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Wednesday
September 2, 1992

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federal register

Wednesday
September 2, 1992

Briefing on How To Use the Federal Register
For information on a briefing in Atlanta, GA, see announcement on the inside cover of this issue.

For important information on changes to your Federal Register subscription see inside back cover.

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WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

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WHEN: September 17, at 9:00 a.m.
WHERE: Centers for Disease Control
1600 Clinton Rd., NE.
Auditorium A
Atlanta, GA (Parking available)
RESERVATIONS: [404-639-3528 (Atlanta area)]
1-800-347-1997 (outside Atlanta area)

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Title 3—

The President

Presidential Determination No. 92–39 of August 17, 1992

Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

Memorandum for the Secretary of State

Pursuant to section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(c)(1), I hereby determine that it is important to the national interest that up to $14,000,000 be made available from the U.S. Emergency Refugee and Migration Assistance Fund (the Fund) to meet the unexpected and urgent needs of Angolan refugees and returnees. These funds are to be contributed to the United Nations High Commissioner for Refugees in response to its appeal to assist Angolan refugees and returnees.

You are directed to inform the appropriate committees of the Congress of this determination and the obligation of funds under this authority and to publish this memorandum in the **Federal Register**.

George Bush

THE WHITE HOUSE,
Washington, August 17, 1992.

[FR Doc. 92–21303
Filed 8–31–92; 3:34 pm]
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Presidential Documents

Presidential Determination No. 92–40 of August 17, 1992

Determination Under Subsection 2(b)(2)(D) of the Export-Import Bank Act of 1945, as Amended—Albania

Memorandum for the Secretary of State

Pursuant to subsection 2(b)(2)(D) of the Export-Import Bank Act of 1945, as amended [12 U.S.C. 635(b)(2)(D)], I determine that it is in the national interest for the Export–Import Bank of the United States to guarantee, insure, extend credit, and participate in the extension of credit in connection with the purchase or lease of any product or service by, for use in or for sale or lease to Albania.

You are authorized and directed to report this determination to the Congress and to publish it in the **Federal Register.**

George Bush

THE WHITE HOUSE,
Washington, August 17, 1992.

[FR Doc. 92–21311
Filed 8–31–92; 3:42 pm]
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Presidential Documents

Presidential Determination No. 92–42 of August 25, 1992

Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

Memorandum for the Secretary of State

Pursuant to section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(c)(1), I hereby determine that it is important to the national interest that up to $12,000,000 be made available from the U.S. Emergency Refugee and Migration Assistance Fund (the Fund) to meet the unexpected and urgent needs of refugees, conflict victims, and displaced persons from the former Yugoslavia. These funds will provide U.S. contributions to the United Nations High Commissioner for Refugees (UNHCR), the International Committee of the Red Cross (ICRC), and the United Nations Children's Fund (UNICEF) in support of their emergency assistance efforts.

You are directed to inform the appropriate committees of the Congress of this determination and the obligation of funds under this authority and to publish this memorandum in the **Federal Register**.

George Bush

THE WHITE HOUSE,
Washington, August 25, 1992.

[FR Doc. 92-21312
Filed 8-31-92; 3:51 pm]
Billing code 3195-01-M

[FR Doc
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Presidential Documents

Presidential Determination No. 92–43 of August 25, 1992

Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

Memorandum for the Secretary of State

Pursuant to section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(c)(1), I hereby determine that it is important to the national interest that up to $15,200,000 be made available from the U.S. Emergency Refugee and Migration Assistance Fund (the Fund) to meet the unexpected and urgent needs of refugees, conflict victims, and displaced persons in Africa. These funds will be used for U.S. contributions in response to the appeals issued by the United Nations Special Emergency Program for the Horn of Africa (SEPHA) and by the International Committee of the Red Cross (ICRC) for its programs in Somalia and Mozambique.

You are directed to inform the appropriate committees of the Congress of this determination and the obligation of funds under this authority and to publish this memorandum in the **Federal Register**.

George Bush

THE WHITE HOUSE,
Washington, August 25, 1992.

[FR Doc 92–21813
Filed 8–31–92; 3:52 pm]
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Presidential Documents

Presidential Determination No. 92–44 of August 25, 1992

Eligibility of the Organization of African Unity (OAU) To Be Furnished Defense Articles and Services Under the Foreign Assistance Act and the Arms Export Control Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me by section 503(a) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2311(a)), and section 3(a)(1) of the Arms Export Control Act, as amended (22 U.S.C. 2753(a)(1)), I hereby find that the furnishing of defense articles and services to the Organization of African Unity will strengthen the security of the United States and promote world peace.

You are directed to report this finding to the Congress and to publish it in the **Federal Register**.

George Bush

THE WHITE HOUSE,
Washington, August 25, 1992.

[FR Doc. 92–21315
Filed 8–31–92; 4:05 pm]
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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1207

[AMS-FV-91-235A]

RIN 0581-AA47

Potato Research and Promotion Plan; Termination of Obsolete Provisions of the Plan and Amendments to the Rules and Regulations Issued Thereunder

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This action: (1) Terminates obsolete provisions in the Potato Research and Promotion Plan (Plan) and the Rules and Regulations issued thereunder that provide for the one-time refund of assessments; and (2) provides assessment rates for imported processed potato products. This action is based on the vote in a referendum conducted in August and September 1991. In the referendum, domestic potato producers and importers favored levying assessments on imported potatoes, seed potatoes, and processed potato products and terminating the Plan's refund provisions.

DATES: This interim final rule is effective September 2, 1992, except that § 1207.510(b) is effective November 2, 1992. Comments must be received by October 2, 1992.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Research and Promotion Branch, F&V, AMS, USDA, room 2533-So., P.O. Box 96456, Washington, DC 20090-6456. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours. Comments concerning the information collection requirements contained in this action should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, attn: Desk Officer for the Agricultural Marketing Service, USDA.

FOR FURTHER INFORMATION CONTACT: Georgia C. Abraham, Research and Promotion Branch, F&V, AMS, USDA, room 2533-So., P.O. Box 96456, Washington, DC 20090-6456; telephone (202) 720-5057.

SUPPLEMENTARY INFORMATION: These amendments to the Plan are issued pursuant to the Potato Research and Promotion Act, as amended on November 28, 1990 (104 Stat. 3865, 7 U.S.C. 2611 *et seq.*), hereinafter referred to as the Act.

This rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This interim rule will not preempt any state or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 311 of the Act, a person subject to a plan may file a petition with the Secretary stating that such plan, any provision of such plan or any obligation imposed in connection with such plan is not in accordance with law; and requesting a modification of the plan or an exemption from the plan. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which such person is an inhabitant, or has a principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided that a complaint is filed within 20 days after the date of entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

There are an estimated 2,000 handlers, 6,000 producers, 80 importers of potatoes and potato products for human consumption, and 25 importers of seed potatoes who are subject to the provisions of the Plan. The majority of these persons may be classified as small agricultural producers and small agricultural service firms. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of potato handlers and producers may be classified as small entities. During the 1990 crop year, 397 million hundredweight of potatoes were produced in the United States. Imports of potatoes for 1990, as reported by the Foreign Agricultural Service, were 7,910,500 hundredweight. Of this total, 4,823,040 hundredweight of tablestock potatoes, 2,009,720 hundredweight of seed potatoes, and 982,500 hundredweight of frozen potato products were imported from Canada. Potato chip imports from Mexico accounted for 37,340 hundredweight of total imports.

Domestic potato producers are no longer able to apply for and receive refunds of assessments. Importers are subject to the Act's provisions requiring importers to share the cost of the program with domestic potato producers on an equal basis. This burden is not considered significant in light of the benefits all potato producers and importers receive from this program.

The reporting burden for domestic potato producers and importers will decrease since they are no longer required to complete the forms necessary to receive the one-time refund of assessments paid. The reporting burden on importers requires approximately 6 hours per year for each importer of potatoes and potato products for human consumption and for each importer of seed potatoes.

In accordance with the Paperwork Reduction Act (PRA) of 1980 (44 U.S.C. chapter 35) and Office of Management and Budget (OMB) regulations (5 CFR

part 1320), the information collection and recordkeeping requirements contained in this action were submitted to the OMB and approved under OMB control numbers 0581–0093 and 0505–0001. Comments concerning the information collection requirements contained in this action should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, attn: Desk Officer for the Agricultural Marketing Service, USDA.

The Plan, as amended in the August 14, 1991, issue of the **Federal Register** (56 FR 40226), authorizes the National Potato Promotion Board (Board) to collect assessments on potatoes and potato products for human consumption, and on seed potatoes imported into the United States from foreign countries. Importers of such potatoes, potato products, and seed potatoes are required to submit such reports to the Board as it deems necessary to administer the provisions of the Plan. However, no immediate reporting requirements by importers are contemplated at this time since the Department will enter into an agreement with the United States Customs Service (Customs Service) of the Department of the Treasury whereby the Customs Service will collect assessments on imported potatoes, potato products, and seed potatoes. Importers are required to maintain records, and such records will be subject to inspection. Records are required to be maintained for 2 years beyond the close of the fiscal year in which they were created.

It is estimated that approximately 105 importers are subject to these requirements. Because the assessment is levied at the time of importation or withdrawal for consumption into the United States, there are no added reporting requirements on importers.

The August 14, 1991, rule amended the Plan to conform with amendments made to the Potato Research and Promotion Act of 1971 by the Food, Agriculture, Conservation, and Trade Act of 1990. Amendments to the Plan included: (1) Adding the authority to levy assessments on imported potatoes, potato products, and seed potatoes equal to that levied on domestic production, and providing for importer representation on the Board; and (2) eliminating the provisions of the Plan which permitted refunds of assessments. The August 14 rule also directed that a referendum be conducted to determine whether or not a majority of producers and importers voting favored continuance of these amendments. During the referendum, conducted from August 19 to September 6, 1991, a majority of the producers and importers voting in the referendum favored continuance of the amendments.

Section 315 of the Act provides the Secretary the authority to terminate provisions of the Plan which do not tend to effectuate the declared policy of the Act. Paragraph (k) of § 1207.328 and § 1207.343 of the Plan and § 1207.514 of the rules and regulations which, respectively, established an escrow account and permitted the one-time refund of assessments if producers and importers did not favor continuance of the amendments as stated in the above paragraph, were rendered obsolete by the results of the referendum conducted from August 19 to September 6, 1991. Therefore, this interim final rule terminates paragraph (k) of § 1207.328 and § 1207.343 of the Plan and § 1207.514 of the rules and regulations.

To facilitate collection of the assessments on imported potatoes, potato products, and seed potatoes, the Department and the Customs Service will enter into an agreement whereby the Customs Service is designated as the collecting agency for assessments levied on such imports. Since all imported potatoes, potato products, and seed potatoes are imported into the United States under the supervision and control of the Customs Service, this is an appropriate and efficient method to collect the assessment.

Therefore, this interim final rule also incorporates the Harmonized Tariff Schedule (HTS) codes of the Customs Service and establishes rates of assessment for the various kinds of processed potato products imported into the United States including, but not limited to, the following: frozen (french fries, tater tots, hashbrown potatoes, etc.); canned; chips and shoestring potato sticks; and dehydrated (flakes, granules, etc.). This is accomplished by revising § 1207.510 to add the conversion factors and assessment rates for potato imports.

The amended Act requires the assessment rate for imported tablestock, frozen or processed potatoes for ultimate consumption by humans, and seed potatoes to equal the effective assessment rate for domestic potato production. Since imported tablestock and seed potatoes do not undergo processing procedures that substantially alter the original product, the assessment rate for imported tablestock and seed potatoes was established at 2 cents per hundredweight in the August 14, 1991, revision of the Plan and the rules and regulations (§ 1207.510(a)). It is necessary, however, to establish conversion factors in order to compute assessment rates for processed potato products that equal fresh weight equivalents of potatoes.

The Board submitted conversion factors based on data published by the Department's Economic Research Service in Statistical Bulletin No. 825, "Food Consumption, Prices, and Expenditures, 1968–89." The Department has found these factors satisfactory and has adopted them in determining the assessment rates for imported processed potato products. The conversion factor for frozen potato products is .50. This translates into an assessment rate of 4 cents per hundredweight or 0.0882 cents per kilogram of finished product. The conversion factor for canned potatoes is .636; the assessment rate is 3.1446 cents per hundredweight or 0.0693 cents per kilogram. The conversion factor for potato chips and shoestring potatoes is .245; the assessment rate is 8.1633 cents per hundredweight or 0.1800 cents per kilogram. The conversion factor for dehydrated potato products is .14; the assessment rate is 14.2857 cents per hundredweight or 0.3149 cents per kilogram. Since most countries exporting potatoes and potato products to the United States use the metric system, the Customs Service requires that assessment rates be expressed in metric weights. The assessment rates are given in both U.S. and metric weight equivalents in the table in paragraph (b)(3) of § 1207.510. The collection of assessments on imports will begin 60 days after publication of this rule in the **Federal Register**. This will allow the Customs Service sufficient time to prepare for collection of the assessments on imports.

In addition, this action adds a new paragraph (c) to § 1207.500 to provide a definition for imported frozen or processed potatoes for ultimate consumption by humans. The authority citation for part 1207 is also revised.

In the August 14, 1991, revision of the Plan and the rules and regulations, paragraph (d) of § 1207.320 was redesignated as paragraph (e). A reference to this paragraph in paragraph (a) of § 1207.325 was not changed to reflect the new paragraph number. Therefore, in order to avoid confusion, the reference to paragraph (d) is terminated from paragraph (a) of § 1207.325.

Based on the above, the Administrator of the AMS has determined that the issuance of this interim final rule will not have a significant economic effect on a substantial number of small entities.

After consideration of all relevant material presented, it is found that the amendments to the rules and regulations, as hereinafter set forth, will tend to effectuate the declared policy of the Act. With regard to the termination of provisions in the Plan and the rules and regulations, as hereinafter set forth, it is found that these provisions no longer tend to effectuate the declared policy of the Act.

All written comments received in response to this publication by the date specified herein will be considered prior to finalizing this action.

Pursuant to the provisions in 5 U.S.C. 553, it is found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action (except for § 1207.510(b)) until 30 days after publication in the **Federal Register** because: (1) This action is required by the 1990 amendments to the Act and the 1991 amendments to the Plan; (2) a 30-day period is provided to allow interested parties to comment prior to finalization; and (3) no useful purpose would be served by a delay of the effective date.

PART 1207—POTATO RESEARCH AND PROMOTION PLAN

1. The authority citation for 7 CFR part 1207 is amended to read as follows:

Authority: Potato Research and Promotion Act, as amended, 7 U.S.C. 2611 *et seq.*

§ 1207.325 [Amended]

2. Paragraph (a) of § 1207.325 is amended by removing the reference to paragraph "d.".

§ 1207.328 [Amended]

3. In § 1207.328, paragraph (k) is removed.

§ 1207.343 [Reserved]

4. Section 1207.343 is removed and reserved.

5. Section 1207.500 is amended by adding paragraph (c) to read as follows:

§ 1207.500 Definitions.

* * * * *

(c) *Imported frozen or processed potatoes for ultimate consumption by humans. Imported frozen or processed potatoes for ultimate consumption by humans* means products which are imported into the United States which the Secretary determines contain a substantial amount of potato.

6. Section 1207.510 is revised to read as follows:

§ 1207.510 Levy of assessments.

(a) *Domestic assessments.* (1) An assessment rate of 2 cents per hundredweight shall be levied on all potatoes produced within the 50 States of the United States.

(2) No assessment shall be levied on potatoes grown in the 50 States of the United States by producers of less than 5 acres of potatoes.

(b) *Assessments on imports.* (1) An assessment rate of 2 cents per hundredweight shall be levied on all tablestock potatoes imported into the United States for ultimate consumption as human food and all seed potatoes imported into the United States. An assessment rate of 2 cents per hundredweight shall be levied on the fresh weight equivalents of frozen or processed potatoes imported into the United States for ultimate consumption as human food. The importer of imported tablestock potatoes, potato products, or seed potatoes shall pay the assessment to the Board through the U.S. Customs Service at the time of entry or withdrawal for consumption of such potatoes and potato products into the United States.

(2) The following conversion factors shall be used to determine the fresh weight equivalents of frozen and processed potato products:

Frozen potato products	.50
Canned potatoes	.630
Potato chips and shoestring potatoes	.245
Dehydrated potato products	.14

(3) The Harmonized Tariff Schedule (HTS) categories and assessment rates on imported tablestock potatoes and frozen or processed potato products for ultimate consumption by humans and on seed potatoes are as follows:

Tablestock potatoes, processed potato products, and seed potatoes	Assessment	
	Cents/cwt	Cents/kg
0701.10.0020	2.00	0.0441
0701.10.0040	2.00	0.0441
0701.90.1000	2.00	0.0441
0701.90.5010	2.00	0.0441
0701.90.5020	2.00	0.0441
0701.90.5030	2.00	0.0441
0701.90.5040	2.00	0.0441
0710.10.0000	4.00	0.0882
2004.10.4000	4.00	0.0882
2004.10.8020	4.00	0.0882
2004.10.8040	4.00	0.0882
2005.20.6060	3.1446	0.0693
0712.10.0000	14.2857	0.3149
1105.10.0000	14.2857	0.3149
1105.20.0000	14.2857	0.3149
2005.20.6040	14.2857	0.3149
2005.20.2000	8.1633	0.1800

(4) No assessments shall be levied on otherwise assessable potatoes which are contained in imported products wherein potatoes are not a principal ingredient.

(c) Potatoes used for other nonhuman food purposes, including starch, are exempt from assessment but are subject to the disposition of exempted potatoes provisions of § 1207.515 of this subpart.

(d) No more than one such assessment shall be made on any potatoes or potato products.

§ 1207.514 [Reserved]

7. Section 1207.514 is removed and reserved.

Dated: August 26, 1992.

John E. Frydenlund,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 92-21062 Filed 9-1-92; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF ENERGY

Office of the Secretary

10 CFR Part 600

Financial Assistance Rules; Continuation Awards

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) today is amending Subpart A of the Financial Assistance Rules, 10 CFR part 600, to permit a continuation application for a research award to be submitted without detailed budgetary information. This rule is issued in response to the President's Regulatory Review Program. This rule permits recipients of research awards, in certain cases, to submit requests for continuation funding without detailed budgetary information on how funds are to be spent in the upcoming period.

EFFECTIVE DATE: October 2, 1992.

FOR FURTHER INFORMATION CONTACT:

Edward F. Sharp, Business and Financial Policy Division (PR-122), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8192.

Mary Ann Masterson, Office of the Assistant General Counsel, Procurement and Finance (GC-34), U.S. Department of Energy, Washington, DC 20585, (202) 586-1900.

SUPPLEMENTARY INFORMATION:

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I. Introduction

DOE is amending its Financial Assistance Rules (Rules) to permit recipients of research awards, in certain cases, to submit requests for continuation funding without detailed budgetary information on how funds are to be spent in the upcoming period. This will be permitted in those situations in which a new or renewal application contains detailed future-year budgets, which permit DOE to evaluate the future years at the time the initial award is made. Should there be a significant change in the direction of the project or the budget, a detailed budget could still be required for a continuation award. This rulemaking is in response to the President's memoranda on "Reducing the Burden of Government Regulation," dated January 28, 1992, and on "Implementing Regulatory Reforms," dated April 29, 1992.

II. Changes to 10 CFR Part 600

Section 600.10(e)(3) is changed to include a cross-reference to § 600.31.

Section 600.31(b)(3) is changed to permit a continuation award to be made without a detailed budget being submitted with the continuation application if the new or renewal award contained detailed future-year budgets.

III. Discussion of Comments on Proposed Rule

Three comments were received, which supported the proposed change because it would ease the paperwork burden associated with the award and administration of research financial assistance, in a manner consistent with sound financial management practices. No comments in opposition to the proposed change were received.

IV. Review Under Executive Order 12612

Executive Order 12612 requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among various levels of Government. If there are sufficient substantial direct effects, then the Executive order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

Today's rule will revise certain policy and procedural requirements. However, DOE has determined that the revision will not have a substantial direct effect on the institutional interests or traditional functions of States.

V. Review Under Executive Order 12291

Today's rule was reviewed under Executive Order 12291. DOE has concluded that the rule is not a "major rule," as therein defined, because its promulgation will not result in: (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S. based enterprises to compete in domestic or export markets. In accordance with requirements of Executive Order 12291, this rulemaking has been reviewed by the Office of Management and Budget (OMB).

VI. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Public Law 96–354, 94 Stat. 1164, which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities; i.e., small businesses, small organizations, and small governmental jurisdictions. DOE has concluded that the rule would only affect small entities as they apply for and receive financial assistance, and does not create additional economic impact on small entities as a whole. DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

VII. Review Under the Paperwork Reduction Act

No information collection or recordkeeping requirements are imposed upon the public by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.*, or OMB's implementing regulations at 5 CFR Part 1320.

VIII. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule clearly would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.* (1976)), the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), and DOE guidelines (10 CFR Part 1021) and, therefore, does not require an environmental impact statement pursuant to NEPA.

IX. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency subject to Executive Order 12291 to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2 (a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards (whether they are engineering or performance standards), and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE certifies that today's rule meets the requirements of sections 2 (a) and (b) of Executive Order 12778.

List of Subjects in 10 CFR Part 600

Cooperative agreements/energy; Educational institutions; Energy; Grants/energy; Non-profit organizations; Reporting requirements.

In consideration of the foregoing, the Department of Energy hereby amends chapter II of Title 10 of the Code of Federal Regulations by amending part 600 as set forth below.

Issued in Washington, DC, August 26, 1992.

Berton J. Roth,

Acting Director, Office of Procurement, Assistance, and Program Management.

For the reasons set out in the preamble, part 600 of chapter II, title 10 of the Code of Federal Regulations is amended as follows:

PART 600—FINANCIAL ASSISTANCE RULES

1. The authority citation for part 600 continues to read as follows:

Authority: Secs. 644 and 646, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254 and 7256); Pub. L.

97-258, 96 Stat. 1003-1005 (31 U.S.C. 6301-6308), unless otherwise noted.

2. Section 600.10 is amended by revising paragraph (e)(3) to read as follows:

§ 600.10 Form and content of applications and preapplications.

* * * * *

(e) * * *

(3) A budget with supporting justification (see §§ 600.31, 600.102, and 600.203); and

* * * * *

3. Section 600.31 is amended by revising paragraph (b)(3) to read as follows:

* * * * *

§ 600.31 Funding.

* * * * *

(b) * * *

(3) A detailed budget for the upcoming budget period, including an estimate of unobligated balances (§ 600.32(c)). For research awards, a detailed budget need not be submitted if the new or renewal application contains future-year budgets sufficiently detailed to allow DOE to review and approve the categories and elements of cost. Should the research award have a change in scope or significant change in the budget, DOE may request a detailed budget. DOE shall review a continuation application for the adequacy of the awardee's progress and planned conduct of the project in the subsequent budget period. DOE shall not require a continuation application to compete against any other application. The amount and award of continuation funding is subject to the availability of appropriations.

* * * * *

[FR Doc. 92-21021 Filed 9-1-92; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 545, 562, 563, 563c, and 571

[No. 92-221]

RIN 1550-AA31

Accounting and Reporting Requirements

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is amending its accounting regulations to implement sections 4(b) and 4(c) of the Home Owners' Loan Act (HOLA), as amended by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. The regulatory changes also re-designate existing accounting regulations into a new part of the Code of Federal Regulations (CFR). The regulatory changes also amend the financial management regulations for obvious contradictions with other regulations and policies. The OTS is planning a more substantive revision of the affected regulations in the near future.

EFFECTIVE DATE: October 2, 1992.

FOR FURTHER INFORMATION CONTACT: David H. Martens, Chief Accountant, OTS, (202) 906-5646, Arthur Lindo, Senior Accountant, (202) 906-5642, Supervision Policy; Deborah Dakin, Assistant Chief Counsel, (202) 906-6445, Regulations and Legislation Division, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: Historically, the Federal Home Loan Bank Board (FHLBB), the predecessor to the OTS, established various accounting and financial reporting requirements for savings associations. These requirements occasionally differed from generally accepted accounting principles (GAAP) and when this occurred, such requirements were referred to as regulatory accounting practices. Regulatory accounting practices were often less stringent than GAAP.

The Competitive Equality Banking Act of 1987, Public Law No. 100-86, 101 Stat. 552, (CEBA) amended HOLA to require the FHLBB to prescribe uniformly applicable accounting standards to be used by all associations for the purpose of determining compliance with any rule or regulation of the FHLBB to the same degree that GAAP is used to determine compliance with rules and regulations of the Federal banking agencies. (The term "Federal banking agencies" means the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation.) To implement the statute, the FHLBB promulgated 12 CFR 563.23-3, now 12 CFR 563.233, which requires all unaudited financial statements and financial reports submitted to the OTS and Statements of Condition be prepared in accordance with GAAP.

The Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law No. 101-73, 103 Stat. 183 ("FIRREA"), amended section 4(b)(1) of HOLA to require the Director of the OTS ("the Director") to prescribe, by regulation, uniform accounting and disclosure standards for savings associations, to be used to determine savings associations' compliance with all applicable regulations. Section 4(b)(2) requires that these uniform accounting standards for savings associations incorporate GAAP to the same degree that such principles are used to determine compliance with regulations prescribed by the Federal banking agencies. This section is comparable to the CEBA requirement. However, section 4(b)(3) allows the Director to, at any time, prescribe more stringent standards than required above if the Director determines that the more stringent standards are necessary to ensure to safe and sound operation of savings associations. Also, section 4(c) of HOLA requires that all regulations and policies of the OTS governing the safe and sound operation of savings associations be no less stringent than those established by the Comptroller of the Currency for national banks.

As a result of the above amendments of HOLA, the accounting rules applied by the OTS to savings associations must, at a minimum, follow GAAP where GAAP is employed by the other federal banking agencies and is the referenced standard; may be more stringent than GAAP when the Director determines it is necessary for safety and soundness purposes; and must be at least as stringent as the accounting standards applied to national banks by the Comptroller of the Currency.

In order to implement these amendments, the final rule adds two terms to the regulatory vernacular. The final rule defines "regulatory reports" as any report that the OTS uses to determine compliance with its rules and regulations including those reports used to monitor the safe and sound operation of savings associations. Reports of Examination and the Thrift Financial Report (TFR) are examples of regulatory reports. Regulatory reports are supervisory and regulatory documents, not accounting documents. The final rule also defines "regulatory reporting requirements" as the instructions for preparing regulatory reports, such as provided in the TFR, OTS regulations, bulletins, and examination handbooks. Regulatory reporting requirements encompass OTS accounting instructions and safety and soundness requirements.

The Federal banking agencies, including the Office of the Comptroller of the Currency, utilize the term "regulatory reporting requirements" in the same manner as the OTS. The Federal banking agencies' regulatory reporting requirements are intended to focus upon the special supervisory, regulatory, and economic needs

applicable to the regulation of banks. The Federal banking agencies discuss their regulatory reporting requirements in the instructions to the Federal Financial Institutions Examination Council's (FFIEC) forms FFIEC 031, 032, 033, and 034: Consolidated Reports and Condition and Income. These forms are collectively referred to as "the Call Report" and serve the same supervisory purpose as the OTS's Thrift Financial Report. Those agencies also discuss regulatory reporting requirements, including accounting instructions and safety and soundness requirements, in their respective examination policies, handbooks and other guidance, such as the Office of the Comptroller of the Currency's banking circulars and the Federal Deposit Insurance Corporation's memoranda to Regional Directors.

The OTS is adopting the following basic standards for regulatory reporting requirements. First, the accounting instructions prescribed for regulatory reports will incorporate GAAP when GAAP is the accounting instruction used by the Federal banking agencies. Second, savings association transactions, financial condition, and regulatory capital must be reported and disclosed in accordance with OTS regulatory reporting requirements consistent with TFR instructions, regulations, bulletins, examination handbooks, and safe and sound practices. Safety and soundness requirements will be no less stringent than those applied by the Comptroller of the Currency to national banks. Third, the Director may prescribe regulatory reporting requirements more stringent than GAAP whenever the Director determines that such requirements are necessary to ensure the safe and sound reporting and operation of savings associations.

Regulatory reporting requirements are applicable to all information in regulatory reports. Regulatory reporting requirements that are not consistent with GAAP, if any, are not required to be reflected in audited financial statements and financial statements contained in securities filings submitted to the OTS pursuant to the Securities Exchange Act of 1934 (1934 Act) or parts 563b, 563d or 563g of the OTS's regulations (Securities filings). Applicable federal securities laws and regulations require securities filings to comply with GAAP, and thus securities filings utilize the reporting requirements referenced in 12 CFR parts 563b, 563c, 563d, and 563g.

Accounting instructions requiring the use of GAAP implicitly incorporate the definition of GAAP that is widely recognized by prudent accounting professionals. The application of accounting instructions and GAAP in regulatory reports must achieve the fundamental objectives of financial accounting; that is to provide reliable financial information about economic resources, and obligations of a business enterprise. The application of accounting instructions, including GAAP instructions, must also incorporate the needs and expectations of the OTS. Regulatory reporting requirements will establish the accounting instructions that should be applied when there is unacceptable diversity in GAAP practices. In such cases, the OTS's accounting instructions must be followed for purposes of regulatory reporting.

Compliance by savings associations with regulatory reporting requirements will be a matter of regulatory judgment. Regulatory reporting requirements will be issued in the OTS's TFR instructions, regulations, bulletins, and examination handbooks. The OTS encourages savings associations and their professional advisors to discuss anticipated unique and unusual transactions with the OTS's examination staff so that regulatory reports will be acceptable to the OTS. A pre-filing conference can be useful in improving the mutual understanding of the transaction in question and in determining the acceptable regulatory reporting requirements.

The final rule also changes the accounting instructions for Statements of Condition. Statements of Condition will be prepared based on regulatory reporting requirements. As a result, OTS expects the statement of condition to be consistent with the TFR. A duly authorized officer of the savings association is required to attest to the accuracy of the information. Statements of condition must be published in a local newspaper and made conspicuously available to the public at the association's home office and branch locations. Statements of condition must also contain disclosures on how a copy of the audited financial statements may be obtained and the amount of regulatory capital that the savings association has available to meet its regulatory capital requirements. Regulatory capital requirements for savings associations are defined in 12 CFR part 567 and include individual minimum capital requirements. Alternatively, a savings association may satisfy this requirement by publishing a statement of condition in a local newspaper and making copies of its audited financial statements conspicuously available to the public at its home office and branch locations.

Finally, the OTS has consolidated and recodified all accounting and reporting regulations for savings associations, except those for securities filings. Four sections of part 545, which pertains only to Federally chartered associations, have been removed and combined with similar sections in subchapter D—Regulations Affecting All Savings Associations. The OTS has removed these sections and combined them with similar requirements found in subchapter D to avoid duplication and inconsistencies between the two sets of requirements. The affected regulations are currently located at 12 CFR 545.111, 545.113, 545.114, 545.115, 563.46, 563.172, 563.173(f), 563.174, 563.175, 563.231, 563.233, 563.234, 563c.10, 563c.12, 563c.13, and 571.18. Part 562 consolidates all accounting and reporting regulations for savings associations. The OTS has amended the above referenced regulations only for obvious contradictions with other regulations and policies. The OTS plans a substantive revision of the recodified regulations in the near future.

Summary of Comments

The OTS received 33 comment letters on the proposed rule. Of these, 19 letters were received from savings associations, 7 letters were received from trade associations, 4 letters were received from accounting firms, 2 letters were received from investment advisors and mortgage product companies, and 1 letter was received from a federal banking agency. The letters responded to concerns in four general areas: (1) Various issues concerning GAAP; (2) requirements for statements of condition; (3) the impact of vague standards and definitions; and (4) technical changes to regulations. The comments received on each of these areas are specifically addressed below.

A. GAAP Related Issues

Twenty two comments were directed at the OTS's description of various aspects of GAAP and the authority to promulgate GAAP. Most of the commentators questioned the need for a new set of standards. Commentators argued that standards which differ from GAAP would serve to expand rather than eliminate the differences among financial institution reporting. These respondents were concerned with inferences in the proposed rule which indicate that current GAAP practice allows savings associations to select the accounting treatment that best suits their objectives. Respondents indicated

that GAAP does not generally lend itself to this type of interpretation when applied properly and was unfairly characterized by the OTS.

A number of commentators specifically indicated that the OTS is not empowered to promulgate GAAP. Respondents believed that the OTS, while properly having input into the promulgation of GAAP, should let the accounting profession establish GAAP through its established procedures. Respondents indicated that the Financial Accounting Standards Board (FASB) and the American Institute of Certified Public Accountants (AICPA) are two organizations recognized by the accounting profession as having the authority to promulgate GAAP and that the OTS should work with these bodies to establish accounting standards.

Respondents also expressed concern that such standards would essentially require savings associations to maintain two sets of books; one set for their GAAP reports and one for supervisory reports. Respondents found the idea of a new set of standards to be unjustified, excessive and wasteful. Thus, respondents recommended that the OTS utilize GAAP standards and reflect safety and soundness concerns through other regulatory vehicles such as regulatory capital.

B. Requirements for Statements of Condition

Eleven commentators indicated that the requirements for statements of condition were unreasonable. Most respondents believed that the use of regulatory reporting requirements as the reporting basis for these reports was inappropriate since they are intended for the use of the general public rather than the OTS. These commentators stated that general purpose financial statements should utilize GAAP reporting since it provides the reviewer with a standard basis of comparison for all entities. In a related matter, respondents argued for the reinstatement of the statement of condition filing exemption for associations that transmit an annual report to their voting members or shareholders. The respondents' contention is that the exemption for these associations is based on a rationale similar to the one used by the OTS to exempt associations that file financial statements pursuant to the 1934 Act from filing statements of condition.

Other commentators indicated concern for perceived extremes in the required footnote disclosures. More specifically, respondents challenged whether the public has a right to obtain copies of audited financial statements for entities that do not file financial statements pursuant to the 1934 Act. Respondents also argued that disclosure of capital information in the statement of condition footnotes would likely be a source of confusion to the public and should therefore, be eliminated. Finally, respondents stated that the requirement to publish the statement of condition within 30 days after year end made it virtually impossible to report accurate information in several areas, most notably the calculation of the regulatory capital information required by the footnote.

C. The Impact of Vague Standards and Definitions on the Industry

Eleven respondents commented on the anticipated impact the proposed rule would have on the savings association industry. The commentators indicated that due to the vague nature of the standards, in particular the economic substance over form standard, the standards would likely result in a very subjective interpretation of transactions by the OTS. Respondents were concerned that the OTS would second guess savings association accounting practices undertaken in good faith. A common theme was that the OTS, with the benefit of hindsight, would inappropriately utilize information that was unavailable at the time of the transaction. Moreover, respondents stated that the rule requires savings associations to justify its decisions when they are second guessed rather than the OTS. The standards do not purport to provide guidance on specific transactions yet allow savings associations to be penalized for reporting transactions in accordance with established principles.

A number of respondents perceived the economic substance standard as an attempt by the OTS to impose market value accounting on associations without adequate discussion and debate. They contended that such action would not be advisable without detailed assessment of the volatility that market valuations produce. Furthermore, the respondents perceived that the likely outcome of market value accounting would be unfair to savings associations unless it was applied simultaneously to other types of financial institutions. In this regard, respondents were concerned that the disclosure of reports to the public based on economic substance standards would promote a misconception that bank assets and liabilities are not as unstable or rate sensitive as savings associations. A few commentators recommended a compromise position that would disclose market value data in a supplemental report rather than through the use of economic substance standards.

Several commentators expressed concern over ambiguities in the definitions of supervisory reports and regulatory reporting requirements. The respondents were particularly concerned that the definition of supervisory reports could be construed to include audited financial statements submitted to the OTS. The respondents contend that considerable uncertainty would surround any audit opinion on these general purpose financial statements. The respondents contended that the exclusion of the term "audited financial statements" from the definition in general is consistent with the specific exclusion granted for financial statements filed pursuant to the Securities and Exchange Act of 1934.

Other commentators were concerned with the definition of regulatory reporting requirements. A few commentators typified the group's concerns in this area. Respondents asked whether the standard requiring "GAAP whenever it is the referenced standard of the federal banking agencies" means that savings associations should default to the bank Call Report instructions for guidance. Another respondent recommended that the OTS clarify its position by references to the annual report of differences in accounting standards among the Federal banking agencies and the OTS that is reported to the House and Senate Banking Committees. Overall, the commentators contended that the rule would not necessarily promote the safety and soundness objectives of FIRREA but rather introduce greater uncertainty and volatility into the savings association industry.

D. Technical Changes to Regulations

Nine respondents commented on technical changes that were made to the recodified regulations or are warranted. Several respondents expressed concern over the elimination of the term Net Realizable Value from the real estate valuation regulation in section 12 CFR 562.4. Those respondents perceived this change as an attempt to establish a new valuation methodology for real estate assets without adequate public comment. They recommended that the OTS include the public in any deliberations to establish a new methodology for real estate valuation.

A few commentators indicated that the requirement to maintain records at locations within 100 miles of a savings

association's home office contained in section 12 CFR 562.1(b)(1) is impractical. They contended that the modern savings association operation utilizes some form of electronic data processing services, remote or specialized processing facilities, and multiple branch and state networks that can easily exceed this limit for valid reasons. They recommended that the requirement be removed. Another commentator stated that the requirement in 12 CFR 562.1(b)(1)(ii) for a savings association to close its books annually no less than 15 days or more than 3 months and 15 days prior to its annual board meeting was not always practical. The respondent recommended that the OTS be more flexible to accommodate unforeseen scheduling difficulties.

A couple of respondents indicated that the recodified guidance on futures and financial options transactions in sections 12 CFR 562.5 and 562.6, respectively, is of such limited scope as to neglect common savings association transactions involving covered calls, options and a variety of securities that are not mentioned. They recommended that the section be amended to incorporate such activities as part of the final rule.

Changes to Proposed Rule

The various comments received, described above, have provided useful insights and guidance to the OTS in considering issues presented by the proposed rule. The following sections discuss the changes in the proposed rule and address the issues and concerns raised by the commentators.

A. Regulatory Reporting Requirements—Records and Reports

The records and reports section has been removed from section 12 CFR 562.1(b)(1). The OTS eliminated this section because it is essentially a duplication of 12 CFR 563.170 (c), (d), and (e), except for two provisions. First, the proposed rule specifically required savings associations to maintain records within 100 miles of their home office whereas 12 CFR 563.170(d) is silent on this point. The final rule eliminates the 100 mile provision. However, savings association records must be maintained within the United States and be readily accessible for examination and supervisory purposes at a location acceptable to the OTS within 5 business days. Second, the proposed rule required the authorization of the savings association's board of directors prior to the transfer of records. The rule adds the provision requiring authorization of the savings association's board of directors prior to the transfer of records to 12 CFR 563.170(d).

Similarly, the OTS removed the requirement for savings associations to close its books quarterly and annually within specified time frames. The OTS believes that the annual audit requirement recodified at 12 CFR 571.2 provides adequate safeguards to facilitate the closing of associations' books in a timely fashion.

B. Regulatory Reports

1. Definition and Scope

The OTS amended the definition of supervisory reports to clarify its position on the applicability of regulatory reporting requirements to audited financial statements. Audited financial statements are not required to follow regulatory reporting requirements that are not consistent with GAAP, if any, because of the general purpose nature of these statements. This position is consistent with the OTS's position on financial statements filed pursuant to the Securities and Exchange Act of 1934.

2. Regulatory Reporting Requirements

The OTS substituted the term "regulatory reporting requirements" for the term "supervisory reporting requirements." This revision makes the OTS's terminology consistent with that of the Federal banking agencies.

The "economic substance" criterion has been removed from the regulatory reporting requirements as an independent standard. However, the OTS reminds savings associations and their practitioners that reliable accounting information does not permit the use of accounting representations that subordinate substance to form. Therefore, accounting representations that purport to use GAAP are expected to incorporate GAAP that best reflects the underlying economic substance of the transaction at issue. The OTS reserves the right to determine whether a particular application of GAAP reflects these characteristics.

C. Statements of Condition

The OTS has retained the provision requiring that statements of condition utilize regulatory reporting requirements, as well as the footnote disclosures on regulatory capital. The OTS recognizes that the statement of condition is a general purpose statement issued for the benefit of the depositors. However, the OTS also believes that the regulatory financial information and regulatory capital compliance information used by regulators are meaningful to depositors.

The OTS also retained the disclosure requiring savings associations to include instructions on how the public can obtain copies of their annual audited financial statements. The OTS notes that the Office of the Comptroller of the Currency has a quarterly and an annual financial disclosure requirement for national banks which is located at 12 CFR part 18. That rule requires national banks to quarterly disclose and publish a statement of condition and annually disclose to the public a statement of condition, results of operations, changes in equity, past due and nonaccrual loans and leases, and charge-offs and recoveries and changes in allowance for loans and leases. National banks are allowed to provide copies of audited financial statements in satisfaction of this requirement. The OTS believes that the provision to make audited financial statements available upon request results in a comparable annual disclosure requirement for savings associations. The final rule requires savings associations to publish a statement of condition annually and either (1) make the statement of condition available in their home offices and branches, with the footnote disclosure on how the audited financial statement may be obtained, or (2) make the annual audited financial statements available at those locations.

Similarly, the OTS has amended the delivery date of the statement of condition from 30 days to 3 months after a savings association's year end to facilitate timely closing of books and records. The OTS also amended the requirements to require a duly authorized officer of the savings association to sign a statement attesting to the accuracy of the statement of condition. These provisions are designed to achieve comparability between savings association and national bank disclosures. National banks are required to have an officer sign the statement of condition and three directors attest to its accuracy.

D. Evaluation of Assets and Adjustment of Book Value

The final rule does not re-designate 12 CFR 563.172(a), Evaluation of real estate assets, at § 562.4(a) as initially indicated in the proposed rule. This paragraph will retain the 12 CFR 563.172 reference but has been amended to reflect the changes indicated in the proposed rule.

The final rule eliminates 12 CFR 563.4(b), Evaluation of loans and other assets, because a comparable authority exists in regulation codified at 12 CFR 563.160, 563.170, 564 and 571.1. Accordingly, the final rule rescinds this

section as part of the recodification process. Similarly, 12 CFR 562.4(c), Adjustment of book value, of the proposed rule is rescinded as part of the final rule. Prior to its recodification, this section made reference to the term Net Realizable Value (NRV) as the valuation methodology to be used for real estate assets. The OTS's classification of assets regulation, located at 12 CFR 563.160, allows for asset evaluations that are consistent with the practices of the federal banking agencies for supervisory reports.

E. Futures Transactions and Financial Options Transactions

The proposed rule re-designated sections 12 CFR 563.174 and 563.175 as 12 CFR 562.5 and 562.6, respectively. However, the OTS has determined that these sections, as revised, have no direct bearing on the accounting for futures and financial options transactions and therefore, these sections will not be re-designated as section 562 regulations. The OTS has amended sections 12 CFR 563.174 and 563.175 in four minor ways.

First, the sections were amended to eliminate information collection requirements that duplicate those already required in the TFR. Second, information currently required to be maintained by associations in a register was updated to reflect minor technical changes. Third, the sections were amended to make the requirements to notify the Regional Director of the association's intent to engage in such transactions consistent. Fourth, all accounting guidance in these sections was eliminated. The accounting for these transactions should follow GAAP unless the OTS specifies a regulatory reporting requirement for these transactions. The OTS has not amended these rules to reflect the expanded variety of transactions involving savings associations. The OTS may amend these rules in the near future.

The following is a section-by-section analysis showing how each regulation has been modified.

12 CFR 545.111—Adjustments to Book Value of Assets

This section has been eliminated since the accounting and safety and soundness guidance for assets, including asset classification, are explained in various regulations and other guidance, such as 12 CFR 563.160 and the instructions to financial reports to the OTS (i.e., the TFR).

12 CFR 545.113—Accounting Records

Paragraph (a). This paragraph was amended to eliminate the required time frame for the annual closing of savings association's books because annual audited financial statements must be filed with the OTS within 90 days following the savings association's year end. The remaining portion of the paragraph was consolidated with 12 CFR 563.233(a) and recodified at 12 CFR 562.1(b)(2).

Paragraph (b). This paragraph has been eliminated because it was essentially a duplication of 12 CFR 563.170(d) and (e). The provision requiring the authorization of the savings association's board of directors prior to the transfer of records has been combined with 12 CFR 563.170(d).

12 CFR 545.114—Monthly Reports

This section has been eliminated since 12 CFR 545.113(a) instructs savings associations to use forms prescribed by the OTS. 12 CFR 545.113(a) was consolidated with 12 CFR 563.233(a) and recodified at 12 CFR 562.1(b)(2).

12 CFR 545.115—Statement of Condition

This section was amended to extend the statement of condition requirements to all savings associations. It has also been amended to include the use of regulatory reporting requirements, a declaration from savings association management attesting to the accuracy of the statement of condition, the disclosure of the savings association's regulatory capital requirements, and the disclosure of how copies of the audited financial statements can be obtained. This section was consolidated with 12 CFR 563.233(d) and recodified at 12 CFR 562.3.

12 CFR 563.46—Charge-Off of Consumer Credit Classified as a Loss

This section has been eliminated since the accounting and safety and soundness guidance for the charge-off of assets are explained in various regulations and other guidance, much as 12 CFR 563.160 and the instructions to financial reports to the OTS (i.e., the TFR).

12 CFR 563.170(d)—Examination and Audits; Appraisals; Establishment and Maintenance of Records

This section was amended to incorporate the board of director approval requirement of 12 CFR 545.113(a).

12 CFR 563.172—Re-Evaluation of Assets; Adjustment of Book Value; Adjustment Charges

Paragraph (a). This paragraph has been amended for minor technical corrections.

Paragraphs (b), (c), and (d). These paragraphs have been eliminated since the accounting and safety and soundness guidance for assets, including asset classification, are explained in various regulations and other guidance, such as 12 CFR 563.160 and the instructions to reports to the OTS (i.e., the TFR).

12 CFR 563.173(f)—Forward Commitments

This paragraph has been eliminated since accounting for commitment fees received for forward commitments is explained in the applicable GAAP literature.

12 CFR 563.174—Futures Transactions

Paragraph (a). This paragraph was amended to remove obvious redundancies in the caption above each definition and to list mortgage pass-through securities issued by the Federal National Mortgage Association among the securities included in the definition of a mortgage-related security.

Paragraph (b). This paragraph was amended to add off-balance sheet contracts to the discussion of net interest-rate risk exposure. The paragraph containing an exemption for interest-rate futures transactions engaged in prior to July 10, 1981 has been eliminated since all such contracts have been closed as of the effective date of this rule.

Paragraph (d). This paragraph was amended to require the board of directors review of activity relating to matched futures transactions at each regular meeting.

Paragraph (e) This paragraph was amended to require the board of directors to notify the Regional Director when it authorizes the association's involvement in futures transactions. This paragraph was also amended to eliminate the redundant reference to the Thrift Financial Report.

Paragraph (f). This paragraph was amended to require the association to maintain documentation of the hedge objective and results. The paragraph also requires maintenance of records for ten years.

12 CFR 563.175—Financial Options Transactions

Paragraph (a). This paragraph was amended to remove obvious redundancies in the caption above each definition and to list mortgage pass-through securities issued by the Federal National Mortgage Association among the securities included in the definition of a permissible counterparty. This

paragraph was also amended to reflect the appropriate titles of OTS personnel.

Paragraph (e). This paragraph was amended to require the board of directors to notify the Regional Director when it authorizes the association's involvement in option transactions. This paragraph was also amended to eliminate the redundant reference to the Thrift Financial Report and to give the appropriate cross reference for limitations governing this activity.

Paragraph (f). This paragraph was amended to require the association to maintain documentation of the objective and results of its option strategy. The paragraph also requires maintenance of records for ten years.

Paragraph (g). This paragraph has been eliminated since accounting or options is explained in the applicable GAAP literature.

12 CFR 563.231—Premiums and Discounts With Respect to Loans

This section has been eliminated since accounting for loan premiums and discounts is explained in the applicable GAAP literature.

12 CFR 563.233—Accounting Principles and Procedures

Paragraph (a). This paragraph was consolidated with 12 CFR 545.113(a) and recodified at 12 CFR 562.1(b)(2).

Paragraph (b). This paragraph was recodified at 12 CFR 562.1(b)(1).

Paragraph (c). This paragraph was amended to require the use of regulatory reporting requirements in regulatory reports. It was recodified at 12 CFR 562.2(a), (b)(1), and (b)(2).

Paragraph (d). This paragraph was amended to require the use of regulatory reporting requirements, a declaration from savings association management attesting to the accuracy of the statement of condition, the disclosure of the savings association's regulatory capital requirements, and a disclosure explaining how copies of the audited financial statements can be obtained. The requirement to disclose FDIC insurance coverage has been eliminated. It was consolidated with 12 CFR 545.115 and recodified at 12 CFR 562.3.

Paragraph (e). This paragraph has been eliminated since the standards set forth in this regulation will not be delayed.

12 CFR 563.234—Accounting for Troubled Debt Restructuring

This section has been eliminated since regulatory reporting for troubled loans is explained in the applicable GAAP literature and in the Thrift Financial Report instructions.

12 CFR 563c.10—Use of Accrual Basis of Accounting

This section has been eliminated since the applicability of accrual basis accounting is explained in the applicable GAAP literature and other guidance, such as the instructions to reports to the OTS (i.e., the TFR).

12 CFR 563c.12—Accounting for Net Income

This section has been eliminated since the definition of net income is explained in the applicable GAAP literature and other guidance, such as the instructions to reports to the OTS (i.e., the TFR).

12 CFR 563c.13—Accounting for Investment in Service Corporation

This section has been eliminated since accounting for service corporations is explained in the applicable GAAP literature and other guidance, such as the instructions to reports to the OTS (i.e., the TFR).

12 CFR 571.18—Accounting for Troubled Debt Restructuring

This section has been eliminated since regulatory reporting for troubled loans is explained in the applicable GAAP literature and in the Thrift Financial Report instructions.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OTS certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

The OTS has determined that this rule does not constitute a "major rule" and, therefore, will not require the preparation of a final regulatory impact analysis.

Paperwork Reduction Act Notice

The collection of information contained in this final rule has been approved by OMB in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3504(h), under OMB Control number 1550-0011. The information collections in this regulation are in 12 CFR 562.1(b)(1), 563.174 (e) and (f), and 563.175 (e) and (f).

This collection of information is required by the Office of Thrift Supervision to assure that financial results of savings association operations are presented in a useful and comprehensive manner for regulatory purposes. Comments concerning the accuracy of these estimates should be directed to the Office of Management and Budget, Paperwork Reduction Project (1550), Washington, DC 20503, with copies to the Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

List of Subjects

12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 562

Accounting, Reporting and recordkeeping requirements.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Flood insurance, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety Bonds.

12 CFR Part 563c

Accounting, Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 571

Accounting, Conflicts of interest, Gold, Investments, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the OTS hereby amends parts 545, 562, 563, 563c, and 571, subchapters C and D, chapter V, title 12, Code of Federal Regulations, as set forth below:

SUBCHAPTER C—REGULATIONS FOR FEDERAL SAVINGS ASSOCIATIONS

1. The authority citation for part 545 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1828.

§§ 545.111, and 545.113 through 545.115 [Removed and reserved].

2. Sections 545.111, and 545.113 through 545.115 are removed and reserved.

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

3. Part 562 is added to read as follows:

PART 562—REGULATORY REPORTING STANDARDS

Sec.
562.1 Regulatory reporting requirements.
562.2 Regulatory reports.
562.3 Statements of condition.

Authority: 12 U.S.C. 1463.

§ 562.1 Regulatory reporting requirements.

(a) *Authority and scope.* This part is issued by the Office of Thrift Supervision (OTS) pursuant to section 4(b) and 4(c) of the Home Owners' Loan Act (HOLA). It applies to all savings associations regulated by the OTS.

(b) *Records and reports—general*—(1) *Records.* Each savings association and its affiliates shall maintain accurate and complete records of all business transactions. Such records shall support and be readily reconcilable to any regulatory reports submitted to the OTS

and financial reports prepared in accordance with GAAP. The records shall be maintained in the United States and be readily accessible for examination and other supervisory purposes within 5 business days upon request by the OTS, at a location acceptable to the OTS.

(2) *Reports.* For purposes of examination by and regulatory reports to the OTS and compliance with this subchapter, all savings associations shall use such forms and follow such regulatory reporting requirements as the OTS may require by regulation or otherwise.

§ 562.2 Regulatory reports.

(a) *Definition and scope.* This section applies to all regulatory reports, as defined herein. A regulatory report is any report that the OTS prepares, or is submitted to, or is used by the OTS, to determine compliance with its rules and regulations, and to evaluate the safe and sound condition and operation of savings associations. The Report of Examination and the Thrift Financial Report (TFR) are examples of regulatory reports. Regulatory reports are regulatory documents, not accounting documents.

(b) *Regulatory reporting requirements*—(1) *General.* The instructions to regulatory reports are referred to as "regulatory reporting requirements." Regulatory reporting requirements include, but are not limited to, the accounting instructions provided in the TFR, guidance contained in OTS regulations, bulletins, and examination handbooks, and safe and sound practices. Regulatory reporting requirements are not limited to the minimum requirements under generally accepted accounting principles (GAAP) because of the special supervisory, regulatory, and economic policy needs served by such reports. Regulatory reporting by savings associations that purports to comply with GAAP shall incorporate the GAAP that best reflects the underlying economic substance of the transaction at issue. Regulatory reporting requirements shall, at a minimum:

(i) Incorporate GAAP whenever GAAP is the referenced accounting instruction for regulatory reports to the Federal banking agencies;

(ii) Incorporate safe and sound practices contained in OTS regulations, bulletins, examination handbooks and instructions to regulatory reports. Such safety and soundness requirements shall be no less stringent than those applied by the Comptroller of the Currency for national banks; and

(iii) Incorporate additional safety and soundness requirements more stringent than GAAP, as the Director may prescribe.

(2) *Exceptions.* Regulatory reporting requirements that are not consistent with GAAP, if any, are not required to be reflected in audited financial statements, including financial statements contained in securities filings submitted to the OTS pursuant to the Securities and Exchange Act of 1934 or parts 563b, 563d, or 563g of this chapter.

(3) *Compliance.* When the OTS determines that a savings association's regulatory reports did not conform to regulatory reporting requirements in previous reporting periods, the association shall correct its regulatory reports in accordance with the directions of the OTS.

§ 562.3 Statements of condition.

(a) *General.* A statement of condition reports a savings association's assets, liabilities, and capital as of the end of its most recent fiscal year in compliance with regulatory reporting requirements. Each savings association, within three months after the end of its fiscal year, must:

(1) Publish a statement of condition in any English language newspaper of general circulation in the county in which the association's home office is located; and

(2) Make a copy of such statement of condition available for public inspection, in a conspicuous location, at its home office and each branch office.

(b) *Format.* The information set forth in a Statement of Condition shall be presented in accordance with regulatory reporting requirements, as defined in § 562.2(b) of this subchapter and shall contain the following:

(1) A footnote indicating the savings association's regulatory capital requirements and the amount of regulatory capital that the savings association has available to meet those requirements. Regulatory capital requirements for savings associations are defined in 12 CFR part 567. The footnote shall include the following language:

This statement has been prepared in accordance with the regulatory reporting requirements of the Office of Thrift Supervision (OTS). Tangible, Core, and Total Capital are the elements of regulatory capital determined under such reporting requirements. Regulatory capital is a basis by which the OTS determines whether a savings association is operating in a safe and sound manner.

(2) A statement that copies of the annual audited financial statements are available to the public and how copies can be obtained;

(3) The signature of one duly authorized officer of the savings association with the following language:

I, (the name and title of officer authorized to sign report), of the above-named savings association, do hereby declare that this statement of condition has been prepared in conformance with the instructions issued by the Office of Thrift Supervision and is true to the best of my knowledge and belief.

(c) *Optional narrative.* Savings association management may, at its discretion, provide a narrative to supplement the requirements of paragraph (b)(1) of this section. This narrative may include information that association management deems important in evaluating the overall condition of the association. Information management may present includes, but is not limited to, a discussion of an approved capital plan; pertinent information relating to mergers and acquisitions; and future plans.

(d) *Alternative annual statement of condition.* The requirement of paragraph (a)(2) of this section is satisfied when a savings association makes copies of its audited financial statements, prepared pursuant to 12 CFR 571.2, conspicuously available to the public in its home office and each of its branch locations.

(e) *Prohibited conduct and penalties.* (1) No savings association or institution-affiliated party shall directly or indirectly:

(i) Disclose or cause to be disclosed false or misleading information in the annual statement of condition, or omit or cause the omission of pertinent or required information in the statement of condition; or

(ii) Represent that the Office of Thrift Supervision, or any employee thereof, has passed upon the accuracy or completeness of the annual statement of condition.

(2) Conduct which violates paragraph (e)(1) of this section may constitute an unsafe or unsound practice or otherwise serve as a basis for enforcement action by the OTS. This includes, but is not limited to, the assessment of civil money penalties against a savings association or any institution-affiliated party who violates this part.

4. The authority citation for part 563 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1468, 1828, 3806; 42 U.S.C. 4106.

§§ 563.46 and 563.231 through 563.234 [Removed]

5. Sections 563.46, 563.172 (b)–(d), 563.173(f), and subpart H of part 563

563.231, 563.233 and 563.234) are removed.

6. Section 563.170 is amended by revising paragraph (d) to read as follows:

§ 563.170 Examinations and audits; appraisals; establishment and maintenance of records.

* * * * *

(d) *Change in location of records.* A savings association shall not transfer the location of any of its general accounting or control records, or the maintenance thereof, from its home office to a branch or service office, or from a branch or service office to its home office or to another branch or service office unless prior to the date of transfer its board of directors has:

(1) By resolution authorized the transfer or maintenance and;

(2) Sent a certified copy of the resolution to the Regional Director of the OTS Region in which the principal office of the savings association is located.

* * * * *

7. Section 563.172 amended by revising paragraph (a) and removing the designation and the heading to read as following:

§ 563.172 Re-evaluation of real estate owned.

A savings association shall appraise each parcel of real estate owned at the earlier of in-substance foreclosure or at the time of the savings association's acquisition of such property, and at such times thereafter as dictated by prudent management policy; such appraisals shall be consistent with the requirements of part 564 of this chapter. The Regional Director or his or her designee may require subsequent appraisals if, in his or her discretion, such subsequent appraisal is necessary under the particular circumstances. The foregoing requirement shall not apply to any parcel of real estate that is sold and reacquired less than 12 months subsequent to the most recent appraisal made pursuant to this part. A dated, signed copy of each report of appraisal made pursuant to any provisions of this part shall be retained in the savings association's records.

* * * * *

8. Section 563.174 is amended by revising paragraphs (a), (b), (d), (e) and (f) to read as follows:

§ 563.174 Future transactions.

(a) *Definitions.* As used in this section, the definitions in paragraphs (a)(1) through (a)(6) apply unless the context otherwise requires.

(1) The term *forward commitment* means a written commitment to make, purchase or issue mortgage loans or mortgage related securities at a price and on or before a date specified in the commitment.

(2) The term *financial futures transaction* means the purchase or sale of a financial futures contract.

(3) The term *long position* means the purchase of a financial futures contract to take delivery of a financial instrument.

(4) The term *mortgage-related securities* means securities based on and backed by mortgages, including mortgage-backed securities guaranteed by the Government National Mortgage Association (GNMAs), Mortgage Participation Certificates of the Federal Home Loan Mortgage Corporation, Mortgage Pass-through Certificates of the Federal National Mortgage Association, and similar obligations issued by the savings association or in which the savings association is authorized to invest.

(5) The term *offset* means to cancel an obligation to make or take delivery of securities under a financial instrument under a financial futures contract. A futures contract to purchase a financial instrument is offset by a futures contract to sell a financial instrument of the same type for the same delivery month. A futures contract to sell a financial instrument is offset by a futures contract to purchase a financial instrument of the same type for the same delivery month.

(6) The term *short position* means the holding of a financial futures contract to make delivery of a financial instrument.

(b) *Permitted transactions.* To the extent that it has legal power to do so, a savings association may engage in interest-rate futures transactions to reduce its net interest-rate risk exposure as provided in this paragraph (b). For purposes of this section, net interest-rate risk exposure is the volatility in a savings association's earnings or the market value of its portfolio equity that can arise from the mismatching of the effective maturities of assets, liabilities, and off-balance sheet contracts. A savings association may enter into short positions that are appropriate for reducing its net interest-rate risk exposure. A savings association may enter into long positions, other than those that offset short positions, only under the conditions in paragraphs (b)(1) and (b)(2) of this section.

(1) The futures position must be matched against a firm forward commitment to sell mortgages not yet originated or to issue mortgage-related securities to be based on mortgages not yet originated. For purposes of this paragraph (b), a firm forward commitment is a written commitment obligating the seller to make delivery, and the buyer to take delivery, of mortgage loans not yet originated or mortgage-related securities to be based on mortgages not yet originated, at a price and on or before a date specified in the commitment.

(2) The futures position may be entered into and maintained only to the extent that the savings association's firm forward commitments exceed 10 percent of long-term assets with fixed interest rates. For purposes of this section, long-term assets are those having remaining terms to maturity in excess of five years.

* * * * *

(d) *Board of directors' authorization.* Prior to engaging in interest-rate futures transactions, a savings association's board of directors must authorize such activity. In authorizing futures trading, the board of directors shall consider any plan to engage in financial futures transactions, shall endorse specific written policies, and shall require the establishment of internal control procedures. Policy objectives must be specific enough to outline permissible contract strategies, taking into account price and yield correlations between assets and liabilities and the financial futures contracts with which they are matched; the relationship of the strategies to the savings association's operations; and how such strategies reduce the savings association's net interest-rate risk exposure. Internal control procedures shall include, at a minimum, periodic reports to management, segregation of duties and internal review procedures. In addition, the minutes of the meeting of the board of directors shall set forth limits applicable to financial futures transactions, identify personnel authorized to engage in financial futures transactions, and set forth the duties, responsibilities and limits of authority of such personnel. The board of directors shall review the position limit, all outstanding contract positions, and the unrealized gains and losses on those positions and matched items at each regular meeting of the board.

(e) *Notification.* A savings association engaging in financial futures transactions shall notify the Regional Director of the region in which its principal office is located immediately following authorization of its board of directors to engage in financial futures transactions.

(f) *Records retention.* A savings association engaging in financial futures transactions shall maintain records of such transactions sufficient to document how the transactions reduce the net

interest-rate risk exposure of the savings association in accordance with the requirements of paragraphs (f)(1) through (f)(3) of this section.

(1) *Contract register.* The savings association shall maintain a contract register adequate to identify and control all financial futures contracts and including, at a minimum, the type and amount of each contract, the maturity date of each contract, the cost of each contract, the dollar amount and description of the asset or the liability with which the futures contract is matched, and the date and manner in which a contract is closed out. Such register shall be prepared in a manner sufficient to indicate at any time the savings association's total outstanding long and short financial futures positions.

(2) *Other documentation.* The savings association shall maintain, as part of the documentation of its financial futures activity, a schedule that describes the hedge objective of the futures contracts (individually or in groups as appropriate) and the hedge results.

(3) *Period covered.* The records designated in this paragraph (f) shall be maintained for all futures transactions closed-out during at least the preceding ten years.

9. Section 563.175 is amended by removing paragraph (g) and revising paragraphs (a), (e) and (f) to read as follows:

§ 563.175 Financial options transactions.

(a) *Definitions.* As used in this section, the definitions in paragraphs (a)(1) through (a)(13) apply unless the context otherwise requires.

(1) The term *call* means an option which gives the holder the right to purchase a financial instrument at a specified price on or before the expiration date of the contract.

(2) The term *deliverable instrument* means a financial instrument whose terms satisfy the requirements for fulfilling delivery obligations of an option.

(3) The term *effective exercise price* means the yield equivalent price of an instrument whose coupon rate differs from the standard instrument specified in the option.

(4) The term *financial options contract* means an agreement (other than an optional delivery forward commitment contract to purchase and sell mortgages or mortgage-backed securities when used as part of the mortgage loan origination process) to make or take delivery of a financial instrument upon demand by the holder of the contract at any time prior to the expiration date specified in the agreement, under terms and conditions established either by:

(i) A board of trade designated as a contract market for the trading of option contracts by the Commodity Futures Trading Commission (CFTC) or a national securities exchange registered with the Securities Exchange Commission (SEC); or

(ii) The saving association and a "permissible counterparty" as defined in paragraph (a)(13) of this section, that are counterparties in an over-the-counter option transaction (other than an over-the-counter commodity option transaction subject to the jurisdiction of the CFTC that is not otherwise authorized under the Commodity Exchange Act and the regulations thereunder).

(5) The term *financial options transaction* means the purchase or sale of a financial options contract.

(6) The term *immediate exercise value* means the market value gained by exercising an option with the lowest cost deliverable instrument at its effective exercise price compared to purchasing (or selling) an identical instrument with the same coupon rate in the cash market.

(7) The term *long position* means the holding of a financial options contract with the option to make or take delivery of a financial instrument.

(8) The term *option commitment fee* means the option premium minus the immediate exercise value of the option.

(9) The term *option premium* means the price paid or received for establishing an option position.

(10) The term *put* means an option which gives the holder the right to sell a financial instrument at a price and on or before the expiration date specified in the financial options contract.

(11) The term *short position* means a commitment through a financial options contract to stand ready during the term of the contract to make or take delivery of a financial instrument.

(12) The term *primary dealer in government securities* means any member of the Association of Primary Dealers in United States Government Securities and any parent, subsidiary, or affiliated entity of such primary dealer. Provided, that the member guarantees (to the satisfaction of the OTS) the over-the-counter financial options transactions between its parent, subsidiary, or affiliated entity with a savings association, and provided further, that the parent, subsidiary, or affiliated entity is substantially engaged in similar activities.

(13) The term *permissible counterparty* means any entity that is:

(i) A primary dealer as defined in paragraph (a)(12) of this section;

(ii) A bank subject to the regulation and supervision of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the Board of Governors of the Federal Reserve System and that is in compliance with applicable regulatory capital requirements;

(iii) A savings association that is subject to the regulation and supervision of the OTS and is in compliance with the applicable capital requirements contained in part 567 of this subchapter;

(iv) A broker or dealer registered with the Securities and Exchange Commission (SEC) and subject to regulation and supervision by a Registered Securities Association (registered pursuant to section 15A of the Securities Exchange Act of 1934 (Exchange Act) or a National Securities Exchange (registered pursuant to sections 6 and 19(a) of the Exchange Act) and that is in compliance with applicable capital requirements;

(v) A government securities broker or dealer registered with the SEC that is subject to examination and supervision by a Registered Securities Association (registered pursuant to section 15A of the Exchange Act) or National Securities Exchange (registered pursuant to section 6 and 19(a) of the Exchange Act) and that is in compliance with applicable capital requirements;

(vi) A futures commission merchant registered with CFTC and that is in compliance with applicable capital requirements;

(vii) The Federal Home Loan Banks;

(viii) The Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, or the Government National Mortgage Association; or

(ix) Any other entity that the OTS, upon application, determines to be adequately regulated, capitalized, and audited or examined such that acting as a counterparty in an over-the-counter options transaction with a savings association would not entail substantial credit risks for the association. The OTS delegates the authority to consider and approve such applications to the Deputy Director for Regional Operations, with the concurrence of the Chief Counsel, or their respective designees.

* * * * *

(e) *Notification, reporting, and approval.* (1) A savings association shall notify the Regional Director of the region in which its principal office is located immediately following authorization of its board of directors to

engage in financial options transactions; and

(2) A savings association shall not engage in over-the-counter financial option transactions with any permissible counterparty unless such counterparty agrees to notify the Regional Director of the region in which the principal office of the savings association is located immediately following the entering into such transaction. A savings association shall not continue to engage in over-the-counter financial options transactions with any permissible counterparty that has failed to so notify the appropriate Regional Director with respect to previous over-the-counter financial option transactions with that savings association. Notwithstanding the foregoing, no savings association shall engage in a long over-the-counter financial option transaction with a specific permissible counterparty, without obtaining the prior approval of its Regional Director, whenever the aggregate exercise value of all long over-the-counter financial option positions with the counterparty exceeds the limitations contained in § 563.93(c)(1) of this part. A Regional Director may approve any financial option transaction whenever he determines that such transaction does not subject the SAIF to undue risk. In making such determinations, the Regional Director shall consider:

(i) The creditworthiness of the specific counterparty;

(ii) The savings association's experience with such counterparty and with transacting in financial option and futures contracts generally;

(iii) The nature of the subject contracts (e.g., matched or unmatched); and

(iv) Any other circumstances deemed relevant by the Regional Director. An application to enter into a financial option transaction under paragraph (e)(2) of this section shall be deemed approved if the Regional Director does not deny such application within 10 calendar days from the date the application was filed.

(f) *Records retention.* A savings association engaging in financial options transactions shall maintain records of such transactions in accordance with the requirements of paragraphs (f)(1) through (f)(3) of this section.

(1) *Contract register.* The savings association shall maintain a contract register adequate to identify and control all financial options contracts and sufficient to indicate at any time the amounts of financial options contracts required to be reported on its monthly report. At a minimum, the register shall list the type, amount, expiration date and the cost of or income from each contract.

(2) *Other documentation.* The savings association shall maintain, as part of the documentation of its financial options activity, a schedule of any cash market or forward commitment position with which the option is matched, the objective for each contract (or group of contracts), and the results.

(3) *Period covered.* The records designated in this paragraph (f) shall be maintained for all financial options closed out during the preceding ten years.

10. The authority citation for part 563c continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 15 U.S.C. 78c(b), m, n, w.

§§ 563c.10 through 563c.13 [Removed and Reserved]

11. Subpart B (sections 563c.10, 563c.12, and 563c.13) is removed and reserved.

PART 571—[AMENDED]

12. The authority citation for part 571 continues to read as follows:

Authority: 5 U.S.C. 552, 559, 12 U.S.C. 1462a, 1463, 1464.

§ 571.18 [Removed]

13. Section 571.18 is removed.

Dated: May 21, 1992.

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

[FR Doc. 92-20953 Filed 9-1-92; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 13

Investigative and Enforcement Procedures; Notification of Resumed Proceedings

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notification of resumed proceedings.

SUMMARY: This document notifies all persons who have received a Notice of Proposed Civil Penalty under the Civil Penalty Assessment Demonstration Program that proceedings will resume.

EFFECTIVE DATE: August 27, 1992.

FOR FURTHER INFORMATION CONTACT: Vicki S. Leemon, Manager, Adjudications Branch, Litigation Division, Office of the Chief Counsel [AGC-430], 701 Pennsylvania Avenue, NW., Washington, DC 20004, telephone (202) 376-6441.

SUPPLEMENTARY INFORMATION: The authority of the Administrator of the Federal Aviation Administration to assess civil penalties for violations arising under the Federal Aviation Act of 1958, as amended, was made permanent on August 26, 1992. All persons who have received a Notice of Proposed Civil Penalty under the Civil Penalty Assessment Demonstration Program (49 U.S.C. app. 1475) are advised that proceedings in their cases will resume. Attached is a notice from the Administrator advising all persons of the status of the civil penalty program.

Issued in Washington, DC on August 27, 1992.

Denise Castaldo,

Manager, Program Management Staff.

Notice

To All Persons Whose Civil Penalty Cases Were Held in Abeyance

The authority of the Administrator of the Federal Aviation Administration (FAA) to assess civil penalties for violations arising under the Federal Aviation Act of 1958, as amended, lapsed on August 1, 1992. In a prior notice dated July 29, 1992, you were informed that your case would be held in abeyance until a new law was enacted renewing the Administrator's authority. The Administrator's authority to assess civil penalties was made permanent on August 26, 1992, with the enactment of the FAA Civil Penalty Administrative Assessment Act of 1992, Public Law 102-345, 106 Stat. 923. As a result, proceedings in your case will now resume.

To ensure fairness and efficiency in the resumption of proceedings, any time period provided by a procedural rule permitting or requiring action by a party will begin anew on the date of issuance of this notice. Thus, regardless of how much time remained when proceedings in your case were held in abeyance on August 1, 1992, the full period specified in the rules is available starting from the date of this notice, August 27, 1992. For example, § 13.16(d) of the Rules of Practice, 14 CFR 13.16(d), requires a response to a notice of proposed civil penalty not later than 30 days after receipt of the notice. If, on August 1, 1992, 15 days of the 30-day period had passed, you will still have 30 days beginning on August 27, 1992, to respond to the notice of proposed civil penalty.

In cases in which the Administrator granted an extension of time to file a brief after August 1, 1992, the extended filing date is no longer in effect. Instead, in those instances, the parties will be entitled to the full time period for filing briefs prescribed in Section 13.233 of the Rules of Practice, 14 CFR 13.233, starting from August 27, 1992. Thus, for example, if you had been granted an extension of time to file an appeal brief until August 3, 1992, your appeal brief is now

due on October 16, 1992, 50 days from the date of this notice.

Please note that if you are filing a response to a document that was served by mail, an additional 5 days is added to the prescribed filing period under 14 CFR 13.211(e). This rule applies even if the document was served before your case was held in abeyance.

Some changes were made in the new law to the FAA's civil penalty assessment authority that will affect future cases. However, your case is unaffected by these changes in the legislation because it arose under the old statute and regulations. The new provisions have no effect on cases that were pending at the time of the lapse.

If you have questions regarding your case and you are represented by an attorney or other representative in this civil penalty action, please consult with that person. Your attorney or representative may contact the FAA attorney who is handling your case. If you are not represented by an attorney or other representative, you may contact the FAA attorney handling your case.

Issued this 27th day of August, 1992.

Thomas C. Richards,

Administrator, Federal Aviation Administration.

[FR Doc. 92-21113 Filed 8-28-92; 12:24 pm]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 90-AWA-12]

Alteration of the Houston Terminal Control Area and the Revocation of the Houston William P. Hobby Airport, Airport Radar Service Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects the description of the Houston, TX, Terminal Control Area (TCA). A final rule was published in the **Federal Register** on July 10, 1992 (57 FR 30818), that altered the Houston, TX, TCA and removed the Houston William P. Hobby Airport, Airport Radar Service Area (ARSA). The rule was ambiguous in identifying the two primary airports. This action corrects the oversight and clarifies the primary airports.

EFFECTIVE DATE: 0901 u.t.c., October 15, 1992.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9255.

SUPPLEMENTARY INFORMATION:

History

A final rule was published in the **Federal Register** on July 10, 1992 (57 FR 30818), with an effective date of October 15, 1992, that altered the Houston TCA and removed the Houston William P. Hobby Airport ARSA. The TCA rule description was not specific in identifying the primary airports. This made it difficult to differentiate between the two primary airports and other airports located within the TCA boundary. This action clarifies the TCA description. Terminal control areas are published in § 71.401(b) of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The terminal control area listed in this document will be published subsequently in the Handbook.

Correction to Final Rule

Accordingly, the publication on July 10, 1992, of the final rule amending the description of the Houston, TX, TCA is corrected as follows:

§ 71.401(b) [Corrected]

On page 30822 under the title "Primary Airports," in the second column the description for Houston, TX, is corrected to read:

Houston Intercontinental Airport (lat. 29°58'49"N., long. 95°20'22"W.) (Primary Airport)
William P. Hobby Airport (lat. 29°38'43"N., long. 95°16'43"W.) (PrimaryAirport)
Ellington Field (lat. 29°36'26" N., long. 95°09'31" W.)
Humble VORTAC (IAH) (lat. 29°57'24" N., long. 95°20'44" W.)
Hobby VOR/DME (HUB) (lat. 29°39'00" N., long. 95°16'44" W.)

Boundaries

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL bounded by a line beginning at the intersection of the Humble VORTAC (IAH) 8-mile arc and the IAH VORTAC 090° radial; thence clockwise along the IAH VORTAC 8-mile arc to the IAH VORTAC 069° radial; thence east along the IAH VORTAC 069° radial to the 10-mile arc of IAH VORTAC thence clockwise along the 10-mile arc to the IAH VORTAC 090° radial thence west to point of beginning; and that airspace bounded by a line beginning at lat. 29°45'36" N., long. 95°21'57" W.; to lat. 29°45'45" N., long. 95°11'46" W.; thence clockwise along the Hobby VOR/DME (HUB) 8-mile DME arc to intercept Beltway 8, thence south to intercept the 4.6-mile radius of Ellington Field, thence west to the 5.5-mile DME arc of HUB, thence clockwise to Interstate 45, thence southeast to the 7-mile DME arc clockwise to the HUB 156° radial thence north along the HUB 156° to the HUB VOR/DME 6-mile arc clockwise to the HUB 211° radial then south along the HUB 211° to HUB VOR/DME 8-mile arc clockwise to point of beginning.

Area B. That airspace extending upward from 2,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the intersection of State Highway 59 and the HUB VOR/DME 15-mile arc, thence counterclockwise along the HUB VOR/DME 15-mile arc to the intersection of HUB VOR/DME 15-mile arc and the IAH VORTAC 15-mile arc, thence counterclockwise along the IAH VORTAC 15-mile arc to the intersection IAH VORTAC 15-mile arc and Westheimer Road (lat. 29°44'06" N., long. 95°28'46" W.), thence southwest to and along State Highway 59 to the point of beginning excluding Areas A and C.

Area C. That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the intersection of State Highway 59 and the IAH VORTAC 20-mile DME arc, thence clockwise along the IAH VORTAC 20-mile DME arc to the intersection of the IAH VORTAC 20-mile DME arc and Interstate 10, west on Interstate 10 to the HUB VOR/DME 15-mile arc, thence counterclockwise along the HUB VOR/DME 15-mile arc to the IAH VORTAC 15-mile DME arc, thence counterclockwise along the IAH VORTAC 15-mile DME arc to the intersection of the IAH VORTAC 15-mile DME arc and Westheimer Road, thence southwest to and along State Highway 59 to the point of beginning; and that airspace beginning at the Intersection of HUB VOR/DME 15-mile arc and HUB 156° radial then north along the HUB 156° radial to the HUB VOR/DME 10-mile arc clockwise along the HUB 10-mile arc to HUB 211° radial then south along the HUB 211° radial to Intersect the 15-mile arc to point of beginning.

Area D. That airspace extending upward from 4,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the intersection of State Highway 59 and the IAH VORTAC 30-mile DME arc, thence clockwise along the IAH VORTAC 30-mile DME arc to Interstate 10, west along Interstate 10 to the HUB VOR/DME 20-mile arc, thence clockwise along the HUB VOR/DME 20-mile arc to State Highway 59, thence southwest on State Highway 59 to the point of beginning excluding Areas A, B, and C.

* * * * *

Issued in Washington, DC, on August 25, 1992.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 92-21098 Filed 9-1-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 92-ANM-5]

Amendment of Worland Control Zone; Worland, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Worland control zone, Worland, Wyoming, from full-time to part-time. A

reduction in personnel staffing of the Worland Flight Service Station has resulted in weather observation not being available 24 hours a day. This action will bring publications up to date giving continuous information to the aviation public.

EFFECTIVE DATE: 0901 u.t.c. October 15, 1992.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM-535, Federal Aviation Administration, Docket No. 92-ANM-5, 1601 Lind Avenue SW., Renton, Washington 98055-4056, Telephone: (206) 227-2535.

SUPPLEMENTARY INFORMATION:

History

On May 26, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to change the status of the Worland control zone from full-time to part-time (57 FR 21913).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Accordingly, the rule is adopted as proposed, except the geographical coordination of the Worland Municipal Airport have been changed to reflect the latest National Flight Data Center data base information. In addition the mileages in the description are expressed in nautical miles. Control zones are published in § 71.171 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The control zone listed in this document will be published subsequently in the handbook.

The Rule

This amendment to part 71 of the Federal Aviation Regulations changes the status of the Worland control zone, Worland, Wyoming, from full-time to part-time. A reduction in personnel staffing at the Worland Flight Service Station has resulted in weather observations not being available 24 hours a day, and therefore, full-time control zone services will not be available. The amendment allows for changes in the hours of effectiveness by issuance of Notices to Airmen when minor variations in time of designation are anticipated.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Control zones.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.171 Designation

* * * * *

Worland, WY [Revised]

Within a 4.2 nautical mile radius of Worland Municipal Airport (lat. 43°57'56" N., long. 107°56'59" W.) and within 3 nautical miles each side of the Worland VOR 352° radial, extending from the 4.2 nautical mile radius zone to 10.5 nautical miles north of the VOR. This control zone shall be effective during the specified dates and time established in advance by Notice to Airmen. The effective date and time thereafter will be continuously published in the airport/facility directory.

* * * * *

Issued in Seattle, Washington, on August 21, 1992.

Helen M. Parke,

Assistant Manager, Air Traffic Division.

[FR Doc. 92-21120 Filed 9-1-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 92-ANM-4]

Amendment to Sheridan Control Zone; Sheridan, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Sheridan control zone, Sheridan, Wyoming, from full-time to part-time. A reduction in personnel staffing of the Sheridan Flight Service Station has resulted in weather observation not being available 24 hours a day. This action will bring publications up to date giving continuous information to the aviation public.

EFFECTIVE DATE: 0901 u.t.c. October 15, 1992.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM-535, Federal Aviation Administration, Docket No. 92-ANM-4, 1601 Lind Avenue SW., Renton, Washington 98055-4056, telephone: (206) 227-2535.

SUPPLEMENTARY INFORMATION:

History

On July 2, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to change the status of the Sheridan control zone from full-time to part-time (57 FR 29455).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Accordingly, the rule is adopted as proposed, except the geographical coordinates of the Sheridan Municipal Airport have been changed to reflect the latest National Flight Data Center data base information. In addition the mileages in the description are expressed in nautical miles. Control zones are published in § 71.171 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The control zone listed in this document will be published subsequently in the handbook.

The Rule

This amendment to part 71 of the Federal Aviation Regulations changes the status of the Sheridan control zone, Sheridan, Wyoming, from full-time to part-time. A reduction in personnel staffing at the Sheridan Flight Service Station has resulted in weather observations not being available 24 hours a day, and, therefore, full-time control zone services will not be available. The amendment allows for changes in the hours of effectiveness by issuance of Notices to Airmen when minor variations in time of designation are anticipated.

The FAA has determined that this regulation only involves an established body of technical regulations for which

frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Control zones.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.171 Designation

* * * * *

Sheridan, WY [Revised]

Within a 4.4 nautical mile radius of Sheridan County Airport (lat. 44°46'26" N., long. 106°58'35" W.) and within 3.5 nautical miles each side of the Sheridan VORTAC 312° and 327° radials, extending the 4.4 nautical mile radius to 10.1 nautical miles northwest of the VORTAC, and within 3.5 nautical miles each side of the Sheridan VORTAC 140° radial extending from the 4.4 nautical mile radius to 21.4 nautical miles southeast of the VORTAC. This control zone shall be effective during the specified dates and time established in advance by Notice to Airmen. The effective date and time thereafter will be continuously published in the airport/facility directory.

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Issued in Seattle, Washington, on August 21, 1992.

Helen M. Parke,

Assistant Manager, Air Traffic Division.

[FR Doc. 92-21121 Filed 9-1-92; 8:45 am]

BILLING CODE 4910-13-M

Office of the Secretary

14 CFR Parts 200, 203, 205, 206, 231, 232, 263, 288, 294, 296, 297, 298, 302, 372, 399

[Docket No. 47939]

RIN No. 2105-AB84

Aviation Economic Rules

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Final rule.

SUMMARY: The Department is amending parts 200, 203, 205, 206, 231, 232, 263, 288, 294, 296, 297, 298, 302, 372, and 399 in order to make technical corrections, eliminate obsolete terms and provisions, and to provide better organization. Of particular note, the U.S. air taxi liability insurance requirements contained in subpart E of part 298 have been relocated to part 205, which contains the liability insurance rules applicable to all other types of direct air carriers, and the allowed liability exclusions set forth in § 298.44 have been eliminated. In addition, the rules governing exemptions for certificated carriers when operating small aircraft, presently contained in subpart I of part 298, have been transferred to part 206 along with various other special authorizations and exemptions applicable to certificated air carriers.

EFFECTIVE DATE: The rule shall become effective on October 2, 1992.

FOR FURTHER INFORMATION CONTACT: Carol A. Woods, Air Carrier Fitness Division, P-56, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-9721.

SUPPLEMENTARY INFORMATION:

Background

Section 204 of the Federal Aviation Act (72 Stat. 743, 49 U.S.C. 1324) ("Act") empowers the Department, in part, to make rules and establish procedures to enable it to carry out its functions under the Act. Pursuant to that authority, the Department undertook a review of a number of the aviation economic regulations promulgated by the Civil Aeronautics Board ("CAB"), as contained in 14 CFR chapter II, with a view to eliminating obsolete terms and provisions, and making changes to bring the rules into conformance with the Department's current needs and to facilite their use by the public. Toward that end, on January 3, 1992, the Department of Transportation issued a notice of proposed rulemaking (NPRM) (57 FR 3366, January 29, 1992) to amend a number of these aviation economic rules (parts 200, 203, 205, 206, 231, 232, 263, 288, 294, 296, 297, 298, 302, 372, 380, 384, 387, and 399).

The most noteworthy of the substantive revisions proposed in the NPRM are as follows:

The provisions of Subpart E—Liability Insurance Requirements of Part 298—Exemption for Air Taxi Operations would be added to Part 205—Aircraft Accident Liability Insurance. Two new insurance certificates (OST Forms 6410 and 6411) would be created to replace current forms, one (OST Form 6410) to be filed for all U.S. direct air carriers (air taxi operators, commuter air carriers, and certificated carriers operating either large or small aircraft), and one (OST Form 6411) for all foreign direct air carriers (Canadian charter air taxis operating either large or small aircraft and all other foreign air carriers operating either large or small aircraft). The current forms (OST Forms 4520 and 4521, and DOT Form 4522) would still be acceptable during the period of transition to the new forms.

In addition, the liability exclusions contained in § 298.44 and the Standard Endorsement (DOT Form 4522) to air taxi operators' aircraft accident insurance policies would be eliminated.

Air taxi operators would become subject to the cargo liability disclosure provisions of § 205.8.

In § 294.2(j) of Part 294—Canadian Charter Air Taxi Operators, the definition of "small aircraft" would be amended to make the definition consistent with the 1974 U.S.-Canada Non-scheduled Air Services Agreement.

New § 206.5—Small aircraft operations by certificated carriers would replace subpart I of part 298. The new section would provide that, when operating small aircraft, certificated carriers are exempt from certain sections of the Act that are set forth in part 298 Subpart B—Exemptions. New § 206.5 also would specify various other rules to which certificated carriers operating small aircraft would continue to be subject.

Other rules being relocated or redesignated include the following:

(1) Part 288—Exemption of Air Carriers for Military Transportation—relocated to new § 206.4;

(2) Part 263—Participation of Air Carriers Associations in Board Proceedings—redesignated § 302.10a.

Rules to be eliminated include the following:

(1) The provisions of part 298 subpart I not transferred to part 206—specifically, §§ 298.90 (a) and (c), 298.93(a), 298.94, 298.97, 298.100;

(2) Section 206.2—Omission of stop at route junction points;

(3) Part 231—Exemption from Schedule Filing, except for the provision which relieves carriers from the need to periodically file copies of their flight schedules, which would be relocated to new § 206.2;

(4) Part 235—Reinvestment of Gains Derived from the Sale or Other Disposition of Flight Equipment;

(5) Part 295—Classification and Exemption of Alaskan Air Carriers;

(6) Part 384—Statement of Organization, Delegation of Authority, and Availability of Records and Information;

(7) Part 387—Organization and Operation during Emergency Conditions; and

(8) Section 399.110(e) of Part 399—Statements of General Policy.

Summary of Comments

Comments on the proposed changes were received from Sky Service FBO, American Travel Abroad, Inc., American Airlines, Inc., and jointly from American Trans Air, Inc., and Amber Tours, Inc.

Sky Service FBO, a Canadian charter air taxi operator registered under part 294 of the Department's regulations, commented on the Department's proposal to amend § 294.2(j) of Part 294—Canadian Charter Air Taxi Operators. That Part states that the aircraft to be operated by Canadian charter air taxi operators under part 294 must be "small aircraft," which term is defined in § 294.2(j) as "any aircraft designed to have both: (1) A maximum passenger capacity of not more than 30 seats or a maximum payload capacity of not more than 7,500 pounds, and (2) a maximum authorized takeoff weight on wheels not greater than 35,000 pounds." In the NPRM, the Department proposed to change that definition by eliminating the word "both" and changing the word "and" to "and/or" in order to make the definition consistent with the 1974 U.S.-Canada Nonscheduled Air Services Agreement. Sky Service stated that it operates aircraft that are qualified as "small aircraft" under the United States-Canada Agreement but not under § 294.2(j). As a result, in order to register with the Department as a Canadian charter air taxi operator under Part 294, Sky Service has found it necessary to expend time and resources to obtain a waiver from the Department for each aircraft that does not meet the "small aircraft" definition in our rule. Sky Service therefore supports the Department's intention to change its "small aircraft" definition in line with that contained in the U.S.-Canada Agreement.

American Travel Abroad, Inc. (AMTA), a U.S. tour operator, commented about the Department's proposal to require charter price information to be disclosed in connection with public charter operations under part 380 (*see* § 380.28(a)(1)) and part 380 appendix B). In the NPRM, the Department proposed to substitute for appendix B a new form, "Statement of Charter Operator and Direct Air Carrier" (OST Form 4532), on which the charter operator was to disclose the charter price for each flight. A footnote to this item authorized the charter operator to show the charter price in separate correspondence if confidentiality was desired. AMTA pointed out that, where a charter operator utilizes blanket security arrangements in accordance with § 380.34(b), the Department has routinely allowed the withholding of charter price information. AMTA recommended that the Department adopt its current practice in such circumstances and eliminate the requirement to reveal the charter price, except where that information is needed to determine the amount of security required under § 380.34(a).

American Airlines, Inc., suggested that the Department eliminate the airline traffic and financial reporting requirements for carriers operating "small" aircraft, as set forth in subpart F of part 298. In the event such a step is not deemed appropriate, American proposes that new § 206.5 should clarify that a carrier operating both "large" and "small" aircraft is subject only to the reporting requirements applicable to operations with "large" aircraft as set forth in part 241, rather than both that part and part 298.

American Trans Air, Inc., a U.S. charter carrier, and Amber Tours, Inc., an affiliated charter operator (collectively, ATA), supported the technical changes proposed to part 380 in the NPRM, but also recommended that the charter rules should undergo a more comprehensive reform.

Discussion of Comments

Part 294 implements, in part, the U.S.-Canada Nonscheduled Air Services Agreement of 1974 (Agreement). Part 294 authorizes qualified Canadian air carriers to operate nonscheduled transborder charter service with "small aircraft" as that term is defined in the Agreement.

The manner in which "small aircraft" is defined in the Agreement has made it difficult to develop a small aircraft definition for part 294 that encompasses all qualified aircraft types. The current definition in part 294 is restrictive. Therefore, whenever a carrier desires to operate an aircraft that qualifies as small under the Agreement but not under part 294, it must obtain a Department waiver from part 294 to do so.

In the NPRM, we proposed an expanded, "small aircraft" definition for part 294 to include specifications that would qualify additional aircraft types under the Agreement. Sky Service's comment, while in favor of the proposed change, also noted that the NPRM language is more liberal than the language in the Agreement. The commenter's observation with respect to the liberal nature of the proposed definition is noteworthy. In fact, upon further review, we have determined that the definition in the NPRM is liberal to a fault, as it could be construed as allowing large aircraft cargo charter flights, which is not the intent of part 294.

In light of the above, we are replacing the NPRM language defining small aircraft in part 294 with the following, which is slightly more restrictive that that proposed and precludes an interpretation permitting the use of large aircraft, but which allows the use of the types of aircraft for which the Department has granted most waivers to date:

§ 294.2(j) "Small aircraft" means any aircraft designed to have: (1) A maximum passenger capacity of not more than 30 seats and a maximum payload capacity of not more than 7,500 pounds, and/or (2) a maximum authorized takeoff weight on wheels not greater than 35,000 pounds.

We will make an identical revision in the "small aircraft" definitions which appear in § 294.30(b)(1) and in the new insurance certificate to be used by Canadian charter air taxi operators (OST Form 6411).

In response to American Airlines' concern that new § 206.5 does not clearly state that certificated carriers operating both large and small aircraft are required to comply only with the reporting requirements of part 241, we are amending § 206.5(a) to clarify that certificated carriers with both large and small aircraft operations are subject only to the reporting requirements of part 241.

With respect to the comments of AMTA and ATA concerning the charter

regulations, the Department has decided to undertake a comprehensive review of those rules which will be covered in a future rulemaking. Therefore, in order to avoid a piecemeal approach to rulemaking, we are withdrawing all of the changes proposed to be made in Part 380—Public Charters in the NPRM.

In addition, there are two other changes being made to the NPRM. First, in the NPRM, we amended § 294.60(a) to state that, instead of filing CAB Form 433, as the current rule instructs, Canadian charter air taxi operators should apply for part 294 registration with the Office of Aviation Analysis, Regulatory Analysis Division. That provision is being revised in the Final Rule to instruct Canadian charter air taxi operators to file OST Form 4540 with the Office of International Aviation, Foreign Air Carrier Licensing Division. Second, the Department proposed in the NPRM to delete parts 235, 292, 384 and 387, which contain obsolete provisions. Subsequently, however, as the result of an agency-wide review of its regulations, the Department issued an NPRM which proposed to delete a large number of obsolete and redundant regulations (57 FR 21362, May 20, 1992), including the four parts noted above. Therefore, we are withdrawing the proposed removal of parts 235, 292, 384 and 387.

Conclusion

After carefully weighing the comments provided in response to the NPRM, and for the reasons discussed above, we have decided to adopt the changes as set forth in the NPRM, except as follows:

1. At the end of § 205.4, replace the Office of Management and Budget control information with the following: "(Approved by the Office of Management and Budget under control number 2106–0030)".

2. Section 206.5(a) (2) and (3) are revised and § 206.5(a)(4) is added to read as follows:

Section 206.5 Small aircraft operations by certificated carriers.

(a) * * *

(1) * * *

(2) Part 215,

(3) Part 298, subpart D, § § 298.30 and 298.38, and subpart H, and

(4) Part 298, subpart F, if the certificated carrier conducts operations with small aircraft only (a certificated carrier conducting both small and large aircraft operations is subject only to the reporting requirements contained in part 241 of this chapter).

3. In § § 294.2(j) and 294.30(b)(1), remove the word "or" where it appears the first time and add, in its place, the word "and".

In addition, the definition of "Canadian Charter Air Taxi Operators with Part 294 Authority Only," found in OST Form 6411, Part 2.A., has been revised to read as follows: "The aircraft covered by this policy have: (1) 30 or fewer passenger seats and a maximum payload capacity of 7,500 pounds or less, and/or (2) a maximum authorized takeoff weight on wheels of no more than 35,000 pounds." Part 2.B on that form, which is applicable to Canadian Charter Air Taxi Operators utilizing large aircraft, has been replaced by a footnote in Part 2.A. stating that the minimum liability limit per occurrence for operations with such aircraft shall be $20,000,000.

4. In § 294.60(a), remove the words "CAB Form 433", where they appear the first time, through the end of the sentence and add, in their place, the words "OST Form 4540 with the Office of International Aviation, Foreign Air Carrier Licensing Division. OST Form 4540 may be obtained from the Foreign Air Carrier Licensing Division."

5. All amendments to parts 235, 292, 380, 384, and 387 are withdrawn.

Economic Impacts

This action has been reviewed under Executive Order 12291 and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of $100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, State or local governments, agencies or geographic regions. Furthermore, this rule will not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, a regulatory impact analysis is not required. The regulation amendments are not significant under the Department's Regulatory Policies and Procedures, dated February 26, 1979, because they do not involve important Departmental policies; rather, they are being made solely for the purposes of eliminating or correcting obsolete requirements and reorganizing the presentation of the regulations used by the Department to administer its air carrier economic regulatory functions.

The Department has considered the implications of this rulemaking under the requirements of Executive Order 12612, Federalism, and has determined that the preparation of a Federalism Assessment is not warranted. The regulations herein will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibility among the various levels of government.

For purposes of its aviation economic regulations, Departmental policy categorizes air carriers operating small aircraft (60 seats or less or 18,000 pounds maximum payload or less) in strictly domestic service as small entities for purposes of the Regulatory Flexibility Act. I certify that this rule will not have a significant economic impact on a substantial number of small entities. The ability of such entities to engage in air carrier operations essentially will be unaffected by the proposed regulation amendments.

The reporting and recordkeeping requirement associated with this rule was approved by the Office of Management and Budget on April 14, 1992, for use through December 31, 1994 under OMB Control No. 2106–0030.

List of Subjects

14 CFR Part 200

Air transportation.

14 CFR Part 203

Air carriers, Air transportation, Foreign relations, Insurance, Reporting and recordkeeping requirements.

14 CFR Part 205

Air carriers, Freight, Insurance, Reporting and recordkeeping requirements.

14 CFR Part 206

Air carriers, Emergency medical services, News media.

14 CFR Part 231

Air carriers, Postal Service.

14 CFR Part 232

Administrative practice and procedure, Air carriers, Postal Service.

14 CFR 263

Administrative practice and procedure, Air carriers.

14 CFR Part 288

Charter flights, Military air transportation.

14 CFR Part 294

Air taxis, Canada, Charter flights, Reporting and recordkeeping requirements.

14 CFR Parts 296 and 297

Air carriers, Freight forwarders.

14 CFR Part 298

Air taxis, Alaska, Canada, Insurance, Reporting and recordkeeping requirements.

14 CFR Part 302

Administrative practice and procedure, Air carriers, Postal Service.

14 CFR Part 372

Charter flights, Military air transportation, Reporting and recordkeeping requirements, Surety bonds.

14 CFR Part 399

Administrative practice and procedure, Air carriers, Air rates and fares, Air taxis, Consumer protection, Small businesses.

Proposed Rule

For the reasons set out in the preamble, title 14, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

1. Part 200 is revised to read as follows:

PART 200—DEFINITIONS AND INSTRUCTIONS

Sec.
200.1 Terms and definitions.
200.2 Instructions.

Authority: 49 U.S.C. 1324, 1371, 1373, 1374, 1377, 1378, 1379, 1381, 1382, 1383, 1384, 1385, 1387, 1482.

§ 200.1 Terms and definitions.

Unless otherwise specifically stated, words and phrases other than those listed in this section have the meaning defined in the Act.

(a) *Board* or *CAB* means the Civil Aeronautics Board.

(b) *Department* or *DOT* means the Department of Transportation.

(c) *Act* means the Federal Aviation Act of 1958, as amended.

(d) *Section* refers to a section of the Act or a section of the regulations in this chapter, as indicated by the context. The terms *this section, pursuant to this section, in accordance with the provisions of this section,* and words of similar import when used in this chapter refer to the section of this subchapter in which such terms appear.

(e) *Rule, regulation,* and *order* refer to the rules, regulations, and orders prescribed by the Board or the Department pursuant to the Act.

§ 200.2 Instructions.

The regulations of the Department may be cited by section numbers. For example, this regulation may be cited as "§ 200.2 of the Aviation Economic Regulations." The sections contained in the Rules of Practice may also be cited by appropriate rule numbers. (See § 302.2 of this chapter.) For example, 14 CFR 302.10 may be cited as "rule 10 of the Rules of Practice."

PART 203—[AMENDED]

2. The authority citation for part 203 is revised to read as follows:

Authority: 49 U.S.C. 1301, 1324, 1371, 1372, 1373, 1374, 1377, 1378, 1381, 1386, 1387, 1388, 1389.

§§ 203.1, 203.4 and 203.5 [Amended]

3. In §§ 203.1, 203.4(a), and 203.5, remove the word "CAB".

4. Section 203.3 is revised to read as follows:

§ 203.3 Filing requirements for adherence to Montreal Agreement.

All direct U.S. and foreign air carriers shall have and maintain in effect and on file in the Department's Documentary Services Division (Docket 17325) on OST Form 4523 a signed counterpart to Agreement 18300, an agreement relating to liability limitations of the Warsaw Convention and Hague Protocol approved by CAB Order E-23680, dated May 13, 1966 (the Montreal Agreement), and a signed counterpart of any amendment or amendments to such Agreement that may be approved by the Department and to which the air carrier or foreign air carrier becomes a party. U.S. air taxi operators registering under part 298 of this chapter and Canadian charter air taxi operators registering under part 294 of this chapter may comply with this requirement by filing completed OST Forms 4507 and 4523, respectively, with the Department's Office of Aviation Analysis. Copies of these forms can be obtained from the Office of Aviation Analysis, Regulatory Analysis Division.

§ 203.4 [Amended]

5. In § 203.4(a), remove the words "Board's Tariff" and add, in their place, the words "Department's Tariffs".

§ 203.5 [Amended]

6. In § 203.5, remove the word "Board" and add, in its place, the word "Department".

PART 205—[AMENDED]

7. The authority citation for part 205 is revised to read as follows:

Authority: 49 U.S.C. 1324, 1371, 1372, 1386, 1388, 1389.

§§ 205.1, 205.3, 205.6, 205.7 [Amended]

In §§ 8.205.1, 205.3(a), 205.3(e), 205.6(a), 205.6(b)(2)—only where it appears the second time, 205.7(a), and 205.7(b), remove the word "Board" and add, in its place, the word "Department".

§ 205.1 [Amended]

9. In § 205.1, remove the word "certain"; and, after the word "foreign" where it appears the second time in the section, add the word "direct".

10. Section 205.2 is revised to read as follows:

§ 205.2 Applicability.

These rules apply to all U.S. direct air carriers, including commuter air carriers and air taxi operators as defined in § 298.2 of this chapter, and foreign direct air carriers, including Canadian charter air taxi operators as defined in § 294.2(c) of this chapter.

11. In the third sentence of § 205.3(a), remove the words "self-insurance plan" and add, in their place, the words "complete plan for self-insurance"; in the fourth sentence of § 205.3(a), remove the words "summary of" and add, in their place, the words "a summary of the complete".

12. Sections 205.4 and 205.5 are revised to read as follows:

§ 205.4 Filing of evidence of insurance.

(a) A U.S. or foreign air carrier shall file a certificate of insurance or a complete plan for self-insurance with the Department's Office of Aviation Analysis. Each carrier shall ensure that the evidence of aircraft accident liability coverage filed with the Department is correct at all times. The Department will normally notify the carrier within 20 days of receipt if the certificate or plan does not meet the requirements of this part. The two Certificates of Insurance (OST Form 6410 for U.S. air carriers, including commuter air carriers and air taxi operators, and OST Form 6411 for foreign air carriers, including Canadian charter air taxi operators) are available from the Office of Aviation Analysis. The Department may return the certificate or self-insurance plan to the carrier if it finds for good cause that such plan or certificate does not show adequate evidence of insurance coverage under this part.

(b) If the coverage is by type or class of aircraft or by specific aircraft, endorsements that add previously unlisted aircraft or aircraft types or classes to coverage, or that delete listed aircraft, types, or classes from coverage, shall be filed with the Department's Office of Aviation Analysis not more than 30 days after the effective date of the endorsements. Aircraft shall not be listed in the carrier's operations specifications with the FAA and shall

not be operated unless liability insurance coverage is in force.

(c) When the insured air carrier is a U.S. air taxi operator operating in the State of Alaska, certificates and endorsements shall be filed with the Department's Alaska Field Office, 222 West Seventh Street, Box 27, Anchorage, Alaska 99513.

(Approved by the Office of Management and Budget under control number 2106-0030)

§ 205.5 Minimum coverage.

(a) Insurance contracts and self-insurance plans shall provide for payment on behalf of the carrier, within the specific limits of liability in this section, of all sums that the carrier shall become legally obligated to pay as damages, excluding any deductible in the policy, for bodily injury to or death of a person, or for damage to the property of others, resulting from the carrier's operation or maintenance of aircraft in air transportation provided under its authority from the Department.

(b) U.S. and foreign direct air carriers, including commuter air carriers but excluding U.S. air taxi operators and Canadian charter air taxi operators, shall maintain the following coverage:

(1) Third-party aircraft accident liability coverage for bodily injury to or death of persons, including nonemployee cargo attendants, other than passengers, and for damage to property, with minimum limits of $300,000 for any one person in any one occurrence, and a total of $20,000,000 per involved aircraft for each occurrence, except that for aircraft of not more than 60 seats or 18,000 pounds maximum payload capacity, carriers need only maintain coverage of $2,000,000 per involved aircraft for each occurrence.

(2) Any such carrier providing air transportation for passengers shall, in addition to the coverage required in paragraph (b)(1) of this section, maintain aircraft accident liability insurance coverage for bodily injury to or death of aircraft passengers, with minimum limits of $300,000 for any one passenger, and a total per involved aircraft for each occurrence of $300,000 times 75 percent of the number of passenger seats installed in the aircraft.

(c) U.S. air taxi operators registered under part 298 shall maintain the following coverage:

(1) Third-party aircraft accident liability coverage for bodily injury to or death of persons, including nonemployee cargo attendants, other than passengers, with minimum limits of:

(i) $75,000 for any one person in any one occurrence, and a total of $300,000 per involved aircraft for each occurrence, and

(ii) A limit of a least $100,000 for each occurrence for loss of or damage to property.

(2) U.S. air taxi operators carrying passengers in air transportation shall, in addition to the coverage required in paragraph (c)(1) of this section, maintain aircraft accident liability insurance coverage for bodily injury to or death of aircraft passengers, with minimum limits of $75,000 for any one passenger, and a total per involved aircraft for each occurrence of $300,000 times 75 percent of the number of passenger seats installed in the aircraft.

(d) Canadian charter air taxi operators registered under part 294 of this chapter shall maintain the following coverage:

(1) Third-party aircraft accident liability coverage for bodily injury to or death of persons, including nonemployee cargo attendants, other than passengers, and for damage to property, with a minimum coverage of $75,000 for any one person in any one occurrence, and a total of $2,000,000 per involved aircraft for each occurrence, except that Canadian charter air taxi operators operating aircraft of more than 30 seats or 7,500 pounds maximum cargo payload capacity, and a maximum authorized takeoff weight on wheels not greater than 35,000 pounds shall maintain coverage for those aircraft of $20,000,000 per involved aircraft for each occurrence.

(2) Canadian charter air taxi operators engaging in passenger charter air service under part 294 of this chapter shall, in addition to the coverage required in paragraph (d)(1) of this section, maintain aircraft accident liability coverage for bodily injury to or death of aircraft passengers, with a minimum coverage of $75,000 for any one passenger and a total per involved aircraft for each occurrence of $75,000 times 75 percent of the total number of passenger seats installed in the aircraft.

(e) Notwithstanding paragraphs (b), (c) and (d) of this section, the carrier may be insured for a combined single limit of liability for each occurrence. The combined single-limit coverage must be not less than the combined required minimums for bodily injury and property damage coverage plus, if the aircraft is used in passenger service, the required total passenger coverages stipulated in paragraph (b) of this section for U.S. and foreign direct air carriers and commuter carriers, paragraph (c) of this section for U.S. air taxi operators, or paragraph (d) of this section for Canadian charter air taxi operators.[1] The single-limit liability policy for the required aircraft accident liability coverage may be provided by a single policy or by a combination of primary and excess policies.

(f) The liability coverage shall not be contingent upon the financial condition, solvency, or freedom from bankruptcy of the carrier. The limits of the liability for the amounts required by this part shall apply separately to each occurrence. Any payment made under the policy or plan because of any one occurrence shall not reduce the coverage for payment of other damages resulting from any other occurrence.

§ 205.6 [Amended]

13. In § 205.6(b)(2), remove the word "CAB".

§ 205.7 [Amended]

14. In § 205.7(a), remove the words beginning with "the Board's Special Authorities Division" through the end of the first sentence, and add, in their place, the words "the Department's Office of Aviation Analysis (or, for Alaskan air taxi operators, to the Department's Alaska Field Office), which 10-day notice period shall start to run from the date such notice is actually received at the Department".

PART 206—CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY: SPECIAL AUTHORIZATIONS AND EXEMPTIONS

15. The heading of part 206 is revised to read as set forth above.

16. The authority citation for part 206 is revised to read as follows:

Authority: 49 U.S.C. 1324, 1373, 1375, 1386, 1396, 1551.

17. Section 206.2 is revised to read as follows:

§ 206.2 Exemption from schedule filing.

All air carriers are hereby exempted from the requirements of the first sentence of section 405(b) of the Act, which provides that each air carrier must periodically provide the Department and the U.S. Postal Service a listing of all of its regularly operated aircraft schedules and schedule changes, showing for each schedule the

[1] For example: the minimum single limit of liability acceptable for any aircraft in air taxi passenger service with 16 passenger seats would be computed on the basis of limits set forth in paragraph (c) as follows: 16 × .75 equals 12; 12 × $75,000 equals $900,000; $900,000 plus $300,000 (nonpassenger liability per occurrence) plus $100,000 (property damage per occurrence) equals $1,300,000. The latter amount is the minimum in which a single-limit liability policy may be written

points served and the departure and arrival times.

18. Section 206.3 is revised to read as follows:

§ 206.3 Transportation of newspersons by all-cargo carriers.

Notwithstanding the provisions of sections 401(a) and 403 of the Act and part 221 of this chapter, an air carrier holding a certificate of public convenience and necessity for the transportation of only property and mail may provide transportation to persons on regularly scheduled cargo flights for the purpose of collecting data for preparation of feature news, pictorial or like articles provided that the transportation is limited to the writer, journalist, or photographer engaged in the preparation of data for use in feature news, pictorial, or like articles which are to appear in newspapers or magazines, or on radio or television programs and which will publicize the regularly scheduled cargo operations of the carrier.

19. Section 206.4 is added to read as follows:

§ 206.4 Exemption of air carriers for military transportation.

Air carriers providing air transportation pursuant to a contract with the Department of Defense are hereby exempted from section 403 of the Act, and from part 221, §§ 207.4 and 208.32, of this chapter, with respect to those services.

20. Section 206.5 is added to read as follows:

§ 206.5 Small aircraft operations by certificated carriers.

(a) A carrier holding an effective certificate issued under section 401 of the Act, when conducting operations with small aircraft, is exempt from the requirements of the Act as set forth in subpart B of part 298 of this chapter, except section 407 of the Act, and is subject to the requirements set forth in the following provisions of this chapter:

(1) Part 205, with the minimum coverage requirements of § 205.5(b),

(2) Part 215,

(3) Part 298, subpart D, §§ 298.30, and 298.38, and subpart H, and

(4) Part 298, subpart F, if the certificated carrier conducts operations with small aircraft only (a certificated carrier conducting operations with both small and large aircraft is subject only to the reporting requirements contained in part 241 of this chapter).

(b) If a certificated carrier, when conducting operations with small aircraft, provides foreign air transportation that includes a segment for which tariff filing is required and another segment for which tariff filing is not required, then for through service over that routing the carrier has the option of filing a tariff or charging the sum of the applicable local rates, fares, or charges. If the carrier files a tariff for through service, it is not exempt from section 403 or section 404(b) of the Act for that air transportation.

PART 231—[REMOVED]

21. Part 231 is removed.

PART 232—[AMENDED]

22. The authority citation for part 232 is revised to read as follows:

Authority: 49 U.S.C. 1324, 1375.

§§ 232.1, 232.2, 232.3, 232.4, 232.5 [Amended]

23. In §§ 232.1(a), 232.1(b)(4), 232.2(a), 232.3, 232.4(a), 232.4(c), and 232.5(a), remove the word "Board" and add, in its place, the word "Department", and in § 232.1(b)(10), remove the word "CAB" and add, in its place, the word "DOT".

PART 263—[REMOVED]

24. Part 263 is removed.

PART 288—[REMOVED]

25. Part 288 is removed.

PART 294—[AMENDED]

26. The authority citation for part 294 is revised to read as follows:

Authority: 49 U.S.C. 1324, 1386.

27. Throughout part 294, remove the word "Board" and add, in its place, the word "Department"; remove the word "Board's" and add, in its place, the word "Department's"; remove the words "Civil Aeronautics Board" and add, in their place, the words "Department of Transportation"; and remove the words "Civil Aeronautics Board's" and add, in their place, the words "Department of Transportation's".

28. Section 294.2(j) is revised to read as follows:

§ 294.2 Definitions.

* * * * *

(j) *Small aircraft* means any aircraft designed to have:

(1) A maximum passenger capacity of not more than 30 seats and a maximum payload capacity of not more than 7,500 pounds, and/or

(2) maximum authorized takeoff weight on wheels not greater than 35,000 pounds.

§§ 294.3, 294.20, 294.22 [Amended]

29. In §§ 294.3(d), 294.20(b), and 294.22(a)(2), remove the words "CAB Form 263" or "CAB Forms 263" and add, in their place, the words "OST Form 4523" or "OST Forms 4523" respectively.

§§ 294.3 and 294.22 [Amended]

30. In §§ 294.3(d) and 294.22(a)(2), remove the word "CAB".

§§ 294.20, 294.21, 294.22 [Amended]

31. In § 294.20(b) 294.21(d), 294.21(e)(1), 294.22 introductory text, and 294.22(a) introductory text, remove the words "CAB Form 294–A" or "Form 294–A" and add, in their place, the words "OST Form 4505" or "Form 4505".

§ 294.20 [Amended]

32. In § 294.20(b), remove the words "Publications Services Division, Washington, DC 20428" and add, in their place, the words "Office of Aviation Analysis, Regulatory Analysis Division".

§§ 294.20, 294.22, 294.21, 294.40 [Amended]

33. In the introductory text of §§ 294.20 and 294.22, and in §§ 294.21(b) and 294.40, remove the words "Bureau of International Aviation, Regulatory Affairs Division" and add, in their place, the words "Office of Aviation Analysis, Regulatory Analysis Division".

§ 294.21 [Amended]

34. In 294.21(e)(1), remove the words "Regulatory Affairs Division, Bureau of International Aviation", and add, in their place, the words "Office of Aviation Analysis, Regulatory Analysis Division".

35. In § 294.30, remove the word "both" in paragraph (b) introductory text, and revise paragraphs (b)(1) and (b)(2) to read as follows:

§ 294.30 Scope of service and equipment authorized.

* * * * *

(b) * * *

(1) A maximum passenger capacity of no more than 30 seats and a maximum payload capacity of no more than 7,500 pounds, and/or

(2) A maximum authorized takeoff weight on wheels not greater than 35,000 pounds.

§ 294.33 [Amended]

36. In § 294.33, third paragraph, remove the words "Rochester General Aviation District Office, Rochester-Monroe County Airport" and add, in their place, the words "Flight Standards District Office, 1 Airport Way"; and, in the fourth paragraph, remove the words beginning with "Chief, Flight Standards," through the end of the sentence and add, in their place, the words "Federal Aviation

Administration, General Aviation District Office, 1601 Lind Avenue, SW., Renton, Washington 98055.".

36a. In § 294.33, the existing four paragraphs of text are designated as paragraphs (a) through (d).

§ 294.60 [Amended]

37. In § 294.60(a), remove the words beginning with "CAB Form 433", where they appear the first time, through the end of the paragraph and add, in their place, the words "OST Form 4540 with the Office of International Aviation, Foreign Air Carrier Licensing Division. OST Form 4540 may be obtained from the Foreign Air Carrier Licensing Division."

PART 296—[Amended]

38. The authority citation for part 296 is revised to read as follows:

Authority: 49 U.S.C. 1301, 1302, 1324, 1378, 1379, 1386.

§ 296.3 [Amended]

39. In § 296.3, remove the word "Board" and add, in its place, the words "Department of Transportation or the Civil Aeronautics Board".

§ 296.20 [Amended]

40. In § 296.20, remove the word "Board" and add, in its place, the word "Department".

PART 297—[Amended]

41. The authority citation for part 297 is revised to read as follows:

Authority: 49 U.S.C. 1324, 1386.

42. Throughout part 297, remove the word "Board" and add, in its place, the word "Department"; remove the word "Board's" and add, in its place, the word "Department's"; remove the words "Civil Aeronautics Board" and add, in their place, the words "Department of Transportation"; and remove the words "Civil Aeronautics Board's" and add, in their place, the words "Department of Transportation's".

§ 297.3 [Amended]

43. In §§ 297.3(a) and 297.3(b), remove the words "air freight forwarder register under part 296" and add, in their place, the words "indirect cargo air carrier as defined in part 296 of this chapter".

44. In § 297.3(c), remove the word "Board" and add, in its place, the words "Department of Transportation or the Civil Aeronautics Board".

§ 297.10 [Amended]

45. In § 297.10(a)(5), the word "interstate" is revised to read "interstate".

§ 297.20 [Amended]

46. In § 297.20(a), remove the words "Director, Bureau of International Aviation" and add, in their place, the words "Director, Office of Aviation Analysis".

§§ 297.20, 297.22, 297.24 [Amended]

47. In §§ 297.20(b), 297.22(a), 297.24(a), and 297.24(b), remove the words "CAB Form 297A" or "Form 297A" and add, in their place, the words "OST Form 4506" or "Form 4506".

§§ 297.20, 297.21, 297.24 [Amended]

48. In §–297.20(b), 297.21, and 297.24(a), remove the words "Bureau of International Aviation, Regulatory Affairs Division" and add, in their place, the words "Office of Aviation Analysis, Regulatory Analysis Division".

§ 297.20 [Amended]

49. In § 297.20(b), remove the words "Civil Aeronautics Board, Publications Services Division, Washington, DC 20428" and add, in their place, the words "Regulatory Analysis Division".

PART 298—[AMENDED]

50. The authority citation for part 298 is revised to read as follows:

Authority: 49 U.S.C. 1301, 1324, 1371, 1374, 1377, 1386, 1388, 1389.

51. Throughout part 298, remove the word "Board" (except in § 298.3(a)(2)) and add, in its place, the word "Department"; remove the word "Board's" and add, in its place, the word "Department's"; remove the words "Civil Aeronautics Board" (except where they occur in § 298.60(a)) and add, in their place, the words "Department of Transportation"; and remove the words "Civil Aeronautics Board's" (except where they occur in § 298.64(e)) and add, in their place, the words "Department of Transportation's".

§§ 298.21, 298.11, 298.30, 298.31 [Amended]

52. In the heading for part 298, the heading for § 298.21, and §§ 298.11 introductory text, 298.11(c) introductory text, 298.30(a), and 298.31, after the words "air taxi" or "air taxi operators", add the words "and commuter air carrier" or "and commuter air carriers", respectively.

§§ 298.3, 298.4, 298.5, 298. 11, 298.21, 298.23, 298.24, 298.30, 298.37, 298.38 [Amended]

53. In the heading for § 298.5 and §§ 298.3(b), 298.4, 298.5, 298.11 introductory text, 298.11(b), 298.11(c)(3), 298.11(d), 298.21(b), 298.21(c)(1)(v), 298.21(c)(1)(vi), 298.23(a) introductory text, 298.24 introductory text, 298.30(b), 298.35, 298.37, and 298.38, after the words "air taxi operator" or "air taxi", add the words "or commuter air carrier"; after the words "air taxi operators", add the words "or commuter air carriers".

54. In § 298.1, the last sentence is revised to read as follows:

§ 298.1 Applicability of part.

* * * This part also establishes reporting requirements for commuter air carriers and small certificated air carriers.

§ 298.2 [Amended]

55. In § 298.2(e-1), remove the number "413" and add, in its place, the number "418".

56. In § 298.2(f), the word "tips" is revised to read "trips".

§ 298.3 [Amended]

57. In § 298.3(a)(2), remove the word "Board" and add, in its place, the words "the Department or the CAB".

58. In § 298.3(a)(4), remove the words "Subpart E of this part" and add, in their place, the words "Part 205 of this chapter".

§§ 298.3, 298.11, 298.21 [Amended]

59. In §§ 298.3(a)(5), 298.11(b)(2), and 298.21(c)(4)(iii), remove the word "CAB" where it occurs in "CAB Agreement 18900"; remove the words "CAB Form 263" and add, in their place, the words "OST Form 4523".

§§ 298.3, 298.21, 298.23 [Amended]

60. In §§ 298.3(a)(5), 298.21(c)(1) introductory text and footnote 6, 298.21(c)(4), and 298.23(b), remove the words "CAB Form 298–A" or "CAB Form 298–A (Rev.)", and add, in their place, the words "OST Form 4507".

§ 298.4 [Amended]

61. In § 298.4, remove the words "Secretary of the Board" and add, in their place, the words "Director, Office of Aviation Analysis".

§ 298.5 [Amended]

62. In § 298.5, remove the words "On or after January 9, 1978, any" and add, in their place the word "Any".

§ 298.11 [Amended]

63. In § 298.11(b)(2), remove the words "Subpart G of this part" and add, in their place, the words "part 203 of this chapter".

64. In § 298.11(d), before the words "air carriers" where they appear for the first time in the paragraph, add the word "certificated".

§ 298.21 [Amended]

65. In § 298.21(a), remove the words "Director of the Bureau of Pricing and Domestic Aviation" and add, in their place, the words "Director, Office of Aviation Analysis".

66. The introductory text of § 298.21(c) is revised to read as follows:

§ 298.21 Filing for registration by air taxi operators and commuter air carriers.

* * * * *

(c) Registration by all commuter air carriers, and by those air taxi operators with a mailing address in any U.S. State or Territory except Alaska, shall be accomplished by filing with the Department's Office of Aviation Analysis (or with the Department's Alaska Aviation Field Office, 222 West Seventh Street, Box 27, Anchorage, Alaska 99513, for air taxi operators that are not also commuter air carriers and that have a mailing address in the State of Alaska) the following:

* * * * *

§ 298.21 [Amended]

67. In § 298.21(c)(1) introductory text, remove the words " 'Air Taxi Operator and Commuter Air Carrier Registration and Amendments Under part 298 of the Economic Regulations of the Civil Aeronautics Board' ".

68. In §§ 298.21(c)(1), footnote 6 and 298.21(c)(4), remove the words "Publications Services Section, Civil Aeronautics Board, Washington, DC 20428" or "Publications Services Division, Civil Aeronautics Board, Washington, DC 20428" and add, in their place, the words "Office of Aviation Analysis, Regulatory Analysis Division".

69. In § 298.21(c)(2), remove the word "§ 298.41(b)" and add, in its place, the words "part 205 of this chapter".

70. Section 298.21(d) is revised to read as follows:

§ 298.21 Filing for registration by air taxi operators and commuter air carriers.

* * * * *

(d) No air taxi operator shall provide scheduled passenger service at an eligible point unless it has registered with the Department as a commuter air carrier and has been found by the Department to be fit, willing, and able to conduct such service.

* * * * *

§ 298.22 [Amended]

71. In § 298.22, the word "retrun" is revised to read "return".

§ 298.23 [Amended]

72. In § 298.23(b), remove the words "Bureau of Domestic Aviation" and add, in their place, the words "Office of Aviation Analysis".

73. In § 298.23(b), remove the words "Board's Field Office," and add, in their place, the words "Department's Alaska Aviation Field Office, 222 West Seventh Avenue,".

§ 298.34 [Removed and reserved]

74. Section 298.34 is removed and reserved.

75. Section 298.35 is revised to read as follows:

§ 298.35 Limitations on carriage of mail.

An air taxi operator or commuter air carrier is not authorized to carry mail except pursuant to contract with the Postal Service entered into pufsuant to section 5402 of the Postal Reorganization Act (39 U.S.C. 5402).

§ 298.36 [Amended]

76. In § 298.36(a), remove the word "operating".

77. In § 298.36, paragraph (c) is redesignated paragraph (d), and a new paragraph (c) is added to read as follows:

§ 298.36 Limitation on use of business name.

* * * * *

(c) Commuter air carriers are subject to the provisions of part 215 of this chapter with regard to the use and change of air carrier names.

* * * * *

§ 298.37 [Amended]

78. In § 298.37, remove the words "subpart E" and add, in their place, the words "part 205 of this chapter".

Subpart E—[Removed and reserved]

79. In part 298, subpart E consisting of §§ 298.41–298.45 is removed and reserved.

§ 298.60 [Amended]

80. In § 298.60(a), remove the words "Civil Aeronautics Board" and add, in their place, the words "Department's Research and Special Programs Administration (RSPA)".

§§ 298.60, 298.61, 298.63, 298.64, 298.65 [Amended]

81. In §§ 298.60(a), 298.60(b), 298.60(d), 298.60(e), 298.61(a), 298.61(g), 298.63(a), 298.64(a), and 298.65(a), remove the word "CAB" and add, in its place, the word "RSPA".

§§ 298.60, 298.65, 298.66 [Amended]

82. In §§ 298.60(b), 298.65(b) introductory text, 298.66(a), and 298.66(b), remove the word "Comptroller" and add, in its place, the words "Airline Statistics".

§ 298.60 [Amended]

83. In § 298.60(c), remove the number "4123" and add, in its place, the number "4125"; and remove the words "Aviation Information Management" and add, in their place, the words "Airline Statistics".

84. In § 298.60(e), remove the number "426–8847" and add, in its place, the number "366–9847".

§ 298.61 [Amended]

85. In § 298.61(g), remove the words "Comptroller, Civil Aeronautics Board, Washington, DC 20428" and add, in their place, the words "Director, Office of Airline Statistics, Department of Transportation, Washington, DC 20590".

86. At the end of § 298.61, remove the OMB control number "3204–0009" and add, in its place, the number "2138–0009".

§§ 298.63, 298.64, 298.65 [Amended]

87. In §§ 298.63(c), 298.64(e) and 298.65(a), remove the words "the Board's Information Management Division" or "the Civil Aeronautics Board's Information Management Division" or "the Board's Office of Comptroller" and add, in their place, the words "RSPA's Office of Airline Statistics".

Subpart I—[Removed]

88. In part 298, subpart I consisting of §§ 298.90–298.100 is removed.

PART 302—[AMENDED]

89. The authority citation for part 302 is revised to read as follows:

Authority: 5 U.S.C. 551 *et seq.*, 39 U.S.C. 5402; 42 U.S.C., 4321, 49 U.S.C. subtitle I, 1301, 1302, 1324, 1371, 1372, 1373, 1374, 1376, 1382, 1471, 1481, 1482, 1485; Reorganization Plan No. 3 of 1961, 75 Stat. 837, 26 FR 5989.

90. Section 302.10a is added to read as follows:

§ 302.10a Participation of air carrier associations in Department proceedings.

(a) An association composed entirely or in part of direct air carriers may participate in any proceedings of the Department to which the Department's procedural regulations apply only if:

(1) The issues substantially affect the property or financial interests of the association as opposed to an interest derivative from its members;

(2) The association acts as a conduit to the Department of factual information gathered from the members, as distinguished from presentation of opinions or positions on issues; or

(3) The association represents members that are identified in any documents filed with the Department, and that have specifically authorized the

positions taken by the association in that proceeding. The specific authorizions may be informal and evidence of them shall be provided only upon request of the Department.

(b) Upon motion of any interest person or upon it own initiative, the Department may issue an order requiring an association to withdraw from a case on the ground of significant divergence of interest or position within the association.

Part 302, Appendix A—[Amended]

91. In part 302 Appendix A—Index to Rules of Practice, under the heading "PARTIES", a new listing is added to read as follows:

"Participation by Air Carrier Associations. § 302.10(a)"

PART 372—[AMENDED]

92. The authority citation for part 372 is revised to read as follows:

Authority: 49 U.S.C. 1301, 1324, 1371, 1372, 1377, 1386.

93. Throughout part 372, remove the word "Board" and add, in its place, the word "Department"; remove the word "Board's" and add, in its place, the word "Department's"; remove the words "Civil Aeronautics Board" (except where they occur in § 372.30(a) (8) and (9)) and add, in their place, the words "Department of Transportation"; and remove the words "Civil Aeronautics Board's" and add, in their place, the words "Department of Transportation's".

94. Section 372.20 is revised to read as follows:

§ 372.20 Requirement of operating authorization.

No person shall engage in air transportation as an overaes military personnel charter operator by organizing, providing, selling, or offering to sell, soliciting, or advertising an overseas military personnel charter or charters unless there is in force an operating authorization issued pursuant to § 372.31 authorizing such person to engage in such transportation.

95. Section 372.24(b) is revised to read as follows:

§ 372.24 Surety bond, depository agreement, escrow agreement.

* * * * *

(b) As used in this section, the term *bank* means a bank insured by the Federal Deposit Insurance Corporation.

* * * * *

§ 372.24 [Amended]

96. In § 372.24(c), remove the words "appendix B, attached to this part 372" and add, in their place, the words" appendix A to this part"; and remove footnote 1.

§ 372.28 [Amended]

97. In § 372.28, footnote 2 is redesignated footnote 1.

98. The introductory text of § 372.30(a) is revised to read as follows:

§ 372.30 Application.

(a) *Application.* Any person desiring to operate as an overseas military personnel charter operator may apply to the Department for an appropriate operating authorization. Contact the Office of Aviation Analysis, Regulatory Analysis Division, for filing instructions. The application shall be certified by a responsible official of such person and shall contain the following information:

* * * * *

§ 372.30 [Amended]

99. In § 372.30(a), footnote 3 is removed.

100. In § 372.30(a)(8) and 372.30(a)(9), after the words "Civil Aeronautics Board" add the words "or the Department of Transportation".

101. In § 372.30(a)(13), footnote 4 is redesignated footnote 2; and, in newly redesignated footnote 2, the last sentence is removed.

102. A new appendix A is added to part 372 to read as follows:

Appendix A to Part 372—Overseas Military Personnel Charter Operator's Surety Bond Under Part 372 of the Special Regulations of the Department of Transportation (14 CFR Part 372)

Know all men by these presents, that we _____ (name of charter operator) of _____ (address) as Principal hereinafter called "Principal"), and _____ (name of surety) a corporation created and existing under the laws of the State of _____ (State) as Surety (hereinafter called "Surety") are held and firmly bound unto the United States of America in the sum of _____ (see § 372.24(a), 14 CFR Part 372) for which payment, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors, and assigns, jointly and severally firmly by these presents.

Whereas Principal is an overseas military personnel charter operator pursuant to the provisions of Part 372 of the Department's Special Regulations and other rules and regulations of the Department relating to security for the protection of charter participants, and has elected to file with the Department of Transportation such a bond as will insure financial responsibility with respect to all monies received from charter participants for services in connection with overseas military personnel charters to be operated subject to Part 372 of the Department's Special Regulations in accordance with contracts, agreements, or arrangements therefor, and

Whereas this bond is written to assure compliance by Principal as an authorized charter operator with Part 372 of the Department's Special Regulations, and other rules and regulations of the Department relating to security for the protection of charter participants, and shall inure to the benefit of any and all charter participants to whom Principal may be held legally liable for any damages herein described.

Now, therefore, the condition of this obligation is such that if Principal shall pay or cause to be paid to charter participants any sum or sums for which Principal may be held legally liable by reason of Principal's failure faithfully to perform, fulfill and carry out all contracts, agreements, and arrangements made by Principal while this bond is in effect with respect to the receipt of moneys from charter participants, and proper disbursement thereof pursuant to and in accordance with the provisions of Part 372 of the Department's Special Regulations, then this obligation shall be void, otherwise to remain in full force and effect.

The liability of Surety with respect to any charter participant shall not exceed the charter price paid by or on behalf of such participant.

The liability of Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penalty (face amount) of the bond, but in no event shall Surety's obligation hereunder exceed the amount of said penalty.

Surety agrees to furnish written notice to the Office of Aviation Analysis, Department of Transportation, forthwith of all suits or claims made and judgments rendered, and payments made by Surety under this bond

This bond shall cover the following Charters: [1]
Surety company's bond No. _____
Date of flight departure _____
Place of flight departure _____

This bond is effective on the _____ day of _____, 199__, 12:01 a.m., standard time at the address of Principal as stated herein and as hereinafter provided. Principal or Surety may at any time terminate this bond by written notice to: "Regulatory Analysis Division (P-57), Office of Aviation Analysis, U.S. Department of Transportation, Washington, DC 20590, such termination to become effective thirty (30) days after the actual receipt of said notice by the Department. Surety shall not be liable hereunder for the payment of any damages hereinbefore described which arise as a result of any contracts, agreements, undertakings, or arrangements for the supplying of transportation and other services made by Principal after the termination of this bond as herein provided, but such termination shall not affect the

[1] These data may be supplied in an addendum attached to the bond; however, all pages are to bear the Surety's seal.

liability of the bond hereunder for the payment of any damages arising as a result of contracts, agreements, or arrangements for the supplying of transportation and other services made by Principal prior to the date that such termination becomes effective. Liability of Surety under this bond shall in all events be limited only to a charter participant or charter participants who shall within sixty (60) days after the termination of the particular charter described herein give written notice of claim to the charter operator or, if it is unavailable, to Surety, and all liability on this bond shall automatically terminate sixty (60) days after the termination date of each particular charter covered by this bond except for claims made in the time provided herein.

In witness whereof, the said Principal and Surety have executed this instrument on the _____ day of _____, 199__.

PRINCIPAL

Name _____

By: Signature and title _____

Witness _____

SURETY

Name _____

By: Signature and title _____

Witness _____

Only corporations may qualify to act as surety and they must meet the requirements set forth in § 372.24(c) of Part 372.

PART 399—[AMENDED]

103. The authority citation for part 399 continues to read as follows:

Authority: 49 U.S.C. 1301, 1302, 1305, 1324, 1371, 1372, 1373, 1374, 1375, 1376, 1377, 1378, 1379, 1381, 1382, 1384, 1386, 1461, 1481, 1482, 1502 and 1504, unless otherwise noted.

§ 399.110. [Removed and reserved]

104. Section 399.110(e) is removed and reserved.

Issued in Washington, DC, on August 20, 1992.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

Appendix

Note: This appendix will not appear in the Code of Federal Regulations.

BILLING CODE 4910-62-M

U.S. Department of Transportation
Office of the Secretary of Transportation

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Office of Aviation Analysis, P-57
400 7th Street, SW
Washington, DC 20590

and

Office of Management and Budget
Office of Information and Regulatory Affairs
Paperwork Reduction Project 2106-0030
Washington, DC 20503

OMB No. 2106-0030 Expires 12-31-94

U.S. AIR CARRIERS CERTIFICATE OF INSURANCE

POLICIES OF INSURANCE FOR AIRCRAFT ACCIDENT BODILY INJURY AND PROPERTY DAMAGE LIABILITY

FILING INSTRUCTIONS: File an original of this form with the Regulatory Analysis Division, P-57, Office of Aviation Analysis, Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590.

(Please type information, except signatures.)

THIS CERTIFIES THAT: _____
(Name of Insurer)

has issued a policy or policies of Aircraft Liability Insurance to _____

_____
(Name and address of insured U.S. Air Carrier)

effective from _____ until ten (10) days after written notice from the insurer or carrier of the intent to terminate coverage is received by the Department of Transportation.

NOTE: Part 205 of the Department's Regulations does not allow for a predetermined termination date, and a certificate showing such a date is unacceptable.

1. The insurer *(Check One)*:
   - ☐ is licensed to issue aircraft insurance policies in the United States;
   - ☐ is licensed or approved by the government of _____ to issue aircraft insurance policies; or
   - ☐ is an approved surplus line insurer in the State(s) of _____

2. The insurer assumes, under the policy or policies listed below, aircraft accident liability insured to minimums at least equal to the following during operation, maintenance, or use of aircraft in "air transportation" as that term is defined in the Federal Aviation Act *(Complete applicable section(s) below)*:

A. **U.S. AIR TAXI OPERATORS WITH PART 298 AUTHORITY ONLY**
The aircraft covered by this policy are SMALL AIRCRAFT (i.e., with 60 or fewer passenger seats or with a maximum payload capacity of 18,000 pounds or less). *(Check separate or combined coverage as appropriate)*:

☐ Separate Coverages:

Policy No.	*Type of Liability*	*Minimum Limit*	
		Each Person	*Each Occurrence*
_____	Bodily Injury Liability (Excluding Passengers)	$ 75,000	$300,000
_____	Passenger Bodily Injury Liability	$ 75,000	$75,000 x 75% of total number of passenger seats installed in the aircraft.
_____	Property Damage		$100,000

☐ Combined Coverage: This combined coverage is a single limit of liability for each occurrence at least equal to the required minimums stated above for bodily injury (excluding passengers), property damage, and passenger bodily injury

Policy No. _____ *Amount of Coverage* _____

☐ This policy covers CARGO operations *only* and *excludes* passenger liability insurance.

OST Form 6410

B. U.S. COMMUTER AND CERTIFICATED AIR CARRIERS OPERATING SMALL AIRCRAFT

The aircraft covered by this policy are SMALL AIRCRAFT (i.e., with 60 or fewer passenger seats or with a maximum payload capacity of 18,000 pounds or less). *(Check separate or combined coverage as appropriate):*

☐ Separate Coverages:

Policy No.	*Type of Liability*	*Minimum Limit* — *Each Person*	*Minimum Limit* — *Each Occurrence*
_____	Combined Bodily Injury (Excluding Passengers other than cargo attendants) and Property Damage Liability	$300,000	$2,000,000
_____	Passenger Bodily Injury Liability	$300,000	$300,000 x 75% of total number of passenger seats installed in the aircraft.

☐ Combined Coverage: This combined coverage is a single limit of liability for each occurrence at least equal to the required minimums stated above for bodily injury (excluding passengers), property damage, and passenger bodily injury.

Policy No. _____ *Amount of Coverage* _____

☐ This policy covers CARGO operations *only* and *excludes* passenger liability insurance.

C. U.S. CERTIFICATED AIR CARRIERS OPERATING LARGE AIRCRAFT

The aircraft covered by this policy are LARGE AIRCRAFT (i.e., with more than 60 passenger seats or with a maximum payload capacity of more than 18,000 pounds). *(Check separate or combined coverage as appropriate):*

☐ Separate Coverages:

Policy No.	*Type of Liability*	*Minimum Limit* — *Each Person*	*Minimum Limit* — *Each Occurrence*
_____	Combined Bodily Injury (Excluding Passengers other than cargo attendants) and Property Damage Liability	$300,000	$20,000,000
_____	Passenger Bodily Injury Liability	$300,000	$300,000 x 75% of total number of passenger seats installed in the aircraft

☐ Combined Coverage: This combined coverage is a single limit of liability for each occurrence at least equal to the required minimums stated above for bodily injury (excluding passengers), property damage, and passenger bodily injury.

Policy No. _____ *Amount of Coverage* _____

☐ This policy covers CARGO operations *only* and *excludes* passenger liability insurance.

3. The policy or policies listed in this certificate insure(s) *(Check One):*

	Make and Model	*FAA or Foreign Flag Registration No*
☐ Operations conducted with all aircraft operated by the Insured		
☐ Operations conducted with the following types of aircraft:		
☐ Operations with the following aircraft: (Use additional page if necessary)		

4. Each policy listed in this certificate meets or exceeds the requirements in 14 CFR Part 205.

_____ *(Name of Insurer)*	_____ *(Name of Broker, if applicable)*
_____ *(Address)*	_____ *(Address)*
_____ *(City, State, Zip Code)*	_____ *(City, State, Zip Code)*
_____ *Contact (person who can verify the effectiveness of the coverage)*	_____ *(Officer or authorized representative)*
_____ / _____ *(Area Code, Phone Number)* *(Area Code, FAX Number)*	_____ / _____ *(Area Code, Phone Number)* *(Area Code, FAX Number)*
_____ *(Signature, if applicable)*	_____ *(Signature)*
_____ *(Date)*	_____ *(Date)*

16-1411-1—Form 2

U.S. Department of Transportation

Office of the Secretary of Transportation

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Office of Management and Budget
Office of Information and Regulatory Affairs
Paperwork Reduction Project 2106-0030
Washington, DC 20503

OMB No. 2106-0030 Expires 12-31-94

FOREIGN AIR CARRIERS CERTIFICATE OF INSURANCE

POLICIES OF INSURANCE FOR AIRCRAFT ACCIDENT BODILY INJURY AND PROPERTY DAMAGE LIABILITY

FILING INSTRUCTIONS: File an original of this form with the Regulatory Analysis Division, P-57, Office of Aviation Analysis, Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590.

(Please type information, except signatures.)

THIS CERTIFIES THAT: _____
(Name of Insurer)

has issued a policy or policies of Aircraft Liability Insurance to _____

_____
(Name and address of Insured Foreign Air Carrier)

effective from _____ until ten (10) days after written notice from the insurer or carrier of the intent to terminate coverage is received by the Department of Transportation.

NOTE: Part 205 of the Department's Regulations does not allow for a predetermined termination date, and a certificate showing such a date is unacceptable.

1. The Insurer *(Check One)*:

☐ is licensed to issue aircraft insurance policies in the United States;

☐ is licensed or approved by the government of _____ to issue aircraft insurance policies; or

☐ is an approved surplus line insurer in the State(s) of _____

2. The insurer assumes, under the policy or policies listed below, aircraft accident liability insured to minimums at least equal to the following during operation, maintenance, or use of aircraft in "foreign air transportation" as that term is defined in the Federal Aviation Act *(Complete applicable section(s) below)*:

A. CANADIAN CHARTER AIR TAXI OPERATORS WITH PART 294 AUTHORITY ONLY

The aircraft covered by this policy have: (1) 30 or fewer passenger seats and a maximum payload capacity of 7,500 pounds or less; and/or (2) a maximum authorized takeoff weight on wheels of no more than 35,000 pounds. *(Check separate or combined coverage as appropriate)*:

☐ Separate Coverages:

Policy No.	*Type of Liability*	*Minimum Limit*	
		Each Person	*Each Occurrence*
_____	Combined Bodily Injury (Excluding Passengers other than cargo attendants) and Property Damage Liability	$75,000	$2,000,000 * (See Note)
_____	Passenger Bodily Injury Liability	$75,000	$75,000 × 75% of total number of passenger seats installed in the aircraft.

☐ Combined Coverage: This combined coverage is a single limit of liability for each occurrence at least equal to the required minimums stated above for bodily injury (excluding passengers), property damage, and passenger bodily injury.

Policy No. _____ *Amount of Coverage* _____

☐ This policy covers CARGO operations *only* and *excludes* passenger liability insurance.

* NOTE: If the aircraft covered by this policy have more than 30 passenger seats or more than a maximum payload capacity of 7,500 pounds, the minimum limit per occurrence shall be $20,000,000.

OST Form 6411

B. FOREIGN AIR CARRIERS OPERATING SMALL AIRCRAFT

The aircraft covered by this policy are SMALL AIRCRAFT (i.e., with 60 or fewer passenger seats or with a maximum payload capacity of 18,000 pounds or less). *(Check separate or combined coverage as appropriate)*:

☐ Separate Coverages:

Policy No.	*Type of Liability*	*Minimum Limit* — *Each Person*	*Minimum Limit* — *Each Occurrence*
_____	Combined Bodily Injury (Excluding Passengers other than cargo attendants) and Property Damage Liability	$300,000	$2,000,000
_____	Passenger Bodily Injury Liability	$300,000	$300,000 x 75% of total number of passenger seats installed in the aircraft.

☐ Combined Coverage: This combined coverage is a single limit of liability for each occurrence at least equal to the required minimums stated above for bodily injury (excluding passengers), property damage, and passenger bodily injury.

Policy No. _____ *Amount of Coverage* _____

☐ This policy covers CARGO operations *only* and *excludes* passenger liability insurance.

C. FOREIGN AIR CARRIERS OPERATING LARGE AIRCRAFT

The aircraft covered by this policy are LARGE AIRCRAFT (i.e., with more than 60 passenger seats or with a maximum payload capacity of more than 18,000 pounds). *(Check separate or combined coverage as appropriate)*:

☐ Separate Coverages:

Policy No.	*Type of Liability*	*Minimum Limit* — *Each Person*	*Minimum Limit* — *Each Occurrence*
_____	Combined Bodily Injury (Excluding Passengers other than cargo attendants) and Property Damage Liability	$300,000	$20,000,000
_____	Passenger Bodily Injury Liability	$300,000	$300,000 x 75% of total number of passenger seats installed in the aircraft

☐ Combined Coverage: This combined coverage is a single limit of liability for each occurrence at least equal to the required minimums stated above for bodily injury (excluding passengers), property damage, and passenger bodily injury.

Policy No. _____ *Amount of Coverage* _____

☐ This policy covers CARGO operations *only* and *excludes* passenger liability insurance.

3. The policy or policies listed in this certificate insure(s) *(Check One)*:

☐ Operations conducted with all aircraft operated by the Insured

☐ Operations conducted with the following types of aircraft:

☐ Operations with the following aircraft: (Use additional page if necessary)

Make and Model	*FAA or Foreign Flag Registration No*

4. Each policy listed in this certificate meets or exceeds the requirements in 14 CFR Part 205.

(Name of Insurer)	*(Name of Broker, if applicable)*
(Address)	*(Address)*
(City, State, Zip Code)	*(City, State, Zip Code)*
Contact (person who can verify the effectiveness of the coverage)	*(Officer or authorized representative)*
(Area Code, Phone Number) *(Area Code, FAX Number)*	*(Area Code, Phone Number)* *(Area Code, FAX Number)*
(Signature, if applicable)	*(Signature)*
(Date)	*(Date)*

[FR Doc. 92-20422 Filed 9-1-92; 8:45 am]

BILLING CODE 4910-62-C

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 25

[Docket No. R-92-1499; FR-2801-C-05]

RIN 2501-AB01

Mortgagee Review Board; Correction

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule; correction.

SUMMARY: On August 18, 1992 (57 FR 37085), the Department published in the **Federal Register**, a notice that corrected a final rule published on July 13, 1992 (57 FR 31048), that made comprehensive changes in the Department of Housing and Urban Development's Mortgagee Review Board (Board) procedures. The purpose of this document is to correct an additional error published in the August 18 correction.

EFFECTIVE DATE: August 12, 1992.

FOR FURTHER INFORMATION CONTACT: For discussion of legal issues or matters of regulatory interpretation: Emmett N. Roden III, Assistant General Counsel, Inspector General and Administrative Proceedings Division, Department of Housing and Urban Development, room 10251, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 708-3200.

For programmatic issues: William Heyman, Director, Office of Lender Activities and Land Sales Registration, Department of Housing and Urban Development, room 9146, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 708-1824. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Accordingly, in FR Doc. 92-19586, the correction document published in the **Federal Register** on August 18, 1992 (57 FR 37085), is corrected to read as follows:

On page 37085, item 8, in the middle column, is corrected to read, "On page 31052, in § 25.5(c)(3), correct the first sentence to read, "* * * HUD will not endorse any mortgage originated by the suspended mortgagee * * *".

Dated: August 28, 1992.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 92-21133 Filed 9-1-92; 8:45 am]

BILLING CODE 4210-32-M

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Part 135

[Docket No. R-92-1607; FR-3290-F-01]

RIN 2529-AA57

Employment Opportunities for Businesses and Lower Income Persons in Connection with Assisted Projects; Technical Amendments

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Final rule.

SUMMARY: Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (section 3) contains certain requirements governing the Department's administration of programs providing direct financial assistance to both public and private recipients. This rule amends the Department's section 3 regulations at 24 CFR part 135 to conform these regulations to statutory amendments made to section 3 by the Housing and Community Development Act of 1974 and the Housing and Community Development Act of 1980.

The amendments to part 135 made by this final rule revise only those sections of part 135 which contain obsolete terminology or language that is inconsistent with the 1974 and 1980 changes made to section 3.

EFFECTIVE DATE: October 2, 1992.

FOR FURTHER INFORMATION CONTACT: Maxine B. Cunningham, Office of Fair Housing Assistance and Voluntary Programs, Section 3 Compliance Division, room 5232, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-2251. This number has TDD capabilities. (The number is not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Background

Section 3 of the Housing and Urban Development Act of 1968 (section 3) contains certain requirements governing the Department's administration of programs providing direct financial assistance to both public and private recipients. Since its enactment, section 3 has been amended by the Housing and Urban Development Act of 1969 (the 1969 Act), the Housing and Community Development Act of 1974 (the 1974 Act), and the Housing and Community Development Act of 1980 (the 1980 Act).

As amended, section 3 now provides that in the administration of programs providing direct financial assistance, including community development block grants, in aid of housing, urban planning, development, redevelopment or renewal, and public or community facilities, and new community development, the Secretary of HUD shall:

(1) Require, in consultation with the Secretary of Labor, that to the greatest extent feasible, opportunities for training and employment arising in connection with the planning and carrying out of any project assisted under any such program be given to lower income persons residing within the unit of local government or the metropolitan area (or nonmetropolitan county), as determined by the Secretary, in which the project is located; and

(2) Require, in consultation with the Administrator of the Small Business Administration, that to the greatest extent feasible contracts for work to be performed in connection with any such project be awarded to business concerns, including but not limited to, individuals or firms doing business in the field of planning, consulting, design, architecture, building construction, rehabilitation, maintenance, or repair, which are located in or owned in substantial part by persons residing in the same metropolitan area (or nonmetropolitan county) as the project.

The Department's regulations at 24 CFR part 135, which implement section 3, have not been amended substantively since their original adoption in 1973, and therefore fail to reflect the changes made to section 3 by the 1974 Act and the 1980 Act. (The part 135 regulations, however, do incorporate the changes made to section 3 by 1969 Act.) The Department currently is in the process of preparing a rule that will implement comprehensive amendments to the part 135 regulations. The comprehensive rule will request public comment on the amendments, and any public comments received on this rule will be taken into consideration in the development of a final rule amending part 135.

The amendments to be made by the comprehensive rule will reflect changes in the Department's programs that are subject to section 3, and make a number of revisions directed to facilitating compliance with section 3. However, this rule is still in the development stage, and the Department anticipates additional time delay before issuance of this rule. Because the Department currently requires an appropriate regulatory basis for implementation of enforcement procedures with respect to section 3, the Department has decided to issue this technical amendment rule which revises only those sections of the part 135 regulations that contain obsolete terminology or language inconsistent with amended section 3.

The specific amendments made by this rule are set forth below.

II. Technical Amendments

Section 135.1

Section 135.1, which describes the purpose and scope of part 135, is revised to remove obsolete statutory language.

Section 135.5

In § 135.5, which defines certain terms used in part 135, the definition of "lower income resident" is revised to remove reference to "Standard Metropolitan Statistical Area" and "SMSA," and to replace them with the current terminology—"Metropolitan Statistical Area" and "MSA," respectively.

Section 135.10

Section 135.10 is revised to reflect the correct title for the Assistant Secretary referred to in this section—which is the Assistant Secretary for Fair Housing and Equal Opportunity.

Section 135.15

Section 135.15, which describes how the boundaries of a section 3 covered project area will be determined, is revised to reflect the changes made to section 3 by the 1980 Act. Before the 1980 Act, section 3 referred to a section 3 area simply as the "area of such project". The 1980 Act, however, established certain geographic boundary guidelines for determining the section 3 area. The 1980 Act identified the section 3 area as follows: (1) For training and employment opportunities, the area "within the unit of local government, or the metropolitan area or the nonmetropolitan county, as determined by the Secretary, in which the project is located"; and (2) for contract opportunities, the same metropolitan area or nonmetropolitan county as the project. This section also is revised to reflect the correct titles of certain HUD Regional and Field officials.

The amendments made to § 135.15 by this final rule do not preclude public housing agencies (PHAs) from awarding contracts to businesses owned in substantial part by residents of a section 3 covered project, as provided in HUD's regulations at 24 CFR part 963, published on May 11, 1992, and effective June 10, 1992.

Section 135.125

This section, which merely provides that all handbooks, circulars and other documents issued by the Department before codification of its part 135 regulations are superseded by the regulations, is removed.

Section 135.140

This section, which merely states the effective date of the part 135 regulations, also is removed.

In addition to the above amendments, §§ 135.20(b) and 135.65 are revised to make the term "section 3 covered project" uniform throughout part 135.

The purpose of this rule is to update the part 135 regulations to reflect the statutory changes made to section 3 by the 1974 Act and the 1980 Act. As noted earlier in this preamble, other changes proposed to be made to part 135 will be published in the near future under separate rulemaking, and the public will be invited to comment on that rule.

Justification for Final Rulemaking

It is the Department's general policy to publish a rule for notice and comment before issuing a rule for effect, in accordance with is own rule on rulemaking, 24 CFR part 10. However, part 10 provides for exceptions from that general rule where the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is determined to be "impracticable, unnecessary, or contrary to the public interest." (24 CFR 10.1)

The Department finds that good cause exists to publish this rule for effect without first soliciting public comment in that prior public procedure is unnecessary. This final rule revises only those sections of the part 135 regulations which contain obsolete statutory language and terminology. Accordingly, these revisions are remedial in effect.

Other Matters

Impact on the Economy

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs of prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on small entities. The rule revises only those sections of the part 135 regulations, which contain obsolete statutory terms. No changes are made to those sections of part 135 which set forth the requirements of recipients of HUD financial assistance under section 3.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50, that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, room 10276, 451 Seventh Street, SW, Washington, DC 20410.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12611, *Federalism*, has determined that this rule does not have a substantial, direct effect on the States or on the relationship between the Federal government and the States, or on the distribution of power or responsibilities among the various levels of government. No programmatic or policy changes result from promulgation of this rule which would affect existing relationships between Federal, State or local governments.

Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule does not have a potential significant impact on family formation, maintenance, and general well-being, and thus is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

Regulatory Agenda

This rule was not listed in the Department's Semiannual Agenda of Regulations published on April 27, 1992 (57 FR 1680), under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR part 135

Administrative practice and procedure, Community development, Equal employment opportunity, Government contracts, Grant programs: housing and community development,

Housing, Loan programs: housing and community development, Reporting and recordkeeping requirements, Small businesses.

Accordingly, 24 CFR part 135 is amended as follows:

PART 135—EMPLOYMENT OPPORTUNITIES FOR BUSINESSES AND LOWER INCOME PERSONS IN CONNECTION WITH ASSISTED PROJECTS

1. The authority citation for 24 CFR part 135 is revised to read as follows:

Authority: 12 U.S.C. 1701u; 42 U.S.C. 3535(d).

2. In § 135.1, paragraph (a) is revised to read as follows:

§ 135.1 Purpose and scope of part.

(a) The regulations set forth in this part contain the procedures established to carry out the Secretary's responsibilities under section 3 of the Housing and Urban Development of 1968 (12 U.S.C. 1701u).

* * * * *

3. In § 135.5, paragraph (g) is revised to read as follows:

§ 135.5 Definitions.

* * * * *

(g) *Lower income resident* of the area means any individual who resides within that area of a section 3 covered project and whose family income does not exceed 90 percent of the median income in the Metropolitan Statistical Area (or the county, if not within an MSA) in which the section 3 covered project is located.

* * * * *

4. Section 135.10 is revised to read as follows:

§ 135.10 Delegation to Assistant Secretary for Fair Housing and Equal Opportunity.

Except as otherwise provided in this part, the functions of the Secretary under this part are delegated to the Assistant Secretary for Fair Housing and Equal Opportunity. The Assistant Secretary for Fair Housing and Equal Opportunity is further authorized to redelegate functions and responsibilities to employees of the Department; *Provided however*, that the authority to issue rules and regulations under § 135.1(d) may not be redelegated.

5. Section 135.15 is revised to read as follows:

§ 135.15 Determination of the area of a section 3 covered project.

(a) The area of a section 3 covered project shall be determined in accordance with the following statutory directives:

(1) For purposes of training and employment opportunities, the area of the section 3 covered project shall be the area within the unit of local government, or the metropolitan area or the nonmetropolitan county, as determined by the HUD officials specified in paragraphs (b) of this section, in which the project is located.

(2) For purposes of contracting opportunities, the area of the section 3 covered project shall be the same metropolitan area or nonmetropolitan county as the section 3 covered project.

(b) The Department's Regional Administrator or Field Office Manager, as appropriate, shall determine the area of section 3 covered projects, in accordance with guidelines and instructions issued by the Assistant Secretary for Fair Housing and Equal Opportunity.

6. In § 135.20, paragraph A of the "section 3 clause" (which is incorporated in paragraph (b) of this section) is revised to read as follows:

§ 135.20 Assurance of compliance with regulations.

* * * * *

(b) * * *

A. The work to be performed under this contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the area of the section 3 covered project, and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing, in the area of the section 3 covered project.

* * * * *

7. Section 135.65 is revised to read as follows:

§ 135.65 General.

Each applicant, recipient, contractor, or subcontractor undertaking work on a section 3 covered project shall assure that, to the greatest extent feasible, contracts for work to be performed in connection with the project are awarded to business concerns located within the section 3 covered project area or business concerns owned in substantial part by persons residing in the section 3 covered project area. The Department, in consultation with the Small Business Administration will establish for the section 3 covered project a registry of business concerns which meet the definition contained in § 135.5 (b) and (c). Each applicant, recipient, contractor, or subcontractor undertaking work in connection with a section 3-covered project shall fulfill the obligations to utilize business concerns located within or owned in substantial part by persons residing in the section 3 covered project area by developing and implementing an affirmative action plan.

§ 135.125 [Removed and Reserved]

8. Section 135.125 is removed and reserved.

§ 135.140 [Removed and Reserved]

9. Section 135.140 is removed and reserved.

Dated: August 28, 1992.

Gordon H. Mansfield,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 92-21134 Filed 9-1-92; 8:45 am]

BILLING CODE 4210-28-M

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 905

[Docket No. R-92-1371; FR-2208-F-06]

RIN 2577-AA32

Indian Housing: Technical Amendments

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule: technical amendment.

SUMMARY: This rule amends the Indian housing final rule published on June 24, 1992 (57 FR 28240) to make technical corrections. Since the final rule revising part 905 in its entirety was published, the Department discovered that a small number of revisions were inadvertently, omitted from the final published version, and that a subsequently published final rule affecting part 905 would have been unintentionally superseded. In addition, language regarding administrative capability has been revised to be consistent throughout the regulation.

EFFECTIVE DATE: October 2, 1992.

FOR FURTHER INFORMATION CONTACT: Dominic Nessi, Director, Office of Indian Housing, room 4140, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-1015 (voice) or (202) 708-0850 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The final rule contained an ambiguity concerning the relocation responsibilities of local governments and terminology concerning IHA administrative capability was not consistent throughout the rule. In addition, there were a few phrases in isolated sections of the rule that were unclear or outdated. This technical amendment clarifies the Department's intent in these matters.

On the relocation issue in the context of disposition or demolition of Indian housing, § 905.925 left it unclear whether it described the responsibilities completely or whether 49 CFR part 24 was the definitive source. HUD has determined that § 905.925, although consistent with its counterpart in the Department's public housing program, is misleading and that a simple reference to the government-wide rule on relocation would be more accurate. Therefore, this amendment removes § 905.925 and changes a cross-reference to that section to refer instead to the government-wide rule, 49 CFR part 24. A revision is also made to § 905.120(e), which refers to an IHA's obligations with respect to relocation, to clarify that permanent relocation costs, as well as temporary relocation or moving costs, are eligible project costs.

Throughout the part, language distinguishing between those IHAs that can take action without prior HUD approval and those that cannot, has referred to a determination of "high risk" status (which only applies to new funding decisions) or to a notice of deficiency. When the concept of the corrective action order was introduced into § 905.135, this language should have been changed. This amendment makes those changes throughout the part.

A revision to § 905.135 removes repetitive language and clarifies the method used by an IHA to appeal a regional administrator's determination that the IHA is ineligible for funding.

Throughout part 905, there have remained references to "HUD approval" of sites, of a memorandum of acceptance, of settlement documents, and other actions, even though the final rule was drafted to eliminate these approvals except for IHAs that had received corrective action orders with respect to the function involved. These references are removed. There are some references in several sections to HUD that have been clarified to indicate that the HUD field office is the contact point.

In the Procurement subpart, there are a few places where a cross-reference to part 85 is needed to make the treatment of a subject complete. Consequently, cross-references have been added to § 905.160 (a)(5) and (a)(7) and to a new paragraph (a)(3)(iv). Instead of adding a cross-reference to paragraph (a)(4) of that section, the additional sentence found in § 85.36(b)(9) is added.

Section 905.175 is amended to remove (from paragraph (b)(2)) a sentence that is repetitious of introductory language found earlier in the paragraph. In addition, a sentence requiring that quotations be obtained in writing is removed, since oral quotations are mentioned and are permitted under the guiding regulation, 24 CFR part 85. In addition, in that section and § 905.180, language is conformed to traditional procurement language with regards to "awarding" contracts, selection of the "most advantageous proposal", and the response to an invitation for bids being simply a "bid."

In subpart C, Development, § 905.210 provides that priority must be given to proposed development projects for large families. This provision was based on a statutory requirement that has been removed from the statute. Consequently, this rule removes the regulatory requirement.

In § 905.215, there were several discussions of bonding requirements, which have been shortened to cross-reference the more thorough coverage of that subject in § 905.170.

In subpart D, Operations, a final rule published on July 30, 1992 (57 FR 33846, 33853) added a § 905.346, concerning fire safety and smoke detectors that is to become effective on August 31, 1992. The stated effective date for the revised consolidated Indian housing rule published on June 24, 1992, is October 1, 1992, and that rule purports to revise part 905 in its entirety.

Since the revised consolidated (June 24th) rule did not include the fire safety provision, that provision of the July 30th rule would be nullified by the June 24th rule if this technical correction did not reinsert it. Consequently, this technical amendment amends part 905, effective the day after the June 24th rule becomes effective, to include § 905.346, Fire safety.

In subpart D, § 905.350 discusses actions to remedy defects and prevent a determination that the IHA is "high risk." This rule removes that section, since that topic is covered under the corrective action order procedure described in § 905.135 on administrative capability.

In the Mutual Help Homeownership Opportunity program, subpart E, there is a reference to "HUD standards" for design of the homes. HUD no longer has standards for design, but IHAs are required to adopt their own. Consequently, the term "HUD standards" is changed to "project standards" in § 905.413. In addition, there has long been a reference in the Mutual Help program to the monthly payment being based on a "schedule." However, IHAs do not have payment schedules; therefore, § 905.427 is amended to remove references to a "schedule."

List of Subjects in 24 CFR Part 905

Aged, Grant programs—Indians, Grant programs—housing and community development, Handicapped, Indians, Loan programs—housing and community development, Loan programs—Indians, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

Accordingly, part 905 of title 24 of the Code of Federal Regulations is amended as follows:

PART 905—INDIAN HOUSING PROGRAMS

1. The authority citation for part 905 continues to read as follows:

Authority: 42 U.S.C. 1437aa–1437ee; 25 U.S.C. 450e(b); 42 U.S.C. 3535(d).

2. In § 905.120, paragraph (e)(2) is revised to read as follows:

§ 905.120 Compliance with other Federal requirements.

* * * * *

(e) * * *

(2) The cost of required permanent or temporary relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs.

* * * * *

3. In § 905.135, paragraph (g)(2) is revised to read as follows:

§ 905.135 Administrative capability.

* * * * *

(g) *Appeals.* * * *

(2) An IHA may appeal a regional administrator's decision to the Assistant Secretary only if the case involves actions related to a determination of ineligibility of funding for the upcoming funding cycle. An appeal of the regional administrator's decision must be made to the Assistant Secretary in writing, stating the justification or evidence, and must be received within 21 days of the date of the regional administrator's decision. Decisions reviewed by the Assistant Secretary will be evaluated based on the facts as presented to the regional administrator and on any aggravating or extenuating circumstances.

* * * * *

4. In § 905.160, paragraphs (a), (2), (3) (ii) and (iii), introductory text, are revised; paragraph (a)(3)(iv) is added; and a sentence is added to the end of paragraphs (a)(4), (a)(5), and (a)(7) to read as follows:

§ 906.160 Procurement standards.

(a) *HUD standards.* * * *

(2) *Contracting authorization.* An IHA may execute contracts without HUD approval for the procurement of work, materials, equipment and/or professional services, in accordance with paragraph (a) (3) (iii) of this section, unless HUD has issued a corrective action order with respect to this function, in accordance with § 905.135. When HUD approval is not required, the IHA Board of Commissioners will certify that program requirements have been satisfied before it executes a contract.

(3) *Limitations.* * * *

(ii) Unless HUD has issued a corrective action order in accordance with § 905.135, requiring HUD approval, an IHA may issue a solicitation after certifying to HUD its receipt of the required architect's/engineer's certification that the drawings and specifications accurately reflect construction or repair standards and that the solicitation is complete and includes all mandatory items. The IHA shall obtain HUD approval of the proposed award of contracts for repairs, construction, and/or related equipment if the proposed contract award amount exceeds the HUD-approved budget amount or the IHA receives only a single bid. Unless HUD has issued a corrective action order with respect to this function, in accordance with § 905.135, requiring HUD approval, the IHA shall make the award after the IHA has certified:

* * * * *

(iii) Unless HUD has issued a corrective action order with respect to this function, in accordance with § 905.135, the IHA may execute, or approve any agreement or contract for personal, management, legal, or other services with any person or firm without the prior written approval of HUD, except under the following circumstances:

* * * * *

(iv) With respect to time and material contracts, see 24 CFR 85.36(b)(10).

(4) *Records.* * * * These records will include, but are not necessarily limited to the following: Rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(5) *Contract administration.* * * * See 24 CFR 85.36(b)(12).

* * * * *

(7) *Contract cost and price.* * * * See 24 CFR 85.36(f).

* * * * *

5. Section 905.165 is amended by removing the last sentence of paragraph (c)(2) and replacing it with the following sentence:

§ 905.165 Indian preference.

* * * * *

(c) * * *

(2) * * * A determination by HUD that the IHA has not provided adequate monitoring or enforcement of Indian preference shall result in the issuance of a corrective action order in accordance with § 905.135.

* * * * *

6. In § 905.170, the introductory text of paragraph (a) is amended by removing the last sentence and replacing it with the following sentence:

§ 905.170 Other requirements applicable to development contracts.

(a) * * * Unless HUD has issued a corrective action order with respect to this function, in accordance with § 905.135, the IHA may approve the form of assurance without prior HUD approval.

* * * * *

§ 905.175 [Amended]

7. In § 905.175, paragraph (b)(2) is amended by removing the introductory text; paragraph (b)(2)(i)(A) is amended by removing the third sentence; the introductory text of paragraph (c) is amended by changing the first letter of the first word from a capital "P" to a lower case "p" and by adding, at the beginning of the sentence, the following phrase: "When sealed bidding is appropriate, in accordance with 24 CFR 85.36(d)(2)(i),"; the fifth sentence of paragraph (c)(1) is amended by removing the words "HUD approval" and replacing them with the words "HUD field office approval"; the first sentence of paragraph (d)(1) is amended by removing the words "are let" and replacing them with the words "are awarded"; and the last sentence in paragraph (d)(1)(ii) is amended by removing the words "most responsive proposal" and replacing them with the words "most advantageous proposal".

§ 905.180 [Amended]

§ 8. In § 905.180, the introductory text of paragraph (a)(1) is amended by removing the word "response".

§ 905.210 [Amended]

9. In § 905.210, the paragraph designation (a) is removed, and paragraph (b) is removed.

§ 905.212 [Amended]

10. In § 905.212, the second sentence of paragraph (a) is amended by removing the words "notice of deficiency" and replacing them with the words "corrective action order", and the second sentence of paragraph (b) is amended by removing the words "letter of deficiency" and replacing them with the words "corrective action order".

11. In § 905.215, paragraphs (a)(1), (a)(2) and (a)(3)(ii) are revised to read as follows:

§ 905.215 Production methods and requirements.

(a) * * *

(1) *Conventional method.* Under the Conventional method, the IHA plans the project and prepares drawings and specifications. After the plans and specifications are approved as described in § 905.250, the IHA solicits competitive bids through public advertisement and awards the contract to the lowest responsible bidder. The contractor shall be required to provide completion assurance in accordance with the bonding requirements of § 905.170. Unless HUD has issued a corrective action order with respect to this function, in accordance with § 905.135, the IHA may proceed with selection of a proposal without HUD concurrence (see § 905.212). The contractor receives progress payments during construction, and a final HUD-approved payment upon completion, in accordance with the contract.

(2) *Turnkey method.* Under the Turnkey method, the IHA advertises for developers to submit proposals to build a project described in the IHA's invitation for proposals. The request for proposals may prescribe the sites to be used. The IHA evaluates the proposals and selects the best proposal after considering price, design, site, the developer's experience and other evidence of the developer's ability to complete the project. Unless HUD has issued a corrective action order with respect to this function, in accordance with § 905.135, the IHA may select a proposal without HUD concurrence (see § 905.212). After the proposal is selected by the IHA, the IHA may award the contract to the successful developer, who prepares working drawings and specifications unless previously provided by the IHA. The IHA and the developer enter into a contract of sale after the drawings and specifications

are reviewed by HUD as required under § 905.250. Upon completion of the project (or stages thereof) in accordance with the contract of sale, the IHA purchases the project (or stage) from the developer. The IHA may contract for assistance in preparing the invitation and evaluating proposals. The IHA must obtain independent inspection services by an architect, engineer or other qualified person during construction. The developer shall be required to provide completion assurance in accordance with the bonding requirements of § 905.170.

(3) *Modified Turnkey.* * * *

(ii) The IHA may require the developer/contractor to furnish completion assurance in accordance with the bonding requirements of § 905.170.

* * * * *

§ 905.225 [Amended]

12. In § 905.225, the second sentence of paragraph (a)(1) is amended by removing the words "notice of deficiency" and replacing them with the words "corrective action order".

13. In § 905.245, paragraphs (a) and (b) are revised to read as follows:

§ 905.245 Site approval.

(a) *IHA certification.* Unless HUD has issued a corrective action order with respect to this function, in accordance with § 905.135, the IHA may submit a written certification that the actions necessary to satisfy the conditions of tentative and final site approval, as described in this section, have been completed and the site is acceptable. (See § 905.212.)

(b) *IHA request for approval.* If HUD has issued a corrective action order with respect to this function, in accordance with § 905.135, the IHA shall request approval for each site by submitting the prescribed form to HUD generally before, but no later than simultaneously with, the development program, discussed in § 905.265. The IHA request shall include all exhibits required by the form, including the written approval of the BIA and IHS where needed.

* * * * *

14. In § 905.250, paragraph (c) is amended by adding the following sentence after the heading of the paragraph:

§ 905.250 Design criteria.

* * * * *

(c) * * * Unless HUD has issued a corrective action order with respect to this function, in accordance with § 905.135, the IHA may proceed without obtaining HUD approval of the design (see § 905.160(a)(3)(ii). * * *

§ 905.255 [Amended]

15. In § 905.255, paragraph (g) is amended by adding, before the period in the last sentence, the words, "for the project".

16. In section 905.260 (paragraphs (a) through (d) and (f) are revised. The OMB number remains unchanged.

§ 905.260 Construction and inspections.

* * * * *

(a) *Conventional projects.* Unless HUD has issued a corrective action order with respect to this function, in accordance with § 905.135, the IHA may prepare the plans, advertise, and award a construction contract without prior HUD approval and certify compliance with HUD procedures in that process. (See § 905.212.) The IHA must submit copies of the plans, advertisements and construction contract with the certification to HUD.

(b) *Turnkey and modified turnkey projects.* Unless HUD has issued a corrective action order with respect to this function, in accordance with § 905.135, the IHA may execute the contract of sale without prior HUD approval and certify in writing proper preparation of the plans and execution of the contract of sale. (See § 905.212.) The IHA shall submit copies of the plans and Contract of Sale with the certification to HUD.

(c) *Force account.* Unless HUD has issued a corrective action order with respect to this function, in accordance with § 905.135, the IHA may prepare the final working drawings, showing the scope of work to be performed by the IHA staff or by subcontractors, and the solicitation for work and begin work without prior HUD approval. (See § 905.212.) The IHA will then certify proper preparation of the drawings and solicitation of work and will submit copies of the drawings.

(d) *IHA construction inspections.* Whatever the development method used, the IHA shall be responsible for obtaining independent inspections throughout the construction period. The frequency of inspections and the procedures to be used shall assure completion of quality housing in accordance with the contract documents. Inspections shall be performed by an independent architect, engineer, or other qualified person selected by the IHA. Unless HUD has issued a corrective action order with respect to this function, in accordance with § 905.135, HUD approval is not required. (See § 905.212.)

* * * * *

(f) *Completion inspection.* (1) The contractor shall notify the IHA in writing when the contract work (or stage) is completed and ready for final inspection. If the IHA agrees that contract work (or stage) is ready for final inspection, the IHA shall arrange for the inspection. The final inspection shall be made jointly by the IHA and the contractor. The IHA must notify the HUD field office before this inspection. Unless HUD has issued a corrective action order with respect to this function, in accordance with § 905.135, the IHA may proceed with acceptance without HUD approval. (See § 905.212.) In an MH project, homebuyers shall also be invited to participate in the inspection of their homes, but acceptance shall be by the IHA. Maximum consideration shall be given to all homebuyer concerns. When the BIA has maintenance responsibility for any part of the project after completion, it too shall be invited to participate.

(2) If the inspection discloses no deficiencies other then punch list items or seasonal completion items, the IHA may develop an interim Certificate of Completion for submission to HUD. The interim Certificate will detail the items remaining and set forth a schedule for their completion, and will allow the IHA to accept the units (or stage) for occupancy. Unless HUD has issued a corrective action order with respect to this function, in accordance with § 905.135, the IHA may release the monies due the contractor less withholdings in accordance with the construction contract. (See § 905.212.)

(3) The contractor shall complete the punch list items in accordance with the time schedule contained in the interim Certificate of Completion. Unless HUD has issued a corrective action order with respect to this function, in accordance with § 905.135, the IHA may pay the contractor for such items without HUD approval. (See § 905.212.) The IHA shall not accept an item if there is a dispute as to whether the item has been completed. If the IHA is satisfied that the applicable requirements of the construction contract and the interim Certificate have been met, the IHA shall prepare a final Certificate of Completion. Unless HUD has issued a corrective action order with respect to this function, in accordance with § 905.135, the IHA will submit the final certificate and certify in writing that the items have been completed, and release the amounts withheld to the contractor. (See § 905.212.)

* * * * *

§ 905.265 [Amended]

17. In § 905.265, the first sentence of paragraph (b) is amended by removing

the work "HUD" and replacing it with the words "the contractor".

18. Section 905.335 is amended by removing the last sentence and replacing it with the following sentence:

§ 905.335 Rent and homebuyer payment collection policy.

* * * Unless HUD has issued a corrective action order in accordance with § 905.135, HUD approval of the policy is not required.

19. A new § 905.346 is added, to read as follows:

§ 905.346 Fire safety.

(a) *Applicability.* This section applies to all IHA-owned or -leased housing, including Mutual Help and Turnkey III.

(b) *Smoke detectors.* (1) After October 30, 1992, each unit must be equipped with at least one battery-operated or hard-wired smoke detector, or such greater number as may be required by applicable State, local, or Tribal codes, in working condition, on each level of the unit. In units occupied by hearing-impaired residents, smoke detectors must be hard-wired.

(2) After October 30, 1992, the public areas of all housing covered by this section must be equipped with a sufficient number, but not less than one for each area, or battery-operated or hard-wired smoke detectors to serve as adequate warning of fire. Public areas include, but are not limited to, laundry rooms, community rooms, day care centers, hallways, stairwells, and other common areas.

(3) The smoke detector for each individual unit must be located, to the extent practicable, in a hallway adjacent to the bedroom or bedrooms. In units occupied by hearing-impaired residents, hard-wired smoke detectors must be connected to an alarm system designed for hearing-impaired persons and installed in the bedroom or bedrooms occupied by the hearing-impaired residents. Individual units that are jointly occupied by both hearing and hearing-impaired residents must be equipped with both audible and visual types of alarm devices.

(4) If needed, battery-operated smoke detectors, except in units occupied by hearing-impaired residents, may be installed as a temporary measure where no detectors are present in a unit. Temporary battery-operated smoke detectors must be replaced with hard-wired electric smoke detectors in the normal course of an IHA's planned CIAP or CGP program to meet the HUD Modernization Standards or applicable State, local, or Tribal codes, whichever standard is stricter. Smoke detectors for units occupied by hearing-impaired residents must be installed in accordance with the acceptability criteria in paragraph (b)(3) of this section.

(5) IHAs shall use operating funds to provide battery-operated smoke detectors in units that do not have any smoke detector in place. If operating funds or reserves are insufficient to accomplish this, IHAs may apply for emergency CIAP funding. IHAs may apply for CIAP or CGP funds to replace battery-operated smoke detectors with hard-wired smoke detectors in the normal course of a planned modernization program.

§ 905.350 [Removed]

20. Section 905.350 is removed.

21. In § 905.407, paragraph (b)(3) is revised to read as follows:

§ 905.407 Application.

* * * * *

(b) *Sites.* * * *

(3) *Alternative sites and substitution of sites.* In order to minimize delay to the project in the event of the withdrawal of a selected homebuyer or an approved site, the IHA should have a reasonable number of alternatives available. No substitution of a site shall be permitted after final site approval unless the change is necessary by reason of special circumstances. Unless HUD has issued a corrective action order with respect to this function, in accordance with § 905.135, HUD approval of substitution of a site is not required.

* * * * *

22. In § 905.413, paragraph (b) is revised to read as follows:

§ 905.413 Special provisions for development of an MH project.

* * * * *

(b) *Consultation with homebuyers.* The IHA shall provide for soliciting comments from homebuyers and other interested parties, as provided in § 905.225(c), concerning the planning and design of the homes. Any changes resulting from such consultation shall be consistent with project standards and cost limitations.

* * * * *

§ 905.416 [Amended]

23. In § 905.416, the last sentence of paragraph (d) is amended by removing the phrase "by IHA certification to HUD, or, for a "high risk" IHA, by the HUD field office.".

24. In § 905.427, paragraph (b) is amended by removing the heading and replacing it with the following words: *"Establishment of payment."*; paragraph (b)(1) is amended by removing the words "in accordance with a schedule" and replacing them with the word "as"; and paragraph (e) is amended by removing the last sentence and replacing it with the following sentence:

§ 3905.427 Homebuyer payments—post—1976 projects.

* * * * *

(e) * * * Unless HUD has issued a corrective action order with respect to this function, in accordance with § 905.135, HUD approval is not required.

25. In § 905.431, paragraph (a) is amended by removing the last sentence and by replacing it with the following sentence:

§ 905.431 Operating reserve.

(a) * * * If the IHA fails to maintain an adequate operating reserve level, HUD may issue a corrective action order prescribing specific actions that the IHA must take to improve its financial condition. (See § 905.135.)

* * * * *

§ 905.434 [Amended]

26. In § 905.434, the introductory language of paragraph (b) is amended by removing the word "HUD" and replacing it with the words "the HUD field office".

27. In § 905.440, the last sentence of paragraph (e)(5) is removed and replaced by the following sentence:

§ 905.440 Purchase of home.

(e) * * *

(5) * * * The required documents shall be approved by the attorney representing the IHA and by the homebuyer or the homebuyer's attorney.

* * * * *

28. In § 905.443, paragraph (a)(2) is amended by removing the following phrase: "(subject to approval by the HUD field office)"; paragraph (b)(1) is amended by removing, from the third sentence, the following words: "be in a form approved by the HUD field office and shall"; paragraph (c)(3) is amended by removing the following words: ", as approved by HUD"; and a new paragraph (g) is added, to read as follows:

§ 905.443 IHA homeownership financing.

* * * * *

(g) *HUD review and approval.* Unless HUD has issued a corrective action order with respect to this function, in accordance with § 905.135, the IHA may proceed with providing IHA financing without prior HUD approval. IHAs without prior experience in IHA financing should consult with the HUD field office.

29. In § 905.923, paragraph (b)(3) is revised to read as follows:

§ 905.923 General Requirements for HUD Approval of Disposition or Demolition.

* * * * *

(b) * * *

(3) A certification by the chief executive officer, or designee, that the unit of general local government will provide relocation assistance to all tenants displaced by an activity covered by this subpart, at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and implementing regulations at 49 CFR part 24.

§ 905.925 [Removed]

30. Section 905.925 is removed.

Dated: August 25, 1992.

Joseph G. Schiff,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 92-20811 Filed 9-1-92; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8430]

RIN 1545-AQ07

Procedure for Monitoring Compliance With Low-Income Housing Credit Requirements

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations relating to the requirement that State allocation plans provide a procedure for State and local housing credit agencies to monitor for compliance with the requirements of section 42 of the Internal Revenue Code. State and local housing credit agencies are to report any noncompliance to the Internal Revenue Service. These final regulations affect State and local housing credit agencies, owners of buildings or projects for which the low-income housing credit is claimed, and taxpayers claiming the low-income housing credit.

EFFECTIVE DATE: These final regulations are effective June 30, 1993.

FOR FURTHER INFORMATION CONTACT: Paul F. Handleman, (202) 622-3040 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control number 1545-1291. The estimated annual burden per State or local government respondent/recordkeeper varies from 10 hours to 1,500 hours, with an estimated average of 250 hours. The estimated annual burden for all other respondent/recordkeepers varies from .5 hours to 3 hours, with an estimated average of 1 hour.

These estimates are an approximation of the average time expected to be necessary for the collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents/recordkeepers may require greater or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attn: IRS Reports Clearance Officer T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

On December 27, 1991, the Internal Revenue Service published in the **Federal Register** a notice of proposed rulemaking (56 FR 67018) under section 42 of the Internal Revenue Code of 1986 with respect to the low-income housing credit.

A number of public comments were received concerning these regulations, and a public hearing was held on March 4, 1992. After consideration of the written comments and those presented at the hearing, the proposed regulations are adopted, as revised, by this Treasury decision.

Explanation of Provisions

Section 42 provides for a low-income housing credit that may be claimed as part of the general business credit under section 38. The credit determined under section 42 is allowable only to the extent the owner of a qualified low-income building receives a housing credit allocation from a State or local housing credit agency ("Agency"), unless the building is exempt from the allocation requirement by reason of section 42(h)(4)(B). Under section 42(m)(1)(A), the housing credit dollar amount for any building is zero unless the amount was allocated pursuant to a qualified allocation plan of the Agency Similarly, under section 42(m)(1)(D), the housing credit dollar amount for any project qualifying under section 42(h)(4) is zero unless the project satisfies the requirements for allocation of a housing credit dollar amount under the qualified allocation plan of the Agency.

Under section 42(m)(1)(B)(iii), which was amended and renumbered by the Revenue Reconciliation Act of 1990 (the "1990 Act"), an allocation plan is not qualified unless it contains a procedure that the Agency (or an agent of, or private contractor hired by, the Agency) will follow in monitoring compliance with the provisions of section 42. The Agency is to notify the Internal Revenue Service of any noncompliance of which the Agency becomes aware.

Section 42(m)(1)(B)(iii) is effective on January 1, 1992, and applies to all buildings for which the low-income housing credit determined under section 42 is, or has been, allowable at any time.

These final regulations provide guidance on section 42(m)(1)(B)(iii). Under the regulations, an allocation plan meets the requirement of section 42(m)(1)(B)(iii) if it includes a monitoring procedure that contains, in substance, all of the provisions specified in the regulations.

The specified provisions are minimum requirements; a monitoring procedure may contain additional provisions or requirements. Moreover, the language, form, and order of the specified provisions as set forth in the regulations need not be exactly duplicated in an allocation plan in order for the plan to include a monitoring procedure as required by the regulations. As long as the substance of the provisions specified in the regulations is contained in the allocation plan as a whole, the allocation plan satisfies the monitoring procedure required by the regulations.

These regulations only address compliance monitoring procedures of Agencies. They do not address forms and other records that may be required by the Internal Revenue Service on examination or audit.

Public Comments

Comments on Recordkeeping and Record Retention

One comment suggested that where an allocation of credit has been made on a project basis under section 42(h)(1)(F), the recordkeeping and record retention provisions should also apply on a project basis. This suggestion has not

been adopted because only the minimum set-aside requirement under section 42(g)(1) is satisfied on a project-by-project basis. All other requirements of section 42 must be met on a building-by-building basis.

Two comments suggested that owners of low-income housing projects be required to keep records describing how utility allowances are determined. Because utility allowances are taken into account in determining whether a unit is rent-restricted under section 42(g)(2)(B)(ii), the final regulations include utility allowances among the rent records to be retained by owners.

Another comment suggested that owners should be required to keep records showing: (1) The number of occupants in each unit and changes in the number of occupants for those units where rent is determined by the number of occupants per unit; (2) information on unit size, including the number of bedrooms and square footage of the unit; and (3) how the eligible basis was calculated at the end of the first year of the credit period. These suggestions have been adopted by the final regulations. Also in response to this comment, the final regulations clarify that the records of tenant income should be kept on a per unit basis. However, this comment's suggestion that owners be required to retain marketing and advertising materials demonstrating that units are available to the general public has not been adopted by the final regulations because marketing and advertising materials may not be sufficient to demonstrate that a building satisfies the general public use requirement.

One comment suggested that if a building is sold or transferred, the building owner should be required to transfer all records to the new owner. In the case of an audit, the new owner needs at least some of those records in order to demonstrate that any credit is allowable for the building and to avoid recapture. In particular, records of the first year of the credit period are necessary to show that credit is allowable for any later year in the credit period. The final regulations do not address transfers of records to new owners of buildings because these regulations are directed to Agencies and Agencies are not required to monitor prior years of the compliance period once those years end. Nevertheless, even without an Agency requirement, the transferee, as part of its transaction with the transferor, should obtain the first year information from the transferor in order to substantiate credits claimed.

Several comments suggested that tenant participation in a housing assistance program under section 8 of the United States Housing Act of 1937 ("Section 8") should exempt the owner from having to obtain supporting income documentation from that tenant because public housing authorities verify each Section 8 tenant's income and assets. Participation in the Section 8 program does not necessarily guarantee that a tenant has a qualifying income equal to or less than the income limitation under section 42(g). However, in response to this suggestion, the final regulations provide that if public housing authorities submit a statement to the building owner declaring that a Section 8 tenant's income does not exceed the applicable income limit under section 42(g), the owner is not required to obtain other documentation to verify that tenant's income.

Several comments noted that the definition of annual income under the Section 8 program is based on the tenant's anticipated annual income for the 12 months following the income certification. These commentators suggested that federal income tax returns not be considered permissible documentation of income because tax returns only show income for the prior tax year. This suggestion has not been adopted by the final regulations because, although the determination of annual income is not based upon gross income for federal income tax purposes (tenant income is calculated in a manner consistent with the determination of annual income under Section 8), tax returns do supply evidence of a tenant's sources of income and are signed under penalty of perjury.

Several comments stated that the requirement that owners retain each year's records for 6 years beyond the end of the building's compliance period is unreasonable. In response to these comments, the final regulations do not require owners to retain a year's records for more than 6 years after the due date (with extensions) for filing the federal income tax return for that year. However, because under the final regulations the records for the first year of the credit period are needed to prove the building's eligibility for the credit each year, those records must be retained for at least 6 years beyond the due date (with extensions) for filing the federal income tax return for the last year of the building's compliance period. This is appropriate because, as noted above, these records may be needed to show that credit is allowable.

Two comments questioned whether records should be kept for the extended use period under section 42(h)(6)(D). The final regulations do not contain any such requirement because recapture of the credit can result only from noncompliance occurring during the compliance period. However, an Agency may require retention of records for a longer period if it desires.

One comment questioned the period for which an Agency should retain its records. In response, the final regulations provide that an Agency must retain records of noncompliance or failure to certify for 6 years beyond the Agency's filing of the respective Form 8823, "Low-Income Housing Credit Agencies Report of Noncompliance." In all other cases, the Agency must retain the certifications and records for 3 years from the end of the calendar year the Agency receives the certifications and records.

Comments on Certification and Review

Two comments suggested that building owners be required to certify the applicable fraction and eligible basis claimed on the last filed Form 8609 (Schedule A), "Annual Statement." This suggestion has not been adopted because this information is already available to the Examination Division of the Internal Revenue Service. The Service bears the responsibility for determining whether a building owner has claimed the correct amount of credit each year and whether the building owner is subject to recapture. It is not the intent of these regulations to have Agencies audit income tax returns. However, in response to this comment, the final regulations add to the list of certifications a requirement that owners certify that the applicable fraction under section 42(c)(1)(B) has not changed from the prior year or, if the applicable fraction has changed, that the owners describe the change.

Several comments questioned whether an Agency is required to choose the reporting period the certifications cover or whether the certifications must cover the owner's taxable year. Those comments also suggested that the certifications should cover the preceding 12-month period. In response to this suggestion, the final regulations state that the annual owner certifications should cover the preceding 12-month period. However, an Agency is free to require more frequent certifications covering shorter time periods provided that all months within each 12-month period are subject to certification.

One comment suggested that the review provision should include monitoring for violations of the rent

restrictions under section 42(g)(2). This suggestion has been adopted by the final regulations.

Another comment suggested that the final regulations provide that the "next available unit" rule is not violated, and credit is not recaptured, if a vacant low-income unit of comparable or smaller size is rented on a temporary basis to a market-rate tenant. This suggestion has not been adopted. The issue of whether temporary rentals result in recapture of the credit is not properly addressed in regulations on compliance monitoring, but will be addressed in future guidance on credit recapture.

Two comments suggested that owners of buildings with 100 percent low-income occupancy should be required to submit tenant income certifications only for those units that became vacant after the previous year's compliance certifications were submitted. This suggestion has not been adopted because the determination of whether a tenant qualifies for purposes of the low-income set-aside is made on a continuing basis, both with regard to the tenant's income and the qualifying area income, rather than only on the date the tenant initially occupies the unit. *See 2 H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II–93 (1986), 1986–3 (Vol. 4) C.B. 93.*

Numerous comments suggested that the review provision be revised to provide for random sampling in both review choices. In addition, the comments requested guidance as to the number of projects that must be inspected each year and the number of units in each project that must be examined. The comments also requested additional flexibility in designing a review procedure than that available under the proposed regulations. In response to these suggestions, the review provision of the final regulations has been revised to provide Agencies with more flexibility and certainty in designing monitoring procedures. The final regulations permit a review provision containing any one or more of the following three sets of requirements: (1) The owners of at least 50 percent of all low-income housing projects in the Agency's jurisdiction must submit to the Agency for compliance review a copy of the annual income certification, the documentation the owner has received to support that certification, and the rent record for each low-income tenant in at least 20 percent of the low-income units in their projects; (2) the Agency must inspect at least 20 percent of the low-income housing projects in the Agency's jurisdiction each year and must inspect the low-income certification, the documentation the owner has received to support that certification, and the rent record for each low-income tenant in at least 20 percent of the low-income units in those projects; or (3) the owners of all low-income housing projects in the Agency's jurisdiction must submit to the Agency each year information on tenant income and rent for each low-income unit, in the form and manner designated by the Agency, and the owners of at least 20 percent of the projects in the Agency's jurisdiction must submit to the Agency for compliance review a copy of the annual income certification, the documentation the owner has received to support that certification, and the rent record for each low-income tenant in at least 20 percent of the low-income units in their projects. The Agency should determine which tenants' records are to be submitted by the owners for review.

Numerous comments questioned how the permitted exception would operate with respect to certain buildings financed with tax-exempt bond proceeds or with loans made under the Farmers Home Administration (FmHA) section 515 program. In response to these comments, the final regulations clarify this exception. Under the final regulations, a monitoring procedure may except FmHA-financed or bond-financed buildings from the review provision if the FmHA or tax-exempt bond issuer agrees to provide information concerning the income and rent of the tenants in the building to the Agency. The Agency may assume the accuracy of the information provided by the FmHA or the tax-exempt bond issuer without verification. The Agency must review the information and determine that the income limitation and rent restriction of section 42 (g)(1) and (2) are met. However, if the information provided by the FmHA or tax-exempt bond issuer is not sufficient for the Agency to make this determination, the Agency must request the necessary additional income or rent information from the owner of the buildings.

Comments on Auditing

One comment suggested that the use of the term "auditing" in the proposed regulations is misleading because it implies that the Agency is to audit the tax records of the owner of the building for the Service. In response to this suggestion, the final regulations substitute the term "inspection."

Another comment noted that the proposed regulations could be interpreted as prohibiting a separate physical inspection of a building without a review of the records. This interpretation was not intended. An inspection may include, but is not required to include, a review of records.

Comments on Notification of Noncompliance

Several comments suggested that notification of noncompliance to the Service not be required where the noncompliance has been corrected within a reasonable amount of time. This suggestion has not been adopted because it may not always be easy or even possible for an Agency to determine whether corrected noncompliance results in recapture of the credit. Accordingly, under the final regulations, all noncompliance, whether or not corrected, must be reported so that the Service can determine whether the taxpayer is subject to recapture of the credit.

Another comment suggested that any change in a building's eligible basis should be considered noncompliance that must be reported to the Service. The commentator reasons that this is necessary to ensure that the information being provided on the annual certifications and Form 8586, "Low-Income Housing Credit," and Form 8609 (Schedule A) are consistent. Changes in eligible basis and the applicable fraction that result in a decrease in qualified basis result in recapture of credit. Therefore, the final regulations provide that any change in either the applicable fraction or eligible basis that results in a decrease in the project's qualified basis should be considered noncompliance that must be reported to the Service.

One comment suggested that tenant fraud should be reported to the Service. No specific changes to the regulations have been made in response to this suggestion. If tenant fraud results in noncompliance, the noncompliance should be reported.

Comments suggested that any notice sent to a building owner and the Form 8823 sent to the Service should be required to be sent by certified mail. These suggestions have not been adopted; although an Agency is free to use certified mail, it is not required to do so.

One comment suggested that any fees paid to an agent or other private contractor for delegated compliance monitoring should not be contingent upon a finding of compliance or noncompliance. The final regulations do not contain this suggested provision. However, it is the view of the Treasury and the Service that if an Agency makes the payment of compliance monitoring fees to an agent or private contractor contingent upon a finding of compliance or noncompliance, the Agency may not be using reasonable diligence to ensure that the agent or private contractor

properly performs the delegated compliance monitoring responsibilities.

One comment suggested that an Agency be permitted to delegate monitoring responsibilities to another Agency, including the responsibility of notifying the Service of any noncompliance of which the delegated Agency becomes aware. In response to this suggestion, the final regulations allow Agencies to delegate some or all of their compliance monitoring responsibilities for a building to another Agency within the State.

One comment suggested that although compliance monitoring is not required of Agencies before January 1, 1992, if an Agency becomes aware of noncompliance that occurred before that date, the Agency should be required to notify the Service of that noncompliance. The final regulations adopt this comment which reflects section 42(m)(1)(B)(iii) as effective before its amendment by the 1990 Act.

Several comments suggested that the regulations should expressly permit an Agency to establish reasonable administrative fees for covering an Agency's expenses in monitoring compliance, and other comments suggested that the failure to pay monitoring fees should be considered noncompliance. Section 42 does not prohibit an Agency from charging an administrative fee to cover the Agency's expenses in monitoring for compliance, but this is a matter for the determination of the Agency, rather than the Service. Accordingly, the regulations do not address any issues concerning Agency fees.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553 (b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805 (f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Paul F. Handleman, Office of the Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, other personnel from the Service and the Treasury Department participated in their development.

List of Subjects

26 CFR 1.37-1 through 1.44A-4

Credits, Income taxes, Reporting and Recordkeeping requirements.

26 CFR part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * Section 1.42-5 is also issued under 26 U.S.C. 42 (n) * * *

Par. 2. New § 1.42-5 is added to read as follows:

§ 1.42-5 Monitoring compliance with low-income housing credit requirements.

(a) *Compliance monitoring requirement*—(1) *In general.* Under section 42(m)(1)(B)(iii), an allocation plan is not qualified unless it contains a procedure that the State or local housing credit agency ("Agency") (or an agent of, or other private contractor hired by, the Agency) will follow in monitoring for noncompliance with the provisions of section 42 and in notifying the Internal Revenue Service of any noncompliance of which the Agency becomes aware. These regulations only address compliance monitoring procedures required of Agencies. The regulations do not address forms and other records that may be required by the Service on examination or audit. For example, if a building is sold or otherwise transferred by the owner, the transferee should obtain from the transferor information related to the first year of the credit period so that the transferee can substantiate credits claimed.

(2) *Requirements for a monitoring procedure*—(i) *In general.* A procedure for monitoring for noncompliance under section 42(m)(1)(B)(iii) must include—

(A) The recordkeeping and record retention provisions of paragraph (b) of this section;

(B) The certification and review provisions of paragraph (c) of this section;

(C) The inspection provision of paragraph (d) of this section; and

(D) The notification-of-noncompliance provisions of paragraph (e) of this section.

(ii) *Order and form.* A monitoring procedure will meet the requirements of section 42 (m)(1)(B)(iii) if it contains the substance of these provisions. The particular order and form of the provisions in the allocation plan is not material. A monitoring procedure may contain additional provisions or requirements.

(b) *Recordkeeping and record retention provisions*—(1) *Recordkeeping provision.* Under the recordkeeping provision, the owner of a low-income housing project must be required to keep records for each qualified low-income building in the project that show for each year in the compliance period—

(i) The total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rental unit);

(ii) The percentage of residential rental units in the building that are low-income units;

(iii) The rent charged on each residential rental unit in the building (including any utility allowances);

(iv) The number of occupants in each low-income unit, but only if rent is determined by the number of occupants in each unit under section 42(g)(2) (as in effect before the amendments made by the Revenue Reconciliation Act of 1989);

(v) The low-income unit vacancies in the building and information that shows when, and to whom, the next available units were rented;

(vi) The annual income certification of each low-income tenant per unit;

(vii) Documentation to support each low-income tenant's income certification (for example, a copy of the tenant's federal income tax return, Forms W-2, or verifications of income from third parties such as employers or state agencies paying unemployment compensation). Tenant income is calculated in a manner consistent with the determination of annual income under section 8 of the United States Housing Act of 1937 ("Section 8"), not in accordance with the determination of gross income for federal income tax liability. In the case of a tenant receiving housing assistance payments under Section 8, the documentation requirement of this paragraph (b)(1)(vii) is satisfied if the public housing authority provides a statement to the building owner declaring that the tenant's income does not exceed the applicable income limit under section 42 (g);

(viii) The eligible basis and qualified basis of the building at the end of the first year of the credit period; and

(ix) The character and use of the nonresidential portion of the building included in the building's eligible basis under section 42 (d) (*e.g.*, tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the project).

(2) *Record retention provision.* Under the record retention provision, the owner of a low-income housing project must be required to retain the records described in paragraph (b)(1) of this section for at least 6 years after the due date (with extensions) for filing the federal income tax return for that year. The records for the first year of the credit period, however, must be retained for at least 6 years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building.

(c) *Certification and review provisions*—(1) *Certification.* Under the certification provision, the owner of a low-income housing project must be required to certify at least annually to the Agency that, for the preceding 12-month period—

(i) The project met the requirements of:

(A) The 20–50 test under section 42 (g)(1)(A), the 40–60 test under section 42 (g)(1)(B), or the 25–60 test under sections 42 (g)(4) and 142 (d)(6) for New York City, whichever minimum set-aside test was applicable to the project; and

(B) If applicable to the project, the 15–40 test under sections 42(g)(4) and 142 (d)(4)(B) for "deep rent skewed" projects;

(ii) There was no change in the applicable fraction (as defined in section 42(c)(1)(B)) of any building in the project, or that there was a change, and a description of the change;

(iii) The owner has received an annual income certification from each low-income tenant, and documentation to support that certification; or, in the case of a tenant receiving Section 8 housing assistance payments, the statement from a public housing authority described in paragraph (b)(1)(vii) of this section;

(iv) Each low-income unit in the project was rent-restricted under section 42(g)(2);

(v) All units in the project were for use by the general public and used on a nontransient basis (except for transitional housing for the homeless provided under section 42 (i)(3)(B)(iii));

(vi) Each building in the project was suitable for occupancy, taking into account local health, safety, and building codes;

(vii) There was no change in the eligible basis (as defined in section 43(d)) of any building in the project, or if there was a change, the nature of the change (*e.g.*, a common area has become commercial space, or a fee is now charged for a tenant facility formerly provided without charge);

(viii) All tenant facilities included in the eligible basis under section 42(d) of any building in the project, such as swimming pools, other recreational facilities, and parking areas, were provided on a comparable basis without charge to all tenants in the building;

(ix) If a low-income unit in the project became vacant during the year, that reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the project were or will be rented to tenants not having a qualifying income;

(x) If the income of tenants of a low-income unit in the project increased above the limit allowed in section 42(g)(2)(D)(ii), the next available unit of comparable or smaller size in the project was or will be rented to tenants having a qualifying income; and

(xi) An extended low-income housing commitment as described in section 42(h)(6) was in effect (for buildings subject to section 7108(c)(1) of the Revenue Reconciliation Act of 1989).

(2) *Review.* The review provision must—

(i) require that the Agency review the certifications submitted under paragraph (c)(1) of this section for compliance with the requirements of section 42;

(ii) contain at least one of the following requirements:

(A) The owners of at least 50 percent of all low-income housing projects in the Agency's jurisdiction must submit to the Agency for compliance review a copy of the annual income certification, the documentation the owner has received to support that certification, and the rent record for each low-income tenant in at least 20 percent of the low-income units in their projects;

(B) The Agency must inspect at least 20 percent of low-income housing projects each year and must inspect the low-income certification, the documentation the owner has received to support that certification, and the rent record for each low-income tenant in at least 20 percent of the low-income units in those projects; or

(C) The owners of all low-income housing projects must submit to the Agency each year information on tenant income and rent for each low-income unit, in the form and manner designated by the Agency, and the owners of at least 20 percent of the projects must submit to the Agency for compliance review a copy of the annual income certification, the documentation the owner has received to support that certification, and the rent record for each low-income tenant in at least 20 percent of the low-income units in their projects; and

(iii) Require that the Agency determine which tenants' records are to be inspected or submitted by the owners for review. If a monitoring procedure includes the review provision described in paragraph (c)(2)(ii)(B) of this section, the records to be inspected must be chosen in a manner that will not give owners of low-income housing projects advance notice that their records for a particular year will or will not be inspected. However, an Agency may give an owner reasonable notice that an inspection will occur so that the owner may assemble records (for example, 30 days notice of inspection). See paragraph (d) of this section for the inspection provision that is required to be included in all monitoring procedures.

(3) *Frequency and form of certification.* A monitoring procedure must require that the certifications and reviews of paragraph (c)(2) and (2) of this section be made at least annually covering each year of the 15-year compliance period under section 42(i)(1). The certifications must be made under penalty of perjury. A monitoring procedure may require certifications and reviews more frequently than on a 12-month basis, provided that all months within each 12-month period are subject to certification.

(4) *Exception for certain buildings*—(i) *In general.* The review requirements under paragraph (c)(2)(ii) (A), (B), and (C) of this section may provide that owners are not required to submit, and the Agency is not required to review, the tenant income certifications, supporting documentation, and rent records for buildings financed by the Farmers Home Administration (FmHA) under the section 515 program, or buildings of which 50 percent or more of the aggregate basis (taking into account the building and the land) is financed with the proceeds of obligations the interest on which is exempt from tax under section 103 (tax-exempt bonds). In order for a monitoring procedure to except these buildings, the Agency must meet the requirements of paragraph (c)(4)(ii) of this section.

(ii) *Agreement and review.* The Agency must enter into an agreement with the FmHA or tax-exempt bond issuer. Under the agreement, the FmHA or tax-exempt bond issuer must agree to provide information concerning the income and rent of the tenants in the building to the Agency. The Agency may assume the accuracy of the information provided by FmHA or the tax-exempt bond issuer without verification. The Agency must review the information and determine that the income limitation and rent restriction of section 42 (g)(1) and (2) are met. However, if the information provided by the FmHA or tax-exempt bond issuer is not sufficient for the Agency to make this determination, the Agency must request the necessary additional income or rent information from the owner of the buildings. For example, because FmHA determines tenant eligibility based on its definition of "adjusted annual income," rather than "annual income" as defined under Section 8, the Agency may have to calculate the tenant's income for section 42 purposes and may need to request additional income information from the owner.

(iii) *Example.* The exception permitted under paragraph (c)(4)(i) and (ii) of this section is illustrated by the following example.

Example. An Agency chooses the review requirement of paragraph (c)(2)(ii)(A) of this section and some of the buildings selected for review are buildings financed by the FmHA. The Agency has entered into an agreement described in paragraph (c)(4)(ii) of this section with the FmHA with respect to those buildings. In reviewing the FmHA-financed buildings, the Agency obtains the tenant income and rent information from the FmHA for 20 percent of the low-income units in each of those buildings. The Agency calculates the tenant income and rent to determine whether the tenants meet the income and rent limitation of section 42 (g)(1) and (2). In order to make this determination, the Agency may need to request additional income or rent information from the owners of the FmHA buildings if the information provided by the FmHA is not sufficient.

(d) *Inspection provision.* Under the inspection provision, the Agency must have the right to perform an on-site inspection of any low-income housing project at least through the end of the compliance period of the buildings in the project. The inspection provision of this paragraph (d) is separate from any review of low-income certifications, supporting documents, and rent records under paragraph (c)(2)(ii) of this section.

(e) *Notification-of-noncompliance provision*—(1) *In general.* Under the notification-of-noncompliance provisions, the Agency must be required to give the notice described in paragraph (e)(2) of this section to the owner of a low-income housing project and the notice described in paragraph (e)(3) of this section to the Service.

(2) *Notice to owner* The Agency must be required to provide prompt written notice to the owner of a low-income housing project if the Agency does not receive the certification described in paragraph (c)(1) of this section, or does not receive or is not permitted to inspect the tenant income certifications, supporting documentation, and rent records described in paragraph (c)(2(ii)(A), (B), or (c) of this section (whichever is applicable), or discovers by inspection, review, or in some other manner, that the project is not in compliance with the provisions of section 42.

(3) *Notice to Internal Revenue Service*—(i) *In general.* The Agency must be required to file Form 8823, "Low-Income Housing Credit Agencies Report of Noncompliance," with the Service no later than 45 days after the end of the correction period (as described in paragraph (e)(4) of this section, including extensions permitted under that paragraph) and no earlier than the end of the correction period, whether or not the noncompliance or failure to certify is corrected. The Agency must explain on Form 8823 the nature of the noncompliance or failure to certify and indicate whether the owner has corrected the noncompliance or failure to certify. Any change in either the applicable fraction or eligible basis under paragraph (c)(1)(ii) and (vii) of this section, respectively, that results in a decrease in the qualified basis of the project under section 42 (c)(1)(A) is noncompliance that must be reported to the Service under this paragraph (e)(3). If an Agency reports on Form 8823 that a building is entirely out of compliance and will not be in compliance at any time in the future, the Agency need not file Form 8823 in subsequent years to report that building's noncompliance.

(ii) *Agency retention of records.* An Agency must retain records of noncompliance or failure to certify for 6 years beyond the Agency's filing of the respective Form 8823. In all other cases, the Agency must retain the certifications and records described in paragraph (c) of this section for 3 years from the end of the calendar year the Agency receives the certifications and records.

(4) *Correction period.* The correction period shall be that period specified in the monitoring procedure during which an owner must supply any missing certifications and bring the project into compliance with the provisions of section 42. The correction period is not to exceed 90 days from the date of the notice to the owner described in paragraph (e)(2) of this section. An Agency may extend the correction period for up to 6 months, but only if the Agency determines there is good cause for granting the extension.

(f) *Delegation of Authority*—(1) *Agencies permitted to delegate compliance monitoring functions*—(i) *In general.* An Agency may retain an agent or other private contractor ("Authorized Delegate") to perform compliance monitoring. The Authorized Delegate must be unrelated to the owner of any building that the Authorized Delegate monitors. The Authorized Delegate may be delegated all of the functions of the Agency, except for the responsibility of notifying the Service under paragraph (e)(3) of this section. For example, the Authorized Delegate may be delegated the responsibility of reviewing tenant certifications and documentation under paragraph (c) (1) and (2) of this section, the right to inspect buildings and records as described in paragraph (d) of this section, and the responsibility of notifying building owners of lack of certification or noncompliance under paragraph (e)(2) of this section. The Authorized Delegate must notify the Agency of any noncompliance or failure to certify.

(ii) *Limitations.* An Agency that delegates compliance monitoring to an Authorized Delegate under paragraph (f)(1)(i) of this section must use reasonable diligence to ensure that the Authorized Delegate properly preforms the delegated monitoring functions. Delegation by an Agency of compliance monitoring functions to an Authorized Delegate does not relieve the Agency of its obligation to notify the Service of any noncompliance of which the Agency becomes aware.

(2) *Agencies permitted to delegate compliance monitoring functions to another Agency.* An Agency may delegate all or some of its compliance monitoring responsibilities for a building to another Agency within the State. This delegation may include the responsibility of notifying the Service under paragraph (e)(3) of this section.

(g) *Liability.* Compliance with the requirements of section 42 is the responsibility of the owner of the building for which the credit is allowable. The Agency's obligation to monitor for compliance with the requirements of section 42 does not make the Agency liable for an owner's noncompliance.

(h) *Effective date.* Allocation plans must comply with these regulations by June 30, 1993. The requirement of section 42 (m)(1)(B)(iii) that allocation plans

contain a procedure for monitoring for noncompliance becomes effective on January 1, 1992, and applies to buildings for which a low-income housing credit is, or has been, allowable at any time. Thus, allocation plans must comply with section 42(m)(1)(B)(iii) prior to June 30, 1993, the effective date of these regulations. An allocation plan that complies with these regulations, with the notice of proposed rulemaking published in the **Federal Register** on December 27, 1991, or with a reasonable interpretation of section 42(m)(1)(B)(iii) will satisfy the requirements of section 42(m)(1)(B)(iii) for periods before June 30, 1993. Section 42(m)(1)(B)(iii) and these regulations do not require monitoring for whether a building or project is in compliance with the requirements of section 42 prior to January 1, 1992. However, if an Agency becomes aware of noncompliance that occurred prior to January 1, 1992, the Agency is required to notify the Service of that noncompliance.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 4. Section 602.101(c) is amended by adding the following entry to the table:

"1.42–5 ..... 1545–1291".

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

Approved: August 4, 1992.

Fred T. Goldberg, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 92–21156 Filed 9–1–92; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD1 92–001]

Special Local Regulation: New York National Championship Race, New York, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation for the New York National Championship Race. The event, sponsored by Super Boat Racing Tour will take place on Sunday, October 4th, 1992. Temporary closure of the Lower Hudson River between Battery Park and Manhattan Pier 76 is needed to protect the boating public from the hazards associated with high speed powerboat racing in confined waters.

EFFECTIVE DATE: This regulation is effective from 12 p.m. to 3 p.m. on October 4, 1992.

FOR FURTHER INFORMATION CONTACT: BM1 G. Gaffney, Waterways Management Office, Coast Guard Group New York (212) 668–7933.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this regulation are BM1 G. Gaffney, Project Manager, Captain of the Port, New York and LCDR J. D. Stieb, Project Attorney, First Coast Guard District, Legal Office.

Regulatory History

On May 1, 1992 the Coast Guard published a notice of proposed rulemaking entitled Special Local Regulation: New York National Championship Race, New York, NY in the Federal Register (57 FR 18850). Prior to this publication, the Coast Guard received six letters commenting on this proposal with no negative comments. A public hearing was not requested and none was held.

Background and Purpose

On December 11, 1991 the sponsor, Super Boat Racing, Inc., submitted a request to hold a power boat race in the Hudson River. The Coast Guard is establishing a temporary regulation in the Hudson River for this event known as the "New York National Championship Race." This regulation establishes a regulated area in NY harbor and provides specific guidance to control vessel movement during the limited timeframe of the race.

This event will include up to 25 powerboats competing on an oval course at speeds approaching 100 m.p.h. Due to the inherent dangers of a race of this type, a bank to bank closure of the waterway and subsequent restriction of traffic will be temporarily effected to ensure the safe navigation of the other users of the Hudson River.

The sponsors, Super Boat Racing, Inc. (formerly under the name Offshore Professional Tour,) have previously run this race in NY harbor in 1990 and 1991. This year's event will follow the same marked course and regulations as set forth in the previous years. By providing sufficient lead time, the Coast Guard, in cooperation with the New York Dept. of Ports and Trade and Super Boat Racing, Inc., is attempting to minimize any burden to the users of the waterway. Parties from the NY and NJ maritime community have been contacted to provide input concerning this repeated event. At the end of the comment period no negative comments had been received.

Discussion of Comments and Changes

Of the six letters that were received from various marine industries around the Port of New York and New Jersey, none opposed the race as long as the conditions, location, and time frame mirror last year's event as planned. Therefore, no changes to the proposed regulation were made as a result of their comments.

Regulatory Evaluation

This regulation is not considered to be major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary due to the limited duration of the race, the extensive advisories that have been and will be made to the affected maritime community, and the fact that the event is taking place on a Sunday afternoon, which normally experiences only a light volume of commercial marine traffic.

Small Entities

For reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this regulation will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this regulation in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this regulation and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, it is an action under the Coast Guard's

statutory authority to protect public safety, and thus is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For reasons set out in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A Temporary section, 100.T01–001 is added to read as follows:

§ 100.T01–001 New York National Championship Race, New York and New Jersey.

(a) *Regulated Area.* The regulated area includes all waters of the Lower Hudson River south of a line drawn between Pier 76 Manhattan and a point on the New Jersey shore at 40°45'52" N latitude 74°01'01" W longitude, and north of a line connecting the following points:

Latitude	*Longitude*
40°42'18.0" N	74°01'09.0" W
40°41'55.0" N	74°01'16.0" W
40°41'47.0" N	74°01'36.0" W
40°41'55.0" N	74°01'59.0" W. Then to shore at
40°42'20.5" N	74°02'06.0" W

(b) *Special Local Regulations.*

(1) Commander, U.S. Coast Guard Group New York reserves the right to delay, modify or cancel the race as conditions or circumstances require.

(2) No person or vessel may enter, transit, or remain in the regulated area during the effective period of regulation unless participating in the event as authorized by the sponsor or the Coast Guard. The Patrol Commander, as delegated by the Commander, Coast Guard Group New York, will attempt to minimize any delays for commercial vessels transiting the area and will monitor channel 16 VHF–FM.

(3) All persons and vessels shall comply with the instructions of the Commander, U.S. Coast Guard Group New York or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(c) *Effective period.* This regulation is effective from 12 p.m. to 3 p.m. on October 4, 1992.

Dated: August 26, 1992.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 92–21101 Filed 9–1–92; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD1 92–097]

Safety Zone: Lower East River, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary Final Rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for a fireworks display within all waters of the Lower East River south of the Brooklyn Bridge and north of a line drawn between slip 7 Manhattan and pier 5 Brooklyn. The fireworks display will take place on Sunday, September 6, 1992 from 8 p.m. to 10 p.m. with a rain date of September 7, 1992. Temporary closure of the waters surrounding the launching barges is needed to protect the boating public from the safety hazards associated with a pyrotechnic fireworks display in these waters.

EFFECTIVE DATES: This regulation is effective from 8 p.m. through 10 p.m. on September 6, 1992. (Raindate September 7, 1992.)

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) J.E. Peschel, Waterways Management Officer, Coast Guard Group New York (212) 668–7933.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are LTJG J.E. Peschel, Captain of the Port, New York and LCDR J. Astley, Project Attorney, First Coast Guard District, Legal Office.

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to public interest since the event takes place on a public holiday where immediate action is needed to respond to any potential hazards and sufficiently protect the boating public. Due to the date that this application was received, there was not sufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

Background and Purpose

The circumstances requiring this regulation result from the desire to protect the maritime public from possible dangers and hazards associated with a pyrotechnic fireworks display in the waters of the Lower East River. The safety zone will surround a barge based program directed over the waters of the Lower East River. This two hour zone allows time for Coast Guard personnel to clear vessels from the area both before and during the display, and ensure all pyrotechnics have been extinguished prior to reopening the area to maritime traffic. No vessel will be permitted to enter or move within the safety zone unless permitted to do so by Captain of the Port, New York.

Regulatory Evaluation

This regulation is not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). Due to the limited duration of the display within this two hour window, and the extensive advisories made to the affected maritime community concerning this event, the impact of this regulation is expected to be minimal. The Coast Guard expects the economic impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

For reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) this regulation will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this regulation and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, it is an action under the Coast Guard's statutory authority to protect public safety, and thus is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, waterways.

For reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5, 49 CFR 1.46.

2. A temporary section, 165.T 01-097 is added to read as follows:

§ 165.T 01-097 South Street Seaport Labor Day Fireworks, Lower East River, New York.

(a) *Location.* The safety zone includes all waters bank to bank of the Lower East River south of the Brooklyn Bridge and north of a line drawn from Slip 7, Manhattan to Pier 5, Brooklyn.

(b) *Effective period.* This regulation is effective from 8 p.m. through 10 p.m. on September 6, 1992. (Rain date of September 7, 1992.)

(c) *Regulations.* (1) No person or vessel may enter, transit, or remain in the safety zone during the effective period of regulation unless participating in the event as authorized by the U.S. Coast Guard Captain of the Port (COTP), New York. The COTP will attempt to minimize any delays for commercial vessels transiting the area and will monitor channel 16 VHF-FM.

(2) All persons and vessels shall comply with the instructions of the COTP NY or the designated on scene personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed.

Dated: August 27, 1992.

R.M. Larrabee,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 92-21012 Filed 9-1-92; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL49-1-5525; FRL-4157-8]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: USEPA is approving a revision to the Illinois State Implementation Plan (SIP) for sulfur dioxide (SO_2). The revision pertains to the Peoria SO_2 nonattainment area plan. USEPA's action is based upon a revision request which was submitted by the State to satisfy the requirements of part D of the Clean Air Act for the Peoria/Tazewell SO_2 nonattainment area, which consists of portions of Peoria and Tazewell Counties. This action is being taken in light of Illinois' February 8, 1991, correction of several deficiencies in the SO_2 compliance test methodology. USEPA approved these corrections on June 26, 1992 (57 FR 28617).

DATES: This action will be effective November 2, 1992 unless notice is received within 30 days of publication that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the requested SIP revision, technical support documents and public comments received are available at the following address: U.S. Environmental Protection Agency, Region V, Air and Radiation Division, Regulation Development Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the regulations being incorporated by reference in today's rule are available for inspection at: U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460.

Comments on this rulemaking should be addressed to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (5AR-18J), United States Environmental Protection Agency, Region V, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Fayette Bright (5AR-18J), Regulation Development Branch, United States Environmental Protection Agency, Region V, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6069.

SUPPLEMENTARY INFORMATION:

I. Background/Summary of State Submittal

On November 20, 1985, the Illinois Environmental Protection Agency (IEPA) submitted to USEPA Illinois Pollution Control Board (IPCB) Proposed Opinion and Order R84-28 (adopted October 10, 1985). On April 24, 1986, prior to completion of USEPA review of the proposal, Final Order R84-28 was adopted by the IPCB. IEPA resubmitted that Order, as adopted, to USEPA on June 9, 1986. The state's submittal is intended to satisfy an outstanding condition related to federal approval of Illinois' Part D SO_2 SIP for the Peoria/Tazewell nonattainment area. See 45 FR 62804 (September 22, 1980) and 50 FR 5246 (February 7, 1985). The Peoria/Tazewell SO_2 Part D plan will be complete following USEPA approval of IPCB Final Order R84-28. The information presented below summarizes the requested SIP revision and USEPA's action on it. A more detailed analysis of the State's submittal is contained in technical support documents dated February 13, 1986, and March 16, 1992, which are available from the Region V office listed above.

On May 31, 1972 (37 FR 10861), USEPA approved Illinois Rule 204(c)(1)(A) which established a 1.8 lbs (pounds SO_2 per million British Thermal Units)/MMBTU emission limit for existing fuel combustion sources in the Peoria, East St. Louis and Chicago major metropolitan area. This rule was to serve as the state's Part D SIP control strategy for the Peoria/Tazewell nonattainment area.

However, Rule 204(c)(1)(A) was invalidated by the Illinois Appellate Court on September 27, 1978. Through several SIP actions (see 47 FR 9479—March 5, 1982; 49 FR 31412—August 7, 1984; 49 FR 31687—August 8, 1984), SO_2 emission limits have been reestablished for all sources in the Peoria area with the exception of boilers at the Caterpillar Tractor Mapleton and East Peoria plants, Westinghouse Air Brake Co. (WABCO), Pabst, Archer Daniels Midland (ADM), and Central Illinois Light Company (CILCO) Edwards Station Units 1 and 3.

The SO_2 emission limits for existing solid fuel emission sources are contained in Part 214 Subpart C of Title 35 Chapter I Subchapter C of Illinois' rules. IPCB Final Order R84-28 revised limits contained in part 214. This revision establishes SO_2 emission limits for the above named sources as follows:

1. Section 214.141(c)—Caterpillar Tractor East Peoria boilers (with maximum rated capacity of 862 MMBTU/hr)—1.4 lbs/MMBTU
2. Section 214.141(d)—Caterpillar Tractor, Mapleton Boilers 2-5 (with maximum rated capacity of 996 MMBTU/hr per Consent Decree with USEPA)—1.1 lbs/MMBTU
3. Section 214.141(b)—WABCO, Pabst and ADM boilers (with maximum rated capacities of 59 MMBTU/hr, 58 MMBTU/hr and 624 MMBTU/hr, respectively)—5.5 lbs/MMBTU. The 5.5 lb/MMBTU limit does not apply to sources in the City of Peoria with stacks less than 47 meters (m) high. This provision affects only WABCO which has a stack height less than 47m. Consequently, WABCO cannot emit more than 1.8 lbs/MMBTU with their current stack. If WABCO increased their stack height to 47m, they would be allowed to emit up to 5.5 lb/MMBTU
4. Section 214.561—Central Illinois Light Company (CILCO), E.D. Edwards Electric Generating Station Units 1 and 3 (with maximum rated capacity of 5461 MMBTU/hr)—6.6 lbs/MMBTU

IPCB Final Order R84-28 also creates Section 214.560 which provides Subpart X Utilities—This Subpart contains rules which modify the general emission rules of Subparts A through M as applied to a given industry or a given site.

II. Demonstration of Attainment

USEPA requires that State SIP submittals contain a demonstration that the provisions of the revised SIP will provide for attainment and maintenance of the National Ambient Air Quality Standards (NAAQS). In support of today's SIP revision for Peoria and Tazewell counties, IEPA has submitted several air quality modeling analyses, which combine to form IEPA's attainment demonstration. USEPA has reviewed these modeling studies, and has found them to be consistent with USEPA modeling guidelines and with USEPA's stack height regulations.

One of these modeling studies predicted violations of the SO_2 NAAQS at two receptors located on a bluff within the boundaries of the Caterpillar Tractor Mapleton plant. The bluff is on plant property and is not fully fenced to prevent public access. USEPA was concerned that the public might be able to gain access to the areas where violations were predicted. If this was in fact possible, the violations would have to be considered to be ambient violations, and therefore the emission limits that Illinois had proposed for the Caterpillar Tractor Mapleton plant could not be shown to protect the NAAQS, and would not be approvable.

Illinois Environmental Protection Agency (IEPA) staff visited the site and determined that the bluff was indeed inaccessible to the public. The terrain is steep and overgrown in that area, and existing access roads are adequately fenced. Following discussions with IEPA and review of a map showing the fencing and terrain of the bluff area, USEPA accepted IEPA's determination. Therefore, the modeled violations at Caterpillar Tractor Mapleton are not considered ambient violations.

The modeling analyses submitted by IEPA adequately demonstrate that the SO_2 limits set forth in the SIP revision will provide for the attainment and maintenance of the SO_2 NAAQS in Peoria and Tazewell Counties.

III. Enforcement

When this rule submittal was received, Illinois' SO_2 compliance test methods (set forth in § 214.101), which are coupled with the emission limits in the Peoria/Tazewell SIP revision, were not consistent with Federal policy requirements intended to protect the short-term SO_2 NAAQS. Illinois was informed of the deficiencies in the compliance methodology and was asked to correct them. On February 8, 1991, Illinois submitted SO_2 compliance measurement method revisions to USEPA. USEPA approved the revision on June 26, 1992, (57 FR 28617) because the revisions have corrected the deficiencies previously identified by USEPA.

IV. Rulemaking Action

USEPA approves 35 IAC Sections 214.141 (b), (c), (d), 214.560 and 214.561 as revisions to the Illinois SO_2 SIP. The Part D plan for the Peoria/Tazewell SO_2 nonattainment area will be complete following today's action.

USEPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective November 2, 1992 unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective November 2, 1992.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989, (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of 2 years.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State Implementation Plan. Each request for revision to the State Implementation Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

The Agency has reviewed this request for revision of the federally approved State Implementation Plan for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with these requirements irrespective of the fact that the submittal preceded the date of enactment.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 2, 1992. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, environmental protection, Sulfur oxides.

Note.—Incorporation by reference of the State Implementation Plan for the State of Illinois was approved by the Director of the Federal Register on July 1, 1982.

Dated: July 10, 1992.

Valdas V. Adamkus,

Regional Administrator.

For the reasons set out in the preamble, chapter 1 of title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671(q).

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(8) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(88) On June 9, 1986, the State submitted revisions to its sulfur dioxide limitations in the form of a April 24, 1986, opinion and order of the Illinois Pollution Board in proceeding R84–28.

(i) Incorporation by reference.

(A) Title 35: Environmental Protection. Subtitle B: Air Pollution Chapter 1: Pollution Control Board Part 214 Sulfur Limitations, Subpart C: Existing Solid Fuel Combustion Emission Sources. § 214.141 Sources Located in Metropolitan Areas, paragraphs b), c) and d), and Subpart X: Utilities, § 214.560 Scope and § 214.561 E.D. Edwards Electric Generating Station effective May 20, 1986.

[FR Doc. 92–21064 Filed 9–1–92; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 180

[OPP-300256A; FRL-4073-4]

RIN 2070-AB78

Buffalo Gourd Root Powder; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of buffalo gourd root powder (*Cucurbita foetidissima* root powder) when used as an inert ingredient (gustatory stimulant) in pesticide formulations applied to growing crops only. This regulation was requested by the Microfolo Co.

EFFECTIVE DATE: This regulation becomes effective September 2, 1992.

ADDRESSES: Written objections, identified by the document control number, [OPP-300256A], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Connie Welch, Registration Support Branch, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 711I, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-7252.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 9, 1992 (57 FR 30454), EPA issued a proposed rule that gave notice that the Micorflo Co., 719 Second St., Suite 12, Davis, CA 95616, had submitted pesticide petition (PP) 2E4064 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(d) by establishing an exemption from the rquirement of a tolerance for residues of Buffalo gourd root powder (*Cucurbita foetidissima* root powder) when used as an inert ingredient (gustatory stimulant) in pesticide formulations applied to growing crops only.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the exemption from the requirement of a tolerance will protect the public health. Therefore, the tolerance exemption is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 13, 1992.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001(d) is amended by adding and alphabetically inserting the inert ingredient "Buffalo gourd root powder" to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

(d) * * *

Inert ingredients	Limits	Uses
* * * * *	* * * * *	
Buffalo gourd root powder (*Cucurbita foetidissima* root powder).	No more than 2.5 lbs/acre/season (3.4 gm/acre/season of Cucurbitacin).	Gustatory stimulant
* * * * *	* * * * *	

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[FR Doc. 92-21029 Filed 9-1-92; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL MARITIME COMMISSION

46 CFR Part 510

[Docket No. 92-30]

Licensing of Ocean Freight Forwarders

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission amends its regulations which govern the licensing, duties and responsibilities of ocean freight forwarders, to reduce financial and regulatory burdens on the ocean freight forwarder industry. The final rule (1) removes the requirement that prior Commission approval be obtained for organizational changes involving the acquisition of one or more additional licensees by a licensee; (2) permits the processing fee for Commission approval of organizational changes to be paid by personal check; and (3) permits the licensee's name to appear before or after the shipper's name when the licensee's name appears in the shipper identification box on the bill of lading. (The final rule also includes technical changes to reflect the redesignation of the Commission's Bureau of Tariffs to the Bureau of Tariffs, Certification and Licensing.)

EFFECTIVE DATE: Effective on September 2, 1992, except the removal of § 510.19(a)(5), the redesignation of § 510.19(a)(6) and (7), and the addition of § 510.19(f) which are effective April 1, 1994.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Director, Bureau of Tariffs, Certification & Licensing, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573-001, (202) 523-5796

or

Seymour Glanzer, Director, Bureau of Hearing Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573-0001, (202) 523-5783

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission ("Commission" or "FMC") initiated this proceeding by publishing a Notice of Proposed Rulemaking ("NPR") in the Federal Register on June 5, 1992 (57 FR 24004). The NPR solicited comments on a proposed rule to amend certain provisions of the freight forwarder regulations in order to reduce financial and regulatory burdens on the ocean freight forwarder industry.

The proposed rule would (1) remove the requirement that prior Commission approval be obtained for organizational changes involving the acquisition of one or more additional licensees by another licensee; (2) permit the processing fee for Commission approval of organizational changes to be paid by personal check; and (3) permit the licensee's name to appear before or after the shipper's name when the licensee's name appears in the shipper identification box on the bill of lading.

Comments

Comments were received from the National Customs Brokers and Forwarders Association of America, Inc. ("NCBFAA"); the Pacific Coast Council of Customs Brokers and Freight Forwarders Associations, Inc. ("Pacific Coast Council"); the New York Foreign Freight Forwarders and Brokers Association New York ("NYFFBA"); Hiram Walker & Sons, Inc. ("Hiram Walker"); and, jointly certain South America, Central America and Caribbean conferences and discussion agreements ("Conferences").[1]

NCBFAA opposes removing the requirement for prior Commission approval of licensee acquisitions at this time. Although it believes that "the Commission is on the right track" with this proposed rule, NCBFAA advises that the proposed rule is untimely.

The underpinning of NCBFAA's concern about timeliness is a petition pending before the Commission seeking relief, pursuant to section 19 of the Merchant Marine Act, 1920, 46 U.S.C. app. 876 from a proposed consortium allegedly sponsored by the Government of the Republic of Korea.[2] NCBFAA argues that removing the approval requirement at this time would facilitate the alleged proposed monopolization and controlled cargo practices in the U.S.-Korean trades by authorizing the acquisition of licensees for the projected consortium.

NCBFAA further believes that given the consortium issue the acquisition process should be scrutinized more closely, and suggests that the Commission require an appropriate

[1] Those conferences and discussion agreements are as follows: Venezuelan American Maritime Association; Atlantic and Gulf/West Coast South America Conference; United States/Central America Liner Association; Central America Discussion Agreement; United States Atlantic & Gulf/Hispaniola Steamship Freight Association; Hispaniola Discussion Agreement; United States Atlantic & Gulf/Southeastern Caribbean Steamship Freight Association; Southeastern Caribbean Discussion Agreement; Jamaica Discussion Agreement; United States/Panama Freight Association; PANAM Discussion Agreement; Puerto Rico/Caribbean Discussion Agreement; Caribbean and Central American Discussion Agreement. Sea-Land Service, Inc., a member of some of the foregoing conferences and agreements, did not participate in their comments.

[2] This petition, entitled Petition No. P3-92—*Petition Of Korean Forwarders & Customs Brokers Association Of Southern California Pursuant To Section 19(b)(b) Of The Merchant Marine Act Of 1920 Regarding Conditions Unfavorable To Shipping In The Foreign Trade Between The United States And The Republic Of Korea*, was dated June 16, 1992, and was filed by the Korean Forwarders and Customs Brokers Association of Southern California. The petition requested Commission action to prevent an agency of the Government of the Republic of Korea from allegedly sponsoring a consortium which plans to establish a transportation operation in the United States offering freight forwarding, non-vessel-operating common carrier, customs brokerage and other transportation services in the U.S.-Korean trade. In a Notice of Filing of Petition For Relief, served June 29, 1992, the Commission advised that Petition No. P3-92 would be held in abeyance because: (1) Bilateral talks between Korea and the United States were scheduled for July 1992; (2) the consortium in nonexistent; and (3) certain Commission action proposed in FMC Docket No. 92-42, *Actions To Adjust Or Meet Conditions Unfavorable To Shipping In The United States/Korea Trade*, could affect the consortium issue.

affirmation from all proposed transferees that: (1) They will abide by all applicable U.S. laws; (2) they will not join with other licensees in seeking to control or otherwise unlawfully monopolize ocean forwarding in any specific trade(s); (3) they are privately owned independent entities rather than instruments of a foreign government; and (4) they have accurately represented any direct or indirect ownership or control by any foreign government. Finally, the NCBFAA suggests an alternative to this proposed rule, to wit: Exempt licensees from the approval process only when the sole change in the identity of the forwarder is through a corporate restructuring, such as a consolidation. NCBFAA favors the proposed amendments which would allow payment by personal check and permit a licensee's name to appear before or after the shipper's name in the shipper identification box on the bill of lading.

The Pacific Coast Council's comments generally tracked those of NCBFAA. Although expressing general support for the licensee acquisition amendment, the Pacific Coast Council argues that the proposed change is untimely because elimination of the prior approval requirement would subvert the Commission's proposed sanctions in Docket No. 92–42.[3] The Pacific Coast Council favors the amendments permitting payment by personal check and permitting a licensee's name to appear before or after the shipper's name.

The NYFFBA, on the other hand, favors elimination of the prior approval requirement for acquisition of licensees for the reasons that the requirement is unnecessary, time consuming and economically and financially burdensome.[4] NYFFBA supports the other proposed amendments permitting payment by personal check and permitting a licensee's name to appear before or after the shipper's name.

Hiram Walker opposes the elimination of the licensee acquisition prior approval requirement, indicating that the Commission and the public should be aware of such acquisitions. Hiram Walker is concerned about potential effects on existing agreements with shippers and possible conflict of interest or restraint of competition and trade. It also opposes the proposed amendment which would allow the licensee's name to appear before or after the shipper's name in the shipper identification box. Opposition is based on the view that the name of only the true shipper or beneficial owner of the cargo should appear in the shipper identification box.

Finally, the Conferences oppose the elimination of the prior approval requirement for acquisition of licensees because of concerns about the Commission's ability to monitor the fitness qualifications of the resulting entity. The Conferences are further opposed to the proposed amendment which would permit payment by personal check on the ground that mere suspension of an application in the event of a dishonored personal check was insufficient. The Conferences contend that dishonoring a personal check bears on the character of the licensee. The Conferences recommend that, if implemented, the proposed rule be revised to require a re-examination of the licensee's fitness, including, but not limited to, a full adjudicatory investigation when a personal check is dishonored.

Discussion

The Commission has considered all of the comments received in this proceeding and has determined to adopt the proposed rule as a final rule in this matter, with certain changes which are discussed below. Any comments not expressly discussed either have been incorporated without discussion, have been found to be mooted by the changes incorporated into the final rule; or have been found to be irrelevant, without merit or beyond the scope of the proceeding.

Acquisitions of Licensees

The concerns expressed by Hiram Walker and the Conferences are not relevant to the process of Commission approval of licensee acquisition under existing regulations. A decision to forgo adoption of this proposed change, therefore, would not result in the effects contemplated by Hiram Walker and the Conferences.

Additionally, elimination of the prior approval requirement for licensee acquisitions is not likely to have the deleterious effect described by NCBFAA and the Pacific Coast Council. The involved amendment would not subvert the sanctions proposed in Docket No. 92–42 should they become effective. Under that proceeding, licensees which are majority owned or controlled by non-U.S. citizen Korean nationals would be ineligible to perform the duties of an ocean freight forwarder in the U.S. trades. This ineligibility would extend to licensees acquired by those Korean forwarders. Therefore, any licensee which a Korean forwarder acquired also would be ineligible to operate as a freight forwarder in the U.S. trades. Similarly, this ineligibility would impede the acquisition of licensees for the projected consortium.

Nevertheless, the Commission recognizes that in these circumstances, adoption of the proposed amendment might be misperceived as inconsistent with the ongoing proceedings in Docket No. 92–42 and Petition No. P3–92. The concerns about timeliness expressed by the affected industry do have merit. However, because it would be inappropriate to withdraw an otherwise beneficial rule solely for that reason, the amendment will be adopted, but its effective date will be postponed to April 1, 1994, a date when the pending proceedings are likely to be concluded.

Payment by Personal Check

The only opposition to permitting payment by personal check in applications for Commission approval of organizational changes was that of the Conferences. The Conferences are against the provision in the proposed rule that would suspend Commission consideration of an application when a check is dishonored, on the grounds that a dishonored personal check goes directly to the character of a licensee. A personal check, however, may be dishonored for various reasons, including those which do not bear on the character of the account holder. Also, reexamination of an applicant's fitness, including a full adjudicatory investigation, would be cumbersome, expensive and time consuming to both the licensee and the Commission. The Commission's proposal to defer the application process by suspending consideration adequately addresses the concerns associated with a dishonored personal check in a simple, expedient and efficient manner. Moreover, adequate procedures to address issues concerning a licensee's character or fitness presently exist in the Commission's regulations, and those procedures may be applied to concerns

[3] The proceeding in Docket No. 92–42 resulted from a petition filed by Direct Container Line, Inc. on January 13, 1992. *Petition Pursuant to Section 19(1)(b) of the Merchant Marine Act of 1920 Against Certain Practices of the Government Of Korea.* (Petition No. P2–92.) The petition sought relief, pursuant to section 19 of the Merchant Marine Act, 1920, from conditions allegedly unfavorable to shipping in the United States-Korea trade resulting from the laws of the Republic of Korea. Thereafter, the Commission initiated an investigation pursuant to section 19 and determined that unfavorable conditions did exist in the trade. On July 1, 1992, in Docket No. 92–42, the Commission published a proposed rule which would suspend the licenses of ocean freight forwarding enterprises owned or controlled by non-U.S. citizen Korean nationals, among other sanctions.

[4] NYFFBA supported the license suspension sanctions in Docket No. 92–42.

arising from a dishonored personal check, as the Commission may determine on a case-by-case basis. Accordingly, this amendment is being adopted in the final rule without change.

Shipper Identification Box

The only opposition to permitting the licensee's name to appear before or after the shipper's name in the shipper identification box was that of Hiram Walker, which opposes any appearance of the licensee's name in the shipper identification box. However, that result is beyond the scope of this proposed rule and is not well taken, inasmuch as the existing regulations currently permit the licensee's name to appear in the shipper identification box after the name of the shipper.

Although the Commission, as an independent regulatory agency, is not subject to Executive Order 12291, dated February 17, 1981, it nonetheless has reviewed the rule in terms of this Order and has determined that this rule is not a "major rule" because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effect on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule streamlines the regulatory process and thereby reduces the financial, administrative and regulatory burdens of ocean freight forwarders. Inasmuch as this reduction will be beneficial to those entities, the Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units or small governmental organizations.

This rule does not contain any collection of information requirements that require submission to the Office of Management and Budget ("OMB"). Therefore, OMB review is not required.

List of Subjects in 46 CFR Part 510

Fees and user charges, Licensing, Ocean freight forwarders, Reporting and record keeping requirements, Surety bonds.

Therefore, pursuant to 5 U.S.C. 553 and sections 17 and 19 of the Shipping Act of 1984, 46 U.S.C. app. 1716 and 1718, part 510 of title 46, Code of Federal Regulations, is amended as follows:

PART 510—[AMENDED]

1. The authority citation for part 510 continues to read:

Authority: 5 U.S.C. 553, 46 U.S.C. app. 1702, 1707, 1709, 1710, 1712, 1714, 1716, and 1718; 21 U.S.C. 853a.

2. Section 510.19 is amended by deleting paragraph (a)(5) and by redesignating paragraphs (a)(6) and (a)(7) as (a)(5) and (a)(6), respectively.

3. Section 510.19 is also amended by revising paragraph (e) and adding a new paragraph (f) to read as follows:

§ 510.19 Changes in organization.

* * * * *

(e) *Application form and fee.* Applications for Commission approval of status changes or for license transfers under paragraph (a) of this section shall be filed in duplicate with the Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, on Form FMC–18, Rev., together with a processing fee of $100, made payable by money order, certified check, cashier's check or personal check to the Federal Maritime Commission. Should a personal check not be honored when presented for payment, the processing of the application shall be suspended until the processing fee is paid.

(f) *Acquisition of one or more additional licensees.* In the event a licensee acquires one or more additional licensees, for the purpose of merger, consolidation, or control, the acquiring licensee shall advise the Commission of such change within thirty days after such change occurs by submitting in duplicate, an amended Form FMC–18, Rev. No application fee is required when reporting this change.

5. Section 510.23 is amended by revising paragraph (a) to read as follows:

§ 510.23 Forwarder and carrier; compensation.

(a) *Disclosure of principal.* The identity of the shipper must always be disclosed in the shipper identification box on the bill of lading. The licensee's name many appear with the name of the shipper, but the licensee must be identified as the shipper's agent.

* * * * *

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92–21039 Filed 9–1–92; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 90–01; Notice 3]

RIN 2127–AE33

Federal Motor Vehicle Safety Standards; School Bus Pedestrian Safety Devices

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; response to petition for reconsideration.

SUMMARY: This rule amends certain provisions in Standard No. 131, School Bus Pedestrian Safety Devices (49 CFR § 571.131) which requires new school buses to be equipped with a stop signal arm. Specifically, the amendment requires the stop signal arm to be aligned relative to the lower edge of the passenger window. In addition, with respect to stop arms equipped with lights to meet the standard's conspicuity requirement, this notice amends the flash rate so that it more closely correlates to the most recent recommended practice of the Society of Automotive Engineers. These amendments will increase the effectiveness of stop signal arms by improving their visibility to other motorists.

DATES: *Effective Date:* The amendment becomes effective September 2, 1992.

Petitions for reconsideration: Any petition for reconsideration of this rule must be received by the agency not later than October 2, 1992.

ADDRESSES: Petitions for reconsideration should refer to Docket No. 90–01; Notice 3 and be submitted to the following: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Gauthier, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202) 366–4799.

SUPPLEMENTARY INFORMATION:

I. Background

On May 3, 1991, NHTSA published a final rule establishing a new Federal motor vehicle safety standard requiring new school buses to be equipped with a stop signal arm. (56 FR 20363). A stop signal arm is a device patterned after conventional " STOP" signs and

attached to the left side of a school bus. When the school bus stops, the stop signal arm automatically extends outward from the bus. Its purpose is to alert motorists that a school bus is stopping or has stopped. The standard specifies requirements about the stop signal arm's appearance, size, conspicuity, operation and location.

The agency established this new safety standard after reviewing the available information, including the docket comments, the Fatal Accident Reporting System (FARS) data, and a report issued by the National Academy of Sciences entitled "Improving School Bus Safety," (Special Report No. 222). The agency determined that a safety need exists for better controlling the movement or vehicles passing stopped school buses during the loading and unloading of passengers.

II. Petitions for Reconsideration

NHTSA received two petitions for reconsideration of the stop signal arm rule. One was a petition from the California Department of Education (DOE) requesting a change in the requirement regarding the height at which a stop signal arm should be located. DOE asked that the reference to the lower edge of the driver's window frame in S5.4.1(b) be deleted, stating that some school bus models are designed so that the lower edge of the driver's side window is lower than the side windows at the passenger seats. The petitioner believed that installation of the stop signal arm relative to the lower edge of the driver's window could reduce the visibility of the stop signal arm to other motorists and thus reduce the arm's effectiveness. The California DOE recommended that the reference in S5.4.1(b) be changed to the lower edge of the passenger windows.

The other petition was from Epicor Industries, a manufacturer of turn signals, hazard warnings and alternating flashers. It requested that the agency change the requirements for the flash rate for stop signal arm lights under S6.2.2 to conform with the most recent version of SAE J1054, "Warning Lamp Flashers, (October 1989). The petitioner stated that such an amendment would assure that the two lamps would flash alternately and have "on" times that meet an accepted standard and have been proven effective. The previous version of SAE J1054 (January 1977), which was used by NHTSA to develop the final requirements of S6.2.2, was determined by the SAE to be incorrectly written. Epicor also requested that Standard No. 131 be amended to include a provision requiring all replacement parts for stop signal arms to comply with the requirements of the standard similar to the provisions of S5.7 in Standard No. 108, Lamps, Reflective Devices, and Associated Equipment.

III. Agency's Review of the Petitions for Reconsideration

A. Reference Plane for Stop Signal Arm's Location

In the final rule, NHTSA specified location requirements applicable to the stop signal arm, based on the goal of standardization, the views of State school transportation personnel about effective locations for stop signal arms, typical location of these devices, and the Vehicle Safety Act's directive that the safety standards be objective. Section S5 currently specifies that school buses be equipped with at least one stop signal arm installed on the left side of the bus so that, when extended, (1) it is perpendicular to the side of the bus, plus or minus five degrees, (2) it has the top edge of the octagon parallel to and within 6 inches of a horizontal plane passing through the lower edge of the driver's window frame, and (3) its vertical centerline is at least 9 inches away from the school bus body, the agency stated that these requirements will provide uniform location specifications while providing users flexibility to install stop signal arms consistent with their experiences with these devices. The location requirements are also intended to ensure that the stop signal arms are visible to motorists trailing and approaching stopped school buses.

As mentioned above, California DOE requested that S5.4.1(b) be amended so that the reference plane passes through the lower edge of the passengers' windows instead of the lower edge of the driver's window. The petitioner believed that this change was necessary to accommodate the new practice of designing some school buses so that the driver's window is lower than the passenger's windows.

NHTSA notes that the agency's decision in the final rule to specify the lower edge of the driver's window was based on the assumption that the lower edge of the driver's window and passengers' windows were all in the same horizontal plane. While this assumption remains valid in most situations, the agency is aware that an increasing number of new school buses are being designed so that the driver's side window is lower than the passenger side windows. The agency believes that new school buses are being designed in this manner to improve school bus driver visibility of student pedestrians in front of and along side the school bus.

NHTSA has decided to amend the requirements of S5.4.1(b) to require that the top edge of the stop signal arm be aligned with the lower edge of the frame of the passenger window immediately behind the driver's window. The agency believes that specifying this window as the reference will ensure that stop signal arms are more visible to other motorists, since some school buses are designed with the bottom of the driver's window being well below that of the passenger's windows. Under the May 1991 final rule, as the lower edge of the driver's window gets closer to the ground, so does the signal stop arm, thereby reducing its visibility to other motorists, and thus its effectiveness.

The agency anticipates that this amendment will not result in any adverse impact to school bus manufacturers or users that were planning to install the stop signal arm relative to the lower edge of the driver's window. In most buses, the driver's window is on the same plane as the passenger's windows. In addition, the agency has reviewed those new bus designs with lower driver windows and believes that installing the stop signal arm relative to the lower edge of the passengers' windows will not result in any additional compliance problems for manufacturers.

B. Flash Rate

In the final rule, the agency determined that a stop signal arm must either be reflectorized or have flashing lamps to provide increased conspicuity, or both. The final rule stated that if flashing lamps are used, they must comply with the requirements for color, flash rate, and vibration, moisture, dust, corrosion, photometry, and warpage, as set forth in S6.2. The notice stated that the tests for flash rate were patterned after the tests in the Society of Automotive Engineer's (SAE's) Recommended Practice, J1054, Warning Lamp Alternating Flashers (January 1977). Specifically, S6.2.2 of the final rule states:

> The lamps on each side of the stop signal arm, when operated at the manufacturer's design loan, shall flash at a rate of 60–120 flashes per minute with a current "on" time of 50 percent.

The petition from Epicor requested that the requirements for the flash rate be patterned after the more recent SAE Recommended Practice for alternating flashers promulgated in October 1989. The October 1989 Recommended Practice cleared up technical problems caused by the existence of two SAE

Recommended Practices dealing with alternating flashing lamps—SAE J1054 and SAE J1104. While J1054 described the performance parameters for a flasher, J1104 specified how to assure that a particular flasher design conformed to the performance parameters. In October 1989, SAE revised J1054 to incorporate the pertinent features and allowable elements of both SAE Recommended Practices, thus eliminating the need for J1104. In doing so, SAE substituted the flash rate conditions of J1104 for those in J1054.

After reviewing the modified SAE Recommended Practice, NHTSA has decided to pattern S6.2.2 after the October 1989 SAE Recommended Practice, J1054. Given that the SAE has determined that the January 1977 version of J1054 is technically incorrect, the agency believes that S6.2.2 should be revised to reflect the language adopted in the October 1989 version of J1054.

C. Replacement Equipment

The final rule specified that Standard No. 131 is a vehicle standard that applies to new school buses. The Standard does not apply to stop signal arms sold in the aftermarket. Nor do the Standard's provisions apply to stop signal arm replacement parts.

Epicor requested that Standard No. 131 be amended to include a section requiring that all replacement bulbs and lenses for stop signal arms meet the requirements of the standard. It was suggested that such an amendment would parallel S5.7 of Standard No. 108, which requires replacement lights to comply with that standard. Requesting that Standard No. 131 be amended to make the replacement bulbs and lenses subject to the requirements of the standard is based on the assumption that such a requirement is necessary for safety. Specifically, the petitioner stated that the amendment would ensure that the standard is "not abused over time as worn parts and components are replaced."

In determining whether to extend Standard No. 131's requirements to aftermarket replacement parts, the agency contacted Specialty Manufacturing Company, the largest manufacturer of stop signal arms. Specialty Manufacturing explained that the bulbs installed in the flashing lamps are the same bulbs used in passenger car stop lamps. In addition, the replacements are normally bought directly from Specialty Manufacturing because the lamp lens has a unique shape and hole pattern.

NHTSA has decided not to extend Standard No. 131 to replacement parts. The agency disagrees with the petitioner's contention that inferior replacement parts will be used unless the Standard is amended. The agency notes that the only replacement bulbs available can be assumed to be in compliance with the standard's requirements for stop signal arm bulbs since those bulbs are the same as the bulbs required to comply with the requirements for passenger car replacement lamps under S5.7 of Standard No. 108. The only known source of replacement lamp lens is the original manufacturer, and the agency does not anticipate the entry of low quality replacement bulbs and lamps into the market given the low cost and low volume of this market. Accordingly, the agency has decided to deny the petitioner's request to establish performance requirements for replacement equipment.

NHTSA has determined that an immediate effective date is in the public interest. The amendments made by this notice impose no new requirements but instead either increase manufacturer flexibility or are for purposes of clarification or correction. Since the new Standard No. 131 is effective September 1, 1992, the agency has determined that it is in the public interest to have these amendments become effective at the same time. Absent these amendments, manufacturers availing themselves to this flexibility would be unable to certify that their school buses comply with Standard No. 131.

This final rule does not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has analyzed this rulemaking and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. The agency believes that a full regulatory evaluation is not required because the rule will have only minimal economic impacts. The first amendment will affect only a very small number of school buses. Even those school buses with driver's windows which are lower than the passengers' windows will have little or no added difficulty in complying with the modified requirement. Further, there should be no added difficulty in complying with the flash rate requirements of the amendment.

Regulatory Flexibility Act

NHTSA has considered the effects of this action under the Regulatory Flexibility Act. I hereby certify that it will not have a significant economic impact on a substantial number of small entities. School bus manufacturers are generally not small businesses within the meaning of the Regulatory Flexibility Act. Small governmental units and small organizations are generally affected by amendments to the Federal motor vehicle safety standards as purchasers of new school buses. However, any impact on small entities from this action will be minimal since the amendments make minimal changes in the final rule that will not impose additional costs. Accordingly, the agency has determined that preparation of a regulatory flexibility analysis is unnecessary.

Executive Order 12612 (Federalism)

This rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and NHTSA has determined that it does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

National Environmental Policy Act

NHTSA has also analyzed this rulemaking action for purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

List of Subjects in 49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 of Title 49 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.131 [Amended]

2. In Section 571.131, the title of the section is revised to read as follows:

§ 571.131 Standard No. 131; School bus pedestrian safety devices.

Standard No. 131, S5.4 [Amended]

3. In Standard No. 131, S5.4 is revised to read as follows:

* * * * *

S5.4 The stop signal arm shall be installed on the left side of the bus.

S5.4.1 The stop signal arm shall be located such that, when in the extended position:

(a) The stop signal arm is perpendicular to the side of the bus, plus or minus five degrees;

(b) The top edge of the stop signal arm is parallel to and not more than 6 inches from a horizontal plane tangent to the lower edge of the frame of the passenger window immediately behind the driver's window; and

(c) The vertical centerline of the stop signal arm is not less than 9 inches away from the side of the school bus.

S5.4.2 A second stop signal arm may be installed on a school bus. That stop signal arm shall comply with S5.4 and S5.4.1.

* * * * *

Standard No. 131, S6.2.2 [Amended]

4. In Standard No. 131, S6.2.2 is revised to read as follows:

S6.2.2 *Flash Rate.* The lamps on each side of the stop signal arm, when operated at the manufacturer's design load, shall flash at a rate of 60 to 120 flashes per minute with a current "on" time of 30 to 75 percent. The total of the percent current "on" time for the two terminals shall be between 90 and 110.

Issued on: August 28, 1992.

Marion C. Blakey,

Administrator, Acting.

[FR Doc. 92-21148 Filed 9-1-92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 653

[Docket No. 920648-2206]

RIN 0648-AE75

Red Drum Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 3 to the Fishery Management Plan for the Red Drum Fishery of the Gulf of Mexico (FMP). This final rule removes from the regulations the detailed procedures applicable to the Gulf of Mexico Fishery Management Council (Council) and NMFS for assessing the stock and determining the allowable biological catch (ABC) of red drum; removes from the regulations language specifying that, at such time as a catch of red drum is allowed, a person landing red drum, other than from a directed commercial fishery, must comply with the landing and possession laws of the state where landed; and makes other minor corrections and clarifications to the regulations. In addition, Amendment 3 changes the requirement that the procedure for stock assessments, panel reports, and setting ABC and total allowable catch (TAC) be commenced prior to October 1 every year to "prior to October 1 every other year or at such time as agreed upon by the Council and the Regional Director," Southeast Region, NMFS. The intended effects of this rule are to simplify the regulations by removing administrative procedures that are not applicable to the conduct of the red drum fishery; to comply with a ruling by the U.S. District Court for the District of Columbia; and to ease an unnecessarily burdensome requirement for stock assessments, panel reports, and findings regarding ABC and TAC.

EFFECTIVE DATE: October 2, 1992.

FOR FURTHER INFORMATION CONTACT: Robert A. Sadler, 813-893-3161.

SUPPLEMENTARY INFORMATION: The red drum fishery is managed under the FMP, prepared and amended by the Council, and its implementing regulations at 50 CFR part 653 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

The background and rationale for the measures in this final rule, and for the change in the procedure for stock assessments, panel reports, and setting ABC and TAC, are set forth in the preamble to the proposed rule (57 FR 26814, June 16, 1992) and in Amendment 3, the availability of which was announced (57 FR 23199, June 2, 1992), and are not repeated here.

No comments were received on the proposed rule.

Changes from the Proposed Rule

NMFS has determined that removal from the regulations of the procedures for stock assessment and analysis of the red drum resource and for revising the management measures, in their entirety, may deprive fishermen and other interested persons of necessary information regarding the possible future establishment of an allowable catch of red drum from the EEZ. Accordingly, in lieu of being removed, § 653.24 is revised to remove the detailed procedures while still apprising interested persons of the frequency of stock assessment and analysis and the general method for revising the management measures. Details of those procedures are contained in the FMP.

Classification

The Secretary determined that Amendment 3 is necessary for the conservation and management of the red drum fishery and that it is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law.

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), determined that this final rule is not a "major rule" requiring the preparation of a regulatory impact analysis under Executive Order 12291.

The Council prepared a regulatory impact review (RIR) for Amendment 3, which concludes that this final rule will reduce costs.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis was not prepared.

The Council prepared an environmental assessment (EA) as part of Amendment 3 that discusses the impact on the environment as a result of this rule. Based on the EA, the Assistant Administrator concluded that there will be no significant impact on the human environment as a result of this rule.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Alabama, Florida, Louisiana, and Mississippi. Texas does not participate in the coastal zone management program. These determinations were submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Louisiana agreed with the determination. Alabama, Florida, and Mississippi did not respond during the statutory time period; therefore, state agency agreement with the consistency determination is automatically inferred.

This final rule does not contain a collection-of-information requirement

for purposes of the Paperwork Reduction Act.

This final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 653

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 28, 1992.

William W. Fox, Jr.,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 653 is amended as follows:

PART 653—RED DRUM FISHERY OF THE GULF OF MEXICO

1. The authority citation for part 653 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 653.2 [Amended]

2. In § 653.2, the definitions for *Commercial fishing (fishery)*, and *Directed commercial red drum fishing (fishery)* are removed.

§ 653.3 [Amended]

3. In § 653.3, paragraph (c) is removed.

4. In § 653.7, paragraph (d) is revised to read as follows:

§ 653.7 Prohibitions.

* * * * *

(d) Fail to release immediately with a minimum of harm a red drum caught in the EEZ; or possess a red drum in or from the EEZ, as specified in § 653.22(a).

* * * * *

§ 653.22 [Amended]

5. In § 653.22, the section heading is revised to read *Harvest and possession limitations.*

6. Section 653.24 is revised to read as follows:

§ 653.24 Adjustment of management measures.

Prior to October 1 every other year or such time as agreed upon by the Council and the Regional Director, the Science and Research Director will prepare a stock assessment and analysis of the red drum resource. Based on a stock assessment and analysis, and in accordance with the procedures specified in the FMP, the Council may establish TAC and user group allocations by amendment to the FMP.

[FR Doc. 92-21152 Filed 9-1-92; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 661

[Docket No. 920412-2112]

Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS announces the closure of the commercial fishery in the exclusive economic zone (EEZ) from the U.S.-Canada border to Cape Falcon, Oregon, at 0001 hours, August 26, 1992. The Director, Northwest Region, NMFS (Regional Director), determined that the harvest guideline of 17,600 coho salmon has been reached and the fishery, which closed at midnight, August 22, 1992, should not be reopened. This action is necessary to conform to the preseason announcement of the 1992 management measures and is intended to ensure conservation of coho salmon.

DATES: Effective at 0001 hours local time, August 26, 1992. Actual notice to affected fishermen was given prior to the time the fishery was scheduled to reopen (0001 hours local time, August 26, 1992) through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.23. Comments will be accepted through September 16, 1992.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE., BIN C15700-Bldg. 1, Seattle, WA 98115-0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at (206) 526-6140.

SUPPLEMENTARY INFORMATION: In its emergency interim rule and notice of 1992 management measures (57 FR 19388, May 6, 1992), NMFS announced that the 1992 commercial fishery between the U.S.-Canada border and Cape Falcon, Oregon, would open July 20 and continue through the earliest of August 31 or attainment of harvest guidelines of either 18,100 coho salmon or 4,400 chinook salmon. These harvest guidelines have since been revised to be 17,600 coho salmon and 9,700 chinook salmon (57 FR 36021, August 12, 1992).

The last opening of this fishery was on August 20-22, 1992, followed by a 3-day closure.

Based on the best available information on August 24, the commercial catch in the subarea from the U.S.-Canada border to Cape Falcon totaled about 18,900 coho salmon and about 8,700 chinook salmon. Unlike fisheries managed under quotas that require closure upon the projected attainment of the quota, fisheries managed under harvest guidelines do not require closure upon the projected attainment of the guideline. However, it was determined that the commercial fishery from the U.S.-Canada border to Cape Falcon, Oregon, would be managed to keep catches near the guideline levels. Therefore, the commercial fishery in this subarea, which closed at 2400 hours local time, August 22, 1992, will remain closed for the duration of its scheduled 7/20-8/31 season. Closure of this fishery is authorized by regulations at 50 CFR 661.21(b)(1)(i).

In accordance with the inseason notice procedures of 50 CFR 661.23, actual notice to fishermen of this action was given prior to 0001 hours local time, August 26, 1992, by telephone hotline number (206) 526-6667 or (800) 662-9825 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 Khz.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Washington, Department of Fisheries, and the Oregon Department of Fish and Wildlife regarding the closure of the commercial fishery between the U.S.-Canada border and the Cape Falcon. The states of Washington and Oregon will manage the commercial fishery in the State waters adjacent to this area of the EEZ in accordance with this Federal action. This notice does not apply to treaty Indian fisheries or to other fisheries that may be operating in other areas.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment.

Classification

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 27, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-21131 Filed 9-1-92; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 661

[Docket No. 920412-2112]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Inseason adjustment.

SUMMARY: NMFS announces that for the commercial fishery from Cape Falcon to Cascade Head, Oregon, up to 25 coho salmon may be landed before the species ratio landing restriction of at least 1 chinook salmon for every 2 coho salmon is required, and there may be no more than 1 landing per day, beginning August 22, 1992. The Director, Northwest Region, NMFS (Regional Director), has determined the landing restriction should be relaxed to provide commercial fishermen with additional opportunity to harvest coho salmon before the scheduled closure on August 31, 1992. This action is intended to maximize the harvest of coho salmon without exceeding the ocean share allocated to the commercial fishery in this subarea.

DATES: Effective at 0001 hours local time, August 22, 1992. Actual notice to affected fishermen was given prior to that time through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.23. Comments will be accepted through September 16, 1992.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE., BIN C15700-Bldg. 1, Seattle, WA 98115-0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at (206) 526-6140.

SUPPLEMENTARY INFORMATION: In its emergency interim rule and notice of 1992 management measures (57 FR 19388, May 6, 1992), NMFS announced that the 1992 commercial fishery for all salmon species between Cape Falcon and Florence South Jetty, Oregon, would open July 22 and continue through the earliest of August 31 or attainment of either the coho salmon ceiling south of Cascade Head, Oregon, or the overall coho salmon quota south of Cape Falcon, Oregon. The coho salmon ceiling south of Cascade Head was reached and the commercial fishery from Cascade Head to the U.S.-Mexico border was closed to coho salmon fishing at midnight, August 7, 1992 (57 FR 36608, August 14, 1992). The commercial fishery in the subarea from Cape Falcon to Cascade Head has continued as scheduled for all salmon species. Preseason restrictions still in effect for the commercial fishery between Cape Falcon and Cascade Head include a species ratio landing restriction such that at least 1 chinook salmon must be landed for each 2 coho salmon landed, except that a landing of 2 coho salmon and no chinook salmon is allowed.

Based on the best available information on August 18, 1992, the commercial catch south of Cape Falcon totaled about 46,900 coho salmon through August 16, 1992. Therefore, about 10,100 fish of the overall catch quota of 57,000 coho salmon south of Cape Falcon are available for harvest by the commercial fishery between Cape Falcon and Cascade Head before its scheduled closure on August 31, 1992. Commercial fishing representatives requested additional opportunity to harvest the remaining coho salmon while extending the season for all salmon species for as long as possible through August 31, 1992. Therefore, the commercial fishery in the subarea from Cape Falcon to Cascade Head is modified to allow up to 25 coho salmon to be landed before the species ratio landing restriction of at least 1 chinook salmon being landed for each 2 coho salmon landed is required, and there may be no more than 1 landing per day. Modification of limited retention regulations is authorized by regulations at 50 CFR 661.21(b)(1)(ii).

In accordance with the inseason notice procedures of 50 CFR 661.23, actual notice to fishermen of this action was given prior to 0001 hours local time, August 22, 1992, by telephone hotline number (206) 526-6667 or (800) 662-9825 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 KHz.

The Regional Director consulted with representatives of the Pacific Fishery Management Council and the Oregon Department of Fish and Wildlife regarding the adjustment affecting the commercial fishery between Cape Falcon and Cascade Head. The State of Oregon will manage the commercial fishery in State waters adjacent to this area of the exclusive economic zone in accordance with this Federal action. This notice does not apply to other fisheries that may be operating in other areas.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment.

Classification

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 27, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-21078 Filed 9-1-92; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 663

[Docket No. 920400-2100]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Release of reserve.

SUMMARY: NMFS announces the release of the 30,000-mt reserve of Pacific whiting for at-sea processing in the Pacific coast groundfish fishery off Washington, Oregon, and California. This action is intended to provide for full utilization of the Pacific whiting resource by U.S. fishermen and processors.

DATES: Effective from 0001 hours (local time) September 4, 1992, until modified, superseded, or rescinded.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at (206) 526-6140; or Rodney McInnis at (310) 980-4040.

SUPPLEMENTARY INFORMATION: The emergency interim rule allocating the 1992 Pacific whiting resources at 50 CFR 663.23(b)(5) (57 FR 13661, April 17, 1992, extended at 57 FR 32181, July 21, 1992) initially limited the amount of the 1992 Pacific whiting (whiting) harvest guideline of 208,800 metric tons (mt) that could be processed at sea in the exclusive economic zone to 98,800 mt, with 80,000 mt set aside for shoreside processing and the remaining 30,000 mt

set aside as a reserve. The rule states that the 30,000-mt reserve first is available for shoreside processing needs without additional announcement in the **Federal Register**. However, the reserve will be made available to at-sea processors on September 1, 1992, or as soon as practicable thereafter, if the shoreside processors have not processed at least 48,000 mt (60% of their initial allocation) by September 1, 1992.

During the 21-day period between April 15 and May 6, 1992, 98,979 mt of whiting were processed at sea. Further at-sea processing was prohibited on May 6, 1992 (57 FR 21041, May 18, 1992).

The best available information on August 3, 1992, indicates that approximately 21,000 mt of whiting has been processed shoreside through July 25, 1992. During recent weeks shoreside landings have averaged about 2,000 mt per week. Although shoreside landings may increase somewhat over the next few weeks, there is no information to indicate that they would reach the 5,300-mt average weekly landing needed to exceed 48,000 mt by September 1, 1992. Consequently, the Northwest Regional Director, NMFS, has determined that shoreside processing will not exceed 48,000 mt by September 1 and the entire 30,000-mt reserve should be made available for at-sea processing. Since the at-sea processors exceeded their initial limit of 98,800 mt by 179 mt, the overage of 179 mt is deducted from the reserve, consistent with 50 CFR 663.23(b)(5)(iii). Therefore, only 29,821 mt of whiting is available for at-sea processing at this time. As a result, the amount of whiting that has so far been made available for at-sea processing in 1992 is increased to 128,800 mt, including any whiting processed at-sea that are incidentally caught by vessels fishing for other species.

Because the 29,821 mt reserve remainder may be harvested in a matter of several days, the reserve release is delayed from September 1 until September 4 (the next earliest practicable date) in order to allow for timeliness in closing the fishery and thereby avoiding the need for a closure during the 3-day Labor Day weekend. The Regional Director will again assess the amounts of whiting processed shoreside again on October 1, 1992, and may make further adjustments.

When the additional 29,821 mt of whiting made available for at-sea processing has been taken, further at-sea processing in the fishery management area will be prohibited. Consistent with 50 CFR 663.23(b)(5)(vii), any prohibitions or adjustments may be made effective immediately by actual notice to fishermen and processors (by phone, fax, Northwest Region computerized bulletin board (contact 206–526–6128), letter, press release, and/or U.S. Coast Guard Notice to Mariners (monitor channel 16 VHF)), followed by publication in the **Federal Register**.

Secretarial Action

For the reasons stated above, the Secretary announces that, at 0001 hours (local time) September 4, 1992, the remainder of the 30,000-mt reserve of Pacific whiting, totaling 29,821 mt, is released available for at-sea processing in 1992.

Classification

This action is taken under the authority of, and in accordance with 50 CFR 663.23(b)(5)(iii) (v), and (vii). The determination to release the reserve of whiting for at-sea processing of Pacific whiting is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the Office of the Director, Northwest Region (see **ADDRESSES**) during business hours until September 16, 1992.

This action implements the emergency rule for the 1992 allocation of Pacific whiting (57 FR 13661), extended at 57 FR 32181, is taken under the authority of 50 CFR 663.23(b)(5), and is exempt from the normal review procedures of Executive Order 12291.

List of Subjects in 50 CFR Part 663

Administrative practice and procedure, Fisheries, Fishing, and Recordkeeping and reporting requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 27, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–21132 Filed 9–1–92; 8:45 am]

BILLING CODE 3510–22–M

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 911176–2018]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Prohibition of retention.

SUMMARY: NMFS is prohibiting further retention of Pacific ocean perch (POP) by all gear types in the Western Regulatory Area of the Gulf of Alaska (GOA) and is requiring that incidental catches of POP be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the overfishing level for POP in the GOA has been reached.

EFFECTIVE DATES: Effective 12 noon, Alaska local time (A.l.t.), August 28, 1992, through 12 midnight A.l.t., December 31, 1992.

FOR FURTHER INFORMATION CONTACT: David R. Cormany, Resource Management Specialist, Fisheries Management Division, NMFS, 907/586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the exclusive economic zone with the GOA is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

Overfishing is defined at § 602.11(c)(1) to be a level or rate of fishing mortality that jeopardizes the long-term capacity of a stock or stock complex to produce its maximum sustainable yield on a continuing basis. The 1992 overfishing level for POP in the GOA was established by the final notice of specifications (57 FR 2844, January 24, 1992) to be equal to the acceptable biological catch (ABC) amount of 5,730 metric tons (mt), as determined and recommended by the Scientific and Statistical Committee of the Council. The ABC was apportioned among the GOA regulatory areas as follows: Western—1,620 mt, Central—1,720 mt, and Eastern—2,390.

Because the sum of ABC amounts equaled the amount defined by the FMP as the overfishing level, the Council advisory panel recommendations for total allowable catch (TAC) amounts were established for each of the GOA regulatory areas as follows: Western—1,470 mt, Central—1,561 mt, and Eastern—2,169.

The TAC amounts of the POP in the Eastern and Central Regulatory Areas of the GOA have already been reached and retention of POP is currently prohibited in these areas by previous closures actions (57 FR 34884, August 7, 1992 and 57 FR 18834, May 1, 1992, respectively). Until the effective date of this closure action, amounts of POP can still be retained as incidental bycatch to directed fishing in the Western GOA.

The 1992 current total harvest of POP in the GOA is 5,769 mt.

The Director of the Alaska Region, NMFS, has determined, in accordance with § 672.20(c)(4), that the overfishing level for POP in the GOA has been reached. Any further harvest of bycatch amounts of POP would result in overfishing. Consequently, under § 672.20(c)(4), NMFS is prohibiting retention of POP in the Western GOA effective from 12 noon, A.l.t., August 28, 1992, through 12 midnight, A.l.t., December 31, 1992.

Classification

This action is taken under 50 CFR 672.20 and is in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 28, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-21116 Filed 8-28-92; 2:23 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 171
Wednesday, September 2, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 75

[Docket No. 92-015-1]

Equine Infectious Anemia (Swamp Fever); Change in Official Test

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We propose to amend the regulations on communicable diseases in horses, asses, ponies, mules, and zebras to allow the use of additional tests as official tests for the laboratory diagnosis of equine infectious anemia (EIA), also known as swamp fever. Such equines that are found to be infected with EIA based on the results of an official test may be moved interstate only under certain conditions, to prevent the interstate spread of this disease. This change will make new test technology available to the industry.

DATES: Consideration will be given only to comments received on or before October 2, 1992.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92-015-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Manuel A. Thomas, Jr., Senior Staff Veterinarian, Sheep, Goat, Equine, and Poultry Diseases Staff, VS, APHIS, USDA, room 701, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-6954.

SUPPLEMENTARY INFORMATION:

Background

The Communicable Diseases regulations, contained in 9 CFR part 75 (referred to below as the regulations), among other things, govern the interstate movement of certain equines (horses, asses, ponies, mules, and zebras) that are subjected to an official test for equine infectious anemia (EIA) and found positive. A viral disease of equines, EIA, also known as swamp fever, is characterized by sudden fever, swelling, and anemia.

Currently, § 75.4 (a) of the regulations provides that either the Agar gel immunodiffusion (AGID) test or the Competitive Enzyme-Linked Immunosorbent Assay (C ELISA) test, when conducted in a laboratory approved by the Administrator, may be used as the official test for determining whether equine are affected with EIA. We propose to amend the regulations to allow the use of other products for the laboratory diagnosis of EIA that may be licensed by the Secretary of Agriculture under the Virus-Serum-Toxin Act of March 4, 1913, and subsequent amendments (21 U.S.C. 151 *et seq.*) for use under 9 CFR part 75.

At one time, the AGID and C ELISA tests were the only permitted tests for the laboratory diagnosis of EIA. Further, the C ELISA test was the only type of ELISA test available for the laboratory diagnosis of EIA. Many technical advances have been made in the test kit industry, resulting in the development of new tests for the laboratory diagnosis of EIA. We believe our regulations need to be changed to allow persons affected by our regulations to take advantage of the new technology.

Therefore, we are proposing to amend the definition of "official test" in § 75.4(a) to allow use of any test for the laboratory diagnosis of EIA that utilizes a diagnostic product that is: (1) Produced under license from the Secretary of Agriculture, and found to be efficacious for that diagnosis, under the Virus-Serum-Toxin Act of March 4, 1913, and subsequent amendments (21 U.S.C. 151 *et seq.*); and (2) conducted in a laboratory approved by the Administrator.

The criteria for approval of laboratories to conduct official tests, as well as information on where to obtain the names and addresses of approved laboratories, are contained in § 75.4(c)(1).

We believe that the change we are proposing would relieve unnecessary restrictions and would encourage the development of other tests for the diagnosis of EIA.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that his proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United Sates-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rule, if adopted, would allow the use of additional tests for the laboratory diagnosis of EIA. Estimates of the U.S. equine population vary from 5.25 million to 6.6 million. Equine owners have suffered losses due to domestic and foreign infectious diseases. The use of diagnostic tests has substantially cut losses that result from the commingling of infected animals with healthy ones. Such has been the case with the AGID and C ELISA tests for EIA. In fiscal year 1991, 993,712 tests for EIA were conducted resulting in the identification of 2,755 reactors. Compared to 9,089 reactors out of 354,412 tests for EIA conducted in 1974,[1] it is clear that the incidence of EIA has declined. Between the two periods, the probability of infection with EIA decreased from 2.56 percent to 0.277 percent. Losses attributed to EIA declined from approximately $271 million to $21 million (in 1990 dollars).

Allowing other tests to be designated as official tests may not result in such a dramatic decline in losses because the present base of infected animals is smaller when compared with previous years. However, the newly-developed tests would likely continue the decline

[1] The first year of test reporting in the United States after the availability in the early seventies of the first test for diagnosing EIA.

in EIA incidence and could inject competition in the EIA test market. The opportunity to develop, obtain a license for, and market a new product for the laboratory diagnosis of EIA could provide a small company the means by which to enter this industry and realize a modest economic benefit. Of the dozen or so companies that manufacture veterinary diagnostic products, we are aware of only two that currently market the AGID and C ELISA tests for EIA. Neither of these companies is considered a small entity.

For these two large firms, marketing products for the laboratory diagnosis of EIA is a small fraction of their total business. Further, these sales represent a niche within a small part of a very large industry. According to USDA records, approximately 1 million tests for the laboratory diagnosis of EIA were produced in the United States in 1991. These records also indicate that during the same time period, approximately 54 million veterinary diagnostic tests were produced. Thus, the production of tests for the laboratory diagnosis of EIA equals approximately 2.0 percent of the total production of the U.S. veterinary diagnostic products.

Any increase in the production of products for the laboratory diagnosis of EIA would likely remain insignificant when compared with the total production of veterinary diagnostic products; however, increased competition could dramatically affect the test turn-around time by making available certain tests that may be less labor intensive. Additionally, designating other qualified tests as official tests would likely encourage entrepreneurs and scientists to engineer new and more powerful procedures and technology that would foster economic growth. Ultimately, costs for testing could be lowered for equine owners.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) not retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 75

Animal diseases, Horses, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 75 would be amended as follows:

PART 75—COMMUNICABLE DISEASES IN HORSES, ASSES, PONIES, MULES, AND ZEBRAS

1. The authority citation for part 75 would continue to read as follows:

Authority: 21 U.S.C. 111–113, 115, 117, 120, 121, 123–126, 134–134h; 7 CFR 2.17, 2.51, and 371.2(d).

In § 75.4, paragraph (a), the definition of "Official test" would be revised to read as follows:

§ 75.4 Interstate movement of equine infectious anemia reactors and approval of laboratories, diagnostic facilities, research facilities, and stockyards.

(a) * * *

* * * * *

Official test. Any test for the laboratory diagnosis of equine infectious anemia that utilizes a diagnostic product that is: (1) Produced under license from the Secretary of Agriculture, and found to be efficacious for that diagnosis, under the Virus-Serum-Toxin Act of March 4, 1913, and subsequent amendments (21 U.S.C. 151 *et seq.*); and (2) conducted in a laboratory approved by the Administrator.

* * * * *

Done in Washington, DC, this 27th day of August 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–21063 Filed 9–1–92; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563

[No. 92–192]

RIN 1550–AA51

Qualified Thrift Lender Test

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) proposes to revise its qualified thrift lender (QTL) regulations to implement amendments made by the Qualified Thrift Lender Reform Act of 1991 (QTL Reform Act), subtitle G of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA).

Effective December 19, 1991, the QTL Reform Act amended section 10(m) of the Home Owners' Loan Act (HOLA) by lowering the required QTL percentage of housing-related investments from 70% to 65% of a thrift's portfolio assets; changing the computation period; increasing the amount of regulatory liquidity excludable from portfolio assets; authorizing certain shares of the stock of certain government sponsored enterprises to be included in the computation of qualified thrift investments; and increasing certain percentages in the computation of qualified thrift investments. The intended effect of these regulations is to lower the actual thrift investment percentage (ATIP) of housing-related investments.

DATES: Comments must be received on or before October 2, 1992.

ADDRESSES: Send comments to Director, Information Services Division, Public Affairs, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 92–192. These submissions may be hand delivered to 1700 G Street NW. from 9 a.m. to 5 p.m. on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7753 or (202) 906–7755. Submissions must be received by 5 p.m. on the day they are due in order to be considered by the OTS. Late-filed, misaddressed or misidentified submissions will not be considered in this rulemaking. Comments will be available for inspection at 1776 G Street, NW., Street Level.

FOR FURTHER INFORMATION CONTACT: Robyn Dennis, Program Manager, Policy, (202) 906–5751; Dorene Cadoff, Attorney, (202) 906–7268; Valerie Lithotomos, Counsel (Banking and Finance), (202)

906-6439 Regulations, Legislation, and Opinions Division, Chief Counsel's Office; Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Introduction

The OTS is today proposing to amend its QTL regulations to implement statutory changes effected by subtitle G of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), Public Law 102-242, 105 Stat. 2236 (1991), also referred to as the "QTL Reform Act." The QTL Reform Act modifies the QTL test that was first enacted in the Competitive Equality Banking Act of 1987, Public Law 100-86, 101 Stat. 552 (CEBA), and was later amended in the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law 101-73, 103 Stat. 183 (FIRREA). Savings associations that fail to satisfy the QTL test by not holding the required percentage of housing-related investments are subject to various penalties, including limitations on the types of activities they may conduct, restrictions on their Federal Home Loan Bank advances, and loss by the savings association's holding company of the activities flexibility it enjoyed as a thrift holding company.

The QTL Reform Act amends the QTL test by lowering the actual thrift investment percentage (ATIP) of housing-related investments a thrift must hold from 70 percent to 65 percent. The ATIP is a ratio whose numerator is housing-related investments (called "qualified thrift investments" or "QTI") and whose denominator is "portfolio assets." The term portfolio assets is statutorily defined to mean a savings association's total assets less goodwill and other intangibles, the thrift's business property, and a limited amount of liquid assets.

The QTL Reform Act also redefines the computation period over which a thrift's ATIP is measured; the ATIP is now measured on a monthly average basis in 9 out of every 12 months. FIRREA had previously required savings associations to maintain daily or weekly averages of their QTI and portfolio assets over a two-year period.

Shares of stock issued by any Federal Home Loan Bank are now includable as QTI. Shares of stock issued by the Federal Home Loan Mortgage Corporation (FHLMC) and the Federal National Mortgage Association (FNMA) also are now includable as QTI in an amount not to exceed 20 percent of the association's portfolio assets.

Finally, the QTL Reform Act increases the amount of regulatory liquidity excludable from portfolio assets from 10 percent to 20 percent of the savings association's total assets; the 15 percent QTI "basket" [1] is increased to 20 percent; and the 5 percent consumer loan "basket" for personal, family, household, or educational purposes is increased to 10 percent.

In short, under the revised QTL test, an association's QTI must equal 65 percent of its "portfolio assets," which excludes goodwill, other intangibles, liquid assets (up to 20 percent) and the association's premises and equipment. Within the 65 percent requirement, the association may hold a variety of non-mortgage assets up to a limit of 20 percent of portfolio assets, such as consumer loans, FNMA and FHLMC stock, and certain community service facilities. The net effect of these changes is that the QTL test no longer requires a heavy concentration, and potentially unsafe and unsound portion, of an association's assets in home mortgage loans.

The QTL Reform Act took effect upon the enactment of FDICIA on December 19, 1991. Thus, these statutory changes supersede any inconsistent provisions in OTS's current QTL regulation. Where the statutory amendments do not affect the current regulatory provisions, however, those provisions remain in effect. For ease of administration, as well as easing the recordkeeping burden on savings associations, OTS is proposing that the QTL measuring period commence as of January 1, 1992, the beginning of the first month following FDICIA's enactment.

II. Description of the Proposal

A. The New QTL Ratio and Computation Period

The QTL Reform Act decreases the ATIP from 70 percent to 65 percent, as measured by a monthly average, for a 9 out of 12 month period, rather than a daily or weekly average over each 104-week period. The OTS proposes that this 9 out of 12 month period be a "rolling" period, instead of a static 3 out of 4 annual quarters measurement. Application of this "rolling" measuring period would mean that a savings association that is not subject to QTL penalties on the effective date of this rule would become and remain a qualified thrift lender so long as it does not fail the new QTL test for more than 3 months out of the previous 12 month period. Thus, if the "rolling" measuring period begins January 1, 1992, as proposed, the first time that a savings association could fail the test is April 30, 1992, the end of the first four moths of 1992. The QTS specifically requests comment on whether to adopt this "rolling" measuring period rather than a static measuring period.

Under today's proposal, both the initial and continuing QTL percentage requirement would decrease to 65 percent. The requalification period would be amended to the 9 out of the 12 month measuring period. The QTL Reform Act did not amend the QTL requalification provision, 12 U.S.C. 1467a(m)(3)(D), added in FIRREA, to conform to the newly enacted 9 out of 12 months computation period, nor did it amend the FIRREA provision requiring thrifts to initially "equal or exceed 70 percent" in order to become a qualified thrift lender, 12 U.S.C. 1467a(m)(1)(A). The OTS believes that the changes contained in the proposed rule are necessary for the QTL Reform Act amendments to be logical and consistent with the QTL test as a whole, in accordance with Congressional intent. This intent is demonstrated in the QTL Reform's Act's legislative history by the explanation given by the sponsor of the bill that eventually became the QTL Reform Act.[2] The amendments proposed today rely on this guidance to resolve otherwise inconsistent provisions in the statutory text as amended.

The QTL Reform Act took effect on December 19, 1991. The OTS proposes to begin the new 12 month QTL measuring period at the beginning of the first month following enactment, on January 1, 1992, for reasons of administrative convenience from both a regulatory and recordkeeping perspective. Savings associations would not be required to have met the 65 percent QTL test immediately as of January 1, 1992. Under the proposed, "rolling" 9 out of 12 month measuring period, savings associations could first fail in the fourth month of the measuring period, or on April 30, 1992. Savings associations that were not subject to QTL penalties prior to July 1, 1991 would continue to hold their QTL status and could not fail before April 30, 1992. Because the changes made by the QTL Reform Act were effective upon enactment and enhance rather than restrict the ability of thrifts to meet the QTL test, the OTS believes it is appropriate to begin calculating compliance with the new test before its implementing rule is finalized. The OTS notes that even if it determined in the

[1] Savings associations were permitted to include as QTI certain specified assets in an aggregate amount not to exceed 15 percent of an association's portfolio assets. This amount has commonly been referred to as the 15 percent basket.

[2] 137 Cong. Rec. E4235 (daily ed. December 18, 1991) (statement of Rep. Baker).

final rule to use a static, 3 out of 4 quarters period for measuring compliance, rather than a "rolling" measuring period, as proposed, the first date at which an association could fail the test is the same under either approach—April 30, 1992.

B. Increase in the Amount of Liquid Assets Excludable From Portfolio Assets

New section 10(m)(4)(B)(iii) of the HOLA increases the amount of regulatory liquidity excludable from portfolio assets from 10 percent to 20 percent of the savings association's total assets. The OTS proposes to amend its rule accordingly.

C. Qualified Thrift Investments

The QTL Reform Act increased the former 15 percent basket to 20 percent for certain assets, including investments in some service corporations, starter homes, and loans to credit-needy areas. The proposed rule would increase the percentage accordingly.

The QTL Reform Act expands the definition of qualified thrift investments at section 10(m)(4)(C)(ii) of the HOLA to include, without limitation, shares of stock issued by any Federal Home Loan Bank. It adds the shares of stock issued by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association to the new 20 percent QTL basket. The OTS proposes to amend its rules accordingly.

Before FDICIA, HOLA section 10(m)(C)(iii)(VI) required the dollar amount of consumer loans for personal, family, household, or educational purposes not exceed an amount equal to 5 percent of the savings association's portfolio assets. The QTL Reform Act increases this amount from 5 percent to 10 percent. OTS proposes to amend its rules accordingly.

D. De Novo Institutions

OTS's current QTL rule for *de novo* savings associations uses the FIRREA 104-week QTL measuring cycle. The OTS proposes to amend its rule to conform the cycle to the new statutory 9 out of 12 month measuring period. The proposed rule also clarifies that the measuring period begins the quarter following the date on which a savings association's charter was granted.

E. Certifying QTL Failure

When a savings association determines that it has failed the 9 out of 12 month QTL test, it must certify that failure to its Regional Director. The certification is separate from the required reporting of its QTL levels on the Thrift Financial Report (TFR), discussed in Section H, below.

F. Deletion of Appendix A

The proposed rule removes appendix A to the QTL regulations. The information and guidance contained therein will be incorporated into the OTS Thrift Activities Handbook, which is provided to all thrifts.

G. Consumer Lending by Federal Savings Associations

The QTL Reform Act also increased federal savings associations' consumer lending authority from 30 percent to 35 percent of assets, subject to some limitations. No regulatory change is necessary to implement this statutory authority.

H. Changes to the Thrift Financial Report [3]

The statutory modifications to the QTL provisions require OTS to modify the TFR to reflect, for example, the change from daily or weekly to monthly averaging. Significant "lead time" is necessary to effect these changes. Therefore, for June, 1992, thrifts will be unable to report QTL month-end figures in the quarterly TFR. However, beginning with the September, 1992 TFR, and thereafter, the quarterly TFR will contain 3 lines for monthly ATIP figures. Thrifts' calculations of QTL compliance over the relevant 12 month measuring period will be confirmed during the course of supervisory examinations.

I. Solicitation of Comments

The OTS solicits comment on all aspects of this proposed regulation. The OTS is providing a 30-day comment period in order to expedite adoption of final regulations.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OTS certifies that this proposal will not have a significant economic on a substantial number of small entities.

Executive Order 12291

The Director of the OTS has determined that this proposal does not constitute a "major rule"; therefore, a regulatory impact analysis is not required.

List of Subjects in 12 CFR Part 563

Accounting, Advertising, Crime, Currency, Flood insurance, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

Accordingly, the Office of Thrift Supervision hereby proposes to amend part 563, chapter V, title 12, Code of Federal Regulations as set forth below:

SUBCHAPTER D—REGULATIONS APPLICANCE TO ALL SAVINGS ASSOCIATIONS

PART 563—OPERATIONS

1. The authority citation for part 563 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467(a), 1468, 1828, 3806; 42 U.S.C. 4106.

SUBPART B—OPERATION AND STRUCTURE

2. Section 563.50 is amended by revising paragraphs (a), (b), (d), (e), and the introductory text of paragraph (g)(2) to read as follows:

§ 563.50 Qualified thrift lender status.

(a) As of January 1, 1992, a savings association that was not subject to penalties for failure to maintain qualified thrift lender (QTL) status as of June 30, 1991, as determined under regulations in this chapter in effect on that date, shall be deemed to be a qualified thrift lender. The savings association shall continue to be a qualified thrift lender so long as the association's actual thrift investment percentage (ATIP) in at least nine months out of each twelve month period thereafter continues to equal or exceed 65 percent. For purposes of this paragraph, the savings association's compliance with the QTL test for the immediately preceding 12 month period shall be calculated at the end of each month.

(b) (1) Beginning January 1, 1992, until December 31, 1992, a savings association shall cease to be a qualified thrift lender when its ATIP as measured by monthly averages over the period beginning January 1, 1992 falls below 65 percent for four or more of such months.

(2) Beginning January 1, 1993, a savings association shall cease to be a qualified thrift lender when its ATIP as measured by monthly averages over the immediately preceding twelve month period falls below 65 percent for four or more of such months.

(3) Upon ceasing to be a qualified thrift lender pursuant to this paragraph, a savings association shall promptly certify its QTL failure to its Regional Director.

* * * * *

(d) *De Novo savings associations.* For purposes of paragraph (a) of this section.

[3] The TFR is a periodic report authorized pursuant to 12 CFR 563.180, which requires savings associations to provide periodic or other reports in a manner prescribed by the OTS.

a *de novo* association shall begin its twelve month QTL measuring cycle, maintaining monthly averages of its qualified thrift investments and portfolio assets, at the beginning of the quarter following the date on which its chapter was granted.

(e) *Requalification.* A savings association may requalify as a qualified thrift lender only once by meeting and maintaining an ATIP, as measured by monthly averages for nine of twelve months over a twelve month period, greater than or equal to 65 percent.

* * * * *

(g) *Special phase-in for certain Federal savings associations.* * * *

(2) After calculating the difference between the savings association's actual thrift investment on August 9, 1989, and 65 percent, the savings association must increase its ATIP in 25 percent increments as set forth in the following schedule until full compliance is achieved on October 1, 1995:

* * * * *

3. Section 563.51 is amended by revising paragraph (e), redesignating paragraph (f)(1)(vi) as paragraph (f)(1)(vii) and revising it, adding new paragraphs (f)(1)(vi) and (f)(1)(vii)(G), removing the word "and" at the end of paragraph (f)(1)(vii)(E) and revising paragraph (f)(1)(vii)(F) to read as follows:

§ 563.51 Definitions.

* * * * *

(e) *Portfolio assets* means the total assets of the savings association minus the sum of: Goodwill and other intangible assets (as defined in 12 CFR 567.1(m)); the value of property used by the association to conduct its business; and the association's liquid assets of the type maintained pursuant to section 6 of the Home Owner's Loan Act, in an amount not exceeding 20 percent of the savings association's total assets.

(f)(1) * * *

(vi) Shares of stock issued by any Federal Home Loan Bank; and

(vii) An aggregate amount, not to exceed 20 percent of such association's portfolio assets, of the following assets:

* * * * *

(F) Loans of personal, family, household, or education purposes, provided that the dollar amount treated as QTI under this subsection may not exceed 10 percent of the savings association's portfolio assets; and

(G) Shares of stock issued by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association.

* * * * *

4. Appendix A to sections 563.50, 563.51, and 563.52 is removed.

Dated: May 11, 1992.

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

[FR Doc. 92-21083 Filed 9-1-92; 8:45 am]

BILLING CODE 6720-01-M

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12 CFR Part 567

[No. 90-332]

RIN 1550-AA58

Risk-Based Capital: Multifamily Housing Loans

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) proposes to amend its risk-based capital regulations as part of an inter-agency initiative to implement the provisions of section 618(b) of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991 (RTCRRIA). The RTCRRIA provides that first liens of multifamily residential properties meeting certain prudential criteria and securities collateralized by such loans qualify for the 50 percent risk-weight category. Under OTS's existing risk-based capital regulations, multifamily mortgage loans satisfying certain criteria are assigned to the 50 percent risk-weight category.

Today's proposal would amend the definition of "qualifying multifamily mortgage loan" in the risk-based capital regulations to incorporate the criteria set forth in section 618(b)(1) of RTCRRIA. These criteria include the ratio of the property's annual net operating income to required debt service, the loan's maximum amortization and minimum maturity, demonstrated timely payment performance on the loan, the property's average annual occupancy rate, and the loan's conformity with applicable lending limits and other prudent underwriting standards. The OTS's proposed rule parallels the proposal of the other banking agencies.

This proposed rule would also expand the category of privately-issued mortgage-backed securities (MBSs) that qualify for inclusion in the 50 percent risk-weight category to include MBSs that at the time of origination are collateralized by qualifying multifamily mortgage loans (*e.g.*, loans that have performed in accordance with their terms for at least one year.)

DATES: Comments must be received on or before October 2, 1992.

ADDRESSES: Send comments to Director, Information Services, Public Affairs, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 92-332. These submissions may be hand delivered at 1700 G Street, NW. from 9 a.m. to 5 p.m. on business days; they may be sent by facsimile transmission to FAX Number (202) 906-7753 or (202) 906-7755. Submissions must be received by 5 p.m. on the day they are due in order to be considered by the OTS. Late-filed, misaddressed or misidentified submissions will not be considered in this rulemaking. Comments will be available for public inspection at 1776 G Street, NW., Street Level.

FOR FURTHER INFORMATION CONTACT: John Connolly, Program Manager for Capital Policy, (202) 906-6465; Dorene Rosenthal, Attorney, (202) 906-7268, Regulations, Legislation and Opinions Division; Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Home Owners' Loan Act and the OTS's implementing regulations impose three capital requirements on savings associations: A tangible, a leverage and a risk-based requirement. (12 CFR part 567) The risk-based requirement is based on the credit-risk profiles of savings associations.

RTCRRIA, enacted on December 12, 1991, contains provisions relating to the capital treatment of multifamily mortgage loans and securities collateralized by such loans. Specifically, section 618(b)(1) of RTCRRIA requires the federal banking agencies, including OTS, to amend their risk-based capital regulations to place certain loans secured by multifamily residential properties and securities collateralized by such loans in the 50 percent risk-weight category under the agencies' risk-based capital regulations.

Under section 618(b)(1), a multifamily mortgage loan must meet the following criteria in order to qualify for a 50 percent risk-weight category: (1) The loan must be secured by a first lien on a residence consisting of 5 or more dwelling units; (2) if the rate of interest does not change over the term of the loan, then (a) the loan-to-value ratio (LTV ratio) cannot exceed 80 percent, and (b) the ratio of annual net operating income generated by the property

(before payment of any debt service on the loan) to annual debt service on the loan cannot be less than 120 percent; (3) if the loan has a variable rate, then (a) the LTV ratio cannot exceed 75 percent, and (b) the ratio of annual net operating income generated by the property (before payment of any debt service on the loan) to annual debt service on the loan cannot be less than 115 percent; (4) the loan must amortize principal and interest over a period of not less than 7 years and not more than 30 years; (5) timely payment of all principal and interest, in accordance with the terms of the loan, must have been made for at least one year; and (6) the loan must satisfy prudent underwriting standards as established by the appropriate federal banking agency.

Section 618(b)(2) requires that any loan fully secured by a first lien on a multifamily residential property that is sold by a financial institution subject to a *pro rata* loss sharing arrangement shall be treated as a sale and not a recourse transaction, to the extent that the purchaser and not the seller is exposed to loss on that loan portion. In addition, section 618(b)(3) provides that the federal banking agencies shall take into account loss sharing arrangements, other than *pro rata* loss sharing arrangements, under their risk-based capital regulations. The agencies should consider the extent to which loans fully secured by a first lien on a multifamily residential property subject to such arrangements should be treated as sold. The OTS capital rule currently follows this approach.

Today, OTS proposes to amend 12 CFR 567.1(v) of its rules to incorporate in the definition of qualifying multifamily mortgage loans the criteria set forth in RTCRRIA, and proposes to amend § 567.6(a)(1)(iii)(C) to include in the 50 percent risk-weight category qualifying, privately-issued MBSs collateralized by qualifying multifamily mortgage loans.

II. Description of Proposal

A. Qualifying Multifamily Housing Loans

Under the current OTS risk-based capital regulation (12 CFR part 567), "qualifying multifamily mortgage loans" are risk-weighted in the 50 percent category. 12 CFR 567.6(a)(1)(iii)(B). "Qualifying multifamily mortgage loans" are defined as loans secured by multifamily residential properties consisting of 5-to-36 dwelling units with an initial LTV ratio of not more than 80 percent where an average annual occupancy rate of 80 percent or more of total units has existed for at least one year. 12 CFR 567.1(v).

To implement section 618(b) of RTCRRIA, the OTS proposed to amend § 567.1(v) to incorporate the statutory criteria and certain additional standards for determining whether a multifamily mortgage loan would qualify for a 50 percent risk-weight. Such loans would be required to meet each of the following conditions to qualify for a 50 percent risk-weight:

(1) The loan must be secured by a first mortgage on multifamily residential properties consisting of 5 or more dwelling units;

(2) The amortization of principal and interest must not exceed thirty years;

(3) The minimum maturity for repayment of principal must not be less than seven years;

(4) All principal and interest payments must have been made on a timely basis in accordance with the terms of the loan for at least one year;

(5) The loan must be performing and not more than 90 days past due;

(6) The loan must comply with applicable lending limit requirements and prudent underwriting standards;

(7) The multifamily residential property securing the loan must have had an average annual occupancy rate of 80 percent or more of total units for at least one year; and

(8) If the rate of interest does not change over the term of the loan, then the loan amount at origination must not exceed 80 percent of the appraised value of the property, and in the most recent fiscal year, the ratio of annual net operating income generated by the property (before payment of any debt service on the loan) to annual debt service on the loan must not be less than 120 percent; or

(9) If the rate of interest changes over the term of the loan, then the loan amount at origination must not exceed 75 percent of the appraised value of the property, and in the most recent fiscal year, the ratio of annual net operating income generated by the property (before payment of any debt service on the loan) to annual debt service on the loan must not be less than 115 percent.

Two aspect of this proposed rule should be noted. First, the RTCRRIA places no upper limit on the number of units that a multifamily residential property may contain. OTS currently requires that the security property for a "qualifying multifamily mortgage loan" must consist of 5-to-36 dwelling units. The OTS has decided not to include a number-of-units restriction in this proposal so that it is consistent with those of the other federal banking agencies. The OTS specifically solicits comment, however, on whether a number-of-units restriction is necessary to minimize the economic risk presented by these loans. Also, because the agencies are considering imposing a number-of-units restriction in the final rule, the OTS solicits both comment and data on the appropriate level for such a number-of-units restriction so that the lower risk-weight category applies only to those multifamily mortgage loans warranting such favorable treatment based on lower credit risk.

Second, this proposed rule also would amend 12 CFR 567.6(A)(1)(iii)(C) to provide expressly that privately-issued MBSs qualify for a 50 percent risk-weight if at the time the MBS is originated it is fully secured by multifamily mortgage loans that are included in the 50 percent risk-weight category.[1]

Multifamily mortgage loans would not qualify for a 50 percent risk-weight at the time of origination, but must have performed in accordance with their terms for at least one year. This provision is likely to discourage savings associations from securitizing multifamily mortgage loans until a minimum of one year after origination.

OTS is requesting specific comment on how to treat MBSs not qualifying for a 50 percent risk-weight at origination solely because the underlying multifamily mortgage loans were new loans that had not satisfied the one-year performance criterion. For example, the OTS could authorize thrifts to reassign these MBSs from the 100 percent to the 50 percent risk-weight category when the one-year performance criterion is satisfied. This would permit such loans to be securitized at origination and to benefit from a lower risk-weight when the underlying loans qualify.

Most of the conditions prescribed in this proposed rule are conditions specifically imposed by section 618(b)(1) of RTCRRIA. Section 618(b)(1)(B)(iv) gives the OTS discretion to establish other underwriting standards consistent with the purposes of the minimum capital requirements and with the safety and soundness of savings associations.

[1] The OTS's current risk-based capital regulations assign a 20 percent risk-weight to (a) MBSs that have been issued or guaranteed by a U.S. government sponsored enterprise, or (b) privately-issued securities that are rated in one of the two highest rating categories by at least one nationally recognized statistical rating agency. 12 CFR 567.76(a)(1)(ii). Privately-issued MBSs collateralized by qualifying one-to-four family mortgage loans are currently assigned a 50 percent risk-weight. 12 CFR 567.6(a)(1)(iii). All other MBSs are currently assigned a 100 percent risk-weight. 12 CFR 567.6(a)(1)(iv).

To protect the safe and sound operations of thrifts, the OTS, along with the other federal banking agencies is proposing certain other underwriting standards.

In this regard, the OTS notes that the average annualized net charge-off rate for permanent multifamily mortgage loans for the nine quarters beginning March 1990 and ending March 1992 as reported in the quarterly Thrift Financial Reports was 0.61 percent of total average multifamily mortgage loans outstanding. In contrast, the average annualized charge-off rate for permanent one-to-four family residential loans was 0.07 percent for the same period. Although the net charge-off rate for permanent multifamily loans exceeded that for permanent one-to-four family residential loans, the multifamily charge-off rate was substantially below the net charge-off rates for other types of loans, including permanent nonresidential property loans (1.19 percent) and permanent commercial loans (1.32 percent).

Accordingly, the OTS believes that multifamily mortgage loans satisfying conservative underwriting and performance standards warrant a reduced risk-weight. The additional standards the OTS is proposing are designed to ensure that the 50 percent risk-weight is afforded to multifamily loans whose future repayment prospects are such that they expose an institution to relatively low levels of credit risk.

First, the OTS proposes that the statutorily prescribed LTV ratio be determined at the time the loan is originated. While RTCRRIA provides specific LTV ratios for qualifying multifamily mortgage loans (based on whether the interest rate is fixed or variable), it does not specify when these LTV ratios must be attained. The use of initial LTV ratios would be consistent with the criteria for qualifying multifamily mortgage loans and qualifying one-to-four family mortgages under the current OTS risk-based capital rule. Prudent real estate loan underwriting standards dictate that a borrower have a substantial equity interest in the property to demonstrate a commitment to repay the loan. Where the borrower has substantial equity interest in the property, the risk of losing this equity interest by defaulting on the loan motivates the borrower to make timely repayment.

The OTS recognizes, however, that the borrower can build equity over time as the principal amount of the loan is repaid. With respect to one-to-four family mortgage loans, the OTS has proposed to base the LTV ratio on the current loan amount compared with the property value at origination. Miscellaneous Capital and Capital-Related Amendments, 56 FR 15,303 (April 16, 1991). This approach would allow for subsequent qualification of the mortgage loans when the LTV ratio was paid down to the prescribed level. Another approach is to base the LTV ratio on the most current appraised value of the property, which normally would be the appraised value at the time the loan was originated, unless a more recent appraisal has been conducted.

In view of these alternatives, the OTS solicits comment on: (1) whether a loan that did not satisfy the LTV ratio criterion at origination should be permitted to qualify when the principal balance is paid down to 80 percent or less of the original appraised value; and (2) whether the LTV ratio should be based on the most current appraised value of the property, which normally would be the appraised value at the time the loan was originated, unless a more recent appraisal has been performed.

Second, section 618(b)(1)(B)(iii) requires timely payment of all principal and interest payments in accordance with the terms of the loan. A borrower may have made all scheduled payments for the past 12 months but may have missed several scheduled payments in previous periods that remained unpaid under the existing loan terms. In addition, other circumstances, such as a sudden significant increase in the vacancy rate, may indicate that full payment of principal and interest will not be made, notwithstanding past repayment experience, cash flow, and occupancy rates. Consequently, in addition to the one year timely payment requirement prescribed by statute, the OTS, like the other federal banking agencies, proposes to require that the multifamily mortgage loan be performing and not more than 90 days past due. The OTS's current risk-based capital regulations contain similar requirements for one-to-four family mortgage loans to qualify for a 50 percent risk-weight. 12 CFR 567.1(u).

Third, the OTS is proposing that the multifamily loan be made in accordance with applicable lending limits and other prudent underwriting standards. Compliance with prudent underwriting standards is designed to control the credit risk inherent in the lending process. These requirements are also necessary to maintain consistent treatment of single-family and multifamily mortgage loans under the current OTS risk-based capital regulations. To be considered prudently underwritten, the savings association's files must contain sufficient documentation on each multifamily mortgage loan to permit OTS examiners to determine that the security property qualifies for a 50 percent risk-weight. Such documentation should generally include a title policy or opinion; adequate fire, hazard, and liability insurance; and other appropriate documentation.

The OTS, consistent with the proposals of the other agencies, also proposes to retain the requirement in its current multifamily rule that average annual occupancy rate for a property securing a loan must have been at least 80 percent of the total number of units for at least a year. This occupancy provision complements the annual net income-to-debt service ratio requirement in section 618(b)(1). While a high occupancy rate alone does not necessarily guarantee that the multifamily residential property will generate sufficient cash flow to service any loan secured by the property, the combination of cash flow and occupancy rate requirements will increase the probabilities that the loan can be repaid. The OTS, however, specifically requests comment on the application of this 80 percent occupancy provision. The OTS is particularly interested in comments concerning whether it is necessary to retain the current requirement that the occupancy rate be at least 80 percent of the total number of units in light of the net income-to-debt service requirement added by section 618(b).

As indicated above, the OTS's current risk-based capital regulations provide that multifamily loans meeting certain criteria are in the 50 percent risk-weight category. The additional criteria imposed by this proposed regulation may cause certain multifamily loans that are currently assigned to the 50 percent risk-weight category to be ineligible for this category. The OTS is proposing that any multifamily loans included in a savings association's portfolio in the 50 percent risk-weight category as of September 2, 1992 be grandfathered so that they continue to be included in the 50 percent risk-weight category. This grandfathered treatment would be conditioned on such loans continuing to meet the requirements of the current regulation, even if such loans do not meet all the criteria for qualifying multifamily loans set forth in this proposed rule. The OTS requests comment on whether this "grandfathering" treatment is appropriate.

Section 305(b)(1)(B) of the Federal Deposit Insurance Corporation Improvement Act of 1991, among other things, requires the OTS to revise its

risk-based capital regulations to reflect the actual performance and expected risk of loss of multifamily mortgages. The OTS solicits comment on whether there are any additional changes besides those discussed herein that are necessary to implement this provision.

B. Loss Sharing Arrangements

Section 618(b)(2) requires that "any loan fully secured by a first-lien on a multifamily housing project that is sold subject to a *pro rata* loss sharing arrangement * * * shall be treated as sold to the extent that loss is incurred by the purchaser of the loan." Section 618(b)(2) further defines a *pro rata* loss sharing arrangement as "an agreement providing that the purchaser of a loan shares in any loss incurred on the loan with the selling institution on a *pro rata* basis."

This statutory requirement is the same as the current OTS policy on *pro rata* risk sharing set forth in 12 CFR 567.6(a)(2)(i)(A)(2). Under the OTS's existing risk-based capital regulation, the sale of a loan fully secured by a first lien on a multifamily residential property would be accorded sales treatment and not treated as recourse to the extent that each participant is responsible solely for its *pro rata* share of the risk and there is no recourse to the originating institution. The OTS policy follows generally accepted accounting principles on loan sales.

Section 618(b)(3) of RTCRRIA also gives OTS discretion to take into account other loss sharing arrangements (besides *pro rata* loss sharing arrangements) in connection with the sale of a loan fully secured by a multifamily residential property.

OTS's current risk-based capital regulations provide that savings association must include in risk-weighted assets one-hundred percent of "the values of assets sold with recourse * * * except where the amount of recourse liability retained by the savings association is less than the capital requirement for credit-risk exposure." 12 CFR 567.6(a)(2)(i)(C). The OTS interprets this regulation as treating that portion of loans subject to loss sharing arrangements, including multifamily mortgage loans, as sold with recourse. The OTS believes that this regulation satisfies the statutory requirement that the OTS's risk-based capital rule take account of risk-sharing arrangements other than *pro rata* loss sharing arrangements involving the sale of multifamily mortgage loans.

C. Issues for Specific Comments

The OTS solicits comments on all aspects of this proposed regulation. The OTS is providing a 30 day comment period in order to expedite adoption of final regulations. The OTS is particularly interested in comments on the following specific issues concerning multifamily mortgage loans.

(1) Should the OTS impose a restriction on the number of units a multifamily residential property may contain in order to qualify for a 50 percent risk-weight? If so, what is the appropriate number of units to impose as an upper limit?

(2) What should be the proper treatment for MBSs secured by qualifying multifamily mortgage loans? How should the rule be applied to MBSs backed by pools of multifamily mortgage loans originated prior to the adoption of this rule?

(3) Should multifamily mortgage loans that do not satisfy the appropriate LTV ratio at the time of origination be permitted to qualify at some later time, and if so, under what circumstances? should the reduced risk-weight apply when the borrower pays down a loan below the prescribed level? Should the LTV ratio be based on the most current valuation, instead of the valuation at origination?

(4) Should the OTS retain the requirement that the occupancy rate be at least 80 percent of the total number of units for a year?

(5) Should the OTS extend "grandfathered" treatment to qualifying multifamily mortgage loans in the 50 percent risk-weight category under current OTS rules if they continue to meet the requirements of the current regulations?

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OTS certifies that this proposal will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

The Director of the OTS has determined that this proposal does not constitute a "major rule," therefore, a regulatory impact analysis is not required.

List of Subjects in 12 CFR Part 567

Capital, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the Office of Thrift Supervision hereby proposes to amend part 567, subchapter D, chapter V, title 12, Code of Federal Regulations as set forth below:

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 567—CAPITAL

1. The authority citation for part 567 is revised to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.

2. Section 567.1 is amended by revising paragraph (v) to read as follows:

§ 567.1 Definitions.

* * * * *

(v) *Qualifying multifamily mortgage loan.* The term *qualifying multifamily mortgage loan* means a loan secured by a first lien on multifamily residential properties consisting of 5 or more dwelling units, provided:

(1) The amortization of principal and interest occurs over a period of not more than 30 years;

(2) The minimum maturity for repayment of principal on the loan is not less than seven years;

(3) All principal and interest payments have been made on a timely basis in accordance with the terms of the loan for at least one year and the loan is performing and not more than 90 days past due;

(4) The property securing the loans has had an average annual occupancy rate of at least 80 percent of the total units in the property for at least one year;

(5) The loan is made by the savings association in accordance with applicable lending limit requirements and other prudent underwriting standards; and

(6)(i) If the interest rate on the loan does not change over the term of the loan:

(A) The loan amount at origination does not exceed 80 percent of the appraised value of the property securing the loan; and

(B) For the property's most recent fiscal year, the ratio of annual net operating income generated by the property (before payment of any debt service on the loan) to annual debt service on the loan is not less than 120 percent; or

(ii) If the interest rate on the loan changes over the term of the loan:

(A) The loan amount at origination does not exceed 75 percent of the appraised value of the property securing the loan; and

(B) For the property's most recent fiscal year, the ratio of annual net operating income generated by the property (before payment of any debt

service on the loan) to annual debt service on the loan is not less than 115 percent.

The term *qualifying multifamily mortgage loan* also includes multifamily mortgage loans in a savings association's portfolio that were qualifying multifamily mortgage loans as of September 2, 1992 and that continue to meet the definition of qualifying multifamily mortgage loan in effect on September 2, 1992.

* * * * *

3. Section 567.6 is amended by revising paragraph (a)(1)(iii)(C) to read as follows:

§ 567.6 Risk-based capital credit risk weight categories.

(a) * * *

(1) * * *

(iii) * * *

(C) Non-high quality mortgage-related securities backed by qualifying mortgage loans and qualifying multifamily mortgage loans, except for those with residual characteristics or stripped mortgage-related securities.

* * * * *

Dated: July 23, 1992.

The Office of Thrift Supervision.

Jonathan Fiechter,

Deputy Director for Washington Operations.

[FR Doc. 92-20949 Filed 9-1-92; 8:45 am]

BILLING CODE 6720-01-M

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12 CFR Part 567

[No. 92-264]

RIN 1550-AA55

Capital Treatment of Equity Investments

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Proposed rule.

SUMMARY: The Office of Thrift Supervision (OTS) is proposing to change its risk-based capital treatment of equity investments that are permissible for both savings associations and national banks. Savings associations will no longer be required to deduct these investments in calculating their capital. Instead, these investments will be placed in the 100% risk weight category.

DATES: Comments must be received on or before October 2, 1992.

ADDRESSES: Send comments to Director, Information Services Division, Public Affairs, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. (92-264). These submissions may be hand delivered to 1700 G Street, NW. from 9 A.M. to 5 P.M. on business days; they may be sent by facsimile transmission to FAX Number (202) 906-7753 or (202) 906-7755. Submissions must be received by 5 p.m. on the day they are due in order to be considered by the OTS. Late-filed, misaddressed or misidentified submissions will not be considered in this rulemaking. Comments will be available for inspection at 1776 G Street, NW., Street Level.

FOR FURTHER INFORMATION CONTACT: John Connolly, Program Manager for Capital Policy, (202) 906-6465, Policy; Deborah Dakin, Assistant Chief Counsel, (202) 906-6445, Regulations and Legislation Division, Chief Counsel's Office; Office of Thrift Supervision, 1700 G St., NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Office of Thrift Supervision (OTS) is today proposing to revise the treatment of certain equity investments under its risk-based capital regulation and to clarify the treatment of certain other equity investments under that regulation. Equity investments that are permissible for both savings associations and national banks would no longer be deducted from savings associations' calculations of total capital over a five-year transition period. They would instead be placed in the 100 percent risk-weight category. This is the same treatment prescribed for national banks under the regulations of the Office of the Comptroller of the Currency (OCC). Only those equity investments held by savings associations that are not permissible for national banks would continue to be required to be deducted from assets and thus total capital. Today's proposal also clarifies the risk-based capital treatment of equity investments that represent interests in pools of assets, such as mutual funds.

The proposed revisions to the risk-based capital treatment of equity investments would not increase or in any way affect a savings association's underlying authority to make such investments. OTS notes that some equity investments permissible for national banks, such as investments in foreign banking corporations, are not permissible for savings associations.

Three equity investments currently held by thrifts would be most affected by this change: Loans with equity participations that are considered equity investments under Generally Accepted Accounting Principles, Federal National Mortgage Association (Fannie Mae) stock, and Federal Home Loan Mortgage Corporation (Freddie Mac) stock.

The OTS is revising its treatment of loans with "equity kickers" because such loan structures are sometimes appropriate alternatives to more traditional debt structures and should not be considered *per se* equivalent to equity investments. The OCC has recognized that such loans may be appropriate and expressly permits them, while prohibiting most forms of equity investment. Such loans by national banks are included in the 100 percent risk-weight category.

Moreover, the OTS has adopted safeguards against excessively high-ratio land and non-residential construction loans, many of which have equity participation features. The portion of such loans above 80 percent of the value of the property is treated as an equity investment subject to the deduction from assets and capital requirement. The OTS is not proposing to change this treatment. Nevertheless, OTS reserves the right under 12 CFR 567.11 in any particular case to determine that either a particular loan structure or group of loans should be treated in the same manner as an equity investment for the purposes of this rule if it finds the structures are more consistent with the characteristics of equity investments or were structured for the purpose of evading the equity investment rule.

As a general matter, OTS does not consider troubled loans that have been restructured to improve the lending institution's protection to be equity investments, even if the resultant structure includes a position that has substantial equity characteristics. Such holdings are generally subject to OTS rules regarding interests in real property acquired in satisfaction of a debt previously contracted.

The recently enacted Federal Deposit Insurance Corporation Improvement Act of 1991 modified the Qualified Thrift Lender (QTL) test to which thrifts are subject by adding Fannie Mae and Freddie Mac stock to the list of investments that count towards meeting the QTL test. This demonstrates Congressional recognition that these investments are consistent with the housing mission of the thrift industry. Under these circumstances, OTS believes that it is not appropriate to discourage thrift investment in Fannie Mae and Freddie Mac stock through requiring deduction of these investments in calculating capital.

OTS is also proposing to clarify that investments in securities evidencing ownership interests in pools of assets, which are risk-weighted pursuant to 12 CFR 567.6(a)(vi) depending on the assets

held in the portfolios, are not considered equity investments as defined in 12 CFR 567.#1(i). While OTS has consistently interpreted the capital regulation this way since its promulgation in 1989, some confusion has resulted from the regulation's silence on the interaction of these sections.

The OTS solicits comments on all aspects of this proposal.

Executive Order 12291

The Director of the OTS has determined that this proposed rule does not constitute a "major rule" and, therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OTS certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 567

Capital, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the Office of Thrift Supervision hereby proposes to amend part 567, chapter V, title 12, Code of Federal Regulations as set forth below:

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 567—CAPITAL

1. The authority citation for part 567 is revised to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.

2. Section 567.1 is amended by revising the last sentence of paragraph (i)(2) to read as follows:

§ 567.1 Definitions.

* * * * *

(i) *Equity investments.* * * *

(2) * * *

(vii) * * *

It does not include investments in subsidiaries as defined in paragraph (dd) of this section, equity investments that are permissible for national banks, ownership interests in pools of assets that are risk-weighted in accordance with § 567.6(a) (vi) of this part, or the stock of Federal Home Loan Banks or Federal Reserve Banks.

* * * * *

3. Section 567.6 is amended by changing the period following paragraph (a)(1)(iv)(Q) to a semicolon and by adding a new paragraph (a)(1)(iv)(R) to read as follows:

§ 567.6 Risk-based capital credit risk weight categories.

(a) *Risk-weighted Assets.* * * *

(1) *On-Balance Sheet Assets.* * * *

(iv) *100 percent Risk Weight (Category 4).* * * *

(R) Equity investments permissible for a national bank.

* * * * *

Dated: June 18, 1992.

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

[FR Doc. 92-20951 Filed 9-1-92; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92-AWP-14]

Proposed Establishment of Two Transition Areas in the Vicinity of the Goffs VHF Omnidirectional Range/ Tatical Air Navigation (VORTAC), CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish two 7000 foot MSL and above transition areas near the Goffs VORTAC, CA. These transition areas would provide controlled airspace for aircraft proceeding via a Standard Terminal Arrival Route (STAR) into the Las Vegas McCarran International Airport, NV.

DATES: Comments must be received on or before October 1, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, System Management Branch, AWP-530, Docket No. 92-AWPA-14, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6W14, 15000 Aviation Boulevard, Lawndale, CA.

An informal docket may be examined during normal business hours at the Office of the Manager, System Management Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Gene Enstad, Airspace Specialist, System Management Branch, AWP-530, Air Traffic Divison, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, CA90261, telephone (310) 297-0010.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92-AWP-14." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaing will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish two 7000 foot MSL and above transition areas near the GoffS

VORTAC, CA. The first of the two transition areas (Goffs North) is bounded by Victor Airway 8 (V-8) on the northwest, V-237 on the east, and V-210 on the south. The second transition area (Goffs South) is bounded V-210 on the north, V-237 on the east and V-135 to the southwest. The Minimum Vectoring Altitude (MVA) is 7,000 feet MSL in that area. These proposed transition areas will provide controlled airspace for aircraft proceeding via a Standard Terminal Arrival Route (STAR) into the Las Vegas McCarran Airport from the vicinity of the Thermal VORTAC, CA. Transition areas are published in § 71.181 of FAA Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The transition areas listed in this document would be published subsequently in the Handbook.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRPSACE, AND REPORTING POINTS, JET ROUTES, AND AREA HIGH ROUTES

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.181 Designation

* * * * *

AWP CA TA Goffs North, CA [New]

That airspace extended upward from 7000 feet mean sea level (MSL) and above bounded on the northwest by Victor Airway 8 (V-8), on the east by V-237, and on the south by V-210.

AWP CA TA Goffs South, CA [New]

That airspace extending upward from 7000 feet mean sea level (MSL) and above bounded on the north by Victor Airway 210 (V-210), on the east by V-237, and on the southwest by V-135.

* * * * *

Issued in Los Angeles, California, on August 20, 1992.

Richard R. Lien,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 92-21100 Filed 9-1-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 91-ANM-16]

Proposed Establishment and Alteration of Jet Routes

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This supplemental notice amends a previous proposal to alter the descriptions of several jet routes located in Colorado, Kansas, Nebraska, South Dakota, Wyoming, and Utah and alter Jet Route J-54 from Pocatello, ID, to Laramine, WY, to accommodate the new Denver International Airport, scheduled to open in October 1993. Simulations conducted at the FAA Technical Center require changes to the original proposal.

DATES: Comments must be received on or before October 15, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ANM-500, Docket No. 91-ANM-16, Federal Aviation Administration, 1601 Lind Avenue, Southwest, Renton, WA 98055-4056.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Alton D. Scott, Airspace and Obstruction Evaluation Branch (AT P-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number of this SNPRM and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 91-ANM-16." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this supplemental notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM 's

Any person may obtain a copy of this Supplemental Notice of Proposed Rulemaking (SNPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3485. Communications must

identify the notice number of this SNPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the descriptions of the jet routes located in Colorado, Kansas, Idaho, Nebraska, South Dakota, Wyoming, and Utah to accommodate the new Denver International Airport scheduled to open in October 1993. The FAA published an earlier notice proposing to alter several jet routes in Colorado, Kansas, Nebraska, South Dakota, Wyoming, and Utah, on March 31, 1992 (57 FR 10841). Comments received in response to the NPRM and this SNPRM will be addressed in the final disposition of the rule.

As a result of simulations of the new route structure conducted at the FAA Technical Center in Atlantic City, NJ, the proposals for two jet routes have been revised and an additional jet route altered. This supplemental notice proposes to alter the jet route structure of J-56 and J-114 as proposed in the original notice and to alter Jet Route J-54 from Pocatello, ID, to Laramie, WY, to accommodate the new airport. Jet routes are published in § 75.100 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The jet routes listed in this document would be published subsequently in the Handbook.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Jet routes.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.607 Jet Routes

* * * * *

J-10 [Revised]

From Los Angeles, CA; via INT Los Angeles 083° and Twentynine Palms, CA, 269° radials; Twentynine Palms; INT of Twentynine Palms 075° and Drake, AZ, 262° radials; Drake; Farmington, NM, Blue Mesa, CO; Falcon, CO; INT Falcon 049°T(038°M) and North Platte, NE, 261°T(250°M) radials; North Platte; Wolbach, NE; Des Moines, IA; to Iowa City, IA.

* * * * *

J-13 [Revised]

From the INT of the United States/Mexican border and the Truth or Consequences, NM, 162° radial, via Truth or Consequences; Albuquerque, NM; Alamosa, CO; INT Alamosa 015°T(002°M) and Falcon, CO, 209°T(198°M) radials; Falcon; Cheyenne, WY; Muddy Mountain, WY; Billings, MT; Great Falls, MT; to Lethbridge, AB, Canada. The airspace within Canada is excluded.

* * * * *

J-17 [Revised]

From San Antonio, TX; via Abilene, TX; Amarillo, TX; Tobe, CO; Pueblo, CO; Falcon, CO; Cheyenne, WY; to Rapid City, SD.

* * * * *

J-20 [Revised]

From Seattle, WA; via Yakima, WA; Pendleton, OR; Donnelly, ID; Pocatello, ID; Rock Springs, WY; Falcon, CO; Lamar, CO; Liberal, KS; INT Liberal 137° and Will Rogers, OK, 284° radials; Will Rogers; Shreveport, LA; Jackson, MS; Montgomery, AL; Meridian, MS; Tallahassee, FL; INT Tallahassee 129° and Orlando, FL, 306° radials; Orlando 154° and Fort Lauderdale, FL, 339° radials; to Fort Lauderdale.

* * * * *

J-44 [Revised]

From Phoenix, AZ; via Winslow, AZ, Farmington, NM; Alamosa, CO; INT Alamosa 015°T(002°M) and Falcon, CO, 209°T(198°M) radials; Falcon; McCook, NE; to Lincoln, NE.

* * * *

J-52 [Revised]

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From Vancouver, BC, Canada; via Spokane, WA; Salmon, ID; Dubois, ID; Rock Springs, WY; Falcon, CO; Lamara, CO; Liberal, KS; INT Liberal 137° and Ardmore, OK, 309° radials; Ardmore; Dallas-Fort Worth, TX; Texarkana, AR; Greenwood, MS; Bigbee, MS; Vulcan, AL; Atlanta, GA; Colliers, SC; Columbia, SC; Raleigh-Durham, NC; to Richmond, VA. The portion within Canada is excluded.

* * * * *

J-54 [Revised]

From Tatoosh, WA; Olympia, WA; Baker, OR; Boise, ID; Pocatello, ID; Cherokee, WY; to Laramie, WY.

* * * * *

J-56 [Revised]

From Mina, NV; Salt Lake City, UT; Hayden, CO; INT Hayden 090°T(076°M) and Falcon, CO, 317°T(306°M) radials; to Falcon.

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J-60 [Revised]

From Los Angeles, CA; via Paradise, CA; Hector, CA; Boulder City, NV; Bryce Canyon, UT; Hanksville, UT; Red Table, CO; Mile High, CO; Hayes Center, NE; Lincoln, NE; Iowa City, IA; Joliet, IL; Goshen, IN; Dryer, OH; Philipsburg, PA; East Texas, PA; to Sparta, NJ.

* * * * *

J-80 [Revised]

From Oakland, CA, via Manteca, CA; Coaldale, NV; Wilson Creek, NV; Milford, UT; Grand Junction, CO; Red Table, CO; Falcon, CO; Goodland, KS; Hill City, KS; Kansas City, MO; Capital, IL; Indianapolis, IN; Bellaire, OH; INT Bellaire 090° and East Texas, PA, 240° radials; East Texas; Sparta, NJ; Barnes, MA; to Bangor, ME.

* * * * *

J-114 [Revised]

From Mile High, CO; Sidney, NE; INT Sidney 075°T(062°M) and O'Neill, NE, 239°T(229°M) radials; O'Neill; Sioux Falls, SD; to Gopher, MN.

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J-116 [Revised]

From Salt Lake City, UT, via Fairfield, UT; Meeker, CO; to Falcon, CO.

* * * * *

J-128 [Revised]

From Los Angeles, CA, via INT Los Angeles 083° and Peach Springs, AZ, 244° radials; Peach Springs; Tuba City, AZ; Blue Mesa, CO; Falcon, CO; Hayes Center, NE; Wolbach, NE; Dubuque, IA; to Northbrook, IL.

* * * * *

J-130 [Revised]

From McCook, NE; to Pawnee City, NE.

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J-154 [Revised]

From Battle Mountain, NV; Bonneville, UT; Salt Lake City, UT; Rock Springs, WY; INT Rock Springs 106°T(090°M) and Mile High, CO, 322°T(311°M) radials; Mile High; INT Mile High 131°T(122°M) and Garden City, KS, 296°T(285°M) radials; to Garden City.

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J-157 [Revised]

From Myton, UT; Laramie, WY; Scottsbluff, NE; to Rapid City, SD.

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J-168 [Revised]

From Wichita Falls, TX; to Lamar, CO.

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J-170 [Revised]

From Crazy Woman, WY; via Muddy Mountain, WY; to Medicine Bow, WY.

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J-172 [Removed]

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Issued in Washington, DC, on August 21, 1992.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92-21097 Filed 9-1-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 92-ASO-3]

Proposed Alteration of VOR Federal Airways and Revocation of V-515; TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to alter the descriptions of six Very High Frequency Omnidirectional Range (VOR) Federal airways and to revoke one airway located in the vicinity of Nashville, TN. The Nashville VOR will be relocated to the north of its current location and, in conjunction with the VHF Omnidirectional Range/Tactical Air Navigational (VORTAC) relocation, the airway structure in the Nashville area would be realigned to reduce congestion within the terminal area and to decrease the en route traffic in the arrival and departure areas.

DATES: Comments must be received on or before October 21, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASO-500, Docket No. 92-ASO-3, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92-ASO-3." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a military list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the descriptions of six VOR Federal airways and to revoke one airway located in the vicinity of Nashville, TN. The Nashville VOR will be relocated to the north of its current location. The airway structure in the Nashville area would be realigned to reduce congestion within the terminal area and to decrease the en route traffic in the arrival and departure areas. VOR Federal airways are published in § 71.123 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The airways listed in this document would be published subsequently in or removed subsequently from the Handbook.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, VOR Federal airways.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.123 Domestic VOR Federal Airways

* * * * *

V–5 [Revised]

From Pecan, GA, via Vienna, GA; Dublin, GA; Athens, GA; INT Athens 340° and Electric City, SC, 274° radials; INT Electric City 274° and Chattanooga, TN, 127° radials; Chattanooga; Bowling Green, KY; New Hope, KY; Louisville, KY; Cincinnati, OH; Appleton, OH; Mansfield, OH; DRYER, OH; London, ON, Canada. The airspace within Canada is excluded.

* * * * *

V–16 [Revised]

From Los Angeles, CA; Paradise, CA; Palm Springs, CA; Blythe, CA; Buckeye, AZ; Phoenix, AZ; INT Phoenix 155° and Stanfield, AZ, 105° radials; Tucson, AZ; Cochise, AZ; Columbus, NM; El Paso, TX; Salt Flat, TX; Wink, TX; Wink 066° and Big Spring, TX, 260° radials, Big Spring; Abilene, TX; Millsap, TX; Acton, TX; Scurry, TX; Quitman, TX; Texarkana, AR; Pine Bluff, AR; Holly Springs, MS; Jacks Creek, TN; Shelbyville, TN; Hinch Mountain, TN; Knoxville, TN; Holston Mountain, TN; Pulaski, VA; Roanoke, VA; Lynchburg, VA; Flat Rock, VA; Richmond, VA; INT Richmond 039° and Patuxent, MD, 228° radials; Patuxent; Smyrna, DE; Cedar Lake, NJ; Coyle, NJ; INT Coyle 036° and Kennedy, NY, 209° radials; Kennedy; Deer Park, NY; Calverton, NY; Norwich, CT; Boston, MA. The airspace within Mexico and the airspace below 2,000 feet MSL outside the United States is excluded. The airspace within Restricted Areas R–5002A, R–5002C, and R–5002D is excluded during their times of use. The airspace within Restricted Areas R–4005 and R–4006 is excluded.

* * * * *

V–52 [Revised]

From Des Moines, IA; Ottumwa, IA; Quincy, IL; St. Louis, MO; Troy, IL; INT Troy 099° and Pocket City, IN, 311° radials; Pocket City; Central City, KY; Bowling Green, KY; to Livingston, TN.

* * * * *

V–124 [Revised]

From Blue Ridge, TX, via Paris, TX; Hot Springs, AR; Little Rock, AR; Gilmore, AR; Jacks Creek, TN; to Graham, TN.

* * * * *

V–136 [Revised]

From Hinch Mountain, TN; INT Mountain 100° and Knoxville, TN, 243° radials; Knoxville; Snowbird, TN; Holston Mountain, TN; Pulaski, VA; INT Pulaski 094° and South Boston, VA, 295° radials; South Boston; Raleigh-Durham, NC; Fayetteville, NC; to Grand Strand, SC. The airspace at and above 7,000 feet MSL from 17 miles south to 38 miles south of Fayetteville is excluded during the time that the Gamecock A MOA is activated by NOTAM.

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V–362 [Revised]

From Brunswick, GA, via Alma, GA; Vienna, GA; to Macon, GA.

* * * * *

V–515 [Removed]

* * * * *

Issued in Washington, DC, on August 28, 1992.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92–21093 Filed 9–1–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 92–ANM–10]

Proposed Amendment of Control Zone; Butts Army Airfield, Fort Carson, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Fort Carson, Colorado Control Zone at Butts Army Airfield to provide controlled airspace for aircraft executing a new instrument approach procedure. The Control Zone would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before October 16, 1992.

ADDRESSES: Send comments on the proposal to: Manager, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 92–ANM–10, 1601 Lind Avenue SW., Renton, Washington 98055–4056, Telephone: (206) 227–2536.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM–536, Federal Aviation Administration, Docket No. 92–ANM–10, 1601 Lind Avenue SW., Renton, Washington 98055–4056, Telephone: (206) 227–2536.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92–ANM–10." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, ANM–530, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Fort Carson, Colorado Control Zone at Butts Army Airfield. The intent is to provide additional controlled airspace for aircraft executing a new instrument approach procedure. The proposed control zone would be defined by a 4.3 mile radius of Butts Army Airfield, and

within 2.2 miles each side of the 146° bearing from the Iron Horse NDB extending from the 4.3 mile radius to 5 miles southeast of the airfield, excluding that airspace within a 5-mile radius of the Colorado Springs Municipal Airport, Colorado Springs, Colorado. The action would accurately define controlled airspace for pilot reference. The airspace would be depicted on aeronautical charts for pilot reference. Control zones are published in § 71.171 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The control zone listed in this document would be published subsequently in the Handbook.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Incorporation by reference.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., P. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991 is amended as follows:

Section 71.171 Designation

* * * * *

ANM CO CZ Fort Carson, CO

That airspace extending upward from the surface to and including 8,400 feet MSL within a 4.3 mile radius of Butts Army Airfield (lat. 38°41'07"N., long. 104°45'52"W.), and within 2.2 miles each side of the 146° bearing from the Iron Horse NDB (lat. 38°40'42"N. long. 104°45'10"W.) extending from the 4.3-mile radius to 5 miles southeast of the airfield, excluding that airspace within a 5-mile radius of the Colorado Springs Municipal Airport, Colorado (lat. 38°48'43"N., long 104°42'40"W). This control zone is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Seattle, Washington, on August 21, 1992.

Helen M. Parke,

Assistant Manager, Air Traffic Division.

[FR Doc. 92–21119 Filed 9–1–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 92–ANM–9]

Proposed Amendment of Transition Area; Akron, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the 700-foot and 1200-foot transition areas at Akron, Colorado, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Akron-Washington County Airport, Akron, Colorado. The transition areas would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before October 16, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 92–ANM–9, 1601 Lind Avenue SW., Renton, Washington 98055–4056, Telephone: (206) 227–2536.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM–536, Federal Aviation Administration, Docket No. 92–ANM–9, 1601 Lind Avenue SW., Renton, Washington 98055–4056, Telephone: (206) 227–2536.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted to the address listed above. Comments wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92–ANM–9." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, ANM–530, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the 700-foot and 1200 foot transition areas at Akron, Colorado, to provide controlled airspace for aircraft executing a new instrument approach procedure to Akron-Washington County Airport, Akron, Colorado. The proposed 700-foot transition area would be defined by a

6.1-mile radius around the Akron Washington County Airport. The proposed 1200-foot transition area would include the airspace extending upward from 1200 feet above the surface within an area bounded by a point beginning at lat. 40°06'35"N, long. 102°37'17"W; to lat. 39°42'28"N, long. 102°58'13"W; to lat. 40°00'15"N, long. 103°33'30"W; to lat. 40°24'30"N, long.103°13'50"W; thence to point of beginning. This action would accurately define controlled airspace and would be depicted on aeronautical charts for pilot reference. Transition areas are published in § 71.181 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The transition area listed in this document would be published subsequently in the Handbook.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas, Incorporated by reference.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 8565, 3 CFR, 1959–1963 Comp., P. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulation, published April 30, 1991, and effective November 1, 1991 is amended as follows:

Section 71.181 Designation

* * * * *

ANM CO TA Akron, CO

That airspace extending upward from 700 feet above the surface within a 6.1 mile radius of Akron-Washington County Airport (lat. 40°10'32"N, long. 103°13'18"W); that airspace extending upward from 1200 feet above the surface within an area bounded by a point beginning at lat. 40°06'35"N, long. 102°37'17"W; to lat. 39°42'28"N, long. 102°58'13"W; to lat. 40°00'15"N, long. 103°33'30"W; to lat. 40°24'30", long. 103°13'50"W; thence to point of beginning.

* * * * *

Issued in Seattle, Washington, on August 23, 1992.

Helen M. Parke,

Assistant Manager, Air Traffic Division.

[FR Doc. 92–21118 Filed 9–1–92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92-ASO-6]

Proposed Alteration to VOR Federal Airways; TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to reflect the change of the name of the Knoxville, TN, VHF Omnidirectional Range (VOR) within the legal descriptions of airways, jet routes, domestic low altitude reporting points, and high altitude reporting points located in the State of Tennessee. The Knoxville VOR is not located on the Knoxville Municipal Airport and the FAA has determined that the current name could lead pilots to some confusion as to their desired destination. The Knoxville VOR is actually located near the Knoxville Downtown Island Airport, which is a satellite airport. This action proposes, where necessary, to reflect the name change of the Knoxville VOR to "Volunteer."

DATES: Comments must be received on or before October 16, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASO–500, Docket No. 92–ASO–6, Federal Aviation Administration, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92–ASO–6." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons

interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to reflect the change of the name of the Knoxville, TN, VOR to the Volunteer, TN, VOR within the legal descriptions of airways, jet routes, domestic low altitude reporting points, and high altitude reporting points located in the State of Tennessee. The Knoxville, TN, VOR is not located on the Knoxville Municipal Airport and the FAA has determined that the current name could lead pilots to some confusion as to their desired destination. The Knoxville VOR is actually located near the Knoxville Downtown Island Airport, which is a satellite airport. This action proposes to reflect, where necessary, the name change of Knoxville, TN, VOR to "Volunteer." This action would aid pilots in flight planning. Domestic low altitude reporting points, high altitude reporting points, VOR Federal airways, and jet routes are published in §§ 71.123, 71.203, 71.207 and 75.100, respectively, of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The domestic low altitude reporting points, high altitude reporting points, VOR Federal airways, and jet routes listed in this document would be published subsequently in the Handbook.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Domestic high altitude reporting points, Domestic low altitude reporting points, Domestic VOR Federal airways, Incorporation by reference, Jet routes.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.123 Domestic VOR Federal Airways

* * * * *

V-16 [Revised]

From Los Angeles, CA; Paradise, CA; Palm Springs, CA; Blythe, CA; Buckeye, AZ; Phoenix, AZ; INT Phoenix 155° and Stanfield, AZ, 105° radials; Tucson, AZ; Cochise, AZ; Columbus, NM; EL Paso, TX; Salt Flat, TX; Wink, TX; INT Wink 086° and Big Spring, TX, 260° radials; Big Spring; Abilene, TX; Millsap, TX; Acton, TX; Scurry, TX; Quitman, TX; Texarkana, AR; Pine Bluff, AR; Holly Springs, MS; Jacks Creek, TN; Graham, TN; Nashville, TN; INT Nashville 102° and Hinch Mountain, TN, 285° radials; Hinch Mountain; Volunteer, TN; Holston Mountain, TN; Pulaski, VA; Roanoke, VA; Lynchburg, VA; Flat Rock, VA; Richmond, VA; INT Richmond 039° and Patuxent, MD, 228° radials; Patuxent; Smyrna, DE; Cedar Lake, NJ; Coyle, NJ; INT Coyle 036° and Kennedy, NY, 209° radials; Kennedy; Deer Park, NY; Calverton, NY; Norwich, CT; Boston, MA. The airspace within Mexico and the airspace below 2,000 feet MSL outside the United States is excluded. The airspace within Restricted Areas R-5002A, R-5002C and R-5002D is excluded during their times of use. The airspace within Restricted Areas R-4005 and R-4006 is excluded.

* * * * *

V-97 [Revised]

From Miami, FL, via La Belle, FL; St. Petersburg, FL; Tallahassee, FL; Pecan, GA; Atlanta, GA; INT Atlanta 001° and Volunteer, TN, 197° radials; Volunteer; London, KY; Lexington, KY; Cincinnati, OH; Shelbyville, IN, INT Shelbyville 313° and Boiler, IN, 136° radials; Boiler; Chicago Heights, IL; to INT Chicago Heights 358° and Chicago O'Hare, IL, 127° radials. From INT Northbrook, IL, 290° and Janesville, WI, 112° radials; Janesville; Lone Rock, WI; Nodine, MN; to Gopher, MN. The airspace below 2,000 feet MSL outside the United States is excluded.

* * * * *

V-115 [Revised]

From Crestview, FL; INT Crestview 001° and Montgomery, AL, 204° radials; Montgomery; INT Montgomery 323° and Vulcan, AL, 177° radials; Vulcan; Chattanooga, TN; Volunteer, TN; Hazard, KY; Charleston, WV; Parkersburg, WV; Newcomerstown, OH; INT Newcomerstown 038° and Franklin, PA, 239° radials; Franklin; Tidioute, PA; Jamestown, NY; Buffalo, NY.

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V-136 [Revised]

From Nashville, TN; INT Nashville 085° and Hinch Mountain, TN, 306° radials; Hinch Mountain, INT Hinch Mountain 100° and Volunteer, TN, 243° radials; Volunteer; Snowbird, TN; Holston Mountain, TN; Pulaski, VA; INT Pulaski 094° and South Boston, VA, 295° radials; South Boston; Raleigh-Durham, NC; Fayetteville, NC; to Grand Strand, SC. The airspace at and above 7,000 feet MSL from 17 miles south to 38 miles south of Fayetteville is excluded during the time that the Gamecock A MOA is activated by NOTAM.

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V-185 [Revised]

From Savannah, GA; Colliers, SC; Greenwood, SC; Sugarloaf Mountain, NC; Snowbird, TN; INT Snowbird 301° and Volunteer, TN, 069° radials; to Volunteer. The airspace within R-6004 is excluded.

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V-267 [Revised]

From Biscayne Bay, FL; INT Biscayne Bay 340° amd Pahokee, FL, 150° radials; Pahokee; Orlando, FL; Craig, FL; Dublin, GA; Athens, GA; INT Athens 340° and Harris, GA, 148° radials; Harris; Volunteer, TN.

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V-466 [Revised]

From Volunteer, TN, via INT Volunteer 050° and Glade Spring, VA, 246° radials; Glade Spring; to Pulaski, VA.

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V-517 [Revised]

From Volunteer, TN; INT Volunteer 019° and London, KY, 141° radials; London; INT London 004° and Falmouth, KY, 164° radials; Falmouth; Cincinnati, OH; Cincinnati 336° and Richmond, IN, 190° radials; Richmond; to Dayton, OH.

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V-519 [Revised]

From Volunteer, TN; via INT Volunteer 050° and Glade Spring, VA, 246° radials; Glade Spring; Bluefield, WV; to Beckley, WV.

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Section 71.203 Domestic Low Altitude Reporting Points

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Knoxville, TN [Remove]

Volunteer, TN [New]

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Section 71.207 Domestic High Altitude Reporting Points

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Knoxville, TN [Remove]

Volunteer, TN [New]

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Section 71.607 Jet Routes

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J-22 [Revised]

From Nuevo Laredo, Mexico, via Laredo, TX; Corpus Christi, TX; Palacios, TX; Lake Charles, LA; McComb, MS; Meridian, MS; Vulcan, AL; Volunteer, TN; Pulaski, VA; to Montebello, VA. The airspace within Mexico is excluded.

* * * * *

J-43 [Revised]

From Miami, FL, via LaBelle, FL; St. Petersburg, FL; Tallahassee, FL; Atlanta, GA; Volunteer, TN; Falmouth, KY; Rosewood, OH; Carleton, MI; to Sault Ste Marie, MI.

* * * * *

J-46 [Revised]

From Tulsa, OK, via Walnut Ridge, AR; Nashville, TN; to Volunteer, TN.

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J-91 [Revised]

From INT Orlando, FL, 252° and Cross City, FL, 136° radials; Cross City; INT Cross City 338° and Atlanta, GA, 169° radials; Atlanta; Volunteer, TN; Henderson, WV; to Bellaire, OH.

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J-99 [Revised]

From Colliers, SC, via Volunteer, TN; to Louisville, KY.

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Issued in Washington, DC, on August 25, 1992.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92-21099 Filed 9-1-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 92-ANM-17]

Proposed Amendment, Livingston Transition Area; Livingston, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Livingston, Montana, 700-foot and 1,200-foot Transition Areas. Additional controlled airspace is necessary for aircraft executing a revised instrument procedure at Mission Field Airport, Livingston, Montana. The areas would be depicted on aeronautical charts to provide reference for pilots.

DATES: Comments must be received on or before November 1, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANM-530, Federal Aviation Administration, Docket No. 92-ANM-17, 1601 Lind Avenue SW., Renton, Washington 98055-4056, telephone: (206) 227-2530.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: James Riley, ANM-537, Federal Aviation Administration, Docket No. 92-ANM-17, 1601 Lind Avenue S.W., Renton, Washington 98055-4056, telephone: (206) 227-2537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92-ANM-17." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, ANM-530, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the 700-foot and 1200-foot transition areas at Livingston, Montana, to provide controlled airspace for aircraft executing a revised instrument approach procedure to Mission Field Airport, Livingston, Montana. The proposal would provide additional controlled airspace necessary to encompass the revised instrument approach procedure at Mission Field Airport. The area would be depicted on aeronautical charts for pilot reference. Transition areas are published in § 71.181 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The transition areas listed in this document would be published subsequently in the Handbook.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Transition areas.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration

proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., P. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991 is amended as follows:

Section 71.181 Designation

* * * * *

ANM MT TA Livingston, MT [Revised]

That airspace extending upward from 700 feet above the surface within 8 nautical miles west and 4 nautical miles east of the Livingston VORTAC 340 degree radial, extending from the VORTAC to 20 nautical miles north of the VORTAC and within 2.2 nautical miles each side of the Livingston 085 degree radial, extending from a 4.4 nautical mile radius circle centered on Mission Field Airport, Livingston, Montana, (Lat. 45°42'09" N, long. 110°26'47" W) to 7.9 nautical miles east of the VORTAC; that airspace extending upward from 1,200 feet above the surface within 5.3 nautical miles south and 8.3 nautical miles north of the Livingston VORTAC 085 and 265 degree radials, extending from 6.1 nautical miles west to 18.3 nautical miles east of the VORTAC.

* * * * *

Issued in Seattle, Washington, on August 21, 1992.

Helen M. Parke,

Assistant Manager, Air Traffic Division.

[FR Doc. 92–21122 Filed 9–1–92; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA14–5–5493; FRL–4201–4]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) adopted by the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) on April 11, 1991 and September 19, 1991. The California Air Resources Board submitted these revisions to EPA on May 30, 1991 and January 28, 1992. The revisions concern the adoption of SJVUAPCD's Rule 461.2, Vegetable Oil Processing Operations, and SJVUAPCD's Rule 460.4, Can and Coil Coating Operations. Both of these rules control the emissions of volatile organic compounds (VOCs) from their respective operations. EPA has evaluated each of these rules and is proposing to approve them under 110(k)(3) as meeting the requirements of Section 110(a) and part D of the Clean Air Act, as amended in 1990 (CAA or the Act).

DATES: Comments must be received on or before October 2, 1992.

ADDRESSES: Comments may be mailed to: Esther Hill, Northern California, Nevada and Hawaii Rulemaking Section (A–5–4), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1219 "K" Street, Sacramento, CA 95814.

San Joaquin Valley Unified Air Pollution Control District, 1745 West Shaw, suite 104, Fresno, CA 93711.

FOR FURTHER INFORMATION CONTACT: Wendy Colombo, Northern California, Nevada and Hawaii Rulemaking Section (A–5–4), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1190, FAX: (415) 744–1076.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 CAA), that included the following eight air pollution control districts (APCDs): Fresno County APCD, Kern County, APCD,[1] Kings County APCD, Madera County APCD, Merced County APCD, San Joaquin County APCD, Stanislaus County APCD, and Tulare County APCD. 43 FR 8964, 40 CFR 81.305. Because these areas were unable to meet the statutory attainment date of December 31, 1982, California requested, and EPA approved, an extension of the attainment date to December 31, 1987.[2] 1977 CAA section 172(a)(2). On May 26, 1988, EPA notified the Governor of California that the above districts' portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

On March 20, 1991, the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) was formed. The SJVUAPCD has authority over the San Joaquin Valley Air Basin which includes all of the above eight counties except for the Southeast Desert Air Basin portion of Kern County. Thus, the Kern County Air Pollution Control District (KCAPCD) still exists, but only has authority over the Southeast Desert Air Basin portion of Kern County.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[3] EPA's SIP-Call used that

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[1] At that time, Kern County included portions of two air basins: the San Joaquin Valley Air Basin and the Southeast Desert Air Basin. The San Joaquin Valley Air Basin portion of Kern County was designated as nonattainment, and the Southeast Desert Air Basin portion of Kern County was designated as unclassified. See 40 CFR 81.305 (1991).

[2] This extension was not requested for Kings, Kern, Madera, Merced, and Tulare Counties. Thus, these County's attainment dates remained December 31, 1982.

[3] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

guidance to indicate the necessary corrections for specific nonattainment areas. APCDs found in the San Joaquin Valley Air Basin (now collectively known as the SJVUAPCD) were subject to the RACT fix-up requirement and the May 15, 1991 deadline.[4] KCAPCD was subject to EPA's SIP-Call, but was not subject to the RACT fix-up requirement and the May 15, 1991 deadline.[5]

The State of California submitted many revised RACT rules for incorporation into its SIP on May 30, 1991 and January 28, 1992, including the rules being acted on in this notice. This notice addresses EPA's proposed action for SJVUAPCD's Rule 461.2, Vegetable Oil Processing Operations, and SJVUAPCD's Rule 460.4, Can and Coil Coating Operations. These submitted rules were found to be complete on July 10, 1991 and April 3, 1992 pursuant to EPA's completeness criteria set forth in 40 CFR Part 51 Appendix V [6] and are being proposed for approval into the SIP.

Both rules control the emission of VOCs, which contribute to the production of ground level ozone and smog. The rules were adopted as part of the district's effort to achieve the National Ambient Air Quality Standards (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for these two rules.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA section and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 3. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of CTG documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTG applicable to SJVUAPCD's Rule 460.4 is entitled, "Surface Coating Volume II—Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks" (EPA document # EPA-450/2-77-008). For some emission categories, such as vegetable oil processing, EPA did not publish a CTG. In such cases, the District will make a determination of what controls are required to satisfy the RACT requirement, by reviewing the operations of facilities within the affected source category. Additionally, for both CTG and non-CTG rules, the District may rely on EPA policy documents, such as the Blue Book, to ensure that the adopted VOC rules are fully enforceable and strengthen or maintain the SIP.

SJVUAPCD Rule 461.2 is a new rule (for all of the eight districts that were combined to form SJVUAPCD) adopted to control VOC emissions from vegetable oil manufacturing operations and, as such, it strengthens the SIP. The rule accomplishes this by specifying equipment requirements for the extractor or desolventizer-toaster (DT) and by regulating leaks from equipment in organic service.

SJVUAPCD's Rule 460.4, Can and Coil Coating Operations, is a revision of the following four SIP rules regulating VOC emissions from these source categories: Kings County APCD's Rule 410.3; Merced County APCD's Rule 409.6; San Joaquin County APCD's Rule 409.6; and Stanislaus County APCD's Rule 409.6. The revisions include the specification of test methods, the addition of recordkeeping requirements, and the requirement for operation and maintenance plans. EPA Region IX's technical support document provides a more detailed discussion of the revisions.

EPA has evaluated the two submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, SJVUAPCD's Rule 461.2 and Rule 460.4 are being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. Section 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

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[4] The San Joaquin Valley Air Basin retained its designation of nonattainment and was classified as serious by operation of law pursuant to section 107(d) and section 181(a) upon the date of enactment of the Clean Air Act Amendments of 1990. See 56 FR 56694 (November 6, 1991).

[5] KCAPCD was not subject to the RACT fix-up requirement and the May 15, 1991 deadline because the Southeast Desert Air Basin portion of Kern County was not a pre-enactment nonattainment area, and thus, was not automatically designated nonattainment on the date of enactment of the Clean Air Act Amendments of 1990. (See section 107(d) and section 182(a)(2)(A) of the Clean Air Act Amendments of 1990.) However, the KCAPCD is still subject to the requirements of EPA's SIP-Call because the SIP-Call included all of Kern County. The substantive requirements of the SIP-Call are the same as those of the statutory RACT fix-up requirement.

[6] EPA has since adopted completeness criteria pursuant to section 110(k)(1)(A) of the CAA. See 56 FR 42216 (August 26, 1991).

List of Subjects in 49 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401-7671q.

Dated: August 25, 1992.

Nora L. McGee,

Acting Regional Administrator.

[FR Doc. 92-21144 Filed 9-1-92; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[CA-11-2-5406; FRL-4201-3]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing a limited disapproval of a new rule submitted to revise the California State Implementation Plan (SIP); the rule was adopted by the Bay Area Air Quality Management District (Bay Area AQMD) on September 20, 1989. The California Air Resources Board submitted this new rule to EPA on December 31, 1990. The new rule concerns Bay Area AQMD Regulation 8, Organic Compounds, Rule 42, Large Commercial Bread Bakeries Rule (8-42), which controls the emission of volatile organic compounds (VOCs) from large commercial bread bakeries. EPA has evaluated Rule 8-42 and is proposing a limited approval under sections 110(k)(3) and 301(a) of the Clean Air Act, as amended in 1990 (CAA or the Act) because this new rule will strengthen the SIP. At the same time, EPA is proposing a limited disapproval under section 110(k)(3) of the CAA because the rule does not meet the part D, section 182(a)(2)(A) requirement of the CAA.

DATES: Comments must be received on or before October 2, 1992.

ADDRESSES: Comments may be mailed to: Esther J. Hill, Northern California, Nevada and Hawaii, Rulemaking Section (A-5-4), Air and Toxics Division, Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

A copy of the rule and EPA's evaluation report is available for public inspection at EPA's Region IX office during normal business hours. A copy of the submitted rule is also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1219 "K" Street, Sacramento, CA 95814.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

FOR FURTHER INFORMATION CONTACT: Christine D. Vineyard, Southern California and Arizona, Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1195, FAX: (415) 744-1076.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the 1977 Clean Air Act (1977 CAA or the 1977 Act) that included the San Francisco-Bay Area. 43 FR 8964, 40 CFR 81.305. Because the San Francisco-Bay Area was unable to reach attainment by the statutory attainment date of December 31, 1982, California requested, and EPA approved, an extension of the attainment date to December 31, 1987. 40 CFR 52.238. The San Francisco-Bay Area did not attain the ozone standard by the approved attainment date. On May 26, 1988, EPA notified the Governor of California that the Bay Area AQMD's portion of the California State Implementation Plan (SIP) was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, amendments to the 1977 CAA were enacted. Public Law 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amended guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The San Francisco-Bay Area is classified as moderate[2], therefore, this area is subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules to EPA for incorporation into its SIP on December 31, 1990, including the rule being acted on in this notice. This notice addresses EPA's proposed action for Rule 8-42, Large Commercial Bread Bakeries. This submitted rule was found to be complete on February 28, 1991 pursuant to EPA's completeness criteria adopted on February 16, 1990 (55 FR 5830) and set forth in 40 CFR Part 51, Appendix V [3] and is being proposed for limited approval and limited disapproval.

Rule 8-42 controls the emission of volatile organic compounds (VOCs) from large commercial bread bakeries. VOCs contribute to the production of ground level ozone and smog. Rule 8-42 is a new rule which has been adopted to meet EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for Bay Area AQMD's Rule 8-42.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance document listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the

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[1] Among other things, the pre-amended guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (The Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] Upon the date of enactment of the amendments, the designation of San Francisco-Bay Area as nonattainment continued under section 107(d) and the Area was classified by operation of law, pursuant to section 181(a), as moderate. See 56 FR 56694 (November 6, 1991).

[3] EPA has since adopted completeness criteria pursuant to section 110(k)(1)(A) of the amended Act. See 56 FR 42216 (August 26, 1991).

presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents as well as other Agency policy, for requiring states to "fix-up" their RACT rules. See section 182 (a)(2)(A). Since no CTG that was applicable to this manufacturing operation existed, the District made a determination of what controls are required to satisfy the RACT requirement, by reviewing the operations of facilities within the affected source category. In that review, the technological and economic feasibility of the proposed controls were considered. Additionally, the District may rely on EPA policy documents, such as the Blue Book, to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

Bay Area AQMD's Rule 8–42, Large Commercial Bread Bakeries, is a new rule which was adopted to control emissions of VOCs from large commercial bread bakeries. EPA has evaluated this submitted Rule 8–42 for consistency with the CAA, EPA regulations, and EPA Policy and has found that the submitted rule will address and correct the deficiencies previously identified by EPA. This new rule will strengthen the SIP.

Although the approval of Bay Area AQMD's Rule 8–42 will strengthen the SIP, this rule still contains two deficiencies which were required to be corrected pursuant to the section 182(a)(2)(A) requirement of Part D of the CAA. The rule does not require the source to maintain records to demonstrate that it is a small bakery, nor that the source contains a low emitting oven or an existing oven and is therefore exempt from the rule. The source must be required to keep the appropriate records to document exemptions and to allow compliance to be determined. And the rule referenced test method ST–32 for determination of emissions (Ethanol) which has not been approved by EPA. Because of these deficiencies, the rule is not approvable pursuant to section 182(a)(2)(A) of the CAA because it is not consistent with the interpretation of section 172 of the 1977 CAA as found in the Blue Book and may lead to rule enforceability problems.

Because of the above deficiencies, EPA cannot grant full approval of this rule under section 110(k)(3) and Part D. Also, because the submitted rule is not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rule under section 110)k)(3). However, EPA may grant a limited approval of the submitted rule under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited in the sense that while the rule strengthens the SIP, it does not meet the section 182(a)(2)(A) requirement of Part D because of the noted deficiencies. Thus, in order to strengthen the SIP, EPA is proposing a limited approval of Bay Area AQMD's submitted Rule 8–42 under sections 110(k)(3) and 301(a) of the CAA.

At the same time, EPA is also proposing a limited disapproval of this rule because it contains deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAA, and, as such, the rule does not fully meet the requirements of Part D of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiencies have been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: Restrictions on highway funding and modified offsets. The 18 month period referred to in section 179(a) will begin at the time EPA publishes final notice of this disapproval. Moreover, final disapproval will trigger the federal implementation plan (FIP) requirement under section 110(c).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. Section 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Limited approvals under sections 110 and 301, and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410 (a)(2).

EPA's limited disapproval of the State request under sections 110 and 301, and subchapter I, Part D of the CAA does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose any new federal requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it impose any new federal requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbon, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 25, 1992.

Nora L. McGee,

Acting Regional Administrator.

[FR Doc. 92–21145 Filed 9–1–92; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 180

[PP 2E4074/P548; FRL-4081-9]

RIN 2070-AC18

Lagenidium Giganteum; Proposed Exemptions From Requirement of Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that exemptions from the requirement of a tolerance be established for residues of *Lagenidium giganteum* (a fungal organism) on the raw agricultural commodities grass forage and hay, rice grain and straw, soybeans, soybean forage and hay, and wild rice when used as a biological pesticide in accordance with good agricultural practices to control mosquito larvae. This regulation was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATES: Comments, identified by the document control number [PP 2E4074/P548], must be received on or before October 2, 1992.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (H7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 305-5310.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 2E4074 to EPA on behalf of the Agricultural Experiment Station of California and the Department of Health Services of the State of California. This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), establish exemptions from the requirement of a tolerance for residues of *Lagenidium giganteum* in or on the raw agricultural commodities pasture grass, rice, soybeans, and wild rice.

The Lagenidialies, or water molds, consist of a small group of aquatic fungi that are parasitic on algae, other water molds, and small aquatic animal life, including certain species of the *Anopheles* and *Culex* mosquito larvae. The fungus develops within the body of the infected larvae and asexually produces motile spores that infect other larvae. When conditions are dry, the fungus reproduces sexually to form dormant spores. Available information indicate that the dormant spores germinate when exposed to water to form motile spores that infect newly hatched mosquito larvae.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed exemptions from the requirement of a tolerance include acute oral toxicity/pathogenicity, acute intravenous toxicity, and acute intraperitoneal infection studies. The studies, which were performed using rats, indicate that the biological pesticide is not toxic to, infective in, or pathogenic to rats by oral, intravenous, or intraperitoneal routes of exposure. There are no reports in the literature of any Lagenidialies infecting vertebrate animals, including man.

Reference dose considerations are not relevant to this petition due to the lack of demonstrated toxicity, host specificity, and natural occurrence of *Lagenidium giganteum*. An analytical method for enforcement purposes is not needed since no enforcement actions are expected.

Although products containing *Lagenidium giganteum* are currently registered by EPA for control of certain species of *Anopheles* and *Culex* mosquito larvae on aquatic noncrop sites, the proposed exemptions from the requirement of a tolerance are the first tolerance exemptions for this pesticide. *Lagenidium giganteum* is considered useful for the purpose for which the exemptions are sought.

Based on the above information considered by the Agency the tolerance exemptions established by amending 40 CFR 180.1113 would protect the public health. Therefore, it is proposed that the tolerance exemptions be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 2E4074/P548]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 13, 1992.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In subpart D, by adding new § 180.1113, to read as follows:

§ 180.1113 Lagenidium giganteum; exemption from the requirement of a tolerance.

Lagenidium giganteum (a fungal organism) is exempt from the requirement of a tolerance in or on the raw agricultural commodities grasses, forage and hay; rice, grain and straw; soybeans; soybean, forage and hay; and wild rice.

[FR Doc. 92-21026 Filed 9-1-92; 8:45 am]

BILLING CODE 6560-50-F

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40 CFR Part 180

[PP 0E3836/P549; FRL-4082-1]

RIN 2070-AC18

Pesticide Tolerances for O-Ethyl S-Phenyl Ethylphosphonodithioate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that tolerances be established for residues of the insecticide *O*-ethyl *S*-phenyl ethylphosphonodithioate, including its oxygen analog (*O*-ethyl *S*-phenyl ethylphosphonothioate), in or on the raw agricultural commodities bananas and plantains. The proposed regulation to establish maximum permissible levels for residues of the insecticide and its oxygen analog in or on the commodities was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATES: Comments, identified by the document control number [PP 0E3836/P549], must be received on or before October 2, 1992.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (H7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 718C, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703-305-5310.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition (PP) 0E3836 to EPA on behalf of the Agricultural Experiment Station of Puerto Rico. This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), propose the establishment of tolerances for residues of the insecticide *O*-ethyl *S*-phenyl ethylphosphonodithioate, including its oxygen analog (*O*-ethyl *S*-phenyl ethylphosphonothioate), in or on the raw agricultural commodities bananas and plantains at 0.1 part per million (ppm).

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerances include:

1. A 2-year feeding/carcinogenicity study in rats fed diets containing 4, 15, and 60 ppm (equivalent to 0.2, 0.75, and 3 milligrams(mg)/kilograms (kg) of body weight (bw)/day) with a systemic no-observed-effect-level (NOEL) of 15 ppm (0.75 mg/kg/day) based on cholinesterase (ChE) inhibition (brain, serum and erythrocyte) and a decrease in body weights and body weight gain. There were no carcinogenic effects observed under the conditions of the study.

2. A carcinogenicity study in mice fed diets containing 0, 5, 25, and 100 ppm (equivalent to 0, 0.75, 3.75 and 15 mg/kg/day) with a systemic NOEL of 5 ppm based on ChE inhibition, hyperplasia and hypertrophy of the duodenum, and reductions in body weights and gains. No carcinogenic effects were observed under the conditions of the study.

3. A 2-year feeding study in dogs (supplementary data) fed diets containing 8, 60, and 240 ppm (equivalent to 0.2, 1.5, and 6 mg/kg/day) with a NOEL for systemic effects and ChE inhibition of 8 ppm. Cholinergic symptoms and systemic effects (increased relative liver weight and decreased body weight) were observed in dogs fed diets containing 60 ppm.

4. A three-generation reproduction study in rats with reproductive and fetotoxic NOELs greater than 31.6 ppm (1.58 mg/kg/day). Levels tested were 10 and 31.6 ppm (0.5 and 1.58 mg/kg/day).

5. A developmental toxicity study in mice (Charles River strain) given gavage doses of 0, 2, 4, 6, and 8 mg/kg/day with a fetotoxic NOEL of 4 mg/kg/day based on sternebral malalignment and slight dilation of the fourth cerebral ventricles, and a maternal NOEL of 6 mg/kg/day based on symptoms of neurotoxicity. There was no evidence of developmental toxicity observed under the conditions of the study.

6. Mutagenicity studies including gene mutation assays in human cells and microorganisms, negative with and without metabolic activation; cytogenetic (*in vitro* in human lymphocytes), negative with and without metabolic activation; micronucleus assay (mice), negative; and an Ames assay, negative with and without activation.

7. A neurotoxicity study in chickens with a NOEL of 6.32 mg/kg. Effects observed at 20 mg/kg include slow locomotion, curling under of the toes, squatting, loss of equilibrium, and possible demyelination of peripheral nerves in one chicken.

8. A metabolism study in male rats given single oral doses of 2.0, 4.0, or 8.0 mg/kg/day which showed elimination of greater than 94 percent in urine and feces at 48 hours.

A provisional reference dose (RfD) is established at 0.002 mg/kg bw/day based upon an uncertainty factor of 100 and a NOEL of 0.2 mg/kg bw/day from the 2-year dog feeding study (supplementary data). The theoretical maximum residue contribution (TMRC) for the overall U.S. population from currently established tolerances is 0.000623 mg/kg bw/day, which represents 31.15 percent of the RfD. The proposed tolerances for bananas and plantains would increase the TMRC by 0.000023 mg/kg/day, an increase of 1.15 percent of the RfD.

The nature of the residue is adequately understood and an adequate analytical method, gas chromatography using a rubidium sulfate flame detector, is available for enforcement purposes. An analytical method for enforcing this tolerance has been published in the Pesticide Analytical Manual (PAM), Vol.

II. No secondary residues in meat, milk, poultry, or eggs are expected since bananas and plantains are not considered livestock feed commodities. There are currently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency the tolerances established by amending 40 CFR 180.221 would protect the public health. Therefore, it is proposed that the tolerances be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 0E3836/P549]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 13, 1992.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By revising § 180.221 to read as follows:

§ 180.221 O-Ethyl S-phenyl ethylphosphonodithioate; tolerances for residues.

Tolerances are established for residues of the insecticide *O*-ethyl *S*-phenyl ethylphosphonodithioate, including its oxygen analog (*O*-ethyl *S*-phenyl ethylphosphonothioate), in or on the following raw agricultural commodities:

Commodity	Parts per million
Asparagus	0.5
Bananas	0.1
Beans, forage	0.1
Beans, vine hay	0.1
Beets, sugar, tops	0.1
Corn, field, fodder	0.1
Corn, field, forage	0.1
Corn, fresh (including sweet) (K + CWHR)	0.1
Corn, grain (including pop)	0.1
Corn, pop, fodder	0.1
Corn, pop, forage	0.1
Corn, sweet, forage	0.1
Corn, sweet, fodder	0.1
Peanuts	0.1
Peanuts, forage	0.1
Peanuts, hay	0.1
Peanuts, hulls	0.1
Peas, forage	0.1
Peas, vine hay	0.1
Peppermint	0.1
Peppermint, hay	0.1
Plantains	0.1
Sorghum, fodder	0.1
Sorghum, forage	0.1
Sorghum, grain	0.1
Soybeans, forage	0.1
Soybeans, hay	0.1
Spearmint	0.1
Spearmint, hay	0.1
Strawberries	0.1
Sugarcane	0.1
Vegetables, fruiting	0.1
Vegetables, leafy	0.1
Vegetables, root crop	0.1
Vegetables, seed and pod	0.1

[FR Doc. 92-21027 Filed 9-1-92; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[OPP-300262; FRL-4062-2]

RIN 2070-AC18

Definitions and Interpretations; Rapeseed

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that 40 CFR 180.1(h) be amended to add EPA's interpretations for the application of tolerances and exemptions from the requirement of a tolerance established for pesticide chemicals in or on the raw agricultural commodity rapeseed. The proposed amendment to 40 CFR 180.1(h) is based, in part, on recommendations of the Interregional Research Project No. 4 (IR-4).

DATES: Comments, identified by the document control number [OPP-300262], must be received on or before October 2, 1992.

ADDRESSES: By mail, submit written comments to: Public Information Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (H7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716C, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5310.

SUPPLEMENTARY INFORMATION: Section 180.1(h) (40 CFR 180.1(h)) provides a listing of general commodity terms and EPA's interpretation of the application of those terms as they apply to tolerances and exemptions from the requirement of a tolerance for pesticide chemicals under section 408 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a. General commodities are listed in column A of 40 CFR 180.1(h), and the corresponding specific commodities for which tolerances and exemptions from the requirement of a tolerance established for the general commodity apply are listed in column B.

The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has requested that 40 CFR 180.1(h) be amended to add the commodity term "rapeseed" to the general category of commodities in column A and add the corresponding specific commodities "*Brassica napus*, *B. campestris*, and *Crambe abyssinica* (oil-seeding producing varieties only which include canola and crambe)" to column B.

EPA has completed an evaluation of the proposed amendment and concludes that tolerances established for the raw agricultural commodity rapeseed are adequate to cover pesticide residues in or on canola and crambe. Canola, crambe, and rape are closely related and have similar growth habits, cultural practices, and pest problems.

The name "canola" has been given to a subgroup of rapeseed cultivars developed and registered in Canada in 1976 as *CAN*adian *O*il *L*ow *A*cid by the Western Canadian Oilseed Crusher's Association. Canola has been genetically modified to produce low erucic acid (2 percent or less) and glucosinolates (under 30 micromoles per gram of defatted meal). Canola has become the standard term for this group of rapeseed cultivars and is recognized by the Food and Drug Administration (21 CFR 184.1555(c)) as the alternate or interchangeable name of low-erucic acid rapeseed oil obtained from certain varieties of *Brassica napus* and *Brassica campestris*.

Crambe (*Crambe abyssinica*) is closely related to rape; both crops are members of the *Cruciferae* family, are cool season annual crops, and are processed as a source of industrial-quality high-erucic acid oil. Cultural practices for crambe and rape are similar. Crambe generally has fewer pest problems than rape and, therefore, should require fewer pesticide treatments.

The raw agricultural commodity for canola, crambe, and rapeseed is the seed. Seeds from all three commodities are processed to produce oil and meal. Canola oil is edible, but other types of rapeseed oil and crambe oil are not and are marketed as high-quality industrial lubricants. Canola, crambe, and rapeseed meal are used as animal feed items. The feeding value of rapeseed and crambe meals, however, is limited by sulfur compounds called glucosinolates, which are unpalatable and goitrogenic. In addition, crambe meal is not palatable to single-stomach animals (nonruminant animals such as poultry and swine).

To obtain a tolerance for rapeseed, residue data will generally be required for the meal and the oil (crude and refined), in addition to geographically representative residue data for the seed (the raw agricultural commodity). Since canola oil is the only edible oil produced from these raw agricultural commodities, most field residue studies and processing studies must be conducted using canola.

Based on the above information, the Agency concludes that it is appropriate to establish the general commodity rapeseed with the corresponding specific commodities *Brassica napus*, *B. campestris*, and *Crambe abyssinica* (oil-seed producing varieties only which include canola and crambe) in 40 CFR 180.1(h).

Therefore, it is proposed that the changes to 40 CFR 180.1(h) be made as set forth below.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300262]. All written comments filed in response to this proposal will be available in the Public Information Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

Although this regulation does not establish or raise a tolerance level or establish an exemption from the requirement of a tolerance, the impact of the regulation would be the same as establishing new tolerances or exemptions from the requirement of a tolerance. Therefore, the Administrator concludes that this rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 13, 1992.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1(h) is amended by adding and alphabetically inserting the general commodity in column "A" and the corresponding specific commodities in column "B" to read as follows:

§ 180.1 Definitions and interpretations.

* * * * *

A	B
* * * * * * *	
Rapeseed	*Brassica napus*; *B. campestris*, and *Crambe abyssinica* (oil-seed-producing varieties only which include canola and crambe).
* * * * * * *	

* * * * *

[FR Doc. 92-21028 Filed 9-1-92; 8:45 am]
BILLING CODE 6560-50-F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 92-46; Notice 1]

RIN 2127-AE57

Federal Motor Vehicle Safety Standards Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes that the thickness of the bulb ring on the Type HB2 standardized replaceable light source for headlamps be reduced from a minimum of .5 to .45 mm, in order to harmonize with corresponding European requirements. This action implements the grant of a petition for rulemaking.

DATES: The comment closing date for the proposal is October 19, 1992. The proposed effective date for the final rule is 30 days after its publication in the **Federal Register**.

ADDRESSES: Comments should refer to the docket number and the notice number, and be submitted to: Docket Section, room 5109, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590 (Docket hours are from 9:30 a.m. to 4 p.m.).

FOR FURTHER INFORMATION CONTACT: Jere Medlin, Office of Rulemaking (202-366-5276).

SUPPLEMENTARY INFORMATION: T. A. Pickett, Technical Advisor SC34B—U.S. National Committee of the International Electrotechnical Committee, has petitioned for rulemaking to amend Standard No. 108 to harmonize a dimension of the Type HB2 replaceable light source for headlamps to accord with a recent change to its European counterpart, the H4. The agency has granted the petition.

Figures 23-4 and 23-5 of Standard No. 108 specify dimensions for Type HB2. The Table for Dimensional Requirements specifies a minimum value of .5 mm for Dimension S, the thickness of the bulb ring. According to the petitioner, "this change * * * was approved via voting on document 34B (Central Office) 649 * * * issued by the International Electrotechnical Commission (IEC) as a Draft International Standard [and] will be published in the standard IEC 61." The minimum thickness would be reduced to .45 mm. The purpose of the change "is to permit utilization of commercially available sheet metal stock."

In the agency's opinion, this change will not affect bulb or headlamp performance. The performance of the bulb is related to the dimensions measured from the reference axis which is the front surface of the bulb ring. The thickness of the metal is not relevant in locating the reference axis of the bulb. Bulbs are secured to the headlamp with snap rings, or threaded attachment rings. The details of attachment connectors are not specified either in Standard No. 108, or in the European standards. A change of this nature would further implement the Administration's goal of international harmonization of safety standards.

This proposed rule would not have any retroactive effect. Under section 103(d) of The National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state many not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Effective Date

Because the amendment would relieve a restriction, and impose no additional burden on any party, it is hereby found that good cause would be shown for an effective date earlier than 180 days after issuance of the final rule, and the final rule would be effective 30 days after its publication in the **Federal Register**.

Rulemaking Analyses

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has considered the impacts of this rulemaking action and has determined that it is neither major within the meaning of Executive Order 12291 "Federal Regulation", nor significant under Department of Transportation regulatory policies and procedures. It does not involve a matter of substantial public interest. The rulemaking would not have an effect upon the economy in excess of $100 million a year. The impacts of the slight dimensional change proposed are so minimal that preparation of a full evaluation is not required.

Regulatory Flexibility Act

The agency has also considered the effects of this rulemaking action in relation to the Regulatory Flexibility Act. I certify that this rulemaking action would not have a significant economic effect upon a substantial number of small entities. Motor vehicle headlamp and light source manufacturers are generally not small businesses within the meaning of the Regulatory Flexibility Act. Further, small organizations and governmental jurisdictions would not be significantly affected as the price of new motor vehicles should not be impacted. Accordingly, no Regulatory Flexibility Analysis has been prepared.

Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 on "Federalism." It has been determined that the rulemaking action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for purposes of the National Environmental Policy Act. The rulemaking action would not have a significant effect upon the environment. There is no environmental impact associated with reducing a minimum dimension. The rulemaking action would not have an effect upon fuel consumption.

Request for Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A

request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, it is proposed that 49 CFR part 571 be amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.108 [Amended]

2. Figures 23–4 and 23–5 of § 571.108 would be revised as follows:

BILLING CODE 4910-59-M

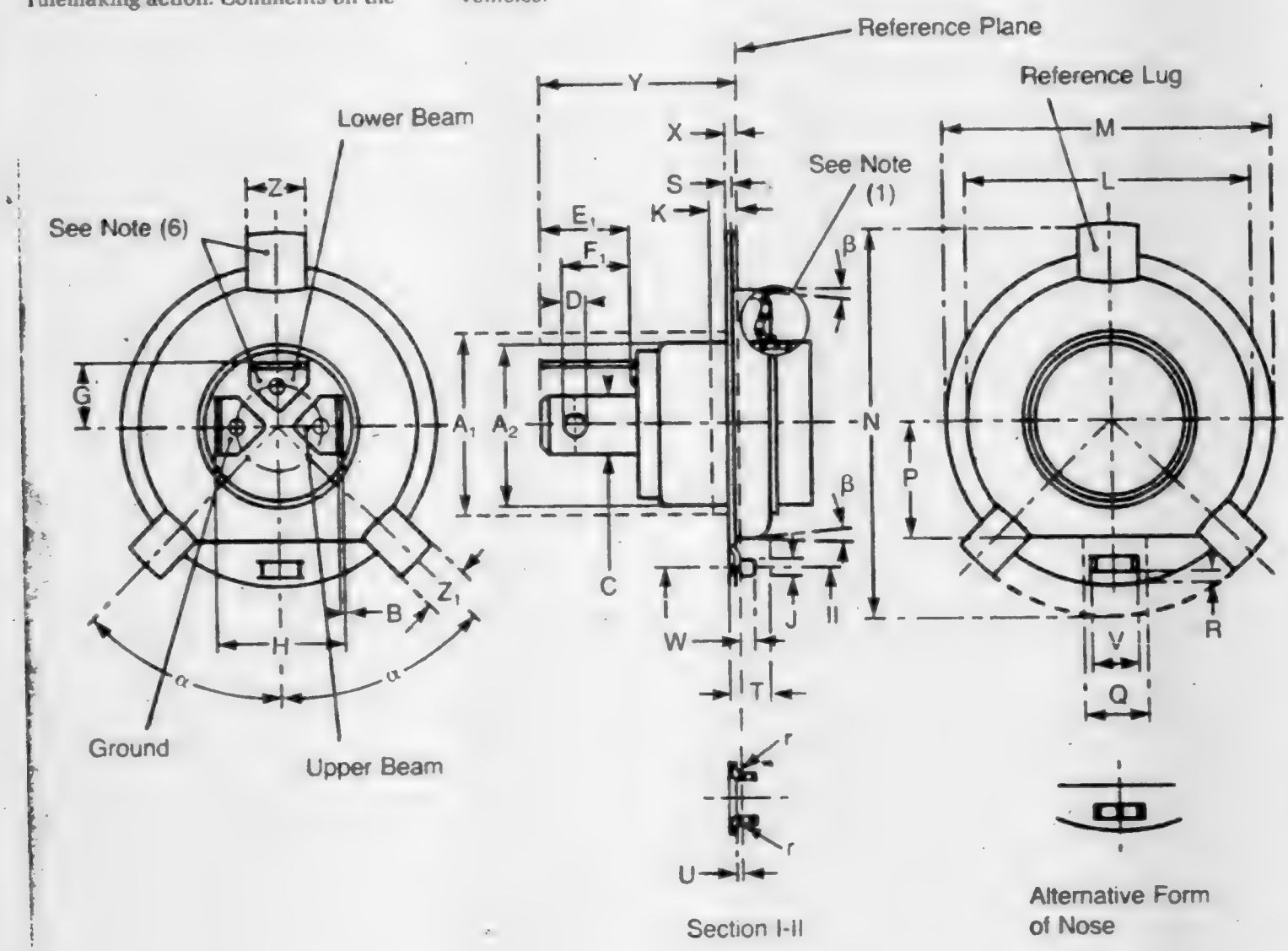

(Also see continuation page)

Figure 23-4. Type HB-2 Replaceable Light Source—Assembled Base P43t-38 on Finished Light Source—Dimensional Specifications

Dimension	Min.	Max.	Dimension	Min.	Max.
A_1 (8)	25.0		Q (2) (7)	8.5	—
A_2 (10)	21.94	22.0	R	1.3	1.7
B	0.7	0.8	S	0.45	—
C	7.7	8.1	T	5.0	6.0
D	3.0	3.3	U	(9)	
E_1	11.8	13.6	V (2) (5)	6.3	6.5
F_1	8.8	10.3	W	1.8	2.2
G	8.5	9.0	X	1.1	1.3
H	17.0	17.9	Y	—	32.0
J	1.9	2.1	Z	7.9	8.0
K (10)	2.0		Z_1	6.0	6.2
L (2) (4)	37.8	38.0	r	(9)	
M (3)	42.9	43.0	α	44° 40'	45° 20'
N	51.6	52.0	β	—	5°
P (2) (7)	15.3	15.5			

Dimensions in millimeters.
The drawing is intended only to indicate the dimensions essential for interchangeability

(1) The form of this part of the ring is optional and may be flat or recessed. However, the form shall be such that it will not cause any abnormal glare from the lower beam filament when the light source is in its normal operating position in the vehicle.
(2) This dimension is measured at the reference plane.
(3) Dimension M is the diameter on which the light source is centered when checking its dimensional characteristics.
(4) The maximum allowable eccentricity of cylinder L with respect to the circle of diameter M is 0.05 mm.
(5) The maximum allowable displacement of the center of the nose from the line running through the centers of the reference lug and the circle of diameter M is 0.05 mm. The sides of the nose shall not bend outwards.
(6) [Reserved]
(7) Dimension Q denotes the minimum width over which both the minimum and maximum limits of dimension P shall be measured. Outside dimension Q, the maximum limit for dimension P shall not be exceeded.
(8) The means of securing the ring in the headlamp shall not encroach on this cylindrical zone, which extends over the full length of the shell shown on this side of the ring.
(9) The radius r shall be equal to or smaller than dimension U.
(10) Beyond distance K, in the direction of the contact tabs, both the minimum and the maximum limits of dimension A_2 shall be measured.

Figure 23-5. (Continued) Type HB-2 Replaceable Light Source—Assembled Base P43t-38 on Finished Light Source—Dimensional Specifications

[FR Doc. 92-21112 Filed 9-1-92; 8:45 am]
BILLING CODE 4910-59-C

Issued on August 28, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 920544-2144]

Taking and Importing of Marine Mammals; Listing of the Northern Offshore Spotted Dolphin

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of delay in issuance of final rule.

SUMMARY: On June 18, 1992, NMFS proposed to designate the northern stock of offshore spotted dolphins (*Stenella attenuata*) as depleted under the Marine Mammal Protection Act (MMPA). NMPS announces that, due to new information indicating that the geographic boundaries which delineate the northern stock of the offshore spotted dolphin should be revised, the issuance of a final rule will be delayed for 6 months in order to solicit additional information on the status of this stock.

DATES: New Information and Comments must be submitted on or before January 4, 1993.

ADDRESSES: Comments should be addressed to Dr. Nancy Foster, Director, Office of Protected Resources, 1335 East-West Highway, room 8268, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Michael Payne, Office of Protected Resources at 301/713-2322.

SUPPLEMENTARY INFORMATION: On October 29, 1991, NMFS was petitioned to designate the northern stock of the offshore spotted dolphin as depleted under the MMPA. On November 5, 1991, NMFS published a notice of receipt of this petition, a determination that the petition presented substantial information indicating the petitioned action may be warranted (56 FR 56502), and a request for comments. After the close of the comment period and review of the available information, NMFS published a proposed rule to designate the northern stock of the offshore spotted dolphin as depleted on June 18, 1992, (57 FR 27207). That notice set a deadline of August 17, 1992, for comments.

At the time the petition was received on October 29, 1991, and the notice of receipt and determination that the petition presented substantial information was published on November 5, 1991, NMFS believed that the best available information accepted by the scientific community indicated that the population of the northern offshore spotted dolphin was below its optimal sustainable population level.

However, at the same time, NMFS was in the process of reviewing new preliminary scientific information regarding this species. In November 1991, NMFS conducted a workshop on the status of eastern tropical Pacific (ETP) dolphin stocks to review these data (DeMaster and Sisson, 1992). Information presented at this workshop included possible changes in the structure of ETP dolphin stocks. Two recent reports (Dizon Perrin and Akin, (1992) and Perrin *et al.* (1991)) were reviewed by a panel of experts at the workshop and subsequently have received further review by NMFS.

At the time the proposed rule to designate the northern stock of the offshore spotted dolphin was published, these changes recommended by the above-mentioned studies were still undergoing peer review and, thus, were not available for the deliberations leading to the proposed rule. Since then, the reviews have been completed and the findings of these studies have become available to NMFS. Based on these studies NMFS believes that changes in the stock structure for spotted dolphins in the ETP are warranted. The changes are as follows:

Existing stock structure	New stock structure
Northern	Northeastern.
Southern	Western/southern.
Coastal	Coastal.

The comment period of the proposed rule closed on August 17, 1992. Section 115 of the MMPA normally requires that a final rule on the status of the stock be issued within 90 days of the close of the comment period on the proposed rule. However, section 115(a)(3)(E) provides that, "If the Secretary finds with respect to such a proposed rule that there is substantial disagreement regarding the sufficiency or accuracy of the available information relevant to a status determination, the Secretary may delay the issuance of a final rule for a period of not more than six months for purposes of soliciting additional information."

The proposed rule published on June 18, 1992, addressed the status (abundance and fishery-induced mortality) of the northern offshore spotted dolphin using previously accepted stock structure and geographic boundaries and not the currently accepted boundaries for the northern offshore spotted dolphin. Therefore, pursuant to section 115(a)(3)(E) of the MMPA, NMFS has decided to delay issuance of a final rule for a period not to exceed 6 months from the close of the comment period on the proposed rule (August 17, 1992) in order to review the new recommendations, to assess the status of the northeastern offshore spotted dolphin, and solicit additional information. Anyone wishing to submit additional information on these recommendations must submit such information by no later than 4 months following publication of this notice in the **Federal Register**.

References

DeMaster, D.P. and J.E. Sisson. 1992. Minutes from a workshop on status of porpoise stocks in the eastern tropical Pacific, with special emphasis on the period 1985–1990. NMFS SEFSC Admin. Rept. LJ-92-21. 67 pp

Dizon, A.E., W.F. Perrin and P.A. Akin. in press. Stocks of dolphins in the (*Stenella* spp. and *Delphinus delphis*) Eastern Tropical Pacific: A phylogeographic classification. *In* DeMaster, D.P. and J.E. Sisson (Eds)., Minutes from a workshop on status of porpoise stocks in the eastern tropical Pacific, with special emphasis on the period 1985–1990. NMFS SEFSC Admin. Rept. LJ-92-21. 67 pp.

Perrin, W.F., G.D. Schnell, D.J. Hough, J.W. Gilpatrick and J.V. Kashiwada. 1991. Re-examination of geographical cranial variation in the pantropcial spotted dolphin, *Stenella attenuata, in the eastern Pacific. NMFS SWRSC Admin. Rept. LJ-91-93.*

Dated: August 24, 1992.

William W. Fox, Jr.,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 92-21406 Filed 9-1-92; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 57, No. 171
Wednesday, September 2, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

August 28, 1992.

The Department of Agricultural has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Revision

• Agricultural Stabilization and Conservation Service 7 CFR 1421, 1425, 1434 and 1427—Loan Deficiency Payments CCC-666LDP 700, 700a, 701, CCC-Cotton AA and CCC-Cotton AA–1, On occasion. Farms; Small businesses or organizations; 223,016 responses; 65,415 hours. Margaret Wright (202) 720–8481.

• Food and Nutrition Service. Emergency Food Stamp Assistance for Victims of Disasters FNS–447. Recordkeeping, On occasion; Individuals or households; State or local government; 12,453 responses; 2,789 hours. Paul Jones (703) 305–2496.

Extension

• Agricultural Stabilization and Conservation Service. 7 CFR 719.11—Eminent Domain Acquisitions: Reallocating Allotments, Quotas, and Acreage Bases. ASCS–177 and ASCS–178. On occasion. Farms; 6,000 responses; 3,000 hours. Star Bryant (202) 720–8573.

• National Agricultural Statistics Service. Field Crops Production, Weekly; Monthly; Quarterly; Annually. Farms; Businesses or other for-profit; 588,791 responses; 137,595 hours. Larry Gambrell (202) 720–5778.

New Collection

• Food and Nutrition Service. *Food Stamp Program:* Good Cause Relief from Quality Control Error Rate Liabilities. On occasion; Annually. Individuals or households; State or local governments; 10 responses; 1600 hours. Charlene L. Simmons (703) 305–2472.

Larry K. Roberson,
Deputy Departmental Clearance Officer.
[FR Doc. 92–21142 Filed 9–1–92; 8:45 am]
BILLING CODE 3410–01–M

The Citizens' Advisory Committee on Equal Opportunity

AGENCY: Office of Advocacy and Enterprise, USDA.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the proposed schedule and agenda of a meeting of the Citizens' Advisory Committee on Equal Opportunity. The meeting will be open to the public. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. No. 92–463).

DATES: September 14–16, 1992, 9 am to 4 pm on the 14th 9:30 am to 4 pm on the 15th, and 9 am to 12 pm on the 16th.

ADDRESSES: The meeting location is at the U.S. Appraisers Building, 630 Sansom Street, San Francisco, California 94111. Send written statements to Steven Chang or Crystal Day, Office of Advocacy and Enterprise, U.S. Department of Agriculture, 14th and Independence Avenue, SW., room 1322–S, South Building, Washington, DC 20250–9400.

FOR FURTHER INFORMATION CONTACT: Steven Chang, (202) 720–4509 or Crystal Day, (202) 720–7117.

SUPPLEMENTARY INFORMATION: The committee will receive status reports from subcommittees, hear briefings from the Forest Service, Region 8 and the Food and Nutrition Service, and set their fiscal year 1993 agenda.

Jo Ann C. Jenkins,
Director, Office of Advocacy and Enterprise.
[FR Doc. 92–21065 Filed 9–1–92; 8:45 am]
BILLING CODE 3410–34–M

Federal Grain Inspection Service

Request for Comments on the Applicants for Designation in the Geographic Area Currently Assigned to the Schaal (IA) Agency

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: FGIS requests interested persons to submit comments on the applicants for designation to provide official services in the geographic area currently assigned to Lewis D. Schaal dba D. R. Schaal Agency (Schaal).

DATES: Comments must be postmarked, or sent by telecopier (FAX) or electronic mail by September 30, 1992.

ADDRESSES: Comments must be submitted in writing to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. SprintMail users may respond to [A:ATTMAIL,O:USDA,ID:A36HDUNN]. ATTMAIL and FTS2000MAIL users may respond to !A36HDUNN. Telecopier (FAX) users may send responses to the automatic telecopier machine at 202–720–1015, attention: Homer E. Dunn. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and

Departmental Regulation do not apply to this action.

In the July 1, 1992, **Federal Register** (57 FR 29274), FGIS asked persons interested in providing official services in the geographic areas assigned to Thomas Oller dba Alva Grain Inspection Department (Alva), and Schaal to submit an application for designation. Applications were due by July 31, 1992. There were two applicants for the Schaal geographic area. Schaal applied for designation in the entire area currently assigned to them, except for: Gold-Eagle Coop, Wright County, Iowa (located inside A. V. Tischer and Son, Inc.'s, area). Tischer applied for designation to serve Gold-Eagle Coop, Wright County, Iowa, in addition to the area they are already designated to serve. The Schaal and Tischer agencies are contiguous official agencies.

There were no applicants for the Alva area. Alva advised FGIS that due to a decline in requests for official inspection services they would cease doing business on July 25, 1992, and asked that their designation be cancelled. In the July 30, 1992, **Federal Register** (57 FR 33717), FGIS cancelled Alva's designation effective July 25, 1992, and requested comments on the need for official inspection services in the geographic area assigned to Alva. FGIS also requested persons interested in providing official services in the geographic area formerly assigned to Alva to submit an application for designation. Applications and comments were to be postmarked on or sent by telecopier (FAX) by August 31, 1992. FGIS will publish notice of the applicants and comments in the **Federal Register**.

FGIS is publishing this notice to provide interested persons the opportunity to present comments concerning the applicants for designation in the Schaal area. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of these agencies. All comments must be submitted to the Compliance Division at the above address.

Comments and other available information will be considered in making a final decision. FGIS will publish notice of the final decision in the **Federal Register**, and FGIS will send the applicants written notification of the decision.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: August 25, 1992

J. T. Abshier

Director, Compliance Division

[FR Doc. 92–21007 Filed 9–1–92; 8:45 am]

BILLING CODE 3410–EN–F

Designation of the States of Louisiana (LA) and North Carolina (NC)

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: FGIS announces the designation of the Louisiana Department of Agriculture and Forestry (Louisiana) to provide official inspection and Class X or Class Y weighing services, and the North Carolina Department of Agriculture (North Carolina) to provide official inspection services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: October 1, 1992.

ADDRESSES: Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the April 1, 1992, **Federal Register** (57 FR 11062), FGIS announced that the designations of Louisiana and North Carolina end on September 30, 1992, and asked persons interested in providing official services within the specified geographic areas to submit an application for designation. Applications were due by May 1, 1992.

Louisiana and North Carolina, the only applicants, each applied for the entire geographic area currently assigned to them. FGIS named and requested comments on the applicants for designation in the June 1, 1992, **Federal Register** (57 FR 23074). Comments were due by July 1, 1992. FGIS received no comments by the deadline.

FGIS evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act; and according to Section 7(f)(1)(B), determined that Louisiana and North Carolina are able to provide official services in the geographic areas for which they applied.

Effective October 1, 1992, and ending September 30, 1995, Louisiana is designated to provide official inspection and Class X or Class Y weighing services, and North Carolina is designated to provide official inspection services under the United States Grain Standards Act, as amended (Act) in the geographic areas specified above.

Interested persons may obtain official services by contacting Louisiana at 318–487–5088, and North Carolina at 919–733–7576.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: August 25, 1992

J. T. Abshier

Director, Compliance Division

[FR Doc. 92–21008 Filed 9–1–92; 8:45 am]

BILLING CODE 3410–EN–F

Request for Applications from Persons Interested in Designation to Provide Official Services in the Geographic Area Presently Assigned to the Columbus (OH) Agency

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations shall end not later than triennially and may be renewed. The designation of Columbus Grain Inspection, Inc. (Columbus), will end February 28, 1993, according to the Act, and FGIS is asking persons interested in providing official services in the specified geographic area to submit an application for designation.

DATES: Applications must be postmarked or sent by telecopier (FAX) by September 30, 1992.

ADDRESSES: Applications must be submitted to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. Telecopier (FAX) users may send applications to the automatic telecopier machine at 202–720–1015, attention: Homer E. Dunn. If an application is submitted by telecopier, FGIS reserves the right to request an original application. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes FGIS' Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

FGIS designated Columbus, headquartered in Circleville, Ohio, to provide official grain inspection services under the Act on March 1, 1990.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act. The designation of Columbus ends on February 28, 1993.

The geographic area presently assigned to Columbus, in the State of Ohio, pursuant to Section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation is as follows:

Bounded on the North by U.S. Route 30 east to State Route 154; State Route 154 east to the Ohio-Pennsylvania State line;

Bounded on the East and South by the Ohio-Pennsylvania State line south to the Ohio River; the Ohio River south-southwest to the western Scioto County line; and

Bounded on the West by the western Scioto County line north to State Route 73; State Route 73 northwest to U.S. Route 22; U.S. Route 22 west to U.S. Route 68; U.S. Route 68 north to Clark County; the northern Clark County line west to State Route 560; State Route 560 north to State Route 296; State Route 296 west to Interstate 75; Interstate 75 north to State Route 47; State Route 47 northeast to U.S. Route 68; U.S. Route 68 north to U.S. Route 30.

Interested persons, including Columbus, are hereby given the opportunity to apply for designation to provide official services in the geographic area specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the specified geographic area is for the period beginning March 1, 1993, and ending February 29, 1996. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated.

AUTHORITY: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: August 25, 1992

J. T. Abshier

Director, Compliance Division

[FR Doc. 92-21009 Filed 9-1-92; 8:45 am]

BILLING CODE 3410-EN-F

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the South Carolina Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the South Carolina Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 5 p.m. on Friday, September 25, 1992, at the Columbia Marriott Hotel, Salon E, 1200 Hampton Street, Columbia, South Carolina 29201. The purpose of the meeting is to discuss the status of the Commission and SACs. In addition, the committee will hold a briefing session to receive information from community leaders on racial tensions in South Carolina (Columbia).

Persons desiring additional information, or planning a presentation to the Committee should contact Bobby D. Doctor, Regional Director, Southern Regional Office of the U.S. Commission on Civil Rights at (404/730-2476, TDD 404/730-2481). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Southern Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 26, 1992.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 92-21040 Filed 9-1-92; 8:45 am]

BILLING CODE 6335-01-M

Agenda of Public Meeting of the Tennessee Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Tennessee Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 5 p.m. on Wednesday, September 23, 1992, at the City County Building, Small Assembly, 400 Main Avenue, Knoxville, Tennessee 37902. The purpose of the meeting is to: (1) To discuss the status of the Commission and SACs; (2) to discuss civil rights progress and/or problems in the State; (3) to update the current project, Racial Tensions in Tennessee; and (4) to receive information from community leaders and others on racial tensions in Knoxville.

Persons desiring additional information, or planning a presentation to the Committee should contact Bobby D. Doctor, Regional Director, Southern Regional Office of the U.S. Commission on Civil Rights at (404/730-2476, TDD 404/730-2481). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Southern Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 24, 1992.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 92-21041 Filed 9-1-92; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Iran Air; Authorizations Under Denial Order

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Notice.

On August 21, 1992, the Acting Under Secretary for Export Administration, United States Department of Commerce issued a Final Order in an administrative enforcement proceeding against Iran Air Mehrabad Airport Tehran, Iran (57 FR 39178, Aug. 28, 1992). The Order finds that Iran Air committed a violation of the Export Administration Regulations (EAR) and imposes as sanctions a civil penalty of $100,000 and a denial of Iran Air's U.S. export privileges for a period of 24 months, with 21 months suspended if the civil penalty is paid within 30 days.

Under the terms of the denial order and of EAR § 787.12(a) (15 CFR 787.12(a)), authorization can be given by the Office of Export Licensing, Bureau of Export Administration for actions otherwise prohibited by the denial order. Following consultation with the Office of Export Enforcement, I hereby issue the following general

authorizations with respect to the denial order against Iran Air:

(1) The denial order prohibition of participation in any transaction which may involve any commodity or technical data already exported from the United States will not apply to repair, maintenance, or other servicing of Iran Air's U.S.-origin equipment unless U.S.-origin commodities or technical data subject to the EAR are used or supplied in such activity;

(2) The denial order will not apply to any action incidental to being a passenger solely by reason of Iran Air's being the carrier;

(3) These general licenses and the related permissive reexports under EAR § 774.2 may still be used—

(a) GATS (aircraft or temporary sojourn, EAR § 771.19).

(b) PLANE STORES (EAR § 771.10).

(c) CREW (EAR § 771.11).

Dated: August 27, 1992.

Iain S. Baird,

Director, Office of Export Licensing, Bureau of Export Administration, Department of Commerce.

[FR Doc. 92-21163 Filed 9-1-92; 8:45 am]

BILLING CODE 3510-DT-M

Minority Business Development Agency

Business Development Center Applications, Atlanta, GA

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the U.S. Department of Commerce's Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3-year period, subject to Agency priorities, recipient performance and the availability of funds. The cost of performance for the first budget period (12 months) is $236,160 in Federal funds and a minimum of $41,675 in non-Federal (cost-sharing) contributions. This federal amount includes $5,760 for an annual audit. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The period of performance will be from January 1, 1993 to December 31, 1993. The MBDC will operate in the Atlanta, Georgia geographic service area.

The award number for this MBDC will be 04-10-93003-01.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, State and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority business. To this end, MBDA funds organizations that can identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority businesses.

Applications will be evaluated initially by regional staff on the following criteria: The experience and capabilities of the firms and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority business, individuals and organizations (50 points); there sources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purpose of the MBDC program. The application will then be forwarded to the Department for final processing and approval, if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist them in this effort, MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000. False information on the application can be grounds for denying or terminating funding.

MBDCs performing satisfactorily may continue to operate after the initial competitive year for up to 2 additional budget periods. MBDCs with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the period should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and Agency priorities.

Awards under this program shall be subject to Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

In accordance with OMB Circular A-129 "Managing Federal Credit Programs," applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements, satisfactory to the Department of Commerce, are made to pay the debt.

Applicants are subject to Governmental Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26.

The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of MBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

Notification must be provided that all non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individual associated with the applicant have been convicted of or is presently facing, criminal charges such as fraud, theft, perjury, or other.

On November 18, 1988, Congress enacted the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, title V, subtitle D). The statute requires contractors and grantees of Federal agencies to certify that they will provide a drug-free

workplace. Pursuant to these requirements, the applicable certification form must be completed by each applicant as a pre-condition for receiving Federal grant or cooperative agreement awards.

15 CFR, part 28, is applicable and prohibits recipients of Federal contracts, grants, and cooperative agreements from using appropriated funds for influencing or attempting to influence an officer or employee if any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a specific contract, grant or cooperative agreement. Form CD-511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying" and, when applicable, the SF-LLL, "Disclosure of Lobbying Activities," are required.

CLOSING DATE: The closing date for submitting an application is October 2, 1992. Applications must be postmarked on or before October 2, 1992. Proposals will be reviewed by the Atlanta Regional Office. The mailing address for submission of RFA responses is: Department of Commerce, Atlanta Regional Office, Minority Business Development Agency, 401 West Peachtree Street, NW., suite 1715, Atlanta, Georgia 30308-3516.

A pre-application conference to assist all interested applicants will be held on September 16, 1992, 9 a.m. at the following address: U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree Street, NW., room 1715, Atlanta, Georgia 30308

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. To order a Request for Application (FRA) and to receive additional information, contact: Carlton L. Eccles, Regional Director of the Atlanta Regional Office on (404) 730-3300 or Department of Commerce, Minority Business Development Agency, 401 West Peachtree Street, NW., room 1715, Atlanta, Georgia 30308.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: August 26, 1992.

Carlton L. Eccles,

Regional Director, Atlanta Regional Office.

[FR Doc. 92-21088 Filed 9-1-92; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of receipt of application for scientific research permit (P497).

Notice is hereby given that Dr. Ted C. Bjornn, The Idaho Cooperative Fish & Wildlife Research Unit, University of Idaho, Moscow, Idaho, 83843, has applied in due form for a Permit to take an endangered species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) and the regulations governing endangered fish and wildlife permits (50 CFR part 217-222).

This application was received prior to the the regulatory deadline of May 22, 1992 (50 CFR part 227), and has thus been subject to the regulatory exemption which allows for the continuation of scientific research/enhancement activities as requested in the applications until NMFS has had adequate time in which to review the applications and to determine their sufficiency, or until issuance or denial of a permit, or until December 31, 1992, whichever comes first. This application has now been determined to contain enough information for complete review, and thus a public comment period will be opened to determine whether this work, as requested in the application, should continue.

The applicant requests that up to 200 listed wild Snake River spring/summer chinook salmon (*Onchorhynchus tshawytscha*) be captured; outfitted with radio transmitters, metal jaw and coded wire tags; released; re-captured and released for scientific purposes over a two-and-one-half-year period. In cooperation with the Oregon Department of Fish and Wildlife, the applicant proposes to monitor these fish using video cameras and radio tracking devices as they pass through electronic tunnels placed in each fishway entrance at Lower Granite Dams (1992) and Ice Harbor Dam (1993-1994) and near radio receivers that will be installed in the John Day and Yakima Rivers. Fish movements into the Umatilla River at Three-Mile Dam and in the Walla Walla River would be monitored with mobile tracking.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7324, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., suite 7324, Silver Spring, MD 20910 (301/713-2289); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., room 620, Portland, OR 97232 (503/230-5400).

Dated: August 25, 1992.

Charles Karnella,

Deputy Director, Office of Protected Resources.

[FR Doc. 92-21086 Filed 9-1-92; 8:45 am]

BILLING CODE 3510-22-M

Travel and Tourism Administration

Travel and Tourism Advisory Board; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. (App. 1976) notice is hereby given that the Travel and Tourism Advisory Board of the U.S. Department of Commerce will meet on September 18, 1992, at 9:30 a.m. at the Grand Floridian Beach Hotel, Walt Disney World, Lake Buena Vista, Florida.

Established March 19, 1982, the Travel and Tourism Advisory Board consists of 15 members, representing the major segments of the travel and tourism industry and state tourism interests, and includes one member of a travel labor organization, a consumer advocate, an academician and a financial expert.

Members advise the Secretary of Commerce on matters pertinent to the Department's responsibilities to accomplish the purpose of the National Tourism Policy Act (Pub. L. 97-63), and provide guidance to the Assistant Secretary for Tourism Marketing in the preparation of annual marketing plans.

Agenda items are as follows:

I. Call to Order
II. Roll Call
III. Old Business
IV. New Business
V. Legislative Issues

VI. Miscellaneous
VII. Adjournment

A very limited number of seats will be available to observers from the public and the press. To assure adequate seating, individuals intending to attend should notify the Committee Control Officer in advance. The public will be permitted to file written statements with the Committee before or after the meeting. To the extent time is available, the presentation of oral statements is allowed.

Karen M. Cardran, Committee Control Officer, United States Travel and Tourism Administration, room 1860, U.S. Department of Commerce, Washington, DC 20230 (telephone: 202-377-1904) will respond to public requests for information about the meeting.

John G. Keller, Jr.,

Under Secretary of Commerce for Travel and Tourism.

[FR Doc. 92-20965 Filed 9-1-92; 8:45 am]

BILLING CODE 3510-11-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Qatar

August 27, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: September 3, 1992.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 377-3715. For information on categories on which consultations have been requested, call (202) 377-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Inasmuch as consultations have not yet been held on a mutually satisfactory solution on Categories 340/640, the United States Government has decided to control imports in these categories for the period beginning on June 30, 1992 and extending through June 29, 1993.

The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in consultations with the Government of Qatar, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 57 FR 32199, published on July 21, 1992.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 27, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on September 3, 1992, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 340/640, produced or manufactured in Qatar and exported during the period beginning on June 30, 1992 and extending through June 29, 1993, in excess of 282,683 dozen [1].

Textile products in Categories 340/640 which have been exported to the United States prior to June 30, 1992 shall not be subject to the limit established in this directive.

Textile products in Categories 340/640 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-21038 Filed 9-1-92; 8:45 am]

BILLING CODE 3510-DR-F

[1] The limit has not been adjusted to account for any imports exported after June 29, 1992.

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade; Proposed Amendments to the Diammonium Phosphate Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The Chicago Board of Trade (CBT) has submitted proposed amendments to its diammonium phosphate futures contract that would increase the deliverable supply of shipping certificates by expanding the delivery territory and by adding storage-only facilities in the revised delivery area as eligible facilities. In accordance with section 5a(12) of the Commodity Exchange Act and acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Economic Analysis (Division) of the Commodity Futures Trading Commission (Commission) has determined, on behalf of the Commission, that the proposed amendments are of major economic significance. On behalf of the Commission, the Division is requesting comment on these proposals.

DATE: Comments must be received on or before October 2, 1992.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the proposed amendments to the CBT diammonium phosphate futures contract.

FOR FURTHER INFORMATION CONTACT: Joseph B. Storer, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581; telephone 202-254-7303.

SUPPLEMENTARY INFORMATION: The CBT was designated as a contract market in diammonium phosphate (DAP) futures on July 25, 1991. The DAP futures contract provides for delivery of 100 short tons (200,000 lbs) of free flowing diammonium phosphate. The delivery area is comprised of three counties, Polk, Hillsborough and Manatee, in central Florida. The price basis is f.o.b. rail cars in these counties. Delivery of DAP futures is made by tendering diammonium phosphate shipping certificates issued by regular shippers (*i.e.*, DAP manufacturing plants) designated by the CBT.

The proposed amendments would: (1) Expand the delivery territory to also include on-water facilities below Mississippi River mile marker 228.2 at Port Allen Lock near Baton Rouge, Louisiana (referred to as NOLA); (2) allow storage-only facilities in the revised delivery areas to become regular for deliverable status on the subject contract; (e) revise the sampling procedures for loading water conveyances; (4) include weighing procedures for loading water conveyances; (5) revise the conditions under which premium charges assessed by the shipper to the certificate holder shall cease; (6) require that loading orders and shipping instructions be included when delivery is from on-water facilities; (7) establish a premium of $8.00 per ton for barge or vessel load-out from an on-water facility in the three-county delivery territory of Central Florida, a premium of $8.00 per ton for vessel load-out from an on-water NOLA facility, and a premium of $12.00 per ton for barge load-out from an on-water NOLA facility; and (8) revise the load-out procedures for off-water facilities and specify load-out procedures for on-water facilities.

The CBT explained that:

The purpose of the proposed amendments is to ensure the continued viability of the DAP futures contract. While the current regulations provide for a potential deliverable supply which is more than adequate to satisfy the delivery needs of the contract, only three of the seven producers in Central Florida are currently regular for delivery. Because of concerns about the capacity of regular firms to issue shipping certificate for delivery, commercial firms have been reluctant to either participate in or fully utilize the DAP contract for their hedging needs. Insufficient market liquidity is a further impediment to firms who want to participate in the futures market. Market liquidity must be increased to ensure the continued viability of the DAP futures contract and create the potential for the contract to mature into an established futures contract used routinely by commercial firms as a pricing and hedging medium.

In order to increase market liquidity, the Exchange is proposing to expand the contract's delivery options to allow additional firms to be eligible to be regular for delivery. The proposed contract terms have been constructed to be fair and equitable to both longs and shorts to facilitate the development of market liquidity. The changes represented by these amendments were developed with input from industry participants.

The Division is requesting comments on the appropriateness of the proposed changes noted above. Specifically, the Division requests comment on the relationship of the revised terms and conditions to customary cash market practices for DAP in the two delivery territories.

Copies of the terms and conditions of the proposed contracts will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the amended terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

The materials submitted by the CBT in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)). Requests for copies should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on August 27, 1992.

Gerald D. Gay,

Director.

[FR Doc. 92-21054 Filed 9-1-92; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board Electronic Systems Center Advisory Group, Air Force Material Command, will hold meetings on 22 September 1992 from 8:30 a.m. to 5 p.m. and 23 September 1992 from 8:30 a.m. to 12 Noon. The meeting will be held in the Command Management Center, Building 1606, Hanscom AFB, Massachusetts.

The Advisory group will address Theater Battle Management (TBM) C3I Architecture and systems to support Global Reach/Global Power. Also discussed will be TBM technology and system-of-system engineering/integration activities.

The meetings concern matters listed in section 552(b) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697-4811.

Grace T. Rowe,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 92-21045 Filed 9-1-92; 8:45 am]

BILLING CODE 3910-01-M

Department of the Navy

Government-owned Inventions; Availability for Licensing

AGENCY: Department of the Navy; DOD.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are made available for licensing by the Department of the Navy.

Copies of patents cited are available from the Commissioner of Patents and Trademarks, Washington, DC 20231, for $3.00 each. Requests for copies of patents must include the patent number.

Copies of patent applications cited are available from the National Technical Information Service (NTIS), Springfield, Virginia 22161, for $6.95 each ($10.95 outside North American Continent). Requests for copies of patent applications must include the patent application serial number. Claims are deleted from the patent applications copies sold to avoid premature disclosure.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of the Chief of Naval Research (Code OOCCIP), Arlington, Virginia 22217-5000, telephone (703) 696-4001.

Patent 4,991,509: Optical Proximity Detector; filed 24 June 1983; patented 12 February 1991

Patent 4,992,988: Underwater Acoustic Control System; filed 29 November 1973; patented 12 February 1991

Patent 5,021,796: Broad Band, Polarization Diversity Monopulse Antenna; filed 15 January 1971; patented 4 June 1991

Patent 5,029,953: Ultraviolet Optical Isolator Utilizing the KDP-Isomorphs; filed 17 October 1900; patented 9 July 1991

Patent 5,039,493: Positive Pressure Blotting Apparatus with Hydrophilic Filter; filed 4 May 1990; patented 13 August 1991

Patent 5,039,894: Magnetostrictive Linear Motor; filed 11 October 1990; patented 13 August 1991

Patent 5,040,464: Controlled Fragementation with Fragment Mix; filed 31 May 1977; patented 20 August 1991

Patent 5,041,400: Low Temperature Synthesis of High Purity Monoclinic Celsian; filed 13 September 1990; patented 20 August 1991

Patent 5,043,378: High Temperature Silicide Protective Coating Slurry; filed 1 February 1991; patented 27 August 1991

Patent 5,049,212: High Energy Explosive Yield Enhancer Using Microencapsulation; filed 27 March 1991; patented 17 September 1991

Patent 5,049,213: Plastic Bonded Explosives Using Fluorocarbon Binders; filed 10 October 1985; patented 17 September 1991

Patent 5,050,220: Optical Fingerprint Correlator; filed 24 July 1990; patented 17 September 1991

Patent 5,051,307: Process for Producing Uniform Protective Coating of Silver Metal on Carbon/Carbon Composites; filed 3 July 1990; patented 24 September 1991

Patent 5,051,695: Thin Film Vector Magnetometer; filed 16 May 1990; patented 24 September 1991

Patent 5,060,115: Heat Sink Device for Electronics Modules Packaged in Cylindrical Casings; filed 25 September 1990; patented 22 October 1991

Patent 5,060,314: Multi-Mission Ballistic Resistant Jacket; filed 3 April 1990; patented 29 October 1991

Patent 5,061,933: Short-Range Radar System; filed 13 April 1976; patented 29 October 1991

Patent 5,061,973: Semiconductor Heterojunction Device with Graded Bandgap; filed 27 April 1990; patented 29 October 1991

Patent 5,062,083: Ping Elongator-Modulator for Realistic Echo Synthesis; filed 15 June 1965; patented 29 October 1991

Patent 5,063,851: Expendable Breech Gun Round; filed 28 October 1975; patented 12 November 1991

Patent 5,067,996: Plastic Bonded Explosives Which Exhibit Mild Cook-Off and Bullet Impact Insensitive Properties; filed 17 October 1977; patented 26 November 1991

Patent 5,068,832: Binaural Ultrasound Detector and Imager; filed 15 February 1990; patented 26 November 1991

Patent 5,070,807: Temporary Canopy for Small Watercraft; filed 2 August 1990; patented 10 December 1991

Patent 5,073,720: Liquid Level and Volume Measurement Device; filed 30 July 1990; patented 17 December 1991

Patent 5,073,784: Transmitter Location System for Frequencies Below HF; filed 26 April 1972; patented 17 December 1991

Patent 5,074,493: Wing-Extendible Gliding Store; filed 21 December 1990; patented 24 December 1992

Patent 5,075,094: Method of Growing Diamond Film on Substrates; filed 30 April 1990; patented 24 December 1991

Patent 5,075,655: Ultra-Low-Loss Strip-Type Transmission Lines, Formed of Bonded Substrate Layers; filed 1 December 1989; patented 24 December 1991

Patent 5,078,768: Hot Isostatic Pressing of Fluoride Glass Materials; filed 19 December 1990; patented 7 January 1992

Patent 5,078,951: High Efficiency Fast Neutron Threshold Deflector; filed 1 August 1990; patented 7 January 1992

Patent 5,079,321: Nonlinear Optical Acrylic Polymers and Use Thereof in Optical and Electro-Optic Devices; filed 16 July 1980; patented 7 January 1992

Patent 5,080,752: Consolidation of Diamond Packed Powders; filed 8 July 1991; patented 14 January 1992

Patent 5,082,200: Method of Guiding an In-Flight Vehicle Toward a Target; filed 3 December 1990; patented 21 January 1992

Patent 5,082,202: Droppable Jet Vane TVC; filed 6 January 1975; patented 21 January 1992

Patent 5,082,431: Mechanical Scavenging System for Single Screw Compressors; filed 3 July 1986; patented 21 January 1992

Patent 5,082,826: Silver Coated Superconducting Ceramic Powder; filed 2 August 1990; patented 21 January 1992

Patent 5,083,174: Floating Gate Magnetic Field Sensor; filed 31 July 1990; patented 21 January 1992

Patent 5,083,852: Laser Beam Stop; filed 13 May 1990; patented 28 January 1992

Patent 5,084,880: Erbium Doped Fluorozirconate Fiber Laser Pumped by a Diode Laser Producing Source; filed 2 July 1990; patented 27 January 1992

Patent 5,086,329: Planar Gallium Arsenide NPNP Microwave Switch, filed 27 July 1990; patented 4 February 1992

Patent 5,086,432: Resonantly Pumped, Erbium-Doped, 2.8 Micron Solid State Laser with High Slope Efficiency; filed 23 May 1991; patented 4 February 1992

Patent 5,088,103: Room-Temperature, Flashpumped, 2.09 Micron Solid State Laser, filed 30 April 1990; patented 11 February 1992

Patent 5,088,327: Phase Cancellation Enhancement of Ultrasonic Evaluation of Metal-to-Elastomer Bonding; filed 17 May 1990; patented 18 February 1992

Patent 5,089,551: Corrosion-Resistant Alkyd Coatings; filed 14 December 1990; patented 18 February 1992

Patent 5,089,742: Electron Beam Source Formed with Biologically Derived Tubule Materials; filed 28 September 1990; patented 18 February 1992

Patent 5,091,732: Lightweight Deployable Antenna System; filed 7 September 1990; patented 25 February 1992

Patent 5,091,890: Method of Extracting Target Range and Doppler Information From a Doppler Spread Signal; filed 20 May 1991; patented 25 February 1992

Patent 5,092,944: High Energy Cast Explosives Based on Dinitropropylacrylate; filed 7 May 1976; patented 3 March 1992

Patent 5,092,945: Glycidyl Azine Propellant With Antigassing Additives; filed 1 March 1982; patented 3 March 1992

Patent 5,095,312: Impulse Transmitter and Quantum Detector Radar System, filed 12 April 1991; patented 10 March 1992

Patent 5,095,841: Underwater Mooring System Using an Underwater Traction Winch; filed 30 October 1990; patented 17 March 1992

Patent 5,097,221: Adaptive Filter Technique for Suppression of Wideband or Offset Radio Frequency Interference; filed 21 December 1990; patented 17 March 1992

Patent 5,097,451: Radial Damper Disk; filed 20 December 1990; patented 17 March 1992

Patent 5,099,745: Apparatus for Designing a Specially Ported Torpedo Launching System to Damp a Seawater Piston; filed 25 July 1990; patented 31 March 1992

Patent 5,100,049: Method of Bonding Carbon-Carbon and Metal Matrix Composite Structures; filed 1 July 1991; patented 31 March 1992

Patent 5,100,942: Corrosion-Resistant Acrylic Coatings; filed 3 April 1991; patented 31 March 1992

Patent 5,101,310: Matched Record/Playback AGC Amplifier System; filed 28 May 1991; patented 31 March 1992

Patent 5,104,223: Optical Interferometric Sensor Detected Intensity Noise Reduction Means; filed 5 February 1990; patented 14 April 1992

Patent 5,106,034: Device and Process for Attachment of Parts to Rocket Motors; filed 28 February 1991; patented 21 April 1992

Patent 5,116,216: Apparatus for Processing Thermoplastic Composites; filed 28 February 1991; patented 26 May 1992

Patent Application 487,489: Air Cushion Vehicle Conductive/Semiconductive Skirt; filed 2 March 1990
Patent Application 675,203: Metering System for Compressible Fluids; filed 26 March 1991
Patent Application 693,106: Modular Signal Processing Unit; filed 23 April 1991
Patent Application 725,717: Method Fabricating Load-Bearing Composites Free From Microbuckling Deformation up to a Predetermined Load; filed 3 July 1991
Patent Application 749,825: Method for Implanting Impurities in Semiconductors and Semiconductor Implanted with Impurities; filed 26 August 1991
Patent Application 750,998: Apparatus and Methods for Determining Balance of a Cylindrical Vehicle; filed 28 August 1991
Patent Application 754,779: Process which Aids in the Laying out of Locations of Personnel and Equipments in Functional Organizations; filed 30 August 1991
Patent Application 756,264: Process which Aids in the Laying Out of Locations of Personnel and Equipments in Functional Organizations; filed 30 August 1991
Patent Application 758,918: Cable Connector/Adapter Support for Multi-Terminal Data Processors; filed 10 September 1991
Patent Application 762,818: Dynamic Test Apparatus for Electro-Phenological Fluids; filed 16 September 1991
Patent Application 764,747: Inverse Tomography by Matched Field Processing; filed 24 September 1991
Patent Application 766,599: Digital Echo Repeater; filed 26 September 1991
Patent Application 766,939: Fabrication and Phase Tuning of an Optical Waveguide Device; filed 27 September 1991
Patent Application 767,187: Replacements for Hydrogen Peroxide for use with Horseradish Peroxidase in Immunoassay; filed 30 September 1991
Patent Application 767,189: Optical Flow Sensor; filed 30 September 1991
Patent Application 767,955: A Multiple Axis Fiber Optic Magnetometer; filed 30 September 1991
Patent Application 769,685: Two Bearing Ranging of an Incoming Intercept Contact; filed 2 October 1991
Patent Application 771,928: Interface Board for Providing Time Signals to a Super Minicomputer; filed 7 October 1991
Patent Application 782,197: Method of Forming Nanometer-Scale Trenches and Vias; filed 24 October 1991
Patent Application 783,660: Friction Drive Position Transducer; filed 28 October 1991
Patent Application 783,663: Wide Band Width Barrel Stave Projector; filed 29 October 1991
Patent Application 786,641: Magnetic Multilayer Strain Gage; filed 1 November 1991
Patent Application 787,994: Process for Making Superplastic Steel Power and Flakes; filed 15 November 1991
Patent Application 807,020: Safety and Arming System for Tube Launched Projectile; filed 13 December 1991

Dated: August 25, 1992.

Wayne T. Baucino,

LT, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 92-21044 Filed 9-1-92; 8:45 am]

BILLING CODE 4810-AE-M

Office of the Secretary

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of the TRICARE—Tidewater Coordinated Care Demonstration Project.

SUMMARY: Notice is hereby given that a demonstration project will be conducted by the three military services, under the provisions of title 10, United States Code, section 1092, to test a different method for financing and delivering health care services under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). This demonstration project is also authorized by section 712(b) of the National Defense Authorization Act for Fiscal Years 1992 and 1993, Public Law 102-190. Delivery of services under the demonstration, hereafter referred to as TRICARE, is expected to begin 30 days from the date of this notice, for all beneficiaries who reside in the Tidewater region of Virginia (the catchment areas of Naval Hospital Portsmouth, Virginia; McDonald Army Community Hospital at Fort Eustis; The First Medical Group, Langley AFB). The current CHAMPUS Fiscal Intermediary (FI) contract will be modified under the authority of 10 United States Code, section 1079(n). The execution of this modification will result in 15 months of service delivery by the current FI. At such time, the FI contract will be recompeted. An ongoing evaluation of the demonstration will be conducted by the Center for Naval Analysis (CNA). TRICARE is a Tri-service Coordinated Care initiative under the direction of the commanders of the three military treatment facilities (MTFs) and administered by the TRICARE office. TRICARE will be responsible for the administration of all CHAMPUS funds in the Tidewater area except mental health services. Direct health care funds will be retained by the respective services and individual MTF commanders. The Navy has been appointed by the Assistant Secretary of Defense (Health Affairs) to act as the Executive Agent. The TRICARE Project provides alternatives for the financing and delivery of health care services under CHAMPUS. It represents structural reform, centered on the principles of managed care and the coordination of the military-civilian health care partnership. The demonstration relies on a coordinated consortium of private companies and the three military services to deliver medical care to all eligible beneficiaries residing in the Tidewater Region of Virginia. The objectives of the demonstration are to: (1) Enhance beneficiary access to care, (2) curb health care cost growth, (3) strengthen quality assurance activities, and (4) improve coordination between the military and civilian components of the Military Health Services System (MHSS).

DATES: On or before October 2, 1992, health care beneficiaries in the Tidewater Region of Virginia may elect to seek health care from providers who agree to participate in the preferred provider network (TRICARE CC Extra or CC Extra). By 1 April, 1993 beneficiaries may elect to participate in an enrollment option called TRICARE CC Plus or CC Plus. Standard CHAMPUS (TRICARE CC Basic or CC Basic) is still available for beneficiaries who choose neither of the previous two options.

FOR FURTHER INFORMATION CONTACT: Captain James F. Howick, U.S. Navy, TRICARE Office, 5365-D Robin Hood Road, Norfolk, VA 23513, telephone (804) 444-2672.

SUPPLEMENTARY INFORMATION: Under the TRICARE demonstration, MHSS eligible beneficiaries in the Tidewater Region of Virginia will be able to choose among three options: (1) They may enroll in the managed care option (CC Plus); (2) they may use the preferred provider network on a case by case basis (CC Extra), (3) or they may remain in the standard CHAMPUS benefit plan, called CC Basic. All active duty will enroll in CC Plus. Medicare eligible beneficiaries may enroll in CC Plus when offered or use the preferred provider network on a case-by-case

basis under CC Extra; however, care rendered by civilian providers continue to be subject to Medicare rules, procedures, and reimbursement rates. All beneficiaries who do not enroll in CC Plus or use network providers remain free to use any military hospital on a space available basis. Non-CHAMPUS eligible beneficiaries may enroll in the direct care system only. Enrollees in CC Plus will obtain practically all their care within the network and pay reduced CHAMPUS cost shares when they receive care from civilian providers. Authorization from TRICARE will be required by TRICARE CC Plus enrollees want to use providers outside the network. Beneficiaries may preserve their freedom of choice for the most part by choosing the TRICARE CC Basic. All current CHAMPUS rules still apply under this option. These beneficiaries will face standard CHAMPUS cost sharing requirements, except that their coinsurance percentages will be lower when they use the preferred provider network (CC Extra).

At TRICARE's request, OCHAMPUS has modified the CHAMPUS Mid-Atlantic Fiscal Intermediary's contract with Blue Cross and Blue Shield of South Carolina (BCBS/SC), a private health insurance company headquartered in Columbia, South Carolina. BCBS/SC will establish the preferred provider network comprised of health care providers and institutions that offer discounts off of the normal CHAMPUS rates and are both CHAMPUS and Medicare Participating Providers. BCBS/SC will continue to process claims for all beneficiaries who reside in the Tidewater region of Virginia catchment area. All negotiated CHAMPUS rates for both professional services and in-patient procedures will be applicable to services provided to active duty members. The negotiated charges for individual professional services under the terms of the demonstration, shall be included with all billed charges for purposes of establishing the prevailing charge.

The enrollment system, which will be available by April 1, 1993, represents one of four cornerstones of the foundation for TRICARE's CC Plus. This system will enable the military treatment facility commanders to identify beneficiaries who rely upon the more closely coordinated military and civilian provider systems as their source of health care and to marshal resources most effectively to meet their health care needs.

Another cornerstone includes the primary care manager (PCM) process and the Health Care Finder (HCF) functions. CC Plus enrollees will have a PCM as a regular point-of-service for most health care needs. The PCM will refer patients for needed specialty care to an MTF or civilian network provider; in this aspect the PCM will be complemented by the TRICARE Service Center (TSC), an administrative office to support the specialty referral process. CC Basic enrollees will be encouraged to use the services of the TSC, including the preferred provider network. The Health Care Finder function will be provided at centers established at each military hospital. The contractor will establish a service center near Naval Hospital Portsmouth. Health care finders will help beneficiaries obtain appointments for services in the most appropriate setting, whether in a military facility or with civilian providers, to facilitate beneficiary access to care and help ensure optimal use of military hospitals. The MTFs will be considered the most preferred provider. The service centers will also serve as a source of information and will assist beneficiaries with resolution of claims problems. The use of the service centers will be available 30 days from the date of this notice.

The third cornerstone of TRICARE is the preferred provider network, comprised of a wide array of qualified health care providers. The civilian preferred provider will agree to follow established rules and procedures for sound utilization management, maintain close coordination with the military facility, provide affordable and high quality care, be easy to manage.

The fourth cornerstone of TRICARE is the comprehensive quality management program that will attempt to balance optimization of resources with high quality care across the Tidewater region. The new CHAMPUS Regional Review Center, the Medical Society of Virginia Review Organization (MSVRO), will use national standards for utilization review and peer review of selected cases. TRICARE will ensure adherence to all rules applicable to this program. A separate CHAMPUS National Quality Monitoring Contract will oversee the review process.

CC Plus

This is a voluntary, HMO-like enrollment option offered as an alternative to standard CHAMPUS. CC Plus provides enhanced CHAMPUS benefits to all enrolled beneficiaries. By April 1, 1993, the CC Plus will be offered throughout the TRICARE service area. The benefits package available to enrollees will contain the same benefits as are available under standard CHAMPUS, plus benefit enhancements offered by TRICARE. These enhancements will include such services as routine physicals and other preventive care procedures not covered under standard CHAMPUS. These benefits will be uniform across all areas of the Tidewater region. This plan requires no annual deductible, offers free primary care office visits for most outpatient care for dependents of sponsors (retired or active duty) in pay grades E–4 and below and requires no daily hospital fee for active duty dependents. (If the sponsor is in the pay grades of E–5 or above, there is a $5 co-payment for most outpatient care.) Retirees and their dependents are charged $75 per day for civilian hospital care up to a maximum of $750 per admission. (See table 1) Beneficiaries who elect CC Plus will have the added benefit of not having to file claims forms. Urgent care visits cost $15 each, and emergency room visits have a $25 fee paid by the patient. Patients who choose CC Plus must follow TRICARE's rules for seeking non-emergency medical care and other applicable rules. They will agree to stay in the program for a full year, unless they move out of an area. Patients who are enrolled and who are not happy with a particular provider will be permitted to choose another one within the network. A patient may disenroll at any time but then cannot reenroll until the next time enrollment is offered. More details of this option will be published before the start of the enrollment option.

CC Extra

This option will be available 30 days from the date of this notice. CHAMPUS beneficiaries who do not choose CC Plus will be able to participate in this preferred provider option. Beneficiaries who receive care from one of the FI contractor's network providers will be entitled to a reduced level of cost-sharing. Under this option, patients will be covered for the same medical services as under the standard CHAMPUS program, and they will get discounts for office visits and hospital inpatient care by using providers who are members of the preferred provider network. Dependents of active duty service members, as an example, will pay 15 percent of the CHAMPUS negotiated reimbursement rate for a doctor's office visit in the contractor network instead of 20 percent required under the standard CHAMPUS program. Retirees from their families will pay 20 percent rather than 25 percent for office visits. For inpatient care, retirees will be $125 per day (or 25 percent of the

negotiated reimbursement rate), whichever is less, plus 20 percent of inpatient professional fees, instead of the current 25 percent. (See table 2) CC Extra offers greater freedom of choice than CC Plus because patients do not have to enroll. CHAMPUS patients can elect to use this option on a case-by-case basis. Standard CHAMPUS deductibles continue to apply and rules regarding NAS eligibility continue. As in CC Plus, beneficiaries have the added benefit of not having to file claims forms for care received through the preferred provider network.

CC Basic

This plan refers to the standard CHAMPUS Program and the CHAMPUS Program for the Handicapped. CC Basic will continue to be available in the Tidewater region to CHAMPUS beneficiaries who choose not to enroll or use network providers. The CHAMPUS Expanded Home Health Care—Case Management Demonstration is included since TRICARE has been named the fourth demonstration site. This is a separate demonstration that will operate in tandem with other TRICARE initiatives. Details of this demonstration was given in the **Federal Register** on June 3, 1988 (53 FR 20359).

Duration

The TRICARE Demonstration project will continue for a minimum of three years. The modifications will remain in place for the duration of the BCBS/SC Mid-Atlantic Fiscal Intermediary contract, which expires January 31, 1994.

Exclusions to the Tricare Demonstration Project

The following are not covered under the demonstration.

—Mental health care benefits will remain under the control of Tidewater Mental Health Contracted Provider Arrangement (CPA) Demonstration Project. All rules that are in place will continue to apply.

—Beneficiaries eligible under the Civilian Health and Medical Program of the Veterans Administration (CHAMPVA) are not covered under this demonstration.

All current CHAMPUS rules, unless this notice specifically provided otherwise, will continue to apply.

This notice reflects the changes under this demonstration which is expected to start 30 days from the date of this notice. A separate, additional notice will be published announcing more details of TRICARE CC Plus option and the opportunity for enrollment.

I. Outpatient Services:

TABLE 1.—COORDINATED CARE PROGRAM; BENEFITS AND BENEFICIARY PAYMENTS UNDER THE CC PLUS PLAN

[See Note 1 Below]

Annual deductible	CC Plus
Applied to all outpatient services	None.
Standard CHAMPUS benefits, type of service	**Beneficiary cost share, CC Plus (note 2)**
Physician Services: Office visits; outpatient office-based medical and surgical care; consultation, diagnosis and treatment by a specialist; allergy tests and treatment; osteopathic manipulation; medical supplies used within the office including casts, dressings, and splints.	$5 copayment per visit.
Laboratory and X-Ray Services	$5 copayment per visit. (No copayment if included in provider's office visit.)
Routine Pap Smears: Frequency to depend on physician recommendations based on the published guidelines of the American Academy of Obstetrics and Gynecology.	$5 copayment per visit. (No copayment if included in provider's office visit.)
Ambulance Services: When medically necessary as defined by CHAMPUS Policy Manual and the service is a covered benefit.	$5 copayment per occurrence.
Emergency Services: Emergency and urgently needed care obtained on an outpatient basis, both network and non-network and in and out of Region.	$25 copayment per emergency room visit. $15 copayment per urgent care center visit.
Durable Medical Equipment, Prosthetic Devices, and Medical Supplies Prescribed by an Authorized Provider Which Are Covered Benefits (If dispensed for use outside of the office or after the home visit.)	Cost share—10% of the negotiated reimbursement rate
Home Health Care: Part-time skilled nursing care, physical, speech & occupational therapy when medically necessary and which are covered benefits.	$5 copayment per visit.
Family Health Services: Family planning and well baby care (up to 24 months of age). The exclusions listed in the CHAMPUS Policy Manual will apply.	$5 copayment per visit.
Outpatient Mental Health: One hour of therapy, no more than two times each week (when medically necessary).	$10 copayment for individual visits. $5 copayment for group visits
Partial Hospitalization for Alcoholism Treatment: Up to 21 days for rehabilitation on a limited hour per day basis. Does not count toward the limits for days of mental health inpatient care.	
Prescription Drugs	$4 copayment per Rx up to a 30-day supply for Active Duty Family Members. $5 copayment per Rx up to a 30-day supply for Retirees their Family Members and Survivors.
Eye Examinations: One routine examination per year covered for family members of active duty sponsors.	$5 copayment per examination
Ambulatory Surgery (same day): Authorized hospital-based or free-standing ambulatory surgical center that is CHAMPUS certified.	Active Duty Family Members. None. Retirees and their Family Members and Survivors: $5 copayment for primary surgeon only
Immunizations: Immunizations required for active duty family members whose sponsors have permanent change of station orders to overseas locations	$5 copayment per visit
Enhanced benefits, type of service	**Beneficiary cost share, CC Plus**
Immunizations: Pediatric and adult immunizations as recommended by the American Academy of Pediatrics for children and by the U.S. Public Health Service for adults.	$5 copayment per visit up to 24 months of age. (See Family Health Services.) $5 copayment per immunization for over 2 years old
Periodic Physical Examinations: Conducted by Primary Care Manager for ages over 24 months. (For well baby care up to 24 months of age, see "Family Health Services" above.)	$5 copayment per physical for ages 2-6. $15 copayment per physical for ages 7 and over
Eye Examinations: One routine examination per year covered for retirees under age 18 and survivors and family members under age 18	$5 copayment per examination

Enhanced benefits, type of service	Beneficiary cost share, CC Plus
Wellness Classes, Community Health Services, and Community Resource Coordination	No charge or minimal copayment.

II. Inpatient Services:

Standard CHAMPUS benefits (see note 3), type of service	Beneficiary cost share, CC Plus
Hospitalization: Semiprivate room (and when medically necessary, special care units), general nursing, and hospital service. Includes inpatient physician and their surgical services, meals including special diets, drugs and medications while an inpatient, operating and recovery room, anesthesia, laboratory tests, x-rays and other radiology services, necessary medical supplies and appliances, blood and blood products. Unlimited services with authorization, as medically necessary. Maternity: Hospital and professional services (prenatal, postnatal). Unlimited services with authorization, as medically necessary. Skilled Nursing Facility Care: Semiprivate room, regular nursing services, meals including special diets, physical, occupational and speech therapy, drugs furnished by the facility, necessary medical supplies, and appliances. Unlimited services with authorization, as medically necessary.	Active Duty Family Members: None. Retirees and their Family Members and Survivors: $75 per day copayment, with a $750 maximum per admission, for institutional services. None for professional services.
Hospitalization for Mental Illness With authorization, up to 30 days per fiscal year for adults (age 19+), up to 45 days per fiscal year for children under age 19.	Active Duty Family Members: None. Retirees and their Family Members and Survivors: $50 per day copayment or 25% cost share of total charges (based on the negotiated reimbursement rate), whichever is less.
Alcoholism (Inpatient, partial): With authorization, 7 days for detoxification and 21 days for rehabilitation per 365 days. Maximum of one rehabilitation program per year and three per lifetime. Detoxification and rehabilitation days count toward limit for mental health benefits.	

Note 1: The beneficiary copayments (i.e., beneficiary payments expressed as a specified amount) in this chart are effective for FY 1993, and will be updated for inflation each fiscal year by the national CPI–U medical index (the medical component of the Urban Consumer Price Index). Beneficiary cost shares (i.e., beneficiary payments expressed as a percentage of the provider's fee) will not be similarly updated. CHAMPUS annual deductibles under CC Basic will not be similarly updated. The beneficiary is responsible for the full cost of noncovered services and nonemergency services obtained outside the network without prior authorization.

Note 2: There is no copayment under CC Plus for primary care or preventive services for family members of active duty or retired sponsors with pay grades of E–4 and below.

Note 3: No enhanced inpatient benefits under CC Plus.

I. Outpatient Services:

TABLE 2.—COORDINATED CARE PROGRAM; BENEFITS AND BENEFICIARY PAYMENTS UNDER CC EXTRA

Annual deductible	CC Extra
Applied to all outpatient services	Standard CHAMPUS deductible as defined in CHAMPUS Policy Manual.

Standard CHAMPUS benefits, type of service	Beneficiary cost share, CC Extra
Physician Services: Office visits; outpatient office-based medical and surgical care; consultation, diagnosis and treatment by a specialist; allergy tests and treatment; osteopathic manipulation; medical supplies used within the office including casts, dressings, and splints. Laboratory and X-Ray Services. Routine Pap Smears: Frequency to depend on physician recommendations based on the published guidelines of the American Academy of Obstetrics and Gynecology. Ambulance Services: When medically necessary as defined by CHAMPUS Policy Manual and the service is a covered benefit. Emergency Services: Emergency and urgently needed care obtained on an outpatient basis, both network and non-network and in and out of Region.	Active Duty Family Members: Cost share—15% of the negotiated reimbursement rate. Retirees and their Family Members and Survivors: Cost share—20% of the negotiated reimbursement rate.
Durable Medical Equipment, Prosthetic Devices, and Medical Supplies Prescribed by an Authorized Provider Which Are Covered Benefits (if dispensed for use outside of the office or after the home visit). Home Health Care: Part-time skilled nursing care, physical, speech & occupational therapy when medically necessary and which are covered benefits. Family Health Services: Family planning and well baby care (up to 24 months of age). The exclusions listed in the CHAMPUS Policy Manual will apply. Outpatient Mental Health: One hour of therapy, no more than two times each week (when medically necessary). Partial Hospitalization for Alcoholism Treatment: Up to 21 days for rehabilitative on a limited hour per day basis. Does not count toward the limits for days of mental health inpatient care.	Active Duty Family Members: Cost share—15% of the negotiated reimbursement rate. Retirees and their Family Members and Survivors Cost share—20% of the negotiated reimbursement rate.
Prescription Drugs.	
Eye Examinations: One routine examination per year covered for family members of active duty sponsors.	Cost share—15% of the negotiated reimbursement rate
Ambulatory Surgery (Same Day): Authorized hospital-based or free-standing ambulatory surgical center that is CHAMPUS certified.	Active Duty Family Members: None. Retirees and their Family Members and Survivors: Cost share—20% of the negotiated reimbursement rate

Standard CHAMPUS benefits, type of service	Beneficiary cost share, CC Extra
Immunizations: Immunizations required for active duty family members whose sponsors have permanent change of station orders to overseas locations.	Active Duty Family Members: Cost share—15% of the negotiated reimbursement rate

II. Inpatient Services:

Standard CHAMPUS benefits, type of service	Beneficiary cost share, CC Extra
Hospitalization: Semiprivate room (and when medically necessary, special care units), general nursing, and hospital service. Includes inpatient physician and their surgical services, meals including special diets, drugs and medications while an inpatient, operating and recovery room, anesthesia, laboratory tests, x-rays and other radiology services, necessary medical supplies and appliances, blood and blood products. Unlimited services with authorization, as medically necessary.	Active Duty Family Members: None. Retirees and their Family Members and Survivors: $125 per day copayment (*See Note 1*) or 25% cost share of total charges (based on the negotiated reimbursement rate) for institutional services, whichever is less, plus 20% cost share of separately billed professional charges (based on the negotiated reimbursement rate).
Maternity: Hospital and professional services (prenatal, postnatal). Unlimited services with authorization, as medically necessary.	
Skilled Nursing Facility Care: Semiprivate room, regular nursing services, meals including special diets, physical, occupational and speech therapy, drugs furnished by the facility, necessary medical supplies, and appliances. Unlimited services with authorization, as medically necessary.	
Hospitalization for Mental Illness: With authorization, up to 30 days per fiscal year for adults (age 19+), up to 45 days per fiscal year for children under age 19.	Active Duty Family Members: None. Retirees and their Family Members and Survivors: $50 per day copayment or 25% cost share of total charges (based on the negotiated reimbursement rate), whichever is less, plus 20% cost share of separately billed professional charges (based on the negotiated reimbursement rate).
Alcoholism: (Inpatient, partial) With authorization, 7 days for detoxification and 21 days for rehabilitation per 365 days. Maximum of one rehabilitation program per year and three per lifetime. Detoxification and rehabilitation days count toward limit for mental health benefits.	

Note 1: The beneficiary copayments (i.e., beneficiary payments expressed as a specified amount) in this chart are effective for FY 1993, and will be updated each fiscal year by the national CPI–U medical index (the medical component of the Urban Consumer Price Index). Beneficiary cost shares (i.e., beneficiary payments expressed as a percentage of the provider's fee) and annual deductibles will not be similarly updated.

Dated: August 28, 1992.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 92–21114 Filed 9–1–92; 8:45 am]

BILLING CODE 3810-01-M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

[Recommendation 92–6]

Operational Readiness Reviews

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice; recommendation.

SUMMARY: The Defense Nuclear Facilities Safety Board (Board) has made a recommendation to the Secretary of Energy pursuant to 42 U.S.C. 2286a concerning Operational Readiness Reviews. The Board requests public comments on this recommendation.

DATES: Comments, data, views, or arguments concerning this recommendation are due on or before October 2, 1992.

ADDRESSES: Send comments, data, views or arguments concerning this recommendation to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Pusateri or Carole J. Council, at the address above or telephone (202) 208–6400.

Dated: August 27, 1992.

John T. Conway,

Chairman.

Operational Readiness Reviews

Dated: August 26, 1992.

Several of the Board's Recommendations to you have referred to Operational Readiness Reviews, and some have been specifically directed to such activities. In this way, the Board has shown that it holds these reviews, whether by the contractor or by DOE, in high regard as important measures in verifying readiness of new activities to be started safely or of previously conducted activities to be safely resumed after an appreciable hiatus.

The Board recognizes that the actual operation of defense nuclear facilities is accomplished through defense contractors. While first line responsibility for safe operation is in effect delegated through contract provisions, such delegation does not relieve DOE management of its responsibility for ensuring that the operation will be protective of public health and safety. It is the Board's firm conviction that adequate protection of the public health and safety must be achieved through sustained exercise of vigilance by line management of DOE and the contractor.

The Operational Readiness Reviews is a process undertaken after the intermediate level of line management has arrived at its conclusion that a state of readiness has been achieved for safe startup of the activity. It is a means whereby top management in the contractor and/or DOE can then arrive at the independently determined conclusion that this readiness exists. If the line organizations that have been delegated responsibility for preparing a facility for operation have performed effectively, findings of any shortfalls are expected to be few, and of such a character that they can be remedied in short order and on a scheduled basis prior to startup.

In this vein, the Board has recognized the laudable advance toward definition of ORR requirements made in SEN–16B–91, "Approval for Restart of Facilities Shut Down for Safety Reasons and for Startup of Major New Facilities", dated November 12, 1991, and the attached "Process for Secretary Approval of Nuclear Facility Restart or Startup". However, we believe that guidance could be improved by specifying the required features of a satisfactory ORR, and by stating specifically on what occasions an ORR will be required.

Some of the Boards Recommendations have also reflected recognition that conducting an Operational Readiness Review prematurely, before line management responsible for preparing a facility for operation has concluded on a sound basis that readiness has been achieved, has adverse effects on safety. Among these are:

(a) It masks possible lack of competence and other defects in contractor and/or DOE line management.

(b) It becomes a management tool for achieving readiness to proceed safely rather

than verifying it. In this way it becomes a crutch for line management.

(c) It postpones discovery of safety deficiencies which effective line management would have identified earlier.

(d) It encourages resort to actions which compensate for safety deficiencies, instead of correcting them.

(e) It vitiates the value of the Operational Readiness Review as a means of independent confirmation of readiness.

The board believes that among the features of an acceptable ORR are the following:

(a) The review team should not include, as senior members, individuals who are responsible for accomplishing the work being reviewed.

(b) When the contractor performs an ORR, it and the DOE's ORR should be carried out in serial fashion, and the latter should not begin until the contractor has informed DOE in writing that the facility is ready to commence operation.

(c) The criteria governing the review should include the scope of the review and the factors to be used by individual technical experts in judging satisfactory performance.

(d) The DOE review should include assessment of the technical and managerial qualifications of those in the DOE field organization who have been assigned responsibilities for direction and guidance to the contractor, including the Facility Representative. A similar review should be made of the qualifications of contractor personnel responsible for facility operations.

(e) The review team should be required to reach a conclusion as to whether the facility will be operated in conformance with applicable DOE orders, directives, and Secretary of Energy Notices; and that any nonconformances or Compliance Schedule Approvals have been justified in writing, have been formally approved, and in the opinion of the review team do not unduly diminish protection of the public health and safety, including worker safety.

The above being recognized, the Board recommends that:

(1) DOE expeditiously develop an effective set of rules, procedures, orders, directives, and other requirements to govern safety aspects of the Operational Readiness Review process, subject to the principle that the purpose of such a Review is confirmation of an acceptable state of readiness.

(2) DOE develop specific criteria for when Operational Readiness Reviews are required and when they are not.

(3) The plan for each ORR incorporate the features discussed above as desirable, as well as those that were recommended in the Board's Recommendation 90-4.

John T. Conway,

Chairman.

Appendix—Transmittal Letter to the Secretary of Energy

August 28, 1992.

The Honorable James D. Watkins,
Secretary of Energy, Washington, DC 20585.

Dear Mr. Secretary: On August 26, 1992, the Defense Nuclear Facilities Safety Board, in accordance with 42 U.S.C. 2286a(5), unanimously approved Recommendation 92-6 which is enclosed for your consideration. Recommendation 92-6 deals with Operational Readiness Reviews.

42 U.S.C. 2286d(a) requires the Board, after receipt by you, to promptly make this recommendation available to the public in the Department of Energy's regional public reading rooms. The Board believes the recommendation contains no information which is classified or otherwise restricted. To the extent this recommendation does not include information restricted by DOE under the Atomic Energy Act of 1954, 42 U.S.C. 2161-66, as amended, please arrange to have this recommendation promptly placed on file in your regional public reading rooms.

The Board will publish this recommendation in the Federal Register.

Sincerely,

John T. Conway,

Chairman.

[FR Doc. 92-21051 Filed 9-1-92; 8:45 am]

BILLING CODE 6820-KD-M

DEPARTMENT OF ENERGY

Noncompetitive Financial Assistance Award to the University of North Texas

AGENCY: Department of Energy (DOE).

ACTION: Notice of intent to make a noncompetitive financial assistance award.

SUMMARY: DOE announces that it plans to award a noncompetitive cooperative agreement to the University of North Texas for two years in the amount of $69,156. The scope of work includes the following: (1) To report on voluntary disclosures of finding costs by oil and gas firms, (2) to compile a finding costs bibliography, and (3) to determine statistically the significance of finding costs and other physical, financial, and accounting variables as predictors of survival and profitability of oil and gas firms. Pursuant to section 600.7(b)(2)(i) (B, C, and D) of the DOE Financial Assistance Rules, 10 CFR Part 600, DOE has determined that eligibility for this cooperative agreement shall be limited to the University of North Texas. Procurement Request number for this requirement is 01-92EI23624.000.

SUPPLEMENTARY INFORMATION: Finding costs are a key indicator of the efficiency of the oil and gas industry. They can also be an early warning device of potential changes in oil and gas production, which would make it possible to put in place policies to offset declining national energy security. However, finding costs are hard to measure and difficult to interpret because they are based on disparate corporate financial and reporting strategies. This study will assist in better understanding and interpreting finding costs data. The Institute of Petroleum Accounting at the University of North Texas is a world-renowned center of petroleum accounting expertise. There is no U.S. institution better equipped to understand and grasp the economic actions underlying the financial reporting of public corporations than the Institute. No other private or government entity possesses their level of expertise on the subject matter in question. Therefore, the DOE has determined that this award to the University of North Texas on a restricted eligibility basis is appropriate.

FOR FURTHER INFORMATION CONTACT: John Wells, PR-322.4, U.S. Department of Energy, Office of Placement and Administration, 1000 Independence Ave., SW., Washington, DC. 20585, (202) 634-4488.

Thomas S. Keefe,

Director, Division "B", Office of Placement and Administration.

[FR Doc. 92-21137 Filed 9-1-92; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. 96-511, 44 U.S.C. 3501 et seq.). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected

public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before October 2, 1992. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so, as soon as possible. The Desk Officer may be telephoned at (202) 395-3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI-73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254-5348.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC-577(A)
3. 1902-0161
4. Gas Pipeline Certificates: Environmental Impact Statements, Re Notice of Proposed Rulemaking in Docket No. RM92-13-000, Revisions to Regulations Governing Section 311 Construction and the Replacement of Facilities, Issued August 3, 1992
5. Extension
6. On occasion
7. Mandatory
8. Business or other for-profit
9. 55 respondents
10. 4 responses
11. 4 hours per response
12. 880 hours
13. The Notice of Proposed Rulemaking in Docket No. RM92-13-000 requires natural gas pipelines to provide at least 30 days notice to the Commission prior to replacing certain facilities or the construction of facilities pursuant to section 311 of the Natural Gas Policy Act.

The second energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC-80
3. 1902-0106
4. Revision
5. Licensed Hydropower Development Recreation Report
6. Sexennial
7. Mandatory
8. Individuals or households, Farms, and Businesses or other for-profit
9. 1 respondent
10. 1 response
11. 1 hour per response
12. 1 hour
13. Part I, section 10a of the Federal Power Act requires that a licensee submit to the Commission for approval, plans, maps and specifications which will present a comprehensive plan for improving or developing a waterway for beneficial uses, including recreation.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93-275, Federal Energy Administration Act of 1974, 15 U.S.C. § 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, August 19, 1992.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 92-21139 Filed 9-1-92; 8:45 am]

BILLING CODE 6450-01-M

Forms EIA-457A-G, "Residential Energy Consumption Survey (RECS)"

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Notice of the Proposed Revision, and Extension of the Forms EIA-457A-G, "Residential Energy Consumption Survey," and Solicitation of Comments.

SUMMARY: The Energy Information Administration (EIA), as part of its continuing effort to reduce paperwork and respondent burden (required by the Paperwork Reduction Act of 1980, Pub. L. No. 96-511, 44 U.S.C. 3501 *et seq.*), conducts a presurvey consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing reporting forms. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, EIA is soliciting comments concerning the proposed revision and extension to the Forms EIA-457A-G, "Residential Energy Consumption Survey (RECS)."

DATE: Written comments must be submitted by October 2, 1992. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below of your intention to do so as soon as possible.

ADDRESS: Send comments to Wendel Thompson, EI-631, Forrestal Building, U.S. Department of Energy, Washington, DC 20585, Telephone: 202-586-1119, Fax: 202-586-0018.

FOR FURTHER INFORMATION OR TO OBTAIN COPIES OF THE PROPOSED FORM AND INSTRUCTIONS: Requests for additional information or copies of the form and instructions should be directed to Wendel Thompson at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. No. 93-275) and the Department of Energy Organization Act (Pub. L. No. 95-91), the Energy Information Administration is obliged to carry out a central, comprehensive, and unified energy data and information program which will collect, evaluate, assemble, analyze, and disseminate data and information related to energy resource reserves, production, demand, and technology, and related economic and statistical information relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

To meet this responsibility, as well as internal DOE requirements that are dependent on accurate data, the EIA has developed an ongoing program of national sample surveys on energy consumption in the manufacturing, commercial, residential and residential transportation sectors.

The RECS has been designed by EIA to collect data on energy consumption in the residential sector. Information about the housing unit is collected through voluntary personal interviews with a representative national sample of approximately 6,000 households. Through these personal interviews, data are collected on the energy sources used in the home, the usage of energy and the characteristics of energy-using equipment. Data are also collected on household demographics (income, size,

origin) and the housing unit's physical characteristics. Data on actual energy consumption and expenditures are obtained from energy billing records maintained by the household's energy suppliers through a mandatory mailed survey. The RECS has been conducted in 1980, 1981, 1982, 1984, and 1990. Beginning with the 1987 survey, the RECS has been conducted on a triennial schedule.

II. Current Actions

For the 1993 RECS, the EIA proposes several changes from the collection as conducted in 1990 and an extension of three years for the OMB approval.

The areas in which less information will be collected include: identification of farms, conservation activities during the last three years, characteristics of household members, heating-fuel switching capability, characteristics of the water heater, floorspace, and wood usage.

Areas in which additional information will be collected include appliance usage, passive, solar design, consumer decision making, demand-side management programs, lighting, cooking, home office activities, perception of electric bills, new technologies, and wood prices.

Form EIA–457A, the household interview part of the RECS, will be conducted using Computer-Assisted Personal Interviewing (CAPI). This technology involves replacing the paper and pencil procedure with a laptop computer. Using CAPI frees the interviewer from determining difficult branching operations, in the questionnaire, notes inconsistent answers which can be resolved in the presence of the respondent, and speeds data delivery.

The sampling for the 1993 RECS is being redesigned to reflect 1990 Decennial Census information and, even more than in the past, the importance of climate, a major driver of residential energy consumption.

III. Request for Comments

Prospective respondents and other interested parties should comment on the proposed extension and revisions. The following general guidelines are provided to assist in the preparation of responses. Please indicate to which form(s) your comments apply.

As a potential respondent:

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can the data be submitted using the definitions included in the instructions?

C. Can data be submitted in accordance with the response time specified in the instructions?

D. Public reporting burden for this collection is estimated to average 1 hour per household for Form EIA–457A, 20 minutes per household for Form EIA–457B, 15 minutes per response for Form EIA–457C, 30 minutes per form for Form EIA–457D, 30 minutes per form for Form EIA–457E, 30 minutes per form for Form EIA–457F, and 30 minutes per form for Form EIA–457G. Form EIA–457A is completed during a personal interview with the household, Form EIA–457B is mailed to households not having a personal interview, Form EIA–457C is answered by rental agents during a telephone interview, and Forms EIA–457D through G are completed by the energy suppliers (electric and natural gas utilities, fuel oil, kerosene and propane suppliers) on mailed survey forms.

As a potential recipient of a form, how much time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, do you estimate it will require for you to provide the required information?

E. What is the estimated cost of completing this form, including the direct and indirect costs associated with the data collection? Direct costs should include all costs, such as administrative costs, directly attributable to providing this information.

F. How can form be improved?

G. Do you know of any other Federal, State, or local agency that collects similar data? If you do, specify the agency, the data element(s), and the means of collection.

As a potential user:

A. Can you use data at the levels of detail indicated on the form?

B. For what purpose would you use the data? Be specific.

C. How could the form be improved to better meet your specific needs?

D. Are there alternate sources of data and do you use them? What are their deficiencies and/or strengths?

E. Would you prefer to see some data published in metric unit measurements? If so, which data elements?

EIA is also interested in receiving comments from persons regarding their views on the need for the information contained in the Residential Energy Consumption Survey.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form; they also will become a matter of public record.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. No. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), and 790a.

Issued in Washington, DC August 19, 1992.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 92–21140 Filed 9–1–92; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 92-80-NG]

EMC Gas Transportation Co.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting EMC Gas Transmission Company blanket authorization to import up to 30 Bcf of natural gas from Canada over a two-year term, beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 25, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–21138 Filed 9–1–92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. RP91-41-000, et al.]

Columbia Gas Transmission Corp.; Filing

August 26, 1992.

On August 20, 1992, Columbia Gas Transmission Corporation (Columbia) filed a letter regarding its current payment and billing practices in light of a July 6, 1992 order of the United States District Court for the District of Delaware concerning Columbia's motion for permission to continue operations under FERC orders and regulations while its petition for reorganization under Chapter 11 of the Bankruptcy Code is pending before the bankruptcy court.

In its August 20 letter, Columbia states that, to the extent its upstream pipeline suppliers have allocated Order Nos. 500/528 take-or-pay costs to Columbia based upon entitlements or usage prior to its bankruptcy filing on July 31, 1991, it is suspending the remaining payments to its pipeline suppliers for all such charges. Columbia also stated that it is suspending billing adjustments relating to the reallocation of Order No. 500 costs among its customers in its own Order No. 528 flowthrough filings.

Columbia states it does not think any Commission waivers are necessary to implement such suspensions, but to the extent the Commission deems otherwise, it requests any necessary waivers to effectuate the suspensions of payments and billing adjustments under the relevant Commission orders.

Any person desiring to respond to or comment on Columbia's letter or alternative motion for waiver should file its response or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, within 15 days after the motion was filed, or on or before September 4, 1992.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21067 Filed 9-1-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-222-000]

Northern Border Pipeline Co.; Proposed Changes in FERC Gas Tariff

August 26, 1992.

Take notice that on August 24, 1992, Northern Border Pipeline Company (Northern Border) submits for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets with a proposed effective date of October 1, 1992:

Sixth Revised Sheet No. 156
Fourth Revised Sheet No. 160
Second Revised Sheet No. 160A
Fifth Revised Sheet No. 161
Third Revised Sheet No. 201
Fourth Revised Sheet No. 205
Fourth Revised Sheet No. 209
First Revised Sheet No. 212
First Revised Sheet No. 216
Third Revised Sheet No. 256
Third Revised Sheet No. 257
Third Revised Sheet No. 422
Third Revised Sheet No. 423
Second Revised Sheet No. 427
First Revised Sheet No. 428

Northern Border states that the primary goals of this filing are to (1) establish an all points contract concept for our interruptible shippers and (2) establish in-line transfer points on our system to facilitate the transfer of volumes from one transportation agreement to another.

Northern Border states that it is proposing to implement an all points, or master receipt and delivery point, contract concept to greatly ease the administrative burden of amending service agreements every time a new receipt or delivery point is added. Under this concept every current interruptible service agreement will be amended such that all receipt and delivery points are available to all interruptible shippers.

Northern Border states that copies of the filing have been sent to all of Northern Border's contracted shippers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 2, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21069 Filed 9-1-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-16-29-000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

August 26, 1992.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on August 24, 1992 certain revised tariff sheets to Third Revised Volume No. 1 of its FERC Gas Tariff included in appendix A attached to the filing.

Transco states that the purpose of the filing is to track rate changes attributable to (1) storage services purchased from Consolidated Natural Gas (CNG) under its Rate Schedule GSS the costs of which are included in the rates and charges payable under Transco's Rate Schedule LSS, (2) transportation services purchased from National Fuel Gas Supply (National Fuel) under its Rate Schedule X-42 the costs of which are included in the rates and charges payable under Transco's Rate Schedule LSS, (3) transportation services purchased from National Fuel under its Rate Schedule X-54 the costs of which are included in the rates and charges payable under Transco's Rate Schedule SS-2, (4) transportation services purchased from National Fuel under its Rate Schedule X-58 the costs of which are included in the rates and charges payable under Transco's Niagara Import Point Project—System Expansion (NIPPs-SE) firm transportation services, and (5) storage services purchased from Texas Eastern Transmission Corporation (TETCO) under its Rate Schedule X-28 the costs of which are included in the rates and charges payable under Transco's Rate Schedule S-2.

Included in Appendices B through E attached to the filing are explanations and detailed computations regarding the proposed tracking changes under the LSS, SS-2, NIPPs-SE, and S-2 rate schedules.

Transco states that copies of the filing are being mailed to each of its LSS, SS-2, NIPPs-SE and S-2 customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214, 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 2, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21068 Filed 9-1-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-196-000]

Transwestern Pipeline Co.; Technical Conference

August 26, 1992.

In the Commission's order issued on July 31, 1992, in the above-captioned

proceeding, the Commission held that the filing raises issues for which a technical conference is to be convened. The conference to address the issues has been scheduled for Friday, September 11, 1992, at 10 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21070 Filed 9-1-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-76-000]

Wyoming Interstate Co. Ltd.; Filing

August 26, 1992.

Take note that on August 19, 1992, Wyoming Interstate Company, Ltd. (WIC) submitted for filing Fourteenth Revised Sheet No. 5 in FERC Gas Tariff, Original Volume No. 1, and First Revised Sheet No. 4 and Second Revised Sheet No. 5 in FERC Gas Tariff First Revised Volume No. 2. The sheets reflect a decrease of $0.0001 per Mcf in the ACA adjustment charge, resulting in a new ACA rate of $0.0023 per Mcf based on WIC's 1992 ACA billing.

WIC requested that the new 0.23 cent per Mcf ACA charge be effective October 1, 1992.

WIC notes that copies of WIC's filing are being served on all jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20246, in accordance with Rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR Sections 385.214 and 385.211). All such motions or protests should be filed on or before September 2, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21066 Filed 9-1-92; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30342; FRL-4081-5]

Buckman Laboratories; Application to Register a Pesticide Product

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register the pesticide product Busan 1104, containing an active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by October 2, 1992.

ADDRESSES: By mail submit comments identified by the document control number [OPP-30342] and the file symbol (1448-GLR) to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Attention PM 31, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, Attention PM 31, Registration Division (H7505C), Environmental Protection Agency, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: PM 31, John Lee, Rm. 258, CM #2, (703-305-5675).

SUPPLEMENTARY INFORMATION: EPA received an application from Buckman Laboratories, 1256 North McLean Blvd., Memphis, TN 38108, to register the pesticide product Busan 1104 (File Symbol 1448-GLR), a microbicide containing the active ingredient 1*H*-pyrazole-1-methane 1,3,5-dimethyl at 93 percent; an ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of FIFRA. The product was classified for general use in emulsion paints, adhesives, latex, polish, waxes, paper inking chemicals, detergents, textiles, and construction materials. Notice of receipt of the application does not imply a decision by the Agency on the application.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operations Division (FOD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the FOD office (703-305-5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

Dated: August 4, 1992.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 92-20898 Filed 9-1-92; 8:45 am]

BILLING CODE 6560-50-F

[OPP-30340; FRL-4077-4]

Tifton Innovation Corp. and AKZO Chemicals, Inc.; Application to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by October 2, 1992.

ADDRESSES: By mail submit comments identified by the document control number [OPP-30340] and the registration/file number to: Public

Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (H7505C), Attn: (Product Manager (PM) named in each registration), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

In person: Contact the PM named in each registration at the following office location/telephone number:

Product Manager	Office location/ telephone number	Address
PM 21 Susan Lewis	Rm. 223, CM #2, (703) 305-6900	Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA.
PM 22 Cynthia Giles-Parker	Rm. 229, CM #2, (703) 305-5540	Do.

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 65263-R. Applicant: Tifton Innovation Corp.; 1009 N. Central Avenue, Tifton, GA. 31794. Product name: DR. BIOSEDGE®. Active ingredient: *Puccinia canaliculata* spores, ATCC #40199 95%; inert ingredients: 5%. Proposed classification/use: None. For use in the control of Yellow Nutsedge. (PM-21)

2. File Symbol: 34688-AO. Applicant: AKZO Chemicals, Inc., 300 South Riverside Plaza, Chicago, Il. 60606. Product name: SINESTO B. Active ingredient: Alkyl trimethylammonium chloride 12%; inert ingredients 88%. Proposed classification/use: None. For use on fresh cut lumber to control sap stains. (PM-22)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operations Division (FOD), office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the FOD office (703-305-5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

Dated: August 4, 1992.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 92-21030 Filed 9-1-92; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-956-DR]

Louisiana; Amendment to a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA-956-DR), dated August 26, 1992, and related determinations.

EFFECTIVE DATE: August 26, 1992.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Louisiana, dated August 26, 1992, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 26, 1992.

The parishes of Lafourche, St. Martin, Assumption, Iberia, St. John the Baptist, Iberville, and St. Mary for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance, No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

[FR Doc. 92-21106 Filed 9-1-92; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-956-DR]

Louisiana; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

EFFECTIVE DATE: August 26, 1992.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Louisiana (FEMA-956-DR), dated August 26, 1992, and related determinations.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 26, 1992, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Louisiana, resulting from Hurricane Andrew on August 25, 1992, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Louisiana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses

You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs, except that for the first 10 days, you are authorized to provide funds for debris removal and emergency protective measures under section 403(a) at 90 percent of the total eligible costs, if warranted.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Brad Harris of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Louisiana to have been affected adversely by this declared major disaster:

Terrebone Parish for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Wallance E. Stickney,

Director.

[FR Doc. 92-21107 Filed 9-1-92; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

U.S. Atlantic & Gulf Ports Eastern; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-009548-045.

Title: U.S. Atlantic & Gulf Ports Eastern Mediterranean North African Freight Conference.

Parties:

Farrell Lines, Inc.
Levant Line, S.A.
Lykes Bros. Steamship Co., Inc.
Waterman Steamship Corporation

Synopsis: The proposed amendment prohibits Agreement members from entering into individual loyalty contracts. It also permits the parties to agree on time-volume rates.

Agreement No.: 224-200693.

Title: Maryland/Sea-Land Terminal Agreement.

Parties:

Maryland Port Administration ("Port")
Sea-Land Service, Inc. ("Sea-Land")

Synopsis: The Agreement provides that Sea-Land will lease 15 acres at the Port's Seagirt Marine Terminal for a period of one year.

Agreement No.: 224-200694

Title: APL/Sea-Land/Guam Terminal Agreement.

Parties:

American President Lines, Ltd. ("APL")
Sea-Land Service, Inc. ("Sea-Land")
Port Authority of Guam ("Port")

Synopsis: The Agreement provides for the transportation of a container crane owned by Sea-Land and APL to Guam and for its installation at and possible future sale to the Port as well as for the sharing of any third party avenues generated prior to the completion of the sale of the crane to the Port.

Dated: August 27, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92-21052 Filed 9-1-92; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. OCS-92-8-1]

Request for Applications Under the Office of Community Services' FY 1992 Homeless Families Support Services Demonstration Program

AGENCY: Office of Community Services, ACF, DHHS.

ACTION: Extension of due date for delivery of applications for the FY 1992 Demonstration Program cited above.

SUMMARY: This notice amends program announcement number OCS-92-8 published in the **Federal Register** on July 30, by extending the due date for delivery of applications to September 3, 1992.

FOR FURTHER INFORMATION CONTACT: Sheldon Shalit, Office of Community Services, (202) 401-4807.

SUPPLEMENTARY INFORMATION: On July 30, 1992, the Office of Community Services (OCS) published an announcement in the **Federal Register** on the availability of FY 1992 funds and requested applications for the Homeless Families Support Services Demonstration Program (FR Doc. 92-17810).

The purpose of the program is to test integrated approaches to reducing homelessness among families with children.

Because of the recent damages and disruptions caused by Hurricane Andrew, we are allowing all prospective applicants more time to submit applications for funding under this announcement. We are extending the due date for delivery and receipt of applications from August 31, 1992 to September 3, 1992. Delivered applications must be received by 5 p.m., Thursday, September 3, 1992 at the following address: U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 6th Floor OFM/DDG, 370 L'Enfant Promenade SW., Washington, DC 20447. Information previously published regarding applications submitted using a postmark date of August 31, 1992 remains the same.

Dated: August 27, 1992.

Eunice S. Thomas,

Director, Office of Community Services.

[FR Doc. 92-21050 Filed 9-1-92; 8:45 am]

BILLING CODE 4130-01-M

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Program and Organizational Emphasis and Medicare Contracting and Procurement

Part F of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), is amended to indicate a reorganization within the Bureau of Program Operations (BPO) in the Office of the Associate

Administrator for Operations. The reorganization changes the organization, functions, and administrative codes respectively. The overall functional statement for the Bureau will not be affected; however, BPO's administrative code must be changed to reflect the realignment of several major Bureau components. BPO's new administrative code is FPB. The organizational changes will realign existing functions within the Bureau to reflect the current program and organizational emphasis in quality control, contractor reform, Medigap, etc. Also, the Medicare contracting and procurement functions are being separated from the Medicare program activities. BPO's functional statements are being published to facilitate the amendment to part F of the Department statement.

The specific amendments to part F are described below:

• Section FP.20.A.1. through FP.20.A.4., for the Bureau of Program Operations (BPO) is deleted in its entirety and replaced by new functional statements for all of the subordinate components to reflect the current alignment of functions. The BPO functional statement is not changed by this reorganization.

The new Section FP.20.A.1. reads as follows:

1. Office of Contracting and Financial Management (FPB1)

• Administers contracts with private organizations to perform various aspects of Medicare program operations falling under the Bureau's area of responsibility.

• Develops, negotiates, maintains, and modifies primary contracts and agreements with intermediaries, carrier, and other organizations authorized under Title XVIII of the Social Security Act.

• Provides direction and guidance to Central Office and Regional Office staff on Medicare intermediary and carrier contracts and contracting activities under the Bureau's area of responsibility.

• Establishes policies and procedures to be used by all Medicare intermediary and carrier contractors in the procurement of equipment, facilities management, software, and other services.

• Establishes the policies and procedure by which Medicare intermediary and carrier contractors and regional offices prepare and submit periodic budget estimates.

• In consultation with other HCFA and Bureau components, develops and negotiates the national budget for Medicare contractors, including workload estimates.

• Controls and manages the Medicare cash flow and related banking activities.

• Reviews periodic contractor expenditure reports to evaluate Medicare intermediary and carrier budget execution and determines the allowability of costs.

• Prepares analysis of Medicare intermediary and carrier expenditure trends and patterns.

• Reviews regional office and contractor performance in determining the correct amount of provider, physician, and supplier overpayments, and assists contractors in negotiations related to the acceptability of techniques for determining the amount of an overpayment and the methods of recovery.

• Prepares cases when compromises are not appropriate and overpayments are collectible and assists the HCFA Claims Collection Officer in preparing such cases for disposition.

• Prepares manual instructions concerning the procedures for the recovery of provider, physician, and supplier overpayments.

• Designs, implements, and maintains a Medicare overpayment tracking system.

• Plans, directs, and coordinates operational policy and procedures for the establishment and maintenance of premium billing and collection.

• Develops plans for possible transitions between new and current contractors, and manages transition activities in coordination with the regional offices.

• Plans, develops, and directs Medicare intermediary and carrier operating contracting experiments.

a. Division of Acquisitions and Contracts (FPB11)

• Develops, maintains, negotiates, and modifies all agreements with intermediaries, and contracts with carriers as authorized under Title XVIII of the Social Security Act.

• Develops procedures for the award, non-renewal, termination, extension, and amendment of Medicare contracts.

• Represents the Bureau in processing contractor claims resulting from changes in contract requirements or other disputes involving the selection or nonelection of contractors.

• Directs contract-related surveys requested by both the Executive and Legislative Branches of the Federal Government.

• Directs and guides Central Office and Regional Office staff on contracts and contract procurement and maintains an oversight role on regional activity in the areas of Title XVIII contracting.

• Coordinates Fiscal Intermediary Group and Carrier Representative Group activities.

• Serves as a HCFA resource in regard to technical Medicare contracting issues concerning matters.

• Reviews the Bureau's contractors' requests for change orders and adjustments in price, determines where liquidated damages should be assessed against contractor and takes proper action.

• Develops and directs policy regarding regional intermediary concept such as for Home Health Agencies.

• Develops necessary regulations and other issuances dealing with Medicare contract administration.

• Provides liaison with contractor management.

• Provides leadership in litigation activities related to contract disputes.

b. Division of Financial Management (FPB12)

• Provides leadership in developing, implementing, and evaluating policies and procedures for the Medicare contractor budget process.

• Formulates and approves the national budget for Medicare contractor administrative costs.

• Develops, implements, and monitors cash management letter-of-credit procedures for contractors and servicing banks.

• Develops, implements, and monitors fund control for the Medicare contractor administrative costs.

• Sets requirements and procedures for contractors and regional offices to prepare and submit periodic budget estimates and reports.

• Participates in negotiations and approval of all related price adjustments and reviews periodic contractor expenditure reports to evaluate budget execution and determination of the allowability of costs.

• Designs, maintains, and as necessary, prepares specifications to revise the Medicare financial administration and benefit payment systems.

• Analyzes contractor administrative cost data and trends.

• Directs and prepares instructions to guide regional office performance to assure consistency in implementation of financial policy.

c. Division of Contractor Planning and Management (FPB13)

• Plans, develops, and directs contracting experiments that involve HCFA contractors, agencies, and

separate contracts with commercial organizations.

• Develops plans for possible transitions between new and current contractors and provides oversight of these transition activities in coordination with the regional offices.

• Assists, manages, monitors, and provides oversight of contractor transition activities in coordination with the regional offices, and carries out plans for transition between new and old contractors.

• Evaluates implementation proposals associated with Medicare electronic data processing (EDP) facility management procurement, software acquisitions, and major systems changes and testing.

• Provides technical assistance to regional offices with respect to Medicare EDP procurement and reviews, proposed hardware and software modifications, and equipment upgrades.

• Incorporates current procurement and operating policy as well as lessons learned from prior transitions into the implementation sections of Request for Proposals and subsequent transitions.

• Evaluates Medicare claims processing contracting arrangements, formulates plans for improvement, and carries out these improvement plans.

d. Division of Account Management and Collection (FPB14)

• Directs the nationwide administration of the institutional and physician and supplier recovery activity.

• Develops regulations, policies, procedures, guidelines, and recommendations for regional offices and HCFA contractors to assure timely and accurate provider overpayment identification, interest assessment, collection, and reduction of incidence of overpayment.

• Assures that the accounting practices, recovery procedures, and collection activities of regional offices and contractors properly and sufficiently implement the providers overpayment recovery policies, procedures, and regulations of HCFA, the Department of Health and Human Services, the General Accounting Office, the Department of Justice, and all applicable Federal statutes.

• Plans, develops, and issues operational policy, specifications, requirements, procedures, and instructional material to administer Third Party agreements for enrollment and premium payments for States, Office of Personnel Management (OPM), third party groups, professional organizations, carriers and intermediaries, and Social Security Administration components, the Medicare Lock-Box premium collection for Medicare beneficiaries, and the direct billed beneficiaries.

• Assists in the negotiation and modification of agreements for third party and direct billing premium collection operations. Manages lock-box contracts for collection of State buy-in and third party group premiums, and for collection of direct billed beneficiary premiums.

• Resolves premium collection problems for States, OPM, third party groups and beneficiaries.

• Develops procedures and provides training and assistance to regional offices for the review and evaluation of the institutional provider, physician, supplier, and beneficiary overpayment recovery, and third party systems.

• Serves as Agency systems manager for premium collection requirements.

2. Office of Medicare Benefits Administration (FPB2)

• Oversees the operations and administration of various Medicare program areas including Medigap, Medicare Secondary Payer (MSP), audit and payment management, benefit integrity, entitlement, medical review, and utilization analysis.

• Develops, implements and administers MSP and Medigap operational policy. Analyzes and evaluate specific operating policy and procedures in the MSP and Medigap programs and initiates proposals to better achieve program objectives.

• Reviews, analyzes, and prepares recommendations regarding approval or disapproval of State regulatory programs for Medicare supplemental health insurance to ensure compliance with the Social Security Act. Conducts the Mandatory Certification Program in those States not having an approved regulatory program.

• Develops, implements, and monitors the Medicare SELECT direct contracting option for medical necessity determinations.

• Reviews State regulatory programs for Medicare supplemental insurance and Medicare supplemental health insurance policies for compliance with the Social Security Act.

• Develops national MSP budget and annual savings goals, enforces MSP provisions and supports MSP litigation and post pay activities.

• Plans and develops methods to improve and enhance the audit and payment management functions and makes recommendations for improvements in the management of the audit program. Analyzes regulations, executive orders, policies, and legislative proposals and assesses their financial impact on the audit budget.

• Develops, implements, and maintains programs and systems to ensure that Medicare benefits are paid within the meaning of applicable law, regulations, and program polity and to ensure that internal or external allegations of fraudulent or abusive behavior are promptly acknowledged, developed, and disposed of including referral to the Office of Inspector General.

• Directs the development and issuance of specifications, requirements, procedures, forms, and instructional material to implement and maintain operational systems for part A and part B medical review and utilization analysis.

• Develops the national budget for intermediary and carrier medical review activities, linking programmatic expectations with funding requirements and available resources.

• Implements new legislation impacting on the medical review processes and/or Medicare covered services.

• Serves as the Agency systems manager for entitlement requirements.

a. Division of Utilization Analysis (FPB21)

• Directs the development of analytical studies, tools, and methodologies, for assessing health care utilization, beneficiary episodes of care, quality of care, patterns, and trends to improve the effectiveness of the medical review program.

• Directs the development and issuance of specifications, requirements, procedures, forms, and instructional material to implement and maintain operational systems for part A and part B medical review and utilization analysis.

• Designs edits and specifications for contractor medical review screens, systems and reports, including nationally mandated screens and reports, and conducts ongoing analysis of the effectiveness of national requirements.

• Utilizes the National Claims History Database to analyze and compare utilization patterns and to assess national trends in the provision of care to the Medicare population.

• Develops the national budget for intermediary and carrier medical review activities linking programmatic expectations with funding requirements.

• Reviews proposed policy, payment, and legislative proposals to evaluate the operational impact on the Medical Review and Utilization Review (MR/

UR) program. Implements new legislation affecting MR/UR and develops program safeguards for new and revised procedures.

• Provides contractors with analytical techniques for analysis of provider specific data, development of cost effective review methodologies, and clarification of Medicare policies. Monitors development and use of contractor MR/UR policies and implementation of MR directives and provides training and technical support to contractors.

• Directs contractor workgroups to develop, enhance, and maintain the most effective MR/UR program.

• Assists with the development of contractor performance standards to assess the effectiveness of the contractor's MR/UR program.

• Provides technical support and assistance to the Bureau, other HCFA and non-HCFA components on contractor MR/UR programs.

• Serves as laison with representatives of the health care industry on MR/UR issues to obtain expert input into policy development, to promote understanding of the MR/UR program, and to ensure that HCFA's MR/UR processes are compatible with health practices.

b. Division of Entitlement and Benefit Coordination (FPB22)

• Develops, implements, and administers Medicare Secondary Payer (MSP) operational policy for coordinating Medicare benefits with other health insurance benefits. Analyzes and evaluates specific operating policy and procedural problems in the benefit coordination program and initiates proposals to better achieve program objectives.

• Plans and directs operational liaison and outreach activities, including public relations, publications, conferences, and presentations.

• Develops national MSP budget and annual performance objectives and priorities. Analyzes contractors' MSP expenditures and goal performance.

• Participates in the design, performance, and analysis of evaluations of contractor MSP performance assessment.

• Enforces MSP provisions and support MSP litigation and post pay activities.

• Monitors Regional Office and contractor operations on negotiation, waiver, and compromise of liability settlements where Medicare has a claim for recovery of prior conditional payments.

• Designs and conducts special projects to improve national coordination of Medicare benefits with other health coverage.

• Develops and monitors the ongoing operations of a data match of the Internal Revenue Service and Social Security Administration data to identify MSP cases. Coordinates MSP operations with HCFA and non-HCFA governmental components and with other payers and their representative organizations, particularly State insurance departments and the National Association of Insurance Commissioners and like organizations.

• Develops operational policy and instructional material for the establishment and maintenance of Medicare entitlement.

• Conducts studies and demonstrations to improve the systems, methods and procedures for establishing and maintaining entitlement information. Develops and recommends entitlement related legislative and policy proposals.

• Develops procedures for issuing and reissuing health insurance cards, monitoring records maintenance and correction, and processing voluntary and other identification problems from the Medicare claims process.

• Serves as Agency systems manager for entitlement requirements.

c. Division of Audit and Payment Management (FPB23)

• Analyzes regulations, executive orders, policies, and legislative proposals and asseses their financial impact on the audit budget. Develops the plan, necessary audit programs, guidelines, and instructions for the implementation of current and future legislation, regulations, and court orders.

• Plans and develops methods to improve and enhance the audit function and makes recommendations for improvements in management of the audit program, including the identification and implementation of automated data processing programs in the desk review, audit, and settlement activities.

• Develops rationale for the audit and payment management portion of the current and future national contractor budgets. Establishes and monitors return ratio requirements for provider audits to assure maximum return on investment expenditures.

• Reviews and analyzes Contractor Auditing and Settlement Reports to determine the effectivess of contractor audit and payment performance and compliance with established audit guidelines, priorities, funding limitations, and workload objectives.

• Researches and responds to all Office of Inspector General and General Accounting Office payment and financial audit reports and studies. Prepares position papers and reports offering alternative methods of resolution.

d. Division of Medigap Operations (FPB24)

• Develops, implements, and administers Medigap operational policy.

• Analyzes State laws and regulations for Medicare supplemental health insurance to ensure compliance with the Social Security Act. Proposes recommendations regarding approval/disapproval with appropriate HCFA official.

• Conducts the Mandatory Certification Program in those States not having an approved regulatory program. Reviews and analyzes Medicare supplemental health insurance policies for compliance with the Social Security Act and recommends that certification be granted or denied.

• Develops, implements, and monitors the Medicare SELECT direct contracting option for medical necessity determinations.

• Conducts periodic operational reviews of State regulatory programs for continued operational compliance with the Social Security Act. Monitors States' application and enforcement of standards; i.e., simplification standards, antiduplication standards, loss ratios and premium standards, pre-existing conditions and medical underwriting limitation standards.

• Provides liaison with governmental entities (both Federal and State) regulating other payers for health care and their representative organizations, particularly State insurance departments and the National Association of Insurance Commissioners and like organizations. Serves as liaison with internal HCFA and Departmental components, the General Accounting Office, and the Office of Inspector General on Medigap issues.

• Provides service, advice, guidance and consultation directly, and through joint efforts with other HCFA components and Medicare contractors, to States, other Government entities, employers, insurers, providers, physicians, beneficiaries, and their representative organizations, to insure the Medigap program is understood.

• Prepares and assists in preparation of various reports to Congress on Medigap related issues.

• Coordinates the Medigap Federal penalty provisions referenced in the Social Security Act.

3. Office of Program Operations Procedures (FPB3)

• Develops and administers the specification, requirements, methods, systems, standards, procedures, and budget guidelines to implement and maintain the operational systems for the Medicare program including detailed definitions of the relative responsibilities of providers, contractors, HCFA, and the beneficiaries of the Medicare program.

• Reviews and evaluates systems, systems plans, and proposals, and Automated Data Processing acquisition and modifications involving carriers and intermediaries.

• Develops and promulgates specification and requirements for contractor processing of beneficiary and provider appeals.

• Develops specifications and recommends budget necessary for more effective methods to process Medicare claims.

• Reviews proposed policy, payment, and legislative proposals to evaluate the operational impact on claims processing and appeals activities including the development of cost estimates for the implementation of such proposals.

• Develops and maintains forms and electronic formats used by intermediaries and carriers to process claims.

• Develops, maintains, and disperses a quarterly task management plan which prioritizes contractor budget workload and initiatives.

a. Division of Claims Processing Procedures (FPB31)

• Directs the development and issuance of specifications, requirements, procedures, and instructional material to implement and maintain operational systems for processing Medicare claims and defining their applications to Medicare carriers, Medicare intermediaries, providers, physicians, other independent medical professionals, suppliers of service, beneficiaries, and HCFA.

• Maintains the intermediary and carrier instructional manuals including the Common Working file (CWF) interface instructions for processing claims from Medicare providers, physicians, other independent medical professionals, and suppliers of services.

• Reviews proposed policy, payment, and legislative proposals to evaluate the operational impact on Medicare claims processing operations.

• Implements new legislation impacting on Medicare claims processing operations.

• Develops the discharge data set specifying required information to be provided by intermediaries to Professional Review Organizations (PRO) in support of PRO medical review activities.

• Maintains liaison with representatives of the health care industry to ensure the HCFA processes are compatible with the industry's administration practices.

• Develops bill processing edits for intermediaries, carriers, and the CWF processing of Medicare claims.

• Develops instructions for and maintains and monitors supplier numbering clearinghouse.

b. Division of Claims Processing Requirements (FPB32)

• Prepares general systems plans and develops requirements for the detailed design and programming for claims processing modules to be used by Medicare contractors.

• Plans, conducts, and evaluates studies aimed at long-range improvements in electronic claims processing systems, methods, and procedures as they relate to the administration of the Medicare program and integration of operations within the framework of HCFA policies, goals, and objectives to promote efficiency and cost effectiveness.

• Develops programs to promote acceptance and usage of electronic claims processing, electronic funds transfer, and electronic remittance advice.

• Develops costs estimates for proposed legislation and regulations.

• Participates in the review and evaluation of systems-related applications project.

• Participants in the government-wide national disaster planning initiative and review of Medicare contractors' systems security.

• Develops and maintains billing forms and formats used by intermediaries and carriers.

• Serves HCFA focal point with American National Standards Institute on electronic claims processing formats used by the health insurance industry.

• Reviews proposed policy, payment, and legislative proposals to evaluate the operational impact on claims processing activities, including the development of cost estimates for the implementation of such proposals.

• Develops budget guidelines and cost estimates for Medicare claims processing activities.

• Develops, maintains, and disperses a quarterly workload plan as it relates to budget initiatives.

c. Division of Appeals and Communications (FPB33)

• Plans, develops, and issues operating policy, specifications, procedural requirements, and other materials to implement, maintain, or revise the appeals process for Part A and B claims.

• Develops, monitors, and approves formats and messages for the Medicare Explanation of Medicare Benefits.

• Plans, conducts, and evaluates studies to streamline and make more effective to appeals process and to develop both long-range and short-range improvements in systems, methods, and procedures relating to beneficiary and provider communications.

• Initiates improvements and develops procedures for providing beneficiary and provider services for telephone, written, and personal contacts by Medicare contractors and other field facilities.

• Develops standard language for use by Medicare contractors in communicating with beneficiaries and providers.

• Reviews proposed policy, payment, and legislative proposals to evaluate the operational impact on the appeals process for part A and part B claims.

• Identifies management's information needs for data relating to Administrative Law Judge's (ALJ) decisions concerning both part A and B claims and initiates appropriate actions for establishing or modifying the reporting and information systems to satisfy these needs (i.e., ALJ database, reversal reports, and decision reports).

• Develops procedures for conforming with the Privacy Act including maintaining a system of records for the **Federal Register**, clearing requests for information, and developing agreements with the States on releasing information.

d. Division of Operational Systems Development (FPB34)

• Designs, develops, and manages, at the national level, activities required to enhance systems for improvement of the Medicare eligibility systems, Part A and Part B claims processing systems, and the Medicare program database.

• Prepares systems plans and develops policies for the design, implementation, and evaluation of shared systems and standardized modules for use by Medicare carriers, intermediaries, and hosts.

• Directs the design, development testing, and implementation of innovative system enhancements to the Common Working File (CWF) shared claims processing systems resulting in

improvements to the national Medicare claims payment process.

• Provides national analysis and planning for changes to CWF and standard systems as required by legislative initiatives.

• Evaluates HCFA-wide systems plans for their impact on functions related to part A and part B of Medicare.

• Integrates systems changes within the framework of HCFA policies, goals, and objectives in an efficient and cost effective manner and coordinates systems changes with other HCFA components, the Social Security Administration, HCFA regional offices, provider groups, and other affected organizations.

4. Office of Quality and Evaluation (FPB4)

• Designs and implements evaluation programs to assess and improve the overall effectiveness and quality of Medicare contractor operations.

• Designs, develops, implements, monitors and, as necessary, revises performance standards for measuring and evaluating all aspects of Medicare contractor operations.

• Develops and applies policies, standards, and guidelines for quality assurance programs to provide uniform and comparative evaluation of contractor performance in areas of program eligibility and payment, bill and claim payment, audit, beneficiary services, and other contractor activities.

• Designs and monitors systems of internal controls and standards for Medicare contractors to ensure the Medicare program is adequately safeguarded against inappropriate expenditures.

• Develops, conducts, and/or directs Central Office and/or Regional Office participation in quality assurance reviews and studies of selected areas of contractor operations and evaluates policy and operations to improve program operations and implement policy and legislative directives.

• Designs, establishes, and maintains reporting and information management systems for Medicare contractor program operations and administrative data.

• Provides data and systems analysis support for the production and interpretation of program operations and performance indicators.

• Serves as the focal point for Medicare intermediary and carrier contractor performance for the contracting officer.

a. Division of Quality Programs (FPB41)

• Develops, implements, directs, and operates national quality assurance programs to determine the effectiveness and quality of Medicare contractor's operations, including claims payment, and payments to institutional providers.

• Evaluates the quality of contractor audits/settlements of cost-based, prospective, and alternate payment systems, and chain providers' home office costs.

• Assures uniform national assessment of Medicare contractors' compliance with claims payment performance standards and program requirements.

• Develops and publishes guides and requirements for the direction on Medicare payment evaluation and quality assurance programs.

• Establishes, develops, implements, and operates a comprehensive system for analyzing quality assurance program results and for evaluating and assuring adherence to requirements for operating Medicare claims payment quality assurance and evaluation programs.

• Reviews established Medicare payment quality assurance and evaluation programs and implements appropriate enhancements reflecting operations, legislative, and administrative changes.

• Identifies inaccurate or inconsistent performance, and reviews and approves corrective action planning and monitoring.

b. Division of Standards (FPB42)

• Develops, operates, and manages a program of qualitative and quantitative standards and requirements for Medicare contractors, including the development and implementation of contractor performance evaluation programs for intermediaries, carriers, Regional Home Health Intermediaries, and Common Working File Host.

• Quantifies and describes acceptable levels of performance by which Medicare contractors are evaluated.

• Negotiates with regional offices, contractors, providers, other HCFA components, and national public and private professional organizations to arrive at proposed or revised performance standards or requirements prior to their formal issuance.

• Assures that new program and performance standards and subsequent modifications are incorporated into the performance evaluation programs and related reports.

• Reviews program instructions and makes recommendations to issuing components to ensure guidelines contain effective safeguards and standards for ensuring accurate implementation.

• Analyzes all quantitative and qualitative standards and program requirements to assess their operational validity and makes recommendations for appropriate changes.

• Serves as the focal point for Medicare intermediary and carrier contractor performance for the contracting officer.

• Designs, develops, implements, and operates a national system for collecting and reporting results of performance as measured against established standards.

• Initiates, interprets, evaluates, and maintains data on each Medicare contractor in terms of compliance with performance requirements.

• Designs, develops, and conducts special projects and/or coordinates with other HCFA components on the conduct of special projects which have an impact on contractor performance evaluation.

c. Division of Program Evaluation (FPB43)

• Conducts in-depths evaluations of selected programmatic areas to determine whether established policy and operational criteria are effectively and accurately met.

• Conducts special surveys in critical areas, identifies problems and barriers to problem resolution, and develops and recommends alternative solutions to promote program quality.

• Analyzes trends and identifies problems or potential problems requiring program action.

• Initiates, interprets, evaluates, and maintains data on each Medicare contractor in terms of compliance with program initiatives and performance requirements, administrative expenditures, and implementation of program and operating policies, systems, and procedures.

• Develops, conducts, and/or directs Central Office and/or Regional Office participation in quality assurance reviews and studies of selected areas of contractor operations to improve operations.

• Uses statistical databases and applications to analyze, evaluate, and make recommendations towards improving program operations, including operational efficiency.

d. Division of Reports and Information Management (FPB44)

• Designs, establishes, and maintains reporting and information management systems for Medicare contractor program operations and administrative data.

• Reviews contractors' reporting systems for consistency and the ability to transmit the required information and prepares the appropriate reporting requirements.

• Prepares written interpretations and analyses of operating data to provide other Bureau components with information necessary in conducting program and performance evaluations.

• Develops the specifications for an automated operational data system for Medicare contractor program operations.

• Prepares recurring and special reports on the status and trends in program administration and operational effectiveness.

• Provides technical assistance to regional offices and contractors on reporting requirements.

• Monitors systems of internal controls for use by Medicare contractors to ensure the Medicare program is adequately safeguarded against inappropriate expenditures.

• Directs the Bureau's microcomputer activities including: providing technical assistance to the Bureau components applications, developing automation strategy based on long term needs and new initiatives, documenting requirements and coordinating design, development, end user training, and implementation activities with Bureau of Data Management and Strategy.

Dated: August 21, 1992.

William Toby, Jr.,

Acting Deputy Administrator, Health Care Financing Administration.

[FR Doc. 92-20873 Filed 9-1-92; 8:45 am]

BILLING CODE 4120-01-M

National Institutes of Health

Cooperative Research and Training Agreement Opportunity (CRADA) for Development of Clinical Therapies To Treat Ocular Inflammation

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The National Eye Institute (NEI) of the National Institutes of Health (NIH) seeks to establish a CRADA with companies for development of clinical therapies to treat ocular inflammation.

ADDRESSES: Questions about this opportunity should be addressed to Dr. Scott Whitcup, National Eye Institute, Building 10, room 10N202, 9000 Rockville Pike, Bethesda, Maryland 20892, telephone (301) 496-0097 (this is not a toll-free number).

DATES: Proposals must be received by October 1, 1992.

SUPPLEMENTARY INFORMATION: The Laboratory of Immunology of the National Eye Institute (NEI), conducts laboratory and clinical investigations of eye disorders, particularly immune-mediated and other ocular inflammatory diseases.

Scientists in the Laboratory have developed methods of blocking cell adhesion molecules in the eye with monoclonal antibodies. They have demonstrated that cell adhesion molecules are strongly expressed on a number of ocular tissues in the presence of ocular inflammation, and that blocking cell adhesion molecules can significantly inhibit ocular inflammation.

The NEI seeks to establish a cooperative research and development agreement (CRADA) to develop clinically useful therapies to prevent ocular inflammatory disorders, using their methods of blocking cell adhesion molecules in the eye.

The successful CRADA awardee will market and commercialize clinically valid therapies in treating ocular inflammation. Selection criteria for choosing the CRADA partner will include, but will not be limited to:

1. Ability to perform market analysis, strategy, marketing, production, sales and support of these therapies.

2. Demonstrated capability to develop ocular devices, such as intraocular lens implants with reservoirs to deliver blocking molecules to the eye, for clinical evaluation.

3. Ability to develop, produce or acquire monoclonal antibodies or other smaller molecules that may be used to block cell adhesion molecules expressed in the eye.

4. Capacity to produce topical or injectable preparations of these drugs for delivery to the eye.

5. Capacity to develop, implement and manage the commercialization process.

6. Ability to market, sell and distribute therapies in a manner that is reasonably calculated to ensure the dissemination of the technology to clinical ophthalmologists and others providing health care services to vision patients.

Pursuant to this CRADA, the NEI will:

1. Provide staff time, laboratory facilities and clinical resources to develop and conduct animal studies and human clinical trials of therapies based on their methods of blocking cell adhesion molecules.

2. Work cooperatively with the company in determining the market potential for such therapies.

Reid G. Adler,

Director, Office of Technology Transfer.

[FR Doc. 92-21077 Filed 9-1-92; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

National Institutes of Health; Privacy Act of 1974; New System of Records

AGENCY: Public Health Service, HHS.

ACTION: Notification of a new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing a notice of a new system of records, 09-25-0167, "National Institutes of Health (NIH) TRANSHARE Program, HHS/NIH/OD." The system of records, which is managed by the NIH Employee Transportation Services Office (ETSO), is used to coordinate and manage the NIH TRANSHARE Program. We are also proposing routine uses for this new system.

DATES: PHS invites interested parties to submit comments on the proposed internal and routine uses on or before October 2, 1992. PHS has sent a report of a New System to the Congress and to the Office of Management and Budget (OMB) on August 19, 1992. PHS has requested that OMB grant a waiver of the usual requirement that a system of records not be put into effect until 60 days after the report is sent to OMB and Congress. If this waiver is granted, PHS will publish a notice to that effect in the **Federal Register**. The routine uses will be effective 30 days after the date of publication unless PHS receives comments which would result in a contrary determination.

ADDRESSES: Please submit comments to: Privacy Act Officer, National Institutes of Health, Building 31, room 3B03, 9000 Rockville Pike, Bethesda, MD 20892, (301) 496-2832. Comments received will be available for inspection at this same address from 9 a.m. to 3 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: NIH Privacy Act Officer, Building 31, room 3B03, 9000 Rockville Pike, Bethesda, MD 20892, (301) 496-2832. The number listed above is not toll free.

SUPPLEMENTARY INFORMATION: The National Institutes of Health (NIH) proposes to establish a new system of records: 09-25-0167, "NIH TRANSHARE Program." This system of records will be used by the ETSO staff to: (1) Manage the NIH TRANSHARE Program, including receipt and processing of employee applications, coordination of the fare media (commuter coupons for the MARC Train, METRO rail tickets, METRO bus tokens, and Ride-On tickets), and distribution of the fare media to employees through the Recreation & Welfare Association of the

National Institutes of Health, Inc. (R&W Association), an NIH employee organization; (2) track the use of appropriated funds used to support the Program; and (3) evaluate employee participation in the Program.

This system includes the following information on all persons applying for the NIH TRANSHARE fare media: Name, home address, parking hanger permit number, unique computer identification number, NIH TRANSHARE commuter card number, NIH pay plan, grade level, office phone number, building and room, Institute/Center/Division designation, name of supervisor, commute mode to work and type of fare media used. The amount of information recorded on each individual will be only that which is necessary to accomplish the purpose of the system.

The records in this system will be maintained in a secure manner compatible with their content and use. NIH staff will be required to adhere to the provisions of the Privacy Act and the HHS Privacy Act Regulations. The System Manager will control access to the data. Only authorized users whose official duties require the use of such information will have regular access to the records in this system. Authorized users are the ETSO staff and R&W Association cashiers who are responsible for implementing the Program. Cashier access will be limited to applicant's name, unique computer identification number, NIH TRANSHARE commuter card number, and type of fare media disbursed.

Records will be stored on paper forms in file folders in locked file cabinets and on computer disk. Data stored in computers will be accessed through the use of a password and specific keywords known only to authorized users. Rooms where records are stored are locked when not in use. During regular business hours rooms are unlocked but are controlled by on-site personnel. Manual and computerized records will be maintained in accordance with the standards of Chapter 45-13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records," supplementary Chapter PHS hf: 45-13, the Department's Automated Information System Security Program Handbook, and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

The routine uses proposed for this system are compatible with the stated purposes of the system. The first routine use, permitting disclosure to a congressional office, is proposed to allow subject individuals to obtain assistance from their representatives in Congress, should they so desire. Such disclosure would be made only pursuant to a request of the individual. The second routine use of this system allows disclosure to the Department of Justice to defend the Federal Government, the Department, or employees of the Department in the event of litigation. The third routine use, allowing disclosure to the R&W Association cashiers for the purpose of distribution of the fare media, will permit NIH to administer the system efficiently. Inclusion of the R&W Association and its facilities is advisable because the NIH lacks necessary internal resources and because the R&W Association has established security procedures in place due to their experience in managing the sale of public transportation fare media. The fourth routine use permits disclosure to organizations deemed qualified by the Secretary to carry out quality assessments or utilization review. The fifth routine use allows disclosure of statistical reports containing information from this system to city, county, State, and Federal Government agencies (including the General Accounting Office).

The following notice is written in the present, rather than future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the system has become effective.

Dated: August 24, 1992.

Wilford J. Forbush,

Director, Office of Management.

09-25-0167

SYSTEM NAME:

National Institutes of Health (NIH) TRANSHARE Program, HHS/NIH/OD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Employee Transportation Services Office (ETSO), National Institutes of Health, Building 31, room B3B08, 9000 Rockville Pike, Bethesda, Maryland 20892.

Recreation and Welfare Association Activities Desk, National Institutes of Health, Building 31, room B1W30A, 9000 Rockville Pike, Bethesda, Maryland 20892.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NIH employees who apply for and participate in the NIH TRANSHARE Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, home address, parking hanger permit number, unique computer identification number, NIH TRANSHARE commuter card number, NIH pay plan, grade level, office phone number, building and room, Institute/Center/Division designation, name of supervisor, commute mode to work, and type of fare media used.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 629 of Public Law 101-509, "State or Local Government Programs Encouraging Employee Use of Public Transportation; Federal Agency Participation," found at 5 U.S.C. note prec. section 7901.

PURPOSE(S) OF THE SYSTEM:

(1) To manage the NIH TRANSHARE Program, including receipt and processing of employee applications, and coordination of the fare media distribution to employees.

(2) To monitor the use of appropriated funds used to support the NIH TRANSHARE Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records were collected.

3. NIH may disclose applicant's name, unique computer identification number, NIH TRANSHARE commuter card number, and type of participant's fare

media to be disbursed to cashiers of the Recreation and Welfare Association of the National Institutes of Health, Inc. (R&W Association) who are responsible for distribution of fare media. Cashiers are required to maintain Privacy Act safeguards with respect to such records.

4. Disclosure may be made to organizations deemed qualified by the Secretary to carry out quality assessments or utilization review.

5. NIH may disclose statistical reports containing information from this system of records to city, county, State, and Federal Government agencies (including the General Accounting Office).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and computer disks.

RETRIEVABILITY:

Records are retrieved by name and NIH TRANSHARE commuter card number.

SAFEGUARDS:

1. Authorized Users: Data on computer files is accessed by keyword known only to authorized users who are ETSO employees and cashiers of the R&W Association who are responsible for implementing the Program. Cashier access will be limited to applicant's name, unique computer identification number, NIH TRANSHARE computer card number, and type of fare media disbursed. Access to information is thus limited to those with a need to know.

2. Physical Safeguards: Rooms where records are stored are locked when not in use. During regular business hours, rooms are unlocked but are controlled by on-site personnel.

3. Procedural and Technical Safeguards: A password is required to access the terminal, and a data set name controls the release of data to only authorized users. All users of personal information in connection with the performance of their jobs (see Authorized Users, above) protect information from public view and from unauthorized personnel entering an unsupervised office.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records," supplementary Chapter PHS hf: 45–13, and the Department's Automated Information System Security Program Handbook, and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B–361), item 1500–A–3. Records are retained for a maximum of two years following the last month of an employee's participation in the NIH TRANSHARE Program. Paper copies are destroyed by shredding. Computer files are destroyed by deleting the record from the file.

SYSTEM MANAGER AND ADDRESS:

Traffic Management Specialist, Employee Transportation Service Officer, Division of Security Operations, National Institutes of Health, Building 31, Room B3B08, 9000 Rockville Pike, Bethesda, Maryland 20892.

NOTIFICATION PROCEDURES:

To determine if a record exists, write to the System Manager listed above. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be. The request should include: (a) Full name, and (b) appropriate dates of participation. The requester must also understand that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURES:

Write to the System Manager specified above to attain access to records and provide the same information as is required under the Notification Procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request an accounting of disclosure of their records, if any.

CONTESTING RECORD PROCEDURES:

Contact the System Manager specified above and reasonably identify the record, specify the information to be contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Subject individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 92–20877 Filed 9–1–92; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–92–3472; FR–3155–N–02]

NOFA for Rental Voucher Program and Rental Certificate Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of funding availability for FY 92, extension of application deadline for selected public housing agencies (PHAs) and Indian housing authorities (IHAs), both referred to in this document as housing agencies (HAs).

SUMMARY: On July 29, 1992, the Department published a NOFA (57 FR 33606) for the Rental Voucher and Rental Certificate Programs for FY 1992. The application deadline stated in the July 29 NOFA is 3 p.m. local time (i.e., time at the office where the application is submitted) on August 28, 1992.

On August 25, 1992 Hurricane Andrew inflicted major damage in Southern Florida and continued through the Gulf coast. Some HA offices have been closed as a result of the storm. Elsewhere, HA employees in the areas inflicted with heavy damages are preoccupied with providing disaster assistance to affected very low income families, correcting damage to assisted housing, and caring for their own homes and families. Accordingly, the Department believes it is in the public interest to extend the application deadline for these HAs.

DATES: Applications from HAs in communities located in Federally declared disaster areas must be received in the HUD Field Office/Indian Programs Office by 3 p.m. local time (i.e., time at the office where the application is submitted) on September 11, 1992. This application date applies only to HAs in communities declared, on or before September 10, 1992, to be Federal disaster areas resulting from

Hurricane Andrew. (All other HAs must have submitted applications by 3 p.m. local time on August 28, 1992, as originally provided for in the July 29, 1992 publication.)

FOR FURTHER INFORMATION: Gerald J. Benoit, Director, Operations Branch, Rental Assistance Division, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000 telephone (202) 708–0477. Hearing-or speech-impaired individuals may call HUD's TDD number (202) 708–4594. (These telephone numbers are not toll-free).

SUPPLEMENTARY INFORMATION: Section 213 of the Housing and Community Development Act of 1974 requires that HUD independently determine that there is a need for the housing assistance requested in applications, and solicit and consider comments relevant to this determination from the chief executive officer of the unit of general local government. Section 213 provides the chief executive officer with 30 days from the date of the letter from HUD soliciting comments from the unit of general local government.

Since there are not 30 days remaining from the date of the extended application period until the end of the Federal fiscal year (September 30, 1992), HAs to which this notice applies should strongly encourage the chief executive officer of the unit of general local government to submit a letter with the HA application commenting on the application in accordance with Section 213. Since HUD cannot approve an application until the 30-day comment period is closed, the section 213 letter not only should comment on the application, it also should state that HUD may consider the letter to be the unit of local government's final comments, and that no additional comments will be forthcoming.

Applications that are not accompanied by the Section 213 letter, or for which a section 213 letter is not received by the close of business on September 28, cannot be approved by HUD during fiscal year 92. HUD cannot guarantee that funding under this NOFA will be available after September 30, 1992.

Dated: August 28, 1992.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 92–21135 Filed 9–1–92; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-920-02-4120-14; WYW119554]

Competitive Coal Lease Sale, North Antelope/Rochelle, WY

AGENCY: Bureau of Land Management, Interior, Wyoming.

ACTION: Notice of Competitive Coal Lease Sale; North Antelope/Rochelle Tract.

SUMMARY: Notice is hereby given that certain coal resources in the North Antelope/Rochelle Tract described below in Campbell County, Wyoming, will be offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*).

DATES: The lease sale will be held at 10:30 a.m., on Monday, September 28, 1992. Sealed bids must be submitted on or before 4 p.m., on Friday, September 25, 1992.

ADDRESSES: The lease sale will be held in the Third Floor Conference Room of the Wyoming State Office, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82003. Sealed bids must be submitted to the Cashier, Wyoming State Office, at the address given above.

FOR FURTHER INFORMATION CONTACT: Mavis Love, Land Law Examiner, or Eugene Jonart, Coal Coordinator at (307) 775–6250.

SUPPLEMENTARY INFORMATION: This coal lease sale is being held in response to lease by applications filed by Powder River Coal Company of Gillette, Wyoming. The coal resources to be offered consist of all reserves recoverable by surface mining methods in the following-described lands located approximately 50 miles south of the city of Gillette, Wyoming:

T. 41 N., R. 70 W., 6th P.M., Wyoming

Sec. 1: Lots 8, 9, 16;
Sec. 2: Lots 5 thru 16;
Sec. 3: Lots 5 thru 16;
Sec. 4: Lots 5 thru 15, SWNE;
Sec. 5: Lots 5 thru 18;
Sec. 6: Lots 8, 9, 14 thru 17, 22, 23;
Sec. 7: Lots 5, 12, 13, 20;
Sec. 8: Lots 4, 10, 11, SWNW;
Sec. 17: Lots 3 thru 6, 11 thru 14.

Containing 3064.04 acres

The tract, located adjacent to the existing North Antelope and Rochelle mines, contains Fort Union Formation coal of the Wyodak-Anderson seam. The coal averages about 71 feet thick on the eastern (Rochelle) portion of the tract and 79 feet thick on the western (North Antelope) portion. This seam can be mined as a single unit except for isolated thin occurrences of interburden. In the extreme eastern portion of the tract, where the seam is split, the upper split averages about 58 feet thick while the lower split averages about two feet in thickness and is considered unrecoverable.

The tract contains an estimated 403,500,000 tons of in-place coal reserves. The eastern (Rochelle) portion of the tract has an average overall stripping ratio of 2.16 bank cubic yards (BCY) overburden/ton of coal and the western (North Antelope) portion of the tract has an average stripping ratio of 2.29 BCY/ton. An estimated 393,600,000 tons of coal are considered recoverable on the tract.

The coal rank is subbituminous C. Average in-place quality in the eastern (Rochelle) portion of the tract is 8700 BTU/lb., 4.31% ash, and 0.13% sulfur. Average in-place quality in the western (North Antelope) portion of the tract is 8804 BTU/lb., 4.28% ash, and 0.35% sulfur. This places the coal reserves in the tract near the top quality range for coal being mined in the southern Powder River Basin.

The tract in this lease offering contains split estate lands. There are qualified surface owners as defined in the regulations at 43 CFR 3400.0–5. Consent granted by the qualified surface owners has been filed with and verified by the Bureau of Land Management (BLM). The lands and purchase price of the consent are shown below:

T. 41 N., R. 70 W., 6th P.M., Wyoming

Sec. 3: Lots 5 thru 16;
Sec. 4: Lots 6 thru 10, 13 thru 15, SWNE;
Sec. 5: Lots 5, 6, 11 thru 14.

Containing 1076.38 acres

Purchase Price: $10.00 and the amount per ton of 2,000 pounds of coal mined from the subject property equal to three percent (3%) of the gross realization of all coal mined and sold from the subject property.

The tract will be leased to the qualified bidder of the highest cash amount provided that the high bid equals the fair market value of the tract. The minimum bid for the tract is $100 per acre or fraction thereof. No bid that is less than $100 per acre, or fraction thereof, will be considered. The bids should be sent by certified mail, return receipt requested, or be hand delivered. The Cashier will issue a receipt for each hand-delivered bid. Bids received after 4:00 p.m., on Friday, September 25, 1992, will not be considered. The minimum bid is not intended to represent fair market value. The fair market value of

the tract will be determined by the Authorized Officer after the sale.

If identical high bids are received, the tying high bidders will be requested to submit follow-up sealed bids until a high bid is received. All tie-breaking sealed bids must be submitted within 15 minutes following the Sale Official's announcement at the sale that identical high bids have been received.

If the applicant for the lease by applications is not the successful bidder, the BLM will evaluate the existing National Environmental Policy Act documentation to determine if further analysis is necessary, which could lead to a delay in lease issuance.

The lease issued as a result of this offering will provide for payment of an annual rental of $3.00 per acre, or fraction thereof, and of a royalty payment to the United States of 12.5 percent of the value of coal produced by strip or augur mining methods and 8 percent of the value of the coal produced by underground mining methods. The value of the coal will be determined in accordance with 30 CFR 206.250.

Bidding instructions for the tract offered and the terms and conditions of the proposed coal lease are available from the Wyoming State Office at the addresses above. Case file documents, WYW119554, are available for inspection at the Wyoming State Office.

Eugene A. Jonart,

Acting Chief, Branch of Mining Law & Solid Minerals.

[FR Doc. 92-21033 Filed 9-1-92; 8:45 am]

BILLING CODE 4310-22-M

[AZ-020-02-4212-24; AZA-24709]

Notice of Receipt of Conveyance of Mineral Interest Application

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Minerals Segregation.

SUMMARY: The private lands described in this notice, aggregating approximately 2,520 acres, are segregated and made unavailable for filings under the general mining laws and the mineral leasing laws to determine their suitability for conveyance of the reserved mineral interest pursuant to section 209 of the Federal Land Policy and Management Act of October 21, 1976.

The mineral interests will be conveyed in whole or in part upon favorable mineral examination.

The purpose is to allow consolidation of surface and subsurface of minerals ownership where there are no know mineral values or in those instances where the reservation interferes with or precludes appropriate nonmineral development and such development is a more beneficial use of the land than the mineral development.

FOR FURTHER INFORMATION CONTACT: Vivian Reid, Land Law Examiner, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027, (602) 863-4464. Serial Number AZA-24709.

Gila and Salt River Base and Meridian, Yavapai County, Arizona

T. 8 N., R. 1 W.,
Sec. 6, All.
Sec. 20, NE¼.
Sec. 21, N½, SE¼.
Sec. 22, SW¼.
T. 8 N., R. 2 W.,
Sec. 10, S½, NE¼, S½NW¼.
Sec. 15, NE¼NW¼, NW¼NE¼.
T. 9 N., R. 2 W.,
Sec. 23, S½NE¼, SE¼.
Sec. 24, S½NW¼, SW¼.
Sec. 25, N½NW¼.
Sec. 26, N½NE¼.

Minerals Reservation—All Federally owned minerals applicable to each individual parcel.

Upon publication of this Notice of Segregation in the **Federal Register** as provided in 43 CFR 2720.1-1(b), the mineral interests owned by the United States in the private lands covered by the application shall be segregated to the extent that they will not be subject to appropriation under the mining and mineral leasing laws. The segregative effect of the application shall terminate upon: issuance of a patent or deed of such mineral interest; upon final rejection of the application; or two years from the date of publication of this notice, whichever occurs first.

Dated: August 26, 1992.

Henri R. Bisson,

District Manager.

[FR Doc. 92-21090 Filed 9-1-92; 8:45 am]

BILLING CODE 4310-32-M

[OR 47550; OR-080-02-4212-12; GP2-404]

Realty Action; Proposed Exchange; Oregon

August 21, 1992.

This exchange will be between the United States (Bureau of Land Management) and the State of Oregon, acting by the through its Department of Forestry.

The following described public lands (public domain and Revested Oregon and California Railroad Grant land Status) have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 et seq.):

Willamette Meridian, Oregon,

T. 1 S., R. 9 W.,
Sec. 2, SW¼NW¼;
T. 2 S., R. 8 W.,
Sec. 21, E½SW¼, S½SE¼;
T. 3 S., R. 9 W.,
Sec. 21, SW¼SW¼.

The parcels described above contain 240.00 acres in Tillamook County.

In exchange for these parcels, the United States will acquire the following described lands from the State of Oregon:

Will. Mer., Oreg.,

T. 3 S., R. 7 W.,
Sec. 18, E½NW¼, S½NE¼;
T. 3 S., R. 8 W.,
Sec. 7, SW¼SE¼;
T. 4 S., R. 7 W.,
Sec. 12, SE¼SW¼.

The parcels described above contain 240.00 acres in Tillamook County.

The purpose of the exchange is to facilitate resource management opportunities as identified in the Salem District's Westside Management Framework Plan. The State lands offered are surrounded by other public lands which are being managed for multiple use, including protection of northern spotted owl habitat and the sustained yield of timber. The public lands selected are adjacent to State lands which are being managed for timber production. Acquisition of these parcels by the State would enhance its timber production program. The public interest will be highly served by making this exchange.

The values of the lands to be exchanged are approximately equal or the acreage will be adjusted to equalize the values upon completion of the final appraisal of the lands. Full equalization of values will be achieved by payment to the United States of funds in an amount not to exceed 25 percent of the value of the public land to be transferred. All mineral rights will be transferred with the surface estate.

The deed or patent to the selected land will be subject to:

1. The reservation to the United States of a right-of-way for ditches or canals. Act of August 30, 1890 (43 U.S.C. 945)

2. Right-of-Way Reservation OR 10173 (Bonneville Power Administration's Carlton-Trask No. 1 transmission line).

3. Valid existing rights.

Publication of this notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land

laws, including the mining laws, except for exchange under section 206 of the Federal Land Policy and Management Act. Any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed, and shall be returned to the applicant (43 CFR 2201.1(b)). The segregative effect of this notice will terminate upon issuance of patent or in two years, whichever occurs first.

Detailed information concerning this exchange, including the environmental assessment/land report, is available for review at the Salem District Office, 1717 Fabry Road Se., Salem, OR 97306, or at the Tillamook Resource Area Office, 4610 Third Street, Tillamook, OR 97141.

For the period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Tillamook Area Manager at the above address. Any objections will be reviewed by the Salem District Manager who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dana R. Shuford,

Tillamook Area Manager.

[FR Doc. 92-21042 Filed 9-1-92; 8:45 am]

BILLING CODE 4310-33-M

Fish and Wildlife Service

Availability of a Final Environmental Impact Statement for the Chincoteague National Wildlife Refuge Master Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: This notice advises the public that the final Environmental Impact Statement of the Chincoteague National Wildlife Refuge Master Plan, Chincoteague, Virginia is available for public review. Comments and suggestions are requested. Proposed is a series of managemental and developmental actions for Chincoteague National Wildlife Refuge (NWR) to be implemented over the next ten to twenty years. This proposed action balances dual goals: (1) To protect and enhance the coastal barrier island habitats of two endangered and one threatened species, as well as other species of management concern, while continuing (2) to provide refuge visitors with high quality educational and recreational experiences to the extent these activities are compatible with the purposes for which the refuge was established. Chincoteague NWR will continue to work in partnership with the National Park Service (NPS), Assateague Island National Seashore (AINS), seeking closer inter-agency coordination while maintaining a division of responsibilities. Four alternatives were considered in the planning process to meet the goals listed above.

DATES: Written comments are requested by September 30, 1992.

ADDRESSES: Comments should be addressed to: John D. Schroer, Refuge Manager, Chincoteague National Wildlife Refuge, P.O. Box 62, Chincoteague, VA 23336.

FOR FURTHER INFORMATION CONTACT: John D. Schroer, Refuge Manager, Chincoteague National Wildlife Refuge, P.O. Box 62, Chincoteague, VA 23336, 804/336-6122.

Individuals wishing copies of this EIS for review should immediately contact the above individual. Copies have been sent to all agencies and individuals who participated in the scoping process and to all others who have already requested copies.

SUPPLEMENTARY INFORMATION: John D. Schroer, Refuge Manager, Chincoteague National Wildlife Refuge is the primary author of this document. The Fish and Wildlife Service (FWS), Department of the Interior, has prepared a final EIS on its proposal to provide for management and development of the Chincoteague National Wildlife Refuge (NWR) to be implemented over the next ten to twenty years. Management proposals regarding wildlife species and their habitat include: Acquiring important wildlife habitat in the refuge vicinity; managing refuge forests to establish and maintain endangered Delmarva Peninsula fox squirrel habitat and habitat diversity; protecting nesting and feeding piping plovers, a threatened species, and other shorebirds by intensifying predator control and continuing/ expanding closures; enhancing freshwater wetland habitat on the refuge by improving water capabilities in the impoundments; maintaining existing biodiversity present on the refuge; and maintaining better control of the Chincoteague ponies. The public use and facilities management actions include: emphasizing wildlife oriented recreational and educational opportunities; continuing the deer and waterbird hunting programs; managing off-road vehicle access to protect the piping plover; retaining the current beach general recreation zone; establishing a maximum beach use capacity; continuing private vehicle beach access as long as beach parking areas remain; allowing NPS to maintain existing parking at the beach as long as the land base remains; coordinating with NPS and the Chincoteague community in identifying a suitable off-site parking area; implementing a system to eliminate traffic backups at the beach; and developing a FWS headquarters/visitor center on a geologically stable portion of the island.

This action is designed to give overall guidance for the protection, use, and development of Chincoteague National Wildlife Refuge (CNWR) during the next ten to twenty years. Chincoteague National Wildlife Refuge was established in 1943 for use as an inviolate sanctuary, or for any other management purpose, for migratory birds. At the time of the original acquisition, primary recognition was given to southern Assateague Island's value in as important habitat for migrating and wintering greater snow geese. While the refuge continues to provide important waterfowl habitat, the management emphasis has expanded over the years to address a variety of other wildlife needs. Today, Chincoteague NWR supports breeding populations of the endangered Delmarva Peninsula fox squirrel and threatened piping plover. In addition the refuge has supported a resident pair of peregrine falcons, also an endangered species, since 1982, and hundreds of peregrine falcons stop on the refuge during migration. The refuge is also one of the top five shorebird migratory staging areas in the United States, east of the Rocky Mountains. However, the refuge also provides as important educational and recreational resource for people attracted to the beautiful beach and excellent wildlife viewing opportunities. Visitation has increased sharply since construction of the bridge from Chincoteague Island in 1963 and inclusion of refuge lands within Assateague Island National Seashore (AINS) in 1965. According to refuge records, public use has grown from an estimated 100,000 visits in 1963 to more than 1.5 million visits in 1987, ascribing to Chincoteague NWR the third highest number of visits of any national wildlife refuge in the country. The primary impetus for master planning of Chincoteague NWR at this particular time comes from a growing need to balance high visitation with protection and enhancement of wildlife populations that depend on refuge habitat. The situation must be viewed in the broad context of regional and national trends in loss of wildlife habitat and demand for recreational and economic opportunities.

This action will result in the following major beneficial consequences: Improved wildlife habitat to encourage endangered and threatened species production; improved habitat for migrating and wintering waterfowl, shorebirds, and other wildlife; improved wildlife oriented recreational and educational opportunities: assured access to the refuge beach, while maintaining a quality beach experience in keeping with wildlands recreational objectives; and improved FWS/NPS management, coordination and efficiency. Possible adverse impacts include: loss of tax revenue for the town or county; redirected or reduced public use in certain areas; loss of small amounts of wetlands; impaired viewing and photographing opportunities for visitors; create negative visual impact by constructing shelters at the beech; and loss of small amounts of habitat to proposed construction.

Besides the proposed action, the major alternatives under consideration that were analyzed and evaluated during planning include the following:

1. The No Action alternative describes current management activities, assuming that these will continue over the next ten to twenty years. A description of this course of no significant new action provides a reference point to compare and evaluate environmental consequences associated with the other alternative plans. Although significant steps are presently being undertaken to manage and protect wildlife, the overall, environmental effects of taking No Action may result in reduced wildlife habitat quality and reduced wildlife reproduction. Inadequate visitor facilities and public use regulation mechanisms will continue to compromise wildlife oriented experiences, and may degrade wildlife habitat or otherwise jeopardize wildlife production.

2. The Wildlife Management alternative emphasizes wildlife protection and gives full consideration to actively managing refuge habitats and public uses for maximum wildlife benefit. Public use has lower priority, although programs that do not require a large outlay of funding or necessitate construction of nonwildlife oriented facilities on the refuge and proposed. Habitat and wildlife production benefits from implementation of the natural resource management proposals in this alternative will exceed those descried for the Proposed Action alternative, as certain public access is confined to seasonal shuttle access and habitat management programs and wildlife studies efforts are increased. Public use management consequences reflect reduced recreation opportunities, including less wildlife observation opportunities.

3. The Public Use Alternative emphasizes visitor accommodation. The major objectives to protect and perpetuate the ecosystem and wildlife population are met. Many proposed management efforts are directed towards educational, interpretive, and wildlife oriented public recreation programs. The intent is to promote awareness and enjoyment of the refuge. Improved interpretive and educational opportunities will increase the awareness of refuge visitors about wildlife and habitat issues. However, habitat degradation and wildlife disturbance will result from increased public access to Toms Cove Hook, the White Hills, and northern refuge areas, possibly reducing wildlife presence and reproduction. These actions may, in turn, reduce the quality of wildlife oriented public use experiences.

Other Government agencies and members of the general public contributed to the planning and evaluation of the proposal and to the preparation of this EIS. The notice of Intent to prepare this EIS was published in the March 2, 1985 **Federal Register**. Public involvement in the Chincoteague NWR master planning process has taken many forms in an effort to obtain meaningful input from various interests, including the following major scoping initiatives:

Scoping letters issued to initiate or update the progress of the plan and to urge public participation sent to 1,000–1,300 individuals or groups, April and September, 1985.

Public scoping meeting, Chincoteague Fire Hall, June 4, 1985 with over 150 people attending.

Regular occurring meetings with the following attending most meetings: Congressman Bateman's Aide, Officials of both the Accomack County and Town of Chincoteague governments, officers and members of the Chincoteague Chamber of Commerce, Assateague Island National Seashore (AINS) Superintendent and Chincoteague NWR Refuge Manager, 1988 through 1990.

Meeting with Chincoteague Refuge Manager and representatives of the Wilderness Society, Committee to Preserve Assateague Island, Inc., National Wildlife Refuge Association, National Audubon Society, Audubon Naturalist Society of the Mid-Atlantic States, Defenders of Wildlife, Sierra Club, Environmental Defense Fund, and National Parks and Conservation Association, October 1989.

Meetings with Chincoteague Refuge Manager, Seashore Superintendent, and representatives of Accomack County, Town of Chincoteague, Chincoteague Chamber of Commerce, The Wilderness Society, Committee to Preserve Assateague Island, Inc., National Wildlife Refuge Association, National Audubon Society, Audubon Naturalist Society of the Mid-Atlantic States, Defenders of Wildlife, Sierra Club, Environmental Defense Fund, National Parks and Conservation Association, and Izaak Walton League of America, December 1989 and April, May, July, and November 1990. (Note: At the five meetings, various of the groups mentioned were represented.)

Master Planning Bulletins/letters to present update on process and urge public participation sent to 200–300 individuals, groups and agencies, October 1990 and January, July, and November, 1991.

Public scoping meeting, Chincoteague Fire House, in attendance were over 60 people including Congressman Bateman's Aide, members of the public and representatives of FWS, NPS, Town of Chincoteague, Assateague Island Mobile Sport Fisherman Association, Wicomico Environmental Trust, Wicomico Bird Club, Worcester Environmental Trust, AJ's Restaurant, Salisbury ZOO, Corner Book Store, and Eastern Shore of Virginia Angler's Club, November 27, 1990.

The draft EIS for the Master Plan was sent to over 600 agencies, organizations, and individuals in January 1992. Public meetings on the draft were held in Baltimore, MD and Chincoteague, VA in March 1992 with 54 and 49 people attending, respectively. The public comment period on the draft ended May 1 with approximately 60 people submitting comments.

All agencies and individuals are urged to provide comments and suggestions for improving this EIS as soon as possible. All comments received by the dates given above will be considered in preparation of the final EIS for this proposed action.

The FWS has determined that this document does not contain a major proposal requiring preparation of an economic impact analysis under Executive Order E.O. 11821 as amended by E.O. 11949 and OMB Circular A–107.

Dated: August 27, 1992.

Curtis A. Laffin,

Chief, Technical Services, Refuges and Wildlife.

[FR Doc. 92–21089 Filed 9–1–92; 8:45 am]

BILLING CODE 4310-55-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-621 (Preliminary)]

Certain Compact Ductile Iron Waterworks Fittings and Accessories Thereof From the People's Republic of China

Determination

On the basis of the record [1] developed in the subject investigation, the Commission unanimously determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that industries in the United States are materially injured by reason of imports from the People's Republic of China of compact ductile iron waterworks fittings and accessories thereof,[3] provided for in subheadings 7307.19.30, 73.18.15.20, 4016.93.00, and 7307.19.90 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On July 8, 1992, a petition was filed with the Commission and the Department of Commerce by The U.S. Waterworks Fittings Producers Council and its individual members, Clow Water Systems, Tyler Pipe Industries, Inc., and Union Foundry Co., alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of compact ductile iron waterworks fittings and accessories thereof from the People's Republic of China. Accordingly, effective July 8, 1992, the Commission instituted antidumping investigation No. 731-TA-621 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 15, 1992 (57 FR 31384). The conference was held in Washington, DC, on July 29, 1992, and all persons who requested the opportunity were permitted to appear in person or by counsel.

Issued: August 25, 1992.

By Order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-21109 Filed 9-1-92; 8:45 am]

BILLING CODE 7020-02-M

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Vice Chairman Peter S. Watson did not participate.

[3] As defined by Commerce, the products covered by this investigation are (1) certain compact ductile iron waterworks (CDIW) fittings of 3 to 16 inches nominal diameter regardless of shape, including bends, tees, crosses, wyes, reducers, adapters, and other shapes, whether or not cement lined, and whether or not covered with bitumen or similar substance, conforming to AWWA/ANSI specification C153/A21.53, and rated for water working pressure of 350 PSI; and (2) certain CDIW fittings accessories which typically consist of a standard ductile iron gland, a styrene butadiene rubber (SBR) gasket, the requisite number of Cor-Ten steel or ductile iron T-head bolts, and hexagonal nuts, whether sold separately or together in kits (also called accessory packs), for fittings in sizes 3 to 16 inches, conforming to AWWA/ANSI specification C111/A21.11, and rated for water working pressure of 350 PSI.

The types of CDIW fittings covered by this investigation are compact ductile iron mechanical joint waterworks fittings and compact ductile iron push-on joint waterworks fittings, both of which are used for the same applications." Nonmalleable cast iron fittings and full-bodied ductile fittings are specifically excluded from the scope of Commerce's investigation.

[Investigation No. 701-TA-318 (Final)]

Sulfanilic Acid From India

AGENCY: United States International Trade Commission.

ACTION: Institution of a final countervailing duty investigation.

SUMMARY: The Commission hereby gives notice of the institution of final countervailing duty investigation No. 701-TA-318 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671(d)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from India of sulfanilic acid and sodium sulfanilate,[1] provided for in subheadings 2921.42.24 and 2921.42.70 of the Harmonized Tariff Schedule of the United States (HTS), that are alleged to be subsidized by the Government of India.

Pursuant to a request from petitioner under section 705(a)(1) of the Act (19 U.S.C. 1671d(a)(1)), Commerce has extended the date for its final determination to coincide with that to be made in the ongoing antidumping investigation on sulfanilic acid from India. Accordingly, the Commission will not establish a schedule for the conduct of the countervailing duty investigation until Commerce makes a preliminary determination in the antidumping investigation (currently scheduled for October 15, 1992).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: August 18, 1992.

FOR FURTHER INFORMATION CONTACT: Robert Carpenter (202-205-3172), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in India of sulfanilic acid. The investigation was requested in a petition filed on May 8, 1992, by R-M Industries, Inc., Fort Mill, SC.

Participation in the Investigation and Public Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register.** The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final

[1] The products covered by this investigation are all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid, and sodium salt of sulfanilic acid (sodium sulfanilate).

investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules.

Issued: August 26, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-21108 Filed 9-1-92; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32138]

Southrail Corp.—Trackage Rights Exemption—CSX Transportation, Inc.

CSX Transportation, Inc. (CSXT), has agreed to grant overhead trackage rights to SouthRail Corporation over approximately 44 miles of CSXT's Huntsville No. 1 Line and North Branch Main Track, between milepost 429.2 at Brookwood, AL, and milepost 384.8 at Boyles Yard, Birmingham, AL. The exemption became effective on August 27, 1992, and the parties intend to consummate the transaction on or about August 31, 1991.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Laurence R. Latourette, 1735 New York Ave. NW., Suite 500, Washington, DC 20006.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: August 27, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. 92-21110 Filed 9-1-92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 32141]

Wheeling & Lake Erie Railway Company—Trackage Rights Exemption—CSX Transportation, Inc.

CSX Transportation, Inc. (CSXT), has agreed to grant local and overhead trackage rights to Wheeling & Lake Erie Railway Company (Wheeling) between valuation station 394+16 at Martins Ferry, Belmont County, OH, and valuation station 1+84, at Benwood, Marshall County, WV, a distance of approximately 8.4-miles. The exemption will be effective on August 26, 1992, and the parties intend to consummate the transaction on or after that date.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filling of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Kevin M. Sheys, 1020 Nineteenth Street, NW., suite 400, Washington, DC 20036.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: August 27, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. 92-21111 Filed 9-1-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Placement of FOIPA Reference Manual in Reading Room

AGENCY: Federal Bureau of Investigation, DOJ.

ACTION: Notice.

SUMMARY: The Federal Bureau of Investigation (FBI) is announcing that, pursuant to subsection (a)(2) of the Freedom of Information Act, 5 U.S.C. Section 552(a)(2), the FBI has made available for public inspection and copying in its Reading Room the current edition of the FBI's Freedom of Information and Privacy Acts (FOIPA) Reference Manual. A copy of the FOIPA Reference Manual may be obtained for the cost of duplication by writing to FBI Headquarters, JEH Building, FOIA Reading Room, 9th Street and Pennsylvania Avenue, NW., Washington, DC 20535. Access to the Reading Room is by appointment 48 hours in advance by contacting (202) 324-3386.

FOR FURTHER INFORMATION CONTACT: J. Kevin O'Brien, Chief, FOIPA Section, Information Management Division, FBI, JEH Building, 9th Street and Pennsylvania Avenue, NW., Washington, DC 20535, 202-324-5520.

Dated: August 20, 1992.

J. Kevin O'Brien,

Chief, FOIPA Section, Information Management Division, FBI.

[FR Doc. 92-21087 Filed 9-1-92; 8:45 am]

BILLING CODE 4410-02-M

Uniform Crime Reporting (UCR); Data Providers' Advisory Policy Board (APB); Meeting

The UCR APB will meet on September 25 and 26, 1992, from 9 a.m. until close of business each day at the Holiday Inn, 300 Woodbury Avenue, Portsmouth, New Hampshire.

Major topics to be considered: (1) FBI and Department of Justice reorganization matters; (2) Hate Crime Data Collection; (3) Progress of NIBRS in the States; and (4) Cost of NIBRS implementation at the local level.

The meeting will be open to the public with approximately 25 seats available on a first-come, first-served basis. Any member of the public may file a written statement with the APB before or after the meeting. Anyone wishing to address a session of the meeting should notify the Committee Management Liaison Officer, FBI, at least 24 hours prior to the start of the session. The notification may be by mail, telegram, cable, or hand-delivered note. It should contain their name, corporate or Government designation, and consumer affiliation, along with the capsulized version of the statement and an outline of the material to be offered. A person will be allowed not more than 15 minutes to present a topic, except with the special approval of the Chairperson of the Board.

Inquires may be addressed to Mr. J. Harper Wilson, Committee Management Liaison Officer, Criminal Justice Information Services Division, Federal Bureau of Investigation, Washington, DC 20535, telephone number (202) 324-2614.

Dated: August 24, 1992.

William S. Sessions,

Director.

[FR Doc. 92-21057 Filed 9-1-92; 8:45 am]

BILLING CODE 4410-02-M

National Institute of Corrections

Advisory Board Meeting

Time and Date: 8 a.m., Tuesday, October 6, 1992.

Place: The Copley Plaza Hotel, 138 St. James Avenue, Boston, Massachusetts.

Status: Open.

Matters to be Considered: An update on the Intensive Correctional Leadership Training Program, a progress report on the Corrections Options Incentive Act, the Corrections Telecommunications Systems, foreign technical assistance, the mental health services policies, and a review of the proposal for a NIC annual Corrections Report.

Contact Person for More Information: Larry Solomon Deputy Director, (202) 307-3106.

M. Wayne Huggins,

Director.

[FR Doc. 92-21043 Filed 9-1-92; 8:45 am]

BILLING CODE 4410-36-M

NATIONAL SPACE COUNCIL

Vice President's Space Policy Advisory Board; Establishment of the National Space Policy Assessment Task Group

AGENCY: National Space Council.

ACTION: Notice of task group establishment.

SUMMARY: The National Space Policy Assessment Task Group of the Vice President's Space Policy Advisory Board is being established.

FOR FURTHER INFORMATION CONTACT: Stephen Hopkins, (703) 685-3307 or James R. Beale, National Space Council, Executive Office of the President, Washington, DC, (202) 395-6175.

SUPPLEMENTARY INFORMATION: The Vice President has determined that the establishment of a task group of the Vice President's Space Policy Advisory Board is necessary and in the public interest in connection with the performance of duties assigned by Executive Order 12675 of April 20, 1989 (3 CFR, 1989 Comp., p218). The National Space Policy Assessment Task Group will conduct a broad review of current U.S. national space policies in the context of the end of the Cold War and other factors. It will make policy recommendations which would have the affect of increasing the efficiency of Federal government space activities to enable the best space program possible for the funds available; maintaining U.S. leadership and competitiveness for the 21st century; and, maintaining an industrial base capable of supporting future national security, civil, and commercial space requirements. The National Space Policy Review Task Group shall be composed of between 8 and 12 individuals drawn from the members of the Vice President's Space Policy Advisory Board. As the Vice President's Space Policy Advisory Board represents a balanced membership of diverse backgrounds and experiences, so too will this task group.

James R. Beale,

Committee Action Officer.

[FR Doc. 92-21103 Filed 9-1-92; 8:45 am]

BILLING CODE 3125-01-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Biological and Critical Systems; Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation (NSF) announces the following meetings.

Date & Time: September 9 & 10, 1992; 8:30 a.m. to 5 p.m.

Place: Room 1133, NSF, 1800 G Street NW., Washington, DC.

Contact Person: Edward H. Bryan, Program Director, Division of Biological and Critical Systems, Rm. 1132, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357-7737.

Date & Time: September 15, 1992; 8:30 a.m. to 5 p.m.

Place: Room 543, NSF, 1800 G Street NW., Washington, DC.

Contact Person: Norman Caplan, Program Director, Division of Biological and Critical Systems, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357-7737.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Agenda: To review and evaluate Small Business Innovation Research (SBIR) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Reason for Late Notice: Difficulty arranging for a suitable meeting time for the full committee.

Dated: August 27, 1992.

Modestine Rogers,

Acting Committee Management Officer.

[FR Doc. 92-21073 Filed 9-1-92; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Electrical and Communications Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended) the National Science Foundation announces the following meeting:

Date and Time: September 18, 1992; 8 a.m. to 5 p.m.

Place: Room 500-A, 1110 Vermont Avenue NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Lawrence S. Goldberg, Program Director, Division of Electrical and Communications Systems, room 1151, National Science Foundation, 1800 G Street NW., Washington, DC. Telephone (202) 357-9618.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Small Business Innovation Research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 27, 1992.

Modestine Rogers,

Acting Committee Management Officer.

[FR Doc. 92-21074 Filed 9-1-92; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Integrative Biology and Neuroscience; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Date and Time: September 25, 1992, 8:30 a.m. to 5 p.m.

Place: Room 543, National Science Foundation, 1800 G Street, NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Barbara Zain, Program Director, IBN, room 321, National Science Foundation, 1800 G St.

NW., Washington, DC 20550. Telephone: (202) 357-7975.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Small Business Innovation Research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 28, 1992.

Modestine Rogers,

Acting Committee Management Officer.

[FR Doc. 92-21146 Filed 9-1-92; 8:45 am]

BILLING CODE 7555-01-M

Notice of Workshop

The National Science Foundation (NSF) will hold a planning session on September 17, 1992 to prepare for a two-day workshop on Teacher Preparation on November 5 and 6, 1992. The Planning Session will take place at The Vista Hotel, 1400 M Street, NW., Washington, DC 20005.[1]

The goal of the workshop will be to provide a forum for science, engineering, and mathematics faculty to share ideas and experience concerning effective ways of improving the undergraduate education of science and mathematics teachers; to encourage faculty in sciences disciplines to share responsibility with Education School faculty in addressing the needs of students considering careers in teaching and to alert academic communities to NSF's programs that support efforts to improve the undergraduate education of mathematics and science teachers.

The planning committee will not operate as an advisory committee. It will be open to the public. Participants will include approximately 12 national leaders in mathematics and science education.

For additional information, contact Dr. William Haver, Program Director, 1800 G Street, NW., room 1210, Washington, DC 20550 (202) 357-7892.

[1] The planning session and workshop will be held from 8:30 a.m. to 5 p.m.

Dated: August 7, 1992.

Robert F. Watson,

Division Director, Undergraduate Education.

[FR Doc. 92-21072 Filed 9-1-92; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee on Advanced Boiling Water Reactors; Meeting

The ACRS Subcommittee on Advanced Boiling Water Reactors will hold a meeting on September 23-24, 1992, room P-110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed to discuss information deemed proprietary to General Electric Nuclear Energy (GE) pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Wednesday, September 23, 1992—8:30 a.m. Until the Conclusion of Business

Thursday, September 24, 1992—8:30 a.m. Until the Conclusion of Business

The Subcommittee will begin its review of the Final Safety Evaluation Report (FSER) for the GE Advanced Boiling Water Reactor (ABWR) design, certain other GE and staff licensing documents, and the remainder of the Standard Safety Analysis Report (SSAR) submittals.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, GE, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Mr. Elpidio Igne (telephone 301/492-8192) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: August 26, 1992.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 92-21124 Filed 9-1-92; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Joint Meeting of the Subcommittees on Thermal Hydraulic Phenomena and Core Performance; Meeting

The ACRS Subcommittees on Thermal Hydraulic Phenomena and Core Performance will hold a joint meeting on September 15, 1992, room P-110, 7920 Norfolk Avenue, Besthesda, MD.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed to discuss information deemed proprietary to General Electric Nuclear Energy (GE) pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Tuesday, September 15, 1992—8:30 a.m. Until the Conclusion of Business

The Subcommittees will continue their review of the issues pertaining to boiling water reactor (BWR) core power stability.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairmen; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittees, their consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with

any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff, GE, the BWR Owners Group, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Mr. Paul Boehnert (telephone 301/492-8558) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: August 25, 1992.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 92-21126 Filed 9-1-92; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Joint Meeting of the Subcommittees on Plant License Renewal/Reliability and Quality; Meeting

The ACRS Subcommittees on Plant License Renewal and Reliability and Quality will hold a joint meeting on September 16, 1992, room P-110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, September 16, 1992—8:30 a.m. Until 12 Noon

The Subcommittees will review the proposed Branch Technical Position on Equipment Qualification for Plant License Renewal.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairmen; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittees, their consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portions of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff, nuclear industry, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Mr. Elpidio Igne (telephone 301/492-8192) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: August 25, 1992.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 92-21127 Filed 9-1-92; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Subcommittee on Computers in Nuclear Power Plant Operations; Meeting

The ACRS Subcommittee on Computers in Nuclear Power Plant Operations will hold a meeting on September 22, 1992, room P-110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed to discuss foreign proprietary information pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Tuesday, September 22, 1992—8:30 a.m. Until the Conclusion of Business

The Subcommittee will host a special international meeting to hear from and discuss with the manufacturers in Germany, France, Japan, U.K., Sweden, and Canada about advanced developments in digital Instrumentation and Control (I&C) systems. National experts will discuss software design concepts including safety, reliability, fault-tolerance, formal methods, and verification and validation.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations from national experts in industry and government and from the NRC staff and its consultants.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Mr. Douglas Coe (telephone 301/492-8972) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: August 26, 1992.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 92-21125 Filed 9-1-92; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Subcommittee on Computers in Nuclear Power Plant Operations; Meeting

The ACRS Subcommittee on Computers in Nuclear Power Plant Operations will hold a meeting on September 8, 1992, room P-110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed to discuss proprietary information pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Tuesday, September 8, 1992—1:30 p.m. Until the Conclusion of Business

The Subcommittee will discuss digital instrumentation and control system design issues for advanced light water reactor (ALWR) designs, including defense against common mode failures.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regrading matters to be considered during the balance of the meeting.

The Subcommittee will hear presentations from the NRC staff and its consultants, and the industry as appropriate.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Mr. Douglas Coe (telephone 301/492–8972) between 7:30 a.m. and 4:15 p.m. (e.s.t.). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: August 27, 1992.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 92–21150 Filed 9–1–92; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Subcommittee on Improved Light Water Reactors; Meeting

The ACRS Subcommittee on Improved Light Water Reactors will hold a meeting on September 9, 1992, in room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, September 9, 1992—3 p.m. Until 6 p.m.

The Subcommittee will review additional policy issues identified in the draft Commission paper, "Design Certification and Licensing Policy Issues Pertaining to Passive and Evolutionary Advanced Light Water Reactor Designs," dated June 25, 1992.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Mr. Elpidio G. Igne (telephone 301/492–8192) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: August 26, 1992.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 92–21151 Filed 9–1–92; 8:45 am]

BILLING CODE 7590-01-M

Biweekly Notice

Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from August 10, 1992 through August 21, 1992. The last biweekly notice was published on August 19, 1992 (57 FR 37558).

Notice Of Consideration Of Issuance Of Amendment To Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity For Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final

determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Directives Review Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 2, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to (Project Director): petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests

for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: August 13, 1992

Description of amendments request: The amendments would revise the implementation schedule for license Amendment Nos. 166 and 146 for the Calvert Cliffs Nuclear Power Plant, Units 1 and 2, respectively. These license amendments were issued on January 17, 1992, and were to be implemented when the spent fuel cask handling crane modifications were completed prior to July 31, 1992. By letter dated July 28, 1992, the licensee indicated that the installation of the crane and implementation of the license amendments would not be complete until late 1992. The licensee requested that the implementation date be revised in its August 13, 1992, letter. The installation of the crane was delayed due to changes in the Unit 1 refueling outage schedule and the identification of additional engineering required to support the installation of the crane. Specifically, the request is to revise the implementation date for the amendments to no later than December 31, 1992.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

This change is administrative. No changes will be made to the Calvert Cliffs Technical Specifications until the Single-Failure-Proof crane is installed and the approved license amendment subsequently implemented. The requested delay in implementation date results in no changes in plant equipment or operation.

Therefore, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or difference type of accident from any accident previously evaluated.

This change is administrative. No changes will be made to the Calvert Cliffs Technical Specifications until the Single-Failure-Proof crane is installed and the approved license amendment subsequently implemented. The requested delay in implementation date results in no changes in plant equipment or operation.

Therefore, this change would not create the possibility of a new or different type of accident from any previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

This change is administrative. No changes will be made to the Calvert Cliffs Technical Specifications until the Single-Failure-Proof crane is installed and the approved license amendment subsequently implemented. The requested delay in implementation date results in no changes in plant equipment or operation.

Therefore, this change would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration. Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Attorney for licensee: Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Robert A. Capra

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: June 18, 1992

Description of amendment request: The proposed Technical Specification (TS) changes would add Limiting Conditions for Operations (LCO) and Surveillance Requirements for the pressurizer power-operated relief valves (PORVs) and their associated block valves whenever Tavg is above 350 degrees F or the reactor is critical. Specifications will also be added for the low-temperature overpressure protection (LTOP) whenever Tavg is less than 350 degrees F and the reactor coolant system (RCS) is not vented to the containment.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. No equipment modifications are required for implementation of these changes. The proposed TSs increase the availability and reliability of the PORVs and Block Valves for their intended function. This enhanced availability and reliability would not create a significant increase in the probability or consequences of accidents previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. As noted above, the requested changes do not involve any physicalchanges to the plant. The proposed changes would tend to increase the availability and reliability of the PORVs and Block Valves. With no physical changes being made to the PORV and Block Valve equipment and enhanced surveillance and maintenance requirements being employed, the proposed amendment would not create the possibility of a new or different accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety. The proposed amendment will result in improved availability due to reduced allowed out of service times, enhanced reliability due to improved/additional surveillance requirements and programs, and enhanced attention to the safety-related aspects of PORV and associated Block Valve operations which would not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602 NRC Project Director: Elinor G. Adensam

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, IllinoisDocket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of amendment request: July 28, 1992

Description of amendment request: The proposed amendment would revise the technical specifications to reflect

changes to the current Boron Dilution Analyses.

The licensee has requested that the proposed changes be approved as soon as possible to implement the revised analyses into the functional requirements of the Boron Dilution Protection System. Currently the licensee has implemented procedural controls to provide adequate systems margins reflecting the revised analyses.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

This amendment will not result in an increase of the probability of occurrence of an accident. The initiating event of an inadvertent dilution is the failure of a component or operator error which results in the decrease of the boron concentration in the reactor coolant system. This amendment does not increase that probability. Isolation of dilution flowpaths is required when automatic protection is not available. This isolation requirement reduces the probability of a dilution.

The amendment will not result in an increase of the consequences of an accident. Analysis has demonstrated that the automatic protection provided by BDPS prevents the reactor from achieving criticality due to an inadvertent dilution. Fuel damage and pressure boundary failure is precluded by maintaining the reactor sub-critical.

This amendment will not result in an increase in the probability of a malfunction of equipment important to safety. The amendment does not modify any component or system or modify any operating procedure which would adversely affect the operation of a component or system important to safety.

This amendment does not create the possibility of an accident of a different type than any previously evaluated accident in the UFSAR. The changes to the operation of equipment required to control reactor coolant system boron concentration do not affect the ability to increase reactor coolant system inventory or boron concentration as required by Technical Specifications and accident analysis. No credit is taken in any accident analysis for the flowpaths which have been isolated as a result of the administrative controls prescribed by the ACTION Statements of the amended Technical Specifications. The administrative controls do not result in a new type of transient which would result in a change in reactor coolant system inventory or heat removal, nor do these controls result in a reactivity anomaly.

This amendment does not create the possibility of a component or system malfunction of a different type than any previously evaluated accident in the UFSAR. The changes to the operation of equipment required to control reactor coolant system boron concentration do not affect the ability to increase reactor coolant system inventory or boron concentration as required by Technical Specifications and accident analysis. No credit is taken in any accident analysis for the flowpaths which have been isolated as a result of the administrative controls prescribed by the action statements of the amended specifications. The amendment does not modify any component or system or modify any operating procedures which would adversely affect the operation of a component or system important to safety.

This amendment does not reduce the margin of safety as defined in the Bases for any Technical Specification. The administrative controls over dilution flowpaths, the revised ICRR Curve, the inclusion of the estimated setpoint uncertainty, and the increase in SHUTDOWN MARGIN adequately compensate for the increase in the critical boron concentration safety analysis limit and the potential loss of conservatism due to the deficiencies in the ICRR and setpoint uncertainty assumptions in the current licensing basis. The analysis demonstrates that the BDPS can successfully detect a dilution, isolate the source of the dilution, and restore plant SHUTDOWN MARGIN before fuel design limits or pressure boundary limits are exceeded. The acceptance criteria is met by demonstrating that criticality is not achieved.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: For Byron, the Byron Public Library, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: Richard J. Barrett

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of amendment request: July 8, 1992

Description of amendment request: The proposed amendments were submitted as a result of NRC recommendations pertaining to Generic Letter 90-06 for the power-operated relief valves (PORVs) and block valves, and low temperature overpressure protection (LTOP) systems. The proposed Technical Specifications will enhance the reliability of the PORVs and block valves and will provide additional low temperature overpressure protection.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

The licensee's proposed changes in response to Generic Issue 70 would not result in any modifications to the PORVs, block valves, initiation logic or actuation setpoints. There is no change in the manner in which equipment is maintained, or a reduction in levels of surveillance. The proposed changes enhance the overall availability and reliability of the PORVs and as a result do not increase the probability of a previously evaluated accident

The licensee's proposed changes in response to Generic Issue 94would not result in any modifications to the PORVs, block valves or initiation logic. There is no change in the manner in which equipment is maintained and there is no reduction in the level of surveillance conductedon equipment used to comply with the limiting conditions of operations.Extending the time for depressization, to accommodate pressurizer and reactor system cooldown, does not involve an event initiator or the consequences of an event which might occur during this time.

Based on the above, the proposed Technical Specification changes will not involve a significant increase in the probability or consequences of an accident that has been previously evaluated.

The licensee's proposed changes to their Technical Specifications, in response to Generic Issue 70, do not necessitate a physical alteration of the plant or changes in parameters governing normal plant operation. Therefore, the changes do not create the possibility of a new or different kind of accident.

The licensee's proposed changes to their Technical Specifications, in response to Generic Issue 94, do not necessitate a physical alteration of the plant or changes in the parameters governing normal plant operation, except for reducing the time during which the plant can be operated in previously evaluated conditions.

Therefore, based on the above, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

With the exception of the increase in the time allowed for depressurization, all changes to the parameters or conditions used to establish the

proposed technical specifications are in a conservative direction. The increase in the time allowed to depressurize from 16 to 24 hours establishes the required plant conditions within the shortest time period possible under current plant restrictions. The proposed changes do not reduce the ability of the PORVs to mitigate an LTOP event. Rather, the proposed changes reduce the time the plant can operate with one or more PORVs inoperable. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: Richard J. Barrett

Duke Power Company, Docket Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units 1, 2 and 3, Oconee County, South Carolina

Date of amendment request: July 13, 1992

Description of amendment request: The proposed amendments would delete cycle dependent core operating limits from the Technical Specifications (TSs) to allow 10 CFR 50.59 reviews for future core reloads for all Oconee units. These limits will be relocated in the Core Operating Limits Report (COLR) in accordance with the guidance provided in NRC Generic Letter88-16. The proposed amendment would relocate the following additional cycle-specific parameter limits from the TSs to the COLR:

. Figure 2.1-1 "Variable Low Pressure Protective Limits,"

2. Figure 2.1-2 "Axial Power Imbalance Protective Limits,"

3. TS 3.2.2 Concentrated Boric Acid Storage Tank (CBAST) volume and boron concentration,

4. TS 3.3.3 Core Flood Tank (CFT) boron concentration, and

5. TS 3.3.4 Borated Water Storage Tank (BWST) boron concentration.Changes are also proposed for the associated Bases.

In addition, related administrative and editorial changes are made, and the Bases have been revised in response to concerns regarding temperature assumptions in shutdown margin analyses. Accordingly, the revised Bases indicate the shutdown margin requirements are based on an RCS temperature of 33 degrees F rather than 70 degrees F.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Duke Power Company (Duke) has made the determination that this amendment request involves a No Significant Hazards Consideration by applying the standards established by NRC regulations in 10 CFR 50.92. This ensures that operation of the facility in accordance with the proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated:

Each accident analysis addressed within the Oconee Final Safety Analysis Report (FSAR) has been examined with respect to the change proposed within this amendment request. The Technical Specifications will continue to require operation within the bounds of the cycle-specific parameter limits. The cycle-specific parameter limits will be calculated using NRC approved methodology. Therefore, the probability of any Design Basis Accident (DBA) is not affected by this change, nor are the consequences of a DBA affected by this change since the relocation of cycle-specific parameter limits from the Technical Specifications to the COLR is not considered to be an initiator or contributor to any accident analysis addressed in the Oconee FSAR.

(2) Create the possibility of a new or different kind of accident from any kind of accident previously evaluated:

Operation of ONS in accordance with these Technical Specifications will not create any failure modes not bounded [by] previously evaluated accidents. Consequently, this change will not create the possibility of a new or different kind of accident from any kind of accident previously evaluated.

(3) Involve a significant reduction in a margin of safety:

The Technical Specifications will continue to require operation within the bounds of the cycle-specific parameter limits. The cycle-specific parameter limits will be calculated using NRC approved methodology. In addition, each future reload will require a 10 CFR 50.59 safety review to assure that operation of the Unit within the cycle-specific limits will not involve a reduction in a margin of safety. Therefore, no margins of safety are affected by the relocation of cycle-specific parameter limits to the COLR.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Attorney for licensee: J. Michael McGarry, III, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20036

NRC Project Director: David B. Matthews

Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One,Unit No. 1, Pope County, Arkansas

Date of amendment request: August 4, 1992

Description of amendment request: The amendment revises Technical Specification 4.7.1.2.a.1 to decrease the value of the secondary steam supply pressure specified for surveillance of the turbine-driven emergency feedwater (EFW) pump from greater than 865 psig to greater than 800 psia. In addition, "secondary steam supply pressure" would be changed to "steam generator pressure."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does Not Involve a Significant Increase in theProbability or Consequences of an Accident PreviouslyEvaluated.

The accident mitigation features of the plant are not affected by the proposed amendment. No modification has been made to the pump or turbine driver. The specified values of flowrate and discharge pressure for the surveillance testing of the turbine driven EFW pump remain unchanged. The capability of the turbine driven EFW pump to perform its required function is not impacted by this change. Design calculations show that the turbine driven EFW pump is capable of delivering required flowrate and discharge pressure for existing plant conditions applicable to a secondary steam supply pressure range of 60 to 1100 psia. The change specifying steam generator pressure as the secondary steam supply pressure is purely administrative in nature and is intended to clarify the specification.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2 - Does Not Create the Possibility of a New or DifferentKind of Accident from any Previously Evaluated.

No new possibility for an accident is introduced by modifying the specifications for the surveillance testing of the turbine driven EFW pump. The surveillance will continue to demonstrate the pump's ability to perform its safety function. The specified values of flowrate and discharge pressure for the surveillance test remain unchanged. Design calculations show that the turbine driven EFW pump is capable of delivering

required flowrate and discharge pressure for existing plant conditions applicable to a secondary steam supply pressure range of 60 to 1100 psia. The change specifying steam generator pressure as the secondary steam supply pressure is purely administrative in nature and is intended to clarify the specification.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in the Margin of Safety.

The safety function of the turbine driven EFW pump is not altered as a result of this change. The pump's required flowrate and discharge pressure are not revised as a result of this change to secondary steam supply pressure. Design calculations show that the turbine driven EFW pump is capable of delivering required flowrate and discharge pressure for existing plant conditions applicable to a secondary steam supply pressure range of 60 to 1100 psia. The change specifying steam generator pressure as the secondary steam supply pressure is purely administrative in nature and is intended to clarify the specification.

Therefore, this change does not involve a significant reduction in the margin of safety.

Therefore, based on the reasoning presented above and the previous discussion of the amendment request, Entergy Operations has determined that the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: John T. Larkins

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: October 15, 1991

Description of amendment request: The proposed change would delete two inboard containment purge isolation valves from Technical Specification Table 3.6-1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does Not Involve A Significant Increase in the Probability or Consequences of An Accident Previously Evaluated

The proposed changes [sic] does not involve a significant increase in the probability or consequences of an accident previously evaluated. The containment purge isolation valves are passive components during Operational Modes 1, 2, 3, and 4 since they are sealed closed in accordance with Technical Specification 3.6.1.8. These isolation valves perform no active safety function and have no effect on the probability of an accident occurring. The consequences of a design basis accident during MODES 1, 2, 3, and 4 are unchanged since containment integrity is maintained by redundant isolation valves for both the purge supply and exhaust penetrations. The use of the redundant outboard isolation valves to provide containment isolation does not increase the probability or consequences of any accident previously evaluated since the additional piping length, which will be part of containment boundary, is rated for greater than post accident containment conditions and the second outboard isolation valve is identical to the first outboard isolation valve which is currently used to provide containment isolation. The increase in probability of tornado missile damage to the isolation valves or associated piping concurrent with a design basis accident has been shown to be insignificant. Specifically, the calculated probability for such an occurrence was shown to be much less than 10^{-10} per year. Therefore, the consequences of previously evaluated accidents are not significantly increased. Previous analyses of accidents occurring during power operations credited a double isolation barrier to prevent containment releases through the purge supply and exhaust lines. The ability to provide a double isolation barrier to containment releases remains unchanged as a result of this Technical Specification change.

Previous evaluations of accidents occurring during MODES 5 and 6 with the purge system operating did not take credit for isolation of these penetrations. As a result, the probability and consequences of these accidents are not increased by this change.

The use of redundant outboard isolation valves to provide containment integrity does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from Any Previously Evaluated

The proposed change does not create the possibility of a new or different kind of accident from any previously analyzed because the use of the redundant outboard isolation valves to provide containment integrity is equivalent to the degree of isolation provided by the current design. These isolation valves are used as passive components during reactor operation and have no effect on the type or kind of accident. The possibility of a new or different kind of accident from any previously evaluated is not created because the changes do not involve any design changes, plant modifications, changes in acceptance criteria or changes in plant operation. The change to the valves used for isolation of the containment purge system penetrations will utilize redundant outboard isolation valves. The second outboard isolation valve is essentially identical in design to the first outboard isolation valve which is currently used to provide containment isolation. As a result, the possibility of a new or different kind of accident is not created.

Criterion 3 - Does Not Involve A Significant Reduction in The Margin of Safety

The proposed change does not involve a significant reduction in a margin of safety since the degree of containment isolation is unchanged from that assumed in the design basis analysis. The redundant isolation valves available for each penetration have been functionally tested and proven to be acceptable isolation barriers. No limits or surveillance requirements provided by the Technical Specifications have been changed. The change in the valves used to provide containment isolation does not involve a significant reduction in the margin of safety since the only changes [sic] is in the location (outside containment instead of inside containment) of the redundant isolation valve for each penetration.

The only potential concern resulting from the use of the outboard valves to provide containment isolation is the possibility of tornado missile damage. Using the techniques of NUREG/CR-4713, the likelihood of any size tornado generating a missile that impacts any part of the outside containment purge piping or valves out through the second isolation valve (whether or not the impact degrades isolation capability) within 30 days following a LOCA of any size, has been shown to be insignificant. Specifically, the calculated probability for such an occurrence was shown to be much less than 10^{-10} per year. Therefore, the possibility of tornado missile damage to the purge isolation valves or piping concurrent with a LOCA is not considered credible. In addition, the outboard isolation valves are located in close proximity to each other (distances between valves are shown in figure 1). This physical arrangement minimizes the piping between the isolation valves which could be subjected to potential tornado missile damage. Therefore, the margin of safety provided by the containment purge isolation valves and the mitigating function of the containment purge isolation valves is not significant reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: John T. Larkins

Entergy Operations, Inc., et al., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: July 29, 1992

Description of amendment request: The proposed amendment would change selected technical specification (TS) instrumentation surveillance test intervals (STIs) and allowed outage times (AOTs) in accordance with changes proposed by the General Electric Company in topical reports that have been reviewed and approved by the NRC staff.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

The proposed TS changes increase the STIs and AOTs for instrumentation supporting a number of TS functions. There are no changes in any of the affected systems themselves. Since there are no such changes, there can be no change in the probability of occurrence of an accident. Regarding theconsequences of an accident, General Electric (GE) reports GENE-770-06-1 and GENE-770-06-2 showed that for the instrumentation evaluated, the effects of the extension in STIs and AOTs are bounded by previous GE analyses. The previously performed GE analyses showed that the changes to the STIs and AOTs produced negligible impact. The proposed changes are those discussed in GENE-770-06-1 or GENE-770-06-2 and their supporting information, or are changes to specifications which have instrumentation common to that changed in the GE analysis. The proposed instrumentation changes are, therefore, bounded by analyses that showed no effect or minimal increases in the unavailability of safety functions for similar changes. The NRC concurred with the conclusions of the GE reports. The NRC has also concurred with the conclusions of GENE-770-06-1 and GENE-770-06-2. All of the changes requested are bounded by analyses presented in GE reports which have been reviewed and approved on a generic basis by the NRC.

Further, given the resulting reduction in test-related plant scrams and test-induced wearout of equipment, the net effect of these changes is expected to represent a net improvement to overall plant safety.

There is therefore no increase in the probability or consequences of a previously evaluated accident due to the proposed changes.

Neither the design nor the functional operation of the affected instrumentation is being changed. The proposed changes only involve a change in the STIs and AOTs. These changes will not impact the function of monitoring system variables over their anticipated ranges for normal operation, anticipated operational occurrences, or accident conditions.

The proposed changes do not introduce any new modes of plant operation, make any physical changes, or alter any operational setpoints.

Therefore, the possibility of a new or different kind of accident from any previously evaluated is not created.

The proposed changes do not alter the manner in which safety limits, limiting safety system settings, or limiting conditions of operation are determined. The impact of reduced testing, other than as addressed above, is to allow a longer time interval over which instrument uncertainties (e.g., drift) may act. The current affected instrumentation setpoints already account for the effects of drift and include a sufficient allowance to tolerate extensions of the STIs. Implementation of the proposed changes is expected to result in an overall improvement in safety, as follows:(1) Reduced testing will result in fewer inadvertent reactor trips, less frequent actuation of engineered safety feature (ESF) components, and greater equipment availability; (2) Improvements in the effectiveness of the operating staff in monitoring and controlling plant operation will be realized. This is due to less frequent distraction of the operators to attend to instrumentation testing.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Judge George W. Armstrong Library, Post Office Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., 12th Floor, Washington, DC 20005-3502

NRC Project Director: John T. Larkins

Entergy Operations, Inc., et al., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: August 19, 1992

Description of amendment request: The proposed amendment requests changes to Technical Specification (TS) 4.0.5, Applicability, and TS 3/4 4.3, Reactor Coolant System Leakage.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. No significant increase in the probability or consequences of an accident previously evaluated results from these changes.

The proposed changes to TS 4.0.5, Applicability, and TS 3/4 4.3, Reactor Coolant System Leakage are consistent with NRC Generic Letter (GL) 88-01 and GL 88-01, Supplement 1.

The proposed change to TS 4.0.5 is administrative in nature and does not affect any accident initiators or initial assumptions used in the accident analyses. The inservice inspection program at Grand Gulf Nuclear Stations (GGNS) currently conforms to the staff position in GL 88-01. The proposed change provides a formal endorsement of the staff position.

Leakage detection systems for the reactor coolant system are provided to alert the operator when leakage rates above normal are detected. The proposed changes to TS 3/4 4.3 provide more stringent requirements for the detection of leakage within the primary containment and will require operator action at a lower limit. Changing the limit for an increase in unidentified leakage from 2 gpm in 4 hours to 2 gpm in 24 hours ensures that small leaks in the reactor coolant system are detected. This proposed change does not adversely affect any of the accident initiators or initial assumptions used in the accident analyses.

The proposed change to the frequency of leakage detection monitoring is consistent with GL 88-01, Supplement 1. The NRC Staff found that monitoring reactor coolant system leakage every 4 hours created an unnecessary administrative hardship for plant operators. A leakage monitoring frequency of 12 hours ensures that leakage measurements are checked frequently without creating an unnecessary operator burden.

2. The changes would not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes do not involve a change in the design, maintenance, or methods of operation or testing of any plant system or component. Therefore, no new failure mode is created. The proposed changes to TS 4.0.5, Applicability, and TS 3/4 4.3, Reactor Coolant System Leakage, are consistent with NRC GL 88-01 and GL 88-01, Supplement 1. Therefore, these changes will not create the possibility of a new or different

kind of accident from any previously analyzed.

3. These changes would not involve a significant reduction in the margin of safety.

The proposed changes do not involve a significant reduction in the margin of safety. The proposed changes to TS 4.0.5, Applicability, and TS 3/4 4.3, Reactor Coolant System [RCS] Leakage, are consistent with NRC GL 88-01 and GL 88-01, Supplement 1.

The proposed change to TS 4.0.5 is administrative in nature and does not affect the margin of safety.

The proposed change to TS 3/4 4.3 on the RCS leakage limit is more stringent than the current limit. This restriction will require operator action at a lower limit. The change in the limit will ensure that small leaks in the RCS will be detected.

The change to the leakage detection frequency will reduce unnecessary administrative hardship for the operator. The enhanced ability for early detection of unidentified leakage and the reduction of operator burden may actually increase the margin of safety.

The proposed changes do not modify the actuation setpoints, function or the method of operation and testing of any plant system or component; therefore, these changes will not involve a significant reduction in the margin of safety.

Based on the above evaluation, operation in accordance with the proposed amendment involves no significant hazards considerations.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Judge George W. Armstrong Library, Post Office Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., 12th Floor, Washington, DC 20005-3502

NRC Project Director: John T. Larkins

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of amendment request: May 19, 1992, as supplemented July 29, 1992

Description of amendment request: The proposed amendments would revise Technical Specifications (TS) Section 6.0, "Administrative Controls" for Turkey Point Units 3 and 4. Specifically, the proposed changes would:

(1) revise the TS to reflect the current organizational titles of the plant staff consistent with a Florida Power and Light Company Nuclear Division reorganization. The minimum qualification requirements specified in TS 6.3, "Facility Staff Qualifications" or organizational responsibilities assigned to them would not be changed.

(2) revise TS 6.5.1.2 "Composition" related to the Plant Nuclear Safety Committee (PNSC) by deleting the specific organizational title designations of its members and substituting the plant disciplines which the members represent in the PNSC. In addition, a new sentence would be added: "The members, according to individual job titles, shall meet the requirements as described in Sections 4.2, 4.3, or 4.4, of the ANSI N-18.1-1971. "Finally, a new sentence would be added to note that the PNSC Chairman and Vice Chairman would be appointed in writing from among the members by the Plant General Manager.

(3) change TS 6.2.2 to revise the wording "applicable department superintendent" to "applicable department manager."

(4) revise Table 6.2.1 to change the abbreviation "PSN" to "NPS" to indicate "Nuclear Plant Supervisor."

(5) correct typographical errors. Specifically, in TS 6.9.1.3, the phrase "Offsite Dose Calculation Manual" would be capitalized, in TS 6.10.3o, the phase "Annual Radiological Environmental Monitoring Report(s)" would be corrected to read "Annual Radiological Environmental Operating Report(s)", and in TS 6.2.1.e, the letters "h" and "p" in the title "health physics" would be capitalized.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment[s] would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The changes being proposed are administrative in nature and do not affect assumptions contained in plant safety analyses, the physical design and/or operation of the plant, nor do they affect Technical Specifications that preserve safety analysis assumptions. Therefore, the proposed changes do not affect the probability or consequences of accidents previously analyzed.

2. Operation of the facility in accordance with the proposed amendment[s] would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The NRC [Nuclear Regulatory Commission] has previously approved the division of responsibility for "Plant Manager - Nuclear", "Site Services Manager - Nuclear", ["]Operations Superintendent", "Health Physics Manager", "Plant Supervisor Nuclear" and "Training Superintendent" as described in Section 6.0 of the Turkey Point Units 3 and 4 Technical Specifications. The proposed amendment[s] [ensure] a consistent corporate responsibility by substituting the revised organizational titles and thus maintaining responsibility for overall plant nuclear safety.

The proposed change in the composition of the Plant Nuclear Safety Committee (PNSC) will have no impact on the responsibilities and effectiveness of this committee. The changes being proposed are administrative in nature and will not affect plant safety analysis assumptions, lead to material procedure changes or to physical modifications to the facility. Therefore, the proposed changes do not create the possibility of a new or different kind of accident.

3. Operation of the facility in accordance with the proposed amendment[s] would not involve a significant reduction in a margin of safety.

The changes being proposed are administrative in nature and do not relate to or modify the safety margins defined in, and maintained by, the Technical Specifications. The NRC will continue to be informed of organizational changes through controlled mechanisms. The Topical Quality Assurance Report provides a detailed description of organization and responsibilities as well as detailed organizational charts. The change to the composition of the PNSC will have no impact on the effectiveness of the individual review process.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzer, P.C., 1615 L Street, NW, Washington, D.C. 20036

NRC Project Director: Herbert N. Berkow

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: December 27, 1991

Description of amendment request: The amendment would change Clinton Power Station (CPS) Technical Specification 3/4.7.2, "Control Room Ventilation System," to revise Action Statement b.1 to provide an alternative where the operable Control Room Ventilation System would not have to be operated in the high radiation mode. Also, Surveillance Requirement 4.7.2.e.5 would be revised to reference the control room pressure to the adjacent areas as opposed to the outside atmosphere as currently identified.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the

issue of no significant hazards consideration which is presented below:

1....the effect of permitting the suspension of fuel handling activities in lieu of placing the operable Control Room Ventilation System in the high radiation mode of operation provides the operator with the flexibility which will permit extended life of the system filters when appropriate actions are taken to significantly reduce the likelihood of needing the system. In addition, failure of this system does not alter the probability of occurrence of any accident previously evaluated. Further, the proposed change to the wording in the surveillance is editorial in nature in that it provides additional clarification and ensures proper implementation of the intent of the specification. As a result, this request does not result in a significant increase in the probability or the consequences of any accident previously evaluated.

2. This request does not result in any change to the plant design as the scope of the potential impact of this request is limited only to providing an acceptable alternative to operation of the operable Control Room Ventilation System in the high radiation mode of operation and to providing clarification on the surveillance requirements. No new failure modes are introduced, and the request will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Permitting the suspension of fuel handling activities in lieu of placing the operable train in the high radiation mode of operation does not impact the reliability of the Control Room Ventilation System. An equivalent level of safety is maintained because either (1) the system will continue to be operated as currently required, or (2) challenges to the system and system demands will be reduced or eliminated due to core alterations, handling of irradiated fuel and operations with the potential for draining the reactor vessel being prohibited. The system will continue to function as required and the proposed changes are consistent with all the Updated Safety Analysis Report (USAR) analyses. Since this alternative will significantly reduce the need for the system and all required functions are still capable of being fulfilled, this request does not involve a significant reduction in a margin of safety. The proposed change to the wording in the surveillance is editorial in nature and provides the operator with needed clarification to prevent improper implementation of the intent of the specification. Therefore, this proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Attorney for licensee: Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606

NRC Project Director: John N. Hannon

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: February 7, 1992

Description of amendment request: The proposed amendment would change the Technical Specifications to delete numerous component lists as recommended in NRC Generic Letter (GL) 91-08. In addition, the proposed change would delete the reactor vessel specimen withdrawal schedule as recommended in NRC GL 91-01.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

(1) The proposed changes are based upon GL 91-01 and GL 91-08 and merely remove component lists or provide clarifying information. The proposed changes do not alter the scope of equipment which is currently required to be OPERABLE or subject to surveillance testing. In addition, the proposed changes do not result in any change to the plant design or operation. The proposed change to delete the requirement to maintain containment HVAC supply and exhaust isolation valves 1VR002A, B and 1VQ006A, B sealed closed in Operational Condition 4 does not alter the requirement to maintain these valves sealed closed whenever CONTAINMENT INTEGRITY is required. As a result, the proposed requirements continue to meet the intent of TMI Action Plan Item II.E.4.2 and support the safety function of primary containment. Therefore, these proposed changes cannot increase the probability or the consequences of any accident previously evaluated.

Operation of the facility in accordance with this proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(2) As described above, these proposed changes do not alter the scope of equipment which is currently required to be OPERABLE or subject to surveillance testing. In addition, these proposed changes do not alter the plant design or operation. As a result, no new failure modes are introduced and these proposed changes cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

Operation of the facility in accordance with this proposed amendment would not involve a significant reduction in a margin of safety.

(3) The proposed changes are based upon GL 91-01 and GL 91-08 and merely remove component lists or provide clarifying information. The proposed changes do not alter the scope of equipment currently required to be OPERABLE or subject to surveillance testing, nor do the proposed changes affect any instrument setpoints or equipment safety functions. The list of components being removed from TS are included in CPS procedures which are subject to the change controls of Section 6.8 of the CPS TS. These change control provisions provide an adequate means to control changes to these component lists without including them in the TS. The proposed change to delete the requirement to maintain containment HVAC supply and exhaust isolation valves 1VR002A, B and 1VQ006A, B sealed closed in Operational Condition 4 does not alter the requirement to maintain these valves sealed closed whenever CONTAINMENT INTEGRITY is required. As a result, the proposed requirements continue to meet the intent of TMI Action Plan Item II.E.4.2 and support the safety function of primary containment. As a result, these proposed changes will not result in a significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Attorney for licensee: Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606

NRC Project Director: John N. Hannon

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: July 28, 1992

Description of amendment request: The proposed amendment would validate the existing pressure versus temperature operating limit curves for Cooper Nuclear Station (CNS) beyond the current 12 effective full-power years, and remove the vessel material surveillance capsule withdrawal schedule from the CNS Technical

Specifications in accordance with the guidance in Generic Letter 91-01.

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Evaluation

The proposed revisions to the existing Cooper Nuclear Station (CNS) Technical Specifications pressure vs. temperature operating limit curves (PT curves) do not involve a significant increase in the probability or consequences of an accident previously evaluated. The existing PT curves, approved with Amendment No. 120 to the CNS operating license, were developed based on Regulatory Guide 1.99 Revision 1, the NRC guidance in effect at the time of their revision, and were conservatively adjusted to account for the results from testing the initial vessel materials surveillance capsule withdrawn. Since that time, the NRC issued Regulatory Guide 1.99 Revision 2, which describes the current methods acceptable to the NRC for predicting the shift in nil-ductility transition temperature (RT_{NDT}) of the vessel beltline materials. The proposed revisions to the CNS PT curves are based on the recommendations in Regulatory Guide 1.99 Revision 2, and are therefore in accordance with the latest NRC guidance.

In 1985, the District removed the first vessel materials surveillance capsule for testing and analysis. This testing displayed an RT_{NDT} shift greater than had been previously expected. Accordingly, the District revised the CNS PT curves based on the guidance in effect at that time, Regulatory Guide 1.99 Revision 1, but conservatively adjusted the results to account for the RT_{NDT} shift exhibited during the testing of the first surveillance capsule. As a result, the Regulatory Guide 1.99 Revision 1 chemistry factors used to determine the Adjusted Reference Temperature (ART - initial RT_{NDT} plus the shift in RT_{NDT} due to neutron irradiation) were multiplied by an adjustment factor equal to the ratio of the measured RT_{NDT} at 6.8 Effective Full Power Years (EFPY) to the expected RT_{NDT} at 6.8 EFPY using Regulatory Guide 1.99 Revision 1 methods. This methodology resulted in estimated ART values that were overly conservative, when compared to Regulatory Guide 1.99 Revision 2 predictions.

The proposed changes to the CNS PT curves are based on the methods described in Regulatory Guide 1.99 Revision 2. Because of the data scatter inherent to Charpy testing results, absent additional justification, Regulatory Guide 1.99 Revision 2 requires that at least two sets of credible surveillance data be available to develop a vessel-specific transition temperature shift correlation; otherwise, the methods of Regulatory Guide 1.99 Revision 2 should be used. Currently, the District has only one set of surveillance data available. The second CNS surveillance capsule was removed during the Reload 14, Cycle 15 Refueling outage in the late fall of 1991; however, the results of the second capsule testing will not be available on a schedule that will support this proposed change. The District has therefore recalculated the ART based on the method described in Regulatory Guide 1.99 Revision 2.

The results of these calculations validate the present CNS PT curves through 21 EFPY of operation, which represents an ART of 110°F as calculated using the Regulatory Guide 1.99, Revision 2. These include Figure 3.6.1.a, "Minimum Temperature"

for Non-Nuclear Heatup or Cooldown Following Nuclear Shutdown,["] Figure 3.6.1.b, "Minimum Temperature for Core Operation (Criticality) - Includes 40°F Margin Required by 10CFR50 Appendix G," and Figure 3.6.2, "Minimum Temperature for Pressure Tests Such as Required by Section XI." Additionally, the three separate curves are retained in Figure 3.6.2 to provide operational flexibility. These curves correspond to ARTs of 93°F, 102°F, and 110°F which are valid for 13, 18, and 21 EFPY respectively based on Regulatory Guide 1.99 Revision 2 calculations.

Other than the extension of their period of validity by using the calculation methods of Regulatory Guide 1.99 Revision 2, no other changes are proposed to the CNS PT curves. Accordingly, the proposed revision to the CNS PT curves are based on an NRC-accepted means of ensuring protection against brittle reactor vessel failure, and compliance with 10 CFR Appendix G will be maintained. Therefore, this proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The changes proposed to remove the reactor vessel surveillance capsule withdrawal schedule from the CNS Technical Specifications are in accordance with the guidance provided in Generic Letter 91-01. As discussed in Generic Letter 91-01, licensee vessel surveillance programs are controlled by 10 CFR Appendix H, which requires licensee submittal of NRC approval of the proposed surveillance capsule withdrawal schedule prior to implementation.

In addition, with Revision 10 to the CNS Updated Safety Analysis Report (USAR), the District will update the surveillance withdrawal schedule as described in the NRC Safety Evaluation accompanying Amendment No. 143 to the CNS Operating License, dated July 5, 1991. Therefore, no loss of NRC regulatory control of the surveillance capsule withdrawal schedule occurs as a result of this proposed change, and removal of the surveillance capsule does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The changes to Section 3.6.A.2 which clarify that the temperature limits apply only when the reactor vessel head is tensioned are consistent with the 1986 ASME code, and are therefore consistent with 10 CFR 50 Appendix G. This is referenced in Section IV.2.6.3.2 of the CNS USAR. Therefore, these clarifications do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Finally, the repagination does not involve a significant increase in the probability or consequences of an accident previously evaluated, as this is a purely administrative change.

2. Does the proposed change create the possibility for a new or different kind of accident from any accident previously evaluated?

Evaluation

The proposed changes update existing vessel pressure - temperature operating limits to correspond with the current NRC guidance. These changes are necessary to permit operation beyond 12 EFPY. The proposed changes do not involve any plant design changes nor any new mode of operation. These changes only demonstrate compliance with the brittle fracture prevention requirements of 10 CFR 50 Appendix G, and therefore do not create the possibility for a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change create a significant reduction in the margin of safety.

Evaluation

The proposed changes to the CNS PT curves do not create a significant reduction in the margin of safety. The proposed changes revise the existing CNS PT curves to be consistent with the recommendations of Regulatory Guide 1.99, Revision 2, the current NRC guidance given to ensure compliance with 10 CFR Appendix G.

As discussed above, the existing CNS PT curves were developed by using the guidance of Regulatory Guide 1.99 Revision 1 with adjustment factors to account for the greater than expected transition temperature shift exhibited during the testing of the first set of vessel material surveillance specimens withdrawn in 1985.

This methodology introduced excessive conservatism compared to the results using the methods of Regulatory Guide 1.99 Revision 2.

The proposed revision of the CNS PT curves removes the excessive conservatism contained in the existing PT curves which were developed using guidance which is now outdated. The proposed revision to the PT curves does utilize the most current NRC guidance for compliance with 10 CFR 50 Appendix G. Therefore, this proposed change does not result in a significant reduction in the margin of safety.

The change to Section 3.6.A.2 to clarify that the vessel temperature limits apply only when the reactor vessel head is

tensioned do not involve a significant reduction in the margin of safety. These changes only clarify the requirements of 10 CFR 50 Appendix G, and makes [sic] the Technical Specifications consistent with the CNS USAR.

The proposed change to remove the vessel material surveillance capsule withdrawal schedule from the CNS Technical Specifications is in accordance with the guidance contained in Generic Letter 91-01. In addition, 10 CFR 50 Appendix H requires licensees to obtain NRC approval of any changes to the surveillance capsule withdrawal schedule; therefore, including the schedule in the Technical Specifications

represents redundant control mechanisms. Further, the District will be updating with Revision 10 to the CNS USAR, the surveillance capsule withdrawal schedule in accordance with commitments made during approval of Amendment No. 143 to the CNS Operating License. Therefore, removal of the surveillance capsule withdrawal schedule does not constitute a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305

Attorney for licensee: Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68602-0499

NRC Project Director: John T. Larkins

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: August 5, 1992

Description of amendment request: The proposed amendment would incorporate into the Technical Specifications the addition of two bypass lines and associated containment isolation valves for the auxiliary feedwater pump steam supply lines.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NNECO has reviewed the changes in accordance with 10 CFR 50.92 and concluded that the changes do not involve a significant hazards consideration. The basis for this conclusion is that the three criteria of 10 CFR 50.92(c) are not compromised. The proposed changes do not involve a significant hazards consideration because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed. The addition of Valves 2-MS-458 and 2-MS-459 to the containment isolation valve list does not impact any safety system. The bypass lines and isolation valves will increase the reliability of the [auxiliary feedwater] AFW pump turbine by reducing the potential for water hammer damage to the turbine and main steam piping during intermittent operation of the [steam supply isolation valves] SSIVs.

2. Create the possibility of a new or different kind of accident from any previously analyzed. This modification and the potential failure modes do not modify the plant response to the point where it can be considered a new accident. The modification was designed so that it will be isolated during normal plant operation. Operation of the bypass line isolation valves would require operator action under controlled or monitored conditions. The valves and the upstream piping have been designed and seismically supported in accordance with ASME III, which is consistent with the original design criteria of the plant.

3. Involve a significant reduction in the margin of safety. The addition of bypass lines and two manual containment isolation valves to the AFW system will provide a drainage path for condensate which collects in the line when an SSIV is shut. The bypass line isolation valves will be operated under specific operating conditions with an operator present at the bypass isolation valve for the entire drainage period. This modification does not affect or have any potential impact on the consequences of any design basis accident. Therefore, the modification does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: August 12, 1992

Description of amendment request: The proposed amendment would revise the limiting condition for operation, action statement, and surveillance requirements (Technical Specifications 3.2.3 and 4.2.3.2) associated with the total unrodded radial peaking factor (F_r^T), the limiting condition for operation (Technical Specification 3.3.3.2) associated with the incore detectors, and Figure 2.2-2, "Local Power Density--High Trip Setpoint Part 2." The proposed technical specification changes would accommodate the method of calculation used in INPAX, the new incore monitoring code which will be used in Cycle 12.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NNECO has reviewed the proposed changes in accordance with the requirements of 10 CFR 50.92 and has concluded that the proposed changes do not involve a significant hazards consideration in that these changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed. There are no analyses or operational aspects of the change which would affect the F_r^T action statement. The new specification on incore detectors is closely based on standard Combustion Engineering technical specifications. This will ensure sufficient numbers and distribution of detectors. The change to the LPD [local power density] trip setpoint is required to ensure against fuel centerline melting ([less than] 21 kW/ft) in the core with F_r^T increased for Cycle 12 to 1.69. The decrease in LPD operability margin will provide a relative increase in the F_r^T margin, thus extending cycle length. There are no potential impacts on design basis accidents previously analyzed. There are no failure modes affected by the change. As such, there are no design basis accidents adversely affected due to this change.

2. Create the possibility of a new or different kind of accident from any previously analyzed. The F_r^T Action Statement revision has no accident associated with it nor would it create any. The incore detector operability revision allows the INPAX code to monitor the core. The revision to the local power density--high trip setpoint figure is an adjustment within the reactor protection system which will continue to protect the core. There are no failure modes associated with these proposed technical specification changes. Therefore, there are no failure modes which can represent a new unanalyzed accident.

3. Involve a reduction in the margin of safety. The only change with a potential to impact safety limits is the revised LPD limit. Safety analysis results have shown that all acceptance criteria are met. Therefore, there is no challenge to safety limits or other protective boundaries.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103-3499.

NRR Project Director: John F. Stolz

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: August 17, 1992

Description of amendment request: The proposed amendment would change the Technical Specifications 4.6.1.6.1.a and 4.6.1.6.2 to bring the surveillance requirements for the containment structural integrity into compliance with Regulatory Guide 1.35, Revision 3.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change does not involve a significant hazards consideration because the change would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

The proposed change will reduce the duplication of inspection performed during an [integrated leak rate test] ILRT and that performed during the scheduled tendon surveillance inspections, while providing a more accurately represented selection of tendons for testing and inspection. As such this change will not increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The changes to RG 1.35 Revision 3 were based on experience derived from previous inspections performed under RG 1.35. Reducing duplication of work, based on previous experience, and establishing a more comprehensive tendon selection will not create the possibility of a new or different kind of accident.

3. Involve a significant reduction in a margin of safety.

Since the proposed change is based on RG 1.35 Revision 3, it will provide a more accurate representation of tendon condition and conformance of performance to anticipated design. Further, it will reduce inspection duplication and will not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: July 27, 1992

Description of amendment request: The proposed amendment revises Technical Specifications for reactor vessel water level as follows:°Provides in Section 3.3.3.6 separate actions when either one or two channels of reactor vessel water level monitoring are not operable.°Adds a definition to Table 3.3-10 of an operable channel.°Clarifies Table 4.3-7 that an electronic calibration from the Inadequate Core Cooling (ICC) cabinets is the appropriate surveillance for the reactor vessel water level instrumentation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve a significant hazards consideration because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed. The proposed changes will revise the surveillance and operability requirements of the reactor vessel water level monitoring instrumentation by incorporating generic requirements proposed by the [Combustion Engineering Owners Group] CEOG and accepted by the NRC staff. These changes provide flexibility to utilize an alternate method of monitoring the reactor vessel inventory if the inoperable channel(s) cannot be restored to operable status within 48 hours, thereby precluding an unnecessary plant shutdown. The changes also allow for the restoration of the inoperable channel(s) to be accomplished during the next scheduled refueling. The proposed changes are bounded by the design basis analysis and will have no negative impact on the probability of occurrence of any design basis accident.

2. Create the possibility of a new or different kind of accident from any previously analyzed. There are no physical design changes associated with the proposed technical specification changes. Therefore, there can be no impact on plant response to the point where a different accident is created.

3. Involve a significant reduction in a margin of safety. Since the proposed changes to Technical Specification 3.3.3.6, Table 3.3-10, and Table 4.3-7 do not affect the consequences of any accident previously analyzed or on any of the protective boundaries, there is no reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: July 31, 1992

Description of amendment request: The proposed amendment removes requirements from the License and Technical Specifications pertaining to the Fire Protection Program, and places these same requirements in operating procedures.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

he proposed changes do not involve a significant hazards consideration because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes simply remove the provisions of the Fire Protection Program that are contained in the Technical Specifications and License and places them in the plant operating procedures. Review of the Fire Protection Program and its revisions will be the responsibility of the [Plant Operations Review Committee] PORC and the [Station Operations Review Committee] SORC, just as it has always been the responsibility of these groups to review changes to fire protection requirements when they were part of the Technical Specifications.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

There are no new failure modes associated with the proposed changes. Since the plant will continue to operate as designed, the proposed changes will not modify the plant response to the point where it can be considered a new accident.

3. Involve a significant reduction in a margin of safety.

No change is being proposed for the Fire Protection Program requirements themselves. The relevant Technical Specifications are being deleted, and the requirements contained therein are being incorporated into the operating procedures. Plant procedures will continue to provide the specific instructions necessary for the implementation

of the requirements, just as when the requirements resided in the Technical Specifications. Fire Protection Program changes will be governed by the provisions of 10 CFR 50.59, and 10 CFR 50.71(e).

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Pennsylvania Power and Light Company, Docket No. 50-388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of amendment request: August 7, 1992

Description of amendment request: The proposed amendment would make a change to the Susquehanna Steam Electric Station (SSES), Unit 2 Technical Specifications that changes the isolation signal for suppression pool cleanup line valves HV-25766 and HV-25768 from reactor vessel low water level 3 (+13") or high drywell pressure to reactor vessel low water level 2 (-38") or high drywell pressure.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change does not:

1. Involve an increase in the probability of occurrence or the consequences of an accident or malfunction of equipment important to safety as previously evaluated.

This conclusion is based on the consideration that the isolation signal change from level 3 to 2 does not degrade the operation of any equipment or system. Furthermore, the Agastat relays and level switches to be used for the level 2 isolation signals are identical in design, material and construction to those currently used for level 3.

The modification does not alter or degrade the ability of the two cleanup line valves to isolate the cleanup line following those LCOAs inside containment that require isolation. The isolation system design will always result in its actuation at level 2. The design requirement for isolation at level 2 remains satisfied, and in compliance with NUREG-0800 (Standard Review Plan) and NUREG-0776 (Safety Evaluation Report, SSES).

During transients that result in reactor vessel water levels between 2 & 3, the modification will permit the cleanup line to be used, if necessary, to lower the suppression pool water level. Manual control of the filter pump has not been changed. Operation of the cleanup line following these transients is permissible because a LOCA inside containment has not occurred.

Since the cleanup line isolation signal remains in compliance with the design requirements established by General Electric, it is concluded that the consequences of an accident have not been increased.

The probability of a malfunction of equipment important to safety has not been increased by the modification. The relay room panels, where both the level 2 & 3 relays are located, will have minor changes to the internal wiring. Seismic qualification of the equipment will be unaltered. Valve operation remains unchanged, except for the level of reactor vessel water that initiates a containment isolation signal.

The loading on the suppression pool structure, and submerged components in the pool, following safety/relief valve operation, has not been increased. Since higher water levels result in higher loads, the loading following the modification would either be less than or equal to the existing loading depending on whether the filter pump is operating.

The modification does not result in an increase in consequences assuming a malfunction of equipment important to safety. The consequences of failing to isolate containment following a LOCA inside containment or preventing the suppression pool from performing its function are not influenced by the modification.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

The modification uses spare terminals on existing relays to receive an input from a level 2 switch. These relays are identical to those used to receive the level 3 input signal. The actuation logic remains single failure proof. A new possibility has not been created for those LOCAs inside containment that require isolation to occur without isolation of the cleanup line.

The modification does not create the possibility of a malfunction of the suppression pool structure and submerged components in the pool. The use of the cleanup line serves to lower the pool water level which decreases the loading during a LCOA or safety/relief valve operation.

3. Involve a reduction in the margin of safety.

The NRC provided their review of containment isolation signals in Section 6.2.4 of the Safety Evaluation Report (NUREG-0776). Reactor vessel water level 2 was found to be acceptable and therefore defines the basis for the margin of safety.

It is therefore concluded that since the proposed modification changes a containment isolation setpoint to a previously accepted value, a reduction in the margin of safety will not occur.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, D.C. 20037

NRC Project Director: Charles L. Miller

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: August 11, 1992

Description of amendment request: The proposed changes to the Technical Specifications clarify the surveillance requirement (SR) for the Suppression Pool Cooling (SPC) Mode of Residual Heat Removal (RHR) System.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Since the RHR system is not an accident initiator, the proposed change to the SR for the SPC mode of operation of the RHR system will not increase the probability of occurrence of an accident previously evaluated. Furthermore, performance of the RHR SPC mode of operation, including suppression pool mixing, suppression pool spray, and containment heat removal will be unchanged by these proposed TS changes. No onsite or offsite radiological effects due to any postulated accident will be affected. Heat transfer performance of the RHR heat exchangers will continue to be verified to meet applicable requirements by heat transfer tests periodically conducted to satisfy other applicable requirements (i.e., GDCs 46 and 40). Therefore, the consequences of an accident are unchanged.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The RHR system and its components are not accident initiators. This clarification of the TS SR will not result in modification of the RHR system, change the method of RHR SPC operation or its effectiveness, and therefore, does not create any new or different type of accident from any previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

These proposed TS changes do not change the operation of RHR in SPC mode. These proposed changes only clarify the fact that the purpose of the current TS SR surveillance requirement 4.6.2.3.b is to confirm the RHR pump performance while operating in the SPC mode through the most restrictive conditions of the flow path. The RHR heat exchanger performance will continue to be verified by periodic testing performed to satisfy other requirements. Thus, the pressure suppression function of the suppression pool is unaffected, and the existing margin of safety is maintained.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: Charles L. Miller

Power Authority of The State of New York, Docket No. 50-286, Indian PointNuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: July 17, 1992

Description of amendment request: The licensee intends to operate on 24-month fuel cycles, instead of the current 18-month fuel cycles, starting with cycle nine. Cycle nine started in August 1992. In order to accommodate operation on 24-month cycles, the licensee proposed a Technical Specifications (TS) amendment to incorporate the changes listed below:

(1) The licensee proposed changing the frequency of testing the automatic actuation of the containment isolation system [specified in TS Table 4.1-3] to accommodate operation on a 24-month cycle.

(2) The licensee proposed changing the frequency of sensitive leakage rate and containment isolation valve testing (specified in TS Section 4.4) to accommodate operation on a 24-month cycle.

(3) The licensee proposed changing the frequency of testing the containment spray system (specified in TS Section 4.5) to accommodate operation on a 24-month cycle.

(4) The licensee proposed changing the frequency of testing the spray additive valves (specified in TS Section 4.5) to accommodate operation on a 24-month cycle.

(5) The licensee has proposed changing the acceptance criteria for the combined containment leakage rate from 0.6 L_a value of 0.5 L_a. The more conservative leakage rate is required to accommodate operation on a 24-month cycle.

These changes follow the guidance provided in Generic Letter 91-04, "Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle," as applicable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response:

The proposed changes do not involve a significant increase in the probability or consequences of a previously-analyzed accident. These changes propose extending the surveillance intervals for containment systems testing. The changes do not involve any physical changes to the plant, nor do they alter the way any equipment functions. Other system testing (e.g., on-line tests) provides assurance of system operability. An evaluation of past equipment performance provides additional assurance that the longer surveillance intervals will not degrade system performance. For containment isolation valve leakage testing the 25% increase in the surveillance interval [24 to 30 months] for containment leak rate testing is compensated for by a proportionate increase in the margin between the specified leakage limit and the allowable leakage limit. Also, containment isolation valve redundancy (two valves in series) provides additional assurance that leakage would be lower than test results would indicate.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response:

The proposed license amendment does not create the possibility of a new or different kind of accident. These changes propose extending the surveillance intervals for containment systems testing. The changes do not involve any physical changes to the plant, nor do they alter the way any equipment functions. Other system testing (e.g., on-line tests) provides assurance of system operability. An evaluation of past equipment performance provides additional assurance that the longer surveillance intervals will not degrade system performance. For containment isolation valve leakage testing, the 25% increase in the surveillance interval [24 to 30 months] for containment leak rate testing is compensated for by a proportionate increase in the margin between the specified leakage limit and the allowable leakage limit. Also, containment isolation valve redundancy (two valves in series) provides additional assurance that leakage would be lower than test results would indicate.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response:

The proposed amendment does not involve a significant reduction in a margin of safety. These changes propose extending the surveillance intervals for containment systems testing. Other system testing (e.g., on-line tests) provides assurance of system operability. An evaluation of past equipment performance provides additional assurance that the longer surveillance intervals will not degrade system performance. For containment isolation valve leakage testing, the 25% increase in the surveillance interval [24 to 30 months] for containment leak rate testing is compensated for by a proportionate increase in the margin between the specified leakage limit and the allowable leakage limit. Also, containment isolation valve redundancy (two valves in series) provides additional assurance that leakage would be lower than test results would indicate.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: April 24, 1992

Description of amendment request: This amendment request proposes changes to Technical Specification 3/4.5.2, "ECCS Subsystems - Tavg greater than or equal to 350 °F", Surveillance Requirements 4.5.2.f and 4.5.2.h. InSection 4.5.2.f, the proposed changes would replace the use of the pump discharge pressure with the total dynamic head. This change would provide the licensee with greater operational flexibility. In Section 4.5.2.h, the proposed changes would modify the maximum allowed and minimum required flows from the centrifugal charging pumps and the safety injection pumps and would allow flow measurement uncertainties to be directly applied to the flow

measurements. This change will allow the licensee to reduce the operational manipulations in performing these surveillance tests. Because these changes impact the emergency core cooling systems (ECCS) at Salem, the licensee has determined the affect of the changes on the accident analyses, including non-Loss-of-Coolant-Accidents (LOCAs), steam generator tube ruptures (SGTR), small break LOCAs, large break LOCAs and containment integrity. In addition, the impact on the low temperature overpressure protection requirements was determined. The licensee also has proposed to update the Bases section to reflect the above changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes to the Salem Generating Station Technical Specifications:

1. Do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The evaluation performed by Westinghouse has determined that the proposed changes will not challenge the operability of the subject pumps nor result in violation of any safety analysis criteria.

Although there would be a relatively minor increase in the runout flows, the increased flows would have no effect on the long-term mechanical and hydraulic performance of the pumps.

Since design limitations continue to be met and the integrity of the reactor coolant system pressure boundary is not challenged, the assumptions employed in the calculation of the offsite radiological doses remain valid.

The Westinghouse evaluation determined that all safety analysis acceptance criteria are met when using the revised flow rates. With respect to the LOCA accidents, the [peak clad temperature] PCT continues to conform to 10 CFR 50.46 requirements. The offsite doses for a SGTR event remain within 10 CFR [Part] 100 guidelines. The evaluation of a main steam line break and LOCA mass and energy releases demonstrated that the present mass and energy releases are acceptable and that the containment responses and all licensing conclusions remain valid. Since the design limitations continue to be met and the integrity of the reactor coolant system pressure boundary is not challenged, the assumption employed in the calculation of the offsite radiological doses remain valid. The consequences of the LOCA, non-LOCA, and SGTR accidents considered in the Salem, Units 1 and 2, licensing basis remain unchanged.

Based on the above information, the proposed changes would not increase the probability or consequences of a previously analyzed accident.

2. Do not create the possibility of a new or different kind of accident from any previously evaluated.

The relatively minor increase in runout flows would have no effect on the long-term mechanical and hydraulic performance of the pumps. It has been determined that the respective pump's operability will not be challenged. No new single failures were discovered, nor were any new accident initiators found. The proposed changes will therefore not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do not involve a significant reduction in a margin of safety.

The evaluation of LOCA, non-LOCA, and SGTR accident analyses performed by Westinghouse has verified that with the proposed changes to the Technical Specifications, plant operation would be maintained within the bounds of safe, analyzed conditions as defined in the FSAR and the conclusions presented in the FSAR [Final Safety Analysis Report] would remain valid. The analysis acceptance criteria would continue to be met with the revised ECCS performance characteristics. The proposed changes would therefore not reduce a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C., 20005-3502

NRC Project Director: Charles L. Miller

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: May 11, 1992 and Supplement dated July 16, 1992.

Description of amendment request: The proposed changes revise the Reactor Trip System (RTS) and Engineered Safety Features Actuation System (ESFAS) Instrument Sections and associated Bases for Surveillance Test Intervals (STS) and Allowed Outage Times (AOT). These changes are line item improvements previously approved by the NRC and documented in Safety Evaluations for WCAP-10271 and Supplement 1, WCAP-10271 Supplement 2 and Supplement 2, Revision 1. Changes are also proposed to the Semi-Automatic Transfer to Recirculation on Refueling Water Storage Tank (RWST) Low Level. This Functional Unit is not part of the program covered in the WCAP and was analyzed on a plant specific basis.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed Technical Specification changes:

1. Do not involve a significant increase in the probability or consequences of an accident previously evaluated.

[Safety Evaluations] issued for WCAP-10271, WCAP-10271 Supplement 1, WCAP-10271 Supplement 2, and WCAP-10271 Supplement 2, Revision 1 document the determination that the proposed changes are within acceptable limits. Implementation of the proposed changes decreases the total Reactor Protection System (RPS) yearly availability, primarily due to less frequent surveillance testing. Decreased availability causes a higher probability of Anticipated Transient Without Scram (ATWS), with an associated increase in the core melt contribution resulting from an AWTS. Decreased ESFAS availability slightly increases the [Core Damage Frequency] CDF.

The proposed changes result in a significant reduction in the core melt probability from inadvertent reactor trips. This reduction is primarily attributable to less frequent surveillance testing.

The reduction in inadvertent reactor trip core melt frequency is large enough to counter the increase in ATWS core melt probability, resulting in an overall reduction in total core melt probability.

The [Westinghouse Owners Group] WOG determined values for the increase in CDF were documented in the WCAP, and independently verified by Brookhaven National Laboratory, as part of an NRC Staff audit and sensitivity analysis. Based on the small increase in CDF compared to the range of uncertainty, the increase is considered acceptable. Salem Function Unit 9, evaluated on a plant-specific basis, falls within the same criteria and is considered acceptable.

Therefore, it may be concluded that the proposed changes do not increase the severity or consequences of an accident previously evaluated. The proposed changes do affect the probability of RPS failure, but do not alter the manner in which protection is afforded, nor the manner in which limiting criteria are established.

2. Do not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes do not involve hardware modifications or result in changes to [Reactor Protection System] RPS provided plant protection. RPS functionally is not altered.

Therefore, it may be concluded that the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do not involve a significant reduction in a margin of safety.

The proposed changes do not alter the manner in which Safety Limits, Limiting Safety System Setpoints, or Limiting Conditions for Operation are determined. The

impact of reduced testing is a longer time interval over which instrument uncertainties (e.g., drift) may act. Experience indicates that the initial uncertainty assumptions are valid for reduced testing.

Therefore, it may be concluded that the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C., 20005-3502

NRC Project Director: Charles L. Miller

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: May 1, 1992

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3/4.6.1, "Primary Containment," and its Bases to clarify some wording, make it consistent internally, make it consistent with 10 CFR Part 50, Appendix J, and change the action statement for an inoperable containment air lock door to allow continued operation if the other containment air lock door is operable, closed, and locked.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below.

Toledo Edison has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the DBNPS Unit Number 1, in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no accident conditions and assumptions are significantly affected by the proposed changes. The proposed change to TS Definition 1.8c reflects that containment integrity is satisfied as long as the requirements of TS 3/4.6.1.3, including its Action statement are satisfied. The proposed change to expand the TS 3/4.6.1.3 Action statement allows continued operation with an inoperable air lock door or with an inoperable air look door interlock mechanism, provided an operable door in the same containment air lock is closed and locked. This would prevent an unwarranted plant shutdown evolution. Each air lock door is designed to provide the containment barrier and is periodically tested to ensure leakage is not excessive. The ability to open the operable air lock door for the purpose of providing the necessary access required to perform repairs on the affected air lock components, provided that the operable door is closed without delay following each entry and exit, has a negligible adverse impact on safety. Containment integrity and containment leakage rates are not significantly impacted by any of the proposed changes. Therefore, none of these proposed changes are associated with the initiation of any design basis accident. The other proposed changes are considered to be administrative in nature.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because no accident conditions and assumptions are affected by the proposed changes. As discussed in item 1a above, the proposed change to TS Definition 1.8c reflects that containment integrity is satisfied as long as the requirements of TS 3/4.6.1.3, including the Action statement, are satisfied. The proposed change to expand the TS 3/4.6.1.3 Action statement allows continued operation with an inoperable air lock door or with an inoperable air lock door interlock mechanism, provided an operable door in the same containment air lock is closed and locked. This would prevent an unwarranted plant shutdown evolution. Since each air lock door is designed to provide the containment barrier and is periodically tested to ensure leakage in not excessive, the change will not significantly increase the radiological consequences of an accident. The ability to open the operable air lock door for the purpose of providing the necessary access required to perform repairs on the affected air lock components, provided that the operable door is closed without delay following each entry and exit, has a negligible adverse impact on safety. As described in the discussion of Effects on Safety, this proposed TS change does not involve an increase in consequences beyond that which exists with the present TS wording. The other proposed changes are considered to be administrative in nature. Since containment integrity and containment leakage rates are not significantly impacted by any of the proposed changes, the radiological consequences of a previously evaluated accident are not significantly increased.

2a. Not create the possibility of a new kind of accident from any accident previously evaluated because no new accident conditions or assumptions are created by the proposed changes. As discussed in item 1a above, the proposed change to TS Definition 1.8c reflects that containment integrity is satisfied as long as the requirements of TS 3/4.6.1.3, including the Action statement, are satisfied. The proposed change to expand the TS 3/4.6.1.3 Action statement allows continued operation with an inoperable air lock door or with an inoperable air lock door interlock, provided an operable door in the same containment air lock is closed and locked. This would prevent an unwarranted plant shutdown evolution. Each air lock door is designed to provide the containment barrier and tested to ensure excessive leakage will not occur. The ability to open the operable air lock door for the purpose of providing the necessary access required to perform repairs on the affected air lock components, provided that the operable door is closed without delay following each entry and exit, has a negligible adverse impact on safety. The other proposed changes are considered to be administrative in nature. Containment integrity and containment leakage rates are not significantly impacted by any of the proposed changes. There is no new failure modes or mechanism associated with the proposed changes. Therefore, none of the proposed changes creates the possibility of a new kind of accident from any accident previously evaluated.

2b. Not create the possibility of a different kind of accident from any accident previously evaluated because no different accident conditions or assumptions are created by the proposed changes. As discussed in item 1a above, the proposed change to TS Definition 1.8c reflects that containment integrity is satisfied as long as the requirements of TS 3/4.6.1.3, including the Action statement, are satisfied. The proposed change to expand the TS 3/4.6.1.3 Action statement allows continued operation with an inoperable air lock door or with an inoperable air lock door interlock, provided an operable door in the same containment air lock is closed and locked. This would prevent an unwarranted plant shutdown evolution. Each air lock door is designed to provide the containment barrier and tested to ensure excessive leakage will not occur. The ability to open the operable air lock door for the purpose of providing the necessary access required to perform repairs on the affected air lock components, provided that the operable door is closed without delay following each entry and exit, has a negligible adverse impact on safety. The other proposed changes are considered to be administrative in nature. Containment integrity and containment leakage rates are not significantly adversely impacted by any of the proposed changes. The proposed changes do not involve any physical changes to the plant. Therefore, none of the proposed changes creates the possibility of a different kind of accident from any accident previously evaluated.

3. Not involve a significant reduction in a margin of safety because each air lock door is designed to provide the containment barrier. Containment integrity is maintained except for the short period of time allowed for necessary access through an operable air lock door (as described above), and containment leakage rates and containment air lock leakage rates are not significantly adversely affected by any of the proposed changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request

involves no significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Project Director: John N. Hannon

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: May 1, 1992

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3/4.1.1.2, "Reactivity Control Systems-Boron Dilution," and its Bases. The change would allow the addition of water of lower boron concentration than the reactor coolant system (RCS) in Mode 6 (refueling) with the RCS flow rate less than 2800 gpm, provided that the boron concentration of the water to be added is greater than the boron concentration corresponding to the more restrictive reactivity condition specified in TS 3.9.1, "Refueling Operations - Boron Concentration."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

Toledo Edison has reviewed the proposed change and determined that a significant hazard consideration does not exist because operation of the Davis-Besse Nuclear Power Station, Unit Number 1, in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no accident conditions or assumptions are significantly affected by the proposed changes. The proposed change to Technical Specification (TS) 3.1.1.2 adds an exception, applicable only in Mode 6, that allows water of a lower boron concentration than the Reactor Coolant System (RCS) to be added to the RCS with the flow rate of reactor coolant through the RCS less than 2800 gpm, provided that the water to be added meets the requirements of TS 3.9.1. TS 3.9.1 requires that in Mode 6, the boron concentration of all filled portions of the RCS and the refueling canal shall be maintained uniform and sufficient to ensure that the more restrictive of two reactivity conditions is met. If the RCS meets these reactivity condition requirements, and water is added to the RCS that also meets the reactivity condition requirements of TS 3.9.1, then the RCS is assured to remain in compliance with the reactivity condition requirements. The possibility that the added water may be of lower boron concentration than the RCS is, therefore, of no adverse consequence to safety. There is no effect on the initial conditions assumed for the boron dilution incident in the accident analysis.

The proposed change to TS Bases 3/4.1.1.2 is considered to be administrative in nature.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because no accident conditions or assumptions are affected by the proposed changes. As discussed in item 1a. above, the proposed addition of the exception to TS 3.1.1.2 will not cause a condition that would result in the RCS not meeting the requirements of TS 3.9.1. The proposed changes do not alter the source term, containment isolation, or allowable releases. The proposed changes, therefore, will not increase the radiological consequences of a previously evaluated accident.

The proposed change to TS Bases 3/4.1.1.2 is considered to be administrative in nature.

2a. Not create the possibility of a new kind of accident from any accident previously evaluated because no new accident initiators or assumptions are introduced by the proposed changes. The proposed change does not alter any accident scenarios. As discussed in item 1a. above, the proposed addition of the exception to TS 3.1.1.2 will not cause a condition that would result in the RCS not meeting the requirements of TS 3.9.1. The proposed change to TS Bases 3/4.1.1.2 is considered to be administrative in nature. None of the proposed changes creates the possibility of a new kind of accident from any accident previously evaluated.

2b. Not create the possibility of a different kind of accident from any accident previously evaluated because no different accident initiators or assumptions are introduced by the proposed changes. The proposed changes do not alter any accident scenarios. As discussed in item 1a. above, the proposed addition of the exception to TS 3.1.1.2 will not cause a condition that would result in the RCS not meeting the requirements of TS 3.9.1. The proposed change to TS Bases 3/4.1.1.2 is considered to be administrative in nature. None of the proposed changes creates the possibility of a different kind of accident from any accident previously evaluated.

3. Not involve a significant reduction in the margin of safety because the proposed change to TS 3.1.1.2, as described above, will not cause a condition that would result in the RCS not meeting the requirements of TS 3.9.1. The margin of safety will be maintained by adhering to the limits specified in that TS. The proposed change to TS Bases 3/4.1.1.2 is considered to be administrative in nature.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Project Director: John N. Hannon

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: May 1, 1992

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3/4.4.6.2, "Reactor Coolant System-Operational Leakage," and its Bases. The changes would clarify the applicability of TS 4.0.4 exceptions, specify the allowed usage of the containment atmosphere gaseous radioactivity monitoring system as an alternate method of determining the presence of reactor coolant system (RCS) leakage, and clarify other existing wording. The proposed revisions to the Bases clarify that leakage from the RCS pressure isolation valves is "identified leakage" under TS 3/4.4.6.2 and is considered a portion of the allowed limit.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

Toledo Edison has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the DBNPS Unit Number 1, in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no accident conditions or assumptions are affected. These proposed changes to TS 3/4.4.6.2 and TS Bases 3/4.4.6.2 do not alter the manner in which equipment is operated or maintained and, therefore, have no effect on the probability of an accident.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because no equipment accident conditions or assumptions are affected which could lead to a change in consequences. These proposed changes to TS 3/4.4.6.2 and TS Bases 3/4.4.6.2 do not alter the source term, containment isolation or allowable releases and therefore have no effect on the consequences of an accident previously evaluated.

2a. Not create the possibility of a new kind of accident from any accident previously evaluated because no new accident conditions, failure mechanisms, or assumptions are introduced by these proposed changes. On matters related to nuclear safety, all accidents remain bounded

by previous analysis and no new malfunctions are involved.

2b. Not create the possibility of a different kind of accident from any accident previously evaluated because no different accident conditions, failure mechanisms or assumptions are introduced by these proposed changes. Plant operation continues to be limited to those conditions assumed in the safety analysis. Therefore, these proposed changes do not create the possibility of a different kind of accident from any accident previously evaluated.

3. Not involve a significant reduction in a margin of safety because the operational leakage limits are not changed and the proposed changes do not significantly reduce or adversely affect the capabilities of any plant systems.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Project Director: John N. Hannon

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: July 28, 1992

Description of amendment request: The proposed changes would (1) delete the operability and surveillance requirements of the hydrogen monitor from the explosive gas monitoring instrumentation requirements for the waste gas holdup system, (2) include a requirement to submit a special report to the NRC if the oxygen concentration in a waste gas decay tank (WGDT) exceeds the Technical Specification limit and is not returned to below that limit within the specified time, and (3) include administrative changes to achieve consistency.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The operation of Surry Power Station in accordance with the proposed Technical Specification changes would ensure an explosive gas mixture does not develop in the waste gas holdup system and consequently would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The probability of a hydrogen explosion in the waste gas holdup system is not increased, since the contents of the system will continue to be monitored to ensure oxygen remains below explosive limits. The consequences of an accident are not increased, since the rupture and total release of the contents of the WGDT have been previously considered in the [Updated Final Safety Analysis Report (UFSAR)] and determined to be within 10 CFR [Part] 100 site boundary dose limits.

2. Create the possibility of a new or different kind of accident from any previously evaluated. The proposed change does not create a new failure mode. The waste gas holdup system will continue to be operated in its present manner and monitored to ensure an explosive gas mixture does not develop. Therefore, no new accidents or malfunction scenarios are introduced by this change. No accident consequences other than those previously evaluated in the UFSAR are introduced by this change. Furthermore, this change does not affect any accident analysis assumption.

3. Involve a significant reduction in a margin of safety. The explosive gas mixture limitations on the contents of the waste gas holdup system remain in place and are appropriately monitored. Furthermore, failure of the WGDT has been previously analyzed in the UFSAR and the proposed changes do not alter the conclusions of the existing analysis. Therefore, the safety margin is not reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

NRC Project Director: Herbert N. Berkow

Notice Of Issuance Of Amendment To Facility Operating License

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, IllinoisDocket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: November 30, 1988, as supplemented May 30, 1990, April 19, 1991, and February 27, 1992.

Brief description of amendments: This amendment revises the Technical Specifications (TS) based on the recommendations provided by Generic Letter (GL) 87-09 related to the applicability of limiting conditions for operations (LCO) and the surveillance requirements of TS 3.0 and 4.0. Changes were also made to clarify when measurements of the axial target flex difference, the heat flux hot channel factor, the Reactor Coolant System flow

rate, and the nuclear enthalpy rise hot channel factor will be performed. Several administrative changes were made to eliminate cycle 1 specific information which is no longer applicable.

Date of issuance: August 11, 1992

Effective date: August 11, 1992

Amendment Nos.: 49, 49, 38, and 38

Facility Operating License Nos. NPF-37, NPF-66, NPF-72 and NPF-77: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 20, 1991 (56 FR 11775), May 15, 1991 (56 FR 22462), and June 10, 1992 (57 FR 24665)The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 11, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: For Byron, the Byron Public Library, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Consolidated Edison Company of New York, Docket No. 50-247, Indian PointNuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: December 30, 1991, as supplemented July 13, 1992.

Brief description of amendment: The amendment would modify the Control Room Air Filtration System Technical Specification to delete the requirement to monitor hydrogen cyanide and to increase the ammonia monitor alarm/trip setpoint from 3.5 ppm to 25 ppm.

Date of issuance: August 11, 1992

Effective date: August 11, 1992

Amendment No.: 157

Facility Operating License No. DPR-26: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 5, 1992 (57 FR 4485) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 11, 1992.No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: January 28, 1992

Brief description of amendment: The amendment revises Technical Specification 3/4.7.5 to provide an alternate snubber visual inspection interval in accordance with Generic Letter 90-09.

Date of issuance: July 31, 1992

Effective date: Effective as of the date of its issuance with full implementation within 45 days of issuance.

Amendment No.: 84

Facility Operating License No. NPF-43. The amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** May 27, 1992 (57 FR 22261) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 31, 1992.No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: January 29, 1992

Brief description of amendment: The amendment revises Technical Specification 4.9.6.a to allow the use of a General Electric Model NF-500 refueling mast and revises the slack cable cutoff surveillance set point.

Date of issuance: August 18, 1992

Effective date: Effective as of the date of its issuance with full implementation within 30 days of issuance.

Amendment No.: 86

Facility Operating License No. NPF-43. The amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** April 29, 1992 (57 FR 18173) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 18, 1992.No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: May 19, 1992, as supplemented June 15, 1992

Brief description of amendments: The amendments revise the Technical Specifications (TSs) to allow the use of the B&W sleeving process as described in BAW-2045P, Revision 1, "Recirculating Steam Generator Kinetic Sleeve Qualification for 3/4 Inch OD Tubes." This revision to the topical allows sleeving to be used in the tube support plate region, as well as in the tube sheet region, which is currently allowed by TS 4.4.5.4.

Date of issuance: August 14, 1992

Effective date: August 14, 1992

Amendment Nos.: 99 and 93

Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 8, 1992 (57 FR 30248) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 14, 1992.No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: May 14, 1992, as supplemented August 5, 1992

Brief description of amendments: The amendments revise the Technical Specification Surveillance Requirement 4.8.2.1.1.d which will permit the service test of battery 2EBD to be conducted during power operation on a one-time basis.

Date of issuance: August 17, 1992

Effective date: August 17, 1992

Amendment Nos.: 100 and 94

Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 27, 1992 (57 FR 22262) The August 5, 1992, letter provided clarifying information that did not change the initial proposed not significant hazards consideration determination.The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 17, 1992.No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Mississippi Power & Light Company, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: April 30, 1992

Brief description of amendment: The amendment revised the Grand Gulf Nuclear Station Technical Specifications

(TS) by adding new surveillance requirements for the reactor protection system and the control rod block instrumentation and by making clarifying editorial changes to the source range monitor TS.

Date of issuance: August 10, 1992

Effective date: August 10, 1992

Amendment No: 101

Facility Operating License No. NPF-29. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** May 27, 1992 (57 FR 22262) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 10, 1992 No significant hazards consideration comments received: No

Local Public Document Room location: Judge George W. Armstrong Library, Post Office Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120.

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: April 21, 1992, as supplemented May 19, June 2 and July 29, 1992

Brief description of amendments: These amendments permit the addition of one definite time delay relay per channel in the existing non-safety injection degraded voltage protection scheme for safety-related load centers, and eliminate the reference in the Technical Specifications to a specific type of relay used in the degraded voltage protection scheme.

Date of issuance: August 20, 1992

Effective date: August 20, 1992

Amendment Nos. 152, 147Facility Operating Licenses Nos. DPR-31 and DPR-41: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 10, 1992 (57 FR 24669) The June 2 and July 29, 1992 letters provided supplemental information which did not change the staff's initial determination of no significant hazards consideration. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 20, 1992.No significant hazards consideration comments received: No

Local Public Document Room location:

Florida International University, University Park, Miami, Florida 33199.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: May 3, 1991, as supplemented August 19 and October 11, 1991, and July 20, 1992.

Brief description of amendments: The amendments revise Technical Specification 3.6.3, "Containment Isolation Valves," to add a footnote stating that isolation valves associated with the containment hydrogen monitors may be opened on an intermittent basis under administrative control. The Bases for Technical Specification 3.6.3 is also revised.

Date of issuance: August 20, 1992

Effective date: August 20, 1992

Amendment Nos.: 53 and 32

Facility Operating License Nos. NPF-68 and NPF-81: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 26, 1991 (56 FR 29277) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 20, 1992.No significant hazards consideration comments received: No.

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: April 28, 1992, as supplemented July 20, 1992

Brief description of amendments: The amendments revise the surveillance interval for periodic disassembly and inspection of the steam admission valves associated with the turbine overspeed protection system

Date of issuance: August 20, 1992

Effective date: August 20, 1992

Amendment Nos.: 54, 33

Facility Operating License Nos. NPF-68 and NPF-81: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 24, 1992 (57 FR 28201) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 20, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830

Houston Lighting & Power Company, City Public Service Board of San Antonio,Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: August 30, 1991, as supplemented by letter dated January 24, 1992.

Brief description of amendments: The amendments change the Technical Specifications (TS) by making editorial changes to TS 3.2.1 which clarify the Action Statement; deleting the requirement of TS 4.2.1.1 to monitor indicated axial flux difference (AFD) each hour for 24 hours following restoration of the AFD monitor alarm; and clarifying the surveillance requirement of TS 4.2.4.2 regarding the use of symmetric movable incore detectors.

Date of issuance: August 18, 1992

Effective date: August 18, 1992, to be implemented within 10 days of issuance.

Amendment Nos.: Amendment Nos. 30 and 30

Facility Operating License Nos. NPF-76 and NPF-80: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 16, 1991 (56 FR 51926). The January 24, 1992, supplement provided an implementation date and did not change the initial no significant hazards consideration determination.The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 18, 1992.No significant hazards consideration comments received: No.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket No. 50-498, South Texas Project, Unit 1, Matagorda County, Texas

Date of amendment request: May 26, 1992

Brief description of amendments: The amendment changes the Technical Specifications to provide for a one-time extension of the 40-month inspection interval for the Unit 1 turbine valves to approximately 52 months.

Date of issuance: August 18, 1992

Effective date: August 18, 1992, to be implemented within five days of issuance.

Amendment No.: Amendment No. 40

Facility Operating License No. NPF-76: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 24, 1992 (57 FR 28202). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 18, 1992.No significant hazards consideration comments received: No.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket No. 50-498 South Texas Project, Unit 1, Matagorda County, Texas

Date of amendment request: June 12, 1990, as supplemented by letter of July 17, 1991.

Brief description of amendments: The amendment changes Appendix A Technical Specifications by deleting the autoclosure interlock portion of the Surveillance Requirements pertaining to TS 3/4.5.6, Residual Heat Removal System.

Date of issuance: August 19, 1992

Effective date: August 19, 1992, to be implemented prior to restart from the fourth refueling outage which is scheduled to begin in September 1992.

Amendment No.: Amendment No. 41

Facility Operating License No. NPF-76: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 22, 1990 (55 FR 34371) The July 17, 1991, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 19, 1992No significant hazards consideration comments received: No.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: October 30, 1990, as supplemented by letter dated September 25, 1991.

Brief description of amendments: The amendments change the Technical Specifications to remove references to requirements for the Spray Additive System for Unit 1 and add requirements for the Recirculation Fluid pH Control System. Comparable changes were made for Unit 2 in October 1991.

Date of issuance: August 21, 1992 Effective date: August 21, 1992, to be implemented prior to restart from the Unit 1 fourth refueling outage scheduled to begin in September 1992.Amendment Nos.: Amendment Nos. 42 and 31.

Facility Operating License Nos. NPF-76 and NPF-80: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 23, 1991 (56 FR 47971). The September 25, 1991, letter provided clarifying information that did not change the initial proposed no significnt hazards consideration determination.The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 21, 1992.No significant hazards consideration comments received: No.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488

Indiana Michigan Power Company, Docket No. 50-315 Donald C. Cook Nuclear Plant, Unit No. 1, Berrien County, Michigan

Date of application for amendment: March 27, 1992 as supplemented April 21, May 21, and July 29, 1992.

Brief description of amendment: The amendment changes TS Sections 4.4.5.2, 3.4.6.2, and the Bases 3/4.4.5, 3/4.4.6.2 and 3/4.4.8 to allow the implementation of interim steam generator tube plugging criteria for the tube support plate elevations. The amendment also reduces the allowed primary-to-secondary operational leakage from any one steam generator from 500 gallons per day to 150 gallons per day. The total allowed primary-to-secondary operation leakage through all steam generators is valued from one gallon per minute (1440 gallons per day) to 42 gallons per minute (600 gallons per day). This amendment is only applicable for fuel Cycle 13.

Date of issuance: July 29, 1992

Effective date: July 29, 1992

Amendment No.: 166

Facility Operating License No. DPR-58. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 9, 1992 (57 FR 24517). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 29, 1992.No significant hazards consideration comments received: No.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: May 8, 1992.

Brief description of amendment: This amendment changes Technical Specification (TS) 1.4D by (1) removing reference to the containment air recirculation system providing post-accident containment atmosphere mixing, and (2) removing reference to construction requirements that have been satisfied and incorporated into the Final Safety Analysis Report (FSAR). (The tense of TS 1.4D is corrected to reflect construction completion.)

Date of issuance: August 10, 1992

Effective date: August 10, 1992

Amendment No.: 132

Facility Operating License No. DPR-36: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 8, 1992 (57 FR 30250) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 10, 1992.No significant hazards consideration comments received: No

Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: June 16, 1988

Brief description of amendment: The amendment revised the Technical Specifications to clarify the operability requirements of the primary containment oxygen analyzer based on installation of redundant channels in accordance with Regulatory Guide 1.97, and incorporated administrative changes associated with the newly

installed redundant oxygen analyzer system.

Date of issuance: August 12, 1992

Effective date: August 12, 1992

Amendment No.: 153

Facility Operating License No. DPR-46. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 27, 1992 (57 FR 22263) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 12, 1992.No significant hazards consideration comments received: No.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.North Atlantic Energy Service Corporation, Docket No. 50-443, Seabrook Station, Rockingham County, New Hampshire

Date of application for amendment: March 20, 1992, as supplemented on June 19, 1992.

Brief description of amendment: This amendment provides for replacement of the Resistance Temperature Detector (RTD) Bypass System for measurement of primary loop temperature with fast-response thermowell-mounted RTDs. Additionally, the changes include specification of a thermal design flow plus a flow measurement uncertainty for primary loop piping, and permit a precision heat balance to be performed above 95 percent of full power instead of 75 percent of full power.

Date of issuance: August 10, 1992

Effective date: August 10, 1992

Amendment No.: 12

Facility Operating License No. NPF-86: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 24, 1992 (57 FR 20516) and renoticed on July 8, 1992 (57 FR 30256). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 10, 1992.No significant hazards consideration comments received: No

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

North Atlantic Energy Service Corporation, Docket No. 50-443, Seabrook Station, Rockingham County, New Hampshire

Date of application for amendment: March 20, 1992 as supplemented on June 19, 1992 and July 1, 1992.

Brief description of amendment: This amendment changes the Technical Specifications for the Seabrook Station to decouple the loss of offsite power/safety injection test from the 24-hour diesel generator surveillance run. The test will still be performed, but can be scheduled for a different time during the refueling outage so as to alleviate test scheduling difficulties and the financial burden that would result from an extended outage.

Date of issuance: August 10, 1992Effective date: August 10, 1992

Amendment No.: 13

Facility Operating License No. NPF-86: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 8, 1992 (57 FR 30258) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 10, 1992. The supplemental information did not change the significant hazards consideration.No significant hazards consideration comments received: No

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: April 28, 1992

Brief description of amendment: The amendment deletes two license conditions for the Millstone 3 operating license which have been satisfied and are no longer necessary. The conditions which are deleted are: (1) 2.C.(5) Inservice Inspection Program, and (2) 2.C.(10) Initial Test Program.

Date of issuance: August 17, 1992

Effective date: August 17, 1992

Amendment No.: 68

Facility Operating License No. NPF-49. Amendment removed conditions from the Operating License.

Date of initial notice in **Federal Register:** July 8, 1992 (57 FR 30253) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 17, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Northern States Power Company, Docket No. 50-263, Monticello NuclearGenerating Plant, Wright County, Minnesota

Date of application for amendment: February 14, 1992

Brief description of amendment: The first change revises reactor protection system technical specifications to eliminate the main steam line high radiation scram and associated reactor vessel isolation function. The second change revises the description of the average power range monitor scram trip function Bases to clarify when bypasses are permissible. The third change relates to the impracticality of performing intermediate range monitor functional testing during Mode 1 operation.

Date of issuance: August 18, 1992

Effective date: August 18, 1992

Amendment No.: 83

Facility Operating License No. DPR-22. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 18, 1992 (57 FR 9447) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 18, 1992.No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, DiabloCanyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County,California

Date of application for amendments: December 26, 1991 (Reference LAR 91-08)

Brief description of amendments: The amendments revise the combined Technical Specifications (TS) for Diablo Canyon Power Plant (DCPP), Unit Nos. 1 and 2, to relocate the list of containment isolation valves from TS Table 3.6-1 to the plant procedures in accordance with the recommendations of NRC Generic Letter 91-08.

Date of issuance: August 10, 1992

Effective date: August 10, 1992

Amendment Nos.: 73 and 72

Facility Operating License Nos. DPR-80 and DPR-82: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 15, 1992 (57 FR 13135) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 10, 1992.No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, DiabloCanyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County,California

Date of application for amendments: February 14, 1992 (Reference LAR 92-03), as supplemented June 5, 1992

Brief description of amendments: The proposed amendements revise Techinical Specifications (TS) 3/4.8.1, "A.C. Sources, Operating," TS 3/4.8.2, "A.C. Sources, Shutdown," and the associated Bases, regarding emergency diesel generator fuel oil system requirements and storage tank inspection and surveillance.

Date of issuance: August 12, 1992

Effective date: August 12, 1992

Amendment Nos.: 74 and 73

Facility Operating License Nos. DPR-80 and DPR-82: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 1, 1992 (57 FR 11113) The June 5, 1992, submittal provided clarifying information and did not affect the proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 12, 1992.No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Philadelphia Electric Company, Public Service Electric and Gas CompanyDelmarva Power and Light Company, and Atlantic City Electric Company,Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station,Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: May 18, 1992 as supplemented by letter dated July 9, 1992

Brief description of amendments: The amendment changes Section 4.6.D of the Technical Specifications. The amendment changes the inspection and testing requirements for the Main Steam line Safety Valves (SV) and Relief Valves (RV). The changes require that at least one safety valve and five relief valves be checked or replaced with a bench checked valve ever 24-months. Currently, the valves are required to be checked every operating cycle. The changes are proposed in order for the licensee to operate with a 24-month fuel cycle

Additionally, the changes require that one of the relief valves be disassembled and inspected every 24-months. Currently, one relief valve is required to be disassembled and inspected ever refueling outage.

Date of issuance: August 19, 1992

Effective date: August 19, 1992

Amendments Nos.: 169 and 173

Facility Operating License Nos. DPR-44 and DPR-56: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 24, 1992 (57 FR 28205) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 19, 1992.No significant hazards consideration comments received: No

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: February 3, 1992 as supplemented June 16, 1992

Brief description of amendment: Eliminated the main steam line isolation and automatic reactor shutdown functions of the main steam line radiation in the TS Tables 2.2.1-1, 3.3.1-1, 3.3.1-2, 4.3.1-1, 3.3.2-1, 3.3.2-3, and Bases Section 2.2.1.6.

Date of issuance: August 17, 1992

Effective date: August 17, 1992

Amendment No.:

53

Facility Operating License No. NPF-57: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 1, 1992 (57 FR 11115) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 17, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: May 26, 1992 (TS 92-04)

Brief description of amendment: The amendments add an additional Limiting Condition for Operation, surveillance requirement, and Bases information related to the operability requirements for the containment ice condenser inlet doors.

Date of issuance: August 10, 1992

Effective date: August 10, 1992

Amendment Nos: 161, and 151

Facility Operating License Nos. DPR-77 and DPR-79: Amendments revise the technical specifications.

Date of initial notice in **Federal Register:** July 8, 1992 (57 FR 30262) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 10, 1992.No significant hazards consideration comments received: No.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendment: May 26, 1992 (TS 92-03)

Brief description of amendment: The amendments remove the provision in Specification 4.0.2 that limits the combined time interval for three consecutive surveillance tests to less than 3.25 times the interval specified in the technical specifications for the surveillance test.

Date of issuance: August 13, 1992

Effective date: August 13, 1992

Amendment No.: 162 for Unit 1,; 152 for Unit 2

Facility Operating License Nos. DPR-77 and DPR-79: Amendments revise the technical specifications.

Date of initial notice in **Federal Register:** July 8, 1992 (57 FR 30261) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 13, 1992.No significant hazards consideration comments received: No.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Texas Utilities Electric Company, Docket No. 50-445, Comanche Peak Steam Electric Station, Unit No. 1, Somervell County, Texas

Date of amendment requests: June 24, 1991, November 11, 1991, andNovember 11, 1991. These applications were supplemented by letter dated May 4, 1992.

Brief description of amendment: The amendment provides clarification to Technical Specifications 4.6.2.1b and 4.8.1.1.2d.1)b) by correcting several

typographical errors. The amendment also deletes a reference to Section 51.5(b)(2) of Title 10 of the Code of Federal Regulations from the Environmental Protection Plan.

Date of Issuance: August 21, 1992.

Effective date: August 21, 1992, to be implemented within 30 days of issuance.

Amendment No.: Amendment No. 12

Facility Operating License No. NPF-87. Amendment revised the Technical Specifications and the Environmental Protection Plan.

Date of initial notice in **Federal Register:** May 27, 1992 (57 FR 22271); as corrected on July 30, 1992 (57 FR 33740). The May 4, 1992, supplemental letter provided a revised implementation date and did not change the initial no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 21, 1992.No significant hazards consideration comments received: No

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P. O. Box 19497, Arlington, Texas 76019.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: June 8, 1992

Brief description of amendments: The amendments revise the time frames in TS 3.0.5 for conducting a shutdown in a controlled and orderly manner which is consistent with the time frames in TS 3.0.3.

Date of issuance: August 10, 1992

Effective date: August 10, 1992

Amendment Nos.: 164 and 144

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 8, 1992 (57 FR 30263) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 10, 1992.No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: June 8, 1992

Brief description of amendments: The amendments revise the current NA-1&2 TS to permit staggered testing of the reactor trip system instrumentation and allow up to 2 hours to test certain emergency safeguards feature actuation system instrumentation.

Date of issuance: August 10, 1992

Effective date: August 10, 1992

Amendment Nos.: 165 and 145

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 8, 1992 (57 FR 30264) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 10, 1992.No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498. Notice Of Issuance Of Amendment To Facility Operating License And Final Determination Of No Significant Hazards Consideration And Opporutnity For Hearing (Exignet Or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and

at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By October 2, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to (Project Director): petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota

Date of amendment request: August 3, 1992

Description of amendment request: The amendments provide a one-time extension of the surveillance test interval for periodic testing of the source breaker trip feature of the automatic voltage restoration function of the 4160 v.a.c emergency buses.

Date of issuance: August 11, 1992.

Effective date: August 11, 1992.

Amendment Nos. 100 and 93

Facility Operating License Nos. DPR-42 and DPR-60: Amendments revised the Technical Specifications.Public comments requested as to proposed no significant hazards consideration: No. The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated August 11, 1992.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

NRC Project Director: L. B. Marsh

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: August 11, 1992

Brief description of amendment: The amendment revised Technical Specification Surveillance 4.3.1.1, Table 4.3-1, Functional Unit 1 (Manual Trip) by adding a footnote to Note 16 which states that "complete verification of OPERABILITY of the manual reactor trip switch circuitry shall be performed prior to startup from the first shutdown to Mode 3 occurring after August 7, 1992." This amendment was required due to the discovery that the existing surveillance procedure does not adequately verify the operability of the shunt trip contacts associated with the manual reactor trip function.

Date of issuance: August 21, 1992

Effective date: August 21, 1992

Amendment No.: 73

Facility Operating License No. NPF-30. Amendment revised the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: No. The Commission's related evaluation of the amendment, discussion of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated August 21, 1992.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

NRC Project Director: John N. Hannon

Dated at Rockville, Maryland, this 25th day of August 1992.

Nuclear Regulatory Commission

Jose A. Calvo,

Acting Director Division of Reactor Projects - I/IIOffice of Nuclear Reactor Regulation

[Doc. 92-20978 Filed 9-1-92; 8:45 am]

BILLING CODE 7590-01-F

[Docket Nos. 50-445 and 50-446]

Texas Utilities Electric Co.; Comanche Peak Steam Electric Station, Units 1 and 2 Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that Mr. Michael D. Kohn, on behalf of Messrs. Macktal and Hasan (Petitioners), submitted to the U.S. Nuclear Regulatory Commission (NRC) on June 11, 1992, a Petition requesting certain enforcement and other actions.

As a basis for this request, the Petitioners allege the discovery of new evidence of a continuing practice by Texas Utilities Electric Company (TU Electric; licensee) to pay "hush money" to keep significant information about Comanche Peak Steam Electric Station, Units 1 and 2 (CPSES) from the Petitioners and the NRC. Specifically, the Petitioners refer to a January 30, 1990, settlement agreement between the licensee and the Tex-La Electric Cooperative of Texas, Inc. (Tex-La), a former co-owner of CPSES, which allegedly contains restrictive language in violation of section 210 of the Energy Reorganization Act and 10 CFR 50.7.

On the basis of this information, the Petitioners requested (1) orders suspending TU Electric's license to operate CPSES Unit 1 and its permit to construct CPSES Unit 2; and (2) that the expiration date of TU Electric's permit to construct Unit 2 not be extended. Petitioners also requested that the Commission take immediate actions; specifically (1) that a licensing board be established to allow public scrutiny into TU Electric's alleged practice of paying "hush money"; (2) that the NRC notify TU Electric and former minority owners that no settlement agreement can preclude employees, attorneys, agents, consultants or others from providing information to persons involved in proceedings before the NRC; (3) that copies of the TU Electric minority owner agreements be made public and provided to petitioners' counsel; and (4) that the NRC notify the counsel to Tex-La that he and others are free to disclose safety-related information about CPSES to others. In a letter dated August 26, 1992, I have determined that the Petitioners have not set forth a basis for the immediate actions raised in the Petition.

The Petition has been referred to the Director of the Office of Nuclear Reactor Regulation pursuant to 10 CFR 2.206. As provided by 10 CFR 2.206, appropriate action will be taken regarding the specific issues raised by the Petition in a reasonable time.

An Order extending the construction permit date was issued on July 28, 1992. The NRC staff's evaluation of the requested extension concluded, in accordance with 10 CFR 50.55(b), that good cause had been shown for the delay and that the requested extension was for a reasonable period of time.

The NRC has obtained a copy of the subject settlement agreement from TU Electric. Copies of the Petition and the settlement agreement are available for inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019.

Dated at Rockville, Maryland, this 26th day of August 1992.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 92-21129 Filed 9-1-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-348]

Southern Nuclear Operating Co.; Consideration of Issuance of Amendment to Facility Operating License, Proposed no Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-2 issued to Southern Nuclear Operating Company, Inc. (the licensee), for operation of the Joseph M. Farley Nuclear Plant, Unit 1, located in Houston County, Alabama.

The proposed amendment would modify the Technical Specifications (TS) on an interim basis to allow the implementation of interim plugging criteria for tube support plate elevations.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of Farley Unit 1 in accordance with the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Testing of model boiler specimens for free standing tubes at room temperature conditions show burst pressures as high as 5000 psi for indications of outer diameter stress corrosion cracking [ODSCC] with voltage measurements as high as 30 volts. Burst testing performed on pulled tubes with up to 10 volt indications show burst pressures in excess of 5900 psi at room temperature. Correcting for the effects of temperature on material properties and minimum strength levels (as the burst testing was done at room temperature), tube burst capability significantly exceeds the [Regulatory Guide (R.G.)] 1.121 criterion requiring the maintenance of a margin of three times normal operating pressure differential on tube burst if through-wall cracks are present. Based on the existing data base, this criterion is satisfied with bobbin coil indications with signal amplitudes less than 6.2 volts, regardless of the indicated depth measurement. This structural limit is based on a lower 95% confidence level limit of the data. The 1.0 threshold volt criteria provides an extremely conservative margin of safety to the structural limit considering expected growth rates of ODSCC at Farley. Alternate crack morphologies can correspond to 6.2 volts so that a unique crack length is not defined by a burst pressure to voltage correlation. However, relative to expected leakage during normal operating conditions, no field leakage has been reported from tubes with indications with a voltage level of under 6.2 volts for a ¾ inch tube, with 8.4 volts correlation to ⅞ inch tubing (as compared to the 1.0 volt proposed interim tube plugging limit).

Relative to the expected leakage during accident condition loadings, the accidents that are affected by primary-to-secondary leakage and steam release to the environment are Loss of External Electrical Load and/or Turbine Trip, Loss of All AC Power to Station Auxiliaries, Major Secondary System Pipe Failure, Steam Generator Tube Rupture, Reactor Coolant Pump Locked Rotor, and Rupture of a Control Rod Drive Mechanism Housing. Of these, the Major Secondary System Pipe Failure is the most limiting for Farley Unit 1 in considering the potential for offsite doses. The offsite dose analyses for the other events which model primary-to-secondary leakage and steam release from the secondary side to the environment assume that the secondary side remains intact. The steam generator tubes are not subjected to a sustained increase in differential pressure, as is the case following a steam line break [SLB] event. This increase in differential pressure is responsible for the postulated increase in leakage and associated offsite doses following [an SLB] event. Upon implementation of the interim plugging criteria, it must be verified that the expected distribution of cracking indications at the tube support plate intersections are such that primary-to-secondary leakage would result in site boundary dose within the current licensing basis for Unit 1, 1 gallon per minute during [an SLB] event. Data indicate that a threshold voltage of 2.8 volts would result in through-wall cracks long enough to leak at SLB conditions. Application of the proposed plugging criteria requires that the current distribution of a number of indications versus voltage be obtained during the Unit 1 Eleventh Refueling Outage. The current voltage is then combined with the rate of change in voltage measurement to establish an end of cycle voltage distribution and, thus, leak rate during SLB pressure differential. If it is found that the potential SLB leakage for degraded intersections planned to be left in service exceeds 1 gallon per minute, then additional tubes will be plugged or repaired to reduce SLB leakage potential to 1 gallon per minute or less.

(2) The proposed license amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

Implementation of the proposed interim tube support plate elevation steam generator tube plugging criteria does not introduce any significant changes to the plant design basis. Use of the criteria does not provide a mechanism which could result in an accident outside of the region of the tube support plate elevations. Neither a single or multiple tube rupture event would be expected in a steam generator in which the plugging criteria has been applied (during all plant conditions). The bobbin probe signal amplitude plugging criteria is established such that operational leakage or excessive leakage during a postulated [SLB] condition is not anticipated.

SNC has implemented a maximum leakage rate limit of 410 gpd [gallons per day] per steam generator to help preclude the potential for excessive leakage during all plant conditions. The R.G. 1.121 criterion for establishing operational leakage rate limits that require plant shutdown are based upon leak-before-break considerations to detect a free span crack before potential tube rupture. The 140 gpd limit should provide for leakage detection and plant shutdown in the event of the occurrence of an unexpected single crack resulting in leakage that is associated with the longest permissible crack length. R.G. 1.121 acceptance criteria for establishing operating leakage limits are based on leak-before-break considerations such that plant shutdown is initiated if the leakage associated with the longest permissible crack is exceeded. The longest permissible crack is the length that provides a factor of safety of three against bursting at normal operating pressure diffferential. A voltage amplitude of 6.2 volts for typical ODSCC corresponds to meeting this tube burst requirement at the lower 95% uncertainty limit on the burst correlation. Alternate crack morphologies can correspond to 6.2 volts so that a unique crack length is not defined by the burst pressure versus voltage correlation. Consequently, typical burst pressure versus through-wall crack length correlations are used below to define the "longest permissible crack" for evaluating operating leakage limits.

The single through-wall crack lengths that result in tube burst at three times normal operating pressure differential and SLB conditions are about 0.42 inch and 0.84 inch, respectively. Normal leakage for these crack lengths would range from 0.11 gallons per minute to 4.5 gallons per minute, respectively, while lower 95% confidence level leak rates would range from about 0.02 gallons per minute to 0.8 gallons per minute, respectively.

An operating leak rate of 140 gpd has been implemented due to the detection of circumferential flaws in the expansion region. This leakage limit provides for detection of 0.4 inch long cracks at nominal leak rates and 0.6 inch long cracks at the lower 95% confidence level leak rates. Thus, the 140 gpd limit provides for plant shutdown prior to reaching critical crack lengths for SLB conditions at leak rates less than a lower 95% confidence level and for three times normal operating pressure differential at less than nominal leak rates.

(3) The proposed license amendment does not involve a significant reduction in margin of safety.

The use of the interim tube support plate elevation plugging criteria at Farley Unit 1 is demonstrated to maintain steam generator tube integrity commensurate with the requirements of R.G. 1.121. R.G. 1.121 describes a method acceptable to the NRC staff for meeting GDC 14, 15, 31 and 32 by reducing the probability of the consequences of steam generator tube rupture. This is accomplished by determining the limiting conditions of degradation of steam generator tubing, as established by inservice inspection, for which tubes with unacceptable cracking should be removed from service. Upon implementation of the criteria, even under the worst case conditions, the occurrence of ODSCC at the tube support plate elevations is not expected to lead to a steam generator tube rupture event during normal or faulted plant conditions. The most limiting effect would be a possible increase in leakage during [an SLB] event. Excessive leakage during [an SLB] event, however, is precluded by verifying that, once the criteria are applied, the expected end of cycle distribution of crack indications at the tube support plate elevations would result in minimal, and acceptable, primary[-]to[-]secondary leakage during all plant conditions and, hence, help to demonstrate radiological conditions are less than a small fraction of the 10 CFR 100 guideline.

In addressing the combined effects of [loss of coolant accident (LOCA) + safe shutdown earthquake (SSE)] on the steam generator component (as required by GDC 2), it has been determined that tube collapse may occur in the steam generators at some plants. This is the case as the tube support plates may become deformed as a result of lateral loads at the wedge supports at the periphery of the plate due to either the LOCA rarefaction wave and/or SSE loadings. Then, the resulting pressure differential on the deformed tubes may cause some of the tubes to collapse.

Additionally, the margin to burst for tubes using the interim plugging criteria is comparable to that currently provided by existing Technical Specifications.

There are two issues associated with steam generator tube collapse. First, the collapse of steam generator tubing reduces the [Reactor Coolant System (RCS)] flow area through the tubes. The reduction in flow area increases the resistance to flow of steam from the core during a LOCA which, in turn, may potentially increase Peak Clad Temperature

(PCT). Second, there is a potential that partial through-wall cracks in tubes could progress to through-wall cracks during tube deformation or collapse.

Consequently, a detailed leak-before-break analysis was performed and it was concluded that the leak-before-break methodology (as permitted by GDC 4) is applicable to the Farley Unit 1 [RCS] primary loop and, thus, the probability of breaks in the primary loop piping is sufficiently low that they need not be considered in the structural design basis of the plant. Excluding breaks in the RCS primary loops, the LOCA loads from the large branch line breaks were analyzed at Farley Unit 1 and were found to be of insufficient magnitude to result in steam generator tube collapse or significant deformation.

Regardless of whether or not leak-before-break is applied to the primary loop piping at Farley Unit 1, any flow area reduction is expected to be minimal (much less than 1%) and PCT margin is available to account for this potential effect. Based on recent analyses results, no tubes near wedge locations are expected to collapse or deform to the degree that secondary[-]to[-]primary in-leakage would be increased over current expected levels. For all other steam generator tubes, the possibility of secondary-to-primary [in-leakage] in the event of a LOCA + SSE event is not significant. In actuality, the amount of secondary-to-primary leakage in the event of a LOCA + SSE is expected to be less than that currently allowed, i.e., 140 gpd per steam generator. Furthermore, secondary-to-primary in-leakage would be less than primary-to-secondary leakage for the same pressure differential since the cracks would tend to tighten under a secondary-to-primary pressure differential. Also, the presence of the tube support plate is expected to reduce the amount of in-leakage.

Addressing the R.G. 1.83 considerations, implementation of the tube plugging criteria is supplemented by 100% inspection requirements at the tube support plate elevations having ODSCC indications, reduced operating leak rate limits, eddy current inspection guidelines to provide consistency in voltage normalization, and rotating pancake coil inspection requirements for the larger indications left in service to characterize the principal degradation mechanism as ODSCC.

As noted previously, implementation of the tube support plate elevation plugging criteria will decrease the number of tubes which must be taken out of service with tube plugs or repaired. The installation of steam generator tube plugs would reduce the RCS flow margin, thus implementation of the interim plugging criteria will maintain the margin of flow that would otherwise be reduced in the event of increased tube plugging.

Based on the above, it is concluded that the proposed change does not result in a significant reduction in margin with respect to plant safety as defined in the Final Safety Analysis Report or any bases of the plant Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within thirty (30) days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Directives Review Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 2, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Houston-Love Memorial Library, 212 W. Burdeshaw Street P.O. Box 1369, Dothan, Alabama 36302. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Elinor G. Adensam: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to James H. Miller, III, Esq., Balch and Bingham, P.O. Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated August 24, 1992, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Houston-Love Memorial Library, 212 W. Burdeshaw Street, P.O. Box 1369, Dothan, Alabama 36302.

Dated at Rockville, Maryland, this 27th day of August 1992.

For the Nuclear Regulatory Commission.

George F. Wunder,

Acting Director, Project Directorate II-1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92-21128 Filed 9-1-92; 8:45 am]

BILLING CODE 7590-01-M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

[RFP 01-93-ProPAC]

Research Support Services; Expert and Consultant Services

Prospective Payment Assessment Commission, 300 7th Street, SW, suite 301B, Washington, DC 20024
Attn: Mrs. Jeannette A. Younes, Executive Officer
Re: RFP 01-93-ProPAC.

Title: Research Support Services
Category: H(Expert and Consultant Services)

The Prospective Payment Assessment Commission (ProPAC) is seeking contractors to conduct a survey of strategies used by hospitals to influence the behavior of physicians. One contractor is being sought to conduct a survey of strategies that is representative of all non-federal, Medicare eligible, short-stay hospitals in the United States. Oversampling of some hospital groups of interest may be required, with the construction of weights to account for this oversampling. The period of performance is one year, and will be completed under a cost plus fixed fee type of contract. The contractor will have extensive experience conducting health surveys, including surveys of hospitals and physicians. RFP-01-93 will be issued on or about September 14, 1992. Interested sources must submit a written request for a copy of this RFP.

Donald A. Young,

Executive Director.

[FR Doc. 92-20943 Filed 9-1-92; 8:45 am]

BILLING CODE 6820-SW-M

PHYSICIAN PAYMENT REVIEW COMMISSION

Commission Meeting

AGENCY: Physician Payment Review Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meeting on Thursday and Friday, September 24 and 25, 1992, at the Sheraton City Centre, 1143 New Hampshire Avenue NW., Washington, DC in the City Centre Ballroom (lower level). The meetings are tentatively scheduled to begin at 9 a.m. Topics to be covered include graduate medical education, malpractice expense, health care reform legislation, and access to care. There will also be a panel discussion on implementation of the Medicare Fee Schedule with representatives from physician and beneficiary organizations.

ADDRESSES: The Commission is located at 2120 L Street, NW. in suite 510, Washington, DC. The telephone number is 202/653-7220.

FOR FURTHER INFORMATION CONTACT: Lauren LeRoy, Deputy Director, 202/653-7220.

SUPPLEMENTARY INFORMATION: Information about the exact agenda for the public meetings can be obtained on Thursday, September 17, 1992. Copies of the agenda will be mailed at that time. Please direct all requests for the agenda to the Commission's receptionist.

Paul B. Ginsburg,

Executive Director.

[FR Doc. 92-21058 Filed 9-1-92; 8:45 am]

BILLING CODE 6820-SE-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) *Collection title:* Application for Spouse Annuity Under the Railroad Retirement Act.

(2) *Form(s) submitted:* AA-3.

(3) *OMB Number:* 3220-0042.

(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.

(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(6) *Frequency of response:* On occasion.

(7) *Respondents:* Individuals or households.

(8) *Estimated annual number of respondents:* 19,500.

(9) *Total annual responses:* 19,500.

(10) *Average time per response:* .4351 hours.

(11) *Total annual reporting hours:* 8,484.

(12) *Collection description:* The RRA provides for the payment of annuities to spouses of railroad retirement annuitants who meet the requirements under the Act. The application will obtain information supporting the claim for benefits based on being a spouse of an annuitant. The information will be used for determining entitlement to and amount of annuity applied for.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312-751-4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611-2092 and the OMB reviewer, Laura Oliven (202-395-7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 92-21085 Filed 9-1-92; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-31107; File No. SR-Amex-92-12]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change, Relating to the Reduction of Trading Increments for Long-Term Reduced Value Index Options

August 27, 1992.

On April 30, 1992, the American Stock Exchange, Inc. ("Amex") or "Exchange"), submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities and Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to reduce from one-eight to one-sixteenth the minimum tick fluctuation for premiums between $300 and $500 for long-term options on reduced value indexes. Under the proposal, the minimum tick fluctuation for premiums over $500 will continue to be one-eighth.

The proposed rule change was published for comment in Securities and Exchange Act Release No. 30694 (May 13, 1992), 57 FR 21312 (May 19, 1992). No comments were received on the proposed rule change.

Amex rules currently provide that bids and offers for all equity and index options may be expressed in one-sixteenth increments for premiums of less than $300 and one-eight increments for premiums greater than $300. The current proposal would amend Exchange Rule 951C to reduce from one-eighth to one-sixteenth the minimum tick fluctuation for premiums between $300 and $500 for long-term options on reduced value indexes.[3] The minimum tick fluctuation for premiums over $500 will continue to be one-eighth. Since November 1990, the Amex has been trading long-term options ("LEAPS") on a reduced value Major Market Index ("XMI").

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[4] Specifically, the Commission believes the Exchange's proposal may result in enhanced pricing efficiency and price continuity for LEAPS on reduced-value stock indexes, because the reduced value XMI underlying XMI LEAPS is one-tenth of the value of the full-value XMI and because any other reduced value index that may have Exchange-traded LEAPS listed on it likewise will be a fraction of its corresponding full-value index, thereby promoting the public interest and protecting investors. The Commission also believes that the narrower minimum tick fluctuations may result in enhanced market maker performance and tighter markets for long-term, reduced-value stock index options.

It is therefore ordered, pursuant to section 19(b)(2) of the Act [5] that the proposed rule change (SR-Amex-92-12) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-21060 Filed 9-1-92; 8:45 am]

BILLING CODE 8010-01-M

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1991).

[3] Under Amex rules, a long-term option is one with a duration greater than twelve months. These options are also regularly known as Long-Term Equity Anticipation Securities or "LEAPS."

[4] 15 U.S.C. 78f(b)(5) (1988).

[5] 15 U.S.C. 78s(b) (1988).

[6] 17 CFR 200.30-3(a)(12) (1990).

[Release No. 34-31097; File No. SR-NYSE-92-07]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Amendments to Rules 600 (Arbitration), 607 (Designation of Number of Arbitrators), 621 (Interpretation of the Provisions of the Code and Enforcement of Arbitrator(s) Rulings) and 636 (Requirements When Using Pre-Dispute Arbitration Agreements With Customers)

August 26, 1992.

I. Introduction

On April 3, 1992, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] a proposed rule change (File No. SR-NYSE-92-07) designed to amend certain of the Exchange's series of rules that govern the administration of its arbitration forum. The NYSE states that the proposed rule change is based for the most part on proposals developed by

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1991).

the Securities Industry Conference on Arbitration ("SICA").[3]

The proposed rule change was published for comment in Securities Exchange Act Release No. 30675 (May 7, 1992), 57 FR 20543 (May 13, 1992). No comments were received on the proposal.

II. Description of the Proposal

A. Rule 600: Arbitration

The NYSE proposes to adopt Rule 600(d), which would provide that class actions between NYSE members and their customers are to be resolved through litigation in the courts, rather than through arbitration at the Exchange. The rule is divided into several parts. First, it would provide that the Exchange will not accept class actions. The rule also prohibits Exchange members from attempting to enforce arbitration contracts with customers who are members of a class or putative class unless the customer has clearly opted out of, or otherwise been excluded by a court from, the class action. It would also provide, however, that customers may pursue, in Exchange arbitration, claims that would otherwise be included in a court-litigated class action by removing their individual claims from the class action.

B. Rule 607: Designation of Number of Arbitrators

The NYSE proposes to adopt Rule 607(a)(2)(v) to classify individuals who are registered under the Commodities Exchange Act ("CEA") or are members of a registered futures association or any commodities exchange as being from the securities industry for purposes of classification of arbitrators.

C. Rule 621: Interpretation of Code

The NYSE proposes to amend Rule 621 to empower arbitrators to take appropriate action to obtain compliance with any ruling by the arbitrators. The Exchange states that such action could include assessment of fees or costs, preclusion of documents or witnesses, and making disciplinary referrals in order to obtain compliance with any ruling by the arbitrators.

D. Rule 636: Requirements When Using Pre-Dispute Arbitration Agreements With Customers

The NYSE proposes to amend Rule 636 to provide that customer agreements containing arbitration clauses entered into after one year from the approval of the rule must include a prescribed statement excluding class actions from the contracts and clarifying investors' ability to pursue class actions in court.

III. Discussion and Conclusion

The Commission has considered the Exchange's proposed rule change and finds that the proposals are consistent with the requirements of the Act and the rules and regulations thereunder and, in particular, the requirements of section 6(b)(5) of the Act.[4] Section 6(b)(5) of the Act requires that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. The Commission believes that because these rules should aid in the just resolution of disputes between investors and broker-dealers, the proposal should further the objectives of section 6(b)(5) of the Act. The Commission also believes, for the reasons set forth below, that the proposed rule change advances the public interest in Exchange arbitrations and should improve the speed and efficiency of the arbitration process, while at the same time maintaining the traditional qualities of arbitration.

The Commission believes that the proposed amendment to Rules 600 and 636 which would enable brokerage customers to pursue class action claims against their broker-dealers in court, notwithstanding any arbitration agreement they may have signed, is an important initiative to protect investors and the public interest. Under the existing rules, investors are not necessarily able to pursue class action claims against their broker-dealers in SRO-sponsored arbitrations. Moreover, individuals who attempted to certify class actions in litigation were subject to the enforcement of their separate arbitration contracts by their broker-dealers. Without access to class actions in appropriate cases, both investors and broker-dealers have been put to the expense of wasteful, duplicative litigation. The new rule, however, expressly prohibits Exchange members from using existing arbitration contracts to defeat the certification of a class, or participation in a class by its customers. Finally, the amendments to Rule 636 will ensure that arbitration agreements clearly state that class action claims are specifically outside the scope of arbitration contracts entered into by members.

Based on the above, the Commission believes that the amendments that would permit certified class actions to proceed in court should increase customer confidence in the markets and promote the efficient resolution of disputes for both investors and broker-dealers.

The Commission also finds that the proposed amendment to Rule 607, which will classify individuals who are registered under CEA or associated with a registered futures association or any commodities exchange as being from the securities industry for the purposes of clasifications of arbitrators, is consistent with the Act. The Commission believes that this amendment should promote impartial and knowledgeable decisions in the arbitration of disputes between investors and broker-dealers.

Further, the Commission agrees with the Exchange that the proposed amendment to NYSE Rule 621 should clarify that arbitrators can take appropriate action to obtain compliance with any ruling by the arbitrators. The NYSE anticipates that appropriate action could include assessment of fees or costs, preclusion of documents or witnesses, and making disciplinary referrals. The Commission believes that the amendment to Rule 621 should raise customer confidence in the arbitration process by assuring that those individuals who utilize the NYSE's arbitration forum comply with the arbitrators' rulings.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change (SR-NYSE-92-07) be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-21061 Filed 9-1-92; 8:45 am]

BILLING CODE 8010-01-M

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[3] SICA is comprised of a representative from each self-regulatory organization ("SRO") that administers an arbitration program, a representative of the securities industry, and four representatives of the public. The SROs that administer an arbitration program are the NYSE, American, Boston, Cincinnati, Midwest, Pacific, and Philadelphia Stock Exchanges, the Chicago Board Options Exchange, the National Association of Securities Dealers, and the Municipal Securities Rulemaking Board.

[4] 15 U.S.C. 78f(b)(5) (1988).

[5] 15 U.S.C. 78s(b)(2) (1988).

[6] 17 CFR 200.30-3(a)(12) (1991).

[Release No. 34-31108; File No. SR-NYSE-92-18]

Self-Regulatory Organizations; Filing and Order Granting Temporary Accelerated Approval of Proposed Rule Change by New York Stock Exchange Relating to a Pilot Program for Specialists' Liquidating Transactions

August 27, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby give that on August 20, 1992, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to extend until November 27, 1992 its existing pilot program under NYSE Rule 104.10(6), as described below, pertaining to specialists' liquidating transactions. The NYSE received approval of amendments to Rule 104.10(6) for a one year pilot period expiring on August 29, 1992.[1] The Exchange seeks accelerated approval of the proposed rule change in order to allow the pilot program to continue without interruption.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The test of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

[1] See Securities Exchange Act Release No. 29626 (August 29, 1991), 56 FR 43953 (September 5, 1991) (File No. SR-NYSE-91-7) ("1991 Approval Order").

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The Exchange proposed to amend Rule 104.10(6) in File No. SR-NYSE-91-7. The proposed rule change, filed as a one year pilot program, amended NYSE Rule 104.10(6) to permit specialists to "reliquify" a dealer position by selling "long" on a zero minus tick, or by purchasing to cover a "short" position on a zero plus tick, without Floor official approval. The proposed amendments also emphasized the specialist's affirmative role in providing stabilizing dealer participation to the marketplace where reliquification may be required to facilitate the maintenance of a fair and orderly market.

As noticed above, the Commission granted temporary approval to this proposal on a one year pilot basis and requested that the Exchange submit a report evaluating the effects of the amendments.[2] In its report, the NYSE concluded that the amendments to Rule 104.10(6) appear to be working well in enabling specialists to reliquify appropriately to meet the needs of the market.

The purpose of this proposed rule change is to request an extension of the pilot program, scheduled to terminate on August 29, 1992, until November 27, 1992.

(b) Statutory Basis

The basis under the Act for his proposed rule change is section 6(b)(5), which requires that the rules of the Exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interests. The Exchange believes the proposed rule change is consistent with these objectives because it enhances the specialists' ability to reliquify and re-enter the market and reinforces the specialists' obligation to participate during volatile or unusual market conditions in a manner that is counter to the trend of the market and which cushions price movements in the specialists' stocks.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes for the Act.

[2] *Id.*

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Relieved From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-92-18 and should be submitted by September 23, 1992.

IV. Commission's Findings and Order Granting Temporary Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with sections 6(b)(5) and 11 of the Act.[3] The Commission believes the proposal is consistent with the section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and, in general, protect investors and the public interest. The Commission also believes that the proposal is consistent with section 11(b) of the Act and Rule 11b-1 thereunder,[4] which allow exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets.[5]

[3] 15 U.S.C. 78f and 78k (1988).

[4] 17 CFR 240.11b-1 (1991).

[5] See 1991 Approval Order, *supra* note 1 for a description of NYSE Rule 104.10(6) procedures and

Continued

Under the current pilot program, a specialist may liquidate a position by selling stock on a direct minus tick or by purchasing stock on a direct plus tick only if such transactions are reasonably necessary for the maintenance of a fair and orderly market and only if the specialist has obtained the prior approval of a Floor Official. Liquidations on a zero minus or a zero plus tick, which previously required Floor Official approval, can be effected under the pilot procedures without a Floor Official's approval, but continue to be subject to the restriction that they be effected only when reasonably necessary to maintain a fair and orderly market. In addition, the specialist must maintain a fair and orderly market during the liquidation.

After the liquidation, a specialist is required to re-enter the market on the opposite side of the market from the liquidating transaction to offset any imbalances between supply and demand. During any period of volatile or unusual market conditions resulting in a significant price movement in a specialist's specialty stock, the specialist's re-entry into the market must reflect, at a minimum, his or her usual level of dealer participation in the specialty stock. In addition, during such periods of volatile market conditions or unusual price movements, re-entry into the market following a series of transactions must reflect a significant level of dealer participation.

In our order approving the pilot program,[6] the Commission asked the NYSE to submit a report setting forth the criteria developed by the Exchange to determine whether any reliquifications by specialists were necessary and appropriate in connection with fair and orderly markets. The Commission also asked the NYSE to provide information regarding the Exchange's monitoring of liquidation transactions effected by specialists on any destabilizing tick. In addition, the Commission asked the NYSE to provide the following information in its report: (1) A review of all liquidation transactions effected by specialists on any destabilizing ticks; (2) a review of liquidating transactions by specialists to determine that the required Floor Official approval was obtained where necessary; (3) and a review of liquidating transactions in light of dealer participation levels and re-entry into the market in terms of timing and support.

the Commission's rationale for approving those procedures on a pilot basis. The discussion in the aforementioned order is incorporated by reference into this order.

[6] See 1991 Approval Order, *supra* note 1.

The NYSE submitted a report to the Commission on July 20, 1992 concerning the pilot program. As noted above, the NYSE concludes that the pilot program procedures appear to be working well in enabling specialists to reliquify appropriately to meet the needs of the market. The NYSE, therefore, concludes that specialists are using the Rule 104.10(6) pilot program in the manner that both the Commission and the Exchange envisioned. Accordingly, the Commission believes that it is reasonable to extend the pilot program for an additional three months to enable the Commission to fully review the NYSE report and to enable the pilot to continue without interruption during the Commission's review. During the next three months, the Commission would expect the NYSE to continue to monitor the pilot and update their report where appropriate. In particular, the NYSE should report any non-compliance with the rule and the action the NYSE has taken as a result of such non-compliance. The Commission requests that the NYSE submit its report on this subject by October 16, 1992.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. This will permit the pilot program to continue on an uninterrupted basis. In addition, the procedures the Exchange proposes to continue using are the identical procedures that were published in the **Federal Register** for the full comment period and were approved by the Commission.[7]

It therefore is ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change is approved for a three month period ending on November 27, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-21092 Filed 9-1-92; 8:45 am]

BILLING CODE 8010-01-M

[7] No comments were received in connection with the proposed rule change which implemented these procedures. See 1991 Approval Order, *supra* note 1.

[8] 15 U.S.C. 78s(b)(2) (1988).

[9] 17 CFR 200.30-3(a)(12) (1991).

[Release No. 34-31098; File No. SR-PSE 92-23]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to Market Maker Transactions Fees

August 26, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 29, 1992, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to increase the per contract fee for Market Maker transactions by $0.01. Currently, the per contract fees for manual Market Maker transactions in equity options and index options are $0.085 and $0.10, respectively. The Exchange proposes to increase these per contract charges to $0.095 for equity options and $0.11 for index options. The per contract market maker fee for transactions executed automatically through the PSE's POETS system [1] are currently $0.075, while the per contract charge for semi-automatic execution through POETS is $0.125. The Exchange proposes to increase these charges to $0.085 and $0.135, respectively, per contract.

The text of the proposed rule change is available at the Office of the Secretary, PSE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries,

[1] POETS is an acronym for the Pacific Options Exchange Trading System. It is an integrated system that provides for, among other things, the automatic execution of options orders, electronic limit order book functions, anti-quote capabilities, and automatic order routing.

set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The charge is being increased in order to fund an industry-wide options education and media program. All options exchanges and the Options Clearing Corporation are participants in the program.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(4), in particular, in that it provides for the equitable allocation of reasonable charges among its members and persons using its facilities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments were received from members, participants or others.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR-PSE-92-23 and should be submitted by September 23, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-21091 Filed 9-1-92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-92-25]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before September 23, 1992.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Mr. C. Nick Spithas, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9704.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on August 27, 1992.

Denise Donohue Castaldo,

Manager, Program Management Staff, Office of The Chief Counsel.

Petitions for Exemption

Docket No.: 23358.

Petitioner: Clarke Environmental Mosquito Management, Inc.

Sections of the FAR Affected: 14 CFR 91.313(c).

Description of Relief Sought: To extend Exemption No. 5010, as amended, which allows Clarke Environmental Mosquito Management, Inc., to carry passengers in its aircraft while in the restricted category within the conditions and limitations stated in its current exemption.

Docket No.: 25934.

Petitioner: Mr. William L. Morse.

Sections of the FAR Affected: 14 CFR 135.243(b)(3).

Description of Relief Sought: To extend Exemption No. 5137A, which allows Mr. William L. Morse to serve as pilot in command in day visual flight rule operations without having an instrument rating.

Docket No.: 26285.

Petitioner: Jet Management Group, Inc.

Sections of the FAR Affected: 14 CFR 135.165(B)(6) and (7).

Description of Relief Sought: To extend Exemption No. 5277 which allows Jet Management Group, Inc. to operate a Learjet 55B equipped with one high-frequency communications system in extended overwater operations.

Docket No.: 26810.

Petitioner: Air Ontario, Inc.

Sections of the FAR Affected: 14 CFR 91.715.

Description of Relief Sought: To allow Air Ontario, Inc. to operate foreign civil aircraft in the United States without

having to request special flight authorization for each operation conducted under § 91.715.

Docket No.: 26821.

Petitioner: MCI Telecommunications, Inc.

Sections of the FAR Affected: 14 CFR 61.57(d).

Description of Relief Sought: To authorize the pilot-in-command for MCI Telecommunications, Inc., holding an airline transport pilot certificate, to be allowed to maintain night takeoff and landing recency requirements through a combination of Phase II simulator checks and actual aircraft landings over longer intervals subject to additional restrictions.

Docket No.: 26877.

Petitioner: General Motors Air Transport Section.

Sections of the FAR Affected: 14 CFR 61.55

Description of Relief Sought: To permit General Motors Air Transport Section copilots to be trained and checked to the same standards as pilots-in-command. Copilots would be checked on their assigned aircraft at the same frequency required for pilots-in-command under § 61.58.

Docket No.: 26921.

Petitioner: Coastal Helicopters, Inc.

Sections of the FAR Affected: 14 CFR 135.143(c) (2)

Description of Relief Sought: To allow Coastal Helicopters, Inc., to install a Mode C, rather than a Mode S, transponder on its Bell 47G helicopter.

Docket No.: 26940.

Petitioner: Captain Frank P. Covie.

Sections of the FAR Affected: 14 CFR 121.383(c)

Description of Relief Sought: To allow Captain Frank P. Covie to serve as a pilot in part 121 air carrier operations after his 60th birthday.

Disposition of Petitions

Docket No.: 11366.

Petitioner: United States Custom Service.

Sections of the FAR Affected: 14 CFR 91.111(b), 91.117(a), (b), and (c), 91.209(a), and (d), 91.119(c), 91.127(c), and 91.159(a)

Description of Relief Sought/ Disposition: To amend Exemption No. 1459 from current §§ 91.111(b), 91.117(a), (b), and (c), 91.119(c), 91.127(c), 91.159(a), and 91.209(a), and (d) which allows the United States Custom Service to deviate from the pertinent provisions of the Federal Aviation Regulations that restrict aviation operations necessary to carry out its assigned law enforcement mission.

Partial Grant, August 14, 1992, Exemption No. 5504

Docket No.: 12227.

Petitioner: National Business Aircraft Association, Inc.

Sections of the FAR Affected: 14 CFR 91.119, 91.409, 91.501(a), 91.503 through 91.533, and 91.515(a) (1)

Description of Relief Sought/ Disposition: To extend Exemption No. 1637, as amended, which permits National Business Aircraft Association, Inc., to allow petitioner's members to use inspection programs required for large turbojet or turboprop powered airplanes for their small civil airplanes and helicopters. It also allows their operation of the aircraft under subpart F of part 91 of the Federal Aviation Regulations.

Grant, August 14, 1992, Exemption No. 1637Q

Docket No.: 078.

Petitioner: Drug Enforcement Administration.

Sections of the FAR Affected: 14 CFR 91.111(b), 91.117(a), (b), and (c), 91.119(c), 91.127(c), 91.159(a), and 91.209(a) and (d).

Description of Relief Sought/ Disposition: To amend Exemption No. 2181 from §§ 91.111(b), 91.117(a), (b) and (c), 91.119(c), 91.127(c), 91.159(a), and 91.209(a) and (d) of the Federal Aviation Regulations by extending its provisions. Exemption No. 2181 allows the DEA to deviate from the pertinent provisions of the FAR which constrain aviation operations necessary to carry out the assigned mission of enforcing Federal narcotics laws.

Partial Grant, August 14, 1992, Exemption No. 5506

Docket No.: 16230.

Petitioner: Federal Bureau of Investigation.

Sections of the FAR Affected: 14 CFR 91.111(b), 91.117(b), and (c), 91.119(b), (c) and (d), 91.123(a), 91.127(c), and 91.159(a), 91.209(a) and (d).

Description of Relief Sought/ Disposition: To amend Exemption No. 2397 from §§ 91.111(b), 91.117(b), and (c), 91.119(b), (c) and (d), 91.123(a), 91.127(c), and 91.159(a), 91.209(a) and (d) which allows the FBI to deviate from the pertinent provisions of the FAR which restrict aviation operations necessary to carry out its assigned law enforcement mission.

Partial Grant, August 14, 1992, Exemption No. 5505

Docket No.: 18324.

Petitioner: American Airlines.

Sections of the FAR Affected: 14 CFR 43.3 and 121.709(b)(3)

Description of Relief Sought/ Disposition: To extend Exemption No. 2678, as amended, which permits American Airlines to allow its properly trained and certificated flight engineers to stow passenger supplemental oxygen masks during flight and to make an entry in the aircraft maintenance logbooks in reference to that function.

Grant, August 24, 1992, Exemption No. 2678H

Docket No.: 21789.

Petitioner: Air Transport Association of America.

Sections of the FAR Affected: 14 CFR 61.49.

Description of Relief Sought/ Disposition: To extend Exemption No. 3474, as amended, which permits the airmen employees of the Air Transport Association of America (ATA) member airlines and similarly situated part 121 certificate holders to apply for retesting without waiting 30 days after a second (or subsequent) failure of the written or flight test, provided that a Part 121-authorized instructor has given that applicant additional flight ground instruction, as appropriate, and finds that applicant competent to pass the test.

Grant, August 18, 1992, Exemption No. 3474F

Docket No: 23492.

Petitioner: United States Hang Gliding Association, Inc.

Sections of the FAR Affected: 14 CFR 103.1(a)

Description of Relief Sought/ Disposition: To extend Exemption No. 4721, as amended, which permits members of the United States Hang Gliding Association, Inc. to operate two-place unpowered ultralight vehicles for the purposes of sport, training, and recreation.

Grant, August 14, 1992, Exemption No. 4721c

Docket No: 23576.

Petitioner: State of Florida, Florida Marine Patrol.

Sections of the FAR Affected: 14 CFR 91.119(c)

Description of Relief Sought/ Disposition: To amend Exemption No. 3936A which provides the Florida Marine Patrol continued relief from the pertinent provisions of Part 91 of the FAR to conduct certain law enforcement and natural resource management air support operations on behalf of federal law enforcement agencies.

Denial, August 14, 1992, Exemption No. 3836B

Docket No: 24187.
Petitioner: Florida Department of Law Enforcement.
Sections of the FAR Affected: 14 CFR 91.111(b), 91.119(c), 91.159(a), and 91.209(a)
Description of Relief Sought/ Disposition: To extend the provision of Exemption No. 3596C which provides the Florida Department of Law Enforcement continued relief from the pertinent provisions of Part 91 of the FAR in order to conduct law enforcement air support.

Partial Grant, August 14, 1992, Exemption No. 3596D

Docket No: 25024.
Petitioner: Institute of Aviation, University of Illinois.
Sections of the FAR Affected: 14 CFR Part 141, Appendices A, C, D, F, and H.
Description of Relief Sought/ Disposition: To extend Exemption No. 4719, as amended, which allows the University of Illinois Institute of Aviation to continue to train its students to a performance standard in lieu of meeting flight time requirements.

Grant, August 10, 1992, Exemption No. 4719C

Docket No: 25177.
Petitioner: United States Coast Guard.
Sections of the FAR Affected: 14 CFR 91.117 (b) and (c), 91.119(c), 91.127(c), 91.159(a), and 91.209(a).
Description of Relief Sought/ Disposition: To extend Exemption No. 5231 granting relief from the provisions of §§ 91.117(b) and (c), 91.127(c), 91.159(a), and 91.2309(a) of the Federal Aviation Regulations (FAR). The United States Coast Guard further requests exemption from § 91.119(c) of the FAR which it had been denied previously. A grant of this petition would permit the USCG to continue performing certain aircraft operations in noncompliance with the above regulations governing aircraft speed, use of aircraft lights, operations on or in the vicinity of an airport, and visual flight rules cruising altitudes or flight levels.

Partial Grant, August 13, 1992, Exemption No. 5231A

Docket No: 25494.
Petitioner: Bohlke International Airways.
Sections of the FAR Affected: 14 CFR 43.3(g).
Description of Relief Sought/ Disposition: To extend Exemption No. 4911 which allows appropriately trained and certificated pilots employed by Bohlke International Aiways to remove and install aircraft cabin seats and certain stretcher and base assemblies in BIA's Aero Commander Model 681 and Cessna Model 402 aircraft.

Grant, August 10, 1992, Exemption No. 5500

Docket No: 25844.
Petitioner: 4 Air.
Sections of the FAR Affected: 14 CFR 43.3(g).
Description of Relief Sought/ Disposition: To extend Exemption No. 5242 which allows properly trained pilots employed by 4 W Air to convert the cabins of certain aircraft from passenger to cargo configurations.

Grant, August 10, 1992, Exemption No. 5242A

Docket No: 26668.
Petitioner: Metro Air Charter, Inc.
Sections of the FAR Affected: 14 CFR 43.3(g).
Description of Relief Sought/ Disposition: To allow properly trained pilots employed by Metro Air Charter, Inc. to convert the cabins of its aircraft operated under FAR Part 135 from passenger to cargo configurations, and the converse, by removing and replacing passenger seats when such aircraft are specifically designed for that purpose.

Grant, August 14, 1992, Exemption No. 5508.

Docket No: 26600.
Petitioner: Keflavik Navy Flying Club.
Sections of the FAR Affected: 14 CFR 91.411(b) and 1.413(c).
Description of Relief Sought/ Disposition: To allow Icelandair Maintenance to perform the tests and inspections of the ATC transponder and the pilot static systems installed in a Piper Warrior PA-28-151, serial number 7415694 and a Grumman AA-1B, serial number 0156 model aircraft.

Grant, August 24, 1992, Exemption No. 5513

Docket No.: 26669.
Petitioner: Evergreen International Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.583(a)(8)
Description of Relief Sought/ Disposition: To permit Evergreen International Airlines, Inc. to provide transportation of its Boeing-747 cargo airplanes for up to four dependents of its employees to any destination, without complying with certain passenger-carrying requirements in Part 121, even though the dependents are not accompanied by their employee/ sponsor, or without regard as to whether the employee sponsor is travelling on company business.

Partial Grant, August 18, 1992, Exemption No. 5509

Docket No.: 26681.
Petitioner: Airlift International, Inc.
Sections of the FAR Affected: 14 CFR 121.356(a).
Description of Relief Sought/ Disposition: To permit Airlift International, Inc. to operate three Fairchild F-27 and one FH-227 aircraft without Traffic Alert and Collison Avoidance System II equipment.

Denial, July 30, 1992, Exemption No. 5489

Docket No.: 26730.
Petitioner: New York Helicopter.
Sections of the FAR Affected: 14 CFR 135.244(a)(1).
Description of Relief Sought/ Disposition: To permit the reduction of the number of hours of operating experience (IOE) that would otherwise be required for a pilot to serve as a pilot in command of a Bell 206 helicopter during operations conducted by New York Helicopter (NYH) as a Commuter Air Carrier. New York Helicopter would substitute both previous flight time, as PIC in the Bell 206 helicopter, with NYH, and previous IOE with NYH, in another make and model of helicopter.

Partial Grant, August 14, 1992, Exemption No. 5507

Docket No.: 26753.
Petitioner: Regional Airline Association.
Sections of the FAR Affected: 14 CFR 61.49(a).
Description of Relief Sought/ Disposition: To permit an applicant who fails a written or practical test for the second or subsequent time to apply for retesting before 30-days have expired, as would be otherwise required.

Grant, August 3, 1992, Exemption No. 5492

Docket No.: 26793.
Petitioner: Delta Air Lines, Inc.
Sections of the FAR Affected: 14 CFR 121.310(f)(5).
Description of Relief Sought/ Disposition: To permit the installation of a door between passenger compartments on the McDonnell Douglas MD-11 (MD-11) airplane.

Grant, August 10, 1992, Exemption No. 5413B

Docket No.: 26820.
Petitioner: Mazzei Flying Service.
Sections of the FAR Affected: 14 CFR 141.65.
Description of Relief Sought/ Disposition: To allow Mazzei Flying Service to hold examining authority for

the flight instructor and airline transport pilot written tests.

Denial, August 18, 1992, Exemption No. 5511

Docket No.: 26840.
Petitioner: Seneca Flight Operations.
Sections of the FAR Affected: 14 CFR 91.511(a)(2) and 135.165(b)(5)(6) and (7).
Description of Relief Sought/ Disposition: To allow Seneca Flight Operations to conduct extended overwater operations equipped with one long-range navigational system and one high-frequency communications system.

Grant, August 11, 1992, Exemption No. 5502

Docket No.: 26846.
Petitioner: University of North Dakota.
Sections of the FAR Affected: 14 CFR 141.65.
Description of Relief Sought/ Disposition: To allow University of North Dakota to hold examining authority for the flight instructor-airplane and flight instructor-instrument written tests.

Grant, August 19, 1992, Exemption No. 5512

Docket No.: 26869.
Petitioner: Practical Flight Systems, Inc.
Sections of the FAR Affected: 14 CFR 61.55(b)(2); 61.56(b)(1) 61.57(c) and (d); 61.58(c)(1) and (d); 61.63(d)(2) and (3); 61.67(d)(2); 61.157(d)(1) and (2) and (e)(1) and (2); part 61, appendix A; and part 121, appendix H.
Description of Relief Sought/ Disposition: To permit Practical Flight Systems, Inc. to use FAA-approved simulators to meet certain training and testing requirements of part 61 of the FAR.

Grant, August 18, 1992, Exemption No. 5497

Docket No.: 26883.
Petitioner: Tech Aviation.
Sections of the FAR Affected: 14 CFR 141.27(c)(2).
Description of Relief Sought/ Disposition: To permit Tech Aviation to reapply for a provisional pilot school certificate in less than 180 days after the date of the expiration of its prior certificate.

Grant, August 11, 1992, Exemption No. 5503

Docket No.: 26915.
Petitioner: Pan Am International Flight Academy.
Sections of the FAR Affected: 14 CFR 61.56(b)(1); 61.57(c) and (d); 61.58(c)(1) and (d); 61.63(d)(2) and (3); 61.67(d)(2); 61.157(d)(1) and (2) and (e)(1) and (2); part 61, appendix A; and part 121, appendix H.
Description of Relief Sought/ Disposition: To permit Pan Am International Flight Academy to use FAA-approved simulators to meet certain training and testing requirements of Part 61 of the FAR.

Grant, August 18, 1992, Exemption No. 5495

Docket No.: 26932.
Petitioner: Aerocar Aviation Corporation.
Sections of the FAR Affected: 14 CFR 91.805.
Description of Relief Sought/ Disposition: To allow the one-time operation of two noncomplying Stage 1 B-727-100 aircraft (Registration No. PP-JF, Serial No. 20419, and Registration No. PP-LT, Serial No. 19250) from Brazil to Miami, Florida, for disposition as scrap.

Denial, August 11, 1992, Exemption No. 5501

[FR Doc. 92-21096 Filed 9-1-92; 8:45 am]

BILLING CODE 4910-13-M

Proposed Modification of the Terminal Control Area at Salt Lake City, UT, Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Informal Airspace Meeting.

SUMMARY: This notice announces a fact-finding informal airspace meeting to solicit information from airspace users and others concerning a proposal to modify the Salt Lake City, UT, Terminal Control Area (TCA). We will discuss the possibility of redesigning the TCA and raising the floor to 7,000 feet mean sea level to better accommodate en route operations proceeding north and south.

DATES: Any comments persons wish to submit for discussion at the meeting must be received on or before October 2, 1992. The informal airspace meeting will be held on October 28, 1992.

ADDRESSES: The location of the informal airspace meeting is as follows:

Date: Wednesday, October 28 1992.
Time: 7:00 p.m.
Location: Salt Lake City Civil Air Patrol Building, 640 North 2360 West, Salt Lake City, UT 84122.

Send comments on the proposal in triplicate to: Manager, Salt Lake City, UT, Airport Traffic Control Tower; Attn: Rebecca Hinz; Federal Aviation Administration; P.O. 22085, AMF; Salt Lake City, UT 84122.

FOR FURTHER INFORMATION CONTACT: Rebecca Hinz or Murry Hess; Salt Lake City, UT, Airport Traffic Control Tower; P.O. Box 22085, AMF; Salt Lake City, UT 84122; telephone: (801) 524-5190.

SUPPLEMENTARY INFORMATION:

Meeting Procedures

(a) This meeting will be informal in nature and will be conducted by a representative of the Administrator, FAA Northwest Mountain Region. Each participant will be given an opportunity to make a presentation, although a time limit may be imposed.

(b) This meeting will be open to all persons on a space-available basis. There will be no admission fee or other charge to attend and participate.

(c) Any person wishing to make a presentation to the panel will be asked to sign in and estimate the amount of time needed for such presentation so that timeframes can be established. This will permit the panel to allocate an appropriate amount of time for each presenter. The panel may allocate the time available for each presentation in order to accommodate all speakers. This meeting will not be adjourned until everyone on the list has had an opportunity to address the panel. This meeting may be adjourned at any time if all persons present have had the opportunity to speak.

(d) Position papers or other handout material relating to the substance of the meeting may be accepted. Participants wishing to submit handout material should present *three* copies to the presiding officer. There should be additional copies of each handout available for other attendees.

(e) This meeting will not be formally recorded. However, a summary of the comments made at this meeting will be filed in the docket.

Agenda

Opening Remarks and Discussion of Meeting Procedures
Public Presentations
Closing Comments

Issued in Washington, DC, on August 27, 1992.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92-21094 Filed 9-1-92; 8:45 am]

BILLING CODE 4910-13-M

Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In July 1992, there were eight applications approved.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Act of 1990 (Title IX of the Omnibus Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC APPLICATIONS APPROVED

Public Agency: Greater Rockford Airport Authority, Rockford, Illinois.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00

Total Approved Net PFC Revenue: $1,177,348.

Earliest Permissible Charge Effective Date: October 1, 1992.

Duration of Authority to Impose: October 1, 1996.

Class of Air Carriers not Required to Collect PFC's

Air taxi operators.

Determination: Approved. The FAA has determined that the proposed class accounts for less than 1 percent of the airport's total annual enplanements.

Brief Description of Projects Approved to Impose and Use

Acquire parcel P,
Rehabilitate Runway 18–36,
Environmental assessment,
Overlay Taxiway C, the south parallel taxiway to Runway 18–36, and the west "GA" apron, and extend box culvert,
Update Part 150 study,
Snow removal equipment,
Construct parallel taxiway to Runway 6–24,
Extend Runway 18 and parallel taxiway,
Land acquisition (phase 1),
Snow removal equipment,
Overlay Runway 12–30,
Land acquisition (phase 2),
Snow removal equipment,
Land Acquisition for runway approaches,
Acquire snow and fire equipment,
Upgrade security to meet Part 107.14.

Brief Description of Projects Approved to Impose

Complete extension of Runway 6,
Construct parallel taxiway to Runway 6 extension.

Decision Date: July 24, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Louis Yates, Manager, Chicago Airports District Office, 2300 East Devon, Room 258, Des Plains, Illinois 60018, (312) 694–7335.

Public Agency: Maryland Aviation Administration, Baltimore, Maryland.

Application Type: Impose PFC.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $141,866,000.

Earliest Permissible Charge Effective Date: October 1, 1992.

Duration of Authority to Impose: September 1, 2002.

Class of Air Carriers not Required to collect PFC's

Part 135 operators—charter carriers/air taxis.

Determination: Approved. The FAA has determined that the proposed class accounts for less than 1 percent of the airport's total annual enplanements.

Brief Description of Projects Approved to Impose

New international terminal,
Terminal roadway improvements,
Runway 10/28 extension.

Brief Description of Projects Approved in Part

Expansion of BWI fire/rescue facility.

Decision Date: July 27, 1992.

FOR FURTHER INFORMATION CONTACT: Robert B. Mendez, Manager, Washington Airport District Office, 101 West Broad Street, Suite 300, Falls Church, Virginia, 22046 (703) 285–2570.

Public Agency: Columbus Municipal Airport Authority, Columbus, Ohio.

Application type: Impose PFC.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $7,341,707.

Earliest Permissible Charge Effective Date: October 1, 1992.

Duration of Authority to Impose: March 1, 1994.

Class of Air Carriers Not Required to Collect PFC's

Air taxi/commercial operators.

Determination: Approved. The FAA has determined that the proposed class accounts for less than 1 percent of the airport's total annual enplanements.

Brief Description of Projects Approved to Impose and Use

Wonderland acquisition/relocation
Plans and specifications—school soundproofing,
Automated identification system (phase 3),
Security vehicles,
Relocate Taxiway "B" from Taxiway "A" to "C–3" (engineering)
Southeast cargo apron, taxiway to Runway 13–31, and tug road,
Boundary survey,
Top trees—approach to Runway 23,
Runway 5 easements,
Relocate Taxiway "B" from Taxiway "A" to Taxiway "C–3" (construction),
Relocate Taxiway "C" (phase 1),
Relocate Taxiway "C" (phase 2),
Soundproof schools (phase 3),
Noise monitoring,
Residential soundproofing,
Maintenance runup pad,
Southeast cargo apron (construction),
Relocate Taxiway "B" (phase 2) (engineering),
Relocate Taxiway "B" (phase 2) (construction),
Relocate Taxiway "C" (phase 3),
Escalator construction,
Crack seal and seal coat terminal apron,
Stabilized shoulders Runway 28L–10R,
Electronic monitoring of airfield lighting and vault work (engineering),
North concourse apron,
Stabilized shoulder—Runway 28L–10R and Runway 10R blast pad (construction),
Relocate lights Taxiway "G",
Replace Runway 5–23 lighting cable,
Snow removal equipment—three heavy trucks with snow plows,
Snow removal equipment—medium weight truck with plow,
Snow removal equipment—three spreaders,
Communication and closed circuit television system,
North Concourse Expansion (Engineering).

Brief Description of Projects Approved To Impose at Bolton Field Airport

Snow removal equipment/material storage building,
Overlay alpha ramp,
Snow removal truck,
T-hanger apron and taxiway,
Crosswind runway.

Decision date: July 14, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Serini, Manager Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, MI 48111 (313) 487–7300.

Public Agency: Erie Municipal Airport Authority, Erie, Pennsylvania.

Application Type: Impose and Use PFC Revenue.

PFC level: $3.00.

Total approved PFC net revenue: $1,997,885.

Earliest Permissible Charge Effective Date: October 1, 1992.

Duration of Authority to Impose: June 1, 1997.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved To Impose and Use

Airport improvement program (AIP) 8–87 easements,
AIP 13–90 Federal Inspection Facility and Runway 20 rehabilitation,
AIP 14–90 apron expansion, security improvements, runway 10–28 taxiway conversion, design Runway 6–24 rehabilitation,
AIP 15–91 and 16–92 acquire property to provide tower line-of-sight,
Rehabilitate Runway 6–24,
Material/equipment storage,
Terminal building remodeling,
Noise mitigation (phase 1),
Runway 6–24 extension—environmental assessment and planning,
Rehabilitate cargo apron,
Replace terminal heating, ventilation, and air conditioning equipment,
Apron lighting,
Taxiway C rehabilitation,
Commuter walkway.

Brief Description of Projects Approved To Impose

Safety equipment,
Terminal handicapped access,
Security Equipment: patrol vehicle; command post; public safety office construction.

Brief Description of Projects Disapproved

Telephone System.

Determination: This project is not AIP eligible, and, therefore, is not PFC eligible. The EMAA request total PFC funding for this project.

Decision Date: July 21, 1992.

FOR FURTHER INFORMATION CONTACT: L.W. Walsh, Manager Harrisburg Airport District Office, 3911 Hartzdale Dr. suite 1, Camp Hill, PA 17011 (717) 782–4548.

Public Agency: City of Worcester, Worcester, Massachusetts.

Application Type: Impose PFC.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $2,301,382.

Earliest Permissible Charge Effective Date: October 1, 1992.

Duration of Authority to Impose: October 1, 1997.

Class of Air Carriers not Required to Collect PFC's: None.

Brief Description of Projects Approved To Impose

Reconstruct terminal apron and Taxiway "B",
Install lighting and groove Runway 11–29,
Construction taxiway and install fencing.

Decision Date: July 28, 1992.

FOR FURTHER INFORMATION CONTACT: Priscilla A. Soldan, Airports Program Specialist, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803 (617) 273–7054.

Public Agency: Port Authority of New York and New Jersey, New York, New York.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue to be Collected at John F. Kennedy International Airport (JFK): $109,980,000.

Total Net PFC Revenue to be Collected at LaGuardia Airport (LGA): $87,420,000.

Total Approved Net PFC Revenue to be Collected at Newark International Airport (EWR): $84,600,000.

Earliest Permissible Charge Effective Date: October 1, 1992.

Duration of Authority to Impose: August 1, 1995.

Class of Air Carriers Not Required to Collect PFC's: Air taxis, except commuter air carriers.

Determination: Approved. The members of the excluded class differ at each airport. Carriers should review specific application for the appropriate airport or consult with the Port Authority to determine if they are a member of the class excluded from PFC collection at a particular airport.

Brief Description of Projects Approved To Impose and Use

JFK/LGA automated guideway transit (AGT)—initial phase.

Brief Description of Projects Approved To Impose

Passenger distribution system

Brief Description of Projects Withdrawn

JFK/LGA AGT implementation (phases 1 and 2).

Determination: The Port Authority of New York and New Jersey withdrew this project from consideration by letter dated July 21, 1992.

Decision Date: July 23, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Brito, Manager, New York Airports District Office, 181 South Franklin Ave, rm. 305, Valley Stream, NY, 11581 (718) 553–1882.

Issued in Washington, DC, on August 24, 1992.

Leonard L. Griggs, Jr.,
Assistant Administrator for Airports.

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED

State, airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date*
Alabama:					
Huntsville Intl-Carl T Jones Field, Huntsville	3/6/1992	53	$20,831,051	6/01/1992	11/01/2008
Muscle Shoals Regional, Muscle Shoals	2/18/1992	3	104,100	6/01/1992	2/01/1995
California:					
Metropolitan Oakland International, Oakland	6/26/1992	3	8,736,000	9/01/1992	9/01/1993
Palm Springs Regional, Palm Springs	6/25/1992	3	44,612,350	10/01/1992	6/01/2019
San Jose International, San Jose	6/11/1992	3	29,228,826	9/01/1992	8/01/1995
Lake Tahoe, South Lake Tahoe	5/01/1992	3	928,747	8/01/1992	3/01/1997
Colorado:					
Denver International (new), Denver	4/28/1992	3	2,330,734,321	7/01/1992	1/01/2026
Florida:					
Sarasota-Bradenton, Sarasota	6/29/1992	3	38,715,000	8/01/1992	9/01/2005
Georgia:					
Savannah International, Savannah	1/23/1992	3	39,501,502	7/01/1992	3/01/2004
Illinois:					
Greater Rockford, Rockford	7/24/1992	3	1,177,348	10/01/1992	10/01/1996
Capital, Springfield	3/27/1992	3	682,306	6/01/1992	5/1/1994
Massachusetts:					
Worcester Municipal, Worcester	7/28/1992	3	2,301,382	9/01/1992	10/01/1997

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State, airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date*
Maryland:					
Baltimore-Washington International, Baltimore	7/27/1992	3	141,866,000	10/01/1992	9/01/2002
Minnesota:					
Minneapolis-St Paul International, Minneapolis	3/31/1992	3	23,408,819	6/01/1992	4/01/1993
Mississippi:					
Golden Triangle Regional, Columbus	5/08/1992	3	1,693,211	8/01/1992	9/01/2006
Gulfport-Biloxi Regional, Gulfport-Biloxi	4/3/1992	3	384,028	7/01/1992	12/01/1993
Hattiesburg-Laurel Regional, Laurel-Hattiesburg	4/15/1992	3	119,153	7/01/1992	1/01/1998
Montana:					
Missoula International, Missoula	6/12/1992	3	1,900,000	9/1/1992	8/01/1997
New Jersey:					
Newark International, Newark	7/23/1992	3	84,600,0000	10/01/1992	08/01/1995
Nevada:					
McCarran International, Las Vegas	2/24/1992	3	426,054,380	6/01/1992	02/01/2004
New York:					
Greater Buffalo International, Buffalo	5/29/1992	3	189,873,000	8/01/1992	3/01/2026
John F Kennedy International, New York	7/23/1992	3	109,980,000	10/01/1992	8/01/1995
Laguardia, New York	7/23/1992	3	87,420,000	10/01/1992	8/01/1995
Ohio:					
Akron-Canton Regional, Akron	6/30/1992	3	3,594,000	9/01/1992	8/01/1996
Port Columbus International, Columbus	7/14/1992	3	7,341,707	10/01/1992	03/01/1994
Oklahoma:					
Lawton Municipal, Lawton	5/08/1992	2	334,078	8/01/1992	1/01/1996
Tulsa International, Tulsa	5/11/1992	3	8,450,000	8/01/1992	8/01/1994
Oregon:					
Portland International, Portland	4/8/1992	3	17,961,850	7/01/1992	7/01/1994
Pennsylvania:					
Erie International, Erie	7/21/1992	3	1,997,885	10/01/1992	6/01/1997
Philadelphia International, Philadelphia	6/29/1992	3	76,169,000	9/01/1992	7/01/1995
Tennessee:					
Memphis International, Memphis	5/28/1992	3	26,000,000	8/1/1992	12/01/1994
Virginia:					
Charlottesville-Albemarle, Charlottesville	6/11/1992	2	255,559	9/01/1992	11/01/1993

*The estimated charge expiration date is subject to change due to the rate of collection and actual allowable project costs.

[FR Doc. 92-21095 Filed 9-1-92; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Public Meeting to Discuss the Permanent International Association of Road Congresses (PIARC)

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FHWA announces that a public meeting will be held on September 25, 1992, at 400 7th Street, SW., room 4200, Washington, DC. The meeting will begin at 1:30 p.m. and end at 5 p.m. This meeting is intended as a public forum for the exchange of information related to U.S. participation in the Permanent International Association of Road Congresses. Discussions will center on the review of highway-related technical activities under way in PIARC and opportunities for the United States highway community to participate.

FOR FURTHER INFORMATION CONTACT: Mr. Donald Symmes (HPI-10), room 3327, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-9627. Office hours are from 9 a.m. to 5:30 p.m., e.t., Monday through Friday, except for legal Federal holidays.

Authority: 23 U.S.C. 315, 49 CFR 1.48.

Issued on: August 27, 1992.

T.D. Larson,

Administrator.

[FR Doc. 92-21076 Filed 9-1-92; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

[FRA Emergency Order No. 16, Notice No. 3]

Owners of Railroad Tank Cars; Railroads Modification of Emergency Order Requiring Inspection and Repair of Dual Diameter Tank Cars

The Federal Railroad Administration [FRA] of the United States Department of Transportation finds that Emergency Order No. 16, Notice No. 1 (57 FR 11900; April 7, 1992) and Notice No. 2 (57 FR 22014; May 26, 1992) should be modified. This Notice summarizes the status of the inspection and repair work performed to date and modifies the required sample size for small fleets.

Authority

Authority to enforce the Federal railroad safety laws, including laws pertaining to the transportation of hazardous materials by railroad, has been delegated by the Secretary of Transportation to the Federal Railroad Administrator. 49 CFR 1.49. Railroads, shippers of hazardous materials, and owners of tank cars are subject to FRA's safety jurisdiction under the Federal Railroad Safety Act of 1970, 45 U.S.C. 421, 438, and the Hazardous Materials Transportation Act, as amended, 49 App. U.S.C. 1804. FRA is authorized to issue emergency orders where an unsafe condition or practice creates "an emergency situation involving a hazard of death or injury to persons." 45 U.S.C. 432(a). These orders may immediately impose "such restrictions or prohibitions as may be necessary to bring about the abatement of such emergency situation." (*Ibid.*)

Background

On April 2, 1992, the FRA issued Emergency Order No. 16, effective 12:01 a.m. April 4, 1992 (57 FR 11900, April 7, 1992), requiring owners of dual-diameter tank cars to develop a sampling plan for inspecting such cars with a 99 percent

confidence level that no more than one percent of the dual-diameter cars of any given design type would contain a structural imperfection in the critical transition welds. Any defects discovered were to be repaired before returning the car to service and any discovery of a weld defect would subject all cars built to that design to an inspection requirement. Emergency Order No. 16 prohibited the loading or offering into transportation of any dual-diameter tank car until its owner had submitted a sampling plan and, once the plan had been submitted, the order further required cars that were part of the sample to be inspected before loading and not later than 60 days after the effective date of the order.

The FRA amended the order on May 26, 1992 by modifying the number of cars to be inspected in the initial 60 days; extending the time for completing inspections of cars included in the sample plans; specifying that the prohibited imperfections were those that may initiate crack growth; clarifying the identity of the "owner" of a tank car; and publishing an FRA approval of an alternative inspection protocol using ultra-sound technology.

Since issuance of the order, FRA has gained considerable insight into the structural integrity of dual-diameter design types. Unlike the car that failed near Dragon, Mississippi, many of these cars have sill structures with reinforcement plates extending beyond the large diameter circumferential weld. Such a design appears to redistribute the induced train action forces (i.e., draft, buff, vertical, and inertial loads) throughout the tank. In a letter dated April 8, 1992, Union Tank Car Company provided calculations showing that, depending on the thickness of the reinforcement plate and the tank shell, the extended-plate design will increase the theoretical fatigue life of the critical joint by a factor of 3.9 to 8.9. FRA's review of the Union calculations, combined with the results of the inspections reported thus far under this Emergency Order, shows that tank car designs calling for a reinforcement plate extending beyond the large diameter circumferential weld do not show the shell cracking that led to the failure at Dragon, Mississippi.

As of August 21, 1992, owners of tank cars under the inspection program have performed inspections of 2,201 tank cars, or 93 percent, of a sample size of 2,357, and 37 percent of a total population of 5,974 dual-diameter tank cars. Sampling was based on a hypergeometric distribution (finite lot size). Such a sampling scheme provides a high degree of confidence that the appearance of defects on non-inspected tank cars will be less than a pre-specified number, in this case 1 percent.

In response to Notice No. 1 of this Emergency Order, owners identified nine specific design types with car populations ranging from 100 to 1970 cars. Finite lot sizes (the number of cars of each population group required to be sampled) were developed based on the population of each design type of dual-diameter car. Despite its benefits, the problem with this method of choosing sample fleets it that it tends to impose a disproportionate burden on small fleet sizes, particularly those where the design type has fewer than 500 cars. For example, one car owner reported that, for his design type, hypergeometric distribution required him to look at over 78 percent of his fleet at the same time other, larger, fleets required inspection of only 25 percent of their total car population.

While it is important to choose an inspection level that will yield confidence in the objectives of the program, FRA believes that the inspection results to date on more than 2,200 tank cars are remarkably uniform and are consistent with equitably relieving the inspection burden on small populations of tank cars. It is plan to say that, other than the design removed from service following the complete shell failure at Dragon, no other designs have been similarly restricted despite the provision that *any* appearance of a structural defect that may initiated crack growth is the basis for removing all cars of the same design-type from service until inspected. It thus appears more likely than previously could be established that the crack phenomenon is related to a single design (or design feature) rather than being an inherent characteristic of the dual-diameter fleet as a whole.

It is FRA's judgement that, for design types with a population of less than 500, when owners successfully inspect at least 50 per cent of the population of that design type, they may be deemed to have established its serviceability. However, the threat of a dual-diameter shell failure remains at least a statistical possibility as long as any of these cars are in service and FRA will continue to insist that discoveries of structural defects in the critical area established in Notice No. 1 (that is, along the A1, A2, B1 and B2 circumferential welds, two inches on either side of the weld and within twenty-four inches of either side of the lower longitudinal centerline) that may initiate crack growth be immediately reported.

Finding and Order

I find that the emergency situation involving a hazard of death or injury to persons that led to the issuance of Emergency Order No. 16, has not been completely abated and, accordingly, pursuant to the authority of section 203 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 432), delegated to me by the Secretary of Transportation (49 CFR 1.49), it is ordered that Emergency Order No. 16, Notice No. 1, as amended by Notice No. 2, be further amended as follows:

1. Owners of dual-diameter tank cars with a design type population of 500 or fewer cars (other than GATX Design 16 cars) who have inspected a minimum of 50 percent of the population of that design type and found no structural defect that may initiate crack growth are relieved of the duty of inspecting, under Emergency Order No. 16 as amended, the remaining non-inspected cars of that design type now listed as part of a sample plan.

2. Owners of dual-diameter tank cars who find, whenever and by whatever means, an imperfection as defined in Appendix W of the tank car Manual, and the imperfection is a structural defect that may initiate crack growth, shall immediately notify FRA and any other owners of cars built to that design type (to the extent the owner knows of such other owners). Thereafter, owners of cars of that design type must ensure that all such cars are inspected in accordance with paragraph 8 of Notice No. 1 of this Order or with the alternative ultra-sound techniques authorized by Notice No. 2 before permitting any further loading of such cars.

Relief

Tank car owners may obtain relief from this Order by performing the inspections and making the reports as required.

Penalties

Each violation of this Emergency order shall subject the person committing such violation to a civil penalty of up to $20,000. 45 U.S.C. 432, 438. FRA may, through the Attorney General, also seek injunctive relief to enforce this order. 45 U.S.C. 439.

Notice to Affected Persons

Notice of this Order will be provided by publishing it in the **Federal Register**. Copies of this Notice No. 3 of Emergency Order No. 16 were sent by mail or facsimile prior to publication to the Association of American Railroads, the American Short Line Railroad

Association, the Regional Railroads of America, the Railway Progress Institute, all members of the AAR Tank Car Committee, and to owners of dual-diameter tank cars as follows: ACF Industries, Inc., Aeropres Corp., Bay Cities Gas, Canadian Enterprise Gas Products Ltd., CGTX, Inc., Chevron U.S.A. Products Company, Coastal Chem, Inc., CONOCO Inc., Continental Tank Car Corporation, General American Transportation Corporation, GLNX Corporation, Home Oil Company Limited, Mallard Transportation Company, Mobile Oil Corporation, Petrosol International, Inc., Phillips 66 Company, PLM Transportation Equipment Corp., SAZ Transportation Corporation, Suburban Propane/Petrolane, Sun Refining and Marketing Company, Texas Petrochemicals Corporation, Trident NGL, Inc., Union Tank Car Company, United States Rail Services, Inc., Vista Chemical Company, Willard Grain & Feed Inc., and ZIP Transportation Company, Inc.

Review

Opportunity for formal review of this Emergency Order will be provided in accordance with section 203(b) of the Federal Railroad Safety Act of 1970, 45 U.S.C. 432(b), and section 554 of title 5 of the United States Code. Administrative procedures governing such review are found in 49 CFR part 211 (see § 211.47, .71–.75)..

Effective Date

This amendment to Emergency Order No. 16, Notice No. 1 and 2, shall be effective immediately upon issuance.

Issued in Washington, DC on August 27, 1992.

Gilbert E. Carmichael,

Administrator.

[FR Doc. 92–21147 Filed 9–1–92; 8:45 am]

BILLING CODE 4910-06-M

Research and Special Programs Administration

[Notice No. 92–8]

International Standards on the Transport of Dangerous Goods; Request for Comments

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Request for comments.

SUMMARY: The RSPA Associate Administrator for Hazardous Materials Safety on behalf of the Department of State represents the United States at meetings of the United Nations Committee of Experts on the Transport of Dangerous Goods in Geneva, Switzerland. The Committee is responsible for the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations) which form the basis for the International Civil Aviation Organization (ICAO) Technical Instructions on the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), and the International Maritime Organization (IMO) International Maritime Dangerous Goods Code (IMDG Code). Through recent amendments to the U.S. Hazardous Materials Regulations (HMR; 49 CFR parts 100–180), U.S. regulations were substantially aligned with the UN Recommendations. While the UN Committee will consider many issues affecting the UN Recommendations at its seventeenth session in December 1992, RSPA is formally requesting comments on (1) whether the acute oral toxicity criterion for toxic solids should be amended and (2) whether the label identifying toxic substances of minor hazard should be revised.

DATES: Comments must be received on or before September 18, 1992.

FOR FURTHER INFORMATION CONTACT: Frits Wybenga, telephone (202) 366–0656, International Standards Coordinator for Hazardous Materials Safety, RSPA, Department of Transportation, Washington, DC 20590–0001, office hours 7:15 a.m.–3:45 p.m.

ADDRESSES: Comments to this notice should reference the notice number and be addressed to the Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard showing the notice number. The Dockets Unit is located in Room 8419 of the Nassif Building, 400 Seventh Street SW., Washington, DC 20590–0001. Telephone: (202) 366–5046. FAX number: (202) 366–3753. Public dockets may be reviewed between the hours of 8:30 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Acute Toxicity Criteria

Efforts are now underway in a number of international fora to develop internationally harmonized multiregulatory classification criteria for hazardous materials. The purpose of this work is to minimize the amount of testing of substances which may be subject to a variety of regulatory requirements (e.g., environmental, consumer protection, workplace safety and transport) in the various countries where the substance is produced, used or transported. The existing classification criteria used by various regulatory authorities are being considered in the development of the internationally harmonized multiregulatory criteria. The classification criteria contained in the UN Recommendations are among the criteria being considered.

Acute oral toxicity is the first hazard being considered in the effort to develop internationally harmonized multiregulatory classification criteria. The Organization for Economic Cooperation and Development (OECD) has hosted several meetings with the intent of developing international criteria for acute oral toxicity. These discussions have resulted in general agreement that the criteria for acute oral toxicity should be based on LD_{50} (lethal dose for 50 percent of the population of animals tested expressed in milligrams of substance per kilogram of body weight) values obtained using OECD test methods and that three levels of toxicity should be identified for regulatory purposes. General agreement has also been reached on a lower level LD_{50} value of 50 mg/kg and an upper level value of 2000 mg/kg. The upper level of 2000 mg/kg is not relevant to transport regulations. The need for the 5 mg/kg level already used in the UN Recommendations was acknowledged by the OECD group but not included as one of the defined levels.

Selection of a mid-range level has proven to be more contentious. Some participants in the OECD discussions advocate a mid-range level of 200 mg/kg, while others advocate using a value of 500 mg/kg. The majority favor the use of the 500 mg/kg value as the mid-range toxicity level. The UN Recommendations and the HMR (49 CFR 173.132(i)) currently used LD_{50} toxicity levels of 200 mg/kg for solids and 500 mg/kg for liquids in the criteria for differentiating between regulated and nonregulated substances. While noting the two different values contained in the transport criteria, the majority at the OECD meetings favor a single value at the mid-range toxicity level.

It was agreed at these OECD meetings that the UN Committee would reevaluate its criteria for acute oral toxicity in the light of these OECD discussions and that the UN Committee would provide OECD with its recommendations at the conclusion of

the December 1992, UN Committee meeting.

The internationally harmonized criteria for classification of hazardous materials for purposes of transportation, as contained in the UN Recommendations, are accepted worldwide through their incorporation in international modal transport regulations, the U.S. HMR and other national and regional regulations. Therefore, when multiregulatory criteria under development deviate from the criteria already contained in the UN Recommendations, changes to the HMR and international transport regulations may be required. With this potential impact in mind, it is important that each deviation be carefully considered and justified before a commitment is made at international meetings. In order to develop a U.S. position for the December meeting which may later serve as the basis for proposed amendments to the HMR, responses to the following questions are needed:

1. Should the transport criteria for acute oral toxicity be amended so that the level for liquids and solids is the same (e.g., 500 mg/kg)? Or, should a level of 500 mg/kg be selected for purposes of the internationally harmonized multiregulatory criteria with relief provided in the transport regulations for solids when the toxicity is shown to be less than 200 mg/kg?

2. What would be the impact of shifting the acute oral toxicity level for solids from 200 mg/kg to 500 mg/kg in transport regulations?

At the present time, RSPA favors establishing a single mid-range value of 500 mg/kg and considers that maintaining a separate value of 200 mg/kg for solids within the transport regulations would result in substantial confusion between information required by workplace safety and transport regulations.

Label Identifying Toxic Substances of Minor Danger

Discussions on the development of internationally harmonized multiregulatory classification criteria and recent decisions of the UN Sub-Committee of Experts on the Transport of Dangerous Goods compel RSPA to reconsider the need for the label identifying toxic substance of minor danger.

The UN Recommendations currently include two different labels for purposes of identifying substances that meet the criteria for toxic substances of Division 6.1. A label incorporating a skull and cross bones symbol is used for substances which pose high (packing group I) and medium (packing group II) danger. This label is referred to as the division 6.1 packing group I and II label. For substances with a minor toxicity danger (packing group III) a label incorporating an ear of wheat with an "X" through it is prescribed. This label is referred to as the St. Andrew's cross label and is described in 49 CFR 172.431. In the case of the St. Andrew's cross label, the UN Recommendations allow the inscription "HARMFUL" and "STOW AWAY FROM FOODSTUFFS" to be placed on the label. Due to the allowed inscription, the label is also frequently referred to as the "harmful" label.

The European Joint Meeting of the RID Safety Committee and the Working Party on the Transport of Dangerous Goods (Joint Meeting) is presently incorporating the UN Recommendations' provisions applying to toxic substances into European regulations for highway and rail transport of dangerous goods. At the sixth session of the UN Sub-Committee, over the objections of the U.S. representative, the Joint Meeting proposed and the UN Sub-Committee tentatively adopted, amendments affecting the proper shipping names of the generic entries (i.e., "not otherwise specifies" entries) for substances which pose a danger of toxicity at the packing group III level. This change would substitute the word "harmful" for the word "toxic" in the generic proper shipping names for substances meeting the criteria for Division 6.1 when the toxicity danger is at the packing group III level. The basis for using the word "harmful" is that the St. Andrew's cross label is also referred to as the "harmful" label. RSPA disagrees with the substitution of the word "harmful" for the word "toxic" because the word "harmful" does not convey the nature of the hazard posed by a substance any more effectively than the words "hazardous" or "dangerous". As an example of a result of this proposal, a substance ge dm2:a02se3.107currently transported under United Nations number "1992" as FLAMMABLE LIQUID, TOXIC, N.O.S. would, if the proposal is adopted, be transported as FLAMMABLE LIQUID, HARMFUL, N.O.S. when the toxicity hazard is at the packing group III level.

RSPA believes that the use of a different label for purposes of identifying packing group III toxic substances should be considered at this time for the following reasons:

1. The St. Andrew's cross label and the words which may be placed on the label wrongly imply that the substances meeting the packing group III toxicity criteria only pose a risk of food contamination and fails to convey other hazards such as dermal and inhalation.

2. As a result of the efforts to develop internationally harmonized multiregulatory classification criteria described above, other nontransportation-related regulatory agencies in both the U.S. and in other countries will identify these substances as toxic.

3. By substituting a different label for the St. Andrew's cross label, RSPA may reverse the UN Sub-Committee's tentative decision to substitute the word "harmful" for "toxic" as described above.

In its proposal to the UN Committee, RSPA would recommend that the same label that is currently used to identify packing group I and II toxic substances be used to identify packing group III substances. Because of the operational benefits of distinguishing between toxic substances of packing groups I and II from substances of packing group III, RSPA would also propose that the UN Recommendations allow "III" to be placed on the label in the case of a packing group III substance.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 92-21149 Filed 9-1-92; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: August 27, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0140.

Form Number: IRS Forms 2210 and 2210F.

Type of Review: Revision.

Title: Underpayment of Estimated Tax

by Individuals and Fiduciaries (Short Method and Regular Method (2210) Underpayment of Estimated Farmers and Fishermen (2210F).

Description: Internal Revenue Code section 6554 imposes a penalty for failure to pay estimated tax. This form is used by taxpayers to determine whether they are subject to the penalty and to compute the penalty if it applies. The IRS uses this information to determine whether the taxpayer is subject to the penalty, and to verify the penalty amount.

Respondents: Individuals or households, Farms, Businesses or other for-profit.

Estimated Number of Respondents/Recordkeepers: 900,000.

Estimated Burden Hours Per Respondents/Recordkeepers:

	Short method form 2210	Regular method form 2210	Form 2210F
Recordkeeping	7 min	13 min	33 min.
Learning about the law or the form	7 min	44 min	7 min.
Preparing the form	34 min	1 hr., 32 min	20 min.
Copying, assembling, and sending the form to the IRS.	20 min	46 min	20 min.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 2,856,250 hours.

Clearance Officer: Garrick Shear (202) 622-3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 92-21105 Filed 9-1-92; 8:45 am]

BILLING CODE 4830-01-M

Establishment of the Department of the Treasury Tax Policy Advisory Group

ACTION: Announcement of Establishment.

SUMMARY: The Department of the Treasury has established a Treasury Tax Policy Advisory Group. The primary purpose of this Group is to provide an organized public forum for an open discussion of relevant tax policy issues between Treasury Department officials and representatives of the public.

The Group will provide on-going observations and suggestions on a number of tax policy matters, including: (1) Priority of topics for consideration; (2) development of broad-based policy initiatives; (3) tax policy studies; (4) the models, methodology, and data used to develop and assess the impact of various tax policy proposals; and (5) overall management of the tax policy function. The Group will be instrumental in providing advice on issues that range from the taxation of multinational business activities to issues of concern for small businesses, individual and low-income taxpayers, state and local governments and consumer organizations.

SUPPLEMENTARY INFORMATION: The Group will report to the Treasury Department Assistant Secretary for Tax Policy. Group members are not paid for their time and services; but consistent with Federal regulations, they will be reimbursed for their travel and lodging to attend three to four two-day meetings each year.

The Department of the Treasury is interested in broad-based representation in all aspects of tax policy. No person who is required to register under the Foreign Agents Registration Act as an agent or representative of a foreign principal may serve on a Federal advisory committee. Anyone who wishes to be considered for participation on the Group should advise the Department of the Treasury, Office of Tax Policy, 1500 Pennsylvania Avenue, NW., room 3120 MT, Washington, DC 20220, by September 15, 1992. Questions may be directed to Gary J. Gasper, Senior Advisor to the Assistant Secretary (Tax Policy) on (202) 622-0160 (not a toll-free number).

Alan J. Wilensky,

Deputy Assistant Secretary, (Tax Policy).

[FR Doc. 92-21059 Filed 9-1-92; 8:45 am]

BILLING CODE 4810-25-M

Office of the Comptroller of the Currency

[Docket No. 92-16]

Branch Closings

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of the proposed advisory statement and request for comment.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is requesting comment on its proposed guidance to national banks as set forth in the attached proposed advisory statement regarding branch closings by national banks and insured Federal branches. The full text of the proposed advisory statement is provided in this notice. This notice is intended to seek comment on the proposed guidance from the widest possible audience. The OCC will consider the comments received from bankers and the public in evaluating whether changes to the guidance as articulated in the proposed advisory statement are required.

DATES: Comments must be submitted on or before November 2, 1992.

ADDRESSES: Comments should be directed to the Communications Division, 250 E St. SW., Washington, DC 20219, Attention: Docket No. 92-16. Comments will be available for photocopying and public inspection at the same location.

FOR FURTHER INFORMATION CONTACT: Margaret Hesse, Attorney, (202) 874-5300, Cindy Hausch, Bank Organization and Structure (202) 874-5060, or Letty Ann Shapiro, Customer and Industry Affairs (202) 874-4930.

SUPPLEMENTARY INFORMATION

Background Information

Section 228 of the Federal Deposit Insurance Corporation Improvement Act of 1991 added a new section 39 (codified at 12 U.S.C. 1831p) to the Federal Deposit Insurance Act (FDI Act). This provision took effect immediately upon enactment on December 19, 1991. The law requires an insured depository institution, which would include a national bank or an insured Federal branch, to give 90 days written notice of a branch closing to its Federal regulator and to branch customers, to post notice at the branch site at least 30 days prior to closing, and to develop a policy with respect to branch closings. The notice to the regulator must include a detailed statement of the reasons for the decision to close the branch and information in support of those reasons.

Because the requirements of 12 U.S.C. 1831p apply to all FDIC-insured depository institutions, and in order to provide a uniform and consistent

approach, the Federal banking agencies (Federal Deposit Insurance Corporation (FDIC), Board of Governors of Federal Reserve System, Office of Thrift Supervision, and OCC) have developed positions substantially similar to those discussed in this proposed advisory statement. At the same time, however, each agency also has existing rules, regulations and policies that are impacted by 12 U.S.C. 1931p; consequently, there may be some procedural differences between the agencies' policies.

The OCC has developed a proposed advisory statement to inform banks and the public about its proposed guidance with respect to the enforcement of 12 U.S.C. 1831p and to request comments prior to finalizing such guidance. The full text of the proposed advisory statement is set out at the end of this notice.

Issues for Specific Comment

The OCC seeks comments on all aspects of its proposed guidance. In addition, the OCC invites comments on the following specific issues:

1. Definition of "Branch"

The law applies to all branch closings. The proposed policy defines "branch," for the purposes of this section, to include any domestic facility established by a national bank, other than its main office, which has been licensed as a branch by the OCC, where deposits are received, checks are paid, or money is lent, and to include insured Federal branches. In addition to traditional brick and mortar branches, the OCC believes that the law applies to closings of other types of domestic facilities that constitute branches. Consequently, the law applies to facilities such as customer-bank communication terminals (CBCTs), drive-in facilities, and mobile branches established by national banks. The branch definition is based on the definition of "domestic branch" in the FDI Act and the definition of "branch" in the McFadden Act (12 U.S.C. 36(f)).

2. Branch Relocations

Under the plain language of the statutory provision, the new law does not apply to branch relocations. In fact, unlike branch closings, Congress has required that the OCC approve branch relocations. See 12 U.S.C. 36(e).

Furthermore, the OCC has in place regulatory provisions governing branch relocations. A national bank seeking to relocate a branch must file an application with the OCC for approval. 12 CFR 5.40(e), 5.41. In addition, the bank must publish notice in a newspaper of general circulation in the community in which the applicant proposes to engage in business. 12 CFR 5.8. A public file consisting of nonconfidential materials regarding the application will be established by the OCC and made available to interested persons. Any person may submit written comments to the agency and make a written request for a hearing. 12 CFR 5.9, 5.10.

Thus, the OCC monitors branch relocations through an approval process and provides for notice, opportunity to comment, and the opportunity to request a hearing. It is unlikely, given the explicit reference to branch closings, that Congress intended to further regulate a national bank's ability to relocate branches.

For these reasons, the OCC has determined that a national bank that proposes to relocate a branch need not comply with the requirements of 12 U.S.C. 1831p. The bank, however, must comply with the OCC's branch relocation requirements.

3. Operation of Branches Following Government-Assisted Failed Institution Acquisitions; Expedited Transitions

The OCC believes that 12 U.S.C. 1831p applies to branch closings initiated by an institution, rather than the government. In addition, the OCC is concerned about the adverse consequences that could result from application of the notice requirements to branches acquired from the FDIC or Resolution Trust Corporation (RTC). In a typical situation, when an acquiror assumes some or all of the assets and liabilities of an institution placed into conservatorship or receivership, it operates one or more of the branches of the failed institution temporarily until it decides, during its option period (generally 90–180 days), whether to purchase or lease the branch or transfer it back to the FDIC or RTC.

The OCC is concerned that the flexibility necessary for government-assisted acquisitions would be lessened rather than enhanced if a flat 90-day advance notice requirement were applicable to these situations. For example, if an acquiror initially is uncertain as to whether the branch should remain open, and if the acquiror is required to operate the branch for 90 days from the time it decides to close the branch, then the acquiror may decide instead to close the branch immediately, rather than to operate it on an interim basis. In addition, if an acquiror decided to operate a branch on an interim basis, but had to do so for at least 90 days after deciding to close it, then the acquiror is likely to lower its bid for the institution to compensate it for the cost of keeping the branch open. This action would increase the cost of the assisted transaction to the FDIC or RTC and, ultimately, the public.

In consideration of these adverse consequences, the OCC is proposing that the 90-day notice requirement not apply when an acquiror national bank operates unwanted branches of a failed institution on an interim basis, so long as the branches are closed prior to expiration of the acquiror's branch acquisition option period. If a national bank were to exercise its branch acquisition option and acquire such a branch, the bank would be required to comply with the statutory notice requirements if it later decided to close the branch. The above policy will help ensure that an acquiring national bank will be more apt to accommodate the customers and community of a failed institution, at least temporarily.

Pending final adoption of the proposed guidance, a national bank making FDIC- or RTC-assisted acquisitions and operating acquired branches on an interim basis should make its best effort to give the notices contemplated by 12 U.S.C. 1831p when it decides not to acquire a branch during its branch acquisition option period. Thus, a bank in such circumstances should provide a written notice and statement of reasons to the OCC and should mail and post notices to customers as expeditiously as is reasonable prior to transferring such facilities back to the FDIC or RTC in accordance with the terms of its agreement with either of those agencies. This position is similar to that taken by the FDIC in Financial Institutions Letter No. 30–92 (April 10, 1992).

In addition, the proposed guidance indicates that the notice requirements of 12 U.S.C. 1831p apply to expedited acquisitions of failing insured depository institutions, either FDIC-assisted (under 12 U.S.C. 1823(c)) or unassisted (under the Bank Merger Act (12 U.S.C. 1828(c)(4)). The OCC requests that interested parties comment about the effects such requirements will have on expedited transactions.

4 Identifying Customers of the Branch

The proposed advisory statement permits each national bank to determine which of its patrons will be identified as customers of a particular branch. The proposed guidance requires a good faith determination using a reasonable method developed by the bank. One reasonable method that a national bank could use is to allocate a customer to a branch based on where the customer

opened his or her deposit or loan account.

Proposed Advisory Statement

Purpose

This advisory statement provides guidance to all national banks and insured Federal branches (hereafter collectively referred to as "national banks") with respect to the new statutory requirements that each bank provide prior notice of branch closings and establish internal policies for branch closings.

Background

The Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) was enacted on December 19, 1991. Section 228 of the FDICIA adds a new section 39 (codified at 12 U.S.C. 1831p) to the Federal Deposit Insurance Act (FDI Act). The new provision imposes notice requirements on insured depository institutions that propose branch closings. The provision became effective on December 19, 1991. An "insured depository institution" includes any bank or savings association, as defined in section 3 of the FDI Act, the deposits of which are insured by the Federal Deposit Insurance Corporation (FDIC). The term includes national banks and insured Federal branches.

(Section 132 of the FDICIA is also incorporated in the new section 39 of the FDI Act. To avoid confusion, this advisory statement will refer to 12 U.S.C. 1831p rather than section 39 of the FDI Act.)

The law requires an insured depository institution to submit notice of any proposed branch closing to the appropriate Federal banking agency not later than 90 days prior to the date of the proposed branch closing. The required notice must include a detailed statement of the reasons for the decision to close the branch and statistical or other information in support of such reasons.

The law also requires an insured depository institution to notify its customers of the proposed closing. The bank must mail the notice to the customers of the branch at least 90 days prior to the proposed closing. The bank also must post a notice to customers in a conspicuous manner on the premises of the branch at least 30 days prior to the proposed closing.

Additionally, the law requires each insured depository institution to adopt policies regarding closings of branches of the institution.

As the Federal banking agency that supervises national banks, the OCC is charged with administering 12 U.S.C. 1831p for those institutions.

Applicability

Under section 3 of the FDI Act (12 U.S.C. 1813), a "branch" is defined as any domestic facility of an insured depository institution, other than its main office, where deposits are received, checks are paid, or money is lent. Thus, in addition to a traditional brick and mortar branch, 12 U.S.C. 1831p applies to the closing of an insured Federal branch, as defined by the FDI act, and any other type of branch established by a national bank and licensed by the OCC under the McFadden Act (12 U.S.C. 36) as a branch of such national bank, including a customer-bank communication terminal (CBCT), drive-in facility, or mobile branch.

A national bank must file a branch closing notice for a branch closing occurring in the context of a merger, consolidation or other form of acquisition, whether or not such transaction is subject to expedited approval under the Bank Merger Act (12 U.S.C. 1828(c)(4)). The parties to such a transaction is subject to expedited approval under the Bank Merger Act (12 U.S.C. 1828(c)(4)). The parties to such a transaction should determine which party will give the notice. Thus, for example, the purchaser may give the notice prior to consummation of the transaction where the purchaser intends to close a branch following consummation, or the seller may give the notice because it intends to close a branch at or prior to consummation. In the latter example, if the transaction were to close ahead of schedule, the purchaser, if authorized by the OCC, could operate the branch to complete compliance with the 90-day requirement without the need for an additional notice.

The law does not apply to a temporary interruption of service caused by an Act of God (e.g., fire, earthquake), as the national bank would not have closed the branch. The law does apply, however, if the national bank decided to close or not reopen the branch following the incident. Although prior notice would not be possible in such a case, the bank should mail and, if practicable, post the required notices to customers and the OCC as soon as possible after the decision to close the branch has been made.

The law does not apply where a branch undergoes a change in name, location, or services but continues to meet the definition of branch. Thus, the law does not not apply to:

- Mergers, consolidations, or other acquisitions, including branch sales, that will not result in any branch closings;
- A change of services at a branch so long as the remaining facility constitutes a branch, such as where loan services are removed from a branch that will continue to offer deposit services, or if a traditional brick and mortar branch is converted to a CBCT;
- A branch relocation, which is subject to its own statutory and regulatory requirements (12 U.S.C. 36(e); 12 CFR 5.40(e), 5.41), including public notice.

In addition, 12 U.S.C. 1831p does not apply when a branch ceases operation but is not closed by a national bank. Thus, the law does not apply to:

- Transferring back to the Federal Deposit Insurance Corporation or Resolution Trust Corporation, pursuant to the terms of an acquisition agreement and prior to the expiration of the buyer's branch acquisition period, a branch of a failed bank or savings association operated on an interim basis in connection with the acquisition of all or part of the failed institution.

Notice of Branch Closing to the OCC

The law requires insured depository institutions to submit notice of any proposed branch closing to the appropriate Federal banking agency no later than 90 days prior to the date of the proposed branch closing. The law requires that the notice to the OCC include the following:

- Identification of the branch to be closed:
- The proposed date of closing;
- A detailed statement of the reasons for the decision to close the branch; and
- Statistical or other information in support of such reasons consistent with the institution's written policy for branch closings.

If a national bank believes certain information included in the required notice is confidential in nature, the bank should prepare such information separately and request confidential treatment. The OCC will decide whether to treat such information confidentially under the Freedom of Information Act (5 U.S.C. 552).

Notice of Branch Closing to Customers

The law requires an insured depository institution that proposes to close a branch to provide notice of the proposed closing to the customers of the branch. A customer of a branch is a patron of a national bank who has been identified with a particular branch by such institution through use, in good faith, of a reasonable method for

allocating customers to specific branches. A national bank that allocates customers to its branches based on where a customer opened his or her deposit or loan account will be presumed to have reasonably identified each customer of a branch for purposes of compliance with 12 U.S.C. 1831p. A national bank need not change its recordkeeping system in order to make a reasonable determination of who is a customer of a branch. If a national bank cannot reasonably identify customers of a particular branch using its current recordkeeping system, it may satisfy the requirements of 12 U.S.C. 1831p by notifying all of its deposit and loan customers.

Under 12 U.S.C. 1831p, a bank proposing to close a branch must include a customer notice at least 90 days in advance of the proposed closing in at least one of the regular account statements mailed to customers, or in a separate mailing. If the branch closing occurs after the proposed date of closing, no additional notice is required to be mailed to customers if the national bank acted in good faith in projecting the date for closing and in subsequently delaying the closing.

To satisfy the mailed customer notice requirement of the law, the mailed notice should include the location of the branch to be closed, the proposed date of closing, and either identifying where customers may obtain service following the closing or provide a telephone number for customers to call to determine such alternative sites.

Under the law, a bank also must post notice to branch customers in a conspicuous manner on the branch premises at least 30 days prior to the proposed closing. This notice should state the proposed date of closing and identify where customers may obtain service following that date or provide a telephone number for customers to call to determine such alternative sites. A bank may revise the notice to extend the projected date of closing without triggering a new 30-day notice period.

In some situations, a national bank, in its discretion and to expedite transactions, may mail and post notices to customers of proposed branch closings that are contingent upon an event. For example, in the case of a proposed merger or acquisition, a national bank may notify customers of its intent to close a branch upon approval by the appropriate Federal banking agency of the proposed merger or acquisition.

For purposes of examinations, a national bank must be able to demonstrate compliance with the law.

Policies for Branch Closings

The law requires all insured depository institutions to adopt policies for branch closings. Each national bank with one or more branches must adopt such a policy. If a bank currently has no branches, it must adopt a policy for branch closings before it establishes its first branch. The policy should be in writing and meet the size and the needs of the national bank.

Closing a branch may have adverse effects on the community and its residents, particularly low- and moderate-income neighborhoods. A branch closing also may affect local economic development and inconvenience businesses and residents, particularly those residents with limited mobility.

Each branch closing policy adopted pursuant to 12 U.S.C. 1831p should include procedures for determining objectively which branch to close and which customers to notify, and methods for providing the notices required by the statute. A national bank may wish to consider including in its written policy factors such as:

- Profits generated by the bank's branch system and the profitability of each branch;
- Actions that have been taken to attempt to return a branch to viability—for example, adjusting hours, changing services, upgrading facilities, and increasing automation;
- The presence in each branch's neighborhood of other financial institutions, and their accessibility and services;
- Actions to advise the community of a planned branch closing—for example, advance meetings with key neighborhood and political leaders;
- Actions to minimize the impact of a branch closing on the neighborhood—for example, providing special services, check cashing, and night deposits, and providing additional services at other sites;
- A review and approval procedure for arriving at a closing decision, including the standards (e.g., profit and loss, number of customers, amount of deposit or loan accounts) used to make the decision, and appropriate follow-up actions to be taken; and
- Any other considerations the bank may wish to include.

Compliance

The OCC will examine institutions for compliance with 12 U.S.C. 1831p to determine whether a national bank has adopted a branch closing policy and whether the bank provided required notices when it closed a branch. If a national bank fails to comply with 12 U.S.C. 1831p, the OCC may make adverse findings in its Community Reinvestment Act (CRA) evaluation or take other appropriate enforcement action, including the imposition of civil money penalties where statutory requirements are not satisfied.

During the CRA portion of an examination, the OCC assesses a bank's record of helping to meet the credit needs of its community. Factors the OCC considers in making its assessment include the institution's record of opening and closing offices and providing services at such offices. The reasons for closing a branch and the statistical or other information included in a branch closing notice submitted to the OCC will be reviewed under these factors in the CRA examination.

For more information regarding branch closing requirements, contact the Office of the Comptroller of the Currency, Bank Organization and Structure, (202) 874–5060, or Corporate Organization and Resolutions Division, (202) 874–5300. The mailing address is Office of the Comptroller of the Currency, 250 E St. SW, Washington, DC 20219.

End of Proposed Advisory Statement Text

Dated: August 11, 1992.

Stephen R. Steinbrink,

Acting Comptroller of the Currency.

[FR Doc. 92–21082 Filed 9–1–92; 8:45 am]

BILLING CODE 4810–33–M

Office of Thrift Supervision

[AC–52; OTS No. 3276]

First Federal Savings and Loan of Rockford, Rockford, IL; Approval of Conversion Application

Notice is hereby given that on August 13, 1992, the Deputy Director for Washington Operations, Office of Thrift Supervision, or his designee, acting pursuant to delegated authority, approved the application of First Federal Savings and Loan Association of Rockford, Rockford, Illinois for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601–4360.

Dated: August 27, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-21047 Filed 9-1-92; 8:45 am]

BILLING CODE 6720-01-M

NATIONAL SCIENCE FOUNDATION

National Science Board Commission on the Future of the National Science Foundation; Notice of Open Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meetings.

Dates and time: September 17, October 16, and November 7, 1992; 8:30 a.m. to 5 p.m.

Type of meetings: Open.

Place: Room 540, NSF 1800 G St., NW., Washington, DC.

Purpose of meetings: To initiate an examination of how NSF can best meet the nation's challenges in research and education today and for the 21st Century.

Agenda: These meetings will focus on a broad range of questions implied by the purpose of the Commission. Written public comments are solicited on two questions:

1. National Science Foundation support plays an important role in the health of the nation's academic system, which is the source of new ideas and human resources in science and engineering. How can NSF maintain and enhance the health of this vital national resource?

2. In light of the many changes in both science and world affairs (such as the increasing inseparability of science and technology, the rise of the global economy, and the end of the cold war), should NSF build on its traditional mission by pursuing a broader array of research and education objectives and doing more to link academia and industry? If so, what strategies could the agency adopt to move in this direction?

Contact person: Persons wishing to file written comments should mail or fax the comments by October 15, 1992, to the NSB Commission on the Future of NSF, Room 546, National Science Foundation, 1800 G St. Washington, DC 20550. FAX # 202-357-7346. E-mail: NSBCOMM@NSF.GOV (Internet) or NSBCOMM@NSF (Bitnet). Dr. Charles Brownstein, Director, NSF Office of Planning and Assessment, is Executive Secretary of the NSB Commission.

Persons requiring more information about the Commission should contact the Office of Legislative and Public Affairs, Room 527, National Science Foundation. Telephone: (202) 357-9838. FAX # 202-357-9869. E-mail: NSBCOMM@NSFGOV (Internet) or NSBCOMM@NSF (Bitnet).

Dated: August 27, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-21075 Filed 9-1-92; 8:45 am]

BILLING CODE 7555-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 171
Wednesday, September 2, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Matters To Be Withdrawn From Consideration at an Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the following matters will be withdrawn from the agenda for consideration at the open meeting of the Board of Directors of the Federal Deposit Insurance Corporation scheduled to be held at 10:00 a.m. on Tuesday, September 1, 1992, in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC:

Memorandum and resolution re: Final amendments to Part 327 of the Corporation's rules and regulations, entitled "Assessments," which amendments increase the assessment to be paid by Savings Association Insurance Fund members.

Memorandum and resolution re: Final amendments to Part 327 of the Corporation's rules and regulations, entitled "Assessments," which amendments increase the assessment to be paid by Bank Insurance Fund members.

Memorandum re: Bank Insurance Fund Recapitalization Schedule.

Memorandum and resolution re: Final regulation establishing a transitional risk-based assessment.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Deputy Executive Secretary of the Corporation, at (202) 898-6757.

Dated: August 28, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92-21193 Filed 8-28-92; 4:46 pm]

BILLING CODE 6714-0-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Tuesday, September 8, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed changes to the Federal Reserve Board employee health plan.
2. Federal Reserve Bank and Branch director appointments.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 31, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-21314 Filed 8-31-92; 3:56 pm]

BILLING CODE 6210-01-M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meetings

TIME AND DATE: 9:30 a.m., Wednesday, September 9, 1992.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, NW., Washington, DC 20456.

STATUS: Open.

BOARD BRIEFINGS:

1. Central Liquidity Facility Report and Report on CLF Lending Rate.
2. Insurance Fund Report.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Central Liquidity Facility Agent Commitment Fee.
3. Central Liquidity Facility Reserving Policy.
4. Proposed Rule: Amendment to Section 791.18(c), NCUA's Rules and Regulations, Sunshine Act.
5. Final Rule: Amendment to Section 701.21(h), NCUA's Rules and Regulations, Member Business Loans.

RECESS: 10:45 a.m.

TIME AND DATE: 11:00 a.m., Wednesday, September 9, 1992.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, NW., Washington, DC 20456.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Administrative Actions under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
3. Regional Staffing Allocations. Closed pursuant to exemption (2).
4. Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682-9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 92-21275 Filed 8-31-92; 2:56 pm]

BILLING CODE 7535-01-M

NATIONAL WOMEN'S BUSINESS COUNCIL (NWBC)

Notice of Access to Capital Symposium

SUMMARY: In accordance with the Women's Business Ownership Act, Public Law 100-533 as amended, the National Women's Business Council announces a forthcoming Symposium and Official Council Meeting. The Symposium will include two panel discussions, a series of expert roundtables focusing on access to capital for women business owners and a hearing. The Official Council Meeting will focus on a strategic plan for the next 12 months.

DATE AND PLACE:

September 10, 1992, 9:00-5:00 pm (Roundtable Discussion), Federal Reserve-Martin Building, 20th & C Streets, NW.

September 11, 1992, 9:00 am-12:00 pm (Testimony), Small Business Administration (SBA), Eisenhower Conference Room-8th Floor, 409 3rd Street, SW.

September 11, 1992, 1:00 pm-4:00 pm (Official Council Meeting), Administrator's Conference Room-7th Floor, 409 3rd Street, SW.

STATUS: All meetings are open to the public.

CONTACT: Wilma Goldstein, Executive Director or Paula Breitweiser, Legislative Analyst, National Women's Business Council, 409 3rd Street, SW., #7425, Washington DC, 20024, (202) 205-3850.

Wilma Goldstein,

Executive Director, National Women's Business Council.

[FR Doc. 92-21233 Filed 8-31-92; 11:27 am]

BILLING CODE 6820-AB-M

Corrections

Federal Register
Vol. 57, No. 171
Wednesday, September 2, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 911176-2018]

Groundfish of the Gulf of Alaska

Correction

In rule document 92-17237 appearing on page 32453 in the issue of Wednesday, July 22, 1992, the file line at the end of the document was incorrect. It should appear as set forth below:

[FR Doc. 92-17237 Filed 7-17-92; 12:25 pm]

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 683

[Docket No. 920530-2192]

Western Pacific Bottomfish and Seamount Groundfish Fisheries

Correction

In rule document 92-19528 beginning on page 36907 in the issue of Monday, August 17, 1992, make the following corrections:

1. On page 36907, in the third column, under **SUPPLEMENTARY INFORMATION**, in the eighth line from the top of the page, after "beyond" insert "the", and in the tenth line from the top of the page, after "alone" insert "would".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 131

[Docket No. 91P-0090/CP]

Evaporated Milk; Proposed Amendment of the Standard of Identity

Correction

In proposed rule document 92-17182 beginning on page 32470 in the issue of Wednesday, July 22, 1992, on page 32471, in the first full paragraph, in the first line, "ADPT" should read "ADPI".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 145

[T.D. 92-80]

Importation of Lottery Material From Canada

Correction

In rule document 92-19830 appearing on page 37702 in the issue of Thursday, August 20, 1992, in the first column, under **EFFECTIVE DATE**, "1992" should read "1993".

BILLING CODE 1505-01-D

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federal register

Wednesday
September 2, 1992

Part II

Department of Health and Human Services

Public Health Service

Specific List for Categorization of Laboratory Test Systems, Assays and Examinations by Complexity; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Specific List for Categorization of Laboratory Test Systems, Assays and Examinations by Complexity

AGENCY: Public Health Service, HHS.

ACTION: Notice with comment period.

SUMMARY: The Clinical Laboratory Improvement Amendments of 1988, Public Law 100–578, requires that the Secretary provide for the categorization of specific laboratory test systems, assays and examinations by level of complexity. 42 CFR 493.17, published in the **Federal Register** on February 28, 1992, established criteria for such categorization.

It is the Department's intention to complete the categorization of all currently available clinical laboratory test systems, assays and examinations prior to the effective date of 42 CFR part 493. This notice announces the fourth of a series of lists containing specific clinical laboratory test systems, assays and examinations, categorized by complexity. This notice also includes deletions and corrections to the list of test systems, assays and examinations published on February 28, 1992. After publication and close of comment period on the published partial lists, a complete list of all laboratory test systems, assays and examinations, categorized by complexity, and responses to public comments received on the partial lists will be published in the form of a compilation of these Notices. Any clinical laboratory test system, assay or examination that is not on the compilation will be considered high complexity, until categorized otherwise as provided under 42 CFR 493.17.

After publication of the compilation, applications will be taken to categorize (or recategorize) other laboratory test systems, assays and examinations following the procedures delineated in 42 CFR 493.17(d). After the effective date of 42 CFR part 493, notices will be published periodically in the **Federal Register** to announce any additional test system, assay or examination that has been categorized (or re-categorized) during the preceding interval.

DATES: *Effective date:* This list is effective September 1, 1992.

Comment date: Written comments on this list of tests will be considered if they are received at the address indicated below, no later than 5 p.m. on October 2, 1992.

ADDRESSES: Comments on the content of this Notice—only—should be addressed to: Public Health Service, Attention: CLIA **Federal Register** Notice, 1600 Clifton Rd. NE, (Mail Stop MLR5), Atlanta GA 30333.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments. Nor can we accept comments by telephone.

FOR FURTHER INFORMATION CONTACT: Miley A. Robinson, (404) 639–1701.

SUPPLEMENTARY INFORMATION: As described in 42 CFR 493.17, seven criteria were used to classify laboratory test systems, assays or examinations as moderate or high complexity using a grading scheme for level of complexity that assigned scores of 1, 2 or 3 for each of the seven criteria. Test systems, assays or examinations receiving total scores of 12 or less were categorized as moderate complexity, while those receiving total scores of 13 through 21 were categorized as high complexity. As provided under 42 CFR 493.17, the following laboratory test systems, assays and examinations have been categorized as moderate or high complexity as noted.

Dated: August 26, 1992.

James O. Mason,

Assistant Secretary for Health.

Additions to the Specific List for Categorization of Laboratory Test Systems, Assays and Examinations by Complexity Published as a Notice in the Federal Register on February 28, 1992

Complexity: Moderate

Speciality/Subspeciality: Bacteriology

Analyte: Aerobic &/or Anaerobic Organisms-Unlimited Sources

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:

Becton Dickinson BACTEC 9240
Becton Dickinson BACTEC NR–660
Becton Dickinson BACTEC NR–860
Organon Teknika BacT/Alert
Vitek Systems Bac-T-Screen 2000 (bacteruria)
Vitek Systems Bac-T-Screen 402A (bacteruria)
Vitek Systems Bac-T-Screen 500 (bacteruria)

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation

Test System, Assay or Examination:

Becton Dickinson BACTEC NR–730

Category: Microscopic evaluations of direct specimens in microbiology or parasitology

Test System, Assay or Examination:

All Direct Wet Mount Preparations

Analyte: Aerobic Organisms From Urine Specimens Only

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation

Test System, Assay or Examination:

Adams Scientific Selecticult-U (colony count only)
BioClinical Systems Bullseye Urine Plate(colony count only)
BioClinical Systems Urine Screen (colony count only)
Culture Kits, Inc. Uri-Three (colony count only)
Future Medical Tech. Intl. Qualture (colony count only)
Meridian Diagnostics FiltraCheck UTI (bacteruria)
Miles Diagnostic Labs MicroStix-3 ID (colony count only)
SmithKline Isocult Cult. Test-Bacteriuria (colony ct only)
Troy Biologicals Bacti-Star II Urine Sys.(colony cnt. only)
Troy Biologicals Bacti-Star Urine Plate (colony count only)
Troy Biologicals Bacti-Urine Plate (colony count only)
Troy Biologicals Uri-Check Plus (colony count only)
Troy Biologicals Uricheck (colony count only)
UTI-tect Bacteriuria Diag. Test System (colony count only)
Unipath Oxoid Dip-Slide (colony count only)
Wampole Bacturcult (colony count only)

Analyte: Aerobic/Anaerobic Organisms—Urethral

Category: Microscopic evaluation and/or enumeration of cells, formed elements, or microorganisms in stained preparations

Test System, Assay or Examination:

All Gram Stain Procedures—Urethral Only

Analyte: Haemophilus Influenzae, Type B

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation

Test System, Assay or Examination:

Wampole Bactigen Meningitis Panel (direct antigen/visual)

Analyte: Neisseria Gonorrhoeae

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation

Test System, Assay or Examination:

SmithKline Diagnostics Isocult Combination Culture Test

SmithKline Isocult Diagnostic Culturing System

Analyte: Neisseria Meningitidis, Group A

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation

Test System, Assay or Examination:
Becton Dickinson Drtgen Meningitis Combo Kit (dirAg/visual)
Becton Dickinson Drtgen Meningitis Individ.Kit (dirAg/vis)

Analyte: Neisseria Meningitidis, Group B and E. Coli K1

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation

Test System, Assay or Examination:
Becton Dickinson Drtgen Meningitis Individ.Kit (dirAg/vis)

Analyte: Staphylococcus

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation

Test System, Assay or Examination:
Culture Kits, Inc. Staph-Kit
SmithKline Isocult Diagnostic Culturing System

Analyte: Streptococcus, Group A

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation

Test System, Assay or Examination:
Access Medical Systems ImmunoCLONE
Baxter MicroScan Cards O.S. (direct antigen/visual)
BioStar Strep A OIA (direct antigen/visual)
Ciba Corning Biotrack Strep A (direct antigen/visual)
Disease Detection International ImmunoCLONE (dir.Ag/visual)
Meridian Diagnostics Immunocard (direct antigen/visual)
Quidel Group A Strep Test (direct antigen/visual)
SmithKline Isocult Diag. Culturing System (hemolysis only)

Analyte: Streptococcus, Group B

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation

Test System, Assay or Examination:
Becton Dickinson Drtgen Meningitis Individ.Kit (dirAg/vis)
Karobio Phadebact CSF (direct antigen/visual)
Quidel Group B Strep Test (direct antigen/visual)
Wampole Bactigen Group B Strep-CS (including broth culture)

Analyte: Treponema Pallidum

Category: Microscopic evaluations of direct specimens in microbiology or parasitology

Test System, Assay or Examination:
All Darkfield Examinations

Speciality/Subspeciality: General Chemistry

Analyte: Acid Phosphatase

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Du Pont Dimension ES
Kodak Ektachem 250
Roche Cobas FARA
Roche Cobas FARA II
Roche Cobas Mira
Roche Cobas Mira Plus
Roche Cobas Mira S

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation

Test System, Assay or Examination:
DataChem DC–100

Analyte: Alanine Aminotransferase (ALT) (SGPT)

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Du Pont Dimension ES
EM Diagnostic Systems EASY PLUS
EM Diagnostic Systems EASY ST
EM Diagnostic Systems EPOS
Instrumentation Laboratory IL Genesis 21
Kodak Ektachem 250
Kodak Ektachem 700 P
Olympus AU 5121
Olympus AU 5131
Roche Cobas Bio
Roche Cobas Mira Plus
Technicon RA 100

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation

Test System, Assay or Examination:
DataChem DC–100
Sclavo Uni-Fast System Analyzer
Sclavo Uni-Fast2 System Analyzer

Analyte: Albumin

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Behring Nephelometer
Behring Nephelometer 100
Du Pont Dimension ES
EM Diagnostic Systems EASY PLUS
EM Diagnostic Systems EASY ST
EM Diagnostic Systems EPOS
Instrumentation Laboratory IL Genesis 21
Kodak Ektachem 250
Kodak Ektachem 700 P
Olympus AU 5131
Roche Cobas Bio
Roche Cobas Mira Plus
Roche Cobas Ready
Sanofi/Kallestad QH 300
Technicon DPA–1
Technicon RA 100

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation

Test System, Assay or Examination:
Behring Turbitime
DataChem DC–100
Sclavo Uni-Fast System Analyzer
Sclavo Uni-Fast2 System Analyzer

Analyte: Alkaline Phosphatase (ALP)

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Du Pont Dimension ES
EM Diagnostic Systems EPOS
Instrumentation Laboratory IL Genesis 21
Kodak Ektachem
250 Kodak Ektachem 700 P
Roche Cobas Bio
Roche Cobas Mira Plus
Roche Cobas Ready
Technicon RA 100

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation

Test System, Assay or Examination:
DataChem DC–100
Sclavo Uni-Fast System Analyzer
Sclavo Uni-Fast2 System Analyzer

Analyte: Alpha-Fetoprotein—Tumor Marker

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
TOSOH A1A–1200
TOSOH A1A–600

Analyte: Alpha-Hydroxybutyrate Dehydrogenase (HBDH)

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Coulter Dacos
Roche Cobas Bio

Analyte: Ammonia

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Du Pont Dimension ES
EM Diagnostic Systems EASY PLUS
EM Diagnostic Systems EASY ST
Kodak Ektachem 250
Kodak Ektachem 700 P
Roche Cobas FARA
Roche Cobas FARA II
Roche Cobas Mira
Roche Cobas Mira S

Analyte: Amylase

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Du Pont Dimension ES
EM Diagnostic Systems EASY PLUS
EM Diagnostic Systems EASY ST
EM Diagnostic Systems EPOS
Instrumentation Laboratory IL Genesis 21
Kodak Ektachem 250
Kodak Ektachem 700 P
Roche Cobas Bio
Roche Cobas Mira Plus
Roche Cobas Ready
Technicon RA 100

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation

Test System, Assay or Examination:
DataChem DC–100

Analyte: Apolipoprotein A1

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Baxter Paramax
Baxter Paramax 720
Baxter Paramax 720 ZX
Behring Nephelometer
Behring Nephelometer 100
Roche Cobas FARA
Roche Cobas FARA II
Roche Cobas Mira
Roche Cobas Mira Plus
Roche Cobas Mira S
Sanofi/Kallestad QH 300
Technicon DPA–1

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation

Test System, Assay or Examination:
Behring Turbitime
Isolab API Apolipoprotein Analyzer

Analyte: Apolipoprotein B

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Baxter Paramax
Baxter Paramax 720
Baxter Paramax 720 ZX
Behring Nephelometer
Behring Nephelometer 100
Roche Cobas FARA
Roche Cobas FARA II
Roche Cobas Mira
Roche Cobas Mira Plus
Roche Cobas Mira S
Sanofi/Kallestad QH 300
Technicon DPA–1

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation

Test System, Assay or Examination:
Behring Turbitime
Isolab API Apolipoprotein Analyzer

Analyte: Asparate Aminotransferase (AST) (SGOT)

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Du Pont Dimension ES
EM Diagnostic Systems EASY PLUS
EM Diagnostic Systems EASY ST
EM Diagnostic Systems EPOS
Instrumentation Laboratory IL Genesis 21
Kodak Ektachem 250
Kodak Ektachem 700 P
Roche Cobas Mira Plus
Technicon RA 100

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation

Test System, Assay or Examination:
DataChem DC–100
Sclavo Uni-Fast System Analyzer
Sclavo Uni-Fast2 System Analyzer

Analyte: Beta-Hydroxybutyrate

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Beckman Synchron CX 4
Beckman Synchron CX 4 CE
Beckman Synchron CX 5
Beckman Synchron CX 7
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Boehringer Mannheim Hitachi 717
Ciba Corning 550 Express
Roche Cobas Bio
Roche Cobas FARA
Roche Cobas FARA II
Roche Cobas Mira
Roche Cobas Mira S
Technicon RA 1000
Technicon RA 500

Analyte: Bilirubin, Direct

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Beckman Astra 8
Beckman Synchron AS–Xi
Beckman Synchron CX 4 CE
Du Pont Dimension ES
EM Diagnostic Systems EASY PLUS
EM Diagnostic Systems EASY ST
EM Diagnostic Systems EPOS
Kodak Ektachem 250
Kodak Ektachem 700 P
Roche Cobas Bio
Roche Cobas Mira Plus
Technicon RA 100

Analyte: Bilirubin, Neonatal

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Baxter Paramax
Baxter Paramax 720
Baxter Paramax 720 ZX
Kodak Ektachem 250
Kodak Ektachem 700 P

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation

Test System, Assay or Examination:
Cambridge Instruments Unistat Bilirubinometer
Wako Bilirubin Tester

Analyte: Bilirubin, Total

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Beckman Astra 8
Beckman Synchron AS–Xi
Beckman Synchron CX 4 CE
Du Pont Dimension ES
EM Diagnostic Systems EASY PLUS
EM Diagnostic Systems EASY ST
EM Diagnostic Systems EPOS
Instrumentation Laboratory IL Genesis 21
Kodak Ektachem 250
Kodak Ektachem 700 P
Roche Cobas Bio
Roche Cobas Mira Plus
Technicon RA 100

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation

Test System, Assay or Examination:
DataChem DC–100
Sclavo Uni-Fast System Analyzer
Sclavo Uni-Fast2 System Analyzer

Analyte: Blood Gases with pH

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Ciba Corning 170
Ciba Corning 178

Instrumentation Laboratory BG3
Instrumentation Laboratory IL 1310
Mallinckrodt GEM–STAT

Analyte: Blood pH (No Blood Gases)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Corometrics 220 pH System

Analyte: Calcium, Ionized

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
AMDEV Lytening 6 Instant ISE
AMDEV Lytening 6R Instant ISE
Baxter Lytening Systems 32
Mallinckrodt GEM–STAT
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Pointe Scientific Ionetics Model 330

Analyte: Calcium, Total

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Astra 8e
Beckman Synchron CX 4 CE
Beckman Synchron EL–ISE
Du Pont Dimension ES
EM Diagnostic Systems EASY PLUS
EM Diagnostic Systems EASY ST
EM Diagnostic Systems EPOS
Instrumentation Laboratory IL Genesis 21
Kodak Ektachem 250
Kodak Ektachem 700 P
Precision Systems Calcette
Roche Cobas Bio
Roche Cobas Mira Plus
Roche Cobas Ready
Technicon RA 100
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Sclavo Uni-Fast System Analyzer
Sclavo Uni-Fast2 System Analyzer

Analyte: Carbon Dioxide, Total (CO2)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Du Pont Dimension ES
EM Diagnostic Systems EASY PLUS
EM Diagnostic Systems EASY ST
Instrumentation Laboratory IL Genesis 21
Kodak Ektachem 250
Nova 12 (with CRT)
Nova 4 (with CRT)
Roche Cobas Bio
Roche Cobas Mira Plus

Analyte: Cerebrospinal Fluid Protein (CSF)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Baxter Paramax
Baxter Paramax 720
Baxter Paramax 720 ZX
Kodak Ektachem 250

Analyte: Chloride

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
AMDEV Lytening 5 Instant ISE
Baxter Lytening Systems 30
Du Pont Dimension ES
Instrumentation Laboratory IL Genesis 21
Kodak Ektachem 250
Nova 12 (with CRT)
Nova 13 (with CRT)
Nova 14 (with CRT)
Nova 4 (with CRT)
Nova 5 (with CRT)
Radiometer CMT10 Chloride Titrator
Roche Cobas Bio
Roche Cobas Mira Plus.
Technicon RA 100
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
I-STAT i-STAT Portable Clinical Analyzer

Analyte: Cholesterol

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Cirrus Diagnostics CRP (Cardiac Risk Profiler)
Du Pont Dimension ES
EM Diagnostic Systems EASY PLUS
EM Diagnostic Systems EASY ST
EM Diagnostic Systems EPOS
Instrumentation Laboratory IL Genesis 21
Kodak Ektachem 250
Kodak Ektachem 700 P
Roche Cobas Bio
Roche Cobas Mira Plus
Technicon RA 100
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Cholestech L.D.X. Lipid Analyzer
DataChem DC–100
Enzymatics Q.E.D. Total Cholesterol Test
Sclavo Uni-Fast System Analyzer
Sclavo Uni-Fast2 System Analyzer

Analyte: Cholinesterase

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Kodak Ektachem 250
Roche Cobas Mira Plus

Analyte: Cholyglycine

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Roche Cobas Mira Plus

Analyte: Cortisol

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
EM Diagnostic Systems EPOS
Roche Cobas Bio
Roche Cobas Mira Plus
Technicon Immuno 1 System

Analyte: Creatine Kinase (CK)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Astra 8e
Beckman Synchron AS-Xi
Beckman Synchron CX 4 CE
Du Pont Dimension ES
EM Diagnostic Systems EASY PLUS
EM Diagnostic Systems EASY ST
EM Diagnostic Systems EPOS
Instrumentation Laboratory IL Genesis 21
Kodak Ektachem 250
Kodak Ektachem 700 P
Roche Cobas Bio
Roche Cobas Mira Plus
Technicon RA 100
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
DataChem DC–100
Sclavo Uni-Fast System Analyzer
Sclavo Uni-Fast2 System Analyzer

Analyte: Creatine Kinase MB Fraction (CKMB)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Du Pont Dimension ES
EM Diagnostic Systems EASY PLUS
EM Diagnostic Systems EASY ST
EM Diagnostic Systems EPOS
Kodak Ektachem 250
Kodak Ektachem 700 P

Roche Cobas FARA
Roche Cobas FARA II
Roche Cobas Mira
Roche Cobas Mira Plus
Roche Cobas Mira S
TOSOH A1A-1200
TOSOH A1A-600

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation

Test System, Assay or Examination:
Sclavo Uni-Fast System Analyzer
Sclavo Uni-Fast-2 System Analyzer
V Tech Target CK-MB

Analyte: Creatinine

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Du Pont Dimension ES
EM Diagnostic Systems EASY PLUS
EM Diagnostic Systems EASY ST
EM Diagnostic Systems EPOS
Instrumentation Laboratory IL 919
Instrumentation Laboratory IL Genesis 21
Kodak Ektachem 250
Kodak Ektachem 700 P
Roche Cobas Bio
Roche Cobas Mira Plus
Technicon RA 100

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation

Test System, Assay or Examination:
DataChem DC-100
Sclavo Uni-Fast System Analyzer
Sclavo Uni-Fast2 System Analyzer

Analyte: Estriol-Total

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Roche Cobas Mira Plus

Analyte: Ferritin

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
PB Diagnostic Systems OPUS
TOSOH A1A-1200
TOSOH A1A-600
Technicon Immuno 1 System

Analyte: Follicle Stimulating Hormone (FSH)

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
TOSOH A1A-1200
TOSOH A1A-600
Technicon Immuno 1 System

Analyte: Fructosamine

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Roche Cobas FARA
Roche Cobas FARA II
Roche Cobas Mira
Roche Cobas Mira Plus
Roche Cobas Mira S

Analyte: Gamma Glutamyl Transferase (GGT)

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Du Pont Dimension ES
EM Diagnostic Systems EASY PLUS
EM Diagnostic Systems EASY ST
EM Diagnostic Systems EPOS
Kodak Ektachem 250
Kodak Ektachem 700 P
Roche Cobas Bio
Roche Cobas Mira Plus
Technicon RA 100

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation

Test System, Assay or Examination:
Sclavo Uni-Fast System Analyzer
Sclavo Uni-Fast2 System Analyzer

Analyte: Glucose

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Du Pont Dimension ES
EM Diagnostic Systems EASY PLUS
EM Diagnostic Systems EASY ST
EM Diagnostic Systems EPOS
Instrumentation Laboratory IL 919
Instrumentation Laboratory IL Genesis 21
Kodak Ektachem 250
Kodak Ektachem 700 P
Nova 12 (with CRT)
Nova 14 (with CRT)
Roche Cobas Bio
Roche Cobas Mira Plus
Technicon RA 100

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation

Test System, Assay or Examination:
DataChem DC-100
I-STAT i-STAT Portable Clinical Analyzer
MediSense Satellite G
Sclavo Uni-Fast System Analyzer
Sclavo Uni-Fast2 System Analyzer

Analyte: Glycosylated Hemoglobin (Hgb A1C)

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Bio-Rad Diamat Analyzer
Chembio Auto-Glyco-Sep/A1C jr
Helena Laboratories ColumnMate

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation

Test System, Assay or Examination:
DataChem DC-100

Analyte: HCG, Serum, Qualitative

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation

Test System, Assay or Examination:
Access Medical Systems ImmunoCLONE
Bio-Rad Quantimune
Kodak SureCell hCG
Leeco Diagnostics Preview Serum/Urine Pregnancy Test
Medical Technology Corp. OPTITEC HCG
Medix Biotech EIA Test Kit
Meridian Diagnostics Immunocard Test
Pacific Biotech Beta Quik Stat
Pacific Biotech Cards HCG-Serum/Urine
V-Tech Target HCG

Analyte: HCG, Serum, Quantitative

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
TOSOH A1A-1200
TOSOH A1A-600
Technicon Immuno 1 System

Analyte: HCG, Urine, Qualitative (non-waived procedures)

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation

Test System, Assay or Examination:
Kodak SureCell hCG
NCS Pregnancy Latex Slide Test
Organon Teknika Pregnosticon Dri-Dot
Stanbio Fertitell Pregnancy Slide Test

Analyte: HCG, Whole Blood, Qualitative

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation

Test System, Assay or Examination:
Bio-Rad Quantimune

Analyte: HDL Cholesterol (no manual precipitation VLDL/LDL)

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Cirrus Diagnostics CRP (Cardiac Risk Profiler)
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Cholestech L.D.X. Lipid Analyzer

Analyte: Human Growth Hormone (GH)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
TOSOH A1A–1200
TOSOH A1A–600

Analyte: Insulin

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
TOSOH A1A–1200
TOSOH A1A–600

Analyte: Iron

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Du Pont Dimension ES
EM Diagnostic Systems EPOS
Kodak Ektachem 250
Roche Cobas Mira Plus
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
DataChem DC–100

Analyte: Ketone, Blood

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
GDS Diagnostics Stat-Site Meter

Analyte: Lactate Dehydrogenase (LDH)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Du Pont Dimension ES
EM Diagnostic Systems EASY PLUS
EM Diagnostic Systems EASY ST
EM Diagnostic Systems EPOS
Instrumentation Laboratory IL Genesis 21
Kodak Ektachem 250
Kodak Ektachem 700 P
Roche Cobas Bio
Roche Cobas Mira Plus
Roche Cobas Ready
Technicon RA 100
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
DataChem DC–100
Sclavo Uni-Fast System Analyzer
Sclavo Uni-Fast2 System Analyzer

Analyte: Lactate Dehydrogenase Heart Fraction (LDH–1)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Roche Cobas FARA
Roche Cobas FARA II
Roche Cobas Mira
Roche Cobas Mira Plus
Roche Cobas Mira S

Analyte: Lactic Acid (Lactate)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Du Pont Dimension ES
EM Diagnostic Systems EASY PLUS
EM Diagnostic Systems EASY ST
Kodak Ektachem 250

Analyte: Lipase

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Ciba Corning 550 Express
Coulter Dacos
Du Pont Dimension ES
Electronucleonics Gem-Profiler
Electronucleonics Gemini
Electronucleonics Gemstar
Kodak Ektachem 250
Kodak Ektachem 700 P
Roche Cobas Bio
Roche Cobas FARA
Roche Cobas FARA II
Roche Cobas Mira
Roche Cobas Mira Plus
Roche Cobas Mira S

Analyte: Lithium

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
AMDEV Lytening 2 Instant ISE
AMDEV Lytening 2z Instant ISE
Baxter Lytening Systems 31
Ciba Corning 480
Instrumentation Laboratory IL 943
Nova 11 (with CRT)
Nova 13 (with CRT)
Nova 4 (with CRT)

Analyte: Luteinizing Hormone (LH)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
PB Diagnostic Systems OPUS
TOSOH A1A–1200
TOSOH A1A–600
Technicon Immuno 1 System

Analyte: Magnesium

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Du Pont Dimension ES
EM Diagnostic Systems EASY PLUS
EM Diagnostic Systems EASY ST
Kodak Ektachem 250
Kodak Ektachem 700 P
Roche Cobas Bio
Roche Cobas Mira Plus
Technicon RA 100

Analyte: Microprotein, CSF

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Roche Cobas Mira Plus

Analyte: Microprotein, Urine

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Roche Cobas Mira Plus

Analyte: Myoglobin

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
PB Diagnostic Systems OPUS

Analyte: Osmolality, Serum

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Advanced Instruments 3M0 Micro-Osmometer
Advanced Instruments Cryomatic 3C2 Osmometer
Advanced Instruments DigiMatic 3D2 Osmometer
Precision Systems Cryette WR
Precision Systems Micro uOsmette
Precision Systems Multi-Osmette
Precision Systems Osmette A
Precision Systems Osmette II
Precision Systems Osmette S
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Advanced Instruments Wide Range Osmometer 3W2
Precision Systems Osmette
Wescor 5500 Vapor Pressure Osmometer
Wescor 5500XR Vapor Pressure Osmometer
Wescor Colloid Osmometer Model 4100

Wescor Colloid Osmometer Model 4400

Analyte: Osmolality, Urine

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Advanced Instruments 3M0 Micro-Osmometer
Advanced Instruments Cryomatic 3C2 Osmometer
Advanced Instruments DigiMatic 3D2 Osmometer
Precision Systems Cryette WR
Precision Systems Micro uOsmette
Precision Systems Multi-Osmette
Precision Systems Osmette A
Precision Systems Osmette II
Precision Systems Osmette S
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Advanced Instruments Wide Range Osmometer 3W2
Precision Systems Osmette
Wescor 5500 Vapor Pressure Osmometer
Wescor 5500XR Vapor Pressure Osmometer
Wescor Colloid Osmometer Model 4100
Wescor Colloid Osmometer Model 4400

Analyte: Oxyhemoglobin/Oxygen Saturation

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Instrumentation Laboratory IL 282
Waters Instruments Oxicom 2000

Analyte: Phosphorus

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Du Pont Dimension ES
EM Diagnostic Systems EASY PLUS
EM Diagnostic Systems EASY ST
EM Diagnostic Systems EPOS
Instrumentation Laboratory IL Genesis 21
Kodak Ektachem 250
Kodak Ektachem 700 P
Roche Cobas Bio
Roche Cobas Mira Plus
Technicon RA 100
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
DataChem DC–100
Sclavo Uni-Fast System Analyzer
Sclavo Uni-Fast2 System Analyzer

Analyte: Potassium

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
AMDEV Lytening 1 Instant ISE
AMDEV Lytening 2 Instant ISE
AMDEV Lytening 2z Instant ISE
AMDEV Lytening 5 Instant ISE
AMDEV Lytening 6 Instant ISE
AMDEV Lytening 6R Instant ISE
Baxter Lytening Systems 20
Baxter Lytening Systems 30
Baxter Lytening Systems 31
Baxter Lytening Systems 32
Ciba Corning 480
Du Pont Dimension ES
EM Diagnostic Systems EASY ST
Instrumentation Laboratory IL 943
Instrumentation Laboratory IL Genesis 21
Kodak Ektachem 250
Mallinckrodt GEM-STAT
MedTest Systems Medisensor 2001
Nova 1 (with CRT)
Nova 11 (with CRT)
Nova 12 (with CRT)
Nova 13 (with CRT)
Nova 14 (with CRT)
Nova 4 (with CRT)
Nova 5 (with CRT)
Orion Model 1020 Na/K Analyzer
Roche Cobas Mira Plus
Technicon RA 100
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
I-STAT i-STAT Portable Clinical Analyzer
Pointe Scientific Ionetics Electrolyte Analyzer II
Pointe Scientific Ionetics Model 310
Seragen Quick-Lyte K/Na

Analyte: Prolactin

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
PB Diagnostic Systems OPUS
TOSOH A1A–1200
TOSOH A1A–600
Technicon Immuno 1 System

Analyte: Prostatic Acid Phosphatase

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
TOSOH A1A–1200
TOSOH A1A–600

Analyte: Protein, Total

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Astra 8
Beckman Synchron AS–Xi
Behring Nephelometer
Behring Nephelometer 100
Du Pont Dimension ES
EM Diagnostic Systems EASY ST
EM Diagnostic Systems EPOS
Instrumentation Laboratory IL Genesis 21
Kodak Ektachem 250
Kodak Ektachem 700 P
Roche Cobas Bio
Roche Cobas Mira Plus
Roche Cobas Ready
Technicon RA 100
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
DataChem DC–100
Reichert TS Meter
Sclavo Uni-Fast System Analyzer
Sclavo Uni-Fast2 System Analyzer

Analyte: Pseudocholinesterase

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Du Pont Dimension ES

Analyte: Retinol Binding Protein

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Behring Nephelometer
Behring Nephelometer 100

Analyte: Salicylates

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Kodak Ektachem 250

Analyte: Sodium

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
AMDEV Lytening 1 Instant ISE
AMDEV Lytening 2 Instant ISE
AMDEV Lytening 2z Instant ISE
AMDEV Lytening 5 Instant ISE
AMDEV Lytening 6 Instant ISE
AMDEV Lytening 6R Instant ISE
Baxter Lytening Systems 20
Baxter Lytening Systems 30
Baxter Lytening Systems 31
Baxter Lytening Systems 32
Ciba Corning 480
Du Pont Dimension ES
Instrumentation Laboratory IL 943
Instrumentation Laboratory IL Genesis 21

Kodak Ektachem 250
Mallinckrodt GEM—STAT
MedTest Systems Medisensor 2001
Nova 1 (with CRT)
Nova 11 (with CRT)
Nova 12 (with CRT)
Nova 13 (with CRT)
Nova 14 (with CRT)
Nova 4 (with CRT)
Nova 5 (with CRT)
Orion Model 1020 Na/K Analyzer
Roche Cobas Mira Plus

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation

Test System, Assay or Examination:
I-STAT i-STAT Portable Clinical Analyzer
Pointe Scientific Ionetics Electrolyte Analyzer II
Pointe Scientific Ionetics Model 310
Seragen Quick-Lyte K/Na

Analyte: Thyroid Stimulating Hormone (TSH)

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
TOSOH A1A–1200
TOSOH A1A–600

Analyte: Thyroid Stimulating Hormone—High Sens. (TSH–HS)

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Technicon Immuno 1 System

Analyte: Thyroxine (T4)

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
EM Diagnostic Systems EPOS
Roche Cobas Bio
Roche Cobas Mira Plus
TOSOH A1A–1200
TOSOH A1A–600
Technicon Immuno 1 System

Analyte: Thyroxine, Free (FT4)

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
TOSOH A1A–1200
TOSOH A1A–600
Technicon Immuno 1 System

Analyte: Triglyceride

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Cirrus Diagnostics CRP (Cardiac Risk Profiler)
Du Pont Dimension ES
EM Diagnostic Systems EASY PLUS
EM Diagnostic Systems EASY ST
EM Diagnostic Systems EPOS
Instrumentation Laboratory IL Genesis 21
Kodak Ektachem 250
Kodak Ektachem 700 P
Roche Cobas Bio
Roche Cobas Mira Plus
Roche Cobas Ready
Technicon RA 100

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation

Test System, Assay or Examination:
Cholestech L.D.X. Lipid Analyzer
DataChem DC–100
Sclavo Uni-Fast System Analyzer
Sclavo Uni-Fast2 System Analyzer

Analyte: Triiodothyronine (T3)

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
TOSOH A1A–1200
TOSOH A1A–600
Technicon Immuno 1 System

Analyte: Triiodothyronine Uptake (T3U) (TU)

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Du Pont Dimension ES
EM Diagnostic Systems EPOS
PB Diagnostic Systems OPUS
Roche Cobas Bio
Roche Cobas Mira Plus
TOSOH A1A–1200
TOSOH A1A–600
Technicon DAX 24
Technicon DAX 48
Technicon DAX 72
Technicon DAX 96
Technicon Immuno 1 System

Analyte: Urea (BUN)

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Du Pont Dimension ES
EM Diagnostic Systems EASY PLUS
EM Diagnostic Systems EASY ST
EM Diagnostic Systems EPOS
Instrumentation Laboratory IL 919
Instrumentation Laboratory IL Genesis 21
Kodak Ektachem 250
Kodak Ektachem 700 P
Nova 12 (with CRT)
Nova 14 (with CRT)
Roche Cobas Bio
Roche Cobas Mira Plus
Technicon RA 100

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation

Test System, Assay or Examination:
Ames Azostix
DataChem DC–100
I-STAT i-STAT Portable Clinical Analyzer
Sclavo Uni-Fast System Analyzer
Sclavo Uni-Fast2 System Analyzer

Analyte: Uric Acid

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Du Pont Dimension ES
EM Diagnostic Systems EASY PLUS
EM Diagnostic Systems EASY ST
EM Diagnostic Systems EPOS
Instrumentation Laboratory IL Genesis 21
Kodak Ektachem 250
Kodak Ektachem 700 P
Roche Cobas Bio
Roche Cobas Mira
Roche Cobas Mira Plus
Roche Cobas Ready
Technicon RA 100

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation

Test System, Assay or Examination:
DataChem DC–100
Sclavo Uni-Fast System Analyzer
Sclavo Uni-Fast2 System Analyzer

Analyte: Vitamin B12

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Roche Cobas Mira Plus

Speciality/Subspeciality: General Immunology

Analyte: Alpha-1 Microglobin

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Behring Nephelometer
Behring Nephelometer 100

Analyte: Alpha-1-Acid Glycoprotein (orosomucoid)

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Behring Nephelometer
Behring Nephelometer 100
Sanofi/Kallestad QH 300
Technicon DPA–1

Analyte: Alpha-1-Antitrypsin

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Behring Nephelometer
Behring Nephelometer 100
Roche Cobas Mira Plus
Sanofi/Kallestad QH 300
Technicon DPA–1

Analyte: Alpha-2-Macroglobulin

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Behring Nephelometer
Behring Nephelometer 100
Sanofi/Kallestad QH 300
Technicon DPA–1

Analyte: Anti-Streptolysin O (ASO)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Behring Nephelometer
Behring Nephelometer 100
Sanofi/Kallestad QH 300
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Behring Turbitime

Analyte: Beta-2 microglobulin

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
TOSOH A1A–1200
TOSOH A1A–600

Analyte: C-Reactive Protein (CRP)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Behring Nephelometer
Behring Nephelometer 100
Du Pont Dimension ES
EM Diagnostic Systems EPOS
Roche Cobas Mira Plus
Sanofi/Kallestad QH 300
Technicon DPA-1
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Behring Turbitime
NCS CRP Slide Test

Analyte: Ceruloplasmin

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Behring Nephelometer
Behring Nephelometer 100
Sanofi/Kallestad QH 300
Technicon DPA-1

Analyte: Complement C3

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Behring Nephelometer
Behring Nephelometer 100
Roche Cobas Mira Plus
Sanofi/Kallestad QH 300
Technicon DPA-1
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Behring Turbitime

Analyte: Complement C4

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Behring Nephelometer
Behring Nephelometer 100
Roche Cobas Mira Plus
Sanofi/Kallestad QH 300
Technicon DPA-1
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Behring Turbitime

Analyte: Cytomegalovirus Antibodies

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
PB Diagnostic Systems OPUS

Analyte: Febrile Agglutinins

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Becton Dickinson BBL—Tube Test
Difco Bacto—Tube Test
Gamma Biologicals—Tube Test
Roach Laboratories—Slide Test
Roach Laboratories—Tube Test

Analyte: Haptoglobin

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Behring Nephelometer
Behring Nephelometer 100
Roche Cobas Mira Plus
Sanofi/Kallestad QH 300
Technicon DPA-1
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Behring Turbitime

Analyte: Hemopexin

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Behring Nephelometer

Analyte: Immunoglobulins IgA

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Behring Nephelometer
Behring Nephelometer 100
Roche Cobas Mira Plus
Sanofi/Kallestad QH 300
Technicon DPA-1
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Behring Turbitime

Analyte: Immunoglobulins IgE

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Behring Nephelometer 100
TOSOH A1A-1200
TOSOH A1A-600

Analyte: Immunoglobulins IgG

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Behring Nephelometer
Behring Nephelometer 100
Roche Cobas Mira Plus
Sanofi/Kallestad QH 300
Technicon DPA-1
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Behring Turbitime

Analyte: Immunoglobulins IgM

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Behring Nephelometer
Behring Nephelometer 100
Roche Cobas Mira Plus
Sanofi/Kallestad QH 300
Technicon DPA–1
Category: Manual or semi-automated procedures with limited steps and

with limited sample or reagent preparation
Test System, Assay or Examination:
Behring Turbitime

Analyte: Kappa Light Chains

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Behring Nephelometer
Behring Nephelometer 100
Sanofi/Kallestad QH 300

Analyte: Lambda Light Chains

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Behring Nephelometer
Behring Nephelometer 100
Sanofi/Kallestad QH 300

Analyte: Myoglobin

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Behring Nephelometer
Behring Nephelometer 100
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Behring Turbitime

Analyte: Prealbumin

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Behring Nephelometer
Behring Nephelometer 100
Sanofi/Kallestad QH 300

Analyte: Properdin Factor B

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Technicon DPA-1

Analyte: Rheumatoid Factor (RF)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Behring Nephelometer
Behring Nephelometer 100
Sanofi/Kallestad QH 300
Technicon DPA-1
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Behring Turbitime

Analyte: Rubella Antibodies

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
PB Diagnostic Systems OPUS
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Seradyn Seratest Rubella

Analyte: Sprothrix schenckii Antibodies

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Immuno-Mycologics Exo-Antigen Test Kit

Analyte: Transferrin

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Behring Nephelometer
Behring Nephelometer 100
Roche Cobas Mira Plus
Sanofi/Kallestad QH 300
Technicon DPA-1
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Behring Turbitime

Analyte: Treponema pallidum Antibodies (includes Reagin)

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Biokit RPR
Seradyn Color Slide—TRUST
Speciality/Subspeciality: Hematology

Analyte: Activated Clotting Time (ACT)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Quest Medical ACTester/ACTest AACT System

Analyte: Activated Partial Thromboplastin Time (APTT)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Bio/Data MCA 110
Bio/Data MCA 210
General Diagnostics Coag-A-Mate 150
General Diagnostics Coag-A-Mate 2001
General Diagnostics Coag-A-Mate Dual Channel
Ortho Koagulab 60-S
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
DataChem DC-100
Diagnostica Stago ST4
LAbor COA Data 2000
LAbor COA Screener
LAbor COA System
TECO Coatron F2
TECO Coatron II
TECO Coatron Jr

Analyte: Antithrombin III (ATIII)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Behring Nephelometer
Behring Nephelometer 100

Analyte: Bleeding Time

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
International Technidyne Surgicutt Bleeding Time Test

Analyte: Eosinophils

Category: Microscopic evaluation and/or enumeration of cells, formed elements, or microorganisms in stained preparations
Test System, Assay or Examination:
All Nasal Smears for Eosinophils

Analyte: Fibrinogen

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Behring Nephelometer
Behring Nephelometer 100
Bio/Data MCA 110
Bio/Data MCA 210
Instrumentation Laboratory IL ACL 1000
Medical Laboratories MLA Electra 1000 C
Medical Laboratories MLA Electra 900
Medical Laboratories MLA Electra 900 C
Organon Teknika Coag-A-Mate RA4
Organon Teknika Coag-A-Mate XC Plus
Ortho Koagulab 60-S
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Becton Dickinson QBC AutoRead

Becton Dickinson QBC Reference
LAbor COA Data 2000
LAbor COA Screener
LAbor COA System
Medical Laboratories MLA Electra 750
TECO Coatron F2
TECO Coatron II
TECO Coatron Jr

Analyte: Hematocrit

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott Cell-Dyn 3300 CS
Abbott Cell-Dyn 3300 SL
Abbott Cell-Dyn 3500 CS
Abbott Cell-Dyn 3500 SL
Coulter JR
Coulter MD16
Mallinckrodt GEM–STAT
MedTest Systems Medisensor 2001
Nova 1 (with CRT)
Nova 11 (with CRT)
Nova 13 (with CRT)
Nova 14 (with CRT)
Nova 5 (with CRT)
Roche Cobas Argos
Roche Cobas Helios
Seradyn Seragen Quick Count Plus II
Technicon H.1 Jr
Technicon H.1E System
Technicon H.2 System
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
I–STAT i–STAT Portable Clinical Analyzer

Analyte: Hemoglobin

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott Cell-Dyn 3300 CS
Abbott Cell-Dyn 3300 SL
Abbott Cell-Dyn 3500 CS
Abbott Cell-Dyn 3500 SL
Coulter JR
Coulter MD16
EM Diagnostic Systems EASY PLUS
EM Diagnostic Systems EASY ST
Roche Cobas Argos
Roche Cobas Helios
Seradyn Seragen Quick Count Plus II
Technicon H.1 Jr
Technicon H.1E System
Technicon H.2 System
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
DataChem DC–100

Analyte: Hemoglobin A2

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Helena Laboratories ColumnMate

Analyte: Hemoglobin S

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Helena Laboratories ColumnMate

Analyte: Leukocytes, Fecal Smear

Category: Microscopic evaluation and/or enumeration of cells, formed elements, or microorganisms in stained preparations
Test System, Assay or Examination:
All Fecal Smears for Leukocytes

Analyte: Plasminogen

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Behring Nephelometer
Behring Nephelometer 100

Analyte: Platelet Count

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott Cell-Dyn 3300 CS
Abbott Cell-Dyn 3300 SL
Abbott Cell-Dyn 3500 CS
Abbott Cell-Dyn 3500 SL
Coulter MD16
Roche Cobas Argos
Technicon H.1 Jr
Technicon H.1E System
Technicon H.2 System

Analyte: Prothrombin Time (PT)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Bio/Data MCA 110
Bio/Data MCA 210
Du Pont Coumatrak
EM Diagnostic Systems EASY ST
General Diagnostics Coag-A-Mate 150
General Diagnostics Coag-A-Mate 2001
General Diagnostics Coag-A-Mate Dual Channel
Ortho Koagulab 60–S
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
DataChem DC–100
Diagnostica Stago ST4
LAbor COA Data 2000
LAbor COA Screener
LAbor COA System
Sclavo Uni-Fast System Analyzer
TECO Coatron F2
TECO Coatron II
TECO Coatron Jr

Analyte: Red Blood Cell Count (Erythrocyte Count)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott Cell-Dyn 3300 CS
Abbott Cell-Dyn 3300 SL
Abbott Cell-Dyn 3500 CS
Abbott Cell-Dyn 3500 SL
Coulter JR
Coulter MD16
Roche Cobas Helios
Seradyn Seragen Quick Count Plus II
Technicon H.1 Jr
Technicon H.1E System
Technicon H.2 System

Analyte: Reticulocyte Count

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Sysmex R–1000
Sysmex R–3000

Analyte: Semen

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Hamilton-Thorn HTM–IVOS (count and motility only)
Category: Microscopic evaluation and/or enumeration of cells, formed elements, or microorganisms in unstained preparations
Test System, Assay or Examination:
All Manual Semen Analyses (presence or absence only)

Analyte: Thrombin Time

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Bio/Data MCA 210
General Diagnostics Coag-A-Mate X2
Instrumentation Laboratory IL ACL 100
Instrumentation Laboratory IL ACL 1000
Instrumentation Laboratory IL ACL 200
Instrumentation Laboratory IL ACL 2000
Instrumentation Laboratory IL ACL 300
Instrumentation Laboratory IL ACL 3000
Instrumentation Laboratory IL ACL 3000 Plus

Medical Laboratories MLA Electra 1000 C
Medical Laboratories MLA Electra 900
Medical Laboratories MLA Electra 900 C
Organon Teknika Coag-A-Mate XC
Organon Teknika Coag-A-Mate XC Plus
Ortho Koagulab 16S
Ortho Koagulab 32–S
Ortho Koagulab 60–S

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation

Test System, Assay or Examination:
Diagnostica Stago ST4
LAbor COA Data 2000
LAbor COA Screener
Medical Laboratories MLA Electra 750
TECO Coatron F2
TECO Coatron II
TECO Coatron Jr

Analyte: White Blood Cell (WBC) Differential

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Abbott Cell-Dyn 3300 CS
Abbott Cell-Dyn 3300 SL
Abbott Cell-Dyn 3500 CS
Abbott Cell-Dyn 3500 SL
Coulter MD16
Roche Cobas Argos5 Diff
Roche Cobas Helios
Technicon H.2 System

Analyte: White Blood Cell Count (Leukocyte Count)

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Abbott Cell-Dyn 3300 CS
Abbott Cell-Dyn 3300 SL
Abbott Cell-Dyn 3500 CS
Abbott Cell-Dyn 3500 SL
Coulter JR
Coulter MD16
Roche Cobas Helios
Seradyn Seragen Quick Count Plus II
Technicon H.1 Jr
Technicon H.1E System
Technicon H.2 System

Analyte: Whole Blood Clotting Time

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Haemoscope Thromboelastograph (qualitative procedure)
Logos elvi 816 Bi Clot (qualitative procedure)
Sienco SONOCLOT Coagulation Analyzer (qualitative procedure)
Sienco SONOCLOT II Surgical Analyzer (qualitative procedure)

Speciality/Subspeciality: Mycology

Analyte: Dermatophytes

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation

Test System, Assay or Examination:
Adams Scientific Selecticult-DTM
Culture Kits, Inc. Derm-Kit

Analyte: Fungi

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Becton Dickinson BACTEC NR–860

Analyte: Fungi—Fungal elements only

Category: Microscopic evaluations of direct specimens in microbiology or parasitology

Test System, Assay or Examination:
All Wet Mount Preparations for Yeast

Analyte: Yeast

Category: Microscopic evaluations of direct specimens in microbiology or parasitology

Test System, Assay or Examination:
All Wet Mount Preparations for Yeast

Analyte: Yeast, Candida only

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation

Test System, Assay or Examination:
Bio-Medical BIOCARD Candida (direct antigen/visual)
Difco Candida Latex Test (direct antigen/visual)
Leeco Diagnostics Super Duo (direct antigen/visual)
Medical Technology Corp. CandidaSure (direct Ag/visual)
Miles Diagnostic Labs MicroStix-Candida
SmithKline Diagnostics Isocult Combination Culture Test
SmithKline Isocult Diagnostic Culturing System

Speciality/Subspeciality: Parasitology

Analyte: Intestinal parasites

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation

Test System, Assay or Examination:
Alexon ProSpecT Cryptosporidium Microtiter (dir Ag/visual)
Alexon ProSpecT Giardia Rapid Assay

Analyte: Trichomonas

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation

Test System, Assay or Examination:
Leeco Diagnostics Super Duo (direct antigen/visual)
SmithKline Diagnostics Isocult Combination Culture Test
SmithKline Isocult Diagnostic Culturing System

Speciality/Subspeciality: Toxicology/TDM

Analyte: Acetaminophen

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Abbott Spectrum
Baxter Paramax
Beckman Synchron CX 4
Beckman Synchron CX 4 CE
Beckman Synchron CX 5
Beckman Synchron CX 7
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Boehringer Mannheim Hitachi 717
Ciba Corning 550 Express
Coulter Dacos
Instrumentation Laboratory IL Monarch
Roche Cobas Bio FP
Roche Cobas FARA
Roche Cobas FARA II
Roche Cobas Mira
Roche Cobas Mira Plus
Roche Cobas Mira S
Technicon AXON
Technicon RA 1000
Technicon RA 500

Analyte: Amikacin

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
EM Diagnostic Systems EASY PLUS
EM Diagnostic Systems EASY ST
EM Diagnostic Systems EPOS
Roche Cobas Bio FP

Analyte: Amphetamines

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Boehringer Mannheim Hitachi 747
EM Diagnostic Systems EPOS
Roche Cobas FARA II
Roche Cobas Mira
Roche Cobas Mira Plus
Roche Cobas Mira S

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation

Test System, Assay or Examination:
Immunotech Microzyme EIA Visual Procedure

Roche Abuscreen ONTRAK

Analyte: Barbiturates

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Boehringer Mannheim Hitachi 747
EM Diagnostic Systems EPOS
Roche Cobas FARA II
Roche Cobas Mira
Roche Cobas Mira Plus
Roche Cobas Mira S
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Roche Abuscreen ONTRAK

Analyte: Benzodiazepines

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Boehringer Mannheim Hitachi 747
Roche Cobas FARA II
Roche Cobas Mira
Roche Cobas Mira Plus
Roche Cobas Mira S
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Roche Abuscreen ONTRAK

Analyte: Benzodiazepines, Urine

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
EM Diagnostic Systems EPOS

Analyte: Cannabinoids (THC)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Boehringer Mannheim Hitachi 717
Boehringer Mannheim Hitachi 747
EM Diagnostic Systems EPOS
Roche Cobas FARA II
Roche Cobas Mira
Roche Cobas Mira Plus
Roche Cobas Mira S
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Immunotech Microzyme EIA Visual Procedure
Roche Abuscreen ONTRAK

Analyte: Carbamazepine

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Ciba Corning Biotrack 516
EM Diagnostic Systems EASY PLUS
EM Diagnostic Systems EASY ST
Roche Cobas Bio FP
Roche Cobas Mira Plus
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Syntex Medical Diagnostics AccuLevel

Analyte: Cocaine Metabolites

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Boehringer Mannheim Hitachi 747
EM Diagnostic Systems EPOS
Roche Cobas FARA II
Roche Cobas Mira
Roche Cobas Mira Plus
Roche Cobas Mira S
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Immunotech Microzyme EIA Visual Procedure
Roche Abuscreen ONTRAK

Analyte: Digoxin

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Du Pont Dimension ES
EM Diagnostic Systems EPOS
Roche Cobas Bio FP
Roche Cobas Mira Plus
Technicon Immuno 1 System

Analyte: Disopyramide

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
EM Diagnostic Systems EPOS

Analyte: Ethanol (Alcohol)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Du Pont Dimension ES
EM Diagnostic Systems EASY PLUS
EM Diagnostic Systems EASY ST
Roche Cobas FARA
Roche Cobas FARA II
Roche Cobas Mira
Roche Cobas Mira S
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Roche ON-SITE Alcohol Test
TOXI-LAB Alcohol Procedure
TOXI-LAB ON-SITE Alcohol

Analyte: Gentamicin

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
EM Diagnostic Systems EASY PLUS
EM Diagnostic Systems EASY ST
EM Diagnostic Systems EPOS
PB Diagnostic Systems OPUS
Roche Cobas Bio FP
Roche Cobas Mira Plus
Technicon Immuno 1 System

Analyte: Isonicotinic Acid

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Difco Bacto INH Test Strips

Analyte: Methadone

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
EM Diagnostic Systems EPOS
Roche Cobas Mira Plus

Analyte: Methaqualone

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
EM Diagnostic Systems EPOS
Roche Cobas Mira Plus

Analyte: Morphine

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Roche Cobas Mira
Roche Cobas Mira S
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Roche Abuscreen ONTRAK

Analyte: N-Acetylprocainamide (NAPA)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
EM Diagnostic Systems EASY PLUS
EM Diagnostic Systems EASY ST
EM Diagnostic Systems EPOS
Roche Cobas Bio FP
Roche Cobas Mira Plus

Analyte: Opiates

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Boehringer Mannheim Hitachi 747
EM Diagnostic Systems EPOS
Roche Cobas FARA II
Roche Cobas Mira Plus
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Immunotech Microzyme EIA Visual Procedure

Analyte: Phencyclidine (PCP)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Boehringer Mannheim Hitachi 747
EM Diagnostic Systems EPOS
Roche Cobas FARA II
Roche Cobas Mira
Roche Cobas Mira S
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Immunotech Microzyme EIA Visual Procedure
Roche Abuscreen ONTRAK

Analyte: Phenobarbital

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Du Pont Dimension ES
EM Diagnostic Systems EASY PLUS
EM Diagnostic Systems EASY ST
EM Diagnostic Systems EPOS
Roche Cobas Bio FP
Roche Cobas Mira Plus
Technicon Immuno 1 System
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Syntex Medical Diagnostics AccuLevel

Analyte: Phenytoin

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Ames Clinimate—TDA
Ciba Corning Biotrack 516
Du Pont Dimension ES
EM Diagnostic Systems EASY PLUS
EM Diagnostic Systems EASY ST
Roche Cobas Bio FP
Roche Cobas Mira Plus
Technicon Immuno 1 System
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Syntex Medical Diagnostics AccuLevel

Analyte: Primidone

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
EM Diagnostic Systems EASY PLUS
EM Diagnostic Systems EASY ST
EM Diagnostic Systems EPOS
Roche Cobas Bio FP
Roche Cobas Mira Plus

Analyte: Procainamide

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
EM Diagnostic Systems EASY PLUS
EM Diagnostic Systems EASY ST
EM Diagnostic Systems EPOS
Roche Cobas Bio FP
Roche Cobas Mira Plus

Analyte: Propoxyphene

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
EM Diagnostic Systems EPOS
Roche Cobas Mira Plus

Analyte: Quinidine

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
EM Diagnostic Systems EASY PLUS
EM Diagnostic Systems EASY ST
EM Diagnostic Systems EPOS
Roche Cobas Bio FP
Roche Cobas Mira Plus

Analyte: Salicylates

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott Spectrum
Boehringer Mannheim Hitachi 704
Ciba Corning 550 Express
Coulter Dacos
Du Pont Dimension ES
EM Diagnostic Systems EASY PLUS
EM Diagnostic Systems EASY ST
Instrumentation Laboratory IL Monarch
Roche Cobas Bio FP
Roche Cobas FARA
Roche Cobas FARA II
Roche Cobas Mira
Roche Cobas Mira Plus
Roche Cobas Mira S
Technicon AXON
Technicon RA 1000
Technicon RA 500
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Sclavo Uni-Fast System Analyzer
Sclavo Uni-Fast2 System Analyzer

Analyte: Theophylline

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Coulter Dacos
Du Pont Analyst
Du Pont Dimension ES
EM Diagnostic Systems EASY PLUS
EM Diagnostic Systems EASY ST
EM Diagnostic Systems EPOS
Kodak Ektachem 250
Roche Cobas Bio FP
Roche Cobas Mira Plus
Technicon Immuno 1 System
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Syntex Medical Diagnostics AccuLevel

Analyte: Tobramycin

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
EM Diagnostic Systems EPOS
PB Diagnostic Systems OPUS
Roche Cobas Bio FP
Roche Cobas Mira Plus
Technicon Immuno 1 System

Analyte: Valproic Acid

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
EM Diagnostic Systems EPOS

Analyte: Vancomycin

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Roche Cobas Bio FP
Speciality/Subspeciality: Urinalysis

Analyte: Urine Qualitative Dipstick Chemistries

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Ames Clini-tek Reflectance Photometer

Ames Clinitek Auto 2000
Speciality/Subspeciality: Virology

Analyte: Respiratory viruses (Influenza A&B, parainfluenza)

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Becton Dickinson QTest Influenza A (direct antigen/visual)

Analyte: Rotavirus

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Isolab RotaStat LA Slide Test (direct Ag/visual)
Complexity: HIGH
Speciality/Subspeciality: Bacteriology

Analyte: Aerobic &/or Anaerobic Organisms—unlimited sources

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Analytab API ALADIN (including culture)
Becton Dickinson Sceptor System (including culture)
Vitek Systems VITEK
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
BioClinical Systems Bullseye OB/GYN Plate (incl. culture)
BioClinical Systems UniSystem Bio-General (incl. culture)
Organism ID & Antimicro. Susceptibil. Testing from Culture
Troy Biologicals Bacti-Bio General Plate (incl. culture)
Troy Biologicals Bacti-Star II Vaginal Plate (incl culture)
Troy Biologicals Bacti-Star Vaginal Plate (incl. culture)
Troy Biologicals Bacti-Vaginal Plate (including culture)

Analyte: Aerobic Organisms from throat specimens only

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Troy Biologicals Bacti Strep Screen Plus (incl. culture)
Troy Biologicals Bacti-Star II Throat Plate (incl. culture)
Troy Biologicals Bacti-Star Throat Plate (incl. culture)
Troy Biologicals Bacti-Throat Plate (including culture)

Analyte: Aerobic/Anaerobic Organisms—Other Than Urethral

Category: Microscopic evaluation and/or enumeration of cells, formed elements, or microorganisms in stained preparations
Test System, Assay or Examination:
All Gram Stain Procedures—Sources other than Urethral

Analyte: Bordetella pertussis/parapertussis

Category: Test kits requiring microscopic evaluations
Test System, Assay or Examination:
Difco FA Bordetella Pertussis/Parapertussis (direct Ag.)
Difco FA Bordetella Pertussis/Parapertussis (inc. culture)

Analyte: Campylobacter

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Gen-Probe AccuProbe (including culture)

Analyte: Chlamydia

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott COMMANDER System
Vitek Systems Vidas (direct antigen)
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
ADI Visuwell Chlamydia (direct antigen/visual)
Abbott Chlamydiazyme (with blocking reagent)
All Organism Identification from Cell Culture
Analytab API IDEIA (direct antigen/spectrophotometric)
Analytab API IDEIA (direct antigen/visual)
Ciba Corning Magic Lite Chlamydia (with blocking reagent)
Gen-Probe Pace2 (direct antigen)
Sigma SIA Chlymydia (dir. Ag/spectrophotometric)
Category: Test kits requiring microscopic evaluations
Test System, Assay or Examination:
Diagnostic Products Corp. PDx Chlamydia Cult. Conf. (inc. cul.)
Diagnostic Technology Chalamydia-Check Sys. (inc. culture)
Diagnostic Technology Chalamydia-Check System (direct Ag)

Analyte: Clostridium Difficile

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Vitek Systems Vidas (direct antigen)
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Analytab C. difficile A+B ELISA Test Kit (direct antigen)
Meridian Premier C. difficile Toxin A (dir Ag/spectrophoto)
Meridian Premier C. difficile Toxin A (dir Ag/visual)

Analyte: Enterococcus

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Gen-Probe AccuProbe (including culture)

Analyte: Escherichia Coli

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Becton Dickinson BBL Eschericia coli (including culture)
Difco Bacto E. coli H H7 (including culture)
Difco Bacto E. coli O 0157 (including culture)
Difco Bacto E. coli O (including culture)
Difco Bacto E. coli OK (including culture)
Roach Laboratories E. coli OK

Analyte: Haemophilus Influenzae

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Gen-Probe AccuProbe (including culture)

Analyte: Haemophilus Influenzae, Type a, c-f

Category: Test kits requiring microscopic evaluations
Test System, Assay or Examination:
Difco FA H. influenzae Types A-F (direct antigen)

Analyte: Haemophilus Influenzae, Type b

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Becton Dickinson Dir. Meningitis Combo Kit (bld cult supern)
Becton Dickinson Dir. Meningitis Indiv. Kit (bld cult supern)
Wampole Bactigen H. influenzae type b (bld cult. supernat)

Wampole Bactigen Meningitis Panel (bld culture supernatant)
Wellcome Wellcogen Bacterial Ag Kit (bld culture supernate)
Category: Test kits requiring microscopic evaluations
Test System, Assay or Examination:
Difco FA H. influenzae Types A-F (direct antigen)

Analyte: Legionella

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Gen-Probe Legionella Rapid Diag. System (direct antigen)
Gen-Probe Legionella Rapid Diag. System (including culture)
Pro-Lab Legionella Latex Ag (including culture)
Category: Test kits requiring microscopic evaluations
Test System, Assay or Examination:
MarDx Legionella DFA (direct antigen)
MarDx Legionella DFA (including culture)
Meridian Diagnostics MERIFLUOR Legionella (direct antigen)
Meridian Diagnostics MERIFLUOR Legionella (inc. culture)
Organon Teknika Legionella DFA Kit I (direct antigen)
Organon Teknika Legionella DFA Kit I (including culture)
Remel Legionella Poly-ID Test Kit (direct antigen)
Remel Legionella Poly-ID Test Kit (including culture)

Analyte: Listeria Monocytogenes

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Gen-Probe AccuProbe (including culture)

Analyte: Mycoplasma Pneumonia

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Gen-Probe M. pneumoniae Rapid Diag. System (direct antigen)
Gen-Probe M. pneumoniae Rapid Diag. System (inc. culture)

Analyte: Neisseria Gonorrhoeae

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Adams Scientific Selecticult-GC (including culture)
BioClinical Systems Gonopen Screen (including culture)
Gen-Probe AccuProbe (including culture)
Troy Biologicals Bacti Gono Screen I (including culture)
Troy Biologicals Bacti Gono Screen II (including culture)
Category: Test kits requiring microscopic evaluations
Test System, Assay or Examination:
Difco FA N. gonorrhoeae (including culture)
Syva MicroTrak N. gonorrhoeae Cult. Cofirm. (incl. culture)

Analyte: Neisseria Meningitidis (Non-Specific)

Category: Test kits requiring microscopic evaluations
Test System, Assay or Examination:
Difco FA Meningococcus Poly (direct antigen)

Analyte: Neisseria Meningitidis, Group A

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Becton Dickinson Dir. Meningitis Combo Kit (bld cult supern)
Becton Dickinson Meningitidis Test (bld culture supernate)
Wampole Bactigen Meningitis Panel (bld culture supernatant)
Wellcome Wellcogen Bacterial Ag Kit (bld culture supernate)

Analyte: Neisseria Meningitidis, Group B

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Wampole Bactigen Meningitis Panel (bld culture supernatant)

Analyte: Neisseria Meningitidis, Group B and E. coli K1

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Becton Dickinson Dir. Meningitis Combo Kit (bld cult supern)
Becton Dickinson Dir. Meningitis Indiv. Kit (bld cult supern)
Wellcome Wellcogen Bacterial Ag Kit (bld culture supernate)
Wellcome Wellcogen Bacterial Ag Kit (including culture)

Analyte: Neisseria Meningitidis, Group C

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Becton Dickinson Dir. Meningitis Combo Kit (bld cult supern)
Becton Dickinson Meningitidis Test (bld culture supernate)
Wampole Bactigen Meningitis Panel (bld culture supernatant)
Wellcome Wellcogen Bacterial Ag Kit (bld culture supernate)

Analyte: Neisseria Meningitidis, Group W135

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Becton Dickinson Dir. Meningitis Combo Kit (bld cult supern)
Becton Dickinson Meningitidis Test (bld culture supernate)
Wampole Bactigen Meningitis Panel (bld culture supernatant)
Wellcome Wellcogen Bacterial Ag Kit (bld culture supernate)

Analyte: Neisseria Meningitidis, Group Y

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Becton Dickinson Dir. Meningitis Combo Kit (bld cult supern)
Becton Dickinson Meningitidis Test (bld culture supernate)
Wampole Bactigen Meningitis Panel (bld culture supernatant)
Wellcome Wellcogen Bacterial Ag Kit (bld culture supernate)

Analyte: Salmonella

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Becton Dickinson BBL Salmonella Grouping (incl. culture)
Difco Bacto Salmonella H (including culture)
Difco Bacto Salmonella O (including culture)
Roach Laboratories Salmonella Flagellar (H) (inc. culture)
Roach Laboratories Salmonella Somatic & Vi (inc. culture)
Wampole Bactigen Salmonella Shigella (including culture)
Category: Test kits requiring microscopic evaluations
Test System, Assay or Examination:
Difco FA Salmonella Panvalent (including culture broth)
Difco FA Salmonella Poly (including culture broth)

Analyte: Shigella

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Becton Dickinson BBL Shigella Grouping (including culture)

Difco Bacto Shigella (including culture)
Roach Laboratories Shigella Grouping & Typing (inc. cult.)
Wampole Bactigen Salmonella-Shigella (including culture)

Analyte: Staphylococcus

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Gen-Probe AccuProbe (including culture)

Analyte: Streptococcus Pneumoniae

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Becton Dickinson Dir. Meningitis Combo Kit (bld cult supern)
Becton Dickinson Dir. Meningitis Indiv. Kit (bld cult supern)
Gen-Probe AccuProbe (including culture)
Wampole Bactigen Meningitis Panel (bld culture supernatant)
Category: Test kits requiring microscopic evaluations
Test System, Assay or Examination:
Difco FA Pneumococcus Poly (direct antigen)

Analyte: Streptococcus, Group A

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Adams Scientific Selecticult-Strep (including culture)
Becton Dickinson Culturette GrpA Strep (including culture)
BioClinical Systems Strep Screen Kit (including culture)
Difco Bacto Strep Grouping Kit (including culture)
Gen-Probe AccuProbe (including culture)
Leeco Diagnostics Preview Strep A (including culture)
Medical Technology Corp. Optitec Strep A (including culture)
Meridian Diagnostics Meritec-Strep Group A (incl. culture)
NCS StrepSlide (including culture)
Troy Biologicals Bacti Strep Screen (including culture)
Vitek Systems Slidex Strepto A (including culture)
Vitek Systems Slidex Strepto-Kit (including culture)
Category: Test kits requiring microscopic evaluations
Test System, Assay or Examination:
Difco FA Streptococcus Groups (including culture)

Analyte: Streptococcus, Group B

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Becton Dickinson Dir. Meningitis Combo Kit (bld cult supern)
Becton Dickinson Dir. Meningitis Indiv. Kit (bld cult supern)
Difco Bacto Strep Grouping Kit (including culture)
Gen-Probe AccuProbe (including culture)
Hybritech Icon Strep B (including culture)
Meridian Diagnostics Meritec-Strep Group B (incl. culture)
NCS StrepSlide (including culture)
Vitek Systems Slidex Strepto B (including culture)
Vitek Systems Slidex Strepto-Kit (including culture)
Wampole Bactigen Group B Strep (blood culture supernatant)
Wellcome Wellcogen Bacterial Ag Kit (bld culture supernate)
Category: Test kits requiring microscopic evaluations
Test System, Assay or Examination:
Difco FA Streptococcus Groups (including culture)

Analyte: Streptococcus, Group C

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Becton Dickinson BBL Strep Grouping Reagents (incl culture)
Difco Bacto Strep Grouping Kit (including culture)
NCS StrepSlide (including culture)
Vitek Systems Slidex Strepto-Kit (including culture)
Category: Test kits requiring microscopic evaluations
Test System, Assay or Examination:
Difco FA Streptococcus Groups (including culture)

Analyte: Streptococcus, Group D

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Difco Bacto Strep Grouping Kit (including culture)
NCS StrepSlide (including culture)
Vitek Systems Slidex Strepto-Kit (including culture)
Category: Test kits requiring microscopic evaluations
Test System, Assay or Examination:
Difco FA Streptococcus Groups (including culture)

Analyte: Streptococcus, Group F

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Becton Dickinson BBL Strep Grouping Reagents (incl culture)
Difco Bacto Strep Grouping Kit (including culture)
NCS StrepSlide (including culture)
Vitek Systems Slidex Strepto-Kit (including culture)
Category: Test kits requiring microscopic evaluations
Test System, Assay or Examination:
Difco FA Streptococcus Groups (including culture)

Analyte: Streptococcus, Group G

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Becton Dickinson BBL Strep Grouping Reagents (incl culture)
Difco Bacto Strep Grouping Kit (including culture)
NCS StrepSlide (including culture)
Vitek Systems Slidex Strepto-Kit (including culture)
Category: Test kits requiring microscopic evaluations
Test System, Assay or Examination:
Difco FA Streptococcus Groups (including culture)

Analyte: Yersinia Enterocolitica

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Bio-Medical ANI Yersinia Test (including culture)
Speciality/Subspeciality: General Chemistry

Analyte: 1,25-Dihydroxyvitamin D (1,25-(OH)2D)

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Nichols Institute 1,25-Dihydroxyvitamin D Assay Kit

Analyte: 5'Nucleotidase

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus

Analyte: Acid Phosphatase

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
DMA Test Kit
Meditech Diagnostic System Test Kit
Pointe Scientific 180 Chemistry Analyzer
Reagents Applications RAICHEM Test Kit
Stanbio Test Kit
TRACE Scientific Test Kit

Analyte: Adenosine Monophosphate, Cyclic (cAMP)

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Du Pont RIANEN RIA Kit

Analyte: Adrenocorticotropic Hormone (ACTH)

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Nichols Institute Allegro (RIA)
Nichols Institute RIA Kit

Analyte: Alanine Aminotransferase (ALT) (SGPT)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus
Technicon SMAC 2
Technicon SMAC 3
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
DMA Test Kit
Mallinckrodt Serometer 370
Medical Analysis Systems RefLab Manual Test Procedure
Meditech Diagnostic System Test Kit
Pointe Scientific 180 Chemistry Analyzer
Reagents Applications RAICHEM Test Kit
Seradyn Manual (spectrophoto/colorimetric) Determination
Seragen StatEase
SmithKline Diagnostics ESKALAB-CCS
Stanbio Premiere
Stanbio Test Kit
TRACE Scientific Test Kit
Wako Autokit

Analyte: Albumin

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus
Technicon SMAC 2
Technicon SMAC 3
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
DMA Test Kit
Mallinckrodt Serometer 370
Medical Analysis Systems Manual Test Procedure
Meditech Diagnostic System Test Kit
Pointe Scientific 180 Chemistry Analyzer
Reagents Applications RAICHEM Test Kit
SmithKline Diagnostics ESKALAB-CCS
Stanbio Premiere
Stanbio Test Kit
TRACE Scientific Test Kit
Wako Autokit

Analyte: Albumin, Glycated

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Isolab Glyc-Affin GA

Analyte: Aldolase

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Behring Stat-Pack Aldolase Test

Analyte: Alkaline Phosphatase (ALP)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus
Technicon SMAC 2
Technicon SMAC 3
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
DMA Test Kit
Mallinckrodt Serometer 370
Medical Analysis Systems RefLab Manual Test Procedure
Meditech Diagnostic System Test Kit
Pointe Scientific 180 Chemistry Analyzer
Reagents Applications RAICHEM Test Kit
SmithKline Diagnostics ESKALAB-CCS
Stanbio Premiere
Stanbio Test Kit
TRACE Scientific Test Kit
Wako Autokit

Analyte: Alkaline Phosphatase Isoenzymes

Category: Electrophoretic separations
Test System, Assay or Examination:
Helena Laboratories Alk. Phosphatase Isoenzyme Procedure
Helena Laboratories Titan Gel Alkaline Phosphatase (HR)
Isolab Resolve-ALP

Analyte: Alpha-Fetoprotein—Maternal Serum

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott COMMANDER System
Abbott IMX

Analyte: Alpha-Hydroxybutyrate Dehydrogenase (HBDH)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Medical Analysis Systems Manual Test Procedure
Reagents Applications RAICHEM Test Kit

Analyte: Ammonia

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process

Test System, Assay or Examination:
Reagents Applications RAICHEM Test Kit
Wako Ammonia Test Kit

Analyte: Amylase

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Behring Pantrak Amylase Test
DMA Test Kit
Mallinckrodt Serometer 370
Medical Analysis Systems RefLab Manual Test Procedure
Meditech Diagnostic System Test Kit
Pointe Scientific 180 Chemistry Analyzer
Reagents Applications RAICHEM Test Kit
SmithKline Diagnostics ESKALAB-CCS
Stanbio Premiere
Stanbio Test Kit
TRACE Scientific Test Kit

Analyte: Angiotensin I

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Du Pont RIANEN RIA Kit

Analyte: Apolipoprotein A1

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Isolab Immunoturbidimetric Assay
Medical Analysis Systems RefLab Manual Test Procedure
Reagents Applications RAICHEM SPIA Test Kit

Analyte: Apolipoprotein B

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Isolab Immunoturbidimetric Assay
Medical Analysis Systems RefLab Manual Test Procedure
Reagents Applications RAICHEM SPIA Test Kit

Analyte: Asparate Aminotransferase (AST) (SGOT)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus
Technicon SMAC 2
Technicon SMAC 3
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
DMA Test Kit
Mallinckrodt Serometer 370
Medical Analysis Systems RefLab Manual Test Procedure
Meditech Diagnostic System Test Kit
Pointe Scientific 180 Chemistry Analyzer
Reagents Applications RAICHEM Test Kit
Seradyn Manual (spectrophoto/colorimetric) Determination
Seragen StatEase
SmithKline Diagnostics ESKALAB-CCS
Stanbio Premiere
Stanbio Test Kit
TRACE Scientific Test Kit
Wako Autokit

Analyte: Beta-Hydroxybutyrate

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
GDS Diagnostics Enzymatic Test Kit

Analyte: Bilirubin, Direct

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus
Technicon SMAC 2
Technicon SMAC 3
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
DMA Test Kit
Mallinckrodt Serometer 370
Medical Analysis Systems Manual Test Procedure
Meditech Diagnostic System Test Kit
Pointe Scientific 180 Chemistry Analyzer
Reagents Applications RAICHEM Test Kit
Seragen StatEase
SmithKline Diagnostics ESKALAB-CCS
Stanbio Premiere
Stanbio Test Kit
TRACE Scientific Test Kit

Analyte: Bilirubin, Neonatal

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Seradyn Quick-Chem II

Analyte: Bilirubin, Total

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus
Technicon SMAC 2
Technicon SMAC 3
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
DMA Test Kit
Mallinckrodt Serometer 370
Medical Analysis Systems RefLab Manual Test Procedure
Meditech Diagnostic System Test Kit
Pointe Scientific 180 Chemistry Analyzer
Reagents Applications RAICHEM Test Kit
Seradyn Manual (spectrophoto/colorimetric) Determination
Seradyn Quick-Chem II
Seragen Quick-Chem
Seragen StatEase
SmithKline Diagnostics ESKALAB-CCS
Stanbio Premiere
Stanbio Test Kit
TRACE Scientific Test Kit

Analyte: C1-Esterase Inhibitor (C1INH)

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Nyegaard Nycotest C1–Esterase Inhibitor

Analyte: Calcitonin

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Nichols Institute RIA Kit

Analyte: Calcium, Total

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Instrumentation Laboratory IL 504
Instrumentation Laboratory IL 508
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus
Technicon SMAC 2
Technicon SMAC 3
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
DMA Test Kit
Mallinckrodt Serometer 370
Medical Analysis Systems RefLab Manual Test Procedure
Meditech Diagnostic System Test Kit
Pointe Scientific 180 Chemistry Analyzer
Reagents Applications RAICHEM Test Kit
Seradyn Manual (spectrophoto/colorimetric) Determination
Seradyn Quick-Chem II
Seragen Quick-Chem
Sherwood Medical Rapid Stat Diagnostic Kit
SmithKline Diagnostics ESKALAB–CCS
Stanbio Premiere
Stanbio Test Kit
TRACE Scientific Test Kit
Wako Calcium C Test Kit

Analyte: Carbon Dioxide, total (CO2)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Instrumentation Laboratory IL 508
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus
Technicon SMAC 2
Technicon SMAC 3
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
DMA Test Kit
Medical Analysis Systems Manual Test Procedure
Pointe Scientific 180 Chemistry Analyzer
Reagents Applications RAICHEM Test Kit
Stanbio Test Kit
TRACE Scientific Test Kit

Analyte: Catecholamines, Plasma

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Bio-Rad HPLC
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Bioanalytical System BAS 482
Bioanalytical Systems BAS 200A
Bioanalytical Systems BAS 480
Bioanalytical Systems BAS 481

Analyte: Catecholamines, Urine

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Bio-Rad HPLC

Analyte: Cerebrospinal Fluid Protein (CSF)

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Bio-Rad Test Kit
DMA Test Kit
Stanbio Test Kit

Analyte: Cerebrospinal Fluid Protein Fractions

Category: Electrophoretic separations
Test System, Assay or Examination:
Isolab Resolve-CSF

Analyte: Chloride

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Instrumentation Laboratory IL 508
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus
Technicon SMAC 2
Technicon SMAC 3
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
DMA Test Kit
Mallinckrodt Serometer 370
Medical Analysis Systems RefLab Manual Test Procedure
Meditech Diagnostic System Test Kit
Pointe Scientific 180 Chemistry Analyzer
Reagents Applications RAICHEM Test Kit
SmithKline Diagnostics ESKALAB–CCS
Stanbio Premiere
Stanbio Test Kit
TRACE Scientific Test Kit

Analyte: Chloride, Sweat (Cystic Fibrosis Sweat Test)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Orion Model 417 Skin Chloride System
Wescor 3100 Sweat Chek Sweat Conductivity Analyzer

Analyte: Cholesterol

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus
Technicon SMAC 2
Technicon SMAC 3
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
DMA Test Kit
Mallinckrodt Serometer 370
Medical Analysis Systems RefLab Manual Test Procedure
Meditech Diagnostic System Test Kit
Pointe Scientific 180 Chemistry Analyzer
Reagents Applications RAICHEM Test Kit
Seradyn Manual (spectrophoto/colorimetric) Determination
Seradyn Quick-Chem II
Seragen Quick-Chem
Seragen StatEase
Sherwood Medical Auto/Stat Kit
SmithKline Diagnostics ESKALAB–CCS
Stanbio Premiere
Stanbio Test Kit
TRACE Scientific Test Kit
Wako Autokit Cholesterol COD–MEHA Method
Wako Cholesterol CII Assay Kit

Analyte: Cholinesterase

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process

Test System, Assay or Examination:
Reagents Applications RAICHEM Test Kit

Analyte: Cholyglycine

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Immunotech ENDAB EIA Kit

Analyte: Cortisol

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Bio-Chem Laboratory Systems ATAC 2100
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Biomerica EIA Test Kit
Immunotech ENDAB EIA Kit

Analyte: Creatine Kinase (CK)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus
Technicon SMAC 2
Technicon SMAC 3
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
DMA Test Kit
Mallinckrodt Serometer 370
Medical Analysis Systems RefLab Manual Test Procedure
Meditech Diagnostic System Test Kit
Pointe Scientific 180 Chemistry Analyzer
Reagents Applications RAICHEM Test Kit
Seradyn CK-UV Determination
Seragen StatEase
Stanbio Test Kit
TRACE Scientific Test Kit
Wako Autokit

Analyte: Creatine Kinase BB Fraction (CKBB)

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Biomerica RIA Test Kit
International Immunoassay Labs ABURIA-CK RIA Kit

Analyte: Creatine Kinase Isoenzymes (CK Isoenzymes)

Category: Electrophoretic separations
Test System, Assay or Examination:
Helena Laboratories CK Isoforms Procedure
Helena Laboratories CPK Isoenzyme Electrophoresis
Helena Laboratories CPK-US Isoenzyme Electrophoresis
Helena Laboratories REP CK Isoenzyme Procedure
Helena Laboratories REP CK Stat Isoenzyme Procedure
Helena Laboratories REP CK/LD Isoenzyme Combo Method
Helena Laboratories Titan Gel CK Isoenzyme Procedure
Helena Laboratories Titan Gel Iso-Dot CK (Black)
Helena Laboratories Titan Gel-PC CK Isoenzyme Procedure

Analyte: Creatine Kinase MB Fraction (CKMB)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
DMA Test Kit
International Immunoassay Labs ABURIA-CK RIA Kit
International Immunoassay Labs CARDIA-CK
International Immunoassay Labs EMBRIA-CK IRMA Kit
International Immunoassay Labs IMACK-MB Test Kit
International Immunoassay Labs IMpres-MB
International Immunoassay Labs IMpres-MB-X
International Immunoassay Labs MicroMI-MB Test Kit
International Immunoassay Labs QuiCK-MB IRMA Kit
Reagents Applications RAICHEM Test Kit
Seradyn CK-MB Immuno UV Determination

Analyte: Creatine Kinase MM Fraction (CKMM)

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
International Immunoassay Labs CheCK-MM
International Immunoassay Labs ISOFOR-MM

Analyte: Creatinine

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Instrumentation Laboratory IL 504
Instrumentation Laboratory IL 508
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus
Technicon SMAC 2
Technicon SMAC 3
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
DMA Test Kit
Mallinckrodt Serometer 370
Medical Analysis Systems RefLab Manual Test Procedure
Meditech Diagnostic System Test Kit
Pointe Scientific 180 Chemistry Analyzer
Reagents Applications RAICHEM Test Kit
Seragen StatEase
SmithKline Diagnostics ESKALAB-CCS
Stanbio Premiere
Stanbio Test Kit
TRACE Scientific Test Kit

Analyte: Dehydroepiandrosterone Sulfate (DHEA-SO4)

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Biomerica RIA Test Kit

Analyte: Erythropoietin

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Ramco EPORIA Test Kit

Analyte: Estradiol

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Biomerica RIA Test Kit

Leeco Diagnostics RIA Test Kit

Analyte: Estriol-Total

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Bio-Chem Laboratory Systems ATAC 2100

Analyte: Estriol-unconjugated

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Biomerica RIA Test Kit
Immunotech EIA Test Kit
Immunotech ENDAB EIA Kit

Analyte: Fatty Acids, Non-Esterified

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Wako NEFA C Test Kit

Analyte: Ferritin

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Coat-A-Count IRMA
Du Pont RIANEN RIA Kit
Leeco Diagnostics RIA Test Kit
Medix Biotech EIA Test Kit
Ramco EIA Test Kit
Ramco FER-IRON II Microtiter Assay Kit

Analyte: Follicle Stimulating Hormone (FSH)

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Immunotech EZ-TUBE EIA Kit
Leeco Diagnostics RIA Test Kit
Medix Biotech EIA Test Kit
Nichols Institute Allegro (RIA)
Organon NML IRMA Test Kit

Analyte: Fructosamine

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Isolab Glyco-PROBE GSP
Reagents Applications RAICHEM Test Kit

Analyte: Gamma Glutamyl Transferase (GGT)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus
Technicon SMAC 2
Technicon SMAC 3
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
DMA Test Kit
Meditech Diagnostic System Test Kit
Pointe Scientific 180 Chemistry Analyzer
Reagents Applications RAICHEM Test Kit
Stanbio Test Kit
TRACE Scientific Test Kit
Wako Autokit

Analyte: Glucose

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Instrumentation Laboratory IL 504
Instrumentation Laboratory IL 508
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus
Technicon SMAC 2
Technicon SMAC 3
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
DMA Test Kit
Mallinckrodt Serometer 370
Medical Analysis Systems RefLab Manual Test Procedure
Meditech Diagnostic System Test Kit
Pointe Scientific 180 Chemistry Analyzer
Reagents Applications RAICHEM Test Kit
Sclavo Fast Glucose
Seradyn Manual (spectrophoto/colorimetric) Determination
Seradyn Quick-Chem II
Seragen Quick-Chem
Seragen StatEase
Sherwood Medical Auto/Stat Kit
SmithKline Diagnostics ESKALAB-CCS
Stanbio Premiere
Stanbio Test Kit
TRACE Scientific Test Kit
Wako Glucose C Test Kit

Analyte: Glucose-6-Phosphate Dehydrogenase (G-6-PDH)

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Behring Stat-Pack G-6-PDH Test

Analyte: Glucose-6-Phosphate Dehydrogenase Fractions

Category: Electrophoretic separations
Test System, Assay or Examination:
Helena Laboratories G-6-PD Electrophoresis

Analyte: Glycosylated Hemoglobin (Hgb A1C)

Category: Electrophoretic separations
Test System, Assay or Examination:
Helena Laboratories REP Glyco
Helena Laboratories Titan Gel-PC GLYCO-Heme System
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Bio-Rad Column Test
Chembio Glyco-Sep/A1c jr
Chembio Glyco-Stat/A1/6
Helena Laboratories GLYCO-Hb Quik Column Chromatography
Helena Laboratories GLYCO-Tek Affinity Column Method
Helena Laboratories Heme Spec Plus
Isolab Glyc-Affin GHb
Isolab Quik-Sep Fast Hemoglobin Test System
Meditech Diagnostic System Test Kit
Pointe Scientific 180 Chemistry Analyzer
Seradyn Glycotrak
Stanbio Premiere
Stanbio Test Kit

Analyte: HCG, Serum, Qualitative

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Leeco Diagnostics Concept-7-Beta-hCG
Leeco Diagnostics Concept-7-Beta-hCG IRMA
Nichols Institute Allegro (RIA)
Organon NML IRMA Test Kit

Analyte: HCG, Serum, Quantitative

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Bio-Chem Laboratory Systems ATAC 2100
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Coat-A-Count IRMA
Leeco Diagnostics Concept-7-Beta-hCG
Leeco Diagnostics Concept-7-Beta-hCG IRMA
Medix Biotech EIA Test Kit

Analyte: HCG, Urine, Qualitative (non-waived procedures)

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Leeco Diagnostics Concept-7-Beta-hCG
Leeco Diagnostics Concept-7-Beta-hCG IRMA
Organon NML IRMA Test Kit

Analyte: HDL Cholesterol (post-precipitation VLDL & LDL)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
DataChem DC-100
Du Pont Dimension ES
EM Diagnostic Systems EASY PLUS
EM Diagnostic Systems EASY ST
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus
Kodak Ektachem 250
Kodak Ektachem 700 P
Roche Cobas Mira Plus
Roche Cobas Ready
Technicon RA 100
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
DMA Test Kit
Mallinckrodt Serometer 370
Medical Analysis Systems Manual Test Procedure
Meditech Diagnostic System Test Kit
Pointe Scientific 180 Chemistry Analyzer
Reagents Applications RAICHEM Test Kit
Reference Diagnostics Magnetic HDL Cholesterol
Seradyn HDL Cholesterol Determination
Seradyn Manual (spectrophoto/colorimetric) Determination
Seradyn Quick-Chem II
Seragen Quick-Chem
Seragen StatEase
Sherwood Medical Rapid Stat Diagnostic Kit
SmithKline Diagnostics ESKALAB-CCS
Stanbio Premiere
Stanbio Test Kit
TRACE HDL Singles
Wako HDL Cholesterol Test Kit

Analyte: Haptoglobin

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Reagents Applications RAICHEM SPIA Test Kit

Analyte: Homovanillic Acid (HVA)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Bio-Rad HPLC

Analyte: Human Growth Hormone (GH)

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Medix Biotech EIA Test Kit
Nichols Institute Allegro (RIA)

Analyte: Insulin-like Growth Factor-1 (IGF-1)

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Nichols Institute RIA Kit

Analyte: Iron

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus
Technicon SMAC 2
Technicon SMAC 3
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Pointe Scientific 180 Chemistry Analyzer
Reagents Applications RAICHEM Test Kit
Seragen StatEase
Stanbio Premiere
Stanbio Test Kit
TRACE Scientific Test Kit
Wako FeB Test Kit
Wako FeC Test Kit

Analyte: Iron Binding Capacity (post saturation/separation)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
DataChem DC-100
Du Pont Dimension ES
EM Diagnostic Systems EPOS
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus
Kodak Ektachem 250
Roche Cobas Mira Plus
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Pointe Scientific 180 Chemistry Analyzer
Reagents Applications RAICHEM Test Kit
Stanbio Premiere
Stanbio Test Kit
Wako Fe B Test Kit
Wako UIBC Test Kit

Analyte: Lactate Dehydrogenase (LDH)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Technicon SMAC 2
Technicon SMAC 3
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
DMA Test Kit
Mallinckrodt Serometer 370
Medical Analysis Systems Manual Test Procedure
Medical Analysis Systems RefLab Manual Test Procedure
Meditech Diagnostic System Test Kit
Pointe Scientific 180 Chemistry Analyzer
Reagents Applications RAICHEM Test Kit
Seradyn LDH-UV Determination
Seragen StatEase
SmithKline Diagnostics ESKALAB-CCS
Stanbio Premiere
Stanbio Test Kit
TRACE Scientific Test Kit
Wako Autokit
Wako Lactate Dehydrogenase CII Test Kit

Analyte: Lactate Dehydrogenase Heart Fraction (LDH-1)

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
DMA Test Kit
Seradyn LD-1 Separation Set

Analyte: Lactate Dehydrogenase Isoenzymes

Category: Electrophoretic separations
Test System, Assay or Examination:
Helena Laboratories LDH Isoenzyme Electrophoresis
Helena Laboratories REP CK/LD Isoenzyme Combo Method
Helena Laboratories REP LD Isoenzyme Procedure
Helena Laboratories REP LD Stat

Isoenzyme Procedure
Helena Laboratories Titan Gel Iso-Dot LD Flur (Black)
Helena Laboratories Titan Gel Iso-Dot LD Flur (Clear)
Helena Laboratories Titan Gel LD Isoenzyme Procedure
Helena Laboratories Titan Gel-PC LD Isoenzyme Procedure

Analyte: Lactate Dehydrogenase Liver Fraction (LLDH)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus

Analyte: Lactic Acid (Lactate)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Behring Stat-Pack Lactate Test

Analyte: Lecithin/Sphingomyelin (L/S) Ratio

Category: Electrophoretic separations
Test System, Assay or Examination:
Helena Laboratories Fetal-Tek 200 Method L/S Ratio
Helena Laboratories L/S Ratio

Analyte: Lipase

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Mallinckrodt Serometer 370
Medical Analysis Systems Manual Test Procedure
Pointe Scientific 180 Chemistry Analyzer
SmithKline Diagnostics ESKALAB-CCS
Stanbio Premiere
Wako Antokit

Analyte: Lipoprotein Fractions

Category: Electrophoretic separations
Test System, Assay or Examination:
Helena Laboratories HDL Cholesterol Electrophoresis
Helena Laboratories Lipoprotein Electrophoresis Procedure
Helena Laboratories REP HDL Electrophoresis
Helena Laboratories REP Lipo Electrophoresis Procedure
Helena Laboratories REP Ultra HDL, VLDL/LDL Choles. System
Helena Laboratories Titan Gel HDL Electrophoresis System
Helena Laboratories Titan Gel Lipoprotein Electropho. Sys.
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Isolab LDL—Direct
Isolab LDL—Direct Plus

Analyte: Luteinizing Hormone (LH)

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Immunotech EZ-TUBE EIA Kit
Leeco Diagnostics RIA Test Kit
Medix Biotech EIA Test Kit
Nichols Institute Allegro (RIA)
Organon NML IRMA Test Kit

Analyte: Magnesium

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
DMA Test Kit
Mallinckrodt Serometer 370
Medical Analysis Systems RefLab Manual Test Procedure
Meditech Diagnostic System Test Kit
Pointe Scientific 180 Chemistry Analyzer
Reagents Applications RAICHEM Test Kit
Sherwood Medical Rapid Stat Diagnostic Kit
SmithKline Diagnostics ESKALAB-CCS
Stanbio Premiere
Stanbio Test Kit
TRACE Scientific Test Kit
Wako Magnesium B Test Kit

Analyte: Microalbumin

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Wako Micro-Albumin (urine) Turbidimetric Test Kit

Analyte: Myoglobin

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Biomerica RIA Test Kit

Analyte: Parathyroid Hormone—Intact

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Nichols Institute Allegro (RIA)
Ramco RIA Test Kit

Analyte: Parathyroid Hormone—Mid-molecule (PTH-M)

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Nichols Institute RIA Kit

Analyte: Phenyalanine

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus

Analyte: Phosphatidylglycerol (PG)—Amniotic Fluid

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Isolab PG-Numeric

Analyte: Phospholipids

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Wako Phospholipids Test Kit

Analyte: Phosphorus

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus
Technicon SMAC 2
Technicon SMAC 3
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
DMA Test Kit
Mallinckrodt Serometer 370
Medical Analysis Systems RefLab Manual Test Procedure
Meditech Diagnostic System Test Kit
Pointe Scientific 180 Chemistry Analyzer
Reagents Applications RAICHEM Test Kit
Seradyn Manual (spectrophoto/colorimetric) Determination
Seragen Quick-Chem
Sherwood Medical Auto/Stat Kit
SmithKline Diagnostics ESKALAB–CCS
Stanbio Premiere
Stanbio Test Kit
TRACE Scientific Test Kit

Analyte: Porphobilinogen

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Whale Scientific Porphyrins and Porphobilinogen

Analyte: Porphyrins

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Whale Scientific Porphyrins and Porphobilinogen

Analyte: Potassium

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Instrumentation Laboratory IL 508
Technicon SMAC 2
Technicon SMAC 3
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Mallinckrodt Serometer 370
Pointe Scientific 180 Chemistry Analyzer
SmithKline Diagnostics ESKALAB–CCS
Stanbio Premiere
Stanbio Test Kit

Analyte: Progesterone

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Biomerica RIA Test Kit
Leeco Diagnostics RIA Test Kit

Analyte: Prolactin

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Bio-Chem Laboratory Systems ATAC 2100
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Immunotech EZ–TUBE EIA Kit
Leeco Diagnostics RIA Test Kit
Medix Biotech EIA Test Kit
Nichols Institute Allegro (RIA)
Organon NML IRMA Test Kit

Analyte: Prostatic Acid Phosphatase

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Biomerica RIA Test Kit
Du Pont RIANEN RIA Kit
Leeco Diagnostics RIA Test Kit

Analyte: Protein, Total

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Instrumentation Laboratory IL 504
Instrumentation Laboratory IL 508
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus
Technicon SMAC 2
Technicon SMAC 3
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Bio-Rad Test Kit
DMA Test Kit
Mallinckrodt Serometer 370
Medical Analysis Systems Manual Test Procedure
Meditech Diagnostic System Test Kit
Pointe Scientific 180 Chemistry Analyzer
Reagents Applications RAICHEM Test Kit
Seragen StatEase
Sherwood Medical Rapid Stat Diagnostic Kit
SmithKline Diagnostics ESKALAB–CCS
Stanbio Premiere
Stanbio Test Kit
TRACE Scientific Test Kit
Wako Autokit
Wako Micro TP Test Kit

Analyte: Pyruvate

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus

Analyte: Serotonin

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Immunotech Urinary Serotonin Enzyme Immunoassay

Analyte: Sex Hormone Binding Globulin

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Ventrex Coated Tube (RIA)

Analyte: Sodium

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Instrumentation Laboratory IL 508
Technicon SMAC 2
Technicon SMAC 3
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Stanbio Test Kit

Analyte: Testosterone

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Leeco Diagnostics RIA Test Kit

Analyte: Thyroid Stimulating Hormone (TSH)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Bio-Chem Laboratory Systems ATAC 2100
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process

Test System, Assay or Examination:
Immunotech EZ–BEAD EIA Kit
Immunotech Microzyme EIA (spectrophotometric)
Leeco Diagnostics IRMA Test Kit
Leeco Diagnostics RIA Test Kit
Medix Biotech EIA Test Kit
Sigma SIA Test Kit (ELISA)

Analyte: Thyroid Stimulating Hormone (TSH) (Neonatal)

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Becton Dickinson Neonatal TSH Immunoradiometric Assay
Biomerica RIA Test Kit

Analyte: Thyroid Stimulating Hormone—high sens. (TSH–HS)

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Medix Biotech EIA Test Kit
Nichols Institute Allegro (RIA)
Sanofi/Kallestad Quanticlone

Analyte: Thyroxine (T4)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Bio-Chem Laboratory Systems ATAC 2100
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Biomerica EIA Test Kit
Immunotech ENDAB EIA Kit
Immunotech EZ–BEAD EIA Kit
Immunotech Microzyme EIA (spectrophotometric)
Medix Biotech EIA Test Kit
Stanbio Premiere

Analyte: Thyroxine (T4), Neonatal

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Sanofi/Kallestad Quanticoat

Analyte: Thyroxine Binding Globulin (TBG)

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Nichols Institute RIA Kit

Analyte: Thyroxine, Free (FT4)

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Immunotech Microzyme EIA (spectrophotometric)
International Immunoassay Labs SPIRIA–FT4 RIA Kit
Nichols Institute Free T4 by Equilibrium Dialysis

Analyte: Transferrin

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Bio-Chem Laboratory Systems ATAC 2100

Analyte: Triglyceride

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus
Technicon SMAC 2
Technicon SMAC 3
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
DMA Test Kit
Mallinckrodt Serometer 370
Medical Analysis Systems RefLab Manual Test Procedure
Meditech Diagnostic System Test Kit
Pointe Scientific 180 Chemistry Analyzer
Reagents Applications RAICHEM Test Kit
Seradyn Manual (spectrophoto/colorimetric) Determination
Seradyn Quick-Chem II
Seragen Quick-Chem
Seragen StatEase
SmithKline Diagnostics ESKALAB–CCS
Stanbio Premiere
Stanbio Test Kit
TRACE Scientific Test Kit
Wako Triglyceride G Test Kit

Analyte: Triiodothyronine (T3)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Bio-Chem Laboratory Systems ATAC 2100
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Biomerica EIA Test Kit
Immunotech EIA Test Kit
Immunotech ENDAB EIA Kit
Immunotech Microzyme EIA (spectrophotometric)
Leeco Diagnostics RIA Test Kit
Medix Biotech EIA Test Kit
Stanbio Premiere

Analyte: Triiodothyronine Uptake (T3U) (TU)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Bio-Chem Laboratory Systems ATAC 2100
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Immunotech EIA Test Kit
Immunotech Microzyme EIA (spectrophotometric)

Analyte: Trypsin

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus

Analyte: Urea (BUN)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Instrumentation Laboratory IL 504
Instrumentation Laboratory IL 508
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus
Technicon SMAC 2
Technicon SMAC 3
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
DMA Test Kit
Mallinckrodt Serometer 370
Medical Analysis Systems RefLab Manual Test Procedure
Meditech Diagnostic System Test Kit
Pointe Scientific 180 Chemistry Analyzer
Reagents Applications RAICHEM Test Kit
Seradyn Quick-Chem II
Seragen StatEase
SmithKline Diagnostics ESKALAB-

CCS
Stanbio Premiere
Stanbio Test Kit
TRACE Scientific Test Kit
Wako Autokit
Wako Urea Nitrogen Test Kit

Analyte: Uric Acid

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus
Technicon SMAC 2
Technicon SMAC 3
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
DMA Test Kit
Mallinckrodt Serometer 370
Medical Analysis Systems RefLab Manual Test Procedure
Meditech Diagnostic System Test Kit
Nycomed Nycotest
Pointe Scientific 180 Chemistry Analyzer
Reagents Applications RAICHEM Test Kit
Seradyn Quick-Chem II
Seragen StatEase
SmithKline Diagnostics ESKALAB-CCS
Stanbio Premiere
Stanbio Test Kit
Wako Autokit

Analyte: Urokinase

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus

Analyte: Zinc

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Wako Zn Test Kit
Speciality/Subspeciality: General Immunology

Analyte: Allergen specific IgE

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Ciba Corning Magic Lite

Analyte: Alpha-1-Acid Glycoprotein (orosomucoid)

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Reagents Applications RAICHEM Test Kit

Analyte: Alpha-1-Antitrypsin

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus

Analyte: Alpha-Fetoprotein—Tumor Marker

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott COMMANDER System

Analyte: Anti-Cardiolipin Antibodies

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Apotex Cardiolipin ELISA
Sigma SIA Anti-Cardiolipin

Analyte: Anti-DNA Antibodies

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Apotex dsDNA ELISA
Du Pont RIANIN Anti-dsDNA RIA Kit

Analyte: Anti-Histone Antibodies

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Apotex Histone ELISA

Analyte: Anti-Jo-1

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Apotex Jo-1 ELISA

Analyte: Anti-Mitochondrial Antibodies (AMTA)

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Apotex Mitochondral ELISA

Analyte: Anti-RNP (Ribonucleoprotein)

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Apotex ENA Profile ELISA
Apotex SM/RNP ELISA

Analyte: Anti-SS-A/Ro

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Apotex ENA Profile ELISA
Apotex SS-A ELISA

Analyte: Anti-SS-B/La

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Apotex ENA Profile ELISA
Apotex SS-B ELISA

Analyte: Anti-Scl-70

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Apotex Scl-70 ELISA

Analyte: Anti-Sm (Smith)

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Apotex ENA Profile ELISA
Apotex SM ELISA
Apotex SM/RNP ELISA

Analyte: Beta-2 microglobulin

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Coat-A-Count IRMA
Serex Beta-2 Microglobulin EIA Kit

Analyte: C-Reactive Protein (CRP)

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Wako Autokit

Analyte: Carcinoembryonic Antigen (CEA)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott COMMANDER System
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:

Roche CEA-Roche EIA

Analyte: Ceruloplasmin

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process

Test System, Assay or Examination:

Instrumentation Laboratory Multistat III

Instrumentation Laboratory Multistat III Plus

Analyte: Coccidioides Antibodies

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process

Test System, Assay or Examination:

Meridian Diagnostics Premier Coccidioides EIA

Analyte: Complement C3

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process

Test System, Assay or Examination:

Bio-Chem Laboratory Systems ATAC 2100

Instrumentation Laboratory Multistat III

Instrumentation Laboratory Multistat III Plus

Analyte: Complement C4

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process

Test System, Assay or Examination:

Bio-Chem Laboratory Systems ATAC 2100

Instrumentation Laboratory Multistat III

Instrumentation Laboratory Multistat III Plus

Analyte: Cytomegalovirus Antibodies

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process

Test System, Assay or Examination:

Abbott COMMANDER System

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process

Test System, Assay or Examination:

Analytab ACCU-LYZA CMV IgG ELISA Test System

Analytab ACCU-LYZA CMV IgM ELISA Test System

Baxter Bartels Cytomegalovirus IgG EIA

Baxter Bartels Cytomegalovirus IgM EIA

Analyte: Epstein-Barr virus Antibodies

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process

Test System, Assay or Examination:

Baxter Bartels Epstein Barr Virus IgG EIA

Baxter Bartels Epstein Barr Virus IgM EIA

Sigma SIA Epstein-Barr EBNA IgM/IgG

Sigma SIA Epstein-Barr VCA IgG

Sigma SIA Epstein-Barr VCA IgM

Analyte: HIV Antibodies

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process

Test System, Assay or Examination:

Abbott COMMANDER System

Analyte: HTLV Antibodies

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process

Test System, Assay or Examination:

Abbott COMMANDER System

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process

Test System, Assay or Examination:

Organon Teknika Vironstika HTLV-1 Microelisa Assay

Analyte: Haptoglobin

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process

Test System, Assay or Examination:

Instrumentation Laboratory Multistat III

Instrumentation Laboratory Multistat III Plus

Category: Electrophoretic separations

Test System, Assay or Examination:

Helena Laboratories Haptoglobin

Analyte: Hepatitis A Antibody (HAVAb)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process

Test System, Assay or Examination:

Abbott COMMANDER System

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process

Test System, Assay or Examination:

Syva MicroTrak Total Anti-HAV EIA

Analyte: Hepatitis A Antibody—IgM

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process

Test System, Assay or Examination:

Abbott COMMANDER System

Analyte: Hepatitis B Core Antibody (Hb Core)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process

Test System, Assay or Examination:

Abbott COMMANDER System

Analyte: Hepatitis B Core Antibody—IgM

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process

Test System, Assay or Examination:

Abbott COMMANDER System

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process

Test System, Assay or Examination:

Syva MicroTrak IgM Anti-HBcore EIA

Analyte: Hepatitis B Surface Antibody

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process

Test System, Assay or Examination:

Abbott COMMANDER System

Analyte: Hepatitis B Surface Antigen (HBsAg)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process

Test System, Assay or Examination:

Abbott COMMANDER System

Analyte: Hepatitis Be Antibody

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process

Test System, Assay or Examination:

Abbott COMMANDER System

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process

Test System, Assay or Examination:

Syva MicroTrak HBeAg/Anti-HBe EIA

Analyte: Hepatitis Be Antigen

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process

Test System, Assay or Examination:

Abbott COMMANDER System

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process

Test System, Assay or Examination:

Syva MicroTrak HBeAg/Anti-HBe

EIA

Analyte: Hepatitis C Virus Antibody

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott COMMANDER System

Analyte: Herpes simplex I and/or II Antibodies

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Analytab ACCU-LYZA HSV-1 and HSV-2 ELISA Test System
Baxter Bartels HSV 1 IgG EIA
Baxter Bartels HSV 1 IgM EIA
Baxter Bartels HSV 2 IgG EIA
Baxter Bartels HSV 2 IgM EIA

Analyte: Immunoglobulins IgA

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Bio-Chem Laboratory Systems ATAC 2100
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus

Analyte: Immunoglobulins IgE

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Ciba Corning Magic Lite
Immunotech EZ-BEAD EIA Kit

Analyte: Immunoglobulins IgG

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Bio-Chem Laboratory Systems ATAC 2100
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus

Analyte: Immunoglobulins IgM

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Bio-Chem Laboratory Systems ATAC 2100
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus

Analyte: Lyme Disease Antibodies (Borrelia burgdorferi Abs)

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Analytab API Lyme ELISA Test Kit
Baxter Bartels Lyme Disease EIA

Analyte: Protein Fractions

Category: Electrophoretic separations
Test System, Assay or Examination:
Helena Laboratories REP SPE Hi Res-15 Procedure
Helena Laboratories REP SPE Plus (Ponceau S)

Analyte: Rubella Antibodies

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Analytab ACCU-LYZA Rubella IgG ELISA Test System
Analytab ACCU-LYZA Rubella IgM ELISA Test System
Baxter Bartels Rubella IgG EIA
Baxter Bartels Rubella IgM EIA

Analyte: Rubeola Antibodies (measles)

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Baxter Bartels Rubeola IgG EIA
Baxter Bartels Rubeola IgM EIA
Sigma SIA Measles IgG
Sigma SIA Measles IgM

Analyte: Toxoplasma gondii Antibodies

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Analytab ACCU-LYZA Toxo IgG ELISA Test System
Analytab ACCU-LYZA Toxo IgM ELISA Test System
Baxter Bartels Toxoplasma IgG EIA
Baxter Bartels Toxoplasma IgM EIA
Sigma SIA Toxoplasma IgG

Analyte: Transferrin

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus

Speciality/Subspeciality: Hematology

Analyte: Alpha-2-Antiplasmin

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Helena Laboratories Chromogenic Systems Analyzer 1200
Instrumentation Laboratory IL ACL 200
Instrumentation Laboratory IL ACL 2000
Instrumentation Laboratory IL ACL 300
Instrumentation Laboratory IL ACL 3000
Instrumentation Laboratory IL ACL 3000 Plus
Medical Laboratories MLA Electra 1000 C
Medical Laboratories MLA Electra 900 C

Analyte: Antithrombin III (ATIII)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination;
Bio/Data PAP-4C
Helena Laboratories Chromogenic Systems Analyzer 1200
Instrumentation Laboratory IL ACL 200
Instrumentation Laboratory IL ACL 2000
Instrumentation Laboratory IL ACL 300
Instrumentation Laboratory IL ACL 3000
Instrumentation Laboratory IL ACL 3000 Plus
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus
LAbor COA Screener
Medical Laboratories MLA Electra 1000 C
Medical Laboratories MLA Electra 900 C
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
LAbor COA Data 2000
LAbor COA System
Sigma AccuStasis 1000
Sigma AccuStasis 2000

Analyte: Coagulation Factors

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Diagnostica Stago ST4
General Diagnostics Coag-A-Mate 2001
General Diagnostics Coag-A-Mate Dual Channel
General Diagnostics Coag-A-Mate X2
Helena Laboratories Cascade 480

Helena Laboratories Chromogenic Systems Analyzer 1200
Instrumentation Laboratory IL ACL 100
Instrumentation Laboratory IL ACL 1000
Instrumentation Laboratory IL ACL 200
Instrumentation Laboratory IL ACL 2000
Instrumentation Laboratory IL ACL 300
Instrumentation Laboratory IL ACL 3000
Instrumentation Laboratory IL ACL 3000 Plus
Medical Laboratories MLA Electra 1000 C
Medical Laboratories MLA Electra 800
Medical Laboratories MLA Electra 800 (with data management)
Medical Laboratories MLA Electra 900
Medical Laboratories MLA Electra 900 C
Organon Teknika Coag-A-Mate RA4
Organon Teknika Coag-A-Mate XC
Organon Teknika Coag-A-Mate XC Plus
Organon Teknika Coag-A-Mate XM
Ortho Koagulab 16S
Ortho Koagulab 32-S
Ortho Koagulab 40-A
Ortho Koagulab 60-S
TECO Coatron F2
TECO Coatron II
TECO Coatron jr

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
American Scientific Fibrometer
Becton Dickinson BBL Fibrometer
Becton Dickinson BBL Fibrometer (Fibrosystem)
LAbor COA Data 2000
LAbor COA Screener
LAbor COA System
Medical Laboratories MLA Electra 750
Ortho KoaguLab M

Analyte: Eosinophils

Category: Microscopic evaluation and/or enumeration of cells, formed elements, or microorganisms in stained preparations
Test System, Assay or Examination:
All Manual Eosinophil Count Procedures

Analyte: Factor VIII Related Antigen

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
International Immunoassay Labs EIA-F8 Kit

Analyte: Factor VIII:C

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Bio/Data PAP-4C

Analyte: Factor X

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus

Analyte: Fibrinogen

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Bio-Chem Laboratory Systems ATAC 8100
Diagnostica Stago ST4
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Organon Teknika Fibriquik

Analyte: Fibronectin

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus

Analyte: Hemoglobin

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Mallinckrodt Serometer 370
Pointe Scientific 180 Chemistry Analyzer
Seradyn Hemoglobin Determination
Seradyn Quick-Chem II
Seragen Quick-Chem
Seragen StatEase
SmithKline Diagnostics ESKALAB-CCS
Stanbio Premiere

Analyte: Hemoglobin A1

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Helena Laboratories Heme Spec Plus

Analyte: Hemoglobin A2

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Helena Laboratories Heme Spec Plus
Isolab Quik-Sep Hemoglobin A2 Test System

Analyte: Hemoglobin Fractions

Category: Electrophoretic separations
Test System, Assay or Examination:
Helena Laboratories Hemoglobin Electrophoresis
Helena Laboratories REP Hemoglobin-30 IEF Procedure
Helena Laboratories Titan III Hgb ID Electrophoresis
Helena Laboratories Titan IV Citrate Hgb Electrophoresis
Isolab Resolve-Hb

Analyte: Hemoglobin S

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Helena Laboratories Heme Spec Plus

Analyte: Heparin

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Bio/Data PAP-4C
Diagnostica Stago ST4
Helena Laboratories Chromogenic Systems Analyzer 1200
Instrumentation Laboratory IL ACL 200
Instrumentation Laboratory IL ACL 2000
Instrumentation Laboratory IL ACL 300
Instrumentation Laboratory IL ACL 3000
Instrumentation Laboratory IL ACL 3000 Plus
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus
Medical Laboratories MLA Electra 900 C

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
LAbor COA System

Analyte: Leukocyte Aggregation

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Bio/Data PAP-4

Bio/Data PAP–4C

Analyte: Malarial Parasite

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Becton Dickinson QBC Blood Parasite Detection Method

Analyte: Plasmin

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus

Analyte: Plasminogen

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Bio/Data PAP–4C
Helena Laboratories Chromogenic Systems Analyzer 1200
Instrumentation Laboratory IL ACL 200
Instrumentation Laboratory IL ACL 2000
Instrumentation Laboratory IL ACL 300
Instrumentation Laboratory IL ACL 3000
Instrumentation Laboratory IL ACL 3000 Plus
Medical Laboratories MLA Electra 1000 C
Medical Laboratories MLA Electra 900 C

Analyte: Plasminogen Activator Inhibitor (PAI)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Helena Laboratories Chromogenic Systems Analyzer 1200

Analyte: Platelet Aggregation

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Bio/Data PAP–4
Bio/Data PAP–4C
Helena Laboratories PACKS–4

Analyte: Prekallikrein

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Helena Laboratories Chromogenic Systems Analyzer 1200

Analyte: Protein C

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Bio/Data PAP–4C
Diagnostica Stago ST4
Helena Laboratories Chromogenic Systems Analyzer 1200
Instrumentation Laboratory IL ACL 100
Instrumentation Laboratory IL ACL 1000
Instrumentation Laboratory IL ACL 200
Instrumentation Laboratory IL ACL 2000
Instrumentation Laboratory IL ACL 300
Instrumentation Laboratory IL ACL 3000
Instrumentation Laboratory IL ACL 3000 Plus
Medical Laboratories MLA Electra 1000 C
Medical Laboratories MLA Electra 900
Medical Laboratories MLA Electra 900 C
Ortho Koagulab 32–S
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
LAbor COA Data 2000
LAbor COA Screener
LAbor COA System
Sigma AccuStasis 2000

Analyte: Protein S

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Diagnostica Stago ST4
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Labor COA Screener

Analyte: Red Blood Cell Count (Erythrocyte Count)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Coulter D2
Coulter FN

Analyte: Semen

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Hamilton-Thorn HTM–IVOS (morphology)
Category: Microscopic evaluation and/or enumeration of cells, formed elements, or microorganisms in unstained prepartions
Test System, Assay or Examination:
All Manual Semen Analyses (count and morphology)

Analyte: Thrombin Time

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus

Analyte: Tissue Plasminogen Activator (t-PA)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Helena Laboratories Chromogenic Systems Analyzer 1200

Analyte: White Blood Cell Count (Leukocyte Count)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Coulter D2
Coulter FN

Analyte: Whole Blood Clotting Time

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Haemoscope Thromboelastograph (quantitative procedure)
Logos elvi 816 Bi Clot (quantitative procedure)
Sienco SONOCLOT Coagulation Analyzer (quant. procedure)
Sienco SONOCLOT II Surgical Analyzer (quant. procedure)

Analyte: von Willebrand Factor

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:

Bio/Data PAP-4
Bio/Data PAP-4C

Analyte: von Willebrand Factor (Ristocetin Cofactor)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Helena Laboratories PACKS-4
Speciality/Subspeciality:
Mycobacteriology

Analyte: Mycobacteria

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
All Organism Identification from Pure Culture
Becton Dickinson BACTEC TB System (Susceptibility Test)
Speciality/Subspeciality: Mycology

Analyte: Blastomyces dermatitidis

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Immuno-Mycologics Exo-Antigen Test Kit

Analyte: Coccidioides immitis

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Immuno-Mycologics Exo-Antigen Test Kit

Analyte: Dermatophytes

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Orion Diagnostica Oricult-DTM (microculture method)

Analyte: Fungi

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
All Fungi Identification from Pure Culture

Analyte: Histoplasma capsulatum

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Immuno-Mycologics Exo-Antigen Test Kit

Analyte: Yeast

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Baxter AutoSCAN Walk/Away
Baxter MicroScan AutoSCAN 4
Category: Microscopic evaluations of direct specimens in microbiology or parasitology
Test System, Assay or Examination:
All India Ink Preparations

Analyte: Yeast, Candida only

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Immuno-Mycologics LA-Candida
Ramco CAND-TEC Candida Detection System

Analyte: Yeast, Cryptococcus only

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Immuno-Mycologics Latex-Crypto
Meridian Premier Cryptococcal Ag (dir Ag/visual)
Wampole Crypto-LA Test
Speciality/Subspeciality: Parasitology

Analyte: Intestinal parasites

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Alexon Biomed. ProSpecT Giardia Microtiter (dir Ag/spectro)
Alexon Biomedical ProSpecT Giardia Microtiter (dir Ag/vis)
Alexon ProSpecT Cryptosporidium Microtiter (dir Ag/spectro)
Alexon ProSpecT/Giardia (direct antigen/visual)
LMD Laboratories Cryptosporidium Ag Detect. Microtiter(vis)
LMD Laboratories G. lamblia Ag Detect. Microtiter (spectro)
LMD Laboratories G. lamblia Ag Detect. Microtiter (visual)
Seradyn Color Vue—Cryptosporidium (dir Ag/spectrophoto)
Seradyn Color Vue—Cryptosporidium (direct Ag/visual)
Seradyn Color Vue—Giardia (dir Ag/spectrophoto)
Seradyn Color Vue—Giardia (direct Ag/visual)
Category: Test kits requiring microscopic evaluations
Test System, Assay or Examination:
Meridian Diagnostics MERIFLUOR Cryptosporidium
Meridian Diagnostics MERIFLUOR Cryptosporidium/Giardia
Meridian Diagnostics MERIFLUOR Giardia

Analyte: Pneumocystis

Category: Test kits requiring microscopic evaluations
Test System, Assay or Examination:
Meridian Diagnostics MERIFLUOR Pneumocystis

Analyte: Trichomonas

Category: Test kits requiring microscopic evaluations
Test System, Assay or Examination:
Scimedx Trichomonas Test System
Speciality/Subspeciality: Toxicology/TDM

Analyte: Acetaminophen

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
CDS Diagnostics Enzymatic Test Kit
Sherwood Medical Rapid Stat Diagnostic Kit
Stanbio Test Kit
Syva Emit Qst Acetaminophen Assay

Analyte: Acetylcholine/choline

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Bioanalytical System BAS 482
Bioanalytical Systems BAS 200A
Bioanalytical Systems BAS 480
Bioanalytical Systems BAS 481

Analyte: Amikacin

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus

Analyte: Amphetamines

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Immunotech Microzyme EIA (spectrophotometric)
Roche Abuscreen RIA
Syva Emit st Drug Detection System
Syva Qstat/Qst System

Analyte: Barbiturates

Category: Automated or semi-automated procedures that do require operator

intervention during the analytic process

Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process

Test System, Assay or Examination:
Roche Abuscreen RIA
Syva Emit st Drug Detection System
Syva Qstat/Qst System

Analyte: Benzodiazepines

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process

Test System, Assay or Examination:
Bio-Rad HPLC
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process

Test System, Assay or Examination:
Diagnostic Products Corp. Coat-A-Count IRMA
Roche Abuscreen RIA
Syva Emit st Drug Detection System
Syva Qstat/Qst System

Analyte: Benzodiazepines, Urine

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process

Test System, Assay or Examination:
Syva Emit st Drug Detection System

Analyte: Cannabinoids (THC)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process

Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process

Test System, Assay or Examination:
Immunotech Microzyme EIA (spectrophotometric)
Roche Abuscreen RIA
Syva Emit st Drug Detection System
TOXI-LAB Cannabinoid (THC) Screen
TOXI-LAB Cannabinoid (THC) Screen THC-PLUS
TOXI-LAB THC II
TOXI-LAB THC II-PLUS

Analyte: Carbamazepine

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process

Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process

Test System, Assay or Examination:
Syva Qstat/Qst System

Analyte: Cocaine Metabolites

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process

Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process

Test System, Assay or Examination:
Immunotech Microzyme EIA (spectrophotometric)
Serex CoMA Cocaine Metabolite Assay
Syva Emit st Drug Detection System
Syva Qstat/Qst System

Analyte: Cyclosporine

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process

Test System, Assay or Examination:
Bio-Rad HPLC

Analyte: Digitoxin

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process

Test System, Assay or Examination:
Immunotech ENDAB EIA Kit

Analyte: Digoxin

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process

Test System, Assay or Examination:
Bio-Chem Laboratory Systems ATAC 2100

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process

Test System, Assay or Examination:
Immunotech ENDAB EIA Kit
Immunotech EZ-BEAD EIA Kit

Analyte: Disopyramide

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process

Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus

Analyte: Drugs of Abuse

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process

Test System, Assay or Examination:
Bio-Rad REMEDi Drug Profiling System

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process

Test System, Assay or Examination:
Bioanalytical System BAS 482
Bioanalytical Systems BAS 200A
Bioanalytical Systems BAS 480
Bioanalytical Systems BAS 481
TOXI-LAB A Drug Detection System
TOXI-LAB B Drug Detection System
TOXI-LAB Drug Detection System A-PLUS
TOXI-LAB Drug Detection System B-PLUS
TOXI-LAB Special Procedure
TOXI-LAB Validation Procedure

Analyte: Ethanol (Alcohol)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process

Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process

Test System, Assay or Examination:
Reagents Applications RAICHEM Test Kit
Syva Emit st Drug Detection System

Analyte: Ethosuximide

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process

Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process

Test System, Assay or Examination:
Syva Qstat/Qst System

Analyte: Ethylene Glycol

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process

Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus

Analyte: Gentamicin

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process

Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus

Analyte: Lidocaine

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process

Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus

Analyte: Lysergic Acid Diethylamide (LSD)

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process

Test System, Assay or Examination:
Roche Abuscreen RIA

Analyte: Metanephrines, Urine

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process

Test System, Assay or Examination:
Bio-Rad HPLC

Analyte: Methadone

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process

Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process

Test System, Assay or Examination:
Syva Emit st Drug Detection System
Syva Qstat/Qst System

Analyte: Methamphetamines

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process

Test System, Assay or Examination:
Roche Abuscreen RIA

Analyte: Methaqualone

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process

Test System, Assay or Examination:
Roche Abuscreen RIA
Syva Emit st Drug Detection System

Analyte: Methotrexate

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process

Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus

Analyte: Morphine

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process

Test System, Assay or Examination:
Roche Abuscreen RIA

Analyte: N-Acetylprocainamide (NAPA)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process

Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus

Analyte: Opiates

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process

Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process

Test System, Assay or Examination:
Immunotech Microzyme EIA (spectrophotometric)
Syva Emit st Drug Detection System
Syva Qstat/Qst System
TOXI-LAB Opiate Procedure

Analyte: Phencyclidine (PCP)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process

Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process

Test System, Assay or Examination:
Immunotech Microzyme EIA (spectrophotometric)
Roche Abuscreen RIA
Syva Emit st Drug Detection System
Syva Qstat/Qst System

Analyte: Phenobarbital

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process

Test System, Assay or Examination:
Bio-Chem Laboratory Systems ATAC 2100
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process

Test System, Assay or Examination:
Immunotech ENDAB EIA Kit
Syva Qstat/Qst System

Analyte: Phenytoin

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process

Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process

Test System, Assay or Examination:
Immunotech ENDAB EIA Kit
Syva Qstat/Qst System

Analyte: Primidone

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process

Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process

Test System, Assay or Examination:
Syva Qstat/Qst System

Analyte: Procainamide

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process

Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus

Analyte: Quinidine

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process

Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus

Analyte: Salicylates

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process

Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process

Test System, Assay or Examination:
GDS Diagnostics Enzymatic Test Kit
Sherwood Medical Rapid Stat Diagnostic Kit
Stanbio Test Kit

Analyte: Theophylline

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process

Test System, Assay or Examination:
Bio-Chem Laboratory Systems ATAC 2100
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process

Test System, Assay or Examination:
GDS Diagnostics Enzymatic Test Kit
Immunotech EZ-BEAD EIA Kit
Stanbio Premiere

Analyte: Tobramycin

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process

Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus

Analyte: Tricyclic Antidepressants

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process

Test System, Assay or Examination:
Bio-Rad HPLC

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process

Test System, Assay or Examination:
Syva Emit st Drug Detection System

Analyte: Valproic Acid

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process

Test System, Assay or Examination:
Instrumentation Laboratory Multistat III
Instrumentation Laboratory Multistat III Plus

Analyte: Vanillylmandelic Acid (VMA)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process

Test System, Assay or Examination:
Bio-Rad HPLC

Speciality/Subspeciality: Virology

Analyte: Adenovirus

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process

Test System, Assay or Examination:
Analytab API Adenovirus Test Kit (inc. cell culture/spectro)
Analytab API Adenovirus Test Kit-EIA (dir Ag/visual)
Analytab API Adenovirus Test Kit-EIA (dir. Ag/spectrophoto)
Analytab API Adenovirus Type 40/41 EIA (dir Ag/visual)
Cambridge Biotech Adenoclone-EIA (direct Ag/spectrophoto)
Cambridge Biotech Adenoclone-EIA (inc. cell cult./spectro)
Cambridge Biotech Adenoclone-EIA (including cell culture)
Cambridge Biotech Adenoclone-type 40/41 (dir.Ag/spectropho)

Category: Test kits requiring microscopic evaluations

Test System, Assay or Examination:
Gull Laboratories Adenovirus Test (including cell culture)

Analyte: Cytomegalovirus

Category: Test kits requiring microscopic evaluations

Test System, Assay or Examination:
Gull Laboratories CMV-EA Test (including cell culture)

Analyte: Herpes simplex

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process

Test System, Assay or Examination:
Vitek Systems Vidas (direct antigen)
Vitek Systems Vidas (including cell culture)

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process

Test System, Assay or Examination:
Du Pont HERPCHEK HSV Antigen Test (dir Ag/spectrophoto)
Fairleigh Dickinson ELISA for HSV (dir Ag/spectrophoto)
Fairleigh Dickinson ELISA for HSV (dir Ag/visual)
Fairleigh Dickinson ELISA for HSV (inc. cell cult./spectro)
Fairleigh Dickinson ELISA for HSV (inc. cell culture/visual)
Ortho HSV Antigen ELISA Test (dir.Ag/spectrophotometric)
Ortho HSV Antigen ELISA Test (incl. cell culture/spectro)

Category: Test kits requiring microscopic evaluations

Test System, Assay or Examination:
Baxter Bartels HSV Immunoperoxidase Test incl. cell culture
Syva MicroTrak HSV Culture Ident. Test (incl. cell culture)
Syva MicroTrak HSV-1/HSV-2 Direct Spec ID/Typ Test (dir Ag)

Analyte: Human Papillomavirus (HPV)

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process

Test System, Assay or Examination:
Digene ViraPap (direct antigen)
Digene ViraType (direct antigen)

Analyte: Respiratory syncitial virus

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process

Test System, Assay or Examination:
Ortho RSV Antigen ELISA Test (dir. Ag/spectrophometric)

Category: Test kits requiring microscopic evaluations

Test System, Assay or Examination:
Gull Laboratories RSV-MAb Test (including cell culture)
Vitek RSV Direct IF (direct antigen)

Analyte: Respiratory syncytial virus

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process

Test System, Assay or Examination:
Vitek Systems Vidas (direct antigen)

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Sanofi/Kallestad Pathfinder RSV (direct antigen/visual)
Category: Test kits requiring microscopic evaluations
Test System, Assay or Examination:
Gull Laboratories RSV-MAb Test (direct antigen)

Analyte: Respiratory viruses (Influenza A&B, parainfluenza)

Category: Test kits requiring microscopic evaluations
Test System, Assay or Examination:
Gull Laboratories Influenza A Test (including cell culture)
Gull Laboratories Influenza B Test (including cell culture)

Analyte: Rotavirus

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Abbott Rotazyme II Diag. Kit (dir.Ag/visual)
Analytab API RotaVirus (dir.Ag/spectrophotometric)
Analytab API RotaVirus Test Kit (dir.Ag/visual)
Cambridge Biotech Rotaclone (direct Ag/spectrophotometric)
Cambridge Biotech Rotaclone (direct antigen/visual)
Isolab RotaVirus EIA (direct antigen/spectrophotometric)
Isolab RotaVirus EIA (direct antigen/visual)
Sanofi/Kallestad Pathfinder RotaVirus (dir.Ag/visual)

Analyte: Viruses

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
All Virus Identification from Pure Isolates

Corrections to the Specific List for Categorization of Laboratory Test Systems, Assays and Examinations by Complexity Published as a Notice in the Federal Register on February 28, 1992

The following corrections to the list of test systems, assays and examinations published previously in the **Federal Register** were made based on supplemental information provided by the commenters during the comment period or as a result of corrections of data entry errors.

Recategorizations

Particular test systems, assays, and examinations were recategorized when they were rescored under 42 CFR 493.17 using new information as discussed below.

The Ciba Corning 170 and the Ciba Corning 178 analyzers for blood gas with pH have been recategorized from high to moderate complexity. This change in complexity is the result of information supplied by the manufacturer of the Ciba Corning analyzers indicating that, when using these models, the analyst is not required to manually flush lines, calibrate parameters or introduce the sample in a manner that is any more complex than routine sample introduction into any blood gas instrument.

The Sysmex R-1000, an automated instrument for reticulocyte counts has been recategorized from high to moderate complexity. Information supplied by the manufacturer indicated that, for normal operation, the analyst is not required to interpret a histogram to arrive at a final result. The instrument has a direct read-out for total reticulocyte count.

The Becton Dickinson BBL-Tube Test, the Difco Bacto-Tube Test and the Gamma Biologicals Tube Test for febrile agglutinins have all been recategorized from high to moderate complexity. After consultation with laboratory professionals and reevaluation of information from manufacturers, it was determined that the level of skill required to perform these procedures was not as specialized nor were the procedures as complex as originally determined.

The Vitek Systems Vidas for respiratory syncytial virus, Chlamydia, and Clostridium difficile has been recategorized from moderate to high complexity. Supplemental information on this test system was received from laboratory professionals with experience performing the procedure and was verified through product inserts submitted by the manufacturer. Based on this information, the procedure for preparation of the sample before placing on the Vidas instrument was determined to be technically complex with multiple steps that included volumetric addition of reagents, precise temperature control, exact timing requirements and mechanical vortexing. The complexity of the procedure for sample preparation also requires a higher level of training and experience than was originally indicated.

During the open comment period for the list of test systems, assays and examinations published as a Notice in the **Federal Register** on February 28, 1992, comments were received suggesting that aspects of microbiology should be categorized as high complexity. Comments specifically targeted the degree of interpretation and judgment required to identify organisms grown in culture media. In response to these comments, this aspect of microbiology has been reevaluated and revised to recognize that the isolation, identification, and susceptibility determination of organisms transferred from culture media constitute a total process which should be categorized as a single test. Identifications and/or susceptibility determinations of organisms transferred from culture require significant knowledge, training, and interpretation for the selection and performance of the individual test components which may include staining for microscopic evaluation, subculturing, and conducting miscellaneous biochemical analyses. Therefore, microbiology procedures involving identification and/or susceptibility determinations of organisms transferred from culture media have been placed in the high complexity category regardless of the specimen source.

Some products are categorized as moderate complexity because they do not require the transfer of organisms and they only provide preliminary results (i.e., colony counts). Additionally, we have graded for complexity only those products that are generally recognized as complete identification systems although additional test components (i.e., culture interpretation and gram stain) are required.

We reevaluated antigen detection systems in the area of microbiology and agreed that some recategorizations were necessary due to the amount of interpretation, judgment, and training required for these procedures. Supplemental information on these tests was received from laboratory professionals with experience performing the procedures and was verified through product inserts submitted by manufacturers. Based on this information, many of the procedures were determined either to be technically complex with multiple steps that included extensive sample and reagent preparation, precise temperature control and exact timing requirements or to require a high level of interpretation and judgment. Additionally, the complexity of some of the tests required a higher level of training and experience to perform the procedure than was originally indicated.

As a result of the reevaluation of the area of microbiology, the following analyte/test systems entries published on February 28, 1992 as moderate

complexity have been recategorized to high complexity:

Adenovirus

Analytab API Adenovirus Test Kit-EIA (dir. Ag/visual)
Analytab API Adenovirus Type 40/41 EIA (dir. Ag/visual)
Cambridge Biotech Adenoclone-EIA (dir. Ag/visual)
Cambridge Biotech Adenoclone-type 40/41 (dir. Ag/visual)

Aerobic and/or Anaerobic Organisms—Unlimited Sources

All Manual KB Disc Diffus Antimicrobial Susceptibility Tests
Vitek Systems VITEK

Campylobacter

Becton Dickinson BBL Campyslide Test (from culture)
Meridian Diagnostics Meritec-Campy (JCL) (from culture)

Chlamydia

Analytab API IDEIA (direct antigen/visual)

Escherichia coli

Bio-Medical ANI E. coli 0157 Test (from culture)
Pro-Lab Diagnostics E. coli 0157 Latex Test (from culture)
Unipath E. coli 0157 Latex Kit (from culture)

Haemophilus Influenzae, Type a, c–f

Karobio Phadebact Haemophilus (from culture)

Haemophilus Influenzae, Type b

Karobio Phadebact Haemophilus (from culture)

Herpes Simplex

Fairleigh Dickinson ELISA for HSV (dir Ag/visual)

Intestinal Parasites

Alexon Biomed. ProSpecT Giardia Microtiter (dir Ag/visual)

Neisseria Gonorrhoeae

Adams Scientific Identicult—Neisseria
Culture Kits, Inc. Goni-Kit
Karobio Phadebact Monoclonal Gonococcus (from culture)
Medical Technology Corp. Biocult GC Culture Paddles
Meridian Diagnostics Meritec-GC (from culture)
New Horizons Gonogen (from culture)
New Horizons Gonogen II (from culture)

Respiratory Syncytial Virus

Sanofi/Kallestad Pathfinder RSV (direct antigen/visual)

Rotavirus

Abbott Rotazyme II Diag. Kit (dir Ag/visual)
Analytab API Rotavirus Test Kit (dir Ag/visual)
Cambridge Biotech Rotaclone (direct antigen/visual)
Isolab RotaVirus EIA (direct antigen/visual)
Sanofi/Kallestad Pathfinder Rotavirus (dir Ag/visual)

Salmonella

Bio-Medical ANI Salmonella Test (from culture)

Staphylococcus

Adams Scientific SeroStat II Staphylococcus
Advanced Medical Technologies Rapi-Staph
Analytab Staph-Ident
Baxter MicroScan StaphyLatex
Becton Dickinson BBL Staphyloslide
Bio-Medical ANI Staph aureus Test
Carr-Scarborough Accu-Staph
Difco Bacto Staph Latex Test
Immuno-Mycologics LA-Staph
Innovative Diagnostic Systems IDS Staphylochrome
Medical Diagnostics Technologies Staph Latex
NCS Staphslide
Regional Media Lab Hemastaph
Vitek Systems RAPIDEC Staph
Wellcome Staphaurex

Streptococcus, Group A

Abbott TestPack Strep A (from culture)
Adams Scientific SeroStat Streptococcus (from culture)
Antibodies Inc. Detect-A-Strep (from culture)
Becton Dickinson BBL Strep Grouping (from culture)
Culture Kits, Inc. Strep-Kit (from culture)
Diagnostic Products PathoDx LA Strep Group (from culture)
Karobio Phadebact Streptococcus (from culture)
Kodak SureCell (from cell culture)
Marion Scientific Group A Strep ID (from culture)
Medical Technology Corp. Optitec Strep A (from culture)
Medix Biotech Sure-Strep A (from culture)
Unipath Oxoid Streptococcal Grouping Kit (from culture)
V-Tech V-Trend Strep A (from culture)
Wellcome Reveal Colour Strep A (from culture)
Wellcome Streptex (from culture)

Streptococcus, Group B

Adams Scientific SeroStat Streptococcus (from culture)
Becton Dickinson BBL Strep Grouping (from culture)
Diagnostic Products PathoDx LA Strep Group (from culture)
Karobio Phadebact Streptococcus (from culture)
Meridian Diagnostics Meritec-Strep (from culture)
Unipath Oxoid Streptococcal Grouping Kit (from culture)
Wellcome Streptex (from culture)

Streptococcus, Group C

Adams Scientific SeroStat Streptococcus (from culture)
Diagnostic Products PathoDx LA Strep Group (from culture)
Karobio Phadebact Streptococcus (from culture)
Meridian Diagnostics Meritec-Strep (from culture)
Unipath Oxoid Streptococcal Grouping Kit (from culture)
Wellcome Streptex (from culture)

Streptococcus, Group D

Bio-Medical ANI Strep Test (from culture)
Diagnostic Products Corp. PathoDx Strep D (from culture)
Karobio Phadebact Streptococcus (from culture)
Unipath Oxoid Streptococcal Grouping Kit (from culture)
Wellcome Streptex (from culture)

Streptococcus, Group F

Adams Scientific SeroStat Streptococcus (from culture)
Diagnostic Products PathoDx LA Strep Group (from culture)
Karobio Phadebact Streptococcus (from culture)
Meridian Diagnostics Meritec-Strep (from culture)
Unipath Oxoid Streptococcal Grouping Kit (from culture)
Wellcome Streptex (from culture)

Streptococcus, Group G

Adams Scientific SeroStat Streptococcus (from culture)
Diagnostic Products PathoDx LA Strep Group (from culture)
Karobio Phadebact Streptococcus (from culture)
Meridian Diagnostics Meritec-Strep (from culture)
Unipath Oxoid Streptococcal Grouping Kit (from culture)
Wellcome Streptex (from culture)

Yeast, Cryptococcus Only

Meridian Premier Cryptococcal Ag Test (dir Ag/visual)

While reevaluating the area of microbiology and in response to

comments, we determined the categorization of gram stains as moderate complexity should be revised and clarified. The original entry of moderate complexity for gram stains has been deleted and replaced with the following two entries as reflected on this list of additions:

All Gram Stain Procedures—Urethral only (moderate complexity)

All Gram Stain Procedures—Sources other than Urethral (high complexity)

We determined that a gram stain on a urethral specimen requires less knowledge, training, and interpretation because the analyst is not required to recognize multiple organisms, there is less background material, and the enumeration of multiple cell types is not usually required. A gram stain from any other specimen source requires a higher level of knowledge, training, and interpretation to assess specimen quality, to determine the morphology of organisms, and to make decisions about further testing.

Deletions

The following test system entries in the area of microbiology as published on February 28, 1992 have been deleted from the list of test systems, assays and examinations categorized by complexity. These test system entries are not complete test systems and therefore will not be individually graded for complexity. Since all of these entries involved identification and/or susceptibility of organisms from culture, they represent components of a total test process that is high complexity:

Adams Scientific B. Cat Confirm
Adams Scientific Identicult—AE
Adams Scientific Identicult—BL
Adams Scientific Mug-Indole Disc
Adams Scientific Rapid-Hippurate
Adams Scientific Stat-Urease
American Biomedical Prod. B. Fragtex
Anaerobe Systems Bile Differential Disk
Anaerobe Systems Colistin 10 mcg. Differential Disk
Anaerobe Systems Kanamycin 1000 mcg Differential Disk
Anaerobe Systems Vancomycin 5 mcg Differential Disk
Analytab API An-Ident
Analytab API Germ Tube
Analytab API StaphTrac
Baxter Coagulase Plasma
Becton Dickinson Cefinase Discs
Calbiochem Padac Differentiation Discs
Calbiochem-Behring Anti-Dnase B
Carr Microbiologicals Beta Lactamase Reagent Disc
Carr Microbiologicals CSM Chromogenic B-Lactamase Disc
Carr Microbiologicals Hipp Microtube
Carr Microbiologicals Onpx-Indol Microtube
Carr Microbiologicals PYR Broth
Carr Microbiologicals PYR Discs
Carr Microbiologicals Pgua-Indol Microtube
Carr Microbiologicals Phos Microtubes
Carr Microbiologicals Pro Discs
Carr Microbiologicals Pyrr Microtubes
Carr-Scarborough ALN Differentiation Discs
Carr-Scarborough Acridine Orange Stain
Carr-Scarborough Rapid Glutamic Acid Decarboxy microtube
Diagnostic Products Corp. PathoDx PYR Kit
Difco Differentiation Discs ALA
Difco Differentiation Discs Colistin 10 mcg
Difco Differentiation Discs Erythromycin 60 mcg
Difco Differentiation Discs Hippurate
Difco Differentiation Discs Kanamycin 1000 mcg
Difco Differentiation Discs Nitrate
Difco Differentiation Discs Penicillin G 2 units
Difco Differentiation Discs Rifampin 15 mcg
Difco Differentiation Discs SPS
Difco Differentiation Discs Spectinomycin
Difco Differentiation Discs Vancomycin 5 mcg
Difco DrySlide Beta-Lactamase
Difco DrySlide Oxidase
Difco Spot Test 10% Na Desoxycholate
Difco Spot Test Acridine Orange Stain
E-Y Laboratories Oxidase Swabzyme
E-Y Laboratories Strep-A-Chek PYR
Innovative Diagnostic Systems Beta Discs
Innovative Diagnostic Systems Oxichrome Reagent
Innovative Diagnostic Systems Porphyrin Reagent
Innovative Diagnostic Systems Rap ANA II System
Kev Connecticut Diagnostics Visi-Strep
Meridian Indol Spot Test Kit
Micro Media Systems M. Cat. Butyrate Disc
Micro-Bio-Logics KWIK-LAC
Micro-Bio-Logics Lyfo-KWIK OMI Kit
Micro-Bio-Logics Neisseria-KWIK Plus
Microbiological Specialties Beta-ase Tubes
Microbiological Specialties Enzyme-ase I Tubes
Microbiological Specialties Galactosid-ase Tubes
Microtech Medical Systems Quadra-titer ID
Pro-Lab Hippurate Test
Pro-Lab Rosco D'Ala Rapid Test
Pro-Lab Rosco Pyrr
Remel ALA Disc
Remel Acridine Orange Stain
Remel Beta Lysin Disc
Remel Beta-Lactam Disc
Remel Bile Disc
Remel CEPH Lactam Disc
Remel Catarrhalis Test Strip
Remel Coagulase Plasma
Remel Colistin Disc
Remel Kanamycin Disc
Remel Legionella ID Disc
Remel Lysostaphin Test Kit
Remel Microdase
Remel Nitrate Swab-Rapid Test
Remel Novobiocin Disc
Remel PYR Disc
Remel PYR/Esculin Disc
Remel Porphyrin (ALA) Disc
Remel Pyridoxal Disc
Remel SPS Disc
Remel Urea-PDA Discs
Unipath Oxoid Bile Esculin Discs
Unipath Oxoid ONPG Discs
Unipath Oxoid Oxidase ID Sticks
Unipath Oxoid SPS Discs
Unipath Oxoid V Factor Discs
Unipath Oxoid X & V Factor Discs
Unipath Oxoid X Factor Discs

The following analyte/test systems entries have been deleted from the list because the entries for these test systems, as published on February 28, 1992, defined complexity by source which does not fit the criteria for grading by complexity. These test systems require identification from culture and, as reflected in the list of additional tests in this Notice, are high complexity regardless of the source:

Aerob Organ.—From ONLY Throat, Urine, or Cerv/Ureth

Analytab API 20 Streptococcus
Analytab API Laboratories Rapid E
Analytab API Laboratories Rapid NFT
Analytab API Laboratories Rapid Strep
Analytab API Quad Ferm +
Analytab API Staphase III
Analytab API ZYM Microorganism Differentiation
Baxter Haemophilus/Neisseria Identif—Panel
Becton Dickinson Cefinase Discs
Becton Dickinson Minitek Kits
Innovative Diagnostic Systems IDS Rapid SS/U System
Innovative Diagnostic Systems IDS Rapid STR System
Innovative Diagnostic Systems Modified IDS Rapid NH System
Innovative Diagnostic Systems Rap NF Plus System
Innovative Diagnostic Systems Rapid NF System

Micro Media Systems Bacterial ID Panels/Gram Neg/Gram Pos
Pro-Lab Neisseria/Branhamella Differential Test
Remel Haemophilus ID Test Kit
Remel Hemastaph
Roche Enterotube II
Vitek Systems Rapid E System

Yeast, C. Albicans Only

Analytab API 20C Yeast Identification Kits
Analytab Yeast Ident
Baxter MicroScan Rapid Yeast Identification Panel
Carr-Scarborough C. albicans Disc Screening Kit
Medical Wire Equip. MicroRing YT

The following test systems entries have been deleted from the list because they are procedures that are part of an automated system. A complete testing process involving an instrument includes both the automated procedure and individual identification procedures which is taken into account when the instrument is graded for complexity. The following entries, therefore, do not represent complete tests:

Aerob Organ.—From ONLY Throat, Urine, or Cerv/Ureth

Baxter MicroScan Gram Neg Panels
Baxter MicroScan Gram Pos Panels

Aerobic &/or Anaerobic Organisms—Unlimited Sources

Baxter MicroScan Gram Neg Panels
Baxter MicroScan Gram Pos Panels
Vitek Systems VITEK AMS ANA Card
Vitek Systems VITEK Anaerobe ID Card
Vitek Systems VITEK/ANI Anaerobes
Vitek Systems VITEK/Bacillus Biochem. card
Vitek Systems VITEK/EPS Enteric path. card

The following analyte/test system entries have been removed from the list because the test systems do not include a procedure for reporting a positive result without a titer. Therefore, the following test systems entries, as published on February 28, 1992, do not describe complete test procedures.

Yeast, Cryptococcus Only

Baxter MYCO-Immune Cryptococcal LA (dir Ag) (non-titration)
Meridian Cryptococcal LA System (dir Ag) (non-titration)

[FR Doc. 92-20988 Filed 9-1-92; 8:45 am]
BILLING CODE 4160-15-M

federal register

Wednesday
September 2, 1992

Part III

Department of the Interior

Bureau of Indian Affairs

25 CFR Parts 211 and 212

Leasing of Tribal Lands for Mineral Development; Leasing of Allotted Lands for Mineral Development; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Parts 211 and 212

Leasing of Tribal Lands for Mineral Development; Leasing of Allotted Lands for Mineral Development

August 25, 1992.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Reopening of comment period; Notice of Public Hearings.

SUMMARY: The Bureau of Indian Affairs (BIA), Office of Trust and Economic Development, Division of Energy and Minerals, announces that it will reopen the comment period on the proposed 25 CFR parts 211 and 212 (published on November 21, 1991 at 56 FR 58734) for 60 days following the date of publication of this notice and will hold public hearings during the comment period in order to address comments expressed by tribal representatives, state and federal agencies and the general public.

DATES: Comments will be accepted until November 2, 1992. Public hearings will be held Friday, September 25, 1992 from 9 a.m. until 5 p.m., and Monday, September 28, 1992 from 9 a.m. until 5 p.m.

ADDRESSES: Comments should be submitted to Bureau of Indian Affairs, Mail Stop 4525–MIB, 1849 C Street NW., Washington, DC 20240.

Public hearings will be held on September 25, 1992 in the Lakewood Sheraton Hotel, Lakewood, Colorado and on September 28, 1992 at the Hyatt Regency Hotel in Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Richard N. Wilson, Chief, Division of Energy and Minerals, Bureau of Indian Affairs, 730 Simms Street, Lakewood Office Plaza, room 239, Golden, Colorado 80401; Telephone: (303) 231–5070 or Kim L. Snyder, Washington Liaison Officer, Division of Energy and Minerals, Bureau of Indian Affairs, Mail Stop 4525–MIB, 1849 C Street NW., Washington, DC 20240; Telephone: (202) 208–3611.

SUPPLEMENTARY INFORMATION: The policy of the Department of the Interior is whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may either submit written comments on the proposed rule or participate in the public hearings.

David J. Matheson,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 92–20985 Filed 9–1–92; 8:45 am]

BILLING CODE 4310–02–M

federal register

Wednesday
September 2, 1992

Part IV

Department of Education

Transitional Bilingual Education Program; Special Alternative Instructional Program; Notice

DEPARTMENT OF EDUCATION

Transitional Bilingual Education Program; Special Alternative Instructional Program

AGENCY: Department of Education.

ACTION: Notice of final priority for Fiscal Year 1993.

SUMMARY: The Secretary announces an absolute priority for fiscal year (FY) 1993 under the Transitional Bilingual Education (TBE) Program and the Special Alternative Instructional (SAI) Program—two of the Basic Programs under part A of the Bilingual Education Act. The Secretary takes this action to focus Federal financial assistance on an identified national need. The priority is intended to improve the achievement of limited English proficient (LEP) students in mathematics and science.

EFFECTIVE DATE: This priority takes effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of this priority, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Harry G. Logel, U.S. Department of Education, 400 Maryland Avenue, SW., room 5086, Switzer Building, Washington, DC 20202-6641. Telephone: (202) 205-9715. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: The TBE and SAI programs are authorized by section 7021 of the Bilingual Education Act (20 U.S.C. 3291). Grants are made to local educational agencies (LEAs) and institutions of higher education applying jointly with one or more LEAs to provide instructional services to LEP children. The TBE program provides structured English language instruction and, to the extent necessary to allow a LEP child to achieve competence in English, instruction in the child's native language. The SAI program provides structured English language instruction and special instructional services to help LEP children achieve competence in English. It allows, but does not require, instruction in the child's native language.

The Secretary announces an absolute priority for FY 1993 under the TBE and SAI programs to assist LEAs to improve the achievement of LEP students in mathematics and science. This priority supports the President's AMERICA 2000 strategy for helping the Nation move itself toward the National Education Goals, particularly Goal 3 and Goal 4. Goal 3 calls for all students to demonstrate competency in challenging subject matter, including English, mathematics, and science. Goal 4 calls for American students to be first in the world in science and mathematics achievement by the year 2000. The priority focuses TBE and SAI funds for new grants on these goals to help LEP students achieve competence in English, mathematics, and science.

On June 17, 1992, the Secretary published a notice of proposed priority for these programs in the **Federal Register** (57 FR 27035).

Note: This notice of final priority does not solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** at a later date.

Public Comment

In the notice of proposed priority, the Secretary invited comments on the proposed priority. The Secretary did not receive any substantive comments. The Secretary has made no changes in this priority since publication of the notice of proposed priority.

Priority

Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

An instructional approach that emphasizes one or both of the following core curriculum areas in addition to English: Mathematics or science.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Applicable Program Regulations

34 CFR parts 500 and 501.

Program Authority: 20 U.S.C. 3291.

Dated: August 19, 1992.

Lamar Alexander,

Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers: 84.003D Transitional Bilingual Education Program; and 84.003K Special Alternative Instructional Program)

[FR Doc. 92-21079 Filed 9-1-92; 8:45 am]

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Briefing on How To Use the Federal Register
For information on a briefing in Atlanta, GA, see announcement on the inside cover of this issue.

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WHO: The Office of the Federal Register.

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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

ATLANTA, GA

WHEN: September 17, at 9:00 a.m.
WHERE: Centers for Disease Control
1600 Clinton Rd., NE.
Auditorium A
Atlanta, GA (Parking available)

RESERVATIONS: [404–639–3528 (Atlanta area)]
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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 800

Issuance of Official Certificates

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) is adopting without change the provisions of an interim final rule to revise the regulations under the United States Grain Standards Act (USGSA) regarding the required issuance by official inspection personnel of an official certificate for each single-lot inspection of grain in a land carrier, container, or barge. Specifically, FGIS revised the requirement by establishing an exception for such lots of grain inspected according to instructions that permit certification at the option of the applicant for inspection. FGIS has determined that official certificates are not always necessary to the trading of grain. This action allowed for the implementation of instructions that provided for issuing certificates on an optional basis.

EFFECTIVE DATE: October 5, 1992.

FOR FURTHER INFORMATION CONTACT: George Wollam, FGIS, USDA, room 0632 South Building, P.O. Box 96454, Washington, DC 20090-6454; (202) 720-0292.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512-1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. The United States Grain Standards Act provides in Section 87g that no state or subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. Otherwise, this final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act Certification

John C. Foltz, Administrator, FGIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities because it relieves regulatory requirements and reduces costs associated with official inspections.

Information Collection Requirements

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the information collection requirements contained in the rule being amended have been previously approved by OMB under control number 0580-0013.

Background

Prior to issuance of an interim final rule published in the **Federal Register** on April 3, 1992, (57 FR 11427), the regulations provided: (1) in § 800.84(c) that an official certificate be issued by official inspection personnel for inspection of grain in each truck, trailer, truck/trailer combination, railcar, barge, or similarly sized carrier, unless the grain was part of a combined lot or bulkhead lot and (2) in § 800.160(a) for the issuance of official certificates for all inspection services except for certain local movements of shiplot grain.

In many instances, official certificates are not needed by applicants for inspection services or by other parties to grain transactions. This is evidenced by the fact that many certificates are discarded immediately upon receipt. In addition, these unneeded certificates require a certain amount of time to prepare and distribute. This increases the cost of providing official inspection services.

From September 1, 1991, to January 31, 1992, FGIS conducted a pilot study to determine the feasibility of offering a "flexible" inspection service that would allow the users to tailor the service, including the issuance of certificates, to fit their individual needs. These users could select specific features from other "complete" services or modify the current inspection procedures without sacrificing the quality of the inspection. This study concluded that State and private official agencies were capable of providing a "flexible" service and, more importantly, that the grain industry wants and will use such a service, if it is cost-effective and timely.

Subsequently, FGIS developed a new "flexible" inspection service: The official commercial inspection service. This service was specifically designed to facilitate the marketing of grain at locations where other kinds of official inspection services are too costly or time-consuming. Like other official services, the official commercial inspection service provides an impartial assessment of grain quality (grade, official factors, and other criteria) by FGIS-licensed or authorized inspectors, using FGIS-approved and checktested equipment. In addition, it allows applicants for inspection—working with FGIS or an official agency—to modify the sampling and inspection procedures to fit their individual needs. To foster additional savings, the instruction that establishes the official commercial inspection service provides for issuing certificates on an optional basis, upon request.

FGIS has projected that the official commercial inspection service, which was introduced on May 1, 1992, will increase the number of trucklot inspections performed by State and private official agencies by as much as 25 percent within three years, from 360,452 trucklots in FY 1991 to 450,000 in FY 1994. Hopper carlot inspections should increase by about 10 percent during the same period, from 944,246 in

FY 1991 to 1 million in FY 1994. The number of trucklot and hopper carlot inspections performed by FGIS would also increase by about the same percentage.

Comment Review

FGIS published an interim rule with request for comment in the April 3, 1992, **Federal Register** (57 FR 11427), that revised the requirement that an official certificate must be issued for each single-lot inspection of grain in a land carrier, container, or barge. FGIS received a total of four comments during the 30-day comment period. All of the commenters supported the changes to the regulations. The commenters also provided their views regarding the official commercial inspection service and various aspects of the service, as provided for by instructions. FGIS will consider these comments in its scheduled review of the official commercial inspection program.

Final Action

FGIS has determined that allowing the implementation of instructions that provide for issuing certificates on an optional basis will reduce a significant regulatory burden, have a positive economic impact on the U.S. grain industry, and facilitate the orderly and timely marketing of grain, particularly at country elevators and other points of first delivery.

Accordingly, the interim rule amending 7 CFR Part 800 which was published in 57 FR 11427 on April 3, 1992, is adopted as a final rule without change.

List of Subjects in CFR Part 800

Administrative practice and procedure, and Grain.

PART 800—GENERAL PROVISIONS

For reasons set out in the preamble, 7 CFR part 800 is amended as follows:

1. The authority citation for part 800 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended, (7 U.S.C. 71 *et seq.*).

2. Accordingly, the interim final rule revising §§ 800.84(c) and 800.160(a) of the regulations, which was published on April 3, 1992, (57 FR 11427), is adopted as a final rule without change.

Dated: August 27, 1992.

John C. Foltz,

Administrator.

[FR Doc. 92–21143 Filed 9–2–92; 8:45 am]

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DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 3

[Docket No. 92–17]

Risk-Based Capital: Residential Construction Loans Secured by Presold Homes

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is issuing this final rule to implement section 618(a) of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991 (RTCRRIA). This final rule amends the risk-based capital guidelines to include in the 50 percent risk weight category certain loans to builders to finance the construction of presold one-to-four family residential properties.

EFFECTIVE DATE: October 5, 1992.

FOR FURTHER INFORMATION CONTACT: Donna E. Duncan, National Bank Examiner, Office of the Chief National Bank Examiner, (202) 874–5170, or Ronald Shimabukuro, Senior Attorney, Bank Operations and Assets Division, (202) 874-5330.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The OCC's risk-based capital guidelines were adopted in 1989 (codified at 12 CFR part 3, appendix A). See 54 FR 4168 (January 27, 1989). The risk-based capital guidelines impose capital requirements based primarily on the credit risk profiles of the assets and off-balance sheet items of a financial institution. The risk-based capital guidelines implement the Agreement on International Convergence of Capital Measurement and Capital Standards of July 1988, as reported by the Basle Committee on Banking Supervision (the Basle Agreement), and were developed in cooperation with the Federal Deposit Insurance Corporation (FDIC) and the Federal Reserve Board (FRB).

The risk-based capital guidelines are structured so that all assets receive a 100 percent risk weight unless the asset specifically qualifies for some lower risk weight category. Under the current risk-based capital guidelines only certain one-to-four family residential mortgages may qualify for a 50 percent risk weight. Loans to builders to finance the construction of residential properties and loans secured by first liens on multifamily rental properties are risk weighted at 100 percent. However, 12 CFR part 3, appendix A, section 3(a)(3)(iii) specifically provides that a loan secured by a first mortgage on a one-to-four family residential property qualifies for a 50 percent risk weight [1]. Section 3(a)(3)(iii) further provides:

> [R]esidential property loans that are made for the purpose of construction financing are assigned to the 100 percent risk-category of section 3(a)(4 of this Appendix A; however, this exclusion from the 50 percent risk category does not apply to loans to individual purchasers for the construction of their own homes.

The OCC notice of proposed rulemaking for the risk-based capital guidelines initially proposed to place all residential mortgages in the 100 percent risk weight category. See 53 FR 8550, 8559 (March 15, 1988). However, as explained in the preamble to the final rule, certain residential mortgages received a 50 percent risk weight because of the concern that a higher risk weight would put national banks at a competitive disadvantage. See 54 FR 4173. This ultimately could have had an adverse impact on consumers. To ensure that mortgages in the 50 percent risk weight category merit the lower risk weight, the OCC imposed the prudential qualification that the loan be secured by a one-to-four family residential property. *Id.*

After the risk-based capital guidelines were promulgated, the OCC along with the FDIC, FRB, and the Office of Thrift Supervision (OTS) revisited the issue concerning the capital treatment of residential mortgages. Specifically, the banking agencies considered whether the 50 percent risk weight should apply to certain loans to builders to finance the construction of residential properties which have been presold to qualifying individuals. As a result of this issue, the OTS published a proposed rule in the **Federal Register** on December 31, 1991. See 56 FR 67551 (December 31, 1991). Similarly, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), the FDIC and the FRB published a joint proposal in the **Federal Register** on February 3, 1992.[2] See 57 FR 4027 (February 3, 1992).

[1] Under section 3(a)(3)(iii) residential property may be either owner occupied or rented; however, the mortgage cannot be more than 90 days past due, on nonaccrual or restructured.

[2] The FFIEC proposal would amend the definition of loans "secured by one-to-four family residential properties" in the Reports of Condition and Income (Call Report). The FRB and FDIC are able to implement this change through an amendment to the Call Report instructions because their risk-based capital guidelines explicitly incorporate the Call Report definition of one-to-four family residential loans.

The OCC also prepared a proposed rule; however, publication was delayed by the enactment of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991 (RTCRRIA), Public Law No. 102–233, 105 Stat. 1761 (December 12, 1991). The OCC proposal was expanded to satisfy the requirements of section 618(a) of RTCRRIA and was published in the **Federal Register** on April 9, 1992. See 57 FR 12218 (April 9, 1992). The OCC proposed rule was subject to a 30 day comment period which closed May 11, 1992.

RTCRRIA required the federal banking agencies to amend their regulations to implement the requirements of the statute by April 10, 1992. The OCC has made every effort to promulgate this final rule by the April 10, 1992, deadline. However, in light of the issues involved, the potential supervisory concerns, and the need for interagency coordination, publication of this final rule by the deadline was not possible.

The main purpose of RTCRRIA was to provide for the recapitalization of the Resolution Trust Corporation. However, RTCRRIA also contained provisions relating to the capital treatment of certain one-to-four family and multifamily residential property loans. Specifically, section 618 of RTCRRIA requires the OCC to promulgate regulations providing a 50 percent risk weight, with certain conditions, for loans to finance the construction of one-to-four family residential properties which have been presold and loans secured by multifamily residential properties. As explained in the proposed rule, the OCC has decided to implement these provisions through two separate rulemakings. The primary reason for this decision is that section 305(b)(1)(B) of the Federal Deposit Insurance Corporation Act of 1991, Public Law No. 102–242, 105 Stat. 2236 (December 19, 1991) requires, among other things, that each appropriate federal banking agency revise its risk-based capital guidelines to reflect the actual performance and expected risk of loss of multifamily mortgages. The OCC believes that the intent of both RTCRRIA and FDICIA must be considered together in developing a rulemaking for multifamily housing loans.

In order for a loan to a builder to finance the construction of a one-to-four family residential property to qualify for a 50 percent risk weight, section 618(a)(1)(B) requires that (1) the loan must be for the construction of one-to-four family residential property, (2) the bank must have sufficient documentation, as may be required by the appropriate federal banking agency, to demonstrate the intent and ability of the buyer to purchase the property, (3) the purchaser must provide to the builder a nonrefundable deposit in an amount determined by the appropriate federal banking agency, but not less than 1 percent of the principal amount of the mortgage, and (4) the loan must satisfy prudent underwriting standards as established by the appropriate federal banking agency. In addition, section 618(a)(2) requires that if the purchase contract is canceled, the bank must promptly notify the appropriate federal banking agency of the cancellation and the bank must recategorize the loan at a 100 percent risk weight.

Discussion

In the NPRM, the OCC requested comments on several specific issues related to the implementation of section 618(a) of RTCRRIA. In response to the NPRM, the OCC received ten comments.

Comments were received from trade associations representing both the housing and banking industries, as well as from financial institutions. Five commenters generally indicated support for the proposed rule; while three commenters were opposed. One commenter indicated no opposition.[3] After careful consideration of all of the comments received, the OCC adopts this final rule to amend the risk-based capital guidelines to include in the 50 percent risk weight category certain loans to finance the construction of one-to-four family residential property which have been presold.

One commenter indicated concern as to whether the proposed residential construction loans were any less risky than other loans in the 100 percent risk weight category. Under the conditions imposed by this final rule, the OCC believes that the reduced 50 percent risk weight for a loan to a builder for the construction of a one-to-four family residence which has been presold to an individual purchaser is justified.

Currently, the risk-based capital guidelines permit a loan to an individual purchaser for the construction of a home to qualify for a 50 percent risk weight if the bank has applied prudent underwriting standards. *See* 12 CFR part 3, appendix A, section 3(a)(3)(iii). The reasoning behind this provision is that the personal stake and the motivation to make timely mortgage payments is the same for a homeowner whether the individual finances the construction of the home, or whether the individual finances the purchase of a preconstructed home. Likewise, the OCC believes that under certain conditions, and subject to prudent underwriting standards, a residential construction loan may have credit risks more similar to a loan to an individual purchaser for the construction of a residence than to a loan to a builder for speculative building purposes.

Generally, builders undertake speculative residential building and property development with the expectation of future sales. The builder typically does not have an individual purchaser committed to purchase the home prior to construction. A builder may not obtain a sales contract until well into the construction process or even after completion of the project. Therefore, the lender must rely on the ability of the builder to sell the inventory of homes in a reasonable period of time in order to generate cash flow sufficient to serve the debt. These speculative residential building loans are a form of commercial lending and pursuant to section 3(a)(3)(iii), are risk weighted at 100 percent.

In other cases, however, an individual purchaser may contract with a builder to construct a home specifically for the individual purchaser. The individual purchaser may provide specific floor plans to the builder or may select a floor plan available from the builder. In such cases, a written, binding contract to build a specific home exists between the builder and the individual purchaser prior to the onset of construction. Typically, the builder arranges for interim financing while the home is under construction, and the individual purchaser arranges in advance for permanent financing upon the completion of the home. Unlike a loan to a builder for speculative residential building and property development, in a residential construction loan as described in this final rule, both the builder and the individual purchaser have a substantial financial commitment to the completion of the project.

As discussed in the proposed rule, in order to qualify for the 50 percent risk weight a residential construction loan secured by a presold home must satisfy the following criteria:

(1) The builder must incur at least the first 10 percent of the direct costs (*i.e.*, actual costs of the land, labor, and material) before any drawdown is made

[3] One comment was misdirected. The comment addressed loans secured by multifamily housing loans and not by residential construction loans. This comment will be refiled and considered along with the other comments received on the proposed rule on loans secured by multifamily housing loans.

under the construction loan and the construction loan may not exceed 80 percent of the sales price of the presold home.

(2) The lender must have obtained, prior to making the construction loan, sufficient document demonstrating (a) that the property is subject to a legally binding written sales contract, and (b) that the purchaser has obtained a firm written commitment for permanent financing of the mortgage;

(3) The individual purchaser has made a substantial "earnest money" deposit of no less than 3 percent of the sales price that will be subject to forfeiture in order to cover the costs incurred as a result of termination of the contract by the individual purchaser even if the contract is terminated pursuant to some condition in the sales contract itself;

(4) The earnest money deposit must be held in escrow by the bank financing the builder or by an independent party in a fiduciary capacity; the escrow agreement must provide that in the event of default the escrow funds must be used to defray any cost incurred relating to any cancellation of the sales contract by the buyer;

(5) The individual purchaser must intend that the home will be owner-occupied;

(6) The construction loan must be made by the bank in accordance with prudent underwriting standards; and

(7) If the individual purchaser terminates the contract or if the loan fails to satisfy any other criterion under this section, then the bank must immediately recategorize the loan at a 100 percent risk weight and accurately report the loan in its next quarterly Consolidated Reports of Condition and Income (Call Report).

Builder Equity

In the NPRM, the OCC proposed to require that (1) the builder incur at least the first 10 percent of the direct costs (*i.e.* actual costs of the land, labor, and material) before any drawdown is made under the construction loan and (2) the construction loan not exceed 80 percent of the sales price of the presold home. The OCC requested specific comment on the factors that should be considered in defining builder equity. The OCC received one comment on this issue. The commenter supported increasing the builder equity requirement from 10 percent to 20 percent; however, the commenter also suggested that equity be defined to include the difference between the market value of the improved property and the cost of the improvements.

The builder equity requirement is designed to ensure that the builder has a sufficient interest in the project to ensure completion. The measure of builder equity suggested by the commenter would in essence permit the expected profits of the project to count as builder equity. The problem with this suggestion is that the measure is based on estimates of expected cost. Consequently, using this measure means that the actual amount of builder equity will depend on the accuracy of the cost estimates. The OCC believes that a measure of builder equity based on the actual direct costs incurred by the builder is easier to apply and more accurate. Therefore, as proposed in the NPRM, this final rule requires that the builder incur at least the first 10 percent of the direct costs (*i.e.* actual costs of the land, labor, and material) before any drawdown is made under the construction loan and the construction loan may not exceed 80 percent of the sales price of the presold home.

Sales Contract and Earnest Money Deposit

The NPRM included a discussion of two separate but related requirements concerning the sales contract between the builder and the individual purchaser and the earnest money deposit. Section 618 requires the bank to obtain documentation demonstrating that the buyer of the home intends to purchase the home and has the ability to obtain a mortgage loan sufficient to purchase the home. The OCC generally believes that this documentation requirement will be satisfied by a legally binding written sales contract and a firm written commitment for permanent financing of the home upon completion.

The proposed rule emphasized that a legally binding written sales contract between the builder and the individual purchaser must be obtained *prior* to the onset of construction. In addition, the individual purchaser must provide an earnest money deposit of no less than 3 percent of the sales price that will be subject to forfeiture if the contract is terminated by the individual purchaser. With respect to forfeiture of the earnest money deposit, the OCC noted that the earnest money deposit would be subject to forfeiture even if the sales contract was terminated pursuant to a provision in the contract.

The OCC requested comments on several specific issues: (1) Whether a 3 percent earnest money deposit is adequate to cover any costs which could be incurred by cancellation of the sales contract; (2) whether contingency clauses in the sales contract should disqualify the loan from the 50 percent risk weight; and (3) whether the deposit should be forfeited even if the individual purchaser terminates the contract pursuant to a clause in the contract. The OCC received three comments. One commenter indicated that a 3 percent earnest money deposit was high but still consistent with the housing industry practice, which ranges from 2 percent to 3 percent of the sales price. Another commenter suggested that the earnest money deposit requirement be lowered to the lesser of 2 percent or an amount common for the local market.

The earnest money deposit is intended to defray any costs incurred by the bank and the builder caused by the cancellation of the sales contract. The OCC believes that a 3 percent earnest money deposit should adequately cover any cost that normally might be incurred by the bank and the builder. The OCC agrees with the commenter that a 3 percent earnest money deposit is within the customary industry practice. In addition, it should be noted that the 3 percent earnest money deposit requirement is the minimum deposit amount required. Special circumstances may warrant a larger deposit.

With respect to the other comment, the OCC is concerned that in any particular area the customary deposit for the local market may be inadequate to fully defray the cost that could be incurred by the cancellation of the sales contract. Moreover, from a supervisory standpoint, the OCC believes that a local market standard would be difficult to monitor.

As to the use of contingency clauses, one commenter noted that although contingency clauses should not be permitted to frustrate the objective of obtaining a serious financial commitment from the buyer, the final rule should not needlessly interfere with the ability of the builder and buyer to negotiate the sales contract. The OCC agrees with this commenter. The OCC does not intend that this final rule should interfere with negotiations between the builder and buyer. This final rule does not, in any way, restrict or prohibit the inclusion of any terms in the sales contract that the builder and buyer wish to negotiate.

However, the OCC still has concern that the excessive use of contingency clauses in the sales contract could make the financial commitment of the buyer meaningless. To counter this concern, this final rule makes clear that the earnest money deposit would be subject to forfeiture by the buyer even if the contract is terminated pursuant to some condition in the sales contract itself. The OCC believes that this provision eliminates most of the concern raised by

the use of contingency clauses in the sales contract.

One commenter indicated that the discussion in the NPRM suggested that the earnest money deposit could be forfeited by the buyer even if the contract was cancelled by the builder and not the buyer. The commenter suggested that the final rule make clear that the earnest money deposit would only be forfeited by the buyer for cancellation of the sales contract caused by the buyer and not the builder. The OCC agrees with this position. The OCC never intended that the buyer should forfeit the earnest money deposit because of some action of the builder. As explained in the proposed rule, this requirement is not intended to apply to certain standard conditions, such as satisfactory completion of the home by the builder in accordance with the sales contract. Rather, the purpose of this requirement is to cover the exercise of contingency clauses by the buyer that are conditioned on the occurrence of events outside of the construction of the home. Accordingly, the final rule has been amended to make clear the buyer would forfeit the earnest money deposit only if the cancellation of the sales contract is caused by the buyer.

The proposed rule also required (1) that the earnest money deposit be held in escrow by the bank financing the builder and (2) that the escrow agreement provide that in the event of default the escrow funds must be used to first compensate the bank for its losses with the remainder to be turned over to the builder to be used in accordance with the terms of the sales contract. No comments were received on this issue; however, the language in the final rule is amended to be more consistent with the statutory language and to provide for the option of using an independent third party as the depository of the escrow funds.

In the event the sales contract is terminated, or for some other reason the loan no longer qualifies for the 50 percent risk weight, this final rule requires that the bank must immediately recategorize the loan at a 100 percent risk weight and accurately report the loan in the bank's next quarterly Call Report. Section 618(a)(2) requires that upon cancellation of the sales contract the bank must immediately recategorize loans and promptly notify the appropriate supervisory agency.

The OCC believes that the prompt notification requirement is satisfied in most instances through the accurate reporting of the loan at a 100 percent risk weight in the bank's next quarterly Call Report. For this reason, this final rule does not require direct notification to the OCC but only requires that the recategorized loan be accurately reported in the next quarterly Call Report. However, in cases where such recategorization results in a significant change in the bank's risk-based capital ratios, the OCC reserves the authority to require the bank to report to its supervisory office. Additionally, it should be noted that this final rule requires immediate recategorization of any residential construction loan which is subsequently disqualified from the 50 percent risk weight for any reason, including but not limited to the cancellation of the purchase contract.

Commitment for Permanent Financing

In addition to a legally binding written sales contract, the proposed rule also required a firm written commitment for permanent financing to be obtained prior to making the construction loan. The proposed regulation specifically names a legally binding sales contract because it clearly documents a borrower's intent to purchase a home. Likewise, a firm written commitment for permanent financing strongly demonstrates a buyer's ability to obtain a mortgage loan sufficient to purchase the home. The OCC received two comments on this issue. One commenter suggested that the firm commitment for permanent financing include prequalification of a buyer up to a specified loan amount but should not require a commitment for a specified rate of interest. The other commenter suggested permitting private mortgage insurance as a substitute for a commitment for permanent financing.

The OCC agrees with the commenter that a specified rate of interest should not be required in a commitment for permanent financing. The OCC does not believe that a specified rate of interest is generally necessary where the commitment would otherwise constitute a firm legal contract to provide permanent financing. The OCC disagrees, however, with the view that prequalification of a buyer up to a specific loan amount is sufficient to satisfy the requirement for a firm commitment for permanent financing. While prequalification is a good preliminary measure, the OCC does not believe that prequalification in itself has the same degree of legal certainty provided by a firm commitment for permanent financing.

With respect to the second comment concerning private mortgage insurance, the OCC does not believe that private mortgage insurance is a substitute for a firm commitment for permanent financing and permitting it as a substitute would not be consistent with the Basle Agreement. However, the capital treatment of private mortgage insurance for residential construction loans is an issue which may warrant further study as this insurance product develops.

The two comments received did raise the possibility that, in the future, other instruments may demonstrate intent and ability on the part of the buyer to purchase the home. Therefore, the OCC has modified the regulatory language to provide flexibility in the event other documents are developed which can satisfy the intent of this section.

Underwriting Standards

The proposed rule also required that a residential construction loan must be made in accordance with prudent underwriting standards in order to qualify for the 50 percent risk weight. As discussed in the NPRM, the OCC believes that prudent underwriting would generally include measures such as ensuring that: (1) The underlying lot is validly platted and bonded by the appropriate municipal authorities; (2) the development project is permissible and in accordance with municipal ordinances or regulations; (3) all necessary infrastructure improvements (appropriate for a given project stage) have been substantially completed; (4) the construction loan is properly secured by the underlying lot, the house under construction, and any other improvements on the lot; (5) disbursement of funds under the construction loan by the bank to the builder is to be made in accordance with a reasonable construction budget and a reasonable percentage-of-completion schedule; (6) the builder must cover any cost overruns and any other costs not included in the construction budget; and (7) the builder is adequately capitalized so that the completion of the project is likely. The OCC requested specific comment on whether these factors were sufficient to ensure that residential construction loans secured by presold homes satisfied prudent underwriting standards. The OCC also requested comment on whether alternative disbursement methods, other than the percentage-of-completion method, could be used.

The OCC received two comments on the proposed underwriting standards. One commenter indicated that in addition to the percentage-of-completion schedule there are other alternative methods of funds disbursement that are equally sound and should not be precluded. The OCC agrees that alternative methods of funds disbursement should be permitted

provided that the bank can demonstrate the soundness of that method. The OCC also would like to emphasize that the discussion on underwriting standards in the NPRM was not intended as a definitive statement on prudent underwriting but instead was intended to provide guidance. The OCC believes that, as a general matter, prudent underwriting would require these or similar measures be taken. However, the discussion on prudent underwriting standards in the NPRM and in this final rule is not intended to dictate absolute procedures. Therefore, while the final rule does require that residential construction loans must be made in accordance with prudent underwriting standards, the regulatory text does not mandate specific measures.

The second commenter expressed concern that some municipalities lack the local ordinances necessary to permit a lot to be bonded.

This commenter suggested that bonding should be required only where necessary under local ordinance. The OCC agrees with this comment. Additionally, the banks should note that, as with all underwriting decisions, sufficient documentation must be maintained to permit adequate review by OCC examiners in determining compliance with the risk-based capital guidelines.

Owner-Occupied

The proposed rule required that the individual purchaser must intend to occupy the home. No comments were received on this issue. This final rule adopts this requirement as proposed. The final rule makes clear that the 50 percent risk weight is available only for a residential construction loan where the presold home is intended to be owner-occupied, and not for a loan for the purchase of a house or houses by commercial entities (including a sole proprietorship) for speculative purposes.

Prior-to-Construction Requirement

The proposed rule required that the bank must obtain, prior to making the loan, sufficient documentation demonstrating that the property is subject to a legally binding written sales contract and that the purchaser has obtained a firm written commitment for permanent financing of the home upon completion. This requirement is based on section 618(a)(1)(B) which provides that:

> the lender (providing the residential construction loan to the builder must acquire) from the lender originating the mortgage loan for purchase of the residence, *before* the making of the construction loan * * * documentation demonstrating that the buyer of the residence intends to purchase the residence and has the ability to obtain a mortgage loan sufficient to purchase the residence; and * * * any other documentation from the mortgage lender that the (OCC) may consider appropriate to provide assurance of the buyer's intent to purchase the property * * *.

(Emphasis added).

As explained in the NPRM, the OCC interprets section 618(a)(1)(B) to mean that the bank must obtain the required documentation before construction begins on a home. The OCC requested comments on this issue. Specifically, the OCC requested whether section 618(a)(1)(B) should be interpreted to include a home sold during some early stage of construction. The OCC received one comment on this issue. This commenter expressed the view that the residential construction loans should be permitted to qualify for the 50 percent risk weight at any time during construction of the home.

The OCC does not believe that such an expansive interpretation should be adopted. To permit residential construction loans to qualify for a 50 percent risk weight at any time prior to the completion of construction would be inconsistent with the intent of section 618. Adopting such a broad interpretation in essence would permit speculative residential construction to qualify for the lower 50 percent risk weight since any construction loan to a builder could be converted into a qualifying residential construction loan at any time.

Attached One-to-Four Family Homes

As required by section 618(a), the proposed rule would apply to residential construction loans on one-to-four family homes. With respect to detached single-family homes, application of the proposed rule is clear. However, the precise application of the proposed rule is uncertain when applied to multiple attached housing such as townhouses and condominiums (limited to four units) where one or more of the attached units may be presold. In the NPRM, the OCC requested specific comment on this issue.

The OCC received one comment on this issue. The commenter suggested that the proposed rule should be applied to attached housing on a *pro rata* basis. The OCC agrees with this commenter. Therefore, with respect to multiple attached housing which consist of one-to-four units, this final rule should be applied on a *pro rata* basis proportional to the number of presold units.

A related issue concerns the application of the proposed rule to multiple housing development projects. In the NPRM, the OCC explained that the proposed rule contemplated that the construction for each presold home would be covered by a separate loan. The OCC requested comment on whether the proposed rule should apply to multiple homes being constructed in a housing development project where some of the homes have been presold and the proceeds of the construction of all the homes are covered under one master note.

The OCC received one comment on this issue. The commenter expressed the view that a master note should be permitted on housing development projects consisting of multiple single-family homes. The OCC disagrees with this commenter. The OCC does not believe that a master note should be permitted to substitute for a separate residential construction loan.

The premise for the 50 percent risk weight on qualifying residential construction loans is that a loan to a builder for the construction of a home which has been presold entails less credit risk. The OCC believes that these loans should be made on a separate loan basis and not under an all-encompassing master note which is more akin to speculative development. Even with sufficient documentation, the OCC believes that the use of a single master note to cover a housing development project would make it difficult for bankers to determine the proper allocation of loan disbursement amounts for the homes which have been presold. Also, the use of a master note raises practical supervisory concerns relating to the examination process.

Credit Allocation

In the NPRM, the OCC requested comment on the possible impact of the proposed rule on credit allocation. The OCC received one comment on this issue. The commenter indicated concern that the proposed rule represented unwarranted government intervention in credit allocation through capital requirements. The OCC shares the concern raised by this commenter. The OCC has attempted to draft this final rule to avoid any undue credit allocation. The OCC believes that this final rule represents a balanced approach which permits only those residential construction loans which merit a lower risk weight to qualify for the 50 percent risk weight while keeping other speculative residential construction loans in the 100 percent risk weight category.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, it is hereby certified that this final rule will not have a significant impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

This final rule reduces the amount of capital required to be maintained by national banks for qualifying residential construction loans secured by presold homes. The OCC believes that this final rule will reduce somewhat the cost of bank operations. The OCC does not believe that the current amount of residential construction loans secured by presold homes held by national banks is significant. Therefore, lowering the capital requirements for these types of loans should not significantly impact national banks, regardless of size. In addition, this final rule would affect all national banks and would not disproportionally affect a substantial number of small banks.

Executive Order 12291

The OCC has determined that this final rule does not constitute a major rule within the meaning of Executive Order 12291. Accordingly, a regulatory impact analysis is not required. This final rule will reduce the amount of capital required to be maintained by national banks for qualifying residential construction loans secured by presold homes. As a result, the OCC believes that this final rule will reduce somewhat the cost of bank operations. Inasmuch as the OCC does not believe that the current amount of residential construction loans secured by presold homes held by national banks is significant, the effect of this final rule should not be material.

List of Subjects in 12 CFR Part 3

Administrative practice and procedure, Capital, National banks, Reporting and recordkeeping requirements, Risk.

Authority and Issuance:

For the reasons set forth in the preamble, appendix A of title 12, chapter I, part 3 of the Code of Federal Regulations is amended as set forth below.

PART 3—AMENDED

1. The authority citation for Part 3 is revised to read as follows:

Authority: 12 U.S.C. 93a, 161, 1818, 1831n note, 3907, 3909.

2. In appendix A, section 3, paragraph (a)(3)(iv) is redesignated as paragraph (a)(3)(v) and new paragraph (a)(3)(iv) is inserted:

Section 3. Risk Categories/Weights for On-Balance Sheet Assets and Off-Balance Sheet Items.

* * * * *

(a) * * *

(3) * * *

(iv) Loans to residential real estate builders for one-to-four family residential property construction, if the bank obtains, prior to the making of the construction loan, sufficient documentation demonstrating that the buyer of the home intends to purchase the home (*i.e.*, a legally binding written sales contract) and has the ability to obtain a mortgage loan sufficient to purchase the home (*i.e.*, a firm written commitment for permanent financing of the home upon completion), subject to the following additional criteria:

(A) The builder must incur at least the first 10% of the direct costs (*i.e.*, actual costs of the land, labor, and material) before any drawdown is made under the construction loan and the construction loan may not exceed 80% of the sales price of the resold home;

(B) The individual purchaser has made a substantial "earnest money deposit" of no less than 3% of the sales price of the home that must be subject to forfeiture by the individual purchaser if the sales contract is terminated by the individual purchaser; however, the earnest money deposit shall not be subject to forfeiture by reason of breach or termination of the sales contract on the part of the builder;

(C) The earnest money deposit must be held in escrow by the bank financing the builder or by an independent party in a fiduciary capacity; the escrow agreement must provide that in the event of default the escrow funds must be used to defray any cost incurred relating to any cancellation of the sales contract by the buyer;

(D) If the individual purchaser terminates the contract or if the loan fails to satisfy any other criterion under this section, then the bank must immediately recategorize the loan at a 100% risk weight and must accurately report the loan in the bank's next quarterly Consolidated Reports of Condition and Income (Call Report);

(E) The individual purchaser must intend that the home will be owner-occupied;

(F) The loan is made by the bank in accordance with prudent underwriting standards;

(G) The loan is not more than 90 days past due, or on nonaccrual; and

(H) The purchaser is an individual(s) and not a partnership, joint venture, trust, corporation, or any other entity (including an entity acting as a sole proprietorship) that is purchasing one or more of the homes for speculative purposes.

3. In appendix A, Table 1, category 3, is amended by adding item 4 to read as follows:

Table 1.—Summary of Risk Weights and Risk Categories

* * * * *

Category 3: 50 Percent

* * *

4. Loans to residential real estate builders for one-to-four family residential property construction that have been presold pursuant to legally binding written sales contract.

* * * * *

Dated: August 19, 1992.

Stephen R. Steinbrink,

Acting Comptroller of the Currency.

[FR Doc. 92-21261 Filed 9-2-92; 8:45 am]

BILLING CODE 4810-33-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-NM-126-AD; Amendment 39-8358; AD 92-19-01]

Airworthiness Directives; Aerospatiale Model ATR42 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Aerospatiale Model ATR42 series airplanes, that currently requires installation of vortex generators on the upper wing surface. This amendment revises a paragraph in the AD that currently allows dispatch with up to one vortex generator missing on each wing; this amendment will require that a symmetrical array of vortex generators be maintained. This amendment is prompted by results of an analysis of the effects of vortex generators on airflow over the ailerons, which indicates that unacceptable roll characteristics could result if the airplane is flown into icing conditions with only one vortex generator missing. The actions specified in this AD are intended to prevent reduced controllability of the airplane.

DATES: Effective September 18, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 18, 1992.

Comments for inclusion in the Rules Docket must be received on or before November 2, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-126-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Lium, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-1112; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: On October 31, 1989, the FAA issued AD 89-09-05 R1, Amendment 39-6393 (54 FR 47197), November 13, 1989), to require installation of 16 vortex generators on the upper wing surface of Aerospatiale Model ATR42 series airplanes. That action was prompted by the results of flight testing and analysis, which demonstrated that installation of vortex generators on the upper surface of the wing significantly improves the effectiveness of the ailerons. This, in turn, reduces the severity of the roll upset that can occur with asymmetric ice accumulations resulting from icing conditions, such as freezing rain. The actions required by that AD are intended to prevent reduced controllability of the airplane.

Since the issuance of that AD, Aerospatiale has reviewed its analysis of the effects of vortex generators on airflow over the ailerons. Aerospatiale has concluded that if a symmetrical pair of vortex generators is missing, no adverse aerodynamic effects would result. However, unacceptable roll characteristics could result if the airplane is flown into icing conditions with only one vortex generator missing. The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has reviewed and approved the results of the manufacturer's analysis and has forwarded the information to the FAA.

Consequently, the FAA has determined that it is necessary to revise a paragraph in AD 89-09-05 R1 that currently allows dispatch with up to one vortex generator missing on each wing. The AD must be revised to allow instead dispatch with an alternative configuration consisting of one vortex generator missing per wing, provided that the two missing vortex generators form a symmetrical pair in relation to the airplane centerline.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD supersedes AD 89-09-05 R1 to revise a paragraph in that AD that currently allows dispatch with up to one vortex generator missing on each wing. This amendment revises the paragraph to delete that provision and allow instead an alternative configuration consisting of one vortex generator missing per wing, provided that two missing vortex generators form a symmetrical pair in relation to the airplane centerline.

This reduced number of required vortex generators is provided to allow operators to continue operations should one vortex generator be found damaged or missing. In this case, the symmetrical mate to the missing vortex generator could be removed, thus producing a symmetrical array of vortex generators. Operators should plan to maintain the full set of 16 vortex generators rather that the reduced number, however, because approval for more than two vortex generators missing will not be made.

The format of this AD has been restructured to be consistent with the standard **Federal Register** style.

Paragraph (d) of this AD clarifies the appropriate procedure for requesting alternative methods of compliance with this AD.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "**ADDRESSES.**" All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-126-AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.69.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-6393 (54 FR 47197, November 13, 1989), and by adding a new airworthiness directive (AD), amendment 39-8358, to read as follows:

92-19-01. Aerospatiale: Amendment 39-8358. Docket 92-NM-126-AD. Supersedes AD 89-09-05 R1, Amendment 39-6393.

Applicability: All Model ATR42 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To minimize the potential hazards associated with operating in icing conditions including freezing rain, accomplish the following:

(a) Within 10 hours time-in-service after May 3, 1989 (the effective date of AD 89-09-05, Amendment 39-6197), incorporate the following statement into the Limitations Section of the FAA-approved Airplane Flight Manual (AFM). This may be accomplished by including a copy of this AD in the AFM.

"When operating in icing conditions, as defined in the AFM, or when freezing rain is forecast or reported, use of the autopilot is prohibited.

Warning:

Prolonged operation in freezing rain should be avoided. Ice accretion due to freezing rain may result in asymmetric wing lift and associated increased aileron forces necessary to maintain coordinated flight. Whenever the aircraft exhibits buffet onset, uncommanded roll, or unusual control wheel forces, immediately reduce angle-of-attack and avoid excessive maneuvering."

(b) Within 60 days after December 15, 1989 (the effective date of AD 89-09-05 R1, Amendment 39-6393), install vortex generators, in accordance with Aerospatiale Service Bulletin ATR42-57-0018, Revision 1, dated June 28, 1989. This action constitutes terminating action for the AFM limitation required by paragraph (a) of this AD, regarding use of the autopilot when operating in icing conditions, and the limitation may be removed from the AFM.

(c) Operations may continue with a configuration consisting of one vortex generator missing per wing, provided that the two missing vortex generators form a symmetrical pair in relation to the airplane centerline.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The installation shall be done in accordance with Aerospatiale Service Bulletin ATR42-57-0018, Revision 1, dated June 28, 1989, which contains the following list of effective pages:

Page No.	Revision level	Date
1, 3, 5-13	1	June 28, 1989.
2, 4	Original	May 3, 1989.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on September 18, 1992.

Issued in Renton, Washington, on August 18, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-21184 Filed 9-2-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-45-AD; Amendment 39-8345; AD 92-18-01]

Airworthiness Directives; British Aerospace Model ATP Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model ATP series airplanes, that requires installation of bonding straps to the oil cooler temperature controller in Module 3, the throttle stepper motor controller, and the engine de-ice timers. This amendment is prompted by reports of engine rundown (flame out) due to ice ingestion, resulting from static discharge and airframe and equipment electrical bonding difficulties that caused the engine de-icing timers to malfunction. The actions specified by this AD are intended to prevent engine rundown due to ice ingestion.

DATES: Effective October 8, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 8, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain British Aerospace Model ATP series airplanes was published in the **Federal Register** on June 5, 1992 (57 FR 23968). That action proposed to require installation of bonding straps to the oil cooler temperature controller in Module 3, the throttle stepper motor controller, and the engine de-ice timers.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Both commenters support the proposed rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 10 airplanes of U.S. registry will be affected by this AD, that it will take approximately 13 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts would be supplied by the manufacturer at no charge to operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $7,150, or $715 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-18-01. British Aerospace: Amendment 39-8345. Docket 92-NM-45-AD.

Applicability: Model ATP series airplanes; serial numbers 2001 through 2045, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent engine rundown (flame out) due to ice ingestion, accomplish the following:

(a) Within 90 days after the effective date of this AD, install bonding straps, Modification 35229A, at the oil cooler temperature controller in Module 3, the throttle stepper motor controller, and the engine de-ice timers, in accordance with British Aerospace Service Bulletin ATP-24-45-35229A, dated December 20, 1991.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The installation shall be done in accordance with British Aerospace Service Bulletin ATP-24-45-35229A, dated December 20, 1991, which contains the following list of effective pages:

Page No.	Revision level	Date
1-7, 9, 11, 13, 15, 17, 19.	Original	December 20, 1991.
8, 10, 12, 14, 16, 18.	(These pages are not used)	

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on October 8, 1992.

Issued in Renton, Washington, on August 6, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-21185 Filed 9-2-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 92-NM-46-AD; Amendment 39-8350; AD 92-18-06]

Airworthiness Directives; British Aerospace Model BAe 146-100A, -200A, and -300A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model 146-100A, -200A, and -300A series airplanes, that requires removing certain hydraulic fuses and installing new hydraulic fuses that have an improved design. This amendment is prompted by two cases of fuse failure. The actions specified by this AD are intended to prevent double hydraulic system failure and potential loss of airplane braking and directional control.

DATES: Effective October 8, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 8, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC. 20041-0414. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2113; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain British Aerospace Model BAe 146-100A, -200A, and -300A series airplanes was published in the **Federal Register** on June 15, 1992 (57 FR 26631). That action proposed to require removing certain hydraulic fuses and installing new hydraulic fuses that have an improved design.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due

consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 74 airplanes of U.S. registry will be affected by this AD, that it will take approximately 13.5 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Replacement parts will be provided at no cost to operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $54,945, or $742.50 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-18-06 British Aerospace: Amendment 39-8350. Docket 92-NM-46-AD.

Applicability: Model BAe 146-100A, -200A, and -300A series airplanes, equipped with Dunlop hydraulic fuses, part number ACM29100; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent potential loss of airplane braking and directional control, accomplish the following:

(a) Prior to the accumulation of 4,000 landings since installation of Dunlop hydraulic fuses having part number ACM29100 (Mod. states 1 or 2), or within 60 days after the effective date of this AD, whichever occurs later, remove green and yellow hydraulic systems Dunlop hydraulic fuses having part number ACM29100 (Mod. states 1 or 2) and install new hydraulic fuses having part number ACM30506 (Mod. 1), in accordance with British Aerospace Modification Service Bulletin SB.32-130-70295C, dated September 27, 1991.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The removal and installation shall be done in accordance with British Aerospace Modification Service Bulletin SB.32-130-70295C, dated September 27, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on October 8, 1992.

Issued in Renton, Washington, on August 7, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-21186 Filed 9-2-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-41-AD; Amendment 39-8359; AD 92-19-02]

Airworthiness Directives; Fokker Model F28 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 series airplanes, that requires modification of the lapjoint between stringers 16 and 17. This amendment is prompted by the discovery of cracking at lapjoint, stringer, and frame member areas. The actions specified by this AD are intended to prevent cracking that could reduce the structural integrity of the fuselage and lead to decompression.

DATES: Effective October 8, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 8, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2145; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 series airplanes was published in the **Federal Register** on April 27, 1992 (57 FR 15259). That action proposed to require modification ("repair") of the lapjoint

between stringers 16 and 17 (58 and 59) at various frames.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the rule as proposed.

One commenter requests that adoption of the subject rule be delayed until Fokker can review an inspection technique that will detect smaller cracks better than the method currently recommended by Fokker. The commenter reports that it is reviewing an eddy current sliding probe inspection that has been used successfully on one other type of airplane. The commenter anticipates that such inspections, conducted on a repetitive basis, would be less costly to its operation than the proposed lapjoint modification. The commenter considers that, during the period that this rulemaking is delayed, the FAA could easily assess the maintenance program for affected airplanes to assure that safety of flight is not compromised. The FAA does not concur. Requiring repair of the lapjoint instead of repetitive inspections is justified based on a review conducted by the manufacturer, and concurred with by the FAA, which indicated that cracks hidden by the rivet heads on or behind a layer of the lapjoint were difficult to detect. It has not been substantiated that a sliding probe technique would work on the Model F28 lapjoint better than the existing inspection techniques. Further, the FAA is not aware of any means to assess the maintenance program to assure safety of flight in this specific case where the capability of non-destructive testing methods is in question. The compliance terms of this AD allow the operator and Fokker approximately 11 months (or 900 more flight cycles under the schedule cited in the Netherlands Airworthiness Directive BLA 91-022, Issue 2), to review an alternative inspection technique, before the first airplane would be required to begin compliance. In the event that an acceptable lapjoint inspection technique and inspection schedule are developed in the interim, the FAA may consider further rulemaking. Under the provisions of paragraph (d) of the final rule, however, operators may apply for the approval of an alternative method of compliance or adjustment of the compliance time if sufficient justification is presented to the FAA.

Paragraphs (a) and (b) of the notice contained a typographical error that has been corrected in this final rule. The modification configuration was incorrectly cited as "SBF28/21-18;" however, the correct reference is "SBF28/21-16."

Paragraph (d) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 42 airplanes of U.S. registry will be affected by this AD, that it will take approximately 270 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $1,800 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $699,300, or $16,650 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-19-02. Fokker: Amendment 39-8359. Docket 92-NM-41-AD.

Applicability. Model F28 series airplanes: serial numbers 11003 through 11241, 11991, and 11992; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the lapjoints between stringers 16 and 17, and consequent decompression, accomplish the following:

(a) For airplanes in the post-SBF28/21-16 configuration, repair the lapjoints located between stringers 16 and 17 (58 and 59), between frames 13345 and 14285, in accordance with Fokker Service Bulletin F28/58-121, Revision 1, dated December 13, 1991, and in accordance with the following schedule:

(1) For airplanes that have accumulated less than 32,000 flight cycles as of the effective date of this AD, accomplish the repair prior to the accumulation of 32,000 flight cycles or within 35 months after the effective date of this AD, whichever occurs later;

(2) For airplanes that have accumulated 32,000 or more flight cycles but less than 40,000 flight cycles as of the effective date of this AD, accomplish the repair prior to the accumulation of 40,000 flight cycles or within 23 months after the effective date of this AD, whichever occurs later;

(3) For airplanes that have accumulated 40,000 or more flight cycles as of the effective date of this AD, accomplish the repair within 11 months after the effective date of this AD.

(b) For airplanes in the pre-SBF28/21-16 configuration, repair the lapjoints located between stringers 16 and 17, (58 and 59) between frames 13345 and 14285, in accordance with Fokker Service Bulletin F28/53-121, Revision 1, dated December 13, 1991, and in accordance with the following schedule:

(1) For airplanes that have accumulated less than 48,000 flight cycles as of the effective date of this AD, accomplish the repair prior to the accumulation of 48,000 flight cycles or within 35 months after the effective date of this AD, whichever occurs later.

(2) For airplanes that have accumulated 48,000 or more flight cycles but less than 60,000 flight cycles as of the effective date of this AD, accomplish the repair prior to the accumulation of 60,000 flight cycles or within 23 months after the effective date of this AD, whichever occurs later.

(3) For airplanes that have accumulated 60,000 or more flight cycles as of the effective date of this AD, accomplish the repair within 11 months after the effective date of this AD.

(c) Accomplishment of the repairs required by paragraphs (a) and (b) of this AD constitutes terminating action for the inspections identified as item 53-30-08 in the Fokker F-28 Structural Integrity Program (SIP), which are required by AD 89-07-16 R1, Amendment 39-6444.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The repair shall be done in accordance with Fokker Service Bulletin F28/53-121, Revision 1, dated December 13, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on October 8, 1992.

Issued in Renton, Washington, on August 18, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-21187 Filed 9-2-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-79-AD; Amendment 39-8347; AD 92-18-03]

Airworthiness Directives; Israel Aircraft Industries, Ltd., Model 1125 Astra Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Israel Aircraft Industries, Ltd., Model 1125 Astra series airplanes that requires inspection of all oxygen tubing for security, chafing, and general condition; and protection of the oxygen tubing, if necessary. This amendment is prompted by indications of potentially insufficient clearance around the oxygen lines such that chafing can occur. The actions specified by this AD are intended to prevent chafing and damage to the oxygen tubing, which could lead to increased potential for fire ignited from arcing or heated components.

DATES: Effective October 8, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 8, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Astra Jet Corporation, Technical Publications, 77 McCollough Drive, suite 11, New Castle, Delaware 19720. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2145; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Israel Aircraft Industries, Ltd., Model 1125 Astra series airplanes was published in the **Federal Register** on June 6, 1992 (57 FR 23975). That action proposed to require inspection of all oxygen tubing for security, chafing, and general condition; and protection of the oxygen tubing, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 45 airplanes of U.S. registry will be affected by this AD, that it will take approximately 40 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $20 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $99,900, or $2,220 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "signifjcant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.23 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-18-03. Israel Aircraft Industries, Ltd.: Amendment 39-8347. Docket 92-NM-79-AD.

Applicability: Model 1125 Astra series airplanes, all serial numbers prior to 059; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing and damage to the oxygen tubing, which could lead to increased potential for fire ignited from arcing or heated components, accomplish the following:

(a) Within 200 hours time-in-service or 6

months after the effective date of this AD, whichever occurs first, inspect all oxygen tubing for security, chafing, and general condition, in accordance with Astra Service Bulletin SB 1125-35-071, dated February 12, 1992.

(b) If any discrepancies are detected as a result of the inspections required by paragraph (a) of this AD, prior to further flight, protect the oxygen tubing in accordance with Astra Service Bulletin SB 1125-35-071, dated February 12, 1992.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspection and protection shall be done in accordance with Astra Service Bulletin SB 1125-35-071, dated February 12, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Astra Jet Corporation, Technical Publications, 77 McCollough Drive, suite 11, New Castle, Delaware 19720. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on October 8, 1992.

Issued in Renton, Washington, on August 6, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-21188 Filed 9-2-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 10

[T.D. 92-83]

Generalized System of Preferences Direct Importation Requirement

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule an interim amendment to the Customs Regulations which expanded the definition of "imported directly" under the Generalized System of Preferences (GSP) in order to allow goods produced in a member of a GSP-designated association of countries to be shipped through, and subjected to limited operations in, another member of the same association whose designation as a member of that association for GSP purposes was terminated by the President.

EFFECTIVE DATE: September 3, 1992.

FOR FURTHER INFORMATION CONTACT: Craig Walker, Office of Regulations and Rulings (202-566-2938).

SUPPLEMENTARY INFORMATION:

Background

On January 17, 1992, Customs published in the **Federal Register** as T.D. 92-6, 57 FR 2016, an interim rule amending the Customs Regulations implementing the Generalized System of Preferences (GSP), Title V of the Trade Act of 1974, as amended (19 U.S.C. 2461-2465). The GSP provides for duty-free treatment on articles which (1) are designated by the President as eligible articles for GSP purposes, (2) are the growth, product, or manufacture of a country designated by the President as a beneficiary developing country (BDC) for GSP purposes, (3) have at least 35 percent of their appraised value attributable to the cost or value of materials produced in the BDC and/or the direct costs of processing operations performed in the BDC, and (4) are imported directly from the BDC into the Customs territory of the United States. The Customs Regulations implementing the GSP are contained in §§ 10.171-10.178 (19 CFR 10.171-10.178).

The interim amendment contained in T.D. 92-6 involved an expansion of the definition of "imported directly" set forth in § 10.175 of those implementing regulations. Specifically, T.D. 92-6 added a new paragraph (e) to incorporate within the concept of "imported directly" a transaction involving goods produced in a member of a GSP-designated association of countries which are shipped through, and only subjected to limited processing operations or non-retail export sale in, another member of the same association whose designation as a member of that association for GSP purposes was terminated by the President. New paragraph (e) also (1) provides that in such a case a new GSP Certificate of Origin Form A must be prepared and signed declaring what, if any, operations were performed on the goods in the former BDC and (2) lists Brunei Darussalam and Singapore as former BDCs for purposes of the paragraph.

The interim regulatory amendment described above went into effect on the date of publication, and the notice prescribed a public comment period which closed on March 17, 1992. No comments were received during the public comment period. Accordingly, Customs believes that the interim regulatory amendment should be adopted as a final rule without change.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendment will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendment is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 10

Customs duties and inspections, Imports.

Amendment to the Regulations

Accordingly, under the authority of 19 U.S.C. 66 and 1624, the interim rule amending 19 CFR part 10 which was published at 57 FR 2016 on January 17, 1992, is adopted as a final rule without change.

Carol Hallett,

Commissioner of Customs.

Approved: August 31, 1992.

Peter K. Nunez,

Assistant Secretary of the Treasury.

[FR Doc. 92-21278 Filed 9-2-92; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Center for Devices and Radiological Health, Center for Drug Evaluation and Research, and Center for Biologics Evaluation and Research

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority relating to general redelegations of authority from the Commissioner of Food and Drugs to certain officers of FDA to redelegate authorities to certain FDA officials in the Center for Devices and Radiological Health (CDRH), the Center for Drug Evaluation and Research (CDER), and the Center for Biologics Evaluation and Research (CBER) to require a manufacturer to conduct required and discretionary postmarket surveillance of devices, including devices that are or contain a biologic or a drug. These authorities were given to the FDA by the Safe Medical Devices Act of 1990.

EFFECTIVE DATE: September 3, 1992.

FOR FURTHER INFORMATION CONTACT: Ellen Rawlings, Division of Management Systems and Policy (HFA-340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4976.

SUPPLEMENTARY INFORMATION: On November 28, 1990, the President signed into law the Safe Medical Devices Act of 1990 (SMDA) (Pub. L. 101-629), which amends the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*). The purpose of the new legislation is to strengthen the Medical Device Amendments of 1976, the first legislation to provide a comprehensive framework for regulating medical devices, and to further ensure the safety and effectiveness of medical devices by providing the agency with tools to remove dangerous and defective articles quickly from the market. One such tool that the SMDA provided the Secretary of Health and Human Services is the authority to require manufacturers to conduct postmarket surveillance of certain devices. (See section 522 of the act (21 U.S.C. 360l).) Under section 522(a) of the act (subchapter A of chapter 5), the Secretary shall require a manufacturer to conduct postmarket surveillance for any device of the manufacturer first introduced or delivered for introduction into interstate commerce after January 1, 1991, that is a permanent implant the failure of which may cause serious, adverse health consequences or death, is intended for a use in supporting or sustaining human life, or potentially presents a serious risk to human health. Under that same section, the Secretary may require a manufacturer to conduct postmarket surveillance for a device of the manufacturer, without limitation of a date of introduction into interstate commerce, if it is determined that such surveillance is necessary to protect the public health or to provide safety or effectiveness data for the device. Under 21 CFR 5.10(a), authority to exercise functions vested in the Secretary under the act are redelegated to the Commissioner of Food and Drugs. Under this regulation, the Commissioner of Food and Drugs is redelegating the authority to require certain manufacturers to conduct postmarket surveillance under the act (section 522) to CDRH, CDER, and CBER because such authority is directly related to their current operations and programs. Further, this redelegation will allow decentralized decisionmaking, resulting in more efficient administration of the program. Authority to require a manufacturer to conduct postmarket surveillance meeting any of the above conditions for any device or any devices that are or contain a biologic or a drug is redelegated to the Director and Deputy Director, CDRH; the Director and Deputy Director, Office of Science and Technology, CDRH; the Director and Deputy Director, Division of Biometric Sciences, Office of Science and Technology, CDRH; the Director, Deputy Director, Associate Director, Division Directors, and Associate Division Directors, Office of Device Evaluation, CDRH; the Chief, Premarket Notification Section; Chief, Premarket Approval Section; and Director, Program Operations Staff, Office of Device Evaluation, CDRH; the Director and Deputy Director, Office of Compliance and Surveillance, CDRH; the Director and Deputy Director, CDER; the Director, Pilot Drug Evaluation Staff, CDER; the Directors and Deputy Directors of the Offices of Drug Evaluation I and Drug Evaluation II, CDER; the Director and Deputy Director, Office of Compliance, CDER; the Director and Deputy Director, CBER; the Director and Deputy Director, Office of Compliance, CBER; and the Director and Deputy Director, Office of Biological Product Review, CBER.

Further redelegation of the authority is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261-1282, 3701-3711a; secs. 2-12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451-1461); 21 U.S.C. 41-50, 61-63, 141-149, 467f, 679(b), 801-886, 1031-1309; secs. 201-903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321-394); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 361, 362, 1701-1706, 2101 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 264, 265, 300u-300u-5, 300aa-1); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007-10008; E.O. 11490, 11921, and 12591.

2. New § 5.60 is added to subpart B to read as follows:

§ 5.60 Required and discretionary postmarket surveillance.

(a) For any device (including any device that is or contains a drug or biologic) that was first introduced or delivered for introduction into interstate commerce after January 1, 1991, and that is either a permanent implant, the failure of which may cause serious adverse health consequences or death, a life-sustaining or life-supporting device, or a device that potentially presents a serious risk to human health, any of the following officials is authorized to require a manufacturer of such device to conduct postmarket surveillance:

(1) The Director and Deputy Director, Center for Devices and Radiological Health (CDRH).

(2) The Director and Deputy Director, Office of Science and Technology, CDRH.

(3) The Director and Deputy Director, Division of Biometric Sciences, Office of Science and Technology, CDRH.

(4) The Director, Deputy Director, Associate Director, Division Directors, and Associate Division Directors, Office of Device Evaluation, CDRH.

(5) The Chief, Premarket Notification Section; Chief, Premarket Approval Section; Director, Program Operations

Staff, Office of Device Evaluation, CDRH.

(6) The Director and Deputy Director, Office of Compliance and Surveillance, CDRH.

(7) The Director and Deputy Director, Center for Drug Evaluation and Research (CDER).

(8) The Director, Pilot Drug Evaluation Staff, CDER.

(9) The Directors and Deputy Directors of the Offices of Drug Evaluation I and Drug Evaluation II, CDER.

(10) The Director and Deputy Director, Office of Compliance, CDER.

(11) The Director and Deputy Director, Center for Biologics Evaluation and Research (CBER).

(12) The Director and Deputy Director, Office of Compliance, CBER.

(13) The Director and Deputy Director, Office of Biological Product Review, CBER.

(b) For any device (including any device that is or contains a drug or biologic), any of the following officials is authorized to require a manufacturer of a device to conduct postmarket surveillance if the official determines that postmarket surveillance of the device is necessary to protect the public health or provide safety or effectiveness data for the device:

(1) The Director and Deputy Director, CDRH.

(2) The Director and Deputy Director, Office of Science and Technology, CDRH.

(3) The Director and Deputy Director, Division of Biometric Sciences, Office of Science and Technology, CDRH.

(4) The Director, Deputy Director, and Associate Director, Office of Device Evaluation, CDRH.

(5) The Director and Deputy Director, Office of Compliance and Surveillance, CDRH.

(6) The Director and Deputy Director, CDER.

(7) The Director, Pilot Drug Evaluation Staff, CDER.

(8) The Directors and Deputy Directors of the Offices of Drug Evaluation I and Drug Evaluation II, CDER.

(9) The Director and Deputy Director, Office of Compliance, CDER.

(10) The Director and Deputy Director, Center for Biologics Evaluation and Research (CBER).

(11) The Director and Deputy Director, Office of Compliance, CBER.

(12) The Director and Deputy Director, Office of Biological Product Review, CBER.

Dated: August 26, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-21228 Filed 9-2-92; 8:45 am]

BILLING CODE 4160-01-F

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21 CFR Part 5

Delegations of Authority and Organization; Center for Devices and Radiological Health, Center for Biologics Evaluation and Research, and Center for Drug Evaluation and Research

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug and Administration (FDA) is amending the regulations for two delegations of authority relating to functions performed by the Center for Devices and Radiological Health (CDRH), the Center for Biologics Evaluation and Research (CBER), and the Center for Drug Evaluation and Research (CDER). This action will add officials authorized to: (1) Make determinations that medical devices present an unreasonable risk of substantial harm to the public, and (2) order repair, replacement of, or refund for medical devices. Redelegation of these authorities will aid the Centers in being responsive to the health needs of the public.

EFFECTIVE DATES: September 3, 1992.

FOR FURTHER INFORMATION CONTACT: Ellen Rawlings, Division of Management Systems and Policy (HFA-300), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4976.

SUPPLEMENTARY INFORMATION: FDA is amending the delegations of authority under § 5.54 *Determinations that medical devices present unreasonable risk of substantial harm* (21 CFR 5.54) by adding the Director and Deputy Director, Office of Compliance and Surveillance, CDRH, the Director and Deputy Director, Office of Compliance, CBER, the Director and Deputy Director, CDER, and the Director and Deputy Director, Office of Compliance, CDER, to those officials authorized to make determinations that medical devices, including devices that are or contain a drug or biologic, present an unreasonable risk of substantial harm to the public and to order adequate notification thereof, under section 518(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360h(a)). FDA is also amending the delegations of authority under § 5.55 *Orders to repair or replace, or make refunds for, medical devices* (21 CFR 5.55) by adding the Director and Deputy Director, Office of Compliance and Surveillance, CDRH, the Director and Deputy Director, Office of Compliance, CBER, the Director and Deputy Director, CDER, and the Director and Deputy Director, Office of Compliance, CDER, to those officials authorized to order repair or replacement of, or refund for, medical devices, including devices that are or contain a drug or biologic, under section 518(b) and (c) of the act.

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis. Persons authorized to issue determinations and orders under this rule will consult with others for scientific or technical guidance before acting.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261-1282, 3701-3711a; secs. 2-12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451-1461); 21 U.S.C. 41-50; 61-63, 141-149, 467f, 679(b), 801-886, 1031-1309; secs. 201-903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321-394); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 361, 362, 1701-1706, 2101 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 264, 265, 300u-300u-5, 300aa-1); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007-10008; E.O. 11490, 11921, and 12591.

2. Section 5.54 is amended by revising paragraphs (a) and (b) and by adding new paragraph (c) to read as follows:

§ 5.54 Determinations that medical devices present unreasonable risk of substantial harm.

* * * * *

(a) The Director and Deputy Director, Center for Devices and Radiological Health (CDRH), and the Director and Deputy Director, Office of Compliance and Surveillance, CDRH.

(b) The Director and Deputy Director, Center for Biologics Evaluation and Research (CBER), and the Director and Deputy Director, Office of Compliance, CBER.

(c) The Director and Deputy Director, Center for Drug Evaluation and Research (CDER), and the Director and Deputy Director, Office of Compliance, CDER.

3. Section 5.55 is amended by revising paragraphs (a) and (b) and by adding new paragraph (c) to read as follows:

§ 5.55 Orders to repair or replace, or make refunds for, medical devices.

* * * * *

(a) The Director and Deputy Director, Center for Devices and Radiological Health (CDRH), and the Director and Deputy Director, Office of Compliance and Surveillance, CDRH.

(b) The Director and Deputy Director, Center for Biologics Evaluation and Research (CBER), and the Director and Deputy Director, Office of Compliance, CBER.

(c) The Director and Deputy Director, Center for Drug Evaluation and Research (CDER), and the Director and Deputy Director, Office of Compliance, CDER.

Dated: August 26, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-21230 Filed 9-2-92; 8:45 am]

BILLING CODE 4160-01-F

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21 CFR Part 5

Delegations of Authority and Organization; Temporary Suspension of Premarket Approval Applications and Medical Device Recalls

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority, to extend the authority to suspend temporarily the approval of a premarket approval application (PMA) and to recall devices (in the event these devices would cause serious adverse consequences to health or death), to certain FDA officials in the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER). In the **Federal Register** of October 10, 1991 (56 FR 51169), this authority was exclusively delegated to the Center for Devices and Radiological Health (CDRH). However, in some cases principal responsibilities for the regulation of certain medical devices is assigned to CDER or CBER. Accordingly, officials of CDER and CBER need to have the authority to suspend PMA approvals and to order recalls for those devices for which they are responsible.

EFFECTIVE DATE: September 3, 1992.

FOR FURTHER INFORMATION CONTACT: Ellen Rawlings, Division of Management Systems and Policy (HFA-340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4976.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 10, 1991 (56 FR 51169), FDA issued a final rule redelegating to certain officials in CDRH the medical device recall authority and the temporary suspension of a PMA authority granted to the agency pursuant to sections 518(e) and 515(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360h(e) and 360e(e)), respectively. Because the principal authority for regulating some medical devices is assigned to CDER or CBER (e.g., because they contain a drug or a biological product), the delegation is being extended, by adding § 5.56(c) and (d) and § 5.57(d) and (e), to give these authorities to certain officials in CDER and CBER as well. See 21 CFR part 3 (56 FR 58754, November 21, 1991) and 21 CFR 5.32 and 5.33 (56 FR 58758). Under 21 CFR 5.10(a), authority to exercise functions vested in the Secretary are redelegated to the Commissioner of Food and Drugs. Accordingly, the introductory text of § 5.56 is also being revised to reflect this.

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261-1282, 3701-3711a; secs. 2-12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451-1461); 21 U.S.C. 41-50, 61-63, 141-149, 467f, 679(b), 801-886, 1031-1309; secs. 201-903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321-394); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 361, 362, 1701-1706, 2101 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 264, 265, 300u-300u-5, 300aa-1); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007-10008; E.O. 11490, 11921, and 12591.

2. Section 5.56 is amended by revising the introductory text and by adding new paragraphs (c) and (d) to read as follows:

§ 5.56 Recall authority.

The following officials, for medical devices assigned to their respective organizations, are authorized to perform all of the recall functions under section 518(e) of the Federal Food, Drug, and Cosmetic Act, which have been delegated to the Commissioner of Food and Drugs:

* * * * *

(c) The Director and Deputy Director, Center for Drug Evaluation and Research (CDER), and the Director and Deputy Director, Office of Compliance, CDER.

(d) The Director and Deputy Director, Center for Biologics Evaluation and Research (CBER), and the Director and Deputy Director, Office of Compliance, CBER.

3. Section 5.57 is amended by adding new paragraphs (d) and (e) to read as follows:

§ 5.57 Temporary suspension of a medical device application.

* * * * *

(d) The Director and Deputy Director, Center for Drug Evaluation and Research (CDER); the Director, Pilot Drug Evaluation Staff, CDER; the Directors and Deputy Directors of the Offices of Drug Evaluation I and Drug Evaluation II, CDER; the Director and Deputy Director, Office of Generic Drugs, CDER; and the Director and Deputy Director, Office of Compliance, CDER.

(e) The Director and Deputy Director, Center for Biologics Evaluation and Research (CBER), and the Director and Deputy Director, Office of Compliance, CBER.

Dated: August 26, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-21226 Filed 9-2-92; 8:45 am]

BILLING CODE 4160-01-F

21 CFR Part 5

Delegations of Authority and Organization; Center for Devices and Radiological Health

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority relating to general redelegations of authority from the Commissioner of Food and Drugs to delegate authorities to additional Office of Compliance and Surveillance officials in the Center for Devices and Radiological Health (CDRH).

EFFECTIVE DATE: September 3, 1992.

FOR FURTHER INFORMATION CONTACT: Ellen Rawlings, Division of Management Systems and Policy (HFA-340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4976.

SUPPLEMENTARY INFORMATION: FDA is amending the regulations in § 5.22 *Certification of true copies and use of Department seal* (21 CFR 5.22), § 5.37 *Issuance of reports of minor violations* (21 CFR 5.37), and § 5.45 *Imports and exports* (21 CFR 5.45) to add the Deputy Director, Division of Compliance Operations, Office of Compliance and Surveillance, CDRH, to those CDRH officials already delegated authorities under those sections. FDA is also amending the regulations in § 5.23 *Disclosure of official records* (21 CFR 5.23) to add the Chief, Device Registration and Listing Branch, Division of Product Surveillance, Office of Compliance and Surveillance, CDRH, to those CDRH officials authorized to sign affidavits regarding the presence or absence of medical device establishment registration records. FDA is further amending § 5.37 above by adding the Director, Division of Product Surveillance, Office of Compliance and Surveillance, CDRH, to those CDRH officials authorized to perform all the functions of the Commissioner under section 306 of the Federal Food, Drug, and Cosmetic Act regarding the issuance of written notices or warnings.

These additional delegations of authority will allow the Center to be more responsive in serving public health needs.

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 21 U.S.C. 41–50, 61–63, 141–149, 467f, 679(b), 801–886, 1031–1309; secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 361, 362, 1701–1706, 2101 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 264, 265, 300u–300u–5, 300aa–1); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11490; 11921, and 12591.

2. Section 5.22 is amended by revising paragraph (a)(9)(iv) to read as follows:

§ 5.22 Certification of true copies and use of Department seal.

(a) * * *

(9) * * *

(iv) The Director and Deputy Director, Division of Compliance Operations, Office of Compliance and Surveillance, CDRH.

* * * * *

3. Section 5.23 is amended by adding new paragraph (c)(4) to read as follows:

§ 5.23 Disclosure of official records.

* * * * *

(c) * * *

(4) The Chief, Device Registration and Listing Branch, Division of Product Surveillance, Office of Compliance and Surveillance, CDRH.

* * * * *

4. Section 5.37 is amended by revising paragraph (a)(2)(iii) and by adding new paragraph (a)(2)(iv) to read as follows:

§ 5.37 Issuance of reports of minor violations.

(a) * * *

(2) * * *

(iii) The Director and Deputy Director, Division of Compliance Operations, Office of Compliance and Surveillance, CDRH.

(iv) The Director, Division of Product Surveillance, Office of Compliance and Surveillance, CDRH.

* * * * *

5. Section 5.45 is amended by revising paragraph (e)(1)(iii) to read as follows:

§ 5.45 Imports and exports.

* * * * *

(e) * * *

(1) * * *

(iii) The Director and Deputy Director, Division of Compliance Operations, Office of Compliance and Surveillance, CDRH.

* * * * *

Dated: August 26, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-21229 Filed 9-2-92; 8:45 am]

BILLING CODE 4160-01-F

21 CFR Part 573

[Docket No. 86F-0060]

Food Additives Permitted in Feed and Drinking Water of Animals; Selenium; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; denial of certain requests for hearing and response to certain objections; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of July 27, 1992 (57 FR 33244), denying certain requests that it has received for a hearing on and stay of a final rule (April 6, 1987 (52 FR 10887)), that increased the maximum permitted use level of selenium in animal feeds. The document was published with some inadvertent computer errors. This correction document will remove the numerals "09" that appeared in the place of hyphens throughout the document.

FOR FURTHER INFORMATION CONTACT: Robin F. Thomas, Office of Policy (HF-27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2994.

In FR Doc. 92-17573, appearing on page 33244, in the **Federal Register** of Monday, July 27, 1992, the following corrections are made:

1. On page 33244, in the 1st column, under the heading "**FOR FURTHER INFORMATION CONTACT:**", in the 2d line, "(HFV09226)" is corrected to read "(HFV-226)".

2. On page 33245, in the 2d column, in the 1st line, "21409215" is corrected to

read "214–215"; and in the same column, in the 4th line, "62009621" is corrected to read "620–621".

3. On page 33247, in the 1st column, in the 3d full paragraph, in the 4th line, "86F090060" is corrected to read "86F–0060".

4. On page 33249, in the 3d column, in the 3d full paragraph, in the 13th line, "80095769" is corrected to read "80–5769"; and in the same column, in the 4th paragraph, in the 3d line, "(HFA09305)" is corrected to read "(HFA–305)"; and in the same paragraph, in the 4th line, "10923" is corrected to read "1–23".

5. On page 33250, in References 1, 2, and 3, in the 3d line, "86F090060" is corrected to read "86F–0060"; in Reference 10, in the 3d line, "1982091989" is corrected to read "1982–1989"; and in Reference 20, in the 4th line, References 21 and 22, in the 3d line, and Reference 25, in the 2d line, "86F090060" is corrected to read "86F–0060".

Dated: August 27, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92–21225 Filed 9–2–92; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8431]

Allocation of Allocable Investment Expense; Original Issue Discount Reporting Requirements

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to reporting requirements with respect to single-class real estate mortgage investment conduits (REMICs) and the market discount fraction reported with other REMIC information. This document also contains final regulations that require an issuer of publicly offered debt instruments with original issue discount (OID) to file an information return with the Internal Revenue Service. The relevant provisions in the Internal Revenue Code were added or amended by the Tax Reform Act of 1984, the Tax Reform Act of 1986, and by the Technical and Miscellaneous Revenue Act of 1988.

EFFECTIVE DATES: Sections 1.67–3 and 1.6049–7(f)(2)(i)(G) are effective for calendar quarters and calendar years ending after September 2, 1992. Section 1.1275–3 is effective for debt instruments issued after September 2, 1992. The amendments to § 602.101 are effective September 2, 1992.

FOR FURTHER INFORMATION CONTACT: James W.C. Canup, 202–622–3950 (not a toll-free number), with respect to the REMIC reporting regulations, and William E. Blanchard, 202–622–3930 (not a toll-free number), with respect to the OID reporting regulations.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control numbers 1545–1018 (relating to REMICs) and 1545–0887 (relating to OID).

The estimated total annual reporting and/or recordkeeping burden for the requirements contained in § 1.67–(f) (1), (2), (3), (4)(i), (5), and (6) of this regulation is reflected in the burden of Schedule Q and Forms 1066, 1099–INT, 1099–OID, 8281, and 8811. The estimated annual burden per respondent for § 1.67–3(f)(4)(ii) varies from 0.1 hours to 1.0 hours, depending on individual circumstances, with an estimated average of 0.3 hours. The estimated annual burden per respondent for § 1.1275–3 is reflected in the burden of Form 8281.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

Comments concerning the accuracy of these burden estimates and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attention: IRS Reports Clearance Officer, T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

REMIC Provisions

Temporary regulations [T.D. 8366] and a notice of proposed rulemaking (FI–61–91) under sections 67 and 6049 of the Internal Revenue Code of 1986 (Code), relating to REMICs, were published in the **Federal Register** on September 30, 1991 (56 FR 49512 and 49524, respectively). No written comments were received from the public on the proposed regulations. In addition, on December 5, 1991, the Internal Revenue Service held a public hearing concerning these regulations. No statements were made at the public hearing concerning these proposed regulations. The proposed regulations are adopted as revised by this Treasury decision.

Section 132 of the Tax Reform Act of 1986 (the 1986 Act) added to the Code section 67, which disallows certain miscellaneous itemized deductions in computing the taxable income of an individual to the extent that the aggregate of those deductions does not exceed two percent of the individual's adjusted gross income. Section 67(c) directs that regulations be issued to prohibit the indirect deduction through pass-through entities of amounts that are not allowable as a deduction if paid or incurred directly by an individual. Section 67(c) also directs that regulations provide any necessary reporting requirements. The regulations under section 67 that are contained in this document fulfill the requirements of section 67(c) as it applies to REMICs.

OID Provisions

Section 41(a) of the Tax Reform Act of 1984 added to the Code section 1275(c)(2), which requires certain information relating to OID on publicly offered debt instruments to be submitted to the Secretary in the time and manner prescribed by the Secretary in regulations. Pursuant to the authority in section 1275(c), § 1.1275–3T (TD 8030) was published in the **Federal Register** on June 18, 1985 (50 FR 25219). Under § 1.1275–3T(b), unless otherwise provided, an issuer must file an information return (Form 8281) with the Internal Revenue Service within 30 days after the issue date of an issue of publicly offered debt instruments that have OID. Section 1.1275–3T(b) lists the information required to be reported on the information return, such as the name, address, and taxpayer identification number of the issuer and the amount of OID for the entire issue.

Amendments to § 1.1275–3T(b) were proposed in a notice of proposed rulemaking (LR–189–84), which was published in the **Federal Register** on April 8, 1986 (51 FR 12086). In addition, § 1.1275–3T(b) was amended by T.D. 8259, which was published in the **Federal Register** on September 7, 1989 (54 FR 37102). A cross-reference notice of proposed rulemaking (FI–27–89) was published in the **Federal Register** on the

same day. In general, the amendments provided additional exceptions to the types of debt instruments subject to the regulation and required additional information to be reported on the information return.

Written comments were received from the public on the temporary and the proposed regulations. As explained below, the comments were considered in the drafting of the final regulations.

Explanation of Provisions

In general, a REMIC is a fixed pool of mortgages in which multiple classes of interests are held by investors and which elects to be taxed as a REMIC. The regulations under sections 67 and 6049 require notice of income and other information to be provided to REMIC investors and the Internal Revenue Service.

Treatment of Allocable Investment Expenses

Section 1.67–3T(a)(1) requires a REMIC to allocate to each of its pass-through interest holders (as defined in § 1.67–3T(a)(2)(i)(A)) the holder's proportionate share of the aggregate amount of allocable investment expenses of the REMIC for the calendar quarter.

Pursuant to § 1.67–3T(b)(1) a pass-through interest holder is treated both as having received or accrued income and as having paid or incurred an expense described in section 212 (or section 162 in the case of a pass-through interest holder that is a regulated investment company) in an amount equal to the pass-through interest holder's proportionate share of the allocable investment expenses of the REMIC.

A REMIC is required under § 1.67–3(f)(1) to provide written notice to each pass-through interest holder to whom an allocation of expenses is required to be made. Except in the case of notice to a regular interest holder in a single-class REMIC (as described in § 1.67–3T(a)(2)(ii)(B)), notice is furnished quarterly on Schedule Q (Form 1066). The notice must list the aggregate amount of expenses accrued during each calendar quarter for which the REMIC is allowed a deduction under section 212 and the interest holder's proportionate share of these expenses for the calendar quarter. A REMIC must also report this information annually to the Internal Revenue Service pursuant to § 1.67–3(f)(3)(i).

If a pass-through interest holder's interest in a REMIC is held in the name of a nominee, the REMIC may provide the written notice to the nominee and make the information return to the Internal Revenue Service with respect to the nominee. Section 1.67–3(f)(5) provides reporting requirements for nominees to which a REMIC provides notice.

Single-Class REMICs

In the case of a single-class REMIC (as described in § 1.67–3T(a)(2)(ii)), the term "pass-through interest holder" is defined more broadly to include any regular or residual interest holder that is either an individual (other than certain nonresident aliens), a person that computes its taxable income in the same manner as would an individual, or a pass-through entity, interests which are owned by certain types of holders. Under § 1.67–3T(c)(3), a single-class REMIC allocates its investment expenses for a calendar quarter to each holder in proportion to the amount of income that accrues to the holder for that quarter.

As required under § 1.67–3(f) for all other REMICs, a single-class REMIC must report to pass-through interest holders and the Internal Revenue Service the holder's proportionate share of allocable investment expenses. The REMIC is required to report this information quarterly to pass-through interest holders who hold a residual interest on Schedule Q (Form 1066) and annually to the Internal Revenue Service as required in § 1.860F–4(e)(4).

Notice to Pass-Through Interest Holders who Hold Regular Interests in Single-Class REMICs

Section 1.67–3(f) provides that a single-class REMIC must furnish information to certain of its regular interest holders showing each such interest holder's allocable share of the REMIC's investment expenses. The information may be furnished annually and, as provided in § 1.67–3(f)(2)(ii), may be separately stated on the statement containing Form 1099 information instead of in a separate statement provided in a separate mailing. The REMIC, however, must provide quarterly information to a person who requests information pursuant to § 1.6049–7(e) together with the information described in that section.

Market Discount Fraction and de minimis OID

A REMIC or an issuer of a collateralized debt obligation is required to provide information necessary to compute the accrual of market discount. Market discount is allocated based on a fraction determined by reference to either the interest or OID or an instrument. The regulations under § 1.6049–7(f)(2)(i)(G) permit the use of de minimis OID in computing the market discount fraction required to be reported with other financial information with respect to REMICs and other collateralized debt obligations.

Information Reporting Requirements for an Issuer of Publicly Offered Debt Instruments With OID

In general, the final regulations adopt the rules of § 1.1275–3T(b), as amended by § 1.1275–3(b) of the proposed regulations. Under § 1.1275–3(c), an issuer of publicly offered debt instruments with OID must provide the information required by Form 8281 (or any successor form) to the Internal Revenue Service within 30 days from the issue date of the debt instruments. The regulations, however, do not apply to debt instruments described in section 1272(a)(2), debt instruments issued by natural persons, certificates of deposit, REMIC regular interests or other debt instruments subject to section 1272(a)(6), or (unless otherwise required by the Commissioner) stripped bonds and coupons.

The final regulations do not contain rules for the information reporting requirements under section 1275(c)(1) and § 1.1275–3(a) of the proposed regulations (the legending requirements). These rules will be addressed in future regulations.

Summary of Amendments

No comments were received on the proposed section 67 and section 6049 REMIC reporting regulations. Therefore, no amendments to those proposed regulations were made. Editorial change, however, have been made to clarify the final regulations.

In general, the final OID reporting regulations adopt the amendments contained in the proposed regulations. The final regulations also make editorial changes to the temporary regulations, including the deletion of the detailed list of information that was in § 1.1275–3T(b). Form 8281, however, currently requires the issuer to submit the same information that was listed in § 1.1275–3T(b).

In addition, § 1.1275–3(d) clarifies that neither a foreign nor a domestic issuer is required to file an information return if the issue is not offered for sale or resale in the United States in connection with its original issuance. This change was made in response to several comments on the definition of issuer in the temporary and proposed regulations.

Special Analyses

These final regulations are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact

Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notices of proposed rulemaking were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is James W. C. Canup, Office of the Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, personnel from other offices of the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR 1.61–1 through 1.67–4T

Income taxes, Reporting and recordkeeping requirements.

26 CFR 1.1231–1 through 1.1297–3T

Income taxes.

26 CFR 1.6031–1 through 1.6060–1

Income taxes, Reporting and recordkeeping requirements.

26 CFR 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 is amended by adding the following citations:

Authority: 26 U.S.C. 7805 * * * Section 1.67–3 also issued under 26 U.S.C. 67(c). * * * Section 1.1275–3 also issued under 26 U.S.C. 1275(c). * * *

Par. 2. Section 1.67–3 is added to read as follows:

§ 1.67–3 Allocation of expenses by real estate mortgage investment conduits.

(a) *Allocation of allocable investment expenses.* [Reserved]

(b) *Treatment of allocable investment expenses.* [Reserved]

(c) *Computation of proportionate share.* [Reserved]

(d) *Example.* [Reserved]

(e) *Allocable investment expenses not subject to backup withholding.* [Reserved]

(f) *Notice to pass-through interest holders*—(1) *Information required.* A REMIC must provide to each pass-through interest holder to which an allocation of allocable investment expense is required to be made under § 1.67–3T(a)(1) notice of the following—

(i) If, pursuant to paragraph (f)(2) (i) or (ii) of this section, notice is provided for a calendar quarter, the aggregate amount of expenses paid or accrued during the calendar quarter for which the REMIC is allowed a deduction under section 212;

(ii) If, pursuant to paragraph (f)(2)(ii) of this section, notice is provided to a regular interest holder for a calendar year, the aggregate amount of expenses paid or accrued during each calendar quarter that the regular interest holder held the regular interest in the calendar year and for which the REMIC is allowed a deduction under section 212; and

(iii) The proportionate share of these expenses allocated to that pass-through interest holder, as determined under § 1.67–3T(c).

(2) *Statement to be furnished*—(i) *To residual interest holder.* For each calendar quarter, a REMIC must provide to each pass-through interest holder who holds a residual interest during the calendar quarter the notice required under paragraph (f)(1) of this section on Schedule Q (Form 1066), as required in § 1.860F–4(e).

(ii) *To regular interest holder.* For each calendar year, a single-class REMIC (as described in § 1.67–3T(a)(2)(ii)(B)) must provide to each pass-through interest holder who held a regular interest during the calendar year the notice required under paragraph (f)(1) of this section. Quarterly reporting is not required. The information required to be included in the notice may be separately stated on the statement described in § 1.6049–7(f) instead of on a separate statement provided in a separate mailing. See § 1.6049–7(f)(4). The separate statement provided in a separate mailing must be furnished to each pass-through interest holder no later than the last day of the month following the close of the calendar year.

(3) *Returns to the Internal Revenue Service*—(i) *With respect to residual interest holders.* Any REMIC required under paragraphs (f)(1) and (2)(i) of this section to furnish information to any pass-through interest holder who holds a residual interest must also furnish such information to the Internal Revenue Service as required in § 1.860F–4(e)(4).

(ii) *With respect to regular interest holders.* A single-class REMIC (as described in § 1.67–3T(a)(2)(ii)(B)) must make an information return on Form 1099 for each calendar year, with respect to each pass-through interest holder who holds a regular interest to which an allocation of allocable investment expenses is required to be made pursuant to § 1.67–3T(a)(1) and (2)(ii). The preceding sentence applies with respect to a holder for a calendar year only if the REMIC is required to make an information return to the Internal Revenue Service with respect to that holder for that year pursuant to section 6049 and § 1.6049–7(b)(2)(i) (or would be required to make an information return but for the $10 threshold described in section 6049(a)(1) and § 1.6049–7(b)(2)(i)). The REMIC must state on the information return—

(A) The sum of—

(*1*) The aggregate amounts includible in gross income as interest (as defined in § 1.6049–7(a)(1) (i) and (ii)), for the calendar year; and

(*2*) The sum of the amount of allocable investment expenses required to be allocated to the pass-through interest holder for each calendar quarter during the calendar year pursuant to § 1.67–3T(a); and

(B) Any other information specified by the form or its instructions.

(4) *Interest held by nominees and other specified persons*—(i) *Pass-through interest holder's interest held by a nominee.* If a pass-through interest holder's interest in a REMIC is held in the name of a nominee, the REMIC may make the information return described in paragraphs (f)(3) (i) and (ii) of this section with respect to the nominee in lieu of the pass-through interest holder and may provide the written statement described in paragraphs (f)(2) (i) and (ii) of this section to that nominee in lieu of the pass-through interest holder.

(ii) *Regular interests in a single-class REMIC held by certain persons.* If a person specified in § 1.6049–7(e)(4) holds a regular interest in a single-class REMIC (as described in § 1.67–3T(a)(2)(ii)(B)), then the single-class REMIC must provide the information described in paragraphs (f)(1) and (f)(3)(ii) (A) and (B) of this section to that person with the information specified in § 1.6049–7(e)(2) as required in § 1.6049–7(e).

(5) *Nominee reporting*—(i) *In general.* In any case in which a REMIC provides information pursuant to paragraph (f)(4) of this section to a nominee of a pass-through interest holder for a calendar quarter or, as provided in paragraph

(f)(2)(ii) of this section, for a calendar year—

(A) The nominee must furnish each pass-through interest holder with a written statement described in paragraph (f)(2)(i) or (ii) of this section, whichever is applicable, showing the information described in paragraph (f)(1) of this section; and

(B) The nominee must make an information return on Form 1099 for each calendar year, with respect to the pass-through interest holder and state on this information return the information described in paragraphs (f)(3)(ii) (A) and (B) of this section, if—

(*1*) The nominee is a nominee for a pass-through interest holder who holds a regular interest in a single-class REMIC (as described in § 1.67–3T(a)(2)(ii)(B)); and

(*2*) The nominee is required to make an information return pursuant to section 6049 and § 1.6049–7 (b)(2)(i) and (b)(2)(ii)(B) (or would be required to make an information return but for the $10 threshold described in section 6049(a)(2) and § 1.6049–7(b)(2)(i)) with respect to the pass-through interest holder.

(ii) *Time for furnishing statement.* The statement required by paragraph (f)(5)(i)(A) of this section to be furnished by a nominee to a pass-through interest holder for a calendar quarter or calendar year must be furnished to this holder no later than 30 days after receiving the written statement described in paragraph (f)(2) (i) or (ii) of this section from the REMIC. If, however, pursuant to paragraph (f)(2)(ii) of this section, the information is separately stated on the statement described in § 1.6049–7(f), then the information must be furnished to the pass-through interest holder in the time specified in § 1.6049–7(f)(5).

(6) *Special rules*—(i) *Time and place for furnishing returns.* The returns required by paragraphs (f)(3)(ii) and (f)(5)(i)(B) of this section for any calendar year must be filed at the time and place that a return required under section 6049 and § 1.6049–7(b)(2) is required to be filed. See § 1.6049–4(g) and § 1.6049–7(b)(2)(iv).

(ii) *Duplicative returns not required.* The requirements of paragraphs (f)(3)(ii) and (f)(5)(i)(B) of this section for the making of an information return are satisfied by the timely filing of an information return pursuant to section 6049 and § 1.6049–7(b)(2) that contains the information required by paragraph (f)(3)(ii) of this section.

Par. 3. Section 1.1275–3 is added to read as follows

§ 1.1275–3 Original issue discount information reporting requirements.

(a) *In general.* [Reserved]

(b) *Information required to be set forth on face of debt instruments that are not publicly offered.* [Reserved]

(c) *Information required to be reported to Secretary upon issuance of publicly offered debt instruments*—(1) *In general.* Except as provided in paragraph (c)(3) or paragraph (d) of this section, the information reporting requirements of this paragraph (c) apply to any debt instrument that is publicly offered and has original issue discount. The issuer of any such debt instrument must make an information return on the form prescribed by the Commissioner (Form 8281, as of September 2, 1992. The prescribed form must be filed with the Internal Revenue Service in the manner specified on the form. The taxpayer must use the prescribed form even if other information returns are filed using other methods (e.g., electronic media), unless the Commissioner announces otherwise in a revenue procedure.

(2) *Time for filing information return.* The prescribed form must be filed for each issue of publicly offered debt instruments within 30 days after the issue date of the issue.

(3) *Exceptions.* The rules of paragraph (c)(1) of this section do not apply to debt instruments described in section 1272(a)(2), debt instruments issued by natural persons (as defined in § 1.6049–4(f)(2)), certificates of deposit, REMIC regular interests or other debt instruments subject to section 1272(a)(6), or (unless otherwise required by the Commissioner pursuant to a revenue ruling or revenue procedure) stripped bonds and coupons (within the meaning of section 1286).

(d) *Application to foreign issuers and U.S. issuers of foreign-targeted debt instruments.* A foreign or domestic issuer is subject to the rules of this section with respect to an issue of debt instruments unless the issue is not offered for sale or resale in the United States in connection with its original issuance.

(e) *Penalties.* See section 6706 for rules relating to the penalty imposed for failure to meet the information reporting requirements imposed by this section.

(f) *Effective date.* Paragraphs (c), (d), and (e) of this section are effective for an issue of debt instruments issued after September 2, 1992.

Par. 4. Section 1.6049–7 is amended by revising paragraph (f)(2)(i)(G) to read as follows:

§ 1.6049–7 Returns of information with respect to REMIC regular interests and collateralized debt obligations.

* * * * *

(f) * * *

(2) * * *

(i) * * *

(g) Information necessary to compute accrual of market discount. For calendar years after 1989, this requirement is satisfied by furnishing to the holder for each accrual period during the year a fraction computed in the manner described in either paragraph (f)(2)(i)(G)(*1*) or (f)(2 (i)(G)(*2*) of this section. For calendar years after December 31, 1991, the REMIC or the issuer of the collateralized debt obligation must be consistent in the method used to compute this fraction.

(*1*) The numerator of the fraction equals the interest, other than original issue discount, allocable to the accrual period. The denominator of the fraction equals the interest, other than original issue discount, allocable to the accrual period plus the remaining interest, other than original issue discount, as of the end of that accrual period. The interest allocable to each accrual period and the remaining interest are calculated by taking into account events which have occurred before the close of the accrual period and the prepayment assumption, if any, determined as of the startup day (as defined in section 860G(a)(9)) of the REMIC or the issue date (as defined in section 1275(a)(2)) of the collateralized debt obligaiton that would be made in computing original issue discount if the debt instrument had been issued with original issue discount.

(*2*) If the REMIC regular interest or the collateralized debt obligation has de minimis original issue discount (as defined in section 1273(a)(3) and any regulations thereunder), then, at the option of the REMIC or the issuer of the collateralized debt obligation, the fraction may be computed in the manner specified in paragraph (f)(2)(ii)(K) of this section taking into account the de minimis original issue discount.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 5. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 6. Section 602.101(c) is amended by adding the following entries to the table:

§ 602.101 OMB Control Numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB Control No.
* * * * *	
1.67-3	1545-1018
* * * * *	
1.1275-3	1545-0887
* * * * *	
1.6049-7	1545-1018
* * * * *	

Shirley D. Peterson,
Commissioner of Internal Revenue.

Approved: August 20, 1992.

Robert Glenn Hubbard,
Acting Assistant Secretary of the Treasury.

[FR Doc. 92-21153 Filed 9-2-92; 8:45 am]

BILLING CODE 4830-01-M

Bureau of Alcohol, Tobacco, and Firearms

27 CFR Part 5

[T.D. ATF-333; Re: T.D. ATF-317, T.D. ATF-311, T.D. ATF-306, Notices Nos. 716, 403, 410, 583; 91F009P]

RIN 1512-AA10

Vodka: Deferral of Compliance Date

AGENCY: Bureau of Alcohol, Tobacco, and Firearms (ATF), Department of the Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule defers the compliance date with respect to the citric acid limitation set forth in section 5.23(a)(3)(ii). The deferral of the compliance date is necessary to complete ATF's review of all data submitted relative to the citric acid limitation.

DATES: This document is effective September 3, 1992. The compliance date for § 5.23(a)(3)(ii) with respect to the citric acid limitation is September 3, 1993.

FOR FURTHER INFORMATION CONTACT: David W. Brokaw, Wine and Beer Branch, (202) 927-8230.

SUPPLEMENTARY INFORMATION:

Background

T.D. ATF-306 (55 FR 49996), amended 27 CFR 5.23(a)(3) to authorize the use of up to 2 grams per liter (2,000 parts per million) of sugar, and a trace amount (defined as 150 milligrams per liter or 150 parts per million) of citric acid in the production of vodka. T.D. ATF-306 was effective January 3, 1991, with a formula and label cancellation date of March 4, 1991, for products not made within the limitations of the Treasury decision.

Petition

On March 4, 1991, ATF issued T.D. ATF-311, 56 FR 8922, deferring the compliance date with respect to the citric acid limitation set forth in § 5.23(a)(3)(ii) by T.D. ATF-306. T.D. ATF-311 was issued in response to a petition from Heublein, Inc., for the reconsideration of T.D. ATF-306. Heublein's petition was based on a representation that new scientific information and data not previously available had come to their attention concerning maximum levels for the use of citric acid in vodka.

Notice No. 716

On April 29, 1991, ATF issued Notice No. 716, 56 FR 19623, to gather additional information by inviting comments from the public and industry as to whether the 150 ppm citric acid limitation set forth in T.D. ATF-306 should be retained or revised. During the comment period, ATF secured an outside testing firm to conduct independent testing on sensory threshold levels for citric acid addition to vodka.

In response to Notice No. 716, ATF received ten comments. All of the comments were opposed to setting a maximum limitation as low as 150 ppm for the addition of citric acid to vodka. The only commenter submitting sensory test data from independent contractors was Heublein, Inc. An evaluation of the test data by ATF revealed a disparity between the Heublein independent contractors' test results and the sensory test results from the outside firm secured by ATF. Therefore, the compliance data of December 4, 1991, set forth in T.D. ATF-311, was deferred until September 3, 1992, by T.D. ATF-317 (56 FR 63398) in order to allow time to resolve the disparity in test results.

On January 28, 1992, the President asked U.S. government agencies to set aside a 90-day period to evaluate existing regulations and programs and to identify and accelerate action on initiatives that would eliminate any unnecessary regulatory burden or otherwise promote economic growth.

Subsequently, the president's 90-day moratorium on new regulations has been extended until August 28, 1992. ATF is in the process of reexamining its system of regulatory controls over the labeling of distilled spirits to ensure that existing regulations do not impose any unnecessary regulatory burdens. Consistent with this objective, ATF requires additional time to interpret and balance data relative to the citric acid requirement in T.D. ATF-306.

Notice and Public Procedure

Because this final rule merely postpones the compliance date with respect to the citric acid requirement in T.D. ATF-306, in order to complete evaluation of the test information submitted by the industry to ATF, and in view of the immediate need for guidance to the industry with respect to compliance with this provision in T.D. ATF-306, it is found to be impractical and contrary to the public interest to issue this rule with notice and public procedure under 5 U.S.C. 553(b) or subject to the effective date limitation of 5 U.S.C. 553(d).

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because the agency was not required to publish a general notice of proposed rulemaking under 5 U.S.C. 553 or any other law.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this final rule is not a "major rule" since it does not result in:

(a) An annual effect on the economy of $100 million or more;

(b) Major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions;

(c) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96-511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Disclosure

Copies of Heublein's petition, the notices, the Treasury decisions, and all comments are available for public inspection during normal business hours at: ATF Reading Room, room 6300, 650 Massachusetts Avenue NW., Washington, DC.

Drafting Information

The principal author of this document is David W. Brokaw, Wine and Beer

Branch, Bureau of Alcohol, Tobacco and Firearms.

Therefore, pursuant to the authority set forth in 27 U.S.C. 205(e), ATF is further postponing the compliance date with respect to the citric acid limitation set forth in 27 CFR 5.23(a)(3)(ii) by T.D. ATF-306. The compliance date is September 3, 1993.

Signed August 10, 1992.

Stephen E. Higgins,

Director.

Approved: August 14, 1992.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 92-21387 Filed 9-2-92; 8:45 am]

BILLING CODE 4810-31-M

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27 CFR Part 53

[T.D. ATF-330]

Firearms and Ammunition Excise Taxes (No. 92-D-006)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Treasury decision, Final rule.

SUMMARY: This final rule amends regulations with respect to the method of payment and filing of tax returns for the payment of firearms and ammunition excise taxes. ATF is establishing a voluntary electronic payment system that will allow taxpayers, at their option, to make firearms and ammunition excise taxpayments by electronic fund transfer. This rule will also liberalize the current tax return filing requirement by eliminating quarterly tax returns when no liability is incurred.

EFFECTIVE DATE: October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Tamara Light, Specialist, Revenue Programs Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091-0221, (202) 927-8210.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 26 U.S.C. 4181, a tax is imposed on the sale by the manufacturer, importer or producer of pistols, revolvers, firearms (other than pistols and revolvers), shells, and cartridges. The tax is 10 percent of the sale price for pistols and revolvers, 11 percent of the sale price for firearms (other than pistols and revolvers) and 11 percent of the sale price for shells and cartridges. Regulations in 27 CFR part 53 require that taxpayers incurring a tax liability on the sale or use of firearms and ammunition file excise tax returns quarterly on ATF Form 5300.26, Federal Firearms and Ammunition Excise Tax Return. In addition, depending on the volume of taxable sales made during the return period, taxpayers are required to make tax deposits on a monthly or semimonthly basis on ATF Form 5300.27, Federal Firearms and Ammunition Excise Tax Deposit.

The existing regulations require that once taxpayers incur liability for tax, they must continue to file returns, whether or not liability was incurred for the return period, until the taxpayers have ceased operations. This final rule amends this requirement so that taxpayers will be required to file a return for a particular calendar quarter only if they incur tax liability during that return period. In addition, taxpayers who incur no tax liability during the calendar year will only be required to file an annual return. Consequently, the paperwork burden for occasional taxpayers will be greatly reduced.

Additionally, ATF has received requests from taxpayers to allow for the payment of firearms and ammunition excise taxes by electronic fund transfer (EFT). ATF recognizes that EFT is an accurate, efficient and convenient method for transferring money. This final rule establishes regulations which will provide taxpayers with the opportunity to remit payments to ATF by EFT. This amendment will allow taxpayers, upon notification to the regional director (compliance), to utilize this method to remit firearms and ammunition excise taxes due with semimonthly and monthly tax deposits and quarterly tax returns. The election to remit firearms and ammunition excise taxes by EFT must be made at the beginning of the calendar quarter preceding the calendar quarter in which the taxpayer will begin remitting payments by EFT. Once a taxpayer elects to remit firearms and ammunition excise taxes by EFT, the taxpayer must continue to make payments in this manner for at least four consecutive calendar quarters or until the taxpayer files a final return.

ATF considered allowing taxpayers to make elections concerning the method of payment on a more frequent basis. However, it was determined that this would cause administrative difficulties in processing the payments. Although payment by EFT will be voluntary, taxpayers are subject to the same filing and deposit requirements as prescribed for all other firearms and ammunition excise taxpayers. ATF will provide guidance to taxpayers who elect to remit taxes by EFT by issuing a procedure on how to prepare deposits, returns and EFT remittances.

Executive Order 12291

In compliance with Executive Order 12291, 46 FR 13193 (1981), ATF has determined that this rule is not a "major rule" since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Administrative Procedures Act

Because this final rule merely establishes an optional method of taxpayment and liberalizes the existing requirements for filing tax returns, it is hereby found to be unnecessary to issue this Treasury decision with notice and public procedure under 5 U.S.C. 553(b).

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis are not applicable to this final rule because the agency was not required to publish a general notice of proposed rulemaking under 5 U.S.C. 553 or any other law. A copy of this final rule has been submitted to the Administrator of the Small Business Administration for comment on the impact of such regulation on small business, pursuant to 26 U.S.C. 7805(f).

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96-511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because there are no new reporting or recordkeeping requirements.

Drafting Information

The principal author of this document is Tamara Light, ATF Specialist, Revenue Programs Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 53

Administrative practice and procedure, Arms and munitions, Authority delegations, Exports, Imports, Penalties, Reporting and recordkeeping requirements.

Authority and Issuance

Accordingly, 27 CFR part 53, entitled "Manufacturers Excise Taxes—Firearms and Ammunition" is amended as follows:

PART 53—[AMENDED]

1. The authority citation for part 53 continues to read as follows:

Authority: 26 U.S.C. 4181, 4182, 4216–4219, 4221–4223, 4225, 6001, 6011, 6020, 6021, 6061, 6071, 6081, 6091, 6101–6104, 6109, 6151, 6155, 6161, 6301–6303, 6311, 6402, 6404, 6416.

2. Section 53.11 is amended by adding in alphabetical order the definition of the terms *"Calendar year, Electronic fund transfer (EFT), Treasury Account, and Financial institution"*, to read as follows:

§ 53.11 Meaning of terms.

* * * * *

Calendar year. The period which begins January 1 and ends on the following December 31.

* * * * *

Electronic fund transfer (EFT). Any transfer of funds effected by a taxpayer's financial institution, either directly or through a correspondent banking relationship, via the Federal Reserve Communications System (FRCS) or Fedwire to the Treasury Account at the Federal Reserve Bank.

* * * * *

Financial institution. A bank or other financial institution, whether or not a member of the Federal Reserve System, which has access to the Federal Reserve Communications Systems (FRCS) or Fedwire. The "FRCS" or "Fedwire" is a communications network that allows Federal Reserve System member financial institutions to effect a transfer of funds for their customers (or other financial institutions) to the Treasury Account at the Federal Reserve Bank.

* * * * *

Treasury Account. The Department of Treasury's General Account at the Federal Reserve Bank of New York.

* * * * *

3. Paragraph (a) of § 53.151 is revised to read as follows:

§ 53.151 Returns.

(a) *In general.* (1) Liability for tax imposed under chapter 32 of the Code shall be reported on ATF Form 5300.26, Federal Firearms and Ammunition Excise Tax Return. Except as provided in paragraphs (a)(2) and (b) of this section, a return on Form 5300.26 shall be filed for a period of one calendar quarter.

(2) *Return periods after September 30, 1992.* For return periods after September 30, 1992, every person required to make a return on ATF Form 5300.26 who does not incur any firearms and ammunition excise tax liability in a given calendar quarter shall not be required to file a return on ATF Form 5300.26 for that calendar quarter. Every person required to make a return on ATF Form 5300.26 who does not incur any firearms and ammunition excise tax liability for the entire calendar year and who has not filed a final return in accordance with § 53.152 shall file an annual return on ATF Form 5300.26.

(3) *Return periods prior to October 1, 1992.* For return periods prior to October 1, 1992, every person required to make a return on ATF Form 5300.26 shall make a return for each calendar quarter (whether or not liability was incurred for any tax reportable on the return for the return period) until the person has filed a final return in accordance with § 53.152.

(4) *Forms, etc.* Each return required under the regulations in this part, together with any prescribed copies, records, or supporting data, shall be completed in accordance with the applicable forms, instructions, and regulations.

* * * * *

4. Paragraph (a) of § 53.152 is revised to read as follows:

§ 53.152 Final returns.

(a) *In general.* Any person who is required to make a return on ATF Form 5300.26 pursuant to § 53.151 and who in any return period ceases operations in respect of which the person is required to make a return on the form, shall make the return for that return period as a final return. A return made as a final return shall be marked "Final Return" by the person filing the return. A taxpayer who has only temporarily ceased to incur liability for tax required to be reported on ATF Form 5300.26 because of temporary or seasonal suspension of business or for other reasons, shall not make a final return until such operations are permanently ceased.

* * * * *

5. Section 53.153 is amended by revising paragraph (a), by revising the paragraph heading of paragraph (b), and by adding paragraph (b)(3) to read as follows:

§ 53.153 Time for filing returns.

(a) *Quarterly returns.* Each return required to be made under § 53.151(a) for a return period of one calendar quarter shall be filed on or before the last day of the first calendar month following the close of the period for which it is made. However, a return may be filed on or before the 10th day of the second calendar month following the close of the period if timely deposits under section 6302(c) of the Code and § 53.157 have been made in full payment of the taxes due for the period. For purposes of the preceding sentence, a deposit which is not required by regulations in respect of the return period may be made on or before the last day of the first calendar month following the close of the period.

(b) *Monthly, semimonthly and annual returns.*

(1) * * *

(2) * * *

(3) *Annual returns.* Each return filed under the provisions of § 53.151(a) for a return period of one calendar year shall be filed not later than the 31st day following the close of the calendar year.

* * * * *

6. Paragraph (b) of § 53.154 is revised to read as follows:

§ 53.154 Manner of filing returns.

* * * * *

(b) When the taxpayer sends the return on ATF Form 5300.26 by U.S. Mail, the official postmark of the U.S. Postal Service stamped on the cover in which the return was mailed shall be considered the date of delivery of the return. When the postmark on the cover is illegible, the burden of proving when the postmark was made will be on the taxpayer. When the taxpayer sends the return with or without remittance by registered mail or by certified mail, the date of registry or the date of the postmark on the sender's receipt of certified mail, as the case may be, shall be treated as the date of delivery of the return and, if accompanied, of the remittance.

7. Section 53.157 is amended by revising the section heading and by revising paragraphs (a), (b)(1), (c), (e)(1), and (e)(4) to read as follows:

§ 53.157 Timeliness of deposits.

(a) *Monthly deposits.* Except as provided in paragraph (b) of this section, if for any calendar month (other than the last month of a calendar quarter) any person required to file a quarterly excise tax return on ATF Form 5300.26 has a total liability under this part of more than $100 for all excise taxes reportable on that form, the amount of liability for taxes shall be deposited by the person in accordance with the instructions on ATF Form 5300.27 on or before the last day of the month following the calendar month.

(b) *Semimonthly deposits.* (1) If any person required to file an excise tax return on ATF Form 5300.26 for any

calendar quarter has a total liability under this part of more than $2,000 for all excise taxes reportable on that form for any calendar month in the preceding calendar quarter, the amount of that liability for taxes under this part for any semimonthly period (as defined in paragraph (d)(1) of this section) in the succeeding calendar quarter shall be deposited by the person in accordance with the instructions on ATF Form 5300.27 on or before the depositary date (as defined in paragraph (d)(2) of this section) applicable to the semimonthly period.

* * * * *

(c) *Deposit of certain excess undeposited amounts.* Notwithstanding paragraphs (a) and (b) of this section, if any person required to file an excise tax return on ATF Form 5300.26 for any calendar quarter beginning after December 31, 1990, has a total liability under this part for all excise taxes reportable on the form for the calendar quarter which exceeds by more than $100 the total amount of taxes deposited by the person pursuant to paragraph (a) or (b) of this section for the calendar quarter, the person shall, on or before the last day of the calendar month following the calendar quarter for which the return is required to be filed, deposit in accordance with the instructions on ATF Form 5300.27 the full amount by which the person's liability for all excise taxes reportable on the return for that calendar quarter exceeds the amount of excise taxes previously deposited by the person for that calendar quarter.

* * * * *

(e) *Depositary forms and procedures*—(1) *In general.* Each remittance of amounts required to be deposited for periods beginning after December 31, 1990 shall be accompanied by an ATF Form 5300.27, Federal Firearms and Ammunition Excise Tax Deposit form, or ATF Form 5300.26, Federal Firearms and Ammunition Excise Tax Return, which shall be prepared in accordance with the applicable instructions. Taxpayers electing to remit deposits by EFT pursuant to § 53.158 shall prepare and submit ATF Form 5300.26 or ATF Form 5300.27 in accordance with the instructions on the form. The timeliness of the deposit will be determined by the date it is received (or is deemed received under section 7502(e) and 26 CFR 301.7502–1) by the lockbox financial institution, or the ATF officer designated on ATF Form 5300.27 or ATF Form 5300.26 accompanying the deposit, or when made by electronic fund transfer, the Treasury Account. Amounts deposited pursuant to this paragraph shall be considered to be paid on the last day prescribed for filing the return in respect of the tax (determined without regard to any extension of time for filing the returns), or at the time deposited, whichever is later.

(2) * * *

(3) * * *

(4) *Procurement of prescribed forms.* Copies of the Federal Firearms and Ammunition Excise Tax Deposit form will be furnished, so far as possible, to persons required to make deposits under this section. Such a person will not be excused from making a deposit, however, by the fact that no form has been furnished. A person not supplied with the form is required to apply for it in ample time to make the required deposits within the time prescribed, supplying with the application the person's name, employer identification number, address, and the taxable period to which the deposits will relate. Copies of the Federal Firearms and Ammunition Excise Tax Deposit form may be obtained by applying for them with the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153.

* * * * *

8. Section 53.158 is added to read as follows:

§ 53.158 Payment of tax by electronic fund transfer.

(a) *In general.* For return periods after September 30, 1992, any taxpayer liable for firearms and ammunition excise taxes incurred under this part may elect to remit payments and deposits of the taxes (taxpayments) by electronic fund transfer (EFT). A taxpayer who elects to make remittance by EFT must use that method of remitting excise taxes on firearms and ammunition for a minimum of four consecutive calendar quarters. A taxpayer who makes remittance by EFT for a calendar quarter may not use any other method of remitting and ammunition excise taxes for that quarter.

(b) *Requirements.* (1) On or before the 10th day of the calendar quarter preceding the calendar quarter in which the taxpayer will begin remitting taxes by EFT, each taxpayer who elects to make remittances by EFT of firearms and ammunition excise taxes incurred under this part shall give written notice to the regional director (compliance) of the ATF region in which taxes are paid, indicating that remittances will be paid by EFT. Taxpayers who gave written notification in a previous calendar quarter electing to make remittances of tax by EFT are not required to give additional written notifications to continue remitting tax by EFT for succeeding calendar quarters.

(2) For each deposit made or return filed in accordance with this subpart, the taxpayer shall direct the taxpayer's financial institution to make an EFT in the amount of the taxpayment to the Treasury Account as provided in paragraph (e) of this section. The request will be made to the financial institution early enough for the transfer of funds to be made to the Treasury Account by no later than the close of business on the last day for making the deposit or filing the return as prescribed in §§ 53.157 and 53.153. The request will take into account any time limit established by the financial institution.

(3) Taxpayers who elect to discontinue making remittances by EFT of firearms and ammunition excise taxes may make such election at any time following four consecutive calendar quarters in which tax is remitted by EFT. Taxpayers electing to discontinue making remittances by EFT shall remit the tax with the next deposit or return as prescribed in §§ 53.157 and 53.151 for remittances not made by EFT and notify the regional director (compliance) by attaching a written notification to the tax deposit form or return stating that remittance of firearms and ammunition excise taxes will no longer be made by EFT.

(c) *Remittance.* (1) Taxpayers who elect to make firearms and ammunition excise taxpayments by EFT shall file the deposit form and/or return with ATF in accordance with the applicable instructions on the forms.

(2) Remittances will be considered as made when the taxpayment by EFT is received by the Treasury Account when it is paid to a Federal Reserve Bank.

(3) When the taxpayer directs the financial institution to effect an electronic fund transfer message as required by paragraph (b)(2) of this section, the transfer data record furnished to the taxpayer through normal banking procedures will serve as the record of payment and will be retained as part of the required records.

(d) *Failure to make a taxpayment by EFT.* The taxpayer is subject to penalties imposed by 26 U.S.C. 6651 and 6656, as applicable, for failure to make a payment or deposit of tax by EFT on or before the close of business on the prescribed last day for making such payment or deposit.

(e) *Procedure.* Upon the notification required under paragraph (b)(1) of this section, the regional director (compliance) will issue to the taxpayer an ATF Procedure entitled Payment of Tax by Electronic Fund Transfer. This

publication outlines the procedure a taxpayer follows when preparing deposits, returns and EFT remittances in accordance with this subpart.

Signed: June 17, 1992.

Stephen E. Higgins,

Director.

Approved: July 24, 1992.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 92-21055 Filed 9-2-92; 8:45 am]

BILLING CODE 4810-31-M

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27 CFR Part 70

[T.D. ATF-331; No. 92-D-003]

Change in Certain Procedural and Administrative Practices Regarding Firearms and Ammunition Excise Taxes

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: ATF is amending certain of its procedural regulations to adopt the IRS procedures with respect to claims for refund, offers in compromise, and enforced collection in relation to firearms and ammunition excise taxes. These amendments are the result of the transfer of authority to administer the excise taxes on firearms and ammunition from the Commissioner, IRS, to the Director, ATF.

EFFECTIVE DATE: September 3, 1992.

FOR FURTHER INFORMATION CONTACT: Tamara Light, Specialist, Revenue Programs Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091-0221, (202-927-8210).

SUPPLEMENTARY INFORMATION:

Background

On November 5, 1990, the Secretary of the Treasury signed Treasury Order No. 120-03 (55 FR 47422) which transferred the authority to administer the excise taxes on firearms and ammunition from the Commissioner, IRS, to the Director, ATF. The order gave the Director the authority to issue regulations for the purpose of carrying out the functions, powers, and duties delegated under the Treasury Order. The order also provided that all rules and regulations of the IRS prescribed for the enforcement of 26 U.S.C. 4181 would continue in effect as rules and regulations of ATF until superseded or revised.

Effective January 1, 1991, T.D. ATF-308 (56 FR 302, January 3, 1991) adopted the existing IRS regulations in 26 CFR part 48 and established ATF regulations in 27 CFR part 53 relating to firearms and ammunition excise taxes. The procedural IRS regulations in 26 CFR part 301 with respect to claims for refund, offers in compromise, and enforced collection for firearms and ammunition excise taxes continued to be utilized by ATF.

This final rule merely amends ATF procedural regulations in 27 CFR part 70 to include those provisions of the IRS regulations relating to claims for refund, offers in compromise, and enforced collection with respect to firearms and ammunition excise taxes.

Executive Order 12291

Because this rule relates to agency organization, management and procedure, the provisions of Executive Order 12291 do not apply.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because the agency was not required to publish a general notice of proposed rulemaking under 5 U.S.C. 553 or any other law. A copy of this final rule has been submitted to the Administrator of the Small Business Administration for comment on the impact of such regulation on small business, pursuant to 26 U.S.C. 7805(f).

Administrative Procedure Act

Because this final rule merely adopts existing IRS procedural regulations relating to claims for refund, offers in compromise, and enforced collection of firearms and ammunition excise taxes, it is hereby found to be unnecessary to issue this Treasury decision with notice and public procedure under 5 U.S.C. 533(b) or subject to the effective date limitation in 5 U.S.C. 553(d).

Paperwork Reduction Act

This final rule does not affect any recordkeeping or reporting requirements.

Drafting Information

The principal author of this document is Tamara Light, ATF Specialist, Revenue Programs Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 70

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Excise taxes, Firearms and ammunition, Government employees, Law enforcement, Law enforcement officers, Penalties, Seizures and forfeitures, Surety bonds, Tobacco.

Authority and Issuance.

PART 70—PROCEDURE AND ADMINISTRATION

Part 70—Procedure and Administration, is amended as follows:

1. The authority citation for part 70 is revised to read as follows:

Authority: 5 U.S.C. 301 and 552; 26 U.S.C. 4181, 4182, 5146, 5203, 5207, 5275, 5367, 5415, 5504, 5555, 5684(a), 5741, 5761(b), 6020, 6021, 6064, 6102, 6155, 6159, 6201, 6203, 6204, 6301, 6303, 6311, 6313, 6314, 6321, 6323, 6325, 6326, 6331-6343, 6401-6404, 6407, 6416, 6423, 6501-6503, 6511, 6513, 6514, 6532, 6601, 6602, 6611, 6621, 6622, 6651, 6653, 6656, 6657, 6658, 6665, 6671, 6672, 6701, 6723, 6801, 6862, 6863, 6901, 7011, 7101, 7102, 7121, 7122, 7207, 7209, 7214, 7304, 7401, 7403, 7406, 7423, 7424, 7425, 7426, 7429, 7430, 7432, 7502, 7503, 7505, 7506, 7513, 7601-7606, 7608-7610, 7622, 7623, 7653, 7805.

2. Section 70.1(d) is revised to read as follows:

§ 70.1 General.

* * * * *

(d) Distilled spirits, wines, beer, tobacco products, cigarette papers and tubes, firearms, ammunition, and explosives.

3. Section 70.11 is amended by revising the definition for "Provisions of 26 U.S.C. enforced and administered by the Bureau" to read as follows:

§ 70.11 Meaning of terms.

* * * * *

Provisions of 26 U.S.C. enforced and administered by the Bureau. Sections 4181 and 4182 of the Internal Revenue Code of 1986 (the Code), as amended; subchapters F and G of chapter 32 of the Code, insofar as they relate to activities administered and enforced with respect to sections 4181 and 4182 of the Code; subtitle E of the Code; and subtitle F of the Code as it relates to any of the foregoing.

* * * * *

4. Section 70.21 is revised to read as follows:

§ 70.21 Canvass of regions for taxable persons and objects.

Each regional director (compliance) shall, to the extent deemed practicable, cause officers or employees under the regional director's supervision and control to proceed, from time to time, through the region and inquire after and concerning all persons therein who may be liable to pay any tax, imposed under provisions of 26 U.S.C. enforced and administered by the Bureau, and all persons owning or having the care and

management of any objects with respect to which such tax is imposed.

5. Section 70.22 is amended by revising paragraph (a) to read as follows:

§ 70.22 Examination of books and witnesses.

(a) *In general.* For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any tax imposed under provisions of 26 U.S.C. enforced and administered by the Bureau (including any interest, additional amount, addition to the tax, or civil penalty) or the liability at law or in equity of any transferee or fiduciary of any person in respect of any such tax, or collecting any such liability, any authorized officer or employee of the Bureau may examine any books, papers, records or other data which may be relevant or material to such inquiry; and take such testimony of the person concerned, under oath, as may be relevant to such inquiry.

* * * * *

6. Section 70.32 is revised to read as follows:

§ 70.32 Examination of records and objects.

Any officer of the Bureau may enter, during business hours, the premises of any regulated establishment for the purpose of inspecting and examining any records, articles, or other objects required to be kept by such establishment under 18 U.S.C. chapter 40 or 44, or provisions of 26 U.S.C. enforced and administered by the Bureau, or regulations issued pursuant thereto.

(68A Stat. 715, as amended, 903, 72 Stat. 1348, 1361, 1373, 1381, 1390, 1391, 1395, 82 Stat. 231, as amended, 84 Stat. 955; (26 U.S.C. 5741, 7606, 5146, 5207, 5275, 5367, 5415, 5504, 5555, 18 U.S.C. 923, 843))

7. Section 70.61 is amended by revising paragraph (a)(3) to read as follows:

§ 70.61 Payment by check or money order.

(a) * * *

(3) *Payment of tax on distilled spirits, wine, beer, tobacco products, pistols, revolvers, firearms (other than pistols and revolvers), shells and cartridges; proprietor in default.* Where a check or money order tendered in payment for taxes on distilled spirits, wine or beer products (imposed under Chapter 51 of the Internal Revenue Code), or tobacco products (imposed under chapter 52 of the Internal Revenue Code), or pistols, revolvers, firearms (other than pistols and revolvers), shells and cartridges (imposed under chapter 32 of the Internal Revenue Code) is not paid on presentment, or where a taxpayer is otherwise in default in payment of such taxes, any remittance for such taxes made during the period of such default, and until the regional director (compliance) finds that the revenue will not be jeopardized by the acceptance of personal checks, shall be in cash, or shall be in the form of a certified, cashier's, or treasurer's check, drawn on any bank or trust company incorporated under the laws of the United States, or under the laws of any State or possession of the United States, or a money order as described in paragraph (a)(1) of this section.

* * * * *

8. Section 70.131 is revised to read as follows:

§ 70.131 Conditions to allowance.

(a) For regulations under section 6416 of the Internal Revenue Code, see part 53 of this chapter, relating to manufacturers excise taxes on firearms and ammunition.

(b) For regulations under section 6423 of the Internal Revenue Code, see part 170 of this chapter, relating to distilled spirits, wine, and beer; and part 296 of this chapter, relating to tobacco products, and cigarette papers and tubes.

§ 70.131 [Amended]

9. The authority citation immediately following § 70.131 is revised to read as follows:

* * * * *

(26 U.S.C. 6416 and 6423)

10. Section 70.223 is amended by revising paragraph (b) to read as follows:

§ 70.223 Exceptions to general period of limitations on assessment and collection.

(a) * * *

(b) *Willful attempt to evade tax.* In the case of a willful attempt in any manner to defeat or evade any tax imposed by provisions of 26 U.S.C. enforced and administered by the Bureau, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

* * * * *

11. Part 70 is amended by revising the undesignated center heading immediately following section 70.438 to read as follows:

Provisions Relating to Firearms, Shells and Cartridges, and Explosives

12. Section 70.441 is amended by adding a new paragraph (f) to read as follows:

§ 70.441 Applicable laws.

* * * * *

(f) Chapter 32 of the Internal Revenue Code (26 U.S.C. 4181), imposes a tax upon the sale by the manufacturer, producer, or importer of pistols, revolvers, firearms (other than pistols and revolvers), and shells and cartridges.

13. Section 70.443 is revised to read as follows:

§ 70.443 Firearms and ammunition.

(a) *Commerce in firearms and ammunition.* (1) 27 CFR part 178 contains the regulations relative to:

(i) The licensing of importers and manufacturers of firearms and ammunition, collectors of firearms, and dealers in firearms,

(ii) The identification of firearms,

(iii) The acquisition and disposition of firearms and ammunition,

(iv) The records required to be kept by licensees, and

(v) The forfeiture and disposition of seized firearms and ammunition, under the provisions of title I of the Gun Control Act of 1968, as amended, and also

(vi) The restrictions regarding the receipt, possession, or transportation of firearms by certain persons.

(b) *Firearms and ammunition excise taxes.* (2) 27 CFR part 53 contains the regulations relative to:

(i) Payment of excise tax on the sale of pistols, revolvers, firearms (other than pistols and revolvers), shells and cartridges,

(ii) Establishing constructive sales price,

(iii) Registration for tax free sales,

(iv) Keeping of records and rendering of returns, and

(v) The exportation or use in further manufacture of tax-paid articles.

14. Section 70.448 is revised to read as follows:

§ 70.448 Claims.

(a) The procedures applicable to the filing of claims under chapter 53 of the Internal Revenue Code are set forth below:

(1) Claims for refund of the making and transfer taxes, and of occupational taxes, whether paid pursuant to assessment or voluntarily paid, and claims for redemption of "National Firearms Act" stamps, are prepared and filed in accordance with the procedures set forth in 27 CFR part 179.

(2) Claims for abatement of making and transfer taxes, and claims for abatement of occupational taxes and penalties erroneously assessed, are

prepared and filed in accordance with the procedures set forth in § 70.413(b).

(3) Claims may be reopened or amended in accordance with the provisions of § 70.414 (k) and (l).

(b) The procedures applicable to the filing of claims relating to the tax imposed by section 4181 of the Internal Revenue Code are set forth below:

(1) Claims for credit or refund of manufacturers taxes, whether paid pursuant to assessment of voluntarily paid, are prepared and filed in accordance with the procedures set forth in § 70.123 and 27 CFR 53.171 through 53.186. For regulations under section 6416 of the Internal Revenue Code, relating to conditions to allowance and other procedural requirements, see 27 CFR 53.172 through 53.186.

(2) Claims for abatement of manufacturers taxes are to be prepared and filed in accordance with § 70.125.

(3) Claims may be reopened or amended in accordance with the provisions of § 70.414 (k) and (l).

15. Section 70.449 is revised to read as follows:

§ 70.449 Offers in compromise.

The procedures in the case of offers in compromise of liabilities under 26 U.S.C. 4181 and chapter 53 are set forth in §§ 70.482 and 70.484.

16. Section 70.471 is amended by revising paragraph (a)(3) to read as follows:

§ 70.471 Rulings.

(a) * * *

(3) The taxes relating to machine guns, destructive devices, and certain other firearms imposed by chapter 53 of the Internal Revenue Code; the registration by importers and manufacturers of, and dealers in, such firearms; the registration of such firearms; the licensing of importers and manufacturers of, and dealers in, firearms and ammunition, and collectors of firearms and ammunition curios and relics under chapter 44 of title 18 of the United States Code; the licensing of manufacturers, importers, limited manufacturer of, and dealers in, explosives and issuance of permits for users of explosives under chapter 40 of title 18 of the United States Code; and registration of importers of, and permits to import, arms, ammunition, and implements of war, under section 38 of the Arms Export Control Act of 1976; and the taxes relating to pistols, revolvers, firearms (other than pistols and revolvers), shells and cartridges imposed by chapter 32 of the Internal Revenue Code, may request a ruling thereon by addressing a letter to the Director, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, to the Chief, Tax Processing Center, or to the regional director (compliance) of the ATF region in which the inquirer's business is located. Since a ruling can issue only from the Bureau Headquarters, any such request made to the Chief, Tax Processing Center or to the regional director (compliance) will be referred to the Director for reply unless the issues involved are clearly covered by currently effective rulings or come within the plain intent of the statutes or regulations.

* * * * *

17. Section 70.482 is amended by revising paragraph (d)(1) to read as follows:

§ 70.482 Offers in compromise of liabilities (other than forfeiture) under 26 U.S.C..

* * * * *

(d) *Procedure with respect to offers in compromise*—(1) *Submission of offers.* (i) Offers in compromise under this section shall be submitted on ATF Form 5640.1, along with any additional information required by the official authorized to accept or reject the offer. If the offer in compromise is based on inability to pay, the proponent must submit any financial statement required by such official.

(ii) The Associate Director (Compliance Operations) has the authority to accept or reject offers in compromise of civil liability (which do not exceed $1,000,000) and criminal liability arising under 26 U.S.C. 4181 and chapters 51, 52, and 53 in cases not subject to compromise by regional directors (compliance).

(iii) Each regional director (compliance) has the authority to accept or reject offers in compromise of:

(A) Tax liabilities arising from:

(*1*) The illegal production of untaxpaid distilled spirits, wines, or beer,

(*2*) The failure to file returns of, or to pay, occupational taxes with respect to distilled spirits, wines, beer, tobacco products, cigarette papers and tubes, or firearms,

(*3*) The failure to pay firearms making or transfer taxes; and

(B) Criminal liabilities of retail dealers in liquor arising from violations of the internal revenue laws relating to liquor, including the reuse or refilling of liquor bottles.

(iv) The Director accepts or rejects all other offers in compromise except those in compromise of liabilities listed in §§ 70.483 and 70.484 of this part.

(v) In civil cases involving liability of $500 or over and in criminal cases the functions of the General Counsel under 26 U.S.C. 7122(b) are performed by the Chief Counsel of the Bureau of Alcohol, Tobacco and Firearms.

(vi) The offer should generally be accompanied by a remittance representing the amount of the compromise offer or a deposit if the offer provides for future installment payments. When final action has been taken, the regional director (compliance), when applicable, and the proponent are notified of the acceptance or rejection of the offer.

* * * * *

Signed: June 25, 1992.

Daniel R. Black,

Acting Director.

Approved: August 10, 1992.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 92-21056 Filed 9-2-92; 8:45 am]

BILLING CODE 4810-31-M

Fiscal Service

31 CFR Part 204

RIN Number—1510-AA28

Responsibilities and Liabilities Under Letter of Credit—Treasury Financial Communications System (LOC-TFCS)

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Final rule; removal.

SUMMARY: The Financial Management Service is removing sections 204.1; 204.2; 204.3; 204.4; 204.5; 204.6. This action removes the Letter of Credit—Treasury Financial Communications System (LOC-TFCS) regulations from this Part. Part 204 is reserved.

Use of the funds transfer system described in this Part, known as LOC-TFCS, was discontinued as of December 1991, and is no longer available for use by Federal Program agencies, commercial banks, or the Federal Reserve System.

EFFECTIVE DATE: September 3, 1992.

FOR FURTHER INFORMATION CONTACT: Tom Maloney, Program Analyst 202-874-8901.

SUPPLEMENTARY INFORMATION: LOC-TFCS was an electronic funds transfer system which relied on the Federal Reserve Communications System (FRCS). This system allowed Federal agencies to delivery funds to recipient organization financial institutions under a Federal letter-of-credit arrangement. The Board of Governors of the Federal Reserve System announced in March 1988, that current communications protocols were being replaced with new protocols and existing protocols would

not be supported after January 1, 1990. Due to an impending change in Treasury computer systems, a decision was made not to incur the high cost of conversion necessary for the existing system to accept the new Federal Reserve communications protocol, and to phase out the LOC–TFCS system completely. Federal agencies were notified of this decision in January 1990. Interim arrangements between Treasury and the Federal Reserve allowed the system to continue in limited operation until December 1991.

It has been determined that this is not a major regulation as defined in E.O. 12291 and a regulatory impact analysis is not required. This determination was based on the reasoned conclusion that the removal of this regulation will not have an annual effect on the economy of $100 million or more; that there will be no major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions as a result of the regulation removal; and that there will be no significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets.

It is hereby certified that the removal of this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. Because alternative comparable means of funds transfer are available, no significant economic impact on small entities is envisioned.

Pursuant to 5 U.S.C. 553(b)(B), the Financial Management Service finds that notice and comment are unnecessary. The LOC–TFCS program was operated at the discretion of Treasury, and its use has already been discontinued. Public notice and comment, therefore, would serve no useful purpose.

Authority: 31 U.S.C. 321; 31 U.S.C. 3325; 31 U.S.C. 3332; 31 U.S.C. 6503.

List of Subjects in 31 CFR Part 204

Banks, banking, Electronic funds transfers.

PART 204—[REMOVED]

For the reasons set out in the preamble, the Financial Management Service is removing and reserving Part 204.

Russell D. Morris,
Commissioner.

[FR Doc. 92–21170 Filed 9–2–92; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP TAMPA Regulation 92–93]

Safety Zone Regulations; Headwaters of Crystal River in Kings Bay, Florida

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone for the headwaters of the Crystal River in Kings Bay, Florida. The zone is needed to protect boaters and their vessels from safety hazards associated with anticipated heavy boating traffic in this area during the Labor Day weekend. Vessels in the area are to proceed at "idle speed" during the holiday weekend.

EFFECTIVE DATES: This regulation becomes effective on Friday, September 4, 1992 at 6 p.m. Eastern Daylight Time (EDT). It terminates on Monday, September 7, 1992 at Midnight.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade L.J. Pearson, Coast Guard Marine Safety Office, Tampa, FL at (813) 228–2189.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is required to respond to potential hazards to the vessels involved.

Drafting Information

The drafters of this regulation are LTJG L.J. Pearson, project officer for the Captain of the Port, and LT J.M. Losego, project attorney, Seventh Coast Guard District Legal Office.

Discussion of Regulation

This regulation is required, because the Labor Day holiday weekend traditionally results in an increased amount of boating traffic in the headwaters of the Crystal River in Kings Bay, Florida. In order to decrease the hazard to boaters and their vessels, all boats transiting the zone must proceed at "idle speed." The entrance areas to the zone shall be marked with buoys indicating, "No wake—Idle Speed."

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulations

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new temporary section 165.T0793 is added to read as follows:

§ 165.T0793 Safety Zone: Headwaters of Crystal River in Kings Bay, Florida

(a) *Location:* The following area is a safety zone: the waters of Kings Bay and the connecting tributaries south and west of the points of land at Crystal Shores on the east and Magnolia Shores on the west wherein the Crystal River meets Kings Bay. Specifically, the northern boundary of the safety zone is formed by a line drawn from position 28–53–63 N, 82–36–29 W, to position 28–53–67 N, 82–35–92 W. The southern boundary is formed by a line drawn from position 28–53–13 N, 82–35–97 W, to position 28–53–10 N, 82–35–71 W. The eastern boundary is formed by a line drawn from position 28–53–67 N, 82–35–92 W, to position 28–53–10 N, 82–35–71 W. Finally, the western boundary is formed by a line drawn from position 28–53–63 N, 82–36–29 W, to position 28–53–13 N, 82–35–97 W.

(b) *Effective dates:* This regulation becomes effective on Friday, September 4, 1992, at 6 p.m. EDT. It terminates on Monday, September 7, 1992 at Midnight.

(c) *Regulations:* In accordance with the general regulations of § 165.23 of the this part, all vessels transiting in this zone must proceed at "idle speed."

Dated: August 18, 1992.

W.H. Fels,

Commander, U.S. Coast Guard, Alternate Captain of the Port, Tampa, Florida.

[FR Doc. 92-21234 Filed 9-2-92; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO13-1-5491; FRL-4157-7]

Approval and Promulgation of Air Quality Implementation Plans; Colorado; Greeley Carbon Monoxide Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action approves the revision to the Colorado Carbon Monoxide (CO) State Implementation Plan (SIP) for Greeley, Colorado. The Governor of Colorado submitted the SIP revision in a letter dated November 25, 1987, in response to an EPA finding that the Greeley CO SIP was inadequate as published in the **Federal Register** (52 FR 1908) on January 16, 1987. Additional information was received from the State in a letter dated February 25, 1988. EPA proposed to approve portions of this SIP revision on March 2, 1990 (55 FR 7503). No comments were received.

The major control strategies contained in the SIP revision are a motor vehicle inspection and maintenance program (AIR Program), the State oxygenated fuels program, and controls on woodburning stoves. However, no CO reduction credit is assumed for the woodburning stove controls.

At the time of this submittal, EPA had no legal basis to take action on an attainment demonstration as it showed attainment after 1987. Now, pursuant to Sections 186 and 187 of the 1990 Clean Air Act Amendments, the area is not required to submit an attainment demonstration. Therefore, EPA is fully approving the SIP and presumes that the existing SIP requirements, and any existing and future Federal requirements, will be sufficient to provide for attainment in this area.

EFFECTIVE DATE: This rule will become effective on October 5, 1992.

ADDRESSES: Copies of the State submittal are available for public inspection between 8 a.m. and 4 p.m., Monday through Friday, at the following offices:

Environmental Protection Agency, Region VIII, Air Programs Branch, Denver Place, Suite 500, 999 18th Street, Denver, CO 80202-2405

Colorado Department of Health, Air Pollution Control Division, 3773 Cherry Creek Drive, North, Ptarmigan Place, suite 300, Denver, CO 80209

Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Jeff Houk, Air Programs Branch, Environmental Protection Agency, Region VIII, Denver Place, suite 500, 999 18th Street, Denver, CO 80202-2405, (303) 293-1766.

SUPPLEMENTARY INFORMATION:

Background

The Greeley element of the Colorado CO SIP was originally approved on December 12, 1983 (48 FR 55284). The plan called for CO reduction measures to be implemented in the Greeley nonattainment area. This area, defined as the Greeley urbanized area, includes the cities of Greeley, Garden City, Rosedale, Evans, and La Salle. The plan was based upon emission reductions of 35% to be gained entirely from the Federal Motor Vehicle Control Program (FMVCP). A series of ongoing, local transportation control measures were included in the plan which would result in an additional 1% reduction. An inspection and maintenance (I/M) program was not required because the area had less than 200,000 total population and was expected to be in attainment by the end of 1987 without an I/M program. The SIP committed to attainment by December 31, 1987.

Since the approval of this SIP, Greeley has shown continuing violation of the CO NAAQS. Data indicate the following:

Year	2nd maximum 8 hour average concentration
1983	11.0 ppm.
1984	16.2 ppm (SIP Design Value).
1985	9.5 ppm.
1986	11.6 ppm.
1987	10.5 ppm.

In a report dated May 30, 1986, the Air Pollution Control Division (APCD) of the Colorado Department of Health (CDH) completed an analysis of Greeley's progress in attaining the CO NAAQS. In evaluating the available data for the 1986 report, the highest second maximum CO concentration over a three year period occurred in 1984. This CO concentration indicated that a 41% reduction in CO emissions was required to attain the standard (9 ppm). Calculations using mobile emission factors (MOBILE 3) indicated that the FMVCP would only result in a 35% CO reduction between 1983 and the end of 1987. Even with the additional transportation measures, the Greeley CO SIP would not have been capable of meeting the CO standard by December 31, 1987.

SIP Call

In a letter dated October 6, 1986, EPA advised the State that the Greeley area had shown an insufficient decline in CO levels to allow the area to attain the CO standard by 1987. An information notice of this SIP Call was published in the **Federal Register** (52 FR 1908) on January 16, 1987.

In a letter dated January 7, 1987, the Governor submitted a schedule for revising the Greeley element of the Colorado CO SIP. The schedule committed to an October 1987 deadline for submittal of the required SIP revision. EPA responded on January 27, 1987, approving the proposed schedule.

SIP Revision

In a letter dated November 25, 1987, the Governor submitted a revision to the Colorado SIP containing the CO attainment strategies for the Greeley nonattainment area. After initial review, the EPA found the SIP revision to be deficient in several areas. Of primary importance was the exclusion from the submittal of the relevant statute and regulation regarding the addition of Greeley into the State's AIR Program. A letter from EPA to CDH, dated February 17, 1988, informed the State of the SIP revision's deficiencies and set a schedule for the State to submit additional, necessary information to EPA. Additional information which addressed the deficiencies was submitted by CDH in a letter dated February 25, 1988. Concerning this amendment, the State determined that the revised submittal did not contain substantive changes and, therefore, did not require an additional public comment period.

The revised SIP, which was adopted and submitted to the AQCC by the Larimer-Weld Regional Council of Governments (LWRCOG) and the Cities of Greeley and Evans, contained the following authority and regulations:

1. Inclusion of HB 1192 in the Greeley SIP. HB 1192 amended the Colorado AIR Program to include the Greeley nonattainment area. Initially, the AIR Program should capture 85% of the VMT in the Greeley urbanized area; this covers all of the vehicles registered in

the Greeley (nonattainment) urbanized area which are subject to the program. However, should the CO standard be exceeded more than twice in any year after January 1, 1988, the program will automatically be expanded to include additional portions of Weld County (as of January 1, 1992, this had not occurred). Under the expanded program, virtually 100% of the VMT in the Greeley urbanized area would be captured by the AIR Program.

2. Inclusion of the AIR Program area (as described in HB 1192) in Weld County into the program area for Colorado Regulation No. 13 which established an oxygenated fuels program beginning January 1, 1988, in all CO nonattainment areas.

3. Colorado Phase 2 woodstove standards as described in Colorado Regulation No. 4, effective July, 1988.

The SIP also included analyses of, and conclusions behind, the control strategies listed in the SIP, as well as the local agency resolution of the appropriate government bodies supporting the Greeley area element of the SIP.

Justification for the three control strategies is demonstrated by analyzing the primary sources of CO emissions in the Greeley urbanized area. CDH evaluated the contribution each source made to CO emissions; the emission inventory is summarized below:

1984 (base yr.)	Mobile sources	Wood-burning	Point sources	Total
Tons/year	38,259	2581	31	40,871
Percent contribution	[illegible]	6.3	1	100.0

The only significant point source in 1984 was Natural Gas Associates in the City of Evans. This source emits approximately 23 tons/year of CO.

Due to the fact that over 99% of CO emissions come from the combination of mobile sources and woodburning, these two categories offer the greatest and most logical potential for reductions in CO emissions. Additionally, because the CO NAAQS is exceeded during the winter months, inclusion of the Greeley AIR Program area into the oxygenated fuels program (operated in winter months only) and implementation of woodstove Phase 2 standards (woodstoves are primarily used in cold winter months) are control measures which will have significant impact during the periods when the pollution problems are most severe.

Control Strategies

A. Mobile Sources

The primary reduction of CO emissions mandated by the SIP revision must logically come from mobile source emissions. The SIP calls for three control strategies to attain the necessary reduction. The control strategies are:

1. FMVCP,
2. the AIR Program, and
3. the Oxygenated Fuels Program.

Discussion of these strategies appears below.

1. FMVCP

The FMVCP requires vehicle manufacturers to certify that new vehicles meet federal vehicle emission standards. The program's effectiveness is based on the replacement of older vehicles in a fleet with newer vehicles that meet more stringent vehicle emission standards, resulting in an overall reduction of CO emissions. This strategy produces an 11% reduction in vehicle CO emissions (10% reduction in total CO emissions) in the Greeley area.

2. AIR Program

The AIR Program has operated in Colorado since January 1, 1982, and was significantly strengthened by revisions which took effect on July 1, 1987. The Colorado AIR Program was implemented in the Greeley urbanized area on January 1, 1988.

The AIR Program is a decentralized, computerized analyzer inspection program. All model years and all weight classes of gasoline, gasohol, and propane or dual-fueled vehicles are inspected (limited exemptions are available). An inspection for tampering of certain emission control system components is performed on 1975 and newer vehicles. All model year vehicles receive a tailpipe test for CO and hydrocarbon (HC) emissions and excessive exhaust dilution, and a visual inspection for visible smoke emissions. The program is registration enforced.

CDH maintains lead responsibility for AIR Program operations and oversight, and performs mechanic training, calibration gas naming, and data analysis functions. The Colorado Department of Revenue (DOR) is responsible for day-to-day operation of the program, including routine and covert audits of inspection stations, enforcement, and resolution of consumer complaints. Both CDH and DOR are involved in many other mobile source activities, directly and indirectly related to the AIR Program. Another section of DOR administers the State vehicle registration system. EPA approved the AIR Program regulations submitted with the Greeley SIP revision on March 12, 1990 (55 FR 9122). The State will be required to further revise the program when EPA issues new regulations for I/M programs later in 1992.

3. Oxygenated Fuels

The AQCC adopted Regulation No. 13 to mandate the sale of oxygenated fuels during the winter months along the Front Range. The oxygenated fuels program was in effect during the months of January and February, 1988, and was expanded in winter 1988–1989 to include the months of November and December. EPA approved Colorado's oxygenated fuels program in the **Federal Register** on March 12, 1990 (55 FR 9122). Under the Clean Air Act Amendments of 1990, the State must revise the program by November 15, 1992, to require an increased oxygen content in fuels sold in neighboring CO nonattainment areas. This requirement may lead to an increased oxygen content in fuels sold in the Greeley area as well.

B. Woodburning

The only non-vehicle significant source of CO emissions in the Greeley area is woodburning, which accounted for 6.3% of CO emissions during 1984. The control measure for woodburning represents an effort to ensure that new woodstoves sold in Colorado are cleaner burning/lower CO emitting than currently operated woodstoves. Colorado Regulation No. 4 (approved by EPA on April 10, 1986, at 51 FR 12321) regulates the sale of new woodstoves, prescribing that only woodstoves that emit particulate matter and CO below established maximum levels may be certified and sold in Colorado. Colorado's regulation regulates CO, where the federal regulation does not. EPA's New Source Performance Standards for woodstoves (promulgated at 53 FR 5860, February 26, 1988) also apply in Colorado.

The primary factor that drives increasing woodstove emissions is growth in the development of new housing units with woodstoves and fireplaces. Regulation No. 4 will ensure that new housing equipped with woodstoves will contain woodstoves which meet the State's requirements, thus significantly reducing the potential CO emissions generated by development growth in the Greeley area. However, the SIP does not claim credit for reducing existing woodburning CO emissions.

Effectiveness

The effectiveness of the above control strategies is demonstrated by observing the following CO data for Greeley:

Year	2nd maximum 8 hour average concentration
1988	9.2 ppm.
1989	7.3 ppm.
1990	7.1 ppm.
1991	7.8 ppm.

Greeley has shown a recent ability to meet the CO NAAQS.

Final Action

EPA is today approving the revision to the Colorado CO SIP for Greeley, Colorado, as submitted by the Governor in a letter dated November 25, 1987, with supplemental information received in a letter dated February 25, 1988. The SIP revision commits to attainment of the CO standard by 1992 (a commitment supported by existing air quality data) and maintenance of levels beneath the standard through at least 1995.

In a May 26, 1988, letter to the Governor, EPA issued a SIP Call to Colorado for deficiencies in its CO SIP. The May 1988 SIP Call referenced the October 6, 1986, call for a revised Greeley SIP, and stated that the State must continue to evaluate the area's nonattainment status. EPA finds the SIP revision to be consistent with the May 1988 SIP Call and subsequent Clean Air Act requirements. Pursuant to the Clean Air Act Amendments of 1990, this area is not required to submit an attainment demonstration. Therefore, EPA is fully approving the Greeley SIP and presumes that the existing SIP requirements, and any existing and future Federal requirements, will be sufficient to provide for attainment in this area.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Today's action makes final the action proposed in the **Federal Register** on March 2, 1990 (55 FR 7503). In addition, it serves to fully approve the Greeley element of the Colorado CO SIP. As noted elsewhere in this notice, EPA received no adverse public comments on the proposed action. As a direct result, the Regional Administrator has reclassified this action from Table 1 to Table 2 under the processing procedures established in 54 FR 2214, January 19, 1989. On January 6, 1989, the Office of Management and Budget (OMB) waived Tables 2 and 3 SIP revisions from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Tables 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709)

The Agency has reviewed this request for revision of the federally-approved SIP for conformance with the provision of the 1990 Amendments to the Clean Air Act enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment. Approval of this specific revision to the SIP does not indicate EPA approval of the SIP in its entirety.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from date of publication). This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of Colorado was approved by the Director of the Federal Register on July 1, 1980.

Dated: July 16, 1992.

James Scherer,

Acting Regional Administrator.

40 CFR part 52, subpart G, is amended as follows:

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671g.

2. Section 52.320 is amended by adding paragraph (c)(57) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(57) Revision to the State Implementation Plan for Carbon Monoxide: Greeley Element.

(i) Incorporation by reference.

(A) Letter and submittal dated November 25, 1987, from the Governor of Colorado to the EPA Region VIII Administrator, to revise the SIP to include the Greeley Element. The revision was adopted by the State on September 17, 1987.

[FR Doc. 92–21181 Filed 9–2–92; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[IL1-1-5044; FRL-4196-2]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: USEPA is approving revisions to the Illinois Sulfur Dioxide (SO_2) State Implementation Plan (SIP). Approval of these rules reinstates SO_2 emission limits for existing solid fuel fired sources in the Chicago and East St. Louis major metropolitan areas.

USEPA's action is based upon a revision request which was submitted by the State to satisfy the requirements of the Clean Air Act.

DATES: This action will be effective November 2, 1992 unless notice is received within 30 days that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the SIP revision request and USEPA's analysis are available for inspection at the following address: (It is recommended that you telephone Mary Onischak at (312) 353–5954, before visiting the Region 5 Office.) U.S. Environmental Protection Agency, Region 5, Air and Radiation Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Written comments should be sent to: J Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of today's revision to the Illinois SO_2 SIP is available for inspection at: U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mary Onischak, Regulation Development Branch, Regulation Development Section (AR–18J) U.S

Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 353–5954.

SUPPLEMENTARY INFORMATION:

I. Background/Summary of State Submittal

On March 13, 1985, the Illinois Environmental Protection Agency (IEPA) submitted amendments of 35 Illinois Administrative Code (35 IAC) 214 (sulfur limitations) to the United States Environmental Protection Agency (USEPA) as a revision to the Illinois Sulfur Dioxide (SO_2) State Implementation Plan (SIP). This SIP revision, which consists of 35 IAC sections 214.141 (in part), 214.201, and 214.202, governs SO_2 emissions from existing solid fuel fired combustion sources in the Chicago and East St. Louis major metropolitan areas. While these rules had been approved by USEPA on May 31, 1972 (37 FR 10862), SO_2 emission limits for these sources have not existed at the Federal level since September 27, 1978, when the Illinois Appellate Court vacated most of the federally approved rules in the SO_2 SIP on State procedural grounds [*Ashland Chemical Company* v. *PCB*, 64 Ill App 3d 169, 381 N.E. 2d 56 (3d Dist. 1978) and *Illinois State Chamber* v. *PCB*, 67 Ill App 3d 839, 384 N.E. 2d 922 (1st Dist. 1978)]. On July 12, 1979, USEPA issued Illinois a notice of SIP deficiency pursuant to Section 110(a)(2)(H) of the Clean Air Act because Illinois' lack of enforceable regulations constituted a deficiency in their SIP.

The March 13, 1985, submittal, intended to satisfy USEPA's notice of SIP deficiency, includes an SO_2 emission limit of 1.8 pounds SO_2 per million British Thermal Units (lb/MMBTU) for existing solid fuel fired combustion sources in the Chicago and East St. Louis areas (Section 214.141), an emission limit of 6.8 lb/MMBTU for sources in Kankakee and McHenry Counties [Section 214.141(a)], procedures for sources to petition the Illinois Pollution Control Board for alternate emission limits up to 6.8 lb/MMBTU (Section 214.201), and a prohibition on the use of dispersion techniques to support such relaxations (Section 214.202).

It should be noted that section 214.141 [formerly Illinois Rule 204(f)] was federally approved for the Peoria major metropolitan area on August 8, 1984 (49 FR 31687). Rulemaking on section 214.141(b) [formerly Illinois Rule 204(f)(2)] occurred on August 7, 1984 (49 FR 31413)

II. Discussion of the Rules

The first paragraph of section 214.141 limits the SO_2 emissions from solid fuel combustion sources in the Chicago and East St. Louis metropolitan areas to 1.8 lb/MMBTU. This merely reestablishes identical SO_2 emission limits to those previously federally approved in Rule 204(c)(1)(A). Section 214.141(a) relaxes the SO_2 emission limit for sources in Kankakee and McHenry Counties from the previously applicable 1.8 lb/MMBTU to 6.8 lb/MMBTU. IEPA supported this relaxation by submitting results from screening model analyses, which indicate that the combined impact of the sources which could take advantage of this rule change does not have the potential to violate the SO_2 National Ambient Air Quality Standards (NAAQS). The remaining portions of this Section (subsections (b), (c), and (d)) apply only to the Peoria area, and are therefore not included in today's action.

Section 214.201 allows sources to petition the Illinois Pollution Control Board for an alternate SO_2 emission rate up to 6.8 lb/MMBTU, provided that the alternate emission rate will not cause or contribute to a violation of the SO_2 NAAQS. This section is approvable because it requires that alternative emission standards be incorporated as a permit condition in the subject sources' operating permit. In a recent Final Rule, USEPA approved Illinois' operating permit program for the purpose of issuing federally enforceable operating permits. Approval of the operating permit program was granted without prior proposal and is subject to withdrawal if notice is received within 30 days of publication that someone wishes to submit adverse comments on USEPA's approval. USEPA is approving section 214.201 today because USEPA has approved the State's operating permit program. If USEPA withdraws its approval of the State's operating permit program, it will also withdraw its approval of the SO_2 rules which are the subject of today's rulemaking. If today's rulemaking is withdrawn, it will be held in abeyance until completion of rulemaking on the State's operating permit program.

Section 214.202 prohibits sources from using dispersion enhancement techniques to support requests for alternate SO_2 emission limits under Section 214.201. This section is approvable because it defines dispersion enhancement techniques to be consistent with Section 123 of the Clean Air Act and regulations promulgated thereunder.

III. Subject Sources

It should be noted that during the State rulemaking process, Illinois granted site-specific exemptions from the SO_2 emission limits of section 214.141 to four facilities. Illinois has set forth a site-specific SO_2 emission limit for the Village of Winnetka Power Plant in 35 IAC Section 214.521. Site-specific SIP revisions which set emission limits for CPC International in Argo, Olin Corporation in Joliet, and Stauffer Chemical Company in Chicago Heights are currently under development. The rules contained in the March 13, 1985, submittal apply to all existing solid fuel fired combustion sources in the Chicago and East St. Louis areas except the Village of Winnetka Power Plant, CPC International, Olin Corporation, and Stauffer Chemical Company. USEPA will rulemake on the emission limitations for these sources at a later date.

IV. Modeling Issues

USEPA policy states that a dispersion modeling study predicting NAAQS attainment is not necessary when new rules equal or tighten approved emission limits. Section 214.141 merely reinstates SO_2 emission limits previously approved by USEPA, and effectively tightens the federal regulation of solid fuel fired combustion sources in Chicago and East St. Louis, which have not been subject to federally enforceable SO_2 emission limits since September 27, 1978. Therefore, USEPA does not require that a modeled attainment demonstration be provided by the State in support of the emission limits in section 214.141. Illinois had submitted air quality analyses for the Chicago and St. Louis metropolitan areas in the March 13, 1985, submittal. Although the models predicted some violations of the SO_2 NAAQS, the sources subject to the emission limits in the March 13, 1985, submittal clearly do not cause or substantially contribute to the predicted NAAQS violations. The culpable sources include process and liquid fuel combustion sources of SO_2, which are subject to emission limits currently under review by USEPA.

The emission limits contained in section 214.141(a) for Kankakee and McHenry Counties, however, are required to be supported by a modeled attainment demonstration. Illinois has provided USEPA with acceptable modeling data to support section 214.141(a).

V. Enforceability Issues

When this rule submittal was received, Illinois' compliance test

methods (Section 214.101), which are coupled with the emission limits in the March 13, 1985, submittal, were not consistent with federal policy requirements intended to protect the short-term SO_2 NAAQS. Illinois was informed of the deficiencies in the compliance methodology and was asked to correct them. On February 8, 1991, Illinois submitted SO_2 compliance measurement methodology revisions to USEPA. USEPA approved the revisions on June 26, 1992 (57 FR 28617). The revisions have corrected the deficiencies identified by USEPA in 1985.

On June 12, 1991, USEPA compiled a list of enforcement deficiencies in SO_2 plans nationwide. This list is known as the Yellow Book. Illinois received a copy of the Yellow Book on June 28, 1991. USEPA plans to correct these deficiencies through a nationwide effort coordinated by Headquarters. The March 13, 1985, submittal contains enforcement deficiencies which had not been identified in 1985. Those deficiencies have been addressed within the Yellow Book rule correction effort.

In view of the fact that the Yellow Book enforcement deficiencies had not been identified as grounds for disapproval when these rules were originally submitted, USEPA is approving the March 13, 1985, rules under the grandfathering policy, with the provision that the enforcement deficiencies identified will be addressed at a later date. This submittal meets the requirements for grandfathering described in the June 6, 1988, grandfathering guidance memorandum from the Director of the Office of Air Quality Planning and Standards to the Regional Air Division Directors.

VI. USEPA's Rulemaking Action

USEPA approves 35 IAC sections 214.141 (in part), 214.201, and 214.202 as revisions to the Illinois SO_2 SIP for the Chicago and St. Louis (Illinois) major metropolitan areas. Approval of these rules satisfies USEPA's notice of SIP deficiency of July 12, 1979. Approval of section 214.141 (in part) will restore federal enforceability to the previously approved 1.8 lb/MMBTU SO_2 emission limits. Modeling analyses which demonstrate that the 6.8 lb/MMBTU limit for two industrial boiler sources in Kankakee County will not jeopardize the SO_2 NAAQS support the approval of section 214.141(a). The approval of Section 214.201 is contingent on USEPA's granting approval of the State's operating permit program for the purpose of issuing federally enforceable operating permits. If USEPA withdraws its approval of the operating permit program it will also withdraw its approval of these SO_2 rules for Chicago and East St. Louis. Section 214.202 is consistent with USEPA's Good Engineering Practice stack height regulations and with 40 CFR 51.100(hh).

Because USEPA considers today's action noncontroversial and routine, we are approving it today without prior proposal. The action will become effective on (60 days from the date of this notice). However, if we receive notice by (30 days from the date of this notice) that someone wishes to submit critical comments, then USEPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period. Further, as stated above, if USEPA withdraws its approval of Illinois' operating permit program it will also withdraw this approval.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table Two action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989, (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table Two and Three SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years.

Under 5 U.S.C. 605(b), the Administrator certifies that SIP approvals under sections 107, 110, and 172 of the Clean Air Act will not have a significant economic impact on a substantial number of small entities. SIP approvals (or redesignations) do not create any new requirements but simply approve requirements that are already State law. SIP approvals (or redesignations), therefore, do not add any additional requirements for small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis for a SIP approval would constitute Federal inquiry into the economic reasonableness of the State actions. The Clean Air Act forbids USEPA to base its actions concerning SIPs on such grounds.

The Agency has reviewed this request for revision of the federally approved State Implementation Plan for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from the date of publication). Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Sulfur oxides.

Note.—Incorporation by reference of the State Implementation Plan for the State of Illinois was approved by the Director of the Federal Register on July 1, 1982.

Dated: March 31, 1992.

Ralph Bauer,

Regional Administrator.

For the reasons set out in the preamble, chapter 1 of Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671(q).

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(87) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(87) On March 13, 1985, the State submitted revisions to its sulfur dioxide limitations.

(i) Incorporation by reference.

(A) Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter 1: Pollution Control Board, Part 214 Sulfur Limitations, Subpart C: Existing Solid Fuel Combustion Emission Sources, Section 214.141 Sources Located in Metropolitan Areas, through paragraph (a) only, effective March 28, 1983; Subpart F: Alternative Standards for

Sources Inside Metropolitan Areas, Section 214.201 Alternative Standards for Sources in Metropolitan Areas and Section 214.202 Dispersion Enhancement Techniques, effective March 28, 1983.

[FR Doc. 92-21182 Filed 9-2-92; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[TN 89-5544; FRL-4196-7]

Approval of State Implementation Plan for Knox County: Proposed Amendments for Miscellaneous Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving amendments to the Knox County portion of Tennessee's State Implementation Plan (SIP). On January 4, 1991, the State of Tennessee through the Department of Environment and Conservation submitted amendments to miscellaneous regulations on behalf of the Knox County Department of Air Pollution Control. The amendments being approved include several miscellaneous revisions to the Knox County portion of the Tennessee SIP. A brief discussion about each amendment and the correction is contained in the "Supplementary Information" section of this action.

EFFECTIVE DATE: This action will be effective November 2, 1992 unless notice is received within 30 days that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the State's submittal are available for review during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Region IV Air Programs Branch, Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia 30365

Tennessee Department of Environment and Conservation, Division of Air Pollution Control, Customs House, 4th Floor, 701 Broadway, Nashville, Tennessee 37243-1531

Knox County Department of Air Pollution Control, City/County Building, Suite 459, 400 Main Avenue, Knoxville, Tennessee 37902.

FOR FURTHER INFORMATION CONTACT: Andrew Fischer of the EPA Region IV Air Programs Branch at (404) 347-2864 and at the above address.

SUPPLEMENTARY INFORMATION: On January 4, 1991, the Knox County Department of Air Pollution Control, through the Tennessee Department of Conservation, submitted amendments to Knox County's regulations 25.2B, 29.1B, 17.4E, 18.1, 19.1 and 47.3C. These amendments were adopted by the Air Pollution Control Board on December 13, 1990. These amendments were submitted with the Volatile Organic Compound (VOC) deficiency corrections, which will be acted upon in a separate notice once supplemental information addressing all deficiencies is received by the Regional Office. The amendments addressed in this notice are as follows.

(1) Section 25.2B, "Applications Permit," is deleted. This section provided that in the event the requirement for a construction permit prior to the construction of a new source or the modification of an existing source created an undue hardship on the applicant, the applicant was able to request of the Director a waiver to proceed with the construction or modification prior to the issuance of the Construction Permit.

(2) Section 29.1B, "Appeals," is amended to include a provision allowing any other citizen of Knox County besides the applicant to appeal a ruling which may confirm, modify or reverse the Director's decision.

(3) Sections 17.4E, "Regulation of Visible Emissions," 18.1B, "Non-Process Emission Standards," 19.1B, "Process Emissions," and 47.3C, "Good Engineering Practice Stack Height Regulations Standards," are amended to include a provision allowing any air contaminant source and the Director, upon mutual agreement, to approve more restrictive emission limits, operating hours, process flow rates, or any other operating parameter. This agreement will be established as a binding limit which shall be stated as a special condition for any permit or order concerning the source and violation of which shall result in revocation of the issued permit.

(4) Sections 18.1, "Non-Process Emission Standards" and 19.1, "Process Emissions," are amended to include a provision which states that no person shall cause, suffer, allow, or permit non-process emissions in excess of the standard set forth in this section.

Final Action

The Agency has determined that the aforementioned changes are consistent with Agency policies. Therefore, EPA is today approving these amendments to the Knox County Portion of the Tennessee SIP. This action is being taken without prior proposal because the changes are noncontroversial and EPA anticipates no significant comments on them. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

If no adverse or critical comments are received by EPA under section 307(b)(1) of the Clean Air Act, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from the date of publication). Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule of action. This action may not be challenged later in proceedings to enforce its requirements [See section 307(b)(2) of the Clean Air Act 42 U.S.C. 7607(b)(2)].

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any State Implementation Plan. Each request for revision to the State Implementation Plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: August 5, 1992.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart RR—Tennessee

2. Section 52.2220 is amended by adding paragraph (c)(106) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(106) Amendments to the Knox County portion of Tennessee's SIP, submitted on January 4, 1991.

(i) Incorporation by reference.

(A) Amendments to Regulations 25.2B, 29.1B, 17.4E, 18.1, 19.1, 47.3C, effective December 13, 1990.

(ii) Other material.

(A) Letter of January 4, 1991, from the Tennessee Department of Health and Environment.

[FR Doc. 92–21183 Filed 9–2–92; 8:45 am]

BILLING CODE 6560-50-M

NATIONAL SCIENCE FOUNDATION

45 CFR Part 641

Environmental Assessment Procedures for Proposed National Science Foundation Actions in Antarctica

AGENCY: National Science Foundation.

ACTION: Final rule.

SUMMARY: This final rule institutes procedures for the National Science Foundation's implementation of Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, 44 FR 1957, as it applies to NSF's activities in Antarctica, and the environmental assessment requirements of the Protocol on Environmental Protection to the Antarctic Treaty and its related annexes (the "Protocol"), adopted by the fourth session of the Eleventh Special Antarctic Treaty Consultative Meeting (SCM XI) on October 4, 1991, and signed by the United States on that date. The procedures require environmental assessment of proposed U.S. Antarctic Program (USAP) actions so that responsible agency officials may consider the potential environmental effects of those proposed actions.

EFFECTIVE DATE: September 3, 1992.

FOR FURTHER INFORMATION CONTACT: Miriam Leder, Assistant General Counsel, National Science Foundation, 1800 G Street, NW., room 501, Washington, DC 20550; (202) 357–9435.

SUPPLEMENTARY INFORMATION: On March 2, 1992, the National Science Foundation (NSF) published proposed procedures for environmental assessment of USAP activities, and invited public comment on those procedures. 57 FR 7355 (March 2, 1992). NSF received written comments from six persons and organizations, including the U.S. Environmental Protection Agency (EPA), the President's Council on Environmental Quality (CEQ), and the Environmental Defense Fund (EDF). The commenters each addressed a variety of issues, and those comments, together with NSF's responses, are discussed below. For ease of reference, general comments are discussed first, and comments on specific regulatory provisions are discussed in the order in which those provisions appear in the rule.

General Comments

Consistency With Protocol

A few of the comments NSF received noted minor inconsistencies between the proposed regulations and the Protocol's environmental assessment provisions. The regulations have been revised to resolve those inconsistencies.

Some other comments proposed revisions to language and phrases that were taken verbatim from the Protocol. Those proposed revisions were not included in the final regulations.

Authority To Issue Regulations

EPA suggested that the regulations themselves include a provision describing NSF's legal authority for promulgating this Rule. The authority citation already states that NSF derives its authority from Executive Order 12114. Moreover, NSF does not believe it necessary to include an additional legal analysis in the regulations.

Applicability of NEPA

Throughout its comments, EDF points out inconsistencies between the proposed regulations, and the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321–4347, and CEQ's implementing regulations thereunder, 40 CFR § 1500 et seq. (the "CEQ regulations"). EDF believes that NEPA and the CEQ regulations apply to NSF's proposed Antarctic activities.

NSF disagrees with EDF's assertion that NEPA applies in Antarctica. In fact, the Federal District Court for the District of Columbia recently decided this issue, holding that NEPA does not apply in Antarctica. See *EDF* v. *Massey*, 772 F.Supp.1296 (D.D.C. 1991). As a result, while NSF's regulations basically adopt NEPA's approach to environmental assessment, they do not incorporate all of NEPA's requirements. Such incorporation is neither mandated by law, nor appropriate or desirable in all instances.

Where EDF's comments include substantive arguments for adopting the NEPA/CEQ regulations approach, NSF discusses those comments below. NSF does not, in every instance, address EDF's comments where EDF simply notes an inconsistency between NEPA and the proposed regulations.

Comments on Specific Regulatory Provisions

Section 641.10 Purpose

EDF commented that one purpose of NSF's regulations should be to fully involve the public in NSF's environmental decisionmaking. NSF's regulations do involve the public in environmental decisionmaking when a proposed action may have more than a minor or transitory impact on the Antarctic environment. They also apply, however, to proposed actions that will have less than minor or transitory impacts. NSF will involve the public in those cases if it deems such involvement appropriate on a case-by-case basis, but it will not necessarily involve the public in every instance. As a result, Section 641.10 was not revised to include EDF's suggested change.

Section 641.11 Policy

EDF commented that NSF should use all means (not just practicable means) to comply with the assessment requirements of the regulations, without regard to the availability of resources. NSF agrees that its general policy of conducting environmental assessments should not be limited by the availability of resources, and NSF has deleted that language from the final regulations.

Section 641.12 Applicability

EPA suggested promoting wider applicability of the regulations by including actions "subject to the control and responsibility" of NSF within the scope of the regulations. NSF agrees,

and has made this change to Section 641.12 and to Section 641.14(a).

Section 641.13 Right of Action

EDF believes that NSF's decisions should be subject to judicial review. However, E.O. 12114, which gives NSF the requisite authority to promulgate these regulations, expressly provides that the Executive Order does not create a private right of action. E.O. 12114, Section 3-1. NSF regulations are consistent with this provision.

Section 641.14 Definitions

Action—EDF commented on the differences between NSF's definition of the term *action* and the definition set forth in CEQ regulations. NSF has broadened its definition in response to EPA's comments on Section 641.12 to include all actions subject to NSF's control and responsibility, but does not feel that there is any substantive reason for using a definition that is identical to the one used in the CEQ regulations.

Comprehensive Environmental Evaluation—EPA and CEQ both suggested that comments received on draft CEEs be included as components of the final CEEs. NSF agrees, and has revised its regulations accordingly.

Environmental Action Memorandum—EPA recommended clarifying this definition by stating that an EAM is prepared when the responsible official determines that a proposed action will have less than a minor or transitory impact. NSF has done so in the final regulations.

Environmental Review—EPA suggested expanding this definition to include public and other external review and comment. NSF has made this change to the final regulations.

Section 641.15 Preliminary Environmental Review

EDF believes that Section 641.15 essentially authorizes the responsible official to categorically exclude particular actions from required assessment procedures, without any public review or oversight. It is not clear how EDF reaches this conclusion. Categorical exclusions dispense with assessment requirements for particular categories of actions, while Section 641.15 requires the responsible official to look at each proposed agency action individually to determine whether it requires the preparation of an environmental document. Neither NEPA nor CEQ regulations requires an agency to prepare an assessment for every possible action undertaken by the agency. Such a requirement would make no sense. The responsible official must give initial consideration to the scope of the activity and to the probability of environmental impacts in determining whether or not to prepare an environmental document.

Section 641.16(a)

CEQ and EPA both found the criteria for determining when to prepare an environmental document to be confusing and, in some cases, inappropriate. EPA suggested the provisions of Article 3(2) of the Protocol might provide useful criteria for making this determination. NSF agrees, and has included these criteria in the final regulations.

Section 641.16(b) Prior Assessments

CEQ and EPA both recommended adopting standards for determining when an environmental document prepared for one action will allow NSF to forego the preparation of a new environmental document for a different, similar proposed action. NSF agrees, and has included standards suggested by EPA in the final regulations (i.e., that there be no site-specific or other impacts which would require further evaluation).

Section 641.16(c) Exclusions

CEQ, EPA and EDF are all concerned that some of the activities excluded from the assessment requirements were too broadly stated in the proposed regulations. For example, all three commenters raised questions about the scope of the "small scale detonations of explosives" exclusion. EPA also stated that the exclusion for the use of radioisotopes was too vague, and an individual commenter suggested clarifications to Section 641.16(c)(1)(i). EPA further stated that NSF should provide some documentation to support the exclusions.

NSF agrees that qualifications to some of the proposed rule's exclusions are appropriate, and has included qualifications in the final regulations. NSF does not believe, however, that specific documentation supporting these general exclusionary categories is necessary.

Section 641.16(d) Coordination With Other Committees, Offices and Agencies

Both CEQ and EPA suggested that NSF consult with other agencies as soon as feasible when it intends to prepare an environmental document. NSF agrees with this suggestion, and has revised its regulations accordingly.

EPA also suggested that the responsible official routinely consult with the inter-agency Antarctic Policy Working Group (APWG) to identify and, as appropriate, solicit the participation of other sources of relevant knowledge and expertise. NSF's practice has been to inform the APWG when it is preparing CEEs, and it intends to continue to do so in the future. However, NSF does not believe it necessary to mandate such consultation in its regulations.

Section 641.16(f) Obligation of Funds

EDF pointed out the inconsistency between the obligation of funds provision in NSF's regulations, and the CEQ regulation requirement that agencies not commit resources prejudicing selection of alternatives before making final decisions. EDF believes that NSF's provision "flies in the face of NEPA's most fundamental requirement—that an agency "evaluate the environmental effects of its action at the point of commitment * * * prior to a decision * * *" These comments are inapposite.

As described in the regulation, logistic constraints can make it impossible to complete an environmental review before funds must be committed. Generally, antarctic activities must be planned at least eighteen months in advance, particularly in light of the fact that a supply ship arrives at McMurdo only once each year. It is sometimes necessary to purchase supplies before an environmental review can be completed, or forego the option of using those supplies for an entire year. Given this practical reality, and the regulations' requirement that implementation of the proposed action in Antarctica be modified or canceled if the completed environmental review indicates that modifications or cancellation is warranted, NSF does not believe that this provision circumvents the purpose of these regulations.

CEQ commented that the term *logistic constraints*, as used in the proposed regulations, is too vague. The final regulations have clarified what is meant by the use of that term.

Section 641.17 Initial Environmental Evaluation

EDF argued that NSF's regulations do not require either a discussion of impacts of alternatives to a proposed action, or the preparation of a "Finding of No Significant Impact" for any action which NSF concludes will not require an environmental impact statement (EIS), as required by the CEQ regulations. EDF also stated that the regulations do not provide for a 30-day review period for decisions not to prepare an EIS. EDF fails to recognize, however, that these regulations are designed to implement the provision of Executive Order 12114 and the assessment requirements of the

Protocol on Environmental Protection to the Antarctic Treaty, not NEPA. They fully accomplish this purpose.

CEQ suggested that NSF designate a point of contact from whom the public can request the information described in § 641.17(c). The final regulations designate the Environmental Officer, Division of Polar Programs, as the point of contact.

Section 641.18(a) Scoping

EDF believes that NSF should publish notice of its intent to prepare a CEE in the Federal Register, and should invite "interested persons" to participate in the scoping process. NSF agrees, and has revised the final regulations accordingly.

Section 641.18(c) Circulation of Draft CEE

This provision requires NSF to provide the State Department with draft CEEs for circulation to the Parties to the Protocol and to organizations or committees established pursuant to the Protocol or the Treaty. EPA suggested that it might be advisable for the APWG to review the draft CEE before it is circulated. While NSF agrees that this might be appropriate in some cases, NSF believes that decision should be made by the State Department on a case-by-case basis.

Section 641.18(d) Final CEE

EPA suggested that notice be given of the availability of final CEEs, and CEQ and EDF suggested that persons who commented on the draft CEE should receive copies of the final CEE, without having to request them. NSF has modified the regulations to require notice of the availability of final CEEs. NSF intends to continue its practice of providing persons who commented on the draft CEE with copies of the final CEE. However, NSF does not believe it necessary to include this requirement in the regulations.

EDF also believes that NSF should include in the final CEE, the full text of comments received on the draft (rather than summaries), unless the comments are exceptionally voluminous. EDF is concerned that summaries may lead to a distorted representation of public comments.

The Protocol expressly provides that final CEEs shall include or summarize comments received on the drafts, and NSF's regulations mirror this requirement. If summaries of comments are included in a final CEE, NSF will not distort the meaning or intent of those comments. Moreover, the full text of those comments will be available to the public under the Freedom of Information Act.

Section 641.18(e) Implementation of Proposed Actions

EDF pointed out that the CEQ regulations require the preparation of a record of decision while NSF's regulations do not. Again, EDF fails to recognize that NSF's regulations are not designed to duplicate NEPA's implementing regulations, which do not apply to Antarctic activities. Rather they implement the provisions of the Executive Order and the Protocol, and are fully consistent with those authorities.

Section 641.20 Notification of Availability of Environmental Documents and Other Information

In its comments, EDF described the CEQ regulations requirements on notice and availability of documents and on the release of monitoring data, and notes where they differ from those set forth in NSF's regulations. In response to comments received on previous sections (e.g., 641.18 (a) and (d)), NSF revised its regulations to require notice of its intent to prepare a CEE and of the availability of draft and final CEEs. Since NSF wishes to encourage public involvement in the preparation of all CEEs, it is important to provide public notice in these instances. However, where public involvement is not required (i.e., in the preparation of EAMs and IEEs), NSF does not believe that public notice is always necessary.

EDF also commented that the regulations' provision on availability of monitoring data is inconsistent with the Freedom of Information Act ("FOIA"). NSF does not agree. The regulations include the Protocol's requirement on public availability of monitoring data. To the extent FOIA requires additional disclosure, NSF will, of course, comply.

Section 641.21 Monitoring

An individual commenter suggested that sites with comparable environmental characteristics should be identified to serve as control areas for assessing minor or transitory impacts. NSF is likely to consider establishing controls in some cases, but does not believe it appropriate to include a requirement to that effect in the regulations.

Section 641.22 Cases of Emergency

EDF commented on the difference between requirements set forth in the CEQ regulations, and the ones set forth in NSF's regulations. However, NSF's regulations are fully consistent with the Executive Order and the assessment provisions of the Protocol, and the CEQ regulations do not apply to activities conducted in Antarctica.

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation, and that this regulation will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 45 CFR Part 641

Antarctica, Environmental protection.

Pursuant to the authority granted by the Executive Order, NSF is adding a new part 641 to title 45 of the Code of Federal Regulations, as set forth below:

Dated: August 26, 1992.

Charles H. Herz,

General Counsel.

PART 641—ENVIRONMENTAL ASSESSMENT PROCEDURES FOR PROPOSED NATIONAL SCIENCE FOUNDATION ACTIONS IN ANTARCTICA

Sec.
641.10 Purpose.
641.11 Policy.
641.12 Applicability.
641.13 Right of action.
641.14 Definitions.
641.15 Preliminary environmental review.
641.16 Preparation of environmental documents, generally.
641.17 Initial environmental evaluation.
641.18 Comprehensive environmental evaluation.
641.19 Modification of environmental documents.
641.20 Notification of availability of environmental documents and other information.
641.21 Monitoring.
641.22 Cases of emergency.

Authority: E.O. 12114, 44 FR 1957, 3 CFR 1979 Comp., p. 356.

§ 641.10 Purpose.

These procedures are designed to elicit and evaluate information that will inform the National Science Foundation (NSF) of the potential environmental consequences of proposed U.S. Antarctic Program (USAP) actions, so that relevant environmental considerations are taken into account by decisionmakers before reaching final decisions on whether or how to proceed with proposed actions. These procedures are consistent with and implement the requirements of:

(a) Executive Order 12114 as it relates to NSF's Antarctic activities, and

(b) the environmental assessment provisions of the Protocol on Environmental Protection to the Antarctic Treaty.

§ 641.11 Policy.

It is the policy of NSF to use all practicable means, consistent with its authority, to ensure that potential environmental effects of actions undertaken by NSF in Antarctica, either independently or in cooperation with another country, are appropriately identified and considered during the decisionmaking process, and that appropriate environmental safeguards which would limit, mitigate or prevent adverse impacts on the Antarctic environment are identified.

§ 641.12 Applicability.

The requirements set forth in this part apply to all proposed projects, programs and actions authorized or approved by, or subject to the control and responsibility of NSF that may have an impact on the Antarctic environment.

§ 641.13 Right of action

The procedures set forth in this part establish internal procedures to be followed by NSF in considering the potential environmental effects of actions taken in Antarctica. Nothing in this part shall be construed to create a cause of action.

§ 641.14 Definitions.

As used in these procedures, the term:

(a) *Action* means a project, program or other activity, including the adoption of an official policy or formal plan, that is undertaken, authorized, adopted or approved by, or subject to the control or responsibility of NSF, the decommissioning of a physical plant or facility, and any change in the scope or intensity of a project, program or action.

(b) *Antarctica* means the area south of 60 degrees south latitude.

(c) *Antarctic environment* means the natural and physical environment of Antarctica and its dependent and associated ecosystems, but excludes social, economic and other environments.

(d) *Antarctic Treaty Consultative Meeting* means a meeting of the Parties to the Antarctic Treaty, held pursuant to Article IX(1) of the Treaty.

(e) *Comprehensive Environmental Evaluation* or *CEE* means a study of the reasonably foreseeable potential effects of a proposed action on the antarctic environment, prepared in accordance with the provisions of § 641.18, and includes all comments thereon received during the comment period described in § 641.18(c). A Comprehensive Environmental Evaluation shall constitute an environmental impact statement for purposes of the Executive Order.

(f) *Environmental Action Memorandum* means a document briefly describing a proposed action and its potential impacts, if any, on the antarctic environment prepared by the responsible official when he or she determines that a proposed action will have less than a minor or transitory impact on the Antarctic environment.

(g) *Environmental document* means an initial environmental evaluation or a comprehensive environmental evaluation.

(h) *Environmental review* means the environmental review required by the provisions of this part, and includes preliminary environmental review and preparation of an environmental document, and review by the parties to the Protocol, and committees established under the Protocol for that purpose, and the public, as applicable.

(i) *Executive Order* means Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, 44 FR 1957.

(j) *Initial Environmental Evaluation* or *IEE* means a study of the reasonably foreseeable potential effects of a proposed action on the antarctic environment, prepared in accordance with the provisions of § 641.17.

(k) *Preliminary environmental review* means the environmental review described in § 641.15(a).

(l) *Protocol* means the Protocol on Environmental Protection to the Antarctic Treaty, adopted on October 4, 1991, in Madrid, at the fourth session of the Eleventh Special Antarctic Treaty Consultative Meeting and signed by the United States on that date, and all annexes thereto.

(m) *Responsible official* means the Assistant Director for Geosciences of NSF, or any NSF employee(s) designated by the Assistant Director to be principally responsible for the preparation of environmental action memoranda or environmental documents under this part.

(n) *Treaty* means the Antarctic Treaty signed in Washington, D.C., on December 1, 1959, T.I.A.S No. 4780.

§ 641.15 Preliminary environmental review.

(a) The responsible official shall be notified early in the general planning process of actions proposed by USAP components that may have impacts on the Antarctic environment, so that environmental review may be integrated into the planning and decisionmaking processes. The responsible official shall conduct a preliminary environmental review of each action, including consideration of the potential direct and reasonably foreseeable indirect effects of a proposed action on the Antarctic environment.

(b) If, on the basis of the preliminary environmental review, the responsible official determines that an action will have less than a minor or transitory impact on the Antarctic environment, he will prepare an Environmental Action Memorandum briefly summarizing the environmental issues considered and conclusions drawn from the review. No further environmental review shall be necessary.

§ 641.16 Preparation of environmental documents, generally.

(a) *Preparation of an environmental document.* If the responsible official determines, either initially or on the basis of a preliminary environmental review, that a proposed action may have at least a minor or transitory impact on the Antarctic environment, he will prepare an environmental document in accordance with the provisions of this part. In making this determination, the responsible official should consider whether and to what degree the proposed action:

(1) Has the potential to adversely affect the Antarctic environment;

(2) May adversely affect climate and weather patterns;

(3) May adversely affect air or water quality;

(4) May affect atmospheric, terrestrial (including aquatic), glacial or marine environments;

(5) May detrimentally affect the distribution, abundance or productivity or species, or populations of species of fauna and flora;

(6) May further jeopardize endangered or threatened species or populations of such species;

(7) May degrade, or pose substantial risk to, areas of biological, scientific, historic, aesthetic or wilderness significance;

(8) Has highly uncertain environmental effects, or involves unique or unknown environmental risks; or

(9) Together with other actions, the effects of any one of which is individually insignificant, may have at least minor or transitory cumulative environmental effects.

(b) *Prior assessments.* Notwithstanding the provisions of § 641.16(a), if (1) An environmental document (including a generic or programmatic CEE) or its equivalent has been prepared for a particular type of action; (2) That document includes an analysis of potential environmental effects that are directly relevant to the potential effects of the proposed action,

taking in account factors such as the similarity of the actions and of the locations within which they take place; and (3) There are no potential site specific or other impacts that would require further evaluation, then a new environmental document need not be prepared. Instead, the responsible official shall prepare an Environmental Action Memorandum for the proposed action, cross-referencing the previously prepared environmental document.

(c) *Exclusions.* NSF has determined that the following actions will have less than a minor or transitory impact on the Antarctic environment, and are not subject to the procedures set forth in this part, except to the extent provided herein:

(1) Scientific research activities involving:

(i) Low volume collection of biological or geologic specimens, provided no more mammals or birds are taken than can normally be replaced by natural reproduction in the following season;

(ii) Small-scale detonation of explosives in connection with seismic research conducted in the continental interior or Antarctica where there will be no potential for impact on native flora and fauna;

(iii) Use of weather/research balloons, research rockets, and automatic weather stations that are to be retrieved; and

(iv) Use of radioisotopes, provided such use complies with applicable laws and regulations, and with NSF procedures for handling and disposing of radioisotopes.

(2) Interior remodelling and renovation of existing facilities.

Notwithstanding the foregoing, if information developed during the planning of any of the actions described in this paragraph (c) indicates the possibility that the action may have at least a minor or transitory impact on the Antarctic environment, the environmental effects of the action shall be reviewed to determine the need for the preparation of an environmental document.

(d) *Coordination with other committees, offices and federal agencies.* The responsible official shall notify NSF's Committee of Environmental Matters and the Office of the General Counsel when he intends to prepare an environmental document, and will coordinate preparation of the document with those entities. Responsibility for preparation of the environmental document rests primarily with the responsible official, but, as soon as is feasible, he should consult with and encourage the participation of other knowledgeable individuals within NSF, and, where appropriate, with other individuals, government agencies and entities with relevant knowledge and expertise.

(e) *Type of environmental document.* The type of environmental document required under this part depends on the nature of the proposed action under consideration. An IEE must be prepared for proposed actions which the responsible official concludes may have at least a minor or transitory impact on the Antarctic environment and for which a CEE is not prepared. A CEE must be prepared if an IEE indicates, or if it is otherwise determined, that a proposed action is likely to have more than a minor or transitory impact on the Antarctic environment.

(f) *Obligation of funds.* Because of logistic constraints (*i.e.*, constraints due to transportation difficulties, inaccessibility of Antarctic bases for much of the year, and the need to obtain items or materials requiring long lead times), it may not be possible to complete the environmental review of a proposed action before funds must be committed and/or disbursed. In such cases, funds for the proposed action may be committed and/or disbursed, provided:

(1) The appropriate environmental review is completed before implementation of the proposed action in Antarctica, and

(2) Implementation plans for the proposed action will be modified or canceled, if appropriate, in light of the completed environmental review (including public comments, if applicable).

§ 641.17 Initial environmental evaluation.

(a) *Contents.* An IEE shall contain sufficient detail to assess whether a proposed action may have more than a minor or transitory impact on the Antarctic environment, and shall include the following information:

(1) A description of the proposed action, including its purpose, location, duration and intensity; and

(2) Consideration of alternatives to the proposed action and any impacts that the proposed action may have on the Antarctic environment, including cumulative impacts in light of existing and known planned actions and existing information on such actions.

(b) *Further environmental review.* If an IEE indicates that a proposed action is likely to have no more than a minor or transitory impact on the Antarctic environment, no further environmental review of the action is necessary provided that appropriate procedures, which may include monitoring, are put in place to assess and verify the impact of the action.

(c) *Availability to public.* An annual list of IEEs and a description of any decisions taken in consequence thereof shall be provided to the Department of State for circulation to all Parties to the Protocol and to organizations or committees established pursuant to the Protocol or the Treaty, as required. The Environmental Officer, Division of Polar Programs, shall also make the list and copies of final IEEs available to the public upon request.

§ 641.18 Comprehensive environmental evaluation.

(a) *Scoping.* If it is determined that a CEE will be prepared, the responsible official shall publish a notice of intent to prepare a CEE in the **Federal Register**, inviting interested persons and government agencies to participate in the process of identifying significant issues relating to the proposed action and determining the scope of the issues to be addressed in the CEE.

(b) *Contents of CEE.* A CEE shall be a concise and analytical document, prepared in accordance with the range of relevant issues identified in the scoping process. It shall contain sufficient information to permit informed consideration of the reasonably foreseeable potential environmental effects of a proposed action and possible alternatives to that proposed action. Such information shall include the following:

(1) A description of the proposed action including its purpose, location, duration and intensity;

(2) A description of the initial baseline environmental state with which predicted changes are to be compared, and a prediction of the future environmental state in the absence of the proposed action;

(3) A description of the methods and data used to forecast the potential impacts of the proposed action;

(4) An estimate of the nature, extent, duration and intensity of the likely direct potential impacts of the proposed action;

(5) A consideration of the potential indirect or second order impacts from the proposed action;

(6) A consideration of potential cumulative impacts of the proposed action in light of existing activities and other known planned actions and available information on those actions;

(7) A description of possible alternatives to the proposed action, including the alternative of not proceeding, and the potential consequences of those alternatives, in sufficient detail to allow a clear basis

for choice among the alternatives and the proposed action;

(8) Identification of measures, including monitoring, that could be employed to minimize, mitigate or prevent potential impacts of the proposed action, detect unforeseen impacts, provide early warning of any adverse effects, and carry out prompt and effective response to accidents;

(9) Identification of unavoidable potential impacts of the proposed action;

(10) Consideration of the potential effects of the proposed action on the conduct of scientific research and on other existing uses and values;

(11) Identification of gaps in knowledge and uncertainties encountered in compiling the information required by this paragraph (b);

(12) A non-technical summary of the information included in the CEE; and

(13) The name and address of the person and/or organization which prepared the CEE, and the address to which comments thereon should be directed.

(c) *Circulation of draft CEE.* A draft of each CEE shall be provided to the Department of State for circulation to all Parties to the Protocol and to organizations or committees established pursuant to the Protocol or Treaty, as required by the Protocol, and shall be made publicly available. Notice of such public availability shall be published in the **Federal Register**. All such parties shall have a period of not less than ninety (90) days within which to review and comment upon the draft CEE.

(d) *Final CEE.* A final CEE shall address, and shall include or summarize, comments received on the draft CEE. The final CEE, notice of any decisions related thereto, and any evaluation of the significance of the predicted impacts in relation to the advantages of the proposed action shall be provided to the Department of State for circulation to all Parties to the Protocol, and shall be available to the public upon request, at least sixty (60) days prior to the commencement of the proposed activity in Antarctica. Notice of such public availability shall be published in the **Federal Register**.

(e) *Implementation of proposed action.* No final decision shall be taken to proceed in Antarctica with an action for which a final CEE is required until after the earlier of:

(1) The first Antarctic Treaty Consultative Meeting taking place at least one hundred and twenty days after circulation of the draft CEE, or

(2) Fifteen months following the circulation of the draft CEE.

§ 641.19 Modification of environmental documents.

The responsible official should revise or supplement an environmental document if there is a change in a proposed action that may have more than a minor or transitory effect on the antarctic environment, or if there are new circumstances or information that indicate the action may have impacts not anticipated in the original environmental document.

§ 641.20 Notification of the availability of environmental documents and other information.

The Environmental Officer, Division of Polar Programs, shall make Environmental Action Memoranda, environmental documents and final data obtained under § 641.21, available to the public upon request. However, notice of such availability need not be given, except as specifically provided in this part.

§ 641.21 Monitoring.

Scientific, analytic and/or reporting procedures shall be put in place, including appropriate monitoring of key environmental indicators, to assess and verify the potential environmental impacts of actions which are the subject of a CEE. All proposed actions for which an environmental document has been prepared shall include procedures designed to provide a regular and verifiable record of the actual impacts of those actions, in order, *inter alia*, to

(a) Enable assessments to be made of the extent to which such impacts are consistent with the Protocol; and

(b) Provide information useful for minimizing or mitigating those impacts, and, where appropriate, information on the need for suspension, cancellation or modification of the action.

§ 641.22 Cases of emergency.

This part shall not apply to actions taken in cases of emergency relating to the safety of human life or of ships, aircraft or equipment and facilities of high value, or the protection of the environment which require an action to be taken without completion of the environmental review required by this part. Notice of any such actions which would otherwise have required the preparation of a CEE shall be provided immediately to the Department of State for circulation to all Parties to the Protocol and to committees and organizations established pursuant to the Treaty or Protocol, as required. A description of the emergency action undertaken shall also be provided to the Department of State for appropriate circulation within ninety days of the action.

Vicki L. De Hullu,

Legal Office Administrator.

[FR Doc. 92-21023 Filed 9-2-92; 8:45 am]

BILLING CODE 7555-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-580; RM-6977, RM-7177, and RM-7446]

FM Radio Broadcasting Services; Elkins, West Virginia, Mountain Lake Park and Westernport, Maryland

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On reconsideration, the Commission grants the request of Southern Highlands, Inc., licensee of Station WKHJ, Channel 255A, Mountain Lake Park, Maryland, to substitute Channel 283A rather than Channel 239A, allotted in that community in the Report and Order, 56 FR 52478, published October 21, 1991, and to modify the license of Station WKHJ accordingly. The Commission also substitutes Channel 266A, rather than Channel 283A, at Westernport, Maryland for Station WWPN (FM), and modifies Station WWPN(FM)'s license accordingly. The Commission also denies Southern Highlands' alternative request on reconsideration to substitute Channel 255B1 to Mountain Lake Park in lieu of Channel 255A. With this action, the proceeding is terminated. See **SUPPLEMENTARY INFORMATION,** *supra.*

EFFECTIVE DATES: October 13, 1992.

FOR FURTHER INFORMATION CONTACT: J. Bertron Withers, Jr., Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 89-580, adopted July 29, 1992 and released August 27, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in FCC Dockets Branch (Room 230), 1919 M Street, N.W., Washington DC. 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1990 M Street, N.W., Suite 640, Washington DC 20036.

Channel 283A can be allotted to Mountain Lake Park in compliance with the Commission's minimum distance

separation requirements using a site restricted to 8.2 kilometers (5.1 miles) west of Mountain Lake Park at coordinates North Latitude 39–24–37 and West Longitude 79–17–15. Channel 266A can be allotted at Westernport in compliance with the Commission's minimum distance separations requirements at coordinates North Latitude 39–29–12 and West Longitude 79–02–42.

List of Subjects in 47 CFR Part 73

Radio Broadcasting

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended].

2. Section 73.202(b), the Table of FM Allotments under Maryland, is amended by removing Channel 255A and adding Channel 283A at Mountain Lake Park and by removing Channel 224A and adding Channel 266A at Westernport.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy & Rules Division, Mass Media Bureau.

[FR Doc. 92–21161 Filed 9–2–92; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Parts 95 and 97

[DA 92–1098]

General Mobile Radio Service, Radio Control Radio Service, Citizens Band Radio Service, and Amateur Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action makes nonsubstantive changes in the General Mobile Radio Service Rules, the Radio Control Radio Service Rules, the Citizens Band Radio Service Rules, and the Amateur Service Rules. The rule amendments are necessary in order to delete obsolete dates, to revise mailing addresses, to reflect the current monetary forfeiture amounts for violations, and to make other editorial changes. The effect of the rule changes is to provide users with service rules that are accurate and current.

EFFECTIVE DATE: October 30, 1992.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Private Radio Bureau, Federal Communications Commission, Washington, DC 20554, (202) 632–4964.

SUPPLEMENTARY INFORMATION:

In the matter of Editorial Amendment of Part 95, Subparts A, C, and D of the Commission's Rules Concerning the General Mobile Radio Service, Radio Control Radio Service, and Citizens Band Radio Service, and of Part 97, Concerning the Amateur Radio Service.

Order

[DA 92–1098]

Adopted: August 7, 1992.
Released: August 20, 1992.

By the Chief, Private Radio Bureau:

1. By this action, we are editorially amending various rules in the radio services shown in the caption. The rule amendments are necessary in order to delete obsolete dates, to revise mailing addresses, to reflect the current monetary forfeiture amounts for repeated or willful violations of the Communications Act or of the Commission's Rules, and to make other necessary editorial changes.

2. Because the rule amendments adopted herein are nonsubstantive in nature, the notice and comment provisions of section 553 of the Administrative Procedure Act, 5 U.S.C. 553, need not be complied with. Authority for this action is contained in § 0.331(a)(1) of the Commission's Rules, 47 CFR 0.331(a)(1), and 47 U.S.C. 154(i) and 303(r).

3. Accordingly, Part 95, subparts A, C, and D, 47 CFR part 95, subparts A, C, and D, and part 97, 47 CFR part 97, are amended, effective October 30, 1992, as set forth in the appendix.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

List of Subjects

47 CFR Part 95

Penalties, Permissible communications, Radio.

47 CFR Part 97

Examinations, Licenses, Radio.

Rule Changes

A. Part 95 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 95 continues to read as follows:

Authority citation: Sections 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

2. Appendix A to part 95, subpart A, is amended by revising the last sentence in paragraph (d) to read as follows:

Appendix A to Part 95—Making a Control Station Power Test

* * * * *

(d) * * * The maximum transmitter output power permitted any GMRS station must not be exceeded (see § 95.135).

* * * * *

3. Section 95.207 is amended by revising the numbers "79.93" in paragraph (a)(2) to read "72.93", and by removing paragraph (a) (4) and (5).

4. Section 95.211 is amended by revising paragraph (b)(2) to read as follows:

§ 95.211 (R/C Rule 11) What communications may be transmitted?

* * * * *

(b) * * *

(1) * * *

(2) A sensor at a remote location turns on and/off an indicating device for the operator. (Refer to Diagram 2). Only Channels 26.995 to 27.255 MHz (see R/C Rule 7, § 95.207(a)(1)) may be used for this purpose. (A remote location means a place distant from the operator.)

* * * * *

5. Section 95.218 is amended by revising paragraph (a) to read as follows:

§ 95.218 (R/C Rule 18) What are the penalties for violating these rules?

(a) If the FCC finds that you have willfully or repeatedly violated the Communications Act or the FCC Rules, you may have to pay as much as $10,000 for each violation, up to a total of $75,000. (See Section 503(b) of the Communications Act.)

* * * * *

6. Section 95.419 is amended by revising the third sentence in paragraph (b) to read as follows:

§ 95.419 (CB Rule 19) May I operate my CB station transmitter by remote control?

* * * * *

(b) * * * Send your request and justification to FCC, 1270 Fairfield Road, Gettysburg, PA 17325–7245. * * *

* * * * *

7. Section 95.421 is amended by revising paragraph (a) to read as follows:

§ 95.421 (CB Rule 21) What are the penalties for violating these rules?

(a) If the FCC finds that you have willfully or repeatedly violated the Communications Act or the FCC Rules, you may have to pay as much as $10,000 for each violation, up to a total of $75,000. (See section 503(b) of the Communications Act.)

* * * * *

B. Part 97 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 97 contains to read as follows:

Authority citation: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

2. Section 97.17 is amended by revising the second sentence in paragraph (d) to read as follows:

§ 97.17 Application for new license.

* * * * *

(d) * * * The application must be submitted to the FCC, 1270 Fairfield Road, Gettysburg, PA 17325–7245.

* * * * *

3. Section 97.19 is amended by revising the last sentence in paragraph (b) to read as follows:

§ 97.19 Application for a renewed or modified license.

* * * * *

(b) * * * All other applications must be submitted to: FCC, 1270 Fairfield Road, Gettysburg, PA 17325–7245.

* * * * *

4. Section 97.27 is revised to read as follows:

§ 97.27 Replacement license.

Each license or permittee whose original document is lost, mutilated, or destroyed must request a replacement. The request must be made to: FCC, 1270 Fairfield Road, Gettysburg, PA 17325–7245. A statement of how the document was lost, mutilated, or destroyed must be attached to the request. A replacement license must bear the same expiration date as the license that it replaces.

5. Section 97.303 is amended by revising the word "amatuer" in paragraph (h) to read "amateur".

6. Section 97.513 is amended by revising paragraph (b) to read as follows:

§ 97.513 Novice Class operator license examination.

* * * * *

(b) Within 10 days of the administration of a successful examination for a Novice Class operator license, the administering VEs must submit the application to: FCC, 1270 Fairfield Road, Gettysburg, PA 17325–7245.

7. Section 97.519 is amended by revising the second sentence in paragraph (b) to read as follows:

§ 97.519 Coordinating examination sessions.

* * * * *

(b) * * * The coordinating VEC must screen and forward all applications for qualified examinees within 10 days of their receipt from the administering VEs to: FCC, 1270 Fairfield Road, Gettysburg, PA 17325–7245.

* * * * *

[FR Doc. 92–21162 Filed 9–2–92; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

Federal Acquisition Regulation; Superfund Tax

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Technical correction.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are correcting a misstatement in the December 21, 1990, **Federal Register** notice (55 FR 52782) for the final rule on allowability of the costs of the "Superfund Tax." The Supplementary Information section of the Background statement in the Superfund Tax final rule notice published at 55 FR 52782 is hereby corrected to read as follows: "The purpose of this rule is to revise the cost principle at FAR 31.205–41 to make the costs of the Environmental Tax (popularly known as the "Superfund Tax") allowable, as a matter of public policy.

EFFECTIVE DATE: September 3, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson, Office of Federal Acquisition Policy, GS Building, Washington, DC 20405, (202) 501–3221.

SUPPLEMENTARY INFORMATION: The FAC 90–3 change in Superfund Tax allowability (55 FR 52783) erroneously used the word "clarify" in explaining the purpose of the rule. However, the corresponding FAC introductory item (55 FR 52787) correctly stated that Federal Acquisition Regulation 31.205–41 was being "revised" to make Superfund Tax payments allowable.

Dated: August 26, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

[FR Doc. 92–21177 Filed 9–2–92; 8:45 am]

BILLING CODE 6820–34–M

Proposed Rules

Federal Register
Vol. 57, No. 172
Thursday, September 3, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

10 CFR Part 1023

Procedures Relating to Awards Under the Equal Access to Justice Act

AGENCY: Department of Energy.

ACTION: Proposed rule.

SUMMARY: The Equal Access to Justice Act, 5 U.S.C. 504, provides for the award of attorney fees and other expanses to parties who prevail over the Federal Government in certain administrative and court proceedings. These proposed rules, which reflect the changes in the law made by Public Law 99-80 and Public Law 99-509, establish procedures for the submission and consideration of applications for such awards where eligible parties have prevailed before the Energy Board of Contract Appeals on appeals from decisions of contracting officers pursuant to section 6 of the Contract Disputes Act of 1978, 41 U.S.C. 605, as provided in section 8 of that Act, 41 U.S.C. 607.

DATE: Comments must be received October 5, 1992.

ADDRESS: Interested persons may submit written comments to: E. Barclay Van Doren, Chairperson, Department of Energy, Board of Contract Appeals, Room 1006, Webb Building, 4040 North Fairfax Drive, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Stephen Lee, Department of Energy, Board of Contract Appeals, (703) 235-2700.

SUPPLEMENTARY INFORMATION: These proposed rules are based upon the Model Rules for Implementation of the Equal Access to Justice Act in Agency Proceedings issued by the Administrative Conference of the United States on May 6, 1986, and appearing at 1 CFR part 315. As indicated below, several changes to the Model Rules are proposed. Additionally, the Model Rules contain a number of alternative provisions proposed specifically for Boards of Contract Appeals. Those alternatives appear in these proposed rules without significant modification. Further, the words "covered proceeding" are substituted for "adversary adjustication" where the latter appears in the Model Rules. Still further, provisions in the Model Rules relating to the payment of fees charged by agents are proposed for omission. The Board has no provision for agents to appear before it. A synopsis of other significant proposed changes follows. Except for § 1023.300, which is new, a cross reference to the Model Rules follows in parenthesis after the synopsis for each section.

Section 1023.300, "Definitions," would be added to include definitions of "Agency Counsel," "Board," "Covered Proceeding," and "Days."

Section 1023.301, "Purpose of these rules," would modify its counterpart in the Model Rules to reflect that these rules apply only to proceedings before the Energy Board of Contract Appeals brought pursuant to section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) as provided in section 8 of that Act (41 U.S.C. 607). (1 CFR 315.101.)

Section 1023.302, "When the Act applies," would utilize its counterpart in the Model Rules without significant changes. (1 CFR 315.102.)

Section 1023.303, "Proceedings covered," would modify its counterpart in the Model Rules to reflect that the rules apply only to applications filed pursuant to the Equal Access to Justice Act (EAJA) for fees and expenses associated with appeals from decisions of contracting officers made pursuant to section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) to the Board as provided in section 8 of that Act (41 U.S.C. 607). Subsection (b) of § 1023.303 is not applicable and would be marked "Reserved" in order to maintain paragraph designations consistent with the Model Rules. (1 CFR 315.103.)

Section 1023.304, "Eligibility of applicants," is proposed without significant changes. (1 CFR 315.104.)

Section 1023.305, "Standards for awards," would utilize its counterpart in the Model Rules without significant changes. (1 CFR 315.105.)

Section 1023.306, "Allowable fees and expenses," would utilize its counterpart in the Model Rules without significant changes. However, references to agents have been deleted as noted above. (1 CFR 315.106.)

Section 1023.308, "Awards against other agencies," would utilize its counterpart in the Model Rules without significant changes. (1 CFR 315.108.)

Section 1023.310, "Contents of application," would utilize its counterpart in the Model Rules without significant changes. (1 CFR 315.201.)

Section 1023.311, subsection (b) of "Net worth exhibit," would modify its counterpart in the Model Rules by deleting the reference to the Freedom of Information Act, (FOIA), 5 U.S.C. 552(b)(1)-(9). Specific references are unnecessary since requests by third parties for exhibits filed with the Board are processed in accordance with agency rules implementing the FOIA which appear at 10 CFR part 1004. (1 CFR 315.202.)

Section 1023.312, "Documentation of fees and expenses," would utilize its counterpart in the Model Rules without significant changes. (1 CFR 315.203.)

Section 1023.313, "When an application may be filed," would modify its counterpart in the Model Rules to avoid unnecessary fragmentation of EAJA award proceedings. Additionally, the reference to "review" is proposed for deletion since there is no provision for administrative review of Board decisions as distinguished from appeals from those decisions to the Court of Appeals for the Federal Circuit as provided in section 8(g)(1) of the Contract Disputes Act of 1978 (41 U.S.C. 607(g)(1)). (1 CFR 315.204.)

Section 1023.320, "Filing and service of documents," would utilize its counterpart in the Model Rules without significant changes. (1 CFR 315.301.)

Section 1023.321, "Answer to application," would utilize its counterpart in the Model Rules without significant changes. (1 CFR 315.302.)

Section 1023.322, "Reply," would utilize its counterpart in the Model Rules without significant changes. (1 CFR 315.303.)

Section 1023.323, "Comments by other parties," would utilize its counterpart in the Model Rules without significant changes. (1 CFR 315.304.)

Section 1023.324, "Settlement," would utilize its counterpart in the Model Rules without significant changes. (1 CFR 315.305.)

Section 1023.325, "Further proceedings," would modify its counterpart in the Model Rules to reflect that the Appeal File and supplements filed pursuant to Rule 4 of the Board's Rules of Practice, 10 CFR part 1023, are

part of the administrative record. (1 CFR 315.306.)

Section 1023.326, "Decision," would rename its counterpart in the Model Rules "Board decision" but otherwise would follow the Model Rules without significant changes. (1 CFR 315.307.)

Section 1023.327, "Agency review," would rename its counterpart in the Model Rules "Reconsideration" and would modify it further to reflect the finality of Board decisions. (1 CFR 315.308.)

Section 1023.328, "Judicial review," would utilize its counterpart in the Model Rules without significant changes. (1 CFR 315.309.)

Section 1023.329, "Payment of award," would utilize its counterpart in the Model Rules without significant changes. (1 CFR 315.310.)

Several sections of the Model Rules have not been included.

Section 315.107 of the Model Rules, "Rulemaking on maximum rates for attorney fees," is not proposed for implementation. The EAJA, in 5 U.S.C. 504(b)(A)(ii), specifies that attorney fees "shall not be awarded in excess of $75 per hour unless the agency determines by regulation that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys * * * for the proceedings involved, justified a higher fee." The Department does not have sufficient data to support a determination that a higher fee is justified. Accordingly, § 1023.307 is marked "Reserved" in order to maintain paragraph designations consistent with the Model Rules.

Additionally, § 315.109 of the Model Rules, "Delegations of authority," is inapposite to the Board's functions under the Contract Disputes Act of 1978 and, consequently, has not been retained.

Review Under Executive Order 12291

These proposed rules have been reviewed under Executive Order 12291 and have been determined not to be a "major rule" because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States based industries to compete in domestic export markets.

Review Under the Paperwork Reduction Act

These proposed rules have been reviewed under the Paperwork Reduction Act, 44 U.S.C. 3501, and have been determined to be exempt from its requirements by virtue of 44 U.S.C. 3518(c)(1)(B), which provides that the Paperwork Reduction Act does not apply to the collection of information during the conduct of an administrative action involving an agency against specific individuals or entities.

Review Under the Regulatory Flexibility Act

These proposed rules have been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354) which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities, i.e., small businesses, small government jurisdictions. It has been determined that these proposed rules will not have a significant economic impact on a substantial number of small entities and that preparation of a regulatory flexibility analysis is not warranted.

Review Under the National Environmental Policy Act

These rules have been reviewed under the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*), Council of Environmental Quality guidelines (40 CFR parts 1500–1508), and the Department of Energy environmental guidelines (10 CFR part 1021), and have been determined not to represent a major federal action having a significant impact on the human environment. Therefore, no environmental impact statement has been prepared.

Review Under Executive Order 12612

Executive Order 12612 requires that regulations be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, or in the distribution of power among various levels of government. If there are sufficient substantial direct effects, the Executive Order requires the preparation of a federalism assessment to be used in decisions by senior policymakers in promulgating or implementing the regulation. These rules will not have a substantial direct effect on the traditional rights and prerogatives of States in relationship to the Federal Government. Therefore, the preparation of a federalism assessment is not required.

Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency subject to Executive Order 12291 to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards (whether they be engineering or performance standards), and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation: Specifies clearly any preemptive effect, effect on existing federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. The proposed rules would have no preemptive effect and would not have any effect on existing federal laws or regulations; the proposed rules would apply only to EAJA applications filed with the Board after the rules became final and, thus, would have no retroactive effect. DOE certifies that today's proposal meets the requirements of sections 2(a) and (b) of Executive Order 12778.

Review Under Equal Access to Justice Act, 5 U.S.C. 504(c)(1)

In accordance with the requirements of 5 U.S.C. 504(c)(1), the Department of Energy Board of Contract Appeals has consulted with the Office of the Chairman of the Administrative Conference of the United States concerning this rule.

Opportunity for Public Comment

These proposed rules have been reviewed under 501(c)(1) of the Department of Energy Organization Act (42 U.S.C. 7101, *et seq.*) and it has been determined that no substantial issue of fact or law exists and it is unlikely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses and therefore can be promulgated in accordance with 5 U.S.C. 553. Interested persons are invited to participate in this rulemaking by submitting data, views or arguments with respect to the proposed rules set forth in this Notice. Comments should be submitted to the address for the Energy Board of Contract Appeals which is given in the beginning of this Notice. All comments received on or before the date specified in the beginning of this Notice

and all other relevant information will be considered by the Board before taking final action on the proposed rules.

List of Subjects in 10 CFR Part 1023

Administrative practice and procedure, Government contracts, Government procurement.

Issued in Washington, DC, on August 27, 1992.

E. Barclay Van Doren,

Chairman, Board of Contract Appeals.

For the reasons set forth in the Preamble, the Department of Energy proposes to amend part 1023 of title 10 of the Code of Federal Regulations as follows:

PART 1023—CONTRACT APPEALS

1. A new subpart C is proposed to be added as set forth below:

Subpart C—Procedures Relating to Awards Under the Equal Access to Justice Act

General Provisions

Sec.
1023.300 Definitions.
1023.301 Purpose of these rules.
1023.302 When the Act applies.
1023.303 Proceedings covered.
1023.304 Eligibility of applicants.
1023.305 Standards for awards.
1023.306 Allowable fees and expenses.
1023.307 [Reserved]
1023.308 Awards against other agencies.

Information Required From Applicants

1023.310 Contents of application—overview.
1023.311 Net worth exhibit.
1023.312 Documentation of fees and expenses.
1023.313 When an application may be filed.

Procedures for Considering Applicants

1023.320 Filing and service of documents.
1023.321 Answer to application.
1023.322 Reply.
1023.323 Comments by other parties.
1023.324 Settlement.
1023.325 Further proceedings.
1023.326 Board decision.
1023.327 Reconsideration.
1023.328 Judicial review.
1023.329 Payment of award.

Subpart C—Procedures Relating to Awards Under the Equal Access to Justice Act

Authority: Sec. 644, Title VI, Pub. L. 95–91, 91 Stat. 599; 5 U.S.C. 504.

General Provisions

§ 1023.300 Definitions.

For purposes of these procedures:

Agency Counsel means the attorney representing the Department or other agency in a proceeding under this subpart.

Board means the Department of Energy Board of Contract Appeals.

Covered proceeding means an underlying proceeding as specified by paragraph (a) of § 1023.303.

Days means calendar days.

§ 1023.301 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504 (called "the Act" in this subpart), provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to covered proceedings. An eligible party may receive an award when it prevails over an agency, unless the agency's position was substantially justified or special circumstances make an award unjust. These procedures describe the parties eligible for awards and covered Board proceedings. They also explain how to apply for awards and the procedures and standards that the Board will use to make them.

§ 1023.302 When the Act applies.

The Act applies to any covered proceeding pending or commenced before the Board on or after August 5, 1985. It also applies to any such proceeding commenced before the Board on or after October 1, 1984, and finally disposed of before August 5, 1985, provided that an application for fees and expenses, as described in § 1023.310 of this subpart, has been filed with the Board within 30 days after August 5, 1985, and to any such proceeding pending on or commenced on or after October 1, 1981, in which an application for fees and other expenses was timely filed and was dismissed for lack of jurisdiction.

§ 1023.303 Proceedings covered.

(a) The Act applies to appeals from decisions of contracting officers made pursuant to section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) to the Board as provided in section 8 of that Act (41 U.S.C. 607).

(b) If a proceeding includes both matters covered by the Act and matters specifically excluded from coverage, any award made will include only fees and expenses related to covered issues.

§ 1023.304 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses under the Act, the applicant must be a party to the covered proceeding for which it seeks an award. The term "party" is defined in 5 U.S.C. 551(3). The applicant must show that it meets all conditions of eligibility set out in tis subpart.

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of not more than $2 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than $7 million, including both personal and business interests, and not more than 500 employees;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) A cooperative association as defined in 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees; and

(5) Any other partnership, corporation, association, unit of local government, or organization with a net worth of not more than $7 million and not more than 500 employees.

(c) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the applicant filed its appeal under 41 U.S.C. 606.

(d) An applicant who owns an unincorporated business will be considered as an "individual" rather than a "sole owner of an unincorporated business" if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests.

(e) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation or other entity that directly or indirectly controls or owns a majority of the voting shares or other interests of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this part, unless the Board determines that such treatment would be unjust and contrary to the purposes of the Act in light of the actua. relationship between the affiliated entities. In addition, the Board may determine that financial relationships of the applicant, other than those described in this paragraph, constitute special circumstances that would make an award unjust.

(g) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

§ 1023.305 Standards for awards.

(a) A prevailing applicant may receive an award for fees and expenses incurred in connection with a proceeding or in a significant and discrete substantive portion of the proceeding, unless the position of the agency over which the applicant has prevailed was substantially justified. The position of the agency includes, in addition to the position taken by the agency in the covered proceeding, the action or failure to act by the agency upon which the covered proceeding is based. The burden of proof that an award should not be made to an eligible prevailing applicant because the agency's position was substantially justified is on the agency counsel.

(b) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding or if special circumstances make the award sought unjust.

§ 1023.306 Allowable fees and expenses.

(a) Awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys or expert witnesses even if the services were made available without charge or at a reduced rate to the applicant.

(b) No award for the fee of an attorney under these rules may exceed $75 per hour. No award to compensate an expert witness may exceed the highest rate at which the respondent agency or agencies pay expert witnesses. However, an award may also include the reasonable expenses of the attorney or witness as a separate item, if the attorney or witness ordinarily charges clients separately for such expenses.

(c) In determining the reasonableness of the fee sought for an attorney or expert witness, the Board shall consider the following:

(1) If the attorney or witness is in private practice, his or her customary fees for similar services, or, if an employee of the applicant, the fully allocated costs of the services;

(2) The prevailing rate for similar services in the community in which the attorney or witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(5) Such other factors as may bear on the value of the services provided.

(d) The reasonable cost of any study, analysis, engineering report, test, project or similar matter prepared on behalf of a party may be awarded, to the extent that the charge for the services does not exceed the prevailing rate for similar services, and the study or other matter was necessary for preparation of applicant's case.

§ 1023.307 [Reserved]

§ 1023.308 Awards against other agencies.

If an applicant is entitled to an award because it prevails over another agency of the United States that participates in a proceeding before the Board and takes a position that is not substantially justified, the award or an appropriate portion of the award shall be made against that agency.

Information Required From Applicants

§ 1023.310 Contents of application—overview.

(a) An application for an award of fees and expenses under the Act shall identify the applicant and the proceeding for which an award is sought. The application shall show that the applicant has prevailed and identify the position of the agency or agencies that the applicant alleges was not substantially justified. Unless the applicant is an individual, the application shall also state the number of employees of the applicant and describe briefly the type and purpose of its organization or business.

(b) The application shall also include a statement that the applicant's net worth does not exceed $2 million (if an individual) or $7 million (for all other applicants, including their affiliates). The applicant shall attach a net worth exhibit that satisfies the requirements of § 1023.311. However, an applicant may omit this statement and forego the attachment of the net worth exhibit if:

(1) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(2) It states that it is a cooperative association as defined in 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)).

(c) The application shall state the amount of fees and expenses for which an award is sought. The applicant must document fees and expenses as required in § 1023.312.

(d) The application may also include any other matters that the applicant wishes the Board to consider in determining whether, and in what amount, an award should be made.

(e) The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true and correct.

§ 1023.311 Net worth exhibit.

(a) Each applicant, except a qualified tax-exempt organization or cooperative association, must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in § 1023.304(f) of this subpart) when the proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this part. The presiding administrative judge may require an applicant to file additional information to determine its eligibility for an award.

(b) Ordinarily, the net worth exhibit will be included in the public record of the proceeding. However, an applicant that objects to public disclosure of information in any portion of the exhibit may submit that portion directly to the presiding administrative judge in a sealed envelope labeled "Confidential Financial Information," accompanied by a motion for a protective order setting forth the grounds therefor. A protective order may be granted for good cause shown.

§ 1023.312 Documentation of fees and expenses.

The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test, project or similar matter, for which an award is sought. A separate, itemized statement shall be submitted for each professional firm or individual whose services are covered by the application. The statement should show the hours spent in connection with the Contract Disputes Act appeal by each individual, a description of the specific services performed, the rates at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The presiding administrative judge may require the applicant to provide vouchers, receipts, logs, or other substantiation for any fees or expenses claimed pursuant to § 1023.306 of this subpart.

§ 1023.313 When an application may be filed.

(a) An application may be filed whenever the applicant has prevailed in the proceeding, or, with permission of the Board for good cause shown, when the applicant has prevailed in a significant and discrete substantive portion of the proceeding, but in no case later than 30 days after the Board's final disposition of the proceeding.

(b) For purposes of paragraph (a) of this section, final disposition means the date on which a decision or order disposing of the merits of the proceeding or any other complete resolution of the proceeding, such as a settlement or voluntary dismissal, becomes final and unappealable.

(c) If reconsideration of a decision is sought as to which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy. When the United States appeals the underlying merits of a covered proceeding to a court, no decision on an application for fees and other expenses in connection with that proceeding shall be made until a final and unreviewable decision is rendered by the court on that appeal or until the underlying merits of the case have been finally determined pursuant to the appeal.

Procedures for Considering Applications

§ 1023.320 Filing and service of documents.

Any application for an award, or other pleading or document relating to an application, shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the underlying proceeding, except as provided in § 1023.311(b) for confidential financial information.

§ 1023.321 Answer to application.

(a) Within 30 days after service of an application, counsel representing the agency against which an award is sought may file an answer to the application. Unless agency counsel requests an extension of time for filing or files a statement of intent to negotiate under paragraph (b) of this section, failure to file an answer within the 30-day period may be treated as a consent to the award requested.

(b) If agency counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days. Further extensions may be granted by the presiding administrative judge upon request by agency counsel and the applicant.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of agency counsel's position. If the answer is based on any alleged facts not already in the record of the proceeding, agency counsel shall include with the answer either supporting affidavits or a request for further proceedings under 1023.325.

§ 1023.322 Reply.

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 1023.325.

§ 1023.323 Comments by other parties.

Any party to a proceeding other than the applicant and agency counsel may file comments on an application within 30 days after it is served or on an answer within 15 days after it is served. A commenting party may not participate further in proceedings on the application unless the Board determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

§ 1023.324 Settlement.

The applicant and agency counsel may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding or after the underlying proceeding has been concluded, in accordance with the agency's standard settlement procedure. If a prevailing party and agency counsel agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

§ 1023.325 Further proceedings.

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or agency counsel, or, on his or her own initiative, the presiding administrative judge may order further proceedings, such as an informal conference, oral argument, additional written submissions or, as to issues other than substantial justification (such as the applicant's eligibility or substantiation of fees and expenses), pertinent discovery or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible. Whether or not the position of the agency was substantially justified shall be determined on the basis of the administrative record as a whole, including the contracting officer Appeal File and supplements filed pursuant to Rule 4 of the Board's Rules of Practice, 10 CFR part 1023, which is made in the covered proceeding for which fees and other expenses are sought.

(b) A request that the presiding administrative judge order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

§ 1023.326 Board decision.

The Board shall issue its decision on the application as expeditiously as is practicable after completion of proceedings on the application. Whenever possible, the decision shall be made by the same administrative judge or panel that decided the contract appeal for which fees are sought. The decision shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the agency's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make the award unjust. If the applicant has sought an award against more than one agency, the decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reasons for the allocation made.

§ 1023.327 Reconsideration.

Either party may seek reconsideration of the decision on the fee application in accordance with 10 CFR 1023.20, Rule 27.

§ 1023.328 Judicial review.

Judicial review of a final Board decision on an application for an award may be sought as provided in 5 U.S.C. 504(c)(2).

§ 1023.329 Payment of award.

An applicant seeking payment of an award shall submit to agency counsel a copy of the Board's final decision granting the award, accompanied by a certification that the applicant will not seek review of the decision in the United States courts. Agency counsel will

forward the submission to the appropriate disbursing official. The agency will pay the amount awarded to the applicant within 60 days.

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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 509, 516, 528, 541, 543, 545, 552, 556, 558, 559, 561, 563, 563b, 563e, 567, 571, 579, and 580

[No. 92-352]

RIN 1550-AA60

Regulatory Review

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking; request for comment.

SUMMARY: The President announced on January 28, 1992, a review of all Federal regulations and policies for the purpose of eliminating over-burdensome regulations that discourage economic growth. The Office of Thrift Supervision has reviewed its regulations and policies, heard testimony from industry officials and issued a request for public comment on our standards for savings associations. We propose today to modify or delete a number of regulations consistent with the President's program as a result of this review process.

DATES: Comments must be submitted on or before October 5, 1992.

ADDRESSES: Send comments to Director, Information Services Division, Public Affairs, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, Attention Docket No. [92-352]. These submissions may be hand delivered to 1700 G Street, NW. from 9 a.m. to 5 p.m. on business days; they may be sent by facsimile transmission to FAX Number (202) 906-7753 or (202) 906-7755. Submissions must be received by 5 p.m. on the day they are due in order to be considered by the OTS. Late-filed, misaddressed or misidentified submissions will not be considered in this rulemaking. Comments will be available for inspection at 1776 G Street NW., Street Level.

FOR FURTHER INFORMATION CONTACT: Deborah Kennedy, Project Manager, (202) 906-7324, Policy; Mary H. Gottlieb, Paralegal Supervisor, (202) 906-7135, Deborah Dakin, Assistant Chief Counsel, (202) 906-6445, or Karen Solomon, Deputy Chief Counsel, (202) 906-7240, Regulations & Legislation Division, Chief Counsel's Office, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: On January 28, 1992, the President announced a Regulatory Review Program for all Federal government agencies. The agencies were asked to "weed out unnecessary and burdensome government regulations, which impede economic growth." The Office of Thrift Supervision (OTS) has reviewed each of its regulatory programs and today is publishing a list of proposed changes conforming to the President's program.

A. Scope of this Rulemaking

This preamble will discuss changes we plan to make to OTS regulations at this time; other changes we anticipate making as a result of our review of regulations; and the comments OTS received in answer to our request for comment on all of our regulations, bulletins, procedures and policies.

Any proposed changes to OTS regulations must balance the benefits of striving to promote growth and reducing regulatory burden against the need to ensure a safe and sound thrift industry. In that light, we have reviewed each of our current and proposed regulations, looking, in particular, for regulations that are no longer necessary or are overly burdensome.

The staff identified a number of rules to delete or modify that fall within the guideliner of the President's program. While none of these changes alone will have a major impact on the industry, taken together these proposed changes will significantly reduce regulatory burden and clarify OTS regulatory requirements without compromising safety and soundness. The changes we are proposing today are described in Section B, below. They are in addition to the proposed and final rules that OTS has published since February 1992, which also meet the objectives of the President's program.

Earlier this year, OTS held public hearings and requested comments from the industry and the general public on any rule, bulletin or policy that may have a negative net effect on the economy. See 57 FR 5080 (Feb. 12, 1992). We received 58 comment letters and testimony from 19 savings associations, law firms and trade associations. The letters and testimony commented on almost every aspect of thrift operations and regulation.

The OTS staff review and public comments indicated several actions that OTS could take that do not specifically require regulation changes. These suggestions include reconsidering specifics of certain policies in light of the President's program, simplifying certain examination procedures and initiating projects to clarify complicated rules. The actions under consideration in response to these suggestions are described in section C, below.

We received comments on the entire spectrum of OTS regulations, bulletins, policies and procedures. Some comments dealt with specific regulations or bulletins and were considered along with initial staff recommendations. We are incorporating some of these comments into the changes we propose today; others will be incorporated into other rulemaking projects already underway.

Some of the comments were general in nature and did not lead to a specific regulation change but were nevertheless helpful in identifying areas for further attention. While we are proposing to adopt the suggestions that comport with the President's review program, a number of the suggestions are beyond the scope of this project. Other suggestions would remove restrictions necessary to insure that savings associations operate safely and, thus, are not included in our proposals. Specific comments are summarized in Section D; more general comments are described in Section E.

The staff review of OTS regulations identified a large number of regulations that could be deleted to eliminate duplication of statutory language, unnecessary definitions, or otherwise unnecessary language, but that would not substantially change the regulations. In general, these types of changes are not being proposed at this time. To do so could have delayed development of the more significant revisions being proposed today and might have caused unnecessary confusion.

We are, however, considering replacing specific regulations that set forth express and implied powers of Federal savings associations with a general regulation authorizing Federal savings associations to exercise: (1) All powers that are authorized by statute, and (2) all incidental powers convenient or useful to conducting the business of a savings association so long as such incidental powers are consistent with safety and soundness and the fiduciary responsibilities of the association's directors, managers and controlling persons. We request comment on whether the advantages of the flexibility afforded by such a change would outweigh any added uncertainty or confusion it might cause.

B. Changes Proposed in This Rulemaking

OTS today proposes to delete or modify the following regulations:

1. Restrictions on Operations

a. Liability Growth (563.131)

OTS proposes to delete the regulation that governs the liability growth of savings associations. The restriction is tied to a capital standard based on liabilities that was removed in 1989 when OTS implemented the capital standards required by the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA). OTS has in place asset growth restrictions based on an association's financial health that more adequately address safety and soundness concerns. See Regulatory Bulletin No. 3a–1. Asset growth limits are also contained in both FIRREA and the Prompt Corrective Action provisions of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA).

b. Appraisals (563.90, 571.1)

Our recently revised "Appraisals" regulation (part 564), published April 13, 1992, sufficiently covers the requirements for appraisals on all real estate related transactions. Savings associations will need only to obtain evaluations, not more costly appraisals, on real estate loans of $100,000 or less, regardless of location. We propose to delete 12 CFR 563.90, "Appraisals Outside Lending Area", and the Policy Statement at § 571.1, "Appraisal of Real Estate Securing Assets of Savings Associations" because they are no longer necessary.

c. Debt Securities (545.75)

OTS proposes to modify the section dealing with commercial paper and corporate debt securities by deleting the requirement that, at any one time, the average maturity of a Federal savings association's portfolio of corporate debt securities may not exceed six years. The capital rules and interest rate risk management policies adequately address safety and soundness concerns in this area and additional restrictions are unnecessary.

d. Service Corporation Secured Debt (556.7)

OTS proposes to delete its regulation limiting the amount of secured debt that can be incurred by service corporations of savings associations. FIRREA imposed capital requirements on thrifts and their service corporations on a consolidated basis, for the most part. Thus these secured debt limitations are unnecessary.

e. Limits on Real Estate Acquisition and Improvement Loans (545.36)

Section 545.36(d) contains a provision limiting real estate acquisition and improvement loans for one development project to 2% of assets. This limit is superseded by the statutory loan to one borrower limit, which is implemented at section 563.93. We therefore propose to eliminate the limit on acquisition and improvement loans in 545.36.

f. Flood Disaster Protection (563.48)

Section 563.48(e) requires that a savings association, as a condition to purchasing a loan secured by property in a flood hazard area, notifying the borrower in writing, at least 10 days before the closing of the purchase transaction, that the property securing the loan is in a special flood hazard area and whether Federal disaster relief would be available for the property in the event of damage caused by flooding in a Federally declared disaster. Compliance with this requirement is virtually impossible for a savings association because pursuant to most purchase contracts, if may not contact a borrower until the purchase transaction is closed. Moreover, the disclosure requirement is redundant because the regulation requires that a borrower receive an identical disclosure at the time the loan is originated. The OTS is eliminating this redundancy by revising § 563.48(e) to delete the requirement that a savings association make written flood hazard disclosures to a borrower in the case of a loan purchase. The OTS stresses that it is eliminating only the written notification requirement and that a purchased loan secured by property in a special flood hazard area must still be covered by an adequate flood insurance policy meeting the requirements of § 563.48(b).

2. Definitions

a. General Reserves (541.12)

The current definition of general reserves is obsolete. The term is no longer used in the asset valuation area. We therefore propose to delete it.

b. District Director (541.9)

Over the past two years, OTS has consolidated its operations, downsizing and regionalizing to operate more efficiently. As a result, delegations formerly flowing through the 12 former "District Directors" now pass through OTS's five Regional Directors, and the term "District Director" is no longer in use. Deleting the term "District Director" will help to eliminate confusion in our delegations process. A conforming change is also being made to § 563e.6.

c. Short-term Savings Account (541.24) and Deposit Broker (561.17)

The definitions of the terms "short-term savings account" and "deposit broker" are unnecessary and may be eliminated.

3. Definitions and Restrictions Related to Transactions With Affiliates and Insiders (561.5, 561.46, 561.22, 563.34, 563.43, 563.45)

OTS has proposed to adopt a new regulatory structure to govern insider transactions and conflicts of interest. The new rules are modeled on the banking statutes and regulations in this area. When OTS adopts, in final form, its proposed regulation titled "Loans to Executive Officer, Directors and Principal Shareholders of Savings Associations: Insider Transactions and Conflicts of Interest," ("Insider Transactions") a number of definitions and regulations dealing with affiliates and affiliated persons and entities will become obsolete.

We propose to delete the definition of the term "affiliated person" at 12 section CFR 561.5. The term "affiliated person" is a key concept in several OTS regulations and deleting it would require that another term denoting similar persons be substituted in those regulations. Therefore, the OTS seeks comment on whether the term "insider," as defined in OTS's recently proposed "Insider Transactions" regulation, 57 FR 12232 (April 9, 1992), is an appropriate standard to replace the term "affiliated person" in each implicated regulation. If commenters believe that the term "insider" is inappropriate, they should suggest an alternative concept consistent with the general principles of safety and soundness governing the implicated regulations.

OTS proposes to delete § 563.45, requiring certain savings associations to provide voting members with an annual notice disclosing certain information on transactions with affiliates (Form AR). Since OTS plans to adopt transactions with affiliates rules similar to those imposed on the banking industry, and because savings associations are now required by section 36 of the Federal Deposit Insurance Act to make publicly available an annual report on financial condition and management, we believe that Form AR is duplicative and obsolete. Because of the many exceptions in the regulation, only approximately 50 institutions completed the form in 1991, although many more associations were required to review transactions in every reporting period to determine if they needed to file.

4. Corporate Structure

a. Directors and Advisory Board (552.6–1, 545.123)

OTS proposes to change the number of directors necessary for a Federal savings association from seven to five, consistent with the required number of national bank directors. This change will allow savings associations to save money on directors' fees and associated costs without impinging on safety and soundness. Section 552.6–1, "Board of Directors", would be modified to make this change. In addition, we propose to delete § 545.123, "Advisory Boards and Committees", because it is unnecessary. Institutions may continue to use advisory boards or committees, but they need not reappoint members on an annual basis.

b. Savings Deposits (552.8)

OTS is proposing to delete § 552.b(b), "Terms of savings deposits; membership and voting rights." The section simply explains that after a conversion from a mutual to stock association, holders of savings deposits are not members of the savings association and do not have voting rights. The substance of this section is self-evident, and the section can be eliminated.

c. Upgrading of Approved Branch Offices (545.93)

OTS, at one point, provided for three types of branch offices. Upgrading from one type to another required an application. OTS no longer distinguishes among branch types, thus an application to upgrade is obsolete. OTS proposes to delete this section.

5. Corporate Title Advertising (543.1, 552.7, 563.27, 563.29)

Section 543.1 requires that a Federal mutual savings association must include the word "savings" in its corporate title, and in some way indicate that it is a Federal association. Section 552.7 requires Federal stock associations to label savings deposits with the words "a captial stock association" or similar description. Section 563.29 prohibits associations from using a name that includes the word "insured." Section 563.27 indicates that any advertisement by a savings association must indicate that it is in fact a savings association.

These restrictions on corporate title and name used in advertisements are not necessary for consumer protection and have become increasingly anachronistic since the bank and thrift insurance funds are governed under the same ground rules by the FDIC. OTS believes that the specific requirements of these rules are no longer needed and therefore proposes to eliminate them. OTS will, however, retain the prohibition against misrepresentation by a savings association of the nature of the institution or the services it offers. We invite comments on what types of titles or phrases could be potentially misleading.

6. Gold (545.79, 571.10, 571.17)

Section 545.79, Gold Transactions, generally prohibits Federal savings associations from engaging in gold-related transactions. The policy statements dealing with gold transactions further establish an OTS policy to carefully scrutinize and limit gold-related transactions at state-chartered associations. These specific rules and guidelines are obsolete, in light of statutory changes made in 1974; thus, we propose to delete them. OTS will, however, continue to consider speculative transactions in gold as an unsafe or unsound activity.

7. Consumer Protection

a. Nondiscrimination Requirements (528.6)

OTS proposes to delete § 528.6 dealing with monitoring information. Presently, all financial institutions regulated by OTS, whether or not they are subject to the Home Mortgage Disclosure Act as implemented by the Federal Reserve Board's Regulation C (12 CFR part 203), must maintain a loan application register for various loan types. This loan application register is more comprehensive than required by Regulation C. Although the additional register information is useful to examiners, that information is available to them by other means. Further, deleting this requirement would make OTS's regulations consistent with those of the banking regulators. Those OTS-regulated institutions subject to Regulation C would still have to maintain loan application registers in accordance with the format and content requirements of that regulation.

OTS would continue to require institutions to report the reason for a denial on their Regulation C registers. We request comment on whether it is advisable to retain regulatory text that sets forth this requirement.

OTS is also considering deleting the definitional provisions contained in § 528.1 (d), (e), (f), and (g). We request comment on whether those definitions continue to be necessary if § 528.6 is deleted.

Finally, all savings associations and subsidiaries would continue to be required to collect monitoring information on home loan applications in accordance with the Equal Credit Opportunity Act, as implemented by the Federal Reserve Board's Regulation B. 12 CFR part 202.

b. Fixed-Rate and Adjustable-Rate Mortgage Loan Disclosures (563.99)

OTS proposes to delete § 563.99(d) requiring the disclosure of additional information dealing with due-on-sale clauses, late charges and prepayment penalties, escrow payments, and the notice of maturity for non- or partially-amortizing loans. Home loan contracts typically contain provisions regarding these matters, and some of them are referenced in Truth in Lending disclosures. Commercial banks are not required to make these additional disclosures, and the deletion of this requirement will make OTS' regulations consistent with those of the other agencies.

c. Prepayment Penalties on Adjustable-Rate Mortgage (ARM) Loans (545.34)

OTS regulations generally permit a Federal association to impose a prepayment penalty on a loan secured by borrower-occupied property, if the loan contract provides for the penalty and if that provision is properly disclosed to the borrower. Under current regulations, however, a federal association may not impose a prepayment penalty on an ARM loan for the 90-day period that follows a notice to the borrower that the mortgage payment will adjust. This requirement is inconsistent with safety and soundness because it discourages institutions from taking steps to prudently manage interest rate risk exposure.

OTS proposes to delete this limitation. As a result, prepayment penalties will be subject to negotiation between lenders and borrowers, and federal associations will be on equal footing with national banks. Any penalty provisions must be provided for in the loan contract and properly disclosed to borrowers. This proposed action will not affect other limitations in OTS regulations on the assessment of prepayment penalties.

d. Sales Plans and Giveaways (545.21, 563.24)

OTS proposes to delete the regulations on sales plans and giveaways. With the repeal of statutory interest rate restrictions, these rules are outdated. A Federal savings association is restricted under § 545.21 from using giveaways in states that have a "reciprocal statutory provision" relating to State-chartered savings associations. OTS believes that only California has

such a statutory provision. Section 563.24 is similarly narrow and relates to the use of sales agents in giveaway programs intended to circumvent deposit interest rate restrictions that no longer exist. We will, however, in conjunction with the FDIC, prohibit circumventions of other applicable interest rate limitations, such as those contained in section 29 of the FDIA.

8. Conservatorships and Receivership Rules (Parts 558, 559, 579, 580)

OTS proposes to consolidate into one regulation four regulations on procedures for taking possession of federal and state savings associations for which OTS has appointed a conservator or receiver. OTS also proposes to delete unnecessary or outdated portions of the regulations, and to correct and update references in the retained portions of the regulations.

OTS may appoint the FDIC or the RTC as conservator for any savings association. The OTS is required by statute to appoint the RTC as receiver until October 1, 1993. Thereafter, the OTS is required to appoint the RTC as receiver if the OTS had previously placed the RTC in control of the institution. After September 30, 1993, OTS must appoint the FDIC as receiver.

OTS proposes to retain and consolidate the portions of its current conservatorship and receivership regulations relating to the procedures for taking possession by a conservator or receiver and for providing notice of the appointment of a conservator or receiver. It is no longer necessary to maintain specific regulations outlining the required functions of a conservator or receiver, since these functions are carried out by the RTC or FDIC.

9. Other Policy Statements (571.3, 571.16, 571.25, 571.26)

OTS proposes to delete several policy statements from our regulations. Policy statement 571.3, "Interest-rate Risk Management", is obsolete and may lead to confusion when read in conjunction with more recent guidance in this area. Institutions should rely instead on Thrift Bulletins 12 and 13, and the recently revised section on interest rate risk in the Thrift Activities Handbook.

Policy statement 571.16, "Mortgage-backed-securities Transactions", is also no longer necessary. The Federal Home Loan Bank Board issued this policy statement to curb abuses in the accounting for exchanges of mortgage backed securities. It established guidelines for sale and financing treatment in anticipation of specific GAAP guidance. Since the issuance of the policy statement, the American Institute of Certified Public Accountants (AICPA) has issued three statements of policy and significantly revised the audit and accounting guide for savings institutions to address the issue of sales versus financing treatment of transactions involving mortgage backed securities. OTS follows generally accepted accounting principles in this area.

Policy Statement 571.25, "Accepting Pooled Accounts,", is unnecessary in light of the FDIC's brokered deposit restrictions implementing section 29 of the Federal Deposit Insurance Act, which apply to savings associations. OTS, thus, proposes to delete the policy statement.

Policy statement 571.26, "Classification of Certain Assets", is unnecessary in that it simply summarizes a more complete discussion of asset classification guidance found in the Thrift Activities Handbook. OTS proposes to delete the policy statement. Institutions should rely instead on section 563.150 and the Handbook guidance.

10. Other Clarifying Changes (§§ 509.104, 516.1, 545.41, 545.132, 563.32, 563.93, 563.132, 563.192, 563b.3, 567.20)

Section 509.104 provides certain additional procedures in adjudicatory proceedings governed by the OTS Local Rules of Practice and Procedure in Adjudicatory Proceedings ("Local Rules").[1] OTS proposes to clarify this section.

We propose several technical amendments to filing procedures. Copies of all documents, papers, and motions required or permitted to be filed with the Office of Financial Institution Adjudication or the administrative law judge would also be required to be filed with the Director by filing copies with the Corporate Secretary. Copies of filings made after the submission of the proceeding to the Director for final review also would be made with the Corporate Secretary. Service upon the Director, in general, would be accomplished by filing with the Corporate Secretary.

We propose to add a new subsection to section 509.104 clarifying that the filing of papers with the Director must be made by filing with the Corporate Secretary.

A technical change to § 516.1 is being made to require the filing in Washington of two copies of any non-delegated application or notice.[2] This filing requirement will facilitate processing of applications that may need review and approval in Washington and will eliminate potential lengthy delays that could occur without readily available application materials.

Section 563.32 allows an association to pay a nominal fee to the trustee of a self-employed retirement trust during the period that the trust account is maintained in the association. OTS proposes to delete the section because it is redundant. Fees and compensation are adequately addressed in part 550, adopted after 563.32, which covers compensation for trust accounts.

We also propose to delete the section requiring specific bond coverage for sale deposit business conducted by savings associations. The existing requirements in part 568 sufficiently address both safety and soundness and security concerns.

Section 567.20 established procedures for savings associations operating under certain limited capital forbearance that were created by the Competitive Equality Banking Act of 1987 and were grandfathered under section 302 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989. We believe that no savings associations currently are operating under these limited statutory forbearance and that the section is now obsolete and should be removed.

Section 545.41(a) contains references to regulations of the Department of Housing and Urban Development ("HUD") that are no longer in existence; this section therefore requires modification.

Section 5(c)(3)(B) of the Home Owners' Loan Act ("HOLA") authorizes a federal savings association to invest up to two percent of its assets in real property and loans located in "a geographic area or neighborhood receiving concentrated development assistance by a local government under title I of the Housing and Community Development Act of 1974." OTS' implementing regulation 23 CFR 545.41, was originally promulgated in 1984 and was intended to be consistent with the manner in which HUD was then administering Title I programs.

[1] The Local Rules apply to OTS administrative proceedings commenced subsequent to August 12, 1991. *See* 56 FR 38,302, 38,317 (Aug. 12, 1991) (codified at 12 CFR 509.104).

[2] Pursuant to its recent applications restructuring regulation to streamline the applications process, see 57 FR 14329 (April 20, 1992), the OTS will shortly, by OTS order, generally delegate the authority to approve and deny most applications to its Regional Offices. Under this order, only applications issues that raise significant issues of law or policy or other matters designated for Washington consideration would fall outside the general delegation. See 57 FR at 14330.

Numerous changes have since been made in the way Title I programs are administered. It is our understanding that HUD currently targets Title I assistance to specific population groups, rather than specific neighborhoods. As a result, it may be relatively rare for Title I assistance to be concentrated in an area or neighborhood.

In light of the foregoing, the OTS invites comment on how 12 CFR 545.41 should be amended. Commenters are specifically asked to address whether, given the way Title I is currently administered, there are meaningful ways to identify neighborhoods or areas receiving concentrated Title I assistance. If not, commenters are asked to address whether there are workable alternative standards that would be consistent with HOLA section 5(c)(3)(B).

In August, 1990, OTS removed § 545.132, governing the release of customer financial records by Federal savings associations. At that time, we announced that we intended to repropose a rule addressing this issue. Since then, OTS has determined that a Federal regulation governing the release of such information by savings associations would not significantly further OTS policies and would duplicate state law. We do not now anticipate reproposing a regulation on this issue. State law will continue to govern the activities of savings association in this area.

The OTS is proposing to amend 12 CFR 563b.3(i) to revise the requirements for acquisitions of control of recently converted associations. Section 563b.3(i) generally prohibits the offer to acquire or the acquisition of more than ten percent of any class of equity of a savings association that converted to stock form within the prior three years, without obtaining prior written approval for the OTS.

New subparagraph (vi) provides that the OTS will no longer require no application under § 563b.3(i), for acquisitions of stock of recently converted associations, provided that an application required to be filed under part 574 regarding a proposed acquisition addresses the criteria for approval under paragraph (i)(5) of § 563b.3(i), and the proposed transaction is not hostile, i.e., not opposed by the association. In addition, new subparagraph (vi) specifies that an application submitted under this exception generally would not be deemed a prohibited offer to acquire a recently converted institution under § 563b.3(i)(3)(i). Thus, in situations where proposed acquirors may utilize the exception, they will be permitted to enter into a binding acquisition agreement prior to submission of an application under part 574.

We are also making technical changes to § 563.93, the loans to one borrower rule, and 563.132, the finance subsidiary rule, to correct cross-references.

C. Other Actions Resulting From the 90-Day Regulation Review

In response to its request for comment published in February, OTS also received a number of requests for changes designed to foster a more pro-growth environment. OTS is considering the following suggestions.

1. Executive Compensation

Five commenters asked that OTS rescind or substantially change its bulletin on Executive Compensation, especially its applicability to non-problem associations. While OTS is concerned that some compensation schemes threaten savings associations' safety and soundness and warrant supervisory attention, we will generally defer to the Board of Director in compensation matters for healthy thrifts where safety and soundness issues do not arise, consistent with section 132 of FDICIA.

2. Loans-to-One Borrower

Two comments focused on the OTS loans to one borrower (LTOB) rule. One asked for OTS to allow associations to apply the LTOB rule to the "end users" of loans. For example, loans to builders for pre-sold homes would be considered loans to the individual home purchasers for LTOB purposes, provided the thrift independent checked the creditworthiness of each home purchaser. This suggestion would not require a rulemaking; we will, however, separately investigate whether the proposed modification in policy would be appropriate.

Finally, a commenter urged OTS to authorize an "untroubled association" to use its salvage powers to exceed LTOB limits in "selected circumstances, and as approved by its Board of Directors." OTS has this issue under active consideration at the present time, and expects to make a determination in the near future.

3. Management Questionnaire

One comment explained that an examination Management Questionnaire requires the number of shares of the institution's common stock held by each director, officer and employee of the institution. OTS will consider some limit on the number or types of individuals listed in the questionnaire.

4. Forward Commitments, Options and Futures

Two commenters pointed to inconsistencies in OTS regulations on forward commitments, options and futures (563.96, 563.173, 563.174, 563.175). OTS is considering substantial revisions to these regulations; in undertaking such revisions, we will consider allowing institutions meeting fully-phased-in capital requirements to participate in long-term futures contracts.

D. Summary of Specific Comments

1. Compliance

The most common specific comments centered on compliance with some consumer protection laws and regulations. Many commenters asked for relief from various provisions of the Bank Secrecy Act (BSA), Truth in Savings Act, Truth in Lending Act, the Flood Disaster Protection Act and the Expedited Funds Availability Act. Many of these comments urged OTS and the Congress to consider the relative costs and benefits of these rules and whether the costs were appropriately placed on financial institutions.

All of these compliance requirements are either implemented primarily by regulations of another agency or are mandated by statute. These regulatory requirements are being reviewed, however, in the Federal Financial Institutions Examination Council's (FFIEC) study of the regulatory burden under the FDICIA, which will determine, on an interagency basis, whether regulatory implementation of the statutory requirements can be streamlined or simplified.

2. Regulations and Policies in Process

Almost a third of the comment letters and testimony gave additional comments on proposed regulations or notices that have already been published for notice and comment. Comments on "Real Estate Appraisals," "Applications Restructuring", "Interstate Branching", "Fidelity Bonds", "Interest Rate Risk", "Leverage Ratio" and "Miscellaneous Capital Amendments", "Monthly Reporting Requirements", "Mutual Holding Companies", "Uniform Accounting Standards", "Supervisory Conversions" and "Transactions with Affiliates and Insiders" have been or will be considered as part of the rulemakings on those issues or considered in this process, as appropriate to the timing of the issue.

We also received a number of comments on issues on which we planned to propose regulations or issue

bulletins, including comments urging OTS to include core deposit intangibles in capital, to allow optional membership in the Federal Home Loan Bank System, to exempt covered assets from percentage of assets or capital limits, to streamline applications for minor merger transactions and to clarify recourse rules. We recently issued proposals on "Identifiable Intangibles" and "Membership in the Federal Home Loan Bank System" and will consider comments on these issues in connection with the preparation of those final rules. We will consider comments on the other issues mentioned as we develop proposed rules, bulletins or opinions in those areas.

3. Valuation Allowances

The ten comments on the OTS general valuation allowance (GVA) policy asked OTS to coordinate loan loss methods with the FDIC, to clarify the interplay between GVAs and capital calculations, or simply to change our current methods of calculating GVAs.

OTS staff has issued a Thrift Bulletin (TB 38–4, issued April 13, 1992) on the interplay between GVAs and capital for assets subject to the "deduction from regulatory capital" requirement. Separately, OTS staff is also developing more explicit guidance on the appropriate level of GVAs for savings associations. We plan to issue the guidance for public comment. Staff also has prepared guidance for associations and examiners on asset classifications. This guidance seeks to ensure that OTS policy is implemented in a uniform, consistent manner, one that comports with the November 7, 1991 Interagency Policy Statement on asset classification.

4. Qualified Thrift Lender (QTL) Test

Five commenters asked for relief from the Qualified Thrift Lender (QTL) test. Most see the statutorily-mandated test, even with FDICIA's recent liberalization, as overly-burdensome, costly and antiquated. Several highlighted that Congress has changed the test three times in the last four years and such changes are extremely costly. We recognize these concerns and intend to continue, through our implementing regulations, to keep the required changes to a minimum, consistent with our statutory responsibilities.

5. Directors' Responsibilities

Eight comments described problems obtaining and retaining directors. Institutions cited difficulties in obtaining blanket bond and director/officer insurance coverage due to mandatory formal enforcement actions against institutions with poor MACRO ratings. In response, we have initiated an interagency project to define more clearly the role of directors.

E. Summary of General Comments

Most commenters asked OTS to consider some general changes in the structure of thrift regulation such as decreasing the examination burden, adopting differential regulations based on size or health of association, providing relief from perceived excessive reporting, or insuring parity between thrifts and banks in their operations or reporting.

1. Examinations

The most common concern of the commenters is the overlap in examination and regulation by the OTS and the Federal Deposit Insurance Corporation (FDIC). Associations cited frustration with conflicting signals from the OTS and the FDIC and increased examination costs and inefficiency due to separate examinations. Institutions want the government to speak with one voice.

Under the authority granted by the FIRREA, the FDIC has examined all troubled, and many healthy, savings institutions, producing a separate examination report. This process initially served several constructive purposes. It has not always been carried out in the most efficient manner, however, sometimes resulting in increased costs and mixed messages to the industry and individual savings institutions.

The OTS and the FDIC recognize this problem and, on May 18, 1992, issued a Joint Agreement that will govern the conduct of examinations, supervisory and enforcement actions, and capital plan reviews in which the FDIC has an interest. The Joint Agreement clarifies the regulatory roles of the OTS and the FDIC, defines responsibilities, and establishes a conflict resolution process for the two agencies. We expect the agreement will result in joint OTS/FDIC examinations for most institutions that the FDIC wishes to examine, and that, generally, the OTS will be the only Federal regulator dealing directly with savings associations.

Some commenters stated that the interagency policies intended to address concerns over credit availability are not being followed by examiners. OTS has taken a number of steps to ensure that these policies are understood and implemented by the field staff. Senior examining personnel participated in the national conference of bank and thrift regulators, held in Baltimore, Maryland in December 1991. Regional conferences have been held in all OTS Regions to ensure that all examiners fully understand the existing policies. The examiner-in-charge of each OTS examination must confirm that these interagency policies have been used in the examination. Senior Regional review examiners must also confirm that each examination has followed these policies. Finally, thrift institutions may utilize the Supervisory Review Process established April 6, 1992 to seek senior level review of exam-related issues if they do not believe that these policies have been followed.

2. Differential Regulation by Health and Size

Many institutions asked OTS to consider health and size of institutions in implementing regulations. Well capitalized associations emphasized their relatively low risk of failure, and thus, low risk to the deposit insurance fund and, ultimately, the taxpayer. Several letters from small associations detailed the strains of consumer protection laws and interest rate risk reporting.

OTS has already adopted a policy of differential regulation based on capital strength and overall health of associations in many recent policies and regulations. The passage of FDICIA adds a Congressional mandate to continue this trend. OTS will consider a differential strategy to regulation when writing new regulations or revisiting existing regulations wherever feasible.

We are also aware of the large relative burden some regulations place on small institutions. Small institutions are exempted from Home Mortgage Disclosure Act (HMDA) filings for this reason. We are currently considering whether smaller healthy institutions should file an abbreviated Maturity and Rate (Schedule MR) report for interest rate risk calculations and whether we should reduce the independent audit burden for such institutions consistent with the FDIC's rule implementing section 112 of FDICIA.

OTS requests comments on other areas of thrift operations or reporting requirements that could benefit from a differential approach. We are particularly interested in comments identifying areas where recordkeeping requirements could be amended to reduce the burden on smaller associations while still supplying OTS with sufficient information to review the association's compliance with OTS regulations and policies.

3. Parity Between Savings Associations and Banks

Five commenters specifically requested that OTS recognize the disparity between bank and thrift reporting and regulation. Several other commenters mentioned specific requirements that apply to thrifts but not to banks. Most of these comments cited capital treatments that very between banks and thrifts, or regulations that take a "cookbook" approach, *i.e.*, regulation of specific business practices rather than establishing general safety and soundness parameters for operations. One commenter asked for OTS help to level the playing field among all financial service providers.

OTS has issued a number of final and proposed regulations over the past year that are the result of interagency agreements. Thus, banks and thrifts are operating under an increasingly similar set of regulations. This trend will continue. FDICIA has resulted in creation of over 20 interagency working groups to develop joint policies on a wide range of major issues. In addition, the OTS and the banking agencies recently announced the Regulatory Uniformity Project (RUP) chaired by the Chairman of the FDIC, to bring still greater uniformity to financial institution regulation. These efforts complement the traditional role of the FFIEC in encouraging interagency cooperation.

4. Uncertainty

Many commenters noted that their most difficult problem was creating a sound business plan in the face of ongoing regulatory uncertainty. Many of those testifying stressed the costs of retraining staff and recreating system to accommodate changing regulations.

We recognize that savings associations have been subject to three major pieces of legislation in five years. OTS is required to implement the standards required by legislation, and other rules necessary for safe and sound operations, on a timely basis. Responsible regulation requires that OTS take the time necessary to seek and respond to public comment, coordinate where possible, or where required, with the banking regulators, and consider the impact of new regulations on savings associations and the economy. Some issues are easily resolved; others, like interest rate risk, are complex and difficult. We strive for a reasonable, coherent framework of regulations through which to supervise savings associations. The changing requirements of legislation, however, have necessitated reconsidering and revising many rules already in place.

5. Role of Bulletins

Five commenters asked that OTS clarify the difference between regulations and bulletins. Thrift Bulletin 1-2, "Enforcement of Bulletins," explains OTS's view of thrift and regulatory bulletins as follows:

"Policies set forth in Bulletins represent the Agency's interpretation of regulations and what constitutes unsafe or unsound practices. These policies establish uniform and objective criteria by which the Agency's staff evaluate the practices and policies of thrift institutions. While Bulletins themselves are not directly enforceable, they represent the Agency's best judgment in interpreting regulations that will be used as the basis for enforcement action."

OTS will continue to use Thrift Bulletins to convey important supplemental guidance and define unsafe and unsound practices.

F. Comment Solicitation

In addition to the specific requests for comment that appear elsewhere in the Supplementary Information, OTS solicits comment on all aspects of today's proposal. Commenters are encouraged to address those issues where regulatory changes are proposed in this rulemaking. We have previously invited and received broad, general comments on our regulatory programs. At this stage of the regulatory review process, commenters are therefore urged to be as specific as possible in identifying any modifications to OTS regulations that they wish to suggest.

Executive Order 12291

The Office has determined that this regulation does not constitute a "major rule" and, therefore, does not require the preparation of a final regulatory impact analysis.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, it is certified that this proposal will not have a significant economic impact on a substantial number of smaller entities. Accordingly, a Regulatory Flexibility Act Analysis is not required.

List of Subjects

12 CFR Part 509

Administrative practice and procedures, Penalties.

12 CFR Part 516

Applications, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 528

Advertising, Civil rights, Credit, Fair housing, Mortgages, Reporting and recordkeeping requirements, Savings associations, Signs and symbols.

12 CFR Parts 541, 543, 556, 558, 559, 561, 579 and 580

Savings associations.

12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations.

12 CFR Parts 552 and 563b

Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Flood insurance, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 563e

Community development, Credit, Investments, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 567

Capital, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 571

Accounting, Conflicts of interest, Gold, Investments, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the Office of Thrift Supervision proposes to amend chapter V, title 12, Code of Federal Regulations, as set forth below.

Subchapter A—Organization and Procedures

PART 509—RULES OF PRACTICE AND PROCEDURE IN ADJUDICATORY PROCEEDINGS

1. The authority citation for part 509 continues to read as follows:

Authority: 5 U.S.C. 556; 12 U.S.C. 1464, 1467, 1467a, 1813; 15 U.S.C. 781.

2. Section 509.104 is amended by revising the first sentence of paragraph (b), paragraphs (d) and (f), by redesignating paragraph (g) as paragraph (i), and by adding new paragraphs (g) and (h) to read as follows:

§ 509.104 Additional procedures

* * * * *

(b) *Motions.* All motions shall be filed with the administrative law judge and with the Corporate Secretary; provided however, once the administrative law judge has certified the record to the Director pursuant to § 509.39 of this part , all motions must be filed with the Director, to the attention of the Corporate Secretary, within the 10 day period allowed for the filing of replies to exceptions. * * *

* * * * *

(d) *Notification of submission of proceeding to the Director.* Upon the expiration of the time for filing any exceptions, any replies to such exceptions or any motions and any ruling thereon, and after receipt of the certified record, the Office shall notify the parties within ten days of the submission of the proceeding to the Director for final determination. Subsequent to the submission of the proceeding to the Director for final determination, service of any document upon the Director shall be made by filing one copy with the Corporate Secretary.

* * * * *

(f) *Service upon the Office.* Service of any document upon the Office shall be made by filing with the Corporate Secretary, in addition to the individuals and/or offices designated by the Office in its Notice issued pursuant to § 509.18 of this part or such other means reasonably suited to provide notice of the person and/or office designated to receive filings.

(g) *Filing of papers with the Director.* One copy of any papers, documents and motions required or permitted to be filed with the OFIA or administrative law judge pursuant to subparts A and B of this part shall also be filed with the Corporate Secretary.

(h) *Filing and certification of record.* Concurrent with filing with and certifying to the Director for decision the record of the proceeding, the administrative law judge shall also furnish to the director a certified index of the entire record, together with a certified index of all hearing exhibits and exhibits introduced but not admitted into evidence at the hearing. The index of the exhibits shall also include any post-hearing exhibits admitted into evidence and post-hearing exhibits introduced but not admitted into evidence after completion of the hearing.

* * * * *

PART 516—APPLICATION PROCESSING GUIDELINES AND PROCEDURES

2a. The authority citation for part 516 is revised to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1462a, 1463, 1464.

3. Section 516.1 is amended by adding a sentence to precede the last sentence of paragraph (c) introductory text to read as follows:

§ 516.1 Offices of the Office of Thrift Supervision; information and submittals.

* * * * *

(c) *Filings.* * * * Two additional conformed copies shall be filed with the Applications Filing Room, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, of any application, notice or other filing that raises a significant issue of law or policy, as defined by OTS order or other OTS guidance. * * *

* * * * *

Subchapter B—Consumer-Related Regulations

PART 528—NONDISCRIMINATION REQUIREMENTS

4. The authority citation for part 528 is revised to read as follows:

Authority: 12 U.S.C. 1464, 2801 *et seq.*, 2901 *et seq.*; 15 U.S.C. 1691; 42 U.S.C. 1981, 1982, 3601–3619.

§ 528.6 [Removed]

5. Section 528.6 is removed.

Subchapter C—Regulations for Federal Savings Associations

PART 541—DEFINITIONS

6. The authority citation for part 541 is revised to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464.

§ 541.9 [Removed]

7. Section 541.9 is removed.

§ 541.12 [Removed]

8. Section 541.12 is removed.

§ 541.24 [Removed]

9. Section 541.24 is removed.

PART 543—INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL MUTUAL ASSOCIATIONS

10. The authority citation for part 543 is revised to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 2901 et seq.

§ 543.1 [Amended]

11. Section 543.1 is amended by removing the first sentence of paragraph (a).

PART 545—OPERATIONS

12. The authority citation for part 545 is revised to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1828.

§ 545.21 [Removed]

13. Section 545.21 is removed.

14. Section 545.34 is amended by revising the second sentence of paragraph (b) and the second sentence of paragraph (c) to read as follows, and by removing the last sentence of paragraph (c):

§ 545.34 Limitations for home loans secured by borrower-occupied property.

* * * * *

(b) * * * With respect to any loan made after July 31, 1976, on the security of a home occupied or to be occupied by the borrower, no later charge, regardless of form, shall be assessed or collected by a Federal savings association, unless any monthly billing, coupon, or notice the Federal savings association may provide regarding installment payments due on the loan discloses the date after which the charge may be assessed.

* * *

(c) * * * A Federal savings association may impose a penalty on the prepayment of a loan as provided in the loan contract.

§ 545.36 [Amended]

15. Section 545.36 is amended by removing the second and third sentences in paragraph (d).

§ 545.75 [Amended]

16. Section 545.75 is amended by removing and reserving paragraph (b)(5).

§ 545.79 [Removed]

17. Section 545.79 is removed.

§ 545.93 [Removed]

18. Section 545.93 is removed.

§ 545.123 [Removed]

19. Section 545.123 is removed.

PART 552—INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL STOCK ASSOCIATIONS

20. The authority citation for part 552 is revised to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.

21. Section 552.6–1 is amended by revising the first sentence of paragraph (b) to read as follows:

§ 552.6–1 Board of directors.

* * * * *

(b) *Number and term.* The board of directors shall consist of not fewer than five nor more than fifteen as prescribed in the bylaws. * * *

* * * * *

§ 552.7 [Removed]

22. Section 552.7 is removed.

§ 552.8 [Amended]

23. Section 552.8 is amended by removing and reserving paragraph (b).

PART 556—STATEMENTS OF POLICY

24. The authority citation for part 556 is revised to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1464, 1701j–3; 15 U.S.C. 1692–1693r.

§ 556.7 [Removed]

25. Section 556.7 is removed.

26. Part 558 is revised to read as follows:

PART 558—POSSESSION BY CONSERVATORS AND RECEIVERS FOR FEDERAL AND STATE SAVINGS ASSOCIATIONS

Sec.
558.1 Procedure upon taking possession.
558.2 Notice of appointment.

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.

§ 558.1 Procedure upon taking possession.

(a) The conservator or receiver for a Federal or state savings association shall take possession of the savings association by taking possession of the principal office of the Federal or state savings association and in accordance with the terms of the Director's appointment.

(b) Upon taking possession, the conservator or receiver shall immediately:

(1) Give notice of the appointment to any officer or employee in the principal office who appears to be in charge of that office.

(2) Serve a copy of the order of appointment upon the savings association or upon its conservator or receiver by:

(i) Leaving a certified copy of the order of appointment at the principal office of the savings association; or

(ii) Handing a certified copy of the order of appointment to the previous conservator, receiver or other legal custodian of the savings association, or to the officer or employee of the savings association or of the previous conservator, receiver or other legal custodian in the principal office of the savings association who appears to be in charge.

(3) Take possession of the savings association's books, records and assets.

(4) Notify in writing, served personally or by registered mail or telegraph, all persons and entities that the conservator or receiver knows to be holding or in possession of assets of the savings association, that the conservator or receiver has succeeded to all rights, titles, powers and privileges of the savings association.

(5) File with the Corporate Secretary a statement that possession was taken, including the time of the taking, which statement shall be conclusive evidence thereof; and

(6) Post a notice on the door of the principal and other offices of the savings association is substantially the following form:

(i) For the appointment of a conservator:

The (name of Federal/state savings association) is in the hands of (name) as Conservator under appointment by the Director of the Office of Thrift Supervision.

Conservator _____

Date_____; or

(ii) For the appointment of a Receiver:

(a) During the period beginning on December 31, 1988 and ending on October 1, 1993:

The (name of savings association) is in the hands of the Resolution Trust Corporation as Receiver under appointment by the Director of the Office of Thrift Supervision.

Receiver_____

Date_____; or

(b) After October 1, 1993:

The (name of savings association) is in the hands of the Federal Deposit Insurance Corporation as Receiver under appointment by the Director of the Office of Thrift Supervision.

Receiver_____

Date_____

(7) By operation of law and without any conveyance or other instrument, act or deed, succeed to the rights, titles, powers and privileges of the savings association, and to the rights, powers, and privileges of its stockholders, members, accountholders, depositors, officers, and directors. No stockholder, member, accountholder, depositor, officer or director shall thereafter have or exercise any right, power, or privilege, or act in connection with any of the savings association's assets or property.

§ 558.2 Notice of appointment.

If the Director of the OTS appoints a conservator or receiver under this part, the Corporate Secretary shall mail a certified copy of the OTS's appointment to the savings association's address as it appears in the OTS's records, and notice of the appointment shall be filed immediately for publication in the Federal Register.

PART 559—POSSESSION BY RECEIVERS FOR FEDERAL SAVINGS ASSOCIATIONS [REMOVED]

27. Part 559 is removed.

Subchapter D—Regulations Applicable to all Savings Associations

PART 561—DEFINITIONS

28. The authority citation for part 561 is revised to read as follows:

Authority 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.

§ 561.5 [Removed]

29. Section 561.5 is removed.

§ 561.17 [Removed]

30. Section 561.17 is removed.

§ 561.22 [Removed]

31. Section 561.22 is removed.

§ 561.46 [Removed]

32. Section 561.46 is removed.

PART 563—OPERATION

33. The authority citation for part 563 is revised to read as follows:

Authority: 12 U.S.C. 1462, 1462(a), 1463, 1464, 1467a, 1468, 1828, 3806; 42 U.S.C. 4106.

§ 563.24 [Removed]

34. Section 563.24 is removed

§ 563.27 [Amended]

35. Section 563.27 is amended by removing paragraph (b)(2) and by redesignating paragraph (b)(1) as paragraph (b).

§ 563.29 [Removed]

36. Section 563.29 is removed.

§ 563.32 [Removed]

37. Section 563.32 is removed.

§ 563.34 [Removed]

38. Section 563.34 is removed.

§ 563.43 [Removed]

39. Section 563.43 is removed.

§ 563.45 [Removed]

40. Section 563.45 is removed.

§ 563.48 [Amended]

41. Section 563.48 is amended by removing from the first sentence of paragraph (e) the phrase "(including

purchasing)" and by inserting in lieu thereof the phrase "(but not including purchasing)".

§ 563.90 [Removed]

42. Section 563.90 is removed.

§ 563.93 [Amended]

43. Section 563.93 is amended by removing the phrase "as defined in paragraph (b)(13) of this section" from paragraphs (b)(6)(i) and (d)(3)(ii) and by adding in lieu thereof the phrase "as defined in paragraph (b)(11) of this section".

§ 563.99 [Amended]

44. Section 563.99 is amended by removing and reserving paragraph (d).

§ 563.131 [Removed]

45. Section 563.131 is removed.

46. Section 563.132 is amended by revising paragraph (a)(1)(ii) to read as follows:

§ 563.132 Securities issued through subsidiaries.

(a) * * *

(1) * * *

(ii) An operating subsidiary (as defined in § 545.81(b) of this chapter), a service corporation (as defined in § 561.45 of this subchapter), or any other subsidiary of a state-chartered savings association not organized in compliance with § 545.82 of this chapter, if any proceeds of such securities are remitted to a parent savings association (unless such a subsidiary demonstrates to the OTS that the purpose for such an issuance was totally for the subsidiary's reasonable corporate needs based on reasonable written projections of its financing requirements).

* * * * *

§ 563.192 [Removed]

47. Section 563.192 is removed.

PART 563b—CONVERSIONS FROM MUTUAL TO STOCK FORM

48. The authority citation for part 563b is revised to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a; 15 U.S.C. 78c, 1–n, w.

49. Section 563b.3 is amended by adding a new paragraph (i)(4)(vi) to read as follows:

§ 563b.3 General principles for conversions.

* * * * *

(i) *Acquisition of the securities of converting and converted savings associations* * * *

(4) *Exceptions.* * * *

(vi) No application under paragraph (i)(3)(i) of this section generally shall be required for any proposed acquisition that requires prior approval of, or clearance by, the OTS under 12 CFR part 574 *provided* that (A) the application required to be filed pursuant to part 574 addresses in specific detail how the proposed transaction will comply with the criteria for approval under paragraph (i)(5) of this section, and (B) the proposed acquisition is not opposed by the recently converted association subject to paragraph (i)(3)(i) of this section. Where, pursuant to this paragraph (i)(4)(vi), no separate application is required under paragraph (i)(3)(i), the prohibition on offers to acquire equity securities contained in paragraph (i)(3)(i) of this section, as defined in paragraph (i)(7)(ii) of this section, shall not apply.

* * * * *

PART 563e—COMMUNITY REINVESTMENT

50. The authority citation for part 563e is revised to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 2901 *et seq.*

§ 563e.6 [Amended]

51. Section 563e.6 is amended by removing the phrase "District Director" from the third, fifth, and sixth paragraphs of the sample Notice and adding in lieu thereof the phrase "Regional Director".

PART 567—CAPITAL

52. The authority citation for part 567 is revised to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.

§ 567.20 [Removed]

53. Section 567.20 is removed.

PART 571—STATEMENTS OF POLICY

54. The authority citation for part 571 is revised to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1462a, 1463, 1464.

§ 571.1 [Removed]

55. Section 571.1 is removed.

§ 571.3 [Removed]

56. Section 571.3 is removed.

§ 571.10 [Removed]

57. Section 571.10 is removed.

§ 571.16 [Removed]

58. Section 571.16 is removed.

§ 571.17 [Removed]

59. Section 571.17 is removed.

§ 571.25 [Removed]

60. Section 571.25 is removed.

§ 571.26 [Removed]

61. Section 571.26 is removed.

Subchapter E—Regulations Applicable to State-Chartered Savings Associations

PARTS 579 AND 580—[REMOVED]

62. Parts 579 and 580 are removed, and subchapter E is removed.

Dated: August 13, 1992.

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

[FR Doc. 92–21192 Filed 9–2–92; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–CE–42–AD]

Airworthiness Directives; Beech Model 300 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 89–22–12, which currently requires inspection of the upper aft cowling access door latches for proper tension and total engagement of the adjusting bolts and striker plates on certain Beech Model 300 airplanes, adjustment or modification if tension or engagement requirements are not met, and cowling door retention modification. A cowling door latch replacement kit has been developed and the Federal Aviation Administration (FAA) has determined that its proper installation provides a level of safety equivalent to the cowling door retention modification required by AD 89–22–12. The proposed action would retain the requirements of the previous AD but incorporate this new modification into the AD as a compliance option. The actions specified by this AD are intended to prevent separation of an aft cowling door, which could result in occupant injury if decompression or structural damage occurs.

DATES: Comments must be received on or before November 17, 1992.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel,

Attention: Rules Docket No. 92-CE-42-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that is applicable to this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. James M. Peterson, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4145; Facsimile (316) 946-4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 92-CE-42-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-CE-42-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

AD 89-22-12, Amendment 39-6351 (54 FR 41438, October 10, 1989), currently requires the following on certain Beech Model 300 airplanes: (1) Inspection of the upper aft cowling access door latches for proper tension and total engagement of the adjusting bolts and striker plates; (2) cowling door latch adjustment if improper tension is found; (3) modification if the adjusting bolts and striker plates do not totally engage; and (4) and modification of the cowlings to provide upper aft cowling access door retention. These actions are required to be accomplished in accordance with Beech Service Bulletin (SB) No. 2329, dated August 1989.

Since AD 89-22-12 has become effective, Beech has developed a cowling door latch replacement kit and the FAA has determined that its proper installation provides a level of safety equivalent to the cowling door retention modification required by AD 89-22-12.

In addition, Beech has revised Service Bulletin No. 2329 to include procedures for this cowling door retention modification as well as procedures for the inspection and modifications already required by AD 89-22-12.

After examining the circumstances and reviewing all available information related to the incidents described above including the referenced service information, the FAA has determined that AD action should be taken in order to prevent separation of an aft cowling door, which could result in occupant injury if decompression or structural damage occurs.

Since an unsafe condition has been identified that is likely to exist or develop in other Beech Model 300 airplanes of the same type design, the proposed AD would supersede AD 89-22-12 with a new AD that would (1) retain the inspection and modifications of the aft cowling doors that are currently required by AD 89-22-12; and (2) allow a cowling door latch replacement kit to be installed in lieu of the cowling door retention modification required by AD 89-22-12. The proposed actions would be accomplished in accordance with Beech SB No. 2394, issued August 1989, revised February 1991.

The FAA estimates that 152 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 17 workhours per airplane to accomplish the proposed action if the operator chose to install the cowling door latch replacement kit (latch replacement option) or approximately 3 workhours per airplane to accomplish the proposed action if the operator accomplished the modification of the cowling to provide a more positive cowling door retention (cowling door retention option), and that the average labor rate is approximately $55 an hour. Parts for the cowling door latch replacement kit cost approximately $2,372 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $505,664 (latch replacement option) or $25,080 (cowling door retention option).

AD 89-22-12, which would be superseded by this AD, currently requires that the cowling door retention option be accomplished on the affected airplanes. The only difference between that AD and the proposed action is the choice of accomplishing either the latch replacement option or the cowling door retention option. Since the latch replacement option is not mandatory, the proposed action would not require any additional cost impact upon U.S. operators of the affected airplanes than that which is currently required by AD 89-22-12.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 89-22-12, Amendment 39-6351 (54 FR 41438, October 10, 1989), and by adding the following new airworthiness directive:

Beech: Docket No. 92-CE-42-AD. Supersedes AD 89-22-12, Amendment 39-6351.

Applicability: Model 300 airplanes (serial numbers FA-2 through FA-211 and FF-1 through FF-19), certificated in any category.

Compliance: Required as indicated, unless already accomplished (superseded AD 89-22-12).

To prevent separation of an aft cowling door, which could result in occupant injury if decompression or structural damage occurs, accomplish the following:

(a) Within the next 25 hours time-in-service (TIS) after the effective date of this AD, inspect the upper aft cowling access door latches for proper tension and total engagement of the adjusting bolts and striker plates in accordance with Part I of the ACCOMPLISHMENT INSTRUCTIONS section of Beech Service Bulletin (SB) No. 2329, dated August 1989, revised February 1991.

(1) If improper tension is found, prior to further flight, adjust the cowling door latch in accordance with Beechcraft Super King Air 300 Maintenance Manual, Chapter 71-10.

(2) If the adjusting bolts and striker plates do not totally engage, prior to further flight, modify the cowling door in accordance with Beechcraft Safety Communique No. 300-75.

(b) Within the next 50 hours TIS after the effective date of this AD, accomplish one of the following:

(1) Modify the cowlings to provide upper aft cowling access door retention in accordance with Part II of the ACCOMPLISHMENT INSTRUCTIONS section of Beech SB No. 2329, dated August 1989, revised February 1991; or

(2) Install cowling door latch replacement Kit No. 101-9052-1 S in accordance with Part III of the ACCOMPLISHMENT INSTRUCTIONS section of Beech SB No. 2329, dated August 1989, revised February 1991.

(c) If the requirements of paragraphs (a), (a)(1), (a)(2), and (b)(1) were previously accomplished (superseded AD 89-22-12) in accordance with Beech SB No. 2329, dated August 1989, then no further action is required by this AD.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and send it to the Manager, Wichita Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(f) Service information that is applicable to this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085. This information may also be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

(g) This amendment supersedes AD 89-22-12, Amendment 39-6351.

Issued in Kansas City, Missouri, on August 25, 1992.

Dwight A. Young,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-21220 Filed 9-2-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 141, 142, 143, and 151

Invoice Requirements

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations to set forth specific requirements for the description of certain types of merchandise on commercial invoices submitted to Customs in connection with the importation and entry of such merchandise in the United States. The proposed amendments are intended to ensure that Customs has sufficient information to determine the tariff classification and admissibility of the merchandise with reference to the numerical scheme and product descriptions contained in the Harmonized Tariff Schedule of the United States.

DATES: Comments must be received on or before November 2, 1992.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to and inspected at the Regulations and Disclosure Law Branch, room 2119, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Elliott Feldman, Office of Trade Operations (202-927-0236).

SUPPLEMENTARY INFORMATION:

Background

On December 21, 1988, Customs published T.D. 89-1 (53 FR 51244) setting forth interim amendments to the Customs Regulations (19 CFR chapter I) to reflect the structure, language, and numbering of the Harmonized Tariff Schedule of the United States (HTSUS). The interim amendments (which took effect on January 1, 1989, to coincide with the implementation of the HTSUS as a replacement for the Tariff Schedules of the United States (TSUS)) included the replacement of TSUS numerical and organizational references with the new corresponding HTSUS references as well as the amendment of regulatory wording to reflect HTSUS terminology which differed from that of the TSUS. Included in the regulatory amendments was a revision of § 141.89(a), Customs Regulations (19 CFR 141.89(a)), which sets forth specific descriptive information which must be supplied on commercial invoices for approximately 50 classes of imported merchandise. The notice invited the public to submit comments on the interim amendments and, after an extension of time published on March 7, 1989 (54 FR 9429), the public comment period closed on March 21, 1989.

After the interim regulations went into effect and following the close of the public comment period, guidelines were drafted by the National Import Specialist (NIS) Division of Customs to assist the import community and Customs field personnel in the uniform application of criteria for accurate and complete invoices for various specific HTSUS headings and subheadings. These draft guidelines were sent to approximately 10,500 major importers, trade associations, and Customs officers between June 30 and July 15, 1989. After reviewing the comments received in response to the interim regulations and the draft guidelines on invoice requirements, Customs determined that it would be beneficial to obtain further information from the importing community relating to the invoice requirements under interim § 141.89(a) and the draft guidelines. Accordingly, on November 14, 1989, Customs published a notice (54 FR 47348) which (1) announced a series of public meetings to be held in New York from November 27 to December 8, 1989, to discuss invoice requirements with the importing community and (2) reopened the comment period of the interim regulations solely regarding the invoice requirements, with comments to be submitted on or before February 7, 1990.

On October 2, 1990, Customs published T.D. 90–78 (55 FR 40162) which adopted as a final rule, with some changes, the interim regulatory amendments previously published in T.D. 89–1 as discussed above. That final rule document noted that a large number of complex issues were raised in the numerous comments on invoice requirements received in response to interim § 141.89(a), the draft NIS Division guidelines, and the November 14, 1989, notice which reopened the comment period for invoice requirement purposes. In view of this, and in consideration of the significant impact which invoice requirements have on the trade community, Customs stated in T.D. 90–78 that further study was necessary before those invoice issues could be properly resolved. Even though interim § 141.89(a) was adopted as a final regulation without change in T.D. 90–78, the notice stated that all issues regarding invoice requirements would be dealt with as appropriate in a separate document at a later date. Accordingly, this document sets forth new proposals for dealing with all aspects of invoice product description requirements based on further study of this matter within Customs after the publication of T.D. 90–78.

Discussion of Proposals

It is first necessary to point out that 19 U.S.C. 1481(a)(3) and §§ 141.86(a)(3) and 142.6(a)(1), Customs Regulations (19 CFR 141.86(a)(3) and 142.6(a)(1)), contain the general requirement that each invoice of merchandise imported into the United States include a detailed or adequate description of the merchandise. Section 142.6(a) further states that the commercial invoice shall be furnished with the entry and before release of the merchandise is authorized. Thus, even though the Customs Regulations may prescribe specific invoice descriptive details for certain classes of merchandise (as is done, for example, in § 141.89(a)), all other merchandise nevertheless remains subject to the general statutory and regulatory requirement that the accompanying invoice contain a detailed or adequate description of the merchandise. Moreover, since the invoice descriptions are principally used by Customs officers to assist them in determining the tariff classification of the merchandise for admissibility, duty, and statistical reporting purposes, the absence of a sufficient invoice description will often result in a delay in the entry, release, and liquidation process.

Based on the comments submitted by the public and as a result of Customs internal review of this matter, Customs has determined that it would be preferable to reduce the regulatory burden on the public by limiting the specific, detailed, invoice description requirements in § 141.89(a) to the following three merchandise groups: (1) Textile and apparel products which are subject to quotas and visa requirements under the U.S. textile import program; (2) steel and steel products which until March 31, 1992, were subject to voluntary restraint arrangements; and (3) machine tools which until December 31, 1991, were subject to voluntary restraint arrangements. The need to have specific, detailed, mandatory invoice descriptions for those groups of products is derived from the fact that such information is necessary not only to ensure proper tariff classification but also (1) in the case of textile and apparel products, to ensure compliance with the special requirements and objectives of the textile import program and (2) in the case of the steel products and machine tools, to facilitate the monitoring of imports of these trade-sensitive products which may be the subject of future bilateral or multilateral trade agreements.

In connection with the proposed revision of § 141.89(a) as discussed below, Customs also proposes to amend the title of § 141.89 in order to reflect that the required information specified in the section is an elaboration of, rather than in addition to, the basic "detailed description" requirement in § 141.86(a)(3). Furthermore, in order to clarify the relationship between § 142.6(a)(1) and the product description requirements contained in part 141, Customs proposes to amend § 142.6(a)(1) by adding at the end "as provided for in part 141 of this chapter." In addition, to avoid overlap and to facilitate application of specific product description requirements within the regulations, Customs proposes to remove present § 151.62 (pertaining to wool and animal hair) and § 151.82 (pertaining to cotton), which are both titled "Information on invoices", and to transfer their contents, with some changes, to revised § 141.89(a) as descriptive requirements applicable to merchandise classified under HTSUS headings 5101–5105 and 5201, respectively.

With regard to the proposed revision of § 141.89(a) set forth in this document, the first sentence in the introductory paragraph replaces the introductory sentence in present § 141.89(a) and, in keeping with the proposed revision of the title of § 141.89 mentioned above, clarifies that the required information set forth therein is in addition to the "descriptive information specified" in § 141.86(a)(3) (for example, the name bv which each item is known and the grade or quality, which must be provided under authority of § 141.86(a)(3) and thus do not require specification in revised § 141.89(a)). The second sentence in the introductory paragraph is intended to ensure that the required information will be submitted with reference to each specified HTSUS chapter, heading and/or subheading number which applies to the imported merchandise (and not with regard to the product descriptors that accompany those numbers, which are provided for ease of reference only and thus are not intended to have legal effect). Thus, for example, if both general chapter or heading and specific subheading descriptive requirements are set forth and the imported merchandise falls under that chapter or heading and subheading, the invoice must set forth all applicable information reflecting both the general descriptive requirements and the specific information required for that subheading, even if the merchandise under consideration is not specifically mentioned in the product descriptors appearing opposite those HTSUS numbers. The specific product description requirements in revised § 141.89(a) as set forth in this document have been derived from the relevant portions of present § 141.89(a), from the draft NIS Division guidelines, from the comments and suggestions received during the public comment periods discussed above, and from Customs further internal review of the product descriptions contained in the HTSUS. These product description requirements represent what Customs believes is the minimum information that normally must be present in order for Customs to carry out its statutory functions. It must be recognized that there may continue to be instances in which Customs determines that still further descriptive information must be requested from the importer or broker due to the circumstances of a particular importation. Customs believes it is in the interest of all parties to treat those instances on a case-by-case non-regulatory basis rather than to increase the overall regulatory burden by expanding the regulatory particulars to cover them.

With regard to those commodities not covered by the proposed revision of § 141.89(a), including certain products that are currently mentioned in § 141.89(a), Customs proposes to have no specific regulatory invoice description requirements other than

those in present § 141.86. Thus, while Customs will continue to require that invoices contain a sufficiently detailed description of the imported merchandise (except where the information is available from alternate sources as discussed further below), in the case of merchandise not specifically covered by regulatory provisions, the authority for requiring such information will remain the general statutory and regulatory provisions cited above.

The approach described above does not represent a fundamental change in the legal position of Customs regarding the need for invoice descriptions sufficiently detailed so that Customs may carry out its statutory duty to classify imported merchandise. The limitation of specific regulatory (and thus mandatory) requirements to only three categories of goods will provide the importing public and Customs officers with more flexibility in determining what information should be provided to Customs with regard to the far larger number of products not specified in regulatory texts. In this regard Customs recognizes that while a detailed invoice description may always be necessary for some types of products, in other cases the very name or nature of the imported product may speak for itself so as to obviate the need for a detailed invoice description. In such latter cases the imposition of specific, detailed, regulatory standards would represent an unnecessary burden on importers, would provide no particular benefit to Customs, and thus should be avoided whenever possible. Customs believes that the proposed revision of § 141.89(a) to cover only the three groups of products described above will assist in reaching this goal.

Customs should also point out that there are several alternative procedures which the trade community may use in order to reduce the need for complete, detailed product descriptions appearing directly on invoices. The preferred and most effective alternate methods are through a pre-entry classification decision or by means of a written, binding tariff classification ruling issued under Part 177, Customs Regulations (19 CFR part 177). The principal benefit derived from the pre-entry classification or part 177 ruling procedure is that the invoice description of the merchandise can be reduced to a minimum because detailed information was previously provided by the importer when the pre-entry review was conducted or when the part 177 ruling was requested. Another alternate method is to provide the information in advance to the responsible National Import Specialist for retention in his/her file, with copies to the field import specialists at those locations where the merchandise will be imported. In addition, where the invoice does not provide a sufficient description of the merchandise, Customs will allow the importer to provide the needed information on a separate sheet attached to the invoice (see present § 141.86(i)). It is important to remember, however, that these alternate procedures cannot be used in place of the specific invoice requirements set forth in § 141.89. Customs also proposes in this document (1) to amend § 141.86(a)(3) to clarify the availability of the preclassification/binding ruling and pre-approval procedures as alternatives to providing detailed product descriptions on invoices and (2) to amend § 143.36(c)(3) concerning electronic transmission of invoice data to clarify that the specific requirements set forth in § 141.89 are also mandatory in that context.

Where parties previously submitted relevant comments to Customs regarding merchandise covered by this proposed revision of § 141.89(a), those parties are hereby advised that they should resubmit those comments if they wish them to be considered in connection with this matter. In addition to the procedures discussed above, Customs will also consider any suggestions regarding other possible alternatives to providing Customs with detailed invoice descriptions in cases involving merchandise not covered by specific regulatory requirements.

Comments

Before adopting the proposed amendments, consideration will be given to any written comments (preferably in triplicate) timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, room 2119, Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the proposed regulations amendments will not have a significant economic impact on a substantial number of small entities. The proposed amendments merely restate existing statutory and regulatory requirements and thus would not result in any increased economic impact. Accordingly, these proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Paperwork Reduction Act

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to Customs at the address set forth previously.

The collection of information in these proposed regulations is in § 141.89(a). This information is required by Customs under 19 U.S.C. 1481(a)(3) and is used to determine the admissibility and tariff status of imported merchandise. The likely respondents are business organizations including importers, exporters, and manufacturers.

Estimated total annual reporting and/or recordkeeping burden: _____ hours.

The estimated annual burden per respondent/recordkeeper varies from _____ minutes to _____ hours, depending on individual circumstances, with an estimated average of _____ hours.

Estimated number of respondents and/or recordkeepers: _____.

Estimated annual frequency of responses: _____.

Drafting Information

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Parts 141, 142 and 143

Customs duties and inspections, Imports, Invoice requirements.

19 CFR Part 151

Customs duties and inspections, Imports.

Proposed Amendments to the Regulations

Accordingly, it is proposed to amend parts 141, 142, 143 and 151, Customs Regulations (19 CFR parts 141, 142, 143 and 151), as set forth below:

PART 141—ENTRY OF MERCHANDISE

1. The authority citation for part 141 continues in part to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

* * * * *

Subpart F also is issued under 19 U.S.C. 1481;

* * * * *

§ 141.86 [Amended]

2. Section 141.86(a)(3) is amended by replacing the semicolon at the end with a period and by adding thereafter the following: "Except in the case of merchandise covered by § 141.89 of this part, where a party either has obtained a preclassification/binding ruling number covering the merchandise being entered or is a participant in a pre-approval program, the preclassification/binding ruling number or appropriate pre-approval identifier may be used in place of a detailed description of the merchandise;".

3. The heading to § 141.89 is revised to read as set forth below.

4. Section 141.89(a) is revised to read as follows:

§ 141.89 Specific descriptive information for certain classes of merchandise.

(a) In addition to the descriptive information specified in § 141.86(a)(3), invoices covering imported merchandise classifiable under the following Chapters, headings, and subheadings of the Harmonized Tariff Schedule of the United States (HTSUS) shall set forth at a minimum the descriptive information specified below. For purposes of this paragraph, the specified information shall be submitted according to each applicable HTSUS Chapter, heading and subheading numerical reference set forth below and without regard to the product descriptors set out with those numerical references which are provided for ease of reference only.

Heading/subheading	
	Chapter 39—Plastics and Articles Thereof
3921.12.11, 3921.12.15, 3921.12.19, 3921.13.11, 3921.13.15, 3921.13.19 and 3921.90.11 through 3921.90.29.	Plates, Sheets, Film, Foil, and Strip, of Plastics and Combined with Textile Material: 1. Identify the type of plastic used in the product. 2. State whether the plastic is cellular or compact or both. 3. Describe the construction of the product. 4. Specify the fiber content of the textile material by weight. 5. Provide the weights of the plastics and the textile materials as percentages of the total product weight. 6. Provide the total weight of the product in kilograms per square meter. 7. If the textile material is coated or laminated with plastics on one or both sides, so state. 8. If the product is made of woven polyethylene strips, indicate the color or tint of the strips and also the color of the plastic coating or laminating film. 9. Indicate how the product is shipped (for example, in rolls, bolts) and provide the overall dimensions of the materials.
	Chapter 42—Articles of Leather; Saddlery and Harness; Travel Goods, Handbags and Similar Containers; Articles of Animal Gut (Other Than Silkworm Gut)
4202.12.40 through 4202.12.80	Trunks, Suitcases, Vanity Cases, Attache Cases, Briefcases School Satchels and Similar Containers, With Outer Surface of Textile Materials: 1. Specify the fiber content by weight in the outer surface textile material. 2. State whether or not the textile material is of pile or tufted construction.
4202.22.35 through 4202.22.80	Handbags With Outer Surface of Textile Materials: 1. Specify the fiber content by weight in the outer surface textile material. 2. State whether or not the product is wholly or in part of braid. If so, indicate the location and use of the braid. 3. State whether or not the textile material is of pile or tufted construction.
4202.32.40 through 4202.32.95	Articles of a Kind Normally Carried in the Pocket or in the Handbag, With Outer Surface of Textile Materials: 1. Specify the fiber content by weight in the outer surface textile material. 2. State whether or not the textile material is of pile or tufted construction.
4202.92.15 through 4202.92.30	Travel, Sports and Similar Bags, With Outer Surface of Textile Materials: Specify the fiber content by weight in the outer surface textile material.
4202.92.60 and 4202.92.90	Other Containers, With Outer Surface of Plastic Sheeting or of Textile Materials: If the outer surface is of textile materials, specify the fiber content by weight in that outer surface.
	Chapter 50—Silk
5004 through 5006	Silk Yarn: 1. Specify the fiber content by weight. 2. State whether the yarn is filament silk yarn or yarn spun from silk waste. 3. Indicate whether or not the yarn is put up for retail sale.
5007	Woven Fabrics of Silk or of Silk Waste: 1. Specify the fiber content by weight. 2. Indicate the presence, and percentage by weight, of silk yarn, noil silk, and other waste silk. 3. Identify the type of weave.

Heading/subheading	
	4. Provide the fabric width in centimeters. 5. State whether or not the fabric is composed of yarns of different colors. 6. State whether or not the silk fabric is of a kind for use in the manufacture of neckties. If so, provide the number of warp yarns per centimeter.
Chapter 51—Wool, Fine or Coarse Animal Hair; Horsehair Yarn and Woven Fabric	
5101 through 5105	Wool and Animal Hair: 1. Identify the animal from which the wool or hair was obtained. 2. If known, identify the specific province or other subdivision of the country wherein the wool or hair originated. 3. If the product is wool: a. State whether or not the wool is unimproved (as defined in Additional U.S. Note 2(e) to Chapter 51, HTSUS); b. Specify the type symbol by which the wool is bought and sold in the country of origin; and c. Specify the grade for each lot of wool (for example, not finer than 40s, finer than 44s) in accordance with current standards promulgated by the Secretary of Agriculture. 4. State whether the wool or hair was shorn or pulled. 5. State whether the wool or hair is greasy (including fleece washed) or degreased. 6. State whether or not the wool or hair is carbonized. 7. State whether or not the wool or hair is carded or combed. If the product is combed wool, state whether or not it is tops or combed wool in fragments. 8. Describe any other processing applied to the wool or hair (for example, scouring, burr-picking, willowing, handshaking, beating, sorting). 9. If the wool or hair is subject to duty at a rate per clean kilogram under the HTSUS, provide the net weight of each lot of wool or hair in the condition in which it is shipped and provide the shipper's estimate of the clean yield (as defined in § 151.61(b) of this chapter) of each lot by weight or by percentage.
5106 through 5110	Yarns of Wool or Animal Hair: 1. State whether or not the yarn is carded or combed. 2. Specify the fiber content of the yarn by weight. 3. Identify the animal from which the wool or hair in the yarn was obtained. 4. State whether or not the yarn is put up for retail sale.
5111 and 5112	Woven Fabrics of Carded or Combed Wool or Fine Animal Hair: 1. Specify the fiber content by weight. 2. State whether the wool or fine animal hair is carded or combed and provide the percentage by weight of each. 3. Provide the fabric weight in grams per square meter. 4. Provide the fabric width in centimeters. 5. State whether or not the fabric is hand-woven. 6. State whether or not the fabric is tapestry or upholstery fabric. 7. If the fabric contains man-made fibers, identify the man-made fibers and provide the weights of filament and staple fiber separately.
5113	Woven Fabrics of Coarse Animal Hair or of Horsehair: 1. Indicate the type of weave. 2. Specify the fiber content by weight. 3. If the fabric contains animal hair, identify the animal (genus and species) from which the hair was obtained.
Chapter 52—Cotton	
5201	Cotton, Not Carded or Combed: 1. State that the cotton was not subjected to any processing operation or, if the cotton was processed, identify the processing. 2. For each lot of cotton, specify its staple length (as defined in § 151.81 of this chapter) by including from the following the statement which properly describes the product: a. This is harsh or rough cotton under 19.05 millimeters (¾ inch) in staple length; b. The staple length of this cotton is under 25.4 millimeters (1 inch) and the cotton is other than harsh or rough under 19.05 millimeters (¾ inch) in staple length; c. The staple length of this cotton is 25.4 millimeters (1 inch) or more but under 28.575 millimeters (1⅛ inches); d. This cotton is harsh or rough having a staple length of 29.36875 millimeters (1 5/32 inches) or more but under 42.8625 millimeters (1 11/16 inches) and white in color (except cotton of perished staple, grabbots and cotton pickings); e. This cotton has a staple length of 28.575 millimeters (1⅛ inches) or more but under 34.925 millimeters (1⅜ inches) and it is other than harsh or rough cotton white in color; f. This cotton has a staple length of 34.925 millimeters (1⅜ inches) or more but under 42.8625 millimeters (1 11/16 inches) and it is other than harsh or rough cotton white in color; or g. The staple length of this cotton is 42.8625 millimeters (1 11/16 inches) or more. 3. If known, identify the specific province or other subdivision of the country in which the cotton was grown. 4. Specify the variety of the cotton (for example, Karnak, Gisha, Pima, Tanguis).

Heading/subheading	
5202	Cotton Waste: 1. Provide the name by which the cotton waste is known (for example, yarn waste, garnetted waste, cotton card strips, cotton comber waste, cotton lap waste, cotton sliver waste, cotton roving waste, cotton fly waste). 2. State whether the length of the cotton staple forming any cotton card strips covered by the invoice is less than 3.016 centimeters (1 3/16 inches) or is 3.016 centimeters (1 3/16 inches) or more.
5204 through 5207	Cotton Sewing Thread and Cotton Yarn: 1. Specify the fiber content by weight. 2. State whether the product is of single or of multiple (folded) or cabled yarn. 3. State whether or not the product is put up for retail sale. 4. If the product is sewing thread, provide the weight put up on supports and state whether or not it is dressed and has a final "Z" twist. 5. If the product is not sewing thread, indicate: a. Whether the fibers are combed or uncombed; b. The metric number (nm) per single yarn; and c. Whether or not the yarn is bleached or mercerized.
5208 through 5212	Woven Fabrics of Cotton: 1. Provide the fabric width in centimeters. 2. Specify the fiber content by weight. 3. Specify the type of fabric (for example, poplin, duck, broadcloth). 4. If the fabric is unbleached, bleached, dyed, composed of yarns of different colors, and/or printed, so state. 5. Specify the number of single threads per square centimeter (all ply yarns must be counted in accordance with the number of single threads contained in the yarn). 6. Specify separately the number of warp ends per centimeter and the number of filling picks per centimeter. 7. Provide the fabric weight in grams per square meter. 8. Provide the average yarn number using the following formula: 100 × (total single yarns per square centimeter) ÷ (number of grams per square meter) 9. Indicate the yarn size or sizes in both the warp and the filling, including the number of plies in each yarn. 10. State whether or not the fibers are combed or carded. 11. State whether the fabric is napped or not napped. 12. Specify the type of weave (for example, plain, twill, sateen, oxford). 13. Specify the type of machine on which the fabric was woven (for example, with jacquard, with swivel, with lappet, with dobby).
Chapter 53—Other Vegetable Textile Fibers; Paper Yarn and Woven Fabric of Paper Yarn	
5301 through 5305	Vegetable Fibers: 1. State whether the vegetable fiber is raw or retted, broken, scutched or otherwise processed. 2. If the vegetable fiber is waste, identify the type of waste (for example, tow, noils, yarn waste).
5306 through 5308	Yarns of Vegetable Fibers and Paper Yarn: 1. Specify the fiber content by weight. 2. State whether the yarn is single, multiple (folded) or cabled.
5309	Woven Fabrics of Flax: 1. Specify the fiber content by weight. 2. State whether the fabric is bleached or unbleached, dyed, printed, or composed of yarns of different colors. 3. Provide the fabric width in centimeters. 4. Identify the type of weave. 5. Provide the fabric weight in grams per square meter. 6. Indicate the number of single yarns per centimeter in the warp and the number of single yarns per centimeter in the filling. 7. Indicate the yarn size or sizes in both the warp and the filling, and state whether the yarns are single or plied. 8. State whether or not the fabric is napped.
5310	Woven Fabrics of Jute or Other Textile Bast Fibers (Other Than Flax, True Hemp and Ramie): 1. Specify the fiber content by weight. 2. State whether or not the fabric is unbleached. 3. Provide the fabric width in centimeters.
5311	Woven Fabrics of Other Vegetable Fibers or of Paper Yarn: 1. Specify the fiber content by weight. 2. Provide the fabric width in centimeters. 3. Identify the type of weave. 4. Provide the fabric weight in grams per square meter. 5. Indicate the number of single yarns per centimeter in the warp and the number of single yarns per centimeter in the filling. 6. Indicate the yarn size or sizes in both the warp and the filling, and state whether the yarns are single or plied. 7. State whether or not the fabric is napped.

Heading/subheading	
	Chapter 54—Man-Made Filaments
5401 through 5406	Man-Made Filament Yarn (Including Monofilament) and Strip: 1. For all products, specify the following: a. The filament and fiber content by weight; b. Whether the product is single or plied (multiple, folded or cabled); c. Whether or not the product is put up for retail sale (as defined in Note 4 to Section XI, HTSUS); d. Whether or not the product is sewing thread (as defined in Note 5 to Section XI, HTSUS); and e. Whether the product contains only filament or a combination of filament and spun staple fibers, and, if it contains such a combination, provide the percentages of filament and spun staple fibers by weight. 2. For products other than sewing thread, specify: a. Whether or not the product is high tenacity yarn; b. Whether the product is monofilament, multifilament or strip; c. Whether or not the product is texturized; d. The yarn number is decitex; e. Whether or not the product is twisted and, if so, the number of turns per meter; f. The cross-sectional dimension in millimeters (for monofilament only); and g. The width in millimeters (for strip only). This measurement must be of the strip in its folded or twisted condition, if so imported.
5407 and 5408	Woven Fabrics of Man-Made Filament Yarn (Including Monofilament) and Strip: 1. Provide the fabric width in centimeters. 2. If the fabric is unbleached or bleached, dyed, of yarns of different colors, and/or printed, so state. 3. Specify the textile content of the fabric by weight. If the fabric is composed of more than one material (textile or non-textile), list the percentage by weight of each material. In the case of man-made textile materials, treat them separately according to whether they are or staple fiber, even if they are of the same generic chemical composition. 4. State whether or not the yarns are high tenacity, and, if twisted, specify the number of turns per meter in each yarn. 5. Indicate the yarn size or sizes in both the warp and the filling, including the number of plies in each yarn. 6. Specify the type of weave (for example, plain twill, sateen). 7. Specify the type of machine on which the fabric was woven (for example, with jacquard, with swivel, with lappet, with dobby). 8. Specify separately the number of warp ends per centimeter and the number of filling picks per centimeter. 9. Provide the fabric weight in grams per square meter. 10. Provide the average yarn number using the following formula: 100 × (total single yarns per square centimeter) ÷ (number of grams per square meter) 11. If the fabric contains staple fiber yarns, state whether or not the fibers are combed or carded. 12. If the fabric contains polyester filament yarns, state whether the polyester filament is textured or non-textured or both and specify the percentage by weight of each such filament in the fabric.
	Chapter 55—Man-Made Staple Fibers
5501 and 5502	Synthetic and Artificial Filament Tow: 1. Provide the length of the tow in meters. 2. Specify the twist (number of turns per meter). 3. Provide the filament measurement in decitex. 4. State whether or not the tow is drawn. 5. Provide the total measurement of the tow in decitex. 6. Specify the constituent filament(s) by name (for example, nylon, polyester, viscose rayon) and weight.
5503, 5504, 5506, and 5507	Man-Made Staple Fibers: 1. Specify the fiber content by weight. 2. State whether or not the fiber is carded, combed or otherwise processed for spinning.
5505	Waste of Man-Made Fibers: 1. Specify the fiber content by weight. 2. Identify the type of waste (for example, noils, rovings, yarn waste, garnetted stock), and indicate the intended use of the waste.
5508 through 5511	Yarn of Man-Made Staple Fibers: 1. Specify the fiber content by weight. 2. State whether the product is single or plied (multiple, folded or cabled). 3. State whether or not the product is put up for retail sale (as defined in Note 4 to section XI, HTSUS). 4. State whether or not the product is sewing thread (as defined in Note 5 to section XI, HTSUS). 5. State whether the product contains only spun staple fibers or is a combination of spun staple fibers and filament, and, if a combination of spun staple fibers and filament, specify the percentages of spun staple fibers and filament by weight.

Heading/subheading	
5512 through 5516	Woven Fabrics of Man-Made Staple Fibers: 1. Provide the fabric width in centimeters. 2. If the fabric is unbleached or bleached, dyed, of yarns of different colors, and/or printed, so state. 3. Specify the textile content of the fabric by weight. If the fabric is composed of more than one material (textile or non-textile), list the percentage by weight of each material. In the case of man-made textile materials, treat them separately according to whether they are artificial or synthetic and filament (or strip) or staple fiber, even if they are of the same generic chemical composition. 4. State whether or not the yarns are high tenacity, and, if twisted, specify the number of turns per meter in each yarn. 5. Indicate the yarn size or sizes in both the warp and the filling, including the number of plies in each yarn. 6. Specify the type of weave (for example, plain, twill, sateen). 7. Specify the type of machine on which the fabric was woven (for example, with jacquard, with swivel, with lappet, with dobby). 8. Specify separately the number of warp ends per centimeter and the number of filling picks per centimeter. 9. Provide the fabric weight in grams per square meter. 10. Provide the average yarn number using the following formula: 100×(total single yarns per square centimeter)÷(number of grams per square meter) 11. If the fabric contains staple fiber yarns, state whether or not the fibers are combed or carded. 12. If the fabric contains filament yarns, state whether they are textured or not textured.
Chapter 56—Wadding, Felt and Nonwovens; Special Yarns, Twine, Cordage, Ropes and Cables and Articles Thereof	
5601	Wadding and Articles Thereof, Textile Flock and Dust, and Mill NEPS: 1. Specify the fiber content by weight 2. State how the product is packed or packaged (for example, in rolls, in blister packs).
5602	Felt: 1. Specify the fiber content by weight. 2. Identify the construction of the product (for example, needleloomed or stitch-bonded, laminated). 3. If the felt is impregnated, coated, covered or laminated with a substance, so state and identify the substance. 4. If the felt is coated, covered or laminated with plastics or rubber, provide the weights of the textile portion and of the plastics or rubber portion. 5. If the felt is coated, covered or laminated with plastics or rubber, state whether these substances are compact or cellular and state whether the plastics or rubber is on one or both sides.
5603	Nonwovens: 1. Specify the fiber content by weight. 2. State whether the nonwoven material consists of filament or of staple fibers. 3. Indicate the method of manufacture of the nonwoven fabric (for example, thermal bonded, mechanical entanglement, wet or dry laid). 4. If the nonwoven fabric is impregnated, coated, covered or laminated with a substance, so state and identify the substance. 5. If the nonwoven fabric is coated, covered or laminated with plastics or rubber, state whether the substance is compact or cellular. If both types are used, so state, and indicate the order in which they occur in relation to the nonwoven fabric. 6. Indicate whether the coating, covering or laminating substance is on one or both sides of the nonwoven fabric.
5604	Rubber Thread and Cord, Textile Covered; Textile Yarn, and Strip and the Like of Heading 5404 or 5405, Impregnated, Coated, Covered or Sheathed with Rubber or Plastics: If the product is textile yarn or strip or the like, impregnated, coated, covered or sheathed with rubber plastics: 1. Identify the material used to impregnate, coat, cover or sheath the textile portion and provide its percentage of the total weight of the product; 2. Specify the fiber content of the product by weight; and 3. State whether or not the textile portion consists of high tenacity yarn.
5605	Textile Yarn or Strip or the Like of Heading 5404 or 5405, Combined or Covered with Metal (Metalized Yarn): 1. State whether or not the yarn is gimped. 2. State whether or not the yarn is reinforced with metal thread. 3. Specify the fiber content of the yarn by weight. 4. If the yarn is twisted, so state and specify the number of turns per meter.
5606	Gimped Yarn and Gimped Strip and the Like of Heading 5404 or 5405 (Other Than Gimped Metalized Yarn and Gimped Horsehair Yarn), Chenille Yarn and Loop Wale-Yarn: 1. State whether the product is gimped yarn or strip, chenille yarn, or loop wale-yarn. 2. Specify the fiber content by weight.
5607	Cordage, Ropes, Cables and Twine: 1. Specify the fiber content by weight.

Heading/subheading	
	2. State whether the construction is: a. Baler or binder twine; b. Stranded rope (3 or 8 strand); or c. Braided or plaited. 3. Specify the decitex for the product. 4. If made from strip, indicate the following: a. The width of the strip is centimeters; b. Whether the strip is fibrillated or non-fibrillated; and c. The weight of any non-fibrillated strip as a percentage of the total weight of the product. 5. If made of coir, indicate the number of plies. 6. If the product is binder or baler twine: a. Identify the type of twist in the twine (S or Z). b. State whether or not the twine is coated with oil or treated with repellant to resist rot, insects or rodents. c. Provide the minimum breaking force of the twine in decanewtons. d. Provide the minimum knot breaking force of the twine in decanewtons.
5608	Netting and Nets: 1. Specify the construction and size of the mesh. 2. Specify the stretch mesh size. 3. Specify the fiber content by weight. 4. Specify the size or thickness of the yarns used in the netting or net. 5. State the intended use of the product. 6. State whether the product is netting material or a finished net.
5609	Other Articles of Yarn, Strip or the Like of Heading 5404 or 5405, Twine, Cordage, Rope or Cables: 1. State the intended use of the article. 2. Provide a breakdown of the component materials of the article by weight.
	Chapter 57—Carpets and Other Textile Floor Coverings
5701	1. Specify the fiber content by weight. 2. Indicate whether the product is hand- or machine-knotted or hand-hooked. 3. Indicate whether the product is of pile or flat construction. 4. Indicate whether or not the product incorporates a pre-existing base.
5702	1. Specify the fiber content by weight. 2. Indicate whether the product is hand- or machine-woven. 3. Indicate whether the product is of pile or flat construction. 4. If the product is hand-loomed chenille, so state.
5703	1. Specify the fiber content by weight. 2. Indicate whether or not the product is hand-hooked. 3. Specify the area of the product in square meters. 4. Indicate whether or not the product incorporates a pre-existing base.
5704	1. Specify the fiber content by weight. 2. Indicate whether or not the product is tufted or flocked.
5705	1. Specify the fiber content by weight. 2. Indicate whether or not the product incorporates a pre-existing base.
	Chapter 58—Special Woven Fabrics; Tufted Textile Fabrics; Lace; Tapestries; Trimmings; Embroidery
5801 and 5802	Woven Pile Fabrics and Chenille Fabrics, Other Than Fabrics of Heading 5802 or 5806: 1. Identify the type of pile (warp or weft). 2. Provide the fabric width in centimeters. 3. Specify the fiber content by weight in the pile and in the ground fabric (separately broken out). 4. State whether the pile is cut or uncut. 5. Provide the fabric weight in grams per square meter.
5803	Gauze (Other Than Narrow Fabrics of Heading 5806): 1. Specify the fiber content by weight. 2. Provide the width of the gauze in centimeters. 3. Describe how the gauze is woven (type of weave).
5804	Tulles and Other Net Fabrics (Not Including Woven, Knitted or Crocheted Fabrics), and Lace in the Piece, in Strips or in Motifs: 1. Specify the fiber content by weight. 2. State whether the product is a tulle or other net fabric, mechanically made lace, or hand-made lace. 3. If the product is a tulle or other net fabric, indicate the type of net construction (for example, tulle, bobinot, plain filet net, mechelin net) and the type of machine used to produce the net. 4. If the product is mechanically made lace, indicate the type of lace (for example, needle point, bobbin, crochet) and the type of machine used to make the lace (for example, leavers, nottingham, bobinet jacquard).
5805	Hand-Woven and Needle-Worked Tapestries: 1. Specify the fiber content by weight.

Heading/subheading	
	2. Indicate whether hand-woven or needle-worked.
5806	Narrow Woven Fabrics (Other Than Goods of Heading 5807) and Narrow Fabrics Consisting of Warp Without Weft Assembled by Means of an Adhesive (Bolducs): 1. If the product is a narrow fabric consisting of warp without weft assembled by means of an adhesive (bolduc), so state. 2. If the product is other than a bolduc: a. Specify the fiber content by weight. b. Provide the fabric width in centimeters. c. State whether or not the fabric has woven selvages or false selvages (for example, cut with a hot knife, gummed edges). d. State whether or not the fabric has a pile construction. e. Specify the amount of elastomeric yarn or rubber thread by weight in the fabric, if any f. If the product is a ribbon, so state and state whether the ribbon is suitable for the manufacture of typewriter or similar machine ribbons of heading 9612.
5807	Labels, Badges and Similar Articles: 1. Indicate how the article is used. 2. If the article is in the piece, so state. 3. If the article is cut to shape or size, indicate whether it has hemmed or finished edges. 4. State whether the article is woven or not woven. 5. Specify the fiber content by weight.
5808	Braids and Ornamental Trimmings, Tassels, Pompons and Similar Articles: 1. Specify the fiber content by weight. 2. If the product is a trimming, state where and how it is to be used and state whether it is in the piece or cut to size.
5809	Woven Fabrics of Metal Thread and Woven Fabrics of Metalized Yarn of Heading 5605 of a Kind Used in Apparel, as Furnishing Fabrics or for Similar Purposes: 1. Specify the fiber content by weight, reporting metalized yarn as a single textile material the weight of which is to be taken as the aggregate of the weights of its components. 2. Provide the fabric width in centimeters. 3. Indicate the end use of the fabric (for example, wearing apparel, home furnishings).
5810	Embroidery: 1. State whether or not there is a visible ground fabric on the front or back. 2. Describe the ground fabric if visible (for example, knit, woven, narrow) and, if the product is other than a label, badge, emblem or motif, provide the weight and width of the ground fabric. 3. Provide the weight of the product in grams per square meter. 4. If the product is an embroidered label, badge or emblem, provide the following additional information: a. The dimensions of the product in centimeters; b. The percentage of embroidery by area; and c. Whether the item has a heat seal backing.
5811	Quilted Textile Products in the Piece: 1. Describe the construction of each fabric layer or component. 2. Specify the fabric content by weight. 3. State how the product is put up (for example, in rolls, flat-folded, cut to a specific size for a particular use).
Chapter 59—Impregnated, Coated, Covered or Laminated Textile Fabrics; Textile Articles of a Kind Suitable for Industrial Use	
5901	Textile Fabrics Coated With Gum or Amylaceous Substances, Tracing Cloth, Prepared Painting Canvas, and Buckram and Similar Stiffened Textile Fabrics: 1. Identify the composition of the coating substance. 2. Describe the fabric construction and specify the fiber content by weight.
5902	Tire Cord Fabric of High Tenacity Yarn of Nylon or Other Polyamides, Polyesters or Viscose Rayon: 1. Specify the fiber content of the yarns by weight. 2. Describe the construction of the fabric.
5903	Textile Fabrics Impregnated, Coated, Covered or Laminated With Plastics, Other Than Those of Heading 5902: 1. Describe the fabric construction and specify the fiber content by weight. 2. Identify the type of plastics used. 3. Provide the respective weights of plastics and textile. 4. Provide the weight of the product per square meter. 5. If the textile fabric is coated or covered on one or both sides, so state. 6. State whether the plastics is compact or cellular. 7. If both compact and cellular plastics are used, so state and specify in what order to the textile. 8. If the textile fabric is made of woven polyethylene strips, indicate the color or tint of the strips and the color of the plastic coating or laminating film. 9. State how the product is shipped (for example, in rolls or bolts) and provide the length, width and, where applicable, thickness of the product in metric units.
5905	Textile Wall Coverings: 1. State how the product is put-up. 2. Specify the width in centimeters.

Heading/subheading	
	3. Describe the construction of the product. 4. If the product is backed with permanently affixed paper, so state. 5. If the back of the product has been treated or coated with any substance to permit pasting, so state and identify this substance.
5906	Rubberized Textile Fabrics, Other Than Those of Heading 5902: 1. Provide the product width in centimeters. 2. Describe the construction of the textile portion (for example, knitted, woven). 3. Specify the fiber content by weight. 4. Identify the rubber (natural or synthetic-type) used in the product. 5. Provide the weight of the product in grams per square meter. 6. Provide the respective weights of the textile and rubber portions. 7. If the rubber is on one or both surfaces of the product or in the middle, so state. 8. State whether the rubber is compact or cellular.
5907	Textile Fabrics Otherwise Impregnated, Coated, Covered or Laminated, and Painted Canvas (Theatrical Scenery, Studio Back-Cloths or the Like): 1. Describe the construction of the base fabric. 2. Specify the fiber content by weight. 3. Indicate the end use of the product. 4. Identify the impregnation, coating, covering or laminate. 5. If the coating substance (for example, flock) forms a design or covers the entire surface, so state. 6. Provide the respective weights of the textile and non-textile materials.
5910	Transmission or Conveyor Belts and Belting of Textile Material: 1. State whether the product is belting material or a finished belt (that is, closed loop, endless, fitted with linking devices or cut to exact length). 2. Indicate the cross-section shape of the belt or belting (for example, trapezoidal-V-, flat, round). 3. If the belt or belting will be used as a conveyor, so state. 4. If the belt or belting will be used in power transmission, so state. 5. State whether or not the belt is synchronous. 6. Identify the type of device, machine or engine in which the belt or belting will be used. 7. Describe the composition and construction of the belt or belting in terms of the following: a. The identity and weight of each textile fiber; b. The identity of any non-textile material; c. The respective weights of the textile and non-textile component materials; d. The number of plies and the order in which they appear; and e. The overall thickness and the width in centimeters.
5911	Textile Products and Articles for Technical Uses: 1. Indicate the end use of the product. 2. Describe the construction of the product and specify the fiber content by weight. 3. State whether the product is in the piece, endless, fitted with linking devices, cut-to-size, or made up. 4. If used in, or in conjunction with a machine, state the type and use of such machine. 5. If the product is a fabric or felt of a kind used in papermaking or similar machines, provide the weight of the product is grams per square meter.
	Chapter 60—Knitted or Crocheted Fabrics
6001	Pile Fabrics, Knitted or Crocheted: 1. Specify by weight the fiber content of the pile and the fiber content the ground fabric, broken out separately. 2. Indicate the type of pile construction (for example, long, looped, terry). 3. Provide the fabric weight in grams per square meter.
6002	Other Knitted or Crocheted Fabrics: 1. If knitted, state whether the fabric is of warp or weft knit construction. 2. Identify the specific construction of the fabric (for example, raschel, tricot, rib, jersey). 3. Specify the fiber content by weight. 4. Provide the fabric width in centimeters. 5. Specify the percentage by weight of elastomeric yarn or rubber thread contained in the fabric, if any.

Chapter 61—Articles of Apparel and Clothing Accessories, Knitted or Crocheted

General Requirements

1. Indicate the style number, the gender of the wearer, the common and commercial designation, and the sizing of the garment or clothing accessory. All articles and components thereof, including lining, trim, and interlining, must be identified as to composition (including fiber content by weight), construction, individual and aggregate weights, and location on the product. For garments with an outer shell of more than one construction or material (textile or non-textile), give the relative weight, percentage value, and visible surface area of each component. For outer shell components which are blends of different materials, give the relative weight of each material in the component.

2. For two or more garments which are imported together and sold as a unit, indicate whether all components are of the same fabric construction, style, color, and composition and of corresponding or compatible size. Indicate if any material appears on one component and not on another component.

3. For garments which cover the upper torso, identify the area of the body which is covered, and indicate the presence or absence of sleeves or an opening at the neck, the type (full or partial) and location of the opening and the means of closure (for example, zipper, buttons, snaps).

4. For each garment, indicate the type of knit construction (for example, jersey, rib, jacquard) and specify any specialized fabric (for example, napped, pile, terry).

5. For garments which cover the upper torso, indicate the stitch count per centimeter in both the horizontal and vertical directions and the stitch count per two centimeters in the horizontal direction.

Additional Requirements for Specific Merchandise

Suits and suit-type jackets: Indicate the jacket construction with respect to the number of panels (exclusive of the sleeves, facing and collar), their location, as well as the location and direction of the seams joining them.

Garments made from fabrics having an application of rubber or plastics: Identify the rubber or plastic substance on the fabric and the portion(s) of the garment made from that fabric.

Coats and jackets: Indicate the garment length (for example, hip-length, three-quarter length). Indicate whether the garment has a lining, and if so, specify the type of lining.

Garments with bibs: Indicate the height of the front bib rise, noting its extension upwards above the natural waistline. Where the bib rise is not uniform, provide all bib measurements in centimeters.

Parts of playsuits: Indicate the use of the garment (for example, as a shirt). Describe the means of physical attachment to the complementary garment imported as parts of playsuits and identify the complementary garment (for example, shorts).

Babies' garments and clothing accessories: Indicate whether the articles are for young children 0 to 24 months of age and whether the wearer has a body height not exceeding 86 centimeters.

Men's and boys' swimwear: Indicate whether the garment has a full liner and specify its fiber content. State whether the article has an elasticized waistband and a functional drawstring.

Shirts and blouses: Indicate the presence or absence of pockets below the waist, a ribbed waistband or other means of tightening at the bottom of the garment, and whether the garment has a neckline opening. Indicate the direction of the closure (left over right or right over left).

Tank tops: Indicate the width of the shoulder straps in centimeters, and if the garment has neck openings, pockets, or any belt treatment, so state.

T-shirts: Indicate whether the garment is all white or colored. Describe the construction of the sleeves, neckline and bottom. Indicate whether the garment has pockets, trim, embroidery, or pieced fabric construction. (See also heading 6109.)

Sweatshirts: Indicate the presence or absence of a snug fitting waist and cuffs.

Tops: Indicate the extent of the body coverage.

Sweaters: Indicate the presence or absence of a lining and the type of lining.

Heading/Subheading	
6108.21 and 6108.22	Women's or Girls' Briefs and Panties: Indicate whether or not the garments are disposable after one-time use.
	T-Shirts, Singlets, Tank Tops and Similar Garments, Knitted or Crocheted:
6109.10.0007	State whether the men's or boys' singlet is white.
6109.10.0009	Identify the specific type of garment.
6109.10.0037	Identify the specific type of garment and specify its color.
6109.90.1047	Identify the garment as a thermal undershirt.
6109.90.1510	Indicate whether or not the garment is underwear with long sleeves.
6109.90.1530	Garments, Made Up of Knitted or Crocheted Fabrics, Having an Outer Surface Impregnated, Coated, Covered, or Laminated With Rubber or Plastics Which Completely Obscures the Fabric:
6113.00.0005, 6113.00.0010 and 6113.00.0012.	Provide the generic names of both the rubber or plastics and textile material present in the shell.
	Panty Hose and Tights:
6115.11.00	Provide the single yarn measurement in decitex.
	Women's Full- or Knee-Length Hosiery Measuring Per Single Yarn Less Than 67 Decitex:
6115.20.00	Provide the single yarn measurement in decitex.
	Other Hosiery, Including Stockings For Varicose Veins, and Footwear Without Applied Soles:
6115.92 through 6115.99	Indicate the presence or absence of net or lace on the hosiery.
	Gloves, Mittens and Mitts, Knitted or Crocheted:
6116.10 18 and 6116.10.45	1. Describe the construction and method of manufacture of the article. 2. Specify the percentage by weight of plastics or rubber in the impregnated, coated or covered portion of the article. 3. If the article is impregnated, coated or covered on the palm only, so state.
6116.10.70	Specify the percentage by weight of plastics or rubber in the article.
6116.10.90	1. Specify the percentage by weight of plastics or rubber in the impregnated, coated or covered portion of the article. 2. If the article is impregnated, coated or covered on the palm only, so state.
6116.91.00	Identify the type of animal hair of which the article is made.
6116.92.60	State whether or not the article has fourchettes.
6116.92.90	State whether or not the article is seamless.
6116.93.60 and 6116.93.90	State whether or not the article has fourchettes.
6117.10	Shaws, Scarves, Mufflers, Mantillas, Veils and the Like: Provide the dimensions in centimeters.
6117.80	Other Made Up Clothing Accessories: When the use of the article is not evident from the name of the article as it would be in the case of items such as earmuffs or belts, describe how it is used (for example, wrapped around the head, pinned to a dress).
6117.90	Parts of Garments or Clothing Accessories: Name the garment or accessory of which they are a part (for example, parts of sweaters, shirts, trousers).

Chapter 62—Articles of Apparel and Clothing Accessories Not Knitted or Crocheted

General Requirements

1. Indicate the style number, the gender of the wearer, the common and commercial designation, and the sizing of the garment or clothing accessory. All articles and components thereof, including lining, trim, and interlining, must be identified as to composition (including fiber content by weight), construction, individual and aggregate weights, and location on the product. For garments with an outer shell of more than one construction or material (textile or non-textile), give the relative weight, percentage value, and visible surface area of each component. For outer shall components which are blends of different materials, give the relative weight of each material in the component.

2. For two or more garments which are imported together and sold as a unit, indicate whether all components are of the same fabric construction, style, color, and composition and of corresponding or compatible size. Indicate if any material appears on one component and not on another other component.

3. For each garment, identify the area of the body which is covered, and indicate the presence or absence of sleeves or an opening at the neck, the type (full or partial) and location of the opening and the means of closure (for example, zipper, buttons, snaps).

Additional Requirements For Specific Merchandise

Suits and suit-type jackets: Indicate the jacket construction with respect to the number of panels (exclusive of the sleeves, facing and collar), their location, as well as the location and direction of the seams joining them.

Women's and girls' woven blouses, shirts and shirtblouses: Indicate the presence or absence of pockets below the waist and a ribbed waistband or other means of tightening at the bottom of the garment. Indicate the direction of the closure (left over right or right over left).

Garments made from fabric having an application of rubber or plastics: Identify the rubber or plastic substance on the fabric and the portion(s) of the garment made from that fabric. In the case of garments entered as water resistant, specify the water resistance rating of the fabric.

Coats and jackets: Indicate the garment length (for example, hip-length, three-quarter length). Indicate whether the garment has a lining and if so, specify the type of lining.

Garments with bibs: Indicate the height of the front bib rise, noting its extension upwards above the natural waistline. Where the bib rise is not uniform, provide all bib measurements in centimeters.

Parts of playsuits: Indicate the use of the garment (for example, as a shirt). Describe the means of physical attachment to the complementary garment imported as parts of playsuits and identify the complementary garment (for example, shirts).

Babies' garments and clothing accessories: Indicate whether the articles are for young children 0 to 24 months of age and whether the wearer has a body height not exceeding 86 centimenters.

Woven cotton and man-made fiber shirts, blouses, dresses, nightdresses, nightshirts and pajamas: State whether or not the fabric is dyed or printed.

Men's woven shirts: Indicate whether the garment has an opening at the neckline and if so, whether it is full or partial.

Men's and boys' swimwear: Indicate whether the garment has a full liner and specify its fiber content. State whether the article has an elasticized waistband and a functional drawstring.

Tops: Indicate the extent of body coverage.

Heading/Subheading	
6201.12.10, 6201.13.10, 6201.92.10, 6201.93.10, 6202.12.10, 6202.13.10, 6202.92.10, and 6202.93.10.	Down Garments: 1. Specify the total weight of the garment. 2. Specify the total weight of feathers, if any. 3. Specify the total weight of the down.
6210.10	Garments of Felt or Nonwoven Fabrics: 1. Specify where the garment is to be used (for example, in hospitals, in asbestos plants). 2. State whether or not the garment is disposable.
6210.20.1010, 6210.20.2010, 6210.30.1010, 6210.30.2010, 6210.40.1010, 6210.40.2010, 6210.50.1010, and 6210.50.2010.	Garments Having an Outer Surface Impregnated, Coated, Covered, or Laminated With Rubber or Plastics Material Which Completely Obscures the Underlying Fabric: Provide the generic names of both the rubber or plastics and the textile.
6211.20.10	Down Ski-Suits: 1. Specify the total weight of the garment. 2. Specify the total weight of feathers, if any. 3. Specify the total weight of the down.
6212.10.10	Brassieres Containing Lace, Net or Embroidery: 1. Indicate the type of lace used, if any. 2. Indicate whether certain areas of the bra are embroidered.
6213	Handkerchiefs: Provide the dimensions in centimeters.
6214	Shawls, Scarves, Mufflers, Mantillas, Veils and the Like: Provide the dimensions in centimeters.
6216.00.12 and 6216.10.18	Gloves, Mittens and Mitts: 1. Indicate which fabric portions of the article are impregnated, coated or covered with plastics or rubber. 2. Describe the construction and method of manufacture of the article. 3. Specify the percentage by weight of plastics or rubber in the impregnated, coated or covered portion of the article. 4. If the article is impregnated, coated or covered on the palm only, so state.
6216.00.28	Specify the percentage by weight of plastics or rubber in the article.
6216.00.32	Specify the percentage by weight of plastics or rubber in the impregnated, coated or covered portion of the article.
6216.00.39	State whether or not the article has fourchettes.
6216.00.52	State whether or not the article has fourchettes.
6217.10	Other Made Up Clothing Accessories: When the use of the article is not evident from the name of the article as it would be in the case of items such as earmuffs or belts, describe how it is used (for example, wrapped around the head, pinned to a dress).
6217.90	Parts of Garments and Clothing Accessories: Identify the article of which the product is a part.

Heading/Subheading	
Chapter 63—Other Made Up Textile Articles; Needlecraft Sets; Worn Clothing and Worn Textile Articles; Rags	
6301	Blankets and Traveling Rugs: 1. Specify the fiber content by weight. 2. Provide the dimensions in meters. 3. State whether or not the article is woven. 4. If the article is an electric blanket, so state.
6302	Bed, Table, Toilet and Kitchen Linen: 1. Describe the construction of the article (for example, woven, knitted or crocheted, pile, tufted). 2. Specify the fiber content by weight. 3. If the article is bed linen: a. State whether or not it is printed; b. Identify the presence of any embrodiery, lace, braid, edging, trimming, piping or applique work; and c. State whether it is napped or not napped.
630.	Curtains, Blinds and Valances: 1. Identify the fabric construction of the product. 2. Specify the fiber content by weight.
6304	Bedspreads and Other Furnishing Articles: 1. Identify the fabric construction. 2. Specify the fiber content by weight. 3. If the article is a bedspread, state whether or not it contains embroidery, lace, braid, edging, trimming, piping or applique work.
6306.22.1000	Backpacking Tents: 1. Identify the tent by specific type (for example, 4-person dome tent, 2-person A-line, wall). 2. Identify each material component of the tent and its location (for example, net windows or doors, woven nylon walls). 3. Provide the net weight of each component. 4. Provide the total net weight of the tent and all accessories necessary to pitch the tent. If the tent is incomplete (for example, a shell only without poles), provide both the weight of the imported articles and the total net weight of the tent plus all accessories necessary to pitch it when it is complete. 5. Provide the open dimensions of the tent and its shape (for example, 5 feet by 7 feet by 40 inches, A-line). If the tent is other than rectangular, provide the measurements necessary to compute the square footage (for example, for a hexagonal dome, provide the diameter point-to-point and side-to-side and the length of the sides). 6. Indicate the shape (for example, cylindrical) and dimensions of the tent as it will be carried. If other than cylindrical, provide the measurements necessary to compute cubic inches.
6307	Other Made-Up Textile Articles: 1. State how the article is used. 2. Specify the fiber content by weight.

Chapter 64—Footwear, Gaiters and the Like; Parts of Such Articles

Explanation of Certain Terms Used in Heading 6406 Invoicing Requirements

The explanations set forth below, although accurately reflecting the position of the Customs Service, are not intended to reflect the full tariff meaning of those terms. If further explanation of these or other terms used in the invoicing requirements for heading 6406 is necessary, or if their application to a particular product is not clear, the exporter or the importer of record should contact Customs for clarification prior to entry of the merchandise.

Composition leather is made by binding together leather fibers or small pieces of natural leather. It does not include imitation leathers not based on natural leather.

External surface means the surface which will be seen in the finished footwear when it is worn.

Leather refers to the tanned skin of any animal from which the hair or fur (if any) has been removed. Tanned skins coated with rubber and/or plastics are "leather" only if the coating is less than .15 millimeter thick.

Related items include: Removable insoles and heel cushions, hose protectors, and similar articles; and gaiters, spats, puttees, leg warmers, leggings, and similar articles. They do not include: tights, socks, or stockings, or anything in general which covers most of the foot; special insoles, arch supports or other orthopedic appliances made to measure for one individual; simple protectors or devices which are designed to reduce pressure on certain parts of the foot and which are usually attached to the foot itself (for example, bunion pads); shin-guards and similar protective sports articles; or knee or ankle supports made of elastic fabric.

Rubber and/or plastics includes any textile material whose external surface is coated or covered with rubber or plastics if this coating or covering can be seen with the naked eye with no account being taken of any resulting change of color. Examples include woven and non-woven fabrics coated with polyvinyl chloride or polyurethane which are embossed to look like grain leather.

Textile materials include fabrics of cotton, other vegetable fiber, wool, hair, silk, or man-made fiber, and any such fabrics coated or covered with rubber or plastics if the rubber or plastics cannot be seen with the naked eye with no account being taken of any resulting change in color.

Upper refers to the part which covers the foot (and leg) whether or not affixed to an inner sole or another sole component (but without an outersole). Boot liners are, therefore, essentially parts of (linings of) uppers.

Heading/subheading	
6406.10	Uppers and Parts Thereof (Except Stiffeners): 1. If the product is an upper or a part thereof which will be visible in the finished footwear when worn, specify the percentage of external surface area (excluding accessories and reinforcements) which is: Leather ..... a. _____% Composition Leather ..... b. _____% Rubber and/or Plastics ..... c. _____% Textile Materials ..... d. _____% Other (Specify: _____) ..... e. _____% Total: 100% 2. If the product incorporates any accessories or reinforcements, so state and identify each by type and constituent material. 3. If any leather identified at a. under 1. above is coated or laminated with rubber and/or plastics, so state and, if coated: a. If the coating is less than 0.1 millimeter in thickness, so state; or b. If the coating is 0.1 millimeter or more in thickness, specify the thickness of the coating to the nearest hundredth of a millimeter. 4. If the product is an upper, state whether or not it has a mostly closed bottom (a layer of material between most of the bottom of the foot and the ground). If it does have a mostly closed bottom: a. State whether or not the upper has been shaped by lasting, molding or otherwise but not by simply closing at the bottom; and b. If the upper has been shaped by lasting, molding or otherwise, describe the shaping performed. 5. State whether or not the shipment includes matching heel pads or other parts of the footwear into which any uppers covered by the shipment will be incorporated, and identify any such parts. 6. If the product is an upper and is of textile materials (that is, the percentage at d. is the largest percentage specified under 1. above), then specify: a. The percentage or external surface area (including any leather, rubber or plastics accessories and reinforcements) which is textile materials: ____%; b. The percentage of external surface area (including any leather accessories and reinforcements) which is leather: ____; and c. The percentage by weight of the textile material(s) constituting the external layer which is: Cotton ..... _____% Wool or fine animal hair ..... _____% Man-made fibers ..... _____% Other (Specify: ..... _____% Total: 100% 7. If the product is an upper and is of rubber or plastics (that is, the percentage at c. is the largest percentage specified under 1. above), then specify the percentage of external surface area (including all accessories and reinforcements) which is rubber or plastics: ____%.
6406.99	Other Footwear Parts and Related Items: 1. Specify the percentage by weight of the product which is: Leather ..... a. _____% Composition Leather ..... b. _____% Rubber and/or Plastics ..... c. _____% Textile Materials ..... d. _____% Wood ..... e. _____% Metal ..... f. _____% Other (Specify: ____) ..... ll. _____% Total 100% For the above weight breakdown, include as "textile materials" all pieces cut from sheets of textiles laminated to, coated with, or impregnated by rubber or plastics on one side (but not both sides) of the materials unless the textile is present merely for reinforcement. 2. If the textile materials is present merely in order to reinforce a rubber or plastics materials, so state and identify each part or item containing any such textile material. 3. If the textile materials weight specified at d. under 1 above is over 25 percent, specify the percentage by weight of the textile materials which is: Cotton ..... _____% Wool or fine animal hair ..... _____% Man-made fibers ..... _____% Other (Specify: ____) ..... _____% Total: 100% 4. If any leather identified at a. under 1. above is coated or laminated with rubber and/or plastics, so state and, if coated: a. If the coating is less than 0.1 millimeter in thickness, so state; or b. If the coating is 0.1 millimeter or more in thickness, specify the thickness of the coating to the nearest hundredth of a millimeter. 5. If the product is a leg warmer, so state. 6. State whether or not the product will cover all or most of the foot.

Heading/subheading	
Chapter 65—Headgear and Parts Thereof	
6505	Hats and Other Headgear, Knitted or Crocheted, or Made Up From Lace, Felt or Other Textile Fabric, In the Piece; Hair-Nets: 1. Provide a component materials breakdown by weight. 2. Describe the construction of the product and state whether or not it contains braid.
Chapter 70—Glass and Glassware	
7019	Glass Fibers (Including Glass Wool) and Articles Thereof: General Requirements: 1. State whether the product is glass fibers (including glass wool) or is an article thereof. 2. If the product consists of glass wool, specify the silica content by weight and, if the silica content is less than 60 percent, specify the alkaline oxide and boric oxide content by weight. 3. If the product is an article, specify the form or commercial designation of the product (for example, thin sheet, web, mat, mattress, board, curtain, drapery). 4. State whether the product is woven or nonwoven.
7019.10.10 and 7019.10.20	Yarns of Glass Fiber: State whether the yarns are colored or not colored.
7019.10.30 through 7019.10.60	Shopped Strands, Rovings and Slivers of Glass Fibers: Specify whether the product is chopped strands, rovings, or slivers.
7019.20.10 through 7019.20.50	Woven Fabrics of Glass Fibers: 1. Provide the fabric width in centimeters. 2. If of a width not exceeding 30 centimeters, state whether or not the fabric has selvages or false selvages (fast edges) on both sides. 3. State whether the fabric is made up of colored or not colored yarns.
Chapter 72—Iron and Steel	
7206 through 7229	Iron and Nonalloy Steel, Stainless Steel and Other Alloy Steel, in Primary Forms, and Semifinished Products and Principal Products Derived Directly Therefrom: 1. Identify the product by name or type (for example, bar, strip, angle, T section, wire, rod). 2. Identify each element in the product in terms of percentage by weight. 3. Describe the process by which the product is made (for example, flat-rolled, cold-rolled, extruded, centered, drawn). 4. Describe any subsequent manufacturing or finishing processes to which the product was subjected (for example, grinding, polishing, turning, perforating, coating, plating, heat treating, embossing, cladding). 5. Provide all measurements of the product in metric units (for example, width, thickness, length, diameter, cross-sectional area). 6. If the product is in coil form, state whether it is in coils of successively superimposed layers or in spirally oscillated coils or in irregularly wound coils, and state whether or not it is wound on a spool or on a reel. 7. For flat-rolled products, indicate the minimum yield point. 8. Indicate any industry standards or specifications to which the product was made, such as ASTM specifications.
Chapter 73—Articles of Iron or Steel	
7301 and 7302	Sheet Piling; Welded, Angles, Shapes and Sections; Railway or Tramway Track Construction Material: 1. Identify the product by specific name (for example, sheet piling, rails, cross-ties, switch blades, sole plates). 2. Identify each element in the product in terms of percentage by weight. 3. Describe the process by which the product is made (for example, hot-rolled, cold-rolled). 4. Describe any subsequent manufacturing or finishing processes to which the product was subjected (for example, welding two or more pieces together, perforating, heat treating). 5. Indicate any industry standards or specifications to which the product was made, such as ASTM specifications.
7303 through 7307	Tubes, Pipes and Hollow Profiles; Tube or Pipe Fittings: 1. Identify the product by name (for example, tubing, line pipe, casing, elbow, flange). 2. Identify each element in the product in terms of percentage by weight. 3. Describe the process by which the product was made (for example, cast, hot-rolled, hot-extruded, cold-drawn, cold-rolled) and, in the case of pipes and tubes, state whether they are welded or seamless. 4. Describe any subsequent manufacturing or finishing processes to which the product was subjected (for example, threading, threading and coupling, coating, machining, drilling). 5. Provide all measurements of the product in metric units (for example, inside diameter, outside diameter, wall thickness). 6. For pipes and tubes, indicate the yield strength. 7. Describe the intended use of the product. 8. Indicate any industry standards or specifications to which the product was made, such as ASTM or API specifications.
7308	Structures (Except Prefabricated Buildings of Heading 9406) and Parts of Structures:

Heading/subheading	
	Identify the type of metal (for example, stainless steel, carbon steel), and state where and how the product is used.
7312	Stranded Wire, Ropes, Cables, Plaited Bands, Slings and the Like, Not Electrically Insulated: General Requirements: 1. Identify each element in the product in terms of percentage by weight. 2. Indicate any industry standards or specifications to which the product was made, such as ASTM specifications. 3. Describe the construction of the product and provide its dimensions in metric units. 4. Identify all coverings, fittings and attachments, if any. 5. Describe the intended use of the product.
7312.10.1050 and 7312.10.3020	Other Stranded Wire: 1. Specify the length of the lay or twist. 2. Specify the strand diameter.
7313	Barbed Wire; Twisted Hoop or Single Flat Wire, Barbed or Not, and Loosely Twisted Double Wire, of a Kind Used for Fencing: 1. State whether the product is made or iron or of steel. 2. Describe the construction of the product and list all its dimensions. 3. Describe the intended use of the product.
7314	Cloth, Grill, Netting and Fencing; Expanded Metal: 1. Identify each element in the product in terms of percentage by weight. 2. Indicate any industry standards or specifications to which the product was made. 3. For all products except expanded metal, describe the construction of the product and provide its dimensions in metric units (including the cross-sectional dimension of the wire and the mesh size of the product). 4. Identify all coverings, coatings and attachments, if any. 5. Describe the intended use of the product.
7317	Nails, Tacks, Drawing Pins, Corrugated Nails, Staples and Similar Articles: 1. Identify each element in the product in terms of percentage by weight. 2. Indicate any industry standards or specifications to which the product was made. 3. Describe the construction of the product and specify its length and diameter in millimeters. 4. State whether or not the product is made of round wire and, if made of another material, identify that other material and describe the manufacturing process.
Chapter 84—Nuclear Reactors, Boilers, Machinery and Mechanical Appliances, and Parts Thereof	
8456 through 8465	Machine Tools, Machining Centers, Unit Construction Machines, Multistation Transfer Machines, and Lathes: Indicate the specific type of machine (for example, external cylindrical grinder, vertical machining center, horizontal lathe).
8456 through 8462	State whether or not the machine is equipped with a CNC (Computer Numerical Control) or the facings (electrical interface) for a CNC.
8457 through 8463	State whether or not the machine is used or rebuilt.
8456.30.10	Electro-Discharge Machines: State whether or not the machine is a traveling wire (wire cut) type
8457.10	Machining Centers: 1. State whether or not the machining center has an ATC (Automatic Tool Changer). 2. If the machining center has an ATC and is a vertical-spindle machine, specify the y-axis travel in millimeters.
8458.11.0030 through 8458.11.0090	Horizontal Single Spindle Numerically-Controlled Lathes for Removing Metal: Specify the continuous rated HP or kW rating of the main spindle motor.
8466.93 and 8466.94	Parts of Machines of Headings 8456–8463: Indicate the specific type of machine of which the product is a part.
Chapter 85—Electrical Machinery and Equipment and Parts Thereof; Sound Recorders and Reproducers, Television Image and Sound Recorders and Reproducers, and Parts and Accessories of Such Articles	
8547.90	Other Insulating Fittings; Electrical Conduit Tubing and Joints Therefor, of Base Metal Lined With Insulating Material: Identify the material(s) of which the product is made, including any insulating lining material.
Chapter 96—Miscellaneous Manufactured Articles	
9612.10	Ribbons for Typewriters and Similar Machines: 1. Describe the type of ribbon, its specific function, and where and how it is used. 2. State whether or not it is put in a plastic or metal cartridge. 3. Provide the ribbon width in millimeters. 4. State whether or not the ribbon is woven of man-made fibers.

PART 142—ENTRY PROCESS

1. The authority citation for part 142 continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

§ 142.6 [Amended]

2. Section 142.6(a)(1) is amended by removing the period at the end and by adding, in its place, the words "as provided for in part 141 of this chapter."

PART 143—SPECIAL ENTRY PROCEDURES

1. The authority citation for part 143 continues to read as follows:

Authority: 19 U.S.C. 66, 1481, 1484, 1498, 1624.

§ 143.36 [Amended]

2. Section 143.36(c)(3) is amended by removing the words "In appropriate cases" and by adding, in their place, the words "Except in the case of information required under § 141.89 of this chapter, in appropriate cases".

PART 151—EXAMINATION, SAMPLING, AND TESTING OF MERCHANDISE

1. The authority citation for part 151 continues in part to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Notes 8 and 9, Harmonized Tariff Schedule of the United States), 1624. Subpart A also issued under 19 U.S.C. 1499. Subpart D also issued under Additional U.S. Notes to chapter 26, HTSUS. Subpart E also issued under Additional U.S. Note 2(f) to chapter 51, HTSUS. Subpart F also issued under Additional U.S. Notes to chapter 52, HTSUS.

* * * * *

2. The authority citation for part 151 is amended by removing the authority citations for sections 151.62 and 151.82.

§§ 151.62 and 151.82 [Removed and reserved]

3. Sections 151.62 and 151.82 are removed and reserved.

Michael H. Lane,

Acting Commissioner of Customs.

Approved: August 13, 1992.

Peter K. Nunez,

Assistant Secretary of the Treasury.

[FR Doc. 92-21037 Filed 9-2-92; 8:45 am]

BILLING CODE 4820-02-M

Internal Revenue Service

26 CFR Part 1

[FI-61-91]

RIN 1545-AQ82

Notice of Allocation of Allocable Investment Expense; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations that propose to adopt as final regulations that portion of the temporary regulations under § 1.67-3T(a) through (e), relating to reporting requirements under section 67 with respect to REMICs.

DATES: The public hearing will be held on Monday, November 9, 1992, beginning at 10:00 a.m. Requests to speak and outlines of oral comments must be received by Monday, October 19, 1992.

ADDRESSES: The public hearing will be held in the IRS Commissioner's Conference Room, room 3313, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R [FI-61-91], room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Bob Boyer of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-622-7190, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is regulations that propose to adopt as final regulations that portion of the temporary regulations under § 1.67-3T(a) through (e). These regulations appear in the proposed rules section of this issue of the **Federal Register.**

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Monday, October 19, 1992, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92-21155 Filed 9-2-92; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 1

[FI-61-91]

RIN 1545-AQ82

Allocation of Allocable Investment Expense

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: On March 9, 1988, the Internal Revenue Service issued temporary regulations [T.D. 8186] under section 67 of the Internal Revenue Code relating to reporting requirements with respect to Real Estate Mortgage Investment Conduits (REMICs) that were published in the Rules and Regulations portion of the **Federal Register** (53 FR 7504). These regulations propose to adopt as final regulations that portion of the temporary regulations under § 1.67-3T(a) through (e) (as contained in the CFR edition revised as of April 1, 1992), relating to reporting requirements under section 67 with respect to REMICs. The text of the temporary regulations serves as the comment document for this notice of proposed rulemaking.

DATES: Written comments and requests to speak (with outlines of oral comments) at the public hearing that is scheduled for November 9, 1992, must be received by October 19, 1992. See notice of hearing published elsewhere in this issue of the **Federal Register.**

ADDRESSES: Send comments, requests to speak at the public hearing, and outlines of oral comments, to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044, Attn: CC:CORP:T:R (FI-61-91), room 5228.

FOR FURTHER INFORMATION CONTACT: James W.C. Canup, 202-622-3950 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On March 9, 1988, temporary regulations [T.D. 8186] under section 67 were published in the **Federal Register** (53 FR 7504). Section 1.67-3T(f) of those regulations was amended on September 7, 1989, [T.D. 8259] (54 FR 37098). Section 1.67-3T(f) of those regulations was also revised on September 30, 1991 [T.D. 8366] (56 FR 49512). In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing final regulations under § 1.67-3(f). These regulations propose to adopt as final regulations that portion of the temporary regulations under § 1.67-

3T(a) through (e) (as contained in the CFR edition revised as of April 1, 1992).

Section 132 of the Tax Reform Act of 1986 (the 1986 Act) added to the Internal Revenue Code section 67, which disallows certain miscellaneous itemized deductions in computing the taxable income of an individual to the extent that the aggregate of those deductions does not exceed two percent of the individual's adjusted gross income. Section 67(c) directs that regulations be issued to prohibit the indirect deduction through pass-through entities of amounts that are not allowable as a deduction if paid or incurred directly by an individual. Section 67(c) also directs that regulations provide any necessary reporting requirements. The regulations under section 67 that are contained in this document fulfill the requirements of section 67(c) as it applies to REMICs.

Explanation of Provisions

In general, a REMIC is a fixed pool of mortgages in which multiple classes of interests are held by investors and which elects to be taxed as a REMIC. The regulations under section 67 require notice of income and other information to be provided to REMIC investors and the Internal Revenue Service.

Treatment of Allocable Investment Expenses

Section 1.67–3T(a)(1) requires a REMIC to allocate to each of its pass-through interest holders the holder's proportionate share of the aggregate amount of allocable investment expenses of the REMIC for the calendar quarter. In general, a pass-through interest holder (as defined in § 1.67–3T(a)(2)(i)(A)) is an holder of a residual interest that is either an individual (other than certain nonresident aliens), a person that computes its taxable income in the same manner as would an individual, or a pass-through entity, interests in which are owned by either an individual or a person that computes its taxable income in the same manner as would an individual.

The term "pass-through entity" includes, pursuant to § 1.67–2T(g), a grantor trust, a partnership, an S corporation, a common trust fund, a nonpublicly offered regulated investment company, and a REMIC. It does not include an estate, a nongrantor trust, a cooperative, a real estate investment trust, or other entities such as a qualified pension plan, an individual retirement account, or an insurance company holding assets in a separate asset account to fund certain variable contracts. The term "allocable investment expenses" (as defined in § 1.67–3T(a)(3)) means the aggregate amount of the expenses paid or accrued in the calendar quarter for which a deduction is allowable under section 212 in determining the taxable income of the REMIC for the calendar quarter.

Pursuant to § 1.67–3T(b)(1) a pass-through interest holder is treated both as having received or accrued income and as having paid or incurred an expense described in section 212 (or section 162 in the case of a pass-through interest holder that is a regulated investment company) in an amount equal to the pass-through interest holder's proportionate share of the allocable investment expenses of the REMIC.

Under § 1.67–3T(b)(1)(i), a pass-through interest holder whose taxable year is the calendar year or ends with a calendar quarter takes into account the amounts in those calendar quarters that fall within the holder's taxable year. Separate inclusion rules apply under § 1.67–3T(b)(1)(ii) to a holder whose taxable year does not end with a calendar quarter. An interest holder in a REMIC that is not a pass-through interest holder does not take into account in computing its taxable income any amount of its proportionate share of allocable investment expenses. Under § 1.67–3T(c)(1), a REMIC generally computes a pass-through interest holder's proportionate share of its allocable investment expenses by determining the daily amount of such expenses and allocating this daily amount to the pass-through interest holder in proportion to its respective holdings on that day. Generally, a pass-through interest holder's proportionate share of the daily amount of the allocable investment expenses is determined by taking into account all holders of REMIC residual interests, whether or not those holders are pass-through interest holders.

Single-Class REMICs

In the case of a single-class REMIC (as described in § 1.67–3T(a)(2)(ii)), the term "pass-through interest holder" is defined more broadly to include any regular or residual interest holder that is either an individual (other than certain nonresident aliens), a person that computes its taxable income in the same manner as would an individual, or a pass-through entity, interests in which are owned by certain types of holders. Under § 1.67–3T(c)(3), a single-class REMIC allocates its investment expenses for a calendar quarter to each holder in proportion to the amount of income that accrues to the holder for that quarter.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to this regulation, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests to Appear at the Public Hearing

Before this proposed regulation is adopted, consideration will be given to any written comments that are timely submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing will be held on November 9, 1992. See the notice of public hearing published elsewhere in this issue of the **Federal Register**.

Drafting Information

The principal author of the proposed regulation is James W.C. Canup, Office of the Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, other personnel from the Service and Treasury Department participated in their development.

Proposal of Regulations

The portion of the temporary regulations (T.D. 8186) under § 1.67–3T(a) through (e), (as contained in the CFR edition revised as of April 1, 1992), is hereby also proposed as final regulations under section 67 of the Internal Revenue Code of 1986.

Shirley D. Peterson,

Commissioner of Internal Revenue.

[FR Doc. 92–21154 Filed 9–2–92; 8:45 am]

BILLING CODE 4830–01–M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[Notice No. 749, Reference Notice No. 581]

RIN 1512-AA57

Grape Variety Names for American Wines

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is issuing for public comment a notice of proposed rulemaking containing lists of approved grape variety names which may be used as type designations for American wines. ATF published a similar notice of proposed rulemaking, Notice No. 581, on February 4, 1986. That notice proposed the establishment of approved lists of names of grape varieties which may be used as varietal designations for American wines. It also proposed a method by which names of additional grape varieties could be added to approved lists in the future. A final rule was not issued.

AFT is reopening comment on this subject for several reasons. A lengthy period of time has elapsed since publication of that notice, and new information about certain grape varieties is now available. Due to the numerous comments submitted in response to Notice No. 581, AFT has decided to modify certain proposals made at that time. Also, new grape varieties have been developed or introduced into the United States which merit consideration as approved names. Consequently, ATF is reopening the subject for comment, and incorporating several substantive changes from the original proposal.

ATF believes the listing of approved names of grape varieties for American wines will help standardize wine label terminology and prevent consumer confusion by reducing the large number of synonyms for grape varieties currently used for labeling American wines.

DATES: Written comments must be received by October 5, 1992.

ADDRESSES: Send written comments to: Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091-0221; Notice No. 749.

Copies of written comments in response to this notice and to Notice No. 581 will be available for public inspection during normal business hours at: ATF Reference Library, Office of Public Affairs and Disclosure, room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226.

FOR FURTHER INFORMATION CONTACT: Charles N. Bacon, or James A. Hunt, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226; Telephone (202) 927-8230.

SUPPLEMENTARY INFORMATION:

Background

The Federal Alcohol Administration Act

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), vests broad authority in the Director, ATF, as a delegate of the Secretary of the Treasury, to prescribe regulations intended to prevent deception of the consumer, and to provide the consumer with adequate information as to the identity and quality of the product.

Regulations which implement the provisions of section 105(e) as they relate to wine are set forth in title 27, Code of Federal Regulations, part 4 (27 CFR part 4).

Wine Varietal Labeling

Under § 4.34, still grape wine may be designated by labeling the wine with the predominant grape(s) from which the wine is produced. Since 1983, labeling rules at § 4.23a have provided for the use of a grape variety name as the type designation of the wine if not less than 75% of the wine is derived from the labeled grape variety (less in the case of wine made from certain *Vitis labrusca* grapes), and if the wine is labeled with an appellation of origin. Wine may also be labeled with the names of two or three grape varieties if all of the grapes used to make the wine are of the labeled varieties, and the percentage of wine derived from each variety shown on the label.

In recent years, ATF has noted a trend among domestic and foreign wineries to label wines using a grape variety designation. Increasing use of hundreds of grape variety names and synonyms prompted ATF to examine the correctness of using these names in order to insure that grape variety names used were truthful, accurate, and not misleading.

Winegrape Varietal Names Advisory Committee

In 1982, ATF established the Winegrape Varietal Names Advisory Committee (referred to as the "Committee") to conduct an examination of the hundreds of grape variety names and synonyms in use (47 FR 13623, March 31, 1982). According to its charter, the Committee was to advise the Director of the grape varieties and subvarieties which are used in the production of wine, to recommend appropriate label designations for these varieties, and to recommend guidelines for approval of names suggested for new grape varieties. Their recommendations were restricted to grape names used in the production of American wines. The Committee's final report was presented to the Director in September 1984. This report contained the Committee's findings regarding use of the most appropriate names for domestic winegrape varieties. ATF announced that the Committee's report was available to the public in Notice No. 548 (49 FR 44049), published on November 1, 1984.

Notice No. 581

On the basis of the recommendations contained in the Committee's final report, ATF issued Notice No. 581 on February 4, 1986 (51 FR 4392). This notice proposed the addition of Subpart J, American Grape Variety Names, to part 4. Within this proposed subpart, § 4.91 contained the list of prime grape names which the Committee had found to be the most appropriate names for grape varieties. Sections 4.92 and 4.93 contained alternative names which could be used in conjunction with the prime name (§ 4.92), or for five years, in lieu of the prime name (§ 4.93). Section 4.94 contained guidelines for adding new grape variety names to the list of prime names.

In addition to the recommendations included in the Committee report, Notice No. 581 contained other proposals. One was to prohibit the modification of grape variety names with color or style descriptive terms or with proprietary names. This proposal would prohibit use of names such as "White Zinfandel", "Cabernet Blush", "Zinfandel Nouveau", and so forth. Notice No. 581 also proposed to make obsolete certain IRS and ATF rulings relating to grape wine designations.

The comment period for Notice No. 581 was extended until July 7, 1986, by the publication of Notice No. 589, April 8, 1986 (51 FR 11944).

Written Comments in response to Notice No. 581

ATF received 156 comments from 146 different respondents prior to the end of the comment period. Comments were received from: 76 consumers; the American Wine Society; 38 American wineries; the Wine Institute; the

Association of American Vintners; the Washington Wine Institute; six grape growers; the California Farm Bureau Federation; the California Association of Winegrape Growers; the North Carolina Grape Growers Association; the Oregon Winegrowers Association; two United States Congressmen; the Embassy of France; the Embassy of the Federal Republic of Germany; four foreign wine producing or exporting companies or associations; the publication *Wine East*; a wine writer; four persons involved in academic research or classification of wine; and four members of the Winegrape Varietal Names Advisory Committee.

Comments Favoring Notice No. 581

Eleven respondents commented generally in favor of Notice No. 581, and the proposal to establish a list of wine grape variety names and for domestic use. The American Wine Society stated that the proposal would make wine labels less confusing for the consumer. Other respondents commented that the Committee had carefully researched the issue of grape variety names.

Comments Opposing Notice No. 581

A large number of respondents opposed the concept of establishing a list of grape varieties, while many objected to specific proposals such as the elimination of certain varietal names, or the proposal to prohibit use of color or style descriptors in conjunction with grape variety names. ATF could identify 54 respondents opposed generally to rulemaking in this area; in addition, nearly every one of the 146 respondents expressed opposition to some issue raised by Notice No. 581.

Conclusion

ATF has decided to reopen for public comment the subject of wine grape variety names through the issuance of this notice of proposed rulemaking. This notice incorporates most proposals from Notice No. 581, but it contains a number of significant changes as well.

Summary of Significant Changes From Notice No. 581

One List of Alternative Names

ATF has reduced the two proposed lists of alternative grape variety names to a single list. The remaining list contains alternative names which would be phased out by January 1, 1996. A few of the alternative names originally proposed have been accepted as prime names, or as synonyms for prime names.

Synonyms for Prime Names

The proposed list of prime names of grape varieties contains more synonyms for prime names than proposed in Notice No. 581. These synonyms, such as "Fumé blanc" (a synonyms for Sauvignon blanc), would be equally acceptable as prime names and can stand alone on a label as the wine designation.

Additional Grape Variety Names

ATF is proposing several additional grape names for inclusion on the list of prime names. These names represent newly developed varieties as well as some Old World grapes introduced into viticultural use in the United States.

Changes to the List of Prime Names

ATF has made certain changes to the list of prime names, through the deletion of names which are not the true names of grape varieties, and through the addition of certain grape names which were proposed as alternative names.

Approval of New Grape Names

ATF is proposing slight changes to the method of approving new grape names, primarily to provide more flexibility for breeders in naming new grape varieties.

Gamay Beaujolais

ATF is not proposing any action on Gamay Beaujolais at this time. This will be the subject of future rulemaking. Domestic wineries and bottlers may continue to use Gamay Beaujolais as a designation on wine labels in the interim.

Color and Style Descriptors

ATF is eliminating the proposal to prohibit the use of descriptive terms with grape variety names.

Type Designations of Varietal Significance

This notice proposes a new type designation for American wines having a varietal basis, but not composed of a single grape variety, such as Muscatel which may be produced using any Muscat grapes.

List of Prime Names, Section 4.91

The final report of the Winegrape Varietal Names Advisory Committee contained a list of "prime names" of grape varieties. They defined the prime name as "The name by which the grape variety is accepted as being the most appropriate and able to appear alone on a label." The Committee recommended inclusion of two additional names which were synonyms so widely accepted that they could be used alone on a label.

In Notice No. 581, ATF proposed a list of prime names at § 4.91. In response, we received many comments directed both at the establishing of any list, and at specific names appearing, or not appearing, on the list.

On the basis of all comments received, ATF has decided to repropose the list of prime grape names at § 4.91. This list has been modified due to the comments received in response to Notice No. 581. These comments are discussed below and elsewhere in this notice. The proposed list of prime names contains a number of synonyms and variant spellings which appear in parentheses. These synonyms and variant spellings may be used without qualification in lieu of the prime name appearing on the list.

Thompson Seedless and Sultanina

ATF proposed the use of both Thompson Seedless and Sultanina as prime names, with either synonym permitted without qualification. In doing so, ATF cited the Committee's findings that either name is equally valid, but that they are seldom used in wine labeling although Thompson Seedless is well known to consumers as a table grape.

Three respondents concurred with this proposal. ISC Wines of California noted that neither is commonly used as a wine designation and that no purpose would be served by restricting either name. Geyser Peak Winery stated that Thompson Seedless is well known as a table grape, but that a better name should be available for use in winemaking.

Three other respondents opposed the inclusion of both names in § 4.91. *Wine East* commented that the Thompson Seedless reputation is notorious and has no place in wine production; if ATF allowed wineries to use Sultanina without qualification, consumers would be misled since they would otherwise avoid Thompson Seedless wine. These respondents favored either dropping Sultanina or requiring it to be qualified with Thompson Seedless when used as a wine designation.

ATF has decided to propose inclusion of both names in the list of prime names. ATF finds that both names are equally valid for this grape variety. It is irrelevant whether or not Thompson Seedless conveys certain connotations to consumers regarding its suitability in wine production. The purpose of the list of grape names in § 4.91 is to provide accurate identification of wine. The listing of a grape name does not denote "quality," it merely reflects recognition of the grape variety.

Gewürztraminer and Traminer

Both Gewürztraminer and Traminer were included in proposed § 4.91.

Heublein Wines and the Wine Institute commented that by the inclusion of both names on the list, ATF was giving the impression that they were distinct grape varieties, when in fact, the names are used interchangeably for the same variety.

It is ATF's understanding that Gewürztraminer and Traminer are two separate varieties; consequently, both are proposed as prime names at § 4.91. ATF welcomes comment on this name issue.

Sauvignon Musque

On the basis of two comments to Notice No. 581, Sauvignon musque no longer appears as a proposed name in § 4.91. Ventana Vineyards and Susan Nelson-Kluk of the Foundation Seed and Plant Materials Service (FPMS), Universiy of California at Davis, both stated that the French ampelographer Pierre Galet has positively identified so-called "Sauvignon musque" samples as Sauvignon blanc. Furthermore, they noted there is no reference to Sauvignon musque in Italian or French ampelographies, and that no proper documentation exists for this name. Based on these comments, ATF has deleted Sauvignon musque from the proposed list of prime names.

Mataro and Mourvèdre

Mataro was proposed as a prime name at § 4.91, while Mourvèdre did not appear as a prime name or synonym. Although no comments were received during the comment period, ATF has since received several letters on the issue. Additionally, many applications for certificates of label approval for a varietal Mourvèdre wine have been submitted and approved.

Due to the widespread usage of the name, and the fact that Mourvèdre is a recognized synonym for this grape, ATF is now proposing to list Mourvèdre as a synonym for Mataro in § 4.91.

Alternative Names for Grape Varieties

Background

The final report of the Committee acknowledged that many grape varieties are known by more than one name, some by several names. As part of its deliberations, it selected the preferred "prime name" for each variety. In addition to these prime names, the Committee considered alternative names and synonyms. After considering the merits of the continued use of these other names, it recommended two lists of alternative names. Both lists were proposed as separate sections in Notice No. 581.

The first list contained synonyms which, if used on a label, would be required to appear in direct conjunction with the prime name of the grape. The Committee report noted that these alternative names refer to some older European grape varieties which are known by local or regional names. Some of these names have been used on labels of American wines and have received a degree of consumer acceptance. Furthermore, the Committee noted that these 16 alternative names, due to their regulatory precedent and commercial history, should be the exception to the general finding that, whenever possible, synonyms should be eliminated in the shortest practical period. Proposed § 4.92 did not contain a termination date for use of these names.

The Committee report also noted that some grape varieties have been misnamed or incorrectly identified, but that these names have received a degree of consumer acceptance. In order to prevent economic hardship to growers and winemakers, the Committee recommended these names be phased out over a five-year period. This second list at § 4.93 contained 52 alternative names. It was proposed to phase out the use of these names five years after adoption of final regulations.

General Written Comments

ATF received many comments on this proposal, both on whether alternative names should be permitted, and on the use of specific alternative names. Dr. Edward J. Wawszkiewicz commented that ATF should not permit the use of any alternative names of wine grape varieties, and that use of the names in §§ 4.92 and 4.93 should not be permitted for more than one year. He pointed to ATF's statutory mandate under the FAA Act to prohibit deception of the consumer, and to provide the consumer with adequate information as to the identity of the product. Dr. Wawszkiewicz argued that authorization of alternative names would be inconsistent with this mandate.

The Oregon Winegrowers Association endorsed retaining both lists of alternative names on a temporary basis, but with the eventual aim of phasing out all alternative names. They further recommended adoption of an additional list of alternative names consisting of prime names approved for temporary use until horticulturally correct names for these varieties were determined. The Association emphasized that this list would stress the temporary nature of these names, including Burger, Grey Riesling, Napa Gamay, Pinot Saint George, Early Burgundy, Sauvignon vert, and Charbono.

Thirty-eight other respondents favored eliminating both proposed lists and including all of the alternative names in the list of prime names. These respondents, including consumers, four wineries, an importer, and the Wine Institute, requested that ATF permit any legitimate synonym for a varietal name without restriction. The primary reason given was that alternative names are well known, are clearly understood by consumers to designate a particular wine, and that to require a change of these names would be confusing to consumers. For the names proposed in § 4.92, the Wine Institute commented that requiring both the prime and alternative name to appear would be redundant and result in label clutter.

Other respondents noted there were no consumer complaints concerning confusing varietal names and that their use is not deceptive. A few cited costs involved with changing existing labels, advertisements, and records to reflect prime grape names. De Loach Vineyards commented "Use of commonly employed commercial wine names with which the consumer is familiar is just as important as the use of botanically accurate varietal names." These respondents generally rejected the concept of requiring use of "the most correct proper name" over an alternative varietal name which is better known. Wineries presented the argument that they should have more flexibility in using varietal names.

One List of Alternative Names

On the basis of all comments, ATF has decided to propose a single list of alternative names, those names to be phased out in the future. ATF believes that it is important to standardize wine grape names and eliminate incorrect or misnamed varieties. Because of current commercial use, ATF is proposing to permit the continued use of certain names until January 1, 1996. Use of the alternative variety names proposed at § 4.92 would not require use of the prime name on the label as well. Most of the alternative names proposed in Notice No. 581 at § 4.93 now appear in the proposed list at § 4.92.

Alternative Names From Proposed § 4.92

ATF is not proposing a second list of alternative names corresponding to those listed at § 4.92 in Notice No. 581; i.e., names which could only appear as a designation in conjunction with the prime name. ATF believes it is redundant to require two names to appear on a label, and this requirement

could result in label clutter. Consequently, ATF proposes to deal with these 16 names on a case-by-case basis, either by adding them as prime names or synonyms in § 4.91, by including them in § 4.92 as alternative names to be phased out, or by eliminating their use altogether.

Saint Emilion

ATF is not proposing to retain Saint Emilion either as a prime or alternative grape name. ATF is instead proposing use of Trebbiano as a prime name for this grape. See the discussion under "Grape Variety Names Similar to French Appellations of Controlled Origin."

Franken Riesling

Franken Riesling is included in the list of alternative names in § 4.92, to be phased out by 1996. See the discussion under "Riesling Issues."

Pineau de la Loire

Pineau de la Loire, an alternative name for Chenin blanc, is proposed for inclusion in § 4.92 to be phased out by 1996. ATF finds that this grape is not a true Pinot and that its use could be misleading.

Fumé Blanc

Notice No. 581 proposed both Fumé blanc and Blanc Fumé as alternative names for Sauvignon blanc in § 4.92. Many respondents addressed this issue.

Comments were mixed. John W. McConnell, University of California Library at Davis, commented that Fumé blanc is used to denote a Sauvignon blanc wine having a smoky or flinty taste made in the Pouilly-sur-Loire region of France. McConnell stated that this taste is not typical of Sauvignon blanc wines produced elsewhere, and that ATF should not authorize its use as an alternative name simply because it is permitted in France.

Livermore Valley Cellars noted that "Fumé" means "smoky" in many European languages. They commented that there is not reason to restrict its use only to Sauvignon blanc, but that "Fumé" should be permitted as a descriptive term to indicate the style of any wine. The American Association of Vintners supported this position and suggested that "Fumé" would provide better consumer understanding of the production style of any varietal wine, i.e., "Seyval Fumé."

Five respondents commented in favor of allowing Fumé blanc as an alternative to Sauvignon blanc. Most stated that both names are equally valid, that Fumé blanc should be allowed to stand alone on a label and that Fumé blanc has a well established consumer understanding.

ATF believes that Fumé blanc is an acceptable synonym for a wine made from Sauvignon blanc grapes. Thus, ATF is proposing Fumé blanc as a synonym in § 4.91. No evidence was introduced that "Blanc Fumé" is a widely used synonym, and ATV is not proposing its continued use either as a prime name or an alternative name. ATF further notes that the term "fumé" may be used as a descriptive term for any grape variety.

Other Alternative Names

ATF has considered the remaining names from proposed § 4.92. Based on written comments and current usage, ATF proposes to list the following names as synonyms for prime grape names in § 4.91: Black Muscat (Muscat Hamburg); Cinsaut (Black Malvoisie); Durif (Petite Sirah); Muscat Canelli (Muscat blanc); and Shiraz (Syrah).

ATF is proposing that the following names be added to the list of alternative names in § 4.92 to be phased out by 1996: Bastardo (Trousseau); Chevrier (Sémillon); Muscadelle (Sauvignon vert); Refosco (Mondeuse); Ruländer (Pinot gris); and Muscat Frontignan (Muscat blanc). ATF believes that these names are not widely used on American wine labels and that the prime names for these grapes are better known to consumers.

Alternative Names From Proposed § 4.93

Limberger and Lemberger

Limberger was proposed as a prime grape name in § 4.91, while Lemberger was listed as an alternative name in § 4.93 which could stand alone on a wine label, but which would be phased out.

Two Washington State wineries and the Oregon Wine-growers Association commented that this variety should be listed as Lemberger. They noted that either spelling, with an "e" or with an "i," is acceptable in Germany and that this variety is not known by this name elsewhere. The Oregon Winegrowers further noted that Limberger may be associated with cheese of that name in the United States, and that this name is not suitable for a wine.

Due to the current use of Lemberger on wine labels in the United States, ATF is proposing to permit either spelling for this variety. Both spellings appear in § 4.91.

Meunier and Pinot Meunier

Meunier was proposed as a prime name in § 4.91, while Pinot Meunier was listed as an alternative name in § 4.93, to be phased out in five years.

Three wineries, the Wine Institute and the Oregon Winegrowers Association requested that Pinot Meunier be permitted as a prime name or as a synonym for this grape variety. Eyrie Vineyards stated that they were the only U.S. winery to bottle this variety, and that it had been labeled Pinot Meunier for 16 years. The Oregon Winegrowers Association further commented that this grape is a true Pinot, and that the French ampelographer Pulliat listed this variety as Pinot Meunier.

Based on the fact that this grape is a true Pinot, and that Pinot Meunier has been used on wine labels for some time, ATF believes that this grape is known to consumers as Pinot Meunier, and that use of this name would not be misleading. Therefore, ATF is proposing both Meunier and Pinot Meunier as synonyms in § 4.91.

Chardonnay and Pinot Chardonnay

Chardonnay was proposed as a prime grape variety name in § 4.91, while Pinot Chardonnay was listed as an alternative name in § 4.93. The Wine Institute requested that Pinot Chardonnay be retained as a prime name or an acceptable synonym.

While Pinot Chardonnay has been used as a synonym in the past, ATF notes that Chardonnay is not a true Pinot grape, and the current nomenclature is to use simply Chardonnay. Therefore, ATF is proposing the use of Pinot Chardonnay as an alternative name in § 4.92 to be phased out by 1996.

Diamond and Moore's Diamond

The Committee considered the nomenclature of certain older American varieties and, in the final report, recommended standardizing names and eliminating synonyms. One such variety is Moore's Diamond which they proposed be simplified as Diamond, with a five year phase out period. *Wine East* requested authorization of Moore's Diamond as an acceptable synonym. ATF has, however, decided to propose phasing out use of the name Moore's Diamond by including it in the list at § 4.92.

Colombard and French Colombard

French Colombard was proposed as an alternative name at § 4.93. The Committee report noted that the true Colombard grape was mistakenly named French Colombard over 40 years ago in order to distinguish it from an unknown variety which previously had been incorrectly identified in California as Colombard. In the intervening time

French Colombard has become the most widely planted white wine grape in California. The Committee further acknowledged that individual opinions existed on whether French Colombard should be phased out, and if so, how long a time period should be granted. In Notice No. 581, ATF included French Colombard in the list of alternative names to be phased out in five years, but acknowledged that some Committee members believed 15 years or more should be provided.

Two respondents favored phasing out use of the French Colombard name in five years. They noted that Colombard is the proper name for the grape variety, and that eliminating "French" would not only promote use of the proper grape name, but would eliminate use of a foreign place name. Dr. Edward J. Wawszkiewicz concurred, but suggested a one-year phase out period. Two other respondents concurred with the proposal to phase out French Colombard, but suggested that a longer time period of 15 or 20 years be provided.

Nineteen respondents opposed the proposal to phase out French Colombard, and they uniformly rejected the idea that Colombard should be used as the prime varietal name. These respondents noted that French Colombard is the most widely planted white wine grape in California, that this grape has been known as French Colombard since at least the 1940's, and that it has never been sold as Colombard in California. E. & J. Gallo Winery stated that it has always been referred to in scientific literature as French Colombard, and that the European Economic Community accepts French Colombard as a varietal designation for wines exported to Europe.

Many respondents commented that there is no benefit to consumers of the industry by requiring a name change. The California Farm Bureau Federation stated "the primary purpose of a label is to identify the product and impart useful and unambiguous information to the consumer." They further maintained that forcing a change to Colombard might provide the correct scientific name on the label but would not benefit consumers. On the other hand, it would be costly for the industry to change labels, advertising, and so forth. Three consumers stated that the term French Colombard is not a source of confusion and that consumers do not believe that the wine is in any way associated with France.

On the basis of the evidence presented in the Committee's final report and in written comments, ATF has decided to propose that French Colombard be accepted as a synonym for Colombard. Thus, French Colombard is proposed as a synonym in § 4.91.

Gamay Issues

Background

The committee's final report noted that there are substantial plantings in California of two grape varieties which include the name "Gamay," the Napa Gamay and the Gamay Beaujolais. It stated that neither of these varieties is correctly named, and that neither is related to the Gamay grape (or one of its clones) grown in Europe. For years, ATF has permitted the use of Gamay Beaujolais on labels as a varietal designation. This resulted from the identification in the 1940's of a grape growing in Napa County as the Gamay grape native to the Beaujolais region of France. During the 1960's, the University of California at Davis determined that the grape known as Napa Gamay was the French Gamay, while the grape previously identified as Gamay Beaujolais was actually a clone of Pinot noir. Since then, wine made both from the Napa Gamay and from the clone of Pinot noir has been permitted to be labeled "Gamay Beaujolais." More recent studies have disclosed that the Napa Gamay grape is not related to the Gamay grape from France.

Napa Gamay

The Committee report recommended that Napa Gamay be proposed as an alternative name to be phased out when the grape's true identify was established. Notice No. 581 proposed Napa Gamay as a prime grape name, but noted that work was underway to establish the true identify of this grape. Until its identity was confirmed, wine made from this grape could be labeled Napa Gamay, or during the five year transition period, could be labeled Gamay Beaujolais if this appeared in direct conjunction with the variety name Napa Gamay.

Written Comments

Beringer Vineyards, ISC Wines of California, Dr. Edward J. Wawszkiewicz, and the Oregon Winegrowers Association, concurred with the proposal to include Napa Gamay in the list of prime names in § 4.91, at least until this grape is positively identified. The Oregon Winegrowers conceded that use of the name Napa Gamay is a practical compromise until the grape's true identity is determined. Three respondents commented that the grape identified as Napa Gamay may actually be the French grape Valdiquié or Valdiguié.

Recent ampelographic studies have disclosed that the grape called Napa Gamay is actually the French grape Valdiguié. On this basis, ATF is proposing Valdiguié as the prime name for this grape. However, due to the longstanding use of the name Napa Gamay, ATF is proposing Napa Gamay as a synonym for Valdiguié in § 4.91. ATF especially welcomes comments on whether Napa Gamay should be retained as a synonym for Valdiguié, or whether Napa Gamay should be phased out in the future.

Gamay Beaujolais

The Committee's findings were that Gamay Beaujolais is not the valid name of any grape variety, but that the grape identified as Gamay Beaujolais is actually a clone of Pinot noir. Its recommendation was to allow wine to be labeled as Gamay Beaujolais if the wine was made from this Pinot noir clone and if Pinot noir appeared in direct conjunction with Gamay Beaujolais. Their final report noted that some members recommended removing Gamay Beaujolais from the list of varietal names and according it semigeneric, non-varietal status. The Committee did not act on this suggestion since it was outside of their charter on varietal designations.

In Notice No. 581, ATF proposed Gamay Beaujolais as an alternative name in § 4.93 for use for five years; it could appear on a label only in direct conjunction with the actual grape variety used in its production, either Pinot noir or Napa Gamay.

Written Comments

The Gamay Beaujolais issue proved to be controversial.

Three respondents concurred with ATF's proposal to phase out use of the term Gamay Beaujolais. ISC Wines of California and the Oregon Winegrowers Association endorsed the five-year phase out period while Dr. Wawszkiewicz suggested no more than one year be permitted because it is not a grape variety.

Twenty-seven respondents objected to the proposal. Six growers of Napa Gamay grapes stated that if the term Gamay Beaujolais were eliminated, it would jeopardize the market and depress the price for their grapes. They noted that consumer recognition of wine labeled as Gamay Beaujolais is good, but that there is limited consumer market for Napa Gamay wine. Louis P. Martini stated that elimination of this term would remove this wine from the

market, and cause severe economic hardship on growers and wineries. Sebastiani Vineyards stated they produce over 100,000 cases of Gamay Beaujolais wine each year and that its removal would cause disruption for growers. The E.&J. Gallo Winery also cited the economic impact stemming from this proposal. Several consumers commented that consumer recognition of Gamay Beaujolais is good, that the wine is popular, that consumers know what they are buying, and that elimination of the term would serve no consumer purpose.

The California Farm Bureau Association, one consumer and six wineries commented that ATF should adopt Gamay Beaujolais as a semigeneric designation. The consensus of these respondents was that Gamay Beaujolais is well known to consumers as a light red, young, fruity wine and that consumers do not view it as a varietal wine. Ellendale Vineyards stated that the label should describe the finished product as well as the grapes used to make it. This vineyard noted that they produce several wines from Pinot noir grapes, and that each is labeled differently to indicate the style of wine (such as Pinot noir rosé). Gamay Beaujolais would be another style of wine made from Pinor noir. One consumer stressed that the term Gamay Beaujolais is necessary to distinguish between Pinot noir made in a Burgundy style, and Pinot noir made in the Beaujolais style; i.e., the varietal designation Pinot noir does not adequately inform the consumer about the wine. Most respondents stated they would not object if ATF required the grape variety to appear on the label of a semigeneric Gamay Beaujolais wine.

Conclusion

At this time, ATF does not believe it has sufficient information to propose eliminating use of the term Gamay Beaujolais, or to authorize its continued use on a permanent basis. In the near future, ATF will solicit additional comment on this issue through rulemaking.

In the interim, ATF will permit domestic wineries to use Gamay Beaujolais as a designation for grape wine, until resolution of rulemaking on this issue. Such wine must derive at least 75% of its volume from Pinot noir, from Napa Gamay, or from a mixture of these grapes.

Gamay

The Committee recommended that the wine variety Gamay be included as a prime name in anticipation that wine from the true Gamay grape would be produced in the United States in the future. Gamay was proposed as a prime name in § 4.91.

The Oregon Winegrowers Association commented that the prime name should be listed as Gamay noir. They noted that this name is shortened from Gamay noir jus blanc, and use of this name would serve to distinguish it from Gamay grape imposters.

ATF concurs with their comment. In view of the past misuse of the term "Gamay," ATF believes that use of the name Gamay noir will help distinguish the true Gamay grape from other grapes which were labeled "Gamay" in the past. Thus, the prime name proposed for this grape in § 4.91 is Gamay noir.

Riesling Issues

Riesling, White Riesling and Johannisberg Riesling

One aspect of the committee report focused on Riesling issues. It noted that Johannisberg Riesling has long been recognized as an American term in order to distinguish the White Riesling from other grape varieties which are not true Rieslings. The Committee recommended that both White Riesling and Johannisberg Riesling be permitted as equal synonyms for this grape variety. Furthermore, it recommended that the term Riesling not be permitted to stand alone as the name of a United States grape variety. In Notice No. 581, ATF proposed both White Riesling and Johannisberg Riesling as equally acceptable prime names in § 4.91; Riesling was not proposed as a prime or alternative name in that notice.

ATF received 14 comments on this issue. Five respondents, including three wineries, a German wine shipper, and the Stabilisierungsfonds fuer Wein ("SFW"), a quasi-government German agency, concurred with the ATF proposals. These respondents commented that this wine is well known in the United States both as White Riesling and as Johannisberg Riesling.

Six respondents requested that ATF permit simply "Riesling" to be used as the name for White Riesling or Johannisberg Riesling. The Embassy of the Federal Republic of Germany and the Oregon Winegrowers Association commented that the actual variety name is Riesling, and that ATF should not prohibit its use, or that ATF should require its use.

Six respondents favored the proposal to allow use of White Riesling. Most noted the term is more acceptable than Johannisberg Riesling because it does not include a foreign term. The Oregon Winegrowers Association noted that White Riesling is acceptable because it is a translation of the German botanical term "Weisser Riesling."

The greatest controversy concerned the continued use of Johannisberg Riesling as a synonym for White Riesling. Although five respondents agreed with the ATF proposal to permit its use, seven objected to it. These respondents commented that its elimination would remove a foreign place name; some noted that the American wine industry should rid itself of European terms. Two of these respondents suggested that ATF phase out Johannisberg Riesling over a period of time in favor of Riesling or White Riesling.

The comments support the proposal that both Johannisberg Riesling and White Riesling are terms well known to consumers, and that these terms have been used for many years to denote the Riesling grape in the United States. Therefore, ATF is proposing that both names appear in the list of prime grape names in § 4.91, as equally acceptable synonyms.

Riesling is not proposed as a prime grape name in § 4.91. By proposing its elimination, ATF wishes to create a clear distinction between those grapes which, in the past were labeled "Riesling" but which were not true Rieslings, from the true White Riesling. Since this proposal affects labeling of domestic wines only, it will not affect the labeling of wines from Germany or other countries which are made from the White Riesling grape.

Grey Riesling

The final Committee report stated that this variety has not been conclusively identified but that it is not a true Riesling. It recommended that ATF permit its continued use since there is no accepted alternative, but that it should be replaced with its horticulturally correct name in the future. In Notice No. 581, ATF proposed Grey Riesling as a prime name in § 4.91.

Louis P. Martini Winery, Beringer Vineyards, ISC Wines of California, E. & J. Gallo Winery and the Wine Institute all favored retaining Grey Riesling as a prime name. Louis P. Martini Winery commented that this variety has been grown in California for over 100 years and has received wide public acceptance. They further noted that Grey Riesling is preferable to an unknown European grape variety name with no recognition. The Wine Institute requested that either spelling, "Grey" or "Gray," be permitted. Five other respondents commented that Grey Riesling is not the true White Riesling and that its use should be prohibited or

phased out within a specified time period.

Recent ampelographic study, and a submission by the Oregon Winegrowers Association have identified the grape known as Grey Riesling as actually being Trousseau gris. Because ATF is interested in the use of the correct grape name whenever possible, and because this grape is not a true Riesling, ATF is proposing that Trousseau gris be listed as the prime grape name in § 4.91. However, due to long use of the name Grey Riesling, ATF proposes that the name Grey Riesling be accepted as synonym for Trousseau gris in § 4.91. ATF welcomes comments on whether Grey Riesling should be retained as a synonym for Trousseau gris, or whether the name Grey Riesling should be phased out in the future. Only the more common spelling "Grey Riesling" (as opposed to "Gray Riesling") appears in proposed § 4.91.

Missouri Riesling

This grape variety has been cultivated in the United States for over a century and has always been known as Missouri Riesling. It is not a Riesling, but is a native American grape. Due to the lack of an alternative name, the Committee report recommended Missouri Riesling be included in the list of prime names. The report did, however, recommend eventual elimination of varietal names such as Missouri Riesling which contain place names.

In Notice No. 581, ATF proposed that Missouri Riesling be listed as a prime name in § 4.91. Three respondents concurred. These respondents noted its long history of cultivation and use in the United States. Five other respondents objected to continued use of the name Missouri Riesling. The Embassy of Germany noted that since it is not a true Riesling, its labeling is misleading; they suggested the name "Missouri grape." The Oregon Winegrowers Association commented that only one winery uses this varietal designation, and its discontinuation would cause little disruption. They suggested that winegrowers and the Committee devise a new name for this grape. Dr. Edward J. Wawszkiewicz suggested the name "So-called Missouri Riesling."

Since this grape has always been known as the Missouri Riesling, and due to the lack of any alternative name, ATF is proposing Missouri Riesling as a prime name in § 4.91.

Emerald Riesling

The Committee report noted that Emerald Riesling is widely planted, but that it is a crossbred variety and not a true Riesling. In the absence of an accepted alternative name, the Committee recommended its continued use as a prime name.

Two wineries concurred with the ATF proposal to list the Emerald Riesling as a prime name in § 4.91. Dr. Edward J. Wawszkiewicz commented that this grape is a cultivar derived from Riesling, and therefore, should be permitted to be labeled Emerald Riesling.

Four other respondents objected to inclusion of this name in the list of prime names on the basis that it is not a true Riesling and should not be so labeled. The Embassy of Germany and the SFW recommended use of the name "Emerald grape." The Oregon Winegrowers Association suggested that winegrowers and the Committee devise a new name for this grape. Emerald Riesling could then be phased out in a specified time period.

Based on the comments and the fact that no alternative name exists, ATF proposes to list Emerald Riesling as a prime name in § 4.91.

Franken Riesling

In its final report, the Committee noted that Riesling has erroneously been used as a designation for Sylvaner grapes. It recommended elimination of this usage in favor of the correct name, Sylvaner. Notice No. 581 included Franken Riesling as an alternative name in § 4.92, to be used only in conjunction with the prime name Sylvaner.

Three United States wineries agreed with the proposal to retain Franken Riesling as an acceptable alternative name, or as a prime name. Five other respondents objected to its listing. All of these respondents noted that there is no such grape as the Franken Riesling, that this grape is the Sylvaner, and that the variety should be called by its correct name. The Oregon Winegrowers Association suggested authorizing Franken Riesling as an alternative name for a five year period and then phasing it out.

On the basis of the written comments and the Committee's recommendation, ATF is proposing to phase out the name Franken Riesling in favor of Sylvaner. Therefore, Franken Riesling is proposed as an alternative name in § 4.92, to be phased out by 1996.

Wälschriesling and Welschriesling

The Committee recommended that both spellings should be equally acceptable for this grape. consequently, both were listed as alternate spellings of prime names in § 4.91.

ATF received eight comments. One consumer and two wineries commented that the variety could be spelled either way. Dr. Edward J. Wawszkiewicz commented that the only correct spelling is Wälschriesling. Several other respondents noted that this grape is not the White Riesling, but that it is grown extensively throughout Europe where it is known as Italian Riesling, Welsch Rizling, and by other names. The Embassy of Germany, the SFW and H. Sichel Söhne stated this grape variety is primarily a European problem, and all recommended that it be named Welsch Rizling, a common European designation for this grape. The Oregon Winegrowers Association suggested that grapegrowers and the Committee devise a new name for this variety.

ATF does not believe the consumer is familiar with the term "Welsch Rizling." Therefore, ATF is proposing that either spelling Wälschriesling or Welschriesling be accepted as alternate spellings in § 4.91.

Other Riesling Names

The final Committee report noted that some other grape varieties include the name Riesling. Since they are not true Rieslings, it recommended that these other names be eliminated, and specified Okanagon Riesling and Siegfried Riesling as misleading names for grapes which are not Rieslings. As a consequence, ATF did not propose these names or any other grape variety names which include the term Riesling as prime grape names in Notice No. 581.

Two wineries and the Oregon Winegrowers Association concurred with the proposal to eliminate other varieties named Riesling. Mount Baker Vineyards objected to the proposal to eliminate Okanagon Riesling and stated this action would have a major impact on their wines.

ATF finds that these other varieties called Riesling are not true Riesling grape varieties. The "Siegfried Riesling" was released in 1958 under the name Siegfried, which appears in the list of prime names. The Okanagon Riesling is not believed to be widely grown in the United States. Consequently, ATF is not proposing these two or any other Riesling varieties as prime or alternative grape names in §§ 4.91 or 4.92.

Grape Variety Names Similar to French Appellations of Controlled Origin

Included in the proposed lists of grape varieties were nine names which four respondents identified as being similar to or identical to French Appellations of Controlled Origion ("AOC"). The Embassy of the Republic of France, the Institute National des Appleations D'Origine des Vins et Eaux-de-Vie, the Fédération des Exportateurs de Vins et Spiritueux de France, and one other

respondent commented on the similarity of the proposed names to French controlled appellations, and requested that these names not be permitted for United States grape varieties. The Agricultural Attachè to the French Embassy commented that Appellations of Controlled Origin have been recognized and protected by French decrees for more than 50 years. The nine grape varieties proposed in Notice No. 581 and the French Appellations of Controlled Origin identified by respondents as being similar are as follows:

Wine grape variety	French Appellation
Aligoté	Bourgogne Aligote.
Fumé	Blanc Fumé de Pouilly.
Gamay Beaujolais	Beaujolais.
Muscat Frontignan	Muscat de Frontignan.
Rosette	Rosette.
Pinot Saint George	Saint-Georges Saint-Emilion.
Saint Emilion	Saint-Emilion.
Saint Macaire	Cotes de Bordeaux Saint-Macaire.
Vivant	Romanee Saint-Vivant.

In 1986 ATF considered the issue of foreign nongeneric names of geographic significance used in the designation of wine. Two **Federal Register** notices of proposed rulemaking proceeded the issuance of Treasury Decision ATF-296 on April 30, 1990 (55 FR 17960). As part of that final rule, ATF added a new part 12, Foreign Nongeneric Names of Geographic significance Used in the Designation of Wine, to title 27, CFR. Section 12.21 of this part contains lists of foreign nongeneric names of geographic significance. Section 12.31 contains lists of foreign nongeneric names which are distinctive designations of specific grape wines.

Some foreign nongeneric names listed in part 12 contain names which are by themselves or include the names of grape varieties. Specific examples listed in part 12 include: Muscat de Frontignan, Rosette, Beaujolais, Pouilly Fumé, Romanee Saint-Vivant, Saint-Emilion, Lambrusco Reggiano, Barbera del Monferrato, Barbera d'Alba, Barbera d'Asti, Dolcetto d'Alba, Nebbiolo d'Alba, Brunello di Montalcino, Merlot Bujstine, Porecki Merlot, Vrsacki Rizling.

In Notice No. 657 (53 FR 12024, April 12, 1988), ATF proposed that foreign denominations of origin that are similar to American grape varietal designations not be published as examples of nongeneric names (e.g., Muscat de Frontignan, Valdepenas). It made an exception for Saint-Emilion which has been recognized in § 4.24(c) as a nongeneric distinctive designation for more than 50 years.

After consideration of all comments to Notice No. 657, ATF concluded in T.D. ATF-296 that names of bona fide geographically demarcated areas used to designate a wine from a particular country should be recognized as nongeneric, even if they are similar or identical to grape variety names. ATF further concluded that the potential for consumer confusion concerning the origin of the wine is obviated due to the fact that wine labeling regulations at § 4.23a provide that the names of grape varieties may be used as a type designation for wine only if the wine is also labeled with an appellation of origin. ATF stated that any questions concerning the potential for consumer confusion as to the identity of wine which may arise when a foreign nongeneric name is similar or identical to a varietal name would be resolved by ATF on a case-by-case basis. Some nongeneric names similar to or containing the name of grape varieties were published in part 12.

Thus, ATF does not believe there is any reason to deny use of a grape variety name to American winemakers simply because that name bears a resemblance to a foreign name of geographic significance. The requirement that grape names may be used as a type designation only when appearing in direct conjunction with the appellation of origin should eliminate any consumer confusion over the origin of the wine. ATF does not believe consumers will be confused between a French AOC wine, and a wine labeled with a similar grape variety name together with an appellation of origin.

Consequently, ATF is proposing listing the following names as prime grape names in § 4.91: Aligoté, Fumé blanc (as a synonym for Sauvignon blanc), Pinot Saint George, Rosette, Saint Macaire, and Vivant.

Muscat Frontignan was proposed in Notice No. 581 not as a prime name but as an alternative name for Muscat blanc. In the time since this notice was published, most domestic producers have shifted to use of the Italian name Muscat Canelli for wine made from this grape. Since this grape variety has a well understood and commonly accepted name, ATF has decided to propose phasing out the name Muscat Frontignan in favor of Muscat blanc or Muscat Canelli. ATF is proposing to list Muscat Frontignan in § 4.92 as an alternative name for Muscat blanc or for Muscat Canelli. Its use would be phased out by 1996.

ATF proposes to eliminate use of the name Saint Emilion entirely as a grape variety name. ATF does not find that the name Saint Emilion is commonly used as a grape variety designation on domestic wine labels. This grape has many synonyms, and ATF finds that other names are equally or better known to consumers. Thus, ATF proposes to list as equally acceptable synonyms both Ugni blanc and Trebbiano as prime names in § 4.91. Saint Emilion is not proposed as a prime or alternative name in §§ 4.91 or 4.92.

Attributes of Color

In its final report, the Committee noted that some variations of varietal names consist of the variety name with or without color descriptors such as "noir" or "blanc." In these cases, the Committee recommended simplication of names by phasing out alternative names applied to the same variety. It recommended listing Chancellor as a prime name, rather than Chancellor noir since the "noir" is superfluous, there being no "blanc" Chancellor grape. It also recommended listing Cayuga White as the prime name rather than Cayuga since examination of the release notice showed Cayuga White to be the correct name. Notice No. 581 incorporated these recommendations in the proposed lists of names in §§ 4.91 and 4.93. No comments addressed the Chancellor and Chancellor noir proposal and ATF is proposing Chancellor as the prime name in § 4.91.

Seyval Blanc and Seyval

Seyval was proposed as the prime name in § 4.91, while Seyval blanc appeared as an alternative name in § 4.93, to be phased out. Three eastern United States wineries and the publication *Wine East* commented in favor of retaining Seyval blanc as a prime name. Meredyth Vineyards noted that almost all of Seyve-Villard 5-276 is labeled Seyval blanc rather than Seyval. Alba Vineyards stated that Seyval blanc is one of the few eastern winegrape varieties which is receiving recognition nationally, and that a change to Seyval would confuse consumers who know of this variety. Merritt Estate Winery commented that a change to Seyval would adversely impact the wine market. The Association of American Vintners commented that ATF should permit the use of the term "Blanc Seyval" to designate a dry white wine made from Seyval. In this case, "Blanc Seyval" would not actually be an alternative name for the grape variety, but would be the variety name used with the descriptive term "Blanc."

ATF finds that Seyval blanc has received widespread usage, and a large number of American wineries have labeled their varietal wine as Seyval blanc. ATF also believes that Seyval blanc has good consumer recognition, and that its use as a varietal designation would not be misleading to consumers. Accordingly, ATF is proposing Seyval blanc as a synonym for the prime name Seyval in § 4.91. Seyve-Villard 5–276 remains as an alternative name in proposed § 4.92 to be phased out by 1996.

Cayuga and Cayuga White

On the basis of the Committee's report which found Cayuga White to be the true name of this grape variety, ATF proposed in Notice No. 581 that Cayuga White should be the prime name in § 4.91, and Cayuga should be in alternative name to be phased out. In response to that notice, the Association of American Vintners commented that there is little possibility of a consumer being confused if the absolutely correct name, Cayuga White, were not used in favor of the name Cayuga.

ATF is proposing Cayuga White as the prime name in § 4.91. In addition to the fact that Cayuga White is the correct name for this grape variety, ATF also believes that use of the full variety name will avoid any possible confusion between the grape variety, Cayuga White, and the American viticultural area, Cayuga Lake. Cayuga is listed as an alternative name in § 4.92 to be phased out by 1996.

Muscadine—Vitis Rotundifolia

Background

Vitis rotundifolia is a native American grape which grows throughout the southeastern United States. It is differentiated from other grape species in that its fruit grow in clusters of individual grapes, rather than in bunches. *Vitis rotundifolia* grapes may be further differentiated into bronze or green grapes, and black grapes. "Muscadine" is a term commonly applied to the species *Vitis rotundifolia*.

Early colonial settlers made Scuppernong wine from *Vitis rotundifolia* grape vines growing in or collected from the wild. The term "Muscadine Wine" is often applied to wine made from black skinned varieties of this species, while "Scuppernong Wine" is applied to wine made from bronze grapes. In recent years, many new varieties have been developed from *Vitis rotundifolia* grapes.

Revenue Ruling 54–528, 1954–2 C.B. 584, held that wine derived from Scuppernong grapes, a white (bronze) variety of Muscadine, could be labeled "Scuppernong Wine," "Muscadine Wine," or "White Muscadine Wine." It also held that wine made from Muscadine grapes could not be labeled "Red Scuppernong Wine." ATF Ruling 87–2, A.T.F.Q.B. 1987–2, 93, revoked Revenue Ruling 54–528 as obsolete.

Notice No. 581

This notice proposed 30 different variety names as prime names in § 4.91 for Muscadine or *Vitis rotundifolia* grapes. Under § 4.23a(b), use of these grape varieties on a label would mean the wine is composed of not less than 75% of that grape variety. Thus, a wine labeled "Scuppernong" would require that at least 75% of its volume be derived from Scuppernong variety grapes. The notice further stated that Revenue Ruling 54–528 would become obsolete with adoption of the proposed regulations, and it solicited comment on this issue, since this would prohibit wine made from Scuppernong grapes from being labeled "Muscadine Wine."

Written Comments

ATF received comments from Canandaigua Wine Company, the North Carolina Grape Growers Association and Dr. Robert M. Pool of the New York State Agricultural Experiment Station in Geneva, N.Y. These respondents stated that even though Scuppernong is a variety of *Vitis rotundifolia*, a varietal Scuppernong containing 75% Scuppernong grapes is not produced today, nor is it capable of being produced. According to Dr. Pool, commercial "Scuppernong" vineyards are grape patches which contain mixed varieties of wild origin. Canandaigua noted that "the name Scuppernong has been used since the colonial days to include all bronze type muscadine grapes and wine" and that "through American history Scuppernong is used synonymously with Muscadine grapes." The North Carolina Grape Growers stated that wineries have used the "Scuppernong" on labels which are not sold as varietals because Southerners call any white Mucadine a "Scuppernong."

No comments were received concerning any of the other proposed variety names for *Vitis rotundifolia* grapes.

Discussion and Proposals

ATF believes that Scuppernong is the valid name of a grape variety which has been used to make American wine for hundreds of years. However, due to the unique nature of the grape vines traditionally used to produce "Scuppernong Wine," ATF questions whether consumers associate Scuppernong wine with a specific grape variety, or simply associate it with all bronze Muscadine grapes.

Thus, ATF is proposing to establish a new category for American wine type designations of varietal significance. Under this new category at proposed § 4.28, Scuppernong wine would be defined as American wine which derives at least 75% of its volume from bronze Muscadine (*Vitis rotundifolia*) grapes. Grapes used could be Scuppernong variety or any other bronze Muscadine grapes, and mixtures of these grapes. As a result, Scuppernong does not appear in the proposed list of prime grape names in § 4.91 since the term would no longer describe a varietal wine.

Similarly, ATF is proposing Muscadine as another American wine type designation of varietal significance. Under proposed § 4.28, Muscadine wine is defined as American wine which derives at least 75% of its volume from any *Vitis rotundifolia* grapes. Under new proposed § 4.34(b)(2), the use of Muscadine or Scuppernong as a label designation would require an appellation of origin to appear in direct conjunction with the type designation.

ATF welcomes comment on the proposed American wine type designations, and the removal of Scuppernong as a grape variety name.

Muscatel

No standard of identity exists for this wine, although § 4.21(a)(3) permits a wine to be designated "Muscatel" if it has the taste, aroma and characteristics generally attributed to Muscatel, and if it contains over 14% alcohol by volume. Although there is no "Muscatel" grape, the term implies a varietal origin since Muscatel wine is made from Muscat grapes of many varieties.

Revenue Ruling 56–430, 1956–2 C.B. 1059, holds that the Aleatico grape is a variety of Muscat and is suitable for Muscatel production. Revenue Ruling 54–424, 1954–2 C.B. 583, holds that a wine may be labeled "Red Muscatel" if it is produced from Black Muscat grapes, Port and white Port wine. In accord with regulations existing at the time, these rulings required that at least 51% of the volume of the wine be derived from the Muscat grapes used.

ATF is proposing to make Muscatel an American wine type designation of varietal significance. Since current regulations require that at least 75% of a varietal wine be derived from the named grape variety, the proposal at § 4.28 defines Muscatel wine as wine which derives at least 75% of its volume from

any Muscat grapes. ATF requests comments on whether proposed § 4.28 should specifically list all Muscat grape varieties, and whether any other grape varieties are suitable for Muscatel production.

Other Grape Varieties

Respondents to Notice No. 581 requested inclusion of many grape variety names in the list of prime names. Several European varieties, including Cortese and Brunello, were requested. However, insufficient data was received concerning the cultivation and commercial significance of these grapes in the United States and they are not included in proposed § 4.91.

Trebbiano

Cypress Valley Winery requested inclusion of the Italian grape variety Trebbiano. This grape, known in France as Saint Emilion, is also called Ugni blanc. Trebbiano vines are available from the Foundation Plant Materials Service, University of California at Davis.

ATF is proposing Trebbiano as the prime name for this grape variety. As discussed previously, ATF believes that Saint Emilion has limited consumer recognition as a grape variety. Consequently, ATF believes that Trebbiano would be a preferred prime grape name and it is proposed at § 4.91 along with Ugni blanc as an equally accepted synonym.

Primitivo

Cypress Valley Winery requested that Primitivo de Gioia be included in the list of prime names. They stated that this variety has been grown in Texas for over 13 years, and is commercially available from different nursery sources. This grape is used in Italy to produce wine, and Cypress Valley has produced a varietal wine in Texas using this grape. Primitivo vines are available from the Foundation Plant Materials Service.

ATF is proposing Primitivo as a prime name in § 4.91 since it meets the criteria for approval of a grape variety name. Although several different clones or regional names are used for this grape in Italy, ATF is proposing simply Primitivo for domesic labels in order to remove foreign place names from grape variety names used in the United States. Information available to ATF at this time indicates that Primitivo and Zinfandel are separate grape varieties, and as such, may not be used as interchangeable grape names on wine labels.

Other Varieties

Since publication of Notice No. 581, a number of grape varieties have been approved by ATF for use on American wine labels. These varieties, which include Marsanne, Melody, Kay Gray, LaCrosse, Blanc Du Bois, St. Croix, Sangiovese, Lambrusco, and Viognier, are proposed as prime names in § 4.91.

ATF requests comment on whether other grape varieties should be considered for inclusion as prime grape names in § 4.91. Some names in which ATF is particularly interested include "Early Muscat," "Sereksia," and "Crimson." Respondents possessing information on these grapes should submit information concerning their cultivation and use in winemaking in the United States.

ATF also solicits information on the use or nonuse of some older grape varieties (for example Fredonia) which may longer be in use for wine production in the United States. Should some grape variety names appearing in proposed § 4.91 be removed from the list due to decline in cultivation or nonuse in wine production?

Terminology of French Hybrids

The final Committee report noted that there exist a large number of interspecific hybrids known by the name of the originator plus the seeding or selection number. Some of the more useful varieties have received commercial names by the hybridizer, the French Ministry of Agriculture, or by the Finger Lakes Wine Growers Association. In order to standardize the names used for some of these grape varieties, the Committee recommended the establishment of one prime name for these varieties, and the phasing out of synonyms within five years.

Ravat 51 and Vignoles

Ravat 51 is the name given to a hybrid of native American grapes with *Vitis vinifera* grapes. Notice No. 581 proposed use of the prime name Vignoles, a name given by the Finger Lakes Wine Growers Association in 1970 with Ravat 51 as an alternative name to be phased out in five years.

Wine East and Keuka Spring Vineyard both commented that this the prime name should be standardized as Ravat rather than Vignoles. Keuka Spring stated that no other Ravat hybrid has the commercial awareness or acceptance of this variety, and that Ravat has become synonymous with Ravat 51 in the consumer's mind. They stated that a change to Vignoles would seriously damage the market for this wine. *Wine East* stated that it would be acceptable to approve Ravat for permanent use in direct conjunction with Vignoles. They noted that the other two Ravat hybrids are no longer commercially important.

On examination of labels in use, ATF finds that both Ravat and Vignoles are frequently used as a grape variety designation, with Vignoles appearing more frequently in recent years. Consequently, ATF believes that it would not be misleading to permit both names to be used as synonyms for this grape variety; however, ATF does not believe that Ravat should be permitted to stand alone because of the existence of other varieties bearing this name, including Ravat 34 and Ravat noir, both of which are listed in § 4.91. Therefore, ATF is proposing that Ravat 51 be added to the list of prime names in § 4.91 as a synonym for Vignoles.

ATF also seeks comment on the name "Ravat blanc" which appears on a number of currently approved labels as the grape designation. ATF wishes to know if this designation as used on labels refers to the Ravat 51 grape (Vignoles) to which vineries have attached the descriptive term "blanc," or if this designation is being used for the "Ravat 6" grape, for which the synonym is Ravat blanc, a grape name not included in the list of prime names.

Vidal

Proposed § 4.91 included the prime name Vidal blanc. *Wine East* stated that Vidal blanc is more commonly sold and referred to as Vidal. They requested that both names be permitted as prime names.

Based on the Committee's recommendation, ATF is proposing only the name Vidal blanc as a prime name in § 4.91. Vidal 256 appears as an alternative name in § 4.92, to be phased out by 1996. The name Vidal is not proposed as a prime or alternate name. ATF welcomes comment on this issue.

ATF Ruling 74–25 "Cabernet"

ATF Ruling 74–25, 1974 ATF C.B. 48, permits the labeling of wine as "Cabernet" if 75% of its volume (51% prior to T.D. ATF–53 (43 FR 37672, August 23,1978) effective January 1, 1983) is derived from Cabernet Sauvignon grapes. This ruling was intended to prevent consumer deception through the use of less expensive grapes such as Ruby Cabernet in a wine labeled "Cabernet" which most consumers associate with Cabernet Sauvignon. Notice No. 581 proposed to make this ruling obsolete, thus precluding the labeling of Cabernet Sauvignon wine as "Cabernet." Notice

No. 581 specifically requested comment on this issue.

ATF received two comments. Ridge Vineyards objected to eliminating the ruling since it would necessitate label redesign in some cases. Heublein Wines stated it had no objection to the proposal.

ATF is now proposing to make ATF Ruling 74–25 obsolete, but to incorporate "Cabernet" as a synonym for Cabernet Sauvignon in § 4.91. Certificates of label approval for a "Cabernet" wine will continue to be qualified that at least 75% of the wine must be derived from Cabernet Sauvignon grapes.

Approval of Future Variety Names

Background

One part of the Winegrapes Varietal Names Advisory Committee charter was to recommend guidelines which the wine industry and ATF could follow in determining the appropriateness of names suggested in the future for new grape varieties. The Committee included their recommendations in its final report, and these recommendations were incorporated in § 4.94, Approval of new grape variety names.

As proposed, a lettershead application to the Director would be sufficient to request approval of a new grape variety name. Evidence regarding the name, its use in winemaking, and its cultivation in the United States would be submitted as part of the application. Supporting evidence such as plant patent, acreage information, and scientific references would also be required.

In addition to outlining the procedure for applying for a grape variety name, the Committee made recommendations regarding suitability of new names. In proposed § 4.94, a new grape variety name could not contain words of geographical significance; could not have been previously used for another variety; could not contain foreign words; could not contain misleading names; and could not contain "Riesling" as part of the name.

Written Comments

Two U.S. wineries and the Wine Institute opposed the proposed guidelines. DeLoach Vineyards stated the guidelines would stifle creativity in naming new varieties. Mt. Baker Vineyards noted that it is unnecessary for foreign vintners to use this procedure to gain approval of variety names and that ATF should allow use of foreign names. The Wine Institute commented that the guidelines are restrictive and inflexible. They also opposed the prohibition of foreign terms, and stated that marketing should allow for consumer demand or acceptance in determining new grape variety names.

Four respondents agreed with the proposal to prohibit use of the term "Riesling" for new grape varieties, while three respondents disagreed. Two of these respondents stated that "Riesling" should be permitted as part of a name for a new variety if a hybrid is derived from the White Riesling grape.

Conclusion and Proposal

Proposed § 4.93 contains the procedure for approval of new grape variety names. Paragraph (a) gives the procedure used to petition the Director for approval of a grape variety name. This procedure applies in the case of newly-developed grape varieties as well as existing varieties which come into use for wine production the United States.

Paragraph (b) sets forth evidence necessary to document a newly-developed grape variety.

Section 4.93(c) sets forth mandatory standards for the approval of any grape name. Names will not be approved if they have previously been used for a different grape variety, if they are misleading under § 4.39, or if they contain the word "Riesling." At the recommendation of the Committee, ATF does not wish to consider for approval any new grape varieties using the term Riesling, regardless of whether they have White Riesling parentage. ATF also solicits comment on whether the prohibition on using the term "Riesling" in naming new grape varieties should be extended to preclude the use of the terms "Chardonnay," "Cabernet," "Pinot" and "Pineau."

In consideration of the comments received regarding the need for creativity in naming, ATF is proposing to give the Director the authority to make a case-by-case determination whether a particular named variety would present a misleading impression. Thus, proposed § 4.93(d) gives the Director authority to make the determination whether grape variety names containing words of geographic significance, place names, or foreign words, are misleading under § 4.39. Variety names found to be misleading would not be approved by the Director.

It is not the intent of this proposed section to prohibit the use of established grape variety names which may contain terms of geographic significance, place names, or foreign words, but rather to discourage the use of these kinds of terms in naming new grape varieties. Therefore, proposed § 4.93(d) applies to grape varieties developed in the United States, but does not apply to existing grape varieties growing in foreign countries and which are introduced into viticultural use in the United States.

New paragraph (e) in § 4.93 provides that the Director will publish the list of approved names annually in the **Federal Register**. This publication will inform consumers and wineries of periodic changes to the list of approved names without formally amending § 4.91 every time a name is added or removed. From time to time, ATF will incorporate changes made to the list into § 4.91.

Proprietary Names and Descriptive Terms

Background

In the "Statement of Principles" section of its final report, the Committee noted that certain wines, which to the uninformed would appear to be varietal wines, are in fact, labeled with registered proprietary names. The Committee suggested that ATF should decline to approve such labels in the future, and should phase out existing approvals of these labels.

Notice No. 581 noted that under the proposed grape variety labeling regulations, currently approved proprietary variations of varietal names would no longer be permissible on wine labels. Under that notice, only the approved variety name could be used as the varietal designation without modification. Proprietary names and color designations could, however, be shown separately on the label. This proposal would have prohibited the use of a designation such as "White Zinfandel," but would have permitted labeling such as "Zinfandel" on one line with another line reading "A White Wine Made From Zinfandel Grapes." Examples of names which would be prohibited include "White Zinfandel," "Cabernet Blush," or "Zinfandel Nouveau."

Written Comments

Ninety-five respondents objected to this proposal, and this proved to be the most controversial aspect of Notice No. 581. Respondents included 23 wineries, 65 consumers, the Wine Institute, the Association of American Vintners, the Oregon Winegrowers Association, the California Association of Winegrape Growers, and the California Farm Bureau Federation. The vast majority of comments addressed the use of color descriptors with a varietal designation; i.e. color descriptors used primarily for wines made in the style of white wine but from grapes traditionally used to make red wine.

Color and Style Descriptors

Consumers and wineries alike commented that the use of color or style descriptors is a significant aid to consumers in selecting wines. Qualifiers such as "White," "Blush," "blanc," "noir," "Novueau," or "Rosé" describe the style of wine and enable consumers to differentiate between wines of the same varietal origin but produced in different styles; i.e., the qualifier together with the varietal name tells consumers what kind of wine is in the bottle when the grape variety name alone does not.

Respondents stressed that use of color or style descriptors facilitates the identification of wines when the consumer cannot see the bottle, such as on a wine list or at a State liquor store. Heublein Wines commented that if Zinfandel is sold in a green bottle, it is visually impossible to distinguish between a red and a "blush" Zinfandel. As proposed, a consumer would need to search the small print to determine the style of wine. Heublein noted that descriptive terms aid wholesalers and retailers in ordering wine and taking inventory.

Wineries cited the economic importance of "blush wines" and the costs associated with removal of descriptive terms from labels. Sebastiani Vineyards stated that all blush wines [in 1985] exceeded $100,000,000 in gross sales. Bargetto Winery commented that "White Zinfandel" accounted for 30% of their varietal wine production, while Joseph E. Seagram & Sons stated that the production of "White Zinfandel" and "Cabernet blanc" wines amounted to more than a half million cases for their subsidiary wineries in less than six months time. Heublein Wines stated that more than 100 wineries produce blush wines.

Geyser Peak Winery stated that adoption of the ATF proposal would severely damage the market for Zinfandel grapes. As a consequence, the proposal would have a far reaching and devastating impact on grapegrowers, wineries and consumers. According to the Oregon Winegrowers Association, more than 20% of currently approved varietal labels in Oregon would require revision if descriptive terms were prohibited.

Finally, several respondents cited the lack of need or justification for this proposal. Many respondents stressed the lack of consumer confusion over use of such terms. The Wine Institute noted that Notice No. 581 failed to indicate the reasons behind the proposal to prohibit descriptive terms. One consumer stated the proposal seeks to "protect" people who don't need protecting from something they are not threatened by. Another consumer stated that academic snobbery to achieve the "most correct proper name" will not lead to enlightenment or reduce confusion. Two committee members, Louis P. Martini and Vincent E. Petrucci, also opposed the proposal to prohibit proprietary variations of varietal names.

Other Comments

Bargetto Winery commented that a dot or dash between a descriptive term and varietal name would be acceptable; for example "White-Zinfandel."

Wine World, Beringer Vineyards and Joseph E. Seagram & Sons all recommended that ATF develop a list of descriptive terms which could be used with varietal designations. These terms would describe a winemaking style or color, and would be the only terms permitted for use in direct conjunction with the varietal designation.

ATF received no comments favoring the proposal in Notice No. 581 to prohibit color or style descriptors in conjunction with varietal names.

Comments Regarding Other Proprietary Names

Three respondents favored continuation of the use of strictly proprietary names with varietal designations. These proprietary names, unlike descriptive terms, consist of a registered name used to differentiate that varietal wine from similar wines made by other winemakers. Examples are "Monterey Riesling" or "Cypress Chardonnay."

Bargetto Winery commented in favor of permitting proprietary names, but stated that a dot or dash between the proprietary name and varietal name would be acceptable, such as "Cypress-Chardonnay." Freemark Abbey Winery opposed prohibiting the use of well established proprietary names. They stated that discontinuation would result in serious economic hardship for wineries which have invested in those brands.

The Association of American Vintners commented that the strict use of varietal names, as proposed by ATF, gives preference to winemakers who produce wines in traditional European styles, and penalizes winemakers who produce innovative styles of wine made from these same varieties. They cited as an example "Cabernet Kiss" which a winemaker might use to denote a Cabernet Sauvignon having a certain taste sensation. They further stated that the ATF proposal would remove from industry the ability to manipulate varietal terminology in a way to appeal to the consumer better.

Beringer Vineyards, Wine World and the California Farm Bureau Federation supported the proposal to prohibit use of these types of proprietary names.

Conclusion

In view of the preponderance of comments opposing the prohibition on the use of descriptive terms in conjunction with varietal designations, ATF has decided no to pursue this proposal. Therefore, descriptive terms and proprietary names will continue to be permitted for use with varietal designations. ATF will, however, take the position that label terms are misleading if their use results in consumer deception.

Miscellaneous Issues

Revenue Ruling on Varietal Names

Revenue Ruling 56–460, 1956–2 C.B. 1059, requires that wine be designated by its true varietal name, and not by other names which may be locally applied to a particular grape variety. This ruling will become unnecessary and thus will be superseded when these proposed regulations become final.

Although Revenue Ruling 56–460 also applies to imported wines, ATF believes that grape variety names are adequately controlled by § 4.25a. Under this section, imported wines must be designated in accordance with the laws and regulations of the country of origin.

Spelling, Capitalization and Punctuation

ISC Wines of California, *Wine East*, Heublein Wines, and the Wine Institute commented that ATF should permit use of varietal names, either capitalized or in lower case, at the option of the winery. These respondents stated that permitting latitude in capitalization would afford wineries maximum flexibility in type styles when designing labels.

ATF policy is that wine variety names may appear either capitalized or in lower case, and in any style or type which is conspicuous and meets the minimum type size requirements. This policy is incorporated in the text of proposed § 4.91.

The Wine Institute also requested that wineries be given the discretion to use other recognized spellings of certain varietal names. ATF does not agree. The intent of this rulemaking is to standardize grape variety names to the maximum extent possible. In those cases in which a variant spelling is recognized, that spelling will be listed with the prime name; for example, Limberger and Lemberger. Other variant

spellings will not be permitted unless approved by the Director. In the case of variety names containing an umlaut, bottlers may use the alternative spelling "ue" or "ae" when the variety name is spelled without the umlaut; for example, "Münch" or "Muench."

Three respondents noted that certain grape variety names should be spelled with umlauts, accent marks, hyphens, or tildes. All grape variety names are listed in §§ 4.91 and 4.92 with umlauts, accent marks, hyphens, or tildes, as applicable. These hyphens and diacritic marks may or may not be used on labels at the option of the bottler, and this policy is incorporated into proposed § 4.91.

Proposed Effective Dates

ATF proposes that effective January 1, 1994, the name of a grape variety may not be used as a type designation for an American wine unless it is approved by the Director.

Grape variety names appearing on the list of alternative names at § 4.92 may be used as the type designation for American wines bottled before January 1, 1996. American wines bottled on or after January 1, 1996, may not use those names as the type designation for wine.

The procedure proposed at § 4.93 for petitioning the Director to approve additional grape variety names would become effective 30 days after publication of a final rule. Interested parties may at any time petition the Director to approve grape variety names.

Bottlers may continue to use Gamay Beaujolais as a type designation for American wine until the completion of rulemaking on that subject.

Public Participation

ATF requests comments from all interested persons concerning the proposals contained in this notice. ATF especially solicits information concerning grape varieties used in making American wines which are not listed in § 4.91.

All comments submitted in response to Notice No. 581 will be considered by ATF in relation to the proposals set out in this notice, and respondents need not resubmit any of those comments.

Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date. ATF will not recognize any material in comments as confidential. Comments will be disclosed to the public. Any material which a respondent considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of any person submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing on the proposed regulations should submit his or her request, in writing, to the Director within the 30-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required because the proposal, if promulgated as a final rule, is not expected (1) to have significant secondary or incidental effects on a substantial number of small entities, or (2) to impose, or otherwise cause, a significant increase in the reporting, record-keeping, or other compliance burdens on a substantial number of small entities.

Executive Order 12291

It has been determined that this document is not a major regulation as defined in E.O. 12291, and a regulatory impact analysis is not required because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Attention: Desk Officer for the Bureau of Alcohol, Tobacco and Firearms; with copies to the Chief, Information Programs Branch, room 3110, Bureau of Alcohol, Tobacco, and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226.

The collection of information in this regulations is in the following section: 27 CFR 4.93. This information is required by the Bureau of Alcohol, Tobacco and Firearms in order to determine what grape varieties have been newly-developed or recently introduced for use in winemaking. ATF uses this information to determine whether a grape variety name is appropriate for use as a type designation for American wine, and whether that name should be authorized for use in labeling wine.

The likely respondents are businesses and other for-profit institutions, non-profit institutions, and small businesses or organizations.

Estimated total annual reporting and/or recordkeeping burden: 4 hours. Estimated total annual burden per record-keeper: 2 hours. Estimated number of respondents: 2 Estimated annual frequency of responses: 1.

Drafting Information

The principal author of this document is Charles N. Bacon, Wine and Beer Branch, Compliance operations, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspections, Imports, Labeling, Packaging and containers, Wine.

Authority and Issuance

Accordingly, it is proposed to amend 27 CFR Part 4, Labeling and Advertising of Wine, as follows:

PART 4—[AMENDED]

Paragraph 1. The authority citation for part 4 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Section 4.23 is revised to read as follows:

§ 4.23 Varietal (grape type) labeling.

(a) *General.* The names of one or more grape varieties may be used as the type designation of a grape wine only if the wine is also labeled with an appellation of origin as defined in § 4.25a.

(b) *One variety.* Except as provided in paragraph (c) of this section, the name of a single grape variety may be used as the type designation if not less than 75 percent of the wine is derived from grapes of that variety, the entire 75 percent of which was grown in the labeled appellation of origin area.

(c) *Exceptions.* (1) Wine made from any *Vitis labrusca* variety (exclusive of

hybrids with *Vitis labrusca* parentage) may be labeled with the variety name if:

(i) Not less than 51 percent of the wine is derived from grapes of the named variety;

(ii) The statement "contains not less than 51 percent (name of variety)" is shown on the brand label, back label, or a separate strip label, (except that this statement need not appear if 75 percent or more of the wine is derived from grapes of the named variety); and

(iii) The entire qualifying percentage of the named variety was grown in the labeled appellation of origin area.

(2) Wine made from any variety of any species found by the Director upon appropriate application to be too strongly flavored at 75 percent minimum varietal content may be labeled with the varietal name if:

(i) Not less than 51 percent of the wine is derived from grapes of that variety;

(ii) The statement "contains not less than 51 percent (name of variety)" is shown on the brand label, back label, or a separate strip label (except that this statement need not appear if 75 percent or more of the wine is derived from grapes of the names variety); and

(iii) The entire qualifying percentage of the named variety was grown in the labeled appellation of origin area.

(d) *two or three varieties.* The names of two or three grape varieties may be used as the type designation if:

(1) All of the grapes used to make the wine are of the labeled varieties;

(2) The percentage of the wine derived from each variety is shown on the label (with a tolerance of plus or minus 2 percent); and

(3)(i) If labeled with a multicounty appelation of origin, the percentage of the wine derived from each variety from each county is shown on the label; or

(ii) If labeled with a multistate appellation of origin, the percentage of the wine derived from each variety from each state is shown on the label.

(e) *List of approved variety names.* Effective January 1, 1994, the name of a grape variety may be used as a type designation for an American wine only if that name has been approved by the Director. A list of approved grape variety names appears in subpart J of this part.

§ 4.23a [Removed]

Par. 3. Section 4.23a is removed.

Par. 4. Subpart C is amended by adding § 4.28 to read as follows:

§ 4.28 Type designations of varietal significance.

The following are type designations of varietal significance for American wine. These names may be used as type designations for American wines only if the wine is labeled with an appellation or origin as defined in § 4.25a.

(a) *Muscadine.* An American wine which derives at least 75 percent of its volume from *Vitis rotundifolia* grapes.

(b) *Muscatel.* An American wine which derives its predominant taste, aroma, characteristics and at least 75 percent of its volume from any Muscat grape source, and which meets the requirements of § 4.21(a)(3).

(c) *Scuppernong.* An American wine which derives at least 75 percent of its volume from bronze *Vitis rotundifolia* grapes.

Par. 5. Section 4.34 is amended by revising the second sentence of paragraph (a) and paragraph (b)(1); by redesignating paragraphs (b) (2), (3), and (4), as paragraphs (b) (3), (4), and (5), respectively, and adding a new paragraph (b)(2) to read as follows:

§ 4.34 Class and type.

(a) * * * In the case of still grape wine there may appear, in lieu of the class designation, any varietal (grape type) designation, type designation of varietal significance, semigeneric geographic type designation, or geographic distinctive designation, to which the wine may be entitled. * * *

(b) * * *

(1) A varietal (grape type) designation is used under the provisions of § 4.23;

(2) A type designation of varietal significance is used under the provisions of § 4.28;

* * * * *

Par. 6. Immediately after § 4.80, the following new subpart J is used to read as follows:

Subpart J—American Grape Variety Names

Sec.
4.91 List of approved prime names.
4.92 Alternative names permitted for wines bottled prior to January 1, 1996.
4.93 Approval of grape variety names.

Subpart J—American Grape Variety Names

§ 4.91 List of Approved prime names.

The following grape variety names have been approved by the Director for use as type designations for American wines. When more than one name may be used to identify a single variety of grape, the synonym is shown in parentheses and listed in alphabetical order. Alternate spellings of prime grape names are shown in parentheses. Grape variety names may appear on labels of wine in upper or in lower case, and may be spelled with or without the hyphens or diacritic marks indicated in the following list.

Agawam
Albermarle
Aleatico
Alicante Bouschet
Aligoté
Alvarelhao
Aurore
Bacchus
Baco blanc
Baco noir
Barbera
Beacon
Beclan
Bellandais
Beta
Black Malvoisie (Cinsault)
Black Muscat (Muscat Hamburg)
Black Pearl
Blanc Du Bois
Blue Eye
Bonarda
Bountiful
Burdin 4672
Burdin 5201
Burdin 11042
Burgaw
Burger
Cabernet (Cabernet Sauvignon)
Cabernet franc
Cabernet Pfeffer
Cabernet Sauvignon (Cabernet)
Calzin
Campbell Early
Canada Muscat
Captivator
Carignane
Carmine
Carlos
Cornelian
Cascade
Castel 19–637
Catawba
Cayuga White
Centurion
Chambourcin
Chancellor
Charbono
Chardonnay
Chasselas doré
Chelois
Chenin blanc
Chief
Chowan
Cinsaut (Black Malvoisie)
Clairette blanche
Clinton
Colombard (French Colombard)
Colobel
Concord
Conquistador
Couderc noir
Cowart
Creek
Cynthiana
Dearing
De Chaunac
Delaware
Diamond
Dixie
Dolcetto
Doreen
Dulcet
Durif (Petite Sirah)
Dutchess
Early Burgundy
Edelweiss

Eden
Ehrenfelser
Ellen Scott
Elvira
Emerald Riesling
Feher Szagos
Fern Munson
Flame Tokay
Flora
Florental
Folle blanche
French Colombard (Colombard)
Fry
Fumé blanc (Sauvignon blanc)
Furmint
Gamay noir
Garronet
Gewürztraminer
Gladwin 113
Glennel
Gold
Golden Muscat
Grand Noir
Grey Riesling (Trousseau gris)
Green Hungarian
Grenache
Grignolino
Grillo
Helena
Herbemont
Higgins
Horizon
Hunt
Iona
Isabella
Ives
James
Jewell
Joannes Seyve 12–428
Joannes Seyve 23–416
Johannisberg Riesling (White Riesling)
Kerner
Kay Gray
Kleinberger
LaCrosse
Lake Emerald
Lambrusco
Landal
Landot noir
Lenoir
Léon Millot
Limberger (Lemberger)
Madeline Angevine
Magnolia
Magoon
Malbec
Malvasia bianca
Maréchal Foch
Marsanne
Metaro (Mourvèdre)
Melody
Melon
Merlot
Meunier (Pinot Meunier)
Mish
Mission
Missouri Riesling
Mondeuse
Montefiore
Moore Early
Morio-Muskat
Mourvèdre (Mataro)
Müller-Thurgau
Münch
Muscat blanc (Muscat Canelli)
Muscat Canelli (Muscat blanc)
Muscat du Moulin
Muscat Hamburg (Black Muscat)
Muscat of Alexandria
Muscat Pantelleria
Muscat Ottonel
Napa Gamay (Valdiguié)
Naples
Nebbiolo
New York Muscat
Niagara
Noah
Noble
Norton
Ontario
Orange Muscat
Palomino
Pamlico
Pedro Ximenes
Petit Verdot
Petite Sirah (Durif)
Peverella
Pinot blanc
Pinot gris
Pinot Meunier (Meunier)
Pinot noir
Pinot Saint George
Precoce de Malingre
Pride
Primitivo
Rayon d'Or
Ravat 34
Ravat 51 (Vignoles)
Ravat noir
Redgate
Regale
Rkatziteli (Rkatsiteli)
Roanoke
Rosette
Roucaneuf
Rougeon
Royalty
Rubired
Ruby Cabernet
St. Croix
Saint Macaire
Salem
Salvador
Sangiovese
Sauvignon blanc (Fumé blanc)
Sauvignon vert
Scarlet
Scheurebe
Sémillon
Seyval (Seyval blanc)
Seyval blanc (Seyval)
Shiraz (Syrah)
Siegerrebe
Siegfried
Southland
Souzão
Steuben
Stover
Sugargate
Sultanina (Thompson Seedless)
Summit
Suwannee
Sylvaner
Syrah (Shiraz)
Symphony
Swenson Red
Tarheel
Taylor
Thomas
Thompson Seedless (Sultanina)
Tinta Madeira
Tinto cão
Topsail
Touriga
Traminer
Trebbiano (Ugni blanc)
Trousseau
Trousseau gris (Grey Riesling)
Ugni blanc (Trebbiano)
Valdepeñas
Valdiguié (Napa Gamay)
Valerien
Van Buren
Veeblanc
Veltliner
Ventura
Verdelet
Vidal blanc
Vignoles (Ravat 51)
Villard blanc
Villard noir
Vincent
Viognier
Vivant
Wälschriesling (Welschriesling)
Watergate
Welder
White Riesling (Johannisberg Riesling)
Yuga
Zinfandel

§ 4.92 Alternative names permitted for wines bottled prior to January 1, 1996.

The following alternative names shown in the left column may be used as the type designation for American wine in lieu of the prime name of the grape variety shown in the right column. Alternative names listed in the left column may only be used for wine bottled prior to January 1, 1996.

Alternative Name	*Prime Name*
Baco 1	*Baco noir*
Baco 22A	*Baco blanc*
Bastardo	*Trousseau*
Black Spanish	*Lenoir*
Burdin 7705	*Florental*
Cayuga	*Cayuga White*
Chancellor noir	*Chancellor*
Chasselas	*Chasselas doré*
Chevrier	*Sémillon*
Chelois noir	*Chelois*
Couderc 71–20	*Couderc noir*
Couderc 299–35	*Muscat du Moulin*
Foch	*Maréchal Foch*
Franken Riesling	*Sylvaner*
Gutedel	*Chasselas doré*
Island Belle	*Campbell Early*
Ives Seedling	*Ives*
Jacquez	*Lenoir*
Joannes Seyve 26–205	*Chambourcin*
Landot 244	*Landal*
Landot 4511	*Landot noir*
Millot	*Leon Millot*
Moore's Diamond	*Diamond*
Muscadelle	*Sauvignon vert*
Muscat Frontignan	*Muscat blanc*
Muscat Frontignan	*Muscat Canelli*
Norton Seedling	*Norton*
Pfeffer Cabernet	*Cabernet Pfeffer*
Pineau de la Loire	*Chenin blanc*
Pinot Chardonnay	*Chardonnay*
Ravat 262	*Ravat noir*
Refosco	*Mondeuse*
Ruländer	*Pinot gris*
Seibel 128	*Salvador*
Seibel 1000	*Rosette*
Seibel 4986	*Rayon d'Or*

Seibel 5279	*Aurore*
Seibel 5898	*Rougeon*
Seibel 7053	*Chancellor*
Seibel 8357	*Colobel*
Seibel 9110	*Verdelet*
Seibel 9549	*De Chaunac*
Seibel 10878	*Chelois*
Seibel 13053	*Cascade*
Seibel 14596	*Bellandais*
Seyve-Villard 5-278	*Seyval*
Seyve-Villard 12-309	*Roucaneuf*
Seyve-Villard 12-375	*Villard blanc*
Seyve-Villard 18-283	*Garronet*
Seyve-Villard 18-315	*Villard noir*
Seyve-Villard 23-410	*Valerien*
Sweetwater	*Chasselas doré*
Verdelet blanc	*Verdelet*
Vidal 256	*Vidal blanc*
Virginia Seedling	*Norton*

§ 4.93 Approval of grape variety names.

(a) Any interested person may petition the Director for the approval of a grape variety name. The petition may be in the form of a letter and should provide evidence of the following—

(1) Acceptance of the new grade variety,

(2) The validity of the name for identifying the grape variety,

(3) That the variety is used or will be used in winemaking, and

(4) That the variety is grown and used in the United States.

(b) For the approval of names of new grape varieties, documentation submitted with the petition to establish the items in paragraph (a) of this section may include—

(1) Reference to the publication of the name of the variety in a scientific or professional journal of horticulture or a published report by a professional, scientific or winegrowers' organization,

(2) Reference to a plant patent, if so patented, and

(3) Information pertaining to the commercial potential of the variety, such as the acreage planted and its location or market studies.

(c) The Director will not approve a grape variety name if:

(1) The name was previously been used for a different grape variety;

(2) The name contains a term or name found to be misleading under § 4.39; or

(3) The name of a new grape variety contains the term "Riesling."

(d) For new grape varieties developed in the United States, the Director may determine if the use of names which contain words of geographical significance, place names, or foreign words are misleading under § 4.39. The Director will not approve the use of a grape variety name found to be misleading.

(e) The Director shall publish the list of approved grape variety names at least annually in the **Federal Register**.

Signed: June 29, 1992.

Stephen E. Higgings,

Director.

Approved: August 20, 1992.

John P. Simpson,

Acting Assistant Secretary (Enforcement).

[FR Doc. 92-21102 Filed 9-2-92; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219-AA75

High-Voltage Longwall Equipment Standards for Underground Coal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects an error in the proposed rule which addressed safety standards for high-voltage longwall equipment that appeared in the **Federal Register** on August 27, 1992 (57 FR 39041).

DATES: All comments and information must be submitted by October 26, 1992.

ADDRESSES: Send comments to Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, 4015 Wilson Boulevard, Arlington, Virginia 22203.

SUPPLEMENTARY INFORMATION: On August 27, 1992, MSHA published a proposed rule addressing its safety standards that are applicable to high-voltage longwall equipment. On page 39045 in column 3 and on page 39050 in column 2, reference was made to Figures I-1 and I-2 in appendix A. Appendix A was inadvertently left out of the document. This appendix is now being published for the information of the reader.

Dated: August 28, 1992.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

BILLING CODE 4510-43-M

APPENDIX - A

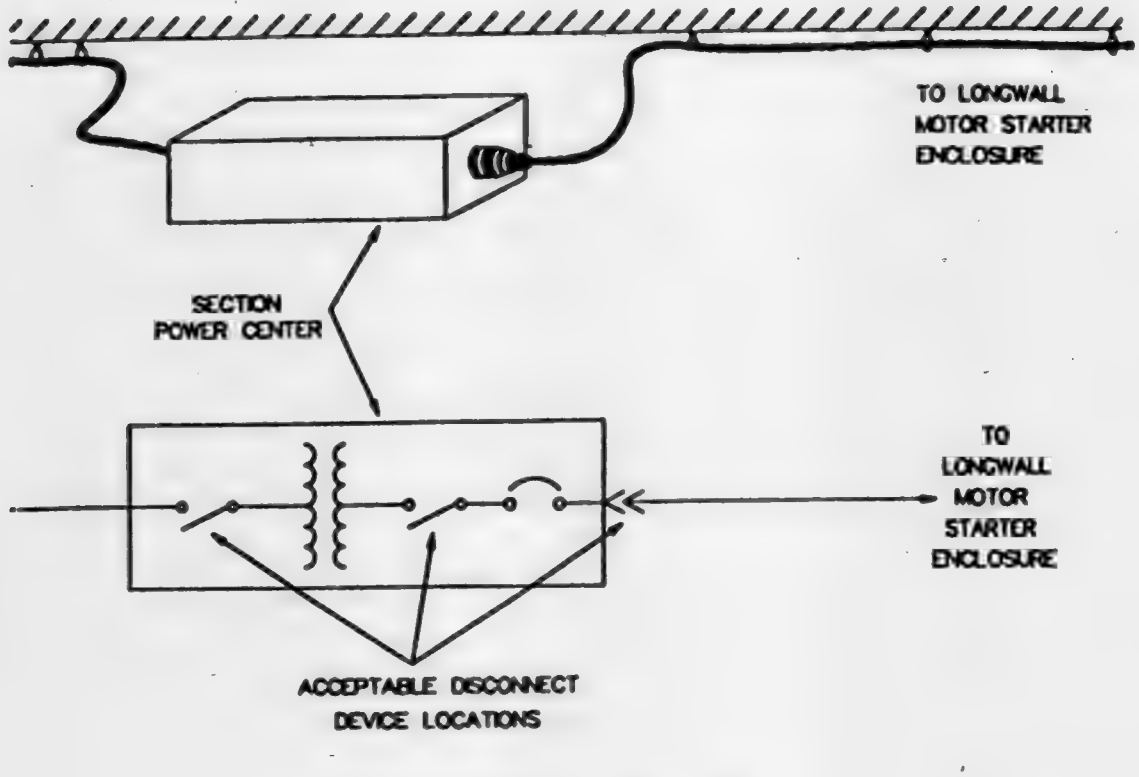

I–1 – INBY SWITCHING

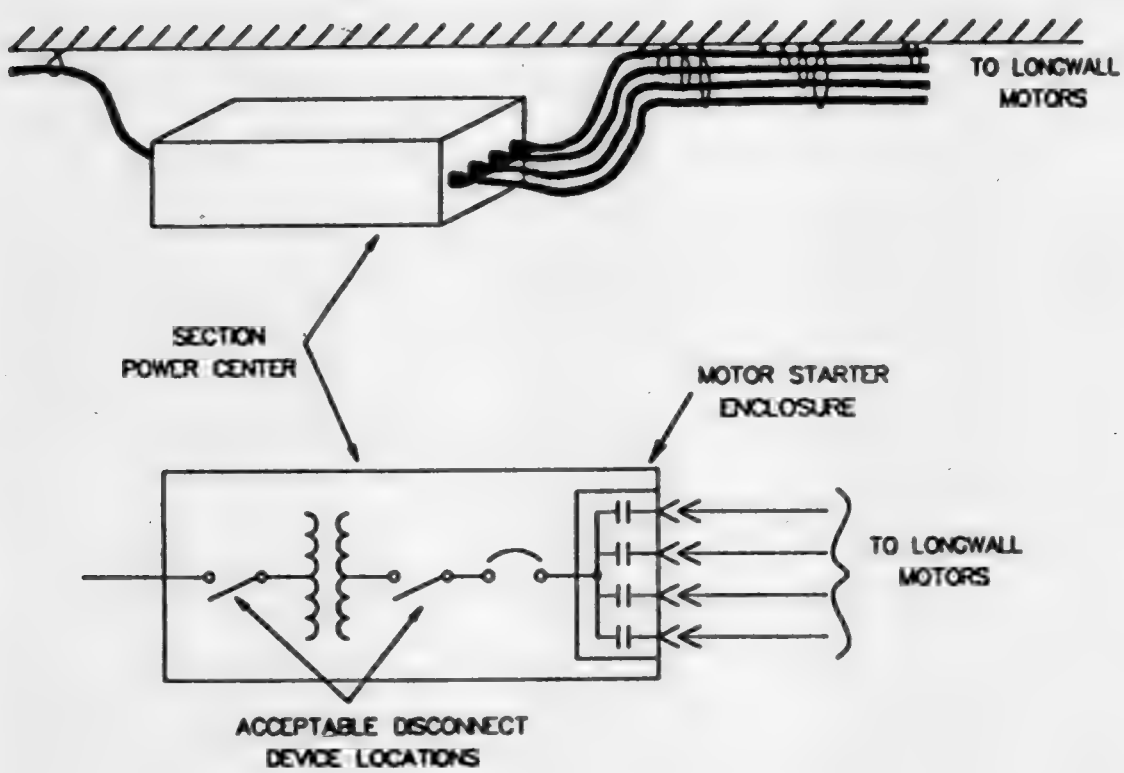

I–2 – OUTBY SWITCHING

[FR Doc. 92–21231 Filed 9–2–92; 8:45 am]
BILLING CODE 4510–43–C

DEPARTMENT OF DEFENSE

Defense Contract Audit Agency

32 CFR Part 317

[DCAA Regulation 5410.10 and DCAA Manual 5410.16]

Defense Contract Audit Agency Privacy Act Program

AGENCY: Defense Contract Audit Agency, DoD.

ACTION: Proposed rule.

SUMMARY: This proposed rule revises the Defense Contract Audit Agency (DCAA) Privacy Act Program that implements the Privacy Act of 1974 (5 U.S.C. 552a), as amended, within DCAA.

Subsection (f) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, requires that Federal agencies promulgate rules for implementing the Privacy Act. On March 8, 1985 the Defense Contract Audit Agency published DCAA Instruction 5410.10, "DCAA Privacy Act Program". This instruction was revised and reissued on June 24, 1991. The revised instruction (Subpart-A) sets forth the fundamental policies and procedures for implementing the DCAA Privacy Act Program, delegates authorities and assigns responsibilities for the administration of the DCAA Privacy Act Program. It further authorizes the publication and maintenance of DCAA Manual 5410.16, "DCAA Privacy Guide" dated June 1991 (Subpart-B et seq.) that contains the uniform detailed procedures for implementation and administration of the DCAA Privacy Act Program.

DATES: Comments should be received by October 5, 1992, to be considered by this agency.

ADDRESS(ES): Foward comments to Mr. Dave Henshall, Information Resources Management Branch, CMR, Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304-6178.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Henshall at (703) 274-4400 or DSN 284-4400.

SUPPLEMENTARY INFORMATION:

Executive Order 12291. The Director, Administration and Management has determined that this proposed rule is not a major rule. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and does not have a significant adverse effect on competition, employment, investment, productivity, or innovation.

Regulatory Flexibility Act of 1980. The Director, Administration and Management certifies that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) and does not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act. The Director, Administration and Management certifies that this rule does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520).

List of Subjects in 32 CFR Part 317

Privacy.

Accordingly, DCAA is revising 32 CFR part 317 to read as follows:

PART 317-DCAA PRIVACY ACT PROGRAM

Subpart A-General Provisions

Sec.
317.1 Purpose.
317.2 Applicability and scope.
317.3 Definitions.
317.4 Policy.
317.5 Responsibilities.
317.6 Procedures.

Subpart B-Systems of Records

317.10 General.
317.11 Federal Government contractors.
317.12 Safeguarding information in systems of records.

Subpart C-Collecting Information About Individuals

317.20 General considerations.
317.21 Forms.

Subpart D-Access to Records

317.30 Individual access to records.
317.31 Reproduction fees.
317.32 Denying individual access.
317.33 Privacy Act case files.

Subpart E-Amendment of Records

317.40 Individual review and amendment.
317.41 Amending records.
317.42 Burden of proof.
317.43 Verifying identity.
317.44 Limits on amending judicial and quasi-judicial evidence and findings.
317.45 Standards for amendment request determinations.
317.46 Time limits.
317.47 Granting an amendment request in whole or in part.
317.48 Denying an amendment request in whole or in part.
317.49 Appeal procedures.
317.50 Requests for amending OPM records.
317.51 Individual's statement of disagreement.
317.52 Agency's statement of reasons.

Subpart F-Disclosure of Records

317.60 Conditions of disclosure.
317.61 Non-consensual disclosures.
317.62 Disclosures to commercial enterprises.
317.63 Disclosing health care records to the public.
317.64 Accounting for disclosures.

Subpart G-Publication Requirements

317.70 **Federal Register** publication.
317.71 Exemption rules.
317.72 System of records notices.
317.73 New and altered record systems.
317.74 Amendment and deletion of system notices.

Subpart H-Training Requirements

317.80 Statutory training requirements.
317.81 DCAA training programs.

Subpart I-Computer Matching Program Procedures

317.90 General.
317.91 Federal personnel or payroll record matches.
317.92 Federal benefit matches.
317.93 Matching program exclusions.
317.94 Conducting matching programs.
317.95 Providing due process to matching subjects.
317.96 Matching program agreement.
317.97 Cost-benefit analysis.
317.98 Appeals of denials of matching agreements.
317.99 Proposals for matching programs.

Subpart J-Enforcement Actions

317.110 Administrative remedies.
317.111 Civil court actions.
317.112 Criminal penalties.
317.113 Litigation status report.
317.114 Annual review of enforcement actions.

Subpart K-Reports

317.120 Report requirements.
317.121 Reports.

Subpart L-Agency Exemption Rules

317.130 Establishing and using exemptions.
317.131 General exemptions.
317.132 Specific exemptions.
317.133 DCAA exempt record systems.

Appendix A to part 317-DCAA Blanket Routine Uses
Appendix B to part 317-Provisions of the Privacy Act from which a General or Specific Exemption may be claimed
Appendix C to part 317-Litigation Status Report

Authority: Privacy Act of 1974, Pub. L. 93-579, 88 Stat. 1896 (5 U.S.C. 552a).

Subpart A-General Provisions

§ 317.1 Purpose.

(a) This part consolidates into a single document, the Defense Contract Audit Agency policies and procedures for implementing the Privacy Act of 1974 (5

U.S.C. 552a), as amended, by authorizing the development, publication and maintenance of the DCAA Privacy Act Program set forth by DCAA Regulation 5410.10 [1], "Privacy Act Program", and DCAA Manual 5410.16 [2], "DCAA Privacy Act Processing Guide."

(b) Its purpose is to delegate authorities and assign responsibilities for the administration of the DCAA Privacy Act Program and to prescribe uniform procedures for agency personnel consistent with DoD 5025.1-M [3], "DoD Directives System Procedures."

§ 317.2 Applicability and scope.

(a) This part applies to all DCAA organizational elements and takes precedence over all regional regulatory issuances that supplement the DCAA Privacy Program.

(b) This part shall be made applicable by contract or other legally binding action to contractors whenever a DCAA contract provides for the operation of a system of records or portion of a system of records to accomplish an agency function.

§ 317.3 Definitions.

(a) *Access.* The review of a record or a copy of a record or parts thereof in a system of records by any individual.

(b) *Agency.* For the purposes of disclosing records subject to the Privacy Act among DoD components, the Department of Defense is considered a single agency. For all other purposes to include applications for access and amendment, denial of access or amendment, appeals from denials, and recordkeeping as regards release to non-DoD agencies; each DoD component, including DCAA, is considered an agency within the meaning of the Privacy Act.

(c) *Confidential source.* A person or organization who has furnished information to the Federal Government under an express promise that the person's or the organization's authority will be held in confidence or under an implied promise of such confidentiality if this implied promise was made before September 27, 1975.

(d) *Defense Data Integrity Board.* Consists of members of the Defense Privacy Board, as established pursuant to 32 CFR part 310, and in addition the Inspector General, DoD or the designee, when convening to oversee, coordinate and approve or disapprove all DoD component computer matching covered by the Privacy Act.

(e) *Disclosure.* The transfer of any personal information from a system of records by any means of communication (such as oral, written, electronic, mechanical, or actual review) to any person, private entity, or government agency, other than the subject of the record, the subject's designated agent or the subject's legal guardian.

(f) *Federal benefit program.* Any program administered or funded by the Federal Government, or by any agent or state on behalf of the Federal Government, providing cash or in-kind assistance in the form of payments, grants, loans, or loan guarantees to individuals.

(g) *Federal benefit program match.* A computerized comparison of two or more automated systems of records or an automated system of records with automated non-Federal records for the purpose of establishing or verifying the eligibility of or continuing compliance with statutory and regulatory requirements by, applicants for, recipients and beneficiaries (both present and past) of, participants in, or providers of services with respect to, cash or in-kind assistance or payments under Federal benefit programs; or recouping payments or delinquent debts under such Federal benefit programs.

(h) *Federal personnel.* Officers and employees of the Government of the United States, members of the uniformed services (including members of the reserve components), individuals entitled to receive immediate or deferred retirement benefits under any retirement program of the Government of the United States (including survivor benefits).

(i) *Federal personnel match.* A computerized comparison of two or more automated Federal personnel or payroll systems of records or an automated Federal personnel or payroll system of records with automated non-Federal records.

(j) *Individual.* A living citizen of the United States or an alien lawfully admitted to the United States for permanent residence. The legal guardian of an individual has the same rights as the individual and may act on his or her behalf. No rights are vested in the representative of a dead person under this chapter and the term "individual" does not embrace an individual acting in an interpersonal capacity (for example, sole proprietorship or partnership).

(k) *Individual access.* Access to information pertaining to the individual by the individual or his or her designated agent or legal guardian.

(l) *Maintain.* Includes maintain, collect, use, or disseminate.

(m) *Matching agency.* The agency which actually performs the match.

(n) *Matching program.* (1) The term means any computerized comparison of:

(i) Two or more automated systems of records or a system of records with non-Federal records for the purpose of:

(A) Establishing or verifying the eligibility of, or continuing compliance with statutory and regulatory requirements by, applicants for, recipients or beneficiaries of, participants in, or providers of services with respect to, cash or in-kind assistance or payments under Federal benefit programs, or

(B) Recouping payments or delinquent debts under such Federal benefit programs, or

(ii) Two or more automated Federal personnel or payroll systems of records or a system of Federal personnel or payroll records with non-Federal records,

(iii) But does not include:

(A) Matches performed to produce aggregate statistical data without any personal identifiers.

(B) Matches performed to support any research for statistical project, the specific data of which may not be used to make decisions concerning the rights, benefits, or privileges of specific individuals.

(C) Matches performed by an agency which performs as its principal function any activity pertaining to the enforcement of criminal laws, subsequent to the initiation of a specific criminal or civil law enforcement investigation of a named person or persons for the purpose of gathering evidence against such person or persons.

(iv) Matches of tax information.

(A) Pursuant to section 6103(d) of the Internal Revenue Code of 1986.

(B) For purposes of tax administration as defined in section 6301(b)(4) of such Code.

(C) For the purpose of intercepting a tax refund due an individual under authority granted by section 464 or 1137 of the Social Security Act; or

(D) For the purpose of intercepting a tax refund due an individual under any other tax refund intercept program authorized by statute which has been determined by the Director of the Office of Management and Budget to contain verification, notice, and hearing

[1] Copies may be obtained, at cost, from the Defense Contract Audit Agency, ATTN: CMO, Cameron Station, Alexandria, VA 22304-6178.

[2] See footnote 1 to § 317.1(a).

[3] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

requirements that are substantially similar to the procedures in section 1137 of the Social Security Act.

(E) Matches.

(1) Using records predominantly relating to Federal personnel, that are performed for routine administrative purposes (subject to guidance provided by the Director of the Office of Management and Budget pursuant to subsection (v) of the Privacy Act).

(2) Conducted by an agency using only records from systems of records maintained by that agency; if the purpose of the match is not to take any adverse financial, personnel, disciplinary, or other adverse action against Federal personnel; or

(F) Matches performed for foreign counterintelligence purposes or to produce background checks for security clearances of Federal personnel or Federal contractor personnel.

(o) *Member of the public.* Any individual or party acting in a private capacity to include Federal employees or military personnel.

(p) *Non-Federal agency.* Any state or local government, or agency thereof, which receives records contained in a system of records from a source agency for use in a matching program.

(q) *Official use.* Within the context of this chapter, this term is used when officials and employees of the Agency have a demonstrated need for the use of any record or the information contained therein in the performance of their official duties, subject to DCAA Regulation 5410.10.

(r) *Personal information.* Information about an individual that is intimate or private to the individual, as distinguished from information related solely to the individual's official functions or public life.

(s) *Privacy Act.* The Privacy Act of 1974 (5 U.S.C. 552a), as amended.

(t) *Privacy Act request.* A request from an individual for notification as to the existence of, access to, or amendment of records pertaining to that individual. These records must be maintained in a system of records. The request must indicate that it is being made under the Privacy Act to be considered a Privacy Act request.

(u) *Recipient agency.* Any agency, or contractor thereof, receiving records contained in a system of records from a source agency for use in a matching program.

(v) *Record.* Any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, the individual's education, financial transactions, medical history, and criminal or employment history, and that contains the individual's name, or identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

(w) *Risk assessment.* An analysis considering information sensitivity, vulnerabilities, and the cost to a computer facility or word processing activity in safeguarding personal information processed or stored in the facility or activity. Applies to manual and automated systems.

(x) *Routine use.* The disclosure of a record outside the Agency for a use that is compatible with the purpose for which the information was collected and maintained by the Agency. The routine use must be included in the published system notice for the system of records involved.

(y) *Source agency.* Any agency which discloses records contained in a system of records to be used in a matching program, or any state or local government, or agency thereof, which discloses records to be used in a matching program.

(z) *Statistical record.* A record maintained only for statistical research or reporting purposes and not used in whole or in part in making determinations about specific individuals.

(aa) *System of records.* A group of records under the control of the Agency from which information is retrieved by the individual's name or by some identifying number, symbol, or other identifying particular assigned to the individual. System notices for all Privacy Act systems of records must be published in the **Federal Register**.

(bb) *Word processing equipment.* Any combination of electronic hardware and computer software integrated in a variety of forms (programmable software, hard wiring, or similar equipment) that permits the processing of textual data.

(cc) *Word processing system.* A combination of equipment employing automated technology, systematic procedures, and trained personnel for the primary purpose of manipulating human thoughts and verbal or written communications into a form suitable to the originator.

§ 317.4 Policy.

It is DCAA policy that personnel will comply with the DCAA Privacy Program and the Privacy Act of 1974. Strict adherence is necessary to ensure uniformity in the implementation of the DCAA Privacy Program and create conditions that will foster public trust. It is also agency policy to safeguard personal information contained in any system of records maintained by DCAA organizational elements and to make that information available to the individual to whom it pertains to the maximum extent practicable. DCAA policy specifically requires that DCAA organizational elements:

(a) Collect, maintain, use, and disseminate personal information only when it is relevant and necessary to achieve a purpose required by statute or Executive Order,

(b) Collect personal information directly from the individuals to whom it pertains to the greatest extent practical.

(c) Inform individuals who are asked to supply personal information for inclusion in any system of records:

(1) The authority for the solicitation.

(2) Whether furnishing the information is mandatory or voluntary.

(3) The intended uses of the information.

(4) The routine disclosures of the information that may be made outside of DoD; and

(5) The effect on the individual of not providing all or any part of the requested information.

(d) Ensure that records used in making determinations about individuals and those containing personal information are accurate, relevant, timely, and complete for the purposes for which they are being maintained before making them available to any recipients outside of DoD, other than a Federal agency, unless the disclosure is made under DCAA Regulation 5410.10, DCAA Freedom of Information Act Program (32 CFR part 290).

(e) Keep no record that describes how individuals exercise their rights guaranteed by the First Amendment to the U.S. Constitution, unless expressly authorized by statute or by the individual to whom the records pertain or is pertinent to and within the scope of an authorized law enforcement activity.

(f) Notify individuals whenever records pertaining to them are made available under compulsory legal processes, if such process is a matter of public record.

(g) Establish safeguards to ensure the security of personal information and to protect this information from threats or hazards that might result in substantial harm, embarrassment, inconvenience, or unfairness to the individual.

(h) Establish rules of conduct for DCAA personnel involved in the design,

development, operation, or maintenance of any system of records and train them in these rules of conduct.

(i) Assist individuals in determining what records pertaining to them are being collected, maintained, used, or disseminated.

(j) Permit individual access to the information pertaining to them maintained in any system of records, and to correct or amend that information, unless an exemption for the system has been properly established for an important public purpose.

(k) Provide, on request, an accounting of all disclosures of the information pertaining to them except when disclosures are made:

(1) To DoD personnel in the course of their official duties.

(2) Under 32 CFR part 290; and

(3) To another agency or to an instrumentality of any governmental jurisdiction within or under control of the United States conducting law enforcement activities authorized by law.

(l) Advise individuals on their rights to appeal any refusal to grant access to or amend any record pertaining to them, and file a statement of disagreement with the record in the event amendment is refused.

§ 317.5 Responsibilities.

(a) *Headquarters.* (1) The *Assistant Director, Resources* has overall responsibility for the DCAA Privacy Act Program and will serve as the sole appellate authority for appeals to decisions of respective initial denial authorities. Under his direction, the *Chief, Information Resources Management Branch*, under the supervision of the *Chief, Administrative Management Division* shall:

(i) Establish, issue, and update policies for the DCAA Privacy Act Program; monitor compliance with this regulation; and provide policy guidance for the DCAA Privacy Act Program.

(ii) Resolve conflicts that may arise regarding implementation of DCAA Privacy Act policy.

(iii) Designate an agency Privacy Act Advisor, as a single point of contact, to coordinate on matters concerning Privacy Act policy.

(iv) Make the initial determination to deny an individual's written Privacy Act request for access to or amendment of documents filed in Privacy Act systems of records. This authority cannot be delegated.

(2) The *DCAA Privacy Act Advisor* under the supervision of the Chief, Information Resources Management Branch shall:

(i) Manage the DCAA Privacy Act Program in accordance with this regulation and applicable DCAA policies, as well as DoD and Federal regulations.

(ii) Provide guidelines for managing, administering, and implementing the DCAA Privacy Act Program.

(iii) Implement and administer the Privacy Act program at the Headquarters.

(iv) Ensure that the collection, maintenance, use, or dissemination of records of identifiable personal information is in a manner that assures that such action is for a necessary and lawful purpose; that the information is timely and accurate for its intended use; and that adequate safeguards are provided to prevent misuse of such information.

(v) Maintain and publish DCAA Pamphlet 5410.13 [4], "DCAA Compilation of Privacy Act System Notices"; DCAA Pamphlet 5410.15 [5], "Privacy Act of 1974, An Employee Guide to Privacy"; and DCAA Manual 5410.16, "DCAA Privacy Act Processing Guide."

(vi) Prepare promptly any required new, amended, or altered system notices for systems of records subject to the Privacy Act and submit them to the Defense Privacy Office for subsequent publication in the **Federal Register**.

(vii) Prepare the annual Privacy Act Report as required by 32 CFR part 310, "DoD Privacy Act Program."

(viii) Conduct training on the Privacy Act program for agency personnel.

(3) *Heads of Principal Staff Elements* are responsible for:

(i) Reviewing all regulations or other policy and guidance issuances for which they are the proponent to ensure consistency with the provisions of this regulation.

(ii) Ensuring that the provisions of this part are followed in processing requests for records.

(iii) Forwarding to the DCAA Privacy Act Advisor, any Privacy Act requests received directly from a member of the public, so that the request may be administratively controlled and processed.

(iv) Ensuring the prompt review of all Privacy Act requests, and when required, coordinating those requests with other organizational elements.

(v) Providing recommendations to the DCAA Privacy Act Advisor regarding the releasability of DCAA records to members of the public, along with the responsive documents.

(vi) Providing the appropriate documents, along with a written justification for any denial, in whole or in part, of a request for records to the DCAA Privacy Act Advisor. Those portions to be excised should be bracketed in red pencil, and the specific exemption or exemptions cited which provide the basis for denying the requested records.

(4) The *General Counsel* is responsible for:

(i) Ensuring uniformity is maintained in the legal position, and the interpretation of the Privacy Act (32 CFR part 310), and this part.

(ii) Consulting with General Counsel, DoD on final denials that are inconsistent with decisions of other DoD components, involve issues not previously resolved, or raise new or significant legal issues of potential significance to other Government agencies.

(iii) Providing advice and assistance to the Assistant Director, Resources; Regional Directors; and the Regional Privacy Act Officer, through the DCAA Privacy Act Advisor, as required, in the discharge of their responsibilities.

(iv) Coordinating Privacy Act litigation with the Department of Justice.

(v) Coordinating on Headquarters denials of initial requests.

(5) Each *Regional Director* is responsible for the overall management of the Privacy Act program within their respective regions. Under his/her direction, the *Regional Resources Manager* is responsible for the management and staff supervision of the program and for designating a *Regional Privacy Act Officer*.

(i) *Regional Directors* will, as designee of the Director, make the initial determination to deny an individual's written Privacy Act request for access to or amendment of documents filed in Privacy Act systems of records. This authority cannot be delegated.

(ii) *Regional Privacy Act Officers* will:

(A) Implement and administer the Privacy Act program throughout the region.

(B) Ensure that the collection, maintenance, use, or dissemination of records of identifiable personal information is in a manner that assures that such action is for a necessary and lawful purpose; that the information is timely and accurate for its intended use; and that adequate safeguards are provided to prevent misuse of such information.

(C) Prepare input for the annual Privacy Act Report as shown in DCAA Manual 5410.16 when requested by the DCAA Information and Privacy Advisor.

[4] See footnote 1 to § 317.1(a).

[5] See footnote 1 to § 317.1(a).

(D) Conduct training on the Privacy Act program for regional and FAO personnel.

(E) Provide recommendations to the Regional Director through the Regional Resources Manager regarding the releasability of DCAA records to members of the public.

(6) *Managers, Field Audit Offices (FAOs)* will:

(i) Ensure that the provisions of this regulation are followed in processing requests for records.

(ii) Forward to the Regional Privacy Act Officer, any Privacy Act requests received directly from a member of the public, so that the request may be administratively controlled and processed.

(iii) Ensure the prompt review of all Privacy Act requests, and when required, coordinating those requests with other organizational elements.

(iv) Provide recommendations to the Regional Privacy Act Officer regarding the releasibility of DCAA records to members of the public, along with the responsive documents.

(v) Provide the appropriate documents, along with a written justification for any denial, in whole or in part, of a request for records to the Regional Privacy Act Officer. Those portions to be excised should be bracketed in red pencil, and the specific exemption or exemptions cited which provide the basis for denying the requested records.

(6) *DCAA Employees* will:

(i) Not disclose any personal information contained in any system of records, except as authorized by this part.

(ii) Not maintain any official files which are retrieved by name or other personal identifier without first ensuring that a notice for the system has been published in the **Federal Register**.

(iii) Report any disclosures of personal information from a system of records or the maintenance of any system of records that are not authorized by this regulation to the appropriate Privacy Act officials for their action.

§ 317.6 Procedures.

Procedures for processing material in accordance with the Privacy Act of 1974 are outlined in subparts B through L of this part.

Subpart B–Systems of Records

§ 317.10 General

(a) *System of records.* To be subject to this part, a "system of records" must:

(1) Consist of "records" that are retrieved by the name or some other personal identifier of an individual, and

(2) Be under the control of the Agency.

(b) *Retrieval practices* (1) Records in a group of records that could be retrieved by personal identifiers, but are not covered by this part, even if the records contain information about individuals and are under the control of the agency. The records must, in fact, be retrieved by personal identifiers in order to become a system of records.

(2) If records previously not retrieved by personal identifiers are rearranged so they are retrieved by personal identifiers, a new system of records is created and a notice of the system must be published in the **Federal Register** of its existence.

(3) If records in a system of records are rearranged so retrieval no longer is by personal identifiers, the records are no longer subject to this part and the records system notice shall be deleted.

(c) *Recordkeeping standards.* A record maintained in a system of records must meet the following criteria:

(1) The record must be accurate--all information in the record must be factually correct.

(2) The record must be relevant--all information contained in the record must be related to the individual who is the subject of record and also must be related to a lawful purpose or mission of the agency.

(3) The record must be timely--all information in the record must be reviewed periodically to ensure that it has not changed due to time or later events.

(4) The record must be complete--it must be able to stand alone in accomplishing the purpose for which it is maintained.

(5) The record must be necessary--all information in the record must be needed to accomplish the agency mission or purpose established by Federal law or Executive Order of the President.

(d) *Authority to establish systems of records.* The specific Federal statute or Executive Order of the President should be identified that authorizes maintaining each system of records. A statute or Executive Order authorizing a system of records does not negate the responsibility to ensure the information in the system of records is relevant and necessary.

(e) *Exercise of first amendment rights.* (1) Records should not be maintained describing how an individual exercises rights guaranteed by the first amendment of the U.S. Constitution unless:

(i) Expressly authorized by Federal law;

(ii) Expressly authorized by the individual; or

(iii) Pertinent to and within the scope of an authorized law enforcement activity.

(2) First amendment rights include, but are not limited to, freedom of religion, freedom of political beliefs, freedom of speech, freedom of the press, the right to assemble, and the right to petition.

(f) *System manager's evaluations and reviews.* (1) Each new proposed system of records shall be evaluated.

(i) The information to be included in the system should be evaluated before establishing it.

(ii) The following factors should be considered:

(A) The relationship of each item of information to be collected and retained to the purpose for which the system is maintained. All information must be relevant to the purpose.

(B) The specific impact on the purpose or mission if each category of information is not collected. All information must be necessary to accomplish a lawful purpose or mission.

(C) The ability to meet the informational needs without using personal identifiers (will anonymous statistical records meet the needs?).

(D) The length of time each item of information must be kept.

(E) The methods of disposal; and

(F) The cost of maintaining the information.

(2) All existing systems of records shall be evaluated and reviewed.

(i) When an alteration or amendment of an existing system is prepared, an evaluation must be performed.

(ii) Reviews should be conducted often and reports prepared which outline the results and corrective actions taken to resolve problems uncovered.

(A) Training practices should be reviewed annually to ensure all personnel are familiar with the requirements of the Privacy Act and any special needs their specific jobs entail.

(B) Recordkeeping and disposal practices should be reviewed annually to ensure compliance with this part.

(C) Each ongoing computer matching program in which records from the system have been matched with non-DoD records should be reviewed annually to ensure that the applicable requirements have been met.

(D) Actions of agency personnel that resulted in either the agency being found civilly liable or an employee being found criminally liable should be reviewed annually to determine the extent of the

problem and find the most effective way of preventing the problem in the future.

(E) Each system of records notice should be reviewed annually to ensure it accurately describes the system. Where minor changes are needed, amend the system notice. If major changes are needed, alter the system notice.

(F) A random sample of agency contracts that provide for the operation of a system of records on behalf of the agency to accomplish an agency function should be reviewed every even-numbered year to ensure the wording of each contract complies with the provisions of the Privacy Act of 1974 (5 U.S.C. 552a).

(G) The routine use disclosures associated with each system of records should be reviewed every three years to ensure the recipient's use of the records continues to be compatible with the purpose for which the agency originally collected the information.

(H) Each system of records for which exemption rules have been established should be reviewed every three years to determine whether each exemption is still needed.

(iii) When directed, the reports should be sent through proper channels to the agency Privacy Act Advisor who will forward them to the Defense Privacy Office.

(g) *Discontinued information requirements.* (1) Any category or item of information about individuals that is no longer justified should not be collected, and when feasible, the information should be removed from existing records.

(2) Records that must be kept in accordance with retention and disposal needs established under DCAA Manual 5015.1 [6], "Files and Disposition Manual," shall not be destroyed.

(h) *Review records before disclosing them outside the Federal government.* Before disclosing a record from a system of records to anyone outside the Federal government, reasonable steps should be taken to ensure the record to be disclosed is accurate, relevant, timely, and complete for the purposes it is being maintained.

§ 317.11 Federal government contractors.

(a) *Applicability to Federal government contractors.* (1) When the agency contracts for the operation of a system of records or portion thereof to accomplish an agency function, this part and 5 U.S.C. 552a are applicable. For purposes of the criminal penalties, the contractor and its employees shall be considered employees of the agency during the performance of the contract.

(2) Consistent with parts 24 and 52 of the Federal Acquisition Regulation [7], contracts for the operation of a system of records or portion thereof shall identify specifically the record system and the work to be performed, and shall include in the solicitations and resulting contract such terms specifically prescribed by the FAR.

(3) If the contractor must use records that are subject to this part to perform any part of a contract, and the information would have been collected and maintained by the agency but for the contract, the contractor activities are subject to this rule.

(4) This rule does not apply to records of a contractor that are:

(i) Established and maintained solely to assist the contractor in making internal contractor management decisions, such as records maintained by the contractor for use in managing the contract; or

(ii) Maintained as internal contractor employee records, even when used in conjunction with providing goods or services to the agency.

(iii) For contracting that is subject to this part, the agency shall:

(A) Inform prospective contractors of their responsibilities under the DCAA Privacy Program.

(B) Establish an internal system for reviewing contractor performance to ensure compliance with the DCAA Privacy Program; and

(C) Provide for the biennial review of a random sampling of agency contracts that are subject to this rule.

(b) *Contracting procedures.* The Defense Acquisition Regulatory Council is responsible for developing the specific policies and procedures for soliciting, awarding, and administering contracts.

(c) *Contractor compliance.* The agency shall establish contract surveillance programs to ensure contractors comply with the procedures established by the Defense Acquisition Regulatory Council pursuant to the preceding subsection.

(d) *Disclosing records to contractors.* Disclosing records to a contractor for use in performing a contract for the agency is considered a disclosure within the agency. The contractor is considered the agent of DCAA when receiving and maintaining the records for the agency.

§ 317.12 Safeguarding information in systems of records.

(a) *General responsibilities.* Appropriate administrative, technical, and physical safeguards shall be established to ensure the records in every system of records are protected from unauthorized alteration, destruction, or disclosure. The records shall be protected from reasonably anticipated threats or hazards that could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained.

(b) *Minimum standards.* (1) Risk analysis and management planning shall be conducted for each system of records. Sensitivity and use of the records, present and projected threats and vulnerabilities, and present and projected cost-effectiveness of safeguards should be considered. The risk analysis may vary from an informal review of a small, relatively insensitive system to a formal, fully quantified risk analysis of a large, complex, and highly sensitive system.

(2) All personnel operating a system of records or using records from a system of records should be trained in proper record security procedures.

(3) Information exempt from disclosure under DCAA Freedom of Information Act Program (32 CFR part 290), shall be labeled to reflect its sensitivity, such as "FOR OFFICIAL USE ONLY," "PRIVACY ACT SENSITIVE: DISCLOSE ON A NEED-TO-KNOW BASIS ONLY," or some other language that alerts individuals to the sensitivity of the records.

(4) Special administrative, physical, and technical safeguards shall be employed to protect records stored or processed in an automated data processing or word processing system from threats unique to those environments.

(c) *Records disposal.* (1) Records from systems of records should be disposed of to prevent inadvertent disclosure. Disposal methods such as tearing, burning, melting, chemical decomposition, burying, pulping, pulverizing, shredding, or mutilation are considered adequate if the records are rendered unrecognizable or beyond reconstruction. Magnetic media may be cleared by degaussing, overwriting, or completely erasing.

(2) The transfer of large volumes of records (e.g., computer cards and printouts) in bulk to a disposal activity such as a Defense Reutilization and Marketing Office for authorized disposal is not a disclosure of records under this

[6] See footnote 1 to § 317.1(a).

[7] For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

rule if volume of the records, coding of the information, or some other factor renders it impossible to recognize any personal information about a specific individual.

(3) When disposing or destroying large quantities of records from a system of records, care must be taken to ensure that the bulk of the records is maintained to prevent easy identification of specific records. If such bulk is maintained, no special procedures are required. If bulk is not maintained, or if the form of the records makes individually identifiable information easily discernible, dispose of the records in accordance with paragraph (c)(1) of this section.

Subpart C–Collecting Information About Individuals

§ 317.20 General considerations.

(a) *Collect directly from the individual.* To the greatest extent practicable, information should be collected for systems of records directly from the individual to whom the record pertains if the record may be used to make an adverse determination about the individual's rights, benefits, or privileges under Federal programs.

(b) *Soliciting the Social Security number.* (1) It is unlawful for any Federal, State, or local government agency to deny an individual a right, benefit, or privilege provided by law because the individual refuses to provide the Social Security Number (SSN). However, this prohibition does not apply if:

(i) A Federal law requires that the SSN be provided, or

(ii) The SSN is required by a law or regulation adopted before January 1, 1975, to verify the individual's identity for a system of records established and in use before that date.

(2) Before requesting an individual to provide the SSN, the individual shall be told:

(i) Whether providing the SSN is voluntary or mandatory,

(ii) By what law or other authority the SSN is solicited, and

(iii) What uses will be made of the SSN.

(3) The notice published in the **Federal Register** for each system of records containing SSNs solicited from individuals must indicate the authority for soliciting the SSNs and whether it is mandatory for the individuals to provide their SSNs. Executive Order No. 9397 permits Federal agencies to solicit SSNs as numerical identifiers for individuals in Federal records systems; however, it does not make it voluntary or mandatory for individuals to provide their SSNs.

(4) Upon entrance into employment with the agency, individuals must provide their SSNs; therefore, they must be given the notification. The SSN is then the individual's numerical identifier and used to establish personnel, financial, medical, and other official records. After the individual has provided the SSN to establish the records, the notification is not required when the SSN is requested only for verification or to locate the records.

(5) The Federal Personnel Manual should be consulted when soliciting SSNs for use in systems of records controlled by the Office of Personnel Management.

(c) *Collecting information about individuals from third persons.* It might not always be practical to collect all information about the individual directly from the individual, such as when:

(1) Verifying information through other sources for security or employment suitability determinations.

(2) Seeking other opinions, such as a supervisor's comments on past performance or other evaluations.

(3) Obtaining the necessary information directly from the individual will be exceptionally difficult or will result in unreasonable costs or delays; or

(4) The individual requests or consents to contacting another person to obtain the information.

(d) *Privacy Act statement.* (1) When an individual is requested to furnish information about himself or herself for a system of records, a Privacy Act statement must be provided to the individual, regardless of the method used to collect the information (forms, personal interviews, telephonic interviews, etc.). If the information requested will not be included in a system of records, a Privacy Act statement is not required.

(2) The Privacy Act statement shall include the following:

(i) The Federal law or Executive Order of the President that authorizes collecting the information.

(ii) Whether it is voluntary or mandatory for the individual to provide the requested information.

(iii) The principal purposes for which the information will be used,

(iv) The routine uses that will be made of the information (to whom and why it will be disclosed outside the Department of Defense); and

(v) The effects, if any, on the individual if all or part of the information is not provided.

(3) The Privacy Act statement must appear on the form used to collect the information or on a separate form that can be retained by the individual requesting it. If the information is collected other than by the individual completing a form, such as when the information is solicited by telephone, the Privacy Act statement should be read to the individual and a copy sent to him or her on request.

(4) It is mandatory for an individual to furnish information about himself or herself for a system of records only when a Federal law or Executive Order of the President specifically imposes a duty to furnish the information and provides a penalty, e.g., criminal sanctions, for failure to do so. If furnishing the information is only a condition for granting a benefit or privilege voluntarily sought by the individual (such as a request for annual leave), it is voluntary for the individual to give the information. However, the denial of the benefit or privilege must be listed in the Privacy Act statement as one of the effects of not providing the information, i.e., the effects on the individual if the information is not provided.

§ 317.21 Forms.

(a) *DCAA forms.* (1) DCAA Regulation 5015.3 [8], "DCAA Forms Management Program," provides guidance for preparing the Privacy Act statement for use with DCAA forms.

(2) When forms are used to collect information about individuals for a system of records, the Privacy Act statement shall appear as follows (listed in the order of preference):

(i) Immediately below the title of the form.

(ii) Elsewhere on the front page of the form (clearly indicating it is the Privacy Act statement).

(iii) On the back of the form with a notation of its location below the title of the form, or

(iv) On a separate form which the individual may keep.

(b) *Non-DCAA forms.* Forms subject to 5 U.S.C. 552a issued by other DoD components or Federal agencies might contain a Privacy Act statement; however, the statement might not reflect accurately the authority, purposes, and routine uses applicable within the agency. If so, the activity using the form shall prepare a statement or supplement to the one provided with the form.

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[8] Copies may be obtained, at cost, from the Defense Contract Audit Agency, ATTN: CMO, Cameron Station, Alexandria, VA 22304–6178.

Subpart D–Access to Records

§ 317.30 Individual access to records.

(a) *Right of access.* (1) The access provisions of this part are for individuals who are subjects of records maintained in DCAA systems of records.

(2) All information that can be released consistent with applicable laws and regulations should be made available to the subject of record.

(b) *Notification of record's existence.* Record managers of system of records shall establish procedures for notifying an individual, in response to a request, if the system of records contains a record pertaining to him or her.

(c) *Individual requests for access.* (1) Individuals shall address requests for access to records in systems of records to the responsible system manager or the regional Privacy Act officer.

(2) Requests for access may be oral or written; however, only written requests are to be maintained in the Privacy Act case file and counted when compiling the biennial Privacy Act report.

(d) *Verifying identity.* (1) An individual shall provide reasonable verification of identity before obtaining access to records.

(2) Procedures for verifying identity shall not be complicated merely to discourage individuals from seeking access to records.

(3) When an individual seeks access in person, identification can be verified by documents normally carried by the individual, such as an identification card, driver's license, or other license, permit or pass normally used for identification purposes.

(4) When access is requested other than in person, identity may be verified by the individual's providing minimum identifying data such as full name, date and place of birth, or other information necessary to locate the record sought. If the information sought is sensitive, additional identifying data may be required.

(5) The individual may be accompanied by a person of his or her choice when viewing the record; however, the individual may be required to provide written authorization to have the record discussed in front of the other person.

(6) An individual shall not be denied access to a record solely for refusing to divulge the SSN, unless it is the only means of retrieving the record or verifying identity.

(7) An individual shall not be required to explain why he or she is seeking access to a record.

(8) Only a designated denial authority may deny access. The denial must be in writing.

(9) If notarization of requests is required for access, procedures shall be established for an alternate method of verification for individuals who do not have access to notary services, such as military members overseas. The following formats may be used as prescribed by 28 U.S.C. 1746:

(i) If executed outside of the United States: *"I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)."*

(ii) If executed within the United States, its territories, possessions, or commonwealths: *"I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)."*

(e) *Granting individual access to records.* (1) The individual should be granted access to the original record (or exact copy) without any changes or deletions. A record that has been amended is considered the original.

(2) The individual's request should be granted for an exact copy of the record, and, upon the signed authorization of the individual, a copy should be provided to anyone designated by the individual. In either case, the copying fees may be assessed to the individual.

(3) If requested, explain any record or portion of a record that is not understood, as well as any changes or deletions.

(f) *Illegible, incomplete, or exempt records*—(1) *Illegible or incomplete records.* Individual access should not be denied solely because the physical condition or format of the record does not make it readily available, such as when the record is in a deteriorated state or on magnetic tape. In this case, the document should be recopied exactly or an extract can be prepared.

(2) *Exempt records.* A request for a record that is wholly or partially exempt from access shall also be processed under the Freedom of Information Act (FOIA). The requester shall be granted access to all information that is releasable under either this part or the FOIA. The agency may provide this information in the form of an extract or summary of the record. The provisions of this rule or the FOIA under which access was granted should be cited.

(g) *Access to medical and psychological records.* (1) Individual access to medical and psychological records should be provided, even if the individual is a minor, unless it is determined that access could have an adverse effect on the mental or physical health of the individual. This determination normally should be made in consultation with a medical practitioner.

(2) If it is medically indicated that access could have an adverse mental or physical effect on the individual, the record should be provided to a medical practitioner named by the individual, along with an explanation why access without medical supervision could be harmful to the individual.

(3) The named medical practitioner should not be required to request the record for the individual.

(4) If the individual refuses or fails to designate a medical practitioner, access shall be refused. The refusal is not considered a denial for reporting purposes under the Privacy Act.

(h) *Access by parents and legal guardians.* (1) The parent of any minor, an individual under 18 years of age who is neither a member of a Military Service nor married, or the legal guardian of any individual declared by a court of competent jurisdiction to be incompetent due to physical or mental incapacity or age, may obtain access to the record of the minor or incompetent individual if the parent or legal guardian is acting on behalf of the minor or incompetent (i.e., for the benefit of the minor or incompetent). However, with respect to access by parents and legal guardians to medical records and medical determinations about minors, observe the following procedures:

(i) In the United States, the laws of the state where the records are located might afford special protection to certain medical records such as drug and alcohol abuse treatment records and psychiatric records. The state statutes might apply even if the records are maintained by a military medical facility.

(ii) For installations located outside the United States, the parent or legal guardian of a minor shall be denied access if all four of the following conditions are met:

(A) The minor at the time of the treatment or consultation was 15, 16, or 17 years old.

(B) The treatment or consultation was within a program authorized by law or regulation to provide confidentiality to the minor.

(C) The minor specifically indicated a desire that the treatment or consultation record be handled in confidence and not disclosed to a parent or guardian, and

(D) The parent or legal guardian does not have the written authorization of the minor or a valid court order granting access.

(2) A minor or incompetent has the same right of access as any other individual. The right of access of the parent or legal guardian is in addition to that of the minor or incompetent.

(i) *Access to information compiled in anticipation of a civil proceeding.* (1) An individual is not entitled to access information compiled in reasonable anticipation of a civil action or proceeding.

(2) The term "civil action or proceeding" includes quasi-judicial and pretrial judicial proceedings as well as formal litigation.

(3) Paragraphs (i)(1) and (2) of this section do not prohibit access to records compiled or used for purposes other than litigation, nor prohibit access to systems of records solely because they are frequently subject to litigation. The information must have been compiled for the primary purpose of litigation.

(4) Attorney work products prepared in conjunction with the paragraphs (i)(1) and (2) of this section are also protected.

(j) *Non-agency records.* (1) Certain documents under the control of DCAA personnel and used to assist them in performing official functions may not be considered agency records within the meaning of this part. Such documents, if maintained in accordance with the following subparagraph, are not systems of records that are subject to this part. Examples are personal telephone lists and personal notes kept to refresh the memory of the author.

(2) To be considered non-agency records, the documents must:

(A) Be maintained and discarded solely at the discretion of the author.

(B) Be created only for the author's personal convenience.

(C) Not be the result of official direction or encouragement, whether oral or written; and

(D) Not be shown to other persons for any reason.

(k) *Relationship between the Privacy Act and the Freedom of Information Act (FOIA).* (1) Access requests that specifically state or reasonably imply that they are made under the Freedom of Information Act (5 U.S.C. 552), are processed pursuant to DCAA Regulation 5410.10 (32 CFR part 290).

(2) Access requests that specifically state or reasonably imply that they are made under the Privacy Act of 1974 (5 U.S.C. 552a) are processed pursuant to this part.

(3) Access requests that cite both the FOIA and the Privacy Act are processed under the Act that provides the greater degree of access. The requester should be informed which Act was used in granting or denying access.

(4) Individual access should not be denied to records otherwise releasable under the Privacy Act or the Freedom of Information Act solely because the request does not cite the appropriate statute.

(l) *Time limits.* Access requests should be acknowledged within 10 working days after receipt, and access should be granted or denied within 30 working days, excluding Federal holidays.

§ 317.31 Reproduction fees.

(a) *Fee schedules.* The fees charged requesters shall include only the direct cost of reproduction and shall not include costs of:

(1) Time or effort devoted by agency personnel to searching for or reviewing the record.

(2) Fees not associated with the actual cost of reproduction.

(3) Producing a copy when it must be provided to the individual without cost under another regulation, directive, or law.

(4) Normal postage.

(5) Transportation of records or personnel, or

(6) Producing a copy when the individual has requested only to review the record and has not requested a copy to keep, and

(i) The only means of allowing review is to make a copy (e.g., the record is stored in a computer and a copy must be printed to provide individual access), or

(ii) The agency does not wish to surrender temporarily the original record for the individual to review.

(7) Compute fees using the appropriate portions of the fee schedule in 32 CFR part 286, subpart F.

(b) *Fee waivers.* (1) Fees shall be waived automatically if the direct cost of reproduction is less than $30.00, unless the individual is requesting an obvious extension or duplication of a previous request for which he or she was granted a waiver.

(2) Decisions to waive or reduce fees that exceed $30.00 may be made on a case-by-case basis.

§ 317.32 Denying individual access.

(a) *Denying individual access.* The subject of record may be denied access only if it:

(1) Was compiled in reasonable anticipation of a civil action or proceeding; or

(2) Is in a system of records that has been exempted from the access provisions of this part.

(3) The individual should be denied access only to those portions of the record for which the denial will serve a legitimate governmental purpose.

(4) An individual may be refused access for failure to comply with established procedural requirements, but must be told the specific reason for the refusal and the proper access procedures.

(b) *Notifying the individual.* Written denial of access must be given to the individual and must be documented in a Privacy Act case file. The denial shall include:

(1) The name, title, and signature of a designated denial authority.

(2) The date of the denial.

(3) The specific reason for the denial, citing the appropriate sections of the Privacy Act or this part authorizing the denial.

(4) Notice of the individual's right to appeal the denial within 60 calendar days of the date the notice is mailed; and

(5) The title and address of the appeal official.

(c) *Appeal procedures.* Appeal procedures provide for the following:

(1) Review by the Assistant Director, Resources, DCAA Headquarters, or his or her designee, of any appeal by an individual.

(2) Written notification to the individual by the Assistant Director, Resources shall:

(i) If the denial is sustained totally or in part, include:

(A) The reason for denying the appeal, citing the provision of the Privacy Act or this part upon which the denial is based

(B) The date of the appeal determination.

(C) The name, title, and signature of the appeal authority; and

(D) A statement informing the applicant of the right to seek judicial relief in Federal District Court.

(ii) If the appeal is granted, advise the individual and provide access to the record sought.

(d) *Final action, time limits, and documentation.* (1) The written appeal notification granting or denying access is the final agency action on the initial request for access.

(2) All appeals shall be processed within 30 working days, excluding Federal holidays, of receipt, unless the appeal authority finds that an adequate review cannot be completed within that period. If additional time is needed, notify the applicant in writing, explaining the reason for the delay and when the appeal will be completed.

(3) All actions on appeals must be documented in the Privacy Act case file.

(e) *Denial of appeal by the agency's failure to act.* An individual may consider his or her appeal denied if the appeal authority fails:

(1) To take final action on the appeal within 30 working days, excluding Federal holidays, of receipt when no extension of time notice was given; or

(2) To take final action within the period established by the extension of time notice.

(f) *Denying access to Office of Personnel Management (OPM) records held by the agency.* (1) The records in all systems of records maintained in accordance with the OPM Government-wide system notices are only in the temporary custody of the agency.

(2) All requests for access to these records must be processed in accordance with the OPM Federal Personnel Manual as well as DCAA Manual 1400.1 [9], "DCAA Personnel Management Manual."

(3) When DCAA initially denies access to a record in an OPM Government-wide system, the agency shall instruct the individual to direct any appeal to the Assistant Director for Workforce Information, Personnel Systems and Oversight Group, Office of Personnel Management, 1900 E Street, NW, Washington, DC 20415-0001.

§ 317.33 Privacy Act case files.

(a) Documents used in processing notification, access, and amendment requests made under the Privacy Act or this part shall be filed in a Privacy Act case file established for each request, not in the record to which they pertain.

(b) Privacy Act case files should contain the following information:

(1) The request to be notified if a system of records contains a record pertaining to the individual and the request for access and amendment.

(2) Approval, denial, request for appeal, action on appeal, coordination action, and other documents relating to the request; and

(3) Documentation of reasons for exceeding the established time limits for processing the request.

(c) The Privacy Act case file shall not contain a copy of the record and shall not be used to make any determination about the individual, other than determinations about the Privacy Act request.

(d) The case file shall be used only to process requests and provide statistics such as for the annual report required by the Privacy Act.

[9] See footnote 1 to § 317.1(a).

Subpart E-Amendment of Records

§ 317.40 Individual review and amendment.

Individuals are encouraged to review periodically the information maintained about them in systems of records, and to avail themselves of the amendment procedures established by this part.

§ 317.41 Amending records.

(a) *Right to request amendment.* An individual may request the amendment of any record retrieved by his or her personal identifier from a system of records, unless the system has been exempted from the amendment procedures. See § 317.133. Amendments are limited to correcting factual matters, not matters of opinion such as those contained in evaluations of promotion potential and performance appraisals.

(b) *Written amendment request.* The agency may require that amendment requests be in writing; however, this requirement shall not be used merely to discourage individuals from requesting valid amendments or to burden needlessly the amendment process. Only written amendment requests must be documented in the Privacy Act case file.

(c) *Content of amendment request.* An amendment request must include:

(1) A description of the information to be amended.

(2) The reason for the amendment.

(3) The type of amendment action sought (deletion, correction, or addition); and

(4) Copies of available documentary evidence supporting the request.

§ 317.42 Burden of proof.

The individual must provide adequate support for the request.

§ 317.43 Verifying identity.

The individual may be required to provide identification to prevent the inadvertent or intentional amendment of another's record.

§ 317.44 Limits on amending judicial and quasi-judicial evidence and findings.

This part does not permit the alteration of evidence presented in the course of judicial or quasi-judicial proceedings. Amendments to such records must be made in accordance with procedures established for such proceedings. This part does not permit a collateral attack on a judicial or quasi-judicial finding; however, it may be used to challenge the accuracy of recording the finding in a system of records.

§ 317.45 Standards for amendment request determinations.

The record which the individual requests to be amended must meet agency recordkeeping standards. The record must be accurate, relevant, timely, complete, and necessary. If the record in its present state does not meet each of the criteria, the amendment request shall be granted to the extent necessary to meet them.

§ 317.46 Time limits.

Within 10 working days, excluding Federal holidays, of receiving an amendment request, provide the individual a written acknowledgment of the request. If action on the amendment request is completed within the 10 working days and the individual is so informed, no separate acknowledgment is necessary. The acknowledgment must clearly identify the request and advise the individual when to expect notification of the completed action. Only under exceptional circumstances shall more than 30 working days, excluding Federal holidays, be required to complete the action on an amendment request. If a completed action takes longer than 30 working days, the delay must be explained fully in the Privacy Act case file.

§ 317.47 Granting an amendment request in whole or in part.

(a) *Notify the requester.* To the extent the amendment request is granted, the individual shall be notified and make the appropriate amendment.

(b) *Notify previous recipients.* All previous recipients of the information (as reflected in the disclosure accounting records) should be notified that the amendment has been made and provide each a copy of the amended record. Recipients who are known to be no longer retaining the record need not be advised of the amendment. If it is known that other DoD components or other Federal Agencies have been provided the information that was amended, or if the individual requests that other DoD components or other Federal agencies be notified, provide the notification even if those components or agencies are not listed in the disclosure accounting.

(c) *Documentation.* The action should be documented in the Privacy Act case file if the request for amendment was in writing.

§ 317.48 Denying an amendment request in whole or in part.

(a) If the amendment request is denied in whole or in part, the individual should be promptly notified in writing and

document the action in the Privacy Act case file. The notification to the individual shall include:

(b) *Basis for denial.* Those sections of the Privacy Act or this part upon which the denial is based.

(c) *Right to appeal.* Advice that the individual may appeal to the Assistant Director, Resources, or his or her designee for an independent review of the initial denial.

(d) *Appeal procedures.* The procedures for requesting an appeal, including the title and address of the official to whom the appeal should be sent; and

(e) *Appeal assistance.* Where the individual can receive assistance in filing the appeal.

§ 6317.49 Appeal procedures.

Procedures to ensure the prompt, complete, and independent review of each denial of an amendment request if the individual appeals must ensure:

(a) *Appeals are forwarded.* The appeal with all supporting documentation, including that furnished by the individual and that contained in agency records, is provided to the Assistant Director, Resources, or his or her designee.

(b) *Standards for review.* The standard for deciding the appeal is whether the unamended record is accurate, relevant, timely, complete, and necessary. If the unamended record does not meet each of these criteria, the amendment request shall be granted to the extent necessary to meet them.

(c) *Time limits.* The appeal is processed within 30 working days, excluding Federal holidays, unless the appeal official determines that an adequate review cannot be completed within that period and gives the individual a written explanation of the reason and when the review will be completed.

(d) *Denial notification.* If the appeal is denied completely or in part, the individual is provided written notification that:

(1) The appeal has been denied, citing the sections of the Privacy Act or this rule on which the denial was based.

(2) The individual may file a statement of disagreement. An explanation of the filing procedures will be included in the written notification.

(3) If properly filed, the statement of disagreement shall be included in the record and furnished to all future recipients of the record and to all prior recipients of the record as listed on the disclosure accounting, except those known to be no longer retaining the record; and

(4) The individual may seek judicial review of the decision not to amend the record.

(e) *Amendment notification.* If the record is amended:

(1) The individual is notified promptly of the decision.

(2) All previous recipients of the record, as listed in the disclosure accounting (except those known to be no longer retaining the record), are notified of the amendment and provided a copy; and

(3) Any previous recipient known to be holding a copy of the record (but not listed in the disclosure accounting), as well as any other DoD component or other Federal agency named by the individual, also should be informed of the amendment and provided a copy.

(f) *Documentation.* All actions on the appeal shall be documented in the Privacy Act case file.

§ 317.50 Requests for amending OPM records.

The records in an OPM Government-wide system of records are only temporarily in the custody of the agency. Requests for amendment of these records must be processed in accordance with the OPM Federal Personnel Manual. The agency denial authority may deny a request, but all denials are subject to review by the Assistant Director for Workforce Information, Personnel Systems Oversight Group, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415–0001.

§ 317.51 Individual's statement of disagreement

(a) *Right to submit.* If the appeal authority refuses to amend the record as requested, the individual may submit a concise statement of disagreement listing the reasons for disagreeing with the refusal to amend.

(b) *Filing the statement.* If possible, incorporate the statement of disagreement into the record. If that is not possible, the record should be annotated to reflect that the statement was filed and maintain the statement so that it can be obtained readily when the disputed information is used or disclosed. For instance, automated record systems not programmed to accept statements of disagreement must be capable of having indicators entered to reflect the presence of statements on file and how to obtain them.

(c) *Inform previous recipients.* Copies of the statement of disagreement should be furnished to all individuals listed in the disclosure accounting of the record (except those known to be no longer retaining the record), as well as to all other known holders of copies of the record.

(d) *Disclosure.* Whenever the disputed information is disclosed for any purpose, ensure that the statement of disagreement also is used or disclosed.

§ 317.52 Agency's statement of reasons.

(a) *Right to file.* If the individual files a statement of disagreement, the agency may file a statement of reasons containing a concise summary of the agency's reasons for denying the amendment request.

(b) *Content.* The statement of reasons shall contain only those reasons given to the individual by the appeal official and shall not contain any comments on the individual's statement of disagreement.

(c) *Disclosure.* At the discretion of the agency, the statement of reasons may be disclosed to those individuals, DoD components, and other Federal agencies that receive the statement of disagreement.

Subpart F–Disclosure of Records

§ 317.60 Conditions of disclosure.

(a) *Disclosures to third persons.* (1) Under the Privacy Act, there are two terms describing how information from a record is provided:

(i) "Access" occurs when information from a record is provided or shown to the individual who is the subject of record or, if that individual is a minor or incompetent, to the parent or legal guardian.

(ii) "Disclosure" occurs when information from a record is provided or shown to anyone other than the subject of record, or the parent or legal guardian of a minor or incompetent.

(b) *When disclosures may be made.* Disclosures may be made only when:

(1) The subject of record gives written consent for the disclosure; or

(2) One of the twelve conditions specified in § 317.61.

(c) *Validation before disclosure.* Except for disclosures made under the FOIA or DCAA Regulation 5410.10 (32 CFR part 290), make reasonable efforts to ensure the record is accurate, relevant, timely, and complete for agency purposes before disclosing any record from a system of records to any recipient other than a Federal agency. Records discovered to have been improperly filed in the system of records should be removed before disclosure.

(1) If validation cannot be obtained from the record itself, the agency may

contact the subject of record (if reasonably available) to verify the accuracy, timeliness, completeness, and relevancy of the information.

(2) If validation cannot be obtained from the record and the subject of record is not reasonably available, the recipient should be advised that the information is believed to be valid as of a specific date and reveal any factors bearing on the validity of the information.

§ 317.61 Non-consensual disclosures.

The Privacy Act provides twelve instances when a record in a system of records may be disclosed without the written consent of the subject of the record:

(a) *Disclosures within the Department of Defense for official purposes.* For purposes of disclosing records among DoD components, the Department of Defense is considered a single agency; hence, a record may be disclosed to any officer or employee in the Department of Defense who needs it in the performance of official duties. Rank or position alone does not authorize the disclosure; there must be a demonstrated official need.

(b) *Disclosures required by the Freedom of Information Act (FOIA).* (1) A record must be disclosed if required by the FOIA, which is implemented by DCAA Regulation 5410.10 (32 CFR part 290).

(2) The FOIA requires that records be made available to any person requesting them in writing, unless the record is exempt from disclosure under one of the nine FOIA exemptions. Therefore, if a record is not exempt from disclosure, it must be provided to the requester.

(3) Certain records, such as personnel, medical, and similar files, are exempt from disclosure under FOIA Exemption number 6. Under that exemption, disclosure of information pertaining to an individual can be denied only when the disclosure would be "a clearly unwarranted invasion of personal privacy."

(4) Records or information from investigatory records, including personnel security investigatory records, are exempt from disclosure under the broader standard of "an unwarranted invasion of personal privacy" found in FOIA Exemption number 7. This broader standard applies only to investigatory records.

(5) A disclosure under the FOIA about civilian employees must be in accordance with DCAA Regulation 5410.8 [10], but the following information normally may be disclosed from civilian employee records:

(i) Full name.

(ii) Present and past position titles and occupational series.

(iii) Present and past grades.

(iv) Present and past annual salary rates (including performance awards or bonuses, incentive awards, merit pay amount, Meritorious and Distinguished Executive Ranks, and allowances and differentials).

(v) Past duty stations.

(vi) Present duty station and future duty station (if finalized), including room numbers, shop designations, or other identifying information regarding buildings or places of employment, unless the duty stations have been determined by the agency to be sensitive, routinely deployable, or located in a foreign territory.

(vii) Position descriptions, identification of job elements, and those performance standards (but not actual performance appraisals) that the disclosure of which would not interfere with law enforcement programs or severely inhibit agency effectiveness.

(6) Disclosure of home addresses and home telephone numbers:

(i) The disclosure under the FOIA of home addresses and telephone numbers normally is considered a clearly unwarranted invasion of personal privacy and is prohibited. However, they may be disclosed if:

(A) The individual has consented, in writing, to the disclosure.

(B) The disclosure is required by the FOIA; or

(C) The disclosure is required by another Federal law, such as 42 U.S.C. 653, which provides assistance to states in locating parents who have defaulted on child support payments.

(ii) When compiling home addresses and telephone numbers, the individual shall be offered the option of authorizing disclosure of the information without further consent for specific purposes, such as locator services. In that case, the information may be disclosed for the stated purpose without further consent. If the information is to be disclosed for any other purpose, a signed consent permitting the additional disclosure must be obtained from the individual.

(iii) Before listing home addresses and home telephone numbers in telephone directories, the individual should be given the opportunity to refuse such a listing. If the individual requests that the home address or telephone number not be listed in the directory, additional fees should not be assessed associated with maintaining an unlisted number for government-owned telephone services.

(iv) The sale or rental of lists of names and addresses is prohibited unless such action is specifically authorized by Federal law, but this does not prohibit the disclosure of names and addresses otherwise permitted to be made public, such as by DCAA Regulation 5410.10 (32 CFR part 290).

(c) *Disclosures for established routine uses.* (1) Records may be disclosed outside the agency if the disclosure is for an established routine use.

(2) A routine use shall:

(i) Be compatible with and related to the purpose for which the record was created.

(ii) Identify the persons or organizations to whom the record may be disclosed.

(iii) Identify specifically the uses for which the information may be employed by the receiving person or organization; and

(iv) Be contained in the system of records notice published previously in the **Federal Register**.

(7) A routine use shall be established for each user of the information outside the agency who needs the information for an official purpose.

(8) Routine uses may be established, discontinued, or amended without the consent of the individuals to whom the records pertain. However, new and amended routine uses must be published in the **Federal Register** at least 30 days before the information may be disclosed under their provisions.

(9) In addition to the routine uses established by the system notices published in the **Federal Register**, certain common "blanket routine uses" have been established for all systems of records maintained by the agency. These blanket routine uses are published in the **Federal Register** at the beginning of the listing of system notices for the agency. Unless a system notice specifically excludes a system of records from a blanket routine use, all blanket routine uses apply to that system. See Appendix A to this part.

(10) If the "routine user" recipient has not been identified in the **Federal Register** or if the recipient, though identified, intends to employ the information for a purpose not published in the **Federal Register**, the written consent of the individual is required before the disclosure can be made.

(d) *Disclosures to the Bureau of the Census.* Records may be disclosed to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activities under the provisions of 13 U.S.C. 8.

[10] See footnote 1 to § 317.1(a).

(e) *Disclosures for statistical research or reporting.* Records may be disclosed to a recipient for statistical research or reporting if:

(1) Prior to the disclosure, the recipient has provided adequate written assurance that the records shall be used solely for statistical research or reporting; and

(2) The records are transferred in a form that does not identify individuals.

(f) *Disclosures to the National Archives and Records Administration.* (1) Records may be disclosed to the National Archives and Records Administration for evaluation to determine whether the records have sufficient historical or other value to warrant preservation by the Federal government. If preservation is warranted, the records will be retained by the National Archives and Records Administration, which becomes the official owner of the records.

(2) Records may be disclosed to the National Archives and Records Administration to carry out records management inspections required by Federal law. Such disclosures are authorized by the National Archives and Records Act of 1984, Pub. L. 98–497.

(3) Records transferred to a Federal Records Center operated by the National Archives and Records Administration for storage are not within this category. Those records continue to be maintained and controlled by the agency. The Federal Records Center is considered the custodian agent of the agency.

(g) *Disclosures when requested for law enforcement purposes.* (1) A record may be disclosed to another agency or an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if:

(i) The civil or criminal law enforcement activity is authorized by law (Federal, State, or local); and

(ii) The head of the agency or instrumentality (or his or her designee) has made a written request to DCAA specifying the particular record or portion desired and the law enforcement activity for which it is sought.

(2) Blanket requests for any and all records pertaining to an individual shall not be honored. The requesting agency or instrumentality must specify each record or portion desired and how each relates to the authorized law enforcement activity.

(3) This disclosure provision applies when the law enforcement agency or instrumentality requests the record. If DCAA discloses a record outside the Department of Defense for law enforcement purposes without the individual's consent and without an adequate written request, the disclosure must be pursuant to an established routine use, such as the blanket routine use for law enforcement.

(h) *Disclosures to protect the health or safety of an individual.* (1) Records may be disclosed by any means and to any person pursuant to a showing of compelling circumstances affecting the health or safety of an individual. The affected individual need not be the subject of the record.

(2) Notification of the disclosure (date and what, why, and to whom disclosed) must be sent to the subject of the record. Sending the notification to the last known address is sufficient.

(i) *Disclosures to Congress.* (1) A record may be disclosed to either House of Congress on the initiative of the agency or at the request of either the Senate or House of Representatives as a whole.

(2) A record also may be disclosed to any committee, subcommittee, or joint committee of Congress if the disclosure pertains to a matter within the legislative or investigative jurisdiction of the committee, subcommittee, or joint committee.

(3) Individual members of Congress not acting on behalf of the entire house, a committee, subcommittee, or joint committee have no greater right to have records disclosed to them than any other individual. However, for Members of Congress making inquiries on behalf of individuals who are subjects of records, a blanket routine use has been established to permit disclosures to individual members of Congress.

(i) When responding to a congressional inquiry made on behalf of a constituent by whose identifier the record is retrieved, there is no need to verify that the individual has authorized the disclosure to the Member of Congress.

(ii) The oral statement of a congressional staff member is sufficient to establish that a request has been received from the individual to whom the record pertains.

(iii) If the constituent inquiry is made on behalf of an individual other than the subject of the record, provide the Member of Congress only that information releasable under the FOIA. The Member of Congress should be advised that the written consent of the subject of record is required before additional information may be disclosed. The subject of record should not be contacted to obtain consent for the disclosure to the Member of Congress unless the congressional office specifically requests that it be done.

(j) *Disclosures to the Comptroller General for the General Accounting Office.* Records may be disclosed to the Comptroller General, or his or her authorized representative, for the performance of the duties of the General Accounting Office.

(k) *Disclosures pursuant to court orders.* (1) Records may be disclosed pursuant to the order of a court of competent jurisdiction.

(2) The court order must bear the signature of a Federal, State, or local judge. Orders signed by court clerks or attorneys are not deemed to be orders of a court of competent jurisdiction. A photocopy of the order, regular on its face, will be sufficient evidence of the court's exercise of its authority if the minimal requirements of DCAA Regulation 5410.11, "Release of Official Information in Litigation and Testimony by DCAA Personnel as Witness."

(3) When a record is disclosed under this provision and the compulsory legal process becomes a matter of public record, make reasonable efforts to notify the subject of the record. Notification sent to the last known address of the individual is sufficient.

(l) *Disclosures to consumer reporting agencies.* (1) Certain information may be disclosed to consumer reporting agencies as defined by 31 U.S.C. 952d.

(2) Under these provisions, the following information may be disclosed to a consumer reporting agency:

(i) Name, address, taxpayer identification number (SSN), and other information necessary to establish the identity of the individual.

(ii) The amount, status, and history of the claim; and

(iii) The agency or program under which the claim arose.

(3) 31 U.S.C. 952d specifically requires that the **Federal Register** notice for the system of records from which the information will be disclosed indicate that the information may be disclosed to a consumer reporting agency.

§ 317.62 Disclosures to commercial enterprises.

(a) *General policy.* (1) Records may be disclosed to commercial enterprises only under the criteria established by the FOIA.

(2) The relationship of commercial enterprises to their customers or clients and to the agency is not changed by this part.

(3) The policy on personal indebtedness for civilian employees, is

contained in DCAA Manual 1400.1, DCAA Personnel Management Manual.

(b) *Disclosure of information.* (1) Any information required to be disclosed by the FOIA may be disclosed to a requesting commercial enterprise.

(2) Commercial enterprises may present a concise statement signed by the individual indicating specific conditions for disclosing information from a record. Statements such as the following, if signed by the individual, are considered sufficient to authorize the disclosure:

I hereby authorize the Defense Contract Audit Agency to verify my Social Security Number or other identifying information and to disclose my home address and telephone number to authorized representatives of (name of commercial enterprise) to be used in connection with my commercial dealings with that enterprise. All information furnished will be used in connection with my financial relationship with (name of commercial enterprise).

(3) When a consent statement as described in the preceding subsection is presented, the information should be provided to the commercial enterprise, unless the disclosure is prohibited by another regulation or Federal law.

(4) Requests should not be honored from commercial enterprises for official evaluations or personal characteristics such as personal financial habits.

§ 317.63 Disclosing health care records to the public.

This section applies to the disclosure of information to the news media and the public concerning individuals treated or hospitalized in DoD medical facilities and, when the cost of care is paid by the agency, in non-Federal facilities.

(a) *Disclosures without the individual's consent.* Normally, the following information may be disclosed without the individual's consent:

(1) Information required to be released by the FOIA, as well as the information listed for military personnel and for civilian employees; and

(2) The following general information concerning medical condition:

(i) Date of admission or disposition; and

(ii) Present medical assessment of the individual's condition in the following terms, if the medical practitioner has volunteered the information:

(A) The individual's condition presently is (stable) (good) (fair) (serious) (critical), and

(B) The patient is conscious, semiconscious, or unconscious.

(b) *Disclosures with the individual's consent.* With the individual's informed consent, any information about the individual may be disclosed. If the individual is a minor or has been declared incompetent by a court of competent jurisdiction, the parent or the appointed legal guardian may give consent on behalf of the individual.

(c) *Disclosures to other government agencies.* This section does not limit otherwise lawful disclosures to other government agencies for use in determining eligibility for special assistance or other benefits provided there is a published routine use permitting the disclosure.

§ 317.64 Accounting for disclosures.

(a) *When to keep disclosure accountings.* An accurate record of all disclosures made from a record (including those made with the consent of the individual) should be kept except those made:

(1) To DCAA personnel for use in performing their official duties; and

(2) Pursuant to DCAA Regulation 5410.10 (32 CFR part 290).

(b) *Content of disclosure accountings.* Disclosure accountings shall contain:

(1) The date of the disclosure.

(2) A description of the information disclosed.

(3) The purpose of the disclosure; and

(4) The name and address of the person or agency to whom the disclosure was made.

(c) *Using disclosure accountings.* When an individual's request to amend the record is granted and when an individual files a statement of disagreement, all persons and agencies listed in the disclosure accounting, except those known to be no longer retaining the record, must be informed.

(d) *Individual access to disclosure accountings.* The record subject has the right of access to the disclosure accounting except when:

(1) The disclosure was made at the request of a civil or criminal law enforcement agency, or

(2) The system of records has been exempted from the requirement to provide access to the disclosure accounting.

(e) *Methods of disclosure accounting.* (1) The agency may use any method of disclosure accounting that will readily provide the necessary disclosure information required.

(2) When numerous similar records are disclosed (e.g., sending payroll checks to banks), identify the category of records disclosed and include the information in some form that can be used to construct a disclosure accounting.

(f) *Retaining disclosure accountings.* The disclosure accounting shall be retained for five years after the disclosure was made or the life of the record, whichever is longer.

Subpart G–Publication Requirements

§ 317.70 Federal Register publication.

(a) *Documents that must be published in the* **Federal Register.**

(1) Three types of documents relating to the Privacy Program must be published in the **Federal Register**:

(i) DCAA Privacy Program procedural rules (32 CFR part 317).

(ii) DCAA exemption rules (32 CFR part 317), and

(iii) Record system notices.

(2) DoD 5025.1–M, "DoD Directives System Procedures," and DoD Directive 5400.9, "Publication of Proposed and Adopted Regulations Affecting the Public" (32 CFR part 336), contain information on preparing documents for publication in the **Federal Register**.

(b) *Effect of publication in the* **Federal Register.** Publishing a document in the **Federal Register** constitutes official public notice of the existence and content of the document.

(c) *Formal rulemaking and notices.* (1) DCAA Privacy Program procedural and exemption rules are subject to the rulemaking procedures prescribed by 32 CFR part 336. These are incorporated automatically into the Code of Federal Regulations.

(2) Record system notices are published in the **Federal Register** as "notices." They are not subject to the rulemaking procedures or automatic incorporation into the Code of Federal Regulations.

(d) *Submitting Privacy Program procedural rules for publication.* (1) Procedural rules must be published in the **Federal Register** first as proposed rules to allow for public comment, then as final rules.

(2) The DCAA Privacy Advisor will submit to the Defense Privacy Office all proposed rules implementing this rule. The submission must conform to the **Federal Register** format.

(3) This part published as a final rule in the **Federal Register** shall be incorporated by regions as their own rules by reference rather than by republication. A region that simply implements this part as its own rule need not publish it as a final rule in the **Federal Register**.

(4) Amendments to agency rules are submitted in the same manner as the original rules.

(5) The Defense Privacy Office, DA&M, reviews and submits all DoD component rules, and amendments to rules to the **Federal Register** for publication.

(e) *Submitting exemption rules for publication.* (1) Exemption rules must be published in the **Federal Register** first as proposed rules to allow for public comment, then as final rules.

(2) No system of records shall be exempt from any provision of the Privacy Act until the exemption rule has been published in the **Federal Register** as a final rule.

(3) Proposed exemption rules should be submitted in proper format through the agency Privacy Advisor to the Defense Privacy Office, DA&M, for review and submittal to the **Federal Register** for publication.

(4) Amendments to exemption rules are submitted in the same manner as the original exemption rules.

(f) *Submitting record system notices for publication.* (1) Although system notices are not subject to formal rulemaking procedures, advance public notice must be given before the agency may begin to collect information for or maintain a new system of records. The notice procedures require that:

(i) The record system notice describe the contents of the record system and the purposes and routine uses for which the information will be used and disclosed.

(ii) The public be given 30 days to comment on any proposed routine uses before the routine uses are implemented; and

(iii) The notice contain the date the system of records will become effective.

(2) System notices shall be submitted though the agency Privacy Advisor to the Defense Privacy Office, DA&M, for publication in the **Federal Register**.

§ 317.71 Exemption rules.

(a) *General procedures.* This section provides guidance for establishing exemptions for systems of records.

(b) *Content of exemption rules.* (1) Each proposed exemption rule submitted for publication in the **Federal Register** must contain:

(i) The agency identification and name of the record system for which an exemption will be established.

(ii) The subsection(s) of the Privacy Act which grants the agency authority to claim an exemption for the system (e.g., subsection (k)(2) or (k)(5) of the Privacy Act).

(iii) The particular subsection(s) of the Privacy Act which the system will be exempt from (e.g., subsections (c)(3), (d)(1)–(5) of the Privacy Act; and

(iv) The reasons why an exemption from the particular subsection identified in the preceding subparagraph is being claimed.

§ 317.72 System of records notices.

(a) *Contents of a record system notice.* The following data captions are prescribed by the Office of the **Federal Register** and must be included for each system notice:

(1) System identification.

(2) System name.

(3) System location.

(4) Categories of individuals covered by the system.

(5) Categories of records in the system.

(6) Authority for maintenance of the system.

(7) Purpose(s).

(8) Routine uses of records maintained in the system, including categories of users and purposes of the uses.

(9) Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system.

(10) System manager(s) and address.

(11) Notification procedures.

(12) Record access procedures.

(13) Contesting records procedures.

(14) Record source categories; and

(15) Exemptions claimed for the system.

(b) *System identification.* The system identifier must appear in all system notices. It is limited to 21 positions, including agency code, file number, symbols, punctuation, and spaces.

(c) *System name.* (1) The system name must indicate the general nature of the system of records and, if possible, the general category of individuals to whom it pertains.

(2) Acronyms should be established parenthetically following the first use of the name (e.g., "Field Audit Office Management Information System (FMIS)"). Acronyms shall not be used unless preceded by such an explanation.

(3) The system name may not exceed 55 character positions, including punctuation and spaces.

(d) *System location.* (1) For a system maintained in a single location, provide the exact office name, organizational identity, routing symbol, and full mailing address. Do not use acronyms in the location address.

(2) For a geographically or organizationally decentralized system, describe each level of organization or element that maintains a portion of the system of records.

(3) For an automated data system with a central computer facility and input or output terminals at geographically separate locations, list each location by category.

(4) If multiple locations are identified by type of organization, the system location may indicate that official mailing addresses are published as an appendix to the agency's compilation of systems of records notices in the **Federal Register**. If no address directory is used, or if the addresses in the directory are incomplete, the address of each location where a portion of the record system is maintained must appear under the "system location" caption.

(5) Classified addresses shall not be listed, but the fact that they are classified shall be indicated.

(6) The U.S. Postal Service two-letter state abbreviation and the nine-digit zip code shall be used for all domestic addresses.

(e) *Categories of individuals covered by the system.* (1) Clear, nontechnical terms shall state the specific categories of individuals to whom records in the system pertain.

(2) Broad descriptions such as "all DCAA personnel" or "all employees," should be avoided unless the term actually reflects the category of individuals involved.

(f) *Categories of records in the system.* (1) Clear, nontechnical terms shall be used to describe the types of records maintained in the system.

(2) The description of documents should be limited to those actually retained in the system of records. Source documents should not be described that are used only to collect data and then are destroyed.

(g) *Authority for maintenance of the system.* (1) The system of records must be authorized by a Federal law or Executive Order of the President, and the specific provision must be cited.

(2) When citing federal laws, include the popular names (e.g.,"5 U.S.C. 552a, The Privacy Act of 1974") and for Executive Orders, the official titles (e.g., "Executive Order 9397, Numbering System for Federal Accounts Relating to Individual Persons").

(3) The Directive establishing the agency, DoD Directive 5105.36 (32 CFR part 357), as well as the law that authorizes the Secretary of Defense to issue Directives, 10 U.S.C. 133 should be cited.

(h) *Purpose(s).* The specific purpose(s) for which the system of records was created and maintained; that is, the uses of the records within the agency and the

rest of the Department of Defense should be listed.

(i) *Routine uses.* (1) All disclosures of the records outside the agency, including the recipient of the disclosed information and the uses the recipient will make of it should be listed.

(2) If possible, the specific activity or element to which the record may be disclosed (e.g., "to the Department of Veterans Affairs, Office of Disability Benefits") should be listed.

(3) General statements such as "to other Federal Agencies as required" or "to any other appropriate Federal agency" should not be used.

(4) The blanket routine uses, published at the beginning of the agency's compilation, applies to all system notices, unless the individual system notice states otherwise.

(j) *Policies and practices for storing, retrieving, accessing, retaining, and disposing of records.* This section is divided into four parts.

(1) Storage: The method(s) used to store the information in the system (e.g., "automated, maintained in computers and computer output products" or "manual, maintained in paper files" or "hybrid, maintained in paper files and in computers") should be stated. Storage does not refer to the container or facility in which the records are kept.

(2) Retrievability: How records are retrieved from the system (e.g., "by name," "by SSN," or "by name and SSN") should be indicated.

(3) Safeguards: The categories of agency personnel who use the records and those responsible for protecting the records from unauthorized access should be stated. Generally the methods used to protect the records, such as safes, vaults, locked cabinets or rooms, guards, visitor registers, personnel screening, or computer "fail-safe" systems software should be identified. Safeguards should not be described in such detail as to compromise system security.

(4) Retention and disposal: Describe long records are maintained. When appropriate, the length of time records are maintained by the agency in an active status, when they are transferred to a Federal Records Center, how long they are kept at the Federal Records Center, and when they are transferred to the National Archives or destroyed should be stated. If records eventually are destroyed, the method of destruction (e.g., shredding, burning, pulping, etc), should be stated. If the agency rule is cited, the applicable disposition schedule shall also be identified.

(k) *System manager(s) and address.* (1) The title (not the name) and address of the official or officials responsible for managing the system of records should be listed.

(2) If the title of the specific official is unknown, such as with a local system, the local director or office head as the system manager should be indicated.

(3) For geographically separated or organizationally decentralized activities with which individuals may correspond directly when exercising their rights, the position or title of each category of officials responsible for the system or portion thereof should be listed.

(4) Addresses that already are listed in the agency address directory; or simply refer to the directory should not be included.

(l) *Notification procedures.* (1) Notification procedures describe how an individual can determine if a record in the system pertains to him or her.

(2) If the record system has been exempted from the notification requirements of subsection (f)(1) or subsection (e)(4)(G) of the Privacy Act, it should be so stated.

(3) If the system has not been exempted, the notice must provide sufficient information to enable an individual to request notification of whether a record in the system pertains to him or her. Merely referring to the agency's procedural rules is not sufficient.

(4) This section should also include:

(i) The title (not the name) and address of the official (usually the system manager) to whom the request must be directed;

(ii) Any specific information the individual must provide in order for the agency to respond to the request (e.g., name, SSN, date of birth, etc.); and

(iii) Any description of proof of identity for verification purposes required for personal visits by the requester.

(m) *Record access procedures.* (1) This section describes how an individual can review the record and obtain a copy of it.

(2) If the system has been exempted from access and publishing access procedures under subsections (d)(1) and (e)(4)(H), respectively, of the Privacy Act, it should be so indicated.

(3) If the system has not been exempted, describe the procedures an individual must follow in order to review the record and obtain a copy of it, including any requirements for identity verification.

(4) If appropriate, the individual may be referred to the system manager or another agency official who shall provide a detailed description of the access procedures. Any addresses already listed in the address directory should not be repeated.

(n) *Contesting record procedures.* (1) This section describes how an individual may challenge the denial of access or the contents of a record that pertains to him or her.

(2) If the record system has been exempted from allowing amendments to records or publishing amendment procedures under subsections (d)(2) and (e)(4)(H), respectively, of the Privacy Act, it should be so stated.

(3) If the system has not been exempted, the procedures an individual must follow should be described in order to challenge the content of a record pertaining to him or her, or explain how he or she can obtain a copy of the procedures (e.g., by contacting the system manager or another agency official).

(o) *Record source categories.* (1) If the system has been exempted from publishing record source categories under subsection (e)(4)(I) of the Privacy Act, it should be so stated.

(2) If the system has not been exempted, this caption must describe where the agency obtained the information maintained in the system.

(3) Describing the record sources in general terms is sufficient; specific individuals, organizations, or institutions need not be identified.

(p) *Exemptions claimed for the system.* (1) If no exemption has been established for the system, indicate "None."

(2) If an exemption has been established, state under which provision of the Privacy Act it is established (e.g., "Parts of this system of records may be exempt under 5 U.S.C. 552a(k)(2)").

§ 317.73 New and altered record systems.

(a) *Criteria for a new record system.* (1) A new system of records is one for which no existing system notice has been published in the **Federal Register**.

(2) If a notice for a system of records has been canceled or deleted and the agency desires to reinstate or reuse the system, a new system notice must be published in the **Federal Register**.

(b) *Criteria for an altered record system.* A system is considered altered when any one of the following actions occurs or is proposed:

(1) A significant increase or change in the number or types of individuals about whom records are maintained requires a change to the "categories of individuals covered by the system" caption in the system notice and might require changes to the "purpose(s)" caption.

(i) For example, a decision to expand a system of records that originally covered personnel assigned to only one location to cover personnel at several locations would constitute an altered system.

(ii) An increase in the number of individuals covered due to normal growth is not an alteration.

(iii) A decrease in the number of individuals covered is not an alteration, but it is an amendment.

(2) A change that expands the types or categories of information maintained requires a change in the "categories of records in the system" caption in the system notice.

(i) For example, a personnel file that has been expanded to include medical records would be an alteration.

(ii) Adding to a personnel file a new data element that is clearly within the scope of the categories of records described in the existing notice is not an alteration, but is an amendment.

(3) A change that alters the purpose for which the information is used requires changing the "purpose(s)" caption in the system notice. In order to be an alteration, the change must be one that is not reasonably inferred from any of the existing purposes.

(4) A change to equipment configuration (either hardware or software) that creates substantially greater use of records in the system requires changing the "storage" caption in the system notice. For example, placing interactive computer terminals at regional offices to use a system formerly used only at the Headquarters would be an alteration.

(5) A change in the manner in which records are organized or in the method by which records are retrieved requires changing the "Retrievability" caption in the system notice.

(i) Combining record systems due to a reorganization within the agency would be an alteration.

(ii) Retrieving by SSNs records that previously were retrieved only by names would be an alteration if the present notice failed to indicate retrieval by SSNs.

(c) *Reports of new and altered systems of records.* (1) Under subsection (o) of the Privacy Act, reports of new and altered systems of records must be submitted to Congress and the Office of Management and Budget.

(2) The agency shall submit reports of new or altered systems to the Defense Privacy Office, DA&M, before collecting information for new systems or altering an existing system.

(3) The Defense Privacy Office, DA&M, shall coordinate all reports of new or altered systems with the Office of the Assistant Secretary of Defense (Legislative Affairs) and the Office of the General Counsel, Department of Defense.

(4) The Defense Privacy Office, DA&M, shall prepare, for the approval and signature of the Director, Administration and Management, Office of the Secretary of Defense, transmittal letters to Congress and the Office of Management and Budget.

(d) *Time limits before implementing routine uses.* After publishing a system notice in the **Federal Register**, 30 days must elapse before routine uses may be employed.

§ 317.74 Amendment and deletion of system notices.

(a) *Criteria for an amended record system.* Minor changes to published system notices are considered amendments rather than alterations. Amendments must also be published in the **Federal Register**, but a new or altered system report does not have to be accomplished.

(b) *Amending a system notice.* In submitting an amendment to a system notice for publication in the **Federal Register**, the agency must include:

(1) The system identification and name;

(2) A description of the specific changes proposed; and

(3) The full text of the system notice as amended.

(c) *Deleting a system notice.* (1) When a system of records is discontinued, incorporated into another system, or determined to be no longer subject to this rule, a deletion notice must be published in the **Federal Register**.

(2) The deletion notice shall include:

(i) The system identification number and name.

(ii) The **Federal Register** citation of the latest publication of the system.

(iii) The reason for the deletion.

(3) If a system is deleted through combination or merger with another system, identify the successor system in the deletion notice.

(d) *Submitting amendments and deletions for publication.* (1) Amendments and deletions should be submitted through the agency Privacy Advisor to the Defense Privacy Office, DA&M, which will transmit them to the **Federal Register** for publication.

(2) At least one original in proper format should be included in the submission.

(3) Multiple amendments and deletions, and combinations of amendments and deletions, may be submitted together.

Subpart H–Training Requirements

§ 317.80 Statutory training requirements.

(a) *Establishing rules of conduct.* Under subsection (e)(9) of the Privacy Act, the agency is required to establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record.

(b) *Training.* The agency shall train all personnel involved in the functions described in the preceding paragraph. The training shall include instruction in the rules of conduct and all requirements prescribed by the Privacy Act, including the penalties for noncompliance.

§ 317.81 DCAA training programs.

(a) *Personnel to be trained.* (1) To conform with Office of Management and Budget guidance, compliance with the statutory training requirements requires informed and active support of all agency personnel. All personnel who in any way use or operate systems of records, or who are engaged in the development of procedures for handling records, must be taught the requirements of the Privacy Act and must be trained in the agency's procedures for the implementation of the Privacy Act.

(2) Personnel to be trained include, but are not limited to, those engaged in the following:

(i) Personnel management.

(ii) Personnel finance.

(iii) Medical care.

(iv) Investigations of personnel.

(v) Records management (reports, forms, records, and related functions).

(vi) Computer systems development and operation.

(vii) Communications.

(viii) Statistical data collection and analysis, and

(ix) Performing other functions subject to this rule.

(b) *Types of training.* The agency shall establish the following three levels of training for those persons who are involved with the design, development, operation, or maintenance of any system of records. The training shall be provided to persons before or shortly after assuming the duties associated with the level of involvement.

(1) Orientation training. Orientation training that provides a general understanding of the individual's rights under the Privacy Act.

(2) Specialized training. Training concerning the application of this part to specialized areas of job performance.

(3) Management training. Training concentrated on factors affecting

decisions made by managers under the Privacy Program, such as system managers, denial authorities, and managers of the specific functions listed.

(c) *Methods of training.* The agency is responsible for developing training methods that will meet this criteria established above. Such methods may include formal and informal (on-the-job) programs, if those personnel giving the training have, themselves, been trained.

Subpart J–Computer Matching Program Procedures

§ 317.90 General.

(a) *Scope.* The Privacy Act and this rule are applicable to certain types of computer matching–the computer comparison of automated systems of records.

(b) *Compliance.* Although the Privacy Act provides for specific procedures, the Act is not in itself authority for carrying out any matching activity. Compliance with this chapter does not relieve the agency of the obligation to comply with any other requirements of the Privacy Act and this part.

(c) *Matching programs covered by the Privacy Act.* There are two specific kinds of matching programs that are fully governed by the Privacy Act and this part. These are:

(1) Matches using records from Federal personnel or payroll systems of records. See also definitions of this part.

(2) Matches involving Federal benefit programs to accomplish one or more of the following purposes:

(i) To determine eligibility for a Federal benefit.

(ii) To comply with benefit program requirements.

(iii) To effect recovery of improper payments or delinquent debts from current or former beneficiaries.

(d) *Automated comparisons.* The record comparison must be a computerized comparison, manual comparisons are not covered, involving records from:

(1) Two or more automated systems of records (i.e., systems of records maintained by Federal agencies that are subject to the Privacy Act); or,

(2) An agency's automated system of records and automated records maintained by a non-Federal agency (i.e., state or local government or agent thereof).

(e) *Features of a matching program.* A covered computer matching program entails not only the actual computerized comparison, but also preparing and executing a written agreement between the participants, securing approval of the Defense Data Integrity Board, publishing a matching notice in the **Federal Register** before the match begins, ensuring that investigation and due process are completed, and taking ultimate action, if any.

§ 317.91 Federal personnel or payroll record matches.

(a) *Scope.* These computer matching programs include matches comparing records from agency automated Federal personnel or payroll systems of records with such automated like records of another Federal agency; or with a non-Federal agency. It also includes matches between DoD components or within the agency itself (internal matches).

(b) *Computerized comparisons.* The matching must be done using a computer. Manual comparisons are not covered.

(c) *Exclusion.* Matches must be done for other than "routine administrative purposes."

(d) *Internal matches.* In some instances, a covered match may take place within the agency or with another DoD component. For example, the agency may wish to determine whether any of its own personnel, participating in a benefit program administered by the Department of Defense, are not complying with the program's eligibility requirements. This internal match will certainly result in an adverse action if ineligibility is discovered. Therefore, it is covered by the requirements of the Privacy Act. The agency should not attempt to avoid the reach of the Act, for example, by improperly combining dissimilar systems into a single system, matching data within that system to make an eligibility determination, and arguing that the match is not covered because only one system of records is involved.

(e) *Categories of record subjects.* The categories of individuals whose records are used in this type of matching program must be carefully analyzed before making a determination whether a proposed match is covered. All information on subjects of record is maintained in the agency's system of records, but matching under the particular programs covered by this subsection is limited to "Federal personnel." For matching purposes, a Federal personnel system of records should not be confused with, or limited to, the commonly recognized personnel system of records maintained by a civilian personnel office or a military assignment branch. The agency may be maintaining within a single system of records several categories of records relating to Federal personnel and other categories on non-Federal personnel, e.g., contractor personnel, applicants, dependents, etc. Some categories may be covered while others may not. Unlike "Federal personnel," the subjects of record of payroll record systems are easily discerned.

(f) *Matching purpose.* The purpose of a Federal personnel or payroll records match must be to take some adverse action, financial, personnel, disciplinary, or other adverse action against Federal personnel.

§ 317.92 Federal benefit matches.

(a) *Categories of subjects covered.* The Privacy Act provisions cover only the following categories of subjects of record for Federal benefit matches.

(1) Applicants for Federal benefit programs (i.e., individuals initially applying for benefits).

(2) Program beneficiaries (i.e., individuals currently receiving or formerly receiving benefits).

(3) Providers of services to support such programs (i.e., those deriving income from them such as health care providers).

(b) *Types of programs covered.* Only Federal benefit programs providing cash or in-kind assistance to individuals are covered by the Privacy Act. State programs are not covered. Programs using records about subjects who are not "individuals". See definitions of this part (§ 317.3).

(c) *Matching purpose.* A Federal benefit match must have as its purpose one or more of the following:

(1) Establishing or verifying initial or continuing eligibility for Federal benefit programs.

(2) Verifying compliance with the requirements, either statutory or regulatory, of such programs.

(3) Recouping payments or delinquent debts under such Federal benefit programs.

(d) *Summary of basic requirements.* Four basic elements:

(1) Computerized comparison.

(2) Categories of subjects.

(3) Federal benefit program, and

(4) Matching purpose, must all be present before a matching program is covered under the Privacy Act.

§ 317.93 Matching program exclusions.

The following are not included under the definition of a matching program. The agency is not required to comply with the computer matching provisions of the Privacy Act, although it may be required to comply with any other applicable provisions of the Act and this part.

(a) *Statistical matches whose purpose is solely to produce aggregate data stripped of personal identifiers.* This does not mean that the data bases used in the match must be stripped prior to the match, but only that the results of the match must not contain data identifying any individual. Implicit in this exception is that this kind of match is not done to take action against specific individuals.

(b) *Statistical matches whose purpose is in support of any research or statistical project.* The results of these matches need not be stripped of identifiers, but they must not be used to make decisions that affect the rights, benefits or privileges of specific individuals.

(c) *Pilot matches.* This exclusion covers small scale sampling matches whose purpose is to gather cost-benefit data on which to premise a decision about engaging in a full-fledged matching program. Pilot matches must be retained in a statistical information gathering channel. It is at this point that the component can decide whether to conduct a statistical data gathering match without consequences to the subjects of record or a full-fledged program where results will be used to take specific action against them. To avoid possible misuse of pilot matches and to ensure full compliance with the Privacy Act, these matches must be approved by the Defense Data Integrity Board.

(d) *Law enforcement investigative matches whose purpose is to gather evidence against a named person or persons in an existing investigation.* (1) To be eligible for the exclusion the match must be performed by an activity of a component whose principal function involves enforcement of criminal laws, i.e., an activity that is authorized to exempt certain of its systems of records under subsection (j)(2) of the Privacy Act.

(2) The match must flow from an investigation already underway which focuses on a named person or persons. Subjects identified generically, e.g., "program beneficiaries," are not eligible.

(3) The investigation may be into either criminal or civil law violations.

(4) In the context of this exclusion only, person or persons could include subjects that are other than individuals as defined in the Privacy Act, such as corporations or other business entities. For example, a business entity could be named subject of the investigation and records matched could be those of customers or clients.

(5) The match must be for the purpose of gathering evidence against the named person or persons.

(e) *Tax administration matches.* (1) Matches involving disclosures of taxpayer return information to state or local tax officials pursuant to section 6103(d) of the Internal Revenue Code.

(2) Tax refund offset matches accomplished pursuant to the Deficit Reduction Act of 1984.

(3) Matches done for tax administration pursuant to section 6103(b)(4) of the Internal Revenue Code.

(4) Tax refund offset matches conducted pursuant to other statutes provided approval of the Office of Management and Budget is obtained.

(f) *Routine administrative matches using Federal personnel records.* These are matches between the agency and other Federal agencies or between the agency and non-Federal agencies for administrative purposes that use data bases that contain records predominantly relating to Federal personnel. The term "predominantly" means that the percentage of records in the system that are about Federal employees must be greater than of any other category contained therein. For the purpose of disclosing records subject to the Privacy Act, the Department of Defense is considered a single agency.

(1) The purpose of the match must not be intended to result in an adverse action. Matches whose purpose is to take any adverse financial, personnel, disciplinary or other adverse action against Federal personnel whose records are involved in the match, are not excluded from the Act's coverage.

(2) An example of a match that is excluded is an agency's disclosure of time and attendance information on all agency employees to the Department of the Treasury in order to prepare the agency's payroll.

(3) This exclusion does not bring under the Act's coverage matches that may ultimately result in an adverse action. It only requires that their purpose not be intended to result in an adverse action.

(g) *Internal matches using only records from DoD systems of records.* (1) Internal matches (conducted within the DoD) is excluded on the same basis as Federal personnel record matching above provided no adverse intent as to a Federal employee motivates the match.

(2) This exclusionary provision does not disturb subsection (b)(1) of the Act permitting disclosure to DoD employees on an official need-to-know basis.

(3) The purpose of the internal match must not be to take any adverse financial, personnel, disciplinary, or other adverse action against Federal personnel.

(h) *Background investigation and foreign counterintelligence matches* Matches done in the course of performing a background check for security clearances of Federal personnel or Federal contractor personnel are not covered. Matches done for the purpose of foreign counterintelligence are also not covered.

§ 317.94 Conducting matching programs.

(a) *Source and recipient agencies.* The agency, if undertaking a matching program, should consider if it will be a "source agency" or a "recipient agency" for the match and be prepared to meet the following requirements:

(1) The recipient agency does the matching. It receives the data from system of records of other Federal agencies or data from state and local governments and actually performs the match by computer.

(2) The recipient agency is responsible for publishing a notice in the **Federal Register** of the matching program. Where a state or local agency is the recipient, the Federal source agency is responsible for publishing the notice.

(3) A Federal source agency discloses the data from a system of records for the match. A non-Federal agency may also be a source, but the record data will not be from a system of records. The "system of records" concept under the Privacy Act does not apply to the recordkeeping practices of state or local governmental agencies.

(4) The recipient Federal agency, or the Federal source agency in a match performed by a non-Federal agency, is responsible for reporting the match. This agency must contact the other participants to gather the information necessary to make a unified report as required by § 317.100.

(5) In some circumstances, a source agency may be the instigator and ultimate beneficiary of the matching program, as when an agency lacking computer resources uses another agency to perform the match; or when as a practical matter, an agency may not wish to release and disclose its data base to another agency as a source because of privacy safeguard considerations.

(b) *Compliance with the system of records and disclosure provisions.* (1) The agency must ensure that it identifies the system(s) of records involved in the matching program and has published the necessary notice(s) in the **Federal Register**.

(2) The Privacy Act does not itself authorize disclosures from system of records for the purpose of conducting a matching program. The agency must justify any disclosures outside the DoD under subsection (b) of the Act. This means obtaining the written consent of the subjects of record for the disclosure or relying on one of the 12 non-consensual disclosures exceptions to the written consent rule. To rely on the routine use exception (b)(3), the agency must have already established the routine use (published in the **Federal Register**), or in the alternative, must comply with subsections (e)(4)(d) and (e)(11) of the Act which means amending the record system notice to add an appropriate routine use for the match. An amendment requires publication in the **Federal Register** with a 30 day waiting period for public comment.

(3) The routine use permitting disclosure for the match must be compatible with and related to the purpose for which the record was initially compiled.

(4) The routine use for the match in a record system notice shall clearly indicate that it entails a computer matching program with a specific agency for an established purpose and intended objective. For purposes of matching, a routine use must state that a disclosure may be made for a matching program. The agency may not rely on an existing established routine use to meet the requirements of the Act unless it expressly permits disclosure for matching purposes.

(c) *Prior notice to record subjects.* Subjects of record must receive prior notice that their records may be matched. This may be done by direct and/or constructive notice.

(1) Direct notice may be given when there is some form of contact between the government and the subject. Information can be furnished to individuals on the application form when they apply for a benefit, in a notice that arrives with a benefit, or in correspondence they receive in the mail. Use of the advisory Privacy Act Statement is an acceptable manner to provide direct notice to subjects of record at the time of application. The agency shall provide direct notice for front-end eligibility verification matching programs whose purpose is to validate an applicant's initial eligibility for a benefit and later to determine continued eligibility using the Privacy Act Statement on the application form. Providers of services should be given notice (Privacy Act Statement) on the form on which they apply for reimbursement for services provided. Providing notice of matching programs using the Privacy Act Statement shall be part of the normal process of implementing a Federal benefits program. The agency shall insure records contain appropriate revisions.

(2) Constructive notice can only be given by an appropriate routine use disclosure provision of the affected system of records to be used in the match. For purely internal matching program uses, amend the "Purpose(s)" element of the record system notice to specifically reflect those internal computer matches performed. The constructive notice method requires publication in the **Federal Register**. Examples of when constructive notice may be used:

(i) For matching programs whose purpose is to locate individuals in order to recoup payments improperly granted to former beneficiaries, direct notice may well be impossible and constructive notice may have to suffice.

(ii) The agency that discloses records to a state or local government in support of a non-Federal matching program is not obligated to provide direct notice to each subject of record. **Federal Register** publication in this instance is sufficient.

(iii) Investigative matches where direct notice immediately prior to a match would provide the subject an opportunity to alter behavior.

(3) The agency shall also provide periodic notice whenever an application is renewed, or at the least during the period the match is authorized to take place by providing notice accompanying the benefit as approved by the Defense Data Integrity Board.

(d) *Publication of the matching notice.* (1) The matching agency is required to publish in the **Federal Register** a notice of any proposed matching program or alteration of an established program at least 30 days prior to conducting the match for any public comment. Only one notice is required. When a non-Federal agency is the matching agency, the source agency shall be responsible for the publication. The proposed matching notice for publication shall be submitted in **Federal Register** format and included in the agency report. The notice shall contain the customary preamble and contain the required information in sufficient detail describing the match so that the reader will easily understand the nature and purpose of the match, including any adverse consequences.

(2) The preamble to the notice shall be prepared by the Defense Privacy Office, DA&M, and shall contain:

(i) The date the transmittal letters to OMB and Congress are signed.

(ii) A statement that the matching program is subject to review by OMB and Congress and shall not become effective until that review period has elapsed.

(iii) A statement that a copy of the agreement shall be available upon request to the public.

(2) The agency shall provide:

(i) Name of participating agency or agencies.

(ii) Identity of the source agency and the recipient agency, or in the case of an internal DoD matching, the Component(s) involved.

(iii) Purpose of the match being conducted to include a description of the matching program and whether the program is a one-time or a continuing program.

(iv) Legal authority for conducting the matching program. Do not cite the Privacy Act as it provides no independent authority for carrying out any matching activity. If at all possible, use the U.S. Code citations rather than the Public Law as access to the Public Laws is more difficult. Avoid citing housekeeping statutes such as 5 U.S.C. 301, but rather cite the underlying programmatic authority for collecting, maintaining, and using the information even if it results in citing the Code of Federal Regulations or a DoD directive or regulation. Whenever possible, the popular name or subject of the authority should be given, as well as a statute, public law, U.S. Code, or Executive Order number; for example: The Debt Collection Act of 1982 (Pub. L. 97-365) 5 U.S.C. 5514, Installment deduction of indebtedness.

(v) A complete description of the system(s) of records that will be used in the match. Include the system identification, name, and the official **Federal Register** citation, date published, including any published amendments thereto. Provide a positive statement that the system(s) contains an appropriate routine use provision authorizing the disclosure of the records for the purpose of conducting the computer matching program. (Note: In the case of internal DoD matches, the "purpose(s)" element of the system(s) involved.) If non-Federal records are involved, a complete description to include the specific source, address, and category of records to be used, e.g., Human Resources Administration Medicaid File, City of New York, Human Resources Administration, 250 Church Street, New York, NY 10013.

(vi) A complete description of the category of records and individuals covered from the record system(s) to be used, the specific data elements to be

matched, and the approximate number of records that will be matched.

(vii) The projected start and ending dates for a one-time match or the inclusive dates for a continuing match.

(viii) The address for receipt of any public comment or inquiries concerning the notice shall indicate: Director, Defense Privacy Office, 400 Army Navy Drive, Room 205, Arlington, VA 22202-2884.

§ 317.95 Providing due process to matching subjects.

(a) *Independent verification and notice.* Subjects of record of matching programs shall be afforded certain due process procedures when a match uncovers any disqualifying or adverse information about them. No recipient agency, non-Federal agency, or source agency shall take any adverse action against an individual until such agency has independently verified such information and the individual has received a notice from the agency containing a statement of its findings and gives the individual the opportunity to contest the findings before making a final determination. The agency shall not take any adverse action based on the raw results of a computer matching program. Adverse information developed by a match must be investigated and verified prior to any action being taken.

(b) *Waiver of independent verification procedures.* Program officials may request the Data Integrity Board waive the independent verification requirement after they have identified the type of matching data eligible for a waiver and conducted a thorough determination of the data's accuracy. The only data eligible for waiver is that which identifies the individual and the amount of benefits paid under a federal benefit program. The data must not be ambiguous. After the Data Integrity Board determines that the data qualifies for the waiver procedure, the program official must present convincing evidence to the Data Integrity Board of the recipient agency to permit the Board to assert a high degree of confidence in the accuracy of the data. The following elements are examples of evidence which will assist a Board in making such a determination: A description of the databases involved including how the information is acquired and maintained; the system manager's overall assessment of the reliability of the systems and the accuracy of the data they contain; the results of any assessments or audits conducted; any material or significant weaknesses under various statutes; security controls in place; previous security assessments; any historical data relating to program error rates; and any information relating to the currency of the data. If the Board approves the waiver, it will notify the source agency and the program officials.

(c) *Independent investigation.* Conservation of resources dictates that the procedures for affording due process be flexible and suited to the data being verified and the consequences to the individual of making a mistake. If the source agency has established a high degree of confidence in the quality of its data and it can demonstrate that its quality control processes are rigorous, the recipient agency may choose to expend fewer resources in independently verifying the data. Absolute confirmation is not required. The agency should bring some degree of reasonableness to the process of verifying data. Some methods to consider are:

(1) The individual subject of record who is the best source where practical, and

(2) Researching source documents.

(d) *Notice and opportunity to contest.* The agency is required to notify matching subjects of adverse information uncovered during a matching program and give them an opportunity to contest and explain before the agency makes a final determination. Recipients already receiving benefits may not have them suspended or reduced pending expiration of the contest period. Individuals have 30 days to respond to a notice of adverse action, unless a statute or regulation grants a longer period. The period runs from the date of the notice until 30 calendar days. The agency shall allow an additional five days for mailing time before ending the notice period. If an individual contacts the agency within the notice period (35 days) and indicates his or her acceptance of the validity of the adverse information, the agency may take immediate action to deny or terminate. The agency may also take action if the period expires without a response.

(e) *Combining verification and notice requirements.* It may be appropriate to combine the verification and notice requirements into a single step, especially if the subject of record is the best source for verification. In this manner, the adverse finding and notice of the opportunity to contest are compressed into a single action. This method is dependent upon the confidence, reliability and quality of the data. Careful thought should be given as to when to apply this method. It may be applicable in special cases, but should not be considered as a routine process. To ensure that this consideration takes place, it shall be the responsibility of the Defense Data Integrity Board to make a formal determination as to when it is appropriate to compress the verification and notice into a single period.

(f) *Individual status pending due process.* The agency may not make a final determination as to applicants for Federal benefit programs whose eligibility is being verified through a matching program until they have completed the due process steps the Act requires. This does not require placing an applicant on the rolls pending a determination, but only that the agency not make a final determination. However, if a subject is already receiving benefits, the benefits shall not be suspended or reduced until due process steps have been completed. If the specific Federal benefit program involved in the match has its own due process requirements, those requirements may suffice for the purposes of the Privacy Act, provided the Defense Data Integrity Board determines that they are at least as strong as the Privacy Act's provisions.

(g) *Exclusion.* (1) If the agency determines a potentially significant effect on public health or safety is likely, it may take appropriate action, notwithstanding these due process requirements.

(2) In such cases, the agency shall include the possibility of suspension of due process for this reason in its matching program agreement.

§ 317.96 Matching program agreement.

(a) *Requirements.* The agency should allow sufficient lead time to ensure that a matching agreement between the participants can be negotiated and signed in time to secure the Defense Data Integrity Board decision before the match begins. The agency, if receiving records from or disclosing records to a non-Federal agency for use in a matching program, is responsible for preparing the matching agreement and should solicit relevant data from the non-Federal agency where necessary. Both Federal source and recipient agencies must have the matching agreement approved by their respective Data Integrity Boards. In cases where matching takes place entirely within the Department of Defense, the agency may satisfy the matching agreement requirements by preparing a Memorandum of Understanding (MOU) between the systems of records managers involved. Before the agency

may participate in a matching program the Defense Data Integrity Board must have evaluated the proposed match and approved the terms of the matching agreement or MOU.

(b) *Agreements or MOUs must contain the following elements*—(1) *Purpose and legal authority.* Citation of the Federal or state statutory or regulatory authority for undertaking the matching program. Do not cite the Privacy Act.

(2) *Justification and expected results.* A full explanation of why a computer matching program, as opposed to some other form of activity, is being proposed and what the expected results will be, including a specific estimate of any savings.

(3) *Records description.* A full identification of the system of records (**Federal Register** citations) or non-Federal records, number of subjects of record, and what data elements will be included in the match.

(4) *Dates.* An indication of whether the match is a one-time or continuing program (not to exceed 18 months) and the projected starting and completion dates for the match.

(5) *Prior notice to subjects of record.* A description of the direct and constructive notice procedures afforded the subjects of record. Copies of the published applicable record system notices involved and all applicable forms containing the appropriate Privacy Act Statement being used by the participants of the proposed match should be provided.

(6) *Verification procedures.* A full description of the methods the agency will use to independently verify the information obtained through the matching program.

(7) *Disposition of matched items.* A statement that the information generated as a result of the matching program will be destroyed as soon as it has served the matching program's purpose and any legal retention requirements the agency establishes in conjunction with the National Archives and Records Administration or other cognizant authority.

(8) *Security procedures.* A description of the administrative, technical and physical safeguards to be used in protecting the information. They should be commensurate with the level of sensitivity of the data.

(9) *Records usage, duplication and disclosure restrictions.* A description of any specific restrictions imposed by either the source agency or by statute or regulation on collateral uses of the records used in the matching program. Recipient agencies may not use the records obtained for a matching program under a matching agreement for any other purpose unless there is a specific statutory authority or there is a direct essential connection to the conduct of the matching program. Agreements shall specify how long the recipient agency may keep records provided for a matching program and when they will be returned to the source agency or destroyed.

(10) *Records accuracy assessments.* A description of any information relating to the quality of the records to be used in the matching program such as the error rate percentage of the data entry for the affected records. The worse the quality of the data, the less likely the matching program will have a cost-beneficial result.

(11) *Disclosure Accounting.* A certification by the agency participating in a matching program as a source agency for disclosures outside the Department of Defense that a disclosure accounting shall be maintained on the subjects of record as required by the Privacy Act.

(12) *Access by the Comptroller General.* A statement that the Comptroller General may have access to all records of a recipient DoD component or non-Federal agency necessary to monitor or verify compliance with the agreement. In this instance, the Comptroller General may inspect state or local government records used in matching programs.

(c) *Non-Federal agencies.* Non-Federal agencies intending to participate in covered matching programs are required to do the following:

(1) Execute matching agreements prepared by a Federal agency or agencies involved in the matching program.

(2) Provide data to Federal agencies on the costs and benefits of matching programs.

(3) Certify that they will not take adverse action against an individual as a result of any information developed in a matching program unless the information has been independently verified and until the applicable number of days after the individual has been notified of the findings and given an opportunity to contest them has elapsed.

(4) For renewals of matching programs, certify that the terms of the agreement have been followed.

(d) *Duration of matching programs.* Matching agreements will remain in force only as long as necessary to fulfill their specific purposes. They will automatically expire 18 months after their approval unless the Defense Data Integrity Board grants an extension of up to one year at least three months prior to the actual expiration date. The program must remain unchanged if an extension is to be granted. Each party to the agreement must certify that the program has been conducted in compliance with the matching agreement. Requests for extensions shall be submitted through channels to the Board.

(e) *Altered matching program.* (1) An altered matching program is one that is already established, but with such a significant change proposed that it requires revision of the matching notice and approval of the Defense Data Integrity Board, OMB and Congress. A significant change is one which does one or more of the following:

(i) Changes the purpose for which the program was established.

(ii) Changes the matching population either by including new categories of subjects of record, or by greatly increasing the numbers of records matched.

(iii) Changes the legal authority under which the match was being conducted.

(iv) Changes the records (data elements) that will be used in the match.

(2) A proposal to alter an established matching program shall be submitted through channels to the Defense Data Integrity Board for review and approval.

(f) *Non compliance sanctions.* (1) The agency shall not disclose any record for use in a matching program as a source agency to any recipient agency (within or outside the Department of Defense) if there is reason to believe that the terms of the matching agreement/MOU or the due process requirements are not being met by the recipient agency. The Defense Privacy Office, DA&M, shall be informed immediately, through channels, should any such incident occur. Normally consulting with the recipient agency should resolve the problem, but the responsibility rests with the source.

(2) No source agency shall renew a matching agreement/MOU unless the recipient agency (within or outside the Department of Defense) has certified that it has complied with the provisions of the agreement/MOU and the agency has no reason to believe otherwise.

(3) A willful disclosure of records from a system of records for any unauthorized computer matching program may subject the responsible officer or employee to criminal penalties. Civil remedies are also available to matching program subjects who can show they were harmed by an agency's violation of the Act as set forth in Subpart J of this part.

§ 317.98 Cost-benefit analysis.

(a) *Purpose.* The requirement for a cost-benefit analysis by the Act is to assist the agency in determining whether or not to conduct or participate in a matching program. Its application is required in two places: As an agency conclusion in the matching agreement containing the justification and specific estimate of savings; and in the Data Integrity Board review process where it is forwarded as part of the matching proposal. The intent of this requirement is not to create a presumption that when agencies balance individual rights and cost savings, the latter should inevitably prevail. Rather, it is to ensure that sound management practices are followed when agencies use records from Privacy Act systems in matching programs. It is not in the government's interest to engage in matching activities that drain agency resources that could be better spent elsewhere. Agencies should use the cost-benefit requirement as an opportunity to re-examine programs and weed out those that produce only marginal results.

(b) *Cost-benefit analysis.* The agency, when proposing matching programs, must provide the Board with all information which is relevant and necessary to allow the Board to make an informed decision including a cost-benefit analysis. The Defense Data Integrity Board shall not approve any matching agreement unless the Board finds the cost-benefit analysis demonstrates the program is likely to be cost effective.

(1) The Board may waive the cost-benefit analysis requirement if it determines in writing that submission of such an analysis is not required.

(2) If a matching program is required by a specific statute, then a cost-benefit analysis is not required. However, any renegotiation of such a matching agreement shall be accompanied by a cost-benefit analysis. The finding need not be favorable. The intent, in this case, is to provide Congress with information to help it evaluate the effectiveness of statutory matching requirements.

(3) The Board must find that agreements conform to the provisions of the Act and appropriate guidelines, regulations, and statutes.

§ 317.99 Appeals of denials of matching agreements.

(a) *Disapproval by the Board.* If the Defense Data Integrity Board disapproves a matching agreement, a party to the agreement may appeal the disapproval to the Director of the Office of Management and Budget, Washington, DC 20503. Appeals must be made within 30 days after the Defense Data Integrity Board's written disapproval. The appealing party shall submit with its appeal the following:

(1) Copies of all documentation accompanying the initial matching agreement proposal.

(2) A copy of the Defense Data Integrity Board's disapproval and reasons.

(3) Evidence supporting the cost-benefit effectiveness of the match.

(4) Any other relevant information, e.g., timing considerations, public interest served by the match, etc.

(b) *OMB approval.* If the Director of the Office of Management and Budget approves a matching program it will not become effective until 30 days after the Director reports his decision to Congress.

(c) *Recourse by the Inspector General.* If the Defense Data Integrity Board and the Director of the Office of Management and Budget both disapprove a matching program proposed by the Inspector General of the denial agency, the Inspector General may report that disapproval to the head of Department of Defense and to the Congress.

§ 317.100 Proposals for matching programs.

(a) *Who initiates the action.* The recipient DoD component (or the DoD component source agency in a match conducted by a non-Federal agency); or the recipient activity within the DoD component for internal matches, is responsible for reporting the match for Board approval. The responsible official should contact the other participants to gather the information necessary to make a unified report.

(b) *New or altered matching programs.* Determine if the match is a new program or an existing one. A new match is one for which no public notice has been published in the **Federal Register**. An altered matching program is an established (published public notice) match with such a significant change that it requires amendment. An altered matching program should not be confused with a request for an unchanged extension of an established program.

(c) *Contents of report (original and one copy).* (1) A proposed new matching program report shall consist of an agency letter of transmittal with the following attached documents:

(i) Completed agreement between the participants.

(ii) Benefit/cost analysis.

(iii) Proposed **Federal Register** matching notice for public review and comment.

(iv) Copies of all the appropriate forms (e.g., applications) of the participating parties providing direct notice to the individual or any other means of communication used.

(v) Copy or copies of the appropriate **Federal Register** system(s) of record notice(s) containing an appropriate routine use providing constructive notice to the individual.

(2) A report on a proposed alteration to an established matching program shall consist of an agency letter of transmittal with the following attached documents:

(i) A report containing the significant change(s) and the following additional information:

(A) What alternatives to matching the agencies considered and why a matching program was chosen.

(B) The date the match was approved by each participating Federal agency's Data Integrity Board.

(C) Whether a cost-benefit analysis was required and, if so, whether it projected a favorable ratio.

(ii) Proposed **Federal Register** matching notice for public review and comment.

(3) A report requesting an extension beyond 18 months of an established unchanged matching program must be received by the Defense Privacy Office, DA&M, at least four months prior to the actual expiration date and consist of an agency letter of transmittal with the following attached:

(i) Justification for the extension (not to exceed one year).

(ii) Certification by the participants that the program has been conducted in compliance with the matching agreement.

(d) *Who receives the reports.* All reports shall be submitted to, and reviewed by, the agency Privacy Advisor and forwarded to the Defense Privacy Office, DA&M, for consideration by the Defense Data Integrity Board.

(e) *Action by the Defense Privacy Office.* The Defense Privacy Office, DA&M, shall present proposals before the Defense Data Integrity Board which shall either approve or disapprove proposals on their merits. Any inaction based on insufficient data, justification, or supporting documentation shall be returned for any further corrective action deemed necessary. Any disapproved proposals are returned with the stated reasons. Board approved proposals are coordinated with the Office of the Assistant Secretary of

Defense (Legislative Affairs) and the Office of the General Counsel, Department of Defense. The Defense Privacy Office prepares for the signature of the Chairman of the Board (Director, Administration and Management (DA&M)), transmittal letters sent to Congress and OMB and concurrently submits the proposed **Federal Register** matching notice for publication.

(f) *Time restrictions on the initiation of new or altered matching programs.*

(1) All time periods begin from the date the Chairman of the Board signs the transmittal letters.

(2) At least 30 days must elapse before the matching program may become operational.

(3) The 30 day period for OMB and Congressional review and the 30 day notice and comment period for the Matching Notice may run concurrently.

(g) *Requests for waivers.* The agency may seek waivers of certain matching program requirements including the 30 day review period by OMB and Congress. Requests for waivers shall be included in the letter of transmittal to the report. Such requests shall cite the specific provision for which a waiver is being requested with full justification showing the reasons and the adverse consequences if a waiver is not granted.

(h) *Outside review and activity.* The agency may presume OMB and Congressional concurrence if the review period has run without comment from any reviewer outside the DoD. Under no circumstances shall the matching program be implemented before 30 days have elapsed after publication of the matching notice in the **Federal Register**. This period cannot be waived.

Subpart J–Enforcement Actions

§ 317.110 Administrative remedies.

An individual who alleges he or she has been affected adversely by a violation of the Privacy Act shall be permitted to seek relief from the Assistant Director, Resources, through proper administrative channels.

§ 317.111 Civil court actions.

After exhausting all administrative remedies, an individual may file suit (5 U.S.C 552a(y)) in the Federal court against the agency for any of the following acts:

(a) *Denial of an amendment request.* The Assistant Director, Resources, or designee refuses the individual's request for review of the initial denial of an amendment or, after review, refuses to amend the record.

(b) *Denial of access.* The agency refuses to allow the individual to review the record or denies his or her request for a copy of the record.

(c) *Failure to meet recordkeeping standards.* The agency fails to maintain the individual's record with the accuracy, relevance, timeliness, and completeness necessary to assure fairness in any determination about the individual's rights, benefits, or privileges and, in fact, makes an adverse determination based on the record.

(d) *Failure to comply with the Privacy Act.* The agency fails to comply with any other provision of the Privacy Act or any rule or regulation promulgated under the Privacy Act and thereby causes the individual to be adversely affected.

§ 317.112 Criminal penalties.

The Privacy Act (5 U.S.C. 552a(i)) authorizes three criminal penalties against individuals. All three are misdemeanors punishable by fines of $5,000.

(a) *Wrongful disclosure.* Any member or employee of the agency who, by virtue of his or her employment or position, has possession of or access to records and willfully makes a disclosure to anyone not entitled to receive the information.

(b) *Maintaining unauthorized records.* Any member or employee of the agency who willfully maintains a system of records for which a notice has not been published.

(c) *Wrongful requesting or obtaining records.* Any person who knowingly and willfully requests or obtains a record concerning an individual from the agency under false pretenses.

§ 317.113 Litigation status report.

Whenever a civil complaint citing the Privacy Act is filed against the agency in Federal court or whenever criminal charges are brought against an individual in Federal court (including referral to a court-martial) for any offense, the agency shall notify the Defense Privacy Office, DA&M. The litigation status report included in Appendix C to this part provides a format for this notification. An initial litigation status report shall be forwarded providing, as a minimum, the information specified. An updated litigation status report shall be sent at each stage of litigation. When the court renders a formal disposition of the case, copies of the court's action, along with the litigation status report reporting the action, shall be sent to the Defense Privacy Office, DA&M.

§ 317.114 Annual review of enforcement actions.

(a) *Annual review.* The agency shall review annually the actions of its personnel that have resulted in either the agency being found civilly liable or an agency member being found criminally liable under the Privacy Act.

(b) *Reporting results.* The agency shall be prepared to report the results of the annual review to the Defense Privacy Office, DA&M.

Subpart K–Reports

§ 317.120 Report requirements.

(a) *Statutory requirements.* Subsection (p) of the Privacy Act requires a report and assigns to the Office of Management and Budget the responsibility for compiling the report.

(b) *OMB requirements.* (1) In addition to the report, the Office of Management and Budget requires that all agencies be prepared to report the results of the reviews.

(2) All reports of the agency concerning implementation of the Privacy Act shall be submitted to the Defense Privacy Office, DA&M, which shall prescribe the contents and suspense for such reports.

§ 317.121 Reports.

(a) *Submission to the Defense Privacy Office.* The agency shall prepare statistics and other documentation for the preceding calendar year concerning those items prescribed for the annual report and any reports of the reviews required, and when directed, send them to the Defense Privacy Office, DA&M.

(b) *Report Control Symbol.* Unless otherwise directed, any report concerning implementation of the Privacy Program shall be assigned Report Control Symbol DD-DA&M(A)1379.

(c) *Content of annual report.* The Defense Privacy Office, DA&M, shall prescribe the content of the annual report but, at a minimum, the annual report shall contain the following:

(1) Name and address of reporting agency.

(2) Name and telephone number of agency official who can best answer questions about this report.

(3) Agency Privacy Act Officials.

(i) Senior Agency Official.

(ii) Privacy Act Officer.

(4) If your agency was involved in any litigation involving the Privacy Act.

(i) Provide a citation to the case and a brief description of the background, issues and results.

(ii) If the cases required your agency to change its practices, describe how.

(5) Systems of Records Inventory:

(i) Total number of systems of records as of December 31, 19XX.

(ii) Number of exempt systems.

(iii) Number of automated systems (either in whole or part).

(iv) Number of systems deleted.

(v) Number of systems added.

(vi) Number of routine uses added.

(vii) Number of routine uses deleted.

(viii) Number of existing systems to which an exemption(s) was added, and

(ix) Number of new systems to which an exemption(s) was added.

(6) If your agency received any public comments on any of its systems of other Privacy Act implementing activities, briefly describe:

(7) Access requests (first party requests which cited the Privacy Act):

(i) Number of requests.

(ii) Number granted in whole or in part.

(iii) Number denied in whole.

(iv) Number for which no record was found.

(8) Amendment requests (first party requests which cited the Privacy Act):

(i) Number of requests.

(ii) Number granted in whole or part.

(iii) Number denied in whole.

(9) Appeals of denial:

(i) Number of access denials appealed.

(ii) Number in which denial was upheld.

(iii) Number of amendment denials appealed.

(iv) Number in which denial was upheld.

(10) Suggestions:

Subpart L–Agency Exemption Rules

§ 317.130 Establishing and using exemptions.

(a) *Types of exemptions.* (1) There are two types of exemptions permitted by the Privacy Act:

(i) General exemptions that authorize the exemption of a system of records from all but specifically identified provisions of the Privacy Act, and

(ii) Specific exemptions that allow a system of records to be exempted from only a few designated provisions of the Privacy Act.

(2) Neither the Privacy Act nor this part permits exemption of a system of records from all provisions of the Privacy Act.

(b) *Establishing exemptions.* (1) Neither general nor specific exemptions are established automatically for a system of records. Only the Director of DCAA or his/her designee shall make a determination that the system is one for which an exemption may be established and then propose and establish an exemption rule for the system. No system of records within the agency shall be considered exempted until the Assistant Director, Resources, DCAA has approved the exemption and an exemption rule has been published as a final rule in the **Federal Register** for this part.

(2) Only the Assistant Director, Resources, or his or her designee, may establish an exemption for a system of records.

(3) No exemption may be established for a system of records until the system itself has been established by publishing a notice in the **Federal Register** describing the system.

(4) A system of records is exempt from only those provisions of the Privacy Act that are identified specifically in the agency exemption rule for the system.

(c) *Provisions to which exemptions may be applied.* After, or along with, establishing the system of records, the Assistant Director, Resources, may establish an exemption rule that shall exempt the system of records from any provision of the Privacy Act for which an exemption is allowed.

(d) *Using exemptions.* (1) Exemptions should be used only for the specific purposes stated in the exemption rules and only when in the best interest of the Government. Exemptions should be applied to only the specific portions of the records that require protection.

(2) An exemption should not be used to deny an individual access to information that he or she can obtain under the FOIA.

(e) *Exempt records maintained in nonexempt systems.* (1) An exemption rule applies to the system of records for which it was established. If a record from an exempted system is incorporated intentionally into a system that has not been exempted, the published notice and rules for the non-exempted system will apply to the record and it will not be exempt from any provisions of the Privacy Act.

(2) A record from one DoD component's exempted system that is temporarily in the possession of another DoD component remains subject to the published system notice and rules of the originating DoD component. However, if the non-originating DoD component incorporates the record into its own system of records, the published notice and rules for the system into which it is incorporated shall apply. If that system of records has not been exempted, the record shall not be exempt from any provisions of the Privacy Act.

(3) Care should be exercised that exempt records are not accidentally misfiled into a system of records that are not exempted

§ 317.131 General exemptions.

(a) *Using general exemptions.* (1) DCAA is not authorized to establish the exemption for records maintained by the Central Intelligence agency under subsection (j)(1) of the Privacy Act.

(2) The general exemption provided by subsection (j)(2) of the Privacy Act may be established to protect criminal law enforcement records maintained by the agency.

(3) To be eligible for the (j)(2) exemption, the system of records must be maintained by an element that performs, as one of its principal functions, the enforcement of criminal laws.

(4) Criminal law enforcement includes police efforts to detect, prevent, control, or reduce crime, or to apprehend criminals, and the activities of prosecution, court, correctional, probation, pardon, or parole authorities.

(5) Information that may be protected under the (j)(2) exemption includes:

(i) Information compiled for the purpose of identifying criminal offenders and alleged criminal offenders consisting of only identifying data and notations of arrests; the nature and disposition of criminal charges; and sentencing, confinement, release, parole, and probation status.

(ii) Information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; and

(iii) Reports identifiable to an individual, compiled at any stage of the enforcement process, from arrest, apprehension, indictment, or preferral of charges through final release from the supervision that resulted from the commission of a crime.

(6) The (j)(2) exemption does not apply to:

(i) Investigative records maintained by an element having no criminal law enforcement activity as one of its principal functions, or

(ii) Investigative records compiled by any element concerning individuals' suitability, eligibility, or qualification for duty, employment, or access to classified information, regardless of the principal functions of the DoD component that compiled them.

(7) The (j)(2) exemption established for a system of records maintained by a criminal law enforcement element cannot protect law enforcement records incorporated into a non-exempted

system of records or any system of records maintained by an element not principally tasked with enforcing criminal laws. Agency system managers are prohibited to incorporate criminal law enforcement records into systems other than those maintained by criminal law enforcement elements.

(b) *Access to records under a (j)(2) exemption.* Requests for access to criminal law enforcement records maintained in a system for which a (j)(2) exemption has been established shall be processed as if also made under the FOIA.

§ 317.132 Specific exemptions.

(a) *Using specific exemptions.* Specific exemptions permit certain categories of records to be exempted from specific provisions of the Privacy Act. Subsections (k)(1–7) of the Privacy Act permits claiming exemptions for seven categories of records. To be eligible for a specific exemption, the record must meet the corresponding criteria.

(1) (k)(1) exemption: Information properly classified under DoD 5200.1–R [11] (32 CFR part 159) in the interest of national defense or foreign policy.

(2) (k)(2) exemption: Investigatory information compiled for law enforcement purposes. If maintaining the information causes an individual to be ineligible for or denied any right, benefit, or privilege that he or she would otherwise be eligible for or entitled to under Federal law, then he or she shall be given access to the information, except for the information that would identify a confidential source. The (k)(2) exemption, when established, allows limited protection of investigative records normally maintained in a (j)(2) exempt system for use in personnel and administrative actions.

(3) (k)(3) exemption: Records maintained in connection with providing protective services to the President of the United States and other individuals under 18 U.S.C. 3056.

(4) (k)(4) exemption: Records required by Federal law to be maintained and used solely as statistical records that are not used to make any determination about an identifiable individual, except as provided by 13 U.S.C. 8.

(5) (k)(5) exemption: Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent such material would reveal the identity of a confidential source. This exemption allows protection of confidential sources in background investigations, employment inquiries, and similar inquiries used in personnel screening to determine suitability, eligibility, or qualifications.

(6) (k)(6) exemption: Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal or military service if the disclosure would compromise the objectivity or fairness of the testing or examination process.

(7) (k)(7) exemption: Evaluation material used to determine potential for promotion in the military services, but only to the extent that disclosure would reveal the identity of a confidential source.

(b) *Confidential source.* (1) A "confidential source" is defined under the Privacy Act as a person or organization that has furnished information to the Federal Government under an express promise or, before September 27, 1975, under an implied promise that the identity of the person or organization would be held in confidence.

(2) Promises of confidentiality are to be given on a limited basis and only when essential to obtain the information sought. Appropriate procedures should be established for granting confidentiality and designate those categories of individuals authorized to make such promises.

(c) *Access to records under specific exemptions.* Requests for access to records maintained in systems of records for which specific exemptions have been established shall be processed as if also made under the FOIA.

§ 317.133 DCAA exempt record systems.

(a) *Exempt systems of records.* The Director, DCAA has made a determination and claims an exemption for the following agency systems of records by publication of an appropriate exemption rule for the record system and therefore allowing the agency to invoke, at its discretion, the particular exemption permitted by the Privacy Act from certain subsections of the Privacy Act.

(b) *Classified material.* The Director, DCAA has made a determination that all systems of records maintained by the agency shall be exempt from 5 U.S.C. 552a(d) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(1) to the extent that the record system contains any information properly classified under Executive Order 12356 and required by the executive order to be withheld in the interest of national defense or foreign policy. This blanket exemption, which may be applicable to parts of all systems of records, is necessary because certain record systems not otherwise specifically designated for exemptions herein may contain items of information that have been properly classified.

(c) *General exemption rules.* (1) [Reserved]

(d) *Specific exemption rules.* (1) [Reserved]

Appendix A to part 317 - DCAA Blanket Routine Uses

A. LAW ENFORCEMENT ROUTINE USE

In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or by regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

B. DISCLOSURE WHEN REQUESTING INFORMATION ROUTINE USE

A record from a system of records maintained by this agency may be disclosed as a routine use to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information, such as current licenses, if necessary to obtain information relevant to a agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

C. DISCLOSURE OF REQUESTED INFORMATION ROUTINE USE

A record from a system of records maintained by this agency may be disclosed to a Federal Agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

[11] See footnote 3 to § 317.1(b).

D. CONGRESSIONAL INQUIRIES ROUTINE USE

Disclosure from a system of records maintained by this agency may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

E. PRIVATE RELIEF LEGISLATION ROUTINE USE

Relevant information contained in all systems of records of the agency published on or before August 22, 1975, may be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular A-19 at any stage of the legislative coordination and clearance process as set forth in that circular.

F. DISCLOSURES REQUIRED BY INTERNATIONAL AGREEMENTS ROUTINE USE

A record from a system of records maintained by this agency may be disclosed to foreign law enforcement, security, investigatory, or administrative authorities in order to comply with requirements imposed by, or to claim rights conferred in, international agreements and arrangements, including those regulating the stationing and status in foreign countries of Department of Defense military and civilian personnel.

G. DISCLOSURE TO STATE AND LOCAL TAXING AUTHORITIES ROUTINE USE

Any information normally contained in IRS Form W-2 that is maintained in a record from a system of records maintained by this agency may be disclosed to State and local taxing authorities with which the Secretary of the Treasury has entered into agreements pursuant to Title 5 U.S.C. sections 5516, 5517, 5520, and only to those State and local taxing authorities for which an employee or military member is or was subject to tax, regardless of whether tax is or was withheld. This routine use is in accordance with Treasury Fiscal Requirements Manual Bulletin No. 76–07.

H. DISCLOSURE TO THE OFFICE OF PERSONNEL MANAGEMENT ROUTINE USE

A record from a system of records subject to the Privacy Act and maintained by this agency may be disclosed to the Office of Personnel Management concerning information on pay and leave, benefits, retirement reductions, and any other information necessary for the Office of Personnel Management to carry out its legally authorized Government-wide personnel management functions and studies.

I. DISCLOSURE TO THE DEPARTMENT OF JUSTICE FOR LITIGATION ROUTINE USE

A record from a system of records maintained by this agency may be disclosed as a routine use to any component of the Department of Justice for the purpose of representing the agency, or any officer, employee or member of the agency in pending or potential litigation to which the record is pertinent.

J. DISCLOSURE TO MILITARY BANKING FACILITIES OVERSEAS ROUTINE USE

Information as to current military addresses and assignments may be provided to military banking facilities that provide banking services overseas and that are reimbursed by the Government for certain checking and loan losses. For personnel separated, discharged, or retired from the Armed Forces, information as to last known residential or home of record address to the military banking facility upon certification by a banking facility officer that the facility has a returned or dishonored check negotiated by the individual or the individual has defaulted on a loan and that if restitution is not made by the individual, the U.S. Government will be liable for the losses the facility may incur.

K. DISCLOSURE OF INFORMATION TO THE GENERAL SERVICES ADMINISTRATION ROUTINE USE

A record from a system of records maintained by this agency may be disclosed as a routine use to the General Services Administration for the purpose of records management inspections conducted under authority of 44 U.S.C. sections 2904 and 2906.

L. DISCLOSURE OF INFORMATION TO THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION ROUTINE USE

A record from a system of records maintained by this agency may be disclosed as a routine use to the National Archives and Records Administration for the purpose of records management inspections conducted under authority of 44 U.S.C. sections 2904 and 2906.

M. DISCLOSURE TO THE MERIT SYSTEMS PROTECTION BOARD ROUTINE USE

A record from a system of records maintained by this agency may be disclosed as a routine use to the Merit Systems Protection Board, including the Office of the Special Counsel, for the purpose of litigation, including administrative proceedings, appeals, special studies of the civil service and other merit systems, review of OPM or agency rules and regulations, investigation of alleged or possible prohibited personnel practices, including administrative proceedings involving any individual subject of a DoD investigation, and such other functions promulgated in 5 U.S.C. section 1205 or as may be authorized by law.

N. COUNTERINTELLIGENCE PURPOSES ROUTINE USE

A record from a system of records maintained by this agency may be disclosed as a routine use outside the Department of Defense for the purpose of counterintelligence activities authorized by U.S. law or executive order or for the purpose of enforcing laws that protect the national security of the United States.

Appendix B to part 317– Provisions of the Privacy Act from which a General or Specific Exemption may be Claimed

Exemption		Section of the Privacy Act
(j)(2)	(k)(1–7)	
No	No	(b)(1) Disclosure within the Department of Defense
No	No	(b)(2) Disclosure to the public
No	No	(b)(3) Disclosure for a routine use
No	No	(b)(4) Disclosure to Bureau of Census
No	No	(b)(5) Disclosure for statistical research and reporting
No	No	(b)(6) Disclosure to National Archives
No	No	(b)(7) Disclosure for law enforcement purposes
No	No	(b)(8) Disclosure under emergency circumstances
No	No	(b)(9) Disclosure to Congress
No	No	(b)(10) Disclosure to General Accounting Office
No	No	(b)(11) Disclosure pursuant to court orders
No	No	(b)(12) Disclosure to consumer reporting agency
No	No	(c)(1) Making disclosure accountings
No	No	(c)(2) Retaining disclosure accountings
Yes	Yes	(c)(3) Making disclosure accounting available to the individual
Yes	No	(c)(4) Informing prior recipients of corrections
Yes	Yes	(d)(1) Individual access to records
Yes	Yes	(d)(2) Amending records
Yes	Yes	(d)(3) Review of the Component's refusal to amend a record
Yes	Yes	(d)(4) Disclosure of disputed information
Yes	Yes	(d)(5) Access to information compiled in anticipation of civil action
Yes	Yes	(e)(1) Restrictions on collecting information
Yes	No	(e)(2) Collecting directly from the individual
Yes	No	(e)(3) Informing individuals from whom information is requested

Appendix B to part 317– Provisions of the Privacy Act from which a General or Specific Exemption may be Claimed—Continued

Exemption (j)(2)	Exemption (k)(1-7)	Section of the Privacy Act
No	No	(e)(4)(A) Describing the name and location of the system
No	No	(e)(4)(B) Describe categories of individuals
No	No	(e)(4)(C) Describing categories of records
No	No	(e)(4)(D) Describing routine uses
No	No	(e)(4)(E) Describing records management policies and practices
No	No	(e)(4)(F) Identifying responsible officials
Yes	Yes	(e)(4)(G) Procedures for determining if a system contains a record on an individual
Yes	Yes	(e)(4)(H) Procedures for gaining access
Yes	Yes	(e)(4)(I) Describing categories of information sources
Yes	No	(e)(5) Standards of accuracy
No	No	(e)(6) Validating records before disclosure
No	No	(e)(7) Records of First Amendment activities
Yes	No	(e)(8) Notification of disclosures under compulsory legal process
No	No	(e)(9) Rules of conduct
No	No	(e)(10) Administrative, technical and physical safeguards
No	No	(e)(11) Notice of new and revised routine uses
Yes	Yes	(f)(1) Rules for determining if an individual is subject of a record
Yes	Yes	(f)(2) Rules for handling access requests
Yes	Yes	(f)(3) Rules for granting access
Yes	Yes	(f)(4) Rules for amending records
Yes	Yes	(f)(5) Rules regarding fees
Yes	No	(g)(1) Basis for civil action
Yes	No	(g)(2) Basis for judicial review and remedies for refusal to amend
Yes	No	(g)(3) Basis for judicial review and remedies for denial of access
Yes	No	(g)(4) Basis for judicial review and remedies for other failure to comply
Yes	No	(g)(5) Jurisdiction and time limits
Yes	No	(h) Rights legal guardians
No	No	(i)(1) Criminal penalties for unauthorized disclosure
No	No	(i)(2) Criminal penalties for failure to publish
No	No	(i)(3) Criminal penalties for obtaining records under false pretenses
Yes	No	(j) Rulemaking requirement
N/A	No	(j)(1) Federal exemption for the Central Intelligence Agency
N/A	No	(j)(2) General exemption for criminal law enforcement records
Yes	N/A	(k)(1) Exemption for classified material
N/A	N/A	(k)(2) Exemption for law enforcement material
Yes	Yes	(k)(3) Exemption for records pertaining to Presidential protection
Yes	N/A	(k)(4) Exemption for statistical record
Yes	N/A	(k)(5) Exemption for investigatory material compiled for determining suitability for employment or service
Yes	N/A	(k)(6) Exemption for testing or examination material
Yes	N/A	(k)(7) Exemption for promotion evaluation materials used by the Armed Forces
Yes	No	(l)(1) Records stored in GSA records centers
Yes	No	(l)(2) Records archived before September 27, 1975
Yes	No	(l)(3) Records archived on or after September 27, 1975
Yes	No	(m) Applicability to government contractors
Yes	No	(n) Mailing lists
Yes	No	(o) Reports on new systems
Yes	No	(p) Biennial report (Note: DoD requires an annual report)

Appendix C to part 317 - Litigation Status Report

(a) Case Name and number:

(b) Plaintiff(s):

(c) Defendant(s):

(d) Basis for Court Action:

(e) Initial Litigation:

(1) Date Complaint or Charges Filed:

(2) Court:

(3) Court Action:

(6) Appeal (if any):

(1) Date Appeal Filed:

(2) Court:

(3) Case Number:

(4) Court Ruling:

(g) Remarks:

Dated: August 25, 1992.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–20855 Filed 09–2–92; 8:45 am]

BILLING CODE 3810-01-F

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AF89

Radiation Exposure Compensation Act of 1990

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its adjudication regulations regarding entitlement to compensation and dependency and indemnity compensation (DIC) benefits. These amendments are necessary to implement the provisions of the Radiation Exposure Compensation Act of 1990 (RECA) which authorize payments by the Department of Justice (DOJ) to certain individuals for disability or death due to specific radiogenic diseases. The intended effect of these amendments is to bring VA regulations into conformance with this new law.

DATES: Comments must be received on or before October 5, 1992. Comments will be available for public inspection until October 13, 1992. These amendments are proposed to be effective October 15, 1990, the date Public Law 101–426 was signed into law.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this amendment to Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 170, at the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays), until October 13, 1992.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, (202) 233–3005.

SUPPLEMENTARY INFORMATION: The Radiation Exposure Compensation Act of 1990 (RECA), Public Law 101–426, 104 Stat. 920, as amended by Public Law 101–510, section 3139, 104 Stat. 1835 (42 U.S.C. 2210 note) authorized the Attorney General of the United States to establish procedures for making payments as restitution to all eligible individuals, who may have contracted one of a specified group of radiation-related diseases as a result of the

federal government's atmospheric nuclear testing program and to certain of their survivors. RECA authorized the Attorney General to make payments to a limited class of individuals with radiation-related diseases who had been employed during a specified period in uranium mines in Colorado, Utah, Arizona, Wyoming or New Mexico, or who had been present during designated periods at, or in, certain specified areas downwind of, the Nevada Test Site, the Pacific Proving Grounds, and the Trinity Test Site at Alamogordo, New Mexico. DOJ published final regulations implementing RECA in the **Federal Register** of April 10, 1992 (57 FR 12428–61).

RECA has clear implications for VA beneficiaries receiving compensation or DIC based on disability or death resulting from a radiogenic disease. Section 6(e) of RECA provides that when an individual accepts a RECA payment, that payment represents full satisfaction of all claims of or on behalf of that individual against the United States based upon a condition that arises out of exposure to radiation as a result of onsite participation in a test involving the atmospheric detonation of a nuclear device. It is clear that under section 6(e) a veteran who accepts a RECA payment based on a radiogenic condition which developed after he or she participated onsite in an atmospheric test, is thereafter barred from receiving disability compensation under chapter 11 of title 38, United States Code, for the same condition. Similarly, a survivor who accepts a RECA payment based on the death of a veteran resulting from a radiogenic condition would thereafter be disqualified from receiving DIC based on death resulting from the same condition. We are proposing to add new § 3.715 to 38 CFR part 3 to implement this statutory provision.

Section 6(c)(2) of RECA provides that the RECA payment will be offset by the amount of previously received federal benefits, except for worker's compensation, authorized for the same condition or death. Such payments include compensation or DIC from VA, and DOJ regulations include provisions to offset those benefit payments. When an individual receiving compensation or DIC elects to accept a RECA payment, we propose to terminate compensation or DIC on the last day of the month preceding the month in which the RECA payment is issued, since DOJ offset, based on benefits received, has been calculated to that point. We propose to amend 38 CFR 3.500 accordingly.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers are 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: July 24, 1992.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is proposed to be amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 105 Stat. 386; 38 U.S.C. 501(a), unless otherwise noted.

2. In 3.500, add new paragraph (x) to read as follows:

§ 3.500 General.

* * * * *

(x) *Radiation Exposure Compensation Act of 1990 (§ 3.715).* (Compensation or dependency and indemnity compensation only). Last day of the month preceding the month in which payment under the Radiation Exposure Compensation Act of 1990 is issued.

3. Add new § 3.715 and its authority citation to read as follows:

§ 3.715 Radiation Exposure Compensation Act of 1990.

Payment to any individual under the provisions of the Radiation Exposure Compensation Act of 1990 (Pub. L. 101–426 as amended by Pub. L. 101–510) based upon disability or death resulting from a specific disease shall bar payment, or further payment, of compensation or dependency and indemnity compensation to or on behalf of that individual based upon disability or death resulting from the same disease.

(Authority: 42 U.S.C. 2210 note)

Cross Reference: See § 3.500(w) for effective date of discontinuance.

[FR Doc. 92–21081 Filed 9–2–92; 8:45 am]

BILLING CODE 8320–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

Below 1 GHz LEO Negotiated Rulemaking Committee

AGENCY: Federal Communications Commission.

ACTION: Notice of meetings.

SUMMARY: The Federal Communications Commission has established the Below 1 GHz LEO Negotiated Rulemaking Committee to provide recommendations on technical matters related to the establishment and regulation of a low-Earth orbiting satellite service operating in the frequency bands below 1 GHz. This notice advises interested persons of upcoming meetings of an informal working group of that Committee.

DATES: September 9—9:30 a.m.–12 p.m.
September 10—9:30 a.m.–12 p.m.
September 11—9:30 a.m.–12 p.m.
September 14—9:30 a.m.–12 p.m.
September 15—9:30 a.m.–12 p.m.

ADDRESSES: Federal Communications Commission, 2000 L Street, NW., rm. 257, Washington, DC (Sept. 11 & 14). All other meetings will be at the offices of Leventhal, Senter & Lerman, 2000 K Street, NW., suite 600, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas S. Tycz, Deputy Chief, Domestic Facilities Division, Common Carrier Bureau, at (202) 634–1860.

SUPPLEMENTARY INFORMATION: These meeting dates are tenative, and may be cancelled or moved to a different location. Members of the general public may attend these informal working

group meetings. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to the seating available.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-21159 Filed 9-2-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 25

Below 1 GHz LEO Negotiated Rulemaking Committee

AGENCY: Federal Communications Commission.

ACTION: Notice of meeting of negotiated rulemaking committee.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons of the fifth meeting of the Below 1 GHz LEO Negotiated Rulemaking Committee ("Committee"), which will be held at the Federal Communications Commission in Washington, DC.

DATES: September 8, 1992 at 9:30 a.m.

ADDRESSES: Federal Communications Commission, rm. 856, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Thomas S. Tycz, Deputy Chief, Domestic Facilities Division, Federal Communications Commission, at (202) 634-1860.

SUPPLEMENTARY INFORMATION: The agenda for the fifth meeting of the Committee will be to approve the minutes of the prior meeting, identify any new record information, report on the progress of the informal working group, discuss any reports of that group, and update the agenda for the final Committee meeting scheduled for September 16.

A more detailed agenda for this meeting will be available at the Federal Communications Commission in CC Docket 92-76 following the Committee's meeting on September 1, 1992.

Members of the general public may attend this meeting. The Federal Communications Commission will attempt to accommodate as many people as possible. However, admittance will be limited to the seating available. There may be limited public oral participation, and the public may submit written comments to Thomas S. Tycz, the Committee's designated Federal representative, before the meeting.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-21160 Filed 9-2-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Parts 61 and 69

[CC Docket No. 92-135; FCC 92-258]

Common Carrier Services: In the Matter of Regulatory Reform for Local Exchange Carriers Subject to Rate of Return Regulation

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: On June 18, 1992, the Commission adopted a Notice of Proposed Rulemaking seeking comment on regulatory proposals affecting rate of return regulated local exchange carriers. The intended effect of the proceeding is to establish regulatory reform that will compliment the price cap system applicable to the largest local exchange carriers, by providing incentives for smaller companies to become more efficient and by encouraging technological development. Because these smaller companies provide service primarily to rural areas, this proposal will help bring ratepayer benefits gained from incentive regulation to rural Americans as well as urban populations served by the largest carriers. This proceeding is also seeks to reduce administrative burdens, and increase flexibility, while continuing to assure high service quality and universal service at reasonable rates. We therefore propose a continuum of options to be made available to the over 1300 carriers not required to be regulated under price caps.

DATES: Comments must be submitted on or before August 28, 1992. Reply comments are due on or before September 28, 1992.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Andrew Mulitz, Attorney/Advisor, Tariff Division, Common Carrier Bureau, (202) 632-6917.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking adopted June 18, 1992, and released July 17, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center (202) 296-3780 1990 M Street NW., suite 640, Washington, DC 20036.

The following collection of information contained in this proposed rule has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3504(h)). Copies of the submission may be purchased from the commission's current copy contractor, Downtown Copy Center (202) 296-3780 1990, M Street NW., suite 640, Washington, DC 20036. Persons wishing to comment on this information collection should direct their comments to Jonas Neihardt, (202) 395-4814, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503. A copy of any comments should also be sent to the Federal Communications Commission, Office of Managing Director, Washington, DC 20554. For further information contact Judy Boley, Federal Communications Commission (202) 632-7513.

OMB Number: None

Title: Regulatory Reform for Local Exchange Carriers Subject to Rate of Return Regulation (CC Docket No. 92-135).

Action: Proposed Revision and New Collection

Respondents: Businesses or other for profit

Frequency of Response: Quarterly and annually

Estimated Annual Burden:

	Responses	Hours per response	Total
Tariff filing requirements:			
Proposed Section 61.38	-20	132	-2640
Proposed Section 6139	20	8	160
Proposed Section 61.50 (1st yr.)	-6	62	-372
Proposed Section 61.50 (2nd yr.)	-6	124	-744
Proposed quarterly service monitoring reports	24	833	20,000
Proposed infrastructure reports	6	10	60

Needs and Uses: The NPRM would require local exchange carriers that elect the proposed incentive plan to file quarterly service quality reports and annual infrastructure reports as is

currently required of carriers subject to price cap regulation.

Regulatory Flexibility Analysis

We have determined that section 605(b) of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b) does not apply to this rulemaking proceeding because if promulgated, it would not have a significant economic impact on a substantial number of small entities. The definition of a "small entity" in section 3 of the Small Business Act excludes any business that is dominant in its field of operation. Although some of the local exchange carriers that will be affected are very small, local exchange companies do not qualify as small entities because they have a nationwide monopoly on ubiquitous access to the subscribers in their service area. The Commission has found all exchange carriers to be dominant in the Competitive Carrier proceeding. 85 FCC 2d 1, 23–24 (1980). To the extent that small telephone companies will be affected by these rules, we hereby certify that these rules will not have a significant economic effect on a substantial number of "small entities." Although we do not find that the Regulatory Flexibility Act is applicable to this proceeding, this Commission has an ongoing concern with the effect of its rules and regulation on small business and the customers of the regulated carriers as is evidenced by this proceeding.

Summary of Notice of Proposed Rulemaking

The more than 1300 local exchange carriers that do not participate in price caps represent approximately 6 percent of the LEC industry. These companies range in size from less than 100 to more than 1 million access lines. These carriers have resisted the price caps option for a number of reasons including: unwillingness to assume the risks; inability to spread the risks; and, discomfort with the administrative complexity of price caps. These perceived difficulties of price caps apparently have not been outweighed by the promises of higher earnings.

Therefore, the NPRM proposes three options that, together with price caps, would establish a continuum of regulatory options. The continuum extends from improved, basic rate of return regulation to full price caps. As one proceeds along the continuum, the risks, potential rewards, and administrative complexity increase.

The option offering the least risk—improved, basic rate of return—would be applicable to NECA and any company that does not elect another option. This form of regulation would differ from the present methods in two major aspects. First, as proposed, tariffs would be filed every two years instead of annually. Second, use of projected costs would be limited, placing greater reliance on historical costs and simple extrapolations made from historical costs. The Notice also seeks comment on ways to permit some degree of pricing flexibility for carriers participating in basic rate of return regulation. Finally, the Notice seeks proposed methods of introducing optional incentive-type plans within the NECA pools.

The next level along the continuum would be available to small telephone companies serving 50,000 access lines or less, with gross annual revenues of 40 million dollars and less. Such companies that do not participate in the NECA pools would be able to file tariffs for all interstate rates based on historical costs for two-year periods. Under existing rules, these carriers may file such tariffs for traffic sensitive rates only. With the exception of subscriber line charges, no cost support would have to be filed with the tariffs; however, the information would be available upon request of the Commission or interested parties. We believe ratepayers would reap the full benefits of reduced costs by lower rate reflected in biennial tariff filings.

Third, the Commission proposed an optional incentive plan for mid-size companies that favor the rewards of incentive regulation, but believe the risks of price caps are too great. Under the optional incentive plan, carriers would file tariffs every two years. Cost support showings would be based on historical, rather than projected, costs. The earnings band would be 100 basis points above and 100 basis points below the rate of return authorized by the Commission. Pricing flexibility would be pursuant to rules similar to those used in price caps. Ratepayers would benefit by rate reductions reflecting the cost reductions of the historical period.

The final step in the continuum would be full price cap regulation. Thus, we would retain the price cap option as it now exists.

Ordering Clauses

Accordingly, it is ordered that, pursuant to sections 4(i), 4(j), 201–205, 303(r), and 403 of the Communications Act of 1934, 47 U.S.C. 154(i), 154(j), 201–205, 303(r), 403, notice is hereby given of proposed amendments to Part 61, and Part 69, and Sections 61.38, 61.39, 61.50, 61.58, and 69.3, in accordance with the proposals, discussions, and statement of issues in this Notice of Proposed Rulemaking, and as set forth in Appendix A to this Order, and that comment is sought regarding such proposals, discussion, and statement of issues.

Accordingly, it is ordered, that a rulemaking proceeding is instituted to determine whether proposals made herein concerning regulatory reform for LECs which remain subject to rate of return regulation would be in the public interest.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

List of Subjects in 47 CFR Parts 61 and 69

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Proposed Rules

Title 47 of the CFR, parts 61 and 69 are amended as follows:

PART 61—TARIFFS

1. The authority citation for part 61 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply sec. 203, 48 Stat. 1070; 47 U.S.C. 203.

2. Section 61.3 is amended by revising paragraph (e) to read as follows:

§ 61.3 Definitions.

* * * * *

(e) *Base period.* The 12-month period ending six months prior to the effective date of annual price cap tariffs, or the 24-month period ending six months prior to the effective date of biennial optional incentive plan tariffs.

* * * * *

3. Section 61.38 is amended by revising paragraph (a) to read as follows:

§ 61.38 Supporting information to be submitted with letters of transmittal.

(a) *Scope.* This section applies to dominant carriers whose gross annual revenue exceed $500,000 for the most recent 12 month period of operations or are estimated to exceed $500,000 for a representative 12 month period. Local exchange carriers serving 50,000 or fewer access lines in a given study area that are described as subset 3 carriers in § 69.602 of this chapter may submit Access Tariff filings for that study area pursuant to either this section or § 61.39. However, the Commission may require any carrier to submit such information as may be necessary for a review of a tariff filing. This section (other than the preceding sentence of this paragraph) shall not apply to tariff filings proposing

rates for services identified in §§ 61.42 (a), (b), (d), (e), and (g), promotional offerings that relate to services subject to price cap regulation, tariff filings proposing rates for services identified in § 61.50, or to tariff filings, other than promotional filings, filed on 14 days notice pursuant to § 61.58(c)(6).

* * * * *

4. Section 61.39 is amended by revising paragraphs (a) and (b) to read as follows:

§ 61.39 Optional supporting information to be submitted with letters of transmittal for Access Tariff filings effective on or after April 1, 1989, by local exchange carriers serving 50,000 or fewer access lines in a given study area that are described as subset 3 carriers in § 69.602.

(a) *Scope.* This section provides for an optional method of filing for any local exchange carrier that is described as subset 3 carrier in § 69.602, which elects to issue its own Access Tariff for a period commencing on or after April 1, 1989, and which serves 50,000 or fewer access lines in a study area as determined under § 36.611(a)(8) of the Commission's Rules. However, the Commission may require any carrier to submit such information as may be necessary for review of a tariff filing. This section (other than the preceding sentence of this paragraph) shall not apply to tariff filings proposing rates for services identified in § 61.42 (d), (e), and (g), which filings are submitted by carriers subject to price cap regulation, or to tariff filings proposing rates for services identified in § 61.50, which filings are submitted by carriers subject to optional incentive regulation.

(b) *Explanation and data supporting tariff changes.* The material to be submitted for either a tariff change of a new tariff which affects rates or charges must include an explanation of the filing in the transmittal as required by § 61.33. The basis for ratemaking must comply with the following requirements. Except as provided in paragraph (b)(5) of this section, it is not necessary to submit this supporting data at the time of filing. However, the local exchange carrier should be prepared to submit the data promptly upon reasonable request by the Commission or interested parties.

(1) For a tariff change, the local exchange carrier which is a cost schedule carrier must propose Traffic Sensitive rates based on the following:

(i) For the first period, a cost of service study for Traffic Sensitive elements for the most recent 12 month period with related demand for the same period.

(ii) For subsequent filings, a cost of service study for Traffic Sensitive elements for the total period since the local exchange carrier's last annual filing, with related demand for the same period.

(2) For a tariff change, the local exchange company which is an average schedule carrier must propose Traffic Sensitive rates based on the following:

(i) For the first period, the local exchange carrier's most recent annual Traffic Sensitive settlement from the National Exchange Carrier Association pool.

(ii) For subsequent filings, an amount calculated to reflect the Traffic Sensitive average schedule pool settlement the carrier would have received if the carrier had continued to participate, based upon the most recent average schedule formulas developed by the National Exchange Carrier Association.

(3) For a tariff change, the local exchange carrier which is a cost schedule carrier must propose Common Line rates based on the following:

(i) For the first period, a cost of service study with demand for all Common Line elements for the most recent 12 month period with demand adjusted to reflect the growth in demand for the same period.

(ii) For subsequent filings, a cost of service study with demand for all Common Line elements for the total period since the local exchange carrier's last annual filing with demand adjusted to reflect the growth in demand for the same period.

(4) For a tariff change, the local exchange carrier which is an average schedule carrier must propose rates based on the following:

(i) For the first period, the local exchange carriers most recent annual Common Line settlement from the National Exchange Carrier Association and actual demand for the most recent 12 month period with demand adjusted to reflect the growth in demand for the same period.

(ii) For subsequent filings, an amount calculated to reflect the average schedule pools settlement the carrier would have received if the carrier had continued to participate, based upon the most recent average schedule Common Line formulas developed by the National Exchange Carrier Association and actual demand for the same period with demand adjusted to reflect the growth in demand for the same period.

(5) For End User Common Line charges include in a tariff pursuant to this Section, the local exchange carrier must provide supporting information for the two-year historical period with its letter of transmittal in accordance with § 61.38.

* * * * *

5. Section 61.50 is added to read as follows:

§ 61.50 Optional incentive regulation for rate of return local exchange carriers.

(a) This section shall apply on an elective basis, to local exchange carriers that are neither participants in any Association tariff, nor affiliated with any such participants, except that affiliation with average schedule companies shall not bar a carrier from electing optional incentive regulation provided the carrier is otherwise eligible.

(b) If a telephone company, or any one of a group of affiliated telephone companies, files an optional incentive regulation tariff in one study area, that telephone company and its affiliates, except its average schedule affiliates, must file incentive plan tariffs in all their study areas.

(c) The following rules apply to telephone companies subject to this section, which are involved in mergers, acquisitions, or similar transactions, except that mergers with, acquisitions by, or other similar transactions with companies subject to price cap regulation, as that term is defined in § 61.3(W), shall be governed by § 61.41(c).

(1) Any telephone company subject to this section that is a party to a merger, acquisition, or similar transaction, shall continue to be subject to incentive regulation notwithstanding such transaction.

(2) Where a telephone company subject to this section acquires, is acquired by, merged with, or otherwise becomes affiliated with a telephone company that is not subject to this section, the latter telephone company shall become subject to optional incentive plan regulation no later than one year following the effective date of such merger, acquisition, or similar transaction and shall accordingly file optional incentive plan tariffs to be effective no later than that date in accordance with the applicable provisions of this part 61.

(3) Notwithstanding the provisions of paragraph (c)(2) of this section, when a telephone company subject to optional incentive plan regulation acquires, is acquired by, mergers with, or otherwise becomes affiliated with a telephone company that qualifies as an "average schedule" company, the latter company may retain its "average schedule" status or become subject to optional incentive plan regulations in accordance with

§ 69.3(i)(3) of this chapter and the requirements references in that section.

(d) Local exchange carriers that are subject to this section shall not be eligible to withdraw from such regulation until the end of a two-year tariff period. If a local exchange carrier withdraws from optional incentive plan regulation, it must file company-specific tariffs under the provisions of § 61.38 for four years before becoming eligible to enter incentive plan regulation; such carrier may not participate in any Association tariff during that four years.

(e) Each local exchange carrier subject to this section shall establish baskets of services as identified in § 61.42 (d), (e), and (f).

(f) Each local exchange carrier subject to optional incentive regulation shall exclude from its baskets such services or portions of such services as the Commission has designated or may hereinafter designate by order.

(g) New services, other than those within the scope of paragraph (f) of this section, must be included in the affected basket 12 months after their introduction. To the extent that such new services are permitted or required to be included in new or existing service categories within the assigned basket, they shall be so included 12 months after their introduction.

(h)(1) Except as provided in paragraph (c)(4) of this section, in connection with any optional incentive plan tariff filings proposing rate changes, the carrier must calculate an API for each affected basket as proscribed in § 61.46 (a), (b), and (c).

(2) In connection with any tariff filed under this section proposing changes to rates for services in the basket designated in paragraph (e)(1) of this section, the maximum allowable carrier common line (CCL) charges shall be limited to a ten percent increase over the two-year tariff period, where the sum of each of the proposed Carrier Common Line rates multiplied by its corresponding historical period Carrier Common Line minutes to use is divided by the same of all types of base period Carrier Common Line minutes to user.

(i) New services introduced pursuant to this section are deemed presumptively lawful, if the projected revenues for the new service are less than two percent of the carrier's total access revenues during the first 12 months of the offering, and the proposed rates, in the aggregate, are no greater than the rate for the same or comparable service offered by a price cap regulated local exchange carrier providing service in an adjacent serving area. Tariff filings made pursuant to this paragraph must include the following:

(1) A study containing a projection of costs for a representative 12 month period;

(2) Data to establish that the annualized projected service revenues during the first 12 month period of the service offering will be less than two percent of the carrier's total interstate access revenues during the most recent 12 month period; and

(3) Data to establish that, in aggregate, the proposed rates for the new service are no greater than those in effect for the same or comparable service offered by a geographically adjacent price cap regulated local exchange carrier.

6. Section 61.58 is amended by adding new paragraph (e) to read as follows:

§ 61.58 Notice requirements.

* * * * *

(e) *Carriers subject to optional incentive regulation.* This paragraph applies only to carriers subject to § 61.50 of this part. Such carriers must file tariffs according to the following notice periods:

(1) For initial and renewal tariff filings whose effective date coincides with the start of any two-year tariff period as defined in § 69.3(f) of this chapter, filings must be made on not less than 90 days' notice.

(2) For rate revisions made pursuant to § 61.50(j) and (k), tariff filings must be made on not less than 14 days' notice.

PART 69—ACCESS CHARGES

1. The authority citation for part 69 continues to read as follows:

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1070, 1072, 1077, 1094, as amended, 47 U.S.C. §§ 154, 201, 202, 203, 205, 218, 403, unless otherwise noted.

2. Section 69.3 is amended by revising the first sentence of paragraph (a), revising the first sentence of paragraph (e), and paragraph (1) introductory text, paragraph (i)(1), and paragraph (i)(3) to read as follows:

§ 69.3 Filing of access service tariffs.

(a) Except as provided in paragraph (h) of this section, a tariff for access service shall be filed with this Commission for a two-year period. * * *

* * * * *

(e) A telephone company or group of telephone companies may file a tariff that is not an association tariff, except that a group rate for non-affiliated telephone companies may not be file tariff under § 61.50; *e.g.*, the Association. * * *

* * * * *

(i) The following rules apply to the withdrawal from Association tariffs under the provision of paragraphs (e)(6) or (e)(9) of this section or both by telephone companies electing to file price cap tariffs pursuant to § 69.3(h) or optional incentive plan tariffs pursuant to § 61.50 of this chapter.

(1) In addition to the withdrawal provisions of § 69.3(e)(6) and (9), a telephone company or group of affiliated telephone companies that participates in one or more Association tariffs during the current tariff year and that elects to file price cap tariffs or optional incentive regulation tariffs effective July 1 of the following tariff year, shall notify the Association with at least 6 months' notice that it is withdrawing from all Association tariffs, subject to the terms of this Rule, to participate in price cap regulation or optional incentive regulation.

* * * * *

(3) Notwithstanding the provisions of § 69.3 (3), (6), and (9), in the event a telephone company withdraws from all Association tariffs for the purpose of filing price cap tariffs or optional incentive plan tariffs, such company shall exclude from such withdrawal all "average schedule" affiliates and all affiliates so excluded shall be specified in the withdrawal. However, such company may include one or more "average schedule" affiliates in price cap regulation or optional incentive plan regulation provided that each price cap or optional incentive plan affiliate relinquishes "average schedule" status and withdraws from all Association tariffs and any tariff filed pursuant to § 61.39(b)(2) of this chapter. See generally §§ 69.605(c), 61.39(b) of this chapter; MTS and WATS Market Structure: Average Schedule Companies, Report and Order, 103 FCC 2D 1026–1027 (1986).

* * * * *

[FR Doc. 92–20935 Filed 9–2–92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB 83

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Three Puerto Rican Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine *Aristida chaseae* (no common name), *Lyonia truncata* var. *proctorii*

(no common name) and *Vernonia proctorii* (no common name) to be endangered species pursuant to the Endangered Species Act (Act) of 1973, as amended. These species are endemic to Puerto Rico, and all are restricted to the southwestern part of the island. With the exception of one site on the Cabo Rojo National Wildlife Refuge, the habitat of all three species is threatened with modification and loss due to various types of development. *Aristida chaseae* may also be affected by competition from introduced grass species. This proposal, if made final, would implement the Federal protection and recovery provisions afforded by the Act for *Aristida chaseae, Lyonia truncata* var. *proctorii* and *Vernonia proctorii*. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by November 2, 1992. Public hearing requests must be received by October 19, 1992.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622. Comments and materials received will be available for public inspection, by appointment, during normal business hours at this office, and at the Service's Southeast Regional Office, Suite 1282, 75 Spring Street, SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Silander at the Caribbean Field Office address (809/851-7297) or Mr. Dave Flemming at the Atlanta Regional Office address (404/331-3580).

SUPPLEMENTARY INFORMATION:

Background

Aristida chaseae was discovered by Agnes Chase near Boquerón in 1913. It was known only from the type collection for many years, until it was discovered by Paul McKenzie in 1987 on the Cabo Rojo National Wildlife Refuge. This new population, which contains from 150 to 175 plants, is approximately 8 km to the south of the type locality. The species has apparently been elminiated from the type location, possibly as a result of competition from vigorous, introduced grass species (McKenzie et al. 1989, Proctor 1991).

Later in 1987, McKenzie and Dr. George Proctor located a third population on the rocky, exposed upper slopes of Cerro Mariquita in the Sierra Bermeja, a range of hills also found within the municipality of Cabo Rojo. This range of hills is the oldest geologic formation in Puerto Rico and is known for its high plant endemism. Additional localities on ridges to the west within the Sierra Bermeja were found in 1988. In these hills it occurs at elevations between 150 and 300 meters (McKenzie et al. 1989; Proctor 1991).

Aristida chaseae is a perennial grass with densely tufted, wide-spreading culms which may reach from 50 to 60 cm in length. The leaf blades are involute, 2 to 3 mm wide and 10 to 15 mm long. The panicles are narrow and may be from 10 to 15 cm in length. The glumes are equal, 10 to 13 mm long and acuminate or awn-tipped. The lemma is approximately 12 mm long, narrowed at the summit but scarcely beaked and scaberulous of the upper half. The callus is 1 mm long and densely pilose. The awns are equal, somewhat divergent, flat at the base, not contorted except with age and are approximately 2 cm long.

Lyonia truncata var. *proctorii* was discovered in September of 1987 by Dr. George Proctor and described by Dr. Walter Judd in 1990 (Judd 1990). It is only known from the type locality, the upper slopes and summits of Cerro Mariquita (elevations of 250 to 300 m) in the Sierra Bermeja. Approximately 63 individual plants have been reported from two locations: 18 to the northwest of the summit and 45 just to the east of the summit (Proctor 1991).

Lyonia truncata var. *proctorii* is an evergreen shrub which may reach up to 2 meters in height. The leaves are alternate, elliptic to ovate, coriaceous, and from 0.9 to 4.5 cm long and 0.4 to 2.3 cm wide. The leaf margins may be toothed and the lower surface is sparsely to moderately lepidote and moderately to densely pubescent. The inflorescences are fasciculate with from 2 to 15 flowers. Pedicels are from 2 to 5 mm in length and sparsely pubescent. Flowers are small (0.7 to 1.6 mm in length), white, and urn-shaped. The fruit is a dry capsule, 3 to 4.5 mm in length and 2.5 to 4 mm in width, sparsely pubescent, and contains seeds approximately 2.5 mm in length.

Vernonia proctorii was discovered in September of 1987 by Dr. George Proctor, Dr. Horst Haneke and Paul McKenzie. It is known to occur only on the summit of Cerro Mariquita in the Sierra Bermeja of southwestern Puerto Rico at elevations between 270 and 300 meters. Plants are scattered throughout a scrub woodland which covers several acres. The population has been estimated at approximately 950 individual plants (Proctor 1991).

Vernonia proctorii is a small erect shrub which may reach a height of 1.5 meters. The stems and trunk are densely pubescent with silvery uniseriate hairs and with a knobby appearance due to the persistent petiole bases. Leaves are alternate, ovate to orbicular, subsessile or with the petioles appressed to the stem, and from 1.5 to 3.5 cm long and 1.0 to 2.6 cm wide. The upper blade surface is green to olive-green and moderately strigose with scattered glistening globular trichomes. The lower surface is grayish-green, sometimes becoming rusty with age, and densely sericeous. The leaf margins are densely ciliate with silvery hairs. Flowers are borne in terminal clusters of 2 to 5 heads, each approximately 3 mm in length, and are bright purple in color. Achenes are from 2 to 3 mm long and sericeous with silvery hairs.

Aristida chaseae, Lyonia truncata var. *proctorii* and *Vernonia proctorii* were recommended for listing by Dr. George Proctor during a September 1988 meeting concerning the revision of the candidate plant species list in Puerto Rico and the U.S. Virgin Islands. They were subsequently included as category 1 species (species for which the Service has substantial information supporting the appropriateness of proposing to list them as endangered or threatened) in the **Federal Register** notice of review published February 21, 1990 (55 FR 6184).

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Aristida chaseae* Hitchcock, *Lyonia truncata* Urban var. *protcorii* Judd, and *Vernonia proctorii* Urbatsch are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

All three species are found on privately owned land currently subject to intense pressure for agricultural, rural and tourist development. The land is currently being cleared for grazing by cattle and goats. Adjacent land is being subdivided for sale in small farms, some destined for tourist and urban developments. Only *Aristida chaseae* occurs outside of the Sierra Bermeja, on the nearby Cabo Rojo National Wildlife Refuge, where the population occurs within and along a little used roadway.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Taking for these purposes has not been a documented factor in the decline of these species.

C. Disease or Predation

Disease and predation have not been documented as factors in the decline of these species.

D. The Inadequacy of Existing Regulatory Mechanism

The Commonwealth of Puerto Rico has adopted a regulation that recognizes and provides protection for certain Commonwealth listed species. However, *Aristida chaseae, Lyonia truncata* var. *proctorii* and *Vernonia proctorii* are not yet on the Commonwealth list. Federal listing would provide immediate protection and, if the species are ultimately placed on the Commonwealth list, enhance their protection and possibilities for funding needed research.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

One of the most important factors affecting the continued survival of these species is their limited distribution. Because so few individuals are known to occur in a limited area, the risk of extinction is extremely high. Wildfires are a frequent occurrence in this extremely dry portion of southwestern Puerto Rico. McKenzie el al. (1989) indicate that *Aristida chaseae* may have once extended throughout sandy coastal areas and rocky hillsides in southwestern Puerto Rico, but that competition from vigorous, introduced grasses such as *Brachiaria subquadripara* may have eliminated the species from the majority of this area.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Aristida chaseae, Lyonia truncata* var. *proctorii* and *Vernonia proctorii* as endangered. *Lyonia truncata* var. *proctorii* and *Vernonia proctorii* are known to occur only in the Sierra Bermeja. *Aristida chaseae* is currently known from only two areas. Deforestation for rural, agricultural, and tourist development are imminent threats to the survival of the species. Therefore, endangered rather than threatened status seems an accurate assessment of the species' condition. The reasons for not proposing critical habitat for these species are discussed below in the "Critical Habitat" section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for these species at this time. The number of individuals of *Aristida chaseae, Lyonia truncata* var. *proctorii* and *Vernonia proctorii* is sufficiently small that vandalism and collection could seriously affect the survival of the species. Taking is an activity that is difficult to control, and it is only regulated by the Act with respect to endangered plants in cases of (1) removal and reduction to possession of these plants from lands under Federal jurisdiction, or their malicious damage or destruction on such lands; and (2) removal, cutting, digging up, or damaging or destroying these plants in knowing violation of any State law or regulation, including State criminal trespass law. Publication of critical habitat descriptions and maps in the **Federal Register** would only increase the likelihood of such activities and would not provide offsetting benefits. The Service believes that Federal involvement in the areas where these plants occur can be identified without the designation of critical habitat. All involved parties and landowners have been notified of the location and importance of protecting these species' habitat. Protection of these species' habitat will also be addressed through the recovery process and through the section 7 jeopardy standard.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, Commonwealth, and private agencies, groups and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the Commonwealth, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, required Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No critical habitat is being proposed for these three species, as discussed above. Federal involvement is anticipated only for the population of *Aristida chaseae* located on the Cabo Rojo National Wildlife Refuge.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce in the course of commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any Commonwealth law or regulation, including Commonwealth criminal trespass law. Certain exceptions can apply to agents of the Service and Commonwealth conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits for these three species will ever be sought

or issued, since the species are not known to be in cultivation and are uncommon in the wild. Requests for copies of the regulations on listed plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, room 432, Arlington, Virginia 22203 (703/358-2104).

Public Comments Solicited

The Service intends that any final action resulting from proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Aristida chaseae, Lyonia truncata* var. *proctorii* and *Vernonia proctorii*;

(2) The location of any additional populations of these three species, and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of these species; and

(4) Current or planned activities in the subject areas and their possible impacts on these three species.

Final promulgation of the regulations on *Aristida chaseae, Lyonia truncata* var. *proctorii* and *Vernonia proctorii* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Judd, W.S. 1990. A new variety of *Lyonia* (Ericaceae) from Puerto Rico. Jour. Arnold Arb. 71:129–133.

McKenzie, P.M., R.E. Noble, L.E. Urbatsch, and G.R. Proctor, 1989. Status of *Aristida* (Poaceae) in Puerto Rico and the Virgin islands. Sida 13(4):423–447.

Proctor, G.R. 1991. Status report on *Aristida chaseae* Hitchcock. *In* Publicación Científica Miscelánea No. 2, Departamento de Recursos Naturales de Puerto Rico. 196 pp.

Proctor, G.R. 1991. Status report on *Lyonia truncata* Urban var. *proctorii* Judd. *In* Publicación Científica Miscelánea No. 2, Departamento de Recursos Naturales de Puerto Rico. 196 pp.

Proctor, G.R. 1991. Status report on *Vernonia proctorii* Urbatsch. *In* Publicación Científica Miscelánea No. 2, Departamento de Recursos Naturales de Puerto Rico. 196 pp.

Author

The primary author of this proposed rule is Ms. Susan Silander, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622 (809/851-7297).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulations Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under Asteraceae, Ericaceae and Poaceae, to the list of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species						
Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules
Asteraceae—Aster family:						
Vernonia proctorii	None	U.S.A. (PR)	E		NA	NA
Ericaceae—Heath family:						
Lyonia truncata var. *proctorii*	None	U.S.A. (PR)	E		NA	NA
Poaceae—Grass family:						
Aristida chaseae	None	U.S.A. (PR)	E		NA	NA

Dated: July 20, 1992.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92-21214 Filed 9-2-92; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 57, No. 172
Thursday, September 3, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Advisory Committee on Emerging Democracies; Meeting

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the first meeting of the Emerging Democracies Advisory Committee will be held September 17–18, 1992. The purpose of the committee is to provide information and advice, based upon the knowledge and expertise of the members, useful to the U.S. Department of Agriculture (USDA) in implementing the program on sharing agricultural expertise with emerging democracies. The committee will also advise USDA on ways to increase the involvement of the U.S. private sector in cooperative work with emerging democracies in food and rural business systems.

DATES: The meeting will be held Thursday, September 17, 1992 from 8:30 a.m. to 5 p.m. and Friday, September 18, 1992, from 8:30 a.m. to 12:45 p.m. Both meetings will be held in Washington, DC.

ADDRESS: The location of the meeting is as follows: September 17–18—United States Department of Agriculture, 14th Street and Independence Avenue SW., room 5066–South, Washington, DC 20250, 202–720–0368.

To help ensure adequate seating and materials are available at each meeting, interested parties are encouraged to register in advance by contacting the Eastern Europe and Soviet Secretariat (EESS), room 6506–S, U.S. Department of Agriculture, Washington, D.C. 20250–1000 (Fax: (202) 690–4369). This meeting is open to the public.

FOR FURTHER INFORMATION AND COPIES OF THE AGENDA CONTACT: Tom Pomeroy, Eastern Europe and Soviet Secretariat, room 6506–S, FAS, U.S. Department of Agriculture, Washington, DC 20250–1000; Telephone: (202) 720–0368.

SUPPLEMENTARY INFORMATION: The minutes of the meeting announced in this Notice shall be available for review. Any members of the public may provide comments in writing to the Eastern Europe and Soviet Secretariat at the address above, but should not make any oral comments at the meeting unless invited to do so by the chairman.

Signed at Washington, DC, August 28, 1992.

Stephen Censky,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 92–21258 Filed 9–2–92; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–601]

Brass Sheet and Strip From Italy; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the petitioners, the Department of Commerce has conducted an administrative review of the antidumping duty order on brass sheet and strip from Italy. The review covers shipments of one manufacturer/exporter to the United States during the period from March 1, 1991 through February 29, 1992.

The company under review, Europa Metalli-LMI S.p.A. ("LMI"), did not respond to the Department's questionnaire. Instead LMI stated that the United States is no longer a strategic market and that its U.S. exports are marginal. Therefore, we are using best information otherwise available for cash deposit and appraisement purposes. As best information for LMI, we preliminarily determine the dumping margin to be 9.49 percent, the highest margin calculated in any previous administrative review or the original investigation.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: September 3, 1992.

FOR FURTHER INFORMATION CONTACT: Stephen D. Dillon or Linda L. Pasden, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–3793.

SUPPLEMENTARY INFORMATION:

Background

On March 6, 1987, the Department published in the **Federal Register** an antidumping duty order on brass sheet and strip from Italy (52 FR 6997). On March 5, 1992, the Department of Commerce published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" (57 FR 7910) of the antidumping duty order on brass sheet and strip from Italy (52 FR 6997) for the period March 1, 1991 through February 29, 1992. On March 31, 1992, we received a request for an administrative review for the period March 1, 1991 through February 29, 1992, from the petitioners: Outokumpu American Brass; Hussey Copper Ltd.; The Miller Company; Olin Corporation-Brass Group; Revere Copper Products, Inc.; International Association of Machinists and Aerospace Workers; International Union-Allied Industrial Workers of America (AFL–CIO); Mechanics Educational Society of America (Local 56); and the United Steelworkers of America (AFL–CIO/CLC). We published a notice of initiation of the antidumping administrative review on April 13, 1992 (57 FR 12797). The Department has now conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Act").

Scope of the Review

Imports covered by this review are shipments of brass sheet and strip, other than leaded brass and tin brass sheet and strip, from Italy. The chemical composition of the products under investigation is currently defined in the Copper Development Association (C.D.A.) 200 series or the Unified Numbering System (U.N.S.) C20000 series. Products whose chemical composition are defined by other C.D.A. or U.N.S. series are not covered by this review. The physical dimensions of the

products covered by this review are brass sheet and strip of solid rectangular cross section, over 0.006 inch (0.15 millimeter) but not over 0.188 inch (4.8 millimeters) in finished thickness or gauge, regardless of width, whether coiled, wound on reels (traverse wound), or cut-to-length. Until January 1, 1989, this merchandise was classifiable under item numbers 612.3960, 612.3982, and 612.3986 of the Tariff Schedules of the United States Annotated (TSUSA). Since that date, brass sheet and strip has been classifiable under Harmonized Tariff System (HTS) item numbers 7409.21.00.50, 7409.21.00.75, 7409.21.00.90, 7409.29.00.50, 7409.29.00.75, and 7409.29.00.90. HTS and TSUSA item numbers are provided for convenience and customs purposes. The written product description remains dispositive.

Preliminary Results of the Review

We preliminarily determine that a margin of 9.49 percent exists for Europa Metalli-LMI, S.p.A. for the period March 1, 1991 through February 29, 1992.

Parties to the proceeding may request disclosure and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 353.38(e).

The Department will publish the final results of the administrative review, including the results of its analysis of issues raised in any case or rebuttal briefs or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from Italy entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be that established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in previous reviews or the original less-than-fair-value investigation, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, previous reviews, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review, or if not covered in this review, the most recent review period or the original investigation; and (4) the cash deposit rate for any future entries from all manufacturers or exporters who are not covered in this or prior administrative reviews, and who are unrelated to the reviewed firms or any previously reviewed firm will be the "All Others" rate established in the final results of the previous administrative review, since we do not use best information available rates in establishing the "All Others" rate. This rate represents the highest rate for any firm (whose shipments to the United States were reviewed) in the most recent administrative review, other than those firms receiving a rate based entirely on best information available. These deposit requirements, when imposed, shall remain in effect until the publication of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: August 28, 1992.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-21165 Filed 9-2-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-549-501]

Malleable Cast Iron Pipe Fittings From Thailand; Intent To Revoke Antidumping Duty Order

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on certain malleable cast iron pipe fittings from Thailand. Interested parties who object to this revocation must submit their comments in writing no later than 30 days after the date of publication of this notice.

EFFECTIVE DATE: September 3, 1992.

FOR FURTHER INFORMATION CONTACT: Gerry Zapiain or Alain Letort, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 377-3793 or telefax (202) 377-1388.

SUPPLEMENTARY INFORMATION:

Background

On August 20, 1987, the Department of Commerce ("the Department") published an antidumping duty order on certain malleable cast iron pipe fittings from Thailand (52 FR 31440). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an order if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity to Object

No later than 30 days after the date of publication of this notice, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order. Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not object to the Department's intent to revoke within 30 days after the date of publication of this notice, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

Dated: August 27, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92-21164 Filed 9-2-92; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments; Ecosystem Center et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651); 80 Stat. 897; 15 CFR 301), we

invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Program Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 92-087. Applicant: The Ecosystem Center, Marine Biological Laboratory, Water Street, Woods Hole, MA 02543. Instrument: Accessory Equipment for Mass Spectrometer. Manufacturer: Finnigan MAT, Germany. Intended Use: This is equipment for an existing mass spectrometer which allows analysis of much smaller CO_2 samples than previously possible and allows easy and rapid analysis of individual molecules important in biological systems. The research focus is in diverse areas including microbial food webs, trace gases involved in global warming, basic physiological studies of photosynthesis and respiration, and studies of carbon storage in soils and sediments. Application Received by Commissioner of Customs: June 19, 1992.

Docket Number: 92-088. Applicant: U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 101 Pivers Island Road, Beaufort, NC 28516-9722. Instrument: Electronic Digital Fish Measuring Board. Manufacturer: Limnoterra Atlantic Inc., Canada. Intended Use: The instrument will be used for research to update and expand shrimp trawl bycatch estimates both temporally and spatially in the offshore, nearshore, and inshore waters of the Gulf of Mexico and along the U.S. coast of the southeastern Atlantic. Application Received by Commissioner of Customs: June 19, 1992.

Docket Number: 92-089. Applicant: The Pennsylvania State University, Department of Geosciences, 503 Dieke Building, University Park, PA 16802. Instrument: Two Mass Spectrometer Systems, Model MAT 252. Manufacturer: Finnigan MAT, Germany. Intended Use: The instrument will be used for studies of minerals (sulfides, carbonates, oxides, silicates), rocks, waters, solutions, gases, and organic compounds from a variety of geologic environments, and solids, solutions and gaseous materials synthesized in the laboratory. The objective of these studies are to unravel the laws governing the variation of isotopic compositions of H, C, O, S and N in nature, and to understand the details of various geological processes (such as the biogeochemistry of organic matter production and preservation formation and migration of oils and natural gases, evolution of the Earth's atmosphere and oceans, evolution of global climate). Application Received by Commissioner of Customs: June 19, 1992.

Docket Number: 92-090. Applicant: Pennsylvania State University, College of Medicine, Department of Pathology, 500 University Drive, P.O. Box 850, Hershey, PA 17033. Instrument: Electron Microscope, Model CM-10. Manufacturer: N.V. Philips, The Netherlands. Intended Use: The instrument will be used to continue and extend the capability and quality for high resolution research pathology (human and animal). All types and phases of specimens can be better handled. Specimens are fixed in glutaraldehyde and ossium tetroxide, embedded in plastic, sectioned by ultramicrotome and stained with electron diffraction stains. Relevant ultrastructures are then recorded via photographic films or videotapes. In addition, the instrument will be used for educational purposes by pathology residents. Application Received by Commissioner of Customs: June 19, 1992.

Docket Number: 92-091. Applicant: Virginia Polytechnic Institute and State University, Department of Biochemistry and Nutrition, 123 Engel Hall, Blacksburg, VA 24061-0308. Instrument: Micro Stopped Flow Spectrophotometer. Manufacturer: Hi-Tech Scientific, United Kingdom. Intended Use: The instrument will be used to study the very early reaction steps in biological nitrogen fixation catalyzed by the enzyme nitrogenase. Experiments will be conducted that are designed to determine the mechanism by which the transferred electrons and energy are coupled together to convert nitrogen into fertilizer. Application Received by Commissioner of Customs: June 19, 1992.

Docket Number: 92-092. Applicant: New Mexico Institute of Mining and Technology, Campus Station—Box I, Socorro, NM 87801. Instrument: Noble Gas Mass Spectrometer, Model MAP 215-50. Manufacturer: Mass Analyzer Products, United Kingdom. Intended Use: The instrument will be used to determine the geologic age of rocks by measuring the isotopic composition of Ar trapped in minerals as a consequence of natural radioactive decay of K. A secondary use will be measurement of isotopic compositions of other noble gases (He, Ne, Kr, Xe) to determine surface exposure ages and use as tracers for geologic processes such as magma formation and hydrologic circulation. In addition, the instrument will be used in the curriculum of two formal courses: Isotope Geochemistry (Geology 549) and $^{40}AR/^{39}$ Ar Geochronology (Geology 572). Application Received by Commissioner of Customs: June 19, 1992.

Docket Number: 92-093. Applicant: University of Alaska-Fairbanks, School of Mineral Engineering, 3rd Floor Eielson Building, Room 302, Fairbanks, AK 99775-1440. Instrument: Coal Oxidation Calorimeter, Model V2.0. Manufacturer: BHP Research New Castle Laboratory, Australia. Intended use: The instrument will be used to monitor the self-heating of coal in an adiabatic environment-similar to that observed during storage, transportation, or stockpiling. Application Received by Commissioner of Customs: June 23, 1992.

Docket Number: 92-094. Applicant: Duke University, Department of Physics, Free Electron Laser Laboratory, LaSalle Street Extension, Durham, NC 27706. Instrument: Magnetic Measuring System. Manufacturer: Institute of Nuclear Physics, C.I.S. Intended Use: The instrument will be used for studies of dipole, quadrupole and sextupole magnet assemblies in order to determine the relationship between magnetic flux and current excitation. Application Received by Commissioner of Customs: June 24, 1992.

Docket Number: 92-095. Applicant: Princeton University, Princeton Materials Institute, Princeton, NJ 08544. Instrument: Electron Microprobe, Model SX 50. Manufacturer: Cameca, France. Intended Use: The instrument will be used in studies to characterize rocks, minerals, and ore deposits, meteorites and synthetic materials to determine the conditions necessary for their formation; compare and correlate chemical composition of these materials with physical properties. In addition, the instrument will be used for training in electron probe microanalysis as part of basic education in mineralogy, petrology, and materials science. Application Received by Commissioner of Customs: June 24, 1992.

Docket Number: 92-096. Applicant: Rutgers, The State University of New Jersey, 311 North Fifth Street, Camden, NJ 08102. Instrument: Electron Microscope, Model EM 902. Manufacturer: Carl Zeiss, Inc., Germany. Intended Use: The instrument will be used for continuing current research projects (mechanisms of neural tube closure and microtubule-associated couplers and axonal transport) and

making possible their expansion to include new experiments based on the ability to view thick sections and the analytical capabilities of this instrument. Application Received by Commissioner of Customs: June 24, 1992.

Docket Number: 92-097. Applicant: Massachusetts Institute of Technology, 77 Massachusetts Avenue, Cambridge, MA 02139. Instrument: Stopped Flow Spectrofluorimeter, Model DX.17MV. Manufacturer: Applied Photophysics, United Kingdom. Intended Use: The instrument will be used to study the cleavage of DNA mediated by the ene-diyne class of antibiotics. In addition, the instrument will be used to study fast chemical reactions catalyzed by several enzymes involved in nucleotide metabolism. Application Received by Commissioner of Customs: June 24, 1992.

Docket Number: 92-098. Applicant: Emory University, Department of Chemistry, 1515 Pierce Drive, Atlanta, GA 30322. Instrument: Mass Spectrometer, Model SX102/SX102/E. Manufacturer: JEOL, Japan. Intended Use: The instrument will be used in research which includes investigating structures of polyoxometallates, unusual peptides and peptides from enzymatic cleavages of proteins, synthetic and unknown naturally-occurring sphingoid bases and related biomolecules, synthetic lipids and host molecules, phospholipids, enzymes involved in neurohormone synthesis, flavoenzymes, the anion exchange membrane protein band 3, and altered DNA and the enzyme myeloperoxidase. In addition, the instrument will be used for educational purposes in the courses Chemistry 766 and Chemistry 767. Application Received by Commissioner of Customs: June 25, 1992.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 92-21166 Filed 9-2-92; 8:45 am]

BILLING CODE 3510-DS-M

National Institute of Standards and Technology

National Voluntary Laboratory Accreditation Program

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of Workshop—Accreditation for Calibration Laboratories Providing Calibration Services for DC Voltage.

SUMMARY: The National Institute of Standards and Technology (NIST) will host a public workshop on September 18, 1992, to provide interested parties an opportunity to participate in the development of technical requirements for accrediting calibration laboratories providing services for DC Voltage.

DATES: The workshop will be held on Friday, September 18, 1992, from 9 a.m. to 4 p.m.

PLACE: The workshop will be held at the National Institute of Standards and Technology, Green Auditorium, Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: S. Wayne Stiefel, NVLAP, National Institute of Standards and Technology, Building 411, Gaithersburg, MD 20899. To assist in preparing for the meeting, please inform NVLAP about individuals/organizations planning to attend the workshop. Contact S. Wayne Stiefel at the above address, or call the NVLAP office (301) 975-4016, or FAX (301) 926-2884. Draft technical documents and administrative details for the program will be available at the workshop.

SUPPLEMENTARY INFORMATION:

Background

This notice is issued in accordance with the NVLAP Procedures (15 CFR part 7). In a **Federal Register** Notice dated May 18, 1992, (Vol. 57, No. 96), the National Institute of Standards and Technology (NIST) announced the establishment of the program for calibration laboratories, "Accreditation for Calibration Laboratories", pursuant to the request by the National Conference of Standards Laboratories in a letter of June 13, 1991, announced in the Federal Register of August 21, 1991. Accreditation will be offered to all applicant laboratories that fulfill the requirements of the National Voluntary Laboratory Accreditation Program (NVLAP).

DC Voltage has been selected as the initial calibration parameter; this program will serve as the pilot model for additional calibration parameters. Technical criteria, requirements, proficiency testing and procedures for the parameter of DC Voltage have been developed and will be presented at the workshop, and interested parties will have an opportunity to comment. The workshop is part of the NVLAP process of assuring that accreditation programs are of high technical quality, responsive to the technical needs of the community, and are relevant to the needs of those affected by accreditation. Future workshops will be scheduled as the Calibration Program is expanded to include additional parameters.

The following plans for the workshop have been established:

1. *Purpose:* The workshop will provide all interested persons with an opportunity to participate and contribute to the development of technical criteria, requirements, and procedures for evaluation and accreditation of laboratories that provide calibration services for DC Voltage.

2. *Procedure:* The workshop will be an informal, nonadversarial meeting. The presiding NIST chairperson will allocate the time available for discussion of each issue to be addressed, and will exercise authority as needed to ensure the equitable, efficient and orderly conduct of the workshop.

3. *Provisions:* This workshop will be open to the public; there is no registration fee. Housing is the responsibility of attendees.

The workshop will take place on September 18, 1992 at NIST, Gaithersburg, MD.

Documents in Public Record

Summary minutes of highlights of the meeting will be made available for inspection in the NVLAP program office, room A162, TRF Building 411 at the campus in Gaithersburg, Maryland.

Dated: August 27, 1992.

John W. Lyons,

Director.

[FR Doc. 92-21217 Filed 9-2-92; 8:45 am]

BILLING CODE 3510-13-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Application of Import Restraint Limits for Certain Cotton, Wool, and Man-Made Fiber Textile and Apparel Products Produced or Manufactured in the Former Republics of the Socialist Federal Republic of Yugoslavia, Other Than Serbia and Montenegro

August 28, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs to apply limits.

EFFECTIVE DATE: September 4, 1992.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6711. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Government of the United States has decided to apply the limits on various cotton, wool, and man-made fiber textile and apparel products established in the Memorandum of Understanding (MOU) dated January 18, 1990 to the former republics of the Socialist Federal Republic of Yugoslavia, other than Serbia and Montenegro.

A copy of the bilateral agreement with the former Socialist Federal Republic of Yugoslavia is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-3889.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 56 FR 65244, published on December 16, 1991.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 28, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on June 1, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns counting imports of textile products in Categories 200-239, 300-369, 400-469, 600-670 and 800-899, produced or manufactured in Croatia, Slovenia and Bosnia-Hercegovina. You are directed to no longer count imports of textile products, produced or manufactured in Croatia, Slovenia and Bosnia-Hercegovina.

Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1984); pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 26 and 27, 1978, as amended and extended by a Memorandum of Understanding dated January 18, 1990, between the Governments of the United States and the former Socialist Federal Republic of Yugoslavia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on September 4, 1992, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, and man-made fiber textile products in the following categories, produced or manufactured in the former republics of the Federal Republic of Yugoslavia, other than Serbia and Montenegro, cumulatively, and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992, in excess of the following levels of restraint:

Category	Twelve-month restraint limit [1]
300/301	1,890,826 kilograms.
338/339	555,490 dozen of which not more than 333,294 dozen shall be in Categories 338-S/339-S [2].
340/640	482,297 dozen.
341/641	314,483 dozen.
410	510,050 square meters.
433	8,220 dozen.
434	9,113 dozen.
435	40,205 dozen.
442	11,300 dozen.
443/643	363,397 numbers of which not more than 108,266 numbers shall be in Category 443.
444	94,854 numbers.
447/448	50,390 dozen of which not more than 31,901 dozen each shall be in Categories 447 and 448.
604-A [3]	364,206 kilograms.
611	11,886,428 square meters.
618	-0-
624	3,825,375 square meters.
666-B [4]	1,088,035 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1991.

[2] Category 338-S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.3010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.0068, 6112.11.0030 and 6114.20.0005; Category 339-S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2010, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.0070, 6112.11.0040, 6114.20.0010 and 6117.90.0022.

[3] Category 604-A: only HTS number 5509.32.0000.

[4] Category 666-B: only HTS numbers 6301.10.0000, 6301.40.0010, 6301.40.0020 and 6301.90.0010.

Imports charged to these category limits for the period January 1, 1991 through December 31, 1991 for goods exported from the former Socialist Federal Republic of Yugoslavia shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the bilateral agreement between the Governments of the United States and the former Socialist Federal Republic of Yugoslavia.

You are also directed, effective on September 4, 1992, to cancel the directive issued to you on December 20, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive established limits on cotton, wool, and man-made fiber textile products in various categories, produced or manufactured in the Socialist Federal Republic of Yugoslavia and exported during 1992.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-21156 Filed 9-2-92; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before October 5, 1992.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Cary Green, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Cary Green, (202) 708-5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public

consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Cary Green at the address specified above.

Dated: August 28, 1992.

Cary Green,

Director, Information Resources Management Service.

Office of Elementary and Secondary Education

Type of Review: Revision
Title: Recordkeeping Requirements for LEAs and SEAs Operating Chapter 1 Projects under Chapter 1 of Title I of ESEA
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 0
Burden Hours: 0
Recordkeeping Burden:
Recordkeepers: 14,199
Burden Hours: 410,110
Abstract: State educational agencies, state agencies and local education agencies are required to keep such reports for subgrants for programs authorized under 34 CFR Part 200 pursuant to the Elementary and Secondary Education Act of 1965, as amended. The Department uses the information to ensure compliance with the requirements.

Type of Review: Reinstatement
Title: Drug-Free Schools and Communities Training Grants Program
Frequency: Annually
Affected Public: State or local governments; non-profit institutions
Reporting Burden:
Responses: 300
Burden Hours: 9,000
Recordkeeping Burden:
Recordkeepers: 55
Burden Hours: 550
Abstract: This form will be used by State educational agencies to apply for grants under the Drug-Free Schools and Communities Training Grants Program. The Department uses the information to make grant awards.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement
Title: Performance Report for Training Personnel for the Education of Individuals with Disabilities
Frequency: Annually
Affected Public: State or local governments; businesses or other for-profit; non-profit institutions; small businesses or organizations
Reporting Burden:
Responses: 832
Burden Hours: 973
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: Grantees that have participated in the Training Personnel for the Education of Individuals with Disabilities program are to submit these reports to the Department. The Department uses the information to assess the accomplishments of project goals and effective program management.

Type of Review: Revision
Title: Application for Training Personnel for the Education of the Handicapped
Frequency: Annually
Affected Public:
Reporting Burden:
Responses: 2,710
Burden Hours: 97,820
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by State agencies and other institutions to apply for funding under the Training Personnel for Education of the Handicapped Program. The Department uses the information to make grant awards.

Office of Postsecondary Education

Type of Review: Revision
Title: Application for Grants under the Jacob K. Javits Fellows Program
Frequency: Annually
Affected Public: Individuals or households
Reporting Burden:
Responses: 3,500
Burden Hours: 17,500
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by individuals to apply for funding under the Jacob K. Javits Fellows Program. The Department will use the information to make grant awards.

Type of Review: Existing
Title: Performance Report (Final) for Grants under the Strengthening Institutions Program
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden:
Responses: 103
Burden Hours: 2,472
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: Grantees that have participated in the Strengthening Institutions Program are to submit these reports to the Department. The Department uses the information to assess the accomplishments of project goals and effective program management.

Office of Educational Research and Improvement

Type of Review: New
Title: Longitudinal Study of Schools
Frequency: One time
Affected Public: Individuals or households; non-profit institutions
Reporting Burden:
Responses: 2,540
Burden Hours: 1,977
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This survey will be used to determine how America's secondary schools have changed since 1980. The Department will use the information to report to policymakers, practitioners and researchers through the Educational Resources Information Center and the National Technical Information Service.

Office of Policy and Planning

Type of Review: New
Title: Study of the Adult Education for the Homeless Program
Frequency: One time
Affected Public: State or local governments
Reporting Burden:
Responses: 2,435
Burden Hours: 776
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This study is being used to evaluate the operation and services provided through the Adult Education for the Homeless (AEH) program. The Department will use the information to develop guidelines for program evaluation and to improve technical assistance to AEH projects.

[FR Doc. 92–21205 Filed 9–2–92; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Energy.

ACTION: Notice of request submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. 96-511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (a DOE component which term includes the Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before October 5, 1992. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so, as soon as possible. The Desk Officer may be telephoned at (202) 395-3084. (Also, please notify the EIA contact listed below.)

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI-73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254-5348.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Office of Emergency Planning and Operations
2. OE-417R (previously IE-417R)
3. 1901-0288
4. Power System Emergency Reporting Procedures
5. Extension
6. Other—event oriented
7. Mandatory
8. State or local governments, Businesses or other for-profit, Federal agencies or employees
9. 40 respondents
10. 1.13 responses per respondent
11. 2.89 hours per response
12. 130 hours
13. OE-417R will provide the Department of Energy with information regarding the location of where emergency electric power supply situations exist on an electrical power system or on a regional electric system. The data also provide DOE with a basis for determining the appropriate Federal action to relieve an electrical energy supply emergency. Respondents are electric utilities.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. No. 93-275, Federal Energy Administration Act of 1974, 15 U.S.C. § 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, August 27, 1992.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 92-21271 Filed 9-2-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER92-779-000, et al.]

Arizona Public Service Co., et al.; Electric rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Arizona Public Service Co.

[Docket No. ER92-779-000]

August 26, 1992.

Take notice that on August 12, 1992, Arizona Public Service Company (APS) tendered for filing a revised Exhibit B to the Transmission Service Agreement between APS and Tohono O'odahm Utility Authority (TOUA) AS-FERC Rate Schedule No. 161). Exhibit B lists Contract Demands applicable under the Agreement.

No change from the currently effective rate or revenue levels is proposed herein.

A copy of this filing has been served on TOUA and the Arizona Corporation Commission.

Comment date: September 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Southern California Edison Co.

[Docket No. ER92-789-000]

August 26, 1992.

Take notice that on August 20, 1992, Southern California Edison Company (Edison) tendered for filing the Determination of Combustion Turbine (CT) Rated Capabilities and Minimum Take Obligation (MTO) in accordance with the Supplement Agreement between Edison and Anaheim for the Integration of the Anaheim Combustion Turbines, Commission Rate Schedule No. 246.16 approved by the Commission on March 25, 1991 in Docket No. ER91-290-000.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: September 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. Florida Power Corp.

[Docket No. ER92-870-000]

August 26, 1992.

Take notice that on August 4, 1992, Florida Power Corporation (Florida Power) filed a letter as a result of discussions with the Commission's Staff, stating that Florida Power hereby agrees that its charges relating to the Cabbage Hill interconnection under section 14 of the June 14, 1992 Construction Agreement between Florida Power and Tampa Electric Company, will not exceed the charges resulting from the application of the formula attached thereto. Florida Power requested that this letter and the attached formula be accepted as supplements to the Agreement.

Comment date: September 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. The Washington Water Power Co.

[Docket No. ER92-688-000]

August 26, 1992.

Take notice that on August 19, 1992, The Washington Water Power Company (WWP) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.11 an Amendment to its annual contract rate for the 15-Year Agreement for Purchase and Sale of Firm Capacity and Energy between The Washington Water Power Company and Puget Sound Power & Light Company. WWP states that the purpose of the amendment is to provide additional cost support requested by Commission staff. WWP requests a waiver of the sixty (60) day filing requirement in order for the Agreement to have an effective date of April 1, 1992 as required by contract.

A copy of the filing was mailed to Puget Sound Power & Light.

Comment date: September 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. Mid-Continent Area Power Pool

[Docket No. ER92-483-000]

August 26, 1992.

Take notice that on August 7, 1992, Mid-Continent Area Power Pool (MAPP) tendered for filing an amendment in the above-referenced docket.

Comment date: September 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. Louisville Gas and Electric Co.

[Docket No. ER92-533-000]

August 26, 1992.

Take notice that Louisville Gas and Electric Company (LG&E), by letter dated August 20, 1992, tendered for filing an amendment to Rate Schedule T—Firm Transmission Service, originally filed on May 6, 1992.

In the filing, Rate Schedule T was amended to: (1) Include language which would require LG&E to file with the Commission any time a rate other than the standard rate is charged; (2) describe in more detail how the opportunity cost provision would operate; (3) modify the definition of available capacity; (4) add a provision for incorporating an electronic bulletin board; (5) remove certain restrictions regarding complaints; (6) include a completion date in the study agreement. LG&E also provided the Commission with clarification regarding the transmission customers' priority of service and LG&E's ownership interest in Ohio Valley Electric Corporation.

A copy of the filing was served upon the Kentucky Public Service Commission.

Comment date: September 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Upper Peninsula Power Co.

[Docket No. ES92-54-000]

August 26, 1992.

Take notice that on August 24, 1992, Upper Peninsula Power Company filed an application with the Federal Energy Regulatory Commission under sectin 204 of the Federal Power Act requesting authorization to issue not more than $18 million of unsecured promissory notes on or before October 1, 1994, with a final maturity date no later than October 1, 1995.

Comment date: September 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. Texas-New Mexico Power Co.

[Docket No. ES92-53-000]

August 26, 1992.

Take notice that August 24, 1992, Texas-New Mexico Power Company filed an application with the Federal Energy Regulatory Commission under section 204 of the Federal Power Act requesting authorization to issue not more than $250 million of short-term promissory notes and other evidences of indebtedness on or before October 1, 1994, with a final maturity date no later than October 1, 1995.

Comment date: September 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. Duke Power Co.

[Docket No. ER92-775-000]

August 26, 1992.

Take notice that on August 11, 1992, Duke Power Company (Duke) tendered for filing with the Commission a notice of the proposed termination of the Letter Agreement between Duke and Carolina Power & Light Company which was approved by the Commission's Letter Order dated February 9, 1992. This Letter Agreement provided for the installation by Duke of a second 230/100-44kV transformer at Pisgah Tie Substation. Duke has proposed an effective termination date of November 30, 1992.

Copies of this filing were mailed to Carolina Power & Light Company, the North Carolina Utilities Commission, and the South Carolina Public Service Commission.

Comment date: September 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. Florida Power & Light Co.

[Docket No. ER92-787-000]

August 26, 1992.

Take notice that on August 6, 1992, Florida Power & Light Company (FP&L) tendered for filing a Notice of Cancellation of FPL Rate Schedule No. 54.

Comment date: September 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

11. Tucson Electric Power Co.

[Docket No. ER92-762-000]

August 26, 1992.

Take notice that on August 17, 1992, Tucson Electric Power Company (Tucson) tendered an amended filing of an Agreement entitled 1992 Short Term Power Sale Agreement (the Agreement) between Tucson and Citizens Utilities Company (Citizens). The Agreement established the terms for the sale of capacity and energy by Tucson to Citizens for the period commencing May 15, 1992 and ending September 30, 1992. On July 31, 1992 Tucson tendered for filing a Notice of Cancellation (the Notice of Cancellation) of the Agreement).

An amended filing is being made to withdraw the filing of the Notice of Cancellation. Tucson intends to file in another docket a notice extending the term of the Agreement.

The Parties request waiver of the Commission's regulations regarding filing.

Copies of this filing have been served upon all parties affected by this proceeding.

Comment date: September 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

12. UtiliCorp United Inc.

[Docket No. ES92-52-000]

August 27, 1992.

Take notice that on August 19, 1992, UtiliCorp United Inc. (UtiliCorp) filed an application with the Federal Energy Regulatory Commission under § 204 of the Federal Power Act requesting authorization to issue up to and including 4,600,000 shares of common stock, par value $1.00 per share, up to and including $125 million of Debt Securities and up to and including $7 million of Pollution Control Bonds. Also, UtiliCorp requests exemption from the Commission's competitive bidding regulations.

Comment date: September 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

13. Arkansas Power & Light Co., et al.

[Docket No. EL92-36-000]

Arkansas Power & Light Co.

[Docket Nos. ER92-341-000 and EL92-35-000]

August 27, 1992.

Take notice that on August 24, 1992, the Commission issued an order in the above-indicated dockets initiating an investigation in Docket No. EL92-36-000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL92-36-000 will be 60 days after publication of this notice in the **Federal Register**.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21194 Filed 9-2-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP92-660-000, et al.]

ANR Pipeline Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. ANR Pipeline Co.

[Docket No. CP92-660-000]

August 26, 1992.

Take notice that on August 12, 1992, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP92-660-000 a prior notice request with the Commission pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a new delivery point in Waupaca County, Wisconsin, for service to Wisconsin Gas Company (WGC), an existing customer, under the blanket certificate issued in Docket No. CP82-480-000 pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

ANR proposes to construct and operate a new delivery point and meter station as an interconnection between ANR and WGC in Waupaca County, to be known as the Fremont Readfield meter station. ANR estimates that it would cost $200,000 to construct the proposed facilities. ANR would finance the construction of its proposed facilities with internally generated funds. ANR would use these facilities as an additional delivery point for firm sales service to WGC under ANR's FERC Rate Schedule CD-1. ANR states that addition of the proposed delivery point would not change WGC's current peak day and annual sales entitlements, so that the service proposed herein would not impact on the total quantities ANR is currently authorized to sell to WGC. ANR also states that the addition of this delivery point would not result in any detriment or disadvantage to ANR's other customers.

Comment date: October 13, 1992, in accordance with Standard Paragraph G at the end of this notice.

2. Williams Natural Gas Co.

[Docket No. CP92-645-000]

August 26, 1992.

Take notice that on August 11, 1992, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP92-645-000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon an exchange of natural gas with Transwestern Pipeline Company (Transwestern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

WNG proposes of abandon the exchange of up to 75,000 Dt equivalent of gas per day with Transwestern, which was authorized by the Commission in Docket No. CP79-326 and carried out pursuant to the provisions of an exchange agreement between WNG and Transwestern dated May 15, 1979, on file with the Commission as WNG's Rate Schedule X-16. WNG states that in a letter dated May 15, 1990, WNG informed Transwestern of its intention to terminate the exchange. It is asserted that the proposal involves no abandonment of facilities. It is stated that the abandonment would not cause any adverse impact on WNG's customers. It is explained that no gas has flowed under the agreement since 1984 and that no imbalance exists.

Comment date: September 16, 1992, in accordance with Standard Paragraph F at the end of this notice.

3. Midwestern Gas Transmission

[Docket No. CP92-667-000]

August 26, 1992.

Take notice that on August 21, 1992, Midwestern Gas Transmission Company (Midwestern), P.O. Box 2511, Houston, Texas 77252 filed a request with the Commission in Docket No. CP92-667-000 pursuant to 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to operate an existing tap which was initially constructed under section 311(a) of the Natural Gas Policy Act of 1978 (NGPA), under Midwestern's blanket certificate issued in Docket No. CP82-414-000, all as more fully set forth in the request which is open to public inspection.

Midwestern states that it constructed a 10-inch hot tap in Spencer County, Indiana, pursuant to section 311 of the NGPA in order to establish a delivery connection with Southern Indiana Gas and electric Company (SIGECO). It is asserted that since Midwestern also render jurisdictional transportation services under its subpart G blanket certificate, it is necessary that flexibility be attained as to the use of its facilities for the benefit of all customers on its system.

Comment date: October 13, 1992, in accordance with Standard Paragraph G at the end of this notice.

4. Northern Natural Gas Co.

[Docket No. CP92-672-000]

August 27, 1992.

Take notice that on August 25, 1992, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP92-672-000, an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon two individually certificated transportation services for Florida Gas Transmission Company (FGT), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern states that by order issued November 21, 1983, in Docket No. CP83-405-000, Northern was authorized to transport natural gas for FGT pursuant to two gas transportation agreements dated January 3, 1983 (Agreements). Northern further states that each Agreement provides for the receipt, transportation and delivery by Northern

of up to 45,000 Mcf of natural gas per day for the account of FGT on an interruptible basis. Northern asserts that it filed these Agreements as Rate Schedules T-33 and T-34 in Volume No. 2 of its FERC Gas Tariff.

Northern indicates that Northern and FGT have agreed that the Agreements shall be terminated upon the effective date of an order approving the instant application.

Comment date: September 17, 1992, in accordance with Standard Paragraph F at the end of this notice.

5. Tennessee Gas Pipeline Co.

[Docket No. CP91-2206-003]

August 27, 1992

Take notice that on August 19, 1992, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511 Houston, Texas 77252, filed a petition to amend in Docket No. CP91-2206-003 so as to amend the certificate of public convenience and necessity issued to Tennessee in this proceeding on May 20, 1992 and June 30, 1992, under section 7 of the Natural Gas Act and supart A of part 157 of the Commission's Regulations, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee proposes to revise the initial rates that were approved by the Commission in the June 30, 1992 order to more accurately reflect the actual cost of constructing the certificated facilities. Tennessee states that the present cost estimate for the certificated facilities is $50.6 million, an $8.0 million increase over the original estimated cost. Tennessee attributes the increase in costs to higher materials cost, company and contractor costs related to environmental compliance that were higher than expected, other costs associated with installation, and inflation. Based on the increased facility costs, the revised initial rates, expressed as one-part demand rates (per Dth), are as follows:

Segment U	Segment 1	Segment 2	Segment 3
$12.47	$0.51	$24.04	$16.25

Tennessee also seeks in this petition to amend to establish Rate Schedule NET-Elgen. Tennessee had originally proposed to provide the service approved in the original application under Rate Schedule NET-EU, but it was later recognized that there were other services using this designation that had different rates and rate designs. Therefore, in order to promote the proper and efficient administration of its tariff, Tennessee has proposed to render the transportation service approved in the original application under the newly-designated Rate Schedule NET-Elgen. Further, Tennessee seeks to alter the straight fixed-variable rate design approved in the May 20, 1992 and June 30, 1992 orders. Tennessee now requests to allow negotiated rates for customers under Rate Schedule NET-Elgen on a non-discriminatory basis. Under the new proposal, Tennessee and the shipper may agree to any demand charge, up to the maximum demand rate stated in Tennessee's tariff. Costs not recovered in the negotiated demand rate will be recovered in a negotiated commodity rate, as long as the sum of the negotiated demand rate divided by 30.4 and the negotiated commodity rate is not higher than the 100 percent load factor derivative of the applicable demand rate stated in Tennessee's tariff. Any deviation from the standard 100 percent demand rate will be stated in the shipper's contract.

Comment date: September 17, 1992, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

6. Southern Natural Gas Co. and South Georgia Natural Gas Co.

[Docket No. CP92-668-000]

August 27, 1992.

Take notice that on August 24, 1992, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202-2563, and South Georgia Natural Gas Company (South Georgia), Post Office Box 2563, Birmingham, Alabma 35202-2563, (jointly referred to as Applicants), filed an application with the Commission in Docket No. CP92-668-000 pursuant to section 7(c) of the Natural Gas Act (NGA) for authorization to (1) construct, install, and operate certain jointly-owned main line looping and compression facilities, as well as related appurtenant facilities; (2) replace certain existing measurement and regulating facilities; (3) modify and upgrade an existing compressor unit, then retain the compressor unit on a stand-by basis; (4) operate certain compression facilities without operating mode restrictions; and (5) operate as jurisdictional facilities certain existing jointly-owned pipeline, metering, and appurtenant facilities originally constructed and operated pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA) and § 284.3 of the Commission's Regulations, all as more fully set forth in the application which is open to the public for inspection.

Applicants state that South Georgia has received long-term commitments for additional firm transportation service from the City of Cordele, Georgia; Florida Power Corporation; International Paper Company; Packaging Corporation of America; Peoples Gas System, Inc., and Procter & Gamble Paper Products Company (Shippers), for a total increase of 40,428 Mcf per day of natural gas.

Southern and South Georgia state that in order to provide the additional 40,428 Mcf per day of firm transportation service to the Shippers, Applicants need to construct, install, and operate (1) approximately 62.9 miles of 12-inch and 16-inch pipeline looping on South Georgia's 12-inch and 10-inch main lines in Alabama and Georgia; (2) one 1,340 H.P. turbine compressor unit at South Georgia's existing Albany, Georgia, compressor station; and (3) one 4,390 H.P. turbine compressor unit and appurtenant facilities near South Georgia's Adel Line in Brooks County, Georgia. All of these proposed facilities would be located on South Georgia's system and would be jointly-owned by Southern and South Georgia.

In order to accommodate the proposed increase in firm transportation volumes associated with this project, Southern proposes to replace certain measurement and regulating facilities located at the existing delivery point to South Georgia in Lee County, Alabama. In addition, South Georgia proposes minor modifications to its existing 1,100 H.P. reciprocating compressor at its Albany compressor station in order to operate the compressor unit at 1,232 H.P. and to retain it on a stand-by basis at the same location. South Georgia also requests the removal of the series operating mode restriction with respect to all compression facilities at the Albany compressor station.

In conjunction with this general expansion project, Southern and South Georgia propose to operate as jurisdictional facilities certain existing Florida pipeline, metering, and appurtenant facilities, known as the Jacksonville pipeline, which were originally constructed and operated pursuant to section 311 of the NGPA and § 284.3 of the Regulations. Applicants state that this conversion could be done without constructing or rearranging any facilities. Applicants also state that the Jacksonville pipeline facilities are jointly-owned by Southern and South Georgia.

Southern and South Georgia estimate that they would spend approximately $26,782,440 to construct, install, and modify the herein proposed facilities.

Comment date: September 17, 1992, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed with in the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21195 Filed 9-2-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ST92-4619-000 through ST92-5089-000]

Columbia Gas Transmission Corp.; Self-Implementing Transactions

August 28, 1992.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to part 284 of the Commission's regulations, sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA) and section 5 of the Outer Continental Shelf Lands Act.[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "part 284 Subpart" column in the following table indicates the type of transaction.

A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's regulations and section 311(a)(2) of the NGPA.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G-S" indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines pursuant to § 284.223 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G-LT" or "G-LS" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "G-HT" or "G-HS" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "K" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipelines pursuant to § 284.303 of the Commission's regulations.

A "K-S" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of shippers other than interstate pipeline pursuant to § 284.303 of the Commission's regulations.

Lois D. Cashell,

Secretary.

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's regulations.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate schedule	Date commenced	Projected termination date
ST92-4619	Columbia Gas Transmission Corp.	Mountaineer Gas Co	06-30-92	B	580	N	I	06-01-92	Indef.
ST92-4620	Natural Gas P/L Co. of America.	Coastal Gas Marketing Co	06-30-92	G-S	75,000	N	I	06-01-92	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]	Aff. Y/A/N [3]	Rate schedule	Date commenced	Projected termination date
ST92-4621	Natural Gas P/L Co. of America.	Amoco Energy Trading Corp	06-30-92	B	10,000	N	I	05-01-92	Indef.
ST92-4622	Delhi Gas Pipeline Corp	Mississippi River Trans. Corp	07-01-92	C	500	N	I	06-01-92	Indef.
ST92-4623	Delhi Gas Pipeline Corp	El Paso Natural Gas Co	07-01-92	C	250,000	N	I	06-03-92	Indef.
ST92-4624	ANR Pipeline Co	Highland Energy Co	07-01-92	G-S	8,000	N	I	06-03-92	Indef.
ST92-4625	ANR Pipeline Co	Exide Corp	07-01-92	G-S	750	N	I	06-10-92	Indef.
ST92-4626	ANR Pipeline Co	Fuel Services Group, Inc	07-01-92	G-S	2,000	N	I	06-04-92	Indef.
ST92-4627	ANR Pipeline Co	Aquila Energy Marketing Corp	07-01-92	G-S	150,000	N	I	06-06-92	Indef.
ST92-4628	Sipco Gas Transmission Corp	Natural Gas P/L Co. of America.	07-01-92	C	100,000	N	I	06-01-92	Indef.
ST92-4629	Sipco Gas Transmission Corp	Natural Gas P/L Co. of America.	07-01-92	C	100,000	N	I	06-01-92	Indef.
ST92-4630	Valero Transmission, LP	Texas Gas Transmission Co	07-01-92	C	7,700	N	I	06-23-92	Indef.
ST92-4631	Valero Transmission, LP	El Paso Natural Gas Co	07-01-92	C	50,000	N	I	06-01-92	Indef.
ST92-4632	Valero Transmission, LP	Texas Eastern Transmission Corp.	07-01-92	C	12,000	N	I	06-01-92	Indef.
ST92-4633	Kern River Gas Transmission Co.	City of Burbank	07-01-92	G-S	20,000	N	I	06-05-92	Indef.
ST92-4634	Kern River Gas Transmission Co.	Canwest Gas Supply U.S.A. Inc.	07-01-92	G-S	300,000	N	I	06-06-92	Indef.
ST92-4635	Kern River Gas Transmission Co.	Union Pacific Fuels, Inc	07-01-92	G-S	100,000	N	I	04-20-92	03-01-07
ST92-4636	Algonquin Gas Transmission Co.	Direct Gas Supply Corp	07-01-92	G-S	85,255	N	I	06-08-92	Indef.
ST92-4637	Algonquin Gas Transmission Co.	American Central Gas	07-01-92	G-S	800,000	N	I	06-13-92	Indef.
ST92-4638	Algonquin Gas Transmission Co.	Citizens Gas Supply Corp	07-01-92	G-S	200,000	N	I	05-12-92	Indef.
ST92-4639	Algonquin Gas Transmission Co.	O & R Energy, Inc	07-01-92	G-S	300,000	N	I	06-01-92	Indef.
ST92-4640	Algonquin Gas Transmission Co.	Unigas Energy, Inc	07-01-92	G-S	100,000	N	I	06-01-92	Indef.
ST92-4641	Algonquin Gas Transmission Co.	Union Pacific Fuels, Inc	07-01-92	G-S	50,000	N	I	06-01-92	Indef.
ST92-4642	Algonquin Gas Transmission Co.	Entrade Corp	07-01-92	G-S	9,700,000	N	I	05-09-92	Indef.
ST92-4643	Tennessee Gas Pipeline Co	Piedmont Natural Gas Co	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4644	Tennessee Gas Pipeline Co	City of Holyoke	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4645	Tennessee Gas Pipeline Co	Delta Natural Gas Co	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4646	Tennessee Gas Pipeline Co	Public Service Electric & Gas Co.	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4647	Tennessee Gas Pipeline Co	Southern Connecticut Gas Co	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4648	Tennessee Gas Pipeline Co	Commonwealth Gas Co	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4649	Tennessee Gas Pipeline Co	Columbia Gas Transmission Corp.	07-01-92	G	2,000,000	A	I	06-25-92	Indef.
ST92-4650	Tennessee Gas Pipeline Co	Valley Gas Co	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4651	Tennessee Gas Pipeline Co	T.W. Phillips Gas Oil Co	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4652	Tennessee Gas Pipeline Co	Fitchburg Gas & Electric Light Co.	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4653	Tennessee Gas Pipeline Co	Equitrans, Inc	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4654	Tennessee Gas Pipeline Co	City of Dickson	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4655	Tennessee Gas Pipeline Co	Pennsylvania and Southern Gas Co.	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4656	Tennessee Gas Pipeline Co	National Gas and Oil Co	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4657	Tennessee Gas Pipeline Co	Transcontinental Gas P/L Corp.	07-01-92	G	2,000,000	A	I	06-25-92	Indef.
ST92-4658	Tennessee Gas Pipeline Co	Granite State Gas Transmission.	07-01-92	G	2,000,000	A	I	06-25-92	Indef.
ST92-4659	Tennessee Gas Pipeline Co	East Ohio Gas Co	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4660	Tennessee Gas Pipeline Co	Connecticut Light and Power Co.	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4661	Tennessee Gas Pipeline Co	Creole Gas Piperline Corp	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4662	Tennessee Gas Pipeline Co	Trunkline Gas Co	07-01-92	G	2,000,000	A	I	06-25-92	Indef.
ST92-4663	Tennessee Gas Pipeline Co	Baltimore Gas & Electric Co	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4664	Tennessee Gas Pipeline Co	Mountaineer Gas Co	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4665	Tennessee Gas Pipeline Co	Boston Gas Co	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4666	Tennessee Gas Pipeline Co	Central Hudson Gas & Electric Corp.	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4667	Tennessee Gas Pipeline Co	Westfield Gas & Elect. Light Dept.	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4668	Tennessee Gas Pipeline Co	New York State Elect. & Gas Corp.	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4669	Tennessee Gas Pipeline Co	Consolidated Edison Co. of NY, Inc.	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4670	Tennessee Gas Pipeline Co	Pennsylvania Gas & Water Co	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4671	Tennessee Gas Pipeline Co	Connecticut Natural Gas Corp	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4672	Tennessee Gas Pipeline Co	Natural Gas P/L Co. of America.	07-01-92	G	2,000,000	A	I	06-25-92	Indef.
ST92-4673	Tennessee Gas Pipeline Co	Midwestern Gas Transmission Co.	07-01-92	B	2,000,000	A	I	06-25-92	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]	Aff. Y/A/N [3]	Rate schedule	Date commenced	Projected termination date
ST92-4674	Tennessee Gas Pipeline Co	Varibus Corp	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4675	Tennessee Gas Pipeline Co	National Fuel Gas Supply Corp	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4676	Tennessee Gas Pipeline Co	Utilicorp United, Inc	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4677	Tennessee Gas Pipeline Co	Energy North, Inc	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4678	Tennessee Gas Pipeline Co	United Gas Pipe Line Co	07-01-92	G	2,000,000	A	I	06-25-92	Indef.
ST92-4679	Tennessee Gas Pipeline Co	Orange & Rockland Utilities, Inc.	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4680	Tennessee Gas Pipeline Co	North Penn Gas Co	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4681	Tennessee Gas Pipeline Co	Berkshire Gas Co	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4682	Tennessee Gas Pipeline Co	Eastern Shore Natural Gas Co	07-01-92	G	2,000,000	A	I	06-25-92	Indef.
ST92-4683	Tennessee Gas Pipeline Co	Essex County Gas Co	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4684	Tennessee Gas Pipeline Co	North Alabama Gas District	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4685	Tennessee Gas Pipeline Co	Colonial Gas Co	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4686	Tennessee Gas Pipeline Co	CNG Transmission Corp	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4687	Tennessee Gas Pipeline Co	East Tennessee Natural Gas Co.	07-01-92	G	2,000,000	A	I	06-25-92	Indef.
ST92-4688	Tennessee Gas Pipeline Co	Texas Eastern Transmission Corp.	07-01-92	G	2,000,000	A	I	06-25-92	Indef.
ST92-4689	Tennessee Gas Pipeline Co	Enmark Gas Corp	07-01-92	G-S	78,750	N	I	06-01-92	Indef.
ST92-4690	Northern Natural Gas Co	Northwestern Public Service Co.	07-01-92	B	100	N	F	06-16-92	07-31-92
ST92-4691	Northern Natural Gas Co	Metropolitan Utilities District	07-01-92	B	500	N	F/I	06-04-92	Indef.
ST92-4692	Northern Natural Gas Co	Panhandle Trading Co	07-01-92	G-S	150,000	N	F/I	06-04-92	Indef.
ST92-4693	Northern Natural Gas Co	Western Gas Marketing, Inc	07-01-92	G-S	150,000	N	F/I	06-01-92	Indef.
ST92-4694	Channel Industries Gas Co	Enron Industrial Natural Gas Co.	07-02-92	C	50,000	N	I	06-16-92	Indef.
ST92-4695	Tennessee Gas Pipeline Co	Transok Gas Co	07-02-92	G-S	400,000	N	I	06-16-92	Indef.
ST92-4696	Kern River Gas Transmission Co.	Nevada Cogeneration Associates #1.	07-02-92	G-S	13,000	N	F	04-06-92	Indef.
ST92-4697	Superior Offshore Pipeline Co	UGI Corp	07-02-92	B	5,250	N	I	08-01-91	Indef.
ST92-4698	Superior Offshore Pipeline Co	Central Illinois Public Service	07-02-92	B	67,600	N	I	02-01-92	Indef.
ST92-4699	Superior Offshore Pipeline Co	Louisiana Gas System, Inc	07-02-92	B	10,000	N	I	11-01-91	Indef.
ST92-4700	Transcontinental Gas P/L Corp.	Endevco Oil and Gas Co	07-02-92	G-S	25,000	N	I	06-04-92	Indef.
ST92-4701	Southern Natural Gas Co	Direct Gas Supply	07-02-92	G-S	100,000	N	I	06-03-92	Indef.
ST92-4702	Transwestern Pipeline Co	Pacific Gas & Electric Co	07-02-92	B	100,000	N	I	06-07-92	Indef.
ST92-4703	Florida Gas Transmission Co	Shoreham Pipeline Co	07-02-92	G-S	2,000	N	I	06-01-92	Indef.
ST92-4704	KN Energy, Inc	Northern Gas Co	07-06-92	G-S	11,000	Y	I	06-17-92	Indef.
ST92-4705	Delhi Gas Pipeline Corp	Black Marlin Pipeline Co	07-06-92	C	250,000	N	I	06-09-92	Indef.
ST92-4706	Gas Co. of New Mexico	Marathon Oil Co	07-06-92	G-HT	11,997	N	I	06-03-92	02-28-93
ST92-4707	Trunkline Gas Co	Stellar Gas Co	07-06-92	G-S	50,000	N	I	06-18-92	Indef.
ST92-4708	Transok, Inc	Williams Natural Gas Co	07-06-92	C	10,000	N	I	06-02-92	Indef.
ST92-4709	Northern Natural Gas Co	Panda Resources, Inc	07-06-92	G-S	500,000	N	F/I	06-05-92	Indef.
ST92-4710	Williams Natural Gas Co	Vulcan Chemicals	07-06-92	G-S	13,000	N	I	06-01-92	Indef.
ST92-4711	Williams Natural Gas Co	Midcoast Ventrures I	07-06-92	G-S	5,000	N	I	06-03-92	Indef.
ST92-4712	Gas Gathering Corp	Nasser Oil & Gas, Inc	07-06-92	G-S	500	N	I	07-01-92	Indef.
ST92-4713	Gas Gathering Corp	Graham Royalty, Ltd	07-06-92	G-S	1,000	N	I	07-01-92	Indef.
ST92-4714	Transcontinental Gas P/L Corp.	Consolidated Edison Co. of NY, Inc.	07-06-92	B	500,000	N	F/I	06-08-92	Indef.
ST92-4715	Louisiana Resources P/L Co., LP.	Vesta Energy Co	07-06-92	C	60,000	N	I	07-01-92	Indef.
ST92-4716	Consumers Power Co	General Motors Corp	07-07-92	G-HT	1,500	N	I	06-15-92	Indef.
ST92-4717	Michigan Gas Storage Co	General Motors Corp	07-07-92	B	1,500	Y	I	06-15-92	Indef.
ST92-4718	Gateway Pipeline Co	Laser Marketing Co	07-07-92	G-S	100,000	Y	I	06-19-92	10-17-92
ST92-4719	United Gas Pipe Line Co	Texaco Gas Marketing Inc	07-07-92	G-S	366,800	N	I	06-24-92	10-22-92
ST92-4720	United Gas Pipe Line Co	Enron Gas Marketing, Inc	07-07-92	G-S	33,500	N	F	06-23-92	10-21-92
ST92-4721	United Gas Pipe Line Co	Coastal Gas Marketing Co	07-07-92	G-S	262,000	N	I	06-23-92	10-21-92
ST92-4722	United Gas Pipe Line Co	Shell Gas Trading Co	07-07-92	G-S	10,000	N	F	06-23-92	10-17-92
ST92-4723	United Gas Pipe Line Co	Pennzoil Gas Marketing Co	07-07-92	G-S	209,600	N	I	06-24-92	10-22-92
ST92-4724	United Gas Pipe Line Co	Mobil Natural Gas Inc	07-07-92	G-S	52,400	N	I	06-23-92	10-21-92
ST92-4725	United Gas Pipe Line Co	Union Oil Co. of California	07-07-92	G-S	26,200	N	I	06-19-92	10-17-92
ST92-4726	United Gas Pipe Line Co	Delhi Gas Pipeline Corp	07-07-92	G-S	104,800	N	I	06-25-92	10-23-92
ST92-4727	United Gas Pipe Line Co	Enron Gas Marketing, Inc	07-07-92	G-S	524,000	N	I	06-23-92	10-21-92
ST92-4729	Natural Gas P/L Co. of America.	Minnegasco	07-07-92	G-S	200,000	N	F	05-01-92	04-30-07
ST92-4730	Kern River Gas Transmission Co.	Tosco Corp	07-07-92	G-S	80,000	N	I	06-11-92	Indef.
ST92-4731	Kern River Gas Transmission Co.	Neste Oy	07-07-92	G-S	20,000	N	I	06-12-92	Indef.
ST92-4732	ANR Pipeline Co	Sante Fe International Corp	07-07-92	G-S	50,000	N	I	06-17-92	Indef.
ST92-4733	ANR Pipeline Co	CNG Trading Co	07-07-92	G-S	10,000	N	I	06-10-92	Indef.
ST92-4734	ANR Pipeline Co	Mobil Natural Gas, Inc	07-07-92	G-S	100,000	N	I	06-18-92	Indef.
ST92-4735	Northern Natural Gas Co	Eastex Hydrocarbons, Inc	07-07-92	G-S	100,000	N	F/I	06-08-92	Indef.
ST92-4736	Kern River Gas Transmission Co.	Natural Gas P/L Co. of America.	07-08-92	G-S	250,000	N	I	06-13-92	Indef.
ST92-4737	Kern River Gas Transmission Co.	Oregon Natural Gas Develop. Corp.	07-08-92	G-S	100,000	N	I	06-10-92	Indef.
ST92-4738	Webb/Duval Gatherers	Texas Eastern Transmission Co.	07-09-92	C	5,000	N	I	04-01-92	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]	Aff. Y/A/N [3]	Rate schedule	Date commenced	Projected termination date
ST92-4739	Westar Transmission Co	Natural Gas P/L Co. of America.	07-09-92	C	42,000	N	I	01-01-92	Indef.
ST92-4740	Columbia Gas Transmission Corp.	Van Dyne Crotty, Inc	07-09-92	G-S	420	Y	I	06-10-92	Indef.
ST92-4741	Columbia Gas Transmission Corp.	Gulf Ohio Corp	07-09-92	G-S	78	Y	F	07-01-92	Indef.
ST92-4742	Viking Gas Transmission Co	Northern Minnesota Utilities	07-09-92	G-S	4,028	N	I	06-19-92	Indef.
ST92-4743	Kern River Gas Transmission Co.	Norcen Marketing Inc	07-09-92	G-S	30,000	N	I	06-13-92	Indef.
ST92-4744	Kern River Gas Transmission Co.	North Canadian Marketing Corp.	07-09-92	G-S	200,000	N	I	06-12-92	Indef.
ST92-4745	Kern River Gas Transmission Co.	Continental Energy Marketing Ltd.	07-09-92	G-S	100,000	N	I	06-14-92	Indef.
ST92-4746	Kern River Gas Transmission Co.	Citizens Gas Supply Corp	07-09-92	G-S	572	N	I	06-12-92	Indef.
ST92-4747	Kern River Gas Transmission Co.	Texas-Ohio Gas, Inc	07-09-92	G-S	27,300	N	I	06-12-92	Indef.
ST92-4748	Tennessee Gas Pipeline Co	Diamond Shamrock Offshore Part. L.P.	07-10-92	G-S	107,000	N	I	06-27-92	Indef.
ST92-4749	Kern River Gas Transmission Co.	Reliance Gas Marketing Co	07-10-92	G-S	50,000	N	I	06-13-92	Indef.
ST92-4750	Trunkline Gas Co	Tenaska Marketing Ventures	07-10-92	G-S	100,000	N	I	06-30-92	Indef.
ST92-4751	Trunkline Gas Co	Stellar Gas Co	07-10-92	G-S	50,000	N	I	06-30-92	Indef.
ST92-4752	United Gas Pipe Line Co	Equitable Resources Marketing Co.	07-10-92	G-S	262,000	N	I	06-26-92	10-24-92
ST92-4753	United Gas Pipe Line Co	Associated Intrastate Pipeline Co.	07-10-92	G-S	209,600	N	I	07-01-92	10-29-92
ST92-4754	United Gas Pipe Line Co	Aquila Energy Marketing Corp	07-10-92	G-S	52,400	N	I	07-01-92	10-29-92
ST92-4755	United Gas Pipe Line Co	Shell Gas Trading Co	07-10-92	G-S	209,600	N	I	06-29-92	10-27-92
ST92-4756	United Gas Pipe Line Co	Shell Gas Trading Co	07-10-92	G-S	10,480	N	I	06-29-92	10-27-92
ST92-4757	El Paso Natural Gas Co	Texaco Gas Marketing Inc	07-13-92	G-S	51,500	N	I	07-01-92	Indef.
ST92-4758	El Paso Natural Gas Co	Enogex Services Corp	07-13-92	G-S	50,000	N	I	06-17-92	Indef.
ST92-4759	El Paso Natural Gas Co	Northern Natural Gas Co	07-13-92	G	257,500	N	I	06-28-92	Indef.
ST92-4760	El Paso Natural Gas Co	Tenngasco Marketing Corp	07-13-92	G-S	41,200	N	I	07-01-92	Indef.
ST92-4761	El Paso Natural Gas Co	KN Gas Marketing, Inc	07-13-92	G-S	51,500	N	I	06-19-92	Indef.
ST92-4762	El Paso Natural Gas Co	NGC Transportation, Inc	07-13-92	G-S	309,000	N	I	06-13-92	Indef.
ST92-4763	El Paso Natural Gas Co	Bridgegas USA Inc	07-13-92	G-S	206,000	N	I	06-18-92	Indef.
ST92-4764	El Paso Natural Gas Co	Coastal Gas Marketing Co	07-13-92	G-S	150,000	N	I	06-18-92	Indef.
ST92-4765	CNG Transmission Corp	NGC Transportation, Inc	07-13-92	G-S	170,000	N	I	06-12-92	Indef.
ST92-4766	CNG Transmission Corp	Eastern American Energy	07-13-92	G-S	13,000	N	I	06-15-92	Indef.
ST92-4767	Kern River Gas Transmission Co.	Winward Energy Marketing Co	07-13-92	G-S	75,000	N	I	06-14-92	Indef.
ST92-4768	Kern River Gas Transmission Co.	Pacificorp	07-13-92	G-S	60,000	N	I	06-12-92	Indef.
ST92-4769	Kern River Gas Transmission Co.	Coastal Gas Marketing Co	07-13-92	G-S	100,000	N	I	06-12-92	Indef.
ST92-4770	Questar Pipeline Co	Coastal Gas Marketing Co	07-13-92	G-S	50,000	N	I	07-01-92	06-30-92
ST92-4771	Questar Pipeline Co	Enron Gas Marketing, Inc	07-13-92	G-S	100,000	N	I	07-07-92	09-30-92
ST92-4772	Louisiana Resources P/L Co., LP.	Sea Robin Pipeline Co	07-13-92	C	20,000	N	I	07-01-92	Indef.
ST92-4773	Enogex Inc	Arkla Energy Resources	07-13-92	C	75,000	N	I	07-01-92	Indef.
ST92-4774	Enogex Inc	ANR Pipeline Co	07-13-92	C	20,000	N	I	06-01-92	Indef.
ST92-4775	Tennessee Gas Pipeline Co	Channel Industries Gas Co	07-13-92	B	2,000,000	A	I	04-01-92	Indef.
ST92-4776	Tennessee Gas Pipeline Co	Tenngasco Corp	07-13-92	G-S	3,000,000	A	I	07-03-92	Indef.
ST92-4777	Tennessee Gas Pipeline Co	Chevron USA, Inc	07-13-92	G-S	1,000,000	A	I	07-01-92	Indef.
ST92-4778	Tennessee Gas Pipeline Co	Tenngasco Corp	07-13-92	G-S	2,000,000	A	I	03-03-92	Indef.
ST92-4779	Natural Gas P/L Co. of America.	Peoples Gas Light & Coke Co	07-13-92	G-S	102,600	N	F	12-01-90	11-30-95
ST92-4780	Natural Gas P/L Co. of America.	Western Gas Marketing, Inc	07-13-92	G-S	200,000	N	I	07-01-92	Indef.
ST92-4781	Lone Star Gas Co	Natural Gas P/L Co. of America.	07-14-92	C	10,000	N	I	07-01-92	Indef.
ST92-4782	Kern River Gas Transmission Co.	Tenngasco Marketing Corp	07-14-92	G-S	100,000	A	I	06-14-92	Indef.
ST92-4783	Tennessee Gas Pipeline Co	WES CANA Energy Marketing (U.S.).	07-14-92	G-S	1,500	N	I	07-02-92	04-01-92
ST92-4784	Tennessee Gas Pipeline Co	Union Pacific Resources Co	07-14-92	G-S	150,000	N	I	07-01-92	Indef.
ST92-4785	Tennessee Gas Pipeline Co	Citizens Gas Supply Corp	07-14-92	G-S	3,200,000	N	I	07-02-92	Indef.
ST92-4786	Tennessee Gas Pipeline Co	Philadelphia Electric Co	07-14-92	B	60,000	N	I	01-01-92	Indef.
ST92-4787	Texas Eastern Transmission Corp.	International Paper Co	07-14-92	G-S	400,000	N	I	06-25-92	Indef.
ST92-4788	Inland Gas Co., Inc	Ashland Hide Co	07-14-92	G-S	400	N	I	03-01-92	Indef.
ST92-4789	Tennessee Gas Pipeline Co	Enron Gas Marketing Inc	07-15-92	G-S	703,297	N	I	07-01-92	Indef.
ST92-4790	Kern River Gas Transmission Co.	Trinity Pipeline, Inc	07-15-92	G-S	39,900	N	I	06-15-92	Indef.
ST92-4791	Kern River Gas Transmission Co.	North American Resources Co	07-15-92	G-S	20,000	N	I	06-15-92	Indef.
ST92-4792	Transwestern Pipeline Co	Oasis Pipeline Co	07-15-92	B	100,000	A	I	06-12-92	Indef.
ST92-4793	Transwestern Pipeline Co	Santa Fe Energy Resources, Inc.	07-15-92	B	20,000	N	I	06-15-92	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]	Aff. Y/A/N [3]	Rate schedule	Date commenced	Projected termination date
ST92-4794	Columbia Gas Transmission Corp.	Columbia Gas Development Corp.	07-15-92	G-S	40	A	F	07-01-92	Indef.
ST92-4795	Columbia Gas Transmission Corp.	Transatlantic Gas Marketing Co.	07-15-92	G-S	40	N	I	07-10-92	Indef.
ST92-4796	Columbia Gas Transmission Corp.	OGLS Operations, Inc	07-15-92	G-S	2,499	N	I	07-10-92	Indef.
ST92-4797	Transcontinental Gas P/L Corp.	Long Island Lighting Co	07-15-92	B	60,000	N	I	11-21-89	Indef.
ST92-4798	Kern River Gas Transmission Co.	Amoco Energy Trading Corp	07-16-92	G-S	50,000	N	F	06-16-92	Indef.
ST92-4799	Kern River Gas Transmission Co.	CNG Producing Co	07-16-92	G-S	50,000	N	I	06-15-92	Indef.
ST92-4800	Tennessee Gas Pipeline Co	Providence Gas Co	07-16-92	B	60,000	N	I	07-01-92	Indef.
ST92-4801	Valero Transmission, L.P	El Paso Natural Gas Co	07-16-92	C	10,152	N	I	06-19-92	Indef.
ST92-4802	Valero Transmission, L.P	Natural Gas P/L Co. of America.	07-16-92	C	7,500	N	I	07-01-92	Indef.
ST92-4803	Algonquin Gas Transmission Co.	Endevco Oil and Gas Co	07-16-92	G-S	50,000	N	I	06-30-92	Indef.
ST92-4804	United Gas Pipe Line Co	NGC Transportation, Inc	07-16-92	G-S	157,200	N	I	07-09-92	11-06-92
ST92-4805	United Gas Pipe Line Co	MerCo Oil & Gas, Inc	07-16-92	G-S	50,000	N	I	07-07-92	11-04-92
ST92-4806	United Gas Pipe Line Co	O&R Energy, Inc	07-16-92	G-S	50,000	N	I	07-07-92	11-04-92
ST92-4807	United Gas Pipe Line Co	Marathon Oil Co	07-16-92	G-S	154,232	N	I	07-06-92	11-03-92
ST92-4808	United Gas Pipe Line Co	Shell Gas Trading Co	07-16-92	G-S	209,600	N	I	07-07-92	11-04-92
ST92-4809	United Gas Pipe Line Co	Shell Gas Trading Co	07-16-92	G-S	10,480	N	I	07-07-92	11-04-92
ST92-4810	Columbia Gulf Transmission Co.	GGR Energy	07-16-92	G-S	100,000	N	I	07-01-92	Indef.
ST92-4811	Columbia Gulf Transmission Co.	NGC Transportation, Inc	07-16-92	G-S	200,000	N	I	06-25-92	Indef.
ST92-4812	Columbia Gulf Transmission Co.	Superior Natural Gas Corp	07-16-92	G-S	60,000	N	I	07-01-92	Indef.
ST92-4813	Columbia Gulf Transmission Co.	Transco Energy Marketing Co	07-16-92	G-S	10,000	N	I	06-18-92	Indef.
ST92-4814	Superior Offshore Pipeline Co	Washington Gas Light Co	07-17-92	B	5,000	N	I	02-01-91	Indef.
ST92-4815	Williston Basin Inter. P/L Co	Coastal Gas Marketing Co	07-17-92	G-S	117,200	Y	I	06-19-91	06-18-94
ST92-4816	Oasis Pipe Line Co	El Paso Natural Gas Co	07-17-92	C	150,000	N	I	01-25-91	Indef.
ST92-4817	Oasis Pipe Line Co	El Paso Natural Gas Co	07-17-92	C	30,000	N	I	11-20-91	Indef.
ST92-4818	Gulf Energy Pipeline Co	Tennessee Gas Pipeline Co	07-17-92	C	1,550	N	I	07-13-92	Indef.
ST92-4819	Gulf Energy Pipeline Co	Trunkline Gas Co	07-17-92	C	1,550	N	I	06-01-92	Indef.
ST92-4820	Kern River Gas Transmission Co.	Questar Pipeline Co	07-17-92	G-S	500,000	N	I	06-19-92	Indef.
ST92-4822	Arkla Resources	Clinton Gas Transmission Inc	07-17-92	G-S	722	N	F	05-01-92	Indef.
ST92-4823	Arkla Energy Resources	Arkla Energy Marketing Co	07-17-92	G-S	20,000	A	F	06-01-91	Indef.
ST92-4824	Panhandle Eastern Pipe Line Co.	Union Gas Limited	07-17-92	G-S	20,000	N	F	11-01-91	Indef.
ST92-4825	Panhandle Eastern Pipe Line Co.	Missouri Public Service	07-17-92	G-S	5,018	N	F	05-29-92	Indef.
ST92-4826	Panhandle Eastern Pipe Line Co.	Associated Natural Gas, Inc	07-17-92	G-S	100,000	N	I	05-24-92	Indef.
ST92-4827	Colorado Interstate Gas Co	Montana Power Co	07-17-92	B	15,000	N	I	06-26-92	Indef.
ST92-4828	Colorado Interstate Gas Co	Amoco Energy Trading Corp	07-17-92	G-S	150	N	I	06-01-92	Indef.
ST92-4829	Colorado Interstate Gas Co	Texaco Gas Marketing, Inc	07-17-92	G-S	100,000	N	I	06-01-92	Indef.
ST92-4830	Colorado Interstate Gas Co	Access Energy Corp	07-17-92	G-S	20,000	N	I	06-06-92	Indef.
ST92-4831	Northern Natural Gas Co	Minnegasco, Inc	07-17-92	B	200,000	N	F/I	06-13-92	Indef.
ST92-4832	Northern Natural Gas Co	Helmerich & Payne Energy Service.	07-17-92	G-S	10,000	N	F	07-01-92	Indef.
ST92-4833	Transwestern Pipeline Co	Santa Fe Energy Resources, Inc.	07-17-92	G-S	20,000	N	I	06-18-92	Indef.
ST92-4834	Transwestern Pipeline Co	Tenaska Marketing Ventures	07-17-92	G-S	100,000	N	I	06-05-92	Indef.
ST92-4835	Transwestern Pipeline Co	Grand Valley Gas Co	07-17-92	G-S	100,000	N	I	07-01-92	Indef.
ST92-4836	Transwestern Pipeline Co	KN Gas Marketing, Inc	07-17-92	G-S	100,000	N	I	07-01-92	Indef.
ST92-4837	Transwestern Pipeline Co	Exogex Services Corp	07-17-92	G-S	50,000	N	I	06-18-92	Indef.
ST92-4838	Transwestern Pipeline Co	Gas Energy Development Co	07-17-92	G-S	30,000	N	I	07-01-92	Indef.
ST92-4839	Transcontinental Gas P/L Corp.	Elizabethtown Gas Co	07-17-92	B	900,000	N	I	06-19-92	Indef.
ST92-4840	Natural Gas P/L Co. of America.	Conoco, Inc	07-17-92	G-S	5,000	N	I	03-21-92	Indef.
ST92-4841	Natural Gas P/L Co. of America.	Texaco Gas Marketing, Inc	07-17-92	G-S	50,000	N	I	06-03-92	Indef.
ST92-4842	Natural Gas P/L Co. of America.	Texaco Gas Marketing, Inc	07-17-92	G-S	100,000	N	I	07-01-92	Indef.
ST92-4843	Superior Offshore Pipeline Co	Tenngasco Corp	07-20-92	G-S	60,000	N	I	04-01-92	Indef.
ST92-4844	Northern Gas Co	Williston Basin Inter. P/L Co	07-20-92	G-HT	4,000	N	I	06-17-92	03-31-96
ST92-4845	Northern Gas Co	Williston Basin Inter. P/L Co	07-20-92	G-HT	11,000	N	I	06-17-92	Indef.
ST92-4846	Kern River Gas Transmission Co.	Kogas, Inc	07-20-92	G-S	200,000	N	I	06-25-92	Indef.
ST92-4847	Williston Basin Inter, P/L Co	Conoco, Inc.	07-20-92	G-S	15,993	N	I	06-21-92	05-31-94
ST92-4848	Colorado Intrstate Gas Co	Kiowa Gas Co	07-20-92	G-S	10,000	N	I	06-01-92	Indef.
ST92-4849	Colorado Intrstate Gas Co	Gasco, Inc	07-20-92	G-S	1,250	N	I	06-01-92	Indef.
ST92-4850	Colorado Intrstate Gas Co	Williams Gas Marketing Co	07-20-92	G-S	20,000	N	I	06-01-92	Indef.
ST92-4851	Sabine Pipe Line Co	Arco Oil and Gas Co	07-20-92	G-S	100,000	N	I	06-01-92	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate schedule	Date commenced	Projected termination date
ST92-4852	Sabine Pipe Line Co	Aquila Energy Marketing Corp	07-20-92	G-S	250,000	N	I	06-10-92	Indef.
ST92-4853	Sabine Pipe Line Co	Cedar Energies, Inc	07-20-92	G-S	25,000	N	I	05-28-92	Indef.
ST92-4854	Northern Natural Gas Co	Tenaksa Marketing Ventures	07-20-92	G-S	100,000	N	I	07-01-92	Indef.
ST92-4855	Northern Natural Gas Co	Mobil Natural Gas Inc	07-20-92	G-S	100,000	N	I	07-01-92	Indef.
ST92-4856	Northern Natural Gas Co	Enron Gas Processing Co	07-20-92	G-S	20,000	Y	F/I	07-01-92	Indef.
ST92-4857	Northern Natural Gas Co	Centran Corp	07-20-92	G-S	1,150,000	N	F/I	07-03-92	Indef.
ST92-4858	Northern Natural Gas Co	New Ulm Public Utilit./Power Plant.	07-20-92	G-S	10,000	N	F/I	07-01-92	04-30-93
ST92-4859	Northern Natural Gas Co	Rahr Malting Co	07-20-92	G-S	20,000	N	F/I	07-08-92	Indef.
ST92-4860	Transwestern Pipeline Co	Tristar Gas Co	07-20-92	G-S	20,000	N	I	07-01-92	Indef.
ST92-4861	Transwestern Pipeline Co	Amarillo Natural Gas, Inc	07-20-92	G-S	200	N	I	06-30-92	Indef.
ST92-4862	Transwestern Pipeline Co	Vintage Gas, Inc	07-20-92	G-S	20,000	N	I	07-01-92	Indef.
ST92-4863	Transwestern Pipeline Co	Sioux Pointe, Inc	07-20-92	G-S	100,000	N	I	07-01-92	Indef.
ST92-4864	Transwestern Pipeline Co	Kimball Energy Corp	07-20-92	G-S	25,000	N	I	07-01-92	Indef.
ST92-4865	Algonquin Gas Transmission Co.	Polaris Pipeline Co	07-21-92	G-S	160,000	N	I	07-06-92	Indef.
ST92-4866	Algonquin Gas Transmission	Brooklyn Interstate Nat. Gas Corp.	07-21-92	G-S	900,000	N	I	07-12-92	Indef.
ST92-4867	East Texas Gas Systems	Arkla Energy Resources	07-21-92	C	30,000	N	I	02-01-92	Indef.
ST92-4868	ONG Transmission Co	Arkla Energy Resources	07-21-92	C	75,000	N	I	07-01-92	Indef.
ST92-4869	ONG Transmission Co	Arkla Energy Resources	07-21-92	C	20,000	N	I	07-01-92	Indef.
ST92-4870	ONG Transmission Co	Arkla Energy Resources	07-21-92	C	50,000	N	I	07-01-92	Indef.
ST92-4871	ONG Transmission Co	Arkla Energy Resources	07-21-92	C	10,000	N	I	07-01-91	Indef.
ST92-4872	Tennessee Gas Pipeline Co	AGF, Inc	07-21-92	G-S	5,000	N	I	07-01-92	Indef.
ST92-4873	Arkla Energy Resources	Arkla Energy Marketing Co	07-21-92	G-S	1,000	A	I	06-01-92	Indef.
ST92-4874	Arkla Energy Resources	Arkla Louisiana Gas Co	07-21-92	B	30,000	Y	I	03-01-92	Indef.
ST92-4875	Transcontinental Gas P/L Corp.	Tejas Power Corp	07-22-92	G-S	3,665,000	N	I	05-09-90	Indef
ST92-4876	Transcontinental Gas P/L Corp.	Virginia Natural Gas Co	07-22-92	B	170,000	N	I	06-24-92	Indef.
ST92-4877	Texas Eastern Transmission Corp.	Ledco, Inc	07-22-92	G-S	160,000	N	I	06-13-92	Indef.
ST92-4878	Texas Eastern Transmission Corp.	Samedan Oil Corp	07-22-92	G-S	300,000	N	I	07-01-92	Indef.
ST92-4879	Acadian Gas Pipeline System	ANR Pipeline Co	07-22-92	C	40,000	N	I	07-01-92	Indef.
ST92-4880	Tennessee Gas Pipeline Co	Mobil Natural Gas, Inc	07-22-92	G-S	100,000	N	I	06-23-92	Indef.
ST92-4881	United Gas Pipe Line Co	Hadson Gas Systems, Inc	07-22-92	G-S	20,000	N	I	06-23-92	10-21-92
ST92-4882	United Gas Pipe Line Co	Citrus Marketing, Inc	07-22-92	G-S	250,000	N	I	07-01-92	10-29-92
ST92-4883	Texas Gas Transmission Corp	O&R Energy, Inc	07-22-92	G-S	10,000	N	I	07-14-92	Indef.
ST92-4884	Texas Gas Transmission Corp	Total Minatome Corp	07-22-92	G-S	30,000	N	I	07-01-92	Indef.
ST92-4885	Texas Gas Transmission Corp	Coast Energy Group, Inc	07-22-92	G-S	50,000	N	I	07-14-92	Indef.
ST92-4886	Texas Gas Transmission Corp	Reliance Gas Marketing Co	07-22-92	G-S	15,000	N	I	07-01-92	Indef.
ST92-4887	TransAmerican Natural Gas Corp.	Trunkline Gas Co	07-23-92	C	20,000	N	I	03-01-92	Indef.
ST92-4888	TransAmerican Natural Gas Corp.	Truckline Gas Co	07-23-92	C	30,000	N	I	03-04-92	Indef.
ST92-4889	TransAmerican Natural Gas Corp.	Trunkline Gas Co	07-23-92	C	40,000	N	I	03-19-92	Indef.
ST92-4890	TransAmerican Natural Gas Corp.	Transcontinental Gas P/L Corp.	07-23-92	C	15,000	N	I	03-04-92	Indef.
ST92-4891	TransAmerican Natural Gas Corp.	Texas Eastern Transmission Corp.	07-23-92	C	20,000	N	I	03-24-92	Indef.
ST92-4892	Florida Gas Transmission Co	Valero Transmission, LP	07-23-92	B	500	N	I	07-11-92	Indef.
ST93-4893	ANR Pipeline Co	BP Gas Inc./Briggs & Stratton Corp.	07-23-92	G-S	3,053	N	F	06-01-92	Indef.
ST92-4894	Tennessee Gas Pipeline Co	Kerr McGee Corp	07-23-92	G-S	1,215,000	N	I	07-01-92	Indef.
ST92-4895	Tennessee Gas Pipeline Co	Access Energy Corp	07-23-92	G-S	50,000	N	I	07-02-92	Indef.
ST92-4896	Tennessee Gas Pipeline Co	Kerr McGee Chemical Corp	07-23-92	G-S	6,263	N	F	07-01-92	Indef.
ST92-4897	Tennessee Gas Pipeline Co	Orange & Rockland Utilities, Inc.	07-23-92	B	25,000	N	F	07-01-92	Indef.
ST92-4898	Tennessee Gas Pipeline Co	Niagara Mohawk Power Corp	07-23-92	B	200,000	N	I	07-01-92	Indef.
ST92-4899	Tennessee Gas Pipeline Co	Aquila Energy Marketing Corp	07-23-92	G-S	250,000	N	I	07-01-92	Indef.
ST92-4900	Tennessee Gas Pipeline Co	Central Hudson Gas & Elect. Corp.	07-23-92	B	16,126	N	F	07-01-92	Indef.
ST92-4901	Valero Transmission, L.P.	Texas Eastern Transmission Co.	07-23-92	C	11,169	N	I	06-23-92	Indef.
ST92-4902	United Gas Pipe Line Co	Seagul Marketing Services, Inc.	07-23-92	G-S	524,000	N	I	07-16-92	11-13-92
ST92-4903	United Gas Pipe Line Co	Union Oil Co. of California	07-23-92	G-S	26,200	N	I	07-16-92	11-13-92
ST92-4904	United Gas Pipe Line Co	Quivira Gas Co	07-23-92	G-S	6,288	N	I	07-10-92	11-07-92
ST92-4905	United Gas Pipe Line Co	Pennzoil Gas Marketing Co	07-23-92	G-S	209,600	N	I	07-16-92	11-13-92
ST92-4906	United Gas Pipe Line Co	Division of Nukem, Inc	07-23-92	G-S	104,800	N	I	07-16-92	11-13-92
ST92-4907	United Gas Pipe Line Co	Aquila Energy Marketing Corp	07-23-92	G-S	52,400	N	I	07-10-92	11-07-92
ST92-4908	United Gas Pipe Line Co	Catex Energy Inc	07-23-92	G-S	52,400	N	I	07-11-92	11-08-92
ST92-4909	United Gas Pipe Line Co	Shell Gas Trading Co	07-23-92	G-S	209,600	N	I	07-13-92	11-10-92
ST92-4910	Panhandle Eastern Pipe Line Co.	Clinton Gas Transmission, Inc	07-23-92	G-S	5,000	N	I	07-01-92	Indef.
ST92-4911	Panhandle Eastern Pipe Line Co.	Aquila Gas Marketing Corp	07-23-92	G-S	50,000	N	I	07-01-92	Indef.
ST92-4912	Panhandle Eastern Pipe Line Co.	Western Gas Marketing Inc	07-23-92	G-S	200,000	N	I	07-01-92	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]	Aff. Y/A/N [3]	Rate schedule	Date commenced	Projected termination date
ST92-4913	Panhandle Eastern Pipe Line Co.	Coastal Gas Marketing Co.	07-23-92	G-S	30,000	N	I	07-01-92	Indef.
ST92-4914	Panhandle Eastern Pipe Line Co.	Aquila Energy Marketing Corp	07-23-92	G-S	150,000	N	I	07-01-92	Indef.
ST92-4915	Panhandle Eastern Pipe Line Co.	Peoria Nursing Center Inc.	07-23-92	G-S	50	N	I	07-04-92	Indef.
ST92-4916	Panhandle Eastern Pipe Line Co.	New Mexico Natural Gas, Inc	07-23-92	G-S	100	N	I	07-01-92	Indef.
ST92-4917	Panhandle Eastern Pipe Line Co.	Enron Gas Marketing, Inc	07-23-92	G-S	100,000	N	I	07-01-92	Indef.
ST92-4918	Panhandle Eastern Pipe Line Co.	Sherex Chemical Co	07-23-92	G-S	4,000	N	I	07-01-92	Indef.
ST92-4919	Valero Transmission, L.P	Texas Eastern Gas Pipeline Co.	07-24-92	C	5,500	N	I	06-01-92	Indef.
ST92-4920	Tennessee Gas Pipeline Co	Consolidated Edison Co. of NY, Inc.	07-24-92	G-S	31,212	N	F	07-01-92	Indef.
ST92-4921	Tennessee Gas Pipeline Co	City of Lawrenceburg	07-24-92	B	1,020	N	F	07-01-92	Indef.
ST92-4922	Tennessee Gas Pipeline Co	City of Holyoke Gas & Elect. Dept.	07-24-92	B	5,000	N	F	07-01-92	Indef.
ST92-4923	Tennessee Gas Pipeline Co	Energynorth Natural Gas, Inc	07-24-92	B	16,000	N	F	07-01-92	Indef.
ST92-4924	Tennessee Gas Pipeline Co	Hadson Gas Systems, Inc	07-24-92	G-S	200,000	N	I	07-06-92	Indef.
ST92-4925	Tennessee Gas Pipeline Co	Shell Gas Trading Co	07-24-92	G-S	500,000	N	I	07-09-92	Indef.
ST92-4926	Tennessee Gas Pipeline Co	Project Orange Associates, L.P.	07-24-92	G-S	5,000	N	I	07-08-92	Indef.
ST92-4927	Tennessee Gas Pipeline Co	City of Clarksville	07-24-92	G-S	5,900	N	F	07-01-92	Indef.
ST92-4928	Tennessee Gas Pipeline Co	Wes Canada Energy Marketing Inc.	07-24-92	G-S	1,500	N	F	07-02-92	Indef.
ST92-4929	Tennessee Gas Pipeline Co	Georgia-Pacific Corp	07-24-92	G-S	2,000	N	I	07-10-92	Indef.
ST92-4930	Tennessee Gas Pipeline Co	National Fuel Gas Supply Corp	07-24-92	B	200,000	N	F	07-01-92	Indef.
ST92-4931	Tennessee Gas Pipeline Co	Southern Connecticut Gas Co	07-24-92	B	37,632	N	F	07-01-92	Indef.
ST92-4932	Tennessee Gas Pipeline Co	UGI Utilities, Inc	07-24-92	B	30,000	N	F	07-01-92	Indef.
ST92-4933	Tennessee Gas Pipeline Co	East Ohio Co	07-24-92	B	115,000	N	F	07-01-92	Indef.
ST92-4934	Tennessee Gas Pipeline Co	Long Island Light Co	07-24-92	B	5,202	N	F	07-01-92	Indef.
ST92-4935	Tennessee Gas Pipeline Co	Orange & Rockland Utilities, Inc.	07-24-92	B	31,356	N	F	07-01-92	Indef.
ST92-4936	Tennessee Gas Pipeline Co	Connecticut Natural Gas Corp	07-24-92	B	32,652	N	F	07-01-92	Indef.
ST92-4937	Tennessee Gas Pipeline Co	Access Energy Corp	07-24-92	G-S	70,000	N	I	07-15-92	Indef.
ST92-4938	Tennessee Gas Pipeline Co	Eastman Chemical Co	07-24-92	G-S	9,836	N	F	07-01-92	Indef.
ST92-4939	Tennessee Gas Pipeline Co	United Cities Gas Co	07-24-92	G-S	64,586	N	F	07-01-92	Indef.
ST92-4940	Tennessee Gas Pipeline Co	AFG Industries, Inc	07-24-92	G-S	7,480	N	F	07-01-92	Indef.
ST92-4941	Tennessee Gas Pipeline Co	Yankee Gas Services Co	07-24-92	B	56,838	N	F	07-01-92	Indef.
ST92-4942	Tennessee Gas Pipeline Co	Rochester Gas & Electric Corp.	07-24-92	B	30,725	N	F	07-01-92	Indef.
ST92-4943	Tennessee Gas Pipeline Co	Peoples Natural Gas Co	07-24-92	G-S	30,725	N	F	07-01-92	Indef.
ST92-4944	Tennessee Gas Pipeline Co	Boston Gas Co	07-24-92	B	94,000	N	F	07-01-92	Indef.
ST92-4945	Tennessee Gas Pipeline Co	Commonwealth Gas Co	07-24-92	G-S	12,000	N	F	07-01-92	Indef.
ST92-4946	Tennessee Gas Pipeline Co	Valley Gas Co	07-24-92	B	20,000	N	F	07-01-92	Indef.
ST92-4947	Tennessee Gas Pipeline Co	Quivira Gas Co	07-24-92	G-S	200,000	N	I	07-14-92	Indef.
ST92-4948	Kern River Gas Transmission Co.	Saguaro Power Co	07-24-92	G-S	30,000	N	I	06-25-92	Indef.
ST92-4949	Arkla Energy Resources	Energy Consultants Inc	07-24-92	G-S	1,200	N	F	05-01-92	Indef.
ST92-4950	Panhandle Eastern Pipe Line Co.	Citizens Gas Fuel Co	07-24-92	G-S	1,919	N	F	05-01-92	Indef.
ST92-4951	Panhandle Eastern Pipe Line Co.	Citizens Gas Fuel Co	07-24-92	G-S	4,186	N	F	05-01-92	Indef.
ST92-4952	Natural Gas P/L Co. of America.	Equitable Resources Marketing Co.	07-24-92	G-S	50,000	N	I	07-01-92	Indef.
ST92-4953	Natural Gas P/L Co. of America.	Enserch Gas Co	07-24-92	G-S	100,000	N	I	07-01-92	Indef.
ST92-4954	Natural Gas P/L Co. of America.	Tejas Power Co	07-24-92	G-S	100,000	N	I	07-08-92	Indef.
ST92-4955	Natural Gas P/L Co. of America.	Philbro Energy, Inc	07-24-92	G-S	300,000	N	I	06-01-92	Indef.
ST92-4956	Natural Gas P/L Co. of America.	Amerada Hess Corp	07-24-92	G-S	100,000	N	I	07-01-92	Indef.
ST92-4957	Natural Gas P/L Co. of America.	Gas Energy Development Co	07-24-92	G-S	10,000	N	I	05-03-92	Indef.
ST92-4958	Natural Gas P/L Co. of America.	Oxy USA Inc	07-24-92	G-S	50,000	N	I	07-01-92	Indef.
ST92-4959	Natural Gas P/L Co. of America.	Philbro Energy Inc	07-24-92	G-S	300,000	N	I	06-05-92	Indef.
ST92-4960	Trailblazer Pipeline Co	Helmerich & Payne, Inc	07-24-92	G-S	50,000	N	I	07-14-92	Indef.
ST92-4961	Delhi Gas Pipeline Co	Arkla Energy Resources	07-27-92	C	10,000	N	I	07-01-92	Indef.
ST92-4962	Kern River Gas Transmission Co.	Enogex Services Corp	07-27-92	G-S	50,000	N	I	06-27-92	06-28-92
ST92-4963	East Tennessee Natural Gas Co.	Aluminum Co. of America	07-27-92	G-S	18,000	N	F	07-01-92	Indef.
ST92-4964	East Tennessee Natural Gas Co.	City of Lawrenceburg	07-27-92	G-S	1,000	N	F	07-01-92	Indef.
ST92-4965	East Tennessee Natural Gas Co.	UCAR Carbon Co., Inc	07-27-92	G-S	3,200	N	F	07-01-92	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]	Aff. Y/A/N [3]	Rate schedule	Date commenced	Projected termination date
ST92-4966	East Tennessee Natural Gas Co.	AFC Industries, Inc	07-27-92	G-S	7,300	N	F	07-01-92	Indef.
ST92-4967	East Tennessee Natural Gas Co.	Bowater Inc	07-27-92	G-S	2,500	N	F	07-01-92	Indef.
ST92-4968	East Tennessee Natural Gas Co.	Tennessee Eastman Co	07-27-92	G-S	9,800	N	F	07-02-92	Indef.
ST92-4969	East Tennessee Natural Gas Co.	United Cities Gas Co	07-27-92	G-S	83,000	N	F	07-02-92	Indef.
ST92-4970	ANR Pipeline Co	Peoples Natural Gas Co	07-27-92	B	20,000	N	I	07-01-92	Indef.
ST92-4971	ANR Pipeline Co	Hadson Gas Systems, Inc	07-27-92	G-S	100,000	N	I	07-02-92	Indef.
ST92-4972	ANR Pipeline Co	Triumph Gas Marketing Co	07-27-92	G-S	50,000	N	I	07-02-92	Indef.
ST92-4973	ANR Pipeline Co	Michigan Gas Utilities	07-27-92	B	200,000	N	I	07-02-92	Indef.
ST92-4974	ANR Pipeline Co	Wisconsin Gas Co	07-27-92	G-S	12,728	N	F	07-03-92	Indef.
ST92-4975	ANR Pipeline Co	ARCO Natural Gas Marketing, Inc.	07-27-92	G-S	30,000	N	I	07-01-92	Indef.
ST92-4976	ANR Pipeline Co	Coastal Gas Marketing Co	07-27-92	B	25,443	N	I	07-01-92	Indef.
ST92-4977	ANR Pipeline Co	Aluminum Co. of America	07-27-92	G-S	8,673	N	F	07-01-92	Indef.
ST92-4978	Tennessee Gas Pipeline Co	UCAR Carbon Co., Inc	07-27-92	G-S	3,265	N	F	07-01-92	Indef.
ST92-4979	Tennessee Gas Pipeline Co	Centran Corp	07-27-92	G-S	250,000	N	I	07-01-92	Indef.
ST92-4980	Tennessee Gas Pipeline Co	MG Natural Gas Corp	07-27-92	G-S	160,000	N	I	07-01-92	Indef.
ST92-4981	Tennessee Gas Pipeline Co	Connecticut Natural Gas Corp	07-27-92	G-S	51,300	N	I	07-01-92	Indef.
ST92-4982	Tennessee Gas Pipeline Co	Chevron U.S.A., Inc	07-27-92	G-S	450,000	N	I	07-01-92	Indef.
ST92-4983	Tennessee Gas Pipeline Co	Premier Gas Co	07-27-92	G-S	1,000	N	I	07-02-92	Indef.
ST92-4984	Tennessee Gas Pipeline Co	KCS Energy Marketing, Inc	07-27-92	G-S	200,000	N	I	07-03-92	Indef.
ST92-4985	Tennessee Gas Pipeline Co	Conoco, Inc	07-27-92	G-S	6,000	N	F	07-01-92	Indef.
ST92-4986	Exxon Gas System, Inc	Moss Bluff Gas Storage Systems.	07-27-92	C	39,000	N	I	07-07-92	Indef.
ST92-4987	Sonat Intrastate-Alabama Inc	Tennessee Gas Pipeline Co	07-27-92	C	1,000	N	I	02-12-92	Indef.
ST92-4988	K N Energy, Inc	Signals Fuels Trading Corp	07-27-92	G-S	15,000	N	I	07-13-92	Indef.
ST92-4989	Gas Co. of New Mexico	El Paso Natural Gas Co	07-27-92	G-HT	1,000	N	I	06-01-92	05-31-93
ST92-4990	Gas Co. of New Mexico	El Paso Natural Gas Co	07-27-92	G-HT	10,000	N	I	06-01-92	06-17-94
ST92-4991	Natural Gas P/L Co. of America.	Utrade Gas Co	07-27-92	G-S	50,000	A	I	06-01-92	06-30-92
ST92-4992	Natural Gas P/L Co. of America.	Access Energy Corp	07-27-92	G-S	5,000	N	F	06-01-92	07-31-92
ST92-4993	Transwestern Pipeline Co	Williams Oil Co	07-27-92	G-S	200	N	I	07-01-92	Indef.
ST92-4994	Colorado Interstate Gas Co	North Central Oil Corp	07-27-92	G-S	25,000	N	I	07-13-92	02-01-96
ST92-4995	Colorado Interstate Gas Co	Union Pacific Resources Co	07-27-92	G-S	50,000	N	I	07-01-92	Indef.
ST92-4996	Colorado Interstate Gas Co	Western Natural Gas & Trans. Corp.	07-27-92	G-S	4,900	N	I	07-09-92	Indef.
ST92-4997	Colorado Interstate Gas Co	Helmerich & Payne Energy Services.	07-27-92	G-S	50,000	N	I	07-14-92	Indef.
ST92-4998	Colorado Interstate Gas Co	Bridgegas U.S.A., Inc	07-27-92	G-S	25,000	N	I	07-17-92	Indef.
ST92-4999	Pacific Gas Transmission Co	Coastal Gas Marketing Co	07-27-92	G-S	101,500	N	I	07-01-92	Indef.
ST92-5000	Pacific Gas Transmission Co	Pan-Alberta Gas U.S., Inc	07-27-92	G-S	50,000	N	I	07-01-92	Indef.
ST92-5001	Pacific Gas Transmission Co	Direct Energy Marketing Ltd	07-27-92	G-S	100,201	N	I	07-11-92	Indef.
ST92-5002	Delhi Gas Pipeline Corp	El Paso Natural Gas Co	07-28-92	C	9,000	N	I	07-01-92	Indef.
ST92-5003	Delhi Gas Pipeline Corp	Arkla Energy Resources	07-28-92	C	15,000	N	I	07-01-92	Indef.
ST92-5004	Delhi Gas Pipeline Corp	Arkla Energy Resources	07-28-92	C	13,000	N	I	07-01-92	Indef.
ST92-5005	Delhi Gas Pipeline Corp	Northern Natural Gas Co	07-28-92	C	13,000	N	I	07-03-92	Indef.
ST92-5006	Delhi Gas Pipeline Corp	Natural Gas P/L Co. of America.	07-28-92	C	13,000	N	I	07-01-92	Indef.
ST92-5007	Delhi Gas Pipeline Corp	Arkla Energy Resources	07-28-92	C	28,000	N	I	07-01-92	Indef.
ST92-5008	Tennessee Gas Pipeline Co	Mobil Natural Gas, Inc	07-28-92	G-S	100,000	N	I	07-01-92	Indef.
ST92-5009	Tennessee Gas Pipeline Co	Niagara Mohawk Power Corp	07-28-92	B	236,042	N	I	07-01-92	Indef.
ST92-5010	Tennessee Gas Pipeline Co	CNG Trading Co	07-28-92	G-S	650,042	N	I	07-01-92	Indef.
ST92-5011	Tennessee Gas Pipeline Co	Tenngasco Corp	07-28-92	G-S	20,000	A	F	07-01-92	Indef.
ST92-5012	Tennessee Gas Pipeline Co	Bowater Inc	07-28-92	G-S	2,551	N	F	07-01-92	Indef.
ST92-5013	Tennessee Gas Pipeline Co	American Central Gas Marketing Co.	07-28-92	G-S	200,000	N	I	07-01-92	Indef.
ST92-5014	Tennessee Gas Pipeline Co	Maxus Exploration Co	07-28-92	G-S	110,000	N	I	07-27-92	Indef.
ST92-5015	Tennessee Gas Pipeline Co	Entrade Corp	07-28-92	G-S	500,000	N	I	07-01-92	Indef.
ST92-5016	Tennessee Gas Pipeline Co	Brooklyn Union Gas Co	07-28-92	B	20,808	N	F	07-01-92	Indef.
ST92-5017	Channel Industries Gas Co	Natural Gas P/L Co. of America.	07-28-92	C	25,000	N	I	07-16-92	Indef.
ST92-5018	Gasdel Pipeline System Inc	Aquila Energy Marketing Corp	07-28-92	G-S	4,800	N	I	07-01-92	Indef.
ST92-5019	Northwest Pipeline Corp	Biomass One L.P	07-28-92	G-S	5,500	N	I	06-23-92	Indef.
ST92-5020	Algonquin Gas Transmission Co.	O & R Energy, Inc	07-28-92	G-S	100,000	N	I	07-18-92	Indef.
ST92-5021	Columbia Gas Transmission Corp.	Armco Advanced Materials Co	07-28-92	G-S	6,000	N	I	07-01-92	Indef.
ST92-5022	Columbia Gas Transmission Corp.	Miami Valley Resources, Inc	07-28-92	G-S	40,000	Y	I	07-01-92	Indef.
ST92-5023	Columbia Gas Transmission Corp.	Access Energy Corp	07-28-92	G-S	270	Y	F	07-01-92	05-31-93
ST92-5024	Northern Natural Gas Co	Texaco Gas Marketing, Inc	07-28-92	G-S	20,000	N	F/I	07-01-92	Indef.
ST92-5025	Northern Natural Gas Co	Kogas, Inc	07-28-92	G-S	100,000	N	F/I	06-25-92	Indef.
ST92-5026	Northern Natural Gas Co	Mobil Natural Gas, Inc	07-28-92	G-S	100,000	N	F/I	07-01-92	Indef.
ST92-5027	Northern Natural Gas Co	Enron Oil & Gas Co	07-28-92	G-S	50,000	Y	F/I	07-08-92	Indef.
ST92-5028	Northern Natural Gas Co	Western Gas Marketing	07-28-92	G-S	20,000	N	F/I	07-01-92	03-31-93

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]	Aff. Y/A/N [3]	Rate schedule	Date commenced	Projected termination date
ST92-5029	Northern Natural Gas Co	Tenaska Marketing Ventures	07-28-92	G-S	250,000	N	F/I	07-01-92	Indef.
ST92-5030	Northern Natural Gas Co	Santa Fe Minerals, Inc	07-28-92	G-S	100,000	N	F/I	07-04-92	Indef.
ST92-5031	Northern Natural Gas Co	Howard Energy Co., Inc	07-28-92	G-S	1,00 0	N	F/I	06-01-92	Indef.
ST92-5032	Northern Natural Gas Co	Iowa Electric Light & Power Co.	07-28-92	B	15,625	N	F/I	07-17-92	05-31-97
ST92-5033	Northern Natural Gas Co	Eastex Hydrocarbons, Inc	07-28-92	G-S	50,000	N	F/I	07-01-92	Indef.
ST92-5034	Northern Natural Gas Co	Transok Gas Co	07-28-92	G-S	21,740	N	F/I	07-01-92	03-31-93
ST92-5035	Northern Natural Gas Co	Northwestern Public Service Co.	07-28-92	B	100,000	N	F/I	07-01-92	Indef.
ST92-5036	Northern Natural Gas Co	Iowa Electric Light & Power Co.	07-28-92	B	50,000	N	F/I	07-19-92	07-19-93
ST92-5037	Arkla Energy Resources	Premier Gas Co	07-28-92	G-S	50,000	N	I	09-01-92	Indef.
ST92-5038	Arkla Energy Resources	Eastex Hydrocarbons, Inc	07-28-92	G-S	50,000	N	I	05-01-92	Indef.
ST92-5039	Tennessee Gas Pipeline Co	CNG Transmission Corp	07-29-92	G	531	N	F	07-01-92	Indef.
ST92-5040	Tennessee Gas Pipeline Co	North Penn Gas Co	07-29-92	B	1,075	N	F	07-01-92	Indef.
ST92-5041	Tennessee Gas Pipeline Co	Peoples Natural Gas Co	07-29-92	G-S	50,000	N	I	07-01-92	Indef.
ST92-5042	Tennessee Gas Pipeline Co	Public Service Electric and Gas Co.	07-29-92	B	36,414	N	I	07-04-92	Indef.
ST92-5043	Transok, Inc	Arkla Energy Resources	07-29-92	C	50,000	N	I	07-02-92	Indef.
ST92-5044	Transcontinental Gas P/L Corp.	American Central Gas Cos., Inc.	07-29-92	G-S	2,730,000	N	I	07-01-92	Indef.
ST92-5045	Transcontinental Gas P/L Corp.	United Texas Transmission Co	07-29-92	B	100,000	N	I	07-01-92	Indef.
ST92-5046	Transcontinental Gas P/L Corp.	Pennsylvania Gas & Water Co	07-29-92	B	240,000	N	I	07-01-92	Indef.
ST92-5047	Viking Gas Transmission Co	City of Perham	07-30-92	B	50,000	N	I	07-09-92	Indef.
ST92-5048	Tennessee Gas Pipeline Co	Pennsylvania Gas & Water Co	07-30-92	G-S	23,000	N	F	07-01-92	Indef.
ST92-5049	Tennessee Gas Pipeline Co	Transco Energy Marketing Co	07-30-92	G-S	225,000	N	I	07-01-92	Indef.
ST92-5050	Tennessee Gas Pipeline Co	Allied Signal Inc	07-30-92	G-S	25,000	N	F	07-01-92	Indef.
ST92-5051	Tennessee Gas Pipeline Co	Pennsylvania Gas & Water Co	07-30-92	B	15,000	N	F	07-01-92	Indef.
ST92-5052	Tennessee Gas Pipeline Co	Middle Tennessee Nat. Gas Utility.	07-30-92	G-S	3,061	N	F	07-23-92	Indef.
ST92-5053	Tennessee Gas Pipeline Co	Calcasieu Gas Gathering System.	07-30-92	G-S	6,000	N	I	07-08-92	Indef.
ST92-5054	Tennessee Gas Pipeline Co	NGC Transportation, Inc	07-30-92	G-S	200,000	N	I	07-01-92	Indef.
ST92-5055	Northern Natural Gas Co	Triumph Gas Marketing Co	07-30-92	G-S	10,000	N	F/I	07-01-92	Indef.
ST92-5056	Northern Natural Gas Co	Aquila Energy Marketing Corp	07-30-92	G-S	100,000	N	F/I	07-01-92	Indef.
ST92-5057	Williams Natural Gas. Co	Transok Gas Co	07-30-92	G-S	100,000	N	I	07-01-92	Indef.
ST92-5058	Iroquois Gas Trans. System, Inc.	Connecticut Natural Gas Co	07-30-92	B	400,000	A	I	07-01-92	10-31-92
ST92-5059	Williams Natural Gas Co	Gastrak Corp	07-30-92	G-S	37,000	N	I	07-01-92	Indef.
ST92-5060	Williams Natural Gas Co	Gas Energy Development Co	07-30-92	G-S	2,000	N	I	07-01-92	Indef.
ST92-5061	Williams Natural Gas Co	Continental Natural Gas, Inc	07-30-92	G-S	1,260	N	I	07-01-92	Indef.
ST92-5062	ANR Pipeline Co	Eastex Hydrocarbons, Inc	07-30-92	G-S	50,000	N	I	07-20-92	Indef.
ST92-5063	ANR Pipeline Co	Unigas Energy Inc	07-30-92	G-S	25,000	N	I	07-20-92	Indef.
ST92-5064	ANR Pipeline Co	Trinity Pipeline, Inc	07-30-92	G	50,000	N	I	07-10-92	Indef.
ST92-5065	ANR Pipeline Co	Northern Illinois Gas Co	07-30-92	B	15,000	N	I	07-14-92	Indef.
ST92-5066	ANR Pipeline Co	American Central Gas Cos., Inc.	07-30-92	G-S	100,000	N	I	07-16-92	Indef.
ST92-5067	ANR Pipeline Co	MG Natural Gas Corp	07-30-92	G-S	100,000	N	I	07-06-92	Indef.
ST92-5068	ANR Pipeline Co	Kerr-McGee Corp	07-30-92	G-S	100,000	N	I	07-08-92	Indef.
ST92-5069	ANR Pipeline Co	Wisconsin Gas Co	07-30-92	G-S	700,000	N	I	07-07-92	Indef.
ST92-5070	Columbia Gas Transmission Corp.	American Central Gas Cos., Inc.	07-30-92	G-S	100,000	N	I	07-10-92	Indef.
ST92-5071	K N Energy, Inc	Texaco Gas Marketing, Inc	07-31-92	G-S	5,000	N	I	07-20-92	Indef.
ST92-5072	Williston Basin Inter. P/L Co	Amerada Hess Corp	07-31-92	G-S	25,000	N	I	07-01-92	08-31-92
ST92-5073	Trunkline Gas Co	Central Illinois Public Service Co.	07-31-92	G-S	10,000	N	I	07-01-92	Indef.
ST92-5074	Trunkline Gas Co	CNG Transmission Corp	07-31-92	G	200,000	N	I	07-01-92	Indef.
ST92-5075	Trunkline Gas Co	Oryx Gas Marketing L.P	07-31-92	G-S	125,000	N	I	07-02-92	Indef.
ST92-5076	Trunkline Gas Co	Gasmark, Ltd	07-31-92	G-S	50,000	N	I	07-11-92	Indef.
ST92-5077	Trunkline Gas Co	Clinton Gas Transmission, Inc	07-31-92	G-S	5,000	N	I	07-01-92	Indef.
ST92-5078	Trunkline Gas Co	Arkla Energy Marketing Co	07-31-92	G-S	50,000	N	I	07-06-92	Indef.
ST92-5079	Trunkline Gas Co	Cental Illinois Public Service Co.	07-31-92	G-S	5,000	N	I	07-01-92	Indef.
ST92-5080	Trunkline Gas Co	Gasmark, Ltd	07-31-92	G-S	50,000	N	I	07-02-92	Indef.
ST92-5081	Trunkline Gas Co	Enserch Gas Co	07-31-92	G-S	50,000	N	I	07-14-92	Indef.
ST92-5082	Trunkline Gas Co	Citizens Gas Supply Corp	07-31-92	G-S	75,000	N	I	07-01-92	Indef.
ST92-5083	Texas Gas Transmission Corp	TXG Gas Transmission Co	07-31-92	G-S	200,000	N	I	07-16-92	Indef.
ST92-5084	Texas Gas Transmission Corp	Western Kentucky Gas Co	07-31-92	B	128	N	I	07-24-92	Indef.
ST92-5085	Texas Gas Transmission Corp	NGC Transportation, Inc	07-31-92	G-S	300,000	N	I	07-23-92	Indef.
ST92-5086	Texas Gas Transmission Corp	CMS Gas Marketing	07-31-92	G-S	100,000	N	I	07-17-92	Indef.
ST92-5088	Great Lakes Gas Trans. L.P	Western Gas Marketing Limited.	07-31-92	G-S	500,000	N	I	07-01-92	Indef.
ST92-5089	Great Lakes Gas Trans. L.P	Santanna Natural Gas Corp	07-31-92	G-S	150,000	N	I	07-01-92	Indef.

[1] Notice of transactions does not constitute a determination that filings comply with commission regulations in accordance with order No. 436 (final rule and notice requesting supplemental comments, 50 FR 42,372, 10/10/85).

[2] Estimated maximum daily volumes includes volumes reported by the filing company in mmBTU, MCF and DT.

[3] Affiliation of reporting company to entities involved in the transaction. A "Y" indicates affiliation an "A" indicates marketing affiliation, and a "N" indicates no affiliation.

[Docket No. TM93-1-46-000]

Kentucky West Virginia Gas Co.; Proposed Change in FERC Gas Tariff

August 28, 1992.

Take notice that Kentucky West Virginia Gas Company (Kentucky West) on August 24, 1992, tendered for filing with the Federal Energy Regulatory Commission (Commission) Sixth Revised Sheet No. 45 to its FERC Gas Tariff, Second Revised Volume No. 1, to become effective October 1, 1992.

Kentucky West states the revised tariff sheet amends its Annual Charge Adjustment (ACA) charge to place in effect the new ACA funding unit of $.0023 per MCF which represents a decrease of $.0001 per MCF. This rate is $.0021 per Dth as converted on Kentucky West's system.

Kentucky West states that a copy of its filing has been served upon each of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 4, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21197 Filed 9-2-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-100-000]

Nora Transmission Co.; Proposed Change in FERC Gas Tariff

August 28, 1992.

Take notice that Nora Transmission Company (Nora) on August 25, 1992, tendered for filing with the Federal Energy Regulatory Commission (Commission) Second Revised Sheet No. 5 to its FERC Gas Tariff, Original Volume No. 2, to become effective October 1, 1992.

Nora states the revised tariff sheet amends its Annual Charge Adjustment (ACA) charge to place in effect the new ACA funding unit of $.0023 per MCF which represents a decrease of $.0001 per MCF. This rate is $.0023 per Dth as converted on Nora's system.

Nora states that a copy of its filing has been served upon each of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 4, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21198 Filed 9-2-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TC92-8-000]

Northern Natural Gas Co.; Request for Limited Waiver of Settlement Provision

August 28, 1992.

Take notice that on August 12, 1992, Northern Natural Gas Company (Northern) filed Petition for a limited waiver of settlement provision to allow Northern additional time to file its updated Index of Large Volume Consumer Classifications (Index).

On July 31, 1979, Northern filed a Stipulation and Agreement in Docket Nos. RP76-52, *et al.* which was approved by the Commission on November 30, 1979 (Settlement). The Settlement involved Northern's curtailment plan and the priority of service categories for large volume consumers as contained in the Index. The Settlement provided that the Data Verification Committee would update the Index on August 27 of each year, with an effective date of September 27. Northern requests waiver of the provision and an extension of time until January 1, 1993, to file the updated Index.

Any person desiring to be heard or to make any protest with reference to said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 18, 1992.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21199 Filed 9-2-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-223-000]

Northwest Pipeline Corp.; Petition for Limited Waiver of Tariff

August 28, 1992.

Take notice that on August 25, 1992, Nothwest Pipeline Corporation (Northwest) petitioned the Commission for a limited waiver of the Commission's first-come, first-served policy as reflected in Section 1 of Northwest's TF-1 Rate Schedule and in the Priority Date provisions of section 12 of First Revised Volume 1-A of Northwest's FERC approved tariff, in order to allow the permanent assignment of firm transportation capacity presently held by Intermountain Gas Company (Intermountain) to Intermountain's affiliated, IGI Resources, Inc. (IGI).

Northwest seeks waiver of the Commission's first-come, first-served policy as reflected in section 1 of Northwest's TF-1 Rate Schedule and the Priority Date provisions of section 12 of First Revised Volume 1-A of its FERC approved Tariff in order to implement the permanent assignment to IGI of Intermountain's firm transportation capacity on Northwest's system under the Transportation Agreement and Replacement Transportation Agreement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions

or protests should be filed on or before September 4, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21200 Filed 9-2-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-6-000]

Sea Robin Pipeline Co.; Proposed Changes in FERC Gas Tariff

August 28, 1992.

Take notice that on August 26, 1992, Sea Robin Pipeline Company (Sea Robin) tendered for filing the following revised sheets to its FERC Gas Tariff, Original Volume No. 1 with a proposed effective date of October 1, 1992:

Thirty-Fifth Revised Sheet No. 4A
Twelfth Revised Sheet No. 4-A1
Eleventh Revised Sheet No. 4-A2

Sea Robin states that the proposed tariff sheets have been revised to reflect the Commission's change in the ACA charge from .24¢ per Mcf to .23¢ per Mcf effective October 1, 1992 pursuant to section 6 of Sea Robin's tariff and § 154.38(d)(6) of the Commission's Regulations.

Sea Robin notes that copies of the filing were served upon Sea Robin's shippers.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (§§ 385.214, 385.211). All such petitions or protests should be filed on or before September 4, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21201 Filed 9-2-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-11-000]

Texas Eastern Transmission Corp.; Conference Location

August 28, 1992.

Take notice that the conference originally scheduled for August 26, 1992, that was rescheduled for September 8-9, 1992, will be held at the Holiday Inn Capitol Hill, Columbia Room, 550 C Street, SW., Washington, DC. The conference will begin at 1 p.m. on September 8, and at 9 a.m. on September 9. The conference is being convened so that Texas Eastern can explain, and all parties and staff can comment on, the tariff and rate changes made in the August 14, 1992 draft revisions package which would revise Texas Eastern's June 8, 1992 compliance filing. All interested parties are invited to attend. Attendance at the conference however, will not confer party status. For additional information, interested parties can call Neil L. Levy at (202) 208-2794.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21202 Filed 9-2-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-48-020]

Transwestern Pipeline Co.; Compliance Filing

August 28, 1992.

Take notice that Transwestern Pipeline Company ("Transwestern") on August 21, 1992 tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Effective April 1, 1992

8th Revised Sheet No. 48
Substitute Original Sheet No. 51B
Original Sheet No. 94
9th Revised Sheet Nos. 95-104

Transwestern states that the above-referenced tariff sheets are being filed to comply with the Commission's Order ("Order") issued August 6, 1992 in Docket No. RP89-48-017. The Order required Transwestern to refile revised tariff sheets within fifteen (15) days to provide an additional exemption from assessment of the Production and Gathering ("P&G") charge for gas that is delivered into Transwestern's system on or after April 1, 1992. The Order required the additional exemption if the Shipper delivering said gas: (1) Gathers the gas to Transwestern's system, (2) delivers gas that meets Transwestern's quality specifications, and (3) reimburses Transwestern for measurement facilities.

Transwestern states that copies of the filing were served on its jurisdictional customers, interested state commissions, and all parties to this proceeding.

Any person desiring to protect said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before September 4, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21203 Filed 9-2-92; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4201-6]

Acid Rain Advisory Committee: Subcommittee on Conservation Verification; Open Meeting

SUMMARY: In August of 1990, the U.S. Environmental Protection Agency gave notice of the establishment of an Acid Rain Advisory Committee (ARAC) which would provide advice to the Agency on issues related to the development and implementation of the requirements of the acid deposition control title of the Clean Air Act Amendments of 1990.

At its December 3-4, 1991 meeting, the ARAC advised on the establishment of a Subcommittee on Conservation Verification to provide advice on the development of conservation verification protocols for electric utility energy conservation programs under Title IV of the Clean Air Act Amendments of 1990. The protocols, when issued, can be used to verify energy savings from conservation programs to earn bonus allowances from the Conservation and Renewable Energy Reserve under the proposed allowance system rule (40 CFR part 73, subpart F), and reduced utilization provision under the proposed permits rule (40 CFR part 72, subpart D).

OPEN MEETING DATES AND ADDITIONAL INFORMATION: Notice is hereby given that the ARAC Subcommittee on Conservation Verification will hold its second open meeting on September 23

from 10 a.m. to 5 p.m. and September 24 from 9 to 12 noon at the Ramada Renaissance Dulles Hotel, 13869 Park Center Road, Herndon, VA (703) 478-2900. The meeting will include discussions of the Subcommittee's comments on and revisions to the Conservation Verification Protocols, and the schedule for final revisions to the document and its publication as draft guidance.

INSPECTION OF COMMITTEE DOCUMENTS: All documents for this meeting, including a more detailed meeting agenda, will be publicly available in limited numbers at the meeting. Thereafter, these documents will be available in EPA Air Docket Number A-90-39 in room 1500 of EPA headquarters, 401 M Street SW., Washington, DC. Hours of inspection are 9:30 a.m. to 12 noon and 1:30 to 3:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Concerning the Subcommittee on Conservation Verification and its activities, contact Barry Solomon at (202) 233-9166.

Dated: August 18, 1992.

Edward Callahan,

Acting Director, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation.

[FR Doc. 92-21257 Filed 9-2-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4201-8]

Proposed Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act; The Springfield Township, Michigan Superfund Site

AGENCY: U.S. Environmental Protection Agency.

ACTION: Request for public comment.

SUMMARY: The U.S. Environmental Protection Agency (U.S. EPA) is proposing to enter into an administrative consent agreement under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. Section 9622(h). This proposed settlement is intended to resolve the liabilities under CERCLA of the settling parties for response costs incurred as of May 31, 1991 at the Springfield Township Site, Davisburg, Michigan.

DATES: Comments are due on or before October 5, 1992.

ADDRESSES: Comments should be addressed to Jackie Dillard, Docket Clerk, U.S. EPA, Region V, 77 West Jackson, Chicago, Illinois, 60604 and to Richard Clarizio, Office of Regional Counsel, U.S. EPA, Region V, 77 West Jackson, Chicago, Illinois 60604. Comments must refer to: In Re: Springfield Township, Michigan Superfund Site, U.S. EPA Docket No. V-W-92-C-160.

FOR FURTHER INFORMATION CONTACT: Richard J. Clarizio, U.S. EPA, Office of Regional Counsel, 77 West Jackson Street, Chicago, Illinois 60604, (312) 886-0559.

SUPPLEMENTARY INFORMATION: Notice of Administrative Settlement—In accordance with section 122(i)(1) of CERCLA, notice is hereby given of a proposed administrative settlement concerning the Springfield Township hazardous waste site in Davisburg, Michigan. The proposed settlement agreement was approved by the United States Department of Justice and U.S. EPA, Headquarters. The settlement resulted from negotiations between U.S. EPA and the Respondents.

U.S. EPA is entering into this agreement under the authority of section 122(h) and 107 of CERCLA. Section 122(h) authorizes administrative settlements with parties potentially liable under section 107 of CERCLA if the claim has not been referred to the Department of Justice for further action. Under this authority, the agreement proposes to settle the potential CERCLA section 107 liability of twelve parties in the Springfield Township Superfund Site. The proposed settlement reflects, and was agreed to based on, conditions as known to the parties and U.S. EPA as of the time that this agreement becomes effective.

The agreement requires twelve parties to pay a total of $1,157,373.04 to the United States Superfund within 60 days of the effective date of the Order. In consideration of this payment, the agreement provides the parties with a covenant not to sue for all past response costs as of May 31, 1991, exclusive of $376,306 in potential credits obtained by the State of Michigan under section 104(c)(5)(C) of CERCLA, 42 U.S.C. 9604(c)(5)(C). The proposed settlement provides that U.S. EPA may elect not to complete the settlement based on matters brought to its attention during the public comment period established by this Notice. U.S. EPA has made a preliminary determination that the proposed settlement is in the public interest.

U.S. EPA will receive written comments relating to this agreement for 30 days from the date of publication of this notice. A copy of the proposed administrative settlement agreement may be obtained in person or by mail from Richard Clarizio, U.S. EPA, Region V, Office of Regional Counsel, 77 West Jackson, Chicago, Illinois, 60604. Additional background information relating to the proposed settlement is also available from Richard Clarizio.

Authority: The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601-9675.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 92-21365 Filed 9-2-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-955-DR]

Florida; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida (FEMA-955-DR), dated August 24, 1992, and related determinations.

EFFECTIVE DATE: August 28, 1992.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Florida, dated August 24, 1992, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 24, 1992:

Collier County for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

[FR Doc. 92-21223 Filed 9-2-92; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-956-DR]

Louisiana; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA-956-DR), dated August 26, 1992, and related determinations.

EFFECTIVE DATE: August 28, 1992.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Louisiana, dated August 26, 1992, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 26, 1992:

The parishes of Ascension, East Baton Rouge, Lafayette, St. Charles, St. Tammany, West Baton Rouge, and West Feliciana for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

[FR Doc. 92-21222 Filed 9-2-92; 8:45 am]

BILLING CODE 6718-02-M

Open Meeting; Board of Visitors for the National Fire Academy

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, FEMA announces the following committee meeting:

Name: Board of Visitors for the National Fire Academy.

Dates of Meeting: October 9-11, 1992.

Place: National Emergency Training Center, National Fire Academy, Building G, Conference Room, Emmitsburg, MD 21727.

Time: October 9, 1992, 2 p.m.-5 p.m.; October 10, 1992, 9 a.m.-5 p.m.; October 11, 1992, 9 a.m.-2 p.m.

Proposed Agenda: October 9: Quarterly meeting—old business; October 10—Agenda completion; October 11—Participate in Fallen Firefighter Memorial Service.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public with seating available on a first-come, first-served basis. Members of the general public who plan to attend the quarterly meeting should contact the Office of the Superintendent, National Fire Academy, U.S. Fire Administration, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447-1117, on or before September 25, 1992.

Minutes of the meeting will be prepared and will be available for public viewing in the Office of the Administrator, U.S. Fire Administration, Federal Emergency Management Agency, Emmitsburg, MD 21727. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: August 25, 1992.

Olin L. Greene,

U.S. Fire Administrator.

[FR Doc. 92-21221 Filed 9-2-92; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL RESERVE SYSTEM

Federal Reserve Policy Statement on Payments System Risk

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Policy statement.

SUMMARY: The Board has compiled an updated, comprehensive statement of its previously-adopted policies regarding payments system risk reduction, including policies to control Federal Reserve risk, policies for private-sector networks, and other related policies. This statement incorporates all of the policy modifications adopted by the Board since the last published comprehensive statement in 1987, and supersedes all other published statements. No new policies are included in this compilation.

EFFECTIVE DATE: August 20, 1992.

FOR FURTHER INFORMATION CONTACT: Florence M. Young, Assistant Director (202/452-3955), Division of Reserve Bank Operations and Payment Systems; Stephanie Martin, Senior Attorney (202/452-3198), Legal Division. For the hearing impaired *only*: Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: During the past seven years, the Federal Reserve System has developed a program to address payments system risk. Risk can arise from transactions on the Federal Reserve's wire transfer system (Fedwire), from other types of payments, including checks and automated clearing house (ACH) transactions, and from transactions on private large-dollar networks that permit their participants to transmit payment messages throughout the day with settlement of net positions at the end of the day. The Federal Reserve has addressed primarily large-dollar payments systems but has also developed policies regarding certain small-dollar systems, such as national ACH net settlement and ATM networks

The Federal Reserve first published a policy statement on its payments system risk reduction program in 1985 (50 FR 21120, May 22, 1985) and published an updated "interim" statement in 1987 (52 FR 29255, August 6, 1987). Since 1987, the Board has made several additions to its payments system risk reduction policy, including policies regarding private delivery-against-payment securities systems, offshore dollar-clearing and netting systems, and rollovers and continuing contracts (54 FR 26104, 26092, 26107, respectively, June 21, 1989). In 1990, the Board modified the Federal Reserve risk reduction policy with respect to book-entry securities transactions, net debit caps, capital measurements, and application of the policy to agencies and branches of foreign banks (55 FR 22087, May 31, 1990).

The Board has compiled an updated, comprehensive statement of its previously-adopted policies regarding payments system risk reduction, including policies to control Federal Reserve risk, policies for private-sector networks, and other related policies. This statement incorporates all of the policy modifications adopted by the Board since the last published comprehensive statement in 1987, and supersedes all other published statements. No new policies are included in this compilation. The policy statement is set out below:

Federal Reserve System Policy Statement On Payments System Risk

Introduction

I. Federal Reserve Policy

A. Daylight Overdraft Definition

B. [Reserved]

C. Capital

1. U.S. Chartered Institutions
2. U.S. Agencies and Branches of Foreign Banks

D. Net Debit Caps

1. Cap Set Through Self-Assessment
2. *De Minimis* Cap
3. Exemption From Filing
4. Special Situations
a. Edge and Agreement Corporations
b. Bankers' Banks
c. Zero-Cap Depository Institutions

E. Book-entry Securties Transactiosn

1. Collateralization
2. Transfer Size Limit

F. Inter-affiliate Transfers

G. Third-party Access Arrangements

H. Monitoring

1. *Ex Post*
2. Real Time
3. Multi-District Institutions
4. ACH Controls

II. Policies for Private-Sector Networks

A. Private Large-Dollar Funds Transfer Networks

B. Private Delivery-Against-Payment Securities Systems

C. Offshore Dollar-Clearing and Netting Systems

D. Private Small-Dollar Clearing and Settlement Systems

1. National ACH Net Settlement
2. Small-Dollar ATM Networks

III. Other Policies

A. Rollovers and Continuing Contracts

Federal Reserve System Policy Statement on Payments System Risk

Introduction

The Federal Reserve System has developed this policy statement to address payments system risk. Risk can arise from transactions on the Federal Reserve's wire transfer system (Fedwire), from other types of payments, including checks and automated clearing house (ACH) transactions, and from transactions on private large-dollar networks that permit their participants to transmit payment messages throughout the day with settlement of net positions at the end of the day. This policy statement is addressed primarily to large-dollar payments systems[1] and incorporates the Federal Reserve's policies to reduce Federal Reserve risk as well as risk on various types of private-sector networks.

The Federal Reserve Banks face direct risks of loss should depository institutions[2] be unable to settle their intraday ("daylight") overdrafts in their Federal Reserve accounts before the end of the day. Moreover, systemic risk may occur if an institution participating on a private large-dollar payments network were unable or unwilling to settle its net debit position. If this were to occur, the institution's creditors on that network might also be unable to settle their commitments. Serious repercussions could, as a result, spread to other participants in the private network, to other depository institutions not participating in the network, and to the nonfinancial economy generally. A Reserve Bank could be exposed to an indirect risk if its policies did not address this systemic risk. Finally, depository institutions create risk by permitting their customers, including other depository institutions, to transfer uncollected balances in anticipation of their coverage before the end of the day.

The Board is aware that large-dollar networks are an integral part of the clearing and settlement systems and that it is of vital importance to keep the payments mechanism operating without significant disruption. It is because of the importance of avoiding such disruptions that the Board continues to seek to reduce the risks of settlement failures that could cause these disruptions. The Board is also aware that some intraday credit may be necessary to keep the payments mechanism running smoothly and efficiently. The reduction and control of intraday credit risks, although essential, must be accomplished in a manner that will minimize disruptions to the payments mechanism. The Board anticipates that, by relying largely on the efforts of individual institutions to identify, control, and reduce their own exposures, and by establishing guidelines for use by institutions, the goal of reducing and controlling risks will not unduly disrupt the smooth operation of the payments mechanism.

The Board emphasizes that it is not condoning daylight overdrafts in Federal Reserve accounts. Although some intraday credit may be necessary, the Board anticipates that, as a result of its policies, there will continue to be a reduction in the number of institutions consistently relying on intraday credit supplied by the Federal Reserve to conduct their business. The Board also expects to continue observing, over time, a reduction in the volume of intraday credit at those institutions with a pattern of substantial reliance on such credit. The Board will continue to monitor the effect of its policies on the payments system.

The general methods used to control intraday credit exposures are explained in the policies below. These methods include caps on net debits incurred by depository institutions in their accounts at Federal Reserve Banks, collateralization, in certain situations, of overdrafts at the Federal Reserve due to book-entry securities transactions, bilateral credit limits between institutions on private large-dollar networks, and credit and liquidity safeguards for private delivery-against-payment systems. To assist depository institutions in implementing the Board's policies, the Federal Reserve has prepared a *Users' Guide* to the policy statement. The *Users' Guide* explains in detail how the policies apply to various types of depository institutions, the self-assessment procedures for establishing a net debit cap, and the role of the institutions' boards of directors in overseeing the implementation of risk reduction efforts by the institutions. Depository institutions may obtain the *Users' Guide* from their local Reserve Bank.

I. Federal Reserve Policy

A. Daylight Overdraft Definition

A daylight overdraft occurs when a depository institution's Federal Reserve account is in a negative position during the business day. The Reserve Banks use an *ex post* system to measure daylight overdrafts, calculating intraday Federal Reserve account positions as follows: At the opening of business, each institution's closing balance from the previous day is adjusted by the net of all ACH transactions. Original issues of Treasury securities[3] are posted no earlier than 9:15 a.m. Eastern Time (ET), and redemption and interest payments for Treasury and government agency securities are posted by 9:15 a.m. ET. Funds and book-entry securities transfers are posted throughout the day as they are processed. After the close of business, all other transactions, such as check and currency and coin transactions, are totalled. If the net of these transactions is a credit, it is posted as though it occurred at the opening of business; if the net is a debit, it is posted as though it occurred at the close of business.

[1] In a changing technological and regulatory environment, it is not possible or desirable to adopt an all-inclusive and permanent definition of a "large-dollar payments system" for the purposes of Federal Reserve risk control policy. In determining whether any particular system is a "large-dollar" system, the Board will consider any of the following four factors: (1) the employment of multilateral netting arrangements, (2) the use of same-day settlement, (3) the routine processing of a significant number of individual payments larger than $50,000, and (4) the possibility that any one participant could be exposed to a net debit position at the time of settlement in excess of its capital.

[2] In this policy statement, the terms "depository institution" or "institution" will be used to refer not only to institutions defined as "depository institutions" by 12 U.S.C. 461(b)(1)(A), but also to U.S. branches and agencies of foreign banks, Edge and agreement corporations, and bankers' banks, unless the context indicates a different reading.

[3] New issues of government agency securities are posted as the securities are delivered over Fedwire.

B. [Reserved]

C. Capital

1. U.S. Chartered Institutions.

For depository institutions chartered in the United States, net debit caps are multiples of "qualifying" or similar capital measures that consist of those capital instruments that can be used to satisfy risk-based capital standards, as set forth in the capital adequacy guidelines of the federal financial regulatory agencies. All of the federal financial regulatory agencies collect, as part of their required reports, data on the amount of capital that can be used for risk-based purposes—"qualifying" capital for commercial and savings banks, "risk-based" capital for savings and loan associations, and total regulatory reserves for credit unions. Other U.S. chartered entities that incur overdrafts in Federal Reserve accounts should provide similar data to their Reserve Banks.

In some instances, further adjustments to capital are required. For example, virtually all Edge and agreement corporations are subsidiaries of depository institutions that may themselves use intraday credit. Capital would be double-counted if both the parent and the Edge or agreement corporation subsidiary used intraday credit based on their own capital bases. Accordingly, if a parent elects to permit its Edge or agreement corporation subsidiary to use daylight credit, any risk-based capital attributable to the Edge or agreement corporation subsidiary that is reflected on the parent's balance sheet must be subtracted from the parent's capital. The parent may choose, however, to use all of its capital for its own cap and to prohibit its Edge or agreement corporation subsidiary from using intraday credit.

2. U.S. Agencies and Branches of Foreign Banks.

For U.S. agencies and branches of foreign banks, net debit caps for uncollateralized overdrafts in Federal Reserve accounts are multiples of consolidated "U.S. capital equivalency."[4] All net debit caps are conditioned on the Reserve Bank's judgment that the U.S. agency or branch of the foreign bank has satisfactory U.S. funding capability and potential eligible collateral for a discount window loan, should it be unable to cover its daylight overdraft by the end of the day.

A foreign bank whose home-country supervisor adheres to the Basle Capital Accord may determine its uncollateralized daylight overdraft capacity by applying its cap multiple to a U.S. capital equivalency equal to the greater of 10 percent of worldwide capital or 5 percent of the total liabilities of each agency or branch, including acceptances, but excluding accrued expenses and amounts due and other liabilities to offices, branches, and subsidiaries of the foreign bank. In the absence of contrary information, the Reserve Banks presume that all banks chartered in G-10 countries meet the acceptable prudential capital and supervisory standards and will consider any bank chartered in any other nation that adopts the Basle Capital Accord standards (or requires capital at least as great and in the same form as called for by the Accord) eligible for the Reserve Banks' review for meeting acceptable prudential capital and supervisory standards.

To determine the net debit cap for uncollateralized overdrafts for all other foreign banks, cap multiples are applied to the U.S. capital equivalency measured as the greater of (1) the sum of the amount of capital (but not surplus) which would be required of a national bank being organized at each agency or branch location, or (2) the sum of 5 percent of the total liabilities of each agency or branch, including acceptances, but excluding accrued expenses and amounts due and other liabilities to offices, branches, and subsidiaries of the foreign bank.

All foreign banks, regardless of their cap for uncollateralized overdrafts, may incur total overdrafts up to an amount equal to their cap multiple times 10 percent of their worldwide capital, as long as the amount of the overdraft above the uncollateralized overdraft cap is collateralized. In addition, all foreign banks may elect to collateralize all or a portion of their overdrafts related to book-entry securities activity. This policy offers all foreign banks, under terms that reasonably limit Reserve Bank risk, a level of overdrafts based on the same proportion of their worldwide capital. Banks chartered in countries that follow the Basle Accord and that have demonstrated collateral and funding capacity that would result in a net debit cap based on 10 percent of worldwide capital are not permitted to incur overdrafts above their cap, except for book-entry securities overdrafts, even with collateral. All other foreign banks may incur overdrafts to the same extent as banks from Basle Accord countries, *i.e.*, up to their cap multiple times 10 percent of their worldwide capital, provided that sufficient collateral is posted for any overdrafts in excess of the cap based on their U.S. capital equivalency.

D. Net Debit Caps

To limit the aggregate amount of daylight credit extended by Reserve Banks, each institution that incurs daylight overdrafts in its Federal Reserve account must adopt a net debit cap, *i.e.*, a ceiling on the aggregate net debit position that it can incur during a given interval. Alternatively, if an institution's daylight overdrafts generally do not exceed the lesser of $10 million or 20 percent of capital, the institution may qualify for the exempt-from-filing status. Subject to the provisions for special situations described below, an institution must be financially healthy and eligible to borrow from the discount window in order to adopt a cap greater than zero or qualify for the filing exemption.

Cap categories and associated cap levels, set as multiples of capital, are listed below:

Net Debit Cap Multiples

Cap Category	Two-Week Avg.	Single Day
High	1.50	2.25
Above Avg.	1.125	1.875
Average	0.75	1.125
De Minimis	0.20	0.30
Exempt-from-filing	$10 million (0.20)	$10 million (0.20)
Zero	0.0	0.0

An institution is expected to avoid incurring net debits that, on average over a two-week period, exceed the two-week average cap, *and*, on any day, exceed the single-day cap. The two-week average cap provides flexibility, in recognition that fluctuations in payments can occur from day-to-day. The purpose of the higher single-day cap is to limit excessive daylight overdrafts on any day and to assure that institutions develop internal controls that focus on the exposures each day, as well as over time.

The two-week average cap is measured against the average, over a

[4] The term "U.S. capital equivalency" has been chosen merely as the most convenient term of art. The use of the term for purposes of this policy statement is not meant to suggest that the Board presently intends that this measure necessarily should be used to measure a foreign bank's capital position in the United States for prudential or other purposes.

two-week reserve maintenance period, of an institution's daily maximum net debit positions in its Federal Reserve account. In calculating the two-week average, individual days on which an institution is in an aggregate net credit position throughout the day are treated as if the institution was in a net position of zero. The number of days used in calculating the average is the number of business days the institution's Reserve Bank is open during the reserve maintenance period.

The Board's policy on net debit caps is based on a specific set of guidelines and some degree of examiner oversight. Under the Board's policy, a Reserve Bank may prohibit the use of Federal Reserve intraday credit if (1) an intstitution's use of daylight credit is deemed by the institution's supervisor to be unsafe or unsound, (2) an institution does not qualify for a cap exemption, does not perform a self-assessment, or does not file a board-of-directors-approved *de minimis* cap, and (3) an institution poses an excessive risk to a Reserve Bank.

The net debit cap provisions of this policy apply to foreign banks to the same extent as they apply to U.S. institutions. The Reserve Banks will advise home-country supervisors of banks with U.S. branches and agencies of the daylight overdraft capacity of banks under their jurisdiction, as well as of other pertinent conditions related to their caps. Home-country supervisors that request information on the overdrafts in the Federal Reserve accounts of their banks will be provided that information on a regular basis.

1. Cap Set Through Self-Assessment

An institution that wishes to establish a net debit cap category of high, above average, or average must perform a self-assessment of its own creditworthiness, credit policies, and operational controls, policies, and procedures.[5] The assessment of creditworthiness should address the overall financial condition of the institution, placing emphasis on conformance of the institution's capital with supervisory standards for capital adequacy. The institution should also assess its procedures for evaluating the financial condition of its customers and should establish intraday credit limits that reflect these assessments. Finally, an institution should ensure that its operational controls permit it to contain its use of Federal Reserve intraday credit and restrict its customers' use of credit to the limits it has established. The *Users' Guide* to the Board's Payments System Risk Reduction Policy, available from any Reserve Bank, includes a detailed explanation of the steps that should be taken by a depository institution in performing a self-assessment to establish a net debit cap.

Each institution's board of directors is expected to review the self-assessment and determine the appropriate cap category. The process of self-assessment, with board-of-directors review, should be conducted at least once in each 12-month period. A cap determination may be reviewed and approved by the board of directors of a holding company parent of a depository institution, or the parent of an Edge or agreement corporation, provided that (1) the self-assessment is performed by each entity incurring daylight overdrafts, (2) the entity's cap is based on the entity's own capital (adjusted to avoid double-counting), and (3) each entity maintains for its primary supervisor's review its own file with supporting documents for its self-assessment and a record of the parent's board-of-directors review.[6]

In applying these guidelines, each institution is expected to maintain a file for examiner review that includes (1) worksheets and supporting analysis developed in its self-assessment of its own risk category, (2) copies of senior management reports to the board of directors of the institution or its parent (as appropriate) regarding that self-assessment, and (3) copies of the minutes of the discussion at the appropriate board-of-directors meeting concerning the institution's adoption of a cap category.[7]

As part of its normal examination, the depository institution's examiners will review the contents of the self-assessment file.[8] The objective of this review is to assure that the institution has applied the guidelines seriously and diligently, that the underlying analysis and methodology were reasonable, and that the resultant self-assessment was generally consistent with the examination findings. Examiner comments, if any, should be forwarded to the board of directors of the institution. The examiner, however, would generally not require a modification of the self-assessment cap category unless the level of daylight credit used by the institution constitutes an unsafe or unsound banking practice.

The contents of the self-assessment cap category file will be considered confidential by the institution's examiner. Similarly, the actual cap level selected by the institution will be held confidential by the Federal Reserve and the institution's examiner. (However, cap information will be shared with the home country supervisor of agencies and branches of foreign banks.)

2. De Minimis Cap

Many depository institutions incur relatively small overdrafts and thus pose little risk to the Federal Reserve. To ease the burden on these small overdrafters of engaging in the self-assessment process and to ease the burden on the Federal Reserve of administering caps, the Board will allow institutions that meet reasonable safety standards to incur *de minimis* amounts of daylight overdrafts without performing a self-assessment. A depository institution may incur daylight overdrafts up to 20 percent of capital, if a board-of-directors resolution is submitted.

Reserve Banks will review the status of a *de minimis* cap institution that exceeds its cap on a single day or, on average, over a two-week reserve maintenance period and will decide if the *de minimis* cap should be

[5] This assessment should be done on an individual institution basis, treating as separate entities each commercial bank, each Edge corporation (and its branches), each thrift institution, etc. An exception is made in the case of U.S. agencies and branches of foreign banks. Because these entities have no existence separate from the foreign bank, all the U.S. offices of foreign banks (excluding U.S. chartered bank subsidiaries and U.S. chartered Edge subsidiaries) should be treated as a consolidated family relying on the foreign bank's capital

[6] A foreign bank should undergo the same self-assessment process as a domestic bank in determining a net debit cap for its U.S. branches and agencies. Many foreign banks, however, do not have the same management structure as U.S. depository institutions, and adjustments should be made as appropriate. Where a foreign bank's board of directors has a more limited role to play in the bank's management than a U.S. board, the self-assessment and cap category should be reviewed by senior management at the foreign bank's head office that exercises authority over the foreign bank equivalent to the authority exercised by a board of directors over a U.S. depository institution. In cases where the board of directors exercises authority equivalent to that of a U.S. board, cap determination should be made by the board of directors.

[7] In most cases, it may not be possible for the U.S. examiners to review the minutes of the meeting of a foreign bank's board of directors or other appropriate management group at which the self-assessment was discussed. In lieu of this, the file on the self-assessment that is made available for examiner review by the U.S. offices of a foreign bank should contain the report on the self-assessment made to the foreign bank's senior management by the management of U.S. operations. In addition, the file should also contain a record of the appropriate senior management's response. As in the case of U.S. institutions, this review and confirmation should be completed every year.

[8] Between examinations, examiners or Reserve Bank staff may contact an institution about its cap if statistical or supervisory reports or *ad hoc* information suggest that there may have been a change in the institution's position.

maintained or if the institution will be required to perform a self-assessment and file for a higher cap. An institution choosing to use a *de minimis* cap must submit to its Reserve Bank at least once each year a copy of the resolution of its board of directors (or its holding company's board) approving the depository institution's use of daylight credit up to the *de minimis* level.

3. Exemption From Filing

Depository institutions that only rarely incur overdrafts in their Federal Reserve accounts that exceed the lesser of $10 million or 20 percent of their capital are excused from performing self-assessments and filing board-of-directors resolutions with their Reserve Banks. This dual test is designed to limit the filing exemption to depository institutions that create only low-dollar risks to the Reserve Banks and that incur small overdrafts relative to their capital.

The Reserve Bank will review the status of an exempt depository institution that incurs overdrafts in its Federal Reserve account in excess of $10 million or 20 percent of capital on more than two days in any two rolling two-week reserve maintenance periods. The Reserve Bank will decide if the exemption should be maintained or if the institution will be required to file for a cap. Even for depository institutions meeting the size and frequency standards, the exemption would be granted at the discretion of the Reserve Bank.

4. Special Situations

Special risks are presented by the participation on Fedwire of Edge and agreement corporations, bankers' banks that do not maintain reserves, and institutions that have been assigned a cap of zero by their Reserve Bank. Some of these entities are major participants in privately-operated, large-dollar clearing and settlement systems, often making and receiving a large volume of payments on behalf of their affiliates and parent organizations. Most of these institutions lack regular discount window access. In developing its policy for these institutions, the Board has sought to balance the goal of reducing and managing risk in the payments system, including risk to the Federal Reserve, with that of minimizing the adverse effects on the payments operations of these institutions.

a. *Edge and Agreement Corporations.*[9] Edge and agreement corporations must fully collateralize all overdrafts in their Federal Reserve accounts. To protect the Reserve Banks from excessive risk in conjunction with the collateralization policy, the Board strongly urges each Edge or agreement corporation to restrain its use of intraday credit by establishing a net debit cap based on its own capital in the same manner as any other depository institution. For purposes of net debit caps, the Board suggests that all branches of an Edge or agreement corporation be consolidated. This policy reflects the lack of access of these institutions to the discount window and the possibility that the parent of an Edge or agreement corporation may be unable or unwilling to cover its subsidiary's overdraft on a timely basis.

At the same time, the Board believes it is preferable for Edge and agreement corporation subsidiaries of U.S. banks, together with their parents, to arrange their affairs in a way that would allow them to continue to service their customers and at the same time reduce risk exposures. Specifically, the Board notes that the parent of an Edge or agreement corporation could fund its subsidiary during the day over Fedwire and/or the parent could substitute itself for its subsidiary on private networks. Such an approach by the parent could both reduce systemic risk exposure and permit the Edge or agreement corporation to continue to service its customers. Edge and agreement subsidiaries of foreign banks are treated in the same manner as their domestically-owned counterparts.

b. *Bankers' Banks.*[10] Bankers' banks are exempt from reserve requirements and do not have regular access to the discount window. They do, however, have access to Federal Reserve payment services. To protect Reserve Banks from potential losses resulting from bankers' banks' daylight overdrafts, bankers' banks should refrain from incurring overdrafts and should post collateral to cover any funds or book-entry securities overdrafts they do incur. Bankers' banks may voluntarily waive their exemption from reserve requirements, thus gaining access to the discount window and avoiding the requirement to post collateral for all overdrafts. Such bankers' banks would be subject to the same policy as other depository institutions.

c. *Zero-Cap Depository Institutions.* Some depository institutions have caps of zero that are imposed by Reserve Banks because of the institutions' financially troubled status, because of Board policy (such as limited-purpose trust companies), or because the institution itself requested a zero cap. Regardless of whether it has access to the discount window, if a depository institution on which a Reserve Bank has imposed, or that has adopted, a zero cap incurred a funds-related overdraft, the Reserve Bank would counsel the institution and may monitor the institution's activity in real-time and reject or pend any Fedwire funds tranfer instruction that would cause an overdraft. Because the timing of book-entry securities transfers are not fully within the control of the receiving depository institution, the Board will allow depository institutions with caps of zero that have access to the discount window to continue to incur book-entry overdrafts, but will require that such overdrafts be collateralized even if they are infrequent and modest.

E. Book-entry Securities Transactions

1. Collateralization

A depository institution's funds and book-entry securities overdrafts are combined for purposes of determining an institution's compliance with its cap. Financially healthy depository institutions with positive caps that frequently exceed their caps by material amounts solely due to book-entry securities transactions are required to collateralize all of their book-entry securities overdrafts. To determine whether an institution exceeds its net debit cap due solely to book-entry securities activity, the Reserve Bank determines what activity in an institution's Federal Reserve account is attributable to funds transfers and other payment transactions and what activity is attributable to book-entry securities transactions. Book-entry securities balances are calculated by posting charges for original issues of Treasury securities and credits for interest and redemption payments for Treasury and government agency book-entry securities at 9:15 a.m. ET and posting credits and debits from transfers of book-entry securities as they occur. A book-entry securities overdraft occurs when an institution's book-entry securities balance, less any credit in its funds balance, is a net debit.

[9] These institutions are organized under section 25(a) of the Federal Reserve Act (12 U.S.C. 611-631) or have an agreement or undertaking with the Board under section 25 of the Federal Reserve Act (12 U.S.C. 601-604a).

[10] For the purposes of this policy, a bankers' bank is a financial institution that is not required to maintain reserves under the Board's Regulation D (12 CFR part 204) because it is organized solely to do business with other financial institutions, is owned primarily by the financial institutions with which it does business, and does not do business with the general public and is not a depository institution as defined in the Board's Regulation A (12 CFR 201.2(a)).

For the purposes of this policy, "frequently" means more than three occasions in two rolling two-week reserve maintenance periods, and "material amounts" means in excess of 10 percent of cap. For example, a depository institution with a $50 million cap that meets the "frequent" and "material" tests and has a $70 million overdraft— $30 million due to funds transfers and $40 million due to book-entry securities transactions—will be required to collateralize the entire $40 million book-entry securities overdraft.

In addition, all financially healthy depository institutions with positive caps may *choose* to collateralize all or part of their book-entry securities overdrafts, even if they have not exceeded their caps. Such secured overdrafts shall not be included with those overdrafts measured against their caps. For example, a financially healthy depository institution with a $50 million cap and a $30 million overdraft—$15 million due to funds transfers and $15 million due to book-entry securities transfers—would ordinarily have excess capacity of $20 million. Such an institution may increase its excess capacity by $15 million by collateralizing all of its book-entry securities overdrafts (or may increase its excess capacity by less than $15 million by collateralizing some portion of its book-entry securities overdrafts). Such an institution may not increase its cap of $50 million by over-collateralizing its book-entry securities overdrafts or by collateralizing any part of its funds overdrafts. At the same time, if an institution that voluntarily collateralizes its book-entry securities overdrafts and those overdrafts become frequent and material, the institution will be required to collateralize 100 percent of its book-entry securities overdrafts.

Depository institutions have some flexibility as to the specific type of collateral they may pledge to secure book-entry securities overdrafts. The Reserve Banks will not give preference to a particular type of collateral, such as securities in transit, discount window collateral, or stable pools of collateral, unless a preference is desired by the depository institution. All collateral must be acceptable to the Reserve Bank.

2. Transfer Size Limit

Secondary market book-entry securities transfers on Fedwire are limited to a transfer size of $50 million par value. This limit is intended to induce multiple deliveries to reduce position-building by dealers, a major cause of book-entry securities overdrafts; participants may choose to limit their trade size as well. This limitation does not apply to:

(a) original issue deliveries of book-entry securities from a Reserve Bank to a depository institution or,

(b) transactions sent to or by a Reserve Bank in its capacity as fiscal agent of the United States, government agencies, or international organizations. Thus, requests to strip or reconstitute Treasury securities, or to convert bearer or registered securities to or from book-entry form, are exempt from this limitation. Also exempt are pledges of securities to a Reserve Bank as principal (*e.g.*, discount window collateral) or as agent (*e.g.*, Treasury Tax and Loan collateral).

F. Inter-Affilliate Transfers

Although the institutions affiliated through common holding company ownership are not permitted to consolidate their wire transfer activity and capital for the purpose of monitoring compliance with this policy, such institutions may engage in funds transfers over Fedwire that are intended to simulate consolidation among affiliated depository institutions and that create a pattern of daylight overdrafts up to the sending institution's net debit cap, provided the following conditions are met:

1. Each of the individual sending depository institutions' boards of directors approve, at least once each year, the intraday extension of credit to the specified affiliate(s),[11] and sends a copy of the directors' resolution to its Reserve Bank.

2. During the regular examination, the individual institution's primary federal supervisor reviews the timeliness of board-of-directors resolutions, the establishment by the institution of limits on credit extensions to each affiliate, the establishment by the institution of controls to assure that credit extensions stay within such limits, and notes whether credit extensions have in fact stayed within those limits.

The Board notes that the adoption of this policy regarding transfers among depository institution affiliates does not in any way change the treatment of depository institutions and their Edge and agreement corporation subsidiaries. The ability of a parent institution to fund its Edge or agreement subsidiaries on an intraday basis remains unchanged, so long as the parent remains within its own cap.

[11] The provision of this policy statement that allows a holding company to establish caps for its depository institution subsidiaries does not apply to this requirement.

G. Third-Party Access Arrangements

The Board will allow, under certain conditions, arrangements whereby a depository institution or other entity ("the service provider") could initiate Fedwire transfers from the Federal Reserve account of another depository institution. Such arrangements will be permitted provided:

1. The institution whose account is being charged (the "institution") retains control of the credit-granting process by individually approving each transfer or establishing credit limits within which the service provider can act.

2. The service provider must be an affiliate of the institution, or, if the institution approves each individual transaction, an unaffiliated company. All service providers must be subject to examination.

3. The service provider must not permit or initiate transfers that would exceed individual customer credit limits without first obtaining the institution's permission.

4. The service provider must have the operational ability to ensure that the aggregate funds transfer activity of the institution does not result in daylight overdrafts in excess of the institution's cap.

5. All Fedwire transfer activity must be posted to the institution's account, and the institution will remain responsible for its account.

6. The institution's board of directors must approve the specifics of the arrangement, including: (a) the operational transfer of its Fedwire transfer activity to the service provider; (b) the net debit cap for the activity to be processed by the service provider; and (c) the credit limits for any inter-affiliate funds transfers.

7. The institution and the service provider must execute an agreement with the relevant Reserve Banks delineating the terms of the agreement.

8. The institution must have adequate back-up procedures and facilities to cover equipment failure or other developments affecting the adequacy of the service being provided. This back-up must provide the Reserve Bank with the ability to terminate a service provider arrangement.

9. The institution must have the ability to monitor transfers being made on its behalf.

10. The institution must provide an opinion of counsel that the arrangement is consistent with corporate separateness and does not violate branching restrictions.

11. The primary supervisor must not object to the arrangement.

12. No individual with decision-making responsibilities relating to the Fedwire transfer area may hold such a position in more than one affiliated institution participating in an approved arrangement.

13. The institution must have in place an adequate audit program to review the arrangements at least annually to confirm that these requirements are being met.

In order to assure consistency with the Board's policy, each new arrangement should be reviewed by the Director of the Division of Reserve Bank Operations and Payment Systems prior to approval by the Reserve Bank.

H. Monitoring

1. Ex Post

Under the *ex post* monitoring procedure, an institution with a net debit position in excess of its cap will be contacted by its Reserve Bank.[12] The Reserve Bank will counsel the institution, discussing ways to reduce its excessive use of intraday credit. Each Reserve Bank retains the right to protect its risk exposure from individual institutions by unilaterally reducing Fedwire caps, imposing collateralization or clearing balance requirements, holding or rejecting Fedwire transfers during the day until the institution has collected balances in its Federal Reserve account, or, in extreme cases, taking the institution off-line or prohibiting it from using Fedwire.

2. Real Time

A Reserve Bank will apply real-time monitoring to an individual institution's position when the Reserve Bank believes that it faces excessive risk exposure, *e.g.*, from problem banks or institutions with chronic overdrafts in excess of what the Reserve Bank determines is prudent. In such a case, the Reserve Bank will control its risk exposure by monitoring the institution's position on a real-time basis, rejecting or delaying transfers if the account balance would otherwise be exceeded, and taking other prudential actions.

3. Multi-District Institutions

A depository institution that chooses to access Fedwire through accounts in more than one Federal Reserve district is expected to manage its accounts so that its aggregate net debit position across all accounts does not exceed its net debit cap. One Reserve Bank will act as administrative Reserve Bank and will have overall risk-management responsibilities for institutions maintaining accounts in more than one Federal Reserve district. In the case of families of branches and agencies of the same foreign bank, net debit cap compliance will be monitored by the Reserve Bank that exercises the Federal Reserve's oversight responsibilities under the International Banking Act.[13] The administrative Reserve Bank may determine, in consultation with Reserve Banks in whose territory other U.S. agencies or branches of the same foreign bank are located and with the management of the foreign bank's U.S. operations, that branches and agencies outside its district either will not be permitted to incur overdrafts in Federal Reserve accounts or must allocate part or all of the foreign family's net debit cap (and the responsibility for administering part or all of the collateral requirement) to a Reserve Bank in whose district one or more of the foreign offices operate.[14] For domestic depository institutions that have branches in multiple Federal Reserve districts, the administrative Reserve Bank generally will be the Reserve Bank where the head office of the bank is located.

4. ACH Controls

To reduce risk in the ACH mechanism associated with the origination of ACH credit transactions by institutions that are experiencing financial difficulties, the Reserve Banks:

(a) will monitor ACH credit payments originated by such depository institutions;

(b) may require advanced funding or other assurance of payment or may reject payments if it appears the originating depository institution will not have sufficient funds on the settlement day; and

(c) will review origination patterns for all ACH originators of debit and credit payments.

In addition, a Reserve Bank may defer the availability of some or all of the credit from debit payments originated by an institution that the Reserve Bank believes will not have sufficient balances to pay return items when they are presented.

Further details on Federal Reserve ACH controls are set out in the Uniform ACH Operating Circular, available from each Reserve Bank.

II. Policies For Private-Sector Networks

A. Private Large-Dollar Funds Transfer Networks.

Any large-dollar payments system obtaining net settlement services from a Federal Reserve Bank must establish liquidity and credit controls that provide a reasonable degree of assurance that settlement can be achieved on the settlement day. Under the Board's policy, no private large-dollar payments network is eligible for Reserve Bank net settlement services unless it:

(1) Requires each participant to establish bilateral net credit limits vis-a-vis each other participant on that network,[15]

(2) Establishes a system to reject or hold any payment that would exceed such limits, and

(3) Establishes and monitors in real time network-specific net debit limits.

In order that Reserve Banks may properly monitor the use of intraday credit, no future or existing large-dollar network will be permitted to settle on the books of a Reserve Bank unless its members authorize the network to provide position data to the Reserve Bank on request.

In setting bilateral net credit limits, each participant on a network must determine for itself the maximum dollar amount of net transfers (*i.e.*, the excess of the value received over the value sent) that it is willing to accept from each other participant on that network. The Board believes that bilateral net credit limits reduce risk by enabling an institution to identify and control the exposure it could face in the event of a settlement failure. The volume of daylight exposure that each participant is willing to accept from each other participant is likely to be quite large when aggregated across the network. Moreover, participants may be unaware of the credit made available to a given sender by other potential receivers. For this reason, bilateral net credit limits

[12] Even if the institution is not a state member bank, the Reserve Bank can make this contact when an overdraft occurs in a reserve or clearing account or when the institution is in a net debit position on a wire system that settles on the books of the Federal Reserve.

[13] 12 U.S.C. 3101-3108.

[14] As in the case of Edge and agreement corporations and their branches, with the approval of the designated administrative Reserve Bank, a second Reserve Bank may assume the responsibility of managing and monitoring the net debit cap of particular foreign branch and agency families. This would often be the case when the payments activity and national administrative office of the foreign branch and agency family is located in one district, while the oversight responsibility under the International Banking Act is in another district. If a second Reserve Bank assumes management responsibility, monitoring data will be forwarded to the designated administrator for use in the supervisory process.

[15] Bilateral net credit limits do not apply to Fedwire transfers because the Federal Reserve provides final credit to the receiver when the amount of the payment order is credited to the receiver's account or when the payment order is sent to the receiver, whichever is earlier (12 CFR 210.31(a)). Reserve Banks, however, may take action to reduce their credit exposure.

should be supplemented by network-specific net debit caps, which will limit the aggregate amount of risk a participant may present to the network.

The federal bank examiners will, during regular examinations, review and comment on the procedures used by each institution in establishing, monitoring, reviewing, and modifying bilateral net credit limits, and ensure that institutions understand their potential exposures with each other participant over more than one network and in more than one market.

Avoidance of Risk Reduction Measures

The Board believes that the use of Fedwire for the avoidance of Federal Reserve or private-sector risk reduction measures is not appropriate. The Board seeks to prevent institutions from participating in bilateral netting arrangements that provide only payments netting under which gross payment messages are exchanged during the day and settled at the end of the day by using Fedwire to adjust net positions bilaterally. Such arrangements would be difficult for Reserve Banks to detect and would be outside of Federal Reserve and private-sector risk control measures. They still, however, present the same risks to the payments mechanism that other net settlement arrangements present because settlement failures are possible, and such failures could have deleterious consequences to the payments system.

The Board realizes, however, that certain netting arrangements are not intended to avoid risk reduction measures and can, in fact, reduce risk. For example, institutions may, by means of novation, net transactions prior to settlement, with each participant legally obligated only for the resultant net position. This arrangement reduces risk because it replaces gross transactions with the smaller net obligation, and failures to settle would almost always involve smaller exposures (and less systemic risk) than with simple bilateral net settlement. The Board's policy on limiting avoidance techniques is not intended to restrict this kind of netting arrangement.

B. Private Delivery-Against-Payment Securities Systems

Private delivery-against-payment securities systems that settle on a net, same-day basis entail credit and liquidity risks for their participants and for the payments system in general. The Board believes that these systems should include risk-control features if they are to rely on Fedwire for ultimate settlement. The need for such risk controls is becoming increasingly important in view of these systems' potential for growth, their high volumes, and the possible future course of the Federal Reserve's payments system risk reduction program, e.g., pricing intraday Fedwire funds and book-entry overdrafts.

Delivery-against-payment securities systems, as described below, are expected to adopt appropriate liquidity and credit safeguards in order to ensure that settlement occurs in a timely fashion and that the participants do not face excessive intraday risks. In view of the continuing evolution of these systems, the Board has established general guidelines rather than specifying the exact form such safeguards should take. Reversals or "unwinds" of funds and securities transfers, however, are not considered appropriate liquidity control measures.

The policy addresses four issues:

(1) Liquidity safeguards for ensuring settlement;

(2) Provisions for reversals;

(3) Credit safeguards, such as collateral and netting features; and

(4) Open settlement accounting. These components, and the scope and regulatory implications of this policy, are described below.

Scope of the Policy

This policy is specifically targeted at large-scale private delivery-against-payment securities systems that settle their obligations on a net, same-day basis over Fedwire, either directly or indirectly. These systems settle securities transactions for their participants by transferring securities and the accompanying payment obligations on the books of a clearing corporation or a depository institution operating the system and arrange for final settlement of the funds positions on a net basis at the end of the processing day. Settlement on a "net basis" means that the funds obligations are netted among all participants, so that a participant can settle obligations to or from many counterparties by making a single transfer to or from the system. "Same-day" settlement means that the appropriate funds and securities transfers are settled on the day that a delivery-against-payment request is entered into the system. "Large-scale" systems are those systems that routinely process a significant number of individual transfers larger than $50,000 or that would permit any one participant to be exposed to a net debit position at the time of settlement in excess of its capital.

This policy applies to systems that function primarily as a means of transferring securities and funds between participants. If a firm or bank is providing clearing services to a customer, and these services focus primarily on the bilateral relation between the clearer and the customer, the firm or bank would not be viewed as a system under this policy. Moreover, at least initially, a system that is an integral component of a full service bank, such that obligations that settle on an item-by-item basis are the direct obligations of the bank, will not be subject to this policy because of the existing supervisory oversight of a bank's liquidity and credit resources.

This policy applies to systems in the United States that transfer debt and equity securities, including those not eligible for Fedwire. The policy does not apply to systems dealing with other financial instruments, such as futures and options.

This policy is directed at limiting the risks arising out of the intraday credit generated in private delivery-against-payment systems. The policy does not address other potential sources of risk in these systems, such as inadequate management or facilities. The Board expects that these systems will be subject to regulatory oversight because they are typically clearing agencies subject to supervision by the Securities and Exchange Commission, or because they are limited purpose trust companies subject to state or federal banking supervision, or both. These supervisors have broad responsibility for ensuring the safety and integrity of these systems.

Liquidity Safeguards

Because they give rise to the extension of intraday credit, private delivery-against-payment systems rely on payments by participants with net obligations to the system ("net debtor" participants) in order to make settlement payments to participants with net obligations due from the system ("net creditor" participants). In the absence of appropriate safeguards, the failure by a single participant with a net debit position may delay settlement of the system. The result of a system's failure to settle in a timely manner will be that participants do not receive the transfers of funds and securities that they expected and that they, therefore, may not be able to conclude other transactions outside the system. Because settlement typically occurs at the end of the day, the system and net creditor participants will have relatively little time to react to any failure that may occur.

This policy seeks to ensure that private systems settle in a timely manner, so that participants can rely on

the funds or securities obtained as a result of transfers through the system. The importance of ensuring reliable transfers is due in part to the fact that these systems generally allow participants to re-transfer funds credits or securities acquired during the day. If, for example, a participant sold securities early in the day and later used his funds credits to purchase other securities, then a failure in the settlement of the earlier transaction could result in a failure of the settlement of the later transaction.

The Board believes that private systems should protect timely settlement by adopting safeguards that are commensurate with the risk of settlement failure. The Board recognizes that a private system relying on intraday credit will not be able to guarantee timely settlement of funds and securities transfers under all conceivable circumstances and, therefore, that such a system cannot make an absolute guarantee of settlement finality. At a minimum, however, a system must have sufficient safeguards so that it will be able to settle on time if any one of its major participants defaults. In addition, the Board strongly encourages systems to adopt settlement safeguards beyond this required minimum.

Liquidity arrangements that will enable a system to make end-of-day settlement payments are crucial settlement safeguards. Liquidity safeguards adopted by private delivery-against-payment systems should include provisions that give the system access to sources of readily available funding that will support timely settlement in case a participant is unable to settle its obligation. Funding sources could, for example, include prearranged lines of credit or a pool of funds contributed by the participants. The system should limit, on an intraday basis, the size of potential net debit positions to ensure that these liquidity sources will be adequate.

Because settlement risks and structure may vary in different systems, the Board does not consider it appropriate to specify the exact structure of acceptable safeguards. One example of an appropriate liquidity safeguard may be a cap on the net debit funds position that may be incurred by an individual participant, which is tied to the liquidity resources available to the system and/or to the participant. If such a cap is used, it may be appropriate for it to be administered in a flexible manner, with due regard for liquidity and credit risks and for the efficient operation of the system.

Reversals

Currently, certain systems permit reversals of transfers of funds and securities to facilitate settlement if a participant defaults. By reversing transactions, the systems try to reduce the obligations of the defaulting participant. However, settlement with reversals will not ease the liquidity problems caused by a default; reversals will simply transfer a liquidity shortfall from the defaulter to another participant and will do so at the end of the day, when it may be difficult to arrange for alternate sources of liquidity. The return of securities, with the resulting reversal of a funds credit, may cause the participant receiving the returned securities to default on its obligations. Thus, settlement using reversals will not achieve this policy's objective, because participants will not be able to rely on transfers of funds and securities if transfers may be reversed.

Because the Board does not view reversals as a satisfactory liquidity safeguard, the systems covered by this policy should not use reversals as a substitute for liquidity arrangements, such as those discussed above, in order to ensure timely settlement.

Credit Safeguards

As stated above, these systems effectively allow participants to use intraday credit when receiving securities. All participants may be affected by one participant's failure to repay this credit. The Board, therefore, believes that these systems should adopt clear loss-allocation rules and should minimize credit risks incurred through the system. Methods of reducing credit risk may vary in different systems. Appropriate methods include requiring contributions by all participants to a fund that may be used in the event of a default or requiring the pledging of a sufficient volume of marked-to-market collateral. The loss allocation schedule should not increase risks to the system. In particular, the system should calculate the loss resulting from a default on the basis of the net obligations of the defaulter rather than on the basis of the underlying gross obligations between the defaulter and its counterparties. Thus, the Board would find a loss allocation scheme to be unacceptable if it reversed all transactions between the defaulter and other participants.

This policy, including the restriction on reversals, is not intended to prevent a system from allocating credit losses to the counterparty of a defaulter based on the business dealings between the counterparty and the defaulter. It may be appropriate and prudent for a system to have rules that would require participants who have dealt with the defaulter to be responsible, after settlement, for the related loss. These arrangements could well include returning securities to the counterparty to help absorb the loss.

Open Settlement Accounting

As delivery-versus-payment systems grow in size and volume, the timely and orderly completion of end-of-day settlements takes on an increased importance for the settlement of other large-dollar payments systems. As a general matter, the Board believes that it will be easier for market participants and supervisors to monitor and protect against settlement risks if current information is readily available. Participants in a delivery-against-payment system should therefore have up-to-date information on their net position and on the settlement progress of the system, and appropriate market supervisors should have ready access to current intraday information on both the system's settlement and participants' positions. For those systems wishing to use Fedwire payments as a means of settlement, the Board encourages the use of Federal Reserve Bank net settlement services rather than individual wire payments that cannot be distinguished from all other Fedwire payments. This policy is in no way intended to broaden access to Federal Reserve services; neither Fedwire nor net settlement services will be available, as a general matter, to non-member, non-depository institutions.

C. Offshore Dollar-Clearing and Netting Systems[10]

For some time, the Board has been sensitive to the risks associated with the actual and potential development of netting and clearing arrangements for U.S. dollar payments located outside the United States. In particular, the Board has been concerned that the steps being taken to reduce systemic risk in U.S. large-dollar payments systems may themselves induce the further development of "offshore" dollar payments systems. These offshore systems can settle through payments on the Federal Reserve's wire transfer system (Fedwire) or the New York Clearing House's Clearing House Interbank Payments System (CHIPS), but may operate without adequate

[10] The Board adopted this policy statement in June 1989 as an interim measure to address offshore clearing and netting systems until an international consensus is reached among central banks and bank supervisory authorities.

procedures for the management of risks and without any form of official oversight. The Board also recognizes that the development of offshore clearing and netting arrangements raises issues of concern which go beyond the immediate question of payment risks in the U.S. banking system.

Banks in all countries have been experiencing strong incentives to reduce payment flows and credit exposures. As an apparent consequence, there is an increasing number of proposed or actual interbank netting arrangements which affect an offset or netting of amounts due between banks, arising not only from payment instructions but also from the settlement of foreign exchange and other financial contracts, on either a bilateral or multilateral basis. When located outside the country of issue of the currency subject to the netting, these arrangements have the potential to alter significantly the structure of the international interbank clearing and settlement process.

In response to these developments, the Group of Experts on Payments Systems from the G-10 central banks, meeting at the Bank for International Settlements (BIS) in Basle, Switzerland, studied a variety of payment and currency netting arrangements. The BIS Payments Experts' "Report on Netting Schemes" primarily addresses the allocation of credit and liquidity risk in various netting structures and draws general conclusions as to whether these risks are increased or decreased by the different "institutional forms" of netting. The Board believes that, in so doing, the Report of the Payments Experts provides a valuable starting point for the consideration of risk in the international payment process.

In addition, the Report notes that a number of broader monetary, financial, and supervisory policy implications are associated with the further development of netting arrangements for interbank markets. Netting systems for foreign currency payments and contracts have the potential to create changes in the financial character of affected interbank markets, as well as in the cross-border relationships between national banking systems. These changes, in turn, raise questions about the extent and quality of central banks' oversight and supervision of settlements in their respective currencies, including the allocation of supervisory responsibility among various central banks and national supervisory authorities.

On the basis of this preliminary work, the Governors of the G-10 central banks have determined that a further study of these broader issues be undertaken with a view toward establishing an international understanding of the monetary, financial, and supervisory issues raised by the development of offshore or cross-border netting arrangements.[17]

At the same time, the Board recognizes that the technological, market, and regulatory incentives that are giving rise to the growth of these arrangements will continue to operate. The Board believes that it is important, therefore, to begin to address the potential policy concerns raised by the further development of offshore netting and clearing systems for U.S. dollar payments and the risks that these systems may create. This is particularly the case in light of the significant steps that have been and are being taken by the Federal Reserve and the U.S. banking industry to address payment risk issues. These include both the Board's ongoing payments system risk reduction program and the efforts of the New York Clearing House Association to improve CHIPS participants' awareness of payment risks, to control the level of daylight exposures within CHIPS, and now to adopt settlement finality procedures.[18]

Offshore clearing of U.S. dollar payments, for subsequent net settlement in the United States, may create transaction and other efficiencies for participants in such offshore systems. If, however, the allocation of credit and liquidity risks associated with the netting and settlement is not clearly understood or defined, offshore dollar clearing arrangements may well obscure, or even increase, the level of systemic risk in U.S. large-dollar payments systems as well as in the international dollar settlement process generally. The BIS Report notes that this shifting of risk "can be particularly troubling where the transaction cost efficiencies are enjoyed by banks located in one country, but the credit and liquidity risks associated with the settlement of payments resulting from that netting system may be experienced in the banking system of another country." This is precisely what can happen when U.S. dollar payments are netted in systems outside of the United States and subsequently settled through CHIPS or Fedwire.

Because of the potential for offshore dollar clearing systems both to shift risk to U.S. large-dollar payments systems and to be used to avoid the Board's domestic risk reduction policies, the Board believes that it is appropriate for it to provide preliminary guidance on the framework within which offshore dollar systems should operate. The Board recognizes that the question of the degree of oversight and supervision of offshore clearing and netting systems can only be fully addressed on a cooperative basis among central banks and national bank supervisory authorities. In the interim, the Board's approach to offshore dollar clearing and netting systems will be guided by the following general principles:

1. An offshore dollar clearing or netting system, which settles directly or indirectly through CHIPS or Fedwire, should at a minimum be subject to oversight or supervision, as a system, by a relevant central bank or supervisory authority.

2. The participants should be responsible for clearly identifying the operational, liquidity, and credit risks created within the system and for assuring the prudent management of these risks.

3. The system should have arrangements in place that provide for the finality of settlement obligations and the practical means to assure the timely satisfaction of these obligations.

4. The direct or indirect settlement of the system's obligations through CHIPS or Fedwire should be conducted by an identified settlement agent, in the United States, so that satisfaction of the settlement obligations can be readily ascertained by the participants, the Federal Reserve, and other relevant central banks and supervisory authorities.

Consistent with the foregoing interim principles, the Federal Reserve is prepared to work with the central bank and/or supervisory authorities of the country in which an offshore dollar clearing or netting system is located, on a cooperative basis, to assure the continuing adequacy of the system's procedures for controlling risk.

The Board believes that these interim principles are consistent with the concerns identified by the BIS Payments Experts Group. The minimal conditions that they would impose on offshore clearing and netting systems are similar to the risk-reduction procedures that have been established for CHIPS. These principles should not be regarded as establishing a policy of either encouraging or discouraging the operation of offshore dollar payments systems. Rather, they represent an initial attempt by the Board to indicate the minimum structural features that the

[17] In November 1990, the "Report of the Committee on Interbank Netting Schemes of the Central Banks of the Group of Ten Countries" was published by the BIS. Federal Reserve staff is reviewing the Board's policies on offshore dollar-clearing and netting systems.

[18] CHIPS adopted settlement finality procedures in October 1990.

Board believes are appropriate for offshore dollar clearing arrangements. These principles also presume a cooperative international approach to the supervision of offshore clearing and netting arrangements.

D. Private Small-Dollar Clearing and Settlement Systems

1. National ACH Net Settlement

In October 1990, the Board approved a proposal under which the Federal Reserve would provide net settlement services to depository institutions participating in a national, multilateral automated clearing house (ACH) clearing arrangement. The factors considered by the Board in 1990, discussed below, would also apply to any future proposals for national ACH net settlement services.

Assurance of settlement. The ACH is generally considered a small-dollar payment mechanism, and the settlement positions of ACH participants tend to be small relative to capital. Additionally, unlike large-dollar funds transfer systems, such as CHIPS, ACH payments typically are exchanged in batches before the settlement day. Payments received by ACH participants, therefore, generally are not used to fund subsequent payments to participants within the system. These two factors—the relatively low value of payments and the single flow of payments—result in less systemic credit and liquidity risk for participants in ACH clearing arrangements than for participants in large-dollar payments systems.

Nevertheless, a national ACH network that receives settlement services from the Federal Reserve should take steps to minimize the risk exposure of its participants should one of the participants be unable to fund its net debit position at the designated settlement time. The Board does not mandate specific risk control provisions but will consider the effectiveness of provisions suggested by the participants in a clearing and settlement arrangement. Among the types of credit and liquidity controls that should be considered by such clearing and settlement arrangements are (a) objective admission criteria and ongoing monitoring of participants' adherence to those criteria, (b) bilateral credit limits, (c) net debit caps, and (d) gross origination caps.

For example, an ACH network might control credit risk by evaluating the creditworthiness of participants and setting specific credit criteria for admission or by requiring each participant to establish bilateral credit limits with each other participant in a multilateral clearing arrangement. If a relatively large number of institutions use a national ACH clearing arrangement, however, setting and maintaining bilateral limits may be difficult operationally. On the other hand, setting net debit settlement caps provides a means to limit the risk that any one participant can impose upon the group. Gross origination caps serve a similar purpose.

Recasts and unwinds. Because of the potential systemic risks, the Board will examine closely any ACH clearing arrangements that provide for recasting or unwinding the settlement in the event of a participant default. Generally, the Board does not view recasts or unwinds as satisfactory liquidity controls. It is important to determine the degree of systemic risk associated with a multilateral ACH clearing arrangement in order to assess whether a settlement guarantee should be required or whether a settlement recast would be an acceptable alternative. For example, if simulations of a participant's failure to settle indicate that the degree of systemic risk associated with the recast is relatively low and that participants should be able to cover the changes in their settlement positions caused by a recast, the Board may conclude that a settlement guarantee is not necessary to avoid potential systemic problems. Moreover, a relatively wide distribution of ACH payments would tend to limit the exposure of any one participant to the inability of another participant to settle.

Although the degree of systemic risk associated with ACH clearing arrangements is relatively low, a network's reliance upon a complete unwind, if a settlement cannot be achieved in an orderly fashion, raises concerns. If such an event were to occur, it would cause disruption because a potentially large number of payments would not be made as planned. A national ACH network seeking Federal Reserve settlement services should incorporate appropriate risk controls and should be able to demonstrate that the possibility of an unwind would be remote.

Finality of payment. The Board will consider the extent to which settlement entries under the national ACH network are final. For example, use of Fedwire by participants to make settlement payments would provide finality for net settlement entries by the designated settlement time, which could be relatively early in the day, assuming that all participants in net debit positions are able to fund their positions. The use of Fedwire for settlement may also reduce temporal risk, again assuming all net debtors are able to fund their positions. Additionally, the Reserve Banks' risk is minimized because of the controls used to monitor Fedwire.

Operational concerns. The national ACH network should be able to assure the Board that settlement through a Reserve Bank would not cause serious operational problems for the network or any service provider to the network. In addition to operating capabilities, the Board will consider a service provider's financial viability and its ability to demonstrate that it can provide efficient ACH processing services.

2. Small-Dollar ATM Networks

A small-dollar electronic funds transfer or automated teller machine (ATM) network may request settlement services from a Federal Reserve Bank. The Board has delegated to the Director of the Division of Reserve Bank Operations and Payment Systems, with the concurrence of the General Counsel, authority to approve such arrangements under the following conditions: The standard net settlement service agreement must stipulate that net settlement entries are to be considered provisional until the business day following the presentment of a statement to the Federal Reserve in order to ensure the settling depository institutions' ability to cover their net debit positions. The network must agree that large-dollar payments will not be processed under any circumstances and that the Federal Reserve may terminate net settlement services immediately if there is any indication that the network is being used for large-dollar transfers. The network must agree to provide information to the Federal Reserve regarding its operations and transactions when requested. The Federal Reserve has the right to modify or terminate the agreement at any time.

III. Other Policies

A. Rollovers and Continuing Contracts

The Board believes that the use of market innovations, such as federal funds or Eurodollar rollovers or continuing contracts, to reduce daylight overdrafts in Federal Reserve accounts and on the New York Clearing House's Clearing House Interbank Payments System (CHIPS) is consistent with the Board's policy concerning daylight overdrafts. The Board urges market participants to consider using such innovations for these and other financial instruments where feasible. In doing so, participants should be mindful that implementing changes of this type may

involve incremental costs, at least transitionally, and modified risk positions. Accordingly, participants should evaluate these factors and take them into account when selecting and negotiating with counterparties.

Many overnight interbank federal funds and other similar purchases and sales are negotiated in the morning with the funds being sent over Fedwire in the afternoon. Typically, the previous day's overnight borrowings are returned to the seller in the early morning, thus leaving a midday time gap of three or more hours between the morning repayment and the receipt of that same day's new borrowing. Often these transactions are between the same two banks for the same amount. This funding time gap can contribute to daylight overdrafts for the borrowing institution and create risk to Reserve Banks.

Rollovers are interbank overnight transactions where the principal does not change and is not returned the next day to the seller but, instead, is rolled over for the next overnight period. The overnight interest rate is negotiated daily between buyer and seller. The maturity is one business day, or no maturity is specified, and the arrangement may be cancelled at any time by either party. The Board understands that national bank lending limits would not apply to federal funds transactions that have a maturity of one business day or no stated maturity and require no advance notice for termination. Because the rollover procedure eliminates the daily movement of principal on Fedwire and the corresponding time gap that could otherwise exist between repayment of the previous day's borrowings and receipt of new reborrowing, daylight overdrafts are reduced.

Continuing contracts are similar to rollovers. With a rollover, the size of each day's sale is the same. With a continuing contract, the size of each day's sale can vary, and only the difference in principal from the previous day's borrowing is moved over Fedwire or CHIPS. Such arrangements reduce the size of the daily movement of principal on Fedwire and CHIPS and also eliminate the time gap that could otherwise exist between repayment of the previous day's borrowings and receipt of new reborrowing, thereby reducing daylight overdrafts in Federal Reserve accounts or net debits on CHIPS. When the same maturity conditions apply to a continuing contract as apply to a rollover (one business day or unspecified maturity and cancellation at any time by either party) national bank lending limits do not apply.

Each participant should satisfy itself that it has the flexibility to negotiate amounts, rates, and maturity options before using these practices for federal funds, Eurodollars, or other financial instruments. Either of these practices, rollovers or continuing contracts, can reduce daylight overdrafts or intraday net debits, and their prudential use by the banking industry is consistent with the Federal Reserve's policy of reducing intraday exposures on Fedwire and CHIPS. When borrowing banks reduce their daylight overdrafts by use of these practices, some extra operational costs and risks may be incurred by either party compared to current arrangements in the overnight market. For example, sellers of federal funds and other instruments may have to develop alternative audit trail procedures and may accept some additional risk of repayment since funds would not be returned each day before they would be relent. In addition, buyers of federal funds and other instruments may experience some extra initial operating costs to set up rollover arrangements between themselves and lending banks and may have to pay a higher rate to induce lenders to commit their funds for a longer time. However, these costs and risks, if any, should be reflected in the rate or rate spread received and paid. Although it is unclear whether rates on daily interbank funds transactions will fall relative to rates paid for rollovers, continuing contracts, or term funds, or whether the reverse will occur, the Board believes that the negotiation of terms relative to the use of these arrangements should be left to the free operation of the private market.

The Board also supports efforts to encourage timely return of overnight federal funds and other borrowings and encourages operational improvements that would consistently allow timely receipt of funds purchased soon after a seller negotiates a sale. Similar arrangements and industry standards were suggested for federal funds by the American Bankers Association in July 1986.

By order of the Board of Governors of the Federal Reserve System, August 25, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-21207 Filed 9-2-92; 8:45 am]

BILLING CODE 6210-01-F

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board; Meeting

AGENCY: General Accounting Office.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a two-day meeting of the Federal Accounting Standards Advisory Board will be held on Wednesday, September 23, and Thursday, September 24, 1992 from 9 a.m. to 4 p.m. in room 7313 of the General Accounting Office, 441 G St., NW., Washington, DC.

The agenda for the meeting will consist of a review of the minutes of the August 19 meeting, a discussion of "Uses and Objectives of Federal Accounting," a discussion of recommended changes to the "Statement of Recommended Accounting Standards Number 1," a discussion of inventory issues, and a review of the Board's project agenda. We advise that other items may be added to the agenda; interested parties should contact the Staff Director for more specific information and to confirm the date of the meeting.

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Ronald S. Young, Staff Director, 401 F St., NW., Room 302, Washington, DC 20001, or call (202) 504-3336.

Authority: Federal Advisory Committee Act. Pub. L. No. 92-463, Section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101-6.1015 (1990).

Dated: August 31, 1992.

Ronald S. Young,

Staff Director.

[FR Doc. 92-21273 Filed 9-2-92; 8:45 am]

BILLING CODE 1610-01-M

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FTR 6]

Federal Travel Regulation; Actual Subsistence Expense Reimbursement in Presidentially Declared Disaster Areas in Florida and Louisiana

August 28, 1992

To: Heads of Federal agencies

Subject: Reimbursement for actual subsistence expenses in Presidentially declared disaster areas of Florida and Louisiana.

1. *Purpose.* This bulletin informs agencies of the establishment of a special actual subsistence expense ceiling for official travel to Florida and Louisiana localities designated as Presidentially declared disaster areas as a result of Hurricane Andrew. This special rate may be applied retroactively to claims for reimbursement covering travel during the periods of August 24 through September 22, 1992 for designated Florida areas, and August 26 through September 24, 1992 for designated Louisiana areas.

2. *Background.* The Federal Travel Regulation (FTR) (41 CFR 301-8) permits the Administrator of General Services to establish a higher actual subsistence expense reimbursement rate for the reimbursement of actual subsistence expenses of Federal employees on official travel to an area within the continental United States. The head of an agency may request establishment of such a rate when special or unusual circumstances, such as a natural disaster resulting in a Presidential disaster declaration, result in an extreme increase in subsistence costs for a temporary period.

3. *Maximum rate and effective date.* The Administrator of General Services, pursuant to 41 CFR 301-8.3(c), has increased the maximum daily amount of reimbursement that may be approved for actual and necessary subsistence expenses for official travel to Florida and Louisiana localities designated as Presidentially declared disaster areas as a result of Hurricane Andrew. For travel during the 30-day period, August 24 through September 22, 1992 for Florida, and August 26 through September 24, 1992 for Louisiana, agencies may approve actual subsistence expense reimbursement not to exceed 300 percent of the applicable maximum per diem rate for the affected Florida counties and Louisiana parishes listed in paragraph 4, below.

4. *Affected localities.* The special reimbursement rate described in paragraph 3, above, applies for travel to the following areas of Florida and Louisiana:

FLORIDA

Counties of Broward, Dade, and Monroe.

LOUISIANA

Parishes of Assumption, Iberia, Iberville, Lafourche, St. John the Baptist, St. Martin, St. Mary, and Terrebonne.

5. *Expiration date.* This bulletin expires on December 31, 1992.

6. *For further information contact.* Jane E. Groat, General Services Administration, Transportation Management Division (FBX), Washington, DC 20406, telephone FTS or commercial 703-305-5253.

By delegation of the Commissioner, Federal Supply Service.

Allan W. Beres,

Assistant Commissioner, Transportation and Property Management.

[FR Doc. 92-21280 Filed 9-2-92; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 92N-0341]

Drug Export; White Nitrong® (Nitroglycerin) 6.5 mg Sustained-Release Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that U.S. Ethicals, Inc., has filed an application requesting approval for the export of the human drug White Nitrong® (nitroglycerin) 6.5 mg Sustained-Release Tablets to Sweden.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Division of Drug Labeling Compliance (HFD-313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that U.S. Ethicals, Inc., 500 Arcola Rd., P.O. Box 1200, Collegeville, PA 19426, has filed an application requesting approval for the export of the human drug White Nitrong® (nitroglycerin) 6.5 mg Sustained-Release Tablets to Sweden. This product is used for the prophylactic treatment of angina pectoris. The application was received and filed in the Center for Drug Evaluation and Research on March 13, 1992, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by September 14, 1992, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: August 25, 1992.

Sammie R. Young,

Deputy Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 92-21227 Filed 9-2-92; 8:45 am]

BILLING CODE 4160-01-F

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the meeting September 10, 1992, 8:30 a.m., National Institutes of Health, Building 1, Wilson Hall, of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council, National Institute of Arthritis and Musculoskeletal and Skin Diseases, which was published in the **Federal Register** on August 10, 1992, 57 FR 35598.

The meeting will be open to the public from 1 p m. to 3 p.m.

Dated: August 31, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-21391 Filed 9-3-92; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-050-4320-10]

Emergency Closure of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Colorado, 31 Mile Creek Ranch Vehicle Use Designation Order.

SUMMARY: Notice is hereby given that effective September 1, 1992, all public lands described below are closed to all vehicle access and travel with the exception of Park County Road Number 88. This action is in accordance with title 43 CFR part 8341.2 and in conformance with the principles established by the National Environmental Policy Act of 1969 and the Federal Land Policy and Management Act of 1976. This closure affects 1,600 acres of land located 30 miles northwest of Canon City, Colorado, 3 miles west of Highway 9 and along County Road 88 in Park County. The Bureau of Land Management has recently acquired fee title to the 31-Mile Creek Ranch and is in the process of formulating a management plan which will include an OHV designation plan that will outline the Bureau's land management goals for this property. Until this plan is completed, access to the property will be via County Road 88. All other vehicular traffic and OHV use will be prohibited on the property. When the management plan is implemented, additional roads and trails may be opened to provide better access to remote portions of the property. These restrictions do not apply to emergency, law enforcement, and federal or other government vehicles while being used for official or emergency purposes, or to any vehicle whose use is expressly authorized or otherwise officially approved by BLM.

The purpose of this closure is to protect sensitive values including wildlife habitat, riparian vegetation, watersheds, erosive soils and cultural resources.

Maps of this designation are posted along with this notice in the Canon City District Office, 3170 E. Main St., Canon City, Colorado 81212. Maps of the designated area are also available.

The legal description of the affected lands are:

Sixth Principal Meridian

Township 15 South, Range 73 West
- Section 19: All
- Section 20: SW¼; S½NW¼; SW¼NE¼
- Section 29: N½NW¼
- Section 30: Lots 1, 2 and 7

Township 15 South, Range 74 West
- Section 24: Lots 1, 2 and 3; N½SE¼; E½NE¼
- Section 25: Lots 1, 2, 3, 8 and 9; SE¼NE¼, N½SE¼, except the real boundaries lying in the following described boundaries: commencing at a point from which the Northwest corner of said Section 19, Twp. 15 S., R. 73 W. of the 6th P.M. bears North 21°50' West 669.8 feet; thence South 972.7 feet; thence South 79°17' West 913.3 feet; thence North 1126.2 feet; thence North 89° East 897.4 feet to the place of the beginning;

containing 21.66 acres, more or less, County of Park, State of Colorado.

DATES: This closure becomes effective September 1, 1992.

ADDRESSES: Bureau of Land Management, Canon City District, P.O. Box 2200 Canon City, CO 81215-2200.

FOR FURTHER INFORMATION CONTACT: Tom Grette, Range Conservationist, Bureau of Land Management, Royal Gorge Resource Area, P.O. Box 2200, Canon City, Colorado 81215-2200; Phone: (719) 275-0631.

Donnie R. Sparks,

District Manager.

[FR Doc. 92-21242 Filed 9-2-92; 8:45 am]

BILLING CODE 4310-JB-M

[CO-050-4320-02]

Canon City District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of hearing.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 463), that a meeting of the Canon City District Grazing Advisory Board will be held at 9 a.m. Thursday, September 24, 1992 at the Affiliated National Bank, 148 G Street, Salida, Colorado. The purpose of this meeting will be:

1. Prioritization of Range Improvement projects.
2. Initiate, conduct and settle business pertaining to the expenditure of Range Betterment Funds.
3. Update Board on status of ongoing resource management planning efforts in the Canon City District.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public. Any member of the public may file with the Board a written statement concerning matters to be discussed. Minutes of the meeting will be made available for public inspection 30 days after the meeting.

FOR FURTHER INFORMATION CONTACT: Donnie R. Sparks, District Manager, Bureau of Land Managment, 3170 East Main Street, Canon City, Colorado 81212 or telephone at (719) 275-0631.

Donnie R. Sparks,

District Manager.

[FR Doc. 92-21241 Filed 9-2-92; 8:45 am]

BILLING CODE 4310-JB-M

[CO-050-4212-14]

Realty Action; Competitive Sale of Public Land in Conejos County, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action COC-54051, COC54052, COC54053, Competitive Sale of public Land in Conejos County, Colorado.

SUMMARY: The following described land has been examined and identified as suitable for disposal by sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1701) at no less than the appraised fair market value.

New Mexico Principal Meridian, Colorado

T. 33N., R.9E.
- Section 32: E½E½SE¼, E½W½E½SE¼, E½W½W½E½SE¼ containing 70 acres more or less. This parcel may be divided in half prior to appraisal and sale.

T. 33N., R.9E.
- Section 32: W½W½W½SE¼,

containing 30 acres more or less.

The lands described above are hereby segregated from appropriation under the public land laws, including the mining laws for 2 years or until the patent is issued. The patent or patents, when issued, will be subject to existing rights-of-way. Simultaneous conveyance of mineral rights

will be determined prior to sale. All parcels that are not sold on the sale day will continue to be available for public bid until sold or the sale is canceled.

DATE: The sale will be held on November 4, 1992 at the Canon City District BLM Office.

ADDRESS: Bureau of Land Management, Canon City District, P.O. Box 2200, Canon City, Colorado 81215-2200.

FOR FURTHER INFORMATION CONTACT: Detailed bidding instructions and other information about the sale may be obtained by contacting Bill Miller at (719) 589-4975.

SUPPLEMENTARY INFORMATION: On or before October 13, 1992, interested parties may submit comments to the District Manager, Canon City District, at the above address. In the absence of any objections, this proposal will become the final determination of the Department of Interior.

Donnie R. Sparks,

District Manager.

[FR Doc. 92-21240 Filed 9-2-92; 8:45 am]

BILLING CODE 4310-JB-M

[CO-050-4212-13]

Realty Action; Supplemental Notice

AGENCY: Bureau of Land Management, Interior.

ACTION: Supplement to notices of realty action COC-53506, COC-53540 and COC-44110, exchange of public land in Park, Fremont, Custer and Chaffee Counties, Colorado.

SUMMARY: Three exchange proposals under consideration need additional or alternate public land in order to equalize values so the exchange can be completed. The following described land has been examined and identified as suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 USC 1716:

T.49N., R.11E., N.M.P.M.
Section 12: Lot 3;
T.49N., R.12E.,
Section 6: Lot 9;
Section 7: Lots 8, 9, 10, 13, SE¼NW¼;
T.6S., R.73W., 6th P.M.
Section 35: SE¼;
T.8S., R.75W.,
Section 18: Lot 1;
T.14S., R.78W.,
Section 23: S½SW¼
Section 26: W½NE¼, E½NW¼;
T.15S., R.72W.,
Section 6: Lot 7;
Section 7: Lot 1;
T.15S., R.73W.,
Section 1: Lots 17, 18, 19, 21, 22, 25, 26, 27, 28, 29, SE¼SE¼
Section 12: Lot 9, SE¼NE¼
T.16S., R.72W.,
Section 18: NE¼NW¼, NE¼SE¼;
T.20S., R.73W.,
Section 33: Lot to be assigned;
T.21S., R.73W.,
Section 21: SE¼SE¼;
Section 22: SW¼SW¼;
T.21S., R.71W.,
Section 24: NE¼NE¼;
Section 26: Lots 4, 6, 7, 8, 13, 14, 15, 16, 17, 18, 19;
T.22S., R.72W.,
Section 16: Lot to be assigned;
Section 23: SW¼NE¼;
T.32S., R.65W.,
Section 21: SE¼NE¼, NE¼NW¼, NE¼SE¼;
Section 28: W½E½, SE¼SW¼
T.33S., R.65W.,
Section 6: SE¼NE¼;
Containing approximately 1,600 acres.

The purpose of the exchanges are to acquire private lands containing important public values including recreation, wildlife and riparian areas, while disposing of scattered, difficult to manage tracts with little or no public value. The exchanges are consistent with the objectives of the land use plans for the affected areas.

DATES: Interested parties may submit written comments to the Canon City District Manager on or before October 19, 1992.

ADDRESSES: Bureau of Land Management, Canon City District, P.O. Box 2200, Canon City, Colorado 81215-2200.

FOR FURTHER INFORMATION CONTACT: Stu Parker, (719) 275-0631.

SUPPLEMENTARY INFORMATION: The exchange will involve both the surface and subsurface estates and will be subject to valid existing rights on both the offered and selected lands. This notice segregates the public lands described above from entry under the public land laws, including the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976, for 2 years from publication or until patent issues. Any adverse comments will be evaluated by the District Manager who may vacate, modify, or continue this realty action and issue a final determination.

Donnie R. Sparks,

District Manager.

[FR Doc. 92-21235 Filed 9-2-92; 8:45 am]

BILLING CODE 4310-JB-M

[OR 48644; OR-080-02-4212-14; GP2-422]

Realty Action; Proposed Direct Sale; Oregon

The following described public land has been examined and determined to be suitable for transfer out of Federal ownership by direct sale under the authority of sections 203 and 209 of the Federal Land Policy and Management Act of 1976, as amended (90 Stat. 2750; 43 U.S.C. 1713 and 90 Stat. 2757; 43 U.S.C. 1719), at not less than the appraised fair market value:

Willamette Meridian, Oregon,

T. 10 S., R. 4 W.,
Sec. 21, Lot 5.

The above-described parcel contains 2.61 acres in Benton County.

The parcel will not be offered for sale until at least 60 days after publication of this notice in the **Federal Register**. The fair market value of the parcel has not yet been determined. Anyone interested in knowing the amount may request this information from the address shown below.

The above-described land is hereby segregated from appropriation under the public land laws, including the mining law, but not from sale under the above-cited statute, for 270 days or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

The parcel is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal department or agency. No significant resource values will be affected by this transfer. Because of the parcel's relative small size, its best use is to merge it with the adjoining ownership. Use of direct sale procedures will avoid an inappropriate land ownership pattern. The sale is consistent with the Westside Management Framework Plan and the public interest will be served by offering this land for sale.

The parcel is being offered only to Roy and Dorothy Ashling (owners of Tax lot 1100, Map 10-4-21 and Tax Lot 1600, Map 10-4-21C) using direct sale procedures authorized under 43 CFR 2711.3-3.

The terms, conditions, and reservations applicable to the sale are as follows:

1. The Ashlings will be required to submit a deposit of either cash, bank draft, money order, or any combination thereof for not less than 20 percent of the appraised value. The remainder of the full appraised price must be submitted prior to the expiration of 180 days from the date of the sale. Failure to submit the remainder of the full appraised price shall result in the cancellation of the sale and the forfeiture of the deposit.

2. The mineral interests being offered for conveyance have no known mineral

value. A bid will also constitute an application for conveyance of the mineral estate, in accordance with Section 209 of the Federal Land Policy and Management Act. The Ashlings must include with their bid deposit a nonrefundable $50 filing fee for the conveyance of the mineral estate.

3. The deed will be subject to:

a. Rights-of-way for ditches or canals will be reserved to the United States under 43 U.S.C. 945.

b. All valid existing rights and reservations of record.

If the land identified in this notice is not sold, the sale will be canceled. Detailed information concerning the sale is available for review at the Salem District Office, address above.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comment to the Alsea Area Manager, Salem District Office, at the above address. Any adverse comments will be reviewed by the Salem District Manager, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Dated: August 26, 1992.

John H. Mears,

Alsea Area Manager.

[FR Doc. 92-21245 Filed 9-2-92; 8:45 am]

BILLING CODE 4310-33-M

[MT-060-4333-10]

James Kipp Recreation Area Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Completed James Kipp Recreation Area Management Plan.

SUMMARY: BLM has completed the management plan for the James Kipp Recreation Area which is located where Highway 191 crosses the Upper Missouri National Wild and Scenic River; T. 22 N., R. 24 E., Sec. 31, Lots 3, 4, 7, 9, Section 12, SE¼NW¼ and NW¼SE¼ containing 210.3 acres. This area was previously a component of the Montana State Park system, but is now managed by the Bureau of Land Management.

The management plan defines specific actions designed to maximize safe, enjoyable recreation for a wide variety of users and establishes a sequence for implementing the improvements. These actions will be phased in over the next several years depending on budget capabilities and will include an improved access road, parking areas, day use areas, handicapped fishing access, overnight camping areas and interior access roads.

Restrictions in the recreation area will include the control of pets and livestock (pack horses and mules). Hunting and discharging firearms or other deadly weapons are prohibited within the area. Vehicles will be restricted to the identified access roads and parking areas. These restrictions will become effective upon publication in the **Federal Register**.

A copy of the management plan is available for review at the Lewistown District BLM Office, Airport Road, Lewistown, Montana.

LOCATION: Lewistown District BLM Office, Lewistown, Montana.

FOR FURTHER INFORMATION CONTACT: Chuck Otto, Judith Resource Area Manager, Bureau of Land Management, Box 1160, Lewistown, Montana 59457.

SUPPLEMENTARY INFORMATION: Those wishing to review the management plan may do so at the Judith Resource Area Office, Bureau of Land Management, 1160 Airport Road, Lewistown, Montana.

Dated: August 26, 1992.

David L. Mari,

District Manager.

[FR Doc. 92-21236 Filed 9-2-92; 8:45 am]

BILLING CODE 4310-DN-M

[MT-060-4333-13]

Camping Stay Limit on Public Land; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Establishment of a camping stay limit for public lands administered by the BLM, Lewistown District, Montana.

SUMMARY: Persons may occupy any one site or multiple sites within a 5-mile radius on the Lewistown District for a total period of not more than 14 days during any 28 day period. Following the 14-day period, persons may not relocate within a distance of five (5) miles of the site that was just previously occupied until completion of an additional 14-day period. The 14-day limit may be reached either through a number of separate visits or through a period of continuous occupation of a site. Under special circumstances and upon request, the authorized officer may grant written permission for an extension of the 14-day limit.

Additionally, no person may leave personal property unattended in designated campgrounds or other recreation developments for a period of more than 24 hours (1 day) or elsewhere on public lands within the Lewistown District for a period of more than 48 hours (2 days) without written permission from the authorized officer.

DATES: This camping stay limit will be effective September 3, 1992.

SUPPLEMENTARY INFORMATION: This camping stay limit is being established to assist the Bureau in preventing long-term occupancy trespass conducted under the guise of camping on public lands within the Lewistown District. Of equal importance is the problem of long-term camping, which precludes equal opportunities for other members of the public to camp in the same area, which creates user conflicts.

FOR FURTHER INFORMATION CONTACT: Gary Slagel, Lewistown District Office, Airport Road, Lewistown, Montana 59457, telephone (406) 538-7461.

Authority for this stay limit is contained in CFR title 43, chapter II part 8365, subparts 8365.1-2, 8365.1-6 and 8365.2-3.

Dated: August 25, 1992.

David L. Mari,

District Manager.

[FR Doc. 92-21176 Filed 9-2-92; 8:45 am]

BILLING CODE 4310-DN-M

[NM-940-02-4730-12]

Filing of Plats of Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below will be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico on September 28, 1992. San Antonio Missions National Historical Park, within the city of San Antonio, Bexar County in the State of Texas, accepted August 7, 1992 for Group 3 TX.

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, a notice that they wish to protest prior to the proposed official filing date given above.

A statement of reasons for a protest may be filed with the notice of protest to

the State Director, or the statement of reasons must be filed with the State Director within (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

These plats will be in the files of the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502-7115. Copies may be obtained from this office upon payment of $2.50 per sheet.

Dated: August 25, 1992.

John P. Bennett,

Chief, Cadastral Survey.

[FR Doc. 92-21175 Filed 9-2-92; 8:45 am]

BILLING CODE 4310-FB-M

INTERSTATE COMMERCE COMMISSION

Agency Information Collection Under OMB Review

The following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) are being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Kathleen King, (202) 927-5493. Comments regarding this information collection should be addressed to Kathleen King, Interstate Commerce Commission, room 1312, Washington, DC 20423 and to Ed Clark, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503. When submitting comments, refer to the OMB number or the Title of the Form.

Type of Clearance: Extension of the expiration date of a currently approved collection without any charge in the substance or in the method of collection.

Bureau/Office: Office of Compliance and Consumer Assistance.

Title of Form: Financial Responsibility—Trucking (and Freight Forwarding).

Agency Form Number: BMC-32, 34, 35, 36, 40, 82, 83, 84, 85, 90, 91 and 91X.

Frequency: On occasion.

Respondents: ICC regulated transportation entities.

No. of Respondents: 45,000.

Total Burden Hours: 22,350 (average amount of time to file BMC-40 is 120 hours, all other forms average 15 minutes).

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-21266 Filed 9-2-92; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-377x]

Buffalo Ridge Railroad, Inc.; Exemption

Buffalo Ridge Railroad, Inc. (Buffalo Ridge) has filed a notice of exemption under 49 CFR 1152 subpart F—Exempt Abandonments to abandon its line of railroad between milepost 41.1, at Manley, MN, and milepost 49.0 at Brandon, SD, a distance of 7.6 miles in Rock County, MN and Minnehaha County, SD.

Buffalo Ridge has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) overhead traffic will be rerouted on other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period, and (4) the requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

This exemption will be effective on October 3, 1992, unless stayed or a formal expression of intent to file an offer of financial assistance (OFA) is filed. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 [3] must be filed by September 14, 1992. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 23, 1992, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

[1] A stay will be issued routinely where an informed decision on environmental issues, whether raised by a party or by the Commission's Section of Energy and Environment (SEE), cannot be made before the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental grounds is encouraged to file promptly so that the Commission may act on the request before the effective date.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

A copy of any pleading filed with the Commission should be sent to applicant's representative: John D. Heffner, Mary Todd Carpenter, Gerst, Heffner, Carpenter & Precup, Suite 1107, 1700 K Street, NW., Washington, DC 20006.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio.*

Buffalo Ridge has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEE will issue an environmental assessment (EA) by September 8, 1992. Interested persons may obtain a copy of the EA by writing to SEE (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927-6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: August 20, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. 92-21267 Filed 9-2-92; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 427X)]

CSX Transportation, Inc.—Abandonment Exemption—Manatee County, FL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, under 49 U.S.C. 10505, exempts, CSX Transportation, Inc., from the prior approval requirements of 49 U.S.C. 10903-10904 to abandon its 0.61-mile rail line between milepost 869.13, at Ellenton Junction, and milepost 869.74, at Ellenton, in Manatee County, FL, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on October 3, 1992. Formal expressions of intent to file an offer [1] of financial assistance

[1] See Exempt. of Rail Line Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

under 49 CFR 1152.27(c)(2) must be filed by September 13, 1992, petitions to stay must be filed by September 18, 1992, and petitions for reconsideration must be filed by September 28, 1992. Requests for a public use condition must be filed by September 23, 1992.

ADDRESSES: Send pleadings referring to Docket No. AB-55 (Sub-No. 427X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927-5610. [TDD for hearing impaired: (202) 927-5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927-5721.]

Decided: August 26, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. 92-21268 Filed 9-2-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to Superfund (CERCLA)

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on August 25, 1992, a proposed Consent Decree in *United States* v. *Henry Link Corporation* was lodged with the United States District Court for the Middle District of North Carolina. This Consent Decree resolves the defendant Henry Link Corporation's violations of the Prevention of Significant Deterioration ("PSD") regulations under the Clean Air Act and the North Carolina State Implementation Plan ("SIP") at Plant No. 2, its furniture manufacturing plant in Lexington, North Carolina. Defendant failed to obtain a PSD permit before commencement of construction of Plant No. 2, in violation of the federally enforceable SIP, 40 CFR 52.1778. The complaint seeks civil penalties and injunctive relief under Section 113(b)(2) of the Act, 42 U.S.C. 7413(b)(2), for defendant's violations of that SIP and Section 110 of the Act, 42 U.S.C. 7410. Under the proposed Decree, defendant will pay a civil penalty of $115,000 and implement appropriate injunctive relief.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Henry Link Corporation*, D.J. Ref. 90-5-2-1-1394.

The proposed Consent Decree may be examined at any of the following offices: (1) The Office of the United States Attorney for the Middle District of North Carolina, L. Richardson Preyer Federal Building, 324 West Market Street, Greensboro, North Carolina; (2) the U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, N.E., Atlanta, Georgia; and (3) the Consent Decree Library, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (telephone (202) 347-2072). Copies of the proposed Decree may be obtained by mail from the Consent Decree Library, 601 Pennsylvania Avenue, NW., P.O. Box 1097, Washington, DC 20004. Please enclose a check for $2.25 ($.25 per page reproduction charge) payable to "Consent Decree Library."

Vicki O'Meara,

Acting Assistant Attorney General, Environment & Natural Resources Division.

[FR Doc. 92-21238 Filed 9-2-92; 8:45 am]

BILLING CODE 4410-01-M

Notice of Lodging of Consent Decree Pursuant to The Clean Air Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on Aug. 13, 1992 two proposed consent decrees in *United States* v. *Primeacre Land Corporation and David Yurkovich d/b/a Yurkovich Industries*, Civ. Action No. 90-0089-W(S), were lodged with the United States District Court for the Northern District of West Virginia. The action was brought under sections 112 and 113(b) of the Clean Air Act, 42 U.S.C. 7412 and 7413(b), for violations of the National Emissions Standards for Hazardous Air Pollutants codified at 40 CFR part 61.

The parties to the first consent decree are United States and David Yurkovich, d/b/a Yurkovich Industries ("Yurkovich"). The proposed consent decree requires Yurkovich to pay civil penalties in the amount of $15,000.00 and implement a future compliance program.

The parties to the second consent decree are United States and Primeacre Land Corporation ("Primeacre"). The proposed consent decree requires Primeacre to pay civil penalties in the amount of $75,000.00 and implement a future compliance program.

The Department of Justice will receive comments relating to the proposed consent decrees for a period of thirty (30) days from the date of this publication. The proposed consent decrees may be examined at the Office of the United States Attorney, room 247, Federal Building, 1125 Chapline Street, Wheeling, West Virginia 26003 and at the Region III Office of the United States Environmental Protection Agency, 841 Chestnut Street, Philadelphia 19107. The proposed consent decrees may also be examined at the Consent Decree Library, 601 Pennsylvania Ave., NW, Box 1097, Washington, DC 20004, (202) 347-2077. Copies of the proposed consent decrees may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $3.50 (25 cents per page reproduction costs) for the Yurkovich decree and $2.75 (25 cents per page reproduction costs) for the Primeacre decree payable to Consent Decree Library.

John C. Cruden,

Environment and Natural Resources Division.

[FR Doc. 92-21237 Filed 9-2-92; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clear Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on August 21, 1992 a proposed partial consent decree in *United States* v. *In-Tek Constructors, et al.*, Civil Action No. CIVS-92 353 WBS-JFM, was lodged with the United States District Court for the Eastern District of California. This is an action brought pursuant to the Clean Air Act, 42 U.S.C. 7401-7632, and the National Emissions Standards for Hazardous Air Pollutants ("NESHAP") asbestos, promulgated under Section 112 of the Act, 42 U.S.C. 7412. Under the terms of the proposed partial consent decree, the settling defendants In-Tek Constructors Inc., and In-Tek Wreckers, Inc. (collectively "In-Tek" agree to pay a civil penalty of $40,000, to submit to an extensive asbestos management program and to comply with certain injunctive provisions designed to insure that it does not violate the revised NESHAP in

the future. The decree includes stipulated penalties in the event that In-Tek fails to comply with the provisions of the decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed partial consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20530. Comments should refer to *United States v. In-Tek Constructors, et al.*, D.O.J. Ref. 90-5-2-1-1521.

The proposed partial consent decree may be examined at the Office of the Assistant United States Attorney, Eastern District of California, 3305 Federal Building, 650 Capitol Mall, Sacramento, CA 95814, and at the Consent Decree Library, 601 Pennsylvania Ave., Building, NW., Washington, DC 20004 (202-347-2072). A copy of the proposed partial consent decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, P.O. Box 1097, Washington, DC 20004. In requesting a copy by mail, please enclose a check in the amount of $6.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 92-21239 Filed 9-2-92; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 91-36]

Nathaniel Armstrong, M.D.; Continuation of Registration

On August 9, 1991, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Nathaniel Armstrong, M.D. (Respondent), of Brunswick, Georgia, proposing to revoke his DEA Certificate of Registration, AA5720873, and to deny any pending applications for renewal. The statutory basis for seeking the revocation of the registration was that Respondent's continued registration would be inconsistent with the public interest, as set forth in 21 U.S.C. 823(f) and in 21 U.S.C. 824(a)(4). The Order to Show Cause alleged that Respondent had been arrested in Brunswick, Georgia, on August 9, 1989, for possession of crack cocaine, that the Georgia Composite State Medical Board (Medical Board) summarily suspended Respondent's license, and that a hearing officer for the Medical Board determined that Respondent's arrest for cocaine possession constituted a violation of Georgia statute.

Respondent, through counsel, filed a request for hearing on the issues raised by the Order to Show Cause, and the matter was docketed before Administrative Law Judge Mary Ellen Bittner.

Following prehearing procedures, a hearing was held in Atlanta, Georgia, on January 14, 1992. On July 8, 1992, in her opinion and recommended ruling, findings of fact, conclusions of law, and decision, the administrative law judge recommended that the Respondent's DEA Certificate of Registration not be revoked.

No exceptions were filed to Judge Bittner's opinion. On August 10, 1992, the administrative law judge transmitted the record to the Administrator. The Administrator has carefully considered the entire record in this matter and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

The administrative law judge found that on April 28, 1989, Respondent was arrested by Glynn County Police on a charge of possession of crack cocaine which was seized from a motel room occupied by a woman with whom he had visited. As a result of the arrest, the Medical Board conducted an inquiry relative to Respondent's medical license. They determined that Respondent had been arrested for possession of cocaine; a psychiatric evaluation was inconclusive; and chronic chemical abuse could not be established. As a result of these findings, Respondent's medical license was placed on two years probation.

The Government argued that Respondent ought to be found to have possessed the cocaine constructively. The administrative law judge found that since Respondent was not in the room at the time of seizure of the substance, and other persons had access to the room, that he did not possess the cocaine. She further found that the Government failed to meet its burden of proof that Respondent's registration is not in the public interest. Accordingly, Judge Bittner concluded that Respondent's registration should not be revoked.

The Administrator may revoke or suspend a DEA Certificate of Registration under 21 U.S.C. 824(a), upon a finding that the registrant

(1) Has materially falsified any application filed pursuant to or required by this subchapter or subchapter II of this chapter;

(2) Has been convicted of a felony under this subchapter or subchapter II of this chapter or any other law of the United States, or of any State relating to any substance defined in this subchapter as a controlled substance;

(3) Has had his State license or registration suspended, revoked, or denied by competent State authority and is no longer authorized by State law to engage in the manufacturing, distribution, or dispensing of controlled substances or has had the suspension, revocation, or denial of registration recommended by competition State authority;

(4) Has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section;

(5) Has been excluded (or directed to be excluded) from participation in a program pursuant to section 1320A-7(a) of title 42.

Pursuant to 21 U.S.C. 823(f), "[i]n determining the public interest, the following factors will be considered:

(1) The recommendation of the appropriate State licensing board or disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct as may threaten, the public health or safety.

It is well established that these factors are to be considered in the disjunctive, i.e., the Administrator may properly rely on any one or a combination of factors, and give each factor the weight he deems appropriate. See *Henry J. Schwarz, Jr., M.D.*, Docket No. 88-42, 54 FR 16422 (1989); *Neveille H. Williams, D.D.S.*, Docket No. 87-47, 53 FR 23465 (1988); *David E. Trowick, D.D.S.*, Docket No. 86-69, 53 FR 5326 (1988).

The Administrator adopts the recommended ruling, findings of fact, conclusions of law and decision of the administrative law judge. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AA5720873, issued to Nathaniel Armstrong, M.D., be, and it

hereby is, continued in active standing, and that any pending applications for registration be, and they hereby are, granted. This order is effective September 3, 1992.

Dated: August 27, 1992.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 92-21178 Filed 9-2-92; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration

By notice dated June 11, 1992, and published in the **Federal Register** on June 22, 1992, (57FR27790), GANES Chemicals, Inc., Industrial Park Road, Pennsville, New Jersey 08070, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Glutethimide (2550)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: August 28, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92-21252 Filed 9-2-92; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration

By notice dated July 9, 1992, and published in the **Federal Register** on July 22, 1992, (57 FR 32566), Janssen, Inc., HC 02 Box 19250, Gurabo, Puerto Rico 00658-9629, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Alfentanil (9737)	II
Sufentanil (9740)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: August 27, 1992.

T. Seneca,

Deputy Director of Office of Diversion Control.

[FR Doc. 92-21282 Filed 9-2-92; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration

By notice dated June 11, 1992, and published in the **Federal Register** on June 22, 1992, (57FR27790), Knoll Pharmaceuticals, 30 North Jefferson Road, Whippany, New Jersey 07981, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of Hydromorphone (9150), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: August 28, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92-21253 Filed 9-2-92; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 92-08]

Edward A. Langford, M.D.; Revocation of Registration

On October 7, 1991, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Edward A. Langford, M.D. (Respondent), of Buffalo, New York, proposing to revoke his DEA Certificate of Registration, AL6921515, and to deny any pending applications for registration as a practitioner. The statutory basis for seeking the revocation was that he had been convicted of a felony related to controlled substances, and that his continued registration would be inconsistent with the public interest. 21 U.S.C. 824(a)(2), 824(a)(4) and 823(f).

Respondent, through counsel, filed a request for hearing on the issues raised by the Order to Show Cause, and the matter was docketed before Administrative Law Judge Paul A. Tenney. Following prehearing procedures, a hearing was held in Buffalo, New York, on April 21, 1992. On June 15, 1992, in his opinion and recommended decision, the administrative law judge recommended that the Respondent's DEA Certificate of Registration be revoked and that any pending applications for renewal be denied.

No exceptions were filed to the opinion. On July 15, 1992, the administrative law judge transmitted the record to the Administrator. The Administrator has carefully considered the entire record in this matter and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

The administrative law judge found that on May 8, 1991, Respondent was found guilty in the United States District Court for the Western District of New York of ten counts of illegal distribution and unlawfully aiding and abetting the distribution of Nodular, Tussionex, Tylenol with Codeine #4, Valium 10 mg., and Talwin NX in violation of 21 U.S.C. 841(a)(1); and one count of conspiracy in violation of 21 U.S.C. 846. Judge Tenney further found that these convictions constituted felony offenses related to controlled substances for purposes of 21 U.S.C. 824(a)(2).

Respondent entered into an agreement with the New York State Department of Health on June 16, 1989, in which he admitted that on at least 50 occasions between September 1983 and October 1985, he prescribed Dilaudid in excessive amounts to patients for whom he either did not have any records, or whose records did not contain sufficient information to justify his diagnosis or warrant the prescribing of controlled substances. Respondent was assessed a $10,000 civil penalty, of which $5,000 was suspended contingent on compliance with State law. He was also given a five year suspension from

writing New York State prescription forms for Schedule II controlled substances.

On May 11, 1990, the New York State Department of Education also found Respondent guilty of prescribing Dilaudid excessively. As a result, Respondent's license and registration to practice medicine was suspended for three years, the suspension stayed, and his license and registration placed on five years probation.

The Administrator may revoke or suspend a DEA Certificate of Registration under 21 U.S.C. 824(a), upon a finding that the registrant

(1) Has materially falsified any application filed pursuant to or required by this subchapter or subchapter II of this chapter;

(2) Has been convicted of a felony under this subchapter or subchapter II of this chapter or any other law of the United States, or of any State relating to any substance defined in this subchapter as a controlled substance;

(3) Has had his State license or registration suspended, revoked, or denied by competent State authority and is no longer authorized by State law to engage in the manufacturing, distribution, or dispensing of controlled substances or has had the suspension, revocation, or denial of registration recommended by competent State authority;

(4) Has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section;

(5) Has been excluded (or directed to be excluded) from participation in a program pursuant to section 1320A-7(a) of title 42.

Pursuant to 21 U.S.C. 823(f), "[i]n determining the public interest, the following factors will be considered:

(1) The recommendation of the appropriate State licensing board or disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct as may threaten the public health or safety.

It is well established that these factors are to be considered in the disjunctive, i.e., the Administrator may properly rely on any one or a combination of factors, and give each factor the weight he deems appropriate. See *Henry J. Schwarz, Jr., M.D.*, Docket No. 88-42, 54 FR 16422 (1989); *Neveille H. Williams, D.D.S.*, Docket No. 87-47, 53 FR 23465 (1988); *David E. Trawick, D.D.S.*, Docket No. 86-69, 53 FR 5326 (1988).

The administrative law judge concluded that Respondent's conduct fell within the provisions of 21 U.S.C. 824(a)(2) and 824(a)(4), and constituted violations of the public interest factors contained in 21 U.S.C. 823(f)(3), 823(f)(4), and 823(f)(5). Judge Tenney also noted that no evidence was offered in rebuttal or in avoidance of the evidence offered by the Government and that the Respondent filed no post-hearing documents on his behalf.

The Administrator adopts the findings of fact, conclusions of law and recommended order of the administrative law judge in their entirety. Respondent's registration is clearly inconsistent with the public interest. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AL6921515, previously issued to Edward A. Langford, M.D., be and it hereby is, revoked, and that any pending applications for registration be, and they hereby are, denied. This order is effective October 5, 1992.

Dated: August 27, 1992.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 92-21180 Filed 9-2-92; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 92-07]

Richard J. Lanham, M.D.; Revocation of Registration

On October 16, 1991, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Richard J. Lanham, M.D., (Respondent) of Buffalo, New York, proposing to revoke his DEA Certificate of Registration, BL2400682, and to deny any pending applications for renewal. The statutory basis for seeking the revocation of the registration was that Respondent's continued registration would be inconsistent with the public interest, as set forth in 21 U.S.C. 823(f) and in 21 U.S.C. 824, and as evidenced by the fact that Respondent had, during the period January 1987 through November 1988, been unable to account for 22,700 dosage units of controlled substances; that he had falsified his June 1990 DEA application for registration by failing to disclose a prior revocation of his State medical license; and that his previous DEA registration had been revoked.

Respondent filed a request for hearing on the issues raised by the Order to Show Cause, and the matter was docketed before Administrative Law Judge Paul A. Tenney. Following prehearing procedures, a hearing was held in Rochester, New York on March 17, 1992. On May 22, 1992, in his opinion and recommended decision, the administrative law judge recommended that Respondent's DEA Certificate of Registration be revoked and that any pending applications for renewal be denied.

The Government filed exceptions and Respondent filed a letter in response to Judge Tenney's opinion. On June 29, 1992, the administrative law judge transmitted the record to the Administrator. The Administrator has carefully considered the entire record in this matter and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

The administrative law judge found that the Ohio Medical Board revoked Respondent's Certificate to Practice Medicine and Surgery on June 2, 1989, after Respondent had executed a consent to revocation. The Administrator of the Drug Enforcement Administration revoked Respondent's previous DEA Certificate of Registration, AL6866339, on April 2, 1991, based upon his lack of authorization to handle controlled substances in the State of Ohio. 21 U.S.C. 824(A)(3). On June 20, 1990, Respondent submitted a new application for registration as a practitioner in Schedules II through V for his current address in New York. Respondent failed to indicate on the application that his previous Ohio state medical license had been revoked. The application was approved, based on the representations made and DEA Certificate of Registration, BL2400682, was issued to Respondent on August 27, 1990.

The administrative law judge further found that during the period September 1987 through September 1988, Respondent purchased in excess of 20,000 dosage units of the Schedule III and IV controlled substances Darvon, acetaminophen with codeine, lorazepam, propoxyphene chlordiazepoxide, and Ativan. Respondent admitted that he had no disposition records for the controlled substances he had purchased, and that

they were for his personal use. Respondent admitted that he used the controlled substances to allow him to perform his daily functions and used combinations of drugs to enhance analgesic qualities. Respondent stated that he did not believe that his personal use of controlled substances had been excessive. Respondent admitted that he took no special precautions in the storage or handling of the controlled substances that he ordered, and stated that he had been treating himself symptomatically for chronic fatigue syndrome.

The Administrator may revoke or suspend a DEA Certififate of Registration under 21 U.S.C. 824(A), upon a finding that the registrant:

(1) Has materially falsified any application filed pursuant to or required by this subchapter or subchapter II of this chapter;

(2) Has been convicted of a felony under this subchapter or subchapter II of this chapter or any other law of the United States, or of any State relating to any substance defined in this subchapter as a controlled substance;

(3) Has had his State license or registration suspended, revoked, or denied by competent state authority and is no longer authorized by state law to engage in the manufacturing, distribution, or dispensing of controlled substances or has had the suspension, revocation, or denial of registration recommended by competent state authority;

(4) Has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section;

(5) Has been excluded (or directed to be excluded) from participation in a program pursuant to section 1320A-7(a) of title 42.

Pursuant to 21 U.S.C. 823(f), "[i]n determining the public interest, the following factors will be considered:

(1) The recommendation of the appropriate State licensing board or disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct as may threaten the public health or safety.

It is well established that these factors are to be considered in the disjunctive, i.e., the Administrator may properly rely on any one or a combination of factors, and give each factor the weight he deems appropriate. See *Henry J. Schwarz, Jr., M.D.*, Docket No. 88-42, 54 FR 16422 (1989); *Neveille H. Williams, D.D.S.*, Docket No. 87-47, 53 FR 23465 (1988); *David E. Trawick, D.D.S.*, Docket No. 86-69, 53 FR 5326 (1988).

After reviewing the evidence presented, the administrative law judge concluded that Respondent's continued registration would be inconsistent with the public interest. The administrative law judge found that Respondent had falsified his application for registration in violation of 21 U.S.C. 824(a)(1). Judge Tenney further found that Respondent's conduct fell within the factors in 21 U.S.C. 823 (f)(4) and (f)(5) in that his possession of controlled substances in his home, an uncontrolled and unsecured location, was in violation of 21 CFR 1301.71 and 1301.75; that his failure to keep adequate records violated 21 CFR 1304.24; and his personal detoxification without a separate registration violated 21 CFR 1306.07(a).

The administrative law judge also found, *inter alia*, that Respondent's chronic fatigue syndrome abated in December 1988, that he ceased taking medication, that he returned to New York following his illness, and that there were no indications of any difficulties concerning his current medical practice. The Government took exception to those findings, arguing that such a finding would allow an inference that Respondent had been rehabilitated, whereas the evidence indicated that Respondent was still in a denial stage by failing to acknowledge that his drug use has been excessive. The Administrator does not agree with this finding of fact by the administrative law judge, and adopts the Government position that Respondent has failed to acknowledge the excessive nature of his drug use.

Additionally, the Administrator does not adopt the conclusion of law by the administrative law judge that Respondent dispensed the controlled substances for self-treatment of chronic fatigue syndrome and thus his conduct did not fall within 21 U.S.C. 823(f)(2). The Administrator finds that Respondent's conduct should be considered under 21 U.S.C. 823(f)(2), and hereby adopts the exception filed by the Government that Respondent diverted and dispensed Schedule III and IV controlled substances for his own use in excessive quantities without a valid medical reason, and without observing any protocols in the course of legitimate medical practice.

In addition to recommending that Respondent's Certificate of Registration be revoked, the administrative law judge also recommended that favorable consideration be given to Respondent's reapplication for registration after one year, and that the Administrator waive the provisions of 21 CFR 1301.76(a) with regard to Respondent's future employment in health care facilities. Given the extent of Respondent's abuse of controlled substances and failure to fully acknowledge such abuse, the Administrator declines to adopt either of these two recommendations.

Lastly, Respondent, in his letter protesting the administrative law judge's recommendation that his registration be revoked, asserted that his employment would be jeopardized and that he had been adequately punished by his eight year illness. He recommended that a $1,000.00 fine would be suitable in lieu of revocation. The Administrator rejects this view. These proceedings are not punitive in nature. The Administrator is charged by law with determining and protecting the public health and safety.

The Administrator adopts the opinion and recommended decision of the administrative law judge except as noted above. Respondent's registration is clearly inconsistent with the public interest. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, BL2400682, previously issued to Richard J. Lanham, M.D., be, and it hereby is, revoked, and that any pending applications for registration be, and they hereby are denied. This order is effective October 5, 1992.

Dated: August 27, 1992.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 92-21179 Filed 9-2-92; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration

By notice dated June 22, 1992, and published in the **Federal Register** on July 9, 1992, (57FR30512), Lonza Riverside, 900 River Road, Conshohocken, Pennsylvania 19428, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
4-Methoxyamphetamine (7411)	I
Amphetamine (1100)	II
Phenylacetone (8501)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: August 28, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92-21254 Filed 9-2-92; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration

By notice dated June 11, 1992, and published in the **Federal Register** on June 22, 1992, (57FR 27791), Noramco of Delaware Inc., Division McNeilab Inc., 500 Old Swedes Landing Road, Wilmington, Delaware 19801, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Codeine (9050)	II
Oxycodone (9143)	II
Hydrocodone (9193)	II
Morphine (9300)	II
Thebaine (9333)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: August 28, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92-21255 Filed 9-2-92; 8:45 am]

BILLING CODE 4410-09-M

Importer of Controlled Substances; Registration

By Notice dated July 9, 1992, and published in the **Federal Register** on July 22, 1992, (57 FR 32567), Radian Corporation, 8501 Mo-Pac Blvd., P.O. Box 201088, Austin, Texas 78720, made application to the Drug Enforcement Administration to be registered as an importer of dextropropoxyphene, bulk (non-dosage forms) (9273), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with title 21, Code of Federal Regulation § 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: August 27, 1992.

T. Senneca,

Deputy Director of Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92-21281 Filed 9-2-92; 8:45 am]

BILLING CODE 4410-09-M

Importer of Controlled Substances; Registration

By notice dated July 9, 1992, and published in the **Federal Register** on July 22, 1992, (57 FR 32568), Wildlife Laboratories, Inc., 1401 Duff Drive, suite 600, Fort Collins, Colorado 80524, made application to the Drug Enforcement Administration to be registered as an importer of carfentanil (9743), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with title 21, Code of Federal Regulations § 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: August 27, 1992.

T. Senneca,

Deputy Director of Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92-21280 Filed 9-2-92; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and/or Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills (202-523-5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3001, Washington, DC 20503 (202-395-6880).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

New Collection

Bureau of Labor Statistics

National Survey of Users of Employment and Unemployment Statistics
BLS-CS-1
Annually
Individuals or households; state or local governments; farms; businesses or other for-profit; Federal agencies or employees; non-profit institutions; small businesses or organizations 825 respondents; 15 minutes per response; 206 total hours; 1 form

The National Survey of Users of Employment and Unemployment Statistics measures " customer satisfaction" of all users of such data in order to provide strategic guidance to a quality improvement program.

Revision

Employment and Training Administration
Customer Survey Data Request
1205-0190; ETA 8562
On occasion
Businesses or other for-profit; small businesses or organizations 19,251 respondents; 1 hour per respondent; 19,251 total burden hours; 1 form

Information needed for Secretary of Labor to make determinations of eligibility for petitioning workers to apply for trade adjustment assistance in accordance with sections 222, 223 & 249 of the Trade Act of 1974 as amended, affecting manufacturers, wholesalers, retailers and distributors.

Departmental Management—Assistant Secretary for Policy 15 National Agricultural Workers Survey (NAWS)
1225-0044
Annually
Individuals or households; farms; businesses or other for profit 2,600 respondents; 1 hour per response; 2,600 total burden hours; 1 form
1,250 respondents; 30 minutes per response; 625 total burden hours; 1 form

The National Agricultural Workers Survey (NAWS) provides data to public and private service programs and data analysts which are used for planning, implementing and evaluating farmworker programs. Analysis provides an understanding of the manpower resources available to U.S. agriculture and the importance of immigrants in the labor market. It is the only national source of demographic and employment characteristics of farmworkers.

Extension

Employment Standards Administration
Regulations, 29 CFR Part 4—Labor Standards for Federal Service Contracts
1215-0150
On occasion
Businesses or other for-profit; Federal agencies or employees; Small businesses or organizations
54,800 respondents; 5 minutes to 1 hour per response; 35,234 total hours;
Recordkeeping and incidental reporting requirements in Service Contract Act regulations applicable to employers performance on service contracts with the Federal government.

Employment Standards Administration
Application for Approval of a Representative's Fee
1215-0171; CM-972
As needed
Businesses or other for-profit; small businesses or organizations 1,600 respondents; 42 minutes per response; 1120 total hours; 1 form

A black lung claimant may arrange to have an attorney represent his/her interests during the claims process. The purpose of CM Form 972 is to collect pertinent information to determine if the services rendered and the amounts charged can be paid under the Black Lung Benefits Act.

Mine Safety and Health Administration
Operation Under Water
1219-0020
On occasion
Businesses or other for profit; small businesses or organizations 30 respondents; 5 hours per response; 150 total burden hours

Requires coal mine operators to obtain a permit to mine under a body of water if, in the judgment of the Secretary of Labor, it is sufficiently large enough to constitute a hazard to miners.

Mine Safety and Health Administration
Escape and Evacuation Plans
1219-0046
Semi-annually
Businesses of other for profit; small businesses or organizations 945 respondents; 8 hours per response; 7,560 total burden hours.

Requires operators of underground coal mines to keep records of the results of mandatory weekly examinations of emergency escapeways. The records are used to determine that the integrity of the escapeways is being maintained.

Signed at Washington, DC this 27th day of August, 1992.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 92-21262 Filed 9-2-92; 8:45 am]

BILLING CODE 4510-43-M

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and/or Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills (202-523-5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/

PWBA/VETS), Office of Management and Budget, Room 3001, Washington, DC 20503 (202-395-6880).

Any member of the public who wants to comment on the survey requirements which have been submitted to OMB should advise Mr. Mills of this intent no later than September 15, 1992.

Revision (Amendment)

Bureau of Labor Statistics

Annual Survey of Occupational Injuries and Illnesses 1220-0045; BLS 9300

Form	Affected public	No. of Respondents	Frequency	Average time per respondent
BLS 9300	State and local government (as per State law), Farms, businesses of other for-profit, non-profit institutions, small businesses or organizations.	280,000	Annually	54 minutes. 250,000 total hours.

The Annual Survey of Occupational Injuries and Illnesses is the primary indicator of the Nation's progress in providing every working man and woman safe and healthful working conditions. Survey data are used to evaluate the effectiveness of Federal and State programs and to prioritize scarce resources.

The 1992 Annual Survey form has been redesigned for easier entry of the injury and illness totals collected in past years and for gathering additional information about the worker and the circumstances of injuries and illnesses that involved days away from work.

Signed at Washington D.C. this 27th day of August, 1992.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 92-21263 Filed 9-2-92; 8:45 am]

BILLING CODE 4510-24-M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 14, 1992.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 14, 1992.

The petitions filed in this case are available for inspection at the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 24th day of August 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition number	Articles produced
Hughes Christianson Company (USWA)	Houston, TX	08/24/92	08/11/92	27,684	Oilwell drilling bits.
Granite Finishing Plant (8/13/92)	Haw River, NC	08/24/92	08/13/92	27,685	Fabrics.
Corrugated Paper Corp. (workers)	Westborough, MA	08/24/92	08/10/92	27,686	Corrugated paper products.
Union Pacific Resources Co. (Co.)	Fort Worth, TX	08/24/92	08/14/92	27,687	Oil and gas.
Robertshaw Controls Co. (workers)	El Paso, TX	08/24/92	07/27/92	27,688	Control values for water heaters.
Petroleum Helicopters, Inc. (workers)	Lafayette, LA	08/24/92	08/06/92	27,689	Transporting oil and gas.
Reltoc Manufacturing Co. (ACTWU)	Winfield, AL	08/24/92	08/12/92	27,690	Casual slacks.
Die Mesh Corp. (Co.)	Mount Vernon, NY	08/24/92	08/13/92	27,691	Battery components.
Laurel Metal Processing (workers)	Johnstown, PA	08/24/92	08/11/92	27,692	Steel industry services.
Joyce Manufacturing (workers)	Sayre, PA	08/24/92	08/11/92	27,693	Ladies dresses, jackets and skirts.
Credence Systems Corp (workers)	Beaverton, OR	08/24/92	07/28/92	27,694	Semiconductor test equipment.
Credence Systems Corp (workers)	Fremont, CA	08/24/92	07/28/92	27,695	Semiconductor test equipment.
Credence Systems Corp (workers)	Billerica, MA	08/24/92	07/28/92	27,696	Semiconductor test equipment.
Coombs Machinery (workers)	Whitehall, PA	08/24/92	08/24/92	27,697	Buying & selling used textile machinery.
The Timken Company (USWA)	Canton, OH	08/24/92	08/11/92	27,698	Bearings and steel.
Flory Fashions, Inc. (workers)	Smoyersville, PA	08/24/92	08/05/95	27,699	Ladies' dresses and suits.
B-W Footwear Co., Inc. (Co.)	Webster, MA	08/24/92	08/14/92	27,700	Men's and womens' leather shoes.
Lumber Systems, Inc. (workers)	Vancouver, WA	08/24/92	08/09/92	27,701	Lumber handing machinery.
Little Falls Footwear (Co.)	St. Johnville, NY	08/24/92	08/12/92	27,702	Sandals.
Philips Consumer Electronics Co. (IUE)	Greeneville, TN	08/24/92	08/10/92	27,703	Color TV sets.
U.S. Shoe Component Company (workers)	Vanceburg, KY	08/24/92	08/12/92	27,704	Leather shoe uppers, component parts.
Union Oil of California (workers)	Lafayette, LA	08/24/92	08/14/92	27,705	Oil, gas expoloration.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition number	Articles produced
Prestolite Electric, Inc. (CWA)	Gainesville, GA	08/24/92	08/13/92	27,706	Heavy duty electric motors and regulators.
GeoQuest Technology Corp (Co.)	Houston, TX	08/24/92	07/29/92	27,707	Oil and gas exploration services.
Pride Petroleum Services, Inc. (Co.)	Alice, TX	08/24/92	08/12/92	27,708	Oil and gas.
Pride Petroleum Services, Inc. (Co.)	Freer, TX	08/24/92	08/12/92	27,709	Oil and gas.
Pride Petroleum Services, Inc. (Co.)	Rio Grande City, TX	08/24/92	08/12/92	27,710	Oil and gas.
South Texas Swabbing (Co.)	Corpus Christi, TX	08/24/92	08/12/92	27,711	Oil and gas.
Dresser Industries, Inc., Security (USWA)	Dallas, TX	08/24/92	08/11/92	27,712	Oilwell drilling bits.
Reed Tool Company (USWA)	Houston, TX	08/24/92	08/11/92	27,713	Oilwell drilling bits.
Dresser Industries, Inc., Guiberson (USWA)	Dallas, TX	08/24/92	08/11/92	27,714	Packers—oil drilling equipment.

[FR Doc. 92-21264 Filed 9-2-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-27,336]

R&S Tong Service Odessa, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 9, 1992 applicable to all workers of R&S Tong Service. The certification notice was published in the **Federal Register** on July 28, 1992 (57 FR 33368).

At the request of the State Agency the Department reviewed the subject certification. New information from the company shows that the workers were R&S Tong Service employees before being leased back to R&S Tong Service.The intent of the Department's certification is to include all workers of R&S Tong Service, Odessa, Texas who were adversely affected by increased imports of crude oil and natural gas.

The amended notice applicable to TA-W-27,336 is hereby issued as follows:

"All workers of R&S Tong Service, Odessa, Texas, (including leased employees engaged in activities related to the exploration and drilling of crude oil and natural gas) who became totally or partially separated from employment by R&S Tong Service on or after May 20, 1991 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed in Washington, DC, this August 27, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-21265 Filed 9-2-92; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL ADVISORY COUNCIL ON THE PUBLIC SERVICE

Meeting

AGENCY: National Advisory Council on the Public Service (NACPS)

CHANGE: Meeting Location.

SUMMARY: The meeting of the National Advisory Council on the Public Service scheduled for Thursday, September 10, 1992 (8:45 a.m.–1), which was published in the **Federal Register** on Friday, August 21, 1992, has changed the meeting location to the National Capital Planning Commission, suite 301, 801 Pennsylvania Avenue, NW., Washington, DC. All other information remains the same.

FOR FURTHER INFORMATION CONTACT: Jane Riddleberger, NACPS, suite 420, National Press Building, 529 14th Street, NW., Washington, DC 20045 (202–724–0796).

DATED: August 31, 1992.

Jean M. Curtis,

Executive Director.

[FR Doc. 92-21274 Filed 9-2-92; 8:45 am]

BILLING CODE 7525-01-M

NATIONAL ENDOWMENT FOR THE ARTS AND THE HUMANITIES

Design Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Design Arts Advisory Panel (Challenge, Overview, and Project Grants for Organizations, Design Education, Heritage Conservation, Arts Facilities Design, and Rural and Small Communities Sections) to the National Council on the Arts will be held on September 14, 1992 from 9 a.m.–7 p.m., September 15 from 9 a.m.–6 p.m., September 16 from 9 a.m.–7:30 p.m. and September 17–18 from 9 a.m.–5 p.m. in room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on September 18 from 9 a.m.–5 p.m. for an overview of the program.

The remaining portions of this meeting on September 14 from 9 a.m.–7 p.m., September 15 from 9 a.m.–6 p.m., September 16 from 9 a.m.–7:30 p.m. and September 17 from 9 a.m.–5 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panel which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5439.

Dated: August 31, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92-21285 Filed 9-2-92; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL ENDOWMENT FOR THE ARTS AND THE HUMANITIES

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Single Music Presenters and Festivals Section) to the National Council on the Arts will be held on September 14–16, 1992 from 9 a.m.–5:30 p.m. and September 17–18 from 9 a.m.–5 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on September 17 from 4 p.m.–5 p.m. The topics will be policy discussion and guidelines review.

The remaining portions of this meeting on September 14–16 from 9 a.m.–5:30 p.m., September 17 from 9 a.m.–4 p.m., and September 18 from 9 a.m.–5 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: August 31, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92–21284 Filed 9–2–92; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–322]

Long Island Power Co.; Shoreham Nuclear Power Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the NRC or Commission) is considering issuance of an amendment to Facility License No. NPF–82 issued to Long Island Power Company (LIPA or the licensee) for the possession of the Shoreham Nuclear Power Station, Unit 1 (SNPS or the facility) located in Suffolk County, New York.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would change license conditions and Technical Specifications (TS) to reflect the administrative changes resulting from the February 29, 1993 transfer of the SNPS license from the Long Island Lighting Company (LILCO) to LIPA and to add a condition that the license revert to LILCO in the event LIPA ceases to exist or is otherwise found to be unqualified. Additionally, the TS are being revised to eliminate the requirement for LIPA to maintain 10 CFR part 55 licensed operators.

The proposed action is in accordance with the licensee's and LILCO's joint application dated June 28, 1990, and as supplemented June 13, June 27, October 31, and December 5, 1991, and March 27, and April 10, 1992.

The Need for the Proposed Action

Under the 1989 Settlement Agreement between New York State and LILCO, LILCO was contractually committed never to operate Shoreham as a nuclear facility and to transfer the Shoreham facility to LIPA for decommissioning. The SNPS Facility Operating License (Possession Only License or POL) was transferred to LIPA by Order dated February 29, 1992. The proposed amendment would implement administrative changes to reflect the SNPS license transfer and elimination of the TS requirement for the licensees to maintain 10 CFR part 55 licensed operators. There will be no physical changes to the Shoreham facility associated with this amendment.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed changes to the license conditions and TS. The proposed changes are administrative changes reflecting the transfer of the Possession Only License from LILCO to LIPA and the elimination of the TS requirement to maintain 10 CFR part 55 licensed operators. Under the proposed amendment, all responsibilities and obligations associated with the Possession Only License, Technical Specifications, as well as applicable plans, procedures, and programs referenced therein will be transferred to LIPA. Accordingly, LIPA's activities after license transfer are consistent with the Defueled Safety Analysis Report (DSAR) and the established safety margins. The direct environmental impacts of LIPA's activities under the license transfer are within those previously evaluated by LILCO in their DSAR and authorized by the Commission's approval of the POL on June 14, 1991 and issuance of the Decommissioning Order on June 11, 1992. Thus, there will be no significant change in the activities conducted at the site and there will be no changes to the facility or the environment as a result of the license amendment and the corresponding administrative changes to the TS reflecting the change in ownership and elimination of the TS requirement to maintain 10 CFR part 55 licensed operators consistent with the permanently defueled condition of the plant. Accordingly, the Commission concludes that this action would result in no radiological or non-radiological environmental impact.

Alternative to the Proposed Action

It has been determined that there is no impact associated with the proposed amendment; any alternatives to the amendment will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of resources not considered in the Final Environmental Statement for the Shoreham Nuclear Power Station.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

Based on the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed amendment.

A Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with this action was published in the **Federal Register** on March 20, 1991, (56 FR 11781). On April 19, 1991, the Scientists and Engineers for Secure Energy and the Shoreham Wading River Central School District (the petitioners) filed petitions and comments to intervene and request for hearing concerning the license transfer application. The petitioners in their letter dated June 3, 1992, requested permission to withdraw their opposition in accordance with their settlement agreement with the licensee. The ASLB in its Order, LBP-92-14, dated June 17, 1992, granted the petitioners' motion to dismiss, with prejudice, and terminated the proceeding. The NRC staff addressed the petitioner's comments in their Safety Evaluation concerning this amendment and concluded that nothing in the petitioner's comments affects the staff's proposed no significant hazards consideration.

For further details with respect to this action, see the request for amendment dated June 28, 1990, and supplements of June 13, June 27, October 31, and December 5, 1991, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the Shoreham-Wading River Public Library, Route 25A, Shoreham, New York 11786-9697.

Dated at Rockville, Maryland this 27th day of August, 1992.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors, Decommissioning and Environmental Project Directorate, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-21215 Filed 9-2-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-445]

TU Electric Utilities Co.; (Comanche Peak Steam Electric Station, Unit 1); Exemption

I. The Texas Utilities Electric Company (TU Electric) is the holder of Facility Operating License No. NPF-87, which authorizes operation of the Comanche Peak Unit 1 reactor at a steady-state power level not in excess of 3425 megawatts thermal. The facility is a pressurized water reactor located at the licensee's site in Somervell County, Texas. This license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Commission.

II. Section VI(4)(d) of Appendix E to 10 CFR 50, states that "Each licensee shall complete implementation of the ERDS [Emergency Response Data System] by February 13, 1993, or before initial escalation to full power, whichever comes later."

By letter dated June 1, 1992, the licensee requested a schedular exemption from the requirements of section VI(4)(d) of appendix E. The licensee stated that they planned a replacement of the Comanche Peak Steam Electric Station, Unit 1 computer system during the third refueling outage scheduled during the fourth quarter of 1993.

III. The licensee's request for a schedular exemption from the requirement of appendix E to 10 CFR 50 section VI(4)(d) is based on a planned change-out of the computer system which drives the ERDS. The change-out is to be completed by fourth quarter of 1993. The licensee states that if the exemption is not granted, it would be required to install two different ERDS for the same reactor within one year, and that this would result in redundant and unnecessary costs.

The purpose of the rule requiring installation of ERDS is to assure that all power reactors, except for Big Rock Point, install an ERDS in a timely manner. The licensee stated that it will install an ERDS within four months after installation of a new computer, thus it will comply with the intent of the regulation. The ERDS is informational only, and does not affect plant safety.

For these reasons, we conclude that granting a scheduling exemption from appendix E, section VI(4)(d) of 10 CFR 50 will relieve the licensee from unnecessary hardship and redundant costs of installing and testing two ERDS systems within one year. Therefore, the licensee's request is granted.

IV. Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a)(1), this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(iii), are present justifying the exemption. The exemption would provide only temporary relief from the applicable regulation in that the licensee has extended the installation of the ERDS to allow replacement of its Unit 1 computer system.

Accordingly, the Commission hereby grants an exemption as described in Section III above from appendix E, Section VI(d)(4) of 10 CFR part 50 to extend the completion date of the ERDS.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of the Exemption will have no significant impact on the environment (57 FR 38884).

This Exemption is effective upon issuance.

Dated at Rockville, Maryland, this 27th day of August 1992.

For the Nuclear Regulatory Commission.

Bruce A. Boger,

Director, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-21216 Filed 9-2-92; 8:45 am]

BILLING CODE 7590-1-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Meeting of the President's Council of Advisors on Science and Technology

ACTION: Amended notice of meeting.

CHANGES: The President's Council of Advisors on Science and Technology (the "Council") is currently holding a series of public meetings around the country as announced in 57 FR 23604-605 (June 4, 1992). This amendment is to provide notice of the precise location for the last of these public meetings.

DATE AND LOCATION: On September 24, 1992, the Council will meet at Northwestern University from 8:30 a.m. to 3:30 p.m. following the agenda set out in the **Federal Register** notice referenced above. This meeting will be held at Hardin Hall, Rebecca Crown Center located at 633 Clark Street.

FOR FURTHER INFORMATION CONTACT: Ms. Alicia Tenuta, Office of Science and Technology Policy, 744 Jackson Place, NW., Washington, DC 20506 at (202) 395-3170, fax number (202) 395-5076.

Dated: August 28, 1992.

Vickie V. Sutton,

Assistant Director, Office of Science and Technology Policy.

[FR Doc. 92-21269 Filed 9-2-92; 8:45 am]

BILLING CODE 3170-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-31079; International Series Release No. 439; File No. SR-Amex-92-25]

Self-Regulatory Organizations; Proposed Rule Change by the American Stock Exchange, Inc. Relating to Index Warrants Based on a Basket of Japanese Traded Stocks

August 24, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 29, 1992, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to approve for listing and trading under section 106 of the Amex Company Guide warrants on an index of not less than twenty-five common stocks actively traded on the Tokyo Stock Exchange; and to add commentary .04 to Rule 411 to provide that such warrants shall only be sold to accounts approved for options trading pursuant to Exchange Rule 921.[1]

The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

[1] On August 19, 1992, the Amex submitted an amendment to increase the minimum number of stocks in the proposed index from 20 to 25. See letter from Benjamin D. Krause, Senior Vice President, Amex to Sharon Lawson, Assistant Director, Division of Market Regulation, dated August 19, 1992.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

Section 106 of the Amex Company Guide sets forth guidelines applicable to listing warrants based on foreign and domestic stock indexes. Pursuant to section 106, the Amex proposes to list and trade warrants on a basket of at least twenty-five common stocks actively traded on the Tokyo Stock Exchange (the "Basket").

The market value of the proposed basket of stocks will be calculated once a day based upon the closing prices of the component stocks on the Tokyo Stock Exchange and disseminated each morning before the opening of trading in the United States. At inception, each of the component stocks will be represented in the Basket in approximately equal percentages and market values.

The number of shares of each component stock in the Basket will remain fixed during the life of the warrant, except in the event of certain types of corporate actions such as (i) the payment of a cash dividend or distribution in excess of 10% of the price of the component security (as of the closing of trading on the declaration date); or (ii) a stock distribution, stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, or similar event with respect to the component stocks in excess of 10% of the outstanding number of shares. In the event of such corporate actions, the number of shares of the security in the Basket may be adjusted to maintain the component's relative weight in the Basket at the level immediately prior to the corporate action. In the event of a merger, consolidation, dissolution or liquidation of a component security, the price of the component stock will be fixed at the closing price on the Tokyo Stock Exchange on the last day of trading. Advance notice of such action shall be disseminated by the Exchange. Thereafter, this stock will remain in the Basket and its value will remain static for the duration of the term of the warrant.

As noted above, the Basket will initially be constituted with not less than 25 component stocks. Each component stock will (1) have a minimum market value (in U.S. dollars) of at least $500 million, and (2) have an average monthly trading volume during the preceding six months of not less than 1,000,000 shares. In addition, not less than 75% of the component stocks will have a market value of at least $1 billion.

Warrant issues on the Basket will conform to the listing guidelines under section 106, which generally provide that (1) the issuer shall have assets in excess of $100,000,000 and otherwise substantially exceed the size and earning requirements in section 101(a) of the Company Guide; (2) the term of the warrants shall be for a period ranging from one to five years from the date of issuance; and (3) the minimum public distribution of such issues shall be 1,000,000 warrants, together with a minimum of 400 public holders, and have an aggregate market value of $4,000,000. In addition, the warrant issuer and/or guarantor shall be expected to have shareholders' equity in excess of $100,000,000.

These warrants will be direct obligations of their issuer subject to cash-settlement in U.S. dollars, and either exercisable throughout their life (*i.e.*, American style) or exercisable only on their expiration date (*i.e.*, European style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant structured as a "put" would receive payment in U.S. dollars to the extent that the Basket has declined below a pre-stated cash settlement value. Conversely, holders of a warrant structured as a "call" would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the Basket has increased above the pre-stated cash settlement value. If "out-of-the-money" at the time of expiration, the warrants would expire worthless.

In addition, the Exchange proposes to add Commentary .04 to Exchange Rule 411 to ensure that transactions in warrants on the Basket will not be effected in a customer's account which has not been approved for options trading pursuant to Exchange Rule 921.

(2) Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade, to protect investors and the public interest, and to remove impediments to and perfect the mechanism of a free and open market.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Amex believes that the proposed rule change will impose no burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 24, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-21189 Filed 9-2-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31118; File No. SR-Amex-91-07]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Amendments to Rule 127-Minimum Fractional Changes

August 28, 1992.

I. Introduction

On April 24, 1991, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend Amex Rule 127 in order to increase, from $1 to $5, the price level below which equity securities are traded in sixteenths, and at or above which equity securities are traded in eighths.

Notice of the proposed rule change was published in the **Federal Register** in Securities Exchange Act Release No. 29183 (may 9, 1991), 56 FR 22741 (May 16, 1991). One comment was received on the proposal.[3]

II. Description of the Proposal

The proposed rule change increases, from $1 to $5, the threshold level at or above which securities trade in eighths. The proposal requires, therefore, that securities selling between $0.25 and $5 be traded in sixteenths, while securities selling at or above $5 be traded in eighths. Securities trading below $0.25 will continue to be traded in thirty-seconds.[4]

Prior to approval of this proposed rule change, Amex Rule 127 provided that equity securities selling below $0.25 trade in thirty-seconds, while equity securities selling between $.25 and $1 trade in sixteenths, and those selling at or above $1 trade in eighths. Furthermore, Rule 127 provides that the Exchange may fix different minimum fractional changes for securities traded on its floor. Pursuant to this authority, the Exchange stated that it has established sixteenths trading in foreign issues selling at less than $5 and in foreign currency warrants selling at less than $3. According to the Exchange, it also has used this exemptive authority, from time to time, generally at the request of a specialist seeking to improve market quality, to establish sixteenths trading in certain stocks selling above $1.[5]

At the time of publication of the Commission's release noticing this proposal, ITS was not equipped to accommodate trading in sixteenths. However, at the February 18, 1992 meeting of the ITS Operating Committee, the ITS participants approved enhancements to ITS to permit trading in sixteenths for B issues[6] priced under $5.00. Amex represents that these system modifications have been made and the system now is able to accommodate trading in sixteenths.[7]

III. Comments Received

The Commission received one comment letter regarding the proposal.[8] The commenter generally supported the Amex's proposal, but suggested that the proposal be extended to all equity securities, not just low-priced securities. According to the commenter, the restriction limiting orders to 1/8 of one dollar per share minimum variations deprives brokers and customers of the opportunity to transact at prices between the resultant spread. Among other things, the commenter strongly suggested that all the national stock exchanges, in addition to the National Association of Securities Dealers, Inc., be required to eliminate any commission variation above $.01.

IV. Discussion

After careful consideration, the Commission finds that the Amex's proposed rule change to increase, from $1 to $5, the price level below which equity securities are traded in sixteenths, and at or above which equity securities are traded in eighths, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, specifically, sections 6(b) and 11A of the Act.[9] The

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1991).

[3] *See infra* note 7 and accompanying text.

[4] The proposed amendments to Rule 127 do not pertain to bond issues which will continue to be dealt in at 1/8 of 1%.

[5] See discussion *infra* on the requirements to submit a proposed rule change under section 19(b) of the Act if Amex were to set different minimum fractional changes pursuant to Amex Rule 127.

[6] The Consolidated Tape, operated by the Consolidated Tape Association ("CTA"), compiles last sale reports in certain listed securities from all exchanges and market makers trading such securities and disseminates these reports to vendors on a consolidated basis. Amex-listed stocks and qualifying regional listed stocks are reported on CTA Tape B.

[7] See letter from Thomas B. Demchak, Director, Securities Information Automation Corporation, to Elizabeth MacGregor, Branch Chief, Division of Market Regulation, SEC, dated August 25, 1992.

[8] See letter from James L. Rothenberg, to Jonathan G. Katz, Secretary, SEC, dated May 31, 1991.

[9] 15 U.S.C. 78f and 78k-1 (1988).

Commission believes that the proposal is consistent with the section 6(b)(5) [10] requirement that the rules of the Exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. Additionally, the Commission believes that the proposal is consistent with section 11A which requires the Commission to facilitate the establishment of a national market system. Pursuant to section 11A, a national market system should assure, among other things, fair competition between the exchanges, economically efficient execution of securities transactions and the practicability of brokers executing investors' orders in the best market.

The Commission believes that market quality should be enhanced by applying a minimum fractional change of 1/16, rather than 1/8, to securities selling below $5. The Commission believes that decreasing such trading variations should help to produce more accurate pricing of such securities and can result in tighter quotations. In addition, if the quoted markets are improved by the reduced minimum tick fluctuations, the change could result in added benefits to the market such as increased liquidity in lower priced stocks.

Furthermore, the Amex has represented that 40% of all equity securities presently traded on the Amex sell for under $5 per share.[11] The Commission believes that the tighter quotation resulting from trading these securities in sixteenths should provide customers with the most competitive market and the best possible execution of their transactions in these low-priced securities.

In addition, the Commission believes that the proposal should lead to increased competition between the exchanges pursuant to Section 11A of the Act. As noted above, ITS participants will have the capability to trade in sixteenths in Amex issues.[12] By ensuring that all ITS participants can quote in sixteenths, customers should be able to receive a better, more competitive price in securities priced below $5.00.

While the Commission understands the objective of the commenter's opinion that the proposed minimum fractional change should be made applicable to all equity securities, not just those selling below $5, the Commission finds that approval of the Amex's proposal in its current form is appropriate and consistent with the Act. In particular, we note that lower priced stocks (the ones covered by the Amex proposal) should benefit the most from trading in sixteenths. Moreover, Amex has not proposed sixteenth trading for all stocks, and the Commission does not believe that it should force Amex at this time to go to sixteenth trading for all stocks trading on its market. Nevertheless, we would recommend the Amex to examine its experience with sixteenth trading to assess whether it has provided benefits to its markets that should be expanded to other classes of stocks traded on the Amex.

Finally, as indicated above, Rule 127 provides that the Exchange may fix different minimum fractional changes for securities traded on its floor. Pursuant to this authority, the Exchange stated that it has established sixteenths trading in foreign issues selling at less than $5 and in foreign currency warrants selling at less than $3. According to the Exchange, it also has used this exemptive authority to establish sixteenths trading in certain stocks selling above $1. The Commission emphasizes that any future attempt to alter the minimum fraction change for securities traded on the exchange must first be submitted to the Commission as a proposed rule change pursuant to section 19(b) of the Act, and Rule 19b-4 thereunder.

V. Conclusion

For the reasons set forth above, the Commission finds that the Amex's proposed rule change is consistent with sections 6 and 11A of the Act.

It is therefore ordered, pursuant to section 19(b)(2) [13] of the Act, that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Jonathan G. Katz,

Secretary.

[FR Doc. 92-21224 Filed 9-2-92; 8:45 am]

BILLING CODE 8010-01-M

[10] 15 U.S.C. 78f(b)(5) (1988).

[11] Indeed, with the advent of the newly implemented Emerging Company Marketplace ("ECM"), the exchange should attract additional companies whose securities currently sell at or below $5.

[12] See notes 5 and 6 and accompanying text, *supra.*

[13] § 15 U.S.C. 78s(b)(2) (1988).

[14] 17 CFR 200.30-3(a)(12) (1991).

[Release No. 34-31111; File No. SR-Phlx-92-18]

Self-Regulatory Organization; Filing and Order Granting Accelerated Approval to a Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Reduction of Trading Increments for Long-Term, Reduced Value Index Options

August 27, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 13, 1992, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, pursuant to Rule 19b-4 under the Act, proposes amend Exchange Rule 1034 regarding minimum tick fluctuations for premiums. Specifically, the Exchange proposes to reduce from one-eighth point to one-sixteenth point, the minimum tick fluctuation for premiums between $3.00 and $5.00 for long term options on the reduced value Value Line Composite Index ("VLE").[1] The Exchange believes that narrowing the minimum fractional change to one-sixteenth (1/16) will provide the potential opportunity for market participants to make better markets in long-term, reduced value VLE options trading below $5.00 per index option.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included

[1] On August 18, 1992, the Phlx amended its filing to clarify that the proposed narrower tick fluctuations will only apply to long-term, reduced value index options on the VLE trading between $3 and $5. Currently, under Exchange Rule 1034, the one-sixteenth minimum tick fluctuation only applies to option contracts trading under $3. See Letter from Murray L. Ross, Secretary, Phlx, to Stephen Youhn, Staff Attorney, Options Regulation, Division of Market Regulation, SEC, dated August 18, 1992.

[2] Under Phlx rules, a long-term stock index option is one with a duration greater than twelve months. These options are also known as Long Term Equity Anticipation Securities, or "LEAPs."

statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The proposed rule change was recommended to the Board of Governors of its Options Committee in response to a corresponding filing by the American Stock Exchange, Inc. ("Amex") respecting minimum fractional changes for dealing in LEAPs on the Amex's reduced value Major Market Index ("MXI"). In order to offer investors a competitive pricing interval in LEAPs respecting the VLE, the Phlx Board of Governors authorized and approved the proposed rule filing. The Phlx believes that narrowing the minimum fractional change to one-sixteenth (1/16) will provide the potential opportunity for market participants to make better markets in long-term, reduced value VLE options trading between $3 and $5.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that it is designed to further promote the mechanism of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either received or requested.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested accelerated approval of its proposed rule change.

The Commission believes the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5). Specifically, because the reduced value VLE underlying VLE LEAPs is one-tenth of the value of the full value VLE, the Commission believes the Exchange's proposal may result in enhanced pricing efficiency and price continuity for LEAPs on the reduced value VLE, thereby promoting the public interest and protecting investors. The Commission also believes that the narrow minimum tick fluctuation may result in enhanced market maker performance and tighter market for LEAPs on the reduced value VLE.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that the Phlx's proposal is substantially identical to the Amex's proposal to reduce the trading increments for LEAPs on its reduced value stock index options. The Amex's proposal was subject to the full notice and comment period and the Commission did not receive any comments. Accordingly, the Commission does not believe that there are any new or different regulatory issues arising out of the current Phlx proposal.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-92-18 and should be submitted by September 24, 1992.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act [3] that the proposed rule change (SR-Phlx-92-18) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-21190 Filed 9-2-92; 8:45 am]

BILLING CODE 8010-01-M

[3] 15 U.S.C. 78s(b) (1988).

[Rel. No. IC-18912; 812-7909]

Balanced Fund, et al., Application

August 27, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Balanced Fund, a series of Commonwealth Investment Trust (the "Trust"), and Financial Industrial Income Fund, Inc. ("Financial Fund").

RELEVANT ACT SECTIONS: Exemption requested under section 17(b) from section 17(a).

SUMMARY OF APPLICATION: Applicants seek an order permitting Financial Fund to acquire substantially all of the assets and certain liabilities of Balanced Fund.

FILING DATE: The application was filed on April 27, 1992 and amended on August 4, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 21, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issue contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o Financial Industrial Income Fund, Inc., 7800 East Union Avenue, suite 800, Denver, Colorado 80237, Attention: Glen A. Payne, Esq., and c/o Gardner and Preston Moss, Inc., 101 Federal Street, Boston, Massachusetts 02110, Attention: Carmine A. Greco, Esq.

FOR FURTHER INFORMATION CONTACT: Maura A. Murphy, Staff Attorney, at (202) 272-7779, or Nancy M. Rappa,

Branch Chief, at (202) 272-3030 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representatives

1. Each of the Trust and Financial Fund is registered under the Act as an open end, diversified management investment company. Balanced Fund is one of two series of the Trust.

2. Balanced Fund's investment adviser is Gardner and Preston Moss, Inc. ("Gardner"). Financial Fund's investment adviser is INVESCO Funds Group, Inc. ("INVESCO"). Both Gardner and INVESCO are wholly-owned subsidiaries of INVESCO MIM North American Holdings, Inc., which in turn is a wholly-owned subsidiary of INVESCO MIM PLC.

3. Pursuant to an Agreement and Plan of Reorganization (the "Plan"), Financial Fund proposes to acquire all of the assets of Balanced Fund, subject to all of the liabilities of Balanced Fund reflected on an unaudited statement of assets and liabilities, in exchange for Financial Fund shares at a closing described in the Plan (the "Closing").

4. As of December 31, 1991, Balanced Fund had net assets of approximately $47.7 million, and Financial Fund had net assets of approximately $1.6 billion.

5. Financial Fund will assume all liabilities, expenses, costs, and reserves reflected on an unaudited statement of assets and liabilities of Balanced Fund prepared as of the close of business on the day preceding the Closing in accordance with generally accepted accounting principles consistently applied from the prior audited period. Financial Fund will not assure any other liabilities of Balanced Fund, whether absolute or contingent, known or unknown, around or unaccrued.

6. At or prior to the Closing, Balanced Fund will declare a dividend or dividends which, together with all previous such dividends, shall have the effect of distributing to Balanced Fund's shareholders all of Balanced Fund's investment company taxable income and net capital gains realized for all taxable years ending at or prior to the Closing.

7. The aggregate net asset value of full and fractional Financial Fund shares to be issued to Balanced Fund shareholders will equal the aggregate net assets of Balanced Fund as of the close of business on the day preceding the Closing. The number of Financial Fund shares to be issued to Balanced Fund will be determined by dividing (a) the aggregate value of Balanced Fund's net assets by (b) the net asset value per share of Financial Fund. Portfolio securities of Balanced Fund and Financial Fund will be valued in accordance with the valuation practices of Financial Fund.

8. At or as soon as practicable after the Closing, Balanced Fund will liquidate and distribute *pro rata* to its shareholders of record as of the close of business on the Valuation Date the full and fractional Financial Fund shares received by Balanced Fund.

9. Balanced Fund and Financial Fund will not bear any expenses of the Plan. Gardner and INVESCO will bear the reorganization expenses of Balanced Fund and Financial Fund.

10. Balanced Fund imposes a maximum front-end sales charge of 7½% of the offering price, and does not have a rule 12b-1 plan. Financial Fund does not impose a front-end sales charge, but has adopted a rule 12b-1 distribution plan authorizing monthly payments to INVESCO of up to 0.25% of its average daily net assets. Neither Balanced Fund nor Financial Fund imposes a sales charge in connection with the redemption of shares.

11. Balanced Fund's investment objectives are safety of principal, continuity of income and long-term capital growth. Financial Fund's investment objective is to seek the best possible current income while following sound investment practices by investing its assets in securities that will provide a relatively high yield and stable return and which, over a period of years, may also provide capital appreciation.

12. Pursuant to the Plan, Financial Fund may instruct the Trust to sell securities held by Balanced Fund that Financial Fund in its discretion deems inappropriate for its portfolio, and the Trust may sell or elect not to transfer such securities to Financial Fund. Financial Fund intends to request that the Trust sell securities constituting approximately 35% of Balanced Fund's portfolio. As a result of such sales, Balanced Fund will realize taxable gains of approximately $2 million. The proceeds of such sales will be held in short-term interest bearing instruments pending transfer to Financial Fund.

13. The expense ratios of Financial Fund and Balanced Fund have been similar over a six-year period. Based upon net assets as of March 31, 1992, Balanced Fund's ratio of expenses to net assets is approximately 0.981% per annum and Financial Fund's is 0.964%. INVESCO projects that the combined funds will have an expense ratio of approximately 0.961% following the reorganization.

14. At meetings held on January 29, 1992 and January 22, 1992, respectively, the Plan was approved by the Board of Trustees of the Trust and the Board of Directors of Financial Fund. In determining whether to approve the Plan, the Trustees of the Trust and the Directors of Financial Fund considered the following factors, among others: (a) The capabilities and resources of Financial Fund's investment adviser, sub-investment adviser, and principal underwriter in the areas of investment management and marketing; (b) the compatibility of the funds' investment objectives, policies, and restrictions, as well as service features available to shareholders of the respective funds; (c) expense ratios and published information regarding the fees and expenses of Balanced Fund and Financial Fund and similar funds; (d) sales charges, distribution fees and methods of distribution of the funds; (e) the comparative investment performance of Balanced Fund and Financial Fund, as well as the performance of similar funds; (f) the terms and conditions of the Plan and whether the reorganization would result in dilution of shareholder interests; (g) the advantages to the shareholders of Balanced Fund and Financial Fund as well as to Gardner and INVESCO and their respective affiliates of eliminating the management of the assets of Balanced Fund as a separate portfolio; (h) the costs of the Plan to be borne by the respective investment advisers; (i) the tax consequences of the Plan; and (j) the compatibility, suitability, and acceptability of the assets of Balanced Fund which are to be exchanged for Financial Fund shares.

15. The minutes of the January 29 and January 22 meetings reflect that the Trustees and Directors determined that the reorganization would not be dilutive to shareholders of their respective funds after discussions with management of the funds and an analysis of the *pro forma* estimated operating expenses of the combined entity after the proposed reorganization. Information that was of particular importance in making these determinations was that: (1) The aggregate net asset value of the Financial Fund shares that Balanced Fund would receive in the exchange would equal the fair market value of the aggregate net assets of Balanced Fund; (2) neither Balanced Fund nor Financial Fund would incur any expenses with respect to the proposed reorganization; and (3) the expense ratio of the combined funds was projected over time

to be incrementally lower than that of either fund operating separately.

16. The minutes of the January 29, 1992 meeting reflect that the Trustees of the Trust determined that the proposed reorganization would be in the best interest of Balanced Fund by focusing on: (1) INVESCO's success in distributing shares of Financial Fund, compared with the continued inability of Balanced Fund's distributor to attract retail brokerage firms to distribute Balanced Fund shares; (2) Balanced Fund's increase in net redemptions; (3) Financial Fund's higher average annual total returns and its historical record among equity income funds; (4) services available to Financial Fund shareholders that are not available to Balanced Fund shareholders, including Financial Fund's exchange privileges with twenty-four other portfolios; and (5) the fact that Financial Funds does not charge a front-end sales load (although it does charge a rule 12b-1 fee of 0.25%), while Balanced Fund charges a front-end sales load of 7.5% to 1%.

17. The minutes of the January 22, 1992 meeting reflect that the Directors of Financial Fund determined that the Plan is in the best interests of Financial Fund by focusing upon: (1) The compatibility of Balanced Fund's assets with Financial Fund's investment objectives, policies, and restrictions; (2) the willingness of Financial Fund's adviser and subadviser to acquire and, at least initially, maintain Balanced Fund's assets; (3) the fact that the exchange would not have an adverse effect, and might have a minor beneficial effect, on Financial Fund's expense ratio; and (4) the recognition that the exchange would not dilute the interests of Financial Fund's shareholders, impose any cost or expense on Financial Fund, or cause any taxable gain or loss to Financial Fund.

18. Applicants submit that the proposed reorganization is consistent with the policy of each of Balanced Fund and Financial Fund. Consistent with their investment objectives, both seek income and capital growth, without undue risk. Although Financial Fund's objective emphasizes securities with a "relatively high yield," this approach is tempered by references to "sound investment practices" and "stable return," concepts that are consistent with Balanced Fund's references to "safety of principal" and "continuity of income." Similarly, Financial Fund invests in securities which "over a period of years, may also provide capital appreciation," while Balanced Fund seeks "long term capital growth." Although Financial Fund is classified as an equity income fund rather than a balanced fund, and thus does not have a fundamental policy requiring it to maintain at least 25% of its assets in fixed income senior securities, as Balanced Fund does, Financial Fund normally invests between 60% and 70% of its assets in dividend paying common stocks of domestic industrial issuers, in addition to convertible bonds and preferred stocks. The Trustees determined that the historical asset allocation between common stocks and fixed income senior securities of Financial Fund were generally similar to those of Balanced Fund at the prior four calendar year-ends. Although capital appreciation is the secondary objective of Financial Fund and one of three primary objectives for Balanced Fund, the Trustees observed that Financial Fund and Balanced Fund had benefited to a similar degree from the capital appreciation of their respective portfolio securities. In addition, for the most recent six years, the ratio of net investment income to average net assets of Financial Fund and Balanced Fund ranged generally between 4% and 5%, and Financial Fund's ratio ranged between approximately 108% and 88% of Balanced Fund's ratio.

19. Although Financial Fund intends to request that the Trust sell securities constituting 35% of the value of Balanced Fund's portfolio, such sales will be undertaken primarily to eliminate holdings. (1) That would represent relatively small percentages of Financial Fund's net assets and would require a disproportionate allocation of management's resources for the relative size of such holdings in comparison with Financial Fund's other securities; (2) in industries or sectors where Financial Fund holds alternative issues and expects that such issues will provide a better contribution to investment performance than Balanced Fund's positions in such industries or sectors; and (3) in industries or sectors to which Financial Fund currently is giving limited emphasis or in which Financial Fund is not participating.

20. Consummation of the Plan was contingent upon receipt of the affirmative vote of the holders of at least a majority (as defined in the Act) of the outstanding shares of Balanced Fund, which approval was received at a special meeting of shareholders called for that purpose on July 28, 1992.

21. Consummation of the Plan is not contingent upon receipt of a favorable opinion of counsel regarding the tax consequences of the reorganization. However, management of Balanced Fund and Financial Fund anticipate that Balanced Fund and Financial Fund, respectively, will be able to make the representations necessary for counsel to issue a favorable opinion at the Closing.

Applicants' Legal Analysis

1. Balanced Fund and Financial Fund may be deemed to be affiliated persons of one another, within the meaning of section 2(a)(3) of the Act, because their respective investment advisors, Gardner and INVESCO, are under the common control of INVESCO MIM North American Holdings, Inc. and INVESCO MIM PLC.

2. The exchange of Balanced Fund assets for Financial Fund shares may be prohibited under section 17(a), which among other things, forbids affiliated persons of an investment company to buy or sell securities or property from or to the affiliated investment company.

3. Rule 17a–8 under the Act provides an exemption from section 17(a) for mergers, consolidations, purchases or sales of substantially all the assets of registered investment companies that are affiliated with one another solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions set forth in the rule are satisfied. While Applicants do not have the same investment adviser, their investment advisers are under common control.

4. Applicants believe that the Plan is consistent with the policies and purposes underlying rule 17a–8, notwithstanding that the rule by its terms does not apply. The Trustees of the Trust and the Directors of Financial Fund have concluded, after considering the factors listed in the representations above, that the Plan would be in the best interests of the respective funds, and that the interests of existing shareholders would not be diluted by the transaction.

5. Applicants believe that the terms of the Plan satisfy the standards of section 17(b), which provides that the Commission shall exempt transactions prohibited by section 17(a) if evidence establishes that (1) the terms of the proposed transaction are reasonable and fair and do not involve overreaching on the part of any person concerned; (2) the proposed transaction is consistent with the policy, as recited in the registration statement and reports filed under the Act, of each registered investment company concerned; and (3) the proposed transaction is consistent with the general purposes of the Act.

Applicants' Condition

If the requested order is granted, applicants agree to the following condition:

1. The proposed reorganization described in the application will conform to the requirements of rule 17a-8 under the Act, as follows:

a. The Trustees of the Trust and the Directors of Financial Fund, including a majority of the Trustees and Directors who are not interested persons of the funds, shall have determined:

i. That participating in the transaction is in the best interests of the respective funds after consideration of the factors specifically enumerated in the application; and

ii. That the interests of existing shareholders of the funds shall not be diluted as a result of effecting the transaction.

b. Such findings, and the basis upon which the findings were made, shall have been recorded fully in the minute books of each fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-21191 Filed 9-2-92; 8:45 am]

BILLING CODE 8015-01-M

DEPARTMENT OF STATE

[Public Notice 1683]

United States Organization for the International Telegraph and Telephone Consultative Committee (CCITT), Study Group C; Meeting

The Department of State announces that the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) Study Group C will meet on October 8, 1992 at the Morristown location of Bellcore, 445 South Street. The room number is MRE 2K140. The meeting will begin at 9:30 a.m. and end at 4 p.m.

The agenda for the October meeting will include consideration of optical fibers, and optical fiber system issues in preparation for the November 2-10, 1992 meeting of working parties of Study Group XV in Geneva, Switzerland, including review and approval of U.S. Contributions and any other matters within the purview of Study Group C.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. Prior to the meeting, persons who plan to attend should also advise Madeleine Widuch on (908) 234-8624.

Dated: August 19, 1992.

Earl Barbely,

Director, Telecommunications and Information Standards, Chairman, U.S. CCITT National Committee.

[FR Doc. 92-21172 Filed 9-2-92; 8:45 am]

BILLING CODE 4710-45-M

[Public Notice 1684]

Ad Hoc Task Group 4/4 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that the U.S. CCIR Ad Hoc Task Group 4/4 will hold an open meeting on Wednesday September 30, 1992, commencing at 9:30 a.m. in the 10th floor Conference Room at 1899 L St., NW., Washington, DC.

In response to Resolution 4/1, agreed at WARC-92, Torremolinos, Spain, the CCIR has established Task Group 4/4 to reconfirm sharing criteria among the Radio Services sharing the spectrum allocation 13.75-14.0 GHz. The international chairman of this Task Group is Mr. William Long, of the United States. The first meeting of Task Group 4/4 will take place at the headquarters of the International Telecommunication Union, Geneva on November 23 & 24, 1992.

U.S. CCIR Ad Hoc Task Group 4/4 has been established to prepare for and participate in the November meeting. Mr. Donald Jansky, Jansky/Barmat Telecommunications, Inc., Washington, DC has been appointed the Chairman. The purpose of the September meeting is to consider contributions to the November meeting.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Persons planning to attend the meeting must announce this no later than one day before the meeting to Donald Jansky, phone (202) 467-6400.

Dated: August 20, 1992.

Warren G. Richards,

Chairman, U.S. CCIR National Committee.

[FR Doc. 92-21173 Filed 9-2-92; 8:45 am]

BILLING CODE 4710-45-M

[Public Notice 1686]

Russian, Eurasian and East European Studies Advisory Committee; Meeting

The Department of State announces that the Russian, Eurasian and East European Studies (Title VIII) Advisory Committee will convene a Workshop on New Directions in Russian, Eurasian and East European Studies, on October 13-14, 1992, beginning at 8:30 a.m. at the Meridian International Center, 1630 Crescent Place, NW., Washington, DC.

The purpose of the workshop is to assess new needs and opportunities for research and training in the Russian, Eurasian and East European fields in the US, in connection with the Soviet-Eastern European Research and Training Act of 1983. The agenda will include sessions on the impact of the new states on the fields; how traditional disciplines are adapting to the changed environment and the need to incorporate new areas of study; how to improve the infrastructure for training; new sources for scholarly research; new demands and opportunities for language training; and how workshop findings impact the Title VIII program.

This meeting will be open to the general public; however, attendance will be limited to the seating available and must be arranged in advance. Those wishing to attend must notify Joanne Bramble, INR/RES, US Department of State, (202) 736-9050, by October 1, 1992.

Dated: August 20, 1992.

Kenneth E. Roberts,

Executive Director and DFO, Russian, Eurasian and East European Studies Program.

[FR Doc. 92-21174 Filed 9-2-92; 8:45 am]

BILLING CODE 4710-32-M

[Public Notice 1685]

Shipping Coordinating Committee, Subcommittee for the Prevention of Marine Pollution; Meeting

The Subcommittee for the Prevention of Marine Pollution (SPMP), a subcommittee of the Shipping Coordinating Committee, will conduct an open meeting on October 21, 1992, at 9:30 a.m. in room 2415 of U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC.

The purpose of this meeting will be to review the agenda items to be considered at the thirty-third session of the Marine Environment Protection Committee (MEPC 33) of the International Maritime organization to be held October 26-30, 1992. Proposed U.S. positions on the agenda items for MEPC 33 will be discussed.

The major items for discussion will be the following:

1. Adoption of amendments to Annexes II and III of The International Convention for the Prevention of Pollution from Ships, 1973, as modified

by the Protocol of 1978 (MARPOL 73/78).

2. Uniform Interpretation of MARPOL 73/78.

3. Comprehensive Manual on Reception Facilities. At MEPC 32 work began on a comprehensive manual on reception facilities. Work will continue at MEPC 33.

4. Prevention of Oil Pollution from Machinery Spaces. A working group will convene to determine guidelines for the use of detergents.

5. Prevention of Air Pollution from Ships. This will include further discussion of emission limits on nitrogen oxides, sulfur oxides, chlorofluorocarbons, and volatile organic carbons from ships. This topic will also touch on fuel oil quality and the impact it has on air pollution.

6. Prevention of Pollution by Noxious Solid Substances in Bulk and Possible Development of a New Annex VI of MARPOL 73/78.

7. Enforcement of Pollution Conventions.

8. Implementation of Annexes III, IV, and V of MARPOL 73/78 and Amendments to the International Maritime Dangerous Goods Code (IMDG Code) to Cover Pollution Aspects.

9. Prevention of oil pollution. There will be continuing discussions of Regulations 13F and 13G to Annex I of MARPOL 73/78. IMO will consider guidelines for structural and operational requirements for existing ships, equivalencies for double-hulls for new ships, and guidelines for enhanced inspections.

Members of the public may attend these meetings up to the seating capacity of the room.

For further information or documentation pertaining to the SPMP meeting, contact either Lieutenant Commander M.L. McEwen or Ensign W.H. Crozier, U.S. Coast Guard Headquarters (G-MEP-3), 2100 Second Street, SW., Washington, DC 20593-001, telephone (202) 267-0419.

Dated: August 25, 1992.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 92-21171 Filed 9-2-92; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statements; Maricopa County, AZ

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that individual environmental impact statements will be prepared for three highway projects within the Maricopa Association of Governments Freeway System in Maricopa County, Arizona.

FOR FURTHER INFORMATION CONTACT: Kenneth H. Davis, District Engineer, Federal Highway Administration, 234 North Central Avenue, Suite 330, Phoenix, AZ 85004, telephone (602) 379-3646.

SUPPLEMENTARY INFORMATION: The FHWA, in connection with the Arizona Department of Transportation, will prepare environmental impact statements for the proposed: Pima Freeway (Interstate 17 to Scottsdale Road); Red Mountain Freeway (Red Mountain Intechange to State Route 87); and Price Expressway (State Route 360 Interchange to Pecos Road). All three projects would provide new multiland freeway/expressway facilities on new alignment in the metropolitan Phoenix area. The proposed facilities fall within the ciites of Phoenix, Scottsdale, Tempe, Mesa, and Chandler, Arizona.

Several alternatives, including the "no action," Transportation System Management (TSM) and "build" alternatives will be considered.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to interest groups. Public scoping meetings will be held early in the process for each project.

Comments are invited from all interested parties. Comments or questions about the proposed actions and EIS preparation should be directed to the Federal Highway Administration at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on August 20, 1992.

David E. Bender,

Assistant Division Administrator, Phoenix, Arizona.

[FR Doc. 92-21243 Filed 9-2-92; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service

AGENCY: Department Offices, Treasury.

ACTION: Notice of meeting.

SUMMARY: This notice announces the date of the next meeting and the agenda for consideration by the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service.

DATES: The next meeting of the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service will be held on Friday, September 18, 1992 at 9:30 a.m. in room 4121, U.S. Treasury Department, 1500 Pennsylvania Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dennis M. O'Connell, Director, Office of Tariff and Trade Affairs, Office of the Assistant Secretary (Enforcement), room 4004, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Tel.: (202) 622-0220.

SUPPLEMENTARY INFORMATION: Agenda items for the final meeting on September 18, 1992 of the current two-year term of the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service will include:

I. Old Business

1. Renewal of the Advisory Committee.

2. The Customs Modernization Act/Informed Compliance Legislation.

3. Update on the North American Free Trade Agreement.

4. Harbor Maintenance Fee Issues.

II. New Business

1. Annual report of the Advisory Committee.

2. The Customs FY 1993 Budget.

3. Customs Office of Organizational Effectiveness.

4. Proposed Changes in the Regulation of Central Examination Stations.

5. Recent regulatory changes and proposals (including the President's deregulation initiative).

6. Other new business. (Other agenda items may be added by the meeting date).

The meeting is open to the public. Due to security procedures in place at the Main Treasury Building, persons wishing to attend the meeting should contact Ms. Helen Belt or Ms. Theresa Manning at (202) 622-0220 by Friday, September 11, 1992.

Dated: August 28, 1992.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 92-21272 Filed 9-2-92; 8:45 am]

BILLING CODE 4810-25-M

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 28-92]

Treasury Notes, Series AD-1994; Interest Rates

Washington, August 26, 1992.

The Secretary announced on August 25, 1992, that the interest rate on the notes designated Series AD-1994, described in Department Circular—Public Debt Series—No. 28-92 dated August 19, 1992, will be 4¼ percent. Interest on the notes will be payable at the rate of 4¼ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 92-21208 Filed 9-2-92; 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Department Circular—Public Debt Series—No. 29-92]

Treasury Notes, Series Q-1997; Interest Rate

Washington, August 27, 1992.

The Secretary announced on August 26, 1992, that the interest rate on the notes designated Series Q-1997, described in Department Circular—Public Debt Series—No. 29-92 dated August 19, 1992, will be 5⅝ percent. Interest on the notes will be payable at the rate of 5⅝ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 92-21209 Filed 9-2-92; 8:45 am]

BILLING CODE 4810-40-M

DEPARTMENT OF VETERANS AFFAIRS

Geriatrics and Gerontology Advisory Committee; Meeting

The Department of Veterans Affairs gives notice under Public Law 92-463 that a meeting of the Geriatrics and Gerontology Advisory Committee (GGAC) will be held September 24 and 25, 1992 by the Department of Veterans Affairs, at the Ramada Renaissance (TechWorld), 999 Ninth Street, NW., Washington, DC. The purpose of the Geriatrics and Gerontology Advisory Committee is to advise the Secretary of Veterans Affairs and the Chief Medical Director relative to the care and treatment of the aging veterans, and to evaluate the Geriatric Research, Education and Clinical Centers. The committee will meet on September 24 from 8 a.m. until 4:30 p.m. in Conference Room 14. On September 25 the committee will reconvene in Conference Room 18 at 8:30 a.m. and adjourn at 12 noon. The meeting is open to the public up to the seating capacity of the room. For those wishing to attend contact Jacqueline Holmes, Program Assistant, Office of Assistant Chief Medical Director for Geriatrics and Extended Care (phone 202-535-7164) prior to September 22, 1992.

Future VHA (Veterans Health Administration) health care direction and follow-up of Geriatric Research, Education and Clinical Centers (GRECCs) evaluation will be the primary topics for discussion.

Dated: August 26, 1992.

Diane H. Landis,

Committee Management Office.

September 24, 1992—Conference Room 14

8:30 a.m.—Remarks from the Chair
Dr. Itamar Abrass, Chairman
8:45 a.m.—Health Promotion, Smoking Prevention
Patrick Scheer, Director, Smoking Program
9:15 a.m.—Status of Geriatric Research
Dennis B. Smith, M.D., Associate CMD for Research & Development
10 a.m.—Break
10:15 a.m.—Follow-Up on GRECC Site Visit
Thomas T. Yoshikawa, M.D., Assistant CMD for Geriatrics & Extended Care
11:45 a.m.—Lunch
1:30 p.m.—VHA's Proposed National Health Care Plan
Elwood J. Headley, M.D., Deputy ADCMD for Ambulatory Care
2:30 p.m.—Status of Eligibility Reform
Jo Ann K. Webb, Assistant Secretary for Policy and Planning
3:15 p.m.—Break
3:30 p.m.—Report of Recent GRECC Site Visits Ann Arbor, MI; San Antonio, TX; Little Rock, AR
Site Visit Teams, GGAC Members & Office of Geriatrics and Extended Care Staff
4:30 p.m.—Adjourn

September 24, 1992—Conference Room 18

8:30 a.m.—Veterans Involved in Clinical Evaluation
James E. Lubben, MPH, DSW, GGAC
9:30 a.m.—"Progress of Rural Frontier" Health Care Report
A.J. Copperthite, GGAC Committee Manager
10 a.m.—Long Term Care Outplacement Who Pays? When?
Kenneth W. Ruyle, Director, Medical Administration Service
11 a.m.—Unfinished Business
Dr. Itamar Abrass, Chairman, GGAC
Noon—Adjourn

[FR Doc. 92-21213 Filed 9-2-92; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 172
Thursday, September 3, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. COMMISSION ON CIVIL RIGHTS

August 31, 1992.

DATE AND TIME: Friday, September 11, 1992, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 1121 Vermont Avenue NW., Room 512, Washington, DC 20425.

STATUS: Telephonic Meeting/Open to the Public.

September 11, 1992

I. Approval of Agenda
II. Approval of Minutes of July 17 and August 14 Commission Meetings
III. Announcements
IV. S.1962/H.R. 3748 "Justice for Wards Cove Workers"
V. Appointments to the Indiana, Wisconsin, and Utah (interim) Advisory Committee
VI. *Voting Rights Issues in San Luis, Arizona*
VII. *The Increase of Hate Crime in Michigan*
VIII. *Campus Tensions in Massachusetts: Searching for Solutions in the 1990's*
IX. *Civil Rights Issues in Arkansas, 1991–92*
X. Staff Director's Report
XI. Future Agenda Items

Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact Betty Edmiston, Administrative Services and Clearinghouse Division (202) 376–8105, (TDD 202–376–8116), at least five (5) working days before the scheduled date of the meeting.

CONTACT PERSON FOR FUTURE INFORMATION: Barbara Brooks, Press and Communications (202) 376–8312.

Emma Monroig,
Solicitor.

[FR Doc. 92–21328 Filed 9–1–92; 9:05 am]

BILLING CODE 6335-01-M

STATE JUSTICE INSTITUTE

TIME AND DATE:

9:00 a.m. to 5:00 p.m., September 11, 1992

9:00 a.m. to 1:00 p.m., September 12, 1992

PLACE: Embassy Suites on the River, 101 East Locust Street, Des Moines, IA 50309.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED: FY 1993 Guideline; FY 1993 budget, internal personnel policies; grant applications.

PORTIONS OPEN TO THE PUBLIC: Public forums on the Iowa courts, bankruptcy, and race relations and the courts; and the Institute's business meeting.

PORTIONS CLOSED TO THE PUBLIC: Internal personnel policy discussions.

CONTACT PERSON FOR MORE INFORMATION: David I. Tevelin, Executive Director, State Justice Institute, 1650 King Street, Suite 600, Alexandria, Virginia 22314, (703) 684–6100.

David I. Tevelin,
Executive Director.

[FR Doc. 92–21351 Filed 9–1–92; 2:40 pm]

BILLING CODE 6820-SC-M

Corrections

Federal Register
Vol. 57, No. 172
Thursday, September 3, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 124

[Docket No. 90-011]

Patent Term Restoration for Veterinary Biologics

Correction

In proposed rule document 92-16343, beginning on page 30926 in the issue of Monday, July 13, 1992, make the following corrections:

1. On page 30926, in the 3rd column, in the 2d full paragraph, in the 5th line "sues" should read "uses", and in the 12th line "approval" should read "approvable".

2. On page 30927, in the first column, in the first full paragraph, in the last line the date is corrected to read "February 13, 1991".

§ 124.2 [Corrected]

3. On page 30930, in the first column, in § 124.2 the definition for Applicant is corrected to read as follows:

Applicant. Any person who submits an application or an amendment or supplement to an application under 35 U.S.C. 156 seeking extension of the term of a patent.

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 685

[Docket No. 920776-2176]

RIN 0648-AE35

Pelagic Fisheries of the Western Pacific Region

Correction

In proposed rule document 92-17376 beginning on page 32952 in the issue of Friday, July 24, 1992, make the following corrections:

1. On page 32954, in the first column, in the second full paragraph, in the ninth line after "NMFS" insert "Southwest", and in the fifth line from the end "**ADDRESSES**"" should read "**ADDRESSES**".

§ 611.81 [Corrected]

2. On page 32955, in the first column, under § 611.81(b), in the third full paragraph, in the first line "means "dolphin fish"" should not have been italicized, and in the third line "equisetis" should not have been capitalized.

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 920805-2205]

Pelagic Fisheries of the Western Pacific Region

Correction

In notice document 92-19434 beginning on page 36637 in the issue of Friday, August 14, 1992, on page 36638, in the 1st column, under **SUPPLEMENTARY INFORMATION**, in the 2d full paragraph, beginning in the 15th line, "ika-shibi" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 2

[Docket No. 920401-2194]

RIN 0651-AA54

Revision of Patent and Trademark Fees

Correction

In rule document 92-19968 beginning on page 38190 in the issue of Friday, August 21, 1992, make the following corrections:

1. On page 38191, in the first column, in the first full paragraph, in the first line, after "service" insert "fees".

2. On page 38192, in the third column, in the last full paragraph, in the fourth line "understanding" should read "understating", and in the sixth line "with" should read "which".

3. On page 38193, in the first column, in the first full paragraph, in the next to last line, after "access" insert "fees".

4. On the same page, in the third column, in the sixth full paragraph, in the third line, "investors" should read "inventors".

§ 1.21 [Corrected]

5. On page 38195, in the second column, under § 1.21(a)(6), in the first line, "regarding" should read "regrading".

§ 1.445 [Corrected]

6. On page 38195, in the third column, in amendatory instruction 9 to § 1.445, in the first line "1.455" should read "1.445", and in the second line "paragraphs" should read "paragraph".

§ 2.87 [Corrected]

7. On page 38196, in the third column, under § 2.87(c), in the ninth line, "Trail" should read "Trial".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 157

[CGD 90-051]

RIN 2115-AD61

Double Hull Standards for Vessels Carrying Oil in Bulk

Correction

In rule document 92-18858 beginning on page 36222 in the issue of Wednesday, August 12, 1992 make the following correction:

§ 157.08 [Corrected]

On page 36239, in the third column, in § 157.08(n), "157.19d" is corrected to read "157.10d".

BILLING CODE 1505-01-O

federal register

Thursday
September 3, 1992

Part II

Department of the Interior

National Park Service

36 CFR Part 51

Concession Contracts and Permits; Final Rule

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 51

RIN 1024-AB98

Concession Contracts and Permits

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This rule amends regulations which describe National Park Service procedures for award of concession contracts and permits, and National Park Service procedures governing the sale and transfer of concession contracts and permits. The regulations have been promulgated under the authority of 16 U.S.C. 3 and 16 U.S.C. 20, *et seq.* and are intended, within the scope of existing law, to make more competitive the renewal of concession contracts and permits, and, to increase the extent of the government's review of the sale and assignment of concession contracts and permits.

EFFECTIVE DATE: October 5, 1992.

FOR FURTHER INFORMATION CONTACT: Lee Davis, Chief, Concessions Division, National Park Service, Washington, DC 20013-7127. Tele. (202) 343-3784.

SUPPLEMENTARY INFORMATION:

Background

The Concessions Policy Act (the "Act") authorizes the Secretary of Interior (the "Secretary") to regulate the conditions under which businesses ("concessioners") apply for and operate concessions in National Parks. In describing competition for concession contracts and permits ("contracts"), the Act does not treat all businesses equally. It provides that the Secretary shall encourage continuity of concessioner operations by giving preference in the renewal of concession contracts to existing concessioners that have performed to the satisfaction of the Secretary. It also provides, however, that the Secretary should give public notice of concession opportunities and consider offers that compete for concession contracts. Thus, the Act balances the desire for continuity of operations with a desire for competition in the contracting process.

On November 1, 1979, the National Park Service ("NPS") promulgated regulations at 36 CFR part 51, "Concession Contracts and Permits", to implement the Act. These regulations describe how businesses may compete for concession contracts. They also place certain restrictions on the sale and assignment of concession contract rights.

In 1989 the Secretary began reviewing the NPS concessions program. He found that the part 51 regulations did not adequately balance the Act's call for competition against the existing concessioner's preference. Particularly, the Secretary learned that despite the statutory requirement that he consider all offers for a concessions opportunity, there have only been a handful of instances (involving small operations) when an existing satisfactory concessioner was not awarded a new contract. The Secretary also found that the regulations did not provide NPS with authority over sales and transfers of concession contracts sufficient to protect the government's interests. For example, some concessioners have sold their businesses shortly after they exercised their rights of preference in renewal, in clear contradiction of the preference's statutory objective of encouraging continuity of operations.

Notice of Proposed Rulemaking

In response to the Secretary's findings, NPS sought to amend its concessions regulations by publishing in the "**Federal Register**" a Notice of Proposed Rule Making (NPRM), Notice No. 91-20024 (56 FR 41894; August 23, 1991). In the NPRM, the Park Service proposed modifications to 36 CFR part 51 ("amended regulations") to bring the competition requirement into balance with the right of preference by:

(1) Amending the definition of right of preference in § 51.3(b) to provide that a concessioner NPS rates unsatisfactory in the last year of its contract or marginal in the last two years of its contract will receive an overall rating of unsatisfactory.

(2) Amending the definition of right of preference in § 51.3(b) to provide that NPS will not grant a right of preference to a concessioner that has operated for less than two years as a result of acquiring a concession. This would ensure that only concessioners that prove they are consistently satisfactory performers will receive a right of preference in renewal.

(3) Amending § 51.4 to require the advertising of concession opportunities in the "Commerce Business Daily", in addition to the "**Federal Register**". This would enable more people to learn of concession opportunities.

(4) Amending § 51.5(a) to substitute the term "prospectus" for the term "fact sheet". This would enhance competition, since "prospectus" better signifies the existence of a competitive environment than does "fact sheet".

(5) Amending § 51.5(b) to describe in a new subsection (c) the application of the right of preference. This subsection presented three alternatives, with varying degrees of competitive consequences. Under Alternative 1, NPS would award the contract to the existing satisfactory concessioner (that submits a responsive offer) if it submits the best offer. If NPS receives a better responsive offer, the existing concessioner could still win the contract by meeting the terms and conditions of the better offer.

Under Alternative 2 NPS would numerically evaluate all offers that respond to a prospectus. NPS would award the contract to the offer which receives the highest score, if this score is at least 5 percent (5%) higher than the existing concessioner's score. If the existing concessioner's score is within 5% of the highest score, it would win the contract.

Alternative 3 called for NPS to award the contract to the party submitting the best offer, provided that if the responsive offer of the existing concessioner with a right of preference is substantially equal to the best offer, the contract would be awarded to that concessioner.

Although the three alternatives have varying degrees of competitive consequences, NPS believes that each would attract competition for concession opportunities. Under each alternative, a concessioner must submit a timely offer that responds to the terms and conditions of the prospectus, to retain its right of preference in renewal. This requirement would stimulate competition by letting potential competitors know that the existing concessioner must work hard (by responding to the terms and conditions of the prospectus) if it wishes to exercise its right of preference. (NPS has selected Alternative 1 in the final regulations. See "Analysis of Comments" section).

(6) Adding a new § 51.8, to increase the amount of concessioner financial information that is available to the public. This would enhance competition by educating potential competitors about the nature of a particular concession opportunity.

Additionally, NPS proposed to restrict the use of the preferential right to additional services by:

(7) Amending § 51.3 to restrict grants of the preferential right to additional services to cases where the Director issues a written finding that the right is in the public interest. This would enhance competition by limiting the availability of the anti-competitive preferential right to additional services.

As noted, the Secretary also determined that the present regulations do not give the government adequate

control over sales and transfers of concession contract rights. NPS regulates sales and transfers of concession contracts and permits through the existing 36 CFR 51.7. As a recent Secretarial Concessions Task Force report points out, in recent years concessioners have sold their operations for prices that exceeded the value of the concessions's tangible assets. NPS believes that the value of these purchase prices consisted, at least in part, of the worth of intangible assets that rightly belonged to the general public, through the government.

NPS also used the amended regulations to address this Secretarial concern. In the amended regulations, NPS proposed to gain greater control over sales and transfers of contract and permit rights by:

(1) Amending § 51.7 ("Sale, assignment, or encumbrance of concession contracts permits and assets") to allow a sale or transfer only in those instances where the concessioner has gained a possessory interest. This amendment would reduce the number of sales and transfers that are based on the value of intangible assets. (NPS has deleted this section from the final regulations. See "Analysis of Comments" section.)

(2) Amending § 51.7(e) to make clear that NPS must approve all sales, transfers, or encumbrances of contract rights or assets connected with a concession. This amendment would make clear that NPS has the authority to condition the approval of a sale or transfer upon changes to the terms and conditions of the concession contract. The Director could seek such changes, for instance, where the contract terms do not reflect the current probable value of the privileges granted to the concessioner.

The proposed amendment also authorizes NPS to disapprove a sale or transfer in situations that include, but are not limited to: Those that may result in decreased quality of service to the public; those in which a concessioner may lack a reasonable opportunity for profit; those involving contracts under which higher than comparable rates would be charged to the public as a result of the purchase prices; and, those involving purchase prices that are inflated due to the value of intangible assets or values that belong to the government, such as contract rights, rights of preference in renewal, user days, entry or trip applications, and low fees and charges. These amendments clarify and strengthen the existing regulations in this regard. NPS interprets the existing regulations to allow disapproval of concession sales or renegotiation of contract terms in these circumstances.

In the amended regulations, NPS also proposed provisions that are generally related to competition amongst concessioners, or the issue of control over sales and transfers. One of these would limit the scope of the right of preference to make it consistent with the Act. In § 51.3 the right of preference covers "substantially the same accommodations, or facilities * * *" as provided under the existing contract or permit. The Act, however, authorizes only those concessions that are necessary and appropriate to the public use and enjoyment of a park. Pursuant to this provision, NPS may decide that only part of a concessioner's operation is "necessary and appropriate" to continue under a new concession contract or permit. To make the definition of right of preference consistent with this aspect of the Act, NPS proposed to limit the scope of the right of preference to "all or part of" the activities authorized under the existing contract. This amendment is also for the purpose of clarifying the existing regulations, as NPS interprets the existing regulations in accordance with the clarifying amendment.

The amended regulations also proposed to encourage women and minorities to compete for concessions opportunities by providing in § 51.4 that NPS shall provide maximum allowable information and assistance to minority and women-owned businesses.

Analysis of Comments

NPS received over 920 comments on the amended regulations from August 23, 1991 to November 23, 1991. The largest number of comments, about 700, came from park visitors. Over 95 percent of these were from individuals who enjoyed experiences on river running trips in western parks. Apparently, many of the river running concessioners actively encouraged their customers to comment on the amended regulations. The second largest group of comments, approximately 160, came from the concessions community. About 100 of these were from river runners or outfitters and guides. The remaining 60 were from other concessioners. NPS notes that over 65 percent of the concessioner community did not comment on the proposal. Environmental and commercial interest groups accounted for about 20 comments. In addition, 15 Federal legislators commented on the amended regulations.

The substance of these comments, as well as any changes NPS has made to the amended regulations, are discussed below in the Section by Section Analysis. Additionally, NPS has made some editorial changes to the amended regulations of a technical, rather than substantive, nature.

Section by Section Analysis

General Comments

Many commenters oppose the proposal on the general ground that it is anti-concessioner. Other commenters, however, say the proposal does not go far enough in promoting competition or protecting park resources. These divergent views are inevitable, given the balancing test that NPS must use in implementing the Act. The regulations try to reconcile these views to the greatest extent possible, by properly balancing the requirement of competition against the right of preference, and by ensuring that NPS has control over sales and transfers sufficient to protect the public interest.

Several commenters say the proposal violates either the United States Constitution, the Act, or various Executive orders. NPS has reviewed its authorities in this regard and considers the amended regulations to be lawful. Specific legal issues are addressed below where appropriate. Also, NPS will not take any discretionary action that it considers a material breach of any concession contract or permit that was executed prior to the effective date of these final regulations.

One commenter suggests that NPS add a section to the proposed regulations that would outline its commitment to encouraging minority and women-owned businesses to participate in the NPS concessions program. NPS believes this is unnecessary, as § 51.4 already expresses, to the extent necessary for regulatory purposes, its commitment to stimulating the involvement of minority and women-owned businesses in NPS concessions operations.

NPS recognizes that minority and women-owned businesses are severely under-represented in the concessioner community. To remedy this, NPS will strongly encourage minority and women-owned businesses to apply for concessions opportunities.

Section 51.4(a) of the amended regulations takes one step toward this goal by providing, in pertinent part, that "In order to encourage minority and women-owned business to compete to be potential concessioners, the National Park Service shall provide maximum allowable information and assistance to minority and women-owned

businesses". NPS will implement this provision by:

(1) Making reasonable efforts to include on all source lists of potential concessioners, minority and women-owned business concerns which have actual or potential capabilities to fulfill such requirements.

(2) Seeking the advice and assistance of the Minority Business Development Agency, Department of Commerce, in locating and counselling such firms, as well as providing information on concession contract opportunities to such firms in advance of such opportunities, and,

(3) Providing advice and counselling to such firms on how to participate in concessions contracts and potential subconcession opportunities.

Many commenters assert that the regulations have a disparate impact on smaller concessioners. Some suggest that NPS set up different standards for smaller concessioners. NPS recognizes that one section of the proposal, § 51.7(a), does unfairly impact smaller concessioners. NPS discusses its response to commenters objecting to § 51.7(a) in the analysis of that section. NPS disagrees that the other portions of the regulations disparately impact smaller concessioners, or that separate regulations with regard to contract award and assignment procedures should apply to smaller concessioners.

The amended regulations deal primarily with procedures for the award of concession contracts, and the governmental review of sales and transfers. These matters impact all concessioners in the same manner. Therefore, it would not be just, in the public interest, or consistent with the Act, to give a weak preference to one type of concessioner, and a strong preference to another kind of concessioner. The goal of the proposal is to make the competitive playing field more even. NPS's aim is not to make several playing fields, each with its own degree of competitiveness.

The sales and transfer regulations are also equally applicable to all concessioners. NPS determination of whether to approve a sale or transfer should not turn on the size or type of operation that is sold. It should, instead, turn on whether the sale or transfer is consistent with, or contrary to, the public interest. As the sale or transfer of any concessions operation could, in certain circumstances, be contrary to the public interest, it would be inappropriate to limit this rule to only certain types or sizes of concessions operations.

Some commenters say they cannot intelligently comment on the proposal, since it is only one part of the Secretary's overall plan to reform the NPS concessions program. NPS disagrees. The Secretary will deal with other concession reform initiatives in the future, such as the modification of the standard contract language, and changes to the internal organization of NPS. None of these issues, however, will be addressed through a rulemaking, as that is not the appropriate forum. Moreover, unlike the instant regulations, these initiatives will not directly involve the issues of competition in contract awards or the appropriate extent of government control over sales and transfers (except as in the implementation of these regulations).

Other substantive reforms under review deal primarily with monetary matters, e.g., compensation for possessory interest and franchise fee calculations. These issues are matters of contract administration and are distinct and severable from the procedural provisions of the amended regulations. NPS will seek public comment on other aspects of the Secretary's concessions reform program where appropriate.

NPS also points out that the several provisions of the amended regulations are in large part independent of one another. In the event that it may be determined that any particular provision or portion thereof is not within the authority of NPS to promulgate, it is the intention of NPS to seek to implement the balance of the regulations to achieve their purposes.

Two commenters are concerned about the impact of the regulations on concessioner employees. These commenters suggest that when one concessioner is replaced by another, NPS should require the new concessioner to offer the employees of the predecessor concessioner the same rights and privileges of employment they enjoyed with the predecessor concessioner. This suggestion goes beyond the general authority of the Secretary. Concessioner employment practices, to the extent they are lawful, are generally left to the discretion of the concessioner.

Section 51.1—Authority

One commenter objects to the statement in this section that concession contracts are not procurement contracts. This commenter believes that this policy will allow NPS "to create a separate class of contractors by decree, against whom they could then discriminate on the issue of obtaining and publicizing confidential concessioner financial information". This commenter's assertion is incorrect. NPS is not trying to "create" anything by stating that concessions contracts are not federal procurement contracts. This statement simply clarifies the status of concessions contracts, which NPS has never considered a type of federal procurement contract.

NPS has deleted the word "solely" from this section to make clear that statutory and regulatory requirements relating to federal procurement actions do not apply to concessions contracts or permits. Also, NPS has broadened the term "commercial use license" to include similar non-concession authorizations. Further, NPS has deleted the term "permit" except where necessary to distinguish between concession contracts and permits. The term "concession contract" encompasses both concession contracts and permits, except where otherwise indicated.

Section 51.2—Policy

One commenter suggests that NPS change the requirement that the Secretary permit only those concessions that do not "unduly impair park values and resources". This commenter urges NPS to drop the word "unduly" and disallow concessions that would in any way impair park values and resources.

The mission of NPS is to conserve the environment of National Parks, and provide for the visiting public's enjoyment of the parks, both today and in the future. Under the latter directive, NPS must allow the public to visit and enjoy National Parks. Over the years, legislative and administrative actions have brought some measure of change to park values and resources. While such actions may have some impact on park resources, they are not necessarily deemed to have impaired resources for the enjoyment of future generations (see NPS Management Polices, 1.3, 1988). In the Concessions Policy Act, Congress found that "the preservation of park values requires that such public accommodations, facilities, and services as have to be provided * * * should be provided only under carefully controlled safeguards against unregulated and indiscriminate use, so that the heavy visitation will not *unduly impair* these values * * *" (16 U.S.C. 20; emphasis added). Consequently, NPS will leave the word "unduly", as used in legislation, in final § 51.2.

Section 51.3—Definitions

Section 51.3(b)

Section 51.3(b) defines the right of preference. Subsections 51.3(b) (1) and (2), however, also describe the application of the right of preference. As NPS intends § 51.5 to cover the details

of the application of the right of preference, it will move the language in § 51.3(b) (1) and (2) to that section. Thus, NPS will make proposed § 51.3(b) (1) and (2), amendments to which are discussed below, into a new § 51.5(a). Succeeding subsections in § 51.5 are renumbered accordingly. Also, NPS has changed the definition of right of preference so that it encompasses contract extensions as well as new or renewed contracts.

Several commenters object to § 51.3(b)(1) because it does not specifically define the term "satisfactory performance". They contend that without a specific definition, NPS might base its evaluations on purely arbitrary and subjective grounds, which could lead to unfair determination of a concessioner's performance.

These commenters essentially want NPS to define the term "satisfactory performance" in regulatory terms. NPS believes this would be inappropriate. Rather, determinations of "satisfactory" performance are accomplished through the NPS concessioner review program which involves on-site inspections of concession operations, and specific analysis of the pluses and minuses of each particular operation. The concessioner review program was established in 1976, and has been thoroughly tested. The amended regulations do not attempt to change this program.

The program documents the NPS determination of a concessioner's performance. If the decision is considered incorrect by a concessioner in a particular case, that concessioner is permitted administrative channels of appeal. NPS considers that case-specific, written evaluations of "satisfactory" performance are superior to a regulatory definition which, by its very nature, would be so general as to be of limited practical value.

In making these case specific determinations, NPS evaluates the concessioner's operational performance as well as its conformance with the terms and conditions of the concessions contract. Only formally trained NPS personnel have the authority to conduct evaluations. NPS evaluates smaller concession operations at least twice yearly, and larger concessions at least three times every year.

The concessioner's performance determines its evaluation rating. Park staff may rate a concessioner satisfactory, marginal, or unsatisfactory, depending on its performance.

In evaluating operational performance NPS measures a concessioner's performance against a set of standards that spells out what NPS expects of the concessioner. They serve as goals for concessioners striving to provide park visitors with good, safe, sanitary service.

There are 25 sets of standards, tailored to the unique circumstances of each type of concession operation. The types of operations cover the spectrum of the concessions industry, and include horse and mule operations, as well as lodging, food and beverage, and marina operations. Each type of operation has its own set of standards.

Under the contract compliance part of the concessions program, NPS measures the extent of a concessioner's compliance with the terms and conditions of the concessions contract.

NPS has also amended the timing sequence described in the proposed section. This section, as proposed, require NPS to give an overall unsatisfactory rating to a concessioner it rates marginal during the last two years of a contract, or unsatisfactory during the last year of a contract. This is a very significant evaluation, since concessioners rated less than satisfactory overall are not entitled to a right of preference in contract renewal. As a practical matter, however, it would be impossible to implement this proposed provision, since the solicitation process for a new contract must begin prior to the annual evaluation of concessioner's performance over the last year of a contract. Accordingly, NPS must base its overall evaluation on annual evaluations it has conducted prior to the start of the solicitation process, and not on evaluations it conducts at the expiration of the contract.

To accomplish this, NPS is changing the focus of this section from the date the contract expires to the date the prospectus is issued. The amended section will thus provide that NPS will not give an overall satisfactory rating to a concessioner it rates marginal in the two years prior to the issuance of a prospectus, or unsatisfactory in the year prior to the issuance of the prospectus.

NPS recognizes that some concessioners it rates less than satisfactory overall may perform satisfactory following the issuance of a prospectus. NPS will consider such improvement in performance in evaluating offers for a new contract. This turn-around in performance, however, will not entitle an overall less than satisfactory concessioner to regain its right of preference in renewal. This is because, for the reasons expressed above, the focal point for the overall rating must be the concessioner's performance prior to the issuance of a prospectus, and not its performance subsequent to this event.

NPS has also added another sentence to this section to encourage satisfactory performance following the issuance of a prospectus. The final section provides that an overall satisfactory concessioner that performs unsatisfactorily after the issuance of a prospectus will lose its right of preference.

Several commenters say that this section places undue emphasis on the final years of a contract. NPS disagrees. It is current NPS policy to terminate a contractor or take other appropriate action when it rates a concessioner's performance during the term of a contract marginal for two consecutive years, or unsatisfactory for one year. This provision merely gives concessioners notice that NPS has the additional power to deny a right of preference in renewal to a concessioner whose performance is less than satisfactory during the final years of a contract.

A number of commenters object to the requirement in § 51.3(b)(2) that a concessioner must operate for a least two years after acquiring a concession to qualify for an overall "satisfactory" rating. These commenters generally take the position that this rule is unfair because it will deter transfers during the last two years of a contract. Some commenters note that this provision would cause hardship to those concessioners that are forced to sell their concessions during the last two years of a contract for reasons that are beyond their control. Some also comment that this rule is illogical, claiming that the amount of time on a contract has nothing to do with a concessioner's performance.

NPS recognizes that circumstances beyond a concessioner's control may force a concessioner to sell its operation during the last two years of a contract. This rule would cause a hardship to such concessioners. Therefore, NPS has amended the proposed rule to make clear that it is applicable only to transfers made after the effective date of these regulations, and to except from its application sales and transfers that NPS determines are caused by circumstances beyond the concessioner's control. Sales and transfers that are the result of serious illness, death, bankruptcy, or similar circumstances, would fall under this exception.

NPS has also made other changes to the proposed rule. Final § 51.5(a) makes clear that for its purposes, NPS considers a concessioner's "in operation" from the date the Director

approves in writing the acquisition in question.

NPS has also amended this section to make it consistent with § 51.7(b). Section 51.7(b) refers to sales and transfers as the transfer or sale of, among other things, controlling interests in concession operations. The term "change of ownership" in § 51.3(b) also deals with sales and transfers. To make these sections consistent with one another, final rule § 51.5(a) drops the term "change in ownership" and replaces it with language that follows § 51.7(b). This language refers to this transaction as an "acquisition of a concession, or a controlling interest in a concession as defined in § 51.7(b)", by a "transfer, purchase, or assignment".

Additionally, NPS has amended this section to make clear that it can rate a concessioner either satisfactory, unsatisfactory, or marginal, as a result of its overall evaluation. The proposed rule refers only to "satisfactory" evaluation in the first part of its first sentence.

NPS believes that the rest of this paragraph should remain intact to ensure that only concessioners who demonstrate satisfactory performance over a sustained period of time may qualify for the right of preference. The objective of continuity of service must be based on a demonstrated record of consistent satisfactory performance in light of the anti-competitive consequences of the preference in renewal.

One commenter opposes this section's restriction of the scope of the right of preference to "all or part of" the activities authorized under the existing concessions contract. This commenter urges that this is an unacceptable weakening of the right of preference, since the present regulations apply the right of preference to "substantially the same accommodations, or facilities * * *" as provided under the existing contract or permit.

This amendment does not weaken the right of preference. It merely makes the right consistent with the provision in the Act that authorizes only those concessions that are necessary and appropriate to the public use and enjoyment of the parks. In accordance with this provision, and, as NPS interprets the existing regulations, NPS may choose to discontinue any part of a concession operation that it considers no longer necessary and appropriate to the use and enjoyment of a park. Final § 51.3(b) clarifies this authority by restricting the right of preference to "all or part" of the concession activities under the existing concession contract. NPS has also added an additional phrase to this section to clarify when it will issue a new contract.

Section 51.3(c)

Several commenters suggest that the revised definition of the preferential right to additional services unnecessarily encumbers this right by restricting it to only those situations in which the Director determines the right is in the public interest. These commenters say this restriction is unnecessary because this right is always in the public interest. NPS disagrees. Because the preferential right to additional services is inherently anti-competitive, NPS will include it in contracts only where it is clearly in the public interest to do so. NPS also notes that this provision reflects long standing NPS policy.

Section 51.4—Solicitation and Award of Concessions Contracts and Permits Where No Right of Preference Exists

Section 51.4(b)

Many commenters urged NPS to refrain from making franchise fees the most significant factor in the evaluation of offers. NPS agrees with these comments and points out that the regulations do not change the significance of franchise fees in offer evaluations. Under the revised regulations, franchise fees will continue to be only a secondary factor in the evaluation of offers.

Several commenters suggest that the concessioner's commitment to conservation, as well as its conformance to the Park General Management Plan, should be principal factors in the evaluation of offers. NPS agrees. One of the principal factors under the proposed regulations is the experience and related background of the offeror. Another is the offeror's conformance to the terms and conditions of the prospectus in relation to quality of service to the visitor. To satisfy these factors, a concessioner must prove to NPS that it can conform to the Park General Management Plan. It must also show it is committed to conserving park resources.

A few commenters suggest that the NPS team that drafts the solicitation document should consist of people other than those on the team that evaluates offers. This is current NPS practice. Because it is more appropriately a matter of internal policy, however, it is not a proper subject for regulation. These commenters also suggest that the NPS team that evaluates offers should include members from a variety of NPS departments, including the planning and natural resource departments. This is also a matter of internal policy, and not a proper subject for regulation.

Section 51.4(d)

NPS has added a sentence to this section to clarify that the cancellation of a solicitation at any time prior to execution by NPS does not establish compensable or other rights in an offeror or other interested party. Also, NPS has added a sentence to make clear that failure by the selected offeror to promptly execute the contract will result in resolicitation or award to another offeror. NPS has added a similar provision to § 51.5(c).

Section 51.4(f)

One commenter suggests that the NPS allow waivers of the public notice and advertising procedures only if it finds it is clearly in the public interest to do so. The proposed section allows for a waiver of public notice or advertising in exceptional circumstances or when such a waiver would be in the public interest. NPS believes that this comment is valid, and, accordingly, has amended its proposed regulations to state that the waiver may occur only in exceptional circumstances where the public interest so warrants.

Section 51.5—Solicitation and Award of Concession Contracts and Permits or Extensions or Renewal of Concession Contracts and Permits, Where a Right of Preference Exists

Section 51.5(b)

Several commenters suggest that this section's requirement that offers be fully responsive to a prospectus will enable NPS to reject an offer on merely technical grounds. In response to this concern, NPS is amending this section to remove the term "fully". NPS, as a matter of practice, does not consider an offer non-responsive for slight, nonmaterial, technical deficiencies only. However, offerors must generally meet all requirements of a prospectus for NPS to consider their offers responsive. NPS will continue this practice under final § 51.5(b).

Other commenters object to this requirement because it eliminates negotiation from the contract solicitation process. However, a negotiated contract is not the object of the solicitation process, although some negotiation of minor terms of a contract may occur after the selection of the best offer. The general lack of negotiation in the solicitation process helps balance the requirement of competition against the right of preference.

By requiring existing concessioners to satisfy the terms and conditions of a

prospectus, this rule encourages competitors to submit offers for concessions contracts. A potential competitor who knows an existing concessioner must work hard (by responding to the prospectus) to renew its contract is much more likely to compete for that contract. In this regard, NPS has added a phrase to final regulation § 51.5(d) to the effect that an existing satisfactory concessioner which agrees to meet the terms of a better offer must be capable of carrying out those terms.

NPS also points out that it has the responsibility of determining the terms and conditions of a continuing concession operation. If existing concessioners submitted unresponsive offers and retained their rights of preference, they would be in a position to frustrate this exercise of NPS authority. This clearly is not Congressional intent under the Act.

Some commenters asked what the consequences will be if no offer satisfies the terms and conditions of a prospectus. The consequences will be as follows: If NPS readvertises the prospectus on substantially the same terms and conditions as the prospectus that attracted no responsive offers, then the existing concessioner will not have a right of preference. If, however, NPS advertises the prospectus on terms and conditions that are substantially different from those in the original prospectus, then the existing concessioner will retain its right of preference. The final regulations contain language to this effect.

Section 51.5(c)

This section as proposed listed three alternative methods for applying the right of preference, each with its own degree of competitive consequences. Alternative 1 would give the existing concessioner a right to match or better the best outside offer received in response to a contract solicitation. Alternative 2 would require NPS to evaluate numerically offers, and give the existing satisfactory concessioner's offer a 5% preference. Alternative 3 would treat all offers equally, but would award the contract to the existing satisfactory concessioner if its offer were at least substantially equal to the best competitive offer.

Many commenters believe alternatives 2 and 3 weaken the right of preference to such an extent that they would discourage concessioners from investing in their operations. This, according to these commenters, would lead to a deterioration in the quality of service that concessioners offer to the visitor. These commenters generally prefer alternative 1. Some do so, however, with the understanding that they would oppose it if it is tied to the responsive offer requirement of § 51.5(b).

Other commenters prefer either alternative 2 or 3. These commenters assert that only these alternatives would sufficiently enhance competition.

NPS believes that alternative 1, given the restraints of existing legal authority, represents an appropriate balance between the objective of enhancing competition and the objective of encouraging continuity of service. Accordingly, NPS has implemented this alternative, rather than alternatives 2 and 3, in final regulation § 51.5(c).

Section 51.7—Sale, Assignment or Encumbrance of Concessions Contracts, Permits, and Assets

Section 51.7(a)

Many commenters say this provision's prohibition on sales and transfers of contracts under which there is no possessory interest is unfair. They contend that this rule will discourage concessioners without possessory interest from investing in their operations, as they will not be able to recoup the value of this investment through a sale. Other commenters note that this provision disparately impacts smaller concessioners, as these are the ones without possessory interest.

A few commenters, however, support this provision as it would give NPS tighter control over sales and transfers of concessions operations.

After reviewing these comments, NPS is persuaded that the application of this section would cause a hardship to smaller concessioners. NPS also agrees that this section would discourage concessioners that do not have possessory interest from investing in their operations. This result may adversely impact the quality of service that these concessioners offer to the visitor. For these reasons, NPS is deleting this section from the final regulations. All succeeding subsections in § 51.7 are renumbered accordingly.

Section 51.7(d)

This section provides that a concessioner that is in the process of selling, transferring, assigning, or encumbering its operation must provide the Director with various documents relating to this transaction. NPS would then examine these documents to determine whether to approve or disapprove of the transaction. Several commenters suggest that this requirement will unnecessarily delay the consummation of the sales transaction. NPS disagrees. The documents listed under this section will provide the Director with information from which to determine the transactions effect on park resources, and, its effect on the quality of service that a prospective concessioner might offer to the visitor.

In addition, the documentation requirements do not materially differ from those contained in the current regulations. NPS is not aware of any general problems in this regard under the current regulations. However, to make this rule more flexible, NPS has amended it to provide the Director with the authority to waive these documentation requirements in certain circumstances. It has also clarified the definition of a "controlling interest" in this section to make clear that it encompasses transactions which do not fall within the scope of usual business structures.

Section 51.7(e)

This section clarifies the authority of the Director under the existing regulations to disapprove a sale of a concession, or require amendment of the concession contract that is at the heart of such a sale, where the sale would be contrary to the public interest. A number of commenters submit that this regulation is contrary to the principles of free enterprise, as it allows the government to revise agreements (the concession contract and the sale agreement) that were reached as the result of arms length business transactions.

NPS disagrees with this position. NPS unquestionably has the authority, and obligation, to disapprove a sale of a concession that is against the public interest. NPS also has a responsibility under law to see that franchise fees and other contract terms reflect the probable value of the privileges granted by a concession contract. The modification of a concession contract upon sale or assignment is an appropriate implementation of this authority. However, NPS has added a new provision at the end of § 51.7(e) stating that the Director will not take any discretionary action that he considers a material breach of any contract or permit that was executed prior to the effective date of these final regulations.

NPS notes that permitting contract modification as a condition of contract transfer in effect only incorporates what is a standard business practice in commercial landlord-tenant relationships. Commercial landlords seek to enter into leases whereby the tenant is not allowed to transfer the lease to a third party without a right of

the landlord to renegotiate the terms of the lease. The NPS regulatory provision, accordingly, is not contrary to the principles of free enterprise; rather, it reflects an existing free enterprise practice in this regard. NPS also notes that there is no inherent right on the part of a government contractor to sell or assign its contract to a third party rather than perform itself under the terms of the contract.

Additionally, NPS has amended the part of this section that refers to intangible assets. In the amended regulations NPS refers to intangible assets as the "concession contract, a right of preference in contract renewal, user days, allocated entries or trips, and low fees and charges". NPS has amended this language in final § 51.7(d) to make clear that "intangible assets" refers to those assets which emanate from the privileges granted by the concessions contract, as opposed to those which emanate from the business activities of the concessioner. These include, but are not limited to, a right of preference in contract renewal, allocation of park user days, allocated park entries or trips, and low government fees and charges. NPS has also included the term "values" in this section to make clear that this concept applies even where such matters are not specifically recognized as assets in the transaction.

NPS has also amended this section to make clear that when reviewing the sale or assignment of a concession, the Director will disapprove the transaction only if a significant portion of the purchase price is attributable to intangible assets or values emanating from the concession contract. This amendment recognizes that it is not in the public interest for NPS to prevent the consummation of transactions that involve only insignificant intangible assets and values of this nature.

Section 51.8—Public Availability of Concessions Information

Some commenters claim that this section calls for the unlawful release of confidential information. NPS disagrees. In the first instance, much of the information that would be released by the government under this regulation may be available to the public, at least with respect to corporations whose stock is publicly traded. In any event, it is generally within the authority of NPS to require this information from concessioners, and to distribute it to interested members of the public.

NPS notes that the type of information this regulation asks for is released by other public entities administering concession type contracts. The purpose of this regulation is to enhance competition in the concession contracting process. Under present circumstances, businesses which seek to compete for NPS concession contract awards where there is an existing concessioner (and the information is not otherwise available) are provided with almost no substantive information about the financial circumstances of the concession operation. In short, they are compelled to compete for a "pig in a poke." This situation, of course, discourages competitors from submitting offers, to the detriment of the government and, ultimately, the public. NPS believes, accordingly, that the proposed regulation effectuates a valid governmental purpose and is within its general authority to promulgate.

NPS has added a provision, however, to the effect that it will not exercise the authority contained in this section with respect to contracts in effect prior to the effective date of these final regulations if it determines that such exercise would be a material breach of the terms of the concession contract at issue. NPS has also modified the proposed regulation to make clear that concessioners will provide this information to NPS, and NPS will then make it available to the public. Further, reference to 43 CFR part 2 has been changed to legal authority in general.

NPS also points out that the proposed regulation, in reality, requires concessioners to make only limited financial information available to the public (through NPS). Among other matters, the regulation does not cover profits, salaries, or expenses of existing concessioners; information that competitors would certainly seek if it were available. NPS believes that the proposed regulation strikes an appropriate balance between the need for release of financial information to enhance competition and the desire of NPS concessioners to limit disclosure of financial aspects of their business operations.

Drafting Information

The primary authors of these regulations are Wendelin M. Mann, Chief, and David P. Emmerson, Concession Contract analyst, Contracts Branch, Concessions Division, National Park Service.

Paperwork Reduction Act

The collections of information contained in this rule have been approved by the Office of Management and Budget as required by 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1024–0095 (Contracting procedures), and 1024–0096 (Sales and Transfers).

Compliance With Other Laws

NPS has determined that this document will not have a significant effect on the quality of the human environment, health, and safety, because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce incompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental Regulations in 516 DM 6, (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been proposed.

NPS has determined that this rulemaking is not a "major rule" under Executive Order 12291 (46 FR 13193; February 19, 1981). The planned rulemaking would serve no more than to continue the "usual and customary use and occupancy" of federal lands.

In accordance with the Regulatory Flexibility Act (Pub. L. 96–354) which became effective January 1, 1981, NPS has determined that these regulations will not have a significant economic effect on a substantial number of small entities, nor will they require the preparation of a regulatory analysis. It is estimated that 95 percent of all concession operations are conducted by small entities. The regulations would impose no significant costs on any class or group of small entities, and will give more small entities an opportunity to compete for concession opportunities, particularly in contract renewal situations.

NPS has reviewed this rule as directed by Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property" to determine if this rule has policies that have taking implications. NPS has determined that there are no taking implications because the regulations only described the means by which NPS awards and administers concession contracts and permits and reviews sales and assignments of such contracts. The rules do not affect private property interests within the meaning of the Executive Order.

The Department of the Interior has certified to the Office of Management and Budget that these final regulations meet the applicable standards provided in section 2(a) and 2(b)(2) of Executive Order No. 12778.

List of Subjects in 36 CFR Part 51

Concessions, Government contracts, National parks.

In consideration of the foregoing, 36 CFR part 51 is reviewed to read as follows:

PART 51—CONCESSION CONTRACTS AND PERMITS

Sec.

51.1 Authority.
51.2 Policy.
51.3 Definitions.
51.4 Solicitation and award of concession contracts where no right of preference exists.
51.5 Solicitation and award of concession contracts where a right of preference exists.
51.6 Preferential right for additional services where a right to additional services and facilities exists by specific contract provisions.
51.7 Sale, assignment, or encumbrance of concession contracts and assets.
51.8 Public availability of concessions information.
51.9 Information Collection.

Authority: The Act of August 25, 1916, as amended and supplemented, 16 U.S.C. 1 *et seq.*, particularly the Concessions Policy Act of 1965, 16 U.S.C. 20 *et seq.*, and 16 U.S.C. 3.

§ 51.1 Authority.

Concession contracts and permits are awarded by the Director on behalf of the Secretary of the Interior pursuant to the authority of the Act of August 25, 1916, as amended and supplemented, 16 U.S.C. 1 *et seq.*, particularly, the Concessions Policies Act of 1965, 16 U.S.C. 20 *et seq.*, and 16 U.S.C. 3. All concession contracts and permits are subject to the requirements of this part 51. They are not federal procurement contracts or permits within the meaning of statutory or regulatory requirements applicable to federal procurement actions. Commercial use licenses are not concession contracts or permits, and, particularly, a commercial use licensee (or a person holding a similar nonconcession authorization) has no right of preference in renewal.

§ 51.2 Policy.

It is the policy of the Secretary of the Interior, as mandated by law, to permit concessions in park areas only under carefully controlled safeguards against unregulated and indiscriminate use so that heavy visitation will not unduly impair park values and resources. Concession activities in park areas shall be limited to those that are necessary and appropriate for public use and enjoyment of the park areas in which they are located and that are consistent to the highest practicable degree with the preservation and conservation of the park areas.

§ 51.3 Definitions.

The following definitions shall apply to this part 51:

(a) *Concession contracts* and *concession permits* (or *contracts* and *permits*) are agreements between the Director and a concessioner whereby the concessioner agrees to provide certain visitor accommodations, facilities or services within a park area under the administration of the Director. The Director authorizes concession operations by both contracts and permits. Contracts are used for larger operations and permits for those of less complexity. Throughout this document, wherever the term *contract* or *concession contract* are used, they shall, unless otherwise indicated, refer to both types of authorization documents.

(b) *Right of Preference* refers to the right of an existing satisfactory concessioner to a preference in the extension or renewal of its contract or a new contract concerning all or part of substantially the same accommodations, facilities and services as provided by concessioner under the the terms of its existing contract if the Director chooses to continue to authorize all or part of such accommodations, facilities and services in an extended, renewed or new contract as necessary and appropriate concession activities.

(c) *Preferential Right* refers to a contractual right which may be included in concession contracts (not permits) in the discretion of the Director to provide new or additional visitor accommodations, facilities and services of the same character as authorized under the concessioner's contract if the Director considers such new or additional concession activities necessary and appropriate for the accommodation and convenience of the public. A preferential right to new or additional services shall be granted only upon a specific written finding by the Director that the granting of such a contractual right because of exceptional circumstances is in the public interest.

(d) The term *Director* refers to the Director of the National Park Service or an authorized representative.

§ 51.4 Solicitation and award of concession contracts where no right of preference exists.

The following procedures shall be applicable to the solicitation and award of concession contracts, including renewals and extensions of concession contracts, where no right of preference to the contract exists:

(a) The Director shall issue a prospectus soliciting proposals describing the concession operation to be authorized, the material terms and conditions of the proposed concession contract, and the principal factors considered in selection. Advertisement of the availability of the concession opportunity shall be published in the Commerce Business Daily and, for contracts or permits requiring Congressional review pursuant to 16 U.S.C. 1a–7(c), in the **Federal Register**. Notices may also be published, if appropriate, in local or national newspapers or trade magazines. The notice will be distributed to interested parties and organizations. The prospectus will be made available upon request to all interested parties and will allow a reasonable period of time for submission of offers with a minimum of 60 days unless a written determination is made that a shorter period is necessary because of exceptional circumstances. All offers received shall be evaluated by the Director, and the offeror submitting the offer considered best by the Director on an overall basis shall be awarded the contract.

(b) The principal factors to be considered in selection of the best offer shall be:

(1) The experience and related background of the offeror;

(2) The offeror's financial capability; and

(3) Conformance to the terms and conditions of the prospectus in relation to quality of service to the visitor.

Secondary factors shall include franchise fee offered and other factors as may be specified.

(c) The Director may solicit from any offeror additional written information or clarification of an offer, and may extend the solicitation period in his or her discretion. The Director may choose to reject all offers received at any time and resolicit or cancel the solicitation altogether in his or her discretion. Any material information made available to any offeror or other party by the Director is to be made available to all offerors, and will be available to the public upon request.

(d) The execution of the final contract by the selected offeror shall occur promptly upon award within a time

period established by the Director. Failure by the selected offeror to execute the final contract in this period shall result in cancellation of the award by the Director and resolicitation or award to another offeror. Substantive amendments which improve the proposed terms and conditions of the contract for the offeror, as compared to those set forth in the prospectus, may be permitted only after solicitation of the amended concession opportunity for an appropriate period of time. Changes benefiting only the Government do not require solicitation. Concession contracts with anticipated annual gross receipts in excess of $100,000 or of five (5) years or more in duration, shall be forwarded to the Congress pursuant to 16 U.S.C. 1a-7(c) prior to execution by the Director. The Director may, in his or her discretion, terminate the award of a concession contract at any time prior to execution by the Government and resolicit or cancel the solicitation. No offeror or other interested party shall be considered to have obtained compensable or other legal rights as a result of a resolicited or canceled solicitation or award of a concession contract.

(e) The terms and conditions of the solicitation must represent the requirements of the Director and not be developed to accommodate the capabilities or limitations of any particular party.

(f) Upon a written determination that exceptional circumstances warrant waiver of the procedures described in this subsection in the public interest, to protect visitor or park resources or otherwise, the Director may negotiate a concession contract with any qualified party without public notice or advertising.

§ 51.5 Solicitation and award of concession contracts where a right of preference exists.

Except as follows, the procedures described in § 51.4 shall apply to the solicitation and award of concession contracts, including renewals and extensions of contracts, where an existing satisfactory concessioner is entitled to a right of preference to the contract:

(a) Prior to the issuance of a prospectus, the Director shall determine, based on annual evaluations conducted during the term of the contract, whether or not the existing concessioner has performed in a satisfactory, marginal, or unsatisfactory manner over the term of the contract. The annual evaluations shall be based on the concessioner's operational performance as well as its compliance with the terms and conditions of the contract. In addition, if the concessioner is rated unsatisfactory in the year prior to the issuance of the prospectus, or marginal during the two years preceding the issuance of the prospectus, the concessioner's overall performance shall not be considered satisfactory. If the concessioner's overall performance over the term of the concession contract is determined to have been satisfactory, it is entitled to the preference in the renewal of its contract as described herein. However, if, after a prospectus which recognizes a right of preference is issued, a concessioner is rated pursuant to an annual evaluation as unsatisfactory by the Director, the Director shall cancel the solicitation or contract award and reissue the solicitation without a right of preference. A concessioner whose overall performance has been less than satisfactory as determined by the Director is not entitled to a right of preference. Additionally, if a concessioner has or will have operated less than two (2) consecutive years prior to the expiration of its contract as a result of acquiring, subsequent to the effective date of these regulations, a concession, or a controlling interest in a concession, as described in § 51.7(b) hereof, by a transfer, purchase, assignment, or otherwise, the concessioner shall not be entitled to a right of preference in the renewal of its contract. For the purposes of this section, the concessioner's first day of operation will be considered the date on which the Director approved in writing the acquisition in question. The Director may, in his or her discretion, grant an exception from this two (2) year provision if the Director determines that the transaction was a result of circumstances beyond the selling or transferring concessioner's control.

(b) A prospectus will be developed by the Director and will describe the existing satisfactory concessioner's right of preference, if any, as well as the material terms and conditions under which the Director proposes to award the contract.

(c) The concessioner with a right of preference shall be required to submit a responsive offer (a timely offer which the Director determines meets the terms and conditions of the prospectus) pursuant to the prospectus. If the concessioner fails to do so, the right of preference shall be considered to have been waived and the contract shall be awarded to the party submitting the best responsive offer. If no other responsive offers were received, the concession opportunity shall be resolicited and no right of preference shall apply to the concession opportunity unless the concession opportunity is resolicited upon terms and conditions that are substantially different from the terms and conditions of the initial prospectus. Such award to another responsive offeror or resolicitation without a right of preference shall also occur where a concessioner with a right of preference is awarded a contract but fails to execute it within the time period established by the Director.

(d) All responsive offers received pursuant to a prospectus where a right of preference is applicable to the concession opportunity shall be evaluated on an equal basis. If an offer other than a responsive offer of the existing satisfactory concessioner is determined to be the best offer, the party submitting the best offer will be awarded the contract or permit, provided that the existing satisfactory concessioner shall be given an opportunity to amend its offer to meet the terms and conditions of the best offer. If the existing satisfactory concessioner does so within the period of time allowed by the Director, and its offer, as amended, is, in the judgment of the Director, at least substantially equal to the best offer and the existing concessioner is capable of carrying out its terms, the existing concessioner shall be selected for award of the contract upon the amended terms and conditions.

(e) The requirement for public notice and evaluation of offers received may not be waived.

§ 51.6 Preferential right for additional services where a right to additional services and facilities exists by specific contract provisions.

Where the Director seeks to authorize new or additional accommodations, facilities and services of generally the same character as provided by an existing satisfactory concessioner in a park area, and such concessioner by concession contract has a right to provide such additional services, the Director independently shall develop a description of the new or additional services and the terms and conditions upon which they are to be provided without reference to any private party, including the existing concessioner, and give the existing concessioner a reasonable opportunity to review such descriptions to determine if it wishes to provide the services. If so, the Director shall authorize the additional services by amendment to the concessioner's contract. If the existing concessioner does not agree to provide the additional services upon the terms and conditions described, the Director shall authorize the additional services to be provided

by a new concessioner under substantially the same terms and conditions and pursuant to the procedures of § 51.4 hereof.

§ 51.7 Sale, assignment or encumbrance of concession contracts and assets.

(a) Concession contracts, or operations authorized thereby, controlling interests therein, or assets of a concessioner, may not be transferred, sold, assigned, or encumbered in any manner, including, but not limited to, stock purchases, mergers, consolidations, reorganizations, mortgages, liens or collateralization, except with the prior written approval of the Director. Such approval is not a matter of right to the concessioner. Transfers, sales, assignments, or encumbrances consummated in violation of this requirement shall be considered null and void by the Director and a material breach of the contract resulting in termination of the contract for cause.

(b) The term "controlling interest" as used herein means, in the case of corporate concessioners, an interest, beneficial or otherwise, of sufficient outstanding voting securities or capital of the concessioner or related entities so as to permit exercise of managerial authority over the actions and operations of the concessioner or election of a majority of the Board of Directors of the concessioner, and, in the instance of a partnership, limited partnership, joint venture or individual entrepreneurship, beneficial ownership of the capital assets of the concessioner so as to permit exercise of managerial authority over the actions and operations of the concessioner. In other circumstances, the term refers to any arrangement under which a third party gains the ability to exercise managerial authority over the actions operations of the concessioner.

(c) Prior to consummating any transaction which may constitute the type of transaction described in subsection (a) hereof, the concessioner will request the Director in writing to review the transaction and provide the Director the following information:

(1) All instruments proposed to implement the transaction;

(2) An opinion of counsel from the buyer to the effect that the proposed transaction is lawful under all applicable Federal and State laws;

(3) A narrative description of the proposed transaction and the operational plans for conducting the operation;

(4) A statement as to the existence of any litigation questioning the validity of the proposed transaction;

(5) A description of the management qualifications and financial background of the proposed transferee, if any;

(6) A statement as to whether the proposed transaction constitutes the sale, assignment or transfer of a controlling interest as described herein and the particulars thereof;

(7) A detailed description of the financial aspects of the proposed transaction including but not limited to prospective financial statements (a "forecast") that have been examined by an independent accounting firm and that demonstrate to the satisfaction of the Director that the purchase price is reasonable based on the objective of having a satisfactory concession operation that will generate a reasonable profit over the remaining term of the contract, with rates to the public not exceeding existing approved rates;

(8) A schedule which allocates in detail the purchase price to the assets acquired, together with the basis for the allocation;

(9) If the transaction may result in an encumbrance on the concessioner's assets, full particulars of the terms and conditions of the encumbrance; and

(10) Such other information as the Director may require.

The Director may waive portions of these documentation requirements in circumstances where particular documents are considered unnecessary for the Director's review purposes.

(d) The Director may choose to disapprove a transaction as described herein in his or her discretion or may place appropriate conditions on any approval, including modification of the terms and conditions of the concession contract, as a condition of approval. Among other circumstances, the Director may choose not to approve a transaction if the concessioner does not accept appropriate modifications intended to assure that consideration flowing to the Government under the contract is consistent with the probable value of the privileges granted by the contract. The Director shall not approve a transaction that the Director considers may result in decreased quality of service to the public, the lack of a reasonable opportunity for profit over the remaining term of the contract, or in rates higher than comparable rates being charged to the public. Further, the Director shall not approve a transaction if a significant portion of the purchase price is attributable either directly or indirectly to intangible assets or values emanating from the privileges granted by the concession contract (including, but not limited to, a right of preference in contract renewal, user days, allocated entries or trips, and low fees and charges). 16 U.S.C. 3 and certain concession contracts contain provisions which limit the purposes for which contracts may be encumbered. Such limitations are an element of the Director's review of such transactions. In addition, the Director shall not exercise the authorities contained in this section with respect to concession contracts in effect prior to the effective date of these regulations if the Director considers that such exercise would constitute a material breach of the terms of the concession contract at issue.

§ 51.8 Public availability of concessions information.

Among other information which may be required by contract or otherwise, the following information shall be contained in the financial statements submitted to the Director by a concessioner and shall be made available to the public by the Director: Gross receipts broken out by department for the 3 most recent years; franchise fees charged broken out by building use fee and percentage fee for the 3 most recent years; merchandise inventories for the 3 most recent years; and the depreciable fixed assets and net depreciable fixed assets of the concessioner. Other information may also be made available to the public to the extent permitted by law. The authority in this section shall not be exercised by the Director with respect to contracts in effect prior to the effective date of these regulations if the Director determines that such exercise would constitute a material breach of the concession contract at issue.

§ 51.9 Information collection.

(a) The collections of information contained in this rule have been approved by the Office of Management and Budget as required by 44 U.S.C. 3051 *et seq.* and assigned clearance numbers 1024–0095 (contracting procedures, §§ 51.4–51.6), and 1024–0096 (sales and transfers, § 51.7). Response is required to obtain a benefit in accordance with 16 U.S.C. 20, *et seq.*

(b) The public reporting burden for the collection of information for the purpose of preparing an offer in response to a contract solicitation is estimated to average 80 hours per offer. The public reporting burden for the collection of information for the purpose of reporting a sale or transfer of a concession operation is estimated to be 160 hours for a large operation, and 32 hours for a small operation. Please send comments regarding this burden estimate or any other aspect of this collection of

information, including suggestions for reducing the burden, to Information Collection Officer, National Park Service, 1100 L Street, NW., Washington, DC 20013; and the Office of Management and Budget, Paperwork Reduction Act (1024–0095 and 1024–0096), Washington, DC 20503.

Dated: June 12, 1992.

Michael Hayden,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 92–20843 Filed 9–2–92; 8:45 am]

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Thursday
September 3, 1992

Part III

Department of the Interior

National Park Service

Standard Concession Contract Language; Revision; Notice

DEPARTMENT OF THE INTERIOR

National Park Service

Standard Concession Contract Language; Revision

ACTION: Proposed revision of National Park Service Standard Concession Contract Language.

SUMMARY: The National Park Service authorizes certain businesses to operate concessions in national parks. The agreements embodying these authorizations consist primarily of standard language that incorporates National Park Service concessions policies. The National Park Service proposes to amend this standard language in accordance with 16 U.S.C. 3 and 16 U.S.C. 20, *et seq.*, to clarify the intentions of the drafters of the original language, and to carry out certain policy changes.

DATES: The National Park Service will accept written comments until November 2, 1992.

ADDRESSES: Comments should be addressed to: Director, National Park Service, Washington, DC 20013–7127.

FOR FURTHER INFORMATION CONTACT: Lee Davis, Chief, Concessions Division, National Park Service, Washington, DC 20013–7127.

SUPPLEMENTARY INFORMATION: The Secretary of the Interior ("the Secretary") set up a Departmental Task Force to review the concessions program of the National Park Service ("NPS") in 1989. On April 9, 1990, the Task Force submitted a report to the Secretary that identified three basic problems with the program. First, the Task Force pointed out that there was virtually no competition for NPS concession opportunities. In the history of NPS, there have only been a handful of instances when NPS did not renew the contract of an existing concessioner. Second, the Task Force noted that NPS was not exercising enough oversight with respect to sales and transfers of concessions operations. Some concessioners had sold their operations for prices that included the value of intangible assets that rightly belonged to the American public, through the government. Third, the Task Force noted that NPS was not receiving adequate consideration in return for allowing concessioners the opportunity to operate in national parks.

The Task Force proposed a 12-point reform plan to address these problems. The Task Force saw a need to:

1. Set systematic franchise fees for concessions operations.
2. Raise the building use fees paid by concessioners.
3. Redefine an existing concessioners "right of preference" in contract renewal.
4. Redefine the "preferential right to additional services".
5. Reduce concessioners' possessory interest.
6. Exert better oversight over sales and transfers of concession operations.
7. Shorten the length of concession contracts.
8. Develop mechanisms for funding improvements to concessions facilities.
9. Centralize NPS Concessions Division decision-making authority.
10. Improve Concessions Division accountability and internal controls.
11. Improve Concessions Division training programs and Concessions Division personnel, and,
12. Increase the resources of the Concessions Division.

After slightly modifying some of these recommendations, the Secretary, by a memorandum of July 19, 1990, instructed the Director of NPS ("the Director") to implement the Task Force plan. NPS is using three methods to do this.

Recommendations dealing with the right of preference, the preferential right to additional services, and the appropriate extent of NPS control over sales and transfers, concern the regulation of both contracting procedures and sales and transfers. NPS could carry these out only by amending its existing regulations. NPS recently took care of this by publishing amended regulations in the **"Federal Register"**. The regulations were published for public comment as proposed regulations on August 23, 1991. NPS received over 920 comments on the proposed regulations.

In response to the public comment, NPS modified some aspects of the proposed regulations. (See Preamble to the Final Regulations in the **Federal Register** for a detailed analysis of the regulations and comments). The regulations that evolved from the public comment process enhance competition by restricting the availability of both the right of preference in contract renewal ("right of preference"), and the preferential right to additional services ("right to additional services"). Notwithstanding its restricted availability, the right of preference, in accordance with the Concessions Policy Act, remains strong enough to encourage continuity of concessioner operation.

The amended rules enhance the government's control over sales and transfers of concession operations by expressly allowing the Director to condition his approval of these transactions upon appropriate amendments to the seller's concession contract. The rules do not change the significance of franchise fees in offer evaluations. As an offer-evaluation factor, the amount of franchise fee remains secondary to the offeror's experience, financial capability, and ability to offer good service to park visitors.

Task Force recommendations dealing with franchise fees, building use fees, centralization, increasing accountability, length of contract, personnel, and increasing Concession Division resources, are more policy-oriented. NPS would have to change its policies and procedures to implement these recommendations.

NPS is in the process of addressing these points. It has recently increased funding and personnel for the Concession Division. The increase in resources will help NPS address Task Force recommendations concerning the need to pursue fair franchise fees from concessioners. Also, it will allow NPS to develop a reasoned and workable solution to the building use fee issue. Furthermore, it will enable NPS to enhance its training program, thus satisfying another Task Force concern. The desirability and feasibility of additional adjustments in resources will be assessed as necessary, in order to assure effective implementation.

To implement the Task Force recommendation that NPS shorten the length of concession contracts, NPS is carefully reviewing the length of every new and renewed contract. The Director will not approve those with excessively long terms.

NPS is implementing the directive concerning increasing its accountability by creating an accounting system to accurately track concessioner franchise and building use fees. It is carrying out the Task Force centralization point by requiring a Secretarial signature for all contracts dealing with operations that receive at least $3,000,000 in annual gross revenue. Similarly, the Director must sign all contracts dealing with concession operations that receive over $1,000,000 in annual revenue. To further implement this point the Director now must review, prior to a Regional Director's signature, all contracts for operations that gross between $100,000 and $1,000,000 in annual revenue.

NPS, through this public comment process, is particularly seeking comment on the methods it has chosen to deal with the Task Force points concerning possessory interest and funding mechanisms. Because these issues concern the agreement between the

concessioner and NPS they are being addressed as proposed changes to the standard concession contract. Among other things, NPS intends these proposed changes to amend compensation for concessioners' possessory interests, and establish mechanisms to fund improvements to concessions facilities. NPS notes that some of these changes have strong relationships to Task Force points discussed above, such as the proposed special fund provisions. NPS discusses these and other specific proposed changes that are of a substantive nature in the "Section by Section" analysis below. Additionally, NPS has made some editorial changes to the standard contract that are of a technical, rather than substantive, nature.

Section by Section Analysis

Whereas Clauses

The proposed language drops the present "whereas clause" that states "Whereas, the establishment and maintenance of such facilities and services involves a substantial investment of capital and the assumption of risk of operating loss, it is therefore proper, in consideration of the obligations assumed hereunder and as an inducement to capital, that the concessioner be given assurance of security of such investment and of a reasonable opportunity to make a profit". NPS has dropped this clause from the proposed language as it is unnecessary in light of the applicable provisions of the Concessions Policy Act.

Section 1—Term of Contract

NPS has amended paragraph (a) of this section to provide for a shortened term of contract if the concessioner does not complete a contractually required improvement and building program to the satisfaction of the Secretary within the time allotted. This provision gives the concessioner an incentive to fulfill its building and improvement program commitment in a timely manner. If it fails to do so, the contract will come to a premature end.

Section 1(d) allows the Secretary to grant a concessioner relief from the obligations of an improvement program where the concessioner cannot perform its construction duties because of circumstances beyond its control. Such relief, however, would not extend to accounts set up under section 1(e) of the contract.

Section 2—Accommodations, Facilities and Services

Section 2(b) of the proposed language changes the existing contract by providing for the development of an Operating Plan. The Plan would carry out the requirements of the contract in greater detail. The purpose of the plan is merely to provide a blueprint for how a concessioner will carry out its responsibilities under the contract. The final sentence of section 2(b) makes this clear by stating that the Operating Plan does not "amend or alter the rights and liabilities of the parties to the contract".

The proposed language does not include the optional paragraph from the existing standard contract that grants a concessioner a preferential right to provide new or additional services. The deletion of this section from the standard contract is consistent with the Secretary's initiative. The Secretary has concluded that the preferential right to provide new or additional services is inherently anti-competitive. Therefore, it will no longer be a part of the standard contract.

Section 3—Plant, Personnel and Rates

In the existing standard contract, the following sentence appears as the second sentence in paragraph (a)(2) of this section: "The Secretary shall exercise his decision making authority with respect to the concessioners rates and prices in a manner consistent with a reasonable opportunity for the concessioner to realize a profit on its operations hereunder as a whole commensurate with the capital invested and the obligations assumed". NPS has deleted this sentence from the proposed language because it merely restates NPS's obligation under the Concessions Policy Act to allow concessioners a reasonable opportunity for profit.

Section 4—Government Land and Improvements

NPS has revised section 4(a) of the existing contract to require a separate land assignment and listing of Government Improvements assigned to the concessioner for use under the contract. The proposed language revises section 4(e) to clarify that the concessioner will be responsible for capital improvements to government facilities directly supporting the concession operation unless the Secretary determines that the required improvements are economically infeasible for private investment.

Section 5—Maintenance

The proposed language amends the existing contract by providing for the development of a maintenance plan. This plan would implement the maintenance requirements of the concession contract.

Section 7—Utilities

The proposed language revises this section by clarifying that the Secretary may provide utilities to the concessioner and, if the Secretary does not provide such services, NPS may require the concessioner to secure utility services at its own expense from sources outside the park.

Section 9—Fees

NPS has revised section 9(e) to provide for a 120-day period in which NPS may reconsider the franchise fees in section 9 or other considerations described in section 10. Additionally, NPS has revised the advisory arbitration language of this section. The revised section seeks to resolve reconsideration disputes by using an advisory arbitration panel consisting of one or three neutral arbitrators. The American Arbitration Association or a similar organization would set up the panel, which would recommend to the Secretary appropriate fees and/or other considerations.

Section 10—Accounts

This section sets up two types of accounts for building and improvement programs. Section 10(a) allows the concessioner to remit funds into a "Government Improvement Account" in consideration for the right to use and occupy government-owned buildings. The concessioner would access this account to fund the repairs and improvements of Government Improvements which directly support concession services. This section also provides further details on the approval of projects and the general administration of the account. Further, it provides that the concessioner shall not receive possessory interest in improvements made from the account.

Section 10(b) allows the concessioner to remit funds into a "Capital Account" as partial consideration for the privileges granted under the contract. The concessioner would access this account to fund improvements which directly support concession services. Like section 10(a), this section also provides further details on the approval of projects and the general administration of the account. It also states that the concessioner will not receive possessory interest in improvements made from the account.

The most significant aspect of this section is that it does not grant

concessioners possessory interest for improvements. This distinguishes it from sections 4 and 6, which do grant concessioners possessory interest for government and concessioner improvements made thereunder. The purpose of this section is to carry out the Secretarial initiative that instructs the Director to seek improved funding mechanisms for facility maintenance and rehabilitation. The need for these funding mechanisms is evident, as the concessions facilities in many parks are either inadequate or in need of rehabilitation. These funds also privatize the maintenance and rehabilitation of government-owned facilities.

This section also provides that any money remaining in these accounts at the end of the contract shall either be spent on approved projects or remitted to the "Miscellaneous Receipts" Account of the United States Treasury.

Section 12—Termination

The proposed language amends the existing contract to clarify that the Secretary may terminate or suspend operations under the contract in order to enhance or protect area resources or visitor enjoyment or safety.

Section 13—Compensation

The proposed language changes NPS's method of determining the value of possessory interest. The existing contract entitles concessioners to the sound value of concessioner improvements, less observed depreciation, not to exceed their fair market value. The proposed language drops the reference to sound value and provides that the concessioner will be entitled to the "fair value" of its possessory interest. In those instances where a concessioner has acquired a sound value possessory interest under the terms of a prior concessions contract, NPS would determine the concessioners pre-existing sound value, convert this figure to fair value, and state that figure in the contract. The language further provides that this amount shall be decreased over the shortest period possible, usually not more than 1/30th of the original amount each year. In the event of contract termination or expiration, the concessioner's right to compensation for these improvements will be the amount not yet decreased, except in the event of termination for unsatisfactory performance. Subsection (d) of this section entitles a terminated unsatisfactory concessioner to the fair value of its possessory interest as described in section 13(b), or the original cost of the improvements (less depreciation), whichever is less.

Additionally, the proposed language states that the fair value of any possessory interest in concessioner or Government improvements constructed under the terms of the new contract will be the original cost of the improvement less straight line depreciation over the estimated useful life of the asset, provided that the useful life may not exceed 30 years. It also provides that NPS will not permit a successor to revalue any possessory interest, method of depreciation, or, the useful life of the asset.

Section 14—Assignment or Sale of Interests

The proposed language revises section 14(a)(1) to clarify that a concessioner must have the Secretary's written approval before encumbering its assets or interests (such as mortgages, liens, or collateral) under the contract. The proposed language also provides that Secretarial approval is not a matter of right. It provides that the Secretary will use established policies and procedures in determining whether to approve, disapprove, or place conditions on, the proposed transfer. Further, NPS has deleted the term "controlling interest" from the proposed language. This definition is unnecessary since this term is defined in 36 CFR 51.

NPS has amended proposed section 14(a)(2) to describe in further detail the items that concessioners must provide to the Secretary for his consideration in reviewing a proposed transaction.

Exhibits

NPS has added a new exhibit entitled "Land Assignment" to the proposed contract, and renumbered existing exhibits accordingly.

Other

NPS has dropped the "Disputes" section from the existing contract. This former section 17 of the contract provided for the resolution of contract disputes in accordance with the rules of the Board of Contract Appeals. NPS has removed it from the contract because it believes the Contracts Disputes Act covers these matters.

Dated: June 10, 1992.

James M. Ridenour,

Director, National Park Service.

Standard Language To Be Used, Where Applicable, in Concession Contracts

United States Department of the Interior, National Park Service

(Name of Concessioner)

_____

(Name of Area)

_____

Contract No. _____ executed _____ covering the period _____ through _____

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Exhibits

EXHIBIT "A": Nondiscrimination
EXHIBIT "B": Land Assignment
EXHIBIT "C": Government-owned Structures Assigned
EXHIBIT "D": Possessory Interest Assets
EXHIBIT "E": Building Replacement Cost for Insurance Purposes

Corporation

This contract made and entered into by and between the United States of America, acting in this matter by the Secretary of the Interior, through the Director of the National Park Service, hereinafter referred to as the "Secretary," and _____, a corporation organized and existing under the laws of the State of _____ doing business as

_____ hereinafter referred to as the "Concessioner":

Partnership

This contract made and entered into by and between the United States of America, acting in this matter by the Secretary of the Interior, through the Director of the National Park Service, hereinafter referred to as the "Secretary", and _____ of _____, _____, and _____, of _____, partners, doing business as _____, pursuant to a partnership agreement dated _____, with the principal place of business at _____, hereinafter referred to as the "Concessioner":

Sole Proprietorship

This contract made and entered into by and between the United States of America, acting in this matter by the Secretary of the Interior, through the Director of the National Park Service, hereinafter referred to as the "Secretary," and _____, an individual of _____, doing business as _____, hereinafter referred to as the "Concessioner":

WITNESSETH:

That whereas, (Name of Park, Recreation Area, etc.) (hereinafter referred to as the "Area") is administered by the Secretary to conserve the scenery and the natural and historic objects and the wildlife therein, and to provide for the public enjoyment of the same in such manner as will leave such area unimpaired for the enjoyment of future generations; and

Whereas, the accomplishment of these purposes requires that facilities and services be provided for the public visiting the area; and

Whereas, the United States has not itself provided such necessary facilities and services and desires the Concessioner to establish and operate certain of them at reasonable rates under the supervision and regulation of the Secretary; and

Whereas, pursuant to law the Secretary is required to exercise his authority hereunder in a manner consistent with a reasonable opportunity by the Concessioner to realize a profit on the operations conducted hereunder as a whole commensurate with the capital invested and the obligations assumed:

Now, therefore, pursuant to the authority contained in the Acts of August 25, 1916 (39 Stat. 535; 16 U.S.C. 1, 2–4), and October 9, 1965 (79 Stat. 969; 16 U.S.C. 20 et seq.), and other laws supplemental thereto and amendatory thereof, and said parties agree as follows:

Sec. 1. Term of Contract

(a) This contract shall [supersede and cancel Contract No. _____ effective upon the close of business _____ 19_____, and shall] [1] be for the term of _____ (_____) years from _____, 19_____,[2] [conditioned upon the Concessioner's completion of the improvement and building program set forth in subsection (b) hereof. In the event the Concessioner fails to complete said program to the satisfaction of the Secretary within the time allotted therefor, then this contract shall be for the term of _____ (_____) years from _____].

(b) [3] The Concessioner shall undertake and complete an improvement and building program costing not less than $_____ as adjusted per project to reflect par value in the year of actual construction in accordance with the appropriate indexes of the Department of Commerce's "Construction Review". It is agreed that such investment is consistent with section 3(a) hereof. Such improvement and building program shall include:

(Provide detailed description of improvement and building program.)

(c) The Concessioner shall start the improvement and building program on or before _____ in such a manner as to demonstrate to the satisfaction of the Secretary that it is in good faith carrying said program forward reasonably under the circumstances. After approval of plans and specifications, the Concessioner shall provide the Secretary with such evidence or documentation, as may be satisfactory to the Secretary, to demonstrate that such program is being carried forward, and shall complete and have it available for public use on or before _____.

(d) The Concessioner may, in the discretion of the Secretary, be relieved in whole or in part of any or all of the obligations of the improvement program, except for the account(s) set forth in subsection (e) hereof, for such stated periods and the Secretary may deem proper upon written application by the Concessioner showing circumstances beyond its control warranting such relief.

(e) In addition to the capital improvement program described above, the concessioner shall accomplish such additional projects as may be funded from the account(s) established in section 10 hereof.

Sec. 2. Accommodations, Facilities and Services

(a) The Secretary requires and hereby authorizes the Concessioner during the term of this contract to provide accommodations, facilities and services for the public within _____, as follows:

(Provide detailed description of required and authorized services. Broad generalizations such as "any and all facilities and services customary in such operations" or "such additional facilities and services as may be required" are not to be used. A provision stating "The Concessioner may provide services incidental to the operations authorized hereunder at the request of the Secretary," is acceptable.)

(b) The Secretary reserves the right to determine and control the nature, type and quality of the merchandise and services described herein as authorized and required to be sold or furnished by the Concessioner within the area. Operations under this contract and the administration thereof by the Secretary shall be subject to the laws of Congress governing the area and the rules, regulations and policies promulgated thereunder, whether now in force or hereafter enacted or promulgated, including but not limited to United States Public Health Service requirements. Concessioners must also comply with current applicable criteria promulgated by the United States Department of Labor's Occupational Safety and Health Act of 1970 (OSHA) and those provisions outlined in the National Park Service's Safety and Occupational Health Policy associated with visitor safety and health. In order to implement these requirements the Secretary, acting through the Superintendent, and in consultation with the concessioner, shall establish and revise as circumstances warrant, in the form of an Operating Plan, specific operating requirements. However, such Operating Plan shall not amend or alter the rights and liabilities of the parties to this contract.

Sec. 3. Plant, Personnel and Rates

(a)(1) The Concessioner shall maintain and operate the said accommodations, facilities and services to such extent and in such manner as

[1] To be used when existing contract is to be replaced, before expiration date.

[2] To be used where there is an improvement and building program. The shortened term of contract should generally not exceed 10 years.

[3] (b), (c) and (d) are to be used where improvement programs are included in the contract *Note: Do Not Use* Sec. 1, (b), (c) or (d). If there is no building program.

the Secretary may deem satisfactory, and shall provide the plant, personnel, equipment, goods, and commodities necessary therefor, provided that the Concessioner shall not be required to make investments inconsistent with a reasonable opportunity to realize a profit on its operations hereunder commensurate with the capital invested and the obligations assumed.

(2) All rates and prices charged to the public by the Concessioner for accommodations, services or goods furnished or sold hereunder shall be subject to regulation and approval by the Secretary. Reasonableness of rates and prices will be judged generally by comparison with those currently charged for comparable accommodations, services or goods furnished or sold outside of the areas administered by the National Park Service under similar conditions, with due allowance for length of season, provision for peak loads, [average percentage of occupancy],[4] accessibility, availability and cost of labor and materials, type of patronage, and other conditions customarily considered in determining charges, but due regard may also be given to such other factors as the Secretary may deem significant.

(3) The Concessioner shall require its employees to observe a strict impartiality as to rates and services in all circumstances. The Concessioner may, subject to the prior approval of the Secretary, grant complimentary or reduced rates under such circumstances as are customary in businesses of the character conducted hereunder. The Concessioner will provide Federal employees conducting official business reduced rates for lodging, essential transportation and other specified services in accordance with procedures established by the Secretary.

(b)(1) The Concessioner may be required to have its employees who come in direct contact with the public, so far as practicable, to wear a uniform or badge by which they may be known and distinguished as the employees of the Concessioner. The Concessioner shall require its employees to exercise courtesy and consideration in their relations with the public.

(2) The Concessioner shall review the conduct of any of its employees whose action or activities are considered by the Concessioner or the Secretary to be inconsistent with the proper administration of the area and enjoyment and protection of visitors and shall take such actions as are necessary to fully correct the situation.

[4] This should be used only in contracts involving lodging.

(3) The Concessioner shall comply with the requirements of (a) title VII of the Civil Rights Act of 1964, as well as Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, (b) title V, sections 503 and 504 of the Rehabilitation Act of September 26, 1973, Public Law 93–112 as amended in 1978, (c) CFR, part 60–2 which prescribes affirmative action requirements for contractors and subcontractors, (d) the Age Discrimination in Employment Act of December 15, 1967 (Pub. L. 90–202), as amended by (Pub. L. 95–256) of April 6, 1978, and (e) the Architectural Barriers Act of 1968 (Pub. L. 90–480) which requires Government Contractors and Subcontractors to take affirmative action to employ and to advance in employment qualified handicapped individuals and to make facilities accessible to or useable by handicapped persons so that they will not be denied the benefit of, be excluded from participation in, or otherwise be subject to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by an Executive agency or by the United States Postal Service. The Concessioner shall also comply with regulations heretofore or hereafter promulgated, relating to nondiscrimination in employment and providing accessible facilities and services to the public and shall do nothing in advertising for employees which will prevent those covered by these laws from qualifying for such employment and use of their facilities. Regulations heretofore promulgated are set forth in Exhibit "A" attached hereto and made a part hereof.

Sec. 4. Government Land and Improvements

(a) The Secretary hereby assigns for use by the Concessioner during the term of this contract, certain parcels of land, if any (as described in Exhibit "B" hereto), and Government Improvements, if any (as described in Exhibit "C" hereto) appropriate to conduct the operations authorized hereunder. The Secretary reserves the right to withdraw such assignments or parts thereof at any time during the term of this contract if, in his judgment, (1) such withdrawal is for the purpose of enhancing or protecting area resources or visitor enjoyment or safety, or (2) the operations utilizing such assigned lands are terminated pursuant to section 11 hereof. Any permanent withdrawal of assigned lands or improvements which are essential for conducting the operation authorized hereunder will be considered by the Secretary as a termination pursuant to section 12 hereof. The Secretary shall compensate the Concessioner for any possessory interest in such properties permanently withdrawn pursuant to section 13 hereof.

(b) "Government Improvements" as used herein, means the buildings, structures, utility systems, fixtures, equipment, and other improvements upon the lands assigned hereunder, if any, constructed or acquired by the Government and provided by the Government for the purposes of this contract. The Concessioner shall have a possessory interest in improvements it makes to Government Improvements. In the event that such possessory interest is acquired by the Government or a successor Concessioner at any time, the Concessioner will be compensated for such possessory interest pursuant to section 13 hereof.

(c) The Secretary shall have the right at any time to enter upon the lands and improvements utilized by the Concessioner hereunder for any purpose he may deem reasonably necessary for the administration of the area and the Government services therein.

(d) The Concessioner may construct or install upon the assigned lands such buildings, structures, and other improvements as are necessary for the operations required hereunder, subject to the prior written approval by the Secretary of the location, plans, and specifications thereof. The Secretary may prescribe the form and contents of the application for such approval. The desirability of any project as well as the location, plans and specifications thereof will be reviewed in accordance with the provisions of the National Environmental Policy Act of 1969 and the National Historic Preservation Act of 1966.

(e) If during the term hereof a Government Improvement requires major repairs and/or improvements that serve to prolong the life of the Government Improvement to an extent requiring capital investment for major repair, such capital investment shall be borne by the Concessioner. Such expenditures shall be consistent with a reasonable opportunity for the Concessioner to realize a profit on its operations. Where capital improvements to Government facilities directly supporting the concession operation are determined by the Secretary to be necessary for the accommodation of park visitors they shall be made by the Concessioner unless the Secretary determines that the required improvements are economically infeasible for private investment.

Sec. 5. Maintenance

Subject to section 4(e) hereof, the Concessioner will physically maintain and repair all facilities (both Government and Concessioner's Improvements) used in the operation hereunder, including maintenance of assigned lands and all necessary housekeeping activities associated with the operation to the satisfaction of the Secretary. In order that a high standard of physical appearance, operations, repair and maintenance be maintained, appropriate inspections will be carried out by the Secretary. In order to implement these requirements the Secretary, acting through the Superintendent, and in consultation with the concessioner, shall establish and revise as circumstances warrant, in the form of a Maintenance Plan, specific maintenance requirements. However, such Maintenance Plan shall not amend or alter the rights and liabilities of the parties to this contract.

Sec. 6. Concessioner's Improvements

(a) "Concessioner's Improvements," as used herein, means buildings, structures, fixtures, equipment, and other improvements, affixed to or resting upon the lands assigned hereunder in such manner as to be a part of the realty, provided by the Concessioner for the purposes of this contract, (excluding improvements made to Government Improvements by the Concessioner), as follows: (1) such improvements upon the lands assigned at the date hereof as described in Exhibit "D" hereto; and (2) all such improvements hereafter constructed upon or affixed to the lands assigned to the Concessioner with the written consent of the Secretary. Concessioner's Improvements do not include any interest in land upon which the described structures are located.

(b) The Concessioner shall have a possessory interest in all Concessioner's Improvements and Government Improvements recognized by this contract. Possessory Interest shall consist of all incidents of ownership, except legal title which shall be vested in the United States. However, such possessory interest shall not be construed to include or imply any authority, privilege, or right to operate or engage in any business or other activity, and the use or enjoyment of any structure, fixture or improvement in which the Concessioner has a possessory interest shall be wholly subject to the applicable provisions of this contract and to the laws and regulations relating to the area. The said possessory interest shall not be extinguished by the expiration or other termination of this contract, and may not be terminated or taken for public use without just compensation as determined in accordance with section 13. Wherever used in this contract, "possessory interest" shall mean the interest described in this paragraph. Performance of the obligations assumed by the Secretary under section 13 hereof shall constitute just compensation with respect to the taking of a possessory interest.

(c) Any salvage resulting from the authorized removal, severance or demolition of a Concessioner's Improvement or any part thereof shall be the property of the Concessioner.

(d) In the event that a Concessioner's Improvement is removed, abandoned, demolished, or substantially destroyed and no other improvement is constructed on the site, the Concessioner, at its expense, shall promptly upon the request of the Secretary, restore the site as nearly as practicable to a natural condition.

Sec. 7. Utilities

(a) The Secretary may furnish utilities to the Concessioner, for use in connection with the operations authorized hereunder, when available, at reasonable rates to be fixed by the Secretary in his discretion and which shall at least equal the actual cost of providing the utility or service unless a reduced rate is provided for in an established policy of the Secretary in effect at the time of billing.

(b) Should the Secretary not provide such services, the Concessioner shall, with the written approval of the Secretary and under such requirements as shall be prescribed by him, secure the same at its own expense from sources outside the area or shall install the same within the area subject to the following conditions:

(1) Any water rights deemed necessary by the Concessioner for use of water on Federal lands shall be acquired at its expense in accordance with any applicable state procedures and state law. Such water rights, upon expiration or termination of this contract for any reason shall be assigned to and become the property of the United States without compensation.

(2) Any service provided by the Concessioner under this section shall, if requested by the Secretary, be furnished to the Government to such an extent as will not unreasonably restrict anticipated use by the Concessioner. The rate per unit charged the Government for such service shall be approximately the average cost per unit of providing such service.

(3) All appliances and machinery to be used in connection with the privileges granted in this section, as well as the plans for location and installation of such appliances and machinery, shall first be approved by the Secretary.

Sec. 8. Accounting Records and Reports

(a) The Concessioner shall maintain an accounting system whereby the accounts can be readily identified with its system of account classification. The Concessioner shall submit annually as soon as possible but not later than _____ (_____) days after the _____ day of _____ a financial statement for the preceding year or portion of a year as prescribed by the Secretary, and such other reports and data including but not limited to operations information as may be required by the Secretary. If annual gross receipts are in excess of $1 million, the financial statements shall be audited by an independent certified public accountant or by an independent licensed public accountant certified or licensed by a regulatory authority of a state or other political subdivision of the United States on or before December 31, 1970, in accordance with the auditing standards and procedures promulgated by the American Institute of Certified Public Accountants. If annual gross receipts are between $250,000, and $1 million, the financial statements shall be reviewed by an independent certified public accountant or by a licensed public accountant certified or licensed by a regulatory authority of a state or other political subdivision of the United States on or before December 31, 1970, in accordance with the auditing standards and procedures promulgated by the American Institute of Certified Public Accountants.

Financial statements accompanied by remarks such as "prepared from client records without audit" are unacceptable.

The independent licensed or certified public accountant shall include a statement to the effect that the amounts included in the financial report are consistent to those included in the Federal and state tax returns. If they are not, then a statement showing differences shall be included. The Secretary shall have the right to verify and copy for his own use all such reports from the books, correspondence, memoranda, and other records of the Concessioner, if any, and of the records pertaining thereto of a proprietary or affiliated company, if any, during the period of the contract, and for such time thereafter as may be necessary to accomplish such verification.

(b)[5] Within ninety (90) days of the execution of this contract or its effective date, whichever is later, the Concessioner shall submit to the Secretary a balance sheet as of the beginning date of the term of this contract. The balance sheet shall be audited by an independent certified public accountant or by an independent licensed public accountant, certified or licensed by a regulatory authority of a state or other political subdivision of the United States on or before December 31, 1970. The balance sheet shall be accompanied by a schedule that identifies and provides details for all assets in which the Concessioner claims a possessory interest. The schedule must describe these assets in detail showing for each such asset the date acquired, useful life, cost and book value.

(c) The Secretary and Comptroller General of the United States, or any of their duly authorized representatives, shall, until the expiration of five (5) calendar years after the expiration of this contract, have access to and the right to examine any of the pertinent books, documents, papers, and records of the Concessioner and any subconcessioners related to this contract including Federal, and state income tax returns.

Sec. 9. Fees

(a) For the term of this contract, the Concessioner shall pay to the Secretary for the privileges granted herein, fees as follows:

(1)[6] An annual fee for the use of any Government Improvements utilized by the Concessioner hereunder, if any. Such fee and assigned Government buildings shall be identified in Exhibit "C" hereto, and shall be adjusted annually by the Secretary to equal the fair annual value of such Government Improvements as determined by the Secretary.

(2) In addition to the foregoing, a franchise fee equal to _____ percent (_____%) of the Concessioner's gross receipts, as herein defined, for the preceding year or portion of a year.

(b) The franchise fee shall be due on a monthly basis at the end of each month and shall be paid by the Concessioner in such a manner that payment shall be received by the Secretary within 15 days after the last day of each month that the Concessioner operates. Such monthly payment shall include the annual use fee for assigned Government Improvements, as set forth in Exhibit "C" hereto, divided by the expected number of operating months, as well as the specified percentage of gross receipts for the preceding month. The payment of any additional amounts due at the end of the operating year as a result of adjustments shall be paid at the time of submission of the annual financial report. Overpayments shall be offset against the following year's franchise fees due. All franchise fee payments consisting of $10,000 or more, shall be deposited electronically by the Concessioner using the Treasury Financial Communications System.

(c) An interest charge will be assessed on overdue amounts for each 30-day period, or portion thereof, that payment is delayed beyond the 15-day period provided for in subsection (b) hereof. The percent of interest charged will be based on the current value of funds to the United States Treasury which is published quarterly in the Treasury Fiscal Requirements Manual.

(d)(1) The term "gross receipts," as used herein, shall be construed to mean the total amount received or realized by, or accruing to, the Concessioner from all sales for cash or credit, of services, accommodations, materials, and other merchandise made pursuant to the rights granted in this contract, including gross receipts of subconcessioners as hereinafter defined and commissions earned on contracts or agreements with other persons or companies operating in the area, and excluding gross receipts from the sale of genuine United States Indian and native handcraft, intracompany earnings on account of charges to other departments of the operation (such as laundry), charges for employees' meals, lodgings, and transportation, cash discounts on purchases, cash discounts on sales, returned sales and allowances, interest on money loaned or in bank accounts, income from investments, income from subsidiary companies outside of the area, sale of property other than that purchased in the regular course of business for the purpose of resale, and sales and excise taxes that are added as separate charges to approved sales prices, gasoline taxes, fishing license fees, and postage stamps, provided that the amount excluded shall not exceed the amount actually due or paid Governmental agencies,[7] and amounts received as a result of an add-on to recover utility costs above comparable utility charges. All monies paid into coin operated devices, except telephones, whether provided by; the Concessioner or by others, shall be included in gross receipts. However, only revenues actually received by the Concessioner from coin-operated telephones shall be included in gross receipts.

(2) The term "gross receipts of subconcessioners" as used in subsection (d)(1) of this section shall be construed to mean the total amount received or realized by, or accruing to, subconcessioners from all sources, as a result of the exercise of the rights conferred by subconcession contracts hereunder without allowances, exclusions or deductions of any kind or nature whatsoever and the subconcessioner shall report the full amount of all such receipts to the Concessioner within 45 days after the _____ day of _____ of each year or portion _____ of a year. The subconcessioners shall maintain an accurate and complete record of all items listed in subsection (d)(1) of this section as exclusions from the Concessioner's gross receipts and shall report the same to the Concessioner with the gross receipts. The Concessioner shall be entitled to exclude items listed in subsection (d)(1) in computing the franchise fee payable to the Secretary as provided for in subsection (a) hereof.

(e) Within one hundred twenty (120) days after _____, _____, _____, and _____,[8] at the instance of either party hereto, the amount and character of the franchise fees described in this section and/or the considerations provided for in section 10 hereof may be reconsidered. Such request shall be made in writing within 60 days after the end of the applicable contract year but cannot be made before the end of such year. In the event that the Secretary and the Concessioner cannot agree upon an adjustment of the franchise fees described in this section and/or section 10 considerations within 120 days from the date of the request for renegotiation as made by either party, the position of the Concessioner must be reduced to writing within 30 days therefrom and submitted to the

[5] Optional: Subsection 8(b), in its entirety, may be excluded where the Concessioner has no acquired possessory interest assets involved and no balance sheet is required.

[6] This subsection should be used if a building use fee is to be charged. If a special account is to be established under section 10(a) in lieu of a building use fee, this subsection should be deleted.

[7] Note to Preparer: This means, for example, if fishing licenses are sold, $2.00 goes to State or Federal agency, $.25 goes to Concessioner. Only $2.00 can be excluded from gross receipts, i.e. fishing license cost to user $2.00 but concessioner sells them and charges $.25 for services.

[8] The dates to be inserted in the blanks should coincide with the Concessioner's financial reporting year (for example, if the Concessioner's financial reporting year is on a calendar year basis, the dates should be December 31 of the appropriate year). *Franchise fees must be reconsidered at least every five years.*

Secretary for a determination of appropriate fees and/or section 10 considerations consistent with the probable value to the Concessioner of the privileges granted by this contract based upon a reasonable opportunity for a profit in relation to both gross receipts and capital invested. If desired by the Concessioner an advisory arbitration panel will be established, consisting of either one or three neutral arbitrators and utilizing the American Arbitration Association, or a similar organization, for the purpose of recommending to the Secretary appropriate franchise fees and/or other considerations. The Secretary and the Concessioner shall share equally the expenses of such advisory arbitration. The written determination of the Secretary as to franchise fees and/or section 10 considerations shall be final and conclusive upon the parties hereto. Any amended fees and/or section 10 considerations established will be retroactive to the commencement of the applicable period for which notice of reconsideration is given and be effective for the remaining term of the contract unless subsequent negotiations establish different franchise fee and/or section 10 considerations. If new rates are greater than existing rates, the Concessioner will pay all back franchise fees and make required section 10 deposits due at the time of the next regular payments or deposits. If new rates are less than the existing rates the Concessioner may withhold the difference between the two rates from future payments or deposits until he has recouped the overpayment. Any new franchise fees and/or section 10 considerations will be evidenced by an amendment to the contract unless based upon the written determination of the Secretary in which event a copy of the determination will be attached hereto and become a part hereof, as fully as if originally incorporated herein.

Sec. 10. Accounts

(Two alternatives are presented for subsection (a)):

(a) [9] No special accounts are included in this contract.

(a) Government Improvement Account [10]

(1) As consideration for the use and occupancy of Government Improvements herein provided, Concessioner shall deposit in a "Government Improvement Account", held in trust by the National Park Foundation,[11] funds by which it will undertake on a Project basis a repair and improvement program for Government Improvements which directly support concession services authorized and/or required under this contract, as directed by the Superintendent and in accordance with written approval of individual Projects and Project priorities by the Regional Director. Expenditures from this account for repair and/or improvement projects in excess of $1,000,000 must also receive the written approval of the Director. Projects will include structural repair of Government Improvements and major systems repair and replacement for only those Government Improvements assigned to the Concessioner pursuant to Exhibit "C" hereof.

(2) Projects paid for from the Account will not include routine, operational maintenance of facilities or housekeeping activities. Nothing in this section shall lessen the responsibility of the Concessioner to carry out the maintenance and repair of Government Improvements as required by sections 4 and 5, or otherwise, of the Concession Contract from funds other than the "Government Improvement Account," and the Account will not be used for purposes for which those Sections would apply. Concessioner shall have no ownership, possessory interest, or other interest in improvements made from the Government Improvement Account.

(3) In order to carry out the Account program, the Concessioner shall deposit within fifteen days after the last day of each month a sum equal to one-twelfth of the amount of the Government Improvement Account Allocation as established in Exhibit "C" into [an] interest bearing account(s) at [a] Federally insured financial institution(s) and held in trust by the National Park Foundation. The account(s) shall be maintained separately from all other Concessioner funds, and copies of monthly account statements shall be provided to the Secretary.

(4) An interest charge will be assessed on overdue payments for each 30 day period, or portion thereof, that payment is delayed. The percent of interest charged will be based on the current value of funds to the United States Treasury which is published quarterly in the Treasury Fiscal Requirements Manual.

(5) The Concessioner shall submit annually, no later than _____ of the year following the Concessioner's accounting year a statement reflecting total activity in the Government Improvement Account for the preceding financial year. The statement shall reflect monthly credits, expenses by project, and the interest earned.

(6) The balance in the Government Improvement Account shall be available for projects in accordance with the Account's purpose. Advances or credits to the Account by the Concessioner will not be allowed. Projects will be carried out by the Concessioner as the Superintendent shall direct in writing in advance of any expenditure being made. Account activities shall be initiated and managed as a series of Projects with objections for each Project defined as part of the Superintendent's approval document. For all expenditures made for each project from the Account, Concessioner shall maintain auditable records including invoices, billings, canceled checks, and other documentation satisfactory to the Secretary.

(7) Upon the expiration or termination of this contract, or upon assignment or sale of interests related to this contract, the unexpended balance remaining in the Government Improvement Account shall be expended for approved Projects, or shall be remitted by the Concessioner in such a manner that payment shall be received by the Secretary within 15 days after the last day of the Concessioner's operation. Any payment consisting of $10,000 or more shall be deposited electronically by the Concessioner using the Treasury Financial Communications System. An interest charge will be assessed on overdue amounts for each 30-day period, or portion thereof, that payment is delayed beyond the 15-day period provided for herein. The percent of interest charged will be based on the current value of funds to the United States Treasury which is published quarterly in the Treasury Fiscal Requirements Manual.

(b) Capital Account

(1) As partial consideration for the privileges granted herein, the Concessioner shall deposit in a capital account held in trust by the National Park Foundation [12] funds by which it

[9] This subsection should be used only when no special accounts are included in the contract.

[10] To be used in lieu of building use fee requirement in section 9(a)(1) if a special account is to be established.

[11] The authority to utilize the National Park Foundation for this purpose is under review. If the Foundation cannot undertake this function, another means to achieve the Trust Account objective will be adopted.

[12] The authority to utilize the National Park Foundation for this purpose is under review. If the Foundation cannot undertake this function, another means to achieve the Trust Account objective will be adopted.

will undertake, on a Project basis, improvements which directly support concession services authorized and/or required under this contract. Projects will be selected by the Superintendent in accordance with the written approval of individual Projects and Project priorities by the Regional Director. Projects costing over $1,000,000 must also be reviewed and approved by the Director.

(2) Projects paid for from the Account will not include routine, operational maintenance of facilities or housekeeping activities. Nothing in this section shall lessen the responsibility of the Concessioner to carry out the maintenance and repair of Government Improvements as required by sections 4 and 5, or otherwise, of the Concession Contract from funds other than the Account and the Account will not be used for purposes for which those Sections would apply. Concessioner shall have no ownership, possessory interest or other interest in improvements made from the Account.

(3) In order to carry out the Account projects the Concessioner shall deposit within fifteen days after the last day of each month that the concessioner operates a sum ("SUM") equal to _____ percent (_____%) of the Concessioner's Gross Receipts for the previous month, as defined herein, into (an) interest bearing account(s) at (a) Federally insured financial institution(s) and held in trust by the National Park Foundation. The account(s) shall be maintained separately from all other Concessioner funds and copies of monthly account statements shall be provided to the Secretary.

(4) An interest charge will be assessed on overdue payments for each 30 day period, or portion thereof, that payment is delayed. The percent of interest charged will be based on the current value of funds to the United States Treasury which is published quarterly in the Treasury Fiscal Requirements Manual.

(5) The Concessioner shall submit annually, no later than _____, of the year following the Concessioner's accounting year a statement reflecting total activity in the Account for the preceding financial year. The statement shall reflect monthly credits, expenses by project, and the interest earned.

(6) The balance in the Account shall be available for projects in accordance with the Account's purpose. Advances or credits to the Account by the Concessioner will not be allowed. Projects will be carried out by the Concessioner as the Superintendent shall direct in writing and in advance of any expenditure being made. Account activities shall be initiated and managed as a series of Projects with objectives for each Project defined as part of the Superintendent's approval document. For all expenditures made for each project from the Account, Concessioner shall maintain auditable records including invoices, billings, canceled checks, and other documentation satisfactory to the Secretary.

(7) Upon the expiration or termination of this contract, or upon assignment or sale of interests related to this contract, the unexpended balance remaining in the Account shall be expended for approved Projects or shall be remitted by the Concessioner in such a manner that payment shall be received by the Secretary within 15 days after the last day of the Concessioner's operation. Any payment consisting of $10,000 or more shall be deposited electronically by the Concessioner using the Treasury Financial Communications System. An interest charge will be assessed on overdue amounts for each 30-day period, or portion thereof, that payment is delayed beyond the 15-day period provided for herein. The percent of interest charged will be based on the current value of funds to the United States Treasury which is published quarterly in the Treasury Fiscal Requirements Manual.

Sec. 11. Bond and Lien

The Secretary may, in his discretion, require the Concessioner to furnish a surety bond acceptable to the Secretary conditioned upon faithful performance of this contract, in such form and in such amount as the Secretary may deem adequate, not in excess of _____ dollars ($_____).[13] As additional security for the faithful performance by the Concessioner of all of its obligations under this contract, and the payment to the Government of all damages or claims that may result from the Concessioner's failure to observe such obligations, the Government shall have at all times the first lien on all assets of the Concessioner within the area.

Sec. 12. Termination

(a) The Secretary may terminate this contract in whole or part for default at any time and may terminate this contract in whole or part when necessary for the purpose of enhancing or protecting area resources or visitor enjoyment or safety. The operations authorized hereunder may be suspended in whole or in part at the discretion of the Secretary when necessary to enhance or protect area resources or visitor enjoyment or safety. Termination or suspension shall be by written notice to the Concessioner and, in the event of proposed termination for default, the Secretary shall give the Concessioner a reasonable period of time to correct stated deficiencies. Termination for default shall be utilized in circumstances where the Concessioner has breached any requirements of this contract, including failure to maintain and operate the required accommodations, facilities and services to the satisfaction of the Secretary in accordance with the Secretary's requirements hereunder.

(b) In the event of termination of this contract when necessary for the purpose of enhancing or protecting area resources or visitor enjoyment or safety, or for default, the total compensation to the Concessioner for such termination shall be as described in section 13, "Compensation".

(c) In the event it is deemed necessary to suspend operations hereunder in whole or in part to enhance or protect area resources or visitor enjoyment or safety, the Secretary shall not be liable for any compensation to the Concessioner for losses occasioned thereby, including but not limited to, lost income, profit, wages, or other monies which may be claimed.

(d) To avoid interruption of services to the public upon the expiration or termination of this contract for any reason, the Concessioner, upon the request of the Secretary, will (1) continue to conduct the operations authorized hereunder for a reasonable time to allow the Secretary to select a successor, or (2) consent to the use by a temporary operator, designated by the Secretary, of the Concessioner's Improvements and personal property, if any, not including current or intangible assets, used in the operations authorized hereunder upon fair terms and conditions, provided that the Concessioner shall be entitled to an annual fee for the use of such improvements and personal property, prorated for the period of use, in the amount of the annual depreciation on such improvements and personal property, plus a return on the book value of such improvements and personal property equal to the prime lending rate, effective on the date the temporary operator assumes managerial and operational responsibilities, as published by the Federal Reserve System Board of Governors or as agreed upon by the parties involved. In this

[13] *Note to Preparer:* If a bond is required it should not, under normal conditions, exceed the amount of franchise fees which may be due. Leave blank where there has been no past operator because no dollar amount can be determined.

instance the method of depreciation used shall be either straight line depreciation or depreciation shown on Federal Tax Returns.

Sec. 13. Compensation

(a) *Just Compensation:* The compensation described herein shall constitute full and just compensation to the Concessioner from the Secretary for all losses and claims occasioned by the circumstances described below.

(b) *Contract expiration or termination where operations are to be continued:* If for any reason, including contract expiration or termination as described herein, the Concessioner shall cease to be required by the Secretary to conduct the operations authorized hereunder, or substantial part thereof, and, at the time of such event the Secretary intends for substantially the same or similar operations to be continued by a successor, whether a private person, corporation or an agency of the Government, (i) the Concessioner will sell and transfer to the successor designated by the Secretary its possessory interest in Concessioner and Government Improvements, if any, as defined under this contract, and all other property of the Concessioner used or held for use in connection with such operations; and (ii) the Secretary will require such successor, as a condition to the granting of a contract to operate, to purchase from the Concessioner such possessory interests, if any, and such other property, and to pay the Concessioner the fair value thereof. The fair value of any possessory interest in Concessioner's Improvements heretofore acquired shall be $_____ as of the effective date of this contract. This amount shall decrease by –$_____[14] of the original amount each year. In the event of contract termination or expiration, the concessioner's right to compensation for these improvements shall be the amount not yet decreased, except that in the event of contract termination for default due to unsatisfactory performance, compensation shall be as provided in subsection 13(d) hereof. The fair value of any possessory interest in Concessioner's Improvements hereafter acquired, or in Government Improvements heretofore or hereafter acquired shall be the original cost less straight line depreciation over the estimated useful life of the asset according to Generally Accepted Accounting Principles, provided, however, that in no event shall any such useful life exceed 30 years. In the event that such possessory interest is acquired by a successor, the successor will not be permitted to revalue such possessory interest, method of depreciation or useful life. The fair value of merchandise and supplies shall be actual cost including transportation. The fair value of equipment shall be book value.

(c) *Contract expiration or termination where operations are to be discontinued:* If for any reason, including contract expiration or termination as described herein, the Concessioner shall cease to be required by the Secretary to conduct the operations authorized hereunder, or substantial part thereof, and the Secretary at the time chooses to discontinue such operations, or substantial part thereof within the area, and/or to abandon, remove, or demolish any of the Concessioner's Improvements, if any, then the Secretary will take such action as may be necessary to assure the Concessioner of compensation for (i) its possessory interest, if any, as set forth in section 13(b) hereof, or, if it is a lesser amount, in the amount of the original cost of the improvement less straight line depreciation over the estimated useful life of the asset according to Generally Accepted Accounting Principles, provided, however, that in no event shall any such useful life exceed 30 years; (ii) the cost to the Concessioner of restoring any assigned lands to a natural condition, including removal and demolition, (less salvage) if required by the Secretary; and (iii) the cost of transporting to a reasonable market for sale such movable property of the Concessioner as may be made useless by such determination. Any such property that has not been removed by the Concessioner within a reasonable time following such determination shall become the property of the United States without compensation therefor.

(d) *Contract Termination for Default for Unsatisfactory Performance Where Operations are to be Continued.* Notwithstanding any other provision of this contract to the contrary, in the event of termination of this contract for default for failure to maintain and operate the required accommodations, facilities and services to the satisfaction of the Secretary in accordance with the Secretary's requirements hereunder, compensation for the Concessioner's possessory interest in Concessioner's Improvements, if any, shall be as set forth in section 13(b) hereof, or, if it is a lesser amount, at the original cost of the improvement less straight line depreciation over the estimated useful life of the asset according to Generally Accepted Accounting Principles, provided, however, that in no event shall any such useful life exceed 30 years.

Sec. 14. Assignment or Sale of Interests

(a)(1) The Concessioner and/or any person or entity which owns a controlling interest (as herein defined) in a Concessioner's ownership, (collectively defined as the "Concessioner" for the purposes of this section) shall not assign or otherwise sell or transfer responsibilities under this contract or the concession operations authorized hereunder, or the concessioner's assets in the concession operation, not sell or otherwise assign, transfer or encumber (including, without limitation, mergers, consolidations, reorganizations, other business combinations, mortgages, liens or collateral) a controlling interest in such operations, this contract, or a controlling interest in the Concessioner's ownership or assets, as defined herein, without the prior written approval of the Secretary. Such approval is not a matter of right; the Secretary will exercise his discretion as to whether and/or under what conditions a proposed transaction will be approved in accordance with established policies and procedures. Failure to comply with this provision or the procedures described herein shall constitute a material breach of this contract for which this contract may be terminated immediately by the Secretary without regard to the procedures for termination for default described in section 12 hereof, and, the Secretary shall not be obliged to recognize any right of any person or entity to an interest in this contract or to own or operate the operations authorized hereunder acquired in violation hereof.

(2) The Concessioner shall advise the person(s) or entity proposing to enter into a transaction which subject to subsection (a)(1) above that the Secretary shall be notified and that the proposed transaction is subject to review and approval by the Secretary. The Concessioner shall request in writing the Secretary's approval of the proposed transaction prior to consummation and shall promptly provide the Secretary all relevant documents related to the transaction, and the names and qualifications of the person(s) or entity involved in the proposed transaction. Among others, the

[14] In usual circumstances, the amount by which possessory interest will be reduced annually will be 1/30th (i.e., over 30 years). However, as our policy is to extinguish possessory interests as quickly as possible, taking into consideration the useful life of the facilities, a shorter period of time should be established when the economic conditions permit.

following documents and information shall be provided to the Secretary:

(i) All instruments proposed to implement the transaction;

(ii) An opinion of counsel from the buyer to the effect that the proposed transaction is lawful under all applicable Federal and State laws;

(iii) A narrative description of the proposed transaction and the operational plans for conducting the operation;

(iv) A statement as to the existence of any litigation questioning the validity of the proposed transaction;

(v) A description of the management qualifications and financial background of the proposed transferee, if any;

(vi) A statement as to whether the proposed transaction constitutes the sale, assignment or transfer of a controlling interest as described herein and the particulars thereof;

(vii) A detailed description of the financial aspects of the proposed transaction including but not limited to prospective financial statements (forecast) that have been examined by an independent accounting firm and that demonstrate to the satisfaction of the Director that the purchase price is reasonable based on the objective of having a satisfactory concession operation that will generate a reasonable profit over the remaining term of the contract or permit, with rates to the public not exceeding existing approved rates;

(viii) A schedule which allocates in detail the purchase price to the assets acquired, together with the basis for the allocation;

(ix) If the transaction may result in an encumbrance on the concessioner's assets, full particulars of the terms and conditions of the encumbrance; and

(x) Such other information as the Director may require.

(b) The Concessioner may not enter into any agreement with any entity or person except employees of the Concessioner to exercise substantial management responsibilities for the operation authorized hereunder or any part hereof without written approval of the Secretary at least 30 days in advance of such transaction.

(c) No mortgage shall be executed, and no bonds, shares of stock or other evidence of interest in, or indebtedness upon, the rights and/or properties of the Concessioner, including this contract, in the area, shall be issued without prior written approval of the Secretary. Approval of such encumbrances shall be granted only for the purposes of installing, enlarging or improving, plant equipment and facilities, provided that, such rights and/or properties, including possessory interests, or evidences of interests therein, in addition, may be encumbered for the purposes of purchasing existing concession plant, equipment and facilities. In the event of default on such a mortgage, encumbrance, or such other indebtedness, or of other assignment, transfer, or encumbrance, the creditor or any assignee thereof, shall succeed to the interest of the Concessioner in such rights and/or properties but shall not thereby acquire operating rights or privileges which shall be subject to the disposition of the Secretary.

Sec. 15. Approval of Subconcession Contracts

All contracts and agreements (other than those subject to approval pursuant to section 14 hereof) proposed to be entered into by the Concessioner with respect to the exercise by others of the privileges granted by this contract in whole or part shall be considered as subconcession contracts and shall be submitted to the Secretary for his approval and shall be effective only if approved. However, agreements with others to provide vending or other coin-operated machines shall not be considered as subconcession contracts. In the event any such subconcesssion contract or agreement is approved the Concessioner shall pay to the Secretary within _____ days after the _____ day of _____ each year or portion of a year a sum equal to fifty percent (50%) of any and all fees, commissions or compensation payable to the Concessioner thereunder, which shall be in addition to the franchise fee payable to the Secretary on the gross receipts of subconcessioners as provided for in section 9 of this contract.

Sec. 16. Insurance and Indemnity

(a) *General.* The Concessioner shall save, hold harmless, defend and indemnify the United States of America, its agents and employees for losses, damages or judgments and expenses on account of fire or other peril, bodily injury, death or property damage, or claims for bodily injury, death or property damage of any nature whatsoever, any by whomsoever made, arising out of the activities of the Concessioner, his employees, subcontractors or agents under the contract. The types and amounts of insurance coverage purchased by the Concessioner shall be approved by the Secretary. At the request of the Secretary, the Concessioner shall annually, or at the time insurance is purchased, provide the Secretary with a Statement of Concessioner Insurance and Certificate of Insurance as evidence of compliance with this section and shall provide the Secretary thirty (30) days advance written notice of any material change in the Concessioner's insurance program hereunder. The Secretary will not be responsible for any omissions or inadequacies of insurance coverages and amounts in the event the insurance purchased by the Concessioner proves to be inadequate or otherwise insufficient for any reason whatsoever.

(b) *Property Insurance.* The Concessioner will, in the event of damage or destruction, repair or replace those buildings, structures, equipment, furnishings, betterments and improvements and merchandise determined by the Secretary to be necessary to satisfactorily discharge the Concessioner's obligations under this contract and for this purpose shall provide fire and extended insurance coverage on both Concessioner Improvements and assigned Government Improvements in such amounts as the Secretary may require during the term of the contract. Those values currently in effect are set forth in Exhibit "E" to this contract. This exhibit will be revised at least every 3 years, or sooner, if there is a substantial increase in value.

Such insurance shall provide for the Concessioner and the United States of America to be named insured as their interests may appear. In the event of loss, the Concessioner shall use all proceeds of such insurance to repair, rebuild, restore or replace Concessioner and Government Improvements, equipment, furnishings and other personal property hereunder, as directed by the Secretary. The lien provision of section 10 shall apply to such insurance proceeds.

The Concessioner shall purchase the following additional property coverages in the amounts set forth in Exhibit "E":

1. Boiler and Machinery;
2. Sprinkler Leakage;
3. Builders' Risk;
4. Flood;
5. Earthquake;
6. Hull;
7. Extension-of-Coverage Endorsement.

(c) *Additional Property Damage Requirements—Government Improvements, Property and Equipment.* The following additional requirements shall apply to structures all or any part of which are "Government Improvements" as defined in section 4(b).

(1) The insurance policy shall contain a loss payable clause approved by the

Secretary which requires insurance proceeds to be paid directly to the Concessioner without requiring endorsement by the United States.

(2) The use of insurance proceeds for repair or replacement of Government structures will not alter their character as Government structures and the Concessioner shall gain no possessory interest therein.

(d) *Public Liability.* The Concessioner shall provide Comprehensive General (liability insurance against claims occasioned by actions or omissions of the Concessioner in carrying out the activities and operation authorized hereunder. Such insurance shall be in the amount commensurate with the degree of risk and the scope and size of such activities authorized herein, but in any event, the limits of liability shall not be less than ($_____) per occurrence covering both bodily injury and property damage. If claims reduce available insurance below the required per occurrence limits, the Concessioner shall obtain additional insurance to restore the required limits. An umbrella or excess liability policy, in addition to a Comprehensive General Liability Policy, may be used to achieve the required limits.

From time to time, as conditions in the insurance industry warrant, the Secretary reserves the right to revise the minimum required limits.

All liability policies shall specify that the insurance company shall have no right of subrogation against the United States of America or shall provide that the United States of America is named an additional insured.

The Concessioner shall also obtain the following additional coverages at the same limits as required for Comprehensive General Liability insurance unless other limits are specified below:

(1) *Product Liability*—Amount ($_____);

(2) *Liquor Legal Liability*—Amount ($_____);

(3) *Protection and Indemnity (Watercraft Liability)*—Amount ($_____);

(4) *Automobile Liability*—To cover all owned, non-owned, and hired vehicles—Amount ($_____);

(5) *Garage Liability*—Amount ($_____);

(6) *Workers' Compensation;*

(7) *Aircraft Liability*—Amount ($_____);

(8) *Fire Damage Legal Liability*—Amount ($_____);

(9) Other.

Sec. 17. Procurement of Goods, Equipment and Services

In computing net profits for any purposes of this contract, the Concessioner agrees that its accounts will be kept in such manner that there will be no diversion or concealment of profits in the operations authorized hereunder by means of arrangements for the procurement of equipment, merchandise, supplies or services from sources controlled by or under common ownership with the Concessioner or by any other device.

Sec. 18. General Provisions

(a) Reference in this contract to the "Secretary" shall mean the Secretary of the Interior, and the term shall include his duly authorized representatives.

(b) The Concessioner is not entitled to be awarded or to have negotiating rights to any Federal procurement or service contract by virtue of any provision of this contract.

(c) Notwithstanding any other provision hereof, the Secretary reserves the right to provide directly or through cooperative or other non-concession agreements with non-profit organizations, any accommodations, facilities or services to area visitors which are part of and appropriate to the park interpretive program.

(d) That any and all taxes which may be lawfully imposed by any State or its political subdivisions upon the property or business of the Concessioner shall be paid promptly by the Concessioner.

(e) No member of, or delegate to, Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

(f) This contract may not be extended, renewed or amended in any respect except when agreed to in writing by the Secretary and the Concessioner.

In witness whereof, the parties hereto have hereunder subscribed their names and affixed their seals.

Dated at _____, this _____ day of 19_____.

United States of America
By _____, Regional Director, National Park Service.

CORPORATIONS

Attest:
By _____
By _____
Title _____
Date _____

(Concessioner)

By _____
By _____
Title _____
Date _____

SOLE PROPRIETORSHIP

Witnesses:
Name _____
Address _____
Name _____
Address _____
Date _____

(Concessioner)

_____
(Name)

_____
(Title)

Partnership

Witnesses as to each:
Name _____
Address _____
Name _____
Address _____

(Concessioner)

_____
(Name)

_____
(Name)
Date _____

Exhibit "A"

Concession Authorization No.:

_____

Nondiscrimination

Section I—Requirements Relating to Employment and Service to the Public

A. *Employment:* During the performance of this concession contract the concessioner agrees as follows:

(1) The Concessioner will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin or disabling condition. The Concessioner will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, with out regard to their race, color, religion, sex, age, national origin or disabling condition. Such action shall include, but not be limited to, the following: Employment upgrading, demotion or transfer: recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Concessioner agrees to post in conspicuous places available to employees and applicants for employment, notices to be provided by the Secretary setting forth the

provisions of this nondiscrimination clause.

(2) The Concessioner will, in all solicitations or advertisements for employees placed by or on behalf of the Concessioner, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, national origin or disabling condition.

(3) The Concessioner will send to each labor union or representative of workers with which the Concessioner has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Secretary, advising the labor union or workers' representative of the Concessioner's commitments under Section 202 of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) Within 120 days of the commencement of a contract every Government contractor or subcontractor holding a contract that generates gross receipts which exceed $50,000 or more and having 50 or more employees shall prepare and maintain an affirmative action program at each establishment which shall set forth the contractor's policies, practices and procedures in accordance with the affirmative action program requirement.

(5) The Concessioner will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Concessioner will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to the Concessioner's books, records, and accounts by the Secretary of the Interior and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Concessioner's noncompliance with the nondiscrimination clauses of this concession contract or with any of such rules, regulations, or orders, this concession contract may be canceled, terminated, or suspended in whole or in part and the Concessioner may be declared ineligible for further Government concession contract in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Concessioner will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, so that such provisions will be binding upon each subcontractor or vendor. The Concessioner will take such action with respect to any subcontract or purchase order as the Secretary may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the Concessioner becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Secretary, the Concessioner may request the United States to enter into such litigation to protect the interest of the United States.

B. *Construction, Repair, and Similar Contracts:* The preceding provisions A (1) through (8) governing performance of work under this contract, as set out in Section 202 of Executive Order No. 11246, dated September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, shall be applicable to this contract, and shall be included in all contracts executed by the Concessioner for the performance of construction, repair, and similar work contemplated by this contract, and for the purpose the term "Contract" shall be deemed to refer to this instrument and to contracts awarded by the Concessioner and the term "Concessioner" shall be deemed to refer to the Concessioner and to contractors awarded contracts by the Concessioner.

C. *Facilities:* (1) Definitions: As used herein: (i) Concessioner shall mean the Concessioner and its employees, agents, lessees, subleases, and contractors, and the successors in interest of the Concessioner; (ii) facility shall mean any and all services, facilities, privileges, and accommodations, or activities available to the general public and permitted by this agreement.

(2) The Concessioner is prohibited from: (i) Publicizing facilities operated hereunder in any manner that would directly or inferentially reflect upon or question the acceptability of any person because of race, color, religion, sex, age, national origin or disabling condition; (ii) discriminating by segregation or other means against any person because of race, color, religion, sex, age, national origin or disabling condition in furnishing or refusing to furnish such person the use of any such facility.

(3) The Concessioner shall post a notice in accordance with Federal regulations to inform the public of the provisions of this subsection, at such locations as will ensure that the notice and its contents will be conspicuous to any person seeking accommodations, facilities, services, or privileges. Such notice will be furnished the Concessioner by the Secretary.

(4) The Concessioner shall require provisions identical to those stated in subsection C herein to be incorporated in all of the Concessioner's contracts or other forms of agreement for use of land made in pursuance of this agreement.

Section II—Accessibility

Title V, Section 504 of the Rehabilitation Act of 1973, as amended in 1978, requires that action be taken to assure that any *"program"* or *"service"* being provided to the general public be provided to the highest extent *reasonably possible* to individuals who are mobility impaired, hearing impaired, and visually impaired. It *does not* require architectural access to every building or facility, but only that the service or program can be provided *somewhere* in an accessible location. It also allows for a wide range of methods and techniques for achieving the intent of the law and calls for consultation with disabled persons in determining what is reasonable and feasible.

No handicapped person shall, because a Concessioner's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance or conducted by any Executive agency or by the U.S. Postal Service.

Part A

Discrimination Prohibited

A Concessioner, in providing any aid, benefit, or service, may not directly or through contractual, licensing, or other arrangements, on the basis of handicap:

1. Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

2. Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

3. Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;

4. Provide different or separate aids, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

5. Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or services to beneficiaries of the recipient's program;

6. Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

7. Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage or opportunity enjoyed by others receiving aid, benefit, or service.

Part B

Existing Facilities

A Concessioner shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not require a Concessioner to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

Exhibit "B"

Land Assignment

Note to Preparer: The land assignment may be described in narrative form and, if possible, should include a map showing the area(s) to be assigned.

Exhibit "C"

Government-Owned Structures Assigned to

_____

(Concessioner)

Pursuant To

Concession Contract No. _____

Building Number _____

Description _____

Annual Fee _____

$ _____

Total amount due pursuant to subsection xxxxxxx

Approved, effective _____

By: _____

Name of Concessioner

By _____

Title _____

United States of America

Regional Director

Region

Exhibit "D"

Pursuant to Subsection 6(a)(1)

Note to Preparer: If the Concessioner has no possessory interest assets, put "*NONE*" on this page. You will *ALWAYS* use this EXHIBIT, either with a schedule of possessory interest assets, or with the words "NONE", but *Never Leave This Exhibit Off the Contract.*

Exhibit "E"

Building Replacement Cost for Insurance Purposes

Concessioner:

Concession Contract No.: _____

The replacement costs set forth herein are established for the sole purpose of assuring property insurance coverage and shall not be construed as having application for any other purpose.

I. Government Buildings

Building No. _____

Description _____

Insurance Replacement Value [1] _____

II. Concessioner Buildings

Building No. _____

Description _____

Insurance Replacement Value [1] _____

* * * [1] or "Not to be replaced," where applicable. * * *

(Name of Concessioner _____

United States of America

Regional Director _____

By _____

Title _____

Date _____

[FR Doc. 92-20844 Filed 9-2-92; 8:45 am]

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Thursday
September 3, 1992

Part IV

Department of the Treasury

Office of Thrift Supervision

12 CFR Parts 563 et al.

Regulatory Capital: Interest Rate Risk Component, Proposed Rule; Public Information Collection Requirements Submitted to OMB for Review; Notice

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 563, 567, and 571

[No. 92-318]

RIN 1550-AA46

Regulatory Capital: Interest Rate Risk Component

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) is seeking further comment on how to incorporate an interest rate risk component into the risk-based capital rule. Adding such a component to the existing risk-based capital framework is intended to ensure that savings associations maintain levels of capital commensurate with the degree of interest rate risk to which they are exposed.

On December 31, 1990, the OTS published a proposed regulation, including a technical appendix, addressing how an interest rate risk component would be calculated and incorporated into OTS capital requirements (December 1990 Proposal). This supplemental notice of proposed rulemaking seeks public comment on modifications to the December 1990 Proposal.

Under today's notice, savings associations with a greater than "normal" level of interest rate risk exposure will be subject to an "add-on" to their risk-based capital requirement. The notice also discusses proposed modifications to some aspects of the methodology set forth in the December 1990 Proposal for calculating an association's interest rate risk exposure. OTS will also be instituting a substantially revised data collection form that will be used to calculate the interest rate risk component. Instead of this full scale reporting form, OTS is proposing to give small, highly-capitalized institutions the option of filing an abbreviated reporting form.

DATES: Comments must be received on or before November 2, 1992.

ADDRESSES: Send comments to Director, Information Services Division, Public Affairs, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; Attention Docket No. [92-318]. These submissions may be hand delivered to 1700 G Street, NW. from 9 a.m. to 5 p.m. on business days; they may be sent by facsimile transmission to FAX Number (202) 906-7753 or (202) 906-7755. Submissions must be received by 5 p.m. on the day they are due in order to be considered by the OTS. Late-filed, misaddressed or misidentified submissions will not be considered in this rulemaking. Comments will be available for inspection at 1776 G Street, NW., Street Level.

FOR FURTHER INFORMATION CONTACT: Radu Filimon, Senior Financial Economist, Policy (for questions on liabilities), (202) 906-5733; Doug Gordon, Senior Financial Economist, Policy (for questions on off-balance sheet items), (202) 906-5728; Gerald A. Hinkle, Program Analyst, Policy (for questions on off-balance sheet items), (202) 906-5774; Ed Irmler, Senior Project Manager, Policy (for questions on assets), (202) 906-5730; Elizabeth Mays, Project Manager, Policy, (for questions on assets), (202) 906-5729; Anthony G. Cornyn, Deputy Assistant Director for Policy, Risk Management, (202) 906-5727; Valerie Lithotomos, Counsel (Banking and Finance), (202) 906-6439; Deborah Dakin, Assistant Chief Counsel, (202) 906-6445; Karen Solomon, Deputy Chief Counsel, (202) 906-7240, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background
II. Purpose of Interest Rate Risk Component
III. Discussion of Interest Rate Risk Component
IV. Revisions to the OTS Model and Data Collection
V. Optional Reporting for Small, Highly-Capitalized Institutions
VI. Related Capital Amendments
VII. Issues for Further Consideration
Appendix A: Description of Reporting Form and Methodologies Used in MVPE Model
Appendix B: Draft Copy of Schedule CMR

I. Introduction and Background

This supplemental notice solicits further comment on the OTS proposal to incorporate an interest rate risk component into OTS' capital regulations. OTS believes that interest rate risk (IRR) is one of the most important risks that savings associations must control. OTS also believes that it is important, both for the protection of the insurance fund and to create appropriate incentives for prudent risk-management, that capital requirements for associations be explicitly sensitive to interest rate risk exposure.

Regulatory and Statutory Background. On December 15, 1988, the Federal Home Loan Bank Board ("Bank Board"), the predecessor agency to the OTS, proposed a risk-based capital regulation. At that time, the Bank Board intended to include an interest-rate risk component in a proposed risk-based capital regulation. On June 22, 1989, the Bank Board issued for public comment an advance notice of proposed rulemaking ("June 1989 ANPR") that described the methodologies for measuring interest rate exposure that were under consideration for inclusion in the Bank Board's proposed risk-based capital rule.

Shortly thereafter, the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") was enacted. FIRREA amended the Home Owners' Loan Act by adding a new section 5(t) that required the OTS to promulgate regulations prescribing uniform capital standards for all savings associations. FIRREA mandated that the capital standards were to include a risk-based capital standard, a leverage ratio standard, and a tangible capital standard, and that they be no less stringent than the standards applicable to national banks. FIRREA specifically provided that the risk-based capital standard of OTS may deviate from the standards applicable to national banks "to reflect interest-rate risk or other risks," as long as such deviations "shall not, in the aggregate, result in materially lower levels of capital being required of savings associations."

The OTS adopted the required capital standards for savings associations in November, 1989. The risk-based capital standard, however, did not include an interest rate risk component because the statutory deadline for adopting a capital rule did not provide sufficient time to develop fully a methodology for measuring interest rate exposure.

After that methodology was developed, OTS issued the December 1990 Proposal, which requested comment on the methodology and on how to amend the OTS capital regulation to reflect interest rate risk. Among the alternatives on which comment was sought were (i) adding an interest rate risk component to the existing 8 percent risk-based capital requirement, (ii) lowering the 8 percent risk-based capital requirement and then adding on an interest rate risk component, or (iii) adding an interest rate risk component to the leverage ratio requirement. In addition to reviewing more than 250 comment letters, the OTS held public hearings on the December 1990 Proposal in Washington, DC, and San Francisco on January 31, and February 14, 1991.

On December 19, 1991, the Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA")

was enacted. Section 305 of FDICIA requires the federal banking agencies to review their risk-based capital standards for insured depository institutions to ensure that those standards take adequate account of: (i) Interest rate risk; (ii) concentration of credit risk, and (iii) the risks of nontraditional activities. Section 305 also mandates that the federal banking agencies publish final regulations no later than 18 months after the enactment of FDICIA (June 19, 1993) as well as establish reasonable transition rules to facilitate compliance with those regulations. OTS will publish separately an advance notice of proposed rulemaking requesting comment on the most appropriate ways to deal with the concentration of credit risk and the risks of nontraditional activities.

The Proposed Interest Rate Risk Component. The December 1990 Proposal would have required all institutions, except those with no exposure to interest rate risk, to hold some amount of capital for interest rate risk. Specifically, the amount of capital that institutions would have been required to hold (*i.e.*, the IRR capital component) was an amount equal to one-half the dollar decline in the market value of portfolio equity (MVPE) resulting from a 200 basis point increase or decrease in interest rates.

Under the present supplemental proposal, only institutions with more than a "normal" level of interest rate risk will be required to maintain extra capital for interest rate risk. The consensus among the banking and thrift regulators is that the existing risk-based capital requirement, though focusing primarily on credit risk factors, is nevertheless intended to cover depository institutions with "normal" levels of interest rate risk. Accordingly, OTS is proposing that only institutions with an "above normal" level of interest rate risk exposure be required to maintain additional capital for interest rate risk under the risk-based capital framework. (The banking agencies intend to issue a similar proposal.) This capital requirement for interest rate risk would be in addition to the existing 8 percent risk-based capital requirement.

OTS proposes to measure an institution's interest rate risk using the OTS Market Value Model described in appendix A. An institution's IRR will be expressed as the change in its MVPE resulting from a hypothetical 200 basis point increase or decrease in interest rates (whichever leads to the lower MVPE) divided by the estimated market value of its assets. OTS proposes to define as "above normal" any decline in MVPE (resulting from a 200 basis point shock) that exceeds 2 percent of an institution's assets expressed in market value terms as estimated by the OTS Model.

Institutions whose measured interest rate risk is less than or equal to 2 percent will not be required to maintain additional capital for interest rate risk. Those whose measured interest rate risk exceeds 2 percent (*i.e.*, those that would suffer a loss of MVPE exceeding 2 percent of the estimated market value of their assets under a 200 basis point rate shock) will be required to hold additional capital. The IRR component that such an association will be required to maintain will be calculated as one-half of the difference between its measured IRR and 2 percent, multiplied by the market value of its assets. (For further details see Section III.)

The OTS believes that it is appropriate to measure the interest rate risk exposure of savings associations within the context of a parallel shift in the term structure of interest rates of 200 basis points. A "rate shock," or "stress test," of this magnitude is necessary to measure the ability of an institution to withstand difficult interest rate environments that might be reasonably expected to occur. Moreover, a stress test of at least this magnitude is necessary to reveal the potential impact on an institution's financial condition of mortgage prepayment options, interest rate floors and caps, and other financial contracts with option-like features that would result from a significant movement in interest rates.

Model and Data Collection Improvements. OTS has undertaken a major initiative to upgrade the interest rate risk model and reporting form that will be used by OTS to determine the interest rate risk capital component under this proposal. This initiative was taken in response to comments received on the December 1990 proposal (which contained a description of the model) and discussions held with interest rate risk experts from the industry.

Although many commenters found the prior OTS Model to be reasonably accurate and agreed with the methodologies and assumptions underlying the model, many offered suggestions for ways to improve the reporting form that collects input data for the model. A point made by these commenters was that if regulators intend to incorporate an interest rate risk component into the risk-based capital rule they should ensure that they are in position to assess accurately the interest rate exposure of individual institutions. Some argued that the prior OTS Model was based on overly crude data that could lead to counterproductive results.

For the most part, the suggestions for improving the data collection form (Schedule MR) focused on gathering data in a more precise and efficient manner. A number of commenters also suggested that individual savings associations be given the option to report additional financial data to OTS that would improve the Model's accuracy. Several commenters noted that the reporting of more precise data would reduce the number of assumptions that would need to be made by the Model on the characteristics of financial instruments.

As discussed further in Section IV below and in Appendix A, OTS has, as a consequence, made major revisions to the reporting form and the Model to accommodate these suggestions.

OTS believes that it is important to employ an accurate interest rate risk model for purposes of determining an institution's interest rate risk component under the risk-based capital rule because:

(1) failure to identify institutions with high exposure could prove costly to the insurance fund and taxpayers;

(2) significant flaws in the output of an interest rate risk model could lead to a misallocation of capital, with institutions being required to hold more (less) capital than necessary for a particular level of risk;

(3) an overly crude model could lead to inappropriate asset/liability decisions on the part of savings associations; and,

(4) the growing complexity of financial instruments makes it increasingly difficult to analyze interest rate risk without use of a relatively sophisticated model.

Implementation. OTS intends to publish a final regulation incorporating the interest rate risk component into the risk-based capital rule in late 1992 or early 1993 with an effective date of January 1, 1994. In addition, OTS intends to implement a new reporting form (Schedule CMR) in March, 1993 that will provide information needed by OTS to better measure the interest rate risk exposure of savings associations. During 1993, OTS intends to report the results of the revised model to institutions and use those results for supervisory purposes, as we have during 1991 and 1992.

Once the interest rate risk component becomes effective, OTS intends to reduce or eliminate the leverage ratio requirements to the extent permitted by the agency's statutory authority at that time.

Based on data as of March, 1992, OTS estimates that approximately 45 percent of all savings associations would be subject to an interest rate risk component, requiring them to maintain capital in an amount that would exceed their existing minimum risk-based capital requirement. Many of these institutions however, have sufficient capital to cover the incremental amount that would be required by the interest rate risk component and, therefore, would not be required to raise additional capital.

Institutions that do not have sufficient capital to satisfy the interest rate risk component would be required to submit a capital plan describing their strategy to achieve compliance. Such a plan is required under current regulations for any institution that fails its capital requirements. Institutions could achieve compliance by raising additional capital, reducing their interest rate risk exposure, reducing their risk weighted assets, or a combination of these.

OTS proposes that the interest rate risk component be computed quarterly and that the capital requirement for interest rate risk have an effective lag of one quarter (*i.e.*, the requirement would go into effect on the last day of the quarter that follows the reporting date of Schedule CMR). For example, a capital requirement that is calculated using data from the March 31, 1994 Thrift Financial Report would become effective on June 30, 1994.

II. Purpose of Interest Rate Risk Component

As a result of statutory and regulatory constraints dating back to the 1930s, savings associations have long operated as specialized financial intermediaries, gathering funds, mostly short-term deposits, and making long-term mortgage loans. Until the late 1970s, this practice worked reasonably well. Indeed, the industry prospered throughout most of the postwar period, in part, because interest rates were relatively stable and the average rate paid on short-term deposits rarely rose above the rate earned on mortgages. The practice of funding long-term mortgages with short-term deposits, however, left the thrift industry vulnerable to rising interest rates.

The earnings of most savings associations are exposed to interest rate risk because their liabilities reprice faster than their assets when interest rates change. If interest rates rise, their cost of funds increases more rapidly than their yield on assets, thereby reducing net interest income. This rise in interest rates adversely affects the economic value of most savings associations because an increase in interest rates will cause the present value of assets to decline more than the present value of liabilities.

The industry's vulnerability to rising rates became obvious in the late 1970s and early 1980s when interest rates rose dramatically. The industry experienced sharply higher funding costs and significant deposit disintermediation. Industry profitability plunged and turned negative in 1981 and 1982. Industry losses for the 1981–82 period totaled $8.9 billion. On a mark-to-market basis, however, the losses to net worth were far greater, with some estimates exceeding $150 billion.

Although the stress of the 1981–82 period prompted many industry participants to adopt interest rate risk management programs and hedging strategies, the interest rate exposure of many associations remains a significant risk today. Accordingly, OTS believes that the credit risk component of the risk-based capital requirement should be supplemented by a component that addresses the interest rate exposure of the thrift industry. OTS, therefore, proposes to incorporate an interest rate risk component into its risk-based capital rule.

The principal objectives of adopting an interest rate risk component are to:

(1) Make capital requirements sensitive to differences in interest rate exposures among savings associations;

(2) discourage savings associations from taking excessive interest rate risk by making such behavior more costly; and

(3) ensure that adequate capital is maintained in savings associations to reduce the exposure of the deposit insurance fund and to protect the taxpayers' interests.

In addition to these objectives, OTS believes that the interest rate risk component would create better incentives for savings associations to make decisions on the basis of their economic merit rather than on their accounting effect. All too often depository institutions, including savings associations, enter into transactions that generate high levels of current income at the expense of long-run profitability. By tying the capital requirements to the effect of potential interest rate movements on the present value of a savings association's net worth, the interest rate risk component should encourage associations to give more consideration to the effect of any portfolio changes on the economic value of the association.

III. Discussion of Interest Rate Risk Component

Under the proposed amendment to the risk-based capital rule, a savings association's risk-based capital requirement would be comprised of two components: a credit risk component and an interest rate risk component.

The OTS proposes to measure a savings association's interest rate exposure in terms of the sensitivity of the market value of portfolio equity ("MVPE") of an association to changes in interest rates. The market value of portfolio equity is defined as the net present value of an association's assets, liabilities, and off-balance sheet contracts.

The market price of most financial instruments changes as market interest rates change. For example, the price of a Treasury bond will fall (rise) if interest rates rise (fall). The greater the sensitivity of an instrument's market value to interest rate changes, the greater is the interest rate risk inherent in that instrument. For the typical savings association, the net market value of its portfolio of financial instruments accounts for most of the association's total market value. Thus, since MVPE includes the value of all of an association's financial instruments, measuring the sensitivity of MVPE provides a good measure of the association's exposure to interest rate changes. Furthermore, because MVPE is equal to the present value of all future cash flows from existing financial instruments, it also provides a leading indicator of an association's future income stream.

Calculation of Changes in Market Value of Portfolio Equity. The general formula for computing MVPE is as follows:

MVPE = Present value of expected cash inflows from *existing* assets
minus
the present value of expected cash outflows from *existing* liabilities
plus
the present value of net expected cash inflows from *existing* off-balance sheet contracts.

OTS will calculate changes in an association's MVPE based on financial data submitted by the association on Schedule CMR of the Thrift Financial Report. Changes in MVPE are calculated using the following steps.

Step 1: The savings association's "base case" market value of portfolio equity will be estimated at the end of the quarter. Market value estimates will be based on the level of interest rates at the quarter-end date. This is referred to

as the "base case" interest rate scenario.

Step 2: The effect of an immediate parallel upward shift in the term structure of interest rates (*i.e.*, the zero-coupon Treasury yield curve) on the association's MVPE will be estimated by adding 200 basis points to the quarter-end interest rates and recalculating the association's MVPE. Such an immediate parallel shift in interest rates, in either the upward or downward direction, will hereafter be referred to as an "interest rate shock."

Step 3: The effect of a downward interest rate shock on the association's MVPE will be estimated by subtracting 200 basis points from quarter-end interest rates and recalculating the association's MVPE.

Step 4: The decline in MVPE will be determined by taking the lesser of the MVPEs in the two ("shocked") rate scenarios computed in Steps 2 and 3 and subtracting it from the base case MVPE value computed in Step 1.

Proposed Interest Rate Risk Capital Component. The December 1990 Proposal proposed that institutions be required to maintain an interest rate risk component calculated as one-half the dollar decline in their MVPE (as calculated in Step 4). OTS now proposes to modify the calculation of the interest rate risk (IRR) component of the risk-based capital rule that was described in the December 1990 Proposal.

The IRR capital component described in the December 1990 Proposal would have required all institutions, except those exhibiting no decline in MVPE, to maintain some amount of capital for IRR. The capital required under an institution's IRR component would have been incorporated into its risk-based capital requirement by adding it to a credit risk component consisting of some percentage of risk-weighted assets. (The December 1990 Proposal requested comment on, among other things, whether the credit risk component should remain at the full 8 percent of risk-weighted assets or whether it should be reduced to some smaller percentage.)

As a result of comments received on the December 1990 Proposal and discussions with the bank regulatory agencies, OTS has decided to leave the credit risk component for savings associations unchanged at a fully phased-in level of 8 percent of risk-weighted assets. The consensus among federal banking and thrift regulators is that at this level the credit risk component is sufficient to cover a "normal" amount of IRR. OTS has, therefore, decided that only institutions with more than a normal amount of IRR should maintain extra capital for IRR. All other institutions would be responsible for maintaining only the 8 percent credit risk component. The agencies have also agreed that, once they have sufficient experience with an interest rate risk component, they will reduce or eliminate the leverage ratio.

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Computation of the Interest Rate Risk Capital Component. In order to implement this approach, OTS proposes to measure an institution's IRR as the change in its MVPE under a plus or minus 200 basis point interest rate shock (whichever leads to the lower MVPE) divided by the estimated market value of its assets. That is,

$$\text{Measured IRR} = \frac{\text{Decline in MVPE Caused by Adverse Rate Shock}}{\text{MV of Assets}}$$

OTS proposes that a "normal" level of IRR be defined as measured IRR of 2 percent or less. (That is, an institution whose MVPE declines by no more than 2 percent relative to the market value of its assets would have a "normal" level of IRR.) The amount by which an institution's measured IRR exceeds the 2 percent normal level will be defined as the institution's "excess IRR." That is,

$$\begin{aligned}\text{Excess IRR} &= \text{Measured IRR} - \text{Normal IRR}\\ &= \text{Measured IRR} - 0.02\end{aligned}$$

Only institutions whose measured IRR exceeds 2 percent will be required to maintain an IRR component. The amount of additional capital (or IRR component) that such an association will be required to maintain will be calculated as one-half its excess IRR times the market value of its assets. That is,

$$\text{IRR Component} = \frac{\text{Excess IRR}}{2} \times \text{MV of Assets}$$

For example, suppose that an institution has a base case MVPE of $10 million. MVPE rises to $12 million in the -200 b.p. scenario and falls to $7 million in the +200 b.p. scenario. The estimated market value of the institution's assets in the base case is $100 million and it has $95 million in GAAP assets and $50 million in risk-weighted assets.

This institution's risk-based capital requirement (including the IRR component) would be $4.5 million and is calculated as follows.

1. The relevant interest rate scenario for computing the IRR component is the +200 b.p. one, because it results in a lower MVPE than the -200 b.p. scenario (in which MVPE is projected to increase).

2. The institution's measured IRR is 3 percent. That is:

$$\text{Measured IRR} = \frac{\text{Decline in MVPE Caused By Adverse Rate Shock}}{\text{MV of Assets}}$$

$$= \frac{(\$10 - \$7)}{\$100} = \frac{\$3}{\$100}$$

$$= 0.03 \text{ or } 3\%$$

3. Because its measured IRR exceeds the 2 percent normal level, this association would be required to maintain an interest rate risk component. The amount of this additional capital

requirement would be $.5 million, and is calculated as follows:

$$\text{IRR Component} = \frac{\text{Excess IRR}}{2} \times \text{MV of Assets}$$

$$= \frac{(.03 - .02)}{2} \times \$100$$

$$= \$.5 \text{ million}$$

4. The institution's credit risk component is $4 million (i.e., 8% x $50 million in risk-weighted assets).

5. The institution must, therefore, maintain a minimum of $4.5 million in capital. That is,

$$\text{Minimum Capital Required} = \text{Credit Risk Component} + \text{IRR Component}$$

$$= \$4.0 + \$.5$$

$$= \$4.5 \text{ million}$$

OTS proposes that the capital requirement that is calculated using this process will go into effect on the last day of the quarter that follows the reporting date of Schedule CMR. That is, a capital requirement that is calculated using data from the March 31 Thrift Financial Report becomes effective on June 30 of that year.

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IV. Revisions to the OTS Model and Data Collection

As a result of comments received on our December 1990 Proposal, OTS has made a number of substantial changes to the OTS model and data collection. We believe these changes will both improve the accuracy of the model and result in data collection that is easier for thrifts to provide. The new reporting form, Schedule CMR, collects data in a less aggregate manner than the current form, Schedule MR. With the new form, institutions will need to perform fewer calculations to group together financial instruments for reporting purposes, and the OTS model will have more detailed input data that will result in more accurate interest rate risk estimates.

Two important changes to the reporting form concern the reporting of mortgages and of off-balance sheet instruments. On Schedule MR (the current reporting form), all fixed-rate single family mortgage loans and securities are grouped together and reported as a single balance. On the new Schedule CMR, institutions will report mortgage loans and securities separately, and will report 30-year, 15-year, and balloon mortgages as separate categories.

In the off-balance sheet section of the current Schedule MR, institutions aggregate positions that have similar, but not identical characteristics. The present OTS model must make assumptions about the type of position being reported, leading to possible errors in evaluating those positions. Schedule CMR will collect off-balance sheet data in a way that permits institutions to list their off-balance sheet positions individually. Not only does this approach simplify the reporting of these positions, it eliminates the need for the Model to make assumptions about the nature of the positions being reported, and results in greater accuracy.

Appendix A provides a detailed description of these changes. A draft copy of the revised Schedule CMR is in Appendix B. The revised Schedule CMR and instructions are being provided separately to each thrift institution and are available to others upon request.

V. Optional Reporting for Small, Highly-Capitalized Institutions

OTS is proposing that small, highly-capitalized institutions be given the option to file an abbreviated Schedule CMR should they choose not to file Schedule CMR. The abbreviated form would be filed quarterly and would be used to identify institutions having potentially high interest rate risk that should be required to complete Schedule CMR.

OTS solicits comment on whether the abbreviated form should be the same reporting form that will be used by the federal banking agencies to implement their IRR component, or, alternatively, whether OTS should develop a one-page reporting form that would be more consistent with Schedule CMR and the Thrift Financial Report.

To qualify for an exemption, an institution must have less than $300 million in assets and a risk-based capital ratio in excess of 12 percent. Regional Directors would retain the discretion to require any otherwise qualifying institution to file Schedule CMR if there is a reason to be concerned about the interest rate exposure of the institution.

OTS is proposing this alternative approach for small, highly capitalized institutions in recognition of the reporting burden of Schedule CMR. Although using a short reporting form for certain institutions involves certain risks, OTS believes that such risks are minimal in light of the stringent qualification criteria and the option for OTS to require more detailed data. OTS also believes the regulatory risks of collecting less detailed information from these institutions are outweighed by the benefits of reduced reporting burden for small institutions.

Nevertheless, OTS strongly believes that all institutions regardless of size or financial condition need to be in a position to measure and monitor their interest rate risk exposure.

VI. Related Capital Requirements

OTS also proposes to replace Thrift Bulletin 13 with a new Section 571.3 of the OTS regulation, 12 C.F.R. 571.3, that sets forth the responsibilities of the board of directors and management with regard to interest rate risk.

In addition, OTS is proposing to change the risk-weight assigned to certain securities in the OTS risk-based capital rule. In its current risk-based capital rule, OTS places securities with residual characteristics, as well as all stripped mortgage-backed securities, in higher risk-weight categories than other mortgage-related securities. The OTS made this choice because the value of these securities generally exhibits an extraordinarily high degree of volatility due to interest rate risk. OTS subsequently issued further guidance in Thrift Bulletin 38 defining "residual characteristics" with respect to certain collateralized mortgage obligations ("CMOs") and real estate mortgage investment conduits ("REMICs"). In the preamble to the current risk-based capital rule, OTS noted that it would reconsider this higher risk-weight classification for such instruments upon adoption of an explicit interest rate risk component.

Because the interest rate risk component currently being proposed measures the interest rate exposure of the total portfolio, it will reflect the effect of the instruments discussed in the previous paragraph. OTS, thus, believes that special risk weightings for those instruments will be unwarranted. OTS proposes, therefore, that upon implementation of the interest rate risk component, interest-only and principal-only stripped mortgage-backed securities and tranches of CMOs and REMICs with residual characteristics would be assigned risk weights that reflect only the credit risk of such instruments.

VII. Issues for Further Consideration

The OTS requests comments on all aspects of the proposal. In addition, specific comments are requested on the following issues:

1. The proposal would measure an institution's IRR exposure within the context of hypothetical parallel shifts in the Treasury term structure of plus and minus 200 basis points. Is the 200 basis point shift appropriate or should the rate shift be narrower or broader (*e.g.*, 100 basis points or 300 basis points)? Would a 100 basis point shift be too narrow to provide a meaningful IRR stress test? Would a 100 basis point stress test be too narrow to properly assess the IRR exposure of institutions—particularly institutions with significant holdings of mortgage assets and other financial instruments that contain options or option-like features? Would a 300 basis point shift be too severe and unlikely to persist for an extended period of time to be a reasonable test?

2. Should OTS have the flexibility to change the parameters for the stress test that is used to measure IRR exposure for capital purposes in light of interest rate levels? For example, would it be appropriate to adopt a stress test of plus 200 basis points and minus 100 basis points when interest rates are at low levels because the likelihood of a 200 basis point decline in interest rates is less than a 200 basis point rise in rates?

3. For purposes of determining an IRR component, should an institution's IRR exposure be measured within the context of a non-parallel shift in the yield curve? If so, how should such a non-parallel shift be defined? How would an institution's capital requirement be determined using a non-parallel shift?

4. Under the proposed rule, the amount of capital that an institution would be required to hold for IRR, that is, the IRR component, would become effective one quarter after the quarter-end date of the financial statements on which the IRR component is based. This one quarter lag is designed to provide institutions time to plan for capital needs.

(a) Instead of a one quarter lag, would it be better to make the IRR component effective immediately (*i.e.*, a contemporaneous requirement)?

(b) Should the IRR component be based on a moving average of the last two or three quarters (with or without a lag) in order to moderate the potential quarter-to-quarter variability of the IRR component?

(c) Instead of an explicit formula for computing an IRR component, should an institution's capital requirement be determined on a case-by-case basis after, for example, it has been undercapitalized for two or three successive quarters?

5. Should any institutions be given the option of filing an abbreviated Schedule CMR? If so, should the option be based on an institution's asset size, its capital position, both size and capital position, or some other criteria?

6. Should OTS place a percentage limit, or cap, on the amount of capital that an institution would be required to hold for IRR exposure? If so, what is the appropriate level of such a cap?

7. Should OTS translate an institution's measured IRR into a component of the regulatory capital requirement using (a) the formula shown in Section III above or (b) a "step function" schedule that would set different capital requirements for different, broadly defined risk categories? For example, once an association's measured IRR has been calculated, its IRR component might be determined according to the following schedule, which approximates the formula in Section III.

INTEREST RISK COMPONENT

If an institution's IRR sensitivity percentage is between	Its IRR component as a percent of the MV of its assets is
0.0 and 2.00	0.0
2.01 and 3.00	0.5
3.01 and 4.00	1.0
4.01 and 5.00	1.5
5.01 and 6.00	2.0
6.01 and 7.00	2.5
7.01 and Above	3.0

Note that the schedule provides a cap on the IRR component of 3 percent of the market value of assets.

8. Should institutions that fail to submit a correct Schedule CMR on a timely basis be subject to a specific, "default" capital charge?

9. Should OTS establish an "appeals process" for institutions that disagree with its assessment of their interest rate risk exposure? If so, how should it be structured to be administratively feasible?

10. Should mortgage-backed securities with residual characteristics and stripped mortgage-backed securities be assigned a 20 percent risk-weight under the risk-based capital rule once an IRR component is added to the risk-based capital rule? (Such securities are currently assigned a risk-weight of 100 percent because of their interest rate risk.) If so, should the 20 percent risk-weight be limited to those institutions that (a) have the capability to estimate the market value of such securities under alternative interest rate scenarios and (b) report such estimates to OTS on Schedule CMR?

11. OTS recently issued a notice of proposed rulemaking on Prompt Corrective Action to implement section 38 of the Federal Deposit Insurance Act. Section 38 requires OTS and the other federal banking agencies to take certain supervisory actions when institutions falls within one of five capital categories. The categories are defined in terms of specific capital ratios. The thresholds, or boundaries, for four of the five categories are defined in terms of risk-based capital ratios and leverage ratios. For example, an institution must have a risk-based capital ratio of a least 8 percent to be considered "adequately capitalized." Given the fact that institutions with different levels of interest rate risk exposure would have different IRR components, how should the risk-based capital thresholds for prompt corrective action be changed or defined once an IRR component is added to the risk-based capital framework? (Commenters should also address this issue in commenting on the proposed rule on Prompt Corrective Action.)

12. Are the complexity of the OTS Model and the more detailed data reporting it requires vis a vis the banking agencies' proposal justified by the presumably higher interest rate exposure of savings institutions compared to that of commercial banks? Should OTS consider adopting a less complex system for measuring institutions' interest rate exposure? While this might pose less of a burden for the thrift industry it could produce less accurate results.

Appendices

To submit comments on the proposed information collection requirements appearing in the following appendices, please refer to the notice document entitled "Thrift Financial Report (TFR)" published elsewhere in this issue of the **Federal Register**.

Appendix A—Reporting Form—Schedule CMR

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A. The Reporting Form (Schedule CMR)

Schedule MR is part of the Thrift Financial Report filed by all OTS-regulated savings institutions. It provides information about the interest rate, repricing, and maturity characteristics of financial instruments held by savings associations. The proposal published in December 1990 to incorporate an interest rate risk component into risk based capital was based on the data reported on Schedule MR.

Many of the comment letters received in response to the December 1990 Proposal argued that the Schedule MR data are too highly aggregated to be used to calculate a precise measure of interest rate risk. For example, some commenters criticized the data on adjustable-rate mortgages for lacking detail on certain ARM characteristics such as margins and periodic and lifetime caps and floors. Others stated that the use of a benchmark approach to value CMOs and residuals was inadequate to gauge the sensitivity of these complex instruments. Still others pointed out that the data collected on off-balance sheet instruments are not sufficiently detailed to allow OTS to produce accurate estimates of their sensitivity. In general, commenters indicated that if capital requirements are to be based on institutions' estimated interest rate exposures, OTS should collect the necessary data to produce as accurate an estimate as practicable.

In response to these and other comments, OTS has revised the reporting schedule to collect data in a more precise, less aggregated manner. The new schedule is called Schedule CMR, and collects information on a consolidated basis for the thrift, including the parent thrift, its finance subsidiaries, its first-tier subsidiaries and lower-tier entities of first-tier subsidiaries (but excluding the holding company and its affiliates). The "maturity bucket" approach followed in Schedule MR, where by balances are grouped according to their time to maturity or next repricing, has been eliminated. This permits OTS to collect information about other characteristics of financial instruments that are needed to estimate market value sensitivities without a large increase in the number of items collected. Schedule CMR will collect 605 items (excluding the Optional Supplemental Reporting section described below), while Schedule MR collects 612 items. Schedule CMR is attached as Appendix B.

In addition to sections for assets, liabilities, and off-balance sheet instruments, Schedule CMR includes two new sections not included in Schedule MR. In the section called "Reporting of Market Value Estimates" institutions can report their own market value estimates of certain complex financial instruments (such as collateralized mortgage obligations) in each of the alternative interest scenarios considered by the OTS Model. These estimates will be used in calculating institutions' interest rate exposure estimates. In the "Optional Supplemental Reporting" section, institutions have the option of reporting data in an even more disaggregated manner than in the assets and liabilities sections of Schedule CMR for certain types of instruments.

Some of the more significant improvements in data collection for individual financial instruments made by Schedule CMR relative to Schedule MR are described below. For information on how the OTS model will use the CMR data to value financial instruments, see the descriptions of methodologies for individual instruments in Section V.

1. Assets

Fixed-Rate Single Family First Mortgages

Schedule CMR will collect separate information on 30-year, 15-year, and balloon mortgages by coupon range. Information on mortgage loans and securities will be collected separately within each of these categories. Schedule CMR will also distinguish FNMA and FHLMC from GNMA securities (and conventional from FHA/VA loans), and establish a separate category for construction and land loans (currently aggregated on Schedule MR with permanent mortgages).

Adjustable-Rate Single Family First Mortgages

Schedule CMR will collect information by type of index and distinguish loans from securities, and "teaser rate" from non-teaser rate ARMs. CMR will collect information on margins specific to each type of ARM as well as more detailed information on lifetime rate caps and floors and on periodic rate caps and floors.

Other Mortgages and Nonmortgage Loans

Schedule CMR will distinguish adjustable-rate from fixed-rate loans for all types of multifamily and nonresidential mortgages and nonmortgage loans. CMR will collect indexes to which adjustable-rate loans are tied, as well as their reset frequency and average margin. CMR will also collect separate information on fully-amortizing and balloon multifamily and nonresidential mortgages. In addition, institutions may report balances further disaggregated by index type and by type of consumer loan (*e.g.*, auto, credit card) in the Optional Supplemental Reporting Section of Schedule CMR.

Mortgage Derivative Securities

Schedule CMR will require institutions to report their own estimates of the market value of their mortgage derivative products in each of the nine interest rate scenarios evaluated by the OTS Model if they exhibit any of the following conditions.

(1) Assets exceed $500 million;

(2) They hold "high-risk" mortgage derivative securities acquired after December 31, 1988; or

(3) The book value of their mortgage derivatives exceeds five percent of assets.

Other institutions may optionally do so.

Cash, Deposits, and Securities

Schedule CMR will group these assets into seven categories based on their cash flow characteristics and credit risk so that appropriate assumptions may be applied in estimating their market values sensitivities.

2. Liabilities

Certificates of Deposits (Fixed-Rate)

Schedule CMR will collect information on original maturity, early withdrawal penalties, balances in brokered deposits, and, at the reporting institution's option, on early withdrawals and balances in new accounts.

Fixed-Maturity, Variable Rate Liabilities

Schedule CMR will distinguish variable-rate CDs, FHLB advances, and other borrowings, and will collect information on their index rates, margins, reset frequencies, and months to next reset.

Demand Deposits

Schedule CMR will distinguish interest bearing from noninterest bearing deposits and, at the reporting institution's option, will collect information on new accounts that will be used in the future to estimate institution-specific attrition rates.

Escrow Accounts

Schedule CMR will separately collect information on escrow accounts for mortgages held in portfolio, for mortgages serviced for others, and other escrow accounts.

3. Off-balance Sheet Contracts

The off-balance sheet section of the reporting form has been redesigned to collect information in a "contract specific" manner. That is, institutions will report each OBS position separately on Schedule CMR, along with information required to value the position.

To determine the market value of an OBS contract, information is needed on the type of contract, its maturity, and the interest rate and price specified in the contract. Schedule CMR will use four-digit codes to distinguish 277 different OBS contracts (compared to only 28 on Schedule MR). Institutions will report a contract code for each type of contract, and report the notional principal amount, maturity, price, and rate of the position held. Any OBS contract held by an institution for which there is no contract code will be valued by the institution and be reported in the section titled "Reporting of Market Value Estimates." This information will enable OTS to provide substantially more accurate estimates of the market values of OBS contracts and their sensitivity to changes in interest rates than is currently possible using data from Schedule MR.

B. Methodologies for Estimating MVPE

With a few exceptions, the general methodologies proposed for estimating the market values and market value sensitivities of assets, liabilities, and off-balance sheet instruments are the same as described in the December 1990 Proposal. Most of the modeling changes from the 1990 Proposal are the result of the adoption of the new reporting form, Schedule CMR, which permits collection of additional information on the characteristics of financial instruments held by savings associations. The following sections summarize those methodologies in nontechnical language, and describe how the new data will be used. For a more technical description of the methodologies, see the December 1990 Proposal.

1. Overview

A fundamental characteristic of all financial instruments is that they give rise to cash flows. The value of any financial instrument can be estimated by projecting the amount and timing of future net cash flows associated with the instrument, and discounting those cash flows with appropriate discount rates. This procedure for estimating the value of a financial instrument is commonly referred to as discounted cash flow analysis, or present value analysis. The basic formula for the present value of a financial instrument is as follows:

$$(1) \quad PV = \frac{CF_1}{(1+i)} + \frac{CF_2}{(1+i)^2} + \ldots + \frac{CF_n}{(1+i)^n}$$

where PV is the present value of the instrument; CF_1 is the first cash flow receipt or payment; CF_2 is the second receipt or payment, and so forth; and it is the yield at which the cash flows are discounted. The discounted cash flow approach will be used by the OTS Model to estimate the market value of most assets, liabilities, and off-balance sheet contracts.

The discount rate is the rate of return necessary to induce investors to hold a financial instrument. For any given instrument, the required rate of return is equal to the risk-free rate plus the risk premium necessary to compensate the investor for any additional risk (*e.g.*, credit risk, liquidity risk) associated with the particular instrument.

The discount rate will rise or fall with the general level of interest rates. As interest rates rise, investors require higher rates of return, and therefore, use higher discount rates to value cash flows expected from financial instruments. This causes the value of those cash flows, and thus the market price of the instruments, to decline. The reverse is true for a decline in interest rates. Of course, the size and timing of the cash flows themselves may change as market interest rates change. Such changes could result from changes in prepayment rates, for example, or from the repricing of adjustable-rate instruments.

OTS still proposes to employ two cash flow-based valuation methodologies: (1) A static discounted cash flow analysis, and (2) an option-based pricing analysis, which is a form of discounted cash flow analysis modified to value assets that contain embedded options. In addition, there is a third type of valuation methodology, the Black-Scholes model, that is used to value exchange traded options and some other off-balance sheet instruments. The approach selected for each type of financial instrument will depend on the nature of the instrument and the availability of data.

2. Static Discounted Cash Flow Analysis

Under the static discounted cash flow approach, the market value of a financial instrument is calculated as the present value of the instrument's expected cash flows. The present value is determined by discounting the cash flows the instrument is expected to generate by the yields currently available to investors from other instruments of comparable risk and duration. To calculate the present value, therefore, information is needed about the size and timing of cash flows and about the appropriate discount rate.

For the purposes of determining the interest rate risk component, cash flows will be modeled under the three interest rate scenarios described in Section III (*i.e.*, the base case, and plus and minus 200 basis point).[1] Number each scenario, a single path of future interest rates will be assumed based the Treasury yield curve, plus or minus the rate shock for that scenario. Cash flows will be calculated under each scenario based upon the assumed interest rate path depicted in that scenario.

Cash flows may differ across scenarios for two reasons. First, loan prepayment and deposit attrition rates will differ, since borrowers and depositors will make different decisions about these actions under different interest rate environments. Such differences in customer behavior will be modeled by specifying a relationship between the interest rate scenario and the rates of prepayment and attrition, and will thereby change the magnitude and timing of principal and interest flows. Second, interest payments will differ across scenarios as adjustable-rate instruments reprice in future periods.

Coupons of adjustable-rate instruments will be equal to the projected value of the index to which the instrument is tied, plus the margin

[1] OTS intends to continue to model MVPE in nine interest rate scenarios (base case and plus and minus 100, 200, 300 and 400 basis point rate shocks) for information purposes, and provide the results to thrifts as we have since early 1991.

reported by institutions. In general, indices will be projected by relating them to the Treasury implied forward rates.[2]

The basic principle behind choosing discount rates is that they should represent the yields obtainable from instruments with the same risk and duration as those of the cash flows being discounted. Thus, if one were calculating the present value of a U.S. Treasury security, an appropriate sequence of discount rates for each of its cash flows would be the sequence of zero-coupon Treasury rates with maturities corresponding to the dates on which each cash flow is anticipated. The present value calculation in this sample differs slightly from that in equation (1), above, and is illustrated as follows:

$$(2) \quad PV = \frac{CF_1}{(1+i_1)} + \frac{CF_2}{(1+i_2)^2} + \ldots + \frac{CF_n}{(1+i_n)^n}$$

The difference between this calculation and equation (1) is that subscripts have been added to the discount rates, i through i_n, to denote that each cash flow is being discounted by a different rate. In this example, the i variables represent the zero-coupon Treasury rate with maturities corresponding to the dates on which cash flows will be generated by the security being valued.

OTS proposes that the discount rates of all assets will consist of the zero-coupon Treasury rates observed as of the reporting date, plus a spread to account for the risk difference between the instrument being valued and Treasury securities.

For each type of asset, the spread to the zero-coupon Treasury curve will be unique. This spread will be calculated in one of two ways depending on the availability of market data. Where market price quotes are readily available for instruments with the same characteristics as those being valued (*e.g.*, single family mortgage loans and securities, and multifamily mortgage loans), the spread will be calculated so that the sum of the discounted cash flows (calculated given maturity, amortization, prepayment, and repricing characteristics) will equal the observed market price.

For instruments for which reliable price quotes are not available (*e.g.*, consumer and commercial loans), current lending rates on similar assets will be used to calculate the spread. For each type of asset, the spread will be calculated so that, using the current market rate to calculate cash flows, the sum of the discounted cash flows will equal par, or 100, since that is the value of a newly issued loan or security. Current market rates are available from the Thrift Financial Report or through surveys, such as that conducted by the Federal Reserve on current market rates of commercial and consumer loans.

On the liability side of the balance sheet, cash flows will be discounted using zero-coupon LIBOR (London Interbank Offered Rates) because it represents the marginal cost of funds to credit-worthy depository institutions.

It will be assumed that the risk premium required by investors will not change under the three alternative interest rate scenarios. Thus, for the alternative rate scenarios, each discount rate will be calculated by simply summing the appropriate base case zero-coupon rate, the spread, and the amount of the interest rate shock (i.e., +200 or −200 basis points). As discussed above, under the alternative interest rate scenarios, cash flows must also be revised to reflect different loan prepayment or deposit attrition rates and, if applicable, to reflect repricing of the instrument. To calculate the present value in the alternative rate scenario, the revised cash flows are then discounted by the new discount rates.

OTS proposes to use the static discounted cash flow approach to value non-mortgage loans and certain mortgage loans that have insufficient data to apply the option-based approach, all liabilities, and several off-balance sheet instruments.

3. Option-Based Pricing Analysis

The option-based pricing approach—also known as option-adjusted spread (OAS) methodology—is a technique for valuing assets that contain embedded options. Perhaps the most significant embedded options from the perspective of savings associations are the prepayment options contained in mortgages and mortgage-related securities and the interest rate caps on adjustable-rate mortgages. Prepayment options introduce significant uncertainty into the timing of mortgage cash flows. When mortgage rates fall significantly, mortgage prepayments typically accelerate, forcing associations to reinvest the proceeds of the prepayments at lower rates. An important aspect of valuing a mortgage (or mortgage-related security), therefore, is determining the appropriate value of the option component of the mortgage.

In large part, the value of a prepayment option depends on the volatility of interest rates. When interest rate volatility increases, homeowners are more likely to prepay their mortgages. This is because there is a greater chance that mortgage rates will fall sufficiently below the rates on existing mortgages to induce prepayments. Thus, higher interest rate volatility benefits homeowners to the detriment of thrifts, banks and other mortgage investors.

Option-based pricing models are designed to provide improved mortgage valuation estimates by taking interest rate volatility into account. These models use an interest rate simulation program to generate numerous interest rate paths that, in conjunction with a prepayment model, are used to estimate mortgage cash flows along each path.[3] These each flows are then discounted and averaged to arrive at a single mortgage price.

By estimating the value of a mortgage over numerous possible interest rate paths, an option-based model provides a more comprehensive and accurate estimate of the market value of a mortgage than could be derived from a static cash flow model, which assumes a single interest rate and prepayment path. (In fact, the option-based approach actually repeats the static cash flow approach many times with different interest rate paths and averages the results.)

The option-based valuation approach that OTS proposes to use is briefly described as follows.

(1) Projection of short-term interest rates. The interest rate simulation model will use an empirically estimated equation to generate 200 randomly determined interest rate paths for short-term interest rates based on an assumed level of interest rate volatility. The model will incorporate the current term structure of interest rates as a starting point and project the path of monthly interest rates over a 360 month period. The paths will be generated in a manner that makes the simulation consistent with the observed Treasury yield curve. Thus, if Treasury securities are priced using the simulation, the model will return exactly the currently observed Treasury prices. In this way, all

[2] For a description of the calculation of the implied forward rates, see Fabozzi and Fabozzi, *Bond Markets, Analysis, and Strategies*, Prentice Hall, 1989 (pp. 106–109).

[3] An interest rate path is a sequence of 360 monthly interest rates. Three hundred and sixty months are used because that is the maturity of the longest-lived mortgages (*i.e.*, thirty years).

securities can be accurately compared to the yardstick of Treasury securities.

(2) Projection of mortgage rates. The interest rate model also generates a path of future fixed-rate mortgage coupons and of future coupons of each type of adjustable-rate mortgage valued by the model. The model will use a separate volatility assumption for the fixed-rate mortgage rates, but will assume that a degree of correlation exists between short-term rates and the fixed-rate mortgage rates. The result is that each of the 200 paths will contain a short-term rate, an associated fixed-rate mortgage rate, and a projected coupon for each type of ARM for the next 360 months.

(3) Prepayment projections. The prepayment model will use the spread between the coupon of the mortgage loan or security being valued and the projected fixed-rate mortgage rate at each point along an interest rate path to generate prepayment rates along that path.

(4) Valuation of projected cash flows. Cash flows will be generated for each point along an interest rate path using scheduled amortization, coupon payments, and prepayments. A price for each path will be calculated for the loan or security by discounting that path's projected cash flow by the sequence of short-term rates associated with it, plus a spread. The spread, known as the "option-adjusted spread," will be chosen so that the average of the prices resulting from the 200 simulated rate paths is equal to the currently observed market price of a similar loan or security.

(5) Valuation of cash flows projected in other scenarios. Once the option-adjusted spread has been calculated, mortgage prices can be calculated under the alternate interest rate scenarios. To model such a scenario, steps 1 through 3 will be repeated, but starting with a term structure that has been subjected to a parallel shock of the desired magnitude (i.e., plus or minus 200 basis points). Step 4 will then be repeated with cash flows being discounted by the new sequence of associated short-term rates plus the same option-adjusted spread as the base case. The average of the 200 discounted cash flows will represent the shocked rate scenario's mortgage price.

OTS proposes to use the option-based approach to value single family fixed-rate and adjustable-rate mortgages and mortgage servicing assets.

4. The Black-Scholes Model

The OTS model will use a derivative of the Black-Scholes option valuation model to value the following types of off-balance sheet contracts:

- Optional commitments to purchase or sell mortgages.
- Swaptions (options on swaps).
- Interest-rate caps.
- Interest-rate floors.
- Options on futures.

This model, sometimes referred to as the "Black 76" model, values options on futures and other forward contracts.[4] To calculate the option's value, the model requires the input of five variables that characterize the option. These variables are (1) the future or forward price of the instrument underlying the option, (2) the strike price, (3) the volatility of the underlying instrument, (4) the time to expiration of the option, and (5) the risk-free rate of interest.

To calculate the market value of an option in the shocked-rate environment, two adjustments will be made to the inputs of the model. Shocking the yield curve (LIBOR or Treasury) generates a new forward price for the instrument underlying the option. In addition, the risk-free rate of return is adjusted by the amount of the shock.

5. Summary of Methodologies for Assets

This section summarizes the methodologies used by the OTS Model to estimate the market value of each of the asset categories listed on Schedule CMR.

a. Single Family Fixed-Rate Mortgage Loans and Securities

The methodology used to value single family fixed-rate mortgage (FRM) loans and securities will be the options-based pricing approach described in detail in the December 1990 Proposal. This approach (summarized in Section V.C) is designed to take into account the effect of embedded options (prepayments and, in the case of adjustable-rate mortgages, interest rate and payment caps) on mortgage prices. The model will use an interest rate simulation program to generate numerous interest rate paths that, in conjunction with a prepayment model, are used to estimate mortgage cash flows along each path. Those cash flows will then be discounted and averaged to arrive at a single mortgage price.

Schedule CMR will collect information on FRMs in a more disaggregated manner than the current Schedule MR. Outstanding balances, coupons, and maturities of four types of fixed-rate mortgage loans (30-year conventional, 30-year FHA/VA, 15-year original maturity, and balloon payment mortgages) will be separately reported on the Schedule. Analogous information will also be reported separately for mortgage securities backed by each of the same four types fixed-rate mortgages. All information will be reported in five separate coupon ranges (less than 8 percent, 8 to 8.99, 9 to 9.99, 10 to 10.99, and 11 percent and above).

The availability of disaggregated data will allow the model to estimate the value of the FRM portfolio as consisting of eight fairly specific types of instruments (*i.e.*, the four types of mortgage loans and four types of mortgage securities), rather than treating all single family FRMs as 30-year fixed-rate loans, which was the methodology described in the December 1990 Proposal. That will substantially reduce the need to make various simplifying assumptions made in the existing model about the nature of the mortgage instruments (and their cash flow characteristics) comprising any given data cell. (Another improvement of this type will be the separate reporting of single family construction loans and single family permanent mortgages. Both the cash flow and risk characteristics of construction loans dictate that they be valued differently from mortgages.)

The eight categories of FRMs that will be reported differ in both their projected cash flows and in the discount rates used to discount them. Modeling of cash flows will take account of each instrument's particular amortization schedule and, to the extent possible, will take account of differing prepayment characteristics. For example, separate prepayment functions will be used to estimate prepayments on conventional loans and FHA/VA loans (as well as the securities backed by those types of loans). Cash flows will be discounted using the zero-coupon Treasury yield curve plus the option adjusted spread for the particular instrument being modeled. Separate option adjusted spreads (OASs) will be derived each quarter for representative coupons and maturities of each type of instrument, based on their observed market prices at that time.

For the current and shocked interest rate scenarios, OTS will use the OAS methodology to estimate prices for several different coupon and maturity combinations of each type of mortgage instrument. Those price estimates will be printed in the form of a separate pricing "look-up" table for each type of instrument.[5] Market values for each of

[4] For more information, see Stephen Figlewski, Chapter 3 in Stephen Figlewski, William L. Silber, and Marti G. Subrahmanyan, editors, *Financial Options: From Theory to Practice*, Business One Irwin: Homewood, IL, 1990.

[5] These pricing tables are available to all OTS-regulated thrifts at no charge and at an annual charge of $40 to other interested parties.

the balances reported by the institution will then be calculated by reference to the pricing table that corresponds to that particular type of mortgage instrument. Because the tables will contain price estimates for only a limited number of coupon and maturity combinations for each type of instrument, interpolation will be used to pick prices from the table for the actual coupon/maturity combination reported.

b. Single Family Adjustable-Rate Mortgage Loans and Securities

OTS will also use the OAS approach to estimate the value of single family adjustable-rate mortgage (ARM) loans and securities. The major changes from the methodology described in the December 1990 Proposal stem from the availability of improved data about institutions' ARM portfolios as a result of the planned adoption of Schedule CMR.

Schedule CMR will collect information on ARMs in five columns that correspond to the frequency with which the mortgage rate resets and the type of index on which it is based (*e.g.*, 1-year current market index, 1-month lagging market index). Each column actually accommodates a number of possible indexes and a range of reset frequencies, but balances in the five columns will be assumed for modeling purposes to consist of the most prevalent types of ARMs in that index and reset range. These are, respectively, 6-month Treasury, 1-year Treasury, 3-year Treasury, 1-month 11th District Cost of Funds Index (COFI), and 12-month COFI. All other information about ARMs, described below, is collected separately for each of the five columns, so that the balances in each column may be modeled separately using the information submitted by the reporting institution.

The outstanding balance and weighted average coupon of ARMs subject to introductory "teaser" rates are collected separately from other ARMs, allowing teaser ARMs to be modeled separately. Teaser ARMs not only have low coupons relative to otherwise equivalent ARMs (resulting in possible aggregation error if not handled separately), but the value of their periodic caps is higher than that of otherwise identical non-teaser ARMs, which would also result in aggregation error. Modeling them separately will result in more accurate estimates.

For non-teaser ARMs, in addition to information about balance, coupon, time to next coupon reset, and maturity, the reporting form will collect the average margin of ARMs tied to each of the five index types. This last item will be a significant improvement because it will eliminate the need to assume that each institution's ARMs have the same margins (as was proposed in the December 1990 Proposal).

The second major reporting change will be to collect more detailed information about periodic and lifetime interest rate caps, because aggregation error can be especially severe for option-like instruments such as caps. (The problem is analogous to attempting to value two options—one at its strike price and the other far out of the money—on the basis of their weighted average strike price, and can lead to a very misleading answer.) In reporting on Schedule CMR, institutions will provide information that will allow their ARMs to be segregated into four groups on the basis of the distance between their current coupons and lifetime rate caps. Each group will be valued separately, based on its reported weighted average lifetime cap. That approach will reduce the amount of aggregation error by aggregating across several relatively narrow bands rather than one large one.

In addition to caps, information will also be reported about periodic and lifetime interest rate floors, allowing those features to be incorporated into the price estimates, where relevant. Finally, institutions will report information permitting ARM whole loans and ARM securities to be valued separately.

In response to comments on the December 1990 Proposal, OTS plans to develop a model to simulate the 11th District COF index that is more in keeping with the forecasting models used by various savings associations and other practitioners than the simple equation described in the 1990 Proposal. The model will project COFI in each future month based on several lagged values of short-term and long-term Treasury yields with a more complicated lag structure than the equation proposed in the 1990 Proposal. Contrary to some other comments, however, the Treasury yields projected for future months—on which both simulated Treasury ARM and COFI ARM coupons will depend—will themselves be based on the current quarter-end implied forward rates. This treatment will be similar to that proposed in the 1990 Proposal and is consistent with most industry valuation practices.

For each type of ARM (*e.g.*, 1-year current market index, 1-month lagging market index), OTS will use the OAS methodology to estimate market values, for various combinations of margin, current coupon, time to next reset, maturity, lifetime cap level, and presence or absence of periodic caps and floors. Those estimates will be printed in a series of ten "look-up" tables (both ARM loans and securities for: 6-month Treasury-indexed, 1-year Treasury-indexed, 3-year Treasury-indexed, 1-month 11th District COFI, and 1-year COFI). Market values for each of the balances reported by the institution will then be calculated using the pricing table that corresponds to that particular type of ARM instrument, using interpolation where necessary.

c. Multifamily and Nonresidential Mortgages

The OTS Model will use the static discounted cash flow approach to value multifamily and nonresidential mortgage loans and securities. Because a significant percentage of these mortgages are balloon loans, balances will be divided into balloon and fully amortizing categories on Schedule CMR. Balances will be further divided into fixed-rate and adjustable-rate categories.

For fixed-rate balances, Schedule CMR will collect the weighted average maturity and the coupon. For adjustable-rate balances, CMR will collect the following: the index to which the largest percentage of the institution's balances are tied; the reset frequency of the loans tied to that index; the weighted average margin; the weighted average maturity; the balances with coupons currently within 300 basis points of their lifetime interest rate caps; and, for those balances, the weighted average difference (in basis points) between the coupon and lifetime cap. In addition, for balloon mortgages, CMR will collect the remaining term to full amortization.

The OTS Model will value the four types of mortgages (fixed-rate balloons, fixed-rate fully amortizing, adjustable-rate balloons, adjustable-rate fully amortizing) separately, using maturity, amortization, and rate and cap information specific to each type. All balances will be assumed to pay monthly principal and interest cash flows. The coupons of adjustable-rate mortgages (equal to the projected value of the index plus the reported margin) will reset with the reported frequency, but subject to any interest rate caps. Due to the prevalence of prepayment penalties on these types of mortgages, prepayments for all multifamily and nonresidential mortgages will be assumed to be zero. Although this category may include multifamily securities as well as loans, Schedule CMR does not distinguish between them. Consequently, all balances will be valued as mortgage loans, not securities.

Each monthly cash flow will be discounted by the Treasury zero-coupon yield appropriate for that month plus a spread. That spread will be calculated so that, on average, the spread plus the zero-coupon yields will equal the required net yield for 30 day commitments on multifamily mortgages posted by FHLMC or FNMA.

Institutions holding adjustable-rate multifamily and nonresidential mortgages tied to a variety of different indices may, at their option, report those balances disaggregated by index type in the Optional Supplemental Reporting section of Schedule CMR. The valuation methodology for those balances will be the same as that described above, with the coupon on each reset date being set equal to the projected value of the reported index plus the reported margin.

The date that will be collected for multifamily and nonresidential mortgages on Schedule CMR will be more detailed than that collected on Schedule MR. By using these data, the OTS Model will produce more precise estimates of the mortgages' values and interest rate sensitivities.

d. Construction and Land Loans

The OTS model will use the static discounted cash flow approach to value construction and land loans (hereafter referred to collectively as construction loans). Schedule CMR will collect the outstanding balances of fixed- and adjustable-rate construction loans, their weighted average remaining maturities, the coupon of fixed-rate loans, and the margin of adjustable-rate loans. In addition, for adjustable-rate loans, CMR will collect an index code representing the index to which the largest percentage of the reporting institution's adjustable-rate balances are tied. All reported adjustable-rate balances for the institution will be assumed to be tied to the index it reports. This index will be projected (based on projected Treasury yields) over the remaining life of the loans and the coupon rate in each month will be calculated as the sum of the index plus the reported margin. That is, the OTS model will treat all adjustable-rate construction loans as having a monthly reset frequency with no interest rate caps or floors.

All construction loans will be assumed to pay monthly interest cash flows, and the entire principal at maturity. No prepayments are assumed. Each monthly cash flow will be discounted by the Treasury zero-coupon yield for that month plus a spread. The spread will be calculated so that on average, the discount rate is equal to the then prevailing average rate on construction lending. The average rate on construction lending will be taken from a monthly survey performed by the U.S. Department of Housing and Urban Development and published in the HUD release "Secondary Market Prices and Yields and Interest Rates for Home Loans."

Institutions holding adjustable-rate construction loans tied to indices other than the one reported in the construction loans section of Schedule CMR, may at their option report these loans disaggregated by index type in the Optional Supplemental Reporting Section. The valuation methodology for those balances will be the same as that described above with the coupon in each future month being set equal to the projected value of the index plus the reported margin.

There will be a significant improvement in the OTS Model's valuation of construction loans using the data reported on Schedule CMR. On the existing reporting form, construction loans are aggregated with permanent mortgages, the maturity, terms, and cash flow characteristics of which are very different from construction loans. Separating construction loan balances from permanent mortgages and valuing them using their reported characteristics should result in a marked improvement in the OTS Model results.

e. Second Mortgage Loans

The OTS Model will value second mortgage loans using the static discounted cash flow approach. Schedule CMR will collect the outstanding balances of fixed and adjustable-rate second mortgage loans, the weighted average maturity of those balances, the coupon of fixed-rate second mortgages, and the margin, reset frequency, and index type for adjustable-rate second mortgages.

Second mortgages will be assumed to be level-payment amortizing loans that generate monthly cash flows of interest and principal. Prepayment rates for both fixed- and adjustable-rate second mortgages will be based on observed prepayment rates of home equity loans underlying asset backed securities.

The coupon on adjustable-rate second mortgages will be calculated as the sum of the reported index and the reported margin and will be assumed to reset with the reported reset frequency. The model will treat all second mortgages as having no interest rate caps or floors.

All monthly cash flows will be discounted by the Treasury zero-coupon yield for that month plus a spread. That spread will be calculated so that, on average, the spread plus the zero-coupon yields will equal the observed current lending rate on adjustable-rate second mortgages. The current lending rate will be estimated by using the information on margins and indices on adjustable-rate second mortgages reported in Schedule CMR. It will be assumed to be equal to the index most commonly reported by institutions (*e.g.*, the prime rate) plus the average margin reported by institutions with loans tied to that index.

Institutions holding adjustable-rate second mortgages tied to indices other than the one reported in the second mortgages section of Schedule CMR, may at their option report these loans disaggregated by index type in the Optional Supplemental Reporting Section. The valuation methodology for those balances will be the same as that described above with the coupon on each reset date being set equal to the forecasted value of the reported index plus the reported margin.

The most significant improvement in the methodology for valuing second mortgage loans relative to that described in the 1990 Proposal is in the area of adjustable-rate second mortgages. By making use of the margin, reset frequency, and index to which the loans are tied, the OTS model will be able to produce better estimates of the value and interest rate sensitivity of adjustable-rate second mortgages.

f. Commercial Loans

The OTS Model will use the static discounted cash flow approach to value commercial loans. Schedule CMR will collect the outstanding balances of fixed- and adjustable-rate commercial loans, their weighted average remaining maturity, the coupon of fixed-rate loans, and the weighted average margin of adjustable-rate loans. All loans will be assumed to pay monthly interest cash flows and all principal at maturity. No prepayments are assumed.

Adjustable-rate loans will be assumed to be indexed to the prime rate and to reset monthly. The interest rate on adjustable-rate loans in each future month will be equal to the forecasted prime rate in each month plus the reported margin. The prime rate will be projected based on projected Treasury yields.

An estimate of the current lending rates on fixed- and adjustable-rate commercial loans will be used to calculate the discount rate for commercial loan cash flows. The current lending rates will be taken from the Federal Reserve statistical release E.2, "Survey of Terms of Bank Lending." The discount rate in each future month will be calculated as the zero-coupon Treasury yield in that month plus a

spread. The spread will be calculated such that, on average, the spread plus the zero-coupon yields will equal the current lending rates reported in E.2.

Institutions holding adjustable-rate commercial loans tied to indices other than prime may, at their option, report those balances disaggregated by index type in the Optional Supplemental Reporting Section of Schedule CMR. The valuation methodology for those balances will be the same as that described above, except the loan coupon in each future month will be equal to the projected value of the index (whether it be 1-month LIBOR, the 3-month T-bill rate, etc.), plus the reported margin.

g. Consumer Loans

The OTS Model will use the static discounted cash flow approach to value consumer loans. Schedule CMR will collect the outstanding balances of fixed- and adjustable-rate consumer loans, their weighted average remaining maturity, the coupon on fixed-rate loans, and the margin on adjustable-rate loans. In addition, for adjustable-rate loans, CMR will collect the index to which the largest percentage of loans are tied and the loans' reset frequency. All adjustable-rate consumer loans will be assumed to reset based on that index, with the reported reset frequency.

All consumer loans will be assumed to be level-payment amortizing loans that generate monthly cash flows of interest and principal. On schedule SC, consumer loan balances are broken down into eight types. The OTS Model will determine a unique weighted average prepayment rate for each institution's total consumer loan balances, using as weights the proportion of balances represented by each loan type on Schedule SC. OTS will base prepayment estimates for each type of loan on observed prepayment rates of collateral underlying various types of asset backed securities.

Once again using the balances reported by type on Schedule SC, the OTS model will determine a unique weighted average discount rate for each institution's consumer loan balances. For each loan type, the discount rate in each future month will be calculated as the zero-coupon Treasury yield in that month plus a spread. Each spread will be calculated such that, on average, the spread plus the zero coupon yield will equal the observed yield on an asset backed security with collateral of that loan type. For consumer loan types for which secondary market yields are not readily available, current market lending rates on various consumer loan types from Federal Reserve statistical release G.19 will be used.

Institutions may, at their option, report their consumer loans in a more disaggregated manner in the Optional Supplemental Section of Schedule CMR. Balances may be disaggregated by loan type and index. The OTS model will then apply coupon reset assumptions, discount rates, and prepayment rates specific to each type of consumer loan.

The most significant improvement in the methodology for valuing consumer loans relative to that described in the December 1990 Proposal is in the area of adjustable-rate loans. By making use of the margin, reset frequency, and index to which the loans are tied, the OTS Model will produce better estimates of the value and interest rate sensitivity of adjustable-rate consumer loans.

h. Mortgage Derivative Securities

Mortgage derivative securities include collateralized mortgage obligations (CMOs), interest-only strips (IOs), principal only strips (POs), residuals, CMO swaps, and other instruments with similar characteristics.

In the OTS Model mortgage derivatives will be valued using one of two methodologies, a "self-reporting" approach or a benchmark approach, depending on whether the savings association meets certain criteria. Under the self-reporting approach, institutions will report their own estimates of the market value of their mortgage derivatives in each of the interest rate scenarios evaluated by the OTS model. These estimates will then be used in the OTS Model to estimate institutions' interest rate exposure. Savings associations meeting of the following criteria are required to report their own market value estimates for mortgage derivatives.

a. Assets exceeding $500 million, or

b. Holdings of mortgage derivatives totaling more than 5 percent of book assets, or

c. Any "high-risk" mortgage derivatives (see Thrift Bulletin 52 for a definition of high-risk derivatives).

Other savings associations not required to provide their own estimates may provide the estimate if they wish. The self-reporting approach should result in greater accuracy in estimating market value sensitivity than the benchmark approach described below.

Mortgage derivatives of savings associations not using the self-reporting approach will be valued using a benchmark approach. Savings associations will report the book value of their holdings of each type of mortgage derivative security in the appropriate cell of Schedule CMR. Schedule CMR lists 19 types of mortgage derivatives reflecting broad classes of CMOs and the classification by Thrift Bulletin 52 of mortgage derivatives into high-risk and low-risk categories. A benchmark security will be chosen to represent the securities that savings associations report in each of these cells. The market value of the derivatives for each cell will be estimated by valuing the benchmark for that cell for each interest rate scenario. Prepayment rates assumed for the underlying collateral will be the same as those used to value mortgage securities. The estimation process will generate prices as a percent of par for the benchmark securities under the alternative interest rate scenarios. The benchmark for each class of derivative will be updated when necessary. A listing of the benchmarks and their pricing profiles will be included in the quarterly Asset and Liability Pricing Tables published by OTS.

The methodology for CMOs described in the December 1990 Proposal uses the benchmark approach for all mortgage derivatives (except for IOs and POs) and does not update the estimated market values of the benchmarks from quarter to quarter. Currently, IOs and POs are valued separately, using the option-based methodology that is used to value mortgages. In the new approach most savings associations will self-report the estimates for these securities. For the remainder, the OTS model will use the benchmark approach.

i. Mortgage Loan Servicing Rights

The OTS Model will use the same OAS methodology to value servicing that it uses to value mortgage loans and securities. See Section V.C on valuation methodologies for a further discussion of the OAS methodology.

The outstanding balances of fixed-rate mortgage loans serviced for others will be reported on Schedule CMR in five coupon ranges (less then 8 percent, 8 to 8.99, 9.00 to 9.99, 10 to 10.99, and 11 percent and above). Balances of adjustable-rate mortgages tied to current market indexes (*e.g.*, the 1-year Constant Maturity Treasury yield) will be reported separately from those tied to lagging market indexes (*e.g.*, the 11th District Cost of Funds). The OTS Model will treat all current market index loans as 1-year CMT ARMs and all lagging market index ARMs as 1-month COFI ARMs. CMR will also collect the weighted average remaining maturity and the weighted average servicing fee for each of the reported balances, the number loans serviced, and the number of loans subserviced by others.

The estimated value of mortgage servicing is equal to the discounted

present value of servicing fee income and ancillary income, minus the discounted present value of servicing cost outflows. Monthly servicing fee cash flows will be estimated by adjusting the balances reported on CMR for expected prepayments and amortization, and multiplying the outstanding balances in each month by the reported weighted average servicing fee. Ancillary income cash flows will be estimated by adjusting the reported number of loans outstanding for expected prepayments and multiplying the number of loans serviced by an estimate of monthly ancillary income.

Servicing cost outflows are estimated in the same manner as ancillary income cash flows. That is, by adjusting the reported number of loans serviced for expected prepayments and multiplying the number of loans serviced by an estimate of monthly servicing cost.

Ancillary income and servicing cost estimates will be taken from the Mortgage Bankers' Association's (MBA) annual survey of mortgage bankers. These estimates will be updated annually as new estimates become available.

All monthly cash flows will be discounted by the Treasury zero-coupon yield for that month plus a spread. The spread is calculated so that on average, the discount rate is equal to the current required yield in the servicing market. The required yield will be obtained quarterly from information provided by dealers in the servicing market.

Because the data that will be collected for mortgage servicing on Schedule CMR is somewhat more detailed than that collected on Schedule MR, the OTS Model will produce better estimates of the value and interest rate sensitivity using data from the new reporting form. Improvements in data collection include the following: (1) The reporting of the weighted average remaining maturity and weighted average servicing spread for balances in each of the coupon ranges; (2) the reporting of the number of FRM loans serviced that are conventional versus FHA/VA; (3) the reporting of the number of loans subserviced for others; and (4) the separate reporting of lagging market index and current market index adjustable-rate mortgages serviced for others.

j. Cash, Non-Interest-Earning Deposits, Overnight Fed Funds, and Overnight Repos

These assets will be valued at their face value in all of the interest rate scenarios evaluated by the OTS Model.

k. Equity Securities

Institutuions will report the market value of their equity securities as of quarter-end on Schedule CMR. To value equity securities in the alternative interest rate scenarios, the OTS Model will assume their interest rate elasticity to be −4.5 percent. That is, for every 100 basis point increase in interest rates the value of equity securities will be assumed to decrease by 4.5 percent. For example, if an institution reported $100 of equity securities on Schedule CMR, their estimated market value in the plus 200 basis points scenario would be $\$100 \times (1-.09) = \$91.00$.

This interest rate elasticity was estimated using regression analysis. It was obtained by regressing the monthly average of the Wilshire 5,000 Stock Index on the monthly average ten-year Treasury yield for the past five years. A time variable was included to allow for an upward trend in the index.

l. Mutual Funds With Investments in Mortgage Related Securities

Institutuions will report the current market value of investments in mutual funds that invest in non-high-risk mortgage-related securities on Schedule CMR. Thus, the base case value of these mutual funds will be set equal to the reported value. To value these mutual fund investments in the alternative interest rate scenarios, the OTS Model will apply an interest rate sensitivity measure equal to that of the total industry's single family mortgage securities estimated by the Model in the previous quarter.

m. Zero-Coupon Securities

These assets will be valued using the static discounted cash flow approach. On Schedule CMR, institutions will report the carrying value of their zero-coupon securities, the weighted average yield to maturity, and the weighted average maturity. A single cash flow will be assumed to occur at the weighted average maturity and will be discounted by the Treasury zero-coupon yield for that month.

n. Government and Agency Securities and Deposits at FHLBs

These assets will be valued using the static discounted cash flow approach. Schedule CMR will collect the outstanding principal balance of these securities and deposits and their weighted average coupon and maturity. They will be assumed to generate semiannual cash flows and all cash flows will be discounted by the Treasury zero-coupon yield for each of those months.

o. Term Federal Funds and Repurchase Agreements, Deposits at Non-FHLBs, and Commercial Paper

These assets will be valued using the static discounted cash flow approach. On Schedule CMR, institutions will report the outstanding principal balance of these assets and their weighted average coupon and maturity. They will be assumed to generate monthly interest cash flows and pay all principal at maturity. The discount rate in each month will be calculated as the zero-coupon Treasury yield in that month plus a spread. The spread will be calculated such that, on average, the spread plus the zero-coupon yields will equal the 3-month commercial paper rate published in Federal Reserve Release G.13.

p. Other Investment Securities (Municipal Securities, Mortgage-Backed Bonds, Corporate Securities, Etc.)

These assets will be valued using the static discounted cash flow approach. On Schedule CMR, institutions will report the outstanding principal balance of these assets and their weighted average coupon and maturity. They will be assumed to generate semiannual interest cash flows and pay all principal at maturity. The discount rate will be calculated as the zero-coupon Treasury yield corresponding to the timing of the cash flow, plus a spread. The spread will be calculated such that, on average, the spread plus the zero-coupon yields will equal the AA-rated corporate bond rate published in Federal Reserve Release G.13.

q. Nonperforming Loans

On Schedule CMR, institutions will report the outstanding principal balance of nonperforming mortgage loans and, separately, of nonperforming nonmortgage loans. The base case market value of each will be set equal to their reported outstanding balances minus valuation allowances for mortgage loans and nonmortgage loans respectively. They will be assumed to have the same interest rate sensitivities as each institution's total mortgage loan portfolio and total nonmortgage loan portfolio respectively.

r. Real Estate Held for Investment

Institutions will report the carrying value of real estate held for investment on Schedule CMR. Because the market value and interest rate sensitivity of real estate investments is very difficult to estimate using financial modeling techniques, OTS proposes to assume their market value equals their book value in all interest rate scenarios. That

is, that they have an interest rate sensitivity of zero. OTS request comment on this approach.

s. Repossessed Assets

Institutions will report the carrying value of repossessed assets on Schedule CMR. The market value of these assets will be assumed to be equal to their book value in all interest rate scenarios. That is, they are assumed to have an interest rate sensitivity of zero.

t. Investment in Unconsolidated Subsidiaries

Institutions will report the carrying value of their investment in unconsolidated subsidiaries on Schedule CMR. The base case market value will be assumed to equal the book value. These assets will be assumed to have the same interest rate sensitivity as the weighted average market value of portfolio equity of the entire savings and loan industry estimated by the OTS Model in the previous quarter.

u. Office Premises and Equipment

Institutions will report the carrying value of office premises and equipment on Schedule CMR. The estimated market value will be equal to the book value in all interest rate scenarios. That is, these assets are assumed to have an interest rate sensitivity of zero.

6. Summary of Methodologies for Liabilities

This section summarizes the methodologies used by the OTS Model to estimate the market value of each of the liability categories listed on Schedule CMR.

a. Liability Discount Rate

The discount rates for most liabilities will be based on the current London Interbank Offered Rates (LIBOR). The only exceptions are Escrow Accounts and Miscellaneous Liabilities. LIBOR is the rate that major international banks charge each other for large-volume loans and thus provides a benchmark for the marginal cost of funds for depository institutions, in general.

The zero-coupon LIBOR curve will be derived from market quotes for several maturities of LIBOR.[6]

In the December 1990 Proposal, OTS proposed to use the secondary market CD rates to discount liabilities. The use of LIBOR discount rates has one major advantage over secondary market CD rates: reliable quotes of CD rates cannot be obtained for maturities beyond 6-months so the remainder of the curve, from 7- to 360-month, would have to be obtained through extrapolation. Overall, accuracy in valuing liabilities will be increased through the use of LIBOR, which is based on a deep and wide market.

b. Demand Deposits

Demand deposits include transaction accounts (NOW, Super NOW, etc.), money market deposit accounts, passbook accounts, and non-interest bearing demand deposits. These liabilities have no stated maturity and their offered rates react relatively slowly to changes in market rates (exception for non-interest bearing deposits which, by definition, do not have an offered rate). Consequently, estimation of the case outflows of demand deposits require assumptions about the relationship between offered rates, balances, and market rates. These assumptions will then be applied to the reported rates and balances to derive market values for demand deposits.

These relationships will be estimated statistically for each type of demand deposit. The change in the offered rate on interest-bearing deposits will be assumed to depend on changes in the Treasury bill rate, and will be estimated to allow for the possibility of differing speeds of adjustment under rising and falling market rates. Interest payments will be assumed to be credited to the account balance rather than being paid out monthly. Outflows of accumulated interest and principal depend on the attrition of deposit balances (due to depositor relocation and other factors) and, for interest-bearing deposits, on the relationship between offered and market rates. In addition to principal and interest, the cash outflows of demand deposits also include an estimate of the non-interest cost of maintaining the deposits.

A major change in the valuation methodology for demand deposits, relative to that described in the December 1990 Proposal, is the separate valuation of non-interest bearing demand deposits. The former methodology tended to overstate their sensitivity to changes in interest rates because these accounts were reported with (and, hence, valued as) mortgage escrow accounts which usually have longer maturities. In the future, OTS plans to develop the ability to estimate institution-specific attrition rates for core deposits for institutions that elect to report data that will permit such estimation on Schedule CMR.

c. Escrow Accounts

This category includes escrow accounts associated with mortgages owned by the institution, escrow accounts associated with mortgages serviced for others, and other escrows. Since this type of account has no explicit maturity, balances remaining with the association at each point in the future must be estimated. Future balances of escrow accounts associated with mortgages held in portfolio and mortgages serviced for others will be assumed to depend on the prepayment of each of those two types of mortgages. Throughout the life of the underlying mortgages, interest payments made on these accounts will be assumed to be based on the rates reported in Schedule CMR.

The discount rates used to value these two types of escrow accounts are the same as the discount rates used to value the underlying assets, mortgages held in portfolio and mortgage servicing rights, respectively. This approach recognizes that a mortgage, either held in portfolio or serviced for others, and its associated escrow account are an inseparable bundle.

Other Escrows will be assumed to have a constant annual run-off rate. The rate paid on these accounts will be assumed to remain equal to the rate reported in Schedule CMR. To calculate the market value for Other Escrows, cash flows will be discounted by LIBOR.

d. Fixed-Rate, Fixed-Maturity Deposits

The valuation methodology for these deposits differs depending on whether they are retail or brokered accounts. The valuation of retail deposits will take into account the fact that depositors often roll their deposits over at below "market" interest rates. Because of this feature, the actual maturity and future offered rates of these deposits have to be projected. The roll-over and offered rate behavior will be based on their statistically estimated relationship to market rates. The offered rate on retail deposits of this type reacts somewhat sluggishly to changes in interest rates in either direction and a significant proportion of the account balances normally roll-over, and do so at below market interest rates.

Brokered deposits will be assumed to be replaced at maturity by deposits paying market rates and to be withdrawn whenever the early-withdrawal penalty is less than the

[6] The method used to derive the LIBOR curve is similar to that shown in Chapter 10 of Bierwag, G., *Duration Analysis: Managing Interest Rate Risk*, Ballinger Publishing, 1987.

spread between current market rate and the rate on the account.[7]

Both types of deposits, brokered and retail, will be assumed to behave like zero-coupon instruments in that monthly payments of interest will be credited to the account balance rather than being paid out. Outflows of principal and accumulated interest will be assumed to occur upon early-withdrawal or when the account balance is no longer rolled over. In addition to principal and accumulated interest, the cash outflows of deposits will include an estimate of the non-interest costs attributable to maintaining such deposits.

The only early-withdrawal penalties considered explicitly will be those stated in terms of months of forgone interest. Different penalties, as well as other options (*e.g.*, the option to roll over at a predetermined rate, etc.), can be valued by the reporting institution and reported separately in the Schedule CMR section titled Reporting of Market Value Estimates.

The proposed methodology, especially that for retail deposits, varies considerably from that described in the December 1990 Proposal. First, the value of retail deposits will incorporate the value of future patronage (by current account holders), thus producing lower, less rate-sensitive estimates of the value of these type of deposits.

Second, classifying deposits as retail and brokered, rather than deposits with balance under and over $80,000 as was proposed in the December 1990 Proposal, provides a more meaningful way to distinguish between deposits whose value incorporates the value of future patronage and deposits whose value does not.

e. Fixed-Rate, Fixed-Maturity Borrowings

FHLB advances, other borrowings, redeemable preferred stock, and subordinated debt, are all termed "fixed-rate, fixed maturity borrowings," and are assumed to have cash flows that depend only on the instruments' remaining maturity and coupon. Thus, cash flows are assumed to consist of periodic interest payments, with principal repaid at maturity. At the institution's option, the market value of any option embedded in these instruments (*e.g.*, early-withdrawal penalties, call features, etc.) can be valued by the reporting institution and reported separately on Schedule CMR in the section titled Reporting of Market Value Estimates.

The accuracy in valuing these instruments will be improved relative to that resulting from the methodology described in the December 1990 Proposal due to changes in their reporting. Schedule CMR will collect relatively detailed information on their coupons, thereby minimizing aggregation errors due to convexity.

f. Variable-Rate, Fixed-Maturity Liabilities

This category includes liabilities that have contractually stated maturities and index rates (*e.g.*, certificate of deposit, FHLB advances, and other liabilities). Schedule CMR will collect information on the main characteristics of each type of variable-rate, fixed-maturity liability (*e.g.*, type of index rate; balance, margin, rate reset frequency, time to next reset, and remaining maturity). The cash outflows of variable-rate liabilities will be calculated based on reported balances and assumptions about the relationship between the index and market rates.

These relationships will be estimated statistically for each index rate. Thus, for example, the OTS Model will estimate separately expected future levels of Treasury rates and LIBOR of various maturities, Fed Funds, Prime and other rates based on the current Treasury yield curve. Cash flows will be assumed to consist of periodic interest payments with principal repaid at maturity. At the institution's option, the market value of any embedded option (*e.g.*, early-withdrawal penalties, call features, etc.) can be valued by the institution and reported separately in Schedule CMR, in the section titled, Reporting of Market Value Estimates.

Relative to the methodology described in the December 1990 Proposal, the proposed methodology estimates the market value of variable-rate liabilities more accurately because the amount of information reported in Schedule CMR on these liabilities is much greater than that available in the current Schedule MR.

g. Other Liabilities

This category includes Collateralized Mortgage Securities Issued, and Miscellaneous Liabilities I and II.

Collateralized Mortgage Securities Issued consists of collateralized mortgage securities that are not recorded as sales. Institutions have the option and are encouraged to report the market value of these securities in Schedule CMR in the section, Reporting of Market Value Estimates. For those institutions that elect not to use this option, it will be assumed that the market value of this category is equal to its book value in all interest rate scenarios.

Miscellaneous Liabilities I consists of Accrued Interest Payable, Accumulated and Accrued Taxes, Dividends Payable, Accounts Payable, and Other Liabilities and Deferred Income. The market value of this category will be assumed to be equal to its book value in all interest rate scenarios.

Miscellaneous Liabilities II consists of Financial Options Fees Received, Deferred Gains or Losses on Liability Hedges, and Deferred Income Taxes. The market value of this category will be assumed to be zero.

7. Summary of Methodologies for Off-Balances Sheet Positions

This section summarizes the methodologies used by the OTS Model to estimate the market values of off-balance sheet positions.

a. Optional Commitments to Originate Mortgages

Optional commitments to originate mortgages are obligations to originate mortgage loans at a specified interest rate (fixed or adjustable), where the potential borrower is not obligated to take the loan. Only those optional commitments to originate for which a specified interest rate (a "rate lock") has been offered to the potential borrower will be reported on Schedule CMR.

The OTS Model will distinguish, and value separately, optional commitments to originate the following eight categories of mortgages: (1) 1-month COFI ARMs, (2) 6-month or 1-year COFI ARMs, (3) 6-month or 1-year Treasury ARMs, (4) 3-year or 5-year Treasury ARMs, (5) 5-year or 7-year balloon or 2-step mortgages, (6) 10-year, 15-year or 20-year FRMs, (7) 25-year or 30-year FRMs, and (8) all other mortgages.

Institutions will report the following information on Schedule CMR for each position: (1) The dollar amount, (2) the weighted-average coupon, (3) the expected rate of fallout, and (4) the dollar amount of loan origination and discount fees that will be collected.

To value commitments to originate mortgages, the OTS Model must first estimate the amount of the commitments that will actually close and become mortgage loans. This is accomplished by estimating the percentage of commitments that will not close, (that will "fallout"), and subtracting this from the commitments reported.

In the base case interest rate scenario, the Model will use the expected fallout rates reported by the institution on

[7] The term "brokered deposit" is defined in the FDIC Improvement Act (1991). It refers to funds obtained, directly or indirectly, by or through any deposit broker for deposit into one or more deposit accounts.

Schedule CMR. The rate of fallout will be decreased in the increasing rate scenarios, and increased in the decreasing rate scenarios. The change in the rate of fallout in each alternate interest rate scenario will be estimated based on a statistical analysis of observed fallout rates for changes in interest rates, and estimates of changes in fallout provided by various mortgage banking professionals.

The next step is to determine the market value of the loans expected to close. The methodology used to value mortgages is discussed in the Section B.5.

Because commitments to originate mortgages represent a commitment to provide a mortgage, as opposed to the mortgage itself, the market value of the commitment will be determined by subtracting par from the market value of the underlying mortgage. For example, if the underlying mortgage loan is determined to have a value of 102 percent of par, the commitment to make the loan would have a market value equal to 2 percent of par.

The value of these commitments will be adjusted to compensate for rate buy-ups and buy-downs. If an institution is collecting fees in excess of a normal level of operating costs, possibly due to an extensive "buy-down" program, the excess income will be added to estimated market value. The reverse also holds, should fees amount to less than operating costs.

This methodology represents an improvement over that proposed in the December 1990 Proposal because of the more detailed data that will be provided by institutions. The commitments will be grouped into categories according to their interest-rate sensitivity. As a result, 6-month and 1-year COFI ARMs will be reported separately from 1-year Treasury ARMs. In addition, commitments to originate balloon mortgages will be valued. Adjusting expected fallout in the shocked-rate scenarios will improve sensitivity estimates, as will compensating for buy-ups and buy-downs.

b. Firm Commitments to Purchase, Sell, or Originate Mortgages

A firm commitment to purchase or sell mortgages is an agreement to buy or sell a specified security on a particular date in the future at a specified price. A firm commitment to originate a mortgage is an obligation, binding upon both the lender and the borrower, to transact a specified mortgage loan at a specified interest rate.

The OTS Model will value firm commitments on the following eight categories of mortgages: (1) 1-month COFI ARMs, (2) 6-month or 1-year COFI ARMs, (3) 6-month or 1-year Treasury ARMs, (4) 3-year or 5-year Treasury ARMs, (5) 5-year or 7-year balloon or 2-step mortgages, (6) 10-year, 15-year or 20-year FRMs, (7) 25-year or 30-year FRMs, and (8) all other mortgages. The Model will distinguish, and value separately, commitments to transact whole loans versus MBS, and loans transacted on a "servicing retained" basis versus those transacted on a "servicing released" basis.

Schedule CMR will contain the following information on the mortgages underlying each position of firm commitments reported: (1) The category of loan or security, (2) the notional amount, (3) the coupon or pass through rate, and (4) the price to be paid or received.

The OTS model will evaluate firm commitments to purchase, sell, or originate mortgages using the option-adjusted approach that is used for valuing single family mortgages. See Section B.3 for details. Commitments will be valued as the difference between the value of the underlying security of the contract and par value. An adjustment for the forward nature of the contract will be made by adding an estimate of the cost of carry to the coupon of the forward contract.

In the methodology described in the December 1990 Proposal, firm commitments were reported with futures contracts. As a result, some firm commitments could have been identified and valued as futures contracts. Also, information was not provided on the exact type of mortgage underlying the commitment, whether the instrument was a loan or a security, or whether servicing would be retained or released.

c. Optional Commitments to Purchase or Sell Mortgages

An optional commitment to purchase mortgages is a contract that grants the buyer of the option the right, but not the obligation, to buy a specified type and amount of mortgages or mortgage-backed securities, with a specified weighted average coupon (for mortgages) or pass-through rate (for MBSs), at a specified price (called the "strike price"), on a specified date (called the "expiration date"). An optional commitment to sell mortgages is a contract that grants the buyer of the option the right, but not the obligation, to sell a specified type and amount of mortgages or MBSs, with a specified WAC or pass-through rate, at a specified price on a specified date.

The OTS model will value the four types of option positions on each of eight categories of mortgages that underlie the option. The four option positions are (1) long positions to purchase mortgages, (2) long positions to sell mortgages, (3) short positions to purchase mortgages, and (4) short positions to sell mortgages. (A long position means the thrift owns the option. A short position means the thrift has sold the option.) The following categories of mortgages underlie the options: (1) 1-month COFI ARMs, (2) 6-month or 1-year COFI ARMs, (3) 6-month or 1-year Treasury ARMs, (4) 3-year or 5-year Treasury ARMs, (5) 5-year or 7-year balloon or 2-step mortgages, (6) 10-year, 15-year or 20-year FRMs, (7) 25-year or 30-year FRMs, and (8) all other mortgages.

Schedule CMR will contain the following information on each option position reported: (1) The coupon or pass-through rate, (2) the strike price, (3) the notional principal amount, and (4) the expiration date.

Optional commitments on mortgages will be valued with the Black 76 option valuation model described in Section B.4. Five inputs will be used to calculate the options value. The price of the underlying mortgage, as calculated by the OTS model (see a description of the methodology for pricing mortgages in Section B.5), plus an adjustment for the cost of carrying the asset, will represent the forward price. The strike price and expiration date are reported on Schedule CMR. The 3-month Treasury rate will be used as a proxy for the risk-free rate. Volatility will be estimated as the implied volatility of the 10-year Treasury note futures option contract.

To calculate the market values in the shocked rate environments, two adjustments are made to the inputs of the model. The price of the underlying mortgage corresponding to the shocked environment is used (with the adjustment for the cost of carry), and the risk-free rate of return is adjusted by the amount of the shock.

Optional commitments to purchase or sell mortgages were not valued under the December 1990 Proposal because they were reported in the same cells as commitments to originate mortgages. Schedule MR could not distinguish the instrument being reported, so the model valued the more common instrument, commitments to originate.

d. Commitments to Purchase or Sell Non-Mortgage Financial Assets and Liabilities

Commitments to purchase or sell non-mortgage financial assets and liabilities are agreements to purchase or sell financial assets other than mortgages or mortgage-backed securities, and

commitments to purchase or sell liabilities, for a specified fixed price, on a specified date. (Commitments to purchase or sell mortgages or mortgage-backed securities are discussed in the Section 7.B., titled Firm Commitments to Purchase, Sell or Originate Mortgages.)

Institutions will report the following information on Schedule CMR for the instruments underlying the commitments: (1) Whether they are assets, core deposits (transaction accounts, money market deposit accounts, and passbook accounts), or other liabilities, (2) the dollar (par) amount, (3) the maturity (if the position consists of core deposits, no information is provided on maturity), (4) the coupon or interest rate paid or received, and (5) the price (as a percentage of par) to be paid or received.

Because these commitments represent agreements to purchase or sell the underlying asset or liability, as opposed to the asset or liability itself, the commitment is valued by estimating the value of the underlying asset or liability and subtracting the price at which the institution has agreed to buy or sell it. For example, if an institution has agreed to sell certain bonds for 98 percent of par, and the bonds are determined to have a value of 101 percent of par in some interest rate scenario, the commitment will have a market value of negative 3 percent of par in that scenario.

Positions in other liabilities will be assumed to consist of commitments to buy or sell certificates of deposit (CDs). The valuation of CDs and core deposits is discussed in Section 6.

Positions in non-mortgage financial assets will be valued using a static discounted cash flow approach. These positions will be assumed to consist of bonds paying semiannual interest payments. The OTS model will discount the cash flows by the rate that will return the price at which the institution is transacting the instrument (i.e., the internal rate-of-return of the instrument). For example, if an institution has agreed to sell certain bonds for 98 percent of par, the model will use that discount rate in the base case that causes the sum of the discounted cash flows of the bond to equal 98 percent of par. This assumption will result in these commitments having a base case value of zero. (A contract to transact an asset at its current market price should have little value.)

In the alternate rate scenarios, this single discount rate will be altered by the amount of the shock, the market value of the bond will be recalculated, and this will be subtracted from the price at which the institution has agreed to transact the asset.

This methodology improves on the December 1990 Proposal because under that proposal, these commitments were reported in cells with other instruments such as futures, commitments on mortgages, and loans-in-process. The Model could not distinguish the instrument reported, so the instrument most commonly reported in each cell would be valued. As a result, these commitments could be recognized and valued as some other instrument.

e. Interest-Rate Swaps

i. *Fixed-for-Floating Swaps.* Fixed-for-floating interest-rate swaps are agreements to exchange a stream of fixed-rate interest payments for a stream of interest payments that float with a market index of interest rates. The coupon payments are based on a specified notional principal amount.

Schedule CMR will distinguish, and the OTS model will value separately, fixed-for-floating swaps with each of the following floating rate indices: one-month, three-month, and six-month LIBOR, three-month, one-year, three-year, five-year, seven-year, and ten-year Treasury, the 11th District Cost of Funds (COFI), and the prime rate.

Schedule CMR will contain the following information about each swap position reported: (1) The floating-rate index, (2) the fixed rate, (3) the notional principal amount, (4) the maturity date, and (5) the margin to be added to the floating-rate index, if any. In addition, to value each position, the model will utilize the following information, effective as of the report date: the zero-coupon Treasury yield curve, the LIBOR curve, the COFI rate, and the prime rate.

The market value of a swap will be estimated as the present (discounted) value of its expected cash flows. A swap's cash flows are determined on the swap's reset dates, and the payments are actually exchanged one period later. For example, if a swap resets quarterly, the payment determined on the June 15 reset date is exchanged on September 15.

The cash flows will be estimated by comparing the fixed-rate coupon to the projected floating-rate coupon on each reset date. For swaps based on LIBOR and Treasury indices, the projected floating rate will equal the corresponding implied forward LIBOR or Treasury rate. In the above example, the projected floating rate for the June 15 reset date equals the 91-day implied forward rate as of that date.

COFI rates will be projected using a model based on lagged short-term and long-term Treasury rates. The prime rate will also be projected as a function of implied forward Treasury rates.

The expected cash flow will be computed as the difference between the fixed coupon minus the projected floating coupon (plus any applicable margin), multiplied by the notional amount of the swap. This figure will then be divided by the number of resets in a year (*e.g.*, four, for swaps which reset quarterly).

Swaps contain one additional cash flow that must be valued: the first cash flow to be exchanged after the report date. As of the report date, the swap's next cash flow will be exchanged on the next reset date. However, this payment was determined on the prior reset date, which was before the report date. To estimate this cash flow, the OTS Model will compare the swap's fixed rate to what the floating rate was on the prior reset date.

Each cash flow will be discounted by the zero-coupon rate corresponding to the month the payment is exchanged to determine present value. The market value of the swap is equal to the sum of the discounted cash flows.

To determine the swap's market value in the shocked interest rate environment, the corresponding Treasury or LIBOR curve will be adjusted by the amount of the shock, and market value recalculated. The shock will effect both the projected floating rates and the spot curves used for discounting. (The first cash flow is not effected by the shock, though its value changes because it will be discounted by shocked interest rates.)

ii. *Basis Swaps.* Basis swaps are agreements to exchange one stream of interest payments that float with an index of market rates for a stream that floats with a different index of market rates. The coupon payments are based on a specified notional principal amount.

Schedule CMR will distinguish, and value separately, four types of basis swaps: one-month LIBOR-for-COFI, three-month LIBOR-for-COFI, six-month LIBOR-for-COFI, and three-month Treasury-for COFI swaps. (Treasury-for-LIBOR swaps are not reported on Schedule CMR because they are not considered to exhibit significant sensitivity to the interest rate simulations performed by the OTS model.) Schedule CMR will collect essentially the same information for these contracts as for fixed-for-floating swaps.

The methodology used to value basis swaps will be similar to that of fixed-for-floating swaps. However, instead of projecting the floating rate forward and

comparing it to the fixed rate on each reset date, two floating rates will be projected. The same methods will be used to project rates: implied forward rates will be calculated to project LIBOR and Treasury rates, and COFI will be projected as a lagged function of short and long term Treasury rates. (Because COFI rates react more slowly to rate shocks than Treasury or LIBOR rates, basis swaps in which COFI is received will tend to increase in value when rates fall, and vice versa.)

iii. *Swaptions.* A swaption is an option to enter into a specified swap agreement on a specified future date. The OTS Model will evaluate swaptions on fixed-for-floating swaps.

Schedule CMR will contain the following information on each swaption reported: (1) The floating-rate index, (2) the fixed rate, or strike rate, (3) the notional principal amount, (4) the expiration date of the swaption (the date the swap would begin if the swaption were exercised), (5) the date the swap underlying the swaption matures, and (6) the margin to be added to the floating-rate index, if any. In addition, to value each position, the model will utilize the spot Treasury yield curve and the LIBOR curve.

Swaptions will be valued with the Black 76 option valuation model described in Section B.4. Five inputs will be used to calculate the option's value. The forward swap rate will be estimated as the corresponding implied forward rate. (For example, if an option on a two-year swap expired in six months, the forward swap rate would equal the two-year forward rate beginning six months out.) The strike price and expiration date will be taken from Schedule CMR. The 3-month Treasury rate will be used as a proxy for the risk-free rate. Volatility will be estimated as the implied volatility of the 5-year Treasury note futures contract.

To calculate the market value in the shocked rate environment, two adjustments will be made to the Model. The corresponding Treasury or LIBOR curves will be adjusted by the amount of the shock, which alters the forward swap rate. In addition, the risk-free rate of return will be adjusted by the amount of the shock.

Mortgage Swaps

Mortgage swaps are agreements to exchange a stream of fixed-rate mortgage interest payments for a stream of interest payments that float with a market index of interest rates. The payments are based on a specified notional principal amount which is reduced monthly as a function of the actual amortization and prepayment experience of a specified pool of MBSs.

Schedule CMR will distinguish mortgage swaps with one-month, three-month, and six-month LIBOR floating rate indices. Schedule CMR will contain the following information about each mortgage swap position reported: (1) The floating-rate index, (2) the mortgage coupon, (3) the notional principal amount, (4) the maturity date of the pool of mortgages underlying the swap, and (5) the margin to be added to the floating-rate index, if any.

Mortgage swap agreements are generally constructed to mimic an investment in the underlying mortgage funded by floating-rate borrowings. In the OTS model, the valuation of mortgage swaps will be simplified by the assumption that the value of the borrowings are equal to par. Therefore, the value of the swap will equal the value of the mortgage minus par. For example, if the mortgage underlying a swap is valued at 98% of par, the swap will have a value of −2% of par (for the party receiving the fixed mortgage coupon).

Amortizing Swaps

An amortizing swap is a swap on which the notional principal amount amortizes over time. Any of the swaps reported on Schedule CMR can be valued as amortizing swaps. (Of course, mortgage swaps are always valued as amortizing.)

Schedule CMR will collect the same data on the swap regardless of whether or not it is amortizing. Data on the swap's amortization schedule is not collected. Therefore, the OTS model will assume the swap amortizes in a "straight line" manner over the life of the swap.

This methodology for valuing swaps represents a substantial improvement over that described in the 1990 Proposal. Under that proposal, the floating index was not specified, margins could not be reported, and the expiration date was known only within a range. Forward swaps, swaptions, mortgage swaps and other amortizing swaps could not be distinguished. Therefore, all swaps reported on Schedule MR were assumed to be fixed-for-floating and were evaluated as such.

Interest Rate Caps and Floors

An interest rate cap is a contract that compensates the holder of the contract when a specified interest rate index increases above a specified rate (called the cap rate or strike rate). An interest rate floor is a contract that compensates the holder of the contract when a specified interest rate index decreases below a specified rate (called the cap rate or strike rate). The party that has purchased the cap or floor is said to be "long" the cap or floor, while the party that has sold the cap or floor is said to be "short" the cap or floor. Caps and floors are generally entered into for an extended period of time. They are typically evaluated every quarter or six months. Payments during the subsequent period depend on the relationship of the designated interest rate to the strike rate on the evaluation date.

Schedule CMR will contain the following information about each cap or floor position reported: (1) The interest rate index underlying cap or floor, (2) the notional amount, (3) the date the cap or floor begins (if the contract contains a forward provision), (4) the maturity date, and (5) the strike rate.

Caps and floors will be valued with the derivative of the Black-Scholes option valuation model that was described in Section B.4. Each cap or floor will be valued as the sequence of options represented by the contract. Five inputs will be used to calculate each options value. The forward rate will be estimated as the corresponding implied forward rate. The strike rate and expiration date will be taken from Schedule CMR. The 3-month Treasury rate will be used as a proxy for the risk-free rate. Volatility for the near term options of the cap or floor will be estimated as the implied volatility of the nearby Eurodollar futures contract. This volatility will be adjusted for each subsequent option so that it approaches an estimate of the long term historical volatility of short term interest rates.

To calculate the market value in the shocked rate environment, two adjustments will be made to the Model. The corresponding Treasury of LIBOR curves will be adjusted by the amount of the shock, which alters the implied forward rates used to value each option. In addition, the risk-free rate of return will be adjusted by the amount of the shock.

In the methodology described in the 1990 Proposal all caps were assumed to be based on the 3-month LIBOR rate, while floors were not valued. Cap values were determined by a model similar to the one described in this notice.

Futures

The OTS model will value long and short positions in the following futures contracts: Treasury bond, 2-year, 5-year, and 10-year Treasury notes, 1-month LIBOR, 3-month Eurodollar, 3-month Treasury bill, 30-day interest rate, 3-yea

and 5-year swaps, and 30-year mortgage-backed futures. Institutions will report on Schedule CMR a contract code that represents the type of futures contract, and the notional principal amount of their futures position(s).

Futures contracts are "marked-to-market" daily and cash is paid or received so that the market value of the position is zero at the end of each day. As a result, the market value of futures in the base case as of the reporting date is zero.

The estimated market value of a futures position in the alternate rate scenarios is determined by the difference between the estimated futures price in the alternate rate environment and the futures price in the base case. For Treasury note or bond futures, the OTS Model will estimate the futures price of the cheapest-to-deliver (CTD) security in each alternate rate environment. The futures price in the base case is then subtracted from the futures price in the alternate scenario and multiplied by the notional amount of the position to determine the market value of the position in that scenario.

To value the 1-month LIBOR, 3-month Eurodollar, 3-month Treasury bill, and 30-day interest rate futures, the base case yield is adjusted by the amount of the interest rate shock. (Treasury bill futures are adjusted by the amount that a discount yield would shift, given the shock to the zero-coupon Treasury curve.) Futures contracts have a specific dollar value per yield point, so the market value of these contracts in each scenario equals the product of this specific value and the change in the yield caused by the rate shock.

The OTS Model values 3-year and 5-year swaps futures in the same manner as fixed-for-floating swaps (refer to the Swaps section for discussion).

This methodology represents two improvements over that described in the December 1990 Proposal. The OTS model will accommodate several more futures contracts. Furthermore, the use of CTD securities will improve the valuation of Treasury note and bond futures.

Options on Futures

A call option on a futures contract is a contract that grants the buyer of the option the right, but not the obligation, to acquire a long position in a futures contract at a specified price (called the "strike price") and on a specified date (called the "expiration date"). A put option on a futures contract is a contract that grants the buyer of the option the right, but not the obligation, to acquire a short position in a futures contract at a specified price and on a specified date.

The OTS Model will value the four types of options positions on each of eight different futures contracts. The four option positions are (1) long call, (2) long put, (3) short call and (4) short put. (A long position indicates the thrift has bought the option. A short position indicates the thrift has sold the option.) The eight futures contracts underlying the options are (1) 30-day interest rate futures, (2) 3-month Treasury bill futures, (3) 2-year Treasury note futures, (4) 5-year Treasury note futures, (5) 10-year Treasury note futures, (6) Treasury bond futures, (7) 1-month LIBOR futures, and (8) Eurodollar futures.

Schedule CMR will contain the following information on each option position reported: (1) The notional principal amount, (2) the strike price, and (3) the expiration date of the option.

Options on futures will be valued with the derivative of the Black-Scholes option valuation model that was described in the section titled "Basic Valuation Methodologies." Five inputs will be used to calculate the options value. The price of the underlying futures contract will represent the futures price. The strike price and expiration date will be used from Schedule CMR. The 3-month Treasury rate will be used as proxy for the risk-free rate. Volatility will be estimated as the implied volatility of the corresponding option contract (if liquid) or of a similar contract.

To calculate the market value in the shocked rate environments, two adjustments will be made to the inputs of the model. The futures price in the corresponding shocked environment is used (for a description of how futures prices are calculated, see the Futures section, below) and the risk-free rate of return is adjusted by the amount of the shock.

Though this methodology for valuing options on futures is essentially the same as the one described in the 1990 Proposal, market value estimates will be more accurate for two reasons. The institution will report the specific type, expiration, and strike price or rate of the option held on Schedule CMR. In addition, the methodology for estimating the prices of the futures underlying the option in the alternate rate scenarios will be more accurate.

Construction LIP

Construction loans in process (construction LIP) are construction loans on which the institution has closed but has not yet disbursed the entire proceeds. Only that construction LIP for which a fixed interest rate has been specified will be reported on Schedule CMR. Floating-rate agreements or agreements wherein the rate is determined at the time the funds are disbursed will not be reported on Schedule CMR.

Schedule CMR contains the following information on construction LIP: (1) The amount of undisbursed funds, (2) the term until the expected receipt of principal on the loans, and (3) the interest rate.

Because construction LIP represents a commitment to provide a loan, as opposed to the loan itself, the market value of the commitment will be determined by estimating the value of the underlying loan, and subtracting par. For example, if the underlying loan is determined to have a value of 102 percent of the par, the commitment to make the loan would have market value equal to 2 percent of par. The underlying loan is valued as a fixed-rate construction loan (see the valuation of construction loans in Section V.E).

In the alternate interest rate scenarios, the discount rate will be adjusted by the amount of the shock, the value of the underlying loan will be recalculated, and par subtracted.

Under the December 1990 Proposal, construction LIP was not valued because it cannot be distinguished on Schedule MR. Construction LIP is reported in the same cells as futures and commitments on mortgages, and the model values these other commitments. As a result, positions in construction LIP are treated as either futures or commitments on mortgages.

BILLING CODE 6720-01-M

Appendix B—Draft Copy of Schedule CMR

Office of Thrift Supervision Thrift Financial Report Consolidated Maturity/Rate Schedule CMR March 1993	INSTRUCTIONS 1. Report Dollar Balances in Thousands ($000) 2. Report % to Two (2) Decimal Places (e.g., x.xx%) 3. Report Maturities in Whole Months 4. See Instructions for Details on Specific Items	DOCKET	Name, Address, and Docket Number of Institution (Use Preprinted Label) **DRAFT**
Prepared by	Telephone Number		

ASSETS

FIXED-RATE SINGLE-FAMILY FIRST MORTGAGE LOANS & MORTGAGE-BACKED SECURITIES:

	Coupon				
	Less Than 8%	8.00 to 8.99%	9.00 to 9.99%	10.00 to 10.99%	11.00% & Above
30-Year Mortgages and MBS:					
Mortgage Loans	001 $	002 $	003 $	004 $	005 $
WARM	006 months	007 months	008 months	009 months	010 months
WAC	011 . %	012 . %	013 . %	014 . %	015 . %
$ of Which Are FHA or VA Guaranteed	016 $	017 $	018 $	019 $	020 $
Securities Backed By Conventional Mortgages	026 $	027 $	028 $	029 $	030 $
WARM	031 months	032 months	033 months	034 months	035 months
Wtd Avg Pass-Thru Rate	036 . %	037 . %	038 . %	039 . %	040 . %
Securities Backed by FHA or VA Mortgages	046 $	047 $	048 $	049 $	050 $
WARM	051 months	052 months	053 months	054 months	055 months
Wtd Avg Pass-Thru Rate	056 . %	057 . %	058 . %	059 . %	060 . %
15-Year Mortgages and MBS:					
Mortgage Loans	066 $	067 $	068 $	069 $	070 $
WAC	071 . %	072 . %	073 . %	074 . %	075 . %
Mortgage Securities	076 $	077 $	078 $	079 $	080 $
Wtd Avg Pass-Thru Rate	081 . %	082 . %	083 . %	084 . %	085 . %
WARM (of Loans & Securities)	086 months	087 months	088 months	089 months	090 months
Balloon Mortgages and MBS:					
Mortgage Loans	096 $	097 $	098 $	099 $	100 $
WAC	101 . %	102 . %	103 . %	104 . %	105 . %
Mortgage Securities	106 $	107 $	108 $	109 $	110 $
Wtg Avg Pass-Thru Rate	111 . %	112 . %	113 . %	114 . %	115 . %
WARM (of Loans & Securities)	116 months	117 months	118 months	119 months	120 months

Total Fixed-Rate Single-Family First Mortgage Loans and Mortgage-Backed Securities ..... 125 $

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ASSETS--Continued

ADJUSTABLE-RATE SINGLE-FAMILY FIRST MORTGAGE LOANS & MORTGAGE-BACKED SECURITIES

	Current Market Index ARMs by Coupon Reset Frequency						Lagging Market Index ARMs by Coupon Reset Frequency			
	6 Mo or Less		7 Mo to 2 Yrs		2+ Yrs to 5 Yrs		1 Month		2 Mo to 5 Yrs	
Teaser ARMs										
Balances Currently Subject to Introductory Rates	141	$	142	$	143	$	144	$	145	$
WAC	146	. %	147	. %	148	. %	149	. %	150	. %
Non-Teaser ARMs										
Balances of All Non-Teaser ARMS	156	$	157	$	158	$	159	$	160	$
Wtd Avg Margin	161	bp	162	bp	163	bp	164	bp	165	bp
WAC	166	. %	167	. %	168	. %	169	. %	170	. %
WARM	171	months	172	months	173	months	174	months	175	months
Wtd Avg Time Until Next Payment Reset	176	months	177	months	178	months	179	months	180	months

Total Adjustable-Rate Single-Family First Mortgage Loans & Mortgage-Backed Securities ..... 185 $

MEMO ITEMS FOR ALL ARMS (Rptd at CMR185):

	Current Market Index ARMs by Coupon Reset Frequency						Lagging Market Index ARMs by Coupon Reset Frequency			
	6 Mo or Less		7 Mo to 2 Yrs		2+ Yrs to 5 Yrs		1 Month		2 Mo to 5 Yrs	
ARM Balances by Distance to Lifetime Cap										
Balances W/Coupon Within 200 bp of Lifetime Cap	186	$	187	$	188	$	189	$	190	$
Wtd Avg Distance from Lifetime Cap	191	bp	192	bp	193	bp	194	bp	195	bp
Balances w/Coupon 201 - 400 bp from Lifetime Cap	196	$	197	$	198	$	199	$	200	$
Wtd Avg Distance from Lifetime Cap	201	bp	202	bp	203	bp	204	bp	205	bp
Balances W/Coupon Over 400 bp from Lifetime Cap	206	$	207	$	208	$	209	$	210	$
Balances Without Lifetime Cap	211	$	212	$	213	$	214	$	215	$
ARM Cap & Floor Detail										
Balances Subject to Periodic Rate Caps	221	$	222	$	223	$	224	$	225	$
Wtd Avg Periodic Rate Cap (in basis points)	226	bp	227	bp	228	bp	229	bp	230	bp
Balances Subject to Periodic Rate Floors	231	$	232	$	233	$	234	$	235	$
Balances Subject to Lifetime Rate Floors	236	$	237	$	238	$	239	$	240	$
MBS Included in ARM Balances	241	$	242	$	243	$	244	$	245	$

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ASSETS-Continued

MULTIFAMILY & NONRESIDENTIAL MORTGAGE LOANS & SECURITIES

	Balloons		Fully Amortizing	
Adjustable-Rate:				
Balances	261	$	262	$
WARM	263	months	264	months
Remaining Term to Full Amortization	265	months		
Rate Index Code	267		268	
Margin	269	bp	270	bp
Reset Frequency	271	months	272	months
MEMO: ARMs within 300 bp of Life Cap				
Balances	273	$	274	$
WA Distance to Lifetime Cap (bp)	275	bp	276	bp
Fixed-Rate:				
Balances	281	$	282	$
WARM	283	months	284	months
Remaining Term to Full Amortization	285	months		
WAC	287	. %	288	. %

CONSTRUCTION & LAND LOANS

	Adjustable Rate		Fixed Rate	
Balances	291	$	292	$
WARM	293	months	294	months
Rate Index Code	295			
Margin in Col 1; WAC in Col 2	297	bp	298	. %

SECOND MORTGAGE LOANS & SECURITIES

	Adjustable Rate		Fixed Rate	
Balances	311	$	312	$
WARM	313	months	314	months
Rate Index Code	315			
Margin in Col 1; WAC in Col 2	317	bp	318	. %
Reset Frequency	319	months		

ASSETS-Continued

COMMERCIAL LOANS

	Adjustable Rate		Fixed Rate	
Balances	325	$	326	$
WARM	327	months	328	months
Margin in Col 1; WAC in Col 2	329	bp	330	. %

CONSUMER LOANS

	Adjustable Rate		Fixed Rate	
Balances	335	$	336	$
WARM	337	months	338	months
Rate Index Code	339			
Margin in Col 1; WAC in Col 2	341	bp	342	. %
Reset Frequency	343	months		

MORTGAGE-DERIVATIVE SECURITIES--BOOK VALUE

	High Risk		Low Risk	
Collateralized Mortgage Obligations:				
Floating Rate	351	$	352	$
Fixed Rate:				
Remaining WAL <= 5 Years	353	$	354	$
Remaining WAL 5-10 Years	355	$	356	$
Remaining WAL Over 10 Years	357	$		
Superfloaters	359	$		
Inverse Floaters & Super POs	361	$		
Other	363	$	364	$
CMO Residuals:				
Fixed Rate	365	$	366	$
Floating Rate	367	$	368	$
Stripped Mortgage-Backed Securities:				
Interest-Only MBS	369	$	370	$
WAC	371	. %	372	. %
Principal-Only MBS	373	$	374	$
WAC	375	. %	376	. %
Total Mortgage-Derivative Securities--Book Value	377	$	378	$

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Prepared by:	Telephone Number		

ASSETS-Continued

MORTGAGE LOANS SERVICED FOR OTHERS

Fixed-Rate Mortgage Loan Servicing

	Coupon of Fixed-Rate Mortgages Serviced for Others									
	Less Than 8%		8.00 to 8.99%		9.00 to 9.99%		10.00 to 10.99%		11.00% & Above	
Balances Serviced	401	$	402	$	403	$	404	$	405	$
WARM	406	months	407	months	408	months	409	months	410	months
Wtd Avg Servicing Fee	411	bp	412	bp	413	bp	414	bp	415	bp

Total # of Fixed-Rate Loans Serviced That Are:

Conventional Loans	421	loans
FHA/VA Loans	422	loans
Subserviced by Others	423	loans

Adjustable-Rate Mortgage Loan Servicing

	Index on Serviced Loan			
	Current Market		Lagging Market	
Balances Serviced	431	$	432	$
WARM	433	months	434	months
Wtd Avg Servicing Fee	435	bp	436	bp

Total # of Adjustable-Rate Loans Serviced	441	loans
Of Which, Number Subserviced By Others	442	loans

Total Balances of Mortgage Loans Serviced for Others 450 $

CASH, DEPOSITS, & SECURITIES

	Balances	WAC	WARM
Cash, Non-Interest-Earning Deposits, Overnight Fed Funds, Overnight Repos	461 $		
Equity Securities and All Mutual Funds	464 $		
Zero-Coupon Securities	470 $	471 . %	472 months
Government and Agency Securities and Deposits at FHLBs	473 $	474 . %	475 months
Term Fed Funds, Term Repos, and Non-FHLB Deposits	476 $	477 . %	478 months
Other (Munis, Mortgage-Backed Bonds, Corporate Securities, Commercial Paper, Etc.)	479 $	480 . %	481 months
Total Cash, Deposits, & Securities	490 $		

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ASSETS--Continued

OTHER ASSETS RELATED TO MORTGAGE LOANS & SECURITIES

Nonperforming Loans	501	$
Accrued Interest Receivable	502	$
Advances for Taxes and Insurance	503	$
Unamortized Yield Adjustments	504	$
Valuation Allowances: Category I	505	$
Valuation Allowances: Category II	506	$

OTHER ASSETS RELATED TO NONMORTGAGE LOANS & SECURITIES

Nonperforming Loans	511	$
Accrued Interest Receivable	512	$
Unamortized Yield Adjustments	513	$
Valuation Allowances: Category I	514	$
Valuation Allowances: Category II	515	$

REAL ESTATE HELD FOR INVESTMENT	520	$
REPOSSESSED ASSETS	525	$
INVESTMENT IN UNCONSOLIDATED SUBSIDIARIES	530	$
OFFICE PREMISES AND EQUIPMENT	535	$

OTHER ASSETS

Valuation Allowances for Investment Securities	540	$
Purchased & Excess Servicing Rights	541	$
Margin Account	542	$
Miscellaneous I	543	$
Miscellaneous II	544	$
TOTAL ASSETS	550	$

ASSETS--Continued

MEMORANDUM ITEMS

Book Value of FSLIC Assets	575	$
Mortgage "Warehouse" Loans Reported as Mortgage Loans at CSC24	578	$
Home Equity & Secured Home Improvement Loans Reported as Nonmortgage Loans at CSC31	580	$
Market Value of Equity Securities & Mutual Funds Rpt'd at CMR464:		
Equity Securities & Non-Mortgage-Related Mutual Funds	582	$
Mortgage-Related Mutual Funds	584	$
Mortgage Loans Serviced by Others:		
Fixed-Rate Mortgage Loans Serviced	585	$
Wtd Avg Servicing Fee	587	bp
Adjustable-Rate Mortgage Loans Serviced	588	$
Wtd Avg Servicing Fee	589	bp
Credit Card Balances Expected to Pay Off in Grace Period	590	$

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LIABILITIES

FIXED-RATE, FIXED-MATURITY DEPOSITS

Balances by Remaining Maturity:

	Original Maturity in Months: 12 or Less	13 to 36	37 or More		Early Withdrawal During Quarter (Optional)
Balances Maturing in 3 Months or Less	601 $	602 $	603 $		604 $
WAC	605 . %	606 . %	607 . %		
WARM	608 months	609 months	610 months		
Balances Maturing in 4 to 12 Months	615 $	616 $	617 $		618 $
WAC	619 . %	620 . %	621 . %		
WARM	622 months	623 months	624 months		
Balances Maturing in 13 to 36 Months		631 $	632 $		633 $
WAC		634 . %	635 . %		
WARM		636 months	637 months		
Balances Maturing in 37 or More Months			641 $		642 $
WAC			643 . %		
WARM			644 months		
Total Fixed-Rate, Fixed-Maturity Deposits				645 $	

Memo: Fixed-Rate, Fixed-Maturity Deposit Detail:

	Original Maturity in Months: 12 or Less	13 to 36	37 or More
Balances in Brokered Deposits	650 $	651 $	652 $
Deposits with Early-Withdrawal Penalties Stated in Terms of Months of Foregone Interest:			
Balances Subject to Penalty	653 $	654 $	655 $
Penalty in Months of Foregone Interest (expressed to two decimal places; e.g., x.xx)	656 . months	657 . months	658 . months
Balances in New Accounts (Optional)	659 $	660 $	661 $

Office of Thrift Supervision Thrift Financial Report Consolidated Maturity/Rate Schedule CMR March 1993	INSTRUCTIONS 1. Report Dollar Balances in Thousands ($000) 2. Report % to Two (2) Decimal Places (e.g., x.xx%) 3. Report Maturities in Whole Months 4. See Instructions for Details on Specific Items	DOCKET	Name, Address, & Docket Number of Institution (Use Preprinted Label)
Prepared by:	Telephone Number		

LIABILITIES-Continued

FIXED-RATE, FIXED-MATURITY BORROWINGS: FHLB ADVANCES, OTHER BORROWINGS, REDEEMABLE PREFERRED STOCK, & SUBORDINATED DEBT

Balances by Coupon Class:

	Remaining Maturity: 0 to 3 Months		4 to 36 Months		Over 36 Months		WAC	
Under 5.00 %	675	$	676	$	677	$	678	. %
5.00 to 5.99 %	679	$	680	$	681	$	682	. %
6.00 to 6.99 %	683	$	684	$	685	$	686	. %
7.00 to 7.99 %	687	$	688	$	689	$	690	. %
8.00 to 8.99%	691	$	692	$	693	$	694	. %
9.00 to 9.99 %	695	$	696	$	697	$	698	. %
10.00 to 10.99 %	699	$	700	$	701	$	702	. %
11.00% and Above	703	$	704	$	705	$	706	. %
WARM	711	months	712	months	713	months		

Total Fixed-Rate, Fixed-Maturity Borrowings 715 $

VARIABLE-RATE, FIXED-MATURITY LIABILITIES

	Liability Code	Rate Index Code	Balance		Margin		Rate Reset Frequency		Months to Next Reset		WARM	
Position 1	721	722	723	$	724	bp	725	mo	726	mo	727	mo
Position 2	728	729	730	$	731	bp	732	mo	733	mo	734	mo
Position 3	735	736	737	$	738	bp	739	mo	740	mo	741	mo
All Other Positions			744	$	745	bp	746	mo	747	mo	748	mo

[1]Memo: Book Value of Redeemable Preferred Stock 755 $

Office of Thrift Supervision Thrift Financial Report Consolidated Maturity/Rate Schedule CMR March 1993	INSTRUCTIONS 1. Report Dollar Balances in Thousands ($000) 2. Report % to Two (2) Decimal Places (e.g., x.xx%) 3. Report Maturities in Whole Months 4. See Instructions for Details on Specific Items	DOCKET	Name, Address, and Docket Number of Institution (Use Preprinted Label)
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LIABILITIES (Con't.), MINORITY INTEREST, & CAPITAL

	Total Balances	WAC	Balances in New Accounts (Optional)
DEMAND DEPOSITS			
Transaction Accounts	762 $	763 . %	764 $
Money Market Deposit Accounts (MMDAs)	765 $	766 . %	767 $
Passbook Accounts	768 $	769 . %	770 $
Non-Interest-Bearing Demand Deposits	771 $		773 $

	Total Balances	WAC
ESCROW ACCOUNTS		
Escrows for Mortgages Held in Portfolio	775 $	776 . %
Escrows for Mortgages Serviced for Others	777 $	778 . %
Other Escrows	779 $	780 . %

TOTAL DEMAND DEPOSITS & ESCROW ACCOUNTS	781 $
UNAMORTIZED YIELD ADJUSTMENTS ON DEPOSITS	782 $
UNAMORTIZED YIELD ADJUSTMENTS ON BORROWINGS	784 $
OTHER LIABILITIES	
Collateralized Mortgage Securities Issued	785 $
Miscellaneous I	786 $
Miscellaneous II	787 $
TOTAL LIABILITIES (Incl. Redeemable Preferred Stock)	790 $
MINORITY INTEREST IN CONSOLIDATED SUBSIDIARIES	793 $
UNREALIZED LOSSES ON MARKETABLE EQUITY SECURITIES	794 $
EQUITY CAPITAL	796 $
TOTAL LIABILITIES, MINORITY INTEREST, AND CAPITAL	800 $

Office of Thrift Supervision Thrift Financial Report Consolidated Maturity/Rate Schedule CMR March 1993	INSTRUCTIONS 1. Report Dollar Balances in Thousands ($000) 2. Report % to Two (2) Decimal Places (e.g., x.xx%) 3. Report Maturities in Whole Months 4. See Instructions for Details on Specific Items	DOCKET	Name, Address, and Docket Number of Institution (Use Preprinted Label)
Prepared by:	Telephone Number		Off-Balance-Sheet Positions

Off-Balance-Sheet Contract Positions	[1] Contract Code	[2] Notional Amount	[3] Maturity or Fees	[4] Price/Rate #1	[5] Price/Rate #2
Position 1	801	802 $	803	804 .	805 .
Position 2	806	807 $	808	809 .	810 .
Position 3	811	812 $	813	814 .	815 .
Position 4	816	817 $	818	819 .	820 .
Position 5	821	822 $	823	824 .	825 .
Position 6	826	827 $	828	829 .	830 .
Position 7	831	832 $	833	834 .	835 .
Position 8	836	837 $	838	839 .	840 .
Position 9	841	842 $	843	844 .	845 .
Position 10	846	847 $	848	849 .	850 .
Position 11	851	852 $	853	854 .	855 .
Position 12	856	857 $	858	859 .	860 .
Position 13	861	862 $	863	864 .	865 .
Position 14	866	867 $	868	869 .	870 .
Position 15	871	872 $	873	874 .	875 .
Position 16	876	877 $	878	879 .	880 .

NOTE: Enter "price" or "rate" in columns 4 & 5 to two decimal places (e.g., "price" = 102.25 or "rate" = 6.12%)

MEMO: Reconciliation of Off-Balance-Sheet Contract Positions Reported	# of Positions
Reported Above at CMR801-CMR880	901
Reported Using Optional Supplemental Reporting	902
Self-Valued & Reported as "Additional" Positions at CMR911-CMR919	903

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Prepared by:	Telephone Number		

REPORTING OF MARKET VALUE ESTIMATES

Estimated Market Value After Specified Rate Shock

Rate Shock in Basis Points	Required Reporting Items: Off-Balance-Sheet Contracts Reported Under "Additional"	Required Reporting Items: Mortgage-Derivative Securities	Optional Reporting Items: FSLIC Guarantee	Optional Reporting Items: Options on Liabilities	Optional Reporting Items: Collateralized Mortgage Securities Issued
+400	911 $	921 $	931 $	941 $	951 $
+300	912 $	922 $	932 $	942 $	952 $
+200	913 $	923 $	933 $	943 $	953 $
+100	914 $	924 $	934 $	944 $	954 $
No Change	915 $	925 $	935 $	945 $	955 $
-100	916 $	926 $	936 $	946 $	956 $
-200	917 $	927 $	937 $	947 $	957 $
-300	918 $	928 $	938 $	948 $	958 $
-400	919 $	929 $	939 $	949 $	959 $

Memo: Face Value of Liabilities w/Options (reported CMR941 thru CMR949) ..... 950 $

OPTIONAL SUPPLEMENTAL REPORTING FOR ASSETS/LIABILITIES

Entry #	[1] Asset/ Liability Code	[2] Rate Index Code	[3] Balance $000	[4] Margin/ WAC in bp	[5] Rate Reset Frequency	[6] Months to Full Amort/ Next Reset	[7] Remaining Maturity	[8] Distance to Lifetime Cap
			$	bp	mo	mo	mo	bp
			$	bp	mo	mo	mo	bp
			$	bp	mo	mo	mo	bp

OPTIONAL SUPPLEMENTAL REPORTING FOR OFF-BALANCE-SHEET POSITIONS

Entry #	[1] Contract Code	[2] Notional Amount	[3] Maturity or Fees	[4] Price/Rate #1	[5] Price/Rate #2
		$		.	.
		$		.	.
		$		.	.

Executive Order 12291

The proposed regulation is considered to be a "major rule" within the meaning of Executive Order 12291. Accordingly, the OTS has prepared the following preliminary regulatory impact analysis.

Preliminary Regulatory Impact Analysis

OTS desires to issue a final regulation that meets its objectives at the least possible net social cost. To assist in the evaluation of this proposal, OTS is providing this analysis of the costs and benefits that are likely to accrue from this regulation. OTS also invites commenters to provide data and other information relating to the effect of the proposed regulation on the national economy, on specific activities that may be directly affected, and on savings associations.

The Need for Proposed Rule

The federal government provides a "safety net" to savings associations in the form of deposit insurance. (The safety net is generally defined to include the deposit insurance system and access to the discount window of the Federal Reserve.) In the absence of such a safety net, depositors, equity investors, and other creditors would require certain savings associations to maintain higher levels of capital to protect against potential losses from risks such as interest rate risk exposure than they currently maintain. The existence of the safety net, therefore, creates a moral hazard under which some associations may take greater risks than would be prudent or than they would be permitted to take in its absence. The proposed regulation addresses the need for additional capital to protect against one such risk—excessive interest rate risk.

Objectives of Proposed Rule

The principal objectives of incorporating an interest rate risk component into the risk-based capital framework are to: 1) Make capital requirements more sensitive to differences in risk exposure among savings associations; 2) discourage savings associations from taking excessive risks by making such behavior more costly; and 3) ensure that adequate capital is maintained in savings associations to reduce the exposure of the deposit insurance fund and to protect the taxpayers' interests. The proposal is designed to impose greater market-like discipline on savings associations to foster a more competitive and efficient thrift industry while increasing its overall safety and soundness. As described below, OTS believes that the overall benefits to society of fostering such an environment far outweigh the costs imposed on a relatively small number of savings associations that would have to raise additional capital or adjust their portfolios as a result of this rule.

Benefits

Incorporating an interest rate risk component into the risk-based capital rule will help to ensure that the capital requirements of savings associations are more closely related to the risks incurred by such institutions. Making institutions' capital requirements dependent on the risks they take should result in capital requirements that correspond more closely to those that would be imposed by equity investors, depositors, and other creditors in the absence of the federal safety net that provides support to depository institutions. Adoption of the proposed rule would result in capital requirements that correspond more closely to those that the marketplace would demand in the absence of a federal safety net, leading to gains in overall economic efficiency. It is not possible to quantify these gains with precision with the data currently available to the agency.

There are several ways in which gains should result from adoption of the proposed rule. First, the interest rate risk component requires less capital of those savings associations with low levels of interest rate risk than it does of those that are taking above normal interest rate risk. Consequently, less risky institutions should find it easier to compete and grow. Risky institutions would be encouraged to manage their interest-rate risk more effectively, also leading to gains in economic efficiency.

Second, the imposition of an interest rate risk component should reduce the likelihood of depository institution failures resulting from excessive interest rate risk exposure. While not a direct measure of economic benefit, this would reduce deposit insurance losses that otherwise would be paid by the industry or taxpayers. As is well known, thrift institutions came under severe pressure in the late 1970s and early 1980s, when interest rates rose dramatically. In fact, because of its heavy interest rate risk exposure, the industry reported losses of $9 billion during 1981 and 1982 and, in terms of market value, some estimate that losses exceeded $150 billion. While many institutions have since taken steps to reduce their exposure, others remain heavily exposed to interest rate risk.

OTS believes that the incidence of thrift institution failures resulting from excessive interest rate exposure can be reduced significantly by incorporating an interest rate risk component into the risk-based capital framework. The proposed interest rate risk component would encourage excessively exposed institutions to reduce their exposure or augment their capital base. As a consequence, risk to the deposit insurance fund and taxpayers would be reduced.

Third, OTS believes that the interest rate risk component would create incentives for savings associations to make decisions on the basis of their economic merit rather than on their accounting effect. For example, savings associations may be tempted to acquire fixed-rate mortgages instead of adjustable rate mortgages if fixed-rate mortgages are expected to generate higher levels of reported earnings over the near term, even though adjustable rate mortgages might offer higher risk adjusted returns over the long-term. By tying the capital requirements for interest rate risk to the effect of interest rate movements on the institution's economic value (equal to the present value of its future net income), the interest rate risk component should encourage institutions to consider the effect of portfolio changes on the long-run profitability of the organization.

Finally, once the proposed rule is adopted, OTS intends to reduce or eliminate the leverage ratio requirement to the extent permitted by the agency's statutory authority at that time. The reduction or elimination of this requirement would make it possible for institutions that are presently constrained by the leverage requirement—but not by the risk-based capital requirement—to expand their lending and investment activities. Based on data as of March 31, 1992, 52 savings associations are able to meet the proposed risk-based capital requirement (including the interest rate risk component) but not the current leverage ratio requirement. If the leverage requirement were eliminated, approximately $99 million of capital would be "freed-up" to support potential new lending and investment activities.

In addition, the elimination or reduction of the leverage ratio would enable many institutions that are currently constrained by the narrow definition of core capital (*i.e.*, common equity and non-cumulative perpetual preferred stock) to take advantage of the greater flexibility of the risk-based capital rules to make use of cumulative preferred stock and subordinated debt to reduce the cost of their capital structures. It is not possible to estimate the value of this flexibility with available data.

OTS believes that the proposed rule will result in gains in overall economic efficiency and, in conjunction with a reduced leverage requirement, increase the availability of credit.

Costs

Because the optimal amount of capital an institution should maintain to protect against interest rate risk cannot be measured precisely, the proposal, if adopted, could require at least some institutions to hold more capital than would be demanded by the marketplace in the absence of the safety net. Such institutions would be unfairly harmed *vis a vis* competitors that are not treated unfairly. Institutions that are required to hold more capital than necessary would become less efficient, less competitive, and earn lower returns on capital than otherwise. The cost of reduced efficiency would be borne by investors in the form of lower returns on capital or by the customers in the form of higher rates on loans, lower rates on deposits, or reduced services. It is not possible to quantify the potential costs associated with imperfections in the methodology that would be used by OTS to measure interest rate risk of individual savings associations, but OTS believes the likelihood and magnitude of such mismeasurement would be small in any case, and smaller than under other methods that have been proposed.

The collection of data to measure interest rate risk exposure necessarily imposes reporting costs on savings associations. Savings associations already are required to provide OTS with selected quarterly financial data that OTS uses to measure interest rate risk exposure and calculate capital requirements. The proposal would involve some additional reporting requirements. (See section IV for a description of these requirements.) OTS believes these reporting requirements would be imposed in any case for prudential supervisory purposes, regardless of whether it adopts the proposed approach to interest rate risk. However, OTS acknowledges that there are some costs involved in these new reporting requirements.

OTS also has required savings associations to report selected maturity and interest rate data in similar detail on Schedule MR of the Thrift Financial Report since 1988. These data are used by OTS to measure the risk exposure of individual savings associations to carry out its supervisory responsibilities. OTS intends to replace Schedule MR with Schedule CMR to improve the quality of data that is used by the OTS to measure interest rate risk of individual savings associations, regardless of the form of any final rule.

While the proposed change-over to Schedule CMR will impose certain one-time conversion costs on the industry, OTS believes that the benefits will outweigh the costs. In reaching this conclusion, OTS was persuaded by comments received from savings associations that the costs of incorporating an interest rate risk component into the risk-based capital rule would be minimized by improving the quality of data that OTS would use to assess capital requirements. The ongoing quarterly costs associated with Schedule CMR are not expected to differ significantly from those associated with the existing Schedule MR.

Based on data as of March 31, 1992, OTS estimates that approximately 80 savings associations, or 4 percent of all private sector savings associations, would have a combined capital shortfall of $170 million as a result of the proposed rule. (The 80 associations do not include those savings associations that OTS believes will be transferred to the Resolution Trust Corporation before the rule takes effect.) The $170 million of capital represents 0.3 percent of the industry's total capital base.

Although the rule would result in a $170 million capital shortfall, that amount is not an appropriate measure of the economic impact of the proposed rule for three reasons. First, the affected savings associations would have alternative ways to satisfy their capital shortfall other than raising capital. These include asset shrinkage and balance sheet restructuring to reduce interest rate risk or credit risk. OTS anticipates that most affected institutions will address any capital shortfall through these means rather than by raising capital.

Second, the cost of higher capital to these institutions is not the amount of capital (*i.e.*, the $170 million), but the difference between the yield the institutions must pay on the capital and the interest they pay on their next highest cost of funds. Assuming an "average" cost of equity of 20 percent and an alternative cost of funds of 5 percent, the cost of the extra capital to the affected portion of the industry is closer to $25 million a year [(20%–5%)×$170 million]. If institutions choose to reduce risk rather than raise capital, the cost should be significantly less than even this amount.

Because of the wide variety of different case-specific circumstances, it is not possible to estimate the costs of alternative means of compliance (asset shrinkage, balance sheet restructuring, etc.) under the capital plan that will be required of institutions that fail a new capital requirement as a result of their interest rate risk. While institutions should choose the lowest cost mix of strategies to attain compliance, the cost/risk/return tradeoffs that face each institution will be unique.

Third, while adoption of the proposed rule could be viewed as imposing a cost on individual savings associations that will be required to meet higher capital requirements, it may be more appropriate to view the effect as a reduction in the subsidy provided to such institutions by the existence of a federal safety net. The net effect of the proposal should be to reduce the overall cost to society of ensuring the safety and soundness of the thrift industry by requiring institutions that are taking disproportionate risks in relation to their capital to strengthen their capital positions.

Adoption of the proposed rule may prompt some savings associations to alter their asset/liability mix in order to reduce their interest rate risk exposure. For example, savings associations would have more of an incentive to encourage potential borrowers to take out adjustable-rate loans in lieu of fixed-rate loans, and short-term loans in lieu of long-term loans. In addition, savings associations will have a greater incentive to securitize and sell assets that exacerbate their interest rate exposure. Similarly, on the liability side, there will be a greater incentive to reduce exposure by issuing liabilities with long maturities over those with shorter maturities.

Adoption of the proposal may also prompt some institutions to rely more heavily on futures, options, and other derivative products to manage their interest rate exposure.

Examination of Alternative Approaches

OTS examined two principal alternative approaches to addressing the interest rate risk exposure of savings associations before deciding to move forward with this proposal. These included: (1) assessing capital requirements for interest rate risk on a case-by-case basis, and (2) adopting the approach for incorporating an interest rate risk component into the risk-based capital framework recently proposed by the banking agencies.

Case-by-Case Approach

Under existing authority, OTS may establish increased minimum capital requirements upon a determination that an individual savings association's capital is or may be inadequate. This

case-by-case approach is currently followed by OTS. One advantage of this approach is that it provides OTS with the flexibility to conduct a more in-depth analysis of an institution's risk exposure before an institution's minimum capital requirement is determined. Another advantage is that it provides the institution's management with an opportunity to discuss its interest rate risk exposure with OTS before a determination of its capital requirement is made.

There are, however, two significant disadvantages to the case-by-case approach. First, the case-by-case approach is time-consuming and resource intensive for both OTS and savings associations. In addition to the administrative costs associated with this approach, there is the danger that capital deficiencies of institutions that are taking excessive risks will not be addressed in time to prevent their failure. Second, the amount of capital required under a case-by-case approach is likely to vary with the expertise and negotiating skills of the parties involved, resulting in an uneven application of capital requirements across the industry.

Banking Agencies' Approach

OTS carefully reviewed the approach proposed jointly by the Federal Reserve Board, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency, which would be applicable to commercial banks for incorporating interest rate risk into their risk-based capital rules.

A major difference in the two approaches is that the approach proposed by the banking agencies would impose a smaller reporting burden on institutions than the OTS approach. (To minimize the reporting burden of the proposed rule on savings associations, the proposal would exempt certain small, well-capitalized institutions from filing Schedule CMR. Instead, such institutions would be required to file a one page form that would provide selected maturity and rate information.)

While the OTS approach is conceptually very similar to that proposed by the banking agencies, it differs in that the OTS would determine an institution's interest rate risk capital component using a more sophisticated interest rate risk model than the one proposed by the banking agencies. The OTS model also requires more data input from institutions than the model proposed by the bank regulatory agencies. The OTS decided in favor of a more sophisticated model and a more comprehensive data collection requirement in order to be able to measure an institution's interest rate exposure with a higher degree of accuracy, not only for purposes of determining a capital requirement, but also to use the measure as a supervisory tool.

Another difference is that, under the OTS proposal, an institution's interest rate exposure would be measured in the context of a 200 basis point change in interest rates, compared to the 100 basis point change that would be used by the banking agencies.

OTS is proposing a different approach from the banking agencies because savings associations tend to be considerably more vulnerable to interest rate risk than most commercial banks. The vulnerability of savings associations to interest rate risk is in large part attributable to their role as intermediaries for housing finance. Savings associations are required by statute to hold a significant portion of their assets in mortgages, which tend to be long-term assets. The funding of long-term mortgage assets with deposits, which tend to be short-term, gives rise to interest rate risk. Interest rate risk is one of the most prominent risks, if not the prominent risk, that savings associations must manage. (Banks, in general, face a number of portfolio risks that are different from those faced by savings associations.) Because of this vulnerability, and in light of the potentially high cost to society of allowing institutions with excessive interest rate risk exposure to operate without sufficient capital, the OTS believes that its approach is warranted.

OTS recognizes that a potential criticism of the proposal is that it does not go far enough in its attempt to relate capital requirements to differences in interest rate risk exposure among savings associations. More specifically, the proposal follows an "outlier approach" that differentiates among savings associations that have more than a "normal level" of interest rate exposure, but does not differentiate among those with a less than normal level of exposure. Arguably, an approach that differentiates across all levels of exposure would impose greater "market-like" discipline on savings associations and result in greater gains in economic efficiency than the outlier approach which is being proposed. OTS decided to propose an outlier approach in order to make its proposal consistent with that of the banking agencies.

Need for a Federal Solution and Statutory Authority

Section 305 of the Federal Deposit Insurance Improvement Act of 1991 ("FDICIA"), which was enacted on December 19, 1991 requires the federal banking agencies to review their risk based-capital standards for insured depository institutions to ensure that those standards take adequate account of: (1) Interest rate risk, (2) concentration of credit risk, and (3) the risk of non-traditional activities. Section 305 also mandates that the federal banking agencies publish final regulations no later than 18 months after the enactment of FDICIA (or June 19, 1993) as well as establish reasonable transition rules to facilitate compliance with those regulations. This proposed rule is issued in accordance with this statutory mandate.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OTS certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. The rule proposes to give small, highly-capitalized institutions that have less than $300 million in assets and a risk-based capital ratio in excess of 12 percent the option to file an abbreviated Schedule CMR. The OTS estimates that based on information as of March 31, 1992, approximately 1,052 savings institutions would qualify for this option. In effect, approximately one-half of all savings institutions would qualify for the option. Therefore, the proposed rule will not significantly impact a substantial number of small institutions.

List of Subjects

12 CFR Part 563

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Manufactured homes, Mortgages, Reporting and Recordkeeping requirements, Savings associations.

12 CFR Part 567

Capital, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 571

Accounting, Conflicts of interest, Gold, Investments, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the Office of Thrift Supervision hereby proposes to amend part 567, chapter V, title 12, Code of Federal Regulations as set forth below:

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 563—OPERATIONS

1. The authority citation for part 563 is revised to read as follows.

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1468, 1828, 3806; 42 U.S.C. 4106.

§ 563.176 [Amended]

2. Section 563.176 is amended by removing paragraph (b), and by redesignating paragraphs (c) through (f) as (b) through (e), respectively.

PART 567—CAPITAL

3. The authority citation for part 567 is revised to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.

4. Section 567.2 is amended by revising paragraph (a)(1)(i) to read as follows:

§ 567.2 Minimum regulatory capital requirement.

(a) * * *

(1) *Risk-based capital requirements.* (i) A savings association's minimum risk-based capital requirement shall be an amount equal to 8% of its risk-weighted assets as measured pursuant to § 567.6(a) of this part plus 50% of its excess interest-rate risk exposure as measured pursuant to § 567.7 and Appendix A to § 567.7 of this part.

* * * * *

5. Section 567.7 is added to read as follows:

§ 567.7 Interest-rate risk component.

(a) For purposes of this part, a savings association's interest rate risk exposure is measured by the decline in the MVPE that would result from a 200 basis point increase or decrease in market interest rates (whichever results in the lower MVPE) divided by the market value of assets, as calculated in accordance with the model. A savings association whose measured interest rate risk exceeds .02 (*i.e.*, 2%) is required to maintain additional capital equal to one-half of the difference between its measured interest rate risk and .02 (*i.e.*, 2.0 percent), multiplied by the market value of its assets.

(b) A savings institution with less than $300 million in assets and a risk-based capital ratio in excess of 12 percent may be exempt from filing the Schedule CMR. The qualifying savings institution would have the option to file an abbreviated Scheduled CMR quarterly. The Regional Directors may, within their discretion, require a qualifying savings institution to file the Schedule CMR on a quarterly basis.

PART 571—STATEMENT OF POLICY

6. The authority of citation for part 571 is revised to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1462a, 1463, 1464.

7. Section 571.3 is revised to read as follows:

§ 571.3 Interest rate risk management.

(a) The Office of Thrift Supervision expects savings associations to adopt formal interest rate risk policy statements, management policies, and procedures containing the elements described below. The objective of interest rate risk management is to maintain an institution's earnings and net worth within self-imposed parameters over a range of possible interest rate environments. Institutions will differ in their willingness to assume interest rate risk, their management capability, and their ability to absorb potential losses. As with other aspects of financial management, a trade-off exists between risk and return; thus, the objective of interest rate risk management need not be the elimination of an institution's exposure to changes in interest rates. The board of directors, however, has a fiduciary responsibility for ensuring that the level of interest rate risk exposure incurred by the institution does not exceed prudent levels.

(b) The board of directors must ensure that the institution's policies and procedures for managing interest rate risk are of a level of sophistication that is commensurate with the institution's activities and portfolio and that the institution's exposure is limited to a prudent level. More specifically the the board is accountable for interest rate risk exposure of the institution and must establish a formal policy for the management of interest rate risk and review the results of management's implementation of that policy on at least a quarterly basis.

(1) *Board of Directors' policy statement.* The board's policy statement should delegate responsibility for the management of interest rate risk and should establish limits on the level of the institution's exposure. The board should provide specific authorizations and restrictions regarding the institution's trading activities, its use of derivatives and synthetic instruments, and its hedging strategies. To facilitate the board's oversight of management in this area, the policy should specify the contents of management's reports to the board on this subject and state the frequency with which the directors will review interest rate risk management (at least quarterly).

(2) *Exposure limits.* The most important element of the board of directors' policy statement is a set of explicit limits on the institution's exposure to interest rate risk. In general, the board must be aware of the sensitivity of the institutions' earnings and net economic value to interest rate changes. The board's policy should establish reasonable limits, preferably in terms of the sensitivity of the institution's net interest income and market value of portfolio equity to changes in interest rates. In general, the policy should specify the maximum percentage change the board of directors is prepared to accept in these measures as a result of a parallel shift in the term structure of interest rates prevailing at the date of the analysis. These maximum changes should be specified for instantaneous and sustained changes in interest rates of ±100, ±200, ±300, and ±400 basis points and should be measured relative to the levels of net interest income and market value of portfolio equity under an assumption of no change in interest rates. Those institutions that are exempt from filing Schedule CMR of the Thrift Financial Report with the Office must be able to demonstrate that they have set and monitored reasonable exposure limits, but will not be required to calculate their market value of portfolio equity.

(3) *Periodic review of interest rate risk management.* Periodic reports by management to the board of directors should demonstrate compliance with the exposure limits. Reports by management should, therefore, include an analysis of how net interest income and the market value of portfolio equity would be affected by the hypothetical interest rate changes specified in the board's policy. Because any system of interest rate risk management will rely on certain assumptions, management should demonstrate to the board and document that the assumptions underlying its interest rate sensitivity analysis are reasonable.

Dated: July 15, 1992.

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

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BILLING CODE 6720-01-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, D.C. 20220.

Office of Thrift Supervision

OMB Number: 1550–0023.
Form Number: OTS Form 1313, Monthly Cost of Funds Survey Systems Worksheet, Officer Certification.
Type of Review: Revision.
Title: Thrift Financial Report (TFR).
Description: OTS collects financial data from insured institutions and their subsidiaries in order to assure their safety and soundness as depositories of the personal savings of the general public. The OTS monitors trends in financial positions so that adverse conditions can be reminded promptly. These respondents are primarily savings associations.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents/Recordkeepers: 2,100.
Estimated Burden Hours Per Respondent/Recordkeeper: 21 hrs., 32 min.
Frequency of Response: Quarterly.
Estimated Total Reporting/Recordkeeping Burden: 551,040 hours.
Clearance Officer: Colleen Devine, (202) 906–6025, Office of Thrift Supervision, 2nd Floor, 1700 G Street NW., Washington, DC 20552.
OMB Reviewer: Gary Waxman, (202) 395–7340, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.

[FR Doc. 92–21048 Filed 9–2–92; 8:45 am]
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Thursday
September 3, 1992

Part V

Office of Management and Budget

Budget Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Budget Rescissions and Deferrals

August 26, 1992.

The Honorable Dan Quayle,
President of the Sengte,
Washington, DC 20510.

Dear Mr. President: In accordance with the Congressional Budget and Impoundment Control Act of 1974, I herewith report one deferral of budget authority, totaling $17.6 million. Including this deferral, funds withheld in FY 1992 now total $5.8 billion.

The deferral affects the Agency for International Development. The details of this deferral are contained in the attached report.

Sincerely,

George Bush,
The White House.

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Deferral No. 92–12

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93–344

AGENCY: Funds Appropriated to the President	**New budget authority** (P.L. 102–266) $ 47,801,000
BUREAU: Agency for International Development	**Other budgetary resources** $ 34,063,947
Appropriation title and symbol: Housing guaranty program 7220401	**Total budgetary resources** $ 81,864,947
	Amount to be deferred: Part of year $ 17,630,494 Entire year $ _____
OMB identification code: 72–0401–0–1–151	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act [ ] Other _____
Grant program: [ ] Yes [X] No	
Type of account or fund: [X] Annual [ ] Multi–year: _____ (expiration date) [ ] No–Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other

JUSTIFICATION: The Housing Guaranty program extends guarantees to U.S. private investors who make loans to developing countries to assist them in formulating and executing sound housing and community development policies that meet the needs of lower income groups.

As required by the Federal Credit Reform Act of 1990, this account records, for the Housing Guaranty program, the subsidy costs associated with the loan guarantees committed in FY 1992 and beyond, as well as administrative expenses of this program. The subsidy amounts are estimated on a present value basis; the administrative expenses are estimated on a cash basis.

This action defers funds pending review of specific loan guarantees to eligible countries. The review process will ensure that in each proposed program the proposed recipients are qualified and that the limits of available funds are not exceeded. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

[FR Doc. 92–21206 Filed 9–2–92; 8:45 am]
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Thursday
September 3, 1992

Part VI

Department of Housing and Urban Development

Low Income Housing; Technical Assistance Planning Grants for Resident Groups, Community Groups, Community-Based Nonprofit Organizations and Resident Councils; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

(Docket No. N-92-3466; FR-3288-N-01)

Low Income Housin; Technical Assistance Planning Grants for Resident Groups, Community Groups, Community-Based Nonprofit Organizations and Resident Councils

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of funding availability.

SUMMARY: This NOFA announces the availability of up to $15.0 million in funding for technical assistance planning grants to facilitate acquisitions of certain HUD-insured or -assisted multifamily projects by Community-Based Nonprofit Organizations (CBOs), Resident Councils (RCs), resident groups, and community groups. These grants are to facilitate the development of a CBO or RC and the purchase of projects under the Emergency Low Income Housing Preservation Act of 1987 (ELIHPA) or the Low Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA). In the body of this document is information concerning eligible applicants, the funding available, the application kit and its processing, as well as the selection criteria. Applicants should be aware that the determination of which regulatory requirements apply to an acquisition depends on the preservation program under which the owner has filed a Notice of Intent. Thus applicants must comply with 24 CFR part 248 and with either ELIHPA or LIHPRHA, as appropriate. Regulations covering both of these programs will be included in the application kit (applicants should note that an Interim Rule revising 24 CFR part 248 was published in the Federal Register on April 8, 1992 (57 FR 11992)).

DATES: An application kit will be available beginning October 5, 1992. There is no deadline for an application, however an application must be submitted in a timely fashion that would permit a purchase transaction within the statutory marketing period. An application may be submitted as soon as the applicant becomes eligible under the terms of this NOFA and as long as funds remain available. In order to avoid unnecessary duplication, an applicant is only required to submit one application, which includes all the required information about the applicant, regardless of the number of phases for which funding will be sought under this NOFA. However, an applicant will only be approved for funding in one phase at a time; before being approved for funding for any subsequent phase, the applicant must submit supplemental exhibits demonstrating completion of work for the applicable antecedent phase.

ADDRESSES: Application kits may be requested by contacting the appropriate Field Office, listed in the appendix to this notice.

FOR FURTHER INFORMATION CONTACT: Kevin J. East, Director, Preservation Division, Department of Housing and Urban Development, room 6284, 451 Seventh Street, NW, Washington, DC 20410; telephone (202) 708-2300. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1-800-877-TDDY (1-800-877-8339) or 202-708-9300. (Except for the TDD number, telephone numbers are not toll free).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced in the Federal Register.

I. Purpose and Substantive Description

A. Authority and Background

The funding made available under this NOFA is authorized by the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992, (Pub. L. 102-139, approved October 28, 1991) in order to provide technical assistance funding under the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (Pub. L. 101-625, section 601 of the National Affordable Housing Act (NAHA), approved November 28, 1990) (LIHPRHA).

The origins of LIHPRHA were in Title II, the Emergency Low Income Housing Preservation Act of 1987 (ELIHPA), of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988). The purpose of ELIHPA was to preserve low-income affordability restrictions on certain HUD-insured or -assisted multifamily projects. ELIHPA authorized the use of incentives to encourage owners to retain low-income affordability restrictions or to transfer the property to purchasers who would agree to retain those restrictions. The fundamental principles underlying ELIHPA were that the low-income housing should be preserved for the intended beneficiaries and that owners should be guaranteed a fair and reasonable return on their investments.

ELIHPA was intended to be a temporary measure that would allow Congress time to fashion a permanent program for the preservation of existing low-income housing projects. This permanent program is LIHPRHA, which replaced ELIHPA except to the extent that section 604 of NAHA provides a transition option for certain owners. In addition, section 226 of LIHPRHA establishes the Resident Homeownership Program, under which tenants may become qualified purchasers of eligible low income housing.

The Department's regulations implementing these statutory provisions were published as an Interim Rule amending 24 CFR part 248 (57 FR 11992, April 8, 1992). All references in this NOFA to §§ 248.1 through 248.183 are to those sections as set out in the Interim Rule.

B. Allocation of Amounts

The purpose of this NOFA is to make available a total of up to $15 million in funds to eligible resident and community groups, RCs, and CBOs for technical assistance planning grants. Prospective applicants may be awarded funds in up to three phases. Phase I provides funds for organizing as a legal nonprofit entity under applicable Federal, State and local laws. Phase II provides funds for submitting an expression of interest and a purchase offer. If the offer is accepted, Phase III provides funds for preparing a Plan of Action to transfer ownership of the project. An eligible applicant must seek to purchase "eligible low-income housing" (as that term is defined at 24 CFR 248.101) whose owner has expressed a willingness to entertain an offer from the applicant (under ELIHPA) or filed a Notice of Intent to sell the project (under LIHPRHA).

All applicants must complete training, either conducted by or sponsored through HUD, covering ELIHPA and LIHPRHA prepayment and acquisition procedures and, if applicable, the Resident Homeownership Program. This

training must be completed before an applicant may receive funding for activities in any second phase. If an owner accepts a purchase offer from any other qualified purchaser, then no further funding will be available to the applicant.

In order to avoid unnecessary duplication, an applicant is only required to submit one application, which includes all the required information about the applicant, regardless of the number of phases for which funding will be sought. However, an applicant will only be approved for funding in one phase at a time; before being approved for funding for any subsequent phase, the applicant must submit supplemental exhibits demonstrating completion of work for the applicable antecedent phase. Upon submission of evidence of the tasks completed in a currently funded phase and a reasonable work plan and budget for the next phase, the applicant will receive funding for the next phase requested, if funds remain available. In requests for funding in subsequent phases, the applicant will be required to amend appropriate exhibits (e.g., describing and projecting the costs of activities, and describing the subject property) in the application, as well as certify that all unamended information from the original application remains accurate.

The Department can deobligate funding at any time that it determines that continuing to provide funding would not be in the best interests of the Department. The Department may make this determination upon finding that stated tasks have not been accomplished; there has been fraud, waste, or mismanagement; or purchasing the project is not technically feasible. An applicant may be required to demonstrate that it has sufficient capacity to warrant continued consideration for funding. Recaptured funds will be made available for additional grant awards.

Any expenses incurred by an applicant prior to being awarded a grant under this NOFA will not be reimbursed from the grant under any circumstances. Once a Plan of Action is approved and the purchase completed, the purchaser may be reimbursed for certain expenses pursuant to 24 CFR 248.157(m)(6) and (7) that are not covered by grants received under this NOFA.

C. Timeliness of Application

An application including a request for Phase I or Phase II funding will be returned to the applicant if the Field Office concludes that it is too late in the marketing period (i.e., after the end of the 13th month of the statutory offering period) to permit a purchase transaction, unless the owner expresses in writing a willingness to extend the marketing period. An applicant requesting only Phase III funding should submit its application within 30 days of the project owner's acceptance of a bona fide purchase offer.

D. Phases to be Funded

(1) *PHASE I—Start-Up Funding.* Section I.E, Eligibility, of this NOFA specifies that resident groups and community groups that may not yet be formally organized into RCs or CBOs are eligible applicants, in addition to RCs and CBOs. This is because Phase I grant activity is targeted toward organizing and legally incorporating such groups into RCs or CBOs for the purpose of making legal and feasible purchase offers of eligible low-income housing. After an owner files a Notice of Intent or an expression of interest (i.e., letter or other signed document) under ELIHPA or an Initial Notice of Intent to sell under LIHPRHA, an eligible applicant who submits an acceptable application may receive up to $25,000 for Phase I start-up funding. The funds requested must be at reasonable levels and for a reasonable mix of activities, so that the applicant will complete all tasks necessary to proceed to undertake Phase II activities. The kinds of activities appropriate for this phase include:

- Establishing and organizing Resident Councils or Community-Based Nonprofit Organizations;
- Providing training to project and community residents, board members, and affiliated persons regarding ELIHPA and LIHPRHA acquisition opportunities, housing management and development;
- Assisting residents and CBO members in choosing among homeownership and rental options for the project;
- Incorporating the purchasing entity and applying for tax exempt status under section 501(c) of the Internal Revenue Code;
- Establishing accounting procedures; and
- Related activities.

Note: For Phase I funding, a fully organized Resident Council or Community-Based Nonprofit Organization is not required; however, for Phases II and III the applicant must meet the definition of a RC or CBO, as discussed in Section I.E of this NOFA, and the activities in the first phase must have been accomplished, even if those activities were not funded under this NOFA.

(2) *PHASE II—Expression of Interest and Development of Purchase Offer.* After the owner files a Second Notice of Intent to sell under LIHPRHA or evidences in writing a commitment to sell ELIHPA, an eligible applicant that files an acceptable application may receive up to $50,000 to develop an expression of interest and submit a purchase offer. An applicant shall be considered eligible if it has completed all tasks required of a Phase I applicant and it meets the other requirements specified in Section I.E, Eligibility, of this NOFA. For those applicants who intend to develop a Resident Homeownership Plan, the Resident Council formed must work with a HUD-approved public agency or a public or private nonprofit organization to develop a viable and workable homeownership plan. The funds requested must be at reasonable levels and for a reasonable mix of activities, so that the applicant will complete all tasks necessary to qualify for Phase III funding. Funds may be used for:

- Submission of an expression of interest and the preparation of a bona fide offer;
- Architectural and engineering services, as necessary to supplement the capital needs assessment developed by HUD;
- Financial and legal services;
- Training for the board and members of the purchasing entity; and
- Related activities.

(3) *PHASE III—Preparation of Plan of Action.* If a project owner accepts the applicant's bona fide purchase offer, an eligible applicant that files an acceptable application may receive up to $50,000 for preparation of a Plan of Action. An applicant shall be considered eligible if the owner has accepted a bona fide purchase offer from the applicant, the owner is working with the applicant towards the joint submission of an acceptable Plan of Action or the applicant is developing a Resident Homeownership Plan, and the applicant meets the other requirements set forth in Section I.E, Eligibility, of this NOFA. The funds requested must be at reasonable levels and for a reasonable mix of activities, so that the applicant will complete all tasks necessary to submit a successful Plan of Action or Resident Homeownership Plan. Funds may be used for:

- Preparation of a Plan of Action or Resident Homeownership Plan;
- Architectural and engineering services; as necessary to supplement the capital needs assessment developed by HUD;
- Financial and legal services;
- Training for the board and members of the purchasing entity and for residents of the project;

• Preparation of the Transfer of Physical Assets package; and
• Related activities.

E. Eligibility

(1) *Eligible Applicants:* An eligible applicant is one of the following entities that represents the residents of the eligible property, intends to purchase the property, and complies with the applicable criteria. Before receiving funding for activities in any second phase, an applicant must have completed training, either conducted by or sponsored through HUD, covering ELIHPA and LIHPRHA prepayment and acquisition procedures and, if applicable, the Resident Homeownership Program. In addition, before being approved for funding for any subsequent phase, an applicant must demonstrate completion of work for the applicable antecedent phase.

(a) *Resident group*—For an applicant to be considered a resident group the following must be submitted:

(i) Evidence that adult residents of the greater of 5% of occupied units or 10 units of the subject property are group members;

(ii) A copy of a notice announcing an organizational meeting to discuss the possible purchase of the project (at least one public meeting must have occurred prior to application);

(iii) A copy of the agenda of the organizational meeting referred to in item (ii) of this paragraph;

(iv) A list of attendees of the organizational meeting referred to in item (ii) of this paragraph;

(v) A certification that the resident group intends to form a Resident Council (as defined in 24 CFR 248.101) to purchase the project for either rental purposes or homeownership; and

(vi) A certification that, if the residents are interested in homeownership, the resident group will work with a HUD-approved public agency or a public or private nonprofit organization to form a Resident Council (as defined in § 248.101), with the purpose of purchasing the project.

(b) *Community group*—For an applicant to be considered a community group, the following must be submitted:

(i) A copy of a notice announcing an organizational meeting to discuss the possible purchase of the project (at least one public meeting must have occurred prior to application);

(ii) A copy of the agenda of the organizational meeting referred to in item (i) of this paragraph;

(iii) A list of attendees of the organizational meeting referred to in item (i) of this paragraph;

(iv) A petition signed by adult residents of the greater of 5% of occupied units or 10 units, supporting the community group as their representative;

(v) Certification that the community group intends to work with the residents in developing a plan to purchase the project; and

(vi) Certification by the community group that it intends to meet the definition of a Community-Based Nonprofit Organization (as defined in § 248.101), within the terms of Phase I funding.

(c) *Resident Council (RC)*—For an application to be considered an RC, it must meet the definition of "resident council" as set out in § 248.101 of the Interim Rule.

(d) *Community-Based Nonprofit Organization (CBO)*—For an applicant to be considered a CBO, it must meet the definition of "community-based nonprofit organization" as set out in § 248.101 of the Interim Rule.

(2) *Resident and community groups* that are in the initial stages of organizing are eligible for Phase I funding, but are prohibited from receiving Phase II and Phase III funding until formally organized into a Resident Council or Community-Based Nonprofit Organization. When a community group (including a CBO) and a resident organization (including a RC) are working together to prepare a joint application, the resident organization will be the applicant with primary responsibility for the administration of the grant.

(3) *Eligible projects.* Those projects that conform to the definition of "eligible low income housing" in § 248.101 are eligible within the meaning of this NOFA when the following is also true:

(a) *For LIHPRHA Properties:* (i) *Phase I, only*—The owner of the project has submitted an Initial Notice of Intent to sell under LIHPRHA and the eligible applicant submits an application for Phase I funding only.

(ii) *Phase I and Phase II, or Phase II*—The owner of the project has submitted a Second Notice of Intent to sell under LIHPRHA and the eligible applicant submits an application for Phase I and Phase II funding or Phase II funding.

(iii) *Phase III*—The owner of the project has accepted a bona fide offer, and eligible applicant submits an application for Phase III funding.

(b) *For ELIHPA Properties:* (i) *Phase I or Phase II*—The owner of the project has submitted a Notice of Intent under ELIHPA and there is an expression of interest (i.e., a letter or other signed document) by the owner of the project indicating that the owner is willing to at least consider a sale, and the eligible applicant submits an application for Phase I or Phase II funding.

(ii) *Phase III*—The eligible applicant can provide evidence that there is an agreement to sell or a contract for sale of the property, or that an offer has been accepted by the owner, and the eligible applicant submits an application for Phase III funding.

Note: Two proposals will not be accepted for the same project.

F. Ineligible Applicants

Entities that have applications pending for funds under any of the HOPE 2 grants announced in or subsequent to the HOPE 2 NOFA (published 57 FR 1585, January 14, 1992) are not eligible to apply for funding under this NOFA (because the owner would have already elected to proceed under the distinct requirements applicable to HOPE 2 grants, and is precluded from concurrently filing the prerequisite Notice of Intent under LIHPRHA or ELIPHA). An entity that had been selected for HOPE 2 funding is ineligible to apply for a grant under this NOFA until notified by the administering HUD Field Office that the HOPE grant has been terminated due to the owner's filing of a Notice of Intent under ELIHPA or LIHPRHA.

G. Eligible Activities

Specific activities that are approved by HUD may be funded and carried out by an eligible applicant. However, an applicant must certify that assistance provided under this NOFA will not be used to supplant or duplicate other funding for the proposed activities. These activities may include any combination of, but are not limited to, the following:

(1) Legal services to incorporate the applicant, establish a board of directors, write by-laws and establish non-profit status;

(2) Accounting services for budgeting, planning, and creation of accounting systems that are in compliance with OMB Circular A-110;

(3) Engineering studies, such as site, water, and soil analyses; mechanical inspections; and estimations of the costs of rehabilitation and of meeting local building and zoning codes, in anticipation of purchasing a property, as necessary to supplement the capital needs assessment developed by HUD (see the Final Guidelines for Determining Appraisals of Preservation Value Under LIHPRHA, 57 FR 19970 (May 8, 1992));

(4) Preparing bona fide offers, including contracts and other documents to purchase the property;

(5) Securing financing, and the preparation of mortgage documents, transfer documents, and other documentation incident to closing a purchase offer;

(6) Training residents, RC staff and Board members in skills related to the operations and management of the project, including leadership training;

(7) Developing potential management functions or tasks to be undertaken;

(8) Developing and negotiating management contracts and related contract monitoring and management procedures;

(9) Preparing market studies and management plans; and

(10) Other activities related to this NOFA that are approved by HUD as achieving the purposes of this NOFA, and are reasonable both in cost and timeliness.

H. Ineligible Activities

Examples of activities that are not eligible to be funded under this NOFA include:

(1) Entertainment, including associated costs, such as food and beverages;

(2) Purchase of land or buildings or any improvements to land or buildings;

(3) Activities not directly related to the Eligible Activities listed in Section I.G of this NOFA;

(4) Payment of fees for lobbying services;

(5) Earnest money deposits;

(6) Activities funded from other sources; and

(7) Activities completed prior to the date funding is approved under this NOFA.

I. Selection Criteria

Technical assistance planning grants will be awarded to eligible applicants that have submitted applications according to Section III of this NOFA and the following selection criteria. The HUD Field Office staff must determine that the application meets these criteria before awarding a grant.

(1) The plan for achieving a resident supported purchase of the property must be reasonable, feasible, and in conformance with the appropriate program regulations and guidelines;

(2) The budget submitted with the application must reflect reasonable costs directly associated with the grant activities that would result in the development of a feasible purchase;

(3) The estimate of time necessary to achieve completion of activities and delivery of products must be reasonable, realistic, and within the time frames set forth in the applicable program regulation.

J. Selection Process

The selection process for ELIHPA or LIHPRHA Planning Grants consists of a threshold screening to determine whether the application meets the technical requirements for application submission contained in this NOFA and the application kit. (An application that submits a technically deficient application will be permitted to correct those deficiencies as provided in Section IV of this NOFA.) If the application meets the technical requirements, it will then be reviewed by the appropriate Field Office according to the selection criteria in Section I.I of this NOFA. The Field Office will select for funding those applicants that satisfy the selection criteria. HUD may award less than the amount applied for, or fund fewer than all the activities identified in the budget, based on the extent to which the proposed activities met the eligibility requirements. Within thirty days from receipt of a completed application, the Field Office will notify an applicant of its selection or rejection. Applicants that are selected to receive assistance will be required to sign a grant agreement.

II. Application Process

A. Obtaining applications

An application kit, including instructions for preparing the application, is available beginning October 5, 1992 from the appropriate HUD Field Offices (see the list of HUD Field Offices attached as an appendix to this NOFA).

B. Submitting Applications

Additional information regarding the submission of an application will be included in the package. There is no deadline for an application, except as provided in Section I.C, Timeliness of Application, of this NOFA. An application may be submitted as soon as the applicant becomes eligible under the terms of this NOFA and as long as funds remain available.

Only an application submitted to the correct Field Office will be considered for funding. An application must be submitted to the local HUD Field Office where the owner had submitted the Initial Notice of Intent; an application is not to be submitted to HUD Headquarters. The application should be addressed to the attention of: Director, Housing Management Division. A list of HUD's Field Offices appears as an Appendix to this NOFA. Applicants are advised to contact their local office to confirm the appropriate place for submission.

An application transmitted by facsimile machine will not be accepted.

III. Checklist of application Submission Requirements

A. Submitting Applications

Complete application submission requirements are contained in the application kit. All potential applicants are urged to contact their local HUD Field Office for information and guidance about program requirements and preparation of an application, and for the time and place of any workshops or training sessions scheduled to assist potential applicants in the preparation of an application.

B. Submission Requirements

An applicant must provide the following:

(1) *Each applicant*—A completed application, including the following, as applicable:

(a) OMB Standard form 424;

(b) Summary information;

(c) Description of activities and costs;

(d) General information on the applicant and its experience;

(e) Owner's statement of interest;

(f) Description of property;

(g) Resident organization resolution;

(h) Certification that assistance provided under this NOFA will not be used to supplant or duplicate other resources for the proposed activities. For purposes of this paragraph, "other resources" means resources provided from any source other than under this NOFA;

(i) Other disclosures, certifications, and assurances (including Drug-Free Workplace certification), as required under the law and this NOFA; and

(j) Other information and materials as may be described in the application kit.

(2) *For LIHPRHA properties:* (a) *Phase I*—Evidence that an Initial Notice of Intent to sell has been filed, for a Phase I only funding application. Evidence that a Second Notice of Intent to sell has been filed for an application requesting both Phase I and Phase II funding.

(b) *Phase II*—Evidence that a Second Notice of Intent to sell has been filed, for an application requesting any Phase II funding. The applicant also must demonstrate completion of prerequisite tasks and the ability to perform the Phase II work tasks. Work tasks must be clearly and reasonably stated and must be supported with reasonable cost estimates directly related to each task.

(c) *Phase III*—Evidence that the owner has accepted a bona fide offer

from the eligible applicant. The applicant also must demonstrate completion of prerequisite tasks and the ability to perform the Phase III work tasks. Work tasks must be clearly and reasonably stated and must be supported with reasonable cost estimates directly related to each task.

(d) *RCs and CBOs that are currently organized*—Evidence that the entity meets the applicable definition provided in 24 CFR 248.101.

(3) *For ELIHPA properties:* (a) *Phase I*—Evidence that the owner has submitted a Notice of Intent and that there is an agreement to sell or an expression of interest (i.e., a letter or other signed document) by the owner indicating that the owner is at least willing to consider a sale.

(b) *Phase II*—Evidence that there is an agreement to sell or an expression of interest (i.e., a letter or other signed document) by the owner indicating that the owner is at least willing to consider a sale. The applicant also must demonstrate completion of prerequisite tasks and ability to perform the Phase II work tasks. Work tasks must be clearly and reasonably stated and must be supported with reasonable cost estimates directly related to each task.

(c) *Phase III*—Evidence of an agreement to sell or a contract of sale. The applicant also must demonstrate completion of prerequisite tasks and ability to perform the Phase III work tasks. Work tasks must be clearly and reasonably stated and must be supported with reasonable cost estimates directly related to each task.

(d) *RCs and CBOs that are currently organized*—Evidence of that the entity meets the applicable definition provided in 24 CFR 248.101.

IV. Corrections to Deficient Applications

(1) HUD shall screen each application submitted to determine if it:

(a) Is complete;

(b) Is internally consistent; and

(c) Contains correct computations where appropriate.

(2) Where HUD determines that an application is technically deficient in one or more areas, HUD shall notify the applicant in writing and give the applicant an opportunity to correct those technical deficiencies. The notification shall require an applicant to submit additional or corrected material so that it is received in the appropriate HUD Field Office no later than close of business within 30 calendar days after the date of the written notification to the applicant. HUD may not extend this deadline for actual receipt of the corrected or additional material for any reason.

HUD will not consider further any application that, upon expiration of the 30-day cure period, is not complete and internally consistent, or that fails to comply with program requirements. However, an applicant whose application was rejected because of technical or substantive deficiencies is permitted to submit a new application subsequently.

V. Other Matters

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(b) of the HUD regulations, the policies and procedures contained in this notice relate only to technical assistance and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this notice will not have substantial direct effects on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order. Specifically, the funds available under this NOFA will be used to preserve the stock of HUD-insured multifamily housing. Although some local governments may elect to participate in these efforts, the funded activities will have no significant direct impact on States or their political subdivisions.

Family Executive Order

The General Counsel, as the designated official under Executive Order 12606, The Family, has also determined that some of policies in this NOFA will likely have a beneficial impact on the formation, maintenance, and general well-being of the family. Achievement of home ownership by low-income families in the program can be expected to support family values, by helping families achieve security and independence; by enabling families to live in decent, safe and sanitary housing; and by giving families the skills and means to live independently in mainstream American society. Since the impact on the family is beneficial, no further review is considered necessary.

Section 102 of the HUD Reform Act: Documentation and Public Access Requirements; Applicant/Recipient Disclosures

Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period generally less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR part 12, subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

Public notice. HUD will include recipients that receive assistance pursuant to this NOFA in its quarterly **Federal Register** notice of recipients of all HUD assistance awarded on a competitive basis. (See 24 CFR 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

Section 103 HUD Reform Act

HUD's regulation implementing Section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) (Reform Act) was published on May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are limited by 24 CFR part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (voice/TDD). (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has

specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

Section 112 of the Reform Act

Section 112 of the HUD Reform Act added a new section 13 to the Department of Housing and Urban Development Act (42 U.S.C. 3537b). Section 13 contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in appendix A of the rule.

Any questions about the rule should be directed to the Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-3000. Telephone: (202) 708-3815 (voice/TDD). (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance.

Authority: 12 U.S.C. 1715 *et seq.*, 42 U.S.C. 3535(d).

Dated: August 20, 1992.

Arthur J. Hill,

Assistant Secretary for Housing-Federal Housing Commissioner.

Appendix: Listing of HUD Regional Offices and Field Offices With Multifamily Inventories

Region I

Jurisdiction: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Boston, Massachusetts Regional Office

Regional Administrator, Regional Housing Commissioner, HUD—Boston Regional Office, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway St., Room 375, Boston, MA 02222-1092, (617) 565-5234, (FTS) 835-5234

Hartford, Connecticut Office

Manager, HUD—Hartford Office, 330 Main St., Hartford, Connecticut 06106-1860, (203) 240-4522, (FTS) 244-4523

Manchester, New Hampshire Office

Manager, HUD—Manchester Office, Norris Cotton Federal Building, 275 Chestnut St., Manchester, New Hampshire 03101-2487, (603) 666-7681, (FTS) 834-7681

Providence, Rhode Island Office

Manager, HUD—Providence Office, 330 John O. Pastore Federal Building & U.S. Post Office—Kennedy Plaza, Providence, Rhode Island 02903-1785, (401) 528-5351, (FTS) 838-5351

Region II

Jurisdiction: New York, New Jersey

New York Regional Office

Regional Administrator-Regional Housing Commissioner, HUD—New York Regional Office, 26 Federal Plaza, New York, New York 10278-0068, (212) 264-6500, (FTS) 264-6068

Buffalo, New York Office

Manager, HUD—Buffalo Office, Lafayette Court, 465 Main Street, Buffalo, New York 14203-1780, (716) 846-5755, (FTS) 437-5733

Newark, New Jersey Office

Manager, HUD—Newark Office, Military Park Building, 60 Park Place, Newark, New Jersey 07102-5504, (201) 877-1662, (FTS) 549-1608

Region III

Jurisdiction: Pennsylvania, Washington, D.C., Maryland, Delaware, Virginia, West Virginia

Philadelphia, Pennsylvania Regional Office

Regional Administrator, HUD—Philadelphia Regional Office, Liberty Square Building, 105 South 7th St., Philadelphia, Pennsylvania 19106-3392, (215) 597-2560, (FTS) 597-2560

Baltimore, Maryland Office

Manager, HUD—Baltimore Office, The Equitable Building, 10 North Calvert St., 3rd Fl., Baltimore, Maryland 21202-1865, (301) 962-2520, (FTS) 922-3047

Charleston, West Virginia Office

Manager, HUD—Charleston Office, 405 Capitol St., Suite 708, Charleston, West Virginia 25301-1795, (304) 347-7000, (FTS) 930-7036

Pittsburgh, Pennsylvania Office

Manager, HUD—Pittsburgh Office, Old Post Office Courthouse Building, 7th Ave. & Grant St., Pittsburgh, Pennsylvania 15219-1906, (412) 644-6428, (FTS) 722-6388

Richmond, Virginia Office

Manager, HUD—Richmond Office, 400 North 8th St., Richmond, Virginia 23240, (804) 771-2721, (FTS) 925-2721

Washington, D.C. Office

Manager, HUD—Washington Office, 820 First Street NE., Washington, D.C. 20002-4205, (202) 275-9200, (FTS) 275-9206

Region IV

Jurisdiction: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Caribbean, Virgin Islands

Atlanta, Georgia Regional Office

Regional Administrator-Regional Housing Commissioner, HUD—Atlanta Regional Office, Richard B. Russell Federal Building, 75 Spring Street S.W., Atlanta, Georgia 30303-3388, (404) 331-5136, (FTS) 841-5136

Birmingham, Alabama Office

Manager, HUD—Birmingham Office, Beacon Ridge Towers, 600 Beacon Parkway West, Suite 300, Birmingham, Alabama 35209-3144, (205) 290-7617, (FTS) 229-1617

Caribbean Office

Manager, HUD—Caribbean Office, New San Juan Office Building, 159 Carlos E. Chardon Avenue, San Juan, Puerto Rico 00918-1804, (809) 766-6121, (FTS) 498-5201

Columbia, South Carolina Office

Manager, HUD—Columbia Office, Strom Thurmond Federal Building, 1835 Assembly St., Columbia, South Carolina 29201-2480, (803) 765-5592, (FTS) 677-5592

Greensboro, North Carolina Office

Manager, HUD—Greensboro Office, 415 North Edgeworth Street, Greensboro, North Carolina 27401-2107, (919) 333-5361, (FTS) 699-5363

Jackson, Mississippi Office

Manager, HUD—Jackson Office, Dr. A.H. McCoy Federal Building, 100 W. Capitol St.,

Room 910, Jackson, Mississippi 39269-1096, (601) 965-5308, (FTS) 490-4738

Jacksonville, Florida Office

Manager, HUD—Jacksonville Office, 325 West Adams Street, Jacksonville, Florida 32202-4303, (904) 791-2626, (FTS) 946-2626

Knoxville, Tennessee Office

Manager, HUD—Knoxville Office, Third Floor, John J. Duncan Federal Building, 710 Locust Street, Knoxville, Tennessee 37902-2526, (615) 549-9384, (FTS) 854-9384

Louisville, Kentucky Office

Manager, HUD—Louisville Office, 601 W. Broadway, P.O. Box 1044, Louisville, Kentucky 40201-1044, (502) 582-5251, (FTS) 352-5251

Nashville, Tennessee Office

Manager, HUD—Nashville Office, 251 Cumberland Bend Drive, Suite 200, Nashville, Tennessee 37228-1803, (615) 736-5213, (FTS) 852-5213

Region V

Jurisdiction: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

Chicago, Illinois Regional Office

Regional Administrator-Regional Housing Commissioner, HUD—Chicago Regional Office, Ralph Metcalfe Federal Building, 77 West Jackson Blvd., Chicago, IL 60604, (312) 353-5680, (FTS) 353-5680

Cincinnati, Ohio Office

Manager, HUD—Cincinnati Office, Federal Office Building, Room 9002, 550 Main Street, Cincinnati, Ohio 45202-3253, (513) 684-2884, (FTS) 684-2884

Cleveland, Ohio Office

Manager, HUD—Cleveland Office, One Playhouse Square, 1375 Euclid Avenue, Rm. 420, Cleveland, Ohio 44114-1670, (216) 522-4058, (FTS) 942-4065

Columbus, Ohio Office

Manager, HUD—Columbus Office, 200 N. High Street, Columbus, Ohio 43215-2499, (614) 469-5737, (FTS) 943-7345

Detroit, Michigan Office

Manager, HUD—Detroit Office, Patrick V. McNamara Federal Building, 477 Michigan Avenue, Detroit, Michigan 48226-2592, (313) 226-7900, (FTS) 226-7900

Grand Rapids, Michigan Office

Manager, HUD—Grand Rapids Office, 2922 Fuller Avenue N.E., Grand Rapids, Michigan 49505-3499, (616) 456-2100, (FTS) 372-2182

Indianapolis, Indiana Office

Manager, HUD—Indianapolis Office, 151 North Delaware Street, Indianapolis, Indiana 46204-2526, (317) 226-6303, (FTS) 331-6303

Milwaukee, Wisconsin Office

Manager, HUD—Milwaukee Office, Henry S. Reuss Federal Plaza, 310 W. Wisconsin Avenue, Suite 1380, Milwaukee, Wisconsin 53203-2289, (414) 297-3214, (FTS) 362-1493

Minneapolis-St. Paul, Minnesota Office

Manager, HUD—Minneapolis-St. Paul Office, 220 2nd Street, S., Minneapolis, Minnesota 55401-2195, (612) 370-3000, (FTS) 333-3002

Region VI

Jurisdiction: Arkansas, Louisiana, New Mexico, Oklahoma, Texas

Fort Worth, Texas Regional Office

Regional Administrator-Regional Housing Commissioner, HUD—Fort Worth Regional Office, 1600 Throckmorton, P.O. Box 2905, Fort Worth, Texas 76113-2905, (817) 885-5401, (FTS) 728-5401

Houston, Texas Office

Manager, HUD—Houston Office, Norfolk Tower, 2211 Norfolk, Suite 200, Houston, Texas 77098-4096, (713) 653-3274, (FTS) 522-3271

Little Rock, Arkansas Office

Manager, HUD—Little Rock Office, Lafayette Building, 523 Louisiana, Suite 200, Little Rock, Arkansas 72201-3707, (501) 324-5900, (FTS) 740-5401

New Orleans, Louisiana Office

Manager—New Orleans Office, Fisk Federal Building, 1661 Canal Street, New Orleans, Louisiana 70172-2887, (504) 589-7200, (FTS) 682-7200

Oklahoma City, Oklahoma Office

Manager, HUD—Oklahoma City Office, Alfred P. Murrah Federal Building, 200 N.W. 5th Street, Oklahoma City, Oklahoma 73102-3202, (405) 231-4181, (FTS) 736-4891

San Antonio, Texas Office

Manager, HUD—San Antonio Office, Washington Square Building, 800 Dolorosa Street, San Antonio, Texas 78207-4563, (512) 229-6800, (FTS) 730-6800

Region VII

Jurisdiction: Iowa, Kansas, Missouri, Nebraska

Kansas City Regional Office

Regional Administrator-Regional Housing Commissioner, HUD—Kansas City Regional Office, Gateway Tower II, 400 State Avenue, Kansas City, KS 66101-2406, (913) 236-2162, (FTS) 757-2162

Des Moines, Iowa Office

Manager, HUD—Des Moines Office, Federal Building, 210 Walnut Street, Rm. 239, Des Moines, Iowa 50309-2155, (515) 284-4512, (FTS) 862-4512

Omaha, Nebraska Office

Manager, HUD—Omaha Office, 10909 Mill Valley Road, Omaha, Nebraska 68154-3955, (402) 492-3100, (FTS) 492-3101

St. Louis, Missouri Office

Manager, HUD—St. Louis Office, 1222 Spruce Street, Room 3.207, St. Louis, MO 63103-2836, (314) 539-6583, (FTS) 262-6560

Region VIII

Jurisdiction: Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming

Denver, Colorado Regional Office

Regional Administrator—Regional Housing Commissioner, HUD—Denver Regional Office, Executive Tower Building, 1405 Curtis Street, Denver, Colorado 80202-2349, (303) 844-4513, (FTS) 564-4513

Region IX

Jurisdiction: Arizona, California, Hawaii, Nevada, Guam, American Samoa

San Francisco, California Regional Office

Regional Administrator—Regional Housing Commissioner, HUD—San Francisco Regional Office, Philip Burton Federal Building & U.S. Courthouse, 450 Golden Gate Avenue, P.O. Box 36003, San Francisco, California 94102-3448, (415) 556-4752, (FTS) 556-4752

Honolulu, Hawaii Office

Manager, HUD—Honolulu Office, Seven Waterfront Plaza, 500 Ala Moana Boulevard, Suite 500, Honolulu, Hawaii 96813-4918, (808) 541-1323, (FTS) 551-1343

Los Angeles, California Office

Manager, HUD—Los Angeles Office, 1615 W. Olympic Blvd., Los Angeles, California 90015-3801, (213) 251-7122, (FTS) 983-7122

Phoenix, Arizona Office

Manager, HUD—Phoenix Office, Two Arizona Center, 400 N. 5th Street, Suite 1600, Phoenix, Arizona 85004-2361, (602) 379-4434, (FTS) 261-4434

Sacramento, California Office

Manager, HUD—Sacramento Office, 777 12th Street, Suite 200, Sacramento, California 95814-1997, (916) 551-1351, (FTS) 460-1351

Region X

Jurisdiction: Alaska, Idaho, Oregon, Washington

Seattle, Washington Regional Office

Regional Administrator—Regional Housing Commissioner, HUD—Seattle Regional Office, Arcade Plaza Building, 1321 2nd Avenue, Seattle, Washington 98101-2058, (206) 553-5414, (FTS) 399-5414

Anchorage, Alaska Office

222 West 8th Avenue, #64, Anchorage, Alaska 99513-7537, (907) 271-4170, (FTS) 868-4170

Portland, Oregon Office

Manager, HUD—Portland Office, 520 S.W. 6th Avenue, Portland, Oregon 97204-1596, (503) 326-2561, (FTS) 423-2561.

[FR Doc. 92-21232 Filed 9-2-92; 8:45 am]

BILLING CODE 4210-27-M

federal register

Thursday
September 3, 1992

Part VII

Department of Agriculture

Forest Service

Timber Sales: Northern Region; Notices

DEPARTMENT OF AGRICULTURE

Forest Service

Exemption of Gone Beaver Blowdown Salvage Project from Appeal

AGENCY: USDA, Forest Service, Northern Region.

ACTION: Notification that a salvage timber sale project designed to recover windstorm damaged timber is exempted from appeals under provisions of 36 CFR part 217.

SUMMARY: In October 1991, 20 acres of timber adjacent to the Blown Beaver Area Salvage Timber Sale were blown down during a severe windstorm. In 1992 the Bonners Ferry District Ranger proposed a salvage timber sale to recover damaged sawtimber in the affected area.

The District Ranger has determined, through an environmental analysis documented in the Gone Beaver Blowdown Salvage Environmental Assessment (EA), that there is good cause to expedite these actions in order to rehabilitate National Forest System lands and recover damaged resources. Salvage of commercial sawtimber within the affected area must be accomplished by early 1993 to avoid further deterioration of sawtimber and to reduce the risk for spruce bark beetle infestation in adjacent healthy timber stands.

EFFECTIVE DATE: Effective on September 3, 1992.

FOR FURTHER INFORMATION CONTACT: Debbie Henderson-North, District Ranger, Bonners Ferry Ranger District, Idaho Panhandle National Forest, Route 4, Box 4860, Bonners Ferry, ID 83805.

SUPPLEMENTARY INFORMATION: Severe windstorms in the fall of 1991 damaged approximately 20 acres of timber within and around the Blown Beaver Area Salvage Sale. The windthrown timber is within Management Area 7 as designated by the Idaho Panhandle Forest Plan, August 1987, and consists of lands designated for caribou habitat management and timber production.

In July 1992, the Bonners Ferry District Ranger, Idaho Panhandle National Forest, proposed the salvage harvest of the trees killed by the 1991 windstorms. This proposal was designed to meet the following needs, (a) implement integrated pest management prescriptions to reduce the potential for future spruce bark beetle infestations in adjacent healthy timber stands and (b) contribute to a continuing supply of timber for industry by salvaging merchantable timber products. An interdisciplinary team was convened, and scoping began in 1992. Three environmental issues were identified and were the basis for the environmental analysis disclosed in the EA. Two alternatives were analyzed; a No Action Alternative and the Proposed Action (salvage) alternative.

The selected alternative would salvage 250 MBF of dead and damaged timber from approximately 20 acres. All salvage areas are accessible from existing roads. No road construction or reconstruction is planned for this sale.

The sale and accompanying work is designed to accomplish the objectives as quickly as possible to minimize the risk of a spruce bark beetle epidemic and to recover merchantable sawtimber before it deteriorates and removal becomes infeasible. To expedite implementation of this decision, procedures outlined in 36 CFR 217(a)(11) are being followed. Under this regulation the following may be exempt from appeal:

> Decisions related to rehabilitation of National Forest System lands and recovery of Forest Resources from natural disasters or other natural phenomena, such as . . . severe wind . . . when the Regional Forester . . . determines and gives notice in the **Federal Register** that good causes exists to exempt such decisions from review under this part.

Based on the environmental analysis documented in the Gone Beaver Blowdown Salvage Timber Sale EA and the District Ranger's Decision Notice for this project, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under 36 CFR part 217.

Dated: August 28, 1992.

John M. Hughes,

Deputy Regional Forester Northern Region.

[FR Doc. 92-21219 Filed 9-2-92; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Exemption of They Go 4 Blowdown Salvage Project From Appeal

AGENCY: USDA, Forest Service, Northern Region.

ACTION: Notification that a salvage timber sale project designed to recover windstorm damaged timber is exempted from appeals under provisions of 36 CFR part 217.

SUMMARY: As a result of windstorms during the spring and fall of 1991, isolated patches of timber adjacent to the Italian Creek Timber Sale were blown down. In 1992 the Bonners Ferry District Ranger proposed a salvage timber sale to recover damaged sawtimber in the affected area.

The District Ranger has determined, through an environmental analysis documented in the They Go 4 Blowdown Salvage Environmental Assessment (EA), that there is good cause to expedite these actions in order to rehabilitate National Forest System lands and recover damaged resources. Salvage of commercial sawtimber within the affected area must be accomplished by early 1993 to avoid further deterioration of sawtimber, to reduce the risk for insect infestation and fire in adjacent healthy timber stands, and to restock lands managed for timber production.

EFFECTIVE DATE: Effective on September 3, 1992.

FOR FURTHER INFORMATION CONTACT: Debbie Henderson-Norton, District Ranger, Bonners Ferry Ranger District, Idaho Panhandle National Forest, Route 4, Box 4860, Bonners Ferry, ID 83805.

SUPPLEMENTARY INFORMATION: Severe windstorms in the spring and fall of 1991 damaged isolated pockets of timber in a 180 acre area within and around the Italian Creek Timber Sale area. The windthrown timber is within Management Area 2 as designated by the Idaho Panhandle Forest Plan, August 1987, and consists of lands designated for grizzly habitat management and timber production.

In July 1992, the Bonners Ferry District Ranger, Idaho Panhandle National Forest, proposed the salvage harvest of merchantable timber blown down by the 1991 windstorms. This proposal was designed to meet the following needs, (a) implement integrated pest management prescriptions to reduce the potential for future insect infestations and fire in adjacent healthy timber stands, (b) rehabilitate timber stands that are understocked due to severe wind damage, and (c) contribute to a continuing supply of timber for industry by salvaging merchantable timber products. An interdisciplinary team was convened, and scoping begin in 1992. Three environmental issues were identified and were the basis for the environmental analysis disclosed in the EA. Two alternatives were analyzed, a No Action Alternative and the Proposed Action (salvage) alternative.

The selected alternative would salvage 294 MBF of dead and damaged timber from isolated patches of windthrown timber on 180 acres. All salvage areas are accessible from existing roads. No road construction or reconstruction is planned for this sale.

The sale and accompanying work is designed to accomplish the objectives as quickly as possible to minimize disturbance to grizzly bears and their habitat, reduce the risk of future insect infestations and the potential for catastrophic wild fire, and to recover merchantable sawtimber before it deteriorates and removal becomes infeasible. To expedite implementation of this decision, procedures outlined in 36 CFR 217(a)(11) are being followed.

Under this Regulation the following may be exempt from appeal:

Decisions related to rehabilitation of National Forest System lands and recovery of Forest Resources from natural disasters or other natural phenomena, such as . . . severe wind . . . when the Regional Forester . . . determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

Based on the environmental analysis documented in the They Go 4 Blowdown Salvage Timber Sale EA and the District Ranger's Decision Notice for this project, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under 36 CFR part 217.

Dated: August 28, 1992.

John M. Hughes,

Deputy Regional Forester, Northern Region.

[FR Doc. 92-21218 Filed 9-2-92; 8:45 am]

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federal register

Thursday
September 3, 1992

Part VIII

Department of Energy

Office of Energy Research

10 CFR Part 605

Office of Energy Research Financial Assistance Program; Final Rule

DEPARTMENT OF ENERGY

Office of Energy Research

10 CFR Part 605

Office of Energy Research Financial Assistance Program

AGENCY: Office of Energy Research, DOE.

ACTION: Final rule.

SUMMARY: The final rule being issued today by the Department of Energy's (DOE) Office of Energy Research (ER) is in response to the President's Regulatory Review Program as set forth in Presidential memoranda of January 28 and April 29, 1992, and revises the existing regulation at 10 CFR Part 605 (the Special Research Grant Program) in order to improve, streamline, make uniform, clarify, and reduce the paperwork burden of, administrative requirements yet continue to provide reasonable and workable financial assistance policies and procedures.

EFFECTIVE DATE: This final rule is effective for all awards issued after October 1, 1992.

FOR FURTHER INFORMATION CONTACT:

Robert A. Zich, Director, Acquisition and Assistance Management Division, Office of Energy Research, ER–64/GTN, U.S. Department of Energy, Washington, DC 20585, (301) 903–5544.

Marya Rowan, Office of the Assistant General Counsel for Civilian Nuclear Programs, GC–31, U.S. Department of Energy, Washington, DC 20585, (202) 586–6975.

SUPPLEMENTARY INFORMATION:

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I. Discussion of Comments on Proposed Rules

The Office of Energy Research, U.S. Department of Energy issued two proposed rules on 10 CFR part 605 in the **Federal Register**. The first one appeared on June 24, 1992, (57 FR 28137) and the last one appeared on July 8, 1992, (57 FR 30171).

These notices of proposed rulemaking were issued to revise the existing regulation to clarify, improve, reduce burden, streamline and update financial assistance policies and procedures in accordance with the President's Regulatory Review Program pursuant to the President's memoranda for certain department and agency heads on "Reducing the Burden of Government Regulation," dated January 28, 1992, and on "Implementing Regulatory Reforms," dated April 29, 1992. Comments were requested on these two rulemakings through August 7, 1992. In response to these **Federal Register** publications, DOE received written comments from three university research administration offices, one non-profit organization, one association that represents 136 national research colleges and universities and two comments from DOE Field Offices.

Three commenters requested that proposed § 605.16(b) which would limit indirect cost allowances on training grants and cooperative agreements to 8 percent of total direct costs, be deleted since both the cost and burden associated with the restriction would fall invariably upon the recipient without consideration of the circumstances. Upon ER's review of this comment, it was determined that this suggestion held merit and therefore ER should delete the proposed revision and in the future decide indirect cost allowability on a program basis. Another commenter requested that § 605.9 and 605.19 use the same term to describe reports required under this rule. ER again agreed with this suggestion and has adopted for use under this rule the term "progress report" instead of performance and progress reports. The term "progress report" is now used throughout 10 CFR part 605 in lieu of other terms in order to reduce confusion for award recipients. Three commenters objected to the increase of time for submission of renewal applications from 6 months to 9 months under § 605.9. ER, upon further review of this suggested revision, has decided that pre-award activities that require the additional time can be modified and thereby allow the proposed 3-month increase to be deleted. One commenter requested deletion of the § 605.19 requirement for additional information on graduate students, DOE mission and foreign travel in progress reports, as this information is already required as part of budget and cost documentation and as information on foreign travel and DOE mission are specifically required in separate trip reports or applications. ER has determined that adequate information in these three areas is already provided and the proposed requirement has been deleted. However, § 605.19(a)(1) of this final rule does include additional language that involves the use of threshold percentages to assist award recipients in understanding and in making determinations on reporting unexpended balances or in including detailed budget information during the term of an ER award. This section also includes the addition of the word "generally" under the requirement for a two page progress report to indicate that the report can be more or less as determined by the project director. Two commenters requested language changes to the newly proposed § 605.9(j) on renewal application progress reports. Language suggested by one commenter was adopted for use under this section in the final rule and will satisfy both commenters' concerns and ER's requirements for progress reports and renewal applications. ER also revised the proposed rule to include additional language clarifications that were suggested by one commenter for 605.19(a)(1). In addition to the suggested changes listed above, all of the commenters enthusiastically supported the proposed changes as providing a more efficient and less burdensome financial assistance program for DOE.

In § 605.3 the definition of *related conference* now includes language to cover conferences for educational and training activities since the final rule provides coverages of these activities. The definition for *special purpose equipment* also is revised to indicate the same coverage. Appendix A and § 605.5(b) are revised to indicate recent revisions to and reorganization activities within the Office of Energy Research. For example, the "Technology Analysis" area is deleted and is covered under Field Operations Management as a new sub program entitled "Laboratory Technology Transfer Program." Other ER and STA program descriptions in this final rule contain revisions that update and clarify research, training and related funding opportunities. This final rule in § 605.8(d) also deletes the need for publishing program announcements in the Commerce Business Daily (CBD). (The preamble to the notice of June 24, 1992, **Federal Register** at 57 FR 28137 proposed this deletion, but the proposed regulatory language neglected to do so.) In addition, § 605.20(a) was revised by deleting the term "to the scientific community" and thereby, consistent with the expansion to include educational and training activities, allowing project directors to publish in other than scientific media. Finally, ER incorporated some minor editorial changes, corrected errors discovered during review of the final document, and revised the table of contents to

accurately reflect changes made necessary by the final rule. In addition, for ease of readability and accurate reference for ER award recipients, 10 CFR part 605 is reprinted in its entirety.

II. Review Under Executive Order 12291

This final rule has been reviewed by OMB under Executive Order 12291 (46 FR 13192, February 17, 1981). Prior to publication of the final rule, DOE concluded that the rule is not a "major rule" because its promulgation will not result in (1) an annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographical regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete in domestic or export markets.

III. Review Under Regulatory Flexibility Act

This final rule was reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 95 Stat. 1164) which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities, i.e., small business, small organizations, and small governmental jurisdictions. DOE concluded that this final rule would only affect small entities as they apply for and receive cooperative agreements and grants and does not create additional economic impacts on small entities. Accordingly, DOE certifies that this final rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

IV. Review Under the Paperwork Reduction Act

The collection of information requirements contained in this final rule have been approved by OMB under control numbers 1910–0400 and 1910–1400.

V. Review Under the National Environmental Policy Act

DOE has concluded that the final rule clearly would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.* (1976)), the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), and the DOE guidelines (10 CFR part 1022) and, therefore, does not require an environmental impact statement pursuant to NEPA.

VI. Intergovernmental Review

This program is generally not subject to the intergovernmental review requirements of Executive Order 12372 as implemented by 10 CFR part 1005. However, certain applications may be. All applications from governmental or nongovernmental entities which involve research, development or demonstration activities when such activities: (1) Have a unique geographic focus and are directly relevant to the governmental responsibilities of a State or local government within the geographic area; (2) necessitate the preparation of an Environmental Impact Statement under NEPA; or (3) are to be initiated at a particular site or location and require unusual measures to limit the possibility of adverse exposure or hazard to the general public are subject to the provisions of the Executive Order and 10 CFR part 1005. Those planning to submit covered applications should immediately contact ER for further information.

VII. Review Under Executive Order 12612

Executive Order 12612 requires that regulations or rules be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. Today's final rule will amend existing regulations for a financial assistance program to stimulate research and development, as well as educational and training activities. There will not be any substantial direct effect on States.

VIII. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency subject to Executive Order 12291 to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in section 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards (whether they be engineering or performance standards), and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation: specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE certifies that today's final rule meets the requirements of sections 2(a) and (b) of Executive Order 12778.

IX. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for the Office of Energy Research Financial Assistance Program is 81.049.

List of Subjects in 10 CFR Part 605

Energy, Grant programs—energy, Reporting and recordkeeping requirements, Research.

In consideration of the foregoing, part 605 of chapter II of title 10 of the Code of Federal Regulations is revised as set forth below.

Issued in Washington, DC, on August 27, 1992.

James F. Decker,

Deputy Director, Office of Energy Research.

Part 605 of chapter II of title 10, Code of Federal Regulations, is revised as follows:

PART 605—THE OFFICE OF ENERGY RESEARCH FINANCIAL ASSISTANCE PROGRAM

Sec.

605.1 Purpose and scope.
605.2 Applicability.
605.3 Definitions.
605.4 Deviations.
605.5 The Office of Energy Research Financial Assistance Program.
605.6 Eligibility.
605.7 [Reserved]
605.8 Solicitation.
605.9 Application Requirements.
605.10 Application evaluation and selection.
605.11 Additional requirements.
605.12 Funding.
605.13 Cost sharing.
605.14 Limitation of DOE liability.
605.15 Fee.
605.16 Indirect Cost Limitations.
605.17 [Reserved]
605.18 National Security.
605.19 Continuation Funding and Reporting Requirements.
605.20 Dissemination of results.

Appendix A to Part 605—Energy Research Program Office Descriptions

Authority: Section 31 of the Atomic Energy Act, as amended, Pub. L. 83–703, 68 Stat. 919 (42 U.S.C. 2051); sec. 107 of the Energy Reorganization Act of 1974, Pub. L. 93–438, 88 Stat. 1240 (42 U.S.C. 5817); Federal Nonnuclear Energy Research and Development Act of 1974, Pub. L. 93–577, 88 Stat. 1878 (42 U.S.C. 5901 *et seq.*); secs. 644 and 646 of the Department of Energy Organization Act, Pub. L. 95–91, 91 Stat. 599

(42 U.S.C. 7254 and 7256); Federal Grant and Cooperative Agreement Act, as amended (31 U.S.C. 6301 *et seq.*).

§ 605.1 Purpose and scope.

This part sets forth the policies and procedures applicable to the award and administration of grants and cooperative agreements by the DOE Office of Energy Research (ER) and the Science and Technology Advisor (STA) Organization for basic and applied research, educational and/or training activities, conferences and related activities.

§ 605.2 Applicability.

(a) This part applies to all grants and cooperative agreements awarded after the effective date of this amended rule.

(b) Except as otherwise provided by this part, the award and administration of grants and cooperative agreements shall be governed by 10 CFR part 600 (DOE Financial Assistance Rules).

§ 605.3 Definitions.

In addition to the definitions provided in 10 CFR part 600, the following definitions are provided for purposes of this part—

Basic and applied research means basic and applied research and that part of development not related to the development of specific systems or products. The primary aim of research is scientific study and experimentation directed toward advancing the state of the art or increasing knowledge or understanding rather than focusing on a specific system or product.

Educational/Training means support for education or related activities for an individual or organization that will enhance education levels and skills in particular scientific or technical areas of interest to DOE.

Principal investigator means the scientist or other individual designated by the recipient to direct the project.

Recipient obligation means the amounts of orders placed, contracts and subawards issued, services received, and similar transactions during a given period that will require payment by the recipient during the same or a future period.

Related conference means scientific or technical conferences, symposia, workshops or seminars for the purpose of communicating or exchanging information or views pertinent to ER/STA.

Special purpose equipment means equipment which is used only for research, medical, scientific, educational, or other related project activity.

§ 605.4 Deviations.

Single-case deviations from this part may be authorized in writing by the Director or Deputy Director of ER or the Head of a Contracting Activity upon the written request of DOE staff, an applicant for an award, or a recipient. A request from an applicant or a recipient must be submitted to or through the cognizant contracting officer. Whenever a proposed deviation from this part would be a deviation from 10 CFR part 600, the deviation must also be authorized in accordance with the procedures prescribed in that part.

§ 605.5 The Office of Energy Research Financial Assistance Program.

(a) DOE may issue, under the Office of Energy Research Financial Assistance Program, 10 CFR part 605, awards for basic and applied research, educational/training activities, conferences, and other related activities under the ER program areas set forth in paragraph (b) of this section and described in appendix A of this part.

(b) The Program areas are:

(1) Basic Energy Sciences

(2) Field Operations Management

(3) Fusion Energy

(4) Health and Environmental Research

(5) High Energy and Nuclear Physics

(6) Scientific Computing Staff

(7) Superconducting Super Collider

(8) University and Science Education Programs

(9) Program Analysis; and

(10) Other program areas of interest as may be described in a notice of availability published in the **Federal Register**.

§ 605.6 Eligibility.

Any university or other institution of higher education or other non-profit or for-profit organization, non-Federal agency, or entity is eligible for a grant or cooperative agreement. An unaffiliated individual also is eligible for a grant or cooperative agreement.

§ 605.7 [Reserved]

§ 605.8 Solicitation.

(a) The Catalog of Federal Domestic Assistance number for this program is 81.049, and its solicitation control number is ERFAP 10 CFR part 605.

(b) An application for a new or renewal award under this solicitation may be submitted at any time to DOE at the address specified in paragraph (c) of this section. New or renewal applications shall receive consideration for funding generally within 6 months but, in any event, no later than 12 months from the date of receipt by DOE.

(c) Applicants may obtain application forms, described in § 605.9(b), and additional information from the Acquisition and Assistance Management Division, Office of Energy Research, ER–64, Department of Energy, Washington, DC 20585, (301) 903–5544, and shall submit applications to the same address.

(d) DOE shall publish annually, in the **Federal Register**, a notice of the availability of the Office of Energy Research Financial Assistance Program. DOE shall also publish notices or abbreviated notices of availability in trade and professional journals, and news media, and use other means of communication, as appropriate.

(1) Each notice of availability shall cite this part and shall include:

(i) The Catalog of Federal Domestic Assistance number and solicitation control number of the program;

(ii) The amount of money available or estimated to be available for award;

(iii) The name of the responsible DOE program official to contact for additional information, and an address where application forms may be obtained;

(iv) The address for submission of applications; and

(v) Any evaluation criteria in addition to those set forth in § 605.10.

(2) The notice of availability may also include any other relevant information helpful to applicants such as:

(i) Program objectives,

(ii) A project agenda or potential areas for project initiatives,

(iii) Problem areas requiring additional effort, and

(iv) Any other information which identifies areas in which grants or cooperative agreements may be made.

(e) DOE is under no obligation to pay for any costs associated with the preparation or submission of applications.

(f) DOE reserves the right to fund, in whole or in part, any, all, or none of the applications submitted.

(g) To be considered for a renewal award under this part, an incumbent recipient shall submit a renewal application as provided in § 605.9 (c) and (h).

§ 605.9 Application requirements.

(a) An original and seven copies of the application for initial support must be submitted except that State governments, local governments, or Indian tribal governments shall not be required to submit more than the original and two copies of the application.

(b) Each new or renewal application in response to this part must include:

(1) An application face page, DOE Form 4650.2 (approved by OMB under OMB Control No. 1910–1400). However, the facesheet of the application for State and local governments and Indian tribal government applicants shall be the facesheet of Standard Form (SF) 424 (approved by OMB under OMB Control Number 0348–0043).

(2) A detailed description of the proposed project, including the objectives of the project, in relationship to DOE's program and the applicant's plan for carrying it out;

(3) Detailed information about the background and experience of the principal investigator(s) (including references to publications), the facilities and experience of the applicant, and the cost-sharing arrangements, if any.

(4) A detailed budget for the entire proposed period of support with written justification sufficient to evaluate the itemized list of costs provided on the entire project.

(i) Numerical details on items of cost provided by State and local government and Indian tribal government applicants shall be on Standard Form 424A, Budget Information for Non-Construction Programs (approved under OMB Control No. 0348–0044). All other applicants shall use budget form ERF 4620.1 (approved by OMB under Control No. 1910–1400).

(ii) DOE may, subsequent to receipt of an application, request additional budgetary information from an applicant when necessary for clarification or to make informed preaward determinations under 10 CFR Part 600.

(5) Any preaward assurances required pursuant to 10 CFR parts 600 and 605.

(c) Applications for a renewal award must be submitted in an original and seven copies, except that State governments, local governments, or Indian tribes are required to submit only an original and two copies. (Approved by OMB under OMB Control Numbers 0348–0005—0348–0009).

(d) The application must be signed by an official who is authorized to act for the applicant organization and to commit the applicant to comply with the terms and conditions of the award, if one is issued, or if unaffiliated, by the individual applicant. (See § 605.19(a)(1) for requirements on continuation awards.)

(e) All applications which involve research, development, or demonstration activities when such activities:

(1) Have a unique geographic focus and are directly relevant to the governmental responsibilities of a State or local government within the geographic area;

(2) Necessitate the preparation of an Environmental Impact Statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.* (1976)); or

(3) Are to be initiated at a particular site or location and require unusual measures to limit the possibility of adverse exposure or hazard to the general public, are subject to the provisions of Executive Order 12372 and 10 CFR part 1005.

Anyone planning to submit such applications should contact ER for further information about compliance requirements.

(f) DOE may return an application which does not include all information and documentation required by statute, this part, 10 CFR part 600 or the notice of availability, when the nature of the omission precludes review of the application.

(g) During the review of the complete application, DOE may request the submission of additional information only if the information is essential to evaluate the application.

(h) In addition to including the information described in paragraphs (b), (c), and (d) of this section, an application for a renewal award must be submitted no later than six months prior to the scheduled expiration of the project period and must be on the same forms and include the same type of information as that required for initial applications. The renewal application must outline and justify a program and budget for the proposed project period, showing in detail the estimated cost of the proposed project, together with an indication of the amount of funds needed and the amount of cost sharing, if any. The application also shall describe and explain the reasons for any change in the scope or objectives of the proposed project, and shall compare and explain any difference between the estimates in the proposed budget and actual costs experienced as of the date of the application.

(i) DOE is not required to return to the applicant an application which is not selected or funded.

(j) Renewal applications must include a separate section that describes the results of work accomplished through the date of the renewal application and how such results relate to the activities proposed to be undertaken in the renewal period.

§ 605.10 Application evaluation and selection.

(a) Applications shall be evaluated for funding generally within 6 months but, in any event, no later than 12 months from the date of receipt by DOE. After DOE has held an application for 6 months, the applicant may, in response to DOE's request, be required to revalidate the terms of the original application.

(b) DOE staff shall perform an initial evaluation of all applications to ensure that the information required by this part is provided, that the proposed effort is technically sound and feasible, and that the effort is consistent with program funding priorities. For applications which pass the initial evaluation, DOE shall review and evaluate each application received based on the criteria set forth below and in accordance with the Merit Review System developed as required under DOE Financial Assistance Regulations, 10 CFR part 600.

(c) DOE shall select evaluators on the basis of their professional qualifications and expertise. Evaluators shall be required to comply with all applicable DOE rules or directives concerning the use of outside evaluators.

(d) DOE shall evaluate new and renewal applications based on the following criteria which are listed in descending order of importance:

(1) Scientific and/or technical merit or the educational benefits of the project;

(2) Appropriateness of the proposed method or approach;

(3) Competency of applicant's personnel and adequacy of proposed resources;

(4) Reasonableness and appropriateness of the proposed budget; and

(5) Other appropriate factors established and set forth by ER in a notice of availability or in a specific solicitation.

(e) Also, DOE shall consider, as part of the evaluation, other available advice or information as well as program policy factors such as ensuring an appropriate balance among the program areas listed in § 605.5(b) of this part.

(f) In addition to the evaluation criteria set forth in paragraphs (d) and (e) of this section, DOE shall consider the recipient's performance under the existing award during the evaluation of a renewal application.

(g) Selection of applications for award will be based upon the findings of the technical evaluations, the importance and relevance of the proposed application to ER's mission, and fund availability. Cost reasonableness and realism will also be considered to the extent appropriate.

(h) After the selection of an application, DOE may, if necessary, enter into negotiation with an applicant. Such negotiations are not a commitment that DOE will make an award.

§ 605.11 Additional requirements.

(a) A recipient performing research, development, or related activities involving the use of human subjects must comply with DOE regulations in 10 CFR part 745, "Protection of Human Subjects," and any additional provisions which may be included in the Special Terms and Conditions of an award.

(b) A recipient performing research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall comply with the National Institutes of Health "Guidelines for Research Involving Recombinant DNA Molecules" (51 FR 16958, May 7, 1986), or such later revision of those guidelines as may be published in the **Federal Register**. (The guidelines are available from the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, room 4B11, Bethesda, Maryland 20892.)

(c) Any recipient performing research on warm-blooded animals shall comply with the Federal Laboratory Animal Welfare Act of 1966, as amended (7 U.S.C. 2131 *et seq.*) and the regulations promulgated thereunder by the Secretary of Agriculture at 9 CFR chapter I, subchapter A, pertaining to the care, handling, and treatment of warm blooded animals held or used for research, teaching, or other activities supported by Federal awards. The recipient shall comply with the guidelines described in DHHS Publication No. [NIH] 86-23, "Guide for the Care and Use of Laboratory Animals," or succeeding revised editions. (This guide is available from the Office for Protection from Research Risks, Office of the Director, National Institutes of Health, Building 31, room 4B09, Bethesda, Maryland 20205.)

§ 605.12 Funding.

(a) The project period during which DOE expects to provide support for an approved project under this part shall generally not exceed 3 years and may exceed 5 years only if DOE makes a renewal award or otherwise extends the award. The project period shall be specified on the Notice of Financial Assistance Award (DOE Form 4600.1).

(b) Each budget period, of an award under this part, shall generally be 12 months and may be as much as 24 months as determined appropriate by ER.

§ 605.13 Cost sharing.

Cost sharing is not required nor will it be considered as a criterion in the evaluation and selection process unless otherwise provided under § 605.10(d)(5).

§ 605.14 Limitation of DOE liability.

Awards under this part are subject to the requirement that the maximum DOE obligation to the recipient is the amount shown in the Notice of Financial Assistance Award as the amount of DOE funds obligated. DOE shall not be obligated to make any additional, supplemental, continuation, renewal or other awards for the same or any other purpose.

§ 605.15 Fee.

(a) Notwithstanding 10 CFR part 600, a fee may be paid, in appropriate circumstances, to a recipient which is a small business concern as qualified under the criteria and size standards of 13 CFR part 121 in order to permit the concern to participate in the ER Financial Assistance Program. Whether or not it is appropriate to pay a fee shall be determined by the Contracting Officer who shall, at a minimum, apply the following guidelines:

(1) Whether the acceptance of an award will displace other work the small business is currently engaged in or committed to assume in the near future; or

(2) Whether the acceptance of an award will, in the absence of paying a fee, cause substantial financial distress to the business. In evaluating financial distress, the Contracting Officer shall balance current displacement against reasonable future benefit to the company. (If the award will result in the beneficial expansion of the existing business base of the company, then no fee would generally be appropriate.) Fees shall not be paid to other entities except as a deviation from 10 CFR part 600, nor shall fees be paid under awards in support of conferences.

(b) To request a fee, a small business concern shall submit with its application a written self certification that it is a small business concern qualified under the criteria and size standards in 13 CFR part 121. In addition, the application must state the amount of fee requested for the entire project period and the basis for requesting the amount, and must also state why payment of a fee by DOE would be appropriate.

(c) If the Contracting Officer determines that payment of a fee is appropriate under paragraph (a) of this section, the amount of fee shall be that determined to be reasonable by the Contracting Officer. The Contracting Officer shall, at a minimum, apply the following guidelines in determining the fee amount:

(1) The fee base shall include the estimated allowable cost of direct salaries and wages and allocable fringe benefits. This fee base shall exclude all other direct and indirect costs.

(2) The fee amount expressed as a percentage of the appropriate fee base pursuant to paragraph (c)(1) of this section, shall not exceed the percentage rate of fee that would result if a Federal agency contracted for the same amount of salaries, wages, and allocable fringe benefits under a cost reimbursement contract.

(3) Fee amounts, determined pursuant to paragraphs (c)(1) and (c)(2) of this section, shall be appropriately reduced when:

(i) Advance payments are provided; and/or

(ii) Title to property acquired with DOE funds vests in the recipient (10 CFR part 600).

(d) Notwithstanding 10 CFR part 600, any fee awarded shall be a fixed fee and shall be payable on an annual basis in proportion to the work completed, as determined by the Contracting Officer, upon satisfactory submission and acceptance by DOE of the progress report. If the project period is shortened due to termination, or the project period is not fully funded, the fee shall be reduced by an appropriate amount.

§ 605.16 Indirect Cost Limitations.

Awards issued under this part for conferences and scientific/technical meetings will not include payment for indirect costs.

§ 605.17 [Revised]

§ 605.18 National Security.

Activities under ER's Financial Assistance Program shall not involve classified information (i.e., Restricted Data, formerly Restricted Data, National Security Information). However, if in the opinion of the recipient or DOE such involvement becomes expected prior to the closeout of the award, the recipient or DOE shall notify the other in writing immediately. If the recipient believes any information developed or acquired may be classifiable, the recipient shall not provide the potentially classifiable information to anyone, including the DOE officials with whom the recipient normally communicates, except the Director of Classification, and shall protect such information as if it were classified until notified by DOE that a determination has been made that it does not require such handling. Correspondence which includes the specific information in question shall be sent by registered mail to U.S. Department of Energy, Attn: Director of Classification, DP-32, Washington, DC 20585. If the information is determined to be classified, the recipient may wish

to discontinue the project in which case the recipient and DOE shall terminate the award by mutual agreement. If the award is to be terminated, all material deemed by DOE to be classified shall be forwarded to DOE, in a manner specified by DOE, for proper disposition. If the recipient and DOE wish to continue the award, even though classified information is involved, the recipient shall be required to obtain both personnel and facility security clearances through the Office of Safeguards and Security for Headquarters awards, or from the cognizant field office Division of Safeguards and Security for awards obtained through DOE field organizations. Costs associated with handling and protecting any such classified information shall be negotiated at the time that the determination to proceed is made.

§ 605.19 Continuation Funding and Reporting Requirements.

(a) A recipient shall periodically report to DOE on the project's progress in meeting the project objectives of the award. The following types of reports shall be used:

(1) Progress reports. After issuance of an initial award and if future support is recommended, recipients must submit a satisfactory progress report in order to receive continuation awards for the remainder of the project period. The original and two copies of the required report (generally not to exceed two pages per project or task) must be submitted to the ER program manager 90 days prior to the anticipated continuation funding date and contain the following information: on the first page, provide the project title, principal investigator/project director name, period of time report covers, name and address of recipient organization, DOE award number, the amount of unexpended funds, if any, that are anticipated to be left at the end of the current budget period, and if the amount exceeds 10 percent of the funds available for the budget period, provide information as to why the excess funds are anticipated to be available and how they will be used in the next budget period. Report should state whether aims have changed from original application and if they have, provided revised aims. Include results of work to date. Emphasize findings and their significance to the field, and any real or anticipated problems. A completed budget page must be submitted with the continuation progress report when a change to anticipated future costs will exceed 25 percent of the original recommended future budget.

(2) Notice of Energy R&D Project. A Notice of Energy R&D Project, DOE Form 1430.22, which summarizes the purpose and scope of the project, must be submitted in accordance with the Distribution and Schedule of Documents set forth at the end of this section. Copies of the form may be obtained from a DOE Contracting Office.

(3) Special Reports. The recipient shall report the following events to DOE as soon after they occur as possible:

(i) Problems, delays, or adverse conditions which will materially affect the ability to attain project objectives, or prevent the meeting of time schedules and goals. The report must describe the remedial action the recipient has taken or plans to take and any action DOE should take to alleviate the problems.

(ii) Favorable developments or events which enable meeting time schedules and goals sooner or at less cost than anticipated or producing more beneficial results than originally projected.

(4) Final Report. A final report summarizing the entire investigation must be submitted by the recipient within 90 days after the final project period ends or the award is terminated. Satisfactory completion of an award will be contingent upon the receipt of this report. The final report shall follow the same outline as a progress report. Manuscripts prepared for publication should be appended.

(5) Financial status report (FSR) (OMB No. 0348–0039). The FSR is required within 90 days after completion of each budget period; for budget periods exceeding 12 months, an FSR is also required within 90 days after this first 12 months unless waived by the Contracting Officer.

(b) DOE may extend the deadline date for any report if the recipient submits a written request before the deadline which adequately justifies an extension.

(c) A table summarizing the various types of reports, time for submission, number of copies is set forth below. The schedule of reports shall be as prescribed in this table, unless the award document specifies otherwise.

(d) DOE review of performance. DOE or its authorized representatives may make site visits, at any reasonable time, to review the project. DOE may provide such technical assistance as may be requested.

(e) Subrecipient progress reporting. Recipients may place progress reporting requirements on a subrecipient consistent with the provisions of this section.

DISTRIBUTION AND SCHEDULE OF DOCUMENTS

Type	When due	Number of copies to be submitted
1. Summary: 200 words on scope and purpose (Notice of Energy R&D Project).	Immediately after award and with each application for renewal.	3
2. Renewal	6 months before the project period ends.	3
3. Progress Report	90 days prior to the next budget period (or as part of a renewal application).	3
4. Other progress reports, brief topical reports, etc. (Designated when significant results develop or when work has direct programmatic impact).	As deemed appropriate by the recipient.	3
5. Reprints, Conference papers.	Same as 4 above	3
6. Final Report	Within 90 days after termination of the project.	3
7. Financial Status Report. (FSR).	Within 90 days after completion of the project period; for budget periods exceeding 12 months an FSR is also required within 90 days after the first 12-month period.	3

NOTE: Report types 5 and 6 require with submission two copies of DOE Form 1332.16, University-Type Contractor and Grantee Recommendations for Disposition of Scientific and Technical Document.

§ 605.20 Dissemination of results.

(a) Recipients are encouraged to disseminate project results promptly. DOE reserves the right to utilize, and have others utilize, to the extent it deems appropriate, the reports resulting from awards.

(b) DOE may waive progress reporting requirements set forth in § 605.19, if the recipient submits to DOE a copy of its own report which is published or accepted for publication in a recognized scientific or technical journal and which satisfies the information requirements of the program.

(c) Recipients are urged to publish results through normal publication channels in accordance with the applicable provisions of 10 CFR Part 600.

(d) The article shall include an acknowledgment that the project was supported, in whole or in part, by a DOE

award, and specify the award number, but state that such support does not constitute an endorsement by DOE of the views expressed in the article.

Appendix A to Part 605—The Energy Research Program Office Descriptions

1. Basic Energy Sciences

This program supports basic science research efforts in a variety of disciplines to broaden the energy supply and technological base knowledge. The major science division and its objectives are as follows:

(a) Energy Biosciences

The primary objective of this program is to generate a basis of understanding of fundamental biological mechanisms in the areas of botanical and microbiological sciences that will support biotechnology development related to energy. The research serves as the basic information foundation with respect to renewable resource productivity for fuels and chemicals, microbial conversions or renewable materials and biological systems for the conservation of energy. This office has special requirements on the submission of preapplications, when to submit, and the length of the preapplication/application; applicants are encouraged to contact the office regarding these requirements.

(b) Chemical Sciences

This program sponsors experimental and theoretical research on liquids, gases, plasmas, and solids. The focus is on their chemical properties and the interactions of their component molecules, atoms, ions, and electrons. The subprogram objective is to expand, through support of basic research, our knowledge in the various areas of chemistry; the long-term goal is to contribute to new or improved processes for developing and using domestic energy resources in an efficient and environmentally sound manner. Disciplinary areas covered include physical, organic, and inorganic chemistry; chemical physics; atomic physics; photochemistry; radiation chemistry; thermodynamics; thermophysics; separations science; analytical chemistry; and actinide chemistry.

(c) Geosciences

The goal of this program is to develop a quantitative and predictive understanding of the energy-related aspects of processes within the earth and at the solar-terrestrial interface. The emphasis is on the upper levels of the earth's crust and the focus is on geophysics and geochemistry of rock-fluid systems and interactions. Specific topical areas receiving emphasis include: High resolution geophysical imaging; fundamental properties of rocks, minerals, and fluids; scientific drilling; and sedimentary basin systems. The resulting improved understanding and knowledge base are needed to assist efforts in the utilization of the Nation's energy resources in an environmentally acceptable fashion.

(d) Engineering Research

This program's objectives are: (1) To extend the body of knowledge underlying current engineering practice in order to open new ways for enhancing energy savings and production, prolonging useful equipment life, and reducing costs while maintaining output and performance quality; and (2) to broaden the technical and conceptual base for solving future engineering problems in the energy technologies. Long-term research topics of current interest include: foundations of bioprocessing of fuels and energy related wastes, fracture mechanics, experimental and theoretical studies of multiphase flows, intelligent machines, and diagnostics and control for plasma processing of materials.

(e) Materials Sciences

The objective of this program is to increase the understanding of phenomena and properties important to materials behavior that will contribute to meeting the needs of present and future energy technologies. It is comprised of the subfields metallurgy, ceramics, solid state physics, materials chemistry, and related disciplines where the emphasis is on the science of materials.

(f) Advanced Energy Projects

The objective of this program is to support exploratory research on novel concepts related to energy. The concepts may be in any field related to energy but must not fall into an area of programmatic responsibility of an existing ER technical program. The research is usually aimed at establishing the scientific feasibility of a concept and, where appropriate, at estimating its economic viability.

2. Field Operations Management

This office administers special purpose support programs that cut across DOE program areas. In conjunction with this activity, it supports related conferences, research, and training initiatives that further these areas of interest.

(a) Laboratory Technology Transfer Program

The ER Laboratory Technology Transfer (LTT) Program has dedicated funding which fulfills the legislative mandate to more effectively transfer research and technology from Energy Research laboratories to industry. By design, this program provides only partial funding for technology research projects and personnel exchanges with industry and universities. Mandatory cost-sharing by industry and other partners ensures that cooperative projects will focus on those that generate real interest in the private sector and facilitate the transfer of technology. The program supports laboratory-industry personnel exchanges; comprehensive program evaluation; and cost-shared technology research, especially CRADAs to advance precompetitive research projects to a point where they can be evaluated for commercial applications. Other activities of the ER Laboratory Technology Transfer Program include coordinating technology transfer operations throughout the ER laboratory system; coordinating technology transfer elements of the institutional planning process; contributing to Departmental technology transfer policy development; and implementing appropriate outreach activities.

3. Fusion Energy

The magnetic fusion energy program is an applied research and development program whose goal is to develop the scientific and technological information required to design and construct magnetic fusion energy systems. This goal is pursued by three divisions, whose major functions are listed below.

(a) Applied Plasma Physics (APP)

This Division seeks to develop that body of physics knowledge which permits advancement of the fusion program on a sound basis. APP research programs provide: (1) The theoretical understanding of fusion plasmas necessary for interpreting results from present experiments, and the planning and design of future confinement devices; (2) the data on plasma properties, atomic physics and new diagnostic techniques for operational support of confinement experiments; research and development of Heavy Ion Fusion Accelerator (HIFAR) and reactor studies in support of the development of Inertial Fusion Energy (IFE).

(b) Confinement Systems

This Division has as its primary objective the conduct of research efforts to investigate and resolve basic physics issues associated with medium- to large-scale confinement devices. These devices are used to experimentally explore the limits of specific confinement concepts as well as to study associated physical phenomena. Specific areas of interest include: the production of increased plasma densities and temperatures: the understanding of the physical laws governing plasma energy transport and confinement scaling; equilibrium and stability of high plasma pressure; the investigation of plasma interaction with radio-frequency waves; and the study and control of particle transport in the plasma.

(c) Development and Technology

This Division supports research and development of the technology necessary for fabrication and operation of present and future plasma and fusion devices. The program also pursues R&D and system studies pertaining to critical feasibility issues of fusion technology and development.

4. Health and Environmental Research

The goals of this research program are as follows: (1) To provide, through basic and applied research, the scientific information required to identify, understand and anticipate the long-term health and environmental consequences of energy use and development; and (2) to utilize the Department's unique resources to solve major scientific problems in medicine, biology and the environment. The goals of the program are accomplished through the effort of its divisions, which are:

(a) Health Effects and Life Sciences Research

This is a broad program of basic and applied biological research. The objectives are: (1) To develop experimental information from biological systems for estimating or predicting risks of carcinogenesis,

mutagenesis, and delayed toxicological effects associated with low level human exposures to energy-related radiations and chemicals; (2) to define mechanisms involved in the induction of biological damage following exposure to low levels of energy-related agents; (3) to develop new technologies for detecting and quantifying latent health effects associated with such agents; (4) to support fundamental research in structural biology user facilities at DOE laboratories; and (5) to create and apply new technologies and resources for characterizing the molecular nature of the human genome.

Increasing emphasis will be placed on: Understanding of mechanisms by which low level exposures to radiation and/or energy-related chemicals produce long-term health impacts; development of new technologies for estimating human health risks from low-level exposures; development and application of technologies and approaches for cost-effective characterization of the human genome.

(b) Medical Applications and Biophysical Research

The objectives of this program comprise several areas: (1) To develop new concepts and techniques for detecting and measuring hazardous physical and chemical agents related to energy production; (2) to evaluate chemical and radiation exposures and dosimetry for health protection application; (3) to determine the physical and chemical mechanisms of radiation action in biological systems; and (4) to develop new instrumentation and technology for biological and biomedical research. In addition, Medical Application research is aimed at enhancing the beneficial applications of radiation, and radionuclides, in the diagnosis, study, and treatment of human diseases. This includes the development of new techniques for radioactive isotope production, labeled pharmaceuticals, imaging devices, and radiation beam applications for the improved diagnosis and therapy of human diseases or the study of human physiological processes. A new area of interest involves the integration of Nuclear Medicine and Molecular Biology. This includes development of radioisotopes and new molecular radiopharmaceutical probes specific to disease-associated targets for improved diagnosis and therapy.

(c) Environmental Sciences

The objectives of the program relate to environmental processes affected by energy production and use. For example, the program develops information on the physical, chemical and biological processes that cycle and transport energy related material and nutrients through the atmosphere, and the ocean margin. Specific emphasis is placed on hydrological transport, mobility and degradation of energy-related contaminants by microorganisms in subsurface systems.

This program also addresses global environmental change from increases in atmospheric carbon dioxide and other greenhouse gases. The scope of the global change program encompasses the carbon cycle, climate modeling and diagnostics, ecosystem responses, the role of the ocean in global change and experiments to quantify the links between greenhouse gas increases and climate change. A new dimension of this program addresses the role of molecular biology in understanding the ecosystem response to global change.

5. High Energy and Nuclear Physics

This program supports 90 percent of the U.S. efforts in high energy and nuclear physics. The objectives of these programs are indicated below:

(a) Nuclear Physics (Including Nuclear Data Program)

The primary objectives of this program are an understanding of the interactions and structures of atomic nuclei and nuclear matter at the most elementary level possible, and an understanding of the fundamental forces of nature as manifested in nuclear matter.

(b) High Energy Physics

The primary objectives of this program are to understand the nature and relationships among fundamental forces of nature and to understand the ultimate structure of matter in terms of the properties and interrelations of its basic constituents.

6. Scientific Computing Staff

The goal of this program is to advance the understanding of the fundamental concepts of mathematics, statistics, and computer science underlying the complex mathematical models of the key physical processes involved in the research and development programs of DOE. Broad emphasis is given in three major categories: analytical and numerical methods, information analysis techniques, and advanced concepts.

7. Superconducting Super Collider (SSC)

The goals of the Superconducting Super Collider are to build a proton-proton collider with an energy of 20 TeV per proton, to construct and operate experimental systems to study the interactions of these protons, to establish the premier international laboratory for high energy physics reasearch, and to create a major resource for science education. The Office of the Superconducting Super Collider administers research grants associated with the SSC Laboratory's physics, accelerator, and associated technology research and development programs.

8. University and Science Education

The Office of University and Science Education supports a variety of science, mathematics and engineering education precollege through postgraduate programs aimed at strengthening the Nation's science education and research infrastructure. DOE's education mission has been expanded to include increasing emphasis on the precollege and general public literacy areas. Much of the support involves the use of the unique resources (scientists, facilities and equipment) at DOE's national laboratories and research facilities, and includes research and/or other "hands-on" opportunities for precollege and postsecondary students, teachers, and faculty members. In addition to programs centered in DOE facilities, a number of other educational activities are supported, including:

(a) Pre-Freshman Enrichment Program (PREP)

PREP supports projects at colleges and universities aimed at seeking out gindividuals, typically under-represented in science-based careers, during junior high school and early high school years (sixth through tenth grades) and providing these individuals with pre-freshman enrichment activities to identify, motivate and prepare them for science-based careers. Projects must include concentrated, integrated activities that enhance the student's understanding of science and mathematics, must have a summer component at least four weeks in length, and may also include a pre-summer or post-summer component.

(b) Museum Science Education Program

This program funds museum projects that support the development of the media of informal energy-related science education. The media of informal science education include, but are not limited to: Interactive exhibits, demonstrations, hands-on activities, teacher-student curriculum and film/video/software productions. Examples of energy-related subjects include, but are not limited to: high energy and nuclear physics, nuclear science and technologies, global warming, waste management, energy efficiency, new materials development, fossil energy resources, renewable technologies, risk assessment, energy/environment and other timely topics. The purpose of the program is the development and use of creative informal science education media which focus on energy-related science and technology.

(c) University Research Instrumentation Program

The University Research Instrumentation Program has been developed as part of an interagency effort under the coordination of the Office of Science and Technology Policy to help alleviate the overall shortage of sophisticated state-of-the-art instruments required for advanced scientific and technical research at universities. The overall program objective is to assist university and college scientists in strengthening their capabilities to conduct long-range experimental/scientific research in specific energy areas of direct interest to DOE through the acquisition of large scientific/technical pieces of equipment. Only those colleges and universities that currently have DOE funded research projects, which require the requested equipment, totalling at least $150,000 in the specific area will be selected (more complete eligibility guidelines and principal research areas of particular DOE interest in any given year are available from the program office). Smaller research instruments (less than $100,000 each) are not eligible for consideration in this program. No specific fraction of cost sharing is required but the level of non-Federal funds to be provided will be considered in final selection of awards under the program.

(d) Experimental Program To Stimulate Competitive Research

The purpose of the DOE Experimental Program to Stimulate Competitive Research is to enhance the capabilities of the eligible designated States to develop science and engineering manpower in energy-related areas and to conduct nationally competitive energy-related research. Planning committees within eligible States may apply for planning, implementation and/or training efforts (list of eligible States and activities to be supported in any given year as well as cost-sharing requirements are available from the program office). Separate applications for planning/implementation and graduate traineeships are required. Planning/implementation applications must contain information that details development of a State-wide improvement plan for energy-related research and human resources, while training grant applications must detail the need for energy-related specific and technical educational disciplines.

(e) Nuclear Engineering Research

The objective of this program is to support research efforts aimed at strengthening University-based nuclear engineering programs. Specific areas of basic and applied research of interest include, but are not limited to: (1) Material behavior in a radiation environment typical of advanced nuclear power plants; (2) real-time instrumentation that identifies and applies innovative measurements technologies in nuclear-related fields; (3) advanced nuclear reactor concepts; (4) applied nuclear sciences that address improvements in the applications of radiation and the understanding of the interaction of radiation with matter; (5) engineering science research applicable to advanced nuclear reactor concepts, industry safety and reliability concerns; (6) neutronics that address improvements in reactor computational methodologies and knowledge of the basic fission processes; and (7) nuclear thermal hydraulics that address improvements of models and analysis of thermal hydraulic behavior in an advanced nuclear reactor system.

(f) Used Energy-Related Laboratory Equipment (ERIE) Program

In accordance with DOE's responsibility to encourage research and development in the energy area, grants of used energy-related laboratory equipment for use in energy-oriented educational programs in the life, physical and environmental sciences, and engineering are available to universities, colleges and other non-profit educational institutions of higher learning in the United States. An institution is not required to have a current DOE grant or contract in order to participate in this program. The program office should be contacted for specific information on how to access the list of eligible equipment under this program. The cost of care and handling incident to the grant must be borne by the institution.

9. Program Analysis

The Office of Program Analysis conducts assessments to identify research opportunities in specific areas of interest to DOE programs.

[FR Doc. 92-21141 Filed 9-2-92; 8:45 am]

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Reader Aids

Federal Register

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Thursday, September 3, 1992

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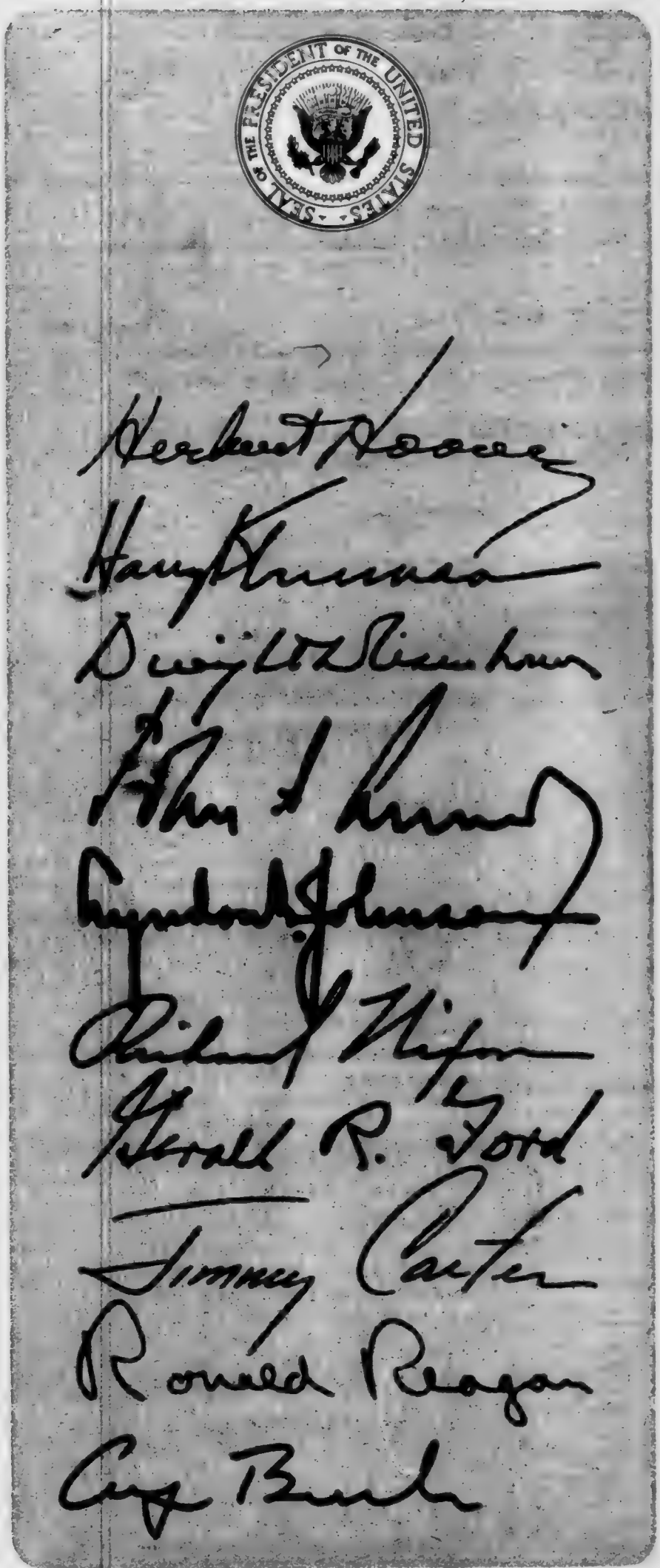

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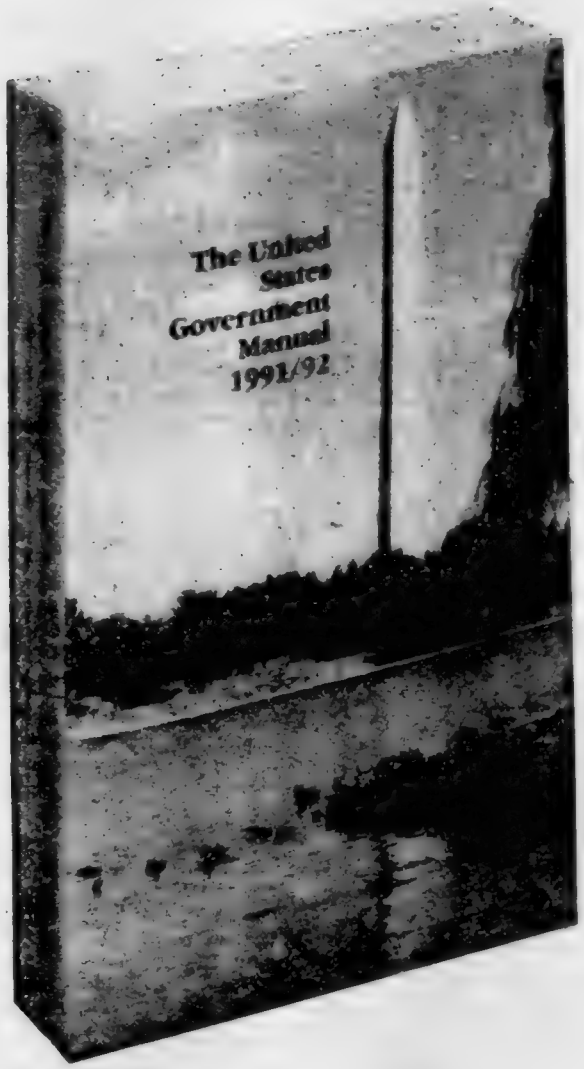

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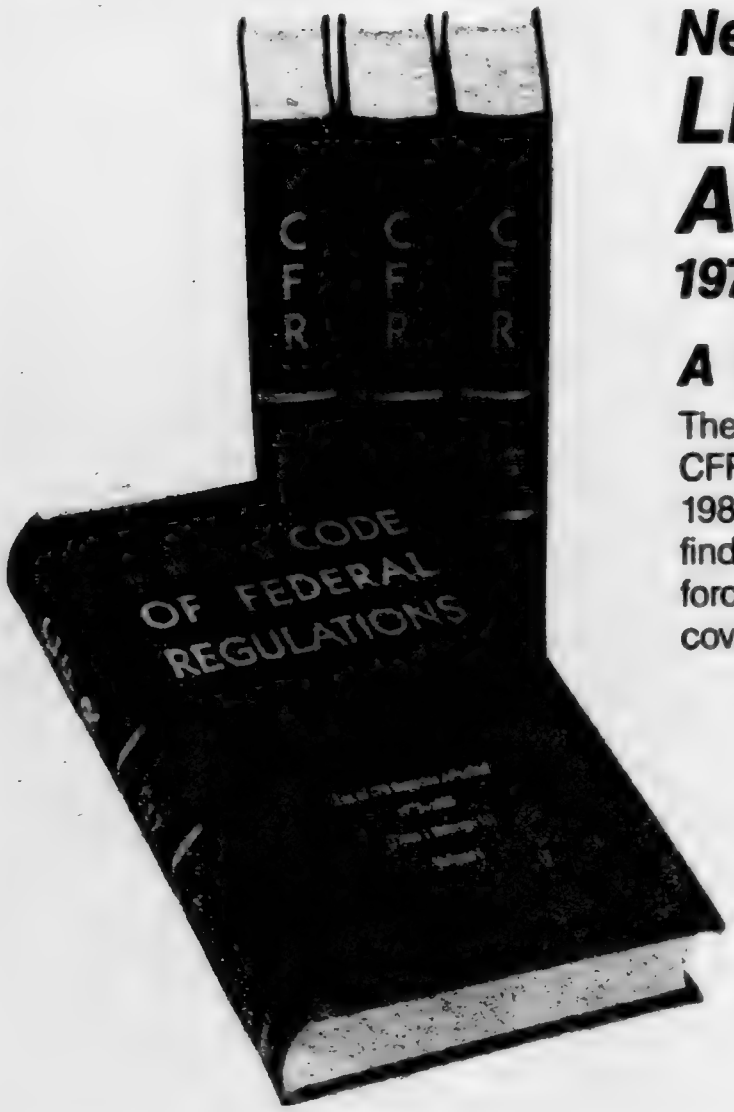

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9-4-92
Vol. 57 No. 173

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Briefing on How To Use the Federal Register
For information on a briefing in Atlanta, GA, see announcement on the inside cover of this issue.

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Presidential Documents

Title 3—

The President

Proclamation 6467 of September 1, 1992

National Rehabilitation Week, 1992

By the President of the United States of America

A Proclamation

With the adoption of the Americans with Disabilities Act of 1990 (ADA), the United States emphatically reaffirmed its commitment to equal opportunity for every citizen. By eliminating barriers to employment, public accommodations, and government services, this historic legislation will enable millions of persons with disabilities to participate more fully in our Nation's social and economic mainstream. The ADA not only provides a model for the world but also portends a bright future for the United States as we look forward to the increasing contributions of talented, hardworking men and women who happen to have a disability.

Today millions of Americans with disabilities are already making outstanding contributions to our communities and country. For some, these achievements would not have been possible without rehabilitation. The field of rehabilitation includes a wide range of professionals and volunteers—from researchers and health care providers to teachers, therapists, and engineers. Utilizing state-of-the-art technologies and techniques, these professionals and volunteers are helping determined individuals to achieve their dreams of greater freedom and independence—including productive, satisfying jobs and careers. Thus, while the ADA opens doors of opportunity for persons with disabilities, rehabilitation offers the means by which many will be able to pass through them.

Because rehabilitation cultivates one's potential for personal and economic autonomy and advancement, it not only enriches the lives of Americans with disabilities but also enables our entire Nation to benefit from their knowledge, creativity, and skills. Thanks, in large part, to rehabilitative programs and services, persons with disabilities are attaining positions of leadership and responsibility throughout American society: in government and business, in science and education—wherever there is an opportunity or a need. The accomplishments of Americans who have benefitted from rehabilitation are the catalyst for continuing efforts to develop a wider array of rehabilitative services and to promote improved coordination among human services agencies in both the public and private sectors.

In honor of Americans with disabilities who are achieving their goals through rehabilitation and in recognition of the professionals and volunteers who serve in this important field, the Congress, by Public Law 102-362, has designated the week of September 13 through September 19, 1992, as "National Rehabilitation Week" and has requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week of September 13 through September 19, 1992, as National Rehabilitation Week. I encourage all Americans to observe this week with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of September, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and seventeenth.

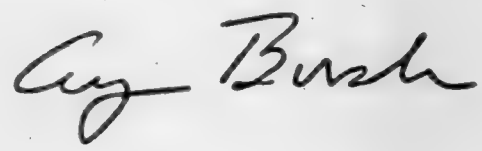

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Rules and Regulations

Federal Register
Vol. 57, No. 173
Friday, September 4, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1427

RIN 0560-AC55

Cotton

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the regulations at 7 CFR part 1427 with respect to the price support loan programs for upland and extra long staple cotton which are conducted by the Commodity Credit Corporation (CCC) in accordance with The Agricultural Act of 1949 (the 1949 Act), as amended. The amendments made by this interim rule will provide greater clarity, enhance the administration of CCC programs by providing uniformity between CCC price support programs, eliminate obsolete provisions, and more appropriately reflect loan eligibility requirements for the 1992 and subsequent year crops.

DATES: Interim rule effective September 4, 1992. Comments must be received on or before October 5, 1992 in order to be assured of consideration.

ADDRESSES: Submit comments to Director, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, DC 20013-2415; telephone 202-720-7641.

FOR FURTHER INFORMATION CONTACT: Philip Sharp, Program Specialist, Cotton, Grain, and Rice Price Support Division (CGRD), Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013-2415; telephone 202-720-7988.

SUPPLEMENTARY INFORMATION: This interim rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512-1 and it has been determined "nonmajor" because these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the federal assistance program, as found in the catalogue of Federal Domestic Assistance, to which this rule applies are Commodity Loans and Purchases—10.051.

It has been determined that the Regulatory Flexibility Act is not applicable because the CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of human environment.

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, and 48 FR 29115 (June 24, 1983).

Public reporting burden for the information collections contained in this regulation with respect to price support programs is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. The information collections have previously been cleared by OMB, and assigned numbers 0560-0087 and 0560-0074.

Since producers are currently making decisions regarding commodities which may be pledged as collateral for CCC price support loans, it has been determined that the provisions of this interim rule are effective upon publication in the **Federal Register**. Comments are requested, however, and will be taken into consideration when developing the final rule. A final document discussing comments received and any amendments required will be published in the **Federal Register** as soon as possible.

Background

The 1949 Act sets forth the statutory authority for CCC price support programs. CCC price support programs are intended to stabilize market prices and provide interim financing and assistance to producers in the orderly marketing of eligible commodities.

This interim rule amends regulations found at 7 CFR part 1427 to provide rules for administering CCC price support programs for the 1992 through 1995 crop years.

This interim rule has been reviewed pursuant to Executive Order 12778. To the extent State and local laws are in conflict with these regulatory provisions, it is the intent of CCC that the terms of the regulations prevail. The provisions of this interim rule are not retroactive and prior to any judicial action in a court of competent jurisdiction, administrative review under 7 CFR part 780 must be exhausted.

This interim rule revises the definition of "authorized loan servicing agent (LSA)" in § 1427.3 to clarify that authorized LSA's may make loan deficiency payments (LDP's) to eligible producers.

This interim rule removes the provisions of §§ 1427.4(g) and 1427.175 and now allows producers to delegate to a person, who has an interest in storing, processing, or merchandising cotton which is eligible for price support or an LDP, authority to exercise on behalf of the producer any of the producer's rights or privileges under such program, including the authority to execute any note and security agreement, LDP request, or any other applicable price support document.

This interim rule amends §§ 1427.5(a) and 1427.6(a)(3) to correct a typographical error and to clarify the reference allowing an approved loan clerk who has entered into a written agreement with CCC on Form CCC-810 to obtain price support loans and LDP's on behalf of producers.

This interim rule amends § 1427.5(b)(1)(viii) to clarify that the

quantity of cotton for which an LDP has been made cannot be pledged as collateral for a price support loan.

This interim rule amends §§ 1427.5(b)(1)(ix) and 1427.9 to allow cotton graded by entities other than Agricultural Marketing Service (AMS) to be eligible to be pledged as collateral for CCC price support loans, if such entities are approved by CCC.

This interim rule amends § 1427.5(b)(2)(iii) to change the referenced year from 1991 to 1992 for the Specifications for Cotton Bale Packaging Materials published by the Joint Cotton Industry Bale Packaging Committee (JCIBPC).

Section 1427.5(c) is amended to clarify that the producer must retain control, title, and risk of loss in the commodity to be considered eligible to receive a CCC price support commodity loan or LDP, on an eligible commodity. A producer must have beneficial interest in such commodity on the date the price support loan or LDP is requested and maintain beneficial interest in such commodity throughout the time the commodity remains under loan.

If the producer enters into a contract that provides for a payment, the producer is considered to have lost beneficial interest at the time the payment is made, unless the contract is an option to purchase a contract and the contract contains the provision contained in § 1427.5(c)(2)(i). If the producer enters into a contract that provides that upon delivery, the buyer takes control of the commodity, beneficial interest is lost at the time of delivery and the producer would not be considered eligible to receive a price support loan.

If the producer enters into a contract that provides the buyer of the commodity an option to direct the producer to pledge the commodity to CCC for price support loan or to obtain an LDP, or requires the producer to obtain the permission of the buyer before the producer may request a loan or an LDP, the producer shall be considered to have divested beneficial interest in the commodity when the contract was signed. Accordingly, the producer shall be ineligible for price support loan or LDP on such commodity. Additionally, if the producer enters into a contract that provides: (1) That upon delivery of the seed cotton to the gin, the buyer takes control of the cotton, beneficial interest is lost at the time of delivery to the gin and the producer would not be eligible for price support loan or LDP; or (2) that immediately after ginning, the control of the cotton becomes the responsibility of someone other than the producer, beneficial interest is lost when the bale of cotton is removed from the gin box. However, under such contract, the producer may be eligible for an LDP at the LDP rate in effect at the time the bale was removed from the gin box, if a request for LDP was made on or before the day of ginning. Also, if the producer enters into a contract providing that control of the cotton transfers to the buyer at time of shipping, either from the gin or warehouse, beneficial interest is considered lost when the cotton is loaded for shipment. Under such contract, the producer may be eligible for an LDP at the LDP rate in effect when the LDP is requested if such LDP is requested on or before the date of shipment.

This interim rule amends §§ 1427.5(d) and 1427.18(a)(1) to add a reference to LDP's that had been inadvertently omitted.

This interim rule amends § 1427.6(c) to delete an incorrect reference to LDP's.

This interim rule amends § 1427.7 to correct an error in a paragraph reference.

This interim rule amends § 1427.11 to allow corrected weights on a warehouse receipt to be documented with the signature or initials of the warehouse. In addition, the reference to cotton destroyed by fire was removed because CCC does not assume the loss of loan collateral.

This interim rule revises §§ 1427.12 and 1427.167 to clarify that lien waivers only apply to cotton tendered as collateral for a price support loan.

This interim rule amends § 1427.15 to clarify that the procedures applicable to loan clerks approved by CCC who advance loan amounts to producers apply to all loan clerks advancing funds without regard to whether or not credit was obtained through a financial institution.

This interim rule amends § 1427.17 to correct a typographical error and to remove the reference to central county office because such offices are not being used as custodial offices.

This interim rule amends § 1427.19 to correct an error in calculating the repayment amount required to repay bales of upland cotton pledged as collateral for a loan.

To be eligible for an upland cotton LDP, the producer and the cotton must meet the same eligibility conditions required to obtain a CCC price support loan on such cotton. However, in some cases, producers will lose beneficial interest in the eligible cotton before such cotton is delivered to a warehouse and, in some cases, a warehouse receipt is not issued for such cotton. CCC has determined that producers of eligible cotton should not be denied LDP eligibility because such cotton will not be warehoused-stored. Accordingly, this interim rule amends § 1427.23(b) to provide that CCC will accept a gin bale listing and gin weights in lieu of requiring a warehouse receipt for an LDP.

In addition, some producers of eligible cotton will lose beneficial interest in such cotton immediately after ginning. In such cases, the producer may not have an opportunity to file a request for LDP for which this producer would otherwise be eligible. Accordingly, §§ 1427.23 (f) and (g) are added to provide that in such cases the producer may file a request for LDP before or on the day the cotton is ginned. Because the loan repayment level for upland cotton is determined effective each Friday, all such cotton included in such request would be eligible for an LDP, if any, at the LDP rate in effect on the date such cotton is ginned.

This interim rule amends § 1427.168 to provide that an LDP made on cotton pledged under a seed cotton loan must be applied to the applicable outstanding seed cotton loan balance.

List of Subjects in 7 CFR Part 1427

Cotton, Loan programs—agriculture, Packaging and containers, Price support programs, Reporting and recordkeeping requirements, Surety bonds, Warehouses.

Accordingly 7 CFR part 1427 is amended as follows:

PART 1427—COTTON

1. The authority citation for 7 CFR part 1427 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1444, and 1444–2; 15 U.S.C. 714b and 714c.

2. Section 1427.3 is amended by revising the definition of "authorized loan servicing agent (LSA)" to read as follows:

§ 1427.3 Definitions.

* * * * *

Authorized loan servicing agent (LSA) means a legal entity that enters into a written agreement with CCC to act as a loan servicing agent for CCC in making and servicing Form A cotton loans. The authorized LSA may perform, on behalf of CCC, only those services which are specifically prescribed by CCC including but not limited to the following:

(1) Preparing and executing loan and loan deficiency payment documents;

(2) Disbursing loan and loan deficiency proceeds;

(3) Handling the extensión of loans as authorized by CCC;

(4) Accepting cotton loan repayments;

(5) Handling documents involved with forfeiture of cotton loan collateral to CCC;

(6) Providing loan, loan deficiency payment, and accounting data to CCC for statistical purposes;

* * * * *

§ 1427.4 Eligible producer. [Amended]

3. Section 1427.4 is amended by removing paragraph (g).

4. Section 1427.5 is amended by:

A. Revising paragraphs (a)(1)(ii) and (2);

B. Removing (a)(3);

C. Revising paragraphs (b)(1)(viii) and (ix), and (b)(2)(iii);

D. Revising the first sentence up to the colon in paragraph (b)(2)(iii)(A); and

E. Revising paragraphs (c)(2) introductory text and (c)(2)(i) introductory text, and (d) to read as follows:

§ 1427.5 General eligibility requirements.

(a) * * *

(1) * * *

(ii) From an authorized LSA.

(2) An approved loan clerk who has entered into a written agreement with CCC on Form CCC-810.

(b)(1) * * *

(viii) Not have been previously sold and repurchased; or pledged as collateral for a CCC price support loan and redeemed except as provided in § 1427.172(b)(4); or for which a loan deficiency payment has been made.

(ix) For upland cotton, have been graded by using a High Volume Instrument (HVI) by the Agricultural Marketing Service (AMS) or such other entity approved by CCC.

(2) * * *

(iii) Be packaged in materials which meet specifications adopted by the Joint Cotton Industry Bale Packaging Committee (JCIBPC) sponsored by the National Cotton Council of America, for bale coverings and bale ties which are identified and approved by the JCIBPC as experimental packaging materials in the June 1992 Specifications for Cotton Bale Packaging Materials. Heads of bales must be completely covered.

(A) Copies of the June 1992 Specifications for Cotton Bale Packaging Materials published by the JCIBPC which are incorporated by reference are available upon request at the county office and at the following address: * * *

* * * * *

(c) * * *

(2) A producer shall not be considered to have divested the beneficial interest in the commodity if the producer retains control, title, and risk of loss in the commodity, including the right to make all decisions regarding the tender of the cotton to CCC for price support, and:

(i) Executes an option to purchase whether or not a payment is made by the potential buyer for such option to purchase with respect to such cotton if all other eligibility requirements are met and the option to purchase contains the following provision:

* * * * *

(d) If the person tendering cotton for a loan or a loan deficiency payment is a landowner, landlord, tenant, or sharecropper, such cotton must represent such person's separate share of the crop and must not have been acquired by such person directly or indirectly from a landowner, landlord, tenant, or sharecropper or have been received in payment of fixed or standing rent.

* * * * *

5. Section 1427.6 is amended by revising paragraph (a)(3) and the first sentence in paragraph (c) to read as follows:

§ 1427.6 Disbursement of price support loans.

(a) * * *

(3) An approved loan clerk who has entered into a written agreement with CCC on Form CCC-810.

* * * * *

(c) The loan documents shall not be presented for disbursement unless the commodity covered by the mortgage or pledged as security is eligible, in existence, in approved storage, and in good condition. * * *

6. Section 1427.7 is amended by revising introductory text of paragraph (b) to read as follows:

§ 1427.7 Maturity of loans.

* * * * *

(b) If a producer's upland cotton price support loan is extended for 8 months in accordance with paragraph (a)(1) of this section and the loan collateral is:

* * * * *

7. Section 1427.9 is revised to read as follows:

§ 1427.9 Classification of cotton.

References made to "classification" in this subpart shall include micronaire, and for upland cotton, strength readings. All cotton tendered for loan must be classed by an AMS Cotton Classing Office ("Cotton Classing Office") or other entity approved by CCC and tendered on the basis of such classification.

(a) An AMS Cotton Classification Memorandum Form 1 ("AMS Form 1") or other form acceptable by CCC showing the classification of a bale must be based upon a representative sample drawn from the bale in accordance with instructions to samplers drawing samples under the Smith-Doxey program.

(b) If the producer's cotton has not been sampled for an AMS Form 1 classification or other form acceptable by CCC, by warehouse shall sample such cotton and forward the samples to the Cotton Classing Office or other entity approved by CCC serving the district in which the cotton is located. Such warehouse must be licensed by AMS or be an entity approved by CCC to draw samples for submission to the Cotton Classing Office.

(c) If a sample has been submitted for classification, another sample shall not be drawn and forwarded to a Cotton Classing Office or other entity approved by CCC except for a review classification. Review classifications are recorded on AMS Form 1, Review Memorandum ("AMS Form 1 Review") or other form approved by CCC.

(d) Where review classification is not involved, if through error or otherwise two or more samples from the same bale are submitted for classification, the loan rate shall be based on the classification having the lower loan value.

(e) The classification on AMS Form 1, AMS Form 1 Review, or other form approved by CCC must be dated not more than 15 days prior to the date the warehouse receipt was issued; however, State committees may, in arid regions, extend this period not to exceed 30 days prior to the date the warehouse receipt was issued upon determining that such extension will not result in reduction in the grade of the cotton during the extension period. Otherwise a new sample must be drawn and a review classification based on the new sample will be required.

(f) If an AMS Form 1 Review classification or other form approved by CCC is obtained, the loan value of the cotton represented thereby will be based on such review classification.

8. Section 1427.11 is amended by revising paragraph (f)(2) and the first sentence in paragraph (g)(4) to read as follows:

§ 1427.11 Warehouse receipt and insurance.

* * * * *

(f) * * *

(2) The tare shown on the receipt shall be the tare furnished to the warehouse by the ginner or entered by the ginner on the gin bale tag. A warehouse receipt reflecting an alteration in tare or net weight will not be accepted by CCC unless it bears, on the face of the

receipt, the following legend or similar wording approved by CCC, duly executed by the warehouse or an authorized representative of the warehouse:

"Corrected (tare or net) weight
(Name of warehouse)
By (Signature or initials)
Date"

* * * * *

(g) * * *

(4) In any case where the loan amount is reduced by unpaid storage or receiving charges, such charges will be paid to the warehouse by CCC after loan maturity if the cotton is not redeemed from the loan, or as soon as practicable after the cotton is ordered shipped by CCC. * * *

* * * * *

9. Section 1427.12 is revised to read as follows:

§ 1427.12 Liens.

If there are any liens or encumbrances on the cotton tendered as collateral for a price support loan, waivers that fully protect the interest of CCC must be obtained even though the liens or encumbrances are satisfied from the loan proceeds. No additional liens or encumbrances shall be placed on the commodity after the loan is approved.

10. Section 1427.15 is amended by revising:

A. Paragraphs (a) and (b)(1)(ii);

B. Introductory text of paragraph (c)(1);

C. Paragraphs (c)(1)(ii) and (c)(3) and (4); and

D. Paragraphs (d) through (f) to read as follows:

§ 1427.15 Special procedure where note amount advanced.

(a) This special procedure is provided to assist persons or firms which, in the course of their regular business of handling cotton for producers, have made advances to eligible producers on eligible cotton to be placed under loan. A person, firm, or financial institution which has made advances to eligible producers on eligible cotton may also obtain reimbursement for the amounts advanced under this procedure.

(b) * * *

(1) * * *

(ii) The research and promotion fee to be collected for transmission to the Cotton Board by CCC, and

* * * * *

(c)(1) Each Form A loan and related documents shall be mailed or delivered to the appropriate county office and shall show the entire proceeds of the loans, except for CCC loan service charges and research and promotion fee, for disbursement to:

* * * * *

(ii) The person, firm, or financial institution which made the loan advances to the producers.

* * * * *

(3) The documents shall be accompanied by Form CCC–825, Transmittal Schedule of Form A Cotton Loans, in original and two copies, numbered serially for each county office by the person, firm, or financial institution which made the loan advance. The Form CCC–825 shall show the amounts invested by the person, firm, or financial institution in the loans, which shall be the amounts on Form CCC–Cotton A's minus the amounts of CCC loan service charges and research and promotion fee shown on Form CCC–Cotton A's.

(4) Upon receipt of the loan documents and Form CCC–825, the county office will stamp one copy of the Form CCC–825 to indicate receipt of the documents and return this copy to the person, firm, or financial institution.

(d) County offices will review the loan documents prior to disbursement and will return to the person, firm, or financial institution any documents determined not to be acceptable because of errors or illegibility. County offices will disburse the loans for which loan documents are acceptable by issuance of one check to the payee indicated on the Form CCC–Cotton A and will mail the check to the address shown for such payee on the Form CCC–Cotton A loan with a copy of Form CCC–825. The Form CCC–825 will show the date of disbursement by a county office and amount of interest earned by the person, firm, or financial institution.

(e) The person, firm, or financial institution shall be deemed to have invested funds in the loans as of the date loan documents acceptable to CCC were delivered to a county office or, if received by mail, the date of mailing as indicated by postmark or the date of receipt in a county office if no postmark date is shown. Patron postage meter date stamp will not be recognized as a postmark date.

(f) Interest will be computed on the total amount invested by the person, firm, or financial institution in the loan represented by accepted loan documents from and including the date of investment of funds by the person, firm, or financial institution to, but not including, the date of disbursement by a county office.

(1) Interest will be paid at the rate in effect for CCC loans as provided in part 1405 of this chapter.

(2) Interest earned by the person, firm, or financial institution on the investment in loans disbursed during a month will be paid by county offices after the end of the month.

11. Section 1427.17 is revised to read as follows:

§ 1427.17 Custodial offices.

Forms CCC–Cotton A and CCC–Cotton A–1, collateral warehouse receipts, cotton classification memoranda, and related documents will be maintained in custody of the local county office, authorized LSA, or any financial institution defined in § 1427.3 and approved by CCC, whichever disbursed the loan evidenced by such documents.

12. Section 1427.18 is amended by revising the introductory text of paragraph (a)(1) to read as follows:

§ 1427.18 Liability of the producer.

(a)(1) If a producer makes any fraudulent representation in obtaining a loan or loan deficiency payment or in maintaining, or settling a loan or disposes of or moves the loan collateral without the prior written approval of CCC, such loan or loan deficiency payment shall be payable upon demand by CCC. The producer shall be liable for:

* * * * *

13. Section 1427.19 is amended by revising paragraph (c)(1)(ii)(A) to read as follows:

§ 1427.19 Repayment of price support loans.

* * * * *

(c) * * *

(1) * * *

(ii) * * *

(A) The national average loan rate applicable for the crop multiplied by 70 percent for the 1991 and subsequent years crops and the result adjusted for location and quality; or

* * * * *

14. Section 1427.23 is amended by:

A. Revising paragraphs (b)(2) and (3);

B. Adding paragraphs (b)(4) through (6);

C. Revising paragraph (c); and

D. Adding paragraphs (f) and (g) to read as follows:

§ 1427.23 Cotton loan deficiency payments.

* * * * *

(b) * * *

(2) Agree to forego obtaining such loans;

(3) File a request for payment for a quantity of eligible cotton in accordance with § 1427.5(a) on CCC Form CCC–

Cotton AA or other form approved by CCC;

(4) Provide warehouse receipts or, as determined by CCC, a list of gin bale numbers for such cotton showing, for each bale, the net weight established at the gin;

(5) Provide classing information for such quantity in accordance with § 1427.9; and

(6) Otherwise comply with all program requirements.

(c) The loan deficiency payment applicable to a crop of cotton shall be computed by multiplying the applicable loan deficiency payment rate, as determined in accordance with paragraph (d) of this section, by the quantity of the crop the producer is eligible to pledge as collateral for a price support loan.

* * * * *

(f)(1) If the producer has the beneficial interest in a quantity of cotton as specified in accordance with § 1427.5(c) on the date the cotton was ginned but will lose beneficial interest in such cotton immediately after it is ginned, the producer may in such cases:

(i) File a request for a loan deficiency payment in accordance with paragraph (b) of this section that will include all such cotton ginned from, and including, such date the request is filed through the Thursday immediately following the date such request is filed; and

(ii) Provide to the county office by the close of business on the Friday immediately following the date such request is filed, a list of gin bale numbers for such cotton showing, for each bale, the net weight established at the gin. If the request is filed on Friday, such gin bale numbers and net weights must be provided to the county office by the close of business by the next Friday.

(2) When a request for a loan deficiency payment is made under paragraph (f)(1) of this section, the payment will not be made by CCC until the producer meets all the other requirements in paragraph (b) of this section.

(g) If the producer enters into an agreement with CCC on or before the date of ginning a quantity of eligible cotton, and the producer has the beneficial interest in such quantity as specified in accordance with § 1427.5(c) on the date the cotton was ginned, the loan deficiency payment rate applicable to such cotton would be the loan deficiency payment rate based on the date the cotton was ginned. In such cases, the producer must meet all the other requirements in paragraph (b) of this section on or before the final date to apply for a loan deficiency payment in accordance with § 1427.5.

15. Section 1427.167 is revised to read as follows:

§ 1427.167 Liens.

If there are any liens or encumbrances on the cotton tendered as collateral for a price support loan, waivers that fully protect the interest of CCC must be obtained even though the liens or encumbrances are satisfied from the loan proceeds. No additional liens or encumbrances shall be placed on the commodity after the loan is approved.

16. Section 1427.168 is amended by adding paragraph (c) to read as follows:

§ 1427.168 Offsets.

* * * * *

(c) If cotton pledged as seed cotton loan is subsequently ginned and a cotton loan deficiency payment is approved on such cotton, the loan deficiency payment shall be applied to the outstanding seed cotton loan amount.

§ 1427.175 [Removed]

17. Section 1427.175 is removed.

Signed this 27th day of August, 1992 in Washington, DC.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 92-21259 Filed 9-3-92; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Parts 204, 250, and 265

[Regulation D; Docket No. R-0774]

Reserve Requirements of Depository Institutions, Miscellaneous Interpretations, and Rules Regarding Delegation of Authority

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; technical amendments.

SUMMARY: The Board is eliminating the requirement that state member banks obtain the Board's prior approval before issuing subordinated debt in order to treat that debt as capital rather than as a deposit and is issuing an interpretation of the capital adequacy appendices to Regulations H and Y which provides general guidance on the criteria that subordinated debt and mandatory convertible debt must meet to be included in capital. The purpose of the interpretation is to clarify these criteria.

In connection with this action, the Board is making a technical amendment to its Regulation D and its Rules Regarding Delegation of Authority. The amendment to Regulation D conforms a reference regarding the minimum maturity of subordinated debt to the minimum maturity set in the capital guidelines (changing "seven" years to "five" years). The amendment to the Rules Regarding Delegation of Authority eliminates the authority of Reserve Banks to approve the issuance of subordinated debt and mandatory convertible debt as such approval is no longer required. The Board also is rescinding an interpretation of Regulation D concerning subordinated debt that is no longer necessary.

EFFECTIVE DATE: September 4, 1992.

FOR FURTHER INFORMATION CONTACT: Norah Barger, Supervisory Financial Analyst, Division of Banking Supervision and Regulation (202/452-2402), or Patrick J. McDivitt, Attorney (202/452-3818), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452-3544); Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Board is eliminating the requirement that state member banks obtain the Board's approval before issuing subordinated debt in order to treat that debt as Tier 2 capital rather than as a deposit. However, in order to ensure that state member banks and bank holding companies fully understand the requirements for subordinated debt and mandatory convertible debt that may be considered Tier 2 capital, the Board is issuing an interpretation of its risk-based capital guidelines in Regulations H (12 CFR part 208, appendix A) and Y (12 CFR part 225, appendix A).

Under the Board's risk-based capital guidelines, state member banks and bank holding companies may include in Tier 2 capital long-term subordinated debt and mandatory convertible debt securities that meet certain criteria. The purpose of the interpretation is to clarify these criteria. The interpretation clarifies the criteria that subordinated debt and mandatory convertible debt issues must meet to be included in capital including treatment of acceleration clauses, provisions inconsistent with safe and sound banking practices, credit sensitive features, and limitations on the amount of such instruments includable in capital.

In connection with this action, the Board also is making a technical

amendment to its Regulation D (12 CFR part 204) and its Rules Regarding Delegation of Authority (12 CFR part 265). The amendment to Regulation D conforms a reference regarding the minimum maturity of subordinated debt that would not be considered a deposit under that Regulation to the minimum maturity set in the capital guidelines (changing "seven" years to "five" years). The Board is amending its Rules Regarding Delegation of Authority to eliminate the authority of Reserve Banks to approve the issuance of subordinated debt and mandatory convertible debt as such approval is no longer required. In addition, the Board is rescinding an interpretation of Regulation D concerning subordinated debt which is no longer necessary.

Notice and Public Participation; Effective Date

The provisions of 5 U.S.C. 553(b) relating to notice and public participation have not been followed in connection with the adoption of these amendments because the amendments are interpretative and are related to agency procedure and practice, and section 553(b) does not apply to such rules. Further, the Board finds that notice and public procedure are impracticable and contrary to the public interest because the amendments make technical corrections and relieve a restriction by eliminating an application requirement.

The provisions of 5 U.S.C. 553(d) generally prescribing 30 days' prior notice of the effective date of a rule have not been followed in connection with the adoption of these amendments. Section 553(d) provides that such prior notice is not necessary whenever a rule relieves a restriction or there is good cause for finding that such notice is contrary to the public interest. This rule relieves such a restriction, and the Board has determined that delaying the effectiveness of that relief is contrary to the public interest.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), the Board certifies that the proposed amendments will not have a significant adverse economic impact on a substantial number of small entities. The proposed amendments reduce certain regulatory burdens for all depository institutions, including small depository institutions, and have no particular adverse effect on other small entities.

List of Subjects

12 CFR Part 204

Banks, banking, Federal Reserve System, Reporting and recordkeeping requirements.

12 CFR Part 250

Federal Reserve System.

12 CFR Part 265

Authority delegations (Government agencies), Federal Reserve System.

For the reasons set forth in the preamble, the Board is amending 12 CFR parts 204, 250, and 265 as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS

1. The authority citation for part 204 continues to read as follows:

Authority: Sections 11(a), 11(c), 19, 25, 25(a) of the Federal Reserve Act (12 U.S.C. 248(a), 248(c), 371a, 371b, 461, 601, 611); section 7 of the International Banking Act of 1978 (12 U.S.C. 3105); and section 411 of the Garn-St Germain Depository Institutions Act of 1982 (12 U.S.C. 461).

§ 204.2 [Amended]

2. Section 204.2(a)(1)(vii)(C) is amended by removing the word "seven" and adding the word "five" in its place.

§ 204.129 [Removed]

3. Section 204.129 is removed.

PART 250—MISCELLANEOUS INTERPRETATIONS

1. The authority citation for part 250 continues to read as follows:

Authority: 12 U.S.C. 248(i).

2. A new § 250.166 is added to read as follows:

§ 250.166 Treatment of mandatory convertible debt and subordinated notes of state member banks and bank holding companies as "capital".

(a) *General.* Under the Board's risk-based capital guidelines, state member banks and bank holding companies may include in Tier 2 capital subordinated debt and mandatory convertible debt that meets certain criteria. The purpose of this interpretation is to clarify these criteria. This interpretation should be read with those guidelines, particularly with paragraphs II.c. through II.e. of appendix A of 12 CFR part 208 if the issuer is a state member bank and with paragraphs II.A.2.c. and II.A.2.d. of appendix A of 12 CFR part 225 if the issuer is a bank holding company.

(b) *Criteria for subordinated debt included in capital*—(1) *Characteristics.* To be included in Tier 2 capital under the Board's risk-based capital guidelines for state member banks and bank holding companies, subordinated debt must be subordinated in right of payment to the claims of the issuer's general creditors[1] and, for banks, to the claims of depositors as well; must be unsecured; must state clearly on its face that it is not a deposit and is not insured by a federal agency; must have a minimum average maturity of five years;[2] must not contain provisions that permit debtholders to accelerate payment of principal prior to maturity except in the event of bankruptcy of or the appointment of a receiver for the issuing organization; must not contain or be covered by any covenants, terms, or restrictions that are inconsistent with safe and sound banking practice; and must not be credit sensitive.

(2) *Acceleration clauses.*—(i) In order to be included in Tier 2 capital, the appendices provide that subordinated debt instruments must have an original weighted average maturity of at least five years. For this purpose, maturity is defined as the earliest possible date on which the holder can put the instrument back to the issuing banking organization. Since acceleration clauses permit the holder to put the debt back upon the occurrence of certain events, which could happen at any time after the instrument is issued, subordinated debt that includes provisions permitting acceleration upon events other than bankruptcy or reorganization under Chapters 7 (Liquidation) and 11 (Reorganization) of the Bankruptcy Code, in the case of a bank holding company, or insolvency—i.e., the appointment of a receiver—in the case of a state member bank, does not qualify for inclusion in Tier 2 capital.

(ii) Further, subordinated debt whose terms provide for acceleration upon the occurrence of events other than bankruptcy or the appointment of a receiver does not qualify as Tier 2 capital. For example, the terms of some subordinated debt issues would permit debtholders to accelerate repayment if the issuer failed to pay principal or interest on the subordinated debt issue when due (or within a certain timeframe after the due date), failed to make

[1] The risk-based capital guidelines for bank holding companies state that bank holding company debt must be subordinated to all senior indebtedness of the company. To meet this requirement, the debt should be subordinated to all general creditors.

[2] The "average maturity" of an obligation or issue repayable in scheduled periodic payments shall be the weighted average of the maturities of all such scheduled payments.

mandatory sinking fund deposits, defaulted on any other debt, failed to honor covenants, or if an institution affiliated with the issuer entered into bankruptcy or receivership. Some banking organizations have also issued, or proposed to issue, subordinated debt that would allow debtholders to accelerate repayment if, for example, the banking organization failed to maintain certain prescribed minimum capital ratios or rates of return, or if the amount of nonperforming assets or charge-offs of the banking organization exceeded a certain level.

(iii) These and other similar acceleration clauses raise significant supervisory concerns because repayment of the debt could be accelerated at a time when an organization may be experiencing financial difficulties. Acceleration of the debt could restrict the ability of the organization to resolve its problems in the normal course of business and could cause the organization involuntarily to enter into bankruptcy or receivership. Furthermore, since such acceleration clauses could allow the holders of subordinated debt to be paid ahead of general creditors or depositors, their inclusion in a debt issue throws into question whether the debt is, in fact, subordinated.

(iv) Subordinated debt issues whose terms state that the debtholders may accelerate the repayment of principal only in the event of bankruptcy or receivership of the issuer do not permit the holders of the debt to be paid before general creditors or depositors and do not raise supervisory concerns because the acceleration does not occur until the institution has failed. Accordingly, debt issues that permit acceleration of principal only in the event of bankruptcy (liquidation or reorganization) in the case of bank holding companies and receivership in the case of banks may generally be classified as capital.

(3) *Provisions inconsistent with safe and sound banking practices*—(i) The risk-based capital guidelines state that instruments included in capital may not contain or be covered by any covenants, terms, or restrictions that are inconsistent with safe and sound banking practice. As a general matter, capital instruments should not contain terms that could adversely affect liquidity or unduly restrict management's flexibility to run the organization, particularly in times of financial difficulty, or that could limit the regulator's ability to resolve problem bank situations. For example, some subordinated debt includes covenants that would not allow the banking organization to make additional secured or senior borrowings. Other covenants would prohibit a banking organization from disposing of a major subsidiary or undergoing a change in control. Such covenants could restrict the banking organization's ability to raise funds to meet its liquidity needs. In addition, such terms or conditions limit the ability of bank supervisors to resolve problem bank situations through a change in control.

(ii) Certain other provisions found in subordinated debt may provide protection to investors in subordinated debt without adversely affecting the overall benefits of the instrument to the organization. For example, some instruments include covenants that may require the banking organization to:

(A) Maintain an office or agency where securities may be presented,

(B) Hold payments on the securities in trust,

(C) Preserve the rights and franchises of the company,

(D) Pay taxes and assessments before they become delinquent,

(E) Provide an annual statement of compliance on whether the company has observed all conditions of the debt agreement, or

(F) Maintain its properties in good condition. Such covenants, as long as they do not unduly restrict the activity of the banking organization, generally would be acceptable in qualifying subordinated debt, provided that failure to meet them does not give the holders of the debt the right to accelerate the debt.[3]

(4) *Credit sensitive features.* Credit sensitive subordinated debt (including mandatory convertible securities) where payments are tied to the financial condition of the borrower generally do not qualify for inclusion in capital. Interest rate payments may be linked to the financial condition of an institution through various ways, such as through an auction rate mechanism, a preset schedule that either mandates interest rate increases as the credit rating of the institution declines or automatically increases them over the passage of time,[4] or that raises the interest rate if payment is not made in a timely fashion.[5] As the financial condition of an organization declines, it is faced with higher and higher payments on its credit sensitive subordinated debt at a time when it most needs to conserve its resources. Thus, credit sensitive debt does not provide the support expected of a capital instrument to an institution whose financial condition is deteriorating; rather, the credit sensitive feature can accelerate depletion of the institution's resources and increase the likelihood of default on the debt.

(c) *Criteria for mandatory convertible debt included in capital.* Mandatory convertible debt included in capital must meet all the criteria cited above for subordinated debt with the exception of the minimum maturity requirement.[6] Since mandatory convertible debt eventually converts to an equity instrument, it has no minimum maturity requirement. Such debt, however, is subject to a maximum maturity requirement of 12 years.

(d) *Previously issued subordinated debt.* Subordinated debt including mandatory convertible debt that has been issued prior to the date of this interpretation and that contains provisions permitting acceleration for reasons other than bankruptcy or receivership of the issuing institution; includes other questionable terms or conditions; or that is credit sensitive will not automatically be excluded from capital. Rather, such debt will be considered on a case-by-case basis to determine whether it qualifies as Tier 2 capital. As a general matter, subordinated debt issued prior to the release of this interpretation and containing such provisions or features

[3] This notice does not attempt to list or address all clauses included in subordinated debt; rather, it is intended to give general supervisory guidance regarding the types of clauses that could raise supervisory concerns. Issuers of subordinated debt may need to consult further with Federal Reserve staff about other subordinated debt provisions not specifically discussed above to determine whether such provisions are appropriate in a debt capital instrument.

[4] Although payments on debt whose interest rate increases over time on the surface may not appear to be directly linked to the financial condition of the issuing organization, such debt (sometimes referred to as expanding or exploding rate debt) has a strong potential to be credit sensitive in substance. Organizations whose financial condition has strengthened are more likely to be able to refinance the debt at a rate lower than that mandated by the preset increase, whereas institutions whose condition has deteriorated are less likely to be able to do so. Moreover, just when these latter institutions would be in the most need of conserving capital, they would be under strong pressure to redeem the debt as an alternative to paying higher rates and, thus, would accelerate depletion of their resources.

[5] While such terms may be acceptable in perpetual preferred stock qualifying as Tier 2 capital, it would be inconsistent with safe and sound banking practice to include debt with such terms in Tier 2 capital. The organization does not have the option, as it does with auction rate preferred stock issues, of eliminating the higher payments on the subordinated debt without going into default.

[6] Mandatory convertible debt is subordinated debt that contains provisions committing the issuing organization to repay the principal from the proceeds of future equity issues.

may qualify as Tier 2 capital so long as these terms:

(1) have been commonly used by banking organizations,

(2) do not provide an unreasonably high degree of protection to the holder in cases not involving bankruptcy or receivership, and

(3) do not effectively allow the holder to stand ahead of the general creditors of the issuing institution in cases of bankruptcy or receivership.

Subordinated debt containing provisions that permit the holders of the debt to accelerate payment of principal when the banking organization begins to experience difficulties, for example, when it fails to meet certain financial ratios, such as capital ratios or rates of return, does not meet these three criteria. Consequently, subordinated debt issued prior to the release of this interpretation containing such provisions may not be included within Tier 2 capital.

(e) *Limitations on the amount of subordinated debt in capital*—(1) *Basic limitation.* The amount of subordinated debt an institution may include in Tier 2 capital is limited to 50 percent of the amount of the institution's Tier 1 capital. The amount of a subordinated debt issue that may be included in Tier 2 capital is discounted as it approaches maturity; one-fifth of the original amount of the instrument, less any redemptions, is excluded each year from Tier 2 capital during the last five years prior to maturity. If the instrument has a serial redemption feature such that, for example, half matures in seven years and half matures in ten years, the issuing organization should begin discounting the seven-year portion after two years and the ten-year portion after five years.

(2) *Treatment of debt with dedicated proceeds.* If a banking organization has issued common or preferred stock and dedicated the proceeds to the redemption of a mandatory convertible debt security, that portion of the security covered by the amount of the proceeds so dedicated is considered to be ordinary subordinated debt for capital purposes, provided the proceeds are not placed in a sinking fund, trust fund, or similar segregated account or are not used in the interim for some other purpose. Thus, dedicated portions of mandatory convertible debt securities are subject, like other subordinated debt, to the 50 percent sublimit within Tier 2 capital, as well as to discounting in the last five years of life. Undedicated portions of mandatory convertible debt may be included in Tier 2 capital without any sublimit and are not subject to discounting.

(3) *Treatment of debt with segregated funds.* In some cases, the provisions in mandatory convertible debt issues may require the issuing banking organization to set up a sinking fund, trust fund, or similar segregated account to hold the proceeds from the sale of equity securities dedicated to pay off the principal of the mandatory convertible debt at maturity. The portion of mandatory convertibles covered by the amount of proceeds deposited in such a segregated fund is considered secured and, thus, may not be included in capital at all, let alone be treated as subordinated debt that is subject to the 50 percent sublimit within Tier 2 capital. The maintenance of such separate segregated funds for the redemption of mandatory convertible debt exceeds the requirements of appendix B to Regulation Y. Accordingly, if a banking organization, with the agreement of its debtholders, seeks Federal Reserve approval to eliminate such a fund, approval normally would be given unless supervisory concerns warrant otherwise.

(f) *Redemption of subordinated debt prior to maturity*—(1) *By state member banks.* State member banks must obtain approval from the appropriate Reserve Bank prior to redeeming before maturity subordinated debt or mandatory convertible debt included in capital.[7] A Reserve Bank will not approve such early redemption unless it is satisfied that the capital position of the bank will be adequate after the proposed redemption.

(2) *By bank holding companies.* While bank holding companies are not formally required to obtain approval prior to redeeming subordinated debt, the risk-based capital guidelines state that bank holding companies should consult with the Federal Reserve before redeeming any capital instruments prior to stated maturity. This also applies to any redemption of mandatory convertible debt with proceeds of an equity issuance that were dedicated to the redemption of that debt. Accordingly, a bank holding company should consult with its Reserve Bank prior to redeeming subordinated debt or dedicated portions of mandatory convertible debt included in capital. A Reserve Bank generally will not acquiesce to such a redemption unless it is satisfied that the capital position of the bank holding company would be adequate after the proposed redemption.

(3) *Special concerns involving mandatory convertible debt.* Consistent with appendix B to Regulation Y, bank holding companies wishing to redeem before maturity undedicated portions of mandatory convertible debt included in capital are required to receive prior Federal Reserve approval, unless the redemption is effected with the proceeds from the sale or common or perpetual preferred stock. An organization planning to effect such a redemption with the proceeds from the sale of common or perpetual preferred stock is advised to consult informally with its Reserve Bank in order to avoid the possibility of taking an action that could result in weakening its capital position. A Reserve Bank will not approve the redemption of mandatory convertible securities, or acquiesce in such a redemption effected with the sale of common or perpetual preferred stock, unless it is satisfied that the capital position of the bank holding company will be satisfactory after the redemption.[8]

PART 265—RULES REGARDING DELEGATION OF AUTHORITY

1. The authority citation for part 265 is revised to read as follows:

Authority: 12 U.S.C. 248(i) and (k).

§ 265.11 [Amended]

2. In § 265.11, paragraph (e)(11) is removed, and paragraph (e)(12) is redesignated as (e)(11).

* * * * *

By order of the Board of Governors of the Federal Reserve System, August 28, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-21204 Filed 9-2-92; 8:45 am]

BILLING CODE 6210-01-F

[7] Some agreements governing mandatory convertible debt issued prior to the risk-based capital guidelines provide that the bank may redeem the notes if they no longer count as primary capital as defined in appendix B to Regulation Y. Such a provision does not obviate the requirement to receive Federal Reserve approval prior to redemption.

[8] The guidance contained in this paragraph applies to mandatory convertible debt issued prior to the risk-based capital guidelines that state that the banking organization may redeem the notes if they no longer count as primary capital as defined in Appendix B to Regulation Y. Such provisions do not obviate the need to consult with, or obtain approval from, the Federal Reserve prior to redemption of the debt.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-NM-52-AD; Amendment 39-8371; AD 92-19-13]

Airworthiness Directives; Airbus Industrie Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Airbus Industrie Model A320 series airplanes, that requires a revision to the FAA-approved Airplane Flight Manual (AFM) to prohibit automatic landings in configuration 3. This amendment is prompted by a report that during an automatic landing in configuration 3, a pitch-up due to activation of the spoilers could result in an excessive attitude, if not immediately counteracted by the flight crew. The actions specified by this AD are intended to prevent tail strikes and damage to the airplane.

EFFECTIVE DATE: October 9, 1992.

ADDRESSES: Information concerning this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2140; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to all Airbus Industrie Model A320 series airplanes was published in the **Federal Register** on June 16, 1992 (57 FR 26797). That action proposed to require a revision to the FAA-approved Airplane Flight Manual (AFM) to prohibit automatic landings in configuration 3.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The commenters support the proposed rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 36 airplanes of U.S. registry will be affected by this AD, that it will take approximately 0.5 work hour per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $990. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-19-13. Airbus Industrie: Amendment 39-8371. Docket 92-NM-52-AD.

Applicability: Model A320 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent tail strikes and damage to the airplane, accomplish the following:

(a) Within 60 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD into the AFM.

"Use of automatic landing in configuration 3 (CONF 3) is prohibited."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on October 9, 1992.

Issued in Renton, Washington, on August 26, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-21346 Filed 9-3-92; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 16

Reports by Contract Markets

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rulemaking.

SUMMARY: The Commodity Futures Trading Commission (Commission) is amending 17 CFR 16.02 to discontinue the routine filing of weekly large option trader reports in hard copy form by the exchanges. The Commission will continue to receive the data from the exchanges on machine readable media. The purpose of this amendment is to eliminate an unnecessary reporting burden.

EFFECTIVE DATE: September 4, 1992.

FOR FURTHER INFORMATION CONTACT: Lamont L. Reese, Division of Economic

Analysis, 2033 K Street, NW., Washington, DC 20581, Telephone (202) 254-3310.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission requires that contract markets submit a weekly report for options on futures and options on physicals showing long and short positions of traders that exceed reporting levels established by the markets.[1] Contract markets submit the data on Commission compatible data processing media and in hard copy form. Until recently, the data received via electronic media was processed on an overnight basis rendering output from the system untimely for certain surveillance needs. Rather, the hard copy reports from the exchanges were used for immediate surveillance. Improvements in the Commission's computer software now allow update of its Large Option Trader system on a timely basis obviating the need for hard copy reports from the exchanges. Under the authority contained in rule 16.07, the Commission's Director of the Division of Economic Analysis has already instructed contract markets that hard copy reports required under § 16.02(b)(1) need not be submitted. In view of the above, the Commission is clarifying its current requirements by deleting reference to those items required on the hard copy report which are set forth in § 16.02(a) and allowing for the filing of hard copy reports if a contract market cannot provide the data on data processing media. This action eliminated the filing of about 257,000 computer pages annually by the exchanges.

II. Other Related Matters

A. Notice and Comment

The Administrative Procedure Act, 5 U.S.C. 553(b), requires in most instances that a notice of proposed rulemaking be published in the **Federal Register** and that opportunity for comment be provided when an agency promulgates new regulations. Section 553(b) sets forth an exception, however, when the agency for good cause finds (and incorporates the findings and a brief statement of reasons therefor in rules issued) that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest.

[1] Commission rule 15.00(b)(2) defines a reportable position in options as any open contract position on any one market in the put option or separately in the call option of a specified expiration month which at the close of the market equals or exceeds 50 contracts or such other level as may be approved by the Commission. 17 CFR §15.00(b)(2) 1991.

The Commission finds that notice and public comment on the rule changes announced herein are unnecessary because the changes do not establish any new obligations under the Act. On the contrary, these changes simplify compliance with the Act by reducing contract markets' reporting obligations under the rules in question and will merely conform these reduced requirements with those that the Director of Division of Economic Analysis has already implemented under the authority contained in Commission rule 16.07.

The Administrative Procedure Act, 5 U.S.C. § 553(d), also requires publication of substantive rules not less than thirty days before their effective date except as otherwise provided by the agency for good cause found and published with the rule. As is noted above these rule changes do not establish any new obligations under the Act but rather reduce the reporting obligations of contract markets. Accordingly, the Commission finds that the rule changes should be made immediately effective.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of these rules on small entities. The Commission has previously determined that exchanges are not "small entities" for purposes of the RFA, 47 FR 18618 (April 30, 1982). In addition, these rules relieve a regulatory burden. Accordingly, the amendments have no significant impact on a substantial number of small entities. For the above reasons, and pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), the Chairman, on behalf of the Commission, hereby certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, (Act) 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act (PRA). In compliance with the Act the Commission has submitted this amended rule and its associated information collection requirements to the Office of Management and Budget. This rule is a part of a larger information collection assigned OMB Number 3038-0007 entitled "Regulation of Domestic Exchange-Traded Commodity Options." The burden associated with this entire collection, including this amended rule, is as follows:

Average Burden Hours per Response—.0068
Number of Respondents—190,186
Frequency of Response—daily

The burden associated with this specific rule is as follows:

Average Burden Hours per Response—0.0743
Number of Respondents—11
Frequency of Response—weekly

Copies of the OMB approved information collection package associated with this rule may be obtained from Gary Waxman, Office of Management and Budget, room 3220, NEOB, Washington, DC 20503, (202) 395-7340.

List of Subjects in 17 CFR Part 16

Commodity futures, Contract markets, Reporting and recordkeeping requirements.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 4a, 4c, 4g, 4i, 5 and 8a thereof, 7 U.S.C. 6a, 6c, 6g, 6i, 7 and 12a, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 16—REPORTS BY CONTRACT MARKETS

1. The authority citation for part 16 continues to read as follows:

Authority: 7 U.S.C. 6a, 6c, 6g, 6i, 7 and 12A.

2. Section 16.02 is amended by revising paragraphs (a) (1) and (2) and (b) to read as follows:

§ 16.02 Large Option Trader Reports.

(a) * * *

(1) With respect to each reportable position controlled by the option trader, the following information shown separately for each futures commission merchant or member of the contract market:

(i) Each long and short separately for puts and calls by expiration month and strike price; and, in addition, for options on physicals not settled in cash,

(ii) The number of contracts exercised.

(2) Each contract market shall identify all option positions controlled by the same trader which are carried at the same futures commission merchant or held by a member of the contract market by use of the number which is assigned by the futures commission merchant or member in accordance with § 17.01(a) of this chapter.

(b) *Form and manner of reporting.* Unless otherwise approved by the Commission or its designee, contract markets shall submit the information required by paragraph (a) of this section as follows:

(1) Using a format and coding structure approved in writing by the Commission or its designee on compatible data processing media or if the contract market is unable to provide the data on data processing media, in hard copy form.

(2) When the data is first available but not later than 3 p.m. on the business day following the day to which the information pertains. For options on futures and for options on physicals that are settled in cash, such information shall be compiled weekly as of the close of business on Tuesday, or Monday if Tuesday is a holiday, or more frequently than weekly as the Commission may direct; and

(3) Except for dial-up data transmission, at the Regional Office of the Commission having local jurisdiction with respect to each contract market.

* * * * *

Issued in Washington, DC., this 28th day of August, 1992, by the Commission.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

[FR Doc. 92-21246 Filed 9-3-92; 8:45 am]

BILLING CODE 6351-01-M

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17 CFR Part 30

Option on the Three-Month Euro Swiss Franc Interest Rate Futures Contract Traded on the London International Financial Futures and Options Exchange

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is publishing an Order permitting option contracts on the Three-Month Euro Swiss Franc Interest Rate futures contract traded on the London International Financial Futures and Options Exchange ("LIFFE") [1] to be offered or sold to persons located in the United States. This Order is issued pursuant to: (1) Commission rule 30.3(a), 17 CFR 30.3(a) (1992), which makes it unlawful for any person to engage in the offer or sale of a foreign option product until the Commission, by order, authorizes such foreign option to be offered or sold in the United States; and (2) the Commission's Order issued on September 5, 1989, 54 FR 37636 (September 12, 1989), authorizing certain option products traded on LIFFE to be offered or sold in the United States.

EFFECTIVE DATE: October 5, 1992.

FOR FURTHER INFORMATION CONTACT: Barney L. Charlon, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order: United States of America Before the Commodity Futures Trading Commission.

Order Under Commission Rule 30.3(a) Permitting Option Contracts on the Three-Month Euro Swiss Franc Interest Rate Futures Contract Traded on the London International Financial Futures and Options Exchange To Be Offered or Sold in the United States Thirty Days After Publication in the **Federal Register**.

By Order issued on September 5, 1989 ("Initial Order"), the Commission authorized, pursuant to Commission rule 30.3(a), certain option products traded on the London International Financial Futures and Options Exchange ("LIFFE") to be offered or sold in the United States. 54 FR 37636 (September 12, 1989). Among other conditions, the Initial Order specified that:

Except as otherwise permitted under the Commodity Exchange Act and regulations thereunder, * * * no offer or sale of any LIFFE option product in the United States shall be made until thirty days after publication in the **Federal Register** of notice specifying the particular option(s) to be offered or sold pursuant to this Order * * *.

By letter dated July 29, 1992, LIFFE represented that it plans to commence trading an option contract based on the Three-Month Euro Swiss Franc Interest Rate futures contract on October 15, 1992.[2] LIFFE has requested that the Commission supplement its Initial Order authorizing the offer and sale in the United States of options on the Long Gilt, U.S. Treasury Bond, German Government Bond, Three-Month Sterling Interest Rate, and Three-Month Eurodollar Interest Rate futures contracts, and options on Sterling and Dollar-Mark currencies; a Supplemental Order, 55 FR 7705 (March 5, 1990), authorizing the offer and sale in the United States of options on the Three-Month Euro-Deutschemark Interest Rate futures contract; and a Supplemental Order, 57 FR 1374 (January 14, 1992), authorizing the offer and sale in the United States of options on the Italian Government Bond futures contract; by also authorizing LIFFE's option contract on the Three-Month Euro Swiss Franc Interest Rate futures contract to be offered or sold to persons in the United States. Upon due consideration, and for the reasons previously discussed in the Initial Order, the Commission believes that such authorization should be granted.

Accordingly, pursuant to Commission rule 30.3(a) and the Commission's Initial Order issued on September 5, 1989, and subject to the terms and conditions specified therein, the Commission hereby authorizes LIFFE's option contract on the Three-Month Euro Swiss Franc Interest Rate futures contract to be offered or sold to persons located in the United States thirty days after publication of this Order in the **Federal Register**.

OPTION ON THREE-MONTH EURO SWISS ("EUROSWISS") FRANC INTEREST RATE FUTURE

Unit of Trading	1 Euroswiss futures contract.
Delivery/Expiry Months	March, June, September, December.
Delivery Day/Exercise Day/Expiry Day.	Exercise by 17.00 on any business day. , Delivery on the first business day after the exercise day. Expiry at 12.30 on the Last Trading Day.
Last Trading Day	11.00 Last Trading Day of the Euroswiss futures contract.
Quotation	Multiples of 0.01 (i.e. 0.01%).
Minimum Price Movement (Tick size & Value).	0.01 (S Fr 25).
Trading Hours	To be announced.
Contract Standard	Assignment of 1 Euroswiss futures contract for the delivery month at the exercise price.
Exercise Price Intervals	0.25 (i.e. 0.25%) e.g. 91.00, 91.25, 91.50 etc.
Introduction of New Exercise Prices.	Nine exercise prices will be listed for new series. Additional exercise prices will be introduced on the business day after the Euroswiss futures contract settlement price comes within 0.12 of the fourth highest or lowest existing exercise price.
Option Price	The contract price is payable by the buyer to the seller on exercise or expiry of the option, not at the time of purchase. Positions are marked to market daily, as with futures positions

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[1] On March 23, 1992, the London International Financial Futures Exchange, which was the subject of the Commission's Order under rule 30.3(a) issued on September 5, 1989, 54 FR 37636 (September 12, 1989), merged with the London Traded Options Market to form the London International Financial Futures and Options Exchange.

[2] Letter dated July 29, 1992, from N.E. Carew Hunt, LIFFE, to Jane C. Kang, Commission.

List of Subjects in 17 CFR Part 30

Commodity futures, Commodity options, Foreign commodity options.

Accordingly 17 CFR part 30 is amended as set forth below:

PART 30—FOREIGN FUTURES AND FOREIGN OPTION TRANSACTIONS

1. The authority citation for part 30 continues to read as follows:

Authority: Secs. 2(a)(1)(A), 4, 4c, and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 6, 6c and 12a.

2. Appendix B to part 30 is amended by revising the entries for "London International Financial Futures Exchange" to read "London International Financial Futures and Options Exchange," under the column heading "Exchange" and by adding the following entry alphabetically after the amended entries to read as follows:

Appendix B to Part 30—Option Contracts Permitted to Be Offered or Sold in the U.S. Pursuant to § 30.3(a)

Exchange	Type of contract	FR date and citation
• • •	• • •	• • •
London International Financial Futures and Options Exchange.	Option Contract on Three-Month Euro Swiss Franc ("Euros-wiss") Interest Rate Futures Contract.	September 4, 1992; 57 FR ——.
• • •	• • •	• • •

Issued in Washington, DC, on August 28, 1992.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

[FR Doc. 92-21247 Filed 9-3-92; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 10

[T.D. 92-85]

Theatrical Effects, Works of Art and Other Articles for Temporary or Permanent Exhibition

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations regarding duty-free importations under bond to no longer require submission of Customs Form 3325 either in connection with the entry of theatrical effects, works of art, engravings, photographic pictures, and philosophical and scientific apparatus admitted for temporary exhibition or in connection with the entry of articles imported for permanent exhibition by an institution established for the encouragement of agriculture, arts, education or science. The amendments will eliminate unnecessary paperwork and thus streamline the entry process for Customs and the importing public.

EFFECTIVE DATE: August 4, 1992.

FOR FURTHER INFORMATION CONTACT: Angela Downey, Entry Operations Branch (202-927-1082).

SUPPLEMENTARY INFORMATION:

Background

Subchapter XIII of chapter 98, Harmonized Tariff Schedule of the United States (HTSUS), covers various articles which, when not imported for sale or for sale on approval, may be admitted into the United States without the payment of duty and under bond for their exportation within a specified period of time from the date of importation. Subheading 9813.00.65, HTSUS, covers "[t]heatrical scenery, properties and apparel brought into the United States by proprietors or managers of theatrical exhibitions arriving from abroad for temporary use by them in such exhibitions". Subheading 9813.00.70 refers to "[w]orks of the free fine arts, engravings, photographic pictures and philosophical and scientific apparatus brought into the United States by professional artists, lecturers or scientists arriving from abroad for use by them for exhibition and in illustration, promotion and encouragement of art, science or industry in the United States".

Section 10.31, Customs Regulations (19 CFR 10.31), sets forth the basic entry requirements and procedures applicable to articles which are claimed to be exempt from duty under subchapter XIII of chapter 98, HTSUS. Paragraph (a)(3) of section 10.31 provides that, in addition to the data usually shown on a regular consumption entry summary, each temporary importation bond entry summary shall include (1) the HTSUS subheading number under which entry is claimed, (2) a statement of the use to be made of the articles in sufficient detail to enable the district director to determine whether they are entitled to entry as claimed, and (3) a declaration that the articles are not to be put to any other use and that they are not imported for sale or sale on approval.

Section 10.33, Customs Regulations (19 CFR 10.33), specifically concerns the theatrical effects of HTSUS subheading 9813.00.65 and provides in paragraph (a) that, in addition to the requirements of section 10.31, a declaration of the manager or proprietor shall be required on Customs Form 3325 in connection with the entry of such theatrical effects. Section 10.34, Customs Regulations (19 CFR 10.34) specifically refers to the works of art and other articles of HTSUS subheading 9813.00.70 and similarly requires, as an addition to the entry requirements of section 10.31, a declaration on Customs Form 3325 by the professional artist, lecturer or scientist. Customs Form 3325 is entitled "Declaration on Entry of Theatrical Effects for Temporary Use or of Works of Art, Etc., For Temporary or Permanent Exhibition" and incorporates the following separate declarations: (1) A declaration by the manager or proprietor which essentially mirrors the legal requirements for entry under HTSUS subheading 9813.00.65, (2) a declaration by the professional artist, lecturer or scientist which essentially mirrors the legal requirements for entry under HTSUS subheading 9813.00.70, and (3) for purposes duty-free entry of articles under bond for permanent exhibition by an institution established for the encouragement of agriculture, arts, education or science, as provided in subheading 9812.00.20 within subchapter XII of chapter 98, HTSUS, and as required under section 10.49, Customs Regulations (19 CFR 10.49), a declaration by an officer of the institution reflecting the basic legal requirements for entry under that HTSUS subheading.

In view of the fact that section 10.31(a)(3) as described above already requires that the entry summary include statements and other information sufficient for the district director to determine whether imported articles are entitled to entry under a subheading within subchapter XIII of chapter 98, HTSUS, Customs believes that the two declarations on Customs Form 3325 required by sections 10.33 and 10.34 are redundant and thus unnecessary. Accordingly, in order to reduce unnecessary paperwork and thus streamline the entry process, this document (1) revises the title and text of section 10.33 to remove paragraph (a) concerning the relevant declaration on Customs Form 3325, and also to make some editorial improvements including incorporation of footnote 36 within the text and clarification of the legal context of the section, and (2) removes section

10.34 which only concerns the relevant declaration on Customs Form 3325.

It is also noted that if only the above-described regulatory changes are made, Customs Form 3325 would still have to be submitted in connection with the entry of articles for permanent exhibition under subheading 9812.00.20 as mentioned above. Customs does not believe that it would be appropriate to continue to require submission of Customs Form 3325 for only this one purpose, which would also necessitate revising the form to omit the other two declarations. Accordingly, in order that use of Customs Form 3325 may be eliminated entirely, this document also amends the first sentence of section 10.49(a) by removing the reference to Customs Form 3325 and inserting in its place a general reference to entitlement to entry as claimed, similar to the approach taken in section 10.31(a)(3) as discussed above.

Inapplicability of Notice and Delayed Effective Date Requirements

Inasmuch as these amendments reduce a regulatory burden and thus confer a benefit on the general public, pursuant to 5 U.S.C. 553(b)(B), notice and public procedures are unnecessary and contrary to the public interest and, for the same reason pursuant to 5 U.S.C. 553(d)(1), a delayed effective date is not required.

Exective Order 12291

These amendments do not meet the criteria for a "major rule" as defined in E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Regulatory Flexibility Act

Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. *et seq.*).

Drafting Information

The principal author of this document was Francis W. Foote, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 10

Customs duties and inspection, Imports.

Amendments to the Regulations

Based on the above, part 10, Customs Regulations (19 CFR part 10), is amended as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The authority citation for part 10 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1202, 1481, 1484, 1498, 1508, 1623, 1624;

* * * * *

2. Section 10.33 is revised to read as follows:

§ 10.33 Theatrical effects.

For purposes of the entry of theatrical scenery, properties and apparel under subheading 9813.00.65, Harmonized Tariff Schedule of the United States:

(a) Animals imported for use or exhibition in theaters or menageries may be classified as theatrical properties; and

(b) The term "theatrical scenery, properties and apparel" shall not be construed to include motion-picture films. For provisions relating to the return without formal entry of theatrical effects taken from the United States, see § 10.68 of this part.

§ 10.33 [Amended]

3. Footnote 36 to section 10.33 is removed.

§ 10.34 [Removed]

4. Section 10.34 is removed.

§ 10.49 [Amended]

5. Section 10.49(a), first sentence, is amended by removing the words "on Customs Form 3325" and adding, in their place, the words "in sufficient detail to demonstrate entitlement to entry as claimed".

Approved: August 31, 1992.

Carol Hallett,

Commissioner of Customs.

Peter K. Nunez,

Assistant Secretary of the Treasury.

[FR Doc. 92-21279 Filed 9-3-92; 8:45 am]

BILLING CODE 4820-02-M

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19 CFR Parts 141, 171, 172

[T.D. 92-84]

Penalties and Claims for Liquidated Damages; Petitions for Relief

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by extending the amount of time allowable for the filing of a petition for relief in penalty or liquidated damages cases from 30 to 60 days. It amends the regulations to require that petitions be filed in duplicate rather than triplicate. It also amends the Regulations to provide that the amount of any claim for liquidated damages assessed for failure to redeliver merchandise into Customs custody shall be an amount equal to the value of the merchandise not redelivered rather than that amount plus any estimated duties due thereon.

These changes will ease the burdens on the public.

EFFECTIVE DATE: September 4, 1992.

FOR FURTHER INFORMATION CONTACT: Jeremy Baskin, Penalties Branch, Office of Regulations and Rulings, (202) 566-8317.

SUPPLEMENTARY INFORMATION:

Background

Petitioning Periods for Penalties

The provisions of section 618 of the Tariff Act of 1930, as amended (19 U.S.C. 1618), allow any person who has incurred a penalty for violation of the Customs or navigation laws to petition for mitigation of such penalty. The same statute also authorizes the Secretary of the Treasury or the Commissioner of Customs to mitigate those penalties "upon such terms and conditions as he deems reasonable and just * * *." The provisions of § 171.12(b) of the Customs Regulations (19 CFR 171.12(b)) require the filing of any petition for relief from any fine, penalty or forfeiture within 30 days after the date of mailing of the notice of the fine, penalty or forfeiture incurred.

Experience has shown that in fine and penalty cases, the 30-day petitioning period is too short. In most penalty situations, the charged party requires time to research its records in order to respond to the penalty notice in a coherent manner. Additionally, mailing and routing time reduce the time available to respond. As a result, many parties seek extensions of the 30-day period. Customs resources must be dedicated to responding to extension requests. Accordingly, in order to ease the burden to the public, this document amends the provisions of § 171.12(b) of the Regulations to extend the petitioning period in these cases from 30 to 60 days from the date of mailing of the notice.

It should be noted that this amendment does not affect the 30-day petitioning period for claimants to property which has been seized subject to forfeiture. Nor does this amendment affect the 30-day period in which a supplemental petition for relief can be filed. In order to limit the possibility of denial of due process rights of claimants to seized property subject to forfeiture

and to minimize costs of storage and seizure to Customs, the 30-day petitioning period for claimants to such property will remain in force. In the supplemental petition situation, most issues are raised and discussed at the initial petition stage. Accordingly, research that a party needs to accomplish in order to respond to a penalty or liquidated damages notice is generally complete and extra time need not be afforded at that stage in the process.

Under the current provisions of § 171.15 of the Regulations (19 CFR 171.15), the district director has the authority to extend the petitioning period from 30 to 60 days when cases involve complex legal or factual problems. In light of the expansion of the penalty petitioning period from 30 to 60 days, this document also amends § 171.15 to empower the district director to extend the petitioning period in complex penalty cases from 60 to 90 days. Inasmuch as the petitioning period in seizure cases remains at 30 days, the regulation is amended in a manner to continue to permit extension of the 30-day period to 60 days in appropriate seizure cases and in the filing of supplemental petitions in any case.

The current regulations (19 CFR 171.12(c)) also provide that petitions be filed in triplicate. Customs does not need three copies of the petition for orderly processing of cases. Accordingly, in order to lighten the paperwork burden on petitioning parties, this document amends the regulations to provide that petitions are to be filed in duplicate rather than triplicate.

Petitioning Periods for Claims for Liquidated Damages

As provided by section 623(a) of the Tariff Act of 1930, as amended, (19 U.S.C. 1623(a)), the Secretary of the Treasury may by regulation or specific instruction require such bonds or other security as he may deem necessary to protect the revenue or assure compliance with any provision of law which he or the Customs Service is authorized to enforce. Pursuant to the provisions of § 623(c) of the Tariff Act of 1930, (19 U.S.C. 1623(c)), the Secretary of the Treasury may authorize the cancellation of any charge made against such bond, in the event of a breach of any condition of the bond, upon payment of such lesser amount or upon such other terms and conditions as he may deem sufficient. When a bond principal or surety incurs liquidated damages liability for violation of the terms of a Customs bond, those charged parties are afforded petitioning rights as provided in Part 172 of the Customs Regulations (19 CFR Part 172). Specifically, § 172.12(b) permits the filing of a petition for relief within 30 days of the date of mailing of any notice of claim for liquidated damages.

As with the petitioning period for penalties, Customs is of the view that this 30-day petitioning period for liquidated damages is too short. The time necessary for a bond principal or surety to accomplish the research to respond to the claim, in addition to time lost for mailing and routing of documents, makes compliance with the 30-day period difficult. Further, as with penalty cases, Customs is required to process numerous requests for extension of the petitioning period. This results in inefficient use of resources. Accordingly, in order to ease the burden to the public, this document amends the provisions of § 172.12(b) of the Regulations to extend the petitioning period in liquidated damages cases from 30 to 60 days from the date of mailing of the notice. This amendment does not affect the 30-day filing period for supplemental petitions for relief.

The current regulations (19 CFR 172.12(c)) also provide that petitions be filed in triplicate. Customs does not need three copies of the petition. Accordingly, in order to lighten the paperwork burden on the petitioning parties, this document amends the regulations to provide that petitions are to be filed in duplicate rather than triplicate.

Failure To Redeliver; Assessment Amounts

The provisions of § 141.113(g) of the Customs Regulations (19 CFR 141.113(g)) authorize Customs to assess liquidated damages against a bond principal who fails to comply with any request for redelivery or marking of merchandise. The claim is assessed in an amount equal to the value of the merchandise not redelivered or marked, plus estimated duties due thereon. Pursuant to § 113.62(k) of the Customs Regulations (19 CFR 113.62(k)), claims are assessed in an amount equal to three times the value of the merchandise if the merchandise is restricted or is alcoholic beverages.

Through this document, Customs is amending the provisions of § 141.113(g) to provide for liquidated damages in an amount equal to the value of the merchandise which is the subject of the breach (or three times the value in the case of restricted merchandise or alcoholic beverages) without reference to estimated duties and taxes, inasmuch as there is no reason to measure the liquidated damages assessed based on duties and taxes. These amounts will have been collected on entry/entry summary. Also, the amendment will specify that assessment of liquidated damages for failure to redeliver restricted merchandise or alcoholic beverages will be three times the value of such merchandise as currently provided by regulation.

In addition, the second sentence of § 141.113(a) is being amended to change a reference to the Tariff Schedules of the United States to the appropriate reference in the Harmonized Tariff Schedule of the United States. Although this change was incorporated in T.D. 89-1, 53 FR 51262, it was never included in the Code of Federal Regulations.

Inapplicability of Notice and Delayed Effective Date Requirements

Insofar as the number of copies of petitions to be filed is a matter of agency management, the notice and public procedure requirements of 5 U.S.C. 553 are inapplicable to this document pursuant to 5 U.S.C. 553(a)(2). Further, inasmuch as the extension of the time for filing certain petitions for relief, and reduction of the amount of the claim for liquidated damages to be assessed for failure to redeliver merchandise into Customs custody reduce burdens and confer a benefit on the public, notice and public procedure thereon are unnecessary and contrary to the public interest, pursuant to the provisions of 5 U.S.C. 553(b)(B). For the same reasons, a delayed effective date is not required pursuant to 5 U.S.C. 553(d).

Executive Order 12291 and Regulatory Flexibility Act

Because this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This document does not meet the criteria for a "major rule as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Drafting Information

The principal author of this document was Jeremy Baskin, Penalties Branch U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 141

Customs duties and inspection; Imports.

19 CFR Parts 171 and 172

Administrative practice and procedure; Penalties.

Amendment to the Regulations

Accordingly, chapter I of title 19, Code of Federal Regulations, is amended as set forth below:

PART 141—ENTRY OF MERCHANDISE

1. The general authority citation for part 141 and specific authority for § 141.113 continue to read as follows:

* * * * *

Section 141.113 also issued under 19 U.S.C. 1499, 1623.

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

2. In § 141.113, paragraph (g) is revised to read as follows:

§ 141.113 Recall of merchandise released from Customs custody.

* * * * *

(g) *Demand not complied with.* When the demand of the district director for return of merchandise of Customs custody is not complied with, liquidated damages shall be assessed, except in the case of merchandise entered under chapter 98, subchapter XII, HTSUS (19 U.S.C. 1202), in an amount equal to the value of the merchandise not returned or three times the value of the merchandise not returned if the merchandise is restricted merchandise or alcoholic beverages, as determined at the time of entry. The amount of liquidated damages to be assessed on merchandise entered under chapter 98, subchapter XII, HTSUS is set forth in § 10.39(d)(3) of this chapter.

PART 171—FINES, PENALTIES, AND FORFEITURES

1. The authority citation for part 171 continues to read as follows:

Authority: 19 U.S.C. 66, 1592, 1618, 1624. The provisions of subpart C also issued under 22 U.S.C. 401; 46 U.S.C. App. 320 unless otherwise noted.

Subpart F also issued under 19 U.S.C. 1595a, 1605, 1614; 21 U.S.C. 881 note.

2. Section 171.12 is amended by revising paragraphs (b) and (c) to read as follows:

§ 171.12 Filing of petition.

* * * * *

(b) *When filed.* If a petitioner seeks expedited relief under subpart F of this part, a petition must be filed within the timeframe stated in § 171.52(d). Otherwise, unless additional time has been authorized as provided in § 171.15, petitions for relief shall be filed within 30 days from the date of the mailing of the notice of seizure of property subject to forfeiture incurred or within 60 days of the mailing of notice of a fine or penalty incurred.

(c) *Number of copies.* The petition shall be filed in duplicate.

* * * * *

3. Section 171.15 is amended by revising paragraph (a) introductory text and (a)(4) to read as follows:

§ 171.15 Extensions of time for filing petition.

(a) *Extension of time for filing petition or supplemental petition for relief.* If there is at least 1 year before the statute of limitations may be asserted as a defense, a district director may extend the time for filing a petition (or establish a 60-day or 90-day response period pursuant to paragraph (a)(4) of this section) or supplemental petition, upon the request of a person who is or may be liable for a fine or penalty, or who has an interest in property subject to forfeiture, in the following situations:

* * * * *

(4) The case involves a complex legal or factual problem. Examples of the type of problem are the need to examine voluminous records (e.g., Customs entries, purchase orders, invoices and the like) to learn the facts on which to base a petition, or the need to determine legal responsibilities in a case involving numerous parties or numerous violations. In such cases, the district director, on his own initiative, may specify in any seizure notice that a 60-day response period from the date of mailing of the notice is warranted, or may specify in any fine or penalty notice that a 90-day response period from the date of mailing of the notice is warranted. If, in such cases, the district director concludes that only a 30 or 60 day response period is warranted and so indicates in the seizure or penalty notice, the person charged with responding shall have 7 days from the date of the mailing of the notice to appeal the decision of the district director to the Director, International Trade Compliance Division, Customs Headquarters. If an appeal is taken, a copy of the appeal must be furnished to the district director who issued the notice, and the original forwarded to the Director, International Trade Compliance Division, U.S. Customs Service, 1301 Constitution Ave., NW., Washington, DC 20229. Such appeals should clearly set forth why the particular case warrants an extension beyond the 30- or 60-day period. If the appeal is granted, the Director, International Trade Compliance Division, will notify both the district director and the person charged with responding of the time period allotted for response. In no case will the filing of an appeal under this paragraph toll the 30- or 60-day period of time specified by the district director in the seizure or penalty notice.

* * * * *

PART 172—LIQUIDATED DAMAGES

1. The authority citation for Part 172 continues to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

2. Section 172.12 is amended by removing the number "30" and adding, in its place, the number "60" in paragraphs (b)(1) and (b)(2), and paragraph (c) is revised to read as follows:

§ 172.12 Filing of petition for relief.

* * * * *

(c) *Number of copies.* The petition shall be filed in duplicate.

Approved: August 28, 1992.

Michael H. Lane,

Acting Commissioner of Customs.

Peter K. Nunez,

Assistant Secretary of the Treasury.

[FR Doc. 92-21277 Filed 9-3-92; 8:45 am]

BILLING CODE 4820-02-M

Fiscal Service

31 CFR Part 358

Bureau of the Public Debt; Regulations Governing Coupons Under Book-Entry Safekeeping (Cubes)

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This final rule is being published to modify the regulations governing the Treasury Department's Coupons Under Book-Entry Safekeeping ("CUBES") program to permit additional reopenings of the CUBES window for conversion to book-entry form of detached physical coupons. In 1987, Treasury offered a one-time opportunity for depository institutions to submit coupons stripped from physical Treasury securities to the Federal Reserve Bank of New York (FRBNY) for conversion to book-entry accounts. Coupons stripped before January 5, 1987, and with payment dates on or after January 15, 1988, were eligible for the program. Treasury has since committed itself to the goal of minimizing the number of all outstanding definitive securities. This amendment to the regulations will authorize Treasury to prove additional opportunities for depository institutions to present eligible physical coupons to the FRBNY for conversion.

EFFECTIVE DATE: September 4, 1992.

FOR FURTHER INFORMATION CONTACT: Sharon Separ, Attorney-Adviser, Bureau of the Public Debt, Washington, DC. (202) 874-4123

SUPPLEMENTARY INFORMATION: The CUBES program was undertaken incipiently at the request of various institutional holders of physical coupons which had been detached from their principal pieces. Under the program, depository institutions holding coupons stripped from physical Treasury securities before January 5, 1987, and with payment dates on or after January 15, 1988, were permitted a one-time opportunity to convert them to book-entry accounts during a January 5, to April 30, 1987, time period. Entities other than depository institutions which held stripped Treasury coupons and wished to convert those coupons to book-entry accounts under the CUBES program were obliged to arrange for such conversion through a depository institution.

Although Treasury indicated in 1988 (see 53 FR 19776) that is had no plans to provide another opportunity to present physical coupons for conversion, it has since established the goal of minimizing the number of outstanding definitive securities. Because reopening the window for conversion will reduce the number of outstanding definitive coupons, it was decided that additional opportunities for depository institutions to present physical coupons to the FRBNY for conversion should be made available from time to time, as determined by the Treasury. It is anticipated that the first such opportunity will be scheduled no earlier tan January, 1993.

Participation in CUBES originally required depository institutions to agree in writing to the terms and conditions of the program, as set forth in appendix A to part 358. However, 31 CFR 358.0(b), subsequently promulgated, provides that the CRBES regulations at part 358 modify the terms and conditions set forth in the agreement referenced in appendix A, "to the extent that they are inconsistent" with the agreement. Moreover, 31 CFR 358.4 confers upon the Secretary the authority to prescribe supplemental or revised regulations with respect to CUBES.

Accordingly, a new provision is being added to the regulations, providing that upon notice by publication in the **Fedeal Register** two months prior to the date coupons may first be presented to the FRBNY, depository institutions will have the opportunity, within a time frame determined by the Treasury, to convert eligible physical coupons detached from U.,S. Treasury obligations to book-entry form.

Thus, the time periods for conversion, as well as the criteria for coupon eligibility and applicable fees, set forth in appendix A will not apply to these future submissions. All other terms and conditions of the agreement governing participation in the CUBES program, not inconsistent with the governing regulations at Part 358, will apply to subsequent reopenings of the window for conversions.

Procedural Requirements

Because this amendment relates to the terms and conditions of marketable Treasury securities, the notice and public procedures, and the delayed effective date requirements of the Administrative Procedure Act (5 U.S.C. 553(a) (2)) are inapplicable. It has been determined that the rule does not constitute a "major rule" for purposes of Executive Order No. 12291. A regulatory impact analysis, therefore, is not required. Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply. The Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*) does not apply to this rule because it does not contain information collection requirements which necessitate approval by the Office of Management and Budget.

List of Subjects in 31 CFR Part 358

Government securities, Federal Reserve System.

Accordingly, part 358 is amended, as follows:

PART 358—REGULATIONS GOVERNING CUBES (COUPONS UNDER BOOK-ENTRY SAFEKEEPING)

1. The authority citation for part 358 continues to read as follows:

Authority: 31 U.S.C. Chapter 31; 12 U.S.C. 391.

2. Section 358.0 is amended by adding a new paragraph (c) at the end of the section, to read as follows:

§ 358.0 Applicability.

* * * * *

(c) These regulations also apply to eligible physical coupons accepted from depository institutions for conversion to book-entry accounts under the CUBES program from time to time, within time periods determined by the Department of the Treasury. Notice of time periods for conversion, as well as coupons eligible or conversion and applicable fees, will be published in the **Federal Register** two months prior to the date coupons may be presented to the Federal Reserve Bank of New York. Coupons shall be submitted in accordance with a schedule provided by the Federal Reserve Bank of New York. Submitters of coupons are deemed to agree to the terms and conditions set forth in this part and any other requirements that may be prescribed by the Department of the Treasury or the Federal Reserve Bank of New York.

Dated: September 1, 1992.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 92-21333 Filed 9-3-92; 8:45 am]

BILLING CODE 4810-35-M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

32 CFR Part 323

[Defense Logistics Agency Reg. 5400.21]

Defense Logistics Agency Privacy Program

AGENCY: Defense Logistics Agency, DOD.

ACTION: Final rule.

SUMMARY: The Defense Logistics Agency is publishing a system name change to two exempt systems of records at 32 CFR part 323, appendix H. This final rule reflects changes made to the systems of records notices previously published on August 18, 1992, at 57 FR 37100.

EFFECTIVE DATE: September 4, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus (703) 617-7583.

SUPPLEMENTARY INFORMATION:

Executive Order 12291. The Director, Administration and Management has determined that this proposed rule is not a major rule. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and does not have a significant adverse effect on competition, employment, investment, productivity, or innovation.

Regulatory Flexibility Act of 1980. The Director, Administration and Management certifies that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) and does not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act. The Director, Administration and Management certifies that this rule does not impose

any reporting or record keeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520).

List of Subjects in 32 CFR Part 323

Privacy

For reasons set forth in the preamble, 32 CFR part 323 is amended as follows:

1. The authority citation for 32 CFR part 323 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat 1896 (5 U.S.C. 552a).

2. Appendix H is amended by revising the introductory text of paragraphs a. and b. as follows:

Appendix H-DLA Exemption Rules

* * * * *

a. ID: S500.10 DLA-I (Specific exemption) * * *

b. ID: S500.20 DLA-I (Specific exemption) * * *

* * * * *

Dated: August 31, 1992.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–21290 Filed 9–3–92; 8:45 am]

BILLING CODE 3810-01-F

Department of the Navy

32 CFR Part 701

[Secretary of the Navy Instruction 5211.5]

Availability of Department of the Navy Records and Publication of Navy Documents Affecting the Public

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: On July 28, 1992 (57 FR 33285), the Department of the Navy published a proposed rule exempting Navy system of records N05520–5, Navy Joint Adjudication and Clearance Systems (NJACS) from certain provisions of the Privacy Act of 1974 (5 U.S.C. 552a), as amended. No comments were received during the thirty day public comment period, therefore, the rule is being adopted.

EFFECTIVE DATE: September 4, 1992.

FOR FURTHER INFORMATION CONTACT: Mrs. Gwen Aitken (703) 614–2004.

SUPPLEMENTARY INFORMATION: **Executive Order 12291.** The Director, Administration and Management has determined that this proposed rule is not a major rule. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and does not have a significant adverse effect on competition, employment, investment, productivity, or innovation.

Regulatory Flexibility Act of 1980. The Director, Administration and Management certifies that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) and does not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act. The Director, Administration and Management certifies that this rule does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520).

List of Subjects in 32 CFR Part 701

Privacy

For reasons set forth in the preamble, 32 CFR part 701 is amended as follows:

1. The authority citation for 32 CFR part 701, subpart G continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat 1896 (5 U.S.C. 552a).

2. Section 701.119 is amended by removing paragraphs (b)(4) and (b)(5), redesignating paragraphs (b)(6) and (b)(7) as (b)(4) and (b)(5); and adding a new paragraph (e)(2 as follows:

§ 701.119 Exempt Navy record systems.

* * * * *

(e) *ID–N05520–5.*

System Name. Navy Joint Adjudication and Clearance Systems (NJACS).

Exemption. Portions of this system of records may be exempt from the following subsections of 5 U.S.C. 552a(d)(1-5).

Authority. 5 U.S.C. 552a(k)(1) and (k)(5.

Reasons. Granting individuals access to information collected and maintained in this system of records could result in the disclosure of classified; material; and jeopardize the safety of informants, and their families. Further, the integrity of the system must be ensured so that complete and accurate records of all adjudications are maintained. Amendment could cause alteration of the record of adjudication.

* * * * *

Dated: August 31, 1992.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–21291 Filed 9–3–92; 8:45 am]

BILLING CODE 3810-01-F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[GGD 05-92-57]

Special Local Regulations for Marine Events; Ocean City Offshore Grand Prix; Atlantic Ocean, Ocean City, Maryland

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for the Ocean City Offshore Grand Prix to be held in the Atlantic Ocean off Ocean City on September 6, 1992. This special local regulation is necessary to control vessel traffic in the immediate vicinity of this event. The effect will be to restrict general navigation in the regulated area for the safety of spectators and participants.

EFFECTIVE DATE: The regulation is effective from 11 a.m. to 3 p.m., on September 6, 1992.

If inclement weather causes the postponement of the event, the regulation is effective from 11 a.m. to 3 p.m., on September 7, 1992.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204, or Commander, Coast Guard Group Eastern Shore (Operations) (804) 336–2891.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this regulation and good cause exists for making them effective in less than 30 days from the date of publication. Adherence to normal rulemaking procedures would not have been possible. Specifically, the sponsor's application to hold the event was not received until August 5, 1992, leaving insufficient time to publish a notice of proposed rulemaking in advance of the event.

Drafting Information: The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Fifth Coast Guard District, and LT

Kathleen A. Duignan, project attorney, Fifth Coast Guard District Legal Staff.

Background and Purpose. The United States Offshore Racing Association submitted an application to hold the Ocean City Offshore Grand Prix. The race will consist of approximately 80 powerboats, from 21 to 50 feet in length racing over a closed course off the beachfront at Ocean City, Maryland. As part of the application, the United States Offshore Racing Association requested that the Coast Guard provide control of spectator and commercial traffic within the regulated area.

Discussion of Regulation: This regulation will encompass the area surrounding the Ocean City Offshore Grand Prix. The race course is generally cigar shaped, running parallel to the shoreline, north of Ocean City Inlet. To provide for the safety of participants, spectators, and vessels transiting the area, the Coast Guard will restrict vessel movement in the regulated area and has established a temporary spectator anchorage for what is expected to be a large spectator fleet. Coast Guard patrol vessels will be positioned at Ocean City Inlet to direct vessels around the regulated area, or to the temporary spectator anchorage. The sponsor will provide approximately 29 vessels to assist the Coast Guard and local government agencies in patrolling this event. Medical vessels will display flourescent orange placards, and patrol boats will display flourscent green placards. Representatives of the sponsors and members of the Coast Guard will be present in the vicinity of the race site to inform vessel operators of this regulation and other applicable laws.

Regulatory Evaluation: This final rule is not considered major under Executive Order 12291 and is not significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this regulation is expected to be so minimal that a full regulatory evaluation is unnecessary. This regulation will only be in effect for four hours, and the impacts on routine navigation are expected to be minimal as Ocean City Inlet is to the south of the regulated area. Vessels wishing to transit north from Ocean City will be directed around the regulated area.

Small Entities: Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. "Small Entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Since the impact of this rule on non-participating small entities will be minimal, the Coast Guard certifies under 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment: This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment: This final rule has been thoroughly reviewed by the Coast Guard and determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and been placed in the rulemaking docket.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations: In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35–T0557 is added to read as follows:

§ 100.35–T0557 Atlantic Ocean, Ocean City, Maryland.

(a) *Regulated area:* The waters of the Atlantic Ocean commencing at a point on the shoreline at latitude 38°25'42" North, longitude 75°05'06" West; thence east southeast to latitude 38°25'30" North, longitude 75°02'12" West; thence south southwest parallel to the Ocean City shoreline to latitude 38°19'12" North, longitude 75°03'48" West; thence west northwest to the shoreline at latitude 38°19'30" North, longitude 75°05'00" West.

(b) *Definitions:* (1) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is any commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Eastern Shore to act on his behalf.

(2) *Spectator Anchorage Area.* The waters off the Maryland seacoast bounded by a line connecting the following points:

Latitude	*Longitude*
38°20'12" N.	75°03'54" W.
38°22'24" N.	75°03'12" W.
38°22'18" N.	75°02'54" W.
38°20'06" N.	75°03'36" W.

(c) *Special Local Regulations:* (1) Except for participants in the Ocean City Offshore Grand Prix and vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area without the permission of the Patrol Commander.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop the vessel immediately when directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard ensign.

(3) Spectator vessels may anchor in the spectator anchorage area specified in paragraph (a)(3) of this regulation.

(4) Vessel operators are advised to remain clear of the advisory area during the effective periods of this regulation.

(c) *Effective dates:* The regulation becomes effective at 11 a.m. until 3 p.m., on September 6, 1992. If inclement weather causes the postponement of the event, the regulation becomes effective at 11 a.m. until 3 p.m., on September 7, 1992.

Dated: August 27, 1992.

W.T. LeLand,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 92–21402 Filed 9–3–92; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD 05–92–60]

Special Local Regulations for Marine Events; Virginia Beach Offshore Grand Prix; Atlantic Ocean, Rudee Inlet, Lake Rudee, Virginia Beach, Virginia

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special Local Regulations are being adopted for the Virginia Beach Offshore Grand Prix to be held in the Atlantic Ocean off Virginia Beach on September 6, 1992. This special local regulation is necessary to control vessel traffic in the immediate vicinity of this event. The effect will be to restrict general navigation in the regulated area for the safety of spectators and participants.

EFFECTIVE DATE: The regulations are effective from 7 a.m. to 7 p.m., on

September 5, 1992. If inclement weather on September 5 postpones the event, the regulation will then be in effect from 7 a.m. to 7 p.m., on September 6, 1992. If the event is postponed on September 6, the regulation will be in effect from 7 a.m. to 7 p.m., on September 7, 1992.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204, or Commander, Coast Guard Group Hampton Roads (Operations) (804) 483-8568.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Adherence to normal rulemaking procedures would not have been possible. Specifically, the sponsor's application to hold the event was not received until August 14, 1992, leaving insufficient time to publish a notice of proposed rulemaking in advance of the event.

Drafting Information. The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Fifth Coast Guard District, and Lieutenant Monica L. Lombardi, project attorney, Fifth Coast Guard District Legal Staff.

Background and Purpose: The Eastern Virginia Offshore Racing Association (EVORA) submitted an application to hold the Virginia Beach Offshore Grand Prix. The race will consist of approximately 100 powerboats, from 22 to 50 feet in length racing over a closed course off the beachfront at Virginia Beach, Virginia. As part of the application, the EVORA requested that the Coast Guard provide control of spectator and commercial traffic along the beachfront and Rudee Inlet areas.

Discussion of Regulations: This regulation will regulate the area surrounding the Virginia Beach Offshore Grand Prix. The Rudee Inlet/Lake Rudee area will include the wet pits and dockage for patrol boats at the Riverhouse boat docks, and the Owl Creek boat ramp which will serve as the put in area for the race participants.

The Cape Henry Precautionary Area is located to the north of the race course. While the race course does not encroach on this area, the regulated area includes the southwest corner of the Cape Henry Precautionary Area. To provide for the safety of participants, spectators, and vessels transiting the area, the Coast Guard will restrict vessel movement in the regulated area and has established a temporary spectator anchorage for what is expected to be a large spectator fleet. Coast Guard patrol vessels will be positioned at Rudee Inlet to direct vessels to the temporary spectator anchorage. The sponsor will provide approximately 35 vessels, including 15 medical boats with paramedics on board to assist the Coast Guard and local government agencies in patrolling this event. All vessels will display Official Regatta Patrol signs and identity numbers.

Representatives of the sponsors and members of the Coast Guard will be present in the vicinity of the race site to inform vessel operators of this regulation and other applicable laws.

Regulatory Evaluation: This final rule is not considered major under Executive Order 12291 and not significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this regulation is expected to be so minimal that a full regulatory evaluation is unnecessary. This regulation will only be in effect for twelve hours, and the impacts on routine navigation are expected to be minimal as Rudee Inlet will only close for short periods of time as the racers transit to and from the actual race area.

Small Entities: Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. "Small Entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Most small entities located in the regulated area will be involved with providing services to the EVORA, the race participants, and race spectators. This should have a favorable impact, and only a few small businesses will not be involved. Since the impact of this rule on non-participating small entities will be minimal, the Coast Guard certifies under 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment: This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment: This final rule has been thoroughly reviewed by the Coast Guard and determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and been placed in the rulemaking docket.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

Regulations: In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary Section 100.35–T0560 is added to read as follows:

§ 100.35–T0560 Atlantic Ocean, Rudee Inlet, Lake Rudee, Virginia Beach, Virginia.

(a) *Definitions:* (1) *Regulated area.* The waters of the Atlantic Ocean commencing at a point on the shoreline at latitude 36°54'41.0" North, longitude 75°59'32.0" West; thence east southeast to latitude 36°54'12" North, longitude 75°55'52" West, thence south southeast to latitude 36°50'00" North, longitude 75°55'12" West; thence west southwest to the shoreline at latitude 36°49'46" North, longitude 75°58'02" West, and the waters of Rudee Inlet and Lake Rudee including the Owl Creek Boat Ramp.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Hampton Roads.

(3) *Spectator Anchorage Area.* The waters off the Virginia seacoast bounded by a line connecting the following points:

Latitude	Longitude
36°51'38.0" N	75°56'24.0" W
36°51'40.0" N	75°55'47.0" W
36°50'40.0" N	75°55'38.0" W
36°50'37.0" N	75°56'14.0" W

(b) *Special Local Regulations.* (1) Except for participants in the Virginia Beach Offshore Grand Prix and vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area without the permission of the Patrol Commander.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop the vessel immediately when directed to do so by any commissioned,

warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard ensign.

(3) Spectator vessels may anchor in the spectator anchorage area specified in paragraph (a)(3) of these regulations.

(4) The Coast Guard Patrol Commander may allow vessels to transit the regulated area whenever a race heat is not being run.

(5) Vessel operators are advised to remain clear of the advisory area during the effective periods of this regulation.

(c) *Effective periods:* This regulation is effective from 7 a.m. to 7 p.m., on September 5, 1992. If inclement weather on September 5 postpones the event, the regulation will then be in effect from 7 a.m. to 7 p.m., on September 6, 1992. If the event is postponed on September 6, the regulation will be in effect from 7 a.m. to 7 p.m., on September 7, 1992.

Dated: August 27, 1992.

W.T. Leland,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 92-21403 Filed 9-3-92; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

COTP Wilmington, NC Regulation 92-006

Safety Zone Regulations; Trent River, New Bern, NC

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone in the Trent River in the vicinity of the Atlantic and North Carolina Railroad bridge in New Bern, North Carolina. The safety zone is needed to protect people, vessels, and property from safety hazards associated with the construction of the single swing span railroad bridge over the Trent River. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATE: This regulation is effective from 12:01 a.m. on September 26, 1992. It terminates on September 27, 1992 at 12:00 noon, unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LTJG J. C. BABB, USCG, c/o U.S. Coast Guard Captain of the Port, Suite 500, 272 N. Front Street, Wilmington, North Carolina 28401-3907, Phone: (919) 343-4881.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is necessary to prevent hazard to the vessels involved.

Drafting Information: The drafters of this regulation are LTJG J. C. BABB, project officer for the Captain of the Port, Wilmington, North Carolina, and LT J. B. GATELY, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulation: The circumstances requiring this regulation will begin on September 26, 1992 at 12:01 a.m. The Commandant (G-N) has requested that the Captain of the Port provide a safety zone for this phase of the construction project authorized by the Truman-Hobbs Act to provide a larger waterway opening to meet the reasonable needs of navigation. This safety zone is needed to protect the public from the potential hazards associated with bridge construction. It will consist of an area of water 300 yards wide and 600 yards long.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation: In consideration of the foregoing, subpart F of part 165 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. A new temporary section 165.T0506 is added, to read as follows:

§ 165.T0506 Safety Zone: Trent River, Vicinity of Atlantic and North Carolina Railroad bridge, New Bern, North Carolina.

(a) *Location.* The following area is a safety zone:

(1) The waters of the Trent River within the following boundaries, with a line beginning at:

35° 06′ 10″ North, 77° 12′ 30″ West, then south to 35° 05′ 58″ North, 77° 12′ 25″ West, then west to 35° 05′ 12″ North, 77° 12′ 30″ West, then north to 35° 06′ 10″ North, 77° 12′ 35″ West, then to the beginning.

(2) The safety zone boundary can be described as follows: The zone will be established in the vicinity of the Atlantic and North Carolina railroad bridge, New Bern, North Carolina, and will encompass the water areas of the Trent River starting from the northern bank of the Trent River 150 yards east of the Atlantic and North Carolina railroad bridge, then south across the Trent River to the southern bank 150 yards east of the railroad bridge, then west 300 yards along the southern bank of the Trent River to a point 150 yards west of the railroad bridge, then north to a point on the northern bank of the Trent River 150 yards west of the railroad bridge, then east 300 yards along the northern bank of the Trent River to the point of origin.

(b) *Effective Date.* This regulation becomes effective on September 26, 1992 at 12:01 a.m. It terminates on September 27, 1992 at 12:00 noon, unless sooner terminated by the Captain of the Port.

(c) *Regulations.*

(1) In accordance with the general regulation in § 165.23, entry into this zone is prohibited unless authorized by the Captain of the Port.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard Ensign.

Dated: August 27, 1992.

C.F. Eisenbeis,

Captain, U.S. Coast Guard, Captain of the Port, Wilmington, NC.

[FR Doc. 92-21401 Filed 9-3-92; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 334

Danger Zone, Chesapeake Bay, Lynnhaven Roads, VA

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule with comments invited.

SUMMARY: The Corps of Engineers is amending the regulations in 33 CFR 334.370 to slightly enlarge a danger zone located in the waters of the Chesapeake Bay, offshore of the U.S. Naval Amphibious Base, Little Creek, Virginia. The intent of the change is to allow additional use of the underwater demolitions area for Very Shallow

Water Training and Mine Countermeasures Training. The purpose of the danger zone is to protect persons, vessels and property from hazards associated with the Navy's use of the training area.

ADDRESSES: HQUSACE ATTN: CECW-OR, Washington, DC 20314-1000.

DATES: Effective on September 4, 1992. Written comments will be accepted until October 5, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Hume at (804) 441-7657 or Mr. Ralph Eppard at (202) 272-1783.

SUPPLEMENTARY INFORMATION: The Commanding Officer, U.S. Naval Amphibious Base, Little Creek, Norfolk, Virginia, has requested the Corps amend the danger zone regulations in 33 CFR 334.370. The purpose of this change is to increase the size of the demolition area (training area), to facilitate Very Shallow Water and Mine Countermeasures Training. The training area will be established by sinking 20 objects (mine shapes), to the bay bottom at various coordinates within the danger zone. The mine shapes are constructed of steel, filled with concrete, and varying in size with the largest being eight feet long and 18 inches in diameter. The actual training consists of Navy divers searching for the mine shapes. There will be two or three diver safety boats stationed in the area during training to ensure that both diver and public navigation safety are maintained. The danger zone is within an existing Naval Restricted Area promulgated in 33 CFR 334.310. Those regulations prohibit fish pound stakes or structures within the area and do not allow any vessel to approach within 300 yards of a naval vessel or within 600 yards of any vessel displaying the red "baker" burgee. The existing restricted area will remain unchanged.

The Corps of Engineers has determined that notice of proposed rulemaking and public procedures thereto are unnecessary and impractical in this instance since the expanded danger zone is within the boundaries of an existing naval restricted area. In addition, this proposed change to the existing danger zone was the subject of a public notice published by the Norfolk District Engineer. The public notice issued on August 14, 1991, with the comment period ending on September 13, 1991, was sent to all known interested parties. No comments were received in response to the public notice. Although this danger zone regulation is effective 30 days after publication in the **Federal Register**, the Corps of Engineer will consider any comments and will make any changes to the regulations it finds to be appropriate after the 30 days comment period.

Economic Assessment and Certification

This proposed rule is issued with respect to a military function of the defense Department and the provisions of E.O. 12291 do not apply.

I hereby certify that this proposed regulation will have no significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 334

Navigation (water), transportation, danger zones.

In consideration of the above, the Corps of Engineers is amending part 334 of title 33 to read as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 226; (33 U.S.C. 1) and 40 Stat. 892; (33 U.S.C. 3).

2. Part 334 is amended by revising § 334.370(a)(1) to read as follows:

§ 334.370 Chesapeake Bay, Lynnhaven Roads; danger zones, U.S. Naval Amphibious Base.

(a) *Underwater demolitions area (prohibited)—(1) The area.* A portion of the restricted area for Navy amphibious training operations described in Sec. 334.310 along the south shore of the Chesapeake Bay, bounded as follows: Beginning at a point at the mean high water line, latitude 36°55'26.5", longitude 76°08'43"; thence 700 yards to latitude 36°55'48", longitude 76°98'38"; thence 500 yards to latitude 36°55'46", longitude 76°06'57"; thence 500 yards to latitude 36°55'37", longitude 76°09'02"; thence 100 yards to latitude 36°55'36", longitude 76°06'57"; thence 200 yards to the mean high water line at latitude 36°55'39.5", longitude 76°08'59"; thence 400 yards along the mean high water line to the point of beginning. The area will be marked by range poles set on shore of the prolongation of the lines forming the eastern and western boundaries.

* * * * *

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92-21244 Filed 9-3-92; 8:45 am]

BILLING CODE 3710-92-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900-AF63

Veterans Education; Miscellaneous Amendments

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: In VA's (Department of Veterans Affairs') response to the final report of the Commission to Assess Veterans' Education Policy VA stated it would make various regulatory changes in response to the Commission's recommendations. These regulatory changes include amendments to adjust the beginning dates of awards of educational assistance; amendments to change VA's definition of a change of program of education; and amendments to liberalize the two year operation requirement which courses must meet before they can be approved for VA training. These final regulations implement the commitments VA made in its response with respect to Dependents' Educational Assistance and the Montgomery GI Bill—Active Duty. Any amendments needed to implement these commitments for other programs which VA administers will be published at a later date.

EFFECTIVE DATE: September 4, 1992.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2092.

SUPPLEMENTARY INFORMATION: On pages 15047 and 15048 of the **Federal Register** of April 24, 1992, there was published a Notice of Intent to amend 38 CFR part 21 in order to implement various commitments VA made to the Commission to Assess Veterans' Education Policy. Interested people were given 32 days to submit comments, suggestions and objections. VA received no comments, suggestions or objections. Accordingly, VA is making the proposed regulations final.

The Department of Veterans Affairs has determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or

prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs has certified that these amended regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the amended regulations directly affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance numbers for the programs affected by these amended regulations are 64.117 and 64.124.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: August 6, 1992.

Edward J. Derwinski,

Secretary of Veterans Affairs.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart D—Administration of Educational Benefits; 38 U.S.C. Chapters 34, 35, and 36

For the reasons set out in the preamble, 38 CFR part 21, subparts D and K are amended as set forth below.

1. The authority citation for part 21, subpart D continues to read as follows:

Authority: 72 Stat. 1114; 38 U.S.C. 501(a).

2. In § 21.4131 paragraphs (b) and (c)(1) are revised and an authority citation is added to paragraph (c) to read as follows.

§ 21.4131 Commencing dates.

* * * * *

(b) *Certification by school—the course or subject leads to a standard college degree.* (1) When the student enrolls in a course offered by independent study, the commencing date of the award or increased award of educational assistance will be the date the student began pursuit of the course according to the regularly established practices of the educational institution.

(2) Except as provided in paragraphs (b)(3), (b)(4) and (b)(5) of this section when a student enrolls in a resident course or subject, the commencing date of the award or increased award of educational assistance will be the first scheduled date of classes for the term, quarter or semester in which the student is enrolled.

(3) When the student enrolls in a resident course or subject whose first scheduled class begins after the calendar week when, according to the school's academic calendar, classes are scheduled to commence for the term, quarter, or semester, the commencing date of the award or increased award of educational assistance allowance will be the actual date of the first class scheduled for that particular course or subject.

(4) When a student enrolls in a resident course or subject, the commencing date of the award will be the date the student reports to the school provided that—

(i) The published standards of the school require the student to register before reporting, and

(ii) The published standards of the school require the student to report no more than 14 days before the first scheduled date of classes for the term, quarter or semester for which the student has registered, and no later than the first scheduled date of classes for the term, quarter or semester for which the student has registered.

(5) When the student enrolls in a resident course or subject and the first day of classes is more than 14 days after the date of registration, the commencing date of the award or the increased award of educational assistance will be the first day of classes.

(Authority: 38 U.S.C. 3481(a), 3680(a); Pub. L. 98–525)

(c) *Certification by school or establishment—course does not lead to a standard college degree.* (1) Residence school: See paragraph (b) of this section.

* * * * *

(Authority: 38 U.S.C. 3481, 3687)

* * * * *

3. In § 21.4234 paragraph (a) is revised to read as follows.

§ 21.4234 Change of program.

(a) *Definition.* (1) Except as provided in paragraph (a)(2) of this section, a change of program consists of a change in the educational professional or vocational objective for which the veteran or eligible person entered training.

(2) VA does not consider any of the following to be changes of program.

(i) A change in the type of courses needed to attain a vocational objective.

(ii) A change in the veteran's or eligible person's educational, professional or vocational objective following the successful completion of the immediately preceding program of education, or

(iii) A return to the veteran's or eligible person's prior educational, professional or vocational objective following a change in program.

(Authority: 38 U.S.C. 3691)

4. In § 21.4251 paragraph (g)(1) is revised and an authority citation is added to the end of paragraph (g)(1) to read as follows.

§ 21.4251 Period of operation of course.

* * * * *

(g) *Waivers.* * * *

(1) The Director of the VA field station of jurisdiction may exercise the waiver authority found in paragraph (a)(6) of this section to exempt from the 2-year operation requirement certain courses given pursuant to a contract with the Department of Defense or the Department of Transportation on or immediately adjacent to a military base, Coast Guard station, National Guard facility, or facility of the Selected Reserve located within a State. He or she may grant such a waiver only when he or she finds that:

(i) The school on an application sent through the State approving agency certifies that the course is available only to—

(A) Active duty military personnel,

(B) Coast Guard personnel,

(C) Members of the Selected Reserve,

(D) Members of the National Guard,

(E) Dependents of active duty military personnel,

(F) Dependents of active duty Coast Guard personnel,

(G) Civilian employees of the base or station,

(H) Persons who began the course while on active duty and who were discharged while remaining continuously enrolled in it, or

(I) Any combinations of these classes of people.

(ii) The State approving agency of the State in which the course is offered certifies that the course meets all other approval requirements.

(Authority: 38 U.S.C. 3689(b))

* * * * *

Subpart K—All Volunteer Force Educational Assistance Program (New GI Bill)

5. The authority citation for part 21, subpart K continues to read as follows:

Authority: 38 U.S.C. chapter 30, Pub. L. 98-525; 38 U.S.C. 501(c).

6. In § 21.7131 paragraph (b) and its authority citation and paragraph (c)(1) are revised to read as follows.

§ 21.7131 Commencing dates.

(b) *Certification by school—the course or subject leads to a standard college degree.* (1) When the student enrolls in a course offered by independent study, the commencing date of the award or increased award of educational assistance will be the date the student began pursuit of the course according to the regularly established practices of the educational institution.

(2) Except as provided in paragraphs (b)(3), (b)(4) and (b)(5) of this section when a student enrolls in a resident course or subject, the commencing date of the award or increased award of educational assistance will be the first scheduled date of classes for the term, quarter or semester in which the student is enrolled.

(3) When the student enrolls in a resident course or subject whose first scheduled class begins after the calendar week when, according to the school's academic calendar, classes are scheduled to commence for the term, quarter, or semester, the commencing date of the award or increased award of educational assistance allowance will be the actual date of the first class scheduled for that particular course or subject.

(4) When a student enrolls in a resident course or subject, the commencing date of the award will be the date of reporting provided that—

(i) The published standards of the school require the student to register before reporting, and

(ii) The published standards of the school require the student to report no more than 14 days before the first scheduled date of classes for the term, quarter or semester for which the student has registered.

(5) When the student enrolls in a resident course or subject and the first day of classes is more than 14 days after the date of registration, the commencing date of the award or the increased award of educational assistance will be the first day of classes.

(Authority: 38 U.S.C. 3014, 3023; Pub. L. 98-525)

(c) *Certification by educational institution or training establishment—course does not lead to a standard college degree.* (1) When a veteran or servicemember enrolls in a course which does not lead to a standard college degree and which is offered in residence, the commencing date of the award of educational assistance will be as stated in paragraph (b) of this section.

* * * * *

[FR Doc. 92-21211 Filed 9-3-92; 8:45 am]

BILLING CODE 8320-01-M

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38 CFR Part 36

RIN 2900-AF67

Loan Guaranty: Lender Participation Fees—Lender Appraisal Processing Program

AGENCY: Department of Veterans Affairs.

ACTION: Final regulatory amendment.

EFFECTIVE DATE: September 4, 1992.

SUMMARY: The Department of Veterans Affairs (VA) is amending its loan guaranty regulations to require lenders to pay a fee to participate in VA's Lender Appraisal Processing Program. This fee will partially defray expenses incurred in administering the Lenders Appraisal Processing Program.

FOR FURTHER INFORMATION CONTACT: Ms. Judith Caden, Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, Washington, DC 20420, (202) 233-3042.

SUPPLEMENTARY INFORMATION: On April 15, 1992, VA published in the **Federal Register** (57 FR 13068) a proposal to amend 38 CFR 36.4225 and 36.4348 to require the payment by lenders participating in the Lender Appraisal Processing Program (LAPP) of a $100 fee for the approval of each staff appraisal reviewer. Under LAPP, lenders who have automatic processing authority under VA's Automatic Lending Program may also have a staff appraisal reviewer determine the reasonable value of properties to be purchased with VA-guaranteed loans. Please refer to the April 15, 1992, **Federal Register** for a complete discussion of the proposed amendment.

Public comments were requested on the proposal, and VA received one written comment. The commenter, a mortgage company, agreed that VA should be allowed to charge a processing fee to review the qualifications of each lender staff appraisal reviewer. The commenter also stated that the lender should be allowed to charge the veteran a fee to offset the additional cost to the lender of obtaining sufficient staff to administer the program.

Our experience has been that lenders wishing to participate in LAPP are nominating existing employees as staff appraisal reviewers; they are not expanding their staff by hiring additional employees to serve in this capacity. Also, the lender review of appraisals under LAPP is similar to the review of appraisals currently performed by lenders when processing conventional loans as well as loans insured by the Department of Housing and Urban Development under its Direct Endorsement Program. The proposal is for a one-time, $100 fee for each staff appraisal reviewer. We do not believe the LAPP program entails any significant increase in costs for lenders. Therefore, it is not necessary to authorize an additional charge against the veteran-borrower on account of this fee. Accordingly, the regulatory amendment is adopted as originally proposed.

The Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. The fee VA will charge lenders is not a large amount and should have a minimal impact on small entities.

The Secretary has also determined that the amendments are not a "major rule" within the meaning of Executive Order 12291, Federal Regulation. They will not have an annual effect on the economy of $100 million or more, and will not cause a major increase in costs or prices for consumers or individual industries, nor will they have other significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance Program numbers are 64.114 and 64.119.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing Loan programs—housing and community development, Manufactured homes, Veterans.

This amendment is made final under the authority granted the Secretary by sections 501(a), 3703(c)(1), and 3712(g) of title 38, United States Code.

Approved: August 10, 1992.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set out in the preamble 38 CFR part 36, is amended as set forth below.

PART 36—LOAN GUARANTY

1. The authority citation for part 36 §§ 36.4201 through 36.4287 is revised to read as follows:

Authority: Sections 36.4201 through 36.4287 issued under 38 U.S.C. 501(a), 3712.

2. Section 36 .4225 is amended by adding paragraph (f) to read as follows:

§ 36.4225 Authority to close manufactured home loans on the automatic basis.

* * * * *

(f) Lenders participating in VA's Lender Appraisal Processing Program shall pay a fee of $100 for approval of each staff appraisal reviewer.

3. The authority citation for part 36, §§ 36.4300 through 36.4375 is revised to read as follows:

Authority: Sections 36.4300 through 36.4375 issued under 38 U.S.C. 501(a).

4. Section 36.4348 is amended by adding paragraph (f) to read as follows:

§ 36.4348 Authority to close loans on the automatic basis.

* * * * *

(f) Lenders participating in VA's Lender Appraisal Processing Program shall pay a fee of $100 for approval of each staff appraisal reviewer.

[FR Doc. 92-21212 Filed 9-3-92; 8:45 am]

BILLING CODE 8320-01-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 560 and 572

[Docket No. 92-32]

Amendments to Agreement Recordkeeping Regulations

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission ("Commission") amends its regulations governing the filing of agreements under, respectively, the Shipping Act, 1916 ("1916 Act") and the Shipping Act of 1984 ("1984 Act") to ease the regulatory burden of recordkeeping and filing of required reports with the Commission.

EFFECTIVE DATE: September 4, 1992.

FOR FURTHER INFORMATION CONTACT: Austin L. Schmitt, Director, Bureau of Trade Monitoring and Analysis, 800 North Capitol Street, NW., Washington DC 20573, (202) 523-5787.

SUPPLEMENTARY INFORMATION: The Commission initiated this proceeding by publishing a notice in the **Federal Register**, 57 FR 24571 (June 10, 1992), that it was proposing to revise several of the regulations under 46 CFR part 560 and 572 in such a manner as to decrease the regulatory costs associated with each regulation with no apparent decrease in benefits. The revisions to part 560, which pertains to agreement filings under the 1916 Act, would, *inter alia*, eliminate the requirement of an annual report of shippers' requests and complaints, allowing such matters to be reported to the Commission as part of agreement minutes.

Other proposed changes included:

1. The revision of § 560.307(e)(1) governing marine terminal agreement exemptions to reduce to 10 from 15 the number of copies of the agreement that must accompany the original filed with the Commission;

2. The revision of § 560.401(a) to reduce to 10 from 15 the number of copies of an original agreement and original supporting information that must accompany an original agreement and original supporting information filed with the Commission;

3. The deletion of § 560.404(c) which requires that a notice of cancellation of an approved agreement be filed not less than 60 days prior to the effective date of cancellation. This regulation is in conflict with § 560.302(b), which requires only a 30-day notice. Upon the termination of § 560.404(c), the 30-day requirement of § 560.302(b) would apply for the cancellation of agreements.

The Commission also proposed to revise § 560.602 to delete from the comments and protests procedures the reference to Director, Bureau of Domestic Regulation, since agreements are no longer filed in that Bureau's successor, the Bureau of Tariffs, Certification and Licensing.

In the analogous sections of part 572—Agreements by Ocean Common Carriers and Other Persons Subject to the Shipping Act of 1984, specifically at Subpart G, Reporting and Record Retention Requirements, the Commission proposed the deletion of § 572.702, eliminating the requirement that each conference file with the Commission annual reports covering all shippers' requests and complaints and shippers' consultations, but required the filing of such information as part of agreement minutes.

Similarly, the Commission proposed the deletion of § 572.704(b), thereby eliminating the requirement that each conference file with the Commission quarterly reports indexing documents prepared for discussion at conference meetings. In its place, the Commission planned to require that a list of any reports, circulars, notices, statistics, analytical studies or other documents (not otherwise filed with the Commission) that are distributed and used by the members be included with each minutes of meetings filed.

Additionally, the Commission proposed the revision of the following regulations under 46 CFR part 572:

1. The revision of § 572.309(a)(2)(i) to exempt filed membership changes to voluntary ratemaking agreements having no other anticompetitive authority (*e.g.*, pooling authority or capacity reduction authority) from the Information Form, notice, and waiting period requirements of the 1984 Act provided that such modifications are filed for informational purposes in the proper format;

2. The revision of § 572.401(a)(1) to reduce to 10 from 15 the number of copies of an original agreement that must accompany an original agreement that must be filed with the Commission for review and disposition pursuant to section 6 of the 1984 Act;

3. The revision of § 572.402(d) to delete the requirement that each appendix to a filed agreement be accompanied by a separate signature page, since the appendix is an integral part of a filed agreement which requires a signature page; and

4. The revision of § 572.603(a) to reduce to 10 from 15 the number of copies that must be submitted of written comments regarding a filed agreement.

Comments

Eight comments were received on the proposed rule. Comments were submitted by the following conferences and discussion agreement: Asia North America Eastbound Rate Agreement, the "8900" Lines, South Europe/U.S.A. Freight Conference, U.S. Atlantic & Gulf/Australia-New Zealand Conference, United States Atlantic & Gulf Ports/Eastern Mediterranean and North African Freight Conference, U.S. Atlantic & Gulf/Western Mediterranean Rate Agreement, United States/East Africa Conference, and United States/Southern Africa Conference ("ANERA *et al.*"); the North Europe-USA Rate Agreement and the USA-North Europe Rate Agreement ("NEC"); Venezuelan American Maritime Association, Atlantic and Gulf/West Coast of South America Conference, United States/Central America Liner Association, Central America Discussion Agreement,

United States Atlantic and Gulf/Hispaniola Steamship Freight Association, Hispaniola Discussion Agreement, United States Atlantic and Gulf/Southeastern Caribbean Steamship Freight Association, Southeastern Caribbean Discussion Agreement, Jamaica Discussion Agreement, United States/Panama Freight Association, PANAM Discussion Agreement, Puerto Rico/Caribbean Discussion Agreement, Caribbean and Central American Discussion Agreement, Ecuador Discussion Agreement, and United States Atlantic and Gulf/Ecuador Freight Association ("Latin American Conferences" or "LAC"); the Inter-American Freight Conference ("IAFC"); and the Transpacific Westbound Rate Agreement ("TWRA"). Additionally, two carriers, Sea-Land Service, Inc. ("Sea-Land") and Tropical Shipping and Construction Co., Ltd. ("Tropical"), as well as one shipper, E.I. du Pont de Nemours and Company ("Dupont"), commented on the proposed rule.

Discussion

All commenters agreed with the Commission's intention to reduce unnecessary paperwork burdens and the majority of the proposed changes generally were supported; however, there was significant disagreement as to whether the proposed revisions to agreement reporting requirements would achieve the intended reduction in paperwork.

Comments regarding each section of the proposed rule are summarized and discussed below.

1. Exemption of filed membership changes to voluntary ratemaking agreements having no other anticompetitive authority (e.g., pooling authority or capacity reduction authority) from the Information Form, notice, and waiting period requirements of the 1984 Act, provided that such modifications are filed for informational purposes in the proper format (section 572.309(a)(2)(i)).

This proposal is supported by all commenters except DuPont, which expressed concern about the loss of economic information which would take place if the Information Form were not required to be filed. Under current regulations, however, such modifications are not considered to be significant modifications, as defined in § 572.403(a)(3), for which an Information Form is required to be filed. Hence, there would be no loss of information under the proposed rule.

Tropical supports the proposed exemption for two reasons: (1) Voluntary rate agreements should be held to no stricter requirements than conference agreements, which are already exempt from such requirements; and (2) there are pressing commercial reasons, especially in fast-growing or volatile trades, to permit membership changes to voluntary agreements to take effect as soon as possible.

LAC supports the proposal, but wish the language clarified to extend the exemption to voluntary ratemaking agreements which also authorize the parties to charter space to each other, jointly establish sailing schedules and port rotation, limit sailings and jointly advertise each others vessels. The Commission believes that the language of the proposed exemption, "voluntary ratemaking agreements having no other anticompetitive authority (e.g., pooling authority or capacity reduction authority)" is sufficiently broad to encompass agreements which provide the authorities mentioned by LAC. Accordingly, no modification to the proposed rule in this regard is necessary.

IAFC, which also supports the proposal, was unclear whether all discussion agreements would be subject to the same conditions that currently pertain to passenger vessel discussion agreements, i.e., passenger discussion agreements do not qualify for the exemption if they contain ratemaking, pooling, joint service, sailing or space chartering authority. The Commission did not intend to extend the passenger vessel discussion agreement qualifying conditions to voluntary ratemaking agreements, nor does the proposed rule do so. Nevertheless, to clarify that point, minor changes have been made in the final rule.

NEC supports the proposed exemption and recommends that the Commission extend it to self-policing agreements. This suggestion is beyond the scope of this proceeding and no action has been taken on it in the final rule.

2. Reduction of the required number of copies from 15 to 10 of: (a) An original agreement and original supporting information filed with the Commission pursuant to section 15 of the 1916 Act (section 560.401(a)); (b) an original marine terminal agreement filed with the Commission (section 560.307(e)(1)); (c) an original agreement filed with the Commission for review and disposition pursuant to section 6 of the 1984 Act (section 572.401(a)(1)); and (d) written comments regarding a filed agreement (section 572.603).

ANERA *et al.* and IAFC believe that adoption of this proposal would help carriers and conferences reduce their paperwork burden, inasmuch as agreements and comments can be quite lengthy, and making 15 copies of such documents can be a significant expense. No comments were filed in opposition to this section and no substantive changes have been made to it in the final rule.

3. Deletion of the provision which requires that a notice of cancellation of an approved agreement under the 1916 Act be filed not less than 60 days prior to the effective date of cancellation (§ 560.404(c)), to be replaced by the 30-day requirement of § 560.302(b).

NEC filed the only comment on this proposal, suggesting that parties to agreements filed under the 1916 Act be permitted to terminate their agreements effective upon filing with the Commission. The Commission's purpose in proposing this change was solely to eliminate the discrepancy between §§ 560.404(c), 60 days, and 560.302(b), 30 days. Additionally, a 30-day requirement does not appear to create any problems for agreement parties, and serves as an appropriate notification period for the public. Accordingly, no substantive changes to this section have been made in the final rule.

4. Deletion of the requirement that each appendix to a filed agreement be accompanied by a separate signature page (§ 572.402(d)).

Only two commenters addressed this proposal and each expressed their approval for it. Accordingly, no substantive changes to this section have been made in the final rule.

5. Deletion of § 560.702, thereby eliminating the requirement of an annual report of shippers' requests and complaints for agreements under the 1916 Act; and deletion of § 572.702, eliminating the requirement that each conference file with the Commission annual reports covering shippers' requests and complaints and shippers' consultations, but requiring that such information be filed as part of agreement minutes; also, the revision of § 572.704, eliminating the requirement that each conference file with the Commission quarterly reports indexing documents prepared for discussion at conference meetings. Instead, a list of such documents that are distributed and used by the members would be included, as appropriate, with minutes of meetings filed with the Commission.

ANERA *et al.* express approval of this proposal, commenting that such changes would reduce the administrative time and expense currently required to prepare special reports for the Commission. They believe that reporting this information in conference minutes, where the information is discussed in any event, is a more rational and efficient approach.

LAC, IAFC, and TWRA oppose the proposal. LAC believe that the existing recordkeeping and reporting requirements do not pose a significant burden. On the contrary, they maintain that the proposed regulations would

significantly increase the conferences' burden because they would be required to prepare and file reports every time they file minutes of conference meetings. Since the conferences meet frequently, as often as weekly, they claim that the proposed change would greatly increase their administrative burden. IAFC objects to the proposal stating that the computations and compilations now performed on an annual basis would have to be prepared and presented at each of its approximate weekly meetings, which would result in significant additional paperwork. TWRA believes that the changes would be disruptive and costly for filing parties, inasmuch as matters to be reported or documents to be indexed cannot be tied readily to a particular meeting because they sometimes are discussed at several meetings. TWRA is particularly concerned that the proposals would delay circulation of minutes which, besides being used for reporting, also serve internal commercial purposes under considerable time pressure.

NEC urges the Commission to afford conferences the option to submit the required information either as set forth in the proposed rules or in the manner prescribed under its currently effective rules. NEC asserts that this would provide conferences an opportunity to experiment with the consolidated reporting procedures proposed and determine for themselves which of the alternative reporting requirements works best, thereby assuring that the burdens of some will not be increased in order to lessen those of others. Sea-Land concurs with NEC in recommending that the Commission permit conferences to determine for themselves which of the alternative report filing requirements they prefer.

The Commission's purpose in proposing the elimination of annual reports of shippers' request and complaints and quarterly filing of indices of documents is to reduce the paperwork burden on regulated parties. Current regulations require that minutes of agreement meetings report "all matters within the scope of the agreement which are discussed or considered at any such meeting, and shall indicate the action taken" (section 572.703(b)). Because shippers' requests and complaints, as well as consultations with shippers and shippers' associations, are discussed at agreement meetings, and documents of potential interest to the Commission are circulated at these meetings, such information must, under current regulations, be reported in minutes filed with the Commission. Consequently, inasmuch as such information is already reported in agreement minutes, the Commission has decided to eliminate the further requirement of periodic reports as currently required in 46 CFR parts 560 and 572.

Accordingly, the Commission will clarify its original proposed rule by deleting references to statistical summaries of numbers and types of shippers' requests, complaints and consultations to be reported. If such statistical information should be required, it could be generated from the minutes, on an *ad hoc* basis, as necessary. Pursuant to this final rule, agreement minutes need only report the particulars of a shipper's request or complaint which would ordinarily be discussed at a meeting and would, therefore, be required to be reported under section 572.703(b). Likewise, if any documents such as those described in section 572.704 are used by agreement members in the course of agreement business, they need only be listed in the minutes. NEC's suggestion, therefore, that the Commission afford conferences the option to submit the required information either as set forth in the proposed rules or in the manner prescribed under its currently effective rules will have no practical application under this final rule. Whatever information is now required to be reported to the Commission in duly certified minutes pursuant to § 572.703(b) with regard to shippers' requests and complaints, consultations and relevant documents, will be deemed sufficient to satisfy this reporting requirement, regardless of how frequently or infrequently agreement parties decide to meet.

Although the Commission, as an independent regulatory agency, is not subject to Executive Order 12291, dated February 17, 1981, it has nonetheless reviewed the rule in terms of that Order and has determined that this rule is not a "major rule" as defined in Executive Order 12291 because it will not result in:

(1) Annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Inasmuch as this final rule will affect only common carriers by water, conferences of such carriers, ports, and marine terminal operators, and will result in a lessening of current regulatory burdens, the Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that the rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small government jurisdictions.

The collection of information requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980, as amended, and have been assigned OMB control number 3072-0040 for 46 CFR part 560 and 3072-0045 for 46 CFR part 572. Public reporting burden for this collection of information is estimated to result in an average burden reduction of 5 manhours per response for 46 CFR part 560 and an average burden reduction of 2 manhours per response for 46 CFR part 572. This includes savings in the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information to Norman W. Littlejohn, Director, Bureau of Administration, Federal Maritime Commission, Washington, DC 20573; and to the Office of Information and Regulatory Affairs, Attention: Desk Officer for the Federal Maritime Commission, Office of Management and Budget, Washington, DC 20503.

List of Subjects

46 CFR Part 560

Administrative practice and procedure; Antitrust; Freight; Maritime carriers; Penalties; Rates and fares; Reporting and recórdkeeping requirements.

46 CFR Part 572

Administrative practice and procedure; Antitrust; Maritime carriers; Rates and fares; Reporting and recordkeeping requirements.

Therefore, parts 560 and 572 of title 46, Code of Federal Regulations, are amended as follows:

PART 560—[AMENDED]

1. The authority citation for part 560 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 814, 817(a), 820, 821, 833a and 841a.

2. Section 560.307(e)(1) is revised to read as follows:

§ 560.307 Marine terminal agreements—exemption

* * * * *

(e) * * *

(1) A true copy and 10 additional copies of the filed agreement;

* * * * *

3. The second sentence in § 560.401 (a) is revised to read as follows:

§ 560.401 Filing of agreements.

(a) * * *. Such requests shall consist of a true copy and 10 additional copies of the agreement and all supporting information. * * *

§ 560.404 [Amended]

4. Section 560.404(c) is removed.

5. The first sentence in § 560.602(e) is revised to read as follows:

§ 560.602 Comments and protests.

* * * * *

(e) Except as provided in this section and § 560.403, or except, in the case of an unprotested agreement, as the Director, Bureau of Trade Monitoring and Analysis may in his/her discretion initiate, or unless specifically requested in writing by the Commission, with copies to the proponents and persons which have filed protests or comments, no other written or oral communication concerning a pending agreement shall be permitted. * * *

6. Section 560.702 is amended by revising the heading for the section, removing paragraph (a), and redesignating paragraph (b) as paragraph (d).

7. Section 560.703 is amended by redesignating paragraphs (a), (b) and (c) as paragraphs (a), (b), and (c) of § 560.702 respectively.

8. Section 560.702 is further amended by revising the first sentence of newly redesignated paragraph (a) to read as follows:

§ 560.702 Filing of minutes—including shippers' requests and complaints.

(a) The parties to each approved conference agreement, agreement between or among conferences, or agreements subject to this part whereby the parties are authorized to fix rates (except leases, licenses, assignments or other agreements of similar character for the use of marine terminal facilities) shall, through a designated official, file with the Commission a report of all meetings describing all matters within the scope of the agreement which are discussed or taken up at any such meeting, and shall specify the action taken with respect to each such matter, including any shippers' requests and complaints, which are discussed at any such meeting. * * *

* * * * *

§ 560.703 [Removed]

9. Section 560.703 is removed and reserved.

PART 572—[AMENDED]

1. The authority citation for part 572 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1701–1707, 1709–1710, 1712, and 1714–1717.

2. Section 572.309(a)(2)(i) is revised to read as follows:

§ 572.309 Miscellaneous modifications to agreements—exemptions.

(a) * * *

(2) * * *

(i) *Article 3*—Parties to the agreement (limited to conference agreements, voluntary ratemaking agreements having no other anticompetitive authority (e.g., pooling authority or capacity reduction authority), and discussion agreements among passenger vessel operating common carriers which are open to all ocean common carriers operating passenger vessels of a class defined in the agreements and which do not contain ratemaking, pooling, joint service, sailing or space chartering authority).

* * * * *

3. Section 572.401(a)(1) is revised to read as follows:

§ 572.401 Filing of agreements.

(a) * * *

(1) A true copy and 10 additional copies of the filed agreement;

* * * * *

4. Section 572.402(d) is revised to read as follows:

§ 572.402 Form of agreements.

* * * * *

(d) Each agreement and/or modification filed will be accompanied by a separate signature page, appended as the last page of the item, which is signed in the original by each of the parties personally or by an authorized representative, indicating immediately below each signature, the typewritten full name of the signing party and his or her position, including organizational affiliation.

* * * * *

5. The second sentence is section 572.603(a) is revised to read as follows:

§ 572.603 Comment.

(a) * * * Such comments will be submitted in an original and ten (10) copies and are not subject to any limitations except the time limits provided in the Federal Register notice.

* * * * *

§ 572.702 [Removed]

6. Section 572.702 is removed.

7. Section 572.703 is redesignated as § 572.702 and is amended by revising the section heading and paragraph (b) to read as follows:

§ 572.702 Filing of minutes—including shippers' requests and complaints, consultations, and other documents.

* * * * *

(b) *Content of minutes.* Except as provided in paragraph (c) of this section, conferences, interconference agreements, agreements between a conference and one or more ocean common carriers, pooling agreements, equal access agreements, discussion agreements, maritime terminal conferences, and marine terminal rate fixing agreements shall, through a designated official, file with the Commission a report of each meeting defined in paragraph (a) of this section describing all matters within the scope of the agreement which are discussed or considered at any such meeting, including shippers' requests and complaints, as well as consultations with shippers and shippers' associations, and shall indicate the action taken. These reports need not disclose the identity of parties that participated in discussions or the votes taken.

* * * * *

8. Section 572.704 is redesignated as § 572.703 and revised to read as follows:

§ 572.703 Other documents.

Each agreement required to file minutes pursuant to § 572.702 shall list in said minutes all reports, circulars, notices, statistics, analytical studies or other documents, not otherwise filed with the Commission pursuant to this subpart, which are distributed to the member lines and are used to reach a final decision on any of the following matters:

(a) Revenue projections and plans. (This would exclude individual rate adjustments but would include general rate adjustments, surcharges and other items affecting shipper costs.)

(b) Studies regarding proposed changes to the conference agreement or its membership.

(c) Non-conference competition.

(d) Changes in the nature and type of transportation service generally and specifically at individual ports or points.

(e) Trade tonnaging requirements, vessel utilization and vessel replacement plans.

(f) Conference participation in trade (market share).

(g) The exercise of the right of independent action.

(h) Development of transportation technology and intermodal services.

(i) Malpractices.

(j) Use of service contracts, time volume rate schemes and loyalty contracts.

(k) Conference relationship with shippers and shipper groups.

(l) Governmental and other foreign requirements affecting the conference.

§ 572.705 [Redesignated as § 572.704]

9. Section 572.705 is redesignated as § 572.704.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92-20657 Filed 9-3-92; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1-250]

Organization and Delegation of Powers and Duties Delegation to the Commandant, United States Coast Guard

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation has delegated to the Commandant, United States Coast Guard, the authority to establish and enforce regulations to prevent the introduction and spread of aquatic nuisance species into the Great Lakes through the ballast water of vessels. The Code of Federal Regulations does not reflect this delegation; therefore, a change is necessary.

EFFECTIVE DATE: September 4, 1992.

FOR FURTHER INFORMATION CONTACT: LT Jonathan C. Burton, Office of Marine Environmental Protection (G-MEP), (202) 267-0970, U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593; or Mr. Steve Farbman, Office of the Assistant General Counsel for Regulation and Enforcement, C-50, (202) 366-9307, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: The Secretary of Transportation has delegated to the Commandant, United States Coast Guard, authority contained in 16 U.S.C. 4711 to establish and enforce regulations to prevent the introduction and spread of aquatic nuisance species into the Great Lakes through the ballast water of vessels. The Code of Federal Regulations does not reflect this delegation; therefore, a change is necessary.

Since this amendment relates to departmental management, organization, procedure, and practice, notice and comment on it are unnecessary, and it may be made effective in fewer than 30 days after publication in the **Federal Register**. Therefore, this final rule is effective upon publication in the **Federal Register**.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, part 1 of title 49, Code of Federal Regulations, is amended to read as follows:

PART 1—[AMENDED]

1. The authority citation for part 1 continues to read as follows:

Authority: 49 U.S.C. 322.

2. Section 1.46 is amended by adding a new paragraph (ww) to read as follows:

§ 1.46 Delegations to Commandant of the Coast Guard.

* * * * *

(ww) Carry out the functions and exercise the authority vested in the Secretary by 16 U.S.C. 4711 to establish and enforce regulations to prevent the introduction and spread of aquatic nuisance species into the Great Lakes through the ballast water of vessels. This authority may be redelegated.

Issued on: August 25, 1992.

Andrew H. Card, Jr.,

Secretary of Transportation.

[FR Doc. 92-21326 Filed 9-3-92; 8:45 am]

BILLING CODE 4910-62-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1039 and 1313

[Ex Parte No. 387 (Sub-No. 964)]

Railroad Transportation Contracts

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission modifies its regulations to exempt rail carriers from the requirement to file contracts, other than contracts for agricultural commodities, entered into with purchasers of rail services pursuant to Section 10713 of the Interstate Commerce Act to clarify that any provisions for the automatic extension or renewal of contracts must be reflected in the contract summaries and amended contract summaries filed with the Commission; and to clarify that the filing of contract summaries and amended contract summaries toll the running of the Commission review period provided for in the statute. This rule is intended to eliminate an unnecessary filing requirement.

EFFECTIVE DATE: This rule is effective October 5, 1992.

FOR FURTHER INFORMATION CONTACT: James W. Greene, (202) 927-5597

or

Charles E. Langyher III, (202) 927-5160 [TDD for hearing impaired: (202) 927-5721].

SUPPLEMENTARY INFORMATION: In a notice of proposed rulemaking (NPR) served March 20, 1992, and published on March 23, 1992 at 57 FR 9997, we proposed to exempt rail carriers from the requirement to file copies of railroad transportation contracts and to clarify that provisions for the automatic renewal or extension of contracts must be included in the corresponding summaries filed with the Commission We pointed out that more than 70,000 contracts and summaries are received each year; that the filings have become routine and are virtually without substantive controversy; and that, even though parties allowed to file complaints against contracts can request discovery of applicable contract provisions, only one such complaint has been received since 1985.

Comments in response to the NPR were received from 8 shippers and shipper organizations,[1] 7 carriers and carrier organizations,[2] Mr. Patrick W.

[1] The Chemical Manufacturers Association (CMA); Iowa Grain and Feed Association (IGFA); The National Industrial Transportation League (NITL); UP-MP Shippers Association (UMSA); Western Coal Traffic League (WCTL); the Dow Chemical Company (Dow); Minnesota Mining and Manufacturing Company (3M); and National Railway Equipment Company (NREC).

[2] The Association of American Railroads (AAR); The American Short Line Railroad Association (ASLRA); Apalachicola Northern Railroad Company (AN); Michigan Southern Railroad Co., Inc. (MSO); and Keokuk Junction Railway, jointly with Toledo, Peoria & Western Railway Corporation, and Wisconsin & Southern Railroad Co. (joint carriers).

Simmons,[3] and the U.S. Department of Transportation (DOT). The majority of the commenters (6 carriers, 3 shippers and DOT) expressed unqualified support for the Commission's proposal. Of the remainder, 3 commenters (2 shippers and Mr. Simmons) opposed the proposal; 2 commenters (1 carrier and 1 shipper) requested that the Commission also exempt carriers from the requirement to file contract summaries; 1 commenter (a shipper) requested that the filing requirement be retained for agricultural commodity contracts; and 1 commenter (a shipper) requested that the Commission both retain the filing requirement for agricultural commodity contracts and exempt carriers from the requirement to file summaries for non-agricultural commodity contracts.

Upon review of all the comments and the Commission's tentative conclusions in the NPR, we find that the proposed rules should be finalized, except that we will continue to require the filing of contracts for agricultural commodities. The statute provides additional remedies and grounds for complaints with respect to agricultural commodity contracts, and continuation of the filing requirement will allow us to more closely monitor contracts providing for the transportation of these commodities. We further find that certain additional changes are warranted to clarify that the filing of contract summaries will toll the running of the Commission's review period provided for in the statute.

As pointed out in the NPR and by most of the commenters, the railroad transportation contract provisions of the Staggers Rail Act of 1980 have grown in popularity and importance since their initiation (over 70,000 contracts and summaries are filed each year), and the program has operated without substantive controversy in recent years. The continued filing of contract summaries will meet the Commission's regulatory requirements for other than agricultural commodity contracts and will ensure that the public continues to receive the same level of information it has received up to this point with respect to contract filings. The Commission has adequate alternative sources of information available to it regarding the utilization of railroad transportation contracts, and, when complaints are filed against contracts, or when it finds any other need therefor, the Commission can obtain copies of contracts from the rail carriers.

[3] Mr. Simmons is Illinois Legislative Director for the United Transportation Union.

Environmental and Energy Considerations

This action will not have a significant impact upon the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

This action will not have a significant impact on a substantial number of small entities.

List of Subjects

49 CFR Part 1039

Agricultural commodities, Intermodal transportation, Manufactured commodities, Railroads.

49 CFR Part 1313

Administrative practice and procedure, Agricultural commodities, Forests and forest products, Railroads.

Decided: August 27, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett. Commissioner Phillips commented with a separate expression. Commissioner Simmons, jointed by Vice Chairman McDonald, dissented with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, Chapter X, parts 1039 and 1313 of the Code of Federal Regulations are amended as follows:

PART 1039—EXEMPTIONS

1. The authority citation for part 1039 continues to read as follows:

Authority: 49 U.S.C. 10321, 10505, 10708, 10761, 10762, 11105, 11902, 11903 and 11904; 5 U.S.C. 553.

2. A new § 1039.23 is added as follows:

§ 1039.23 Railroad contracts entered into pursuant to 49 U.S.C. 10713.

Rail carriers are exempt from the provisions of 49 U.S.C. 10713 and 49 CFR part 1313 to the extent, and only to the extent, that such provisions require the filing of contracts and contract amendments for other than agricultural commodities with the Commission. This exemption does not extend to contracts or contract amendments for agricultural commodities, or to any contract summaries or amended contract summaries. Rail carriers must immediately provide to the Commission all contracts and/or contract amendments it requests.

PART 1313—RAILROAD CONTRACTS ENTERED INTO PURSUANT TO 49 U.S.C. 10713

1. The authority citation for part 1313 continues to read as follows:

Authority: 49 U.S.C. 10321 and 10713; 5 U.S.C. 553.

2. In § 1313.2, paragraph (b) is revised to read as follows:

§ 1313.2 Jurisdiction; contract approval/disapproval.

* * * * *

(b) *Contract approval date.* Except as provided in § 1313.7(a)(2):

(1) The contract is approved on the 30th day after the filing of the contract summary if the Commission does not institute a proceeding to review the contract.

(2) If the Commission institutes a proceeding to review a contract, it has jurisdiction for 60 days after the contract summary is filed. Under these circumstances the contract will be approved:

(i) On the date the Commission approves the contract, if the date of approval is 31 or more days after the filing date of the contract summary;

(ii) On the 31st day after the contract summary filing date if the Commission denies the complaint against the contract by the 30th day after the contract summary filing date; or

(iii) On the 60th day after the contract summary filing date, if the Commission fails to disapprove the contract.

* * * * *

3. In § 1313.3, the introductory text of paragraph (a), and paragraphs (b) and (c)(1) are revised to read as follows:

§ 1313.3 Contract implementation date.

(a) Transportation or service performed under a contract or amendment may being, without specific Commission authorization, on or after the date the contract summary (or amended contract summary) is filed and before Commission approval as defined in 49 CFR 1313.2, subject to the following conditions:

* * * * *

(b) Except as provided under paragraph (c) of this section, transportation or service may not begin under a contract or on amendment to a contract before the filing date of either the contract summary or the amended contract summary, respectively.

(c) * * *

(1) A transportation contract summary or amended contract summary under 49 U.S.C. 10713 has been filed with the

Commission and has been approved by the Commission or by operation of law.

* * * * *

4. In § 1313.7, paragraph (b)(1)(iv) is revised to read as follows:

§ 1313.7 Contract filing, title pages, and numbering.

* * * * *

(b) * * *

(1) * * *

(iv) A solid one inch black border, or a similar border consisting of continuous repetitions of a single alphabetic or special character, down the right side of the title page.

* * * * *

5. In § 1313.10, paragraph (b)(5)(iii) is revised to read as follows:

§ 1313.10 Contract summary content—agricultural commodities.

* * * * *

(b) * * *

(5) * * *

(iii) Termination date of the contract. If the terms of the contract provide for automatic extension or renewal, such information must be shown in connection with the termination date.

* * * * *

6. In § 1313.11, paragraph (b)(4)(iii) is revised to read as follows:

§ 1313.11 Contract summary content—forest products and paper.

* * * * *

(b) * * *

(4) * * *

(iii) Termination date of the contract. If the terms of the contract provide for automatic extension or renewal, such information must be shown in connection with the termination date.

* * * * *

[FR Doc. 92-21375 Filed 9-3-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 920412-2112]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Inseason adjustment.

SUMMARY: NMFS announces the modification of the bag limit for the recreational fishery in the exclusive economic zone (EEZ) from Cape Alava to the Queets River, Washington. The Director, Northwest Region, NMFS (Regional Director), has determined that the recreational bag limit should be increased from one fish to two fish per day beginning August 23, 1992. This action is intended to provide a bag limit comparable to recreational salmon fisheries operating in nearby areas, increase recreational fishing effort, and maximize the harvest of coho salmon without exceeding the ocean share allocated to the recreational fishery in the subarea.

DATES: The modification takes effect 0001 hours local time, August 23, 1992. Actual notice to affected fishermen was given prior to that time through a special telephone hotline and the U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.23. Comments will be accepted through September 21, 1992.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NW., BIN C15700-Bldg. 1, Seattle, WA 98115-0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at (206) 526-6140.

SUPPLEMENTARY INFORMATION: In its emergency interim rule and notice of 1992 management measures (57 FR 19388, May 6, 1992), NMFS announced that the 1992 recreational fishery for all salmon species between Cape Alava and the Queets River, Washington, would open July 13. The fishery will continue through the earliest of October 1, or until the attainment of either the subarea quota of 3,000 coho salmon or the overall chinook salmon quota north of Cape Falcon, Oregon. The preseason area restriction that limits fishing to inside 6 miles was rescinded, effective 0001 hours local time, August 2 (57 FR 35764, August 11, 1992). Preseason restrictions still in effect include a recreational bag limit of one fish per day and no more than four fish in 7 consecutive days.

Based on the best available information on August 20, the recreational catch in the subarea totaled about 1,400 coho salmon through August 16. Since catch and fishing effort have declined sharply during the last 3 weeks, recreational fishing representatives requested changing the daily bag limit from one fish to two fish. Hence, the new limit will be comparable to recreational salmon fisheries operating in nearby areas. The modified bag limit is expected to increase fishing effort in the subarea and to provide additional opportunity to fully harvest the subarea coho salmon quota. Therefore, the bag limit for the recreational fishery in the subarea from Cape Alava to the Queets River is changed from one fish to two fish per day. Modification of recreational bag limits is authorized by regulation 50 CFR 661.21(b)(1)(iii). The restriction on landing or retaining no more than four fish in 7 consecutive days remains in effect.

In accordance with the inseason notice procedures of 50 CFR 661.23, actual notice to fishermen of this action as given prior to 0001 hours local time, August 23, 1992, by telephone hotline number (206) 526-6667 or (800) 662-9825 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz.

The Regional Director consulted with representatives of the Pacific Fishery Management Council and the Washington Department of Fisheries regarding the adjustment affecting the recreational fishery between Cape Alava and the Queets River. The State of Washington will manage the recreational fishery in State waters adjacent to this area of the EEZ in accordance with this Federal action. This notice doe not apply to treaty Indian fisheries or to other fisheries that may be operating in other areas.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 31, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-21294 Filed 9-3-92; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 173
Friday, September 4, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 307 and 310

[Docket No. 83-008W]

Streamlined Inspection System—Cattle and Staffing Standards

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is withdrawing its November 30, 1988, proposal to establish a new system of post-mortem inspection for cattle (Streamlined Inspection System—Cattle). FSIS does not intend to proceed with this rulemaking, since the proposed rule is now considered absolute.

FOR FURTHER INFORMATION CONTACT: Dr. William O. James, Director, Slaughter Inspection Standards and Procedures Division, Science and Technology, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 720-3219.

SUPPLEMENTARY INFORMATION: The Food Safety and Inspection Service on November 30, 1988, published a proposal (53 FR 48262) to amend various provisions of the Federal meat inspection regulations to permit the Agency to implement a streamlined inspection system for cattle in establishments slaughtering steers and heifers and requiring three or more inspectors. The proposal also would have required quality control for use in certain large cattle slaughtering establishments.

FSIS does not intend to proceed with this rulemaking, since the proposed rule is now considered obsolete. Accordingly, FSIS hereby withdraws the proposed rule published in the **Federal Register** on November 30, 1988 (53 FR 48262).

Done at Washington, DC, on: August 31, 1992.

H. Russell Cross,

Administrator.

[FR Doc. 92-21295 Filed 9-3-92; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-NM-151-AD]

Airworthiness Directives; British Aerospace Model ATP Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace Model ATP series airplanes. This proposal would require replacement of currently installed AC generator endplate fixing bolts with longer bolts. This proposal is prompted by a recent report that the existing bolts may be too short to protrude past the bolt locking feature, which could result in the bolts becoming loose. The actions specified by the proposed AD are intended to prevent a generator malfunction, loss of engine oil, and engine shutdown or failure due to loose bolts.

DATES: Comments must be received by October 22, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-151-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-151-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-151-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The United Kingdom Civil Aviation Authority (CAA), which is the airworthiness authority for the United

Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace Model ATP series airplanes. The CAA advises that there has been a recent report that under certain tolerance conditions, the AC generator endplate fixing bolts may be too short to protrude past the bolt locking feature, which could result in the bolts becoming loose. Loose bolts in this area, if not detected and corrected, could result in a generator malfunction, loss of engine oil, and engine shutdown or failure.

British Aerospace has issued Service Bulletin ATP-24-52, dated June 19, 1992, which references Lucas Aerospace Service Bulletin BA03303-24-3, dated June 12, 1992. The Lucas Aerospace service bulletin describes procedures for replacing the currently installed AC generator endplate fixing bolts with longer bolts. Installation of these new bolts will ensure security and locking of the endplate assembly. The CAA classified the Lucas Aerospace service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require replacement of currently installed AC generator endplate fixing bolts with longer bolts. The actions would be required to be accomplished in accordance with the Lucas Aerospace service bulletin described previously.

The FAA estimates that 10 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would be supplied by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,100. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Docket 92-NM-151-AD.

Applicability: Model ATP series airplanes equipped with Lucas Generators, part number BA03303, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent a generator malfunction, loss of engine oil, and engine shutdown or failure, accomplish the following:

(a) Within 3 months after the effective date of this AD, replace the currently installed AD generator endplate fixing bolts, part number 79801316009, with longer bolts, part number 79801316013, in accordance with Lucas Aerospace Service Bulletin BA03303-24-3, dated June 12, 1992.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 21, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-21343 Filed 9-3-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-156-AD]

Airworthiness Directives; British Aerospace Model ATP Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all British Aerospace Model ATP series airplanes. This proposal would require modifications of the stall warning system and the cabin lighting system. This proposal is prompted by two reports of moisture and ice entering the stall warning lift transducer pillarbox opening and the subsequent accretion of ice on the unit. The actions specified by the proposed AD are intended to prevent malfunctioning of the stall warning system.

DATES: Comments must be received by October 22, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-156-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from

British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rule Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-156-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-156-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The United Kingdom Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on all British Aerospace Model ATP series airplanes. The CAA advises that there have been two reports of moisture and ice entering the stall warning lift transducer pillarbox opening and the subsequent accretion of ice on the unit. These conditions occur due to the difficulty in designing an effective seal while still maintaining free movement of the stall warning airstream vane. This condition, if not corrected, could result in malfunctioning of the stall warning system.

British Aerospace has issued Service Bulletin ATP-27-41-70031B, Revision 3, dated June 5, 1992, which describes procedures for replacement of the existing stall warning lift transducers with units that incorporate increased wattage heaters and a deflector plate (Modification 70031B). Installation of these new units will ensure effective operation under extreme icing conditions by improving unit moisture and ice shielding and increasing heating available to melt any ice that accrues. The CAA classified this service bulletin as mandatory.

British Aerospace has also issued Service Bulletin ATP-24-38-10204A, Revision 2, dated August 14, 1991, which describes procedures for increasing the wiring cable size for the stall warning heater and the stall warning lift transducer (Modification 10204A). An increased sized cable is installed to the frame heaters surrounding both leading edge stall warning lift transducers to reduce the drop in the system voltage. In addition, certain cable and circuit breakers are changed to compensate for the increased wattage heaters installed with the modified lift transducers.

Additionally, British Aerospace has issued Service Bulletin ATP-33-19-10238A, dated March 19, 1992, which describes procedures for moving the cabin lighting from essential to non-essential circuit breakers (Modification 10238A). This modification will reduce the potential for exceeding the battery capacity when Modification 70031B, described above, is installed.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require installing a new stall warning lift transducer, increasing the wiring cable size for the stall warning heater and the stall warning lift transducer, and moving the cabin lighting from the essential to the non-essential circuit. The actions would be required to be accomplished in accordance with the service bulletins described previously.

The FAA estimates that 10 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 57 work hours per airplane (including preparation and recovery time) to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts will be supplied by the manufacturer at no cost to operators, once removed parts are returned to the manufacturer. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $31,350. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Docket 92-NM-156-AD.

Applicability: All Model ATP series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent malfunctioning of the stall warning system, accomplish the following:

(a) Within 6 months after the effective date of this AD, accomplish paragraphs (a)(1), (a)(2), and (a)(3) of this AD:

(1) Install a new stall warning lift transducer, part number C74007-4, on the left- and right-hand wing leading edges, in accordance with British Aerospace Service Bulletin ATP-27-41-70031B, Revision 3, dated June 5, 1992.

(2) Increase the wiring cable size for the stall warning heater and the stall warning lift transducer, in accordance with British Aerospace Service Bulletin ATP-24-38-10204A, Revision 2, dated August 14, 1991.

(3) Move the cabin lighting from the essential to the non-essential circuit, in accordance with British Aerospace Service Bulletin ATP-33-19-10238A, dated March 19, 1992.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 21, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service

[FR Doc. 92-21344 Filed 9-3-92; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 33

Deletion of Options Regulations Regarding Customer Complaints and Promotional Material

AGENCY: Commmodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commission is proposing to delete provisions of regulation 33.4 which require boards of trade designated as contract markets for options to adopt rules requiring member futures commission merchants (FCMs) that engage in the offer or sale of commodity options regulated under part 33 to send copies of customer complaints and the resolutions thereof, and copies of all promotional material to the member's designated self-regulatory organization.

DATES: Comments must be received by October 5, 1992.

ADDRESSES: Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Tobey Kaczensky, Assistant Deputy Director, Audit and Review Section, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 (202) 254-8246.

SUPPLEMENTARY INFORMATION:

I. The Commission, through the Markets 2000 component of its excellence 2000 Project, is reexamining the regulation of futures and options markets. As part of this reevaluation process, the Commission solicited the ideas, suggestions, and views of industry members regarding, among other things, the Commission's existing regulatory scheme. In its comment letter dated May 7, 1992 the Futures Industry Association (FIA) suggested, among other matters, deleting certain portions of the rules governing exchange-traded option contracts. The FIA noted that these provisions were part of the special provisions of the Commission's options pilot program and pointed out the "relatively trouble free experience with options."

In particular, the FIA identified two subsections of Commission Regulation 33.4(b). Commission Regulation 33.4(b)(4) requires any board of trade requesting designation as a contract market for the trading of domestic commodity options to adopt certain rules. Regulation 33.4(b)(4)(iii) provides that one of those rules must require member futures commission merchants to send copies of all options customer complaints and the record of the final disposition thereof to the member's designated self-regulatory organization. Regulation 33.4(b)(8) provides that exchange rules must require member FCMs to submit all promotional material to the member's designated self regulatory organization for review. The Commission believes the FIA's suggestion to delete these subsections has merit and, therefore, is proposing to delete 17 CFR 33.4(b)(4)(iii) and 17 CFR 33.4 (b)(8). In this regard, Commission regulation 33.4(b)(4)(i) will continue to require that boards of trade require member FCMs to retain all options complaints. Regulation 33.4(b)(ii) will continue to require that boards of trade adopt and retain rules which require each FCM to make a record of the date the complaint was received, the associated person who serviced, or the introducing broker who introduced the account, a general description of the matter complained of, and what, if any, action was taken by the FCM in regard to the complaint.

The provisions proposed to be deleted date from the Commission's pilot program for the reintroduction of domestic exchange-traded options.[1] At that time, the Commission was concerned that the history of customer abuses that marked the previous trading of commodity options not be repeated. Thus, the Commission imposed certain requirements on the exchanges in an effort to guard against fraud in the offer and sale of exchange-traded options on commodity futures. The pilot program has since been terminated, and the Commission recently reassessed and eliminated some provisions of the options designation requirements.[2]

In light of the activities of the Joint Audit Committee ("JAC"), which is responsible for, among other things, coordinating the self regulatory organizations' audit and financial surveillance programs, including compliance audit procedures, the Commission believes that the exchanges and the National Futures Association (NFA) can be given flexibility in meeting their affirmative action compliance obligations. It should be noted that the JAC's program for FCM audits includes a review of options customer complaints and promotional material. In addition, NFA Rule 2-29 sets standards for promotional material.

The Commission believes that the elimination of the regulations described

[1] For background, see generally 56 FR 43694 (Sept. 4, 1991).

[2] *Id.*

will materially reduce burdens on registrants without significantly reducing customer protection. The staff will monitor through rule enforcement reviews the review of complaints and promotional material. However, the Commission believes it is necessary to seek public comment on whether the elimination of the described requirements could adversely affect systems currently in place to provide customer protection with respect to supervising options sales practices.

II. Related Matters.

A. Regulatory Flexibility Act. The Regulatory Flexibility Act (RFA) 5. U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. These proposed deletions will relieve a regulatory burden and accordingly will have no significant impact on a substantial number of small entities. For the above reason, and pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), the Chairman, on behalf of the Commission, hereby certifies that these proposed deletions will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act.

The Paperwork Reduction Act of 1980. (PRA) 44 U.S.C. 3501 *et seq.*, imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the Act the Commission has submitted these proposed deletions to the Office of Management and Budget. These proposed deletions have no burden.

List of Subjects in 17 CFR Part 33

Regulation of domestic exchange-traded commodity option transactions.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular, section 4(b) of said Act, the Commission proposes to amend Part 33 of title 17 of the Code of Federal Regulations as follows:

PART 33—REGULATION OF DOMESTIC EXCHANGE-TRADED COMMODITY OPTION TRANSACTIONS

1. The authority citation for part 33 continues to read as follows:

Authority: 7 U.S.C. 2, 2a, 4, 6, 6a, 6b, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 7b, 8, 9, 11, 12a, 13a, 13a-1, 13b, 19, and 21, unless otherwise noted.

§ 33.4 [Amended]

2. Section 33.4(b)(4)(iii) is removed.

3. Section 33.4(b)(8) is removed and reserved.

Issued in Washington, DC, August 27th, 1992, by the Commodity Futures Trading Commission.

Lynn K. Gilbert,

Deputy Director of the Secretoriot.

[FR Doc. 92-21053 Filed 9-3-92; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

Vessel Repair Applications for Relief From Duty

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations to increase the monetary jurisdictional authority of the three Customs Regional Vessel Repair Liquidation Units to decide whether to approve or disapprove certain applications for relief from the assessment of duties under the vessel repair statute. The increased authority would be effective only in cases in which specifically applicable Customs Headquarters precedent exists.

DATES: Comments must be received on or before November 3, 1992.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to and inspected at the Regulations and Disclosure Law Branch, room 2119, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Bruce Friedman, Office of Trade Operations, 202-927-0300 (operational matters), or Larry L. Burton, 202-927-0840 (legal matters).

SUPPLEMENTARY INFORMATION:

Background

Section 1466 of title 19, United States Code, provides that a duty of 50 per cent ad valorem shall be assessed upon the value of repairs accomplished outside of the United States on certain American-flag vessels. The statute, as well as numerous judicial and administrative interpretations, provides exceptions to the assessment of duty under specific circumstances.

The statutory mandate is implemented under § 4.14 of the Customs Regulations (19 CFR 4.14), which provides the necessary working guidelines for Customs as well as vessel operators. Among the matters set forth in § 4.14 are the procedures for seeking administrative refund or remission of assessed duty. Necessary evidence is gathered in one of three Vessel Repair Liquidation Units located in the New York Customs Region (New York, New York, for entries filed in the Northeast, New York, and North Central Regions), the South Central Customs Region (New Orleans, Louisiana, for entries filed in the Southeast, South Central, and Southwest Regions), and the Pacific Customs Region (San Francisco, for entries filed in the Pacific Region). Each of these locations is presently empowered to consider and decide initial requests for duty refund or remission (Application for Relief) when there exists clear Customs Headquarters precedent regarding the matter under consideration and when the decision will result in a refund or remission of less than $2,500 in duty (19 CFR 4.14(c)(2)).

Section 4.14 was significantly revised in 1980 by publication in the **Federal Register** of Treasury Decision 80-237 (45 FR 46560), September 30, 1980. A Customs field jurisdictional amount was first made a part of the Customs Regulations with that publication. At that time, the limit for field determination was set at $2,500 because to set it at a higher suggested limit would "preclude a central review of major issues" by Customs Headquarters. Over the intervening years, the cost of foreign shipyard operations has been significantly inflated. In consideration of this factor, together with the development of necessary Customs expertise outside of Headquarters, Customs believes that it is appropriate that the jurisdictional limitation for determinations in the Regional Vessel Repair Liquidation Units be increased to $50,000 in cases in which there exists clear Customs Headquarters precedent.

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours

of 9 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, room 2119, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC.

Regulatory Flexibility Act

Although this document is being issued with notice for public comment, it is not subject to the notice and public procedure requirements of 5 U.S.C. 553 because it relates to agency management. Accordingly, this document is not subject to the regulatory analysis or other requirements of 5 U.S.C. 601 *et seq.*

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Drafting Information

The principal author of this document was Larry L. Burton, Carrier Rulings Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 4

Customs duties and inspection, Reporting and recordkeeping requirements, Vessels.

Proposed Amendment

It is proposed to amend part 4, Customs Regulations (19 CFR part 4), as set forth below.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for part 4 and the specific authority citation for § 4.14 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624; 46 U.S.C. App. 3;

* * * * *

§ 4.14 also issued under 19 U.S.C. 1466, 1498;

* * * * *

§ 4.14 [Amended]

2. It is proposed to amend section 4.14(c)(2) by removing both references to "$2,500" where they appear in the paragraph, and adding in their places "$50,000."

Michael H. Lane,

Acting Commissioner of Customs.

Approved: August 28, 1992.

Peter K. Nunez,

Assistant Secretary of the Treasury.

[FR Doc. 92-21276 Filed 9-3-92; 8:45 am]

BILLING CODE 4820-02-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[NH-5-1-5613; A-1-FRL-4202-2]

Approval and Promulgation of State Air Quality Implementation Plans for Designated Facilities and Pollutants; New Hampshire; Plan for Controlling Total Reduced Sulfur Emissions From Existing Kraft Pulp Mills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes to approve New Hampshire's "111(d) plan" for the control of total reduced sulfur (TRS) emissions from existing kraft pulp mills. The plan was submitted by the New Hampshire Department of Environmental Services (DES) on January 3, 1992. The plan consists of a new regulation, Part Env-A 1207, in Chapter 1200 of the New Hampshire Administrative Rules Governing the Control of Air Pollution which is entitled "Pulp and Paper Industry: Total Reduced Sulfur Emissions from Kraft Pulp Mills." The plan satisfies EPA's requirements for adoption and submittal of a plan to control TRS emissions from designated facilities in accordance with section 111(d) of the Clean Air Act (Act).

DATES: Comments must be received on or before October 5, 1992.

ADDRESSES: Comments may be mailed to Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA and the Air Resources Division, Department of Environmental Services, 64 North Main Street, Caller Box 2033, Concord, NH 03302-2033.

FOR FURTHER INFORMATION CONTACT: Cheryl A. Aloi, (617) 565-3252.

SUPPLEMENTARY INFORMATION: On January 3, 1992, the New Hampshire DES submitted a 111(d) plan controlling TRS emissions from existing kraft pulp mills in the State. This plan was developed to meet the requirements of Section 111(d) of the Act. Under Section 111(d), EPA established procedures whereby States submit plans to control existing sources of designated pollutants. Designated pollutants are defined as pollutants which are not included on a list published under Section 108(a) of the Act (i.e., National Ambient Air Quality Standard pollutants) or emitted from a source category regulated under Section 112 of the Act, but to which a standard of performance for new sources applies under Section 111. TRS is such a "designated" pollutant. Under Section 111(d), emission standards are to be adopted by States and submitted to EPA for approval. The standards limit the emissions of designated pollutants from existing facilities which, if new sources, would be subject to the new source performance standards (NSPS). Such facilities are called "designated facilities."

The procedures under which States submit these plans to control existing sources are defined in subpart B of 40 Code of Federal Regulations (CFR) part 60. According to subpart B, States are required to develop plans within federal guidelines for the control of designated pollutants. EPA publishes guideline documents for development of State emission standards along with the promulgation of any NSPS for a designated pollutant. These guidelines apply to designated pollutants and include information such as a discussion of the pollutant's effects, description of control techniques and their effectiveness, cost considerations and potential impacts. Such guideline documents also recommend emission limits and times for compliance and identify control equipment which will achieve those emission limits.

In subpart B, two types of designated pollutants are discussed. One type of designated pollutant is the type that may cause or contribute to the endangerment of public health. It is referred to as a health-related pollutant. The other type of designated pollutant is a welfare-related pollutant, for which adverse effects on public health have not been demonstrated.

For welfare-related pollutants such as TRS, States have the option of balancing emission guidelines, times for compliance, and other information in the guideline documents against other issues of public concern in the establishment of emission standards, compliance schedules and variances, as long as the guideline document and public hearing information are considered and all the other requirements of subpart B are met. Therefore, States have greater flexibility in establishing plans for the control of TRS. Factors other than technology and costs can be considered in developing a TRS control plan.

In New Hampshire, one kraft pulp mill is affected by this plan for existing facilities. It is the James River Corporation's plant in Berlin.

Summary of the Plan

The 111(d) plan consists of amendments to Chapter 1200 of the New Hampshire Administrative Rules Governing the Control of Air Pollution. The amendments include a new Part Env-A 1207 entitled "Pulp and Paper Industry: Total Reduced Sulfur Emissions from Kraft Pulp Mills." Part Env-A 1207 was adopted by the State of New Hampshire on October 31, 1991, to control TRS emissions from existing kraft pulp mills. Part Env-A 1207 became effective on that same date. This regulation contains the following emission limitations and requirements for existing processes:

(1) It prohibits gases which contain TRS in excess of 5 parts per million (ppm) by volume on a dry basis, corrected to 10 percent oxygen from any digester system or multiple-effect evaporator (MEE) system unless the following conditions are met:

(i) The gases are combusted in a lime kiln subject to the provisions of the regulation or the requirements of the kraft pulp mill NSPS (i.e., 40 CFR part 60, subpart BB); or

(ii) The gases are combusted in an incinerator or other device, and are subjected to a minimum temperature of 1200 °F. for at least 0.5 seconds.

(2) It prohibits gases from any old design [1] kraft recovery furnace which contain TRS in excess of 300 ppm by volume on a dry basis, corrected to 8 percent oxygen after December 31, 1991, except as provided in paragraph (4).

(3) It prohibits gases from any old design kraft recovery furnace which contains TRS in excess of 150 ppm by volume on a dry basis, corrected to 8 percent oxygen after December 31, 1993, except as provided in paragraph (4).

(4) It prohibits gases from any old design kraft recovery furnace which contain TRS in excess of 20 ppm by volume on a dry basis, corrected to 8 percent oxygen, 30 days after the date that any old design kraft recovery furnace emitted gases which contain TRS less than or equal to 20 ppm by volume on a dry basis, corrected to 8 percent oxygen, for 60 consecutive 12-hour block periods at normal production levels, excluding those 12-hour periods where startup or shutdown occurred, or periods where the facility is not operating.

(5) It prohibits gases from any new design [2] kraft recovery furnace which contain TRS in excess of 200 ppm by volume on a dry basis, corrected to 8 percent oxygen after December 31, 1991, except as provided in paragraph (7).

(6) It prohibits gases from any new design kraft recovery furnace which contain TRS in excess of 120 ppm by volume on a dry basis, corrected to 8 percent oxygen after December 31, 1993, except as provided in paragraph (7).

(7) It prohibits gases from any new design kraft recovery furnace which contain TRS in excess of 20 ppm by volume on a dry basis, corrected to 8 percent oxygen, 30 days after the date that any new design kraft recovery furnace emitted gases which contain TRS less than or equal to 20 ppm by volume on a dry basis, corrected to 8 percent oxygen, for 60 consecutive 12-hour block periods at normal production levels, excluding those 12-hour periods where startup or shutdown occurred, or periods where the facility is not operating.

(8) It prohibits gases from any kraft recovery furnace which contain TRS in excess of 20 ppm by volume on a dry basis, corrected to 8 percent oxygen after December 31, 1995.

(9) It prohibits gases from any smelt dissolving tank which contain TRS in excess of 0.016 grams per kilogram (g/kg) black liquor solids as H_2S (0.033 pounds per ton (lb/ton) black liquor solids as H_2S).

(10) It prohibits gases from any lime kiln which contain TRS in excess of 20 ppm by volume on a dry basis, corrected to 10 percent oxygen.

In addition, the regulation outlines the monitoring requirements, recordkeeping and reporting requirements, and test methods necessary for each subject TRS-emitting process. It also defines excess emissions for each affected process. Compliance with all of the requirements of the regulation except the emission standards for kraft recovery furnaces is required by October 31, 1992. Compliance with the requirements for kraft recovery furnaces is required in "increments of progress" as specified in 40 CFR 60.24(e)(1). Final compliance with the most stringent emission standards specified in the regulation for kraft recovery furnaces is required by December 31, 1995.

EPA has reviewed the plan and has written a technical support document based on the requirements of Section 111(d) of the Act, 40 CFR part 60, subpart B, and the EPA guideline document entitled "Kraft Pulping: Control of TRS Emissions from Existing Mills" (EPA-450/2-78-003b). The technical support document is available for inspection during normal business hours at the EPA Regional Office listed in the **ADDRESSES** section of this notice.

EPA's review of New Hampshire's submittal indicates that it meets the requirements of 40 CFR part 60, subpart B. EPA is proposing to approve New Hampshire's 111(d) plan controlling TRS emissions from kraft pulp mills, submitted on January 31, 1992. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional Office listed in the **ADDRESSESS** section of this notice.

Proposed Action

EPA is proposing to approve the 111(d) plan controlling TRS emissions from kraft pulp mills submitted by the New Hampshire Department of Environmental Services. The plan consists of a regulation entitled "Part Env-A 1207 Pulp and Paper Industry: Total Reduced Sulfur Emissions from Kraft Pulp Mills" and affects one existing kraft pulp mill in the State of New Hampshire.

Under 5 U.S.C. 605(b), I certify that this action will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225).

EPA has submitted a request for a permanent waiver for Tables 2 and 3 SIP Revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future submittal of a 111(d) plan by any State. Each request for approval of a 111(d) plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

List of Subjects in 40 CFR Part 62

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Paper and paper products industry, Reporting and recordkeeping requirements.

[1] In the regulation, an "old design kraft recovery furnace" is defined as a furnace without membrane wall or welded wall construction.

[2] In the regulation, a "new design kraft recovery furnace" is defined as a furnace with membrane wall or welded wall construction.

Authority: 42 U.S.C. 7401–7642.

Dated: August 20, 1992.

Julie Belaga,

Regional Administrator, Region I.

[FR Doc. 92–21386 Filed 9–3–92; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 15, 22, and 99

[GEN Docket No. 90–314 and ET Docket No. 92–100, FCC 92–333]

Establishment of New Personal Communications Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This notice of proposed rulemaking (NPRM) seeks comprehensive comment on the regulatory steps needed to realize the promise of personal communications services (PCS) with the least amount of regulatory delay. The Commission sought comment on allocating portions of the 1850–1990 MHz band for licensed PCS services and unlicensed devices contingent on the outcome of broader reallocation proposals for emerging technologies; and on allocating three megahertz in the 900 MHz range to licensed narrowband PCS services.

DATES: Comments are due by November 9, 1992, and reply comments are due by December 9, 1992.

ADDRESSES: Federal Communications Commission, 1919 M St. NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tom Mooring, Office of Engineering and Technology, Frequency Allocation Branch, (202) 653–8114.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's combined NPRM in GEN Docket No. 90–314 and ET Docket No. 92–100, which was adopted on July 16, 1992, and released on August 14, 1992.

The complete text of this NPRM is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this NPRM also may be purchased from the Commission's duplication contractor, Downtown Copy Center, at (202) 452–1422, 1114 21st Street, NW., Washington, DC 20036.

Summary of Notice of Proposed Rule Making

1. This NPRM proposed spectrum allocations to permit provision to the public of new personal communications services, or PCS. PCS likely will consist of a variety of new mobile and portable services and technologies, such as small, lightweight telephone handsets that work at home, in the office, or on the streets; portable, wireless facsimile machines; wireless PBXs; advanced "smart" paging devices; and wireless electronic mail services.

2. The advent of PCS likely will impact the future development of all telecommunications networks. New PCS and products are expected to create new markets and provide new or additional competition in many segments of the telecommunications industry. For the consumer, PCS is expected to increase productivity and efficiency across a broad array of industries and have a positive impact on the international competitiveness of U.S. telecommunications products and services.

3. The NPRM made proposals for the implementation of licensed PCS services and unlicensed equipment at 2 GHz; and separately, for licensed narrowband PCS services at 900 MHz. The 2 GHz proposals are contingent upon the resolution of ET Docket No. 92–9, 57 FR 5993 (1992), which proposes a broader reallocation of 2 GHz spectrum for emerging technologies. The Commission also reiterated its intent not to harm the quality of service offered by its licensees that currently use the 2 GHz band, and solicited comment on a proposal that the Commission permit and facilitate negotiations between incumbent and new users on relocation terms and conditions.

4. For licensed PCS services at 2 GHz, the Commission proposed to allocate a minimum of 90 MHz, 1850–1895/1930–1975 MHz, with assignments of twenty, thirty, or forty megahertz per provider, with the preferred option being thirty megahertz. The Commission noted that the 1970–1975 MHz portion of this band recently was allocated on a primary basis for Mobile-Satellite Service in Region 2 at the WARC.

5. The Commission proposed four alternatives for licensing areas: the 487 "basic trading areas," or the 49 "major trading areas" (as defined by Rand McNally); the 194 LATAs; or nationwide; and requested comment on the preferred option. The Commission also proposed a minimum of three licensees per service area, and sought comment on whether four or five licensees per service area would be more desirable and could be accommodated.

6. With regard to 2 GHz licensed PCS services, the Commission solicited comment on local exchange carrier (LEC) and cellular eligibility, including: Whether cellular licensees should be allowed to hold PCS licenses within their cellular service areas; liberalization of cellular service rules to allow cellular firms to make better use of their existing frequencies; and whether LECs should be eligible to receive PCS licenses (unless barred by their cellular holdings) and, if so, whether the spectrum available to LECs should be less than that provided other licensees. (No set-asides are proposed.)

7. The Commission also proposed to allocate twenty megahertz of spectrum at 1910–1930 MHz for unlicensed (part 15) devices and to allocate three megahertz of spectrum at 901–902, 930–931, and 940–941 MHz for licensed narrowband PCS services.

8. The Commission solicited comment on whether PCS should be regulated as a common carrier or private service, and proposed that PCS licensees be given a federally protected right to interconnect with the public switched network without regard to their regulatory classification.

9. The Notice proposed a technical framework formulated to permit significant flexibility in the design and implementation of PCS systems, devices, and services. Contingent upon the outcome of Docket 92–9 in the Notice proposed technical standards, including power and height limits, and restrictions on energy radiation into a microwave receiver, to protect incumbent microwave operations. The Commission also sought comment on related technical and operational issues, including: The appropriate level of technical and operational standards; a decision not to establish a PCS technical advisory committee; and ways to encourage industry development of technical and operational standards.

10. Further, the Commission asked for comment on possible reforms of the lottery process and on possible competitive bidding rules (in the event Congress authorized use of competitive bidding).

List of Subjects

47 CFR Part 2

Frequency allocations, Radio.

47 CFR Part 15

Communications equipment.

47 CFR Part 22

Communications common carriers.

47 CFR Part 99

Personal communications services, Radio.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-21168 Filed 9-3-92; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 57, No. 173
Friday, September 4, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

[Docket No. 021N]

Office of the Secretary

National Advisory Committee on Meat and Poultry Inspection; Meetings

Notice is hereby given that meetings of the National Advisory Committee on Meat and Poultry Inspection will be held on Tuesday, 1 p.m. to 5 p.m., and Wednesday, 8 a.m. to 12 noon, September 22-23, 1992, at the Holiday Inn, 11787 Lee Jackson Memorial Highway, Fairfax, VA; (703) 352-2525.

The Committee provides advice and recommendations to the Secretaries of Agriculture pertaining to the meat and poultry inspection program, pursuant to sections 7(c), 24, 205, 301(a)(3), 301(c) of the Federal Meat Inspection Act (21 U.S.C. 607(c), 624, 645, 661(a)(3) and 661(c) and sections 5(a)(3), 5(a)(4), 5(c), 8(b), and 11(e) of the Poultry Products Inspection Act (21 U.S.C. 454(a)(3), 454(c), 457(b), and 460(e).

The meetings will include discussion of the following topics:

1. Introductions and opening comments;
2. Review and approval of agenda;
3. Questions/comments from the Committee from agenda of previous meeting;
4. Microbiological Baseline Data Collection program;
5. Standards and Labeling issues;
6. Topics suggested by the Committee;
7. General discussion of issues relevant to FSIS;
8. North American Free Trade Agreement and its implications for the meat and poultry industries;
9. Unfinished business; items from the audience, time permitting.

Notice is hereby given on the appointment of members to the Committee. The members are: Ms. Amy Barr, Good Housekeeping, New York, NY; Dr. Wesley B. Bonner, Veribest Cattle Feeders, Inc., Veribest, TX; Dr. Claude W. Carraway, North Carolina Department of Agriculture, Raleigh, NC; Dr. James H. Denton, University of Arkansas, Fayetteville, AR; Mr. Stanley J. Emerling, National Association of Meat Purveyors, Reston, VA; Mr. L. L. Gast, Inspection and Management Resources, Gaithersburg, MD; Mr. Mark A. Gustafson, U.S. Meat Exporters Federation, Denver, CO; Mr. James H. Hodges, American Meat Institute, Arlington, VA; Dr. Thomas Hoes, Wampler-Longacre, Inc., Franconia, PA; Dr. Curtis L. Kastner, Kansas State University, Manhattan, KS; Dr. Winston H. Marshall, H&M Foods Corporation, North Richland Hills, TX; Dr. Fred Shank, Food and Drug Administration, Washington, DC; Dr. Gary C. Smith, Colorado State University, Ft. Collins, CO; Mr. Edgar C. Staren, Starmill, Inc., Oak Brook, IL; and Mr. Larry K. Winslow, Perdue Farms, Inc., Salisbury, MD.

The Committee meetings are open to the public on a space available basis. Comments of interested persons may be filed prior to and following the meeting and should be addressed to Mr. Bill Dennis, Assistant to the Administrator, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 3175, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250. Background materials are available for inspection by contacting Mr. Dennis on (202) 720-9150.

Done at Washington, DC, on September 1, 1992.

H. Russell Cross,
Administrator, Food Safety and Inspection Service.

[FR Doc. 92-21383 Filed 9-3-92; 8:45 am]

BILLING CODE 3410-DM-M

Animal and Plant Health Inspection Service

[Docket No. 92-127-1]

Notice of Proposed Interpretive Ruling in Connection With The Upjohn Company Petition for Determination of Regulatory Status of ZW-20 Virus Resistant Squash

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of Proposed Interpretive Ruling.

SUMMARY: We are advising the public that the Animal Health Inspection Service (APHIS) has received a petition from The Upjohn Company seeking a determination regarding the regulatory status of its ZW-20 virus resistant squash. APHIS is requesting comments on its proposal to issue an interpretive ruling that the ZW-20 virus resistant squash does not present a plant pest risk, and therefore, would no longer be considered a regulated article under its regulations.

DATES: Consideration will be given only to written comments that are received on or before October 19, 1992.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92-127-1. A copy of the Upjohn submission and any written comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. A copy of the Upjohn petition may be obtained by contacting Ms. Kay Peterson at 301-436-7601.

FOR FURTHER INFORMATION CONTACT: Michael A. Lidsky, Deputy Director, Biotechnology Coordination and Technical Assistance, or L. Val Giddings, Chief, International Programs Branch, Biotechnology Coordination and Technical Assistance, BBEP, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7601.

SUPPLEMENTARY INFORMATION: On July 13, 1992, the Animal and Plant Health Inspection Service (APHIS) received a "Petition for Determination of Regulatory Status" from The Upjohn Company (Upjohn), of Kalamazoo, MI. The Upjohn petition seeks a determination from APHIS that its ZW-20 virus resistant squash no longer be considered a "regulated article" under regulations in 7 CFR part 340 (the regulations).

The ZW-20 virus resistant squash (*Cucurbita pepo* L. cultivar YC77E ZW-20) (ZW-20 squash) has been described by Upjohn as a squash line which contains the coat protein genes of

watermelon mosaic virus 2 (WMV2) and zucchini yellow mosaic virus (ZYMV), and which exhibits significant field resistance against WMV2 and ZYMV.

The Upjohn petition states that the ZW-20 squash should no longer be regulated by APHIS because it does not present a plant pest risk. The ZW-20 squash is currently considered a regulated article under the regulations because it was developed through the use of vectors, promoters, and terminators from plant pathogenic sources. However, as indicated in the petition, the vectors used in producing the ZW-20 squash were disarmed, and the other plant pathogen derived elements did not present a risk of plant pest introduction or dissemination. The field testing of the ZW-20 squash has demonstrated that it does not present a plant pest risk.

Under the regulations, a genetically engineered plant or other organism is a regulated article, subject to regulatory oversight by APHIS, if it is a plant pest or it is unclassified or the Deputy Administrator has reason to believe it is a plant pest. Based on reviews for a number of field tests of the ZW-20 squash and the information in the petition submitted by Upjohn, APHIS believes that the ZW-20 squash is not a plant pest, and that there is no reason to believe that it may be a plant pest or otherwise presents any plant pest risk. Therefore, APHIS is proposing to issue a ruling that the ZW-20 squash is not a regulated article under its regulations. APHIS is requesting comments on the petition and the proposed ruling.

After reviewing the data submitted by the petitioner, written comments received during the comment period, as well as other relevant literature, and interpreting the application of statutes and regulations to these data and comments, APHIS will issue its interpretive ruling regarding the regulatory status of the ZW-20 squash. A notice of the ruling and its availability will be published in the **Federal Register.**

Done in Washington, DC, this 1st day of September 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-21379 Filed 9-3-92; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Intermountain Region; Fee Schedule For Communications Uses

AGENCY: Forest Service, USDA.

ACTION: Correction.

SUMMARY: This document corrects the communications uses fee schedule announced by the Intermountain Regional Forester on August 21, 1992. A key indexing number was "rounded off" erroneously, resulting in incorrect fee calculations.

FOR FURTHER INFORMATION CONTACT: Frank Elder (801) 625-5150, Recreation and Lands Staff. Copies of the corrected fee schedule may also be obtained by writing to the Regional Forester, Intermountain Region, 324 25th Street, Ogden, UT 84401.

SUPPLEMENTARY INFORMATION: The September 1, 1992, Federal Register contained a Notice of Availability of the Intermountain Region's fee schedule for communications uses authorized on National Forest System lands located in the States of Nevada, Utah, and portions of California, Colorado, Idaho, and Wyoming. Implementation actions included use of the Consumer Price Index (Urban) to adjust the fees annually to stay current and thereby continue to represent fair market value. When calculating the index, the Forest Service inadvertently "rounded" the cumulative index two decimal places (1.15) rather than three (1.154). Three decimal places is the standard practice in the use of adjustment factors for these and other uses. Use of the erroneous adjustment factor results in miscalculated fees. While small, these errors need corrections which will result in fee increases between $1 to $8. The fee schedule was mailed to all communications use permit holders of record. An errata sheet will be included with their 1993 Bills for Collection explaining this error. This error appears on page 5 of the fee schedule notice mailed to permittees.

Dated: August 28, 1992.

Gray F. Reynolds,

Regional Forester, Intermountain Region.

[FR Doc. 21300 Filed 9-3-92; 8:45 am]

BILLING CODE 3410-11-M

Rural Electrification Administration

Electric and Telephone Program Regulations

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice: Rescission of certain obsolete REA bulletins.

SUMMARY: As part of an ongoing project to simplify, clarify, and update Agency regulations and in response to the President's regulatory review initiative, the Rural Electrification Administration (REA) hereby announces the rescission of a number of outdated publications.

EFFECTIVE DATE: These publications are rescinded effective on September 4, 1992.

FOR FURTHER INFORMATION CONTACT: Sue Arnold, Management Analyst, Program Support Staff, Rural Electrification Administration, room 2230-S, 14th Street and Independence Avenue, SW., Washington, DC 20250-1500. Telephone: 202-720-0736.

SUPPLEMENTARY INFORMATION: In the State of the Union Address on January 28, 1992, President Bush announced a 90-day moratorium on new regulations and a concurrent review of existing regulations. In a January 28, 1992, memorandum to certain Department and Agency heads, the President directed that agencies set aside a 90-day period "to evaluate existing regulations and programs and to identify and accelerate action on initiatives that will eliminate any unnecessary regulatory burden or otherwise promote economic growth."

On February 25, 1992, at 57 FR 6483, the Department of Agriculture published a request for public comments on how Departmental regulations can be improved, updated or streamlined and made more "user friendly."

In 1990 REA began its own independent project to simplify, clarify and update Agency regulations. Consistent with the spirit of both regulatory review projects, REA is now rescinding the REA bulletins listed below. These bulletins contain regulatory material that has become outdated. Some of the information and instructions in the bulletins have been rendered obsolete through legislation or codified regulations. The material in other bulletins is unnecessary in today's business environment.

On June 18, 1992, at 57 FR 27212, REA published a notice proposing to rescind these bulletins. Comments were received from the National Rural Electric Cooperative Association, the Virginia, Maryland and Delaware Association of Electric Cooperatives, and from three REA electric borrowers. One commentor objected to the rescission of Bulletin 45-4, Distribution System Energy Losses. Since the bulletin was updated in April 1990, the commentor implies that the information should still be accurate. REA believes that in today's business environment it is no longer appropriate to devote government resources to the development of guidelines of this nature.

Two commentors addressed Bulletin 112-3, Area Coverage Service. One of these noted the importance of the

principle of area coverage and objected to the rescission. The other noted that REA policies on area coverage are now codified at 7 CFR 1710.103, published on January 9, 1992, rendering the bulletin obsolete.

One commentor believes that the guidance in Bulletin 110-1, Member Services, Community Relations and Power Use is "...vital to the rural electric program and should continue to be the subject of policy guidance from REA." REA believes, in today's environment, that members of electric cooperatives, the cooperatives themselves, and their trade associations are better able to provide this kind of guidance than a Federal agency in Washington, DC. REA agrees with the commentor that communication between a generation and transmission cooperative and its distribution members is vital to assessing credit worthiness. However, this kind of relationship is not addressed in the bulletin under discussion.

One commentor suggested that the public be given an opportunity to comment on any replacements to the bulletins being rescinded. REA's project to simplify, clarify and update Agency regulations, including certain requirements now contained in bulletins, will afford borrowers and other members of the public an opportunity to comment on proposed rules. REA will consider all comments when drafting its final rules. Borrowers are encouraged to consult with their REA general field representatives or with REA Washington staff at any time, either orally or in writing, with comments and suggestions about Agency directives.

One commentor, while pointing out that "it is unnecessary for REA to explain in detail the reason or reasons for rescinding each individual policy bulletin on the list," suggests that REA list the specific statute or regulation that overrides or supersedes regulatory material. REA believes such a list is unnecessary.

List of REA Bulletins Rescinded

Number	Title	Issued
24-1	Electric Loan Policy for Section 5 Loans	3/69

List of REA Bulletins Rescinded—Continued

Number	Title	Issued
45-4	Distribution System Energy Losses	4/90
100-1:400-2	Selection of an Attorney by an REA Borrower (Supplement 2/75)	4/60
107-1:407-1	Data Processing Systems	2/79
107-2	Coding System for Material Items	6/77
107-3	Data Processing Systems—Factors to Consider in Conversion	10/72
109-6	Personnel Practices for Business Security	12/58
110-1	Member Services, Community Relations and Power Use	2/71
112-3	Area Coverage Service	9/58
180-5	Authorization and Accounting for Travel and Incidental Expenses	6/67

Authority: 7 U.S.C. 901 *et seq.*

Dated: August 28, 1992.

James B. Huff, Sr.,

Administrator.

[FR Doc 92-21382 Filed 9-3-92; 8:45 am]

BILLING CODE 3410-15-F

ARMS CONTROL AND DISARMAMENT AGENCY

The President's General Advisory Committee on Arms Control and Disarmament; Closed Meeting

August 27, 1992.

In accordance with the Federal Advisory Committee Act, as amended, the U.S. Arms Control and Disarmament Agency announces the following Presidential committee meeting:

Name: General Advisory Committee on Arms Control and Disarmament.

Date: October 15 and 16, 1992.

Time: 9 a.m.

Place: State Department Building, Washington, DC.

Type of Meeting: Closed

Contact: Robert M. Meissner, Executive Director, General Advisory Committee on Arms Control and Disarmament, room 5927, Washington, DC, 20451. (202) 647-5178.

Purpose of Advisory Committee: To advise the President, the Secretary of State, and the Director of the Arms Control and Disarmament Agency respecting matters affecting arms control, disarmament, and world peace.

Agenda: The Committee will review specific issues of national security policy and arms control.

Reason for Closing: The GAC members will be reviewing and discussing matters specifically required by Executive Order to be kept secret in the interest of national defense and foreign policy.

Authority to Close Meeting: The closing of this meeting is in accordance with a determination by the Director of the Arms Control and Disarmament Agency dated August 21, 1992, made pursuant to the provisions of section 10(d) of the Federal Advisory Committee Act as amended.

Cathleen Lawrence,

Committee Management Officer.

[FR Doc. 92-21316 Filed 9-3-92; 8:45 a.m.]

BILLING CODE 6820-32-M

COMMISSION ON CIVIL RIGHTS

Agenda and Public Meeting of the Idaho Advisory Committee

Pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, notice is hereby given that the meeting of the Idaho Advisory Committee to the Commission, previously announced in the **Federal Register** on August 20, 1992 (57 FR 37768), FR Doc. 92-19857, to convene at 1 p.m. until 4 p.m. on Thursday, September 10, 1992, at the Guadalupe Center, 630 Falls Avenue, Twin Falls, Idaho 83303, has been rescheduled to convene at 1 p.m. and adjourn at 4 p.m. on Thursday, September 17, 1992, at the same location. The purpose of the meeting is to plan activities and programming for the coming year.

Persons desiring additional information should contact Committee Chairperson Gladys Esquibel at (208) 678-3838 or Philip Montez, Director of the Western Regional Office, at (213) 894-3437. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 1, 1992.

Wilfredo J. Gonzalez,

Staff Director.

[FR Doc. 92-21511 Filed 9-3-92; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 597]

Extension of Authority and Expansion With Restrictions Subzones 122D, 122E, and 122H; Corpus Christi, TX

Pursuant to its authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), and the Foreign-Trade Zones Board Regulations (15 CFR part 400), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

Whereas, on September 5, 1985, the Foreign-Trade Zones (FTZ) Board designated the Port of Corpus Christi Authority (the Port), as grantee of FTZ 122, under a zone plan which included conditional approval for foreign-trade subzone status at the manufacturing plants of Aker Gulf Marine (formerly Gulf Marine Fabricators, Inc.) (SZ 122D), Berry Contracting, Inc. (SZ 122E), and Hitox Corporation of America (SZ 122H) in the Corpus Christi, Texas, area (Board Order 310, 50 FR 38020, 9/19/85);

Whereas, the foregoing subzones were approved subject to restrictions, including a five-year time restriction, which has been extended (to 9/5/92);

Whereas, the Port has made application (three applications were consolidated as Docket 50-91, filed 9-5-91, 56 FR 46411, 9-12-91) to the Board requesting an indefinite extension of authority and removal of certain restrictions applicable to Subzones 122D, 122E, and 122H, and expansion of Subzones 122E and 122H, including expansion of zone manufacturing authority for Subzone 122H;

Whereas, notice of said application has been given in the **Federal Register** and public comment has been invited;

Whereas, the Board has found that the requirements of the Act and the Board's regulations would be satisfied, and that the proposal would be in the public interest provided that approval is subject to the standard restrictions on steel mill products;

Now, therefore, the Board hereby orders that the authority for Subzones 122D, 122E and 122H is extended, that Subzones 122E and 122H are expanded and that certain restrictions (except those on steel mill products) are removed in accordance with the consolidated application filed September 5, 1991, subject to restrictions requiring that privileged foreign status (19 CFR 14641) shall be elected on any foreign steel mill products used in the manufacture of finished products not classified as vessels, and requiring that foreign steel mill products used in the manufacture of products classified as vessels shall be subject to the standard shipyard restriction as contained in Board Order 539 (56 FR 56627, 11-6-91), and subject to the Act and the Board's Regulations (as revised, 56 FR 50790-50808, 10/8/91), including § 400.28.

Signed at Washington, DC, this 26th day of August, 1992, pursuant to Order of the Board.

Francis J. Sailer,

Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92-21429 Filed 9-3-92; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-351-811]

Certain Hot Rolled Lead and Bismuth Carbon Steel Products From Brazil; Postponement of Preliminary Antidumping Duty Determination

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

EFFECTIVE DATE: September 4, 1992.

FOR FURTHER INFORMATION CONTACT: Linda L. Pasden or Richard Weible, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 377-3793.

POSTPONEMENT: On August 24, 1992, Inland Steel Industries, Inc. and the Bar, Rod & Wire Division of Bethlehem Steel Corp., the petitioners in this investigation, requested that the Department postpone the preliminary determination in this investigation from September 21, 1992, until November 10, 1992. The Department finds no compelling reasons to deny the request. Accordingly, we are postponing the date of the preliminary determination until not later than November 10, 1992.

This notice is published pursuant to section 733(c)(2) of the Tariff Act of 1930, as amended, and 19 CFR 353.15(d).

Dated: August 28, 1992.

Rolf Th. Lundberg, Jr.,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-21428 Filed 9-3-92; 8:45 am]

BILLING CODE 3510-DS-M

[C-507-501]

In-Shell Pistachios From Iran; Determination Not To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of determination not to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the countervailing duty order on in-shell pistachios from Iran.

EFFECTIVE DATE: September 4, 1991.

FOR FURTHER INFORMATION CONTACT: Christopher Beach or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION: On March 10, 1992, the Department of Commerce ("the Department") published in the **Federal Register** (57 FR 8436) its intent to revoke the countervailing duty order on in-shell pistachios from Iran (51 FR 8344; March 11, 1986). We have not received a request for an administrative review of the order for the last five consecutive anniversary months. In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month.

On March 26, 1992, the California Pistachio Commission and the Western Pistachio Association, interested parties and the petitioners in the original investigation, objected to our intent to revoke the order. Because he requirements of 19 CFR 355.15(d)(4)(iii) have not been met, we will not revoke the order.

Dated: August 20, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92-21427 Filed 9-3-92; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

[Docket No. 920784-2184]

Announcement of Opportunities for Funding Research in the National Estuarine Research Reserve System for Fiscal Year 1993

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice.

SUMMARY: The Sanctuaries and Reserves Division of the Office of Ocean and Coastal Resource Management is soliciting proposals for funding of research within the National Estuarine Research Reserves. The focus of funding for the upcoming annual grant period is the effect of non-point source pollution on estuarine and estuarine-like ecosystems. This notice describes the procedures for proposal submission, establishment of funding priorities and selection criteria.

DATES: Pre-proposals must be submitted and be postmarked no later than September 30, 1992. Notification regarding the disposition of the pre-proposals will be issued on or about November 1, 1992. Final proposals must be postmarked no later than December 18, 1992.

FOR FURTHER INFORMATION CONTACT: Dr. Michael P. Crosby, Chief Scientist & National Research Coordinator, Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1825 Connecticut Ave., NW., suite 714, Washington, DC 20235; Attn: FY93 NERRS Research; 202/606-4126; FAX 202 606-2496.

SUPPLEMENTARY INFORMATION:

I. Authority and Background

Section 315 of the Coastal Zone Management Act (CZMA), 16 U.S.C. § 1461), establishes the National Estuarine Research Reserve System (NERRS). Subsection 315(e)(1)(B) authorizes the Sanctuaries and Reserves Division (SRD) of the Office of Ocean and Coastal Resource Management (OCRM), National Oceanic and Atmospheric Administration (NOAA), to make grants or cooperative agreements to any coastal state or public or private person for purposes of supporting research within the NERSS. This program is listed in the Catalog of Federal Domestic Assistance under "Coastal Zone Management Estuarine Research Reserve," Number 11.420.

II. Information on Established National Estuarine Research Reserves

The NERRS consists of carefully selected estuarine areas of the United States which are designated, preserved, and managed for research and educational purposes. The Reserves are chosen to reflect regional differences and to include a variety of ecosystem types in accordance with the classification scheme of the national program as presented in 15 CFR part 921 (49 FR 26502-26520).

Each NERRS site is uniquely suited for supporting a wide range of beneficial uses of ecological, economic, recreational, and aesthetic value which are dependent upon maintenance of a healthy ecosystem. Each site provides critical habitat for a wide range of ecologically and commercially important species of fish, shellfish, birds, and other aquatic and terrestrial wildlife. Each Reserve has been designed to ensure its effectiveness as a conservation unit and as a site for long-term research and monitoring. As part of a national system, the Reserves collectively provide a unique opportunity to address research questions and estuarine management issues of national significance. For a more comprehensive description of the sites, contact individual site Managers and/or Research Coordinators. The on-site contacts and addresses of the National Estuarine Research Reserves are provided in appendix I.

III. Availability of Funds

Funds are available on a competitive basis to any coastal state, public or private university, qualified public or private institution, or individuals, to conduct research within National Estuarine Research Reserves. Managers and Research Coordinators at NERRS sites are ineligible to submit competitive research proposals under this Announcement. In FY91 and 92, SRD provided funding in the amounts of approximately $400,000 and $700,000, respectively, for research in the NERRS. The approximately range of funding in past years per successful project has been between $10,000 and $50,000. Federal funds requested must be matched by the applicant by at least 30% of the total cost of the project, not just the Federal share. For example, if the total project cost is $10,000, the Federal share is $7,000, match is $3,000.

Note: The match requirement was decreased from 50% to 30% by Coastal Zone Act Reauthorization Amendments of 1990.

The required match must be with cash or the value of goods and services directly benefiting the project in accordance with 15 CFR Part 24, "Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments," or OMB Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations. It is anticipated that projects receiving funding under this announcement will begin in the spring/summer of 1993. NERRS research funds are normally awarded through a cooperative agreement. Applicants not familiar with the requirements of a cooperative agreement or who need additional information on application requirements are encouraged to contact the applicable Reserve Manager or SRD.

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either: (1) The delinquent account is paid in full, (2) A negotiated repayment schedule is established and at least one payment is received, or (3) Other arrangements satisfactory to the Department of Commerce are made. In addition, any researchers who are past due for submitting acceptable final reports of any previous SRD-funded research will be ineligible to be considered for new awards until final reports are received, reviewed and deemed acceptable by SRD. Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding. A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

IV. Purpose and Priorities

Research funds are primarily used to support management-related research that will enhance scientific understanding of Reserve environments, provide information needed by Reserve Managers and coastal zone decision-makers, and improve public awareness of estuaries and estuarine management issues. Research projects may be oriented to specific Reserves; however, projects that will benefit more than one Reserve in the national system will be given a higher emphasis than Reserve-specific projects.

The ten-year primary research objective is the study of natural and anthropogenically-induced change in the ecology of estuarine and estuarine-like

ecosystems that comprise the National Estuarine Research Reserve System. All research funded through SRD should be designed to provide information of significant value to the development and implementation of management policy governing the U.S. coastal zone, for which NOAA's Office of Ocean and Coastal Resource Management has management and regulatory responsibilities. Five two-year research priority categories will serve as foci for the SRD competitive research program over this ten-year period. The first of the two-year research priorities will begin in FY93 (see below). Every two years, beginning in FY94, SRD will review (and if necessary, re-evaluate) its next ten-year set of research priorities. This system will ensure a continuous decade-long research agenda which, in turn, will provide the basis for long-term research and monitoring in the NERRS program. This system will also facilitate long-term interaction with other Federal and state agencies, as well as the academic research community.

NERRS Research Priorities for FY 1993–2002

FY 1993, 1994: Non-point Source Pollution (Pollution inputs from non-focused or nonidentifiable sources).

FY 1995, 1996: Habitat Restoration (restoration of coastal habitats that have been altered by anthropogenic activities and/or inputs).

FY 1997, 1998: Alterations in Habitat Utilization by Coastal Biota (exotic species, commercial species, non-commercial species).

FY 1999, 2000: Alterations in Water Circulation, Transportation and Quality (tidal exchange, fresh water diversion, hydrological budgets, ground water intrusion, biotic species transportation).

FY 2001, 2002: Anthropogenic Inputs and Activities (focused and identifiable—i.e., dredge spoils, HAZMAT, recreational uses, commercial uses).

Each year's research proposals should be designed to answer the same standardized, management-oriented question. In FY 1993 the question to be addressed is: "How will non-point source pollution affect estuarine or estuarine-like ecosystems in terms of a) functional biodiversity, b) functional ecology, c) human health, d) eutrophication, and e) and/or commercial fisheries."

Research proposals submitted in response to this announcement must address coastal management issues identified as having regional or national significance, must relate them to the National Research Priorities described in this announcement, and be conducted (at least partially) within one or more designated NERRS sites. Research projects are normally funded for a duration of either one or two years. It is the applicant's prerogative as to whether his/her proposal should be reviewed as a one- or two-year study. Researchers submitting one-year proposals should design their studies so that at the end of one year of funding significant results will be obtained. In FY93, it is expected that approximately 50% of the competitive research budget will be expended for studies with a two-year duration. Multi-year funding will always be initiated in the first year of a two-year priority. One year projects may be submitted in either year of a two-year priority. This will ensure that no site is automatically locked out of research funds in the second year of a priority period and will ensure infusion of "fresh ideas" each year. Second-year funding of multi-year projects is not guaranteed. It is at the discretion of SRD based on such factors as performance and the availability of funds. However, funding priority will be given to the second year of multi-year proposals upon satisfactory completion of the first year of research. The research topic and the Reserve must be carefully chosen to ensure that the resource management issues of primary concern to the Reserve and the NERRS are addressed. Thus, it is very important that all prospective researchers contact the appropriate Reserve before submitting a proposal responding to this announcement.

V. Guidelines for Proposal Preparation, Proposal Review and Evaluation and Reporting Requirements

Applicants for SRD research funds must follow the guidelines presented herein when preparing pre-proposals and proposals for research in National Estuarine Research Reserves. Pre-proposals and proposals not following these guidelines will be returned to the applicant without further review.

Proposals for research in the NERRS are solicited annually for award the following fiscal year. Proposal due dates and other pertinent information are contained in this announcement of research opportunities. All proposals sent to SRD must cite and reference this **Federal Register** notice. Proposers must submit an original and two (2) copies of each proposal and 2 copies of all supportive documents (curricula vitae, literature referenced, etc.).

It is important to understand that each proposal will be reviewed only as a one-year project or a two-year project, not both. It is the applicant's responsibility to design his/her study as either a one-year or a two-year study and to clearly inform SRD as to which category the proposal should be classified. Applicants that are approved for further review must submit an original and two (2) copies of their full proposals as well. For second year funding researchers submitting multi-year proposals must re-submit all NOAA forms, certifications, detailed budgets with justifications, milestone schedules, and any changes in the Statement of Work.

A. Pre-proposals

Pre-proposals will be used by SRD to evaluate the applicability of the research plan with regard to the goals of this announcement. Pre-proposals are limited to 8 double-spaced pages including the abstract, introduction, objectives, statement of hypothesis, brief methods description, and discussion of anticipated results and benefits. A discussion of coordination with other research in progress or proposed would also be helpful. Curricula vitae (not to exceed 3 pages each) for each researcher must be included. The budget description showing matching funds, cover page, curriculum vitae, literature cited section, and any tables or figures, will not be counted in the 8 double-spaced page limit. Submit the original and 2 copies of the pre-proposal and additional sections to: Dr. Michael P. Crosby, Chief Scientist & National Research Coordinator, Sanctuaries and Reserves Division, suite 714, 1825 Connecticut Avenue, NW., Washington, DC 20235. All pre-proposals must be postmarked no later than September 30, 1992. Receipt of all pre-proposals will be acknowledged and a copy sent to the appropriate Reserve Manager. All pre-proposals will be reviewed by Dr. Crosby and his staff, the SRD Headquarters Regional Managers and their staff, and the Reserve Manager, Research Coordinator, and their research advisory committees. Pre-proposals will be rated using the criteria listed in section C below, "Proposal Review and Evaluation." Applicants will be notified by mail as to the disposition of their pre-proposals on or about November 1, 1992. Applicants whose research projects are deemed by SRD to warrant further consideration will be requested to submit a full proposal. Incomplete pre-proposals will be returned to the Principal Investigator without further review.

B. Full Proposals

Full proposals must be postmarked no later than December 18, 1992. Submit 1 original and 2 copies of the proposal (including all forms, curricula vitae, etc.) to the same address as the pre-proposals. These guidelines for proposal

preparation should be followed in preparing your proposals. The proposal should be no longer than 20 double-spaced pages, excluding table of contents, title page, literature cited, curricula vitae, and figures and tables. Incomplete proposals will be returned to the Principal Investigator without further review.

Proposal Content

1. *Cover sheet.* The applicant must submit as a cover sheet a Standard Form 424 (revised 4/88) with all blocks completed and the SF-424A and SF-424B, Budget and Assurances. These forms are available upon request from the Sanctuaries and Reserves Division, 1825 Connecticut Avenue, NW., suite 714, Washington, DC 20235, (202) 606-4126.

Specification of a proposed starting date does not ensure receiving an award by that date. Therefore, work on a project should not begin before the effective date on the official notification of the award from the NOAA Grants Officer. If any costs are incurred prior to an award being made the applicant does so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that they may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

A proposal must be signed and dated by the organizational official authorized to contractually obligate the submitting organization. The principal investigator is also signatory.

2. *Title page.* Proposal title must include the name of the NERRS site(s) in which the research will be conducted, and whether it is a one or two-year project.

3. *Table of contents, lists of figures and tables.* These should list the major contents of the proposal and the appropriate page numbers.

4. *Abstract.* A one-page abstract must be included. The abstract should state the research objectives, scientific methods to be used, the significance of the project to a particular Reserve, the NERRS program, and the national research priorities.

5. *Project description.* The main body of the proposal should be a detailed statement of the work to be undertaken, and include the following headings and components:

(a) *Introduction.* This section should introduce the reviewer to the research setting and environment. It should include a brief review of pertinent literature, and describe the research problem in relation to relevant coastal management issues and the FY93 research priority identified in this Request for Proposals.

(b) *Objectives.* This section should discuss the overall study objectives, the specific research objectives, and the relationship of research project objectives to site-specific and NERRS program objectives. This section should also present the primary hypothesis upon which this project is focused, as well as any additional or component hypotheses which will be addressed by this research.

(c) *Methods.* This section should state the method(s) to be used to test the hypotheses and accomplish the specific research objectives including a systematic discussion of what, when, where, and how the data are to be collected, analyzed, and reported. Field and laboratory methods should be scientifically valid and reliable and accompanied by a statistically sound sampling scheme. Methods should be well documented and described in sufficient detail to enable other scientists to evaluate their appropriations and their possible impact on the environment. Methods chosen should be justified and compared with other methods employed for similar work.

Techniques should allow the testing of the hypotheses, but also provide baseline data that may be used in answering related ecological and management questions concerning the Reserve environment. Measures should be concise and reliable enough to allow comparison with those made at different sites and times by different investigators. If the project is envisioned as the initial phase of a long-term effort (e.g., a monitoring program) the methods selected must be stable enough that it is unlikely that they will change drastically over the next 10-15 years. The methods must have proven their utility and sensitivity as indicators for natural or human-induced change. Unproven or newly-devised methods should be field-tested to evaluate their soundness and likely success before applying for SRD research funds.

Analytical methods and statistical tests applied to the data should be documented, thus providing a rationale for choosing one set of methods over alternatives. Quality control measures also should be documented (e.g., statistical confidence levels, standards of reference, performance requirements, internal evaluation criteria). Indicate by way of discussion how data are to be synthesized, interpreted and integrated into final work products, and how and where the data are to be catalogued and stored for ready retrieval at later dates.

A map clearly showing the study location and any other features of interest must be included. Use a U.S. Geological Survey topographic map, or an equivalent, in constructing the location map for the proposal. Consultation with Reserve personnel to identify existing maps is strongly recommended.

(d) *Project significance.* In this section, discuss how the proposed research effort will enhance or contribute to improving the state of knowledge of the estuary and assist coastal zone management decision-making; i.e., why is the proposed research important and how can the results be used to manage coastal resources? This section must also discuss, in detail, the relation of the proposed research to the research priorities stated in the research announcement. In addition, the applicant must also provide a clear discussion of how the proposed research addresses state and national estuarine and coastal resource management issues and how the results can be utilized by policy-makers. If research findings may be applicable to other sites in the NERRS, this should be given special mention. If the research is to be conducted at more than one Reserve, the applicant must provide copies of correspondence with the appropriate Reserve Managers indicating consultation with the Managers and their support for the proposed project.

(e) *Milestone schedule.* A milestone schedule is required in the proposal. This schedule should show, in table form, anticipated dates for completing field work and data collection, data analysis, progress reports, the draft technical report, the final technical report and other related activities. Use "Month 1, Month 2," rather than June, July, etc., in preparing these charts. (SRD Headquarters requires at least six weeks from time of receipt to review draft technical reports.)

(f) *Personnel and project management.* Give a complete description of how the project will be managed, including the name and expertise of the principal investigator and the name(s), expertise, and task assignments of team members. Evidence of ability to successfully complete the proposed research should be supported by reference to similar efforts performed. Curricula vitae (not to exceed 3 pages for each investigator) listing qualifications related to professional and technical personnel should be provided. All non-profit and for-profit applicants are subject to a name check review process as required

by Department of Commerce regulations. The proposal should discuss and explain any portion of work expected to be subcontracted, and identify probable sources.

(g) *Literature cited.* Provide complete references for current literature, research, and other appropriate published and unpublished documents cited in the text of the proposal.

(h) *Budget.* The applicant may request funds under any of the categories listed below as long as the costs are reasonable and necessary to perform research and are determined to be in accordance with the previously mentioned 15 CFR part 24 and OMB Circulars A-21, A-122, A-87, and A-110. The amount of Federal funds requested must be matched by the applicant by at least 30% of the total project cost. Cash or the value of goods and services, except land, directly benefitting the research project may be used to satisfy the matching requirements. Funds from other Federal agencies may not be used as match. General guidelines for the non-Federal share are contained in 15 CFR part 24 and OMB Circular A-110.

The budget should contain itemized costs with appropriate narratives justifying proposed expenditures. Budget categories are to be broken down as follows, clearly showing both Federal and non-Federal shares side by side:

—*Salaries and Wages.* Salaries and wages of the principal investigator and other members of the project team constitute direct costs in proportion to the effort devoted to the project. The number of full-time person months or days and the rate of pay (hourly, monthly, or annually) should be indicated. Salaries requested must be consistent with the institution's regular practices. The submitting organization may request that salary data remain confidential information.

—*Fringe benefits.* Fringe benefits (i.e., social security, insurance, retirement) may be treated as direct costs as long as this is consistent with the institution's regular practices.

—*Equipment.* While not their primary purpose, research funds may be approved for the purchase of major equipment only if the following conditions are met:

(a) A lease versus purchase analysis has been conducted and the findings determine that purchase is the most economical method of procurement; and

(b) The equipment does not exist at the recipient's institution or the Reserve site and is essential for the successful completion of the project.

Discuss each of these points along with the purpose of the equipment and a justification for its use. Provide a list of equipment to be purchased, leased, or rented by model number and manufacturer, where known. At the termination of the contract, equipment acquired costing $300 or more with a life expectancy of 2 years or more will become the property of the NERR(s) where the research was conducted unless there is a demonstrated need for the equipment at the recipient institution to support Reserve-sponsored research, or there are inadequate facilities and provisions for housing, storing, protecting, and maintaining the equipment on location at the Reserve.

—*Travel.* The type, extent, and estimated cost of travel should be explained and justified in relation to the proposed research. Travel expense is limited to round trip travel to field research locations and should not exceed 40 percent of total direct costs. Requests for funds to travel to conferences are discouraged and will not be approved unless a clear justification is provided.

—*Other Direct Costs.* Other anticipated costs should be itemized under the following categories:

(i) *Materials and supplies.* The budget should indicate in general terms the types of expendable materials and supplies required and their estimated costs;

(ii) *Research vessel or aircraft rental.* Include purpose, unit cost, duration of use, and justification;

(iii) *Laboratory space rental.* Funds may be requested for use of laboratory space at research establishments away from the grantee's institution while conducting studies specifically related to the proposed effort;

(iv) *Telecommunication services and reproduction costs.* Include expenses associated with telephone calls, telex, copying, reprint charges, film duplication, etc;

(v) *Consultant services and subcontracts.* Consultant services should be disclosed and justified in the proposal. Funds may be requested for transportation and subsistence, and for consultant's travel. Travel costs, per diem and other related costs must be listed. Furnish information on consultation's expertise, primary organizational affiliation, daily compensation rate, and number of days of service;

(vi) *Computer services.* The cost of unusual or costly computer services may be requested and must be justified.

—*Indirect costs.* Include fees and overhead costs based on the negotiated rate agreement by the cognizant agency on behalf of the Federal Government.

Note: It is the policy of the Department of Commerce that indirect costs shall not exceed direct costs.

(i) *Requests for reserve support services.* On-site Reserve personnel sometimes can provide limited logistical support for research projects in the form of manpower, equipment, supplies, etc. Any request for Reserve support services should be approved by the Reserve Manager prior to proposal submission and be included as part of the proposal package in the form of written correspondence.

(j) *Coordination with other research in progress or proposed.* SRD encourages collaboration and cost-sharing with other investigators to enhance scientific capabilities and avoid unnecessary duplication of effort. Proposals should include a description of how the proposed effort will be coordinated with other research projects that are in progress or proposed, if applicable.

(k) *Other sources of financial support.* List all current or pending research to which the principal investigator or other key personnel have committed their time during the period of the proposed work, regardless of support. Indicate the level of effort or percentage of time devoted to these projects.

In addition to their required non-Federal match, SRD encourages investigators to seek other sources of financial support to supplement Federal funds. If the proposal submitted to SRD is being submitted to other possible sponsors, list them and describe the extent of support being sought. Disclosure of this information will not jeopardize chances for Federal funding.

(l) *Permits.* The applicant must apply for any applicable state or Federal permits. Attach a copy of the permit application and supporting documentation to the proposal as an appendix. SRD must receive notification of the approval of the permit application before funding can be approved.

Again, to be considered for second year funding for multi-year proposals, applicants must re-submit all NOAA forms, certifications, detailed budgets with justifications, milestone schedules, and any changes in the Statement of Work by the FY94 pre-proposal deadline.

C. Proposal Review and Evaluation

All proposals are thoroughly reviewed by Dr. Crosby and his staff, and by at least two outside individuals who are acknowledged experts in the particular field represented by the proposal. Each full proposal is also forwarded to the applicable SRD Regional and Reserve

staff for their comments. Applicants are requested to include the names, addresses, and telephone numbers of five (5) individuals who, in their opinions, are especially well qualified to evaluate the proposal objectively. Once SRD award recommendations are authorized by the NOAA Grants Management Division and the cooperative agreement is awarded, verbatim copies of the reviews, excluding the names of reviewers, are mailed, upon request, to each Principal Investigator/Project Director.

In order to provide for the fair and equitable selection of the most meritorious research projects for support, SRD has established specific criteria for their review and evaluation. These criteria are intended to be applied to all research proposals in a balanced and judicious manner, in accordance with the SRD Research Priorities set forth in this request for proposals (RFP). The criteria used in the peer review process to aid SRD in its final selection of research projects are listed below, together with the elements that constitute each criterion and the relative weight (in parenthesis):

1. *Scientific merit (20%).* This criterion relates to determining whether the objectives of the proposal or of the observations are important to the field, and to assess the likelihood that the research will improve the scientific understanding of estuarine processes within the Reserve as well as in other similar estuaries.

2. *Technical approach (20%).* This criterion assesses the technical feasibility of the proposed effort, the reasonableness of the hypotheses, the degree to which the proposed timeline is realistic, the appropriateness and scientific validity of the proposed analytical methods, the degree to which the proposal demonstrates an understanding of the Reserve environment and management needs, the current state of knowledge in the particular field of research interest, and the total research requirements.

3. *Utility to reserve management and to regional coastal management issues (20%).* This criterion relates to determining the likelihood that results of this research will be important to management of the Reserve (does its address management issues relevant to the site and the region?) and for addressing coastal management issues of regional importance (will the results of this study significantly enhance a coastal zone manager's ability to wisely manage coastal resources?).

4. *Relevance to National Research Priorities and utility to national coastal management issues (20%).* This criterion is used to assess the relationship between the objectives of the proposed project and the National Research Priorities established by NOAA, and the likelihood that results of this research will be important to national coastal management issues.

5. *Qualifications of P.I. and key personnel (10%).* This criterion relates to the experience and past performance of the principal investigator and key personnel, their familiarity with the geographic area of the proposed study, and their publication record.

6. *Institutional support and capabilities (5%).* This criterion relates to the extent of the applicant institution's support for and commitment to the proposed research and what facilities, equipment, and other resources are available to the principal investigator and key personnel from his/her institution for use in accomplishing the proposed work.

7. *Budget (5%).* This criterion is used to determine whether the budget is realistic and reasonable for accomplishing the proposed tasks.

D. Reporting Requirements

Awards for research are usually made during the third or fourth quarter of the fiscal year (April through September). Semi-annual performance and financial reports, a draft technical report, and a final technical report, and a final technical report are required as conditions of the award.

Performance Reports are summaries of all work performed during the preceding 6 months and show the overall progress against the milestone schedule in the approved proposal. A statement of the milestones reached, data compiled, and analyses completed must be included. In addition, a summary of any significant technical, manpower, schedule, or cost problems encountered during the preceding quarter, an assessment of their probable impact on the project's approved milestone schedule, and a statement of any corrective action taken or proposed is also required. Any presentations at scientific meetings (or publications including theses, dissertations, and journal articles) that occurred should be highlighted. Also required is a summary of major work activities scheduled for the next quarter and any questions or problems regarding the applicant's work that requires discussion with or resolution by SRD. The semi-annual performance reports are not expected to exceed 2–5 pages in length. Principal investigators are encouraged to routinely discuss (via telephone, personal visits, FAX, etc.) progress of their research with the Reserve Manager and/or Research Coordinator and SRD headquarters research staff.

Financial reports are to be filed at the same time as technical and performance reports, cover the same periods, and show the status of the project's financial operations.

The draft and final technical reports are required to be prepared following SRD's "Guidelines for Preparing Technical Reports of Research in National Estuarine Research Reserves" which is available upon request (202) 606–4126.

All final reports are due 90 days after the project end date.

E. Further Information

For further information on research opportunities under the National Estuarine Research Reserve System, contact the on-site personnel listed in appendix I or the Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, 1825 Connecticut Avenue, NW., suite 714, Washington, DC 20235, (202) 606–4126.

VI. General Requirements

Cooperative agreements for Federal financial assistance are subject to all Federal and Department regulations, policies, and procedures applicable to Federal assistance awards, such as compliance with the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, and other laws and regulations prohibiting discrimination; patent and copyright requirements; cost sharing; the use of U.S. flag carriers for international travel; and the use of foreign currency as appropriate to accomplish the objectives of a project.

The requirements of Executive Order 12372, "Intergovernmental Review of Federal Programs," are applicable to the awards of grants and cooperative agreements under this notice. However, the requirements of the Executive Order apply to individuals only if a state or local government is the provider of the non-Federal funds.

All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matter; Drug-Free Workplace Requirements and Lobbying," and applicants should be advised that:

1. *Nonprocurement debarment and suspension.* Prospective participants (as defined at 15 CFR 26.105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension," and the related section of the certification form;

2. *Drug-free workplace.* Grantees (as defined at 15 CFR 26.105), are subject to

15 CFR part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form;

3. *Anti-lobbying*. Persons (as defined at 15 CFR 28.105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on the use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form which applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater;

4. *Anti-lobbying disclosures*. Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

A. Adherence to Original Objectives

The Principal Investigator should feel free to pursue important leads that may arise during the conduct of the project. SRD support will not be jeopardized if the Principal Investigator discontinues or materially modifies the originally planned line of inquiry in favor of one that appears to have more promise. The Chief Scientist & National Research Coordinator of SRD must, however, give prior written approval when a modification would result in a major deviation from the original objective(s) or project scope, including activities specifically excluded from support when the award has been made. The Chief Scientist & National Research Coordinator will consult with the appropriate NERRS Manager and Research Coordinator prior to giving approval for such modifications.

B. Adherence to Original Budget Estimates

The cooperative agreement award includes or refers to a budget that lists the items for which funds are provided. All budget transfers will be subject to the provisions of the Department of Commerce Standard Terms and Conditions. While the Principal Investigator has reasonable flexibility to alter direction of the project when changes seem advantageous, the recipient organization must consider the effect of any budget reallocations on the direct cost portions of the budget, and must observe the conditions prescribed by the award. Any change in the budget that will affect the match portion of the award must be approved in writing by the NOAA Grants Officer. When any budget change requires the NOAA Grants Officer's approval, two copies of the request, signed by the Principal Investigator and by the recipient organization's authorized official, should be sent to the Grants Management Division and the Chief Scientist & National Research Coordinator. The request should clearly state which budget items are to be changed and by what amounts and should explain the reasons for the change. (Applicants and institutional grants offices should be aware that all matching funds, including over-match, are understood to be a commitment to the project by NOAA's Grants Management Division and must be obligated and used by the project end date.)

C. Changes in Personnel

Written approval by the NOAA Grants Officer is required for any permanent change in Principal Investigator(s) or project director(s) or for any temporary change in excess of three (3) months, such as an investigator taking sabbatical leave. Furthermore, SRD must be informed when it appears that a Principal Investigator will devote substantially less effort to the work than anticipated in the approved proposal. Written prior approval is also required for any change in senior personnel specifically named in the proposal and for the addition of senior personnel not named in the proposal.

D. Transfer of Principal Investigator

When a Principal Investigator plans to leave an institution during the course of an award, the institution has the prerogative to nominate a substitute P.I. or request that the award be terminated and closed out. Substitute P.I.'s are subject to written approval by the NOAA Grants Officer. In those cases where a particular P.I.'s participation is integral to a given project and the PI's original and new institutions agree, SRD may request a transfer of the cooperative agreement and the assignment of remaining unobligated funds to the P.I.'s new institution.

E. Subcontracts

Subcontracts that become necessary after a cooperative agreement has been made must be submitted to SRD for approval. The proposed performance statement and budget, a statement indicating the basis for selection of the contractor, and a justification of the proposed arrangement must be provided. Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying," and disclosure form SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to the Department of Commerce. SF–LLL submitted by any tier recipient or subrecipient should be submitted to the Department of Commerce in accordance with the instructions contained in the award document.

F. Suspension or Termination of Cooperative Agreements

SRD cooperative agreements may be suspended or terminated in accordance with the procedures contained in the General Grant Conditions. Cooperative agreements may also be terminated by mutual agreement. Termination by mutual agreement shall not affect any commitment of cooperative agreement funds that, in the judgement of SRD after consultation with the recipient, had become firm (been expended) before the effective date of the termination.

G. Proposals as Public Record

A proposal that results in an SRD cooperative agreement becomes part of the record of the transaction and will be available to the public, upon written request, except as described below. Information or material that SRD and the applicant or recipient mutually agree to be of a privileged nature will be held in confidence to the extent permitted by the Freedom of Information Act (FOIA), 5 U.S.C. 522, and other applicable laws. Without assuming any liability for inadvertent disclosure, SRD will seek to limit dissemination of such information to its personnel and, when necessary for evaluation of the proposal, to outside reviewers. Accordingly, any privileged information the applicant views as confidential should be set forth in a separate section of the proposal and be labeled with an accompanying statement bearing a legend such as: "The following is confidential information that the proposing entity requests not to be released to persons outside the Government, except for purposes of evaluation." Appropriate labeling in the application aids identification of what may be specifically prohibited from disclosure by statute. In accordance with Department of Commerce Administrative Order 203–26 (May 15, 1985), if a decision has been made not to fund an application containing information marked "confidential," "proprietary," trade secret, "or the like,

the proposal shall be returned promptly to the sender.

A proposal that does not contain confidential information and does not result in an SRD cooperative agreement will be retained by SRD for a period not to exceed 3 years, and will be released to the public only with the consent of the proposer or to the extent required by FOIA and other applicable laws. Portions of proposals resulting in awards that contain descriptions of inventions in which either the Government or the recipient owns or may own a right, title, or interest (including a nonexclusive license) will normally not be made available to the public until after reasonable time has been allowed for filing a patent application(s). It is the policy of SRD to notify the recipient of requests for copies of funded proposals so that the recipient may advise SRD of such inventions described in the proposal.

H. Inventions and Copyrightable Materials

Eash SRD cooperative agreement in support of research may be subject to a patent rights clause. Normally, recipients may elect to retain principal rights to their employees' inventions, subject to certain conditions set forth in the Federal Acquisition Circular 84–27. Each NOAA cooperative agreement may be subject to several conditions affecting copyrightable material (reports, publications, software, etc.) produced in the performance of work under the cooperative agreement. Normally, recipients may own or permit others to own most rights to such material, with the Government receiving the right to use the material for Government purposes.

SRD encourages dissemination, especially through publication in refereed journals and similar media, of research performed under its cooperative agreements. SRD may arrange for the publication of outstanding SRD-funded research projects in its NOAA Technical Memorandum Series disseminated through the National Technical Information Service (NTIS) of the U.S. Department of Commerce.

I. Classification

The Under Secretary for Oceans and Atmosphere, NOAA, determined that this notice is not a major action requiring a regulatory impact analysis under Executive Order 12291 because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, and local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law because this notice concerns grant, benefits and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

This action is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02–10.

This notice does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

This notice contains a collection of information requirements subject to the Paperwork Reduction Act. The collection of this information has been approved by the Office of Management and Budget, OMB Control Number 0648–0121.

(Federal Domestic Assistance Catalog Number 11.420 Coastal Zone Management Estuarine Research Reserves)

Dated: July 7, 1992.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

Appendix I. NERRS On-Site Staff

Alabama

Mr. Thomas McAlpin, Manager, Weeks Bay National Estuarine Research Reserve, 10936–B, U.S. Highway 98, Fairhope, AL 36532, (205) 928–9792.

California

Mr. Steve Kimple, Manager, Dr. Andrew deVogelaere, Research Coordinator, Elkhorn Slough National Estuarine Research Reserve, 1700 Elkhorn Road, Watsonville, CA 95076, (408) 728–0560.

Mr. Paul Jorgensen, Manager, Tijuana River National Estuarine Research Reserve, 301 Caspian Way, Imperial Beach, CA 92032, (619) 575–3613.

Florida

Mr. Woodard Miley II, Manager, Mr. Lee Edmiston, Research Coordinator, Apalachicola River National Estuarine Research Reserve, 261 7th Street, Apalachicola, FL 32320, (904) 653–8063.

Mr. Gary Lytton, Manager, Dr. Thomas Smith, Research Coordinator, Rookery Bay National Estuarine Research Reserve, 10 Shell Island Road, Naples, FL 33942, (813) 775–8845.

Georgia

Dr. Fred Marland, Manager & Research Coordinator, Sapelo Island National Estuarine Research Reserve, Department of Natural Resources, P.O. Box 19, Sapelo Island, GA 31327, (912) 485–2251.

Hawaii

Mr. William Stormont, Manager, Waimanu Valley National Estuarine Research Reserve, Department of Land and Natural Resources, Division of Forestry & Wildlife, 1151 Punchbowl Street, Honolulu, HI 96813, (808) 587–0051.

Maine

Mr. James List, Manager, Dr. Michelle Dionne, Research Coordinator, Wells National Estuarine Research Reserve, RR #2, Box 806, Wells, ME 04090, (207) 646–1555.

Maryland

Ms. Mary Ellen Dore, Manager, Chesapeake Bay National Estuarine Research Reserve in Maryland, Dept. of Natural Resources, Tawes State Office Building, B–3, 580 Taylor Avenue, Annapolis, MD 21401, (410) 974–2784.

Massachusetts

Ms. Christine Gault, Manager, Waquoit Bay National Estuarine Research Reserve, Dept. of Environmental Management, P.O. Box 92W, Waquoit, MA 02536, (508) 457–0495.

New Hampshire

Mr. Peter Wellenberger, Manager, Great Bay National Estuarine Research Reserve, New Hampshire Fish and Game Department, 37 Concord Road, Durham, NH 03824, (603) 868–1095.

New York

Ms. Elizabeth Blair, Manager, Mr. Chuck Nieder, Research Coordinator, Hudson River National Estuarine Research Reserve, New York State Department of Environmental Conservation, c/o Bard College Field Station, Annandale-on-Hudson, NY 12504, (914) 758–5193.

North Carolina

Dr. John Taggart, Manager, Dr. Steve Ross, Research Coordinator, North Carolina National Estuarine Research Reserve, University of North Carolina at Wilmington, 7205 Wrightsville Avenue, Wilmington, NC 28403, (919) 256–3721.

Ohio

Mr. Eugene Wright, Manager, Dr. David Klarer, Research Coordinator, Old Woman Creek National Estuarine Research Reserve, 2514 Cleveland Road, East, Huron, OH 44839, (419) 433–4601.

Oregon

Mr. Michael Graybill, Manager, Dr. Steve Rumrill, Research Coordinator, South Slough National Estuarine Research Reserve, P.O. Box 5417, Charleston, OR 97420, (503) 888–5558.

Puerto Rico

Ms. Anaisa Delgado, Manager, Mr. Carlos J. Cianchini, Research Coordinator, Jobos Bay National Estuarine Research Reserve,

Dept. of Natural Resources, P.O. Box 1170, Guayama, PR 00655, (809) 864-0105.

Rhode Island

Mr. Al Beck, Manager, Narragansett Bay National Estuarine Research Reserve, Dept. of Environmental Management, Box 151, Prudence Island, RI 02872 (401) 683-6780.

Virginia

Dr. Maurice P. Lynch, Manager, Dr. Jeffrey Shields, Research Coordinator, Chesapeake Bay National Estuarine Research Reserve in Virginia, Virginia Institute of Marine Science, College of William and Mary, P.O. Box 1347, Gloucester Point, VA 23062, (804) 642-7135.

Washington

Mr. Terry Stevens, Manager, Dr. Douglas Bulthuis, Research Coordinator, Padilla Bay National Estuarine Research Reserve, 1043 Bayview-Edison Road, Mt. Vernon, WA 98273, (206) 428-1558.

Sites Expected to be Designated in 1992:

South Carolina

Mr. Michael D. McKenzie, Project Manager, Ashepoo-Combahee-Edisto (ACE) Basin, South Carolina Wildlife and Marine Resources Department, P.O. Box 12559, Charleston, SC 29412, (803) 762-5052.

Dr. F. John Vernberg, Project Manager, North Inlet-Winyah Bay, Baruch Marine Field Laboratory, P.O. Box 1630, Georgetown, SC 29442, (803) 546-3623.

[FR Doc. 92-21287 Filed 9-3-92; 8:45 am]

BILLING CODE 3510-08-M

Membership of the National Oceanic and Atmospheric Administration Performance Review Boards

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Membership of NOAA Performance Review Boards.

SUMMARY: In conformance with the Civil Service Reform Act of 1978, 5 U.S.C., 4314(c)(4), NOAA announces the appointment of persons to serve as members of NOAA Performance Review Boards (PRBs). The NOAA PRBs are responsible for reviewing performance appraisals and ratings of Senior Executive Service (SES) members and making written recommendations to the appointing authority on SES retention and compensation matters, including performance-based pay adjustments, awarding of bonuses and amounts, initial recommendations for potential rank awards and recertification. The appointment of these members to the NOAA PRBs will be for periods of 24 months service beginning September 30, 1992.

EFFECTIVE DATE: The effective date of service of appointees to the NOAA Performance Review Boards is September 30, 1992.

FOR FURTHER INFORMATION CONTACT: Debbie J. Scholl, Senior Executive Service Program Officer, Personnel and Civil Rights Office, Office of Administration, NOAA, 1335 East-West Highway, Silver Spring, Maryland 20910, (301) 713-0530.

SUPPLEMENTARY INFORMATION: The names and titles of the members of the NOAA PRBs (NOAA officials unless otherwise identified) are set forth below:

J. Roy Spradley, Special Advisor for International Environmental Programs, Office of the Under Secretary
J. Michael Hall, Director, Office of Global Programs, Office of the Deputy Under Secretary
Donald Scavia, Director, NOAA Coastal Ocean Program Office, Office of the Deputy Under Secretary
Robert M. Valone, Director, Systems Program Office, Office of the Deputy Under Secretary
William H. Hooke, Deputy Chief Scientist, Office of the Chief Scientist
Robert F. Fagin, Director, Office of Administration
Martha R. Lumpkin, Director, Central Administrative Support Center, Office of Administration
Thomas A. Campbell, General Counsel
Robert A. Newman, Director, Office of External Affairs
Glenn A. Flittner, Director, Office of Research and Environmental Information, National Marine Fisheries Service (NMFS)
Nancy Foster, Director, Office of Protected Resources, NMFS
Morris M. Pallozzi, Director, Office of Enforcement, NMFS
Rolland A. Schmitten, Director, Northwest Region, NMFS
Gertrude Coxe, Director, Ocean and Coastal Resource Management, National Ocean Service (NOS)
Andrew Robertson, Chief, Coastal Monitoring & Bioeffects Assessment Division, NOS
Kenneth D. Hadeen, Director, National Climatic Data Center, National Environmental Satellite, Data and Information Services (NESDIS)
Thomas N. Pyke, Assistant Administrator, NESDIS
P. Krishna Rao, Director, Office of Research and Applications, NESDIS
Gregory W. Withee, Deputy Assistant Administrator for Environmental Information Services, NESDIS
Richard P. Augulis, Director, Central Region, National Weather Service (NWS)
Lois J. Gajdys, Chief, Management and Budget, NWS
Eugenia Kalnay, Chief, Development Division, National Meteorological Center, NWS
Walter Telesetsky, Director, Office of Systems Operations, NWS
Hugo F. Bezdek, Director, Atlantic Oceanographic and Meteorological Laboratories, Office of Oceanic and Atmospheric Research (OAR)
Syukuro Manabe, Supervisory Research Meteorologist, Geophysical Fluid Dynamics Laboratories, OAR
Kikuro Miyakoda, Supervisory Research Meteorologist, Geophysical Fluid Dynamics Laboratories, OAR
Alan R. Thomas, Deputy Assistant Administrator, OAR
Joseph E. Clark, Deputy Director, National Technical Information Service, Department of Commerce (DOC)
Burton Colvin, Deputy Director Academic Affairs, National Institute of Standards and Technology (NIST), DOC
Frederick T. Knickerbocker, Executive Director, Economic Affairs, DOC
Chris Kuyatt, Coordinator of Radiation, NIST, DOC
Roy R. Mullen, Associate Chief, National Mapping Division, United States Geological Survey, Department of Interior
Joe D. Simmons, Deputy Director, Center for Basic Standards, National Institutes of Science and Technology, DOC
Sheldon Wiederhorn, Scientific Assistant to Director, NIST, DOC

Dated: August 31, 1992.

John A. Knauss,
Under Secretary for Oceans and Atmosphere

[FR Doc. 92-21329 Filed 9-3-92; 8:45 am]

BILLING CODE 3510-12-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement Lists Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: October 5, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact on the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodities and services to the Procurement List:

Commodities

Trousers, Woodland Camouflage

8415-01-084-1016
8415-01-084-1017
8415-01-084-1705
8415-01-084-1706
8415-01-084-1707
8415-01-084-1708
8415-01-084-1709
8415-01-084-1710
8415-01-084-1711
8415-01-084-1712
8415-01-084-1713
8415-01-084-1714
8415-01-084-1715
8415-01-084-1716
8415-01-084-1717
8415-01-084-1718
8415-01-084-3193
(10% of the Government Requirement)

8415-01-184-1343
8415-01-184-1344
8415-01-184-1345
8415-01-184-1346
8415-01-184-1347
8415-01-184-1348
8415-01-184-1349
8415-01-184-1350
8415-01-184-1351
8415-01-184-1352
8415-01-184-1353
8415-01-184-1354
8415-01-184-1355
8415-01-184-1356
8415-01-184-1357
(5% of the Government Requirement)

Nonprofit Agency: Goodwill Industries of South Florida Miami, Florida.

Services

Food Service

Tinker Air Force Base, Oklahoma

Nonprofit Agency: Oklahoma County Council for Mentally Retarded Citizens, Inc., Oklahoma City, Oklahoma.

Janitorial/Custodial

Norris Cotton Federal Building
275 Chestnut Street
Manchester, New Hampshire

Nonprofit Agency: Easter Seal Society of New Hampshire, Inc., Manchester, New Hampshire.

Beverly L. Milkman,
Executive Director.

[FR Doc. 92-21405 Filed 9-3-92; 8:45 am]

BILLING CODE 6820-33-M

Procurement List Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List cattle ear tags to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: October 5, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On July 6, 1992, the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (57 FR 29713) of the proposed addition of these tags to the Procurement List. Before the notice of rulemaking was published the Committee received comments from the current contractor and a member of Congress. The latter urged the Committee to consider the contractor's comments. The current contractor advised the Committee in response to a request for sales data that adding the cattle ear tag to the Procurement List would have a severe adverse impact on his firm, which had been supplying it to the Government continuously for the past nine years and was dependent upon it. After reviewing the data submitted by the current contractor and considering the potential adverse impact on that firm of adding the item to the Procurement List, the Committee decided to add only 60 percent of the total Government requirement for the item to the Procurement List. This approach will provide employment for people with severe disabilities and at the same time avoid the possibility of a severe adverse impact upon the current contractor because that firm will continue to have the opportunity to compete for a portion of the Government business.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodities, fair market price, and impact of the addition of the current or most recent contractors, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other then the small organizations that will furnish the commodities to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodities proposed for addition to the Procurement List.

Accordingly, the following commodities are hereby added to the Procurement List:

Tag, Cattle Ear

9905-00-NSH-0027 Silver Plated
9905-00-NSH-0028 Orange Baked Enamel
9905-00-NSH-0029 Red Baked Enamel
(60% of the Government's requirement for the Department of Agriculture, Minneapolis, MN)

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,
Executive Director.

[FR Doc. 92-21406 Filed 9-3-92; 8:45 am]

BILLING CODE 6820-33-M

Procurement List Addition; Correction

In notice document 92-20063, appearing on page 38299 in the issue of Monday, August 24, 1992 the effective date of the addition should be changed to September 23, 1992.

Beverly L. Milkman,
Executive Director.

[FR Doc. 92-21407 Filed 9-3-92; 8:45 am]

BILLING CODE 1505-02-M

COMMODITY FUTURES TRADING COMMISSION

Occupation Categories; Amendments to List

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice to amend list of occupation categories.

SUMMARY: On August 27, 1982, the Commission published in the **Federal Register** notification of its list of occupation categories for option contracts (47 FR 37880). This list, as amended on January 10, 1983 (48 FR 1047), February 3, 1984 (49 FR 4200), October 15, 1984 (49 FR 40159), October 26, 1984 (49 FR 43048), December 17, 1985 (50 FR 51385), July 22, 1986 (51 FR 26236), January 28, 1987 (52 FR 2920), March 2, 1987 (52 FR 6139), and March 11, 1992 (57 FR 8632) forms the basis from which the Commission measures commercial participation in domestic exchange-traded commodity options. Futures commission merchants and members of contract markets are required under Commission Rule 1.37(a), 17 CFR 1.37(a)(1982), to record for each option customer account they carry an appropriate occupation category from a list of such categories set forth by the Commission. Futures commission merchants and members of contract markets are required also to record a symbol indicating whether the option customer is commercial or non-commercial. In order to accommodate proposed options on clean air (sulfur dioxide emission allowance) futures, the Commission has determined to revise its list of occupation categories.

FOR FURTHER INFORMATION CONTACT: Richard Shilts of the Division of Economic Analysis, (202) 254-7303, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION: The Commission has revised the list of commercial categories for option contracts as follows:

Commodity and Occupation Categories

Sugar, Cocoa, and Coffee

1. Producer
2. Merchant or dealer.
3. Refiner/processor of raw commodities.
4. Manufacturer of intermediate or final products.
5. Other commercial.

Metals/Precious Metals

6. Miner/producer.
7. Primary or secondary refiner.
8. Dealer (metal merchant).
9. Commercial end user.
46. Fabricator or alloyer.
11.* Other commercial.

Petroleum

39. Crude oil or natural gas producer.
40. Crude oil or natural gas reseller.
12. Refiner.
53. Natural gas processor.
13. Product marketer and/or distributor.
14. End user.
15. Other commercial.

Financial Instruments/Foreign Exchange

16. Savings and loan, mortgage bank or thrift institution.
17. Commercial bank.
18. Insurance company.
19. Pension and retirement fund.
20. Mutual fund.
21. Broker/dealer.
22. Foundation or endowment.
23. Other commercial.
24. Importer/exporter of goods and services.
25. Investor/issuer of foreign currency denominated securities.

Grains, Soybeans, and Soybean Products

26. Grain or soybean producer.
27. Producer cooperative.
28. Elevator operator or merchant other than a producer cooperative.
29. Processor, including feed manufacturing and soybean crushing.
30. Livestock feeder or producer.
47. Soybean oil refiner.
31. Other commercial.

Livestock and Frozen Pork Bellies

32. Farmer or rancher.
33. Commercial feedlot operator.
34. Other livestock feeder.
35. Marketing agency and/or merchant.
36. Packer or other meat processor.
37. Meat wholesale, retailer, or buyer.
38. Other commercial.

Cotton and Frozen Concentrated Orange Juice

41. Producer/grower.
42. Producer/grower cooperative.
43. Merchant/wholesaler.
44. Mill operator/processor.
45. Other commercial.

Forest Products

48. Producer.
49. Remanufacturers.
50. Wholesalers.
51. Retailers and builders.
52. Other commercial.

Emission Allowances

54. Electric utilities.
55. Allowance broker/dealers.
56. Opt-in firms.
57. Other commercial.

Under the revisions, a new commodity category, emission allowances, would be added with four new occupation categories: category 54, electric utilities; category 55, allowance broker/dealers; category 56, opt-in firms; and category 57, other commercial. These revisions will accommodate option trading based on sulfur dioxide emission allowances and related instruments.

As is the case with the existing categories, the appropriate classification for a customer is based on the primary activity of the customer in using the option market in conjunction with its cash market activities.

Issued in Washington, DC on August 25, 1992.

Jean A. Webb,
Secretary to the Commission.

[FR Doc. 92-21348 Filed 9-3-92; 8:45 am]

BILLING CODE 6351-01-M

* Category 10 intentionally blank.

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, October 6, 1992; Tuesday, October 13, 1992; Tuesday, October 20, 1992 and Tuesday, October 27, 1992, at 2 p.m. in room 800, Hoffman Building #1, Alexandria, Virginia.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning

all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Public Wage 92–392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Public Law 92–463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b. (c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b. (c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy/Equal Opportunity) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b. (c)(2)), and the detailed wage data considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, room 3D264, The Pentagon, Washington, D.C. 20310.

Dated: August 31, 1992.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–21284 Filed 9–3–92; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

Privacy Act of 1974; Delete and Amend Systems of Records

AGENCY: Department of the Air Force, DOD.

ACTION: Delete and amend systems of records.

SUMMARY: The Department of the Air Force proposes to delete 13 and amend four existing systems of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The deleted systems are effective immediately. The amended systems will be effective October 5, 1992, unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Air Force Access Programs Manager, SAF/AAIA, The Pentagon, Washington, DC 20330–1000.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Gibson at (703) 697–3491 or DSN 227–3491.

SUPPLEMENTARY INFORMATION: The Department of the Air Force record systems notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** as follows:

50 FR 22332 May 29, 1985 (DoD Compilation, changes follow)
50 FR 24672 June 12, 1985
50 FR 25737 June 21, 1985
50 FR 46477 November 08, 1985
50 FR 50337 December 10, 1985
51 FR 4531 February 05, 1986
51 FR 7317 March 05, 1986
51 FR 16735 May 06, 1986
51 FR 18927 May 23, 1986
51 FR 41382 November 14, 1986
51 FR 44332 December 09, 1986
52 FR 11845 April 13, 1987
53 FR 24354 June 28, 1988
53 FR 45800 November 14, 1988
53 FR 50072 December 13, 1988
53 FR 51301 December 21, 1988
54 FR 10034 March 09, 1989
54 FR 43450 October 25, 1989
54 FR 47550 November 15, 1989
55 FR 21770 May 29, 1990
55 FR 21900 May 30, 1990 (Updated Mailing Addresses)
55 FR 27868 July 06, 1990
55 FR 28427 July 11, 1990
55 FR 34310 August 22, 1990
55 FR 38126 September 17, 1990
55 FR 42625 October 22, 1990
55 FR 52072 December 19, 1990
56 FR 1990 January 18, 1991
56 FR 5804 February 13, 1991
56 FR 12713 March 27, 1991
56 FR 23054 May 20, 1991
56 FR 23876 May 24, 1991
56 FR 26800 June 11, 1991
56 FR 31394 July 10, 1991 (Updated Index Guide)
56 FR 32181 July 15, 1991
56 FR 63718 December 05, 1991
57 FR 1907 January 16, 1992
57 FR 24600 June 10, 1992
57 FR 27742 June 22, 1992
57 FR 30473 July 9, 1992
57 FR 30474 July 9, 1992
57 FR 30961 July 13, 1992
57 FR 33174 July 27, 1992

The deleted and amended systems are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which requires the submission of an altered system report. The specific changes to the systems of records being amended are set forth below, followed by the systems of records notices, as amended, published in their entirety.

Dated: August 31, 1992.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETIONS

F030 REDCOM A

System name: United States Readiness Command (USREDCOM) Military Personnel Data File, (51 FR 18928, May 23, 1986).

Reason: System is a duplicate of F030 AF A and F035 AF MP O, and is no longer needed.

F035 AFAA A

System name: Air Force Audit Agency Office File, (50 FR 22387, May 29, 1985).

Reason: System is a duplicate of F030 AF A and F035 AF MP O, and is no longer needed.

F035 AFAA B

System name: Air Force Audit Agency Office Personnel File, (50 FR 22388, May 29, 1985).

Reason: System is a duplicate of F030 AF A and F035 AF MP O, and is no longer needed.

F035 AFAA C

System name: Informal Airmen/Reserve Information Record, (50 FR 22389, May 29, 1985).

Reason: System is a duplicate of F030 AF A and F035 AF MP O, and is no longer needed.

F035 AFCC B

System name: Management Control System (MCS), (51 FR 44345, December 9, 1986).

Reason: System is a duplicate of F030 AF A and F035 AF MP O, and is no longer needed.

F035 AFIS A

System name: Intelligence Reserve Information System (IRIS), (50 FR 22391, May 29, 1985).

Reason: System is a duplicate of F030 AF A and F035 AF MP O, and is no longer needed.

F035 ARPC F

System name: Biographical File, (50 FR 22399, May 29, 1985).

Reason: System is a duplicate of F030 AF A and F035 AF MP O, and is no longer needed.

F035 TAC A

System name: Informational Personnel Records (PA Personnel

Background), (50 FR 22429, May 29, 1985).

Reason: System is a duplicate of F030 AF A and F035 AF MP O, and is no longer needed.

F035 SAC B

System name: Officer Involuntary Administrative Separation File, (51 FR 44350, December 9, 1986).

Reason: System is a duplicate of F030 AF A and F035 AF MP O, and is no longer needed.

F050 AFSP A

System name: Unit Training Program, (50 FR 22439, May 29, 1985).

Reason: System is a duplicate of F030 AF A and F035 AF MP O, and is no longer needed.

F127 AFISC A

System name: Safety Education File, (50 FR 22502, May 29, 1985).

Reason: System is a duplicate of F030 AF A and F035 AF MP O, and is no longer needed.

F178 AFSC A

System name: Rome Air Development Center (RADC) Manpower Resources Expenditure System, (50 FR 22543, May 29, 1985).

Reason: System is a duplicate of F030 AF A and F035 AF MP O, and is no longer needed.

F178 AFSC C

System name: Integrated Management Information and Control System (IMICS), (50 FR 22543, May 29, 1985).

Reason: System is a duplicate of F030 AF A and F035 AF MP O, and is no longer needed.

AMENDMENTS

F035 ATC J

SYSTEM NAME:

Drug Abuse Control Case Files, (57 FR 24601, June 10, 1992).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Sensitive Skills Element (Special Counseling), 3731 Personnel Processing Squadron, Lackland Air Force Base, TX 78236–5000."

* * * * *

PURPOSE(S):

Delete "Special Counseling Section" and replace with "Sensitive Skills Element (Special Counseling)."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Commander, 3731 Personnel Processing Squadron, Lackland Air Force Base, TX 78236–5000."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Sensitive Skills Element (Special Counseling), 3731 Personnel Processing Squadron, Lackland Air Force Base, TX 78236–5000."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking to access records about themselves contained in this system should address requests to the Sensitive Skills Element (Special Counseling), 3731 Personnel Processing Squadron, Lackland Air Force Base, TX 78236–5000."

* * * * *

F035 ATC J

SYSTEM NAME:

Drug Abuse Control Case Files.

SYSTEM LOCATION:

Sensitive Skills Element (Special Counseling), 3731 Personnel Processing Squadron, Lackland Air Force Base, TX 78236–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force active duty enlisted personnel and Reserve personnel referred to drug abuse office.

CATEGORIES OF RECORDS IN THE SYSTEM:

Various letters describing drug abuse information such as notification of disposition, recommendation for disposition, drug abuse determination of urinalysis cases.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: powers and duties; delegation by; Air Force Regulation 39–10, Administration Separation of Airman, and Air Force Regulation 30–2, Social Actions Program.

PURPOSE(S):

Discharge authority, Sensitive Skills Element (Special Counseling), and squadron commanders determine extent of prior service drug abuse and make determinations of discharge or retention in the Air Force.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record systems notices apply to this system.

Note: Records of identity, diagnosis, prognosis or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol/drug abuse, family advocacy, AIDS, or sickle cell prevention and treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided herein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–3, 290ee–3. These statutes take precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. The Department of the Air Force "Blanket Routine Uses" do not apply to these records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets.

RETENTION AND DISPOSAL:

Retained in office files for one year after annual cutoff, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, 3731 Personnel Processing Squadron, Lackland Air Force Base, TX 78236–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Sensitive Skills Element (Special Counseling), 3731 Personnel Processing

Squadron, Lackland Air Force Base, TX 78236–5000.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to the Sensitive Skills Element (Special Counseling), 3731 Personnel Processing Squadron, Lackland Air Force Base, TX 78236–5000.

CONTESTING RECORD PROCEDURES:

The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35, Air Force Privacy Act Program; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from squadron commanders, base surgeons, classification interviewers, medical institutions and from source documents such as reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F035 ATC K

SYSTEM NAME:

Processing and Classification of Enlistees (PACE), (57 FR 24602, June 10, 1992).

CHANGES:

SYSTEM LOCATION:

Delete "3507 Airman Classification Squadron (ATC)" and replace with "3731 Personnel Processing Squadron."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete the word "School" and insert "Group" in two places.

* * * * *

PURPOSE(S):

Delete "3700 Personnel Processing Group" and replace with "3700 Mission Support Squadron."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Commander, 3731 Personnel Processing Squadron Lackland AFB, TX 78236–5000."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Commander, 3731 Personnel Processing Squadron, Lackland Air Force Base, TX 78236–5000."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking to access records about themselves contained in this system should address written requests to the Commander, 3731 Personnel Processing Squadron, Lackland Air Force Base, TX 78236–5000."

* * * * *

RECORD SOURCE CATEGORIES:

Delete "3507 Airman Classification Squadron (ATC)" and replace with "3731 Personnel Processing Squadron."

* * * * *

F035 ATC K

SYSTEM NAME:

Processing and Classification of Enlistees (PACE).

SYSTEM LOCATION:

Air Training Command Randolph AFB, TX 78150–5000, input/output remote at 3731 Personnel Processing Squadron, Lackland AFB, TX 78236–5000 and HQ USAF Recruiting Service, Randolph AFB, TX 78150–5421.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force active duty enlisted personnel. Attached records for Air National Guard and Air Force reserve personnel attending basic military training and the Officer Training Group. Active duty enlisted personnel attending Officer Training Group in TDY status.

CATEGORIES OF RECORDS IN THE SYSTEM:

Airmen trainee records containing name, Social Security Number, and other personal data for assignment from basic military training, security investigation, job preferences, dependent data, education, test scores, grade and promotions, biographical history, physical data, drug abuse history, enlistment personnel and guaranteed training enlistee program data, separation information, classification data, service dates, and basic training flight, squadron, entry and graduation dates.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; and Air Force Regulation 39–1, Airman Classification; and Executive Order 9397.

PURPOSE(S):

To create an initial record for the Base Level Military Personnel Data System (BLMPS); to provide Air Force Military Personnel Center (AFMPC) with initial accession information on non-prior service enlistees; provide for improved classification and assignment procedures using computer processes; provide necessary information to Joint Unit Military Pay System (JUMPS) and Lackland Entering Pay System (LEAPS) for establishment of military pay records; interface the data ring process to the maximum extent with other functional areas; and to standardize and simplify personnel processing for the 3700 Mission Support Squadron, Lackland AFB, TX, so that they may more effectively control record preparation, processing, and classification actions necessary to transition civilian enlistees to military status.

Aptitude tests are administered; biographical history and job and assignment preferences are collected; and personal data is collected from enlistment records to establish a mechanized record necessary to support classification and assignment of trainees. Accession and update data is furnished through automatic interface to the advanced Personnel Data System (PDS) at AFMPC and Air Training Command, Randolph AFB, TX; to JUMPS at Defense Accounting and Finance Center, Denver, CO, and to LEAPS at accounting and finance, Lackland AFB, TX.

History records are furnished monthly to the Human Resources Laboratory, Personnel Research Division (HRLPRD) Brooks AFB, TX, for statistical analysis and to HQ USAF Recruiting Service/RSO, Randolph AFB, TX, for use in the enlistee quality control monitoring system. Data is used to prepare forms, processing schedules, reassignment and promotion orders, classification actions, transaction and error rosters, autodin lists, and management products necessary to administer trainees while at Lackland AFB, TX. Standard BLMPS products such as JUMPS transaction registers, strength balance reports, and suspense lists are prepared. Changes in basic data, promotions, reassignments, separations, and duty status changes are reported to PDS, JUMPS, and LEAPS as the action occurs. History records used at HRLPRD and the enlistee quality control monitoring system are augmented by additional data from PDS and technical training centers and are used to evaluate the quality of airmen enlisted in the USAF and the effects of changes in procurement and classification policies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in computers and on computer output products.

RETRIEVABILITY:

Retrieved by name or Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Records for basic trainees are retained in active file until departure from basic military training is confirmed then transferred to history file on magnetic tape for one year. Records for Officer trainees are maintained in the active file until end of fiscal year in which they enter training and then transferred to history file on magnetic tape for one year. History file is destroyed when no longer needed. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, 3731 Personnel Processing Squadron, Lackland AFB, TX 78236–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Commander, 3731 Personnel Processing Squadron, Lackland AFB, TX 78236–5000.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to the Commander, 3731 Personnel Processing Squadron, Lackland AFB, TX 78236–5000.

CONTESTING RECORD PROCEDURES:

The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35, Air Force Privacy Act Program; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from automated system interfaces, from source documents such as reports, and from forms prepared during enlistment processing and completed during interviews and testing at 3731 Personnel Processing Squadron.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F050 ATC A

SYSTEM NAME:

Officer Training School Resource Management System - Officer Trainees, (57 FR 24611, June 10, 1992).

CHANGES:

SYSTEM NAME:

Change system name to "Officer Training Group (OTG) Resource Management System - Officer Trainees."

SYSTEM LOCATION:

Delete entry and replace with "3700 Officer Training Group, Lackland AFB, TX 78236–5000."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Registrar, 3700 Officer Training Group (OTG/MT), Lackland AFB, TX 78236–5000."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Registrar, 3700 Officer Training Group (OTG/MT), Lackland AFB, TX 78236–5000."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking to access records about themselves contained in this system should address written requests to the Registrar, 3700 Officer Training Group (OTG/MT), Lackland AFB, TX 78236–5000."

* * * * *

F050 ATC A

SYSTEM NAME:

Officer Training Group (OTG) Resource Management System - Officer Trainees.

SYSTEM LOCATION:

3700 Officer Training Group, Lackland AFB, TX 78236–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Officer trainees while attending OTG.

CATEGORIES OF RECORDS IN THE SYSTEM:

Officer trainee record showing name, Social Security Number; demographic data such as college degree, major institution, and year awarded; OTG selection data such as Air Force Officer Qualifying Test scores; performance data such as test scores, measurement evaluation, merits and demerits earned, involvement in remedial programs; health data to include height, weight aerobic program requirements and performance; injuries that require waivers to training or delay of commissioning; student disposition indicators showing in-training, eliminated, recycled, holdover or graduated.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. Chapter 907 - Schools and camps as implemented by Air Force Regulation 53–27, Officer Training School (OTS) Pre-commissioning Program, USAF; Air Training Command Regulation 53–3, Administration of the Officer Training School (OTS) Program, and Executive Order 9397.

PURPOSE(S):

To track attrition to the OTG program by cause and type comparing that against demographic and performance data of the individual, and to monitor the progress of an individual toward completion of the program. Records may be grouped by class, squadron, flight, a demographic or performance factor in the accomplishment of evaluations of the program or the individual in relation to peers. Studies, analyses, and evaluations that use these records are intended to improve the quality of the training program, and develop a more accurate profile of those individuals who can be expected to accomplish the OTG program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of

record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on magnetic tape, disk units, in computers and on computer output products.

RETRIEVABILITY:

Retrieved by Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Records are retained for two years after class graduation then destroyed. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Registrar, 3700 Officer Training Group (OTG/MT), Lackland AFB, TX 78236–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Registrar, 3700 Officer Training Group (OTG/MT), Lackland AFB, TX 78236–5000.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to the Registrar, 3700 Officer Training Group (OTG/MT), Lackland AFB, TX 78236–5000.

CONTESTING RECORD PROCEDURES:

The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35, Air Force Privacy Act Program; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from the individual, flight commanders, OTG instructors, personnel specialists and members of the registrar's office.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F050 AMC A

SYSTEM NAME:

Training Instructors (Academic Instructor Improvement/Evaluation), (50 FR 22454, May 29, 1985).

CHANGES:

SYSTEM IDENTIFICATION NUMBER:

Change system identification number to "F050 AMC A".

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Change "10 USC 8012" to "10 U.S.C. 8013."

* * * * *

SAFEGUARDS:

Delete entry and replace with "Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets."

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Chief, Academic Training Branch, 1550th Technical Training Squadron, Kirtland Air Force Base, NM 87117–5000."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking to access records about themselves contained in this system should address requests to the Chief, Academic Training Branch, 1550th Technical Training Squadron, Kirtland Air Force Base, NM 87117–5000."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Department of the Air Force rules for access to records and for contesting contents and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35, Air Force Privacy Act Program; 32 CFR part 806b; or may be obtained from the system manager."

* * * * *

F050 AMC A

SYSTEM NAME:

Training Instructors (Academic Instructor Improvement/Evaluation).

SYSTEM LOCATION:

Chief, Academic Training Branch, 1550th Technical Training Squadron, Kirtland Air Force Base, NM 87117–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Academic instructors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Forms for evaluating instructor performance in the classroom.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by.

PURPOSE(S):

Basic for instructor improvement.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets.

RETENTION AND DISPOSAL:

Retained in office files until reassignment or separation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Academic Training Branch, 1550th Technical Training Squadron, Kirtland Air Force Base, NM 87117–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Chief, Academic Training Branch, 1550th Technical Training Squadron, Kirtland Air Force Base, NM 87117–5000.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Chief, Academic Training Branch, 1550th Technical Training Squadron, Kirtland Air Force Base, NM 87117-5000.

CONTESTING RECORD PROCEDURES:

The Department of the Air Force rules for access to records and for contesting contents and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12-35, Air Force Privacy Act Program; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Supervisors.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 92-21293 Filed 09-03-92; 8:45 am]

BILLING CODE 3810-01-F

Department of the Army

Directorate of Personal Property Performance Bond Policy

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice.

SUMMARY: This is to announce effective October 1, 1992, the Military Traffic Management Command (MTMC) will implement the method of releasing performance bonds announced in 57 FR 11941, April 8, 1992. The article read as follows:

Agency: Military Traffic Management Command (MTMC)

Action: Directorate of Personal Property Performance Bond Policy

Summary: The Military Traffic Management Command's (MTMC) qualification standard for carriers to participate in the international movement of household goods and unaccompanied baggage shipment services includes a requirement that a carrier place a continuous performance bond on file with MTMC. The minimum amount of the bond is currently $100,000 or 2.5 percent of the carrier's gross annual revenue derived from the preceding year's Department of Defense (DOD) international shipments, whichever is more. The purpose of the performance bond requirement is to protect the DOD's interests against shipments becoming frustrated or delayed prior to delivery to the member.

The bond requirement is set forth in DOD 4500.34-R, dated October 19, 1991, Appendix A, paragraph I.B.11.

Recently, requests have been received from carriers to release performance bonds on file with MTMC. Therefore, MTMC intends to implement the following procedures for releasing a carrier's performance bond. Carriers wishing to have their performance bond released by MTMC must conform to the conditions and policies prescribed below.

1. Release of Performance Bond Policy-General

a. Carriers must submit a written request to Headquarters, Military Traffic Management Command (HQMTMC), Directorate of Personal Property, Rate Acquisition Division (MTPP-CA), for the return of either performance bond type listed below. The request must provide a reason why the bond needs to be returned and be accompanied by a listing of shipments which are in the carrier's possession or control. Any shipment not delivered to the member or member's designated agent is considered to be in the carrier's possession or control. If no shipments are in the carrier's possession or control, the request must so state.

b. It is MTMC's policy performance bonds will not be released until all shipment services and final delivery to the member have been completed. This constitutes final performance by the carrier. Shipments in storage-in-transit (SIT) at destination area considered in-transit and do not meet the final delivery or completed performance standard stated above. The following policies apply for the release of bonds based on the type of bond the carrier has on file.

c. This policy applies to active carriers (DOD-approved) and inactive carriers (carriers in a nonuse status, disqualified, but retaining DOD approval; and carriers voluntarily withdrawn from the program, but who have agreed to onward movement of shipments to final destination).

2. Annual Performance Bond Release Procedures

a. Active Carriers:

(1) Carriers wishing return of the last Annual Performance Bond may have the bond returned to them (or their surety company, at their request) only if all shipments have been delivered to the member. Shipments in the pipeline and/or in SIT will remain subject to coverage under the bond until delivery is complete.

(2) If there are still undelivered shipments or shipments in SIT, the carrier may obtain a rider from its surety company to apply those shipments to the continuous performance bond on file with MTMC, changing the effective date of the continuous bond to the pickup date of the oldest undelivered shipment. After the rider is attached to the continuous bond, the Annual Performance Bond may be returned to the carrier (or surety company).

(3) For shipments in the pipeline or SIT, the carrier must submit a list of all shipments to include Government Bill of Lading number, member's name, rank, Social Security Number, pickup date of shipment, responsible destination personal property shipping office, and status.

b. Inactive Carriers:

(1) Paragraphs a.(1)-(3) apply.

(2) If the carrier does not have a continuous bond on file, the value of the Annual Performance Bond may be reduced to cover the costs of delivering outstanding shipments. A reduction in the bond's value must be agreed to by the carrier and surety. Based on the listing of outstanding shipments, MTMC will determine a dollar value of the new bond. In this case, a rider from the surety company must be affixed to the bond. The bond will remain a part of the carrier's file until all shipments are delivered.

3. Continuous Performance Bond Release Procedures

a. Active Carriers (DOD-approved carriers):

Carriers wishing return of the continuous performance bond may have the bond returned to them (or their surety company, at their request) only if all shipments have been delivered to the service members. Shipments in the pipeline and/or in SIT will remain subject to coverage under the bond until delivery is complete.

b. Inactive Carriers (DOD-approved carriers in nonuse status; disqualified, but retain DOD approval; voluntarily withdrawn from program, but agreed to onward movement of shipments to final destination):

MTMC will consider reducing the value of the bond to cover the costs of delivering outstanding shipments. A reduction in the bond's value must be agreed to by the carrier and surety. In this case, a rider from the surety company must be affixed to the bond.

For shipments in the pipeline or SIT, the carrier must submit a list of all shipments to include Government Bill of Lading number, member's name, rank, Social Security Number, pickup date of shipment, responsible destination personal property shipping office, and status.

The bond will remain a part of the carrier's file until all shipments are delivered.

Dates: Comments requested by May 8, 1992.

For Further Information Contact: Mrs. Rosemarie F. Guzzardo or Mrs. Sylvia Walker at (703) 756-1190, Headquarters, Military Traffic Management Command, ATTN: MTPP-CA (Mrs. Guzzardo or Mrs. Walker), room 408, 5611 Columbia Pike, Falls Church, VA 22041-5050.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92-21248 Filed 9-3-92; 8:45 am]

BILLING CODE 3710-08-M

Directorate of Personal Property Change to Mobile Home Tender of Service

AGENCY: Military Traffic Management Command (MTMC) DOD.

ACTION: Notice.

SUMMARY: This is to announce effective 1 October 1992, the Military Traffic Management Command (MTMC) will implement a change to the Mobile Home Tender of Service. The Mobile Home Tender of Service Paragraph 16 will be changed to comply with the Carmack Amendment and will read as follows:

16. Liability. I agree that my liability shall apply from time of pickup during

SIT to time of receipt of shipment by the member or his designated agent at an accessible destination delivery site. I shall accept liability for loss or damage to all items packed or secured by my company. I shall accept tariff liability for loss or damage to all items packed by owner when external damage to the mobile home is apparent. Liability, as used herein, means applicable rate tariff or rate tender liability, declared valuation, or PPGBL liability. Damage, per se, does not constitute violation of this tender. I agree to deliver the mobile home and its contents to destination in the same condition as received at origin. The burden will be upon me to establish that any loss or damage was caused by conditions that relieve me of liability.

FOR FURTHER INFORMATION CONTACT: Mrs. Diane Coleman or Mr. Hank Spieler at (703) 756-2577, Headquarters, Military Traffic Management Command, ATTN: MTPP-CD (Mrs. Coleman or Mr. Spieler), room 408, 5611 Columbia Pike, Falls Church, VA 22041-5050.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92-21301 Filed 9-3-92; 8:45 am]

BILLING CODE 3710-08-M

Availability of Non-exclusive, Exclusive or Partially Exclusive Licensing of U.S. Patent Application Concerning Blood Clot Lysis in Mammals Using a Combination of Ultrasound and a Tissue-Type Plasminogen Activator

AGENCY: U.S. Army Medical Research and Development Command, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of U.S. Patent Application Serial No. 07/531,281 entitled "Blood Clot Lysis in Mammals Using a Combination of Ultrasound and a Tissue-Type Plasminogen Activator" filed May 31, 1990 for licensing. This patent will be assigned to the United States Government as represented by the Secretary of the Army.

FOR FURTHER INFORMATION CONTACT: Mr. John F. Moran, Patent Attorney, Office of the Command Judge Advocate, U.S. Army Medical Research and Development Command, Fort Detrick, Frederick, Maryland 21702-5012, (301) 619-2065.

SUPPLEMENTARY INFORMATION: The invention represents a method whereby the fibrinolytic effect of tissue-type plasminogen activator can be enhanced by the application of external ultrasound. The patent describes the use of intermittent ultrasound delivered at a frequency and intensity used in physiotherapy from a planar transducer 6 cm external to the site of thrombus to increase the fibrinolytic efficacy of intravenous tissue-type plasminogen activator in vitro and in an animal jugular vein thrombosis model. Intermittent ultrasound, when used as described in the patent has no effect on clot lysis in the absence of t-PA and does not induce temperature increases or tissue damage during the 200-minute period.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92-21249 Filed 9-3-92; 8:45 am]

BILLING CODE 3710-08-M

Availability of Non-exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Concerning a Process for the Preparation of Protein Complexes and Their Use as Antibacterial Vaccines

AGENCY: U.S. Army Medical Research and Development Command, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of U.S. Patent No. 4,707,543 entitled "Process for the Preparation of Detoxified Polysaccharide-Outer Membrane Protein Complexes, and Their Use as Antibacterial Vaccines" issued November 17, 1987 for licensing. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

FOR FURTHER INFORMATION CONTACT: Mr. John F. Moran, Patent Attorney, Office of the Command Judge Advocate, U.S. Army Medical Research and Development Command, Fort Detrick, Frederick, Maryland 21702-5012, (301) 619-2065.

SUPPLEMENTARY INFORMATION: The invention involves a preparative method for the purification of meningococcal and certain other gram negative outer membrane proteins and the use of these proteins as a vaccine when complexed noncovalently with capsular polysaccaride, or detoxified lipopolysaccharide (LPS). It includes a method for the direct extraction of the outer membrane proteins from whole cells, removal of LPS, capsular polysaccharides, and other contaminants, and the hydrophobic complexing of the purified outer membrane proteins to lipid-containing polysaccharides. The method yields purified outer membrane proteins that are essentially free of LPS, and when complexed with lipid containing polysaccharides are useful as a vaccine.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92-21250 Filed 9-3-92; 8:45 am]

BILLING CODE 3710-08-M

Availability of Non-exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning a Quantitative Method for Measuring Thrombin-Specific Anticoagulants

AGENCY: U.S. Army Medical Research and Development Command, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of U.S. Patent Application Serial Number 07/893,631 entitled "A Quantitative Method for Measuring Thrombin Time for Determining Plasma Levels of Thrombin-Specific Inhibitors" filed June 5, 1992 for licensing. This patent will be assigned to the United States Government as represented by the Secretary of the Army.

FOR FURTHER INFORMATION CONTACT: Mr. John F. Moran, Patent Attorney, Office of the Command Judge Advocate, U.S. Army Medical Research and Development Command, Fort Detrick, Frederick, Maryland 21702-5012, (301) 619-2065.

SUPPLEMENTARY INFORMATION: The invention represents a technique whereby a clotting assay, the thrombin time, can be modified to provide a quantitative thrombin time (QTT) for determining concentrations of the thrombin-specific inhibitor hirudin, or its analogues, in patient plasmas. It includes a method to dilute patient plasma and utilizes human alpha thrombin and purified fibrinogen. Reliable results can be obtained in plasmas that have low fibrinogen and elevated fibrinogen-fibrin degradation products, lupus anticoagulants, or heparin concentrations equal to or less than 0.9 U/mL. Plasma concentrations of recombinant human hirudin (rHirudin) or other analogues can be determined by comparing the OTT of patient plasma against a standard curve of QTT generated from four different concentrations of rHirudin. The assay can be performed on most available coagulation instruments.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92-21251 Filed 9-3-92; 8:45 am]

BILLING CODE 3710-08-M

Defense Nuclear Agency

Privacy Act of 1974; Amend Record Systems

AGENCY: Defense Nuclear Agency, DOD.

ACTION: Amend record systems.

SUMMARY: The Defense Nuclear Agency proposes to amend nine existing systems of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendments will be effective on October 5, 1992, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to General Counsel, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

FOR FURTHER INFORMATION CONTACT: Ms. Sandy Barker at (703) 325–7681.

SUPPLEMENTARY INFORMATION: The Defense Nuclear Agency record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, were published in the **Federal Register** as follows:

50 FR 22596, May 29, 1985 (DOD compilation, changes follow)
52 FR 23333, June 19, 1987
55 FR 15265, April 23, 1990

The amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of altered systems reports. The specific changes to the systems of records are set forth below followed by the systems of records notices published in their entirety, as amended.

Dated: August 31, 1992.

L. M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

HDNA 001

SYSTEM NAME:

Employee Assistance Program, (50 FR 22597, May 29, 1985).

CHANGES:

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SYSTEM LOCATION:

Delete first sentence and replace with "Occupational Health Unit, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398."

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Case records on employees which are maintained by counselors, supervisors, and civilian personnel offices, that consist of information on condition, current status, and progress of employees or dependents who have alcohol, drug, or emotional problems (referral only)."

* * * * *

RETRIEVABILITY:

Delete entry and replace with "Retrieved by the individuals Social Security Number."

* * * * *

SAFEGUARDS:

Delete entry and replace with "Buildings are protected by security guards and an intrusion alarm system. Records are maintained in locked security containers accessible only to personnel who are properly screened, cleared and trained."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "For Headquarters, Defense Nuclear Agency contact the Occupational Health Nurse, Occupational Health Unit, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

For the Armed Forces Radiobiology Research Institute contact the Chief, Civilian Personnel, Armed Forces Radiobiology Research Institute, Bethesda, MD 20889–5145.

For Field Commands, DNA contact the Civilian Personnel Officer, Kirtland AFB, NM 87115–5000."

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the appropriate system manager.

The letter should contain the full name, SSN, and signature of the requester and the approximate period of time, by date, during which the case record was developed."

* * * * *

HDNA 001

SYSTEM NAME:

Employee Assistance Program.

SYSTEM LOCATION:

The Occupational Health Unit, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398; the Civilian Personnel Office, Building 20203A, Kirtland AFB, NM 87115–5000; and the Civilian Personnel Office, Armed Forces Radiobiology Research Institute Bethesda, MD 20889–5145.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All civilian employees in appropriated and non-appropriated fund activities who are referred by management for, or voluntarily request, counseling assistance.

CATEGORIES OF RECORDS IN THE SYSTEM:

Case records on employees which are maintained by counselors, supervisors, and civilian personnel offices, that consist of information on condition, current status, and progress of employees or dependents who have alcohol, drug, or emotional problems (referrals only).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Drug Abuse Office and Treatment Act of 1972, as amended by Pub. L. 93–282 (21 U.S.C. 1175); Subchapter A of Chapter I, Title 42, Code of Federal Regulations; Chapter 43 of Title 5, United States Code; and Executive Order 9397.

PURPOSE(S):

For use by the Drug and Alcohol Abuse Coordinator in referring individuals for counseling and by management officials for follow-up actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In order to comply with provisions of 42 U.S.C. 290dd-3 and 290ee-3, the DNA "Blanket Routine Uses" do not apply to this system of records.

Records in this system may not be disclosed without the prior written consent of such patient, unless the disclosure would be:

To medical personnel to the extent necessary to meet a bona fide medical emergency.

To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report of such research, audit, or evaluation, or otherwise disclose patient identities in any manner; and

If authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Case records are stored in paper file folders.

RETRIEVABILITY:

Retrieved by the individuals Social Security Number.

SAFEGUARDS:

Buildings are protected by security guards and an intrusion alarm system. Records are maintained in locked security containers accessible only to personnel who are properly screened, cleared and trained.

RETENTION AND DISPOSAL:

Records are purged of identifying information within five years after termination of counseling or destroyed when they are no longer useful.

SYSTEM MANAGER(S) AND ADDRESS:

For Headquarters, Defense Nuclear Agency contact the Occupational Health Nurse, Occupational Health Unit, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

For the Armed Forces Radiobiology Research Institute contact the Chief, Civilian Personnel, Armed Forces Radiobiology Research Institute, Bethesda, MD 20889–5145.

For Field Commands, DNA contact the Civilian Personnel Officer, Kirtland AFB, NM 87115–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the appropriate system manager.

The letter should contain the full name, SSN, and signature of the requester and the approximate period of time, by date, during which the case record was developed.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the appropriate system manager.

The letter should contain the full name, SSN, and signature of the requester and the approximate period of time, by date, during which the case record was developed.

CONTESTING RECORD PROCEDURES:

The DNA rules for accessing records and for contesting contents and appealing initial agency determinations by the individual concerned are published in DNA Instruction 5400.11A, DNA Privacy Program; 32 CFR part 318; or may be obtained from the system manager or the General Counsel, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310-3398.

RECORD SOURCE CATEGORIES:

Counselors, other officials, individuals or practitioners, and other agencies both in and outside of Government.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

HNDA 002

SYSTEM NAME:

Employee Relations, (50 FR 22598, May 29, 1985).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Civilian Personnel Management Division, Manpower Management and Personnel, Command Services Directorate, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398; the Civilian Personnel Office, Building 20203A, Kirtland AFB, NM 87115–5000; and the Civilian Personnel Office, Armed Forces Radiobiology Research Institute, Building 42, Bethesda, MD 20889–5145.

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SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "For Headquarters, Defense Nuclear Agency contact the Occupational Health Nurse, Occupational Health Unit, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

For the Armed Forces Radiobiology Research Institute contact the Chief, Civilian Personnel, Armed Forces Radiobiology Research Institute, Bethesda, MD 20889–5145.

For Field Commands, DNA contact the Civilian Personnel Officer, Kirtland AFB, NM 87115–5000."

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the appropriate system manager."

* * * * *

HDNA 002

SYSTEM NAME:

Employee Relations.

SYSTEM LOCATION:

Civilian Personnel Management Division, Manpower Management and Personnel, Command Services Directorate, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398; the Civilian Personnel Office, Building 20203A, Kirtland AFB, NM 87115–5000; and the Civilian Personnel Office, Armed Forces Radiobiology Research Institute, Building 42, Bethesda, MD 20889–5145.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian employees and former employees paid from appropriated funds serving under career, career-conditional, temporary and excepted service appointments on whom suitability, discipline, grievance, and appeal records exist.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents and information pertaining to discipline, grievances, and appeals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302, 3301, 3302, 7301; Executive Order 11222; Executive Order 11557; Executive Order 11491.

PURPOSE(S):

For use by agency officials and employees in the performance of their official duties related to management of civilian employees and the processing, administration and adjudication of discipline, grievances, suitability and appeals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Appeals examiners of the Merit Systems Protection Board to adjudicate appeals.

The Comptroller General or his authorized representatives and the Attorney General of the United States or his authorized representatives in connection with grievances, disciplinary actions, suitability, and appeals, Federal Labor Relations officials in the performance of official duties.

The "Blanket Routine Uses" published at the beginning of DNA's compilation of system of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper folders.

RETRIEVABILITY:

Retrieved alphabetically by last name of individual.

SAFEGUARDS:

Buildings are protected by security guards and an intrusion alarm system. Records are maintained in locked security containers in a locked room accessible only to personnel who are properly screened, cleared and trained.

RETENTION AND DISPOSAL:

Records are destroyed upon separation of the employee from the agency or in accordance with appropriate records disposal schedules.

SYSTEM MANAGER(S) AND ADDRESSES:

For Headquarters, Defense Nuclear Agency contact the Occupational Health Nurse, Occupational Health Unit, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

For the Armed Forces Radiobiology Research Institute contact the Chief, Civilian Personnel, Armed Forces Radiobiology Research Institute, Bethesda, MD 20889–5145.

For Field Commands, DNA contact the Civilian Personnel Officer, Kirtland AFB, NM 87115–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the appropriate system manager.

The letter should contain the full name and signature of the requester and the approximate period of time, by date, during which the case record was developed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the appropriate system manager.

CONTESTING RECORD PROCEDURES:

The DNA rules for accessing records and for contesting contents and appealing initial agency determinations by the individual concerned are published in DNA Instruction 5400.11A, DNA Privacy Program; 32 CFR part 318; or may be obtained from the system manager or the General Counsel, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310-3398.

RECORD SOURCE CATEGORIES:

Supervisors or other appointed officials designated for this purpose.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

HDNA 004

SYSTEM NAME:

Nuclear Weapons Accident Exercise Personnel Radiation Exposure Records, (50 FR 22599, May 29, 1985).

CHANGES:

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In the third line, insert "current or potential employers " after "contractors".

* * * * *

STORAGE:

Delete entry and replace with "Records are stored on computer printouts and in paper files folders."

* * * * *

SAFEGUARDS:

Delete first sentence and change second sentence to read "Records and computer printouts are available only to authorized persons with an official need to know."

* * * * *

CONTESTING RECORD PROCEDURE:

Delete entry and replace with "The DNA rules for contesting contents and appealing initial agency determinations are published in DNA Instruction 5400.11A, DNA Privacy Program; 32 CFR part 318; or may be obtained from the system manager or from the General Counsel, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398."

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HDNA 004

SYSTEM NAME:

Nuclear Weapons Accident Exercise Personnel Radiation Exposure Records.

SYSTEM LOCATION:

Field Command, Defense Nuclear Agency, Kirtland AFB, NM 87115–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military and civilian employees of the Department of Defense and other federal, state, and local government agencies, contractor personnel, and visitors from foreign countries, who participate in planned exercises.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; Social Security Number (SSN); date of birth; service; grade/rank; specialty code; job series or profession; experience with radioactive materials such as classification as "radiation worker;" use of film badge or other dosimetric device; respiratory protection equipment; training and actual work in anti-contamination clothing and respirators; awareness of radiation risks associated with exercises; previous radiation exposure; role in exercise; employer/organization mailing address and telephone; unit responsible for individuals radiation exposure records; time in exercise radiological control area; and external and internal radiation monitoring and/or dosimetry results.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2013 and 2201 (Atomic Energy Act of 1954) and 10 CFR parts 10 and 20; 5 U.S.C. 7902 and 84 Stat. 1599 (Occupational Safety and Health Act of 1970) and 29 CFR subparts 1910.20 and 1910.96; Executive Order 12196, February 26, 1980, (Occupational Safety and Health Programs for Federal Employees); and Executive Order 9397.

PURPOSE(S):

For use by agency officials and employees in determining and evaluating individual and exercise collective radiation doses and in reporting dosimetry results to individuals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Officials and employees of other government agencies, authorized government contractors, current or potential employers, national, state and local government organizations and foreign governments in the performance of official duties related to evaluating, reporting and documenting radiation dosimetry data.

Officials of government investigatory agencies in the performance of official duties relating to enforcement of Federal rules and regulations.

The "Blanket Routine Uses" published at beginning of DNA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ASSESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on computer printouts and in paper files folders.

RETRIEVABILITY:

Records are retrieved by individuals last name or SSN; by service; organization/employee; dose results or other input data.

SAFEGUARDS:

Records and computer printouts are available only to authorized persons with an official need to know. Buildings are protected by security guards and an intrusion alarm system.

RETENTION AND DISPOSAL:

All records are retained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Field Command, Defense Nuclear Agency, ATTN: Radiological Safety Officer, Kirtland AFB, NM 87115–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Commander, Field Command, Defense Nuclear Agency, ATTN: Radiological Safety Officer, Kirtland AFB, NM 87115–5000.

RECORD ACCESS PROCEDURE:

Individuals seeking access to information about themselves contained in this system of records should address inquiries to the Commander, Field Command, Defense Nuclear Agency, ATTN: Radiological Safety Officer, Kirtland AFB, NM 87115–5000.

Inquiry should contain full name and SSN of the individual and applicable dates of participation, if available. Visits can be arranged with the system manager.

Requests from current or potential employers must include a signed authorization from the individual.

CONTESTING RECORD PROCEDURES:

The DNA rules for contesting contents and appealing initial agency determinations are published in DNA Instruction 5400.11A, DNA Privacy Program; 32 CFR part 318; or may be obtained from the system manager or the General Counsel, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

RECORD SOURCE CATEGORIES:

Information in this system of records is supplied directly by the individual; or derived from information supplied by the individual; or supplied by a contractor or government dosimetry service; or developed by radiation measurements at the exercise site.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None

HDNA 005

SYSTEM NAME:

Manpower/Personnel Management System, (50 FR 22600, May 29, 1985).

CHANGES:

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SYSTEM LOCATION:

Delete entry and replace with "Primary location is at the Manpower Management and Personnel, Command Services Directorate, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

Secondary locations exist at the following DNA subordinate commands: Field Command, Defense Nuclear Agency, Building 20364, Kirtland AFB, NM 87115–5000; Civilian Personnel Office, Building 42, Armed Forces Radiobiology Research Institute, Bethesda, MD 20889–5145; Military Personnel Office, Armed Forces Radiobiology Research Institute, Bethesda, MD 20889–5145; and the Defense Nuclear Agency, Las Vegas, NV 89193–8539.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

In line 29, add "Joint Specialty Officer; service position number; career status; officer evaluation report date (Army only); highest professional military education; rank; grade; status certification; promotion sequence number;" after "Uniformed Service".

* * * * *

PURPOSE(S):

Delete entry and replace with "For use by officials and employees of the Defense Nuclear Agency in the performance of their official duties related to the management of civilian and military employee programs and for preparation and publication of personnel rosters to facilitate communications/contact for official, or emergency purposes.

To compile and consolidate reports relating to manpower authorization/assigned strengths and record personnel data and use that data to compile information as required by management officials with the agency."

* * * * *

SAFEGUARDS:

Delete entry and replace with "The computer facility and data base are located in a restricted area accessible only to authorized personnel that are properly screened, cleared, and trained. Terminal users are within a restricted area. Use of these terminals are by authorized personnel who have a need to acquire data from the data base. Terminal users are cleared, provided proper training and are assigned a password/code to retrieve data. Manual records and computer printouts are available only to authorized personnel having a need to know. Building employs security guards and is protected by an intrusion alarm system."

* * * * *

RETENTION AND DISPOSAL:

Delete the second sentence and replace with "Manpower's manual records are maintained indefinitely and all personnel manual records are kept until the employee departs."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Assistant Director, Manpower Management and Personnel, Command Service Directorate, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398."

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HDNA 005

SYSTEM NAME:

Manpower/Personnel Management System.

SYSTEM LOCATION:

Primary location is at the Manpower Management and Personnel, Command Services Directorate, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

Secondary locations exist at the following DNA subordinate commands: Field Command, Defense Nuclear Agency, Building 20364, Kirtland AFB, NM 87115–5000; Civilian Personnel Office, Building 42, Armed Forces Radiobiology Research Institute, Bethesda, MD 20889–5145; Military Personnel Office, Armed Forces Radiobiology Research Institute, Bethesda, MD 20889–5145; and the Defense Nuclear Agency, Las Vegas, NV 89193–8539.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual, military or civilian, employed by DNA.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains following information on all personnel assigned to DNA: Social Security Number (SSN); agency; employee name; birth date; veteran's preference; tenure group; service computation date; federal employees

group life insurance; retirement code; nature of action code; effective date of action; position number; pay plan; occupation code; functional classification code; grade; step; pay basis; salary; supervisory position; location code/duty station; position occupied; work schedule; pay rate determinant; sex; citizen status; date entered present grade; date entered present step; separation date; reason for separation (quit code); cost center; academic discipline; career conditional appointment date (conversion to career); education level; degree date; purpose of training; type of training; source of training; special interest; direct cost; indirect cost; date of completion; on-duty hours; off-duty hours; JTD paragraph number; JTD line number; competitive level; military service retirement date; uniformed service; joint specialty officer; service position number; career status; officer evaluation report date (Army only); highest professional military education; rank; grade; status of incumbent in Personnel Reliability Program (PRP); date of latest PRP certification;' promotion sequence number; service commissioned (military); service pay grande (rank); Agency sub-element code; submitting office number; retired military code; bureau; unit identification code; program element code; civil function code; guard/reserve technician; appropriation code; active/inactive strength designation; work center code; projected vacancy date; targeted grade; position title; date of last equivalent increase; fair labor standards act designator; health benefits enrollment code; type and date of incentive award; civil service or other legal authority; date probationary period begins; performance rating; due date for future action; position tenure; leave category; personnel authorized; projected personnel requirement; special experience identifies; additional duties; manpower track: facility; branch of service; date of rank; primary/Alternate specialty; control specialty; last OER/EER; total commissioned service date; total active service date; date of arrival; projected rotation date; security clearance; marital status; spouse's name; dependents; address (Number and street, city, state, Zip Code); phones (home and duty); handicap code; minority group designator; aggregate program element code; position indicator; academic degree requirements; directorate/department, division, branch, and section office titles; service authorization position number; physical profile; nature of action code No. 2; annuitant indicator; Vietnam veteran; entered present position; future action type; agency submitting element; submitting office code; merit pay designator; bargaining unit designator; old SSN; course title host; tuition; Transportation Per Diem; hourly rate; training grade level; administrative cost; type of career training program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 302, 4103; Pub. L. 89–554. September 6, 1966; and Executive Order 9397.

PURPOSE(S):

For use by officials and employees of the Defense Nuclear Agency in the performance of their official duties related to the management of civilian and military employee programs and for preparation and publication of personnel rosters to facilitate communications/contact for official, or emergency purposes.

To compile and consolidate reports relating to manpower authorization/assigned strengths and to record personnel data and use that data to compile information as required by management officials within the agency.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Representatives of the Merit Systems Protection Board on matters relating to the inspection, survey, audit or evaluation of the civilian programs or such other matters under the jurisdiction of that organization.

The Comptroller General or any of his authorized representatives in the course of performance of duties of the General Accounting Office relating to civilian programs.

Duly appointed Hearing Examiners or Arbitrators for the purpose of conducting hearings in connection with an employee grievance.

The "Blanket Routine Uses" published at beginning of DNA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records are stored on magnetic tapes, discs, computer printouts, and on punched cards. Manual records are stored in paper file folders and card file boxes.

RETRIEVABILITY:

Automated records are retrieved by employee name, SSN or Position Service Number (PSN). Manual records are retrieved by employee's last name and PSN.

SAFEGUARDS:

The computer facility and data base are located in a restricted area accessible only to authorized personnel that are properly screened, cleared, and trained. Terminal users are within a restricted area. Use of these terminals are by authorized personnel who have a need to acquire data from the database. Terminal users are cleared, provided proper training and are assigned a password/code to retrieve data. Manual records and computer printouts are available only to authorized personnel having a need to know. Buildings are protected by security guards and is protected by an intrusion alarm system.

RETENTION AND DISPOSAL:

Computer magnetic tapes are permanent. Manpower's manual records are maintained indefinitely and all personnel manual records are kept until the employee departs. Monthly reports are destroyed at the end of each fiscal year; annual reports are retained in 5-year blocks, transferred to the Washington National Records Center, and offered to National Archives and Records Administration 20 years after cutoff.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Manpower Management and Personnel, Command Services Directorate, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Assistant Director, Manpower Management and Personnel, Command Services Directorate, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

The letter should contain the full name and signature of the requester and the approximate period of time, by date, during which the record was developed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Assistant Director, Manpower Management and Personnel, Command Services Directorate, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

Written requests for information should contain the full name of individual. For personal visits, the individual should provide military or civilian identification card.

CONTESTING RECORD PROCEDURES:

The DNA rules for contesting contents and appealing initial agency determinations are published in DNA Instruction 5400.11A, DNA Privacy Program; 32 CFR part 318; or may be obtained from the system manager or the General Counsel, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

RECORD SOURCE CATEGORIES:

Information is extracted from military and civilian personnel records, Joint Manpower Program documents and voluntarily submitted by individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

HDNA 006

SYSTEM NAME:

Employees Occupational Health Programs, (50 FR 22601, May 29, 1985).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Occupational Health Unit, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398."

* * * * *

STORAGE:

Delete entry and replace with "Records are stored in paper file folders in a locked file cabinet."

* * * * *

RETREIVABILITY:

Delete entry and replace with "Records are manually retrieved by the terminal digit filing system (Social Security Number)."

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with "Records are retained until the individual leaves the Agency. Records are combined with the Official Personnel Folder which is forwarded to the Federal Personnel Records Center or to the new employing agency, as appropriate."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Occupational Health Nurse, Occupational Health Unit, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398."

* * * * *

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The DNA rules for contesting contents and appealing initial agency determinations are published in DNA Instruction 5400.11A, DNA Privacy Program; 32 CFR part 318; or may be obtained from the system manager or the General Counsel, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398."

* * * * *

HDNA 006

SYSTEM NAME:

Employees Occupational Health Programs.

SYSTEM LOCATION:

Occupational Health Unit, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual, military or civilian, employed by the Defense Nuclear Agency (DNA) and the General Services Agency employees assigned to the building.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains a variety of records relating to an employee's participation in the DNA Occupational Health Program. Information which may be included in this system are the employee's name, SSN, date of birth, weight, height, blood pressure, medical history, blood type, nature of injury or complaint, type of treatment/medication received, immunizations, examination findings and laboratory findings, exposure to occupational hazards.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7901 et seq., Pub. L. 79–658; and Executive Order 9397.

PURPOSE(S):

For use by authorized medical personnel in providing any medical treatment or referral; to provide information to agency management officials pertaining to job-related injuries or potential hazardous conditions' and to provide information relative to claims or litigation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office of Personnel Management, and the Federal Labor Relations Authority (including the General Counsel) in the Performance of official duties.

The Department of Labor in connection with claims for compensation.

The Department of Justice in connection with litigation relating to claims.

The Occupational Safety and Health Agency in connection with job-related injuries, illnesses, or hazardous condition.

The "Blanket Routine Uses" published at beginning of DNA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper file folders in a locked file cabinet.

RETRIEVABILITY:

Records are manually retrieved by using the terminal digit filing system (Social Security Number).

SAFEGUARDS:

During the employment of the individual, medical records are maintained in files located in a secured room with access limited to those whose official duties require access. Buildings are protected by security guards and an intrusion alarm system.

RETENTION AND DISPOSAL:

Records are retained until the individual leaves the DNA. Records are combined with the Official Personnel Folder which is forwarded to the Federal Personnel Records Center or to the new employing agency, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Occupational Health Nurse, Occupational Health Unit, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Occupational Health Nurse, Occupational Health Unit, Headquarters, Defense Nuclear Agency,

6801 Telegraph Road, Alexandria, VA 22310–3398.

The letter should contain the full name and signature of the requester and the approximate period of time, by date, during which the case record was developed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquires to the Occupational Health Nurse, Occupational Health Unit, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

Written requests for information should contain the full name of the requester. For personal visits the individual should provide a military or civilian identification card.

CONTESTING RECORD PROCEDURES:

The DNA rules for contesting contents and appealing initial agency determinations are published in DNA Instruction 5400.11A, DNA Privacy Program; 32 CFR part 318; or may be obtained from the system manager or the General Counsel, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

RECORD SOURCE CATEGORIES:

Information is supplied directly by the individual, or derived from information supplied by the individual, or supplied by the medical officer or nurse providing treatment or medication, or supplied by the individual's private physician.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

HDNA 007

SYSTEM NAME:

Security Operations, (50 FR 22601, May 29, 1985).

CHANGES:

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SYSTEM LOCATION:

Replace the first sentence with "Security Operations Division, Intelligence and Security, Command Services Directorate, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398."

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Add "Vehicle ID and Sticker Number" after "Badge Number;" in line 13.

Delete "Contracting Officer's Representative, Contracting Officer's Organization" in lines 14 and 15.

Replace "picture and identification cards" in lines 25 and 26 with "picture identification".

* * * * *

STORAGE:

Replace "punched cards" with "hard drive" in the first sentence.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete the first sentence and replace with "For Headquarters DNA and AFRRI contact the Assistant Director, Intelligence and Security, Command Services Directorate, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398."

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the appropriate system manager.

* * * * *

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The DNA rules for contesting contents and appealing initial agency determinations are published in DNA Instruction 5400.11A, DNA Privacy Program; 32 CFR part 318; or may be obtained from the system manager or the General Counsel, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398."

* * * * *

HDNA 007

SYSTEM NAME:

Security Operations.

SYSTEM LOCATION:

Security Operations Division, Intelligence and Security, Command Services Directorate, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

System also exists at the following subordinate commands: Security Division, Field Command, Defense Nuclear Agency, Kirtland AFB, Albuquerque, NM 87115–5000; and Armed Forces Radiobiology Research Institute, Bethesda, MD 20889–5145.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All military and civilian personnel assigned to, or employed by Headquarters, Defense Nuclear Agency (DNA); the Field Command, Defense Nuclear Agency (FCDNA); and the Armed Forces Radiobiology Research Institute (AFRRI). Other U.S. Government personnel, U.S. Government contractors, foreign government representatives, and visitors from foreign countries.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; Social Security Number (SSN); date and place of birth; height; weight; hair/eye color; citizenship; grade/rank; service; organization; security clearance; date of clearance; basis special accesses; courier authorization; continuous access roster expiration date; badge number; vehicle ID and sticker Number; special intelligence access; expiration date; agency; billet number; list of badges/passes issued; list of keys issued; conference title; conference duties; location; Department of Defense Form 398 "Statement of Personal History;" Reports of Investigation; security incident files; visit requests; conference rosters; clearance and special access rosters; picture identification ; and correspondence concerning adjudication/passing of clearances.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10450, "Security Requirements for Government Employment," April 27,1953, as amended by Executive Orders 10491, 10531, 10548, 10558, 11605, and 11785; Executive Order 12065, "National Security Information," June 28,1978; Section 21 of the Internal Security Act of 1950 (Pub. L. 831); Section 145 of the Atomic Energy Act of 1954, as amended by Pub. L. 83–703, 42 U.S.C. 2185; and Executive Order 9397.

PURPOSE:

For use by officials and employees of the Defense Nuclear Agency and other DoD Components in the performance of their official duties related to determining the eligibility of individuals for access to classified information, access to buildings and facilities, or to conferences over which DNA has security responsibility.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Officials and employees of Government contractors and other Government agencies in the performance of their official duties related to the screening and selection of individuals for security clearances and/or special authorizations, access to facilities or attendance at conferences.

The "Blanket Routine Uses" published at the beginning of DNA's compilation of

systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records are stored on magnetic tapes, discs, computer printouts, and/or hard drives. Manual records are stored in paper file folders, card files and paper rosters.

RETRIEVABILITY:

Automated records are retrieved by individual's last name, conference title, and by type of badge issued. Manual records are retrieved by individuals last name, organization or subject file.

SAFEGUARDS:

The computer facility and terminals are located in restricted areas accessible only to authorized personnel. Manual records and computer printouts are available only to authorized persons with an official need to know. Buildings are protected by security guards and an intrusion alarm system.

RETENTION AND DISPOSAL:

Computer records on individuals are erased upon termination of an individual's affiliation with DNA, FCDNA, or AFRRI; personnel security files are destroyed within thirty days from the date of termination of an individual's employment, assignment or affiliation with DNA, FCDNA or AFRRI. Manual records or conference attendees, visitors, and visit certifications to other agencies are maintained for two years and destroyed. Security incident files are retained for two years unless they concern compromise of classified information, in which case they may be retained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

For Headquarters DNA and AFRRI contact the Assistant Director, Intelligence and Security, Command Services Directorate, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

For Field Commands, DNA contact the Chief, Security Division, Field Command, Defense Nuclear Agency, Kirtland AFB, NM 87115–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the appropriate system manager.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the appropriate system manager.

Written requests for information should contain the full name, home address, SSN, date and place of birth. For personal visits, the individual must be able to provide identification showing full name, date and place of birth, and their SSN.

CONTESTING RECORD PROCEDURES:

The DNA rules for contesting contents and appealing initial agency determinations are published in DNA Instruction 5400.11A, DNA Privacy Program; 32 CFR part 318; or may be obtained from the system manager or the General Counsel, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

RECORD SOURCE CATEGORIES:

Information is extracted from military and civilian personnel records, investigative files, and voluntarily submitted by individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Part of this system may be exempt under the provisions of 5 U.S.C. 552a(k)(5), as applicable.

An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 318. For additional information contact the system manager.

HDNA 008

SYSTEM NAME:

Biographies, (50 FR 22602, May 29, 1985).

CHANGES:

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SYSTEM LOCATION:

Delete entry and replace with "Public Affairs Office, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Public Affairs Officer, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398."

* * * * *

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to information about themselves contained in this system should address written inquiries to the Headquarters, Defense Nuclear Agency, ATTN: Public Affairs Office, 6801 Telegraph Road, Alexandria, VA 22310–3398.

Inquiry should contain the full name of the requester. Visits can be arranged by the Public Affairs Officer."

* * * * *

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The DNA rules for accessing records and for contesting contents and appealing initial agency determinations by the individual concerned are published in DNA Instruction 5400.11A, DNA Privacy Program; 32 CFR part 318; or may be obtained from the system manager or from the General Counsel, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398."

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HDNA 008

SYSTEM NAME:

Biographies.

SYSTEM LOCATION:

Public Affairs Office, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Senior military officers of the Army, Air Force, Navy and Marines; senior DoD civilians, and contractor personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Brief biographical data (sometimes including photographs).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 302.

PURPOSE(S):

To maintain biographical data for use by agency officials and employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information on key Defense Nuclear Agency personnel may be released to the media, individuals, businesses, or any other public or private requester for use in compiling background information.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Alphabetically by last name.

SAFEGUARDS:

Files are secured in a file cabinet in an area accessible only to authorized personnel. The building is protected by security guards and an intrusion alarm system.

RETENTION AND DISPOSAL:

Files are retained in an active file until retirement, transfer, separation, death of the individual concerned or in accordance with current records management regulations.

SYSTEM MANAGER(S) AND ADDRESS:

Public Affairs Officer, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Public Affairs Officer, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Headquarters, Defense Nuclear Agency, ATTN: Public Affairs Office, 6801 Telegraph Road, Alexandria, VA 22310–3398.

Inquiry should contain the full name of the requester. Visits can be arranged by the Public Affairs Officer.

CONTESTING RECORD PROCEDURES:

The DNA rules for accessing records and for contesting contents and appealing initial agency determinations by the individual concerned are published in DNA Instruction 5400.11A, DNA Privacy Program; 32 CFR part 318; or may be obtained from the system manager or from the General Counsel, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

RECORD SOURCE CATEGORIES:

Information is voluntarily submitted by individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

HDNA 009

SYSTEM NAME:

Personnel Radiation Exposure Records, (52 FR 23333, Jun 19, 1987).

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Employees, contractors, or visitors who enter the Armed Forces Radiobiology Research Institute (AFRRI) building; other Defense Nuclear Agency or Field Command, Defense Nuclear Agency, (DNA/FCDNA) employees who work in positions which might result in exposure to radiation."

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "Atomic Energy Act of 1954, 42 U.S.C. 2013; and Executive Order 9397."

* * * * *

RETRIEVABILITY:

Delete entry and replace with "Records are retrieved by name, Social Security Number, or participant number. Automated records may be retrieved on all fields within the record."

* * * * *

RETENTION AND DISPOSAL:

Delete the last sentence.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "The Department Head, Safety and Health Department, Armed Forces Radiobiology Research Institute, Defense Nuclear Agency, Bethesda, MD 20889–5145; the Health Physicist, Logistics Directorate, Field Command, Defense Nuclear Agency, ATTN: (FCLS), Kirtland AFB, NM 87115–5000."

* * * * *

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The DNA rules for accessing records and for contesting contents and appealing initial agency determinations by the individual concerned are published in DNA Instruction 5400.11A, Privacy Program; 32 CFR part 318; or may be obtained from the system manager or from the General Counsel, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398."

* * * * *

HDNA 009

SYSTEM NAME:

Personnel Radiation Exposure Records.

SYSTEM LOCATION:

Armed Forces Radiobiology Research Institute, Defense Nuclear Agency, Bethesda, MD 20889–5145, on the grounds of the National Naval Medical Center, and Field Command, Defense Nuclear Agency, Kirtland AFB, NM 87115–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees, contractors, or visitors who enter the Armed Forces Radiobiology Research Institute (AFRRI) building; other Defense Nuclear Agency or Field Command, Defense Nuclear Agency (DNA/FCDNA) employees who work in positions which might result in exposure to radiation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, sex, date of birth, current and previous radiation exposure history, dates and places of employment, dates of exposures, citizenship, information on pregnancy, areas visited or worked, dates of arrival and departure, organization, assigned department, bioassay information, grade/rank, work phone and location.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Atomic Energy Act of 1954, 42 U.S.C. 2013; and Executive Order 9397.

PURPOSE(S):

For use by agency officials, employees, and authorized contractors, to provide documentation of any exposure to radiation which might be experienced by an individual in the course of work related activities or while present in agency facilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be released to support legal or medical claims for or against the government.

To regulatory agencies for use in measuring quality of radiation protection programs, or for licensing procedures.

To contractors for use in processing uniquely identifiable dosimetry devices and for maintaining required dosimetry histories.

The "Blanket Routine Uses" published at the beginning of DNA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Card files, paper records in file folders, microfiche/film and automated

records on magnetic tapes, disks and computer printouts.

RETRIEVABILITY:

Records are retrieved by name, SSN, or participant number. Automated records may be retrieved on all fields within the record.

SAFEGUARDS:

Computer equipment and records are in controlled access areas protected by either guards, intrusion alarms, or coded locks. Manual or hard copy records are further secured in locked cabinets or vaults. Automated programs are protected by user identification codes and passwords which limit access to the system.

RETENTION AND DISPOSAL:

For employees, records are kept for 75 years. For visitors, records are retired after two years to record holding area for 75 year retention.

SYSTEM MANAGER(S) AND ADDRESS:

Department Head, Safety and Health Department, Armed Forces Radiobiology Research Institute, Defense Nuclear Agency, Bethesda, MD 20889–5145; and the Health Physicist, Logistics Directorate, Field Command, Defense Nuclear Agency, ATTN: (FCLS), Kirtland AFB, NM 87115–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address inquiries to the Department Head, Safety and Health Department, Armed Forces Radiobiology Research Institute, Defense Nuclear Agency, Bethesda, MD 20889–5145; or the Health Physicist, Logistics Directorate, Field Command, Defense Nuclear Agency, ATTN: (FCLS), Kirtland AFB, NM 87115–5000.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Department Head, Safety and Health Department, Armed Forces Radiobiology Research Institute, Defense Nuclear Agency, Bethesda, MD 20889–5145; or the Health Physicist, Logistics Directorate, Field Command, Defense Nuclear Agency, ATTN: (FCLS), Kirtland AFB, NM 87115–5000.

CONTESTING RECORD PROCEDURES:

The DNA rules for contesting contents and appealing initial agency determinations are published in DNA Instruction 5400.11A, DNA Privacy Program; 32 CFR part 318; or may be obtained from the system manager or the General Counsel, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

RECORD SOURCE CATEGORIES:

Information is voluntarily submitted by individuals or derived from exposure data.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

HDNA 010

SYSTEM NAME:

Nuclear Test Participants, (50 FR 22603, May 29, 1985).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Radiation Policy Division, Radiation Sciences Directorate, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398."

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "Atomic Energy Act of 1954, 42 U.S.C. 2013, Tasking Memorandum from Office of the Secretary of Defense to the Director, Defense Nuclear Agency dated 28 Jan 1978, Subject: DoD Personnel Participation in Atmospheric Nuclear Weapons Testing, Military Construction Appropriations Act of 1977 (Pub. L. 94–367), DNA OPLAN 600–77, Cleanup of Enewetak Atoll, Radiation Exposure Compensation Act (Pub. L. 100–426 as amended by Pub. L. 100–510)."

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with "National Research Council and the Center for Disease Control, for the purpose of conducting epidemiological studies on the effects of ionizing radiation on participants of nuclear test programs.

Department of Labor and the Department of Justice for the purpose of processing claims by individuals who allege job-related disabilities as a result of participation in nuclear test programs and for litigation actions.

Department of Energy (DOE) for the purpose of identifying DOE civilians and DOE contractor personnel who were, or may be in the future, involved in nuclear test programs; and for use in processing claims or litigation actions.

Department of Veterans Affairs, for the purpose of processing claims by individuals who allege service-connected disabilities as a result of participation in nuclear test programs and for litigation actions' and to conduct epidemiological studies on the effect of radiation on nuclear test participants.

Information may be released to individuals or their authorized representatives.

The "Blanket Routine Uses" published at the beginning of DNA's compilation of system of records notices apply to this system."

* * * * *

STORAGE:

Delete entry and replace with "Paper records in file folders, microfilm/fiche, computer magnetic tape disks, and printouts in secure computer facilities."

* * * * *

SAFEGUARDS:

Delete first sentence and replace with "Paper records are filed in folders, microfilm/fiche and computer printouts stored in areas accessible only by authorized personnel."

* * * * *

RETENTION AND DISPOSAL:

Delete the first sentence and replace with "Records are retained for 75 years after termination of case."

* * * * *

SYSTEM MANAGERS(S) AND ADDRESS:

Delete entry and replace with "Nuclear Test Personnel Review (NTPR) Program Manager, Radiation Sciences Directorate, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398."

* * * * *

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The DNA rules and procedures for contesting record contents or appealing initial agency determinations are published in DNA Instruction 5400.11A, DNA Privacy Program; 32 CFR part 318; or may be obtained from the General Counsel, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398."

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with "Retired Military Personnel records from the National Personnel Records Center, US DNA Form 10 from individuals voluntarily contacting DNA or other

elements or DoD, or other Government Agencies by phone or mail. DoD historical records, dosimetry records, and records from the Department of Energy, Department of Veterans Affairs, the Social Security Administration, the Internal Revenue Service, and the Department of Health and Human Services."

* * * * *

HDNA 010

SYSTEM NAME:

Nuclear Test Participants.

SYSTEM LOCATION:

Radiation Policy Division, Radiation Sciences Directorate, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military and DoD civilian participants of the U.S. nuclear testing programs, military occupation forces assigned to Hiroshima or Nagasaki from August 6, 1945 to July 1, 1946, and individuals who participated in the cleanup of Enewetak Atoll.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, rank, grade, service number, Social Security Number (SSN), last known or current address, dates and extent of test participation, exposure data, unit of assignment, medical data, and documentation relative to administrative claims or civil litigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Atomic Energy Act of 1954, 42 U.S.C. 2013, Tasking Memorandum from Office of the Secretary of Defense to the Director, Defense Nuclear Agency dated 28 Jan 78, Subject: DoD Personnel Participation in Atmospheric Nuclear Weapons Testing and Military Construction Appropriations Act of 1977 (Pub. L. 94–367), DNA OPLAN 600–77, Cleanup of Enewetak Atoll, and the Radiation Exposure Compensation Act (Pub. L. 100–426, as amended by Pub. L. 100–510); and Executive Order 9397.

PURPOSE(S):

For use by agency officials and employees, or authorized contractors, and other DoD components in the preparation of the histories of nuclear test programs; to conduct scientific studies or medical follow-up programs and to provide data or documentation relevant to the processing of administrative claims or litigation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

National Research Council and the Center for Disease Control, for the purpose of conducting epidemiological studies on the effects of ionizing radiation on participants of nuclear test programs.

Department of Labor and the Department of Justice for the purpose of processing claims by individuals who allege job-related disabilities as a result of participation in nuclear test programs and for litigation actions.

Department of Energy (DOE) for the purpose of identifying DOE and DOE contractor personnel who were, or may be in the future, involved in nuclear test programs; and for use in processing claims or litigation actions.

Department of Veterans Affairs for the purpose of processing claims by individuals who allege service-connected disabilities as a result of participation in nuclear test programs and for litigation actions' and to conduct epidemiological studies on the effect of radiation on nuclear test participants.

Information may be released to individuals or their authorized representatives.

The "Blanket Routine Uses" published at the beginning of DNA's compilation of system of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in files folders, microfilm/fiche, computer magnetic tape disks, and printouts in secure computer facilities.

RETRIEVABILITY:

Records are retrieved by name, military service number and SSN.

SAFEGUARDS:

Paper records are filed in folders, microfilm/fiche and computer printouts stored in area accessible only by authorized personnel. Buildings are protected by security guards and intrusion alarm systems. Magnetic tapes are stored in a vault in a controlled area within limited access facilities. Access to computer programs is controlled through software applications which require validation prior to use.

RETENTION AND DISPOSAL:

Records are retained for 75 years after termination of case.

SYSTEM MANAGER(S) AND ADDRESS:

NTPR Program Manager, Radiation Sciences Directorate, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the NTPR Program Manager, Radiation Sciences Directorate, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the NTPR Program Manager, Radiation Sciences Directorate, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

CONTESTING RECORD PROCEDURES:

The DNA rules and procedures for contesting record contents or appealing initial agency determinations are published in DNA Instruction 5400.11A, DNA Privacy Program; 32 CFR part 318; or may be obtained from the General Counsel, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398."

RECORD SOURCE CATEGORIES:

Retired Military Personnel records form the National Personnel Records Center, US DNA Form 10 from individuals voluntarily contacting DNA or other elements of DoD or other Government Agencies by phone or mail. DoD historical records, dosimetry records and records from the Department of Energy, Department of Veterans Affairs, the Social Security Administration, the Internal Revenue Service, and the Department of Health and Human Service.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 92–21292 Filed 09–03–92; 8:45 am]

BILLING CODE 3810–01–F

DEPARTMENT OF EDUCATION

National Education Commission on Time and Learning; Meeting

AGENCY: National Education Commission on Time and Learning, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a

forthcoming meeting of the National Education Commission on Time and Learning. This notice also describes the functions of the Commission. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATE AND TIME: September 24, 1992 from 9 a.m. to 4 p.m.

ADDRESSES: The Washington Marriott Hotel, Salon H, 2nd Floor, 1221 22nd Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Julia Anna Anderson, Special Assistant, 1255 22nd Street, NW., suite 502, Washington, DC 20037. Telephone: (202) 653-5063.

SUPPLEMENTARY INFORMATION: The National Education Commission on Time and Learning is established under section 102 of the Education Council Act of 1991 (20 U.S.C. 1221-1). The Commission is established to examine the quality and adequacy of the study and learning time of elementary and secondary students in the United States, including issues regarding the length of the school day and year, how time is being used for academic subjects, the use of incentives, how time is used outside of school, the extent and role of homework, year-round professional opportunities for teachers, the use of school facilities for extended learning programs, if appropriate a model for adopting a longer day or year, suggested changes for state laws and regulations, and an analysis and estimate of the additional costs.

The meeting of the Commission is open to the public. The proposed agenda includes: Discussion of the synthesis paper on the June hearing, reports of the Commissioners' site visits, administrative report and discussion of the Commission's scope of work. Presentations will also be given from invited guests.

Records are kept of all Commission proceedings, and are available for public inspection at the Office of the Commission at 1255 22nd Street, NW., suite 502, Washington, DC 20037, from the hours of 9 a.m. to 5:30 p.m.

Dated: August 31, 1992.

John Hodge Jones,

Chairman, National Education Commission on Time and Learning.

[FR Doc. 9-21327 Filed 9-3-92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Agency Information Collection Extensions

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The Department of Energy (DOE) has submitted the following 10 public information collection packages to the Office of Management and Budget (OMB) for renewal under the Paperwork Reduction Act of 1980, Public Law No. 96-511. The packages cover management and procurement collections of information principally from management and operating contractors and the public. The information is used by Departmental management to exercise management oversight as to the implementation of applicable statutory and contractual requirements and obligations. The listing for each package contains the following information: (1) Title of the information collection package; (2) current OMB control number; (3) type of respondents; (4) estimated number of responses; (5) estimated total burden hours, including recordkeeping hours, required to provide the information; (6) purpose; and (7) number of collections.

DATE AND ADDRESSES: Comments regarding the information collection packages should be submitted to the OMB Desk Officer at the following address no later than (October 5, 1992). Mr. Ronald Minsk, DOE Desk Officer, Office of Management and Budget (OIRA), room 3001, NEOB, Washington, DC 20503, (202) 395-3084.

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Clarence L. Henley, Director, Records Management Division (AD-244), U.S. Department of Energy, Washington, DC 20585, (301) 903-3307.

SUPPLEMENTARY INFORMATION:

Package Title

Automatic Data Processing (ADP) Management.

Current OMB No.: 1910-0100.
Type of Respondents: DOE management and operating contractors.
Estimated Number of Responses: 21,997.
Estimated Total Burden Hours: 163,200.
Purpose: This information is required by the Department to assure that ADP Management resources and requirements are managed efficiently and effectively, and to exercise management oversight of DOE contractors and grantees. The package contains 18 information and/or recordkeeping requirements.

Package Title

Industrial Relations.

Current OMB No.: 1910-0600.
Type of Respondents: DOE management and operating contractors.
Estimated Number of Responses: 1,452.
Estimated Total Burden Hours: 30,149.
Purpose: This information is required by the Department to assure that Industrial Relations resources and requirements are managed efficiently and effectively, and to exercise management oversight of DOE contractors and grantees. The package contains 27 information and/or recordkeeing requirements.

Package Title

In-house Energy Management.

Current OMB No.: 1910-0700.
Type of Respondents: DOE management and operating contractors.
Estimated Number of Responses: 285.
Estimated Total Burden Hours: 11,402.
Purpose: This information is required by the Department to assure that In-house Energy resources are managed efficiently and effectively, and to exercise management oversight of DOE contractors and grantees. The package contains three information and/or recordkeeping requirements.

Package Title

Legal.

Current OMB No.: 1910-0800.
Type of Respondents: DOE management and operating contractors and potential or previous DOE employees.
Estimated Number of Responses: 3,109.
Estimated Total Burden Hours: 23,469.
Purpose: This information is required by the Department to assure that Legal resources and requirements are managed efficiently and effectively, and to exercise oversight of DOE contractors and grantees in the area of inventions, and employees and former employees in the area of conflicts of interest. The package contains eight information and/or recordkeeping requirement.

Package Title

Printing Management.

Current OMB No.: 1910-1300.
Type of Respondents: DOE management and operating contractors.
Estimated Number of Responses: 280.
Estimated Total Burden Hours: 4,044.
Purpose: This information is required by the Department to assure that Printing Management resources and requirements are managed efficiently and effectively, and to exercise management oversight of DOE contractors and grantees. The package contains 11 information and/or recordkeeping requirements.

Package Title

Public Affairs.

Current OMB No.: 1910-1500.

Type of Respondents: DOE management and operating contractors.
Estimated Number of Responses: 241.
Estimated Total Burden Hours: 3,694.
Purpose: This information is required by the Department to assure that Audiovisual-Publications resources and requirements are managed efficiently and effectively, and to exercise management oversight of DOE contractors and grantees. The package contains eight information and/or recordkeeping requirements.

Package Title

Records and Administration.

Current OMB No.: 1910–0700.
Type of Respondents: DOE management and operating contractors.
Estimated Number of Responses: 3,112.
Estimated Total Burden Hours: 8,783.
Purpose: This information is required by the Department to assure that Records resources and requirements are managed efficiently and effectively, and to exercise management oversight of DOE contractors and grantees. The package contains five information and/or recordkeeping requirements.

Package Title

Telecommunications.

Current OMB No.: 1910–1900.
Type of Respondents: DOE management and operating contractors.
Estimated Number of Responses: 153.
Estimated Total Burden Hours: 7,371.
Purpose: This information is required by the Department to assure that Telecommunications resources and requirements are managed efficiently and effectively, and to exercise management oversight of DOE contractors and grantees. The package contains four information and/or recordkeeping requirements.

Package Title

Traffic Management.

Current OMB No.: 1910–2000.
Type of Respondents: DOE management and operating contractors, offsite contractors.
Estimated Number of Responses: 97.
Estimated Total Burden Hours: 23,272.
Purpose: This information is required by the Department to assure that Traffic Management resources and requirements are managed efficiently and effectively, and to exercise management oversight of DOE contractors and grantees. The package contains three information and/or recordkeeping requirements.

Package Title

Procurement (formerly Department of Energy Acquisition Regulations—DEAR 970).

Current OMB No.: 1910–4100.
Type of Respondents: DOE management and operating contractors, offsite contractors.
Estimated Number of Responses: 6,177.
Estimated Total Burden Hours: 1,291,041.
Purpose: This information is required by the Department to assure that Procurement resources and requirements are managed efficiently and effectively, and to exercise management oversight of DOE contractors and grantees. The package contains 33 information and/or recordkeeping requirements.

Issued in Washington, DC, on September 1, 1992.

Dolores L. Rozzi,

Director of Administration and Human Resource Management.

[FR Doc. 92–21422 Filed 9–3–92; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award; Intent To Award a Grant to the National Academy of Sciences/National Research Council

AGENCY: U.S. Department of Energy.

ACTION: Notice of Noncompetitive Financial Assistance Award.

SUMMARY: The Department of Energy (DOE) announces that pursuant to 10 CFR 600.6(a)(5), it intends to award, on a noncompetitive basis, Grant Number DE–FG01–92AN00002 to the National Academy of Sciences/National Research Council (NAS/NRC) to support the International Atomic Energy Fellowship Program.

SUPPLEMENTARY INFORMATION: The proposed grant will provide funding in the amount of $1,250,000 to the NRC. The grant will be used to provide technical advice and administrative assistance and will be responsible for the day-to-day implementation of U.S. commitments to the International Atomic Energy Agency (IAEA) to provide scientists from developing countries with opportunities for training and study in the United States in the field of nuclear science and its application for peaceful uses. These scientists are selected by the IAEA. The IAEA fellowship program was initiated in April 1958.

This proposed grant serves the interest of the Government because the National Academy of Sciences has a mandate from Congress to advise the Federal Government on scientific and technical matters and the National Research Council regularly convenes committees of outstanding scientists and engineers who volunteer their time, who represent a broader scope of knowledge than Legal authority for this grant exists under Pubic Law (Pub. L.) 102–145; FY 1992 Congressional appropriations under the Foreign Assistance Act, which includes funds from the U.S. Voluntary Contributions to the International Atomic Energy (IAEA) and Public Law 85–177; U.S./IAEA Participation Act, ratifying the 1957 Statute of the Agency.

The Fellowship Program is undertaken pursuant to fundamental policy objectives of (IAEA), it is part of larger efforts for promotion of the peaceful uses of atomic energy, therefore, it has been determined that this project has extremely high technical merit.

The anticipated term of the proposed grant is 60 months from the date of the award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, ATTN: Juanita Ellis, PR–322.4, 1000 Independence Avenue, SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Operations Division "B", Office of Procurement, Assistance and Program Management.

[FR Doc. 92–21425 Filed 9–3–92; 8:45 am]

BILLING CODE 6450-01-M

Geothermal Technologies, Promotion; Research, Development and Demonstration Program

AGENCY: Department of Energy, Idaho Field Office.

ACTION: Amendment No. 1 to Solicitation for Financial Assistance: New Technology for the Direct Use of Geothermal Energy.

SUMMARY: The U.S. Department of Energy, Idaho Field Office, published a complete solicitation in the Federal Register [Vol. 57, No. 129, Page Numbers 29716 through 29719] on Monday, July 6, 1992. The solicitation requested applications on the basis of open competition for cost sharing of new technology for the direct use of geothermal energy. The purpose of Amendment No. 1 is to change the application due date and the milestone dates for selection and award. The solicitation is amended as follows:

a. Page 29716 is revised to state that the deadline for receipt of applications is October 9, 1992 rather than September 4, 1992;

b. Page 29719 is amended to state that selection is expected to be made on or about December 10, 1992 rather than November 10, 1992 and that the earliest

award date is expected to be March 12, 1993 rather than February 12, 1993.

ADDRESSES: Applications shall be submitted to: [NUMBER DE-PS07-92ID13203]. J.O. Lee, Contracting Officer, Contracts Management Division, Financial Assistance Branch, 785 DOE Place, MS 1221, Idaho Falls, Idaho 83401-1562. Contact Point: Dallas L. Hoffer, (208) 526-0014. Solicitation: DE-PS07-92ID13203. Procurement Request Number: 07-92ID13203. Procurement Request Number: 07-92ID13203.

Dated: August 26, 1992.

Dolores J. Ferri,

Director, Contracts Management Division.

[FR Doc. 92-21419 Filed 9-3-92; 8:45 am]

BILLING CODE 6450-01-M

Pittsburgh Energy Technology Center; Krakow Clean Fossil Fuels and Energy Efficiency Program

AGENCY: Pittsburgh Energy Technology Center, Department of Energy.

ACTION: Notice of financial assistance program solicitation.

SUMMARY: The Department of Energy (DOE), Pittsburgh Energy Technology Center (PETC) announces that pursuant to 10 CFR 600.9, it intends to issue a program opportunity notice entitled "Krakow Clean Fossil Fuels and Energy Efficiency Program".

EFFECTIVE DATE: On or About September 21, 1992.

CLOSING DATE: Four months after issuance of solicitation.

ADDRESSES: Copies of the solicitation may be obtained by writing to the Department of Energy, Pittsburgh Energy Technology Center, Attention William R. Mundorf, P.O. Box 10940, MS 921-118, Pittsburgh, PA 15236.

FOR FURTHER INFORMATION CONTACT: William R. Mundorf (Contract Specialist), 412/892-4483 or Richard D. Rogus (Contracting Officer) 412/892-6221.

SUPPLEMENTARY INFORMATION: *Program Opportunity Notice No.* DE-PN22-92PC92178.

Title of Solicitation: Krakow Clean Fossil Fuels and Energy Efficiency Program.

Term of Assistance Effort: Up to four years.

Scope

Krakow Clean Fossil Fuels and Energy Efficiency Program. Applications are being solicited for cost-shared Cooperative Agreements to provide support for the establishment of business ventures to supply equipment and/or services to reduce air pollution from coal- or coke-fired small-scale boilers and coal-fired home heating stoves in Krakow, Poland. Proposed projects should apply commercial or commercially ready technologies with any proposed manufacturing capabilities to be located in Poland. Proposers are encouraged to include Polish firms in the business venture.

The program calls for applications in the following five areas: (1) District Heating—extension of the central station district heating system to eliminate local boiler houses; methods to increase the efficiency of heat distribution; methods to incorporate conservation measures in the district heating system or in Krakow residences and buildings. (2) Replacement with Natural Gas Heating—replacement of coal- or coke-fired boilers with natural gas-fired boilers; utilization, extension, maintenance, or management of the natural gas distribution system to substitute natural gas for coal or coke in heating applications. (3) Replacement with Electric Heating—retrofit of home stoves with electric inserts or replacement of home stoves with electric thermal storage heaters; installation, maintenance, and management of the electrical supply infrastructure required to utilize electric energy for space heating. (4) Boiler Houses—methods of reducing pollution from coal- and coke-fired boilers; examples may include: Boiler replacement, supply of an alternative solid fuel, installation of retrofit technologies, or operator training. (5) Home Stoves—methods of increasing the efficiency of home stoves of reducing the pollution emitted by them; examples include: Stove replacement, modification of the traditional stove design, or the supply of an alternative solid fuel such as briquettes or graded coal.

Each proposed project must be cost-shared, with Federal funding not exceeding 50% of the total cost of the project. Applications must utilize a U.S. Technology or a technology in the public domain. This solicitation will be available as stated in the effective date caption of this announcement. The closing date for submission of applications is four months after the release of the solicitation. Multiple awards may result from the solicitation. Copies of this solicitation may be obtained by writing to the address listed in this announcement.

Dated: August 21, 1992.

Carroll A. Lambton,

Contracting Officer.

[FR Doc. 92-21420 Filed 9-3-92; 8:45 am]

BILLING CODE 6450-01-M

Industrial Associates Program Announcement

By this notice the U.S. Department of Energy (DOE) is advising industry of an Industrial Associates Program at the DOE Savannah River Site, sponsored by DOE and its management and operating contractor, Westinghouse Savannah River Company. This program is part of DOE's Technology Transfer initiative and is intended to increase industry awareness of the availability for licensing technologies developed by DOE contractors. DOE requests that potential participants write to us stating their particular area of interest, the preferred dates from your schedule, and a vita of the individual who would like to participate. Participants may spend five days at the site. Time will be divided between the Technology Transfer Office to review available technologies, and the area of technical interest. There is no cost to be an industrial associate. Only U.S. citizens may participate.

The above information can be submitted at any time through September 30, 1993, to the following address: Caroline Teelon, Westinghouse Savannah River Company, Building 770-A, P.O. Box 616, Aiken, South Carolina 29802, Telephone: (803) 725-5540.

FOR FURTHER INFORMATION CONTACT: Elizabeth T. Martin, DOE, Savannah River Field Office, Contracts Division, P.O. Box A, Aiken, SC 29802, Telephone: (803) 725-2191.

Robert E. Lynch,

DOE Savannah River Field Office, Head of Contracting Activity Designee.

[FR Doc. 92-21424 Filed 9-3-92; 8:45 am]

BILLING CODE 6450-07-M

Kansas City Support Office; Noncompetitive Financial Assistance Award to Kansas State University, Engineering Extension Service

AGENCY: U.S. Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The U.S. Department of Energy (DOE), Kansas City Support Office announces that, pursuant to the DOE Financial Assistance Rules 10 CFR 600.7(b)(2), DOE intends to make a noncompetitive financial assistance award to Kansas State University, Engineering Extension Service (KSU/EES), which focus on the energy efficiency of high rise buildings operated by Public Housing Authorities (PAA's).

SUPPLEMENTARY INFORMATION: KSU/EES provided technical, computer, and

software support for the DOE/HUD Initiative in FY91. That effort will be continued in the FY92 project effort. KSU/EES will: (1) Develop an Energy Assessment and Management Program, (2) evaluate certain utility accounting programs, and (3) develop model RFP and contract documents for building re-commissioning. Due to their prior involvement, and associated experience, their staff is uniquely qualified to continue the efforts associated with their assigned tasks. KSU/EES has expended much time and effort in helping analyze the extensive engineering and facility management relationships and complexities that are associated with the program.

It would not be cost effective to sever that *base of knowledge* in either time or funds because competition for support would have a significant adverse effect on continuity and completion of the project in the time frame approved by DOE Washington.

The project period for the grant award is 12 months, beginning on October 1, 1992, to be completed on/or before September 30, 1993. Total funding for the FY92 portion of the project is expected to be approximately $40,000.

FOR FURTHER INFORMATION CONTACT: Kirk M. Bond, Project Engineer, U.S. Department of Energy, Kansas City Support Office, 911 Walnut Street, suite 1411, Kansas City, MO 64106–2024, Phone: (816) 426–5182, FAX: (816) 426–6860.

Issued in Chicago, Illinois, on August 20, 1992.

Johnnie D. Greenwood,

Director, Contracts Division.

[FR Doc. 92–21414 Filed 9–3–92; 8:45 am]

BILLING CODE 6450–01–M

Morgantown Energy Technology Center; Financial Assistance Award (Award of Cooperative Agreement)

AGENCY: U.S. Department of Energy (DOE), Morgantown Energy Technology Center.

ACTION: Notice of Noncompetitive Financial Assistance Award.

SUMMARY: Based upon a determination made pursuant to 10 CFR 600.7(b)(2)(i)(B) the DOE, Morgantown Energy Technology Center (METC), gives notice of its plans to award a cooperative agreement to the University of Oklahoma, Norman, Oklahoma, in the amount of $16.5M, of which $5.9M will be funded by the DOE. DOE intends to provide funding in the amount of $1.8M for the first budget period. The total project period is expected to be 5 years.

FOR FURTHER INFORMATION CONTACT: D. Denise Riggi, I–07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507–0880. Telephone: (304) 291–4241. Procurement Request No. 21–92MC29077.000.

SUPPLEMENTARY INFORMATION: The purpose of the cooperative agreement is to provide financial assistance to the University in support of its program entitled "Fracturing Fluid Characterization Facility." The research is designed to characterize hydraulic fracture performance in various simulated geologic media, and is expected to develop new technologies as well as to improve efficiency of existing fracturing practices. One of DOE/METC's missions is to conduct research and development on the efficient exploitation of natural gas resources. Hydraulic fracturing is one of the main technical and cost components of developing most gas wells. Therefore, the proposed research program fits well into the DOE/METC mission. By providing financial support, METC expects to accelerate the dissemination of information to the general public, and have full access to the facility. Issued in Washington, DC, August 27, 1992.

Louie L. Calaway,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 92–21418 Filed 9–3–92; 8:45 am]

BILLING CODE 6450–01–M

San Francisco Field Office; Grant Award for Environmental Restoration Program for Technical Review and Services for Lawrence Livermore National Laboratory—Site 300; Noncompetitive Award

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of Noncompetitive Financial Assistance Award.

SUMMARY: Pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b) the U.S. Department of Energy, San Francisco Field Office announces that it plans to make a noncompetitive grant award for the technical review and services for the Environmental Restoration Program—Lawrence Livermore National Laboratory—Site 300. The term of the award will cover the period 30 September 1992 and end on 29 August 1994. The total grant award is $504,000.00.

ADDRESSES: U.S. Department of Energy, San Francisco Field Office, 1333 Broadway, Oakland, CA 94612.

FOR FURTHER INFORMATION CONTACT: Terrie Brown of the DOE San Francisco Field Office, Contracts Management Division, telephone (510) 273–4134.

SUPPLEMENTARY INFORMATION: The proposed grant award primarily supports the management and operation of the environmental restoration program at Lawrence Livermore National Laboratory—Site 300. The overall objectives and goals of the work is to perform timely technical reviews and substantive comments on reports and studies, identification and explanation of unique State requirements; field investigations and cleanup activities and support and assist DOE in conducting public participation activities.

Eligibility for this grant award is being limited to the State of California, Central Valley Regional Water Quality Control Board because LLNL—Site 300 is located in the State of California and the state has sole authority within its borders.

Issued in Oakland, CA, August 20, 1992.

Joan Macrusky,

Chief, ER/DP/EM Branch, Contracts Management Division.

[FR Doc. 92–21423 Filed 9–3–92; 8:45 am]

BILLING CODE 6450–01–M

Secretary of Energy Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Secretary of Energy Advisory Board Task Force on Department of Energy's Role in Education.

Date and Time: Thursday, September 17, 1992, 8 a.m.–4 p.m.

Place: The Teachers Academy for Mathematics and Science, 10 West 35th Street, Chicago, Illinois 60616, 312–808–0100.

Contact: Dr. Michele Donovan, Designated Federal Officer, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7092.

Purpose: The Task Force was established to assist Secretary of Energy in planning the Department's future in math/science education. This Task Force will apply its expertise and experience to an independent assessment of the Department's education activities.

Tentative Agenda

Thursday, September 17, 1992, 8 a.m.–4 p.m.

8 a.m.–8:20 a.m. Opening Remarks

8:20 a.m.–10 a.m. Overview of Federal Activities in Math/Science Education: Presentations and Discussion
10 a.m.–10:15 a.m. Break
10:15 a.m.–11:15 a.m. Overview of Current & Proposed DOE Activities
11:15 a.m.–11:45 p.m. Data and Trends in Minority Math/Science Education
11:45 p.m.–12:45 p.m. Working Lunch
Noon–12:30 p.m. Frontiers in Education Technologies
12:45 p.m.–2 p.m. National-level, non-Federal Activities in Math/Science Education: Presentations and Discussion
2 p.m.–3 p.m. Local Initiatives in Math/Science Education: Presentations and Discussion
3 p.m.–4 p.m. Discussion of Task Force Terms of Reference & Charge
4 p.m. Public Comment and Adjourn (10 minute rule)

Public Participation: The meeting is open to the public. The Chairman of the Task Force is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business.

Any member of the public who wishes to make an oral statement pertaining to agenda items should contact the Designated Federal Officer at the address or telephone number listed above. Requests must be received before 3 p.m. (E.D.T.) Tuesday, September 8, 1992, and reasonable provision will be made to include the presentation during the public comment period. It is requested that oral presenters provide 20 copies of their statements at the time of their presentations.

Written testimony pertaining to agenda items may be submitted prior to the meeting. Written testimony must be received by the Designated Federal Office at the address shown above before 5 p.m. (E.D.T.) Tuesday, September 8, 1992, to assure that it is considered by Board members during the meeting.

Minutes: A transcript of the meeting will be available for public review and copying approximately 30 days following the meeting at the Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday except Federal holidays.

Issued: Washington, DC, on September 1, 1992.

Howard H. Raiken,

Advisory Committee Management Officer.

[FR Doc. 92–21415 Filed 9–3–92; 8:45 am]

BILLING CODE 6450–01–M

Office of the Deputy Secretary

U.S. Alternative Fuels Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: United States Alternative Fuels Council.

Date and Time: Wednesday, September 9, 1992, 8 a.m.–4 p.m.

Location: National Renewable Energy Laboratory, Building 17/1, 1617 Cole Boulevard, Golden, Colorado.

Contact: Mark Bower, Office of Energy Demand Policy, U.S. Department of Energy, Mail Stop EP–50, Washington, DC 20585, Phone: (202) 586–3891.

Purpose of the Council: To provide advice to the Interagency Committee on Alternative Motor Fuels to help:

1. "* * * coordinate Federal agency efforts to develop and implement a national alternative motor fuels policy."

2. "* * * ensure the development of a long-term plan for the commercialization of alcohols, natural gas, and other potential alternative motor fuels."

3. "* * * ensure communication among representatives of all Federal agencies that are involved in alternative motor fuels projects or that have an interest in such projects."

4. "* * * provide for the exchange of information among persons working with, or interested in working with, the commercialization of alternative motor fuels."

Agenda

8 a.m.–10 a.m.

Open discussion on CRS draft report. Objective:

- Discuss draft document.
- List recommendations on how to process.
- Examine draft recommendations.
- Identify recommendations/issues on which consensus can be reached.
- Mr. David Gushee (CRS) will be available to answer questions and comment. Chair: Robert W. Hahn.

10:15 a.m.–12 p.m.

Open discussion of individual member recommendations with member being available to answer questions and comment. Chair: Charles R. Imbrecht.

12 p.m.–1 p.m.

Lunch.

1 p.m.–3:45 p.m.

Full Council work on morning session to make decisions on the recommendations and report. Facilitator: Herbert J. Lapp.

3:45 p.m.–4 p.m.

Final comments, farewells, and public comment period (10 minute rule).

4 p.m.

Adjourn.

Public Participation: The meeting is open to the public. Written statements may be filed with the Council either before or after the meeting. Members of the public who wish to make oral statements pertaining to the agenda items should contact Mark Bower at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairpersons of the Council are empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: Available for public review and copying approximately 30 days following the meeting at the Public Reading Room, room 1E190, Forrestal Building, 1000 Independence Ave., SW., Washington, DC between 9 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

Issued at Washington, DC, on September 1, 1992.

Howard H. Raiken,

Advisory Committee, Management Officer.

[FR Doc. 92–21417 Filed 9–3–92; 8:45 am]

BILLING CODE 6450–01–M

Office of Conservation and Renewable Energy

Financial Assistance Award; Intent To Award Grant to Northeast Sustainable Energy Association

AGENCY: Department of Energy.

ACTION: Notice of award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.7, it is making a noncompetitive financial assistance award based in an application submitted to the U.S. Department of Energy, Boston Support Office, from the Northeast Sustainable Energy Association (NESEA).

The grant will provide funding in the amount of $4,500 in support of the 1992 Solar/Electric Vehicle (S/EV) Symposium which will be held by the NESEA in the October of 1992. The objective of the conference is to provide a forum for the public, policy makers and fleet owners which will help them focus on removing the technical obstacles in the S/EV market, and to discuss legislative issues affecting S/EV market development. It also provides an educational program which encourages students to enter challenging technical careers in the S/EV and other alternative vehicle fuels. Participants will continue to gain a better understanding of factors that contribute to the success of efforts to improve energy efficiency.

DOE knows of no other entity in the Northeast that is conducting or planning to conduct such a symposium. This effort is suitable for noncompetitive financial assistance and would not be eligible for financial assistance under a recent, current, or planned solicitation.

DATES: The term of this grant shall be six (6) months from the effective date of award.

FOR FURTHER INFORMATION CONTACT: Hugh Saussy, Jr., CE-Support Office, Boston, U.S. Department of Energy, One Congress Street, Boston, Massachusetts 02114–2021, (617) 565–9700.

Issued in Chicago, Illinois, on August 24, 1992.

Johnnie D. Greenwood,

Director, Contracts Division.

[FR Doc. 92-21421 Filed 9-3-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. RS92-1-001, RP89-161-022, RP89-172-003, CP90-2275-003 and CP91-687-002]

ANR Pipeline Co.; Filing

August 31, 1992.

On August 28, 1992, ANR Pipeline Company (ANR) submitted for filing pertinent provisions of its FERC Gas Tariff incorporating modifications required by the Commission's Order Approving Settlement on an Interim Basis as Modified and Denying Rehearing issued August 5, 1992, in the above-docketed proceeding. Notice is hereby given that anyone interested in filing comments on ANR's August 28, 1992, filing should submit those comments on or before September 8, 1992.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21370 Filed 9-3-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. EL92-36-000; ER92-341-000 and EL92-35-000]

Arkansas Power & Light Co. and System Energy Resources, Inc., et al.; Intervention Date

August 31, 1992.

On August 24, 1992, the Commission issued an Order Establishing Hearing Procedures, Establishing Refund Effective Date and Consolidating Dockets. The order, *inter alia*, set the formula rates as identified in the attachment for investigation as well as any other such rates to be identified by the Energy Companies.

Take notice that interventions in this proceeding shall be due on or before September 15, 1992. Anyone previously granted intervention in Docket Nos. ER92-341-000 and EL92-35-000 need not file again.

Lois D. Cashell,

Secretary.

Attachment

Rate Schedules Containing Formula Rates Incorporating a Return on Equity Greater than 11.6 Percent

System Energy Resources, Inc.
(1) Rate Schedule FERC No. 2

New Orleans Public Service, Inc.
(1) Rate Schedule FERC No. 8

Louisiana Power & Light Company
(1) Rate Schedule FERC No. 69

Mississippi Power & Light Company
(1) Rate Schedule FERC No. 262

Arkansas Power & Light Company
(1) Rate Schedule FERC No. 94
(2) Rate Schedule FERC No. 96
(3) Rate Schedule FERC No. 127

[FR Doc. 92-21318 Filed 9-3-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-19-000]

KN Energy, Inc.; Prefiling Conference

August 31, 1992.

Take notice that on Thursday, September 17, 1992, at 9 a.m., a conference will be convened in the above-captioned docket to discuss KN Energy's summary of its proposed plan for implementation of Order No. 636.

The conference will be held at the National Guard Memorial, 1 Massachusetts Ave., NW., Washington, DC (corner of Massachusetts Ave. and North Capitol St.). Parking is available under the National Guard Memorial and may be accessed from North Capitol Street. Be advised that telephone facilities are limited.

All parties are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested parties may call Arnold H. Meltz at (202) 208-2161 or Thomas E. Gooding at (202) 208-0831.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21317 Filed 9-3-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-8811-000, et al.]

Union Oil Company of California (Successor-in-interest of Unocal Exploration Corporation; Application

August 31, 1992.

Take notice that on August 17, 1992, Union Oil Company of California (Union), at 1201 West Fifth Street, Los Angeles, California 90017, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder as successor-in-interest to Unocal Exploration Corporation (Unocal).

By Certificate of Merger effective May 2, 1992, Unocal merged into Union. Union seeks authorization to continue the service previously authorized by the Commission under the certificates listed in the appendix and requests that the related rate schedules listed in the appendix be redesignated as those of Union, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

To be heard or to protest the application a person must file a motion to intervene or a protest on or before September 16, 1992. A person filing a protest or motion to intervene must follow the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests or motions to intervene must be filed with the Federal Energy Regulatory Commission, Washington, DC 20426.

The Commission will consider all fixed protests in deciding the appropriate action to take but filing a protest does not make a protestant a party to a proceeding. A person wanting to be a party to a proceeding or the participate as a party in a hearing must file a motion to intervene.

Under the procedure provided for here, unless otherwise advised, Union will not have to appear or be represented at any hearing.

Lois D. Cashell,

Secretary.

Unocal Exploration Corporation FERC Gas Rate Schedule No.	Certificate Docket No.	Purchaser
13	G-8811	Texas Gas Transmission Corporation.
35	G-17010	Texas Gas Transmission Corporation
38	G-17457	Texas Gas Transmission Corporation
59	CI61-165	Texas Gas Transmission Corporation.
60	CI61-166	Texas Gas Transmission Corporation.
99	G-7193	Texas Gas Transmission Corporation.
104	G-7193	Mobil Oil Corporation.
133	CI61-245	Texas Gas Transmission Corporation.
134	CI61-265	Texas Gas Transmission Corporation.
136	CI61-1070	Arkansas-Louisiana Gas Company.
142	CI62-634	Natural Gas Pipeline Company of America.
166	CI66-1016	Texas Gas Transmission Corporation

Unocal Exploration Corporation FERC Gas Rate Schedule No.	Certificate Docket No.	Purchaser
167	CI65-1351	Texas Gas Transmission Corporation.
208	CI72-180	Texas Gas Transmission Corporation.
219	CI75-469	Texas Eastern Transmission Corporation.
220	CI75-474	Texas Eastern Transmission Corporation.
221	CI75-477	Texas Eastern Transmission Corporation.
223	CI76-736	Natural Gas Pipeline Company of America.
235	CI77-492	Texas Eastern Transmission Corporation.
237	CI77-828	Texas Gas Transmission Corporation.
245	CI78-859	Texas Gas Transmission Corporation.
250	CI79-66	Texas Gas Transmission Corporation.
252	CI77-828	Texas Eastern Transmission Corporation.
262	CI81-12-000	United Gas Pipe Line Company.
263	CI81-16-000	United Gas Pipe Line Company.
264	CI81-25-000	ANR Pipeline Company.
265	CI81-93-000	Texas Eastern Transmission Corporation.
273	CI82-355-000	United Gas Pipe Line Company.
277	CI85-224-000	Texas Gas Transmission Corporation.
278	CI85-182-000	ANR Pipeline Company.
853	CI79-540-001	Texas Gas Transmission Corporation.
854	CI80-203-001	Southern Natural Gas Company.
855	CI83-19-000	Texas Gas Transmission Corporation.
859	CI83-294-000	Texas Gas Transmission Corporation.
903	CI88-611-001	Texas Eastern Transmission Corporation.
904	CI89-446-001	Texas Eastern Transmission Corporation.
905	CI89-795-001	Texas Gas Transmission Corporation.
906	CI88-734-000	ANR Pipeline Company.
908	CI88-163-000	Texas Gas Transmission Corporation.
910	CI89-100-000	Natural Gas Pipeline Company of America.

[FR Doc. 92-21319 Filed 9-3-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 91-42-NG]

Lockport Energy Associates, L.P.; Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Lockport Energy Associates L.P. (Lockport) authorization to import at Niagara Falls, New York, up to 12,000 Mcf of natural gas per day from Canada over a period of 15 years beginning on the date of the initial delivery. The gas would be purchased from ProGas, Inc. to fuel Lockport's new cogeneration facility in Lockport, New York.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F-056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on August 31, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-21426 Filed 9-3-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-4202-1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared August 17, 1992 Through August 21, 1992 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1992 (57 FR 12499).

Draft EISs

ERP No. D-BLM-J02024-UT Rating EC2, Castlegate Coalbed Methane Gas Production Project, Construction, Operation, Maintenance and Abandonment, Approval, Drilling Control, Temporary Use, Federal Antiquities, COE Section 404 and DOT Federal Pipeline Safety and Operations Permits and Right-of-Way Grants, Carbon County, UT.

Summary: EPA had environmental concerns based on the potentially adverse effects to surface and groundwater of the identified preferred alternative. In addition, there are no mitigation measures proposed to reduce or eliminate the impacts.

ERP No. D-BOP-E81033-MS Rating EC2, Yazoo City, Mississippi Federal Correctional Complex, Construction and Operation, Possibly Consisting of a High Security U.S. Penitentiary, Medium Security Federal Correctional Institution and Minimum Security Federal Prison, Site Selection and Possible COE Section 404 Permit, Yazoo City, Yazoo County, MS.

Summary: EPA's comments expressed the need for a better description of the alternatives development and evaluation processes, and noise impacts.

ERP No. D-FHW-F40224-WI Rating E02, Wisconsin STH-64 Improvements, Houlton to New Richmond, Funding and COE Section 404 Permit, St. Croix County, WI.

Summary: EPA expressed environmental objections due to impacts to wetlands and water quality. EPA recommended that the final EIS include additional information concerning wetland mitigation in terms of replacement ratio, and consideration and discussion of mitigation for upland ecosystem impacts.

ERP No. D-FHW-L40180-WA Rating EC2, WA-522 Transportation Improvements, WA-9 near Woodinville to WA-2 in Monroe, Funding, U.S. CGD Permit and Section 10 and 404 Permits, Snohosmish River Bridge, Snohosmish County, WA.

Summary: EPA expressed concerns about mitigation effectiveness, and groundwater, surface water quality, noise, and wildlife effects. EPA believed that additional information is needed on indirect effects to wetlands, the sole

source aquifer, water quality and wildlife.

ERP No. D-FHW-L50009-WA Rating EC2, Elliott Bridge No. 3166 Replacement, from WA-169 (Renton-Maple Valley Highway) across the bridge to the intersection of 154th Place SE., Funding, U.S. CGD Bridge Permit and Section 404 Permit, Cedar River, City of Renton, King County, WA.

Summary: EPA expressed concerns regarding wetland impacts, fisheries and traffic noise increases. EPA believed that additional information is needed on mitigation.

ERP No. D-SFW-J28018-ND Rating LO, Lake Ilo Dam and Reservoir Modification Project, Elimination of Existing Dam Safety Deficiencies and Section 404 Permit Issuance, Lake Ilo National Wildlife Refuge, Spring Creek, Dunn County, ND.

Summary: EPA had no objections to the proposed project.

ERP No. D2-AFS-J65134-WY Rating, EC2, Thunder Basin National Grasslands Oil and Gas Exploration and Development, Land Availability, Authorization for Leasing and Lease Offerings, Medicine Bow National Forests, Campbell, Crook, Weston, Converse and Niobrara Counties, WY.

Summary: EPA had environmental concerns with the proposed project based on the inadequate data provided. EPA recommended that the final EIS include sufficient information that analyzes water quality, wetlands, ground and surface water and other resources.

Final EISs

ERP No. F-AFS-J65183-UT, East Fork Black Forks Multiple Use Management Project, Implementation, Wasatch-Cache National Forest, Evanston Ranger District, Summit County, UT.

Summary: EPA had environmental concerns regarding the lack of baseline data necessary to assess potential environmental impacts. In addition EPA requested that the Forest Service explain methodologies for establishing existing stream quality and habitat conditions, discuss monitoring criteria to be used and clarify the no surface occupancy stipulation applies to wetlands and riparian areas.

ERP No. F-BLM-J03011-00, TransColorado Gas Pipeline Transmission Project, Construction, Operation and Maintenance, Section 404 and 10 Permits, Right-of-Way Grants and Special Use Permit, La Plata, Delta, Dolores, Garfield, Mesa, Montezuma, Montrose, Rio Blanco, San Miguel Counties, CO and San Juan County, NM.

Summary: EPA had no objection to the proposed project.

ERP No. F-FHW-F40317-IL, FAP-322/US 51 Improvement, from US 51 south of Pana to FAP 322 near Elwin, Funding, Section 404 Permit and Possible NPDES Permit, Christian, Shelby, and Macon Counties, IL.

Summary: EPA believed that the final EIS adequately responded to the previously expressed concerns regarding secondary impacts and avoidance/minimization of wetlands impacts. However, EPA remains concerned that effective mitigation for ambient noise level impacts will not be provided for some of the area's sensitive receptors.

ERP No. F-FHW-J40124-UT, Utah Forest Highway 5 and Wolf Creek Road, UT-35 Improvement, North Fork Provo River Bridge to Stockmore, Funding and Section 404 Permit, Duchesne, Wasatch and Summit Counties, UT.

Summary: EPA continued to have concerns about impacts to water quality and wetlands due to the movement of the salt and sanding material inherent to winter maintenance of the roadway.

ERP No. F-GSA-D80020-MD, Baltimore Health Care Financing Administration Consolidation (HCFA), Site Selection and Funding, Woodlawn Area, Baltimore County, MD.

Summary: EPA believed that the document adequately covered the environmental impacts of the project.

ERP No. F-GSA-D81020-MD, Internal Revenue Service National Office Consolidation and Construction, Site Selection, First Capital Realty Site, Meridian Site, Riverside Site or Metroview Site, Prince George's County, MD.

Summary: EPA had no objectives to the project.

Dated: September 1, 1992.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 92-21409 Filed 9-3-92; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-4201-9]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260-5076 OR (202) 260-5075. Availability of Environmental Impact Statements Filed August 24, 1992 Through August 28, 1992 Pursuant to 40 CFR 1506.9.

EIS No. 920352, Final Supplement, AFS, SD, WY, Norbeck Wildlife Preserve Land Management Plan, Implementation, Additional Information, Black Hills National Forest Land and Resource Management Plan, Custer and Pennington County, SD, Due: October 5, 1992, Contact: Mary Sue Waxler (605) 673-2251.

EIS No. 920353, Draft EIS, AFS, CA, Southbranch Resource Management Project, Harvest Timber, Road Closures and Developing Water Storage Facilities, Peavine Compartment, Tahoe National Forest, Foresthill Ranger District, Placer County, CA, Due: October 19, 1992, Contact: Slim Trout (916) 367-2224.

EIS No. 920354, Draft EIS, BLM, CA, Klamath Falls Resource Management Plan, Implementation, Lakeview District, Klamath County, CA, Due: December 21, 1992, Contact: Judy Nelson (503) 947-2177.

Amended Notices

EIS No. 910034, Draft EIS, COE, IN, Tillery Hill State Recreation Area Development, Construction, Operation and Maintenance of Recreation Facilities, Patoka Lake, Orange County, IN, Due: March 15, 1993, Contact: Keith Hoss (502) 582-6015. Published FR: 2-8-91—Review period extended.

EIS No. 920258, Draft EIS, NPS, WA, Hanford Reach of the Columbia River Comprehensive River Conservation Study, Designation or Nondesignation, National Wildlife Refuge with Wild and Scenic River Overlay, Benton, Grant and Franklin Counties, WA, Due: October 9, 1992, Contact: Bob Karotko (206) 553-4720. Published FR: 07-10-92—Review period extended.

EIS No. 920342, Final Supplement, USA, MA, NJ, AZ, Fort Huachuca Base Realignment and Cancellation of Transfer of Missions and Functions, Cochise County, AZ, Due: October 5, 1992, Contact: Alex Watt (213) 894-5088. Published FR: 08-28-92—Review Period Reregulationed.

Dated: September 1, 1992.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 92-21408 Filed 9-3-92; 8:45 am]

BILLING CODE 6560-50-M

[OPPTS-59949; FRL 4162-9]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN)

to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 8 such PMN(s) and provides a summary of each.

DATES: Close of review periods:

Y 92-184, 92-185, 92-186, August 25, 1992.

Y 92-187, August 27, 1992.

Y 92-188, 92-189, 92-190, August 30, 1992.

Y 92-191, September 7, 1992.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC, 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office, NE-G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

Y 92-184

Manufacturer. Confidential.

Chemical. (G) Modified acrylic resin.

Use/Production. (G) Textile processing agent. Prod. range: Confidential.

Y 92-185

Manufacturer. Confidential.

Chemical. (G) Modified acrylic resin.

Use/Production. (G) Textile processing agent. Prod. range: Confidential.

Y 92-186

Manufacturer. Confidential.

Chemical. (G) Modified acrylic resin.

Use/Production. (G) Textile processing agent. Prod. range: Confidential.

Y 92-187

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Polyester resin.

Use/Production. (S) Powder coatings. Prod. range: Confidential.

Y 92-188

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Polyester resin.

Use/Production. (S) Powder coatings. Prod. range: Confidential.

Y 92-189

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Polyester resin.

Use/Production. (S) Powder coatings. Prod. range: Confidential.

Y 92-190

Manufacturer. Henkel Corporation.

Chemical. (S) Adipic acid and phthalic anhydride, polymer with propylene glycol-, coco fatty acid ester.

Use/Production. (S) Plasticizer for polyvinyl chloride. Prod. range: 200,000-500,000 kg/yr.

Y 92-191

Importer. Confidential.

Chemical. (G) Polyester resin.

Use/Import. (S) Component for powder coatings. Import range: Confidential.

Dated: August 28, 1992.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92-21368 Filed 9-3-92; 8:45 am]

BILLING CODE 6560-50-F

[OPPTS-59312; FRL 4163-1]

Certain Chemical; Test Market Exemption Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substance Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of one application for exemption, provides a summary, and requests comments on the appropriateness of granting these exemptions.

DATES:

Written comments by:

T 92-17, September 23, 1992.

ADDRESSES: Written comments, identified by the document control number "(OPPTS-59312)" and the specific TME number should be sent to: Document Processing Center (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW, Rm. 201ET, Washington, DC 20460, (202) 260-1532.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW, Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer of the TME received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office NE-G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

T 92-17

Close of Review Period. October 7, 1992.

Importer. Confidential.

Chemical. (S) Polypropylene resin.

Use/Import. (G) Open, nondispersive. Import range: Confidential.

Dated: August 28, 1992.

Steve Newburg-Rinn,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92-21369 Filed 9-3-92 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

[ET Docket No. 92-100, FCC 92-333]

Establishment of New Personal Communications Services

AGENCY: Federal Communications Commission.

ACTION: Notice; tentative decision with request for comments.

SUMMARY: This Tentative Decision seeks comprehensive comment on the Commission's proposal to award Mobile Telecommunication Technologies Corporation (Mtel) a pioneer's preference in the licensing process for its efforts in developing 900 MHz.

narrowband personal communications services (PCS) technology and services. This action responds to thirteen requests for a pioneer's preference in licensing PCS in the 900 MHz bands. The Commission deferred reaching tentative decisions on pioneer's preference requests in associated GEN Docket No. 90-314.

DATES: Comments are due by November 9, 1992, and reply comments are due by December 9, 1992.

ADDRESSES: Federal Communications Commission, 1919 M St. NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tom Morring, Office of Engineering and Technology, Frequency Allocation Branch, (202) 653-8114.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Tentative Decision in ET Docket No. 92-100, which was adopted on July 16, 1992, and released on August 14, 1992.

The complete text of this Tentative Decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this Tentative Decision also may be purchased from the Commission's duplication contractor, Downtown Copy Center, at (202) 452-1422, 1114 21st Street, NW., Washington, DC 20036.

Summary of Notice of Tentative Decision

1. The Commission awarded Mtel a tentative pioneer's preference for unpaired spectrum in the 930-931 MHz range for its development of significantly improved bit transmission rates, submission of an innovative proposal based upon these improved rates that will result in new service functionalities being available to consumers, and development of the technology necessary to implement its proposal. The Commission tentatively denied 12 other pioneer's preference requests in Docket 92-100.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-21167 Filed 9-3-92; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1906]

Petitions for Reconsideration and Clarification of Actions in Rule Making Proceedings

August 28, 1992.

Petitions for reconsideration and clarification have been filed in the Commission rule making proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, N.W., Washington, DC, or may be purchased from the Commission's copy contractor Downtown Copy Center (202) 452-1422. Oppositions to these petitions must be filed by September 21, 1992.

See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards. (CC Docket No. 91-115) Number of Petitions Filed: 4.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-21283 Filed 9-3-92; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89-777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Nur Touristic GmbH (d/b/a Neckermann Und Reisen), Zimmersmuhlenweg 55, 6370 Obersul 1, Germany.

Vessel: Fedor Dostoyevskiy.

Dated: August 31, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 92-21355 Filed 9-3-92; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89-777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Nur Touristic GmbH (d/b/a Neckermann Und Reisen), Unicom Management Services (Cyprus) Limited and Fedor Dostoyevskiy Shipping Company Limited, Zimmersmuhlenweg 55, 6370 Obersul 1, Germany.

Vessel: *Fedor Dostoyevskiy.*

Dated: August 31, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 92-21356 Filed 9-3-92; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Crossroads Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 28, 1992.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Crossroads Bancshares, Inc., Perry, Georgia; to become a bank holding company by acquiring 100 percent of the

voting shares of Crossroads Bank of Georgia, Perry, Georgia.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Firstar Corporation, Milwaukee, Wisconsin, and Firstar Corporation of Illinois, Milwaukee, Wisconsin; to merge with DSB Corporation, Deerfield, Illinois, and thereby indirectly acquire Deerfield State Bank, Deerfield, Illinois.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. First Dakota Financial Corporation, Yankton, South Dakota; to merge with McCook Bancshares, Inc., Salem, South Dakota, and thereby indirectly acquire McCook County National Bank, Salem, North Dakota.

D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Merchants Bancshares, Inc., Kansas City, Missouri; to become a bank holding company by acquiring at least 80 percent of the voting shares of Metro Bancshares, Inc., Kansas City, Missouri, and thereby indirectly acquire Metro North State Bank, Kansas City, Missouri; MBI Bancshares, Inc., Kansas City, Missouri, and thereby indirectly acquire The Merchants Bank, Kansas City, Missouri; and International Bancshares, Inc., Gladstone, Missouri, and thereby indirectly acquire First Bank of Gladstone, Gladstone, Missouri; Bank of St. Joseph, St. Joseph, Missouri; and Citizens Bank and Trust Co., Smithville, Missouri.

2. One Security of Kansas, Inc., Kansas City, Kansas; to become a bank holding company by acquiring at least 80 percent of the voting shares of One Security, Inc., Kansas City, Kansas, and thereby indirectly acquire Security Bank of Kansas City, Kansas City, Kansas; Mission Bancshares, Inc., Mission, Kansas, and thereby indirectly acquire The Mission Bank, Mission, Kansas; Valley View Bancshares, Inc., Overland Park, Kansas, and thereby indirectly acquire Valley View State Bank, Overland Park, Kansas; and Industrial Bancshares, Inc., Kansas City, Kansas, and thereby indirectly acquire Industrial State Bank, Kansas City, Kansas.

Board of Governors of the Federal Reserve System, August 31, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-21337 Filed 9-3-92; 8:45 am]

BILLING CODE 6210-01-F

Lisco State Company; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 18, 1992.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Lisco State Company, Lisco, Nebraska; to acquire 20.73 percent of the voting shares of First Nebraska Bancs, Inc., Sidney, Nebraska, and thereby indirectly acquire First National Bank, Sidney, Nebraska. In connection with this application, First Nebraska Bancs, Inc. has applied to merge with Torrington National Company, Torrington, Wyoming, and thereby indirectly acquire First National Bank, Torrington, Wyoming.

Lisco State Company also proposes to engage in the sale of general insurance in the community of Dalton, Nebraska, and the immediately surrounding area pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 31, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-21338 Filed 9-3-92; 8:45 am]

BILLING CODE 6210-01-F

Mahaska Investment Company, et al.; Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a

hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 28, 1992.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Mahaska Investment Company, and Mahaska Investment Company ESOP, Oskaloosa, Iowa; to engage *de novo* through their subsidiary, MIC Development Corporation, Oskaloosa, Iowa, in forming a *de novo* community development corporation pursuant to § 225.25(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 31, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-21339 Filed 9-3-92; 8:45 am]

BILLING CODE 6210-01-F

Joseph J. Schuessler, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 24, 1992.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Joseph J. Schuessler, Kansas, Illinois, to acquire 23.18 percent; John M. Schuessler, River Forest, Illinois, to acquire 20.64 percent; Charles L. Kirchner, Kansas, Illinois, to acquire 20.64 percent; Thomas R. Furey, Perrysburg, Ohio, to acquire 20.64 percent; and Kansas State Banc Corporation, Kansas, Illinois, to acquire 4.71 percent of the voting shares of Paonia Financial Services, Inc., Paonia, Colorado, and thereby indirectly acquire Paonia State Bank, Paonia, Colorado.

Board of Governors of the Federal Reserve System, August 31, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-21340 Filed 9-3-92; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Federal Council on the Aging; Meeting

Agency Holding the Meeting: Federal Council on the Aging.

Time and Date: Meeting begins at 9 a.m. and ends at 4:30 p.m. on Wednesday, September 23, 1992, and begins at 9 a.m. and ends at 4:30 p.m., on Thursday, September 24, 1992.

Place: On Wednesday, September 23, from 9 a.m. to 12 noon, and from 1:30 p.m. to 4:30 p.m., in the SSA Conference Room 648-H, Hubert Humphrey Building, 200 Independence Avenue, SW., Washington, DC, from 9 a.m. to 4:30 p.m., and Thursday, September 24, in the SSA Conference Room 648-H Hubert Humphrey Building, 200 Independence Avenue, SW., Washington, DC, from 9 a.m. to 4:30 p.m.

Status: Meeting is open to the public. (Due to building security, names of attendees should be called into FCoA office (619-2451) prior to meeting dates).

Contact Person: Kevin W. Parks, rm. 4280, Wilbur J. Cohen Building, 330 Independence Ave., SW., Washington, DC 20201 (202) 619-2451.

The Federal Council on the Aging was established by the 1973 Amendments to the Older Americans Act of 1965 (Pub. L. 93-29, 42 U.S.C. 3015) for the purpose of advising the President, the Secretary of Health and Human Services, the Commissioner on Aging and the Congress on matters relating to the special needs of older Americans.

Notice is hereby given pursuant to the Federal Advisory Committee Act (Pub. L. 92-453, 5 U.S.C. App. 1, Sec. 10, 1976) that the Council will hold its fourth quarterly meeting of FY 92 on September 23 and 24, 1992, from 9 a.m. to 4:30 p.m. respectively. On September 23 and 24, the meeting will be held in the SSA Conference Room 648-H, Hubert Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201-0001.

The agenda will include: On Wednesday, September 23, the morning session will be devoted to the Council's regular business session. The afternoon session will be devoted to work sessions of the Council's Committees on Older Persons Living Alone, Outreach and Barriers to Access to Services, and Older Persons and the Media.

On Thursday, September 24, the morning session will be devoted to reports of the three committees and discussion of future activities. The afternoon session will begin at 1:30 p.m. and end at 4:30 p.m. and will focus on preliminary development of meeting topics and agenda for calendar year 1993.

The rest of the two-day meeting will be devoted to discussion of FCoA subcommittee meetings and reports, discussion of presentations and formulation of recommendations, and other matters as they relate to the aging population.

Dated: August 28, 1992.

Max L. Friedersdorf,

Chairman, Federal Council on the Aging.

[FR Doc. 92-21288 Filed 9-3-92; 8:45 am]

BILLING CODE 4130-01-M

Centers for Disease Control

[Announcement Number 300]

Cooperative Agreements for Human Immunodeficiency Virus (HIV); Prevention Projects Program Announcement and Availability of Funds for Fiscal Year 1993

Introduction

The Centers for Disease Control (CDC), the Nation's prevention agency, announces the availability of fiscal year (FY) 1993 funds for a cooperative agreement program for human immunodeficiency virus (HIV) prevention projects.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and to improve the quality of life. This announcement is related to the priority areas of HIV infection, sexually transmitted diseases, and immunization and infectious diseases. (The HIV infection objectives are included in the application kit; for ordering a copy of Healthy People 2000, see the section Where to Obtain Additional Information.)

Authority: This program is authorized by the Public Health Service Act sections 301(a) and 317 (42 U.S.C. 241(a) and 247b), as amended.

Eligibility

Eligible applicants for this program are official state and local health

agencies that currently receive HIV/AIDS prevention cooperative agreements. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, and the Republic of Palau.

Availability of Funds

On the basis of the President's FY 1993 budget request, approximately $145,000,000 is expected to be available to fund 65 competing continuation cooperative agreements for a 12-month budget period within a 4- to 5-year project period. The average award is expected to be $2.2 million, ranging from $50,000 to $17,000,000. Specifically, these funds are expected to be available as follows:

1. Counseling, Testing, Referral, and Partner Notification (CTRPN)—$80,000,000.
2. Health Education and Risk Reduction (HE/RR)—$17,000,000.
3. Minority Initiatives (MI)—$14,000,000.
4. HIV Prevention in Drug Users (PHPDU)—$24,000,000.
5. Public Information (PI)—$10,000,000.

Funding estimates already outlined may differ and are subject to change. At the request of the applicant, Federal personnel, equipment, or supplies may be provided in lieu of a portion of the financial assistance.

Continuation awards within the project period will be based on the availability of funds and the extent to which the recipient has successfully met its objectives during the preceding budget period.

Purpose

The purpose of the HIV Prevention Cooperative Agreement Program is to assist state and local public health departments, in collaboration with other agencies and organizations working at the local, state, regional, and national levels, to:

- Prevent the transmission of HIV and
- Reduce associated morbidity and mortality of HIV-infected persons by increasing access to early medical intervention to delay the onset of symptoms and to prevent and treat complications of HIV infection.

CDC Strategic Goals for HIV Prevention

A. Strengthen current systems and develop new systems to accurately monitor the HIV epidemic, as a basis for assessing and directing HIV prevention programs.

B. Increase public understanding of, involvement in, and support for HIV prevention.

C. Implement comprehensive school health education programs to prevent risk behaviors that lead to HIV infection and related health problems.

D. Prevent or reduce behaviors or practices that place persons at risk for HIV infection, or if already infected, place others at risk.

E. Increase individual knowledge of HIV serostatus and improve referral systems to appropriate prevention and treatment services.

This announcement is intended to provide support for programs, activities, and services relevant to goals B, D, and E.

Additional important national goals are to strengthen sexually transmitted disease (STD) services and to improve referral to substance abuse treatment programs to reduce the prevalence of diseases that promote HIV transmission.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting the activities under "A" and "B," below, and CDC shall be responsible for conducting the activities under "C," below:

A. Recipient Requirements and Guidance

1. *Objectives:* All states must develop realistic, specific, and measurable process and outcome objectives for required HIV prevention activities and services.

2. *Resource/Needs Assessment:* States should use data from AIDS case surveillance, Behavioral Risk Factor Surveillance (BRFS), HIV infection reporting (if required by state law), STD surveillance, HIV seroprevalence studies, and other relevant indicators (e.g., teen birth rates, number of drug arrests) to determine geographic and population priorities for allocating resources and to target primary and secondary HIV prevention services. States are encouraged to contact other state agencies (e.g., agencies that focus on substance abuse) and community organizations to obtain additional data to help identify the needs of target populations.

Working with the appropriate community groups and organizations, states should examine and document current and projected resource requirements and unmet needs for HIV primary and secondary prevention services. This information can be used to plan program activities and services, redirect efforts and resources to meet current needs, use resources more efficiently, and identify unmet service needs. In conducting this assessment, states are encouraged to determine the availability and the location of preventive, medical, laboratory, therapeutic, psychological, and other support services for persons at increased risk for HIV infection and/or persons who are HIV-infected so that current and projected program and service needs can be identified and referrals can be made.

Recipients are encouraged to place particular emphasis on assessing the availability and the accessibility of primary and secondary HIV prevention services for underserved populations heavily affected by the HIV epidemic. These underserved groups might include racial and ethnic minority populations, persons of low income, and other groups at risk who are not currently receiving primary and secondary HIV prevention services. Recipients are encouraged to identify and describe barriers to the use of services by populations at risk.

3. *Advisory Group:* States are encouraged to establish or work with a current advisory group (e.g., those established for programs supported by the Health Resources and Services Administration (HRSA) under Part B of Title XXVI) that broadly represents the populations to be served and that actively participates with the health department in the ongoing review and strengthening of comprehensive primary and secondary HIV prevention programs. The advisory group can help facilitate planning and minimize the duplication of services. States are strongly encouraged to include HIV-infected persons as members of the advisory group. In addition, minority populations should be represented in the membership. Such broad representation will involve community organizations and indigenous groups who have trust and credibility with the populations to be served and who understand the relevant cultural issues. Their participation can improve planning and increase acceptance of needed services by populations at risk. States are encouraged to coordinate planning with other relevant state agencies (e.g., agencies that focus on substance abuse) and with other HIV-related planning groups, councils, consortia, or organizations, especially the planning councils and consortia established for HRSA-supported programs under Parts A and B of Title XXVI.

4. *Collaboration:* States must collaborate with other agencies and organizations which provide primary and secondary HIV prevention and

other related services such as substance abuse treatment (especially those receiving Federal funds for such purposes), when planning, implementing, and evaluating their program activities and services. Examples of other agencies and organizations to collaborate with include other state and local health departments, state and local drug abuse treatment agencies, state and local educational agencies, state offices of minority health, other appropriate state and local agencies, community-based organizations (CBOs), health care providers, correctional institutions and criminal justice systems, other Federal agencies, and national and regional organizations and their affiliates. If relevant and appropriate, applicants are encouraged to submit evidence of collaboration such as joint plans for providing services or brief descriptions of collaborative activities.

B. Required Activities and Services and Related Guidance

1. Counseling, Testing, Referral, and Partner Notification (CTRPN)

The major functions of CTRPN programs are to provide individuals a convenient opportunity to learn their current HIV serostatus, to receive counseling to help initiate behavior change to avoid infection or, if already infected, to prevent transmission to others, to obtain referral to additional prevention, medical care, and other needed services, and to provide prevention services and referral to sex and needle-sharing partners of infected persons. States must undertake the following activities and provide the specified services.

a. *Counseling and Testing:* Routinely offer, on a voluntary basis with informed consent, HIV prevention counseling (pretest, posttest, and additional prevention counseling) and HIV laboratory testing services (including HIV antibody and, when feasible and appropriate, CD4+ cell determination or other testing to determine immune system functioning). Recipients are encouraged to offer services, as resources permit, to the clients of designated counseling and testing sites, STD clinics, drug treatment centers, tuberculosis clinics, criminal justice and correctional systems, women's health and family planning clinics, and other sites serving persons at risk. Recipients are strongly encouraged, whenever possible, to integrate HIV counseling and testing into the ongoing operations of health-care providers, especially STD and substance abuse treatment clinics, to reduce unnecessary costs and use resources as efficiently as possible. If a state opts to charge for services, they are encouraged to do so on a sliding scale, and no one should be denied services because of an inability to pay. Funds generated from charging clients must be used to support HIV preventation program activities and services.

States are encouraged to give priority to providing services through sites serving the residents of areas that have high rates of HIV seroprevalence and AIDS case incidence and sites with clientele known to have high rates of HIV seropositivity (e.g., STD clinics, drug treatment centers, hospitals with AIDS-diagnosis rates of 1.0 or more per 1000 discharges and their outpatient clinics) or risk behavior, especially men who have sex with men, (including gay identified and non-gay identified) individuals infected with other STDs, injecting drug users (IDUs), women at risk, and youth in high-risk situations.

Some clients may be at very high risk of becoming HIV-infected or, if already infected, of transmitting the virus to others. States are encouraged to provide, either onsite or through referral, additional prevention counseling (individual, couple, group, or peer), as appropriate to the needs of these clients. Funds awarded through this component of the cooperative agreement can be used to support such ongoing counseling and prevention case management.

In deciding which sites will provide, or continue to provide, HIV-antibody counseling and testing services, priority should be given to the programs that can reach large numbers of persons at high risk of HIV, can obtain test results promptly, and can yield a high return rate of clients for posttest counseling. States are required to implement a written policy for contacting clients who are infected with HIV and who have not returned for posttest counseling.

If CTRPN services are offered on site, or planned to be, a limited amount of funds awarded through this cooperative agreement (approximately $5,000–$12,000 per site) may be used in analyzing and improving systems and procedures (e.g., patient flow analysis) for serving clients and for other minor improvements in the general operations of STD and other clinics serving large numbers of clients at high risk for HIV infection. Such requests should include details of how the proposed improvements may increase access to counseling and testing services and increase return rates for posttest counseling.

A focused and tailored risk assessment should be the foundation of HIV pretest counseling. Pretest counseling should not be a passive appraisal by the counselor of the client's behavior but an interactive process between the counselor and the client, conducted in an empathic manner with special attention on the ongoing behaviors and circumstances (e.g., sexual history, STD history, drug use) that may continue to place the client at risk for HIV infection or transmission. Information from the individualized risk assessment should be the basis for assisting the client in developing a plan to reduce HIV risk. Counselors should also address the client's information and skill needs identified through risk assessment.

Some clients may choose not to disclose risk behavior, and others may not be aware of their actual risks. Therefore, the lack of self-reported risk should not be used as the sole reason to discourage a client from HIV-antibody testing.

Persons who are tested should be confidentially notified of their test results and provided appropriate posttest counseling. During pretest counseling, clients should be informed of the benefits of knowing their serostatus and encouraged to return for test results and posttest counseling.

Highest priority must be given to increasing return rates of seropositive clients.

States may wish to provide pretest or posttest counseling through video or other more cost-efficient means to persons with low or no risk, as indicated by the risk assessment, but who wish to receive HIV-antibody testing. States are encouraged to offer services at times and places that are convenient and accessible to target populations. Counseling should be culturally competent (i.e., program and services provided in a style and format respectful of cultural norms, values, and traditions that are endorsed by cultural leaders and accepted by the target population), sensitive to issues of sexual identity, developmentally appropriate (i.e., information and services provided at a level of comprehension that is consistent with the age and the learning skills of the persons being served), and linguistically specific (i.e., information is presented in dialect and terminology consistent with the target population's native language and style of communications).

Unless it is prohibited by state law or regulation, clients should be offered reasonable opportunities to receive HIV-antibody counseling and testing services

anonymously. The availability of anonymous services may encourage some persons at risk to seek services who should otherwise be reluctant to do so. Seropositive clients, especially those initially tested anonymously, should be counseled about the benefits of receiving follow-up services under a confidential system.

b. *Referral:* Clients who are at increased risk for HIV infection and clients who are infected with HIV are often in need of many services such as STD screening and treatment, substance abuse counseling and treatment, tuberculosis testing and treatment, family planning, further HIV prevention counseling, evaluation of immune system function, and HIV early medical intervention. These services should be provided at the testing site. If they are unavailable at the testing site, individuals must be referred to another service provider. States should have a system in place to link counseling and testing sites with other health, medical, and psychosocial service providers through referral.

All clients who are found to be HIV-infected at any CTRPN service site should be provided TB PPD skin testing (Mantoux technique) and a CD4+ cell test to determine their stage of illness and to assess their medical eligibility for treatment. If these services are unavailable at the testing site, individuals must be referred to another service provider. HIV-infected persons should be counseled about the benefits of early medical treatment and be provided opportunities, either on-site or through referral, to receive appropriate medical therapies.

Information about services available through referral should be regularly updated so that counselors can refer clients for services currently available in the local area. Clients who need services should be counseled, or referred for counseling, about their eligibility for publicly supported, third party payment or reimbursement programs.

Funds provided through this cooperative agreement cannot routinely be used to provide ongoing clinical and therapeutic care of HIV-infected persons. Support for such services should be obtained from other sources of funding, or the services should be obtained through referral to local providers. With prior approval from CDC and under special circumstances, a limited amount of funds can be used to provide outpatient clinical and therapeutic services to HIV-infected persons who would not otherwise have access to such services. This will be negotiated on a project-by-project basis and must be done in such a manner that primary prevention activities of the project area will be strengthened.

Funds may be used, however, to provide CD4+ cell and TB PPD skin (Mantoux technique) testing, to establish and maintain formal linkages between the counseling and testing sites and the providers of secondary HIV prevention services including TB testing and treatment, and to improve the success rate of referrals through prevention case management systems.

c. *Partner Notification:* States must establish standards and implement procedures for confidential voluntary notification of sex and needle-sharing partners of HIV-infected persons. Partner notification is a primary prevention service with the following objectives of:

(1) Providing prevention information to persons, if not already infected, who may be at very high risk of becoming HIV-infected but who are unaware of or who misunderstand their risks; and

(2) Assisting them in obtaining other services such as HIV counseling, testing, referral, and additional HIV prevention counseling.

If the partner is already HIV-infected, partner notification can play a very important role in providing access to secondary HIV prevention services.

States should provide partner notification services in both anonymous and confidential testing sites. States should also provide partner notification services for physicians or hospitals who provide HIV counseling and testing, or the necessary training to conduct these services.

These services may include counseling the infected person alone, or with his or her partners, about HIV prevention measures and about the need for and the availability of other services, including HIV secondary prevention. Staff who provide partner notification services should receive specialized training so that they can provide these services sensitively and effectively. Partner notification programs should include:

(1) Patient referral, which includes encouraging seropositive persons to notify their partners, including spouses, and counseling them on techniques, (e.g., role play during the counseling session), for successfully undertaking such notifications, and

(2) Provider referral, which includes, in situations where the HIV-infected person is unable or unwilling to notify partners, the offer of health department assistance to notify partners, including spouses, and confidentially offer them services.

d. *CTRPN Training and Quality Assurance:* States must routinely assess the performance and training needs of counselors and other staff providing client services such as HIV prevention counseling and partner notification. Staff training should be provided as needed. Comprehensive quality assurance procedures and standards for staff performance should be developed [examples of quality assurance quidelines can be obtained from CDC through project officers and should include: procedures for client medical record reviews and monitoring; direct observation by supervisory staff; and the performance of staff (including pretest and posttest counseling audits)]. Procedures for feedback should also be included so that the staff may improve their skills and the quality of their services.

As part of a comprehensive quality assurance program, states must monitor: (1) Blinded seroprevalence rates to assess the extent of client access and acceptance of CTRPN services and (2) the rates at which clients return to receive HIV-antibody test results and posttest counseling. When less than 50 % of high-risk clients are receiving counseling and testing or when low return rates (e.g., less than 80% return for seropositives and less than 60% return for seronegatives) are identified, documented action steps must be taken to determine the reasons for such low rates and to resolve significant barriers to clients accessing services and learning their test results and obtaining counseling and referral services.

States are encouraged to ensure that testing laboratories provide tests of adequate quality, report findings promptly, and participate in a laboratory performance evaluation program for HIV-1 antibody testing and T-lymphocyte immunophenotyping (TLI). States are encouraged to include participation of their state public health laboratory in efforts to assure laboratory quality, so as to minimize any inaccuracies that may occur during specimen collection, testing, or the reporting of laboratory test results.

2. Health Education/Risk Reduction (HE/RR)

HERR programs and services are efforts to reach persons at increased risk of becoming HIV-infected or, if already infected, of transmitting the virus to others. The goal of HE/RR programs is to reduce the risk of these events occurring. These programs should be directed to persons whose behaviors or personal circumstances place them at high risk including, but not limited to:

• men who have or have had sex with men (including gay identified and non-gay identified)

• substance users including IDUs (especially those who share needles and other paraphernalia)

• persons, both male and female, who exchange sex for drugs, money, housing, or food

• persons with a newly diagnosed STD and persons who have a history of repeated STDs

• persons who are, or were, sex or needle-sharing partners of those already listed

• youth in high-risk situations (e.g., youth who are engaging or who are likely to engage in high-risk behavior, including runaways, youth who have had STDs, gay and bisexual youth, juvenile offenders, youth using drugs, youth who barter or sell sex)

• women in high-risk situations (including partners of infected persons and partners of persons who engage in high-risk behavior)

• persons in the correctional and criminal justice systems (e.g., parole, probation and transition programs)

• homeless persons in high-risk situations.

HE/RR programs and services should be culturally competent, sensitive to issues of sexual identity, developmentally appropriate, and linguistically specific. Funding for HE/RR programs is not intended to support efforts to educate the general public or low-risk populations (see guidance on public information programs). The HE/RR programs and services can be undertaken directly by health departments or can be contracted to other governmental or community-based organizations that have access to and credibility with persons at risk. Decisions about the allocation of HE/RR resources, both in terms of priority activities undertaken and populations to be served, must be based on the results of ongoing needs assessment date and other information that documents the availability and accessibility to primary prevention services for all populations at risk for HIV infection. Health departments are encouraged to discuss their interpretation of needs assessment data with community-based service providers to learn more about HIV prevention needs at the state and local level.

Street and community outreach, risk reduction, community-level intervention, and HIV prevention case management are the HE/RR programs that have priority for support with funds awarded through this component of the cooperative agreement. The following are brief descriptions of each of these programs:

a. Street and community outreach programs reach persons at high risk on the street or in community settings and provide prevention messages, information materials, and other services and assist them in obtaining other primary and secondary HIV-prevention services such as HIV-antibody counseling and testing, HIV risk-reduction counseling, STD prevention and treatment, substance abuse prevention and treatment, family planning services, tuberculin testing, and HIV medical intervention.

b. Risk-reduction programs provide counseling interventions (i.e., led by peers or professionals, to individual, groups, families, or couples) to persons at high risk for infection that promote and reinforce safe behavior. Risk reduction programs should include interpersonal skills training for clients in negotiating and sustaining appropriate behavior changes (e.g., delaying the initiation of sexual activity, avoiding unsafe sex, negotiating safer sex, needle cleaning).

c. Community intervention programs are directed at the community, rather than the individual, to influence community norms in support of the behaviors known to reduce the risk for HIV infection and transmission. The primary goals of these programs are to improve health status, to promote health behaviors, and to change factors that affect the health of community residents. Community intervention programs should target racial, ethnic, gender, sexual identity, and specific populations. Activities conducted under this component include:

(1) Identifying and describing structural, environmental, behavioral, and psychosocial facilitators and barriers to risk reduction such as

(a) source and patterns of communication and social influence surrounding the initiation and the maintenance of specific risk-reduction behavior

(b) individual and community beliefs and attitudes about STD prevention and treatment and their role in HIV prevention

(c) the significance of condom and contraceptive use within sexual, social, and family relationships

(d) cultural, sexual identity, linguistic, and religious influences

(e) incentive and disincentives to risk reduction

(f) alcohol and drug use

(2) Developing and implementing culturally competent, developmentally appropriate, linguistically specific, and sexual identity sensitive interventions to influence specific structural, environmental, behavioral, and psychosocial factors thought to promote risk reduction by:

(a) Changing community norms about condom and contraceptive use, needle sharing, diagnosis and treatment of STDs, and other HIV risk-reduction strategies through persuasive communications and role play

(b) identifying and enlisting family, peer, and community networks (e.g., family networks, parents of youths in high-risk situations, women's networks) to promote and reinforce HIV risk reduction

(c) creating and mobilizing new networks of communication in support of HIV risk reduction

(d) providing opportunities to acquire skills in HIV risk reduction and in reinforcement of behavior change

(e) involving community members as role models in locally developed small media (e.g., local newspapers, radio stations) to present information and persuasive messages about HIV risk reduction

(3) Persuading community members who are at risk of acquiring or transmitting HIV infection to accept and use HIV prevention measures, (e.g., condoms, bleach to disinfect drug paraphernalia, and services such as HIV prevention counseling, HIV-antibody testing and follow-up, STD treatment, HIV medical intervention, and psychosocial support).

d. HIV Prevention Case-Management is a one-on-one client service specifically designed to assist both uninfected and infected persons. HIV prevention case-management services are directed at persons who need

• highly individualized support to remain seronegative or

• substantial psychosocial and other support to reduce the risk of HIV transmission to others

(1) HIV prevention case-management services may be needed by persons who are having or who are likely to have difficulty initiating or sustaining safe behavior. Examples of such persons include

• persons awaiting placement or admission to drug treatment

• persons who repeatedly become infected with STDs

• sex partners of recently diagnosed HIV-infected persons

• persons who engage in sex for economic reasons

• youth in high-risk situations

• recently released residents of criminal justice facilities

• persons who may be in the "window period" (period between

exposure to HIV and the development of detectable levels of antibodies against the virus, usually 6 to 12 weeks)

• HIV-infected persons who are unable to obtain supportive services

• persons who have recently learned they are infected with HIV and who are experiencing acute mental health stress

(2) HIV prevention case-management services are not intended as substitutes for medical case management or extended social services. They should complement current HIV prevention services such as HIV-antibody counseling, testing, referral, and partner notification and early medical intervention programs undertaken in community-based settings (e.g., street and community outreach and risk reduction). Services provided under this component should concentrate on the identification, the coordination, and the delivery of appropriate prevention services to persons. These services should be provided as part of, or in coordination with, early medical intervention services for HIV-infected persons. HIV prevention case-management services should also assist persons at risk in obtaining STD diagnosis and treatment, women's health services, TB diagnosis and treatment, and other primary health care services related to HIV prevention.

e. HE/RR Training and Quality Assurance: Recipients must routinely assess the performance and training needs of staff who provide HE/RR services. States should provide ongoing technical assistance in CBOs in assessing current and projected needs for HIV prevention and early medical intervention services in their communities and in planning, implementing, and evaluating prevention programs, activities, and services. Technical assistance should include the active monitoring of services and programs provided by CBOs. Some states may elect to fund nongovernmental organizations to assist in providing technical assistance to CBOs.

3. State/Local Initiative for HIV Prevention in Racial and Ethnic Minority Populations (MI)

Funds awarded in this component of the cooperative agreement are to assist health departments in supporting systematic efforts in racial and ethnic minority populations to engage individuals and organizations in HIV prevention activities. Minority Initiative activities and services should be focused on preventing or reducing high-risk behavior through street and community outreach, risk reduction, community intervention, and prevention case-management programs and services as described in the previous section. These programs should be culturally competent, sensitive to issues of sexual identity, developmentally appropriate, and linguistically specific and be directed to minority persons whose behaviors or personal circumstances place them at high risk including:

• men who have or have had sex with men (including gay identified and non-gay identified)

• substance users including IDUs (especially those who share needles and other paraphernalia)

• persons, both male and female, who exchange sex for drugs, money, housing, or food

• persons with a newly diagnosed STD and persons who have a history of repeated STDs

• persons who are, or were, sex or needle-sharing partners of those already listed

• youth in high-risk situations (e.g., youth who are engaging or who are likely to engage in high-risk behavior, including runaways, youth who have had STDs, gay and bisexual youth, juvenile offenders, youth using drugs, youth who barter or sell sex)

• women in high-risk situations (including partners of infected persons and partners of persons who engage in high-risk behavior)

• persons in the correctional and criminal justice systems (e.g., parole, probation, and transition programs)

• homeless persons in high-risk situations

All requirements specified in the HE/RR section apply to these programs. Additional activities that must be undertaken by the state include the following:

a. Consult regularly with the leadership or representatives of minority community-based groups to discuss local HIV/AIDS-related needs, issues, and problems and to collaboratively develop, implement, and evaluate prevention strategies and program plans.

b. Provide direct financial assistance, through a competitive application process, to minority CBOs, particularly those representing and serving racial and ethnic minority populations at high risk of HIV and whose governing body is composed of more than 50% racial or ethnic minority group members (Asian/Pacific Islanders, African-Americans, Latinos/Hispanics, American Indians/Alaskan Natives, and Caribbean Americans). The process for identifying CBOs who need assistance should ensure wide dissemination of Requests for Proposals (RFPs), which provide details on application procedures and explain how eligible applicants can obtain technical assistance. A plan to provide financial assistance must be developed that includes provisions for ensuring that funds are awarded to CBOs on a timely basis. RFPs must be disseminated within 90 days of the notice of award. Multiyear assistance is allowable, provided the initial award was made competitively.

c. Provide technical assistance to CBOs in assessing current and projected needs for HIV prevention and early medical intervention services in their communities and in planning, implementing, and evaluating prevention programs, activities, and services. Program management, strategies for meeting the HIV prevention needs of populations at high risk, and strategies for overcoming barriers to prevention should be priority areas for technical assistance programs. Technical assistance should include the active monitoring of services and programs provided by CBOs. Some states may elect to fund appropriate non-governmental organizations to assist in providing technical assistance to CBOs.

4. HIV Prevention in Drug Users (HPDU)

These programs should target IDUs and other high-risk substance users and their partners. Activities and services include counseling, testing, referral, partner notification in drug treatment and other settings, street and community outreach, risk reduction, community-level intervention, and HIV prevention case management. These efforts should be concentrated in areas with high prevalence of drug use as identified in the needs assessment (e.g., drug arrests, drug overdose cases, AIDS cases associated with injection drug use and other indicators of drug use). Demonstration of coordination with the state/territorial drug agency is particularly important for HIV prevention activities for drug users. All requirements included under the CTRPN and HE/RR sections apply to these programs. In determining the allocation of these resources, states should give priority to sites (e.g., drug treatment centers, correctional facilities, street outreach programs) that provide services to substantial numbers of IDUs and other high-risk substance users. Specific plans are required for these activities and must be submitted to CDC.

5. Public Information Programs (PI)

The purposes of public information programs and activities funded through

this cooperative agreement are to build general support for safe behavior and to support efforts for personal risk reduction. In addition to informing general audiences, state and local public information programs should assist in informing persons at risk of infection of how to obtain specific prevention and treatment services, such as CTRPN and STD screening and treatment. Public information programs and messages should be planned, based on an assessment of needs in each state and local area. Priority messages to communicate through public information programs include how HIV is and is not transmitted; how to avoid becoming infected; what the impact of other STDs is on risk of HIV transmission; what to do if you think you might be infected; and the benefits of knowing one's serostatus, including early diagnosis and treatment for HIV disease.

Where appropriate, state and local public information activities should be coordinated with the National AIDS Information and Education Program (NAIEP). The NAIEP is the CDC component responsible for the National "America Responds to AIDS" (ARTA) campaign and other public information efforts. Funds awarded under this cooperative agreement may be used to reproduce, localize, disseminate, and market, through appropriate channels and distribution systems, these public information materials.

Before developing new materials, states should determine whether informational materials that address the identified need already exist. The CDC National AIDS Clearinghouse and other sources should be contacted. If no materials exist that can be adapted to meet the identified need, funds may be used to develop, produce, disseminate, and market materials that meet unique and documented state or local needs and sensitivities.

Priority should be given to materials directed to hard-to-reach audiences and populations heavily affected by the HIV epidemic. Any newly developed public information resources and materials should be submitted to the National AIDS Information Clearinghouse so that they can be incorporated into the current database for access by other organizations and agencies.

Quality assurance measures should be developed and maintained to ensure the consistency, accuracy, and relevance of information provided to the public through local hotlines including information about referral services.

6. Evaluation

States must develop and implement a plan for evaluation of all major program activities and services supported with CDC HIV prevention funds. The following are recommendations for the plan, the minimum data that should be collected, and the systems for collecting the data. Evaluation activities undertaken under the plan should be capable of the following:

a. Providing a detailed description of

(1) each program activity and the documented need for that activity

(2) progress toward achieving each stated objective in the cooperative agreement.

b. Providing detailed information for

(1) the specific service or intervention that was provided with cooperative agreement funds and how it differed from the planned services;

(2) the description and the number of persons who received the service, including demographics such as age, race and ethnicity, gender, and if appropriate and available, sexual orientation and risk exposure, and how the persons actually served differed from those the program intended to serve;

(3) when and how often the service or intervention was provided and how this differed from program plans; and,

(4) where the service or intervention was provided (e.g., CTRPN site, STD clinic, street corner, housing project) and a comparison of these data to the expected locations of service delivery.

c. Documenting and describing program successes, unmet needs, barriers and problems encountered in planning, implementing, or providing services (e.g., establishing or maintaining effective collaborative relationships) or in coordinating services with other organizations and agencies serving target populations.

d. Documenting and describing the success of referral systems, including the numbers of persons referred and the number actually receiving services, by site, and how well the system functions in identifying sources of services and in assisting persons in obtaining and receiving them.

e. Documenting and describing problems that affect planning or implementing program activities (e.g., recruiting, hiring, or retaining staff; training or ensuring quality staff performance; establishing or maintaining contracts with CBOs or ensuring the quality of their performance).

f. Evaluating the behavioral and health outcomes of persons receiving HIV prevention activities and services is strongly encouraged, as resources permit. States should use counseling and testing service utilization data, AIDS case surveillance data, STD surveillance data, BRFS system, and HIV seroprevalence (especially blinded seroprevalence survey) data to evaluate the impact of services, whenever feasible.

g. Client satisfaction with HIV prevention services should be assessed periodically via quantitative or qualitative methods (e.g., periodic focus groups with current or former clients might be utilized).

h. Detailed consideration should be given to the cost per service unit delivered. This might be done via a detailed breakdown of budget categories with a mapping of costs expended to service units delivered. Or, this may be done via a careful tracking of the costs for service units delivered over a short time period. Other methods of cost analysis may be utilized as local circumstances dictate.

Whenever possible, states should use standardized data collection systems, procedures, and reporting forms. States are strongly encouraged to use a computerized client record system for documenting and reporting HIV counseling and testing services that is compatible with the scannable system available from CDC.

Based on needs expressed at two external consultant meetings, additional technical assistance documents on evaluation will be forthcoming from CDC.

C. Centers for Disease Control Activities

1. Provide consultation and scientific and technical assistance in planning, operating, analyzing, and evaluating HIV prevention activities.

2. In consultation with states, assess training needs, determine how best to meet those training needs, and support implementation through direct training or technical assistance for state trainers.

3. Provide up-to-date scientific information on risk factors for HIV infection, preventive measures, and program strategies.

4. Develop, refine, and disseminate HIV prevention program information that describes model programs and effective methods to carry out program activities and to monitor progress.

5. Assist in assessing program operations and in evaluating the overall effectiveness of programs, including the impact on behavior of specific behavior change interventions.

6. Provide

a. On a routine basis, data on the number of HIV tests performed, including post-test counseling return rates, by site type within a project area.

b. National performance evaluation program for laboratories performing the following tests: EIA, Western Blot, and IFA tests for HIV-1 antibody, and CD4+ cell tests to monitor immune status; and

c. Laboratory training that includes current scientific, technical, and quality assurance information about the tests used in diagnosing and monitoring HIV-1 infection.

Review and Evaluation Criteria

Each application will be reviewed and evaluated individually according to the following criteria (maximum 100 points):

A. The need for support as documented in the background and need section, including (1) the degree to which trends in reported AIDS cases and HIV seroprevalence show the need for increased HIV prevention activities and services, and (2) the extent of unmet prevention needs as identified through the needs assessment and discussions with leaders representing racial and ethnic minority and other affected communities. (30 points)

B. The extent to which collaboration has taken place with other agencies and organizations and with groups disproportionately affected by HIV, and the extent to which they will be involved in planning, implementing, and evaluating program activities and services. (10 points)

C. The extent to which the short-term and long-term objectives are realistic, measurable, time-phased, and related to the CDC Strategic Goals and the Health People 2000 HIV objectives. (10 points)

D. The quality of the applicant's plan for conducting program activities, the potential effectiveness of the proposed methods in meeting the stated objectives, and previous success in implementing activities and services. This includes the degree to which the proposed program activities and methods, if different than those required or recommended in the Program Announcement, are science-based (i.e., theory-predicted or based on findings of scientific research) and the likelihood that the applicant can effectively implement the proposed activities and services. (30 points)

E. The quality of the proposed evaluation plan. (20 points)

In addition, consideration will be given to the extent to which the budget request is clearly explained, is adequately justified, and is consistent with the intended use of Federal funds.

Executive Order 12372 Review

Applications are subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs. E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants should contact their state Single Point of Contacts (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC for each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them, no later than November 18, 1992, to Elizabeth M. Taylor, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, GA 30305. The CDC does not guarantee to accommodate or explain state process recommendations it receives after November 18, 1992.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Number is 93.118, acquired immunodeficiency syndrome (AIDS) activities.

Other Requirements

Confidentiality

All personally identifying information obtained in connection with the delivery of services provided to any individual under any program which is being carried out with a cooperative agreement made under this announcement shall not be disclosed unless required by a law of a state or political subdivision or unless such an individual provides written, voluntary informed consent.

HIV/AIDS Requirements

Recipients must comply with the document entitled "Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions" (June 1992), a copy of which is included in the application kit. At least one member of the program review panel must be an employee (or a designated representative) of the health department consistent with the Content guidelines. The names of the review panel members must be listed on the Assurance of Compliance Form CDC 0.113, which is also included in the application kit. The recipient must submit, as an attachment to the quarterly report, the program review panel's report that indicates all material have been reviewed and approved.

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by this cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Application and Submission Deadline

The original and two copies of the application (Form PHS-5161-1) must be submitted to Elizabeth M. Taylor, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E-14, Atlanta, GA 30305, on or before September 18, 1992.

A. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Sent on or before the deadline date and received in time for submission to the independent review committee. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will be acceptable as proof of timely mailing.)

B. *Late Applications*: Applications that do not meet the criteria in A.1. or A.2. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

Information on application procedures and business management technical assistance may be obtained from Lynn Mercer (Regions I-V) or Marsha Driggans (Regions VI-X), Grants Management Specialists, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NW., room 300, Mailstop E-16, Atlanta, GA 30305, (404) 842-6814 (Regions I-V), or (404) 842-6523 (Regions VI-X).

Programmatic technical assistance may be obtained from Paul Poppe, Division of Sexually Transmitted Diseases/Human Immunodeficiency Virus Prevention (DSTD/HIVP), National Center for Prevention Services, Centers for Disease Control, Atlanta, GA 30333, (404) 639-1205. Programmatic technical assistance is also available from your project officer.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report, Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325, (Telephone (202) 783-3238). The HIV infection objectives are included in the application kit.

Dated: August 31, 1992.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control.

[FR Doc. 92-21353 Filed 9-3-92; 8:45 am]

BILLING CODE 4160-18-M

Health Resources and Services Administration

Program Announcement and Proposed Funding Priorities and Special Consideration for Nurse Practitioner and Nurse Midwifery Programs

The Health Resources and Services Administration (HRSA) announces that applications will be accepted for fiscal year (FY) 1993, Grants for Nurse Practitioner and Nurse Midwifery Programs, under the authority of section 822(a), title VIII of the Public Health Service (PHS) Act, as amended by Public Law 100-607. This program announcement is subject to reauthorization of this legislative authority and to the appropriation of funds. Comments are invited on the proposed funding priorities and special consideration.

The Administration's budget request for FY 1993 does not include funding for this program. Applicants are advised that this program announcement is a contingency action being taken to assure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

Previous Funding Experience

Previous funding experience is provided to assist potential applicants to make better informed decisions regarding submission of an application for this program. Data are not yet available for FY 1992. In the first cycle of FY 1991, HRSA reviewed 29 applications for Nurse Practitioner and Nurse Midwifery Grants. Of those applications, 79 percent were approved and 21 percent were disapproved. Twelve projects, or 52 percent of the applications approved, were funded. In the second cycle of FY 1991, HRSA reviewed 24 applications for Nurse Practitioner and Nurse Midwifery Grants. Of those applications, 71 percent were approved and 29 percent were disapproved. Sixteen projects, or 94 percent of the applications approved, were funded.

Section 822(a) of the Public Health Service Act, as implemented by 42 CFR part 57, subpart Y, presently authorizes assistance to meet the costs of projects to:

(1) Plan, develop and operate;

(2) Expand; or

(3) Maintain programs for the training of nurse practitioners and/or nurse midwives.

The period of Federal support should not exceed 3 years.

Eligibility

Eligible applicants are public or nonprofit private schools of nursing and public health, public or nonprofit private hospitals, and other public or nonprofit private entities. Also eligible are public or nonprofit private schools of medicine which received grants or contracts under section 822(a) prior to October 1, 1985. Eligible applicants must be located in a State.

National Health Objectives for the Year 2000

The Public Health Service (PHS) urges applicants to submit work plans that address specific objectives of Healthy People 2000. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report; Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (telephone (202) 783-3238).

Education and Service Linkage

As part of its long range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service supported education programs and programs which provide comprehensive primary care services to the underserved.

Review Criteria

The review of applications will take into consideration the following criteria:

1. The degree to which the project plan adequately provides for meeting the requirements set forth in § 57.2405 of the program regulations and the appendix;

2. The potential effectiveness of the proposed project in carrying out the education purposes of section 822 the Act and 42 CFR part 57, subpart Y;

3. The capability of the applicant to carry out the proposed project;

4. The extent to which the project has joint program direction by qualified nurse and physician educators;

5. The soundness of the fiscal plan for assuring effective utilization of grant funds; and

6. The potential of the project to continue on a self-sustaining basis after the project period.

Other Considerations

In addition, the following funding factors may be applied in determining funding of approved applications.

A funding priority is defined as the favorable adjustment of aggregate review scores of individual approved applications when applications meet specified criteria.

Special consideration is defined as the enhancement of priority scores by merit reviewers based on the extent to which applications address special areas of concern.

It is not required that applicants request consideration for a funding factor. Applications which do not request consideration for funding factors will be reviewed and given full consideration for funding.

Statutory Special Considerations

In accordance with the statute, section 822, the Secretary will give special consideration to applications for grants for programs for the education of nurse practitioners and nurse midwives who will practice in health professional shortage areas (designated under section 332 of the PHS Act) and for programs for the education of nurse practitioners which emphasize education with respect to the special problems of geriatric patients (particularly problems in the delivery of preventive care, acute care and long-term care—including home health care and institutional care to such patients) and education to meet the particular needs of nursing home patients and patients confined to their homes.

Proposed Funding Priorities

In addition, for FY 1993, it is proposed that a funding priority be given to applicant institutions which demonstrate either substantial progress over the last three years or a significant experience of ten or more years in enrolling and graduating trainees from those minority or low-income populations identified as at risk of poor health outcomes. This priority is consistent with a HRSA strategy to

increase the number of health professionals from minority and other at risk populations, to assure equal access to health professions education for all population groups, and ultimately, to provide a greater volume of health care in underserved areas.

It is also proposed that a funding priority be given to applicant institutions offering substantial training experiences in underserved areas. This priority is consistent with HRSA's long-range plan to strengthen linkages between Public Health Service supported education programs and programs which provide comprehensive primary care services to the underserved.

Proposed Special Consideration

Special consideration will be given to the extent to which applicants enroll and graduate trainees from underserved areas. This special consideration is intended to recognize applicants that enroll and graduate trainees from underserved areas because health professionals who come from underserved areas are more likely to return there upon completion of training to provide needed health services.

Additional Information

Interested persons are invited to comment on the proposed funding priorities and special consideration. The comment period is 30 days. All comments received on or before October 5, 1992, will be considered before the final funding priorities and special consideration are established. No funds will be allocated or final selections made until a final notice is published stating when the final funding priorities and special consideration will be applied. Written comments should be addressed to: Director, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 9-35, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Nursing, Bureau of Health Professions, at the above address; weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

Application Requests

Requests for application materials, and questions regarding grants policy and business management issues should be directed to: Ms. Donna Nash, Grants Management Specialist (D-24), Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8C-26, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-6960.

Completed applications should be returned to the Grants Management Branch at the above address.

If additional programmatic information is needed, please contact: Chief, Advanced Nursing Education Branch, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 9-36, 5600 Fishers Lane, Rockville, Maryland 20857, Rockville, Maryland 20857, Telephone: (301) 443-6333.

The standard application form PHS 6025-1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915-0060.

The deadline date for receipt of applications is December 1, 1992. Applications shall be considered as meeting the deadline if they are either:

1. received on or before the established deadline date, or

2. sent on or before the established deadline date and received in time for orderly processing. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications not accepted for processing will be returned to the applicant.

This program, Nurse Practitioner and Nurse Midwifery Programs, is listed at 93.298 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, (as implemented through 45 CFR part 100).

Dated: July 28, 1992.

Robert G. Harmon,

Administrator.

[FR Doc. 92-20813 Filed 9-3-92; 8:45 am]

BILLING CODE 4160-15-M

Food and Drug Administration

[Docket No. 92N-0344]

Drug Export; Coumadin® (Crystalline Warfarin Sodium) 4 mg Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that The Du Pont Merck Pharmaceutical Co. has filed an application requesting approval for the export of the human drug Coumadin® (crystalline warfarin sodium) 4 mg Tablets to Canada.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Division of Drug Labeling Compliance (HFD-313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that The Du Pont Merck Pharmaceutical Co., P.O. Box 80027, Barley Mill Plaza, 4301 Lancaster Pike, Wilmington, DE 19880-0027, has filed an application requesting approval for the export of the human drug Coumadin® (crystalline warfarin sodium) 4 mg Tablets to Canada. This drug is indicated for use in the prophylaxis and/or treatment of venous thrombosis and its extension, pulmonary embolism, atrial fibrillation with embolization, and as an adjunct in the prophylaxis of systemic embolism after myocardial infarction. The application was received and filed in the Center for Drug Evaluation and Research on June 25, 1992, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except

that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by September 14, 1992, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: August 26, 1992.

Daniel L. Michels,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 92-21286 Filed 9-3-92; 8:45 am]

BILLING CODE 4160-01-F

National Institutes of Health

Consensus Development Conference on Gallstones and Laparoscopic Cholecystectomy

Notice is hereby given of the NIH Consensus Development Conference on "Gallstones and Laparoscopic Cholecystectomy," which will be held on September 14–16, 1992 in the Masur Auditorium of the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. This conference is sponsored by the National Institute of Diabetes and Digestive and Kidney Diseases and the NIH Office of Medical Applications of Research. The conference begins at 8:30 a.m. each day.

Approximately 20 million people in the United States have gallstones. There are about 1 million new cases per year, with about one-half million having surgery for gallbladder removal per year. As a cause of hospitalization, gallstones are the most common digestive disease, accounting for about 600,000 hospital discharges per year and for an average length of stay of 6 days. Most gallstones remain asymptomatic for many years and may, in fact, never cause symptoms. However, the complications of gallstones can be severe, ranging from intense pain of a few hours (biliary colic) to life-threatening conditions such as acute cholecystitis and pancreatitis.

Up until two years ago, major abdominal surgery to remove the gallbladder was the prevailing treatment for symptomatic gallstone disease. The usual course of recovery was a 5-day hospital stay and a 3- to 5-week recovery period. Although the mortality of the operation was quite low (about 0.05 percent except in older or high risk individuals), nonsurgical approaches were pursued and used in special situations. These medical approaches included oral dissolution therapy, contact dissolution through a catheter placed into the gallbladder, and shock-wave fragmentation combined with dissolution. All of these alternate approaches left the gallbladder intact, and therefore stone recurrence in about one-half of the cases was a major drawback.

A new surgical technique, laparoscopic cholecystectomy, was introduced in France and the United States in 1989. In this relatively short time, some 25,000 surgeons have received some training in the techniques, and the demand for the operation has escalated to the point where probably 80 percent of the cholecystectomies are being performed in this manner. Attempts are being made to evaluate the safety and efficacy of this operation, but it is doubtful that a randomized trial can ever be done in the future to compare it with open cholecystectomy. Laparoscopic cholecystectomy does not require the abdomen to be opened, resulting in quicker healing and fewer complications such as infection. Recovery usually consists of only an overnight hospitalization and 3 to 5 days recuperation.

The purpose of this conference is to bring together all the data that are available on laparoscopic cholecystectomy to compare it with data on older surgical and medical treatments for gallstone disease. The specific problem patients who must be evaluated in dealing with the disease will be addressed by surgeons, endoscopists, hepatologists, gastroenterologists, radiologists, and epidemiologists.

Following 1½ days of presentations and discussion by the audience, an independent consensus panel will weigh the scientific evidence and write a draft statement in response to the following key questions:

—Which patients with gallstones should be treated?

—Which patients should be treated with laparoscopic cholecystectomy?

—What are the alternative medical and surgical treatments of gallstone disease?

—What are the comparative results of laparoscopic cholecystectomy with open cholecystectomy and other available treatments?

—How should bile duct stones be detected and treated when laparoscopic cholecystectomy is or is not contemplated?

—What are the future directions for research in the prevention and management of gallstone disease, and in laparoscopic surgery?

On the final day of the meeting, the consensus panel chairman will read the draft statement to the conference audience and invite comments and questions.

Information on the program may be obtained from: Debra Steward, Technical Resources, Inc., 3202 Tower Oaks Blvd., Suite 200, Rockville, Maryland 20852, (301) 468-1047.

Dated: August 18, 1992.

Bernadine Healy,

Director.

[FR Doc. 92-21397 Filed 9-3-92; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Meeting; Board of Scientific Counselors, Division of Cancer Prevention and Control

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, Division of Cancer Prevention and Control, National Cancer Institute, October 22–23, 1992, Building 1, Wilson Hall, Third Floor, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on October 22 from 8:30 a.m. to 5 p.m. and on October 23 from 8:30 a.m. to adjournment to discuss administrative details and for the discussion and review of concepts and programs within the Division. Attendance by the public will be limited to space available.

The Committee Management Office, National Cancer Institute, Building 31, room 10A06, National Institutes of Health, Bethesda, Maryland 20892, (301/496–5708) will provide a summary of the meeting and a roster of committee members, upon request.

Other information pertaining to this meeting can be obtained from the Executive Secretary, Linda M. Bremerman, National Cancer Institute, Executive Plaza-North, room 318, National Institutes of Health, Bethesda, Maryland 20892 (301–496–8526), upon request.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: August 31, 1992.

Mrs. Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-21396 Filed 9-3-92; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Meetings

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the following Heart, Lung, and Blood Special Emphasis Panel.

This meeting will be open to the public to discuss administrative details relating to Special Emphasis Panel (SEP) business for approximately one held hour at the beginning of the first session of the meeting. Attendance by the public will be limited to space available. This will be closed thereafter in accordance with the provisions set forth in sec. 552b(c)(4) and 522b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92-463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclose of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, National Heart, Lung, and Blood Institute, Westwood Building, room 7A15, National Institutes of Health, Bethesda, Maryland, 20892, telephone 301-496-7548, will furnish a summary of the meeting and rosters of panel members. Substantive program information may be obtained from each Scientific Review Administrator whose telephone number is provided. Since it is necessary to schedule meetings well in advance, it is suggested that anyone planning to attend a meeting contact the Scientific Review Administrator to confirm the exact date, time and location.

Name of Panel: NHLBI SEP on Dietary Intervention Study in Children (DISC) Renewal Applications and Research Demonstration and Dissemination Projects (R18s).

Scientific Review Administrator: Dr. C. James Scheirer, Telephone 301-496-7363.

Dates of Meeting: September 21-22, 1992.

Place of Meeting: Holiday Inn, Bethesda, Maryland.

Time of Meeting: 7:30 p.m.

(Catalog of Federal Domestic Assistance Program Nos. 92.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: August 26, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-21394 Filed 9-3-92; 8:45 am]

BILLING CODE 4140-01-M

National Institute on Aging Meeting of the National Advisory Council on Aging

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Advisory Council on Aging, National Institute on Aging, October 13-14, 1992, to be held at the National Institute of Health, Building 31, Conference Room 10, Bethesda, Maryland. This meeting will be open to the public on Tuesday, October 13, from 1 p.m. until recess for a status report by the Acting Director, NIA; a report on the Epidemiology, Demography and Biometry Program; and a report on the Behavioral and Social Research Program. The meeting will be open again on Wednesday, October 14 from 8:30 until 10:30 a.m. for a report on the Neuroscience and Neuropsychology of Aging Program and other items of interest. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting of the Council will be closed to the public on October 14 from 10:30 a.m. to adjournment for the review, discussion and evaluation of grant applications.

The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June McCann, Council Secretary for the National Institute on Aging, National Institutes of Health, Gateway Building, 7201 Wisconsin Avenue, suite 2C218, Bethesda, Maryland 20892 (301/496-9322), will provide a summary of the meeting and a roster of committee members upon request.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health)

Dated: August 26, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-21392 Filed 9-3-92; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Allergy and Infectious Diseases; Meetings: National Advisory Allergy and Infectious Diseases Council; Acquired Immunodeficiency Syndrome Subcommittee; Allergy and Immunology Subcommittee; Microbiology and Infectious Diseases Subcommittee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Advisory Allergy and Infectious Diseases Council, National Institute of Allergy and Infectious Diseases, and its subcommittees on September 21-22, 1992 at the National Institutes of Health, Building 31C, Bethesda, Maryland 20892.

The meeting of the full Council will be open to the public on September 21 in Conference Room 6 from approximately 1 p.m. until 3:30 p.m. for opening remarks of the Institute Director, discussion of procedural matters, Council business, and a report from the Institute Director which will include a discussion of budgetary matters. The primary program will include a report on the Division of Intramural Research as well as presentations on non-HIV immunodeficiency; behavioral research; and, research training support. On September 22 the meetings of the NAAIDC Acquired Immunodeficiency Syndrome Subcommittee, NAAIDC Allergy and Immunology Subcommittee and NAAIDC Microbiology and Infectious Diseases Subcommittee will be open to the public from 8 a.m. until adjournment. All three subcommittees will meet at the National Institutes of Health, Building 31C in Conference Rooms 6, 7 and 4 respectively.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92-463, the meeting of the NAAIDC Acquired Immunodeficiency Syndrome Subcommittee, NAAIDC Allergy and Immunology Subcommittee and the NAAIDC Microbiology and Infectious Diseases Subcommittee will be closed to the public for approximately three hours for review, evaluation, and discussion of individual grant applications. It is anticipated that this will occur from 8:30 a.m. until approximately 1 p.m. on September 21, in conference rooms 6, 7 and 8 respectively. The meeting of the full Council will be closed from 3:30 p.m.

until recess on September 21 for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone 301-496-5717, will provide a summary of the meeting and a roster of the committee members upon request.

Dr. John J. McGowan, Director, Division of Extramural Activities, NIAID, NIH, Solar Building, room 4C07, 6003 Executive Boulevard, Rockville, Maryland 20892, telephone 301-496-7291, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.855 Immunology, Allergic and Immunologic Diseases Research, 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: August 26, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-21395 Filed 9-3-92; 8:45 am]

BILLING CODE 4140-01-M

National Institute on Deafness and Other Communication Disorders; Meeting of the Ad Hoc Speech and Speech Disorders Subcommittee of the National Deafness and Other Communication Disorders Advisory Board

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Ad Hoc Speech and Speech Disorders Subcommittee of the National Deafness and Other Communication Disorders Advisory Board on October 6, 1992. The meeting will take place from 8:30 a.m. to 12 noon in Conference Room 7, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting, which is open to the public, will discuss changes in the scientific field of speech and speech disorders since the Research Plan was written, compare the research portfolio of the Institute with the priorities in the Research Plan to determine areas of emphasis and levels of activity, and to identify gaps and to suggest new initiatives in preparation for the updating of the speech and speech disorders section of the Research Plan. Attendance by the public will be limited to the space available.

Summaries of the Subcommittee's meeting and a roster of members may be obtained from Ms. Monica M. Davies, Executive Director, National Deafness and Other Communication Disorders Advisory Board, Building 31, room 3C08, National Institutes of Health, Bethesda, Maryland 20892, (301) 402-1129, upon request.

(Catalog of Federal Domestic Assistance Program No. 93.173, Biological Research Related to Deafness and Other Communicative Disorders)

Dated: August 31, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-21398 Filed 9-3-92; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Meeting (President's Cancer Panel Special Commission on Breast Cancer)

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the President's Cancer Panel Special Commission on Breast Cancer, National Cancer Institute, September 23, 1992, at the Hyatt Regency Hotel, 1800 Presidents Street, Reson, Virginia 22090. The room will be posted in the lobby.

This meeting will be open to the public on September 23 from 8:30 a.m. to 5 p.m. Attendance will be limited to space available. Agenda items will include presentations by invited speakers on the topic of "Nutrition: Etiology and Implications for Prevention and Other Etiologic Factors."

Iris J. Schneider, Acting Executive Secretary, President's Cancer Panel Special Commission on Breast Cancer, National Cancer Institute, Building 31, room 4A34, National Institutes of Health, Bethesda, Maryland 20892, 301/496-1148, will provide a roster of the Commission members and substantive program information upon request.

Dated: August 31, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-21399 Filed 9-3-92; 8:45 am]

BILLING CODE 4140-01-M

Unconventional Medical Practices; Meeting

The Office of the Associate Director for Science Policy and Legislation, National Institutes of Health (NIH), announces a meeting on unconventional medical practices. The meeting is scheduled for September 14, 1992 beginning at 6:30 p.m. and closing at 5 p.m. on September 16. Morning sessions on September 15 and 16 will begin at 8 a.m. The meeting will be held at Westfields International Conference Center, 14750 Conference Center Drive, Chantilly, Virginia 22021. The meeting is open to the public subject to space availability. Persons or organizations wishing to have their views on a specific intervention considered by the panels may provide written comments, not later than September 7, to the address below.

The purpose of this meeting is to convene a working group on the study of unconventional medical practices. NIH is developing means by which to foster research into and validation of unconventional or alternative medical practices. Participants in the meeting will be grouped into area-of-interest panels on such therapeutic intervention subjects as, ethnomedicine, manipulation therapies, nutrition/life style changes, etc. Members from these panels will also participate in discussion groups considering the following cross-cutting subjects: research and training needs; research methodologies; peer review process; population-based studies (epidemiological studies, etc.); and information dissemination activities.

Written comments for consideration of the panels or questions about the meeting should be addressed to Stephen C. Groft, Pharm. D.; Acting Director, Office for the Study of Unconventional Medical Practices; NIH; 9000 Rockville Pike; Building 31; room 3B-13; Bethesda, MD 20892, 301-402-2466.

Dated: August 31, 1992.

Bernadine Healy,

Director, NIH.

[FR Doc. 92-21393 Filed 9-3-92; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information

collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, August 28, 1992.

(Call PHS Reports Clearance Officer on 202-690-7100 for copies of package)

1. International Research Fellowship Application—0925-0010 The International Research Fellowship Award (IRF) provides support for biomedical, behavioral, and public-health related research to selected individual applicants for specified research proposals, selected through international competition. These forms are used to apply for and terminate an IRF award. Respondents: Individuals or households; State or local governments, Non-profit institutions; Small businesses or organizations; Number of Respondents: 1,360; Number of Responses per Respondent: 1; Average Burden per Response: 1.87 hours; Estimated Annual Burden: 2,543 hours.

2. Data Collection and Reporting Requirements for Healthy Start—New—Patient records and aggregate data will be collected from Healthy Start grantees for two purposes: (1) Provide the foundation for the national evaluation of this demonstration; and (2) permit program monitoring for specific interventions and categories of patients. Respondents: Non-profit institutions; State or local governments.

Title	No. of respondents	No. of responses per respondent	Average burden per response
Patient data	15	1	200 hrs.
Aggregate reports	15	1	40 hrs.
Midyear reports	15	1	5 hrs.

Estimated total annual burden: 3,675 hours.

3. The Cohort Surveys for the Community Intervention Trial for Smoking Cessation (COMMIT)—0925-0309—The National Cancer Institute (NCI) is undertaking the Community Intervention Trial for Smoking Cessation (COMMIT). This large-scale trial will test community-based strategies to produce long-term cessation among smokers, particularly heavy smokers. Clearance is herein being requested for the fielding of the final cohort surveys to complete the evaluation of this trial. Respondents: Individuals or households.

Title	No. of respondents	No. of responses per respondent	Average burden per response
Final evaluation cohort survey	8,800	1	0.31667 hrs.
Final endpoint cohort survey	17,600	1	0.1333 hrs.

Estimated total annual burden: 5,133 hours.

Desk Officer: Shannah Koss.

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated above at the following address: Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: August 31, 1992.

Phyllis M. Zucker,

Acting Director, Office of Health Planning and Evaluation.

[FR Doc. 92-21357 Filed 9-3-92; 8:45 am]

BILLING CODE 4160-17-M

President's Council on Physical Fitness and Sports; Meeting

AGENCY: Office of the Assistant Secretary for Health, Public Health Services, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the President's Council on Physical Fitness and Sports. This notice also describes the functions of the Council. Notice of this meeting is required under the Federal Advisory Committee Act.

DATES: September 25, 1992—8:30 a.m.-4 p.m.

ADDRESSES: Ritz Carlton Buckhead, 3434 Peachtree Rd., NE., Atlanta, Georgia 30326.

FOR FURTHER INFORMATION CONTACT: John A. Butterfield, Executive Director, President's Council on Physical Fitness and Sports, 701 Pennsylvania Ave., NW., Suite 250, Washington, DC, 202/272-3421.

SUPPLEMENTARY INFORMATION: The President's Council on Physical Fitness and Sports operates under Executive Order #12345, and subsequent orders. The functions of the Council are: (1) To advise the President and Secretary concerning progress made in carrying out the provisions of the Executive Order and recommending to the President and Secretary, as necessary, actions to accelerate progress; (2) advise the Secretary on matters pertaining to the ways and means of enhancing opportunities for participation in physical fitness and sports actions to extend and improve physical activity programs and services; (3) advise the Secretary on State, local, and private actions to extend and improve physical activity programs and services.

The Council will hold this meeting to apprise the members of the national program of physical fitness and sports, to report on ongoing Council programs, and to plan for future directions.

Dated: September 1, 1992.

John A. Butterfield,

Executive Director, President's Council on Physical Fitness and Sports.

[FR Doc. 92-21334 Filed 9-3-92; 8:45 am]

BILLING CODE 4160-17-M

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HC (Centers for Disease Control) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772-67776, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 57 FR 33512, dated July 29, 1992) is amended to reflect the following organizational changes resulting from the recent establishment

of the National Center for Injury Prevention and Control (NCIPC): (1) Delete the Division of Injury Control, National Center for Environmental health, and (2) establish the Office of Planning, Evaluation,and Legislation and the office of Program Management and Operations within the Office of the Director, NCIPC.

On an unofficial basis, NCIPC will temporarily operate within the organizational framework which served as the branch substructure for the Division of Injury Control. This will help to maintain continuity of program activities until such time as an official NCIPC substructure is determined.

Section HC-B, Organization and Functions, is hereby amended as follows:

1. After the functional statement for the *Division of Environmental Health Laboratory Sciences (HCN8),* delete in their entirely the title and functional statement for the *Division of Injury Control (HCN9).*

2. After the functional statement for the *National Center for Injury Prevention and Control (HCE), Office of the Director (HCE1),* insert the following:

Office of Planning, Evaluation, and Legislation (HCE12). (1) Within the policies and guidelines of HHS, PHS, and CDC, conducts NCIPC planning and evaluation activities including tracking program objectives and performing evaluation studies; (2) provides information for the development of NCIPC's annual budget submission and supporting documents; (3) reviews, prepares, and coordinates legislation, congressional testimony, and briefing documents; develops proposed legislation; analyzes bills; and provides for other legislative-related activities; (4) provides liaison with staff offices and other officials of CDC.

Office of Program Management and Operations (HCE13). (1) Plans, coordinates, and provides administrative and management support, advice, and guidance to NCIPC; (2) coordinates NCIPC-wide administrative management and support services in the areas of fiscal management, personnel, travel, and other administrative services; (3) prepares annual budget plans and budget justifications; (4) coordinates NCIPC requirements relating to contracts, grants, cooperative agreements, and reimbursable agreements; (5) develops and implements administrative policies, procedures, and operations, as appropriate, for NCIPC, and prepares special reports and studies, as required, in the administrative management areas; (6) maintains liaison with related staff offices and other officials of CDC.

Effective Date: August 26, 1992.

William L. Roper,

Director, Centers for Disease Control.

[FR Doc. 92-21354 Filed 9-3-92; 8:45 am]

BILLING CODE 4160-18-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-92-1917; FR-2934-N-94]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1-800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88-2503-OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number). HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the Federal Register, the landholding agency, and the property number.

For more information regarding particular properties identified in this

Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Corps of Engineers: Gary B. Paterson, Chief, Base Realignment and Closure Office, Directorate of Real Estate, 20 Massachusetts Ave., NW., room 4133, Washington, DC 20314–1000; (202) 272–0520; GSA: Ronald Rice, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405; (202) 501–0067; U.S. Navy: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–0474; Dept. of Transportation: Ronald D. Keefer, Director, Administrative Services & Property Management, DOT, 400 Seventh St. SW., room 10319, Washington, DC 20590; (202) 366–4246; Dept. of Veterans Affairs: Douglas Shinn, Management Analyst, Dept. of Veterans Affairs, room 414, Lafayette Bldg., 811 Vermont Ave., NW., Washington, DC 20420; (202) 233–8474; (These are not toll-free numbers).

Dated: August 28, 1992.

Denise Alexander,

Deputy Assistant Secretary for Operations.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 09/04/92

Suitable/Available Properties

Buildings (by State)

Alabama

Bldg. 19, VA Medical Center
Tuskegee Co: Macon AL 36083–
Landholding Agency: VA
Property Number: 979220006
Status: Underutilized
Comment: Portion of a 5,320 sq. ft. 4-story structure

California

Bldg. 20–VA Medical Center
Wilshire & Sawtelle Blvds.
Los Angeles Co: Los Angeles CA 90073–
Landholding Agency: VA
Property Number: 979210003
Status: Unutilized
Comment: 8,758 gross sq. ft., one story wooden, requires complete restoration meeting standards of national preservation laws and guidelines

Bldg. 13, VA Medical Center
Wilshire and Sawtelle Blvds.
Los Angeles Co: Los Angeles CA 90073–
Landholding Agency: VA
Property Number: 979220001
Status: Underutilized
Comment: portion of 66,165 sq. ft. bldg., needs major rehab, no util., pres. of asbestos, in historic district, potential to be hazardous due to storage of radioactive material nearby.

Maine

Naval Air Station
Transmitter Site
Old Bath Road
Brunswick Co: Cumberland ME 04053–
Landholding Agency: Navy
Property Number: 779010110
Status: Underutilized
Comment: 7,270 sq. ft., 1 story bldg., most recent use-storage, structural deficiencies.

Pennsylvania

Bldg. 25–VA Medical Center
Delafield Road
Pittsburgh Co: Allegheny PA 15215–
Landholding Agency: VA
Property Number: 979210001
Status: Unutilized
Comment: 133 sq. ft., one story brick guard house, needs rehab

Tennessee

Bldg. 16, VAMC Mountain Home
Johnson Co: Washington TN 37604–
Landholding Agency: VA
Property Number: 979220007
Status: Unutilized
Comment: 3,215 sq. ft., 3-story wood frame residence, needs repair, subject to historic preservation requirements

Texas—Naval Air Station, Chase Field

Chase Field Naval Air Station is located in Beeville, Texas 78103. All the properties will be excess to the needs of the Department of Navy on or about October 1993. Properties shown below as suitable/available will be available at that time.

The base covers approximately 1,866 acres and has over 430 housing units and government-owned buildings. The properties that HUD has determined suitable and which are available include on- and off-base housing; administration buildings; recreational facilities; dining facilities; warehouses; a hospital; industrial and other specialized structures. All properties may need routine maintenance.

Suitable/Available Properties

Property Numbers: 779210001–779210003, 779210006
Type Facility: Housing—208 off-base capehart residences; 2 bedrooms—1 bath; 54 off-base family residences, 1 & 2 bedrooms/1 & 2 story; 19 on-base capehart residences, 1 & 2 bedrooms; brick/wood frame; 5 bachelor quarters, 16,800 to 62,200 sq. ft., 3 story metal/brick frame.
Property Number: 779210004
Type Facility: Recreational—3; 2,100 to 13,900 sq. ft.; 1 story concrete masonry frame; includes a theatre, bowling center, and racquetball.
Property Number: 779210005
Type Facility: Dining Halls—4 buildings; 6,000 to 21,900 sq. ft.; 1 story concrete masonry frame.
Property Number: 779210007
Type Facility: Administration—9 buildings; 1,300 to 29,500 sq. ft.; 1 and 2 story concrete masonry frame.
Property Number: 779210008
Type Facility: Hospital (clinic)—31,000 sq. ft.; 1 story brick/concrete masonry frame.
Property Numbers: 779210009, 779210012
Type Facility: Miscellaneous—7 buildings; 900 to 55,600 sq. ft.; 1 and 2 story; wood and concrete masonry frame; includes fire/security buildings.
Property Number: 779210011
Type Facility: Industrial–16 buildings; 200 to 10,900 sq. ft.; 1 story metal/concrete masonry frame.
Property Numbers: 779210013–779210014
Type Facility: Aircraft/Air Traffic Control—8 buildings; 3,200 to 89,300 sq. ft.; 1 and 2 story; concrete masonry and metal frame; some bldgs. used for storage and aircraft maintenance.

Unsuitable Properties

Property Number: 779210015
Type Facility: Building 2137, Aircraft Hangar; within 2,000 ft. of flammable or explosive material.
Property Number: 779210016
Type Facility: Building 1032, Warehouse; structural deterioration.

Wisconsin

Bldg. 8
VA Medical Center
County Highway E
Tomah Co: Monroe WI 54660–
Landholding Agency: VA
Property Number: 979010056
Status: Underutilized
Comment: 2200 sq. ft., 2 story wood frame, possible asbestos, potential utilities, structural deficiencies, needs rehab.

Land (by State)

Alabama

VA Medical Center
VAMC
Tuskegee Co: Macon AL 36083—
Landholding Agency: VA
Property Number: 979010053
Status: Underutilized
Comment: 40 acres, buffer to VA Medical Center, potential utilities, undeveloped.

Georgia

Naval Submarine Base
Grid R–2 to R–3 to V–4 to V–1
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 779010229
Status: Underutilized
Comment: 111.57 acres; areas may be environmentally protected; secured area with alternate access.

Louisiana

Land—8.27 acres
VA Medical Center
2501 Shreveport Highway
Alexandria Co: Rapides LA 71301–
Landholding Agency: VA
Property Number: 979010009
Status: Unutilized
Comment: 8.27 acres, heavily wood with natural drainage ravine across property, most recent use—recreation/buffer area.

Maine

Naval Air Station
Transmitter Site
Old Bath Road
Brunswick Co: Cumberland ME 04053–
Landholding Agency: Navy
Property Number: 779010111
Status: Underutilized

Comment: 66.13 acres, most recent use-transmitter station.

Maryland

VA Medical Center
9500 North Point Road
Fort Howard Co: Baltimore MD 21052-
Landholding Agency: VA
Property Number: 979010020
Status: Underutilized
Comment: Approx. 10 acres, wetland and periodically floods, most recent use—dump site for leaves.

Texas

Peary Point #2
Naval Air Station
Corpus Christi Co: Nueces TX 78419-5000
Landholding Agency: Navy
Property Number: 779030001
Status: Excess
Comment: 43.48 acres; 60% of land under lease until 8/93.
GSA Number: 7-N-TX-402-V

Land
Olin E. Teague Veterans Center
1901 South 1st Street
Temple Co: Bell TX 76504-
Landholding Agency: VA
Property Number: 979010079
Status: Underutilized
Comment: 13 acres, portion formerly landfill, portion near flammable materials, railroad crosses property, potential utilities.

VA Medical Center
4800 Memorial Drive
Waco Co: McLennan TX 76711-
Landholding Agency: VA
Property Number: 979010081
Status: Underutilized
Comment: 2.3 acres, leased to Owens-Illinois Glass Plant, expiration date 10/31/92, most recent use—parking lot.

West Virginia

VA Medical Center
1540 Spring Valley Drive
Huntington Co: Wayne WV 25704-
Landholding Agency: VA
Property Number: 979010022
Status: Unutilized
Comment: 72 acres, very rough terrain and wooded, potential utilities.

Wisconsin

VA Medical Center
County Highway E
Tomah Co: Monroe WI 54660-
Landholding Agency: VA
Property Number: 979010054
Status: Underutilized
Comment: 12.4 acres, serves as buffer between center and private property, no utilities.

Suitable/Unavailable Properties

Buildings (by State)

California

Bldg. 116
VA Medical Center
Wilshire and Sawtelle Blvds.
Los Angeles Co: Los Angeles CA 90073-
Landholding Agency: VA
Property Number: 979110009
Status: Underutilized
Comment: 60309 sq. ft., 3 story brick frame, seismic reinforcement defics., underutil. port of bldg. used intermitly., needs rehab, poss. asbestos in pipes/floor tiles, site access lim.

Bldg. 263
VA Medical Center
Wilshire and Sawtelle Blvds.
Los Angeles Co: Los Angeles CA 90073-
Landholding Agency: VA
Property Number: 979110010
Status: Unutilized
Comment: 1600 sq. ft., 1 story wood frame w/ stucco exterior, needs rehab, poss. asbestos on pipes/floor tiles, site access limitations, no operating utilities.

Bldg. 205, VA Medical Center
Wilshire and Sawtelle Blvds.
Los Angeles Co: Los Angeles CA 90073-
Landholding Agency: VA
Property Number: 979220002
Status: Underutilized
Comment: portion of 50,546 sq. ft. concrete bldg., pres. of asbestos, in historic district, potential to be hazardous due to storage of radioactive material nearby.

Bldg. 256, VA Medical Center
Wilshire and Sawtelle Blvds.
Los Angeles Co: Los Angeles CA 90073-
Landholding Agency: VA
Property Number: 979220003
Status: Underutilized
Comment: portion of 48,861 sq. ft. concrete bldg., pres. of asbestos, in historic district, potential to be hazardous due to radioactive material nearby.

Bldg. 300, VA Medical Center
Wilshire and Sawtelle Blvds.
Los Angeles Co: Los Angeles CA 90073-
Landholding Agency: VA
Property Number: 979220004
Status: Underutilized
Comment: portion of 66,214 sq. ft. concrete bldg., needs rehab, presence of asbestos, in historic district.

Minnesota

Bldg. 43
VA Medical Center
Minneapolis Co: Hennepin MN 55441-7
Location: 54th Street and 48th Avenue S.
Landholding Agency: VA
Property Number: 979010032
Status: Underutilized
Comment: 26000 sq. ft., 8 story brick/steel frame, asbestos present on pipe insulation, most recent use—office/storage.

Bldg. 227
VA Medical Center
Fort Snelling
St. Paul Co: Hennepin MN 55111-
Landholding Agency: VA
Property Number: 979010033
Status: Unutilized
Comment: 850 sq. ft., 2 story wood frame and brick residence, utilities disconnected.

New York

Bldg. 5
VA Medical Center
Redfield Parkway
Batavia Co: Genesee NY 14020-
Landholding Agency: VA
Property Number: 979030001
Status: Underutilized
Comment: Portion of 16800 sq. ft., 3 story, brick and masonry bldgs., needs minor repairs.

Bldg. 144, VAECC
Linden Blvd. and 179th St.
St. Albans Co: Queens NY 11425-
Landholding Agency: VA
Property Number: 979210004
Status: Unutilized
Comment: 5215 sq. ft., 2 story wood frame residence, needs rehab, potential utilities

Bldg. 143, VAECC
Linden Blvd. and 179th St.
St. Albans Co: Queens NY 11425-
Landholding Agency: VA
Property Number: 979210005
Status: Unutilized
Comment: 5215 sq. ft., 2 story wood frame residence, needs rehab, potential utilities

Bldg. 142/146, VAECC
Linden Blvd. and 179th St.
St. Albans Co: Queens NY 11425-
Landholding Agency: VA
Property Number: 979210006
Status: Unutilized
Comment: 5215 sq. ft., 2 story wood frame residence, needs rehab, potential utilities

Pennsylvania

Bldg. 3 VA Medical Center
University Drive C
Pittsburgh Co: Allegheny PA 15240-
Landholding Agency: VA
Property Number: 979210002
Status: Unutilized
Comment: Approx. 2765 sq. ft., two story brick residence, needs rehab

Texas

66 Bldgs.
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419-
Landholding Agency: Navy
Property Number: 779010161-779010227
Status: Underutilized
Comment: 1 story residences.

Virginia

Naval Medical Clinic
6500 Hampton Blvd.
Norfolk Co: Norfolk VA 23508-
Landholding Agency: Navy
Property Number: 779010109
Status: Unutilized
Comment: 3665 sq ft., 1 story, possible asbestos, most recent use—laundry.

Washington,

Naval Station Puget Sound
7500 Sand Point Way, NE
Seattle Co: King WA 98115-
Landholding Agency: Navy
Property Number: 779120002
Status: Excess
Base closure: Number of Units: 1
Comment: 144 sq. ft. ammunition bunker, most recent use—storage, secured area with alternate access.

West Virginia

Naval & Marine Corps Res. Ctr.
N. 13th St & Ohio River
Wheeling Co: Ohio WV 26003-
Landholding Agency: Navy
Property Number: 779010077
Status: Excess
Comment: 32000 sq. ft.; 1 floor; most recent use—offices; 15% of total space occupied;

needs rehab; land leased from city—expires September 1990.

Wyoming

Bldg. 13
Medical Center
N.W. of town at the end of Fort Road
Sheridan Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 979110001
Status: Unutilized
Comment: 3613 sq. ft., 3 story wood frame masonry veneered, potential utilities, possible asbestos, needs rehab.

Bldg . 79
Medical Center
N.W. of town at the end of Fort Road
Sheridan Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 979110003
Status: Unutilized
Comment: 45 sq. ft., 1 story brick and tile frame, limited utilities, most recent use—reservoir house, use for storage purposes.

Land (by State)

California

Land
VA Medical Center
Wilshire and Sawtelle Boulevards
Los Angeles Co: Los Angeles CA 90073–
Landholding Agency: VA
Property Number: 979010077
Status: Underutilized
Comment: Approx. 30 acres of 80 acre tract, 7 acre portion contaminated, portions may be environmentally protected.

Florida

Naval Public Works Center
Naval Air Station
Pensacola Co: Escambia FL 32508–
Location: Southeast corner of Corey station—next to family housing.
Landholding Agency: Navy
Property Number: 779010157
Status: Unutilized
Comment: 22 acres

Georgia

Naval Submarine Base
Grid AA–1 to AA–4 to EE–7 to FF–2
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 779010255
Status: Underutilized
Comment: 495.acres; 86 acre portion located in floodway; secured area with alternate access.

Illinois

VA Medical Center
3001 Green Bay Road
North Chicago Co: Lake IL 60064–
Landholding Agency: VA
Property Number: 979010082
Status: Underutilized
Comment: 2.5 acres, currently being used as a construction staging area for the next 6–8 years, potential utilities.

Michigan

VA Medical Center
5500 Armstrong Road
Battle Creek Co: Calhoun MI 49016–
Landholding Agency: VA
Property Number: 979010015
Status: Underutilized
Comment: 20 acres, used as exercise trails and storage areas, potential utilities.

Minnesota

Bldg. 43 Land Site
VA Medical Center
54th Street & 48th Avenue South
Minneapolis Co: Hennepin MN 55417–
Landholding Agency: VA
Property Number: 979010005
Status: Underutilized
Comment: 8.9 acres, most recent use—parking, potential utilities.

Bldg 227–229 Land
VA Medical Center
Fort Snelling
St. Paul Co: Hennepin MN 55111–
Landholding Agency: VA
Property Number: 979010006
Status: Underutilized
Comment: 2.0 acres, potential utilities, buildings occupied, residence/garage.

VA Medical Center
Near 5629 Minnehaha Avenue
Minneapolis Co: Hennepin MN 55417–
Location: Land (Site of Building 15, 16, 21, 48, 64, T10)
Landholding Agency: VA
Property Number: 979010024
Status: Underutilized
Comment: 12.1 acres, most recent use—parking, potential utilities.

Land–12 acres
VAMC
Near 5629 Minnehaha Avenue
Minneapolis Co: Hennepin MN 55417–
Landholding Agency: VA
Property Number: 979010031
Status: Unutilized
Comment: 12 acres, possible asbestos, leased to Department of Natural Resources as a park walking trail.

New York

VA Medical Center
Fort Hill Avenue
Canandaigua Co: Ontario NY 14424–
Landholding Agency: VA
Property Number: 979010017
Status: Underutilized
Comment: 27.5 acres, used for school ballfield and parking, existing utilities easements, portion leased.

Pennsylvania

VA Medical Center
New Castle Road
Butler Co: Butler PA 16001–
Landholding Agency: VA
Property Number: 979010016
Status: Underutilized
Comment: Approx. 9.29 acres, used for patient recreation, potential utilities.

Land No. 645
VA. Medical Center
Highland Drive
Pittsburgh Co: Allegheny PA 15206–
Location: Between Campania and Wiltsie Streets.
Landholding Agency: VA
Property Number: 979010080
Status: Unutilized
Comment: 52.42 acres, heavily wooded, property includes dump area and numerous site storm drain outfalls.

Virginia

Naval Base
Norfolk Co: Norfolk VA 23508–
Location: Northeast corner of base, near Willoughby housing area.
Landholding Agency: Navy
Property Number: 779010156
Status: Unutilized
Comment: 60 acres; most recent use—sandpit; secured area with alternate access.

Suitable/To Be Excessed

Buildings (by State)

California

Bldg. 100
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010259
Status: Unutilized
Comment: 2628 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access; use—office space.

Bldg. 102
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010260
Status: Unutilized
Comment: 580 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access; most recent use—office.

Bldg. 103
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010261
Status: Unutilized
Comment: 3675 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access; most recent use—dining hall.

Bldg. 109
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010262
Status: Unutilized
Comment: 1045 sq. ft.; 2 story permanent bldg; possible asbestos; secure facility with alternate access; most recent use—barracks.

Bldg. 110
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010263
Status: Unutilized
Comment: 4439 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access; most recent use—shop.

Bldg. 113
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010264
Status: Unutilized

Comment: 100 sq. ft.; 1 story permanent bldg; secured facilities with alternate access; most recent use—storage.

Bldg. 138
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010265
Status: Unutilized
Comment: 110 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access; most recent use—filling station.

Bldg. 144
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010266
Status: Unutilized
Comment: 4320 sq. ft.; 1 story semi-permanent bldg; possible asbestos secure facility with alternate access; most recent use—bowling alley.

Bldg. 145
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010267
Status: Unutilized
Comment: 4000 sq. ft.; 1 story semi-permanent bldg; possible asbestos secure facility with alternate access; most recent use—recreation building.

Land (by State)

Illinois

Libertyville Training Site
Libertyville Co: Luke IL 60048–
Landholding Agency: Navy
Property Number: 779010073
Status: Excess
Comment: 114 acres; possible radiation hazard; existing FAA use license.

Minnesota

Land around Bldg. 240–249,253
VA Medical Center
Fort Snelling
St. Paul Co: Hennepin MN 55111–
Landholding Agency: VA
Property Number: 979010007
Status: Unutilized
Comment: 3.76 acres, potential utilities.

Unsuitable Properties

Buildings (by State)

Alaska

Baler Bldg., Map Grid 55N14
Naval Air Station
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779120003
Status: Unutilized
Reason: Secured Area

Sand Shed, Map Grid 45024
Naval Air Station
Adak Co: Adak AK 98791—
Landholding Agency: Navy
Property Number: 779120004
Status: Unutilized
Reason: Secured Area

LORAN Station, Map Grid 09L11
Naval Air Station
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779120006
Status: Unutilized
Reason: Secured Area

California

Bldgs. 105, 165
Naval FPS, CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010159–779010160
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 146
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010268
Status: Unutilized
Reason: Other
Comment: Sewer treatment facility

Florida

East Martello Bunker #1
Naval Air Station
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 779010101
Status: Excess
Reason: Within airport runway clear zone

Georgia

Naval Submarine Base—Kings Bay
1011 USS Daniel Boone Avenue
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 779010107
Status: Unutilized
Reason: Secured area

Illinois

Bldg. 117, Hangar
Fort Sheridan Co: Lake IL 60037–5000
Landholding Agency: COE–BC
Property Number: 329230001
Status: Excess
Base closure: Number of Units: 1
Reason: Within airport runway clear zone

Bldgs. 928, 28, 25
Naval Training Center
Great Lakes
Great Lakes Co: Lake IL 60088–
Landholding Agency: Navy
Property Number: 779010120, 779010123, 779010126
Status: Unutilized
Reason: Secured Area

South Wing–Building No. 62
Great Lakes Co: Lake IL 60088–5000
Landholding Agency: Navy
Property Number: 779110001
Status: Underutilized
Reason: Secured Area

Indiana

Bldgs. 21, 22, 62–VA Medical Center
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 979230001–979230003
Status: Underutilized
Reason: Other
Comment: Extensive deterioration

Maine

Bldgs. 7, 10–Naval Air Station
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 779230004–779230005
Status: Excess
Reason: Within airport runway clear zone Secured Area

Bldgs. 93, 614, 101–107, 186, 192, 202–208
Naval Air Station
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 779230006–779230011
Status: Excess
Reason: Secured Area

New York

Bldgs. 204, 255, T–370
Naval Underwater Systems Center
Fisher's Island Annex Detachment
Fisher's Island Co: Suffolk NY 06390–
Landholding Agency: Navy
Property Number: 779010270–779010272
Status: Excess
Reason: Secured Area

North Carolina

Bldg. 9
VA Medical Center
1100 Tunnel Road
Asheville Co: Buncombe NC 28805–
Landholding Agency: VA
Property Number: 979010008
Status: Underutilized
Reason: Other
Comment: Friable asbestos.

Pennsylvania

Bldg. 62
Philadelphia Naval Shipyard
Philadelphia Co: Philadelphia PA 19112–
Landholding Agency: Navy
Property Number: 779010112
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Rhode Island

91 Bldgs.
Naval Construction Battalion Center
Davisville Co: Washington RI 02854–
Landholding Agency: Navy
Property Numbers: 779010001–779010023, 779010025, 779010027–779010040, 779010042–779010061, 779010063–779010065, 779010067, 779010069–779010072, 779010074, 779010076, 779010078–779010079, 779010232–779010240, 779010242–779010253
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. 32
Naval Underwater Systems Center
Gould Island Annex
Middletown Co: Newport RI 02840–
Landholding Agency: Navy
Property Number: 779010273
Status: Excess
Reason: Secured Area

Bldg. A–63
Naval Construction Battalion Center
Davisville Co: Washington RI 02854–
Landholding Agency: Navy
Property Number: 779010277
Status: Excess
Reason: Secured Area

Tennessee

Bldg. 60, VAMC Mountain Home
Johnson, Co: Washington, TN 37604–
Landholding Agency: VA
Property Number: 979220005
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Texas

20 Bldgs.
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010279–779010298
Status: Underutilized
Reason: Floodway

Bldgs. 24–26
Olin E. Teague Veterans Center
1901 South 1st Street
Temple Co: Bell TX 76504–
Landholding Agency: VA
Property Number: 979010050–979010052
Status: Unutilized
Reason: Other
Comment: Friable asbestos.

Virginia

Bldg. 052 & Tennis Court
USCG Reserve Training Center
Yorktown Co: York VA 23690–
Landholding Agency: DOT
Property Number: 879230004
Status: Excess
Reason: Secured Area

Washington

Bldg. 57
Naval Supply Center Puget Sound
Manchester Co: Kitsap WA 98353–
Landholding Agency: Navy
Property Number: 779010091
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. 47 (Report 1)
Naval Supply Center, Puget Sound
Manchester Co: Kitsap WA 98353–
Landholding Agency: Navy
Property Number: 779010230
Status: Unutilized
Reason: Secured Area

Wyoming

Bldg. 95
Medical Center
N.W. of town at the end of Fort Road
Sheridan Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 979110004
Status: Unutilized
Reason: Other
Comment: Sewage digester for disposal plant.

Bldg. 96
Medical Center
N.W. of town at end of Fort Road
Sheridan Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 979110005
Status: Unutilized
Reason: Other
Comment: Pump house for sewage disposal plant.

Structure 99
Medical Center
N.W. of town at the end of Fort Road
Sheridan Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 979110006
Status: Unutilized
Reason: Other
Comment: Mechanical screen for sewage disposal plant.

Structure 100
Medical Center
N.W. of town at the end of Fort Road
Sheridan Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 979110007
Status: Unutilized
Reason: Other
Comment: Dosing tank for sewage disposal plant.

Structure 101
Medical Center
N.W. of town at the end of Fort Road
Sheridan Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 979110008
Status: Unutilized
Reason: Other
Comment: Chlorination chamber for sewage disposal plant.

Land (by State)

California

.0475 acres
Ocotillo Wells
Barrego CA
Landholding Agency: GSA
Property Number: 549230002
Status: Excess
Reason: Other
Comment: Inaccessible
GSA Number: 9–F–CA–1327

Central Valley Project
San Luis Drain
Tracy Co: San Joaquin CA 95376–
Landholding Agency: GSA
Property Number: 549230003
Status: Excess
Reason: Other
Comment: Landlocked
GSA Number: 9–I–CA–1325

Salton Sea Test Range
ElCentro Co: Imperial CA 93555–
Landholding Agency: Navy
Property Number: 779010068
Status: Excess
Recess: Secured Area

DVA Medical Center
4951 Arroyo Road
Livermore Co: Alameda CA 94550–
Landholding Agency: VA
Property Number: 979010023
Status: Unutilized
Reason: Other
Comment: 750,000 gallon water reservoir.

Florida

Boca Chica Field
Naval Air Station
Key West Co: Monroe FL 23040–
Landholding Agency: Navy
Property Number: 779010097
Status: Unutilized
Reason: Floodway

East Martello Battery #2
Naval Air Station
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 779010275
Status: Excess
Reason: Within airport runway clear zone

Wildlife Sanctuary, VAMC
10,000 Bay Pines Blvd.
Bay Pines Co: Pinellas FL 33504–
Landholding Agency: VA
Property Number: 979230004
Status: Underutilized
Reason: Other
Comment: Inaccessible

Georgia

Naval Submarine Base
Grid G–5 to G–10 to Q–6 to P–2
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 779010228
Status: Underutilized
Reason: Secured Area

Idaho

Portion
Former Farragut Naval Training Center
Athol Co: Kootenai ID 83801–
Landholding Agency: GSA
Property Number: 549230004
Status: Excess
Reason: Other
Comment: Inaccessible
GSA Number: 9–GR(2)–ID–421C

Louisiana

Land—3.4 acres
VA Medical Center
2501 Shreveport Highway
Alexandria Co: Rapides LA 71301–
Landholding Agency: VA
Property Number: 979010010
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Minnesota

VAMC
VA Medical Center
4801 8th Street No.
St. Cloud Co: Sterns MN 56303–
Landholding Agency: VA
Property Number: 979010049
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material

New York

Tracts 1–4
VA Medical Center
Bath Co: Steuben NY 14810–
Location: Exit 38 off New York State Route 17.
Landholding Agency: VA
Property Number: 979010011–979010014
Status: Unutilized
Reason: Secured Area

Washington

Land (Report 2), 234 acres
Naval Supply Center, Puget Sound
Manchester Co: Kitsap WA 98353–
Landholding Agency: Navy
Property Number: 779010231
Status: Unutilized
Reason: Secured Area

[FR Doc. 92–21032 Filed 9–3–92; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization; Public Meeting

AGENCY: Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 101-512, the Office of the Assistant Secretary-Indian Affairs is announcing the forthcoming meeting of the Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization (Task Force).

DATES: September 21, 22, and 23, 1992; 9 a.m. to 5:30 p.m.; Red Lion Sacramento Inn; 1404 Arden Way; Sacramento, California, 95815; (916) 922-6041; Facsimile (916) 922-0386. The meeting of the Task Force is open to the public.

FOR FURTHER INFORMATION CONTACT: Veronica L. Murdock, Designated Federal Officer, Office of the Assistant Secretary-Indian Affairs; MS 4140 MIB; 1849 C Street NW., Washington, DC, 20240; Telephone number (202) 208-4173.

SUPPLEMENTARY INFORMATION: The Task Force welcomes public oral and written comments, and time is set aside on the agenda for public comments on Wednesday, September 23, 1992. Persons wishing to present written comments or speak to the Task Force may sign up in advance during the first two days of the meeting as well as prior to the public comment time on Thursday. Speakers are encouraged to prepare written testimony, background material, comments, and other documents for presentation to the Task Force because time for oral presentations may be limited. Also, written comments may be submitted by individuals unable to attend the meeting. Written comments that are not delivered to the Task Force meeting may be mailed to Veronica L. Murdock,Office of the Assistant Secretary-Indian Affairs, Mail Stop 4140 MIB, Department of the Interior, 1849 C Street NW., Washington, DC, 20240. Discussion items for this meeting include: Work group meetings held since the last general meeting, the proposed charter to continue the Task Force, Tribal comments on the 1991 Cumulative Report, management improvement and restructuring initiatives, the Trust Funds Management Strategic Plan, and delegation of further authority to the Agency Superintendents. The Task Force will develop a methodology and work group for preparation of its final report to the Secretary and the Appropriations Committees of the Congress. Time has been set aside for work group sessions with concentration on Area/Agency structures, the Bureau's budget process, and the directives systems under which the Bureau operates.

Dated: September 1, 1992.

Eddie F. Brown,

Assistant Secretary-Indian Affairs.

[FR Doc. 92-21335 Filed 9-3-92; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[MT-070-02-4320-02-ADVB]

District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Butte District Office, Interior.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Butte District Grazing Advisory Council will be held Thursday and Friday, October 1 and 2.

On October 1 the council will go on a field tour in conjunction with the Butte District Grazing Advisory Board of various points of interest in the Dillon Resource Area. The field tour will depart at 8 a.m. from the Dillon Resource Area office, 1005 Selway Drive in Dillon.

A business meeting will begin at 9 a.m. on October 2 in the conference room of the Dillon Resource Area office. The agenda will include: (1) Discussion, recommendations resulting from field tour; (2) access issues; and (3) county/BLM coordination relating to Resource Management Planning efforts.

The meeting and the field tour are open to the public although transportation will not be provided on the field tour for members of the public. Interested persons may make oral statements to the council or file written statements for the council's consideration. Anyone wishing to make oral statements should make prior arrangements with the district manager. Summary minutes of the meeting will be maintained in the district office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: James R. Owings, District Manager, Bureau of Land Management, Box 3388, Butte, Montana 59702.

Dated: August 27, 1992.

James R. Owings,

District Manager.

[FR Doc. 92-21304 Filed 9-3-92; 8:45 am]

BILLING CODE 4310-DN-M

[MT-070-02-4320-02 ADVB]

District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Butte District Office, Interior.

ACTION: Notice of meeting.

SUMMARY: A brief business meeting of the Butte District Advisory Board will be held Thursday, October 1 in the conference room of the Dillon Resource Area office, 1005 Selway Drive, Dillon. The meeting will begin at 8 a.m. Immediately following the meeting, the board will depart on a field tour in conjunction with the Butte District Advisory Board of points of interest in the Dillon Resource Area.

The meeting and the field tour are open to the public although transportation will not be provided on the field tour for members of the public. Interested persons may make oral statements to the board or file written statements for the board's consideration. Anyone wishing to make oral statements should make prior arrangements with the district manager. Summary minutes of the meeting will be maintained in the district office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: James R. Owings, District Manager, Bureau of Land Management, Box 3388, Butte, Montana 59702.

Dated: August 27, 1992.

James R. Owings,

District Manager.

[FR Doc. 92-21305 Filed 9-3-92; 8:45 am]

BILLING CODE 4310-DN-M

[AZ-040-02-4320-02]

Safford District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bureau of Land Management (BLM), Safford District announces a forthcoming meeting of the Safford District Grazing Advisory Board.

DATES: Friday, October 2, 1992; 9 a.m.

ADDRESSES: BLM Office, 425 E. 4th St., Safford, Arizona 85546.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with Public Law 92-463. The agenda for the meeting will include:

1. Election of Chairperson, Vice-Chairperson, and Treasurer.
2. Proposed Allotment Management Plans (AMPs) for FY93.
3. Proposed Range Improvement (RI) Projects for FY93.
4. Business from the floor.
5. Update on Planning Efforts for the Gila Box Riparian National Conservation Area (RNCA).
6. Overview of the Coordinated Resource Management Planning Process (CRMP), San Pedro River.
7. Resolution of Protests on Safford District Resource Management Plan.
8. BLM management update.

The meeting will be open to the public. Interested persons may make oral statements to the Board between 10 a.m. and 11 a.m. A written copy of the oral statement may be required to be provided at the conclusion of the presentation. Written statements may also be filed for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 425 E. 4th Street, Safford, Arizona 85546, by 4:15 p.m., Thursday, October 1, 1992.

Summary minutes of the Board meeting will be maintained in the District Office and will be available for public inspection and reproduction (during regular business hours) within thirty (30) days following the meeting.

Dated: August 28, 1992.

William Civish,

District Manager.

[FR Doc. 92-21306 Filed 9-3-92; 8:45 am]

BILLING CODE 4310-32-M

[ID-943-02-4212-13; IDI-27620]

Exchange and Order Providing for Opening of Public Lands; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of exchange and opening order.

SUMMARY: The United States has issued an exchange conveyance document to Thomas T. Nicholson and Diana R. Nicholson, of Boise, Idaho, under Section 206 of the Federal Land Policy and Management Act. In addition to providing official public notice of the exchange, this document contains an order which opens land received by the United States to the public land, mining, and mineral leasing laws.

EFFECTIVE DATE: October 5, 1992.

FOR FURTHER INFORMATION CONTACT: Sally Carpenter, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho, (208) 384-3163.

1. In an exchange made under the provisions of section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, the following described land has been conveyed from the United States:

Boise Meridian

T. 2 N., R. 1 E.,
sec. 13, SE¼NE¼.
Comprising 40.00 acres of public land.

2. In exchange for these lands, the United States acquired the following described land:

Boise Meridian

T. 2 N., R. 2 E.,
sec. 20, SW¼SE¼.
Comprising 40.00 acres of private land.

The purpose of the exchange was to acquire non-Federal land which will provide legal access to public lands for recreation purposes. The public interest was well served through completion of the exchange. The values of both the Federal and private lands were appraised at $16,000.

3. At 9 a.m. on October 5, 1992, the reconveyed private land described in paragraph 2 will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on October 5, 1992, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. At 9 a.m. on October 5, 1992, the reconveyed private land described in paragraph 2 will be opened to location and entry under the United States mining laws and to the operation of the mineral leasing laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: August 27, 1992.

William E. Ireland,

Chief Realty Operations Section.

[FR Doc. 92-21308 Filed 9-3-92; 8:45 am]

BILLING CODE 4310-GG-M

[ID-942-02-4730-12]

Idaho; Filing of Plats of Survey

The plats of the following described land were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., August 27, 1992.

The plat representing the dependent resurvey of portions of the east boundary and subdivisional lines, the subdivision of sections 11 and 13, and a metes-and-bounds survey in sections 11, 12, and 13, T. 4 S., R. 7 E., Boise Meridian, Idaho, Group No. 822, was accepted, August 27, 1992.

The plat representing the dependent resurvey of a portion of the subdivisional lines, subdivision of section 18, and metes-and-bounds survey in section 18, T. 4 S., R. 8 E., Boise Meridian, Idaho, Group No. 822, was accepted, August 27, 1992.

These surveys were executed to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: August 27, 1992.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 92-21309 Filed 9-3-92; 8:45 am]

BILLING CODE 4310-GG-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32128]

Burlington Northern Railroad Company—Trackage Rights Exemption—Norfolk and Western Railway Company

Norfolk and Western Railway Company (NW) has agreed to grant overhead trackage rights to Burlington Northern Railroad Company between McCoy, IA (NW Milepost SD 334.58) and Des Moines, IA (NW Milepost DM 343), a distance of approximately 5.7 miles. The trackage rights will take effect on August 24, 1992.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may

be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Ethel A. Allen, Assistant General Counsel, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102-5384.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: August 18, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. 92-21376 Filed 9-3-92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 32124]

Missouri Pacific Railroad Company and the Atchison, Topeka and Santa Fe Railway Company—Joint Relocation Project Exemption

On August 18, 1992, Missouri Pacific Railroad Company (MP) and The Atchison, Topeka and Santa Fe Railway Company (ATSF), filed a notice of exemption under 49 CFR 1180.2(d)(5) to relocate a line of railroad. The joint project involves: (1) Acquisition of overhead trackage rights by MP over ATSF's rail line between milepost 228.41 near Mulvane, KS, and milepost 213.20 near Wichita, KS, a distance of approximately 15.21 miles, in Sumner and Sedgwick Counties, KS, and (2) incidental abandonment of MP's line known as the Conway Springs Branch between milepost 538.7 near Belle Plaine, KS, and milepost 544.5 near Riverdale, KS, a distance of 5.8 miles in Sumner County, KS.[1] The transaction was to have been consummated on, or soon as possible after August 25, 1992.

Relocation of MP's train operations will utilize resources effectively, will result in an alternate and satisfactory operation over ATSF's tracks, allow MP to continue service to its customers, and will avoid the need to expend resources on the repair of the track. According to MP, this transaction will not generate new traffic, there will be no extension of MP's rail service into new territory, and there will no disruption in service to shippers. In addition, there will be no change in the competitive situation of the rail carriers in the area, under these circumstances the joint relocation project falls within the class exemption provisions of 49 CFR 1180.2(d)(5). See, *Denver & R.G.W.R. Co.—Jt. Proj.—Relocation over BN*, 4 I.C.C.2d 95, 99 (1987).

As a condition to the use of this exemption, any employees affected by the trackage rights agreement will be protected by the conditions in *Norfolk and Western Ry. Co.—Trackage Rights—BN* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Joseph D. Anthofer, General Attoreny, Jeanna L. Regier, Registered ICC Practitioner, 1416 Dodge Street, room 830, Omaha, NE 68179.

Decided: August 27, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-21377 Filed 9-3-92; 8:45 am]

BILLING CODE 7035-01-M

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[1] In mid 1985, a washout occurred on this segment of MP's line which extends between Belle Plaine and Riverdale, KS. Since the washout, MP has used a detour arrangement over ATSF's line into Wichita, KS, instead of accessing its line at Riverdale to travel in a northerly direction into Wichita.

[Docket No. AB-326X]

Washington Central Railroad Co., Inc.—Abandonment Exemption—in Yakima County, Washington

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903-10904 the abandonment by Washington Central Railroad Company, Inc., of 20.56 miles of rail line in Yakima County, WA, subject to the standard labor protection conditions and a joint consultation condition.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on October 5, 1992. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by September 14, 1992. Petitions to stay must be filed by September 21, 1992, and petitions for reconsideration must be filed by September 29, 1992. Requests for a public use condition must be filed by September 24, 1992.

ADDRESSES: Send pleadings referring to Docket No. AB-326X to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and

(2) Petitioner's representative: Mark H. Sidman, Esq., Weiner, Brodsky, Sidman & Kider, suite 800, 1350 New York Avenue, NW., Washington, DC 20005-4797.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder (202) 927-5610, [TDD for hearing impaired: (202) 927-5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927-5721].

Decided: August 13, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett. Commissioner Emmett did not participate in the disposition of this proceeding.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-21404 Filed 9-3-92; 8:45 am]

BILLING CODE 7035-01-M

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[1] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Registration

By Notice dated July 9, 1992, and published in the **Federal Register** on July 22, 1992 (57 FR 32567), Roberts Laboratories, Inc., Meridian Center III, 6 Industrial Way West, Eatontown, New Jersey 07724, made application to the Drug Enforcement Administration to be registered as an importer of propiram (9649), a basic class of controlled substance listed in Schedule I.

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with title 21, Code of Federal Regulations 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: August 31, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92-21359 Filed 9-3-92; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration

By Notice dated June 22, 1992, and published in the **Federal Register** on July 9, 1992, (57 FR 30512), Sigma Chemical Company, 3500 DeKalb Street, St. Louis, Missouri 63118, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Methcathinone (1237)	I
Methaqualone (2565)	I
Ibogaine (7260)	I
Lysergic acid diethylamide (7315)	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
4-Methyl-2,5-dimethoxyamphetamine (7395).	I
2,5-Dimethoxyamphetamine (7396)	I
3,4-Methylenedioxyamphetamine (7400).	I
3,4-Methylenedioxymethamphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
Bufotenine (7433)	I
Diethyltryptamine (7434)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
N-Ethyl-1-phenylcyclohexylamine (7455).	I
1-(1-Phenylcyclohexyl)pyrrolidine (7458).	I
1-[1-(2-Thienyl)cyclohexyl]piperidine (7470).	I
Etorphine (except HC1) (9056)	I
Difenoxin (9168)	I
Heroin (9200)	I
Morphine-N-oxide (9307)	I
Normorphine (9313)	I
1-Methyl-4-phenyl-4-propionoxypiperidine (9661).	I
3-Methylfentanyl (9813)	I
Alpha-methylfentanyl (9814)	I
Beta-hydroxyfentanyl (9830)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Fenethylline (1503)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
1-Piperidinocyclohexanecarbonitrile (8603).	II
Anileridine (9020)	II
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Meperidine (9320)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Oxymorphone (9652)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substance Import and Export Act and in accordance with title 21, Code of Federal Regulations 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: August 28, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92-21358 Filed 9-3-92; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment Standards Administration/Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein. Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations

Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page number(s).

Volume II

Iowa:
IA91-5(Sept. 4, 1992)..... p. All.
Iowa:
IA91-19(Sept. 4, 1992)..... p. All.
Iowa:
IA91-20(Sept. 4, 1992)..... p. All.
Iowa:
IA91-21(Sept. 4, 1992)..... p. All.
Iowa:
IA91-22(Sept. 4, 1992)..... p. All.
Iowa:
IA91-23(Sept. 4, 1992)..... p. All.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Florida:
FL91-9(Feb. 22, 1991)..... p. 121, p. 122.
Kentucky:
KY91-3(Feb. 22, 1991)..... p. 319, pp. 320, 321.
Maryland:
MD91-36(Feb. 22, 1991)..... p. All.
New York:
NY91-8(Feb. 22, 1991)..... p. 857, p. 863.
NY91-9(Feb. 22, 1991)..... p. 869, p. 870.
NY91-10(Feb. 22, 1991)..... p. 873, p. 874.
Pennsylvania:
PA91-4(Feb. 22, 1991)..... p. 985, pp. 986, 989.
PA91-20(Feb. 22, 1991)..... p. 1099, pp. 1100, 1101.
Virginia:
VA91-15(Feb. 22, 1991)..... p. All.
VA91-17(Feb. 22, 1991)..... p. All.
VA91-27(Feb. 22, 1991)..... p. All.
VA91-28(Feb. 22, 1991)..... p. All.
VA91-60(Feb. 22, 1991)..... p. All.
VA91-78(Feb. 22, 1991)..... p. All.
VA91-79(Feb. 22, 1991)..... p. All.
VA91-80(Feb. 22, 1991)..... p. All.
VA91-81(Feb. 22, 1991)..... p. All.
V91-82(Feb. 22, 1991)..... p. All.
VA91-83(Feb. 22, 1991)..... p. All.
West Virginia:
WV91-2(Feb. 22, 1991)..... p. 1421, p. 1422.

Volume II

Arkansas:
AR91-1(Feb. 22, 1991)..... p. All.
Illinois:
IL91-13(Feb. 22, 1991)..... p. 183, pp. 188-189.
Indiana:
IN91-2(Feb. 22, 1991)..... p. 259, pp. 262, 263, pp. 265, 272
IN91-6(Feb. 22, 1991)..... p. 315, pp. 317, 320, 327.
Louisiana:
LA91-14(Feb. 22, 1991)..... p. All.
Missouri:
MO91-3(Feb. 22, 1991)..... p. 686, pp. 686-687.
MO91-5(Feb. 22, 1991)..... p. All.
MO91-13(Feb. 22, 1991)..... p. All.

Volume III:

Oregon:
OR91-1(Feb. 22, 1991)..... p. All.
Washington:
WA91-5(Feb. 22, 1991)..... p. All.
WA91-6(Feb. 22, 1991)..... p. All.
Wyoming:
WY91-5(Feb. 22, 1991)..... p. All.
WY91-6(Feb. 22, 1991)..... p. All.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 28th day of August 1992.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 92-21136 Filed 9-3-92; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

Federal Committee on Apprenticeship; Request for Membership Nominations

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice; request for membership nominations.

SUMMARY: Notice is hereby given that under the provisions of the Federal Advisory Committee Act the Secretary of Labor is seeking nominations to fill 1 labor and 1 management vacancy and several other project vacancies that may occur on or before September 30, 1992, on the Federal Committee on Apprenticeship. The Committee was rechartered on May 23, 1991.

Nominations are being sought from these groups—

Management: Representatives of an employer or national employer association.

Labor: Representatives of employees or national employee associations.

Public: Representatives of religious, social welfare, academic, charitable, public, non-profit organizations, state or local governments.

Only individuals who have some knowledge or familiarity with apprenticeship an structured, work-place training programs should be nominated. Also a description of the candidate's qualifications and the group he or she represents must be included.

DATES: To ensure consideration, nominations should be postmarked on or before September 17, 1992.

ADDRESSES: Submit nominations to Mr. Minor R. Miller, Executive Director, Federal Committee on Apprenticeship, Office of Work-Based Learning, Employment and Training Administration, U.S. Department of Labor, Frances Perkins Building, 200 Constitution Avenue, NW., room N-4649, Washington, DC 20210, FAX Number 202-535-0986.

Signed at Washington, DC, this 26th of August, 1992.

Roberts T. Jones,

Assistant Secretary of Labor for Employment and Training.

[FR Doc. 92-21400 Filed 9-3-92; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL COMMISSION ON MIGRANT EDUCATION

Final Meeting

ACTION: Notice of meeting.

SUMMARY: The National Commission on Migrant Education will hold its last meeting on Wednesday, September 23, 1992, for the purpose of releasing its final report. The Commission was established by Public Law 100-297, April 28, 1988.

DATE, TIME, AND PLACE: Wednesday, September 23, 1992, beginning at 10:30 a.m., at 2261 Rayburn House Office Building, Washington, DC.

STATUS: Open to the public.

AGENDA: Release of the Commission's final report.

FOR FURTHER INFORMATION CONTACT: Elizabeth J. Skiles (301) 492-5336,

National Commission on Migrant Education, 8120 Woodmont Avenue, Fifth Floor, Bethesda, Maryland 20814.

Linda Chavez,

Chairman.

[FR Doc. 92-21388 Filed 9-3-92; 8:45 am]

BILLING CODE 6820-DE-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Challenge/Advancement Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Challenge/Advancement Advisory Panel (Theater Challenge Section) to the National Council on the Arts will be held on September 24-25, 1992 from 9 a.m.-5:30 p.m. in room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public on September 24 from 9 a.m.-10 a.m. and September 25 from 5 p.m.-5:30 p.m. The topics will be welcoming remarks, an overview of Challenge III, and policy discussion.

The remaining portions of this meeting on September 24 from 10 a.m.-5:30 p.m. and September 25 from 9 a.m.-5 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202-682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5439.

Dated: September 1, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92-21410 Filed 9-3-92; 8:45 am]

BILLING CODE 7537-01-M

National Endowment for the Arts; Challenge/Advancement Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Challenge/Advancement Advisory Panel (Arts in Education Challenge Section) to the National Council on the Arts will be held on September 22, 1992 from 9 a.m.-5:30 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 9 a.m.-10 a.m. and 5 p.m.-5:30 p.m. The topics will be opening remarks, overview of Challenge III, and policy discussion.

The remaining portion of this meeting from 10 a.m.-5 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 21, 1991, this session will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5439.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92-21411 Filed 9-3-92; 8:45 am]

BILLING CODE 7537-01-M

National Endowment for the Arts; Visual Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Overview Section) will be held on September 22, 1992 from 9 a.m.-5:30 p.m. in room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics will include introductory remarks, guidelines review and policy discussion.

Any interested person may observe meetings, or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5439.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92-21412 Filed 9-3-92; 8:45 am]

BILLING CODE 7537-01-M

National Endowment for the Arts; Challenge/Advancement Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Challenge/Advancement Advisory Panel (Visual Arts Challenge Section) to the National Council on the Arts will be held on September 21, 1992 from 9:30 a.m.-5 p.m. in room 716 at the Nancy Hanks Center,

1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 9:30 a.m.–10:30 a.m. and 4 p.m.–5 p.m. for introductory remarks, policy discussion and review of guidelines.

The remaining portion of this meeting from 10:30 a.m.–4 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92–21413 Filed 9–3–92; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–333]

Power Authority of the State of New York, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of exemptions from the requirements of 10 CFR Part 50, Appendix R, "Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979," Sections III.L.1.b, III.L.2.b, III.G.2, III.G.3, III.L, III.J, and III.G.1, to the Power Authority of the State of New York (PASNY/licensee) for the James A. FitzPatrick Nuclear Power Plant, located at the licensee's site in Oswego County, New York.

Environmental Assessment

Identification of Proposed Action

The licensee is requesting six exemptions from 10 CFR Part 50, Appendix R, as a result of a recent reassessment of the Fire Protection Program at the James A. FitzPatrick Nuclear Power Plant. The exemption requests are divided into three exemption categories: Revised, new, and temporary. The revised exemption requests are necessary to include additional fire areas and/or equipment. The new exemption request results from the new 1992 10 CFR part 50, appendix R, reanalysis for FitzPatrick. The temporary exemption requests are necessary to permit plant startup before modifications to bring the plant into compliance with appendix R can be completed. The following is a summary of the stated exemption requests.

Revised

1. The licensee requests a revised exemption from the requirements of 10 CFR part 50, appendix R, Sections III.L.1.b and III.L.2.b, as they apply to the James A. FitzPatrick Nuclear Power Plant so that the reactor coolant level be permitted to drop below the top of the core during use of alternative safe shutdown procedures which includes the possibility of Control Room evacuation following a fire in any of five fire zones: (1) Control Room; (2) Relay Room; (3) Cable Spreading Room; (4) North Cable Tunnel; and (5) Battery Room Corridor.

This exemption would extend the current exemption that allows the use of alternate shutdown with Control Room evacuation to two additional fire areas: (1) Fire Area ID (North Cable Tunnel) and (2) Fire Area XVI (Battery Room Corridor). The result of this request is to treat a fire in these two areas in the same fashion as the current exemption treats a fire in Fire Area VII (Control Room, Relay Room, Cable Spreading Room).

2. The licensee requests a revised exemption from the requirements of 10 CFR part 50, appendix R, Sections III.G.2, III.G.3, and III.L, with respect to the separation of redundant safe shutdown circuits in that they are not in accordance with Section III.G.2 and alternate shutdown capability has not been provided in accordance with Sections III.G.3 and III.L in the Torus Room (Fire Area XV).

This exemption would revise the current exemption to more accurately reflect the equipment in the Torus Room. It would also provide a revised technical basis for the exemption to reflect the new area description.

New

1. The licensee requests an exemption from the requirements of 10 CFR part 50, appendix R, Section III.J, as they apply to the James A. FitzPatrick Nuclear Power Plant, which mandates permanently installed 8-hour Appendix R lighting in outdoor areas. The requested exemption is to use general outdoor lights, outdoor security lights, vehicle headlights and/or flashlights for exterior access and egress routes not only for the fire areas listed in this exemption request, but for any fire area where exterior access and egress routes may be used.

A fire in Fire Area ID, VII, IX, X, XI, XV, XVII, or XVIII requires operator actions in the Containment Atmosphere Dilution (CAD) housing which is reached via exterior access and egress routes. A fire in Fire Area IV, VII, or XVI requires the transport of equipment from the warehouse to the plant. Operator actions take place inside buildings or next to doors where interior 8-hour appendix R lighting is available.

Temporary

1. The licensee requests a temporary exemption from the requirements of 10 CFR part 50, appendix R, Section III.G.1, as they apply to the James A. FitzPatrick Nuclear Power Plant with respect to the ventilation systems in the Emergency Service Water (ESW) and Residual Heat Removal Service Water (RHRSW) Pump Rooms (Fire Areas XII and XIII) being free of fire damage. The exemption is needed until the modifications can be completed to assure that one division of RHRSW and ESW pumps and either the electric driven fire pump or diesel driven fire pump and their associated ventilation systems will be available in the event of a fire in Fire Areas IB or II. The modifications are scheduled to be completed prior to startup from the Reload 11/Cycle 12 refueling outage which is currently scheduled to begin in October 1993. Interim compensatory actions will be implemented until the modifications are completed.

2. The licensee requests a temporary exemption from the requirements of 10 CFR part 50, appendix R, Sections III.G.2 and III.G.3, as they apply to the James A. FitzPatrick Nuclear Power Plant with respect to a full area suppression system

being required in the West Cable Tunnel (Fire Area IC) to protect redundant circuits that are installed in this area. The exemption is needed until modifications can be completed to provide fire suppression adequate for the hazards present. Interim compensatory actions will be implemented until the modifications are completed.

3. The licensee requests a temporary exemption from the requirements of 10 CFR part 50, appendix R, Section III.G.2, as they apply to the James A. FitzPatrick Nuclear Power Plant with respect to 3-hour-rated fire barrier penetration seals. The exemption is needed until concerns associated with bondstrand, greenthread and PVC (polyvinyl chloride) piping penetrations can be resolved and modifications can be completed to assure separation by a 3-hour-rated fire barrier. Interim compensatory actions will be implemented until the modifications are completed. The modifications are scheduled to be completed by November 30, 1992.

The Need for the Proposed Action

The licensee has performed a reassessment of the Fire Protection Program at the FitzPatrick plant. As a result of this reassessment, the licensee has identified the need for several exemptions from 10 CFR part 50, appendix R. The proposed exemptions are needed to permit the licensee to operate the plant without being in violation of the Commission's requirements.

Environmental Impacts of the Proposed Action

The proposed exemptions will provide a degree of fire protection that is adequate for the affected areas of the plant such that there is no increase in the risk of fires at this facility. Furthermore, the proposed exemptions would not adversely impact the capability to safely shut down the plant in the event of a fire; would not pose a threat to fuel cladding integrity; would not pose a threat to containment integrity; and would provide an acceptable level of safety, equivalent to that attained by compliance with Sections III.L.1.b, III.L.2.b, III.G.2, III.G.3, III.L, III.J, and III.G.1 of appendix R to 10 CFR part 50. Based on the considerations discussed above, the NRC staff concludes that granting the proposed exemptions will not increase the probability of an accident and will not result in any post-accident radiological releases in excess of those previously determined for the James A. FitzPatrick Nuclear Power Plant. The proposed exemptions would not otherwise affect radiological plant effluents, nor result in any significant occupational exposure.

With regard to potential non-radiological impacts, the proposed exemptions involve features located within the restricted area as defined in 10 CFR part 20. They do not affect non-radiological plant effluents and have no other environmental impact.

Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with the proposed exemptions.

Alternatives to the Proposed Action

Since the Commission has concluded that there are no measurable environmental impacts associated with the proposed exemptions, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the exemptions would be to require rigid compliance with the requirements of 10 CFR part 50, appendix R, Sections III.L.1.b, III.G.2, III.L.2.b, III.G.3, III.L, III.J, and III.G.1. Such action would not enhance the protection of the environment. Furthermore, requiring: (1) Installation of modifications to bring the plant into compliance with 10 CFR part 50, appendix R, in lieu of the new or revised exemptions; or (2) completion of modifications to bring the plant into compliance with 10 CFR part 50, appendix R, prior to startup in lieu of the temporary exemptions, would result in additional costs to the licensee, including loss of income from generating power, without adding any benefits already available by existing plant systems or proposed compensatory measures.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement for the James A. FitzPatrick Nuclear Power Plant," dated March 1973.

Agencies and Persons Consulted

The NCR staff reviewed the licensee's submittals that support the proposed exemptions discussed above. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemptions.

Based upon the foregoing environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the licensee's letters dated June 26, 1992, and July 31, 1992. These letters are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC and at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York.

Dated at Rockville, Maryland, this 28th day of August 1992.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate I-1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92-21349 Filed 9-2-92; 8:45 am]

BILLING CODE 7590-01-M

Nuclear Safety Research Review Committee; Meeting on Subcommittee on Aging; Meeting

The NSRRC Subcommittee on Aging will hold a meeting on September 16, 1992, in the Versailles III Room, Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting will be as follows:

Wednesday, September 16, 1992, 8:30 a.m.–5 p.m.

The Subcommittee will review the philosophy of the aging research program, status of the regulatory guide on license renewal, and the aging of valves. A detailed agenda will be made available at the meeting.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Questions may be asked only by members of the Subcommittee and the staff. Persons desiring to make oral statements should notify the NSRRC staff member named below as far in advance as is practicable so that appropriate arrangements can be made

During the initial portion of the meeting, the Subcommittee may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, ORNL, INEL and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to Mr. George Sege, (telephone 301/492-3904) between 8 a.m. and 4:30 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: August 31, 1992.

George Sege,

Technical Assistant to the Director, Office of Nuclear Regulatory Research.

[FR Doc. 92-21350 Filed 9-3-92; 8:45 am]

BILLING CODE 7590-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Application and Claim for Unemployment Benefits and Employment Service.

(2) *Form(s) submitted:* UI-1(ES-1), UI-3.

(3) *OMB Number:* 3220-0022.

(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.

(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(6) *Frequency of response:* On occasion.

(7) *Respondents:* Individuals or households.

(8) *Estimated annual number of respondents:* 45,000.

(9) *Total annual responses:* 360,000.

(10) *Average time per response:* .0895833 hours.

(11) *Total annual reporting hours:* 32,250.

(12) *Collection description:* Under Section 2 of the Railroad Unemployment Insurance Act, unemployment benefits are provided for qualified railroad workers. The collection obtains from railroad employees who apply for and claim unemployment benefits, information needed for determining eligibility for and amount of such benefits.

ADDITIONAL INFORMATION OR COMMENTS

Copies of the form and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312-751-4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611-2092 and the OMB reviewer, Laura Oliven (202-395-7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 92-21310 Filed 9-3-92; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Form BD, File No. 270-19]

Requests Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon written request copies available from: Securities and Exchange Commission, Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549.

Amendment

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval proposed amendments to Form BD (17 CFR 249.501) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Form BD is used to apply for registration as a broker-dealer and, for firms other than banks and registered broker-dealers, to apply for registration as a municipal securities dealer or a government securities broker-dealer. Form BD is also used to amend such applications when any information previously filed on Form BD becomes inaccurate. It is estimated that 1,200 broker-dealers annually will incur an average burden of 3 hours to file initial applications for registration on Form BD, and that 7,500 broker-dealers annually (11,000 in FY 1993) will incur an average burden of 24 minutes to file amendments on Form BD.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with Securities and Exchange Commission rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and Gary Waxman, Clearance Officer, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: August 19, 1992.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-21320 Filed 9-3-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31117; International Series Release No. 442; File No. SR-Amex-91-26]

Self-Regulatory Organizations; Filing of Amendment No. 2 to Proposed Rule Change by the American Stock Exchange, Inc., Relating to the Listing of Options on American Depositary Receipts

August 28, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 20, 1991, the American Stock Exchange ("Amex" or "Exchange") filed with the the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposal rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend its proposal providing for the listing of options on American Depositary Receipts ("ADRs") to require that, prior to listing an option on an ADR, the Exchange have in place an effective surveillance sharing agreement with the primary foreign exchange on which the security underlying the ADR trades. The Exchange also proposes to list several options on ADRs for which the Exchange is in the process of obtaining surveillance sharing agreements.

The text of the proposed amendment is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange, initially, proposed to list options on ADRs which met the uniform established listing criteria and guidelines for options set forth in Exchange Rule 915. In addition to this criteria, the Exchange now proposes to amend Commentary .03 to Rule 915 to add another requirement governing the listing of options on ADRs. Specifically, the amendment provides that the Exchange must have an effective surveillance sharing agreement in place with the "home country" exchange where the security underlying the ADR trades.

In conjunction with the amendment to this filing, the Exchange also proposes to list several options on ADRs for which the Exchange is in the process of obtaining surveillance sharing agreements with the primary exchanges where the securities underlying the ADRs trade. These options would be listed on ADRs representing shares of Empresas ICA Sociedad Controladora S.A. de C.V., Sony Corporation, Toyota Motor Corporation, and Vitro Sociedad Anonima.

The Exchange believes that the proposed rule change is consistent wtih section 6(b) of the Act, in general, and section 6(b)(5), in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and national market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Amex believes that the proposed rule change will not impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 21, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Jonathan G. Katz,

Secretary.

[FR Doc. 92-21371 Filed 9-3-92; 8:45 am]

BILLING CODE 8010-01-M

[1] 17 CFR 200.30-3(a)(12) (1991).

[Release No. 34-31119; File No. SR-BSE-92-05]

Self-Regulatory Organizations; Filing of Proposed Rule Change by Boston Stock Exchange, Inc. Relating to Stop and Stop Limit Order Bans

August 28, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 29, 1992, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE proposes to amend its rules to provide for the implementation of stop and stop limit order bans whenever such orders are banned in the primary market.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The BSE has indicated that the purpose of the proposed rule is to prevent the BSE from becoming a haven for stop and stop limit orders that are otherwise banned on the primary exchange.[1] The BSE proposes to

[1] Conversation between Karen Aluise, Staff Attorney, BSE, and Elizabeth M. Cosgrove, Attorney, SEC, on July 27, 1992 clarifying the purpose of the BSE proposed rule.

establish a procedure to implement stop and stop limit order bans to parallel the two situations in which the New York Stock Exchange ("NYSE") implements bans. The first situation arises when an individual specialist requests a stop and stop limit order ban due to an unusually large accumulation of such orders. The second situation arises automatically, pursuant to NYSE Rule 80A, when a 12 point decline is reached in the Standard and Poor ("S&P") 500.

2. Statutory Basis

The basis under the Act for the proposed rule is section 6(b) (5) in that the rule is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments have neither been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copied of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR-BSE-92-05 and should be submitted by September 25, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-21321 Filed 8-3-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31123; File No. SR-BSE-92-07]

Self-Regulatory Organizations; Filing of Proposed Rule Change by Boston Stock Exchange, Inc. Relating to its Facility Security Policy

August 28, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(B)(1), notice is hereby given that on July 20, 1992, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-BSE-92-07) as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Boston Stock Exchange, Inc. proposes to adopt a Facility Security Policy to ensure the safety of exchange staff and members and to prevent the loss of or damage to Exchange and member equipment and information.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed policy is to address the security concerns of the Exchange and to set forth specific procedures through which to enforce compliance. The policy addresses all Exchange staff, members, customers, vendors and visitors. It is meant to prevent unauthorized access to confidential member firm and Exchange data, damage to equipment and facilities, and injury to persons on the Exchange premises. The policy does not infringe upon the rights of Exchange members to conduct their business, but rather seeks to ensure their safety and the security of proprietary information.

2. Statutory Basis

The basis under the Act for the proposed policy is section 6(b)(5) in that the policy is designed to prevent fraudulent and manipulative acts and practices, to protect investors and the public interest, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by this title matters not related to the purposes of this title or the administration of the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The exchange does not believe that the proposed policy will impose any

burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR-BSE-92-07 and should be submitted by September 25, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-21322 Filed 9-3-92; 8:45 a.m.]

BILLING CODE 8010-01-M

[Release No. 34-31116; International Series Release No. 441; File No. SR-CBOE-92-16]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Listing Options on American Depositary Receipts Representing Shares of Sony Corporation

August 28, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that the Chicago Board Options Exchange, Inc. ("CBOE"), on August 10, 1992, filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to trade options on American Depositary Receipts ("ADRs") representing the shares of Sony Corporation. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Commission approved, by order dated August 29, 1992,[1] uniform, exchange proposals to modify their options listing standards. In that order, the Commission stated that the "Exchanges must file separate rule changes pursuant to section 19(b) of the Act for options on securities other than common stock." On October 4, 1991, the CBOE filed a proposal to amend Interpretation .03 to Exchange Rule 5.3 to state that preferred stock and ADRs meeting the criteria and guidelines set forth in Rule 5.3 are deemed by the CBOE to be securities appropriate for options trading. That proposal is still being reviewed by the Commission. The current proposal requests Commission approval to trade options on ADRs representing the securities of Sony Corporation, while the general listing standards are being reviewed. Options listed on Sony Corporation ADRs would meet Exchange listing standards for options on common stock.[2]

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and section 6(b)(5), in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose an inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

[1] Securities Exchange Act Release No. 29628 (August 29, 1991), 56 FR 43949.

[2] In its filing, the CBOE stated that the Commission has executed a memorandum of understanding with the Ministry of Finance of Japan, which is the appropriate regulatory authority for the country in which the home market for Sony Corporation stock is located.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 21, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. 92-21372 Filed 9-3-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31122; International Series Release No. 445; File No. SR-CBOE-92-15]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Listing Options on Certain Specific American Depository Receipts

August 28, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that the Chicago Board Options Exchange, Inc. ("CBOE"), on August 10, 1992, filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[8] 17 CFR 200.30-3(a)(12) (1991).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to trade options on American Depositary Receipts ("ADRs") representing the shares of British Telecommunications PLC, Empresas ICA Sociedad Controladora S.A. de C.V., Societe Nationale Elf Aquitane, TOTAL, Vitro Sociedad Anonima, Waste Management International PLC, and Wellcome PLC. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Commission approved, by order dated August 29, 1991,[1] uniform, exchange proposals to modify their options listing standards. In that order, the Commission stated that the "Exchanges must file separate rule changes pursuant to section 19(b) of the Act for options on securities other than common stock." On October 4, 1991, the CBOE filed a proposal to amend Interpretation .03 to Exchange Rule 5.3 to state that preferred stock and ADRs meeting the criteria and guidelines set forth in Rule 5.3 are deemed by the CBOE to be securities appropriate for options trading. That proposal is still being reviewed by the Commission. The current proposal requests Commission approval to trade options on ADRs representing the securities of the above listed corporations, while the general listing standards are being reviewed. Options listed on the proposed ADRs would meet Exchange listing standards for options on common stock.[2]

[1] Securities Exchange Act Release No. 29628 (August 29, 1991), 56 FR 43949.

[2] In its filing, the CBOE also noted that it has determined that the primary foreign market for each of the stocks underlying the ADRs on which the option will be listed is located in a country in which the Commission has executed a memorandum of understanding with the appropriate foreign regulatory authority. In addition, the CBOE notes that it has surveillance sharing agreements in place with all of the primary markets for the stocks underlying the ADRs except in the case of Empresas ICA Sociedad Controladora S.A. de C.V. and Vitro Sociedad Anonima.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and section 6(b)(5), in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in

accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 21, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Jonathan G. Katz,

Secretary.

[FR Doc. 92-21373 Filed 9-3-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-25616]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

August 28, 1992.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 21, 1992 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

[3] 17 CFR 200.30-3(a)(12) (1991).

Central Power and Light Company (70-8053)

Central Power and Light Company ("CPL"), 539 N. Carancahua Street, Corpus Christi, Texas 78401-2431, an electric public-utility subsidiary company of Central and South West Corporation, a registered holding company, has filed an application-declaration under sections 6(a), 7, 9(a), 10, and 12(c) of the Act and rules 42(a), 50, and 50(a)(5) thereunder.

CPL requests authorization to issue and sell up to $800 million of first mortgage bonds ("New Bonds"), in one or more series, through December 31, 1994. The New Bonds will be issued under one or more new supplements to an existing trust indenture dated November 1, 1943, as amended and supplemented by previous supplemental indentures (collectively, "Indenture"), and will be secured by a first lien on substantially all of the properties now owned and hereafter acquired by CPL, except for properties specifically excepted from such liens.

The New Bonds will have maturities of not less than five nor more than thirty years. CPL proposes to sell the New Bonds either pursuant to competitive bidding or in negotiated transactions with underwriters or agents. It, therefore, requests an exception from the competitive bidding requirements of Rule 50 under subsection (a)(5) thereunder. It also requests authority to enter into negotiations with potential underwriters with respect to the interest rate, redemption provisions and other terms and conditions applicable to the New Bonds, and to set the terms of the New Bonds, subject to the receipt of an order of this Commission authorizing their issuance and sale. It may do so.

In addition, CPL seeks authorization to issue the new Bonds with terms that deviate from the standards contained in the Commission's Statement of Policy Regarding First Mortgage Bonds, as amended, (HCAR Nos. 13105 and 16369). The New Bonds may include terms which (i) limit CPL's ability to redeem or refund the New Bonds for a period of up to fifteen years, (ii) do not include a sinking fund or retirement fund requirement, and/or (iii) do not restrict CPL's ability to pay dividends on its common stock.

The proceeds from the sale of the New Bonds will be used principally to redeem all or a portion of one or more series of CPL's outstanding first mortgage bonds, including $25 million of 8¾% Series K bonds due January 1, 2000 ("Series K Bonds"), $46 million of 8% Series M bonds due November 1, 2003 ("Series M Bonds"), $40 million of 9⅜% Series N bonds due June 1, 2004 ("Series N Bonds"), $75 million of 8¼% Series O bonds due October 1, 2007 ("Series O Bonds"), $75 million of 8⅞% Series P bonds due September 1, 2008 ("Series P Bonds"), $200 million of 8¾% Series W bonds due May 1, 1996 ("Series W Bonds"), $100 million of 9¾% Series X bonds due November 1, 1994 ("Series X Bonds") and $150 million of 9¾% Series Y bonds ("Series Y Bonds") due June 1, 1998 (collectively, "Old Bonds"), at the then current general redemption price for each series,[1] plus accrued and unpaid interest to the redemption date.[2] The proceeds may also be used to redeem all or a portion of CPL's outstanding 500,000 shares of 8.72% Preferred Stock, par value $100 per share ("Preferred Stock"), at the then current applicable redemption price, currently $102.91 per share, together with all unpaid dividends thereon. Any net proceeds not used for the redemption or repurchase of the Old Bonds and Preferred Stock will be used to repay outstanding short-term borrowings or for other general corporate purposes. In the event that the proceeds from the sale of the New Bonds are less than the amount required to redeem all of any series of CPL's Old Bonds or Preferred Stock, CPL will pay a portion of the redemption or tender price from internally generated funds or available short-term borrowings pursuant to an order of this Commission dated March 29, 1991 (HCAR No. 25288).

CPL believes that the redemption or repurchase of the Old Bonds and Preferred Stock and the issuance of the New Bonds will result in substantial savings to CPL and benefit its ratepayers because there has been a significant reduction in long-term interest rates since the Old Bonds and Preferred Stock were issued. CPL states

[1] The current redemption prices for the Series K, M, N, O, P, W and X Bonds are 102.37%, 103.04%, 103.56%, 104.27%, 105.04%, 101.25% and 101.80%, respectively, of the principal amount of the series.

[2] The Series K, M, N, O, P and W Bonds became refundable pursuant to their terms on or before May 1, 1991. The Series X Bonds will become refundable pursuant to their terms on November 1, 1992. The Series Y Bonds will not be refundable by their terms until June, 1993. If CPL decides to acquire its Series Y Bonds, it will do so through a tender offer to the holders of the Series Y Bonds which may be conditioned upon receipt of a certain percentage of the outstanding Series Y Bonds. CPL estimates that, under present market conditions, a successful tender offer for the Series Y Bonds could be made at approximately 114.5% of the principal amount thereof, plus accrued interest. CPL proposes to retain an investment banking firm to act as its tender agent and dealer-manager for any such tender offer. CPL states that it may also retain a depositary to hold the tendered Series Y Bonds pending the purchase thereof and/or an information agent to assist in the tender offer.

that it will not issue the New Bonds unless the estimated present value savings of doing so (derived from the net difference between interest payments on any New Bonds to be issued for refunding purposes and the interest or divident payment on any Old Bonds or Preferred Stock redeemed) is, on an after-tax basis, greater than the present value of all redemption and issuance costs, assuming an appropriate discount rate.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-21323 Filed 9-3-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18914; 812-7835]

Smith Barney Equity Funds, Inc., et al.; Application

August 28, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Smith Barney Equity Funds, Inc., Smith Barney Funds, Inc., Smith Barney Money Funds, Inc., Smith Barney Muni Bond Funds, Smith Barney Tax Free Money Fund, Inc., Smith Barney World Funds, Inc., and any open-end management investment companies that in the future become members of the Smith Barney, Harris Upham & Co. Incorporated ("Smith Barney") "group of investment companies" as defined in rule 11a-3 under the Act and whose shares are distributed on substantially the same basis as those of the existing funds (collectively, the "Funds"), Mutual Management Corp. ("MMC"), Smith, Barney Advisers, Inc. ("SBA"), and Smith Barney.

RELEVANT ACT SECTIONS: Conditional order requested under section 6(c) for an exemption from sections 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c), and 22(d) of the Act and rule 22c-1 thereunder.

SUMMARY OF APPLICATION: Applicants seek a conditional order under section 6(c) that would permit the Funds (a) to issue three classes of shares representing interests in the same portfolio of securities, and (b) to assess a contingent deferred sales charge ("CDSC") on certain redemptions of shares of two of the classes, and to waive the CDSC in certain cases.

FILING DATE: The application was filed on December 16, 1991, and amendments thereto were filed on February 13, 1992, and July 15, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 22, 1992, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 1345 Avenue of the Americas, New York, New York 10105.

FOR FURTHER INFORMATION CONTACT: John V. O'Hanlon, Staff Attorney, at (202) 272-3922, or Elizabeth G. Osterman, Branch Chief, at (202) 272-3016 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. The Funds are open-end management investment companies registered under the Act. Several of the Funds consist of multiple investment portfolios or series, each of which has separate investment objectives and policies and segregated assets. Each Fund has entered into or will enter into a management agreement with either MMC or SBA. Each Fund has entered into or will enter into a distribution agreement with Smith Barney pursuant to which Smith Barney acts as principal underwriter for the Fund (the "Distributor").

2. Shares of the Funds currently are offered to the public at net asset value plus a front-end sales load. Certain of these Funds also pay fees to Smith Barney under rule 12b-1 plans. The remainder of the Funds currently offer their shares to investors subject to a front-end sales load but without imposition of a rule 12b-1 fee. Funds offered with a front-end sales load are collectively referred to herein as the "Front-End Load Funds." Also, certain of the Funds are money market funds which are offered on a no-load basis (the "Money Market Funds").[1]

3. Applicants seek an exemptive order that would permit the Funds to offer three classes of shares representing interests in the same portfolio of securities and to assess a CDSC on certain redemptions of shares of two of the classes.

A. The Alternative Distribution System

1. Applicants propose to establish an "Alternative Distribution System" that would be implemented by each of the Funds creating two additional classes of shares so that each Fund will offer three classes of shares. Class A would be offered subject to a conventional front-end sales load. Class A shareholders of certain Funds also would be assessed an ongoing service fee under a rule 12b-1 plan based upon a percentage of the average daily net asset value of the Class A shares (expected to be an annual rate of up to 0.25%).

2. Class B shares would be subject to a service fee at an annual rate of up to 0.25%, and a distribution fee at an expected annual rate of up to 0.75%, of average daily net assets pursuant to a rule 12b-1 plan. In addition, an investor's proceeds from a redemption of Class B shares made within a specified period (expected to be 18 months) of his or her purchase may be subject to a CDSC, which would be paid to the distributor.

3. Class C would be offered exclusively to investors with aggregate assets in all of the Funds of $500,000 or more. Class C shares would pay a service fee at an annual rate of up to 0.25% of average daily net assets pursuant to a rule 12b-1 plan. An investor's proceeds from a redemption of Class C shares made within a specified period (expected to be 18 months) of his or her purchase also may be subject to a CDSC.

4. Income would be allocated to each class of shares based on the relative net asset value of each class. Expenses would be allocated to each class based on the relative net asset value of each class, except that each class's net asset value and expenses would reflect the expenses of the Class A, Class B, and Class C rule 12b-1 plans, any expenses that are directly attributable to one class ("Class Expenses"), and any

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[1] It is anticipated that the Money Market Funds will continue to be offered without the imposition of a front-end sales load. The Money Market Funds are parties to this application because they are requesting an order exempting their proposed issuance and sale of three classes of shares so that they may participate in exchanges with the other Funds and impose a CDSC, as set forth below.

incremental expenses properly attributable to one class which the Commission shall approve by an amended order. Because of the ongoing distribution fee and potentially higher Class Expenses (specifically as a result of a higher transfer agency fee) paid by the holders of Class B shares and the potentially higher Class Expenses paid by holders of Class C shares, the net income attributable to and the dividends payable on both Class B shares and Class C shares would be lower than the net income attributable to and the dividends payable on Class A shares. To the extent that a Fund has undistributed net income, the net asset value of the Class A shares would be higher than the net asset value of either the Class B shares or Class C shares.

5. Currently, shares of Front-End Load Funds may be exchanged at net asset value for shares of other Front-End Load Funds and shares of the Money Market Funds. It is contemplated that Class A shares of a Fund would be exchangeable only for Class A shares of the other Funds, including Class A shares of the Money Market Funds. Class B shares of a Fund would be exchangeable only for Class B shares of the other Funds, including Class B shares of the Money Market Funds. Similarly, Class C shares of a Fund would be exchangeable only for Class C shares of the other Funds, including Class C shares of the Money Market Funds. Money Market Fund shares would be exchangeable for either Class A shares, Class B shares, or Class C shares only if the Money Market Fund shares were originally acquired through an exchange, in which case they would be exchangeable only for the class of shares involved in the original exchange into the Money Market Fund shares. The exchange privileges applicable to the Class A, Class B, and Class C shares would comply with rule 11a–3 under the Act.

B. The CDSC

1. Applicants propose to charge a CDSC on certain redemptions of Class B and Class C shares of the Funds and to waive the CDSC on certain redemptions. The amount of any applicable CDSC would be calculated as being the lesser of the amount that represents a specified percentage of the net asset value of the shares at the time of purchase, or the amount that represents the same or lower percentage of the net asset value of the shares at the time of redemption. Currently, the CDSC is expected to be 1.00% for Class B and 1.50% for Class C shares (but may be higher or lower). Any changes in the amount of the CDSC would not affect shares that have already been issued.

2. The CDSC would not be imposed on redemptions of Class B and Class C shares which were purchased more than 18 months prior to the redemptions (the "CDSC Period") or on Class B or Class C shares derived from reinvestment of distributions. Furthermore, no CDSC would be imposed on an amount which represents an increase in the value of the shareholder's account resulting from capital appreciation above the amount paid for shares purchased during the CDSC Period. In determining the applicability of any CDSC, it will be assumed that a redemption is made first of shares representing reinvestment of dividends and capital gain distributions and finally of other shares held by the shareholder for the longest period of time.

3. The Funds request relief to waive the CDSC (a) on redemptions following the death or disability, as defined in section 72(m)(7) of the Internal Revenue Code of 1986, as amended (the "Code"), of a shareholder; (b) in connection with qualified retirement plan distributions which are permitted to be made without penalty pursuant to the Code; (c) in connection with redemptions of shares made pursuant to a shareholder's participation in any systematic withdrawal plan adopted by a Fund; (d) in connection with redemptions by tax-exempt employee benefit plans resulting from the enactment or promulgation of any law or regulation pursuant to which continuation of the investment in the Funds would be improper; and (e) in connection with the exercise of exchange privileges among the Class B or Class C shares of the Funds. If the Funds waive the CDSC, such waiver will be uniformly applied to all offerees in the class specified. In waiving a CDSC, the Funds will comply with the requirements of rule 22d–1 as if the CDSC were a sales load. If the directors or trustees (the "Directors/Trustees") of a Fund which has been waiving its CDSC pursuant to any of the items set forth above determine not to waive such CDSC any longer, the disclosure in that Fund's prospectus will be appropriately revised. Also, any Class B and Class C shares purchased prior to the termination of such waiver would be able to have the CDSC waived as provided in a Fund's prospectus at the time of the purchase of such shares.

Applicants' Legal Analysis

A. The Alternative Distribution System

1. Applicants seek an exemption from sections 18(g), 18(f)(1), and 18(i) to the extent the Alternative Distribution System may result in a senior security, as defined by section 18(g), the issuance and sale of which would be prohibited by section 18(f)(1), and to the extent the allocation of voting rights under the Alternative Distribution System may violate the provisions of 18(i). Applicants believe that the Alternative Distribution System does not raise any of the legislative concerns that section 18 of the Act was designed to ameliorate. The proposal does not involve borrowings and does not affect the funds' existing assets or reserves. Each class of shares will be redeemable at all times. No class of shares will have preference or priority over any other class of the Fund in the usual sense (that is, no class will have distribution or liquidation preferences to particular assets and no class will be protected by any reserve or other account).

2. Owners of each class of shares may be relieved under the Alternative Distribution System of a portion of the fixed costs normally associated with investing in mutual funds since such costs would, potentially, be spread over a greater number of shares than they would be otherwise. Similarly, the owners of Class A, Class B, and Class C shares in those Funds with management agreements under which the fee rates decrease as the net assets of the particular Fund increase could expect to enjoy, under the Alternative Distribution System, lower effective management fee rates than they would enjoy if the arrangement is not implemented.

3. Applicants assert that the Alternative Distribution System would provide a meaningful choice for public investors. Applicants believe that the proposed allocation of expenses and voting rights relating to the rule 12b–1 plans in the manner described above is equitable and would not discriminate against any group of shareholders. In addition, such arrangements should not give rise to any conflict of interest because the rights and privileges of each class of shares are substantially identical.

B. The CDSC

1. Section 2(a)(32) of the Act defines redeemable security to be a security that, upon presentation to the issuer or to a person designated by the issuer, entitles the shareholder to receive approximately his proportionate share of the issuer's current net assets. Applicants assert that the imposition of the CDSC will not restrict a shareholder from receiving a proportionate share of the current net assets, but merely will defer the deduction of a sales charge and make it contingent upon an event that may never occur. However, to avoid uncertainty in this regard, applicants

request an exemption from the operation of section 2(a)(32) of the Act to the extent necessary to permit the imposition of the proposed CDSC.

2. Section 2(a)(35) of the Act defines a sales load to be the amount properly chargeable to sales or promotional expenses that are paid at the time the securities are purchased. Applicants will pay the CDSC to the Distributor to reimburse it for expenses related to the sale of shares. Applicants contend that the deferral of the sales charge, and its contingency upon the occurrence of an event that may not occur, does not change the basic nature of this charge, that is in every other respect a sales charge. Nevertheless, applicants request an exemption from the provisions of section 2(a)(35) to the extent necessary to implement the proposed charge in connection with the Class B and Class C shares of the Funds.

3. Section 22(c) of the Act and rule 22c–1 thereunder require that the price of a redeemable security issued by an open-end management company for purposes of sale, redemption and repurchase be based on the company's current net asset value. Applicants contend that the redemption price of their shares is based on current net asset value. Applicants assert that the CDSC is deducted at the time of redemption in arriving at a shareholder's proportionate redemption proceeds. However, to avoid any question as to the potential applicability of section 22(c) and rule 22c–1, applicants request an exemption from rule 22c–1 to the extent necessary to permit applicants to impose the proposed CDSC.

4. Applicants request an exemption from the provisions of section 22(d) of the Act to permit the waiver of the CDSC as described in this notice. Section 22(d) requires a registered investment company, principal underwriter or dealer in redeemable securities to sell those securities only at a current public offering price described in the company's prospectus. Subject to certain conditions, rule 22d–1 provides an exemption from section 22(d) allowing investment companies to vary or eliminate sales loads to different classes of investors. The CDSC and the waivers therefrom will be applied as described in the Fund's and Portfolio's registration statements. However, to preclude any assertion that rule 22d–1 is inapplicable to the CDSC, applicants request an exemption from section 22(d) to the extent necessary or appropriate to implement the CDSC and waivers therefrom as described above.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

A. Conditions Relating to the Alternative Distribution System

1. Each class of shares will represent interests in the same portfolio of investments of a Fund and be identical in all respects, except as set forth below. The only differences among various class of shares of the same Fund will relate solely to: (a) the impact of the respective rule 12b–1 plan payments made by each of the Class A shares, Class B shares, and Class C shares of a Fund, any Class Expenses that may be imposed upon a particular class of shares and which are limited to (i) transfer agency fees attributable to a specific class of shares; (ii) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and proxies to current shareholders of a specific class; (iii) blue sky registration fees incurred by a class of shares; (iv) Commission registration fees incurred by a class of shares; (v) the expenses of administrative personnel and services as required to support the shareholders of a specific class; (vi) litigation or other legal expenses relating solely to one class of shares; (vii) Directors/Trustees' fees incurred as a result of issues relating to one class of shares; and (viii) any other incremental expenses subsequently identified that should be properly allocated to one class which shall be approved by the Commission pursuant to an amended order, (b) voting rights on matters which pertain to rule 12b–1 plans, (c) the different exchange privileges of the various classes of shares as described in the prospectuses (and as more fully described in the statements of additional information) of the Funds, and (d) the designation of each class of shares of a Fund.

2. The Directors/Trustees of each of the Funds, including a majority of the Independent Directors/Trustees, shall have approved the Alternative Distribution System prior to the implementation of the Alternative Distribution System by a particular Fund. The minutes of the meetings of the Directors/Trustees of each of the Funds regarding the deliberations of the Directors/Trustees with respect to the approvals necessary to implement the Alternative Distribution System will reflect in detail the reasons for determining that the proposed Alternative Distribution System is in the best interests of both the Funds and their respective shareholders and such minutes will be available for inspection by the Commission staff.

3. The initial determination of Class Expenses, if any, that will be allocated to a particular class of a Fund and any subsequent changes thereto will be revised and approved by a vote of the Directors/Trustees including a majority of the Independent Directors/Trustees. Any person authorized to direct the allocation and disposition of the monies paid or payable by the Fund to meet Class Expenses shall provide to the Directors/Trustees, and the Directors/Trustees shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

4. On an ongoing basis, the Directors/Trustees of the Funds, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflicts among the interests of the various classes of shares. The Directors/Trustees, including a majority of the Independent Directors/Trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Manager and the Distributor will be responsible for reporting any potential or existing conflicts to the Directors/Trustees. If a conflict arises, the Manager and the Distributor at their own costs will remedy such conflict up to and including establishing a new registered management investment company.

5. Any rule 12b–1 plan adopted or amended to permit the assessment of a rule 12b–1 fee on any class of shares which has not had its rule 12b–1 plan approved by the public shareholders of that class will be submitted to the public shareholders of such class for approval at the next meeting of shareholders after the initial issuance of the class of shares. Such meeting is to be held within 16 months of the date that the registration statement relating to such class first becomes effective or, if applicable, the date that the amendment to the registration statement necessary to offer such class of shares first becomes effective.

6. The Directors/Trustees of the Funds will receive quarterly and annual statements complying with paragraph (b)(3)(iii) of rule 12b–1, as it may be amended from time to time. In the statements, only distribution expenditures properly attributable to the sale of a class of shares will be used to support the rule 12b–1 fee charged to shareholders of such class of shares. Expenditures not related to the sale of a

specific class of shares will not be presented to the Directors/Trustees to support rule 12b–1 fees charged to shareholders of such class of shares. The statements, including the allocations upon which they are based, will be subject to the review and approval of the Independent Directors/Trustees in the exercise of their fiduciary duties under rule 12b–1.

7. Dividends paid by a Fund with respect to each class of shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day and will be in the same amount, except that fee payments made under the rule 12b–1 plans relating to the Class A, Class B, and Class C shares, respectively, will be borne exclusively by each such class and except that any Class Expenses will be borne by the applicable class of shares.

8. The methodology and procedures for calculating the net asset value and dividends/distributions of the various classes and the proper allocation of income and expenses among such classes has been reviewed by an expert (the "Independent Examiner"). The Independent Examiner has rendered a report to the applicants, which has been provided to the staff of the Commission, stating that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner, subject to the conditions and limitations in that report. On an ongoing basis, the Independent Examiner, or an appropriate substitute Independent Examiner, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Independent Examiner shall be filed as part of the periodic reports filed with the Commission pursuant to section 30(a) and 30(b)(1) of the Act. The work papers of the Independent Examiner with respect to such reports, following request by the Funds which the Funds agree to make, will be available for inspection by the Commission staff upon the written request for such work papers by a senior member of the Division of Investment Management or of a Regional Office of the Commission, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Independent Examiner is a "Special Purpose" report on the "Design of a System," and the ongoing reports will be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defined and described in SAS No. 44 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

9. The applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends/distributions among the various classes of shares and the proper allocation of income and expenses among such classes of shares and this representation has been concurred with by the Independent Examiner in the initial report referred to in condition (8) above and will be concurred with by the Independent Examiner, or an appropriate substitute Independent Examiner, on an ongoing basis at least annually in the ongoing reports referred to in condition (8) above. The applicants agree to take prompt corrective action if the Independent Examiner, or appropriate substitute Independent Examiner, does not so concur in the ongoing reports.

10. The prospectuses of the Funds will include a statement to the effect that an account executive and any other person entitled to receive compensation for selling shares of the fund may receive different levels of compensation for selling Class A shares, Class B shares, or Class C shares.

11. The Distributor will adopt compliance standards as to when Class A shares, Class B shares, and Class C shares may appropriately be sold to particular investors. The applicants will require all persons selling shares of the Funds to agree to conform to such standards.

12. The conditions pursuant to which the exemptive order is granted and the duties and liabilities of the Directors/Trustees of the Funds with respect to the Alternative Distribution System will be set forth in guidelines which will be furnished to the Directors/Trustees as part of the materials setting forth the duties and responsibilities of the Directors/Trustees.

13. Each Fund will disclose in its prospectus the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of shares offered through the prospectus. Class A, Class B, and Class C shares will be offered and sold through a single prospectus. Each fund will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. To the extent any advertisement or sales literature describes the expenses or performance data applicable to Class A, B, or C shares, it will disclose the expenses and/or performance data applicable to the three classes. The information provided by the applicants for publication in any newspaper or similar listing of the Funds' net asset values and public offering prices will separately present Class A, Class B, and Class C shares.

14. The applicants acknowledge that the grant of the exemptive order requested by this application will not imply Commission approval, authorization acquiescence in any particular level of payments that the Funds may make pursuant to rule 12b–1 plans in reliance on the exemptive order.

B. Conditions Relating to the CDSC

1. The applicants will comply with the provisions of proposed rule 6c–10 under the Act, Investment Company Act Release No. 16619 (Nov. 2, 1988), as such rule is currently proposed and as it may be reproposed, adopted or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–21324 Filed 9–3–92; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18913; 811–3505]

Vantage Money Market Funds; Application for Deregistration

August 28, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Vantage Money Market Funds.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N–8F was filed on August 12, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be

received by the SEC by 5:30 p.m. on September 22, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 1345 Avenue of the Americas, New York, NY 10105.

FOR FURTHER INFORMATION CONTACT: Felicia H. Kung, Senior Attorney, at (202) 504–2803, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a Massachusetts business trust and is registered as an open-end diversified management investment company under the Act. On June 29, 1982, applicant filed a notification of registration under section 8(a) of the Act. On September 10, 1982, applicant filed a registration statement under the Securities Act of 1933 and section 8(b) of the Act. Applicant's registration statement was declared effective on October 13, 1982, and its initial public offering commenced on October 18, 1982.

2. At a meeting held on December 6, 1991, applicant's board of trustees approved an agreement and plan of reorganization (the "Reorganization Plan") between applicant and Smith Barney Money Funds, Inc. ("Smith Barney") (File No. 811–2490).

3. Applicant mailed to its shareholders proxy materials, dated April 24, 1992, relating to the proposed reorganization. On June 25, 1992, applicant had outstanding 1,088,446,903 shares of its Cash Portfolio and 300,591,650 shares of its Government Portfolio, each share with a net asset value of $1.00 per share. At a special meeting held on June 26, 1992, applicant's shareholders approved the reorganization.

4. On June 26, 1992, pursuant to the Reorganization Plan and in compliance with rule 17a–8, applicant transferred all assets and disclosed liabilities of its Vantage Cash Portfolio and Vantage Government Portfolio to Smith Barney in exchange for shares of Smith Barney's Cash and Government Portfolios, respectively. The transfer of applicant's assets for Smith Barney shares was based on the relative net asset value of the portfolios. Shares of the two Smith Barney portfolios were distributed to shareholders of Vantage Cash Portfolio and Vantage Government Portfolio, respectively, *pro rata* in accordance with their respective interests in Vantage Cash and Vantage Government Portfolios.

5. All expenses in connection with the reorganization, such as the costs of preparing, printing and mailing the related proxy materials, and the related legal and governmental filing fees, will be paid by Mutual Management Corp., applicant's former investment adviser and the investment adviser to Smith Barney.

6. At the time of the application, applicant had no shareholders, assets or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 92–21325 Filed 9–3–92; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 18915; International Series Rel. No. 446; 812–8058]

William Blair Mutual Funds, Inc.; Application

August 31, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANT: William Blair Mutual Funds, Inc.

RELEVANT ACT SECTIONS: Order requested under section 6(c) for an exemption from the provisions of section 12(d)(3).

SUMMARY OF APPLICATION: Applicant seeks a conditional order permitting it to acqurie equity and convertible debat securities of foreign issuers that, in each of their msot recent fiscal years, derived mroe than 15% of their gross revenue from their activities as a broker, dealer, underwriter, or investment adviser ("foreign securities companies"), provided that such investments comply with the provisions of proposed amended rule 12d3–1 under the Act.

FILING DATE: The application was filed on August 20, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 pm. on September 25, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 135 South LaSalle Street, Chicago, Illinois 60603.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Law Clerk, at (202) 272–7027, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a Maryland corporation, is registered as a diversified open-end management investment company under the Act. Applicant presently consists of three separate investment portfolios: The Growth Shares portfolio, the Income Shares portfolio, and the Ready Reserves Shares portfolio. Applicant intends to establish a fourth portfolio: The International Growth Shares portfolio ("International"). International is the only portfolio that currently intends to invest in equity or convertible debt securities of foreign issuers. William Blair & Company acts as the investment adviser for each portfolio. Framlington Overseas Investment Management Limited will serve as sub-adviser for International.

2. Applicant, consistent with its investment policies and objectives, seeks to invest in equity securities and convertible debt securities of foreign securities companies. Applicant seeks conditional relief from section 12(d)(3) of the Act to invest in equity and convertible debt securities of foreign

securities companies to the extent permitted in proposed amended rule 12d3–1 under the Act. *See* Investment Company Act Release No. 17096 (Aug. 3, 1989).

Applicant's Legal Conclusions

1. Section 12(d)(3) generally prohibits an investment company from acquiring any security issued by any person who is a broker, a dealer, an underwriter, or an investment adviser. Rule 12d3–1 provides an exemption from section 12(d)(3) for investment companies acquiring securities of an issuer that derived more than 15% of its gross revenues in its most recent fiscal year from securities-related activities, provided that these investments comply with certain conditions set forth in the rule.

2. Applicant's proposed acquisition of securities issued by foreign securities companies will comply with the provisions of current rule 12d3–1, except subparagraph (b)(4) thereof. Subparagraph (b)(4) of rule 12d3–1 provides that, any equity security of the issuer must be a "margin security" as defined in Regulation T promulgated by the Board of Governors of the Federal Reserve (the "Board"). Although the Board maintains a list of foreign margin securities, many securities of foreign securities companies are not included on such list. Accordingly, applicant is prevented from investing in equity securities of many foreign securities companies that are comparable in quality to "margin securities," but do not fall within the definition of "margin securities" in Regulation T.

3. Proposed amended rule 12d3–1 provides that the "margin security" requirement will be excused if the acquiring company purchases the equity securities of foreign securities companies that meet the qualitative criteria comparable to criteria applicable to equity securities of United States securities-related businesses.

Applicant's Condition

Applicant agrees that the proposed exemptive order will be subject to the following condition:

Applicant will comply with the proposed amendments to rule 12d3–1 (Investment Company Act Release No. 17096 (Aug. 3, 1989); 54 FR 33027 (Aug. 11, 1989)) as they are currently proposed, or as they may be reproposed, adopted, or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–21374 Filed 9–3–92; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted October 5, 1992. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (SF 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3RD Street, SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205–6629.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Nomination for the Small Business Prime Contractor and Subcontractor of the Year Award
SBA Form No.: SBA Forms 883, 1375
Frequency: Annual
Description of Respondents: Small Businesses
Annual Responses: 363
Annual Burden: 1,452

Title: Prime Contracts Quarterly Report
SBA Form No.: SBA Form 843A, 843B
Frequency: Quarterly
Description of Respondents: Procurement Center Representatives
Annual Responses: 1,340
Annual Burden: 670

Title: Personal Financial Statement
SBA Form No.: SBA Forms 413
Frequency: On occasion
Description of Respondents: Small Business Loan Applicants
Annual Responses: 88,000
Annual Burden: 132,000

Cleo Verbillis,

Acting Chief, Administrative Information Branch.

[FR Doc. 92–21456 9–3–92; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2585]

Indiana and Contiguous Counties in Kentucky; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on August 17, 1992, and an amendment thereto dated August 18, 1992, I find that the Counties of Clark, Jackson, Jefferson, Lawrence, Scott, and Washington in the State of Indiana constitute a disaster area as a result of damages caused by severe weather, torrential rains, and flash flooding August 8 through and including August 11, 1992. Applications for loans for physical damage may be filed until the close of business on October 16, 1992, and for loans for economic injury until the close of business on May 17, 1993, at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, suite 300, Atlanta, Georgia 30308 or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the contiguous Counties of Bartholomew, Brown, Crawford, Floyd, Greene, Harrison, Jennings, Martin, Monroe, Orange, Ripley, and Switzerland in Indiana and Carroll, Jefferson, Oldham, and Trimble Counties in Kentucky may be filed until the specified date at the above location.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	8.500
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 258506 and for

economic injury the numbers are 768500 for Indiana and 768600 for Kentucky.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 25, 1992.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 92-21446 Filed 9-3-92; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2582; Amendment #1]

Ohio and Contiguous Counties in Indiana and Pennsylvania; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with an amendment dated August 11, 1992, to the President's major disaster declaration of August 4, to include Cuyahoga, Mahoning, Medina, Mercer, Summit, Trumbull, and Van Wert Counties in the State of Ohio as a disaster area as a result of damages caused by severe storms, tornadoes, and flooding beginning on July 12, 1992 and continuing.

In addition, small businesses located in the contiguous counties of Allen, Ashland, Ashtabula, Columbiana, Geauga, Lake, Lorain, Paulding, Portage, Putnam, Stark, and Wayne in Ohio; Adams, Allen, and Jay in Indiana; and Crawford, Lawrence, and Mercer in Pennsylvania may file applications until the specified date at the aforementioned location.

The economic injury numbers are 768200 for Ohio; 769000 for Indiana; and 769100 for Pennsylvania.

All other information remains the same, i.e., the termination date for filing applications for physical damage is October 4, 1992, and May 4, 1993 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 21, 1992.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 92-21447 Filed 9-3-92; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Economic Injury Disaster Loan Area #7687]

Rhode Island and Contiguous Counties in Massachusetts and Connecticut; Declaration of Disaster Loan Area

Providence County and contiguous counties of Bristol and Kent in the State of Rhode Island; Bristol, Norfolk and Worcester Counties in Massachusetts; and Windham County in Connecticut constitute an Economic Injury Disaster Loan Area due to a Water Contamination Emergency caused by the presence of coliform bacteria in the water supply serving the communities of Pawtucket, Central Falls, and Cumberland in Rhode Island beginning on August 3, 1992. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on May 19, 1993 at the address listed below: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South, 3rd Fl., Niagara Falls, NY 14303, or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: August 19, 1992.

Patricia Saiki,

Administrator.

[FR Doc. 92-21444 Filed 9-3-92; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2584]

Oklahoma; Declaration of Disaster Loan Area

Okmulgee County and the contiguous counties of Creek, McIntosh, Muskogee, Okfuskee, Tulsa, and Wagoner in the State of Oklahoma constitute a disaster area as a result of damages caused by flooding which occurred on August 5, 1992. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on October 15, 1992 and for economic injury until the close of business on May 14, 1993 at the address listed below: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., suite 102, Ft. Worth, TX 76155, or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	6.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	8.500
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 258406 and for economic injury the number is 768400.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 14, 1992.

Patricia Saiki,

Administrator.

[FR Doc. 92-21445 Filed 9-3-92; 8:45 am]

BILLING CODE 8025-01-M

[License #06/06-0206]

Caddo Capital Corporation; License Surrender

Notice is hereby given that Caddo Capital Corporation ("Caddo"), a Louisiana corporation, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). Caddo was licensed by the Small Business Administration on May 1, 1979.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on August 2, 1991, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 25, 1992.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 92-21441 Filed 9-3-92; 8:45 am]

BILLING CODE 8025-01-M

[License #04/04-0201]

Carolina Venture Capital Corporation; License Surrender

Notice is hereby given that Carolina Venture Capital Corporation ("CVCC"), a South Carolina corporation, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). CVCC was licensed by the Small Business Administration on January 19, 1981.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender

of the license was accepted on April 4, 1990, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 25, 1992.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 92-21439 Filed 9-3-92; 8:45 am]

BILLING CODE 8025-01-M

[License #08/08-0047]

Colorado Growth Capital, Inc.; License Surrender

Notice is hereby given that Colorado Growth Capital, Inc. ("CGC"), a Colorado corporation, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). CGC was licensed by the Small Business Administration on June 28, 1979.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on September 17, 1990, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 25, 1992.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 92-21442 Filed 9-3-92; 8:45 am]

BILLING CODE 8025-01-M

[License #07/07-5078]

Community Equity Corporation of Nebraska; License Surrender

Notice is hereby given that Community Equity Corporation of Nebraska ("CECN"), a Nebraska corporation, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). CECN was licensed by the Small Business Administration on August 16, 1977.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on February 14, 1990, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 25, 1992.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 92-21430 Filed 9-3-92; 8:45 am]

BILLING CODE 8025-01-M

[License #04/10-0086]

Delta Capital, Inc.; License Surrender

Notice is hereby given that Delta Capital, Inc. ("Delta"), a North Carolina corporation, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). Delta was licensed by the Small Business Administration on November 29, 1961.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on October 30, 1990, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 25, 1992.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 92-21443 Filed 9-3-92; 8:45 am]

BILLING CODE 8025-01-M

[License #09/09-0305]

Enterprise Venture Capital Corporation; License Surrender

Notice is hereby given that Enterprise Venture Capital Corporation ("EVCC"), a California corporation, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). EVCC was licensed by the Small Business Administration on May 3, 1983.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on December 14, 1990, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 25, 1992.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 92-21437 Filed 9-3-92; 8:45 am]

BILLING CODE 8025-01-M

[License #02/04-0048]

ESIC Capital, Inc.; License Surrender

Notice is hereby given that ESIC Capital, Inc. ("ESIC"), a New York corporation, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). ESIC was licensed by the Small Business Administration on December 24, 1963.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on March 30, 1990, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 25, 1992.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 92-21431 Filed 9-3-92; 8:45 am]

BILLING CODE 8025-01-M

[License #05/06-0031]

Gries Investment Company; License Surrender

Notice is hereby given that Gries Investment Company ("GIC"), an Ohio corporation, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). GIC was licensed by the Small Business Administration on March 24, 1964.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on January 17, 1992, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 25, 1992.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 92-21440 Filed 9-3-92; 8:45 am]

BILLING CODE 8025-01-M

[License #02/02-5285]

North Street Capital Corporation; Notice of License Surrender

Notice is hereby given that North Street Capital Corporation ("NSCC"), a New York corporation, has surrendered

its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). NSCC was licensed by the Small Business Administration on October 16, 1970.

Under the authority vested by the Act and pursuant to the regulation promulgated thereunder, the surrender of the license was accepted on January 19, 1990, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 25, 1992.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 92-21438 Filed 9-3-92; 8:45 am]

BILLING CODE 8025-01-M

[License #06/06-0260]

Omega Capital Corporation; License Surrender

Notice is hereby given that Omega Capital Corporation ("Omega"), a Texas corporation, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). Omega was licensed by the Small Business Administration on August 12, 1982.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on March 6, 1991, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 25, 1992.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 92-21434 Filed 9-3-92; 8:45 am]

BILLING CODE 8025-01-M

[License #09/09-0195]

San Jose SBIC, Inc.; License Surrender

Notice is hereby given that San Jose SBIC, Inc. ("San Jose"), a California corporation, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). San Jose was licensed by the Small Business Administration on September 2, 1977.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on August 10, 1990, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 25, 1992.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 92-21435 Filed 9-3-92; 8:45 am]

BILLING CODE 8025-01-M

[License #05/05-0203]

Seagate Venture Management Inc.; License Surrender

Notice is hereby given that Seagate Venture Management Inc. ("Seagate"), an Ohio corporation, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). Seagate was licensed by the Small Business Administration on July 19, 1985.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on May 29, 1991, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 25, 1992.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 92-21433 Filed 4-3-92; 8:45 am]

BILLING CODE 8025-01-M

[License #06/06-0234]

Southwestern Venture Capital of Texas, Inc.; License Surrender

Notice is hereby given that Southwestern Venture Capital of Texas, Inc. ("SWVC"), a Texas corporation, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). SWVC was licensed by the Small Business Administration on November 24, 1980.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on July 15, 1990, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 25, 1992.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 92-21436 Filed 9-3-92; 8:45 am]

BILLING CODE 8025-01-M

[License #02/02-5364]

Venture Capital Puerto Rico, Inc.; License Surrender

Notice is hereby given that Venture Capital Puerto Rico, Inc. ("VCPR"), a Puerto Rico corporation, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). VCPR was licensed by the Small Business Administration on February 24, 1981.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on June 12, 1990, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 25, 1992.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 92-21432 Filed 9-3-92; 8:45 am]

BILLING CODE 8025-01-M

Region IV Advisory Council; Public Meeting

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of Georgia, will hold a public meeting from 8:00 a.m. on Thursday, October 15, to 12 Noon on Friday, October 16, 1992, at the Clarion Buccaneer, 85 Beachview Drive, Jekyll Island, Georgia, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Wilfred A. Stone, District Director, U.S. Small Business Administration, 1720 Peachtree Road, NW., 6th Floor, Atlanta, Georgia 30309, (404) 347-4749.

Dated: September 1, 1992.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92-21453 Filed 9-3-92; 8:45 am]

BILLING CODE 8025-01-M

Region III Advisory Council; Public Meeting

The U.S. Small Business Administration Region III Advisory Council, located in the geographical area of Baltimore, will hold a public meeting from 9 a.m. to 11 a.m. on Thursday, September 17, 1992 at the U.S. Small Business Administration, 10 North Calvert Street, 3d Floor, Baltimore, Maryland, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Charles J. Gaston, District Director, U.S. Small Business Administration, 10 North Calvert Street, 3d Floor, Baltimore Maryland, 21202, (410) 962-2054.

Dated: August 31, 1992.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92-21448 Filed 9-3-92; 8:45 am]

BILLING CODE 8025-01-M

Region III Advisory Council; Public Meeting

The U.S. Small Business Administration Region III Advisory Council, located in the geographical area of Pittsburgh, will hold a public meeting on Thursday and Friday, September 17-18, 1992 at 10:30 a.m., at Edinboro Inn (Holiday Inn), U.S. Route 6N, Edinboro, Pennsylvania, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Joseph M. Kopp, District Director, U.S. Small Business Administration, 960 Penn Avenue, 5th Floor, Pittsburgh, Pennsylvania 15222, (412) 644-4306 or Mr. Al Werner, Chairperson, Pittsburgh District Advisory Council, (412) 762-2040.

Dated: August 24, 1992.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92-21449 Filed 9-3-92; 8:45 am]

BILLING CODE 8025-01-M

Region IV Advisory Council; Public Meeting

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of Columbia, will hold a public meeting at 9:30 a.m. on Thursday, October 1, 1992, in the SC Electric and Gas Energy Information Center at Dutch Square, Columbia, South Carolina, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Elliott O. Cooper, District Director, U.S. Small Business Administration, P.O. Box 2786, Columbia, South Carolina 29201, (803) 765-5339.

Dated: August 31, 1992.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92-21454 Filed 9-3-92; 8:45 am]

BILLING CODE 8025-01-M

Region IV Advisory Council; Public Meeting

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of Nashville, will hold a public meeting from 8:00 a.m. on Friday, October 23, 1992 at Pickwick Landing State Park, Pickwick Dam, Tennessee, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Robert M. Hartman, District Director, U.S. Small Business Administration, 50 Vantage Way, suite 201, Nashville, Tennessee 37228-1500, (615) 736-5850.

Dated: August 31, 1992.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92-21452 Filed 9-3-92; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council; Public Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of Dallas-Fort Worth, will hold a public meeting at 9:30 a.m. on Friday, October 23, 1992 at the U.S. Small Business Administration, 4300 Amon Carter Boulevard, suite 114, Fort Worth, Texas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. James S. Reed, District Director, U.S. Small Business Administration, 4300 Amon Carter Boulevard, suite 114, Fort Worth, Texas 76155, (817) 885-6500.

Dated: August 31, 1992.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92-21450 Filed 9-3-92; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council; Public Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of El Paso, will hold a public meeting from 9 a.m. to 12 noon on Friday, September 18, 1992, at the First City Bank of El Paso, 320 North Stanton Street, El Paso, Texas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. John E. Scott, District Director, U.S. Small Business Administration, 10737 Gateway West, suite 320, El Paso, Texas 79935, (915) 540-5560.

Dated: August 24, 1992.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92-21451 Filed 9-3-92; 8:45 am]

BILLING CODE 8025-01-M

Region VIII Advisory Council; Public Meeting

The U.S. Small Business Administration Region VIII Advisory Council, located in the geographical area of Casper, will hold a public meeting at 9 a.m., on Friday, October 9, 1992, at the Holiday Inn, 900 East Sunset, Riverton, Wyoming, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. James Gallogly, District Director, U.S. Small Business Administration, Federal Building, room 4001, 100 East B Street, P.O. Box 2839, Casper, Wyoming 82602-2839, (307) 261-5761.

Dated: August 28, 1992.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92-21455 Filed 9-3-92; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended August 28, 1992

The following Agreements were filed with the Department of Transportation

under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 48320.
Date filed: August 26, 1992.
Parties: Members of the International Air Transport Association.
Subject: Comp Reso/C0517 Dated August 14, 1992, Reso 033F–Lebanon.
Proposed Effective Date: August 7, 1992.

Docket Number: 48321.
Date filed: August 26, 1992.
Parties: Members of the International Air Transport Association.
Subject: TC2 Mail Vote 593, Fares from Tanzania to Africa/Mideast.
Proposed Effective Date: October 1, 1992.

Docket Number: 48322.
Date filed: August 26, 1992.
Parties: Members of the International Air Transport Association.
Subject: Request For Interim Approval of Amendments to the Provisions for the Conduct of The IATA Traffic Conferences.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 92–21381 Filed 9–3–92; 8:45 am]
BILLING CODE 4910–62–M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended August 28, 1992

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations, (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 48318.
Date filed: August 26, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 22, 1992.
Description: Application of Transwede Airways AB, pursuant to section 402 of the Act and subpart Q of the Regulations for renewal of its foreign air carrier permit to engage in charted foreign air transportation of persons and their accompanying baggage: Between any point or points in Denmark, Norway and Sweden and any point or points in the United States.

Docket Number: 48319.
Date filed: August 26, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 23, 1992.
Description: Application of TAMPA, pursuant to section 402 of the Act and subpart Q of the Regulations applies for an amended foreign air carrier permit seeking authority to conduct scheduled cargo flights between a point or points in Colombia, on the one hand, and New York, New York; Los Angeles, California; Miami, Florida; and San Juan, Puerto Rico, on the other hand, via intermediate points. TAMPA also seeks authority to coterminalize Miami and San Juan and Miami and New York.

Docket Number: 48323.
Date filed: August 27, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 24, 1992.
Description: Application of Alitalia, pursuant to section 402 of the Act and subpart Q of the Regulations, requests amendment of its foreign air carrier permit to authorize it to engage in foreign air transportation between the Republic of Italy and the United States.

Docket Number: 48325.
Date filed: August 28, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 25, 1992.
Description: Application of United Air Lines, Inc, pursuant to section 401 of the Act and subpart Q of the Regulations applies for an amendment to its certificate of public convenience and necessity for Route 566 so as to authorize foreign air transportation of persons, property and mail over the following additional U.S.-Mexico route segments: "Between Los Angeles, California and Acapulco, Mexico," and "Between Los Angeles, California, and San Jose del Cabo, Mexico."

Docket Number: 48327.
Date filed: August 28, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 25, 1992.
Description: Application of Mesaba Aviation, Inc. d/b/a Mesaba Airlines d/b/a Mesaba Northwest Airlink, pursuant to section 401(d)(1) of the Act and subpart Q of the Act, for a certificate of convenience and necessity to engage in scheduled interstate and overseas air transportation of persons, property and mail.

Docket Number: 48328.
Date filed: August 28, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 25, 1992.
Description: Application of Atlas Air, Inc., pursuant to section 401(d)(1), and subpart Q of the Regulations, requests issuance of a certificate of public convenience and necessity authorizing Atlas to engage scheduled air transportation of property and mail in interstate and overseas markets.

Docket Number: 47675.
Date filed: August 25, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 22, 1992.
Description: Application of Delta Air Lines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations, applies to renew its authority to serve the New York, New York/Boston, Massachusetts-Nairobi, Kenya market, the only authority on segment 12 of Delta's certificate of public convenience and necessity for Route 616 that is limited as to duration.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 92–21380 Filed 9–3–92; 8:45 am]
BILLING CODE 4910–62–M

Federal Aviation Administration

General Aviation and Business Airplane Subcommittee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration General Aviation and Business Airplane Subcommittee of the Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on September 16, 1992, at 9 a.m. Arrange for oral presentations by September 9, 1992.

ADDRESSES: The meeting will be held in the Board Room, National Business Aircraft Association, Inc., 1200 Eighteenth Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Ball, (AIR–1), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8235.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. II), notice is hereby given of a meeting of the General Aviation

and Business Airplane Subcommittee to be held on September 16, 1992, in the Board Room, National Business Aircraft Association, Inc., 1200 Eighteenth Street, NW., Washington, DC 20036. The agenda will include:

- Report from the Accelerated Stalls Working Group.
- Report from the Fuel Indicators Working Group.
- Report on JAR/FAR 23 Working Group.
- Discussion of future activities.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by September 9, 1992, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 12 copies to the Executive Director, or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading **"FOR FURTHER INFORMATION CONTACT."**

Issued in Washington, DC, on August 28, 1992.

William J. Sullivan,

Executive Director, General Aviation and Business Airplane Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 92-21345 Filed 9-3-92; 8:45 am]

BILLING CODE 4910-13-M

Aviation Security Advisory Committee; Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Aviation Security Advisory Subcommittee Meeting.

SUMMARY: Notice is hereby given of a meeting of the Equipment and Technology Subcommittee of the Aviation Security Advisory Committee.

DATES: The meeting will be held September 18, 1992, from 9 a.m. to 2 p.m.

ADDRESSES: The meeting will be held in the main auditorium of the Federal Aviation Administration Technical Center Technology and Administration Building, Atlantic City International Airport, New Jersey.

FOR FURTHER INFORMATION CONTACT: The Aviation Security Research and Development Service, FAA Technical Center, Atlantic City International Airport, NJ 08405, telephone 609-484-4872.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Equipment and Technology Subcommittee of the Aviation Security Advisory Committee to be held September 18, 1992, in the main auditorium of the Federal Aviation Administration Technical Center Technology and Administration Building, Atlantic City International Airport, New Jersey.

The agency for the meeting will include (a) a review of current aviation security technology and equipment, (b) report of results of recent aircraft hardening conference, (c) description of Combined Technology Test (CTT) Program, (d) review of Aviation Security Research, Engineering, and Development requirements, (e) discussion of Baltimore Washington International Airport Demonstration Program and airport security design criteria, (f) discussion of new laboratory equipment, activities, and tour, and (g) life cycle. Attendance at the September 18, 1992, meeting is open to the public but limited to space available. Members of the public may address the subcommittee only with the written permission of the chair, which should be arranged in advance. The chair may entertain public comment if, in its judgment, doing so will not disrupt the orderly progress of the meeting and will not be unfair to any other person. Members of the public are welcome to present written material to the subcommittee at any time.

Persons wishing to present statements or obtain information should contact the Aviation Security Research and Development Service, Federal Aviation Administration Center, Atlantic City International Airport, NJ 08405, telephone 609-484-4872.

Issued in Washington, DC, on August 31, 1992.

Jack L. Gregory,

Deputy Assistant Administrator for Civil Aviation Security.

[FR Doc. 92-21347 Filed 9-3-92; 8:45 am]

BILLING CODE 4910-13-M

Office of Hearings

[Docket 48331]

Trans World Express, Ltd.; Assignment of Proceeding

This proceeding has been assigned to Chief Administrative Law Judge John J. Mathias. All future pleadings and other communications regarding the proceeding shall be served on him at the Office of Hearings, M-50, room 9228, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-2142.

John J. Mathias,

Chief Administrative Law Judge.

[FR Doc. 92-21342 Filed 9-3-92; 8:45 am]

BILLING CODE 4910-62-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Christopher Columbus and the Spanish Exploration of the Indies," (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the IBM Gallery of Science and Art, New York, New York, from on or about September 17, 1992, to on or about November 7, 1992, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: September 1, 1992.

Alberto J. Mora,

General Counsel.

[FR Doc. 92-21496 Filed 9-3-92; 8:45 am]

BILLING CODE 8230-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATION

Implementation of the Accelerated Tariff; Elimination Provision of the United States-Canada Free-Trade Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of and request for comments on articles under consideration for negotiations with the

[1] A copy of this list may be obtained by contacting Mr. Paul W. Manning of the Office of the General Counsel of USIA. The telephone number is 202/619-6827, and the address is room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

Canadian Government for accelerated tariff elimination.

SUMMARY: Section 201(b) of the United States-Canada Free-Trade Agreement Implementation Act of 1988 ("FTA Implementation Act") grants the President, subject to consultation and layover requirements of section 103 of that Act, the authority to proclaim any accelerated schedule for duty elimination that may be agreed to by the United States and Canada under FTA Article 401(5). This notice is intended to inform the public of those articles that may be the subject of negotiations between the United States and Canada for accelerated tariff elimination.

DATES: Public comments are due November 2, 1992.

ADDITIONAL INFORMATION: Further information on this subject may be found in the **Federal Register** notice of November 15, 1991, Volume 56, Number 221, at page 581117 through 581119. Copies of a listing of specific products to be considered for accelerated tariff elimination, where the subheading is listed in Annexes I and II with an asterisk, may be obtained from one of the following agencies:

Agricultural Products (Chapters 1–24 of the Harmonized Tariff Schedule of the United States (HTSUS)): U.S. Department of Agriculture, Foreign Agricultural Service, FAS Publications, room 5910-s, Washington, DC 20250–1000, Telephone (202) 447–7937.

Non-agricultural products (Chapters 24–99 of the HTSUS); U.S. Department of Commerce, International Trade Administration, Office of Canada, room 3033, 14th and Constitution Ave, NW., Washington, DC 20230, Telephone (202) 377–3101

or

Office of the United States Trade Representative, Office of Public Affairs, 600 17th Street, NW., room 103, Washington, D.C. 20506.

Inquiries regarding other aspects of this notice or relating to the implementation of accelerated tariff elimination under the FTA should be directed to Mr. P. Claude Burcky, Office of North American Affairs, Office of the United States Trade Representative, room 501, 600 17th Street, NW., Washington, DC 20506, Telephone (202) 395–3412.

Requests for Comments

Comments supporting or opposing accelerated U.S. or Canadian duty elimination on articles provided for in the tariff subheadings listed in Annex I or Annex II will be accepted until November 2, 1992, if submitted in accordance with 15 CFR part 21003. Comments should be type-written and submitted in ten copies to P. Claude Burcky, Office of North American Affairs, room 501, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20506. All submissions must specify: (1) The United States and/or Canadian subheading to which the comments refer, (2) the name, address, and telephone number of the person, firm, or organization making the comments, and (3) an indication as to whether the writer represents a:

—Producer in the United States
—Importer in the United States
—Exporter in the United States
—Consumer in the United States
—Other, in the United States (please specify)
—Producer in Canada
—Importer in Canada
—Exporter in Canada
—Consumer in Canada
—Other, in Canada (please specify)

Advice of the United States International Trade Commission

The United States International Trade Commission is being furnished with the list of the article published in Annex I of this notice for the purpose of securing from the Commission its judgment as to the probable economic effect of accelerated elimination of United States duties on industries producing like or directly competitive articles and on consumers.

Advice of the Private Sector Advisory Committees

Pursuant to section 103(a)(1) of the FTA Implementation Act, private sector advisory committees are being furnished with the list of articles published in Annexes I and II of this notice for the purpose of securing their advice.

Articles That May Be Considered in Negotiations

Except as noted, all articles provided for in the subheadings of the Harmonized Tariff Schedule of the United States that are listed in Annex I of this notice, and in the subheadings of the Customs Tariff of Canada that are listed in Annex II, may be subject to negotiations with Canada for accelerated duty elimination. A description of the articles provided for in the tariff subheadings listed in Annex I can be obtained by consulting the "Harmonized Tariff Schedule of the United States (1992)," U.S. International Trade Commission Publication 2449. The "Customs Tariff" of Canada should be consulted for the description of the articles provided for in the tariff subheadings listed in Annex II.

For subheadings listed in Annex I and II with an asterisk, only certain products covered by the subheadings may be considered for accelerated tariff elimination. A list of specific products which may be considered is available (see "**ADDITIONAL INFORMATION**" above).

Charles E. Roh, Jr.,

Assistant U.S. Trade Representative for North American Affairs.

BILLING CODE 3190-01-M

Annex I

Subheadings in the Harmonized Tariff Schedule of the United States containing products to be considered for accelerated removal of the duty.

[Except as noted, all products provided for in the subheadings listed below which are currently dutiable on importation into the United States from Canada under the U.S.-Canada Free Trade Agrement will be considered for accelerated removal of the duty. For the subheadings with an asterisk, only certain specified products will be considered for accelerated removal of the duty. Information on obtaining a list of such products is contained in the body of this notice.]

0202.30	1519.19	2005.90.20	2208.90.60	3919.90.10*	3926.90.20*
0209.00.00*	1602.49.90	2005.90.50	2208.90.65	3919.90.50*	3926.90.45 1/
0305.30.20	1602.50.90*	2005.90.55	2208.90.70	3920.10.00*	3926.90.83
0305.61.20	1603.00.10	2005.90.80	2208.90.75	3920.20.00*	3926.90.90*
0306.14.20	1604.12.20	2005.90.85	2208.90.80	3920.41.00*	4008.11.10*
0306.24.20	1604.13	2005.90.87	2309.90.60	3920.42.50*	4008.11.50*
0601.20.90*	1604.19.40	2005.90.95	2403.91.40*	3920.59*	4008.21.00*
0602.99.30	1604.19.50	2007.99.05*	2836.20.00*	3920.61.00*	4008.29.00*
0602.99.60	1604.20.05	2007.99.10	3004.20.00*	3920.72.00	4010.99*
0603.10.30	1604.20.15	2007.99.15*	3004.32.00*	3920.92.00*	4011.40.00
0603.10.60	1604.20.25	2007.99.20*	3004.39.00*	3920.99.10*	4012.90.20*
0603.10.70*	1604.20.30	2007.99.25*	3004.90.60*	3920.99.20*	4012.90.50*
0603.90.00	1604.20.40	2007.99.35*	3005.10.10*	3920.99.50*	4013.10.00
0604.99.60	1604.20.50	2007.99.45*	3006.60.00*	3921.19.00*	4013.90.50
0704.90.40*	1604.20.60	2007.99.70*	3302.10	3921.90.11*	4016.10.00*
0706.90.20*	1605.10.05	2007.99.75*	3302.90	3921.90.15*	4016.92.00
0709.90.40*	1605.10.20	2008.19.90*	3304.99.00	3921.90.19*	4016.93.00*
0711.90.60*	1605.10.40	2008.92*	3305.30.00	3921.90.21*	4016.99.25*
0712.10.00	1605.20.05	2008.99.05*	3305.90.00	3921.90.25*	4016.99.50*
0712.90.10	1605.30.05	2008.99.90*	3306.10.00	3921.90.29*	4017.00.00*
0712.90.15	1605.90.05	2009.11.00	3306.90.00*	3921.90.40*	4202.32.10*
0712.90.20	1704.90.20	2009.19	3307.10	3921.90.50*	4202.92.15*
0712.90.65	1806.10.30	2009.20	3307.20.00	3922.10.00*	4202.92.20*
0712.90.70	1806.10.41	2009.80.60*	3307.30	3922.20.00*	4202.92.30*
0712.90.75	1806.10.42	2009.90.40*	3307.49.00*	3922.90.00*	4202.92.45*
0712.90.80	1806.20.40*	2103.20	3307.90.00*	3923.10.00*	4203.10
1001.90	1806.20.60*	2103.30.40	3502.10	3923.21.00*	4203.21.80*
1003.00	1806.20.70*	2103.90.40	3916.90.10*	3923.29.00*	4203.30.00
1104.11.00	1806.20.80*	2103.90.60	3916.90.20	3923.40.00*	4410.10.00*
1104.21.00	1806.31.00*	2104.10.00	3916.90.30*	3923.50.00 1/	4411.21.00
1107.10.00	1806.90.00*	2106.90.60*	3916.90.50*	3923.90.00*	4412.19.50*
1107.20.00	1901.20.00*	2202.10.00	3917.23.00*	3924.10.10	4418.10.00*
1108.11.00	1902.11.40	2202.90	3917.32.00*	3924.10.20	4418.90.40 1/
1109.00	1902.19.40	2206.00.90*	3917.40.00*	3924.10.30	4421.90.90*
1515.19.00	1904.90.00*	2207.10.30*	3918.10.31	3924.10.50*	5101.11
1518.00.20	1905.90.90*	2208.10	3918.10.32	3924.90.20	5101.19
1518.00.40*	2002.10.00	2208.20	3918.10.40	3924.90.50*	5101.21
1519.11.00	2004.10	2208.50.00	3919.10.10*	3925.90.00*	5101.29
1519.12.00	2005.90.10	2208.90.45	3919.10.20*	3926.10.00*	5101.30

5103.10.00	5402.51.00*	5512.29.00*	5902.10.00	6203.33	6911.10.60
5103.20.00	5402.61.00*	5512.91.00*	5902.20.00	6203.39	6911.10.80
5104.00.00	5402.62.00*	5513.11.00*	5902.90.00	6204.42*	6912.00
5105.10.00	5402.69.00	5513.21.00*	5903.10.15*	6210.10*	7007.19.00
5105.21.00	5403.10	5514.19.00*	5903.10.18*	6210.40*	7007.29.00
5105.29.00	5403.32.00	5515.11.00*	5903.10.20*	6211.33.00*	7010.90.20
5105.30.00	5403.33.00	5515.13.05*	5903.10.25*	6212.10	7010.90.30
5105.40.00	5403.39.00	5515.13.10*	5903.90 1/	6212.20.00	7013.99*
5106.10.00	5403.42.00	5515.19.00*	5904.91.00*	6217.10.00*	7019.10 1/
5106.20.00	5404.10.10 1/	5515.21.00*	5904.92.00*	6301.10.00	7019.31.00
5107.10.00	5404.10.80*	5515.22.05*	5905.00.90	6301.30.00	7019.39
5107.20.00	5404.90.00 1/	5515.22.10*	5906.10.00*	6301.40.00	7019.90.50*
5111.11	5405.00	5515.29.00*	5906.99*	6301.90.00*	7117.19
5111.19	5407.10.00*	5515.92.05*	5911.31.00	6302.22.20*	7117.90.50*
5111.20	5407.41.00 1/	5515.92.10*	5911.32.00	6302.40	7209.23.00*
5111.30	5407.42.00 1/	5515.99.00*	5911.40.00	6302.51	7210.12.00*
5111.90	5407.51.00*	5516.11.00*	5911.90.00 1/	6302.52	7210.70*
5112.11	5407.53*	5516.21.00*	6002.42.00	6304.92.00	7212.40*
5112.19 1/	5408.10.00	5516.31.05*	6002.43.00*	6304.99	7213.31
5112.20	5408.21.00*	5516.31.10*	6002.92.00*	6305.20.00	7213.50.00
5112.30	5408.33*	5516.32.05*	6002.93.00*	6307.90.99*	7215.90*
5112.90	5501.10.00	5516.33.05*	6108.21.00	6402.19*	7217.11.10*
5203.00.00	5501.20.00	5516.34.05*	6108.22.00	6403.19*	7217.11.20*
5204.11.00	5501.30.00	5516.41.00*	6113.00.00*	6403.59	7217.11.30*
5204.19.00	5501.90.00	5516.91.00*	6114.30.30*	6404.11*	7217.11.50*
5204.20.00	5503.10.00 1/	5601.30.00*	6115.11.00	6406.91.00*	7217.11.70
5205.12*	5503.20.00	5602.10.10*	6115.12.00	6406.99.15*	7217.11.90*
5205.15	5503.30.00	5602.10.90	6115.19.00	6406.99.30*	7217.12.50
5208.12*	5503.40.00	5602.21.00*	6115.20.00	6406.99.60*	7217.13*
5208.22	5503.90.00	5603.00.30*	6115.91.00	6406.99.90*	7217.23*
5208.32	5504.90.00	5603.00.90*	6115.92	6602.00.00*	7217.31.30
5209.11.00	5506.10.00	5604.20.00	6115.93	6804.22	7217.32.10
5209.21.00	5506.20.00	5605.00.00	6115.99	6809.11.00*	7217.33*
5209.31 1/	5506.30.00	5609.00.30*	6116.10.70*	6810.19.12	7219.12.00
5209.42.00	5506.90.00	5702.31.20*	6116.93.88*	6815.99.40 1/	7219.21.00*
5211.11.00	5508.10.00	5702.32.20*	6117.80.00*	6907.10.00	7219.22.00*
5211.42.00	5508.20.00	5703.20*	6201.11.00	6907.90.00	7222.30.00*
5212.21.10*	5509.11.00*	5703.30.00*	6201.13	6908.10	7223.00.10*
5212.21.60*	5509.12.00*	5704.90.00*	6201.91	6908.90.00	7223.00.50*
5309.11.00*	5509.21.00*	5705.00.20*	6201.92	6909.19*	7223.00.90*
5309.21.40*	5509.22.00*	5801.25.00 1/	6201.93	6911.10.20	7225.10.00
5402.10.60	5510.11.00*	5801.35.00 1/	6202.11.00	6911.10.35	7226.10
5402.20.60	5511.10.00*	5806.32*	6202.13	6911.10.39	7228.60*
5402.32	5511.20.00*	5806.40.00	6202.91	6911.10.41	7229.90*
5402.33*	5512.11.00*	5807.10.20*	6202.93	6911.10.45	7304.41.00*
5402.49.00 1/	5512.21.00*	5808.10.30*	6203.32	6911.10.49	7304.49.00*

7306.30.10*	7411.29*	8215.99.05*	8450.90.00*	8544.11.00*	9405.10.80*
7306.30.50*	7412.20.00 1/	8215.99.10*	8479.89.10	8544.19.00*	9405.40.60*
7306.40*	7413.00 1/	8215.99.15*	8479.90.40*	8544.41.00 1/	9405.60*
7307.11.00*	7419.10.00*	8215.99.20*	8501.10*	8544.49.00*	9405.92.00*
7307.19*	7419.91.00*	8215.99.22*	8501.40*	8544.51.80*	9503.90.50*
7307.22.10	7607.11	8215.99.24*	8504.31*	8544.59.20*	9506.31.00
7307.29.00	7607.19	8215.99.26*	8504.32.00*	8544.59.40*	9506.32.00
7307.91.50*	7607.20.10	8215.99.30*	8506.11.00*	8544.60.20*	9506.39.00 1/
7307.93	7610.10.00*	8215.99.35*	8506.20.00*	8544.60.40*	9506.59
7307.99*	7612.10.00	8215.99.40*	8506.90.00*	8544.60.60*	9506.91.00*
7308.20.00	7612.90.10*	8215.99.45*	8507.20.00 1/	8545.20.00*	9506.99.12*
7308.30*	7616.90.00*	8215.99.50*	8507.30.00*	8546.20.00*	9506.99.15*
7308.90.90*	8203.10	8301.40.60*	8509.10.00	8546.90.00*	9506.99.45*
7312.10*	8203.20.40	8301.50.00	8509.80.00*	8547.90.00*	9506.99.60*
7314.19.00	8203.20.60*	8301.60.00*	8509.90.20	8548.00.00*	9603.50.00
7314.20.00*	8203.20.80	8302.10 1/	8509.90.40 1/	8606.10.00 1/	9603.90
7314.30	8203.30.00	8302.20.00*	8511.30.00*	8606.20.00 1/	9608.20.00
7314.41.00	8203.40*	8302.41	8511.50.00*	8606.30.00 1/	9609.10.00
7315.89.10	8204.11.00*	8302.42 1/	8511.80*	8606.91.00 1/	9609.90.80
7315.89.50	8204.12.00	8302.49.20*	8511.90*	8606.92.00 1/	9612.10*
7315.90.00*	8204.20.00	8302.49.60*	8512.20.40*	8606.99.00 1/	
7317.00.10	8205.20	8302.49.80*	8512.30.00*	8708.99.50*	
7317.00.30	8205.30	8302.50.00	8512.90.20*	8715.00.00	
7317.00.55	8205.40.00	8303.00.00	8516.10.00*	8716.10.00*	
7317.00.65 1/	8205.51	8308.10.00*	8516.79.00*	8716.31.00	
7317.00.75	8205.59.10	8308.20	8516.90.60*	8716.39.00 1/	
7318.15.20*	8205.59.55*	8309.90.00*	8518.30.20	8716.40.00	
7318.24.00*	8205.59.60*	8409.99.91	8518.40	8716.90.30*	
7318.29.00*	8205.59.70*	8415.10.00	8518.50.00	8716.90.50*	
7320.90.50*	8205.59.80*	8415.81.00 1/	8518.90	8903.92.00*	
7321.83.00*	8205.70.00	8415.90.00 1/	8523.13.00*	9001.40.00	
7321.90.60*	8208.40.30	8416.10.00	8523.90.00*	9001.50.00	
7323.93.00*	8211.91*	8416.20.00	8535.10.00*	9017.30.40*	
7323.99	8211.92.20*	8416.90.00*	8535.40.00*	9018.41.00	
7324.90.00	8211.92.80*	8418.10.00	8535.90.00*	9019.10.20*	
7325.99*	8211.93.00	8418.30.00	8536.10.00 1/	9025.90.00*	
7326.19.00*	8211.94*	8418.69.00*	8536.20.00*	9032.89*	
7326.20.00*	8212.10.00	8418.91.00*	8536.30.00*	9113.20	
7326.90.10*	8212.20.00	8418.99.00*	8536.49.00*	9202.90.60*	
7326.90.60*	8214.90.30	8422.11.00	8536.50.00*	9209.30.00*	
7326.90.90*	8214.90.60*	8422.90.05*	8536.69.00*	9209.92.40*	
7408.19.00*	8214.90.90*	8424.10.00 1/	8536.90.00 1/	9209.92.80*	
7411.21	8215.20.00	8424.90.05	8538.90.00*	9404.30*	
7411.22.00	8215.99.01*	8450.11.00	8540.11.00	9404.90*	

1/ Certain goods provided for in the subheading and originating in Canada are already free of duty under the U.S.-Canada Free Trade Agreement (see chapter 99, subchapter V, of the Harmonized Tariff Schedule of the United States (1992)—Supplement 1).

Annex II

Subheadings in the Customs Tariff of Canada containing products to be considered for accelerated removal of the duty.

[Except as noted, all products provided for in the subheadings listed below which are currently dutiable on importation into Canada from the United States under the U.S.-Canada Free Trade Agreement will be considered for accelerated removal of the duty. For the subheadings with an asterisk, only certain specified products will be considered for accelerated removal of the duty. Information on obtaining a list of such products is contained in the body of this notice.]

0202.30.00	1704.90.20	2207.10.10*	3916.90.90*	4005.91.00*	5112.11
0306.14.00	1704.90.30	2208.10.00	3917.23.00*	4008.11.00*	5112.19
0306.24.00	1704.90.90*	2208.20.00	3917.32.00*	4008.21.90*	5112.20
0601.20.10*	1806.10.00	2208.50.00	3917.40.00*	4008.29.00*	5112.30
0602.99.99*	1806.20.90*	2208.90.10	3918.10.11	4010.99.90*	5112.90
0603.10.90*	1806.31.00*	2208.90.30	3918.10.19	4011.40.00	5203.00.90
0603.90	1806.90.00*	2208.90.41	3919.10.99*	4012.90.90*	5204.11.00
0604.99.90	1901.20.10*	2208.90.91	3919.90.99*	4013.10.00	5204.19.00
0704.90.41	1902.11.00	2309.90.20	3920.10.00*	4013.90.90	5204.20.00
0706.90.51*	1902.19.90	2403.91.90*	3920.20.00*	4016.10.00*	5205.12.00*
0709.90.99*	1904.90*	2710.00.10*	3920.41.00*	4016.92.00	5205.15.00
0711.90.00*	1905.90.90*	2710.00.20*	3920.42.00*	4016.93.00*	5208.12.00*
0712.10.00	2002.10.00	2710.00.30*	3920.59.00*	4016.99.90*	5208.22.90
0712.90.20	2004.10.00	2712.10.00*	3920.61.00*	4017.00.90*	5208.32.90
0712.90.90	2005.90.11	2712.90.90*	3920.72.00	4202.32.00*	5209.11.00
1001.90.00	2005.90.19	2713.20.90*	3920.92.00*	4202.92.10*	5209.21.00
1003.00.00	2005.90.99	2715.00.20*	3920.99.00*	4202.92.90*	5209.31.00
1104.11.00	2007.99.10	2715.00.90*	3921.19.90*	4203.10.00	5209.42.00
1104.21.00	2007.99.90	2817.00.00*	3921.90.11*	4203.21.90*	5211.11.00
1107.10	2008.19.90*	2836.20.00*	3921.90.90*	4203.30.00	5211.42.00
1107.20	2008.92.90*	3004.20.00*	3922.10.00*	4411.21.00	5212.21.10*
1108.11.00	2008.99.19*	3004.32.90*	3922.20.00*	4412.19.10	5212.21.20*
1109.00.00	2008.99.99*	3004.39.99*	3922.90.10*	4412.19.90*	5212.21.90*
1515.19.00	2009.11.90	3004.90.99*	3922.90.90*	4418.10.10	5309.11.00*
1518.00.10	2009.19.90	3005.10.10*	3923.10.00*	4418.90	5309.21.00*
1518.00.90	2009.20.90	3006.60.00*	3923.21.00*	4421.90.90*	5402.10.00
1519.11.00	2009.80.19*	3302.10.00	3923.29.00*	5105.10.90	5402.20.00
1519.12.00	2009.90.30*	3302.90.00	3923.40.00*	5105.29.90	5402.32.00
1519.19.00	2103.20.00	3304.99.00	3923.50	5105.30.90	5402.33.00*
1602.49.10	2103.30	3305.30.00	3923.90.00*	5105.40.90	5402.49.00
1602.50.10	2103.90	3305.90.00	3924.10.10	5106.10.00	5402.51.00*
1603.00.21	2104.10.00	3306.10.00	3924.10.90*	5106.20.00	5402.61.00*
1604.12.91	2106.90.30*	3306.90.00*	3924.90.90*	5107.10.00	5402.62.00*
1604.13	2106.90.70*	3307.10.00	3925.90.00*	5107.20.00	5402.69.00
1604.19.10	2106.90.80	3307.20.00	3926.10.00*	5111.11	5403.10.00
1604.20	2106.90.90*	3307.30.00	3926.90.40*	5111.19.00	5403.32.00
1605.10.00	2202.10.00	3307.49.00*	3926.90.90*	5111.20	5403.33.00
1605.30.10	2202.90	3307.90.00*	4005.10.00	5111.30	5403.39.00
1605.90.10	2206.00.90*	3502.10	4005.20.00*	5111.90	5403.42.00

5404.10.00*	5515.29.00*	5911.90.20	6302.51.00	7217.11.00*	7323.99.90
5404.90.00	5515.92.00*	5911.90.90	6302.52.00	7217.12.00*	7324.90
5405.00.00	5515.99.00*	6002.42	6304.92.00	7217.13.00*	7325.99.99*
5407.10.00*	5516.11.00*	6002.43.90*	6304.99.00	7217.23.00*	7326.19.00*
5407.41.00	5516.21.00*	6002.92.00*	6305.20.00	7217.31.00*	7326.20.00*
5407.42.00	5516.31.00*	6002.93.00*	6307.90.99*	7217.32.00*	7326.90.99*
5407.51.00*	5516.32.00*	6108.21.00	6402.19.00*	7217.33.00*	7408.19.10*
5407.53.00*	5516.33.00*	6108.22.00	6403.19.00*	7219.12.00	7411.21
5408.10.00	5516.34.00*	6113.00.90*	6403.59.00	7219.21.00*	7411.22
5408.21.00*	5516.41.00*	6114.30.00*	6404.11*	7219.22.00*	7411.29.10*
5408.33.00*	5516.91.00*	6115.11.00	6406.91.90*	7222.30.00*	7411.29.29*
5501.10.00	5601.30.12*	6115.12.00	6406.99.90*	7223.00.19*	7412.20.00
5501.20.00	5602.10.10*	6115.19.00	6602.00.00*	7225.10	7413.00.00
5501.30.00	5602.10.91	6115.20.00	6804.22.90	7226.10	7419.10.00*
5501.90.00	5602.10.99	6115.91.00	6809.11.10	7228.60.00*	7419.91.90*
5503.10.00	5602.21.00*	6115.92.00	6813.10.90*	7229.90.00*	7607.11.20
5503.20.00	5603.00.20*	6115.93.00	6815.99.20	7304.41.00*	7607.11.30
5503.30.00	5603.00.90*	6115.99.00	6815.99.30	7304.49.00*	7607.19
5503.40.00	5604.20	6116.10.00*	6815.99.40	7306.30.00*	7607.20
5503.90.00	5605.00.00	6116.93.00*	6815.99.91	7306.40.00*	7610.10.00*
5504.90.00	5609.00.00*	6117.80.90*	6815.99.99	7307.11*	7612.10.00
5506.10.00	5702.31.00*	6201.11.00	6907.10.00	7307.19*	7612.90.00*
5506.20.00	5702.32.00*	6201.13.00	6907.90	7307.22.00*	7616.90.90*
5506.30.00	5703.20*	6201.91.00	6908.10.00	7307.29	8203.10.00
5506.90.00	5703.30*	6201.92	6908.90	7307.91.91*	8203.20.00*
5508.10.00	5704.90.00*	6201.93.00	6909.19.00*	7307.93	8203.30
5508.20.00	5705.00.00*	6202.11.00	6911.10.00	7307.99*	8203.40.00*
5509.11.00*	5801.25	6202.13.00	6912.00.00	7308.20.00	8204.11.00*
5509.12.00*	5801.35.00	6202.91.00	7007.19.00	7308.30.90*	8204.12.00
5509.21.00*	5806.32.00*	6202.93.00	7007.29.00	7308.90.90*	8204.20
5509.22.10*	5806.40.00	6203.32.00	7010.90.90	7310.29.99*	8205.20.00
5510.11.00*	5807.10.20*	6203.33.00	7013.99.90	7312.10.90*	8205.30.00
5511.10.00*	5808.10.00*	6203.39.00	7019.10.10	7314.19	8205.40.00
5511.20.00*	5902.10.00	6204.42.00*	7019.10.29	7314.20.00*	8205.51.00
5512.11.00*	5902.20.00	6210.10.00*	7019.31	7314.30.00	8205.59.90*
5512.21.00*	5902.90.00	6210.40.00*	7019.39.00	7314.41.00	8205.70
5512.29.00*	5903.10.20*	6211.33.00*	7019.90.90*	7315.89	8208.40.20
5512.91.00*	5903.90	6212.10.00	7117.19.00	7315.90.90*	8211.91*
5513.11.00*	5904.91*	6212.20.00	7117.90.00*	7317.00	8211.92.00*
5513.21.00*	5904.92.00*	6217.10.00*	7209.23.00*	7318.15.00*	8211.93.00
5514.19.00*	5905.00	6301.10.00	7210.12.00*	7318.24.00*	8211.94.00*
5515.11.00*	5906.10.20*	6301.30.00	7210.70.00*	7318.29.00*	8212.10.00
5515.13.00*	5906.9920	6301.40.00	7212.40.00*	7320.90.90*	8212.20.00
5515.19.00*	5911.31.00	6301.90.00*	7213.31.00	7321.83.00*	8214.90.90*
5515.21.00*	5911.32.00	6302.22.00*	7213.50.00	7321.90.40*	8215.20
5515.22.00*	5911.40.00	6302.40.00	7215.90.00*	7323.93.00*	8215.99.10*

8215.99.20*	8501.40.19*	8539.40.20*	9202.90.90*
8215.99.90*	8501.40.29*	8540.11.00	9209.30.90*
8301.40.90*	8503.00.11*	8544.11.00*	9209.92.20*
8301.50.00	8504.31.00*	8544.19.00*	9404.30.00*
8301.60.00*	8504.32.00*	8544.41.00	9404.90.90*
8302.10.00	8506.11.00*	8544.49.00*	9405.10.00*
8302.20.00*	8506.20.00*	8544.51.00*	9405.40.90*
8302.41	8506.90.90*	8544.59.00*	9405.60.00*
8302.42.00	8507.20.00	8544.60.00*	9405.92.00*
8302.49.90*	8507.30.00*	8545.20.00*	9503.90.00*
8302.50.00	8509.10.00	8546.20.00*	9506.31.00
8303.00.00	8509.80.00*	8546.90.00*	9506.32
8308.10.90*	8509.90.10	8547.90.90*	9506.39.20
8308.20.90	8509.90.30	8548.00.00*	9506.39.30
8309.90.00*	8511.30.00*	8604.00.90	9506.39.90
8407.34.00*	8511.50.00*	8606.10.00	9506.59.90
8409.99.20	8511.80.00*	8606.20.00	9506.91.90*
8415.10	8511.90.20*	8606.30.00	9506.99.60*
8415.81.00	8512.20.00*	8606.91.00	9506.99.99*
8415.90.10	8512.30.00*	8606.92.00	9603.50.90
8415.90.40	8512.90.00*	8606.99.00	9603.90
8416.10	8516.10.20*	8701.20.00	9608.20.00
8416.20	8516.10.90*	8708.99.99*	9609.10.00
8416.90.10*	8516.79.90*	8715.00.00	9609.90.00
8416.90.20*	8516.90.49*	8716.10.21*	9612.10.10*
8418.10	8516.90.90*	8716.31.00	
8418.30.00	8518.30.90	8716.39.20	
8418.69.00*	8518.40.00	8716.39.30	
8418.91.10*	8518.50.00	8716.39.40	
8418.91.20*	8518.90.20	8716.39.50	
8418.91.40*	8518.90.30	8716.39.90	
8418.99.10*	8518.90.40	8716.40.00	
8418.99.30*	8523.13.00*	8716.90.20	
8418.99.50*	8523.90.00*	8716.90.40	
8422.11.91	8535.10.00*	8716.90.90*	
8422.11.99	8535.40.00*	8901.20.00	
8422.90.91*	8535.90.90*	8901.90	
8424.10.00	8536.10.00	8903.92.00*	
8424.90.10	8536.20.00*	8905.20*	
8450.11	8536.30.90*	9001.40.90	
8450.90.10*	8536.49.00*	9001.50.90	
8450.90.40	8536.50.91*	9017.30.00*	
8479.89.20	8536.50.99*	9019.10.10*	
8479.90.10*	8536.69.00*	9025.90.10*	
8501.10.90*	8536.90	9032.89.90*	
8501.33.19*	8538.90.90*	9113.20.00	

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BILLING CODE 3190-01-C

Sunshine Act Meetings

Federal Register
Vol. 57 No. 173
Friday, September 4, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 10:05 a.m. on Tuesday, September 1, 1992, the Corporation's Board of Directors determined, on motion of Director C.C. Hope, Jr. (Appointee), seconded by Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), concurred in by Director Stephen R. Steinbrink (Acting Comptroller of the Currency) and Acting Chairman Andrew C. Hove, Jr., that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Memorandum and resolution re: Final amendments to Part 327 of the Corporation's rules and regulations, entitled "Assessments," which amendments increase the assessment to be paid by Savings Association Insurance Fund members.

Memorandum and resolution re: Final amendments to Part 327 of the Corporation's rules and regulations, entitled "Assessments," which amendments increase the assessment to be paid by Bank Insurance Fund members.

Memorandum re: Bank Insurance Fund Recapitalization Schedule.

Memorandum and resolution re: Final regulation establishing a transitional risk-based assessment.

By the same majority vote, the Board further determined that no notice earlier than August 28, 1992, of these changes in the subject matter of the meeting was practicable.

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: September 1, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92-21523 Filed 9-2-92; 2:48 pm]

BILLING CODE 6714-01-M

Corrections

Federal Register
Vol. 57, No. 173
Friday, September 4, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 210

National School Lunch Program, Special Milk Program for Children, and School Breakfast Program: Coordinated Review Effort

Correction

In rule document 92–20400 beginning on page 38579 in the issue of Wednesday, August 26, 1992 make the following corrections:

1. On page 38584, in the third column, in amendatory instruction 2d., in the third line, "for" should read "from".

2. On the same page, in the same column, in amendatory instruction 2i., in the third line, "(1)(3)" should read "(l)(3)".

§ 210.18 [Corrected]

3. On page 38585, in the first column, in § 210.18(j), in the last line, "§ 210.3(d)(3)" should read "§ 210.30(d)(3)"; and two lines below paragraph (j), "(1) * * *" should read "(l) * * *".

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

International Trade Administration

University of California, Berkeley, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

Correction

In notice document 92–19428 appearing on page 36635 in the issue of Friday, August 14, 1992, in the third column, in the second line from the top, "MIIα" should read "MPα".

BILLING CODE 1505–01–D

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federal register

Friday
September 4, 1992

Part II

Department of Health and Human Services

Social Security Administration

Supplemental Security Income Modernization Project; Final Report; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

Supplemental Security Income Modernization Project; Final Report by the Experts

AGENCY: Social Security Administration, HHS

ACTION: Notice of final report and request for public comments.

SUMMARY: The Social Security Administration (SSA) requests comments on the final report of the Supplemental Security Income (SSI) Modernization Project (the Project) experts.

DATES: Comments must be postmarked on or before December 3, 1992.

ADDRESSES: Comments should be submitted in writing to the SSI Modernization Project Staff, room 311, Altmeyer Building, P.O. Box 17052, Baltimore, MD 21235.

FOR FURTHER INFORMATION CONTACT: SSI Modernization Project Staff, room 311, Altmeyer Building, P.O. Box 17052, Baltimore, MD 21235, telephone (410) 965–3571.

SUPPLEMENTARY INFORMATION:

SSA has undertaken a comprehensive examination of the SSI program by reviewing its fundamental structure and purpose. The SSI program has been in operation over 18 years. The purpose of the Project is to determine whether the SSI program is meeting and will continue to meet the needs of the population it is intended to serve in an efficient and caring manner, recognizing the constraints in the current fiscal climate.

The Project was intended to create a dialogue that provided a full examination of how well the SSI law, and the policies developed by SSA to implement the law, serve people with very low or no income who are over 65 or blind or otherwise disabled. The goal of the initial dialogue was to exchange ideas and information about the program and to promote the sharing of ideas among attendees' constituencies, including advocacy groups, State and local governments, and academicians. To begin this dialogue, the Commissioner involved 21 people who are experts in the SSI program and/or related public policy areas. The experts represent a wide range of interests regarding programs that serve aged, blind and disabled persons. Dr. Arthur S. Flemming, former Secretary of Health, Education and Welfare, is the Chairman. The Project held meetings in Baltimore, MD; Washington, DC; New York, NY; Chicago, IL; Los Angeles, CA; Montgomery, AL; Atlanta, GA; and Falls Church, VA. We announced these meetings in the Federal Register and invited the public to comment either in person or through correspondence. During these meetings, the public as well as the experts expressed their individual views and concerns about the SSI program.

From late June 1990 to July 1991 more than 400 individuals, including current and former SSI recipients, representative payees, representatives from professional organizations, advocacy groups, legal services organizations, institutions, private agencies and federal, State and local governments, provided oral and/or written comments. The Chairman and other experts met with SSA employees in regional offices in all 10 regions of the Department of Health and Human Services across the country. They also met with State disability determination services employees in five States, and staff in a hearing office.

On July 31, 1991, the Project published a paper in the Federal Register (56 FR 36640) which identified issues and options. The paper summarized the comments which had been provided and included options for change that were identified as a result of public comments. The public was invited to comment by September 30, 1991. In all, approximately 14,600 comments were received on this paper. These public comments were shared with the Project experts in preparation for their final meeting, on January 9–10, 1992, in Falls Church, VA. The experts' individual views concerning what options they supported and which deserve priority consideration are included in this final report.

The Commissioner of Social Security has asked the Modernization Project Staff to solicit comments on this report. After the close of the public comment period announced by this notice, the Project staff will prepare an analysis of the options presented in this paper, taking into account the experts' individual views and the public comments. The analysis will be considered by SSA in developing legislative proposals as well as in determining regulatory and other initiatives which do not require legislation.

Dated: August 18, 1992.

Peter D. Spencer,

Executive Staff Director, SSI Modernization Project.

August 24, 1992.

Gwendolyn S. King,

Commissioner of Social Security, Baltimore, Maryland 21235

Dear Commissioner King: I am transmitting to you the report of the experts who served on the Supplemental Security Income Modernization Project.

In submitting this report, I want to express our deep appreciation to you for establishing this project and for providing us with a farsighted mandate which constitutes a basis for the study. I also want to express our gratitude for the part played by Rhoda Davis, the Associate Commissioner for Supplemental Security Income, and Peter Spencer, the Executive Staff Director of the project. They, and many of your associates, traveled the second mile in rendering us services. We want to pay tribute also to the other members of your career staff for their help and assistance and for acting at all times in accordance with the highest standards of the Federal career service.

I want to make a few observations growing out of my participation in this study.

I am stuck by the fact that this nation does not have a well-coordinated policy for poor persons as individuals.

I have been very much impressed by the following observation by Father Henry J.M. Nouwen in his book, "Aging: The Fulfillment of Life".

"The painful suffering of many old people cannot be understood by pointing to their mistakes, weaknesses, or sins. By doing so we might avoid the realization that the fact of many old people reflects an evil that is the evil of a society in which love has been overruled by power and generosity by competition. They are not just suffering for themselves but for all of us who are, knowingly or unknowingly, responsible for their condition."

I find no difficulty in substituting for "old people" the words "poor people". This then becomes an accurate portrayal of what is oftentimes our approach to poor persons of any age.

We seem to be unaware of their suffering—suffering which grows out of starvation, lack of clothing, and lack of a home. We rationalize our failure to respond to this suffering by pointing to the mistakes, weaknesses, and sins of some. We fail to recognize that all are suffering and that the fate of many poor persons also reflects the evil of a society in which love has been overruled by power.

We seem to forget that their suffering is taking place now and that, in many instances, compassion is overruled by what we are told is "practical".

Therefore, we fail, for example, to coordinate SSI and AFDC in an effective manner in spite of the fact that they are both Social Security programs—both committed to lifting the poor out of poverty. President Nixon was right when he urged an income floor for all Americans.

I believe that many of the changes supported by a majority of the experts point to a national policy in which today's suffering is recognized and compassion becomes a way of life for our nation.

That is why the experts oppose those policies which would keep poor people poor

under the guise of giving them help. A majority supports ending a policy which penalizes an SSI beneficiary because that person receives help in the way of food or shelter from family or friends.

We also believe there should be significant upward revisions and simplifications in a resource requirement which makes it impossible for a person to save money and set aside a "nest egg" to meet the unknown hazards of the future.

We also believe that we should strengthen immeasurably the provisions for work incentives—the provisions which permit and encourage an SSI recipient to leave the beneficiary rolls and enable him or her to live in accordance with his or her highest possibilities by becoming a member of the workforce.

Our preferred options on benefits are geared to providing now what is needed today for food, clothing, and housing. Unless we expedite this process, we know that many of today's poor people will suffer and die prematurely because we have failed to act as a compassionate society.

Congress has lifted the criteria for program access for poor people to 120 percent of poverty, or more, under some fifteen programs. We believe that those people who are below 120 percent of poverty should become eligible for the Supplemental Security Income program. We recognize that, in suggesting that these benefits be phased in over a period of five years, we have made a concession to practicality. We feel, however, that we are supporting the right goal.

We recognize that the overall price tag at the end of five years—$38.8 billion—is an expensive one. Nearly $28 billion of that price tag, or more than two-thirds, is attributable to benefit increases which are long overdue.

We are, however, the richest nation in the world. I also recognize, as a recent Congressional Budget Office study revealed, that the after-tax income of the upper one percent of our population doubled in the period from 1977 to 1989 and represented 70 percent of the after-tax income increases received during that 12-year period. During that same period, the lower 20 percent of our population experienced a decline of nine percent in after-tax income.

I believe that it is only fair to ask the upper one percent to share a small portion of their wealth with the poor.

That is why your decision is welcomed to have a group of fiscal experts recommend "where, in the light of the fiscal situation over the next five years, we can get the money" to pay for the conclusions made by the experts. This group will report to you within six months as you have directed. Therefore, both the Executive and Legislative Branches will have both reports before them very early in the next session of Congress.

Again, I appreciate very much the opportunity of developing, with the colleagues that you have appointed, the blueprint for action for the Supplemental Security Income program.

Very sincerely yours,
Arthur S. Flemming,
Chairman.

List of SSI Modernization Project Experts

Elizabeth M. Boggs—the parent, guardian and representative payee (for Social Security) of an adult son with complex disabilities; she has been a volunteer advocate for people with developmental disabilities for more than forty years.

M. Kenneth Bowler—currently Vice President, Federal Government Relations with Pfizer Inc. He was formerly Staff Director of the House Ways and Means Committee, and is an Adjunct Professor at the University of Maryland, Baltimore. He is married and has four children.

A. Lorraine Brannen—District Manager, Social Security Administration (Retired).

John Costa—Former Commissioner, U.S. Assistance Payments Administration.

Arthur S. Flemming—Former Secretary, Department of Health, Education and Welfare, has held many prominent posts including U.S. Commissioner on Aging and Chairman, U.S. Commission on Civil Rights. He currently chairs coalitions of national organizations serving as advocates in the areas of social security, health care, and civil rights.

Robert E. Fulton—an independent public policy analyst. He works part-time for the Oklahoma Alliance for Public Policy Research and the National Center for Children in Poverty (Columbia University). He formerly served for 35 years in executive-level positions in federal and State governments.

Lou Glasse—M.S.W., President of the Older Women's League, is a consultant on policies and services for older people. She serves on the Board of Advisors of the Mildred and Claude Pepper Foundation and of the National Academy on Aging.

Sharon Gold—President, National Federation of the Blind, California.

Robert Gorski—Disability Advocate, City of Pasadena, California.

Arthur E. Hess—Former Acting Commissioner of Social Security and first SSA director of Disability Insurance and of Medicare.

Chris Koyanagi—Vice President for Government Affairs, National Mental Health Association.

Carmela G. Lacayo—National Association of Hispanic Elderly; President and CEO.

Richard P. Nathan—Provost, State University of New York and Director of its Rockefeller Institute of Government, Albany, New York.

Barbara L. Sackett—parent of an adult daughter with developmental disabilities, and a professional in the field of developmental disabilities; she has been a volunteer advocate for people with disabilities for more than thirty years.

Samuel Sadin—Deputy Director, Brookdale Center on Aging of Hunter College, Institute on Law and Rights of Older Adults, New York.

Bert Seidman—was AFL-CIO Social Security Director from 1966 until his retirement in 1990. Since then he has been a consultant to the National Council of Senior Citizens. He has twice served on the Advisory Council on Social Security and more recently on the Prospective Payment Assessment Commission which deals with the hospitalization (Part A) phase of Medicare. One of his three daughters who is autistic and severely retarded has been in a State mental hospital for 30 years.

Timothy M. Smeeding—Professor of Economics and Public Administration, Maxwell School, Syracuse University.

Michael Stern—R. Duffy Wall and Associates; formerly Minority Staff Director, U.S. Senate Finance Committee.

Eileen P. Sweeney—Children's Defense Fund; formerly staff attorney, National Senior Citizens Law Center.

Fernando M. Torres-Gil—Professor, University of California, Los Angeles.

Elaine T. White—retired management analyst, Office of Child Support Enforcement, Department of Health and Human Services, and a former SSA employee.

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Introduction

Twenty years ago, a White House press release heralded the enactment of a new amendment to the Social Security Act—the Supplemental Security Income (SSI) program. It was proclaimed as "landmark legislation" for the aged, blind, and disabled which would end many inequities and "provides dramatic and heart-warming evidence that America is the country that cares—and translates that humanitarian care into a better life for those who need, and deserve, the support of their fellow citizens."

With one bold stroke, Franklin Delano Roosevelt in 1935 brought into existence the Social Security system, a system which was made up of ten programs. It has proved to be the greatest system ever enacted for the prevention of poverty.

Today, there is general agreement that the SSI program has been a great step forward for the Social Security system. It has kept many people of all ages, including older women and minorities, from destitution. In 1992, the program will serve over 5.5 million people—up from 3.2 million in January 1974, the first month for which SSI benefits were paid.

The program has provided a means for independent living for many people with disabilities. People with disabilities now comprise the largest segment of the beneficiary population. It has enabled many children with disabilities and their families to receive needed income and medical assistance. Over 500,000 children with disabilities will receive benefits in 1992. It also has rendered an outstanding service to needy older persons. Some of the principal needs confronting the blind have been met.

SSI is the only national effort to date where the Federal Government has undertaken to assure a minimum income to a significant portion of those in need in America. However, millions of people who are aged, blind, or disabled—and who are truly needy—are denied access to SSI benefits because of inadequate outreach and rules and procedures which deny them access to the program.

Today the disability community is confronted with a backlog of approximately 762,000 cases and an estimated 1.4 million backlog by the end of 1993 because of inadequate funding and staffing. On average, a person currently filing a claim for the first time waits up to four months to receive benefits. If the backlog doubles, it can be assumed that the average delay will increase materially.

Today—nearly 20 years after the first payments were made—SSI still fails to lift its constituency out of poverty. The Federal floor which is established is still below the poverty line.

In 1992, the poverty income guideline for an individual is $6,810. But the income which SSI assures qualified individuals is only $5,064. While forty-three States and the District of Columbia voluntarily supplement this Federal standard, in all but two States the total amount available to beneficiaries living independently is still below the poverty line.

Despite its shortcomings, recipients and advocates around the country have directly and indirectly testified to the importance of the program.

One advocate, an attorney, stated, "The SSI program is a great program. It is the best way currently in use to provide some basic financial and medical relief to a great number of disabled individuals. Unfortunately, they are poor and many times illiterate, but this should be looked on as an opportunity for this country to serve, rather than oppress its people."

Similarly, an advocate for the mentally ill stated, "* * * I believe the SSI program is marvelous. It serves millions of needy persons and considering the size and scope of the program, does it relatively efficiently. However, in my contacts both professionally and personally with SSI recipients I see a number of inequities."

Like this person, and many others who wrote in or came to public meetings, the experts find no flaw with the underlying basic concepts upon which SSI is based. However, the poorest of the poor among people who are aged, blinded, or disabled are being shortchanged.

The public comments and the results of the experts' analysis reflect three key themes:

- First, this is a solid, exceptionally important program which, despite the intent of those who created it, has never completely lived up to its potential;
- Second, after almost twenty years, some of the rules of the program should be modified to reflect the realities of being poor and aged, blind or disabled in America in the 1990's and to bring about better coordination with other social security programs; and
- Third, no program, no matter how exceptional, can meet its goal if it is perpetually understaffed, creating bureaucratic nightmares for those intended to benefit from the program and morale problems for agency staff.

The body of this report addresses more than 50 program improvements which would grant SSI access to truly needy persons who are aged, blind, or disabled and which would improve the quality of care received by people on the rolls. A majority of experts endorse these improvements which cover diverse issues, including: Matters relating to the payment of benefits and the adequacy of the benefits; the criteria for eligibility (the needs tests—income and resources—and tests for categorical eligibility—the definitions of age and disability); agency staffing; linkages to the Medicaid and food stamps programs; and the need for periodic reviews of the program. Also included is relevant background information about the current program and specific issues the experts believe need to be addressed, as well as the individual points of view of all experts, including those whose

perspective differs from that of the majority on a given issue.

While individual experts differ on how far they want to go on changes, and how fast to go, a majority of the experts concluded that there are four top priorities, each of equal importance, which should be addressed first. In no particular order, they are:

- Increase SSA staffing;
- Increase the federal benefit rates;
- Stop counting, as income, in-kind support and maintenance; and
- Increase the resources limits, while streamlining the resources exclusions.

When Commissioner King asked the experts to work on the SSI Modernization Project, she asked them to explore in depth the implementation of the objectives that Congress had in mind when it approved the program in 1972. They were asked to provide a blueprint for improving the program to meet the needs of low income elderly, blind and disabled people in the 1990's.

This is the experts' blueprint for action extending over a period of 5 years. The action should not be delayed. The poorest of the poor among the aged, blind, and disabled are suffering today. The mark of a truly great nation is that it faces the needs of those who are poor; it does not shrug its shoulders but goes to work on meeting those needs today.

The next chapter tells about the objectives of the SSI program, overall characteristics of the people it serves, and the experts' work. It also tells about the four highest priorities of a majority of experts. The remaining chapters deal with all of the options supported by the experts.

Chapter I—Program Background and the Experts' Findings and Priorities

This chapter summarizes: (1) Background material on the SSI program; (2) the activities of the experts—their public meetings, and individual visits to field offices of the Social Security Administration, including discussions with career staff in those offices; and finally, (3) the experts' priorities.

A. Program Background

Objectives of the SSI Program

The main objective of the SSI program when it was enacted was to provide a national income floor for needy people who are aged, blind, or disabled. More specifically, it was intended that the program would provide:

- An income floor for aged, blind, or disabled persons whose income and resources were below specified levels and which would lift them out of poverty;
- Eligibility requirements and benefit standards that were nationally uniform;
- Incentives and opportunities for those recipients able to work or to be rehabilitated which would enable them to increase their independence;
- An efficient and economical method of providing assistance;
- Inducements to encourage States to provide supplementation of the basic federal benefit;
- Appropriate coordination of the SSI program with the social insurance programs for retirement, survivorship and disability; and
- Protection for the eligibility and income levels of recipients under the former State programs who were transferred to the SSI program.

The SSI program is an integral part of the nation's total social security program. "Social Security" is an "umbrella" title which was used in 1935 for ten closely related programs. The programs under Social Security are dependent on one another to attempt to lift people out of poverty. For example, a total of 2.3 million persons draw monthly benefits from both SSI and the social insurance programs. In addition, approximately 500,000 persons on SSI participate in the Medicare program through the payment of premiums.

These 2.8 million persons draw SSI Federal benefits which are below the poverty line and, therefore, SSI does not lift them out of poverty. But, if it were not for SSI, these people would not even approximate the poverty level with their social insurance benefits. Therefore, the social insurance programs are very dependent on SSI; without it, they would be criticized as programs for middle and higher income people which ignore the poor.

SSI—a Program For All Ages

The former State-administered programs which SSI replaced generally did not provide benefits for children. (The Federal legislation specified that persons under age 18 could not qualify for benefits. An exception applied to the Aid to the Blind program—States could choose to include children in that program.)

On the other hand, by the time it had passed both houses of Congress, SSI was designed to provide benefits to qualified persons of all ages. The House Committee on Ways and Means was instrumental in including disabled children in the SSI program because such children who were in low-income households were "certainly among the most disadvantaged of all Americans" and deserved "special assistance in order to help them become self-supporting members of our society."

In December 1975, children comprised slightly over 3 percent of recipients of Federal SSI benefits, and persons who qualified on the basis of age comprised 52 percent. The remaining 45 percent represented adults ages 18 and over who qualified due to blindness or disability.

While the program always has served people of all ages, over time there have been changes in the makeup of the caseload. The portion of beneficiaries who qualify on the basis of disability has been increasing over the years. Projections for FY '93 show that those receiving benefits on the basis of age will comprise slightly less than 25 percent of those who receive Federal benefits. Children are expected to represent 12 percent of the total. Blind and disabled adults are expected to make up 63 percent of the population served. (Note: Approximately 550,000 persons who came on the rolls on the basis of blindness or disability have reached age 65 but continue to qualify as blind or disabled. Thus, while the number of people under 65 has increased greatly, the total number of those ages 65 and over has been holding steady at a little more than 2 million since 1982.)

BILLING CODE 4190-29-M

SSI RECIPIENT ELIGIBILITY, DECEMBER 1975 & 1993 PROJECTIONS

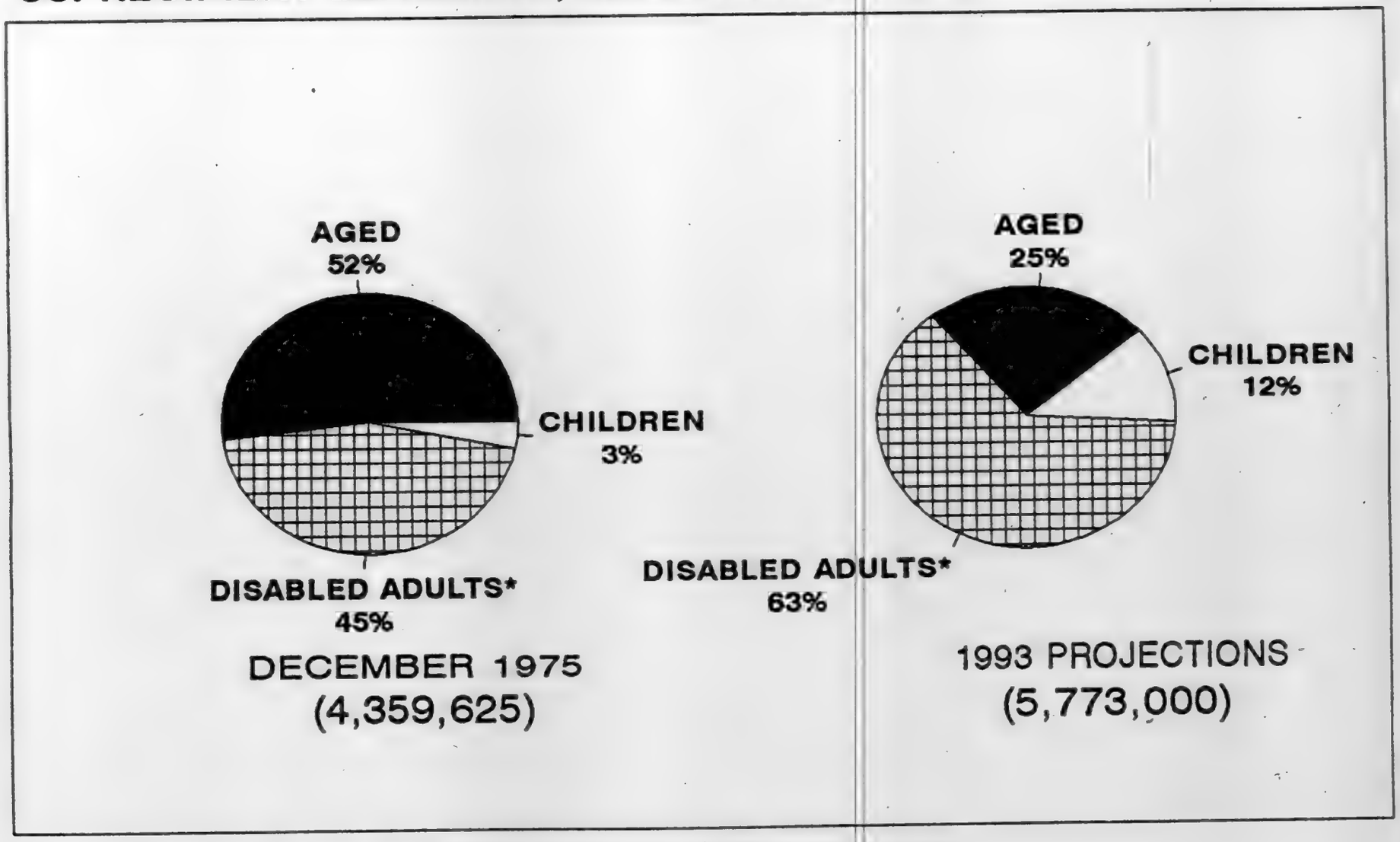

* Includes persons 65 and over who began receiving SSI before age 65.
Disabled includes the blind

BILLING CODE 4190-29-C

The trend in the caseload composition has been attributed to several different factors: the retirement insurance program under title II of the Social Security Act has reduced poverty among the elderly; outreach efforts have been more successful with respect to younger (disabled) people; and court decisions relating to determinations of disability have expanded the population served on this basis. The Supreme Court decision in *Zebley*, which changed the disability criteria for children, has particular impact with respect to the projections of the increasing number of children on the rolls.

BILLING CODE 4190-29-M

AGE DISTRIBUTION OF SSI RECIPIENTS, DECEMBER 1975 AND 1990

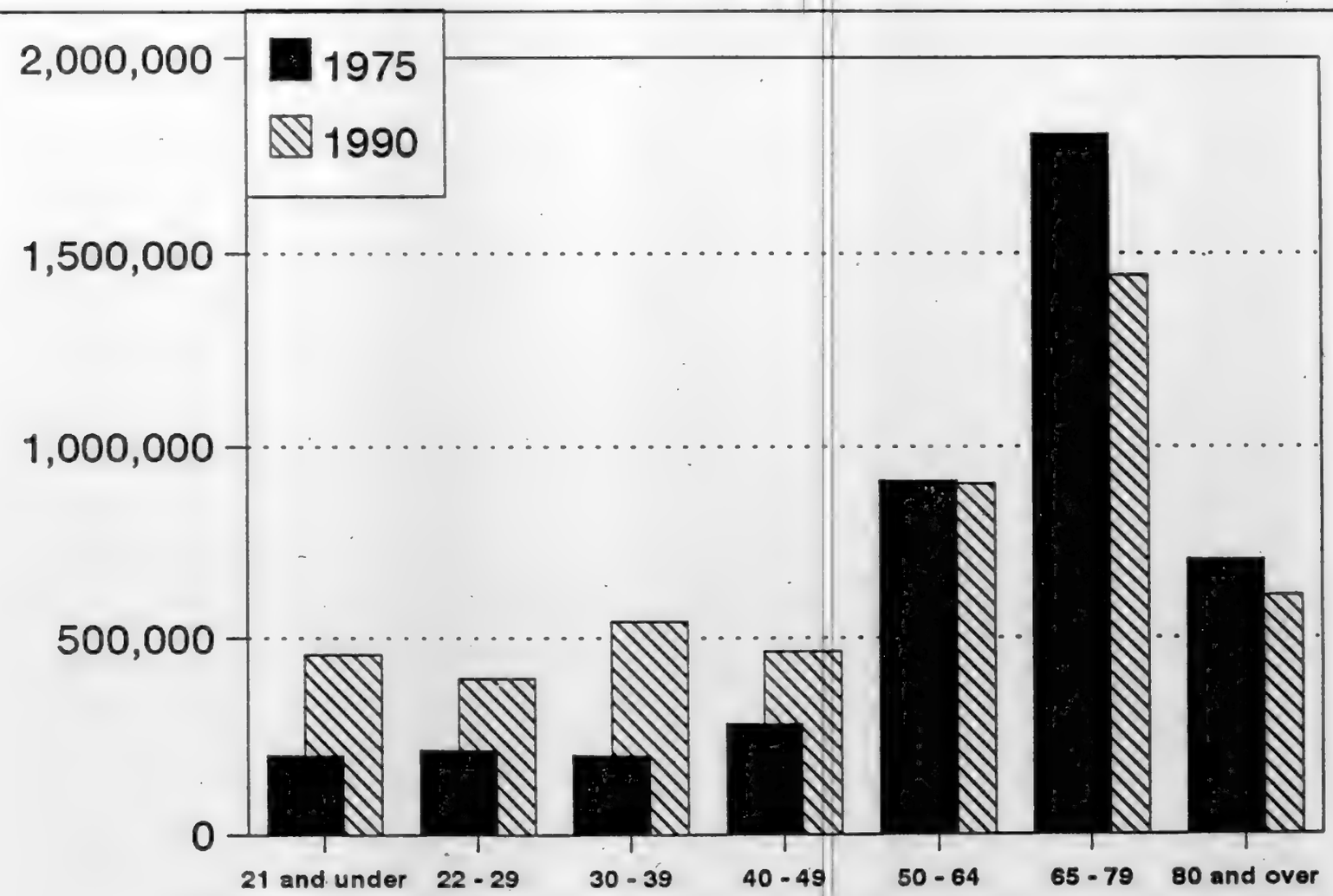

	21 and under	22 - 29	30 - 39	40 - 49	50 - 64	65 - 79	80 and over
1975	199,757	213,911	201,351	280,887	909,221	1,805,465	703,683
1990	457,525	394,860	542,601	466,491	901,648	1,444,248	609,754

BILLING CODE 4190-29-C

In terms of program expenditures, the cash value of Federal benefits paid to children in FY '93 is expected to exceed the amount for the elderly; nearly 17 percent of the total is expected to be for children—this compares to 16 percent for the elderly. (Note: The percent for the elderly does not include benefits payable to the 550,000 recipients who are 65 or over, but whose eligibility is based on disability or blindness.) This difference reflects the fact that the elderly on the rolls are more likely to have other income—particularly retirement social insurance benefits.

BILLING CODE 4190-29-M

SSI FEDERAL BENEFITS 1983 ACTUALS AND 1993 PROJECTIONS

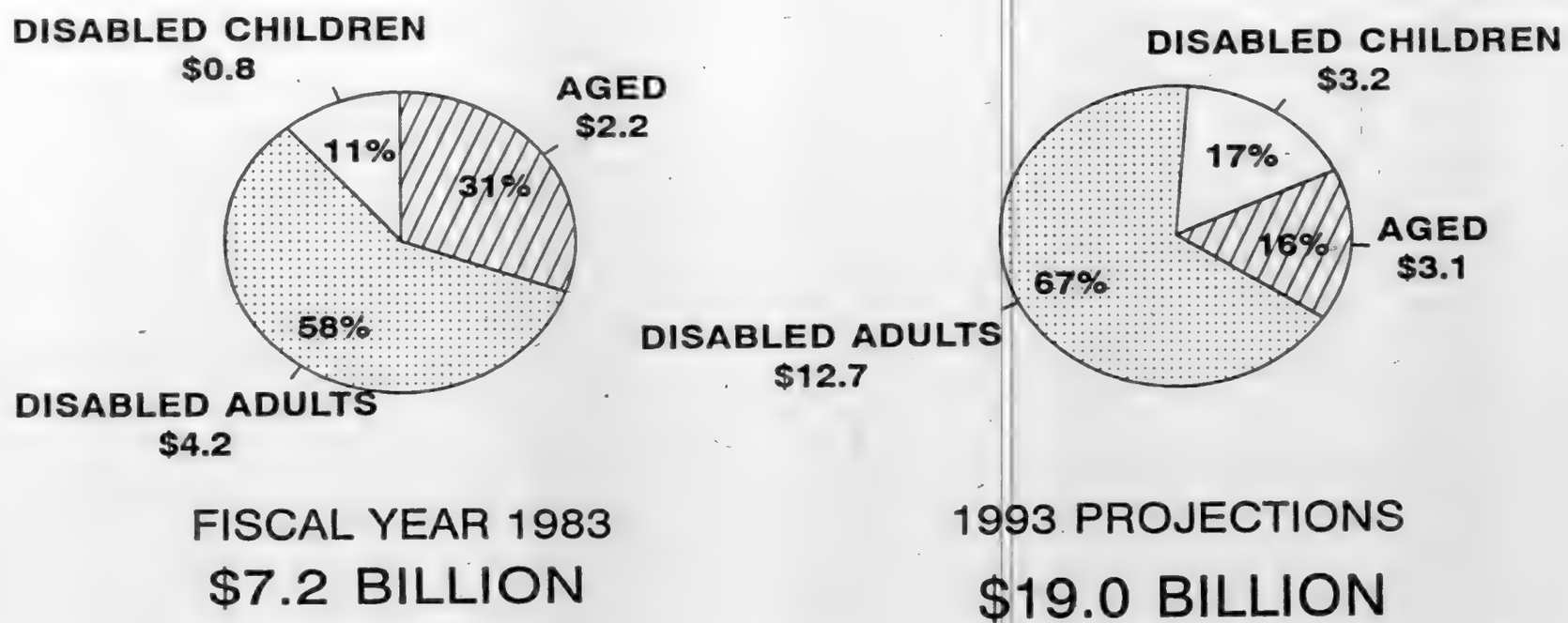

Disabled includes the blind
Dollars in billions

BILLING CODE 4190-29-C

SSI—An Essential Supplement

The SSI program has become a vital supplement to the retirement, survivors and disability insurance programs of the social security system. About 65 percent of persons 65 and over receiving an SSI benefit also receive a social insurance benefit. Among the disabled under age 65 who receive SSI, 37 percent also receive a social insurance benefit.

While a smaller portion of the disabled than aged receive a social insurance benefit, approximately 80 percent of those becoming SSI eligible as adults have worked in covered employment. Even among SSI eligible children, about 7.5 percent receive a social insurance benefit and a very high number live with a parent who has worked in employment covered by Social Security.

Thus SSI supplements individual benefits when a lifetime of work produces a low social insurance benefit. It also supplements the overall program for the disabled by taking care of those who have not worked long enough or recently enough to get disability benefits and those disabled children whose parents are still working but at very low income levels.

BILLING CODE 4190-29-M

SSI RECIPIENTS RECEIVING SOCIAL INSURANCE BENEFITS FOR RETIREMENT, SURVIVORSHIP AND DISABILITY, DECEMBER 1988

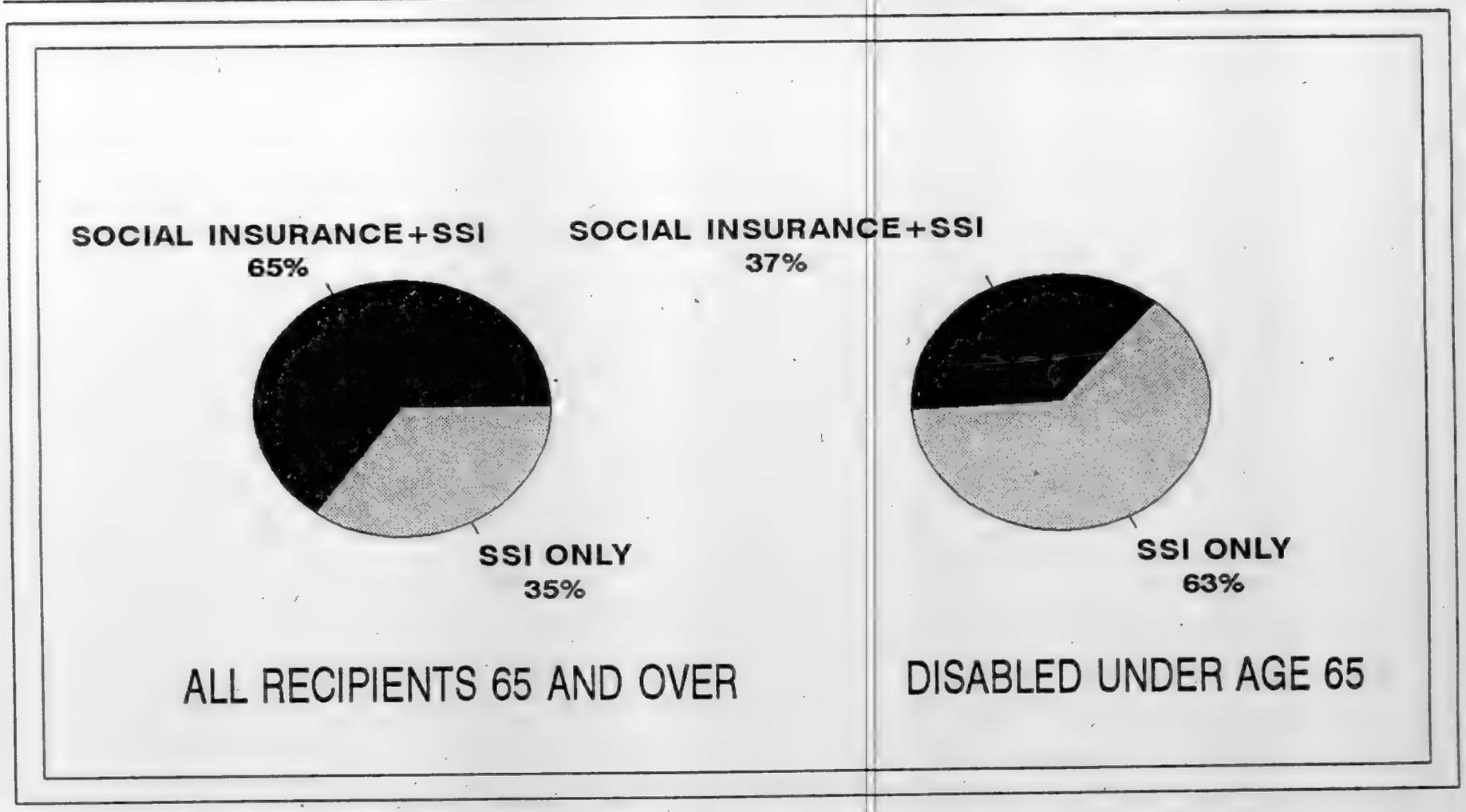

Recipients aged 65 and over includes blind and disabled recipients aged 65 and over.
Disabled recipients under age 65 also includes blind recipients

BILLING CODE 4190-29-C

B. Project Activities

Commissioner Gwendolyn S. King asked the experts to create a dialogue that would provide a full examination of how well the SSI law, and the policies developed by SSA to implement the law, serve people with very low or no income who are over 65 or blind or otherwise disabled. Their initial goal was to exchange ideas and information about the program and to promote the sharing of ideas. The Project held public meetings in Baltimore, MD; Washington, DC; New York, NY; Chicago, IL; Los Angeles, CA; Montgomery, AL; Atlanta, GA; and Falls Church, VA. During these meetings, the public as well as the experts expressed their individual views and concerns about the SSI program.

From late June 1990 to July 1991 more than 400 individuals, including current and former SSI recipients, representative payees, representatives from professional organizations, advocacy groups, legal services organizations, institutions, private agencies and Federal, State and local governments, provided oral and/or written comments. The Chairman and other representatives from among the experts met with SSA employees in regional offices in all 10 regions of the Department of Health and Human Services across the country. They also met with State disability determination services employees in five States, and with staff in a hearing office.

In addition, there were discussions with others—representatives of non-profit organizations, State agencies, legal aid attorneys, health care providers, and representative payees, as well as field office staff of the Social Security Administration who have to apply program provisions to actual case situations.

C. The Experts' Findings and Priorities

Highlights From What the Experts Heard

The experts were told repeatedly that SSI benefits are not adequate to provide a dignified quality of life. People are forced to make difficult choices whether to pay for food or shelter. Housing costs sometimes absorb most or all benefits, but the program penalizes people for trying to live together to make ends meet.

A health care professional described the situation eloquently: "The SSI eligibility limits and living-expense allowances can be dangerous to health, in my view. The program excludes too many needy persons and gives too little to those it includes * * *. To eat nutritiously, some may scrimp on necessities of life other than food. Some often try to stretch out their drug supplies by taking less than the recommended doses. They live in dangerous housing: accidents are waiting to happen because of poorly maintained structures and poor lighting. At risk of hypothermia, they have trouble paying the bills for cooling and auxiliary heating. They have heart trouble and they live in walk-ups. Taking a bus ride is risky and taxis are too expensive if they need to reach a medical clinic."

One of the experts described results of research completed in the internationally sponsored Luxembourg Income Study which illustrate the inadequacy of assistance programs in the U.S. The study set the poverty line at 40 percent of median income in each country studied. (This was very close to the U.S. poverty line definition.) The study found that, in the mid to late 1980s, the poverty rate for the elderly (those age 65 or over) in the U.S. was 3.8 times the rate in the other countries studied (Australia, Canada, Netherlands, Sweden, France, Germany, and Britain). It attributes this fact to a failure of income security policy in the U.S. compared to policies in the other countries studied which were very different and much more effective at fighting poverty through public programs.

In addition, the experts heard that, as people attempt to establish their entitlement to benefits, they are required to respond to invasive questioning about how they live. Some current provisions of statute work against family members and friends assisting each other. Some have the effect of undermining basic human dignity. Still others deter efforts to save for emergencies, and, therefore, have anti-savings consequences.

The experts believe that, in other areas of public policy, the Federal Government provides incentives for people to live at home with policies that support and encourage self-sufficiency of the household unit. They heard that the SSI program, on the other hand, penalizes people for attempting to do these things.

The Experts' Findings and Priorities

The experts' review resulted in over 50 options for change which a majority believes make good sense and will lead to improved effectiveness of the SSI program. In arriving at these options, the experts noted that: (1) Changes should be consistent with the purpose of the program; (2) the SSI eligibility process should be simplified; and, (3) procedures that are unreasonable, demeaning, and harsh should be eliminated.

Individual experts differ on how far they want to go on changes, and how fast to go. However, most conclude that there are four top priorities of equal importance:

- Increase SSA staffing;
- Increase the Federal benefit standard;
- Stop counting, as income, in-kind support and maintenance; and
- Increase the resources limits, while streamlining the resources exclusions.

Staffing increases. Throughout the hearings, the experts heard repeatedly from claimants and advocates about the need for more face-to-face contact between SSI claimants and SSA staff. Claimants far too often failed to receive the personalized help they needed in pursuing their right to benefits.

In describing the need for improved access to the program, an advocate for the mentally ill stated, "* * * it is almost mandatory that confused or feeble elderly and mentally ill persons have a relative, friend, or other responsible party assist them * * *. When one considers that the mental illness that leads one to be eligible for benefits does so by virtue of the person's inability to concentrate, to problem solve, to tolerate ordinary stresses, it is antithetical to expect such a person to wait hours—often days—in lines and waiting rooms and fill out voluminous forms, produce long lost documents, and answer questions the brain is often too ill to comprehend * * *. It is necessary that specially trained staff be available to interview and assist those unable to tolerate the stresses of application for benefits. Yes, in the short run, we are talking more money in staff increases * * *. Is it equitable that only those persons with family or community support are able to obtain subsistence?"

The experts also became aware of a multitude of situations in which people encounter unwarranted delays in receiving disability benefits to which they are entitled—delays during which, at times, death occurs before an entitled person receives benefits which are due. The experts noted that the Administration's fiscal year 1993 budget proposal will result in a backlog of 1.4 million disability cases (social insurance and SSI) at the end of 1993. (A normal backlog would be 400,000 cases.) Thus, the program will become less accessible to those in need as economic conditions create more and more individuals who are eligible.

Additionally, the experts heard from SSA staff working on the front lines and perceived that staff has deep and sincere concerns for the welfare of the

SSI eligible population. They heard staff describe their frustrations in attempting to meet many needs with limited staff resources to do so, and the need to be constantly on guard so that their high workloads do not have a negative effect on claimants.

The experts stress in Chapter VI that an immediate staffing increase of 6,000 in SSA is necessary. This would constitute a first step in eliminating growing backlogs and enabling the agency to move toward providing the level of personalized services which many of the SSI population so sorely need.

Benefit increases. Recognizing that the goal of the Senate Finance Committee was to bring the income floor for the SSI population to the poverty level, a majority of experts believe that this should be among the top priorities for program improvements. These experts believe that the Federal floor should be increased over a period of five years, and that it should reach 120 percent of the poverty guidelines by the fifth year.

During their public meetings, the experts heard from an extremely large number of people concerning the inadequacy of the present benefit standard. Nearly 14,000 individuals and organizations attested to this in response to their issues and options paper which was published in the **Federal Register**.

The income floor as set by the Federal benefit standard was initially established below the poverty level; and to this day, it has continued below the poverty line. The benefit standard's real (and relative) value remains largely unchanged. In 1992 the standard for an individual is roughly 75 percent of the poverty guideline for an individual and the standard for a couple is roughly 83 percent of the poverty guideline for two people.

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COMPARSION OF THE SSI BENEFIT STANDARDS WITH THE POVERTY INCOME GUIDELINES
FOR COUPLES AND INDIVIDUALS, 1974 - 1992

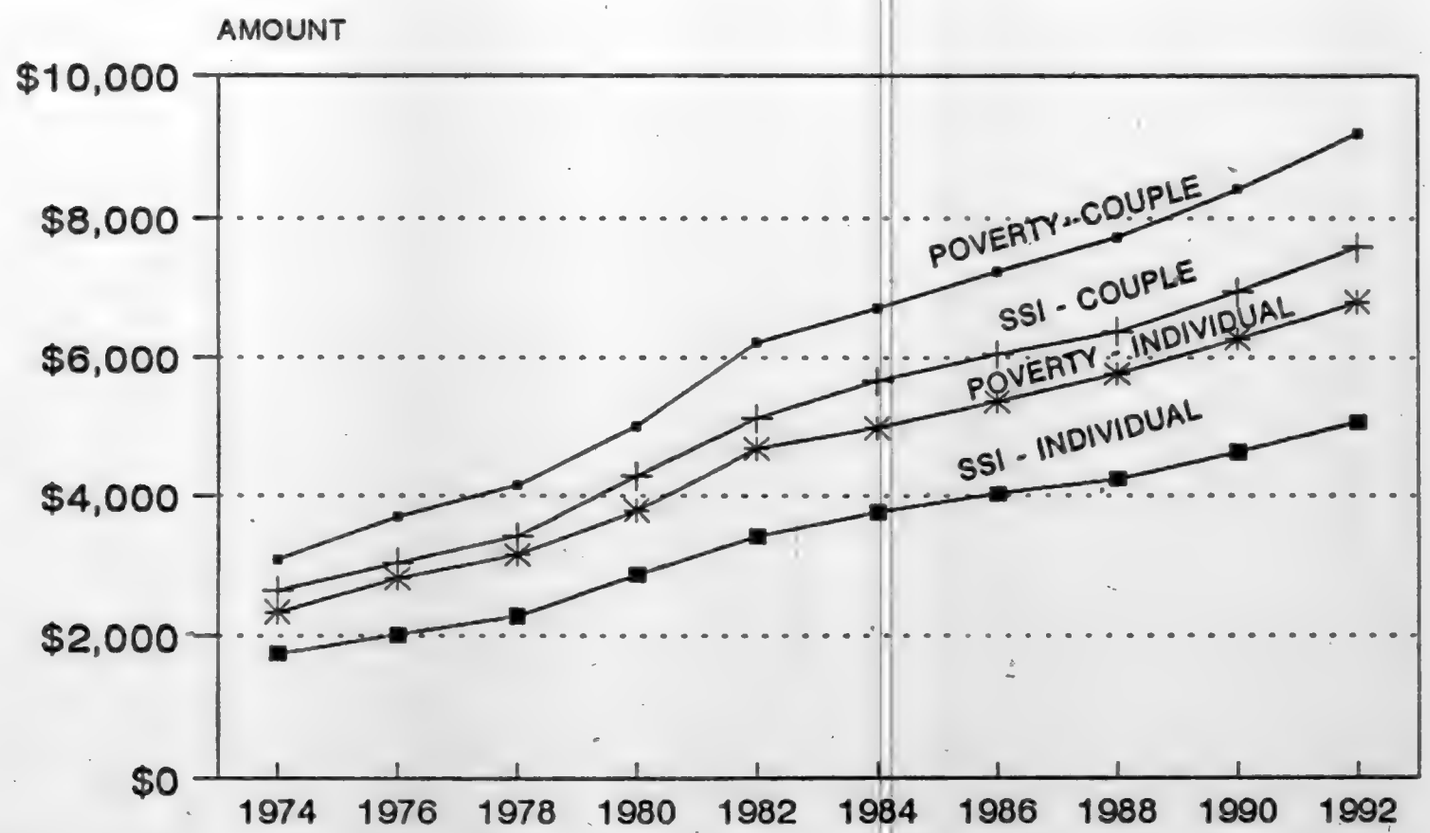

POVERTY COUPLE	-•-	$3,070	$3,700	$4,160	$5,010	$6,220	$6,720	$7,240	$7,730	$8,420	$9,190
SSI COUPLE	+	$2,628	$3,021	$3,409	$4,284	$5,117	$5,664	$6,048	$6,384	$6,948	$7,596
POVERTY (INDIV)	✳	$2,330	$2,800	$3,140	$3,790	$4,680	$4,980	$5,360	$5,770	$6,280	$6,810
SSI INDIVIDUAL	-■-	$1,752	$2,014	$2,273	$2,857	$3,412	$3,768	$4,032	$4,248	$4,632	$5,064

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In addition, a majority of the experts view the existing poverty measures as inadequate and outdated. These experts view it as imperative that benefits be raised to 120% of the outdated poverty level. One expert pointed out that Congress already has lifted the criteria for program access to this level or more for some fifteen programs for the poor. Some experts stated that it is unconscionable that this program which serves all generations is not adequately providing the safety net which was envisioned when it was enacted and that the poorest of the poor among aged, blind and disabled people are still living in poverty.

The experts supporting this option are adamant that the Federal benefit standards must be increased since those in effect leave beneficiaries unable to meet their expenses for food, clothing, and shelter. In recognition of the cost of increasing the benefit standard to 120 percent of the poverty line and their three other priorities, they propose that the increase be phased in over a 5-year period, as set forth in Chapter II.

Treatment of in-kind support and maintenance. Most experts believe that the law which requires that receipt of in-kind support and maintenance (food, clothing, and shelter) must be considered as income is particularly demeaning and should be repealed.

As a direct result of statutory language, if a beneficiary moves into someone else's household and receives in-kind support and maintenance, the benefit is reduced by one-third.

Others who receive food, clothing, or shelter also are subject to benefit reduction under the law, even if they do not live in another person's household. (For more information, see Chapter III.)

All the experts are convinced that experience has too long shown that the actions required (questioning, verification, computations, etc.) to determine whether a person receives such income (and, frequently, the amount to be charged) take up a great deal of staff time and are demeaning to claimants. Many SSA claims representatives alleged that they spend between one-fourth and one-third of their time on this issue. It has grown to be a complex area and the effects of the rules are difficult for people to understand. In fact, the program instructions comprise 150 pages of the manual.

The complexity stems from efforts both by Congress and by SSA to achieve equity, but most experts believe that the effect of considering in-kind support and maintenance as income is in conflict with other national objectives. They believe it is definitely anti-family and contrary to the concept of encouraging voluntary support by others. Even though some beneficiaries are fortunate enough to move into the households of family or friends, they should not be penalized by the Federal Government by having their benefit reduced for this reason. They are still truly needy. Further, almost all of the experts concluded that it is inequitable to count this type of support while others receive similar support at public expense (e.g., housing assistance, energy assistance) with no benefit reduction as a result.

A priority of the experts as set forth in Chapter III is to change the treatment of in-kind support and maintenance. Most experts support the elimination of the receipt of in-kind support and maintenance from consideration under the program. This would remove a harsh and demeaning provision and it would further the goal of simplification.

Resources. Most experts believe that the resources test does not efficiently or effectively identify those who are truly needy; it should be changed from $2,000 for an individual and $3,000 for a couple to $7,000 for an individual and $10,500 for a couple and the exclusions should be streamlined.

Initially, the resource limits were $1,500 for an individual and $2,250 for a couple. Congress has taken action only once to increase these amounts, providing for incremental changes (of $100/$150 for an individual/couple) in each of five years (January 1985 through January 1989). The program currently allows a person to retain a "nest egg" of $2,000 or less ($3,000 for a couple).

Almost all of the experts concluded that a person with little or no income and only $2,100 of countable resources, or a couple with little or no income and only $3,100 of countable resources, is still truly needy. Further, the experts supporting this option concluded it is not appropriate to require an otherwise eligible individual, who has little or no income, to spend down a lifetime of meager savings to $2,000. Needy veterans can qualify for a VA pension and retain $35,000. The Administration has proposed raising the limit for families receiving Aid to Families with Dependent Children (AFDC) from $1,000 to $10,000 "to encourage self-support by families on AFDC * * *."

Therefore, almost all of the experts—adopting a middle ground as described in Chapter III—concluded that the resource limits should be raised to $7,000 and $10,500 for individuals and couples respectively so that people can retain a small, but more appropriate, "nest egg." These experts also said that, concurrent with increasing the resource limits, the resource exclusions should be streamlined. This would make the rules easier for beneficiaries to understand and give them more flexibility in the use of funds while simplifying program administration.

D. Other Considerations

Work Incentives

Most of the experts are in agreement on the absolute necessity of changing the law and regulations to strengthen the provisions for work incentives for persons drawing disability benefits. They believe that it is necessary not only to increase the benefit levels for disability beneficiaries, but also to increase the numbers of persons who leave the disability rolls in order to join the workforce. They also believe that the incentives for work should be extended to older persons who qualify for SSI because of age.

The National Perspective—Needy Children

While the SSI program is growing rapidly in terms of the children it serves, many nondisabled but needly children across the nation are unserved or underserved. The National Commission on Children documented those needs in its final report: Beyond Rhetoric: A New American Agenda for Children and Families.

In 1972, when Congress enacted SSI, it did so after it failed to pass legislation which would have provided all persons, including children, with an income floor. As this nation moves forward to improve the SSI program so that it meets the needs of the poorest of the poor among aged, blind, and disabled people, it must also improve another social security program, namely AFDC, and meet the needs of children it failed to assist in 1972. All the experts expressed their view that one group of needy people should not take priority over another.

Financing Improvements

As the experts completed this review of the SSI program, they recognized that most of their ideas for change would require increased expenditures. Many experts believed that the identification of potential sources of financing program improvements should be under the purview of persons with expertise in public finance; and they, in general, are not such experts. Thus, the Commissioner of Social Security has asked the Chairman to chair a group of public finance experts to develop options for financing the improvements identified in this report and to complete their work in six months.

Additional Views

One expert has provided a statement which addresses the definition of disability and provides suggestions for modernizing the definition for the social insurance disability program as well as for SSI. This statement may be found at the end of the chapter on "Disability & Work Incentives."

Another expert has submitted a statement of personal views concerning priorities and financing. That statement, which includes a cost-neutral proposal for restructuring benefits and improving program administration, appears at the end of this report.

Five experts have submitted a joint statement of "additional views." They express hope that the report will increase significantly the attention given to the SSI program. They also describe their concerns about the need for a balance between the needs of the SSI program and other domestic needs in light of the present fiscal situation. This statement also appears at the end of the report.

Chapter II—Benefit Payment Issues—Including Proposed Increases in the Federal Income Floor

A. Preamble to Chapter

The National Perspective

The SSI program serves a population requiring assistance in obtaining at least the most basic of human needs: food, clothing, and shelter. Some may require only cash assistance while others may require help in getting SSI benefits for which they are eligible and/or in reaching other kinds of help in the form of medical care, nutrition, social services, or management of benefits.

In undertaking their broad-based review of the SSI program, the experts endeavored to make choices that would enable people who are aged, blind, or disabled to live their lives with dignity. In so doing, the experts saw the need to address a number of areas which are interrelated and contain issues with respect to payment amounts and the way in which they are determined.

SSI and Poverty

Federal SSI benefits were designed to provide a nationally uniform income floor for people who have little or nothing on which to live. For this reason, efforts to measure the adequacy of benefits and related issues usually focus on such comparisons as poverty measures and benefits provided by other poverty-related programs. With this in mind, the experts were concerned with the effectiveness of SSI benefits in providing an acceptable standard of living.

The September 26, 1972 Report of the Senate Finance Committee stated that the legislation which established the SSI program would "create a new Federal program administered by the Social Security Administration, designed to provide a positive assurance that the Nation's aged, blind and disabled people would no longer have to subsist on below-poverty-level incomes." The initial Federal SSI benefit standard specified that all individual benefits would be determined on the basis of their relationship to a uniform Federal floor. However, the statutory income floor for 1974 was below the poverty line and has been so ever since.

B. Benefit Adequacy

Background Information

Measures of poverty. There are two slightly different versions of the Federal Government's poverty measure. The Census Bureau's proverty thresholds are the official Federal definition of poverty for statistical purposes. The Department of Health and Human Services' poverty guidelines are a simplification of the poverty thresholds for administrative purposes. The guidelines are generally considered easier to use in such programmatic contexts as establishing benefit eligibility. The guidelines are updated annually to reflect changes in prices. However, the thresholds (and, by extension, the guidelines derived from them) have been subject to criticism because they do not take into account changes in consumption patterns over the past several decades.

SSI benefit standards and poverty guidelines. The 1992 Federal benefit standard or income floor for one eligible person (adult or child) is $422 per month while the floor for a couple, both of whom are eligible, is $633 per month. (In December 1991, nearly 10 percent of the adults who received SSI and/or federally-administered State supplementary benefits did so as members of couples.) The following table compares the poverty guideline for a 1-person unit with the annual Federal SSI benefit standard for an individual and the guideline for a 2-person family with the standard for a couple:

1992	Poverty guidelines	SSI standard	Percentage
Individual	$6,810	$5,064	74.4
Couple	9,190	7,596	82.7

Other programs' standards and poverty guidelines. A number of Federal programs use eligibility criteria which involve some percentage of the poverty guidelines. Because of differences in what indicates "need" for various kinds of assistance, 100 percent of the poverty guideline is not always considered adequate. For example, a number of food programs use 130 percent of the poverty guidelines as a cutoff for eligibility while several health service programs use a sliding fee schedule for persons with incomes up to 200 percent of the guidelines. See Appendix i (at the end of this chapter) for some Federal programs using a percentage of the guidelines which is more than 100 percent.

Areas Where Issues Arise

Federal benefit standard for an individual. As indicated above, the 1992 Federal SSI benefit standard for an individual is approximately 75 percent of the poverty guideline. This percentage has remained essentially unchanged since the program began in 1974.

Federal benefit standard for a couple. An eligible individual and his or her eligible spouse are paid based on a benefit standard which is 150 percent (rather than 200 percent) of the standard for an individual. As a result, members of couples receive lower SSI benefits than would two eligible individuals. However, as shown above, the benefit standard for a couple is a higher percentage of the applicable poverty guideline than is the standard for an individual. (See C. below for more information concerning treatment of eligible individuals and their spouses.)

Experts' Discussion of Benefit Adequacy Issues

Adequacy of Federal benefit standard. All of the 20 experts who took a position concerning the benefit standard viewed the current standard as inadequate and said that it should be increased at least to 100 percent of the poverty guideline. While they expressed several viewpoints concerning the amount and timing of an increase, most of them said that increasing the standard should be one of their highest priorities.

Benefit standard for an individual. The experts considered several approaches to increasing the adequacy of an individual's SSI Federal benefit standard (i.e., the national income floor). These approaches ranged from increasing the standard to 100 percent of

the poverty guideline over a 7-year period to increasing it to 120 percent of the guideline over 3 years.

A majority of the experts favored increasing the individual's Federal benefit standard to 120 percent of the poverty guideline because they said the nation's neediest people who are aged, blind, or disabled could not attain a minimally decent standard of living at 100 percent of the guideline. One pointed out that often people with incomes at levels between 100 and 125 percent of poverty suffer the most because they become ineligible for important ancillary benefits such as Medicaid or Food Stamps. However, in order to soften the cost impact in the current fiscal climate, most preferred a 5-year phase-in period to a shorter one or to a significant one-time increase.

Benefit standard for a couple. All but one of the experts expressing a view on the point favored maintaining the couple's benefit standard at the current 150 percent of the standard for an individual. Setting the couple's standard at a percentage of the poverty guideline (as described above for an individual)—even though it would mean increasing the benefit amount—would also have the effect of reducing the couple's standard from 150 percent to 134.9 percent of that for an individual. The majority saw such a result as inequitable since it would ignore all the testimony that people living together cannot share certain expenses, such as food or medicine, and some couples would experience actual decreases in benefits.

Impact of increased benefit standards. It is the experts' understanding that increasing the Federal benefit standards for individuals and couples, as described above, would result in 2,128,000 new Federal SSI recipients by the end of fiscal year 1997.

Measure of adequacy. A number of the experts were concerned over the need to update the indices used to compute the poverty guidelines. They recalled public testimony to the effect that, unless the poverty level were "modernized"(i.e., increased in real terms by being recalculated using post-1950s consumption data), not even 100 percent of that level would be sufficient to provide a proper diet or maintain health. These experts concluded that the poverty guideline understate considerably the true cost of a minimal standard of living. Nevertheless, they accepted the poverty guidelines as a useful benchmark because they are widely recognized and easy to use.

Recapitulation of Experts' Opinions on Benefit Adequacy

Option	Experts supporting
1. Increase the benefit standard for an individual, in equal annual increments, to:	
a. 120 percent of the poverty guideline over 5 years	12
Comment: One of these experts also would support increasing the standard to 100 percent over 5 years if the poverty line were updated.	
b. 120 percent of the poverty guideline over 3 years	2
Comment: One of these experts, while preferring the 3-year phase-in, would also support a 5-year period and is included in the count for a. as well as for b.	
c. 110 percent of the poverty guideline over 3 years	1
d. 110 percent of the poverty guideline over 10 years	1
e. 100 percent of the poverty guideline over 3 years	3
Comment: One of these experts also supports a longer (unspecified) period if required by competing priorities.	
f. 100 percent of the poverty guideline over 7 years	1
General Comment: Several experts, most of whom support increasing the benefit standard beyond 100 percent of poverty, also support reconsideration of other SSI priorities once the standard reaches 100 percent of the poverty guideline.	
2. Keep the Federal benefit standard for a couple at 150 percent of that for an individual	13
Comment: One expert disagrees, saying that the couple's standard should be set at the same percentage of the two-person poverty guideline as an individual's standard would be of the one-person guideline.	

C. Couples

Background Information

The "couple" as an eligibility unit. The statute distinguishes between eligibility and payment determinations for an eligible individual with an eligible spouse (a "couple" for SSI purposes), and all other eligible individuals, including those with ineligible spouses and those who are children. Being a "couple" means that each spouse is eligible to receive SSI benefits; i.e., each is aged, blind, or disabled and their combined countable income and resources do not exceed limits which are 150 percent of the income and resources limits for an individual.

The couple as an eligibility unit is a concept that carries throughout the program. When both members of a couple apply for SSI, they do so with a single application. In determining eligibility for the members of a couple, SSA deducts their combined countable income from the couple's benefit standard to determine the total payment amount; that amount is then divided equally and paid in separate checks.

When members of a couple separate, they are treated as individuals the month following the month of separation. If the members of a couple separate and reunite frequently, SSA must make adjustments in payment and eligibility status.

When one spouse is ineligible. If an eligible individual has an ineligible spouse, only the former can receive SSI benefits, thus qualifying automatically (in most States) for Medicaid. However, the statute requires that, under certain circumstances, the eligible individual's income and resources be deemed to include the income and resources of the ineligible spouse. This is a carryover of States' "relative responsibility" laws used in the antecedent assistance programs. It says that one spouse has some financial responsibility for the other spouse, even if they are not legally married. (See "Definition of 'spouse' " below.)

The statue sets the resource limit at $3,000 for a person who has a spouse, whether or not that spouse is also eligible. The income limit for a person whose spouse is ineligible can be the same as for a person with an eligible spouse, depending on the results of the deeming formula.

Areas Where Issues Arise

Couple's income and resources standards. Using income and resources standards for spouses which are 50 percent, rather than 100 percent, of those for individuals can be traced to the social insurance programs under which a spouse is entitled to a benefit equal to half the benefit paid to the wage earner. Today's use of such a ratio in the means-tested SSI program also reflects a premise that two people can live together more economically than they could live separately, but only if they are spouses. As a result, an eligible couple receives combined SSI benefits which are less than the benefits payable to two eligible nonspouses (e.g., an aged mother and her disabled son) who may live together.

Couple's income and resources exclusions. Income exclusions apply differently to couples than to individuals. Each individual receives a $20 general income exclusion and a $65 earned income exclusion. In contrast, a couple, as a unit, receives one $20 general exclusion and one $65 earned income exclusion.

With respect to resources exclusions, couples also receive treatment which differs from that given two eligible individuals. For example, a couple can have only one automobile excluded for necessary transportation and have a total of $2,000 excluded in household goods and personal effects. In contrast, two individuals who are not spouses may each have an automobile excluded and may each have $2,000 in excluded personal items even though they live in the same household.

Definition of "spouse". The SSI statute considers a formally married husband and wife to be spouses. However, the statute also requires that two people who are not legally married but who hold themselves out to the community as married be treated as spouses, whether one or both are eligible. This provision is known as "holding out."

Some effects of "couple" rules. When two people, each of whom is receiving disability social insurance benefits as well as SSI benefits, wish to marry, they may face a substantial reduction in combined income. Each remains entitled to the same full disability insurance benefit as before because entitlement to these benefits is not subject to a "means" test. However, marriage could make them both ineligible for SSI benefits and, often, for Medicaid.

Examples of effects of "couple" rules. Betty Barnes and Samuel Short each received $350 in disabled adult child social insurance benefits before marriage and each was eligible as an individual for an SSI payment of $92 (at 1992 standards). When they married, they became subject to the SSI "couple" rules. Since their combined social insurance benefits ($700 less $20 general income exclusion=$680) exceeded the $633 Federal benefit standard for an SSI couple, their total income dropped from $884 a month to $700. Losing their SSI eligibility caused a loss of Medicaid as well.

On the other hand, some people benefit from the "couple" rules. This can happen when a person with significant income is married to someone with little or no income. For example, Mr. Johnson is 63 and receives a social insurance retirement benefit of $550 monthly; however, because of his income, he is not eligible for SSI or Medicaid. He cannot receive Medicare because he is neither age 65 nor disabled. His 57-year-old wife is disabled but does not qualify for a wife's benefit (she would have to be at least 62 or have a child in her care) and has no income. As an individual with an ineligible spouse, Mrs. Johnson is eligible for an SSI monthly cash payment of $103, giving the Johnsons combined cash income of $653. She is also eligible for Medicaid. When Mr. Johnson turns 65, he becomes eligible for SSI and they are an SSI "couple". While there is no change in their combined cash income, Mr. Johnson is now eligible for Medicaid as well as for Medicare.

Experts' Discussion of Couples' Issues

Definition of "spouse". A majority of the experts favored retaining the existing concept of a "spouse" (for both "couple" and spouse-to-spouse deeming purposes) with just one modification. They said that the "holding out" provision should be eliminated so that only legally married persons would be considered spouses. The experts did not view favorably having a Federal statutory provision that considers people to be married simply because they live together. They saw no useful SSI purpose being served through establishing the existence of what is, in effect, a common-law relationship. The experts objected to the SSI "holding out" provision as having adverse and disturbing effects both with respect to claimants' personal privacy and to the administrative process.

The experts discussed briefly, but gave no support to, the possibility of permitting people to choose whether to be treated as spouses or as individuals. One expert remarked that both the Internal Revenue Service and the social security insurance programs give people such a choice. However, all of the experts taking a position on this issue felt that, for SSI purposes, such a choice would be prone to inequities because of the complex program rules and the linkages with programs such as Medicaid.

Income and resources exclusions. Most of the experts favored giving each member of a couple a full set of earned income exclusions. They stated that this would provide a greater incentive for both members of a couple to work, particularly if both are disabled. It would also help compensate for the higher costs generally experienced by members of a couple with both members aged, blind, or disabled as compared with costs for younger, nondisabled couples.

In view of the support for increasing the resources limits (see part D of chapter III), the expert did not entertain any options for changing resources exclusions with respect to couples.

Recapitulation of Experts' Opinions on Couples

Option	Experts supporting
Definitions of "spouse" and "couple"	
1. Eliminate the concept of "holding out"	14
2. Eliminate the concept of "spouse" and treat everyone as an individual	2
3. Treat any two adult individuals who live together as a couple	1
Couple's income exclusions.	
1. Give each member of a couple a full set of earned income exclusions; leave the unearned income exclusions unchanged	18
2. Give each member of a couple a full set of earned and unearned income exclusions	2

D. State Supplementation With an Increased Federal Benefit Standard

Background Information

Federal/State roles with respect to benefit levels. When designing the SSI program, Congress was aware that SSI beneficiaries might have special needs and appreciated the appropriateness of augmenting the Federal benefit level to account for those needs as well as for geographic variations in the cost of living. However, Congress viewed the Federal responsibility as limited to provision of a basic benefit and that benefit has been generally regarded as geared toward meeting a person's basic needs of food, clothing, and shelter. Payments for higher living costs or special needs were left to the States.

The role of State supplementation. States use optional supplementary payments to achieve more nearly adequate benefits for people who are aged, blind or disabled. Supplementary payments allow a State to provide an income "floor" that takes into account geographic differences in living costs and individualized special needs in a manner that is not possible with a nationally uniform Federal benefit standard. In many States, supplementary payments serve as a link to Medicaid eligibility. In March 1992, more than 2.2 million SSI recipients received State supplementation while nearly 3 million did not.

The amount of optional supplementation varies significantly from State to State as do the conditions under which States provide supplementation. For example, California has a number of supplementation levels and supplements nearly all of its SSI recipients in a variety of living arrangements. In that

State, most total benefits, SSI plus State supplement, exceed the Federal poverty level. On the other hand, Texas does not have any supplementation program while several other States supplement only persons in certain protected living arrangements variously known as "domiciliary care" or "board and care". In addition to basic meal preparation and laundry, these living arrangements may provide such services as minimal social supervision or personal care assistance. Outside of this kind of living arrangement, few State supplements increase the benefit standard above the Federal poverty level.

Administration of supplementation programs. States may administer their own supplementation programs or have SSA do so. When SSA administers a State's supplementation program, the Federal Government absorbs all related administrative costs while the State pays only the cash benefit amount. At present, 26 States administer their own optional supplementation programs while SSA does so for 17 States and the District of Columbia. There are 7 States which do not have optional supplementation programs.

Areas Where Issues Arise

Statutory supplementation requirement. Soon after the SSI program began, some States reduced their costs by reducing their optional supplementation when SSI benefits were adjusted for the cost of living. The result was that some recipients were no better off after a Federal benefit increase than they had been before. To avoid this benefit erosion, the SSI statute was amended in 1976 to require States to pass along any SSI increases. That is, States must maintain their supplementary payment levels, or the total amount of supplementation, that they pay from year to year regardless of any SSI benefit adjustments for the cost of living. If a state fails to do so, it loses Federal matching funds under its Medicaid program.

Federal administration of supplementation. Under Federal administration, a State may have up to 18 different payment level variations: 3 based on geographic distinctions, 6 based on living arrangements, and 9 categorical variations such as aged individuals, blind couples, etc. Thus, SSA's agreement to administer such varied supplementary payments entails such administrative difficulties as the need to do additional living arrangement development, maintain State-specific operating instructions which are updated at least annually, provided detailed systems coding, and issue specialized notices to recipients. All this raises the cost of administration borne by the Federal Government.

Experts' Discussion of State Supplementation Issues

Statutory supplementation requirement. The experts discussed possible changes in the role of State supplementation as the Federal benefit standard approaches or exceeds the Federal poverty line. (See B. above on benefit adequacy.) All but one of the experts taking a position on the issue favored giving States greater flexibility in use of funds, particularly considering that some States' costs of living are lower than the national poverty level. These experts concluded that States should be able to use funds, now required for cash supplementation, to provide their SSI populations with assistance in such other areas as social services, medical care, or nutrition once the Federal benefit standard reaches at least 100 percent of the poverty line. These same experts supported requiring States to "grandfather" existing supplementation levels for any beneficiary who would otherwise experience a net decrease in the amount of combined Federal/State benefits.

Alternative uses of supplementation funds. A majority of the experts also said that States should be required, for some period, to spend the amount "saved" on supplementation to provide other services to their SSI populations. One of these experts supported a specific and permanent requirement for States to continue to spend some funds either on supplementation or on other services for their SSI populations; however, the amount so spent would not have to be at the full rate required under current law. Another expert favored continuing to require States to maintain current supplementary payment levels.

None of the experts supported permitting States to reduce or eliminate supplementation levels until the Federal benefit standard increases at least to the poverty line. However, if States were allowed to eliminate supplementation without such an increase, three of them endorsed a variable Federal benefit standard tied to geographic living costs following Bureau of Labor Statistics indices. One of these experts observed that this option should be relatively easy to administer since SSA already administers some geographically variable State supplementary payments.

Simplifying Federal administration of supplementation. A majority of the experts supported simplifying, and reducing SSA's costs for, Federal administration of State supplements by reducing the number of possible State payment level variations. Specifically, they concluded that allowable living arrangement variations should be reduced from 6 to 3 (not counting supplementation of the $30 payment limit) and categorical distinctions from 9 to 6; the b allowable variations would consist of up to 3 for individuals and 3 for couples. Because of the dramatic differences in living costs, even within a State, the experts supported continuation of the existing three permissible geographic variations. Most of them said that, within a specified timeframe, States should be given the choice of limiting their payment level variations as described, paying SSA for administering them, or taking over the administration themselves.

Recapitulation of Experts' Opinions on State Supplementation

Option	Experts supporting
1. Permit States to reduce or terminate supplements once the Federal SSI benefit standard increases to 100 percent of the poverty line. "Grandfather" extant supplementation levels for current beneficiaries (but not new eligibles) who would otherwise experience a net benefit decrease. Require States, for at least 3 years after reduction or termination of supplementation, to spend any "freed up" supplementation funds for other services to their needy residents who are aged, blind, or disabled	18
2. Require States, by July 1, 1995, to do one of the following:	16
a. Have no more than 3 supplementary payment level variations based on living arrangements (in addition to one, if desired, for people subject to the $30 payment limit) and no more than 6 variations based on categorical distinctions: up to 3 each for individuals and for couples; plus the existing limit of 3 variations based on geographic areas; or	
b. Pay SSA for administering their supplements; or	
c. Administer their own supplements.	
Comment: The President's budget for fiscal year 1993 includes a proposal to charge States for the cost of administering State supplementation programs.	

E. Payment Limits for People in Institutions

Background Information

Residents of most public institutions. Individuals who reside in public institutions throughout a month generally are not eligible for SSI. This ineligibility rule applies because Congress has not wanted the Federal

Government to assume the traditional responsibilities of State and local governments for residents of their institutions. Historically, Congress has shown some concern about subsidizing institutions if the Federal Government has no control over the quality of care.

Residents of certain public institutions. There are exceptions to the general ineligibility rule for residents of certain public institutions. Exceptions to the ineligibility rule relate to persons in public emergency shelters for the homeless, publicly operated community residences for 16 or fewer residents, public institutions for educational or vocational training, and, when certain conditions are met, persons in medical or psychiatric facilities, provided they were receiving SSI under the provisions of section 1619 (see part C of chapter IV) or are expected to have stays of limited duration. Also, certain residents of public medical facilities may be eligible but their SSI payments cannot exceed $30 a month (see material on issues below).

Residents of private institutions. There is no statutory rule prohibiting eligibility for residents of private institutions. However, the $30 payment limit may apply to a person in a private medical institution when the Medicaid program is paying a substantial portion of the cost of his/her care.

Supplementation of limited payment. Sixteen States supplement the limited SSI payment in amounts ranging from $5 to $45 for an individual. Nine of these supplements are administered by the Social Security Administration.

Areas Where Issues Arise

Amount of payment limit. Residents of public or private institutions for whom Medicaid is paying more than 50 percent of the cost of care are subject to a monthly Federal payment limit of $30 (minus any countable income). This limited amount is for the purpose of meeting incidental personal needs (e.g., toiletries, soft drinks and entertainment) not met by the institution. The amount of the maximum payment has changed only once since the creation of the SSI program—from $25 to $30. Automatic cost-of-living adjustments are not applicable to the $30 payment limit.

Applicability of payment limit. The payment limit described above applies since most of the individual's subsistence needs are met by the institution, which is being paid by Medicaid, another Federal assistance program. However, in other situations where most of a person's needs are being provided by a third party (e.g., a State or local government, a relative, or private health insurance), that person remains ineligible, if in a public institution, or remains eligible at the full benefit rate, if in a private institution.

Experts' Discussion of Payments to Residents of Institutions

Amount of payment limit. Nearly all of the experts said that there should be an increase in the $30 payment limit for institution residents for whom Medicaid is paying more than 50 percent of the cost of care. There was discussion regarding the appropriate amount and whether an increase should be one time only or yearly, based on cost-of-living increases.

One expert indicated that a one-time raise to $35 a month would eliminate the complications of cost-of-living adjustments and would be less costly than yearly increases. Another expert suggested combining the two approaches; that is, increase the payment limit to $35 initially, and increase the limit yearly thereafter, based on the cost-of-living adjustment. This suggestion received the support of nearly all of the experts.

Applicability of payment limit. The experts discussed the possibility of expanding the applicability of the $30 payment limit to institutionalized individuals for whom cost of care is being paid by any source (e.g., Medicare, private insurance, family members, charitable organizations or State funds) other than the individual's own income or resources. It was explained that this option would remove the prohibition against eligibility for residents of public institutions who otherwise meet the eligibility criteria; payments would be limited to no more than $30. Additionally, some residents of private institutions who are currently eligible for the full SSI payment would become subject to the $30 payment limit.

A few experts expressed the opinion that an expansion of the applicability of the $30 payment limit would not be desirable because, in combination with the rules for computing income, ineligibility could result for some individuals in private institutions who, under current rules, are eligible for benefits without the payment limit. The experts considered a variation of the option which would address only the eligibility of people in public institutions who are now barred from receiving payments. Under the modified option, SSI eligibility would be possible for residents of public institutions without regard to payment for the cost of care; such payments would be limited to $30. This option would allow limited payments to any otherwise eligible person who happened to be residing in a public institution, such as a county home, even though Medicaid is not paying a significant share of the cost. This option would not disadvantage anyone now on the SSI rolls. Neither option appealed to most of the experts.

Recapitulation of Experts' Opinions on Payments to Residents of Institutions

Option	Experts supporting
1. Increase the $30 payment limit to $35, indexing annually thereafter based on the cost of living, and rounding to the next higher dollar	19
Comments: One expert, while supporting this option, prefers an initial increase to $40. Another expert supporting this option also favors computing the cost-of-living adjustment retroactively to the beginning of the program, or at least to July 1, 1988 when the payment was increased from $25 to $30.	
2. Expand the applicability of the $30 payment limit to apply to institutionalized individuals for whom more than 50 percent of the cost of care is being paid by any source other than the individual's own income or resources	1
3. Allow SSI eligibility for residents of public institutions without regard to payment of the cost of care by an outside source, but limit the payment to $30	1

F. Accounting Periods

Background Information

The Federal benefit standard functions as a limit on countable income. Thus, after applying all appropriate exclusions to arrive at countable income, the benefit to be paid is the amount by which countable income falls short of the benefit standard. Actual payment amounts are affected by the accounting period prescribed by statute. From 1974 to 1982, SSI benefits were computed using a quarterly prospective system. That is, income and benefit amounts were estimated prospectively for each calendar quarter and paid in equal increments for each month of eligibility in the quarter. A prospective accounting system makes it possible to respond promptly to changes in income. However, because income and benefits were spread over 3 months, the quarterly aspect of the arrangement also entailed overpayments and underpayments and produced situations which were complicated to explain to recipients.

In 1982, a new statutory provision changed the accounting period and ever since SSI benefits have been determined on a monthly retrospective basis. Generally speaking, the benefit payment is now determined separately for each

month using countable income from 2 months earlier. However, there are special rules for new eligibles and for recipients who lose eligibility for one or more months and then regain it. Certain aspects of the retrospective monthly accounting rules are considered by many observers to be inequitable.

Areas Where Issues Arise

The accounting period. The 1982 change to retrospective monthly accounting was intended to allow time for people to report changes so that benefit payments could be made with greater accuracy. However, retrospective accounting is often less responsive to immediate need since it takes 2 months for payments to change in response to decreases in, or losses of, other income.

Triple counting and termination of income. Under the rules of retrospective monthly accounting, the current month's payment amount is usually based on the beneficiary's income from 2 months earlier. However, when a beneficiary becomes eligible for SSI benefits, either initially or after a period of ineligibility, any countable income received in the first month of new or regained eligibility is used to compute the payment amount for the first, second, and third months. This is true even when income terminates after the first month. In initial eligibility cases, the individual may have to choose between delaying the month of eligibility or taking a reduced benefit for 3 months. There is no way to avoid the benefit reduction in renewed eligibility situations.

Similarly, when a beneficiary with countable income experiences reduction or termination of that income, the SSI payment continues to be reduced for 2 more months. This can leave the person with total income which may be far below the income floor.

Varying numbers of paydays in a month. A beneficiary (or a parent or spouse whose wages are deemed available to the beneficiary) earning wages close to the eligibility limit may be paid every other week or once a week. For two- or four-payday months, income remains under the eligibility limit. However, under a monthly system, the extra earnings in a three- or five-payday month are enough to result in ineligibility. While less common, similar situations can arise with unearned income such as unemployment benefits which may be paid weekly or biweekly.

The most serious consequence of the "extra payday" phenomenon is the loss of Medicaid coverage. Blind or disabled recipients who are working, and would be eligible except for their earned income, continue to be entitled to Medicaid under the provisions of section 1619(b) of the Social Security Act (see part C of chapter IV). However, this protection is not available to a recipient who receives unearned, rather than earned income, nor does it extend to aged beneficiaries.

Monthly verification of wages. Because eligibility is determined monthly and benefits are computed monthly, it is necessary for SSA to know the amount of monthly earnings a claimant received. The law states that "relevant information will be verified from independent or collateral sources * * *." Thus, SSA requests monthly wage information from employers when a worker does not have pay slips.

The verification requirement has proven burdensome, particularly for employers who may not maintain their records in the format needed by SSA. Employers provide wage information to SSA for retirement and survivors insurance and income tax purposes and often resent the need to provide yet a different (monthly) breakout for SSI purposes.

State supplementation payments computation. SSA administers supplementary payments for some States. However, persons whose incomes are too high to receive Federal SSI benefits but low enough to qualify for federally-administered State supplementary payments are not "eligible" for Federal SSI under the law. This can lead to some unusual payment computations that are very difficult to explain either orally or in written notices.

For example, an individual may be receiving both a partial Federal payment and a full State supplementary payment. The individual's income may increase to the point that it exceeds the Federal benefit standard, but is below the combined Federal plus State supplementary payment level. In this instance, the individual will receive no Federal payment because s/he is not eligible for one, but s/he will still receive a full State supplementary payment, because the computation for the State payment is based on income from 2 months ago. Only after 2 months will the State payment be reduced. In this situation, one change in income produces 2 payment changes. Such payment changes result in confusing notices to some people in States where SSA administers the supplement.

Experts' Discussion of Accounting Period Issues

The accounting period. All of the experts who took a position on the accounting period favored keeping a monthly accounting system but making it prospective instead of retrospective. The experts noted that prospective monthly accounting solves the payment computation problems of triple counting, termination of income, and State supplementation. They also concluded that prospective monthly accounting could be more responsive to current needs by making timely adjustments in benefit payments.

Some experts felt that, in theory, annual accounting might solve the problems currently identified with retrospective monthly accounting. However, they acknowledged that annual accounting may result in new problems and adversely impact some beneficiaries. Therefore, they believed that extensive testing prior to seeking enactment of annual accounting would be appropriate. Other experts expressed concern that even testing this option suggests support for it which may not exist.

Varying numbers of paydays in a month. Because of the preference for retaining a monthly accounting system, the experts recognized that there would continue to be certain months in which some people would lose eligibility due to an extra payday. A majority of the experts viewed the principal problem in these situations as the loss of Medicaid eligibility. Therefore, they concluded that Medicaid coverage should continue whenever there is a loss of SSI eligibility due solely to calendar-related income fluctuations.

Monthly verification of income. A majority of the experts said that beneficiaries, employers, and SSA staff would all benefit from some easing of the requirement for income verification. These experts concluded that, when it is not cost-effective, SSA should not be required to verify income.

Recapitulation of Experts' Opinions on Accounting Period

Option	Experts supporting
1. Change from retrospective monthly accounting to prospective monthly accounting	19
2. Continue Medicaid coverage when SSI eligibility is lost solely due to a calendar-related income fluctuation	19
3. Do not require income verification when it is not cost effctive	19
4. Define eligibility for SSI in terms of income below the combined Federal/State payment level for beneficiaries in States for which SSA administers the supplement	16

Option	Experts supporting
Comment: One expert expressed concern that, by supporting minor or "technical" improvements, such improvements might be perceived as sufficient and so blunt the impetus for prospective monthly accounting.	
5. Test one or more methods of annual accounting, beginning with prospective annual accounting, by running a computer simulation of the method or methods proposed	13

G. Options Preferred by a Majority of Experts—Summary and Cost Estimates

Federal Benefit Standards

Nearly all of the 20 experts who took a position on this issue view increasing the Federal benefit standard as one of the program's top priorities. A majority of these experts favors increasing the Federal benefit standard for an individual to 120 percent of the poverty guideline for one person and doing so in five equal annual increments.

At the same time, a majority of the experts also supports keeping the Federal benefit standard for a couple at 150 percent of the standard for an individual. They say that reducing the couple's standard to 135 percent of the individual's standard (the result of using 120 percent of the poverty guideline for a two-person family) would decrease benefits to some couples and ignore testimony concerning the fact that, even though people may live together, they cannot share expenses such as those for food or medicine.

The experts want to see the SSI program live up to the vision of the 1972 report of the Senate Finance Committee. They feel a sense of urgency about assuring those who are aged, blind, or disabled that they will no longer have to live in poverty. The experts agree with public testimony that it is unfair to provide a benefit which keeps such an at-risk population poor and on the brink of homelessness; that it is a national responsibility to provide sustenance to these people who cannot provide it for themselves—and to provide it in a measure that affords dignity and security to each life.

ESTIMATED COST

[In millions]

Fiscal year	SSI program	SSI administrative	Medicaid program
1993	$2,567	$250	$435
1994	7,092	710	1,825
1995	12,706	460	2,950

ESTIMATED COST—Continued

[In millions]

Fiscal year	SSI program	SSI administrative	Medicaid program
1996	19,527	470	4,310
1997	27,707	510	5,995

* * * * *

Couples: Definition of "Spouse"

A majority of the experts supports the existing definition of a "spouse" (for purposes both of couples' determinations and of spouse-to-spouse deeming)—with one exception. They say that the SSI program should not view a person as another person's spouse simply because they hold themselves out to the community as such.

This majority favors continuing the concept of an individual and spouse, eligible or ineligible, as an eligibility unit, using the combined income and resources of both spouses. However, they are concerned that the "holding out" provision represents an unacceptable invasion of people's personal lives and presents administrative complications to no useful end. These experts say that this is an area where SSI should differ from the social insurance programs under which establishing a common-law relationship can be beneficial.

ESTIMATED COST

[In millions]

Fiscal year	SSI program	SSI administrative	Medicaid program
1993	$2	Negligible	Negligible.
1994	3	Negligible	Negligible.
1995	3	Negligible	Negligible.
1996	4	Negligible	Negligible.
1997	4	Negligible	Negligible.

* * * * *

Couples: Income Exclusions

All of the experts who expressed a view on this issue support giving each member of a couple a full set of earned income exclusions. They see this as an important adjunct of providing incentives for people to work, especially in helping compensate for the higher expenses of a working person who is aged, blind, or disabled.

ESTIMATED COST

[In millions]

Fiscal year	SSI program	SSI administrative	Medicaid program
1993	$1	Negligible	$5
1994	2	$10	20
1995	3	Negligible	25
1996	3	None	25
1997	3	Negligible	35

* * * * *

State Supplementation: Reduction/Termination

Nearly all of the experts say that States should be permitted to reduce or terminate their supplemental payments once the Federal benefit standard reaches 100 percent of the poverty guideline; however, this should be coupled with grandfathering any current recipient who would otherwise experience a net benefit reduction. As part of this option, States would be required, for at least 3 years after reducing or terminating supplementation, to use their "freed up" funds to provide other services to their SSI populations.

This large majority says that States should be allowed the flexibility to assume new roles with respect to their needy populations and to use limited funds for purposes other than supplementation of SSI. These experts conclude that, once the Federal benefit standard reaches the poverty line, benefits in some States will move above local costs of living; therefore, other kinds of assistance for needy people may be more helpful than cash supplementation of the Federal benefit.

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
1993	None	(*)	$435
1994	None	(*)	1,825
1995	None	(*)	1,995
1996	None	(*)	2,195
1997	None	(*)	2,410

* Unable to estimate.

* * * * *

State Supplementation: Federally Administered Variations

A majority of the experts supports requiring each State whose optional supplementation program is administered by the Federal Government, by July 1, 1995, to: (a) Have no more than 3 living arrangement

variations—not counting a supplementation level for persons subject to the $30 payment limit, no more than 6 categorical variations (3 each for individuals and couples), and up to 3 based on geographic distinctions; or (b) pay SSA for administering the supplementation program; or (c) administer its own program. They view the federally-administered supplementation programs as having become overly complex and costly for Federal administration and say that an increased Federal benefit standard should reduce the need for so many variations.

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
All	None	(*)	None.

* Unable to estimate.

* * * * *

Limited Payment to Residents of Institutions

All of the 19 experts who expressed a view on this issue support an increase in the current $30 payment limit applicable to certain residents of medical institutions. These experts say the payment should be increased to a maximum of $35, followed by annual cost-of-living adjustments rounded to the next higher dollar.

This majority of experts views an initial increase of $5 as necessary recognition of ongoing increases in the costs of the comfort items for which the limited payment was intended. Thereafter, annual adjustments would keep the payment limit in alignment with living costs. They also say that applicability of the payment limit should apply as it does now: to persons experiencing lengthy stays in public or private medical treatment facilities where the Medicaid program pays a substantial part of the cost of their care so that SSI should continue to fill in only in terms of personal incidentals not provided by the institution or Medicaid.

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
1993	$8	None	Negligible.
1994	16	Negligible	Negligible.

ESTIMATED COST—Continued

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
1995	20	None	Negligible.
1996	23	None	Negligible.
1997	27	None	Negligible.

* * * * *

Accounting Periods: Prospective Monthly Period

Almost all of the experts support use of a prospective monthly accounting period for purposes of determining SSI eligibility and payment amount. The experts want an SSI accounting period that is as responsive as possible to changes in recipients' financial circumstances, that simplifies program administration, and that produces easily understood results in terms of eligibility and payment amount. They also want to protect Medicaid eligibility for those people affected by variations in the number of regular paydays per month. These experts conclude that, except for calendar-related income fluctuations which can occur under any kind of monthly system, a monthly prospective accounting period would meet all of the criteria more effectively than the present retrospective system.

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
All	(*)	Negligible	(*)

* Unable to estimate.

* * * * *

Accounting Periods: SSI Eligibility Definition

For as long as the existing monthly retrospective accounting period remains in existence, a majority of the experts concludes that SSI eligibility should be defined in terms of the combined Federal/State supplementary benefit level for those States where SSA administers the supplement.

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
1993	$4	Negligible	Negligible.

ESTIMATED COST—Continued

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
1994	5	Negligible	Negligible.
1995	5	Negligible	Negligible.
1996	5	Negligible	Negligible.
1997	5	Negligible	Negligible.

* * * * *

Accounting Periods: Annual Period Simulation

A majority of the experts, all of whom support a change to monthly prospective accounting, also favors computer simulation testing of methods of annual accounting, beginning with a prospective annual period. They wish to determine whether an annual period might be justified as simpler and more understandable than a monthly or quarterly one.

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
All	None	(*)	None.

* Unable to estimate.

* * * * *

Accounting Period: Income Fluctuations

Almost all of the experts favor continuing Medicaid coverage when a calendar-related income fluctuation causes loss of SSI eligibility. They see this as consistent with the statutory linkage between SSI and Medicaid, more equitable, and easier for the public to understand.

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
All	None	Negligible	Negligible.

* * * * *

Accounting Period: Income Verification

Nearly all of the experts also favor eliminating income verification in situations when such verification would not be cost-effective. They say that this would be an administrative

simplification with little financial risk attached if the criteria for cost-effectiveness are carefully drawn.

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
All	(*)	(*)	(*)

* Unable to estimate.

* * * * *

Chapter II, Appendix i—Other Federal Programs' Eligibility Standards as a Percentage of the Poverty Guidelines

The following Federal programs are chief among those which, by statute (or regulation), use more than 100 percent of the poverty guidelines in establishing income cutoffs for eligibility and/or for offering sliding fee schedules for services.[1]

Program and Poverty Guidelines Percentage

Medicaid: Qualified Medicare Beneficiaries 1991–92: 100%, 1993–94: 110%, and 1995 on: 120%.

Children under 6, infants, and pregnant women—133% but State may go to 185%; 23 States are at 185% and 6 others are between 133% and 185%.

Spousal impoverishment, minimum protected income—1989–91: 122% of amount for 2 people; 1991–92: 133%; 07/92 on: 150% of amount for 2 people.

Food Stamps: 130% for households w/o elderly or disabled member.

Special Supplemental Food Program for Women, Infants, & Children—Set by States but cannot exceed 185%.

Commodity Supplemental Food Program—130% (elderly only).

National School Lunch Program; School Breakfast Program; Child/Adult Care Food Program; Special Milk Program for Children—Free meals: 130%; Reduced-price meals: 130% to 185%.

Food Distribution Program on Indian Reservations—130%.

Food Commodities Program—Set by States. Often 130% but may be higher.

Community Services Block Grants; Community Food and Nutrition—Usually 100% but States may go to 125%.

Low-Income Energy Assistance—Greater of 150% of the guidelines or 60% of State's adjusted median income.

Weatherization Assistance for Low-Income Persons—125%.

Community Health Centers; Migrant Health Centers Grants; National Health Service Corps—Sliding fee schedule for those between 100% and 200%.

Family Planning Services—Sliding fee schedule between 100% and 200% (or 250% in some cases).

Senior Community Service Employment Program—125%.

Foster Grandparent Program; Senior Companion Program—Higher of 125% or of 100% + SSI State supplement.

* * * * *

Note: Benefits for SSI recipients are considerably higher than those for AFDC recipients but are generally lower than benefits provided to retired or disabled workers under the social insurance programs. (AFDC legislation does not refer to poverty guidelines although a few States have chosen to use a less-than-100-percent level of the guidelines.) SSI benefits for children with disabilities are basically the same as benefits for adults.

Chapter III—Needs-Based Issues—Including the Elimination of In-Kind Support and Maintenance and Raising the Resources Limits While Streamlining the Exclusions

A. Preamble to Chapter

Precursors to SSI—the National Perspective.

Historically, one objective of the Social Security Act was to establish a social insurance program as the first line of defense against the future loss of income for persons who work. However, some persons were ineligible for social insurance benefits due to insufficient work history, and some received benefits which were inadequate to provide a basic living. Therefore, the Act provided incentives (in the form of matching funds) to the States to establish and maintain means-tested programs of assistance to persons who were aged, blind, or disabled.

For these Federal/State grant programs, the statute required that a person's income and resources be considered in determining need. However, neither the statute nor Federal regulations provided a definition of income or resources, or specified income levels or resource limits which would apply. Each State specified the amount that represented basic needs and defined those needs. All States recognized food, clothing, shelter, fuel and utilities as "basic" consumption items needed by everyone. Most States also included other items (e.g., personal care items, medicine chest supplies, household supplies, etc.).

The Act mandated certain disregards (exclusions) relating to earned income. States were given options in designing their measures of need; some options were to disregard a limited monthly amount of "any income" and to provide for some form of "relative responsibility."

Federal rules required States to specify the amounts and types of real and personal property, including liquid assets, that might be retained to meet current and future needs. In addition to the home, personal effects, automobile and income-producing property allowed by the State, the amount of real and personal property, including liquid assets, that could be reserved for each individual recipient was limited to $2,000. States also were permitted to allow "reasonable" proportions of income from business or farms to be used to increase capital assets, so that a person's income might be increased.

Needs Tests Under SSI

When the SSI program was enacted, its primary objective was to provide a nationally uniform income floor for persons who are aged, blind, or disabled and have little or nothing on which to live; i.e., those who are "needy." There were efforts to provide objective and nationally uniform rules, to remove the "stigma" of welfare, and to provide individuals with cash which could be used at their own discretion. At the same time, some of the adult programs' basic income and resource schemes carried over to the SSI program in addressing measures of need.

As with the former State programs, the SSI program uses two measures of need: Income and resources. To be sufficiently "needy" to receive SSI benefits, a person must meet both the income test and the resources test. For someone who is eligible, the amount of his/her income also affects the amount of any SSI benefit which may be paid.

The Federal benefit standard functions as a limit on countable income which a person may have and still be eligible to receive Federal SSI benefits. Income which is counted is subtracted from the Federal benefit standard to arrive at the amount payable to an otherwise eligible person. This approach bears some similarity to the approach under the former programs. A discussion of the adequacy of the Federal benefit standard as a measure of income necessary to support a person's needs for food, clothing, and shelter, is provided in part B of chapter II. That chapter also contains information concerning the computation of benefits (in part F).

This chapter addresses basic rules regarding what is considered to be income or resources; how much income should be counted against the Federal benefit standard, and the role of resources in efficiently and effectively identifying those who are needy. Although in-kind support and maintenance is a type of income, it is addressed separately (in part C) since it has unique characteristics and has been

[1] Except for Medicaid, based on excerpts from "Federal Programs Using the Poverty Guidelines * * * as an Eligibility Criterion or to Target Assistance or Services", Gorden M. Fisher, ASPE/DHHS.

frequently identified as one of the most complex and troublesome program areas.

B. Income

Background Information

Meaning of income. For SSI purposes, there is a national definition of "income." In general, "income" means anything a person receives that can provide food, clothing, or shelter. Sometimes income takes the direct form of food, clothing, or shelter. More often, it comes in the form of cash (including checks and electronic funds transfers).

Income, under the statute, is either "earned" or "unearned." Earned income comes from wages, self-employment, and similar sources. Unearned income is every other kind of income. Examples of common types of unearned income are social insurance benefits, veterans benefits, rental and lease income, interest and dividend income, and "in-kind support and maintenance" (food, clothing, and shelter).

Exclusions from income. Income exclusions provide a financial advantage to persons who receive certain kinds of income (see "countable income"). The Social Security Act provides many exclusions from income. In addition, a number of other specific exclusions have been written into statutes governing other programs, such as housing subsidies and earned income tax credits. There are more than 50 income exclusions provided by statute.

Countable income. Countable income is the amount of income remaining after all appropriate exclusions are applied to income. It is the amount actually subtracted from the Federal benefit standard to determine eligibility and to compute the monthly benefit amount.

Areas Where Issues Arise

Earned income exclusions. Some program rules relating to earned income address a program objective other than need: incentives and opportunities for SSI eligible persons who are able to work, or to be rehabilitated, to enable them to increase their independence. In designing the SSI program, the Congress recognized that some needy people, including the aged, would continue to work and attempt to be self-supporting long after others would have stopped. To encourage these attempts, Congress reasoned that those who work should find that their work resulted in a higher level of income than could be had without working. Therefore, the statute provides that, in determining eligibility for and the amount of SSI benefits, significant amounts of a worker's earnings are to be excluded. The experts' individual views concerning the income provisions related to such exclusions are addressed in part C of chapter IV.

The $20 monthly general income exclusion. The first $20 of monthly income does not count. The $20 was set at the beginning of the program. This exclusion was intended to assure that persons who had previously worked in the labor force would receive somewhat higher monthly income than those who had not. It was believed that the exclusion would most often apply to social insurance benefits; however, it could apply to income from any source except need-related income.

The amount of the exclusion has never been increased, although the Federal benefit standard has more than tripled since it was first set in 1972. The $20 is subtracted first from any unearned income a person has. If the person has less than $20 in unearned income (or none at all), any remaining amount of the $20 is subtracted from any earned income.

During the experts' meetings, they heard people state that this exclusion has lost much of its value and should be increased to reflect the increased cost of living since 1972 and it should be indexed for inflation. Some also said that if the exclusion were applied only to unearned income, it would be more understandable to the public.

Interest and dividends. The amounts of interest and dividends received by SSI beneficiaries usually are quite small. (The amounts are limited, in effect, by the program's eligibility limits on the resources that generate such income.) These amounts count as income unless they can be excluded under a provision that allows for exclusion of income that is "infrequent or irregular" or under the $20 monthly general income exclusion.

Often, the "infrequent or irregular" exclusion cannot apply, even when the amount of the interest or dividend is very small. This is because interest and dividends often are received both "regularly" and "frequently." To be considered "infrequent," the income must be received no more than once in a calendar quarter and in an amount not greater than $20.

The experts heard people state that there are inequities in the treatment of interest and dividends because some are excluded under the "infrequent or irregular" exclusion and others must be counted; sometimes the only difference is how often the bank or company chooses to pay its interest or dividends. Some people said that excluding interest and dividends would simplify program administration and it would reward SSI recipients who are thrifty and try to save money.

Income "deemed" from an ineligible spouse or parent. When a married person whose spouse is ineligible applies for SSI benefits, part of the spouse's income may be considered to belong to the applicant. Similarly, if a child applies for SSI benefits, part of the income of an ineligible parent(s) in the household may be considered to belong to the child. This process of considering some of a spouse's or parent's income is called for by statute; it is referred to as "deeming," because the SSI program "deems" part of the relative's income to be available for the support of the applicant or beneficiary. The Secretary of Health and Human Services determines, through regulations, how much of the income of an ineligible spouse or parent(s) to deem as income.

The regulations provide three different formulas for deeming income from a parent(s) to a child. In all three formulas, an amount for each ineligible child in the household is excluded from the parent's income. This recognizes the need for the parent to support such other children. After this exclusion is applied, one of the three formulas is used, depending on whether the remaining income of the parent is earned income, unearned income, or a mixture of earned and unearned income.

Experience has shown that the three formulas do not always produce equitable and reasonable results. Often, a slight change in the nature of the parent's income (e.g., from a mixture of earned and unearned income to only unearned income) can produce a major increase in the amount of income deemed to the SSI child. This happens because of the differences between the formulas used in these two situations.

On July 8, 1991, the Secretary of Health and Human Services published a Notice of Proposed Rulemaking in the **Federal Register** (56 FR 30884) to change the rules so that the formula in use for situations where the parent(s) has both earned and unearned income would apply in all situations. A final regulation has not been published to date.

Other issues related to parent-to-child deeming of income were raised by the public in response to the issues paper which the SSI Modernization Project published in the **Federal Register** on July 31, 1991. People commented that unusual expenses incurred by parents for a disabled child should be deducted before deeming the parents' income to that child. Examples of such special expenses ranged from smaller items, such as disposable diapers needed by a child who is incontinent, to major

investments, such as structural changes to a home to accommodate a child who uses a wheelchair. Money spent on such items is not available for the child's food, clothing, and shelter needs.

Some people also commented that certain types of income received by a parent who is no longer able to work due to disability or unemployment should be treated as earned, rather than unearned, income. Examples mentioned of such types of income are: unemployment compensation, workers' compensation, and disability and survivorship social insurance benefits. It was stated that, despite a substantial loss in household income, a child can actually lose entitlement to SSI, and possibly Medicaid, when wages stop and these other benefits begin. The problem arises because earned income is treated more favorably than unearned income.

Income from individually held Indian trust land. Many Federal statutes provide for the exclusion from income of payments made to members of Indian tribes and groups. There is, however, no specific exclusion that applies to income derived from individually held Indian trust lands.

Individually held Indian trust land is managed by the Bureau of Indian Affairs for the benefit of individual Indian landowners. It may generate income, typically from agricultural leases. Indians receive a portion of the lease income in proportion to the amount of land they own.

The experts were told during the public meetings that the SSI treatment of this lease income creates serious problems for tribal elders because receipt of the income is virtually always unpredictable and it may be received in 6 or 8 different months of the year. It was stated that the program pays monthly benefits based on estimates of such income which (of necessity) are highly unreliable; this too often leaves the tribal elders with little or no income.

Experts' Discussion of Unearned Income Issues

The $20 monthly general income exclusion. Several of the experts cited the historical purpose of the general income exclusion: to reward beneficiaries who receive social insurance benefits. Without such an exclusion, some persons who have worked and earned social security coverage would be no better off than SSI recipients who have never worked.

Some experts questioned whether, with an adequate Federal benefit standard, it would be appropriate to exclude a significant amount of other income and so lift SSI beneficiaries with other income significantly above the benefit standard. These experts pointed out that the need for a high general income exclusion is greater while the benefit standard remains low but diminishes as the benefit standard becomes more nearly adequate.

A number of experts said the cost of increasing the exclusion to one-seventh of the Federal benefit standard (the ratio at the beginning of the program) is prohibitively high, at least in the early years as the higher benefit standard is being phased in. Most experts agreed that achieving the higher benefit standard should take priority over an increase in the general income exclusion.

Several experts spoke in favor of restricting the exclusion to unearned income only. They agreed that this change would simplify the program. If accompanied by an increase in the basic earned income exclusion, the restriction would not cause any recipient to lose SSI benefits.

One expert suggested a different simplification: Replace the general income exclusion and the earned income exclusions with a $200 exclusion for any combination of earned and unearned income. Exclude one-half of the balance; and index the basic ($200) exclusion to the cost of living, increasing the exclusion when a change in the cost of living would raise the exclusion by a $50 increment.

Another expert suggested an immediate increase in the existing exclusion to $30, to be followed by a phased-in increase to one-seventh of the benefit standard only after the benefit standard reaches 120 percent of the poverty line. A majority of the experts, however, expressed a preference for a one-time increase in the exclusion to $30, and restricting it's application to unearned income.

Interest and dividends. Many experts expressed the view that the present requirement to count very small amounts of interest and dividends is undesirable. It discourages beneficiaries who have only modest amounts of savings, and it adds unnecessary complexity to the management of the SSI program.

However, the experts were concerned that a blanket exclusion of all interest and dividends might be inappropriate in an SSI program with a significantly higher limit on assets (see part D). Such an exclusion would benefit most those with the highest assets. In view of this concern, an expert suggested an annual exclusion of $200 of interest and dividends; all additional interest and dividends would be counted. Most of the experts agreed with this suggestion.

Parent-to-child deeming. Most of the experts said that the present three formulas should be reduced to one. They said that the current formula which is used when the parents have both earned and unearned income should be used in all cases, regardless of whether the income is earned, unearned, or a mixture.

A majority also believed that itemized special expenses of the disabled child should be deducted from parental income before income is deemed to the child. This would recognize the need for parents to be able to provide for special needs directly related to the child's disabling condition. These experts also stated that income received by a parent because she is no longer able to work should be treated as earned income so as to avoid a benefit decrease when income drops substantially.

Individual Indian trust income. One expert familiar with the problems of SSI beneficiaries who are Indians stated that, because income from individually held trust lands can be very irregular and unpredictable, the lease payments often cause SSI overpayments. The expert said that some Indians have given up on SSI because of frustration with these overpayments over which they have little or no control.

The same expert explained that proposed legislation (S. 754), which would provide a $4,000 annual exclusion of income from individually held Indian trust lands, is intended to protect the large majority of affected SSI beneficiaries who receive this amount or less each year. Those few who receive more than $4,000 per year would continue to have the excess amount counted for SSI purposes.

Another expert from a State with a large Indian population said that, because many Indians live in communities with non-Indian SSI beneficiaries, an annual exclusion of $4,000 for some SSI beneficiaries might be resented by those who must rely on SSI alone. This expert suggested, as a compromise, an annual exclusion of $2,000, since most income from individually held Indian trust land totals less than $2,000 annually, and the Alaska Native Claims Settlement Act provides for a similar exclusion of up to $2,000 per year of cash for certain Alaskan natives. The experts who supported an exclusion preferred this $2,000 amount.

Recapitulation of Experts' Opinions on Unearned Income

Option	Experts supporting
The $20 general monthly income exclusion:	
1. Increase the exclusion to $30 but apply the exclusion only to unearned income	16
Comment: One expert supporting this option also supports indexing the exclusion for inflation by setting its value at one-seventh of the Federal benefit standard and rounding to the nearest multiple of $10. A second expert supporting this option also supports such indexing, but prefers that the value be rounded to the nearest mulitiple of $5.	
2. Replace the general income exclusion and the earned income exclusions with a $200 exclusion for any combination of earned and unearned income. Also exclude one-half of the balance. Index the basic ($200) exclusion to the cost of living, increasing the exclusion when a change in the cost of living would raise the exclusion by a $50 increment	1
Interest and Dividends:	
1. Exclude from income an annual amount of $200 of interest and dividends. Count any interest and dividends in excess of this annual amount	17
Comment: One expert supporting this option also supports counting interest and dividends, but only if the resource limits are increased significantly or the Federal benefit standard is increased at least to the poverty line.	
2. Continue to count interest and dividends, as at present, regardless of the resource limit and Federal benefit standard	1
Parent-to-child deeming:	
1. Adopt, for use in all parent-to-child deeming situations, the current formula used when the parents have both earned and unearned income	16
2. Deduct itemized special expenses of the disabled child before deeming parental income to the child	16
3. In parent-to-child deeming, treat unearned income that is intended to replace a parent's earnings (such as unemployment compensation, workers' compensation, and disability and survivorship social insurance benefits) as earned income	16
Individual Indian trust income:	
1. Exclude up to $2,000 per year per individual of income derived from individually held Indian trust land	16
Comment: One expert in favor of this option also supports indexing the $2,000 amount of the cost of living and increasing the exclusion when a change in the cost of living would increase the exclusion by an increment of $500.	
2. Continue to count all income derived from individually held Indian trust land	1

C. In-Kind Support and Maintenance

Background Information

One type of income that the SSI program considers is "in-kind support and maintenance." In-kind support and maintenance is not cash but is actual food, clothing, or shelter that is given to a person or that the person receives because someone else pays for it. Shelter means room, rent, mortgage payments, real property taxes, heating fuel, gas, electricity, water, sewerage, and garbage collection services. There are two rules for valuing in-kind support and maintenance: The one-third reduction rule and the presumed maximum value rule.

One-third reduction rule. The statute provides for reducing the SSI benefit rate by one-third instead of determining the actual dollar value of items received when the individual or couple lives in another's household and receives in-kind support and maintenance from that person. This has been interpreted to mean that a person in the household of another must receive both food and shelter from others in the household before the one-third reduction can apply.

An SSI claimant is not living in another person's household if s/he owns, or has rental liability for, the living quarters or is in a noninstitutional care arrangement such as foster or family care. Such a claimant is not subject to the one-third reduction.

An SSI claimant is not receiving both food and shelter from anyone else in the household if s/he pays a pro rata share of household operating expenses, lives in a household in which all members receive public assistance, or receives food or shelter (but not both). Therefore, such a claimant is not subject to the one-third reduction even if s/he lives in another person's household.

Presumed maximum value rule. When an SSI claimant receives food, clothing, or shelter (from someone with whom s/he lives or does not live) but the one-third reduction rule does not apply, the presumed maximum value rule is used. The value of any food, clothing, or shelter received is presumed to be worth a maximum of one-third the Federal benefit rate plus the amount of the general income exclusion ($20). (This value results in the same benefit which would be payable to a person with no other income and subject to the one-third reduction.)

This amount is unearned income unless the presumed maximum value is higher than the actual value of the food, clothing, or shelter received. In such a case, the actual amount received is unearned income.

Discovering in-kind support and maintenance. When a person applies for SSI, and periodically thereafter when eligibility is redetermined, s/he must answer many personal questions about her/his living arrangements. These include questions about the household operating expenses, the number and relationship of other household members, and any help the household may receive to meet expenses. Questions are also asked of—and statements obtained from—other household members, even though these other people may not be applying for SSI benefits themselves.

Testimony received. Many members of the public provided oral and written statements to the experts concerning the adverse effects of the current program treatment of in-kind support and maintenance. Such testimony came from officials of local government agencies as well as representatives of private non-profit organizations and advocacy groups, and recipients themselves.

Many people reported that the program's attempts to discover, and assign a value to, in-kind assistance provided to an SSI claimant are harsh and demeaning, a disincentive to family members helping each other, and in direct conflict with other government programs which encourage family involvement.

Some said that the application of these provisions discourages caregiving by family members and use of housing alternatives which are beneficial to the individual and to society. One person said, "The poorest and sickest of the elderly live with poor families who assist in caring for them." Another commented, "Informal caregiving provided by friends and relatives provides valuable assistance to the elderly. It is estimated that relatives represent 84 percent of all caregivers * * *. [The provisions] only serve to create further financial hardship for the family of the elderly or disabled and discourages family support * * * [and] encourages institutionalization, which is a much more expensive alternative to home caregiving."

It was stated that the pro-rata share analysis is inequitable since it assumes that all household members consume or otherwise benefit from equal portions of the food and shelter expenses of a household. This does not necessarily correlate to the facts of any given household situation.

A recipient commented, "There are as many reasons as there are people for having to live with [SSI]. No one expects

government to pay them to live in luxury * * * but it would be nice to be able to accept a gift at Christmas or on your birthday without having to report it and have the small check you receive reduced because these things are considered 'in-kind income.' "

Others stated that it is inequitable that in-kind support provided by a nonprofit organization is not counted, but help from within a family reduces the benefit. Similarly, some stated that it is inequitable that those who receive public housing are not charged with income because of it, but those whose family members help with housing costs receive a benefit which is reduced because of that help.

Field office employees reported that the process of gathering information and decisionmaking regarding the existence and value of in-kind support and maintenance is one of the most complex and time-consuming tasks they face. They said that evaluating in-kind support and maintenance is subjective, and even experienced employees have difficulty in making the necessary judgments. They also viewed the provisions as inequitable, time consuming to administer, and error prone. Some also said that it is difficult for recipients to understand why they are being charged the determined amounts. Nearly all stated that an inordinate amount of the time they spend processing SSI claims is devoted to this area.

Other programs. Other income maintenance programs supported by the Federal Government do not require that a person's benefit be reduced due to the in-kind receipt of food, clothing, or shelter. With respect to the Aid of Families with Dependent Children program, States have the option of disregarding in-kind income which is not earned income. While there is no central data source on the matter, it appears that most States, in recognition of the difficulty of valuing it, to disregard such income.

The VA, with respect to its needs-based cash benefit programs, looks to the source and purpose of an in-kind gift. If the purpose of the gift is to provide basic sustenance needs (e.g., food, clothing, and housing), it is not counted as income, even when received from a private party such as a friend or relative.

Experts' Discussion of In-kind Support and Maintenance

None of the experts who addressed this issue was satisfied with the status quo. Each one favored some modification of the in-kind support and maintenance rules. Each also said that modification of these rules should be one of the top priorities.

Nearly all of the experts indicated that, as a result of public testimony and discussions with field office staff, SSI recipients, and others, the only option they felt they could support was to eliminate counting in-kind support and maintenance. They stated that efforts over the years to clarify or change the rules on counting in-kind support and maintenance have not succeeded, and have only made the policy more confusing and troublesome to recipients and SSA employees alike.

One expert stated that the proposal to eliminate counting in-kind support and maintenance would be too costly and, for this reason, the Congress probably would not support such a change to the program. This expert suggested that the better approach would be to replace present rules for addressing in-kind support and maintenance with a provision for a 25 percent reduction in benefits for any person residing in a household with another person who is an adult. The expert also favored including measures which would protect current recipients against a benefit reduction due to the operation of such a provision. This expert believed that this option would result in program savings, and stated that such savings should be used to improve the SSI program, rather than reverting to the general budget. (For more information, see "Additional Views" at the end of this report.)

Recapitulation of Experts' Opinions on In-kind Support and Maintenance

Option	Experts supporting
1. Eliminate consideration of in-kind support and maintenance as income	17
2. For new beneficianes, eliminate the current provisions regarding in-kind support and maintenance. The benefit for a person living in a household with another person who is an adult (whether or not an SSI beneficiary) would be based on 75 percent of the benefit for an individual living alone	2

D. Resources

Background Information

Resources: Eligibility with respect to resources is determined based on a person's resources as of the first moment of each calendar month and the determination is applicable to the entire month. Thus, a person is determined to be resources eligible or ineligible for an entire month at a time.

If countable resources (see below) do not exceed the applicable limit, the person is resources eligible; there is no effect on the amount of SSI payments. If countable resources exceed the limit, the person is ineligible. A basic premise of the resources test is that people whose resources exceed the applicable limit (currently $2,000 for individuals and $3,000 for couples whether or not both spouses are eligible) should use the excess to meet their needs before becoming eligible for SSI benefits.

Meaning of resources: Resources are cash, other personal property, and real property that an individual owns and has the right to turn into cash to use for his/her own basic needs of food, clothing, and shelter. Not everything a person owns is a resource. A person may own something that s/he does not have the right to turn into cash or use for basic needs. Such things are not resources for SSI purposes.

Certain statutory provisions of the SSI program are based on a presumption that other people share financial responsibility for an individual or couple. Thus, resources of certain other people, particularly an ineligible spouse, or ineligible parent of a child under age 18, are considered to be resources of the individual. This is referred to as "deeming of resources" and is addressed further under "Resources of an ineligible spouse or parent," below.

Excludable and countable resources. The statute provides that certain items shall be excluded from resources when determining whether an individual (or couple) meets the applicable resource limit. These items are referred to as "excludable" resources. This term applies to such things as: the home; household goods and personal effects; an essential automobile; burial spaces and burial funds; life insurance; lump sum retroactive payments of SSI or social insurance benefits (time-limited exclusions); property essential to self-support; and resources set aside as part of a plan for achieving self-support.

Resources that are not excluded count against the statutory limits and are referred to as "countable" resources. Examples of common types of countable resources are cash, nonhome real property, checking and savings accounts, time deposits, stocks and bonds, and property agreements and property rights.

Reasons for resource exclusions. The SSI statute and regulations single out certain resources for special treatment (exclusion). The idea behind the resource exclusions is that certain property is so essential to one's well-being (for example, the home a person lives in) that its owner should not be expected to sell it and use the cash to

meet day-to-day living expenses. In addition, certain funds which are provided for, or set aside for, special purposes are not counted in the SSI program (for example, money paid to a victim of a crime or set aside for burial expenses).

Areas Where Issues Arise

The resources limits and exclusions. The original resources limits established by statute were $1,500 for an individual and $2250 for a couple. These remained the same for 10 years. Effective January 1985, and in each of the next 4 years, the limits were increased by $100 for an individual and $150 for a couple. By January 1989, the limits were $2,000/$3,000 and they have remained at these levels.

Questions frequently arise concerning what should be regarded as a resource, particularly with respect to trusts, and transfers of resources at less than market value.

Treatment of trusts. Money or other property in a trust is treated according to the basic rules concerning what is a resource and which resources count. In order for a trust fund to be considered a person's resource, the person must own the property in the trust and be legally able to access the trust and use the money for support. If the person cannot legally do so, the trust fund is not considered to be a resource. These rules allow a third party to set aside money in any amount in a trust for the benefit of an individual without it being counted as a resource for that individual.

Transfer of resources. If a person gives away something s/he owns, or sells it for less than it is worth, there is no effect on SSI eligibility. (Before July 1, 1988, if a person gave away something or sold it for less than it was worth, the difference between the fair market value and what the person received was counted under the SSI program as the person's resource for 24 months.) However, the Medicaid statute provides that if a person gives away a resource or sells it for less than its value, s/he may not be eligible for Medicaid-covered nursing home services for up to 30 months from the time of the transfer.

During the public meetings, people said that the resources limits are too low and keep people who are very needy from receiving benefits. Some pointed out that the limits prevent people from being able to save sums sufficient to provide for emergencies (e.g., repair of a roof, replacement of a heater or refrigerator, etc.). Others said that the resource exclusions lend complexity to the program—those who understand exclusions are able to make optimal use of the rules to gain eligibility while those who have total resources of equal or lesser value but do not understand (or receive knowledgeable help) are resources ineligible.

Time-limited resources exclusions. Some resources are not counted for a limited number of months, ranging from 1 to 9 months. These time-limited exclusions give people extra time to use the resources before they are counted toward the SSI limit. Examples of time-limited exclusions are: (a) retroactive payments of SSI, and retirement, survivors, and/or disability social insurance payments are excluded for 6 months; (b) payments from a fund established by a State to aid victims of crime, and certain relocation assistance provided by a State or local government, are excluded for 9 months.

Overpayments due to excess resources. When a person's resources exceed the limit at the beginning of a month for which s/he receives an SSI payment, the entire benefit paid for the month(s) represents an overpayment. In such a situation, if the individual requests waiver and is found to be without fault in creating the overpayment, recovery of a portion of the overpayment may be waived. However, the person must repay an amount equal to (a) the difference between his/her total resources and the resources limit or (b) the total overpayment, whichever is less. An exception applies in situations where the resources exceed the limit by $50 or less. In such situations, the person does not have to pay back any amount unless the failure to report the excess resources in a timely manner was willful and knowing.

Resources of an ineligible spouse or parent. The value of all countable resources of an ineligible spouse is added to the value of the eligible individual's own countable resources. As long as the total value of those resources does not exceed the resource limit for a couple (currently $3,000), the individual is resources eligible.

In general, if a child under age 18 lives in a household with both parents, the value of all countable resources of the parents which exceed the resources limit for a couple (currently $3,000) is deemed to be a resource of the child. If only one parent is in the household, the value of all countable resources of that parent which exceed the resources limit for an individual (currently $2,000) is deemed to be a resource of the child. There is no provision for an exclusion(s) for an ineligible child(ren) in the household. (If there is more than one SSI eligible child under age 18 in the household, the deemed parental resources are divided equally among the children.)

The child's countable resources include deemed parental resources in addition to his/her own resources. As long as the child's total resources do not exceed the resource limit for an individual, the child is resources eligible.

Experts' Discussion of Resources Issues

Resources limits and exclusions. Most experts, affirming the views of most public commenters, said that the resources test needs to be changed.

During the course of their public meetings, the experts were concerned with a total review of the asset test to determine whether the test is useful, and if so, whether it effectively and efficiently identifies those who are truly needy. Various experts posed, for discussion purposes, a variety of different approaches to the resources test. One approach would have eliminated the test, creating incentives to place resources in an income producing mode while retaining rules which provide for counting the income. Most experts believed that this would open the program to potential abuse.

Other approaches were to increase the limits to various levels with alternatives as to whether current exclusions would be retained. Some experts introduced, for discussion, concerns over current program rules which: allow money to be set aside in trusts; ignore transfers of resources to others for less than full value; and, in effect, create the need to "pigeonhole" resources in order to take full advantage of the available exclusions.

Many experts said that increased resources limits are needed in order to enable people to set money aside to meet emergencies. Further, some contended that current limits make it impossible for people to save enough money to eventually achieve independence from public assistance. They believed that higher limits would improve the potential for people to do this.

The experts discussed what resources limits would be appropriate, taking into consideration the estimated costs of increasing the limits to various levels, and possible tradeoffs between increases in the limits and elimination of some current exclusions. A few experts expressed concern that the elimination of exclusions for such things as life insurance and burial funds would mean that some recipients would have to dispose of assets in order to remain eligible to receive SSI benefits. However other experts pointed out that adequate increases in the limits would allow beneficiaries with such currently excluded resources to keep them. Eliminating specific exclusions while increasing the limits would simplify the

program and provide people with greater flexibility in their conservation and use of funds.

One expert commented that the need for increases in the resources limits is overshadowed by the need for increased benefit levels and, therefore, the resources limits should remain as they are until benefits are more nearly adequate. Another expert said that the current limits impose restrictions on people which cannot be ignored. This expert stated it would be legitimate to consider some trusts as resources, but not those established by third parties in an effort to provide beneficiaries with things which are not considered to be income.

A majority of the experts supported increasing the resources limits to $7,000 for an individual and $10,500 for a couple and simplifying the resources test by streamlining the exclusions. The home, an essential car, business property essential for self-support, and household goods and personal effects would (continue to) be excluded. All other exclusions, including the exclusions for life insurance and burial funds would be eliminated. Assests not readily convertible to cash, such as real property, would not be counted. However, funds in a trust established with an individual's (or spouse's) own money, and funds in a trust established with judgment payments when the settlement order requires that the funds be made available for general needs, would be counted as resources. The experts did not propose changes to the SSI program regarding transfer of assets, recognizing that this is an issue more for the Medicaid program than for SSI.

Several experts supported the streamlining of the exclusions, as described above, but favored larger increases to the resources limits. They would set the limits at $12,000 for an individual and $15,000 for a couple. Two more experts, while not objecting to increasing the resources limit, believed that other priorities should be addressed first.

In general, most experts supported increases in the resources limits with streamlined exclusions. The experts favored the above approaches over an option to triple the resources limit, without changing the exclusions. They said that streamlining the exclusions would remove present inequities (i.e., differences in how much people can retain, depending on the manner of retention); and it would make the program easier for beneficiaries to understand and for SSA to administer. A majority of experts said that the change in the resource limits, while streamlining the exclusions, should be one of the top priorities.

Another option considered was to set the resources limit for a couple at an amount equal to twice the limit for an individual. However most experts did not choose to pursue this. They also generally declined to support indexing the resources limits for cost-of-living increases, in favor of establishing new, higher limits and streamlining the resources test. One expert stated that the resources limits should be reviewed again in 5–10 years following an increase to determine whether changes in the cost of living had created a need for further increases in the limits.

Time-limited resources exclusions. Most experts concluded that it is reasonable to allow people time to dispose of certain resources, and uniform time limits would make the resources rules easier for the public to understand and easier for field offices to administer. For those exclusions which have time limits, they favored a limit of 12 months.

Treatment of excess resources. The experts discussed concerns over the "notch" effect created by the present resources eligibility test. That is, if resources exceed the limit by as little as one dollar, a person becomes ineligible to receive benefits. This can be troublesome in initial claims as well as for people who are on the rolls. In an initial claim, the person must spend down to become eligible. A person already receiving benefits can be removed from payment status because of a change in resources which is relatively small, such as interest added to a bank account. Several experts spoke in favor of a sliding scale approach such that resources in excess of the limit would, on a graduated basis, reduce the benefit amount (in much the same way as countable income reduces the benefit amount). Most of the experts believed that this would introduce a new complexity to the program and would be of limited value since it would be so hard for beneficiaries to understand.

Most experts believed that they could alleviate the problem related to ongoing eligibility of people on the rolls by changing the method for calculating overpayments that result from excess resources. Under the favored policy change, the amount of an overpayment resulting from excess resources would not be greater than the maximum amount by which the person's resources exceeded the resources limit. This would remove the current onus on the beneficiary to request and justify waiver of recovery of the excess amount.

Parent-to-child "deeming" of resources. Most experts favored a policy change that would provide for a resources exclusion for an ineligible child(ren) in the household, along the lines of the current parent-to-child income deeming rules. Under the favored approach, when the amount of resources to be deemed from a parent(s) to an eligible child was determined, $2,000 for each ineligible child in the household would be excluded.

Recapitulation of Experts' Opinions on Resources

Option	Experts supporting
RESOURCES LIMITS	
A. Increasing the limits:	
1. Increase resources limits to $7,000 for an individual and $10,500 for a couple and simplify the resources test by streamlining the exclusions. The home, an essential car, business property essential for self-support, and household goods and personal effects would be excluded. All other exclusions (except the time-limited exclusions) would be eliminated. Funds in a trust established with an individual's own money, and funds in a trust established with judgment payments when the settlement order requires that the funds be made available for general needs, would be counted as resources	16
Comment: One experts who supports this option also favors increasing the limit for a couple to an amount which would be twice the limit for an individual.	
2. Increase resources limits to $12,000 for an individual and $15,000 for a couple. Streamline the resources exclusions as in option 1 above	3
Comment: Two experts supporting this option also support option 1 above and are included in that count.	
3. Increase resources limits, establishing reasonable levels based on the funds available and other priorities	1
4. Do not change the resources limits until the benefit levels are increased significantly	1
B. Indexing the resources limits:	
1. Index new, higher resources limits to yearly increases in the cost of living	3
Comment: One expert who supports this option also support(s) indexing the current limits to yearly increases in the cost of living.	
2. Index the resources limits to the cost of living when a rise in the cost of living would result in raising the resources limit by an increment of $500	2
Comment: One expert supporting this option would support, as a second choice, indexing the current limits to yearly increases in the cost of living. This expert, while favoring higher limits, does not support indexing such new higher limits.	
TIME-LIMITED RESOURCES EXCLUSIONS	
1. Change the current periods for the time-limited exclusions to 12 months	15

Option	Experts supporting
2. Keep the current periods for the time-limited exclusions	1
TREATMENT OF EXCESS RESOURCES	
1. Change the method for calculating overpayments that result from excess resources. The amount of an overpayment resulting from excess resources would not be greater than the maximum amount that the person's resources exceeded the resources limit	17
2. Implement a "sliding scale" approach. Resources over the limit would reduce SSI benefits in proportion to the amount of excess resources, as opposed to across-the-board ineligibility	3
Comment: The three experts supporting this option also support option 1 above and are reflected in that count.	
PARENT-TO-CHILD DEEMING OF RESOURCES	
1. In determining the amount of resources to be deemed from a parent(s) to a child, exclude $2,000 for each ineligible child in the household	14

E. Options Preferred by a Majority of Experts—Summary and Cost Estimates

In this chapter, the experts have made it clear that a majority favors the elimination of in-kind support and maintenance, including the reduction of benefits by one-third when a beneficiary moves into the household of a family or friend; and a majority favors an increase in the amount of resources people can retain—from $2,000 for an individual and $3,000 for a couple to $7,000 and $10,500 respectively—while streamlining the resources exclusions.

An elaboration of these and other views follows.

The $20 Monthly General Income Exclusion

A majority of experts supports increasing the general income exclusion to $30 and applying it only to unearned income. These experts believe that it will simplify the program to apply this exclusion only to unearned income, and the option to increase the earned income exclusion (see Part C of Chapter IV) will prevent any person from being disadvantaged. These experts also believe that an initial increase in this exclusion will ameliorate the effects of inflation on the exclusion, but further increases are not needed in view of the option to increase the Federal benefit standard to 120 percent of the poverty guideline, as supported by a majority of experts. They stated that it is more important to increase the benefit rate than to exclude additional amounts of income, since the benefit increase will help those with the greatest need—those with no other income.

ESTIMATED COST

[In millions]

Fiscal year	SSI program	SSI administrative	Medicaid program
1993	$203	$150	$260
1994	303	370	935
1995	321	40	1,105
1996	338	30	1,280
1997	355	30	1,475

* * * * *

Interest and Dividends

Most experts support excluding from income an annual amount of $200 of interest and dividends. This would encourage beneficiaries who have modest savings, and it would simplify administration of the program. The cost of this option would be limited by the $200 ceiling on the exclusion; the ceiling also avoids a potential problem of a blanket exclusion which would provide the most help to those with the highest assets.

ESTIMATED COST

[In millions]

Fiscal year	SSI program	SSI admnistrative	Medicaid program
1993	$3	None	$5
1994	4	Negligible	5
1995	5	None	5
1996	5	None	5
1997	5	None	5

* * * * *

Parent-to-Child Deeming: Income Formula

A majority of experts supports the use of a single formula in all parent-to-child deeming situations. The formula should be that currently used when the parents have both earned and unearned income. This would avoid inequities which now occur due to the use of other formulas in some situations. It would also help to simplify the program and make it more understandable to the public.

ESTIMATED COST

[In millions]

Fiscal year	SSI program	SSI administrative	Medicaid program
1993	$11	Negligible	Negligible.
1994	15	Negligible	Negligible.
1995	15	Negligible	Negligible.
1996	15	Negligible	Negligible.

ESTIMATED COST—Continued

[In millions]

Fiscal year	SSI program	SSI administrative	Medicaid program
1997	16	Negligible	Negligible.

* * * * *

Parent-to-Child Deeming: Special Expense Deduction

A majority of experts supports the option to deduct itemized special expenses of a disabled child before deeming parental income to the child. This would recognize that the parents incur unusual expenses related to the child's disability and money spent on such items is not available for the child's food, clothing, and shelter needs.

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
1993	$10	Negligible	Negligible.
1994	15	Negligible	Negligible.
1995	17	Negligible	Negligible.
1996	18	Negligible	Negligible.
1997	20	Negligible	Negligible.

* * * * *

Parent-to-Child Deeming: New Treatment of Certain Income

A majority of experts supports a change in the treatment of certain types of income received by parents when they are no longer able to work due to disability or unemployment. Such unearned income (e.g., unemployment compensation, workers' compensation, and disability and survivorship social insurance benefits) should be treated as earned income.

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
1993	$16	Negligible	Negligible.
1994	27	Negligible	Negligible.
1995	29	Negligible	Negligible.
1996	32	Negligible	Negligible.

ESTIMATED COST—Continued

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
1997	35	Negligible	Negligible.

* * * * *

Individual Indian Trust Income

Nearly all the experts favor excluding up to $2,000 per year (per individual) of income derived from individually held Indian trust land. This would protect those who receive small amounts of income from individually held trust lands on an irregular and unpredictable schedule. The amount protected would be consistent with a similar exclusion of cash under the Alaska Native Claims Settlement Act.

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
All	Negligible	Negligible	Negligible.

* * * * *

In-Kind Support and Maintenance

A majority of experts supports, as a high priority, the elimination of in-kind support and maintenance from consideration as income. They believe the current provisions are harsh, demeaning, inequitable, an invasion of privacy, subject to manipulation, and contrary to principles which most programs endorse (e.g., support of the family unit, encouragement for voluntary assistance, etc.). Additionally, they view the provisions as inordinately complex to administer. Many past efforts to ameliorate the problems have been unsuccessful and, in some cases, have added to the complexities. Elimination of in-kind support and maintenance from consideration as income is one of the four top priorities of most of the experts.

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
1993	$600	$60	$140
1994	1,003	170	510
1995	1,066	0	600
1996	1,122	(4)	695

ESTIMATED COST—Continued

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
1997	1,178	(4)	805

* * * * *

Resource Limits

A majority of experts supports increasing the resource limits to $7,000 for an individual and $10,500 for a couple, while eliminating most of the resource exclusions. The home, an essential car, business property essential for self-support, and household goods and personal effects would continue to be excluded. Assets not readily convertible to cash, such as real property, would not be counted. However, funds in a trust established with an individual's (or spouse's) own money, and funds in a trust established with judgment payments when the settlement order requires that the funds be made available for general needs, would be counted as resources.

These experts see these changes as making the program simpler and more equitable. The increased resource limits, with fewer exclusions, would more efficiently and effectively identify the truly needy among persons who are aged, blind, or disabled. Also, the increases in the resource limits would be sufficient to assure that currently eligible persons with resources which are excluded would not be made ineligible due to the elimination of the exclusions. These changes are among the top four priorities of a majority of the experts.

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
1993	$55	$40	$75
1994	191	100	265
1995	215	10	315
1996	236	10	365
1997	257	10	420

* * * * *

Time-Limited Resource Exclusions

Nearly all of the experts who expressed an opinion favor making all of the time-limited exclusions available for 12 months. This would recognize that there are certain situations in which it is reasonable to allow individuals time to dispose of certain resources, and, at the same time, make the program easier for the public to understand and easier for field offices to administer.

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
All	Negligible	Negligible	Negligible.

* * * * *

Treatment of Excess Resources

Most experts support a change in the method for calculating overpayments so that the amount considered overpaid would never exceed the maximum amount that the person's resources exceeded the resource limit. This would alleviate an unreasonable effect of current rules which require that a beneficiary request and justify waiver of an overpayment amount in excess of the amount by which his/her resources exceeded the limit.

ESTIMATED COST

[In millions]

Fiscal year	SSI program	SSI administrative	Medicaid program
1993	53	Negligible	Negligible
1994	3	Negligible	Negligible
1995	3	Negligible	Negligible.
1996	3	Negligible	Negligible.
1997	3	Negligible	Negligible.

* * * * *

Parent-to-Child Deeming of Resources

A majority of experts supports a change in regulations governing deeming of resources from a parent to a child. The change would provide a resource allocation of $2,000 per ineligible child in the household. This would recognize the parents' obligation to provide for needs of other children in the household.

ESTIMATED COST

[In millions]

Fiscal year	SSI program	SSI administrative	Medicaid program
1993	$7	Negligible	(*)
1994	11	Negligible	(*)
1995	12	Negligible	(*)
1996	13	Negligible	(*)
1997	14	Negligible	(*)

(*) Unable to estimate.

* * * * *

Chapter IV—Disability & Work Incentives

A. Preamble to Chapter

The Historical Perspective

National policy has moved slowly but steadily in the direction of providing broad-based help in solving the problems of people with disabilities—including problems related to employment. This chapter is devoted to changes in practice and law which the experts believe will contribute to the solution of vital problems.

The first Federal step toward assisting those with disabilities came with the 1950 enactment of a Federal-State grant program called Aid to the Permanently and Totally Disabled. This program, under title XIV of the Social Security Act, had a minimum age limit of 18. Title XIV was followed in 1956 by enactment of the original title II disability social insurance provisions; those provisions covered only disabled workers who were age 50–64 and had substantial recent work histories, plus coverage for certain disabled adult children.

The following years saw legislation to eliminate the age requirement in the insurance program and eventually to establish SSI. The latter had the effect of joining SSI to the social insurance programs to form a national income maintenance safety net for the aged and blind as well as for those with disabilities. As recently as 1990, the U.S. Supreme Court, by its decision in *Zebley* v. *Sullivan*, ensured inclusion in the SSI program of all needy children with disabilities while Congress' passage of the Americans with Disabilities Act, which prohibits discrimination against persons with disabilities, closed many of the remaining gaps.

The experts have endeavored to express their views in a manner that is consistent with the ever-broadening approach taken in congressional and judicial actions over the years and especially within the past decade.

More Recent Legislative/Judicial Actions and Their Effects

By law, State agencies (called disability determination services), under contract to SSA, make medical determinations of disability. During the Chairman's visit to some of these agencies, their staffs reported significant changes in the adjudication of disability cases. They said that, when the SSI program began in 1974, they were taught to adjudicate claims with the presumption that a claimant was eligible when the preponderance of evidence so indicated. They also reported that subsequently it had become the responsibility of the claimant to establish eligibility beyond any doubt.

It is true that data reflect a decrease in SSI program disability allowance rates between 1977 and 1982. However, in 1982, the allowance rates began to rise and by 1991 were nearly back to their 1977 levels. (See Appendix i to this chapter for actual figures.) Although specific causes of these variations have not been identified with certainty, the continuing upward trend of the period 1982–1991 is consistent with a series of Federal court decisions and congressional actions which took an increasingly comprehensive view of the meaning of disability and of how to arrive at decisions concerning its existence. It is a trend endorsed by a majority of the experts.

The Federal Courts

The period from 1981–1991 saw a number of U.S. district and circuit (appeals) court decisions which had such significant results as legislation on medical improvement; a ruling clarifying agency policy on evidence of pain; new regulations on evaluating disability in children and in widows/widowers; expedited processing of claims based on AIDS/HIV infection; and changes in the way SSA evaluates mental impairments.

Court decisions, combined with legislative history, also resulted in SSA's becoming the first Federal agency ever to publish regulations governing its policies on formal acquiescence with U.S. circuit court decisions which are not consistent with existing national policy. Under regulations signed by Secretary Sullivan, "acquiescence rulings" apply within the circuit(s) involved in the litigation. This can result in different policies in different parts of the country, a situation which can be resolved judicially only if the Supreme Court takes jurisdiction. The situation can also be resolved by the Secretary's declaring that one of the circuit court decisions will become national policy. The experts heard some public testimony on acquiescence and, as a result, it is believed to be important that all concerned understand that a new policy is now in effect. The experts are supportive of all efforts to clarify and formalize SSA's acquiescence policy.

The Congress

Some of the litigation described above was relevant to significant congressional actions over this same decade:

The Social Security Disability Amendments of 1980. Important provisions included work incentives, some of which applied to initial claims (and so may have affected allowance rates) while others were restricted to SSI posteligibility situations. One provision established a new section 1619 of the Social Security Act which allows working SSI recipients to maintain eligibility for SSI and/or Medicaid despite performance of substantial gainful activity. (For more information, see part C below.) The 1980 amendments also modified the requirements for "deeming" parental income and resources to be available to a blind or disabled child and authorized the government to pay for medical evidence and certain travel expenses incidental to required medical examinations.

The Social Security Disability Benefits Reform Act of 1984. These amendments established new requirements relating to cases involving mental impairments, consultative examinations, and medical records. They also established a new medical improvement standard for determining continued disability. In addition, the conference report on these amendments was instrumental in the formalization of SSA's policy on acquiescence, described above under "The Federal courts".

B. Disability

Background Information

Disability caseloads in SSI. The category of "disability" is the largest and fastest growing of the three SSI eligibility categories (the other two being "age" and "blindness"). Since the program began in 1974, there has been an overall growth of approximately 169 percent in its disability caseload. For 1993, the President's budget projects an increase in SSI disability claims of nearly 59 percent just since 1989. It also projects a backlog of 1.4 million SSI and social insurance disability cases by the end of 1993. While the growth began early in the program, there has been a recent surge. One result of that surge is a substantial backlog, due in large part to lack of adequate staff, in many of the State disability determination services which, by law, make medical determinations for SSA for which they are reimbursed solely with Federal funds.

Relationship of SSI disability to disability social insurance. As enacted in 1972, the SSI disability program rested on the same basic concepts which underlay the disability social insurance program enacted nearly two decades earlier. Specifically, it was intended that the "disability test" for

SSI and for the disability insurance program be essentially the same so that SSI payments could more easily serve to supplement income for those persons whose disability insurance benefits, in the absence of significant other income, were low or nonexistent.

Despite the intended overlap, the two disability programs serve what are often significantly different segments of the population with disabilities. The social insurance disability provisions relate to people who have significant work histories. The SSI disability program, on the other hand, assists persons who are disabled and are in need, regardless of their work histories. Therefore, while conformity between the two programs is desirable in many respects, total parallelism may not be appropriate. Nevertheless, as testimony pointed out, differing rules can be confusing, particularly for those who may be eligible under both programs. For example, SSI offers special assistance and incentives to people who work despite being blind or disabled, while work at a substantial level can result in complete loss of benefits under the disability insurance program.

Some characteristics of the SSI population with disabilities. The nature of the SSI population whose eligibility is based on disability (but not blindness) has changed significantly over the program's eighteen years of operation. For example, children under age 18, none of whom would have been eligible under the pre-1974 Federal/State programs unless they were blind, now constitute 13 percent of SSI recipients with disabilities. In addition, more than 2 in 3 of all adult recipients are under age 50 (compared with 1 in 5 in 1976). This means that, on the average, adult recipients under 65 have become younger.

Areas Where Issues Arise

Definitions. The statute defines "disability" as the inability to engage in any "substantial gainful activity" by reason of any medically determinable physical or mental impairment(s) which can be expected to result in death or which has lasted or is expected to last for a continuous period of not less than 12 months.

Note: The SSI statute categorizes the blind separately from those with other disabilities; therefore, discussions of "disability" in the SSI program do not apply to the blind unless specifically stated otherwise.

The Secretary defines substantial gainful activity as any significant physical or mental activity in employment or self-employment. Generally, earnings above a specific amount function to delineate whether a person is able to work and, therefore, whether s/he is disabled. Originally a flat $50 per month, the substantial earnings figure is now $500 after deducting the cost of impairment-related work expenses and disregarding the value of earnings subsidies. For purposes both of disability social insurance and of SSI disability initial claims, work at or above the specified level means that the worker is not disabled. Thus, a person who is working and earning above $500 cannot become eligible in the first place under either program.

Unlike the disability social insurance program, once SSI eligibility has been established on the basis of disability (and assuming medical improvement has not occurred), work has a direct effect on SSI posteligibility situations only from the standpoint of benefit offset due to countable income. That is, SSI payments are offset $1 for every $2 of earned income after applying appropriate income exclusions. However, work can be a sign of medical improvement and may trigger a review of continuing disability.

Disability claims process. Claims for SSI disability benefits are usually initiated through applicant contact with a teleservice center. The teleservice center, in most instances, mails a Disability Report form to the claimant for completion and schedules an interview at the local field office. A field office claims representative conducts the interview in person or by telephone. The interview consists of completing the basic application forms, reviewing them with the claimant, and obtaining permission to contact any treating sources. The claims file then goes to the State disability determination services for review and a determination concerning disability. Although they are State organizations, the disability determination services are funded by SSA and use SSA rules on disability.

Presumptive disability. It is possible to make SSI payments based on a presumption of disability or blindness, even though a formal medical determination has not yet been made, provided the claimant meets all other eligibility requirements. This cannot be done under the social insurance, or title II, provisions of the Act. These payments can be made for no more than 6 months. They do not have to be repaid even if the later formal determination is that the presumption was erroneous and the claimant is not disabled or blind.

A presumption of disability may be made by a field office claims representative when there are readily observable severe impairments such as amputation of extremities. The field offices also have the authority to make a finding of presumptive disability for claimants with HIV infection whose disease manifestations are of a severity listed in the regulations. In addition, presumptive disability findings may be made for any claimants by the examiners in the State agencies when available medical and other evidence indicates a high probability of disability.

Very young children. In establishing medically determinable impairments in very young children, SSA gives greater weight to the functional impact of impairments than to a precise definition or naming of their causes. Some children are too young to be tested formally to establish laboratory findings (e.g., to establish a precise reading of visual acuity), and it may not even be possible to attach a specific diagnosis to a recognized medically determinable impairment. For these children, medical findings are often presented in terms of the child's functioning in relation to age. In these cases, once it is established that there is a medically determinable impairment, SSA makes a disability determination based on all available evidence about the child's development and functioning, on knowledge of the course of the disease or disorder (if a diagnosis has been established), and on informed clinical observation and judgment.

As of May 1992, under new childhood disability regulations (to implement the Supreme Court's decision in *Zebley*), the initial allowance rate for children age 5 and under was 65.1 percent of the applications filed for those in this age group. Children under age 1 (the hardest to test) were being paid at the initial decision level at a rate of 75.6 percent.

Appeal of disability decisions. Each time a decision is made on an initial claim for benefits, or on continued eligibility, a written notice is sent to the individual. An individual who does not agree with the decision has the right to appeal. There are three appeals steps in the administrative review process and an individual usually has 60 days from receipt of a notice to appeal the decision.

1. If dissatisfied with the medical decision made by a State agency, an individual can request reconsideration. This is a review of all available evidence by State employees other than the team who made the initial decision. Reconsideration usually does not involve a personal interview with the individual.

2. An individual who is not satisfied with reconsideration results may request a hearing before an

administrative law judge. Such a hearing does involve a face-to-face interview and may also involve a representative for the individual as well as witnesses and new evidence.

3. The third step for a dissatisfied individual is to request a review of the administrative law judge's decision by the Appeals Council. If the request is granted, the Appeals Council will issue a decision or will remand the case to the administrative law judge. Also, the Appeals Council, on its own motion, may decide to review a hearing decision which is not appealed. Whatever it does, the Appeals Council sends the individual a notice explaining the action. If still dissatisfied, the individual may bring action in Federal district court.

Time limits on disability claims and appeals. There are no statutory time limits applicable to SSA actions with respect to initial disability decisions or to most decisions on claims under appeal. Claimants, who have 60 days to file appeals at each of the three levels described above, may have a long wait for a final decision.

Experts' Discussion of Disability Issues

Definitions. All of the experts who took a position in this area agreed with public commenters that, for SSI purposes, the definition of "substantial gainful activity" should be changed to recognize that persons with disabilities may work and also become eligible for SSI. The experts said that an SSI individual who works by virtue of receiving significant support services should not be viewed as engaging in substantial gainful activity. However, the SSI means tests (limits on income and resources) would remain in place and earnings could result in ineligibility if countable income (or resources) exceeded the limit. While the experts cited on-the-job attendant care and job-related support services as examples of "significant support services", they did not wish to limit the scope of the term by suggesting a specific definition.

One of the experts submitted for consideration an option addressing the definition of "disability" itself. (For more information, see appendix ii at the end of this chapter.) This option urged use of functional measures of mental/physical impairments—not substantial gainful activity—to define disability in both the SSI and the social insurance programs.

The expert offering the option pointed out that this is essentially what SSI already does in determining childhood disability as well as blindness and said it should be viewed as important to have a better parallel between the SSI and social insurance programs in order to deal equitably with the "notch" effect. This effect, which occurs under current rules when a social insurance program beneficiary (under title II) works, is as follows. So long as the beneficiary's earnings are below the substantial gainful activity level, there is no reduction in insurance benefits. However, if the beneficiary completes a trial work period and begins to work at a level that constitutes substantial gainful activity, s/he loses all social insurance cash benefits rather than encountering a gradual reduction as would be the case under SSI.

A number of the experts agreed with the philosophy outlined above but were concerned about the possible impact on the administration of the disability social insurance program. They pointed out that, unlike SSI, the social insurance disability program does not apply any means limitation in the form of an "income" test or other mechanism. Most of them agreed that a feasibility study would be a better course. By way of clarification, one of them noted that it should be made clear that this option does not contemplate relying solely on medical listings to establish disability since that could be a more rigorous test than applies under current policy.

In their discussion, the experts took particular note of repeated testimony concerning the need to update medical criteria used to determine disability of persons with Parkinson's disease. The experts learned that SSA was reviewing its neurological Listing of Impairments and that the export group established for that purpose included a specialist in Parkinsonian syndrome. Therefore, the modernization experts concluded that further consideration on their part was not necessary.

In response to some public comments on the July 31, 1991 **Federal Register** issue paper publication, the experts considered a change in the definition of disability to encompass those not fully functional but not fully disabled. Most of the experts said they were not prepared to endorse such a program. A number of the experts, however, indicated their strong support for a "functional" test of whether or not a person is disabled as contrasted with the continuation of a "work" test.

Disability claims process. The experts acknowledged the many public comments concerning need for specially-trained staff to conduct informed, sensitive initial disability claims interviews in order to provide the State agencies with claims information that is both complete and accurate. The experts said that this kind of specialized staff would contribute significantly to faster, more accurate disability determinations. In this context, the experts considered whether it would be better for such staff to be attached to the SSA field offices or to the State disability determination services and whether the actual interviews should be moved from field offices to State agencies.

A number of the experts expressed the view that the real problem was the budget-driven underfunding of agency operations. This, they concluded, results in a chronic lack of resources necessary to do a quality job. These experts said that, without added resources, lasting improvements are not possible no matter how much effort is directed toward altering administrative processes or reassigning priorities which, in turn, can only reduce backlogs at the expense of other program necessities. (For more information, see chapter VI.)

A majority of the experts favored keeping responsibility for initial disability interviews in the field offices provided funding were made available for intensive trainings of their staffs in disability claims-taking. The experts preferred use of field offices because this would keep intact their traditional responsibility for maintaining a full and continuing relationship with each claimant whereas the State agency responsibility is that of making medical determinations. They pointed out, too, that the greater number of field offices makes them more easily accessible to the public. The experts also noted that, prior to SSA's staff downsizing, field offices had had disability specialists, similar to the kind of staff under discussion, and concluded that a return to such staffing would be the most appropriate route to faster, more accurate disability determinations.

A majority of the experts also said that using State agency staff to perform the interview function, even if those staff were outstationed in SSA field offices, could further overextended State staffs and change their long-standing basic role of making medical determinations. One expert, who preferred the majority view but found use of State agency personnel acceptable, said that the most important thing was having sufficient personnel with adequate specialized expertise, and not whether these staff are assigned to field offices or State units. One expert who disagreed with the majority was concerned that the workload would be too much for field offices to absorb without funding for a new, specialized staff and questioned the need to build the disability determination services'

kind of expertise at some other level of the organization.

Very young children. The experts considered a number of public comments concerning the need for disability criteria that would more easily permit an assumption of disability in very young children, thus providing early access to Medicaid in most States. They recognized that SSA does not necessarily follow the same process used to determine disability in adults because the emphasis for children is on whether their functioning is age-appropriate. A majority of the experts concluded that SSA should develop appropriate criteria for making an assumption concerning the existence of disability in children under the age of 4. They said that payments based on such an assumption should not be limited to the 6-month period allowed under the existing "presumptive disability" provision but, like the existing presumptive payments, they would not be overpayments when and if the children were found not to be disabled based on later testing and diagnosis.

Appeal of disability claims. A number of the experts expressed support for the principle of offering a claimant a face-to-face interview prior to denying a claim based on disability; they also supported the concomitant elimination of the reconsideration level of appeal. These experts were strongly opposed to the current procedures which do not provide claimants with the opportunity to be seen. One expert stated that it was "morally unacceptable * * * that there are people who are eligible for this program who are not getting it simply because the procedures basically freeze them out."

Time limits on disability claims and appeals. A majority of the experts favored establishment of 90-day time limits, not only for completing SSI cases under appeal, but also for making initial determinations on new SSI claims based on disability. They agreed that failure to reach a decision within the prescribed time should mean that SSI payments would begin without a final determination and that any benefits paid on this basis would not later become overpayments even if an individual were later determined not to be disabled.

One expert proposed, and most of the others agreed, that any time limits enacted should be studied after four years of experience with them.

Recapitulation of Experts' Opinions on Disability

Option	Experts supporting
Definitions:	
1. Change the definition of "substantial gainful activity" in the SSI program to recognize that persons who work by virtue of substantial support services (such as on-the-job attendant care, use of a job coach in a sheltered employment situation, or employer accommodations which create a highly specialized environment) are not performing substantial gainful activity and so are still disabled	19
2. Study the feasibility of: (a) Eliminating use of substantial gainful activity for determining disability in both the SSI and the disability insurance programs; and (b) formulating disability criteria in terms of being disadvantaged in participating in major life activities, of which work may be one. This study would be undertaken immediately and completed as soon as possible	17
3. Change the definition of "disability" to cover those neither fully functional nor fully disabled under existing rules	1
Disability claims process:	
1. Use specially trained disability experts assigned to field office staffs to conduct initial disability claims interviews	16
2. Use State disability determination services staff, outstationed in SSA field offices, to conduct initial disability claims interviews. (This would provide claimants with a face-to-face interview as described below in connection with appeals.)	2
Very young children:	
1. Develop appropriate criteria for making an assumption concerning the existence of disability in very young children. Permit continued payment, based on such an assumption, up to the age of 4 without creating an overpayment even if later testing and diagnosis result in a finding that the children are not disabled	14
Appeal of disability decisions:	
1. In both the SSI and the insurance programs: (a) eliminate the reconsideration level of appeal; and (b) provide claimants the opportunity for face-to-face interview with the decisionmaker prior to issuing a denial based on a disability issue	17
2. In both the SSI and the insurance programs, eliminate the reconsideration level of appeal in disability issues but without adding a face-to-face predenial interview	1
Comment: One expert, who did not take a position on this issue, suggested, as a means of controlling backlogs and costs, giving applicants written notice of pending denials and offering the opportunity to present additional medical evidence within a specified timeframe	
Time limits on disability claims and appeals:	
1. Establish 90-day time limits which, if exceeded, would result in benefit payments which would not be considered overpayments even if the recipient were later found ineligible. Study the effects after four years of experience. Apply such limits to:	
a. making initial determinations on new SSI claims on the basis of disability	19
b. completing cases at the administrative law judge level of appeal	15
Comment: One expert, who supports a time limit but does not support this option, says that considered action at this level of appeal requires 120 days	
c. completing cases at the Appeals Council level of appeal	15

C. Work Incentives

Background Information

Role of work incentives. Work incentives play a dual role in the SSI program. First, they offer the working individual emotional and psychological reward in the form of a sense of independence and self-worth. In addition, they seek to provide a meaningful net increase in the worker's income, thereby reducing or eliminating reliance on public and private assistance. In order to be successful, work incentives must overcome work disincentives in the form of fear of losing needed assistance before someone is secure in believing that s/he has the capacity for self-support. The beneficiary must also be assured that, if his/her job terminates, s/he will not, in many instances, go through the long process of reestablishing eligibility for disability payments.

While less than 3 percent of SSI recipients (almost none of them disabled) received income from working in 1974, by September of 1991 the figure had risen to more than a quarter of a million representing 6.3 percent of all recipients with disabilities. Of the disabled who were working in 1991, some 50,000 were benefiting from special work incentive provisions passed by the Congress and available figures show a strong upward trend in this area.

Section 1619 provisions. The SSI statute has certain work incentives which do not affect the benefit amount. The most significant of these provisions appear in section 1619 of the Social Security Act and allow working SSI recipients to maintain eligibility for SSI and/or Medicaid. In 1982, the first year in which the provisions were effective,

approximately 5,800 people benefited from them. In September 1991, the number had risen to 40,443—an eightfold increase.

To establish SSI eligibility on the basis of disability, a person cannot be performing substantial gainful activity (see part B above). However, a person who has received at least one month of "regular" SSI benefits can qualify to receive "special" benefits under section 1619(a) when earnings indicate substantial gainful activity—provided s/he has not recovered medically and still meets all other SSI requirements.

If a working SSI recipient's total income becomes too high to allow a payment, the recipient may continue to qualify for Medicaid under section 1619(b). To qualify for Medicaid, the person's unearned income must be low enough that the person would receive an SSI payment if s/he were not working. The person must also need Medicaid in order to work and not have enough earnings to replace certain benefits s/he would receive absent the earnings (i.e., SSI, Medicaid, and publicly-funded attendant care).

Special income and resources provisions. In addition to the SSI work incentives described above, there are many others which take the form of exceptions to the regular income and resource counting rules. Under the work incentive rules, portions of a working recipient's income and resources are excluded. Specifically, the Act allows for exclusion of:

The earned income of a child who is a student, subject to limits set by the Secretary (currently $400 per month and $1,620 per year).

The first $65 of a person's earned income, plus any portion of the $20 general income inclusion not applied to the person's unearned income.

Amounts of the earned income, of a person who is disabled, used to pay for certain work expenses the person has because of the disability. These expenses are known as impairment-related work expenses and may include things like special equipment or certain transportation costs.

Half of a person's remaining earned income after the above exclusions are applied.

Any portion of the earned income, of a person who is blind, which is used to pay expenses related to earning the income. These are called blind work expenses. The expenses do not have to be related to the person's blindness; they only have to be work-related. Examples of these expenses include taxes, dog guide expenses, meals bought during work hours, etc.

Income (earned or unearned) and/or resources, which a person who is blind or disabled, uses to fulfill an approved plan for achieving self-support. This is a plan written specifically for the individual. The plan allows the person to set aside income or resources for a period of time to pay for things needed to reach a job goal. A plan may be used to pay for things like training, education, job coaching, equipment, etc.

Areas Where Issues Arise

State Medicaid rules and 1619. In most states, SSI eligibility, including eligibility under section 1619, automatically makes a person eligible for Medicaid. However, a few States make their own determinations of Medicaid eligibility using criteria that are more restrictive than those used under SSI. In such States, a working recipient could lose Medicaid eligibility because of earnings before those earnings reach the substantial gainful activity level. Such States are only required to continue Medicaid under section 1619 if the person was eligible for Medicaid under State rules in the month prior to attaining 1619 eligibility. Therefore, the 1619 provisions offer only limited protection to residents of those States.

Deeming rules and Medicaid eligibility under 1619(b). In determining continued Medicaid eligibility under section 1619(b), SSA uses the same methodologies that apply to regular SSI and Medicaid eligibility determinations. Therefore, a working person's unearned income is considered to include any income deemed available from an ineligible spouse. In some cases, this means that the worker who is blind or disabled does not qualify for continuation of Medicaid even though his/her own income alone is low enough to meet the requirements.

State supplementation and 1619. States are not required to make supplementary payments to someone who receives benefits under section 1619(a). Currently, most States which supplement regular SSI payments also supplement section 1619(a) payments. Eight do not.

Disability definition and 1619. The discussion of definitions under part B above explains the "notch" effect which occurs when a person's social insurance disability benefits result in too much income for him/her to receive SSI payments. If this person should begin to work at a level considered indicative of substantial gainful activity, s/he would no longer be disabled and would lose all disability insurance benefits. At the same time, s/he could not become SSI eligible because the SSI statute does not permit use of section 1619 provisions in adjudication of initial claims; the provisions apply only in posteligibility situations.

Experts' Discussion of Work Incentives Issues

Need for expanded work incentives: A majority of the experts said that SSA should begin at once to seek legislation authorizing use of expanded work incentives (detailed below under option 1). An even larger majority favored SSA's conducting a national demonstration in order to make the expanded incentives available as quickly as possible. Most of these experts also supported seeking legislation to make the incentives permanent—ideally without any "moratorium" on the incentives between completion of the demonstration and implementation of permanent provisions. They said that demonstration results should be helpful in establishing the value of such legislation.

Recognizing that it may take more time to obtain legislation than would be possible to devote to a demonstration, most of these same experts also favored some kind of "grandfathering" arrangement so that earnings would not cause demonstration participants to lose benefits when the project ended. One expert commented that, without grandfathering, the demonstration cannot truly test the incentive value of the prospect of retaining the incentives.

Time limits for approval of self-support plans. One of the experts said that, all too often, SSA field offices do not make timely decisions on plans for achieving self-support which are submitted for approval. The result can be inordinate delays in eligibility. All of the experts taking a position on work incentives agreed that there should be a 30-day time limit for such decisions and that, lacking a decision, the proposed plan should be deemed approved; i.e., resultant payments, which should begin at once based on application of the plan exclusions, would not become overpayments if the plan were subsequently disapproved.

State rules and Federal "disability" definitions. A majority of the experts expressed concern over, and supported correction of, two technical problem areas involving other programs. One of these problem areas was national while the other was limited to certain States. The areas were: (a) Loss of social insurance disability benefits due to work which also prevents initial SSI eligibility, despite having little or no income; and (b) lack of State

supplementation or Medicaid eligibility for persons who are, or are considered to be, SSI-eligible under section 1619 (a) or (b). All of the experts who expressed a view on work incentives said that efforts to work should be encouraged as much as possible. A majority of them concluded that there was a need for changes in the rules governing interprogram relationships to permit initial SSI eligibility despite performance of substantial gainful activity and to provide Medicaid and State supplementation to eligibles under section 1619.

Nonselected options. The experts considered, but did not support, the idea of establishing a work attempt period during which all of an individual's earnings would be excluded. It was their view that recipients who work should recognize the effect of that work and earnings on their benefits.

There was also discussion of allowing a working recipient to put some earnings in an excluded "independence account" which could be used only for specified purchases, such as a home or a vehicle. Two experts supported this idea but the others who took a position said that it was not necessary in light of the options for increasing the resource limits (see chapter III).

Recapitulation of Experts' Opinions on Work Incentives

Option	Experts supporting
1. Begin at once to seek legislation, where needed, to authorize permanently all of the following work incentives	12
a. Raise the earned income exclusion from $65 to $200 and reduce the SSI benefit by $1 for every $3 (instead of the current $1 for every $2) of earned income over $200.	
The increased exclusion amount would be intended to compensate the recipient for his/her work expenses. Therefore, this exclusion would replace all of the existing earned income exclusions except for the student earned income exclusion and plans for achieving self-support.	
Individuals whose actual work expenses are more than the amount of earnings excluded (i.e., more than $200 plus two-thirds of the remaining income) could have an individual exclusion computed which would consider the person's actual work expenses. All work-related expenses would be excluded, regardless of whether they are disability related, similar to the current blind work expense exclusion, and this exclusion would be available to all working SSI recipients.	
b. Eliminate continuing disability reviews triggered by work activity and defer scheduled medical reviews for working recipients for 3 years after beginning work.	
c. Treat unemployment compensation, workers' compensation, sick pay, and other similar benefits received because of recent work activity as earned income rather than as unearned.	
Comment: Some experts question whether treating these kinds of benefits as earned income would be an incentive to work.	
d. Eliminate the regulatory time limit for completing a plan for achieving self-support.	
e. Make individuals who receive benefits based on age eligible for all work incentives.	
Comment: The experts recognize that, even under present conditions, the nation is confronted with worker shortages in certain occupations which could be filled by older persons. These shortages are likely to increase in the future.	
2. Simultaneous with the legislative effort in option 1, conduct a national demonstration of the work incentives listed in that option. Use the demonstration results to reinforce legislative efforts	18
Comment: Six of those who support a work incentives demonstration are withholding judgment on specific legislative proposals until demonstration results are available. Another expert favors seeking legislation without a demonstration.	
3. Provide a "grandfathering" arrangement for demonstration participants so they can continue to receive benefits upon expiration of the project (assuming that legislation is not yet in place)	14
Comment: Five of the experts who support a demonstration do not support a grandfather provision while another expert, who does not favor a demonstration, views a grandfather provision as essential if a demonstration were to be conducted.	
4. Disregard deemed income of an ineligible spouse when determining continued Medicaid eligibility under section 1619(b)	18
5. Require SSA to make a decision on a plan for achieving self-support within 30 days. Lacking a decision within that time, assume the plan to be acceptable	18
6. Require States which supplement regular SSI payments to supplement payments under section 1619(a)	18
7. Provide Medicaid under section 1619 to all working persons who are blind or disabled in States not using SSI criteria for Medicaid eligibility purposes	17
8. Provide SSI benefits for individuals who lose their social security benefits due to substantial gainful activity	17
9. Do not permit States to count resources set aside under a plan for achieving self-support when determining Medicaid eligibility using their own rules	14

D. Summary of Options Preferred by a Majority of Experts

Many persons who are truly disabled fail to qualify for disability benefits. Many who are on the disability rolls fail to have the opportunity of realizing their highest possibilities in the work force.

The changes in this chapter which are supported by a majority of the experts deal with both problems. They are designed both to add to, and to subtract from, the beneficiary rolls numbers of persons with disabilities.

The options that the experts favor on the definition of disability support both goals.

The experts favor a change in the definition of "substantial gainful activity" which the SSI law requires as a test of disability. This change would recognize that working persons are disabled if they are unable to work without support services such as on-the-job attendant care or job-related support services such as those furnished through transitional employment programs for persons with mental illness.

The experts want to encourage persons with disabilities to work. The present "substantial gainful activity" definition is seen as detrimental to that objective. These experts see it as highly desirable to encourage work, particularly on the part of persons with disabilities so severe that they are able to work only by virtue of special supportive services. The experts want to see these people qualify for, and continue receiving, disability payments until such time as their total income exceeds the SSI standard, assuming there is no medical recovery before that time. Therefore, they support encouraging persons with disabilities to use their abilities to work instead of encouraging them not to work.

In addition to the SSI change described above, a majority of the experts would like to see the Social Security Administration undertake a study of the feasibility of eliminating "substantial gainful activity" as a test of disability in both the SSI and disability insurance programs. In place of ability to work, they wish to see tested a disability standard based on inability to perform certain mental or physical processes in order to participate in major life activities, of which work may be one. Such a change in definition might add some persons to the disability rolls. This study should begin immediately and be completed as soon as possible.

Next, the preferred options deal with a consideration of the manner in which applications from disabled persons are

handled. They are changes which, if adopted, would undoubtedly add persons to the beneficiary rolls.

A majority of the experts supports the view that claims interviews should be conducted initially by trained disability experts who are SSA field office employees rather than by State disability determination services interviewers outstationed in field offices. These experts are convinced that it is sound procedure to equip the 1,300 SSA field offices with trained personnel who are able to deal with the full range of the SSA-administered income maintenance programs.

While conducting initial disability interviews in field offices is the procedure currently in use, the experts are concerned that the lack of adequate staff prevents SSA from conducting in-depth, high quality interviews with individuals who have disabilities.

A majority of the experts favors a requirement for a face-to-face interview before a claim at the initial level can be denied on the basis of disability. Such an interview can prevent the rejection of a claimant who is clearly eligible and would establish an essential step in providing due process.

The same majority of experts has paired the face-to-face interview prior to a denial with the elimination of the reconsideration level of appeal which would no longer serve a significantly useful purpose. An appeal of a denial after a face-to-face interview would go directly to an administrative law judge.

A majority of the experts concludes that SSA should develop appropriate criteria for assuming the existence of disability in a very young child. These experts favor continuing payments based on such an assumption (until the child reaches four or, if sooner, until a formal disability determination is possible) without creating an overpayment. These experts believe that early access to cash benefits and to medical care is essential in helping these children become adults who are, as much as possible, healthy and productive.

The experts are very much concerned with the current backlog of 762,000 disability cases. This is estimated by the President in his budget message for the fiscal year 1993 to be 1.4 million at the end of that year. The experts want to commend Commissioner King for the increase in the processing rate for these cases. However, if the estimate in the 1993 budget proves valid, they see it as a reasonable assumption that a doubling of the backlog would have a material effort on processing time.

The experts are aware that Commissioner King, in testimony before the Congress, has stated that prevention of the projected significant backlog increase would require the processing of an additional 500,000 claims. That, in turn, would take 5,000 workyears at a cost of $500 million. This supports the experts' view (see Part B of Chapter VI) that the Social Security Administration staff should be increased, as a first step, by 6,000 people.

A majority of the experts believes that, if a claim on the basis of disability has not been decided within 90 days of filing, payments should begin. Such payments would not be regarded as overpayments should the applicant ultimately be found ineligible. The 90-day rule would apply to cases at the administrative law judge and Appeals Council levels of appeal as well.

Those favoring this option believe that it would encourage Congress and the Administration to obtain adequate staff, thereby preventing situations such as currently exist with large backlogs leading to significant delays in many claims for disability benefits.

Long delays often occur in appeals that are made to administrative law judges and to the Appeals Council. These delays are frequently due to a lack of resources. The procedures should be examined very closely to see if they can be shortened without affecting the high quality of decisions made by administrative law judges and the Appeals Council. The experts pointed out that justice delayed can be justice denied.

The number of appeals and the time it takes to handle them should be affected favorably by the Secretary's policy on acquiescence. The Chairman has examined the agreement in the *Stieburger* case in New York dealing with the policy of acquiescence. He believes the Department was wise in entering into the court-approved agreement with the plaintiffs. He believes further that the agreement is consistent with the Secretary's policy and could be applied to the rest of the country.

In addition to the change in the definition of disability, experts discussed how people could ultimately earn enough income to leave the rolls by providing an increasing number of the beneficiaries with the incentives they need to join the workforce. Here are some of the options.

A majority of the experts favors beginning at once to seek legislation to provide expanded work incentives in the form of increasing the monthly earned income exclusion to $200 plus two-thirds of dollars earned over $200; eliminating continuing disability reviews triggered by a return to work even on a part-time basis, and deferring scheduled medical reviews for workers for three years after work begins; treating benefits received because of recent work activity (e.g., unemployment compensation, worker's compensation, sick pay, etc.) as earned income rather than unearned income; eliminating the time limit for completion of a plan for achieving self-support and requiring action on a plan within 30 days or else the plan would be assumed to have been approved.

A majority of the experts also favors extending all work incentives to older persons as well as to the blind and disabled.

A larger majority of the experts supports conducting a national demonstration involving the work incentives described above while legislative efforts are under way. Most of the experts also support permitting demonstration participants to retain their demonstration incentives when the project ends if new legislative provisions are not yet in place.

With respect to Medicaid coverage in all States, a majority of the experts supports mandating the disregard of income of an ineligible spouse when determining Medicaid eligibility under section 1619(b). A majority also supports requiring States using more restrictive eligibility criteria than those applicable to the SSI program to disregard resources set aside under a plan for achieving self-support. They also support the provision of Medicaid to all working individuals who are eligible under section 1619.

In addition, there is majority support for required supplementation, by States which supplement benefits to recipients of regular SSI benefits, for those who receive "special" SSI benefits under section 1619(a). Finally, a majority of experts supports provision of SSI disability benefits to workers who lose their social insurance disability benefits due to substantial gainful activity, provided they have not recovered medically and that they meet the SSI income and resources limits.

All of the preceding opinions further reinforce the experts' support of the proposition that it is good public policy to encourage persons with disabilities to work. The disability program should have written into it incentives, not disincentives, for work.

E. Cost Estimates on Options Preferred by a Majority of Experts

Disability: Definitions

1. Change the SSI program's definition of "substantial gainful activity" to

recognize that persons who work by virtue of substantial support services are not performing substantial gainful activity and so are still disabled.

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
All	(*)	(*)	(*)

* Unable to estimate.

* * * * *

2. Study the feasibility of: (a) Eliminating use of substantial gainful activity for determining disability in both the SSI and the disability insurance programs; and (b) formulating disability criteria in terms of being disadvantaged in participating in major life activities, of which work may be one. This study is to be completed as soon as possible.

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
All	None	(*)	None.

* Unable to estimate.

* * * * *

Disability: Claims Process

Use specially trained disability experts assigned to field office staffs to conduct initial disability claims interviews.

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
1993	(*)	(20)	Negligible.
1994	(*)	(20)	Negligible.
1995	(*)	(20)	Negligible.
1996	(*)	(30)	Negligible.
1997	(*)	(30)	Negligible.

* Unable to estimate.

* * * * *

Disability: Very Young Children

Develop appropriate criteria for making an assumption concerning the existence of disability in very young children. Permit continued payment, based on such an assumption, up to the age of 4 without creating an overpayment even if later testing and diagnosis result in a finding that the children are not disabled.

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
1993	$8	$0	$5
1994	31	10	20
1995	35	0	20
1996	38	0	25
1997	42	0	25

* * * * *

Disability: Appeal of Decisions

In both the SSI and the insurance programs: (a) eliminate the reconsideration level of appeal; and (b) provide claimants the opportunity for a face-to-face interview with the decisionmaker prior to issuing a denial based on a disability issue.

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
All	(*)	(*)	(*)

* Unable to estimate.

* * * * *

Disability: Time Limits on Claims and Appeals

Establish a 90-day time limit which, if exceeded, would result in benefit payments which would not be considered overpayments even if the recipient were later found ineligible. Apply this time limit to making initial determinations on SSI disability claims as well as to completing cases at the administrative law judge and Appeals Council levels of appeal.

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
All	(*)	(*)	(*)

* Unable to estimate.

* * * * *

Work Incentives: Legislation

Seek legislation, where needed, to authorize permanently: (1) Increasing the earned income exclusion to $200 plus two-thirds; (2) eliminate continuing disability reviews triggered by work and defer scheduled medical reviews for 3 years after beginning work; (3) treat as earned income unemployment compensation, worker's compensation, sick pay, and similar benefits received because of recent work; (4) eliminate the regulatory time limit for completing a plan for achieving self-support; and (5) extend all work incentives to the aged.

1. Increase earned income exclusion:

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
1993	$149	$80	$140
1994	328	200	510
1995	351	20	605
1996	370	20	695
1997	388	20	805

2. Modify requirements for continuing disability reviews and scheduled medical reviews:

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
All	(*)	Negligible	(*)

* Unable to estimate.

3. Treat certain work-related benefits as earned income:

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
1993	$10	Negligible	Negligible.
1994	14	Negligible	Negligible.
1995	15	Negligible	Negligible.
1996	16	Negligible	Negligible.
1997	16	Negligible	Negligible.

4. Eliminate time limit for completing a self-support plan:

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
All	(*)	Negligible	(*)

* Unable to estimate.

5. Extend all work incentives to the aged:

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
All	(*)	(*)	(*)

* Unable to estimate.

* * * * *

Work Incentives: Demonstration

1. Conduct a national demonstration project involving all of the incentives listed above while seeking legislation.

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
All	None	(*)	Negligible.

* Unable to estimate.

2. Permit demonstration participants to retain incentives.

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
All	(*)	(*)	(*)

* Unable to estimate.

* * * * *

Work Incentives: Additional Legislation

1. Disregard deemed income of an ineligible spouse when determining Medicaid eligibility under section 1619(b):

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
All	None	Negligible	Negligible.

2. Require SSA to make a decision on a proposed self-support plan within 30 days or else assume it is acceptable and begin payments accordingly:

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
All	None	Negligible	Negligible.

3. Require States which supplement regular SSI payments to supplement section 1619(a) payments:

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
All	No Federal program cost and negligible State cost.	Negligible	Negligible.

4. Provide Medicaid under section 1619 to all working persons in States not using SSI eligibility criteria:

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
1993	None	Negligible	$10
1994	None	Negligible	15
1995	None	Negligible	15
1996	None	Negligible	15
1997	None	Negligible	15

5. Provide SSI benefits to those who lose disability social insurance benefits due to substantial gainful activity:

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
All	(*)	(*)	(*)

* Unable to estimate.

6. When States determine Medicaid eligibility using their own rules, do not permit them to count any resources set aside under a self-support plan:

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
All	None	(*)	Negligible.

* Unable to estimate.

Chapter IV, Appendix i

DISABILITY ALLOWANCE RATES—SSI ONLY

Fiscal year	Percent allowed		
	Initial	Reconsideration	ALJ
1977	47.7	21.1	45.0
1980	32.5	14.4	51.0
1982	29.4	11.2	46.0
1985	37.5	15.3	47.0
1990	41.1	18.9	56.0
1991	44.8	19.2	60.0

Note: The data do not reflect rates applicable to concurrent claims for SSI and disability social insurance benefits.

Chapter IV, Appendix ii

Definition of Disability

by Elizabeth M. Boggs

The July 1991 **Federal Register** issue paper included no specific reference to the disability definition used in the SSI program. However, two of the topics in that paper have direct bearing on the matter: Work Incentives and Substantial Gainful Activity.

In approaching this topic, it is well to recall Commissioner King's request that we review present practice in the light of the original intent of the SSI program. In doing so, a posture similar to that taken toward the Constitution may be helpful: Maintain the principles but interpret them in terms of contemporary conditions.

Principles Underlying 1974 Legislation

Among the relevant principles are:

1. Social insurance programs should increasingly become the basic universal guarantees of income replacement for workers and their dependents when they are not expected to work because of age or incapacity.

2. SSI should supplement social insurance for those among the elderly and disabled for whom social insurance benefits (together with other resources) are insufficient to assure a minimally acceptable standard of living.

3. The supplement should be sufficient to keep recipients out of "poverty". This would be the standard for individuals or couples having no other income.

4. For those retired or disabled workers who have contributed to their own retirements, whether through savings or through a public or private retirement system (including social insurance), a higher allowance would be effected through an unearned income disregard.

5. In principle, SSI was to complete a basic nationally uniform, uncomplicated underlying system of cash benefits (with associated medical benefits), with the States retaining authority and responsibility for fine tuning allocations to meet individual special needs, whether for cash or social services.

At that time and until the 1980s, Federal financial participation (FFP) in the States' costs of social services was closely tied in with eligibility for federally supported means-tested programs; these were locally administered with a substantial targeted Federal subsidy. Such State assistance, whether in cash or in kind (e.g., social or medical services), if based on need as State determined, was not to be counted as income for SSI purposes. In recent years this rule has been generalized so that contributed in-kind goods and services that cannot be applied or converted to food, clothing or shelter are disregarded regardless of source. The block granting of Title XX in the early '80s deprived SSI recipients both of their priority for federally-funded social services and of the open ending that permitted States to expand those services in proportion to evident need in the growing younger population.

Significant Changes Since 1974

Overall, the SSI system as set up in 1974 was designed primarily for people over 65. The manuals were written with them in the forefront. Seniors were then in the majority (58 percent) of all SSI recipients. The disability program was seen as largely composed of people over 50 who had found it necessary to retire early because of chronic illnesses, such as heart disease and arthritis. For them, as for those somewhat older, replacement of income and access to medical care appeared to be the highest priorities.

Today those receiving SSI (including federally-administered State supplements) based on being age 65 or older constitute only 28 percent of the total number of recipients. The median age of adults under 65 on SSI has declined significantly. In 1976 only one in five of all adult recipients was under 50 whereas today more than two in three fall in the younger group. The majority of those under 35 have been disabled since childhood and have little or no work history or credits; they represent an increased survivorship among children with conditions such as spina bifida, traumatic brain injury, and certain syndromes associated with moderate, severe, or profound mental retardation. In addition, the distribution of other etiologies of later onset has shifted significantly, with spinal cord injury and adult traumatic brain injury survivors being more numerous than in 1974. Chronic mental illness among young adults and, more recently, AIDS have further changed the picture. These younger people are not only not looking for nursing home care, they are actively resisting it. They would rather have a relatively small amount of cash in hand with which to purchase supportive social services such as personal assistance than depend on Medicaid for an institutional package. Clearly, stereotypes have to be changed to include new images while recognizing that the traditional populations are still with us.

Modernizing the Definition

The postulates laid down in 1974 required, among other things, that the definition of disability used in the new title XVI (SSI) be the same as that used under title II for Social Security Disability Insurance (SSDI). They have remained very similar but not identical. Although some people believe that the definition of disability should be more liberal for SSI than for SSDI, this discussion recognizes the merits of a single definition and seeks to remedy the dilemmas it creates in either system. When SSI was implemented in 1974, replacing the myriad State definitions with a uniform Federal one, there were already 15 years of Federal experience with the disability insurance (DI) definition and some revisions of it. These years have been followed by a further 15 years of refinement through regulation to interpret the statutory language concerning "physical or mental impairment" and "substantial gainful activity" (SGA). The former has provided us with a viable tool for an alternative definition using functional capacity; the latter (SGA) has become less and less useful as actual gross wages have become more and more distorted as measures of productive capacity.

The inappropriateness of both the concept of SGA and the use of a monetary value as an index has been increasingly apparent in the last decade as attempts have been made to adjust SGA (expressed as dollars of earnings) in the light of various forms of support or wage subsidy or accommodation for a person with a severe continuing disability who (with accommodation) can make a net contribution to the gross national product (GNP). These problems will only become worse as The Americans with Disabilities Act (ADA) is implemented. While the intentions are laudable, the rules for carrying them out have become a jungle, a direct challenge to the "simplicity principle". In addition, the levels of SGA that have been set over the years by a succession of DHEW and DHHS Secretaries have been well below the minimum wage, creating real problems for those who attempt to make a transition from no work to full employment. The disengagement of SGA as a criterion for an individual on SSI who attempts work while continuing to meet the medical criteria has been a major improvement in both principle and practice but it has not gone far enough.

On the other hand, the functional measures of mental/physical impairments now in use (functional limitations plus consideration of age, education and vocational factors—see 20 CFR part 404, subpart P, appendices 1—Listing of Impairments—and 2—Medical-Vocational Guidelines), although necessarily detailed (49 pages) and complex, are based on a relevant body of knowledge that has produced credible indicators of "work disability" derived from the (nonworking) individual's observable ability (or lack of it) to function in major life activities. These concepts have recently been validated in the successful compliance by SSA with the Supreme Court mandate to write the disability criteria for children in a manner equivalent to the "work disability" criteria used for adults. An additional example is provided in section 1614(a)(2) of the Social Security Act (Act) where blindness is considered separately from other disabilities and is defined entirely in terms of explicitly stated functional limitations, omitting any reference to SGA. (For purposes of Title II, earnings of blind beneficiaries are, in effect, limited by the same "retirement tests" that apply to the elderly.)

Recommendations

I propose to build on these findings to redefine disability (for both SSDI and SSI) in a way that will not significantly change the level of severity associated with the SSA programs but will permit and encourage more of the younger men and women with continuing severe impairments who want to work to do so without being worse off than when not working. While continuing on the rolls in some cases, they will draw down reduced benefits.

These incentives are made equally available to SSI recipients and applicants of all ages; however, experience has shown that people over 55 make relatively little use of them.

The effect of the proposal on the SSI program will be minimal in that it will adopt the same standard for initial eligibility as is now in effect for continuing eligibility of an individual who works despite continuing severe functional limitations. The extension of the same definition to initial and continuing eligibility for social security benefits based on disability will require some structural changes in title II as described below.

Basic Change

Eliminate references to "substantial gainful activity" in Title II and in Title XVI; reformulate the criteria for disability in terms of disadvantage in performing or participating in major life activities—of which work may be one. This step has already been taken, in effect, for SSI continuing eligibility purposes and is under consideration for initial award as well.

In order to secure adoption of this concept in the statutory definitions (sections 223(d) and 1614(a) of the Act), it will be necessary to consider the impact on SSDI. In the SSI program, as has already been demonstrated, even in the absence of a specified dollar limitation on SGA, benefits with earnings are self-limiting (by the formula for countable income) at a level that makes for a fairly smooth transition from reliance entirely on benefits to reliance entirely on earnings (or earnings plus other income). This effect is not found for substantial levels of SSDI benefits under title II. One of the major obstacles experienced to date for putting work incentives into title II comparable to those recently enacted for SSI (section 1619 of the Act) has been the recognition that the breakeven point (at which benefits are reduced to zero) for individuals with the highest earnings records would be unacceptably high unless a formula were introduced for gradual reduction in benefits as earnings increase, beginning well below the level protected by the presently specified SGA dollar limit. This would somewhat disadvantage some present SSDI beneficiaries who regularly earn something not far under $500 a month while

concurrently receiving full tax-free SSDI benefits without any reduction: disadvantaging any present beneficiaries is a step which members of Congress consider "off the table". Furthermore, a high breakeven point would tend to produce "induced filers". "Induced filers" are people with disabilities (who may or may not have heavy extraordinary disability-related expenses) who are well situated in good primary jobs where they have already accumulated generous Social Security credits and who (it is assumed) would, in the absence of an SGA limit, be induced to apply for SSDI benefits while continuing to work at the same or a similar job. These cases, although relatively rare, would require rather complex rules of the kind that we seek to avoid imposing on SSA. To come to grips with this issue, it would be necessary to differentiate between gross salary and net disposable income after legitimate disability-related expenses are assessed on an individual basis.

It is suggested that the appropriate place to counter these inappropriate incentives can be found in the IRS environment. A precedent has already been set for taxing some Social Security benefits and for calculating refunds owed to SSA by a retiree who has significant earned income. Annual calculations of individual medical expenses are also an IRS routine and similar protocols could be used to calculate disability-related costs that should be deductible by a disabled taxpayer in order to equalize his net income as compared to his peers. This arrangement could alleviate what is likely to become an increasingly burdensome task for claims representatives: calculating "real" (net) earnings on a monthly basis.

Additional Options

Option 1—Use the disability determination process to gather and record needed data about the nature and extent of functional impairments of individuals who qualify as disabled under title II and title XVI: The processes presently in place for determining the extent and severity of functional impairments associated with specified physical or mental conditions or disorders readily lend themselves to identifying also the extent of need for personal or other ongoing assistance of a nonmedical nature. Following the models used in practice by the US Public Health Service, three levels can be established: (a) Most severe—those requiring ongoing (frequent) assistance of another person in the activities of daily living; (b) very severe—those requiring some personal assistance but less frequently *or* those who require special transportation, special equipment, devices, vehicles, pharmaceuticals, adapted housing, etc., where maintenance and ongoing operation involve expenses substantially in excess of those experienced by nondisabled people; and (c) severe—those meeting the eligibility criteria currently in place as indicators of work limitation but who do not experience extraordinary need for ongoing nonmedical support.

Partly because of the increasing interest in maintaining people with disabilities in their own homes, the National Center for Health Statistics has in recent years given increased attention within its ongoing National Health Interview Survey to ascertainment of the prevalence of impairments in specific "activities of daily living" (ADL), primarily related to personal self care, and "instrumental activities of daily living" (IADL), primarily related to management of money, use of telephone, mobility outside the home and the like among people living in "households". Some of the results have been analyzed by Mitchell LaPlante (1988. Data on Disability from the National Health Interview Survey, 1983–1985. National Institute on Disability and Rehabilitation Research, U.S. Department of Education.) Among those age 18–69 reporting a limitation in amount or kind of work, about 7 percent reported that they needed personal assistance in IADL or ADL. These surveys also show different rates of prevalence of these impairments among persons of working age depending on age and income, along lines that might be anticipated. Clearly people eligible for SSI, being poorer, can be expected to have higher rates of need for personal assistance. An additional supplement to the NHIS, focused on disability, will be included in the 1993 and 1994 waves. Valuable as these surveys are, however, the interpretations that we can put on the results are limited both by the survey methodology and by their reliance on self reporting without clinical verification as to diagnosis or impairment.

On the other hand, there are upwards of 5 million individuals between the ages of 18–64 who are receiving either social security benefits or SSI, or both, based on their own work disability, each of whom has been subject to a professional clinical evaluation as to both the medical condition and the extent of functional impairment. Medical conditions by age are regularly coded and reported, although there are some missing data in older records.

It is recommended that impairments that limit major life activities (including self care, self management, communication, mobility, personal planning and decision making, as well as working) be documented prospectively as they are identified in the course of carrying out the routines now prescribed for disability determinations, and that the data be made available for analysis.

Option 2—Give consideration to establishing a specified Federal supplement (a percentage of the benefit, whether SSI or SSDI/DAC) associated with each of the two higher classifications of need for assistance; i.e., "most severe" and "very severe": The supplement would recognize some part of the incidental extra cost of living experienced by these individuals in the ordinary course of life, without detailed accounting (e.g., the food for a guide dog, the taxi to the station). It is recognized that such a standard supplement (which resembles the federally administered supplement given by some States to SSI recipients who live in boarding homes or similar non-Medicaid residential facilities) will not obviate the need of many recipients for substantial additional social services as indicated in the description of the "most severe" and "very severe" categories. These more costly services would continue to be allowed based on individual need and monitored for quality and cost under State and local supervision.

Chapter V—Definition of "Aged" Issue

A. Preamble to Chapter

The SSI statutory definition of an aged individual as one who is 65 or older perpetuates the age limit used in the Federal/State grant program of Old Age Assistance which was replaced by SSI. It is also currently the age at which full retirement benefits are payable under the retirement and survivors insurance program. The Medicare and Medicaid programs use age 65 as an entrance point for the nondisabled.

In other programs, different ages have a role in eligibility determinations. For example, under the retirement and survivors social insurance program, an insured individual can collect "early retirement" benefits at age 62, and older women and men may begin collecting widow(er)s' benefits at age 60. The Older Americans Act sets age 60 as the point of eligibility for programs it funds. On the other hand, beginning with the year 2000, the age for unreduced social insurance retirement benefits (age 65) will increase gradually until it reaches age 67 in the year 2022.

A review of six other countries (Australia, Austria, Canada, Finland, The Netherlands, and Switzerland) shows that all use age 65 for men as a criterion for entitlement to benefits. However, only three of the six use that age for women: Australia and Austria use age 60 while Switzerland uses age 62. In the United States, people are considered, by a variety of programs, to be "seniors" at points ranging from 50 to 65.

B. Lowering the Age Limit for "Aged" Benefits

Background Information

For SSI purposes, a person must be at least 65 in order to be considered "aged". Being under age 65 means that SSI eligibility is possible only for those who are disabled or blind. If a person who is becoming older, but is not yet 65, files for benefits on the basis of disability, both the SSI and the disability social insurance programs take age into consideration when assessing ability to work. That is, they recognize that age can affect a person's ability to adapt to a new work situation and to work competitively. However, being older does not, of itself, constitute being disabled.

A study of SSI disability applications received in 1989 from people between the ages of 50 and 64 gives some clues to the number of potential eligibles if SSI

had a lower limit for its "aged" population.

Category	Total	Age	
		50–59	60–64
Claimants meeting "means" test	266,748	191,879	74,869
Awarded benefits	158,464	109,091	49,373
Medical denials	108,284	82,788	25,496

Note: The figures above are only pointers, not definitive indicators of potential eligibles. They show only older people who were needy and who considered themselves disabled but did not meet the medical criteria for disability. For example, there could be many more than 25,500 new eligibles age 60–64 since not all needy people in that age group would have filed claims on the basis of disability.

One of the significant differences between eligibility on the basis of age and eligibility on the basis of disability or blindness relates to work incentives. Although employment can be an effective tool in preventing or reducing poverty among older Americans, most of the SSI work incentives apply only to those who are blind or disabled. For this reason, a majority of the experts support extending all work incentives to the aged (see part C of chapter IV).

Experts' Discussion of "Age" Issue

Most of the experts concluded that the age requirement for SSI eligibility should be lower than 65. A majority of them favored lowering the age requirement to 62 although a few experts preferred lowering it to age 60.

The experts who favored lowering the age requirement to 62 did so in order to provide a linkage with the retirement and survivors insurance programs which, in most instances, allow for reduced retirement benefits at age 62—although, for aged widow(er)s the age is 60. They believed an age 62 SSI requirement would provide a better economic safety net.

The same majority of experts favored phasing in the 3-year age reduction, from 65 to 62, one year at a time. They believed that a gradual change would be easier to administer and would permit phasing in the additional program costs.

The experts also discussed making the SSI age requirement as low as 50. They said this might provide a bridge for people, such as displaced homemakers and widows, who have been out of the workforce for a number of years and are unable to find work due to their age or lack of marketable skills. In general, the majority concluded that lowering the age requirement that much might reduce benefits under some State or local government programs. For example, general assistance programs sometimes provide a lower level of assistance to the elderly than to the nonaged. There was also concern that encompassing a larger group of "aged" eligibles might stretch limited funds to the point where, eventually, there would have to be restrictions on future benefits for the frail elderly age 80 and over.

Recapitulation of Experts' Opinions on "Age"

Option	Experts supporting
1. Lower the age requirement to age 62, phased in over 3 years	16
Comment: One expert, who supports this option, expressed a preference for reducing the age to 60 over a 5 to 10 year period, depending on other priorities.	
2. Lower the age requirement to age 60	2
3. Extend the SSI program to low income (unemployed or marginally employed) workers and spouses age 62–65 and widow(er)s age 60–65 who are eligible for a low social security insurance benefit	4

C. Option Preferred by a Majority of Experts Summary and Cost Estimates

Sixteen of the eighteen experts who took a position on the definition of "aged" believe that the age requirement should be lowered from the current 65 to age 62 and that the change should be phased in, 1 year at a time, over 3 years.

This majority of experts sees lowering the age limit as creating greater consistency with the social insurance retirement program and making it possible to provide SSI to older people who, though not technically disabled, have found it necessary to stop working for reasons of health.

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
1993	$40	Negligible	$20
1994	178	$10	115
1995	351	$10	255
1996	481	$10	390
1997	528	Negligible	460

* * * * *

Chapter VI—Agency Services Issues—Including Additional Staffing to Fulfill the Promise to Serve the Needy

A. Preamble to Chapter

The Social Security Administration role has expanded over the years to encompass: identifying individuals potentially eligible for benefits; ensuring their awareness of that potential eligibility; assisting the public by providing information and referral to other agencies for social services; helping the homeless, and recruiting representative payees when needed. This chapter addresses areas requiring additional resources and other necessary improvements to enable SSA to effectively and efficiently fulfill its service delivery role.

Members of the public have consistently stated that SSA's service to the SSI population is inadequate. Some said that this was due to SSA's downsizing over the past 10 years. Commenters said that processing initial applications, especially those based on disability, has taken too long. They also said that improvements are needed in the areas of information and referral, and outreach—including assistance to the homeless.

SSA's field office staff throughout the nation reported the effect downsizing has had on the agency since the early 1980's. Some staff stated that downsizing has hampered the agency's ability to provide consistent and adequate public service on a nationwide basis. Some also said that, while downsizing was taking place, the SSI population in need of services from SSA was constantly growing.

B. Staffing

Background Information

Between 1984 and 1990, SSA underwent a planned staff reduction in excess of 17,000 positions from approximately 80,000 to 63,000 positions. Although increased use of computers provided some basis for downsizing, in the judgment of the Chairman, the 21 percent cut was arrived at in, to use an expression often used by the courts, an arbitrary and capricious manner.

The downsizing ended in 1990 but current staffing levels remain approximately 21 percent below the pre-1984 levels. During the same period, SSA's ongoing workloads increased. SSI claims based on disability, for example, increased by more than 20 percent.

Currently there is a backlog of approximately 762,000 disability cases. For 1993, the President's budget projects a backlog of 1.4 million SSI and social insurance disability cases. On average, a person currently filing a claim for the first time waits up to 4 months to receive benefits.

The Chairman of the House Ways and Means Subcommittee on Social Security asked the Commissioner of Social Security how a staff increase of 6,000 would improve SSA's services. The Commissioner responded that funds for additional staff would be devoted to priority workloads such as processing

additional disability and appellate cases; processing additional workloads generated by provisions of recent legislation; reducing the busy rate on the 800 number service; and increasing time spent in field offices on new claims, postentitlement actions, and continuing eligibility reviews.

Public testimony. Many public commenters familiar with SSA's workload said there is a need for additional SSA staff in order to improve the agency's performance in meeting the public's expectation of service. For example:

> There is an urgent need for the hiring of additional staff at the district office level. * * * we receive complaints from the elderly and disabled regarding the length of time they have had to wait * * * before they were able to meet with a representative. Often times, they were told to come back and were given an appointment for a later date * * *. They rarely have sufficient monies to pay for transportation to and from the district office. If they were lucky enough to obtain transportation via a friend or family member, the latter may not be able to take another day off from work or child care duties so as to provide transportation * * *
>
> Some seniors show up at the office at 6 a.m. so they won't have to wait half a day or more. When you are old or sick, or have arthritis or other disabilities, you can't wait like that. You just give up on applying for benefits you're entitled to.
>
> Many of the staff people who cared the most about helping the needy aged and disabled recipients have become frustrated and disillusioned and moved on to different jobs. The ones who have stayed are stressed out and overwhelmed * * *. We believe the single most important change that can be made to humanize the SSI program is to increase staffing levels.
>
> "* * * the SSI recipient is being deprived of his initial Medicaid card and his benefits because of the [processing] time delay that [is] taking place * * *."

Other areas identified by the public as needing improvement include such things as eliminating delays in processing reports of changes which affect benefit amounts; doing a better job of assisting claimants in pursuing their rights, providing information and referral, conducting outreach, and processing applications which result from effective outreach. They also described the need for more staff training—including sensitivity training—and bilingual staff.

Field office staff members also spoke and wrote to the experts. In addition to addressing specific issues, some addressed the staffing situation:

> Not having enough staff has created low morale and feelings of despair. A workload is consisted of human beings—disabled, blind and aged. Human beings who call the claims representative asking when benefits will start. Many die, become sicker, or become homeless waiting for our agency to make a decision and process the claim * * *. The claims representatives in my office have worked long hours and half days on weekends to keep ahead of workloads. We have one claims representative that has nearly had a nervous breakdown, but she's trying to hang in there * * * I hope * * * she gets better, but in the meantime we all suffer with added workloads because her slot can't be filled.
>
> I beg to differ with the attitude that * * * SSA claims representatives no longer seem to want to help people. * * * In the 5 years I have worked in this district office I have: (a) Given mouth to mouth resuscitation to a heart attack victim in the front end interview area. (b) Assisted a pregnant SR who had collapsed at the public service counter. (c) Assisted a young man who was having an epileptic seizure on the floor of the reception area. I am not discussing these experiences because I want Kudos. I wish to emphasize that, although there are 'burn out' CRs who don't care, there are more of us who will take the extra step * * *. I am responsible to interview, process claims, process a multitude of post-eligibility items, answer phones, etc. But I must also, (a) Try to convince a young woman that life is worth living. (B) Talk to a representative payee about her retarded brother who wants to wander to Colorado. (C) Advocate to get emergency medical stickers for an elderly claimant. (D) Console a woman because her mother just died. (E) Phone the young woman to make sure she is alive. Discuss referrals to local agencies where she might find support/motivation. So, while there is dialogue about how involved we should get as SSI CRs, we are getting involved because our claimants NEED US NOW.
>
> I have thought of quitting many times. I keep telling myself 'who needs it—let someone else do it.' But I see faces. The mother who brought her son in for his redetermination interview. He is dying of aids. As the interview ended she looked at me with tears in her eyes and said 'thank you for being so patient with my questions and showing respect to my son.' Or the young woman in a wheelchair. She is completely disabled and has two disabled children, one who walks and one who lays across her lap. At the end of the interview she looks at me and says, 'thank you for not treating me like I am stupid'. So, I am still an SSI CR. I do not know how long I will stay. I have my bad days when I get cranky and am rude to coworkers and claimants alike. But I do CARE. That is why I stay . . . we need to remember that although this is a battleground—it is war against poverty, illiteracy, disease, apathy, etc.—the SSI CR is WITH the CLAIMANT not against the CLAIMANT."

Experts' Discussion of Staffing Issues

The experts view an improved staffing picture as integral to resolving a variety of the problems discussed in this report. Almost all agreed with the comments during the experts' public meetings that SSA needs more, better-trained staff in order to improve the timeliness and quality of its service to the public.

The subject of staffing arose during the experts' discussions of almost every issue. It was emphasized during every public hearing in connection with the need for more personalized service for many SSI claimants, and especially in connection with the mounting backlogs in the State agencies which make disability determination for SSA.

The experts view the disability backlogs in the State agencies as unacceptable. The average waiting period is up to 4 months, and some claimants and their representatives described much longer delays. The 1993 budget will increase the backlogs.

An expert commented that with the projected backlog increases, the average daily delay may be expected to increase substantially. This expert recalled that when the Commissioner of Social Security was asked recently by the subcommittee on Social Security what she would need to clear up the backlog of disability cases, she replied that it would require 5,000 persons and $500 million.

The experts recognized that behind all statistics regarding backlogs and processing times are hundreds, even thousands, of persons who are suffering. They also recognized that there are also thousands of career civil servants who are blamed for these delays. One expert said, "Now and then the public may have to deal with a callous civil servant. But the overwhelming majority of civil servants are eager to clear up the backlogs and are frustrated because of the shortage of staff."

The experts recognized that the disability backlogs are not the sole problem. One expert said that in the Omnibus Reconciliation Act of 1990, Congress required extensive changes in SSA's operations with respect to representative payees. This included more extensive investigations of potential payees; a variety of studies with reports due by dates specified; and the development of an extensive master file of representative payees which must be in place by October 1, 1992. The expert pointed out that currently, 5 million beneficiaries of social insurance and SSI have representative payees, and while there are fewer than 5 million different payees, creating this system is an enormous task. The expert noted that Congress has never appropriated a single dollar for the design and implementation of this very extensive system.

This same expert described other staffing problems related to SSA's installation of large telephone service

centers to handle an 800 number. The expert reported that the cost of doing this was absorbed by the budgets in the field offices; and when the large telephone service centers became operative, SSA directed phone calls to those centers. Recently the Congress has directed that the local SSA offices should once again publicize and use local phone numbers. The expert said that Congress has not provided resources to restore this service in local offices. The large telephone service centers with their attendant 800 numbers continue in place. The expert pointed out that the result is that local offices have been forced to absorb the costs of creating the telephone service centers and the costs of reestablishing telephone services in local offices.

For these, and other reasons, a majority of the experts also concluded that the restoration of 6,000 staff positions is not enough to do the job being asked of SSA. However, they viewed it as a reasonable and desirable first step.

A majority identified increased staffing as one of the top priorities for modernizing and improving the SSI program. Two experts viewed increased staffing as the single highest priority of all since they concluded it could eliminate, or greatly reduce, many of the other problems discussed.

The experts specified that funds provided for additional staffing must be used to improve staffing in the State disability determination services as well as in SSA. One expert, while agreeing that adding 6,000 positions was reasonable as an initial goal, urged that this number be doubled, at least, over a period of 2 to 3 years. Another urged placing emphasis on the need for near-future increases beyond the initial 6,000.

Nearly all the experts expressed the view that, with additional staff, SSA should place renewed emphasis on restoring more personal contact and individualized assistance to those it is intended to serve. One expert, while agreeing in principle, added that such emphasis should not be considered separately but viewed as an integral aspect of additional staffing.

Recapitalization of Exports' Opinions on Staffing Issues

Option	Experts supporting
1. Increase SSA's administrative budget, as quickly as possible, to provide for at least 6,000 additional positions as a first step toward adequate staffing	19

Recapitalization of Exports' Opinions on Staffing Issues—Continued

Option	Experts supporting
2. With additional staffing, place renewed emphasis on personal contact and individualized service	18

Comment: The one expert who did not favor this option said that the first priority of added staff should be the reduction of processing times in all areas.

C. Funding for Outreach Activities

Background Information

Historically—and especially following enactment of the SSI program—the Social Security Administration has assumed the obligation to provide people with information and other assistance in obtaining benefits for which they are eligible. At times the Agency has been admonished to do more in this regard, but rarely has there been any budgetary recognition that this type of work has an impact on agency resources.

Beginning in 1989, SSA made SSI outreach an ongoing agency priority. SSA has undertaken an outreach campaign through its field offices, working with community-based agencies. For example, offices have used other agencies' lists to send letters to potentially eligible individuals; workers regularly visit homeless shelters, facilities for the elderly, and other sites where needy individuals might be found; and computer matches between SSA and other agencies identify potential recipients. Information and referral agreements with advocacy and service groups have been a key aspect of outreach. However, many groups within the population, including the homeless, the frail isolated elderly, children, and Native Americans, have been underserved. (For additional discussion on this issue, see Parts D and E below concerning "Information and Referral" and "Helping the Homeless.")

In fiscal year 1990, Congress appropriated $3 million for SSI outreach demonstrations. SSA funded 33 outreach demonstration projects operating in 46 sites nationwide which tested or are testing methods of overcoming the barriers that prevent potentially eligible individuals from filing for SSI. In fiscal year 1991, Congress appropriated another $6 million to continue this outreach program. SSA published a grant announcement which closed on November 19, 1991, and SSA will fund additional cooperative agreements based on what has been learned from the first group of projects. The most successful methods from all of the projects will be incorporated into future outreach initiatives.

The experts noted that, although Congress has awarded outreach monies for cooperative agreements to outside organizations, it has not provided additional funds for SSA staff support. Out of necessity, staff support for outreach activities is being absorbed by SSA's existing staff. The experts said that this detracts from other SSA activities, and processing backlogs increase as a result.

Experts' Discussion on Funding for Outreach Activities

A majority of the experts agreed with the majority of public commenters that SSA should continue outreach activities. These experts concluded that many potentially eligible disabled and elderly individuals are not participating in the program.

Most experts agreed that the SSI administrative budget should be increased by some specific percentage and the additional amount should be dedicated to SSA staff outreach activities. Some of the experts were concerned that the option, as previously published, was not specific regarding the percentage of the budget which would be dedicated to outreach activities. They wanted to ensure that outreach activities would not be reduced. They reworded the option to state that the SSI administrative budget should be increased by at least 5 percent, with the increased amount dedicated solely to outreach. One expert commented that 5 percent seemed too high and suggested that 2.5 percent would be preferable with the remaining 2.5 percent allocated to increase personnel, and service improvement.

RECAPITULATION OF EXPERTS' OPINIONS ON FUNDING FOR OUTREACH ACTIVITIES

Option	Experts supporting
1. Establish specific funding for outreach by increasing the SSI administrative budget by at least 5 percent	16

Comment: Two of the experts indicated that SSA should not establish specific funding for outreach, but instead should use the 5 percent to invest in more staff and better service.

D. Information and Referral

Background Information

When Congress established the SSI program, it separated responsibility for income maintenance from that for social services. The new program placed responsibility for cash assistance payments delivery in SSA, and social service assessment and delivery in the hands of State and local governments and private nonprofit agencies. This separation of payment delivery and social service delivery was consistent with the historic operation of most States programs prior to the 1974 implementation of SSI.

SSA initiated information and referral activities to help link SSI claimants and beneficiaries with other public and private agencies which could meet other needs. This had previously been done for claimants and beneficiaries of the social insurance programs.

The Social Security Act requires SSA to provide referral to vocational rehabilitation programs for certain categories of SSI and disability social insurance beneficiaries. Also, the food stamp law requires SSA offices to inform SSI claimants that they may be eligible for food stamps and that food stamp application forms can be obtained at SSA offices; also, SSA staff is required to assist certain claimants in applying for food stamps.

SSA has committed to assisting the public in obtaining social services they need. By recognizing the importance of information and referral responsibilities, SSA acknowledges that people have needs beyond those met by SSA programs.

SSA field office staff reported during SSI Modernization Project meetings that, as a result of heavy workloads and inadequate staffing, information and referral is often shortchanged. They said that the public expects SSA to have the capacity to provide support to individuals in need of social services, but with the current level of staffing this is not realistic.

Models for expanded information and referral services which the experts considered are:

Expanded community liaison model. This model would broaden the scope of SSA's referrals to include more in-depth community liaison activities. This activity would provide linkage with community organizations and ensure that individuals receive assistance through other organizations; e.g., the mental health system, local charity or cultural groups and State agencies. SSA field offices would dedicate additional staff resources to contacting community agencies and institutions and to working with them on a continuing basis. The goal would be to use community organizations in concert with local SSA offices. Ongoing dialogue would keep SSA aware of changes in local service agencies. Feedback from the other organizations would help SSA improve its information and referral process.

Case manager model. Case management would further increase SSA's information and referral responsibilities. SSA would make referrals by contacting other organizations on behalf of the individual rather than providing the individual with information regarding whom to contact. SSA would follow up to ensure that referrals were effective and met the needs of the individual.

A still more comprehensive approach to the case manager model would have SSA work face-to-face with beneficiaries, their families and caregivers, taking responsibility for the progress of each person. Case management would provide for an active and ongoing link between people who want or need services and people who provide those services.

Experts' Discussion of Information and Referral

Generally, the experts believed that SSA's information and referral services should be expanded. They said that information and referral services are especially important to SSI claimants, many of whom are vulnerable and require special assistance in order to obtain needed services.

The Chairman concluded, based on his visits to SSA field sites, that there is room for more effective relationships between the telephone service centers and field offices.

A majority of the experts favored the expanded community liaison model for providing information and referral services. This was also favored by a majority of the public commenters who addressed this issue. The experts believed that, even though its use might require increased staffing, this model represents an appropriate increase in the scope of SSA field office responsibility for in-depth community liaison activities.

The experts believed SSA field office staffs could develop referral lists and expertise in identifying the particular resources which would be helpful to individual claimants. They also felt adoption of this model would be rewarding to SSA employees. One expert stated that a background in social services would be helpful to staff engaged in such activity.

Some experts stated emphatically that SSA should not become involved in the case management model. They also noted that case management is very labor intensive and would require a major increase in staff. One expert expressed the view that there would be potential for conflicts of interest and abuse of confidentiality if entitlement agencies were to perform social service functions.

RECAPITULATION OF EXPERTS' OPINIONS ON INFORMATION AND REFERRAL

Option	Experts supporting
1. Adopt the expanded community liaison model	14
2. Adopt the case manager model	1

Comment: An expert, who disagrees with this option, opposes SSA's getting into case management because it "violates the principle of allocating appropriate duties to appropriate levels of government. Federal aid is available to the States for this function through * * * other programs."

E. Helping the Homeless

Background Information

Provisions of law. Certain provisions of the SSI statute are intended to help prevent homelessness. They establish exceptions to provisions of the statute that prohibit SSI eligibility for people in public institutions and set a payment limit (currently $30 per month) with respect to a person who is confined to a medical facility when Medicaid is paying a substantial portion of the cost of his/her care. These provisions address:

Eligibility while in an emergency shelter for the homeless. Although an individual generally is not eligible for SSI benefits for any month throughout which he or she is a resident of a public institution, there is a statutory exception for persons in public emergency shelters. In any 9-month period, a qualified person may be eligible for SSI for any 6 months throughout which s/he resides in a public emergency shelter for the homeless. There is no similar limit on eligibility with respect to a resident of a privately operated shelter.

Continued payments during a medical confinement. Under certain circumstances, full SSI payments can be continued temporarily for individuals who are institutionalized (where payments would otherwise be reduced or suspended). Under one provision, the person must have expenses for maintaining a home, and a physician must certify that his/her confinement

will be for 90 days or less. Under a separate provision, the person need only to have been eligible for SSI under work incentive provisions prior to institutionalization.

Prerelease program. The prerelease program is designed to identify potentially eligible people who are about to be discharged from institutions and assist them in filing for SSI benefits before discharge. The goal is to expedite the processing of the application so that payments can begin as quickly as possible after the person is discharged.

Under the program, SSA offices establish agreements with interested and appropriate public and private institutions. The institution agrees to identify those persons who appear likely to meet the criteria for SSI eligibility and who could be released within 30 days of notification of potential eligibility. The SSA office takes applications from potentially eligible persons and determines each person's potential eligibility and payment amount based on his/her anticipated living arrangement upon release.

Existing procedures. SSA has procedures designed to ameliorate some of the difficulties homeless people encounter in establishing and maintaining their right to receive benefits. These include the following:

Outreach. Many SSA field offices have "homeless coordinators" who work with local service and advocacy group to help homeless persons receive benefits due them. As a result, many local social service agencies, soup kitchens, shelters, churches, etc., screen clients for possible SSA eligibility, refer those with potential eligibility to the local SSA field office, and help them through the system. In some areas of the country, SSA staff persons, sometimes assisted by State disability determination service staff, visit shelters for the homeless, clinics, and hospitals to take applications. SSA is investigating methods of continuous funding for these activities.

No fixed mailing address. SSA does not require a fixed mailing address for issuing a check. Persons who are homeless may pick up their checks at the local Social Security office, at a shelter, or any other location they choose.

Assistance in securing evidence. SSA has a policy designed to ensure that an individual's payments are not inappropriately terminated because of failure to respond to a request for evidence. SSA recognizes that a person's age or medical condition, or homelessness itself, may make it difficult for him or her to respond on a timely basis. Failure to furnish this information does not automatically result in loss of benefits. SSA tries to locate individuals, including contacting homeless shelters, to assist them in obtaining the necessary documents.

Barriers to receipt of benefits. During their public meetings, the experts heard from homeless persons and their advocates concerning the extraordinary barriers which such persons encounter with respect to establishing and maintaining eligibility for SSI. People testified that:

Access problems. Getting access to SSA, in itself, is difficult for a person who is homeless. Frequently, homeless people are not connected to any of the social agencies which routinely refer people to SSA offices. They have no transportation to go to SSA offices. The use of the 800 number also has presented difficulties.

Processing times. After an application is filed, long processing times present problems. Homeless people are in especially tenuous positions in terms of securing food and shelter while awaiting benefits. Some people who are seriously ill wait for SSI eligibility (with its concomitant eligibility for Medicaid) before seeking medical treatment.

No fixed mailing address. Because they have no fixed mailing address to receive notices or requests for evidence, homeless people frequently do not receive notices of appointments for consultative examinations or other notices. Therefore, despite efforts by SSA field office staff to contact them, they are subject to denial of benefits for failure to pursue their claims.

Other. The experts also were told that many mentally ill individuals are receiving SSI and continuing to live on the streets. When this becomes a habit, it is difficult to persuade such people to spend their monthly benefits on housing since it would absorb most of the benefit. (See Part F below regarding Representative Payment.)

Federal Task Force. On March 20, 1992 the Federal Task Force on Homelessness and Severe Mental Illness released a report on a national strategy designed to end homelessness among people with severe mental illness. According to that report, up to 600,000 people are homeless and about one-third of them suffer from severe mental illness. A significant portion of this population may meet requirements for SSI eligibility.

Experts' Discussion on Helping the Homeless

The experts urged SSA to continue expanding its efforts to help those who are homeless and prevent homelessness, as it has committed to do. This report contains numerous specific suggestions which would assist in helping the homeless as well as others. For example, actions which would shorten processing time and expand outreach in general would improve program access for the homeless. Improvements to the representative payee system would help to assure that, once eligibility is established, benefits are used to meet food and shelter needs. In addition, the experts have identified certain action items designed specifically to help prevent homelessness.

Emergency payments. Nearly all of the experts stated (as did the majority of public commenters) that emergency SSI payments should be provided to individuals who are homeless, as defined by the Stewart B. McKinney Homeless Assistance Act, and who, in the judgment of a qualified mental health professional, exhibit symptoms of severe mental illness. The McKinney Act defines a homeless person as someone without a fixed, adequate nighttime residence or whose primary nighttime residence is a shelter, a temporary holding place for individuals intended to be institutionalized, or a place not intended as sleeping accommodation for human beings.

These experts believed that applications from such persons should be processed for a final decision within 30 days or benefits continued until a final decision is reached. They said that the payments should not be considered overpayments if it is decided that these individuals are not disabled or blind.

One expert commented that these provisions are needed because severely mentally ill and homeless persons are not likely to stay in one location and pursue their claims through the normal adjudication period.

Continued benefits for people in medical facilities. Almost all of the experts concluded that there is a need to modify the provision which permits continued SSI payments for certain hospitalized individuals. They concluded that restrictions regarding a physician's certification and the requirement to provide evidence that the eligible individual needs continued payments to maintain his or her living arrangement should be removed for those entering hospitals. They believed that the requirements could be retained for those entering other medical institutions. An expert noted that many individuals, especially those suffering from mental impairments, are not able to provide the information required. This modification would help all SSI recipients who are hospitalized to maintain living arrangements in the

community to which they can return, reducing the likelihood of homelessness.

Benefits for people in public emergency shelters for the homeless. Nearly all of the experts stated that residents of public emergency shelters for the homeless should be eligible for SSI indefinitely, without the current restriction that eligibility is limited to any 6 months in any 9-month period. There was some discussion concerning the fact that residents of private shelters are not subject to this restriction on eligibility, and it was noted that the public shelter issue is localized in that in some areas there are no public emergency shelters.

Barriers to benefits. Almost all of the experts favored the expansion nationwide of outreach services currently being tested by SSA. Almost all of the experts concluded that SSA should develop a "backup" mailing address for homeless or mentally ill individuals. There was some discussion explaining that this provision refers to establishing a secondary address at the time of application, and not merely a post office box.

Recapitulation of Experts' Opinions on Helping the Homeless

Option	Experts supporting
1. Provide emergency payments to homeless persons with severe mental illness. *Comment:* One expert indicated that emergency payments should be left to State/local governments and private agencies	16
2. Provide continued payment protection for all hospitalized individuals	18
3. Pay SSI benefits to individuals in public emergency shelters for the homeless without any time limit. *Comment:* One expert favored a 90-day eligibility rule for both public and private shelters. Another expert suggested that the current 6-out-of-9 month rule be extended to private shelters	17
4. Expand nationwide the outreach services now being tested	15
5. Create backup mailing address locations for homeless and/or mentally ill persons	17

F. Representative Payment

Background Information

Most people entitled to social insurance or SSI benefits receive their payments directly. When a beneficiary cannot manage or direct the management of monthly payments because of severe mental or physical limitation, SSA appoints a representative payee to use the payment in the beneficiary's best interest.

Each month, SSA pays benefits to about 43 million SSI and social insurance beneficiaries. Of these, about 5 million are paid through representative payees who receive more than $1.6 billion monthly. Representative payments are made for about 27 percent of the SSI population.

Representative payees are required for beneficiaries who are children under 18, legally incompetent adults, and disabled persons receiving SSI payments because of alcoholism or drug addiction. In other cases, SSA determines that a beneficiary is incapable of managing funds based on evidence from the beneficiary's doctor and/or reports of persons who are familiar with the beneficiary's day-to-day activities.

Payee responsibility. A representative payee is required to use benefits in the best interests of the beneficiary, and to act on behalf of the beneficiary in dealing with SSA. For example, a payee must report changes which may affect the person's entitlement or benefit amount, and s/he must decide whether to appeal SSA decisions. In addition, a payee must account, annually, to SSA for the benefits received.

Payee recruitment. Most beneficiaries who need representative payees are served by family members or close friends. If a beneficiary does not have family or close friends, SSA must look to the community for a suitable payee. A custodial institution such as a nursing home or State hospital may be appointed as payee. State and private social service agencies likewise may be appointed. However, in some States, social service agencies are precluded by law or policy from serving as payees. In others, budget constraints prevent agencies from serving. When other sources are not available, SSA has the often difficult task of finding a volunteer payee. Persons most often in need of volunteer payees include those who are severely mentally ill, substance abusers, and the homeless.

Payment for services. Beginning July 1, 1991, the law permits certain nonprofit community-based social service organizations to collect fees for expenses incurred in performing payee services. Such organizations may deduct from a beneficiary's social insurance and/or SSI monthly payment the lesser of 10 percent of that payment or $25. This is a first-time authority to collect fees of any kind for payee services. It is a temporary authority which expires on July 1, 1994.

Payee monitoring. Certain State institutions are subject to onsite reviews of their payee functions by SSA representatives. All other payees are required to submit an annual accountability report. There is no routine audit of these reports and there are questions about their effectiveness in preventing and detecting misuse. However, use of sampling techniques to audit use of funds by payees has shown little misuse.

When a payee misuses a beneficiary's funds, the payee is liable to the beneficiary for restitution. Restitution of misused benefits is always sought from the payee who caused the misuse. In these cases, SSA usually appoints a new payee and tries to recover the misused funds from the former one. Effective November 1990, Federal legislation provides that SSA is liable for restitution of benefits in cases of misuse where it is determined that there was negligent failure by SSA to investigate or monitor a representative payee and the payee misuser has not refunded the misused benefits. Misuse cases may be referred for prosecution but referral and conviction levels are low.

Study. SSA commissioned the Administrative Conference of the United States, an independent Federal agency, to study procedural aspects of the representative payee program. The study findings were published in the **Federal Register** on July 24, 1991. Congress had addressed some of the procedural issues reviewed by the study as part of the Omnibus Budget Reconciliation Act of 1990.

Several of the recommendations by the Administrative Conference address issues similar to those discussed by the experts:

1. SSA should develop and promulgate regulatory criteria on monitoring and evaluation of representative payee performance.

2. SSA should search for appropriate representative payees by identifying organizations that offer representative payee services on a volunteer basis. After gaining experience with these organizations as representative payees, SSA should evaluate their performances in comparison with other payees.

3. SSA should evaluate the need for further use of organizations that serve as representative payees on a reimbursed or compensated basis.

4. Congress should authorize SSA to require payees who have misused funds to pay restitution and to impose civil monetary penalties.

SSI Modernization Project public meetings. During the public hearings an expert noted that, over the years, Congress has increased SSA's responsibilities for representative payment but has never allocated specific resources for the activities. The Omnibus Budget Reconciliation Act of 1990 enhanced SSA's power to investigate prospective representative payees, but provided no additional funding for the activity.

The growth in the number of SSI beneficiaries with mental illness has led to an increased need for representative payment. Historically, representative payees have been found among beneficiaries' relatives and friends. However, for those disabled by substance abuse or severe mental illness, finding and retaining a suitable representative payee is difficult. During the public hearings, the experts heard from individuals and social service organizations concerning problems encountered representing this group of beneficiaries. Substance abusers and severely mentally ill persons often do not want a payee managing their money; this results in power struggles between the payee and the beneficiary over the benefits. When the payee is a family member, family strife often leads to frequent payee changes. Representative payees described being threatened or attacked by the eligible person in disputes over the use of SSA benefits. Because of these difficulties, the experts say a continuing need for SSA to seek out social service agencies to act as payees when suitable payees are unavailable among family members or close friends.

As of July 1, 1991, the law permits certain nonprofit community-based social service organizations to collect a fee for expenses occurred in performing payee services. This fee is deducted from the beneficiary's check. During the public hearings, social service organizations and representative payees indicated that fees for representative payee services should come from the administrative budget rather than from the beneficiary's check.

Members of the public emphasized the importance of monitoring representative payees. Instances of abuse, both physical and financial, were described. When a representative payee misuses funds or fails to report changes to SSA, the beneficiary suffers and is responsible for repaying any overpayments which may occur, even though s/he may never have received use of the funds. People said that when a change in payee occurs, overpayment notices are sent to the new payee and SSA makes little or no attempt to recover the overpaid monies from the previous payee. Public commenters urged that there be stricter monitoring of representative payees by SSA, and that payees provide documentation to support their accounting for the use of funds. It was stated that SSA should have the ability to recover misused funds from the responsible payee.

Experts' Discussion of Representative Payment Issues

Some experts stressed in particular that payments for representative payee services should be made from SSA's administrative budget and should not be deducted from beneficiaries' checks. Most experts also agreed that there would need to be a special appropriation for the fees.

Also, most experts preferred that a fee should be paid only to a payee who is neither a relative of the beneficiary nor a custodial institution. One expert stated that if the benefit rate is raised to 120 percent of the poverty level, the $25 fee should come from the beneficiary's payment.

During the discussions one expert expressed the view that prosecution of a payee for misuse of funds should be left to the discretion of SSA.

Most experts supported the development of legislation which would mandate a specific program of recruitment, training, and monitoring of representative payees and authorize the appropriation of funds to implement the program. The legislative proposal would provide for: (a) Payments of reasonable compensation by the Federal Government to nonrelative and noncustodial representative payees for their services out of administrative budget funds rather than from beneficiaries' checks; (b) contracting by SSA with agencies at Government expense when suitable volunteers are not available (alternatively, if an SSI beneficiary were required to pay some or all the cost of the fees of a representative payee, s/he would be reimbursed); (c) requiring payees, other than parents with custody of minor children, to provide periodic documentation to support their annual accountings; (d) recovery of misused funds by SSA from the monthly payment of any representative payee currently receiving benefits in his or her own right; and (e) prosecution of representative payees who have misused funds, regardless of the amount.

RECAPITULATION OF EXPERTS' OPINIONS ON REPRESENTATIVE PAYMENT

Option	Experts supporting
1. Develop legislation which mandates recruitment, training and monitoring of representative payees and authorizes the appropriation of funds to implement the program. This legislation should provide reasonable compensation to nonrelative, noncustodial representative payees from administrative funds; contracting by SSA with agencies when suitable payees are not available; periodic documentation by payees to support annual accounting; recovery of misused funds from the monthly check of representative payees receiving benefits in their own right; and prosecution of representative payees who misuse funds	10
Comment: An expert who did not support this option expressed the view that representative payees' fees should be paid from social insurance benefit checks. However, with respect to beneficiaries receiving only SSI, the fee should be paid from the administrative budget.	

G. Options Preferred by a Majority of Experts—Summary and Cost Estimates

Staffing: Adequacy

All of the experts who took a position on this issue stated that one of their top priorities is an increase in SSA's administrative budget to permit additional staff positions and related support (e.g., training and equipment). These experts view an immediate increase of 6,000 positions as a reasonable first step toward adequate staffing. The experts believe that an increase in staffing would help to alleviate backlogs and allow SSA to better serve the public.

ESTIMATED COST

[In millions]

Fiscal year	SSI program	SSI administrative	Medicaid program
1993	None	$280	None.
1994	None	297	None.
1995	None	315	None.
1996	None	335	None.
1997	None	356	None.

* * * * *

Staffing: Services

A majority of the experts believes that SSA should renew emphasis on personal contact and individualized service. These experts believe that this is badly needed by a large portion of the population which the SSI program is

intended to serve. This would improve access to the program.

ESTIMATED COST

[In millions]

Fiscal year	SSI program	SSI administrative	Medicaid program
All	None	(*)	None.

(*): Unable to estimate.

* * * * *

Funding for Outreach Activities

A majority of the experts expressing a view on this option favor establishing a specific funding stream to assure continuation of outreach activities. These experts believe that many potentially eligible elderly or disabled persons are not receiving SSI benefits. Outreach activities can help to remove barriers to filing for SSI benefits, and appropriations should provide funds for outreach activities. The experts believe that outreach should have specific funding provided by an increase in the SSI administrative budget of at least 5 percent.

ESTIMATED COST

[In millions]

Fiscal year	SSI program	SSI administrative	Medicaid program
All	(*)	(*)	(*)

(*): Unable to estimate.

* * * * *

Information and Referral.

Most of the experts expressing a view favor SSA's use of the expanded community liaison model. The experts believe that SSA has a responsibility to refer individuals for services available from other agencies and organizations.

ESTIMATED COST

[In millions]

Fiscal year	SSI program	SSI administrative	Medicaid program
1993	None	$100	(*)
1994	None	110	(*)
1995	None	120	(*)
1996	None	130	(*)
1997	None	130	(*)

(*): Unable to estimate.

* * * * *

Helping the Homeless—Emergency payments

A majority of the experts support providing emergency payments to homeless persons who are severely mentally ill. Such payments are needed since these persons are not likely to stay in one place during the normal adjudication period.

ESTIMATED COST

[In millions]

Fiscal year	SSI program	SSI administrative	Medicaid program
1993	$13	$10	$10
1994	45	10	35
1995	50	0	40
1996	55	0	50
1997	60	0	55

* * * * *

Continued Payment Protection for Hospitalized Persons

All the experts expressing a view on providing continued payment protection for hospitalized individuals favor elimination of the statutory requirements for a physician's certification regarding the person's anticipated length of stay and the requirement that the individual have expenses for maintaining a home. The experts support continuation of full payment for 3 months for all SSI beneficiaries who become hospitalized. This would help such beneficiaries to maintain a home or to secure a place to live upon discharge.

ESTIMATED COST

[In millions]

Fiscal year	SSI program	SSI administrative	Medicaid program
1993	$31	Negligible	Negligible.
1994	43	Negligible	Negligible.
1995	46	Negligible	Negligible.
1996	48	Negligible	Negligible.
1997	50	Negligible	Negligible.

* * * * *

Public Emergency Shelters for the Homeless

All but one of the experts expressing a view favor paying SSI benefits to individuals in public emergency shelters for the homeless without a time limit. These experts believe that elimination of the time limit would allow beneficiaries to continue living in emergency shelters and eliminate the need for a beneficiary to choose whether to remain at a shelter or to continue receiving SSI.

ESTIMATED COST

[In millions]

Fiscal year	SSI program	SSI administrative	Medicaid program
All	Negligible.	Negligible	Negligible

* * * * *

Expand Nationwide Outreach Services

Most of the experts expressing a view supporting expanding outreach services. The experts believe that outreach services for the homeless are needed as this population encounters numerous barriers to filing an application and obtaining documentation required to complete the application process and/or to provide necessary medical evidence.

ESTIMATED COST

[In millions]

Fiscal year	SSI program	SSI administrative	Medicaid program
All	(*)	(*)	(*)

(*): Unable to estimate.

* * * * *

Create Backup Mailing Address Locations

All the experts expressing a view believe that when a homeless or mentally ill person files an application for SSI, SSA should ask for a backup mailing address. The experts believe that a backup mailing address would increase the likelihood that the beneficiary will receive his/her benefits.

ESTIMATED COST

[In millions]

Fiscal year	SSI program	SSI administrative	Medicaid program
All	None	Negligible	None.

* * * * *

Representative Payment

A majority of the experts supports development of legislation to strengthen the recruitment, monitoring and training of representative payees. A majority

also stated that fees for representative payee services should be provided when the payee is neither a relative of the beneficiary nor a custodial institution. Such fees should be paid from the administrative budget—needy persons should not have to pay them from monthly benefit.

ESTIMATED COST

[In millions]

Fiscal year	SSI program	SSI administrative	Medicaid program
All	None	(*)	None.

(*): Unable to estimate.

* * * * *

Chapter VII—Linkage of the Supplemental Security Income Program to Medicaid and the Food Stamp Program

A. Preamble to Chapter

The Social Security Act and other Federal statutes mandate certain linkages between SSI and other programs. The nature of these linkages varies widely. For example, the SSI statute requires that SSI applicants file for all other benefits for which they may be eligible. (This includes, for example, retirement, survivors, and disability social insurance benefits.) The SSI law and other Federal statutes provide for income disregards (in whole or in part) which apply to benefits paid under other programs. Other statutory provisions address linkages with certain noncash benefits of other Federal programs, including some which are State-administered. In particular, Medicaid and the Food Stamp Program have eligibility conditions which specifically relate to persons eligible to receive an SSI payment.

The experts reviewed the linkages between the SSI program and Medicaid and the Food Stamp Program, with the view that the SSI benefit package should be considered in the context of the total impact of the three programs. In doing so, the experts noted existing disparities in the benefits and services available to SSI recipients nationwide.

During their public meetings, the experts had discussions with representatives from the Health Care Financing Administration and the Department of Agriculture concerning Medicaid and the Food Stamp Program, respectively. Also, they heard members of the public describe problems people encounter in connection with the relationships between SSI and other programs.

It was apparent to the experts that many SSI claimants are in need of improved access to Medicaid and the Food Stamp Program. This chapter addresses the experts' opinions regarding the appropriate linkages between these programs and SSI.

B. Linkage of the Supplemental Security Income Program and the Medicaid Program

Background

Prior to the SSI program, receipt of cash benefits from the former State administered programs of aid to the aged, blind, or disabled made a person eligible for Medicaid (except in Arizona which did not have a Medicaid program). The Congress recognized that, with the enactment of SSI, more people would become eligible to receive cash assistance payments. Given the potential for increased State Medicaid costs, the legislation which established SSI also permitted States to break the direct link between receipt of cash assistance and Medicaid eligibility.

The statute permits States to use more restrictive Medicaid eligibility criteria than those of the SSI program. States may use more restrictive rules and disregards for income, resources and disability. However, these rules and disregards may not be more stringent than those the State used just before enactment of the SSI program. Also, a State which elects income criteria which are more restrictive than those of the SSI program must deduct medical expenses which a person has incurred for Medicaid covered services from that person's countable income when determining eligibility for Medicaid.

Currently, 12 States elect to use more restrictive criteria. Thirty-eight States, the District of Columbia, and the Commonwealth of the Northern Mariana Islands provide Medicaid to persons who meet the SSI requirements.

These latter jurisdictions have an option to enter into agreements with SSA to use the SSI application as an application for Medicaid and for SSA to make determinations of Medicaid eligibility for persons who receive SSI payments or who are deemed to be receiving payments under section 1619(b). (For information about section 1619(b) see part C of chapter IV.) Thirty-one States and the District of Columbia have these agreements. The remaining 7 States and the Commonwealth of the Northern Mariana Islands use the SSI standards to determine Medicaid eligibility, but require a separate Medicaid application.

Experts' Discussion of Medicaid Linkage Issues

The experts' discussion recognized that much has been happening outside the SSI arena relating to public interest in structural reform to the health insurance system. One expert pointed out that, even if there were legislation to improve health care access for people in general, this would not necessarily cover things which Medicaid now covers for qualified disabled persons. This expert stressed that recognition of the need for all SSI recipients to have Medicaid coverage cannot be postponed on the assumption that there will be broader action to provide health care access. Another expert, in agreement, noted that nearly 450,000 SSI recipients are not covered by Medicaid.

A majority of the experts stated that SSI should be a primary route to Medicaid eligibility, and the linkage of Medicaid and SSI should be strengthened. This affirmed views expressed by the majority of public commenters. Two experts stated that, conceptually, Medicaid is "part and parcel" of the total benefit package that the experts are addressing. If medical coverage is not provided, people have to use their SSI checks to pay for medical care. Those experts believe it is a gross inequity to permit over 400,000 persons in 12 States to be provided a smaller benefit package (i.e., a package which does not include Medicaid) than that provided to others.

Some experts also pointed out that Federal determinations of Medicaid eligibility should be universal. They said that where there is State administration, some people who qualify for Medicaid coverage get lost on their way through the State bureaucracy. These experts think SSI recipients should not have to go through extra steps (e.g., filing a separate application, etc). to obtain the coverage.

Recapitulation of Experts' Opinions on Medicaid Linkage

Option	Experts supporting
1. Require all States to use the SSI eligibility criteria and mandate Federal determinations of Medicaid eligibility	15
2. Retain the current State option to use more restrictive eligibility criteria than those of the SSI program	2

Recapitulation of Experts' Opinions on Medicaid Linkage—Continued

Option	Experts supporting
Comment: One of the experts favoring this option also supports requiring Federal determinations of Medicaid eligibility in all States that use the SSI criteria to determine Medicaid eligibility.	

C. Linkage of the Supplemental Security Income Program and the Food Stamp Program

Background Information

Under the Food Stamp Program, eligibility for benefits is determined for a household (rather than for individuals/couples as in the SSI program) and depends on the household's size, resources, gross income, and net income after certain exclusions and allowable deductions (e.g., dependent care, excess medical and shelter costs, etc.).

Food Stamp law requires SSA offices to inform SSI applicants and recipients that they may be eligible for food stamps and that food stamp application forms can be obtained at Social Security offices. In addition, SSA staff is to assist applicants and recipients who are members of a household in which all members are applicants or recipients of SSI (referred to as a "pure SSI household") in applying for food stamps at Social Security offices.

Members of pure SSI household and/or "public assistance households" (households in which all members receive public assistance; e.g., AFDC, or AFDC and SSI) are automatically ("categorically") eligible to participate in the Food Stamp Program. These households do not have to meet the income or resource limits of the Food Stamp Program.

However, SSI recipients in "mixed food stamp households" (households where at least one member receives SSI but others do not) must file for benefits at the food stamp office. Some SSI recipients in mixed households are not eligible for food stamp benefits depending on household size and the resources and income of others in the household. Mixed households must meet the Food Stamp Program's resource and net income limits in order to be eligible. However, because mixed households contain an elderly or disabled member, they do not have to meet the Food Stamp Program's gross income limits. Also, by law, SSI recipients' resources are excluded in determining whether a household meets the resource limit.

Food stamp offices make eligibility determinations and issue food stamp coupons.

Note: Pursuant to changes in the Food Stamp Act at the time of the implementation of the SSI program, SSI recipients in California do not participate in the Food Stamp Program. Instead, the value of food stamps is included in their State supplementary payments (although consideration is being given to allowing recipients in California to participate).

Experts' Discussion of Food Stamp Linkage Issues

Most of the discussion centered on the experts' observation that the current processes for filing for SSI and food stamps are confusing, duplicative, too time consuming and needlessly complicated. A majority of experts concluded that SSA's completion of a short food stamp application form for each interested SSI claimant would be the preferred way to simplify and improve processing of food stamp applications in Social Security offices. Although the short-form application would be incomplete for determining food stamp eligibility, it would establish the individual's intent to file a claim. One expert pointed out that this option would require SSA to do less than it is currently required to do by statute, but the agency probably would be able to administer this approach more successfully.

One expert proposed that eligibility for food stamps should be phased out when the SSI benefit reaches the poverty level. The experts discussed the possibility of doing this by eliminating categorical eligibility and/or eliminating the $10 minimum allotment for one- and two-person households. A majority of the experts supported eliminating automatic eligibility when the SSI Federal benefit standard reaches the poverty line. A majority of the experts did not favor eliminating the minimum allotment for SSI recipients, since this would be treating SSI recipients less favorably than others.

The experts discussed three other options. One option was to urge that SSA pursue with the Food and Nutrition Service the feasibility of SSA making food stamp eligibility determinations for the SSI population. The second option would allow categorical eligibility for a food stamp allotment, but the food stamp benefit would be cashed out with a flat amount which would be included in the SSI check. There was little support for these two options. Under the third option, the food stamp program would treat all SSI recipients as separate food stamp households which would be categorically eligible for food stamps but would receive a flat food stamp allotment. This could decrease the amount that some recipients currently receive. No expert supported this option.

RECAPITULATION OF EXPERTS' OPINIONS ON FOOD STAMP LINKAGE

Option	Experts supporting
1. Have Social Security offices complete short-form food stamp applications for all interested SSI claimants	16
Comment: One expert supporting this option also favored action by SSA to pursue with the Food and Nutrition Service the feasibility of SSA making food stamp eligibility determinations for the SSI population	
2. Eliminate automatic (categorical) eligibility for food stamps when the SSI Federal benefit rate equals or exceeds the poverty line	13
Comments: One expert supporting this option also supports allowing categorical eligibility, but cashing out the food stamp benefit with a flat amount which would be included in the SSI check	
Another expert, voicing disagreement with the elimination of categorical eligibility, stated that a person does not cease to be needy when the Federal benefit standard reaches the poverty line	

D. Options Preferred by a Majority of Experts Summary and Cost Estimates

Medicaid Linkage

Most experts favor a requirement that all States use both the SSI eligibility criteria and Federal determinations of Medicaid eligibility. They believe that anyone who is eligible for SSI should have Medicaid coverage as part of a total benefit package. They also believe that people should receive this coverage automatically. Mandated use of the SSI criteria with automatic determinations of eligibility would achieve this goal; people would no longer have to work their way through another governmental system in order to be covered for Medicaid.

ESTIMATED COST

[In millions]

Fiscal year	SSI program	SSI administrative	Medicaid program
1993	None	Negligible.	$1,590
1994	None	Negligible.	1,750
1995	None	Negligible.	1,915

ESTIMATED COST—Continued

[In millions]

Fiscal year	SSI program	SSI administrative	Medicaid program
1996	None	Negligible.	2,110
1997	None	Negligible.	2,315

* * * * *

Food Stamps Linkage: Applications

A majority of experts supports having Social Security offices complete short-form food stamp applications for all interested SSI claimants. This would help to assure that all interested persons establish, on a timely basis, their intention to apply for food stamps while simplifying the administrative difficulties which SSA and food stamp applicants encounter under the current process.

ESTIMATED COST

[In millions]

Fiscal year	SSI program	SSI administrative	Food Stamp Program
All	None	(*)	$1

* Unable to estimate.

* * * * *

Food Stamps Linkage: Eligibility

A majority of experts supports eliminating categorical eligibility of SSI recipients for food stamps at such time as the Federal benefit standard for SSI reaches the poverty line. This would eliminate expenses (for the guaranteed minimum food stamp allotment and related administrative costs) which they believe are unreasonable since most SSI recipients would be receiving sufficient cash benefits under the SSI program to enable them to purchase food. At the same time, it would not prevent those SSI recipients with significant excess shelter or medical expenses from qualifying for food stamps under the regular rules of the Food Stamp Program.

ESTIMATED COST

[In millions]

Fiscal year	SSI program	SSI administrative	Food stamp program
1993	None	Negligible	$(870)
1994	None	Negligible	(1300)

ESTIMATED COST—Continued

[In millions]

Fiscal year	SSI program	SSI administrative	Food stamp program
1995	None	Negligible.	(710)
1996	None	Negligible.	(740)
1997	None	Negligible.	(780)

* * * * *

Chapter VIII—Program Review Issues

A. Preamble to Chapter

Congress passed legislation to create the SSI program in 1972. Since the first payments in January 1974, the program has provided a valuable lifeline to millions of aged, blind and disabled persons. SSI benefits help provide life's necessities—food, clothing, and shelter—to people who might otherwise be without these basic items.

Society has changed since 1972 but the SSI program remains fundamentally unchanged in structure and purpose. Until now, there has never been a comprehensive review of the program by a group entirely from outside the Federal government.

Provisions for Review of Trust Fund Programs of the Social Security Act.

Shortly after the Social Security Act was established, the Social Security Board and Congress appointed an Advisory Council to examine the advisability of amending the social insurance program to ensure that its financing was sound. The Advisory Council, consisting of representatives of employees, employers, and the general public, met initially in 1937 and periodically thereafter.

In 1969, the Advisory Council's charter was expanded to reflect a broader scope of review, including the scope of coverage of the trust fund programs (old-age and survivors insurance, disability insurance, and hospital insurance and supplementary medical insurance under Medicare); the adequacy of benefits; and all other aspects, including the impact of the programs on public assistance programs under the Social Security Act.

Currently, under the law, a new Council is appointed every four years. Each Council is charged, by the Secretary of HHS, with addressing certain issues (however, the Council is not limited to those issues) and it submits a comprehensive report to the Secretary. Through the years, the various Advisory Councils have provided independent reviews which have enabled the Government to be responsive to the changes in society and the needs of the people.

B. An Advisory Council Level of Review

Background Information

Reviews of SSI. At the time of the statutory mandate for an "Advisory Council on Social Security", the SSI program had not been established, and the Act has never been modified to specify that this Council should review the SSI program. Only one Social Security Advisory Council has ever addressed SSI program issues.

Although the SSI program has undergone numerous refinements and modifications since enactment, the basic structure has not changed. A number of reviews have been conducted over the years, but not on a regular basis. Only one review was comprehensive and involved direct reporting to the Secretary, as is the case with the Advisory Council on Social Security.

Major initiatives to review the operation of the SSI program were done on an ad hoc basis and for a variety of reasons. Some of the early reviews performed in the 1970's were in response to complaints about the programs not living up to expectations and the quality of service. These were done by representatives from both inside and outside the Federal Government. Later studies done in the 1980's focused on achieving administrative simplification. These efforts were mostly internal efforts aimed at improving SSA's field office efficiency and understanding.

This current review of the program was initiated in 1990 by Social Security Commissioner Gwendolyn S. King. She recognized an existing need for a broad-based review to determine how well the program has met, and will continue to meet, the needs of the population it is intended to serve, recognizing current fiscal constraints.

Testimony received. Many commenters expressed support and appreciation for the SSI Modernization Project, remarking that the effort is important and necessary. Additionally, some people stated that the SSI program would benefit from a periodic, independent review, similar to the Social Security Advisory Council process afforded the four trust fund programs. They said that a separate Advisory Council for SSI is desirable because: (1) There are fundamental differences between the SSI program and the social insurance programs; (2) the scope of review would be too great to be manageable if the SSI review were

combined with a review of the social insurance programs; and (3) the issues involved in a review of SSI would require extensive consideration of other social and domestic programs.

Experts' Discussion of Program Review

All of the experts who addressed the subject stated that program review at an advisory council level would ensure a detailed analytical review of the SSI program. This review would achieve a level of visibility equivalent to that afforded the social insurance programs, because recommendations for change made by the Council are brought before the Secretary and Congress. Also, they believed that an advisory council level of review for SSI would establish a formalized process of periodic review by an independent group which would be sensitive to the needs of the SSI population and responsive to changes in society.

Two options for an advisory council were considered. One option would amend the Social Security Act to include SSI in the Social Security advisory Council jurisdiction. While this approach would not guarantee that the SSI program would be reviewed every four years, it would include SSI in the Council's jurisdiction and allow the program to be reviewed singly or jointly with the trust fund programs.

The other option was to establish a separate Advisory Council on SSI. This option would guarantee that the SSI program receives a regular, comprehensive review by an independent group of experts who would report to the Secretary. The mandate would include a broad charter for the examination of the SSI program, such as the SSI relationship with Federal and State income maintenance programs (other than trust fund programs). The separate Advisory Council would be expected to take into account actions of the most recent or existing Advisory Council for the social insurance programs on issues of mutual interest.

A majority of the experts concluded that a separate Advisory Council should be established for the SSI program. This affirmed the views expressed by the public. One expert stated, "The failure to regularly review the program has resulted in creating prolonged hardships for beneficiaries and inefficiency in the SSI program." The majority view was that a separate council would provide a better focus on the SSI program, rather than having SSI issues reviewed along with other Social Security programs and Medicare. However, two experts said they believed that including SSI in the Social Security Advisory Council's jurisdiction would give the SSI program a higher profile.

RECAPITULATION OF EXPERTS' OPINIONS ON PROGRAM REVIEW

Option	Experts supporting
1. Establish a separate Advisory Council on SSI	17
Comment: One of the experts favoring this option supported the option below as a second choice	
2. Include SSI in the Social Security Advisory Council jurisdiction	3

C. Option Preferred by a Majority of Experts—Summary and Cost Estimates

Program Review

A majority of the experts supports SSI program review by a separate Advisory Council. They conclude that such a level of separate review would increase the overall effectiveness of the program.

ESTIMATED COST

[In millions]

Fiscal year	SSI program	SSI administrative	Medicaid program
All	None	(*)	None.

(*): Unable to estimate.

* * * * *

Additional Views

By Michael Stern

In their review and consideration of the Supplemental Security Income program, a majority of the experts gave support to changes affecting virtually all elements of the program. When fully effective, these changes would increase Federal program costs by some $47 billion annually. (Federal program outlays in the current fiscal year are estimated at about $17 billion.)

The experts did not attempt to identify those program changes which they would support if only a specified amount of additional funds were available, such as $300 million or $1 billion annually.

There are a number of important things that could be done within a total limitation of about $300 million.

Staffing increases.—In my view, the most important single need for the Supplemental Security Income program is to increase its staffing. Many of the difficulties the program is experiencing could be eliminated or substantially alleviated simply by having more staff available.

Program simplifications.—The following relatively modest changes in the program hold the promise of improving equity, simplifying program operations and significantly reducing the incidence of overpayments:

1. Change the method for calculating overpayments that result from excess resources; the overpayment would not be greater than the amount the individual's resources exceeded the resource limit.

2. Accounting Issues: (a) Change the computation method from retrospective monthly accounting to prospective monthly accounting; changes that result in a reduction in payment would be effectuated two months later than the month in which the income changed. (b) Continue Medicaid coverage when SSI eligibility is lost solely due to a calendar-related income fluctuation (e.g., when there are five weekly paydays in a month). (c) Do not require income verification when it is not cost-effective.

3. Require Federal determinations of Medicaid eligibility in all States that use the SSI criteria to determine Medicaid eligibility.

4. Develop legislation that would mandate specific recruitment, training, and monitoring of representative payees and authorize the appropriation of funds to implement the program.

5. Increase the monthly payment limit for residents of institutions from $30 to $35 and provide for an annual cost of living adjustment.

6. Change the definition of substantial gainful activity so that, for purposes of establishing initial eligibility for SSI, an individual would be considered to be engaging in substantial gainful activity only if he is earning above the substantial gainful earnings level (generally $500 a month) *without* significant support services. (Wages and self-employment income would still count in terms of evaluating need and determining the benefit amount.)

Perhaps the most complex administrative task in the SSI program is determining in-kind support and maintenance—food, clothing, or shelter that is given to a person or that a person receives because someone else pays for it. Most of the experts assigned a high priority to the elimination of this feature of the program, which would involve an average annual program cost in the area of $1 billion. In my view, the elimination of the in-kind support and maintenance provision with no other program changes would fail to recognize that the needs of a person living in quarters with someone else are lower than those of a person living alone. A proposal for restructuring SSI and eliminating determinations of in-kind support and maintenance is discussed below.

A Cost-Neutral Proposal for Restructuring SSI Benefits and Improving Program Administration

If no additional funds become available for SSI program expansion, consideration could be given to a cost-neutral restructuring of SSI benefits and improvement of program administration consisting of the following elements:

1. Any SSI recipient living in the same quarters as another person who is an adult (whether or not an SSI recipient) would receive a payment based on 75 percent of the standard for an individual living alone. (This rule would apply only to persons who

become recipients after the proposal's effective date.)

In the SSI program, as in the social insurance programs, a couple's benefits are set at 150 percent of an individual's benefits. This recognizes the fact that two individuals living together do not have twice the expenses of an individual living alone. (The current Federal poverty level for a couple is 134 percent of the poverty level for an individual.) Under the proposed change, two SSI recipients living in the same quarters would receive the same combined payment whether or not they are a couple.

2. For new recipients, the SSI in-kind support and maintenance rules would be eliminated.

Under the first element of the proposal, any SSI recipient living with at least one other person who is an adult would receive a payment 25 percent below what he would receive if he were living alone. The principal reason for having an in-kind support and maintenance provision would no longer exist.

3. To assure no reductions in payments for persons already on the SSI rolls at the time the proposal is adopted, and whose payment amounts, but for this provision, would be affected by receipt of in-kind support and maintenance, I propose the following:

a. If the recipient is not living in the same quarters as another person who is an adult, the payment would be based on 100 percent of an individual's standard, and the in-kind support and maintenance reduction would be eliminated.

b. If the recipient is living in the same quarters as another person who is an adult, and if the recipient's in-kind support and maintenance reduction is equal to, or greater than, 25 percent of the Federal benefit standard, the payment would be based on 75 percent of an individual's standard and the in-kind support and maintenance reduction would be eliminated.

c. If the recipient is living in the same quarters as another person who is an adult, and if the recipient's in-kind support and maintenance reduction is less than 25 percent of the Federal benefit standard, the payment would be based on 100 percent of an individual's standard and the in-kind support and maintenance reduction would not be eliminated.

4. It would take some years for the restructuring to be fully effective, since present recipients would be protected from payment reductions. In the first two years, the savings would be applied largely to the staffing increases and program simplifications outlined above.

Beginning in the second year, any program savings that exceed these costs would be devoted to increasing the SSI payment levels beyond the annual cost of living increases and at the same time as those increases. Based on the estimates provided me, the SSI payment levels could be increased about 11 percent over a four year period from FY 1994 to FY 1997. By the end of that time, substantial progress would have been made in increasing SSI payment levels to the Federal poverty level.

ESTIMATED NET SSI PROGRAM SAVINGS

[In millions of dollars]

FY 1993	(85)
FY 1994	(515)
FY 1995	(985)
FY 1996	(1,455)
FY 1997	(1,930)
Total	(4,970)

ESTIMATED BENEFIT INCREASES ABOVE THE COLA'S AFTER DEVOTING $300 MILLION PER YEAR TO OTHER IMPROVEMENTS

	Percent
FY 1993	NA
FY 1994	.8
FY 1995	2.2
FY 1996	3.4
FY 1997	4.4

Additional Views by Kenneth Bowler, Robert Fulton, Arthur Hess, Richard Nathan, and Timothy Smeeding

Commissioner King is to be commended for launching a thorough examination of the Supplemental Security Income (SSI) program. Such a review of the program was long overdue. The Modernization Project experts, under the capable leadership of Dr. Arthur Flemming, have performed an important public service. They have identified, examined, and formulated potential corrective actions for the key problems that inhibit the SSI program's effectiveness, complicate its administration, and create inequities among applicants for, and recipients of, program benefits. The experts' report can help build public awareness of the importance of the SSI program to millions of America's elderly, blind, and disabled citizens and their families. We hope this work will also increase significantly the attention given to the SSI program by policy makers in both the executive and legislative branches of the federal government as well as by analysts and advocates outside government.

We join our colleagues in endorsing many of the changes presented in the report. Nevertheless, we find a number of aspects of the report troublesome. We presented these concerns during meetings with our fellow experts. We present them here in the hope that our perspectives will help persuade congressional committees, the Social Security Administration, and policy officials elsewhere in the executive branch to treat this report as an essential starting point for considering comprehensive reform of the SSI program.

Specific Concerns

1. Cost

The options preferred by a majority of the experts would, by the end of five years, double the cost of the SSI program to the federal treasury. Some of the cost increases would result from addition to the rolls of persons who would become eligible as a result of increased benefit levels, more generous resource limitations, and other liberalizations presented. The changes would also significantly increase payments to persons already receiving SSI benefits. The chances of all these program expansions being effected in the foreseeable future are extremely slim, given the federal budget situation and the many other pressing domestic priorities which are competing for resources.

Moreover, the cost impact would extend beyond the federal government to state and local governments as well. In particular, the impact of the increased numbers of SSI recipients on state and local Medicaid costs deserves much more attention than it received, in view of the prominence of Medicaid cost growth as a source of great budgetary concern throughout the nation.

2. Choice of Priorities Within the SSI Program

The report treats an extremely expensive option on increasing benefits as being on the highest priority level. We advocate a more deliberate approach which would treat increases in benefit levels beyond 100 percent of the poverty guidelines as a longer-range goal and move to the top of the agenda for short-term action lower-cost changes which will improve equity, simplify administration, improve understanding of the program by those already eligible, and promote self-help efforts by recipients and their families.

3. Sensitivity to Other Needs

It is obvious that the response made to the needs of elderly, blind and disabled citizens must take into account other urgent national needs such as health care for the medically uninsured, the economic and social needs of our cities, and improvement of the support and protection of all of America's children. While this broad array of needs was beyond the experts' specific charge, we believe proposals on the scope and phasing of SSI changes must fully take into account their cumulative effect and the fact that other pressing domestic problems also have priority claims on substantial additional resources.

Conclusions

We believe it would be major, and acceptable, progress if the following resulted in the near future from the work of the experts:

(1) The Social Security Administration were provided the staff resources it must have in order to discharge more adequately its responsibilities for the SSI program. It is urgent that SSA receive the approvals and funding necessary for hiring, training, and making fully functional, no more than two years from now, the additional staff seen as vital by nearly all of the experts.

(2) Significant administrative complexities were eliminated and equity and benefit adequacy were improved for many recipients through early approval and implementation of many of the simplifications proposed. Examples of changes which should be effected without delay are: Simplified and more generous treatment of interest income,

raising current resource limits by moderate amounts and reconciling the treatment of different types of resources, providing stronger work incentives, and eliminating benefit reductions due to in-kind support and maintenance.

(3) A plan for gradually increasing benefits and expanding eligibility were developed and implemented. For example, annual increases covering changes in the cost of living plus two percentage points could bring benefit levels close to the poverty line by the early years of the 21st century, while being more realistically accommodated within the federal budget.

These changes would represent a major contribution to the well-being of Americans who are elderly or have disabilities and are dependent on SSI for meeting their basic needs.

SUMMARY OF OPTIONS PREFERRED BY A MAJORITY OF EXPERTS WITH COST ESTIMATES—SSI PROGRAM COSTS, SSA ADMINISTRATIVE COSTS, MEDICAID COSTS, AND FOOD STAMP COSTS

Options		1993	Cost (Millions of dollars)			1997
			1994	1995	1996	
Benefit Payment Issues:						
Benefit Adequacy:						
Increase the Federal benefit standard for an individual, in 5 equal annual increments, to 120 percent of poverty guideline. Keep the couple's benefit standard at 150 percent of that for individuals.	Program	2,567	7,092	12,706	19,527	27,707
	Administration	250	710	460	470	510
	Medicaid	435	1,825	2,950	4,310	5,995
Couples:						
Eliminate the concept of "holding out" in defining a spouse	Program	2	3	3	4	4
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)
Give each member of a couple a full set of earned income exclusions	Program	1	2	3	3	3
	Administration	(*)	10	(*)	0	(*)
	Medicaid	5	20	25	25	35
State Supplementation:						
Permit States to reduce or terminate supplements once the Federal SSI benefit standard reaches 100 percent of poverty. "Grandfather" extant supplementary levels for current beneficiaries. Require States, for at least 3 years, to spend "freed up" supplementation funds for other services to needy aged, blind, or disabled.	Program	0	0	0	0	0
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	435	1,825	1,995	2,195	2,410
		0	0	0	0	0
Require States by July 1, 1995, to: have no more than 3 supplementary payment level variations based on living arrangements, 6 based on categorical distinctions, and 3 by geographic area; or pay SSA for the costs of administration; or take over administration of supplementation.	Program	0	0	0	0	0
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	0	0	0	0	0
Payment Limits for People in Institutions:						
Increase the payment limit to $35, indexed annually, and rounded to the next higher dollar	Program	8	16	20	23	27
	Administration	0	(*)	0	0	0
	Medicaid	(*)	(*)	(*)	(*)	(*)
					0	
					(*)	
Accounting Periods:						
Change to prospective monthly accounting	Program	(*)	(*)	(*)	(*)	(*)
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)
Continue Medicaid coverage when SSI eligibility is lost solely due to a calendar-related income fluctuation.	Program	0	0	0	0	0
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)
When it is not cost-effective, do not require income verification	Program	(*)	(*)	(*)	(*)	(*)
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)
Define SSI eligibility in terms of income below the combined Federal/State payment level in States with federally-administered supplements.	Program	4	5	5	5	5
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)
Test method(s) of annual accounting, beginning with prospective annual accounting, by running computer simulation(s).	Program	0	0	0	0	0
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	0	0	0	0	0
Needs—Based Eligibility Issues:						
Unearned Income:						
Increase the general income exclusion to $30 and apply it only to unearned income	Program	203	303	321	338	355
	Administration	150	370	40	30	30
	Medicaid	260	935	1,105	1,280	1,475
Exclude from income up to $200 annually of interest and dividends	Program	3	4	5	5	5
	Administration	0	0	0	0	0
	Medicaid	5	5	5	5	5
Adopt the current "earned and unearned" income formula for use in all parent-to-child deeming situations.	Program	11	15	15	15	16
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)
Deduct itemized special expenses of a disabled child before deeming parental income	Program	10	15	17	18	20
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)
In parent-to-child deeming, treat as earned income benefits intended to replace a parent's earnings (e.g., unemployment, worker's compensation, and disability and survivorship social insurance benefits).	Program	18	27	29	32	35
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)
Exclude up to $2,000 per year of income from individually-held Indian trust land	Program	(*)	(*)	(*)	(*)	(*)
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)
In-Kind Support and Maintenance:						
Eliminate consideration of in-kind support and maintenance as income	Program	600	1,003	1,066	1,122	1,178
	Administration	60	170	0	(4)	(4)
	Medicaid	140	510	600	695	805

SUMMARY OF OPTIONS PREFERRED BY A MAJORITY OF EXPERTS WITH COST ESTIMATES—SSI PROGRAM COSTS, SSA ADMINISTRATIVE COSTS, MEDICAID COSTS, AND FOOD STAMP COSTS—Continued

Options		1993	Cost (Millions of dollars)			1997
			1994	1995	1996	
Resources:						
Increase resource limits to $7,000 and $10,500 with fewer resource exclusions	Program	55	191	215	236	257
	Administration	40	100	10	10	10
	Medicaid	75	265	315	365	420
Change all periods for time-limited resource exclusions to 12 months	Program	(*)	(*)	(*)	(*)	(*)
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)
Change the calculation of overpayments resulting from excess resources	Program	2	2	2	2	2
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)
In deeming parental resources, exclude $2,000 for each ineligible child	Program	7	11	12	13	14
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)
Disability and Work Incentive Issues:						
Disability: Definitions:						
Redefine "substantial gainful activity" in the SSI program to recognize that persons who need substantial support services in order to work are not performing substantial gainful activity.	Program	(*)	(*)	(*)	(*)	(*)
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)
Study the feasibility of: (a) eliminating use of substantial gainful activity in both the SSI and the disability insurance programs; and (b) formulating disability criteria in terms of being disadvantaged in participating in major life activities.	Program	0	0	0	0	0
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	0	0	0	0	0
Disability: Claims Process:						
Use specially trained field office disability experts to conduct initial disability interviews	Program	(*)	(*)	(*)	(*)	(*)
	Administration	(20)	(20)	(20)	(30)	(30)
	Medicaid	(*)	(*)	(*)	(*)	(*)
Disability: Very Young Children:						
Develop appropriate criteria for assuming the existence of disability in very young children Permit continued payment, based on an assumption, up to age 4, without creating an overpayment.	Program	8	31	35	38	42
	Administration	0	10	0	0	0
	Medicaid	5	20	20	25	25
Disability: Appeal of Decisions:						
In both the SSI and the insurance programs: (a) eliminate the reconsideration level of appeal; and (b) provide opportunity for a face-to-face interview with the decisionmaker prior to issuing a disability denial.	Program	(*)	(*)	(*)	(*)	(*)
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)
Disability: Time Limits on Claims and Appeals:						
Establish 90-day time limits which, if exceeded, would result in benefit payments not to be considered overpayments. Apply such limits to: initial SSI disability determinations; completing cases at the administrative law judge level; and completing cases at the Appeals Council level. Study the effects after 4 years of experience.	Program	(*)	(*)	(*)	(*)	(*)
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)
Work Incentives:						
Seek legislation authorizing all of the following work incentives:						
(a) Raise the earned income exclusion to $200 plus two-thirds of any remaining earned income.	Program	149	328	351	370	388
	Administration	50	200	20	20	20
	Medicaid	140	510	605	695	805
(b) Eliminate continuing disability reviews triggered by work; defer scheduled medical reviews for 3 years after work begins.	Program	(*)	(*)	(*)	(*)	(*)
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)
(c) Treat as earned income: unemployment compensation, workers' compensation, sick pay, and similar benefits related to recent work activity.	Program	10	14	15	16	16
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)
(d) Eliminate the time limit for completing a plan for achieving self-support	Program	(*)	(*)	(*)	(*)	(*)
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)
(e) Allow aged individuals to be eligible for all work incentives	Program	(*)	(*)	(*)	(*)	(*)
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)
Simultaneous with the preceding option, conduct a national demonstration of its work incentives.	Program	0	0	0	0	0
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)
Grandfather demonstration policies for demonstration participants after expiration of the project.	Program	(*)	(*)	(*)	(*)	(*)
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)
Disregard deemed income of an ineligible spouse when determining continued Medicaid eligibility under section 1619(b).	Program	0	0	0	0	0
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)
Require SSA to make a decision on a plan for achieving self-support within 30 days. If there is no decision within that time, assume the plan is acceptable.	Program	0	0	0	0	0
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)
Require States which supplement regular SSI payments to supplement payments under 1619(a).	Program	0	0	0	0	0
	Administration	(*)	(*)	(*)	(*)	(*)
	States	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)
Provide Medicaid under section 1619 to all working individuals	Program	0	0	0	0	0
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	10	15	15	15	15
Provide SSI benefits for individuals who lose their social insurance cash benefits due to substantial gainful activity.	Program	(*)	(*)	(*)	(*)	(*)
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)

SUMMARY OF OPTIONS PREFERRED BY A MAJORITY OF EXPERTS WITH COST ESTIMATES—SSI PROGRAM COSTS, SSA ADMINISTRATIVE COSTS, MEDICAID COSTS, AND FOOD STAMP COSTS—Continued

Options		1993	Cost (Millions of dollars) 1994	1995	1996	1997
Do not permit States to count resources set aside under a plan for achieving self-support when determining Medicaid eligibility using their own rules.	Program	0	0	0	0	0
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)
Definition of "Aged" Issue:						
Lowering the "Aged" Limit:						
Lower the age requirement to 62, phased in over 3 years	Program	40	178	351	461	528
	Administration	(*)	10	19	10	(*)
	Medicaid	20	115	255	390	460
Agency Service Issues:						
Services:						
Increase staffing (6,000 positions)	Program	0	0	0	0	0
	Administration	280	297	315	335	356
	Medicaid	0	0	0	0	0
Place renewed emphasis on personal contact and individualized service	Program	0	0	0	0	0
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	0	0	0	0	0
Outreach:						
Establish specific funding for outreach by increasing the SSI administrative budget by at least 5 percent.	Program	(*)	(*)	(*)	(*)	(*)
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)
Information and Referral:						
Adopt the expanded community liaison model	Program	0	0	0	0	0
	Administration	100	110	120	130	130
	Medicaid	(*)	(*)	(*)	(*)	(*)
Helping the Homeless:						
Provide emergency payments to homeless persons with severe mental illness	Program	13	45	50	55	60
	Administration	10	10	0	0	0
	Medicaid	10	35	40	50	55
Provide continued payment protection for all hospitalized individuals	Program	31	43	46	48	50
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)
Pay SSI benefits to individuals in public emergency shelters for the homeless without any time limit.	Program	(*)	(*)	(*)	(*)	(*)
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)
Expand nationwide outreach services now being tested	Program	(*)	(*)	(*)	(*)	(*)
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)
Create backup mailing addresses for the homeless or mentally ill	Program	0	0	0	0	0
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	0	0	0	0	0
Representative Payment:						
Develop legislation mandating specific recruitment, training and monitoring of representative payees; provide reasonable compensation to nonrelative noncustodial payees out of administrative funds.	Program	0	0	0	0	0
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	0	0	0	0	0
Program Linkage Issues:						
Medicaid:						
Require all States to use SSI eligibility criteria and mandate Federal determinations of Medicaid eligibility.	Program	0	0	0	0	0
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	1,590	1,750	1,915	2,110	2,315
Food Stamps:						
Social security offices to complete a short-term food stamp application for all interested SSI claimants.	Program	0	0	0	0	0
	Administration	(*)	(*)	(*)	(*)	(*)
	FdStamps	1	1	1	1	1
	Medicaid	0	0	0	0	0
Eliminate categorical eligibility for food stamps when the SSI benefit standard equals or exceeds the poverty line.	Program	0	0	0	0	0
	Administration	(*)	(*)	(*)	(*)	(*)
	FdStamps	(870)	(1300)	(710)	(740)	(780)
	Medicaid	0	0	0	0	0
Program Review Issues:						
An Advisory Council Level of Review:						
Establish a separate Advisory Council on SSI	Program	0	0	0	0	0
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	0	0	0	0	0
Four Top Priority Issues:						
Increase Staffing: Increase Federal Benefit Standard; Eliminate In-Kind Support and Maintenance; Increase Resource Limits With Fewer Exclusions.	Program	3,539	9,391	15,711	23,346	32,507
	Administration	610	1,237	855	885	948
	Medicaid	610	2,490	3,870	5,545	7,615
All Issues Combined:						
Estimate of combined SSI costs, program and administrative, for all preceding options to which specific dollar amounts have been attributed.		5,281	13,258	19,635	26,539	38,844
Number of New Beneficiaries (in thousands):						
Estimate of total number of people added to the Federal SSI rolls by all preceding options to which specific dollar amounts have been attributed. Annual numbers are cumulative.		489	1,527	2,240	2,965	3,607

(*): Negligible.
(*): Unable to estimate.

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federal register

Friday
September 4, 1992

Part III

Environmental Protection Agency

40 CFR Part 55

Outer Continental Shelf Air Regulations; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[FRL-4200-9]

Outer Continental Shelf Air Regulations

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Final rule.

SUMMARY: The EPA is promulgating new regulations that establish requirements to control air pollution from outer continental shelf ("OCS") sources.

The Clean Air Act ("the Act") requires EPA to promulgate a rule establishing air pollution control requirements for OCS sources. The purpose of the requirements is to attain and maintain federal and state ambient air quality standards, to comply with part C of title I of the Act, and to distribute the burden of achieving these goals more equitably between onshore sources and OCS sources.

The requirements apply to all OCS sources except those located in the Gulf of Mexico west of 87.5 degrees longitude (near the border of Florida and Alabama). New sources must comply with the requirements of this part on the date of promulgation and existing sources must comply within 24 months from promulgation. For OCS sources located within 25 miles of states' seaward boundaries, the requirements are the same as the requirements that would be applicable if the source were located in the corresponding onshore area ("COA"). In states affected by this rule, state boundaries extend three miles from the coastline, except off the coast of the Florida Panhandle, where that state's boundary extends three leagues (approximately 9 miles) from the coastline. Sources located beyond 25 miles of states' boundaries are subject to federal requirements for Prevention of Significant Deterioration ("PSD") promulgated pursuant to part C of title I of the Act. New Source Performance Standards ("NSPS") and National Emissions Standards for Hazardous Air Pollutants Standards ("NESHAPS") apply under section 328 to the extent they are rationally related to protection of federal or state ambient air quality standards and compliance with part C of title I of the Act. EPA will amend its new regulations to incorporate the federal operating permit program and enhanced compliance and monitoring regulations when they are promulgated. The rule establishes procedures for EPA to delegate implementation and enforcement of the requirements of this part to state and local agencies. Beyond 25 miles from states' seaward boundaries, the OCS program requirements will be implemented and enforced solely by EPA. The new regulations also establish procedures to allow the Administrator of EPA ("the Administrator") to exempt any OCS source from a control technology requirement if it is technically infeasible or poses an unreasonable threat to health or safety.

DATES: This rule shall be effective as of September 4, 1992. The incorporation by reference of certain rules listed in the regulation (under § 55.14 of this part) is approved by the Director of the Federal Register Office as of September 4, 1992.

ADDRESSES: *Docket:* This rulemaking is determined to be subject to the requirements of § 307(d) of the Act. Supporting information used in developing the rule is contained in EPA docket A-91-76. This docket is available for public inspection and copying at the following locations: (1) U.S. Environmental Protection Agency Region 9, Air and Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105, and (2) U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460 in Room M-1500. These locations are open to the public Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Alison Bird, Air and Toxics Division (A-5), U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION: This rule (40 CFR part 55) was proposed in the **Federal Register** on December 5, 1991 (56 FR 63774). EPA held four public hearings during January 1992 and accepted public comments on the proposal until February 20, 1992. The hearings were held in San Francisco, CA, Los Angeles, CA, Washington, DC, and Anchorage, AK. The hearing testimony, public comments, EPA's response to comments, and other support documents are contained in the docket referenced above. This preamble discusses changes made to the proposed rule and responds to the major comments received on the proposed rule. This preamble does not repeat information and policies discussed in the preamble that accompanied the proposed rule. Hereafter, the proposed rule and preamble will simply be referred to as the notice of proposed rulemaking ("NPR"). The reader may refer to the NPR for further background and information on this rule.

This preamble is organized according to the following outline:

I. Discussion of the Final Regulations

A. § 55.1—Statutory authority and scope.
B. § 55.2—Definitions.
C. § 55.3—Applicability.
D. § 55.4—Requirements to submit a notice of intent ("NOI").
E. § 55.5—Designation of the corresponding onshore area ("COA").
F. § 55.6—Permit requirements.
G. § 55.7—Exemptions.
H. § 55.8—Monitoring, reporting, inspections, and compliance.
I. § 55.9—Enforcement.
J. § 55.10—Fees.
K. § 55.11—Delegation.
L. § 55.12—Consistency updates.
M. § 55.13—Applicable federal requirements.
N. § 55.14—Applicable requirements of the COA.

II. Additional Topics for Discussion

A. Relationship between the OCS regulations and state implementation plans.
B. Regulation of non-criteria pollutants.

III. Administrative Requirements

A. Executive Order 12291 (Regulatory Impact Analysis).
B. Regulatory Flexibility Act.
C. Paperwork Reduction Act.

List of Subjects in 40 CFR Part 55

As in the NPR, citations to various sections within commonly referenced documents will not always be followed by a notation of their origin such as "of this preamble" or "of section 328."

Rather, the reader can recognize the origins of the sections by their nature:

- Sections of the preamble begin with a roman numeral
- Sections of the OCS regulations appear as § 55.xx
- Sections of the Act are numbered in the hundreds
- Sections of non-OCS EPA regulations are preceded by 40 CFR

This preamble and the final rule make frequent use of the term "state," usually meaning the state air pollution control agency that would be the permitting authority. Use of the term "state" may also reference a local air pollution permitting agency or certain Indian tribes which can be the permitting authority for areas within their jurisdiction. In some cases, the term "delegated agency" is used and can refer to the state agency, the local agency, or the Indian tribe, depending on the delegation status of the program. The term state may also be used in the geographic sense and in such cases may refer to the state or the geographic area associated with an onshore permitting authority, such as the nearest onshore area ("NOA"), and the COA.

I. Discussion of the Final Regulations

A. § 55.1—Statutory Authority and Scope

In response to several comments, § 55.1 has been revised from the NPR to more accurately reflect the language of section 328 of the Act by stating that the Administrator is required to issue regulations for the OCS, rather than simply authorized to do so.

In addition, language has been added to this section to clarify that the purpose of this rule is to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Act. This language sets forth the limits of the rulemaking authority given to EPA under section 328 of the Act. As a result, the state and local rules that EPA incorporates pursuant to this rule must be rationally related to this purpose and may not be used expressly for the purpose of preventing exploration and development of the OCS.

B. § 55.2—Definitions

The following definitions were added or amended since the publication of the NPR. The various changes are summarized below and explained as necessary.

Corresponding Onshore Area ("COA")—This definition has been changed to clarify that the COA may be defined in association with a "proposed" source as well as an existing source. Several commenters noted that this will make clear that a proposed OCS source must comply with the preconstruction requirements of the COA. The definition of NOA has been changed in an identical manner for the same reason.

Delegated Agency—Language has been added to the rule to clarify that the delegated agency may be a state or local agency or an Indian tribe, provided that EPA has found that the delegation requirements of part 55 have been satisfied.

Exploratory Source—Language has been added to this definition to clarify that an exploratory source includes an operation conducted during the exploratory phase to determine the characteristics of the reservoir and formation and may involve the extraction of oil and gas.

Existing Source, New Source and Modification—Many commenters expressed confusion as to when the definitions of existing source, new source, and modification apply. These terms have the meaning given in the federal, state, and local requirements incorporated into §§ 55.13 and 55.14, as stated in the NPR. However, for two years following the date of promulgation of this part, the definitions given in section 111(a) of the Act shall apply for the purpose of determining the required date of compliance with this part, as required by section 328 of the Act and set forth in § 55.3 of this part. Language has been added to this section to clarify the applicability of the definitions given § 55.3 and in the requirements incorporated into §§ 55.13 and 55.14.

Nearest Onshore Area ("NOA")—This definition has been changed so that the NOA may be defined in association with a proposed source. This clarifies that proposed sources are subject to preconstruction requirements (see definition of COA). Language was also added to limit application of the NOA definition to OCS sources located within 25 miles of states' seaward boundaries. The definition of NOA is now consistent with the definition of COA.

Onshore Area—This definition has been changed to reflect the fact that the boundaries of areas designated pursuant to section 107 often do not coincide with the jurisdictional boundaries of any one air pollution control agency. When this is the case, the onshore area will have the same boundaries as the air pollution control agency for the purpose of determining the NOA and the COA.

Outer Continental Shelf—This definition was modified so that it will track any changes made to the definition in the Outer Continental Shelf Lands Act (OCSLA). Commenters were divided on whether or not this definition should be made permanent within this rule or allowed to change if OCSLA changes. EPA concurs with the comment that the determination of applicability, implementation, and enforcement could become unnecessarily complicated if the definitions in OCSLA and this rule diverge.

OCS Source—The definition of "OCS source" has been modified to clarify when EPA will consider vessels to be OCS sources. Section 328(a)(4)(C)(ii) defines an OCS source as a source that is, among other things, regulated or authorized under the OCSLA. The OCSLA in turn provides that the Department of the Interior ("DOI") may regulate "all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring, developing, or producing resources therefrom, or any such installation or other device (other than a ship or vessel) for the purpose of transporting such resources." 43 U.S.C. § 1333(a)(1). Vessels therefore will be included in the definition of "OCS source" when they are "permanently or temporarily attached to the seabed" and are being used "for the purpose of exploring, developing or producing resources therefrom." This would include, for example, drill ships on the OCS.

In addition, when a vessel is physically attached to an OCS facility it will be considered a part of that facility and regulated as such. This is consistent with DOI's regulations, which specifically cover vessels used to transfer production from an offshore facility when the vessel is physically attached to the facility. 30 CFR 250.2. It is also consistent with federal new source review ("NSR") requirements, under which emissions from the stationary source activities of vessels at dockside are considered primary emissions of the marine terminal and are regulated as such. Moreover, under the "same as" requirements of section 328, the OCS platform will have to comply with the same requirements as the marine terminals. It therefore makes sense for vessels to be subject to the same requirements at OCS platforms as they are at marine terminals.

Only the vessel's stationary source activities may be regulated, since when vessels are in transit, they are specifically excluded from the definition of OCS source by statute. In addition, only the stationary source activities of vessels at dockside will be regulated under title I of the Act (which contains NSR and PSD requirements), since EPA

is prohibited from directly regulating mobile sources under that title. See *NRDC v. EPA*, 725 F.2d 761 (DC Cir. 1984). Part 55 thus will not regulate vessels en route to or from an OCS facility as "OCS sources," nor will it regulate any of the non-stationary source activities of vessels while at dockside. Section 328 does not provide authority to EPA to regulate the emissions from engines being used for propulsion of vessels. Any state or local regulations that go beyond these limits will not be incorporated into the OCS rule. If the mobile source emissions of vessels are regulated under future regulations developed pursuant to title II of the Act, the OCS rule will be revised accordingly.

All vessel emissions related to OCS activity will be accounted for by including vessel emissions in the "potential to emit" of an OCS source. Vessel emissions must be included in offset calculations and impact analyses, as required by section 328 and explained in the NPR. Emissions from vessels that service more than one OCS facility will be allocated among all the OCS facilities that the vessel services, to ensure that there is no double-counting of emissions.

EPA received some comments noting that at one point DOI proposed OCS rules that would have regulated vessels. Because the DOI regulations were proposed long before section 328 was enacted and were not developed beyond the stage of a proposal, they were not considered during rule development.

EPA also received comments regarding a development and production plan that DOI approved for an OCS platform named Julius, to be located off the coast of California, which contained requirements for vessels. However, these requirements were not required of the source by DOI, but rather were controls that the source and the state had agreed to. DOI simply incorporated the requirements into the plan as existing controls. Moreover, for the most part, these regulations applied to vessels while at the platform.

State—This definition was added to clarify that state means the state air pollution control agency that would be the permitting authority, a local air pollution permitting agency, or certain Indian tribes which can be the permitting authority for areas within their jurisdiction. In some cases, the term "delegated agency" is used and can refer to the state agency, the local agency, or the Indian tribe, depending on the delegation status of the program. The term may also be used in the geographic sense and then it refers to a state or the area associated with a permitting authority. Usage of this term was described in the NPR and has now been included in the final rule for clarification.

C. § 55.3—Applicability

As discussed in the NPR, this section gives the compliance dates for new and existing sources. Section 328 requires that new sources comply with this part on the date of promulgation, which is the date that the rule is published in the **Federal Register**. Existing sources must comply with this part within 24 months from promulgation. For purposes of compliance with this requirement a "new source" means an OCS source that is a new source within the meaning of section 111(a) and an "existing source" means any source that is not a new source. In brief, section 111(a) defines a "new source" as any stationary source the construction or modification of which is commenced after the publication of the NPR, which for this rule was December 5, 1991.

This section also establishes two separate regulatory regimes, as indicated by the statute and discussed in the NPR. The first applies to OCS sources within 25 miles of states' seaward boundaries. These nearshore OCS sources must comply with all the requirements of this part, including the federal requirements as set forth in § 55.13 and the federal, state, and local requirements of the COA (designated pursuant to § 55.5), as set forth in § 55.14. The second regulatory regime will apply to OCS sources located more than 25 miles beyond states' seaward boundaries. These outer sources must comply with all the applicable requirements of this part, including the federal requirements set forth in § 55.13.

Most of the comments received on this section pertain to the requirements that EPA proposed to incorporate into these two regimes. The reader is referred to sections I.M. and I.N. for a discussion of these comments. The only change made to this section clarifies in § 55.3(c) that sources in the outer regime are not subject to the requirements of the following sections: § 55.6—Requirements to Submit a Notice of Intent; § 55.4—Corresponding Onshore Area Designation; § 55.11—Delegation; § 55.12—Consistency Updates; and § 55.14—Requirements that Apply to OCS Sources Located Within 25 Miles of States' Seaward Boundaries.

D. § 55.4—Requirements To Submit a Notice of Intent ("NOI")

Few comments were received on § 55.4, and the changes, discussed below, are simply to clarify EPA's intent in the NPR in response to comment. As stated in the NPR, the owner or operator of a new OCS source or modification to be located within 25 miles of a state's seaward boundary must submit an NOI to the Administrator through the Regional EPA Office and to the air pollution control agency of the nearest onshore area and adjacent onshore areas. The NOI must include information about the proposed source or modification to determine onshore impacts and the applicability of onshore requirements for the purposes of designating a COA (if necessary) and performing consistency updates as mandated by section 328 of the Act.

The information required to be submitted in the NOI is listed in § 55.4. This information will generally be less extensive than that required by a new source review permit application and will in no way limit the required scope and contents of the permit application or applicable requirements. In response to comments, subsection (c) has been added to the rule to eliminate any confusion in this regard.

Several comments stated that existing sources planning to modify should be required to submit an NOI. In the NPR, modifications that trigger preconstruction requirements were considered new sources as defined by sections 328 and 111(a) of the Act. Section 55.4(a) has been amended to clarify that the NOI requirement applies to new sources and to modifications of existing sources that result in an increase in emissions. The NOI for modifications to existing sources only triggers consistency updates and not the COA procedure, as discussed in more detail in section I.E. below.

In addition, § 55.4(a) has been amended to require that the applicant submit the NOI to the EPA Administrator through the EPA Regional Office and at the same time to the air pollution control agencies of the NOA and onshore areas adjacent to the NOA. This clarification was made in response to comments that sources should submit the NOI to the Administrator and the delegated agency simultaneously.

EPA received several comments that stated that exploratory sources should not be exempt from NOI and emission control requirements. Exploratory sources and modifications to existing sources are exempt only from § 55.4(b)(10), the requirement to submit "such other information as necessary to determine the source's impact in onshore areas." Because the NOA will automatically be designated as the COA for exploratory sources (see discussion section II.D of the NPR) and the COA will not change for modifications to

existing sources, these sources will not be required to submit any information to be used for the purpose of determining the COA (i.e. an impacts analysis). Exploratory sources and modifications to existing sources that result in an increase in emissions will have to submit all other information required for consistency update purposes and will be subject to all the permitting and emission control requirements of the COA. In addition, should exploration lead to development and production, proposed sources will be subject to the full NOI and COA designation processes. Exploratory sources are discussed further in § I.E below.

E. § 55.5—Designation of the Corresponding Onshore Area ("COA")

Under section 328(a)(4)(B), the COA is assumed to be the NOA, but the Act gives the Administrator the discretion to designate a more stringent area as the COA if the area meets certain other criteria.

Proposed Exploratory Sources

The substance of this section of the rule was not changed significantly, but clarifying language was added in response to comments. The added language states that COA designations apply only to exploratory sources that are located within 25 miles of states' seaward boundaries. Another minor change clarifies that exploratory sources are not subject to those requirements of § 55.5 that relate only to the designation of the COA.

The content of this section resulted in several significant comments that are discussed for clarification, although they did not result in changes to the rule. Some commenters objected to EPA's proposal to make presumptive determinations of the COA for exploratory sources. Although exploratory sources are of admittedly limited duration, they emit significant amounts of nitrogen oxides (NO_x) while in operation. Commenters objected that areas possibly affected by emissions from these sources would be deprived of the chance to request COA designation. EPA concluded that this concern was outweighed by the need to prevent overly burdensome regulations. As previously stated in the NPR, EPA has determined that it is unreasonable to require a source that will operate for three or four months to undergo an administrative procedure that may last up to eight months. If the exploratory operation results in a plan to develop the site for production, that proposed source will be subject to all the requirements of § 55.5 for the designation of a COA. The Administrator may reconsider presumptive COA designations for exploratory sources in the future if presumptive determinations appear to be interfering with an area's ability to protect or attain ambient standards or comply with PSD, or if other conditions indicate that a review is warranted.

Many comments were received stating that exploratory sources should not be exempt from regulation and control requirements. In fact, exploratory sources are subject to the requirements of this part. In addition, exploratory sources are required to submit an NOI, thereby initiating the consistency review process. If necessary, a consistency update will be performed and the proposed exploratory source shall then be required to comply with the updated requirements of the NOA.

Requests for Designation

The final rule contains a change to the procedural requirements for COA designation requests. In response to comment, § 55.5(b)(1) has been modified to require the agency requesting COA designation to notify the chief air pollution control officer of the NOA and the owner or operator of the proposed source at the same time the request is submitted to EPA. This change will facilitate information transfer among affected parties.

Section 55.5(b)(1) also contains the first instance of a change that is repeated throughout § 55.5. The words submission and submittal are replaced with receipt and received, respectively. This change lends certainty to the timing of events that are to occur pursuant to this section. In the NPR, every significant date in this section was related to the date the NOI was submitted. As a practical matter, the Administrator cannot know when the NOI is submitted, only when it is received. Thus, this aspect of the change allows EPA to initiate the COA process with certainty. The COA process has the potential to last eight months; it is essential to ensure that it does not last any longer than planned. Another ramification of this word change is that the burden now lies with the requesting area to assure that EPA receives the deliverable items (i.e. COA requests and demonstrations) by the date specified. If the Administrator does not receive a deliverable item, the COA will be designated by default.

If an air pollution control district wants to be designated as the COA, it must submit a demonstration showing that the criteria of § 55.5(b)(2) are met. In the NPR, EPA solicited suggestions to more explicitly define the parameters of the demonstration and criteria. Two of the three statutory criteria use the undefined term "reasonably expected." Because this term can be broadly interpreted, EPA specifically requested comment on possible interpretations. After a thorough review of the comments received, it was determined by EPA that the Administrator must be allowed to exercise discretion in the evaluation of each COA request. In part, the large number and variability of suggestions received contributed to EPA's decision. Each suggestion had merit if applied under specific circumstances, but no single suggestion could be logically applied in every case. The rule applies to a variety of local environments and trying to set rigid criteria for evaluating COA requests limits the flexibility of the requesting area to tailor the demonstration to their situation.

In response to an overwhelming number of comments, § 55.5(c) of the final rule has been revised to allow the delegated agency that is designated as the COA to exercise all delegated authority. The NPR stated that if the COA was not the NOA, EPA would implement and enforce the rule. Commenters argued that permit engineers at the delegated agency would have expertise developed through implementing their own regulations, while EPA's permit engineers would be less familiar with the applicable requirements of the COA. EPA concurs with this argument. If there is no delegated agency in the COA, EPA will implement and enforce the requirements of the rule. EPA may also choose to implement and enforce the requirements of this rule if the NOA and the COA are in different states.

In the NPR, every modification to an existing source that required a preconstruction permit would have triggered the COA designation process. Some commenters requested that EPA consider modifying the rule to stipulate that the COA for each source shall be designated only once in the source's lifetime. Comment to the contrary was also received. The final rule has been modified so that an OCS source will be subject to the COA designation process only once. The rule still requires an NOI to be submitted when an existing platform is modified, but only the consistency update process will be triggered by the NOI. The statute makes no mention of reevaluating the COA, and this approach will ensure a consistent and stable permitting regime, as is the case onshore. Corresponding changes were also made to § 55.4, the section that contains the requirements of the NOI process because it is the NOI

that actually triggers the COA designation process.

Offset Requirements

Section 55.5(d) of the rule has changed significantly as a result of comments received by EPA. The first change is the addition of language that requires all offsets to be obtained in accordance with the requirements of the Act and the regulations thereunder. This is simply a clarification and mirrors the language of the offset requirements in § 55.7, Exemptions.

The substantive requirements of the offset provisions contained at § 55.5(d) have undergone several changes as a result of comments received. As proposed, the rule would not have required any offset penalties or discounting based on the distance between the proposed source and the source of offsets when the offsets were obtained on the landward side of the proposed OCS source. Offsets obtained on the seaward side of the proposed source would have been subject to distance discounting and penalties in the same manner that those requirements are applied onshore. EPA's rationale for this proposal is explained in detail in the NPR. Put simply, EPA believed that onshore emission reductions would yield greater air quality benefits in the onshore nonattainment area than emission reductions on the OCS. Many onshore regulatory agencies agreed that it would be preferable for OCS sources to obtain offsets onshore. However, these agencies expressed concern that complete elimination of distance based penalties could result in OCS sources obtaining onshore offsets that would not provide actual air quality benefits in the affected nonattainment area. Each onshore area has crafted offset requirements with the aim of reducing emissions and impacts in the areas that experience violations of the ambient standards.

Key comments focused on the fact that EPA's proposed offset requirements would not necessarily achieve EPA's goals as described in the NPR. Commenters stated that not all onshore emission reductions have a beneficial effect in the nonattainment area, even if the emissions reductions occur in the same air basin, NOA, or COA. After review of the comments, EPA concluded that the offset requirements in the NPR were inadequate to consistently achieve the desired result of producing a net air quality benefit in the onshore nonattainment area.

The offset requirements of the final rule have been revised to allow the offset requirements of the COA to be applied to OCS sources in a manner consistent with the underlying goals and technical rationale used by the COA to determine its offset requirements. The revisions, discussed below, address the concerns of most commenters and still provide incentive for OCS sources to obtain their offsets from the landward side of the OCS source. The changes reflect EPA's position that distance discounting and penalties serve a useful purpose when they are applied in a manner consistent with the assumptions upon which they are based.

The offset provisions of the final rule create three geographic zones, each with different requirements for the purpose of applying distance penalties. The first zone lies seaward of the OCS source, the second zone lies between the OCS source and the state seaward boundary, and the third zone extends from the state seaward boundary inland. In each zone the offset ratio applied shall not be higher than the highest offset ratio required onshore, provided that a net air quality benefit is achieved.

Offsets obtained in the first zone are subject to all the offset requirements of the COA, and any distance penalties are calculated based on the distance between the OCS source and the source of offsets. Offsets obtained in the second zone are obtained at the base ratio required in the COA, and no distance penalties will apply. Offsets obtained in the third zone are subject to the offset requirements of the COA. For the purpose of calculating the distance between the OCS source and the source of offsets, a straight line shall be drawn from the site of the OCS source to the source of offsets. The point at which this line crosses the state seaward boundary shall be treated as the site of the OCS source for the purpose of offset requirements.

No negative comment was received on the application of distance penalties to offsets obtained seaward of the OCS source, and these offset requirements are unchanged from the NPR. The rule does not apply distance penalties to offsets obtained between the OCS source and the state seaward boundary, which avoids creating a disincentive to obtain offsets from the landward side of the OCS source. Finally, when offsets are obtained from within state boundaries, offset penalties apply, but the OCS source is not penalized for the distance between the OCS source and the state seaward boundary. Treating the OCS source as if it were located at the state seaward boundary allows the onshore offset requirements to function in the manner originally intended. This eliminates the concern of EPA and other commenters that application of onshore offset requirements might unintentionally provide an incentive for an OCS source to obtain offsets far from the nonattainment area.

The NPR and the final rule state that an OCS source may obtain offsets from the NOA, the COA, and from OCS sources with the same NOA or COA. The NOA is likely to experience impacts from the OCS source; it is therefore appropriate to allow offsets to be obtained from sources located within the NOA. Since some onshore areas prohibit sources from obtaining offsets outside their area of jurisdiction, it was necessary to include language which supersedes such geographic restrictions. This provision was not meant to contradict or supersede any other requirements of the COA's regulations or of part 55. The rule now clarifies that the OCS source must comply with all other offset requirements of the COA and this part, including distance penalties. The language of the offset requirements has also been modified to make it clear that modifications are subject to offset requirements.

Administrative Procedures and Public Participation

A very large number of commenters expressed concern regarding public participation. In response to these comments, § 55.5(f) now states more clearly that public comment will be taken on preliminary COA designations before they are made final. Another change to this section eliminates the obligation of the Administrator to issue a separate document to respond to comments. This requirement is redundant because the Administrator must prepare a written justification of the COA designation setting forth the reasons for the decision. Since public comment must be considered in making the designation, this justification will address the comments.

Final Designations of COAs

The final rule designates the COAs for existing and proposed OCS sources adjacent to California. No changes have been made from the COA designations proposed in the NPR. EPA is designating the COAs for these sources in order to facilitate their timely compliance with part 55. In making these designations, EPA is not making or implying a decision as to the status of these facilities pursuant to section 111(a) of the Act for the purposes of compliance with the requirements of this part.

The NPR stated that the proposed COA designations would be included in the final rule unless commenters submitted sufficient documentation to

demonstrate that EPA should reconsider the proposed COA for a source. Comments were submitted requesting that EPA change some of the proposed COA designations. Although these comments contained logical justifications for changing the COA for specific sources, none contained a stringency analysis, a key criterion for requesting COA designation. EPA does not have the discretion to designate a COA other than the NOA unless a determination is made that the requesting area has more stringent requirements for the control of air pollution than the NOA. One commenter requested that EPA delay all the COA designations for six months to allow time to prepare a stringency analysis. Existing sources have only two years from promulgation of part 55 to come into compliance with the rule, and a six month delay would jeopardize their ability to meet the compliance deadline. For these reasons EPA is making final designations of the COAs for the existing and proposed platforms adjacent to California, as listed below.

The South Coast Air Quality Management District is designated as the COA for the following OCS facilities: Edith, Ellen, Elly, and Eureka.

The Ventura County Air Pollution Control District is designated as the COA for the following OCS facilities: Grace, Gilda, Gail, and Gina.

The Santa Barbara County Air Pollution Control District is designated as the COA for the following OCS facilities: Habitat, Hacienda, Harmony, Harvest, Heather, Henry, Heritage, Hermosa, Hidalgo, Hillhouse, Hogan, Houchin, Hondo, Irene, Independence (formerly named Iris), the OS & T, and Union A, B, and C.

F. § 55.6—Permit Requirements

Section 55.6 contains requirements to enable EPA or a delegated agency to issue preconstruction and operating permits in accordance with onshore federal, state, and local regulations for OCS sources within 25 miles of states' seaward boundaries and establishes federal permitting requirements for OCS sources beyond 25 miles of states' seaward boundaries. As discussed in the NPR (section II.K.) and section I.K below, the Administrator will retain authority for the implementation and enforcement of the OCS regulations beyond 25 miles of states' seaward boundaries.

Permit Applications

This section requires that approval to construct or permit to operate applications submitted by a new or existing OCS source must include a description of how the source will comply with all the applicable requirements of this part. In response to several comments, this section has been amended to require that the application also identify those requirements that have been proposed by EPA for incorporation into this part. This will ensure that the permitting agency and the applicant have identified all the requirements to which the source will be subject and allows the applicant to identify any control technology requirements that the applicant believes are technically infeasible or will cause an unreasonable threat to health and safety. In addition, to help ensure that the OCS source meets requirements that are consistent with onshore requirements, the condition set out at § 55.6(b)(2) states that the permit application must not be submitted until any consistency update that the Administrator determines is necessary has been proposed. This requirement was included in response to numerous comments received on the proposed consistency update procedures. The consistency update procedures, including the deadlines specified for the Administrator, are discussed in detail in section I.L. below.

Modification of Existing Sources

Section 55.6 of the NPR exempts from preconstruction requirements (new source review requirements and preconstruction permits) those existing sources that undertake modifications solely to come into compliance with part 55 within 24 months of promulgation of this part, providing such modifications do not result in an increase in emissions of any regulated pollutant. Those sources not requiring a preconstruction permit must submit a compliance plan to the permitting agency. Numerous comments were received on how to ensure that existing sources come into compliance within 24 months from promulgation of part 55 in light of EPA's exemption of these sources from preconstruction requirements for modifications required to obtain compliance. The comments ranged from several assertions that all modifications made to come into compliance with the regulation should require NSR or preconstruction permits prior to modification, to a recommendation that only modifications that result in an increase of emissions above some unspecified *de minimus* level should be subject to any compliance review at all. Several commenters stated that sources would make costly modifications to facilities that may not meet onshore requirements and subsequent enforcement would be difficult.

For the most part, commenters agreed with the provision contained in the NPR that NSR requirements (such as best available control technology or modeling) should not be applied to these sources, but they felt that preconstruction permits or enforceable compliance plans should be required. Specifically, several commenters stated that § 55.6 should be modified to require that the applicant submit a compliance plan for approval by the Administrator or delegated agency prior to performing the modification and that the regulation should make provisions for the delegated agency to charge fees for the review and approval of the plan. Other commenters suggested that the regulation give a timeline for agency review of the compliance plan.

EPA is concerned that preconstruction permits or compliance plans that require approval and public comment would not leave existing sources with enough time to come into compliance. In addition, EPA does not believe that compliance plans must be enforceable to be effective. If existing OCS sources do not meet the compliance deadline, they will be in violation of this part and subject to enforcement action. The intent of a compliance plan is to ensure that existing sources make appropriate modifications in a timely manner in order to comply with all the applicable requirements of this part within 24 months of rule promulgation. The compliance plan should facilitate communication between the source and reviewing agency, which should in turn expedite the operating permit review and eliminate costly oversights. EPA maintains that existing sources must meet all applicable requirements of part 55 within 24 months, regardless of the status of the compliance plan, and that sources subject to COA operating permit requirements are required to obtain such permits within 24 months of promulgation of this part.

In response to the above comments, § 55.6(b) has been amended to require that the reviewing agency provide written comments to the source within 45 days of receipt of the compliance plan. The source must in turn respond to such comments as required by the reviewing agency. This will ensure that both the reviewing agency and existing source benefit from the compliance plan and that the intended modification will indeed meet the onshore requirements.

In addition, language was added to § 55.6(b)(8)(iii) to address DOI's concern with the condition that modifications exempt from preconstruction

requirements must not result in an increase in emissions of any regulated pollutant. They believed that onshore agencies would interpret the preconstruction exemption to require that all modifications required to comply with this rule that result in an increase in emissions would be subject to NSR requirements irrespective of any *de minimus* levels that may exist in onshore NSR rules. The applicable definition of modification, however, is that definition given by the applicable federal, state, or local requirements incorporated into this part. Thus, only sources that increase emissions above any *de minimus* levels included in the applicable rules will be subject to preconstruction requirements.

Finally, language was added to this section to require that, as with permit applications, any requests for exemption from control technology requirements must be submitted with the compliance plan. The administrator or delegated agency will act on the exemption request in accordance with the procedures set forth in § 55.7.

Exemptions

Several commenters pointed out that the timeline for the exemption procedure may conflict with mandatory permit issuance requirements of state and local agencies, especially when an exemption request is appealed to the Administrator (see § 55.7). Language has been added to § 55.6(a)(2) to ensure that a final permit will not be issued until a final determination is made on any exemption request submitted with the required permit application.

Administrative Procedures

A few comments were received regarding the NPR's reference to 40 CFR part 124. As stated in the NPR, when issuing preconstruction or operating permits, EPA will use the applicable administrative and public notice and comment procedures of § 55.6 and 40 CFR part 124, Procedures for Decision Making. Part 124 contains regulations on the issuance of EPA permits and will be amended to reference the issuance of federal OCS permits. Where the Administrator delegates the OCS permitting requirements to a state or local agency, that agency must issue permits in accordance with the requirements of § 55.6, except for the administrative and public participation procedures of the federal rule, for which the agency may substitute its own procedures. Comments stated that the applicable procedures that EPA intends to apply from part 124 must be made explicit. Section 55.6 now specifies that until part 124 has been modified to reference permits issued under this part, the Administrator will follow the procedures in part 124 used to issue PSD permits.

During the public comment period, industry expressed the concern that given the complex leasing, owner, and operator relationships on the OCS it would be easy to postulate conditions under which the owner of an OCS source would have no constructive knowledge of the requirements of the permits obtained by an applicant. Once commenter suggested that applicants should be required to inform contractors and sub-contractors of any conditions of the permits issued under part 55 that might affect their equipment or operations. Section 55.6 has been amended to include the above suggestion. Notification of future owners and sub-contractors is often a requirement of federally issued PSD permits.

Several comments were received that recommended the regulation should allow the delegated agency 10 days to send a copy of any preliminary determination and final action to the Administrator. Section 55.6 of the NPR requires the delegated agency to send a copy of any preliminary determination or final permit action to EPA on the date of the determination. By "date of determination" EPA meant the date that the draft or final permit is issued to the applicant or made available for public review and comment. EPA needs simply to receive a copy of all such actions. A delay of 10 days could effectively shorten EPA's review time during the public comment period if such period begins on the date of draft permit issuance. The condition set out in § 55.6(a)(5)(iii) has been modified to clarify this intent.

Transitional Permit Applications

In responding to comments, EPA discovered a discontinuity in the proposed rule for sources that commence construction during the period between proposal of this part on December 5, 1991 and promulgation of this final rule, which is the date of publication of this notice in the **Federal Register**. Section 328(a)(1) of the Act provides that "new OCS sources" must be "in compliance" as of the date EPA's final OCS rules are promulgated. Under section 328(a)(4)(D), a "new OCS source" is defined by reference to CAA section 111(a) (42 U.S.C. 7411(a)). Under that section, a source is new if construction of that source commences after the applicable regulation is proposed in the **Federal Register**. Therefore, an OCS source that is covered by this rule, and that commenced construction after December 5, 1991 (the date this rule was proposed), is a new OCS source that must be "in compliance" on the date of promulgation.

The OCS rule includes, among other things, preconstruction review (NSR and PSD) and other permitting requirements. However, the source can not obtain such permits prior to promulgation of this rule, because the permitting authority does not have the jurisdiction and authority necessary for action until promulgation of the rule. It is thus impossible for the source to be "in compliance" by the date of promulgation to the extent that phrase is interpreted to mean in receipt of final, valid permits.

As the permitting process typically takes several months or longer to complete, the source would potentially be in the position of having to cease all activity for the time it takes to get a permit or continuing to construct and operate in violation of federal law. The situation would occur regardless of whether the source was in compliance with all the applicable air pollution control requirements. Although, in theory, it may have been technically possible for such sources to have prepared a permit application and made preliminary contracts with the projected permitting authority in advance of promulgation, EPA does not believe the necessity or availability of such a course was sufficiently apparent prior to today's final action to require sources to have done so. Moreover, even if an affected source took these actions, a permit likely still could not be issued immediately (e.g., before a PSD or NSR permit may be issued, the public must first be provided an opportunity to comment on the draft permit).

EPA believes that Congress did not intend such a result for these sources. Nothing in the statute or legislative history suggests that Congress intended that OCS sources that have lawfully commenced construction or operation in the period between proposal and promulgation, cease construction or operation while they engage in a potentially lengthy permitting process. Instead, EPA believes that Congress desired that these sources immediately comply with all substantive provisions and that they immediately commence the process of receiving all necessary permits. To this end, provisions for receiving valid permit(s) without unduly or unnecessarily disrupting ongoing activities for these limited number of sources have been included in this final rule.

EPA has determined that, for purposes of permitting only, compliance by

prepromulgation new OCS sources with the transitional permit rules, set forth in § 55.6(e), satisfies the requirements of section 328(a) of the Act. These provisions are designed to assure continuous compliance with all substantive requirements and provide assurance that public health or welfare will not be impaired. In essence, these rules contain the same requirements that the source would have to comply with if it had a valid permit except that the following requirements replace the obligation to have a valid permit on the date of promulgation of this rule:

1. Pursuant to § 55.6(e), within 30 days of promulgation the source must submit to the permitting authority a transitional permit application (TPA). The essential information required in the TPA includes a complete description of the source, a listing of all requirements that apply to the source directly, and, for sources required to perform an air quality analysis (such as under PSD), a screening analysis that demonstrates whether the source has or is expected to cause or contribute to a violation of any ambient air quality standard or exceed any applicable increment;

2. If the source is required to obtain a preconstruction permit, the source must set forth in the TPA, proposed emission limits that reflect utilization of the required control technology, including BACT or LAER. The TPA must demonstrate that the source is in compliance with these proposed emission limits;

3. The TPA must include documentation that source emissions are currently being offset, or will be offset if the source has not commenced operation, at the ratio required under this part, and documentation that those offsets will meet the requirements of this part by the date the final permit is issued;

4. The source must expeditiously complete its permit application; and

5. The source may not operate if the permitting authority determines that the source will cause or contribute to a violation of an ambient air quality standard or would exceed an applicable increment.

EPA believes that 30 days is a reasonable period for filing the TPA; it reflects our determination as to the earliest date affected sources could reasonably be expected to comply with this requirement. This limited period is needed for the source to receive and comprehend the rule once published, accumulate the information called for by the regulations, and conduct the requisite air quality and technology analyses.

Under this scheme, EPA retains the authority to preclude sources from constructing or operating if it finds that the source has failed to fully satisfy its obligations under the regulations. In other words, if the source has filed an incomplete TPA, unduly delayed in completing its permit application, failed to adhere to an applicable control requirement, projected a plainly inadequate BACT or LAER emission limit (or failed to adhere to the limit projected), or if it can be expected to interfere with attainment of an ambient air quality standard or exceed an applicable increment, EPA may take enforcement action.

Response to Comments

Although not requiring modifications to § 55.6, there are several permitting issues that EPA believes merit additional clarification. Comments related to these issues are discussed below. The reader is referred to the Response to Comment document contained in EPA Air Docket A-91-76 for a more detailed discussion of these issues and other comments received on this section.

Section 55.6(b)(4) requires that an approval to construct expire if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. One commenter stated that it is not clear what is meant by "reasonable time" or whether this allows an exception to the 18-month requirement. "Reasonable time" should be read as that continuous construction schedule defined in the permit application and is not an exception to the other criteria. Section 55.6 further allows the 18 month period to be extended if the administrator or delegated agency believes that the applicant has made a showing that the extension is justified. This will provide flexibility for the construction of OCS sources. Sources obtaining extensions are subject to all new or interim requirements and a reassessment of applicable control technology when the extension is granted. It should also be noted that § 55.6(b)(4) does not supersede more stringent requirements contained in applicable federal, state, or local permitting regulations, as this would conflict with the intent of the statute.

Many commenters requested that part 55 specify a deadline by which existing OCS sources must apply for an operating permit. Section 328 and part 55 require that existing sources comply with the OCS rule within 24 months of promulgation of the rule. This includes obtaining, not simply applying for, any operating permits required by the COA. EPA acknowledges the commenters' concerns that existing sources may not allow enough time for the onshore area to process the permit application. However, due to the varying permit processing times of agencies, EPA does not feel it is appropriate, or in the best interest of the permitting agency or applicant, to specify an application date that may conflict with onshore timelines. Existing sources have been put on notice of the onshore requirements and need to plan accordingly to receive required operating permits by the compliance deadline.

Numerous comments stated that the permits should address impacts on non-human species and resources in addition to the protection of onshore ambient air quality standards. Specifically, these commenters stated that the near coastal environment, islands, and plant and animals, must also be protected and biological damage from deposits of surface contaminants should be addressed. These concerns are in part addressed by onshore requirements incorporated into part 55 and in other federal laws that apply independent of part 55. OCS sources subject to the PSD regulations must assess their impacts on ambient air quality, soils, vegetation, and visibility. Impacts on the resources of federal Class I areas (National Parks, Forests and Seashores), including flora, fauna, water, visibility, and cultural artifacts, must also be analyzed. In addition, section 7 of the Endangered Species Act of 1973 requires all federal agencies to ensure that any actions authorized, funded, or carried out by the agency are not likely to jeopardize the continued existence of any listed endangered or threatened species or result in the destruction or adverse modification of their critical habitat. This includes federal actions such as permits, grants, and licenses. Permits issued under the OCS regulation would qualify as such an action. The Minerals Management Service ("MMS") holds formal consultations with the Fish and Wildlife Service and National Marine Fisheries Service up to three times during the life of an OCS project to comply with this requirement. Finally, to the extent that the rule results in improved air quality, non-human species, the near coastal environment, islands, plants and animals may benefit.

A few commenters requested clarification of the term "modification" as it applies to § 55.6. One commenter rquested that part 55 specify *de minimus*

levels of emission increases to determine the applicability of this section. As stated in the NPR, the definition of modification will be that given by the applicable requirements incorporated into §§ 55.13 and 55.14, except for the purpose of determining the date that the modification must comply with this part. For two years following the date of promulgation of this part, the definitions of modification and new source given in section 111(a) of the Act shall apply for the purpose of determining whether the modification shall be treated as a new source, and consequently must comply upon promulgation of this part, or treated as an existing source and must comply within 24 months of promulgation. In brief, a physical change, or change in method of operation, commenced after December 5, 1991 (the proposal date of 40 CFR part 55) that results in an increase in emissions will cause an existing OCS source to be considered a new OCS source. Establishing *de minimus* levels would conflict with the definition of modification required by the statute and the directive that the OCS requirements applying to sources located within 25 miles of states' seaward boundaries be the same as those onshore. *De minimus* levels are set, however, in most of the applicable federal, state and local regulations that have been incorporated into part 55.

G. § 55.7—Exemptions

Section 328(a)(2) allows the Administrator to grant an OCS source an exemption from a specific control technology requirement if the Administrator finds that the requirement is technically infeasible or will cause an unreasonable threat to health and safety.

EPA intends to delegate the authority to make exemption determinations to states with adequate regulations for carrying out this part of the rule. EPA interprets the statue to require delegation of this authority if the state's regulations are adequate, since exemption determinations are simply a part of the implementation and enforcement of the rule, which EPA must delegate under section 328(a)(3). This position is unchanged from the NPR and is implicit in the language of § 55.7. Industry and DOI have both commented that the statute does not allow EPA to delegate the authority to grant and deny exemption requests. Evaluation of an exemption request is simply a control technology determination, very similar to the best available control technology (BACT) and lowest achievable emission rate (LAER) determinations. It would be ineffective to divide what is essentially a single task between two agencies and EPA does not believe that was the intent of Congress. The rule integrates the exemption process into the permitting process, which streamlines the administrative process and is a logical approach to permitting.

Request for Exemption

Concern was expressed by many commenters that the exemption procedures contained in the rule are lengthy at best and have the potential to be extended by many months due to appeals. Because this is an overriding concern for many commenters, several of the times allotted for procedures under the rule have been shortened. A source must now request an exemption within 60 days from the date EPA promulgates a requirement that does not require a permit. This is 30 days fewer than in the NPR. In addition to this change, the section now requires that existing sources that submit a compliance plan shall include all requests for exemption when the plan is submitted. For the purpose of § 55.7, these requests will be treated as requests that do not require a permit.

The final change to this section is in § 55.7(b)(4)(iv), where language has been added to require a source located beyond 25 miles from states' seaward boundaries to consult with the Administrator to identify suitable offsets. There are no analogous, offset requirements for onshore sources, so offsets for these sources must be evaluated on an individual basis. This is also addressed in § 55.7(e), as discussed below.

Delegation

Comments were received on § 55.7(c), the requirement that a delegated agency must reach consensus with the MMS and the U.S. Coast Guard ("USCG") on exemption requests. Some commenters suggested that this requirement represented an illegal delegation of authority to these agencies. These agencies have the primary responsibility for assuring that OCS operations occur in a safe manner and can provide valuable advice to ensure that no control technology believed to be unsafe will be required on the OCS. In regard to the issue of illegal delegation, there is no delegation of authority; MMS and the USCG have no authority to grant or deny a request, and if consensus cannot be reached, the request is automatically referred to the Administrator.

Two clarifying changes were made to this section in response to comments. First, the word "application" has been replaced by "permit application," and exemption requests that do not require a permit are now explicitly included. The second change is that the time allowed for the delegated agency to transmit the request and related materials has been reduced from 15 days to 5 days. This will allow the federal agencies to begin discussion with the delegated agency sooner and will facilitate reaching a consensus decision within the required time frame. If consensus cannot be reached within 90 days from the date the delegated agency received the request or application, whichever is sooner, the exemption request will be referred to the Administrator, and the decision will be more in accordance with the procedures contained in § 55.7(f). This is a change from the NPR, which simply stated that the request would be appealed to the Administrator.

The language contained in the NPR that would have allowed an extension of the consensus process has been deleted in response to comments that the procedures in the NPR were too lengthy. Similarly, to expedite the permit process in the event that an exemption request is referred to the Administrator, language has been added to § 55.7 to allow the delegated agency to issue a preliminary permit determination prior to the Administrator's final decision on the exemption request. This allows the delegated agency to proceed with the public notice and comment phase of their permitting process before the Administrator makes a final decision on the exemption request. The notice must refer to the exemption request and mention that comments related to the request must be made to the Administrator. The rule specifies that the Administrator's final decision must be incorporated into the final permit issued by the delegated agency.

Grant of Exemption

One commenter pointed out an oversight in the offset requirements; no provision was made for OCS sources located beyond 25 miles from states' seaward boundaries to obtain offsets. Language has been added to § 55.7(e) to address the acquisition of required offsets when a source located beyond 25 miles from a state's seaward boundary is granted a technical exemption. The source will be required to consult with EPA to identify suitable offsets. If the source is granted an exemption, the offsets obtained must be adequate to protect state and federal ambient air quality standards and ensure compliance with PSD.

Administrative Procedures and Public Participation

Another change attributable to comments on the NPR is the deletion of § 55.7(f)(1), which allowed the Administrator 30 days to review an exemption request and notify the source of any deficiencies. Instead, the Administrator or the delegated agency will simply proceed with deliberations on the exemption request. If any information from the source is needed, it must be obtained during the review process.

This section has also been revised to clarify the implicit intent of the NPR; an exemption request shall be considered part of the permit application. This is clarified at § 55.7(f)(1), which now specifies that if a permit is required, the applicable procedures to process the permit will be used to simultaneously process the exemption request. EPA will use the procedures at 40 CFR part 124 and a delegated agency will use its own administrative procedures to process a permit.

The majority of § 55.7(f) contains procedures to be used by the Administrator or the delegated agency in the event that an exemption request is submitted that does not require a permit. These procedures have not substantively changed from the NPR. Language has been added to allow the Administrator to use these procedures when an exemption request is referred from the delegated agency. The Administrator must make a preliminary determination on the exemption request within 30 days of referral. The Administrator or delegated agency is allowed 90 days to make this determination when there is no referral.

Language describing the appeal procedure when the Administrator of an EPA regional office ("Regional Administrator") denies an exemption request has been removed in the final rule. This language was redundant because the Regional Administrator's decision may be appealed to the Administrator by petitioning for administrative review in accordance with § 55.7(f)(5).

H. § 55.8—Monitoring, Reporting, Inspections, and Compliance

Section 55.8 adopts the monitoring, reporting and inspection authority of section 114 of the Act. Only one change was made to this section. EPA added language to the final rule clarifying that all monitoring, reporting, inspections and compliance requirements of the Act apply to OCS sources. This will include the upcoming rules for Enhanced Monitoring and Compliance and Certification of Compliance when such rules are promulgated pursuant to section 114 of the Act.

Several commenters emphasized the importance of good monitoring and reporting requirements and requested that EPA ensure that state and local requirements are adequate if authority is to be delegated. EPA agrees that good monitoring and reporting requirements are essential to effective implementation. The statute requires EPA to evaluate the adequacy of the program of the state agency that is requesting delegation. Therefore, EPA will ensure that state and local programs contain effective monitoring and reporting requirements prior to delegation.

I. § 55.9—Enforcement

Section 55.9 restates the requirement set out in section 328 of the Act that all OCS sources shall comply with this part and failure to comply shall be considered a violation of section 111(e) of the Act. The section adopts the enforcement authority of sections 113, 114, 120, and 303 of the Act. Several commenters indicated that section 304 of the Act should be included also. This was an oversight and was corrected in the final rule. EPA also made explicit that all the enforcement authority of the Act applies to OCS sources.

J. § 55.10—Fees

Section 55.10 establishes the requirements under which EPA will collect operating permit fees, as discussed in the NPR. No changes were made to this section of the rule.

K. § 55.11—Delegation

This section sets forth the requirements for a state or local agency to receive delegation to implement and enforce the OCS regulation in accordance with section 328(a). The NPR generated a significant number of comments on this section.

The California air pollution control districts pointed out that they, not the state air pollution control agency (the Air Resources Board), are the state agencies with authority to permit air pollution sources and enforce air pollution regulations. They contend that EPA should delegate implementation and enforcement authority to them and not the state (through the Governor). After considering the air pollution control districts' concerns, EPA maintains that it is more appropriate for the Governor or the Governor's designee to make the request on behalf of the local air pollution control district. This will eliminate the need for EPA to make a state law determination of which agency has the proper authority for implementing and enforcing the OCS regulations, yet allows flexibility for the Governor to designate the local air pollution control district as the designee.

Many commenters wanted the OCS rule to be more explicit as to what authority the state has, after delegation, to use its administrative procedures, such as variances. EPA maintains that a state may use any administrative procedure that it has under state law to implement and enforce the requirements of this part. However, as required by the statute, part 55 will only be delegated to a state or local agency that demonstrates that these administrative procedures are adequate to implement and enforce the requirements of this part (see also the discussion of state administrative procedures in section I.N.). As onshore, a variance will not shield a source form enforcement action by EPA.

A large number of commenters expressed concern with the revocation of delegation procedure in the NPR. Several commenters argued that EPA does not have the authority to revoke delegation, since revocation is not addressed in the statue. EPA disagrees, as revocation of a grant of authority if the delegated agency is not performing adequately is basic to governmental functioning. Many commenters objected to the language in the NPR that stated that EPA would revoke the delegation if "the requirements of this part are being implemented or enforced in an inequitable, arbitrary, or capricious manner." After consideration of the comments, EPA is modifying the language such that the basis of revocation will be inadequate implementation and enforcement. The rule has been adjusted so that the concerns over improper use of OCS regulations are now addressed in § 55.1, as discussed above in section I.A.

Several commenters questioned why EPA was not delegating authority for sources beyond 25 miles from states' seaward boundaries. They pointed out that the statute required EPA to delegate all of its authority under section 328 if the state program was adequate. However, for sources beyond 25 miles, only federal requirements were incorporated into this part. In this situation, EPA believes that it is more efficient to have the federal government retain authority than to have a state agency try to implement and enforce purely federal requirements. The state agency would have to treat sources within 25 miles with one set of rules and procedures and sources beyond 25 miles

with a second set of rules and procedures.

A number of commenters stressed the importance of public comment and requested that EPA ensure that public comment procedures are required and maintained if the program is delegated. EPA modified the criteria for delegation to include a requirement that a delegated agency have adequate procedures for public comment.

L. § 55.12—Consistency Updates

Because onshore requirements may change, section 328(a)(1) requires that EPA update the OCS requirements "as necessary to maintain consistency with onshore regulations." In the NPR, EPA described the criteria it would use to evaluate rules to be incorporated via consistency updates. EPA proposed that state and local rules must be rationally related to the attainment and maintenance of state or federal ambient standards or part C of title I, equitable, and must not be arbitrary or capricious. EPA proposed to update the rule annually, with NOIs also triggering consistency reviews. EPA solicited comment on the appropriate frequency of consistency updates. Most comments that EPA received regarding this portion of the rule concerned the timing and content of the consistency updates and the use of "inequity" as a criterion for screening onshore rules.

The statute mandates that OCS sources be subject to the same requirements that would be applicable if the source were located in the COA. At the same time, the statute does not provide a mechanism by which state law can automatically (and instantaneously) apply on the OCS. Because EPA must incorporate onshore requirements by formal rulemaking, inherent delay is introduced.

Several commenters opined that the consistency update procedure should provide for onshore agency submittal of OCS rules and EPA action in a timely manner. Some had detailed suggestions as to the events which should trigger consistency updates and the frequency with which EPA should do them. Commenters also expressed concern that higher emission levels could be permanently permitted if consistency updates were not done in a timely manner. EPA considered all comments and has revised this section to include more specific procedures and details regarding the timing of consistency updates.

In areas where there is OCS activity, EPA will review onshore requirements at least annually. If the Administrator finds that the requirements of part 55 are inconsistent with those onshore, EPA will update the appropriate portion of part 55. Also, as proposed, EPA will initiate a consistency review upon recipe of an NOI. In the case where the NOI is for a source that does not require a COA designation (a COA was previously determined), EPA will propose a consistency update, if needed, within 60 days of receiving the NOI. If the NOI is for a source that requires a COA designation, EPA will take action, if needed, in accordance with the following schedule:

- If no adjacent areas request to be designated as the COA and the NOA is automatically designated as the COA, EPA will publish a proposed consistency update no later than 15 days after the default COA determination (within 75 days after the NOI is received by EPA).
- If an area other than the NOA requests to be the COA but fails to submit the required demonstration, EPA will publish the proposed consistency update no later than 15 days after the due date for the demonstration has passed (within 105 days after the NOI is received by EPA).
- If an area other than the NOA requests COA designation and submits the required demonstration, EPA will publish the proposed consistency update no later than 15 days after the date of the final COA determination.

In addition, if a state or local district submits an applicable rule to EPA (with proof of adoption) that meets the criteria for incorporation into part 55, EPA will take action on that rule by the end of the following calendar quarter. This approach enables EPA to process rules in batches, thus reducing the time and expense involved in publishing multiple **Federal Register** notices. It also enables EPA to postpone unnecessary rulemaking in areas where there is no activity and thus avoids expending resources on activities that will have no effect on air quality.

An OCS source may not submit its permit application until a consistency review is completed and, if appropriate, an update of part 55 has been proposed. However, sources are only required to comply with those requirements that are adopted into part 55 as of the date the final permit is issued. EPA intends to promulgate the final update prior to the final permit issuance. This puts the consistency update process and the permit review process on a parallel timeline. EPA believes that the approach it has taken to consistency updates will minimize the possibility of sources being permitted under outdated requirements.

The use of the term "inequitable" in the NPR was the cause of considerable concern to many commenters. Commenters stated that the term "inequitable" is vague and undefined and has no basis in the statute. Several suggested that EPA eliminate or objectively define "inequitable." By using the word "inequitable" EPA was attempting to clarify the terms "arbitrary" and "capricious." However, to avoid any confusion, EPA has deleted all references to this term from the rule. Language has been added to § 55.1 to clarify that EPA will not incorporate rules that are designed to prohibit exploration or development of the OCS.

The inclusion of language prohibiting the incorporation of arbitrary and capricious rules was negatively commented on by several parties. Several commenters stated that consistency updates may not consider whether a state or local onshore regulation is arbitrary or capricious. Others said that EPA is already prohibited from adopting arbitrary and capricious rules so the use of these terms is confusing and redundant. A number of commenters recommended that the terms arbitrary and capricious be deleted from § 55.12.

Pursuant to section 706(2)(a) of the Administrative Procedures Act, EPA must consider whether any action it undertakes is arbitrary or capricious. All federal rulemaking is subject to this standard. Inclusion of this language neither expands nor limits EPA's pre-existing authority and obligation. EPA has included this language to emphasize that state or local rules incorporated into the OCS rule must bear a rational relationship to the purposes of the rule, as discussed in section I.A. of this preamble, and may not be designed expressly to prohibit offshore development.

Some commenters objected to EPA incorporating rules via notice and comment rulemaking. They stated that onshore rules should automatically apply. However, the statute requires that EPA update part 55 to maintain consistency with onshore requirements. In consultation with the Department of Justice, EPA has concluded that Congress did not intend that changes in state or local law would automatically change the content of federal OCS law. Therefore, before a state or local rule or regulation may be applied to OCS sources, it must be incorporated into part 55 by federal rulemaking, which includes mandatory notice and comment procedures.

A few commenters stated that if EPA precludes onshore agencies from independently changing the requirements of § 55.14, then EPA must ensure that the rules applied to the OCS are "the same." In contrast, another

commenter stated that only federally approved state implementation plan ("SIP") rules should be incorporated into part 55. The Act clearly specifies that EPA must promulgate requirements to control OCS sources of air pollution that are "the same as" or "consistent with" onshore requirements. If EPA were to rely solely on the federally approved SIP, it would fail to meet its statutory obligation because, in a number of cases, current state or local requirements that would apply to OCS sources have not been incorporated into the SIP. This could be the case for any number of reasons. There is no basis for EPA to exclude from part 55 rules that are not part of a federally approved SIP.

While EPA will update the rule as required by the statute to maintain consistency, EPA cannot guarantee that all requirements will be exactly "the same as" onshore requirements for the following reasons:

1. The Administrator must comply with the general prohibition against arbitrary and capricious rulemaking. (Section 307(d) of the Act or section 706(2)(a) of the Administrative Procedures Act.) Therefore, if EPA finds that inclusion of a state or locally adopted rule would be arbitrary or capricious, EPA will not incorporate it into part 55.

2. Under section 328(a)(1), state and local requirements that apply to OCS sources are limited to those that pertain to the control of pollutants (and their precursors) for which there is a state or federal ambient standard, or pertain to the requirements of part C of title I of the Act. Therefore, state and local requirements that are not related to the attainment and maintenance of ambient air quality standards or part C of title I will not be incorporated into part 55.

M. § 55.13—Applicable Federal Requirements

Section 55.13 contains requirements that apply to all OCS sources. Under § 55.13, PSD, and to the extent they are rationally related to protection of ambient air quality standards or part C of title I, NSPS and NESHAPS apply. When promulgated, EPA will incorporate the requirements of the federal operating permit program (40 CFR part 71) into part 55. When part 55 is amended, part 71 will apply to sources located more than 25 miles beyond states' seaward boundaries. Part 71 requirements will also apply to sources located within 25 miles if the requirements are in effect in the COA. (See section B. for a discussion of the general applicability of the Act.)

Some commenters suggested that some or all of these requirements should not apply to sources located more than 25 miles beyond states' seaward boundaries. Section 328 does not mandate the precise content of the OCS requirements for sources located on the "outer" OCS. However, it does require that EPA "establish requirements to attain and maintain federal and state ambient standards and to comply with the provision of part C of title I." Within these bounds, EPA has latitude to establish requirements that apply under section 328 to sources located more than 25 miles beyond states' seaward boundaries. EPA believes that the requirements incorporated into this part are necessary to fulfill its statutory obligation.

It is possible that additional requirements for "outer" OCS sources may be necessary to protect onshore air quality. This could occur, for example, if the density of OCS sources in a specific area cumulatively caused negative impacts on onshore air quality. As discussed in the NPR, EPA will promulgate such requirements in future rule makings if the Administrator deems such action necessary. EPA has added language to § 55.13 of the rule to clarify this.

NSPS regulations often define a new source as any source that was constructed or modified after the date the NSPS was proposed. Language has been added to the rule to clarify that sources determined to be existing OCS sources pursuant to § 55.3(e) will not be considered new sources for the purpose of compliance with NSPS adopted prior to December 5, 1991. This ensures that existing sources will not be required to meet NSPS intended for new or modified sources.

Sections 55.13 and 55.14 were amended to clarify that language contained in onshore requirements adopted prior to promulgation of part 55 that restricts the applicability of the requirements to onshore sources or sources in state waters, does not apply. This provision was added to ensure that offshore requirements are the same as onshore requirements and to preserve flexibility for states to tailor their future rules to OCS sources and the marine environment, should they so choose.

N. § 55.14—Applicable Requirements of the COA

Section 55.14 contains the requirements that apply to sources located within 25 miles of states' seaward boundaries. Requirements applying to such OCS sources must be "the same as" or "consistent with" onshore requirements, as well as rationally related to the attainment and maintenance of federal or state ambient air quality standards or part C of title I. EPA therefore has little flexibility in establishing requirements under section 328 that apply to nearshore OCS sources.

The format of this section was changed to make it consistent with § 55.13 and to reflect a change in the method of incorporation by reference, as required by the Office of the Federal Register. This change in format is administrative only, and does not alter the requirements of this section.

A few other minor changes have been made to this section of the rule. Language was added to clarify that only those substantive 40 CFR part 52 (federally approved SIP) requirements that are rationally related to ambient air quality standards or part C of title I shall apply to OCS sources. Also, several commenters provided suggestions regarding specific rules that had or had not been listed. EPA's analysis of these rules is contained in the response to comments document. Only a few minor changes were made to the rule list. Typographical errors and mistakes in adoption dates or rule titles were corrected. No rules were added to or deleted from the list. Any rules identified that should be incorporated into part 55 will be proposed in a consistency update. The reader is referred to Appendix A of this part for the complete listing of requirements incorporated by reference into § 55.14.

EPA received comment on several issues related to this section that did not result in changes to the rule. Some commented that administrative and procedural rules should be included in the requirements incorporated in § 55.14. The statute, however, does not require nor is it necessary for EPA to adopt non-control requirements. Upon delegation, the onshore area will be allowed to use its administrative and procedural rules, to the same extent as onshore. The same situation that exists onshore will exist on the OCS; state and local governments can use their administrative procedures, but EPA will disregard any procedures that conflict with federal requirements and can enforce federal law in a delegated program.

Several commenters said that EPA should provide a variance mechanism for OCS sources. Variances are administrative or procedural rules, not substantive requirements, and therefore they are not incorporated into part 55. Upon delegation, districts may grant variances as they would onshore. However, state and local variance procedures are not recognized by federal law because there is no provision in the Act giving the

Administrator such authority. Agencies delegated the OCS program can use administrative tools if they do not result in any violations of federal requirements. Variances do not shield sources from federal enforcement onshore, nor will they shield an OCS source. In those instances where EPA does not delegate authority to implement and enforce part 55, EPA will use its own administrative and procedural requirements to implement the substantive requirements.

Many commenters felt that all state and local rules should be included, and that EPA should not "pick and choose" or screen out rules. Also, some stated that delegated agencies must have unfettered discretion to impose all onshore rules. EPA will incorporate into the OCS rule those state and local onshore rules that comply with the statutory requirements of section 328, are not arbitrary or capricious, and are rationally related to the attainment and maintenance of ambient air quality standards and PSD. The screening criteria that EPA will apply are mandated by the language of section 328 or the general prohibition against arbitrary or capricious rulemaking with which the Administrator must comply in any rulemaking proceeding, either under section 307(d) of the Act or under the Administrative Procedures Act.

Finally, several people commented that it appeared or could be misconstrued that EPA was intending to incorporate only those requirements that were in place at the time of enactment of the Clean Air Act Amendments and would therefore be inappropriately grandfathering sources to pre-1991 control levels. In the NPR, EPA was attempting to point out that rules in place as of the date of enactment were to be considered part of an initial promulgation. Rules adopted subsequent to enactment are incorporated via consistency updates. The rule is not limited to the requirements that were in place as of the date of enactment, and in fact, contains numerous state and local rules that were adopted subsequent to that date.

II. Additional Topics for Discussion

A. Relationship Between the OCS Regulations and the State Implementation Plans

1. Emission Inventories/Attainment Demonstrations

EPA received comment that the NPR did not adequately integrate the new program into the SIP process. Commenters suggested that EPA needs to ensure that OCS sources are included in emission inventories and are tracked through the SIP process so that only surplus OCS emissions reductions are utilized in offset transactions.

EPA concurs with the proposition that OCS emissions must be included in inventories. All offsets must be surplus to emission reductions required by the SIP. The treatment of OCS emissions will be addressed in revised emissions inventory guidance. All existing sources under EPA jurisdiction are presently included in emission inventories prepared by coastal air pollution control agencies. No changes to the rule were necessary.

2. Deficiencies Incorporated Into the OCS Rule

Section 328(a) requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into part 55, and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA is incorporating into part 55 several rules that do not conform to all of EPA's SIP guidance or certain requirements of the Act. EPA emphasized in the NPR that incorporation of a state or local rule into part 55 does not constitute or imply approval of that rule as part of the SIP. Nor does it preclude any action EPA may take in regard to deficient onshore SIPs.

EPA received comment in support of differentiating between the SIP process and the OCS consistency update process. A commenter agreed that regulations being considered for incorporation under the two different programs are subject to different standards of review, and the COA may submit OCS regulations directly to EPA, rather than through the state as in the SIP process.

Another commenter felt that EPA was attempting to weaken the rules by insisting they are less stringent than SIP requirements. The intent of EPA's discussion regarding SIP deficiencies was to explain that for the purposes of incorporation into part 55, EPA cannot use SIP approvability criteria or EPA guidance for SIP rules as a screening mechanism. This in no way weakens the OCS rule. Often rules that contain "deficiencies" may be more stringent than the federally approved version of the same rule. By incorporating all versions of applicable rules, EPA ensures that the most stringent onshore requirements will apply.

B. Regulation of Non-criteria Pollutants

Section 328(a) requires the Administrator to promulgate requirements for OCS sources "to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Act." EPA reads this provision to restrict EPA's authority to regulate OCS sources pursuant to this part. (See NPR at p. 63786). The practical effect of this interpretation is that certain state and local regulations adopted for toxic air pollutants will not be adopted pursuant to section 328 of the Act.

The NPR generated numerous comments on this subject. Many commenters questioned EPA's interpretation and pointed out that this approach will result in inconsistencies between the regulation of onshore and offshore sources, which section 328 was intended to eliminate. After considering these comments, EPA still believes that its original interpretation conforms with the plain language of the statute.

However, while EPA interprets its regulatory authority under section 328 to be restricted to federal and state criteria pollutants, precursors to those pollutants, and pollutants regulated pursuant to PSD, and has accordingly limited its rule to these pollutants, EPA's general authority to apply the Act to the OCS is a separate question which is not addressed here.

III. Administrative Requirements

A. Executive Order 12291 (Regulatory Impact Analysis)

EPA has determined that neither the proposed rule nor the final rule constitutes a major action according to the criteria of Executive Order (E.O.) 12291. However, due to the relevance of potential outer continental shelf oil and gas reserves to the National Energy Strategy, an Regulatory Impact Analysis ("RIA") has been prepared.

The estimated incremental annualized cost of this rule is $5 million in 1997. This estimated incremental cost is expected to reach $29 million in 2010 primarily as a result of increased exploration, construction, development, and production. This rule will result in the reduction of 610 tons of volatile organic compound emissions and 730 tons of nitrogen oxide emissions in 1997. The projected emission reductions in 2010 are 2400 tons of volatile organic compounds and 3800 tons of nitrogen oxides. These pollutants are precursors to several pollutants for which EPA has

set ambient standards, including nitrogen dioxide, ozone, and particulate matter. The paucity of data and other factors precluded monetization of the benefits of this rule. Consequently, the allocative efficiency aspects of this rule cannot be determined.

A few commenters asserted that Executive Order 12291 is not applicable to part 55 according to section 8 of that Order. They noted that section 8 states that Executive Order 12291 shall not apply where its terms would be in conflict with statutory deadlines. EPA notes that the RIA was not a pacing item in rule development. Furthermore, other analyses contained in the RIA are necessary to respond to the requirements of the Paperwork Reduction Act and the Regulatory Flexibility Act.

Another commenter suggested that EPA avoided the most direct measure of assessing equity by not comparing the relative cost effectiveness of onshore regulations to offshore regulations. The criterion used by EPA to assess equity is that required by section 328, namely, that the same requirements applied onshore be applied offshore, within 25 miles of states' seaward boundaries.

Cost effectiveness estimates on the regulations are included in the RIA as they were in the RIA Screening. Estimates included in the RIA are based on application of generic control technologies on existing platforms. The resulting cost effectiveness numbers (dollars per ton of pollution removed) do not establish a precedent as a cost-effectiveness benchmark. In addition, permitting agencies are not bound by EPA's assumptions of the controls that may be required of any specific source.

Various parameters of the RIA Screening have been changed or modified for the RIA as a result of comments received. The following is a brief description of comments and resulting changes to the analysis. A more detailed description is found in the Response to Comments document in EPA Air Docket A-91-76.

New Sources

The following comments, to which the RIA responds, have had the greatest impact on the estimated cost of this rule. These comments are in regard to (1) the time frame of the analysis, (2) the number and type of projected activities assumed, (3) assumptions regarding emission offset ratios, (4) projections of offset prices, and (5) transfer and resale of surplus offsets.

Comments regarding items (1) and (2) correctly noted that due to current moratoria on OCS leasing, the time frame chosen and activity level assumed for the RIA Screening did not typify the rate of OCS development. In response, EPA has used data from MMS which incorporate activity on existing leases, as well as projected activity on future leases. Costs resulting from activity projected to occur during 1993–1997 have been analyzed in the RIA. For activity projected to occur between 1998–2010, costs have been tabulated and explained in Addendum I of the RIA.

The incremental offset ratio is what is at issue in item (3) because it affects an important element of cost attributable to the OCS regulation. The comment noted the emission offset ratio assumed for Santa Barbara, 1.2:1, was incorrect. The rationale was that as a result of the coastal consistency process, new sources locating in the Santa Barbara Channel currently face a 1:1 offset ratio. In response, EPA incorporated an incremental offset ratio of 0.2:1 into the RIA for new sources in the Santa Barbara Channel, but only in the form of a sensitivity analysis. The offset ratio imposed through the coastal consistency process is dependent on the membership of the Coastal Commission, and is therefore subject to change. A 1.2:1 offset ratio is still assumed in the RIA to calculate the incremental costs and benefits of the rule for new sources locating off of ozone nonattainment areas in Southern California, as this is the offset ratio incorporated into Santa Barbara's onshore regulations.

In response to comment (4), EPA has revised its projected offset prices to incorporate additional data and analyses, including two NO_x offset price scenarios. The result is higher projected costs for offsets.

In regard to comment (5), commenters noted that although the transfer and resale of surplus offsets, which was assumed in the RIA Screening, is consistent with EPA policy, such assumptions may not be consistent with the regulations of the onshore area. Another commenter noted that due to the uncertainty of the offsets market, holders of offsets are apt to maintain, and then transfer, offsets between OCS phases of operation. As a result, the RIA retains the assumption that emission offsets are transferred from a successful exploration activity to the later stages of an OCS project; however, the resale of surplus offsets is not assumed. This change in assumption regarding the resale of surplus offsets may overestimate costs.

Existing Platforms

With respect to existing platforms, comments were received on control cost levels, the baseline used for assessing incremental costs, and applicability of technical and safety exemptions.

Regarding control cost levels, commenters stated existing platforms would be subject to $87 million in equipment retrofit and incremental operating costs, or an average of $17.4 million/year, over the five-year time frame analyzed in the RIA Screening. Insufficient data were provided to analyze the methods used to derive these figures. However, it appeared that total investment costs had been accounted for as opposed to incremental investment costs, and that investment costs had not been amortized over the life of the retrofit equipment.

In response to comments on the baseline, incremental control and administrative requirements have been assessed for all existing OCS platforms with onshore agency agreements. For the RIA Screening, these platforms were assumed to be in compliance with many of the requirements onshore as a result of their agreements, and thus, incremental costs were not assessed.

In response to comment, assumptions on the applicability of technical and safety exemptions were revised in the RIA. The RIA Screening assumed that emergency equipment on existing platforms was operated infrequently and that technical and safety exemptions would, as a result, be given. Moreover, residual emissions resulting from these exemptions would have to be offset. Upon further data review and analysis, it was determined that the engines in question are not subject to onshore control technology due to the infrequency of their operation. Hence, the exemptions assumed in the RIA Screening are not required or warranted. As a result, offsets will not be required and costs associated with emergency equipment controls have been deducted from the costs for these platforms originally calculated in the RIA Screening.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires each federal agency to perform a Regulatory Flexibility Analysis for all rules that are likely to have a "significant impact on a substantial number of small entities." Small entities include small businesses, organizations, and governmental jurisdictions.

As with the proposed regulation, the final regulation does not apply to any small entities. Consequently, a Regulatory Flexibility Analysis is not required. In response to comments which stated that the regulation may have an impact on small businesses in service and supply operations, a

sensitivity analysis has been conducted. This analysis suggests that the rule as currently structured averts direct impacts and mitigates indirect impacts on small entities.

The EPA certifies that the proposed rule will not have a significant impact on a substantial number of small entities.

C. Paperwork Reduction Act

As a result of better data, industry compliance testing costs as reflected in the Information Collection Request ("ICR") have increased. One comment stated that the resource burden for states and localities has been underestimated in the ICR relative to EPA's resource burden. It should be noted that EPA's resource burden is higher in part due to the resources needed for initial rule makings and for consistency updates. The burden is also higher due to an increase in projected sources under EPA jurisdiction during the five-year time frame of 1992–1997.

Another comment noted that most of the administrative burden associated with this regulation will be borne by the regulated community as a result of the federal and California Acts which require permitted sources to cover the expense of implementing the regulations under these Acts. To some extent this point is valid. However, there may be a lag between activities conducted by the agencies and the reimbursement via fee collections from the sources. Furthermore, market forces may allow the cost for fees to be reflected in the market prices of products produced by the sources. Hence, it may be the customer and not necessarily the source who bears the ultimate cost for the agencies to administer these regulations. Regardless, the compliance with the ICR requirements of the Paperwork Reduction Act focuses on the initial, not the ultimate, incidence of administrative requirements.

EPA disagrees with the concern that administrative costs associated with the federal operating permit program were not anticipated in the ICR. The Santa Barbara County Air Pollution Control District's regulations were used as a guide in determining administrative costs in Southern California. Santa Barbara's regulations are more stringent than the regulations anticipated as a result of the 40 CFR part 70 permit program. Moreover, for sources outside of California, the best available information regarding the federal operating permit program was employed.

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0249.

This collection of information is estimated to have a public reporting burden averaging 413 hours per response. This includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch (PM–223Y); U.S. Environmental Protection Agency; 401 M St., SW.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Part 55

Administrative practice and procedures, Air pollution control, Continental shelf, Ozone, Sulfur oxides, Nitrogen dioxide, Particulate matter, Hydrocarbons, Nitrogen oxides, Intergovernmental relations, Reporting and Recordkeeping requirements, Incorporation by reference, Permits.

Dated: August 21, 1992.

William K. Reilly,

Administrator.

For the reasons set out in the preceding preamble, title 40, chapter I of the Code of Federal Regulations is amended by adding a new part 55 as follows.

PART 55—OUTER CONTINENTAL SHELF AIR REGULATIONS

Sec.

55.1 Statutory authority and scope.
55.2 Definitions.
55.3 Applicability.
55.4 Requirements to submit a notice of intent.
55.5 Corresponding onshore area designation.
55.6 Permit requirements.
55.7 Exemptions.
55.8 Monitoring, reporting, inspections, and compliance.
55.9 Enforcement.
55.10 Fees.
55.11 Delegation.
55.12 Consistency updates.
55.13 Federal requirements that apply to OCS sources.
55.14 Requirements that apply to OCS sources located within 25 miles of states' seaward boundaries, by state.
Appendix A to 40 CFR Part 55—Listing of state and local requirements incorporated by reference into part 55, by state.

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401, *et seq.*) as amended by Public Law 101–549.

PART 55—OUTER CONTINENTAL SHELF AIR REGULATIONS

§ 55.1 Statutory authority and scope.

Section 328(a)(1) of the Clean Air Act ("the Act"), requires the Environmental Protection Agency ("EPA") to establish requirements to control air pollution from outer continental shelf ("OCS") sources in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Act. This part establishes the air pollution control requirements for OCS sources and the procedures for implementation and enforcement of the requirements, consistent with these stated objectives of section 328(a)(1) of the Act. In implementing, enforcing and revising this rule and in delegating authority hereunder, the Administrator will ensure that there is a rational relationship to the attainment and maintenance of federal and state ambient air quality standards and the requirements of part C of title I, and that the rule is not used for the purpose of preventing exploration and development of the OCS.

§ 55.2 Definitions.

Administrator means the Administrator of the U.S. Environmental Protection Agency.

Corresponding Onshore Area ("COA") means, with respect to any existing or proposed OCS source located within 25 miles of a state's seaward boundary, the onshore area that is geographically closest to the source or another onshore area that the Administrator designates as the COA, pursuant to § 55.5 of this part.

Delegated agency means any agency that has been delegated authority to implement and enforce requirements of this part by the Administrator, pursuant to § 55.11 of this part. It can refer to a state agency, a local agency, or an Indian tribe, depending on the delegation status of the program.

Existing source or existing OCS source shall have the meaning given in the applicable requirements incorporated into §§ 55.13 and 55.14 of this part, except that for two years following the date of promulgation of this part the definition given in § 55.3 of this part shall apply for the purpose of

determining the required date of compliance with this part.

Exploratory source or exploratory OCS source means any OCS source that is a temporary operation conducted for the sole purpose of gathering information. This includes an operation conducted during the exploratory phase to determine the characteristics of the reservoir and formation and may involve the extraction of oil and gas.

Modification shall have the meaning given in the applicable requirements incorporated into §§ 55.13 and 55.14 of this part, except that for two years following the date of promulgation of this part the definition given in section 111(a) of the Act shall apply for the purpose of determining the required date of compliance with this part, as set forth in § 55.3 of this part.

Nearest Onshore Area ("NOA") means, with respect to any existing or proposed OCS source located within 25 miles of a state's seaward boundary, the onshore area that is geographically closest to that source.

New source or new OCS source shall have the meaning given in the applicable requirements of §§ 55.13 and 55.14 of this part, except that for two years following the date of promulgation of this part, the definition given in § 55.3 of this part shall apply for the purpose of determining the required date of compliance with this part.

OCS source means any equipment, activity, or facility which:

(1) Emits or has the potential to emit any air pollutant;

(2) Is regulated or authorized under the Outer Continental Shelf Lands Act ("OCSLA") (43 U.S.C. § 1331 *et seq.*); and

(3) Is located on the OCS or in or on waters above the OCS.

This definition shall include vessels only when they are:

(1) Permanently or temporarily attached to the seabed and erected thereon and used for the purpose of exploring, developing or producing resources therefrom, within the meaning of section 4(a)(1) of OCSLA (43 U.S.C. § 1331 *et seq.*); or

(2) Physically attached to an OCS facility, in which case only the stationary sources aspects of the vessels will be regulated.

Onshore area means a coastal area designated as an attainment, nonattainment, or unclassifiable area by EPA in accordance with section 107 of the Act. If the boundaries of an area designated pursuant to section 107 of the Act do not coincide with the boundaries of a single onshore air pollution control agency, then onshore area shall mean a coastal area defined by the jurisdictional boundaries of an air pollution control agency.

Outer continental shelf shall have the meaning provided by section 2 of the OCSLA (43 U.S.C. § 1331 *et seq.*).

Potential emissions means the maximum emissions of a pollutant from an OCS source operating at its design capacity. Any physical or operational limitation on the capacity of a source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as a limit on the design capacity of the source if the limitation is federally enforceable. Pursuant to section 328 of the Act, emissions from vessels servicing or associated with an OCS source shall be considered direct emissions from such a source while at the source, and while enroute to or from the source when within 25 miles of the source, and shall be included in the "potential to emit" for an OCS source. This definition does not alter or affect the use of this term for any other purposes under §§ 55.13 or 55.14 of this part, except that vessel emissions must be included in the "potential to emit" as used in §§ 55.13 and 55.14 of this part.

Residual emissions means the difference in emissions from an OCS source if it applies the control requirements(s) imposed pursuant to § 55.13 or § 55.14 of this part and emissions from that source if it applies a substitute control requirement pursuant to an exemption granted under § 55.7 of this part.

State means the state air pollution control agency that would be the permitting authority, a local air pollution permitting agency, or certain Indian tribes which can be the permitting authority for areas within their jurisdiction. State may also be used in the geographic sense to refer to a state, the NOA, or the COA.

§ 55.3 Applicability.

(a) This part applies to all OCS sources except those located in the Gulf of Mexico west of 87.5 degrees longitude.

(b) OCS sources located within 25 miles of states' seaward boundaries shall be subject to all the requirements of this part, which include, but are not limited to, the federal requirements as set forth in §55.13 of this part and the federal, state, and local requirements of the COA (designated pursuant to § 55.5 of this part), as set forth in § 55.14 of this part.

(c) OCS sources located beyond 25 miles of states' seaward boundaries shall be subject to all the requirements of this part, except the requirements of §§ 55.4, 55.5, 55.11, 55.12, and 55.14 of this part.

(d) New OCS sources shall comply with the requirements of this part by September 4, 1992 where a "new OCS source" means an OCS source that is a new source within the meaning of section 111(a) of the Act.

(e) Existing sources shall comply with the requirements of this part by September 4, 1994, where an "existing OCS source" means any source that is not a new source within the meaning of section 111(a) of the Act.

§ 55.4 Requirements to submit a notice of intent.

(a) Prior to performing any physical change or change in method of operation that results in an increase in emissions, and not more than 18 months prior to submitting an application for a preconstruction permit, the applicant shall submit a Notice of Intent ("NOI") to the Administrator through the EPA Regional Office, and at the same time shall submit copies of the NOI to the air pollution control agencies of the NOA and onshore areas adjacent to the NOA. This section applies only to sources located within 25 miles of states' seaward boundaries.

(b) The NOI shall include the following:

(1) General company information, including company name and address, owner's name and agent, and facility site contact.

(2) Facility description in terms of the proposed process and products, including identification by Standard Industrial Classification Code.

(3) Estimate of the proposed project's potential emissions of any air pollutant, expressed in total tons per year and in such other terms as may be necessary to determine the applicability of requirements of this part. Potential emissions for the project must include all vessel emissions associated with the proposed project in accordance with the definition of potential emissions in § 55.2 of this part.

(4) Description of all emissions points including associated vessels.

(5) Estimate of quantity and type of fuels and raw materials to be used.

(6) Description of proposed air pollution control equipment.

(7) Proposed limitations on source operations or any work practice standards affecting emissions.

(8) Other information affecting emissions, including, where applicable, information related to stack parameters (including height, diameter, and plume

temperature), flow rates, and equipment and facility dimensions.

(9) Such other information as may be necessary to determine the applicability of onshore requirements.

(10) Such other information as may be necessary to determine the source's impact in onshore areas.

(c) Exploratory sources and modifications to existing sources with designated COAs shall be exempt from the requirement in paragraph (b)(10) of this section.

(d) The scope and contents of the NOI shall in no way limit the scope and contents of the required permit application or applicable requirements given in this part.

§ 55.5 Corresponding onshore area designation.

(a) *Proposed exploratory sources.* The NOA shall be the COA for exploratory sources located within 25 miles of states' seaward boundaries. Paragraphs (b), (c), and (f) of this section are not applicable to these sources.

(b) *Requests for designation.*

(1) The chief executive officer of the air pollution control agency of an area that believes it has more stringent air pollution control requirements than the NOA for a proposed OCS source, may submit a request to be designated as the COA to the Administrator and at the same time shall send copies of the request to the chief executive officer of the NOA and to the proposed source. The request must be received by the Administrator within 60 days of the receipt of the NOI. If no requests are received by the Administrator within 60 days of the receipt of the NOI, the NOA will become the designated COA without further action.

(2) No later than 90 days after the receipt of the NOI, a demonstration must be received by the Administrator showing that:

(i) The area has more stringent requirements with respect to the control and abatement of air pollution than the NOA;

(ii) The emissions from the source are or would be transported to the requesting area; and

(iii) The transported emissions would affect the requesting area's efforts to attain or maintain a federal or state ambient air quality standard or to comply with the requirements of part C of title I of the Act, taking into account the effect of air pollution control requirements that would be imposed if the NOA were designated as the COA.

(c) *Determination by the Administrator.*

(1) If no demonstrations are received by the Administrator within 90 days of the receipt of the NOI, the NOA will become the designated COA without further action.

(2) If one or more demonstrations are received, the Administrator will issue a preliminary designation of the COA within 150 days of the receipt of the NOI, which shall be followed by a 30 day public comment period, in accordance with paragraph (f) of this section.

(3) The Administrator will designate the COA for a specific source within 240 days of the receipt of the NOI.

(4) When the Administrator designates a more stringent area as the COA with respect to a specific OCS source, the delegated agency in the COA will exercise all delegated authority. If there is no delegated agency in the COA, then EPA will issue the permit and implement and enforce the requirements of this part. The Administrator may retain authority for implementing and enforcing the requirements of this part if the NOA and the COA are in different states.

(5) The Administrator shall designate the COA for each source only once in the source's lifetime.

(d) *Offset requirements.* Offsets shall be obtained based on the requirements imposed in the COA, and in accordance with the following provisions:

(1) The offset ratio applied shall not be higher than the highest offset ratio required onshore provided that a net air quality benefit is achieved.

(2) To determine whether an offset is on the landward or seaward side of a proposed source or modification, a straight line shall be drawn through the proposed source or modification parallel to the coastline. Offsets obtained on the seaward side of the line will be considered seaward of the source, and offsets obtained on the landward side will be considered landward.

(3) Offsets obtained between the site of the proposed source or modification and the state seaward boundary shall be obtained at the base ratio for the COA. No discounting or penalties associated with distance between the proposed source and the source of emissions reductions shall apply.

(4) Offsets obtained on the landward side of the state seaward boundary will be subject to onshore discounting and penalties associated with distance as required in the COA to be applied in the following manner. A straight line shall be drawn from the site of the proposed source or modification to the source of the offsets. The point at which this line crosses the state seaward boundary shall be treated as the site of the proposed source or modification for the purpose of determining the amount of offsets required.

(5) Offsets obtained on the seaward side of the proposed source or modification will be subject to all the requirements of the COA, including any discounting and distance penalties.

(6) Offsets may be obtained in the COA, the NOA, and from OCS sources with the same COA or NOA as the proposed source or modification. All other offset requirements of the COA and paragraph (d) of this section shall apply, including distance penalties applied in accordance with the requirements of this subsection.

(7) Offsets may be obtained outside the NOA or the COA in accordance with the requirements of the COA and this subsection.

(e) *Authority to designate the COA.* The authority to designate the COA for any OCS source shall not be delegated to a state or local agency, but shall be retained by the Administrator.

(f) *Administrative procedures and public participation.* The Administrator will use the following public notice and comment procedures for processing a request for COA designation under this section:

(1) Within 150 days from receipt of an NOI, if one or more demonstrations are received, the Administrator shall make a preliminary determination of the COA and shall:

(i) Make available, in at least one location in the NOA and in the area requesting COA designation, a copy of all materials submitted by the requester, a copy of the Administrator's preliminary determination, and a copy or summary of other materials, if any, considered by the Administrator in making the preliminary determination; and

(ii) Notify the public, by prominent advertisement in a newspaper of general circulation in the NOA and the area requesting COA designation, of a 30-day opportunity for written public comment on the available information and the Administrator's preliminary COA designation.

(2) A copy of the notice required pursuant to paragraph (f)(1)(ii) of this section shall be sent to the requester, the affected source, each person from whom a written request of such notice has been received, and the following officials and agencies having jurisdiction over the COA and NOA: state and local air pollution control agencies, the chief executive of the city and county, the Federal Land Manager of potentially affected Class I areas, and any Indian governing body whose lands

may be affected by emissions from the OCS source.

(3) Public comments received in writing within 30 days after the date the public notice is made available will be considered by the Administrator in making the final decision on the request. All comments will be made available for public inspection.

(4) The Administrator will make a final COA designation within 60 days after the close of the public comment period. The Administrator will notify, in writing, the requester and each person who has requested notice of the final action and will set forth the reasons for the determination. Such notification will be made available for public inspection.

§ 55.6 Permit requirements.

(a) *General provisions.*

(1) *Permit applications.* (i) The owner or operator of an OCS source shall submit to the Administrator or delegated agency all information necessary to perform any analysis or make any determination required under this section.

(ii) Any application submitted pursuant to this part by an OCS source shall include a description of all the requirements of this part and a description of how the source will comply with the applicable requirements. For identification purposes only, the application shall include a description of those requirements that have been proposed by EPA for incorporation into this part and that the applicant believes, after diligent research and inquiry, apply to the source.

(2) *Exemptions.* (i) When an applicant submits any approval to construct or permit to operate application to the Administrator or delegated agency it shall include a request for exemption from compliance with any pollution control technology requirement that the applicant believes is technically infeasible or will cause an unreasonable threat to health and safety. The Administrator or delegated agency shall act on the request for exemption in accordance with the procedures established in § 55.7 of this part.

(ii) A final permit shall not be issued under this part until a final determination is made on any exemption request, including those appealed to the Administrator in accordance with § 55.7 of this part.

(3) *Administrative procedures and public participation.* The Administrator will follow the applicable procedures of 40 CFR part 124 in processing applications under this part. Until 40 CFR part 124 has been modified to specifically reference permits issued under this part, the Administrator will follow the procedures in part 124 used to issue Prevention of Significant Deterioration ("PSD") permits.

(4) *Source obligation.* (i) Any owner or operator who constructs or operates an OCS source not in accordance with the application submitted pursuant to this part 55, or with any approval to construct or permit to operate, or any owner or operator of a source subject to the requirements of this part who commences construction after the effective date of this part without applying for and receiving approval under this part, shall be in violation of this part.

(ii) Any owner or operator of a new OCS source who commenced construction prior to the promulgation date of this rule shall comply with the requirements of paragraph (e) of this section.

(iii) Receipt of an approval to construct or a permit to operate from the Administrator or delegated agency shall not relieve any owner or operator of the responsibility to comply fully with the applicable provisions of any other requirements under federal law.

(iv) The owner or operator of an OCS source to whom the approval to construct or permit to operate is issued under this part shall notify all other owners and operators, contractors, and the subsequent owners and operators associated with emissions from the source, of the conditions of the permit issued under this part.

(5) *Delegation of authority.* If the Administrator delegates any of the authority to implement and enforce the requirements of this section, the following provisions shall apply:

(i) The applicant shall send a copy of any permit application required by this section to the Administrator through the EPA Regional Office at the same time as the application is submitted to the delegated agency.

(ii) The delegated agency shall send a copy of any public comment notice required under this section or §§ 55.13 or 55.14 to the Administrator through the EPA Regional Office.

(iii) The delegated agency shall send a copy of any preliminary determination and final permit action required under this section or §§ 55.13 or 55.14 to the Administrator through the EPA Regional Office at the time of the determination and shall make available to the Administrator any materials used in making the determination.

(b) *Preconstruction requirements for OCS sources located within 25 miles of states' seaward boundaries.*

(1) No OCS source to which the requirements of §§ 55.13 or 55.14 of this part apply shall begin actual construction after the effective date of this part without a permit that requires the OCS source to meet those requirements.

(2) Any permit application required under this part shall not be submitted until the Administrator has determined whether a consistency update is necessary, pursuant to § 55.12 of this part, and, if the Administrator finds an update to be necessary, has published a proposed consistency update.

(3) The applicant may be required to obtain more than one preconstruction permit, if necessitated by partial delegation of this part or by the requirements of this section and §§ 55.13 and 55.14 of this part.

(4) An approval to construct shall become invalid if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. The 18-month period may be extended upon a showing satisfactory to the Administrator or the delegated agency that an extension is justified. Sources obtaining extensions are subject to all new or interim requirements and a reassessment of the applicable control technology when the extension is granted. This requirement shall not supersede a more stringent requirement under §§ 55.13 or 55.14 of this part.

(5) Any preconstruction permit issued to a new OCS source or modification shall remain in effect until it expires under paragraph (b)(4) of this section or is rescinded under the applicable requirements incorporated in §§ 55.13 and 55.14 of this part.

(6) Whenever any proposed OCS source or modification to an existing OCS source is subject to action by a federal agency that might necessitate preparation of an environmental impact statement pursuant to the National Environmental Policy Act (42 U.S.C. 4321), review by the Administrator conducted pursuant to this section shall be coordinated with the environmental reviews under that Act to the extent feasible and reasonable.

(7) The Administrator or delegated agency and the applicant shall provide written notice of any permit application from a source, the emissions from which may affect a Class I area, to the Federal Land Manager charged with direct responsibility for management of any lands within the Class I area. Such notification shall include a copy of all information contained in the permit application and shall be given within 30 days of receipt of the application and at

least 60 days prior to any public hearing on the preconstruction permit.

(8) *Modification of existing sources.* The preconstruction requirements above shall not apply to a particular modification, as defined in §§ 55.13 or 55.14 of this part, of an existing OCS source if:

(i) The modification is necessary to comply with this part, and no other physical change or change in the method of operation is made in conjunction with the modification;

(ii) The modification is made within 24 months of promulgation of this part; and

(iii) The modification does not result in an increase, in excess of any *de minimus* levels contained in the applicable requirements of §§ 55.13 and 55.14, of potential emissions or actual hourly emissions of a pollutant regulated under the Act.

(9) *Compliance plans.* Sources intending to perform modifications that meet all of the criteria of paragraph (b)(8) of this section shall submit a compliance plan to the Administrator or delegated agency prior to performing the modification. The compliance shall describe the schedule and method the source will use to comply with the applicable OCS requirements within 24 months of the promulgation date of this part and shall include a request for any exemptions from compliance with a pollution control technology requirement that the applicant believes is technically infeasible or will cause an unreasonable threat to health and safety. The Administrator or delegated agency shall act on the request for exemption in accordance with the procedures established in § 55.7 of this part.

(i) The Administrator or delegated agency shall review the compliance plan and provide written comments to the source within 45 days of receipt of such plan. The source shall provide a written response to such comments as required by the reviewing agency.

(ii) Receipt and review of a compliance plan by the Administrator or delegated agency shall not relieve any owner or operator of an existing OCS source of the responsibility to comply fully with the applicable requirements of §§ 55.13 and 55.14 of this part within 24 months of promulgation of this part.

(c) *Operating permit requirements for sources located within 25 miles of states' seaward boundaries.*

(1) All applicable operating permit requirements listed in this section and incorporated into §§ 55.13 and 55.14 of this part shall apply to OCS sources.

(2) The Administrator or delegated agency shall not issue a permit to operate to any existing OCS source that has not demonstrated compliance with all the applicable requirements of this part.

(3) [Reserved].

(d) *Permit requirements for sources located beyond 25 miles of states' seaward boundaries.*

(1) OCS sources located beyond 25 miles of states' seaward boundaries shall be subject to the permitting requirements set forth in this section and § 55.13 of this part.

(2) The Administrator shall retain authority to implement and enforce all requirements of this part for OCS sources located beyond 25 miles from states' seaward boundaries.

(e) *Permit requirements for new sources that commenced construction prior to September 4, 1992.*

(1) *Applicability.* § 55.6(e) applies to a new OCS source, as defined by section 328 of the Act, that commenced construction before September 4, 1992.

(2) A source subject to § 55.6(e) shall comply with the following requirements:

(i) By October 5, 1992, the owner or operator of the source shall submit a transitional permit application ("TPA") to the Administrator or the delegated agency. The TPA shall include the following:

(A) The information specified in §§ 55.4(b)(1) through § 55.4(b)(9) of this part;

(B) A list of all requirements applicable to the source under this part;

(C) A request for exemption from compliance with any control technology requirement that the applicant believes is technically infeasible or will cause an unreasonable threat to health and safety;

(D) An air quality screening analysis demonstrating whether the source has or is expected in the future to cause or contribute to a violation of any applicable state or federal ambient air quality standard or exceed any applicable increment. If no air quality analysis is required by the applicable requirements of §§ 55.13 and 55.14, this requirement does not apply;

(E) Documentation that source emissions are currently being offset, or will be offset if the source has not commenced operation, at the ratio required under this part, and documentation that those offsets meet or will meet the requirements of this part; and

(F) A description of how the source is complying with the applicable requirements of §§ 55.13 and 55.14 of this part, including emission levels and corresponding control measures, including Best Available Control Technology ("BACT") or Lowest Achievable Emission Rates ("LAER"), but excluding the requirements to have valid permits.

(ii) The source shall expeditiously complete its permit application in compliance with the schedule determined by the Administrator or delegated agency.

(iii) The source shall comply with all applicable requirements of this part except for the requirements of paragraph (a)(4)(i) of this section. The source shall comply with the control technology requirements (such as BACT or LAER) set forth in the TPA that would be applicable if the source had a valid permit.

(iv) Any owner or operator subject to this subsection who continues to construct or operate an OCS source thirty days from promulgation of this part without submitting a TPA, or continues to construct or operate an OCS source not in accordance with the TPA submitted pursuant to paragraph (e) of this section, or constructs or operates an OCS source not in accordance with the schedule determined by the permitting authority, shall be in violation of this part.

(3) Upon the submittal of a permit application deemed to be complete by the permitting authority, the owner or operator of the source shall be subject to the permitting requirements of §§ 55.13 and 55.14 of this part that apply subsequent to the submission of a complete permit application. When a source receives the permit or permits required under this part, its TPA shall expire.

(4) Until the date that a source subject to this subsection receives the permit or permits required under this part, that source shall cease operation if, based on projected or actual emissions, the permitting authority determines that the source is currently or may in the future cause or contribute to a violation of a state or federal ambient air quality standard or exceed any applicable increment.

§ 55.7 Exemptions.

(a) *Authority and criteria.* The Administrator or the delegated agency may exempt a source from a control technology requirement of this part if the Administrator or the delegated agency finds that compliance with the control technology requirement is technically infeasible or will cause an unreasonable threat to health and safety.

(b) *Request for an exemption.* (1) *Permit application required.* An applicant shall submit a request for an exemption from a control technology requirement at the same time as the

applicant submits a preconstruction or operating permit application to the Administrator or delegated agency.

(2) *No permit application required.* If no permit or permit modification is required, a request for an exemption must be received by the Administrator or delegated agency within 60 days from the date the control technology requirement is promulgated by EPA.

(3) *Compliance plan.* An existing source that submits a compliance plan in accordance with § 55.6(b) of this part shall submit all requests for exemptions at the same time as the compliance plan. For the purpose of applying § 55.7 of this part, a request submitted with a compliance plan shall be treated in the same manner as a request that does not require a permit application.

(4) *Content of request.* (i) The request shall include information that demonstrates that compliance with a control technology requirement of this part would be technically infeasible or would cause an unreasonable threat to health and safety.

(ii) The request shall include a proposed substitute requirement(s) as close in stringency to the original requirement as possible.

(iii) The request shall include an estimate of emission reductions that would be achieved by compliance with the original requirement, an estimate of emission reductions that would be achieved by compliance with the proposed substitute requirement(s) and an estimate of residual emissions.

(iv) The request shall identify emission reductions of a sufficient quantity to offset the estimated residual emissions. Sources located beyond 25 miles from states' seaward boundaries shall consult with the Administrator to identify suitable emission reductions.

(c) *Consultation requirement.* If the authority to grant or deny exemptions has been delegated, the delegated agency shall consult with the Minerals Management Service of the U.S. Department of Interior and the U.S. Coast Guard to determine whether the exemption will be granted or denied.

(1) The delegated agency shall transmit to the Administrator (through the Regional Office), the Minerals Management Service, and the U.S. Coast Guard, a copy of the permit application, or the request if no permit is required, within 5 days of its receipt.

(2) *Consensus.* If the delegated agency, the Minerals Management Service, and the U.S. Coast Guard reach a consensus decision on the request within 90 days from the date the delegated agency received the request, the delegated agency may issue a preliminary determination in accordance with the applicable requirements of paragraph (f) of this section.

(3) *No consensus.* If the delegated agency, the Minerals Management Service, and the U.S. Coast Guard do not reach a consensus decision within 90 days from the date the delegated agency received the request, the request shall automatically be referred to the Administrator who will process the referral in accordance with paragraph (f)(3) of this section. The delegated agency shall transmit to the Administrator, within 91 days of its receipt, the request and all materials submitted with the request, such as the permit application or the compliance plan, and any other information considered or developed during the consultation process.

(4) If a request is referred to the Administrator and the delegated agency issues a preliminary determination on a permit application before the Administrator issues a final decision on the exemption, the delegated agency shall include a notice of the opportunity to comment on the Administrator's preliminary determination in accordance with the procedures of paragraph (f)(4) of this section.

(5) The Administrator's final decision on a request that has been referred pursuant to paragraph (c) of this section shall be incorporated into the final permit issued by the delegated agency. If no permit is required, the Administrator's final decision on the request shall be implemented and enforced by the delegated agency.

(d) *Preliminary determination.* The Administrator or delegated agency shall issue a preliminary determination in accordance with paragraph (f) of this section. A preliminary determination shall propose to grant or deny the request for exemption. A preliminary determination to grant the request shall include proposed substitute control requirements and offsets necessary to comply with the requirements of paragraph (e) of this section.

(e) *Grant of exemption.*

(1) The source shall comply with a substitute requirement(s), equal to or as close in stringency to the original requirement as possible, as determined by the Administrator or delegated agency.

(2) An OCS source located within 25 miles of states' seaward boundaries shall offset residual emissions resulting from the grant of an exemption request in accordance with the requirements of the Act and the regulations thereunder. The source shall obtain offsets in accordance with the applicable requirements as follows:

(i) If offsets are required in the COA, a new source shall offset residual emissions in the same manner as all other new source emissions in accordance with the requirements of § 55.5(d) of this part.

(ii) If offsets are not required in the COA, a new source shall comply with an offset ratio of 1:1.

(iii) An existing OCS source shall comply with an offset at a ratio of 1:1.

(3) An OCS source located beyond 25 miles from states' seaward boundaries shall obtain emission reductions at a ratio determined by the Administrator to be adequate to protect state and federal ambient air quality standards and to comply with part C of title I of the Act.

(f) *Administrative procedures and public participation.*

(1) *Request submitted with a permit application.* If a request is submitted with a permit application, the request shall be considered part of the permit application and shall be processed accordingly for the purpose of administrative procedures and public notice and comment requirements. The Administrator shall comply with the requirements of 40 CFR part 124 and the requirements set forth at § 55.6 of this part. If the Administrator has delegated authority to a state, the delegated agency shall use its own procedures as deemed adequate by the Administrator in accordance with § 55.11 of this part. These procedures must provide for public notice and comment on the preliminary determination.

(2) *Request submitted without a permit or with a compliance plan.* If a permit is not required, the Administrator or the delegated agency shall issue a preliminary determination within 90 days from the date the request was received, and shall use the procedures set forth at paragraph (f)(4) of this section for processing a request.

(3) *Referral.* If a request is referred to the Administrator pursuant to paragraph (c) of this section, the Administrator shall make a preliminary determination no later than 30 days after receipt of the request and any accompanying materials transmitted by the delegated agency. The Administrator shall use the procedures set forth at paragraph (f)(4) of this section for processing a request.

(4) The Administrator or the delegated agency shall comply with the following requirements for processing requests submitted without a permit, with a compliance plan, and requests referred to the Administrator:

(i) Issue a preliminary determination to grant or deny the request. A preliminary determination by the Administrator to deny a request shall be

considered a final decision and will be accompanied by the reasons for the decision. As such, it is not subject to any further public notice, comment, or hearings. Written notice of the denial shall be given to the requester.

(ii) Make available, in at least one location in the COA and NOA, a copy of all materials submitted by the requester, a copy of the preliminary determination, and a copy or summary of other materials, if any, considered in making the preliminary determination.

(iii) Notify the public, by prominent advertisement in a newspaper of general circulation in the COA and NOA, of a 30-day opportunity for written public comment on the information submitted by the owner or operator and on the preliminary determination.

(iv) Send a copy of the notice required pursuant to paragraph (f)(4)(iii) of this section to the requester, the affected source, each person from whom a written request of such notice has been received, and the following officials and agencies having jurisdiction over the COA and NOA: state and local air pollution control agencies, the chief executive of the city and county, the Federal Land Manager of potentially affected Class I areas, and any Indian governing body whose lands may be affected by emissions from the OCS source.

(v) Consider written public comments received within 30 days after the date the public notice is made available when making the final decision on the request. All comments will be made available for public inspection. At the time that any final decision is issued, the Administrator or delegated agency will issue a response to comments.

(vi) Make a final decision on the request within 30 days after the close of the public comment period. The Administrator or the delegated agency will notify, in writing, the applicant and each person who has submitted written comments, or from whom a written request of such notice has been received, of the final decision and will set forth the reasons. Such notification will be made available for public inspection.

(5) Within 30 days after the final decision has been made on a request, the requester, or any person who filed comments on the preliminary determination, may petition the Administrator to review any aspect of the decision. Any person who failed to file comments on the preliminary decision may petition for administrative review only on the changes from the preliminary to the final determination.

§ 55.8 Monitoring, reporting, inspections, and compliance.

(a) The Administrator may require monitoring or reporting and may authorize inspections pursuant to section 114 of the Act and the regulations thereunder. Sources shall also be subject to the requirements set forth in §§ 55.13 and 55.14 of this part.

(b) All monitoring, reporting, inspection and compliance requirements authorized under the Act shall apply.

(c) An existing OCS source that is not required to obtain a permit to operate within 24 months of the date of promulgation of this part shall submit a compliance report to the Administrator or delegated agency within 25 months of promulgation of this part. The compliance report shall specify all the applicable OCS requirements of this part and a description of how the source has complied with these requirements.

(d) The Administrator or the delegated agency shall consult with the Minerals Management Service and the U.S. Coast Guard prior to inspections. This shall in no way interfere with the ability of EPA or the delegated agency to conduct unannounced inspections.

§ 55.9 Enforcement.

(a) OCS sources shall comply with all requirements of this part and all permits issued pursuant to this part. Failure to do so shall be considered a violation of section 111(e) of the Act.

(b) All enforcement provisions of the Act, including, but not limited to, the provisions of sections 113, 114, 120, 303 and 304 of the Act, shall apply to OCS sources.

(c) If a facility is ordered to cease operation of any piece of equipment due to enforcement action taken by EPA or a delegated agency pursuant to this part, the shutdown will be coordinated by the enforcing agency with the Minerals Management Service and the U.S. Coast Guard to assure that the shutdown will proceed in a safe manner. No shutdown action will occur until after consultation with these agencies, but in no case will initiation of the shutdown be delayed by more than 24 hours.

§ 55.10 Fees.

(a) *OCS sources located within 25 miles of states' seaward boundaries.*

(1) EPA will collect operating fees from OCS sources calculated in accordance with the fee requirements imposed in the COA if the fees are based on regulatory objectives, such as discouraging emissions. If the fee requirements are based on cost recovery objectives, however, EPA will adjust the fees to reflect the costs to EPA to issue permits and administer the permit program.

(2) EPA will collect all other fees from OCS sources calculated in accordance with the fee requirements imposed in the COA if the fees are based on regulatory objectives, such as discouraging emissions. If the fee requirements are based on cost recovery objectives, however, EPA will adjust the fees to reflect the costs to EPA to issue permits and administer the permit program.

(3) Upon delegation, the delegated agency will collect fees from OCS sources calculated in accordance with the fee requirements imposed in the COA. Upon delegation of authority to implement and enforce any portion of this part, EPA will cease to collect fees imposed in conjunction with that portion.

(b) [Reserved].

§ 55.11 Delegation.

(a) The governor or the governor's designee of any state adjacent to an OCS source subject to the requirements of this part may submit a request to the Administrator for authority to implement and enforce the requirements of this OCS program within 25 miles of the state seaward boundary, pursuant to section 328(a)(3) of the Act. Authority to implement and enforce §§ 55.5, 55.11, and 55.12 of this part will not be delegated.

(b) The Administrator will delegate implementation and enforcement authority to a state if the state has an adjacent OCS source and the Administrator determines that the state's regulations are adequate, including a demonstration by the state that the state has:

(1) Adopted the appropriate portions of this part into state law;

(2) Adequate authority under state law to implement and enforce the requirements of this part. A letter from the State Attorney General shall be required stating that the requesting agency has such authority;

(3) Adequate resources to implement and enforce the requirements of this part; and

(4) Adequate administrative procedures to implement and enforce the requirements of this part, including public notice and comment procedures.

(c) The Administrator will notify in writing the governor or the governor's designee of the Administrator's final action on a request for delegation within 6 months of the receipt of the request.

(d) If the Administrator finds that the state regulations are adequate, the Administrator will authorize the state to implement and enforce the OCS

requirements under state law. If the Administrator finds that only part of the state regulations are adequate, he will authorize the state to implement and enforce only that portion of this part.

(e) Upon delegation, a state may use any authority it possesses under state law to enforce any permit condition or any other requirement of this part for which the agency has delegated authority under this part. A state may use any authority it possesses under state law to require monitoring and reporting and to conduct inspections.

(f) Nothing in this part shall prohibit the Administrator from enforcing any requirement of this part.

(g) The Administrator will withdraw a delegation of any authority to implement and enforce any or all of this part if the Administrator determines that: (1) The requirements of this part are not being adequately implemented or enforced by the delegated agency, or (2) The delegated agency no longer has adequate regulations as required by § 55.11(b) of this part.

(h) *Sharing of information.* Any information obtained or used in the administration of a delegated program shall be made available to EPA upon request without restriction. If the information has been submitted to the delegated agency under a claim of confidentiality, the delegated agency must notify the source of this obligation and submit that claim to EPA. Any information obtained from a delegated agency accompanied by a claim of confidentiality will be treated in accordance with the requirements of 40 CFR Part 2.

(i) *Grant of exemptions.* A decision by a delegated agency to grant or deny an exemption request may be appealed to the Administrator in accordance with § 55.7 of this part.

§ 55.12 Consistency updates.

(a) The Administrator will update this part as necessary to maintain consistency with the regulations of onshore areas in order to attain and maintain federal and state ambient standards and comply with part C of title I of the Act.

(b) Where an OCS activity is occurring within 25 miles of a state seaward boundary, consistency reviews will occur at least annually. In addition, in accordance with paragraphs (c) and (d) of this section, consistency reviews will occur upon receipt of an NOI and when a state or local agency submits a rule to EPA to be considered for incorporation by reference in this part 55.

(1) Upon initiation of a consistency review, the Administrator will evaluate the requirements of part 55 to determine whether they are consistent with the current onshore requirements.

(2) If the Administrator finds that part 55 is inconsistent with the requirements in effect in the onshore area, EPA will conduct a notice and comment rulemaking to update part 55 accordingly.

(c) *Consistency reviews triggered by receipt of an NOI.* Upon receipt of an NOI, the Administrator will initiate a consistency review of regulations in the onshore area.

(1) If the NOI is submitted by a source for which the COA has previously been assigned, EPA will publish a proposed consistency update in the **Federal Register** no later than 60 days after the receipt of the NOI, if an update is deemed necessary by the Administrator:

(2) If the NOI is submitted by a source requiring a COA designation, EPA will publish a proposed consistency update in the **Federal Register**, if an update is deemed necessary by the Administrator:

(i) No later than 75 days after receipt of the NOI if no adjacent areas submit a request for COA designation and the NOA becomes the COA by default, or

(ii) No later than 105 days after receipt of the NOI if an adjacent area submits a request to be designated as COA but fails to submit the required demonstration within 90 days of receipt of the NOI, or

(iii) No later than 15 days after the date of the final COA determination if one or more demonstrations are received.

(d) *Consistency reviews triggered by state and local air pollution control agencies submitting rules directly to EPA for inclusion into Part 55.*

(1) EPA will propose in the **Federal Register** to approve applicable rules submitted by state or local regulatory agencies for incorporation by reference into § 55.14 of this part by the end of the calendar quarter following the quarter in which the submittal is received by EPA.

(2) State and local rules submitted for inclusion in part 55 must be rationally related to the attainment and maintenance of federal or state ambient air quality standards or to the requirements of part C of title I of the Act. The submittal must be legible and unmarked, with the adoption date and the name of the agency on each page, and must be accompanied by proof of adoption.

(e) No rule or regulation that EPA finds to be arbitrary or capricious will be incorporated into this part.

(f) A source may not submit a complete permit application until any update the Administrator deems necessary to make part 55 consistent with the COA's rules has been proposed.

§ 55.13 Federal requirements that apply to OCS sources.

(a) The requirements of this section shall apply to OCS sources as set forth below. In the event that a requirement of this section conflicts with an applicable requirement of § 55.14 of this part and a source cannot comply with the requirements of both sections, the more stringent requirement shall apply.

(b) In applying the requirements incorporated into this section:

(1) "New Source" means new OCS source; and

(2) "Existing Source" means existing OCS source; and

(3) "Modification" means a modification to an OCS source.

(4) For requirements adopted prior to promulgation of this part, language in such requirements limiting the applicability of the requirements to onshore sources or to sources within state boundaries shall not apply.

(c) 40 CFR Part 60 (NSPS) shall apply to OCS sources in the same manner as in the COA, except that any source determined to be an existing source pursuant to § 55.3(e) of this part shall not be considered a "new source" for the purpose of NSPS adopted before December 5, 1991.

(d) 40 CFR 52.21 (PSD) shall apply to OCS sources:

(1) Located within 25 miles of a state's seaward boundary if the requirements of 40 CFR 52.21 are in effect in the COA;

(2) Located beyond 25 miles of states' seaward boundaries.

(e) 40 CFR Part 61, together with any other provisions promulgated pursuant to section 112 of the Act, shall apply if rationally related to the attainment and maintenance of federal or state ambient air quality standards or the requirements of part C of title I of the Act.

(f) (Reserved).

(g) The provisions of 40 CFR 52.10, 40 CFR 52.24, and 40 CFR Part 51 and accompanying Appendix S shall apply to OCS sources located within 25 miles of states' seaward boundaries, if these requirements are in effect in the COA.

(h) If the Administrator determines that additional requirements are necessary to protect federal and state ambient air quality standards or to comply with part C of title I, such requirements will be incorporated in this part.

§ 55.14 Requirements that apply to OCS sources located within 25 miles of states' seaward boundaries, by state.

(a) The requirements of this section shall apply to OCS sources as set forth below. In the event that a requirement of this section conflicts with an applicable requirement of § 55.13 of this part and a source cannot comply with the requirements of both sections, the more stringent requirement shall apply.

(b) In applying the requirements incorporated into this section:

(1) "New Source" means new OCS source; and

(2) "Existing Source" means existing OCS source; and

(3) "Modification" means a modification to an existing OCS source.

(4) For requirements adopted prior to promulgation of this part, language in such requirements limiting the applicability of the requirements to onshore sources or to sources within state boundaries shall not apply.

(c) During periods of EPA implementation and enforcement of this section, the following shall apply:

(1) Any reference to a state or local air pollution control agency or air pollution control officer shall mean EPA or the Administrator, respectively.

(2) Any submittal to state or local air pollution control agency shall instead be submitted to the Administrator through the EPA Regional Office.

(3) Nothing in this section shall alter or limit EPA's authority to administer or enforce the requirements of this part under federal law.

(4) EPA shall not be bound by any state or local administrative or procedural requirements including, but not limited to, requirements pertaining to hearing boards, permit issuance, public notice procedures, and public hearings. EPA will follow the applicable procedures set forth elsewhere in this part, in 40 CFR Part 124, and in federal rules promulgated pursuant to title V of the Act (as such rules apply in the COA), when administering this section.

(5) Only those requirements of 40 CFR Part 52 that are rationally related to the attainment and maintenance of federal or state ambient air quality standards or part C of title I shall apply to OCS sources.

(d) *Implementation Plan Requirements.*

(1) (Reserved).

(2) Alaska.

(i) 40 CFR part 52, subpart C.

(ii) (Reserved).

(3) California.

(i) 40 CFR part 52, subpart F.

(ii) (Reserved).

(4) and (5) (Reserved).

(6) Florida.

(i) 40 CFR part 52, subpart K.

(ii) (Reserved).

(7) through (16) (Reserved).

(17) North Carolina.

(i) 40 CFR part 52, subpart II.

(ii) (Reserved).

(18) through (23) (Reserved).

(e) *State and local requirements.* State and local requirements promulgated by EPA as applicable to OCS sources located within 25 miles of states' seaward boundaries have been compiled into separate documents organized by state and local areas of jurisdiction. These documents, set forth below, are incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register Office in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be inspected at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. Copies of rules pertaining to particular states or local areas may be inspected or obtained from the EPA Air Docket (A-91-76), U.S. EPA, room M-1500, 401 M Street, SW., Washington, DC, 20460 or the appropriate EPA regional offices: U.S. EPA, Region 4 (Florida and North Carolina), 345 Courtland Street, NE., Atlanta, GA 30365; U.S. EPA, Region 9 (California), 75 Hawthorne Street, San Francisco, CA 94105; and U.S. EPA, Region 10 (Alaska), 1200 Sixth Avenue, Seattle, WA 98101. For an informational listing of the state and local requirements incorporated into this part, which are applicable to sources of air pollution located on the OCS, see Appendix A to this part.

(1) (Reserved).

(2) Alaska.

(i) State requirements.

(A) *State of Alaska Requirements Applicable to OCS Sources,* August 21, 1992.

(B) (Reserved).

(ii) Local requirements.

(A) *South Central Alaska Clean Air Authority Requirements Applicable to OCS Sources,* August 21, 1992.

(B) (Reserved).

(3) California.

(i) State requirements.

(A) (Reserved).

(ii) Local requirements.

(A)–(D) (Reserved).

(E) *San Luis Obispo County Air Pollution Control District Requirements Applicable to OCS Sources,* August 21, 1992.

(F) *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources,* August 21, 1992.

(G) *South Coast Air Quality Management District Requirements Applicable to OCS Sources,* August 21, 1992.

(H) *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources,* August 21, 1992.

(4) and (5) (Reserved).

(6) Florida.

(i) State requirements.

(A) *State of Florida Requirements Applicable to OCS Sources,* August 21, 1992.

(B) (Reserved).

(ii) Local requirements.

(A) (Reserved).

(7) through (16) (Reserved).

(17) North Carolina.

(i) State requirements.

(A) *State of North Carolina Air Pollution Control Requirements Applicable to OCS Sources,* August 21, 1992.

(B) (Reserved).

(ii) Local requirements.

(A) (Reserved).

(18) through (23) (Reserved).

Appendix A to 40 CFR Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

This Appendix lists the titles of the state and local requirements that are contained within the documents incorporated by reference into 40 CFR Part 55.

Alaska

(a) State requirements.

(1) The following requirements are contained in *State of Alaska Requirements Applicable to OCS Sources,* August 21, 1992:

Alaska Administrative Code—Department of Environmental Conservation. The following sections of Title 18, Chapter 50:

18 AAC 50.020 Ambient Air Quality Standards (Effective 7/21/91)

18 AAC 50.030 Open Burning (Effective 10/30/83)

18 AAC 50.040 Incinerators (Effective 10/30/83)

18 AAC 50.050 Industrial Processes and Fuel Burning Equipment (Effective 5/11/91)

18 AAC 50.090 Ice Fog Limitations (Effective 5/26/72)

18 AAC 50.100 Marine Vessels (Effective 7/21/91)

18 AAC 50.110 Air Pollution Prohibited (Effective 5/26/72)

18 AAC 50.300 Permit to Operate (Effective 7/21/91)

18 AAC 50.310 Revocation or Suspension of Permit (Effective 5/4/80)

18 AAC 50.400 Application Review and Issuance of Permit to Operate (Effective 7/21/91)

18 AAC 50.500 Source Testing (Effective 6/2/88)

18 AAC 50.510 Ambient Analysis Methods (Effective 7/21/91)

18 AAC 50.520 Emission and Ambient Monitoring (Effective 7/21/91)

18 AAC 50.530 Circumvention (Effective 6/7/87)

18 AAC 50.820 Air Quality Control Plan; Volume II, Section IV: Paragraph F.—Facility Review Procedures; Paragraph G.—Application Review and Permit Development, only. (Effective 7/21/91)
18 AAC 50.900 Definitions (Effective 7/21/91)

(b) Local requirements.

(1) the following requirements are contained in *South Central Alaska Clean Air Authority Requirements Applicable to OCS Sources*, August 21, 1992:

15.30.030 | Definitions
15.30.100 | Registration and Notification, except E
15.30.110 | Permit to Operate
15.30.120 | Source Reports
15.30.130 | Source Tests
15.35.040 | Stationary Source Emissions—General Definitions
15.35.050 | Stationary Source Emissions—Visible Emission Standards
15.35.060 | Stationary Source Emissions—Emission Standards
15.35.080 | Stationary Source Emissions—Circumvention
15.35.090 | Stationary Source Emissions—Fugitive Emissions
15.35.100 | Stationary Source Emissions—Open Burning

California

(a) State requirements.

(1) (Reserved).

(b) Local requirements.

(1)–(4) (Reserved).

(5) The following requirements are contained in *San Luis Obispo County Air Pollution Control District Requirements Applicable to OCS Sources*, August 21, 1992:

Rule 103 | Conflicts Between District, State and Federal Rules (Adopted 8/6/76)
Rule 104 | Action in Areas of High Concentration (Adopted 7/5/77)
Rule 105 | Definitions (Adopted 11/5/91)
Rule 106 | Standard Conditions (Adopted 8/6/76)
Rule 108 | Severability (Adopted 11/13/84)
Rule 113 | Continuous Emissions Monitoring, except F. (Adopted 7/5/77)
Rule 201 | Equipment not Requiring a Permit, except A.1.b. (Adopted 11/5/91)
Rule 202 | Permits, except A.4. and A.8. (Adopted 11/5/91)
Rule 203 | Applications, except B. (Adopted 11/5/91)
Rule 204 | Requirements, except B.2. and C. (Adopted 11/5/91)
Rule 209 | Provision for Sampling and Testing Facilities (Adopted 11/5/91)
Rule 210 | Periodic Inspection, Testing and Renewal of Permits to Operate (Adopted 11/5/91)
Rule 213 | Calculations, except E.4. and F. (Adopted 11/5/91)
Rule 302 | Schedule of Fees (Adopted 7/1/91)
Rule 305 | Fees for Acid Deposition Research (Adopted 7/18/89)
Rule 401 | Visible Emissions (Adopted 8/6/76)
Rule 403 | Particulate Matter Emission Standards (Adopted 8/6/76)
Rule 404 | Sulfur Compounds Emission Standards, Limitations and Prohibitions (Adopted 12/6/76)
Rule 405 | Nitrogen Oxides Emission Standards, Limitations and Prohibitions (Adopted 11/13/84)
Rule 406 | Carbon Monoxide Emission Standards, Limitations and Prohibitions (Adopted 11/14/84)
Rule 407 | Organic Material Emission Standards, Limitations and Prohibitions (Adopted 1/10/89)
Rule 411 | Surface Coating of Metal Parts and Products (Adopted 1/10/89)
Rule 416 | Degreasing Operations (Adopted 6/18/79)
Rule 422 | Refinery Process Turnarounds (Adopted 6/18/79)
Rule 501 | General Burning Provisions (Adopted 1/10/89)
Rule 503 | Incinerator Burning, except B.1.a. (Adopted 2/7/89)
Rule 601 | New Source Performance Standards (Adopted 9/4/90)

(6) The following requirements are contained in *Santa Barbara County air Pollution Control District Requirements Applicable to OCS Sources*, August 21, 1992:

Rule 102 Definitions (Adopted 7/30/91)
Rule 103 Severability (Adopted 10/23/78)
Rule 201 Permits Required (Adopted 7/2/79)
Rule 202 Exemptions to Rule 201 (Adopted 7/30/91)
Rule 203 Transfer (Adopted 10/23/78)
Rule 204 Applications (Adopted 10/23/78)
Rule 205 Standards for Granting Applications (Adopted 7/30/91)
Rule 206 Conditional Approval of Authority to Construct or Permit to Operate (Adopted 10/15/91)
Rule 207 Denial of Applications (Adopted 10/23/78)
Rule 210 Fees (Adopted 5/7/91)
Rule 301 Circumvention (Adopted 10/23/78)
Rule 302 Visible Emissions (Adopted 10/23/78)
Rule 304 Particulate Matter—Northern Zone (Adopted 10/23/78)
Rule 305 Particulate Matter Concentration—Southern Zone (Adopted 10/23/78)
Rule 306 Dust and fumes—Northern Zone (Adopted 10/23/78)
Rule 307 Particulate Matter Emission Weight Rate—Southern Zone (Adopted 10/23/78)
Rule 308 Incinerator Burning (Adopted 10/23/78)
Rule 309 Specific Contaminants (Adopted 10/23/78)
Rule 310 Odorous Organic Sulfides (Adopted 10/23/78)
Rule 311 Sulfur Content of Fuels (Adopted 10/23/78)
Rule 312 Open Fires (Adopted 10/2/90)
Rule 317 Organic Solvents (Adopted 10/23/78)
Rule 318 Vacuum Producing Devices or Systems—Southern Zone (Adopted 10/23/78)
Rule 321 Control of Degreasing Operations (Adopted 7/10/90)
Rule 322 Metal Surface Coating Thinner and Reducer (Adopted 10/23/78)
Rule 323 Architectural Coatings (Adopted 2/20/90)
Rule 324 Disposal and Evaporation of Solvents (Adopted 10/23/78)
Rule 325 Storage of Petroleum and Petroleum Products (Adopted 7/11/89)
Rule 326 Effluent Oil Water Separators (Adopted 10/23/78)
Rule 327 Organic Liquid Cargo Tank Vessel Loading (Adopted 12/16/85)
Rule 328 Continuous Emission Monitoring (Adopted 10/23/78)
Rule 331 Refinery Valves and Flanges (Adopted 7/11/89)
Rule 332 Petroleum Refinery Vacuum Producing Systems, Wastewater Separators and Process Turnarounds (Adopted 6/11/79)
Rule 505 Breakdown Conditions Sections A., B.1., and D. only. (Adopted 10/23/78)
Rule 603 Emergency Episode Plans (Adopted 6/15/81)

(7) The following requirements are contained in *South Coast Air Quality Management District Requirements Applicable to OCS Sources*, August 21, 1992:

Rule 102 Definition of Terms (Adopted 11/4/88)
Rule 103 Definition of Geographical Areas (Adopted 1/9/76)
Rule 104 Reporting of Source Test Data and Analyses (Adopted 1/9/76)
Rule 107 Determination of Volatile Organic Compounds in Organic Material (Adopted 1/8/82)
Rule 108 Alternative Emission Control Plans (Adopted 4/6/90)
Rule 109 Recordkeeping for Volatile Organic Compound Emissions (Adopted 5/5/89)
Rule 201 Permit to Construct (Adopted 1/5/90)
Rule 201.1 Permit Conditions in Federally Issued Permits to Construct (Adopted 1/5/90)
Rule 202 Temporary Permit to Operate (Adopted 5/7/76)
Rule 203 Permit to Operate (Adopted 1/5/90)
Rule 204 Permit Conditions (Adopted 1/4/85)
Rule 205 Expiration of Permits to Construct (Adopted 1/5/90)
Rule 206 Posting of Permit to Operate (Adopted 1/5/90)
Rule 207 Altering or Falsifying of Permit (Adopted 1/9/76)
Rule 208 Permit for Open Burning (Adopted 1/5/90)
Rule 209 Transfer and Voiding of Permits (Adopted 1/5/90)
Rule 210 Applications (Adopted 1/5/90)
Rule 212 Standards for Approving Permits (Adopted 6/28/90)
Rule 214 Denial of Permits (Adopted 1/5/90)
Rule 217 Provisions for Sampling and Testing Facilities (Adopted 1/5/90)
Rule 218 Stack Monitoring (Adopted 8/7/81)
Rule 219 Equipment Not Requiring a Written Permit Pursuant to Regulation II (Adopted 6/3/88)
Rule 220 Exemption—Net Increase in Emissions (Adopted 8/7/81)
Rule 221 Plans (Adopted 1/4/85)
Rule 301 Permit Fees (Adopted 6/7/91)
Rule 304 Equipment, Materials and Ambient Air Analyses (Adopted 7/6/90)
Rule 304.1 Analyses Fees (Adopted 6/7/91)
Rule 305 Fees for Acid Deposition Research (Adopted 3/3/89)
Rule 306 Plan Fees (7/6/90)

Rule 401 Visible Emissions (Adopted 4/7/89)
Rule 403 Fugitive Dust (Adopted 5/7/76)
Rule 404 Particulate Matter—Concentration (Adopted 2/7/86)
Rule 405 Solid Particulate Matter—Weight (Adopted 2/7/86)
Rule 407 Liquid and Gaseous Air Contaminants (Adopted 4/2/82)
Rule 408 Circumvention (Adopted 5/7/76)
Rule 409 Combustion Contaminants (Adopted 8/7/81)
Rule 429 Start-Up and Shutdown Provisions for Oxides of Nitrogen (Adopted 12/21/90)
Rule 430 Breakdown Provisions, (a) and (e) only. (Adopted 5/5/78)
Rule 431.1 Sulfur Content of Gaseous Fuels (Adopted 5/4/90)
Rule 431.2 Sulfur Content of Liquid Fuels (Adopted 5/4/90)
Rule 431.3 Sulfur Content of Fossil Fuels (Adopted 5/7/76)
Rule 441 Research Operations (Adopted 5/7/76)
Rule 442 Usage of Solvents (Adopted 3/5/82)
Rule 444 Open Fires (Adopted 10/2/87)
Rule 463 Storage of Organic Liquids (Adopted 12/7/90)
Rule 465 Vacuum Producing Devices or Systems (Adopted 12/7/90)
Rule 468 Sulfur Recovery Units (Adopted 10/8/76)
Rule 473 Disposal of Solid and Liquid Wastes (5/7/76)
Rule 474 Fuel Burning Equipment—Oxides of Nitrogen (Adopted 12/4/81)
Rule 475 Electric Power Generating Equipment (Adopted 8/7/78)
Rule 476 Steam Generating Equipment (Adopted 10/8/76)
Rule 480 Natural Gas Fired Control Devices (Adopted 10/7/77)
Addendum to Regulation IV
Rule 701 General (Adopted 7/9/82)
Rule 702 Definitions (Adopted 7/11/80)
Rule 704 Episode Declaration (Adopted 7/9/82)
Rule 707 Radio-Communication System (Adopted 7/11/80)
Rule 708 Plans (Adopted 7/9/82)
Rule 708.1 Stationary Sources Required to File Plans (Adopted 4/4/80)
Rule 708.2 Content of Stationary Source Curtailment Plans (Adopted 4/4/80)
Rule 708.4 Procedural Requirements for Plans (Adopted 7/11/80)
Rule 709 First Stage Episode Actions (Adopted 7/11/80)
Rule 710 Second Stage Episode Actions (Adopted 7/11/80)
Rule 711 Third Stage Episode Actions (Adopted 7/11/80)
Rule 712 Sulfate Episode Actions (Adopted 7/11/80)
Rule 715 Burning of Fossil Fuel on Episode Days (Adopted 8/24/77)
Regulation IX—New Source Performance Standards (Adopted 9/7/90)
Rule 1106 Marine Coating Operations (Adopted 12/7/90)
Rule 1107 Coating of Metal Parts and Products (Adopted 11/2/90)
Rule 1109 Emissions of Oxides of Nitrogen for Boilers and Process Heaters in Petroleum Refineries (Adopted 8/5/88)
Rule 1110 Emissions from Stationary Internal Combustion Engines (Demonstration) (Adopted 11/6/81)
Rule 1110.1 Emissions from Stationary Internal Combustion Engines (Adopted 10/4/85)
Rule 1110.2 Emissions from Gaseous- and Liquid-Fueled Internal Combustion Engines (Adopted 9/7/90)
Rule 1113 Architectural Coatings (Adopted 12/7/90)
Rule 1116.1 Lightering Vessel Operations—Sulfur Content of Bunker Fuel (Adopted 10/20/78)
Rule 1121 Control of Nitrogen Oxides from Residential-Type Natural Gas-Fired Water Heaters (Adopted 12/1/78)
Rule 1122 Solvent Cleaners (Degreasers) (Adopted 5/5/89)
Rule 1123 Refinery Process Turnarounds (Adopted 12/7/90)
Rule 1129 Aerosol Coatings (Adopted 11/2/90)
Rule 1134 Emissions of Oxides of Nitrogen from Stationary Gas Turbines (Adopted 8/4/89)
Rule 1140 Abrasive Blasting (Adopted 8/2/85)
Rule 1142 Marine Tank Vessel Operations (Adopted 7/19/91)
Rule 1146 Emissions of Oxides of Nitrogen from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 1/6/89)
Rule 1146.1 Emissions of Oxides of Nitrogen from Small Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 10/5/90)
Rule 1148 Thermally Enhanced Oil Recovery Wells (Adopted 11/5/82)
Rule 1149 Storage Tank Degassing (Adopted 4/1/88)
Rule 1168 Control of Volatile Organic Compound Emissions from Adhesive Applications (Adopted 7/19/91)
Rule 1173 Fugitive Emissions of Volatile Organic Compounds (Adopted 12/7/90)
Rule 1176 Sumps and Wastewater Separators (Adopted 1/5/90)
Rule 1301 General (Adopted 6/28/90)
Rule 1302 Definitions (Adopted 6/28/90)
Rule 1303 Requirements (Adopted 5/3/91)
Rule 1304 Exemptions (Adopted 5/3/91)
Rule 1306 Emission Calculations (Adopted 5/3/91)
Rule 1313 Permits to Operate (Adopted 6/28/90)
Rule 1403 Asbestos Emissions from Demolition/Renovation Activities (Adopted 10/6/89)
Rule 1701 General (Adopted 1/6/89)
Rule 1702 Definitions (Adopted 1/6/89)
Rule 1703 PSD Analysis (Adopted 10/7/88)
Rule 1704 Exemptions (Adopted 1/6/89)
Rule 1706 Emission Calculations (Adopted 1/6/89)
Rule 1713 Source Obligation (Adopted 10/7/88)
Regulation XVII Appendix

(8) The following requirements are contained in *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources*, August 21, 1992:

Rule 2 Definitions (Adopted 5/8/90)
Rule 5 Effective Date (Adopted 5/23/72)
Rule 6 Severability (Adopted 11/21/78)
Rule 7 Zone Boundaries (Adopted 6/14/77)
Rule 10 Permits Required (Adopted 7/5/83)
Rule 11 Application Contents (Adopted 8/15/78)
Rule 12 Statement by Application Preparer (Adopted 6/16/87)
Rule 13 Statement by Applicant (Adopted 11/21/78)
Rule 14 Trial Test Runs (Adopted 5/23/72)
Rule 15 Permit Issuance (Adopted 7/5/83)
Rule 16 Permit Contents (Adopted 12/2/80)
Rule 18 Permit to Operate Application (Adopted 8/17/76)
Rule 19 Posting of Permits (Adopted 5/23/72)
Rule 20 Transfer of Permit (Adopted 5/23/72)
Rule 21 Expiration of Applications and Permits (Adopted 6/23/81)
Rule 23 Exemptions from Permit (Adopted 1/8/91)
Rule 24 Source Recordkeeping and Reporting (Adopted 11/21/78)
Rule 26 New Source Review (Adopted 2/26/85)
Rule 26.1 All New or Modified Major Stationary Sources (Adopted 11/19/85)
Rule 26.2 New or Modified Non-Major Sources (Adopted 11/19/85)
Rule 26.3 New or Modified Stationary Sources—Prevention of Significant Deterioration (PSD) (Adopted 11/19/85)
Rule 26.6 Air Quality Impact Analysis and Notification (Adopted 1/10/84)
Rule 28 Revocation of Permits (Adopted 7/18/72)
Rule 29 Conditions on Permits (Adopted 5/30/89)
Rule 30 Permit Renewal (Adopted 5/30/89)
Rule 32 Breakdown Conditions; Emergency Variances, A., B.1., and D. only. (Adopted 2/20/79)
Appendix II–A Information Required for Applications to the Air Pollution Control District
Appendix II–B Best Available Control Technology (BACT) Tables
Rule 42 Permit Fees (Adopted 6/19/90)
Rule 44 Exemption Evaluation Fee (Adopted 1/8/91)
Rule 45 Plan Fees (Adopted 6/19/90)
Rule 50 Opacity (Adopted 2/20/79)
Rule 52 Particulate Matter-Concentration (Adopted 5/23/72)
Rule 53 Particulate Matter-Process Weight (Adopted 7/18/72)
Rule 54 Sulfur Compounds (Adopted 7/5/83)
Rule 56 Open Fires (Adopted 5/24/88)
Rule 57 Combustion Contaminants—Specific (Adopted 6/14/77)
Rule 60 New Non-Mobile Equipment—Sulfur Dioxide, Nitrogen Oxides, and Particulate Matter (Adopted 7/8/72)
Rule 63 Separation and Combination of Emissions (Adopted 11/21/78)
Rule 64 Sulfur Content of Fuels (Adopted 7/5/83)
Rule 66 Organic Solvents (Adopted 11/24/87)
Rule 67 Vacuum Producing Devices (Adopted 7/5/83)
Rule 68 Carbon Monoxide (Adopted 6/14/77)
Rule 71 Crude Oil and Reactive Organic Compound Liquids (Adopted 9/11/90)

Rule 71.1 Crude Oil Production and Separation (Adopted 10/4/88)
Rule 71.2 Storage of Reactive Organic Compound Liquids (Adopted 9/26/89)
Rule 71.3 Transfer of Reactive Organic Compound Liquids (Adopted 9/11/90)
Rule 71.4 Petroleum Sumps, Pits, Ponds and Well Cellars (Adopted 10/4/88)
Rule 72 New Source Performance Standards (NSPS) (Adopted 6/19/90)
Rule 74 Specific Source Standards (Adopted 7/6/76)
Rule 74.1 Abrasive Blasting (Adopted 9/5/89)
Rule 74.2 Architectural Coatings (Adopted 10/21/86)
Rule 74.6 Surface Cleaning and Degreasing (Adopted 5/8/90)
Rule 74.6.1 Cold Cleaning Operations (Adopted 9/12/89)
Rule 74.6.2 Batch Loaded Vapor Degreasing Operations (Adopted 9/12/89)
Rule 74.7 Fugitive Emissions of Reactive Organic Compounds at Petroleum Refineries and Chemical Plants (Adopted 1/10/89)
Rule 74.8 Refinery Vacuum Producing Systems, Waste-water Separators and Process Turnarounds (Adopted 7/5/83)
Rule 74.9 Stationary Internal Combustion Engines (Adopted 9/5/89)
Rule 74.10 Components at Crude Oil Production Facilities and Natural Gas Production and Processing Facilities (Adopted 9/22/87)
Rule 74.11 Natural Gas-Fired Residential Water Heaters—Control of NO_x (Adopted 4/9/85)
Rule 74.12 Surface Coating of Metal Parts and Products (Adopted 5/15/89)
Rule 74.15 Boilers, Steam Generators and Process Heaters (Adopted 3/28/89)
Rule 74.16 Oil field Drilling Operations (Adopted 1/8/91)
Rule 75 Circumvention (Adopted 11/27/78)
Appendix IV–A Soap Bubble Tests
Rule 100 Analytical Methods (Adopted 7/18/72)
Rule 101 Sampling and Testing Facilities (Adopted 5/23/72)
Rule 102 Source Tests (Adopted 11/21/78)
Rule 103 Stack Monitoring (Adopted 6/4/91)
Rule 155 Plans (Adopted 11/20/79)
Rule 157 First Stage Episode Actions (Adopted 11/20/79)
Rule 158 Second Stage Episode Actions (Adopted 11/20/79)
Rule 159 Third Stage Episode Actions (Adopted 11/20/79)

Florida

(a) State requirements.

(1) The following requirements are contained in *State of Florida Requirements Applicable to OCS Sources*, August 21, 1992:

Florida Administrative Code—Department of Environmental Regulation. The following sections of Chapter 17:

2.100 Definitions (Adopted 9/13/90)
2.200 Statement of Intent (Adopted 8/26/81)
2.210 Permits Required (Adopted 7/9/89)
2.215 Emission Estimates (Adopted 5/1/85)
2.240 Circumvention (Adopted 8/26/81)
2.250 Excess Emissions (Adopted 8/26/81)
2.260 Air Quality Models (Adopted 7/9/89)
2.270 Stack Height Policy (Adopted 10/20/86)
2.280 Severability (Adopted 8/26/81)
2.300 Ambient Air Quality Standards (Adopted 7/9/89)
2.310 Maximum Allowable Increases (Prevention of Significant Deterioration) (Adopted 7/13/90)
2.320 Air Pollution Episodes (Adopted 8/26/81)
2.330 Air Alert (Adopted 5/30/80)
2.340 Air Warning (Adopted 7/9/89)
2.350 Air Emergency (Adopted 5/30/88)
2.500 Prevention of Significant Deterioration (Adopted 7/13/90)
2.510 New Source Review for Nonattainment Areas (Adopted 8/30/89)
2.520 Sources Not Subject to Prevention of Significant Deterioration or Nonattainment Requirements (Adopted 7/9/89)
2.530 Source Reclassification (Adopted 1/12/82)
2.540 Source Specific New Source Review Requirements (Adopted 7/9/89)
2.600 Specific Source Emission Limiting and Performance Standards (Adopted 8/30/89)
2.610 General Particulate Emission Limiting Standards (Adopted 7/9/89)
2.620 General Pollutant Emission Limiting Standards, except (2). (Adopted 8/26/81)
2.630 Best Available Control Technology (BACT) (Adopted 5/1/85)
2.640 Lowest Achievable Emission Rate (LAER) (Adopted 8/26/81)
2.650 Reasonably Available Control Technology (RACT), except (2)(f) (Adopted 9/13/90)
2.660 Standards of Performance for New Stationary Sources (NSPS) (Adopted 12/18/89)
2.670 National Emission Standards for Hazardous Air Pollutants (Adopted 12/5/88)
2.700 Stationary Point Source Emission Test Procedures (Adopted 8/30/89)
2.710 Continuous Emission Monitoring Requirements (Adopted 8/30/89)
2.753 DER Ambient Test Methods (Adopted 5/1/85)
4.020 Definitions (Adopted 3/31/88)
4.021 Transferability of Definitions (Adopted 8/31/88)
4.030 General Prohibitions (Adopted 8/31/88)
4.040 Exemptions (Adopted 8/31/88)
4.050 Procedure To Obtain Permit; Application, except (4)(b) through (4)(j) and 4(n) (Adopted 5/30/91)
4.070 Standards for Issuing or Denying Permits; Issuance; Denial (Adopted 3/28/91)
4.080 Modification of Permit Conditions (Adopted 3/19/90)
4.090 Renewals (Adopted 3/19/90)
4.100 Suspension and Revocation (Adopted 8/31/88)
4.110 Financial Responsibility (Adopted 8/31/88)
4.120 Transfer of Permits (Adopted 3/19/90)
4.130 Plant Operations—Problems (Adopted 8/31/88)
4.160 Permit Conditions, except (16) and (17) (Adopted 10/4/89)
4.210 Construction Permits (Adopted 8/31/88)
4.220 Operation Permits for New Sources (Adopted 8/31/88)
4.520 Definitions (Adopted 7/11/90)
4.530 Procedures (Adopted 3/19/90)
4.540 General conditions for all General Permits (Adopted 8/31/88)
256.100 Declaration and Intent (Adopted 10/20/86)
256.200 Definitions (Adopted 10/20/86)
256.300 Prohibitions (Adopted 10/20/86)
256.600 Industrial, Commercial, Municipal and Research Open Burning (Adopted 8/26/87)
256.700 Open Burning Allowed (Adopted 11/23/88)

(b) Local requirements.

(1) (Reserved).

North Carolina

(a) State requirements.

(1) The following requirements are contained in *State of North Carolina Air Pollution Control Requirements Applicable to OCS Sources*, August 21, 1992: The following sections of Subchapters 2D and 2H:

2D.0101 Definitions (Adopted 12/1/89)
2D.0104 Adoption by Reference Updates (Adopted 10/1/89)
2D.0201 Classification of Air Pollution Sources (Adopted 7/1/84)
2D.0202 Registration of Air Pollution Sources (Adopted 6/1/85)
2D.0303 Emission Reduction Plans (Adopted 7/1/84)
2D.0304 Preplanned Abatement Program (Adopted 7/1/88)
2D.0305 Emission Reduction Plan; Alert Level (Adopted 7/1/84)
2D.0306 Emission Reduction Plan; Warning Level (Adopted 7/1/84)
2D.0307 Emission Reduction Plan; Emergency Level (Adopted 7/1/84)
2D.0401 Purpose (Adopted 10/1/89)
2D.0501 Compliance with Emission Control Standards (Adopted 10/1/89)
2D.0502 Purpose (Adopted 6/1/85)
2D.0503 Particulates from Fuel Burning Indirect Heat Exchanger (Adopted 6/1/85)
2D.0505 Control of Particulate from Incinerators (Adopted 7/1/87)
2D.0510 Particulates: Sand, Gravel and Crushed Stone Operations (Adopted 1/1/85)
2D.0511 Particulates, SO_2 from Lightweight Aggregate Processes (Adopted 10/1/89)
2D.0515 Particulates from Miscellaneous Industrial Processes (Adopted 1/1/85)
2D.0516 Sulfur Dioxide Emissions Combustion Sources (Adopted 10/1/89)
2D.0518 Miscellaneous Volatile Organic Compound Emissions (Adopted 2/1/83)
2D.0519 Control of Nitrogen Dioxide Emissions (Adopted 10/1/89)
2D.0520 Control and Prohibition of Open Burning (Adopted 1/1/85)
2D.0521 Control of Visible Emissions (Adopted 8/1/87)
2D.0530 Prevention of Significant Deterioration (Adopted 10/1/89)
2D.0531 Sources in Nonattainment Area (Adopted 12/1/89)
2D.0532 Sources Contributing to an Ambient Violation (Adopted 10/1/89)
2D.0533 Stack Height (Adopted 7/1/87)

2D.0535 Excess Emissions Reporting and Malfunctions, (a) and (f) only. (Adopted 5/1/90)
2D.0537 Control of Mercury Emissions (Adopted 6/1/85)
2D.0601 Purpose and Scope (Adopted 7/1/84)
2D.0602 Definitions (Adopted 7/1/84)
2D.0604 Sources Covered by Implementation Plan Requirements (Adopted 7/1/88)
2D.0606 Other Coal or Residual Oil Burners (Adopted 5/1/85)
2D.0607 Exceptions to Monitoring and Reporting (Adopted 7/1/84)
2D.0901 Definitions (Adopted 12/1/89)
2D.0902 Applicability (Adopted 5/1/90)
2D.0903 Recordkeeping, Reporting, Monitoring (Adopted 12/1/89)
2D.0906 Circumvention (Adopted 1/1/85)
2D.0912 General Provisions on Test Methods and Procedures (Adopted 12/1/89)
2D.0914 Determination of VOC Emission Control System Efficiency (Adopted 1/1/85)
2D.0925 Petroleum Liquid Storage (Adopted 12/1/89)
2D.0933 Petroleum Liquid Storage in External Floating Roof Tanks (Adopted 12/1/89)
2D.0939 Determination of Volatile Organic Compound Vapor Emissions (Adopted 7/1/88)
2D.1101 Purpose (Adopted 5/1/90)
2D.1102 Applicability (Adopted 5/1/90)
2D.1103 Definition (Adopted 5/1/90)
2D.1104 Toxic Air Pollutant Guidelines (Adopted 5/1/90)
2D.1105 Facility Reporting, Recordkeeping (Adopted 5/1/90)
2D.1106 Determination of Ambient Air Concentrations (Adopted 5/1/90)
2D.1107 Multiple Facilities (Adopted 5/1/90)
2D.1108 Multiple Pollutants (Adopted 5/1/90)
2H.0601 Purpose and Scope (Adopted 10/1/89)
2H.0602 Definitions (Adopted 5/1/90)
2H.0603 Applications (Adopted 12/1/89)
2H.0609 Permit Fees (Adopted 8/1/88)
2H.0610 Permit Requirements for Toxic Air Pollutants (Adopted 5/1/90)

(b) Local requirements.

(1) (Reserved).

[FR Doc. 92-21256 Filed 9-3-92; 8:45 am]

BILLING CODE 6560-50-M

federal register

Friday
September 4, 1992

Part IV

Office of Personnel Management

Notice of Request for Expedited Review of Instructions for OPM 2809-EZ1 by OMB

OFFICE OF PERSONNEL MANAGEMENT

Request for Expedited Review of Instructions for OPM 2809–EZ1 Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces the expedited review by OMB for a clearance of instructions for the information collection, OPM 2809–EZ1—Open Season Health Benefits Enrollment Change Form or Request for Additional Information. The form appeared for comment in the **Federal Register** on June 18, 1992, and now we are submitting the instructions. These instruction will be under the same clearance as the OPM 2809–EZ1. OPM 2809–EZ1 is completed by annuitants or survivor annuitants who wish to change enrollment in the FEHB program during the annual open season.

Approximately 127,913 forms are completed annually, each requiring approximately 30 minutes to complete for a total public burden of 63,957 hours.

A draft copy of this proposal is appended to this notice.

DATES: Comments on this proposal should be received on or before September 9, 1992. OMB will act upon this clearance by September 11, 1992.

ADDRESS: Send or deliver comments to—

Lorraine Dettman, Chief, Operations Support Division, Retirement and Insurance Group, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415.

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 3002, Washington, DC 20503

FOR FURTHER INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Chief Administrative Management Branch (202) 606–0623.

U.S. Office of Personnel Management.

Douglas A. Brook,

Acting Director.

BILLING CODE 6325-01-M

Open Season Information and Instructions for Annuitants

November 9 - December 14, 1992

RI 70-NY
Rev. October 1992

Office of Personnel Management
Retirement and Insurance Group
Washington, DC 20415

The annual Federal Employees Health Benefits (FEHB) Open Season will be from November 9 through December 14 this year. During the open season you may change from one plan to another, from one option to another in the same plan, or from self only to self and family. *Coverage under your current enrollment will continue automatically unless you request a change or unless your current plan will no longer be participating in the FEHB Program after December 31, 1992. Do not complete and return the enclosed form to notify us that you wish to continue your current health benefits enrollment coverage.*

This annuitant package contains both informational material and an enrollment change form tailored especially for you. The plan comparison chart on the following pages shows the benefits and premiums effective in January 1993 for open fee-for-service plans in the FEHB Program and any prepaid plans available in your geographic area. Your current plan will send you its 1993 brochure by separate mail. **Don't rely on the chart alone.** Detailed information about plan benefits and the contractual description of coverage appear in the plan brochures. Before you make a final decision about changing your enrollment, you should review carefully the official brochure for the plan or plans in which you are interested.

Important

You should carefully review the 1993 premiums shown in the plan comparison chart for your plan and option of coverage. There are only limited opportunities which could permit you to change your enrollment outside the open season. If you do not change your enrollment during open season, you may not be eligible to change later, even if you do not wish to pay an increased premium cost for your enrollment. If you elect to cancel your enrollment in the FEHB Program you may not be eligible to reenroll at a later date.

Important notice about signatures

Only the enrollee or an OPM approved representative can sign the enclosed form to make an enrollment change. Persons granted **Power of Attorney** are not recognized representatives for the purpose of changing health benefits coverage of an enrollee. To avoid delays in processing your enrollment change request, make sure you sign the enclosed form.

Important benefit changes

If you are enrolled in a fee-for-service plan for 1993, read your plan's brochure to learn about these two important changes: (1) the plan's payment for doctor's services is limited by an amount set by Medicare, and (2) because Medicare does not cover prescription drugs, the prescription drug coinsurance will not be waived for Medicare beneficiaries.

Plans not participating in the FEHB Program in 1993

A number of plans have decided to withdraw from the FEHB Program after December 31, 1992 including the National Treasury Employees Union (NTEU) Health Benefit Plan. If you are enrolled in one of these plans, you should elect new coverage during the open season. If you no longer wish to have FEHB Program coverage, you MUST elect to cancel your enrollment. If you do not elect new coverage or cancel your FEHB Program participation, you will be deemed to have elected to enroll in the Blue Cross and Blue Shield Service Benefit Plan, which is the only plan available to all enrollees without a membership fee. The effective date of your deemed election will be January 1, 1993. This will assure your continued coverage and eligibility to participate in the FEHB Program.

Hospital admission requirement in fee-for-service plans

The preadmission certification is a cost containment measure to ensure that hospital admissions are medically necessary for the type of treatment you require and that your insurance pays only for the number of hospital days required to treat your condition. You must check, or confirm that your doctor has checked, with your plan before you are admitted to the hospital. If that isn't done, your plan will reduce benefits by $500. Be a responsible consumer, avoid penalties and help keep premiums under control by following the procedures specified in your plan's brochure.

Direct payment of health insurance premiums

If the amount of your monthly annuity is less than the monthly premium for the plan or option you want, you may be eligible to pay your share of the premium directly to OPM. You may request information on electing this payment option by completing Section 2 of the enclosed EZ-1.

Effective dates of open season changes and cancellations

If you change your enrollment coverage, your new coverage will be effective January 1, 1993. Cancellations made during the open season are effective December 31, 1992. Your February 1, 1993, annuity payment will be the first monthly payment to reflect the new premium deductions for 1993.

Late authorization

If you request additional FEHB information during the Open Season, you will be granted at least 31 days in which to review the information and return your enrollment change request to us. A special authorization message will appear on the form we send you, granting this individual extension.

Recent retirees

If you received this package, OPM has received your application and records from your last employing agency. These records indicated that you were eligible to continue your health benefits enrollment into retirement. If you make an enrollment change it will be processed along with your retirement application, and you will receive a copy of an OPM Form 2809 showing your election of new enrollment coverage effective January 1, 1993.

Identification cards

These cards are issued by the health plans, not OPM. Thus, your inquiries regarding identification cards should be directed to your plan. It may take up to 3 months after OPM has processed your open season change for you to receive your new identification card. Should you or your family require medical attention after the January 1 effective date, but before you receive your new identification card, you may use the confirmation letter or the copy of the OPM Form 2809 we will send you as proof of your new coverage.

Husband and wife accounts

If you and your spouse are both receiving Civil Service Retirement benefits, and you are enrolled in FAMILY coverage, you may decide that it would be more advantageous to have two self only coverages (one for you and one for your spouse). If you want to make such a change, **DO NOT USE THE OPEN SEASON FORM** because your spouse will not receive an open season form to enroll in the FEHB Program. To ensure your change from family to self only coverage and your spouse's request to enroll in self only coverage will be processed

together, and avoid a lapse in health coverage, you and your spouse should make your health benefits change requests by writing to:

Office of Personnel Management
Open Season Task Force
P.O. Box 809
Washington, DC 20044

Your and your spouse's written request must include your retirement claim numbers, Social Security Numbers, the plans and options being elected, and signatures. **WE WILL NOT CHANGE YOUR HEALTH BENEFITS COVERAGE UNTIL WE HAVE DETERMINED THAT YOUR SPOUSE MEETS THE ELIGIBILITY REQUIREMENTS TO ALSO ENROLL.**

Restricted fee-for-service plans

If you are eligible to enroll in or are enrolled in BACE, FOREIGN SERVICE, NAPUS, PANAMA CANAL AREA, RURAL CARRIERS, SAMBA OR SECRET SERVICE, you should review a plan brochure for information concerning benefits and premium rates for 1993. These are limited plans open only to specific individuals and for this reason have not been included in the chart below.

Additional help

If you need assistance in completing your form, you may write to the Open Season Task Force at the address shown above or you may call OPM's Retirement Information Office in Washington, DC. (This is a Toll Call if you are calling long distance.) For open season telephone inquiries dial (202) 606-0125.

FEHB Plan Comparison Chart - for benefits beginning in January 1993

Fee-for-service plans

Fee-for-service plans reimburse you or the health care provider in whole or in part for covered services. These plans allow you to choose your own providers.

The Service Benefit Plan is open to all annuitants. The employee organization plans shown below are open to all annuitants who join the sponsoring organization at fees specified in its brochure.

Fee-for-service plans typically use either **reasonable and customary** (R&C) or **scheduled allowance** (SA) as the maximum amount they will pay toward covered expenses. R&C is the amount a plan considers to be covered based on a profile of charges for similar procedures. SA is a fixed dollar amount allowed for a covered service. Generally, you must pay charges in excess of the R&C or SA. **See plan brochures for details.**

For the Hearing Impaired: If you have access to a TDD machine, OPM's Retirement Information Office has a TDD number you may use to call for assistance. (This is also a Toll Call if you are calling long distance.) The TDD number is (202) 606-0551.

Privacy Act and Public Burden Statement

The information you provide on this form is needed for your enrollment in the Federal Employees Health Benefits Program under Chapter 89, title 5, U.S. Code. It will be shared with the health insurance carrier you select, so that they may (1) identify your enrollment in their plan, (2) verify your and/or your family's eligibility for payment of claims for health benefits services or supplies, and (3) coordinate payment of claims with other carriers. This information may be disclosed to other Federal agencies or Congressional offices that may have a need to know it in connection with your application for a job, license, grant or other benefit. It may also be shared and is subject to verification, via paper, electronic media, or through the use of computer matching programs, with national, state, local or other charitable or social security administrative agencies to determine and issue benefits under their programs. In addition, if the information indicates a violation of civil or criminal law, it may be shared with an appropriate Federal, state, or local law enforcement agency. The law does not require you to supply all the information requested on the form, but doing so will assist in the prompt processing of your enrollment.

We think this form takes an average of 30 minutes to complete, including the time for reviewing instructions, getting the needed data, and reviewing the completed form. Send comments regarding our estimate or any other aspect of this form, including suggestions for reducing completion time, to the Office of Management and Budget, Paperwork Reduction Project, (3206-0141), Washington, DC 20503.

See Plan Brochures for Full Benefit Descriptions

- You must share costs through deductibles, coinsurance and/or copayments.
- The calendar year deductible is per person but generally only two or three in a family enrollment must meet this deductible.
- The inpatient hospital deductible is per admission, although it may be applied other ways, such as to the first admission of the year.
- The medical-surgical catastrophic limit applies to coinsurance and may also apply to deductibles.
- The percentages shown are maximum plan payments.
- Most plans restrict accidental injury benefits to care received within a certain time period.
- These plans may provide other benefits with cost share features. For example: hospice care, mental conditions and substance abuse benefits.
- Preferred provider organization (PPO) arrangements increase plan benefits and are now included below if offered by a plan.

FEHB Plan Comparison Chart - for benefits beginning in January 1993
Prepaid plans (commonly known as CMP/HMOs)

Prepaid plans provide or arrange for health care by designated plan physicians, hospitals and other providers in particular locations. The general area served by each prepaid plan is shown below; however, you may choose one of the prepaid plans only if you live in the exact enrollment area described in the plan's brochure.

Prepaid plans provide many or all of the following services: prescripdion drugs from local pharmacies; mail order prescription drug programs; chiropractic care; alcoholism and drug abuse care; transplants; hospice care; extended care facilities; home health care; and dental care. Before choosing a plan based on your need for a particular service, including these, please see the plan brochure for details about availability of the benefit, how you share costs, and any dollar, day or visit limits. Here are other benefit facts about prepaid plans:

- Deductibles and coinsurance are not a common feature of prepaid plans; however, most prepaid plans require copayments where you share costs for certain services.
- Prepaid plans offer a wide range of preventive care, including routine care features such as physicals and immunizations.
- Prepaid plan benefits for mental conditions are limited to short-term treatment.
- "Opt-out" benefits are available in some prepaid plans. With the opt-out feature, you can receive non-emergency care outside the prepaid plan's regular health care delivery system, generally at a higher out-of-pocket expense to you than for care inside the plan's delivery system.
- The benefits of prepaid plans must be provided by or through plan providers (except opt-out benefits). Read the plan brochures carefully.

OPM Form 2809-EZ1
1992 FEHB Open Season

(Revised October 1992)

Federal Employees Health Benefits Program
United States Office of Personnel Management
For use by CSRS/FERS Annuitants to Change Enrollment or to request additional information

Form Approved: OMB No. 3206-0201 Previous Editions are not usable.

See Instructions on the other side before marking this form.

OPM USE ONLY
E O L O NS O T O
CLAIM NUMBER:

SECTION 1 - ADDRESS CORRECTION

O Address Change. If your permanent mailing address as shown to the right is incorrect, darken the Address Change circle and make the necessary corrections in the space provided below.

Street Address

City, State and ZIP Code

Country *(if not United States)*

SECTION 2 - OPEN SEASON ACTION REQUEST - You may either change your FEHBP enrollment or request information. You may not do both on this form. If you are satisfied with your present FEHB coverage, do not return this form.

O Enrollment Change

I WANT TO CHANGE MY HEALTH BENEFITS ENROLLMENT AND DO NOT NEED ADDITIONAL INFORMATION. Please change my coverage in my current plan or change my enrollment to the plan I have selected in Section 3 below for the following type of coverage:

O Self Only O Self and Family

Information *(You may make more than one selection in this Section)*

O I DO NOT WANT HEALTH BENEFITS COVERAGE. Send me the form necessary to cancel my health benefits coverage effective December 31, 1992. **Note:** Your enrollment will not be cancelled unless you sign and return the confirmation form.

O MY ANNUITY ISN'T BIG ENOUGH FOR THE COVERAGE I WANT. Send me information on how I may mail premiums directly to OPM.

O I NEED MORE PLAN INFORMATION BEFORE I DECIDE. Send me the health plan brochure(s) for the plan(s) I have selected in Section 3 below.

SECTION 3 - PLAN CHOICES *(Plan Brochure Requests, choose which ones you want. Enrollment Change, choose ONE)* Darken the circle BETWEEN the enrollment code and the plan you choose.

GOVERNMENT WIDE PLAN	Prepaid Plans:	Prepaid Plans:
O	O	O
O	O	O
	O	O
Fee-for-Service - PLANS OPEN TO ALL	O	O
O	O	O
O	O	O
O	O	O
O	O	O
O	O	O
O	O	O
O	O	O
	O	O
Fee-for-Service - RESTRICTED PLANS	O	O
O	O	O
O	O	O
O	O	O
O	O	O
O	O	O
O	O	O

SECTION 4 - SIGNATURE *(You Must Sign and Date this form)*

Signature *(Must be signed by the addressee or by an OPM-approved representative)*	Date	Telephone Number *(include Area Code)*
		( ) -

EXAMPLES OF COMPLETED FORMS

The other side of this form has been personalized with your name, retirement claim number, and the health benefits plans available to persons residing in your address area. This form should not be used by anyone other than you. Since it is designed to allow a machine to read your answers, use only a Number 2 lead pencil to darken the circle. If you make a mistake, erase it completely and darken the correct circle. **Note: You can select either an enrollment change or information but not both in Section 2.** If you need assistance completing this form, call the Office of Personnel Management at (202) 606-0125. If you are hearing impaired, call our Retirement Information Office TDD number (202) 606-0551. **REMEMBER: DO NOT RETURN THIS FORM TO CONFIRM YOUR PRESENT COVERAGE.**

Examples of how to complete this form are below:

IF you are making an address change or correction, **Section 1** of your form should look like this.

This address will be used by OPM to mail all future correspondence and payments (unless your payments are being sent to a financial institution).

SECTION 1 - ADDRESS CORRECTION

● Address Change If your permanent mailing address as shown to the right is incorrect, darken the Address Change circle and make the necessary corrections in the space provided below

Street Address: 333 MAIN STREET

City, State and ZIP Code: ANYPLACE, FL 35505

Country (if not United States)

John Smith
111 Work Place
New York, NY 23144

IF you want to **change** to another plan or change the type of coverage in your current plan, **Sections 2 and 3** of your form should look like this.

Your new plan will send you a brochure when we notify them of your enrollment.

SECTION 2 - OPEN SEASON ACTION REQUEST - You may either change your FEHBP enrollment or request information. You may not do both on this form. If you are satisfied with your present FEHB coverage, do not return this form.

● **Enrollment Change**

I WANT TO CHANGE MY HEALTH BENEFITS ENROLLMENT AND DO NOT NEED ADDITIONAL INFORMATION. Please change my coverage in my current plan or change my enrollment to the plan I have selected in Section 3 below for the following type of coverage:

○ Self Only ● Self and Family

Information *(You may make more than one selection in this Section)*

○ I DO NOT WANT HEALTH BENEFITS COVERAGE. Send me the form necessary to cancel my health benefits coverage effective December 31, 1992. **Note:** Your enrollment will not be cancelled unless you sign and return the confirmation form.

○ MY ANNUITY ISN'T BIG ENOUGH FOR THE COVERAGE I WANT. Send me information on how I may mail premiums directly to OPM.

○ I NEED MORE PLAN INFORMATION BEFORE I DECIDE. Send me the health plan brochure(s) for the plan(s) I have selected in Section 3 below.

DO NOT COMPLETE

SECTION 3 - PLAN CHOICES - (Plan Brochure Requests: choose which ones you want. Enrollment Change: choose ONE). Darken the circle BETWEEN the enrollment code and the plan you choose.

GOVERNMENT WIDE PLAN	Prepaid Plans: MARYLAND	Prepaid Plans: MARYLAND
10 ○ Blue Cross/Shield High	V8 ○ AETNA HEALTH PLAN	JB ○ Prudential Health Plan
10 ● Blue Cross/Shield Std	JQ ○ CareFirst	○
Fee-for-Service - PLANS OPEN TO ALL	BL ○ Chesapeake Health Plan	○
	67 ○ Columbia Medical Plan	○

- If you do not want health benefits coverage; or
- If your annuity isn't enough for the coverage you want; or
- If you need more information before making a decision;

Darken the appropriate circle(s) in section(s) 2 and 3.

In this example, the person is asking for **both** information about how to mail premiums directly to OPM **and** more plan information before making a decision. The plans the person wants information about are marked in Section 3.

SECTION 2 - OPEN SEASON ACTION REQUEST - You may either change your FEHBP enrollment or request information. You may not do both on this form. If you are satisfied with your present FEHB coverage, do not return this form.

○ **Enrollment Change**

I WANT TO CHANGE MY HEALTH BENEFITS ENROLLMENT AND DO NOT NEED ADDITIONAL INFORMATION. Please change my coverage in my current plan or change my enrollment to the plan I have selected in Section 3 below for the following type of coverage:

○ Self Only ○ Self and Family

Information *(You may make more than one selection in this Section)*

○ I DO NOT WANT HEALTH BENEFITS COVERAGE. Send me the form necessary to cancel my health benefits coverage effective December 31, 1992. **Note:** Your enrollment will not be cancelled unless you sign and return the confirmation form.

● MY ANNUITY ISN'T BIG ENOUGH FOR THE COVERAGE I WANT. Send me information on how I may mail premiums directly to OPM.

● I NEED MORE PLAN INFORMATION BEFORE I DECIDE. Send me the health plan brochure(s) for the plan(s) I have selected in Section 3 below.

DO NOT COMPLETE

SECTION 3 - PLAN CHOICES - (Plan Brochure Requests: choose which ones you want. Enrollment Change: choose ONE). Darken the circle BETWEEN the enrollment code and the plan you choose.

GOVERNMENT WIDE PLAN	Prepaid Plans: MARYLAND	Prepaid Plans: MARYLAND
10 ○ Blue Cross/Shield High	V8 ○ AETNA HEALTH PLAN	JB ○ Prudential Health Plan
10 ● Blue Cross/Shield Std	JQ ○ CareFirst	○
Fee-for-Service - PLANS OPEN TO ALL	BL ○ Chesapeake Health Plan	○
YA ○ Alliance	67 ○ Columbia Medical Plan	○
46 ● APWU	LD ○ Free State Health Plan	○
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45 ○ Mail Handlers-Std	60 ○ Group Health Assoc-High	○
	60 ○ Group Health Assoc-Std	○

SELECT WHICH ONES YOU WANT

The returned form **MUST ALWAYS** be signed by the addressee or by a representative that has been approved by OPM.

SECTION 4 - SIGNATURE *(You Must Sign and Date this form)*

Signature (Must be signed by the addressee or by an OPM-approved representative)	Date	Telephone Number (include Area Code)
John Smith	11/13/92	(202) 711-2323

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[FR Doc. 92-21587 Filed 9-3-92; 10:17 am]

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Federal Register

Vol. 57, No. 173

Friday, September 4, 1992

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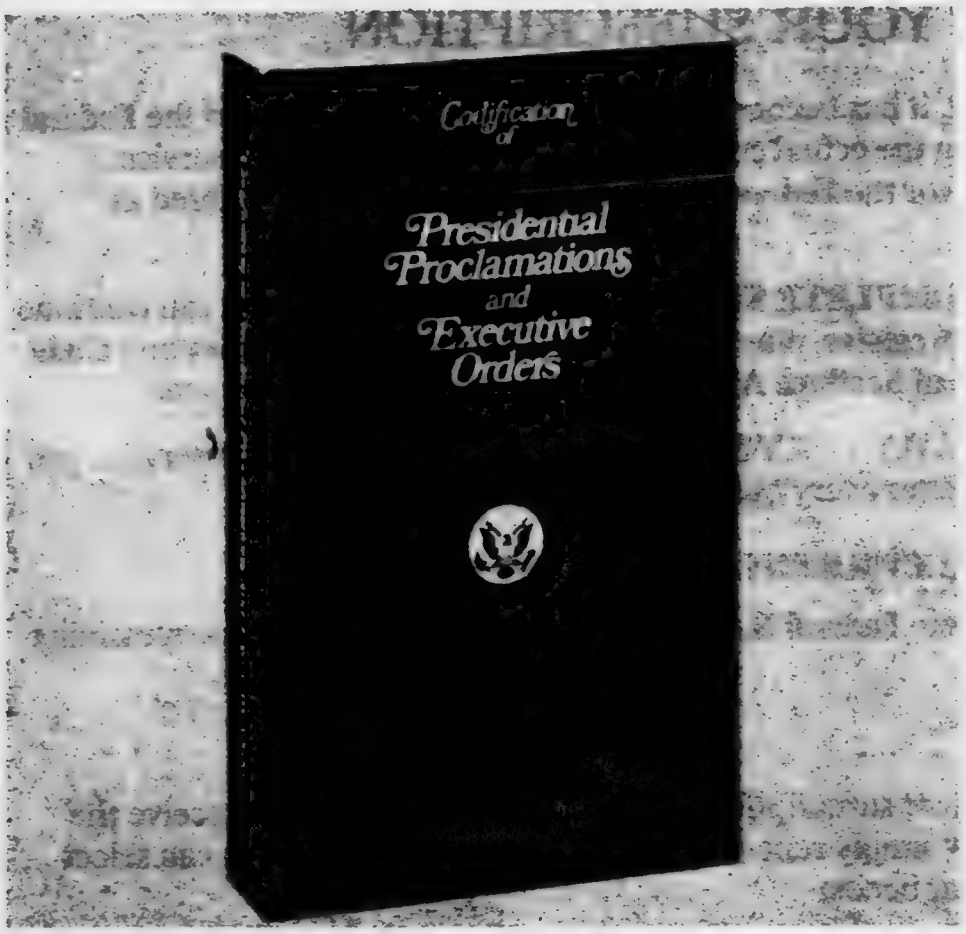

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federal register

Tuesday
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federal register

Tuesday
September 8, 1992

Briefing on How To Use the Federal Register
For information on a briefing in Atlanta, GA, see announcement on the inside cover of this issue.

For important information on changes to your **Federal Register** subscription see inside back cover.

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WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

ATLANTA, GA

WHEN: September 17, at 9:00 a.m.
WHERE: Centers for Disease Control
1600 Clinton Rd., NE.
Auditorium A
Atlanta, GA (Parking available)
RESERVATIONS: [404–639–3528 (Atlanta area)]
1–800–347–1997 (outside Atlanta area)

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The

Federal Register
Vol. 57, No. 174
Tuesday, September 8, 1992

Presidential Documents

Title 3—

The President

Proclamation 6468 of September 2, 1992

National Hispanic Heritage Month, 1992

By the President of the United States of America

A Proclamation

Our Nation's Hispanic heritage is celebrated with an especially deep sense of pride during this 500th anniversary year of Christopher Columbus' first journey to the Americas. Today we celebrate a rich, diverse heritage that traces back to places as far-flung as Mexico and Peru. The Columbus Quincentenary thus provides a fitting historical perspective as we set aside this month in honor of the many outstanding contributions that persons of Spanish and Latin American descent have made to the United States.

While our Nation's history bears ample evidence of our Hispanic heritage, we cannot view that great heritage solely in terms of the past. Rather, it is a living legacy. Over the years Hispanic Americans have continued to take part in the social and economic development of the United States and in the defense of the ideals that unite all of our citizens. In this century alone, thousands of Hispanic Americans have answered the call to duty in places such as Bataan, Da Nang, and the Persian Gulf. Today persons of Spanish and Latin American descent are also demonstrating their love of freedom by reaping the rewards of opportunity and hard work. In the past decade, the number of Hispanic-owned businesses has increased by more than 80 percent. As always, Hispanic Americans are also contributing to our Nation through its very foundation: the family. Together with the support of their churches and communities, millions of Hispanic American families are preserving the traditional values on which our great Republic rests: values of faith, duty, devotion to friends and relatives, and respect and concern for others. As the 20-million-strong Hispanic American community continues to grow, these and other contributions to our country are sure to increase as well.

Because many Hispanic Americans maintain strong personal ties to the nations of Latin America and the Caribbean, this month we also celebrate the United States' growing partnership with our neighbors in the region. The expansion of democratic ideals in this hemisphere has enhanced cooperation and security throughout the Americas, and U.S. exports to Latin American countries have more than tripled since 1983, creating thousands of jobs and opportunities for our citizens. Through the Enterprise for the Americas Initiative, the United States is working with our Latin American and Caribbean neighbors to promote mutually beneficial progress in the areas of trade and investment. The achievement of a North American Free Trade Agreement, which Hispanic American organizations across the country are helping accomplish, will mark a major milestone in our efforts to expand markets for U.S. goods and services. As Hispanic Americans well know, by creating in this hemisphere a thriving market of some 360,000,000 consumers, we will generate hundreds of thousands of new jobs and opportunities.

Just as they have contributed so much to our Nation in the past, Hispanic Americans are now helping to lead the United States toward a bright future—one marked by opportunity and prosperity for every citizen here at home and by increasing cooperation and freedom throughout the hemisphere.

The Congress, by Joint Resolution approved September 17, 1968, as amended by Public Law 100-402, has authorized and requested the President to issue annually a proclamation designating the month beginning September 15 and ending October 15 as "National Hispanic Heritage Month."

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the month beginning September 15, 1992, and ending October 15, 1992, as National Hispanic Heritage Month. I invite all Americans to observe this month with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of September, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and seventeenth.

George Bush

[FR Doc. 92-21652
Filed 9-3-92; 12:20 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 57, No. 174
Tuesday, September 8, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Delegations of Authority by the Secretary of Agriculture and General Officers of the Department

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This document amends the delegations of authority from the Secretary of Agriculture and the General Officers of the Department to delegate the authorities of the Secretary of Agriculture under the Food for Progress Act of 1985 and to address the responsibility of the General Sales Manager with respect to administration of section 416(b) of the Agricultural Act of 1949.

EFFECTIVE DATE: September 8, 1992.

FOR FURTHER INFORMATION CONTACT: Mary Chambliss, Foreign Agricultural Service, United States Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC 20250–1400; telephone (202) 720–3573.

SUPPLEMENTARY INFORMATION: The Food for Progress Act of 1985, as amended by section 1516 of the Food, Agriculture, Conservation, and Trade Act of 1990, authorizes the President to enter into agreements with foreign governments, private voluntary organizations, nonprofit agricultural organizations, or cooperatives to furnish agricultural commodities in support of developing countries, and countries that are emerging democracies, that have made commitments to introduce or expand free enterprise elements in their agricultural economies. Agricultural commodities may be made available on a donation basis or on credit terms.

Executive Order No. 12752, dated February 25, 1991, delegated the President's authority under the Food for Progress Act of 1985 to the Secretary of Agriculture. The delegations of authority of the Department of Agriculture are amended to further delegate this authority to the Under Secretary for International Affairs and Commodity Programs and to the Administrator, Foreign Agricultural Service (FAS) and the Administrator, Agricultural Stabilization and Conservation Service.

The existing delegation of authority to the Administrator, FAS, provides that, on policy matters relating to certain specified activities, the General Sales Manager who reports to the Administrator, FAS, shall report to the Secretary of Agriculture through the Under Secretary for International Affairs and Commodity Programs. This provision is being revised to include reference to activities under the Food for Progress Act of 1985 and section 416(b) of the Agricultural Act of 1949.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order No. 12291. Finally, this action is not a rule as defined by the Regulatory Flexibility Act, Public Law 96–354, and, thus, is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

Accordingly, part 2, title 7, Code of Federal Regulations is amended as follows:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

2. Section 2.21 is amended by adding a new paragraph (d)(35) to read as follows:

§ 2.21 Delegations of authority to the Under Secretary for International Affairs and Commodity Programs.

* * * * *

(d) * * *

(35) Administer programs under the Food for Progress Act of 1985 (7 U.S.C. 1736o).

* * * * *

Subpart H—Delegations of Authority by the Under Secretary for International Affairs and Commodity Programs

3. Section 2.65 is amended by revising the section heading and by adding a new paragraph (a)(42) to read as follows:

§ 2.65 Administrator, Agricultural Stabilization and Conservation Service.

(a) * * *

(42) Recommend the types and quantities of commodities which are available for programming under the Food for Progress Act of 1985, as amended (7 U.S.C. 1736o), and furnish commodities in connection therewith.

* * * * *

4. Section 2.68 is amended by revising the introductory text of paragraph (a) and adding a new paragraph (a)(38) to read as follows:

§ 2.68 Administrator, Foreign Agricultural Service.

(a) *Delegations.* Pursuant to § 2.21(d) and (f), subject to reservations in § 2.22(d), the following delegations of authority are made by the Under Secretary for International Affairs and Commodity Programs to the Administrator, Foreign Agricultural Service: *Provided,* That on policy matters relating to activities listed in paragraphs (a) (16) through (27), (35) and (38) of this section, the General Sales

Manager who reports to the Administrator, FAS, shall report to the Secretary, who is Chairman of the Board of Directors of the Commodity Credit Corporation, through the Under Secretary for International Affairs and Commodity Programs, who is president of the Commodity Credit Corporation:

* * *

* * * * *

(38) Administer programs under the Food for Progress Act of 1985 (7 U.S.C. 1736o), except as otherwise delegated in § 2.65(a)(42).

Dated: August 26, 1992.

For Subpart C:

Edward Madigan,

Secretary of Agriculture.

For Subpart H:

Randy Green,

Acting Under Secretary for International Affairs and Commodity Programs.

[FR Doc. 92-21463 Filed 9-4-92; 8:45 am]

BILLING CODE 3410-10-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 214, 251, and 258

[INS No. 1418-92]

RIN 1115-AC42

Denial of Crewman Status in the Case of Certain Labor Disputes and Specifications of Authorized Employment

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule implements sections 202 and 203 of the Immigration Act of 1990 (IMMACT 90) by placing certain restrictions on the admission and employment of alien crewmen during strikes and in their performance of longshore work. This rule is necessary to clarify the circumstances under which a nonimmigrant crewman may be employed in the United States and to implement those new restrictions contained in IMMACT 90.

EFFECTIVE DATE: This rule is effective September 8, 1992.

FOR FURTHER INFORMATION CONTACT: Michael T. Jaromin, Assistant Chief Inspector, Immigration and Naturalization Service, 425 I Street NW., room 7123, Washington, DC 20536, telephone number (202) 514-3275.

SUPPLEMENTARY INFORMATION: On June 6, 1991, at 56 FR 26016-26020, the Immigration and Naturalization Service (the Service) published an interim rule with request for comments by July 8, 1991, implementing sections 202 and 203 of the Immigration Act of 1990, Public Law 101-649, dated November 29, 1990. Subsequently, the comment period was extended until August 9, 1991. The interim rule clarified the circumstances under which nonimmigrant crewmen may perform duties incident to their nonimmigrant status while in the United States and provided implementing regulations for the new section 258 of the Immigration and Nationality Act concerning limitations on alien crewmen in performing longshore work. The interim rule was effective May 29, 1991, through December 31, 1991, with a final rule to be issued on or before the last effective date of the interim rule, and after the Service had an opportunity to review public and agency comments.

On July 10, 1991, at the request of interested parties, the Service published a notice in the **Federal Register** at 56 FR 31305, extending the comment period to August 9, 1991. The June 6, 1991 interim rule expired on December 31, 1991, and was later reinstated on February 21, 1992, through March 31, 1992 (57 FR 6183-6187).

On April 1, 1992, the Service extended the expiration date to June 30, 1992, (57 FR 10978) in order to review and consider the information and comments presented by the public on the June 6, 1991 interim rule. On July 1, 1992, the Service extended the expiration date of the interim rule to October 31, 1992, (57 FR 29193) in order to further evaluate the comments and to further coordinate this rule with the rule being published by the U.S. Department of Labor.

The Service received a number of well-reasoned, constructive suggestions during the comment period some of which have been incorporated into this final rule.

During the comment period, the Service received a total of 20 comments. All of the suggestions and opinions submitted by the commenters were carefully reviewed and given full consideration. The discussion that follows summarizes the issues that have been raised relating to the interim rule, provides the Service's position on the issues, and indicates the revisions adopted in the final rule as a result of those comments.

Labor Disputes

Two commenters stated that the National Mediation Board is the federal agency best able to provide timely information about airline labor disputes and suggested that the Service confer with the National Mediation Board to determine when a strike or lockout is in progress at a work site. This suggestion has been incorporated into this final rule.

One commenter stated that labor disputes need not originate in the employer's work site to trigger the prohibition against a company employing nonimmigrant crewmen during a labor dispute. The Service believes that the language of the statute, "where there is a strike or lockout in the bargaining unit of the employer in which the alien intends to perform such service," section 214(f)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1184(f)(1) (Supp. II 1991) requires a narrower interpretation than the commenter advocates. This narrower interpretation is reflected in the final rule.

Another commenter suggested that the rule should refer to fines that may be imposed against an airline or vessel for employing nonimmigrant crewmen during a strike, since refusal to allow the crewmen to land may be an ineffective deterrent to employing them. However, section 214 of the Act, as amended, does not authorize a fine for a violation of section 214(f)(1) of the Act. Instead, section 214(f) provides that such alien may not be paroled and is not considered a bona fide crewman under section 252(b) of the Act. The Service may not impose a fine that is not specifically authorized by statute. Therefore, this suggestion has not been incorporated into the rule.

One commenter suggested a detailed procedure for an airline to follow when a labor dispute is under way to ensure that only current employees as defined by the statute are allowed to work during the labor dispute; this procedure would include a union review of the process. The Service believes that its immigration officers will be able to screen crewmen arrivals accurately in strike situations to determine who are qualified current employees and who are not. Therefore, the Service will not incorporate the suggested procedure. The same commenter suggested that the rule state that even qualified current employees in crewman status are not allowed to work domestic flights during a strike. The Service agrees with this suggestion because the language of INA 101(a)(15)(D), 8 U.S.C. 1101(a)(15)(D) (Supp. II 1991) clearly refers to crewmen serving on vessels or aircraft originating outside the United States, and thus excludes D crewman from employment in connection with domestic flights or movements of a vessel or aircraft. This suggestion has therefore been incorporated into the rule.

The same commenter commends the rule's general restriction on alien crewmen being employed in connection with domestic flights or movements of

an aircraft. This rule retains the same language at 8 CFR 214.2(d)(1). However, this rule distinguishes domestic flights or movements of an aircraft from domestic stopovers of an aircraft on an international flight. When an aircraft of any United States carrier with an origin or destination point outside the United States has stopover rights, any alien crewmen performing crewmember duties on the flight may perform such duties through the stopover. This change reflects and is consistent with Department of Transportation regulations. It is also consistent with the longstanding position of the Service with regard to "D" crewmen performing crewmember duties through stopovers of international flights.

Another commenter suggested that discretionary parole for crewmen be allowed in compelling circumstances other than to protect the national security of the United States, when, for example, the health of the alien is at risk. The Service interprets the restriction on parole in section 214(f)(2) of the Act to mean that crewmen may be paroled into the United States for the purpose of performing crewmember duties only if such parole is necessary to protect the national security of the United States. However, the Service believes that district directors may continue to exercise their discretion to parole crewmen for other purposes including, for example, to receive medical treatment.

Another commenter remarked that the interim rule created a category of nonimmigrants who are exempt from the strikebreaker provision of the statute, namely, alien crewmen who are not already employees of the company. The Service disagrees with this interpretation. The interim rule stated that crewman status will be denied during a labor dispute to an alien who is not already an employee of the company. The same commenter stated that there is no rationale evident or provided for the exceptional treatment given to vessels of Canadian or British registry engaged in trade solely on the Great Lakes, as provided in § 251.1(a) of the interim rule. The basis for this treatment is contained in section 251 of the Act which provides that manifests shall be furnished for such vessels when the Attorney General requires it. It is established practice for Great Lakes vessels to be exempt from presentation of a manifest on each arrival in the United States unless the vessel has a change in nonimmigrant crewmen among those who are not British or Canadian citizens.

Arrival Manifests and Lists

Numerous commenters expressed concern that the lists required for the manifest, and the supporting documentation needed to invoke an exception to the prohibition against nonimmigrant crewmen doing longshore work, are unduly burdensome and unnecessary. The Service agrees and will retain only those requirements which it considers necessary to implement the statute and create records of accountability. For example, this rule will not require the listing of ports of call, except for vessels that will perform longshore work under the prevailing practice exception, and will not require the listing of crewmen who will perform the longshore work.

This rule also streamlines the documentation required to invoke an exception to the prohibition against crewmen performing longshore work. The hazardous cargo exception may be invoked, without attaching supporting documentation, by qualifying tankers and vessels carrying solid bulk hazardous cargo. Invoking the reciprocity exception requires one affidavit. Invoking the automated equipment exception requires only an annotation on the manifest.

Limitation on Performance of Longshore Work by Alien Crewmen

One commenter asked that the Service specify in the final rule that the activities of nonimmigrant crewmen aboard cruise vessels, which transport passengers rather than cargo, fall under exceptions or are exempt by definition from the longshore provisions of section 258 of the Act. With respect to the question of whether baggage and ships' stores are to be included in the meaning of the term "cargo," section 258 of the Act does not address this issue. The Service believes that since the term is not defined in the Act, it should be given its ordinary meaning for purposes of this regulation. "Cargo" is commonly defined as "the goods or merchandise conveyed in a ship, airplane, or vehicle," and is considered synonymous with "freight." Webster's Ninth New Collegiate Dictionary 208. This ordinary meaning would not include ships' stores or baggage. Thus, we conclude that had Congress wished to include the loading or unloading of ships' stores or baggage in the definition of "longshore work," it would have so specified. Since it did not, the Service will not deem baggage or ships' stores to be included in the term "cargo." With regard to longshore activities that are distinct from cargo loading and unloading, the Service's position is that immigration officers must make a determination on a case by case basis which exemptions, if any, apply to passenger vessels since such vessels are not exempted from compliance with section 258 of the Act.

Several commenters stated that § 258.2(c)(3) of the interim rule requiring that the master or agent present documentation showing that a majority of the ownership interest of the vessel is held by nationals of countries that do not prohibit longshore work by crewmen aboard U.S. vessels is impractical. The Service agrees that, with respect to many vessels, determining the nationality of a majority of ownership will not be an easy task. However, section 258(d)(1) of the Act requires that two conditions be met before the reciprocity exception can be used: The vessel must be registered in a "reciprocity country"; and a majority of the ownership interest must be held by nationals (not merely residents) of "reciprocity countries." This rule requires only an affidavit from the crewmen's employer or the vessel's owner to show that a majority of the ownership interest of the vessel has a qualifying nationality. Pursuant to the authority provided in section 235 of the Act, upon cause, an immigration inspector may require further documentation.

One commenter stated that both the Service and the Department of Labor (DOL) have written rules for unanticipated emergencies under which crewmen may perform longshore work. The commenter states that this is a duplication of rules, and if both agencies make determinations on the same unanticipated emergency, they may reach different conclusions. The Service and DOL regulations address different emergency situations. The DOL regulation addresses the situation described in section 258(c) of the Act when longshore work is done unexpectedly under the prevailing practice exception and, as a result, the master or agent of the vessel is unable to file an attestation with DOL 14 days in advance of the work as is required under normal circumstances. The Service regulation addresses circumstances in which no exception is applicable but which require immediate, essentially reflexive, action to avert possible damage, loss of property, injury, or death. The Service added this "imminent danger" provision as a protection for vessels against Service fines when unsanctioned longshore activities are performed under these narrow circumstances. Two commenters commended the inclusion of this provision and suggested that it be

broadened to include action taken to avert environmental contamination. This suggestion has been incorporated in this rule and § 258.3(e) has been revised to clarify the kinds of situations covered by the "imminent danger" provision.

One commenter noted that the Service did not define the term "port," though this term is essential in applying the prevailing practice exception. The DOL incorporates a definition of "port" in its regulation that the commenter states is unnecessarily comprehensive for INS purposes. After careful consideration of this comment, the Service concludes that the DOL definition of "port" most closely reflects the intent of Congress, as well as the usage of "port" in other parts of the Code of Federal Regulations. Hence, the Service adopts the definition of "port" as set forth in the DOL interim rule, to include a geographic area on a seacoast, lake, river, or other navigable body of water that is commonly regarded as a port by other government maritime-related agencies, such as the Maritime Administration.

One commenter stated that § 258.2(b)(4) of the rule suggests that the Service has the authority to assess fines for misrepresentations made by an employer in invoking the prevailing practice exception. The statute does not authorize such a fine. The language, "the sanction stated in section 258(c)(4)(E)(i) of the Act," was intended to refer to the Service's authority to prohibit landing. The rule has been amended to clarify this point.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

The information collection requirement contained in this rule has been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The OMB control number for this collection is contained in 8 CFR 299.5.

List of Subjects

8 CFR Part 214

Administrative practice and procedure, Aliens.

8 CFR Part 251

Air carriers, Airmen, Aliens, Maritime carriers, Reporting and recordkeeping requirements, Seamen.

8 CFR Part 258

Aliens, Longshore work, Maritime carriers, Reporting and recordkeeping requirements, Seamen.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1184, 1186a, 1221, 1281, 1282; 8 CFR part 2.

2. In § 214.2, paragraph (d) is revised to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(d) *Crewmen.* (1) The provisions of parts 251, 252, 253, and 258 of this chapter shall govern the landing of crewmen as nonimmigrants of the class defined in section 101(a)(15)(D) of the Act. An alien in this status may be employed only in a crewman capacity on the vessel or aircraft of arrival, or on a vessel or aircraft of the same transportation company, and may not be employed in connection with domestic flights or movements of a vessel or aircraft. However, nonimmigrant crewmen may perform crewmember duties through stopovers on an international flight for any United States carrier where such flight uses a single aircraft and has an origination or destination point outside the United States.

(2) *Denial of crewman status in the case of certain labor disputes (D nonimmigrants).* (i) An alien shall be denied D crewman status as described in section 101(a)(15)(D) of the Act if:

(A) The alien intends to land for the purpose of performing service on a vessel of the United States (as defined in 46 U.S.C. 2101(46)) or an aircraft of an air carrier (as defined in section 101(3) of the Federal Aviation Act of 1958); and

(B) A labor dispute consisting of a strike or lockout exists in the bargaining unit of the employer in which the alien intends to perform such service; and

(C) The alien is not already an employee of the company (as described in paragraph (d)(2)(iv) of this section).

(ii) *Refusal to land.* Any alien (except a qualified current employee as described in paragraph (d)(2)(iv) of this section) who the examining immigration officer determines has arrived in the United States for the purpose of performing service on board a vessel or an aircraft of the United States when a strike or lockout is under way in the bargaining unit of the employer, shall be refused a conditional landing permit under section 252 of the Act.

(iii) *Ineligibility for parole.* An alien described in paragraph (d)(2)(i) of this section may not be paroled into the United States under section 212(d)(5) of the Act for the purpose of performing crewmember duties unless the Attorney General determines that the parole of such alien is necessary to protect the national security of the United States. This paragraph does not prohibit the granting of parole for other purposes, such as medical emergencies.

(iv) *Qualified current employees.* (A) Paragraphs (d)(2)(i), (d)(2)(ii), and (d)(2)(iii) of this section do not apply to an alien who is already an employee of the owner or operator of the vessel or air carrier and who at the time of inspection presents true copies of employer work records which satisfy the examining immigration officer that the alien:

(*1*) Has been an employee of such employer for a period of not less than one year preceding the date that a strike or lawful lockout commenced;

(*2*) Has served as a qualified crewman for such employer at least once in three different months during the 12-month period preceding the date that the strike or lockout commenced; and

(*3*) Shall continue to provide the same crewman services that he or she previously provided to the employer.

(B) An alien crewman who qualifies as a current employee under this paragraph remains subject to the restrictions on his or her employment in the United States contained in paragraph (d)(1) of this section.

(v) *Strike or lockout determination.* These provisions will take effect if the Attorney General, through the Commissioner of the Immigration and Naturalization Service or his or her designee, after consultation with the National Mediation Board, determines that a strike, lockout, or labor dispute involving a work stoppage is in progress in the bargaining unit of the employer for whom the alien intends to perform such service.

* * * * *

PART 251—ARRIVAL MANIFESTS AND LISTS: SUPPORTING DOCUMENTS

3. The authority citation for part 251 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1221, 1281, 1282.

4. In § 251.1, paragraphs (a) and (d) are revised to read as follows:

§ 251.1 Arrival manifests and lists.

(a) *Vessels.* (1) *General.* The master or agent of every vessel arriving in the United States from a foreign place or an outlying possession of the United States shall present to the immigration officer at the port where the immigration inspection is performed a manifest of all crewmen on board on Form I–418, Passenger List-Crew List, in accordance with the instructions contained thereon.

(2) *Longshore work notations.* The master of the vessel or his or her agent shall indicate in writing immediately below the name of the last alien listed on the Form I–418 whether or not D crewmen aboard the vessel will be used to perform longshore work at any United States port before the vessel departs the United States.

(i) If no longshore work will be performed, no further notation regarding longshore work is required.

(ii) If longshore work will be performed, the master or agent shall note which exception listed in section 258 of the Act permits the work. The exceptions are:

(A) The hazardous cargo exception;

(B) The prevailing practice exception in accordance with a port's collective bargaining agreements;

(C) The prevailing practice exception at a port where there is no collective bargaining agreement, but for which the vessel files an attestation;

(D) The prevailing practice exception for automated vessels; and

(E) The reciprocity exception.

(iii) If longshore work will be performed under the hazardous cargo exception, the vessel must either be a tanker or be transporting dry bulk cargo that qualifies as hazardous. All tankers qualify for the hazardous cargo exception, except for a tanker that has been gas-freed to load non-hazardous dry bulk commodities.

(A) To invoke the exception for tankers, the master or agent shall note on the manifest that the vessel is a qualifying tanker.

(B) If the vessel is transporting dry bulk hazardous cargo, the master or agent shall note on the manifest that the vessel's dry bulk cargo is hazardous and shall show the immigration officer the dangerous cargo manifest which is signed by the master or an authorized representative of the owner, and which under 46 CFR 148.02 must be kept in a conspicuous place near the bridge house.

(iv) If longshore work will be performed under the prevailing practice exception, the master or agent shall note on the manifest each port at which longshore work will be performed under this exception. Additionally, for each port the master or agent shall note either that:

(A) The practice of nonimmigrant crewmen doing longshore work is in accordance with all collective bargaining agreements covering 30 percent or more of the longshore workers in the port;

(B) The port has no collective bargaining agreement covering 30 percent or more of the longshore workers in the port and an attestation has been filed with the Secretary of Labor;

(C) An attestation that was previously filed is still valid and the vessel continues to comply with the conditions stated in that attestation; or

(D) The longshore work consists of operating an automated, self-unloading conveyor belt or a vacuum-actuated system.

(v) If longshore work will be performed under the reciprocity exception, the master or agent shall note on the manifest that the work will be done under the reciprocity exception, and will note the nationality of the vessel's registry and the nationality or nationalities of the holders of a majority of the ownership interest in the vessel.

(vi) *Notations for Great Lakes vessels.*

(A) A manifest shall not be required for a vessel of United States, Canadian, or British registry engaged solely in traffic on the Great Lakes or the St. Lawrence River and connecting waterways, herein designated as a Great Lakes vessel, unless nonimmigrant crewmen intend to do longshore work at a port in the United States.

(B) If nonimmigrant crewmen will do longshore work, the master of agent of the vessel shall note on the manifest which exception in section 258 of the Act permits the work and any other notations described in paragraphs (a)(2)(ii) through (a)(2)(v) of this section required by the exception invoked.

(C) A manifest shall be required for crewmen of other than United States, Canadian, or British citizenship and shall contain the same information regarding longshore work as is required of other vessels.

(D) After submission of a manifest on the first voyage of a calendar year, a manifest shall not be required on subsequent arrivals unless a nonimmigrant crewman of other than Canadian or British citizenship is employed on the vessel who was not aboard and listed on the last prior manifest, or a change has occurred regarding the performance of longshore work in the United States by nonimmigrant crewmen, or a change has occurred in the exception that the master or agent of the vessel wishes to invoke which was not noted on the last prior manifest.

(3) The master or agent of a vessel that only bunkers at a United States port pursuant to 8 CFR 235.1(d)(7) shall annotate Form I–418 to indicate the time, date, and place of bunkering.

(4) If documentation is required to support an exception, as described in 8 CFR 258.2, it must accompany the manifest.

* * * * *

(d) *Immigration officer notations on arrival manifests.* (1) Upon completion of the examination of each crewman listed on the Form I–418 presented by the master or agent of an arriving vessel, the immigration officer shall place one of the following symbols in column (5) of the Form I–418 opposite the name of the crewman: "USC" for a crewman admitted as a United States citizen; "RP" or "ARC" to indicate respectively the presentation of a reentry permit or an alien registration receipt card, Form I–151 or I–551, for a crewman admitted as a lawful permanent resident; "D–1" for an alien crewman granted a conditional landing permit under section 252(a)(1) of the Act; "D–2" for an alien crewman granted a conditional landing permit under section 252(a)(2) of the Act; "Parolee" for an alien crewman paroled pursuant to section 212(d)(5) of the Act; and "Refused" for a nonimmigrant crewman whose request for a landing permit has been refused.

(2) The immigration officer shall note on the Form I–410, Receipt for Crew List, whether or not nonimmigrant crewmen will perform longshore work in the United States, and if so:

(i) Under which exception in section 258 of the Act it will be performed; and

(ii) What type of documentation accompanied the manifest to support the exception invoked.

(3) The examining immigration officer shall sign his or her name, title, and the date of the inspection following the last entry on the Form I–418. The master of the vessel shall be furnished Form I–410 as a receipt for the Form I–418 arrival manifest, and the immigration officer shall list on the Form I–410 both the information regarding longshore work described in 8 CFR 251.1(a)(2) and the names of all crewmen who have been refused conditional landing permits.

5. Part 258 is revised to read as follows:

PART 258—LIMITATIONS ON PERFORMANCE OF LONGSHORE WORK BY ALIEN CREWMEN

Sec.
258.1 Limitations—General.
258.2 Exceptions.
258.3 Action upon arrival.

Authority: 8 U.S.C. 1101, 1103, 1281; 8 CFR part 2.

§ 258.1 Limitations—General.

(a) *Longshore work defined.* Longshore work means any activity relating to the loading and unloading of cargo, the operation of cargo-related equipment [whether or not integral to the vessel], and the handling of mooring lines on the dock when the vessel is made fast or let go, in the United States or the coastal waters thereof.

(1) Longshore work is not included in the term "normal operation and service on board a vessel" for the purposes of section 101(a)(15)(D)(i) of the Act except as provided in sections 258 (c) or (d) of the Act.

(2) A vessel that uses nonimmigrant crewmen to perform longshore work, other than the activities allowed in particular circumstances under § 258.2 (a)(2), (b), or (c) of this part, shall be subject to a fine under section 251(d) of the Act.

(b) *Port defined.* For purposes of this section, the term "port" means a geographic area, either on a seacoast, lake, river, or other navigable body of water, which contains one or more publicly or privately owned terminals, piers, docks, or maritime facilities, which is commonly regarded as a port by other government maritime related agencies, such as the Maritime Administration.

§ 258.2 Exceptions.

Any master or agent who uses nonimmigrant crewmen to perform longshore work at any United States port under the exceptions provided for in paragraphs (a)(2), (b), or (c) of this section must so indicate on the crew manifest and shall note under which exception the work will be performed.

(a) *Hazardous cargo.*

(1) The term "longshore work" does not include the loading and unloading of any cargo for which the Secretary of Transportation has prescribed regulations under authority contained in chapter 37 of title 46, United States Code, section 311 of the Federal Water Pollution Control Act, section 4106 of the Oil Pollution Act of 1990, or section 105 or 106 of the Hazardous Materials Transportation Act.

(2) In order to invoke the hazardous cargo exception for safety and environmental protection, the master or agent shall note on the manifest that the vessel is a qualifying tanker or carries hazardous dry bulk cargo.

(i) All tankers qualify for the hazardous cargo exception, including parcel tankers, except for a tanker that has been gas-freed to transport non-hazardous dry bulk commodities.

(ii) In order for a vessel to qualify for the hazardous cargo exception as a dry bulk hazardous cargo carrier, the master or agent must show the immigration officer the dangerous cargo manifest that is required by Coast Guard regulation 46 CFR 148.02–3(a) to be kept near the bridge house.

(b) *Prevailing practice exception.*

(1) Nonimmigrant crewmen may perform longshore work under this exception if:

(i) There is in effect in the local port one or more collective bargaining agreements, each covering at least 30 percent of the persons performing longshore work at the port, and each of which permits the longshore activity to be performed by the nonimmigrant crewman, or

(ii) There is no collective bargaining agreement in effect in the local port covering at least 30 percent of the persons performing longshore work at the port, and the employer of the crewmen has filed an attestation with the Secretary of Labor that the Secretary of Labor has accepted.

(2) *Documentation to be presented under the prevailing practice exception.* (i) If the master or agent states on the manifest, Form I–418, that nonimmigrant crewmen will perform longshore work at a port under the prevailing practice exception as permitted by all collective bargaining agreements covering 30 percent or more of the persons performing longshore work at the port, then the master or agent must present to the examining immigration officer an affidavit from the local stevedore. The stevedore or a union representative of the employees' association must state on the affidavit that all bargaining agreements covering 30 percent or more of the longshore workers at the port allow nonimmigrant crewmen either to perform all longshore work or to perform those specified longshore activities that crewmen on the vessel intend to perform.

(ii) Where there is no collective bargaining agreement in effect at a port covering at least 30 percent of the persons who do longshore work, and the master or agent states on the manifest that nonimmigrant crewmen will perform such work under the prevailing practice exception, then the master or agent shall present a copy of the notification received from the Secretary of Labor that the attestation required for this exception has been accepted.

(iii) When an unanticipated emergency occurs, the master or agent of a vessel may file an attestation with the Secretary of Labor up to the date on which crewmen perform longshore work.

(A) If, because of an unanticipated emergency, crewmen on a vessel perform longshore work under the prevailing practice exception at a port, a revised manifest shall be submitted together with complete documentation, as specified in paragraph (b)(2)(ii) of this section, within 14 days of the longshore work having been done. Failure to present the required documentation may result in a fine under section 251 of the Act.

(B) All documents submitted after inspection shall be sent to the Immigration and Naturalization Service seaport office that inspected the vessel.

(iv) Attestations are valid for one year from the date of filing and cover nonimmigrant crewmen landing during that period if the master or agent states on the manifest that the vessel's crew continue to comply with the conditions in the attestation. When the vessel's master or agent intends to use a previously accepted attestation that is still valid, the master or agent shall submit a copy of the notification from the Secretary of Labor that the attestation was accepted and shall note on the manifest that the vessel continues to comply with the conditions of the attestation.

(3) *Use of automated self-unloading conveyor belt or vacuum-actuated system on a vessel.* An automated self-unloading conveyor belt or a vacuum-actuated system may be operated by a nonimmigrant crewman under the prevailing practice exception when no collective bargaining agreement at the local port prevents it. The master or agent is not required to file an attestation for nonimmigrant crewmen to perform such activity in such a circumstance unless the Secretary of Labor has determined that such activity is not the prevailing practice at that port, and has publicized this finding. When invoking this exception, the master or agent of the vessel shall annotate the manifest that the longshore work consists of operating a self-unloading conveyor belt or a vacuum-actuated system on the vessel under the prevailing practice exception.

(4) *Sanctions upon notification by the Secretary of Labor.* If the Immigration and Naturalization Service is notified by the Secretary of Labor that an entity has either misrepresented facts in its

attestation or has failed to meet a condition attested to, then the Immigration and Naturalization Service will take the necessary steps to prevent the landing of vessels owned or chartered by the offending entity in accordance with section 258(c)(E)(i) of the Act. The Service may also impose a sanction as provided in that section, including the prohibition of any vessel owned or chartered by the violating entity from landing at any United States port for up to one year.

(5) The three variations of the prevailing practice exception—collective bargaining agreement, attestation process, and automated equipment—are port specific. If a vessel is to use nonimmigrant crewmen to perform longshore work under the prevailing practice exception, the appropriate documentation required under paragraph (b)(2) of this section must be presented for each port at which the longshore work will be performed.

(c) *Reciprocity exception.* Nonimmigrant crewmen may perform longshore work in a United States port under this exception if:

(1) The vessel on which the crewmen serve is registered in a country that does not prohibit crewmen aboard United States vessels from performing longshore work, or a specified longshore activity, when United States vessels land in that country, as determined by the Secretary of State; and

(2) The master or agent presents an affidavit from the crewmen's employer or the vessel's owner that a majority of the ownership interest in the vessel is held by nationals of a country or countries that do not prohibit such longshore activity by crewmen aboard United States vessels when they land in those countries.

(d) *Vessels that qualify for multiple exceptions.* A vessel that qualifies for more than one exception under this section may invoke the exception that the master or agent chooses.

(e) *Lack of documentation required by an exception.* If a vessel invokes an exception to the prohibition against nonimmigrant crewmen performing longshore work, but lacks any documentation required to accompany the manifest when invoking the exception, then the vessel's crewmen shall not perform longshore work. If the longshore work is performed despite the lack of documentation that the immigration officer has noted on the Form I-410, then the vessel is subject to fine under section 251(d) of the Act.

§ 258.3 Action upon arrival.

(a) The master or agent of the vessel shall state on the manifest at the first port of entry:

(1) Whether or not nonimmigrant crewmen aboard the vessel will perform longshore work at any port before departing the United States; and

(2) If nonimmigrant crewmen will perform longshore work, which exception in section 258 of the Act permits them to do so.

(b) If nonimmigrant crewmen will perform longshore work, the master or agent of the vessel shall present with the manifest any documentation required by 8 CFR 258.2 for the exception invoked.

(c) If, at the time of inspection, the master or agent fails to present the documentation required for the exception invoked, then the vessel is prohibited from using nonimmigrant crewmen to perform longshore work. If crewmen aboard the vessel perform longshore work despite the prohibition, the vessel is subject to fine under section 251(d) of the Act.

(d) The examining immigration officer shall give the master or agent a Receipt for Crew List, Form I-410, on which the officer shall note whether or not nonimmigrant crewmen will do longshore work at any port of call and, if so, under which exception. The officer shall also note which documentation supporting the exception accompanied the manifest, and any failure to present documentation which failure would prohibit crewmen from performing longshore work under the exception that the vessel invoked.

(e) If a vessel's crewmen perform longshore activity not sanctioned by an exception but performed to prevent the imminent destruction of goods or property; severe damage to vessels, docks, or real estate; possible environmental contamination; or possible injury or death to a person, a concise report of the incident shall be made within 14 days of the incident to the Immigration and Naturalization Service seaport office that performed the inspection. If the Service agrees that the situation was one of imminent danger requiring immediate action, no fine will be imposed for the performance of a longshore activity in this isolated instance.

(f) Failure to deliver true and complete information on the manifest or any documentation required to support an exception may result in a fine against the owner, agent, consignee, master, or commanding officer under section 251(d) of the Act.

Dated: July 16, 1992.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 92-21576 Filed 9-4-92; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-165-AD; Amendment 39-8349; AD 92-18-05]

Airworthiness Directives; Aerospatiale Model ATR42-300 and ATR42-320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Aerospatiale Model ATR42-300 and ATR42-320 series airplanes, that requires a one-time inspection of the main landing gear (MLG) fastener holes to detect fatigue cracks, and repair, if necessary; the installation of certain reinforcement fittings on certain structural components; and cold working of certain fastener holes. This amendment is prompted by fatigue testing by the manufacturer which has identified fatigue damage in the landing gear bay area in line with Frame 25 and Stringer 15. The actions specified by this AD are intended to prevent the collapse of the MLG.

DATES: Effective October 13, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 13, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gary Lium, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-1112; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR42-300 and ATR42-320 series airplanes was published in the **Federal Register** on October 4, 1991 (56 FR 50297). That action proposed to require a one-time inspection of the main landing gear (MLG) fastener holes to detect fatigue cracks, and repair, if necessary; the installation of certain reinforcement fittings on certain structural components; and cold working of certain fastener holes.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

A second commenter requests that the FAA provide clarification in the final rule that each edition of Aerospatiale Service Bulletin ATR42-53-0043 that was released prior to Revision 3 incorrectly references in the "Reason" paragraph the installation of a doubler on Stringer 14. Revision 3 of the service bulletin corrects that reference to Stringer 15. The commenter also states that the maintenance records for airplanes modified prior to the service bulletin correction would indicate modification to Stringer 14, despite the fact that the modification can only be performed at Stringer 15. The commenter further explains that the modification is performed according to drawings and instructions in the service bulletin; and with no numbers or other markings on the stringers themselves, the error in numbering the stringers in the "Reason" paragraph of the service bulletin may not be noticed. The FAA concurs that the reference to Stringer 14 in earlier revisions of the service bulletin is confusing. A note has been placed in paragraph (a)(3) of the final rule to indicate that the reference to Stringer 14 is an error and that the required modification is actually performed at Stringer 15, as described in the Accomplishment Instructions of the service bulletin.

The same commenter submits that accomplishment of the actions described in any edition of Aerospatiale Service Bulletin ATR42-53-0043 that was issued prior to Revision 4 should be considered alternative methods of compliance with the AD. The commenter remarks that some operators may have already modified their fleets in accordance with one of these earlier versions of the service bulletin. The commenter also notes that Revisions 1 through 4 of that service bulletin contain changes that are not regarded as significant by the Direction Générale de l'Aviation Civile (DGAC) and Aerospatiale. The commenter adds that each of these revisions include phrases such as, "The changes introduced by this revision do not affect the operations or modification embodied on aircraft already delivered * * *" or "* * * do not affect the operations or modification kit already delivered." Lastly, the commenter notes that since an eddy current inspection is not introduced until Revision 3 of the service bulletin, the inspection should apply only to airplanes modified after receipt of Revision 3.

The FAA concurs. According to recent information received from Aerospatiale, the modifications proposed in the NPRM were developed for fatigue reasons as a result of the ATR42 full-scale fatigue test that was completed recently. Due to the difficulty and costs associated with accomplishing the required modifications, Aerospatiale has been performing the work for operators at one of two facilities located in the United States and Europe on airplanes prior to the accumulation of 10,000 landings. Aerospatiale and the French DGAC consider Revisions 3 and 4 of the service bulletin to include only minor changes. Aerospatiale has confirmed that airplanes modified previously in accordance with earlier revisions of the service bulletin need not be inspected or modified further. The final rule has been revised to include a paragraph stating that airplanes modified previously in accordance with service bulletin revisions issued prior to Revision 4 need not be inspected or modified further.

Paragraph (b) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 77 airplanes of U.S. registry will be affected by this AD, that it will take approximately 82 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $347,270. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-18-05 Aerospatiale: Amendment 39-8349. Docket 91-NM-165-AD.

Applicability: Model ATR42-300 and ATR42-320 series airplanes; as listed in Aerospatiale Service Bulletin ATR42-53-0043, Revision 4, dated April 30, 1991; certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent the collapse of the main landing gear, accomplish the following:

(a) Prior to the accumulation of 10,000 landings since new, or within 30 days after the effective date of this AD, whichever

occurs later, accomplish the following in accordance with Aerospatiale Service Bulletin ATR42-53-0043, Revision 4, dated April 30, 1991:

(1) Install a new machined reinforcement fitting (Modification 1281) on the left and right sides of the main landing gear (MLG) in accordance with the service bulletin.

(2) Perform a one-time eddy current inspection of the fastener holes on the left and right sides of the MLG to detect fatigue cracks in accordance with the service bulletin. If any cracks are found, prior to further flight, repair in accordance with the service bulletin.

(3) Install doublers on Stringer 15 at Frame 25 on the reinforcement plate in accordance with the service bulletin.

Note: Previous editions of this service bulletin erroneously referred to Stringer 15 as Stringer 14. The doubler can only be installed at Stringer 15.

(4) Perform cold working procedures of two fastener holes on the left and right sides of the MLG in accordance with the service bulletin.

(b) Airplanes modified prior to the effective date of this AD in accordance with earlier versions of Aerospatiale Service Bulletin ATR42-53-0043 issued prior to Revision 4 need not be inspected or modified further.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The installation, inspection, and cold working shall be done in accordance with Aerospatiale Service Bulletin ATR42-53-0043, Revision 4, dated April 30, 1991, which includes the following list of effective pages:

Page No.	Revision level	Date
1-2, 29	4	April 30, 1991.
3-6, 10-28, 30-32	3	October 30, 1990
7-9	Original	April 21, 1989.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on October 13, 1992.

Issued in Renton, Washington, on August 7, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-21475 Filed 9-4-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-34-AD; Amendment 39-8354; AD 92-18-10]

Airworthiness Directives; British Aerospace Model ATP Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model ATP series airplanes, that requires installation of an intercompressor case (ICC) fire detector system, and revises the Airplane Flight Manual (AFM) to include operating procedures associated with the ICC fire system. This amendment is prompted by reports of engine fires that originated from a bearing failure inside the ICC on Pratt and Whitney PW126 series engines. The actions specified by this AD are intended to prevent severe structural damage to the airplane resulting from an engine ICC fire.

DATES: Effective October 13, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 13, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain British Aerospace Model ATP series airplanes was published in the **Federal Register** on June 23, 1992 (57 FR 27953). That action proposed to require installation of an intercompressor case (ICC) fire detector system, and a revision to the Airplane Flight Manual (AFM) to include operating procedures associated with the ICC fire system.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 10 airplanes of U.S. registry will be affected by this AD, that it will take approximately 9 work hours per airplane to accomplish the required installation actions, and approximately 1 work hour to revise the AFM, at an average labor rate of $55 per work hour. Required installation parts will cost approximately $985 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $15,350, or $1,535 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-16-10 British Aerospace: Amendment 39-8354. Docket 92-NM-34-AD.

Applicability: Model ATP series airplanes; serial numbers 2001 through 2045, inclusive; which have been modified in accordance with Pratt and Whitney Service Bulletin PW100-72-21097, dated November 8, 1991; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent severe structural damage to the airplane due to an internal engine fire within the intercompressor case, accomplish the following:

(a) Within 90 days after modification in accordance with Pratt and Whitney Service Bulletin PW100-72-21097, dated November 8, 1991, or within 90 days after the effective date of this AD, whichever occurs later:

(1) Install an intercompressor case (ICC) fire detector system, in accordance with British Aerospace Service Bulletin ATP-26-5-35225A, dated October 30, 1991.

(2) Revise Section 0.25.0 of the FAA-approved Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

Modification No.	Description
35225A	Introduction of ICC Fire Detector at the Intercompressor Case.

(3) Revise the FAA-approved AFM to include operating information pertaining to the ICC fire detection systems. This may be accomplished by inserting a copy of Temporary Revision No. T/24, Issue 1, dated February 17, 1992, into the AFM.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The installation and revision of the AFM shall be done in accordance with Temporary Revision No. T/24, Issue 1, dated February 17, 1992; and British Aerospace Service Bulletin ATP-26-5-35225A, dated October 30, 1991, which contains the following list of effective pages:

Page No.	Revision level	Date
1-7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, 35, 37, 39, 41, 43.	Original	Oct. 30, 1991.
8, 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 32, 34, 36, 38, 40, 42.	(These pages are not used).	

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on October 13, 1992.

Issued in Renton, Washington, on August 12, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-21476 Filed 9-4-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-152-AD; Amendment 39-8355; AD 92-16-51]

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB-120 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) T92-16-51 that was sent previously to all known U.S. owners and operators of EMBRAER Model EMB-120 series airplanes by individual telegrams. This AD requires repetitive visual checks or inspections to verify that the flight idle stop system circuit breakers are closed, and functional tests to determine if the backup flight idle stop system is operative. This amendment is prompted by a report of an overspeed condition that occurred on both engines of one airplane during flight; the fact that both of the circuit breakers in the backup flight idle stop system circuit were open may have contributed to this condition. The actions specified by this AD are intended to prevent an inoperative backup flight idle stop system and potential engine failure.

DATES: Effective September 23, 1992, to all persons except those persons to whom it was made immediately effective by telegraphic AD T92-16-51, issued July 29, 1992, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 23, 1992.

Comments for inclusion in the Rules Docket must be received on or before November 9, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-152-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The applicable service information may be obtained from EMBRAER Aircraft Corporation, 276 SW. 34th Street, Fort Lauderdale, Florida 33315. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Gil Carter, Aerospace Engineer, Propulsion Branch, ACE-140A, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349; telephone (404) 991-3810; fax (404) 991-3606.

SUPPLEMENTARY INFORMATION: On July 29, 1992, the FAA issued telegraphic AD T92-16-51, applicable to EMBRAER Model EMB-120 series airplanes, which requires repetitive visual checks, inspections, and functional checks to verify that the backup flight idle stop system is operating properly.

That action was prompted by a recent report indicating that, during a landing approach, an operator of an EMBRAER Model EMB-120 series airplane experienced an overspeed condition on both engines, apparently due to movement of the power levers below flight idle. The overspeed of the left engine reached 150% and the engine failed; the overspeed of the right engine rose to 120%. The incident occurred approximately six miles out, while the airplane was encountering severe air turbulence. Investigation revealed that both of the circuit breakers in the backup flight idle stop system circuit on the airplane were open.

The cause of the incident has not yet been determined. However, there are several items being considered: (1) Certain latent failure modes exist in the backup flight idle stop system that could render it inoperative, and an inoperative system is not annunciated to the flight crew; or (2) normal maintenance action could have led to the opening of the circuit breakers.

This condition, if not corrected, could result in an inoperative backup flight idle stop system, which could lead to possible engine failure.

EMBRAER previously had issued Service Bulletin 120-076-0009, Change No. 4, dated November 1, 1990, which describes procedures to install a flight idle position electrical lock to the power control bellcrank. This installation minimizes the possibility of setting the power control levers to angles below flight idle during flight. [Installation of such a device is the subject of AD 90-17-12, amendment 39-6696 (55 FR 33107, August 14, 1990).]

This airplane model is manufactured in Brazil and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, the FAA issued Telegraphic AD T92-16-51 to prevent an inoperative backup flight idle stop system and potential engine failure. The AD requires repetitive visual checks or inspections to verify that both flight idle stop circuit breakers for engine 1 and 2 are closed. For airplanes on which an inspection window has been installed on the left lateral console panel that permits visibility of the flight idle stop solenoid circuit breakers, a flight crew member may perform a visual check to make this verification. However, for airplanes without such an installation, a visual inspection must be accomplished by a rated mechanic.

The AD also requires repetitive functional tests to determine whether the backup flight idle stop system is operative. Depending upon what discrepancies are found, an inoperative system must either be restored to the configuration specified in the EMBRAER service bulletin described previously, or repaired in accordance with the EMB-120 maintenance manual.

Additionally, this AD requires that operators submit a report of their initial findings to the FAA.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual telegrams issued on July 29, 1992, to all known U.S. owners and operators of EMBRAER Model EMB-120 series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations (FAR) to make it effective as to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "**ADDRESSES.**" All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-152-AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-16-51 Embraer: Amendment 39-8355. Docket 92-NM-152-AD.

Applicability: All Model EMB-120 series airplanes, certificated in any category.

To prevent an inoperative backup flight idle stop system and potential engine failure, accomplish the following:

(a) Within 5 days after the effective date of this AD, and thereafter prior to the first flight of each day, accomplish paragraph (a)(1) or (a)(2) of this AD, as applicable:

(1) For airplanes on which an inspection window has been installed on the left lateral console panel that permits visibility of the flight idle stop solenoid circuit breakers: Using an appropriate light source, perform a visual check to verify that both "FLT IDLE STOP SOL" circuit breakers CB0582 and CB0583 for engine 1 and engine 2 are closed.

Note 1: This check may be performed by a flight crew member.

Note 2: Instructions for installation of an inspection window can be found in EMBRAER Information Bulletin 120-076-0003, dated November 19, 1991; or EMBRAER Service Bulletin 120-076-0014, dated July 29, 1992.

(2) For airplanes on which an inspection window has not been installed on the left lateral console panel: Perform a visual inspection to verify that both "FLT IDLE STOP SOL" circuit breakers CB0582 and CB0583 for engine 1 and engine 2 are closed.

(b) As a result of the check or inspection performed in accordance with paragraph (a) of this AD: If circuit breakers CB0582 and CB0583 are not closed, prior to further flight, reset them and perform the functional test specified in paragraph (c) of this AD.

(c) Within 5 days after the effective date of this AD and thereafter at intervals not to exceed 75 hours time-in-service, or immediately following any maintenance action where the power levers are moved with the airplane on jacks, conduct a functional test of the backup flight idle stop system for engine 1 and engine 2 by performing the following steps:

(1) Move both power levers to the "MAX" position.

(2) Turn the aircraft power select switch on.

(3) Open both "AIR/GROUND SYSTEM" circuit breakers CB0283 and CB0286 to simulate in-flight conditions with weight-off-wheels. Wait for at least 15 seconds, then move both power levers back toward the propeller reverse position with the flight idle gate triggers raised. Verify that the power lever for each engine cannot be moved below the flight idle position, even though the flight idle gate trigger on each power lever is raised.

(4) If the power lever can be moved below the flight idle position, prior to further flight, restore the backup flight idle stop system to the configuration specified in EMBRAER Service Bulletin 120-076-0009, Change No. 4, dated November 1, 1990, and perform a functional test.

Note: If the power lever can be moved below flight idle, this indicates that the backup flight idle stop system is inoperative.

(5) Move both power levers to the "MAX" position.

(6) Close both "AIR/GROUND SYSTEM" circuit breakers CB0283 and CB0286. Wait for at least 15 seconds, then move both power levers back toward the propeller reverse position with the flight idle gate triggers raised. Verify that the power lever for each engine can be moved below the flight idle position.

(7) If either or both power levers cannot be moved below the flight idle position, prior to further flight, inspect the backup flight idle stop system and the flight idle gate system, and accomplish either paragraph (c)(7)(i) or (c)(7)(ii) of this AD, as applicable:

(i) If the backup flight idle stop system is failing to disengage with weight-on-wheels, prior to further flight, restore the system to the configuration specified in EMBRAER Service Bulletin 120-076-0009, Change No. 4, dated November 1, 1990.

(ii) If the flight idle gate system is failing to open even though the trigger is raised, prior to further flight, repair in accordance with the EMBRAER Model EMB-120 maintenance manual.

(8) Turn the power select switch off. The functional test is completed.

(d) Within 10 days after accomplishing the initial visual inspection/check and initial functional test required by paragraphs (a) and (c) of this AD, report the results of those tests, positive or negative, to the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; fax (404) 991-3606. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120-0056.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta ACO, FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The restoration procedure shall be done in accordance with EMBRAER Service Bulletin 120-076-0009, Change No. 4, dated November 1, 1990. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from EMBRAER Aircraft Corporation, 276 SW. 34th Street, Fort Lauderdale, Florida 33315. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(h) This amendment becomes effective on September 23, 1992, to all persons except those persons to whom it was made immediately effective by telegraphic AD T92-16-51, issued July 29, 1992, which contained the requirements of this amendment.

Issued in Renton, Washington, on August 12, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-21477 Filed 9-4-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 60

[Docket No. 920240-2040]

Public Information

AGENCY: Bureau of the Census, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of the Census is amending its rule at 15 CFR, part 60, to repeal its existing guidelines for the disclosure of information to the public, and to refer any subsequent inquiries to 15 CFR part 4. The purpose of this rule-making notice is to implement updated policies and procedures for handling public requests for materials pursuant to the requirements of the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended.

EFFECTIVE DATE: September 8, 1992.

FOR FURTHER INFORMATION CONTACT: J. Patrick Heelen, Deputy Chief Counsel, Bureau of the Census, U.S. Department of Commerce, Federal Building 3, room 3077, Washington, DC 20233, (301) 763-2818.

SUPPLEMENTARY INFORMATION: 15 CFR, part 60, contains outdated information. The information found in 15 CFR, part 4, which is the Department of Commerce's rules on FOIA procedures, provides a more updated explanation of the scope, purpose, policies, and guidelines for

making publicly available certain records as specified in 5 U.S.C. 552(a)(2) and 552(a)(3). As part of the Department of Commerce, the Bureau of the Census follows the rules set forth in 15 CFR part 4.

The Bureau of the Census finds good cause to dispense with the notice and comment and delayed effective date requirements of the Administrative Procedures Act (APA) for this rule. These APA requirements are unnecessary because the Bureau of the Census is deleting superseded regulations and substituting a cross-reference for currently operating regulations.

Since a notice and an opportunity for comment are not required to be given for the rule under section 533 of the APA (5 U.S.C. 533) or any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)), no initial or final Regulatory Flexibility analysis has to be or will be prepared.

List of Subjects in 15 CFR Part 60

Freedom of information.

PART 60—PUBLIC INFORMATION

1. The Authority citation is revised to read as follows:

Authority: 5 U.S.C. 301, 552, 553, Reorganization Plan No. 5 of 1950; 31 U.S.C. 3717.

§§ 60.2–60.11 [Removed]

2. Part 60 is amended by removing §§ 60.2 through 60.11, and by revising § 60.1 to read as follows:

§ 60.1 Public information.

The rules and procedures regarding public access to the records of the Bureau of the Census are found at 15 CFR part 4.

Date: September 2, 1992.

Barbara Everitt Bryant,

Director, Bureau of the Census.

[FR Doc. 92–21522 Filed 9–4–92; 8:45 am]

BILLING CODE 3510–07–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8433]

RIN 1545–AJ51

Discounted Unpaid Losses

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the discounting of unpaid losses of insurance companies for federal income tax purposes. Changes to the applicable law were made by the Tax Reform Act of 1986. The regulations affect insurance companies and provide the guidance needed to comply with these changes.

EFFECTIVE DATE: The regulations are effective for taxable years beginning after December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Katherine A. Hossofsky, (202) 622–3970 (not a toll-free call) or Ann H. Logan, (202) 622–3970 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document sets forth final income tax regulations relating to the discounting of unpaid losses under section 846 of the Internal Revenue Code. Section 846 was added to the Code by section 1023(c) of the Tax Reform Act of 1986 (100 Stat. 2399). Proposed regulations under section 846 were published in the **Federal Register** on May 2, 1991 (56 FR 20161). Written comments were received from the public and a public hearing was held on September 24, 1991. Guidance on certain issues relating to section 846 was provided in Notice 88–100, 1988–2 C.B. 439.

Explanation of Provisions

The deduction for losses incurred provided to property and casualty insurance companies under section 832(b)(5)(A) of the Code takes into account changes in the amount of discounted unpaid losses for contracts other than life insurance contracts. In addition, section 807(c) requires life insurance companies to discount unpaid losses (other than losses on life insurance contracts) for purposes of sections 807(c)(2) and 805(a)(1). Section 846 provides rules for the discounting of unpaid losses. These regulations provide guidance on certain issues arising under section 846.

Requirements for Election To Use Own Experience

Although taxpayers generally must discount unpaid losses using the loss payment patterns determined by the Secretary and published by the Internal Revenue Service (Service), section 846(e) allows a taxpayer to elect to discount unpaid losses using the company's own historical loss payment pattern. Under section 846(e), the taxpayer's loss payment pattern must be determined using the information provided on the most recent annual statement filed before the beginning of the accident year for which the loss payment pattern is computed. The election is made separately for each determination year (1987 and each fifth calendar year thereafter) and applies to all of the taxpayer's lines of business that are eligible lines during the determination year. Section 846(e)(4) directs the Secretary to provide that the election is not available for a line of business for which the taxpayer does not have sufficient historical experience to determine a loss payment pattern.

The proposed regulations provided that a taxpayer's election to compute discounted unpaid losses based on its own historical loss payment pattern would apply to a line of business only if the taxpayer, on its most recent annual statement filed before the beginning of the determination year, reported unpaid losses for that line of business for at least the number of accident years for which unpaid losses in that line are required to be separately reported on the annual statement.

Commentators have suggested that the "unpaid losses" standard is not the appropriate criterion for determining whether a taxpayer has sufficient historical experience in a line of business. A taxpayer with sufficient historical experience in a line of business could nevertheless report on its annual statement no unpaid losses for one or more of the requisite accident years. This could occur if, for a particular accident year, all of the losses incurred in a line of business have been paid.

In response to these comments, the final regulations provide that a taxpayer's election to compute discounted unpaid losses based on its own historical payment pattern generally will apply to a line of business if the taxpayer, on its most recent annual statement filed before the beginning of the determination year, reports "losses and loss expenses incurred" for that line of business for at least the number of accident years for which losses and loss expenses incurred in that line are required to be separately stated. Further, in recognition of the need for flexibility to adapt to changes in business practice or annual statement presentation, the final regulations provide that for the 1992 and subsequent determination years a line of business will also be considered an eligible line of business if it satisfies conditions set forth in other published guidance provided by the Service. In connection with the finalization of these regulations, the Service is publishing Rev. Proc. 92–76, 1992–38 I.R.B. to

address certain situations that have been identified in comments. Taxpayers may provide the Service with data concerning lines of business and loss payment patterns to enable the Service to determine if additional guidance is warranted.

The final regulations include a transition rule for the 1987 determination year. The transition rule, which was initially published in Notice 88-100, provides that a taxpayer has sufficient historical experience for a line of business for the 1987 determination year if the taxpayer reports written premiums for at least the number of accident years for which unpaid losses for that line are required to be separately reported on the annual statement. The transition rule is not adopted for determination years after 1987 because a taxpayer may write premiums for several accident years before having unpaid losses relating to those premiums. Thus, the transition rule does not provide adequate assurance of the availability of loss payment information for each of those accident years to warrant its adoption as a final rule.

Notice 88-100 also required that the amount of unpaid losses a taxpayer reports on its annual statement for a line of business be equal to or greater than the amounts reported by at least 10 percent of all other companies that report unpaid losses for that line of business. The final regulations do not adopt this rule because of its potentially adverse impact on small companies and because determination of the 10th percentile threshold amount was administratively burdensome for taxpayers.

Anti-Abuse Rules

Section 846(e)(4)(B) directs the Secretary to issue regulations to prevent the avoidance (through the use of separate corporations or otherwise) of the requirement that the election to use historical loss payment patterns apply to all lines of business of a taxpayer. In response to commentators' requests for an expansion of the lines of business eligible for the historical loss experience election, the final regulations adopt a less restrictive criterion for determining whether a taxpayer has sufficient historical experience in a line of business and authorize further guidance to expand the definition of eligible lines of business. In view of this liberalization, safeguards are provided to prevent the avoidance of the requirement that the election apply to all eligible lines through the use of reinsurance agreements or separate corporations. Specifically, the final regulations provide that the district director may (1) nullify a taxpayer's election to compute discounted unpaid losses based on its historical loss payment pattern, (2) adjust a taxpayer's historical loss payment pattern, or (3) make other proper adjustments, to prevent avoidance of the requirement of section 846 that the election apply to all eligible lines of business of a taxpayer.

Determination of Discount Tables To Be Used

The final regulations generally provide for application of a composite schedule of discount factors to unpaid losses of a line of business for which the Service has not published discount factors.

Rev. Proc. 91-21, 1991-1 C.B. 525, provided an administrative procedure under which certain taxpayers could elect to use composite discount factors for unpaid losses on certain insurance contracts written on a claims-made basis. Neither the revenue procedure nor the final regulations permit this election for unpaid losses attributable to the 1992 accident year or any subsequent accident year.

If the groupings of individual lines of business on the annual statement change, taxpayers must discount unpaid losses on the resulting lines of business using the discounting patterns that would have applied to those unpaid losses based on their annual statement classification prior to the change. This is appropriate because the Service has published discount factors based on the classification of unpaid losses on the most recent annual statement filed before the beginning of the determination year.

In certain cases, the final regulations specify other factors that must be applied to unpaid losses for which the Service has not published discount factors. For example, for purposes of discounting unpaid losses from nonproportional reinsurance for accident years after 1991, the proposed regulations are modified to reflect changes in the information required on the annual statement. As a result of the additional information contained in the 1990 annual statement, the Secretary is able to calculate discount tables from nonproportional reinsurance for short-tailed lines of business, long-tailed lines of business, and financial guarantee/surety type business.

The final regulations also provide that the 90 percent rule applies to reinsurance and international business for all accident years. The 90 percent rule requires that reinsurance which is not allocated to a specific line of business must nonetheless be discounted using the factors associated with that line of business if 90 percent of the unallocated unpaid losses relate to underlying line of business.

Fresh Start

The final regulations adopt with one modification the rules contained in the proposed regulations concerning the computation of the "fresh start" provided by section 1023(e)(3) of the Tax Reform Act of 1986 (the Act). The fresh start provides a double deduction by allowing a taxpayer to not take into account the difference between undiscounted and discounted losses as of the end of the last taxable year beginning before January 1, 1987. However, under section 1023(e)(3)(B) of the Act, the fresh start does not apply to any "reserve strengthening" in a taxable year beginning in 1986. Congress imposed this rule to limit the double deduction benefit allowed by the fresh start.

The proposed regulations provided a mechanical test which was applied to reserves to determine the existence of reserve strengthening for purposes of the fresh start provisions. Commentators suggested a number of different alternatives to the mechanical test. One commentator proposed that the final regulations provide specific instances and safe harbors under which certain reserve adjustments would not be treated as reserve strengthening under section 1023(e)(3)(B) of the Act. The commentator suggested that reserve strengthening should not be deemed to occur in situations where a taxpayer's reserves, based on hindsight, were deficient at the beginning of 1986 and also suggested that the following types of reserve increases not be treated as reserve strengthening under section 1023(e)(3)(B): (a) reserve increases based on normal business practice, (b) reserve increases attributable to changes in law, (c) reserve increases attributable to writing off reinsurance recoverable from reinsurers that became impaired, (d) reserve increases for reinsurance attributable to increases in reserves reported to the taxpayer by the primary insurer, (e) reserve increases resulting from the acquisition in 1986 of an insolvent insurer that was under-reserved, (f) losses paid or reserves established in 1986 where there was no reserve at the end of 1985 for pre-1986 accident years, (g) reserve increases for a particular line of business, to the extent that other companies with which the taxpayer has entered into a pool or quota share arrangement have combined reserve weakening for that line of business, and (h) reserve increases

attributable to correction of an error in reserve determinations for one or more prior years. Alternatively, the commentator suggested the use of a facts and circumstances test.

Another commentator asked that reserve strengthening be defined to exclude reserve increases necessary for business reasons. An alternative suggestion was that non-artificial reserve increases be identified based on a runoff of the taxpayer's loss reserves held at the end of 1986.

The final regulations generally adopt the mechanical test of the proposed regulation. Congress did not limit the imposition of the reserve strengthening rule to tax motivated transactions. The legislative history indicates that for purposes of the fresh start adjustment the term "reserve strengthening" includes "all additions to reserves attributable to an increase in an estimate of reserve established for a prior accident year (taking into account claims paid with respect to that accident year), and all additions to reserves resulting from a change in the assumptions (other than changes in the assumed interest rates applicable to reserves for the 1986 accident year) used in estimating losses for the 1986 accident year, as well as all unspecified or unallocated additions to loss reserves". See 2 H.R. Conf. Rep. 841, 99th Cong., 2d Sess. II-367 (1986), 1986-3 (Vol. 4), C.B. 367. Thus, Congress adopted an expansive and mechanical definition of reserve strengthening that is reflected in the final regulations.

Proposed § 1.846-3(c)(3)(iii) provided that, for purposes of the reserve strengthening rule applicable to pre-1986 accident years:

> reinsurance assumed (ceded) in the final quarter of a taxable year beginning in 1985 is treated as assumed (ceded) during the immediately succeeding taxable year if the appropriate unpaid loss reserve is not adjusted to take into account the reinsurance until that immediately succeeding year.

Several commentators noted that reporting lags of more than one calendar quarter frequently occur in the ceding company's reporting of 1985 loss information to the assuming company. In response to these comments, the final regulations include within the rule reinsurance assumed (ceded) at any time in the taxable year beginning in 1985, if the reserve is not adjusted until the first taxable year beginning in 1986.

The final regulations also clarify the treatment of reinsurance assumed during the taxable year beginning in 1986 in the determination of reserve strengthening. The final regulations provide that taxpayers take into account neither the end of the year reserve nor the payments made prior to the end of the year with respect to the assumed reinsurance in determining reserve strengthening. A corresponding clarification is made in the example illustrating this rule.

Adjustment of Annual Statement Reserves

The final regulations incorporate existing guidance for the two situations in which reserves shown on the annual statement may be increased due to disclosure of additional information. The first situation corresponds to the adjustment of reserves under section 846(b)(2), and the second situation makes the treatment of estimated salvage recoverable in determining unpaid losses symmetrical with the treatment of salvage recoverable provided in the regulations under section 832 of the Code.

Title Insurers

The final regulations do not allow title insurance companies to make an election to use their historic loss payment pattern for purposes of discounting case reserves. This modification is necessary as the annual statement does not provide the taxpayer with the information necessary to calculate its historical loss payment pattern. Further, as the annual statement does not provide the Secretary with the information necessary to construct a loss payment pattern specifically for case reserves of title insurers, the final regulations requires title insurers to discount their case reserves based on a miscellaneous casualty pattern.

Other Comments That Were Not Adopted

Commentators suggested a number of additional modifications to the proposed regulations. In the consolidated return context, several commentators suggested that a net reserve weakening for one member of an affiliated group should be netted with a net reserve strengthening of another member. Another commentator proposed that the final regulations permit companies included in intercompany pooling arrangements to demonstrate historical experience on a group basis. These comments have not been adopted.

Notice 88-100

Sections II, III, and VI of Notice 88-100, 1988-2 C.B. 439, are now obsolete.

Effective Date

Notice 88-100 set forth guidance regarding the forthcoming regulations that taxpayers were able to rely upon prior to the publication of final regulations. The final regulations follow most of the guidance in Notice 88-100 and provide relief from certain of its rules. Therefore, retaining the effective date announced in Notice 88-100 is appropriate.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these regulations are Katherine A. Hossofsky and Ann H. Logan of the Office of the Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. Other personnel from the Service and Treasury Department participated in their development.

List of Subjects

26 CFR 1.801-1 through 1.846

Income taxes; Insurance companies.

Adoption of Amendments to the Regulations

For the reasons set forth in the preamble, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * Sections 1.846-1 through 1.846-4 also issued under 26 U.S.C. 846.

Par. 2. Sections 1.846-0 through 1.846-4 are added to read as follows:

§ 1.846-0 Outline of provisions.

The following is a list of the headings in §§ 1.846-1 through 1.846-4.

§ 1.846-1 Application of discount factors.

(a) In general.
(1) Rules.
(2) Examples.

(3) Increase in discounted unpaid losses shown on the annual statement.
(4) Increase in unpaid losses which take into account estimated salvage recoverable.
(b) Applicable discount factors.
(1) In general.
(i) Discount factors published by the Service.
(ii) Composite discount factors.
(iii) Annual statement changes.
(2) Title insurance company reserves.
(3) Reinsurance business.
(i) Proportional reinsurance for accident years after 1987.
(ii) Non-proportional reinsurance.
(A) Accident years after 1991.
(B) Accident years 1988 through 1991.
(iii) Reinsurance for accident years before 1985.
(iv) 90 percent exception.
(4) International business.
(5) Composite discount factors.

§ 1.846–2 Election by taxpayer to use its own historical loss payment patterns.

(a) In general.
(b) Eligible line of business.
(1) In general.
(2) Other published guidance.
(3) Special rule for 1987 determination year.
(c) Anti-abuse rule.

§ 1.846–3 Fresh start and reserve strengthening.

(a) In general.
(b) Applicable discount factors.
(1) Calculation of beginning balance.
(2) Example.
(c) Rules for determining the amount of reserve strengthening.
(1) In general.
(2) Accident years after 1985.
(i) In general.
(ii) Hypothetical unpaid loss reserve.
(3) Accident years before 1986.
(i) In general.
(ii) Exceptions.
(iii) Certain transactions deemed to be reinsurance assumed (ceded) in 1986.
(d) Section 845.
(e) Treatment of reserve strengthening.
(f) Examples.

§ 1.846–4 Effective date.

§ 1.846–1 Application of discount factors.

(a) *In general*—(1) *Rules.* A separate series of discount factors are computed for, and applied, to undiscounted unpaid losses attributable to each accident year of each line of business shown on the annual statement (as defined by section 846(f)(3)) filed by that taxpayer for the calendar year ending with or within the taxable year of the taxpayer. See § 1.832–4(b) relating to the determination of unpaid losses. Paragraph (b) of this section provides rules relating to applicable discount factors and § 1.846–3(b) contains guidance relating to discount factors applicable to accident years prior to the 1987 accident year. Once a taxpayer applies a series of discount factors to unpaid losses attributable to an accident year of a line of business, that series of discount factors must be applied to discount the unpaid losses for that accident year for that line of business for all future taxable years. The discount factors cannot be changed to reflect a change in the taxpayer's loss payment pattern during a subsequent year or to reflect a different interest rate assumption. However, discount factors may be changed for taxpayers who elect to use their own historical loss payment pattern, if information upon which the pattern is based is adjusted upon examination by the district director.

(2) *Examples.* The following examples illustrate the principles of paragraph (a)(1) of this section:

Example 1. A taxpayer discounts unpaid losses attributable to all accident years prior to 1992 using discount factors published by the Service. In 1992, the taxpayer elects, under § 1.846–2, to compute discount factors using its own historical loss payment pattern. The taxpayer must continue to discount unpaid losses attributable to pre-1992 accident years using the discount factors published for those accident years by the Service.

Example 2. On its annual statements through 1987, a taxpayer did not allocate unpaid losses attributable to proportional reinsurance to the line of business associated with the risks being reinsured. Beginning with the 1988 annual statement, the taxpayer allocated those losses for all accident years to the line of business being reinsured. The taxpayer must continue to discount the unpaid losses attributable to proportional reinsurance from pre-1988 accident years using the discount factors that were used in determining tax reserves for the 1987 tax year. (See paragraph (b)(3) of this section for rules relating to the application of discount factors to reinsurance unpaid losses.)

(3) *Increase in discounted unpaid losses shown on the annual statement.* If the amount of unpaid losses shown on the annual statement is determined on a discounted basis, and the extent to which the unpaid losses were discounted can be determined on the basis of information disclosed on or with the annual statement, the amount of the unpaid losses to which the discount factors are applied shall be determined without regard to any reduction attributable to the discounting reflected on the annual statement.

(4) *Increase in unpaid losses which take into account estimated salvage recoverable.* If the amount of unpaid losses shown on the annual statement reflects a reduction for estimated salvage recoverable and the extent to which the unpaid losses were reduced by estimated salvage recoverable is appropriately disclosed as required by § 1.832–4(d)(2), the amount of unpaid losses shall be determined without regard to the reduction for salvage recoverable.

(b) *Applicable discount factors*—(1) *In general.* Except as otherwise provided in section 846(f)(6) (relating to certain accident and health lines of business), in § 1.846–2 (relating to a taxpayer's election to use its own historical loss payment pattern), in this paragraph (b), or in other guidance published in the Internal Revenue Bulletin, the following factors must be used—

(i) *Discount factors published by the Service.* If the Service has published discount factors for a line of business, a taxpayer must discount unpaid losses attributable to that line by applying those discount factors; and

(ii) *Composite discount factors.* If the Service has not published discount factors for a line of business, a taxpayer must discount unpaid losses attributable to that line by applying composite discount factors.

(iii) *Annual statement changes.* If the groupings of individual lines of business on the annual statement changes, taxpayers must discount the unpaid losses on the resulting lines of business with the discounting patterns that would have applied to those unpaid losses based on their annual statement classification prior to the change.

(2) *Title insurance company reserves.* A title insurance company may only take into account case reserves (relating to claims which have been reported to the insurance company). Unless the Service publishes other guidance, the reserves must be discounted using the "Miscellaneous Casualty" discount factors published by the Service. Section 832(b)(8) provides rules for determining the discounted unearned premiums of a title insurance company.

(3) *Reinsurance business*—(i) *Proportional reinsurance for accident years after 1987.* For the 1988 accident year and subsequent accident years, unpaid losses for proportional reinsurance must be discounted using discount factors applicable to the line of business to which those unpaid losses are allocated as required on the annual statement.

(ii) *Non-proportional reinsurance*—(A) *Accident years after 1991.* For the 1992 accident year and subsequent accident years, unpaid losses for non-proportional reinsurance must be discounted using the applicable discount factors published by the Service for the appropriate reinsurance line of business.

(B) *Accident years 1988 through 1991.* For the 1988, 1989, 1990, and 1991 accident years unpaid losses for non-proportional reinsurance must be

discounted using composite discount factors.

(iii) *Reinsurance for accident years before 1988.* If on its annual statement a taxpayer does not allocate unpaid losses to the applicable line of business for proportional or nonproportional reinsurance attributable to the 1987 accident year or a prior accident year, those losses must be discounted using composite discount factors. If on its annual statement a taxpayer allocates to the underlying line of business reinsurance unpaid losses that are attributable to the 1987 accident year or a prior accident year, those losses must be discounted using discount factors applicable to the underlying line of business.

(iv) *90 percent exception.* For purposes of § 1.846–1(b)(3) (ii) and (iii), if more than 90 percent of all the unallocated losses of a taxpayer for an accident year relate to one underlying line of business, the taxpayer must discount all unallocable reinsurance unpaid losses attributable to that accident year using the discount factors published by the Service for the underlying line of business.

(4) *International business.* For any accident year, unpaid losses which are attributable to international business must be discounted using composite discount factors unless more than 90 percent of all losses for that accident year relate to one underlying line of business. If more than 90 percent of all losses for an accident year relate to one underlying line of business, the taxpayer must discount the losses attributable to that accident year using discount factors published by the Service for the underlying line of business.

(5) *Composite discount factors.* For purposes of the regulations under section 846, "composite discount factors" means the series of discount factors published annually by the Service determined on the basis of the appropriate composite loss payment pattern.

§ 1.846–2 Election by taxpayer to use its own historical loss payment pattern.

(a) *In general.* If a taxpayer has one or more eligible lines of business in a determination year, the taxpayer may elect on the taxpayer's timely filed Federal income tax return for the determination year to discount unpaid losses using its own historical loss payment pattern instead of the industry-wide pattern determined by the Secretary. A taxpayer making the election must use its own historical loss payment pattern in discounting unpaid losses for each line of business that is an eligible line of business in that determination year. The election applies to accident years ending with the determination year and to each of the four succeeding accident years. If a taxpayer makes the election for the 1987 determination year, the taxpayer must use its 1987 loss payment pattern (determined by reference to its 1985 annual statement) to discount unpaid losses attributable to all accident years prior to 1988.

(b) *Eligible line of business*—(1) *In general.* A line of business is an eligible line of business in a determination year if, on the most recent annual statement filed by the taxpayer before the beginning of that determination year, the taxpayer reports losses and loss expenses incurred (in Schedule P, part 1, column 24 of the 1990 annual statement or comparable location in an earlier or subsequently revised blank) for at least the number of accident years for which losses and loss expenses incurred for that line of business are required to be separately reported on that annual statement. For example, for the 1987 determination year, the 1985 annual statement is used. The annual statement to be used to determine eligibility in subsequent determination years is the annual statement for each fifth year after 1985 (e.g., 1990, 1995, etc.).

(2) *Other published guidance.* A line of business is also an eligible line of business for purposes of the election if the line is an eligible line under requirements published for this purpose in the Internal Revenue Bulletin.

(3) *Special rule for 1987 determination year.* A line of business is an eligible line of business in the 1987 determination year if it is eligible under paragraph (b) (1) or (2) of this section, or if on the most recent annual statement filed by the taxpayer before the beginning of the 1987 determination year, the taxpayer reports written premiums for the line of business for at least the number of accident years that unpaid losses for that line of business are required to be separately reported on that annual statement.

(c) *Anti-abuse rule.* To prevent avoidance of the requirement that the election to use historical loss payment patterns apply to all eligible lines of business of a taxpayer, the district director may—

(1) Nullify a taxpayer's election to compute discounted unpaid losses based on its historical loss payment pattern;

(2) Adjust a taxpayer's historical loss payment pattern; or

(3) Make other proper adjustments.

§ 1.846–3 Fresh start and reserve strengthening.

(a) *In general.* Section 1023(e) of the Tax Reform Act of 1986 ("the 1986 Act") provides rules relating to fresh start and reserve strengthening. For purposes of section 1023(e) of the 1986 Act, a taxpayer must discount its unpaid losses as of the end of the last taxable year beginning before January 1, 1987. The excess of undiscounted unpaid losses over discounted unpaid losses as of that time is not required to be included in income, except (as provided in paragraph (e) of this section) to the extent of any "reserve strengthening" in a taxable year beginning in 1986. The exclusion from income of this excess is known as "fresh start." The amount of fresh start is, however, included in earnings and profits for the first taxable year beginning after December 31, 1986.

(b) *Applicable discount factors*—(1) *Calculation of beginning balance.* For purposes of section 1023(e) of the 1986 Act, a taxpayer discounts unpaid losses as of the end of the last taxable year beginning before January 1, 1987—

(i) By using the same discount factors that are used in the succeeding taxable year to discount unpaid losses attributable to the 1987 accident year and prior accident years (see section 1023(e)(2) of the 1986 Act); and

(ii) By applying those discount factors as if the 1986 accident year were the 1987 accident year.

(2) *Example.* The following example illustrates the principles of this paragraph (b):

Example. X, a calendar year taxpayer, does not make an election in 1987 to use its own historical loss payment pattern. When X computes discounted unpaid losses for its last taxable year beginning before January 1, 1987, the discount factor for AY+0 published in Rev. Rul. 87–34, 1987–1 C.B. 168, must be applied to unpaid losses attributable to the 1986 accident year; the discount factor for AY+1 is applied to unpaid losses attributable to the 1985 accident year; etc.

(c) *Rules for determining the amount of reserve strengthening (weakening)*—(1) *In general.* The amount of reserve strengthening (weakening) is the amount that is determined under paragraph (c)(2) or (3) to have been added to (subtracted from) an unpaid loss reserve in a taxable year beginning in 1986. For purposes of section 1023(e)(3)(B) of the 1986 Act, the amount of reserve strengthening (weakening) must be determined separately for each unpaid loss reserve by applying the rules of this paragraph (c). This determination is made without regard to the reasonableness of the amount of the unpaid loss reserve and without regard

to the taxpayer's discretion, or lack thereof, in establishing the amount of the unpaid loss reserve. The amount of reserve strengthening for an unpaid loss reserve may not exceed the amount of the reserve, including any undiscounted strengthening amount, as of the end of the last taxable year beginning before January 1, 1987. For purposes of this section, an "unpaid loss reserve" is the aggregate of the unpaid loss estimate for losses (whether or not reported) incurred in an accident year of a line of business.

(2) *Accident years after 1985*—(i) *In general.* The amount of reserve strengthening (weakening) for an unpaid loss reserve for an accident year after 1985 is the amount by which that reserve at the end of the last taxable year beginning in 1986 exceeds (is less than) a hypothetical unpaid loss reserve.

(ii) *Hypothetical unpaid loss reserve.* For purposes of this paragraph (c)(2), the term "hypothetical unpaid loss reserve" means a reserve computed for losses the estimates of which were included, at the end of the last taxable year beginning in 1986, in the unpaid loss reserve for which reserve strengthening (weakening) is being determined. The hypothetical unpaid loss reserve must be computed using the same assumptions, other than the assumed interest rates in the case of reserves determined on a discounted basis for annual statement reporting purposes, that were used to determine the 1985 accident year reserve, if any, for the line of business for which the hypothetical reserve is being computed. If there was no 1985 accident year reserve for that line of business, the hypothetical unpaid loss reserve is the reserve, at the end of the last taxable year beginning in 1986, for which reserve strengthening (weakening) is being determined (and thus there is no reserve strengthening or weakening).

(3) *Accident years before 1986*—(i) *In general.* For each taxable year beginning in 1986, the amount of reserve strengthening (weakening) for an unpaid loss reserve for an accident year before 1986 is the amount by which the reserve at the end of that taxable year exceeds (is less than)—

(A) The reserve at the end of the immediately preceding taxable year; reduced by

(B) Claims paid and loss adjustment expenses paid ("loss payments") in the taxable year beginning in 1986 with respect to losses that are attributable to the reserve. The amount by which a reserve is reduced as a result of reinsurance ceded during a taxable year beginning in 1986 is treated as a loss payment made in that taxable year.

(ii) *Exceptions.* Notwithstanding paragraph (c)(3)(i) of this section, the amount of reserve strengthening (weakening) for an unpaid loss reserve for an accident year before 1986 does not include—

(A) An amount added to the reserve in a taxable year beginning in 1986 as a result of a loss reported to the taxpayer from a mandatory state or federal assigned risk pool if the amount of the loss reported is not discretionary with the taxpayer; or

(B) Payments made with respect to reinsurance assumed during a taxable year beginning in 1986 or amounts added to the reserve to take into account reinsurance assumed for a line of business during a taxable year beginning in 1986, but only to the extent that the amount does not exceed the amount of a hypothetical reserve for the reinsurance assumed. The amount of the hypothetical reserve is determined using the same assumptions (other than the assumed interest rates) that were used to determine a reserve for reinsurance assumed for the line of business in a taxable year beginning in 1985.

(iii) *Certain transactions deemed to be reinsurance assumed (ceded) in 1986.* For purposes of this paragraph (c)(3), reinsurance assumed (ceded) in a taxable year beginning in 1985 is treated as assumed (ceded) during the succeeding taxable year if the appropriate unpaid loss reserve is not adjusted to take into account the reinsurance transaction until that succeeding taxable year.

(d) *Section 845.* Any reinsurance transaction that has as one of its purposes the avoidance of the reserve strengthening limitation is subject to section 845.

(e) *Treatment of reserve strengthening.* The fresh start provision of section 1023(e)(3)(A) of the 1986 Act does not apply to the portion of the taxpayer's unpaid losses attributable to reserve strengthening. Thus, the difference between the undiscounted unpaid losses attributable to reserve strengthening and the discounted unpaid losses attributable to reserve strengthening must be included in income and, therefore, included in earnings and profits for the first taxable year beginning after December 31, 1986. The amount that a taxpayer must include in income for its first taxable year beginning after December 31, 1986, as a result of reserve strengthening is equal to the excess (if any) of—

(1) The sum of each amount of reserve strengthening multiplied by the difference between 100 percent and the discount factor that, under paragraph (b) of this section, is applicable to the unpaid loss reserve which was strengthened; over

(2) The sum of each reserve weakening multiplied by the difference between 100 percent and the discount factor that, under paragraph (b) of this section, is applicable to the unpaid loss reserve which was weakened.

(f) *Examples.* The following examples illustrate the principles of this section. For purposes of these examples, it is assumed that the taxpayers are property and casualty insurance companies that in 1987 did not elect to use their own historical loss payment patterns.

Example 1. (i) As of the end of 1985, X, a calendar year taxpayer, had undiscounted unpaid losses of $1,000,000 in the workers' compensation line of business for the 1984 accident year. The same reserve had undiscounted unpaid losses of $900,000 at the end of 1986. During 1986, X's loss payments for this reserve were $300,000. Accordingly, under paragraph (c)(3)(i) of this section, X has a reserve strengthening of $200,000 ($900,000–($1,000,000–$300,000)).

(ii) This was X's only reserve strengthening or weakening. Thus, under paragraph (e) of this section, for 1987 must include in income $54,361.40 ($200,000 × (100%–72.8193%)). The factor of 72.8193% is the AY+2 factor from the workers' compensation series of discount factors published in Rev. Rul. 87–34, 1987–1 C.B. 168.

Example 2. The facts are the same as in *Example 1*, except that X's 1986 loss payments for the reserve were $1,100,000. If only paragraph (c)(3)(i) of this section were applied, X would have a $1,000,000 reserve strengthening ($900,000–($1,000,000–$1,100,000)). Under paragraph (c)(1) of this section, however, the amount of reserve strengthening for the reserve is limited to the amount of the reserve at the end of 1986. Accordingly, X has a reserve strengthening of $900,000 and for 1987 must include in income $244,626.30 ($900,000 × (100%–72.1893%)).

Example 3. (i) As of the end of 1985, Y, a calendar year taxpayer, had undiscounted unpaid losses of $1,000,000 in the auto physical damage line of business for the 1985 accident year. The same reserve included undiscounted unpaid losses of $600,000 at the end of 1986. During 1986, Y had loss payments of $300,000 for this line of business. Under paragraph (c)(3)(i) of this section Y has a $100,000 reserve weakening ($600,000–($1,000,000–$300,000)).

(ii) Under paragraph (e) of this section, the only effect of the reserve weakening is to reduce the amount that Y is required to include in income as a result of any strengthening of another reserve.

Example 4. The facts are the same as in *Example 1* except that X also has a $100,000 reserve weakening for the 1985 accident year in its auto physical damage line of business. Under paragraph (b) of this section, the reserve discount factor for the reserve is 93.3400, the AY+1 factor from the auto physical damage series of discount factors published in Rev. Rul. 87–34. Thus, under paragraph (e) of this section, the amount that

X is required to include in income in 1987 is reduced by $6,660 ($100,000 × (100%–93.3400%)), resulting in an amount of $47,761.40 ($54,361.40–$6,660).

Example 5. (i) At the end of 1985, Z, a calendar year taxpayer, had undiscounted unpaid losses of $1,000,000 in the workers' compensation line of business for the 1984 accident year. On May 1, 1986, Z ceded $130,000 of the reserve to an unrelated reinsurer. Z added $250,000 to the 1985 year end reserve to take into account workers' compensation risks for the 1984 accident year that Z assumed in a reinsurance transaction on September 1, 1986. Z had $230,000 of 1986 loss payments related to the 1984 accident year of its workers' compensation line, $60,000 of which was attributable to the reinsurance assumed by Z. At the end of 1986, Z's reserve for the workers' compensation line for the 1984 accident year was $1,100,000.

(ii) If only paragraph (c)(3)(i) of this section were applied, Z would have a $460,000 reserve strengthening ($1,100,000–($1,000,000–230,000–$130,000)). Under paragraph (c)(3)(ii)(B) of this section, however, reserve strengthening does not include the $250,000 that Z added to the reserve to take into account the reinsurance assumed. Also, none of the $60,000 of loss payments attributable to the reinsurance assumed in 1986 are taken into account. Accordingly, Z has $150,000 of reserve strengthening ($460,000–$250,000–$60,000). If this is Z's only reserve strengthening or weakening, then the amount that Z must include in income for 1987 under paragraph (e) of this section is $40,771.05 ($150,000 × (100%–72.8193%)). The factor of 72.8193% is the AY+2 factor from the workers' compensation series of discount factors published in Rev. Rul. 87–34.

Example 6. (i) X was a calendar year taxpayer before July 1, 1986, the date on which X became a member of an affiliated group of corporations that files a consolidated return with a June 30 year end. Thus, X had two taxable years beginning in 1986: a short taxable year ending June 30, 1986, and a fiscal taxable year ending June 30, 1987.

(ii) As of the end of 1985, X had undiscounted unpaid losses of $800,000 in the automobile liability line of business for the 1983 accident year. At the end of the short taxable year, X had reserves of $700,000 of undiscounted unpaid losses, and on June 30, 1987, had reserves of $600,000 of undiscounted unpaid losses. During the short taxable year, ending June 30, 1986, X's loss payments for this reserve were $120,000. During the taxable year ending June 30, 1987, X's loss payments for this reserve were $180,000. Under paragraph (c)(3)(i) of this section, X has a $100,000 reserve strengthening: of which $20,000 ($700,000–($800,000–$120,000)) is attributable to the short taxable year ending June 30, 1986 and $80,000 ($600,000–($700,000–$180,000)) is attributable to the taxable year ending June 30, 1987.

(iii) The amount of reserve strengthening for this line of business is determined pursuant to the principles of paragraph (c)(2) of this section.

§ 1.846–4 Effective date.

Sections 1.846–1 through Sections 1.846–3 apply to taxable years beginning after December 31, 1986.

Approved: August 14, 1992.

Shirley D. Peterson,

Commissioner of Internal Revenue.

Alan J. Wilensky,

Assistant Secretary of the Treasury.

[FR Doc. 92–21299 Filed 9–4–92; 8:45 am]

BILLING CODE 4830–01–M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 20

[T.D. ATF–332, Re: Notice No. 743]

Specially Denatured Spirits; Miscellaneous Amendments

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: This final rule amends regulations to eliminate the requirement that a person obtain a permit as a dealer in specially denatured spirits with respect to shipments of specially denatured spirits which that person never physically received nor intended to receive; clarify a reference to specially denatured spirits, and to correct a regulatory reference; allow for the notification of adoption of formulas and statements of process to be filed at the regional level; allow distributors of an article to place minimal identifying information (name, address and phrase such as "distributed by") on the label of that article without qualifying in any manner under agency regulations on the distribution and use of denatured alcohol and rum; allow that, in certain cases, code marks may be used on the container of an article, in lieu of a permit number, to identify the site where the article was manufactured; and revise the procedures for the disposition of specially denatured spirits from one user to another.

These changes are intended to liberalize the procedures applicable to the distribution of specially denatured spirits, and reduce regulatory burdens.

EFFECTIVE DATE: September 8, 1992.

FOR FURTHER INFORMATION CONTACT: Tamara Light, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226 ((202) 927–8210).

SUPPLEMENTARY INFORMATION:

Background

Dealer Redefined

26 U.S.C. 5271 provides, in part, that persons who deal in specially denatured spirits shall obtain a permit which authorizes that activity. ATF has interpreted the term "deal in" to mean the purchase and sale of specially denatured spirits. This interpretation has sometimes required a person who merely takes orders for specially denatured spirits, and arranges for the shipment to an eligible user, to qualify with ATF as a dealer, to file a bond and to otherwise comply with the regulatory provisions of 27 CFR part 20, because that person is buying and selling specially denatured spirits. Since a person acting in this manner never physically receives a shipment of specially denatured spirits, and never intends to receive such shipment, ATF feels that by revising the definition of the term dealer, only those persons who engage in activities involving physical possession of denatured spirits will be required to obtain a permit.

It is ATF's view that product accountability should rest with persons who physically receive specially denatured spirits. This view is based on the fact that specially denatured spirits may only be transferred between persons who hold a permit authorizing them to receive, store, use or denature such products. This means that ATF can establish the accountability of specially denatured spirits by verifying that the consignor and consignee are operating in compliance with the provisions of 27 CFR parts 19 and/or 20. There is no need for ATF to consider the ownership (without physical receipt) of specially denatured spirits by intervening third parties. Accountability and tax liability relating to specially denatured spirits will reside with those persons who are accountable for the specially denatured spirits because they physically possess the product.

Regulation 27 CFR 20.25 Clarified

The phrase "specially denatured alcohol" in § 20.25 is revised to read "specially denatured spirits." Section 20.25 is revised to correct the reference to § 20.222 to read § 20.241.

Regulation in 20.63 Revised

The regulations in 27 CFR 20.63 provide for the adoption of a predecessor's formulas and statements of process by a successor. Current regulations require the successor to submit to the Director a certificate containing information regarding the proposed adoption. ATF is revising

§ 20.63 to allow the certificate to be submitted to the regional director (compliance) instead of the Director. This change will make this procedure consistent with other regulatory requirements that changes after original qualifications be filed with the regional director (compliance). The change will result in a streamlined process for notifying ATF of changes which affect permits.

Changes in Labeling Provisions for Articles

The Cosmetic, Toiletry and Fragrance Association (CTFA) on behalf of its members, petitioned ATF to amend 27 CFR 20.134(b) to allow the principal place of business to be shown on the labels of articles for external human use that contain denatured spirits, when the labels are coded to identify the place the article was manufactured. CTFA has requested this change to ease the burden of the labeling requirements for companies who have more than one manufacturing facility. The current regulations require the name and principal office of the manufacturer and the permit number of the place of manufacture. The purpose of this requirement is to provide the consumer with information about the manufacturing location of the article. We believe the consumer will be sufficiently informed as to who is responsible for the article by allowing manufacturers to use their principal business address on the label. This change will facilitate the use of identical labels in the situation where a single manufacturer operates more than one manufacturing site. Manufacturers with more than one manufacturing site will have a reduced cost because they will no longer maintain separate label inventories merely because of different addresses printed on labels. The identifying code marks will be permissible following submission of a notice explaining the coding system to the regional director (compliance) of the region where the manufacturing site is located.

ATF is also revising 27 CFR 20.134 to permit distributors to add a label to an article without the necessity to qualify in any way under 27 CFR part 20, provided the label merely states the distributor's name and address (city and State) and a short explanatory phrase, such as "Distributed by." Such additional labeling has been permitted for many years for alcoholic beverage products without danger to revenue or to consumers. It is expected that the use of such additional labeling will be a matter to be agreed upon between the manufacturer or packager and the distributor.

Regulation 20.235 Revised

Regulation 27 CFR 20.235(a) permits the transfer of specially denatured spirits from one user to another. Section 20.235 is revised to clarify the manner in which such spirits packaged for transfer shall be marked or labeled. This change will improve the accountability of the specially denatured spirits.

Public Participation—Written Comments

ATF received two comments during the 30 day comment period which ended on July 23, 1992. Both commenters were opposed to eliminating the current requirement that a person who merely takes orders and arranges for the shipment of specially denatured spirits without ever taking physical possession of the spirits, obtain a permit as a dealer. The commenters feel that by eliminating this requirement, the third party brokers will be less knowledgeable of the regulatory specially denatured spirits requirements and, therefore, an increased risk of an unaccounted for use of specially denatured spirits is present. ATF does not feel that the accountability over the use of specially denatured spirits will be lessened. ATF believes that it is not necessary for a person who merely directs the shipment of specially denatured spirits from one party to another without ever physically receiving the specially denatured spirits to qualify as a dealer because specially denatured spirits may only be transferred between persons who hold a permit authorizing them to receive, store, use or denature such products. This means that if a third party broker directs a dealer to ship x amount of specially denatured spirits to a user, both the dealer and the user will have to hold qualified ATF permits authorizing them to deal in and/or use specially denatured spirits. Since the dealer and the user will be the only ones who actually physically process the specially denatured spirits, there is no need to require that the third party obtain a permit. ATF will continue to be able to regulate both permit holders (the dealer and the user) and ensure compliance with the regulations in 27 CFR parts 19 and/or 20.

Final Rule

Accordingly, ATF is adopting the regulations as proposed in Notice No. 743 and published in the **Federal Register** (57 FR 27956, June 23, 1992).

Regulatory Flexibility Act

It is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required because the final rule is not expected (1) to have significant secondary or incidental effects on a substantial number of small entities; or (2) to impose or otherwise cause, a significant increase in the reporting, recordkeeping or other compliance burdens on a substantial number of small entities.

Executive Order 12291

It has been determined that this document is not a "major rule" within the meaning of Executive Order 12291, and a regulatory impact analysis is not required because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The collections of information contained in this final regulation have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control numbers 1512–0336 and 1512–0337. The total annual reporting burden for 1512–0336, which combines numerous sections of regulations contained in 27 CFR Part 20, is 1,556 hours. The total annual recordkeeping burden for 1512–0337 is 1 hour.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Chief, Information Programs Branch, room 3200, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, and the Office of Management and Budget, Paperwork Reduction Project 1512–0336 and 1512–0337, Washington, DC 20503.

Drafting Information

The principal author of this document is Tamara Light, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 20

Administrative practice and procedure, Advertising, Alcohol and alcohol beverages, Authority delegations, Claims, Excise taxes, Reporting and recordkeeping requirements, Surety bonds.

Issuance

Accordingly, 27 CFR part 20, entitled "Distribution and Use of Denatured Alcohol and Rum," is amended as follows:

1. The authority citation for 27 CFR part 20 is revised to read as follows:

Authority: 26 U.S.C. 5001, 5206, 5214, 5271–5275, 5311, 5552, 5555, 5607, 6065, 7805.

2. Section 20.11 is amended by revising the definition for dealer and adding an OMB control number to the end of the section to read as follows:

§ 20.11 Meaning of terms.

* * * * *

Dealer. A person required to hold a permit to deal in specially denatured spirits for resale to persons authorized to purchase or receive specially denatured spirits in accordance with this part. The term does not include a person who only buys and sells specially denatured spirits which that person never physically receives or intends to receive.

* * * * *

(Approved by the Office of Management and Budget under control number 1512–0336)

3. Section 20.25 is revised to read as follows:

§ 20.25 Permits.

The Director shall issue permits covering the use of specially denatured spirits by the United States or a Governmental agency as provided in § 20.241. The regional director (compliance) shall issue the industrial alcohol user permit, Form 5150.9, required under this part.

4. The information cited immediately following section 20.36 is revised to read as follows:

§ 20.36 Execution under penalties of perjury.

* * * * *

(26 U.S.C. 6065)

5. Section 20.63(a) is revised to read as follows:

§ 20.63 Adoption of formulas and statements of process.

(a) The adoption by a successor (proprietorship or fiduciary) of a predecessor's formulas and statements of process as provided in § 20.57(c), and § 20.58, will be in the form of a certificate submitted to the regional director (compliance).

* * * * *

6. Section 20.134(b)(1)(ii) is revised and paragraph (f) is added to read as follows:

§ 20.134 Labeling.

(b) * * *

(1) * * *

(ii) The name and principal office address (city and State) of the manufacturer, and the permit number or numbers of the place or places of manufacture. However, in lieu of such permit number or numbers, the place or places where the manufacturing operation occurred may be indicated by a coding system. Prior to using a coding system, the manufacturer shall send a notice explaining the coding system to the regional director (compliance) of the region where the manufacturing site is located, or

* * * * *

(f) *Distributor labeling.* Distributors of an article may place minimal identifying information (name, address and a phrase such as "distributed by") on the label of that article (or on an additional label) without qualifying in any manner under this part; provided:

(1) The article is produced, packaged and labeled as provided in this part; and

(2) The distributor does not produce, repackage or reprocess the article.

(Approved by the Office of Management and Budget under control number 1512–0336)

7. Section 20.235 is amended by revising paragraph (b) to read as follows:

§ 20.235 Disposition to another user.

* * * * *

(b) The user shall prepare a record of shipment in accordance with § 20.171. The packages to be shipped shall bear the name and permit number of the user and the marks and labels required under § 20.178. The user's copy of the record of shipment shall include an explanation of the reason for the disposition.

* * * * *

(Approved by the Office of Management and Budget under control number 1512–0337)

Signed: August 19, 1992.

Stephen E. Higgins,

Director.

Approved: August 26, 1992.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 92–21361 Filed 9–4–92; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 60

Drug Abuse Testing Program

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Final rule.

SUMMARY: The Department of Defense hereby removes 32 CFR part 60. This part has served the purpose for which it was issued and is no longer valid.

EFFECTIVE DATE: August 31, 1992.

FOR FURTHER INFORMATION CONTACT: L.M. Bynum, Correspondence and Directives Directorate, 1155 Defense Pentagon, Washington, DC 20301–1155.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 60

Drug testing; Military personnel.

PART 60—[REMOVED]

Accordingly, by the authority of 10 U.S.C. 131, 32 CFR part 60 is removed.

Dated: September 2, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–21502 Filed 9–4–92; 8:45 am]

BILLING CODE 3810-10-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket Nos. 85–251 and 85–390; FCC 92–401]

Television Broadcasting Services; Santa Barbara, Ventura, and Bakersfield, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document consolidates MM Dockets No. 85–251 and 85–390 and deletes UHF–TV Channel 51 from Ventura, California, in response to two petitions for reconsideration and two applications for review. See 52 FR 38232 (October 15, 1987) and 52 FR 41433 (October 28, 1987). The Commission deleted Channel 51 because of changed circumstances that have occurred since the channel was allotted in 1987. Specifically, the channel had become vacant and no applications can be filed for the channel because of the freeze imposed for vacant allotments in order

to accommodate the inquiry into Advanced Television Systems. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 8, 1992.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Mass Media Bureau, (202) 632-5414.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order in MM Docket Nos. 85-251 and 85-390, adopted August 24, 1992, and released September 1, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors. Downtown Copy Center, (202) 452-1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Allotments under California, is amended by deleting Channel 51 at Ventura.

Federal Communications Commission.

Donna Searcy,

Secretary.

[FR Doc. 92-21468 Filed 9-4-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 90

[PR Docket No. 92-79; FCC 92-359]

Elimination of Separate Licensing of End Users of Specialized Mobile Radio Systems

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a Report and Order eliminating separate licensing of end users of Specialized Mobile Radio systems in most circumstances. End users will operate under the terms and conditions of the authorizations issued Specialized Mobile Radio base station licensees, who will assume responsibility for exercising operational control over mobile and control stations communicating over their base stations. Certain loading reports required of Specialized Mobile Radio licensees are eliminated and loading calculations for trunked systems are to be made on the basis of base station licensee business records. Requirements for modifying trunked Specialized Mobile Radio system licenses are relaxed.

EFFECTIVE DATE: October 8, 1992.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Myra G. Kovey, (202) 632-6497, Private Radio Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, PR Docket No. 92-79, FCC 92-359, adopted August 5, 1992, and released August 31, 1992. The full text of this Report and Order is available for inspection and copying during normal business hours in the FCC Dockets Branch, room 230, 1919 M Street, NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, Downtown Copy Center, 1990 M Street, NW., Washington, DC 20036, telephone (202) 452-1422.

Summary of Report and Order

1. In a Notice of Proposed Rule Making, released May 5, 1992, the Commission proposed with respect to the Specialized Mobile Radio (SMR) service elimination of separate SMR end user licensing, modification of the reporting requirements associated with the loading of trunked SMR systems, and relaxation of license modification requirements for trunked SMR systems. The Report and Order considers these proposals.

2. First, the Report and Order eliminates separate SMR end user licensing with the exception of proposed end user facilities falling within the scope of the Federal Aviation Act and implementing Rules, the National Environmental Policy Act and implementing Rules and Commission "quiet zone" restrictions. Facilities in these categories must be separately licensed by the Commission. SMR base station licensees are responsible for assuring that end users comply with all applicable Rules and Regulations governing end user operations.

3. Next, the Report and Order eliminates requirements for periodic mobile loading reports and substitutes a requirement that SMR base station licensees submit loading data only when applying for authorizations for which loading is a prerequisite. Mobile loading data will comprise the average number of mobiles and control stations operating on a licensee's system on the first business day of the month for the six month period immediately preceding the filing of an application. The average will be calculated according to the licensee's business records.

3. Finally, the Report and Order eliminates the requirement that licensees of trunked SMR systems modify their licenses when there is a change in the location or number of fixed, control or mobile transmitters.

Final Regulatory Flexibility Analysis

Need and Purpose of This Action

The Commission is adopting this Report and Order to eliminate a substantial burden on the public, reduce administrative costs and to improve government efficiency by removing the requirement that most end users of trunked and conventional SMR systems obtain individual licenses.

Summary of the Issues Raised

No comments addressed our Initial Regulatory Flexibility Analysis.

Significant Alternatives Considered

The Commission considered and rejected an alternative regarding the method of calculating loading data.

List of Subjects in 47 CFR Part 90

Private land mobile radio services.

Amendatory Text

Title 47 of the Code of Federal Regulations, part 90, is amended as follows:

1. The authority citation for part 90 continues to read as follows:

Authority: Sections 4, 303, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, and 332, unless otherwise noted.

§ 90.651 [Amended]

2. 47 CFR § 90.651(a) is removed and reserved.

3. 47 CFR § 90.655 is revised to read as follows:

§ 90.655 Special licensing requirements for Specialized Mobile radio systems.

End users of conventional or trunked Specialized Mobile Radio systems that have control stations that require FAA clearance, as specified in Subpart B of part 17 of Title 47 of the Code of Federal Regulations, 47 CFR 17.7-17.17, or that may have a significant environmental effect, as defined by § 1.1307, or that are located in a "quiet zone", as defined by 47 CFR 90.177 must be individually licensed for such control stations prior to construction or operation. All other end users' operations will be within the scope of the base station licensee. All end users, however, continue to be

responsible to comply with 47 CFR part 90 and other federal laws.

4. A new § 90.656 is added as follows:

§ 90.656 Responsibilities of base station licensees of Specialized Mobile Radio systems.

(a) The licensees of base stations that provide Specialized Mobile Radio service on a commercial basis for the use of individuals, Federal government agencies, or persons eligible for licensing under either subparts B, C, D, or E of this part will be responsible for exercising effective operational control over all mobile and control stations that communicate with the base station. The base station licensee will be responsible for assuring that its system is operated in compliance with all applicable rules and regulations.

(b) Customers that operate mobile units on a particular Specialized Mobile Radio system will be licensed to that system. A customer that operates temporarily on more than one system will be deemed, when communicating with the other system, to be temporarily licensed to the other system and for that temporary period, the licensee of the other system will assume the same licensee responsibility for the customer's mobile station(s) as if the customer's stations were licensed to that other system.

5. A new § 90.658 is added to subpart S to read as follows:

§ 90.658 Loading data required for base station licensees of trunked Specialized Mobile Radio systems to acquire additional channels or to renew trunked systems licensed before June 1, 1993.

(a) A base station licensee of a trunked Specialized Mobile Radio system that applies for additional channels to expand an existing system or to construct a new system within 40 miles of its existing system, or a base station licensee of a trunked system applying for its first renewal in a waiting list area for a system licensed before June 1, 1993 must identify on the appropriate application form the number of mobiles and control stations loaded on its system as calculated in paragraph (b) of this section.

(b) The number described in paragraph (a) of this section must be calculated by averaging the number of mobiles and control stations operating on a licensee's system on the first business day of each of the six months immediately preceding the filing of an application and must be based on the licensee's business records for that period. Alternative calculations will be permitted upon good cause showings of special circumstances.

(c) Business records may constitute invoices, customer service agreements, customer lists or any other type of record kept in the ordinary course of business.

(d) The FCC will use the loading data required by this section to determine whether the licensee's existing system has a sufficient number of mobiles as required by 47 CFR Chapter I to qualify for additional channels or for the first renewal of trunked systems licensed before June 1, 1993.

6. A new § 90.659 is added to subpart S to read as follows:

§ 90.659 Change in number or location of base stations or transmitters.

(a) Licensees of trunked Specialized Mobile Radio systems are exempt from the requirement under § 90.135(a)(5) to file an application for modification of license when there is a change in the location or number of fixed, control, or mobile transmitters from that authorized, including area of mobile operations.

(b) Licensees of conventional Specialized Mobile Radio channels are not exempt from the requirement under § 90.135(a)(5) to file an application for modification of license when there is a change in the location or number of fixed, control, or mobile transmitters from that authorized, including area of mobile operations.

(c) Licensees of trunked and conventional Specialized Mobile Radio systems are not exempt from the requirement under § 90.135(a)(5) to file an application for modification of license when there is a change in the location or number of base stations.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-21467 Filed 9-4-92; 8:45 am]

BILLING CODE 6712-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1801, 1803, 1804, 1805, 1806, 1807, 1808, 1809, 1813, 1815, 1816, 1819, 1822, 1823, 1825, 1827, 1831, 1832, 1833, 1836, 1837, 1842, 1845, 1849, 1851, 1852, 1853, and 1870

[NASA FAR Supplement Directive 89-11]

RIN 2700-AB15

Acquisition Regulation; Miscellaneous Amendments to NASA FAR Supplement

AGENCY: Office of Procurement, Procurement Policy Division, NASA.

ACTION: Final rule.

SUMMARY: This document amends the NASA Federal Acquisition Regulation Supplement (NFS) to reflect a number of miscellaneous changes dealing with NASA internal or administrative matters. The major changes involve: (1) Office of Procurement (Code H) Reassignments; (2) Revisions to NASA Headquarters Mail Codes; (3) Reconciliation of Deviation Procedures; (4) List of Parties Excluded from Procurement Programs; (5) Small Purchase Procedures; (6) Certified Cost and Pricing Data; (7) Price Negotiation Memorandum; (8) Calculation of Facilities Capital Cost of Money; (9) Ordering from Government Supply Sources; (10) Increase of Threshold for Reporting of Subcontracts; and (11) Addition of Provision and Clause Matrix.

EFFECTIVE DATE: August 31, 1992.

FOR FURTHER INFORMATION CONTACT: Thomas J. Whelan, Deputy Director, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters, Washington, DC 20546, Telephone: (202) 358-0475.

SUPPLEMENTARY INFORMATION:

Availability of NASA FAR Supplement

The NASA FAR Supplement, of which this rule is a part, is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Cite GPO Subscription Stock Number 933-003-00000-1. It is not distributed to the public, either in whole or in part, directly by NASA.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The regulations herein are in the exempted category. NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The regulation imposes no new burdens on the public within the ambit of the Paperwork Reduction Act, as implemented at 5 CFR part 1320, nor does it significantly alter any reporting or recordkeeping requirements currently approved under OMB control number 2700-0042.

List of Subjects in 48 CFR Parts 1801, 1803, 1804, 1805, 1806, 1807, 1808, 1809, 1813, 1815, 1816, 1819, 1822, 1823, 1825, 1827, 1831, 1832, 1833, 1836, 1837, 1842, 1845, 1849, 1851, 1852, 1853, and 1870

Government procurement.

Don G. Bush,

Assistant Administrator for Procurement.

1. The authority citation for 48 CFR parts 1801, 1803, 1804, 1805, 1806, 1807, 1808, 1809, 1813, 1815, 1816, 1819, 1822, 1823, 1825, 1827, 1831, 1832, 1833, 1836, 1837, 1842, 1845, 1849, 1851, 1852, 1853, and 1870 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1801—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Part 1801 is amended as set forth below:

1801.104-370 [Amended]

a. In section 1801.104–370, paragraph (a), the telephone number "(202–453–2105)" is revised to read "(202–358–2105)."

b. In section 1801.104–370, paragraph (e), "Code DBD–4" is revised to read "Code JBD–4."

c. In section 1801.104–370, paragraph (f), the telephone number "(202–453–2080)" is revised to read "(202–358–2080)," "Code NA–2" is revised to read "Code JM–2," and "Code DBD–4" is revised to read "Code JBD–4."

d. In section 1801.104–370, paragraph (g), the telephone number "(202–453–2088)" is revised to read "(202–358–2088)."

1801.270 [Amended]

e. In section 1801.270, the phrase "Code HP analyst responsible for the applicable subject matter." is revised to read "Code HP analyst responsible under 1801.370 for the applicable subject matter."

1801.370 [Amended]

f. In section 1801.370, paragraphs (a)(1)(ii), (a)(1)(iii), (a)(2)(i), and (b) are revised to read as follows:

(a) * * *

(1) * * *

(ii) FAR and NFS Substantive areas—

Part 1:	
1.602–3	Bennett
Balance of 1.6	Pesnell
1.7	Pesnell
All Other Subparts.	King
Part 2	Brown
Part 3	Sudduth
Part 4:	
4.6	Baker/Brown
4.9	Baker/Brown
4.72	Evey/Brown
All Other Subparts.	Brown
Part 5	Jeffries
Part 6:	
6.5	Nelson/Pesnell
All Other Subparts.	Pesnell
Part 7:	
7.71	Evey/Sudduth
7.72	Nelson/Sudduth
All Other Subparts.	Sudduth
Part 8:	
8.3	Brown
All Other Subparts.	Brown
Part 9:	
9.4	Brundage
All Other Subparts.	Pesnell
Part 10:	
10.002(c)	Pesnell
All Other Subparts.	Sudduth
Part 11	Sudduth
Part 12:	
12.1	Brown
12.2	Brundage
12.3	Brown
12.4	Brown
12.5	Brundage
Part 13:	
13.71	Dussault/Brown
All Other Subparts.	Brown
Part 14	Brown
Part 15:	
15.1	Jeffries
15.4	Jeffries
15.5	Sudduth
15.6	Whelan
15.7	Jeffries
15.8	Guenther/King
15.9	Guenther/King
15.10	Brundage
Part 16	Guenther/Pesnell
Part 17	Sudduth
Part 19	Jeffries/Rosen/Deback
Part 20	Jeffries
Part 22	Pesnell/Gilson
Part 23:	
23.5	Sudduth
All Other Subparts.	Brown
Part 24	Brundage
Part 25	Jeffries
Part 26	Sudduth
Part 27	Kempf/Pesnell
Part 28	Pesnell
Part 29	Bennett
Part 30	LeCren/King
Part 31	LeCren/King
Part 32	LeCren/King
Part 33	Brundage
Part 34	Sudduth
Part 35	Sudduth
Part 36	Pesnell/Stamper
Part 37:	
37.2	Baker/Pesnell
All Other Subparts.	Pesnell/Gilson
Part 38	Brown
Part 39	Bennett
Part 42:	
42.7	LeCren/King
42.8	LeCren/King
42.10	Guenther/King
42.12	Baker
All Other Subparts.	Pendleton/Bennett
Part 43	Pendleton/Pesnell
Part 44	Jeshow/Jeffries
Part 45	Bennett/Pendleton/Wilchek
Part 46	Bennett/Jeshow
Part 47	Jeffries/Brunner
Part 48	Wilson/Jeffries
Part 49	Bennett
Part 50:	
50.4	O'Neill/Pesnell
All Other Subparts.	Brundage
Part 51	Brown
Part 52	Brown/All analysts in assigned areas
Part 53	Brown
Part 70:	
70.3	Evey/Sudduth
70.4	Dussault/Sudduth
All Other Subparts.	Sudduth

(iii) Publication Matters—Brown

* * * * *

(2) * * *

(i) All areas, including Federal Demonstration Project—Sudduth

* * * * *

(b) Consolidated Contact List.

Name (Code)	(202)
Baker, Herbert H. (HM)	358–0460
Bennett, Carol E. (HP)	358–0479
Brown, Madelon C. (HP)	358–0480
Brundage, Paul D. (HP)	358–0481
Brunner, Peter E. (JIB)	453–2975
Deback, Thomas L. (HS)	358–0431
Dussault, Thomas W. (HM)	358–0463
Evey, Walker L. (HS)	358–2080
Gilson, Gordon K. (JL)	453–2882
Guenther, Anne (HC)	358–0003
Jeffries, Kenneth I. (HP)	358–0482
Jeshow, J. Ronald (HK)	358–0486
Kempf, Robert F. (GP)	453–2424
King, Bruce C. (HP)	358–0483
LeCren, Joseph (HC)	358–0444
Maraist, William J. (HP)	358–2105
Nelson, Harold (HS)	358–0440
O'Bryant, Cynthia B. (HP)	358–2105
O'Neill, Deborah A. (HS)	358–0428
Pendleton, Larry G. (HK)	358–0478
Pesnell, James A. (HP)	358–0484
Rosen, Eugene D. (K)	358–2089
Smith, Phillip T. (BFC)	358–1026
Stamper, William (JXF)	358–1133
Sudduth, David (HP)	358–0485
Whelan, Thomas J. (HP)	358–2105
Wilchek, Billie E. (JIE)	453–2989
Wilson, Roger (HK)	358–0498

1801.471 [Amended]

g. In section 1801.471, paragraph (a) is revised to read as follows:

(a) Requests for authority to deviate from the provisions of the FAR or of this Regulation shall be:

(1) submitted to the Office of Procurement, NASA Headquarters (Code HS) (but see 1831.101 for deviations from FAR cost principles);

(2) signed by the procurement officer or, in that person's absence, by the acting procurement officer; and

(3) submitted as far in advance as the exigencies of the situation will permit.

* * * * *

PART 1803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

1803.804 [Amended]

3. In section 1803.804, paragraph (a), the phrase "Procurement Management Division" is revised to read "Procurement Systems Division."

PART 1804—ADMINISTRATIVE MATTERS

4. Part 1804 is amended as set forth below:

1804.470-3 [Amended]

a. In section 1804.470-3, paragraph (a), the words "in consort" are removed and the word "together" is added in their place.

1804.601 [Amended]

b. In section 1804.601, the phrase "The Headquarters Procurement Management Division" is revised to read "The Headquarters Procurement Systems Division."

1804.671-4 [Amended]

c. In section 1804.671-4, paragraph (k), the phrase "Procurement Management Division" is revised to read "Procurement Systems Division."

d. In section 1804.671-4, paragraph (w), Code 3, the citation "FAR 15.506-2" is revised to read "FAR 15.608."

1804.671-6 [Amended]

e. In section 1804.671-6, paragraph (e), the words "(except FSS orders)" are added after the word "procurements" and before the word "of."

1804.676 [Amended]

f. In section 1804.676, the phrase "Educational Affairs Division, University Programs Office, NASA Headquarters (Code XEU)" is revised to read "Education Division, Higher Education Branch, NASA Headquarters (Code FEH)."

PART 1805—PUBLICIZING CONTRACT ACTIONS

1805.403-70 [Amended]

5. In section 1805.403-70, "(Code XC)" is revised to read "(Code L)."

PART 1806—COMPETITION REQUIREMENTS

1806.303-1 [Amended]

6. In section 1806.303-1, paragraph (b), "(Code XI)" is revised to read "(Code IRD)."

PART 1807—ACQUISITION PLANNING

1807.7206 [Amended]

7. In section 1807.7206, paragraph (b)(2), the words "semiannual annual forecasts" are revised to read "semiannual forecasts."

PART 1808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

1808.303, 1808.304-571, 1808.305, 1808.307-70 [Amended]

8. In sections 1808.303(a), 1808.304-571, 1808.305 (a) introductory text and (b), and 1808.307-70, the phrase "Facilities Division" is revised to read "Facilities Engineering Division" and the parenthetical phrase "(Code NX)" is revised to read "(Code JX)" wherever it appears.

PART 1809—CONTRACTOR QUALIFICATIONS

9. Part 1809 is amended as set forth below:

1809.106-70 [Amended]

a. In paragraph (d)(1) of this section, the words "or facsimile" are added after the word "telegraphic" and before the word "communication."

b. In paragraph (d)(2) of this section, the word "to" is added after the word "furnished" and before the word "the."

c. In paragraph (d)(3) of this section, the reference "DOD 4105.59-H" is revised to read "DLAH 410-5.4."

1809.404 [Amended]

d. In section 1809.404, a new paragraph (c) is added to read as follows:

* * * * *

(c) For the purpose of obtaining copies of the list, field installation procurement offices shall notify Code HP of how many copies they want and provide a single mailing address at the installation. Code HP will, in turn, place the order for the copies which will be mailed directly to the installation.

PART 1813—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

10. Section 1813.104, is amended by revising paragraph (a) to read as follows:

1813.104 Procedures.

(a) Small purchase procedures are exempt from the requirements of FAR Part 6.

* * * * *

PART 1815—CONTRACTING BY NEGOTIATION

11. Part 1815 is amended as set forth below:

1815.613-71 [Amended]

a. In section 1815.613-71, paragraph (b)(5)(ii)(A), the words "in concert" are removed and the word "together" is added in their place.

b. In section 1815.804-3, existing paragraphs (a) through (d) are redesignated as paragraphs (b) through (e), and a new paragraph (a) is added to read as follows:

1815.804-3 Exemptions from or waiver of submission of certified cost or pricing data.

(a)(1) The term "lowest evaluated price," as used in FAR 15.804-3(b), is defined to include all of the factors (for example, mission suitability, cost, past performance, etc.) used in the evaluation of proposals (but see paragraph (a)(2) of this section).

(2) In order for adequate price competition to exist, cost or price must be a substantial factor in the evaluation of proposals. Cost or price shall be considered a substantial factor if the source selection will be based on the most advantageous offer to the Government, price or cost or other factors considered, and cost or price, although not necessarily the determinative factor, will contribute significantly to the source selection decision.

(3) The adequate price competition exemption is applicable to both fixed-price and cost-reimbursement type procurements.

(i) The use of this exemption for a cost-reimbursement procurement requires the careful exercise of judgment on the part of the contracting officer based on the application of the guidance in FAR 15.804-3(b) and the NFS to the facts of each procurement. The instances when its use under cost-reimbursement procurements would be appropriate should be limited. One reason is that, unlike fixed-price type contracts, where the final cost to the Government is set at the negotiated contract amount, in cost-reimbursement contracts, the contract amount is only an estimate of the Government's final cost. As a consequence, the failure to obtain certified cost or pricing data could result in a competing contractor intentionally underestimating its costs

for the purpose of winning the award, which could then cause the actual contract costs to significantly exceed those proposed.

(ii) If and when negotiations conducted with a successful offeror after receipt of Best and Final Offers result in a substantial change in that offeror's price, the validity of any adequate price competition exemption which previously applied could be nullified, regardless of contract type.

(4) When the decision is made to apply the adequate price competition exemption, that decision shall be documented in the contract file. In addition, for cost-reimbursement procurements, that document shall be signed by the procurement officer and a copy provided to the Contract Pricing and Finance Division, Code HC.

* * * * *

1815.804-3 [Amended]

c. In section 1815.804-3, newly designated paragraph (d), the phrase "Contract Pricing and Finance Office" is revised to read "Contract Pricing and Finance Division."

1815.807-72 [Amended]

d. In section 1815.807-72, paragraph (a), the phrase "Program Operations Division" is revised to read "Competition and Program Operations Division."

e. In section 1815.808, paragraph (b) is revised to read as follows:

1815.808 Price negotiation memorandum.

* * * * *

(b) When the PNM is a "stand-alone" document, it shall contain the information required by the FAR and NFS for both PPM's and PNM's. However, when a PPM has been prepared under 1815.807, the subsequent PNM need only provide any information required by FAR 15.808 that was not provided in the PPM. The FAR 15.808(a)(4) requirement, that the current status of the contractor's systems be included, must be addressed in the PNM. If any of these systems do not apply to a particular procurement, the reasons for not including their status must be explained. Also, explain the differences between the prenegotiation objective position and the final negotiated settlement, including each proposed subcontract that meets the requirement of FAR 15.806-2(a). If, at the time of negotiated settlement for cost-reimbursement type prime contracts, there remain significant pricing uncertainties with respect to any proposed subcontract that meets the requirement of FAR 15.806-2(a), each such subcontract shall be discussed in the PNM, identified in the contract Schedule for special surveillance, and set aside for subcontract consent by the NASA contracting officer in accordance with FAR 44.2 and NFS 1844.102-70.

f. In section 1815.970-3, paragraph (b) is revised to read as follows:

1815.970-3 Facilities capital cost of money.

* * * * *

(b) Facilities capital cost of money shall be calculated using the format of DD Form 1861, Contract Facilities Capital Cost of Money. Overhead pools, for example, engineering, manufacturing, and G&A, are listed by year in the first column of the DD Form 1861 labeled Pool. The allocation base figure for each overhead pool objective is listed by year in the second column. Each allocation base is then multiplied by the recommended facilities capital cost of money factor for that base. The total facilities capital cost of money amounts appearing in the last column labeled Amount are totaled in the space provided in the line labeled Total. This total represents the estimated facilities capital cost of money amount for the contract and is the figure to be used to calculate the prenegotiation position memorandum objective cost and to reduce the profit objective in accordance with 1815.970-3(1). The lines labeled Treasury Rate and Facilities Capital Employed (Total Divided by Treasury Rate) and section 7 of the form labeled Distribution of Facilities Capital Employed do not apply to NASA and should be ignored.

* * * * *

PART 1816—TYPES OF CONTRACTS

1816.207-70 [Amended]

12. In section 1816.207-70, paragraph (a), the word "rates(s)" is revised to read "rate(s)."

PART 1819—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

1819.505 [Amended]

13. In section 1819.505, paragraph (c), the phrase "paragraph (f)" is revised to read "paragraph (e)."

PART 1822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITION

14. Part 1822 is amended as set forth below:

Subpart 1822.1 [Amended]

a. In subpart 1822.1, "Code NR" is revised to read "Code JL." in the following places:

A. 1822.101-(b)

B. 1822.101-4

1822.302 [Amended]

b. In section 1822.302, the phrase "Code NR" is revised to read "Code JL."

Subpart 1822.4—[Amended]

c. In subpart 1822.4, the phrase "Code NR" is revised to read "Code JL" in the following places:

A. 1822.403-4

B. 1822.404-3

C. 1822.406-2

D. 1822.406-6

E. 1822.406-9

F. 1822.406-11

Subpart 1822.6—[Amended]

d. In subpart 1822.6, the phrase "Code NR" is revised to read "Code JL" in the following places:

A. 1822.604-2

B. 1822.608-4

Subpart 1822.10—[Amended]

e. In subpart 1822.10, the phrase "Code NR" is revised to read "Code JL" in the following places:

A. 1822.1001

B. 1822.1003

C. 1822.1007 (a) and (b)

PART 1823—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

1823.7004 [Amended]

15. In section 1823.7004, paragraph (f), the word "clause" is revised to read "provision."

PART 1825—FOREIGN ACQUISITION

16. Part 1825 is amended as set forth below:

a. In section 1825.402, the dollar figure "$172,000" is revised to read "$176,000."

1825.402-70 [Amended]

b. In section 1825.402-70, "(Code XI)" is revised to read "(Code IRD)."

1825.403-70 [Amended]

c. In section 1825.403-70, "Office of External Relations (Code X)" is revised to read "Office of Policy Coordination and International Relations (Code I)."

Subpart 1825.10—[Removed]

d. Subpart 1825.10 is removed in its entirety.

1825.7002, 1825.7003, 1825.7006 [Amended]

e. In sections 1825.7002, 1825.7003, and 1825.7006(a) and (c), "(Code XI)" is revised to read "(Code IRD)."

PART 1827—PATENTS, DATA, AND COPYRIGHTS

1827.670-2 [Amended]

17. In sections 1827.670-2, the section heading is revised to read "Contract clause," and, in the text, the word "Agreement" is revised to read "Agreements."

PART 1831—CONTRACT COST PRINCIPLES AND PROCEDURES

1831.205-70 [Amended]

18. In section 1831.205-70, the paragraph designation "(b)" is removed.

PART 1832—CONTRACT FINANCING

19. Subpart 1832.5 is amended as set forth below:

a. Section 1832.503-4 is amended by revising the section heading to read as follows:

1832.503-4 Approval of progress payment requests.

* * * * *

b. Section 1832.503-470 is added to read as follows:

1832.503-470 Contract clause.

The contracting officer shall insert the clause at 18-52.232-70, NASA Progress Payment Rates, in all solicitations and fixed-price contracts under which the Government will provide progress payments based on costs.

PART 1833—PROTESTS, DISPUTES, AND APPEALS

20. Part 1833 is amended as set forth below:

1833.103 [Amended]

a. In section 1833.103, paragraph (b), the citation "FAR 33.103(b)(1)" is revised to read "FAR 33.103(a)(3)."

1833.104 [Amended]

b. In section 1833.104, paragraph (a)(2), the sentence beginning with "The Contracting Officer's Statement shall . . ." is revised to read "The contracting officer's statement shall. . . ."

1833.211, 1833.211-70 [Amended]

c. In sections 1833.211 and 1833.211-70, in paragraph (b) of the revised FAR paragraph, "Code NC" is revised to read "Code JD."

PART 1836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

21. Part 1836 is amended as set forth below:

1836.602-70 [Amended]

a. In section 1836.602-70, paragraph (b)(1) and (b)(2), the phrase "Associate Administrator for Management" is revised to read "Associate Administrator for Management Systems and Facilities."

1836.602-71 [Amended]

b. In section 1836.602-71, paragraph (b), the word "chair-person" is revised to read "chairperson."

PART 1837—SERVICE CONTRACTING

22. Part 1837 is amended as set forth below:

1837.205 [Amended]

a. In section 1837.205, paragraph (c), the phrase "Associate Administrator for Management" is revised to read "Associate Administrator for Management Systems and Facilities."

1837.205-70 [Amended]

b. In section 1837.205-70, paragraphs (a) and (b), the phrase "Associate Administrator for Management (Code N)" is revised to read "Associate Administrator for Management Systems and Facilities (Code J)."

PART 1842—CONTRACT ADMINISTRATION

23. Part 1842 is amended as set forth below:

1842.101 [Amended]

a. In section 1842.101, the phrase "Defense and Intergovernmental Relations Division (Code XD)" is revised to read "Defense Division (Code ID)."

1842.174 [Amended]

b. In section 1842.174, paragraph (b), "(Code HP)" is revised to read "(Code HK)."

1842.202-70 [Amended]

c. In section 1842.202-70, paragraph (d), the phrase "Headquarters Supply and Equipment Management Branch, Code, NIE" is revised to read "Headquarters Supply and Equipment Management Office, Code JIE."

PART 1845—GOVERNMENT PROPERTY

24. Part 1845 is amended as set forth below:

1845.106-70 [Amended]

a. In section 1845.106-70, paragraph (e), the phrase "Supply and Equipment Management Division (Code NIE)" is revised to read "Supply and Equipment Management Office (Code JIE)."

1845.405 [Amended]

b. In section 1845.405, paragraph (b), the phrase "Supply and Equipment Management Division (Code NIE)" is revised to read "Supply and Equipment Management Office (Code JIE)," and "(Code XI)" is revised to read "(Code IRD)."

1845.407 [Amended]

c. In section 1845.407, paragraph (a), the phrase "Supply and Equipment Management Division (Code NIE)" is revised to read "Supply and Equipment Management Office (Code JIE)."

1845.608-6, 1845.610-2 [Amended]

d. In sections 1845.608-6 and 1825.610-2, the phrase "Supply and Equipment Management Division (Code NIE)" is revised to read "Supply and Equipment Management Office (Code JIE)."

1845.7203 [Amended]

e. In section 1845.7203, the phrase "Supply and Equipment Management Division" is revised to read "Supply and Equipment Management Office" and "Code NIE" is revised to read "Code JIE" in each occurrence.

1845.7205 [Amended]

f. In section 1845.7205, paragraphs (f)(1) and (i), the phrase "Code NIE" is revised to read "Code JIE."

1845.7213 [Amended]

g. In section 1845.7213, paragraph (c)(1), the phrase "Supply and Equipment Management Division (Code NIE)" is revised to read "Supply and Equipment Management Office (Code JIE)."

PART 1849—TERMINATION OF CONTRACTS

1849.111-71 [Amended]

25. In section 1849.111-71, paragraph (a)(1), the dollar amount "$50,000" is revised to read "$100,000."

PART 1851—USE OF GOVERNMENT SOURCES BY CONTRACTORS

26. Part 1851 is amended as set forth below:

1851.102 [Amended]

a. In section 1851.102, paragraph (b), the phrases "Supply and Equipment Management Division" and (Code NIE)" and revised to read "Supply and

Equipment Management Office" and "(Code JIE)," respectively.

b. Section 1851.103 is revised to read as follows:

1851.103 Ordering from Government supply sources.

(a) All orders for materials from Government supply sources shall contain the statement in paragraph (c)(2)(i) or (c)(2)(ii), as appropriate, of the authorization format set forth in 1851.102 .

(b) Contracting officers shall use NHB 4100.1, NASA Materials Inventory Management Manual, to obtain activity address codes (AAC) to enable use of FEDSTRIP and MILSTRIP for requisitioning material from Federal and military supply sources.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

27. Part 1852 is amended as set forth below:

a. Section 1852.000 is revised to read as follows:

1852.000 Scope of part.

This part, in conjunction with FAR Part 52—

(a) Gives instructions for using provisions and clauses prescribed by this Regulation and lower level provisions and clauses;

(b) Sets forth the provisions and clauses prescribed in this Regulation, and

(c) Presents a matrix listing the NFS provisions and clauses applicable to each principal contract type and/or purpose (e.g., fixed-price supply, cost-reimbursement research and development).

b. In section 1852.101, the section heading "Using FAR Part 52" is revised to read "Using Part 52", the existing paragraph is redesignated as paragraph "(a)" and new paragraphs "(b)" and "(c)" are added to read as follows:

1852.101 Using Part 52.

* * * * *

(b) The NFS matrix in Subpart 1852.3 is formatted similarly to the FAR matrix described in FAR 52.101(e). The first page of the NFS matrix contains a key to column headings, a dollar threshold chart, and requirement symbols. To fully determine the applicability of a provision or clause in the "required-when-applicable" and "optional" categories, Contracting Officers shall refer to the NFS text (cited in the matrix) that prescribes its use.

(c) The NFS matrix may be reproduced by field installations for the purpose of supplementing it with installation-developed provisions and clauses.

1852.204-70 [Amended]

c. In section 1852.204-70, the citation "1804.672" is revised to read "1804.672(b)."

d. In the title of the clause, the date "DEC 1988" is revised to read "AUG 1992."

e. In paragraph (a) of the clause, the sentence ending with "exceeding $10,000 as soon as possible after its execution:" is revised to read "exceeding $25,000 within 10 working days after its execution:".

f. In paragraph (c) of the clause, the word in quotation marks, "Subcontract;" is italicized, and the dollar amount "$10,000" is revised to read "$25,000."

g. In paragraph (d) of the clause, the phrase in quotation marks, "Research and development," is italicized.

h. In paragraph (e)(1) of the clause, the dollar amount "$50,000" is revised to read "$100,000."

1852.208-83 [Amended]

i. In section 1852.208-83, the citation "1808.002-71" is revised to read "1808.002-76."

1852.216-81 [Amended]

j. In section 1852.216-81, the citation "1816.307-70(f)" is revised to read "1816.307-70(e)."

1852.223-73 [Amended]

k. In section 1852.223-73, in the introductory paragraph of Alternate I, the word "clause" is removed and the word "provision" is added in its place.

1852.228-70 [Amended]

l. In section 1852.228-70, the citation "1828.370" is revised to read "1828.370(a)."

1852.228-76 [Amended]

m. In section 1852.228-76, the citation "1828.373" is revised to read "1828.373 (a) and (b)."

1852.232-70 [Amended]

n. In section 1852.232-70, the citation "1832.503-4" is revised to read "1832.503-470."

1852.232-81 [Amended]

o. In section 1852.232-81, the citation "1832.705-270(c)" is revised to read "1832.705-270(b)."

1852.242-72 [Amended]

p. In section 1852.242-72, in the title to the clause, the date "SEPT 1989" is revised to read "AUG 1992," and in paragraph (a) of the clause, "Washington's Birthday" is revised to read "President's Birthday."

q. Subpart 1852.3 is added to read as follows:

Subpart 1852.3—Provision and Clause Matrix

1852.300 Scope of subpart.
1852.301 Solicitation Provisions and Contract Clauses (Matrix).

1852.300 Scope of subpart.

The matrix in this subpart contains a column for each principal type and/or purpose of contract. See the first page of the matrix for the key to column headings, the dollar threshold chart, and requirement symbols.

1852.301 Solicitation provisions and contract clauses (Matrix)

PART 1853—FORMS

28. Part 1853 is amended as set forth below:

1853.103 [Amended]

a. In section 1853.103, "(Code NTD-1)" is revised to read "(Code JTD-1)."

1853-242.70 [Amended]

b. In section 1853.242-70, paragraph (c) is revised to read as follows:

* * * * *

(c) NASA Form 1431, Letter of Acceptance of Contract Administration Delegation. NASA Form 1431, prescribed at 1842.202-70(a)(8) (i), (ii), and (iii), shall be used in conjunction with NASA Form 1430 to record receipt and acceptance of delegation by other agencies.

* * * * *

PART 1870—NASA SUPPLEMENTARY REGULATIONS

29. Part 1870 is amended as set forth below:

1870.103 [Amended]

a. In 1870.103, appendix C to appendix I, section II, paragraph A.3.a., the phrase "Office of External Relations, Code XID" is revised to read "Office of Policy Coordination and International Relations, Code IRD," and in paragraph A.3.d., the phrases "Code XID" and "Office of External Relations" are revised to read "Code IRD" and "Office of Policy Coordination and International Relations," respectively.

1870.303 [Amended]

b. In 1870.303, chapter 3, section 303, paragraph 5, paragraphs "(a)", "(b)", and "(c)" are revised to read "a.", "b.", and "c."

c. In 1870.303, chapter 4, section 407, in paragraphs 2.b.3. and 2.c., the words "in

concert" are removed and the word "together" is added in their place.

[FR Doc. 92-21360 Filed 9-4-92; 8:45 am]

BILLING CODE 7510-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1321

[Ex Parte No. MC-208]

Nonoperating Motor Carriers—Collection of Undercharges

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission is issuing final rules providing for prior Commission review of certain classes of undercharge claims by nonoperating and certain other motor carriers. These rules are needed because there is tremendous potential and actual abuse in rebillings involving defunct carriers. The rules provide that a nonoperating carrier may not unilaterally disavow the tariff rate under which a shipment moved, or the contract if the shipment moved as contract carriage, unless and until a Commission pre-review of the contemplated undercharge claim, to determine whether there is a colorable undercharge claim which may be asserted. The rules also apply to pending claims and to undercharge claims that have already been paid pursuant to a settlement. The intent of the rules is to establish a process to eliminate facially baseless claims.

EFFECTIVE DATE: The rules are effective September 23, 1992.

FOR FURTHER INFORMATION CONTACT: Thomas Dahl, (202) 927-5289, or Richard Felder, (202) 927-5610 [TDD for hearing impaired (202) 927-5621].

SUPPLEMENTARY INFORMATION: The Commission instituted a rulemaking proceeding on its own motion (June 4, 1992, 57 FR 23568) to add regulations addressing the undercharge collection practices of nonoperating motor carriers. The full text of the final regulations are set forth below.

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927-5721.]

Environmental and Energy Considerations

The Commission concludes that this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Act Certification

The Commission preliminarily concluded that the proposed regulations would not have a significant economic impact on a substantial number of small entities. Based on the comments, it again arrives at the same conclusion. These rules are needed to protect the shipping public and the transportation industry from a rebilling problem that has become acute. However, the rules should not impose additional regulatory requirements for a substantial number of small entities. Rather, they are intended to make clear the kinds of situations where preliminary review by the Commission of undercharge claims is required, and to establish a process for this initial review. To the extent that the regulatory issues would ultimately be referred to the Commission anyway, under the doctrine of primary jurisdiction, these rules simply speed up the process and eliminate the need to pursue and defend against frivolous claims. None of the commenters argued that the proposal would have a significant impact on small entities.

List of Subjects in 49 CFR Part 1321

Motor carriers, Undercharges.

Decided: August 26, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett. Commissioner Simmons commented with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the Preamble, the Commission amends title 49, chapter X, of the Code of Federal Regulations by adding a new part 1321 as follows:

PART 1321—NONOPERATING MOTOR CARRIERS—COLLECTION OF UNDERCHARGES

Sec.
1321.1 Nonoperating motor carriers—undercharge collection.
1321.2 Intent and scope of rules in this part.
1321.3 Disavowal of tariff rates.
1321.4 Disavowal of contract carrier charges.
1321.5 Notice of shipper or other party from whom undercharges are sought.
1321.6 Limitation of rules in this part.
1321.7 Operating carriers.

Authority: 49 U.S.C. 10101, 10102, 10321, 10521, 10701, 10702, 10704, 10741, 10743, 10761, 10762, 10764, 10921, 10923, 11144, 11901, 11903, 11904, 11906; 5 U.S.C. 553.

§ 1321.1 Nonoperating motor carriers—undercharge collection.

Motor carriers, including subsidiaries, subject to the rules in this part are those that have ceased operation (because of bankruptcy, voluntary liquidation or otherwise) or are ceasing operations. Additionally, the carrier representatives, estates, assigns, or others who may assert undercharge claims purportedly founded on the regulatory requirements of the Interstate Commerce Act or Commission regulations, are subject to the rules in this part at all stages of the collection process, including the initial phase of rebilling. The regulations in this part extend to pending claims (including claims already pending in court), settled claims of carriers that have not terminated their existence, and future claims. For purposes of these regulations, the term "shipper" applies broadly to anyone receiving undercharge claims (*i.e.*, brokers and freight forwarders as well as shippers). The carrier or its representative must file its claims at this Commission prior to, or concurrently with, a court action, except during a 30-day transition phase extending from the effective date of these regulations, which is September 23, 1992. The carrier or its representative must certify that all underlying claims are supported with the appropriate underlying documents in the carrier's possession. The carrier may not make any offer to settle prior to the Commission's initial determination that the carrier may pursue the undercharge claims. However, the regulations in this part are not intended to preclude a carrier from filing a court action, when necessary to preserve its claim from being barred by the statute of limitations, so long as it does not further prosecute the claim until it has obtained Commission approval to do so.

§ 1321.2 Intent and scope of rules in this part.

The rules in this part provide that a nonoperating motor carrier may not unilaterally disavow the tariff rate under which a past shipment moved, or the contract if the shipment moved as contract carriage, without the Commission's preliminary review and approval of the contemplated undercharge claim as a permissible claim. At the prior review stage, the Commission will not address the ultimate merit of the undercharge claim, but merely determine whether or not there is a valid, colorable undercharge claim which may be asserted. Our approval of the claim at that stage is not

intended to limit a shipper's defenses to the claim, nor affect a court's obligation to refer any regulatory issues that are raised to us, under the doctrine of primary jurisdiction, if and when a collection suit is filed. Rather, these rules are designed merely to screen out and prevent undercharge claims that lack a legitimate or cognizable basis, so that shippers are not required to defend themselves against baseless claims.

§ 1321.3 Disavowal of tariff rates.

A person subject to this part seeking to rebill for a past shipment based on the substitution of a different (higher) tariff rate for the tariff rate billed at the time of shipment, whether on lawfulness, reasonableness, or applicability grounds, must obtain a Commission preliminary review and approval of a contemplated undercharge claim as a permissible claim, before attempting to substitute different tariff rates. However, this does not mean that the person must submit for approval each individual claim. Rather, in the event of multiple claims with the same basis, we will review representative claims for each class of claims upon which the person seeks to collect undercharges.

§ 1321.4 Disavowal of contract carrier charges.

A person subject to this part seeking to rebill for a past shipment based on the substitution of a common carrier tariff rate for contract carriage charges originally billed, must obtain Commission preliminary review and approval before attempting to substitute a (higher) tariff rate. However, this does not mean that the person must submit for approval each individual claim. Rather, in the event of multiple claims with the same basis, we will review representative claims for each class of claims upon which the person seeks to collect undercharges.

§ 1321.5 Notice to shipper or other party from whom undercharges are sought.

For *pending* claims where the shipper has already been notified of the rebilling, a person subject to this part seeking undercharges that are covered by these rules must notify the shipper in writing, within 60 days of the effective date of these regulations, which is September 23, 1992, that:

(a) The Commission will give a preliminary review of the basis for the undercharge claims under § 1321.3 or § 1321.4 (as appropriate);

(b) The person cannot make a settlement offer prior to the Commission's initial determination that the undercharge claims may be pursued; and

(c) The person must submit to the Commission for approval a sample letter or notice providing the notification required by paragraphs (a) and (b) of this section.

§ 1321.6 Limitation of rules in this part.

The provisions of this part do not apply to rebillings that:

(a) Seek to collect the (lowest applicable) tariff rate where the rate originally billed was not contained in a tariff on file with the Commission; or

(b) Seek to collect the unpaid portion of the originally billed tariff rate or contract charges, together with any interest or late payment charges that are permitted by Commission regulations.

§ 1321.7 Operating carriers.

The rules in this part do not apply to operating carriers including those which might be struggling to stay in business. However, they do apply to situations where a carrier is conducting only a token amount of service in order to avoid the operation of the rules. In such a situation, the Commission may determine *sua sponte* (or at the request of a shipper) after notice and opportunity to respond by the carrier that the motor carrier is within the reach of these rules.

[FR Doc. 92-21596 Filed 9-4-92; 8:45 am]
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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 204 and 299

[Docket No. 920649-2149]

U.S. Nationals Fishing in the Russian Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule; effectiveness and enforcement of collection-of-information requirements.

SUMMARY: NMFS announces approval by the Office of Management and Budget (OMB) of collection-of-information requirements applicable to owners and operators of U.S. vessels fishing in the Russian fisheries. This rule establishes an effective date for the collection-of-information requirements, informs the public of its enforcement, and publishes the applicable OMB control number.

EFFECTIVE DATE: Section 299.5 (b), (c), and (d) published at 57 FR 33653 (July 30, 1992) and this rule are effective September 2, 1992.

FOR FURTHER INFORMATION CONTACT: John D. Kelly, (301) 713-2337.

SUPPLEMENTARY INFORMATION: An interim final rule to amend regulations applicable to U.S. nationals fishing in the Russian fisheries at 50 CFR part 299 was published July 30, 1992 (57 FR 33649). Section 299.5 (b), (c) and (d) contain collection-of-information requirements subject to the Paperwork Reduction Act that could not be enforced before the Office of Management and Budget (OMB) approved them and those paragraphs were not made effective in the July 30, 1992, interim final rule.

Section 299.5(b) requires the vessel owner and operator to submit to NMFS headquarters a permit abstract report.

Section 299.5(c) requires the owner and operator to submit to NMFS Alaska Region by telefax, a departure report and a return report.

Section 299.5(d) requires the vessel owner and operator to retain on board the vessel for 1 year after the end of the calendar year in which the report was submitted, all copies of all reports. Section 299.5(d) also requires that the vessel owner and operator must retain and make such records available for inspection upon request of an authorized officer at any time for 3 years after the end of the calendar year in which the report was generated, whether or not such records are aboard the vessel.

OMB has approved these collection-of-information requirements under OMB control number 0648-0228. Accordingly, § 299.5 (b), (c) and (d) are effective September 2, 1992 and will be enforced from that date on.

List of Subjects

50 CFR Part 204

Reporting and recordkeeping requirements.

50 CFR Part 299

Fisheries, Foreign fishing, Reporting and recordkeeping requirements, Russian Federation, Treaties, U.S.-Russia Agreement.

Dated: August 31, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 204 is amended as follows:

PART 204—OMB CONTROL NUMBERS FOR NOAA INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 204 continues to read as follows:

Authority: Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520 (1982).

§ 204.1 [Amended]

2. In § 204.1(b), the table is amended by adding in the left hand column, in numerical order, "§ 299.5 (b), (c) and (d)" and adding in the right hand column, in a corresponding position "–0228".

[FR Doc. 92–21458 Filed 9–2–92; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Parts 217 and 227

[Docket No. 920780–2180]

Sea Turtle Conservation; Shrimp Trawling Requirements

AGENCY: Department of Commerce.

ACTION: Interim final rule with request for comments.

SUMMARY: The Secretary of Commerce (Secretary) issues this interim final rule to continue to allow limitations on tow times as an alternative to the requirement to use turtle excluder devices (TEDs) by shrimp trawlers in a small area off the coast of North Carolina through September 30, 1992. This area exhibits intermittently high concentrations of a brown alga, *Dictyopteris* sp., that makes trawling with TEDs impracticable. Shrimp inhabit the alga, and fishermen wish to harvest the alga to catch the shrimp. When algal concentrations are high, TEDs may reduce shrimp retention by excluding a large portion of the algae and the shrimp within. The tow time alternative allows fishermen to harvest shrimp more productively. NMFS will monitor the situation to ensure there is adequate protection for sea turtles in this area when tow-times are allowed in lieu of TEDs, and to determine whether algal concentrations continue to make TED use impracticable.

DATES: This rule is effective from September 1, 1992 through September 30, 1992. Comments on this interim final rule must be submitted by October 1, 1992.

ADDRESSES: Comments on this interim final rule should be sent to Dr. Nancy Foster, Director, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Phil Williams, NMFS National Sea Turtle Coordinator (301/713–2322) or Charles A. Oravetz, Chief, Protected Species Program, NMFS, Southeast Region (813/893–3366).

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973, U.S.C. 1531 *et seq.* (ESA). Incidental capture by shrimp trawlers has been documented for five species of sea turtles that occur in waters off of North Carolina. Regulations at 50 CFR parts 217 and 227 require shrimp trawlers 25 feet (7.6 m) long or longer in offshore waters of the Atlantic Area, which includes waters off North Carolina, to use approved TEDs in trawls from May 1 through August 31, each year. In a separate rulemaking, this requirement is being made applicable throughout the year. Shrimp trawlers less than 25 feet long in offshore waters of the Atlantic Area are required to limit tow times to 90 minutes or less, or use TEDs. Tow time is defined as the interval from trawl doors entering the water to trawl doors being removed from the water.

Recent Events

An interim final rule published on July 29, 1992 (57 FR 33452) allowed shrimpers to limit tow times rather than use TEDs through August 31, 1992 in a restricted area off the coast of North Carolina. The background and need for this exemption was thoroughly discussed in that rule, and will not be repeated here.

NMFS' review of the TED exemption program in the North Carolina restricted area indicates there are no documented sea turtle mortalities associated with this program. The State of North Carolina reports that shrimpers have generally complied with the tow-time restrictions. Fishing activity in the restricted area has been limited. While 42 vessels have registered for the TED exemption program, daily fishing activity has been limited to between 5 and 8 vessels.

However, the Secretary finds that there is nothing to indicate that the environmental conditions in the restricted area that were initially determined to make TED use impracticable have changed. Therefore, the Secretary extends the exemption for an additional 30 days.

Comments on the Interim Final Rule

NMFS requested comments on the interim final rule. Two comments were received. The U.S. Fish and Wildlife Service (USFWS) commented that it concurred with the rulemaking as long as there is an NMFS-approved observer on each shrimp trawler fishing without TEDs. USFWS commented that the low incidental take level allowed by this action could only be adequately monitored by observers monitoring the catch of every vessel. Response: NMFS agrees that an observer on board each vessel using tow times is a preferable means of monitoring the incidental take of turtles. However, NMFS does not believe that full observer coverage is necessary at this time. The NMFS-sponsored sea turtle stranding network has not reported any unusual increase in the number of sea turtle strandings on beaches adjacent to the restricted area, and no incidental captures or mortalities of turtles have been reported by shrimpers in the restricted area. In addition, the State of North Carolina has conducted intensive monitoring of the tow-time requirements and found compliance to be high. Only one vessel was found to have exceeded, unintentionally, the tow-time limit.

The Center for Marine Conservation (CMC) commented that it endorsed the concept of allowing restricted tow times in lieu of TEDs when TED use is impracticable, but expressed grave concerns with the implementation of the rule and the potential for its abuse by shrimpers. CMC recommended that the 55-minute tow-time limit be shortened, noting that if shrimpers are limited to tow times of 20 to 30 minutes due to heavy algae causing clogging of the nets, then a 55-minute tow time is excessive. CMC noted that recent studies have shown that even 20 to 30 minutes of forced submergence causes significant stress to sea turtles. Additionally, CMC expressed concern for nesting sea turtles and hatchlings because the restricted area is adjacent to nesting beaches.

Response: NMFS agrees that the granting of an exemption from required TED use can be problematical as restricted tow time requirements are less easily enforceable. However, NMFS and the State of North Carolina are monitoring compliance in the restricted area, and NMFS will terminate the exemption program if it determines that there is non-compliance, or turtle mortalities are in excess of those allowed as a result of the ESA section 7 consultation for this action. NMFS recognizes that trawling in the restricted area may be limited to 20 to 30 minutes when algae concentrations are high. However, when algae is less concentrated, but still problematical for TED use, a 55-minutes tow time limitation will allow longer fishing time of approximately 40 minutes. With respect to possible incidental capture of turtles attempting to nest on beaches adjacent to the restricted area, NMFS and the State of North Carolina will continue to monitor incidental take of

turtles and nesting activity, and may impose additional protective measures, including termination of the TED exemption program during periods of nesting.

Sea Turtle Conservation Measures

The Secretary issues this interim final rule to maintain a restricted area in which the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), or his designee, may authorize the use of restricted tow times of up to 55 minutes (measured from the time trawl doors enter the water, until they are retrieved from the water) by shrimp trawlers, when the Assistant Administrator finds that the concentration of brown algae makes trawling with TEDs impracticable. Shrimp trawlers are required to register with the Assistant Administrator in order to use restricted tow times in lieu of TEDs. Owners and operators of shrimp trawlers are advised that the State of North Carolina issues authorizations to fish in the North Carolina restricted area.

This interim final rule utilizes the framework established in associated rulemaking which allows the Assistant Administrator to modify the required conservation measures through notice in the **Federal Register**, if necessary, to ensure adequate protection of endangered and threatened sea turtles. Under this procedure, the Assistant Administrator will impose any necessary additional or more stringent measures, including requiring more restrictive tow times, synchronized tow times, or termination of the TED-use exemption program, if the Assistant Administrator determines that the concentration of algae no longer makes trawling with TEDs impracticable, that there is insufficient compliance with the required conservation measures, that compliance cannot be monitored effectively, or if monitoring to assess turtle mortality indicates that the incidental take level for the program is approaching, or has exceeded, the incidental take level established by the biological opinion for this rule issued as a result of consultation under section 7 of the ESA. That level is one lethal take of a Kemp's ridley, green, hawksbill, or leatherback turtle; or two lethal takes of loggerhead turtles. Finally, the Assistant Administrator may impose any necessary additional conservation measures, including termination of the exemption program, if significant or unanticipated levels of lethal or non-lethal takings or strandings of sea turtles associated with fishing activities in the North Carolina restricted area occur.

This interim final rule requires a shrimp trawler participating in this program to carry a NMFS–approved observer, if requested by the Assistant Administrator, and to monitor compliance with required conservation measures, including restricted tow times, and resuscitation of captured turtles in accordance with 50 CFR 227.72(e)(1)(i).

Finally, authorization for the use of 55-minute tow times in the restricted area may be rescinded by publication in the **Federal Register** if the Assistant Administrator determines that trawling with TEDs is feasible during the effective dates of this rule.

The Assistant Administrator will monitor algal concentrations regularly in the restricted area through limited observer coverage and the testing of TEDs to evaluate the need for continued TED exemption for this local fishery.

The provisions of this interim final rule do not preclude the State of North Carolina from implementing more stringent protective measures for sea turtles in the North Carolina restricted area.

Classification

The Secretary has determined that this interim final rule is necessary to respond to an emergency situation to allow more efficient fishing for shrimp, while providing adequate protection for listed sea turtles, and is consistent with the ESA and other applicable law. This interim final rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. The basic regulations that this rule amends were determined not to be major.

Because neither section 553 of the Administrative Procedure Act (APA) nor any other law requires that general notice of proposed rulemaking be published for this action, under section 603(b) of the Regulatory Flexibility Act, an initial Regulatory Flexibility Analysis is not required.

The Assistant Administrator prepared an environmental assessment (EA) for the original interim final rule (57 FR 33452, July 29, 1992) that concluded that there will be no significant impact on the human environment.

In the final rule that implemented the sea turtle conservation regulations (52 FR 24244, June 29, 1987), the NMFS concluded that, to the maximum extent practicable, the regulations were consistent with the coastal zone management programs of each of the southeastern states that has an approved program under the Coastal Zone Management Act. Since this interim final rule, does not directly affect the coastal zone in a manner not already fully evaluated in the initial consistency determination, a new consistency determination is not required. Neither this interim final rule nor the ESA preclude a state from adopting more stringent sea turtle protection measures.

Paragraph 227.72(e)(3)(iii)(A)(2) of this interim final rule contains a new collection-of-information requirement subject to the Paperwork Reduction Act (PRA), namely, requests for registration to trawl using restricted tow times in lieu of TEDs in the North Carolina restricted area. This collection has been approved by the Office of Management and Budget (OMB) under OMB control number 0658–0267.

This interim final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

The Secretary, pursuant to section 553(b)(B) of the APA, finds for good cause that the reasons justifying promulgation of this rule on an emergency basis also make it impracticable and contrary to the public interest to provide notice and opportunity for comment on this rule. Failure to implement interim measures immediately would result in fishermen not being able to catch shrimp as efficiently as possible in the North Carolina restricted area, while still protecting endangered and threatened sea turtles. Because this rule relieves a restriction (the requirement to use TEDs), under section 553(d)(1) of the APA, this rule is being made immediately effective.

List of Subjects

50 CFR Part 217

Endangered and threatened species, Exports, Fish, Imports, Marine Mammals, Transportation.

50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine Mammals, Transportation.

Dated: August 31, 1992.

William W. Fox, Jr.,

Assistant Administrator for Fisheries.

For the reasons set forth in the preamble, 50 CFR parts 217 and 227 are amended as follows:

PART 217—GENERAL PROVISIONS

1. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 1521–1543; and 16 U.S.C. 742a *et seq.*, unless otherwise noted.

2. In § 217.12, a new definition for "North Carolina restricted area" is temporarily added effective from September 1, 1992 through September 30, 1992, in alphabetical order, to read as follows:

§ 217.12 Definitions.

* * * * *

North Carolina restricted area means that portion of the offshore waters between Rich Inlet, North Carolina (34°17.6'N. latitude) and Brown's Inlet, North Carolina (34°35.7'N. latitude), the inner boundary of which is the 72 COLREGS demarcation line, as described in the definition for "inshore" in this section, and the seaward boundary of which is 1 nautical mile east of that line.

* * * * *

PART 227—THREATENED FISH AND WILDLIFE

3. The authority citation for part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

4. In § 227.72, paragraph (e)(3)(iii)(A) is temporarily added from September 1, 1992 through September 30, 1992, to read as follows:

§ 227.72 Exceptions to prohibitions.

* * * * *

(e) * * *

(3) * * *

(iii) * * *

(A) *North Carolina restricted area.*—*(1) Determination.* The Assistant Administrator has determined that special environmental conditions continue to exist in the North Carolina restricted area, and therefore, compliance with tow-time restrictions, as an alternative to the TED requirement, is appropriate. Notwithstanding paragraphs (e)(2)(i) and (e)(2)(ii) of this section, through September 30, 1992, a shrimp trawler may operate in the North Carolina restricted area if that shrimp trawler is in compliance with paragraphs (e)(3)(iii)(A)*(2)* through *(6)* of this section.

(2) Registration. The owner or operator of a shrimp trawler (regardless of length) who wishes to operate his or her shrimp trawler in the North Carolina restricted area either must comply with the TED requirement of paragraph (e)(2)(i) of this section, or must register with the Regional Director, NMFS, Southeast Region at least 24 hours before the first fishing trip after September 1, 1992 by telephoning at (813) 893–3163 and providing the following information:

(i) The name and official number of the vessel;

(ii) The time and date of the telephone registration;

(iii) The number of the State permit authorizing fishing in the restricted area;

(iv) A statement that the owner or operator intends to trawl in the North Carolina restricted area using the limited tow times option; and

(v) The dates trawling operations in the North Carolina restricted area are expected to be conducted.

(3) Observers. If required by the Assistant Administrator, the owner and operator of a shrimp trawler trawling in the North Carolina restricted area must carry a NMFS-approved observer.

(4) Tow times. As an alternative to compliance with the TED requirement of paragraph (e)(2)(i) of this section, a shrimp trawler trawling in the North Carolina restricted area must limit each tow time to 55 minutes, measured from the time trawl doors enter the water until trawl doors are removed from the water.

(5) Additional restrictions. The Assistant Administrator may impose additional restrictions on shrimp trawlers trawling in the North Carolina restricted area by publishing a notice in the **Federal Register** if he/she determines that this is necessary to ensure the protection of endangered and threatened sea turtles, or that environmental conditions no longer make TED use impracticable. The Assistant Administrator may require more restrictive tow times, synchronized tow times, or other suitable measures, if the Assistant Administrator determines that one or more sea turtle mortalities have occurred under this program, or there have been significant and unanticipated levels of takings or strandings of sea turtles associated with fishing activities in this area.

(6) Termination. The Assistant Administrator may terminate the exemption from the TED requirement provided for the North Carolina restricted area if the Assistant Administrator determines that two or more sea turtle mortalities have occurred under this program, that there have been significant or unanticipated levels of takings or strandings of sea turtles associated with fishing activities in the North Carolina restricted area, that shrimpers are not complying with required conservation measures, that conditions are such that it is not practicable to monitor compliance, or that algal concentrations no longer make the use of TEDs impracticable.

* * * * *

[FR Doc. 92–21330 Filed 9–1–92; 4:57 pm]

BILLING CODE 3510-22-M

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50 CFR Parts 217 and 227

[Docket No. 910779–2213]

RIN 0648–AE12

Threatened Fish and Wildlife; Threatened Marine Reptiles; Revisions to Enhance and Facilitate Compliance With Sea Turtle Conservation Requirements Applicable to Shrimp Trawlers; Restrictions Applicable to Shrimp Trawlers and Other Fisheries

AGENCY: Department of Commerce.

ACTION: Interim final rule with request for comments.

SUMMARY: Under the Endangered Species Act (ESA) and its implementing regulations, it is unlawful to take sea turtles. The incidental taking of turtles during fishing is exempted from the prohibitions in certain specified circumstances. Shrimp trawlers in the southeastern Atlantic and the Gulf of Mexico, including the Southwest Florida Area, are exempt if they employ specified measures (sea turtle conservation measures) to reduce the mortality of sea turtles incidentally taken.

The Secretary of Commerce (Secretary) issues this interim final rule to amend the sea turtle protection regulations applicable to shrimp trawlers in the southeastern Atlantic and Gulf of Mexico. Major provisions of this interim rule follow. Shrimp trawlers in Federal or state waters inshore or offshore of the southeastern Atlantic coastal states (Atlantic Area) are required to comply with the Federal sea turtle conservation requirements year round, rather than from May 1 through August 31 of each year as presently required (52 FR 24244, June 29, 1987). Beginning November 1, 1992, in all areas where limited tow times can be used as an alternative to the use of turtle excluder devises (TEDs), tows normally must be limited to no more than 75 minutes. The exemption for the rock shrimp fisheries in the Atlantic Area is eliminated and exemptions for vertical-barred beam an roller trawls, wing nets, skimmer trawls, pusher-head trawls, and bait shrimpers are added. Procedures are established for restricting shrimp trawling or other types of fishing activities when found necessary to protect sea turtles or when

special environmental conditions make trawling with TED-equipped nets impracticable. Definitions are added and prohibitions are revised to clarify the sea turtle conservation measures and improve the enforcement measures. The sale of non-approved TEDs is prohibited. Generic standards applicable to all hard TEDs are specified. Unnecessary elements concerning the construction requirements for the Morrison "soft" TED are removed. Allowable modifications to approved TEDs are clarified and all other modifications are prohibited.

DATES: This rule is effective on September 1, 1992. Comments on this interim rule must be submitted by October 16, 1992.

ADDRESSES: Requests for a copy of the biological opinion, Environmental Assessment and Supplemental Regulatory Impact Review/Regulatory Impact Analysis and comments on this interim rule should be addressed to Dr. Nancy Foster, Director, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Phil Williams, NMFS National Sea Turtle Coordinator, 301-713-2322, or Charles A. Oravetz, Chief, Protected Species Program, NMFS Southeast Regional Office, 813-893-3366.

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the ESA. Kemp's ridley, leatherback, and hawksbill turtles are listed as endangered. Loggerhead and green turtles are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered. The incidental take and mortality of these species by shrimp trawlers has been documented in the Gulf of Mexico and along the Atlantic seaboard.

The Secretary issued regulations amending 50 CFR parts 217, 222, and 227 to protect endangered and threatened sea turtles on June 29, 1987 (52 FR 24244). Those regulations require shrimp trawlers 25 feet (7.6 m) in length or longer, trawling in offshore waters from North Carolina through Texas, to use a NMFS-approved TED in each net during certain times of the year in specific areas. Shrimp trawlers of all sizes trawling in inshore waters, and shrimp trawlers less than 25 feet (7.6 m) in length trawling in offshore waters, are required to limit their tow times to 90 minutes or use nets equipped with National Marine Fisheries Service (NMFS)-approved TEDs during certain times of the year in specific areas.

The 1987 sea turtle conservation regulations were designed to reduce the mortality of sea turtles incidentally taken during shrimp trawling. NMFS-approved TEDs allow at least 97 percent of the sea turtles captured by a net to escape. Tow-time restrictions limit the amount of time sea turtles are subjected to forced submergence in the nets. The regulations were, in part, in response to data that indicate that, without protective regulations in place, offshore commercial shrimp trawlers kill 11,000 sea turtles in the waters off the south Atlantic and Gulf of Mexico coastal states each year. A recent National Academy of Sciences (NAS) study, "Decline of the Sea Turtles: Causes and Prevention" (NAS Study), found that 11,000 sea turtle deaths each year was a conservative estimate and that total sea turtle mortality could have been underestimated by a factor of four.

During 1990, the sea turtle conservation regulations became effective for the first time in all southeastern U.S. inshore and offshore waters. Interruptions in the implementation of these regulations were due to a series of lawsuits challenging the regulations and Congressional action in 1988. That action interrupted implementation of the sea turtle conservation regulations, except for the Canaveral Area, until May 1, 1989, and May 1, 1990, for offshore and inshore areas, respectively.

Currently, the regulations are in effect in inshore and offshore waters as follows: Gulf Area from March 1 through November 30; Atlantic Area from September 1991 through April 30, 1992 (and from May 1 through August 31, generally, in other years); and the Canaveral Area and the Southwest Florida Area year-round.

In the 1988 amendments to the ESA, Congress directed the Secretary to contract with the NAS for an independent review of the conservation of sea turtles and the causes and significance of their mortality. In particular, the 1988 ESA amendments required an independent NAS determination as to whether more or less stringent measures to reduce the drowning of sea turtles in shrimp nets are necessary and advisable to conserve sea turtles and where such measures should apply.

The NAS Study, released in May 1990, concluded that: (1) Combined annual counts of nests and nesting females indicate that nesting sea turtles continue to experience population declines in most of the United States; (2) natural mortality factors—such as predation, parasitism, diseases, and environmental changes—are largely unquantified, so their respective impacts on sea turtle populations remain unclear; (3) sea turtles can be killed by several human activities, including beach manipulations (because of the effects on eggs and hatchlings), boating (through collisions with turtles), non-shrimp fishing (because of entrapment in fishing nets and other gear), dredging, oil-rig removal, powerplant operation (because of entrainment), discharge of plastics and toxic substances (because of ingestion), and shrimp trawling (because of incidental capture and drowning); (4) shrimp trawling kills more sea turtles than all other human activities combined; (5) shrimp trawling can be compatible with the conservation of sea turtles if adequate controls are placed on trawling activities, especially the mandatory use of TEDs in most places at most times of the year; and (6) the increased use of conservation measures on a worldwide basis would help to conserve sea turtles.

Based on the NAS Study, the recommendations of an *ad hoc* reviewing committee of NOAA/NMFS scientists and managers and the information summarized below, the Secretary has concluded that the measures shrimp trawlers are currently required to employ to reduce the mortality of sea turtles incidentally taken in the shrimp trawl fishery are inadequate to conserve sea turtles and, accordingly, must be revised.

Moreover, there are problems with compliance with, and enforcement of, the existing regulations. For example, during 1990, enforcement officers documented over 230 alleged violations of the regulations, approximately 50 percent of which involved alterations to installed TEDs. The most commonly found alterations were escape openings sewn shut, webbing flaps sewn tightly over escape openings, and elastic cords or twine installed through webbing flaps. Some of the reasons advanced by fishermen for not complying with the requirements include confusion over what constitutes an approved TED and relying on the manufacturer to provide an approved TED.

Proposed Regulations

The Secretary determined that there was a need to amend the sea turtle conservation regulations to conserve and prevent further declines in the populations of listed sea turtles and to enhance and facilitate compliance and enforcement. The Secretary published proposed regulations on April 30, 1992

(57 FR 18446) and held public hearings on the regulations in each State where shrimp trawlers would be affected.

Comments and Responses on the Proposed Regulations

The Secretary received over 15,000 comments on the proposed amendments to the sea turtle conservation measures, both from participants in the public hearings and by letter. These comments ranged from complete support of the proposed amendments to total opposition to the use of TEDs and to regulations in any form. The Secretary fully considered all the comments. Comments that are germane to the conservation measures addressed in this interim rule are grouped into general categories and discussed below. Other comments will be addressed when the remaining conservation measures (e.g., expanded TED requirements) in the proposed rule are implemented through additional regulations.

Many of the comments received were similar to those addressed in the 1987 final rule. Those common to both the 1987 regulations and the proposed amendments included: (1) Support for mandatory use of TEDs; (2) opposition to the use of TEDs/will not use a TED; (3) TEDs are dangerous; (4) TEDs will cause insurance premiums to increase; (5) TEDs reduce shrimp production and increase costs; (6) TEDs do not exclude turtles; (7) shrimpers do not catch/kill any/many sea turtles; (8) available data do not support the proposed amendments; (9) the Secretary should delay implementation of amendments until more research has been done on shrimp retention when using TEDs; and (10) the Secretary should address all sources of impacts to sea turtles, not just shrimp trawling. Because the Secretary has already responded to these comments in the 1987 final rule, many of the general comments will not be re-addressed at this time. The majority of the other comments received were specific to provisions of the proposed amendments.

By far the most controversial provision was the proposal to expand significantly the requirements for TED use. The proposed rule would have required most shrimp trawlers to use TEDs in both inshore and offshore waters throughout the year and would have eliminated the tow-time option, except in limited situations. Because expanded TED requirements for the Gulf of Mexico and inshore waters are not a part of this interim rule, most of these comments will not be addressed here. However, they will be addressed when the Secretary promulgates regulations providing for expanded sea turtle conservation measures in the shrimp fishery.

Comment: There are no sea turtles in inshore waters and thus, inshore fishermen seldom, if ever, catch turtles. Many of the commenters stated that they had never seen or caught sea turtles in inshore waters despite years of fishing. Other commenters affirmed that they occasionally caught turtles in inshore waters, but argued that the turtles were always released alive.

Response: The preponderance of evidence suggests that sea turtles occur in both inshore and offshore waters off the U.S. coast. Although sea turtle distribution, abundance, species composition and seasonality in inshore waters have not been quantified in many areas affected by this rule, the best available data and information indicate that sea turtles are seasonal residents in most inshore areas. When sea turtles are present in inshore waters, they are vulnerable to capture and mortality in shrimp trawls.

Many of the commenters suggested that NMFS should collect more data on sea turtles inshore and, that without additional data, additional regulations should not be implemented. In contrast, another commenter provided results of a limited survey of Carteret County, North Carolina, shrimp boat captains. For this sample of 20 Core Sound shrimpers, an average of 8.5 sea turtles were caught per vessel per year. While more data would be useful, the best available information indicates that additional protections for sea turtles are necessary to comply with the mandates of the ESA.

Comment: In general, the commercial shrimping industry claimed that tow times are a viable alternative to TEDs and this option should remain in effect in inshore waters. Fishermen commented that 90-minute tow times have proven successful in protecting sea turtles and that this option is the only thing that will work in inshore waters. Comments from other sectors, which constitute the majority of comments on this issue, favor elimination of restricted tow times as an alternative.

Response: The Secretary has not yet reached a final decision about the effectiveness of reduced tow times in the conservation of sea turtles. However, the NAS Study determined that 90-minute tow times are inadequate to provide sea turtle protection comparable to that provided by TED use and recommended 40- and 60-minute tows (actual bottom fishing time) for warm- and cold-water months, respectively. Sea turtle scientists have information indicating that tow-time restrictions do not eliminate stress and trauma to turtles associated with their capture and forced submergence. Physiologists suggest that full recovery from such a capture could require days or even weeks, and that multiple captures of the same turtle could result in death, even when short tows are used. Reduced tow times also may result in significant adverse economic impacts to shrimp fishermen. Finally, enforcement of tow-time limitations is problematic. In the 3 years that limited tow times have been required in waters off the U.S. coast, an insignificant number of cases involving a violation of these limitations have been prosecuted, despite the fact that many commenters readily admit to tows in excess of 90 minutes. After receipt and review of the additional comments solicited with this interim rule, the Secretary will reach a final decision on whether reduced tow times provide conservation benefits that are similar to those of TEDs. However, the Secretary is reducing the length of the tow-time alternative from 90 minutes to 75 minutes, effective November 1, 1992, in light of the conclusions of the NAS Study.

Comment: The Federal Government is targeting the U.S. shrimp industry and ignoring other sources of domestic and foreign sea turtle mortality. Many commenters thought that expanding TED regulations would put an increased financial burden on shrimp fishermen while other human related impacts to sea turtles were being largely overlooked.

Response: The adverse effects of shrimp trawling on sea turtle populations have been studied extensively and are well known. The NAS Study concluded that shrimp trawling kills more sea turtles at sea than all other human activities combined. Because shrimp trawling is the number one source of sea turtle mortality, the Secretary has indeed made reduction of turtle mortality by this sector the top priority for sea turtle conservation. Nonetheless, NMFS has analyzed the impacts of other activities that may adversely affect sea turtles. Under section 7 of the ESA, NMFS has consulted with the U.S. Army Corps of Engineers regarding impacts of channel dredging projects on sea turtles. This consultation resulted in a ban on use of hopper dredges from Florida to North Carolina from April through November each year. Since this requirement went into effect last December, only two loggerhead mortalities have been documented for all dredging within the area of concern. NMFS has also consulted with Minerals Management

Service on potential adverse effects of explosive removal of obsolete oil and gas platforms in the Gulf of Mexico. As a result of this section 7 consultation, aerial surveys, diver surveys, 48-hour surface observations and other measures have been required on all removals since 1987. Since these measures were implemented, one turtle injury and no mortalities have been reported from approximately 300 platform removals.

TEDs are expected to be used on most shrimp trawlers of foreign nations in the Gulf of Mexico and wider Caribbean region, and on the Pacific coast of several Latin American nations. This is the result of Public Law 101-162, section 609. This law bans importation into the United States of trawl-caught shrimp from a foreign nation, unless that nation can demonstrate that it has both a sea turtle protection program and a rate of incidental capture of sea turtles by its shrimp trawl fleet that are comparable to those of the United States. The implementation of these measures by foreign nations is expected to protect sea turtles throughout their ranges and not just in waters off the U.S. coasts.

NMFS also is evaluating non-shrimp fisheries to determine the impact of these fisheries on sea turtles. The Secretary has published an advance notice of proposed rulemaking concerning these fisheries (57 FR 30709, July 10, 1992). NMFS has conducted a variety of section 7 consultations concerning specific fisheries to determine if these fisheries are likely to adversely affect or jeopardize the continued existence of sea turtles or other species listed under the ESA. The Secretary has taken action to regulate the summer flounder fishery so that sea turtles are protected (56 FR 63685, December 5, 1991), and additional measures are under consideration (57 FR 24577, June 10, 1992). The Secretary has requested information on the impacts of other non-shrimp trawl fisheries, and has recommended that observer programs be established to investigate gill net fisheries, long line fisheries and other trawl fisheries. Finally, this interim rule provides a mechanism so that other fisheries may be restricted when such action is necessary in order to protect sea turtles.

Comment: Allowing shrimpers to substitute tow-time restrictions for TED requirements under special environmental conditions should not be allowed. Many of the commenters thought that this exemption could easily be abused, and recommended that the Secretary further clarify the conditions under which such an exemption would be granted. Most commenters argued that tow times are difficult to enforce and that such an exemption would allow fishermen to circumvent the TED regulations. In general, the commercial shrimp industry favored this provision.

Response: The Secretary believes that there may be certain areas and times when adverse environmental conditions (algae, seagrasses, etc.) make it impractical to trawl with TEDs. For example, the Secretary recently allowed a small group of fishermen to comply with restricted tow times in lieu of TEDs in a very small offshore area off North Carolina where brown algae concentrate until August 31, 1992 (57 FR 33452, July 29, 1992). The Secretary views the North Carolina algae situation as unique, because fishermen want to catch the algae and associated shrimp. TEDs that exclude algae also exclude shrimp. The Secretary does not expect to encounter similar situations elsewhere, because most fishermen do not want to catch seagrasses, algae, or other debris. This is the only location where a problem has ever been identified and confirmed by NMFS personnel and where TED-use clearly has a detrimental economic impact on fishing. In a separate rule, the Secretary is allowing the use of restricted tow times in lieu of TEDs in this small area to continue for an additional 30 days. The Secretary will consider further extending this exemption if concentrations of algae continue.

The Secretary does not intend to allow compliance with restricted tow times in offshore waters as an alternative to TEDs except where problems have been well documented and a viable alternative that ensures the protection of sea turtles exists.

Comment: Seasonal area closures are not necessary, and tow time restrictions offer a viable alternative. Many fishermen expressed concerns that this provision would allow arbitrary and capricious closures of fishing grounds based on minimal information. Other commenters strongly supported this provision as necessary to allow timely response to unusual stranding events.

Response: The principal objective of this provision is to allow the Secretary to restrict shrimp trawling in discrete areas for short time periods when unusually high concentrations of sea turtles are present. It was primarily directed at recurrent leatherback stranding events in the spring of the year off Georgia and South Carolina. None of the currently approved TEDs are designed to exclude the large leatherback turtle. During most times of the year, leatherback captures by shrimp trawlers are not a problem, because the leatherback spends most of its time in deeper offshore waters. At certain times of the year, however, leatherbacks occur on shrimping grounds while feeding on large concentrations of jellyfish. Area closures when leatherbacks are abundant in nearshore waters may be the only alternative to prevent drowning in trawls. The Secretary expects to use area closures only as a last resort if other alternatives (such as limited tow times or increasing the size of TED escape openings during periods when leatherbacks are present) fail to prevent sea turtle mortalities. This provision simply enhances the Secretary's ability to react in a timely manner to short-term events.

Comment: A number of commenters objected to the Secretary's inclusion of rock shrimpers under the proposed amendments. They argued that bottom conditions, water depth, gear and limited tow times made it unlikely that a sea turtle would be encountered, and if captured, killed.

Response: The best available data indicate that sea turtles are likely to occur at depths and in bottom conditions similar to those found in the rock shrimp fishery, and that sea turtle capture and mortality is possible in this fishery. The Secretary also believes that gear and tow times in the rock shrimp fishery are comparable to those used in the nearshore brown shrimp fishery. Furthermore, the Secretary believes that TEDs will function properly in nets used in this fishery, and thus, requiring TEDs as a precautionary measure is warranted.

Other Comments: Several commenters provided technical suggestions and recommendations regarding gear descriptions.

Response: The Secretary considered these suggestions and incorporated recommended changes where appropriate.

Interim Regulations

As a result of comments and recommendations received, the interim amendments differ from the proposed amendments in several areas. Specific changes from the proposed amendments are summarized below.

1. The proposed amendments would have allowed compliance with tow-time restrictions of 40 minutes in warm-water months (April 1 through October 31) and 60 minutes in cold-water months (November 1 through March 31) in lieu of the use of TEDs in certain limited circumstances. The NAS Study concluded that if compliance with tow-

times limits were to be allowed as an alternative to the use of TEDs, the limits should not exceed 40 minutes (defined as actual bottom fishing time) in warm-water months and 60 minutes in cold-water months.

The tow-time limits in the proposed amendments did not take into consideration the fact that, in addition to bottom fishing time, a certain amount of time is required to set and retrieve nets. The Secretary has determined that 15 minutes should be added to the proposed cold-water months' tow-time limit, resulting in a tow-time limit of no more than 75 minutes starting November 1, 1992. For gear equipped with trawl doors, this time is measured from the time trawl doors enter the water until they are removed from the water. For gear without doors, tow times are measured from the time the codend is deployed until it is retrieved. The Secretary will evaluate the need for shorter tow times in warm-water months in the continuation of this rulemaking and, if necessary, impose them by April 1, 1993.

2. The proposed amendments generally would have eliminated compliance with restricted tow times as an alternative to the use of TEDs. This interim rule reduces the length of the tow times for cold-water months, but does not eliminate the use of restricted tow times as an alternative to TEDs. However, the Secretary solicits additional comments on the proposed amendment to generally eliminate restricted tow times. The NAS Study and the biological opinion prepared in conjunction with this rule indicate that the use of TEDs should be required by most shrimp trawlers year round. Consistent with the Biological Opinion, expanded required TED use can be phased in over time, thereby minimizing disruptions to the shrimp fishery, while providing adequate protection for sea turtles.

This interim rule takes effect immediately in order to protect sea turtles in the Atlantic Area where protective measures otherwise would expire September 1, 1992. It is essential to take immediate action to avoid a high risk that sea turtles will be injured or killed after September 1.

3. The proposed rule would not have provided an exemption from the TED requirements for boats less than 25 feet (7.6 m) in length. This interim rule continues the existing exemption, and the Secretary solicits additional comments on the proposed amendment to eliminate this exemption. However, effective November 1, 1992, vessels less than 25 feet (7.6 m) in length and all vessels fishing in inshore waters that are not using NMFS-approved TEDs must limit tow times to no more than 75 minutes (until November 1, 1992, 90-minute tow-time limits remain in effect). In addition, neither tow-time restrictions nor TEDs are required in the Gulf Area between December 1, and February 28, regardless of a vessel's length.

The Secretary recognizes that enforcement of tow-time restrictions is problematic. If there is widespread noncompliance with the tow-time restrictions or with the requirement to use TEDs, the Secretary will restrict fishing or impose additional requirements so that sea turtles are adequately protected. This interim rule establishes new procedures to facilitate a quick response under such circumstances.

4. The proposed amendments contained specific exemptions from the requirements to use TEDs for various gear and shrimping operations, such as vertical-barred beam and roller trawls, test nets, and bait shrimpers. Specific exemptions were not included for wing nets and skimmer trawls, since they were implicitly exempt by proposed revisions to § 227.72(e)(2)(i). This interim rule maintains the specific exemption for vertical-barred beam and roller trawls, test nets and bait shrimpers and adds specific exemptions for wing nets, skimmer trawls and pusher-head trawls.

The proposed amendments did not address pusher-head trawls. Pusher-head trawls are sometimes referred to locally as "chopsticks." During public hearings, NMFS learned that about 20 vessels employ this type of gear in Mississippi water. Pusher-head trawls are a variation of skimmer trawls, and because the tailbag usually is retrieved and dumped frequently, NMFS believes that they are unlikely to cause mortality to sea turtles.

Pusher-head trawls use long telephone poles (60+feet) (18.3+m) that are attached to the bow of a vessel in a "V" configuration. A shrimp trawl is attached to the bottom of the poles. The poles and trawl are then pushed through the water. The bag or codend of the trawl runs just under the front portion of the vessel.

Like wing nets and skimmer trawls, pusher-head trawls are fished continuously and the bag is dumped frequently. The tailbags of pusher-head trawls are emptied every 15–20 minutes. Since there are no barriers or other net modifications in pusher-head trawls that would prevent sea turtle captures, some level of turtle take is expected. However, it seems unlikely that any captured turtles would be killed because of the frequent dumping of the bag.

However, if the tail bags of pusher-head trawls, wing nets, or skimmer trawls are left in the water for long periods, sea turtle mortality is a possibility. To address this concern, this interim rule includes a provision that if shrimp vessels using wing nets, skimmer trawls, and pusher-head trawls do not use TEDs they must retrieve and dump the tailbag at least every 75 minutes. This requirement is expected to enhance turtle protection.

The proposed exemption for bait shrimpers remains in this interim rule, but has been revised to apply to shrimp trawlers fishing for bait that retain live shrimp in a container with a circulating seawater system; that do not possess more than 32 pounds (14.5 kg) of dead shrimp; and that have on board an original, valid state bait-shrimp license, where such a license is required. This revision is necessary to avoid potential problems resulting from discrepancies in state requirements for bait shrimping licenses.

The change from allowing 5 pounds (2.3 kg) of dead shrimp aboard in the proposed rule, to 32 pounds (14.5 kg) of dead shrimp aboard in this interim rule, was based on a survey of the various state regulations. Some states have stringent requirements for bait shrimping licenses while other states have few, if any, requirements. Several state regulations allowed no more than a bucket of dead shrimp aboard. A bucket of shrimp translates to roughly 32 pounds (14.5 kg), and for purposes of consistency, the Secretary adopts this standard in this interim rule.

In addition, this interim rule requires bait shrimps not using TECs to limit tow times to no more than 75 minutes for the same reasons it places this requirement on pusher-head trawls, wing nets, and skimmer trawls.

5. This interim rule differs from the proposed rule as a result of several technical changes to gear requirements. In the description of the Morrison TED, Georgia Sea Grant pointed out that some fishermen were installing the leading edge of the TED on a bias. This method of installation would cause a pouching in the TED that might entangle sea turtles. The description of the Morrison TED in this interim rule has been revised to prevent this method of installation. The mesh size measurement for the Morrison TED is also specified in the interim rule to be 8 inches (20.3 cm) measured center knot to center knot. On review of the net specifications when the Morrison TED was approved, NMFS determined that the mesh had been measured in this matter. The method of measurement was not specified in the

regulatory amendment that approved the Morrison TED or in the proposed rule.

The dimensions of the accelerator funnel in the proposed rule were set as 36 inches (97.4 cm). To be more consistent with the escape opening TEDs, the funnel measurement has been modified to 39 inches (99.1 cm). A provision that the path of the funnel opening match that of the turtle escape opening was also added to this interim rule to ensure that the openings would be on the same plane since TEDs can be installed in an upward or downward configuration. Finally, a clarifying statement was added to allow attachment of no more than ⅓ of the trailing edge of the funnel to the TED. Attachment of the top portion of the funnel to the TED reduces shrimp loss and is recommended by NMFS gear specialists. This provision in no way hinders turtle release.

This interim rule differs from the proposed rule by eliminating specific requirements for using depth-stretched polyethylene or polypropylene for optional funnels and flaps because manufacturers complained that such materials were expensive and difficult to obtain. NMFS recommends, but does not require, the use of such materials because they appear to minimize shrimp loss.

In the proposed rule, floats would have been allowed to be added to only the outer portion of the TED. During the hearings, fishermen noted that floats on the outside of the trawl might be torn off during net retrieval, and that installation of floats inside the trawl on the rear portion of the TED would in no way prevent turtle release. This interim rule therefore allows installation of floats inside the trawl net, but only to the rear surface of the TED, and not to any flap.

6. This interim rule also adds or changes certain provisions of the proposed rule to correct, clarify, or make minor adjustments to the rule. For example, various definitions were added or revised in this interim rule, including the following: "Bait shrimper", "footrope", "footrope length", "headrope", "headrope length", "shrimp", "stretched mesh size", and "test net or try net". These new or revised definitions are designed to clarify and explain gear terms and to enhance enforceability of the regulations.

The definition of "shrimp" is expanded to make it clear that the interim rule covers all species of marine shrimp that occur in the regulated areas (although an exemption is provided to trawlers fishing for royal red shrimp). The definition of "test net or try net" (which the interim rule exempts from having to use a TED) refers to nets that are pulled for brief periods of time, either prior to or during fishing operations with one or more primary nets in order to test for shrimp concentrations, or to determine fishing conditions. Tows with these test nets are normally limited to no more than 15 or 20 minutes.

Finally, this interim rule provides additional explanation concerning the exemption that is provided for shrimp trawlers without power or mechanical advantage trawl retrieval systems. Under both the proposed and interim rule, these trawlers may limit tow times instead of using TEDs. This interim rule indicates that a trawl retrieval system includes any device that is used to haul any part of the net on board the trawler. Thus, a portable device, such as a block-and-tackle system or a "come along," is considered part of the trawl retrieval system. Such a device that provides a mechanical advantage would make the trawler ineligible for the exemption.

This interim rule differs from the proposed rule in that it adds a definition for "Southwest Florida Area" to account for the fact that there are differing requirements in the Gulf and Southwest Florida Areas under this interim rule.

Classification

The Secretary of Commerce has determined that this rule is consistent with the ESA and other applicable law. NMFS conducted a consultation under section 7 of the ESA for the 1987 sea turtle conservation regulations (52 FR 24244, June 29, 1987). A biological opinion was prepared analyzing those regulations. Additional consultation has been conducted to analyze the effects of the shrimp trawl fishery in the southeastern United States on sea turtles and other species listed under the ESA. The biological opinion prepared for this consultation concludes that operation of the shrimp trawl fishery, upon implementation of specified measures pursuant to a time table not inconsistent with this interim rule and an extension of the public comment period in the proposed rule, is not likely to jeopardize the continued existence of sea turtles or other listed species. This interim rule is consistent, in general, with the terms and conditions of the incidental take statement that is included in the biological opinion, although to be consistent with that opinion additional conservation measures will be necessary in the future.

A regulatory impact review/regulatory flexibility analysis (RIR/RFA) was prepared for the 1987 sea turtle conservation regulations. A combination Environmental Assessment (EA) and supplemental RIR was prepared for the proposed amendments that were not already analyzed in the original analysis. An EA/RIR was also prepared on August 19, 1992. The Supplemental RIR indicates that this interim rule would not be considered a "major rule" for which a regulatory impact analysis is required under E.O. 12291.

An environmental impact statement (EIS) was prepared for the listing of three species of sea turtles, the green, loggerhead, and olive ridley, and this EIS addressed the development of gear and procedures to reduce the incidental take and mortality of sea turtles in shrimp trawls. An EA that described a voluntary program to encourage the use of TEDs was prepared in 1983. A supplemental EIS covering the mandatory TED and tow-time requirements was prepared in 1987. A combination EA and supplemental RIR was prepared on August 19, 1992, to analyze provisions of this interim rule that were not already analyzed in the original EA/RIR. This EA concludes that the preferred alternative would not result in an adverse effect on the human environment.

The Secretary has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Alabama, Florida, Louisiana, Mississippi, North Carolina, and South Carolina. Georgia and Texas do not participate in the Federal coastal zone management program. These determinations were submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act.

Neither this interim rule nor the ESA precludes any state from adopting more stringent sea turtle protection measures. This interim rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

This interim rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

The Secretary has determined that this interim rule should take effect immediately in order to extend protections for sea turtles in the Atlantic Area after September 1, 1992, and for other reasons. There is a high risk of sea turtle mortality in these parts of the Atlantic area and elsewhere. Additional time is not required in order to comply with the requirements imposed by this interim rule since the substantive

requirements are substantially similar to those now in effect. The Secretary has determined that there is good cause to make this interim rule effective immediately.

List of Subjects

50 CFR Part 217

Endangered and threatened species, Exports, Fish, Imports, Marine mammals, Transportation.

50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: August 31, 1992.

William W. Fox, Jr.,

Assistant Administrator for Fisheries.

For the reasons set forth in the preamble, 50 CFR parts 217 and 227 are amended as follows:

PART 217—GENERAL PROVISIONS

1. The authority citation for part 217 is revised to read as follows:

Authority: 16 U.S.C. 1531–1544; and 16 U.S.C. 742a *et seq.*, unless otherwise noted.

* * * * *

2. In § 217.12, the definition for "Canaveral Area" is removed; the definitions for "Atlantic Area", "Authorized officer", "Gulf Area", "Shrimp", "Shrimp trawler", and "Southwest Florida Area" are revised; and definitions for "Accelerator funnel", "Approved TED", "Bait shrimper", "Fishing, or to fish", "Footrope", "Footrope length", "Hard TED", "Headrope", "Headrope length", "Pusher-head trawl (chopsticks)", "Skimmer trawl", "Soft TED", "Stretched mesh size", "Taut", "TED (turtle excluder device)", "Test net, or try net", and "Wing net (butterfly trawl)" are added in alphabetical order to read as follows:

§ 217.12 Definitions.

Accelerator funnel means a device used to accelerate the flow of water through a shrimp trawl net.

* * * * *

Approved TED means:

(1) A hard TED that complies with the generic design criteria set forth in 50 CFR 227.72(e)(4)(i). (A hard TED may be modified as specifically authorized by 50 CFR 227.72(e)(4)(iii)); or

(2) A soft TED that complies with the provisions of 50 CFR 227.72(e)(4)(ii).

* * * * *

Atlantic Area means all waters of the Atlantic Ocean south of 36°33'00.8" N. latitude (the line of the North Carolina/Virginia border) and adjacent seas, other than waters of the Gulf Area or Southwest Florida Area, and all waters shoreward thereof (including ports).

Authorized officer means:

(1) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(2) Any special agent or enforcement officer of the National Marine Fisheries Service;

(3) Any officer designated by the head of a Federal or state agency that has entered into an agreement with the Secretary or the Commandant of the Coast Guard to enforce the provisions of the ESA; or

(4) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (1) of this definition.

Bait shrimper means a shrimp trawler that fishes for and retains its shrimp catch alive for the purpose of selling it for use as bait.

* * * * *

Fishing, or to fish, means:

(1) The catching taking or harvesting of fish or wildlife;

(2) The attempted catching, taking, or harvesting of fish or wildlife;

(3) Any other activity that can reasonably be expected to result in the catching, taking, or harvesting of fish or wildlife; or

(4) Any operations on any waters in support of, or in preparation for, any activity described in paragraphs (1) through (3) of this definition.

Footrope means a weighted rope or cable attached to the lower lip (bottom edge) of the mouth of a trawl net along the forwardmost webbing.

Footrope length means the distance between the points at which the ends of the footrope are attached to the trawl net, measured along the forwardmost webbing.

* * * * *

Gulf Area means all waters of the Gulf of Mexico west of 81° W. longitude (the line at which the Gulf Area meets the Atlantic Area), other than waters of the Southwest Florida Area, and all waters shoreward thereof (including ports).

Hard TED means a rigid deflector grid and associated hardware designed to be installed in a trawl net forward of the codend for the purpose of excluding sea turtles from the net.

Headrope means a rope that is attached to the upper lip (top edge) of the mouth of a trawl net along the forewardmost webbing.

Headrope Length means the distance between the points at which the ends of the headrope are attached to the trawl net, measured along the forewardmost webbing.

* * * * *

Pusher-head trawl (chopsticks) means a trawl that is spread by poles suspended in a "V" configuration from the bow of the trawler.

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Shrimp means any species of marine shrimp (Order Crustacea) found in the Atlantic Area, the Gulf Area, or the Southwest Florida Area, including, but not limited to:

(1) Brown shrimp (*Penaeus aztecus*);

(2) White shrimp (*P. setiferus*);

(3) Pink shrimp (*P. duorarum*);

(4) Rock shrimp (*Sicyonia brevirostris*);

(5) Royal red shrimp (*Hymenopenaeus robustus*); and

(6) Seabob shrimp (*Xiphopenaeus kroyeri*).

Shrimp trawler means any vessel that is equipped with one or more trawl nets and that is capable of, or used for, fishing for shrimp, or whose on-board or landed catch of shrimp is more than 1 percent, by weight, of all fish comprising its on-board or landed catch.

Skimmer trawl means a trawl that extends from the outrigger of a vessel with a cable and a lead weight holding the trawl mouth open.

Soft TED means a panel of polypropylene or polyethylene netting designed to be installed in a trawl net forward of the codend for the purpose of excluding sea turtles from the net.

Southwest Florida Area means that portion of the Gulf of Mexico that lies between 23°40' N. latitude and 27° N. latitude and between 81° W. longitude and 84° W. longitude, and all waters shoreward thereof (including ports).

* * * * *

Stretched mesh size means the distance between the centers of the two opposite knots in the same mesh when pulled taut.

* * * * *

Taut means a condition in which there is no slack in the net webbing.

TED (turtle excluder device) means a device designed to be installed in a trawl net forward of the codend for the purpose of excluding sea turtles from the net.

Test net, or try net, means a net pulled for brief periods of time just before, or during, deployment of the primary net(s) in order to test for shrimp concentrations or determine fishing conditions (e.g., presence or absence of bottom debris, jellyfish, bycatch, seagrasses, etc.).

* * * * *

Wing net (butterfly trawl) means a trawl with a rigid frame, rather than trawl door, holding the trawl mouth open.

PART 227—THREATENED FISH AND WILDLIFE

3. The authority citation for part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

4. Section 227.71 is revised to read as follows:

§ 227.71 Prohibitions.

(a) Except as provided in § 227.72, the prohibitions of section 9 of the ESA (16 U.S.C. 1538) relating to endangered species apply to any species of sea turtle enumerated in § 227.4.

(b) Except as provided in § 227.72, it is unlawful for any person subject to the jurisdiction of the United States to do any of the following:

(1) Own, operate, or be on board a vessel, except if that vessel is in compliance with all applicable provisions of § 227.72(e);

(2) Fish for, catch, take, harvest, or possess, fish or wildlife while on board a vessel, except if that vessel is in compliance with all applicable provisions of § 227.72(e);

(3) Fish for, catch, take, harvest, or possess, fish or wildlife contrary to any notice of tow-time or other restriction specified in, or issued under, § 227.72(e)(3) or (6);

(4) Possess fish or wildlife taken in violation of paragraph (b) of this section;

(5) Fail to follow any of the sea turtle handling and resuscitation requirements specified in § 227.72(e)(1);

(6) Possess a sea turtle in any manner contrary to the handling and resuscitation requirements of § 227.72(e)(1);

(7) Fail to comply immediately, in the manner specified at 50 CFR 620.8 (b)–(d), with instructions and signals specified therein issued by an authorized officer, including instructions and signals to haul back a net for inspection;

(8) Refuse to allow an authorized officer to board a vessel, or to enter an area where fish or wildlife may be found, for the purpose of conducting a boarding, search, inspection, seizure, investigation, or arrest in connection with enforcement of this section;

(9) Destroy, stave, damage, or dispose of in any manner, fish or wildlife, gear, cargo, or any other matter after a communication or signal from an authorized officer, or upon the approach of such an officer or of an enforcement vessel or aircraft, before the officer has an opportunity to inspect same, or in contravention of directions from the officer;

(10) Assault, resist, oppose, impede, intimidate, threaten, obstruct, delay, prevent, or interfere with an authorized officer in the conduct of any boarding, search, inspection, seizure, investigation, or arrest in connection with enforcement of this section;

(11) Interfere with, delay, or prevent by any means, the apprehension of another person, knowing that such person committed an act prohibited by this section;

(12) Resist a lawful arrest for an act prohibited by this section;

(13) Make a false statement, oral or written, to an authorized officer concerning the fishing for, catching, taking, harvesting, landing, purchasing, selling, or transferring fish or wildlife, or concerning any other matter subject to investigation under this section by such officer;

(14) Sell, barter, trade or offer to sell, barter, or trade, a TED that is not an approved TED; or

(15) Attempt to do, solicit another to do, or cause to be done, any of the foregoing.

(c) In connection with any action alleging a violation of this section, any person claiming the benefit of any exemption, exception, or permit under this subpart D has the burden of proving that the exemption, exception, or permit is applicable, was granted, and was valid and in force at the time of the alleged violation. Further, any person claiming that a modification made to a TED that is the subject of such an action complies with the requirements of § 227.72(e)(4)(iii) has the burden of proving such claim.

5. In § 227.72, Figures 1 through 8b of the section are redesignated as Figures 1 through 8b of the part; paragraph (e)(7) is removed; and paragraph (e)(1) introductory text, and paragraph (e)(2), (e)(3), (e)(4), and through (e)(6) are revised and paragraph (e)(5) is added to read as follows:

§ 227.72 Exceptions to prohibitions.

* * * * *

(e) * * *

(1) *General.* The prohibitions against taking in § 227.71(a) do not apply to the incidental take of any member of any species of sea turtle listed in § 227.4 (i.e., a take not directed toward such member) during fishing or scientific research activities to the extent that those involved are in compliance with the requirements of paragraphs (e)(1), (e)(2), (e)(3), and (e)(6) of this section.

* * * * *

(2) *Gear requirements.* (i) *TED requirement.* Except as provided in paragraph (e)(2)(ii) of this section, any shrimp trawler that is in the Atlantic Area, the Gulf Area, or the Southwest Florida Area, must have an approved TED (as defined in § 217.12) installed in each net that is rigged for fishing. A net is rigged for fishing if it is in the water, or if it is shackled, tied, or otherwise connected to any trawl door or board, or to any tow rope, cable, pole or extension, either on board or attached in any manner to the shrimp trawler.

(ii) *Exemptions from the TED requirement.* (A) A shrimp trawler is exempt from the TED requirements of paragraph (e)(2)(i) of this section if it complies with the alternative tow-time restrictions in paragraph (e)(3)(i) of this section and if it:

(*1*) Has on board no power or mechanical-advantage trawl retrieval system (i.e., any device used to haul any part of the net aboard);

(*2*) Is a bait shrimper that retains all live shrimp on board in a container with a circulating seawater system, if it does not possess more than 32 pounds (14.5 kilograms (kg)) of dead shrimp on board, and if it has on board a valid original state bait-shrimp license (if in a state that requires such a license);

(*3*) Has only a pusher-head trawl, skimmer trawl, or wing net rigged for fishing; or

(*4*) Is in an area during a period for which tow-time restrictions apply under paragraphs (e)(3) (ii), (iii), or (iv) of this section, and it complies with all applicable provisions imposed under those paragraphs.

(B) The following fishing gear or activities are exempted from the TED requirements of paragraph (e)(2)(i) of this section:

(*1*) A single test net (try net) with a headrope length of 20 feet (6.1 m) or less, if it is either pulled immediately in front of another net or is not connected to another net in any way, if no more than one test net is used at a time, and if it is not towed as a primary net.

(*2*) A beam or roller trawl fished without doors, boards, or similar devices, that has a mouth formed by a rigid frame and rigid vertical bars, if none of the spaces between the bars, or between the bars and the frame, exceed 4 inches (10.2 cm).

(*3*) A shrimp trawler fishing for, or possessing, royal red shrimp, if at least 90 percent (by weight) of all shrimp either found on board, or offloaded from that shrimp trawler is royal red shrimp.

(*4*) A shrimp trawler fishing in the Gulf Area from December 1 through February 28.

(3) *Tow-time restrictions.* (i) *Duration of tows.* If tow-time restrictions are utilized pursuant to paragraphs (e)(2)(ii), (e)(3)(ii), (e)(3)(iii), or (e)(3)(iv) of this section, a shrimp trawler must limit tow times to no more than 90 minutes through October 31, 1992, and thereafter

to no more than 75 minutes. The tow time is measured from the time that the trawl door enters the water until it is removed from the water. For a trawl net that is not attached to a door, the tow time is measured from the time the codend enters the water until it is removed from the water.

(ii) *Alternative to TED requirements.* A shrimp trawler may, as an alternative to complying with the TED requirements of paragraph (e)(2)(i) of this section, comply with the applicable alternative tow times if it qualifies with the area, season, and vessel size requirements set forth in Table 1.

(iii) *Alternative—special environmental conditions.* The Assistant Administrator may allow compliance with tow-time restrictions, as an alternative to the TED requirement of paragraph (e)(2)(i) of this section, if he/she determines that the presence of algae, seaweed, debris or other special environmental conditions in a particular area makes trawling with TED-equipped nets impracticable.

(iv) *Substitute—ineffectiveness of TEDs.* The Assistant Administrator may require compliance with tow-time restrictions, as a substitute for the TED requirement of paragraph (e)(2)(i) of this section, if he/she determines that TEDs are ineffective in protecting sea turtles.

TABLE 1.—ALTERNATIVE TOW TIME TABLE

Area	Season	Vessel sizes
Inshore:		
Atlantic area.	All year	All.
Gulf area	Mar. 1–Nov. 30	All
Southwest Florida area.	All year	All.
Offshore:		
Atlantic area.	All year (special provisions may apply in the North Carolina restricted area).	<25 ft (7.6m).
Gulf area	Mar. 1–Nov. 30	<25 ft (7.6m).
Southwest Florida area.	All year	<25 ft (7.6m).

(Note that tow-time restrictions do not apply to a shrimp trawler using an approved TED in each net during trawling.)

(v) *Notice; applicability, conditions.* The Assistant Administrator will publish notification concerning any tow-time restriction imposed under paragraph (e)(3) (iii) or (iv) of this section in the **Federal Register** and will announce it in summary form on channel 16 of the marine VHF radio. A notification of tow-time restrictions will include findings in support of these restrictions as an alternative to, or as substitute for, the TED requirements of paragraph (e)(2)(i) of this section. The notification will specify the effective dates, the geographic area where tow-time restrictions apply, and any applicable conditions or restrictions that the Assistant Administrator determines are necessary or appropriate to protect sea turtles and ensure compliance, including, but not limited to, a requirement to carry observers, or for all shrimp trawlers in the area to synchronize their tow times so that all trawl gear remains out of the water during certain times. A notification withdrawing tow-time restrictions will include findings in support of that action.

(vi) *Procedures.* The Assistant Administrator will consult with the appropriate fishery officials (state or Federal) where the affected shrimp fishery is located in issuing a notification concerning tow-time restrictions. An emergency notification can be effective for a period of up to 30 days and may be renewed for additional periods of up to 30 days each if the Assistant Administrator finds that the conditions that necessitated the imposition of tow-time restrictions continue to exist. The Assistant Administrator may invite comments on such an action, and may withdraw or modify the action by following procedures similar to those for implementation. The Assistant Administrator will implement any permanent tow-time restriction through rulemaking.

(4) *Approved TEDs.* Any netting, webbing, or mesh that may be measured to determine compliance with this paragraph (e)(4) is subject to measurement, regardless of whether it is wet or dry. Any such measurement will be of the stretched mesh size.

(i) *Hard TEDs.* Hard TEDs are TEDs with rigid deflector grids and are categorized as "hooped hard TEDs," such as the NMFS and Cameron TEDs (Figures 1 & 2), or "single-grid hard TEDs," such as the Matagorda and Georgia TEDs (Figures 3 & 4). Hard TEDs complying with the following generic design criteria are approved TEDs:

(A) *Construction materials.* A hard TED must be constructed of one or a combination of the following materials, with minimum dimensions as follows:

(*1*) Solid steel rod with a minimum outside diameter of ¼ inch (.64 cm);

(*2*) Fiberglass or aluminum rod with a minimum outside diameter of ½ inch (1.27 cm); or

(*3*) Steel or aluminum tubing with a minimum inside diameter of ¼ inch (.64 cm) and a minimum outside diameter of ½ inch (1.27 cm) (schedule 40 tubing).

(B) *Method of attachment.* A hard TED must be sewn into the trawl around the entire circumference of the TED with heavy twine.

(C) *Angle of deflector bars.* The angle of the deflector bars must be between 30° and 50° from the normal, horizontal flow through the interior of the trawl.

(D) *Space between bars.* The space between deflector bars, and between the deflector bars and the frame, must not exceed 4 inches (10.2 cm).

(E) *Position of escape opening.* The entire width of the escape opening from the trawl must be centered on and immediately forward of the frame at either the top or bottom of the net when the net is in its deployed position. The escape opening must be at the top of the net when the slope of the deflector bars from forward to aft is upward, and must be at the bottom when such slope is downward. For a single-grid TED, the escape opening must be cut horizontally along the same plane as the TED, and may not be cut in a fore-and-aft direction.

(F) *Size of escape opening.* (*1*) On a hooped hard TED, the escape opening must not be smaller than 25 inches by 25 inches (63.5 cm by 63.5 cm) in the Gulf Area or Souuthwest Florida Area, and 30 inches by 30 inches (76.2 cm by 76.2 cm) in the Atlantic Area. If a door frame is used over the escape opening, it must open a minimum height of 10 inches (25.4 cm) in the Gulf Area or Southwest Florida Area, and 12 inches (30.5 cm) in the Atlantic Area.

(*2*) On single-grid hard TED, the escape opening in the net webbing must be at least 32 inches (81.3 cm) in horizontal taut length and, simultaneously, 10 inches (20.5 cm) in vertical taut height in the Gulf Area or Southwest Florida Area, and 35 inches (88.9 cm) in horizontal taut length and, simultaneously, 12 inches (30.48 cm) in vertical taut height in the Atlantic Area. The vertical measurement must be taken at the mid-point of the horizontal measurement.

(G) *Size of hoop or grid.* (*1*) *Hooped hard TED.* (*i*) An oval front hoop on a hard TED must have an inside horizontal measurement of at least 32 inches (81.3 cm) and an inside vertical measurement of at least 20 inches (50.8 cm) in the Gulf Area or Southwest Florida Area, and an inside horizontal measurement of at least 35 inches (88.9 cm) and an inside vertical measurement of at least 30 inches (76.2 cm) in the Atlantic Area.

(*ii*) A circular front hoop on a hard TED must have an inside diameter of at least 32 inches (81.3 cm) in the Gulf Area

or Southwest Florida Area and 35 inches (88.9 cm) in the Atlantic Area.

(2) *Single-grid hard TED.* A single-grid hard TED must have an inside horizontal and vertical measurement of at least 28 inches (71.1 cm) in the Gulf Area or Southwest Florida and 30 inches (76.2 cm) in the Atlantic Area. The required inside measurements must be at the mid-point of the deflector grid.

(ii) *Soft TEDS.* Soft TEDs are TEDs with deflector panels made from polypropylene or polyethylene netting. The following soft TEDs are approved TEDs:

(A) *Morrison TED* (Figures 5 & 6). The Morrison TED uses synthetic mesh webbing for its deflector panel(s). The webbing must consist of number 42 (3-mm thick) or larger polypropylene or polyethylene webbing that is heat-set knotted or braided. The stretched mesh size may not exceed 8 inches (20.3 cm). The webbing may be installed either as one main excluder panel or as a main and two side (jib) excluder panels (Figure 6), as long as it forms a complete barrier to large objects inside the trawl net forward of the codend. The base (leading edge) of the excluder panel(s) must be sewn to the bottom body of the trawl net at least 16 feet 8 inches (5.1 m) forward of the point at which the codend is attached to the trawl net. The apex of the excluder panel(s) must be sewn to the center of the top body of the trawl net not more than 20 inches (50.8 cm) forward of the point at which the codend is attached to the trawl net. The meshes of the leading edge of the excluder panel shall be sewn evenly onto the bottom belly of the trawl following the same row of meshes from seam to seam including the wings (i.e., the sides of the trawl that separate the top from the bottom). The leading edge of the panel cannot be installed on a bias. If a net extension is inserted forward of the codend, the base and apex attachments of the excluder panel(s) must be measured from the forward attachment points of such extension. The horizontal taut length of the stretched main excluder panel may not be less than 15 feet (4.54 m). Each point on the circumference of the webbing must be sewn to the trawl net. The meshes of the webbing must be under tension when the codend is pulled aft, thus forming diamond patterns pointing toward the top of the trawl net. As an escape opening, a slit at least 4 feet 8 inches (1.4 m) in taut length must be cut in a fore-and-aft direction at the top of the trawl net immediately forward of the apex of the webbing. The slit may not be covered or closed in any manner.

(B) *Parrish TED* (Figure 7). The Parrish TED consists of an extension and deflector panel made of synthetic mesh and a steel frame. The extension must be a piece of 1¾-inch (4.5-cm) stretched mesh, no. 15 thread, treated nylon, measuring 150 meshes by 100 meshes and installed in the trawl. When installed, the extension must be cylindrically shaped with a circumference of 150 meshes and a depth of 100 meshes. The deflector panel must slope down the inside of the extension and must be a rectangular piece of 8-inch (20.3-cm), stretched mesh, 3-mm diameter, braided polyethylene. The deflector panel must measure eight meshes across its leading and trailing edges and be 15½ meshes deep. The eight meshes at the leading edge of the deflector panel must be sewn into the small (1¾-inch) (4.5-cm) mesh of the extension three meshes down from the top edge of the extension. The eight meshes at the trailing edge must be attached to the top edge of the frame. Each side edge of the deflector panel must be attached at 5⅝-inch (14.3-cm) intervals to a ⅜-inch (1.0-cm) diameter, three-strand polydacron rope, which must be attached to the small mesh of the extension at ⅝-inch (14.3-cm) intervals. The deflector panel must form a complete barrier to large objects inside the extension forward of the frame. The frame must be a rectangular, ⅜-inch (1.0-cm) diameter, welded galvanized steel rod unit with a 40-inch by 4-inch (101.6-cm by 10.2-cm) opening and small pad eyes at the top corners. The trailing-edge meshes of the deflector panel must be attached to the top of the frame, and 50 lateral meshes of the extension netting (1¾-inch (4.5-cm mesh) must be centered and sewn to the bottom and sides of the frame. The escape opening must consist of a lateral slit, measuring 40 meshes, cut from the leading edge at the bottom of the frame. A 50-inch (127.0-cm), ¼-inch (.6-cm) diameter, bungee cord must be laced through the meshes at the cut. Opposing ends of the bungee cord must be secured to the opposing pad eyes at the top of the frame. One end of a flap measuring 50 meshes across by 30 meshes deep must be attached to the meshes at the cut.

(C) *Andrews TED* (Figures 8a & 8b). The Andrews TED is a funnel constructed of 5-inch (12.7-cm) stretched mesh polyethylene or polypropylene webbing that is sewn inside a shrimp trawl. The leading edge of the funnel must be sewn with heavy twine at all points to the outer trawl beginning on the row of meshes located 20 meshes behind the center of the footrope and continuing around the circumference of the trawl, following the same row of meshes. The webbing must not be laced with rope. The funnel must taper to an escape opening in the bottom of the trawl. The rear edge of the escape opening must be located no more than 20 inches (50.8 cm) ahead of the net extension. The trailing edge on the funnel must be sewn at all points around the circumference of the escape opening. The escape opening must be at least 96 inches (243.8 cm) in circumference. A webbing flap may be used to cover the escape opening if no device holds the webbing flap closed or otherwise restricts the opening, and if such flap is constructed of webbing which has a stretched mesh size no larger than 2-inch (5.1-cm), lies on the outside of the trawl, is attached along its entire forward edge forward of the escape opening, is 50 meshes wide and 15 meshes deep, does not overlap the exit opening more than five meshes on each side (it may be attached along the 15-mesh edge), and maintains an opening of at least 48 inches (121.9 cm) in a stretched, straight-line position.

(iii) *Allowable modifications.* No modifications may be made to an approved soft TED. Only the following modifications may be made to an approved hard TED:

(A) Floats may be attached to the TED either outside or inside of the net, but not to a flap. Floats attached inside the net must be behind the rear surface of the TED.

(B) An accelerator funnel may be installed in the trawl, if it is made of net webbing material with a stretched mesh size not greater than 1⅝ inches (4.1 cm), if it has an inside horizontal opening of at least 39 inches (99.0 cm) when measured in a taut position, if it is inserted in the net immediately forward of the TED, and if its rear edge does not extend past the bars of the TED. The accelerator funnel may be attached to the TED if not more than ⅓ of its circumference is attached, if the inside horizontal opening of at least 39 inches (99.0 cm) is maintained. In a downward shooting TED only the bottom ⅓ of the circumference of the funnel may be attached. In an upward shooting TED only the upper ⅓ of the circumference of the funnel may be attached.

(C) A webbing flap may be used to cover the escape opening if no device holds it closed or otherwise restricts the opening, and if it is constructed of webbing with a stretched mesh size no larger than 1⅝-inch (4.1–cm), lies on the outside of the trawl, is attached along its entire forward edge forward of the escape opening, it not attached on the sides more than 6 inches (15.2 cm) beyond the posterior edge of the grid, does not extend more than 24 inches

(61.0 cm) beyond the posterior edge of the grid.

(5) *Revision of generic design criteria and allowable modification of hard TEDs and additional soft TEDs.*

(i) The Assistant Administrator may revise the generic design criteria for hard TEDs set forth in paragraph (e)(4)(i) of this section, may approve allowable modifications to hard TEDs in addition to those authorized in paragraph (e)(4)(iii) of this section, or may approve soft TEDs in addition to those listed in paragraph (e)(4)(ii) of this section, by a regulatory amendment if, according to a NMFS-approved scientific protocol, they demonstrate a sea turtle exclusion rate of 97 percent or greater (or an equivalent exclusion rate). Two such protocols have been published by NMFS (52 FR 24262, June 29, 1987; and 55 FR 41092, Oct. 9, 1990). Testing under the protocol must be conducted under the supervision of the Assistant Administrator, and shall be subject to all such conditions and restrictions as the Assistant Administrator deems appropriate. Any person wishing to participate in such testing should contact the Director, Southeast Fisheries Center, NMFS, 75 Virginia Beach Drive, Miami, FL 33149.

(ii) Upon application, the Assistant Administrator may issue permits, subject to such conditions and restrictions as the Assistant Administrator deems appropriate, authorizing public or private experimentation aimed at improving shrimp retention efficiency of existing approved TEDs and at developing additional TEDs, or conducting fishery research, that would otherwise be subject to paragraph (e)(2) of this section. Applications should be addressed to the Director, Southeast Region, NMFS, 9450 Koger Blvd., St. Petersburg, FL 33702.

(6) *Limitations on incidental takings during fishing activities.* (i) *Limitations.* The exemption for incidental takings of sea turtles in paragraph (e)(1) of this section does not authorize incidental takings during fishing activities if the takings:

(A) Would violate the restrictions, terms, or conditions of an incidental take statement or biological opinion;

(B) Would violate the restrictions, terms, or conditions of an incidental take permit; or

(C) May be likely to jeopardize the continued existence of a species listed under the ESA.

(ii) *Determination; restrictions on fishing activities.* The Assistant Administrator may issue a determination that incidental takings during fishing activities are unauthorized. Pursuant thereto, the Assistant Administrator may restrict fishing activities in order to conserve a species listed under the ESA, including, but not limited to, restrictions on the fishing activities of vessels subject to paragraph (e)(2)(i) of this section. The Assistant Administrator will take such action if he determines that restrictions are necessary to avoid unauthorized takings that may be likely to jeopardize the continued existence of a listed species. The Assistant Administrator may withdraw of modify a determination concerning unauthorized takings or any restriction on fishing activities if the Assistant Administrator determines that such action is warranted.

(iii) *Notice; applicability; conditions.* The Assistant Administrator will publish a notification of a determination concerning unauthorized takings or a notification concerning the restriction of fishing activities in the **Federal Register**. The Assistant Administrator will provide as much advance notice as possible consistent with the requirements of the ESA, and will announce the notification in summary form on channel 16 of the marine VHF radio. Notification of a determination concerning unauthorized takings will include findings in support of that determination; specify the fishery, including the target species and gear used by the fishery, the area, and the times, for which incidental takings are not authorized; and include such other conditions and restrictions as the Assistant Administrator determines are necessary or appropriate to protect sea turtles and ensure compliance. Notification of restriction of fishing activities will include findings in support of the restriction, will specify the time and area where the restriction is applicable, and will specify any applicable conditions or restrictions that the Assistant Administrator determines are necessary or appropriate to protect sea turtles and ensure compliance. Such conditions and restrictions may include, but are not limited to, limitations on the types of fishing gear that may be used, tow-time restrictions, alteration or extension of the periods of time during which particular tow-time requirements apply, requirements to use TEDs, and requirements to provide observers. Notification of withdrawal or modification will include findings in support to that action.

(iv) *Procedures.* The Assistant Administrator will consult with the appropriate fisheries officials (state or Federal) where the fishing activities are located in issuing notification of a determination concerning unauthorized takings or notification concerning the restriction of fishing activities. An emergency notification will be effective for a period of up to 30 days and may be renewed for additional periods of up to 30 days each. The Assistant Administrator may invite comments on such action, and may withdraw or modify the action by following procedures similar to those for implementation. The Assistant Administrator will implement any permanent determination or restriction through rulemaking.

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Proposed Rules

Federal Register
Vol. 57, No. 174
Tuesday, September 8, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 91-033-1]

Postentry Quarantine of Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend our regulations that require postentry quarantine for certain imported plants by adding requirements limiting such imports to articles destined for States that have signed an agreement with the Animal and Plant Health Inspection Service. In the agreement, States would agree to inspect and monitor postentry quarantine sites, and to monitor importer compliance with postentry quarantine requirements. This action is necessary to standardize the involvement of States in postentry quarantine activities, and to allow States to accurately estimate the resources they need to devote to postentry quarantine activities.

We also propose to add a requirement that the importer of an article required to be grown in postentry quarantine may not propagate the article, allow its propagation, or move it off the premises without written permission of an inspector. This action is necessary to ensure that plants grown in postentry quarantine do not present a significant risk of spreading plant pests.

DATES: Consideration will be given only to comments received on or before November 9, 1992.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 91-033-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Cooper, Senior Operations Officer, Port Operations, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 639-C, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-5231.

SUPPLEMENTARY INFORMATION:

Background

The Plant Quarantine Act (7 U.S.C. 151 *et seq.*) and the Federal Plant Pest Act (7 U.S.C. 150aa *et seq.*) authorize the Department to prohibit or restrict the importation into the United States of any plants, roots, bulbs, seeds, or other plant products in order to prevent the introduction into the United States of exotic plant pests.

Regulations promulgated under these authorities include, among others, 7 CFR 319.37 through 319.37-14, "Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products" (referred to below as the subpart). The subpart governs the importation of living plants, plant parts, and seeds for or capable of propagation, and related articles. Other sections of part 319 deal with imported articles such as cut flowers, or fruits and vegetables intended for consumption.

Section 319.37-7 of the subpart allows certain articles to be imported into the United States only if, among other requirements, they are grown under special postentry quarantine conditions for a period after importation. The period of quarantine ranges from six months to two years, depending on the genus of the article. During that period, the articles are kept separate from domestic plants, are subject to inspection by inspectors, and must meet other conditions necessary to prevent the dissemination of plant diseases or other plant pests.

The postentry quarantine provision is designed for importing regulated articles for which there is a slight, but existing risk of infection with certain plant diseases in the place of origin. Since many of the regulated articles listed in § 319.37-7 are shipped in a dormant or leafless state, diseases would not be readily revealed by inspection at the time of importation. The postentry quarantine growing period would allow manifestation of these diseases.

Regulated articles are grown under postentry quarantine in many States nationwide. Historically, State governments have cooperated with the Animal and Plant Health Inspection Service (APHIS) by assigning State inspectors to inspect, approve, and monitor postentry quarantine sites. The basic requirements for growing an imported regulated article under postentry quarantine are contained in the regulations, with detailed requirements recorded in a written agreement between APHIS and the importer of the article (see current § 319.37-7(c)).

Because APHIS relies on State assistance to ensure that plants grown at postentry quarantine sites are grown in accordance with the requirements of the subpart, the subpart should describe the role of the States. We propose to add language to the subpart establishing written agreements between APHIS and the States detailing Federal and State responsibilities and authorities regarding postentry quarantine sites. We also propose to issue permits allowing the importation of articles subject to postentry quarantine only for articles destined for States that have signed such an agreement.

We believe establishing these written State postentry quarantine agreements would aid both APHIS and the States in effectively administering the postentry quarantine requirements of the subpart. From the APHIS perspective, the agreement would establish a uniform, nationwide standard for State participation in the program, and would prevent the importation of articles destined for States that have not agreed to take the steps needed to meet the requirements of the subpart. From the State perspective, the agreement would detail State responsibilities, allowing States to plan their allocation of resources to the postentry quarantine program in an orderly manner. The agreement would also provide the States a role in the import permit review process, to ensure that the number or size of shipments for which importers are granted import permits would be appropriate for the State's resources available to supervise postentry quarantine sites.

In the proposed State postentry quarantine agreement, the State would agree to perform the following actions:

—Establish and enforce State regulations and requirements necessary to inspect sites and monitor compliance with postentry quarantine growing in accordance with this section. This requirement would help ensure that the State has established the necessary legal authorities to supervise the postentry quarantine site and enforce procedures consistent with the subpart.

—Review pending permit applications upon request of Plant Protection and Quarantine (PPQ), and report to PPQ whether the State would be able to provide inspection services for the proposed postentry quarantine. This would provide APHIS with useful data to determine when import permits should be issued, based on availability of APHIS and State resources to enforce the requirements of the subpart.

—Provide the services of State inspectors to inspect sites to be used for postentry quarantine, and to monitor compliance with the requirements of this section during the use of sites for postentry quarantine.[1] This would formalize the existing procedures under which States provide services to alleviate the burden on APHIS resources, allowing APHIS to expend its resources more effectively by concentrating on the import permit process and managing postentry quarantine on a national basis.

—Report to Plant Protection and Quarantine any evidence of exotic plant pests or diseases found at a postentry quarantine site by State inspectors, recommend to Plant Protection and Quarantine safeguards or mitigation measures to control the pests or diseases, and supervise the application of safeguards or mitigation measures approved by PPQ. This would ensure that the central purpose of postentry quarantine, the identification and control of exotic plant pests inadvertently introduced with imported articles, is met.

—Report to Plant Protection and Quarantine any propagation or increase in the number of plants that occurs during postentry quarantine. This would help APHIS ensure that during postentry quarantine, articles are not propagated to an extent that would result in an inability to control the dissemination of plant pests, if any are present. In some cases in the past, articles in postentry quarantine have been propagated to a point where there were too many articles at a site to readily inspect, or to a point where the articles spread beyond the limits of the site authorized for postentry quarantine. To address this problem, we propose to require States to report propagation or increase, and, as discussed below in the section concerning postentry quarantine growing agreements, we also propose to require importers to obtain the written permission of an inspector before propagating articles grown in quarantine or allowing their propagation.

We also propose that after a State postentry quarantine agreement is signed, either APHIS or the State may terminate the agreement by giving written notice to the other party. The termination would be effective 60 days following written notice with regard to future movements of postentry quarantine articles to that State. However, the State would be responsible for continuing to provide postentry quarantine services until the time the plant material is eligible to be released from quarantine, for all postentry quarantine material already in the State, and for all postentry quarantine material that arrives in the State within 60 days of the date the State or APHIS gives notice that it wishes to terminate the postentry quarantine agreement. APHIS believes it needs 60 days notice prior to termination in order to inform permittees and to deal with pending requests to import articles requiring postentry quarantine to a State that terminates its participation.

For States that sign a postentry quarantine agreement, APHIS would provide the following services in support of postentry quarantine activities:

—APHIS would seek State review of permit applications for postentry quarantine material, and would issue permits only after determining that inspector services are available to monitor the postentry quarantine.

—APHIS, upon a State's request, would provide training, technical advice, and pest identification services to State officials involved with postentry quarantine services in accordance with the regulations.

—APHIS would notify State officials when plant material destined for postentry quarantine in their State arrives in the United States, and would notify State officials when materials in postentry quarantine may be released from quarantine in their State.

The responsibilities of both the State and APHIS would be recorded in each State postentry quarantine agreement signed between APHIS and a State. The Administrator of APHIS, or his designee, would sign the agreement for APHIS, and the State Plant Regulatory Official would sign for the State. We propose to define State Plant Regulatory Official as "The official authorized by the State to sign agreements with Federal agencies involving operations of the State plant protection agency." We propose to define State as "Each of the 50 States of the United States, the District of Columbia, Guam, Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States, and all other territories and possessions of the United States."

We also propose to add several requirements to current § 319.37–7(c) of the regulations, concerning the agreement which importers of postentry quarantine articles must sign with APHIS. We propose to change this paragraph to require that the importer may not propagate the articles, allow their propagation, or move them off the premises without written permission of an inspectors. This action appears necessary to ensure that plants grown in postentry quarantine do not present a significant risk of spreading plant pests. Unrestricted propagation could result in infected imported plants being grown too close to domestic plants of the same genus, and in an increased risk that some plants would be moved from the premises and pose a risk of spreading plant pests.

We also propose to change current paragraphs (a) and (c) of § 319.37–7 to require that the person who applies for a permit under § 319.37–3 to import an article requiring postentry growing (the importer) must also sign a postentry quarantine growing agreement with APHIS. The person who imports an article into the country should bear responsibility to ensure that it meets postentry quarantine requirements after its arrival. It is not mandatory that the importer who signs a postentry quarantine growing agreement be physically present at the growing site to supervise its operations, as the importer may use employees or other personnel to operate the growing site. However, in enforcing the requirements of the regulations, we propose to deal directly with the person who signs a postentry quarantine growing agreement, where such an agreement exists. We would serve any notices required by the regulations to that person, and would

[1] In accordance with laws of individual States, services provided by State inspectors may be subject to charges imposed by the State.

hold that person reponsible for completing any disposal, treatment, or safeguarding ordered under proposed § 319.37–7(f), and for any costs and charges applicable under proposed § 319.37–7(f).

We also propose to change current § 319.37–7(c)(6) (new § 319.37–7(d)(6)), which requires notification of PPQ if an article at a postentry growing site dies or shows abnormalities. We propose to require the importer to notify an inspector, orally or in writing, within 30 days of the time an article shows abnormalities, dies, or is killed by the importer or any other person, and to keep the article for 60 days and turn it over to an inspector on request. This change would help inspectors to determine whether deaths or abnormalities of articles are caused by plant pests.

We also propose to add a new § 319.37–7(f) specifying actions inspectors may take regarding articles that are grown in violation of the regulations, or that are found to present a risk of introducing plant pests. For violations involving articles grown under a postentry quarantine growing agreement, the person who signed the agreement would be responsible for carrying out actions ordered by an inspector. This new paragraph states that inspectors may order such articles destroyed, shipped to a point outside the United States, or subjected to treatments or safeguards to control plant pests. If an article subject to postentry quarantine growing is found at a site that is not authorized for such growing, the inspector may order the owner of the article, or the person who owns or is in possession of the site where the article is growing, to take one of the above actions or to sign a postentry quarantine growing agreement or to move the article to an authorized postentry quarantine site. This paragraph also states that in choosing which action to order and in setting the time limit for the action, the inspector shall consider the degree of pest risk presented by the plant pests associated with the kind of article, the types of other host materials for the pest in or near the growing site, the climate and season at the site in relation to the pest's survival, and the availability of treatment facilities. Finally, proposed paragraph (f) states that all costs pursuant to any action ordered by an inspector in accordance with the regulations shall be borne by the person who signed the postentry quarantine growing agreement covering the site where the articles were grown, or if no such agreement was signed, by the owner of the articles at the growing site.

To clarify the above references to inspectors ordering actions with regard to articles subject to postentry quarantine but grown in the absence of a postentry quarantine growing agreement, we should note that it is not always possible to determine the identity of the "owner" of such articles. For articles imported under an authorized postentry quarantine growing agreement and grown at an authorized growing site, the importer is the person responsible for implementing actions ordered by an inspector, because he or she signed the permit application and the postentry quarantine growing agreement. However, if an inspector discovers articles subject to postentry quarantine being grown not in accordance with a postentry quarantine growing agreement, on a site that was not authorized, it is more difficult to identify the person to hold responsible for taking actions ordered by an inspector. In many cases such articles are grown under the supervision of one person, but are legally owned by another person. The identity of the owner may not be readily or accurately ascertained by an inspector questioning the person found growing the articles.

Because articles subject to postentry quarantine present a risk of spreading plant pests, it is important that actions ordered by an inspector be implemented quickly. To accomplish this, it is necessary to give timely notice to the person who will be held responsible for implementing the actions. In cases where articles are grown without being covered by a signed postentry quarantine growing agreement, the identity of the owner may be in doubt and it may not be possible for an inspector to give him or her timely notice of actions required to control pest risk. Therefore, we are proposing in § 319.37–7(f)(1) that the regulations allow an inspector to issue an emergency action notification (PPQ form 523) requiring actions regarding the articles to either the owner of the articles, or to the person who owns or is in possession of the site on which the articles are being grown contrary to the regulations. The person named in the notice, whether the owner of the articles or the person who owns or is in possession of the site, would be responsible for implementing actions specified in the notice. Those actions could include signing a postentry quarantine growing agreement, destroying the articles, shipping them to a point outside the United States, moving them to an authorized postentry quarantine site, and/or applying treatments or other safeguards to the articles.

We are not making the person who owns or is in possession of the growing site for unauthorized articles responsible for costs pursuant to any actions ordered by an inspector, because there is no need to assign costs immediately to control pest risk, and the owner of the articles has the most direct legal responsibility for these costs. In § 319.37–7(f)(3) of the regulations we propose to identify the owner of the articles as responsible for such costs. The owner of the articles, the owner or person in possession of the growing site, and possibly other persons involved in the growing may have contractual arrangements regarding costs and responsibilities, but we believe the owner of the article is the proper person to identify in the regulations as responsible for costs associated with articles.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule, if adopted, would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed amendment, if adopted, would define responsibilities of APHIS and the States in carrying out postentry quarantine operations in accordance with 7 CFR 319.37–7. Defining these responsibilities would standardize the involvement of States in postentry quarantine activities, and allow States to accurately estimate the resources they need to devote to postentry quarantine activities.

If this proposal is adopted, States would monitor and inspect postentry quarantine sites; monitor importer compliance with postentry quarantine requirements on behalf of APHIS; inspect plants for evidence of exotic pests (at least once each year for plants required to be grown in quarantine for two years, and at least once for plants required to be grown in quarantine for

less than two years); report to PPQ any increase from plants under postentry quarantine and any evidence of exotic plant pests found at postentry quarantine sites, and recommend to PPQ safeguards or mitigation measures to control the pests.

Increased economic costs to society are expected to be negligible as a result of the proposed rule change. We have consulted plant protection services of the States that are currently cooperating in the postentry quarantine program, and they have indicated that they do not expect the changes we propose to substantially increase or decrease the amount of postentry material grown in their States, or to significantly increase or decrease the demands for services from their inspectors. States have been largely responsible for the administrative costs of enforcement since the postentry program was first initiated. State inspectors have traditionally inspected postentry quarantine sites, and monitored compliance with Federal postentry regulations. Historically, State inspectors have also reported to PPQ any evidence of exotic plant pests, and propagation or increases in the number of plants contained in postentry quarantine areas.

Approximately 130 new sites are authorized for postentry quarantine in an average year, and approximately the same number of site authorizations expire each year. We do not expect the proposed changes to result in significant changes to these numbers.

Under the proposed rule, APHIS would have the authority to limit entry of materials requiring postentry quarantine based on availability of APHIS and State resources to enforce the requirements of the regulations. It is not expected that this authority would be used frequently to deny shipments entry; however, some importers will likely be unable to import some materials due to this provision. The amount of economic impact would depend on the per unit value and number of plants that would be denied entry due to limited APHIS and State resources.

Under the circumstances described above, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR, subpart V).

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted:

(1) All State and local laws and regulations that are inconsistent with this rule will be preempted;

(2) No retroactive effect will be given to this rule; and

(3) It will not require administrative proceedings before parties file suit in court challenging its provisions.

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection provisions that are included in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB). Your written comments will be considered if you submit them to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. You should submit a duplicate copy of your comments to:

(1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782 and

(2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue, SW, Washington, DC 20250.

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Under the circumstances described above, we propose to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for "Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products," §§ 319.37 through 319.37–14, would be revised to read as follows:

Authority: 7 U.S.C. 150dd–150FF, 154, 155, 157, 159, 160, 162, 164a, and 450; 7 CFR 2.17, 2.51, and 371.2(c).

§ 319.37–1 [Amended]

2. In § 319.37–1, the following definition would be added in alphabetical order:

* * * * *

State Plant Regulatory Official. The official authorized by the State to sign agreements with Federal agencies involving operations of the State plant protection agency.

* * * * *

3. Section 319.37–7 would be amended as follows:

a. Paragraph (a) would be revised.

b. Paragraphs (c) and (d) would be redesignated as paragraphs (d) and (e).

c. A new paragraph (c) would be added.

d. In newly-designated paragraph (d), the introductory language and paragraphs (d)(1) and (d)(6) would be revised.

e. A new paragraph (f) would be added.

f. A new paragraph (g) would be added.

As amended, § 319.37–7 would read as follows:

§ 319.37–7 Postentry quarantine.

(a) The following restricted articles, from the designated countries and localities, and any increase therefrom must be grown under postentry quarantine conditions specified in paragraphs (c) and (d) of this section, and may be imported or offered for importation into the United States only:

(1) If destined for a State that has completed a State postentry quarantine agreement in accordance with paragraph (c) of this section. A current list of such States is available from Port Operations, Plant Protection and Quarantine, APHIS, room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8295;

(2) If a postentry quarantine growing agreement has been completed and submitted to Plant Protection and Quarantine in accordance with paragraph (d) of this section. The agreement must be signed by the person issued a written permit for importation of the article (the importer) in accordance with § 319.37–3; and,

(3) If Plant Protection and Quarantine has determined that the completed postentry quarantine growing agreement fulfills the applicable requirements to monitor the postentry quarantine.

* * * * *

(c) *State postentry quarantine agreement.* (1) Articles required to undergo postentry quarantine in accordance with this section may only be imported if destined for postentry quarantine growing in a State which has entered into a written agreement with the Animal and Plant Health Protection Service, signed by the Administrator or his or her designee and by the State Plant Regulatory Official.

(2) In any such written agreement, the State shall agree to:

(i) Establish State regulations and requirements prior to the effective date of the agreement and enforce such regulations and requirements necessary to inspect sites and plants growing in postentry quarantine and to monitor compliance with postentry quarantine growing in accordance with this section;

(ii) Review pending permit applications for articles to be grown under postentry quarantine conditions in that State, upon request of Plant Protection and Quarantine, and report to the Postentry Quarantine Unit of Plant Protection and Quarantine whether the State would be able to provide inspection and monitoring services for the proposed postentry quarantine;

(iii) Provide the services of State inspectors to: Inspect sites to be used for postentry quarantine; report to the Postentry Quarantine Unit of Plant Protection and Quarantine whether the site is of adequate size to contain the number of plants proposed for importation, including potential increase if increase is allowed; inspect plants for evidence of exotic pests at least once during the first year and once during the second year for plants required to be grown in postentry quarantine for two years, and at least once for plants required to be grown in quarantine for less than two years; and monitor compliance with the requirements of this section during the use of the sites for postentry quarantine;

(iv) Report to the Postentry Quarantine Unit of Plant Protection and Quarantine any evidence of exotic plant pests found at a postentry quarantine site by State inspectors, recommend to Plant Protection and Quarantine safeguards or mitigation measures to control the pests, and supervise the application of safeguards or mitigation measures approved by Plant Protection and Quarantine, and

(v) Report to the Postentry Quarantine Unit of Plant Protection and Quarantine any propagation or increase in the number of plants that occurs during postentry quarantine.

(3) In any such written agreement, the Administrator shall agree to:

(i) Seek State review of permit applications for postentry quarantine material in that State, and issue permits only after determining that State services are available to monitor the postentry quarantine;

(ii) Upon request of the State, provide training, technical advice, and pest identification services to State officials involved in providing postentry quarantine services in accordance with this section;

(iii) Notify State officials, in writing and within ten days of the arrival, when plant material destined for postentry quarantine in their State arrives in the United States, and notify State officials in writing when materials in postentry quarantine may be released from quarantine in their State.

(4) *Termination of State postentry quarantine agreement.* A State postentry quarantine agreement may be terminated by either the Administrator or the State Plan Regulatory Official by giving written notice of termination to the other party. The effective date of the termination will be 60 days after the date of actual receipt of notice, with regard to future importation to that State of articles requiring postentry quarantine in accordance with this section. When a postentry quarantine agreement is terminated by either the State Plant Regulatory Official or the Administrator, APHIS and the affected State shall continue to provide postentry quarantine services in accordance with its postentry quarantine agreement, until the time the plan material is eligible to be released from quarantine, for all postentry quarantine material already in the State, and for all postentry quarantine material that arrives in the State prior to the effective date of termination.

(d) *Postentry quarantine growing agreements.* Any restricted article required to be grown under postentry quarantine conditions, as well as any increase therefrom, shall be grown in accordance with a postentry quarantine growing agreement signed by the person (the importer) applying for a written permit in accordance with § 319.37–3 for importation of the article and submitted to Plant Protection and Quarantine, which specifies the kind, number, and origin of plants to be imported, and whereby the signer agrees to comply with the following conditions for the period of time specified below:

(1) To grow such article or increase therefrom only on specified premises owned, rented, or otherwise in possession of the importer, within a space of dimensions designated by an inspector, and to move, propagate, or allow propagation of the article or increase therefrom or parts thereof only with the written permission of an inspector and only to the extent prescribed by the inspector;

* * * * *

(6) To notify an inspector, orally or in writing, within 30 days of the time the importer or the person in charge of the growing site finds any abnormality of the article, or the article dies or is killed by the importer, the person in charge of the growing site, or any other person; to retain the abnormal or dead article for at least 60 days following that date of notification; and to give the abnormal or dead article to an inspector upon request;

* * * * *

(f) *Inspector-ordered disposal, movement, or safeguarding of restricted articles; costs and charges; civil and criminal liabilities.*

(1) *Growing at unauthorized sites.* If an inspector determines that any article subject to the postentry quarantine growing requirements of this section, or any increase therefrom, is being grown at an unauthorized site, the inspector may file an emergency action notification (PPQ form 523) with the owner of the article or the person who owns or is in possession of the site on which the article is being grown. The person named in the form 523 must within the time specified in form 523, sign a postentry quarantine growing agreement, destroy, ship to a point outside the United States, move to an authorized postentry quarantine site, and/or apply treatments or other safeguards to the article, the increase therefrom, or any portion of the article or the increase therefrom, as prescribed by an inspector to prevent the introduction of plant pests into the United States. In choosing which action to order and in setting the time limit for the action, the inspector shall consider the degree of pest risk presented by the plant pest(s) associated with the kind of article (including increase therefrom), the types of other host materials for the pest in or near the growing site, the climate and season at the site in relation to the pest's survival, and the availability of treatment facilities.

(2) *Growing at authorized sites.* If an inspector determines that articles grown at a site specified in an authorized postentry quarantine growing agreement present a risk of introducing plant pests into the United States, or are being grown contrary to the provisions of this section, the inspector shall issue an emergency action notification (PPQ form 523) to the person who signed the postentry quarantine growing agreement. That person shall be responsible for carrying out all actions specified in the emergency action notification. The emergency action notification may extend the time for which the articles and the increase therefrom must be grown under the postentry quarantine conditions specified in the authorized postentry quarantine growing agreement, or may require that the person named in the notification must destroy, ship to a point

outside the United States, or apply treatments or other safeguards to the article, the increase therefrom, or any portion of the article or the increase therefrom, within the time specified in the emergency action notification. In choosing which action to order and in setting the time limit for the action, the inspector shall consider the degree of pest risk presented by the plant pest(s) associated with the kind of article (including increase therefrom), the types of other host materials for the pest in or near the growing site, the climate and season at the site in relation to the pest's survival, and the availability of treatment facilities.

(3) *Costs and charges.* All costs pursuant to any action ordered by an inspector in accordance with this section shall be borne by the person who signed the postentry quarantine growing agreement covering the site where the articles were grown, or if no such agreement was signed, by the owner of the articles of the growing site.

(4) *Civil and criminal liabilities.* Any person who moves an article subject to postentry quarantine growing requirements from the site specified for that article in an authorized postentry quarantine growing agreement, or who otherwise handles such an article contrary to the requirements of this section, shall be subject to such civil penalties and such criminal liabilities as are provided by 18 U.S.C. 1001, 7 U.S.C. 150gg and 163, or other applicable Federal statutes.

(g) *State.* Each of the 50 States of the United States, the District of Columbia, Guam, Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States, and all other territories and possession of the United States.

Done in Washington, DC, this 2nd day of September 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-21533 Filed 9-4-92; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 946

[Docket No. 920383-2083]

RIN 0648-AE73

Weather Service Modernization

AGENCY: National Weather Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Proposed rule and request for comment.

SUMMARY: The National Weather Service proposes rules to establish the internal process that it will follow in certifying that there will be no degradation of weather services as a result of consolidating, automating, or relocating a field office during the initial stage of modernizing the National Weather Service or of closing a field office during the second stage of modernization.

DATES: Comments are requested until November 9, 1992.

ADDRESSES: Comments should be sent to Julie Scanlon, NOAA/GC, SSMC2, Room 18119, 1335 East-West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Louis Boezi, (301) 713-0397.

SUPPLEMENTARY INFORMATION:

Background

Since 1950, significant improvements have been made in the prediction of large-scale weather features (high pressure areas, large storms) owing to increased knowledge of atmospheric processes, new observational techniques such as radar and satellites, and the advent of large computers and numerical prediction models. However, improvements in the forecasting and warning of smaller-scale phenomena (severe thunderstorms, tornadoes, flash floods) have been less dramatic. Continuing scientific advances in the understanding of these phenomena and new capabilities to observe and rapidly process information on these smaller scales (from a few to several hundred miles) permit major advances in weather service to the nation.

Provision of public warnings of severe weather or flash floods id currently accomplished in most cases after actual detection of these events or after a collection of reports of visual sightings, *i.e.*, the current warnings are reactionary. Prediction of small scale violent weather has been very difficult, and lead times for warnings are correspondingly short. Moreover, the existing technological base for weather observations, information processing and communication is obsolete and highly costly to maintain. For example, NWS currently operates the Automation of Field Operations and Services (AFOS) system to process and distribute meteorological data. AFOS can not process radar or satellite imagery, and its communications are saturated to the point that data and products are routinely lost. The existing network of radars is already more than 30 years old. Obtaining some replacement parts is impossible. Failure of existing systems and the resulting absence of critical weather data could result in a major disaster during severe weather conditions.

In its 1980 report, "Technological and Scientific Opportunities for Improved Weather and Hydrological Services in the Coming Decade", the Select Committee on the National Weather Service of the National Research Council (NRC), pointed out scientific and technological opportunities for substantial improvement in the quality and quantity of the nation's weather hydrological services, including the timely warning of hazardous weather flooding. As a result, the Department of Commerce (DOC) began to consider modernization of the National Weather Service (NWS), a major component of the National Oceanic and Atmospheric Administration (NOAA). That modernization involves new observational technology, powerful new information and forecast systems, and an new organizational structure. It promises to provide more accurate and timely predictions of those weather events that have regular and dramatic impact on both private and public activities. In 1987, a study panel of NRC reviewed the status of the development of potential technological components of a modernized NWS and the planning for modernization and the associated restructuring. The report was generally supportive of both the technological developments and DOC's plan for implementation.

In response to DOC's budget proposals to move ahead with the modernization and associated restructuring, the Congress passed and the President signed, Public Law 100-685, Title IV of which set forth guidelines for planning and implementing the NWS modernization and restructuring.

In 1989, NOAA proposed to the NRC that it establish a review committee on the modernization and associated restructuring of NWS to advise NOAA in the (i) implementation of the most cost-effective technical systems and services, and (ii) successful demonstration and acceptance of the modernized and restructured NWS operations. Later that year, NRC established a committee on National Weather Service Modernization of the Commission on Engineering and Technical Systems.

The first report of that Committee, dated March 1991, presented the results

of its work during 1990.[1] In addition to taking a broad overview of the modernization and associated restructuring, the Committee examined selected areas in which near-term decisions by NOAA were contemplated. The Committee will continue to examine the planning and implementation of the NWS modernization and associated restructuring efforts. Additional recommendations of the Committee will be found in subsequent reports to be issued at least annually during its lifetime.

The recommendations of the Committee generally relate to the most cost effective deployment of modern technical systems and, with respect to the closure of field offices, to methods for statistically comparing modernized weather services with those produced by current operations. As the NWS proceeds with modernization, it intends to utilize the advice of the Committee in order to promote user confidence in the quality of its modernize services although, in certain instances, the Committee may advocate activities that would lead to a level of certainty substantially exceeding the basis requirements of Public Law 100–685.

As discussed in greater detail in the section entitled "The Modernization Process", these proposed regulations respond only to the requirements for certification of transition actions (consolidation, automation and relocation) and not to requirements applicable to the closure of a field office, which will not occur until the final stage of modernization. Proposed regulations governing the closure of field offices will be published at a later date, but well before a closure will occur.

The New Technology

The key new observation systems in the NWS modernization are the Next Generation Weather Radar (NEXRAD), the automated Surface Observing System (ASOS), and the Next Generation Geostationary Operational Environmental Satellites (GOES). Other observational systems may contribute significantly to the modernized NWS. Two particularly important ones for forecasting and warning of severe weather events are wind profilers and a network for lightning detection and analysis.

NEXRAD units utilize doppler radar technology to measure the radial wind velocity in severe weather elements such as thunder-storms, to improve estimates of precipitation amounts, and to track storm movement and intensity. The new radars also will allow for earlier detection of the precursors of tornadic activity, thunderstorm development, and other important weather phenomena.

ASOS units will be installed initially at more than 1000 locations in the United States in a cooperative program with the Federal Aviation Administration and the Department of Defense. These units will provide surface weather information on a nearly continuous basis and in a uniform manner. The ASOS network will provide the basic data required for severe weather, flash flood, and river forecasting, as well as for support of aviation operations. This automation will free personnel for other activities and allow future expansion of the observation network at much less cost than presently required with manual observations. ASOS units now are being produced and installed in the field.

Next Generation GOES Satellites (GOES-Next) are currently under development. These satellites will allow atmospheric soundings and cloud images to be obtained simultaneously (only one or the other can be obtained from the current GOES). Both observations will also be of higher quality and resolution. New images can be provided as frequently as every six minutes during severe weather conditions. These advances are very important for improved prediction of severe storms and flash floods.

The Advanced Weather Interactive Processing System (AWIPS) and its associated communications will be the data integrator at each Weather Forecast Office in the fully modernized Weather Service, receiving high-resolution data from the observation systems; centrally collected data, analyses, and guidance products from the National Meteorological Center (NMC) in the National Capital Area; and products from the National Hurricane Center in Miami, Florida, and the National Severe Storms Forecast Center in Kansas City, Missouri. This integrated and continuously updated data base is the source from which all warnings and forecasts issued by the modernized WFO will be prepared. The AWIPS, by providing fast-response interactive data analysis and display, will be the information system used by the meteorologist on duty to prepare warnings and forecasts and to disseminate these products rapidly to the public and other users. AWIPS also will include a new communications systems to support NWS operations.

Advanced super computers at the NMC will improve the accuracy of numerical weather forecasts, particularly at the smaller scales of atmospheric motion. Numerical models of the atmosphere must run on large, high-speed computers to have the spatial resolution and timeliness needed in today's weather forecasting. The requirements for computer-generated guidance products in support of forecasting severe storms are significantly increased over those previously needed. For example, a high-resolution model, with a horizontal resolution of 30 km and improved physics, is now being developed that requires a much larger computer capability than the Class VI computers previously used at the NMC for models with a resolution of 85 km. The first advanced super computer was installed at the NMC in 1990.

Structure of NWS

The main field forecast offices of today's NWS are 52 Weather Service Forecast Offices (WSFOs) whose responsibilities are organized on a geographical basis. In addition, there are about 200 smaller offices, including Weather Service Offices (WSOs) and Weather Service Meteorological Observatories, that take manual weather observations and, in the case of WSOs, issue local area forecasts and warnings based on the products of the WSFOs. Thirteen River Forecast Centers (RFCs), which primarily provide flood warnings and river stage and water supply forecasts, are located to cover the contiguous 48 states and Alaska. Six RFCs are collocated with WSFOs. The hydrologic forecasts and warnings prepared by the RFCs are disseminated by the WSFOs and selected WSOs.

A fundamental change in the structure of the NWS is planned as part of the proposed modernization. There will be 115 Weather Forecast Offices (WFOs) at locations determined primarily by the coverage of NEXRAD systems to be installed nearby. Upon completion of modernization, all the remaining WSOs and Weather Service Meteorological Observatories will be automated. The forecast and warning responsibilities of the WSOs to be closed will be assumed by the appropriate WFOs using the improved observation, information processing, and dissemination systems.

The Modernization Process

Section 407 of Public Law 100–685 directs the Secretary of Commerce

[1] Toward a new National Weather Service—A First Report, National Academy Press, Washington, DC, March 1991. The material in this section and the following section is derived directly from that report.

(Secretary) to prepare and submit to the Congress a 10-year Strategic Plan for the comprehensive modernization of the NWS. In addition, the Secretary must prepare and submit to the Congress a National Implementation Plan setting forth schedules for necessary actions to accomplish the objectives described in the strategic plan. The Implementation Plan is revised annually.

The Secretary submitted the Strategic Plan required by Sec. 407 to the Congress on March 10, 1989, and prepared and submitted the National Implementation Plan on April 23, 1990. The latest revision of the National Implementation Plan covers fiscal year 1992. Copies of the Strategic Plan and the revised Implementation Plan are available at National Weather Service, room 17201, WX21; 1325 East-West Highway; Silver Spring, MD 20910.

As described in these plans, transition to the modernized NWS will progress using an incremental office-by-office approach. Transition to the fully modernized NWS will be accomplished in two stages. The first stage will be characterized by specific improvements in weather detection capability at individual offices generally resulting from the deployment of new observational technologies—NEXRAD and ASOS. As meteorologists at NWS offices gain familiarity with NEXRAD and ASOS technology, develop their interpretive skills and apply these skills to the enhanced observational data, NEXRAD and ASOS will be commissioned on a site-by-site basis and the existing, outmoded technologies decommissioned.

The transition of offices in the first stage of the modernization process will be paced primarily by delivery schedules of the NEXRAD and ASOS systems. The timing of staffing changes and training also will be based on the delivery schedules with the goal of providing the necessary people on site prepared to do the job when the systems are ready for operation. Generally, NEXRAD offices will require additional staff to perform stage 1 operations. To the extent possible, these additional positions will be drawn from field offices not scheduled to receive NEXRAD, without degrading current services. As operations in these field offices are consolidated or automated and staffing is reduced, available positions will be used in the development of NEXRAD offices.

Non-NEXRAD field offices with surface observations and/or local warning programs will not have their staffs reduced below the levels required to carry out their assigned programs. In each stage 1 transition action, *i.e.*, any consolidation, automation, or relocation of field office responsibilities, the National Weather Service Regional Director will ensure that community leaders and affected organizations are kept informed of significant changes, and that warning services and required observations will not be degraded. Weather services must continue without degradation throughout the transition and offices must be fully capable of performing all assigned operations and services.

No WSO or WSFO will be closed during the first stage of modernization. Commissioning of the AWIPS system will commence the operation of the full-function WFO defined in the Strategic Plan, which will permit the closure of field offices as NWS moves toward national implementation of the plan. AWIPS will permit each WFO to perform all required operational activities utilizing the advanced centrally produced guidance products; observational data from both local and adjacent weather offices as well as satellite data; and local meteorological analyses performed with AWIPS, and prepare and disseminate weather services and products sufficient to support the certification requirements for services to the area affected by the closure of the current field offices during stage 2. Although Pub. L. 100-685 does not impose requirements for certifying the closure of an office that exceed the requirements for certification of a transition action, certifications of closures that will occur during stage 2 of the modernization will be made with the benefit of the results of the "multi-station operational demonstration" of sec. 407 testing the performance of all components of the modernization in an integrated manner over a prolonged period. These certifications will also be based upon statistical comparisons of the accuracy of warnings provided by WFOs before and after modernization. The National Weather Service, in close consultation with NRC, is developing the criteria for future stage 2 closure certifications. Additional technology that will become available over the next decade, *e.g.*, new geostationary and polar orbiting meteorological satellites and upgraded super computers for complex numerical modeling will further improve short range warnings and forecasts, and longer term forecasts. Introduction of these technologies will not involve the closing, relocating, consolidating or automating of any field office. Therefore, the introduction or commissioning of these technologies is not subject to the provisions of this sec. 408.

A fuller discussion of NWS's transition philosophy and the time tables for the transition to the modernized weather service are found in the Strategic Plan and the Implementation Plan.

Requirements of Public Law 100-685

Section 407 of Public Law 100-685 was enacted in 1988 to guide NWS's modernization plans. Section 407 focuses on the planning and testing of a national modernized structure. It requires the Secretary to submit an overall strategic plan as well as a national implementation plan. In addition, just before national implementation, which constitutes the second and final stage of modernization, NWS must conduct a "multistation operational demonstration which tests the performance of all components of the modernization in an integrated manner for a sustained period." NWS plans to fulfill this mandate by conducting a Modernization and Associated Restructuring Demonstration (MARD) beginning in late 1995.

Paragraph (b) of sec. 408 of Pub. L. 100-685 provides that the Secretary may not close, consolidate, automate, or relocate any [Weather Service Office or Weather Service Forecast Office] unless the Secretary has certified to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives that such action will not result in any degradation of weather services provided to the affected area. Such certification shall include a detailed comparison of the services provided to the affected area and the services to be provided after such action; any recent or expected modernization of National Weather Service operations which will enhance services in the affected area; and evidence, based upon operational demonstration of modernized National Weather Service operations, which supports the conclusion that no degradation in services will result from such action.

The text and legislative history of sec. 408 offer only limited guidance on the meanings of "close, consolidate, automate or relocate" a Weather Service Office or Weather Service Forecast Office. These proposed regulations define these terms.

Members of Congress most active in passage of sec. 408 expressed what appeared to be a general concern that the Administration would modernize the nation's weather services with an eye on savings and development of

nationwide technology, but would not focus so much on the weather services provided to individual areas. For example, in 1984, Congress passed, but the President vetoed, a provision that would have given the governor of each state standing to obtain judicial review of NWS's modernization activities in his state. See 133 Cong. Rec. H10678 (Nov. 20, 1987). Prior to passage of Public Law 100-685, Congress again expressed concern that local areas would be forgotten. 133 Cong. Rec. H10678 (Nov. 20, 1987); 134 Cong. Rec. S16450 (Aug. 9, 1988); 134 Cong. Rec. H10386 (Oct. 19, 1988).

The legislation and the legislative history indicate that sec. 408 was enacted primarily to assure Congress that even short term decreases in weather services provided to local communities would not occur as the result of modernization. The law requires that the Secretary of Commerce provide assurances through a "certification" to the concerned committees of the House and Senate. The content of the certification includes the three elements listed in sec. 408(b).

The law requires the certification be made before a modernization action occurs. Consequently, the certification need only contain a comparison of the services currently provided against those "to be provided" after the modernization action; recent or expected modernization of operations which will enhance services; and an operational demonstration that supports the conclusion that no degradation in services will result from modernization. The law does not require statistical certitude of "no degradation" at each incremental step. Because an "operational demonstration" is a necessary element under sec. 408, NWS will also conduct an operational demonstration of operations before consolidating, automating or relocating a field office in stage 1. If the transition action involves the commissioning of a NEXRAD or ASOS unit, these operational demonstrations will, in fact, occur before the commissioning of the new technology. These demonstrations are different from, and in addition to, the "multi-station operational demonstration" required by sec. 407 prior to national implementation.

Agency Implementation of the Certification Requirements

With respect to first stage certifications under the proposed regulations, the responsible meteorologist will generate a report containing sufficient information to satisfy the three requirements of sec. 408. The certification recommendation would be reviewed by the Secretary or his designee and submitted to Congress before the consolidation, relocation or automation occurs.

The introduction of new technologies and the resultant changes in operations could raise concerns that the new equipment is at least as accurate and reliable as the old equipment and in the case of NEXRAD, provides at least equal coverage; that the employees operating it are adequately trained both in operations and maintenance; and that the same services continue to be provided to users. These concerns probably prompted the certification requirements of sec. 408 discussed above, and will be addressed during the first stage of the transition primarily through the documentation that accompanies commissioning and decommissioning. That documentation will form much of the basis for certifications during the stage 1 transition that no degradation of services will result from a consolidation, relocation, or automation.

As indicated above, the pivotal events involved in an action requiring certification during the stage 1 transition will be the commissioning of a NEXRAD and/or an ASOS unit and the decommissioning of the obsolete technology. The introduction of these technologies can lead to the consolidation or relocation of some operations from an existing field office to a new NEXRAD office and/or the automation of surface observations at an existing field office. These consolidations, relocations, or automations will allow the NWS to reassign to a modernized office those employees whose responsibilities at the existing field office have been eliminated. These events may also lead to the reassignment of employees whose responsibilities at the existing office have been significantly reduced—if their remaining responsibilities (*e.g.*, taking upper air observations) can be consolidated at a modernized office without degrading services.

Following installation of a NEXRAD or ASOS unit, a brief operational demonstration of the capabilities of the new units in each field setting, a Commissioning Report will be prepared. The first element of the Commissioning Report will consist of the result of the comprehensive engineering and performance tests which are part of the contractual site acceptance of each NEXRAD and ASOS unit. Site acceptance represents the culmination of a long and rigorous development and operational testing program that has (1) proven that the design, and realization of that design in a functioning prototype or reproduction system has met all specifications; and (2) demonstrated performance, reliability, data accuracy and overall superiority of these new technologies on a programmatic basis. Each production system is subjected to both factory and site acceptance tests to ensure it is a complete system, has been properly assembled, and is functionally operable. A brief synopsis of the development and operational testing program for NEXRAD and ASOS is given below:

NEXRAD Testing

Extensive development test and evaluation dating back to 1983 has been performed on the NEXRAD system. These tests were carried out to verify the requirements of the developmental specifications which were written by the contractor in response to the Government's functional specification. The developmental specifications were approved by the Government and set forth detailed requirements for the system. Development test and evaluation tested the numerous requirements in these specifications including software and hardware functionality, human engineering, environmental (temperature and humidity), electromagnetic interference, and maintainability and reliability. Begun in 1986, NEXRAD operational testing has assessed the operational effectiveness, suitability and readiness of the system to perform first at test sites, and subsequently at NWS field offices. A successful Operational Readiness Demonstration was conducted in July 1991 at the Operational Support Facility and WSFO Norman, Oklahoma.

ASOS Testing

The feasibility of deploying an integrated system using an array of sensors to automate the measurement of surface weather elements has been demonstrated since the early 1980s. Both the NWS and the FAA operated prototype ASOS systems in the state of Kansas during 1985 and 1986. Subsequent to the successful completion of the Kansas demonstration, numerous refinements and improvements were made to the ASOS system. Rigorous reproduction and operational testing was then conducted during 1990 and 1991. The operational tests included the comparison of ASOS observations with human observations. The results of these tests were reviewed by an independent three agency Testing Review Board made up of senior level personnel from the NWS, the FAA and

the Navy. In August 1991, this Board concluded that the test results clearly supported continuation of the production phase of the program and that there was a high degree of confidence that ASOS would satisfy agency operational requirements.

The Commissioning Report will also document that the employees are adequately trained and that maintenance support is in place prior to commissioning the new systems. The NWS has developed operational and technical criteria for use in preparing the Commissioning and Decommissioning Reports that will document these events. These criteria are contained in the Commissioning Plans required by Weather Service Operations Manual, chapter A-73.

NWS is also developing criteria for a Confirmation of Services Report which will confirm, by a review of actual operations, that the decommissioning of existing radar units will not degrade services to affected users. The Confirmation of Services Report will document the necessary interaction with all affected users after the new technology has been commissioned to confirm that services have remained intact and accessible.

Thus, as NWS progresses through the first stage of modernization, the actual operational performance of systems such as NEXRAD and ASOS will be demonstrated in a series of local operational demonstrations of modernized operations prior to commissioning. The Confirmation of Services Report, which will occur after commissioning of the NEXRAD or ASOS, but before decommissioning of the obsolete technology, will confirm that weather services in each affected service area will not be degraded as the result of the commissioning of NEXRAD or ASOS. The results of the operational demonstrations and the Confirmation of Services Report, along with other available data, will provide increasing confidence in the Secretary's future certifications. Furthermore, some of the data supporting one certification may form part of the basis for subsequent certifications that are made at other locations so that the pace of stage 1 modernization may well accelerate as experience accumulates and confidence increases.

The following summary of the sequence of events leading to a certification of "no degradation" for a typical transition action following the commissioning of a NEXRAD and the decommissioning of an obsolete radar is provided for illustrative purposes:

(1) Installation and acceptance testing of the NEXRAD unit;

(2) Operational demonstration of the NEXRAD unit and technical coordination with users; (3) preparation of the Commissioning Report; (4) commissioning of the NEXRAD unit and its subsequently fully operational use; (5) transfer of service responsibility from a non-NEXRAD field office to the NEXRAD field office without changing staffing levels of the non-NEXRAD office; (6) confirmation that services to users are maintained and preparation of Confirmation of Services Report; (7) preparation of Decommissioning Report; (8) decommissioning of the obsolete radar; (9) certification of "No Degradation", and (10) occurrence of the stage 1 transition action (the personnel action which constitutes the consolidation, relocation or automation).

Several operational demonstrations are currently being conducted. For example, NWS has installed and is conducting an operational demonstration of a NEXRAD unit at Norman, Oklahoma. Thus far, the quality of the data provided by this radar greatly exceeds the quality of the data generated by the existing weather radar at the Will Rogers Airport, Oklahoma City. The Norman NEXRAD will be commissioned as the official radar for its service area once the local operational demonstration of the NEXRAD is successfully completed, *i.e.*, personnel are trained and the system has been operated over an appropriate period to demonstrate performance. The Will Rogers radar will be decommissioned when services for the service area can be confirmed. Prior to draw down of personnel at the Will Rogers field office, the Secretary will certify to the Congress that "no degradation" of weather services will occur in the affected area, as provided in §§ 946.5–946.7 of the proposed regulations.

During the operational demonstration of new observational technologies (NEXRAD and ASOS), observational data will be available from both the NEXRAD and/or ASOS and from the current technology. For example, during the demonstration period of a NEXRAD unit, the responsible meteorologist may use NEXRAD data for operational purposes prior to commissioning of the NEXRAD. That is, relying upon his or her professional judgment and evaluation of the relative quality, accuracy, or type of data provided by the two radars, he or she may decide to use as much or as little of the data from either source as is appropriate to provide the most comprehensive and accurate weather services to the service area. During the operational demonstration, he or she may choose to advise the public when the forecasts or warnings of the office rely (partly or entirely) on NEXRAD data, or may provide weather services without reference to the specific observational technology employed.

Incremental implementation of the Strategic Plan has also involved certain actions of a non-technological nature which fall short of consolidating, relocating, or automating a field office. For example, the field office serving the Chicago, Illinois, area was moved from a building in Rosemont, Illinois, to a building at Lewis University Airport, North of Joliet, Illinois, about 20 miles away in anticipation of the eventual establishment of a Weather Forecast Office at the Lewis University Airport. Similarly, the Washington, DC, WSFO was moved from Camp Springs, MD, to Sterling in the Virginia suburbs of the District of Columbia. The Chicago field office and the Washington, DC, field office each continue at a site within its original service area. No weather services of these field offices were altered by the move. Staffing levels were unaffected. Radar coverage, by the same radar, remained the same in both instances, and no new technology was commissioned. Thus, there could be no valid concern that either move would cause degradation of weather services in the service area. These routine non-technological actions were outside the scope of sec. 408(b), and no certification was made in either case. Prior notification of these actions was provided in the National Implementation Plan.

Similarly, in 1994 NWS contemplates moving the San Francisco Weather Service Forecast office located in Redwood City, California, to Monterey, California, in anticipation of this office becoming a WFO with the eventual installation of a NEXRAD. (The office now has only an electronic feed from a nearby FAA radar). While the distance involved in this move will be more than that in Chicago or Washington, there is no greater likelihood of any effect on weather services. The new office will remain within the same service area and will still provide this area with exactly the same products and services using the same technology (including the feed from the FAA radar) and even the same communications systems. Eventually, one or more consolidations, relocations, or automations may occur as modernization proceeds through stage 1 at this office, and each such transition action will be preceded by an appropriate certification as provided in these regulations.

As NWS continues to implement the first phase of the Strategic Plan, it will begin to consolidate, automate, relocate some field offices in late 1992 or 1993. Prior to undertaking the first of such transition actions, it is appropriate to formally set forth the process NWS will follow for certifying these actions. Proposed rules for certifications of field office closures which will commence during under stage 2, will be published for comment at a later date. NOAA is aware that bills are pending in each house of Congress which contain provisions that would modify the certification requirements of Public Law 100-685. Should these provisions in either bill become effective, NOAA will amend these regulations, either proposed or final as the case may be, to take the modifications into account.

Other Actions Associated with the Rulemaking:

A. Classification Under Executive Order 12291

NOAA has concluded that these regulations are not major because they will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

These proposed regulations establish procedures and criteria for certifying that certain actions to modernize NWS will not result in any degradition of weather services to the affected service area. They will not result in any direct or indirect economic or environmental impacts.

B. Regulatory Flexibility Act Analysis

The regulations set forth procedures certifying "no degradation" of weather services to areas affected by the closure, consolidation, automation or relocation of a field office in the course of modernizing NWS. Since these proposed regulations relate to the internal management of the National Weather Service, notice-and-comment rulemaking is not required. A Regulatory Flexibility Analysis is therefore not required for this Notice of Proposed Rulemaking. These rules do not directly affect "small government jurisdictions" as defined by Public Law 96-354, the Regulatory Flexibility Act.

C. Paperwork Reduction Act of 1980

These regulations will impose no information collection requirements of the type covered by Public Law 96-511, the Paperwork Reduction Act of 1980.

D. E.O. 12612

This rule does not contain policies with sufficient Federalism implications to warrant preparation of a Federalism assessment under Executive Order 12612.

E. National Environmental Policy Act

NOAA has concluded that publication of the proposed rules does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required. A programmatic Environmental Impact Statement (EIS) regarding NEXRAD was prepared in November 1984, and an Environmental Assessment to update the portion of the EIS dealing with the bioeffects of NEXRAD non-ionizing radiation is being prepared.

List of Subjects in 15 CFR Part 946

Administrative practice and procedure, National Weather Service, Weather Service modernization.

Dated: August 31, 1992.

Robert C. Landis,

Acting Assistant Administrator for Weather Service.

Accordingly, it is proposed to amend subchapter C of chapter IX of title 15 of the CFR by adding a new part 946 as follows:

PART 946—MODERNIZATION OF THE NATIONAL WEATHER SERVICE

Sec.
946.1 Purpose.
946.2 Definitions.
946.3 Notification of transition actions.
946.4 Menu of services.
946.5 Preparation of proposed certification for a transition action.
946.6 Review of proposed certification for a transition action.
946.7 Certification of a transition action.
946.8 Certification of the closing of a field office pursuant to modernization.

Authority: 15 U.S.C. 313 note, sec. 407 and 408 of Pub. L. 100-685.

§ 946.1 Purpose.

This part sets forth the procedures for certification by the Secretary of Commerce that the closure, consolidation, automation or relocation of any field office of the National Weather Service pursuant to the implementation of the Strategic Plan for the Modernization of the NWS will not result in any degradation of weather services to the affected area. Section 408 of Pub. L. 100-685 requires that no such field office be closed, consolidated, automated, or relocated until such certification is made.

§ 946.2 Definitions.

Automate (or automation) means a transfer of weather service personnel performing observations from a field office resulting from a technological change in the method of performing observations at that field office.

Close (or closure) means to transfer or reassign all weather services from a field office, but does not include a relocation or a move of a field office to another location within the current service are of that office from with it continues to provide the same weather services to the entire area. Closure of field offices will not occur during stage 1 of the modernization as set forth in the National Implementation Plan submitted to Congress.

Commission means to officially charge a new observational technology (*e.g.*, NEXRAD and ASOS) with responsibility for providing weather data within a defined service area or to charge a new weather office support system (*e.g.*, AWIPS) with responsibility for supporting office operations.

Consolidate (or consolidation) means a transfer or reassignment of weather service personnel from one field office to another field office resulting from a combination of responsibility for providing weather services assigned to two or more field offices.

Decommission means to withdraw existing official responsibility for providing weather data or weather office support from an existing technology.

Degradation of weather services means a decrease in (1) the inventory of the weather services or products provided to users in an affected service area; (2) the timeliness of the delivery of the services or products to users; or (3) the reliability or accuracy of the data on which such services or products depend, including specifically the reliability or accuracy of surface weather observations or of the data provided by existing weather radar coverage at an elevation of 10,000 feet.

Field office means a National Weather Service Office (WSO) or a National Weather Service Forecast Office (WSFO).

Inventory of services means all of those weather services listed on the menu of services that are provided to the public by a field office in its service area prior to a transition action.

Menu of services means all of the weather services currently provided by the National Weather Service and listed in § 946.4.

National Implementation Plan means the plan submitted to Congress on April 23, 1990, and each revision of that plan submitted to Congress as required by sec. 407(c) of Public Law 100-685.

Regional Director means the Director of one of the six geographical regions of the National Weather Service.

Relocate (or Relocation) means a transfer or reassignment of weather service personnel resulting from (1) a move of a field office to a location outside the current service area of that field office, or (2) a move of a field office within its service area to a location from which it will be unable to continue to provide weather services to the entire area.

Responsible meteorologist means an employee of the NWS in charge of the office that will be responsible for providing weather services to the area affected by a closure, consolidation, automation or relocation of a field office.

Secretary means the Secretary of Commerce or his or her delegate.

Service area means the geographical area for which an existing field office provides weather services.

Strategic plan means the 10-year strategic plan for the modernization of NWS which was submitted to the Congress by the Secretary on March 10, 1989.

Transition action means the consolidation, automation, or relocation of a field office pursuant to an incremental step in stage 1 of the National Implementation Plan.

Weather service means a service or product provided to a service area by a field office.

§ 946.3 Notification of transition actions.

(a) The National Implementation Plan shall be revised annually and submitted to Congress.

(b) To promote the orderly process for the incremental transition to the modernized National Weather Service, no transition action may be taken by the National Weather Service unless such action has been included in the schedule of necessary actions contained in the most current revision of the National Implementation Plan submitted to the Congress and all requirements of §§ 946.5 through 946.7 of this part have been complied with.

§ 946.4 Menu of services.

Surface Observations
Upper Air Observations
Radar Observations
Public Forecasts and Warnings
Aviation Forecasts and Warnings
Marine Forecasts and Warnings
Hydrologic Forecasts and Warnings
Fire Weather Forecasts and Warnings
Agricultural Forecasts and Advisories
NOAA Weather Radio
Climatological Services
Emergency Management Support
Special Products and Service Programs

§ 946.5 Preparation of proposed certification for a transition action.

(a) Whenever it becomes appropriate to take a transition action listed in the Implementation Plan, but prior to taking such action, the responsible meteorologist shall prepare a proposed certification that there will be no degradation of weather services to the affected areas. The proposed certification may address all related transition actions that occur as part of a coordinated step described in the Implementation Plan.

(b) The proposed certification shall include (1) A comparison of the services provided to the affected area prior to such action and the services to be provided after such action; (2) Any recent or expected modernization of National Weather Service operations which will enhance services to the affected area (3) Evidence based upon an operational demonstration of modernized National Weather Service operations which supports a determination that no degradation in office operations and resultant services will result from such action.

(c) For any proposed certification, the responsible meteorologist shall prepare (1) A current inventory of services for the relevant field office; (2) A detailed list of weather services which will be provided to the affected area after the transition action is completed; and (3) A confirmation of services report including a list of those users contacted during the confirmation process to ensure that services will not be degraded, including specifically the appropriate Federal Aviation Administration official if the transition action involves a field office located at an airport.

(d) If the transition action proposed to be certified involves the commissioning of a NEXRAD or ASOS unit, the responsible meteorologist shall include with the certification the Commissioning Report, and any other documentation necessary to demonstrate that:

(1) An engineering basis exists for concluding that any new technology involved will perform to the Government's specifications, which reflects the state-of-the-art and exceeds the specification for the technology being replaced;

(2) The technology has been tested on site and performs reliably;

(3) The new system will satisfactorily support field office operations;

(4) Sufficient staff with adequate training are available to operate and maintain the system and that any other necessary maintenance support is in place.

(e) If the transition action also involves the decommissioning of a radar unit the responsible meteorologist shall also include a Decommissioning Report demonstrating that the technology being decommissioned is no longer needed to support office operations.

(f) The responsible meteorologist shall transmit the proposed certification and the accompanying documentation to the Regional Director of the NWS.

§ 946.6 Review of proposed certification for a transition action.

The Regional Director shall review the proposed certification and the accompanying documentation submitted as provided in § 946.5. The Regional Director may amend or supplement the documentation provided subsequent readers can easily identify his or her amendments or supplements. If the Regional Director agrees with the proposed certification, he or she shall endorse the proposed certification, and transmit it along with all the accompanying documentation to the Secretary.

§ 946.7 Certification of a transition action.

(a) If the Secretary agrees that the proposed transition action will not result in any degradation of weather services provided to the affected areas, he or she shall so certify to the Committee on Science, Space, and Technology of the House of Representatives and to the Committee on Commerce Science and Transportation of the Senate. Upon transmittal of the certification by the Secretary, NWS shall promptly publish the certification in the **Federal Register** stating where copies of the certification and the accompanying documents may be obtained.

(b) The responsible meteorologist may take a transition action only after the certification has been submitted to Congress.

(c) Any field office for which a transition action is certified under this section shall also be subject to additional certification in accordance with the criteria of § 946.8 if that office is closed during stage 2 of the modernization.

§ 946.8 Certification of the closing of a field office pursuant to modernization. [Reserved]

[FR Doc. 92-21378 Filed 9-4-92; 8:45 am]

BILLING CODE 3510-12-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4 and 5

[Notice No. 750; Ref: Notice Nos. 710, 727, 732]

RIN 1512-AA87

Definition of "Brand Label" for Wine, and; Standard Wine and Distilled Spirits Containers (91F006P and 90F275P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Withdrawal of standard wine and distilled spirits containers issue from notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is issuing this notice of withdrawal to inform interested persons that it is not pursuing rulemaking regarding standard wine and distilled spirits containers, as proposed in Notice No. 727. ATF's remaining proposal in Notice No. 727 concerning an amended definition of "brand label" for wine will be addressed in a forthcoming document.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20091 (202-927-8230).

SUPPLEMENTARY INFORMATION:

Background

On September 12, 1991, ATF published Notice No. 727 in the **Federal Register** (56 FR 46393) proposing to amend the definition of "brand label" in 27 CFR 4.10 for wine containers. In addition, the Bureau amended its earlier proposal regarding standard wine containers, as set forth in Notice No. 710 (February 6, 1991; 56 FR 4770), and proposed an amendment to the regulations concerning the design of standard liquor bottles in 27 CFR 5.46.

As amended, ATF proposed that standard wine and distilled spirits containers should be so made and formed as not to mislead the purchaser. Wine and distilled spirits containers would be held (irrespective of the information contained on the label) to be likely to mislead the purchaser if the Director determined that the size, shape, or composition of the container (e.g., glass, metal, plastic, etc.), when considered in conjunction with the placement of the label, were likely to mislead the purchaser as to the identity or alcoholic content of the product.

A container found to be in violation of the regulation would not have to be removed from the marketplace and redesigned. Rather, wine or distilled spirits could not be bottled in such a container unless the product was labeled with an additional statement which the Director found to be sufficient to dispel any misleading impression as to the product's identity or alcoholic content. The Director could require such a statement to be placed on a principal display panel other than a neck label or a shoulder wrap.

The comment period for Notice No. 727, initially scheduled to close on December 11, 1991, was subsequently extended until January 10, 1992 (Notice No. 732, December 11, 1991; 56 FR 64584).

Analysis of Comments

ATF received 22 comments in response to Notice No. 727. Of those, 12 commenters addressed the amended proposal regarding standard wine and distilled spirits containers.

Several commenters believed that the proposed regulation did not go far enough. These commenters reiterated their earlier concern regarding the exclusion of malt beverages from the proposed regulations. They also suggested that in determining the acceptability of a wine or distilled spirits container the color of the bottle as well as the color of the contents should be considered. Furthermore, they suggested that once final regulations have been implemented, containers found by the Director to be misleading should be removed from the marketplace, rather than labeled with some additional statement.

Many other commenters expressed opposition to the Bureau's amended proposal. These commenters, representing both domestic and foreign industry, shared ATF's concern regarding deceptive packaging of alcoholic beverages. However, they still believed that the amended proposal would have a negative impact on the industry by placing at risk investments made by suppliers, wholesalers, and retailers.

These commenters also maintained that, as in the case of the Bureau's earlier proposed regulation, the amended proposal would have a detrimental effect on innovation in the marketplace. As one commenter stated, "* * * the proposed rule would stifle innovation and hinder competition by deterring the development of container designs by new and existing members of the industry."

Furthermore, in its amended proposal the Bureau stated that a container found to be in violation of the regulation would not have to be removed from the marketplace and redesigned. Rather, wine or distilled spirits could not be bottled in such a container unless the product was labeled with an additional statement that dispelled any misleading impression as to the product's identity or alcoholic content. Some commenters expressed their concern with this proposal. As one commenter noted,

> Substantial effort and cost is expended in devising and testing the packaging for the product and introducing the product into the marketplace. Consequently, the 'option' of relabeling a product, * * * with an additional label that the Director deems satisfactory is not necessarily a commercially acceptable alternative.

In addition to the above, other commenters questioned the necessity of amending the regulations.

Decision

After careful consideration of the comments received in response to Notice No. 727, ATF believes that the issue of deceptive alcoholic beverage packaging needs to be studied further. Many of the commenters, including those representing both consumers and industry members, raised valid concerns which the Bureau believes should be addressed before proceeding with further rulemaking.

In light of the comments received, ATF is at this time terminating further rulemaking concerning standard wine and distilled spirits containers as proposed in Notice No. 727. However, the Bureau will explore and consider alternative labeling proposals which address deceptive alcoholic beverage packaging, taking into consideration the comments received in response to Notice No. 727. The remaining issue discussed in Notice No. 727, an amended definition of "brand label" for wine, will be addressed in a forthcoming document.

Drafting Information

The principal author of this document is James P. Ficaretta, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance

This document is issued under the authority in 27 U.S.C. 205.

Signed: May 29, 1992.

Stephen E. Higgins,

Director.

Approved: June 29, 1992.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 92-21362 Filed 9-4-92; 8:45 am]

BILLING CODE 4810-31-M

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27 CFR Part 250

[Notice No. 751]

RIN 1512-AA69

Liquors and Articles From Puerto Rico and the Virgin Islands

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: ATF is considering the revision and recodification of the regulations regarding liquors and articles (hereinafter "alcoholic products") which are brought into the United States from Puerto Rico or the Virgin Islands. The purpose of the proposed revision/recodification is to update and simplify the regulations in 27 CFR part 250 and to reissue those regulations as part of the same chapter. ATF is issuing this advance notice to solicit comments on its proposal to eliminate application and transaction forms required to be submitted by persons who bring alcoholic products into the United States from Puerto Rico.

Comments are also being solicited on proposals to coordinate with the U.S. Customs Service to reduce duplicate efforts involving shipments of merchandise from Puerto Rico to the United States. ATF would also like to receive comments regarding other suggestions for reducing or eliminating unnecessary regulatory burdens on proprietors in both Puerto Rico and the U.S. while continuing to provide adequate protection to the revenue.

DATES: Written comments must be received on or before October 8, 1992.

ADDRESSES: Comments must be submitted to the Revenue Programs Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091-0221. ATTN: Notice No. 751.

FOR FURTHER INFORMATION CONTACT: Gail Hosey, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, telephone (202) 927-8210.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 7652 of the Internal Revenue Code of 1986, alcoholic products of Puerto Rican manufacture which are brought into the United States for consumption or sale, and alcoholic products coming into the United States from the Virgin Islands, are subject to a tax equal to the tax imposed on similar products of domestic manufacture.

Under section 5232, distilled spirits brought into the United States in bulk containers from Puerto Rico or the Virgin Islands may be withdrawn from Customs custody and transferred to the bond premises of a distilled spirits plant without payment of tax.

ATF wishes to solicit comments on its proposal to review, update, and reissue the regulations pertaining to shipments of alcoholic products from Puerto Rico or the Virgin Islands to the United States. AFT plans to recodify and reissue the regulations now in 27 CFR part 250 as part 26 of the same chapter.

ATF would like to reorganize the regulations to eliminate often lengthy duplication of requirements that apply equally to operations in Puerto Rico and the Virgin Islands. We are considering deleting many regulatory requirements which may be unnecessary.

In updating the regulations, primary emphasis will be given to the simplification of procedures for the taxpayment and shipment of alcoholic products from Puerto Rico to the United States. ATF is also considering proposals to coordinate with the U.S. Customs Service to reduce duplicate efforts at the port of arrival in the United States when such products are shipped from Puerto Rico; however, the responsibilities of Customs with respect to shipments from the Virgin Islands would remain unchanged.

Under current regulations, before distilled spirits, wine or beer may be shipped from Puerto Rico to the United States, an application on ATF Form 5110.51, Application, Permit, and Report—Distilled Spirits Products (Puerto Rico), or 5100.21 (2900), Application, Permit and Report—Wine and Beer (Puerto Rico), must be submitted and a permit received to verify computation of the internal revenue tax. After tax determination, a second application and permit on ATF Form 487-B (5170.7). Application and Permit to Ship Liquors and Articles of Puerto Rican Manufactured Taxpaid to the United States, is required in order to ship the taxpaid or tax determined products to the United States.

ATF is considering ways to reduce paperwork and simplify the procedures for shipping distilled spirits, beer or wine from Puerto Rico to the United States. We would like to solicit comments on the following proposals:

(1) Should the regulations be amended to permit the proprietor of qualified premises in Puerto Rico to maintain a record of tax determination in lieu of the application and permit to compute the tax? ATF is proposing that, in lieu of the initial application and permit currently required to compute the tax, a record of tax determination be kept by the proprietor containing sufficient information to allow an ATF officer to verify the tax liability represented by the document.

(2) Should the regulations be amended to allow such record of tax determination to be an invoice, bill of lading, or other commercial document which would contain the necessary data elements?

(3) If ATF adopts the above proposals, what additional safeguards to the revenue would be necessary?

(4) Do the current provisions in part 250 adequately address the bulk shipment of distilled spirits from Puerto Rico to the United States? ATF is interested in whether or not the regulations reflect the current technology in this area.

(5) Finally, ATF would like to solicit general comments on ways in which it could reduce paperwork, simplify existing procedures and eliminate unnecessary regulations in any area currently covered in part 250, while continuing to maintain adequate safeguards to the revenue.

Public Participation

ATF requests comments from all interested persons. All comments received on or before the closing date will be carefully considered. Comments received after the closing date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material or comments as confidential. All comments submitted in response to this notice will be available for public inspection during normal business hours at: ATF Public Reading Room, room 6480, 650 Massachusetts Avenue NW., Washington, DC. Any material that the commenter considers confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

Drafting Information

The principal authors of this document are Dick Langford and Gail Hosey of the Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 250

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Beer, Customs duties and inspection, Electronic fund transfers, Excise taxes, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Surety bonds, Transportation, Virgin Islands, Warehouses, Wine.

Authority: This advance notice of proposed rulemaking is issued under the authority in 26 U.S.C. 7805.

Signed: August 21, 1992.

Stephen E. Higgins,

Director.

Approved: August 26, 1992.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 92-21363 Filed 9-4-92; 8:45 am]

BILLING CODE 4810-31-M

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27 CFR Part 251

[Notice No. 753]

RIN 1512-AA72

Importation of Distilled Spirits, Wine and Beer

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: ATF is proposing to revise and recodify the regulations pertaining to the importation of distilled spirits, wine and beer. The purpose of this revision/recodification is to update and simplify the regulations prior to their being reissued. ATF is issuing this advance notice to incorporate into the importation regulations various rulings, to also authorize specific metric quantities that may be imported free of internal revenue tax as commercial samples for use in soliciting orders for foreign products and to include in these regulations the alcoholic beverage health warning labeling requirements. ATF would also like to receive any other comments relating to the importation of distilled spirits, wine and beer regulations that would help reduce or eliminate unnecessary burdens on industry members while continuing to provide adequate protection of the revenue.

DATES: Written comments must be received on or before October 8, 1992.

ADDRESSES: Send written comments to: Chief, Distilled Spirits and Tobacco Branch, Revenue Programs Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091-0221. Attn: Notice No. 753.

FOR FURTHER INFORMATION CONTACT: Edward A. Reisman, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Ave., NW., Washington, Dc 20226, telephone (202-927-8210).

SUPPLEMENTARY INFORMATION:

Background

ATF wishes to solicit comments on its proposal to review, update, and reissue the importation of distilled spirits, wine and beer regulations. The importation regulations now found in 27 CFR part 251 will be revised and recodified as part 27 of the same chapter.

Restrictive regulations will be eliminated and where possible rulings will be incorporated into the recodified importation regulations. ATF would like to solicit comments on the following proposals:

Incorporate ATF and IRS Rulings into the Importation Regulations

The importation regulations would make obsolete ATF Ruling 77-33, 1977 ATF C.B. 179, with pertinent parts of that ruling appearing in the recodified importation regulations. This ruling held that alcohol may be issued to increase the alcohol content in wine provided such use of alcohol is an authorized procedure and a standard winemaking process in the country of origin. Wine produced in this manner which is imported into the United States will be taxed as a wine, so long as the alcoholic content of that wine does not exceed 24 percent by volume.

ATF Ruling 84-3, ATF Q.B. 1984-4, 71, relating to the use of certificates of label approval (COLA) (ATF Form 5100.31) by a person other than the owner, will be declared obsolete, with pertinent parts of this ruling appearing in proposed regulations.

Also, Revenue Ruling 56-579, C.B. 1956-2, 1031, will be declared obsolete, with pertinent parts of that ruling appearing in proposed regulations. The ruling held that distilled spirits withdrawn from customs bond solely for the use of foreign embassy personnel, the foreign diplomatic corps, or members of the armed services of foreign countries on active duty in the United States are not subject to labeling and liquor bottle regulations.

Additionally, ATF is interested in comments whether the procedures contained in these rulings should be revised as part of recodifying these rulings into the regulations. Particular comments are sought on the experiences of importers using the procedure allowing one importer to use a COLA owned by another importer.

Commercial Samples

The importation regulations on the quantity of distilled spirits, wine or beer which may be imported free of internal revenue tax for use as samples in soliciting orders for foreign products would be changed from fluid ounces to metric quantities, to agree with the treatment of such products in the Harmonized Tariff Schedule of the United States (HTSUS).

Alcoholic Beverage Health Warning Statement

The importation regulations would also contain specific information about the health warning labeling requirements for alcoholic beverages now required in 27 CFR, Part 16, titled, health Warning Statement Requirements for Alcoholic Beverages. The regulations require that a health warning statement appear on the labels of all containers of alcoholic beverages sold or distributed. Sale and distribution of alcoholic beverages also includes samples or other distribution not for sale.

Other Matters

ATF would like to solicit general comments on ways in which it could reduce paperwork, simplify existing procedures and eliminate unnecessary regulations in any area currently covered in part 251, while continuing to maintain adequate safeguards to the revenue.

Additionally, ATF wishes to solicit particular comments on the following issues:

1. Do the current provisions of the importation regulations adequately address the bulk importation of distilled spirits, wine and beer? ATF is interested in whether or not the regulations reflect the current technology in this area.

2. Wine under the Internal Revenue Code of 1986 includes such products containing not less then one-half of one percent alcohol by volume whereas under the Federal Alcohol Administration Act wine is defined to exclude such products containing less than 7 percent alcohol. Similarly, under the Internal Revenue Code the definition of beer excludes a product containing

less than one-half of one percent alcohol by volume while under the Federal Alcohol Administration Act the term malt beverage includes such products which contain alcohol in an amount of less than one-half of one percent percent. ATF is soliciting comments on whether the importation regulations which apply to wine and beer or malt beverages sufficiently address these definitional distinctions or whether there exist areas in the current regulations which are confusing on this point.

Public Participation—Written Comments

ATF requests written comments or suggestions concerning these proposal from all interested persons. As stated, ATF also requests written comments or suggestions regarding any other aspects relating to the importation of distilled spirits, wine and beer regulations. All written comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material in the comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure should not be included in the comment. The name of the person submitting the comment is not exempt from disclosure.

During the comment period, any person may request an opportunity to present oral testimony at a public hearing. However, the Director reserves the right, in light of all circumstances, to determine if a public hearing will be held.

Drafting Information

The principal author of this document is Edward A. Reisman, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 251

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations (Government agencies), Beer, Cosmetics, Customs duties and inspection, Excise taxes, Imports, Labeling, Liquors, Packaging and containers, Perfume, Reporting and recordkeeping requirements, Transportation, Wine.

Authority

This advance notice of proposed rulemaking is issued under the authority in 26 U.S.C. 7805.

Signed: August 14, 1992.

Stephen E. Higgins,

Director.

Approved: August 26, 1992.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 92-21390 Filed 9-4-92; 8:45 am]

BILLING CODE 4810-31-M

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27 CFR Part 252

[Notice No. 752]

RIN 1512-AA98

Exportation of Distilled Spirits, Wine, Beer, Beer Concentrate, and Specially Denatured Spirits

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: ATF is considering the revision and recodification of the regulations pertaining to the exportation of distilled spirits, wine, beer, beer concentrate, and specially denatured spirits. The purpose of the proposed revision/recodification is to update and simplify the export regulations now in 27 CFR part 252 and to reissue those regulations as part 28 of the same chapter. ATF is issuing this advance notice to solicit comments on its proposal to eliminate application and transaction forms required to be submitted by persons who withdraw such products without payment of tax, simplify the procedures for claiming export drawback, and coordinate with the U.S. Customs Services to reduce duplicate efforts involving exportations.

ATF would also like to receive comments regarding other suggestions for reducing or eliminating unnecessary regulatory burdens on industry members while continuing to provide adequate protection to the revenue.

DATES: Written comments must be received on or before October 8, 1992.

ADDRESSES: Comments must be submitted to the Revenue Programs Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091-0221 ATTN: Notice No. 752.

FOR FURTHER INFORMATION CONTACT: Gail Hosey or Dick Langford, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, telephone (202) 927-8210.

SUPPLEMENTARY INFORMATION:

Background

ATF wishes to solicit comments on its proposal to review, update, and reissue the regulations pertaining to the exportation of distilled spirits, wine, beer, beer concentrate, and specially denatured spirits. ATF plans to recodify and reissue the exportation regulations now in 27 CFR part 252 as part 28 of the same chapter. ATF wishes to reorganize the regulations to eliminate often lengthy duplication of requirements that apply equally to exportations of distilled spirits, wine, beer, beer concertrate, and specially denatured spirits.

We are considering deleting many regulatory requirements which may be unnecessary.

In updating the regulations, primary emphasis will be given to the simplification of procedures for the withdrawal of spirits, wine, beer, beer concentrate, and specially denatured spirits for exportation without payment of tax and for their withdrawal and exportation with benefit of drawback of tax. ATF is also considering proposals to coordinate with the U.S. Customs Service to reduce duplicate efforts at the port of exportation in the United States when such products are exported. The Bureau would like to solicit comments on the following proposals.

Withdrawals Without Payment of Tax or Free of Tax

Under the provisions of sections 5214, 5066, and 5362 of the Internal Revenue Code of 1986, distilled spirits and wine may be withdrawn without payment of tax for exportation, deposit in a foreign trade zone for exportation or storage pending exportation, transfer to a customs bonded warehouse for exportation, transfer to a customs bonded warehouse for taxfree withdrawal and use by eligible diplomatic personnel, or lading for use as supplies on certain vessels and aircraft. Under current regulations, an application or notice must be submitted for each withdrawal on ATF Form 5100.11.

Pursuant to the provisions of section 5053, a brewer may withdraw beer from brewery premises without payment of tax for exportation, lading for use as supplies on certain vessels and aircraft, or deposit in a foreign trade zone for exportation or storage pending exportation. The brewer may also withdraw beer concentrate without payment of tax for exportation or for deposit in a foreign trade zone. Under current regulations, the brewer must file a notice of withdrawal on ATF Form

1689 (5130.12) when withdrawing the beer or beer concentrate.

ATF is considering ways to reduce paperwork and simplify the procedures for the exportation of distilled spirits, wine and beer by the proprietors of distilled spirits plants, bonded wineries, and breweries. We would like to solicit comments on the following proposals:

(1) Should the regulations be amended to allow the proprietors of distilled spirits plants and bonded wine cellars to withdraw spirits and wine, respectively, pursuant to a continuing application, instead of having to file a notice of exportation on ATF Form 5100.11 for each withdrawal?

(2) Should the regulations be amended to eliminate the requirement that the proprietor of a distilled spirits plant file a notice on ATF Form 5100.11 for the withdrawal of specially denatured spirits free of tax for exportation or for deposit in a foreign trade zone? Instead, such withdrawals would be covered by the continuing application filed by the distilled spirits plant proprietor.

(3) Should ATF amend the regulations to eliminate the requirement that the brewer file a notice of withdrawal on ATF Form 1689 (5130.12) when withdrawing beer or beer concentrate for exportation?

(4) If ATF adopts the above proposals, what additional safeguards to the revenue would be necessary? Would it suffice to require the proprietor of a distilled spirits plant, bonded wine cellar, or brewery, as the case may be, to prepare a record of withdrawal for each exportation? The record of withdrawal could be in invoice, bill of lading, or other document which contained all the necessary information. A copy of the record would be maintained on file by the proprietor. In addition, the proprietor would be required to maintain a monthly export summary account of withdrawals to record the withdrawals and subsequent receipt of proof of exportation. Proprietors of distilled spirits plants, bonded wine cellars, and breweries would submit a copy of the account each month at the time monthly operational reports are submitted.

(5) The current regulations require exporters to submit proof of exportation to the regional director (compliance) so that the exporter's bond may be relieved of liability for spirits, wine, or beer withdrawn without payment of tax. Should the regulations be amended to eliminate this requirement for proprietors of a distilled spirits plant, bonded wine cellar, or brewery? These proprietors would instead be required to maintain such proof of exportation at their business premises, available for inspection by ATF officers.

(6) Should ATF amend the regulations to allow a dealer in specially denatured spirits to withdraw such spirits free of tax for exportation or deposit in a foreign trade zone? If so, what safeguards must be enacted to protect the revenue? Should such authorization be limited to dealers who have (a) obtained a permit under part 20; (b) filed a bond under part 20; and (c) filed a consent of surety?

Export Drawback

Pursuant to the provisions of section 5062 of the Internal Revenue Code of 1986, when taxpaid distilled spirits which have been manufactured, produced, bottled, or packaged in the United States and marked especially for export are exported, laden for use as supplies on qualified vessels or aircraft, deposited in a foreign trade zone for exportation or storage pending exportation, or deposited in a customs bonded warehouse for taxfree withdrawal and use by accredited foreign diplomatic personnel, the bottler or packager of the spirits may claim drawback of the taxes paid.

When taxpaid wine which has been manufactured, produced, bottled, or packaged in the United States is exported, laden for use as supplies on qualified vessels or aircraft, or deposited in a foreign trade zone for exportation or storage pending exportation, drawback of tax may be claimed by the proprietor of the bonded wine cellar, taxpaid wine bottling house, or wholesale liquor dealer who withdrew the wine. Pursuant to the provisions of section 5055, drawback of taxes paid on beer which has been brewed or produced in the United States may only be claimed by the brewer if such beer is exported, laden for use as supplies on certain vessels or aircraft, or deposited in a foreign trade zone for exportation on for storage pending exportation.

Current regulations in part 252 require that, at the time of withdrawal, the exporter of taxpaid spirits, wine, or beer, must file a notice of shipment of exportation on ATF Form 5110.30, 1582-A (5120.24) or 1582-B (5130.6), respectively, with the district director of Customs at the port from which exported, laden, or deposited. The exporter is then required to submit the form, with claim information and attachments as required, to the regional director (compliance) as the claim for drawback. Upon receipt of a copy of the form upon which the district director of Customs has certified exportation, the regional director (compliance) may approve the claim.

ATF is considering ways to streamline this process, and to coordinate with Customs to reduce duplicate involvement in this procedure. ATF believes that it may be preferable to rely on commercial documentation rather than requiring Customs to certify exportation. ATF would like to solicit comments on the following proposals:

(1) Should the regulations be amended to eliminate the use of ATF Forms 5110.30, 1582-A (5120.24), and 1582-B (5130.6), and to instead require claims for drawback to be filed on ATF Form 2635 (5620.8), "Claim—Alcohol, Tobacco, and Firearms Taxes," along with appropriate proof of exportation?

Under this proposal, Customs certification of exportation would no longer be necessary, and commercial documents appropriate to the particular exportation transaction would serve as sufficient evidence upon which claims for drawback could be based.

(2) What types of commercial documentation would provide sufficient evidence upon which to base drawback claims? For example, ATF is considering amending the regulations to require a permittee who exported distilled spirits, wine, or beer to obtain an export bill of lading or a landing certificate from an official of the foreign government to document the exportation. The deposit of distilled spirits in a customs bonded warehouse or a foreign trade zone would be documented by a certificate of receipt executed by the proprietor or operator thereof. When spirits, wine, or beer are laden for use as supplies on vessels or aircraft, a copy of the transportation bill of lading and a certificate of receipt by the vessel or aircraft would provide satisfactory evidence of exportation.

Finally, ATF would like to solicit general comments on ways in which it could reduce paperwork, simplify procedures, and eliminate unnecessary regulations in this area, while continuing to maintain adequate safeguards to the revenue.

Public Participation

ATF requests comments from all interested persons. All comments received on or before the closing date will be carefully considered. Comments received after the closing date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material or comments as confidential. All

comments submitted in response to this notice will be available for public inspection during normal business hours at: ATF Public Reading Room, room 6480, 650 Massachusetts Avenue NW., Washington, DC. Any material that the commenter considers confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

Drafting Information

The principal authors of this document are Dick Langford and Gail Hosey of the Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 252

Aircraft, Alcohol and alcoholic beverages, Armed Forces, Authority delegations (Government agencies), Beer, Claims, Excise taxes, Exports, Fishing vessels, Foreign trade zones, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Vessels, Warehouses, Wine.

Authority: This advance notice of proposed rulemaking is issued under the authority in 26 U.S.C. 7805.

Signed: August 7, 1992.

Stephen E. Higgins,

Director.

Approved: August 26, 1992.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 92-21364 Filed 9-4-92; 8:45 am]

BILLING CODE 4810-31-M

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27 CFR Part 290

[Notice No. 754]

RIN 1512-AA03

Revision of Regulations on Exportation of Tobacco Products and Cigarette Papers and Tubes, Without Payment of Tax, or With Drawback of Tax

AGENCY: Bureau of Alcohol, Tobacco and Firearms (AFT), Department of the Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: ATF is proposing to revise and recodify the regulations pertaining to the exportation of tobacco products and cigarette papers and tubes. The purpose of the proposed revision and recodification is to update and simplify the regulations prior to their being reissued. ATF is issuing this advance notice to solicit comments on ways in which the exportation regulations can be simplified so as to reduce or eliminate unnecessary regulatory burdens on industry members while continuing to provide adequate protection of the revenue.

DATES: Written comments must be received on or before October 8, 1992.

ADDRESSES: Comments must be submitted to the Chief, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091-0221. [Attn: Notice No. 754]

FOR FURTHER INFORMATION CONTACT: Mary A. Wood, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226 (202-927-8210).

SUPPLEMENTARY INFORMATION:

Background

ATF wishes to solicit comments from the public on its proposal to update and reissue the regulations pertaining to the exportation of tobacco products and cigarette papers and tubes. ATF plans to revise the regulations now in 27 CFR part 290, and to reissue the revised regulations as part 44 of the same chapter. ATF believes that the regulations can be reorganized to eliminate unnecessary duplications, and to delete regulatory requirements which may have become obsolete.

Pursuant to the provisions of 26 U.S.C. 5704(b), a manufacturer or export warehouse proprietor may remove tobacco products and cigarette papers and tubes, without payment of tax, for shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, or for consumption beyond the jurisdiction of the internal revenue laws of the United States. Section 5706 provides for the allowance of drawback of tax paid on tobacco products and cigarette papers and tubes which have been exported in accordance with the regulations, upon the filing of a bond.

ATF wants to ensure that the regulations pertaining to the exportation of tobacco products and cigarette papers and tubes are made as simple as possible, while still providing the necessary protection to the revenue. In updating the regulations, primary emphasis will be given to the simplification of procedures for the exportation of tobacco products and cigarettes papers and tubes. ATF is also considering the use of commercial documents, in lieu of U.S. Customs certification, as evidence of exportation.

ATF wishes to solicit comments on the following issues:

(1) Can the recordkeeping and documentation requirements in the exportation regulations be made less burdensome on the industry, while continuing to provide adequate safeguards to the revenue? For example, the current regulations often call for the U.S. Customs Service to certify that tobacco products and cigarette papers and tubes have been exported from the United States. ATF believes that in some circumstances, proof of exportation can be provided by commercial documentation, such as signed copies of export bills of lading, or landing certificates issued by an official of the country or possession where the tobacco products have actually landed. Are there other types of commercial documentation which would provide adequate proof of exportation? Under what circumstances would such commercial documentation not provide adequate proof of exportation?

(2) Are there regulations in part 290 which are duplicative and unnecessary? Can sections of the regulations be combined to eliminate such duplication?

(3) Is there a need for greater flexibility in allowing different kinds of marks on packages of tobacco products? Section 290.184 currently requires marks on packages or labels of packages of tobacco products which are removed from the factory for exportation. The mark may consist of the name of the manufacturer removing the product and the location (by city and State) of the factory from which the products are to be removed, or may consist of the permit number of the factory from which the products are to be removed. Approved trade names of the manufacturer may be used in the mark as the name of the manufacturer. Should the regulations be amended to provide for the use of codes to designate the location of factories? Would this satisfy the purpose of the regulation, while providing greater flexibility to manufacturers?

Finally, ATF would like to solicit general comments on ways in which it could reduce paperwork, simplify procedures, and eliminate unnecessary regulations in this area, while continuing to maintain adequate safeguards to the revenue.

Public Participation

ATF requests comments from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after the closing date will be given the same consideration if it is

practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material as confidential. all comments submitted in response to this notice will be available for public inspection during normal business hours at: ATF Public Reading Room, room 6480, 650 Massachusetts Avenue NW., Washington, DC 20226. Any material that the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting the comment is not exempt from disclosure.

Drafting Information

The principal authors of this document are Mary A. Wood and Daniel J. Hiland of the Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 290

Administrative practice and procedure, Aircraft, Authority delegations (Government agencies), Cigarette papers and tubes, Claims, Customs duties and inspection, Excise taxes, Exports, Foreign trade zones, Labeling, Packaging and containers, Penalties, Surety bonds, Tobacco products, Vessels, Warehouses.

Authority: This advance notice of proposed rulemaking is issued under the authority in 26 U.S.C 7805.

Signed: August 7, 1992.

Stephen E. Higgins,

Director.

Approved: August 6, 1992.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 92-21389 Filed 9-4-92; 8:45 am]

BILLING CODE 4810-31-M

POSTAL SERVICE

39 CFR Part 111

Postage Meter Rental Agreements

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes to amend its rules to clarify that postage meter rental agreements must be in writing and that meter manufacturers must notify the Postal Service of the expiration or termination of agreements. These proposed changes will assist the Postal Service in verifying the validity of postage meter rental agreements between manufacturers and users.

DATES: Comments on the proposed rule must be received on or before October 8, 1992.

ADDRESSES: Written comments should be mailed or delivered to the Director, Office of Classification and Rates Administration, U.S. Postal Service, Room 8430, 475 L'Enfant Plaza SW, Washington, DC 20260-5903. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: Nicholas Stankosky, (202) 268-5311.

SUPPLEMENTARY INFORMATION: Current policy requires meter users to hold both a postage meter license with the Postal Service and a rental agreement with the meter manufacturer in order to have a meter in their possession. The Postal Service may revoke a license if the licensed user fails to comply with the requirements for use of postage meters.

Postal regulations do not explicitly state that the rental agreement must be in writing, although the Postal Service expects the agreements to be written. With over 1.4 million meters in use, the Postal Service cannot verify whether or not valid rental agreements between manufacturers and users exist unless the agreements are in written form.

Accordingly the pertinent rules in Domestic Mail Manual 144.14, 144.231 and 144.952b are proposed to be revised to require that all rental agreements be in writing in the format used by the applicable manufacturer. The proposed revisions also specify that the Postal Service will revoke a postage meter license upon receipt of written notification from a manufacturer, or other evidence, that a rental agreement has expired or has been otherwise terminated. An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

Although exempt from the provisions of the Administrative Procedure Act regarding proposed rulemaking (5 U.S.C. 553(b), (c)) by U.S.C. 410(a), the Postal Service invites public comment on the following proposed revisions to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR part 111.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001-3011, 3201-3219, 3403-3406, 3621, 5001.

2. Amend Domestic Mail Manual 144.14, 144.231 and 144.952b to read:

144 POSTAGE METERS AND METER STAMPS

* * * * *

144.1 Postage Meters

* * * * *

144.14 Possession. Except for a meter manufacturer, no one may have possession of a postage meter without both a valid postage meter license for the Postal Service and a written rental agreement with the meter manufacturer. Anyone who fails to satisfy both requirements must return the appropriate meter to the manufacturer at the manufacturer's request.

144.2 Meter License

* * * * *

144.23 Revocation.

* * * * *

144.231 Reason. A license may be revoked for any of the following reasons:

a. The meter is used in connection with any unlawful scheme or enterprise.

b. The meter is not used during any consecutive 12 months.

c. The meter manufacturer provides written notification, or other evidence, that the written meter rental agreement has expired or has been otherwise terminated.

d. The licensee fails to comply with the requirements governing the use of postage meters.

* * * * *

144.9 Manufacture and Distribution of Postage Meters

* * * * *

144.95 Distribution.

* * * * *

144.952 Controls. * * *

* * * * *

b. Lease meters only to mailers to whom meter licenses have been issued by the Postal Service. Meter rental agreements must be in writing. Manufacturers must notify the licensing post office in writing if an agreement has been terminated or has expired.

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 92-21336 Filed 9-4-92; 8:45 am]

BILLING CODE 7710-12-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[CC Docket No. 92-76]

Low-Earth Orbit Satellite Service

AGENCY: Federal Communications Commission.

ACTION: Notice of meeting of negotiated rulemaking committee.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, this notice advises interested persons of the final meeting of the Below 1 GHz LEO Negotiated Rulemaking Committee ("Committee"), which will be held at the Federal Communications Commission in Washington, DC

DATE: September 16,1992 at 9:30 a.m.

ADDRESSES: Federal Communications Commission, rm. 856, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Thomas S. Tycz, Deputy Chief, Domestic Facilities Division, Common Carrier Bureau, Federal Communications Commission, at (202) 634-1860.

SUPPLEMENTARY INFORMATION: The agenda for the final meeting of the Committee will be to approve the minutes of the prior meeting and to discuss, revise and approve the final report of the Committee for presentation to the FCC.

Members of the general public may attend this meeting. The Federal Communications Commission will attempt to accommodate as many people as possible. However, admittance will limited to the seating available. There may be limited public oral participation, and the public may submit written comments to Thomas S. Tycz, the Committee's designated Federal representative, before the meeting.

Donna R. Searcy,

Secretary.

[FR Doc. 92-21469 Filed 9-4-92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 45

[FAR Case 91-73]

Federal Acquisition Regulation; Records of Plant Equipment

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulations Council (DARC) are proposing changes to the coverage at FAR 45.501, Definitions, and 45.505-5(a), Records of plant equipment, to clarify the procedures for use of summary records for plant equipment costing less than $5,000.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before November 9, 1992 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), ATTN: Deloris Baker, 18th & F Streets, NW., room 4041, Washington, DC 20405.

Please cite FAR case 91-73 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501-3775 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAR case 91-73.

SUPPLEMENTARY INFORMATION:

A. Background

The CAAC and the DARC approved proposed changes to FAR subpart 45.5 originating from a proposal from industry to encourage the use of summary records for recording and controlling plant equipment. Under this proposal, summary records are permitted for use with plant equipment costing less than $5,000, except when the contracting officer determines that individual records are necessary for effective control, calibration, or maintenance. Industry has advised that control and recordkeeping burden is a problem on plant equipment below $5,000 because of the need to alter property records each time an item in this category is moved within the contractor's facilities. The use of summary records as proposed will alleviate burden on contractors by eliminating full recordkeeping requirements on these relatively low-dollar items.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule is merely a clarification of existing FAR language. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 91-73), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR clarify but do not alter the recordkeeping or reporting requirements which have been approved under OMB Control Number 9000-0075.

List of Subjects in 48 CFR Part 45

Government procurement.

Dated: September 1, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR part 45 be amended as set forth below:

PART 45—GOVERNMENT PROPERTY

1. The authority citation for 48 CFR part 45 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 45.501 is amended by adding "Summary record" in alphabetical order to read as follows:

45.501 Definitions.

* * * * *

"Summary Record," as used in this subpart, means a separate card, form, document or specific line(s) of computer data used to account for multiple quantities of a line item of plant equipment costing less than $5,000 per unit.

* * * * *

3. Section 45.505–5 is amended by revising paragraph (a) to read as follows:

45.505–5 Records of plant equipment.

(a) The contractor shall maintain individual item records for each item of plant equipment having a unit cost of $5,000 or more. Summary records are adequate for plant equipment costing less than $5,000 per unit, except where the contract administration office determines that individual item records are necessary for effective control, calibration, or maintenance. Summary records may reference a general location, provided the contractor can locate the property within a reasonable period of time.

* * * * *

[FR Doc. 92–21493 Filed 9–4–92; 8:45 am]

BILLING CODE 6820–34–M

Notices

Federal Register
Vol. 57, No. 174
Tuesday, September 8, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to the Office of management and Budget (OMB) for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Export Administration (BXA).
Title: Request for Amendment Action.
Agency Form Number: BXA-685P.
OMB Approval Number: 0694-0007.
Type of Request: Extension of the expiration date of a currently approved collection.
Burden: 316 reporting/recordkeeping hours.
Number of Respondents: 1,184.
Avg Hours Per Response: 15 minutes for reporting requirements, 20 minutes per recordkeeper.
Needs and Uses: This collection of information is used by U.S. exporters to amend their outstanding export licenses for controlled goods. This amendment, if approved by BXA, allows the exporter to make the changes in lieu of applying for a new export license.
Affected Public: Businesses or other for-profit institutions, small businesses or organizations.
Frequency: On occasion and recordkeeping.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: Gary Waxman, (202) 395-7340, room 3208, New Executive Office Building, Washington, DC 20503.

Agency: National Oceanic and Atmospheric Administration (NOAA).
Title: Application for Fisheries Obligation Guarantee.
Agency Form Number: NOAA 88-1.
OMB Approval Number: 0648-0012.
Type of Request: Extension of the expiration date of a currently approved collection.
Burden: 10,400 hours.
Number of Respondents: 1,300.
Avg Hours Per Response: 8 hours.
Needs and Uses: This application is used by commercial fishermen to obtain guaranteed financing under the Fisheries Obligation Guarantee Program. Information is used to determine eligibility and to monitor program participation.
Affected Public: Individuals or households, businesses or other for-profit institutions, small businesses or organizations.
Frequency: On occasion, annually.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: Ron Minsk, (202) 395-3084, room 3019, New Executive Office Building, Washington, DC 20503.

Agency: National Oceanic and Atmospheric Administration (NOAA).
Title: Monthly Cold Storage Fish Report.
Agency Form Number: NOAA 88-16.
OMB Approval Number: 0648-0015.
Type of Request: Extension of the expiration date of a currently approved collection.
Burden: 1,000 hours.
Number of Respondents: 200.
Avg Hours Per Response: 8 minutes (12 reports annually).
Needs and Uses: These data on cold storage holdings are needed by NMFS for fishery management and development purposes, and by industry for orderly distribution and purchase of fishery products.
Affected Public: Businesses or other for-profit institutions, small businesses or organizations.
Frequency: Monthly.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Ron Minsk, (202) 395-3084, room 3019, New Executive Office Building, Washington, DC 20503.

Agency: National Oceanic and Atmospheric Administration (NOAA).
Title: Saltonstall-Kennedy (S-K) Grant Application, Project Quarterly and Final Reports.
Agency Form Numbers: 88-204 and 88-205.
OMB Approval Numbers: 0648-0135.
Type of Request: Extension of the expiration date of a currently approved collection.
Burden: 2,572 hours.
Number of Respondents: 200.
Avg Hours Per Response: Applications—8 hours; Quarterly Reports—2 hours; Final Reports—13 hours.
Needs and Uses: Under the S-K Act, financial assistance is made available through the Secretary of Commerce to the public for projects which help strengthen or develop the U.S. fishing industry. Information is needed to decide which projects should be funded; quarterly reports are needed to ensure Federal monies are used properly; and final reports are needed to assess the success of completed projects.
Affected Public: Individuals, state or local governments, farms, businesses or other for-profit institutions, federal agencies or employees, non-profit institutions, small businesses or organizations.
Frequency: On occasion, quarterly, annually.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: Ron Minsk, (202) 395-3084, room 3019, New Executive Office Building, Washington, DC 20503.

Agency: National Oceanic and Atmospheric Administration (NOAA).
Title: Pacific Tuna Fisheries.
Agency Form Number: None.
OMB Approval Number: 0648-0148.
Type of Request: Extension of the expiration date of a currently approved collection.
Burden: 850 reporting hours.
Number of Respondents: 72.
Avg Hours Per Response: .1 hours (113 responses per respondent).
Needs and Uses: Data are used by the National Marine Fisheries Service and the Inter-American Tropical Tuna Commission biologists to determine effects of fishing on tuna abundance. Results forms the basis for stock assessments.
Affected Public: Individuals or households, businesses or other for-profit institutions, small businesses or organizations.
Frequency: By trip.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Ron Minsk, (202) 395-3084, room 3019, New Executive Office Building, Washington, DC 20503.

Agency: National Oceanic and Atmospheric Administration (NOAA).
Title: Atlantic Tuna Fisheries.
Agency Form Number: None.
OMB Approval Number: 0648-0168.

Type of Request: Extension of the expiration date of a currently approved collection.
Burden: 56 reporting hours.
Number of Respondents: 5.
Avg Hours Per Response: 6 minutes per each day fished (approximately 100 days per year for 5 vessels).
Needs and Uses: Data are used by the National Marine Fisheries Service (NMFS) and the International Commission for the Conservation of Atlantic Tunas (ICATT) biologists to determine effects of fishing on tuna abundance. This information is needed to determine stock conditions.
Affected Public: Businesses or other for-profit institutions.
Frequency: On occasion, annually.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Ron Minsk, (202) 395-3084, room 3019, New Executive Office Building, Washington, DC 20503.

Copies of the above information collection proposals can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377-3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to the respective OMB Desk Officer listed above.

Dated: August 31, 1992.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 92-21474 Filed 9-4-92; 8:45 am]

BILLING CODE 3510-CW-F

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of initiation of process of revoke export trade certificate of review No. 90-00004.

SUMMARY: The Department of Commerce had issued an export trade certificate of review to Dimick International & Associates, Inc. Because this certificate holder has failed to file an annual report as required by law, the Department is initiating proceedings to revoke the certificate. This notice summarizes the notification letter sent to Dimick International & Associates, Inc.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (15 U.S.C. 4011-21) authorized the Secretary of Commerce to issue export trade certificates of review. The regulations implementing title III ("the Regulations") are found at 15 CFR part 325. Pursuant to this authority, a certificate of review was issued on May 15, 1990 to Dimick International & Associates, Inc

A certificate holder is required by law (section 308 of the Act, 15 U.S.C. 4018) to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate. The annual report is due within 45 days after the anniversary date of the issuance of the certificate of review (§§ 325.14(a) and (b) of the Regulations). Failure to submit a complete annual report may be the basis for revocation. [Sections 325.10(a) and 325.14(c) of the Regulations].

The Department of Commerce sent to Dimick International & Associates, Inc. on May 21, 1992, a letter containing annual report questions with a reminder that its annual report was due on June 29, 1992. Additional reminders were sent on July 10, 1992 and on August 12, 1992. The Department has received no written response to any of these letters.

On September 2, 1992, and in accordance with § 325.10 (c)(2) of the Regulations, a letter was sent by certified mail to notify Dimick International & Associates, Inc. that the Department was formally initiating the process to revoke its certificate. The letter stated that this action is being taken for the certificate holder's failure to file an annual report.

In accordance with § 325.10(c)(2) of the Regulations, each certificate holder has thirty days from the day after its receipt of the notification letter in which to respond. The certificate holder is deemed to have received this letter as of the date on which this notice is published in the **Federal Register**. For good cause shown, the Department of Commerce can, at its discretion, grant a thirty-day extension for a response.

If the certificate holder decides to respond, it must specifically address the Department's statement in the notification letter that it has failed to file an annual report. It should state in detail why the facts, conduct, or circumstances described in the notification letter are not true, or if they are, why they do not warrant revoking the certificate. If the certificate holder does not respond within the specified period, it will be considered an admission of the statements contained in the notification letter (§ 325.10(c)(2) of the Regulations).

If the answer demonstrates that the material facts are in dispute, the Department of Commerce and the Department of Justice shall, upon request, meet informally with the certificate holder. Either Department may require the certificate holder to provide the documents or information that are necessary to support its contentions (§ 325.10(c)(3) of the Regulations).

The Department shall publish a notice in the **Federal Register** of the revocation or modification or a decision not to revoke or modify § 325.10(c)[4] of the Regulations). If there is a determination to revoke a certificate, any person aggrieved by such final decision may appeal to an appropriate U.S. district court within 30 days from the date on which the Department's final determination is published in the **Federal Register** (§§ 325.10(c)(4) and 325.11 of the Regulations).

Dated: September 2, 1992.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 92-21457 Filed 9-4-92; 8:45 am]

BILLING CODE 3510-DR-M

National Institute of Standards and Technology

[Docket No. 920538-2136]

RIN 0693-AA94

A Proposed Federal Information Processing Standard for Automated Password Generator

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; request for comments.

SUMMARY: A Federal Information Processing Standard (FIPS) for Automated Password Generator is being proposed. This proposed standard specifies an algorithm to automate the generation of passwords for use in systems that require computer generated pronounceable passwords. The algorithm uses random numbers to select the characters that form the random pronounceable passwords. The random numbers are generated by a random number subroutine based on the Electronic Codebook mode of the Data Encryption Standard (DES) (FIPS PUB 46-1). This proposed standard is for use in conjunction with FIPS PUB 112, Password Usage Standard, which specifies basic security criteria for the

design, implementation and use of passwords.

The purpose of this notice is to solicit views from the public, manufacturers, and Federal, State, and local government users prior to submission of this proposed standard to the Secretary of Commerce for review and approval.

The proposed standard contains two sections: (1) An announcement, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) specifications which deal with the technical aspects of the standard. Only the announcement section of the standard is provided in this notice. Interested parties may obtain copies of the specifications section from the Standards Processing Coordinator (ADP), National Institute of Standards and Technology, Technology Building, room B-64, Gaithersburg, MD 20899, telephone (301) 975-2816.

DATES: Comments on this proposed standard must be received on or before December 7, 1992.

ADDRESSES: Written comments concerning the proposed standard should be sent to: Director, Computer Systems Laboratory, ATTN: Proposed FIPS for Automated Password Generator, Technology Building, room B-154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Dinkel, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975-3367.

Dated: August 31, 1992.

John W. Lyons,

Director.

Federal Information Processing Standards Publication

DRAFT (date)

Announcing the Standard for Automated Password Generator

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology (NIST) after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100-235.

1. Name of Standard. Automated Password Generator.

2. Category of Standard. Computer Systems, Computer Security.

3. Explanation. A password is a protected character string used to authenticate the identity of a computer system user or to authorize access to system resources. When users are allowed to select their own passwords they often select passwords that are easily compromised. An automated password generator creates random passwords that have no association with a particular user.

This Automated Password Generator Standard specifies an algorithm to generate passwords for the protection of computer resources. This standard is for use in conjunction with FIPS PUB 112, Password Usage Standard, which provides basic security criteria for the design, implementation, and use of passwords. The algorithm uses random numbers to select the characters that form the random pronounceable passwords. The random numbers are generated by a random number subroutine based on the Electronic Codebook mode of the Data Encryption Standard (DES) (FIPS PUB 46-1). The random number subroutine uses a pseudorandom DES key generated in accordance with the procedure described in Appendix C of ANSI X9.17 (FIPS PUB 171).

Similar to DES, the FIPS for Automated Password Generator is an interoperability standard. Interoperability standards specify functions and formats so that data transmitted can be properly acted upon when received by another computer. This type of standard is independent of physical implementation. For discussion purposes a NIST implementation of the Automated Password Generator is provided. It is expected that commercial implementations will be based on the latest technologies and differ from NIST's, however the results should be logically equivalent to that of this FIPS.

4. Approving Authority. Secretary of Commerce.

5. Maintenance Agency. U.S. Department of Commerce, National Institute of Standards and Technology (NIST), Computer Systems Laboratory (CSL).

6. Cross Index.

a. American National Standards Institute (ANSI) X9.28, *Financial Institution Multiple Center Key Management (Wholesale)* Draft.

b. Department of Defense CSC-STD-002-85, *Password Management Guideline.*

c. Federal Information Processing Standards Publication (FIPS PUB) 46, *Guidelines on Evaluation of Techniques for Automated Personal Identification.*

d. Federal Information Processing Standards Publication (FIPS PUB) 46-1, *Data Encryption Standard.*

e. Federal Information Processing Standards Publication (FIPS PUB) 81, *DES Modes of Operation.*

f. Federal Information Processing Standards Publication (FIPS PUB) 83, *Guideline on User Authentication Techniques for Computer Network Access Control.*

g. Federal Information Processing Standards Publication (FIPS PUB) 112, *Password Usage.*

h. Federal Information Processing Standards Publication (FIPS PUB) 171, *Key Management Using ANSI X9.17.*

i. National Technical Information Service (NTIS) AD A 017676, *A Random Word Generator for Pronounceable Passwords.*

7. Objectives. The objectives of this standard are to:

a. improve the administration of password systems that are used for authenticating the identity of individuals accessing computer resources or files;

b. provide a standard automated method for producing pronounceable passwords that have no association with a particular user;

c. produce passwords that are easily remembered, stored and entered into computer systems, yet not readily susceptible to automated techniques that have been developed to search for and disclose passwords.

8. Applicability. This standard is applicable to the development of procurement or design specifications for implementing an automatic password generation algorithm within a computer system. It shall be used by all Federal departments and agencies when there is a requirement for computer generated pronounceable passwords for authenticating users of computer systems, or for authorizing access to resources in those systems.

This standard does not require the use of passwords in a computer system, but establishes an automatic password generation algorithm for use in systems where an agency's computer security policy requires computer generated pronounceable passwords. It should be used in conjunction with FIPS PUB 112, Password Usage Standard, which specifies basic security criteria for the design, implementation, and use of passwords.

9. Export Control. Implementations of this standard are subject to Federal Government export controls as specified in Title 15, Code of Federal Regulations, Parts 768 through 799. Exporters are advised to contact the Department of Commerce, Bureau of Export Administration for more information.

10. Specifications. Federal Information Processing Standard (FIPS) # # #, Automated Password Generator (affixed).

11. Qualifications. The Automated Password Generator uses the Electronic Codebook (ECB) mode of the Data Encryption Standard (DES), Federal Information Processing Standard 46-1 (FIPS PUB 46-1), as the random number generator. This mode of operation is specified in FIPS 81, DES Modes of Operation.

The protection provided by the DES algorithm against potential threats has been reviewed every 5 years since its adoption in 1977 and has been reaffirmed during each of those reviews. The DES, and the possible threats reducing the security provided by the use of DES will undergo continual review by NIST and other cognizant Federal organizations. The new technology available at review time will be evaluated to determine its impact on the DES. In addition, the awareness of any breakthrough in technology

or any mathematical weakness of the algorithm will cause NIST to reevaluate the DES and provide necessary revisions.

12. Implementation Schedule. This Standard becomes effective 6 months following approval by the Secretary of Commerce.

13. Waivers. Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, U.S. Code. Waivers shall be granted only when compliance with a standard would:

a. adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. cause a major adverse financial impact on the operator which is not offset by Government-wide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when the determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: National Institute of Standards and Technology; ATTN: FIPS Waiver Decisions; Technology Building, Room B-154; Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Government Affairs of the Senate and shall be published promptly in the **Federal Register**.

When the determination on a waiver apples to the procurement of equipment and/or services, a notice of the waiver determination must be published in the Commerce Business Daily as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. Sec. 552(b), shall be part of the procurement documentation and retained by the agency.

14. Where to obtain copies. Copies of this publication are available for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. When ordering, refer to Federal Information Processing Standards Publication # # # # # (FIPS PUB # # # #), and identify the title. When microfiche is desired, this should be specified. Payment may be made by check, money order, credit card, or deposit account.

[FR Doc. 92-21459 Filed 9-4-92; 8:45 am]

BILLING CODE 3510-CN-M

National Oceanic and Atmospheric Administration

South Atlantic Fishery Management Council; Rock Shrimp Fishery; Meeting

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public scoping meetings and request for comments.

SUMMARY: The South Atlantic Fishery Management Council will hold public scoping meetings to solicit industry input on the possible need for management of the rock shrimp fishery.

Recent dramatic declines in rock shrimp landings have raised concerns among fishermen and dealers that there may be biological and/or environmental problems in the fishery that could be alleviated by management action. This is an opportunity for the rock shrimp industry to discuss any problems in the fishery and to suggest solutions.

DATES: Written comments on the rock shrimp fishery must be received by October 23, 1992. See "**SUPPLEMENTARY INFORMATION**" for dates, times, and locations of meetings.

ADDRESSES: Written comments on the rock shrimp fishery should be addressed to Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, suite 306, Charleston, SC 29407-4699, FAX (803) 769-4520.

FOR FURTHER INFORMATION CONTACT: Carrie Knight, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, suite 306, Charleston, SC 29407 (803) 571-4366.

SUPPLEMENTARY INFORMATION: The public scoping meetings will begin at 3 p.m., and adjourn at 6 p.m., local time, and are scheduled as follows:

1. Wednesday, September 23: Cocoa Beach Hilton, 1550 N. Atlantic Avenue, Cocoa Beach, Florida 32932, (407) 799-0003.
2. Thursday, September 24: Holiday Inn—Oceanfront, 1617 N. First Street, Jacksonville Beach, FL 32250 (904) 249-9071.

Dated: September 1, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-21592 Filed 9-4-92; 8:45 am]

BILLING CODE 3510-22-M

National Institute of Standards and Technology

Visiting Committee on Advanced Technology; Meeting

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the National Institute of Standards and Technology Visiting Committee on Advanced Technology will meet on Wednesday, September 16, 1992, from 8:30 a.m. to 5 p.m., and on Thursday, September 17, 1992, from 8:30 a.m. to 9:30 a.m. The Visiting Committee on Advanced Technology is composed of nine members appointed by the Director of the National Institute of Standards and Technology who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, this budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. Presentations will be given on information technology issues, the Manufacturing Excellence Partnership, NIST Strategic Planning, the Board on Assessment of NIST Programs' annual report, and the Advanced Technology Program. The discussion on NIST budget, scheduled to begin at 3:15 p.m. and to end at 5 p.m. on September 16, 1992, and to reconvene on September 17, 1992, at 8:30 a.m. and to end at 9:30 a.m., will be closed.

DATES: The meeting will convene September 16, 1992, at 8:30 a.m. and will adjourn at 9:30 a.m. on September 17, 1992. The meeting will be open to the public on September 16 from 8:30 a.m. to 3 p.m. The meeting will be closed from 3:15 p.m. to 5 p.m. on September 16, and from 8:30 a.m. to 9:30 a.m. on September 17, 1992.

ADDRESSES: The meeting will be held in Lecture Room A, Administration Building, National Institute of Standards and Technology, Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: Dale E. Hall, Visiting Committee Executive Director, National Institute of Standards and Technology,

Gaithersburg, Maryland 20899, telephone number (301) 975–2158.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on September 1, 1992, that portions of the meeting of the Visiting Committee on Advanced Technology which involve examination and discussion of the budget for the Institute may be closed in accordance with section 552(b)(9)(B) of title 5, United States Code, since the meeting is likely to disclose financial information that may be privileged or confidential.

Dated: September 1, 1992.

Samuel Kramer,

Acting Director.

[FR Doc. 92–21545 Filed 9–4–92; 8:45 am]

BILLING CODE 3510-13-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Limit for Certain Wool Textile Products Produced or Manufactured in Hong Kong

September 1, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A notice published in the **Federal Register** on August 5, 1992 (57 FR 34555) announced that the United States Government had requested consultations with the Government of Hong Kong on wool textile products in Category 433.

In a Memorandum of Understanding dated August 18, 1992, the Governments of the United States and Hong Kong agreed to amend further their Bilateral Textile Agreement of August 4, 1986, to establish a limit for wool textile products in Category 433 for the agreement periods beginning on January 1, 1992 and extending through December 31, 1995. The 1992 level for Category 433 is 9,000 dozen.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 56 FR 63716, published on December 5, 1991.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92–21473 Filed 9–4–92; 8:45 am]

BILLING CODE 3510-DR-F

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade Proposed Futures and Futures Option Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures and futures option contracts.

SUMMARY: The Chicago Board of Trade (CBOT) has applied for designation as a contract market in National Catastrophe Insurance Futures, Eastern Catastrophe Insurance Futures, Midwestern Catastrophe Insurance Futures, and Western Catastrophe Insurance Futures. The CBOT also has submitted options based on each of those four futures contracts. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before October 8, 1992.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the CBOT National Catastrophe Insurance Futures, Eastern Catastrophe Insurance Futures, Midwestern Catastrophe Insurance Futures, and Western Catastrophe Insurance Futures or the options on those futures contracts.

FOR FURTHER INFORMATION CONTACT: Please contact Steve Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone 202–254–7303.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions of the proposed contracts will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CBOT in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the terms and conditions of the proposed contracts, or with respect to other materials submitted by the CBOT in support of the applications, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on August 31, 1992.

Gerald A. Gay,

Director.

[FR Doc. 92–21472 Filed 9–4–92; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF ENERGY

Grant Award for Environmental Restoration Program for Technical Review and Services for Lawrence Livermore National Laboratory—Site 300; Noncompetitive Award

AGENCY: Department of Energy (DOE).

ACTION: Notice of Noncompetitive Financial Assistance Award.

SUMMARY: Pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b) the U.S. Department of Energy, San Francisco Field Office announces that it plans to make a noncompetitive grant award for the technical review and services for the Environmental Restoration Program—Lawrence Livermore National Laboratory—Site 300. The term of the award will cover

the period 30 September 1992 and end on 29 August 1994. The total grant award is $116,494.00.

ADDRESSES: U.S. Department of Energy, San Francisco Field Office, 1333 Broadway, Oakland, CA 94612.

FOR FURTHER INFORMATION CONTACT: Terrie Brown of the DOE San Francisco Field Office, Contracts Management Division, telephone (510) 273–4134.

SUPPLEMENTARY INFORMATION: The proposed grant award primarily supports the management and operation of the environmental restoration program at Lawrence Livermore National Laboratory—Site 300. The overall objectives and goals of the work is to perform timely technical reviews and substantive comments on reports and studies, identification and explanation of unique State requirements; field investigations and cleanup activities and support and assist DOE in conducting public participation activities.

Eligibility for this grant award is being limited to the State of California Environmental Protection Agency, Department of Toxic Substances Control because LLNL—Site 300 is located in the State of California and the state has sole authority within its borders.

Issued in Oakland, CA, August 20, 1992.

Joan Macrusky,

Chief, ER/DP/EM Branch, Contracts Management Division.

[FR Doc. 92–21416 Filed 9–4–92; 8:45 am]

BILLING CODE 6450–01–M

Chicago Field Office; Noncompetitive Award of Financial Assistance; South Carolina Energy Research and Development Center; Clemson University

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The Department of Energy (DOE), Chicago Field Office, through the Atlanta Support Office, announces that pursuant to DOE Financial Assistance Rules 10 CFR 600.7(b)(2), it intends to award a grant to South Carolina Energy Research and Development Center-Clemson University to provide financial assistance for the Symposium of Energy Futures III. The anticipated overall objective of this project is to provide a forum for discussing national, regional and state impacts of energy policy development and implementation.

FOR FURTHER INFORMATION CONTACT: James R. Powell, U.S. Department of Energy, Atlanta Support Office, 730 Peachtree Street, NE., Atlanta, Georgia 30308, (404) 347–2888.

SUPPLEMENTARY INFORMATION: The object of Symposium III is to provide participants with the latest information on energy supplies, projected energy demands, and emerging energy technologies. The widespread realization that energy, economy and the environment are tightly interrelated now drives most energy decisions. Symposium III reflects this coming together of the Three E's with a diverse group of individuals and institutions joining to discuss our Energy Future. The Symposium will permit all participants to interact first hand with leading authorities in a mix of energy fields and to exchange and refine ideas. Discussion sessions between the speakers and Symposium III attendants will be highly encouraged so that a free flow of ideas can develop. The Symposium represents an unparalleled opportunity to obtain insights for effective planning for the future.

The grant application is being accepted by DOE because it knows of no other organization which is conducting or planning to conduct this type of conference. The project period for the grant award is a one-year period, expected to begin in September 1992. DOE plans to provide funding in the amount of $5,000 for this project period.

Johnnie D. Greenwood,

Director, Contracts Division.

[FR Doc. 92–21531 Filed 9–4–92; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Cases Filed During the Week of July 31 through August 7, 1992

During the Week of July 31 through August 7, 1992, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs it. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: September 1, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of July 31 through August 7, 1992]

Date	Name and location of applicant	Case No.	Type of submission
July 30, 1992	ERA/Dalco Petroleum, Washington, DC	LRZ–0019	Motion to Dismiss. *If Granted:* Proposed Remedial Order issued to Dalco Petroleum & Wayne Zang would be dismissed.
Aug. 3, 1992	California Delta Newspaper, Inc., Carmichael, CA	LFA–0231	Appeal of an Information Request Denial. *If Granted:* The April 23, 1992 Denial of the Freedom of Information Request filed by California Delta Newspaper, Inc., would be rescinded, and the Requester would receive access to DOE information.
Aug. 3, 1992	Government Accountability Project, Seattle, WA	LFA–0230	Appeal of an Information Request Denial. *If Granted:* The May 20, 1992 Freedom of Information Request Denial issued by the Office of Administrative Services would be rescinded, and the Government Accountability Project would receive access to requested records pursuant to the FOIA and Privacy Act.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of July 31 through August 7, 1992]

Date	Name and location of applicant	Case No.	Type of submission
Aug. 3, 1992	Gulf/T.E. Hinson Gulf, Atlantic Beach, FL	RR300-194	Request for Modification/Rescission in the Gulf Refund Proceeding. *If Granted:* The July 1, 1992 Dismissal Letter (Case No. RF300-14940) issued to T.E. Hinson Gulf regarding the firm's Application for Refund submitted in the Gulf refund proceeding would be modified.
Aug. 3, 1992	RBR America Inc., Armor, Hudson, NY	LFA-0229	Appeal of an Information Request Denial. *If Granted:* The June 29, 1992 Freedom of Information Request Denial issued by the Bonneville Power Administration would be rescinded, and RBR America, Inc., Armor would receive access to requested DOE information.
Aug. 4, 1992	Gulf/Lamar Davis Gulf, West Palm Beach, FL	RR300-195	Request for Modification/Rescission in the Gulf Refund Proceeding. *If Granted:* The July 1, 1992 Dismissal Letter (Case No. RF300-14848) issued to Lamar Davis Gulf regarding the firm's Application for Refund submitted in the Gulf refund proceeding would be modified.
Aug. 6, 1992	Gulf/Bob's Gulf, Woodbridge, VA	RR300-196	Request for Modification/Rescission in the Gulf Refund Proceeding. *If Granted:* The July 1, 1992 Dismissal Letter (Case No. RF300-14797) issued to Bob's Gulf regarding the firm's Application for Refund submitted in the Gulf refund proceeding would be modified.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund applicant	Case number
7/31/92 Thru 8/7/92	Crude Oil Applications Received	RF272-93793 Thru RF272-93803
7/31/92 Thru 8/7/92	Texaco Refund Applications Received	RF321-19058 Thru RF321-19095
7/31/92 Thru 8/7/92	Gulf Oil Refund Applications Received	RF300-20423 Thru RF300-20454
7/31/92 Thru 8/7/92	Appex/Clark Refund Applications Received	RF342-292 Thru RF342-304
8/4/92	Al's Arco	RF304-13240
8/4/92	Allen's Arco in Wells	RF304-13241
8/4/92	Apache Junction School	RF304-13242
8/4/92	Harlan Oil Co	RF304-13243
8/4/92	American Lumber Co	RF324-35

[FR Doc. 92-21540 Filed 9-4-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

Application Filed with the Commission

September 1, 1992.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Application*: Minor License.

b. *Project No.*: 10849-001.

c. *Date Filed*: July 9, 1992.

d. *Applicant*: Hydro-Power Electric of Nevada, Inc.

e. *Name of Project*: Empire Hydroelectric Project.

f. *Location*: On the Snake River at river mile 594.5 in Gooding County, Idaho, near the town of Buhl. Section 1, T.9S., R.14E., Boise Meridian.

g. *Filed Pursuant to*: Federal Power Act, 16 USC 791(a)-825(r).

h. *Applicant Contact*: Hydro-Power Electric of Nevada, Inc., c/o Robert Jones, 1766 Addison Avenue East, Twin Falls, ID 83301, (208) 733-0404.

Mr. Larry Falkner, L.B. Industries, Inc., 1401 Shoreline Drive, P.O. Box 2797, Boise, ID 83701, (208) 345-7515.

Carl L. Myers, P.E., Myers Engineering Company, P.A., 750 Warm Springs Avenue, Boise, ID 83712, (208) 336-1425.

Lee S. Sherline, 207 Park Avenue, Suite 101, Falls Church, VA 22046, (703) 536-5401.

i. *FERC Contact*: Ms. Deborah Frazier-Stutely (202) 219-2842.

j. *Description of Project*: The proposed project would consist of: (1) An earth lined side channel turnout intake at elevation 2,945 feet msl; (2) a 20-foot-deep, 640-foot-long unlined canal; (3) a 19-foot-high, 150-foot-long unlined cancel; (3) a 19-foot-high, 150-foot-long reinforced concrete road under-crossing; (4) a 1,050-foot-long, 35-foot-wide concrete lined canal at elevation 2,945 feet msl; (5) a 98-foot-wide, 39-foot-long reinforced concrete powerhouse containing two generating units with a total capacity of 3,100 kW, operating under a head of 18 feet; (6) a switchyard; (7) a 1,300-foot-long, 20-foot-wide access road; (8) a 46-kV, 600-foot-long transmission line tying into the existing Idaho Power Company's Buhl substation; and (9) related facilities.

The proposed project would produce approximately 18.8 GWH of energy annually.

k. In accordance with section 4.32(b)(7) of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate, factual basis for a complete analysis of this application on its merits, they must file a request for the study with the Commission, together with justification for such request, no later than October 16, 1992, and must serve a copy of the request on the applicant.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21516 Filed 9-4-92; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

[Project Nos. 710-000, et al.]

Hydroelectric Applications (Wisconsin Power and Light Company, et al.); Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1a. *Type of Applications* Subsequent License.

b. *Project No.:* 710-000.

c. *Date Filed:* November 8, 1976.

d. *Applicant:* Wisconsin Power and Light Company.

e. *Name of Project:* Shawano Hydro Project.

f. *Location:* On the Wolf River, Shawano County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. James D. Loock, Director, Generating Station Engineering, WPLC, 222 West Washington Avenue, Box 192, Madison, WI 53701–0192, (608) 252–3311.

i. *FERC Contact:* Ed Lee (dt) (202) 219–2809.

j. *Deadline Date:* October 27, 1992.

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D5.

l. *Description of Project:* The existing operating project was issued an initial license on July 19, 1977. The project is currently operating under an annual license until a new license is issued. The licensee has applied for a new license and proposes no major modifications to the licensed project. The existing project consists of: (1) a reinforced concrete dam about 150-foot-long and 20-foot-high, with two earthen embankments and a concrete spillway section with six steel taintor gates, 14-feet by 14-feet; (2) a reservoir having a surface area of 195 acres; (3) a powerhouse containing one 640-kW generating unit; and (4) appurtenant facilities. The project would have an average annual generation of 3,810 MWh. The licensee owns the dam and all project related structures.

m. *Purpose of Project:* All project energy generated would be utilized by the applicant for sale to its customers.

n. *This notice also consists of the following standard paragraphs:* D5.

o. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, N.E., Room 3104, Washington, D.C. 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the Office of Mr. James D. Loock, Director, Generating Station Engineering, WPLC, 222 West Washington Avenue, Madison, WI 53701–0192, (608) 252–3311.

2a. *Type of Applications:* New License.

b. *Project No.:* 2239–004.

c. *Date Filed:* July 31, 1991.

d. *Applicant:* Tomahawk Power & Pulp Company.

e. *Name of Project:* Kings Dam Project.

f. *Location:* On the Wisconsin River, Lincoln County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. John L. Laughlin, Tomahawk Power & Pulp Company, 610 Jackson Street, Wausau, WI 54401, (715) 453–5376.

i. *FERC Contact:* Michael Dees (202) 219–2807.

j. *Deadline Date:* November 2, 1992.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached standard paragraph E.

l. *Description of Project:* The project structures consist of earth dikes, a powerhouse, and a tainter gate spillway. Earth dikes on each side of the concrete powerhouse/spillway structure, constructed of poorly graded sands and gravelly sands, are up to 30 feet high and have a total length of 1,190 feet. The 190.6 foot wide powerhouse/spillway structure includes three 20-foot-wide by 15-foot-high tainter gates and four 22.5-foot-wide intake bays. Three of the intakes are equipped with twin horizontal turbines (two are connected to 800–kW generators). The fourth intake is equipped with a vertical turbine connected to a 300–kW generator. The applicant proposes to add a 800–kW generator to the third twin horizontal turbine. At the normal project head water elevation of 1,458.4 feet, the reservoir surface area is 1,420 acres and the storage volume is 18,200 acre feet. Normal head on the turbines is 23 feet.

The existing project would also be subject to Federal takeover under Sections 14 and 15 of the Federal Power Act.

m. *Purpose of Project:* The purpose of the project is to generate electric power for sale to Wisconsin Public Service Corporation.

n. This notice also consists of the following standard paragraphs: B1 and E.

o. Available Location of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC, 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Tomahawk Power & Pulp Company, 610 Jackson Street, Wausau, WI 54401, (715) 453–5376.

3a. *Type of Application:* New License.

b. *Project No.:* 2334–001.

c. *Date Filed:* December 23, 1991.

d. *Applicant:* Western Massachusetts Electric Company.

e. *Name of Project:* Gardners Falls Project.

f. *Location:* On the Deerfield River, Franklin County, Massachusetts.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. R.A. Reckert, Western Massachusetts Electric Company, P.O. Box 270, Hartford, CT 06141–0270, (203) 665–5315.

i. *FERC Contact:* Michael Dees (202) 219–2807.

j. *Deadline Date:* November 5, 1992.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached standard paragraph E.

l. *Description of Project:* The project structures consist of a dam and impoundment, a power canal, powerhouse, tailrace, and appurtenant facilities. Applicant proposes to operate the project at the same electric capacity (3.48 MW) and in the same general manner as it has prior to relicensing. The proposed average annual generating capacity is 15,740 MWH (existing capacity is 16,600 MHW) using the four existing active turbines and a hydraulic capacity of 1,420 cfs.

Applicant proposes to operate the project in a similar manner, except that they now propose to release a continuous minimum flow of 50 cfs (no minimum flow at this time), or inflow if less, at all times to enhance the available fish habitat in the bypassed reach below the dam.

In detail, the project components are described as follows:

(1) A concrete gravity dam with an ogee type spillway and masonry abutments. The dam is 337 feet long with a maximum height of 30 feet. Permanent crest elevation is 332.79 feet msl with flash board elevation of 334.79 feet msl. The resulting impoundment is 3,200 feet long with approximately 21 acres of surface area at normal full pond. The impoundment has 190 acre-feet of gross storage and 37.2 acre-feet of usable storage.

(2) A brick and concrete powerhouse equipped with four active turbines with a) a rated capacity of 3.58 MW, b) a

hydraulic capacity of 1,420 cfs and a proposed average annual generation of 15,740 MWH (16,600 MWH existing), and c) a gross head of 36.1 feet.

(3) A 1300 foot power canal 31 feet wide and 15 feet deep.

(4) A double circuit 13.8 kV transmission line which extends over the river at the tailrace. The transmission line connects the Gardners Falls project to the Montague substation. However, WMECO states that the line is not part of this project.

The existing project would also be subject to Federal takeover under sections 14 and 15 of the Federal Power Act.

m. *Purpose of Project:* The purpose of the project is to generate electric energy for sale to applicant's customers.

n. This notice also consists of the following standard paragraphs: B1 and E.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Western Massachusetts Electric Company, Hartford, CT 06141–0270.

4a. *Type of Application:* New Major License.

b. *Project No.:* 2390–002.

c. *Date Filed:* December 16, 1992.

d. *Applicant:* Northern States Power Company-Wisconsin.

e. *Name of Project:* Big Falls.

f. *Location:* On the Flambeau River near Big Falls in Rusk County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Anthony G. Schuster, 100 North Barstow Street, P.O. Box 8, Eau Claire, WI 54702, (715) 839–2621.

i. *FERC Contact:* Ms. Julie Bernt, (202) 219–2814.

j. *Deadline Date:* November 2, 1992.

k. *Status of Environmental Analysis:* This application has been accepted for filing but is not ready for environmental analysis at this time—see attached paragraph E.

l. *Description of Project:* The licensed project would consist of the following existing facilities: (1) A 22-foot-high earth embankment dam; (2) a 320-foot concrete spillway; (3) a reservoir with a surface area of 370 acres at surface elevation 1,234 feet msl and a storage area of 6,500 acre-feet; (4) a powerhouse containing three generating units with a total rated capacity of 7.78 MW; and, appurtenant facilities. The applicant is proposing no changes to the project. The average annual net energy generation is 37,318,036 kWh. The applicant owns all the existing project facilities.

The existing project would also be subject to Federal takeover under sections 14 and 15 of the Federal Power Act.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: B1 and E.

5a. *Type of Application:* New Major License.

b. *Project No.:* 2522–002.

c. *Date Filed:* December 18, 1991.

d. *Applicant:* Wisconsin Public Service Corporation.

e. *Name of Project:* Johnson Falls.

f. *Location:* On the Peshtigo River near Stephenson in Marinette County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. R.A. Krueger, 700 North Adams Street, P.O. Box 19002, Green Bay, WI 54307–9002, (414) 433–1268.

i. *FERC Contact:* Ms. Julie Bernt, (202) 219–2814.

j. *Deadline Date:* November 5, 1992.

k. *Status of Environmental Analysis:* This application has been accepted for filing but is not ready for environmental analysis at this time—see attached paragraph E.

l. *Description of Project:* The licensed project would consist of the following existing facilities: (1) a 188-foot-long earth embankment dam; (2) a 141-foot long concrete spillway; (3) a reservoir with a surface area of 130.5 acres at surface elevation 813.8 feet NGVD and a storage area of 65 acre-feet; (4) a powerhouse containing two generating units with a total rated capacity of 3,520 kW; and, (5) appurtenant facilities. The applicant is proposing no changes to the project. The average annual net energy generation is 11,874 MWh. The applicant owns all the existing project facilities.

The existing project would also be subject to Federal takeover under Sections 14 and 15 of the Federal Power Act.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: B1 and E.

6a. *Type of Application:* New Major License.

b. *Project No.:* 2533–008.

c. *Date Filed:* December 26, 1991.

d. *Applicant:* Potlatch Corporation.

e. *Name of Project:* Brainerd Hydroelectric Project.

f. *Location:* On the Mississippi River in the city of Brainerd in Crow Wing County, Minnesota.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Glenn R. Koepp, Mead & Hunt, Inc., 6501 Watts Road, Suite 101, Madison, Wisconsin 53719, (608) 273–6380.

i. *FERC Contact:* Michael Strzelecki at (202) 219–2827.

j. *Comment Date:* October 19, 1992.

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D6.

l. *Description of Project:* The run-of-river project consists of: (1) a 25-foot-high L-shaped dam; (2) a 2,500-acre impoundment; (3) a powerhouse containing five generating units with a total installed capacity of 3,342 kW; (4) a short transmission line extending from the powerhouse to three 500-kVA, 2,400/480-volt step-down transformers; and (5) appurtenant facilities.

The Applicant is not proposing any changes to the existing project works as licensed. The Applicant estimates the average annual generation from this project to be 18,291 MWh.

m. *Purpose of Project:* All project energy generated would be utilized by the applicant.

n. This notice also consists of the following standard paragraphs: B1 and D6.

7a. *Type of Application:* New Major License.

b. *Project No.:* 2546–001.

c. *Date Filed:* December 19, 1991.

d. *Applicant:* Wisconsin Public Service Corporation.

e. *Name of Project:* Sandstone Rapids.

f. *Location:* On the Peshtigo River near Stephenson in Marinette County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. R.A. Krueger, 700 North Adams Street, P.O. Box 19002, Green Bay, WI 54307–9002, (414) 433–1268.

i. *FERC Contact:* Ms. Julie Bernt, (202) 219–2814.

j. *Deadline Date:* November 5, 1992.

k. *Status of Environmental Analysis:* This application has been accepted for filing but is not ready for environmental analysis at this time—see attached paragraph E.

l. *Description of Project:* The licensed project would consist of the following existing facilities: (1) A 420-foot-long earth embankment dam; (2) a 193-foot long concrete spillway; (3) a reservoir

with a surface area of 150 acres at surface elevation 724.1 feet NGVD and a storage area of 50 acre-feet; (4) a powerhouse containing two generating units with a total rated capacity of 3,840 kW; and, (5) appurtenant facilities. The applicant is proposing no changes to the project. The average annual net energy generation is 13,025 MWh. The applicant owns all the existing project facilities.

The existing project would also be subject to Federal takeover under sections 14 and 15 of the Federal Power Act.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: B1 and E.

8a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 2560–001.

c. *Date Filed:* December 19, 1991.

d. *Applicant:* Wisconsin Public Service Corporation.

e. *Name of Project:* Potato Rapids.

f. *Location:* On the Peshtigo River near Porterfield in Marinette County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. R. A. Krueger, 700 North Adams Street, P.O. Box 19002, Green Bay, WI 54307–9002, (414) 433–1268.

i. *FERC Contact:* Ms. Julie Bernt, (202) 219–2814.

j. *Deadline Date:* November 5, 1992.

k. *Status of Environmental Analysis:* This application has been accepted for filing but is not ready for environmental analysis at this time—see attached paragraph E.

1. *Description of Project:* The licensed project would consist of the following existing facilities: (1) Two existing earth fill dikes, 1,950 feet long and 1,500 feet long, respectively; (2) a 684-foot long non-overflow earth fill dam; (3) a 225-foot-long concrete gated spillway; (4) a reservoir with a surface area of 350 acres at surface elevation 621.5 feet NGVD and a storage area of 322 acre-feet; (5) a powerhouse containing three generating units with a total rated capacity of 2,380 kW; and, (6) appurtenant facilities. The average annual net energy generation is 5,677 MWh. the applicant owns all the existing project facilities.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. *This notice also consists of the following standard paragraphs:* B1 and E.

9a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 2561–003.

c. *Date Filed:* December 19, 1991.

d. *Applicant:* Wisconsin Public Service Corporation.

e. *Name of Project:* Peshtigo.

f. *Location:* On the Peshtigo River near Peshtigo in Marinette County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. R. A. Krueger, 700 North Adams Street, P.O. Box 19002, Green Bay, WI 54307–9002, (414) 433–1268.

i. *FERC Contact:* Ms. Julie Bernt, (202) 219–2814.

j. *Deadline Date:* November 5, 1992.

k. *Status of Environmental Analysis:* This application has been accepted for filing but is not ready for environmental analysis at this time—see attached paragraph E.

1. *Description of Project:* The licensed project would consist of the following existing facilities: (1) A 20-foot-high concrete gravity dam; (2) a 20-foot-high, 60-foot-long concrete spillway; (3) a reservoir with a surface area of 460 acres at surface elevation 603 NGVD and a storage area of 460 acre-feet; (4) a powerhouse containing two generating units with a total rated capacity of 584 kW; and (5) appurtenant facilities. The average annual net energy generating is 3,534 MWh. The applicant is proposing no changes to the project. The applicant owns all the existing project facilities.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. *This notice also consists of the following standard paragraphs:* B1 and E.

10a. *Type of Application:* Subsequent License. (see 18 CFR 16.2(e) for definition)

b. *Project No:* 2607–001.

c. *Date Filed:* December 16, 1991.

d. *Applicant:* Duke Power Company.

e. *Name of Project:* Spencer Mountain Project.

f. *Location:* On the South Fork Catawba River in Gaston County, North Carolina, near the town of Gastonia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:*

John E. Lansche, Esq., Duke Power Company, Legal Department, 422 South Church Street, Charlotte, NC 28242–0001, (704) 382–8125

Steve C. Griffith, Jr., Esq., Duke Power Company, Legal Department, 422 South Church Street, Charlotte, NC 28242–0001, (704) 382–8100.

i. *FERC Contact:* Ms. Deborah Frazier-Stutely, (202) 219–2842.

j. *Comment Date:* October 29, 1992.

k. *Description of Project:* The existing project would consist of: (1) A 12-foot-high, 636-foot-long masonry and rubble low head dam with a crest elevation of 634.7 feet msl; (2) a 68-acre reservoir with a storage capacity of 166 acre-feet, at an elevation of 634.7 feet msl; (3) a 58.9-foot-long canal headworks, consisting of four 6-foot wide wood gates with a crest elevation of 641.9 feet msl; (4) a 53.8-foot-long canal spillway connected to the downstream side of the canal headworks, with a crest elevation of 634.7 feet msl; (5) a 30-foot-wide, 10-foot-deep, 3,644-foot-long open earthen canal; (6) a 32-foot-wide trashrack at powerhouse forebay; (7) a 36-inch-diameter bypass pipe; (8) a 22.5-foot-high, 49.5-foot-long powerhouse containing two Francis-type turbines and horizontal generators each with a capacity of 320 kilowatts each, totaling 640 kilowatts; (8) a concrete lined tailrace discharging flows back into the South Fork Catawba River; (9) two substations containing a 2.3/44-kV transformer; (10) a 3,300-foot-long, 44-kV transmission line tying into an existing line; and (11) related facilities.

The project generates on an average 2,581,000 kilowatthours of energy annually.

m. *Purpose of Project:* Project power is utilized by the Rutherford Electric Membership Cooperation, the city of Gastonia, and the applicant's customers.

n. *This notice also consists of the following standard paragraphs: B1, E:*

o. *Available Locations of Applications:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the applicant's office (see item (h) above).

11a. *Type of Application:* Minor License.

b. *Project No.:* 10873–002.

c. *Date Filed:* January 17, 1992.

d. *Applicant:* Michael P. O'Brien and Robert A. Davis, III.

e. *Name of Project:* Cullasaja River Project.

f. *Location:* On the Cullasaja River, Macon County, North Carolina.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Michael P. O'Brien, 390 Timber Laurel Lane, Lawrenceville, GA 30243, (404) 995–0891.

i. *FERC Contact:* Mary Golato (dt), (202) 219–2804.

j. *Deadline Date:* November 2, 1992.

k. *Status of Environmental Analysis:* This application has been accepted for filing and is not ready for environmental analysis at this time—see attached paragraph D8.

l. *Description of Project:* The proposed project facilities would consist of: (1) an existing concrete arch dam which has an overall length of 208 feet and a maximum height of 23 feet; (2) a reservoir which has a surface area of about 67 acres and a volume of 462 acre-feet at a normal water surface elevation of 3,606 feet mean sea level; (3) an intake facility with trashracks at the right abutment of the dam; (4) a proposed 3.0-foot-diameter penstock 2,045 feet long; (5) an existing stone masonry powerhouse containing one 900-kilowatt generating unit; (6) a 2.3-kilovolt transmission line about 150 feet long; and (7) appurtenant equipment and facilities.

m. *Purpose of Project:* All project energy generated would be utilized by the applicant for sale to its customers.

n. *This notice also consists of the following standard paragraphs:* A2, A9, B1, and D8.

o. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Mr. Michael P. O'Brien or Robert A Davis, III, 390 Timber Laurel Lane, Lawrenceville, GA 30243 (404) 995–0891.

12a. *Type of Application:* Minor License.

b. *Project No.:* 11090–000.

c. *Date Filed:* February 15, 1991.

d. *Applicant:* Tunbridge Mill Corporation.

e. *Name of Project:* Tunbridge Mill Project.

f. *Location:* On the First Branch of the White River, Orange County, Vermont.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Jay Boeri, RR #1, Box 798, Woodstock, VT 05091, (802) 436–2521.

i. *FERC Contact:* Michael Dees, (202) 219–2807.

j. *Deadline Date:* November 6, 1992.

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached standard paragraph D10.

l. *Description of Project:* The proposed project would consist of: (1) an existing concrete dam 102 feet long and 8.5 feet high and equipped with flashboards two feet high; (2) an existing reservoir with a surface area of 2.5 acres; (3) a proposed penstock 4.5 feet in diameter and 187 feet long; (4) an existing brick and timber powerhouse containing a 100-kW hydropower unit; (5) an existing tailrace 20 feet long; (6) a proposed 7.2-kV buried transmission line 80 feet long; and (7) appurtenant facilities. The estimated annual energy production is 370 MWh. Project energy would be sold to a local utility.

m. *This notice also consists of the following standard paragraphs:* A4, and D10.

n. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371.

13a. *Type of application:* Preliminary Permit.

b. *Project No.:* 11311–000.

c. *Date Filed:* July 17, 1992.

d. *Applicant:* TS Hydro.

e. *Name of Project:* TS Ranch Hydro Project.

f. *Location:* Partially on lands administered by the Bureau of Land Management approximately 30 miles northeast of Battle Mountain in Lander and Eureka Counties, Nevada. T35/36N, R49/50E.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r)

h. *Applicant Contact:* Mr. Robert Rebholtz, Jr., TS Hydro, 1555 Shoreline Drive, 3rd Floor, Boise, Idaho 83702, (208) 338–2500.

i. *FERC Contact:* Mr. Michael Strzelecki, (202) 219–2827.

j. *Comment Date:* October 23, 1992.

k. *Description of Project:* The proposed project would include two developments. The first development would utilize the water drained from the Goldstrike open pit mine and would consist of: (1) An intake structure located near the point of discharge of water pumped from the mine; (2) a 13,000-foot-long, 54-inch-diameter buried steel pipeline; (3) a powerhouse containing one generating unit with a total installed capacity of 2,500 kW; (4) a tailrace returning water to the applicant's existing Boulder Valley Reservoir; and (5) a 13,000-foot-long transmission line interconnecting with an existing Sierra Pacific Power Company transmission line near the Goldstrike mine.

The second development would consist of: (1) The applicant's two existing 35-foot-high earthen dams and 10,887-acre-foot Boulder Valley Reservoir; (2) the applicant's existing 5-mile-long, 48-inch-diameter pipeline; (3) a powerhouse containing one generating unit with a total installed capacity of 2,000 kW; and (4) a 5-mile-long transmission line interconnecting with the proposed transmission line from the first development.

No new access roads will be needed to conduct the studies. The approximate cost of the studies would be $150,000.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

Standard Paragraphs

A2. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a

competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 (b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit with be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to contract and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtain by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D5. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (October 27, 1992 for Project No. 710–000). All reply comments must be filed with the Commission within 105 days from the date of this notice. (December 11, 1992 for Project No. 710–000).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters are title "PROTEST", "MOTION TO INTERVENE", "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

D6. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, rely comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (October 19, 1992 for Project No. 2533–006). All reply comments must be filed with the Commission within 105 days from the date of this notice. (December 1, 1992 for Project No. 2533–006).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "COMMENTS,"

"REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

– D8. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE", "NOTICE OF INTENT TO FILE COMPETING APPLICATION," or "COMPETING APPLICATION; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant.

Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

D10. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (October 27, 1992 for Project No. 11090-000). All reply comments must be filed with the Commission within 105 days from the date of this notice. (December 11, 1992 for Project No. 11090-000).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS", "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

E. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will notify all persons on the service list and affected resource agencies and Indian tribes. If any person wishes to be placed on the service list, a motion to intervene must be filed by the specified deadline date herein for such motions. All resource agencies and Indian tribes that have official responsibilities that may be affected by the issues addressed in this proceeding, and persons on the service list will be able to file comments, terms and conditions, and prescriptions within 60 days of the date the Commission issues a notification letter that the application is ready for an environmental analysis. All reply comments must be filed with the Commission within 105 days from the date of that letter.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE; " (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Dated: September 1, 1992, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21520 Filed 9-4-92; 8:45 am]

BILLING CODE 6717-01-M

Application Filed With the Commission

September 1, 1992.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Application:* Major License.

b. *Project No.:* 10903-001.

c. *Date Filed:* June 29, 1992.

d. *Applicant:* L.B. Industries, Inc.

e. *Name of Project:* Kanaka Rapids Hydroelectric Project.

f. *Location:* On the Snake River at river mile 592 (near Kanaka Rapids) in Twin Falls and Gooding Counties, Idaho, near the town of Buhl. Section 3 and 10, T.9S., R.14E, Boise Meridian.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:*

L.B. Industries, Inc., c/o Larry Falkner, 1401 Shoreline Drive, P.O. Box 2797, Boise, ID 83701, (208) 345-7515.

Carl L. Myers, P.E., Myers Engineering Company, PA, 750 Warm Springs Avenue, Boise, ID 83712, (208) 336-1425.

Lee S. Sherline, 207 Park Avenue, 101, Falls Church, VA 22046, (703) 536-5401.

i. *FERC Contact:* Ms. Deborah Frazier-Stutely, (202) 219-2842.

j. *Description of Project:* The proposed project would consist of: (1) A side channel turnout intake at elevation 2,917 feet msl; (2) a 20-foot-deep, 800-foot-long unlined canal; (3) a 19-foot-deep, 1,450-foot-long concrete lined canal at elevation 2,920 feet msl; (4) a 160-foot-long ogee spillway with a crest elevation of 2,920.5 feet msl; (5) a 92-foot-wide, 39-foot-long reinforced concrete powerhouse containing two generating units with a total capacity of 6,300 kW, operating under a head of 25 to 28 feet; (6) a switchyard; (7) a 138-kV, 4,600-foot-long transmission line, tying into the Idaho Power Company's Upper Salmon Cliff line; and (8) related facilities.

The proposed project would produce approximately 40.9 GWh of energy annually.

k. In accordance with § 4.32(b)(7) of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate, factual basis for a complete analysis of this application on its merits, they must file a request for the study with the Commission, together with justification for such request, no later than October 16, 1992, and must serve a copy of the request on the applicant.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21515 Filed 9-4-92; 8:45 am]

BILLING CODE 6717-01-M

Application Filed With the Commission

September 1, 1992.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Application:* Major License.

b. *Project No.:* 10772-001.

c. *Date filed:* June 18, 1992.

d. *Application:* Hydro-Power Electric of Nevada, Inc.

e. *Name of Project:* Boulder Rapids Hydroelectric Project.

f. *Location:* On the Snake River at river mile 597.5 in Twin Falls and Gooding Counties Idaho near the town of Buhl. Section 9, T.9S., R.15E., Boise Meridian.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)-825(r).

h. *Applicant Contact:* Hydro-Power Electric of Nevada, Inc., c/o Robert Jones, 1766 Addison Avenue East, Twin Falls, ID 83301, (208) 733-0404

Lee S. Sherline, 207 Park Avenue, suite 101, Falls Church, VA 22046, (703) 536-5401

L.B. Industries, Inc., c/o Larry Falkner, 1401 Sherline Drive, P.O. Box 2797, Boise, ID 83701, (208) 345-7515

Carl L. Meyers, P.E., Myers Engineering Company, P.A., 750 Warm Springs Avenue, Boise, ID 83712, (208) 336-1425

i. *FERC Contact:* Ms. Deborah Frazier-Stutely (202) 219-2842.

j. *Description of Project:* The proposed project would consist of: (1) A side channel turnout intake with a wetland peninsula extending 320 feet into the Snake River at elevation 2,967 feet msl; (2) a 14-foot-deep, 2,331-foot-long partially lined canal at elevation 2,966 feet msl; (3) a 20-foot-wide spillway; (4) a 92-foot-wide, 39-foot-long powerhouse containing two generating units with an installed capacity of 4,900 kW, operating under a head of 16 to 24 feet; (5) 30-foot-long concrete and riprap tailrace; (6) a switchyard; (7) a 138-kV, 2,200-foot-long transmission line tying into the existing Idaho Power Company's Upper Salmon Cliff line; and (8) related facilities.

The project would generate approximately 25.5 GWH of energy annually.

k. In accordance with § 4.32(b)(7) of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate, factual basis for a complete analysis of this application on its merits, they must file a request for the study with the Commission, together with justification for such request, no later than October 16, 1992, and must serve a copy of the request on the applicant.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21514 Filed 9-4-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI92-76-000, et al.]

Sioux Pointe Inc., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Sioux Pointe Inc.

[Docket No. CI92-76-000]

August 28, 1992.

Take notice that on August 24, 1992, Sioux Pointe Inc. (Sioux) filed an application under sections 4 and 7 of the Natural Gas Act (NGA) for a blanket certificate with pregranted abandonment authorizing sales in interstate commerce for resale of all categories of natural gas subject to the Commission's NGA jurisdiction. Sioux's application is on file with the Commission and open to public inspection.

Comment date: September 16, 1992, in accordance with Standard Paragraph J at the end of the notice.

2. Northern Natural Gas Company

[Docket No. CP92-674-000]

August 28, 1992.

Take notice that on August 26, 1992, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP92-674-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon and remove fifty-four small volume measuring stations in various states for People's Natural Gas Company, a division of UtiliCorp United Inc. (Peoples) and Southern Union Gas Company (Southern Union) under its blanket certificate issued in Docket No. CP82-401-000 pursuant to section 7 of

the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern states that it has been informed by Peoples and Southern Union that fifty-three of Peoples' end-users and one of Southern Union's end-users have requested the removal of these measuring stations from their property. Northern further states that the measuring stations it proposes to abandon are located in the states of Iowa, Kansas, Minnesota, Nebraska, Oklahoma and South Dakota.

Northern indicates that the appropriate state Commissions are being notified of the abandonments proposed herein by Northern providing each Commission a copy of the subject application.

Comment date: October 13, 1992, in accordance with Standard Paragraph G at the end of this notice.

3. Northern Natural Gas Company

[Docket No. CP92-670-000]

August 28, 1992.

Take notice that on August 24, 1992, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124-1000, filed in Docket No. CP92-670-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a delivery point for transportation service to the City of Duluth, Minnesota (Duluth), a local distribution company, for redelivery to Northwest Airline's (Northwest) new maintenance facility, under Northern's blanket certificate issued in Docket No. CP82-401-000, all as more fully described in the request which is on file with the Commission and open to public inspection.

Northern requests authorization to install the proposed delivery point, consisting of a tap on Northern's 16-inch Reserve Mining branchline and metering and appurtenant facilities in St. Louis County, Minnesota, to accommodate the delivery of gas to Duluth for Northwest and for other potential commercial and residential customers in the vicinity. It is asserted that Northern would use the facilities for gas transported under its FT-1 and IT-1 Rate Schedules. It is stated that Duluth has requested the new delivery point to accommodate the expansion of its distribution system into new areas. It is asserted that the proposed delivery point would be used to delivery 9,080 Mcf of gas on a peak day, 3,274 Mcf on an average day and 1,195,000 Mcf on an annual basis and that the end uses would be residential, industrial and commercial.

It is further asserted that these volumes are within Duluth's current entitlement from Northern. The cost of the proposed delivery point is estimated at $265,000. Northern states that it would construct, also under its blanket authority in Docket No. CP82-401-000, approximately 1.1 miles of 4-inch pipeline to connect the delivery point proposed herein with Northwest's facility.

Comment date: October 13, 1992, in accordance with Standard Paragraph G at the end of this notice.

4. Panhandle Eastern Pipe Line Company

[Docket No. CP92-665-000]

August 28, 1992.

Take notice that on August 20, 1992, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP92-665-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon sales of natural gas to Battle Creek Gas Company (Battle Creek) and Southeastern Michigan Gas Company (SEMCO), both jurisdictional sales customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle proposes to abandon firm sales to Battle Creek under Panhandle's Rate Schedule LS-1 and to SEMCO under Panhandle's Rate Schedule G-1. It is stated that the proposed abandonments are in response to the customers' election to convert from the existing service to firm sales under Panhandle's Rate Schedule PT-Firm, effective November 1, 1992. Panhandle requests abandonment authority on condition that residual take-or-pay costs and other costs attributable to Battle Creek and Semco are recovered from the two customers. It is asserted that no facilities would be abandoned as a result of the proposal.

Comment date: September 18, 1992, in accordance with the Standard Paragraph F at the end of this notice.

5. Williams Natural Gas Company

[Docket No. CP92-673-000]

August 28, 1992.

Take notice that on August 25, 1992, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP92-673-000 a request pursuant to sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon the transportation of natural gas for direct sale to Chevron U.S.A. (Chevron) and to reclaim measuring, regulating and appurtenant facilities located in Osage County, Oklahoma, under WNG's blanket certificate issued in Docket No. CP82-479-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

WNG states that Hyperion Energy, L.P., has succeeded to Chevron's interest in the gas sales contract and has terminated it effective February 28, 1991. WNG explains that the gas was previously used for waterflood operations and is no longer required. WNG advises that the facilities were originally certificated in Docket No. G-18869, 22 FPC 561 (1959). WMG estimates that the cost of reclaiming the facilities would be $830 and the facilities would have no salvage value.

Comment date: October 13, 1992, in accordance with the Standard Paragraph G at the end of this notice.

6. Florida Gas Transmission Company

[Docket No. CP92-182-002]

August 31, 1992.

Take notice that on August 25, 1992, Florida Gas Transmission Company (FGT), P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP92-182-002 an application pursuant to sections 7 (b) and (c) of the Natural Gas Act for authorization to construct and operate natural gas pipeline facilities which would enable FGT to provide incremental firm transportation service to the Florida market totaling 541,117 MMBtu per day in the winter season (November-April) and 522,573 MMBtu per day in the summer season (May-October) under new Rate Schedule FTS-2, approval of initial incremental rates and to abandon certain previously certificated facilities, all as more fully set forth in the amendment, which is on file with the Commission and open to public inspection.

In addition to the authorizations originally requested, FGT requests authorization to:

(a) Construct and operate facilities necessary to provide incremental market area transportation service totaling 541,117 MMBtu per day in the winter season (November-April) and 522,573 MMBtu per day in the summer season (May-October) into Florida. The facilities to be constructed and added to the system include approximately 101,500 horsepower of compression; 415.9 miles of 36-inch pipeline, 311.74 miles of 30-inch pipeline, and 39.4 miles of 26-inch pipeline; laterals consisting of

15.3 miles of 22-inch pipeline, 3.1 miles of 20-inch, 10.6 miles of 16-inch, 7 miles of 12-inch, 3 miles of 10-inch, 4.7 miles of 8-inch, 4.3 miles of 6-inch and 0.03 mile of 4-inch pipeline; and additional meter facilities and stations necessary to provide deliveries of volumes of gas at various points off of the FGT system;

(b) Abandon certificated facilities by removal of 66.8 miles of 24-inch mainline loop, and authorization to replace it with 66.8 miles of 36-inch mainline loop (included in the 415.9 miles of 36-inch pipeline reflected in (a) above);

FGT also filed a proposed offer of settlement which, if approved, it states would lead to the withdrawal of Peoples Gas System, Inc. opposition in this proceeding. In addition, the settlement provides for (1) a new allocation of risk; (2) permit rolled-in treatment of future expansions; (3) provide certain rate caps; and (4) two part, incremental rates with a 25-year depreciation life, straight-fixed variable method of classifying and allocating costs and a return on equity of 14 percent.

Comment date: September 21, 1992, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice. All persons who have heretofore filed need not file again.

7. Texas Eastern Transmission Corporation

[Docket No. CP92-664-000]

August 31, 1992.

Take notice that on August 20, 1992, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056-5310, filed in Docket No. CP92-664-000 a request pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a new delivery point for transportation service for Winnie Pipeline Company (Winnie) under Texas Eastern's blanket certificate issued in Docket No. CP82-535-000, all as more fully described in the request which is on file with the Commission and open to public inspection.

Texas Eastern proposes to construct and operate a 12-inch hot tap to serve as a new delivery point on its system in Jefferson County, Texas. It is stated that the delivery point would be used for the delivery of up to 9,000 Dt equivalent of natural gas per day to Winnie on an interruptible basis pursuant to an agreement dated August 12, 1992, and pursuant to the terms of Texas Eastern's Rate Schedule IT-1. It is stated that Texas Eastern transports natural gas for Winnie under Texas Eastern's blanket certificate issued in Docket No. CP88-136-000. It is asserted that the proposal would have no effect on Texas Eastern's peak day or annual deliveries and that the deliveries can be accomplished without detriment or disadvantage to Texas Eastern's other customers. The construction cost is estimated at $219,000, for which Texas Eastern would be reimbursed by Winnie.

Comment date: October 15, 1992, in accordance with Standard Paragraph G at the end of this notice.

Standard paragraphs

F. Any person desiring to be heard or make any protest with reference to said file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Standard Paragraph

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21479 Filed 9-4-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ES92-55-000, et al.]

Boston Edison Company, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

August 31, 1992.

Take notice that the following filings have been made with the Commission:

1. Boston Edison Company

[Docket No. ES92-55-000]

Take notice that on August 28, 1992, Boston Edison Company filed an application with the Federal Energy Regulatory Commission under section 204 of the Federal Power Act requesting authorization to issue not more than $350 million of short-term debt securities on or before December 31, 1994, with a final maturity date no later than December 31, 1995.

Comment date: September 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Schuylkill Energy Resources

[Docket No. QF85-720-003]

On August 20, 1992, Schuylkill Energy Resources tendered for filing an amendment to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The amendment provides additional information pertaining primarily to the technical data of the cogeneration facility.

Comment date: September 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21478 Filed 9-4-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-48-000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 1, 1992.

Take notice that ANR Pipeline Company ("ANR") on August 27, 1992, tendered for filing as part of its FERC Gas Tariff, Original Volume Nos. 1, 1-A, 2 and 3, the following tariff sheets to be effective October 1, 1992.

Original Volume No. 1

Sixty-Sixth Revised Sheet No. 18

Original Volume No. 1-A

Eighteenth Revised Sheet No. 6

Original Volume No. 2

Seventeenth Revised Sheet No. 16
Seventeenth Revised Sheet No. 17
Seventeenth Revised Sheet No. 18
Seventeenth Revised Sheet No. 19
Nineteenth Revised Sheet No. 20
Eighteenth Revised Sheet No. 21
Fifteenth Revised Sheet No. 22

Original Volume No. 3

Twelfth Revised Sheet No. 5

ANR states that the above referenced tariff sheets are being filed to adjust its Annual Charge Adjustment ("ACA") rate as permitted by section 17 of its Volume No. 1 Tariff. The revised sheets reflect an ACA rate of $0.0023.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such petitions or protests should be filed on or before September 9, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21480 Filed 9-4-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-24-000]

Equitrans, Inc. Notice of Proposed Change in FERC Gas Tariff

September 1, 1992.

Take notice that Equitrans, Inc. (Equitrans), on August 28, 1992, tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Original Volume Nos. 1 and 3, to become effective October 1, 1992:

Original Volume No. 1

Thirty-Eighth Revised Sheet No. 10
Eleventh Revised Sheet No. 23

Original Volume No. 3

Eleventh Revised Sheet No. 4
Eleventh Revised Sheet No. 8

Pursuant to Order No. 472, the Commission has authorized pipeline companies to track and pass through to their customers their annual charges under an Annual Charge Adjustment (ACA) clause. The 1992 ACA unit surcharge approved by the Commission is $.0023 per Mcf. Equitrans has converted this Mcf rate to a dekatherm (Dth) of $.0022 per Dth.

Pursuant to § 154.51 of the Commission's Regulation, Equitrans requests that the Commission grant any waivers necessary to permit the tariff sheets contained herein to become effective October 1, 1992.

Equitrans states that a copy of its filing has been served upon its purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Section 385.211 and 385.214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 9, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any persons wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21481 Filed 9-4-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA92-1-15-001 & TQ92-5-15-001]

Mid Louisiana Gas Company; Notice of Revision to Annual Filing

September 1, 1992.

Take notice that Mid Louisiana Gas Company ("Mid Louisiana") on August 28, 1992, tendered for filing as part of First Revised Volume No. 1 of its FERC Gas Tariff the Tariff Sheet and proposed effective date as set forth below:

1st Rev. Superseding

Substitute Ninety-Second, Rev. Sheet No. 3a
1st Ninety-First, Revised Sheet No. 3a
September 1, 1992

Mid Louisiana states that the purpose of the filing of Substitute Ninety-Second Rev. Sheet No. 3a is to revise the current adjustment contained in Mid Louisiana's annual PGA filing in compliance with the Commission's Reglations issued in Order Nos. 483 and 483-A.

Mid Louisiana states that the tariff sheet was filed as a revision to its annual PGA filing to reflect the latest estimated gas cost to Mid Louisiana from its various suppliers. Mid Louisiana states that the majority of these suppliers have contracts with Mid Louisiana which contain pricing provisions which are tied to the spot market price of gas.

Mid Louisiana states that copies of this filing have been mailed to each of its jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before September 9, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21482 Filed 9-4-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-15-25-000]

Mississippi River Transmission Corporation; Notice of Rate Change Filing

September 1, 1992

Take notice that on August 28, 1992 Mississippi River Transmission Corporation (MRT) tendered for filing Eighty-First Revised Sheet No. 4, and Fortieth Revised Sheet No. 4.1 to its FERC Gas Tariff, Second Revised Volume No. 1 to be effective September 1, 1992. MRT states that the purpose of the instant filing is to reflect an out-of-cycle purchase gas cost adjustment (PGA).

MRT states that Eighty-First Revised Sheet No. 4 and Fortieth Revised Sheet No. 4.1 reflect an increase of 5.31 cents per MMBtu in the commodity cost of purchased gas from PGA rates filed to be effective September 1, 1992, in Docket No. TQ92-14-25-000. MRT also states that since the July 31, 1992 filing date, MRT has experienced changes in purchase and transportation costs for its system supply that could not have been reflected in that filing under current Commission regulations.

MRT states that a copy of the filing has been mailed to each of MRT's jurisdictional sales customers and the State Commissions of Arkansas, Missouri, and Illinois.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 9, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21483 Filed 9-4-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-81-000]

Stingray Pipeline Company; Notice of Conference

September 1, 1992.

Take notice that on September 17, 1992, a conference will be convened in the above-captioned docket to discuss Stingray Pipeline Company's summary of its proposed plan for implementation of Order No. 636 and 636-A.

The conference will be held at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. The conference will begin at 9 a.m. All interested persons are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested persons can call Theresa Cooney at (202) 208-0418 or Jacquie McDuffy at (202) 208-0928.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21484 Filed 9-4-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-17-000]

Texas Eastern Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 1, 1992.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on August 28, 1992, tendered for filing as part of its FERC Gas Tariffs, Fifth Revised Volume No. 1 and Original Volume No. 2, six copies each of the following tariff sheets:

Fifth Revised Volume No. 1

Forty-fifth Revised Sheet No. 50.1
Fifty-second Revised Sheet No. 50.2
Twenty-sixth Revised Sheet No. 51
Seventh Revised Sheet No. 51.1
Tenth Revised Sheet No. 51.2
Tenth Revised Sheet No. 51.3

Original Volume No. 2

Ninth Revised Sheet No. 1J
Ninth Revised Sheet No. 1K
Fifth Revised Sheet No. 1L

Texas Eastern states that the purpose of this filing is to permit the tracking of the ACA unit surcharge authorized by the Commission for fiscal year 1993. The ACA Unit Surcharge authorized by the Commission for fiscal year 1993 is $0.0023 per Mcf, $0.0022 per dth converted to Texas Eastern's measurement basis.

Texas Eastern also proposes to track in its Rate Schedules SS-2 and SS-3 rates CNG Transmission Corporation's (CNG) revised ACA surcharge for rates applicable to its Rate Schedule GSS. Texas Eastern states that CNG is filing revised tariff sheets to be effective October 1, 1992 reflecting its revised ACA surcharge. Section 4.F of Texas Eastern's Rate Schedules SS-2 and SS-3 provide for an automatic rate adjustment to flow through any changes in CNG's GSS rates which underlie Texas Eastern's SS-2 and SS-3 rates.

The proposed effective date of the above listed tariff sheets is October 1, 1992.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers, interested state commissions and all current Rate Schedule IT-1 Shippers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 9, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21485 Filed 9-4-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-10-17-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

September 1, 1992.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on August 28, 1992 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies each of the following tariff sheets:

Proposed To Be Effective July 1, 1992

Revised 47th Revised Sheet No. 50.2
Revised Sub 47th Revised Sheet No. 50.2

Proposed To Be Effective August 1, 1992

Fiftieth Revised Sheet No. 50.2

Proposed To Be Effective September 1, 1992

Fifty-first Revised Sheet No. 50.2

Texas Eastern states that these sheets are being filed pursuant to section 4.F of Texas Eastern's Rate Schedules SS-2 and SS-3 to flow through a change in CNG Transmission Corporation's (CNG) Rate Schedule GSS rate which underlies the rates for Texas Eastern's Rate Schedules SS-2 and SS-3.

Texas Eastern states that CNG made tariff filings on July 1, 1992 and July 2, 1992 in Docket Nos. TM92-8-22-000 and TA92-1-22-000 which revise the Rate Schedule GSS rates effective July 1, 1992 and September 1, 1992, respectively.

Texas Eastern states that Revised 47th Revised Sheet No. 50.2 will be used for purposes of billing the revised Rate Schedule SS-2 and SS-3 rates effective July 1, 1992 while Revised Sub 47th Revised Sheet No. 50.2 will be used for purposes of determining the refund in accordance with the Stipulation and Agreement in Docket No. RP90-119-000 *et al.* Fiftieth Revised Sheet No. 50.2 is being filed to reflect CNG's July 1, 1992 GSS rate change in Texas Eastern's out-of-cycle PGA effective August 1, 1992.

The proposed effective dates of the above tariff sheets are as indicated above.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 9, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21486 Filed 9-4-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-56-000]

Valero Interstate Transmission Co.; Proposed Changes in FERC Gas Tariff

September 1, 1992.

Take notice that Valero Interstate Transmission Company ("Vitco"), on August 28, 1992 tendered for filing the following tariff sheets containing changes to the ACA unit rate in each applicable rate schedule:

FERC Gas Tariff, First Revised Volume No. 1

1st Revised Sheet No. 7
1st Revised Sheet No. 8
1st Revised Sheet No. 70

FERC Gas Tariff, First Revised Volume No. 2

6th Revised Sheet No. 6
1st Revised Sheet No. 21

The proposed effective date of the above filing is October 1, 1992. Vitco requests a waiver of any Commission order or regulations which would prohibit implementation by October 1, 1992.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 9, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21487 Filed 9-4-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-53-000]

Western Gas Interstate Co.; Conference

September 1, 1992.

Take notice that on September 22, 1992, a conference will be convened in the above-captioned docket to discuss Western Gas Interstate Company's summary of its proposed plan for implementation of Order Nos. 636 and 636-A.

The conference will be held in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. The conference will begin at 10 a.m. All interested persons are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested persons can contact David Faerberg at (202) 208-1275 or Marilyn Rand at (202) 208-0327.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21488 Filed 9-4-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA92-7-000]

Winnie Pipeline Co.; Petition for Adjustment

August 28, 1992.

On August 17, 1992, Winnie Pipeline Company (Winnie) filed with the Federal Energy Regulatory Commission (Commission) a petition for adjustment pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA), from the regulations appearing at subpart C of part 284 of the Commission's regulations. Winnie, which does not render city-gate service, seeks an adjustment to permit it to base its rates for section 311(a) storage services on the Winnie storage rate on file with the Railroad Commission of Texas, in satisfaction of the comparable service standard set forth in § 284.123(b)(1)(ii) of the Commission's regulations.

The procedures applicable to the conduct of this adjustment proceeding are found in subpart K of the Commission's Rules of Practice and Procedure.

Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of such subpart K. All motions to intervene must be filed

within 15 days after publication of this notice in the Federal Register.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21489 Filed 9-4-92; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4201-5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before October 8, 1992. For further information, or to obtain a copy of this ICR, contact Sandy Farmer at EPA (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Data Acquisition for List 3 Inert Ingredients (EPA ICR No. 1620.01). This is a new collection.

Abstract: Under section 3(c)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), pesticide registrants are required to report to EPA and keep records of data from studies of the pesticides which are currently registered under FIFRA. EPA collects data on List 1 pesticides which are known to contain toxic inert ingredients. EPA also collects information on List 2 pesticides which contain inert ingredients with suspected toxicity. Under this collection, registrants would submit to EPA, and keep records of, any information on List 3 pesticides which contain inert ingredients with unknown toxicity. The Agency uses the information to assess whether the inert ingredients contained in pesticides may cause an unreasonable adverse effect on human health and the environment, and to determine whether to maintain the registration of a pesticide.

Burden Statement: The burden for this collection of information is estimated to average 5.438 hours per response for reporting, and 24 hours per recordkeeper annually. This estimate includes the time needed to review instructions, gather the data needed, complete the form, and review the collection of information.

Respondents: Pesticide Registrants.

Estimated No. of Respondents: 400.

Estimated No. of Responses per Respondent: 50.

Estimated Total Annual Burden on Respondents: 273,100 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM 223Y), 401 M Street, SW., Washington, DC 20460.

and

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: August 31, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92-21546 Filed 9-4-92; 8:45 am]

BILLING CODE 6560-50-M

FARM CREDIT SYSTEM INSURANCE CORPORATION

Statement of Policy on Assistance To Operating Insured System Banks

AGENCY: Farm Credit System Insurance Corporation.

ACTION: Statement of policy; request for comments.

SUMMARY: Section 5.61 of the Farm Credit Act of 1971 (the Act) provides the Farm Credit System Insurance Corporation (Corporation) with authority, in its sole discretion, to provide assistance to insured banks as that term is defined in section 5.61.

Given the importance of the provisions of section 5.61, the Board of Directors of the Corporation has concluded that it should adopt a policy statement setting forth the circumstances under which financial assistance to operating institutions will be considered, and the terms and conditions which would likely be imposed in conjunction with the granting of assistance. The Board of Directors is requesting comments on such terms and conditions.

DATES: Comments must be submitted on or before October 8, 1992.

ADDRESSES: Comments should be mailed or delivered (in triplicate) to G. Michael Dew, Director, Risk Management Division, Farm Credit System Insurance Corporation, McLean, Virginia 22102-0826. Copies of all comments received will be available for examination by interested parties in the offices of the Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia.

FOR FURTHER INFORMATION CONTACT: G. Michael Dew, Director, Risk Management Division, Farm Credit System Insurance Corporation, P.O. Box 9826, McLean, VA 22102-0826, (703) 883-4385, TDD (703) 883-4455.

SUPPLEMENTARY INFORMATION: Under section 5.61 of the Act, the Corporation may provide financial assistance to operating insured System banks:[1] (1) To prevent the placing of the bank in receivership or to assist a bank in danger of being placed in receivership, or (2) when severe financial conditions exist that threaten the stability of a significant number of insured System banks or of insured System banks possessing significant financial resources, to lessen the risk to the Corporation posed by such insured System bank under such threat of instability.

In order for the Corporation to provide assistance to any operating insured bank, the Corporation Board of Directors must determine that either: (1) The amount of assistance is less than the cost of liquidating the bank (including paying the insured obligations issued on behalf of the bank) or (2) the continued operation of the bank is essential to provide adequate agricultural credit services in the area of operations of the bank.

Assistance to operating insured banks may be provided directly to the bank in danger of being placed in receivership, or to another insured bank qualified to merge with or acquire the failing bank.

The Corporation believes that proposals for assistance to operating insured banks under section 5.61 of the Act should be reviewed by the Corporation utilizing the following criteria:

1. The cost to the Corporation must be clearly less than other available alternatives.

[1] As used in section 5.61, the terms "Insured System Bank" and "Bank" include each Production Credit Association and other Associations making direct loans under the authority provided under section 7.6 of the Farm Credit Act of 1971, as amended.

2. All alternative sources of assistance must be exhausted prior to the Corporation's granting assistance.

3. The proposal must reasonably anticipate the viability of the recipient, including provisions for the attainment of an adequate level of capitalization within a reasonable period of time.

4. The proposal should provide for the eventual repayment of the assistance.

5. The proposal must provide for adequate managerial resources, and for the Corporation's approval of business plans. Continued service of any Director or Senior Officer serving the assisted institution in a policy-making role, as determined by the Corporation, will be subject to approval of the Corporation. In addition, compensation arrangements covering Directors and Senior Officers must be approved by the Corporation.

6. The Corporation will consider on a case-by-case basis the nature of the financial assistance requested. Generally, assistance proposals should not anticipate the acquisition and servicing of assets from the assisted institution by the Corporation.

7. Fee arrangements with attorneys, accountants, consultants, and other parties incident to requests for financial assistance must be disclosed to the Corporation. Excessive fees are unnecessary and must be avoided; fee arrangements will be considered in evaluating the cost of the assistance request. In no case should the payment of any fee be contingent upon approval or receipt of financial assistance.

8. The Corporation retains the option of evaluating the assistance proposal within the context of a competitive bidding process and will consider soliciting interest from qualified acquirors.

9. An institution seeking operating institution assistance must consent to unrestricted on-site due diligence review by any potential acquiror that is determined by the Corporation to be qualified after consultation with the Farm Credit Administration.

10. The proposal must contain quantifiable limits on all financial items in the request.

11. The Corporation will evaluate the potential financial effect of the proposal on shareholders, uninsured creditors and the financial markets.

The Corporation invites comments on these factors and recommendations for any others that may be appropriate for consideration and inclusion in the Board of Directors policy statement.

Dated: August 31, 1992.

Curtis M. Anderson,

Secretary, Board of Directors, Farm Credit System Insurance Corporation.

[FR Doc. 92-21492 Filed 9-4-92; 8:45 am]

BILLING CODE 6710-01-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

August 26, 1992.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452-1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0022.

Title: Application for Permit of an Alien Amateur Radio Licensee to Operate in the United States.

Form Number: FCC Form 610-A.

Action: Extension of a currently approved collection.

Respondents: Individuals or households.

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 4,000 responses; .084 hours average burden per response; 336 hours total annual burden.

Needs and Uses: FCC Form 610-A is used when aliens, who hold an amateur operator and station license issued by his/her government, wish to apply for a permit to operate an amateur radio station in the United States. Licensing Division personnel will use the data to determine eligibility for radio station authorization and to issue a radio station/operator permit. Data is also used by Compliance personnel in conjunction with Field Engineers for enforcement and interference resolution purposes.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-21471 Filed 9-4-92; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

August 27, 1992.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, Downtown Copy Center, 1990 M Street, NW, suite 640, Washington, DC 20036, (202) 452-1422. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: None.

Title: ARMIS Joint Cost Report.

Report Number: FCC Report 43-03.

Action: New collection.

Respondents: Businesses or other for profit.

Frequency of Response: Annually.

Estimated Annual Burden: 150 responses, 115 hours average burden per response; 17,250 hours total annual burden.

Needs and Uses: This submission is made to request extension of the expiration date of FCC Report 43-03, the Joint Cost Report, without any change in its substance or method of collection. The Joint Cost Report contains financial and operating data and is used to monitor the local exchange carrier industry and to perform routine analyses of costs and revenues on behalf of the Commission. It is one of ten reports comprising the Automated Reporting Management Information System (ARMIS). ARMIS was implemented to facilitate the timely and efficient analyses of revenue requirements and rate of return, to provide an improved basis for audits and other oversight functions, and to enhance the Commission's ability to quantify the effects of alternative policy. Currently, OMB control number 3060-0395 is assigned to ARMIS reports, including this one. However, the Commission is

requesting that a new OMB control number be assigned exclusively for the Joint Cost Repair to facilitate recordkeeping.

OMB Number: None.
Title: ARMIS Quarterly Report.
Report Number: FCC Report 43-01.
Action: New collection.
Respondents: Businesses or other for-profit.
Frequency of Response: Quarterly.
Estimated Annual Burden: 600 responses; 220 hours average burden per response, 132,000 hours total annual burden.
Needs and Uses: This submission is made to request extension of the expiration date of FCC Report 43-01, the Quarterly Report, without any change in its substance or method of collection. The Quarterly Report contains financial and operating data and is used to monitor the local exchange carrier industry and to perform routine of costs and revenues on behalf of the Commission. It is one of ten reports comprising the Automated Reporting Management Information System (ARMIS). ARMIS was implemented to facilitate the timely and efficient analyses of revenue requirements and rate of return, to provide an improved basis for audits and other oversight functions, and to enhance the Commission's ability to quantify the effects of alternative policy. Currently, OMB control number 3060-0395 is assigned to ARMIS reports, including this one. However, the Commission is requesting that a new OMB control number be assigned exclusively for the Quarterly Report to facilitate recordkeeping.

OMB Number: None.
Title: ARMIS Access Report.
Report Number: FCC Report 43-04.
Action: New collection.
Respondents: Businesses or other for-profit.
Frequency of Response: Annually.
Estimated Annual Burden: 150 responses; 1,150 hours average burden per response, 172,500 hours total annual burden.
Needs and Uses: This submission is made to request extension of the expiration date of FCC Report 43-04, the Access Report, without any change in the substance or method of collection. The Access Report contains financial and operating data and is used to monitor the local exchange carrier industry and to perform routine of costs and revenues on behalf of the Commission. It is one of ten reports comprising the Automated Reporting Management Information System (ARMIS). ARMIS was implemented to facilitate the timely and efficient analyses of revenue requirements and rate of return, to provide an improved basis for audits and other oversight functions, and to enhance the Commission's ability to quantify the effects of alternative policy. Currently, OMB control number 3060-0395 is assigned to ARMIS reports, including this one. However, the Commission is requesting that a new OMB control number be assigned exclusively for the Access Report to facilitate recordkeeping.

Federal Communications Commission.
Donna R. Searcy,
Secretary.
[FR Doc. 92-21470 Filed 9-4-92; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-957-DR]

Guam; Notice of Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).
ACTION: Notice.

EFFECTIVE DATE: August 28, 1992.
SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Territory of Guam (FEMA-957-DR), dated August 28, 1992, and related determinations.
FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.
SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 28, 1992, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Territory of Guam, resulting from Typhoon Omar on August 28, 1992, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the Territory of Guam.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Richard Buck of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Territory of Guam to have been affected adversely by this declared major disaster:

The Territory of Guam for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Wallace E. Stickney,
Director.
[FR Doc. 92-21521 Filed 9-4-92; 8:45 am]
BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Oakland, et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-010974-011.
Title: Oakland/International Transportation Service Terminal Agreement.
Parties:
City of Oakland ("Port")

International Transportation Service, Inc. ("ITS").

Synopsis: The amendment extends the term of the Agreement until October 8, 1992 or until the effectiveness of a pending supplemental agreement between the Port and ITS.

Agreement No.: 224–200087–004.

Title: Oakland/Maersk Pacific Terminal Agreement.

Parties:

City of Oakland ("Port")

Maersk Pacific Ltd. ("Maersk")

Synopsis: The amendment adjusts the rental Maersk will pay to the port for the premises Maersk leases under the Agreement.

Dated: September 1, 1992.

Joseph C. Polking,

Secretary.

By Order of the Federal Maritime Commission.

[FR Doc. 92–21491 Filed 9–4–92; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Fourth Financial Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 2, 1992.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Fourth Financial Corp.*, Wichita, Kansas; to acquire 100 percent of the voting shares of Southern Bancorp, Inc., Tulsa, Oklahoma, and thereby indirectly acquire Southern National Bank, Tulsa, Oklahoma.

2. *United Nebraska Financial Co.*, Grand Island, Nebraska; to acquire 100 percent of the voting shares of First Security Bank of Holdrege, Holdrege, Nebraska.

Board of Governors of the Federal Reserve System, September 1, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92–21497 Filed 9–4–92; 8:45 am]

BILLING CODE 6210-01-F

NBD Bancorp, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 2, 1992.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *NBD Bancorp, Inc.*, and NBD Indiana, Inc., both located in Detroit, Michigan; as part of their application to acquire INB Financial Corporation, Indianapolis, Indiana, to acquire INB's 4.65 percent interest in BHC Financial, Inc., Philadelphia, Pennsylvania, for a total of 8.34 percent, and thereby indirectly acquire:

(1) BHC Securities, Inc., Philadelphia, Pennsylvania, and thereby engage in securities brokerage services; underwriting and dealing in government obligations and money market instruments; and the purchase and sale of gold and silver bullion and coins for the account of customers; and

(2) Texas First Securities Corporation, Houston, Texas, and thereby engage in providing investment advisory and brokerage services separately and on a combined basis for institutional and retail customers.

These activities have been authorized by §§ 225.25(b)(15) and (16) of the Board's Regulation Y and by Board Order (*See, e.g., United Virginia Bankshares, Inc.*, 73 Federal Reserve Bulletin 309 (1987); and *PNC Financial Corporation*, 75 Federal Reserve Bulletin 396 (1989)). These activities will be conducted subject to all of the commitments and limitations in the Board's Orders.

Board of Governors of the Federal Reserve System, September 1, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92–21498 Filed 9–4–92; 8:45 am]

BILLING CODE 6210-01-F

Susquehanna Bancshares, Inc., et al.; Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise

noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 2, 1992.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Susquehanna Bancshares, Inc., Lititz, Pennsylvania; to engage *de novo* through its subsidiary, Susquebanc Lease Co., Manheim, Pennsylvania, in making, acquiring or servicing loans or other extensions of credit, for the Company's account, or for the account of others, such as would be made by a commercial finance company pursuant to § 225.25(b)(1)(iv) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First Midwest Bancorp, Inc., Naperville, Illinois; to engage *de novo* in acquiring and servicing nonperforming loans from its subsidiary banks pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 1, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-21499 Filed 9-4-92; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Los Angeles Target City Cooperative Agreement; Grant Availability

AGENCY: Office for Treatment Improvement, ADAMHA, DHHS.

ACTION: Supplemental award to the Los Angeles (LA) Target City Cooperative Agreement—LA Drug Program Enhancement Project.

SUMMARY: This notice is to provide information to the public that the Office for Treatment Improvement (OTI), in concert with the President's Weed and Seed strategy, is making available special funds to assist LA neighborhoods affected by recent civil disturbances. Specifically, up to $1 million has been set aside from the Office of National Drug Control Policy's special forfeiture funds, which were transferred to OTI for treatment expansion programs. These funds will be awarded in fiscal year 1992 as a supplement to the ongoing LA Target City cooperative agreement.

The supplemental award will focus on providing expanded and improved treatment services for adolescents involved with the juvenile justice system who are living in the two designated LA weed and seed service areas. This target population has been identified as one of the highest risk population groups. Therefore, the project will seek to build on expanding the capacity of treatment services available through the current cooperative efforts between the LA County Alcohol and Drug Abuse Program and the LA County Probation Department in implementing the Juvenile Offender Substance Abuse Treatment program (JOSAT), as well as the ongoing cooperative efforts between the city, county, and State agencies involved in the Target City project.

The receipt, review, and award of the supplemental application from the California Department of Alcohol and Drug Programs will be handled in an expedited manner, and it is anticipated that the supplemental award will be made by mid-September 1992. The amount of funds awarded, as well as the specific purposes and activities for which funds will be used, will be based on the quality of the application as determined by an objective review and the negotiated terms and conditions of award.

Authority: The award will be made under the authority section 509G(b) of the Public Health Service Act and Public Law 102-141.

The Catalog of Federal Domestic Assistance number for this program is 93.950.

Joseph R. Leone,

Associate Administrator for Management, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 92-21460 Filed 9-4-92; 8:45 am]

BILLING CODE 4160-20-M

Office for Substance Abuse Prevention; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meetings of the advisory committees of the Office for Substance Abuse Prevention for September 1992.

The initial review groups will be performing review of applications for Federal assistance; therefore, portions of these meetings will be closed to the public as determined by the Acting Administrator, ADAMHA, in accordance with 5 U.S.C. 552b(c)(6) and 5 U.S.C. app. 2 10(d).

A summary of the meetings and rosters of committee members may be obtained from: Ms. D. Herman, OSAP Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration, Rockwall II Building, Suite 630, 5600 Fishers Lane, Rockville, MD 20857 (Telephone: 301-443-4783).

Substantive program information may be obtained from the contact whose name, room number, and telephone number is listed below.

Committee Names: High Risk Youth Review Committee, Subcommittees 1 and 3.
Meeting Date(s): September 21-25, 1992.
Place: Courtyard Marriott, 805 Russell Avenue, Gaithersburg, MD 20879.
Open: September 21, 8:30 a.m.-10 a.m.
Closed: Otherwise.
Contact: High Risk Youth Review Committee, Subcommittee 1, Mrs. Dorothy West, Telephone: (301) 443-5062.
High Risk Youth Review Committee, Subcommittee 3, Frederick C. Depp, Ph.D., Telephone: (301) 443-9540.

Committee Names: High Risk Youth Review Committee, Subcommittees 2 and 4.
Meeting Date(s): September 21-25, 1992.
Place: Marriott Residence Inn, 7335 Wisconsin Avenue, Bethesda, MD 20814.
Open: September 21, 8:30 a.m.-10 a.m.
Closed: Otherwise.
Contact: High Risk Youth Review Committee, Subcommittee 2, Beverlie Fallik, Ph.D., Telephone: (301) 443-9136.
High Risk Youth Review Committee, Subcommittee 4, Thomas Granzow, Ph.D., Telephone: (301) 443-5062.

Committee Name: Substance Abuse Prevention Conference Review Committee.
Meeting Date(s): September 30, 1992, October 1-2, 1992.
Place: J.W. Marriott Hotel, 1331 Pennsylvania Avenue, Washington, DC.
Open: September 30, 8:30 a.m.-10 a.m.

Closed: Otherwise.

Contact: Substance Abuse Prevention Conference, Review Committee, Ferdinand W. Hui, Ph.D., Telephone: (301) 443-9136.

Dated: September 1, 1992.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 92-21466; Filed 9-4-92; 8:45 am]

BILLING CODE 4160-20-M

Centers for Disease Control

Diseases Transmitted Through the Food Supply

AGENCY: Centers for Disease Control, Public Health Service, Department of Health and Human Services.

ACTION: Notice of annual update of list of infectious and communicable diseases that are transmitted through handling the food supply and the methods by which such diseases are transmitted.

SUMMARY: Section 103(d) of the Americans with Disabilities Act of 1990 requires the Secretary to publish a list of infectious and communicable diseases that are transmitted through handling the food supply. The Centers for Disease Control (CDC) published a final list on August 16, 1991, (56 FR 40897). The final list was reviewed in light of newly received information and has been revised as set forth below.

EFFECTIVE DATE: September 8, 1992.

FOR FURTHER INFORMATION CONTACT: Dr. Morris E. Potter, National Center for Infectious Diseases, Centers for Disease Control, 1600 Clifton Road, NE, Mailstop C-09, Atlanta, Georgia 30333, telephone (404) 639-2237.

SUPPLEMENTARY INFORMATION: Section 103(d) of the Americans with Disabilities Act of 1990, 42 U.S.C. 12113(d), requires the Secretary of Health and Human Services to:

1. Review all infectious and communicable diseases which may be transmitted through handling the food supply;
2. Publish a list of infectious and communicable diseases which are transmitted through handling the food supply;
3. Publish the methods by which such diseases are transmitted; and
4. Widely disseminate such information regarding the list of diseases and their modes of transmissibility to the general public.

Additionally, the list is to be updated annually.

After consultation with the Food and Drug Administration, the National Institutes of Health, state and local health officers, and national public health organizations, and after reviewing comments received after publication of an interim list, CDC published a final list in the **Federal Register** on August 16, 1991, (56 FR 40897).

Since the publication of the list on August 16, 1991, new information has been reviewed. A report on neurocysticercosis forms the basis for adding *Taenia solium*" infections to the list of infectious and communicable diseases in Part II.

Therefore, this revision of the list of infectious and communicable diseases that are transmitted through handling the food supply and the methods by which such diseases are transmitted is set forth below:

I. Pathogens Often Transmitted by Food Contaminated by Infected Persons Who Handle Food, and the Modes of Transmission of Such Pathogens

The contamination of raw ingredients from infected food-producing animals and contamination during processing are more important causes of foodborne disease than is contamination of foods by persons with infectious or contagious diseases. However, some pathogens are frequently transmitted by food contaminated by infected persons. The presence of any one of the following signs or symptoms in persons who handle food may indicate infection by one of these pathogens: diarrhea, vomiting, open skin sores, boils, fever, dark urine, or jaundice. The failure of food employees to wash hands (in situations such as after using the toilet, handling raw meat, cleaning spills, or carrying garbage, for example), wear clean gloves, or use clean utensils is responsible for the foodborne transmission of these pathogens. Non-foodborne routes of transmission, such as from one person to another, are also important in the spread of these pathogens. Pathogens that can cause diseases after an infected person handles food are the following:

Hepatitis A virus
Norwalk and Norwalk-like viruses
Salmonella typhi
Shigella species
Staphylococcus aureus
Streptococcus pyogenes

II. Pathogens Occasionally Transmitted by Food Contaminated by Infected Persons Who Handle Food, But Usually Transmitted by Contamination at the Source or in Food Processing or by Non-foodborne Routes

Other pathogens are occasionally transmitted by infected persons who handle food, but usually cause disease when food is intrinsically contaminated or cross-contaminated during processing or preparation. Bacterial pathogens in this category often require a period of temperature abuse to permit their multiplication to an infectious dose before they will cause disease in consumers. Preventing food contact by persons who have an acute diarrheal illness will decrease the risk of transmitting the following pathogens:

Campylobacter jejuni
Entamoeba histolytica
Enterohemorrhagic *Escherichia coli*
Enterotoxigenic *Escherichia coli*
Giardia lamblia
Nontyphoidal *Salmonella*
Rotavirus
Taenia solium
Vibrio cholerae 01
Yersinia enterocolitica

References

1. World Health Organization. Health surveillance and management procedures for food-handling personnel: report of a WHO consultation. World Health Organization technical report series; 785. Geneva: World Health Organization, 1989.

2. Frank JF, Bernhart HM. Food and dairy sanitation. In: Last JM, ed. Maxcy-Rosenau public health and preventive medicine. 12th edition. New York: Appleton-Century-Crofts, 1986:765-805.

3. Bennett JV, Holmberg SD, Rogers MF, Solomon SL. Infectious and parasitic diseases. In: Amler RW, Dull HB, eds. Closing the gap: the burden of unnecessary illness. New York: Oxford University Press, 1987:102-114.

4. Centers for Disease Control. Locally acquired neurocysticercosis—North Carolina, Massachusetts, and South Carolina, 1989-1991. MMWR 1992;41:1-4.

Dated: August 31, 1992.

William L. Roper,

Director, Centers for Disease Control.

[FR Doc. 92-21501 Filed 9-4-92; 8:45 am]

BILLING CODE 4160-18-M

Public Health Service

Subcommittee of the National Vaccine Advisory Committee (NVAC), Public Meeting

AGENCY: Office of the Assistant Secretary for Health, PHS, HHS.

SUMMARY: The Department of Health and Human Services (DHHS) and the Office of the Assistant Secretary for Health (OASH) are announcing the forthcoming meeting of a newly-formed NVAC Subcommittee on State and Local Level Impediments to Immunization Services.

DATE: Date, Time and Place: September 30, 1992, at 9 a.m. to 5 p.m., Parklawn

Building, Maryland Conference Room, Third Floor, 5600 Fishers Lane, Rockville, Maryland. The entire meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Written requests to participate should be sent to Kenneth J. Bart, M.D., Executive Secretary, National Vaccine Advisory Committee, National Vaccine Program Office, 5600 Fishers Lane, Parklawn Building, room 13A–53, Rockville, Maryland 20857, (301) 443–0715.

Agenda: Open Public Hearing: Interested persons may formally present data, information, or views orally or in writing on issues to be discussed by the Subcommittee or on any of the duties and responsibilities of the Subcommittee as described below. Because of limited seating, those desiring to make such presentations should make a request to the contact person before September 23, and submit a brief description of the information they wish to present to the Subcommittee. Those requests should include the names and addresses of proposed participants and an indication of the approximate time required to make their comments. A maximum of 10 minutes will be allowed for a given presentation. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting will be allowed to make an oral presentation at the conclusion of the meeting, if time permits, at the chairperson's discretion.

Open Subcommittee Discussion: The Subcommittee shall act as an advisory capacity to the NVAC to identify state and local impediments to the delivery of effective immunization services and recommend ways to remove the policy and management barriers to immunization services. The agenda will be announced at the beginning of the meeting.

A list of Subcommittee members and the charter of the Advisory Committee will be available at the meeting. Those unable to attend the meeting may request this information from the contact person.

Dated: August 20, 1992.

Kenneth J. Bart,

Executive Secretary, NVAC.

[FR Doc. 92–21504 Filed 9–4–92; 8:45 am]

BILLING CODE 4150–17–M

Secretary's Council on Health Promotion and Disease Prevention; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following meeting of the Secretary's Council on Health Promotion and Disease Prevention, scheduled to meet Friday, September 25, 1992.

Name: Secretary's Council on Health Promotion and Disease Prevention.

Date and Time: September 25, 1992, 9 a.m. to 5 p.m., Stonehenge, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Open, except for working breakfast and lunch.

Purpose: The Secretary's Council on Health Promotion and Disease Prevention is charged to provide advice to the Secretary and to the Assistant Secretary for Health on national goals and strategies to achieve those goals for improving the health of the Nation through disease prevention and health promotion and to provide a link to the private sector regarding health promotion activities.

Agenda: This will be the eleventh meeting of the Secretary's Council. The topic of this meeting is School Health: Ready to Learn.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should contact Deborah R. Maiese, Senior Prevention Policy Advisor, Office of Disease Prevention and Health Promotion, Public Health Service, U.S. Department of Health and Human Services, Washington, DC 20201, Telephone (202) 905–8583.

Agenda items are subject to change as priorities dictate.

Dated: August 31, 1992.

James A. Harrell,

Deputy Director, Director, Office of Disease Prevention and Health Promotion.

[FR Doc. 92–21505 Filed 9–4–92; 8:45 am]

BILLING CODE 4150–17–M

Social Security Administration

Rescission of Social Security Acquiescence Ruling

AGENCY: Social Security Administration, HHS.

ACTION: Notice of Rescission of Social Security Acquiescence Ruling 88–7(5)—*Hickman* v. *Bowen*, 803 F. 2d 1377 (5th Cir. 1986).

SUMMARY: In accordance with 20 CFR 416.1485(e) and 422.406(b)(2) published January 11, 1990 (55 FR 1012), the Commissioner of Social Security gives notice of the rescission of Social Security Acquiescence Ruling 88–7(5).

EFFECTIVE DATE: September 8, 1992.

FOR FURTHER INFORMATION CONTACT: Darlynda Bogle, Litigation Staff, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (410) 965–4237.

SUPPLEMENTARY INFORMATION: A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act or regulations when the Government has decided not to seek further of the case or is unsuccessful on further review.

As provided by 20 CFR 416.1485(e)(4), a Social Security Acquiescence Ruling may be rescinded as obsolete if we subsequently clarify, modify or revoke the regulation or ruling that was the subject of the circuit court holding for which the Acquiescence Ruling was issued.

On November 14, 1988, we issued Acquiescence Ruling (AR) 88–7(5) to reflect the holding in *Hickman* v. *Bowen*, 803 F. 2d 1377 (5th Cir. 1986), that advances of in-kind support and maintenance could be considered as loans to applicants for or recipients of supplemental security income (SSI) benefits and thus excluded from income as are loans of money. Under this AR, the governing factor was not the nature of the advance, but whether it created a debt. Therefore, under AR 88–7(5), a householder's advance of food or shelter to a household member could be treated as a loan, and thus excluded from income for SSI purposes, if the loan was made in realistic anticipation of repayment, if the borrower intended to repay the debt and if, under the terms of Social Security Ruling (SSR) 78–26, a bona fide loan agreement had been made. The AR applied to SSI claims filed by residents of states comprising the Fifth Circuit (Louisiana, Mississippi and Texas).

We are rescinding this AR because, concurrently with such rescission, we are issuing a Social Security Ruling (SSR) 92–88 which, among other things, reinterprets SSI policy to permit a householder's advance of food or shelter provided to a household member with the expectation of future repayment to be treated as the basis of a loan. Because this SSR provides a uniform national policy interpretation on the treatment of advances of in-kind support and maintenance, and it offers the same program results as AR 88–7(5), it is appropriate to rescind AR 88–7(5) as obsolete. Adjudicators of claims arising in the Fifth Circuit (Louisiana, Mississippi and Texas) will decide cases in accordance with SSR 92–8p. If we made a determination or a decision between November 10, 1986, the date of the Court of Appeals decision in *Hickman*, and the effective date of the SSR, a person residing in one of those

States may request application of the SSR to his or her claim by first demonstrating that application of the SSR could change our prior determination or decision.

(Catalog of Federal Domestic Assistance Programs Nos. 93.802 Social Security—Disability Insurance; 93.803 Social Security—Retirement Insurance; 93.805 Social Security Survivor's Insurance; 93.806—Special Benefits for Disabled Coal Miners; 93.807—Supplemental Security Income.)

Dated: August 26, 1992.

Gwendolyn S. King,

Commissioner of Social Security.

[FR Doc. 92-21518 Filed 9-4-92; 8:45 am]

BILLING CODE 4190-29-M

[Social Security Ruling SSR 92-8p.]

Title XVI: SSI Loan Policy, Including Its Applicability to Advances of Food and/or Shelter

AGENCY: Social Security Administration, HHS.

ACTION: Notice of Social Security Ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling 92-8p. This Ruling explains when the proceeds of a loan are not income for Supplemental Security Income (SSI) purposes, when they are a resource under the SSI program, and how a loan agreement is treated when the lender is an SSI applicant or recipient. This Ruling also reinterprets SSI regulations to permit treating food or shelter that an individual receives from someone in whose household he or she lives and has an obligation to pay for at a future date as the basis for a loan. The Commissioner also gives notice that this Ruling supersedes SSR 78-26.

EFFECTIVE DATE: September 8, 1992.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castello, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-1711.

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 422.406(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

Although Social Security Rulings do not have the force and effect of the law or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 422.406(b)(1), and are to be relied upon as precedents in adjudicating other cases.

If this Social Security Ruling is later superseded modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance Program No. 93.807 Supplemental Security Income.)

Dated: July 15, 1992.

Gwendolyn S. King,

Commissioner of Social Security.

Policy Interpretation Ruling

Title XVI: SSI Loan Policy, Including Its Applicability to Advances of Food and/or Shelter

Purpose: This Ruling defines a loan for SSI purposes. It also explains when the proceeds of a loan count as resources under SSI program, when they do not count as income, and how SSA treats a loan agreement when the lender is an SSI applicant or recipient. Social Security Ruling (SSR) 78-26 previously addressed these issues.

In addition, this Ruling reinterprets SSI regulations to permit treating, as the basis for a loan, food or shelter that an SSI applicant or recipient receives from someone in whose household he or she lives and has an obligation to pay for at a future date.

This Ruling supersedes SSR 78-26.

Citations (authority): Sections 1611 and 1631(e)(1)(B) of the Social Security Act, as amended; Regulations No. 16, subpart K, §§ 416.1103(f) and 416.1133(a).

Background: The Social Security Act, at section 1612(a)(2)(A), provides that unearned income includes in-kind support and maintenance. Regulations, at 20 CFR 416.1121(h), define in-kind support and maintenance as food, clothing, and shelter furnished to an SSI applicant or recipient. Regulations, at 20 CFR 416.1103(f), provide that the proceeds of a loan are not income.

In 1978, the Social Security Administration (SSA) published SSR 78-26, setting forth its policy regarding the treatment of loans under the SSI program. SSR 78-26 gave the following information:

When an individual borrows and receives money through a lending process, as a borrower, or receives money as repayment on an outstanding loan (lender), a determination must be made whether such money is considered a resource or income for SSI eligibility and payment purposes. Since inception of the SSI program, proceeds of a loan have not been considered income to the borrower because of the obligation to repay. Existing regulations do not spell this out. Similarly, since inception of the SSI program, outstanding loans made by an SSI applicant or recipient from money available to him/her have been considered a countable resource to the extent there has been a negotiable instrument showing existence of a loan agreement. This is because a negotiable instrument is convertible to cash and, therefore, meets the definition of a resource for SSI purposes. In such a case, the negotiable instrument would be a countable resource to the lender.

Existence of a negotiable instrument, however, is not the sole criterion of a bona fide loan. The interpretation of a bona fide loan for SSI purposes is that where a borrower receives money (from relatives, friends or others) a loan is created if there is an understanding between the parties that the money borrowed is to be repaid and it is recognized as an enforceable contract under State law. The transaction which creates a loan can be in the form of a written or oral agreement if enforceable under State law. Absent a negotiable instrument, a bona fide loan must still be convertible to cash in order to be considered a resource for SSI purposes.

Under this policy interpretation, a householder's advance of food or shelter to a household member could not be treated as a loan because it did not involve an actual advance of cash.

In 1986, in *Hickman* v. *Bowen* (803 F.2d 1377), the Fifth Circuit Court of Appeals ruled that there was no justification for treating cash and in-kind income differently under 20 CFR 416.1103(f). Since both are income, both could be the subject of a loan. The court concluded that food or shelter provided by a householder to a household member is a loan if the household member is obligated to repay the debt.

In 1988, SSA issued Acquiescence Ruling (AR) 88-7(5) to implement the *Hickman* decision for individuals residing in the States in the Fifth Circuit (Louisiana, Mississippi, and Texas). AR 88-7(5) instructed that when an SSI claimant or recipient alleges receiving in-kind support and maintenance, that in-kind support and maintenance will be considered a loan and its value will not be considered for the purpose of calculating SSI benefits, but only if the applicant or recipient can demonstrate that the in-kind support and maintenance received was, in fact, loaned to him or her in realistic anticipation of repayment, that he or she intends to repay the debt, and that under the terms of SSR 78-26 a bona fide loan agreement has been made.

In 1991, in *Ceguerra* v. *Secretary of Health and Human Services* (933 F.2d 735), the Ninth Circuit Court of Appeals issued an opinion which adopted the rationale of the Fifth Circuit Court of Appeals in *Hickman*. Absent a change in national policy, SSA acquiescence policy would thus require the issuance of another acquiescence ruling similar to AR 88-7(5) for individuals residing in the Ninth Circuit (Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Northern Mariana Islands, Oregon, and Washington).

In view of these recent court decisions, SSA has decided to reinterpret its regulations on the treatment in the SSI program of advances of food and shelter to an SSI

applicant or recipient by an individual in whose household he or she is residing.

Policy Interpretation: For purposes of determining when a loan is not considered income and when a loan is considered a countable resource under the SSI program, the following policies apply:

1. A loan means an advance from lender to borrower that the borrower must repay, with or without interest. A loan can be cash or an in-kind advance in lieu of cash. For example, an advance of food or shelter can represent a loan for the pro rata share of household operating expenses. This applies to any commercial or noncommercial loan (between relatives, friends or others) that is recognized as enforceable under State law. The loan agreement may be oral or written, as long as it is enforceable under State law.

2. Any advance an SSI applicant or recipient receives that meets the above definition of a loan is not income for SSI purposes since it is subject to repayment. Any portion of borrowed funds that the borrower does not spend as a countable resource to the borrower if retained into the month following the month of receipt.

3. When money or an in-kind advance in lieu of cash is given and accepted based on any understanding other than that it is to be repaid by the receiver, there is no loan involved for SSI purposes. It could be a gift, support payments, in-kind support and maintenance, etc., and must be treated as provided for in the rules applicable to such items.

4. If there is a bona fide loan as defined in (1) above, there is a rebutable presumption that the loan agreement is a resource of the lender for SSI purposes.

For example, an SSI applicant or recipient reports making a loan to a relative. The loan agreement is oral. The oral agreement is found to be binding under State law. Accordingly, the loan is presumed to be a resource of the lender because it can be converted to cash if the lender calls for repayment from the borrower. The lender can rebut this presumption by showing that the loan cannot be converted to cash—for example, because the borrower died without leaving an estate.

5. Money a lender receives as repayment of a loan (which meets the definition of a resource) reduces the outstanding loan balance and is considered a countable resource to the lender inasmuch as the repayment amount represents a return of part of the loan principal; i.e., the total value of the resource, which is the repayment amount plus the outstanding loan balance, remains unchanged.

6. Interest on a loan is counted as unearned income to the lender in the month of receipt and, if retained, is a resource as in (2) above.

Documentation: Evidence must be obtained with respect to the existence of a bona fide loan agreement. The burden of proof with respect to the bona fide nature of the loan is with the applicant or recipient.

Effective Date: The effective date of this Ruling is the date of its publication in the **Federal Register**. Determinations made before that date regarding advances of food or shelter may be reopened and revised subject to the rules of administrative finality at 20 CFR 416.1488(a).

The AR for the *Hickman* decision (AR 88-7(5)), is being rescinded through a sepatate publication in the **Federal Register**. However, anyone to whom the *Hickman* AR would have applied, had it remained in effect, may request application of the policy contained in this Ruling to determinations made by SSA between the date of the Fifth Circuit Court of Appeals decision (November 10, 1986) and the date this Ruling is published in the **Federal Register** if he or she first demonstrates that application of this Ruling could change the prior determination or decision. In addition, anyone to whom a *Ceguerra* AR would have applied, had one been issued, may request application of this Ruling to deteriminations made by SSA between the date of the Ninth Circuit Court of Appeals decision (May 15, 1991) and the date this Ruling is published in the **Federal Register** if he or she first demonstrates that application of this Ruling could change the prior determination or decision.

[FR Doc. 92-21519 Filed 9-4-92; 8:45 am]

BILLING CODE 4190-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU-69956]

Utah; Invitation To Participate in Coal Exploration Program; Mountain Coal Co.

Mountain Coal Company is inviting all qualified parties to participate in its proposed exploration of certain coal deposits located approximately 11 miles northwest of Orangeville, Utah. The exploration area lies approximately four miles up Straight Canyon from its confluence with Cottonwood Creek. The lands are located in Emery County, Utah, and are described as follows:

T. 18 S., R. 6 E., SLM, Utah
Sec. 3, lots 3-6, S½NW¼.
Containing 226.41 acres.

Any party electing to participate in this exploration program must send written notice of such election to the Bureau of Land Management, Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145-0155, and to Mountain Coal Company, P.O. Box 1378, Price, Utah 84501. Such written notice must be received within 30 days after the publication of this notice in the **Federal Register**.

Any party wishing to participate in this exploration program must be qualified to hold a lease under the provision of 43 CFR 3472.1 and must share all cost on a pro rata basis. A copy of the exploration plan, as submitted by Mountain Coal Company, is available for public review during normal business hours in the BLM office, (Public Room, Fourth Floor), 324 South State Street, Salt Lake City, Utah under Serial Number UTU-69956.

Teresa Catlin,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 92-21509 Filed 9-4-92; 8:45 am]

BILLING CODE 4310-DQ-M

[ID-020-4320-12]

Burley District Grazing Advisory Board; Meeting and Agenda

AGENCY: Burley District, Bureau of Land Management, Interior.

ACTION: Meeting and agenda for Burley District Grazing Advisory Board.

SUMMARY: Notice is hereby given that the Burley District Grazing Advisory Board will meet on October 8, 1992. The meeting will convene at 9:30 a.m. in the conference room of the Bureau of Land Management Office at 200 South Oakley Highway, Burley, Idaho.

Agenda items for the meeting will include: (1) Reorganization of the Board Leadership; (2) Status of FY-92 Range Improvement Projects; (3) Drought Impact on '92 Fall and '93 Spring Grazing Use; (4) proposed Mormon Cricket control activities in FY-93; (5) Review FY-93 and FY-94 Proposed Range Improvement Projects; (6) Secretary/Treasurer's Report; (7) District Fires and Relief Areas of Use; (8) Items of Information: (a) Districtwide "Resource management Plan" (RMP); (b) BLM 2015.

The public is invited to attend the meeting. Interested persons may make an oral statement to the Board beginning at 11:30 a.m. or they may file a written statement for the Board's consideration. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District manager. Anyone wishing to make an oral statement or file a written statement must contact the District manager by October 7, 1992 for inclusion in the meeting schedule.

Detailed minutes of the Board meeting will be maintained in the District Office and will be available for public inspection during regular business hours (7:45 a.m. to 4:30 p.m., Monday thru Friday) within 30 days following the meeting.

DATE: October 8, 1992.

ADDRESS: Bureau of Land Management, Burley District Office, Route 3, Box 1, Burley, Idaho 83318.

FOR FURTHER INFORMATION CONTACT: Gerald L. Quinn, District Manager, (208) 678-5514.

Dated: August 28, 1992.

Marvin R. Bagley,

Associate District Manager.

[FR Doc. 92-21464 Filed 9-4-92; 8:45 am]

BILLING CODE 4310-55-M

[UT-020-02-4320-02]

Salt Lake District; Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Grazing Advisory Board meeting.

SUMMARY: Notice is hereby given in accordance with Public Law 92-463 that the Salt Lake District Grazing Advisory Board will be meeting on October 15, 1992. The meeting will begin at 8:30 a.m. at the Salt Lake District, Bureau of Land Management, office at 2370 South 2300 West, Salt Lake City, Utah.

The purpose of the meeting will be to: (1) Elect New Board officers; (2) review FY 1992 range improvement accomplishments; (3) review proposed range improvement work for the upcoming year (FY 1993).

The meeting is open to the public. Interested persons may make oral statements at the meeting between 9 a.m. and 9:30 a.m., or file a written statement for the Board's consideration. Those wishing to make statements to the Board are requested to contact Glade Anderson at (801) 977-4300 by October 5th so that adequate time can be included on the agenda.

Deane H. Zeller,

Salt Lake District Manager.

[FR Doc. 92-21510 Filed 9-4-92; 8:45 am]

BILLING CODE 4310-DQ-M

National Park Service

Amendment to the Federal Register Notice for the Draft Comprehensive River Conservation Study and Environmental Impact Statement

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Amendment to the Federal Register Notice for the Draft Comprehensive River Conservation Study and Environmental Impact Statement for the Hanford Reach of the Columbia River.

DATES: Public comments will be accepted until Friday, October 9, 1992.

ADDRESSES: Written comments should be sent to Kristen Sycamore, National Park Service, Pacific Northwest Regional Office, 83 South King Street, suite 212, Seattle, Washington 98104.

SUPPLEMENTARY INFORMATION: Public hearings to receive oral and written comments on this draft have been scheduled as follows:

Tuesday, September 8, 1992, at 7:00 p.m., Basin City Firehall, Road #170, Basin City, Washington

Wednesday, September 9, 1992, at 7:00 p.m., Federal Building Auditorium, 825 Jadwin Avenue, Richland, Washington

Monday, September 14, 1992, at 7:00 p.m., Henry M. Jackson Federal Building, South Auditorium, 915 Second Avenue, Seattle, Washington

Dated: August 27, 1992.

Willie R. Taylor,

Acting Director, Office of Environmental Affairs.

[FR Doc. 92-21550 Filed 9-4-92; 8:45 am]

BILLING CODE 4310-70-M

Native American Graves Protection and Repatriation Review Committee; Meeting

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of meeting of the Native American Graves Protection and Repatriation Review Committee.

Notice is hereby given in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix (1988), that the third meeting of the Native American Graves Protection and Repatriation Act Review Committee will be held on October 8, 9, and 10, 1992 in Ft. Lauderdale, Florida.

The Committee will meet at the Sheraton Yankee Trader Hotel, 321 North Atlantic Blvd, Ft. Lauderdale, FL 33304. Meetings will begin each day at 9 a.m. and conclude not later than 5 p.m.

The Native American Graves Protection and Repatriation Act Review Committee was established by Public Law 101-601 to monitor, review, and assist in implementation of the inventory and identification process and repatriation activities required under the statute.

The matters to be discussed at this meeting include development of proposed regulations implementing the statute.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited and persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with Dr. Francis P. McManamon, Department Consulting Archeologist.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact Dr. Francis P. McManamon, Departmental Consulting Archeologist, Archeological Assistance Division, National Park Service, P.O. Box 37127, Washington, DC 20013-7127, Telephone (202) 343-4101. Draft summary minutes of the meeting will be available for public inspection about eight weeks after the meeting of the office of the Departmental Consulting Archeologist, room 210, 800 North Capitol Street, Washington, DC.

Dated: September 2, 1992.

Francis P. McManamon,

Departmental Consulting Archeologist, Chief, Archeological Assistance Division.

[FR Doc. 92-21551 Filed 9-4-92; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 29, 1992. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by September 23, 1990.

Antoinette J. Lee,

Acting Chief of Registration, National Register.

California

Fresno County

Tower Theatre, 1201 N. Wishon Ave., Fresno, 92001276

Napa County

First National Bank, 1026 First St., Napa, 92001277

Yount, Eliza G., House, 423 Seminary St., Napa, 92001279

San Diego County

Kuchamaa, SE of San Diego at the US-Mexico border, Tecate vicinity, 92001268

Santa Cruz County

Lettunich Building, 406 Main St., Watsonville, 92001278

Florida

Palm Beach County

Aiken, Fred C., House, 801 Hibiscus St., Boca Raton, 92001271

Maryland

Anne Arundel County

Bates, Wiley H., High School, 1029 Smithville Street, Annapolis, 92001267

New York

Hamilton County

Hamilton County Courthouse Complex, Jct. of NY 8 and S. Shore Rd., Lake Pleasant, 92001280

Virginia

Accomack County

Onancock Historic District, Roughly bounded by Joynes Branch, Onancock Cr. and Lake, Kerr, Jackson, Market, Justice, Johnson and Holly Sts., Onancock, 92001286

Albemarle County

Enniscorthy, VA 627 .5 mi. S of jct. with VA 712, Keene vicinity, 92001273

Loudoun County

Douglass High School, 408 E. Market St., Leesburg, 92001274

Northumberland County

Ditchley, VA 607 N side, 2000 ft. E of jct. with VA 669, Kilmarnock vicinity, 92001272

Hurstville, VA 605 E side, 3500 ft. S of jct. with VA 606, Kilmarnock vicinity, 92001264

Alexandria Independent City

Rosemont Historic District, Roughly bounded by Commonwealth Ave., W. Walnut St., Russell Rd., Rucker Pl. and King St., Alexandria (Independent City), 92001275

Salem Independent City

Salem Post Office, 103 E. Main St., Salem (Independent City), 92001265

[FR Doc. 92-21552 Filed 9-4-92; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-622 (Preliminary)]

Dry Film Photoresist From Japan

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from Japan of dry film photoresist, provided for in subheadings 3702.39.00, 3702.42.00, 3702.43.00, 3702.44.00, 3702.95.00, and 3707.90.30 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Bernadale dissenting; Vice Chairman Watson not participating.

Background

On July 16, 1992, a petition was filed with the Commission and the Department of Commerce by E.I. Du Pont de Nemours & Co., Wilmington, DE; Morton International, Inc., Tustin, CA; and Hercules Incorporated, Wilmington, DE, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of the subject products from Japan. Accordingly, effective July 16, 1992, the Commission instituted antidumping investigation No. 731-TA-622 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 23, 1992 (57 FR 32810). The conference was held in Washington, DC, on August 6, 1992, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on August 31, 1992. The views of the Commission are contained in USITC Publication 2555 (August 1992), entitled "Dry Film Photoresist from Japan: Determination of the Commission in Investigation No. 731-TA-622 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation.

Issued: September 1, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-21548 Filed 9-4-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-623 (Preliminary)]

Hairbrushes and Certain Parts and Components Thereof From the People's Republic of China

AGENCY: United States International Trade Commission.

ACTION: Notice of withdrawal of petition in antidumping investigation.

SUMMARY: On August 21, 1992, the U.S. Department of Commerce and the U.S. International Trade Commission received a letter from petitioner in the subject investigation (Goody Products, Inc., Kearny, NJ) withdrawing its petition. Commerce has not initiated an investigation as provided in section 732(c) of the Tariff Act of 1930 (19 U.S.C. 1673a(c)). Accordingly, the Commission gives notice that its antidumping investigation concerning hairbrushes and certain parts and components thereof from the People's Republic of China (investigation No. 731-TA-623 (Preliminary)) is discontinued.

EFFECTIVE DATE: August 21, 1992.

FOR FURTHER INFORMATION CONTACT: Jonathan Seiger (202-205-3183), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by conatacting the Commission's TDD terminal on 202-205-1810.

Issued: September 1, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-21549 Filed 9-4-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-337]

Certain Integrated Circuit Telecommunication Chips and Products Containing Same, Including Dialing Apparatus; Commission Determination Not To Review an Initial Determination Designating the Investigation More Complicated; Setting of Administrative Deadline

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) issued by the presiding administrative law judge (ALJ) designating the above-captioned investigation "more complicated." The deadline for completion of the investigation has been extended by one month, *i.e.*, from April 8, 1993, to May 10, 1993.

ADDRESSES: Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-205-2000.

FOR FURTHER INFORMATION CONTACT: Daniel Hopen, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW.,

Washington, DC 20436, telephone 202-205-3108.

Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202-205-1810.

SUPPLEMENTARY INFORMATION: On July 27, 1992, respondents Hualon Microelectronics Corporation (Taiwan), Hualon Microelectronics Corporation (California), and United Microelectronics Corporation (collectively "respondents") filed a joint motion to designate this investigation more complicated. The motion was supported by the Commission investigative attorneys, but opposed by complainant SGS-Thomson Microelectronics, Inc. The presiding ALJ issued an ID on August 5, 1992, designating the investigation "more complicated" and extending the deadline for issuance of his final ID by one month. The investigation was designated "more complicated" because of the large number of chips at issue involving complex technology and the short amount of time available for newly-added respondent Tranbon to prepare for the Commission hearing. No petitions for review or government agency comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and section 210.53 of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.53).

Issued: August 31, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-21547 Filed 9-4-92; 8:45 am]

BILLING CODE 7020-03-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 321361]

William E. Gardner and Railroad Acquisition Corporation—Control Exemption—Wisconsin & Calumet Railroad Co., Inc.

William E. Gardner and Railroad Acquisition Corporation (RAC), (applicants), have filed a notice of exemption to acquire control of Wisconsin & Calumet Railroad Company, Inc. (WICT), a class III rail carrier operating over 408.6 miles of rail line between Clearing Yard, IL, and Prairie Du Chien, WI, and between various points in Wisconsin. Mr. Gardner controls RAC, a noncarrier. In addition, Mr. Gardner separately controls Wisconsin & Southern Railroad Company (W&S), a class III rail carrier operating over 148 miles of rail home in Wisconsin. Under the terms of the transaction RAC will purchase 100 percent of WICT's stock, and, after consummation, Mr. Gardner will be in control of two non-connecting class III rail carriers.[1] The parties planned to consummate the transaction on or after the effective date, August 21, 1992.

Applicants indicate that: (1) The lines operated by W&S do not connect with the lines operated by WICT; (2) the involved transaction is not a part of a series of anticipated transactions that would connect the railroads with each other; and (3) the transaction does not involve a class I carrier. The transaction is therefore exempt from the prior approval requirements of 49 U.S.C. 11343. See 49 CFR 1180.2(d)(2).

As a condition to the use of this exemption, any employees adversely affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

This notice is filed under 49 CFR 1180.2(d)(2). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: David A. Hirsh, Pepper, Hamilton & Scheetz, 1300 Nineteenth St., NW., Washington, DC, 20036.

Dated: September 1, 1992.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-21537 Filed 9-4-92; 8:45 am]

BILLING CODE 7035-01-M

[1] By decision served August 21, 1992, the Commission's Office of the Secretary granted a motion filed by applicants for a protective order covering their stock purchase agreement.

[1] Consolidated Rail Corporation (Conrail) provides freight service over the Amtrak line and maintains a station at Grundy.

[Finance Docket No. 32106]

Bristol Industrial Terminal Railway—Lease and Operation Exemption—Frank A. Greek & Son, Inc.

Bristol Industrial Terminal Railway (Bristol) has filed a notice of exemption to lease and operate over approximately 2.2 miles of rail line extending between a connection with tracks owned by National Railroad Passenger Corporation (Amtrak) at Grundy [1] and a point within the Bristol Industrial Park, in Bristol Township, Bucks County, PA.[2] The proposed transaction was scheduled to be consummated on July 27, 1992, the notice's effective date.[3]

Any comments must be filed with the Commission and served on: Edward J. Rodriquez, P.O. Box 537, Old Saybrook, CT 06475.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time.[4] The filing of a

[2] The line is owned in contiguous segments by Minnesota Mining & Manufacturing Company (3M) and Frank A. Greek & Son, Incorporated (Greek). Greek also owns an easement to operate over 3M's segment. Bristol has entered into a 5-year lease agreement with Greek; it will operate the entire rail line to serve businesses in the Bristol Industrial Park.

[3] In a concurrently filed motion, Bristol requests dismissal of the notice. It asserts that the line is an industrial spur, located entirely in one State, and therefore exempt from the Commission's licensing jurisdiction under 49 U.S.C. 10907(b).

There is no single test for determining whether a line segment is an exempt spur or a line of railroad subject to regulation. Over the years, the Commission has adopted a case-by-case analysis that considers the line's intended use, history, and physical characteristics. *See Texas & Pac. Ry.* v. *Gulf, Etc., Ry.*, 270 U.S. 266 (1926); *New Orleans Terminals Co.* v. *Spencer*, 366 F.2d 160 (5th Cir. 1966), *cert. denied*, 386 U.S. 942 (1967); *Illinois Commerce Com'n* v. *United States*, 779 F.2d 1270 (7th Cir. 1985); and *Nicholson* v. *ICC*, 711 F.2d 364 (D.C. Cir. 1983). Factors considered include the amount of traffic over the line, the availability of regularly scheduled service, the number of shippers being served, the existence of stations, and the weight of the rail used to construct the line. *See CNW—Aban. Exemp.—In McHenry County, IL*, 3 I.C.C.2d 366 (1987), *rev'd on other grounds, Illinois Commerce Com'n* v. *ICC*, 879 F.2d 917 (D.C. Cir. 1989); *United States* v. *Idaho*, 298 U.S. 105 (1936); and *New York Central R. Co.* v. *Chicago & Eastern Ill. R. Co.*, 222 F.2d 828 (7th Cir. 1955).

Bristol does not address these criteria in detail. It simply notes that the track is industrially owned and currently carries no freight. Bristol proposes, however, to provide switching services for businesses located, or to be located, in the Bristol Industrial Park and to interchange their traffic with Conrail at Grundy. Thus, the evidence presented is ambiguous; it is impossible to find that the track will be an exempt spur. Moreover, it is not controlling that the line could formerly have been characterized as a spur. Indeed, it is well established that a line's status can change from an "exempt spur" to a "line of railroad" subject to Commission regulation under 49 U.S.C. 10901-10906 because of an expansion of service. *See* Docket No. AB-52 (Sub-No. 71X), *Atchison, T. & S. F. Ry. Co.—Aband. Exemp.—in Lyon County, KS* (not printed), served June 17, 1991 (*Santa fe*).

[4] If, after evaluating its proposed operations against the criteria discussed above, Bristol still feels that its lease and operation is exempt under section 10907(b) it should file a petition to revoke this exemption, accompanied by specific evidence to support its position. *See Santa Fe, supra.*

petition to revoke will not automatically stay the transaction.

Dated: September 1, 1992.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-21538 Filed 9-4-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Consent Judgment in Action To Enjoin Violations of the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *General Motors Corporation*, Civil Action No. CV-92-5017-MRP(SHx), was lodged on August 20, 1992 with the United States District Court for the Central District of California.

The proposed consent decree requires payment of a $57,000 penalty by defendant for violations of the Clean Air Act. The consent decree also provides that defendant achieve compliance with the Clean Air Act and the volatile organic compound emission limit in the California State Implementation Plan.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *General Motors Corporation*, DOJ Ref. No. 90-5-2-1-986.

The proposed consent decree may be examined at the Office of the United States Attorney, Central District of California, 300 North Los Angeles Street, Los Angeles, California 90012; at the Region IX Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105; and at the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $4.00 (25 cents per page reproduction costs) payable to the Consent Decree Library.

Roger Clegg,

Deputy Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92-21465 Filed 9-4-92; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL SCIENCE FOUNDATION

Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Application Received Under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by October 2, 1992. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESS: Comments should be addressed to Permit Office, room 627, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Thomas F. Forhan at the above address or (202) 357-7817.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95-541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The applications received are as follows:

1. *Applicant:* Warren M. Zapol, M.D., Department of Anesthesia, Massachusetts General Hospital, Boston, MA 02114.

Activity for Which Permit Requested

Taking. Import into USA. As part of a research program to investigate how a highly adapted Antarctic marine mammal tolerates long periods of breath-holding and underwater exercise, up to 30 Weddell seals, (Leptonychotes weddelli) will be captured by corralling, up to 10 subadult males and up to 20 pregnant females. The females will be captured, instrumented, observed and ultimately released. Ten newborns and ten subadult males will be taken by lethal overdose of barbiturates for verification of myoglobin spectrophotometer measurements, obtaining biochemical assays and correlating ultrasound measurements. Organs and tissues of these animals will be imported to the USA for further study. Weddell seals are abundant in the study area, with stable populations.

Location

McMurdo Station, Antarctica, and the surrounding region.

Dates

10/1/92-4/1/93.

2. *Applicant:* R.G. Kroger, Project Director, Antarctic Support Associates, 61 Inverness Drive East, Suite 300, Englewood, CO 80112.

Activity for Which Permit Requested

Enter Site of Special Scientific Interest. The U.S. maintains a small summer field camp within SSSI #8 to support research within the SSSI (which is permitted separately). This request is for entry by a support contractor to allow routine light construction and maintenance work as needed at the site. Usually, this work is carried out by a four or five member crew of Palmer Station construction and maintenance personnel. No taking or other interference with indigenous species is planned.

Location

Admiralty Bay, King George Island, Antarctica.

Dates

10/1/1992-12/31/1998.

Thomas F. Forhan,

Permit Office, Division of Polar Programs.

[FR Doc. 92-21490 Filed 9-4-92; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Networking and Communications Research and Infrastructure Amendment

The meeting of the Special Emphasis Panel in Networking and Communications Research and Infrastructure scheduled to be held on September 15, 1992 at the National Science Foundation in Washington DC has been changed to September 23-24, 1992.

The notice for this meeting originally appeared in the August 20, 1992 issue of the **Federal Register**, Vol. 57, No. 162, p. 37843.

Dated: September 2, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-21542 Filed 9-4-92; 8:45 am]

BILLING CODE 7555-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-31126; File No. SR-OCC-92-19]

Self-Regulatory Organizations; the Options Clearing Corp.; Filing and Order Granting Accelerated Approval on a Temporary Basis of a Proposed Rule Change Relating to Revisions to the Standards for Letters of Credit Deposited as Margin

September 1, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 29, 1992, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by the self-regulatory organization. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval on a temporary basis through December 31, 1992.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change extends the Commission's previous temporary approvals of OCC's modifications to its rules setting forth the standards for letters of credit deposited with OCC as a form of margin.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In August 1991, February 1992, and April 1992, OCC filed with the Commission proposed rule changes which proposed to modify the standards for letters of credit deposited with OCC as a form of margin. In turn, the Commission granted approval of each of the rule filings on an accelerated and temporary basis.[2] This filing again proposes to make permanent the Commission's temporary approval of OCC's modifications to its Rule 604 that sets forth the standards for letters of credit deposited with OCC as a form of margin. Like the previous filings, this filing proposes several modifications to that rule. First, in order to conform to the Uniform Commercial Code and to avoid any ambiguity as to the latest time for honoring payments upon letters of credit, letters of credit must state expressly that payment must be made prior to the close of business on the third banking day following demand. Second, letters of credit must be irrevocable. Third, letters of credit must expire on a quarterly basis. Fourth, OCC included language in its Rule 604 to make explicit OCC's authority to draw upon letters of credit at any time, whether or not the Clearing Member that deposited the letter of credit has been suspended or is in default, if OCC determines that such draws are advisable to protect OCC, other Clearing Members, or the general public.[3]

In the interim since its original letter of credit filing, OCC has received no adverse comments or complaints from any of its Clearing Members, banks, or other interested parties with respect to the modifications to Rule 604 or the implementation of the revised letter of credit standards. Accordingly, OCC requests that the Commission permanently approve those revisions.

OCC believes the proposed rule change is consistent with the requirements of section 17A of the Act, as amended. Specifically, OCC believes the proposed rule change promotes the protection of investors by enhancing OCC's ability to safeguard the securities and funds in its possession or subject to its control.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were not and are not intended to be solicited with respect to the proposed rule change, and none were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission believes that the proposal is consistent with section 17A of the Act and specifically with section 17A(b) (3) (F) of the Act.[4] That section requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which the clearing agency is responsible. The revised standards should make such letters of credit more liquid instruments and, consequently, should permit OCC to more safely rely upon letters of credit deposited as margin. Because the revised standards will induce letter of credit issuers to reexamine Clearing Members' financial conditions every three months rather than annually, as under the prior standards, the financial condition of Clearing Members electing to deposit letters of credit as margin may be assessed more frequently thereby facilitating the discovery of any adverse developments in a more timely manner. In addition, since the letters of credit will be irrevocable, issuers of letters of credit will no longer be able to revoke letters of credit at times when the Clearing Members most need credit facilities (*e.g.*, when a Clearing Member is experiencing financial difficulties or during times of market volatility). By approving the proposed rule change on a temporary basis through December 31, 1992, OCC, the Commission, and other interested parties will be able to assess further, prior to permanent Commission

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release Nos. 29641 (August 30, 1991), 56 FR 46027 (File No. SR-OCC-91-13) (order temporarily approving proposed rule change through February 28, 1992); 30424 (February 28, 1992), 57 FR 8160 (File No. SR-OCC-92-06) (order temporarily approving proposed rule change through May 31, 1992); and 30763 (June 1, 1992), 57 FR 242884 (File No. SR-OCC-92-11) (order temporarily approving proposed rule change through August 31, 1992).

[3] For a detailed discussion of the modifications to OCC's rules governing letters of credit deposited as margin, refer to Securities Exchange Act Release No. 29641, *supra* note 2.

[4] 15 U.S.C. 78q-1(b)(3)(F) (1988).

approval, any effects these revised standards have on letter of credit issuance and on margin deposited at OCC.

OCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for so approving because the Commission believes it is desirable that the proposed rule change be approved before the expiration of the Commission's previous order granting temporary approval of these modifications to the letter of credit standards. By approving this proposed rule filing before expiration of the prior temporary approval order, the changes that have been implemented pursuant to the temporary approval order may remain in place pending permanent approval.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549.

Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File Number SR-OCC-92-19 and should be submitted by September 29, 1992.

V. Conclusion

On the basis of the foregoing, the Commission finds that OCC's proposed rule change is consistent with the Act and in particular with section 17A of the Act.

It is therefore ordered, under section 19(b)(2) of the Act, that the proposal (File No. SR-OCC-92-19) be, and hereby is, approved temporarily through December 31, 1992.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-21526 Filed 9-4-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31121; International Series No. 444; File Nos. SR-PSE-92-09 and SR-PSE-92-10]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Filing and Order Granting Accelerated Approval of Proposed Rule Changes Relating to the Listing of Index Warrants Based on the FT-SE Eurotrack 200 Index and the Eurotop 100 Index

August 28, 1992.

I. Introduction and Background

On February 18, 1992, the Pacific Stock Exchange, Inc. ("PSE") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] proposed rule changes to list warrrants based on the Financial Times-Stock Exchange ("FT-SE") Eurotrack 200 Index ("Eurotrack 200 Index") and the Eurotop 100 Index ("Eurotop 100 Index") (collectively referred to as the "Indexes").[3] This order solicits comments on the proposed rule changes and grants accelerated approval of these proposals.

II. Description of the Proposals

The PSE proposes to list index warrants based on the Eurotrack 200 Index and the Eurotop 100 Index, two broad-based indexes that are designed to represent substantial segments of the overall European stock market. The Commission previously has approved the listing of Eurotrack 200 Index warrants on the Chicago Board Options Exchange ("CBOE"), the American Stock Exchange ("Amex"), and the New York Stock Exchange ("NYSE") and the listing of Eurotop 100 Index warrants on the Amex.[4] The PSE is submitting its proposals to list warrants based on these Indexes pursuant to the requirements of a 1990 Commission order approving a PSE proposal that, among other things, permitted the Exchange to list index warrants based on established market indexes, both foreign and domestic ("Index Warrant Approval Order").[5]

A. Description of the Eurotrack 200 Index

The Eurotrack 200 Index is a capitalization-weighted stock index, designed and operated by the London Stock Exchange ("LSE"), based on the prices of 200 stocks, from 12 European countries that are traded on the LSE.[6] All of the Eurotrack 200 Index's component stocks are traded on the LSE by means of either the LSE's Stock Exchange Automated Quotation System ("SEAQ") or SEAQ International ("SEAQI").[7] The countries currently included in the Eurotrack 200 Index and their weightings as of January 21, 1992, are as follows: United Kingdom, 42.74%; Germany, 15.16%; France, 13.54%; Netherlands, 6.54%; Switzerland, 7.13%; Italy, 5.67%; Spain, 3.89%; Belgium, 2.67%; Sweden, 1.63%; Ireland, 0.6%; Denmark, 0.25% and Norway, 0.18%.

The Eurotrack 200 Index is a combination of two other stock indexes, the Eurotrack 100 Index and the FT-SE 100 Index, which also are designed and operated by the LSE. The FT-SE 100 Index component of the Eurotrack 200 Index is an internationally-recognized, capitalization-weighted stock index based on the prices of 100 of the most highly capitalized British stocks traded on the LSE.[8] The Commission previously

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1989).

[3] The PSE submitted both proposals to the Commission on February 18, 1992. However, as discussed *infra* at notes 28-30 and accompanying text, the PSE was unable to obtain all necessary surveillance sharing agreements concerning the Indexes until May 21, 1992.

[4] See Securities Exchange Act Release Nos. 30462 (March 11, 1992), 57 FR 9290 (order approving SR-CBOE-91-13, SR-Amex-91-10 and SR-NYSE-91-13) ("Eurotrack 200 Approval Order") and 30462 (March 11, 1992), 57 FR 9284 (order approving SR-Amex 91-01) ("Eurotop 100 Approval Order"). The Eurotrack 200 Approval Order also approved the trading of Eurotrack 200 Index options on the CBOE and the Eurotop 100 Approval Order also approved the trading of Eurotop 100 Index options on the Amex. Additionally, the Commission sent a letter to the Commodity Futures Trading Commission ("CFTC") indicating it would not object to the designation of the Commodity Exchange, Inc. ("Comex") as a contract market to trade Eurotop 100 Index futures and options on Eurotop 100 Index futures. *See* letter from William H. Heyman, Director, Division of Market Regulation ("Division"), SEC, to Brian Folkerts, Director, Office of Congressional and Governmental Affairs, CFTC, dated May 27, 1992.

[5] See Securities Exchange Act Release No. 28034 (May 22, 1990), 55 FR 22001.

[6] For additional information regarding the design, construction, and operation of the Eurotrack 200 Index, *see* Eutrotrack 200 Approval Order, *supra* note 4 at notes 6-28 and accompanying text.

[7] The stocks in the Eurotrack 200 Index from the United Kingdom and the Republic of Ireland are traded over SEAQ and the stocks from the other European countries are traded over SEAQI. SEAQ's and SEAQI's quotations of the stocks are available to all exchanges listing those stocks, but the system is solely that of the LSE and its dealers and does not reflect markets from the other exchanges.

[8] The FT-SE 100 Index is composed of companies from 29 different industry groups, no one of which

Continued

has approved the listing of FT-SE 100 Index warrants on the CBOE, Amex, NYSE, PSE, and the Midwest Stock Exchange ("MSE") and the listing of FT-SE 100 options on the CBOE.[9] The Eurotrack 100 Index is a capitalization-weighted index based on 100 stocks from 11 European countries other than the United Kingdom that is designed to be a real-time index of major continental European securities.[10] Both the FT-SE 100 Index and the Eurotrack 100 Index have index rules designed to address corporate actions that involve one or more component companies, such as mergers, stock dividends, or rights offerings.

The Eurotrack 200 Index is calculated by multiplying the price of each constituent stock of the Eurotrack 100 and FT-SE 100 Indexes, converted into European Currency Units ("ECUs"), by the number of shares outstanding.[11] The value of the stocks in the Eurotrack 200 Index that also are in the FT-SE 100 Index, however, are reduced by a "Weight Restraint Factor ("WRF").[12] The Index will be calculated during an Official Index Period ("OIP"), which will run from 9:45 a.m. to 3:30 p.m., London time (4:45 a.m. to 10:30 E.S.T.).[13] An Official Index Closing Price ("OICP") for the Eurotrack 200 Index will normally be calculated each day at 3:30 p.m. London Time.

B. Description of the Eurotop 100 Index

The Eurotop 100 Index, an internationally-recognized stock index, developed and maintained by the European Option Exchange ("EOE") is designed to measure the collective performance of the most actively-traded stocks on the major European stock exchanges.[14] Specifically, the Index is based on the prices of 100 European stocks from nine countries. The Eurotop 100 Index is a weighted index [15] denominated in ECUS. The countries currently included in the Eurotop 100 Index and their weightings as of December 27, 1991, are as follows: United Kingdom, 27%; Germany, 14%; France, 14%; Switzerland, 10.5%; Spain, 9%; the Netherlands, 8%; Sweden, 8%; Italy, 6%; and Belgium, 3.5%.

In order to ensure that the Eurotop 100 Index reflects this active segment of the European stock market, there are specific Eurotop 100 Index Rules that determine: (1) The countries represented in the Index; (2) the base weightings of the countries in the Index; (3) the stocks from each country represented in the Index; and (4) the weightings of the stocks in the Index.[16]

Additionally, there are specific Eurotop 100 Index Rules designed to address corporate actions that involve one or more component companies, such as mergers, stock dividends, or rights offerings. Consistent with the design and operation of the Eurotop 100 Index, the Eurotop 100 Rules provide that any necessary changes will be done in such a way as to result in minimal changes in the value of the Eurotop 100 Index.[17] The EOE, for purposes of calculating the Eurotop 100 Index, will use the last sale price of each component stock in its own home currency, as reported by the principal stock exchange listing the stock in its home country. On an instantaneous and continuous basis, the value of each component stock in its respective home country currency first will be converted into either German marks or U.S. dollars and then into ECUs, based on the German mark or U.S. dollar/ECU lowest asked price at that moment as quoted by the foreign exchange institutions whose quotes are disseminated by Reuters PLC.[18]

C. Applicable Warrant Rules

Consistent with the Index Warrant Approval Order, the PSE represents that the Eurotrack 200 Index and Eurotop 100 Index warrant issues will conform to the listing guidelines under PSE Rule 3.2. Specifically, PSE Rule 3.2 provides that: (1) The issuer shall have assets in excess of $100,000,000 and otherwise substantially exceed the Exchange's size and earnings requirements; (2) the term of the warrants shall be for a period of at least one year from the date of issuance; and (3) the minimum public distribution of such issues shall be 1,000,000 warrants together with a minimum of 400 public holders, and have an aggregate market value of $4,000,000.[19]

The PSE proposes that the Eurotrack 200 Index and Eurotop 100 Index warrants will be direct obligations of their issuer subject to cash-settlement during their term, and either exercisable throughout their life (*i.e.*, American style) or exercisable only on their expiration date (*i.e.*, European style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant structured as a "put" would receive payment in U.S. dollars to the extent that the Eurotrack 200 Index or the Eurotop 100 Index has declined below a pre-stated cash settlement value. Conversely, holders of a warrant structured as a "call" would, upon exercise or at expiration, receive

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dominates the FT-SE 100 Index. The total capitalization of the FT-SE 100 Index, as of October 30, 1991, was $521.6 billion.

[9] See Securities Exchange Act Release Nos. 27769 (March 6, 1990), 55 FR 9380 (order approving File No. SR-Amex-90-3); 28106 (June 12, 1990), 55 FR 24955 (order approving File No. SR-PSE-90-15); 28399 (August 30, 1990), 55 FR 37390 (order approving SR-NYSE-90-37); 28827 (November 19, 1990) (order approving SR-CBOE-90-17); 28634 (November 20, 1990), 55 FR 49729 (order approving File No. SR-MSE-90-12); and 29722 (September 23, 1991), 56 FR 49609 (order approving SR-CBOE-91-07).

[10] For additional information regarding the Eurotrack 100 Index, *see* Eurotrack 200 Approval Order, *supra* note 4, at notes 15-24 and accompanying text. Additionally, the PSE, Amex, CBOE, and NYSE have submitted proposals to list warrants based on the Eurotrack 100 Index. *See e.g.*, Securities Exchange Act Release No. 29078 (April 15, 1991), 56 FR 16132 (notice of File No. SR-CBOE-91-14).

[11] As with the FT-SE 100 and Eurotrack 100 Indexes, the prices used are derived by taking the mid-point between the highest bid and the lowest offer displayed on SEAQ or SEAQI. Stock prices are converted from home currency prices into U.S. dollars, then converted from U.S. dollars into ECUs. The foreign exchange rates used in the calculation of the Eurotrack 200 Index are supplied by Telerate Inc. See Eurotrack 200 Approval Order, *supra* note 4.

[12] After making this adjustment for the FT-SE 100 Index stocks, the index calculator then divides the sum of the product of the price times shares outstanding, for all Eurotrack 200 Index stocks, by the total market capitalization of the index ("the divisor") on the base date, February 25, 1991. The divisor is changed, as appropriate, to reflect certain corporate actions involving constituent companies, such as stock dividends, and to maintain the continuity of the Index.

[13] The OIP covers the time period when all the quotes for stocks within the Index are firm (*i.e.*, the LSE's Mandatory Quote Period). For a discussion of "firm" quotes, *See* Eurotrack 200 Approval Order, *supra* note 4.

[14] For additional information regarding the design, construction, and operation of the Eurotop 100 Index, see Eurotop 100 Approval Order, *supra* note 4, at notes 6-23 and accompanying text.

[15] The Eurotop 100 Index is neither price-weighted nor capitalization-weighted. Instead, the EOE utilizes a weighing process based on the relative capitalizations of each component country's primary stock market and the relative Gross National Product ("GNP") of each country to determine each country's representation in the Eurotop 100 Index. The EOE uses another process based on share price and trading volume to determine the weighing of each stock included in the Eurotop 100 Index. See Eurotop 100 Approval Order.

[16] In order to ensure that the Eurotop 100 Index will remain representative of the most actively-traded stocks on the major European stock exchanges, the EOE reviews country weightings biennially. By contrast, the EOE reviews Eurotop 100 Index stock selections and stock weightings on an annual basis based on the monetary share volumes of the stocks over the three prior calendar years.

[17] See Eurotop 100 Approval Order, *supra* note 4.

[18] Accordingly, Index values will reflect the last available component stock prices converted into ECUs. Nonetheless, in the event that there is no price change in a component stock, its value will be continuously updated to reflect any changes in the home currency/U.S. dollar or German mark/ECU exchange rates.

[19] In addition, the PSE proposes to trade warrants on the Indexes on an unlisted trading privilege basis. To do so, the PSE would have to make a separate application under section 12(f) of the Act for each such warrant issue.

payment in U.S. dollars to the extent that the Eurotrack 200 Index or Eurotop 100 Index has increased above the pre-stated cash settlement value. If "out-of-the-money" at the time of expiration, the warrants would expire worthless.

Consistent with the Index Warrant Approval Order, trading in warrants on the Indexes will be subject to several safeguards designed to ensure investor protection. First, the Exchange has recommended to its members that they should sell warrants on the Indexes only to options-approved accounts. In addition, the Exchange's options suitability standard will apply to recommended Eurotrack 200 Index and Eurotop 100 Index warrant transactions. Moreover, pursuant to PSE Rule 9.18(c), a Senior Registered Options Principal or Registered Options Principal will be required to approve and initial a discretionary order in Eurotop 100 Index or Eurotrack 200 Index warrants on the day the order is entered. Furthermore, the PSE, prior to the commencement of trading of Eurotrack 200 Index or Eurotop 100 Index warrants, will distribute circulars to its membership calling attention to the specific risks associated with warrants on the Eurotrack 200 Index or the Eurotop 100 Index.

III. Discussion

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b)(5).[20] Specifically, the Commission finds that the trading of warrants on the Eurotrack 200 and Eurotop 100 Indexes will serve to protect investors, promote the public interest, and help to remove impediments to a free and open securities market by providing investors with a means to hedge exposure to market or systematic risk associated with European stock investments.[21] The trading of warrants on the Eurotrack 200 Index and the Eurotop 100 Index, however, raises several concerns, namely, issues related to index design, customer protection, surveillance, and market impact. The Commission believes, for the reasons discussed below, that the PSE has adequately addressed these concerns.

A. Index Design and Structure

As discussed more fully in the Eurotrack 200 Approval Order and the Eurotop 100 Approval Order, the Commission finds that the broad-based nature of both of these Indexes significantly minimizes the potential for manipulation of either Index.[22] First, the total capitalization of the Eurotrack 200 Index and the Eurotop 100 Index, as of January 1992, were both over U.S. $900 billion. Second, the stocks in each Index include stocks from a wide range of European industry sectors. Although the component stocks in neither Index are selected to achieve a specified industry representation, 25 industry groups are represented in the Eurotrack 200 Index and 24 industry groups are represented in the Eurotop 100 Index. Third, neither Index is dominated by a stock or group of stocks. Specifically, the ten most highly-weighted stocks accounted for only 19.12% of the Eurotop 100 Index and 21.84% of the Eurotrack 200 Index. Fourth, the component stocks in each Index are actively traded. Finally, the Commission believes that the rules for each index governing, among other things, the selection of countries included in the Indexes, the stocks included in the Indexes, and the periodic review of the composition and weighing of the Indexes will serve to ensure that both the Eurotrack 200 Index and the Eurotop 100 Index maintain their broad representative sample of actively-traded European stocks. Accordingly, the Commission finds that the Eurotrack 200 Index and the Eurotop 100 are broad-based indexes.

B. Customer Protection

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as Eurotrack 200 Index warrants and Eurotop 100 Index warrants, can commence on a national securities exchange. The Commission notes that, consistent with the Index Warrant Approval Order, specific rules and procedures of the PSE that address the special concerns attendant to the secondary trading of index warrants will be applicable to warrants based on the Indexes. In particular, by imposing the special suitability, disclosure, and compliance requirements noted above, the Exchange has addressed adequately the potential public customer problems that could arise from the derivative nature of warrants on the Eurotrack 200 Index and the Eurotop 100 Index. Moreover, the PSE plans to distribute circulars to its membership calling attention to the specific risks associated with warrants on the Eurotrack 200 Index and Eurotop 100 Index, and, pursuant to the Exchange's listing guidelines, only substantial companies capable of meeting their warrant obligations will be eligible to issue warrants on the Indexes.

Warrants, unlike standardized options, do not contain a clearinghouse guarantee but are instead dependent upon the individual credit of the issuer. This heightens the possibility that an exerciser of warrants may not be able to receive full cash settlement upon exercise. To some extent this risk is minimized by the Exchange's standard that warrant issuers possess at least $100,000,000 in assets. In any event, financial information regarding the issuers of Eurotrack 200 Index warrants and Eurotop 100 Index warrants will be disclosed or incorporated in the prospectuses accompanying the offerings of the warrants.

There is a systemic concern, however, that broker-dealers or broker-dealer subsidiaries issuing index warrants or providing a hedge for an issuer of index warrants will incur position exposure. This position exposure, if left partially hedged or dynamically hedged, not only creates a risk of non-performance by the issuer but also adds a systemic risk in that the broker-dealer will have to hedge dynamically the position exposure to minimize losses should the market turn against it. To date, the warrant issuances have been so small in relation to a broker-dealer issuer's (or underwriter's) total equity positions as not to raise significant concerns. Nevertheless, the Exchange should continue to monitor this area.

C. Surveillance

In evaluating new derivative instruments, the Commission, consistent with the protection of investors, considers the degree to which the derivative instrument is susceptible to

[20] 15 U.S.C. 78f(b)(5) (1988).

[21] Pursuant to section 6(b)(5) of the Act, the Commission must predicate approval of any new derivative product proposal upon a finding that the introduction of such new derivative instrument is in the public interest. Such a finding would be difficult with respect to a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. In this regard, the trading of warrants on the Indexes will provide investors with hedging vehicles that should reflect the overall movement of the European stock market. The Commission also believes that these warrants will provide investors with a means by which to make investment decisions in the European equity market. Specifically, warrants on the Indexes will allow investors to establish positions or increase existing positions in European stocks in a cost effective manner.

[22] See Eurotrack 200 Approval Order, *supra* note 4, at notes 43–44 and accompanying text and Eurotop 100 Approval Order, *supra* note 4, at notes 34–35 and accompanying text.

manipulation. The ability to obtain information necessary to detect and deter market manipulation and other trading abuses is a critical factor in the Commission's evaluation.[23] It is for this reason that the Commission has required that there be an effective surveillance sharing agreement in place between an exchange listing or trading a derivative product and the exchange(s) trading the stocks underlying the derivative contract that specifically enables officials to surveil trading in the derivative product and its underlying stocks.[24] Such agreements provide an important deterrent to manipulation because they facilitate the availability of information needed to fully investigate a potential manipulation if it were to occur. For foreign stock index derivative products, these agreements are especially important to facilitate the collection of necessary regulatory, surveillance and other information from foreign jurisdictions.

The Commission has considered the adequacy of surveillance sharing arrangements in the context of several types of derivative products, including derivative products based on stock indexes comprised of component securities from one country ("single country indexes") and indexes comprised of component securities from several countries ("multi-country indexes"). In the context of derivative securities products based on single country indexes, the Commission consistently has required the U.S. exchange that proposes to trade a derivative product to establish an effective surveillance sharing arrangement with the primary foreign stock market where the underlying securities are traded. For example, the Commission approved the trading of warrants based on the FT–SE 100 Index and the CAC–40 Index which are broad-based indexes representative of the U.K. and French stock markets, respectively. In these two instances, the Commission required that there be an effective surveillance sharing agreement in place between the relevant U.S. exchange and the relevant underlying foreign exchange because the indexes were limited to one country, thus enabling a potential manipulation to be based on the securities of a single market.[25]

In the context of derivative products based on multi-country indexes, such as the Eurotrack 200 Index and the Eurotop 100 Index, the Commission considers several factors in evaluating whether these instruments are readily susceptible to manipulation. The presence of effective surveillance sharing agreements is one factor in this evaluation. In many cases, without effective surveillance sharing agreements, the Commission would be unable to approve the proposed product. The Commission, however, recognizes that the construction of an index, including the diversification and active and deep markets for component securities, can mitigate against the need to require that effective surveillance sharing agreements be concluded with all of the markets whose securities underlie an index. Indeed, the Commission has approved or commented favorably upon derivative products based on the International Market Index ("IMI") and the Europe, Australia, Far East ("EAFE") Index, even though all of the stocks comprising these indexes were not covered by an effective surveillance sharing agreement.[26] In both cases, the stocks from countries with a major index weighing were covered by effective surveillance sharing agreements and no single uncovered country's securities accounted for more than a small percentage of the index's weight. This made it very unlikely that a successful manipulation could be based on the markets that did not have effective surveillance sharing agreements with the derivative exchange.

The PSE has effective surveillance sharing agreements with the home markets for 62.8% and approximately 50% of the stocks comprising the Eurotrack 200 Index and the Eurotop 100 Index, respectively. For the reasons discussed below, the Commission believes this is not problematic. Specifically, the Indexes contain several features that make it difficult to engage in intermarket abuses (such as manipulation or front running) using Eurotrack 200 Index warrants or Eurotop 100 Index warrants. As noted above, both Indexes are comprised of the most highly-capitalized, actively-traded securities from a large number of European countries.[27] Accordingly, because the component securities of both Indexes are spread over a large number of European countries, are diversified by industry sector, and are adjusted in accordance with specific rules designed to maintain specific weightings and relationships, the Commission believes it would be considerably more difficult to affect the value of either the Eurotrack 200 Index or the Eurotop 100 Index because to do so would require influencing simultaneously several foreign markets.

In addition, as noted above, while the PSE does not have effective surveillance sharing agreements with all of the countries comprising the Indexes, no single uncovered country's securities account for 20% or more of the weighing of either Index and no two uncovered countries' securities account for 30% or more of the weighing of either Index. In particular, the Commission notes that the PSE has concluded effective surveillance sharing agreements with the relevant self-regulatory

[23] The Commission also notes that the PSE will apply its existing index warrant surveillance procedures to trading in Eurotrack 200 Index warrants and Eurotop 100 Index warrants.

[24] The Commission believes that the ability to obtain relevant surveillance information, including, among other things, the identity of the ultimate purchasers and sellers of securities, is an essential and necessary component of an effective surveillance sharing agreement.

[25] See, e.g., Securities Exchange Act Release No. 27769 (March 6, 1990), 55 FR 9380 (order approving the listing and trading of FT–SE 100 warrants on the Amex) and Securities Exchange Act Release No. 28544 (October 17, 1990), 55 FR 42792 (order approving the listing and trading of CAC–40 warrants on the Amex). In addition, in light of unique circumstances, the Commission has approved some U.S. exchange proposals to trade index warrants based on the Japanese equity market without the presence of direct surveillance sharing arrangements between these exchanges and the Tokyo Stock Exchange. In these instances, the Commission relied on, among other things, the existence of a Memorandum of Understanding between the SEC and the Japanese Ministry of Finance ("MOF") which could provide the Commission with information that would be covered by an effective surveillance sharing agreement, and the history of cooperation between the Commission and the MOF. Notwithstanding, the Commission continues to believe in the importance of sharing agreements between the derivative and underlying cash markets. Accordingly, we have urged the U.S. markets to secure surveillance sharing agreements with the TKE as soon as possible. See Securities Exchange Act Release Nos. 30256 (January 16, 1992), 57 FR 2797 and 31016 (August 11, 1992), 57 FR 37012.

[26] See Securities Exchange Act Release No. 26653 (March 21, 1989), 54 FR 12705 (order approving an Amex proposal to list and trade options based on the IMI) and letter from Jonathan G. Katz, Secretary, SEC, to Dr. Paula Tosini, Director, Division of Economic Analysis, CFTC, dated October 11, 1988 (letter not objecting to the designation of the Chicago Mercantile Exchange as a contract market to trade EAFE stock index futures).

[27] Stocks from nine countries are represented in the Eurotop 100 Index and stocks from 12 countries are represented in the Eurotrack 200 Index. The stocks from the three countries that are not included in the Eurotop 100 Index (Ireland, Norway, and Denmark) comprise only 1.03% of the value of the Eurotrack 200 Index.

organizations in the U.K.,[28] France,[29] and the Netherlands,[30] three of the countries with large weightings within the Indexes. In this regard, the Commission emphasizes, that if there were a country accounting for 20% or more of either Index that was not covered by an effective surveillance sharing agreement (or two countries accounting for 30%), then it would be difficult for the Commission to reach the conclusions contained in this order.[31]

In sum, the Commission believes that the Eurotrack 200 Index and the Eurotop 100 Index are not readily susceptible to manipulation, and that if a manipulation were nonetheless to occur, it could be easily detected. As noted above, the component securities of the Indexes are spread over a large number of European countries, the Indexes are broad-based, a substantial portion of each Index is covered by effective surveillance sharing agreements, and the weighing in each Index of the securities of any country without an effective surveillance sharing agreement is relatively small.

While reaching this conclusion, the Commission nevertheless continues to believe strongly that surveillance sharing agreements between the PSE and all the exchanges trading component securities of the Indexes would be useful in deterring and detecting potential manipulations or other improper or illegal trading involving warrants on the Eurotrack 200 Index and the Eurotop 100 Index. Accordingly, the Commission believes it is worthwhile for the PSE and the relevant foreign exchanges to continue to work together to consummate formal effective surveillance sharing agreements as soon as practicable.[32]

D. Market Impact

The Commission believes that the listing and trading of Eurotrack 200 Index warrants and Eurotop 100 Index warrants on the PSE will not adversely impact the securities markets in the U.S. or Europe. First, as previously described, the PSE's existing stock index warrant rules and surveillance procedures will apply to warrants based on the Indexes. Second, the Commission notes that both Eurotrack 200 Index and the Eurotop 100 Index are broad-based and diversified and include highly capitalized and actively-traded securities, no one of which dominates either Index. Accordingly, the Commission believes that the introduction of warrants on the Eurotrack 200 Index and the Eurotop 100 Index by the PSE should not have a significant effect on the underlying European securities markets or U.S. securities markets.

The Commission finds good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that PSE's proposals to trade warrants based on the Eurotrack 200 Index and the Eurotop 100 Index are identical to proposals by other U.S. securities to trade warrants based on these Indexes. The other exchange's proposals for these products were subject to the full notice and comment period and the Commission did not receive any comments on them. Accordingly, the Commission does not find any different regulatory issues arising out of the current PSE proposals. Therefore, the Commission believes it is consistent with section 6(b)(5) of the Act to approve the PSE's proposals on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the proposed rule changes. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filings will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the respective file numbers in the caption above and should be submitted by September 29, 1992.

IV. Conclusion

For the reasons set forth above, the Commission finds that the proposed rule changes are consistent with the requirement of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5) and the rules and regulations thereunder.

It therefore is ordered, pursuant to section 19(b)(2) of the Act,[33] that the proposed rule changes (SR–PSE–92–09 and SR–PSE–92–10) are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[34]

Jonathan G. Katz,

Secretary.

[FR Doc. 92–21527 Filed 9–4–92; 8:45 am]

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[28] See Memorandum of Understanding Concerning the Provision of Information for the Purpose of Regulation and Enforcement between The Securities Association and the PSE, dated May 1, 1990.

[29] See Memorandum of Understanding Concerning the Listing of Securities Linked with an Index and the Furnishing of Information for the Purpose of Regulation and Enforcement between the Societe Des Bourse Francaises and the PSE, dated October 9, 1990. See also Administrative Agreement between the U.S. Securities and Exchange Commission and the Commission des Operations de Bourse de France, dated December 14, 1989, 45 SEC Docket 726, January 12, 1990.

[30] See Memorandum of Understanding Concerning the Provision of Information for the Purpose of Regulation and Enforcement between the Amsterdam Stock Exchange and the PSE, dated May 21, 1992.

[31] In addition, in the event that the percentage weightings of the countries included in either Index changed so that a country without an effective surveillance sharing agreement comprised greater than 20% of either Index (or two countries accounted for 30% or more), then the Commission would consider the PSE's determination to continue to list additional warrants based on such Index to be a material change in the PSE's listing standards, requiring the filing of a proposed rule change pursuant to section 19(b) of the Act.

[32] In this regard, the PSE agrees to report yearly to the Commission over the next three years detailing its efforts to secure effective surveillance sharing agreements with the uncovered countries. See letter from David P. Semak, Vice President, Regulation, PSE, to Thomas R. Gira, Branch Chief, Options Regulation, Division, dated June 26, 1992.

[33] 15 U.S.C. 78s(b) (1982).

[34] 17 CFR 200.30–3(a)(12) (1989).

[Release No. 34–31120; International Series No. 443; File No. SR–PHLX–91–08]

Self-Regulatory Organization; Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Rule 1016—Block Transactions in Foreign Currency Options

August 28, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 28, 1992, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit

comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX, pursuant to Rule 19b-4 of the Act, proposed to add PHLX Rule 1016—Block Transactions in Foreign Currency Options.[1] The proposed rule change would permit foreign currency options orders of 1,000 contracts or more to trade utilizing special procedures applicable to such block transactions. A copy of proposed PHLX Rule 1016 is attached as *Exhibit A*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The PHLX proposes to establish a "Block Rule" for the trading of foreign currency options. Specifically, in order to provide quick executions at a single price to trades over 1,000 contracts, the PHLX proposes the following block execution procedure: a floor broker with a block order shall quote the market in a particular foreign currency option, announce that a block quotation for a specified number of contracts over 1,000 is sought, and ascertain from the trading crowd response the best price at which the entire order can be executed. This price—the block price—shall be the price at which the entire block order is executed. Contrary to present permitted practice, this block trade may occur at a price that is not within the market first quoted to the broker. Markets given in response to a request for a block quote are provided specifically for the inquiring individual in possession of the block order and such quotes are not firm for anyone else at the time, but nonetheless must be made in a loud and audible fashion.

Additionally, the block order execution procedures proposed by the PHLX provide for priority among categories of those contra-side interests competing in the crowd for participation in the block trade. The proposed priority of categories among contra-side interests can best be understood by the following example. The market first quoted was 16–20, and in response to a request for a block quote for 3,000 contracts, the market given was 12–23, 3,000 contracts on each side; the floor broker executes a block order to buy 3,000 at 23. First, priority goes to customer orders of less than 100 contracts offering from 20 to 23. Second, thereafter priority is accorded to the interest that constituted the best offer when the floor broker first quoted the market, but before the block order was announced. Thus, any offer at 20 is executed next. Third, interests of 1,000 contracts or more at prices better than the block price receive priority. For example, offers of 21 and 22, of at least 1,000 contracts fall into this category. Fourth, any eligible interest of at least 200 contracts at the block price or better, such as offers of 21, 22 or 23, receive next priority. Finally, any remaining portion of a block order can be executed against any remaining eligible interests, such as offers of 21 through 23, for less than 200 contracts. Under this example, all of the executions occur at a price of 23, the "clean-up price," despite the offer being for a lower price, such as 21 or 22. The Exchange indicates that the purpose of arranging priority in this fashion is twofold. First, the Exchange believes that ensuring that customer orders of under 100 contracts are always afforded top priority to participate at the block price is consistent with the Exchange's commitment to the retail public investor. Second, the Exchange believes that providing the opportunity for a trader in the crowd, or off-floor interest, to increase his participation (over that of pro-rata parity split) by voicing a market quicker and larger than others will foster competition in the crowd resulting in better and faster executions of block sized orders. Accordingly, the Exchange believes that the proposal will enable the PHLX to more effectively compete with the over-the-counter ("OTC") foreign currency options market for block orders.

With respect to priority among orders of the same category, the PHLX points out that within each of the aforementioned categories priority among those interests shall be determined in accordance with the Exchange's rules regarding the parity and priority of foreign currency options orders, as enumerated in PHLX Rules 1014(h) and 119. For example, within the third category in the example above (offers of 1,000 contracts or more at prices better than the block price) priority is given to the 21 offer, the better price. If a portion of the block order remains after all offers of 1,000 at 21 are satisfied, priority is next given to the offers at 22, also within the third category. In addition, notwithstanding the above, the proposal also provides that any bid or offer, regardless of which category of contra-side interest it is in, for the account of an Exchange member which relies on the exemption under Section 11(a)(1)(G) of the Act must yield priority to any bid or offer for the account of a customer.

The PHLX believes that its proposal will attract block orders presently directed predominantly to the OTC market, thereby increasing the liquidity of the PHLX's foreign currency options market. Moreover, the Exchange believes that customers choosing to trade on the PHLX, as opposed to the OTC market, will enjoy the significantly greater protections afforded by an exchange regulated market environment. The PHLX also notes that its proposed procedures for foreign currency block trades contain sufficient safeguards to ensure that the procedures cannot be misapplied in order to achieve otherwise impermissible goals. Specifically, the floor broker must quote the market before announcing the existence of a block order; and, moreover, the broker must actually hold an order ticket for a block order. Moreover, under the PHLX proposal, any bid or bid offer for the account of an Exchange member which relies on the exemption under section 11(a)(1)(G) of the Act must yield priority to any bid or offer for the account of a customer.

The Exchange believes that the proposed rule change is consistent with the Act, and, in particular, section 6(b)(5) in that it is designed to remove impediments to and perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

[1] The PHLX originally submitted its proposal on May 9, 1991. On April 21, 1992, the PHLX amended its proposal to clarify that any bid/offer for the account of a member which relies on the exemption under Section 11(a)(1)(G) of the Act must yield priority to any bid/offer for the account of a customer. See letter from Gerald D. O'Connell, Vice President, Market Surveillance, PHLX, to Thomas Gira, Branch Chief, Options Regulation, Division of Market Regulation, SEC, dated April 21, 1992.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 29, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Jonathan G. Katz,

Secretary.

Exhibit A—Rule 1016—Block Transactions In Foreign Currency Options

(a) A member may request the trading crowd to give an indication as to where a large sized order may be executed. A response from the crowd to any such request may include large sized indications of interest at prices outside the existing best bid and offer, but no trade may be consummated at the outside price until the previously established superior bids or offers (as the case may be) are either satisfied or withdrawn and a new market is established within which the large sized order may trade.

(b) The following is an exception to the prohibition against trading outside the best bid and offer; it applies to block orders executed at a clean-up price in accordance with the steps below:

(i) For the purposes of this rule, the following definitions apply:

(A) A "block order" is any Exchange foreign currency options order of 1,000 contracts or more.

(B) A "block quote" is the best bid and offer at which the block order can be entirely satisfied.

(C) The "clean-up price" is the price at which the block order is executed.

(D) The "clean-up" includes those bid or offers as the case may be of eligible interests at the clean-up price or better.

(E) An "Eligible interest" includes the following:

(1) orders placed on the book or held by a broker in the crowd at any price within the clean-up range;

(2) bids/offers within the clean-up range which constituted markets in the crowd in response to the floor broker's request for the current market and prior to his request for a block quote;

(3) bids/offers within the clean-up range made in response to the request for a block quote.

(ii) A floor broker in possession of a block order shall inquire as to the current market, inform the crowd as to the size of the block order and ask the crowd to provide a block quote;

(iii) The crowd shall then respond with bids and offers (whether agency and/or principal), at prices which may be equal, superior or inferior to the current market, which for that moment are exclusive to that block order. From these responses the floor broker shall derive the block quote and immediately determine the priority of eligible interests established within the clean-up range;

(iv) The floor broker may execute the block order at the clean-up price by announcing the trade along with the price and size of the trade.

(c) With respect to determining the priority of eligible interests within the clean-up range, the following shall apply:

(i) Priority among eligible interests is afforded as follows:

(A) First, to customer orders, as defined by Exchange Rule 1014(g) of less than 100 contracts at any price within the clean-up range.

(B) Second, to all eligible interests constituting the best market in the crowd in response to the floor broker's request for the current market and prior to his request for a block quote.

(C) Third, to all interests of 1,000 contracts or more at any price better than the clean-up price made in response to the request for a block quote.

(D) Fourth, to all eligible interests of 200 contracts or more at any price within the clean-up range made in response to the request for a block quote.

(E) Fifth, to any remaining eligible interests.

(F) Notwithstanding the above, any bid/offer for the account of a member which relies on the exemption under section 11 (a) (1) (G) of the Securities Exchange Act of 1934 must yield time priority to any bid/offer for the account of a customer.

(ii) In any instance where the question of priority arises in connection with orders within the same category (i.e., the first, second, third, fourth, or fifth), priority is established in accordance with Exchange Rule 1014(g) and Rule 119.

[FR Doc. 92-21528 Filed 9-4-92; 8:45 am]

BILLING CODE 8010-01-M

[2] 17 CFR 200.30-3(a)(12) (1989).

[Rel. No. IC-18920; 812-7920]

Dean Witter American Value Fund, et al.; Application

September 1, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Dean Witter American Value Fund, Dean Witter California Tax-Free Income Fund, Dean Witter Convertible Securities Trust, Dean Witter Developing Growth Securities Trust, Dean Witter Dividend Growth Securities, Inc., Dean Witter Government Securities Plus, Dean Witter High Yield Securities Inc., Dean

Witter Intermediate Income Securities, Dean Witter Managed Assets Trust, Dean Witter Natural Resource Development Securities Inc., Dean Witter New York Tax-Free Income Fund, Dean Witter Strategist Fund, Dean Witter Tax-Exempt Securities Trust, Dean Witter Utilities Fund, Dean Witter World Wide Investment Trust, Dean Witter Value-Added Market Series, Active Assets Money Trust, Active Assets Tax-Free Trust, Active Assets Government Securities Trust, Dean Witter/Sears New York Municipal Money Market Trust, Dean Witter Capital Growth Securities, Dean Witter European Growth Fund Inc., Dean Witter Global Short-Term Income Fund Inc., Dean Witter Precious Metals and Minerals Trust, Dean Witter Pacific Growth Fund Inc., Dean Witter Multi-State Municipal Series Trust, Dean Witter Premier Income Trust, Dean Witter Short-Term U.S. Treasury Trust, Dean Witter Equity Income Trust, Dean Witter Diversified Income Trust, Dean Witter/Sears California Tax-Free Daily Income Trust, Dean Witter/Sears Liquid Asset Fund Inc., Dean Witter/Sears Tax-Free Daily Income Trust, Dean Witter/Sears U.S. Government Money Market Trust (the "DWR Funds"), TCW/DW Core Equity Trust, TCW/DW North American Government Bond Trust, and TCW/DW Latin American Fund, (collectively, with the DWR Funds, the "Funds"), and Dean Witter Reynolds Inc. ("DWR").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from the provisions of sections 2(a)(32), 2(a)(35), 22(c), and 22(d), and rule 22c-1.

SUMMARY OF APPLICATION: Applicants seek an order amending certain contingent deferred sales charge ("CDSC") orders (the "Prior Orders") to extend the relief granted by the Prior Orders to certain additional funds, investment advisers, and principal underwriters, to permit the Funds to implement an interfund reinvestment program, and to waive the CDSC in connection with certain redemptions.

FILING DATE: The application was filed on May 13, 1992 and amended on August 7, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 28, 1992, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, Two World Trade Center, New York, New York 10048.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Staff Attorney, (202) 272-2511, or C. David Messman, Branch Chief, (202) 272-3018 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Funds are registered under the Act as open-end management investment companies. DWR is a registered broker-dealer and, through its InterCapital Division, provides administrative, advisory, and distribution services to the Funds. DWR also is an investment adviser registered under the Investment Advisers Act of 1940.

2. In 1983, the SEC issued an order, and an amended order thereto (the "Prior Orders"), to the DWR Funds to permit certain of the DWR funds (the "CDSC Funds") to impose a contingent deferred sales charge ("CDSC") on redemptions of shares and to waive the CDSC in certain circumstances.[1] Pursuant to the Prior Orders, a CDSC generally is imposed on shares redeemed within six years of purchase. The rate of the applicable CDSC declines over time, based upon the period an investor holds shares of the CDSC Funds. The CDSC also is waived under certain circumstances.

3. The Prior Orders granted relief to the DWR Funds and any open-end management investment company for which DWR now or in the future serves as investment adviser or principal underwriter. Pursuant to an internal reorganization, the investment company management activities currently engaged in by the InterCapital Division of DWR and the principal underwriting activities currently performed by DWR will be "spun off" into two separate newly-formed corporations. Subsequent to the reorganization, the investment adviser and/or principal underwriter of the Funds will no longer be DWR but rather corporations under common control with DWR. The Prior Orders do not apply to companies controlling, controlled by, or under common control with, DWR. Therefore, applicants seek an order amending the Prior Orders to extend the relief granted by the Prior Orders to (a) the named applicants, (b) any open-end management investment company for which any person controlling, controlled by, or under common control with DWR within the meaning of section 2(a)(9) of the Act may in the future serve as an investment adviser or principal underwriter, and (c) any person controlling, controlled by, or under common control with DWR within the meaning of section 2(a)(9) of the Act (a "DWR Entity") that may in the future serve as investment adviser or principal underwriter to the Funds.

4. Applicants also seek relief to waive the CDSC in connection with an interfund reinvestment program. Under the Prior Orders, shares of each CDSC Fund that are acquired through the reinvestment of dividends, capital gains, or other distributions (collectively, "Distributions") paid by such Fund ("Reinvestment Shares") are treated as "free shares." As free shares, Reinvestment Shares are not subject to any CDSC at the time of their redemption or exchange and, subject to the conditions generally applicable to exchanges of shares, may be exchanged to purchase shares of any other CDSC Fund without imposition of a CDSC upon exchange or at the time such shares of the other CDSC Fund are redeemed. Exchanges of Reinvestment Shares are made available pursuant to offers of exchange made by the Funds (the "exchange Program"). Exchanges are made in reliance upon and in conformity with applicable requirements of section 11(a) of the Act and rule 11a-3 thereunder. In all cases, shares are exchanged on a "no-load" basis at the relative net asset values per share of the two Funds involved.

5. Under current arrangements, Distributions paid by one Fund cannot be invested directly in shares of any other Fund. Distributions may be invested only in Reinvestment Shares of the Fund that paid the Distributions. The Reinvestment Shares so acquired, however, can be exchanged for shares of other Funds pursuant to the Exchange Program, assuming an exchanging privilege between the two Funds involved is available.

6. To make available a more convenient and efficient means to invest Distributions paid by one Fund in shares

[1] Investment Company Act Release Nos. 13072 (Mar. 4, 1983) (notice), and 13126 (Mar. 30, 1983) (order); and Investment Company Act Release Nos. 13627 (Nov. 14, 1983) (notice), and 13673 (Dec. 4, 1983) (order).

of another Fund, applicants propose to implement an interfund reinvestment program (the "Reinvestment Program"). Under the Reinvestment Program, Distributions declared by a Fund could, at the option and direction of a shareholder, automatically be invested in shares of another Fund. Although all Funds could potentially participate in the Reinvestment Program, applicants anticipate that, at least initially, only certain Funds will participate and applicants will limit the availability of the Reinvestment Program to allow Distributions to be invested only in a Fund in which a shareholder already owns shares. In all cases, the investment of Distributions pursuant to the Reinvestment Program will be affected at the then-current net asset value per share of the Fund whose shares are being acquired, without being subject to any front-end sales charge at the time of purchase or any CDSC at the time of redemption or exchange. Accordingly, the Funds will waive the CDSC on shares of any CDSC Fund acquired pursuant to the Reinvestment Program.

7. Additionally, applicants propose to waive the CDSC with respect to redemptions of shares of the Funds held by: (a) Employees and former employees of DWR or any DWR Entity, (b) employee benefit plans in which such employees or former employees are participants, and (c) directors/trustees of the Funds (collectively, the "Employee Redemptions"). DWR, or any DWR Entity will determine whether, and the extent to which, these waivers are implemented, subject to the approval of the board of directors/trustees of each Fund adopting such waiver, including a majority of the directors/trustees of each Fund who are not "interested persons" of the Fund, DWR, or any DWR Entity, as such term is defined in section 2(a)(19) of the Act, as being in the best interests of the Fund and its shareholders.

Applicants' Legal Analysis

1. The requested amendment of the Prior Orders is necessary and appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policies and provisions of the Act. The amount, computation and timing of the CDSC are designed to promote fair treatment of all shareholders, while permitting applicants to offer investors the advantage of having purchase payments fully invested on their behalf immediately. The waivers of the CDSC will not harm the Funds or their shareholders, nor will such waivers unfairly discriminate among shareholders or purchasers. Moreover, the Funds will disclose fully all available waivers of the CDSC.

2. The proposed waiver of the CDSC in connection with both the Reinvestment Program and Employees Redemptions does not raise legal issues with respect to sections 2(a)(32), 2(a)(35), 22(c) of the Act, or rule 22c-1 thereunder. Applicants recognize, however, that waiving the CDSC in such circumstances could be viewed as causing such shares to be sold at other than a uniform offering price in violation of section 22(d). Nevertheless, applicants believe that the proposed additional types of waivers are consistent with the policies underlying section 22(d) of the Act.

3. The Reinvestment Program will provide shareholders of the Funds an efficient mechanism to reinvest Distributions in the manner they believe most appropriate given their individual investment goals and financial needs. With respect to Employee Redemptions, the redeeming shareholder will redeem shares sold at little or no expense to DWR or any DWR Entity. Shareholders of the Funds will benefit from such arrangements to the extent that economies of scale may result from such sales (e.g., certain expenses will be borne *pro rata* across a larger base of shares or be subject to reductions at higher asset levels) ultimately reducing on a per share basis the expenses borne by all shareholders.

Applicants' Conditions

As a condition of the requested relief, applicants agree to comply with the provisions of proposed rule 6c-10 under the Act (Investment Company Act Release No. 16619 (Nov. 2, 1988)) as such rule is currently proposed and as it may be reproposed, adopted, or amended.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-21529 Filed 9-4-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18921; 812-7722]

John Hancock Asset Allocation Fund, et al.; Application

September 1, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: John Hancock Asset Allocation Fund, John Hancock Cash Management Fund, John Hancock Global Fund, John Hancock Government Spectrum Fund, John Hancock Growth Fund, John Hancock Sovereign Bond Fund, John Hancock Sovereign Investors Fund, Inc., John Hancock Strategic Series, John Hancock Special Equities Fund, John Hancock Tax Exempt Income Fund, John Hancock Tax Exempt Series Fund, John Hancock Technology Series, Inc., John Hancock U.S. Government Securities Fund, and John Hancock World Fund (the "Hancock Funds"), Freedom Investment Trust, Freedom Investment Trust II, and Freedom Investment Trust III (the "Freedom Funds"), and any existing or future series thereof, and any open-end registered investment company, including any series thereof, not currently advised by the Adviser (as defined below), but for which the Adviser may serve in the future as investment adviser, or future open-end registered investment companies or series thereof that are of the same "group of investment companies as that term is defined in rule 11a-3 under the Act (the "Funds"), John Hancock Advisers, Inc. (the "Adviser"); and John Hancock Broker Distribution Services, Inc. ("Broker Services") and Freedom Distributors Corporation, ("Freedom Distributors") (together, the "Co-Distributors").

RELEVANT ACT SECTIONS: Order requested under section 6(c) for exemptions for sections 18(f)(1), 18(g), 18(i), 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and rule 22c-1 thereunder.

SUMMARY OF APPLICATION: Applicants seek order to permit the Funds (a) to issue and sell three classes of shares representing interests in the same portfolios of securities, and (b) to assess a contingent deferred sales charge ("CDSC") on certain redemptions of the shares of one of the classes, and to waive the CDSC in certain cases.

FILING DATES: The application was filed on May 10, 1991, and amended on October 22, 1991, March 26, 1992, August 5, 1992, and August 31, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 28, 1992 and should be accompanied by proof of service on applicants, in the form of an affidavit or,

for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 101 Huntington Avenue, Boston, Massachusetts 02199–7603.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Law Clerk, at (202) 272–7027, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. All of the Funds are Massachusetts business trusts, except John Hancock Sovereign Investors Fund, Inc. ("Sovereign Investors") and John Hancock Technology Series, Inc., which are Maryland corporations. The Funds are registered under the Act as open-end management investment companies. The Adviser provides investment advisory and management services to the Funds. Broker Services acts as principal underwriter for the Hancock Funds. The Co-Distributors act as principal underwriters for the Freedom Funds.

2. All shares of the Hancock Funds, except John Hancock Cash Management Fund ("Cash Management Fund"), are currently offered to the public daily at their net asset value with the imposition of a front-end sales load. Investors may qualify for a reduced sales load based on the aggregate amount of current and prior investments in shares of the Hancock Funds which carry a sales load. Pursuant to an order of the SEC, the Funds may impose a CDSC on certain redemption of shares sold pursuant to a complete front-end sales load waiver applicable to large purchases.[1]

3. Currently, most Hancock Funds have adopted a distribution plan pursuant to rule 12b–1 under the Act. Each Hancock Fund with a rule 12b–1 plan pays Broker Services a monthly distribution fee equal to the lesser of the annual rate of 0.50% of average daily net asset value of the distribution expenses estimated to be incurred by Broker Services in any year, except Cash Management Fund (for which fund the fee has been waived since 1983) and Sovereign Investors (which pays Broker Services the lesser of 0.25% of the average daily net asset value of the distribution expenses estimated to be incurred by Broker Services in any year). Pursuant to the rule 12b–1 plans, at least quarterly, Broker Services provides the Directors/Trustees of the Funds with a written report of the amounts expended under the plan and the purpose for which such expenditures were made.

4. Shares of the Freedom Funds are purchased at a price equal to the net asset value per share, plus a sales charge which, at the investor's election, may be imposed either (a) at the time of purchase ("Class A Shares"), or (b) on a contingent deferred basis ("Class B shares").[2] Class A shares (except Freedom Money Market Fund Class A shares, as discussed below) of the Freedom Funds are subject to an ongoing distribution fee at an annual rate of up to 0.25% of each Freedom Funds' average daily net assets attributable to Class A shares. Class B Freedom Fund shares are subject to an ongoing distribution fee of up to 0.75% of each Freedom Fund's average daily net assets attributable to Class B shares.[3]

5. Freedom Money Market Fund offers two classes of shares without imposition of a sales charge: Class A shares ("Money Market Class A shares") and Class B shares ("Money Market Class B shares"). Money Market Class A shares are not subject to any ongoing distribution fees. Money Market Class B shares are subject to a distribution fee of 0.75% of average daily net assets. Shares of Freedom Money Market Fund outstanding prior to January 2, 1992 are designated Money Market Class C shares, and are not subject to any sales charge or distribution fee. Money Market Class C shares are no longer offered for purchase.

6. Applicants proposed to establish a three-part distribution plan (the "Multi-Class Plan") to enable each Fund to offer investors the options to purchase shares either with a front-end sales load and rule 12b–1 distribution and service fees (except for certain shares to be purchased in large amounts and subject to a CDSC) (the "Front End Option"), or shares subject to a CDSC, a rule 12b–1 service fee, and a higher rule 12–1 distribution fee (the "CDSC Option"). A third option available only to eligible institutional investors will allow shares to be sold without any rule 12b–1 distribution plan, CDSC, or front-end sales load (the "No-Load Option"). The Directors/Trustees will make appropriate amendments to each Hancock Funds's articles of incorporation or declaration of trust to authorize issuance of multiple classes of shares. Such amendments will be approved by the existing shareholders of the Hancock Funds. The Directors/Trustees of the Freedom Funds will approve the Freedom Funds' participation in the Multi-Class Plan.

7. The Multi-Class Plan will be implemented by designating the currently issued and outstanding shares of each Hancock Fund, except Cash Management Fund (as further explained below), as Class A shares and creating two additional new classes of shares of each Hancock Fund: Class B shares and Class C shares. Current Freedom Fund investors will continue to hold their designated class shares upon implementation of the Multi-Class Plan. Class A shares will be offered for sale subject to the Front-End Option. Class B shares will be offered subject to the CDSC Option. Class C shares will be offered pursuant to the No-Load Option. Shares of Cash Management Fund and Freedom Money Market Fund will not pay sales charges after implementation of the Multi-Class Plan.

8. To integrate Cash Management Fund into the Multi-Class Plan, Cash Management Fund will create Class A Cash Management shares, Class B Cash Management shares, and Class C Cash Management shares. Existing Shares of Cash Management Fund will be designated as Class A Cash Management shares. Class A Management shares will not be subject to a front-end sales charge, but will be charged a rule 12b–1 distribution fee of up to 0.25%, and a service fee of up to 0.25%, of the average daily net asset value of the Class A Cash Management shares. Such shares may be purchased with initial investments into the Cash Management Fund or upon exchange of Class A shares of another Fund (as described below). Class B Cash Management shares will not be subject to a front-end or deferred sales charge, but will be charged a rule 12b-1 distribution fee of up to 0.75%, and a service fee of up to 0.25%, of the average

[1] Investment Company Act Release Nos. 18331 (Sept. 20, 1991) (notice), and 18368 (Oct. 16, 1991) (order).

[2] Although up to three separate classes of shares of the Freedom Funds may be offered to the public pursuant to any order of the Commission (the "Freedom Order"), Investment Company Act Release Nos. 18378 (Oct. 24, 1992) (notice) and 18411 (Nov. 20, 1991) (order), the Adviser has determined that for efficiency in administration, separate classes of shares of the Freedom Funds will be offered to the public pursuant to the order sought in this application, and subject to the representations and conditions made in this application.

[3] The Freedom Order permits the issuance of a third class of shares ("Class C shares"), but to date no Freedom Fund Class C shares have been issued.

daily net asset value of the Class B Cash Management shares. Such shares may be acquired only in exchange for Class B shares of another Fund (as described below).[4] Class C shares offered by Cash Management Fund will be the same as Class C shares of the other Funds.

9. Under the Front-End Option, Class A shares will be sold at net asset value plus a front-end sales load. The sales load generally will be reduced for larger purchases. For purchases of Class A shares in amounts of one million dollars or more, there will be no initial sales load, but a CDSC will be imposed on redemptions of these shares made within the first twelve months after purchase (the "CDSC Class A shares"). The CDSC amount will be 1.0% on purchases of $1,000,000 to $4,999,999, 0.50% on purchases of $5,000,000 to $9,999,999, and 0.25% on purchases over $10,000,000.

10. Class A shares will be subject to rule 12b–1 distribution plans (the "Class A Plans"). Each Hancock Fund will adopt a new Class A Plan under which Class A shares will be subject to a distribution fee of up to 0.25%, and a service fee of up to 0.25% of the average daily net asset value of the Class A shares. The Freedom Funds' existing Class A Plans, under which Class A shares pay an ongoing distribution fee at an annual rate of up to 0.25% of each Freedom Fund's aggregate average daily net assets attributable to Class A shares, will remain in effect.

11. Under the CDSC Option, Class B shares will be sold at net asset value per share without the imposition of a sales load at the time of purchase. An investor's proceeds from a redemption of Class B Shares made within a specified period (which could range from one to six years) after purchase generally will be subject to a CDSC payable to the Co-Distributors. The CDSC would typically range from 1% to 4% (but could be higher or lower) on shares redeemed during the first year after purchase and would typically be reduced at a rate of either 1.00%, 0.50%, or 0.0% per year over the applicable CDSC period so that redemptions of shares held after the period will not be subject to a CDSC. If an investor reinvests in any of the Funds within 120 days of a redemption of Class B shares, any CDSC paid upon redemption will be reinstated to the investor's account by the Co-Distributors and the reinvested shares will continue to be subject to the applicable CDSC. The reinvestment will be in Class B shares of the chosen Fund without imposition of a sales charge.

12. Class B shares will be subject to rule 12b–1 distribution plans (the "Class B Plans"). Each Hancock Fund will adopt a new Class B plan under which the Class B shares will be subject to a distribution fee of up to 0.75%, and a service fee of up to 0.25%, of the average daily new asset value of the Class B Shares. The Freedom Funds' existing Class B Plans under which Class B shares pay an ongoing distribution fee at an annual rate of up to 0.75% of each Freedom Fund's aggregate average daily net assets attributable to Class B shares, will remain in effect.

13. Class C shares will not be subject to any sales load or rule 12b–1 plan fees. No Money Market Class C shares will be offered to prospective investors. Class C shares will be offered only to the following six categories of investors: (a) Unaffiliated benefit plans: (b) tax-exempt retirement plans of the Adviser and its affiliates, including the retirement plans of the Adviser's affiliated brokers; (c) unit investment trusts ("UITs") sponsored by Broker Services, and Freedom Principal Return Trust, a UIT sponsored by two indirect wholly owned subsidiaries of John Hancock Mutual Life Insurance Company; (d) banks and insurance companies purchasing for their own account; (e) investment companies not affiliated with the Adviser; and (f) endowment funds of non-profit organizations.

14. The unaffiliated benefit plans in category (a) will have several common features. Among these features are total assets in excess of $10 million or such other amounts as the Funds may establish, a separate trustee for the plan who is vested with investment discretion as to plan assets, certain limitations on the ability of plan beneficiaries to access their plan investments without incurring adverse tax consequences, and such other characteristics as the Funds may establish. Applicants will exclude self-directed plans from this category.

15. Offerees of the tax-exempt retirement plans in category (b) will be qualified defined contribution plans maintained pursuant to section 401(a) of the Internal Revenue Code by the Adviser and its affiliates for the benefit of employees, under which the assets are held in trust by a trustee and employees have limited preretirement access to the assets.

16. The UITs in category (c) will, under current regulations, require a separate order of exemption pursuant to section 6(c) of the Act in order to invest in shares of the Funds. In addition, the UITs will invest in fixed pools of securities, which will include Class C shares of the funds but would also include other securities.

17. The entities included in categories (d), (e), and (f) will not be affiliated with the Adviser. These offerees will have in common the essential features of substantial assets under management and investment decision-making by institutional management on behalf of the entity with respect to the purchase of Class C shares of the Funds. Banks and insurance companies typically employ professional staff to manage the investment of cash assets, and portfolio managers make investment decisions on behalf of investment companies. Likewise, an endowment fund of a non-profit organization is professionally managed and individual donors to such endowment funds exercise no investment discretion on behalf of the endowment fund, nor would such an individual donor consider a direct investment in shares of a Fund as an investment alternative in lieu of a donation. Thus, no possibility exists that an individual investor would be able to use these entities as a conduit for individual investing in Class C shares.

18. Several characteristics substantially distinguish the direct types of ownership interests of individuals in Class A or Class B shares, and indirect type of ownership interests of individuals in Class C shares. Individuals purchasing Class A or Class B shares are the direct owners of such securities and normally possess investment and voting power with respect thereto. On the other hand, an entity purchasing Class C shares, and not any individual beneficiaries, would be the direct owner of such shares. Except for self-directed retirement plans affiliated with the Adviser, the trustee of the plan, the depositor of the UIT or the institutional manager of trustee would possess the investment and voting power with respect to the Fund shares. The ultimate plan beneficiary, UIT shareholder, or beneficiary in any of the other categories of eligible investors would hold no direct interest in Class C shares of a Fund, and except for self-directed retirement plans affiliated with the Adviser, would not be involved in the decision to purchase, sell, or vote such shares. Decisions to invest in Class C shares will be made only by an institutional manager or trustee. Class C shares will not be offered to the same types of investors to whom Class A and Class B shares will be offered. In

[4] References to Class A shares and Class B shares in this notice are intended to include Class A Cash Management shares and Class B Cash Management shares, except to the extent these two classes of Cash Management shares differ from those two classes of the other Funds as described in this paragraph.

addition, applicants' compliance procedures require that any investor eligible to purchase Class C shares be directed into that class by the securities dealer.

19. Because shares of each class will be marketed to different types of investors, the method of soliciting sales of such shares will vary. A separate prospectus will be used to offer Class C shares and will be tailored to the needs of institutional investors regarding purchase procedures and cost information. Distribution fees received by the Co-Distributors under the Class A or Class B Plans will not be used to finance the distribution of Class C shares. The expenses of any sales literature prepared for Class C shares will be borne exclusively by the Adviser or paid from the assets of the Co-Distributors not directly or indirectly attributable to the Class A or Class B Plans ("Independent Assets"). The expenses incurred in the preparation, printing, and distribution of shareholder reports used in distributing Class C shares will be paid by the Adviser or the Co-Distributors from Independent Assets. Compensation for selling the Class C shares and servicing the accounts of Class C shareholders, other than customary transfer agency fees paid to the Fund's transfer agent, will be paid solely from the Adviser's resources or the Independent Assets of the Co-Distributors.

20. All items of income and expense of a Fund will be allocated among the three classes of shares of that Fund on a *pro rata* basis of the relative aggregate net asset value of the three classes except: (a) The expenses of the Class A Plan and the Class B Plan; (b) any higher transfer agency costs; and (c) any incremental expenses properly attributable to one class which the SEC shall approve by an amended order. Because of the higher ongoing distribution fees paid by the holders of Class B shares, the net income attributable to and the dividends payable on Class B shares will be lower than the net income attributable to and the dividends payable on either Class A shares or Class C shares. Because Class C shareholders pay no distribution expenses, the net income attributable to and dividends paid on Class C shares will be higher than for either Class A or Class B shares. Dividends and other distributions paid to each class of shares of a Fund will, however, be declared on the same days and at the same times and will be determined in the same manner.

21. At present, shares of each Fund may be exchanged, either in whole or in part, at net asset value for shares of any other Fund. Upon implementation of the Multi-Class Plan, Class A shares of a Fund will be exchangeable only for Class A shares of other Funds, Class B shares will be exchangeable only for Class B shares, and Class C shares will be exchangeable only for Class C shares. Class B shareholders and Class A shareholders subject to a CDSC and who exchange for Class B Cash Management shares and Class A Cash Management shares, respectively, will be subject to any applicable CDSC upon redemption of such Cash Management Fund shares to the extent permitted by rule 11a-3 under the Act. A shareholder who exchanges Class A Cash Management shares for Class A shares of any other Fund (and subject to a sales load) is subject to that charge at the time of the exchange, unless the Class A Cash Management shares were acquired in an exchange for shares of another Fund, and a sales charge was previously paid in the purchase of such other Fund's shares. A shareholder who exchanges Class B Cash Management shares for Class B shares of any other Fund will be subject to any applicable CDSC upon redemption of those acquired Class B shares to the extent permitted by rule 11a-3 under the Act.

22. Applicants seek an exemption from the provisions of sections 2(a)(32), 2(a)(35), 22(c), 22(d), and rule 22c-1 under the Act to permit the Funds to assess a CDSC on redemptions of Class B shares and to permit the Funds to waive the CDSC for certain types of redemptions. The amount of the CDSC will be calculated as the lesser of the amount that represents a specified percentage of the net asset value of the shares at the time of purchase, or that represents the same or lower percentage of the net asset value of the shares at the time of redemption.

23. No CDSC will be imposed on shares purchased more than a specified period prior to redemption. No CDSC will be imposed on shares derived from the reinvestment of distributions. In determining whether any CDSC is applicable, it will be assumed that a redemption is made, first, of shares derived from reinvestment of distributions or amounts which represent an increase in the value of the shareholder's account resulting from capital appreciation, second, of shares purchased prior to the CDSC period, and third, of shares purchased during the CDSC period. In determining the rate of any applicable CDSC, it will be assumed that a redemption is made of Class B shares or CDSC Class A shares of a Fund held by the investor for the longest period of time within the CDSC period.

24. The funds are requesting authority to waive the CDSC for Class B shares and are authorized to waive the CDSC for CDSC Class A shares: (a) On redemptions following the death or disability, as defined in section 72(m)(7) of the Internal Revenue Code of 1986, as amended (the "Internal Revenue Code"), of a shareholder if redemption is made within one year of death or disability of a shareholder; (b) in connection with distributions from retirement plans that are not subject to any penalties in accordance with the provisions of section 72(t) under the Internal Revenue Code; (c) in whole or in part, in connection with shares sold to (i) Directors/Trustees or officers of the Funds, directors or officers of the Adviser, the Distributor and their affiliates or selected broker-dealers, (ii) bona fide, full time employees or sales representatives of any of the foregoing, (iii) retired employees, officers, or Directors/Trustees of the foregoing, or (iv) any trust, pension, profit sharing or other benefit plan for persons described above; (d) in whole or in part, in connection with shares sold to any state, county, or city, or any instrumentality, department, authority or agency thereof, which is prohibited by applicable investment laws from paying a sales load or commission in connection with the purchase of shares of any registered investment management company; (e) pursuant to each Fund's right to liquidate or involuntarily redeem shares in a shareholder's account; (f) pursuant to a systematic withdrawal plan; and (g) in connection with the redemption of shares of any Fund that is combined with another Fund, investment company or personal holding company by virtue of a merger, acquisition or other similar reorganization transaction. If the Funds waive or reduce the CDSC, such waiver or reduction will be uniformly applied to all shares in the specified category.

25. If the Directors/Trustees of a Fund, which has been waiving or reducing its CDSC decide to suspend or discontinue such waivers or reductions, the disclosure in the Fund's prospectus will be appropriately revised. Any Class B shares or CDSC Class A shares purchased prior to the termination of such waiver or reduction would be entitled to a waiver or reduction of the CDSC as provided in a Fund's prospectus at the time of purchase of such shares.

Applicants' Legal Analysis

1. Applicants request an order exempting them from the provisions of sections 18(f)(1), 18(g), and 18(i) of the Act to the extent that the proposed issuance and sale of Class A, Class B, and Class C shares representing interests in the Funds might be deemed: (a) to result in a "senior security" within the meaning of section 18(g); and (b) to violate the equal voting provisions of section 18(i).

2. Applicants believe that the proposed Multi-Class Plan would permit them to tailor their marketing and distribution activities to a broader segment of the capital markets than is currently possible. Applicants would be able to maintain the sales activities and services currently provided to smaller individual customers and simultaneously expand their marketing and sale activities to attract substantial institutional investors who may purchase large amounts of the Funds' shares. The Funds' current and prospective individual customers would continue to enjoy not only the benefits of the services provided by the Funds, but also the potential improved investment performance resulting from the Funds' ability to invest in larger blocks of portfolio securities. Moreover, to the extent that the adoption of the Multi-Class Plan increases sales of Fund shares, owners of all classes of shares may be relieved of a portion of the fixed costs normally incurred by mutual funds.

3. The proposed allocation of expenses and voting rights relating to the Class A Plan and the Class B Plan in the manner described is equitable and would not discriminate against any group of shareholders. Investors purchasing shares offered in connection with the Class A and Class B Plans and receiving services provided under those plans would bear costs associated with such services. They would also enjoy exclusive shareholder voting rights with respect to matters affecting the Class A Plan or the Class B Plan.

4. Applicants believe that the proposed Multi-Class Plan does not create the potential for the abuses that section 18 of the Act was designed to redress. The Multi-Class Plan will not increase the speculative character of the shares of the Fund. The Multi-Class Plan does not involve borrowing, nor will it affect the Funds' existing assets or reserves, and does not involve a complex capital structure. Nothing in the Multi-Class Plan suggests that it will facilitate control by holders of any class of shares.

5. Applicants submit that the requested exemption to permit the Funds to implement the proposed Class B CDSC arrangement is appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act. The proposed CDSC arrangement will provide shareholders the option of having their full payment invested for them at the time of their purchase of shares of the Funds with no deduction of a sales charge.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief shall be subject to the following conditions:

1. The Class A shares, Class B shares, and Class C shares will represent interests in the same portfolio of investments of a Fund, and be identical in all respects except as set forth below. The only differences among Class A shares, Class B shares, and Class C shares of the same Fund will relate solely to: (a) the distribution fees charged to Class A and Class B shares under the Class A and Class B Plans will only be applied to the distribution expenses attributable to the sale of such class of shares; (b) Class B shares would pay higher distribution fees under the Class B Plans than would Class A shares under the Class A Plans or shares of Class C (which has no rule 12b–1 plan); (c) Class A shares would pay higher distribution fees under the Class A Plans than would Class C shares because Class C has no rule 12b–1 plan; (d) each class would pay any other incremental expense subsequently identified that should be properly allocated only to that class and which is approved by the SEC pursuant to an amended order; (e) the out-of-pocket cost to purchase shares paid by an investor would differ depending on which class of shares was purchased by the investor; (f) shareholders of Class A and Class B would have exclusive voting rights with respect to the Class A and Class B Plans applicable to their respective classes of shares; (g) Class A, Class B and Class C shares may bear different expenses relating to the cost of holding shareholder meetings necessitated by the exclusive voting rights among the classes; (h) Class C shares would have no voting rights with respect to the Class A Plan or Class B Plan; (i) the three classes would have different exchange privileges; (j) transfer agency costs would differ in amount among the classes based on any difference in relative net assets of the classes (but would be the same percentage of each class's net asset value), and by virtue of an incremental per account charge would be higher for Class B than Class A or Class C; and (k) the designation of the three classes of shares would be different.

2. The Directors/Trustees of the Funds, including a majority of the non-interested Directors/Trustees, will approve the Multi-Class Plan. The minutes of the meetings of the Directors/Trustees of the Funds regarding the deliberations of the Directors/Trustees concerning, and their approval of, the Multi-Class Plan will reflect in detail the reasons for the Directors/Trustees' determination that the proposed Multi-Class Plan is in the best interests of both the Funds and their respective shareholders.

3. On an ongoing basis, the Directors/Trustees of the Funds, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflicts among the interests of the classes of shares. The Directors/Trustees, including a majority of the non-interested Directors/Trustees, will take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Adviser and the Co-Distributors will be responsible for reporting any potential or existing conflicts to the Directors/Trustees. If a conflict arises, the Adviser or the Co-Distributors, each at its own cost, will remedy such conflict up to and including establishing a new registered management investment company.

4. Any rule 12b–1 plan adopted or amended which permits the assessment of a distribution fee or service fee on any class of shares which has not had its rule 12b–1 plan approved by public shareholders of that class will be submitted to the public shareholders of that class for approval at the next meeting of shareholders of that class for approval at the next meeting of shareholders after the initial issuance of such shares. If still required by the Commission, such meeting will be held within sixteen months of the date that the registration statement relating to such class first becomes effective or, if applicable, the date that the amendment to the registration statement necessary to offer such class first becomes effective.

5. The Directors/Trustees of the Funds will receive quarterly and annual statements concerning distribution expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as amended from time to time. In these statements, only distribution expenditures properly attributable to the sale of a particular

class of shares will be used to justify the rule 12b–1 fees charged to the shareholders of such class of shares. Expenditures not related to the sale of a specific class of shares will not be presented to the Directors/Trustees to justify any rule 12b–1 fees charged to such class of shares. These statements, including the allocations upon which they are based, will be subject to the review and approval of the non-interested Directors/Trustees in the exercise of their fiduciary duties.

6. Dividends paid by a Fund with respect to its Class A, Class B, and Class C shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day and will be paid in the same amount, except that distribution fee payments made under the rule 12b–1 plans relating to Class A and Class B shares will be borne exclusively by those classes (Class C and shares are not subject to a rule 12b–1 plan) and any incremental transfer agency costs relating to Class B shares will be borne exclusively by Class B.

7. The methodology and procedures for calculating the net asset value and dividends and distributors of the three classes of shares and the proper allocation of expenses among the three classes have been reviewed by an expert (the "Expert"). The Expert has rendered a report to the applicants filed with amendment No. 1 to the application and an amended report filed with amendment No. 2 to the application, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following a request by the Fund (which the Funds agree to provide), will be available for inspection by the SEC's staff upon the written request for such work papers by a senior member of the Division of Investment Management or of a Regional Office of the SEC limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" and the ongoing reports will be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defined and described in SAS No. 44 of the American Institute of Certified Public Accountants (the "AICPA"), as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

8. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the new asset value and dividends and distributions of the three classes of shares and the proper allocation of expenses among the three classes of shares and this representation has been concurred with by the Expert in the initial report referred to in condition (7) above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition (7) above. Applicants agree to take immediate corrective action if this representation is not concurred in by the Expert or appropriate substitute Expert.

9. The prospectuses of the applicants will include a statement to the effect that any person entitled to receive compensation for selling Fund shares may receive different compensation with respect to sales of Class A shares, Class B shares or Class C shares.

10. The Co-Distributors will adopt compliance standards as to when Class A shares, Class B shares and Class C shares may appropriately be sold to particular investors. Applicant's compliance standards will require all investors eligible to purchase Class C shares of a Fund offering such shares to invest in Class C, rather than Class A or Class B, shares of such Fund. Applicants will require all persons selling shares of the Funds to conform to such standards.

11. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Directors/Trustees of the Fund with respect to the Multi-Class Plan will be set forth in guidelines which will be furnished to the Directors/Trustees as part of the materials setting forth the duties and responsibilities of the Directors/Trustees.

12. Each Fund will disclose in each of its prospectuses the respective expenses, performance data, distribution arrangements, services, fees, initial sales loads, CDSCs and exchange privileges applicable to each class of shares offered through such prospectus. Class A and Class B shares will be offered and sold through a single prospectus. Class C shares of a Fund will be offered solely pursuant to a separate prospectus and the prospectus for the Class A and Class B shares of that Fund will disclose the existence of the Class C shares of the Funds and will identify the entities eligible to purchase such shares, and the Class C prospectus will disclose the existence of the Fund's Class A and Class B shares. Each Fund will disclose the respective expenses and performance data of each class of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to Class A or Class B shares, it will disclose the expenses and/or performance data applicable to both classes of shares. Advertising materials reflecting the expenses or performance data for Class C shares will be available only to institutional investors eligible to invest in Class C shares. The information provided by the applicants for publication in any newspaper or similar listing of a Fund's net asset value and public offering price will separately present this information for Class A and Class B shares.

13. Applicants acknowledge that the grant of the exemptive order requested by the application will not imply SEC approval, authorization or acquiescence in any particular level of payments that the Funds may make pursuant to the rule 12b–1 plans in reliance on the exemptive order.

14. The relief requested from the provisions of sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act shall be subject to the applicants' compliance with the provisions of proposed rule 6c–10 under the Act, IC–16619 (November 2, 1988), as such rule is currently proposed and as it may be reproposed, adopted or amended.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–21530 Filed 9–4–92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[(Order 92-9-4); Docket 41958]

Reissuance of Certificate of Bering Air, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not reissue a certificate of public convenience and necessity to Bering Air, Inc., authorizing it to engage in interstate and overseas air transportation of persons, property, and mail, subject to a new condition prohibiting operations with aircraft having more than 30 passenger seats or a 7,500-pound payload capacity until the company has been found fit to do so.

DATES: Persons wishing to file objections should do so no later than September 16, 1992.

ADDRESSES: Objections and answers to objections should be filed in Docket 41958 and addressed to the Documentary Services Division (C-55, room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mr. James Lawyer, Air Carrier Fitness Division (P-56, room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-1064.

Dated: September 1, 1992.

Patrick V. Murphy,

Deputy Assistant Secretary for Policy and Program Development.

[FR Doc. 92-21544 Filed 9-4-92; 8:45 am]

BILLING CODE 4910-62-M

Federal Railroad Administration

Petition for Exemption or Waiver of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received from the Kansas City Southern Railway Company a request for exemptions from or waivers of compliance with a requirement of Federal rail safety standards. The petition is described below, including the regulatory provisions involved, and the nature of the relief being requested.

The Kansas City Southern Railway Company

[Waiver Petition Docket Number PB-92-1]

The Kansas City Southern Railway Company (KCS) is seeking a waiver of compliance from § 232.13 of the Railroad Power Brakes and Drawbars Regulations, 49 CFR part 232. KCS is requesting that requirements for a transfer train air brake test be waived to expedite the movement of an empty unit coal train to clear public rail crossings. The 110 car train is assembled at the Kansas City Power and Light Company's Hawthorne Plant after unloading. Section 232.13(e)(1) requires that a transfer train air brake test consisting of charging the train to not less than 60 pounds, making a 15 pound brake pipe reduction and inspecting each car to determine that brakes are applied. This procedure takes approximately 1½ to 1¾ hours during which time the plant entrances and two rail lines are blocked. When completed, the coupled cut of empty cars extends from the end of the Hawthorne Plant siding to Air Line Junction, a distance of over one mile. The front end of the train at Air Line Junction is less than 50 yards from the entrance to the joint facility. After the transfer train air brake test, the train proceeds into the KCS/Soo Line Railroad joint facility where an initial terminal air brake test is performed and the Burlington Northern Railroad then operates the train.

KCS seeks to eliminate the transfer train air brake test and proceed directly to the joint facility at ten miles per hour or less. This movement would require ten to fifteen minutes. The railroad states the movement is on a slight upgrade and the train can be controlled with the locomotive independent brake. The train blocks all crossings in the distance traveled. The two plants involved, Miles, Inc., Agriculture Division Chemical Plant and the Kansas City Water and Pollution Control Department, support the petition stating the blocked crossings interfere with worker access and emergency vehicle access. Both plants use and store hazardous materials.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number PB-92-1) and must be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) in room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Issued in Washington, DC on September 2, 1992.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 92-21535 Filed 9-4-92; 8:45 am]

BILLING CODE 4910-06-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Performance Review Board

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of members of senior executive service performance review board.

EFFECTIVE DATE: Performance Review Board effective September 1, 1992.

FOR FURTHER INFORMATION CONTACT: DiAnn Kiebler, HR:H:E, room 3515, 1111 Constitution Avenue, N.W., Washington, DC. 20224, Telephone No. (202) 622-6320, (not a toll free number).

SUPPLEMENTARY INFORMATION: Pursuant to section 4324(c)(4) of the Civil Service Reform Act of 1978, the members of the Internal Revenue Service's Senior Executive Service Performance Review Board for senior executives other than Assistant Commissioners, Regional Commissioners and senior executives in Inspection and the Office of the Commissioner are as follows:.

Michael Dolan, Deputy Commissioner, Chairperson
Charles Brennan, Regional Commissioner, Mid-Atlantic
Walter Hutton, Assistant Commissioner (Information Systems Management)
Leon Moore, Regional Commissioner, Central
Inar Morics, Assistant Commissioner (Criminal Investigation)
Judy Van Alfen, Assistant Commissioner (Returns Processing)
Helen White, Assistant to the Commissioner (Equal Opportunity)

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the **Federal Register** for Wednesday, November 8, 1978 (43FR52122).

Shirley D. Peterson,

Commissioner.

[FR Doc. 92-21557 Filed 9-4-92; 8:45 am]

BILLING CODE 4830-01-M

Performance Review Board

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of members of senior executive service performance review board.

EFFECTIVE DATE: Performance Review Board effective September 1, 1992.

FOR FURTHER INFORMATION CONTACT: DiAnn Kiebler, HR:H:E, Room 3515, 1111 Constitution Avenue, NW., Washington, DC 20224, Telephone No. (202) 622-6320, (not a toll free number).

SUPPLEMENTARY INFORMATION: Pursuant to section 4314(c)(4) of the Civil Service Reform Act of 1978, the members of the Internal Revenue Service's Senior Executive Service Performance Review Board for Assistant Commissioners, Regional Commissioners and senior executives in the Office of the Commissioner are as follows:

Philip Brand, Chief Financial Officer
David Jordon, Deputy Chief Counsel
Richard Mihelcic, Associate Chief Counsel (Finance and Management)
Henry Philcox, Chief Information Officer

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the **Federal Register** for Wednesday, November 8, 1978 (43FR52122).

Shirley D. Peterson,

Commissioner.

[FR Doc. 92-21556 Filed 9-4-92; 8:45 am]

BILLING CODE 4830-01-M

Performance Review Board

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of Members of Senior Executive Service Performance Review Board.

EFFECTIVE DATE: Performance Review Board effective September 1, 1992.

FOR FURTHER INFORMATION CONTACT: DiAnn Kiebler, HR:H:E, Room 3515, 1111 Constitution Avenue, NW., Washington, DC 20224, Telephone No. (202) 622-6320, (not a toll free number).

SUPPLEMENTARY INFORMATION: Pursuant to section 4314(c)(4) of the Civil Service Reform Act of 1978, the members of the Internal Revenue Service's Senior Executive Service Performance Review Board for senior executives in the Office or the Chief Inspector are as follows:

Michael Dolan, Deputy Commissioner
Donald Kirkendall, Inspector General, Department of the Treasury
Helen White, Assistant to the Commissioner (Equal Opportunity)

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the **Federal Register** for Wednesday, November 8, 1978 (43 FR 52122).

Shirley D. Peterson,

Commissioner.

[FR Doc. 92-21555 Filed 9-4-92; 8:45 am]

BILLING CODE 4830-01-M

Performance Review Board

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of Members of Senior Executive Service Performance Review Board.

EFFECTIVE DATE: Performance Review Board effective September 1, 1992.

FOR FURTHER INFORMATION CONTACT: DiAnn Kiebler, HR:H:E, room 3515, 1111 Constitution Avenue, NW., Washington, DC 20224, Telephone No. (202) 622-6320, (not a toll free number).

SUPPLEMENTARY INFORMATION: Pursuant to section 4314(c)(4) of the Civil Service Reform Act of 1978, the members of the Internal Revenue Service's Senior Executive Service Performance Review Board for senior executives in the Appeals organization are as follows:

David Blattner, Chief Operations Officer;
Philip Brand, Chief Financial Officer;
Henry Philcox, Chief Information Officer

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the **Federal Register** for Wednesday, November 8, 1978 (43 FR 52122).

Shirley D. Peterson,

Commissioner.

[FR Doc. 92-21554 Filed 9-4-92; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 174
Tuesday, September 8, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on September 10, 1992, from 10:00 a.m. until such time as the Board may conclude its business.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. The matters to be considered at the meeting are:

Open Session

A. *Approval of Minutes*
B. *New Business*
1. *Noncorporate Prior Approvals*
a. National Bank for Cooperatives—Financial Risk Management for Customers
b. National Bank for Cooperatives—Lending Limits
2. *Regulations*
a. Assessment and Apportionment of Administrative Expenses (Proposed)
b. Personnel Administration; Referral of Crimes and Suspected Crimes (Proposed)
c. Organization; Director Compensation (Final)
d. Personnel Administration; Human Resources Policies, Retirement Plans (Final)
3. *Other*
a. Farm Credit System (FCS) Building Association

Closed Session *

A. *New Business*
1. Enforcement Actions.

Dated: September 3, 1992.

Curtis M. Anderson,
Secretary, Farm Credit Administration Board.

[FR Doc. 92–21682 Filed 9–3–92; 3:35 pm]

BILLING CODE 6705–01–M

* Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c) (8) and (9).

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 1:00 p.m., September 21, 1992.

PLACE: 5th floor, Conference Room, 805 Fifteenth Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Budget presentation by Clyde McShan, Director, National Finance Center.
2. Approval of the minutes of the August 17, 1992, Board meeting.
3. Thrift savings Plan activity report by the Executive Director.
4. Review of the FY 1993–1994 budgets.
5. Status of action on audit recommendations.
6. Review of KPMG Peat Marwick audit reports:

"Pension and Welfare Benefits Administration Review of the Thrift Savings Plan Forfeiture and Forfeiture Restoration Operations at the United States Department of Agriculture, Office of Finance and Management, National Finance Center."

"Pension and Welfare Benefits Administration Review of Access Controls and Security Over Thrift Savings Plan Computerized Resources at the United States Department of Agriculture, Office of Finance and Management, National Finance Center."

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 523–5660.

Dated: September 1, 1992.

Francis X. Cavanaugh,
Executive Director Federal Retirement Thrift Investment Board.

[FR Doc. 92–21590 Filed 9–3–92; 11:06 am]

BILLING CODE 6760–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:30 a.m., Thursday, September 10, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposal to adopt Regulation DD (Truth in Savings) to implement the Trust in Savings Act. (Proposed earlier for public comment; Docket No. R–0753)
2. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: September 3, 1992.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 92–21643 Filed 9–3–92; 12:03 pm]

BILLING CODE 6210–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 11:00 a.m., Thursday, September 10, 1992, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 3, 1992.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 92–21644 Filed 9–3–92; 12:03 pm]

BILLING CODE 6210–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Audit and Appropriations Committee Meeting; Notice

TIME AND DATE: A meeting of the Board of Directors Audit and Appropriations Committee will be held on September 14, 1992. The meeting will commence at 10:00 a.m.

PLACE: The Legal Services Corporation, 750 1st Street NE., The Board Room, 11th Floor, Washington, DC 20002, (202) 336–8896.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Approval of Minutes of August 9, 1992 Meeting.
3. Consideration and Review of Proposed Fiscal Year 1993 Consolidated Operating Budget.

CONTACT PERSON FOR INFORMATION: Patricia Batie (202) 336–8896.

Date issued: September 3, 1992.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 92–21589 Filed 9–3–92; 11:05 am]

BILLING CODE 7050–01–M

Corrections

Federal Register
Vol. 57, No. 174
Tuesday, September 8, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 91N-0505]

RIN 0905-AA06

Status of Certain Additional Over-the-Counter Drug Category II and III Active Ingredients

Correction

In proposed rule document 92-20209 beginning on page 39568 in the issue of Tuesday, August 25, 1992 make the following corrections:

1. On page 39569, in the table, in the first column, in entry (4), insert ", and" between "Antipyretic" and "Antirheumatic".

2. On page 38570, in the second column, in the table, under entry (2)(i), the ANPRM and NPRM for "Candicidin" now reading "III" should read "II".

§ 310.545 [Corrected]

3. On page 38574, in the 1st column, in § 310.545(a)(10)(vii), in the 15th line, "Pyrilamine maleateSalicylamide" should have appeared as two separate entries.

BILLING CODE 1505-01-D

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AF60

Burial of Unclaimed Bodies

Correction

In rule document 92-15285 appearing on page 29025 in the issue of Tuesday, June 30, 1992, make the following corrections:

§ 3.1610 [Corrected]

1. On page 29025, in the second column, in § 3.1610:

a. In the introductory text, in the second line, "permissible" was misspelled.

b. In paragraph (b), in the third line from the bottom, "cemetery" was misspelled, and insert "at" after "or,".

BILLING CODE 1505-01-D

federal register

Tuesday
September 8, 1992

Part II

Department of Transportation

Federal Highway Administration

49 CFR Parts 350, 355, and 396
Motor Carrier Safety Assistance Program; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 350, 355, and 396

[FHWA Docket Nos. MC-91-7, MC-91-15, and MC-92-17]

RIN 2125-AC90

Motor Carrier Safety Assistance Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This final rule implements revisions to the Motor Carrier Safety Assistance Program (MCSAP) which was reauthorized through FY 1997 in the Intermodal Surface Transportation Efficiency Act of 1991. The MCSAP provides financial assistance to States to enforce the Federal Motor Carrier Safety and Hazardous Materials Regulations or compatible State regulations pertaining to commercial motor vehicle safety. The reauthorizing legislation contained a number of provisions which must be incorporated into the program before fiscal year 1993. The program for FY 1992 remained substantially unchanged, and the existing regulations at 49 CFR part 350 continued to govern. The revisions made herein will shape the program for the following five fiscal years.

This final rule also incorporates into part 350 a requirement from the Motor Carrier Safety Act of 1990 that violations found during inspections funded under MCSAP be corrected and that States participating in the MCSAP adopt a verification program to ensure that commercial motor vehicles and operators thereof found in violation of safety requirements have subsequently been brought into compliance. Finally, a new part 355 is added which will implement the recommendations of the Commercial Motor Vehicle Safety Regulatory Review Panel intended to carry out the objectives of the Motor Carrier Safety Act of 1984 with respect to achieving the benefits of uniform enforcement of consistent commercial motor vehicle safety regulations nationwide.

These latter two objectives conclude rulemaking actions that had been initiated under Dockets No. MC-91-7 [RIN 2125-AC11] and No. MC-91-15 [RIN 2125-AC-76], which were closed on April 16, 1992 and incorporated into this Docket.

EFFECTIVE DATE: October 8, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Petty, Office of Motor Carrier Safety Field Operations, (202) 366-9579, or Mr. Paul L. Brennan, Office of the Chief Counsel, (202) 366-0834, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: On April 16, 1992, a notice of proposed rulemaking was published in the **Federal Register** (57 FR 13572) to solicit comments on proposed revisions to the Motor Carrier Safety Assistance Program (MCSAP), first authorized in the Surface Transportation Assistance Act of 1982 (STAA) (secs. 401-404, Pub. L. 97-424, 96 Stat. 2097, 2154 (49 U.S.C. app. § 2301 *et seq.*)), and reauthorized in the Commercial Motor Vehicle Safety Act of 1986 (sec. 12014, Pub. L. 99-570, 100 Stat. 3207, 3207-186). The original authorization contained certain conditions States would have to meet to be eligible for financial assistance and established funding levels beginning at $10 million for FY 1984 and increasing by $10 million each year until the maximum of $50 million was reached in the final year of FY 1988. Subsequent legislation increased the funding levels to $60 million per year in FY's 1989 through 1991.

The Motor Carrier Safety Act of 1984 (MCSA of 1984) (49 U.S.C. app. § 2501 *et seq.*) created a Commercial Motor Vehicle Safety Regulatory Review Panel (Safety Panel) to assist the Secretary in the review of existing State laws and regulations affecting commercial motor vehicle safety to determine their consistency with the Federal regulations. The Safety Panel accomplished its mission with the publication of its report, "Achieving Compatibility of State and Federal Safety Requirements," in August 1990. The report recommended that the FHWA establish procedures for the continual review and analysis of the compatibility of State safety laws and regulations with the Federal requirements. The 1984 Act also authorized the Secretary to preempt State laws and regulations affecting commercial motor vehicle safety which were found to be inconsistent with Federal laws and regulations.

New Legislation

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102-240, 105 Stat. 1914) was signed into law on December 18, 1991. Title IV of that Act is the Motor Carrier Act of 1991 (MCA of 1991), section 4002 of which reauthorizes MCSAP at gradually increasing funding levels through FY 1997. The new legislation adds several conditions for eligibility for participation in MCSAP; provides MCSAP funds to encourage the States to include certain related enforcement activities in their enforcement programs; and changes the maintenance of effort requirement.

The new legislation also allows for in-kind contributions by States to be counted toward their matching shares; increases the availability of allocated funds for expenditure by the State to the year of allocation plus one year; specifically authorizes discretionary reallocation of unobligated funds; provides for an administrative takedown of up to 1.25 percent, and earmarks 75 percent of that takedown for non-Federal training; and requires minimum funding levels for certain specified programs. Finally, the MCA of 1991 mandates the development within six months of an "improved" formula and process for allocation of the funds, and within nine months, the issuance of regulations specifying "guidelines and standards for ensuring compatibility of intrastate commercial motor vehicle safety laws and regulations with the Federal motor carrier safety regulations."

This final rule (1) accommodates all of the revisions to the MCSAP required by the 1991 legislation; (2) incorporates the requirements of the Motor Carrier Safety Act of 1990 (MCSA of 1990) (sec. 15, Pub. L. 101-500, 104 Stat. 1218) with respect to verification of correction of out-of-service conditions with new prescriptions in the 1991 legislation; and (3) implements the Safety Panel recommendations.

Because so much of the existing rule is being affected by the new legislation, the FHWA is publishing a revised part 350 in its entirety.

Analysis of Comments

Thirty-one State and local agencies submitted comments to the docket. In addition, eight associations, one labor union, and four individuals submitted comments. Generally, the issues raised in the comments addressed the new activities to be included in the Motor Carrier Safety Assistance Program (MCSAP), the funding and formula issues, the maintenance of effort (MOE) requirement, the verification of correction of violations identified during roadside inspections, the requirement that States adopt the Commercial Motor Vehicle Safety Alliance (CVSA) fine schedule, and compatible interstate and intrastate regulations and enforcement.

a. New Eligible Activities

Section 4002 (a) and (c) of the ISTEA specifically referred to activities, such as size and weight enforcement, drug interdiction, and traffic law enforcement, which are intended to increase the comprehensiveness and effectiveness of the MCSAP program. As proposed, §§ 350.9 and 350.13 required these new activities as conditions of MCSAP participation or to be addressed in the State Enforcement Plans (SEP). Although one State law enforcement agency agreed that newly emphasized programs should not diminish the effectiveness of the other MCSAP enforcement programs, many commenters expressed reservations about integrating these activities into existing programs. For example, the International Brotherhood of Teamsters opposed the new program activities, maintaining that they may dilute the basic commercial motor vehicle inspection program. Several State agencies had similar views, particularly when it involved the participation of other State and local agencies not currently receiving MCSAP funds.

The FHWA believes the rule, as proposed, strikes the proper balance between continued progress toward more comprehensive and integrated commercial motor vehicle safety enforcement and the current capacities of States to expand their programs. The FHWA recognizes that Congress has created obligations in the ISTEA to extend the MCSAP to more traditional enforcement activities incorporating existing safety enforcement resources at State and local levels, but the statute allows for gradual growth. In fact, there is a specific provision included to ensure that participation in the new activities will not diminish the effectiveness of the existing commercial motor vehicle safety programs. The FHWA is confident, therefore, that the States can successfully integrate these activities into their current commercial motor vehicle safety activities during the life of this reauthorization. A few State agencies, currently receiving MCSAP funds, opposed expansion of activities on the basis of lack of jurisdictional authority by the MCSAP agency to conduct such activities. The FHWA would not consider this a good reason to avoid efforts to consolidate State activities into a more integrated and effective program.

There was some support for the emphasis on enforcement of regulations concerning impaired drivers, the availability and use of roadside alcohol testing equipment, and training of personnel in the recognition of impaired drivers. On the other hand, there was considerable concern about the inclusion of a random roadside element in the drug and alcohol testing requirements. Five State agencies and two industry associations expressed opposition to such a program, citing constitutional concerns. It must be understood that FHWA is not now requiring random roadside testing as a condition of MCSAP participation, but is studying the feasibility of such a program element in the future.

Some commenters to the docket addressed the emphasis on hazardous materials enforcement. One agency supported the proposal to increase inspection of shipper facilities and loads in transportation. Two agencies (in the same State) said they had no jurisdiction over hazardous materials shippers. A fourth agency not only supported the proposal, but recommended States not having jurisdiction over shippers of hazardous materials "be placed under good faith effort" until that is achieved.

One State law enforcement agency commented that the proposed rule requires an assessment of "highway hazardous materials safety problems within the State." Not having this data, the State maintains that it would impose a hardship to provide it as a condition of SEP approval. The FHWA feels that identification of the nature of the safety problems facing a State is important to the formulation of an effective enforcement plan, and such identification has always been an integral step in the development of the SEP. Some States may need to develop data sources to allow them to plan and evaluate their enforcement activities in this area of hazardous materials. The FHWA believes that a comprehensive hazardous materials enforcement program includes not only roadside inspection of hazardous materials laden vehicles, but ultimately inspection of the cargo and the facilities at which the materials are packaged, marked, loaded and placarded. The FHWA recognizes that although jurisdictional obstacles may exist, enforcement strategies can be devised with the States to deal with shipper-related transportation problems.

Several comments were received regarding Commercial Driver's License (CDL) enforcement requirements. Although one driver expressed his opposition to the CDL, which is not the subject of this rulemaking, the comments were otherwise favorable. The FHWA believes that the positive effect of the CDL program will become increasingly apparent as States improve licensing procedures, including roadside verification of the status of the CDL. Computer equipment and other costs related to CDL verification and enforcement are eligible expenses for MCSAP funding.

One respondent, referring to size and weight, drug interdiction, and traffic law enforcement, was opposed to having these activities included in the driver/vehicle inspection to determine funding eligibility. This State enforcement agency felt this makes these activities secondary to the inspection program, and are important enough to stand alone. The FHWA agrees that these are important activities and should receive due emphasis, but only in the context of the overall driver/vehicle inspection process, which is consistent with the law and retains the fundamental focus of the Motor Carrier Safety Assistance Program.

Eight comments from law enforcement agencies were received relative to the inclusion of size and weight, drug interdiction, and traffic enforcement as eligible costs. One commenter was opposed to size and weight enforcement as being dangerous under roadside inspection conditions. Another believed that it was cost prohibitive to use motor carrier safety personnel for drug interdiction activities. Two other did not have the authority to enforce traffic law. On the other hand, one agency said it is appropriate and potentially very effective to combine these efforts into a unified program of activities. Another State recommended that drug interdiction funds be earmarked for that purpose. One State recommended expanding "seaport" to include "transportation terminal facilities," to take into account inland locations experiencing problems with intermodal containers. In each of these instances, the rule implements what was required by the ISTEA. The principal requirement is that each of these activities, to be eligible for Federal participation under MCSAP, be performed "in conjunction with an appropriate type of inspection of the commercial motor vehicle for enforcement of Federal and State commercial motor vehicle safety regulations." Section 4002(c), 49 U.S.C. app § 2302(e).

b. Enforcement by Local Agencies

Thirteen comments were received regarding the provision to promote the effective use of qualified employees of local agencies, under the direction and supervision of the lead State agency, in commercial motor vehicle enforcement activities. Support for the provision was received from two commenters, citing successful working relationships with

other agencies in the past, but eleven respondents (10 State agencies and an industry association) were opposed. Commonly cited reasons for opposition were lack of statutory authority to control local agencies, increased administrative costs, fear that inspection will become revenue-generating procedures, and overall loss of effectiveness. The FHWA does not consider the ISTEA as requiring the pass through of Federal funds to local agencies, nor the exercise of control over local agencies by the State. It does require assurances by grant recipients that they will promote the selective use of properly "trained and qualified officers" from cooperating agencies at the local level, which the FHWA believes can make a significant contribution to the States' overall commercial motor vehicle effort. Because the States' basic formula allocations are projected to increase throughout the life of the authorization, this may provide opportunities for States to train and qualify local enforcement personnel, and to use them in coordinated enforcement efforts. It may, in some appropriate cases, lead to arrangements with local agencies as subgrantees, but this is not perceived as the major thrust of this provision. On the other hand, local agency participation may be an effective means to address localized commercial motor vehicles safety problems, particularly in traffic enforcement, impaired driver detection, vehicle inspections and CDL compliance. Such participation would also increase the awareness of local enforcement agencies in more uniform compliance and enforcement. This provision would allow for the use of existing local resources in lieu of additional staff and resources at the State level in times of fiscal constraints. Because of the number of MCSAP agencies that have been successful in including local agencies in their programs, the FHWA expects that other States will be able to promote the use of local agencies in MCSAP.

The FHWA recognizes that jurisdictional relationships and sensitivities exist, but believes that the MCSAP agencies can play significant leadership roles in their States, including, for example, education, training, cooperation, coordination, and sharing of data that would foster improved commercial motor vehicle law enforcement by other State and local agencies.

C. Maintenance of Effort (MOE)

Seventeen State and local agencies commented on the Maintenance of Effort requirement. Section 4002(b) of the ISTEA amends the original maintenance of effort required in the STAA of 1982 by changing the base period for measuring the level of effort. The effect of this change has been to greatly increase the level of commercial motor vehicle safety activities that the State must maintain to participate in MCSAP. The intent of the maintenance of effort provision is to ensure that Federal funds supplement State funds and do not replace them. Further, it ensures that States commit to continuing their past efforts in commercial motor vehicle safety activities.

Fourteen of the commenting States and the CVSA are strongly opposed to this increase in the MOE for a variety of reasons, mostly related to future fiscal uncertainties, and the perceived inequities imposed on those States which substantially increased their spending in this area in recent years.

Several States suggested alternatives for the MOE requirement such as delaying implementation of the statutory requirements, self-certification by the States consistent with other grant programs, allowing temporary adjustments during the current economic hard times in a particular State. In addition, while the CVSA believes that this congressional mandate is a detriment to those States which enhanced their programs, the CVSA supports the flexibility provided to the States by the rule.

While three States supported the new calculation of the MOE as appropriate, the FHWA is aware of the burden that the requirement of the statute places on some States. The final rule has been rewritten and goes further to clarify that for purposes of determining a State's expenditures, only currently eligible activities for funding under MCSAP, by agencies participating in MCSAP, are counted.

The CVSA and the Oregon Public Utility Commission interpreted the wording in the NPRM to allow States that elected to provide in excess of the 20 percent required match are authorized to exclude those funds from the MOE calculation. The previous language in part 350 stated that "any State funds *required* as the State's share to match such Federal funds" (emphasis added) are excluded from the MOE. The NPRM used the wording from the ISTEA which stated that "any State matching funds *used* to receive Federal funding" are excluded from the MOE. The FHWA finds this interpretation interesting, but invalid. The Federal funds authorized in the MCSAP are "used to reimburse States pro rata for the Federal share (not to exceed 80 percent) of the costs incurred." Those costs have already been incurred and the Federal share reimbursed in the base years pursuant to grant agreements, which identified the matching ratios.

The Missouri Department of Public Safety recommended that a "certified assurance" would "eliminate the tedious exercise of calculating, documenting, and performing a yearly verification of the MOE." The FHWA agrees with this recommendation and will include a self-certification by the State that it is maintaining its level of expenditures for commercial motor vehicle safety activities. Section 350.13(b)(2), requiring that the State Enforcement Plan (SEP) include a calculation of the MOE, and § 350.17 will be revised accordingly. As part of the certification required under § 350.15, the State will certify its commitment to the MOE. While the calculations will not be required in advance in the annual SEP process, compliance would be subject to verification by audit similar to other grant and financial requirements.

The Ohio Public Utility Commission suggested that because the section on MOE did not specify Federal fiscal year or State fiscal year, they would prefer to use the State fiscal year. The FHWA believes that either fiscal year would meet the intent of the statute and agrees that the States should have the flexibility to consider its MOE on either the State or Federal fiscal year.

d. CVSA Recommended Fine Schedule

Section 4002(a)(4) of the ISTEA requires that the States, as part of their SEPs, ensure that fines imposed and collected by the State are reasonable and appropriate and that, to the maximum extent practicable, the State will seek to implement into law and practice the recommended fine schedule published by the CVSA.

The Owner-Operator Independent Drivers Association (OOIDA) strongly supports the maximum fine schedule as a means to ensure that motor carriers are treated fairly nationwide. Generally, other commenters support the concept of uniform fines for similar violations nationwide. However, the CVSA and fourteen State and local agencies, which commented on this requirement, opposed making compliance with the fine schedule a grant condition and withholding MCSAP funding for States that are not able to meet the schedule. The States report that they have little control or influence over the judicial process in their States and that they should not, therefore, be held accountable. The Department of Transportation for the State of New

York and the Idaho State Police were particularly adamant for on this point. The CVSA stated that its intent in obtaining the cooperation and support of Congress to achieve reasonable, appropriate, and uniform national penalty ranges was not to create "the potential of ultimately precluding some States from participating in MCSAP." The CVSA recommended that SEPs include an explanation of State actions to establish an estimated time to implement, and reasons why the schedule of fines has not been achieved. The CVSA further recommended not withholding MCSAP funding during a reasonable implementation period.

The FHWA agrees with the OOIDA, most State commenters, and the CVSA that uniform and appropriate penalty schedules for violations is a worthwhile goal. Working with the State of Utah, the FHWA has developed a Judicial Outreach Program designed to provide information to State and local judges on the importance of meaningful, effective fines for violations of commercial motor vehicle safety regulations and standards. The FHWA anticipates that this Judicial Outreach Program will soon be available for the States as one tool to use to begin working toward uniform fines. The FHWA believes that appropriate fines, high enough to be an effective deterrent to unsafe motor carriers without being draconian, are an important element of any effective commercial motor vehicle safety program. Although some MCSAP agencies may believe they have no control or influence over the fines and penalties assessed or collected in their States, the FHWA believes the statute requires a State to compare its fines and penalties with the CVSA schedule. Ideally, a national uniform schedule will emerge from these efforts. The FHWA agrees with the commenters that this is a goal that the States should work toward and that the language of the statute, i.e., "to the maximum extent practicable," provides some latitude in approximating this goal by a specific date.

Consistent with the CVSA recommendations, § 350.13 will include a new paragraph requiring the States to provide information on their current fine and penalty structures and to describe their actions and plans to achieve uniformity. This important program element will be closely monitored as part of the SEPs, and future consideration will be given toward addressing this in the Tolerance Guidelines. The FHWA will also continue its cooperative efforts with the CVSA, the States, and the industry to evaluate and improve the effectiveness of this requirement on the MCSAP.

e. Funding.

Twelve States, an association, and a labor union commented on funding and formula issues. Two States supported the formula allocations and grant structure as proposed. The other States supported the funding proposals and recommended adjustments of factors such as use of interstate road mileage only, counting all vehicle miles rather than only commercial motor vehicle miles, giving States with depressed economies additional funds, and increasing formula allocations to States that have adopted compatible regulations. The American Trucking Association (ATA) recommends that the territories receive less funding than small States, and that the formula be adjusted so that there are the same number of States at the lower minimum as at the maximum. The Teamsters recommended that the formula count only commercial motor vehicles which are covered by the State's rules so that for those States which do not include vehicles under 26,000 GVWR, the formulas would be reduced. The Maine State Police offered a similar recommendation.

The FHWA has reviewed these proposals and believes that they have merit. Some of the data elements suggested, however, are not that easily attainable or reliable. The formula factors described in the NPRM provide a good balance of relevant factors, for which reliable data is readily available. This formula has been used for a number of years, and can be readily updated for current figures. The formula allocation proposed in the NPRM would produce a distribution that is very close to current ratios, which have been found to be generally acceptable. It also allows for growth as the authorizations increase in the later years of the program.

Seven State agencies wrote in support of maintaining funding levels for certain States that were able to expand their motor carrier safety programs in the early years of MCSAP. Because of the availability of unused funds, they were able to receive secondary funding for a number of years in addition to their basic allocations. These States have developed comprehensive commercial motor vehicle safety programs. This has played an important role in demonstrating the advantages of MCSAP thereby facilitating expansion. These States have employed personnel and expanded activities in reliance on continued MCSAP funding at previous program levels. An abrupt decrease in Federal funds would create a void that could not be filled under existing State budget constraints. Although these States are not accommodated in the formula allocation, the FHWA intends to give them preference in the redistribution of other funds. These grant funds are in addition to the basic formula grant and redistributional preference will be gradually reduced over the life of the authorization.

f. Coordination of SEP

Three States, including the Governor of Idaho, and the National Association of Governor's Highway Safety Representatives (NAGHSR) asked for clarification on the nature and scope of coordination required for the SEP. Additionally, Idaho questions how the determination is made that the coordination has been achieved. The States believe that the FHWA should provide latitude in how this requirement is met. In general, States recognize the importance of coordinating the SEP with other agencies to identify overlapping programs and assure that efforts are not duplicated. They do not want to relinquish the administrative authority and control of MCSAP in the process.

The NAGHSR recommended that the State MCSAP agencies and highway safety agencies exchange information in early summer as each is developing its plans for the upcoming year. The Governor of Idaho further states that the coordination process should be a two-way street and that State highway safety planners should also coordinate their State highway safety plans with the State MCSAP agencies. The FHWA agrees with these comments, but believes the State entities are in a better position to determine how this exchange of information and coordination should be accomplished.

g. Uniform Reporting Requirements

The California Highway Patrol supports SAFETYNET and recognizes that participation by all States is important for the enforcement and monitoring of the motor carrier industry. However, it cautions that over-collection of data can become a burden on the States. Collected data must be meaningful, essential, and useful. The FHWA supports this recommendation and is interested in improving the data while lessening the paperwork and reporting burden on grantees and the industry. Two State agencies and the CVSA sought clarification of the required participation in the SAFETYNET. One State was reluctant to commit to a developing program with potentially burdensome data

requirements. Another State and the CVSA inquired whether this would require all States to conduct safety reviews and compliance reviews. Although the FHWA encourages the States to participate in all aspects of commercial motor vehicle safety programs, including safety reviews and compliance reviews, this participation is not mandatory. An example of new data requirements, which is a necessary element of SAFETYNET participation, is to upload accident data elements identified by the National Governor's Association (NGA).

The Arkansas Highway Police expressed concerns about § 350.11(i) (final rule § 350.9) on uniform reporting requirements as they may impact State privacy statutes. This will be addressed with each State as it prepares to adopt specific SAFETYNET modules, and the FHWA is confident that accommodations can be made. By January 1, 1994, all States should be performing the following related activities:

1. Electronically submitting to the Motor Carrier Management Information System (MCMIS) inspection records;

2. Electronically submitting to the MCMIS accident records of accidents involving commercial motor carriers (Accident data item definitions should adhere to the NGA standard);

3. States participating in the safety review (SR)/compliance review (CR) program activities and using MCSAP-funded laptop computers to conduct SRs and CRs must, after authorization by FHMA Division management, electronically submit SR/CR records for reviews performed on motor carriers to MCMIS (non-laptop States may continue to submit in paper form to the Division office); and

4. Records submitted electronically should be in standard SAFETYNET record format and pass standard SAFETYNET field edit checks.

The FHWA will give the States ample time to implement any other new requirements which are deemed necessary to effectively evaluate and manage the MCSAP.

h. Imminent Hazard

Two State agencies and one association commented on the proposed definition of "imminent hazard." The definition is being omitted from the final rule because the term is not otherwise used in the rule.

i. Recognition and Acceptance of Inspections

For State agencies, including the Governor of Idaho, and four associations wrote in support of the proposal that States recognize and accept inspections and stickers from participating agencies. The OOIDA also expressed support for the reciprocal recognition of the vehicle inspection and emphasizes the importance of uniformity among the various jurisdictions. The lack of uniformity places a burden on the trucking industry by requiring drivers and owner-operators to comply with criteria that could vary widely from State to State. The lack of reciprocity also burdens the industry by subjecting the same vehicle to multiple inspections.

The American Bus Association (ABA) points out that the reciprocity provision is particularly important for intercity bus operators. Passengers on a charter trip, for example, do not understand why the bus should be inspected more than once during the trip. Although the safe transportation of passengers is a prime objective of the FHWA, the rule should alleviate any unnecessary delays. The Chemical Waste Transportation Institute (CWTI) believes the States should also certify that they reciprocally recognize the Federal periodic inspections provided by other States.

The Governor of Idaho and the State of Idaho Department of Law enforcement recommended that only those officers who have been CVSA certified may issue out-of-service orders. The FHWA does not believe that this final rule is the appropriate place to address that issue. The training, qualifications and certification of State inspectors authorized to issue out-of-service orders can best be addressed by the States.

Idaho and the Washington State Patrol also add that the CVSA sticker should not be considered as evidence that the periodic inspection required under part 396 has been conducted. This provision is covered under 49 CFR 396.23 which defines the types of inspections which are considered equivalent to a periodic inspection. This issue is outside the scope of this rulemaking and is not addressed here.

j. Public Education

Two individual drivers wrote to register their support for the proposed public education efforts. The drivers stated that more needs to be done to educate car drivers and the public in general about the special operating characteristics of commercial motor vehicles. One driver points out that uninformed car drivers cause a large percentage of the commercial motor vehicle accidents. Even though commercial drivers try their best to be safety-minded, a greater impact on safety could be made if car drivers were more knowledgeable of the limitations of commercial motor vehicles. The FHWA agrees that this is an important issue and will work with the States to develop initiatives in this area.

k. Declaration of Knowledge

Three State agencies recommended deleting the requirement that owners declare knowledge of the FMCSRs at the time of registration. All three commenters believe that the requirement is burdensome, unnecessary, and that its effectiveness is questionable. Besides being a statutory requirement for which there is no discretion to delete, the FHWA believes that all registrants of commercial motor vehicles have a proprietary interest in their vehicles being operated safely. The FHWA believes that the requirement serves to emphasize the importance of the regulations and the responsibility of the carriers. The FHWA will be exploring ways of tying inspection information with registration records through the development of the Commercial Motor Vehicle Information System (CMVIS) provided by section 4003 of the ISTEA so that the State can readily determine the safety fitness of motor carriers at the time of registration.

l. Correction of Vehicle Defects

Seven State agencies and three associations submitted comments addressing the verification of out-of-service (OOS) orders. Overall, the commenters appear to be very supportive of the proposed requirements included in the NPRM. The need for a verification program is well stated in the comments submitted by the California Highway Patrol, i.e., a system of inspection and enforcement without benefit of a verification program loses its validity.

There is strong support from the States on the flexibility that the requirement offers the States. As reflected in the overall comments submitted, the insistence on a single procedure for all States or the establishment of a specific level of covert operations would most likely be perceived as a burden by the States and inappropriate or ineffective for a number of States.

The Washington State Patrol recommends, in part, that the definition be modified to also include OOS orders issued by "local officers." This is consistent with our efforts to encourage States to bring local agencies into the program, and the definition has been changed to reflect this. The Washington Utility and Transportation Commission

further asks the FHWA to "clarify the verification process in order to impress the fact that this rule is directed toward out-of-service defects—and not all defects." The MCSA of 1990 requires that the correction of both OOS violations and other violations be verified. The States should include activities that address both. For example, a State may choose to use some covert verification activities for vehicles and drivers placed out of service, and certifications on the return copy of the roadside inspection report for other violations.

The Chemical Waste Transportation Institute agrees that the requirement to return the certification of safety violation corrections to the issuing agency will help ensure that violations have, in fact, been corrected. One commenter suggests that the requirement under § 396.9 that motor carriers retain a copy of the inspection record for 12 months may be a burden. However, this requirement is consistent with other recordkeeping requirements in the FMCSRs and should not be a significant issue for carriers.

One commenter suggested that, as an alternative, an investigating officer should be able to obtain inspection data from SAFETYNET and bring it to the carrier's premises. Since intrastate data is not currently entered into SAFETYNET, the commenter suggests that inspection data on intrastate carriers should also be captured in SAFETYNET in the future so that all data would be available to the officer. It should be noted that intrastate data is, in fact, entered into the SAFETYNET; however, intrastate data is not uploaded to FHWA.

The ATA asks that carriers be given more time to return inspection reports and file a report at the terminal where the vehicle is maintained. The ATA urges that the carrier be allowed 60 days to file a copy of each roadside report. Currently, § 396.9 allows 15 days for the motor carrier to certify correction of defects found in inspections. The FHWA believes that this is sufficient time and, moreover, that these reports on safety violations found on trucks and buses operating on the highways require immediate attention and follow-up by the motor carrier.

The ATA further recommends that carriers have the option of retaining copies of the inspection forms at the principal place of business or at the point at which the vehicle is based. This is consistent with the retention requirements for all other maintenance records and is contemplated in the rule.

m. Compatibility and Tolerance Guidelines

Section 4002(1) of the ISTEA requires that the FHWA issue formal regulations specifying guidelines for ensuring compatibility of intrastate regulations. Eighteen comments were received regarding this issue. There were seven comments in favor of the Tolerance Guidelines contained in the NPRM, including four State and local agencies, and three associations. Generally, they favored uniform standards and enforcement, and withholding MCSAP funding from States whose laws are incompatible. The Commonwealth of Virginia felt the Tolerance Guidelines were "equitable," while the Hazardous Materials Advisory Council "strongly supports the FHWA's effort to ensure that uniform national standards are consistently applied and enforced." Commenters also supported the exemptions contained in the Tolerance Guidelines, including the proposed intrastate exemption for vehicles with GVWRs of less than 26,001 lbs., hours of service, and the flexibility for existing State waiver programs. The Iowa DOT expressed support for the 26,000 lbs. GVWR limit, noting that "drivers travelling in less than 26,001 vehicles and combinations do not usually travel long distances across country, nor, in our opinion, do they represent a significant safety hazard." The Oregon Public Utility Commission stated that it supports the waiver programs proposed by the FHWA, as it believes that "our driver waiver program qualifies under the proposed standard and constitutes a very real service to particular drivers without jeopardizing highway safety." While supporting the Tolerance Guidelines provision on hours of service, the Oregon Trucking Association also stated that the limited tolerance for hours of service should be extended to interstate operations as well.

Eleven commenters expressed opposition to the Tolerance Guidelines in the NPRM, including seven State agencies, the ATA, the CVSA, the Teamsters, and the Advocates for Highway and Auto Safety. The New York DOT, Tennessee PSC, and the Minnesota Department of Public Safety opposed the NPRM on the grounds that it is not sufficiently flexible. The CVSA also recommended that good faith efforts negotiated with noncompatible States be extended another three years instead of being eliminated. The FHWA believes that the limited exemptions/exceptions contained in the Tolerance Guidelines give flexibility to the States while retaining the safety benefits derived from the FMCSRs. Further, the FHWA believes it is clearly the responsibility of each State to evaluate its safety laws and regulations in comparison to the national standard.

The California Highway Patrol and the Tennessee PSC expressed concern regarding the autonomy of local jurisdictions. These parties indicated that no mechanism exists to review local law. As proposed, part 355 permits review, at least with respect to the impact of local laws and regulations on interstate commerce with preemption as the remedy, if necessary. The Maine State Police expressed concern that the Tolerance Guideline do not allow a mileage exception for intrastate motor carriers or drivers operating from a home terminal, as "very few motor carriers involved in highway transportation today do not engage in interstate commerce as part of their business." The definition of interstate commerce for purposes of the FMCSRs includes trade, traffic, or transportation across State lines or national borders. If the Tolerance Guidelines do not provide an exemption, such regulations impacting on interstate commerce would be subject to the preemption under part 355. Ideally, the States' intrastate regulations would be identical to the FMCSR, and this would negate any issue of disparate treatment. All motor carriers would be required to meet the same safety standards.

The International Brotherhood of Teamsters (IBT) supports the concept of uniformity, but believes that the proposed rule, particularly the Tolerance Guidelines, permits too much divergence in the treatment of intrastate and interstate motor carriers. This is particularly so with regard to age, hours-of-service, medical qualifications, and vehicles under 26,000 lbs. The IBT believes that "this perpetuates an environment wherein an interstate driver passing through an inspection station can be placed out of service for eight hours based on his hours of service, and an intrastate driver right behind him with more hours can pass right through." The IBT also believes that the FHWA should not preempt more stringent safety regulations as it would not result in greater protection for drivers and the public. The law and the regulations, as proposed, allow for waivers of preemption based on demonstrated public interest and consistency with safety.

The Advocates for Highway and Auto Safety (Advocates) also expressed strong opposition to "the weak requirements of the Tolerance Guidelines and the numerous wholesale

exemptions that are proposed in the draft regulations." Further, concern was expressed over the exclusion of parts 394, 398, and 399, size and weight, hours-of-service, GVWR, and medical variances, especially for insulin dependent diabetics. The Advocates believes "that the FHWA must at least require MCSAP participants to adhere to current FMCSRs." To support its position, the Advocates also submitted copies of comments it had submitted to previous rulemakings.

Tolerance Guidelines have been used for a number of years. Consistent with the ISTEA, the FHWA believes that the Tolerance Guidelines ensure the degree of uniformity necessary to assure safety and allow flexibility within which resources can be directed at the most beneficial programs. The elimination of the limited flexibility provided to the States by the exemptions and waivers that are currently in effect would frustrate States' attempts at compliance, and have a detrimental effect on the overall program.

The ATA recommended that the States' review of both interstate and intrastate regulations be published in the **Federal Register** for review and comment before accepting the SEP. The ATA believes that this would allow the motor carrier industry to examine each State's review of its laws and regulations and provide comments. The FHWA does not support this proposal because it would create unnecessary delays in the development of the SEPs.

The FHWA has provided in the final rule a process by which compatibility of State laws, regulations and enforcement practices are considered in terms of the effect on continued funding under MCSAP. Therefore, under the parallel procedures in parts 350 and 355, any individual may petition the FHWA to determine if a State requirement, whether applicable to interstate or intrastate commerce, is compatible. The FHWA believes that this provides sufficient opportunity for individuals or associations to address specific regulatory concerns.

The ATA, along with the Hazardous Materials Advisory Council, expressed concern over the language regarding variances in the hazardous materials areas, and believes that the final rule should clarify that the Research and Special Programs Administration (RSPA) will set Hazardous Materials variances, not the FHWA. The preemption provisions in Part 355 do not apply to the Hazardous Materials Regulations because that is within the province of the RSPA. The FHWA is delegated the responsibility for enforcement of the Hazardous Materials Regulations as they apply to highway transportation. As the MCSAP is primarily an enforcement program, the FHWA retains responsibility for determining the compatibility of enforcement tolerances. The final rule now makes it clear that any decision with respect to the compatibility of State laws or regulations with the Hazardous Materials Transportation Regulations requiring interpretation of the latter will be referred to the RSPA before any final determination is made regarding continued funding under the MCSAP. Additionally, the ATA believed that paragraph 3.B. of appendix C should be deleted in order to eliminate confusion over interstate versus intrastate carriage of hazardous materials. The ATA also suggested that the FHWA clarify Appendix B, part 350 to ensure that States certify as to the compatibility of both interstate and intrastate regulations, and recommended that § 355.25(a) include the date of compliance recommended by the Safety Panel (July 31, 1992). Additionally, it recommended that the reference be changed from part 389 to 386. The ATA also believes that Appendix A should clarify that States need not review laws that were not reviewed by the Safety Panel.

The compatibility portion of the regulations has been revised to eliminate any possible confusion. Section 350.9, Conditions for basic grant approval, specify that compatibility is a requirement for a basic grant. Part 389, Rulemaking Procedures, is the proper reference.

The ATA, the Advocates for Highway and Auto Safety, and the IBT expressed dissatisfaction with the provisions contained in the Tolerance Guidelines that would exempt vehicles with a GVWR of 26,000 lbs. or less, and insulin-dependent diabetics. The FHWA is currently addressing these issues in separate rulemaking proceedings. Any possible effect of those proceedings on the Tolerance Guidelines will be noted and dealt with in those proceedings.

n. Guidelines for SEP

Four State law enforcement agencies commented that the data required by appendix A, paragraphs 2(j), (k), and (l), would be very difficult and expensive to obtain. These paragraphs contain no data requirements. The purpose of this part of the Guidelines for preparation of the SEP is problem identification. By addressing these problems in the SEP, the States are led to the subsequent issue of measuring the effectiveness of their activities. Certainly, by now, the participating States are gathering data in these areas which would allow for strategic deployment of available resources. Another State requested criteria for correlating overweight violations with safety. Although this is a worthwhile goal of program management, it is not an issue to address in rulemaking. As data becomes available, the FHWA will attempt to distribute useful information as part of its oversight responsibilities. The type of weight enforcement presently authorized for MCSAP funding is at locations where overweight vehicles are most likely to be a safety problem.

Although preliminary SEPs will be submitted prior to the effective date of this rule, it must be recognized that approval of fiscal year 1993 SEPs will be contingent upon conformance with the terms and conditions of this final rule.

o. Miscellaneous

The docket included several comments that were unrelated to the specific proposals in the NPRM. While many of these comments may be worthy of consideration, they are not discussed here because they are outside the scope of this rulemaking. For example, the California Highway Patrol discussed the recent Memorandum of Understanding between the United States and Mexico on CDLs. Additionally, one driver wrote to express his support for alcohol restrictions and to recommend that tobacco use also be prohibited. The driver's health and safety is jeopardized if he/she is fumbling with cigarettes while driving. These are interesting propositions, but not subjects for this rulemaking.

Section-by-Section Analysis

Part 350

Section 350.1 Purpose

This section is amended slightly to eliminate the distinction between development and implementation of programs that existed in the early stages of MCSAP.

Section 350.3 Definitions

The term "basic grant" is added and defined in the same way as "implementation" was defined in the current regulation. The terms "development" and "implementation" are eliminated as there is no longer a need for distinction. The definition of "commercial motor vehicle" is changed slightly to be consistent with that of the MCSA of 1984 (49 U.S.C. app. § 2501 *et seq.*), which provides the basis for the operative definition in the Federal Motor Carrier Safety Regulations (49 CFR 390.5). The FHWA does not believe the definition used in the MCSAP statute (49

U.S.C. app. § 2302), unchanged by the ISTEA, is meant to require the expansion of the class of vehicles subject to federally assisted safety regulation and enforcement by States unless that would be consistent with the class of vehicles subject to direct federal safety regulation and enforcement.

The difference is that the definition in 49 U.S.C. app. 2302 includes vehicles "designed to transport more than ten passengers, including the driver," while the definitions in 49 U.S.C. app. 2503 and 49 CFR 390.5 include vehicles "designed to transport more than 15 passengers, including the driver." It is inconceivable that Congress intended for different definitions to apply to State and Federal enforcement activities when the core purpose of the MCSAP is to encourage States to adopt and enforce compatible regulations. The FHWA, therefore, is interpreting the definition in the grant statute as permissive, and is adopting a narrower definition for purposes of prescribing which regulations are compatible with the Federal regulations so that related enforcement activities may be eligible for MCSAP funding.

The FHWA is also defining "compatible or compatibility" in the final rule for purposes of determining eligibility for State participation in the MCSAP, setting tolerance guidelines for deviations, and considering preemption decisions.

The definitions of "driver/vehicle out-of-service order" and "imminent hazard" proposed in the NPRM are being dropped because they were not used in the final rule. The term "motor carrier" is amended to exclude private carriers of passengers which are not presently covered under the FMCSR.

Section 350.5 Policy

This section remains unchanged from the original rule and the NPRM. It includes the FHWA's policy of encouraging a comprehensive and coordinated national program of uniform compliance and enforcement of motor carrier safety regulations.

Section 350.7 Objective

This section is unchanged from the original rule and the NPRM. The objective of MCSAP is to reduce the number and severity of commercial motor vehicle accidents and hazardous materials incidents through effective enforcement.

Section 350.9 Conditions for Basic Grant Approval

This section is renumbered in the final rule, occupying a place that was reserved in the NPRM. Section 350.11 of the NPRM, as modified, is redesignated as § 350.9 in the final rule. Section 350.9(b) of the original rule is retained in this final rule. The largest portion of the MCSAP funds are allocated by formula to States which participate in the national program of comprehensive, uniform commercial motor vehicle safety programs. The ISTEA added new requirements and optional, eligible activities to enhance the overall effectiveness of the MCSAP. These include, e.g., participation in the enforcement data system SAFETYNET, use of fines consistent with the recommended fine schedule published by the CVSA, improved traffic enforcement, and verification of correction of violations found during roadside inspections.

There are three other changes in this section from the NPRM. Section 350.9(g) is added to require a State's commitment to maintenance of effort as a condition of MCSAP participation. Section 350.11(d) through (g) of the NPRM are designated as §§ 350.9(c) through (f) in the final rule, and clarifications are made in the last paragraph (§ 350.9(p) in the final rule) on verification of correction of out-of-service violations.

In the final rule, § 350.9(h) [NPRM § 350.11(h)] is inserted to require, as a condition of grant approval, that the State certify that it will maintain its level of effort as defined under § 350.17. The NPRM had proposed to continue the requirement that the State include in its State Enforcement Plan (SEP) an actual calculation of these costs. This has been deleted from the SEP and replaced by self-certification under this section. States should be aware that the certification is subject to subsequent audit, and failure to comply with the maintenance of effort requirement could result in a proportional reduction of MCSAP funding.

The third change to this section is to clarify the wording of paragraph (p). The NPRM would have required States to "ensure comprehensive enforcement and *random* reinspection of vehicles and drivers placed out-of-service" (emphasis added). The word "random" is deleted from the final rule because it is likely to be construed as requiring mathematically "random" activities. The States must develop effective reinspection techniques, including such strategies as covert surveillance and unpredictable reinspection and records verification. In addition, the phrase "and the correction of other violations cited on roadside inspection reports" is added to make it clear that the States' activities to verify correction of violations includes both severe violations resulting in an out-of-service order as well as other less critical safety violations.

Section 350.11 Adopting Enforcing Compatible Laws and Regulations

This section is added to the final rule to provide a process by which compatibility determinations are made and the Tolerance Guidelines are maintained. It parallels the provision in § 355.25 by which preemption decisions are made. This section makes it clear that funding under MCSAP is conditioned upon the adoption and enforcement of State laws and regulations that are compatible with the FMCSR and HMTR. It incorporates the requirement for annual State review of its laws and regulations previously included in what is now § 350.9, Conditions of basic grant approval. It also contains excerpts from the proposed Tolerance Guidelines that were regulatory in nature. It describes the effect that compatibility determinations have on continued funding by relating the process to § 350.27, Procedure for withdrawal of approval. Also, it provides that compatibility decisions requiring interpretations of hazardous materials regulations will be referred to the RSPA before any determinations affecting funding are made by the FHWA.

With respect to the adoption of changes to the Federal regulations, the States will be required to become compatible as soon as possible, but no later than three years from the effective date of the change. This is consistent with part 355 and the instructions appended thereto concerning the required review of State laws and regulations. The States that currently have incompatible laws or regulations applicable to intrastate commerce only will have an additional two years from the effective date of the final rule to come into compliance. Two years will ensure that each affected State will have at least one legislative session in which to achieve compatibility. Those States, however, with incompatible regulations applicable to interstate commerce which have already been brought to their attention through the Safety Panel review process will be subject to the provisions of part 355 as of the effective date of the final rule.

Section 350.13 State Enforcement Plan (SEP) for a Basic Grant

This section describes what a State must include and address in its SEP. Appendix A provides further guidance to the States on the preparation of the SEP.

This section reflects several changes based on the comments to the docket. Paragraph (b)(2), which required the States to calculate expenditures in the base period to determine the required maintenance of effort as part of the SEP, has been deleted. As discussed above, the States now self-certify compliance with this requirement. A new paragraph (b)(2) has been substituted which requires the States to identify their penalty structures, to evaluate their reasonableness and appropriateness, and to indicate the steps being taken to approximate the published CVSA fine schedule, if necessary.

Paragraph (b)(4) requires the State to describe its objectives, resources, work items, costs, and its means to measure the effectiveness of the commercial motor vehicle safety activities. In paragraph (b)(4)(iv), the State must describe its specific activities to ensure violations cited during driver and vehicle roadside inspections are corrected. A new sentence is added to this paragraph to require the States to evaluate the effectiveness of their activities in this area. States will need to periodically conduct covert operations to determine the extent of compliance with the State's out-of-service orders. As the States continue to develop strategies that are effective deterrents to inherently unsafe practices of continuing operation of defective equipment or by ineligible drivers, the State should make appropriate adjustments.

Section 350.15 Certification of Compliance by State

This section requires that the State certify compliance with the conditions for basic grant approval. This section is unchanged from the NPRM, but appendix B is amended to include certification of maintenance of effort.

Section 350.17 Maintenance of Effort

Based on the comments received and consideration of the intent of the legislation, practices of other agencies with maintenance of effort requirements, and program continuity, this section has been changed. Although the proposed rule had provided a State two methods by which to calculate its MOE, the final rule consolidates and clarifies this section. No calculation of base year expenditures will be required to be submitted as part of the SEP. The State need only certify that it is committed to maintaining its level of expenditures of State funds, exclusive of State funds used to match MCSAP funds and any State funds used in connection with pilot projects under this program, for commercial motor vehicle safety programs and for enforcement of truck size and weight limitations, drug interdiction, and traffic enforcement, at a level which does not fall below the average level of expenditures for its last three full fiscal years preceding December 18, 1991 (fiscal year 1989, 1990, and 1991). The fiscal years may be either Federal fiscal years or State fiscal years, at the State's option. Certifications will be subject to subsequent audit. For purposes of determining compliance with this requirement, only State funds expended during the base period for activities conducted by those State agencies participating in MCSAP during the base period or those currently participating need be counted. Moreover, only expenditures during the base period on those enforcement activities which were then eligible or are currently being funded under MCSAP need be counted. For example, a MCSAP agency was performing traffic enforcement in conjunction with MCSAP funded roadside inspections during the base period. The level of expenditures on that type of traffic enforcement must be maintained as long as the State agency is a grantee in the MCSAP. The MCSAP agency may cease performance of an eligible activity, but the level of effort included in the MOE must be maintained as long as the MCSAP agency is participating in the grant. If such enforcement activity was being performed in the State during the base period by a non-MCSAP agency, those State expenditures need only be considered if, in the current year, that agency is receiving MCSAP funds.

Finally, if a subsequent audit reveals that the State is not maintaining or has not maintained its level of effort as certified, the State will have an opportunity to provide information to support the certification. A final determination of noncompliance will result in a proportional reduction of the State's current allocation, and those funds will be immediately available for reallocation.

Section 350.19 Grant Application Submission

This section is unchanged from the original rule and the NRPM. It establishes that the SEPs are due to the Office of Motor Carriers Division Office by August 1 of each year. For the Federal fiscal year beginning October 1, 1992, the States may have until December 31, 1992, to amend their SEPs to meet all the requirements of this rule. This grace period is necessary because of the changes brought about by this rule.

Section 350.21 Distribution of Funds

This section includes the formula used to distribute the basic grant. The formula factors will use the most recently available final data. In most cases, this will mean a gap of about two fiscal years. For example, highway statistics for FY 1990 are finalized by the Spring of 1992 and will be used for FY 1993 allocations. Generally, the FHWA notifies the States of their anticipated formula allocations for the next fiscal year in the Spring when the States are beginning to develop their SEPs. These preliminary formula allocations are estimates because the level of funding for the MCSAP may change through the appropriations process.

Paragraph (e)(1) is modified to clarify that any eligible MCSAP activity can be included under the State's basic grant activities. However, it should be noted that § 350.9(1) requires the State to ensure that the newly eligible activities of size and weight enforcement, traffic enforcement, and drug interdiction do not diminish the effectiveness of the existing motor carrier safety programs.

Paragraph (f) is revised to facilitate the FHWA's intention to accommodate, to the extent practicable, the needs of those States which had been receiving relatively large secondary grants in previous years to avoid substantial cutbacks in successful programs due to State fiscal constraints. Therefore, funds which have not been awarded to States under application of the allocation formula and the provisions for additional allocations under supplemental or special grants, may be distributed at the discretion of the Administrator. The primary purpose of any such redistribution is to prevent a decrease in the amount of Federal funds used by particular States in previous years to support effective and innovative programs. Preference will be given to those States which have maintained effective federally assisted programs at levels beyond that possible if limited to formula allocations and proportional supplemental allocations.

Sections 350.23, 350.25, and 350.27 Review, Approval, and Withdrawal Process for State Plans

These sections remain unchanged from the NPRM. These are the same procedures used under the original MCSAP rule with wording updates to reflect the new grant structure.

Section 350.29 Eligible Costs

Only paragraph (j) of this section is modified to clarify the wording. The remainder of the section is the same as was proposed in the NPRM. Newly

eligible activities including size and weight, traffic enforcement, and drug interdiction activities are covered under paragraph (c). While these are eligible activities, the rule limits these activities to those carried out in conjunction with an appropriate type of inspection or at specific geographical locations (for size and weight activities) or where the weight of the vehicle can significantly affect the safe operation of the vehicle. Further, it should be noted that § 350.9(1) requires that the State ensure that these activities do not diminish the effectiveness of current commercial motor vehicle safety programs.

Paragraph (j) of this section is amended to provide that the eligibility of specific costs *must* be necessary, reasonable and allocable to the approved *plan* (emphasis added), which is consistent with 49 CFR Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

Appendix A—Guidelines To Be Used in Preparing State Enforcement Plan

This appendix provides additional guidance to the States on preparing the SEP. In ongoing discussions and coordination with the States, the FHWA is continuing to identify ways to streamline, simplify, and improve the SEPS. The revisions to the SEP guidelines generally do not change the substance of what is to be included in the SEP, but will eliminate duplication of information requested. Further, a few requirements are dropped while information on new program activities are added.

A new paragraph 2, *Program Summary*, is added. It combines into one section paragraphs with the headings *Define the problem, Determine current enforcement efforts, Establish objectives*, and *Program evaluation*. While the contents of these sections is generally unchanged, this regrouping will help the States avoid some duplication.

Paragraph 2(g) in the NPRM which directed the States to consider the operational and economic impact of increased enforcement as part of collecting data and information to define the problem is added to paragraph (d), *Provide for evaluation*, because it is an analysis of the results of specific enforcement activities rather than a factor in problem definition.

Paragraphs 2 (h) and (i) in the NPRM are deleted because this information is provided in other sections. Paragraph 2(h) directs the State to consider its ability to prevent commercial motor vehicle operators from circumventing inspection sites. This is deleted as a factor under problem definition because it is covered under paragraph 2(c)(2) *Describe the practices*, and the enforcement strategies would be covered under the program evaluation section. Similarly, paragraph 2(i) of the NPRM is deleted because costs of the plan are fully covered under *Identify resources*.

A parenthetical statement is added to the end of this section to acknowledge that the States may not now have all of the data that they need regarding traffic violations, impaired drivers and overweight vehicles. They will need to begin to compile this data to evaluate and improve the effectiveness of their programs.

Parts of paragraph 2(b), *Determine current enforcement efforts*, are deleted because they are covered under other sections of the SEP. Under this section the State describes its current commercial motor vehicle safety and hazardous materials activities. This section does not need to include a description of existing laws and regulations because this will be addressed and included as part of the part 355 review and Tolerance Guidelines process. In addition, while the plan should include a description of other agencies within the State with enforcement responsibilities to identify opportunities for coordination and cooperation, it does not need to include the "resources devoted by these agencies and the cost to the State or local government of these efforts." This cost information, if applicable, would be considered in the State's MOE certification.

Appendix B—Form of State Certification

This appendix is essentially unchanged. The only significant additions are that the State must include the name of the State highway safety representative with whom coordination was accomplished, and because of self-certification, the State is no longer required to include the level of expenditure for its maintenance of effort.

Appendix C—Tolerance Guidelines for Adopting Compatible State Rules and Regulations

The Tolerance Guidelines remain basically the same as they appear in the NPRM, except that procedural requirements are now included under § 350.11.

Part 355

This part, dealing with preemption determination with respect to State laws and regulations applicable to interstate commerce, remains virtually unchanged from the NPRM. The regulations in this part require an annual review of State laws and regulations to be completed and submitted with the MCSAP grant applications to take up where the Safety Panel left off. Guidelines for conducting the review are provided in appendix A to this part, and make it clear that States will have three years within which to adopt any changes to the Federal regulations before any incompatibility determination can be made. Those State laws or regulations that have already been determined to be incompatible under the Safety Panel review process will be subject to the provisions of this part on the effective date of the final rule.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The action taken by the FHWA in this document will amend the regulation governing the Motor Carrier Safety Assistance Program, which has been reauthorized for an additional six years. The final rule restates the basic eligibility requirements for participation in the MCSAP and adds the further program elements required by the ISTEA. The FHWA has determined that this document does not contain a major rule under Executive Order 12291. The requirements contained in this document would not result in an annual effect on the economy of $100 million or more, or lead to a major increase in costs or prices, or have significant adverse effects on the United States economy. However, the FHWA has determined that this is a significant regulation under the regulatory policies and procedures of the Department of Transportation because of substantial public, congressional, and State government interest in this rule. The requirements of this document affect over 1.5 million inspections of commercial motor vehicles each year, as well as over 10,000 on-site reviews of the safety management practices of motor carriers.The economic impacts of this rulemaking that will occur are primarily mandated by the statutory provisions themselves. A regulatory evaluation is not required because of the ministerial nature of this action.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354), the agency has evaluated the effects of this rule on small entities. This rule primarily relates to the requirements States must meet to be eligible for Federal funding

under the MCSAP. This rule does not impose any direct requirement on small entities that will result in increased economic costs. Based on this evaluation, the FHWA certifies that this rule would not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. Although this rule relates to the requirements that States must meet to be eligible for Federal funding, federalism implications, though unavoidable, have been kept to a minimum. This rule does implement express preemption provisions contained in the MCSA of 1984. The preemptive authority therein furthers the goal of national uniformity of commercial motor vehicle safety regulations and their enforcement, as intended by Congress. This intention was evidenced in the STAA of 1982, creating the MCSAP; the review of State commercial motor vehicle safety laws and regulations and determinations of compatibility required by the MCSA of 1984; and the intrastate compatibility provision in section 4002 of the ISTEA. The FHWA believes that the requirements contained in this document are consistent with the principles and criteria in E.O. 12612 for the implementation of express statutory provisions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.

Paperwork Reduction Act

The collection of information requirements contained in the existing 49 CFR part 350 have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 2125–0536. Approval for the amended requirements in this rule is being sought from the OMB.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Parts 350, 355, and 396

Grant programs—transportation, Highway safety, Highways and roads, Motor carriers, Motor vehicle safety, Penalties.

Issued on: August 31, 1992.

T.D. Larson,

Administrator.

In consideration of the foregoing, the FHWA amends title 49, Code of Federal Regulations, subtitle B, chapter III as set forth below.

1. Part 350 is revised to read as follows:

PART 350—COMMERCIAL MOTOR CARRIER SAFETY ASSISTANCE PROGRAM

Sec.
350.1 Purpose.
350.3 Definitions.
350.5 Policy.
350.7 Objective.
350.9 Conditions for basic grant approval.
350.11 Adopting and enforcing compatible laws and regulations.
350.13 State Enforcement Plan (SEP) for a basic grant.
350.15 Certification of compliance by State.
350.17 Maintenance of effort.
350.19 Grant application submission.
350.21 Distribution of funds.
350.23 Acceptance of State plan.
350.25 Effect of failure to submit a satisfactory State plan.
350.27 Procedure for withdrawal of approval.
350.29 Eligible costs.

Appendix A to Part 350—Guidelines To Be Used in Preparing State Enforcement Plan

Appendix B to Part 350—Form of State Certification

Appendix C to Part 350—Tolerance Guidelines for Adopting Compatible State Rules and Regulations

Authority: 49 U.S.C. app. 2301–2304, 2505–2507; 49 U.S.C. 3102; Sec. 15(d), Pub. L. 101–500, 104 Stat. 1213, 1219; Secs. 4002 and 4009, Pub. L. 102–240, 105 Stat. 2140; 49 CFR 1.48.

§ 350.1 Purpose.

The purpose of this part is to prescribe requirements for Federal assistance to States for programs to adopt and enforce Federal rules, regulations, standards and orders applicable to commercial motor vehicle safety or compatible State rules, regulations, standards and orders.

§ 350.3 Definitions.

As used in this part:

Administrator means the Federal Highway Administrator.

Basic allocation means only those Federal funds distributed by the allocation formula, or the minimum funding level specified in this part.

Basic grant means the funds available to a State for carrying out an approved State Enforcement Plan (SEP), which include, but are not limited to:

(1) Recruiting and training of personnel, payment of salaries and fringe benefits, the acquisition and maintenance of equipment except those at fixed weigh scales for the purposes of weight enforcement, and reasonable overhead costs needed to operate the program;

(2) Commencement and conduct of expanded systems of enforcement;

(3) Establishment of an effective out-of-service and compliance enforcement system; and

(4) Retraining and replacing staff and equipment.

Commercial motor vehicle means any self-propelled or towed vehicle used on the public highways in commerce to transport passengers or property when:

(1) The vehicle has a gross vehicle weight rating or gross combination weight rating of 10,001 or more pounds; or

(2) The vehicle is designed to transport more than 15 passengers, including the driver; or

(3) The vehicle is used in the transportation of hazardous materials in quantities requiring placarding under regulations issued by the Secretary of Transportation pursuant to the authority of the Hazardous Material Transportation Act, as amended (49 U.S.C. app. 1801 *et seq.*).

Compatible or *compatibility* means, in relation to State laws and regulations pertaining to commercial motor vehicle safety, having the same effect as the Federal Motor Carrier Safety Regulations (FMCSR) or Federal Hazardous Materials Regulations (FHMR) in that those State rules are either identical or fall within the tolerance guidelines in appendix C to this part.

Motor carrier means a for-hire carrier of passengers or property by motor vehicle and a private carrier of property by motor vehicle.

State means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, or the Commonwealth of the Northern Marianas.

§ 350.5 Policy.

The Federal Highway Administration (FHWA) policy is to encourage each State to enforce uniform motor carrier safety and hazardous materials regulations for both interstate and intrastate motor carriers and drivers. The requirements for compliance with safety standards in one State should be compatible with the requirements in another State. A coordinated program of inspection and enforcement activities is needed to avoid duplication of effort, to promote compliance with uniform safety requirements by all types of motor carriers, and to provide a basis for sanctioning carriers for poor safety performance.

§ 350.7 Objective.

The objective of the Motor Carrier Safety Assistance Program (MCSAP) is to reduce the number and severity of accidents and hazardous materials incidents involving commercial motor vehicles by substantially increasing the level and effectiveness of enforcement activity and the likelihood that safety defects, driver deficiencies and unsafe carrier practices will be detected and corrected.

§ 350.9 Conditions for basic grant approval.

(a) The State shall agree to adopt, and to assume responsibility for enforcing the Federal Motor Carrier Safety Regulations (FMCSR) (49 CFR parts 390 through 399, except as may be determined by the Administrator to be inapplicable to a State enforcement program) including highway related portions of the Federal Hazardous Materials Regulations (FHMR) (49 CFR parts 107, 171–173, 177, 178 and 180), or compatible State rules, regulations, standards, and orders applicable to motor carrier safety, including highway transportation of hazardous materials.

(b) The State shall submit a State Enforcement Plan (SEP) for the conduct of an effective safety program. Such plan, upon acceptance by the FHWA, will serve as the basis for monitoring and evaluating performance of the State under the grant, and will be resubmitted, with revisions as necessary, in applications for reapproval in following years.

(c) The SEP shall designate the lead State agency responsible for administering the plan for the State.

(d) The agencies named to perform functions under the plan shall have the legal authority, resources, and qualified personnel necessary to enforce the FMCSR and FHMR or compatible State rules at the time the State implements the approved SEP.

(e) The State shall allocate adequate funds for the administration of the SEP and the enforcement of the FMCSR and FHMR or compatible State rules.

(f) State laws shall provide for right of entry and inspection adequate to carry out the SEP and provide that the State will grant maximum reciprocity for inspections conducted pursuant to the North American Uniform Driver/Vehicle Inspection standard, through the use of a nationally accepted system allowing ready identification of previously inspected commercial motor vehicles.

(g) The State shall certify that it will maintain its aggregate expenditure of funds by the State and political subdivisions thereof, exclusive of Federal funds, for commercial motor vehicle safety programs and related programs eligible for funding under this part, as required by § 350.17 of this part.

(h) The State shall agree to prepare and submit all reports required in connection with the SEP or other conditions of the grant to the FHWA upon request.

(i) The lead State agency shall agree to adopt such uniform reporting requirements and use such uniform forms to record work activities performed under the SEP as may be established and required by the FHWA.

(j) The State shall require registrants of commercial motor vehicles to declare, at the time of registration, knowledge of the FMCSR and FHMR or compatible State rules, as applicable.

(k) The statutory authority of the State to regulate motor carriers shall extend to private motor carriers of property as well as for-hire motor carriers.

(l) The State shall ensure that commercial motor vehicle size and weight enforcement, drug interdiction, and traffic enforcement activities funded under this program will not diminish the effectiveness of other commercial motor vehicle safety enforcement programs.

(m) The State shall take appropriate steps to ensure that fines imposed and collected by the State for violations will be reasonable and appropriate and, to the maximum extent practicable, will seek to implement into law and practice the recommended fine schedule published by the Commercial Vehicle Safety Alliance.

(n) The State will participate in the SAFETYNET no later than January 1, 1994.

(o) The State will undertake efforts to emphasize and improve enforcement of State and local traffic laws as they pertain to commercial motor vehicle safety.

(p) The State will ensure comprehensive enforcement and reinspection of vehicles and drivers placed out of service to verify compliance with lawful orders and the correction of all violations cited on roadside inspection reports.

§ 350.11 Adopting and enforcing compatible laws and regulations.

(a) No funds shall be awarded under this part to States that do not adopt and enforce laws and regulations that are compatible with the FMCSR (except as may be determined by the Administrator to be applicable) and the FHMR, unless otherwise provided in the Tolerance Guidelines (appendix C to this part).

(b) The State shall conduct an annual review of all its laws and regulations pertaining to commercial motor vehicle safety to determine their compatibility with the FMCSR and FHMR. The review shall be carried out in accordance with part 355 of this subchapter. To support a State's contention of compatibility, the State may submit opinions from the State's Attorney General or other chief legal officer with respect to the effect and enforceability of State laws, rules, regulations, standards, or orders in relation to the FMCSR and FHMR.

(c) State laws and regulations pertaining to commercial motor vehicle safety in interstate commerce are also subject to preemption under the provisions of § 355.25 of this chapter.

(d) State laws and regulations that are not identical to the FMCSR or FHMR will be deemed compatible for purposes of this part only if they are within the variances permitted under the tolerance guidelines in appendix C of this part.

(e) No State shall implement any changes to a State law or regulation which makes that or any other law or regulation incompatible under this section.

(f) As soon as practical after the effective date of any amendment to the FMCSR or FHMR, but no longer than three years, the applicable State law or regulation must be adopted or amended in such manner as makes it compatible with the amended Federal provision.

(g) Any State may apply for a variance related to State laws, regulations or enforcement practices pertaining to commercial motor vehicle safety in intrastate commerce, which shall be granted if the State can satisfactorily demonstrate that the State law, regulation or enforcement practice

achieves substantially the same purpose as the similar Federal rule, does not apply to interstate commerce, and has no adverse impact on safety.

(h) Upon a determination by the FHWA, on its own initiative or after determination initiated at the request of any person, including a State, that a State has failed to comply with the requirements of this part, or that a State law, regulation or enforcement practice pertaining to commercial motor vehicle safety in either interstate or intrastate commerce is incompatible with the FMCSR or HMTR, a proceeding under § 350.27 for withdrawal of approval of a State plan may be initiated. This proceeding shall be in addition to or in conjunction with any action initiated under § 355.25 of this chapter.

(i) Any decision regarding the compatibility of a State law or regulation with the FHMR that requires an interpretation will be referred to the Research and Special Programs Administration for such interpretation before proceeding under § 350.27.

§ 350.13 State Enforcement Plan (SEP) for a basic grant.

(a) As a condition of the basic grant the State shall submit its proposed SEP or update thereof to the FHWA division office.

(b) The SEP shall:

(1) Provide an assessment of the commercial motor carrier and highway hazardous materials safety problems within the State;

(2) Identify State penalty structures applicable to enforcement activities covered in the SEP, evaluate their reasonableness and appropriateness, and indicate the steps being taken to approximate the published Commercial Vehicle Safety Alliance (CVSA) fine schedule, if necessary.

(3) Demonstrate that the State has authority to regulate and to enforce its regulations with respect to private carriers of property as well as for-hire motor carriers; and

(4) Describe in detail the objectives sought to be achieved, the resources to be employed, the work items to be performed, the unit costs where feasible and the methods to be used to measure effectiveness. Specifically, the SEP shall:

(i) Identify other agencies participating in the plan and describe the roles of each;

(ii) Identify the number and category of personnel employed and the specialized training provided;

(iii) Include roadside inspection activity at such times and locations as will assure comprehensive enforcement;

(iv) Describe the proposed reinspection activities that would ensure motor carriers had made timely corrections of the out-of-service defects and other safety violations cited on the roadside inspection reports and that out-of-service drivers came into compliance with the regulations. These reinspection activities shall include covert operations to determine the extent of compliance with the State's out-of-service orders. State enforcement activities to remedy out-of-service violations shall depend on the extent of the verification problem and may include, but are not limited to: on-site reinspection activities; covert surveillance activities; safety and compliance review programs; and other State proposed activities approved by the FHWA; and

(v) Describe the tracking system to be used by the State to ensure that the motor carrier has certified to the correction of the safety violations and returned the inspection report to the issuing agency.

(5) Be coordinated with the State highway safety plan under 23 U.S.C. 402.

(6) Describe the methods the State will use to promote:

(i) Removing impaired drivers from the highways through enforcement of regulations on the use of alcohol and controlled substances and by ensuring ready roadside access to alcohol detection and measuring equipment;

(ii) Appropriate training to its personnel on the recognition of drivers impaired by alcohol or controlled substances;

(iii) Enforcement of requirements relating to the licensing of commercial motor vehicle drivers, including checking the status of commercial driver's licenses;

(iv) Improved enforcement of hazardous materials transportation regulation by encouraging more inspections of shipper facilities and comprehensive inspections of hazardous materials loads;

(v) Effective controlled substance interdiction activities and training on strategies for carrying out such activities; and

(vi) Effective use of trained and qualified officers and employees of political subdivisions and local governments, under the direction and supervision of the lead agency, in enforcement of commercial motor vehicle safety and hazardous materials transportation safety.

(7) Document, if funds are used for vehicle size and weight, alcohol/controlled substance checks, drug interdiction and/or traffic law enforcement, that such activities are carried out in conjunction with an appropriate type of vehicle or driver inspection.

(c) Guidelines for the preparation of the SEP are provided in appendix A to this part.

(Approved by the Office of Management and Budget under control number 2125-0536)

§ 350.15 Certification of compliance by State.

The FHWA will accept a certification, executed by the Governor, the State's Attorney General or other State official specifically designated by the Governor, in the form provided in appendix B to this part, that the State is in compliance with the conditions of § 350.9 of this part. The certification shall accompany the SEP and be made part thereof. The certification shall be supplemented by a copy of any State law, regulation or forms pertaining to commercial motor carrier safety adopted since the State's last certification, if any, which bear on the items listed in the certification. The certificate should acknowledge that activities described in § 350.9 will be performed.

§ 350.17 Maintenance of effort.

(a) No SEP shall be approved or grant awarded in the absence of a commitment by the State to maintain the aggregate expenditure of funds by the State for commercial motor vehicle and highway hazardous materials safety programs as provided in this section.

(b) The State shall certify each year that the level of State funding for the 12-month period covered in the SEP for motor carrier and highway hazardous materials safety, size and weight, traffic safety and drug interdiction enforcement purposes shall not fall below the average aggregate expenditure of funds, exclusive of Federal funds and any State matching funds used to receive Federal funding, for those purposes in the base period of three full fiscal years prior to December 18, 1991. The State may elect to use either Federal fiscal years or State fiscal years at its option.

(c) In determining whether a State has complied with this maintenance of effort commitment, expenditures of State funds for federally sponsored demonstration or pilot programs need not be included in aggregating expenditures in the base period.

(d) For the purpose of determining the State's expenditures in the base period, only costs associated with activities performed by State or local agencies currently receiving or projected to receive funds under this part must be counted, and only those activities which meet the most current requirements for funding eligibility under the grant program must be included.

(e) If it is determined that a State has not maintained its level of expenditures as certified, the State shall be notified of the deficiency. Upon receipt of such notification, the State shall have the opportunity to submit information to substantiate the certification.

(f) If, after consideration of all information, it is finally determined that a State has failed to meet its maintenance of effort requirement, an amount equal to the deficiency shall be deducted from the State's current allocation. That amount will then be available for reallocation under § 350.21 of this part.

§ 350.19 Grant application submission.

A State shall submit its application to the FHWA division office on or before August 1 of each year. The time for submitting a plan may be extended for a period not to exceed 30 calendar days for good cause shown. Grants are approved for the fiscal year for which application is made. Failure of a State to submit a plan for any given fiscal year will preclude consideration of grant approval for that State for that year.

§ 350.21 Distribution of funds.

(a) The Federal share payable to reimburse States for eligible costs incurred in the administration of a commercial motor carrier safety program shall not exceed 80 percent.

(b) The FHWA will, upon request, waive the requirement for matching funds to be provided by the Virgin Islands, American Samoa, Guam, or the Commonwealth of the Northern Marianas.

(c) The funds available to any State for a basic grant in any one year shall be distributed according to an allocation formula based on the most recent reliable data concerning the following factors in equal proportion:

(1) Road mileage (all highways);

(2) Vehicle miles travelled (all vehicles);

(3) Number of commercial vehicles over 10,000 pounds (gross vehicle weight rating);

(4) Population (most current census); and

(5) Special fuel consumption (net after reciprocity adjustment).

(d) Subject to the availability of funds, the individual allocations shall be adjusted so that no State qualifying for an award shall be allocated more than a ceiling amount, which shall be no less than the ceiling amount used in the previous year's distribution process. The ceiling shall be increased each fiscal year in proportion to the amount of increase in the funds available for distribution in that fiscal year. The allocation formula shall also be adjusted so that no State qualifying for an award shall be allocated:

(1) Less than the basic allocation of funds received in the 1991 fiscal year, provided the SEP continues to support that level of funding; or

(2) Less than 0.5 percent of the total amount allocated to all States (or $250,000, whichever is greater).

(e) Funds will be allocated to States in recognition of innovative, successful, cost efficient or cost effective programs to promote commercial motor vehicle safety and hazardous materials transportation safety and provide incentives to States that conduct traffic safety enforcement activities done in conjunction with motor carrier safety inspections. The allocations will be done in three separate grants:

(1) Basic grants—funds used to perform commercial vehicle safety activities such as driver/vehicle inspections, safety reviews and compliance reviews. Allocation for basic grants will be made pursuant to paragraphs (c) and (d) of this section. Unused basic allocations will be periodically redistributed. Any eligible MCSAP activity can be included under the State's basic grant activities.

(2) Supplemental grants—funds used to conduct additional activities or innovative programs demonstrated to be effective and cost-efficient, and may include emphasis areas established by policy in consultation with the States. To be eligible for a supplemental grant, a State must qualify for a basic grant. Unused supplemental grant funds will be periodically redistributed among those States that are able to demonstrate innovative, cost-effective purposes consistent with the objectives of this part.

(3) Special grants—funds used by States to meet the conditions in § 350.9 regarding eligibility requirements for basic grants; or for States already participating in the basic program, to develop the prerequisites for expanded activities not presently part of their basic programs. Special grants are also available for research or data collection activities, or for projects specifically identified by statute, as, for example, commercial driver's license enforcement. To be eligible for a special grant, a State need not qualify for a basic grant.

(f) Notwithstanding any other provisions of this section, funds which have not been awarded to States under application of the allocation formula and the provisions for additional allocations contained in this section may be redistributed at the discretion of the Administrator. Subject to the availability of funds, the primary purpose of any such redistribution is to prevent a decrease in the amount of Federal funds used by particular States in previous years to support effective and innovative programs. Preference will be given to those States which have maintained effective federally assisted programs at levels beyond that possible if limited to formula allocations.

(g) The funds obligated by a State will remain available to the State for a period of the fiscal year in which obligated and the next full fiscal year. Any unexpended obligations which are to be carried over to the next fiscal year must be accounted for in the new SEP for that fiscal year. Funds must be expended in the order in which they are obligated.

§ 350.23 Acceptance of State plan.

(a) Each plan will be reviewed for content, after which the State will be notified of its acceptance or rejection.

(b) The time for submitting a plan may be extended for a period not to exceed 30 calendar days for good cause shown.

(c) Each State plan shall include an analysis of the effectiveness of its prior year's plan in reaching the stated objectives. The State will be advised whether any changes are needed in the plan or in its intended objectives.

§ 350.25 Effect of failure to submit a satisfactory State plan.

(a) A State will be notified in writing that approval of the plan is being withheld along with the reasons for such action, if:

(1) It is determined that a plan does not meet the requirements described in §§ 350.9 and 350.13; or

(2) It is determined that an SEP is not adequate to ensure effective enforcement of the FMCSR and FHMR; or compatible State rules.

(b) The State shall have 30 calendar days from the date of the notice to modify the plan and resubmit it for approval.

§ 350.27 Procedure for withdrawal of approval.

(a) If a State is not performing according to an approved plan or a State is not adequately enforcing the FMCSR and FHMR, or compatible State rules, the Administrator shall issue a written notice of proposed determination of nonconformity to the Governor of the State or the official designated in the plan. The notice shall state the reasons for the proposed determination and inform the State that it may reply in writing within 30 calendar days from the date of the notice. The reply should address the deficiencies cited in the

notice and provide documentation as necessary.

(b) The Administrator's decision, after notice and opportunity for comment, will constitute the final decision of the FHWA. An adverse decision will result in immediate cessation of Federal participation in the plan.

(c) If the State does not respond to a notice of proposed determination of nonconformity as provided in paragraph (a) of this section, the proposed determination shall become the Administrator's final decision with the same effect as paragraph (b) of this section.

(d) Any State aggrieved by an adverse decision issued under this part may seek judicial review pursuant to 5 U.S.C. ch. 7.

§ 350.29 Eligible costs.

(a) Work must be performed pursuant to an acceptable State plan in order for the cost of that work to be eligible for reimbursement. The eligible costs under the grant program are comprised of the allowable direct costs incident to the State's performance and its allocable portion of allowable indirect costs, less applicable credits.

(b) The primary functions to be performed under a basic grant are uniform roadside inspections and safety and compliance reviews with follow-up enforcement actions or compliance measures. Consequently, the major cost will be compensation and expenses of the personnel required to perform these functions.

(c) Subject to paragraph (c)(5) of this section, funds may also be used for:

(1) Enforcement of size and weight limitations;

(2) Detecting the unlawful presence of controlled substances in a commercial motor vehicle or on the person of any occupant (including the operator) of such a vehicle;

(3) Enforcement of State traffic laws and regulations designed to promote safe operation of commercial motor vehicles; and

(4) Sanitary food transportation inspections pursuant to 49 U.S.C. 2808.

(5) *Provided:* these activities are carried out in conjunction with an appropriate type of inspection for enforcement of safety regulations. Size and weight enforcement must be conducted at locations other than fixed weight facilities, at specific geographical locations where the weight of the vehicle can significantly affect the safe operation of the vehicle, or at seaports where intermodal shipping containers enter and exit the United States.

(d) Eligible personnel costs include, but are not limited to:

(1) Recruitment and screening;

(2) Training;

(3) Salaries and fringe benefits; and

(4) Supervision.

(e) Equipment and travel costs directly related to the primary functions are also eligible for proportionate reimbursement. These costs include, but are not limited to:

(1) Vehicles;

(2) Uniforms;

(3) Communications equipment;

(4) Special inspection equipment;

(5) Vehicle maintenance;

(6) Motor fuel and oil; and

(7) Travel and per diem expenses.

(f) Indirect expenses related to facilities used to conduct inspections or to house enforcement personnel, support staff, and equipment, except those related to fixed weighing facilities, may also be eligible to the extent they are measurable and recurring, such as rent and overhead.

(g) A secondary function of the MCSAP is to develop a data base on which to coordinate resources and improve efficiency. Therefore, costs related to data acquisition, storage, and analysis that are specifically identifiable as program expenses may be eligible for reimbursement.

(h) Clerical and administrative expenses, to the extent they are necessary and directly attributable to the MCSAP, are eligible for reimbursement.

(i) The cost of acquisition of real property, land and buildings, is not eligible as a participating cost in the MCSAP. Expenditures related to the improvement of real property, for example, the installation of lights for the inspection of vehicles at night or minor modifications to existing structures, are not considered acquisition costs.

(j) The eligibility of specific costs is subject to review, and such costs must be necessary, reasonable, allocable to the approved SEP, and allowable under this part and 49 CFR part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

(k) In-kind contributions are acceptable if they represent eligible costs as established by 49 CFR part 18, OMB Circulars, agency rule or policy.

Appendix A to Part 350—Guidelines To Be Used in Preparing State Enforcement Plan

1. Designate the lead State agency: The plan should indicate the agency responsible for administering the plan.

2. Program Summary: This section includes objectives, activities, resources, costs and an analysis of the effectiveness of the program.

(a) *Define the problem:* In assessing the level of commitment to be made to the enforcement of commercial motor carrier and highway hazardous materials safety regulations, the following factors should be considered:

(1) Volume of commercial motor vehicle traffic;

(2) Type of commercial motor vehicle traffic;

(3) Volume of commercial motor vehicle traffic transporting hazardous materials;

(4) Number and frequency (rate) of commercial motor carrier accidents;

(5) Severity of accidents involving commercial motor carriers:

(i) Fatalities;

(ii) Injuries; and

(iii) Property damage.

(6) Seasonal commercial motor carrier operational patterns within the State;

(7) Type and frequency of violations of traffic safety laws and regulations pertaining to commercial motor vehicles and accidents;

(8) Use of alcohol and controlled substances by commercial motor vehicle drivers; and

(9) Problems related to overweight vehicles and safety. (The information in paragraphs 2(a) (6), (7), (8), and (9) of this appendix may or may not be available to the States at present. To be able to measure program effectiveness, however, States will need to compile this type of data.)

(b) *Determine current enforcement efforts:* The plan should identify the activities currently engaged in by the State to address the commercial motor carrier and hazardous materials safety problems. This should include a description of existing laws, regulations and compliance activities, as well as the agencies within the State with enforcement responsibilities.

(c) *Establish the objectives:* A key element in each plan is the establishment of the objectives sought to be achieved through the use of Federal funds. The objectives should be stated in terms of quantifiable measurements of results, where possible, or at least of effort. Ideally, the objectives should include a measurable reduction in highway accidents or hazardous materials incidents involving commercial motor vehicles, but may also refer to quantifiable improvements in legislative or regulatory authorities, problem identification, enforcement strategies and resource allocations.

(1) Goals should be identified as:

(i) Short term—the year beginning October 1 following submission of a MCSAP enforcement plan.

(ii) Medium term—two to four years after submission of the enforcement plan.

(iii) Long term—five years beyond the submission of the enforcement plan.

(2) Describe the practices: The plan should describe how the resources are to be employed to achieve the objectives included under 350.13 and should discuss:

(i) Schedules of operation of inspection sites and units;

(ii) Tactics for placing vehicles out of service and verifying compliance;

(iii) Projected number of annual:

(A) Roadside vehicle inspections including Commercial Driver's Licenses checks; and

(B) Safety and Compliance Reviews;

(iv) Methods to inspect all types of carriage;

(v) Strategy for preventing circumvention or avoidance of inspections;

(vi) Procedures for handling hazardous materials carriers and passenger carriers;

(vii) Supervision and recordkeeping; and

(viii) Methods used to coordinate activities with the State highway safety plan under 23 U.S.C. 402, including providing information to the appropriate State agency, describing the information provided, and discussing the comments that were received.

(3) Identify the resources: The plan should detail the resources to be used in accomplishing the objectives, and should include:

(i) State agencies involved:

(A) Lead agency; and

(B) Local and other cooperating political subdivisions.

(ii) Personnel (from each agency involved):

(A) Line functions;

(B) Staff and supervision; and

(C) Administrative, technical and clerical.

(iii) Facilities:

(A) Inspection sites regularly maintained; and

(B) Building space required.

(iv) Equipment:

(A) Vehicles;

(B) Communication and ADP; and

(C) Other specialized tools.

(v) Itemization of Costs:

(A) Personnel (salaries, benefits, etc.);

(B) Equipment (purchase, rental, fuel, maintenance, depreciation, salvage, etc.); and

(C) Facilities (rent and overhead).

(d) *Program evaluation:* Each plan should include a provision for program evaluation of the effectiveness of previous activities. This should include the economic and operational impact of increased enforcement and provisions for review and update of the plan. It is not practicable to establish objective minimums, as each State has unique characteristics and varying levels of existing enforcement activity. The FHWA will cooperate with State regulatory and enforcement agencies by gathering useful information and experience on elements of enforcement practices that produce positive results.

The bottom line objective in any safety program is a decrease in the number and severity of accidents. Motor carrier safety regulations should be designed to prescribe methods to eliminate the risks of accidents. Compliance with such regulations should, therefore, reduce accidents. The States are encouraged to design their programs to link their enforcement efforts to causes of accidents, whenever possible, and to develop the data necessary to demonstrate the results. The States are encouraged to use the safety and program performance data collected over several years to show trends and effects of program activities. In assessing State Enforcement Plans, the FHWA will be particularly attentive to the methods by which effectiveness is to be evaluated, and will provide whatever assistance is feasible in developing measurement factors.

Appendix B to Part 350—Form of State Certification

I (name), (title), on behalf of the State of _____, as requested by the Federal Highway Administrator as a condition of approval of a grant under the authority of Sec. 402 of the Surface Transportation Assistance Act of 1982 (Pub. L. 97–424), do hereby certify as follows:

1. The State (has adopted) (will adopt) commercial motor carrier and highway hazardous materials safety rules and regulations, which (are) (will be) substantially similar to and consistent with the Federal Motor Carrier Safety Regulations and the Federal Hazardous Materials Regulations (a copy of the existing or proposed State rules and regulations to be attached in the first year of the program).

2. The State has designated (name of State commercial motor carrier safety agency) as the lead agency to administer the enforcement plan for which the grant is being awarded, and (name of agencies) to perform functions under the plan. These agencies (have) (will have) the legal authority, resources and qualified personnel necessary for the enforcement of the State's commercial motor carrier and highway hazardous materials safety rules and regulations.

3. The State will devote such of its own funds as may be necessary to provide its matching share to the Federal assistance provided in the grant to administer the plan it is herewith submitting, and to enforce the State's commercial motor carrier safety rules and regulations in a manner to be consistent with the approved plan.

4. The laws of the State provide the State's enforcement officers right of entry and inspection sufficient to carry out the purposes of the enforcement plan as approved and provides that the State will grant maximum reciprocity for inspections conducted pursuant to the North American Inspection Standard, through the use of a nationally accepted system allowing ready identification of previously inspected commercial motor vehicles.

5. The State shall require that all reports relating to the program be submitted to the appropriate State agency or agencies; and such reports will be made available to the Federal Highway Administration upon request.

6. The State will adopt such uniform reporting requirements and use such uniform forms for recordkeeping, inspection, and other enforcement activities as may be established by the Federal Highway Administration.

7. The State (has) (will have) in effect a requirement that registrants of commercial motor vehicles declare knowledge of the applicable Federal or State commercial motor carrier safety rules and regulations.

8. The State will maintain the level of its expenditures for motor carrier safety programs and, if applicable, size and weight, traffic safety, and drug interdiction enforcement programs, exclusive of Federal assistance, at least at the level of the average of the aggregate expenditures of the State and political subdivisions for these purposes during the last three full fiscal years immediately prior to December 18, 1991 (fiscal years 1989, 1990, and 1991).

9. The State will ensure that commercial motor vehicle size and weight enforcement, drug interdiction, and traffic enforcement activities funded under this program will not diminish the effectiveness of other commercial motor vehicle safety enforcement programs.

10. The State will ensure that fines imposed and collected by the State for violations will be reasonable and appropriate and provides that, to the maximum extent practicable, it will seek to implement into law and practice the recommended fine schedule published by the Commercial Vehicle Safety Alliance.

11. The State will ensure that the SEP is coordinated with the State highway safety plan under 23 U.S.C. 402 and the name of the Governor's highway safety representative (or other authorized State official) through whom coordination was accomplished is _____

12. The State will participate in the SAFETYNET no later than January 1, 1994.

13. The State will undertake efforts to emphasize and improve enforcement of State and local traffic laws as they pertain to commercial motor vehicle safety.

Date _____

Location _____

(Signature) _____

Appendix C to Part 350—Tolerance Guidelines for Adopting Compatible State Rules and Regulations

1. Introduction, Purpose and Rules of Construction

The goal of the Federal Highway Administration (FHWA) is to encourage all States to ultimately adopt motor carrier safety and hazardous materials transportation rules and regulations identical in all respects to those requirements set forth in Federal laws and regulations, applicable to both interstate and intrastate commerce. Recognizing that there are circumstances unique to each State which may require special attention in that particular State, FHWA has concluded that certain circumstances may warrant limited deviations from the Federal standards where the Federal regulations do not apply.

The purpose of this appendix is to set forth the limits within which a State's deviations to variances in adopting motor carrier safety and hazardous materials rules may extend and still be considered compatible for funding purposes under 49 CFR 350. These limits or tolerances are applicable for this purpose to those State rules and regulations applicable where the U.S. Department of Transportation does not have jurisdiction.

2. Tolerance Guidelines for State Rules and Regulations Where the U.S. Department of Transportation Also Holds jurisdiction

(a) States shall not be required to adopt 49 CFR parts 394, 398, 399, 107, 171.15, 171.16 and 177.807 as applicable to either interstate or intrastate commerce. A State is not required to adopt 49 CFR part 178 only if the State can still enforce the standards contained therein.

(b) State rules must be applicable to the same extent as the Federal Motor Carrier Safety and Hazardous Materials Regulations except where deviation may be allowed by part 355 of this subchapter and this appendix.

3. Tolerance Guidelines for State Rules and Regulations Where the U.S. Department of Transportation Regulations Do Not Apply

(a) State rules must be applicable to the same extent as the Federal Motor Carrier Safety and Hazardous Materials Regulations except where deviation may be allowed by parts 350 and 355 of this subchapter and this appendix.

(b) States may exempt from all or part of their regulations commercial motor vehicles with a GVWR of 26,000 pounds or less. However, vehicles with a GVWR of 26,000 pounds or less may not be exempted from either the motor carrier safety regulations or hazardous materials regulations if the vehicle is used to transport hazardous materials requiring a placard or if the vehicle is designed to transport more than 15 passengers, including the driver.

(c) States may not exempt from regulation motor carriers based on the type of carriage being performed (i.e., for-hire, private, etc.).

(d) Exemptions granted to certain industries by a State prior to April 1988 and accepted by FHWA may remain valid. Although industry exemptions are strongly discouraged, a State may request and FHWA may approve such an exemption after the State has submitted to the FHWA documentation which will allow evaluation of the following or similar information:

(1) Type and scope of the industry exemption requested;

(2) Type and scope of regulatory exemption requested;

(3) Accident information related to that specific industry—ratio, frequency, comparative figures, etc.;

(4) Percentage of industry affected—number of vehicles, mileage traveled, number of companies involved, etc.;

(5) Inspection information—number of violations per inspection, out-of-service information, etc.;

(6) Other regulations enforced by other State agencies not participating in the MCSAP;

(7) Commodity transported—i.e., hazardous materials, livestock, grain, etc.;

(8) Similar exemptions granted;

(9) Reason exemption is needed;

(10) Projected effect on safety;

(11) The State's economic environment and its ability to compete in foreign and domestic markets.

(e) Regulatory exemptions based on the distance a motor carrier or driver operates from their home terminal are not deemed to be compatible. This prohibition does not apply to those exemptions already contained in the Federal Motor Carrier Safety Regulations nor to the extension of the mileage radius exemption contained in 49 CFR 395.8(l) from 100 to 150 miles.

(f) States are strongly encouraged to apply the identical regulatory and enforcement schemes to both interstate and intrastate carriers as set forth in the Federal Motor Carrier Safety Regulations when regulating drivers' hours of service. However, certain limited tolerances where the U.S. Department of Transportation's hours of service regulations do not apply are allowed. Specifically, an expansion of the 10-hour driving rule to a 12-hour driving limit, provided that the total period of time spent driving and on duty not driving is not extended to more than 16 hours and an increase in the 70 hour rule to 70 hours in 7 consecutive days or 80 hours in 8 consecutive days will be considered compatible.

(g) Drivers operating not subject to the jurisdiction of the U.S. Department of Transportation may drive if they are at least 18 years old.

(h) States may provide grandfather clauses in their rules and regulations if such exemptions are uniform or in substantial harmony with the Federal standards and provide an orderly transition to full regulatory adoption at a later date.

(i) The States may qualify any driver engaged wholly in intrastate commerce who is adversely affected by current State medical standards, upgraded to be consistent with part 391, even if the States adopted those medical standards in the past. Drivers identified through March 31, 1993, as not meeting the upgraded State standards may also be qualified. Such a driver may remain qualified after March 31, 1993, as long as an examining physician determines during the biennial medical examination that existing medical or physical conditions that would otherwise render the driver not qualified under Federal standards have not significantly worsened or another non-qualifying medical or physical condition has not developed.

It should be noted that the FHWA still considers the physical qualification standards in part 391 to be the minimum standards that contribute significantly to commercial motor vehicle operational safety. The FHWA continues to encourage States to adopt these minimum standards as their own and to use this grandfathering option judiciously to respond to legitimate hardships. This policy should in no way be interpreted as discrediting the medical standards adopted in part 391.

This guideline will not preclude a State's adoption of or continuation of a waiver program which can be demonstrated to be based on sound medical judgment combined with appropriate performance standards causing no adverse effect on safety.

2. Part 355 is added to read as follows:

PART 355—COMPATIBILITY OF STATE LAWS AND REGULATIONS AFFECTING INTERSTATE MOTOR CARRIER OPERATIONS

Subpart A—General Applicability and Definitions

Sec.
355.1 Purpose.
355.3 Applicability.
355.5 Definitions.

Subpart B—Requirements

355.21 Regulatory review.
355.23 Submission of results.
355.25 Adopting and enforcing compatible laws and regulations.

Appendix A to part 355—Guidelines for the Regulatory Review

Authority: 49 U.S.C. app. 2505—2508; 49 U.S.C. 504 and 3102; 49 CFR 1.48.

Subpart A—General Applicability and Definitions

§ 355.1 Purpose.

(a) To promote adoption and enforcement of State laws and regulations pertaining to commercial motor vehicle safety that are compatible with appropriate parts of the Federal Motor Carrier Safety Regulations.

(b) To provide guidelines for a continuous regulatory review of State laws and regulations.

(c) To establish deadlines for States to achieve compatibility with appropriate parts of the Federal Motor Carrier Safety Regulations with respect to interstate commerce.

§ 355.3 Applicability.

These provisions apply to any State that adopts or enforces laws or regulations pertaining to commercial motor vehicle safety in interstate commerce.

§ 355.5 Definitions.

Unless specifically defined in this section, terms used in this part are subject to the definitions in 49 CFR 390.5.

Compatible or *compatibility* means, in relation to State laws and regulations pertaining to commercial motor vehicle safety, having the same effect as the Federal Motor Carrier Safety Regulations in that those State laws and regulations are either identical or fall within the guidelines in appendix C of part 350.

Federal Motor Carrier Safety Regulations means those safety regulations which are contained in parts 390, 391, 392, 393, 395, 396, and 397 of this subchapter.

State means a State of the United States and the District of Columbia.

Subpart B—Requirements

§ 355.21 Regulatory review.

(a) General. Each State shall annually analyze its laws and regulations, including those of its political subdivisions, which pertain to commercial motor vehicle safety to determine whether its laws and regulations are compatible with the Federal Motor Carrier Safety Regulations. Guidelines for the regulatory review are provided in the appendix to this part.

(b) Responsibility. The State agency designated as lead agency for the administration of grants made pursuant to part 350 of this subchapter is responsible for reviewing and analyzing State laws and regulations for compliance with this part. In the absence of an officially designated Motor Carrier Safety Assistance Program (MCSAP) lead agency or in its discretion, the State shall designate another agency responsible to review and determine compliance with these regulations.

(c) State Review.

(1) The State shall determine which of its laws and regulations pretaining to commercial motor vehicle safety are the same as the Federal Motor Carrier Safety or Federal Hazadous Materials Regulations. With respect to any State law or regulation which is not the same, the State shall identify such law or regulation and determine whether:

(i) It has the same effect as a corresponding section of the Federal Motor Carrier Safety or Federal Hazardous Materials Regulations;

(ii) It applies to interstate commerce;

(iii) It is more stringent than the FMCSR or FHMR in that it is more restrictive or places a greater burden on any entity subject to its provisions;

(2) If the inconsistent State law or regulation applies to interstate commerce and is more stringent than the FMCSR or FHMR, the State shall determine:

(i) The safety benefits associated with such State law or regulation; and

(ii) The effect of the enforcement of such State law or regulation on interstate commerce.

(3) If the inconsistent State law or regulation does not apply to interstate commerce or is less stringent than the FMCSR or FHMR, the tolerance guidelines for participation in the Motor Carrier Safety Assistance Program in part 350 of this subchapter shall apply.

§ 355.23 Submission of results.

Each State shall submit the results of its regulatory review annually with its certification of compliance under 49 CFR 350.15. It shall submit the results of the regulatory review with the certification no later than August 1 of each year with the SEP. The State shall include copies of pertinent laws and regulations.

§ 355.25 Adopting and enforcing compatible laws and regulations.

(a) General. No State shall have in effect or enforce any State law or regulation pertaining to commercial motor vehicle safety in interstate commerce which the Administrator finds to be incompatible with the provisions of the Federal Motor Carrier Safety Regulations.

(b) New State Requirements. No State shall implement any changes to a law or regulation which makes that or any other law or regulation incompatible with a provision of the Federal Motor Carrier Safety Regulations.

(c) Enforcement. To enforce compliance with this section, the Administrator will initiate a rulemaking proceeding under part 389 of this subchapter to declare the incompatible State law or regulation pertaining to commercial motor vehicle safety unenforceable in interstate commerce.

(d) Waiver of Determination. Any person (including any State) may petition for a waiver of a determination made under paragraph (c) of this section. Such petition will also be considered in a rulemaking proceeding under part 389. Waivers shall be granted only upon a satisfactory showing that continued enforcement of the incompatible State law or regulation is not contrary to the public interest and is consistent with the safe operation of commercial motor vehicles.

(e) Consolidation of Proceedings. The Administrator may consolidate any action to enforce this section with other proceedings required under this section if the Administrator determines that such consolidation will not adversely affect any party to any such proceeding.

Appendix A to Part 355—Guidelines for the Regulatory Review

Each State shall review its laws and regulations to achieve compatibility with the Federal Motor Carrier Safety Regulations (FMCSRs). Each State shall consider all related requirements on enforcement of the State's motor carrier safety regulations. The documentation shall be simple and brief.

Scope

The State review required by § 355.21 may be limited to those laws and regulations previously determined to be incompatible in the report of the Commercial Motor Vehicle Safety Regulatory Review Panel issued in August 1990, or by subsequent determination by the Administrator under this part, *and* any State laws or regulations enacted or issued after August 1990.

Applicability

The requirements must apply to all segments of the motor carrier industry common, contract, and private carriers of property and for-hire carriers of passengers.

Definitions

Definitions of terms must be consistent with those in the FMCSR. For example, a commercial motor vehicle is a vehicle operating in interstate commerce on a public highway, that (1) has a gross vehicle weight rating (GVWR) of 10,001 pounds or more, (2) is designed to transport more that 15 passengers (including the driver), or (3) is used to transport hazardous materials in a quantity requiring placarding under regulations issued by the Secretary under the Hazardous Materials Transportation Act, as amended (49 U.S.C. app. 1801 et seq).

Driver Qualifications

Require a driver to be properly licensed to drive a motor vehicle; require a driver to be in good physical health, at least 21 years of age, able to operate a vehicle safely, and maintain a good driving record; prohibit drug and alcohol abuse; require a motor carrier to maintain a driver qualification file for each driver; require a motor carrier to ensure that a driver is medically qualified; and require a motor carrier to establish an anti-drug program with testing of drivers prior to employment, periodically, based on reasonable cause, after reportable accidents, and by random selection.

Note: The requirements for testing apply only to drivers of commercial motor vehicles as defined in 49 CFR part 383.

Driving of Motor Vehicles

Prohibit possession, use, or driving under the influence of alcohol or other controlled substances (while on duty); and establish 0.04 percent as the level of alcohol in the blood at which a driver is considered under the influence of alcohol.

Parts and Accessories Necessary for Safe Operation

Require operational lights and reflectors; require systematically arranged and installed wiring; and require brakes working at the required performance level, and other key components included in 49 CFR part 393.

Hours of Service

Prohibit a motor carrier from allowing or requiring any driver to drive: More than 10 hours following 8 consecutive hours off duty; after being on duty 15 hours, after being on duty more than 60 hours in any 7 consecutive days; or after being on duty more than 70 hours in any 8 consecutive days.

Require a driver to prepare a record-of-duty status for each 24-hour period. The driver and motor carrier must retain the records.

Inspection and Maintenance

Prohibit a commercial motor vehicle from being operated when it is likely to cause an accident or a breakdown; require the driver to conduct a walk-around inspection of the vehicle before driving it to ensure that it can be safely operated; require the driver to prepare a driver vehicle inspection report; and require commercial motor vehicles to be inspected at least annually.

Hazardous Materials

Require a motor carrier or a person operating a commercial motor vehicle transporting hazardous materials to follow the safety and hazardous materials requirements.

State Determinations

1. Each State must determine whether its requirements affecting interstate motor

carriers are "less stringent" than the Federal requirements. "Less stringent" requirements represent either gaps in the State requirements in relation to the Federal requirements as summarized under item number one in this appendix or State requirements which are less restrictive than the Federal requirements.

a. An example of a gap is when a State does not have the authority to regulate the safety of for-hire carriers of passengers or has the authority but chooses to exempt the carrier.

b. An example of a less restrictive State requirement is when a State allows a person under 21 years of age to operate a commercial motor vehicle in interstate commerce.

2. Each State must determine whether its requirements affecting interstate motor carriers are "more stringent" than the Federal requirements: "More stringent" requirements are more restrictive or inclusive in relation to the Federal requirements as summarized under item number one in this appendix. For example, a requirement that a driver must have 2 days off after working 5 consecutive days. The State would demonstrate that its more stringent requirements:

a. Have a "safety benefit;" for example, result in fewer accidents or reduce the risk of accidents;

b. do not create "an undue burden on interstate commerce," e.g., do not delay, interfere with, or increase that cost or the administrative burden for a motor carrier transporting property or passengers in interstate commerce; and

c. Are otherwise compatible with Federal safety requirements.

3. A State must adopt and enforce in a consistent manner the requirements referenced in the above guidelines in order for the FHWA to accept the State's determination that it has compatible safety requirements affecting interstate motor carrier operations. Generally, the States would have up to 3 years from the effective date of the new Federal requirement to adopt and enforce compatible requirements. The FHWA would specify the deadline when promulgating future Federal safety requirements. The requirements are considered of equal importance.

PART 396—INSPECTION, REPAIR AND MAINTENANCE

3. The authority citation for part 396 is revised to read as follows:

Authority: 49 U.S.C. app. 2509; 49 U.S.C. 3102; 49 CFR 1.48.

§ 396.9 [Amended]

4. Section 396.9 is amended by revising paragraph (d)(3)(ii) to read as follows:

§ 396.9 Inspection of motor vehicles in operation.

* * * * *

(d) * * *

(3) * * *

(ii) Return the completed roadside inspection form to the issuing agency at the address indicated on the form and retain a copy at the motor carrier's principal place of business or where the vehicle is housed for 12 months from the date of the inspection.

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Part III

Department of Labor

Employment and Training Administration; Wage and Hour Division

20 CFR Part 655
29 CFR Part 506

Attestations by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports; Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

RIN 1205-AA90

Wage and Hour Division

29 CFR Part 506

RIN 1215-AA70

Attestations by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports

AGENCIES: Employment and Training Administration, Labor; and Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: The Employment and Training Administration (ETA) and the Employment Standards Administration (ESA) of the Department of Labor (DOL or Department) are promulgating regulations governing the filing and enforcement of attestations by employers seeking to use alien crewmembers to perform longshore work at U.S. ports. Under the Immigration and Nationality Act, as amended by the Immigration Act of 1990 (IA), employers are, in certain circumstances, required to submit these attestations to DOL in order to be allowed by the Immigration and Naturalization Service (INS) to use alien crewmembers to perform specified longshore activity(ies) at U.S. ports. The attestation process is to be administered by ETA, while complaints and investigations regarding the attestations are to be handled by ESA.

DATES: *Effective Date:* The effective date for this final rule is October 8, 1992.

Expiration Date: Effective September 4, 1992, the expiration date of the interim final rule published at 56 FR 24648 (May 30, 1991), as corrected at 56 FR 29431 (June 27, 1991), which previously had been September 8, 1992, pursuant to 57 FR 182, 10989, 29203 and 30640 (January 3, 1992, April 1, 1992, July 1, 1992 and July 10, 1992), and as corrected at 57 FR 32894 (July 24, 1992) is extended until October 8, 1992.

FOR FURTHER INFORMATION CONTACT: On 20 CFR part 655, subpart F, and 29 CFR part 506, subpart F, contact Flora T. Richardson, Chief, Division of Foreign Labor Certifications, U.S. Employment Service, Employment and Training Administration, Department of Labor, room N-4456, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: 202-535-0163 (this is not a toll-free number).

On 20 CFR part 655, subpart G, and 29 CFR part 506, subpart G, contact Mr. Solomon Sugarman, Chief, Farm Labor Programs, Wage and Hour Division, Employment Standards Administration, Department of Labor, room S-3502, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: 202-523-7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

The information collection requirements contained in the rule have been submitted to the Office of Management and Budget (OMB) for clearance under the Paperwork Reduction Act of 1980, as amended, (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control No. 1205-0309.

The Employment and Training Administration estimates that up to 5,000 employers per year will be submitting attestations. The public reporting burden for this collection of information is estimated to average 3-4 hours per response, including the time for reviewing instructions, searching existing information/data sources, gathering and maintaining the information/data needed, and completing and reviewing the attestation. It is likely that the burden will be considerably less in the second and subsequent years in which an employer submits an attestation.

Written comments on the collection of information requirements should be sent to the Office of Information And Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Employment and Training Administration, Washington, DC 20503.

II. Background

On November 29, 1990, the Immigration Act of 1990 (IA), Public Law 101-649, 104 Stat. 4978, was enacted. The Act amends the Immigration and Nationality Act (INA) (8 U.S.C. 1101 *et seq.*) and assigns responsibility to the Department of Labor (Department or DOL) for the implementation of several provisions relating to the entry of certain categories of employment-based immigrants and to the temporary employment of certain categories of nonimmigrants. One of the new provisions of the INA the Department is charged with implementing is Section 258, which places limitations on the performance of longshore work by alien crewmembers in U.S. ports.

The loading and unloading of vessels has been traditionally performed by U.S. longshore workers. However, until now, alien crewmembers had also been allowed (by Immigration and Naturalization Service (INS) regulation) to do this kind of work in U.S. ports, because longshore work was considered to be within the scope of permitted employment for alien crewmembers. The Immigration Act of 1990 has limited this practice in order to provide greater protection to U.S. longshore workers.

Section 258 of the INA prohibits alien crewmembers admitted with D-visas from performing longshore work except in four specific instances: (a) Where the vessel's country of registration does not prohibit U.S. crewmembers from performing longshore work in that country's ports and nationals of a country which does not prohibit U.S. crewmembers from performing longshore work in that country's ports hold a majority of the ownership interest in the vessel; (b) where there is in effect in a local port one or more collective bargaining agreement(s), each covering at least 30 percent of the longshore workers at a particular port and each permitting the activity to be performed by alien crewmembers; (c) where there is no collective bargaining agreement covering at least 30 percent of the longshore workers and an attestation has been filed with the Department which states that the use of alien crewmembers to perform longshore work is permitted under the prevailing practice of the port, that the use of alien crewmembers is not during a strike or lockout, that such use is not intended or designed to influence the election of a collective bargaining representative, and that notice has been provided to longshore workers at the port; and (d) where the activity is performed with the use of automated self-unloading conveyor belts or vacuum-actuated systems; *provided that*, the Secretary of Labor (Secretary) has not found that an attestation is required because it was not the prevailing practice to utilize alien crewmembers to perform the activity or because the activity was performed during a strike or lockout or in order to influence the election of a collective bargaining representative. For this purpose, the term "longshore work" does not include the loading or unloading of hazardous cargo, as determined by the Secretary of Transportation, for safety and environmental protection and no attestations are necessary for the loading and unloading of such cargo.

III. Attestation Process and Requirements

The regulations for the attestation program for employers using alien

crewmembers for longshore work in the United States are published at 20 CFR part 655, subparts F and G, and 29 CFR part 508, subparts F and G, 56 FR 24648 (May 30, 1991).

An employer seeking to employ alien crewmembers for a particular activity of longshore work under the prevailing practice exception shall submit an attestation. An attestation is required for each port at which the employer intends to use alien crewmembers for longshore work and is valid for a period of twelve months from the time of its acceptance by DOL.

A. When and Where To File

The regulations require that any attestation received less than 14 days prior to the first performance of longshore activity by alien crewmembers will be returned to the employer as unacceptable, unless the delay is due to an unanticipated emergency. An attestation must be filed only once per year for each port at which alien crewmembers will be used. Therefore, the 14-day filing requirement applies only to the first performance of longshore work after the attestation is filed. Subsequent arrivals to the same U.S. port in the same year do not require that an additional attestation be filed.

The Department requires that all crewmember attestations be submitted to and accepted by one of four designated Employment and Training Administration (ETA) Regional Offices. Attestations for all ports located on the Atlantic Coast, Puerto Rico, and in the Virgin Islands, must be submitted to the Boston Regional Office; attestations for all ports located on the Pacific Coast, Alaska, Hawaii, and Guam, must be submitted to the Seattle Regional Office; attestations for all ports located on the Gulf of Mexico must be submitted to the Dallas Regional Office; and attestations for all ports located on the Great Lakes must be submitted to the Chicago Regional Office. The addresses of these four regional offices are on the instructions for completing the Form ETA 9033.

The ETA shall make available for public examination in Washington, DC, a list of employers which have filed attestations, and for each such employer, a copy of the employer's attestation and accompanying documentation in a timely manner after the acceptance of the attestation.

B. Acceptance for Filing

In accepting an attestation for filing, the regulations require: That the application be received by ETA at least 14 days before the first performance of the longshore activity (unless an unanticipated emergency exists as defined herein); that the Department review an attestation only to ensure that it is completed properly, that it is accompanied by the required documentation specified in the regulations, that the documentation is not, on its face, inconsistent with the attestation, and that the attestation does not involve a port or an employer for which the Department has previously made a determination which would preclude its acceptance.

Level of Federal Review of Attestations

In determining the Department's general approach to its review of employer attestations, the Department considered various approaches, ranging from the filing of all attestations with no review for completeness or compliance to a thorough review of each attestation and the accompanying documentation to determine whether the facts and evidence submitted are sufficient to prove each attestation element. The Department will review an attestation to ensure that it is received at least 14 days prior to the first performance of the longshore activity (unless it is being filed due to an unanticipated emergency), that it is completed properly, that it has accompanying documentation for each element attested to, and that the documentation is not, on its face, inconsistent with the attestation. In addition, the Department will review attestations to determine the following: (1) Whether the Administrator, Wage and Hour Division, DOL, has found that it is not a prevailing practice to use alien crewmembers for a particular activity of longshore work for a port; (2) whether the Administrator has advised ETA that it has issued a cease and desist order currently in effect that would affect the attesting employer; (3) whether the Administrator has advised ETA of a determination that an employer has misrepresented or failed to comply with an attestation previously submitted and accepted for filing, requiring the Attorney General to bar the employer from entry to any U.S. port for up to one year; and (4) whether the Administrator has advised ETA that the employer has failed to comply with any penalty or remedy assessed.

Statutory Precondition Regarding Collective Bargaining Agreements

In accordance with the precondition mandated by section 258(c)(1)(B) of the Act, an attestation may be filed only when there is no collective bargaining agreement in effect in the port covering 30 percent or more of the longshore workers. The employer therefore must attest on the Form ETA 9033 that no such collective bargaining agreement exists at the port at the time that the attestation is filed. The employer is not required to submit any documentation with the Form ETA 9033 regarding this statutory precondition. If, however, a complaint is filed which presents reasonable cause to believe that such a collective bargaining agreement is in effect, the Department will conduct an investigation. In such an investigation, the employer will have the burden of proving that no such collective bargaining agreement exists. Misrepresentation of this requirement will constitute a violation such as involves any other attestation element.

Appeals Process

The regulations do not include an administrative appeal process for attestations. When an attestation is returned because it is untimely, improperly completed, or lacking proper documentation, an employer may resubmit another attestation to the Department. Attestations which have been accepted by ETA may be objected to by an aggrieved party through the complaint process in subpart G, and procedures for investigation, hearing and appeal are provided therein. Where the Administrator makes a finding in response to a complaint regarding a prevailing practice issue, a **Federal Register** notice will be published to afford appeal rights to all potentially affected parties. The Department believes that this approach is consistent with the statute's intent for a streamlined attestation filing process and a complaint-driven enforcement system for the statute's requirements.

C. Attestation Elements

Prevailing Practice

The regulations rely on employer certification and documentation of prevailing practice for the particular activity of longshore work performed. "Longshore work" is defined in the statute as any activity (except safety and environmental protection work as described in section 258(b)(2) of the INA) relating to: (1) Loading of cargo; (2) unloading of cargo; (3) operation of cargo-related equipment (whether or not integral to the vessel), or (4) handling of mooring lines on the dock when a vessel is made fast or let go.

Under the regulations, the employer must submit facts and evidence with an attestation to show that in the 12-month period immediately preceding the filing of the attestation one of the following conditions existed: (1) Over 50 percent of vessels docking at the port used alien

crewmembers for the longshore activity; or (2) alien crewmembers made up over 50 percent of the workers who engaged in the activity.

Facts and evidence to support the prevailing practice exception shall include affidavits or summary statements of items such as prevailing practice surveys of ship masters' experience and written statements from the port authority regarding port practice. Statements from collective bargaining representatives or shipping agents, etc., with direct knowledge of practices in the port in question may also be pertinent. In the event a complaint is filed with the Department on an attestation, the employer must have sufficient documentation available on file at the place of business of its U.S. agent to meet the burden of proof for the validity of each attestation element. Documentation submitted or retained pursuant to this part shall either be in English or be accompanied by an English translation.

The Department also considered what entity should be responsible for making determinations of prevailing practice, the type of data that should be used, and the type of documentation required to support such a determination. The legislative history suggests, and the Department has adopted, a process which would rely on employer certification of prevailing practice. The consequence, however, is that if the Wage and Hour Administrator determines that an employer erroneously attests as to port practice, the statute mandates that the employer be barred by the Attorney General from entering U.S. ports for up to one year. DOL will recommend to the Attorney General that a lesser period be imposed where an employer has attested in good faith, with a reasonable belief that the documentation available is indicative that the attested longshore activity(ies) prevail. In addition, the regulations provide that if, under such circumstances, an employer withdraws an attestation prior to performance of the activity(ies) in the port, the Administrator will not find reasonable cause to conduct an investigation unless it is alleged and reasonable cause is indicated that an employer made misrepresentations or did not give the required notice.

Strike, Lockout, Election

The employer must also attest that, at the time of submitting the attestation, there is not a strike or lockout in the course of a labor dispute in the port relating to the employer's longshore activity, and that it will not use alien crewmembers during a strike or lockout during the validity period of the attestation. To substantiate this requirement, an employer may submit a statement which indicates that, prior to submitting its attestation, the employer made a good faith effort to determine whether there is a strike or lockout at the particular port, as for example, by contacting the port authority or the collective bargaining representative(s) for longshore workers at the particular port.

Notice

Lastly, an employer of alien crewmembers must attest that at the time of filing the attestation, notice of the filing has been provided to the bargaining representative(s), or where there is no such bargaining representative(s), notice of the filing has been provided to longshore workers employed at the local port. After considering a variety of approaches for providing notice to longshore workers where there is no bargaining representation, including public advertisements in newspapers and/or radio, DOL provides in the regulations that the employer must delivery a copy of the notice to the local port authority for public distribution on request. In addition, the employer is required to post the notice in conspicuous locations at the port where U.S. longshore workers can readily see the notice on their way to perform their longshore duties. The notice shall include a copy of the Form ETA 9033, shall state that the attestation with accompanying documentation has been filed and is available at the national office of ETA for review by interested parties, and shall explain where complaints can be filed with respect to employer attestations. Appropriate places for posting such notices include locations where other announcements and legally required notices, such as mandatory Fair Labor Standards Act wage and hour notices and Occupational Safety and Health Act notices, are posted. In addition, the Department shall periodically publish in the **Federal Register** a list of employers who have submitted attestations.

D. Automated Vessel Exception

DOL interprets section 258 of the INA to create a "presumption" regarding prevailing practice on certain automated vessels. The legislation creates a presumption that the use of alien crewmembers on automated vessels to do longshore work is the prevailing practice. To give this presumption effect, the regulations provide that in the case of automated vessels the burden for determining the prevailing practice does not rest with the employer who is using the exception. Rather, it must be shown by evidence submitted by any interested party that the use of alien crewmembers on automated vessels to perform a particular longshore activity at a particular port is not the prevailing practice. However, where a complainant has successfully challenged an employer's use of the automated vessel exception, and the employer has filed an attestation under the prevailing practice exception, the burden of proof shifts to the employer to show that a particular practice does, in fact, prevail at the particular port.

IV. Complaints, Investigations, and Dispositions

The INA provides that the Secretary shall establish complaint, investigation, and hearing procedures and authorizes the Secretary to issue cease and desist orders against employers. The Secretary's enforcement responsibilities are assigned to the Administrator, Wage and Hour Division, of the Department's Employment Standards Administration (ESA).

A. Complaint, Investigation and Hearing

Section 258(c)(4) of the INA requires that the Secretary establish a system to conduct investigations where a complaint presents reasonable cause to believe that an attesting employer failed to meet a condition attested to or misrepresented a material fact in its attestation, or that a non-attesting employer claiming the automated vessel exception was not qualified for the exception because the performance of the associated longshore activity does not prevail in the port, or because the activity was performed during a strike or lockout or to influence the election of a collective bargaining representative. The regulations provide that the Wage and Hour Administrator may conduct investigations of potential violations of the law only pursuant to a complaint. Based on the legislative history, this carries out Congressional intent that the enforcement of the statute should be exclusively complaint-driven. The investigative process is to be completed and a determination issued in a 180-day period, or a longer period for good cause shown. Any aggrieved person may file a complaint.

The regulations provide that, after determining that there is reasonable cause to believe that an investigation is warranted, the Wage and Hour Division will conduct an investigation in which appropriate consideration is given to any previous and relevant Departmental determination as to the prevailing

practice for the particular longshore activity(ies) and U.S. port at issue. Further, the regulations provide that, in investigating an attesting employer, the Administrator shall consider the employer's statutory burden to present and retain facts and evidence to show the matters attested. The regulations also require that the employer cooperate in the investigation and take no retaliatory action against persons who file complaints, assist in the investigation, or participate in administrative proceedings.

The regulations provide that, after the investigation is complete and a determination is made only with respect to an issue of the prevailing practice for using (or not using) alien crewmembers to perform particular longshore activity(ies) at a particular port (whether the investigation involves an attesting employer, or an employer claiming the automated vessel exception), the Department shall publish a **Federal Register** notice to advise any interested party(ies) of the Department's determination about the prevailing practice at issue and to provide any interested party(ies) the opportunity to request a hearing on the determination before an administrative law judge (ALJ). If no timely request for a hearing is filed, or after an ALJ decision is issued which reverses the Administrator's determination or which establishes that the use of alien crewmembers is not the prevailing practice for a particular longshore activity(ies) at the particular port (whether or not the later ALJ decision is a reversal of the Administrator's determination), the Department will publish a second **Federal Register** notice advising of the disposition of the prevailing practice issue. Should an ALJ's decision be further appealed to the Secretary, and the Secretary reverse the ALJ decision, the Department will publish a third notice in the **Federal Register** announcing the Secretary's decision and its effect for the prevailing practice for the activity(ies) and port in question.

Under the regulations, the second **Federal Register** notice will constitute formal advice to the public. Effective upon publication of the second **Federal Register** notice, ETA will no longer accept an attestation from any employer which attests to a prevailing practice that is contrary to the published determination by the Department. Additionally, as provided in subpart F of the regulations, ETA will review attestations previously accepted for filing from other employers to determine if a heretofore accepted attestation of prevailing practice would clearly be nullified by the Department's published determination. Where it is easily identified that the employer's attestation regards the subject prevailing practice, ETA will either suspend or invalidate the attestation and so notify the employer. Where it is unclear whether the employer's accepted attestation regards the subject prevailing practice, the employer must make a determination, based upon the second **Federal Register** notice, whether to withdraw its valid attestation. Also effective upon publication of the second **Federal Register** notice, INS will not permit the use of alien crewmembers to perform the specified activity(ies) at the port (whether the employer asserts that it has an attestation on file with ETA for such activity(ies) at such port, or claims to be entitled to the automated vessel exception). In addition, in any subsequent investigation of any employer regarding the prevailing practice for the particular activity(ies) at the port specified in the second **Federal Register** notice, the Administrator shall give conclusive effect to the determination that the prevailing practice does not permit the use of alien crewmembers. This regulatory provision was deemed necessary because, in the Department's view, to do otherwise would condone illegal activity, since the illegal use of alien crewmembers would be the only manner in which the prevailing practice could have subsequently changed (unless a collective bargaining agreement covering more than 30 percent of the longshore workers at the port came into effect and permitted such use of alien crewmembers, in which case the attestation and automated vessel exceptions would no longer be applicable).

B. Administrative Law Judge Hearing and Discretionary Review by the Secretary

Section 258(c)(4)(D) of the INA requires that the Secretary provide interested parties an opportunity for a hearing within 60 days of the date of the investigative determination. Because of this compressed time frame, the regulations require that a request for hearing be filed directly with the Chief Administrative Law Judge no later than 15 days from the date of the Administrator's determination. Further, because of the problems of proof to be anticipated in an administrative hearing on factual issues of prevailing practice which may be virtually impossible to address except through hearsay reports of surveys, or for which crucial witnesses and other evidence may be unavailable except through hearsay since, for example, the witnesses are located outside the U.S., the regulations specify that the Department's rules of evidence for ALJ proceedings shall not apply. In addition, the regulations incorporate the statutory imposition of the burden of proof on the attesting employer to establish the truth of the attestation elements.

An opportunity for discretionary review by the Secretary is afforded by the regulations, with short deadlines in accordance with the statutory intent for expedited dispositions. Any interested party may request such review, and the Secretary shall determine what matters, if any, will be reviewed.

C. Cease and Desist Order

Section 258(c)(4)(C) of the INA authorizes the Secretary, at the request of a complainant, to issue a cease and desist order against an attesting employer or against a non-attesting employer claiming the automated vessel exception. The complainant's request may be made when the Secretary has determined there is reasonable cause to conduct an investigation. The INA specifies that, if a complainant requests such an order, the employer will be notified and given 14 days within which to respond. The Secretary is then required to determine whether the preponderance of the evidence submitted supports the complainant's position and, if it does, to order that the employer cease and desist the activity(ies) at issue. The order remains in effect throughout the hearing process for the attesting employer; for the non-attesting employer claiming the automated vessel exception, the order remains in effect throughout the hearing process unless ETA accepts for filing an attestation from that employer for the activity(ies) and port which the cease and desist order affects.

The regulations provide that the complainant who desires a cease and desist order must submit two complete copies of the request and the evidence to substantiate the allegations (the second copy of the request and evidence will be provided to the employer). The Administrator's notice to the employer shall include copies of the complaint, the cease and desist order request and supporting evidence, and any other pertinent evidence from an investigation of the same or a closely related matter which the Administrator incorporates into the record. The employer, thus, will be fully informed as to the allegations and evidence. The Administrator's notice also shall specify that, during the 14 day response period specified by the

Act, the Administrator will provide, at the employer's request, an opportunity for a meeting with a Wage and Hour Division official to give the employer's views on the evidence and issues. This meeting shall be informal, shall not be subject to any procedural rules, and shall include the complainant if the complainant so desires.

The regulations specify that the cease and desist order will remain in effect unless and until withdrawn by the Administrator because the employer's position is determined to have been correct or a final determination is made which results in resolution of the matter under investigation, or—in the case of the automated vessel exception—an attestation relating to the longshore activity(ies) is accepted for filing by ETA.

D. Penalties

A violation of section 258 of the INA or the regulations thereunder by an attesting employer may result in the imposition of administrative remedy(ies), such as a civil money penalty not to exceed $5,000 per alien crewmember illegally employed. Upon notice of the violation(s), the Attorney General shall thereafter not permit the vessels owned or chartered by the employer to enter any port of the U.S. during a period of up to one year. Additionally, ETA will be notified and shall thereafter not accept any attestation from the employer for any activity(ies) at any U.S. port for one year (or for a shorter period, if such period is specified by INS).

Upon the Department's final determination that an employer improperly claimed the automated vessel exemption, the Attorney General will be notified and shall thereafter require that, before using alien crewmembers, the employer must have on file with ETA an attestation for the activity(ies) and the port at issue.

V. Analysis of Comments to Interim Final Rule

A. Introduction

On April 19, 1991, a proposed rule was published in the **Federal Register** to implement the Department's responsibilities relating to attestations by employers seeking to employ alien crewmembers (56 FY 16031). DOL reviewed the comments received from the public on the proposed rule and, subsequently, the Department published an interim final rule in the **Federal Register** on May 30, 1991, with a comment period ending July 29, 1991 (56 FR 24648). See also 57 FR 182 and 10989.

In response to the interim final rule, comments were received from eleven entities, including five representatives of the shipping industry, businesses employing international personnel, and/or their attorneys. These commenters generally asserted that the regulations should be relaxed (*e.g.*, via expanded exceptions and a less-stringent definition of "prevailing practice") in order that the attestation process not impose an undue burden on the shipping industry.

Comments jointly submitted by two major labor organizations representing U.S. workers employed in longshore work, the International Longshoremen's Association (ILA) and the International Longshoremen's and Warehousemen's Union (ILWU), generally sought to further restrict exceptions and require a tougher standard for "prevailing practice." In addition, comments from a professional legal organization were received, which asserted general support for the interim final rule, and offered recommendations to further protect both employers of alien crewmembers and members of labor organizations.

All of these comments, including those submitted in response to the proposed rule, have been reviewed and considered in preparing the final rule. Several changes to the interim final rule, discussed below, have been made as a result of this review.

B. Changes in Final Rule

1. Statutory Precondition Regarding Collective Bargaining Agreements

Comments received from four Members of Congress and from the Immigration and Naturalization Service (INS) focused, in large part, on the respective roles of DOL and INS regarding the application and enforcement of the statutory precondition to the filing of an attestation—namely, that no collective bargaining agreement (CBA) exist covering 30 percent or more of the individuals involved in longshore work in a port. The Congressional commenters, who had sponsored Section 203 of the IMMACT legislation, objected to the DOL regulatory structure which did not include in the attestation process any provision requiring employers to attest to the requirement that no CBA exist covering 30 percent or more of the longshore workers in the port; the DOL interim final rule contemplated that all enforcement responsibility regarding CBAs would rest with INS because this is not specified as a statutory attestation element. According to these legislators, the DOL regulation was flawed in that "[t]he Immigration and Naturalization Service would make preliminary findings [relating to CBAs] that are nowhere in the law delegated to it and which the Congress deemed to be within the Labor Department's own authority." INS expressed the same view as the Congressmen regarding the structure and intent of the statute. INS asserted that, under its own analysis of IMMACT, INS is authorized to enforce only one provision regarding CBAs: the requirement that, where a CBA exists covering more than 30 percent of the longshore workers in the port, an employer can use alien crewmembers to perform longshore work only if that CBA expressly permits such longshore work to be done by such aliens. In the view of INS, the assertion and determination of the absence of a CBA covering 30 percent of a port's longshore workers must be an integral part of the attestation process, to be enforced by DOL through the investigation, hearing, and penalty procedures established by Congress for the prevailing practice exception. A labor organization also expressed the same position as the Congressmen and INS. Upon careful consideration of these comments, as well as a review of relevant legal authorities regarding the enforcement of statutory preconditions (*e.g.*, *Fedorenko* v. *United States*, 449 U.S. 490 (1981)), DOL has concluded that the employer's attestation must include affirmation that no CBA exists which covers 30 percent or more of the longshore workers in a port, that the employer shall have the burden of proving this element of the attestation (as with all elements), and that misrepresentation of this attestation element shall carry the same sanctions applicable to other violations under attestations. § _____.510(c) of these regulations has been revised to reflect these requirements.

2. Ports for Which Attestations may be Filed

Because the Department has received so many inquiries regarding its definition of a port, the final rule clarifies the circumstances under which remote locations can be determined to be ports for the purposes of this program. Under the final rule, an employer may file an attestation for any port which is listed in appendix A (U.S. Seaports) to subpart F of these regulations. An employer may also file an attestation for a location that is not in appendix A if it also submits with its attestation additional facts and evidence to demonstrate that this location meets all the criteria to qualify

as a port as defined in § _____.502 of this rule, *i.e.* the location is on a seacoast, lake, river or any other navigable body of water, contains one or more publicly or privately owned terminals, piers, docks, or maritime facilities (a floating processor may be a maritime facility), and is commonly thought of as a port by other government maritime-related agencies. Attestations filed for such locations that, on investigation, are determined not to be a port shall be subject to enforcement proceedings and sanctions as with other attestation elements. Use of alien crewmembers to perform longshore functions in remote locations in U.S. waters that do not qualify as ports is not allowed under the statute's prevailing practice exception. § _____.510(c) of these regulations has been revised to reflect this clarification.

3. Effect of Reciprocity on Prevailing Practice

This final rule addresses an issue which arose under the interim final rule, where foreign crewmembers performing longshore work on a vessel operating under the "reciprocity exception" no longer qualify for that exception and then, in order to continue to use foreign crewmembers to perform longshore work in a particular U.S. port, their employer files an attestation asserting that it is the prevailing practice to do so in that port.

The Secretary of State annually compiles and publishes a "non-reciprocity" list identifying countries where particular longshore activities by crewmembers aboard U.S. vessels are prohibited by law, regulation, or practice. 8 U.S.C. 1288(d)(2); see 22 CFR part 89, 57 FR 1384 (January 14, 1992), and 56 FR 66970 (December 27, 1991). Under the "reciprocity exception," the Attorney General will permit foreign crewmembers to perform longshore activities in U.S. ports if their vessel is registered in, and a majority ownership interest in the vessel is held by nationals of, a country that is not on the Secretary of State's non-reciprocity list.

In the first several months of operation under the interim final rule, the Department encountered troublesome circumstances where a country has been placed on the non-reciprocity list (thereby being removed from the reciprocity exception), and thereafter sought to use the prevailing practice exception to continue to perform longshore activities by filing attestations. Effective in January 1992, the Secretary of State added a number of countries, including Japan and Germany, to the non-reciprocity list (22 CFR 89.1, 57 FR 1384 (January 14, 1992), and 56 FR 66970 (December 27, 1991)). Since that date, foreign crewmembers on vessels from those countries are prohibited from performing longshore work in U.S. waters, absent the applicability of some exception, other than reciprocity, authorized in the Act. As a result, a number of Japanese employers who assert that they have used foreign crewmembers to perform longshore work in Alaskan waters have filed attestations asserting that it is the prevailing practice in these locations to permit foreign crewmembers to perform particular longshore activities. These attestations focused attention on the interface between Section 258's reciprocity and prevailing practice exceptions.

In addressing this issue, the Department gave careful consideration to the structure of the Act, its limited legislative history regarding these exceptions, and the potential practical consequences of various approaches that could be utilized. The Department recognizes that the reciprocity and prevailing practice exceptions are separate, self-contained provisions in section 258 of the Act, and that Congress contemplated no cross-reference or cross-effect between the two provisions. Congress enacted the prevailing practice exception to maintain the long-term *status quo* in U.S. ports. H.R. Rep. No. 101-723(I), 101st Cong., 2d Sess. (1990), *reprinted in* 1990 U.S.C.C.A.N. 6710, 6763. Thus, the prevailing practice exception rests on longshore activities as they actually happened in a particular port, rather than on the reasons or basis for the activities prior to enactment. However, another purpose of Section 258, embodied in the reciprocity exception, is to preserve jobs for U.S. longshore workers by prohibiting situations where foreign crewmembers' performance of longshore activities in U.S. ports reduces job opportunities for U.S. longshore workers absent commensurate opportunities for longshore work by U.S. crewmembers in the foreign vessel's home country. H.R. Rep. No. 101-280, 101st Cong., 1st Sess. (1989), page 7; see H.R. Rep. No. 101-723(I), 101st Cong., 2d Sess. (1990), page 83, and H.R. Rep. No. 101-955, 101st Cong., 2d Sess. (1990), page 125.

To reconcile these dual statutory purposes, the Department has clarified the regulation to provide that longshore work performed under the reciprocity exception may be considered or "counted" by employers seeking to demonstrate a prevailing practice for the use of foreign crewmembers in a particular port (so as to file prevailing practice attestations for the port), except that special requirements are established for employers from countries that have been placed on the Secretary of State's non-reciprocity list and thus removed from the reciprocity exception.

For an employer whose country is added to the non-reciprocity list, the final rule provides several options for filing attestations under the prevailing practice exception. The employer may simply wait for at least 12 months from the date of his country's placement on the non-reciprocity list. During this 12-month period, the employer could not use alien crewmembers to perform longshore work under the prevailing practice exception in any U.S. port, but at the end of this period, the employer may file a prevailing practice attestation, like any other employer, for the port where he seeks to use his alien crewmembers to do longshore work. If the employer does not want to wait 12 months to file an attestation under the general rules, he may file an attestation immediately after his country's placement on the non-reciprocity list but he will be subject to particular rules regarding the period of time for which he must make his showing as to the prevailing practice in the U.S. port at issue. The prevailing practice showing may be for the 12-month period preceding the date of the attestation (as the period would be for an ordinary attestation); however, the employer choosing this option cannot consider or "count" any of the longshore activities performed by crewmembers on vessels from the employer's country. If the employer wants to file an immediate attestation and wants to "count" the longshore activities performed by crewmembers on vessels from his country, the period on which the prevailing practice showing must be based is either the 12-month period immediately preceding the effective date of section 258 of the INA (May 28, 1991), or the most recent continuous 12-month period in which the employer was not entitled to the reciprocity exception, whichever is later.

The following example illustrates the operation of these clarifications in the rule. An employer from Country X has been using foreign crewmembers to perform longshore work in U.S. Port Y pursuant to the reciprocity exception since May 28, 1991, when the reciprocity exception became effective. Then, on January 3, 1993, the Secretary of State adds Country X to the non-reciprocity list; the employer from Country X can no longer use the reciprocity exception. Employers from countries other than Country X, who file prevailing practice

attestations for Port Y, may continue to "count" the longshore activities performed by crewmembers on Country X vessels. The employer from Country X can dock in Port Y and use U.S. workers, rather than its own crewmembers, to perform longshore work. However, if the employer from Country X wants to continue to use its crewmembers to perform longshore work in Port Y, the employer has the following options regarding the filing of a prevailing practice attestation for Port Y. First, the employer from Country X may wait until after January 3, 1994 (12 months from the time Country X was put on the non-reciprocity list), and then file an attestation subject to the requirements for any other employer. Second, the employer may immediately file an attestation that it was the prevailing practice to use foreign crewmembers to do longshore work at Port Y during the 12-month period immediately preceding the date of its attestation, but in determining the prevailing practice, the employer must exclude (not "count") any longshore work performed by any foreign crewmembers on any Country X vessels. Finally, the employer from Country X may immediately file a prevailing practice attestation for Port Y, and in establishing the prevailing practice may "count" longshore activities performed by Country X crewmembers; however, the prevailing practice determination is based on the 12-month period from May 28, 1990, to May 28, 1991. (In the event that Country X has been removed from the reciprocity exception more than once (due to changes in Country X laws regarding longshore work by U.S. crewmembers), the 12-month period for which prevailing practice must be established would be the period immediately preceding the date on which Country X was last taken off the non-reciprocity list).

4. Counting of Workers for Prevailing Practice Purposes

The provision in § _____.510(d)(1) regarding determination of the percentage of workers in a port which have been performing a particular longshore activity in order to establish a prevailing practice has been amended to clarify that "workers in the port who engaged in the activity" means any person who performed a particular longshore activity in any calendar day.

5. Counting of Vessels for Prevailing Practice Purposes

The provision in § _____.510(d)(1) regarding the counting of vessels in establishing prevailing practice has been amended to clarify that vessels which are exempt under Section 258(b)(1) of the Act for safety and environmental protection will not be included in any manner.

6. Two Sets of Accompanying Documentation Required

Under § _____.510(c) of the interim final rule, employers were required to submit three copies of Form ETA 9033, but only one copy of the accompanying documentation. By law, however, ETA is to "make available for public examination in Washington, DC a list of employers which have filed attestations, and for each such employer, *a copy of the employer's attestation and accompanying documentation* * * *" (emphasis added).

Since attestations are filed with the regional offices but the law requires availability for public examination at the National Office, the Department originally intended to keep the attestation and documentation only in the National Office. This has proven to be impractical since the National Office is not able to respond quickly to inquiries regarding attestations that are filed in the field. These responses can be better handled by the regions. The Department is therefore requiring that attesting employers submit two sets of supporting documentation—one to be retained by the regional office where the attestation is filed, and one to be kept on file in the National Office for public examination purposes.

7. Regional Offices Processing Attestations

The interim final rule provides at § _____.510(b)(1) that attestations shall be submitted to the "U.S. Department of Labor ETA Regional Offices(s) which are designated by the Chief, Division of Foreign Labor Certifications * * *" The preamble to the interim final rule stated in Section III.A. When and Where to File, that attestations will be submitted to the Chicago and Dallas Regional Offices because it was "anticipated that employers using ports in the Great Lakes and the Gulf of Mexico will utilize alien crewmembers * * *" Accordingly, the instructions for completing Form ETA 9033 directed employers to file attestations pertaining to ports on the West Coast and the Gulf of Mexico with the Dallas Regional Office and attestations pertaining to ports on the East Coast and the Great Lakes with the Chicago Regional Office.

After one year of operational experience, the Department has decided to expand the processing of crew member attestations to two more of its regional offices: The Boston and Seattle Regional Offices. Attestations pertaining to all ports on the Atlantic Coast, Puerto Rico, and in the Virgin Islands will now be processed by the Boston Regional Office instead of the Chicago Regional Office. The Chicago Regional Office will continue to process attestations pertaining to all ports on the Great Lakes. Attestations pertaining to all ports on the Pacific Coast, Alaska, Hawaii, and Guam will now be processed by the Seattle Regional Office instead of the Dallas Regional Office. The Dallas Regional Office will continue to process attestations pertaining to all ports on the Gulf of Mexico. The instructions for completing Form ETA 9033 have been modified accordingly.

8. Ports Added to List

Two commenters submitted lists of ports which were inadvertently omitted from the list published with the interim final rule. The following ports have now been added to the list:

South Atlantic Range

Southport, NC
Riviera, FL
Cocoa, FL
Ft. Lauderdale, FL
Ceiba, PR
Vieques, PR
St. Mary, GA

North Pacific Range

Klawock/Craig, AK
Pelican, AK
Bandon, OR
Mapleton, OR
Toledo, OR
Columbia City, OR
Port Gamble, WA

Great Lakes Range

Cincinnati, OH

Gulf Coast Range

Gretna, LA
Harbor Island, TX
Port Isabel, TX

C. Changes Considered But Not Made

Several issues raised by commenters were carefully considered for possible changes to the interim final rule, but, after thoughtful deliberation, the final rule was left unchanged with respect to these issues.

1. Definition of "Port"

The proposed rule originally defined a "port" as "a place * * * where ships * * * stop for the purpose of loading and unloading cargo." Labor organization commenters urged a change to clarify that a "port" refers to a conglomeration of terminals, to preclude the designation of an individual terminal or dock as a "port." In drafting the proposed rule, the Department did not intend that a "port" could be construed to be a dock, pier, terminal or other such "place," but that

it encompass the commonly held view that a port is comprised of an area where many docking places are concentrated. Several commenters from the shipping industry, on the other hand, strongly supported the port definition contained in the proposed rule, interpreting the definition to mean a "dock," "pier," "terminal," or other "place," and in their comments urged that the port definition explicitly permit an individual dock or terminal to be considered a port. Based on its research of this issue, DOL believes that the commonly held view of a port as a conglomeration of docking facilities in an area to be the most reflective of Congressional intent. Moreover, various government agencies, including the U.S. Coast Guard, U.S. Army Corps of Engineers, and the Maritime Administration's Office of Port and Intermodal Development, likewise utilize a definition that supports this "conglomeration" definition. Finally, the legislation itself uses the phrase "in and about the local port," which implies a definition broader than an individual dock or terminal. In response to these comments, the interim final rule clarified the definition of a "port" to be "a geographic area, either on a seacoast, lake, river or any other navigable body of water, which contains one or more publicly or privately owned terminals, piers, docks, or maritime facilities, which is commonly thought of as a port by other government maritime-related agencies, such as the Maritime Administration. U.S. ports include, but are not limited to, those listed in appendix A to this subpart." The final rule has retained the definition used in the interim final rule.

2. Period of Time Necessary to Establish a Prevailing Practice

One commenter stated that 12 months is an inadequate period of time to establish a prevailing practice. The INA, at section 258(c)(1)(B)(i), provides that an attestation may be filed where "the performance of the activity by alien crewmen is permitted under the prevailing practice of the particular port as of the date of filing of the attestation." The Conference Report (H.R. Rep. No. 101–955), at page 125, states that a prevailing practice is one which "has long been accepted by all local interests concerned." Thus, Congress contemplated that a prevailing practice would have to be based on conditions which existed for some "long" period of time prior to the filing of an attestation.

In the regulations, the Department has sought to give meaning to this language by requiring that the period of time necessary to establish a prevailing practice be one year. In establishing this requirement, the Department looked to the reciprocity exception in section 258(d)(3) of the INA, where the term "in practice" is defined as "an activity normally performed * * * during the one-year period preceding the arrival of such vessel into the United States * * *." The Department reasoned that consistency indicated use of the same time period to establish a prevailing practice in the U.S. as was required to establish a practice in other countries.

Although ultimately adopting one year as the appropriate period to establish a prevailing practice under section 258(c) of the INA, the Department seriously considered a longer time period. The proposed rule discussed two alternatives that the Department was considering. One option would have defined "prevailing" based on length of time—*e.g.*, two to three years—allowing the continuance of any longshore activity using alien crewmembers that had occurred during that period. The other option, which was adopted in the interim final rule, defines "prevailing" in terms of the "majority" of a longshore activity—*i.e.*, over 50 percent—within a port which must have been performed by alien crewmembers over the one year period preceding the arrival of the vessel into the U.S. Requiring a period longer than one year to establish a prevailing practice would make attestations too difficult to substantiate.

As of May 28, 1991, the day INA section 258 and the crewmember regulations became effective, alien crewmembers could no longer legally perform longshore work in U.S. ports except under one of the exceptions provided in the statute. Under the prevailing practice exception, as of that date, a prevailing practice of using aliens to perform longshore work must have already existed in the port for one year. Such practice would therefore have continued until the time an attestation is filed.

3. Percentage Threshold for Establishing "Prevailing Practice"

Two commenters suggested that the percentage necessary for establishing "prevailing practice" should be lowered from 50 percent to 30 percent because 30 percent equates to the requirement regarding coverage by a collective bargaining agreement. Two other commenters endorsed the 50 percent standard as consistent with the concept of "prevailing."

DOL recognizes the shipping industry's concerns, but believes the concept of "prevailing" requires that the standard be no lower than a simple majority. Accordingly, this provision was unchanged in the interim final rule and this final rule.

4. Crewmember Prevailing Practice Distinguishable From Farmworker Prevailing Practice

In response to a comment, it is appropriate to distinguish the standard for determining prevailing practice for the use of alien crewmembers in longshore work from that used with respect to certain employer-provided benefits to nonimmigrant alien farmworkers and similarly employed U.S. workers under the H–2A program. See 20 CFR part 655, subparts B, F, and G, and 29 CFR part 506, 56 FR 24648 (May 30, 1991). In the proposed rule on crewmembers, the Department stated that the prevailing practice standard it would use for the program was consistent with other immigration programs of the Department "which use the concept of a simple majority" (56 FR 16031, 16033 (April 19, 1991)). That statement needs to be clarified, since it is not consistent with those immigration programs which do not use a simple majority, such as the H–2A program.

In the crewmember regulations, the Department accepts longshore work by alien crewmembers as prevailing in a port if:

(1) The majority of vessels used alien crewmembers for longshore work; or
(2) Over 50 percent of the workers in the port performing such work are aliens.

20 CFR 655.510(d)(1) and 29 CFR 506.510(d)(1), 56 FR 24648, 24657 (May 30, 1991).

Under the temporary alien agricultural labor certification (H–2A) regulations governing the employment of nonimmigrant alien farmworkers and any U.S. co-workers, the Department requires covered employers to: offer family housing and transportation advances; pay more frequently than semi-monthly; and utilize (and override payments to) farm labor contractors, if that is a prevailing practice. The reference groups for determination of prevailing practice are employers of workers in that occupation: In the area of intended employment for family housing and frequency of pay, or such employers who do not use alien farmworkers for transportation advances and various factors involving the use of farm labor contractors.

20 CFR 655.102(b)(1)(vi), (b)(5)(i), and (b)(10), 655.102(d), and 655.103(f). Determinations of prevailing practice under the H–2A program are made based on a standard of a majority of employers and a majority of workers.

e.g., a "double majority" standard (Employment and Training Administration Handbook No. 398 at II-6 and II-7; see also 56 FR 5670 (February 12, 1991)).

A commenter on the H-2A regulations has questioned the distinction and asked whether the crewmember regulations will affect the H-2A regulations (see 56 FR 5670 (February 12, 1991)). In the Department's view, the unique nature of each of these two types of employment requires a standard reflective of the nature of the industry.

Specifically, the Department could have taken two courses under the crewmember regulations. The legislative history of the crewmember program references "well-established" prevailing practices "long * * * accepted by all local interests concerned * * *" (H.R. Conf. Rep. No. 101-955 at 124 and 125). The "all local interests concerned" language has been argued by some to support a double-majority test, as in the H-2A regulations. On the other hand, some have argued that the language in the INA stating that the measure for longshore prevailing practice is the permitting of alien crewmembers to do this work rather than the actual performance of the work by alien crewmembers, implies a somewhat looser standard in determining prevailing practice for crewmember longshore work (see 8 U.S.C. 1288(c)(1)(B)(i)).

In response to the proposed crewmember rule, some commenters sought a prevailing practice standard less than single majority. While the Department modified the methodology slightly in the interim final rule, by eliminating measurement of tonnage in the port worked on by alien workers, the Department did not effect a less-than-single-majority standard for the crewmember program, stating its desire to be consistent with other immigration programs (56 FR at 24650).

As in many rulemaking actions, the Department received comments on the crewmember rulemaking from various interests with opposing views. In this rulemaking, as in its H-2A rulemaking, the Department took into consideration the comments as well as the unique nature of the employment. For example, in the H-2A program, the number of employers using farmworkers in an area of intended employment and the number of farmworkers employed are generally relatively stable from year-to-year. To avoid having the practice of a number of small employer, or the practice of a small number of large employers, determine prevailing practice in an area, the Department determined that it would be fairer under the farmworker program to require a double majority of both workers and employers as the standard for establishing a prevailing practice.

In the crewmember program, however, the variations in workforce size of affected employers is not as great as in agriculture, and application of a double majority standard is not necessary to provide prevailing practice protection to U.S. workers. The Department's experience is that in a labor market area where H-2A farmworkers are employed, there may be as many as 70 or more agricultural workers on some farms and as few as 5 or fewer agricultural workers on others, all engaged in the same crop activity, such as picking apples.

By contrast, the Department's experience is that the workforce per-employer in the crewmember program varies much less. For example, it is fairly standard that refrigerator vessels carrying processed fish in Alaska have crews of 15-20 doing longshore work. Other area employers, such as barge operators employ 5-7 workers, and fish processors use a fraction or their crews for longshore work. Thus, it is not necessary, and would be unduly burdensome administratively, for employers to have to attest to a double majority prevailing practice in the crewmember program.

Further, while U.S. longshore workers are, to a large extent, based in one location, alien crewmembers performing longshore work are a mobile workforce, as is true for many farmworkers under the H-2A program. In contrast to the H-2A program, however, and unlike most of the other immigration programs with which the Department is involved, the crewmember program also involves mobile employers. The same employers are not necessarily in a port on a repetitive, continuous, seasonal, or even annual basis. As such, the Department determined that the double majority approach was not necessary, too administratively burdensome, and inappropriate for the crewmember program.

5. Clarification of Hazardous Cargo Exception

Four commenters requested clarification regarding how to determine which vessels carrying hazardous cargo will be excepted from the requirement to file an attestation. Since this issue does not fall within DOL's jurisdiction, interested parties should seek such clarification from the Department of Transportation, which is the agency responsible for making such determinations.

6. Changing the 14-Day Filing Requirement

Three commenters sought to reduce or eliminate the 14-day filing requirement, because it is incompatible with last-minute changes in shipping schedules. DOL has no flexibility in interpreting this requirement because the statute explicitly sets forth a 14-day advance filing requirement.

7. Enforcement Issues

One commenter suggested that the Department should provide advance notice to an employer before initiating an investigation. Wage and Hour investigators coordinate and organize their activities in a manner that takes into consideration the employer's business activities. Employers will generally be contacted in advance of the investigator's appearance at the employer's place of business to inspect records and interview personnel. However, prior notification is not always appropriate, therefore, the Department has not changed the final rule in this respect.

One commenter requested that the regulations be changed to protect employers from frivolous complaints and afford sufficient opportunity to defend against a complainant's allegations. The INA requires that, before initiating an investigation, the Department will make a determination that there is "reasonable cause" to conduct an investigation, thereby assuring that an investigation will not be initiated based on a frivolous allegation. Therefore, the Department has determined that the final rule need not be changed in this respect.

One commenter suggested that the Equal Access to Justice Act (EAJA) should be applicable to administrative proceedings under this program. The Department has concluded, based on the case law and authorities, that the EAJA is not applicable because the statute does not mandate a hearing on the record within the meaning of the Administrative Procedures Act (5 U.S.C. 504; 5 U.S.C. 554; *e.g.*, *St. Louis Fuel and Supply Co., Inc.* v. *FERC*, 890 F.2d 446 (D.C. Cir. 1989); *Smedberg Machine & Tool, Inc.* v. *Donovan*, 730 F.2d 1089 (7th Cir. 1984)).

Regulatory Impact and Administrative Procedure

E.O. 12291

The rule does not have the financial or other impact to make it a major rule and, therefore, the preparation of a regulatory impact analysis is not necessary. See Executive Order 12291, 3

CFR, 1981 Comp., Page 127, 5 U.S.C. 601 note.

Regulatory Flexibility Act

The Department of Labor has notified the Chief Counsel of Advocacy, Small Business Administration, and made the certification pursuant to the Regulatory Flexibility Act at 5 U.S.C. 605(b), that the rule does not have a significant economic impact on a substantial number of small entities.

Nevertheless, interested parties are requested to submit, as part of their comments on this rule, information on the potential economic impact of the rule.

Effective Date

The final rule promulgated in this document is effective on October 8, 1992. Since the interim final rule published at 56 FR 24648 (May 30, 1991) is effective only through September 8, 1992, it is necessary to extend the interim final rule until the final rule becomes effective. To do otherwise would preclude employers, during the hiatus, from using alien crewmembers for longshore work, and thus, would be impracticable and contrary to the public interest.

Catalog of Federal Domestic Assistance Number: This program is not yet listed in the *Catalog of Federal Domestic Assistance.*

List of Subjects

20 CFR Part 655

Administrative practice and procedure, Agriculture, Aliens, Crewmembers, Employment, Enforcement, Forest and Forest Products, Guam, Health professions, Immigration, Labor, Longshore work, Migrant labor, Nurse, Penalties, Registered nurse, Reporting and recordkeeping requirements, Specialty occupation, Students, Wages.

29 CFR Part 506

Administrative practice and procedures, Aliens, Crewmembers, Employment, Enforcement, Immigration, Labor, Longshore work, Penalties, Reporting and recordkeeping requirements.

Text of the Final Joint Rule

The text of the joint final rule as adopted by ETA and the Wage and Hour Division, ESA, and in this document appears below:

Subpart F—Attestations by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports

Sec.

_____.500 Purpose, procedure and applicability of subparts F and G of this part.
_____.501 Overview of responsibilities.
_____.502 Definitions.
_____.510 Employer attestations.
_____.520 Special provisions regarding automated vessels.
_____.550 Public access.
Appendix A to Subpart F—U.S. Seaports

Subpart G—Enforcement of the Limitations Imposed on Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports

Sec.

_____.600 Enforcement authority of Administrator, Wage and Hour Division.
_____.605 Complaints and investigative procedures.
_____.610 Automated vessel exception to prohibition on utilization of alien crewmember(s) to perform longshore activity(ies) at a U.S. port.
_____.615 Cease and desist order.
_____.620 Civil money penalties and other remedies.
_____.625 Written notice, service and **Federal Register** publication of Administrator's determination.
_____.630 Request for hearing.
_____.635 Rules of practice for administrative law judge proceedings.
_____.640 Service and computation of time.
_____.645 Administrative law judge proceedings.
_____.650 Decision and order of administrative law judge.
_____.655 Secretary's review of administrative law judge's decision.
_____.660 Administrative record.
_____.665 Notice to the Attorney General and the Employment and Training Administration.
_____.670 **Federal Register** notice of determination of prevailing practice.
_____.675 Non-applicability of the Equal Access to Justice Act.

Subpart F—Attestations by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports

§ _____.500 Purpose, procedure and applicability of subparts F and G of this part.

(a) *Purpose.* (1) Section 258 of the Immigration and Nationality Act prohibits nonimmigrant alien crewmembers admitted to the United States on D-visas from performing longshore work at U.S. ports except in four specific instances:

(i) Where the vessel's country of registration does not prohibit U.S. crewmembers from performing longshore work in that country's port and nationals of a country (or countries) which does not prohibit U.S. crewmembers from performing longshore work in that country's port hold a majority of the ownership interest in the vessel, as determined by the Secretary of State;

(ii) Where there is in effect in a local port one or more collective bargaining agreement(s), each covering at least thirty percent of the longshore workers, and each permitting the activity to be performed under the terms of such agreement(s);

(iii) Where there is no collective bargaining agreement covering at least thirty percent of the longshore workers at the particular port and an attestation with accompanying documentation has been filed with the Department of Labor attesting that, among other things, the use of alien crewmembers to perform a particular activity of longshore work is permitted under the prevailing practice of the particular port (henceforth referred to as the "prevailing practice exception"); or

(iv) Where the longshore work involves an automated self-unloading conveyor belt or vacuum-actuated system on a vessel and the Administrator has not previously determined that an attestation must be filed pursuant to this part as a basis for performing those functions (henceforth referred to as the "automated vessel exception").

(2) The term "longshore work" does not include the loading or unloading of hazardous cargo, as determined by the Secretary of Transportation, for safety and environmental protection. The Department of Justice, through the Immigration and Naturalization Service (INS), determines whether an employer may use alien crewmembers for longshore work at U.S. ports. In those cases where an employer must file an attestation in order to perform such work, the Department of Labor shall be responsible for accepting the filing of such attestations. Subpart F of this part sets forth the procedure for filing attestations with the Department of Labor for employers proposing to use alien crewmembers for longshore work at U.S. ports under the prevailing practice exception and where it has been determined that an attestation is required under the automated vessel exception listed in paragraph (a)(4) of this section. Subpart G of this part sets forth complaint, investigation, and penalty provisions with respect to such attestations.

(b) *Procedure.* (1) Under the prevailing practice exception in sec. 258(c) of the Act, and in those cases where it has been determined that an attestation is required under the automated vessel exception, the procedure involves filing an attestation with the Department of Labor attesting that:

(i) The use of alien crewmembers for a particular activity of longshore work is the prevailing practice at the particular port;

(ii) The use of alien crewmembers is not during a strike or lockout nor designed to influence the election of a collective bargaining representative; and

(iii) Notice of the attestation has been provided to the bargaining representative of longshore workers in the local port, or, where there is none, notice has been provided to longshore workers employed at the local port.

(2) Under the automated vessel exception in sec. 258(c) of the Act, no attestation is required in cases where longshore activity consists of the use of an automated self-unloading conveyor belt or vacuum-actuated system on a vessel. The legislation creates a rebuttable presumption that the use of alien crewmembers for the operation of such automated systems is the prevailing practice. In order to overcome such presumption, it must be shown by the preponderance of the evidence submitted by any interested party, that the use of alien crewmembers for such activity is not the prevailing practice at the particular port, that it is during a strike or lockout, or that it is intended or designed to influence an election of a bargaining representative for workers in the local port.

(c) *Applicability.* Subparts F and G of this part apply to all employers who seek to employ alien crewmembers for longshore work at U.S. ports under the prevailing practice exception, to all employers claiming the automated vessel exception, and to those cases where it has been determined that an attestation is required under the automated vessel exception.

§ _____.501 Overview of responsibilities.

This section provides a context for the attestation process, to facilitate understanding by employers that may seek to employ alien crewmembers for longshore work under the prevailing practice exception and in those cases where an attestation is necessary under the automated vessel exception.

(a) *Department of Labor's responsibilities.* The United States Department of Labor (DOL) administers the attestation process. Within DOL, the Employment and Training Administration (ETA) shall have responsibility for setting up and operating the attestation process; the Employment Standards Administration's Wage and Hour Division shall be responsible for investigating and resolving any complaints filed concerning such attestations.

(b) *Employer attestation responsibilities.* Each employer seeking to use alien crewmembers for longshore work at a local U.S. port pursuant to the prevailing practice exception, or where an attestation is required under the automated vessel exception shall, as the first step, submit an attestation on Form ETA 9033, as described in § _____.510 of this part, to ETA at the address set forth at § _____.510(b) of this part. If ETA accepts the attestation for filing, pursuant to § _____.510 of this part, ETA shall return the cover form of the accepted attestation to the employer, and, at the same time, shall notify the Immigration and Naturalization Service (INS) of the filing.

(c) *Complaints.* Complaints concerning misrepresentation in the attestation, failure of the employer to carry out the terms of the attestation, or complaints that an employer is required to file an attestation under the automated vessel exception, may be filed with the Wage and Hour Division, according to the procedures set forth in subpart G of this part. Complaints of "misrepresentation" may include assertions that an employer has attested to the use of alien crewmembers only for a particular activity of longshore work and has thereafter used such alien crewmembers for another activity of longshore work. If the Division determines that the complaint presents reasonable cause to warrant an investigation, the Division shall then investigate, and, where appropriate, after an opportunity for a hearing, assess sanctions and penalties. Subpart G of this part further provides that interested parties may obtain an administrative law judge hearing on the Division's determination after an investigation and may seek the Secretary's review of the administrative law judge's decision. Subpart G of this part also provides that a complainant may request that the Wage and Hour Administrator issue a cease and desist order in the case of either alleged violation(s) of an attestation or longshore work by alien crewmember(s) employed by an employer allegedly not qualified for the claimed automated vessel exception. Upon the receipt of such a request, the Division shall notify the employer, provide an opportunity for a response and an informal meeting, and then rule on the request, which shall be granted if the preponderance of the evidence submitted supports the complainant's position.

§ _____.502 Definitions.

For the purposes of subparts F and G of this part: *Accepted for filing* means that a properly completed attestation including accompanying documentation for each of the requirements in § _____.510 (d) through (f) of this part submitted by the employer or its designated agent or representative has been received and filed by the Employment and Training Administration of the Department of Labor (DOL). (Unacceptable attestations are described at § _____.510(g)(2) of this part.)

Act and *INA* mean the Immigration and Nationality Act, as amended, 8 U.S.C. 1101 *et seq.*

Activity means any activity relating to loading cargo; unloading cargo; operation of cargo-related equipment; or handling of mooring lines on the dock when a vessel is made fast or let go.

Administrative law judge means an official appointed pursuant to 5 U.S.C. 3105.

Administrator means the Administrator of the Wage and Hour Division, Employment Standards Administration, Department of Labor, or such authorized representatives as may be designated to perform any of the functions of the Administrator under subparts F and G of this part.

Attestation means documents submitted by an employer attesting to and providing accompanying documentation to show that the use of alien crewmembers for a particular activity of longshore work at a particular U.S. port is the prevailing practice, and is not during a strike or lockout nor intended to influence an election of a bargaining representative for workers; and that notice of the attestation has been provided to the bargaining representative, or, where there is none, to the longshore workers at the local port.

Attesting employer means an employer who has filed an attestation.

Attorney General means the chief official of the U.S. Department of Justice or the Attorney General's designee.

Automated vessel means a vessel equipped with an automated self-unloading conveyor belt or vacuum-actuated system which is utilized for loading or unloading cargo between the vessel and the dock.

Certifying Officer means a Department of Labor official who makes determinations about whether or not to accept attestations:

(1) A regional Certifying Officer designated by a Regional Administrator, Employment and Training Administration (RA) makes such determinations in a regional office of the Department;

(2) A national Certifying Officer makes such determinations in the national office of the USES.

Chief, Division of Foreign Labor Certifications, USES means the chief official of the Division of Foreign Labor Certifications within the United States

Employment Service, Employment and Training Administration, Department of Labor, or the designee of the Chief, Division of Foreign Labor Certifications, USES.

Chief Administrative Law Judge means the chief official of the Office of the Administrative Law Judges of the Department of Labor or the Chief Administrative Law Judge's designee.

Crewmember means any nonimmigrant alien admitted to the United States to perform services under sec. 101(a)(15)(D)(i) of the Act (8 U.S.C. 1101(a)(15)(D)(i)).

Date of filing means the date an attestation is *accepted for filing* by ETA.

Department and *DOL* mean the United States Department of Labor.

Director means the chief official of the United States Employment Service (USES), Employment and Training Administration, Department of Labor, or the Director's designee.

Division means the Wage and Hour Division of the Employment Standards Administration, DOL.

Employer means a person, firm, corporation, or other association or organization, which suffers or permits, or proposes to suffer or permit, alien crewmembers to perform longshore work at a port within the U.S.

Employment and Training Administration (ETA) means the agency within the Department of Labor (DOL) which includes the United States Employment Service (USES).

Employment Standards Administration (ESA) means the agency within the Department of Labor (DOL) which includes the Wage and Hour Division.

Immigration and Naturalization Service (INS) means the component of the Department of Justice which makes the determination under the Act on whether an employer of alien crewmembers may use such crewmembers for longshore work at a U.S. port.

Lockout means a labor dispute involving a work stoppage, wherein an employer withholds work from its employees in order to gain a concession from them.

Longshore work means any activity (except safety and environmental protection work as described in sec. 258(b)(2) of the Act) relating to the loading or unloading of cargo, the operation of cargo related equipment (whether or not integral to the vessel), or the handling of mooring lines on the dock when the vessel is made fast or let go, in the United States or the coastal waters thereof.

Longshore worker means a U.S. worker who performs longshore work.

Port means a geographic area, either on a seacoast, lake, river or any other navigable body of water, which contains one or more publicly or privately owned terminals, piers, docks, or maritime facilities, which is commonly thought of as a port by other government maritime-related agencies, such as the Maritime Administration. U.S. ports include, but are not limited to, those listed in Appendix A to this subpart.

Regional Administrator, Employment and Training Administration (RA) means the chief official of the Employment and Training Administration (ETA) in a Department of Labor (DOL) regional office.

Secretary means the Secretary of Labor or the Secretary's designee.

Strike means a labor dispute wherein employees engage in a concerted stoppage of work (including stoppage by reason of the expiration of a collective-bargaining agreement) or engage in any concerted slowdown or other concerted interruption of operations.

Unanticipated emergency means an unexpected and unavoidable situation, such as one involving severe weather conditions, natural disaster, or mechanical breakdown, where cargo must be immediately loaded on, or unloaded from, a vessel.

United States is defined at 8 U.S.C. 1101(a)(38).

United States Employment Service (USES) means the agency of the Department of Labor, established under the Wagner-Peyser Act, which is charged with administering the national system of public employment offices.

United States (U.S.) worker means a worker who is a U.S. citizen, a U.S. national, a permanent resident alien, or any other worker legally permitted to work indefinitely in the United States.

§ _____.510 Employer attestations.

(a) *Who may submit attestations?* An employer (or the employer's designated U.S. agent or representative) seeking to employ alien crewmembers for a particular activity of longshore work under the prevailing practice exception shall submit an attestation, provided there is not in effect in the local port any collective bargaining agreement covering at least 30 percent of the longshore workers. An attestation is required for each port at which the employer intends to use alien crewmembers for longshore work. The attestation shall include: a completed Form ETA 9033, which shall be signed by the employer (or the employer's designated agent or representative); and facts and evidence prescribed in paragraphs (d) through (f) of this section.

(b) *Where and when should attestations be submitted?* (1) Attestations must be submitted, by U.S. mail, private carrier, or facsimile transmission to the U.S. Department of Labor ETA Regional Office(s) which are designated by the Chief, Division of Foreign Labor Certifications, USES. Attestations must be received and date-stamped by DOL at least 14 calendar days prior to the date of the first performance of the intended longshore activity, and shall be accepted for filing or returned by ETA in accordance with paragraph (g) of this section within 14 calendar days of the date received by ETA. An attestation which is accepted by ETA solely because it was not reviewed within 14 days is subject to subsequent invalidation pursuant to paragraph (i) of this section. Every employer filing an attestation shall have an agent or representative with a United States address. Such address shall be clearly indicated on the Form ETA 9033. In order to ensure that an attestation has been accepted for filing prior to the date of the performance of the longshore activity, employers are advised to take mailing time into account to make sure that ETA receives the attestation at least 14 days prior to the first performance of the longshore activity.

(2) *Unanticipated Emergencies.* ETA may accept for filing attestations received after the 14-day deadline when due to an unanticipated emergency, as defined in § _____.502 of this part. When an employer is claiming an unanticipated emergency, it shall submit documentation to support such a claim. ETA shall then make a determination on the validity of the claim, and shall accept the attestation for filing or return it in accordance with paragraph (g) of this section. ETA shall in no case accept an attestation received later than the date of the first performance of the activity.

(c) *What should be submitted?* (1) *Form ETA 9033 with accompanying documentation.* For each port, a completed and dated original Form ETA 9033, or facsimile transmission thereof, containing the required attestation elements and the original signature of the employer (or the employer's designated agent or representative) shall be submitted, along with two copies of the completed, signed, and dated Form ETA 9033. (If the attestation is submitted by facsimile transmission, the attestation containing the original signature shall be maintained at the U.S. business address of the employer's designated agent or representative). Copies of Form ETA 9033 are available at all Department of Labor ETA

Regional Offices and at the National Office. In addition, the employer shall submit two sets of all facts and evidence to show compliance with each of the attestation elements as prescribed by the regulatory standards in paragraphs (d) through (f) of this section. In the case of an investigation pursuant to subpart G of this part, the employer shall have the burden of proof to establish the validity of each attestation. The employer shall maintain in its records at the office of its U.S. agent, for a period of at least 3 years from the date of filing, sufficient documentation to meet its burden of proof and shall make the documents available to Department of Labor officials upon request. Whenever any document is submitted to a Federal agency or retained in the employer's records pursuant to this part, the document either shall be in the English language or shall be accompanied by a written translation into the English language certified by the translator as to the accuracy of the translation and his/her competency to translate.

(2) *Statutory precondition regarding collective bargaining agreements.* (i) The employer may file an attestation only when there is no collective bargaining agreement in effect in the port covering 30 percent or more of the longshore workers in the port. The employer shall attest on the Form ETA 9033 that no such collective bargaining agreement exists at the port at the time that the attestation is filed.

(ii) The employer is not required to submit with the Form ETA 9033 documentation substantiating that there is no collective bargaining agreement in effect in the port covering 30 percent or more of the longshore workers. If a complaint is filed which presents reasonable cause to believe that such an agreement exists, the Department shall conduct an investigation. In such an investigation, the employer shall have the burden of proving that no such collective bargaining agreement exists.

(3) *Ports for which attestations may be filed.* Employers may file an attestation for a port which is listed in appendix A (U.S. Seaports) to this subpart. Employers may also file an attestation for a particular location not in appendix A to this subpart if additional facts and evidence are submitted with the attestation to demonstrate that the location is a port, meeting all of the criteria as defined by § _____.502 of this part.

(4) *Attestation elements.* The attestation elements referenced in paragraph (c)(1) of this section are mandated by sec. 258(c)(1)(B) of the Act (8 U.S.C. 1288(c)(1)(B)). Section 258(c)(1)(B) of the Act requires employers who seek to have alien crewmembers engage in a longshore activity to attest as follows:

(i) The performance of the activity by alien crewmembers is permitted under the prevailing practice of the particular port as of the date of filing of the attestation;

(ii) The use of the alien crewmembers for such activity is not during a strike or lockout in the course of a labor dispute, and is not intended or designed to influence an election of a bargaining representative for workers in the local port; and

(iii) Notice of the attestation has been provided by the owner, agent, consignee, master, or commanding officer to the bargaining representative of longshore workers in the local port, or, where there is no such bargaining representative, notice has been provided to longshore workers employed at the local port.

(d) *The first attestation element: Prevailing practice.* For an employer to be in compliance with the first attestation element, it is required to have been the prevailing practice during the 12-month period preceding the filing of the attestation, for a particular activity of longshore work at the particular port to be performed by alien crewmembers. For each port, a prevailing practice can exist for any of four different types of longshore work: Loading of cargo, unloading of cargo, operation of cargo-related equipment, or handling of mooring lines. It is thus possible that at a particular port it is the prevailing practice for alien crewmembers to unload vessels but not the prevailing practice to load them. An employer shall indicate on the attestation form which of the four longshore activities it is claiming is the prevailing practice for such work to be performed by alien crewmembers.

(1) *Establishing a prevailing practice.*

(i) In establishing that a particular activity of longshore work is the prevailing practice at a particular port, an employer shall submit facts and evidence to show that in the 12-month period preceding the filing of the attestation, one of the following conditions existed:

(A) Over fifty percent of vessels docking at the port used alien crewmembers for the activity; or

(B) Alien crewmembers made up over fifty percent of the workers in the port who engaged in the activity.

(ii) *Prevailing practice after Secretary of State determination of non-reciprocity.* Section 258(d) of the Act provides a reciprocity exception (separate from the prevailing practice exception) to the prohibition on performance of longshore work by alien crewmembers in U.S. ports. However, this reciprocity exception becomes nonapplicable where the Secretary of State determines that, for a particular activity of longshore work, a particular country (by law, regulation, or practice) prohibits such activity by U.S. crewmembers in its ports. When the Secretary of State places a country on the non-reciprocity list (which means, for the purposes of this section, *Prohibitions on longshore work by U.S. nationals; listing by country* at 22 CFR 89.1), crewmembers on vessels from that country (that is, vessels that are registered in that country or vessels whose majority ownership interest is held by nationals of that country) are not permitted to perform longshore work in U.S. waters, absent applicability of some exception other than the reciprocity exception. The Secretary of State's determination has the following effects in the establishment of a prevailing practice for a particular longshore activity at a particular U.S. port for purposes of the prevailing practice exception.

(A) An employer from any country, *other than* the country which is placed on the non-reciprocity list, may include the longshore activities performed by alien crewmembers on all vessels in establishing the prevailing practice for a particular longshore activity in a particular port.

(B) An employer from a country which is placed on the non-reciprocity list may file an attestation for the prevailing practice exception under the standards and requirements established in this Subpart F (except as provided in (d)(1)(ii)(C) of this section), *provided that* the attestation is filed at least 12 months after the date on which the employer's country is placed on the list.

(C) An employer from a country which is placed on the non-reciprocity list may file an attestation pursuant to the prevailing practice exception earlier than 12 months from the date on which the employer's country is placed on the list, *except that* the following restrictions shall apply to such attestation:

(*1*) The employer shall submit facts and evidence to show that, for the 12-month period preceding the date of the attestation, the use of alien crewmembers to perform a particular activity of longshore work was permitted by the prevailing practice in the port (as defined in paragraph (d)(1)(i) of this section) without considering or including such activity by crewmembers on vessels from the employer's country; or

(2) The employer shall submit facts and evidence (including data on activities performed by crewmembers on vessels from the employer's country) to show that the use of alien crewmembers to perform a particular activity of longshore work was permitted by the prevailing practice in the port (as defined in paragraph (d)(1)(i) of this section) for one of two periods—

(i) For the employer whose country has not previously been on the non-reciprocity list, the period is the continuous 12-month period prior to May 28, 1991 (the effective date of Section 258 of the Act); or

(ii) For the employer whose country was at some time on the non-reciprocity list, but was subsequently removed from the non-reciprocity list and then restored to the non-reciprocity list (on one or more occasions), the period is the last continuous 12-month period during which the employer's country was not under the reciprocity exception (that is, was listed on the non-reciprocity list).

(iii) For purposes of this paragraph (d)(1) of this section:

(A) "Workers in the port engaged in the activity" means any person who performed the activity in any calendar day;

(B) Vessels shall be counted each time they dock at the particular port);

(C) Vessels exempt from section 258 of the INA for safety and environmental protection shall not be included in counting the number of vessels which dock at the port (see Department of Transportation Regulations); and

(D) Automated vessels shall not be included in counting the number of vessels which dock at the port. For establishing a prevailing practice under the automated vessel exception see § _____.520 of this subpart.

(2) *Documentation.* In assembling the facts and evidence required by paragraph (d)(1) of this section, the employer may consult with the port authority which has jurisdiction over the local port, the collective bargaining representative(s) of longshore workers at the local port, other employers, or any other entity which is familiar with the practices at the port. Such documentation shall include a written summary of a survey of the experience of shipmasters who entered the local port in the previous year; or a letter, affidavit, or other written statement from an appropriate local port authority regarding the use of alien crewmembers to perform the longshore activity at the port in the previous year; or other documentation of comparable weight. Written statements from collective bargaining representatives and/or shipping agents with direct knowledge of practices regarding the use of alien crewmembers in the local port may also be pertinent. Such documentation shall accompany the Form ETA 9033, and any underlying documentation which supports the employer's burden of proof shall be maintained in the employer's records at the office of the U.S. agent as required by paragraph (c)(1) of this section.

(e) *The second attestation element: no strike or lockout; no intention or design to influence bargaining representative election.* (1) The employer shall attest that, at the time of submitting the attestation, there is not a strike or lockout in the course of a labor dispute covering the employer's activity, and that it will not use alien crewmembers during a strike or lockout after filing the attestation. The employer shall also attest that the employment of such aliens is not intended or designed to influence an election for a bargaining representative for workers in the local port. Labor disputes for purposes of this attestation element relate only to those involving longshore workers at the port of intended employment. This attestation element applies to strikes and lockouts and elections of bargaining representatives at the local port where the use of alien crewmembers for longshore work is intended.

(2) *Documentation.* As documentation to substantiate the requirement in paragraph (e)(1) of this section, an employer may submit a statement of the good faith efforts made to determine whether there is a strike or lockout at the particular port, as, for example, by contacting the port authority or the collective bargaining representative for longshore workers at the particular port.

(f) *The third attestation element: notice of filing.* The employer of alien crewmembers shall attest that at the time of filing the attestation, notice of filing has been provided to the bargaining representative of the longshore workers in the local port, or, where there is no such bargaining representative, notice of the filing has been provided to longshore workers employed at the local port through posting in conspicuous locations and through other appropriate means.

(1) *Notification of bargaining representative.* No later than the date the attestation is received by DOL to be considered for filing, the employer of alien crewmembers shall notify the bargaining representative (if any) of longshore workers at the local port that the attestation is being submitted to DOL. The notice shall include a copy of the Form ETA 9033, shall state the activity(ies) for which the attestation is submitted, and shall state in that notice that the attestation and accompanying documentation are available at the national office of ETA for review by interested parties. The employer may have its owner, agent, consignee, master, or commanding officer provide such notice. Notices under this paragraph (f)(1) shall include the following statement: "Complaints alleging misrepresentation of material facts in the attestation and/or failure to comply with the terms of the attestation may be filed with any office of the Wage and Hour Division of the United States Department of Labor."

(2) *Posting notice where there is no bargaining representative.* If there is no bargaining representative of longshore workers at the local port when the employer submits an attestation to ETA, the employer shall provide written notice to the port authority for distribution to the public on request. In addition, the employer shall post one or more written notices at the local port, stating that the attestation with accompanying documentation has been submitted, the activity(ies) for which the attestation has been submitted, and that the attestation and accompanying documentation are available at the national office of ETA for review by interested parties. Such posted notice shall be clearly visible and unobstructed, and shall be posted in conspicuous places where the longshore workers readily can read the posted notice on the way to or from their duties. Appropriate locations for posting such notices include locations in the immediate proximity of mandatory Fair Labor Standards Act wage and hour notices and Occupational Safety and Health Act occupational safety and health notices. The notice shall include a copy of the Form ETA 9033 filed with DOL, shall provide information concerning the availability of supporting documents for examination at the national office of ETA, and shall include the following statement: "Complaints alleging misrepresentation of material facts in the attestation and/or failure to comply with the terms of the attestation may be filed with any office of the Wage and Hour Division of the United States Department of Labor."

(3) *Documentation.* The employer shall provide a statement setting forth the name and address of the person to whom the notice was provided and where and when the notice was posted and shall attach a copy of the notice.

(g) *Actions on attestations submitted for filing.* Once an attestation has been received from an employer, a determination shall be made by the

regional Certifying Officer whether to accept the attestation for filing or return it. The regional Certifying Officer may request additional explanation and/or documentation from the employer in making this determination. An attestation which is properly filled out and which includes accompanying documentation for each of the requirements set forth at § _____.510 (d) through (f) shall be accepted for filing by ETA on the date it is signed by the regional Certifying Officer unless it falls within one of the categories set forth in paragraph (g)(2) of this section. Once an attestation is accepted for filing, ETA shall then follow the procedures set forth in paragraph (g)(1) of this section. Upon acceptance of the employer's attestation by ETA, the attestation and accompanying documentation will be forwarded and shall be available in a timely manner for public examination at the ETA national office. ETA shall not consider information contesting an attestation received by ETA prior to the determination to accept or return the attestation for filing. Such information shall not be made part of ETA's administrative record on the attestation, but shall be referred to ESA to be processed as a complaint pursuant to subpart G of this part if the attestation is accepted by ETA for filing.

(1) *Acceptance.* (i) If the attestation is properly filled out and includes accompanying documentation for each of the requirements at § _____.510 (d) through (f) of this subpart, and does not fall within one of the categories set forth at paragraph (g)(2) of this section, ETA shall accept the attestation for filing, notify the Attorney General in writing of the filing, and return to the employer, or the employer's agent or representative at a U.S. address, one copy of the attestation form submitted by the employer, with ETA's acceptance indicated thereon. The employer may then use alien crewmembers for the particular activity of longshore work at the U.S. port cited in the attestation in accordance with INS regulations.

(ii) DOL is not the guarantor of the accuracy, truthfulness or adequacy of an attestation accepted for filing.

(2) *Unacceptable Attestations.* ETA shall not accept an attestation for filing and shall return such attestation to the employer, or the employer's agent or representative at a U.S. address, when one of the following conditions exists:

(i) When the Form ETA 9033 is not properly filled out. Examples of improperly filled out Form ETA 9033's include instances where the employer has neglected to check all the necessary boxes, or where the employer has failed to include the name of the port where it intends to use the alien crewmembers for longshore work, or where the employer has named a port that is not listed in appendix A and has failed to submit facts and evidence to support a showing that the location is a port as defined by § _____.502, or when the employer has failed to sign the attestation or to designate an agent in the United States;

(ii) When the Form ETA 9033 with accompanying documentation is not received by ETA at least 14 days prior to the date of performance of the first activity indicated on the Form ETA 9033; unless the employer is claiming an unanticipated emergency, has included documentation which supports such claim, and ETA has found the claim to be valid;

(iii) When the Form ETA 9033 does not include accompanying documentation for each of the requirements set forth at § _____.510 (d) through (f);

(iv) When the accompanying documentation required by paragraph (c) of this section submitted by the employer, on its face, is inconsistent with the requirements set forth at § _____.510 (d) through (f). Examples of such a situation include instances where the Form ETA 9033 pertains to one port and the accompanying documentation to another; where the Form ETA 9033 pertains to one activity of longshore work and the accompanying documentation obviously refers to another; or where the documentation clearly indicates that only thirty percent, instead of the required fifty percent, of the activity attested to is performed by alien crewmembers;

(v) When the Administrator, Wage and Hour Division, has notified ETA, in writing, after an investigation pursuant to subpart G of this part, that the particular activity of longshore work which the employer has attested is the prevailing practice at a particular port, is not, in fact, the prevailing practice at the particular port;

(vi) When the Administrator, Wage and Hour Division, has notified ETA, in writing, that a cease and desist order has been issued pursuant to subpart G of this part, with respect to the attesting employer's performance of the particular activity and port, in violation of a previously accepted attestation;

(vii) When the Administrator, Wage and Hour Division, has notified ETA, in writing, after an investigation pursuant to subpart G of this part, that the particular employer has misrepresented or failed to comply with an attestation previously submitted and accepted for filing, but in no case for a period of more than one year after the date of the Administrator's notice and provided that INS has not advised ETA that the prohibition is in effect for a lesser period; or

(viii) When the Administrator, Wage and Hour Division, has notified ETA, in writing, that the employer has failed to comply with any penalty, sanction, or other remedy assessed in a fainal agency action following an investigation by the Wage and Hour Division pursuant to subpart G of this part.

(3) *Resubmission.* If the attestation is not accepted for filing pursuant to the categories set forth in paragraph (g)(2) of this section, ETA shall return to the employer, or the employer's agent or representative, at a U.S. address, the attestation form and accompanying documentation submitted by the employer. ETA shall notify the employer, in writing, of the reason(s) that the attestation is unacceptable. When an attestation is found to be unacceptable pursuant to paragraphs (g)(2) (i) through (iv) of this section, the employer may resubmit the attestation with the proper documentation. When an attestation is found to be unacceptable pursuant to paragraphs (g)(2) (v) through (viii) of this section and returned, such action shall be the final decision of the Secretary of Labor.

(h) *Effective date and validity of filed attestations.* An attestation is filed and effective as of the date it is accepted and signed by the regional Certifying Officer. Such attestation is valid for the 12-month period beginning on the date of acceptance for filing, unless suspended or invalidated pursuant to subpart G of this part or paragraph (i) of this section. The filed attestation expires at the end of the 12-month period of validity.

(i) *Suspension or invalidation of filed attestations.* Suspension or invalidation of an attestation may result from enforcement action(s) under subpart G of this part (*i.e.*, investigation(s) conducted by the Administrator or cease and desist order(s) issued by the Administrator regarding the employer's misrepresentation in or failure to carry out its attestation); or from a discovery by ETA that it made an error in accepting the attestation because such attestation falls within one of the categories set forth in paragraph (g)(2) of this section.

(1) *Result of Wage and Hour Division action.* Upon the determination of a violation under subpart G of this part, the Administrator shall, pursuant to § _____.660(b), notify the Attorney General of the violation and of the Administrator's notice to ETA.

(2) *Result of ETA action.* If, after accepting an attestation for filing, ETA finds that the attestation is unacceptable because it falls within one of the categories set forth at paragraph (g)(2) of this section, and as a result, ETA suspends or invalidates the attestation, ETA shall notify the Attorney General of such suspension or invalidation and shall return a copy of the attestation form to the employer, or the employer's agent or representative, at a U.S. address. ETA shall notify the employer, in writing, of the reason(s) that the attestation is suspended or invalidated. When an attestation is found to be suspended or invalidated pursuant to paragraphs (g)(2)(i) through (iv) of this section, the employer may resubmit the attestation with the proper documentation. When an attestation is suspended or invalidated because it falls within one of the categories in paragraphs (g)(2)(v) through (viii) of this section, such action shall be the final decision of the Secretary of Labor, except as set forth in subpart G of this part.

(j) *Withdrawal of accepted attestations.* (1) An employer who has submitted an attestation which has been accepted for filing may withdraw such attestation at any time before the 12-month period of its validity terminates, unless the Administrator has found reasonable cause under subpart G to commence an investigation of the particular attestation. Such withdrawal may be advisable, for example, when the employer learns that the particular activity(ies) of longshore work which it, has attested is the prevailing practice to perform with alien crewmembers may not, in fact, have been the prevailing practice at the particular port at the time of filing. Requests for such withdrawals shall be in writing and shall be directed to the regional Certifying Officer.

(2) Withdrawal of an attestation shall not affect an employer's liability with respect to any failure to meet the conditions attested to which took place before the withdrawal, or for misrepresentations in an attestation. However, if an employer has not yet performed the particular longshore activity(ies) at the port in question, the Administrator will not find reasonable cause to investigate unless it is alleged, and there is reasonable cause to believe, that the employer has made misrepresentations in the attestation or documentation thereof, or that the employer has not in fact given the notice attested to.

(Approved by the Office of Management and Budget under Control No. 1205-0309.)

§_____.520 Special provisions regarding automated vessels.

In general, an attestation is not required in the case of a particular activity of longshore work consisting of the use of automated self-unloading conveyor belt or vacuum-actuated systems on a vessel. The legislation creates a rebuttable presumption that the use of alien crewmembers for the operation of such automated systems is the prevailing practice. In order to overcome such presumption, it must be shown by the preponderance of the evidence submitted by any interested party, that the use of alien crewmembers for such activity is not the prevailing practice. Longshore work involving the use of such equipment shall be exempt from the attestation requirement only if the activity consists of using that equipment. If the automated equipment is not used in the particular activity of longshore work, an attestation is required as described under §_____.510 of this part if it is the prevailing practice in the port to use alien crewmembers for this work. When the automated equipment is used in the particular activity of longshore work, an attestation is required only if the Administrator finds, based on a preponderance of the evidence which may be submitted by any interested party, that the performance of the particular activity of longshore work is not the prevailing practice at the port, or was during a strike or lockout or intended to influence an election of a bargaining representative for workers in the local port, or if the Administrator issues a cease and desist order against use of the automated equipment without such attestation.

(a) *Procedure when attestation is required.* If it is determined pursuant to subpart G of this part that an attestation is required for longshore work consisting of the use of automated equipment, the employer shall comply with all the requirements set forth at §_____.510 of this part except paragraph (d) of §_____.510. In lieu of complying with §_____.510(d) of this part, the employer shall comply with paragraph (b) of this section.

(b) *The first attestation element: prevailing practice for automated vessels.* For an employer to be in compliance with the first attestation element, it is required to have been the prevailing practice that over fifty percent (as described in paragraph (b)(1) of this section) of a particular activity of longshore work which was performed through the use of automated self-unloading conveyor belt or vacuum-actuated equipment at the particular port during the 12-month period preceding the filing of the attestation, was performed by alien crewmembers. For purposes of this paragraph (b), only automated vessels shall be included in counting the number of vessels which dock at the port.

(1) *Establishing a prevailing practice.*

(i) In establishing that the use of alien crewmembers to perform a particular activity of longshore work consisting of the use of self-unloading conveyor belt or vacuum-actuated systems on a vessel is the prevailing practice at a particular port, an employer shall submit facts and evidence to show that in the 12-month period preceding the filing of the attestation, one of the following conditions existed:

(A) Over fifty percent of the automated vessels docking at the port used alien crewmembers for the activity (for purposes of this paragraph (b)(1), a vessel shall be counted each time it docks at the particular port); or

(B) Alien crewmembers made up over fifty percent of the workers who performed the activity with respect to such automated vessels.

(ii) *Prevailing practice after Secretary of State determination of non-reciprocity.* Section 258(d) of the Act provides a reciprocity exception (separate from the prevailing practice exception) to the prohibition on performance of longshore work by alien crewmembers in U.S. ports. However, this reciprocity exception becomes nonapplicable where the Secretary of State determines that, for a particular activity of longshore work, a particular country (by law, regulation, or practice) prohibits such activity by U.S. crewmembers in its ports. When the Secretary of State places a country on the non-reciprocity list (which means, for purposes of this section, *Prohibitions on longshore work by U.S. nationals; listing by country* at 22 CFR 89.1), crewmembers on vessels from that country (that is, vessels that are registered in that country or vessels whose majority ownership interest is held by nationals of that country) are not permitted to perform longshore work in U.S. waters, absent applicability of some exception other than the reciprocity exception. The Secretary of State's determination has the following effects in the establishment of a prevailing practice for a particular longshore activity at a particular U.S. port for purposes of the prevailing practice exception.

(A) An employer from any country, other than the country which is placed on the non-reciprocity list, may include the longshore activities performed by

alien crewmembers on all vessels in establishing the prevailing practice for a particular longshore activity in a particular port.

(B) An employer from a country which is placed on the non-reciprocity list may file an attestation for the prevailing practice exception under the standards and requirements established in this Subpart F (except as provided in (b)(1)(ii)(C) of this section), *provided that* the attestation is filed at least 12 months after the date on which the employer's country is placed on the list.

(C) An employer from a country which is placed on the non-reciprocity list may file an attestation pursuant to the prevailing practice exception earlier than 12 months from the date on which the employer's country is placed on the list, *except that* the following restrictions shall apply to such attestation:

(*1*) The employer shall submit facts and evidence to show that, for the 12-month period preceding the date of the attestation, the use of alien crewmembers to perform a particular activity of longshore work was permitted by the prevailing practice in the port (as defined in paragraph (d)(1)(i) of this section) *without* considering or including such activity by crewmembers on vessels from the employer's country; *or*

(*2*) The employer shall submit facts and evidence (including data on activities performed by crewmembers on vessels from the employer's country) to show that the use of alien crewmembers to perform a particular activity of longshore work was permitted by the prevailing practice in the port (as defined in paragraph (b)(1)(i) of this section) for one of two periods—

(*i*) For the employer whose country has not previously been on the non-reciprocity list, the period is the continuous 12-month period prior to May 28, 1991 (the effective date of section 258 of the Act); or

(*ii*) For the employer whose country was at some time on the non-reciprocity list, but was subsequently removed from the non-reciprocity list and then restored to the non-reciprocity list (on one or more occasions), the period is the last continuous 12-month period during which the employer's country was not under the reciprocity exception (that is, was listed on the non-reciprocity list).

(2) *Documentation.* In assembling the documentation described in paragraph (b)(1) of this section, the employer may consult with the port authority which has jurisdiction over the local port, the collective bargaining representative(s) of longshore workers at the local port, other employers, or any other entity which is familiar with the practices at the port. The documentation shall include a written summary of a survey of the experience of shipmasters who entered the local port in the previous year; or a letter, affidavit, or other written statement from an appropriate local port authority regarding the use of alien crewmembers to perform the longshore activity at the port in the previous year; or other documentation of comparable weight. Written statements from collective bargaining representatives and/or shipping agents with direct knowledge of practices regarding the use of alien crewmembers may also be pertinent. Such documentation shall accompany the Form ETA 9033, and any underlying documentation which supports the employer's burden of proof shall be maintained in the employer's records at the office of the U.S. agent as required under §_____.510(c)(1) of this part.

(Approved by the Office of Management and Budget under Control No. 1205–0309)

§ _____.550 Public access.

(a) *Public examination at ETA.* ETA shall make available for public examination in Washington, DC, a list of employers which have filed attestations, and for each such employer, a copy of the employer's attestation and accompanying documentation it has received.

(b) *Notice to public.* ETA periodically shall publish a list in the **Federal Register** identifying employers which have submitted attestations; employers which have attestations on file; and employers which have submitted attestations which have been found unacceptable for filing.

(Approved by the Office of Management and Budget under Control No. 1205–0309.)

Appendix A to Subpart F—U.S. Seaports

The list of 224 seaports includes all major and most smaller ports serving ocean and Great Lakes commerce.

North Atlantic Range

Bucksport, ME
Eastport, ME
Portland, ME
Searsport, ME
Portsmouth, NH
Boston, MA
Fall River, MA
New Bedford, MA
Providence, RI
Bridgeport, CT
New Haven, CT
New London, CT
Albany, NY
New York, NY/NJ
Camden, NJ
Gloucester City, NJ
Paulsboro, NJ
Chester, PA
Marcus Hook, PA
Philadelphia, PA
Delaware City, DE
Wilmington, DE
Baltimore, MD
Cambridge, MD
Alexandria, VA
Chesapeake, VA
Hopewell, VA
Newport News, VA
Norfolk, VA
Portsmouth, VA
Richmond, VA

South Atlantic Range

Morehead City, NC
Southport, NC
Wilmington, NC
Charleston, SC
Georgetown, SC
Port Royal, SC
Brunswick, GA
Savannah, GA
St. Mary, GA
Cocoa, FL
Fernandina Beach, FL
Fort Lauderdale, FL
Fort Pierce, FL
Jacksonville, FL
Miami, FL
Palm Beach, FL
Port Canaveral, FL
Port Everglades, FL
Riviera, FL
Agudilla, PR
Ceiba, PR
Guanica, PR
Guayanilla, PR
Humacao, PR
Jobos, PR
Mayaguez, PR
Ponce, PR
San Juan, PR
Vieques, PR
Yabucoa, PR
Alucroix, VI
Charlotte Amalie, VI
Christiansted, VI
Frederiksted, VI
Limetree Bay, VI

North Pacific Range

Astoria, OR
Bandon, OR
Columbia City, OR
Coos Bay, OR
Mapleton, OR
Newport, OR
Portland, OR
Rainier, OR
Reedsport, OR
St. Helens, OR
Toledo, OR
Anacortes, WA
Bellingham, WA
Edmonds (Edwards Point), WA
Everett, WA
Ferndale, WA
Friday Harbor, WA
Grays Harbor, WA
Kalama, WA
Longview, WA
Olympia, WA
Point Wells, WA
Portage, WA
Port Angeles, WA
Port Gambe, WA
Port Townsend, WA
Raymond, WA
Seattle, WA
Tacoma, WA
Vancouver, WA
Willapa Harbor, WA
Winslow, WA
Anchorage, AK
Cordova, AK
Dutch Harbor, AK
Haines, AK
Homer, AK
Juneau, AK
Kenai, AK
Ketchikan, AK
Klawock/Craig, AK
Kodiak, AK
Metlakatla, AK
Nikisnka, AK
Pelican, AK
Petersburg, AK
Seward, AK
Sitka, AK
Skagway, AK
Unalaska, AK
Valdez, AK
Whittier, AK
Wrangell, AK

Great Lakes Range

Duluth, MN
Silver Bay, MN
Green Bay, WI
Kenosha, WI
Manitowoc, WI
Milwaukee, WI
Sheboygan, WI
Superior, WI
Alpena, MI
Bay City, MI
Detroit, MI
De Tour Village, MI
Essexville, MI
Ferrysburg, MI
Grand Haven, MI
Marine City, MI
Muskegon, MI
Port Huron, MI
Presque Isle, MI
Rogers City, MI
Saginaw, MI
Sault Ste Marie, MI
Chicago, IL
Ashtabula, OH
Cincinnati, OH
Cleveland, OH
Conneaut, OH
Fairport, OH
Huron, OH
Lorain, OH
Sandusky, OH
Toledo, OH
Erie, PA
Buffalo, NY
Odgensburg, NY
Oswego, NY
Rochester, NY
Burns Harbor, IN
E. Chicago, IN
Gary, IN

Gulf Coast Range

Panama City, FL
Pensacola, FL
Port Manatee, FL
Port St. Joe, FL
Tampa, FL
Mobile, AL
Gulfport, MS
Pascagoula, MS
Baton Rouge, LA
Gretna, LA
Lake Charles, LA
Louisiana Offshore Oil Port, LA
New Orleans, LA
Beaumont, TX
Brownsville, TX
Corpus Christi, TX
Freeport, TX
Galveston, TX
Harbor Island, TX

Houston, TX
Orange, TX
Port Arthur, TX
Port Isabel, TX
Port Lavaca, TX
Port Neches, TX
Sabine, TX
Texas City, TX

South Pacific Range

Alameda, CA
Antioch, CA
Benicia, CA
Carlsbad, CA
Carpinteria, CA
Crockett, CA
El Segundo, CA
Eureka, CA
Estero Bay, CA
Gaviota, CA
Huntington Beach, CA
Long Beach, CA
Los Angeles, CA
Mandalay Beach, CA
Martinez, CA
Moss Landing, CA
Oakland, CA
Pittsburg, CA
Port Costa, CA
Port Hueneme, CA
Port San Luis, CA
Redwood City, CA
Richmond, CA
Sacramento, CA
San Diego, CA
San Francisco, CA
Selby, CA
Stockton, CA
Vallejo, CA
Ventura, CA
Barbers Point, HI
Hilo, HI
Honolulu, HI
Kahului, HI
Kaunakakai, HI
Kawaihae, HI
Nawiliwili, HI
Port Allen, HI

Subpart G—Enforcement of the Limitations Imposed on Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports

§ _____.600 Enforcement authority of Administrator, Wage and Hour Division.

(a) The Administrator shall perform all the Secretary's investigative and enforcement functions under section 258 of the INA (8 U.S.C. 1288) and subparts F and G of this part.

(b) The Administrator, pursuant to a complaint, shall conduct such investigations as may be appropriate and, in connection therewith, enter and inspect such places and such records (and make transcriptions or copies thereof), question such persons and gather such information as deemed necessary by the Administrator to determine compliance regarding the matters which are the subject of the investigation.

(c) An employer being investigated shall make available to the Administrator such records, information, persons, and places as the Administrator deems appropriate to copy, transcribe, question, or inspect. No employer subject to the provisions of section 258 of the INA (8 U.S.C. 1288) and subparts F and G of this part shall interfere with any official of the Department of Labor performing an investigation, inspection or law enforcement function pursuant to 8 U.S.C. 1288 or subpart F or G of this part. Any such interference shall be a violation of the attestation and subparts F and G of this part, and the Administrator may take such further actions as the Administrator considers appropriate.

Note: Federal criminal statutes prohibit certain interference with a Federal officer in the performance of official duties. 18 U.S.C. 111 and 18 U.S.C. 1114.

(d)(1) An employer subject to subparts F and G of this part shall at all times cooperate in administrative and enforcement proceedings. No employer shall intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against any person because such person has:

(i) Filed a complaint or appeal under or related to section 258 of the INA (8 U.S.C. 1288) or subpart F or G of this part;

(ii) Testified or is about to testify in any proceeding under or related to section 258 of the INA (8 U.S.C. 1288) or subpart F or G of this part;

(iii) Exercised or asserted on behalf of himself or herself or others any right or protection afforded by section 258 of the INA (8 U.S.C. 1288) or subpart F or G of this part.

(iv) Consulted with an employee of a legal assistance program or an attorney on matters related to section 258 of the Act or to subpart F or G of this part or any other DOL regulation promulgated pursuant to 8 U.S.C. 1288.

(2) In the event of such intimidation or restraint as are described in this paragraph (d)(1) of this section, the conduct shall be a violation of the attestation and subparts F and G of this part, and the Administrator may take such further actions as the Administrator considers appropriate.

(e) The Administrator shall, to the extent possible under existing law, protect the confidentiality of any person who provides information to the Department in confidence in the course of an investigation or otherwise under subpart F or G of this part. However, confidentiality will not be afforded to the complainant or to information provided by the complainant.

§ _____.605 Complaints and investigative procedures.

(a) The Administrator, through an investigation, shall determine whether a basis exists to make a finding that:

(1) An attesting employer has—

(i) Failed to meet conditions attested to; or

(ii) Misrepresented a material fact in an attestation (**Note:** Federal criminal statutes provide penalties of up to $10,000 and/or imprisonment of up to 5 years for knowing and willful submission of false statements to the Federal Government. 18 U.S.C. 1001; see also 18 U.S.C. 1546.); or

(2) In the case of an employer operating under the automated vessel exception to the prohibition on utilizing alien crewmembers to perform longshore activity(ies) at a U.S. port, the employer—

(i) Is utilizing alien crewmember(s) to perform longshore activity(ies) at a port where the prevailing practice has not been to use such workers for such activity(ies); or

(ii) Is utilizing alien crewmember(s) to perform longshore activities:

(A) During a strike or lockout in the course of a labor dispute at the U.S. port; and/or

(B) With intent or design to influence an election of a bargaining representative for workers at the U.S. port; or

(3) An employer failed to comply in any other manner with the provisions of subpart F or G of this part.

(b) Any aggrieved person or organization may file a complaint of a violation of the provisions of subpart F of G of this part.

(1) No particular form of complaint is required, except that the complaint shall be written or, if oral, shall be reduced to writing by the Wage and Hour Division official who receives the complaint.

(2) The complaint shall set forth sufficient facts for the Administrator to determine—

(i) Whether, in the case of an attesting employer, there is reasonable cause to believe that particular part or parts of the attestation or regulations have been violated; or

(ii) Whether, in the case of an employer claiming the automated vessel exception, the preponderance of the evidence submitted by any interested party shows that conditions exist that would require the employer to file an attestation.

(3) The complaint may be submitted to any local Wage and Hour Division office; the addresses of such offices are found in local telephone directories. The office or person receiving such a complaint shall refer it to the office of the Wage and Hour Division administering the area in which the reported violation is alleged to have occurred.

(c) The Administrator shall determine whether there is reasonable cause to believe that the complaint warrants investigation. If the Administrator determines that the complaint fails to present reasonable cause for an investigation, the Administrator shall so notify the complainant, who may submit a new complaint, with such additional information as may be necessary. There shall be no hearing pursuant to § _____.625 for the Administrator's determination not to conduct an investigation. If the Administrator determines that an investigation on the

complaint is warranted, the investigation shall be conducted and a determination issued within 180 calendar days of the Administrator's receipt of the complaint, or later for good cause shown.

(d) In conducting an investigation, the Administrator may consider and make part of the investigation file any evidence or materials that have been compiled in any previous investigation regarding the same or a closely related matter.

(e) In conducting an investigation under an attestation, the Administrator shall take into consideration the employer's burden to provide facts and evidence to establish the matters asserted. In conducting an investigation regarding an employer's eligibility for the automated vessel exception, the Administrator shall not impose the burden of proof on the employer, but shall consider all evidence from any interested party in determining whether the employer is not eligible for the exception.

(f) In an investigation regarding the use of alien crewmembers to perform longshore activity(ies) in a U.S. port (whether by an attesting employer or by an employer claiming the automated vessel exception), the Administrator shall accept as conclusive proof a previous Departmental determination, published in the **Federal Register** pursuant to § _____.670, establishing that such use of alien crewmembers is not the prevailing practice for the activity(ies) and U.S. port at issue. The Administrator shall give appropriate weight to a previous Departmental determination published in the **Federal Register** pursuant to § _____.670, establishing that at the time of such determination, such use of alien crewmembers was the prevailing practice for the activity(ies) and U.S. port at issue.

(g) When an investigation has been conducted, the Administrator shall, within the time period specified in paragraph (c) of this section, issue a written determination as to whether a basis exists to make a finding stated in paragraph (a) of this section. The determination shall be issued and an opportunity for a hearing shall be afforded in accordance with the procedures specified in § _____.625(d) of this part.

§ _____.610 Automated vessel exception to prohibition on utilization of alien crewmember(s) to perform longshore activity(ies) at a U.S. port.

(a) The Act establishes a rebuttable presumption that the prevailing practice in U.S. ports is for automated vessels (*i.e.*, vessels equipped with automated self-unloading conveyor belts or vacuum-actuated systems) to use alien crewmembers to perform longshore activity(ies) through the use of the self-unloading equipment. An employer claiming the automated vessel exception does not have the burden of establishing eligibility for the exception.

(b) In the event of a complaint asserting that an employer claiming the automated vessel exception is not eligible for such exception, the Administrator shall determine whether the preponderance of the evidence submitted by any interested party shows that:

(1) It is not the prevailing practice at the U.S. port to use alien crewmember(s) to perform the longshore activity(ies) through the use of the self-unloading equipment; or

(2) The employer is using alien crewmembers to perform longshore activity(ies)—

(i) During a strike or lockout in the course of a labor dispute at the U.S. port; and/or

(ii) With intent or design to influence an election of a bargaining representative for workers at the U.S. port.

(c) In making the prevailing practice determination required by paragraph (b)(1) of this section, the Administrator shall determine whether, in the 12-month period preceding the date of the Administrator's receipt of the complaint, one of the following conditions existed:

(1) Over fifty percent of the automated vessels docking at the port used alien crewmembers for the activity (for purposes of this paragraph (c)(1) of this section, a vessel shall be counted each time it docks at the particular port); or

(2) Alien crewmembers made up over fifty percent of the workers who performed the activity with respect to such automated vessels.

(d) An interested party, complaining that the automated vessel exception is not applicable to a particular employer, shall provide to the Administrator evidence such as:

(1) A written summary of a survey of the experience of masters of automated vessels which entered the local port in the previous year, describing the practice in the port as to the use of alien crewmembers;

(2) A letter, affidavit, or other written statement from an appropriate local port authority regarding the use of alien crewmembers to perform the longshore activity at the port in the previous year;

(3) Written statements from collective bargaining representatives and/or shipping agents with direct knowledge of practices regarding the use of alien crewmembers at the port in the previous year.

§ _____.615 Cease and desist order.

(a) If the Administrator determines that reasonable cause exists to conduct an investigation with respect to an attestation, the complainant may request that the Administrator enter a cease and desist order against the employer against whom the complaint is lodged.

(1) The request for a cease and desist order may be filed along with the complaint, or may be filed subsequently. The request, including all accompanying documents, shall be filed in duplicate with the same Wage and Hour Division office that received the complaint.

(2) No particular form is prescribed for a request for a cease and desist order pursuant to this paragraph (a). However, any such request shall:

(i) Be dated;

(ii) Be typewritten or legibly written;

(iii) Specify the attestation provision(s) with respect to which the employer allegedly failed to comply and/or submitted misrepresentation(s) of material fact(s);

(iv) Be accompanied by evidence to substantiate the allegation(s) of noncompliance and/or misrepresentation;

(v) Be signed by the complaining party making the request or by the authorized representative of such party;

(vi) Include the address at which such complaining party or authorized representative desires to receive further communications relating thereto.

(3) Upon receipt of a request for a cease and desist order, the Administrator shall promptly notify the employer of the request. The Administrator's notice shall:

(i) Inform the employer that it may respond to the request and meet with a Wage and Hour Division official within 14 calendar days of the date of the notice;

(ii) Be served upon the employer by facsimile transmission, in person, or by certified or regular mail, at the address of the U.S. agent stated on the employer's attestation;

(iii) Be accompanied by copies of the complaint, the request for a cease and desist order, the evidence submitted by the complainant, and any evidence from other investigation(s) of the same or a closely related matter which the Administrator may incorporate into the record. (Any such evidence from other investigation(s) shall also be made available for examination by the complaining party at the Wage and

Hour Division office which issued the notice.)

(4) No particular form is prescribed for the employer's response to the complaining party's request for a cease and desist order under this paragraph (a). However, any such response shall:

(i) Be dated;

(ii) Be submitted by facsimile transmission, in person, by certified or regular mail, or by courier service to the Wage and Hour Division office which issued the notice of the request;

(iii) Be received by the appropriate Wage and Hour Division office no later than 14 calendar days from the date of the notice of the request;

(iv) Be typewritten or legibly written;

(v) Explain, in any detail desired by the employer, the employer's grounds or reasons as to why the Administrator should deny the requested cease and desist order;

(vi) Be accompanied by evidence to substantiate the employer's grounds or reasons as to why the Administrator should deny the requested cease and desist order;

(vii) Specify whether the employer desires an informal meeting with a Wage and Hour Division official;

(viii) Be signed by the employer or its authorized representative;

(ix) Include the address at which the employer or its authorized representative desires to receive further communications relating thereto, if such address is different from the address of the U.S. agent stated on the attestation.

(5) In the event the employer requests a meeting with a Wage and Hour Division official, the Administrator shall provide the employer and the complaining party, or their authorized representatives, an opportunity for such a meeting to present their views regarding the evidence and arguments submitted by the parties. This shall be an informal meeting, not subject to any procedural rules. The meeting shall be held within the 14 calendar days permitted for the employer's response to the request for the cease and desist order, and shall be held at a time and place set by the Wage and Hour Division official, who shall notify the parties.

(6) After receipt of the employer's timely response and after any informal meeting which may have been held with the parties, the Administrator shall promptly issue a written determination, either denying the request or issuing a cease and desist order. In making the determination, the Administrator shall consider all the evidence submitted, including any evidence from the same or a closely related matter which the Administrator has incorporated into the record and provided to the employer. If the Administrator determines that the complaining party's position is supported by a preponderance of the evidence submitted, the Administrator shall order that the employer cease the activities specified in the determination, until the completion of the Administrator's investigation and any subsequent proceedings pursuant to § _____.625 of this part, unless the prohibition is lifted by subsequent order of the Administrator because it is later determined that the employer's position was correct. While the cease and desist order is in effect, ETA shall suspend the subject attestation and shall not accept any subsequent attestation from the employer for the activity(ies) and U.S. port at issue.

(7) The Administrator's cease and desist order shall be served on the employer at the address of its designated U.S. based representative or at the address specified in the employer's response, by facsimile transmission, personal service, or certified mail.

(b) If the Administrator determines that reasonable cause exists to conduct an investigation with respect to a complaint that a non-attesting employer is not entitled to the automated vessel exception to the requirement for the filing of an attestation, a complaining party may request that the Administrator enter a cease and desist order against the employer against whom the complaint is lodged.

(1) The request for a cease and desist order may be filed along with the complaint, or may be filed subsequently. The request, including all accompanying documents, shall be filed in duplicate with the same Wage and Hour Division office that received the complaint.

(2) No particular form is prescribed for a request for a cease and desist order pursuant to this paragraph. However, any such request shall:

(i) Be dated;

(ii) Be typewritten or legibly written;

(iii) Specify the circumstances which allegedly require that the employer be denied the use of the automated vessel exception;

(iv) Be accompanied by evidence to substantiate the allegation(s);

(v) Be signed by the complaining party making the request or by the authorized representative of such party;

(vi) Include the address at which such complaining party or authorized representative desires to receive further communications relating thereto.

(3) Upon receipt of a request for a cease and desist order, the Administrator shall notify the employer of the request. The Administrator's notice shall:

(i) Inform the employer that it may respond to the request and meet with a Wage and Hour Division official within 14 calendar days of the date of the notice;

(ii) Be served upon the employer by facsimile transmission, in person, or by certified or regular mail, at the employer's last known address;

(iii) Be accompanied by copies of the complaint, the request for a cease and desist order, the evidence submitted by the complainant, and any evidence from other investigation(s) of the same or closely related matter which the Administrator may incorporate into the record. (Any such evidence from other investigation(s) shall also be made available for examination by the complaining party at the Wage and Hour Division office which issued the notice.)

(4) No particular form is prescribed for the employer's response to the complaining party's request for a cease and desist order under this paragraph (b). However, any such response shall:

(i) Be dated;

(ii) Be submitted by facsimile transmission, in person, by certified or regular mail, or by courier service to the Wage and Hour Division office which issued the notice of the request;

(iii) Be received by the appropriate Wage and Hour Division office no later than 14 calendar days from the date of the notice of the request;

(iv) Be typewritten or legibly written;

(v) Explain, in any detail desired by the employer, the employer's grounds or reasons a to why the Administrator should deny the requested cease and desist order;

(vi) Be accompanied by evidence to substantiate the employer's grounds or reasons as to why the Administrator should deny the requested cease and desist order;

(vii) Specify whether the employer desires an informal meeting with a Wage and Hour Division official;

(viii) Be signed by the employer or its authorized representative;

(ix) Include the address at which the employer or its authorized representative desires to receive further communications relating thereto.

(5) In the event the employer requests a meeting with a Wage and Hour Division official, the Administrator shall provide the employer and the complaining party, or their authorized representatives, an opportunity for such a meeting to present their views regarding the evidence and arguments submitted by the parties. This shall be

an informal meeting, not subject to any procedural rules. The meeting shall be held within the 14 calendar days permitted for the employer's response to the request for the cease and desist order, and shall be held at a time and place set by the Wage and Hour Division official, who shall notify the parties.

(6) After receipt of the employer's timely response and after any informal meeting which may have been held with the parties, the Administrator shall promptly issue a written determination, either denying the request or issuing a cease and desist order. If the Administrator determines that the complaining party's position is supported by a preponderance of the evidence submitted, the Administrator shall order that the employer cease the use of alien crewmembers to perform the longshore activity(ies) specified in the order. In making the determination, the Administrator shall consider all the evidence submitted, including any evidence from the same or a closely related matter which the Administrator has incorporated into the record and provided to the employer. The order shall remain in effect until the completion of the investigation and any subsequent hearing proceedings pursuant to § _____.625 of this part, unless the employer files and maintains on file with ETA an attestation pursuant to § _____.520 of this part or unless the prohibition is lifted by subsequent order of the Administrator because it is later determined that the employer's position was correct.

(7) The Administrator's cease and desist order shall be served on the employer or its designated representative by facsimile transmission, personal service, or by certified mail at the address specified in the employer's response or, if no such address was specified, at the employer's last known address.

§ _____.620 Civil money penalties and other remedies.

(a) The Administrator may assess a civil money penalty not to exceed $5,000 for each alien crewmember with respect to whom there has been a violation of the attestation or subpart F or G of this part. The Administrator may also impose appropriate remedy(ies).

(b) In determining the amount of civil money penalty to be assessed, the Administrator shall consider the type of violation committed and other relevant factors. The factors which may be considered include, but are not limited to, the following:

(1) Previous history of violation, or violations, by the employer under the Act and subpart F or G of this part;

(2) The number of workers affected by the violation or violations;

(3) The gravity of the violation or violations;

(4) Efforts made by the violator in good faith to comply with the provisions of 8 U.S.C. 1288(c) and subparts F and G of this part;

(5) The violator's explanation of the violation or violations;

(6) The violator's commitment to future compliance; and

(7) The extent to which the violator achieved a financial gain due to the violation, or the potential financial loss, potential injury or adverse effect with respect to other parties.

(c) The civil money penalty, and any other remedy determined by the Administrator to be appropriate, are immediately due for payment or performance upon the assessment by the Administrator, or the decision by an administrative law judge where a hearing is requested, or the decision by the Secretary where review is granted. The employer shall remit the amount of the civil money penalty, by certified check or money order made payable to the order of "Wage and Hour Division, Labor." The remittance shall be delivered or mailed to the Wage and Hour Division office for the area in which the violations occurred. The performance of any other remedy prescribed by the Administrator shall follow procedures established by the Administrator. The employer's failure to pay the civil money penalty, or to perform any other remedy prescribed by the Administrator, shall result in the rejection by ETA of any future attestation submitted by the employer, until such payment or performance is accomplished.

§ _____.625 Written notice, service and Federal Register publication of Administrator's determination.

(a) The Administrator's determination, issued pursuant to § _____.605 of this part, shall be served on the complainant, the employer, and other known interested parties by personal service or by certified mail at the parties' last known addresses. Where service by certified mail is not accepted by the party, the Administrator may exercise discretion to serve the determination by regular mail.

(b) Where the Administrator determines the prevailing practice regarding the use of alien crewmember(s) to perform longshore activity(ies) in a U.S. port (whether the Administrator's investigation involves an employer operating under an attestation, or under the automated vessel exception), the Administrator shall, simultaneously with issuance of the determination, publish in the **Federal Register** a notice of the determination. The notice shall identify the activity(ies), the U.S. port, and the prevailing practice regarding the use of alien crewmembers. The notice shall also inform interested parties that they may request a hearing pursuant to § _____.630 of this part, within 15 days of the date of the determination.

(c) The Administrator shall file with the Chief Administrative Law Judge, U.S. Department of Labor, a copy of the complaint and the Administrator's determination.

(d) The Administrator's written determination required by § _____.605 of this part shall:

(1) Set forth the determination of the Administrator and the reason or reasons therefor, and in the case of a finding of violation(s) by an attesting employer, prescribe any remedies, including the amount of any civil money penalties assessed and the reason therefor, and/or any other remedies required for compliance with the employer's attestation.

(2) Inform the interested parties that they may request a hearing pursuant to § _____.625 of this part.

(3) Inform the interested parties that in the absence of a timely request for a hearing, received by the Chief Administrative Law Judge within 15 calendar days of the date of determination, the determination of the Administrator shall become final and not appealable.

(4) Set forth in the procedure for requesting a hearing, and give the address of the Chief Administrative Law Judge (with whom the request must be filed) and the representative(s) of the Solicitor of Labor (upon whom copies of the request must be served).

(5) Inform the parties that, pursuant to § _____.665, the Administrator shall notify ETA and the Attorney General of the occurrence of a violation by the attesting employer or of the non-attesting employer's ineligibility for the automated vessel exception.

§ _____.630 Request for hearing.

(a) Any interested party desiring to request an administrative hearing on a determination issued pursuant to §§ _____.605 and _____.625 of this part shall make such request in writing to the Chief Administrative Law Judge at the address stated in the notice of determination.

(b) Interested parties may request a hearing in the following circumstances:

(1) The complainant or any other interested party may request a hearing where the Administrator determines, after investigation, that there is no basis for a finding that an attesting employer has committed violation(s) or that the employer is eligible for the automated vessel exception. In such a proceeding, the requesting party and the employer shall be parties; the Administrator may intervene as a party or appear as *amicus curiae* at any time in the proceeding, at the Administrator's discretion.

(2) The employer or any other interested party may request a hearing where the Administrator determines, after investigation, that there is a basis for a finding that an attesting employer has committed violation(s) or that a non-attesting employer is not eligible for the automated vessel exception. In such a proceeding, the Administrator and the employer shall be parties.

(c) No particular form is prescribed for any request for hearing permitted by this section. However, any such request shall:

(1) Be dated;

(2) Be typewritten or legibly written;

(3) Specify the issue or issues stated in the notice of determination giving rise to such request;

(4) State the specific reason or reasons why the party requesting the hearing believes such determination is in error;

(5) Be signed by the party making the request or by an authorized representative of such party; and

(6) Include the address at which such party or authorized representative desires to receive further communications relating thereto.

(d) The request for such hearing must be received by the Chief Administrative Law Judge, at the address stated in the Administrator's notice of determination, no later than 15 calendar days after the date of the determination. An interested party that fails to meet this 15-day deadline for requesting a hearing may thereafter participate in the proceedings only by consent of the administrative law judge, either through intervention as a party pursuant to 29 CFR 18.10 (b) through (d) or through participation as an *amicus curiae* pursuant to 18 CFR 18.12.

(e) The request may be filed in person, by facsimile transmission, by certified or regular mail, or by courier service. For the requesting party's protection, if the request is filed by mail, it should be certified mail. If the request is filed by facsimile transmission, the original of the request, signed by the requestor or authorized representative, shall be filed within ten days.

(f) Copies of the request for a hearing shall be sent by the requestor to the Wage and Hour Division official who issued the Administrator's notice of determination, to the representative(s) of the Solicitor of Labor identified in the notice of determination, and to all known interested parties.

§ _____.635 Rules of practice for administrative law judge proceedings.

(a) Except as specifically provided in this subpart, and to the extent they do not conflict with the provisions of this subpart, the "Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges" established by the Secretary at 29 CFR part 18 shall apply to administrative proceedings under this subpart.

(b) As provided in the Administrative Procedure Act, 5 U.S.C. 556, any oral or documentary evidence may be received in proceedings under this part. The Federal Rules of Evidence and subpart B of the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges (29 CFR part 18, subpart B) shall not apply, but principles designed to ensure production of relevant and probative evidence shall guide the admission of evidence. The administrative law judge may exclude evidence which is immaterial, irrelevant, or unduly repetitive.

§ _____.640 Service and computation of time.

(a) Under this subpart, a party may serve any pleading or document by regular mail. Service on a party is complete upon mailing to the last known address or, in the case of the attesting employer, to the employer's designated representative in the U.S. No additional time for filing or response is authorized where service is by mail. In the interest of expeditious proceedings, the administrative law judge may direct the parties to serve pleadings or documents by a method other than regular mail.

(b) Two (2) copies of all pleadings and other documents in any administrative law judge proceeding shall be served on the attorneys for the Administrator. One copy shall be served on the Associate Solicitor, Division of Fair Labor Standards, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, and one copy on the attorney representing the Administrator in the proceeding.

(c) Time will be computed beginning with the day following the action and includes the last day of the period unless it is a Saturday, Sunday, or federally-observed holiday, in which case the time period includes the next business day.

§ _____.645 Administrative law judge proceedings.

(a) Upon receipt of a timely request for a hearing filed pursuant to and in accordance with § _____.630 of this part, the Chief Administrative Law Judge shall promptly appoint an administrative law judge to hear the case.

(b) Within seven calendar days following the assignment of the case, the administrative law judge shall notify all interested parties of the date, time and place of the hearing. All parties shall be given at least fourteen calendar days notice of such hearing.

(c) The date of the hearing shall be not more than 60 calendar days from the date of the Adminstrator's determination. Because of the time constraints imposed by the Act, no requests for postponement shall be granted except for compelling reasons. Even if such reasons are shown, no extension of the hearing date beyond 60 days from the date of the Administrator's determination shall be granted except by consent of all the parties to the proceeding.

(d) The Administrative Law Judge may prescribe a schedule by which the parties are permitted to file a prehearing brief or other written statement of fact or law. Any such brief or statement shall be served upon each other party in accordance with § _____.640 of this part. Posthearing briefs will not be permitted except at the request of the administrative law judge. When permitted, any such brief shall be limited to the issue or issues specified by the administrative law judge, shall be due within the time prescribed by the administrative law judge, and shall be served on each other party in accordance with _____.640 of this part.

(e) In reaching a decision, the administrative law judge shall, in accordance with the Act, impose the following burden of proof—

(1) The attesting employer shall have the burden of producing facts and evidence to establish the matters required by the attestation at issue;

(2) The burden of proof as to the applicability of the automated vessel exception shall be on the party to the hearing who is asserting that the employer is not eligible for the exception.

(f) The administrative law judge proceeding shall not be an appeal or

review of the Administrator's ruling on a request for a cease and desist order pursuant to § _____.615.

§ _____.650 Decision and order of administrative law judge.

(a) Within 90 calendar days after receipt of the transcript of the hearing, the administrative law judge shall issue a decision.

(b) The decision of the administrative law judge shall include a statement of findings and conclusions, with reasons and basis therefor, upon each material issue presented on the record. The decision shall also include an appropriate order which may affirm, deny, reverse, or modify, in whole or in part, the determination of the Administrator; the reason or reasons for such order shall be stated in the decision. The administrative law judge shall not render determinations as to the legality of a regulatory provision or the constitutionality of a statutory provision.

(c) The decision shall be served on all parties in person or by certified or regular mail.

§ _____.655 Secretary's review of administrative law judge's decision.

(a) The Administrator or any interested party desiring review of the decision and order of an administrative law judge shall petition the Secretary to review the decision and order. To be effective, such petition shall be received by the Secretary within 30 calendar days of the date of the decision and order. Copies of the petition shall be served on all parties and on the administrative law judge.

(b) No particular form is prescribed for any petition for Secretary's review permitted by this subpart. However, any such petition shall:

(1) Be dated;

(2) Be typewritten or legibly written;

(3) Specify the issue or issues stated in the administrative law judge decision and order giving rise to such petition;

(4) State the specific reason or reasons why the party petitioning for review believes such decision and order are in error;

(5) Be signed by the party filing the petition or by an authorized representative of such party;

(6) Include the address at which such party or authorized representative desires to receive further communications relating thereto; and

(7) Attach copies of the administrative law judge's decision and order, and any other record documents which would assist the Secretary in determining whether review is warranted.

(c) Whenever the Secretary determines to review the decision and order of an administrative law judge, a notice of the Secretary's determination shall be served upon the administrative law judge and upon all parties to the proceeding within 30 calendar days after the Secretary's receipt of the petition for review.

(d) Upon receipt of the Secretary's notice, the Office of Administrative Law Judges shall within fifteen calendar days forward the complete hearing record to the Secretary.

(e) The Secretary's notice may specify:

(1) The issue or issues to be reviewed;

(2) The form in which submissions shall be made by the parties (*e.g.*, briefs);

(3) The time within which such submissions shall be made.

(f) All documents submitted to the Secretary shall be filed with the Secretary of Labor, U.S. Department of Labor, Washington, DC 20210, Attention: Executive Director, Office of Administrative Appeals, room S-4309. An original and two copies of all documents shall be filed. Documents are not deemed filed with the Secretary until actually received by the Secretary. All documents, including documents filed by mail, shall be received by the Secretary either on or before the due date.

(g) Copies of all documents filed with the Secretary shall be served upon all other parties involved in the proceeding. Service upon the Administrator shall be in accordance with § _____.640(b) of this part.

(h) The Secretary's final decision shall be issued within 180 calendar days from the date of the notice of intent to review. The Secretary's decision shall be served upon all parties and the administrative law judge.

(i) Upon issuance of the Secretary's decision, the Secretary shall transmit the entire record to the Chief Administrative Law Judge for custody pursuant to § _____.660 of this part.

§ _____.660 Administrative record.

The official record of every completed administrative hearing procedure provided by subparts F and G of this part shall be maintained and filed under the custody and control of the Chief Administrative Law Judge. Upon receipt of a complaint seeking review of the final agency action in a United States District Court, the Chief Administrative Law Judge shall certify the official record and shall transmit such record to the clerk of the court.

§ _____.665 Notice to the Attorney General and the Employment and Training Administration.

(a) The Administrator shall promptly notify the Attorney General and ETA of the entry of a cease and desist order pursuant to § _____.615 of this part. The order shall remain in effect until the completion of the Administrator's investigation and any subsequent proceedings pursuant to § _____.630 of this part, unless the Administrator notifies the Attorney General and ETA of the entry of a subsequent order lifting the prohibition.

(1) The Attorney General, upon receipt of notification from the Administrator that a cease and desist order has been entered against an employer:

(i) Shall not permit the vessels owned or chartered by the attesting employer to use alien crewmembers to perform the longshore activity(ies) at the port specified in the cease and desist order;

(ii) Shall, in the case of an employer seeking to utilize the automated vessel exception, require that such employer not use alien crewmembers to perform the longshore activity(ies) at the port specified in the cease and desist order, without having on file with ETA an attestation pursuant to § _____.520 of this part.

(2) ETA, upon receipt of the Administrator's notice shall, in the case of an attesting employer, suspend the employer's attestation for the activity(ies) and port specified in the cease and desist order.

(b) The Administrator shall notify the Attorney General and ETA of the final determination of a violation by an attesting employer or of the ineligibility of an employer for the automated vessel exception, upon the earliest of the following events:

(1) Where the Administrator determines that there is a basis for a finding of violation by an attesting employer or a finding of nonapplicability of the automated vessel exception, and no timely request for hearing is made pursuant to § _____.630 of this part;

(2) Where, after a hearing, the administrative law judge issues a decision and order finding a violation by an attesting employer or finding inapplicable the automated vessel exception; or

(3) Where the administrative law judge finds that there was no violation by an attesting employer or that the automated vessel exception does apply, and the Secretary, upon review, issues a decision pursuant to § _____.655 of this part, holding that a violation was

committed by an attesting employer or holding that the automated vessel exception does not apply.

(c) The Attorney General, upon receipt of notification from the Administrator pursuant to paragraph (b) of this section:

(1) Shall not permit the vessels owned or chartered by the attesting employer to enter any port of the U.S. for a period of up to one year;

(2) Shall, in the case of an employer determined to be ineligible for the automated vessel exception, thereafter require that such employer not use alien crewmember(s) to perform the longshore activity(ies) at the specified port without having on file with ETA an attestation pursuant to § _____.520 of this part;

(3) Shall, in the event that the Administrator's notice constitutes a conclusive determination (pursuant to § _____.670) that the prevailing practice at a particular U.S. port does not permit the use of nonimmigrant alien crewmembers for particular longshore activity(ies), thereafter permit no employer to use alien crewmembers for the particular longshore activity(ies) at that port.

(d) ETA, upon receipt of the Administrator's notice pursuant to paragraph (b) of this section:

(1) Shall, in the case of an attesting employer, suspend the employer's attestation for the port at issue and for any other U.S. port, and shall not accept for filing any attestation submitted by the employer for a period of 12 months or for a shorter period if such is specified for that employer by the Attorney General;

(2) Shall, if the Administrator's notice constitutes a conclusive determination (pursuant to § _____.670) that the prevailing practice at a particular U.S. port does not permit the use of alien crewmembers for the longshore activity(ies), thereafter accept no attestation from any employer for the performance of the activity(ies) at that port, and shall invalidate any current attestation for any employer for the performance of the activity(ies) at that port.

§ _____.670 Federal Register notice of determination of prevailing practice.

(a) Pursuant to § _____.625(b), the Administrator shall publish in the **Federal Register** a notice of the Administrator's determination of any investigation regarding the prevailing practice for the use of alien crewmembers for particular longshore activity(ies) in a particular U.S. port (whether under an attestation or under the automated vessel exception). Where the Administrator has determined that the prevailing practice in that U.S. port does not permit such use of alien crewmembers, and no timely request for a hearing is filed pursuant to § _____.630, the Administrator's determination shall be the conclusive determination for purposes of the Act and subparts F and G of this part; the Attorney General and ETA shall, upon notice from the Administrator, take the actions specified in § _____.665. Where the Administrator has determined that the prevailing practice in that U.S. port at the time of the investigation permits such use of alien crewmembers, the Administrator shall, in any subsequent investigation, give that determination appropriate weight, unless the determination is reversed in proceedings under §§ _____.630 or § _____.655.

(b) Where an interested party, pursuant to § _____.630, requests a hearing on the Administrator's determination, the Administrator shall, upon the issuance of the decision of the administrative law judge, publish in the **Federal Register** a notice of the judge's decision as to the prevailing practice for the longshore activity(ies) and U.S. port at issue, if the Administrative Law Judge:

(1) Reversed the determination of the Administrator published in the **Federal Register** pursuant to paragraph (a) of this section; or

(2) Determines that the prevailing practice for the particular activity in the port does not permit the use of alien crewmembers.

(c) If the administrative law judge determines that the prevailing practice in that port does not permit such use of alien crewmembers, the judge's decision shall be the conclusive determination for purposes of the Act and subparts F and G of this part (unless and until reversed by the Secretary on discretionary review pursuant to § _____.655). The Attorney General and ETA shall upon notice from the Administrator, take the actions specified in § _____.665.

(d) In the event that the Secretary, upon discretionary review pursuant to § _____.655, issues a decision that reverses the administrative law judge on a matter on which the Administrator has published notices in the **Federal Register** pursuant to paragraphs (a) and (b) of this section, the Administrator shall publish in the **Federal Register** a notice of the Secretary's decision and shall notify the Attorney General and ETA.

(1) Where the Secretary reverses the administrative law judge and determines that, contrary to the judge's decision, the prevailing practice for the longshore activity(ies) in the U.S. port at issue does not permit the use of alien crewmembers, the Secretary's decision shall be the conclusive determination for purposes of the Act and subparts F and G of this part. Upon notice from the Administrator, the Attorney General and ETA shall take the actions specified in § _____.655.

(2) Where the Secretary reverses the administrative law judge and determines that, contrary to the judge's decision, the use of alien crewmembers is permitted by the prevailing practice for the longshore activity(ies) in the U.S. port at issue, the judge's decision shall no longer have the conclusive effect specified in paragraph (b) of this section. Upon notice from the Administrator, the Attorney General and ETA shall cease the actions specified in § _____.665.

§ _____.675 Non-applicability of the Equal Access to Justice Act.

A proceeding under subpart G of this part is not subject to the Equal Access to Justice Act, as amended, 5 U.S.C. 504. In such a proceeding, the administrative law judge shall have no authority to award attorney fees and/or other litigation expenses pursuant to the provisions of the Equal Access to Justice Act.

Adoption of the Joint Final Rule

The agency specific adoption of the joint final rule, which appears at the end of the common preamble, appears below:

TITLE 20—EMPLOYEES' BENEFITS

CHAPTER V—EMPLOYMENT AND TRAINING ADMINISTRATION, DEPARTMENT OF LABOR

Accordingly, the interim final rule published at 56 FR 24648 (May 30, 1991) is adopted as the final rule, and chapter V of title 20, Code of Federal Regulations, is further amended as follows:

PART 655—TEMPORARY EMPLOYMENT OF ALIENS IN THE UNITED STATES

1. The Authority citation for part 655 is revised to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(H)(i) and (ii), 1182(m) and (n), 1184, 1188, and 1288(c); 29 U.S.C. 49 *et seq.*; sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2103 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); and 8 CFR 214.2(h)(4)(i).

Section 655.00 issued under 8 U.S.C. 1101(a)(15)(H)(ii), 1184, and 1188; 29 U.S.C. 49 *et seq.*; and 8 CFR 214.2(h)(4)(i).

Subparts A and C issued under 8 U.S.C. 1101(a)(15)(H)(ii)(b) and 1184; 29 U.S.C. 49 *et seq.*; and 8 CFR 214.2(h)(4)(i).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184, and 1188; and 29 U.S.C. 49 *et seq.*

Subparts D and E issued under 8 U.S.C. 1101(a)(15)(H)(i)(a), 1182(m), and 1184; 29 U.S.C. 49 *et seq.*; and sec. 3(c)(1), Pub. L. 101-238, 103 Stat. 2099, 2103 (8 U.S.C. 1182 note).

Subparts F and G issued under 8 U.S.C. 1184 and 1288(c); and 29 U.S.C. 49 *et seq.*

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b), 1182(n), and 1184; 29 U.S.C. 49 *et seq.*; and sec. 303(a)(8), Pub. L. 102-232, 105 Stat. 1733, 1748 (8 U.S.C. 1182 note).

Subparts J and K issued under 29 U.S.C. 49 *et seq.*; and sec. 221(a), Pub. L. 101-649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note).

2. Part 655 is amended by revising Subparts F and G to read as set forth in the joint final rule above in this document.

Subpart F—Attestations by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports

Sec.
655.500 Purpose, procedure and applicability of Subparts F and G of this part.
655.501 Overview of responsibilities.
655.502 Definitions.
655.510 Employer attestations.
655.520 Special provision regarding automated vessels.
655.550 Public access.

Appendix A to Subpart F—U.S. Seaports

Subpart G—Enforcement of the Limitations Imposed on Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports

Sec.
655.600 Enforcement authority of Administrator, Wage and Hour Division.
655.605 Complaints and investigative procedures.
655.610 Automated vessel exception to prohibition on utilization of alien crewmembers to perform longshore activity(ies) at a U.S. port.
655.615 Cease and desist order.
655.620 Civil money penalties and other remedies.
655.625 Written notice, service and **Federal Register** publication of Administrator's determination.
655.630 Request for hearing.
655.635 Rules of practice for administrative law judge proceedings.
655.640 Service and computation of time.
655.645 Administrative law judge proceedings.
655.650 Decision and order of administrative law judge.
655.655 Secretary's review of administrative law judge's decision.
655.660 Administrative record.
655.665 Notice to the Attorney General and the Employment and Training Administration.
655.670 **Federal Register** notice of determination of prevailing practice.
655.675 Non-applicability of the Equal Access to Justice Act.

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(H) (i) and (ii), 1182 (m) and (n), 1184, 1188, and 1288(c); 29 U.S.C. 49 *et seq.*; sec. 3(c)(1), Pub. L. 101-238, 103 Stat. 2099, 2103 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101-649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); and 8 CFR 214.2(h)(4)(i).

Section 655.00 issued under 8 U.S.C. 1101(a)(15)(H)(ii), 1184, and 1188; 29 U.S.C. 49 *et seq.*; and 8 CFR 214.2(h)(4)(i).

Subparts A and C issued under 8 U.S.C. 1101(a)(15)(H)(ii)(b) and 1184; 29 U.S.C. 49 *et seq.*; and 8 CFR 214.2(h)(4)(i).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184 and 1188; 29 U.S.C. 49 *et seq.*

Subparts D and E issued under 8 U.S.C. 1101(a)(15)(H)(i)(a), 1182(m), and 1184; 29 U.S.C. 49 *et seq.*; and sec. 3(c)(1), Pub. L. 101-238, 103 Stat. 2099, 2103 (8 U.S.C. 1182 note).

Subparts F and G issued under 8 U.S.C. 1184 and 1288(c); and 29 U.S.C. 49 *et seq.*

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b), 1182(n), and 1184; 29 U.S.C. 49 *et seq.*; and sec. 303(a)(8), Pub. L. 102-232, 105 Stat. 1733, 1748 (8 U.S.C. 1182 note).

Subparts J and K issued under 29 U.S.C. 49 *et seq.*; and sec. 221(a), Pub. L. 101-649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note).

Signed at Washington, DC, this 1st day of September, 1992.

Roberts T. Jones,

Assistant Secretary for Employment and Training.

Cari M. Dominguez,

Assistant Secretary for Employment Standards.

Lynn Martin,

Secretary of Labor.

TITLE 29—LABOR

CHAPTER V—WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR

Accordingly, the interim final rule published at 56 FR 24648 (May 30, 1991) is adopted as the final rule, and part 506 of title 29, Code of Federal Regulations, is further amended by revising subparts F and G to read as set forth in the joint final rule above in this document:

PART 506—ATTESTATIONS BY EMPLOYERS USING ALIEN CREWMEMBERS FOR LONGSHORE ACTIVITIES IN U.S. PORTS

Subparts A, B, C, D, and E—[Reserved]

Subpart F—Attestations by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports

Sec.
506.500 Purpose, procedure and applicability of subparts F and G of this part.
506.501 Overview of responsibilities.
506.502 Definitions.
506.510 Employer attestations.
506.520 Special provisions regarding automated vessels.
506.550 Public access.

Appendix A to Subpart F—U.S. Seaports

Subpart G—Enforcement of the Limitations Imposed on Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports

Sec.
506.600 Enforcement authority of Administrator, Wage and Hour Division.
506.605 Complaints and investigative procedures.
506.610 Automated vessel exception to prohibition on utilization of alien crewmembers to perform longshore activity(ies) at a U.S. port.
506.615 Cease and desist order.
506.620 Civil money penalties and other remedies.
506.625 Written notice, service and **Federal Register** publication of Administrator's determination.
506.630 Request for hearing.
506.635 Rules of practice for administrative law judge proceedings.
506.640 Service and computation of time.
506.645 Administrative law judge proceedings.
506.650 Decision and order of administrative law judge.
506.655 Secretary's review of administrative law judge's decision.
506.660 Administrative record.
506.665 Notice to the Attorney General and the Employment and Training Administration.
506.670 **Federal Register** notice of determination of prevailing practice.
506.675 Non-applicability of the Equal Access to Justice Act.

Authority: 8 U.S.C. 1288(c).

Signed at Washington, DC, this 1st day of September, 1992.

Roberts T. Jones,

Assistant Secretary for Employment and Training.

Cari M. Dominguez,

Assistant Secretary for Employment Standards.

Lynn Martin,

Secretary of Labor.

BILLING CODES 4510-30-M and 4510-27-M

Appendix—Form ETA 9033

Note: This appendix will not appear in the Code of Federal Regulations.

Attestation by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports

U.S. Department of Labor
Employment and Training Administration
U.S. Employment Service

1. Full Legal Name of Company	5. Name of U.S. Agent	OMB Approval No. 1205-0309 Expires: 07/31/95
2. Headquarters Address (No., St., City, Town, State, ZIP Code, Country)	6. U.S. Business Address of Agent (No., St., City, State, ZIP Code)	
3. Telephone (Area Code and Number)	7. Telephone (Area Code and Number)	
4. Name of Chief Executive Officer	Fax (Area Code and Number)	

8. EMPLOYER ATTESTATION

☐ There is no collective bargaining agreement in effect in the port covering at least 30 percent of the longshore workers.

(If accompanying documentation supporting each one of the following three attestation elements (8(a), 8(b), and 8(c)) is not attached, attestation will be deemed incomplete and will be returned without action.)

☐ (a) Alien crewmembers will be used beginning _____ (Month/Day/Year) to perform the following activities of longshore work at the port of _____ (Name of Port, City, and State), and it is the prevailing practice to use alien crewmembers for each of the following activities to be performed at this port, i.e., those marked "Yes" **(a "Yes" or "No" box must be checked for each activity):**

Yes	No		
☐	☐	(i)	Loading cargo
☐	☐	(ii)	Unloading cargo
☐	☐	(iii)	Operation of cargo-related equipment
☐	☐	(iv)	Handling of mooring lines
☐		(v)	Check this box if claiming an unanticipated emergency **(include documentation to support claim).**

☐ (b) On the date this attestation is signed and submitted, there is not a strike or lockout in the course of a labor dispute at this port and, during the period of this attestation's validity, I will not use alien crewmembers in my employ to perform any longshore activity during a strike or lockout; and the employment of such aliens is not intended or designed to influence an election for a bargaining representative for longshore workers at the port.

☐ (c) As of this date, notice of this attestation has been provided to longshore workers in the port by (check appropriate box):

☐ (i) Notice of this filing has been provided to the bargaining representative of longshore workers in the port (include copy of actual notice); or

☐ (ii) Where there is no such bargaining representative, notice of this filing has been provided to the port authority, and to longshore workers employed at the port through posting in conspicuous locations (include copy of actual notice posted).

9. DECLARATION OF EMPLOYER:

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the information provided on this form and accompanying documentation is true and correct. In addition, I declare that I will comply with the Department of Labor regulations governing this program and, in particular, that I will make this attestation, supporting documentation, and other records, files and documents available to officials of the Department of Labor, upon such official's request, during any investigation under this attestation or the Immigration and Nationality Act.

_____ Signature of Chief Executive Officer (or Such Officer's U.S. Agent or Designee

_____ Date

FOR U.S. GOVERNMENT AGENCY USE ONLY: By virtue of my signature below, I acknowledge that this attestation is accepted for filing on _____ (date) and will be valid for the longshore activities herein attested to from _____ (beginning date) through _____ (date twelve months from beginning date).

_____ Signature of Authorized DOL Official

_____ ETA Case No.

Subsequent DOL action: Suspended _____ Invalidated _____ Withdrawn _____

The Department of Labor is not the guarantor of the accuracy, truthfulness or adequacy of an attestation accepted for filing.

Public reporting burden for this collection of information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of IRM Policy, Department of Labor, Room N1301, 200 Constitution Avenue, N.W., Washington, D.C. 20210; and to the Office of Management and Budget, Paperwork Reduction Project (1205-0309) Washington, D.C. 20503.

DO NOT SEND THE COMPLETED FORM TO EITHER OF THESE OFFICES

ETA 9033 (Aug. 1992)

INSTRUCTIONS FOR COMPLETING FORM ETA 9033
ATTESTATION BY EMPLOYERS USING ALIEN CREWMEMBERS
FOR LONGSHORE ACTIVITIES AT U.S. PORTS

IMPORTANT: READ CAREFULLY BEFORE COMPLETING FORM

An employer may file an attestation only when there is no collective bargaining agreement in effect in the local port covering at least 30 percent of the number of individuals employed in performing longshore work. Submit the completed original Form ETA 9033 along with two copies of the form and two sets of accompanying documentation. Attestations must be received by the Employment and Training Administration, Alien Certification Unit, no later than 14 days prior to the first performance of the longshore activity unless the employer is claiming an unanticipated emergency. Attestations for ports located on the Atlantic Coast, Puerto Rico, and the Virgin Islands, must be submitted to the Boston Regional Office at One Congress Street, 10th Floor, Boston, Massachusetts 02114; attestations for ports located on the Pacific Coast, Alaska, Hawaii, and Guam, must be submitted to the Seattle Regional Office at 1111 3rd Avenue, Suite 900, Seattle, Washington 98101; attestations for ports located on the Gulf of Mexico must be submitted to the Dallas Regional Office at Federal Building, Room 317, 525 Griffin Street, Dallas, Texas 75202; and attestations for ports located on the Great Lakes must be submitted to the Chicago Regional Office at 230 S. Dearborn Street, 6th Floor, Chicago, Illinois 60604.

To knowingly furnish any false information in the preparation of this form and any supporting documentation thereto, or to aid, abet or counsel another to do so is a felony, punishable by $10,000 fine or five years in the penitentiary, or both (18 U.S.C. 1001). Other penalties apply as well to fraud and misuse of this immigration document (18 U.S.C. 1546) and to perjury with respect to this form (18 U.S.C. 1546 and 1621).

Print legibly in ink or use a typewriter. Sign and date one form in original signature. Citations below to "regulations" are citations to the identical provisions at 20 CFR Part 655, Subparts F and G, and at 29 CFR Part 506, Subparts F and G.

Item 1. Name of Company. Enter full legal name of business, firm or organization, or, if an individual, enter name used for legal purposes on documents.

Item 2. Address of Company. Self Explanatory.

Item 3. Telephone Number. Include area code or international calling code.

Item 4. Name of Chief Executive Officer. Self explanatory.

Item 5. Name of U.S. Agent. Self explanatory.

Item 6. Address of Agent. This address must be in the U.S.

Item 7. Telephone Number. Include fax number, if available.

Item 8. Employer Attestation. In order to be eligible to use alien crewmembers for longshore activities at a U.S. port, an employer must attest that there is no collective bargaining agreement in effect in the local port covering at least 30 percent of individuals employed in performing longshore work. An employer is not required to submit documentation to support this condition. An employer must also attest to the conditions listed in elements (a) through (c). The attestation will only be accepted for filing if the required documentation supporting these elements is attached to the Form ETA 9033. See § ___ .510(d) through (f) of the regulations for guidance on the documentation that must be attached to the Form ETA 9033 to support each of the elements.

Item 8(a). Prevailing Practice. The employer must attest that it is the prevailing practice to use alien crewmembers for a particular activity of longshore work at the U.S. port where the employer intends to employ alien crewmembers. The employer must include the date of the first performance of the longshore activity. If claiming an unanticipated emergency, the appropriate box must be checked. The employer must also include the name of the port, and the city and state in which it is located. Longshore work is defined as activity relating to (1) loading of cargo, (2) unloading of cargo, (3) operation of cargo-related equipment, and (4) handling of mooring lines on the dock when a vessel is made fast or let go. For each activity, the employer must check either the "Yes" or "No" box, depending on whether the employer intends to perform such activity. The employer must attach documentation to support each activity it intends to perform under this attestation element. See § ___ .510(d) for detailed explanation.

Item 8(b). No Strike or Lockout; No Intention or Design to Influence Bargaining Representative Election. The employer must attest that, at the time of submitting the attestation, there is not a strike or lockout in the course of a labor dispute covering the employer's activity, and that it will not use alien crewmembers during a strike or lockout after filing the attestation. The employer must also attest that the employment of such aliens is not intended or designed to influence an election for a bargaining representative for workers in the local port. The employer must attach documentation to support this attestation element. See § ___.510(e) for detailed explanation.

Item 8(c). Notice of filing. The employer must attest that at the time of filing the attestation, notice of filing has been provided to the bargaining representative of the longshore workers in the local port, or, where there is no such bargaining representative, notice of the filing has been provided to longshore workers employed at the local port through posting in conspicuous locations and through other appropriate means. The employer must check the appropriate box under 8(c). The employer must attach documentation to support this attestation element. See § ___.510(f) for detailed explanation.

Item 9. Declaration of Employer. One copy of this form must bear the original signature of the chief executive officer (or the chief executive officer's designee) unless filing by facsimile transmission. See § ___ .510(c)(1) of the regulations if filing by facsimile transmission. By signing this form, the chief executive officer is attesting to the conditions listed in items 8(a) through (c) and to the accuracy of the information provided elsewhere on the form and in the supporting documentation. False statements are subject to Federal criminal penalties, as stated above.

If the attestation bears the necessary entries of information and documentation, the Department of Labor may accept the attestation for filing and shall document such acceptance on each of the three Form ETA 9033's submitted. A copy of the attestation form indicating the Department's acceptance, or notification of nonacceptance, will be returned to the employer. The employer may then use alien crewmembers for longshore work at the port for which this attestation has been accepted in accordance with Immigration and Naturalization Service regulations, unless the Department subsequently acts to suspend or invalidate the attestation.

A copy of this attestation, along with accompanying documentation, will be available for public inspection at the Division of Foreign Labor Certifications, United States Employment Service, Room N-4456, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

federal register

Tuesday
September 8, 1992

Part IV

Department of Education

Research in Education of Individuals With Disabilities Program; Technology, Educational Media, and Materials; Notice

DEPARTMENT OF EDUCATION

Research in Education of Individuals With Disabilities Program; Technology, Educational Media, and Materials for Individuals With Disabilities Program

AGENCY: Department of Education.

ACTION: Notice of proposed funding priorities for fiscal years 1993 and 1994.

SUMMARY: The Secretary proposes priorities for fiscal years 1993 and 1994 for two programs under the Office of Special Education and Rehabilitative Services. To ensure wide and effective use of program funds, the Secretary proposes to select from among these program priorities in order to fund the areas of greatest need for fiscal years 1993 and 1994. A separate competition will be established for each priority that is selected.

DATES: Comments must be received on or before October 8, 1992 for the Technology, Educational Media, and Materials for Individuals with Disabilities Program; and November 9, 1992 for the Research in Education of Individuals with Disabilities Program.

ADDRESSES: All comments concerning these proposed priorities should be addressed to: Linda Glidewell, U.S. Department of Education, 400 Maryland Avenue SW., room 3095, Switzer Building, Washington, DC 20202–2640.

FOR FURTHER INFORMATION CONTACT: Linda Glidewell. Telephone: (202) 732–1099. Deaf and hard of hearing individuals may call (202) 732–6153.

SUPPLEMENTARY INFORMATION: This notice contains proposed priorities under the following programs: Research in Education of Individuals with Disabilities Program; and the Technology, Educational Media, and Materials for Individuals with Disabilities Program. The purpose of each program is stated separately under the title of that program. The Secretary will announce the final priorities in a notice in the **Federal Register**. The final priorities will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the final priorities, availability of funds, and the quality of the applications received. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priorities does *not* solicit applications. Notices inviting applications under these competitions will be published in the **Federal Register** concurrent with or following publication of the notices of final priorities.

These proposed priorities support AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals, by improving our understanding of how to enable children and youth with disabilities to reach the high levels of academic achievement called for by the National Education Goals.

Title of Program: Research in Education of Individuals with Disabilities Program.

Purpose of Program: The Research in Education of Individuals with Disabilities Program, authorized by Part E of the Individuals with Disabilities Education Act (20 U.S.C. 1441–1443), provides (1) support to advance and improve the knowledge base and improve the practice of professionals, parents, and others providing early intervention, special education, and related services, including professionals in regular education environments, to provide children with disabilities effective instruction and enable them to successfully learn; and (2) support for research and related purposes, surveys, or demonstrations relating to physical education or recreation, including therapeutic recreation, for infants, toddlers, children, and youth with disabilities.

Priorities

Under 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference to applications that meet one of the following priorities. The Secretary proposes to fund under these competitions only applications that meet one of these absolute priorities:

Proposed Priority 1—Interventions To Support Junior High School Aged Students Who Are at Risk of Dropping out of School (CFDA 84.023)

Background

One of the National Education Goals is to increase the high school graduation rate to at least 90 percent by the year 2000. The current graduation rate for children with disabilities, 41 percent, falls substantially below the average for all children and well below the national goal of 90 percent (National Longitudinal Study, 1991). The findings of recent research and the consistently very poor rates of high school completion reported by States for children with disabilities support the need for research to develop and implement interventions that will increase student engagement in school during the year that they become at the greatest risk of dropping out and to evaluate the effectiveness of these interventions on progress towards graduation.

Priority

This proposed priority will support research projects to develop, implement, and evaluate the effectiveness of interventions that increase student engagement in school. Projects must focus on students with learning disabilities and those with serious emotional disturbance.

Site Selection. Project sites must be in schools where the drop-out rate for students with disabilities is significantly higher than for children who are not disabled. Sites must encourage the implementation of school-based interventions within general education settings.

Project Planning. Projects may dedicate up to 12 months to plan for and develop the implementation of interventions with special and general educators, administrators, related service staff, parents, students, community agencies and groups, and others as appropriate. The plan must include activities that develop and maintain ongoing school, community, and family commitment to implement the interventions. Planning activities must include (1) the identification of school, home, and community variables that are related to student engagement in learning and the development of interventions related to these variables; (2) the specification of the procedures and participants required to implement the interventions; and (3) procedures for evaluating the implementation and impact of the interventions and the project. Variables of student engagement must be developed through a consensual process and must include school, home, and community variables that have a significant predictive relationship with student drop-out rates.

Implementation of Interventions. Projects must implement their interventions over a three-year period. Projects must select a cohort of students with learning disabilities and serious emotional disturbance who are enrolled at the seventh through tenth grade level (the "study group"). Interventions must be implemented for these students for three successive years.

Studying Effects and Implementation of the Project. During the first two years of implementation, project effects must be described with respect to the variables of student engagement. Information must be reported longitudinally on a control group of students with learning disabilities and serious emotional disturbance within

the school district ("the control group") who do not receive the interventions. Data collection and analyses must permit the statement of findings for student subgroups reflecting each disability group included in the sample.

Information must also be provided regarding the process and levels of implementation of the project and a description of community, school, and student characteristics.

Collaboration. Projects must work with the other projects funded under this priority and with related projects and must budget for two annual meetings: one with the other grantees under this priority and one of all project directors.

Proposed Priority 2—Increasing Participation in General Education Development Programs (GED) Among Youth With Disabilities (CFDA 84.023)

Background

One of the National Education Goals is to increase the high school graduation rate to at least 90 percent by the year 2000. Forty-one percent of all youth with disabilities drop out of school without completing high school graduation requirements. (National Longitudinal Study, 1991). Nationally, most students who do not complete high school in the traditional fashion eventually obtain a high school diploma through the General Education Development (GED) program. This compares sharply with students with disabilities who have dropped out or withdrawn from school, less than five percent of whom ever receive a diploma.

Having a high school diploma represents one of the most important credentials a young adult must possess to access many of the adult opportunities associated with successful, independent adult outcomes, including for example, access to higher education and competitive employment. The National Longitudinal Study (1991) has provided compelling evidence that there is a consistent gap between students with disabilities who drop out as compared to those who complete high school graduation requirements with respect to several outcomes, and that the discrepancy increases over time.

Priority

This proposed priority will support research projects to develop, implement, and evaluate interventions that will increase the participation in and successful completion of GED programs for students with disabilities who have either withdrawn from or dropped out of school. Projects must focus on students with learning disabilities and those with serious emotional disturbance.

Activities

Site Selection. Project sites must be in schools in communities where the drop-out rate for students with disabilities is significantly higher than for children who are not disabled. Sites must encourage the implementation of school-based interventions within general education settings.

Project Planning. Grantees may dedicate up to 12 months to plan for and develop the implementation of interventions that will increase the successful participation of students with disabilities in GED programs. The plan must be prepared by a group that includes those knowledgeable regarding the needs of students who have withdrawn or dropped out. The plan must include activities that ensure the involvement of GED program staff and others to implement the interventions. The plan must include (1) a site-based, descriptive study of the factors and barriers associated with the decision by young adults with disabilities to seek a GED diploma, and a synthesis describing factors (student, administrative, financial, etc.) related to the successful completion of GED programs by students with disabilities; (2) the new or adapted interventions to be studied; (3) the procedures and participants required to implement the interventions, including how students will be identified and recruited; (4) a description of how a GED program that effectively accommodates the special learning needs and circumstances of youth with disabilities will be developed; and (5) procedures for evaluating the impact of the interventions.

Implementation of Interventions. Projects must implement their interventions and operational plan over a three-year period. Projects must annually select a cohort of youth with disabilities (three cohorts, total) that is participating in the GED program and is 6 months past the compulsory minimum age for exiting from school, as determined by State law or regulations. Information is also to be reported for a control group of students with disabilities within the community, but who are not participating in the GED program.

Studing Effects and Implementation of the Project. During the first two years of implementation, projects must study project effects and the process of implementation of the project. Data collection and analyses must include the statement of findings for student subgroups reflecting each disability area included in the sample. Information describing community, school, and student characteristics must be included.

Collaboration. Projects must work with the other projects funded under this priority and with related projects and must budget for two annual meetings: one with the other grantees under this priority and one of all project directors.

Proposed Priority 3—Enhancing Language Acquisition Among Students Who Are Deaf or Hard of Hearing (CFDA 84.023)

Background

As reported by the Commission on Education of the Deaf (COED), in its 1988 report, Towards Equality, "the educational system has not been successful in assisting the majority of students who are deaf or hard of hearing to achieve reading skills commensurate with those of their hearing peers." Competence in understanding and using vocal, visual, and written language represents an especially critical and difficult accomplishment for children who are deaf or hard of hearing. As the COED report notes, "[a] child without a strong language and communication base faces significant barriers." The findings of this and other recent research and policy studies document the need to enhance the levels of language acquisition for individuals who are deaf or hard of hearing so as to improve levels of achievement and other outcomes.

Priority

This proposed priority will support research projects to evaluate the effectiveness of American Sign Language (ASL) relative to other modes of communication such as signed English in improving achievement in reading and writing for children, 5–18 years of age, who are deaf or hard of hearing.

Activities

Projects must examine achievement in reading and writing, other relevant variables, e.g., other relevant child outcomes (including social and behavioral variables), and the satisfaction of service providers. Project participants must include elementary and secondary-aged students. Project designs must produce information on ASL relative to other modes of communication to which it is being compared by age and achievement level.

Projects must study the effectiveness of using ASL relative to other modes of communication to which it is being compared in relation to the severity of hearing loss, who provides (service provider) the interventions, and where

the interventions are provided (setting). Projects must also study and relate the effectiveness of using ASL and the other interventions to the age of the child at the onset of deafness and time of first intervention, respectively, and the nature and scope of family and community supports. Projects must examine the effectiveness of ASL relative to other modes of communication to which it is being compared in academic and nonacademic settings and in integrated and nonintegrated settings. Service providers may include, for example, parents, hearing or nonhearing peers, and special and regular educators. Projects must report information describing special accommodations, if relevant, associated with using ASL relative to the other modes of communication to which it is being compared in various settings, e.g., within the home or in school environments with normally-hearing children. Projects must also report information describing the appropriate alternative reading and writing assessment systems and procedures that are best suited to document the reading and writing acquisition skills.

Dissemination. Projects must report and exchange their information and findings in formats useable to the research community and to service providers.

Collaboration. Projects must work with the other projects funded under this priority and other related projects and must budget for two annual meetings: One with the other grantees under this priority and one of all project directors.

Title of Program: Technology, Educational Media, and Materials for Individuals with Disabilities Program.

Purpose of Program: The purpose of this program is to support projects and centers for advancing the availability, quality, use, and effectiveness of technology, educational media, and materials in the education of children and youth with disabilities and the provision of early intervention services to infants and toddlers with disabilities. In creating Part G of the Individuals with Disabilities Education Act, Congress expressed the intent that the projects and centers funded under that part should be primarily for the purpose of enhancing research and development advances and efforts being undertaken by the public or private sector, and to provide necessary linkages to make more efficient and effective the flow from research and development to application.

Priority

Under 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this competition only applications that meet this absolute priority:

Priority 1—Applications of Assistive Technology for Students who Are Deaf or Hard of Hearing (CFDA 84.180)

Priority

This proposed priority supports projects to develop and demonstrate applications of assistive technology that allow educational programs to be more accessible and appropriate for students who are deaf or hard of hearing, and thus lead to improved outcomes for these students. Assistive technologies have proven capabilities for alleviating some of the problems encountered by students who are deaf or hard of hearing in educational programs. However, continued efforts are needed to develop and improve the technologies themselves, as well as to adapt and apply the technologies in educational programs. An analysis of factors associated with the setting, students, and implementation is also included in this priority.

Activities

Projects must select and specify the population to be addressed—deaf or hard of hearing. Projects must also present an analysis of (1) the student characteristics and environmental factors that interact to produce the need for assistive technology; (2) the functions of the assistive technology that make it appropriate for addressing the needs; and (3) features of the technology (e.g., cost, portability, ease of use, durability) that must be considered in maximizing its usefulness.

Based on the analysis, projects must develop a prototype of the assistive technology application that includes plans and materials for implementation in applied settings. Projects may use new or emerging technologies, components of "off-the-shelf" technologies, and innovations from other sectors (e.g., industry, military).

Possible technology applications include, but are not limited to (1) technologies for translating speech to text or other visual representations of language; (2) improved hearing aid systems for use in educational environments, such as digital signal processing systems; (3) improved systems for providing access to media and communications, such as improved captioning systems; and (4) systems for facilitating communication with teachers, peers, and others.

Demonstration and testing of the prototype must examine (1) the potential of the assistive technology application in addressing the needs of the target population; (2) implementation factors such as cost, technical support, training, and maintenance that must be considered in its use; and (3) impact on the educational outcomes for students who are deaf or hard of hearing.

Dissemination. Projects must disseminate information about the needs addressed by the assistive technology application, implementation factors, design features and principles, and impact on educational outcomes. Projects must, if appropriate, communicate with potential developers and manufacturers for the assistive technology application. Also, projects must budget for an annual meeting of all project directors in Washington, DC.

Intergovernmental Review

The Technology, Educational Media, and Materials for Individuals with Disabilities Program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed priorities.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in room 3524, 300 "C" Street SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m.,

Monday through Friday of each week except Federal holidays.

Applicable Program Regulations: 34 CFR parts 324 and 333. Program Authority: 20 U.S.C. 1441–1443 and 20 U.S.C. 1461.

(Catalog of Federal Domestic Assistance Numbers: 84.023, Research in Education of Individuals with Disabilities Program; and 84.180, Technology, Educational Media, and Materials for Individuals with Disabilities Program)

Dated: September 1, 1992.

Lamar Alexander,

Secretary of Education.

[FR Doc. 92–21462 Filed 9–4–92; 8:45 am]

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federal register

Tuesday
September 8, 1992

Part V

Environmental Protection Agency

Effluent Guidelines Plan; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL-41966]

RIN 2040-AA90

Effluent Guidelines Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of effluent guidelines plan.

SUMMARY: This notice announces the Agency's plan for developing new and revised effluent guidelines, which regulate industrial discharges to surface waters and publicly owned treatment works (POTWs). Section 304(m) of the Clean Water Act requires EPA to publish a biennial Effluent Guidelines Plan.

EFFECTIVE DATE: October 8, 1992.

ADDRESSES: The public record for this notice is available for review in EPA's Headquarters Library, room M2404, 401 M Street SW., Washington, DC. The EPA public information regulation (40 CFR part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Eric Strassler, Engineering and Analysis Division (WH-552), U.S. Enviornmental Protection Agency, 401 M Street SW., Washington, DC 20460, telephone 202-260-7150.

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I. Legal Authority

This notice is published under the authority of section 304(m) of the Clean Water Act, 33 U.S.C. 1314(m).

II. Introduction

A. Purpose of Today's Notice

Today's notice announces the Agency's second biennial Effluent Guidelines Plan for developing new and revised effluent guidelines pursuant to section 304(m) of the Clean Water Act (CWA).

EPA proposed this plan on May 7, 1992 (57 FR 19748)("Proposed Plan"). The Agency invited comment on the notice until June 8, 1992. Today's notice summarizes and addresses the major comments the Agency received.

B. Overview of Today's Notice

The Agency intends to develop effluent limitation guidelines and standards ("effluent guidelines") as follows:

1. Continue development of the nine ongoing rules: Pulp, Paper and Paperboard; Pesticide Chemicals (Manufacturing); Pesticide Chemicals (Formulating and Packaging); Offshore Oil and Gas Extraction; Coastal Oil and Gas Extraction; Organic Chemicals, Plastics and Synthetic Fibers (Remand); Waste Treatment; Pharmaceutical Manufacturing; and Metal Products and Machinery, Phase 1.

2. Develop effluent guidelines for each of the following point source categories: Waste Treatment, Phase 2; Industrial Laundries; Transportation Equipment Cleaning; and Metal Products and Machinery, Phase 2.

3. Begin approximately two preliminary studies of particular point source categories each year. Each preliminary study will generally take approximately two years to complete.

4. Start development of additional guidelines (either new or revised). Point source categories will be identified in future biennial Effluent Guidelines Plans. Eight rules would be begun on a staggered basis during the years 1996 to 1999 with final action between 2000 and 2003.

These actions are identical to those described in the Proposed Plan.

III. 1992 Proposed Effluent Guidelines Plan

In the Proposed Plan, EPA described its intent to continue development of 9 ongoing rulemakings, develop 12 new rules over an 11 year period, and conduct 11 preliminary studies over a 6 year period. The Proposed Plan set forth EPA's rationale for the selection of particular industries as candidates for new or revised effluent guidelines. The Proposed Plan also described the relevant statutory framework, the components and process for development of an effluent guidelines regulation, and other background information. The principal elements of the Proposed Plan were designed to implement sec. 304(m) and a consent decree in *Natural Resources Defense Council et al.* v. *Reilly* (D.D.C. 89-2980, January 31, 1992)(the "Consent Decree"). See 57 FR 19750-19755.

IV. 1992 Effluent Guidelines Plan

EPA's 1992 Effluent Guidelines Plan is set forth below. Today's Plan is substantively identical to the Proposed Plan. As noted above, the basis for selection of the industries identified in today's Plan is described in the Proposed Plan. This plan is based on funding levels proposed by the President's Budget for fiscal year 1993. If these levels cannot be achieved EPA will have to evaluate the impact on the Plan's schedules.

A. Regulations

1. Ongoing Rulemakings

EPA is currently in the process of developing new or revised effluent guidelines for nine categories. These rulemakings will proceed as previously described in the Proposed Plan. The current schedules for these rules are set forth in Table 1.

TABLE 1.—EFFLUENT GUIDELINES CURRENTLY UNDER DEVELOPMENT

Category	Proposal	Final action
Offshore Oil and Gas Extraction [1]	11/26/90 & 3/13/91	1/93
Organic Chemicals, Plastics and Synthetic Fibers (Remand issues)	12/6/91	5/93
Pesticide Chemicals (Manufacturing)	4/10/92	7/93
Pulp, Paper and Paperboard [2]	10/93	8/95
Pesticide Chemicals (Formulating and Packaging)	1/94	8/95
Waste Treatment (Phase 1)	4/94	1/96
Pharmaceutical Manufacturing	8/94	2/96
Metal Products and Machinery (Phase 1)	11/94	5/96
Coastal Oil and Gas Extraction	1/95	7/96

[1] The Offshore Oil and Gas Extraction rulemaking is not covered under the January 31, 1992 Consent Decree. The deadline is required by a Consent Decree in *NRDC v. Reilly* (D.D.C. No. 79-3442).

[2] The Pulp, Paper and paperboard rulemaking is not covered under the January 31, 1992 Consent Decree. Deadlines are required by a Consent Decree in *Environmental Defense Fund et al.* v. *Thomas* (D.D.C. No. 85-0973).

2. New Rulemakings

EPA intends to develop 12 new effluent guidelines over an 11 year period. Four of the rules are specified; the remaining eight rules will be specified in future Effluent Guidelines Plans. This schedule for developing the guidelines is set forth in Table 2, and is identical to the schedule in the Proposed Plan.

TABLE 2.—NEW CATEGORIES TO BE REGULATED

Category	Proposal	Final action
Waste Treatment, Phase 2	1995	1997
Industrial Laundries	1996	1998
Transportation Equipment Cleaning	1996	1998
Metal Products and Machinery, Phase 2	1997	1999
Eight additional categories	1998–2001	2000–2003

EPA will include any updates to these schedules in the semi-annual Regulatory Agenda published in the **Federal Register**.

B. Preliminary Studies

In the Proposed Plan EPA announced that it intended to conduct 11 preliminary studies, which will assist the Agency in selecting industries for the eight remaining rules discussed in Section IV.A.2 above (see 57 FR 19752, 19755).

The Agency is proceeding as proposed with studies for the Metal Finishing Category (40 CFR part 433) and the Petroleum Refining Category (40 CFR part 419). These studies are underway and are scheduled to be completed by the end of 1993. The findings will be published in Preliminary Data Summaries, and will be considered in preparation of the 1994 Effluent Guidelines Plan.

EPA intends to conduct nine additional studies. Six industries (all of which are currently subject to effluent guidelines) were tentatively identified in the Proposed Plan as the subject of future studies, with two studies to begin in each of 1993, 1994 and 1995. These are Iron and Steel Manufacturing (40 CFR part 420), Inorganic Chemicals (40 CFR part 415), Leather Tanning and Finishing (40 CFR part 425), Coal Mining (40 CFR part 434), Onshore/Stripper Oil and Gas Extraction (40 CFR part 435), and Textile Mills (40 CFR part 410). The Agency intends to study three additional categories, not yet identified, beginning in 1997. Other industries, identified through review of new information made available to the Agency, may be studied. Each Preliminary Study would take approximately two years to complete. Updated information on industry studies will be included in the next biennial Effluent Guidelines Plan.

C. Summary of Changes from Proposed Plan

Today's Effluent Guidelines Plan is substantively identical to the Proposed Plan. However, some clarifications are provided below in response to several comments the Agency received on the proposal.

V. Public Comments

The public comment period for the Proposed Plan closed on June 8, 1992. The Agency received comments that covered approximately 12 topics from 10 commenters, including industries, local governments (POTWs), and an environmental group. EPA also considered seven comment letters received after publication of the January 2, 1990 Effluent Guidelines Plan (55 FR 80). The summary is in this section highlights the more significant comments submitted. The administrative record for today's notice includes a complete text of the comments and the Agency's responses.

A. Metal Products and Machinery Category

Two POTWs expressed reservations about the feasibility of regulating the Metal Products and Machinery (MP&M) Category. They were concerned that implementing categorical standards for a large number of MP&M facilities in a local pretreatment program would be overly burdensome to POTWs and hinder their ability to effectively run their programs. While they did not disagree with EPA's assertions that the overall MP&M category is a significant source of toxic and nonconventional pollutants, they believed that attention should be focused on the larger facilities in the category.

EPA's Proposed Plan included a brief working description of the MP&M category. This working description is subject to change, pending collection and analysis of additional data, prior to promulgation of an effluent guideline for this category. The description in the Proposed Plan included an estimate of 970,000 facilities in the category nationwide. This figure was derived from mailing lists that EPA purchased for the purpose of sending survey questionnaires to a statistical sample of the industry.

The Agency has administered questionnaires focused primarily on MP&M Phase 1 facilities and is now analyzing the surveys along with other information it is gathering on the industry. Preliminary assessments of the Phase 1 survey information indicate that the overall size of the MP&M category is significantly smaller than the initial estimate of 970,000 facilities. The Phase 1 survey responses indicate that the information sources used to compile the Agency's mailing list included sites without manufacturing activities such as sales offices, warehouses, and company headquarters. EPA currently projects that there are 80,000 active Phase 1 sites rather than the initial estimate of 195,000. If similar trends are observed in the planned Phase 2 survey, then the number of Phase 2 sites would be projected to be about 318,000 instead of the initial estimate of 775,000.

The Notices of Proposed Rulemaking and accompanying Development Documents will provide a fuller description of the category. EPA believes that when the MP&M rules (Phases 1 and 2) are proposed, there will be a clearer and smaller estimate of the category size, and an acceptable balance between addressing serious pollutant discharges and maintaining a manageable compliance and enforcement workload at POTWs.

B. Basis for Conducting Preliminary Studies

Four industry associations questioned the need for conducting preliminary studies of existing effluent guidelines affecting their industries—Coal Mining, Iron and Steel Manufacturing, and Leather Tanning and Finishing. In the case of the Coal Mining Category, the commenter argued that in general the industry does not discharge toxic or nonconventional pollutants and that current pollutant discharges are at low concentrations (which are too small to be effectively reduced by additional treatment technology). Regarding the Iron and Steel and Leather Tanning and Finishing Categories, the commenters stated that the existing regulations were adequately protective of human health and the environment.

EPA conducted a brief review of documents supporting the existing Coal Mining effluent guidelines and estimated that high loadings of metal pollutants continue to be discharged by the category, after application of BAT-level (best available technology) limitations. These pollutants are predominantly inorganic: Antimony, arsenic, chromium, copper, lead, nickel, selenium, silver, thallium, and zinc; as well as phenol. While the Agency agrees with the commenter that these pollutants tend to be found in low concentrations in mine discharges, the nationwide pollutant

estimates are large because of the large number of mines (estimated in the thousands).

The Agency estimated that the other two categories also continue to discharge high levels of pollutants on a nationwide basis, after application of BAT-level limitations. The Iron and Steel Manufacturing Category discharges include antimony, arsenic, copper, selenium, benzene, phenol, sulfide, and fluoride. The Leather Tanning and Finishing Category discharges lead, zinc, and toxic organic pollutants.

EPA's studies of the existing regulations will likely include a review of existing wastewater characteristics and technologies (including source reduction, recycling and treatment techniques). A decision to study an industry does not mean that EPA has decided to proceed with a rulemaking for that industry.

C. Overall Effluent Guidelines Plan

One commenter recommended that any further work on effluent guidelines be postponed and that EPA's water quality efforts should be directed primarily at nonpoint source pollution. The commenter cited reports that nonpoint sources are responsible for 55 percent of the water quality problems in the nation's streams, and that directing additional work toward point sources would be a waste of resources.

The Agency agrees that nonpoint source pollution is a major cause of water quality problems nationwide. However, industrial point sources continue to cause water quality impairment in some areas, and the Agency is mandated by the Clean Water Act and the Consent Decree to develop new or revised effluent guidelines.

D. EPA Discretion Not to Regulate Following a Preliminary Study

The Natural Resources Defense Council (NRDC) objected to several phrases in the Proposed Plan relating to EPA's discretion to elect not to issue effluent guidelines for a particular industry following study of that industry. NRDC disputes whether EPA necessarily has such discretion.

EPA acknowledges that NRDC and EPA have different views concerning the Agency's discretion to decide not to proceed with an effluent guideline. At NRDC's suggestion, EPA is including as Appendix A to today's plan a copy of paragraph 6 of the Consent Decree, which states EPA's position concerning its discretion not to proceed with guidelines and establishes a procedure by which NRDC may challenge any attempt by EPA to exercise such discretion.

E. Clean Water Act Requirements Regarding Toxic and Nonconventional Pollutants

NRDC also objected to the statement in the Proposed Plan that effluent guidelines "may include limitations on any toxic or nonconventional pollutants in addition to the 126 priority pollutants" (57 FR 19751). In NRDC's view, the Clean Water Act requires, rather than allows, effluent limitations for all toxic and nonconventional pollutants present in more than trivial amounts.

EPA does not share NRDC's view on this issue. In addition, EPA believes the quoted statement, which appeared in a parenthetical explaining the Agency's methodology in calculating "toxic pound-equivalent factors", is accurate even under NRDC's view of the law.

F. Relationship of Clean Water Act and Pollution Prevention Act

NRDC recommended that the Effluent Guidelines Plan should focus explicitly on the Pollution Prevention Act of 1990 (Pub. L. 101–508) (PPA) and explain the Agency's efforts to identify source reduction opportunities in connection with the development of effluent guidelines.

The PPA declares that pollution should be prevented or reduced whenever feasible; pollution that cannot be prevented should be recycled or reused in an environmentally safe manner wherever feasible; pollution that cannot be recycled should be treated; and disposal or release into the environment should be chosen only as a last resort. Source reduction, as defined by the PPA, means any practice which reduces the amount of any hazardous substance, pollutant or contaminant entering any waste stream or otherwise released into the environment prior to recycling, treatment or disposal, and reduces the hazards to public health and the environment associated with the release of such substances. The term includes equipment or technology modification, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, or inventory control. The term "source reduction" does not include any practice which alters the physical, chemical, or biological characteristics or the volume of a substance, pollutant, or contaminant through a process or activity which itself is not integral to and necessary for the production of a product or the providing of a service.

In developing effluent guidelines for a point source category, EPA identifies the "best available technology economically achievable" (BAT) under CWA sections 301(b) and 304(b)(2)(B) and "best available demonstrated control technology" (used for setting New Source Performance Standards) under CWA section 306. In so doing, the Agency is required to consider (among other things) process changes, non-water quality environmental impacts, energy requirements and the cost of achieving effluent reductions. Pursuant to the foregoing, the Agency routinely considers source reduction opportunities in developing effluent guidelines.

To identify source reduction opportunities in effluent guidelines, the Agency's Source Reduction Review Project (SRRP) will coordinate multi-media reviews of several industries included in the Effluent Guidelines Plan. These categories were chosen based on one or more of the following criteria:

- Environmental releases to more than one medium (air, water, solid waste);
- Potential for pollution reduction;
- Known opportunity for source reduction;
- Forthcoming regulatory requirements under multiple statutes.

The effluent guidelines to be reviewed under SRRP are:

- Pesticide Formulating and Packaging;
- Pulp, Paper and Paperboard;
- Pharmaceutical Manufacturing; and
- Metal Products and Machinery.

To further explore opportunities for source reduction in effluent guidelines, the Agency created the Industrial Pollution Prevention Project (IP3) Focus Group, a subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT). The IP3 Focus Group is comprised of representatives from industry, citizen groups, state and local governments, consultants and academics, and is exploring ways of instituting additional pollution prevention measures in effluent guidelines. The Focus Group has held several public meetings and is beginning to formulate recommendations to the Agency.

Service industries are distinct from manufacturing industries in that their discharges of toxic and nonconventional pollutants may be a direct result of handling wastes or contaminated materials and equipment received from their customers. Industrial laundries, for example, receive soiled shop towels and work uniforms which may be contaminated with solvents or other pollutants. The Agency's technology

assessments for effluent guidelines have traditionally focused on manufacturing processes. As a result, source reduction strategies for service industries have not been fully explored. Such strategies, if adopted, would meet the requirements for "best available technology economically achievable" or "best available demonstrated control technology." In the case of the industrial laundries example, EPA may evaluate the appropriateness of source reduction methods such as substitute cleaners and changing of materials handling practices. In addition to the Industrial Laundries Category, two other categories in today's Effluent Guidelines Plan are service industries: Waste Treatment and Transportation Equipment Cleaning.

G. Relative Utility of POTW Local Limits Compared to National Categorical Pretreatment Standards

One POTW contended that local pretreatment limits established by a POTW are a more effective way of controlling specific industrial discharges to that POTW than national categorical pretreatment standards. This POTW argued that, due to the wide level of discharge variability in some of the categories listed in EPA's Proposed Plan, development of national standards would be difficult and control by means of local limits would be more effective. This is especially true for certain categories such as Waste Treatment, Industrial Laundries, and Metal Products and Machinery, according to the commenter.

EPA required POTWs to develop local limits as part of their pretreatment programs pursuant to the General Pretreatment Regulations (40 CFR part 403) and has provided assistance to POTWs in developing local limits. However, the Agency considers local limits to be complementary to, rather than a replacement for, categorical standards, as part of an overall pretreatment program. Many POTWs have informed EPA that they need categorical standards because they lack the resources and/or technical expertise to develop local limits for some pollutants, particularly toxic organics. The Agency's National Pretreatment Program Report to Congress (July 1991) listed enhancement of national categorical pretreatment standards as its first recommendation. (Improvement of local pretreatment standards was the second recommendation.) While EPA may indeed encounter more difficulty in setting national standards for some categories such as those mentioned by the commenter, other POTWs have in fact urged EPA to develop standards for these categories.

VI. Future Effluent Guidelines Plans

EPA will continue to publish Effluent Guidelines Plans biennially. In future notices, the Agency will provide updated information on these rulemakings and preliminary studies, and will notice other information received, if any, that may be considered in the designation of additional industries to be regulated by new or revised effluent guidelines. Industries listed in today's notice for further study may be designated for rulemaking in the future 304(m) notices. In those notices, the Agency may also schedule rulemaking actions for other industries not listed in today's notice, based on public comments received and new data made available to the Agency.

The public is invited to submit information on industrial discharges that may be useful to EPA in planning for future effluent guidelines development. Such information might include descriptions of specific industrial effluent, water quality effects of industrial discharges, impacts on POTWs (interference, pass-through, etc.), and developments in wastewater technology (including source reduction, recycling and treatment techniques). In particular, the Agency is interested in data that would facilitate category-wide comparisons of industries with regard to discharge characteristics, treatment practices and effects on water quality. EPA will include any information submitted in the record for the 1994 plan.

Comments on proposed guidelines for specific categories of dischargers will be accepted, as usual, according to the time periods specified in notices published as part of rulemaking proceedings to establish effluent guidelines for the categories.

VII. Economic Impact Assessment; OMB Review

This notice contains a plan for the review and revision of existing effluent guidelines and for the selection of priority industries for new regulations. This notice is not a rulemaking; therefore, no economic impact assessment has been prepared. EPA will provide economic impact analyses or regulatory impact analyses, as appropriate, for all of the future effluent guideline rulemakings developed by the Agency.

Today's notice has been reviewed by the Office of Management and Budget under Executive Order 12291.

Dated: August 28, 1992.

F. Henry Habicht II,

Acting Administrator.

Appendix A—Paragraph 6 of Consent Decree in NRDC et al. v. Reilly

(D.D.C. 89-2980, January 31, 1992)

6.(a) The parties disagree with respect to what discretion, if any EPA has under applicable law to decide not to proceed with an effluent guideline. Accordingly, the Court has determined that the following provisions shall govern in the event that EPA decides not to proceed with an effluent guideline for a particular point source category. For such purposes, "decide not to proceed with an effluent guideline" shall mean to make a final, affirmative decision prior to proposal that an effluent guideline is not appropriate for the point source category under consideration, and shall not include making a decision to defer development of such guideline.

(1) Notwithstanding the provision of Paragraphs 4 and 5, EPA reserves the discretion to decide not to proceed with any one or more effluent guidelines where the Administrator determines, pursuant to any discretion the Administrator has under the Clean Water Act, 33 U.S.C. 1251–1387, or any other legal authority, that an effluent guideline is not appropriate for the point source category under consideration. In EPA's view, such discretion includes the discretion not to proceed with an effluent guideline where the Administrator determines (taking into account the range of environmental issues confronting the Agency) that promulgating the guideline would not have the potential to significantly reduce risk to human health or the environment, or that another approach would accomplish a comparable reduction in risk. In EPA's view, such discretion also includes the discretion not to proceed with an effluent guideline on the basis of cost considerations.

(2) Plaintiffs do not necessarily agree that EPA has the discretion, under the Clean Water Act or any other legal authority, to decide not to proceed with an effluent guideline as described in Paragraph 6(a)(1), and thus reserve the right to contest any determination made pursuant to such paragraph.

(3) In the event EPA decides not to proceed with an effluent guideline with respect to any point source category described in Paragraphs 4(a) or 5(a), EPA shall notify plaintiffs within thirty (30) days of the date such discretion is exercised. Plaintiffs shall have sixty (60) days from receipt of such notice to provide EPA with a written statement of plaintiffs' intent to challenge such decision, and one hundred eighty (180) days from receipt of such notice to file any and all motions contesting such decision with the Court.

(4) In the event EPA decides not to proceed with an effluent guideline with respect to any point source category described in Paragraphs 4(a) or 5(a), and either (i) plaintiffs do not challenge such decision pursuant to the procedures and within the time frames described in Paragraph 6(a)(3)

above, or (ii) the Court holds that, in making such decision, EPA properly exercised its discretion under applicable law, then such decision shall satisfy any and all obligations of EPA under this Decree with respect to such point source category.

(b) Any decision by the Administrator not to proceed with an effluent guideline pursuant to Paragraph 6(a)(1) above shall be included in the first 304(m) Plan proposed following such determination.

(c) (1) Notwithstanding the provisions of Paragraph 6(a), EPA will take final action with respect to twelve (12) effluent guidelines (in addition to those listed in Paragraph 2) before December 31, 2003 unless, after analysis of the eleven (11) studies undertaken pursuant to Paragraph 3 and the seven (7) studies already completed, the Administrator determines, pursuant to any discretion the Administrator has under the Clean Water Act, 33 U.S.C. 1251–1387, or any other legal authority, that fewer than twelve (12) of the eighteen (18) total point source categories studied merit proposal of effluent guidelines pursuant to the standards set forth in Paragraph 6(a)(1). In such case, EPA will undertake studies of additional categories of point sources to determine whether the promulgation of additional effluent guidelines is appropriate. EPA will state its intention to conduct any such additional studies in 304(m) Plans.

(2) EPA will notify plaintiffs within thirty (30) days after any decision pursuant to Paragraph 6(c)(1) not to take final action with respect to twelve (12) effluent guidelines (in addition to those effluent guidelines listed in Paragraph 2) before December 31, 2003. Plaintiffs may challenge such decision by following the procedures set forth in Paragraph 6(a)(3) above. In the event the Court holds that EPA lacks the authority to make such a decision, the Court will establish a new schedule for taking final action on the remaining effluent guidelines.

Appendix B—Effluent Guidelines Currently Under Development, New Categories to be Regulated, and Preliminary Studies

Effluent Guidelines Currently Under Development

Category	40 CFR Part	Proposal	Final action
Offshore Oil and Gas Extraction	435	3/13/92	1/93
Organic Chemicals, Plastics and Synthetic Fibers (Remand)	414	12/6/91	5/93
Pesticides Manufacturing	455	4/10/92	7/93
Pulp, Paper and Paperboard	430	10/93	9/95
Pesticides Formulating and Packaging	455	1/94	8/95
Waste Treatment, Phase 1	437	4/94	1/96
Pharmaceutical Manufacturing	439	8/94	2/96
Metal Products and Machinery, Phase 1	438	11/94	5/96
Coastal Oil and Gas Extraction	435	1/95	7/96

New Categories To Be Regulated

Category	40 CFR Part	Proposal	Final action
Waste Treatment, Phase 2	437	1995	1997
Industrial Laundries	441	1996	1998
Transportation Equipment Cleaning	442	1996	1998
Metal Products and Machinery, Phase 2	438	1997	1999
Eight additional categories		1998–2001	2000–03

Preliminary Studies

Category	40 CFR Part	Start	Complete
Petroleum Refining	419	1992	1993
Metal Finishing	433	1992	1993
Iron and Steel Manufacturing	420	1993	1994
Inorganic Chemicals	415	1993	1994
Leather Tanning and Finishing	425	1994	1995
Coal Mining	434	1994	1995
Onshore/Stripper Oil and Gas Extraction	435	1995	1996
Textile Mills	410	1995	1996
Three additional categories		1996	1997

[FR Doc. 92–21367 Filed 9–4–92; 8:45 am]

BILLING CODE 6560–50–M

federal register

Tuesday
September 8, 1992

Part VI

Architectural and Transportation Barriers Compliance Board

36 CFR Part 1191

Americans With Disabilities Act Accessibility Guidelines; Accessible Automated Teller Machines; Proposed Rule

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1191

[Docket 92-1]

Americans With Disabilities Act Accessibility Guidelines; Proposed Rule on Accessible Automated Teller Machines

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Architectural and Transportation Barriers Compliance Board proposes to amend the reach range requirement for accessible automated teller machines (ATMs) under the Americans with Disabilities Act Accessibility Guidelines (ADAAG) based on new information received in connection with a petition for rulemaking. The proposed amendment sets out the reach ranges for controls when a person using a wheelchair can make a forward approach only, a parallel approach only, or both a forward and parallel approach to an ATM. To address the reach over an obstruction resulting from recessed controls and the installation of surrounds in front of ATMs, the proposed amendment includes a table of reach depths and maximum heights for the placement of the controls where the reach depth to any control is more than 10 inches from a parallel approach. The Department of Justice and the Department of Transportation have adopted ADAAG as the accessibility standards for certain titles of the Americans with Disabilities Act of 1990. Those agencies will be issuing separate notices of proposed rulemaking to amend the accessibility standards consistent with this rulemaking.

DATES: Comments should be received by October 8, 1992. Comments received after this date will be considered to the extent practicable.

ADDRESSES: Comments should be sent to the Office of the General Counsel, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., Suite 1000, Washington, DC 20004-1111. Comments are available for inspection at this address from 9 a.m. to 4 p.m. on regular business days.

FOR FURTHER INFORMATION CONTACT: James Raggio, Office of the General Counsel, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., Suite 1000, Washington, DC 20004-1111. Telephone (202) 272-5434 (Voice); (202) 272-5449 (TDD). These are not toll-free numbers. This document is available in accessible formats (cassette tape, braille, large print, or computer disc) upon request.

SUPPLEMENTARY INFORMATION:

Background

On February 24, 1992, the Architectural and Transportation Barriers Compliance Board received a petition for rulemaking from the American Bankers Association, NCR Corporation, and InterBold requesting that the reach range requirement for accessible automated teller machines (ATMs) under the Americans with Disabilities Act Accessibility Guidelines (ADAAG) be amended. On May 6, 1992, the Board published a notice in the **Federal Register** which reviewed the current ADAAG reach range requirement for accessible ATMs and the petition. 57 FR 19472 (May 6, 1992). As discussed in the May 6th **Federal Register** notice, the reach range requirement for accessible ATMs is contained in ADAAG 4.34.3. This section references ADAAG 4.27.3 which generally applies to controls and requires that the "highest operable part of controls be placed within at least one of the reach ranges specified in ADAAG 4.2.5 [forward reach] and 4.2.6 [side reach]." ADAAG 4.34.3 goes on to require "both a forward and side reach to the unit allowing a person in a wheelchair to access the controls and dispensers."

The dimensions for a forward and side reach are contained in ADAAG 4.2.5 and 4.2.6 and are taken from the "American National Standard Specifications for Making Buildings and Facilities Accessible to and Usable by Physically Handicapped People"(ANSIA117.1-1980). The maximum forward reach permitted is 48 inches above the floor. ADAAG 4.2.5 and Figure 5(a). If the forward reach is over an obstruction, clear floorspace must be provided under the obstruction that equals or exceeds the reach depth for a maximum of 25 inches; and if the reach depth is between 20 inches and 25 inches, the maximum forward reach permitted is 44 inches above the floor. ADAAG 4.2.5 and Figure 5(b). The maximum side reach permitted is 54 inches above the floor for a maximum reach depth of 10 inches. ADAAG 4.2.6 and Figure 6(b). If the side reach is over an obstruction, the maximum side reach permitted is 46 inches above the floor for a maximum reach depth of 24 inches. ADAAG 4.2.6 and Figure 6(c).

As explained in the May 6th **Federal Register** notice, the controls on ATMs are typically recessed or set back into the wall or the unit for privacy and security purposes. In addition, banks usually install fixtures called "surrounds" in front of ATMs which contain writing counters and bins for envelopes and waste paper. These surrounds can create an obstruction and increase the reach depth to the controls. Persons using ATMs must also perform a range of motions and are likely not to remove their coats during inclement weather and colder temperatures which can affect their reach abilities. For these reasons, the Board originally proposed that ATMs comply with both a forward and side reach when ADAAG was initially published in the **Federal Register** for public comment. 56 FR 2296, 2380 (January 22, 1991). The Board did not receive any timely comments on the proposed reach range requirement for accessible ATMs. After the final ADAAG was issued, the petitioners informed the Board that the provision was ambiguous and that ATMs currently being sold could not comply with both a forward and side reach. The petitioners requested that ADAAG be amended to permit a forward or side reach to the controls.

The Board requested the three leading manufacturers who sell ATMs in this country to provide information about the controls on their current ATM models in connection with the petition. The information is summarized in the May 6th **Federal Register** notice. 57 FR 19472, Table 1 (May 6, 1992). Only one manufacturer, Fujitsu-ICL Systems, claimed that its current ATM models could comply with both a forward and side reach. The other manufacturers, NCR Corporation and InterBold, claimed that their current ATM models could comply with only a side reach. The manufacturers did not take into account the installation of surrounds in front of ATMs. Although the reach depth to the controls on most ATMs is less than 10 inches, the reach depth can exceed 10 inches when a surround is installed in front of the machine. As noted above, the maximum side reach permitted over an obstruction is 46 inches above the floor for a maximum reach depth of 24 inches. ADAAG 4.2.6 and Figure 6(c). Most ATMs have adjustable bases which allow the controls to be placed at different heights. In light of the new information received in connection with the petition, the Board announced in the May 6th **Federal Register** notice that it was considering amending the reach range requirement for accessible ATMs. A public hearing was held in Washington, DC on May 28, 1992 to hear from the petitioners and others affected

by the rulemaking. Written comments were also requested from the public.

Summary of Comments

Three ATM manufacturers, a surround manufacturer, the American Bankers Association, two banks, and three national and State organizations representing the interests of individuals with disabilities testified at the public hearing. Many of those who testified at the public hearing also submitted written comments. In addition, the Board received written comments from about sixty five banks; three State bank associations; six national, State, and local organizations representing the interests of individuals with disabilities; six other organizations; and two individuals. The Rights Task Force of the Consortium for Citizens with Disabilities and thirteen national organizations representing the interests of individuals with disabilities also submitted a joint set of written comments.

NCR Corporation has introduced a new generation of ATMs, the 5600 series, in November 1991. The reach depth to the highest control on most of these new ATMs is 8⅛ inches. NCR Corporation testified that it began designing the new ATMs in 1986 and followed ANSI A117.1 which generally permits controls to be placed within at least one of the reach ranges. NCR Corporation designed its new ATMs so that the highest control would comply with the 54 inch maximum side reach. NCR Corporation stated that it conducted tests with wheelchair users during and after the design of its new ATMs and that the tests show that wheelchair users can reach the controls. NCR Corporation did not address the additional reach depth resulting from the installation of surrounds in front of ATMs. NCR Corporation testified that it would have to substantially redesign three of its new ATMs to comply with a forward reach at a cost of $10 million and that it would take 18 to 24 months to accomplish. NCR Corporation also expressed concern that a forward reach would limit the functionality of its ATMs and compromise usability by others. NCR Corporation recommended that either a forward or side reach be allowed.

InterBold has also produced a new "i series" of ATMs. The reach depth to the highest control on these new ATMs ranges from 6⅛ inches to 16⅝ inches. InterBold has developed an "enhanced access fascia" for the ATM with the 16⅝ inch reach depth which allows the highest control to comply with the 46 inch maximum side reach over an obstruction while retaining the upper height profile of the machine so that it is comfortable to use from a standing position. InterBold testified that it recently retained a research firm to conduct a focus group of individuals with disabilities and to report on their reactions to two of its ATMs. The highest control on the first ATM was 50 inches from the floor and the reach depth was 17 inches. The highest control on the second ATM was 54 inches from the floor and the reach depth was 8 inches. Half of the focus group was comprised of wheelchair users and the other half used walkers and crutches or had vision impairments. InterBold submitted videotaped excerpts of the focus group which showed five wheelchair users activating the controls. The Board has requested that the full report be submitted for the record. InterBold testified that it would have to redesign two of its new ATMs to comply with a forward reach at a cost of $2 to $4 million and that it would take 18 months to accomplish. InterBold also expressed concern about a forward reach compromising usability by others. InterBold recommended that either a forward or side reach be allowed.

Fujitsu-ICL Systems has also produced new "7000 series" of ATMs and made a demonstration model available for the public hearing. Fujitsu-ICL Systems designed its new ATMs with the keypad directly below the video display screen function keys. An optional software enhancement allows the user to perform transactions from either the higher video display screen function keys or the lower keypad. If the user performs transactions from the lower keypad, the highest control which needs to be activated to operate the ATM is the card reader which can be placed at 48 inches above the floor. The controls on Fujitsu-ICL Systems' new ATMs can be installed flush against the wall or recess in the wall. Fujitsu-ICL Systems testified that if the controls are installed flush against the wall, a ¾ inch knock out would have to be provided in the wall under the ATM to comply with a forward reach. If the controls are recessed in the wall, toe or knee space would have to be provided in the wall under the ATM to comply with a forward reach. The controls also comply with a side reach. Although Fujitsu-ICL Systems demonstrated how its new ATMs could comply with both a forward and side reach, it did not make any specific recommendations regarding ADAAG.

Companion Systems, a leading manufacturer of ATM surrounds, testified about the design of the fixtures. Companion Systems stated that the area directly under ATMs is the prime area for locating writing counters and bins for envelopes and waste paper and discussed the problem of applying the side reach requirement to ATMs with surrounds. The side reach requirement does not make any allowance for reach depths between 10 inches (54 inch maximum height for controls) and 24 inches (46 inch maximum height for controls). Companion Systems pointed out that an arm reaching between these two points would normally move in an arc and submitted Figure 1 which is set forth below interpolating reach depths and maximum heights for controls if the points were connected by a straight line.

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Figure 1

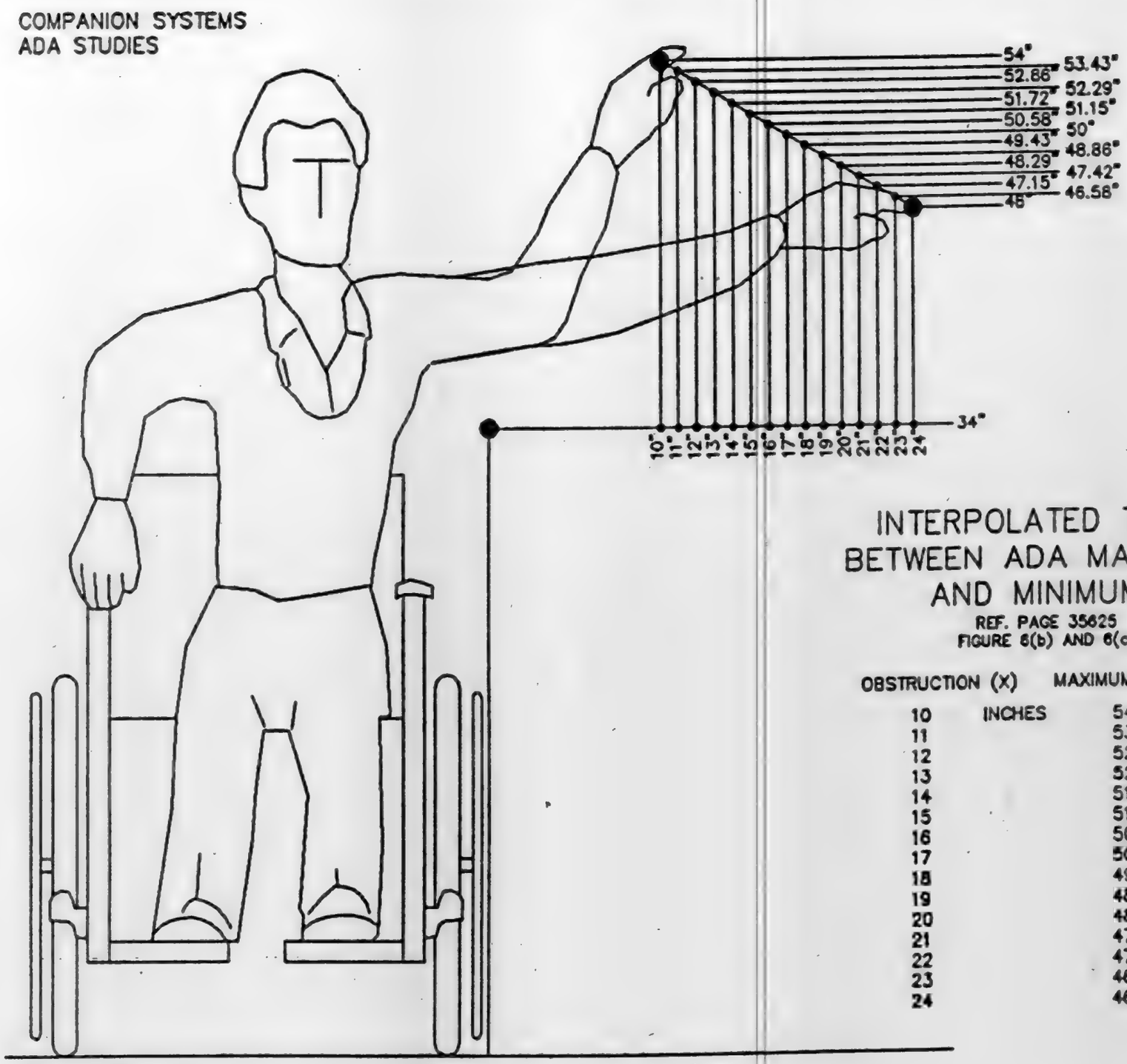

INTERPOLATED TABLE BETWEEN ADA MAXIMUMS AND MINIMUMS

REF. PAGE 35625
FIGURE 6(b) AND 6(c)

OBSTRUCTION (X)	MAXIMUM HEIGHT (Y)
10 INCHES	54 INCHES
11	53.43
12	52.86
13	52.29
14	51.72
15	51.15
16	50.58
17	50
18	49.43
19	48.86
20	48.29
21	47.42
22	47.15
23	46.58
24	46

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Based on this straight line interpolation, for each one inch increment in reach depth, the maximum height for controls would decrease approximately ½ inch. Companion Systems recommended that a table of reach depths and maximum heights for controls be included in the reach range requirement for accessible ATMs based on a straight line interpolation to address the reach over an obstruction resulting from recessed controls and the installation of surrounds in front of ATMs. InterBold and several banks submitted written comments in support of including such a table in ADAAG.

The American Bankers Association testified that if ATM manufacturers have to redesign their new ATMs at significant cost to comply with a forward reach, it will result in higher prices for ATMs and banks will purchase fewer ATMs. The American Bankers Association was further concerned that banks would be unable to relocate or resell used ATMs that do not comply with a forward reach and recommended that used ATMs be exempt from ADAAG. The American Bankers Association also expressed similar concerns as the NCR Corporation and InterBold that a forward reach would limit the functionality of ATMs and compromise usability by others, as well as privacy and security.

The banks that testified at the public hearing and that submitted written comments supported the American Bankers Association's position. Many of the banks stated that they have initiated programs to lower their existing ATMs to provide a side reach and that they would be unable to continue their programs if required to comply with a forward reach. The banks identified only one existing ATM model that is mounted on top of a night depository which cannot be lowered to provide a side reach.

The ATM Exchange, a used ATM broker, submitted written comments and estimated that about 6,000 to 8,000 used ATMs are relocated or resold each year. The ATM Exchange stated that the most common used ATMs can be installed to comply with a side reach but not a forward reach. The ATM Exchange also described some actions that it has taken to make used ATMs accessible. For example, the ATM Exchange has added a second lower keypad on a used ATM model to make it accessible. The ATM Exchange recommended that used ATMs be exempt from ADAAG and that ATM manufacturers be given adequate time to incorporate any new reach range requirement in the design of their new ATMs.

Paralyzed Veterans of America, United Cerebral Palsy Associations, Prince George's County Commission for Persons with Disabilities testified against changing the requirement for both a forward and side reach. The Rights Task Force of the Consortium for Citizens with Disabilities submitted written comments to retain the requirement, which were joined by thirteen national organizations representing the interests of individuals with disabilities. Three State and local organizations representing the interests of individuals with disabilities and two individuals also submitted written comments to retain the requirement.

Paralyzed Veterans of America testified that individuals with disabilities have a wide range of functional abilities and that the intent of the ADA is to provide access to the greatest number of persons possible. Paralyzed Veterans of America stated that changing the requirement for both a forward and side reach will put ATMs out of the reach of some of its members who have limited upper body mobility. United Cerebral Palsy Associations testified how the rulemaking affects this nation's 700,000 citizens with cerebral palsy. United Cerebral Palsy Associations estimated that 35% to 40% of these persons have mobility impairments, manual dexterity or grasping impairments, and speech impairments and would be affected by any change in the reach range requirement. The Rights Task Force of the Consortium of Citizens with Disabilities and other organizations representing the interests of individuals with disabilities who recommended that the requirement for both a forward and side reach be retained expressed similar concerns that changing the provision will result in ATMs being unusable by a portion of this nation's population with disabilities.

The National Council on Independent Living representing over 100 centers for independent living across he country submitted written comments that the current forward and side reach ranges are too high for individuals whose reach may be limited due to height, spasticity, lack of arm strength, sitting or standing instability, or poor balance. The National Council on Independent Living recommended a maximum height of "42–43 inches" for a forward reach and "44–45 inches" for a side reach. The National Council on Independent Living further recommended that, in addition to "maximum limits," lower "comfort zones" be established and their use be encouraged whenever possible. The National Council on Independent Living also suggested that if placing ATM controls at a lower height would compromise usability by others, then ATMs should be equipped with two sets of controls or, where two ATMs are provided at a location, one should be placed at a lower height and the other should be placed at a higher height.

Eastern Paralyzed Veterans Associations submitted written comments that access to ATMs is not solely a function of control heights but also the angle at which the screen and other controls are placed. Eastern Paralyzed Veterans Association recommended that additional research be done to establish definitive specifications for accessible ATMs which can be imposed as a "package" on the industry.

The California Council of the Blind submitted written comments that ATMs complying with a forward reach can result in braille instructions on the controls being unusable. The California Council of the Blind recommend that two ATMs be required at each location: one complying with a forward reach and one at a height that would be conducive to readability by individuals who are blind and visually impaired. The California Council of the Blind also recommended that ATMs be equipped with a private audio response device.

Proposed Rule

The reach depth to controls is a critical issue in establishing a reach range requirement for accessible ATMs. The ATM manufacturers and banks generally agree that recessed controls are desirable for privacy and security purposes. Surrounds also serve a useful function. A reach range requirement for accessible ATMs must address the reach over an obstruction resulting from recessed controls and the installation of surrounds in front of ATMs. As pointed out by Companion Systems, a leading manufacturer of ATM surrounds, the side reach requirement does not make any allowance for reach depths between 10 inches (54 inch maximum height for controls) and 24 inches (46 inch maximum height for controls). Interpolating reach depths and maximum heights for controls along a straight line between these points, as recommended by Companion Systems, appears to be a reasonable way to address the reach over an obstruction resulting from recessed controls and the installation of surrounds in front of ATMs. The Board proposes to include a table of reach depths and a maximum heights for controls based on a straight

line interpolation in the reach range requirement for accessible ATMs in place of requiring both a forward and side reach. The proposed rule would require that for each additional inch of reach depth beyond 10 inches, the height of the controls would be lowered ½ inch below the 54 inch maximum height for a side reach. (Due to rounding off, the controls would be lowered an additional half inch at reach depths greater that 13 inches and 20 inches.) The proposed rule will allow banks to choose among available ATM models and surround designs and, based upon their combined reach depth, install the ATM and surround so the controls are placed at the appropriate height. For instance, if the controls on an ATM are recessed 10 inches and the surround adds another 6 inches to the reach depth, the controls would be placed at a maximum height of 50½ inches.

Because many commenters remarked that the references in ADAAG 4.34 to other sections relating to clear floor space and approach were ambiguous, particularly with respect to the relationship between the required approach and applicable reach ranges, the proposed rule clarifies the application of those provisions to ATMs. ADAAG 4.34.1 is unchanged and provides that each ATM required to be accessible by the scoping provision in ADAAG 4.1.3(20) must be on an accessible route and comply with the other requirements in ADAAG 4.34. Proposed ADAAG 4.34.2 requires that ATMs be located so that clear floor space complying with ADAAG 4.2.4(30 inches by 48 inches minimum with one full unobstructed side adjoining or overlapping an accessible route) is provided to allow a wheelchair user to make a forward approach, a parallel approach, or both to the machine. When making a forward approach, the longer dimension of the wheelchair is positioned perpendicular to the ATM; and when making a parallel approach, the longer dimension of the wheelchair is positioned parallel to the ATM. ATMs are usually located in the lobby of buildings or installed through the exterior wall of buildings and accessed from the sidewalk, and there is adequate clear floor space for a wheelchair user to make a forward or parallel approach to the machine. The word "both" is used in proposed ADAAG 4.34.2 to clarify that an ATM can be located so that clear floor space is provided to allow a wheelchair user to make both types of approaches.

Figure 2 which is set forth below illustrates these points.

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Figure 2

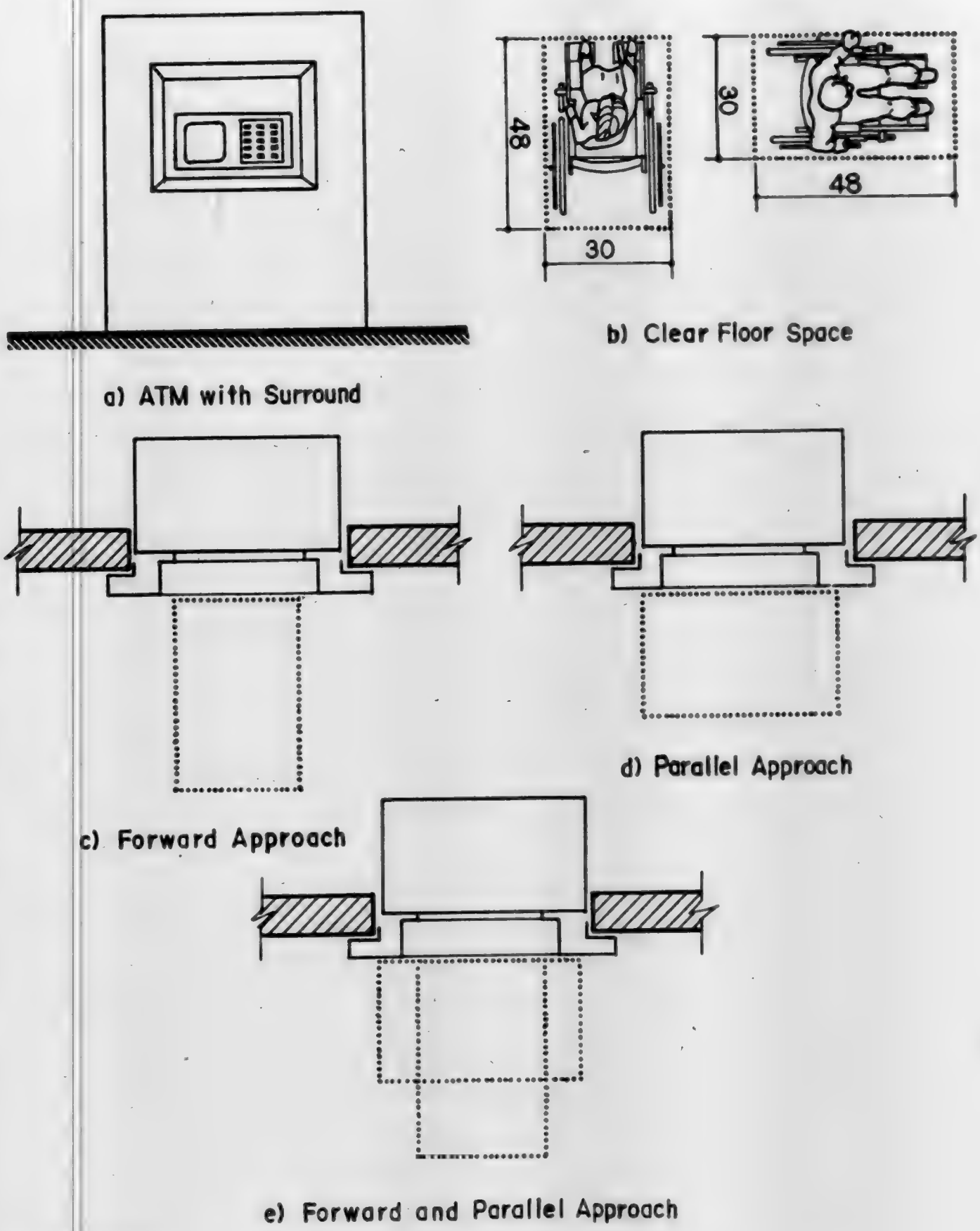

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Figure 2(a) shows an ATM with a surround. Figure 2(b) shows the clear floor space minimum dimensions. Figure 2(c) shows the clear floor space required for a front approach to an ATM. Figure 2(d) shows the clear floor space required for a parallel approach to an ATM. Figure 2(e) shows the clear floor space required for both types of approaches. One full unobstructed side of the clear floor space must adjoin or overlap an accessible route to facilitate the approach.

Proposed ADAAG 4.34.3 sets out the reach ranges for ATM controls, including card readers, keypads, video display screen function keys, receipt dispensers, and statement printers. Paragraph (1) provides that if only a forward approach is possible, operable parts of all controls would have to be placed within the forward reach range specified in ADAAG 4.2.5. For instance, if an ATM is located in a narrow alcove and a wheelchair user can make only a forward approach, the maximum height for the placement of the controls is 48 inches for a forward reach and clear floor space must be provided under the ATM that equals or exceeds the reach depth for a maximum of 25 inches. (If the reach depth is between 20 inches and 25 inches, the maximum height for the placement of the controls is 44 inches.) Paragraph (2)(a) specifies the reach ranges if only a parallel approach is possible such as where an ATM is located in a narrow corridor. Paragraph (2)(a) provides that where the reach depth to the operable parts of all controls is not more than 10 inches, the maximum height for the placement of the controls is 54 inches. Paragraph 2(b) includes the table of reach depths and maximum heights for the placement of the controls based on a straight line interpolation where the reach depth to the operable parts of any control is more than 10 inches. The maximum heights are rounded off to half inches. Paragraphs (2) (a) and (b) also clarify that the reach depth is to be measured from the vertical plane perpendicular to the edge of the unobstructed clear floor space at the farthest protrusion from the ATM or surround. Paragraph (3) provides that if both types of approaches are possible, the operable parts of all controls must be placed within at least one of the reach ranges in paragraphs (1) or (2). Thus, if there is adequate clear floor space for a wheelchair user to make a forward approach or parallel approach, at a minimum the controls must be reachable from one of the approaches. This is a change from the current ADAAG provision which requires accessible ATMs to provide for a parallel approach and both a forward and side reach. Many of the comments received in response to the May 6th **Federal Register** notice support this revision. Those comments will be considered part of this rulemaking docket and do not need to be resubmitted in response to this notice of proposed rulemaking. Paragraph (4) states that where bins are provided for envelopes, waste paper, or other purposes, at least one of each type provided must comply with the applicable reach ranges. This provision is consistent with ADAAG 4.1.3 (12)(a) which requires at least one of each type of fixed or built-in storage units to be accessible.

Proposed ADAAG 4.34.3 also includes an exception for those ATMs which are equipped with an alternate control that can perform the same function in a substantially equivalent manner. Under the exception, only one of the controls needed to perform the function is required to comply with the reach range requirement. If the controls are identified by tactile markings, such markings must be provided at both controls so that the markings can be read by persons with vision impairments from a standing position or a wheelchair.

Proposed ADAAG 4.34.4 references ADAAG 4.27.4 which provides that controls must be operable with one hand and not require tight grasping, pinching, twisting of the wrist, or more than 5 lb. force to activate. The requirement that instructions and information for use of ATMs be made accessible to and independently usable by persons with visual impairments is unchanged and has been renumbered ADAAG 4.34.5.

The references to the clear floor space and reach range requirements in the exception for drive-up only ATMs under ADAAG 4.1.3(20) are revised to reflect the newly proposed ADAAG sections.

As discussed above, the proposed rule will allow banks to choose among available ATM models and surround designs. The maximum height for the placement of controls will vary depending on where the ATM is located, the clear floor space and type of approaches possible, and reach depth. The highest control can be placed at a maximum height of 54 inches where a parallel approach is possible and the reach depth to operable parts of all the controls is not more than 10 inches. Organizations representing the interests of individuals with disabilities have commented that a 54 inch maximum height is not usable by a portion of this nation's population with disabilities and that the intent of the ADA is to provide access to the greatest number of persons possible. NCR Corporation, InterBold, and the American Bankers Association have suggested that the Board conduct research before proposing any change to the 54 inch maximum height.

As noted earlier, the 54 inch maximum height is taken from ANSI A117.1–1980. The original research for that reach was conducted in the 1950's and consisted of measuring how high wheelchair users could extend their arms in a vertical direction on a wall. The vertical reach of the persons tested, as measured from the floor to the tips of their fingers, ranged from 54 inches to 78 inches with 60 inches as average. ANSI A117.1–1961, section 3.3.1. Research sponsored by the Department of Housing and Urban Development in the 1970's tested the reach of wheelchair users and found that the vertical reach of the persons tested ranged from less than 36 inches to almost 72 inches. E. Steinfeld, S. Schroeder, M. Bishop, "Accessible Buildings for People with Walking and Reaching Limitations" 17–19 (1979). Approximately 10% of the persons tested could not reach vertically to 54 inches; and over 50% could reach to 60 inches or higher. Id. Research sponsored by the Board in the 1980's tested the reach of wheelchair users in both laboratory and field conditions and found that more than 20% of the persons tested could not reach devices above 48 inches with the exception of devices that required a flat hand push or finger push and 1.5 lb. or less force to operate. E. Steinfield, "Hands-On Architecture" Volume 3, Part II, 9(1986). The research findings further demonstrated that a 48 inch maximum height would accommodate 90% of the persons tested. Id.

Human engineering data compiled by Henry Dreyfuss Associates shows that from a parallel approach, a short female wheelchair user (58.3 inches height) can reach 53 inches vertically and 48.5 inches over a 12 inch obstruction and a tall male wheelchair user (73.6 inches height) can reach 71.2 inches vertically and 67.7 inches over a 12 inch obstruction. Henry Dreyfuss Associates, "Humanscale 1, 2, 3" Selector 3a (1974). Henry Dreyfuss Associates notes that these maximum reaches are valid only for wheelchair users who are capable of full arm movement and estimates this group to be 42% of all wheelchair users. Id at 26. Henry Dreyfuss Associates recommends a "handy reach zone" between 36 inches and 48 inches above the floor as accommodating a larger percentage of wheelchair users. Id.

Reach abilities can also vary based upon the task. For example, a wheelchair user may be able to operate a light switch or push a button at a 54 inch maximum height but inserting a card into a slot at the same height may be more difficult because of the manipulation required. Some wheelchair users may need to reach across their bodies to activate controls. (Two of the wheelchair users in the videotape submitted by Inter-Bold reached across their bodies to activate the ATM controls.) The ANSI A117.1 standard originally included a provision for a 48 inch diagonal reach to account for this type of reach. ANSI A117.1–1961, section 3.3.4.

The Board recognizes that any reach range requirement must also take into account the needs of other user groups. Usually, this is done by requiring that where more than one type of equipment is provided, one be placed at a higher height and one be placed at a lower height. For instance, ADAAG 4.1.3(17)(a) requires that where more than one bank of public telephones is provided on each floor of a building, at least one telephone per bank be installed to comply with a side reach and at least one telephone per floor be installed to comply with a forward reach. It is estimated that only 5% to 10% of locations have more than one ATM. A requirement mandating that banks provide a second ATM at each location would be very costly to implement and may result in banks providing ATMs at fewer locations.

The Board requests comments on alternative means for increasing accessibility to ATMs that do not necessarily involve installing the machines at a lower height. For instance, the card reader is the highest control on many ATMs. "Smart cards" have been developed which can activate a machine without actually inserting the card in the card reader. It may also be possible to provide two keypads on ATMs with one at a lower height. ATM manufacturers are encouraged to provide information on these and other alternatives, and their cost.

The Board notes that the June 15, 1992 final draft of ANSI A117.1 contains a provision which would require ATM video display screens to be placed so that the lower edge is at a maximum height of 38 inches above the floor or adjustable so that the screen can be readily viewed by wheelchair users. California has also proposed accessible viewing provisions for ATM video display screens. The California provisions would require the video display screen to be positioned so that it is readily visible by a wheelchair user with approximate eye level of 45 inches as follows:

- If the screen is mounted vertically or at an angle no more than 30 degrees tipped away from the viewer, the center line of the screen would have to be located a maximum of 52 inches above the floor.
- If the screen is mounted at an angle between 30 degrees and 60 degrees tipped away from the viewer, the center line of the screen would have to be located a maximum of 44 inches above the floor.
- If the screen is mounted at an angle between 60 degrees and 90 degrees tipped away from the viewer, the center line of the screen would have to be located a maximum of 34 inches above the floor.

The Board requests comments on whether any of these provisions should be included in the ADAAG requirements for accessible ATMs. The Board also requests information on any costs associated with these provisions. The Board further notes that the keypads on some ATMs are placed on the same sight line as the video display screen but are tipped at a greater angle than the screen and requests whether any viewing requirement should also apply to keypads.

The Department of Justice and Department of Transportation have adopted ADAAG as the accessibility standards for certain titles of the Americans with Disabilities Act of 1990. 28 CFR part 36, appendix A; 49 CFR part 37, appendix A. Those agencies will be issuing separate notices of proposed rulemaking to amend the accessibility standards consistent with this rulmaking.

List of Subjects in 36 CFR Part 1191

Buildings, Civil rights, Handicapped, Individuals with disabilities.

Authorized by vote of the Board on August 25, 1992.

Gordon H. Mansfield,

Chairman, Architectural and Transportation Barriers Compliance Board.

For the reasons set forth in the preamble, it is proposed that part 1191 of title 36 of the Code of Federal Regulations be amended as follows:

PART 1191—AMERICANS WITH DISABILITIES ACT (ADA) ACCESSIBILITY GUIDELINES FOR BUILDINGS AND FACILITIES

1. The authority citation for part 1191 continues to read as follows:

Authority: Americans with Disabilities Act of 1990, Pub. L. 101–336, 104 Stat. 370 (42 U.S.C. 12204).

2. The appendix to part 1191 is amended by republishing the introductory text of section 4.1.3, by revising paragraph 20 in section 4.1.3, by revising sections 4.34 and 4.34.1 through 4.34.4, and by adding section 4.34.5 to read as follows:

Appendix to Part 1191—Americans With Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities

* * * * *

4.1.3 Accessible buildings: New construction.

Accessible buildings and facilities shall meet the following minimum requirements:

* * * * *

(20) Where automated teller machines are provided, each machine shall comply with the requirements of 4.34 except where two or more are provided at a location, then only one must comply.

Exception: Drive-up-only automated teller machines are not required to comply with 4.34.2 and 4.34.3.

* * * * *

4.34 Automated Teller Machines.

4.34.1 General.

Each automated teller machine required to be accessible by 4.1.3 shall be on an accessible route and shall comply with 4.34.

4.34.2 Clear floor space.

The automated teller machine shall be located so that clear floor space complying with 4.2.4 is provided to allow a person using a wheelchair to make a forward approach, a parallel approach, or both, to the machine.

4.34.3 Reach ranges.

(1) Forward Approach Only. If only a forward approach is possible, operable parts of all controls shall be placed within the forward reach range specified in 4.2.5.

(2) Parallel Approach Only. If only a parallel approach is possible, operable parts of controls shall be placed as follows:

(a) Reach Depth Not More Than 10 In (255 Mm). Where the reach depth to the operable parts of all controls as measured from the vertical plane perpendicular to the edge of the unobstructed clear floor space at the farthest protrusion of the automated teller machine or surround is not more than 10 in (255 mm), the maximum height from the floor shall be 54 in (1370 mm).

(b) Reach Depth More Than 10 In (255 Mm). Where the reach depth to the

operable parts of any control as measured from the vertical plane perpendicular to the edge of the unobstructed clear floor space at the farthest protrusion of the automated teller machine or surround is more than 10 in (255 mm), the maximum height from the floor shall be as follows:

Reach depth		Maximum height	
In	Mm	In	Mm
10	255	54	1370
11	280	53½	1360
12	305	53	1345
13	330	52½	1335
14	355	51½	1310
15	380	51	1295
16	405	50½	1285
17	430	50	1270
18	455	49½	1255
19	485	49	1245
20	510	48½	1230
21	535	47½	1205
22	560	47	1195
23	585	46½	1180
24	610	46	1170

(3) Forward and Parallel Approach. If both a forward and parallel approach are possible, operable parts of controls shall be placed within at least one of the reach ranges in paragraphs (1) or (2) of this section.

(4) Bins. Where bins are provided for envelopes, waste paper, or other purposes, at least one of each type provided shall comply with the applicable reach ranges in paragraph (1), (2), or (3) of this section.

Exception: Where a function can be performed in a substantially equivalent manner by using an alternate control, only one of the controls needed to perform that function is required to comply with this section. If the controls are identified by tactile markings, such markings shall be provided on both controls.

4.34.4 Controls.

Controls for user activation shall comply with 4.27.4

4.34.5 Equipment for persons with vision impairments.

Instructions and all information for use shall be made accessible to and independently usable by persons with vision impairments.

* * * * *

[FR Doc. 92-21494 Filed 9-2-92; 3:50 pm]

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federal register

Tuesday
September 8, 1992

Part VII

Department of Labor

Office of the Secretary

Women's Bureau; Announcement of Competition for Grant Applications for the Nontraditional Employment for Women (NEW) Act Demonstration Programs for Fiscal Year 1992; Notice

DEPARTMENT OF LABOR

Office of the Secretary

Women's Bureau; Announcement of Competition for Grant Applications for the Nontraditional Employment for Women (NEW) Act Demonstration Programs for Fiscal Year 1992

AGENCY: Office of the Secretary, Women's Bureau, Labor.

ACTION: Notice.

SUMMARY: The National Office (Washington, DC) of the Women's Bureau, U.S. Department of Labor, intends to award up to six (6) grants to conduct demonstration projects which provide a wider range of training opportunities for women in nontraditional fields.

The NEW Act establishes a four-year, $6 million demonstration program to assist States in the development of exemplary programs that train and place women in nontraditional occupations, with a special focus on growth occupations with increased wage potential.

The Women's Bureau is to award, from funds available under Title IV of JTPA, $1.5 million per year for Fiscal Years 1992, 1993, 1994 and 1995; up to six grants per year may be awarded to States. The size of the grants will be determined by the number of grants funded; i.e., if the maximum six grants are funded, awards could be approximately $250,000 each. Since these grants are to be funded from JTPA Title IV monies, the State's operating entity for JTPA is the intended grant recipient

DATES: Grant applications which request funding in FY 1992 must be received by close of business (4:45 p.m., Eastern Standard Time) Friday, November 13, 1992, or be postmarked by the U.S. Postal Service on or before that date. Applications received after the deadline will be considered to be non-responsive and not reviewed. Notice of the action taken on all applications will be issued to applicants no later than December 31, 1992. Awards will be made by January 8, 1993.

ADDRESSES: A State's operating entity for JTPA interested in submitting a grant application for review under this competition must request in writing a copy of Solicitation for Grant Application (SGA) #92-01 from the Office of Procurement Services, U.S. Department of Labor, 200 Constitution Avenue NW., room S-5220, Washington, DC 20210, Attention: Ms. Lisa Harvey.

FOR FURTHER INFORMATION CONTACT: Ms. Dora E. Carrington, Chief, Office of Administrative Management, U.S. Department of Labor, Office of the Secretary, Women's Bureau, 200 Constitution Avenue NW., room S-3305, Washington, DC 20210; telephone number: (202) 523-6606.

SUPPLEMENTARY INFORMATION:

I. Background

The Women's Bureau was established by statute in 1920 to "* * * formulate standards and policies which shall promote the welfare of wage-earning women, improve their working conditions, increase their efficiency and advance their opportunities for profitable employment."

The Bureau is an agency of the Department of Labor located in the Office of the Secretary of Labor. The Director of the Bureau serves as an advisor to the Secretary on matters affecting working women and on the development and implementation of Department of Labor policies and programs as they relate to its statutory mandate. The Women's Bureau conducts a broad-based program of research, information development and dissemination, legislation analysis, demonstration projects and technical assistance.

The Women's Bureau demonstration and technical assistance program is conducted to contribute to policy development and implementation by testing new program concepts and new techniques for assisting unions, private employers and others in their efforts to expand women's opportunities for employment and advancement. One area where the Bureau has focused considerable efforts has been that of improving women's access to training and, particularly, increasing their representation and participation in those occupational fields considered nontraditional for women.

Nontraditional jobs generally pay more than jobs traditional to women. The Bureau has long advocated that women's participation in nontraditional occupations can serve a dual purpose: it can be a means of achieving self-sufficiency for women, and it provides employers with a skilled labor force in a competitive economy. To that end, the Bureau has undertaken a number of major initiatives over time.

In 1978 the Women's Bureau participated in the revision to the regulations found at title 29 CFR part 30, Equal Opportunity in Apprenticeship and Training, as amended, as well as in the Goals and Timetables for Female and Minority Participation in the Construction Industry regulations for contractors and subcontractors subject to Executive Order 11246, as amended. In the early 1980's the Bureau also served as the Coordinator for the Monitoring Committee established by the consent order handed down in the case of Advocates for Women and Women Working in Construction versus the Department of Labor. A major effort was the Women Apprenticeship Initiative, developed in 1982 in cooperation with the Bureau of Apprenticeship and Training (BAT). This project consisted of workshops held nationwide that were designed to increase the awareness of and secure the support of employers and program sponsors in recruiting, placing, and retaining women in apprenticeable occupations. The Bureau's publication "A Women's Guide to Apprenticeship," one of the products of this project, is still requested today by practitioners in the field interested in learning effective techniques to recruit and retain women in the skilled trades.

More recently the Bureau, BAT and the Office of Federal Contract Compliance Programs (OFCCP) have been partners on the Secretary's Initiative to Improve Opportunities for Women in the Skilled Trades (WIST). WIST is a multifaceted, departmental effort to improve opportunities for women and minorities in the skilled trades, especially apprenticeships. The coordinated effort includes outreach and promotion, enforcement of applicable EEO regulations and research. The Bureau is also working in cooperation with the Department of Transportation's Federal Highway Administration to increase the number of women in skilled highway construction occupations. A program guide, developed for State Highway agencies, will be released this year. In 1989, the Bureau provided funding for the Second National Tradeswomen Conference. Discussions at the conference pointed to the need for a national advocacy organization for tradeswomen that could provide technical assistance to employers and others interested in the issue of women in the trades; the National Tradeswomen Network was subsequently established with funding from the Women's Bureau.

The body of knowledge and expertise acquired through these initiatives and through numerous technical assistance activities have given the Bureau a unique perspective from which to guide the implementation of the Nontraditional Employment for Women (NEW) Act demonstration grants. One key element of this perspective is that if women's participation and representation in the nontraditional occupations is to increase, a

fundamental change must occur within the job training system: the institutionalization of nontraditional occupational and skills training services into the primary labor market delivery system in each geographic area to encourage the inclusion of women and girls into training and employment leading to the area's best training programs and jobs which are usually nontraditional to them.

Equally important is the coordination of job training services with other vocational education and training services. Coordinating services ensures that a fuller range of activities are available to individual participants, allowing for "customizing" and tailoring of services to fit each client's needs, including the support services women need related to their family responsibilities. The NEW Act encourages both institutionalization of a broader array of employment opportunities and coordination of services. Both these elements should be present in these demonstration grants if the specifics and intent of the NEW Act are to be fully carried out.

On December 12, 1991, the President signed into law the Nontraditional Employment for Women (NEW) Act, Public Law 102–235. NEW amends the Job Training Partnership Act (JTPA) to provide a wider range of training opportunities for women under existing JTPA programs; to provide incentives for the establishment of programs that train, place and retain women in nontraditional fields; and to facilitate coordination of JTPA and vocational education resources available for training and placing women in nontraditional employment. Nontraditional job fields are defined as those in which less than 25 percent of the workers in that occupation or field are women. Construction, public utilities, technical jobs in construction, plumbing and electro-mechanics are a few examples of such occupations.

Nontraditional occupations have the potential for greatly improving the economic status of women. They tend to pay higher wages, have better fringe benefits, offer a wider variety of work schedules, greater job security and more opportunities for advancement. For some women, they may mean the difference between being on welfare and being economically self-sufficient. Nontraditional training for women also provides benefits for both the State and its service providers. This kind of training expands the occupational mix available to all clients, increases the quality of available training, and enhances coordination with other education and training programs as well as with labor and apprenticeship programs. It allows the State to be a valuable source of trained individuals for employers and unions working to meet human resource goals.

II. Eligible Applicants

Grants funded under the NEW Act demonstration programs are to be funded from JTPA Title IV monies; therefore, the State's operating entity for JTPA is the eligible applicant.

III. Funding Levels

Proposal (i.e., grant application) funding requests shall not exceed $1.5 million. Any grant application requesting more than $1.5 million shall be deemed non-responsive to this SGA and will not be evaluated.

IV. Program Design—Key Features

The grants for which States are competing shall have the following principal features:

1. Linkages and Coordination

The NEW Act calls for coordination between JTPA and other resources available (Federal and/or State) for training women in nontraditional employment, both in the Governor's Coordination and Special Services Plan (GCSSP) developed for Title IIA and for the demonstration grants. Therefore, any linkages and collaborative efforts that exist between (a) JTPA and other programs, such as registered apprenticeship programs or the Carl D. Perkins Vocational and Applied Technology Education Act (Perkins), (b) between JTPA and other entities, such as federal and/or state contractors or state agencies responsible for work that is nontraditional for women (such as highway construction), or (c) other linkages established specifically for purposes of this demonstration must be clearly identified and defined, including those articulated in the GCSSP for Title IIA. In addition, the Department expects that the private sector, in their roles as members of Private Industry Councils (PICs), employers or members of Apprenticeship Committees will be called upon to play a strategic role in the design and/or delivery of training, certainly in the placement of participants. For this reason, the level of private sector involvement in the development and implementation of training programs under NEW must also be clearly identified.

2. Existing Efforts and/or New Initiatives

Program activities funded under this grant may consist of new initiatives, further development of existing programs, or a combination. Therefore, proposals shall describe any new initiatives to be implemented through this grant; the demonstrated effectiveness of existing programs in achieving the goals of the NEW Act and the enhancements to be undertaken under this grant; and, in cases where the programmatic approach calls for a combination of new and existing programs, a description of how the new activities and existing programs will complement each other.

3. Measurable and Attainable Goals

Proposals shall describe expected impacts on participants as a result of the training programs. These impacts shall be measurable and attainable and may include awareness/orientation sessions to increase women's knowledge of opportunities in nontraditional occupations, attainment of training competencies, placement in registered apprenticeship training, completion of training, wage at placement, occupation at placement, and retention in employment. The discussion shall also include information on whether the proposed grant amount is sufficient to accomplish measurable goals; if, in linking with other programs, additional financial resources are expected, the proposal shall identify the source(s) of funds and their intended use.

4. Initiatives Continued Beyond Grant Period

As previously mentioned, it is the Department's intent that activities funded under the NEW Act lead to systemic changes that institutionalize nontraditional training within a geographic area. Proposals shall indicate the strategies to be used to encourage and promote the continuation of activities once Federal support has ended.

5. Replication and Dissemination

The Department believes that one way of encouraging and promoting institutionalization of nontraditional training within a grantee's area is to plan for replication of successful programs and to disseminate information about both the demonstration and existing model programs. For that reason, proposals shall include a discussion on the extent to which the State is prepared to accomplish dissemination of information as well as the extent to which they are prepared to produce materials for replication of the demonstration training programs.

A State's operating entity for JTPA interested in submitting a grant application for review under the FY 1992 competition should request a copy of SGA #92-01 from the Office of Procurement Services, U.S. Department of Labor, 200 Constitution Avenue NW., room S-5220, Washington, DC 20210, Attention: Ms. Lisa Harvey.

Applications must be received by close of business (4:45 p.m., Eastern Standard Time), Friday, November 13, 1992, or be postmarked by the U.S. Postal Service on or before that date. Proposals received after the deadline that were not postmarked by the U.S. Postal Service on or before Friday, November 13, 1992, will be considered to be non-responsive and will not be reviewed.

Signed at Washington, DC, this 1st day of September 1992.

Elsie Vartanian,

Director, Women's Bureau.

[FR Doc. 92-21517 Filed 9-4-92; 8:45 am]

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federal register

Tuesday
September 8, 1992

Part VIII

Environmental Protection Agency

40 CFR Parts 372 and 721

Chemicals; Toxic Chemical Release Reporting; Community Right-to-Know; Proposed Significant New Use Rule; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 372 and 721

[OPPTS-400069; FRL-4078-5]

Chemicals; Toxic Chemical Release Reporting; Community Right-To-Know; Proposed Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is partially granting a petition submitted by Governor Mario M. Cuomo of New York and the Natural Resources Defense Council to add 80 chemicals and 2 chemical categories to the list of toxic chemicals subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) by proposing to add 68 chemicals and 2 chemical categories. All of the chemicals and chemical categories contained in this petition appear on the Resource Conservation and Recovery Act (RCRA) list of hazardous wastes at 40 CFR 261.33(f). The addition of these chemicals and chemical categories to the list of toxic chemicals is based on their acute human health effects, carcinogenicity or other chronic human health effects, or their environmental effects. EPA believes that these chemicals and chemical categories meet the criteria for addition to the list of toxic substances as established in EPCRA section 313(d)(2). EPA is not proposing to add the remaining 12 chemicals addressed in this petition because the available data do not indicate that these chemicals meet the criteria of EPCRA section 313(d)(2). Alternatively, EPA is proposing to add only those chemicals identified in this document that are produced in quantities greater than a certain manufacturing threshold. The selection of an annual manufacturing volume threshold would be guided by the section 313(f) reporting thresholds, such that the addition of those chemicals produced in quantities less than the selected threshold would not be expected to result in the submission of EPCRA section 313 Form R reports to EPA. As discussed in Unit VI, EPA is requesting comment on the use of an annual manufacturing volume threshold and on what an appropriate threshold should be. In conjunction with this alternative proposal, the Agency is proposing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) that would cover the substances manufactured or imported in amounts less than the selected manufacturing volume threshold specified in this Rule. This petition does not request that any action be taken under RCRA, and today's proposal should not be inferred as a proposed RCRA action or a request for comment on the RCRA list of hazardous wastes.

DATES: Written comment on this proposed rule should be submitted by November 9, 1992. Submissions of TSCA section 14 CBI waivers should be submitted by November 9, 1992.

ADDRESSES: Written comments should be submitted in triplicate to: OPPT Docket Clerk, TSCA Public Docket Office, Environmental Protection Agency, TS-793, Rm. NE-004, 401 M St., SW., Washington, DC 20460, Attn: Docket Number OPPTS-400069. Requests for TSCA section 14 waivers should be submitted to: TSCA Document Receipt Office (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. ET-105, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Maria J. Doa, Petitions Coordinator, Emergency Planning and Community Right-to-Know Information Hotline, Environmental Protection Agency, Mail Stop TS-779, 401 M St., SW., Washington, DC 20460, Toll free: 800-535-0202.

SUPPLEMENTARY INFORMATION:

Electronic Availability: This document is available as an electronic file on *The Federal Bulletin Board* the day of publication in the **Federal Register**. By modem dial 202-512-1387 or call 202-512-1530 for disks or paper copies. This file is available in Postscript, Wordperfect 5.1 and ASCII.

I. Introduction

A. Statutory Authority

This proposal is issued under section 313(d) and (e) of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11023 et seq., "EPCRA"). EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986.

B. Background

Section 313 of EPCRA requires certain facilities manufacturing, processing or otherwise using toxic chemicals to report their environmental releases of such chemicals annually. Beginning with the 1991 reporting year, such facilities also must report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the Pollution Prevention Act (42 U.S.C. 13101 et seq.). Section 313 establishes an initial list of toxic chemicals that is comprised of more than 300 chemicals and 20 chemical categories. Any person may petition EPA to add chemicals to or delete chemicals from the list (EPCRA section 313(e)). Under EPCRA section 313(e)(2), if a State Governor petitions EPA to add a chemical to the list, the chemical will be added within 180 days after receipt of the petition, unless the Administrator: (1) Initiates a rulemaking to add the chemical to the list, in accordance with section 313(d)(2); or (2) publishes an explanation of why the Administrator believes the petition does not meet the statutory requirements of section 313(d)(2) for adding a chemical to the list.

EPA issued a statement of petition policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for petitions. On May 23, 1991 (56 FR 23703), EPA published guidance regarding the recommended content of petitions to delete individual members of the section 313 metal compound categories.

II. Description of Petition

On March 4, 1992, EPA received a petition from Governor Mario M. Cuomo of New York and the Natural Resources Defense Council to add 80 chemicals and 2 chemical categories to the list of toxic chemicals under section 313 of EPCRA. All of the chemicals and chemical categories appear on the RCRA list of toxic wastes under 40 CFR 261.33(f). The petitioners contend that the chemicals should be added to the EPCRA section 313 list because "[t]he findings that must be made to add a chemical under [s]ection 313(d)(2)(B) are precisely the same findings that EPA has already made in the course of exercising its authority to identify and list hazardous wastes under RCRA." The statutory deadline for EPA's response is August 31, 1992.

III. Regulatory Status

The 80 chemicals and 2 chemical categories are regulated under RCRA as hazardous wastes under 40 CFR 261.33(f) and also appear as hazardous constituents listed in 40 CFR Part 261 Appendix VIII. The Appendix VIII list is comprised of chemicals which have toxic, carcinogenic, mutagenic, or teratogenic effects on human or other life forms (40 CFR 261.11(a)(3)). EPA uses this list as one criterion in determining whether a waste should be listed as hazardous under 40 CFR 261.11. In addition, there are other environmental statutes besides RCRA (see Table 1) under which these 80

chemicals and 2 chemical categories are regulated. For example, one of the chemicals, acetophenone, is listed as a Hazardous Air Pollutant under Title III of the Clean Air Act (CAA), as amended in 1990; 13 of the chemicals are listed on section 307(a) of the Clean Water Act (CWA) (the Priority Pollutant List) (see Table 1); 2 chemicals, 2,4,5-TP (silvex) and benzo[a]pyrene, are regulated under the Safe Drinking Water Act; all 82 chemicals and chemical categories are listed under section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Table 1 lists the chemicals and identifies their regulatory status under RCRA, CWA, and CERCLA.

This petition does not request that any action be taken under any statute other than EPCRA, and today's proposal should not be inferred as a proposed action under any statute other than EPCRA or TSCA. Each statute prescribes different standards for adding or deleting chemicals or pollutants from their respective list. Today's proposal is based solely on the criteria in EPCRA section 313.

TABLE 1—Chemicals and Chemical Categories Petitioned for Addition to EPCRA Section 313

Chemical Name	CAS No[1]	RCRA U No.[2]	CWA Section 307(a)[3]	CERLA Section 102(RQ)[4]
Acetophenone	00098-86-2	u004		5,000
Acetyl chloride	00075-36-5	u006		5,000
Amitrole	00061-82-5	u011		10
Azaserine	00115-02-6	u015		1
Benz[c]acridine	00225-51-4	u016		100
Benz[a]anthracene	00056-55-3	u018		10
Benzo[rst]pentaphene	00189-55-9	u064		10
Benzo[a]phenanthrene	00218-01-9	u050	X	100
Benzo[a]pyrene	00050-32-8	u022	X	1
Bis(2-chloroethoxy)methane	00111-91-1	u024	X	1,000
4-Bromophenyl phenyl ether	00101-55-3	u030	X	100
Carbonic difluoride	00353-50-4	u033		1,000
Chloral	00075-87-6	u034		5,000
Chlorambucil	00305-03-3	u035		10
Chlornaphazine	00494-03-1	u026		100
p-Chloro-m-cresol	00059-50-7	u039	X	5,000
2-Chloroethyl vinyl ether	00110-75-8	u042	X	1,000
beta-Chloronaphthalene	00091-58-7	u047	X	5,000
4-Chloro-o-toluidine hydrochloride	03165-93-3	u049		100
Crotonaldehyde	04170-30-3	u053		100
Cyclophosphamide	00050-18-0	u058		10
Daunomycin	20830-81-3	u059		10
DDD	00072-54-8	u060	X	1
DDT	00050-29-3	u061	X	1
Dibenzo(a,h)anthracene	00053-70-3	u063	X	1
1,4-Dichloro-2-butene	00764-41-0	u074		1
1,2-Diethylhydrazine	01615-80-1	u086		10
O,O-Diethyl-S-methyl dithiophosphate	03288-58-2	u087		5,000
Diethylstilbestrol	00056-53-1	u089		1
Dihydrosafrole	00094-58-6	u090		10
7,12-Dimethylbenz[a]anthracene	00057-97-6	u094		1
1,2-Dimethylhydrazine	00540-73-8	u099		1
Ethylenebisdithiocarbamic acids, salts and esters	NA	u114		5,000
Ethylidene dichloride	00075-34-3	u076	X	1,000
Ethyl methacrylate	00097-63-2	u118		1,000
Ethyl methanesulfonate	00062-50-0	u119		1
Fluoranthene	00206-44-0	u120	X	100
Formic acid	00064-18-6	u123		5,000
Glycidylaldehyde	00765-34-4	u126		10
Hexachlorophene	00070-30-4	u132		100
Hexachloropropene	01888-71-7	u243		1,000
Hydrogen sulfide	07783-06-4	u135		100
Indeno[1,2,3-cd]pyrene	00193-39-5	u137	X	100
Isobutyl alcohol	00078-83-1	u140		5,000
Kepone	00143-50-0	u142		1
Lasiocarpine	00303-34-4	u143		10
Maleic hydrazide	00123-33-1	u148		5,000
Malononitrile	00109-77-3	u149		1,000
Melphalan	00148-82-3	u150		1
Methacrylonitrile	00126-98-7	u152		1,000
Methapyrilene	00091-80-5	u155		5,000
Methyl chlorocarbonate	00079-22-1	u156		1,000
3-Methylcholanthrene	00056-49-5	u157		10
Methyl ethyl ketone peroxide	01338-23-4	u160		10
Methyl mercaptan	00074-93-1	u153		100
2-Methylpyridine	00109-06-8	u191		5,000
Methylthiouracil	00056-04-2	u164		10
Mitomycin C	00050-07-7	u010		10
MNNG (N-methyl-N'-nitro-N-nitrosoguanidine)	00070-25-7	u163		10
1,4-Naphthoquinone	00130-15-4	u166		5,000
N-Nitrosodiethanolamine	01116-54-7	u173		1
N-Nitroso-N-methylurethane	00615-53-2	u178		1
N-Nitrosopyrrolidine	00930-55-2	u180		1
5-Nitro-o-toluidine	00099-55-8	u181		100

TABLE 1—Chemicals and Chemical Categories Petitioned for Addition to EPCRA Section 313—Continued

Chemical Name	CAS No.[1]	RCRA U No.[2]	CWA Section 307(a)[3]	CERLA Section 102(RQ)[4]
Paraldehyde	00123-63-7	u182		1,000
Pentachlorobenzene	00608-93-5	u183		10
Pentachloroethane	00076-01-7	u184		10
Phenacetin	00062-44-2	u187		100
Pronamide	23950-58-5	u192		5,000
n-Propylamine	00107-10-8	u194		5,000
Reserpine	00050-55-5	u200		5,000
Resorcinol	00108-46-3	u201		5,000
Streptozotocin	18883-66-4	u206		1
1,2,4,5-Tetrachlorobenzene	00095-94-3	u207		5,000
1,1,1,2-Tetrachloroethane	00630-20-6	u208		100
Thiram	00137-26-8	u244		10
p-Toluidine	00106-49-0	u353		100
2,4,5-TP (Silvex)[5]	00093-72-1	f027		100
1,3,5-Trinitrobenzene	00099-35-4	u234		10
Trypan blue	00072-57-1	u236		10
Uracil mustard	00066-75-1	u237		10
Warfarin and salts[6]	NA	u248		100

[1] EPA intends that the CAS Registry Number be used as the primary identifier of the chemicals proposed for addition.

[2] 40 CFR section 261.33(f). These commercial chemical products, manufacturing chemical intermediates, or off-specification commercial chemical products are identified under RCRA regulations as toxic unless otherwise designated.

[3] CWA section 307(a), Priority Pollutant List.

[4] CERCLA section 112.

[5] This chemical is listed in 40 CFR 261.31, hazardous wastes from non-specific sources.

[6] Warfarin and salts are listed under 40 CFR section 261.33(f) only when present inconcentrations of 0.3% or less. Warfarin and salts are listed under 40 CFR section 261.33(e) only when present in concentrations greater than 0.3%.

IV. EPA's Technical Review

In order to be added to the EPCRA section 313 list of toxic substances, the Administrator must determine whether, in his judgement, there is sufficient evidence to establish any one of the following:

(A) The chemical is known to cause or can reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring releases.

(B) The chemical is known to cause or can reasonably be anticipated to cause in humans--

(i) cancer or teratogenic effects, or

(ii) serious or irreversible--

(I) reproductive dysfunction,

(II) neurological disorders,

(III) heritable genetic mutations, or

(IV) other chronic health effects.

(C) The chemical is known to cause or can reasonably be anticipated to cause, because of--

(i) its toxicity,

(ii) its toxicity and persistence in the environment, or

(iii) its toxicity and tendency to bioaccumulate in the environment, a significant adverse effect on the environment of sufficient seriousness, in the judgement of the Administrator, to warrant reporting under this section.

In Unit IV.B of this preamble, EPA identifies each of the chemicals proposed for addition to EPCRA section 313 and the specific statutory criteria upon which the proposed addition is based.

For those chemicals that are being proposed for listing pursuant to EPCRA section 313(d)(2)(A), EPA assumes for purposes of this proposal that there are sufficient releases for the Agency to reasonably anticipate that the chemical will cause "significant acute human health effects" beyond the facility site boundaries. Due to the time limitations imposed by the statute and limitations in currently available production volume information, EPA was unable for this proposal to conduct exposure assessments for each of the chemicals proposed for listing pursuant to section 313(d)(2)(A). EPA requests comment on any release and exposure information for each of these chemicals or, in the alternative, evidence that there are no releases.

With respect to those chemicals proposed to be added pursuant to section 313(d)(2)(C), EPA requests specific information on whether each of the chemicals satisfy that criterion.

A. Introduction

In evaluating each of the chemicals or chemical categories to determine if it meets the statutory criteria in section 313(d)(2), EPA's technical review of the petition to add 80 chemicals and 2 chemical categories includes a limited hazard analyses of the known health and environmental effects for these substances using criteria outlined in the *Draft Hazard Assessment Guidelines for Listing Chemicals on the Toxic Release Inventory* (*Draft Hazard Assessment Guidelines*, Ref. 32). These *Draft Hazard Assessment Guidelines* embody internal EPA practices that have been used in the review of petitions to add and/or delete chemicals from EPCRA section 313. These *Draft Hazard Assessment Guidelines* are available for review in the docket associated with this rulemaking. This draft document was available for distribution to the public at a public meeting on May 29, 1992. EPA is currently reviewing comments received as a result of that public meeting. A final version of these guidelines has not been promulgated. Requests for further information should be addressed to the person identified under the FOR FURTHER INFORMATION CONTACT Unit at the front of this document.

EPA is proposing to add to EPCRA section 313 those chemicals that meet the criteria for "sufficient for listing" or "may be sufficient for listing" as defined in these draft guidelines. These terms are defined in the *Draft Hazard Assessment Guidelines* as follows: (1) Sufficient for listing is a "...category corresponding to the situation where there is a high level of confidence that a chemical produces a specific toxic effect, (e.g., cancer, developmental effects), or where a chemical has relatively high toxicity based on specified numerical screening criteria and there is a high confidence in the toxicity value," (2) may be sufficient for listing is a "...category corresponding to the situation where there is suggestive but not definitve evidence that a chemical produces a specific toxic effect (e.g., cancer, developmental effects), or where a chemical has intermediate

toxicity based on specified numerical screening criteria." (Ref. 32).

Information on the health and environmental effects of the 80 chemicals and 2 chemical categories was obtained from the following sources: EPA documents including *Chemical Hazard Information Profiles* (Ref. 12), *Health Advisories* (Refs. 28 and 29), *Health and Environmental Effects Profiles* (Ref. 13), Reportable Quantity documents (Refs. 17 to 27), Pesticide Position Documents (Refs. 10 and 11), and *Toxic Substances Control Act (TSCA)/Inter-agency Testing Committee-Information Reviews* (Ref. 39), *Agency for Toxic Substances and Disease Registry's Toxicological Profiles* (Refs. 4 to 6), *Shepard's Catalogue of Teratogenic Agents* (Ref. 47), *National Research Council's Publication on Drinking Water and Health* (Ref. 43), and *National Toxicology Program's Chemical Status Report* (Ref. 44). On-line searches of a limited number of data bases including *Integrated Risk Information System* (Ref. 36), *Hazardous Substances Data Bank* (Ref. 37), *Registry of Toxic Effects of Chemical Substances* (Ref. 46), *National Pesticide Information Retrieval System* (Ref. 42), *Quantitative Structure-Activity Relationship* (Ref. 45), and *Aquatic Information Retrieval* (Ref. 3) were performed to supplement the information from the secondary sources listed above. Data on the chemicals and chemical categories were reviewed for evidence indicating adverse acute and chronic toxicity, carcinogenicity, mutagenicity, developmental and reproductive effects, neurotoxicity, and environmental fate and effects. This information is summarized in the support document for today's proposal (Ref. 35). A limited discussion of the health and environmental effects associated with each of the 80 chemicals and 2 chemical categories follows.

All chemicals are listed as RCRA hazardous wastes at 40 CFR 261.33(f) for toxicity only unless otherwise noted.

B. Chemicals Proposed for Addition to EPCRA Section 313

1. *Acetophenone* (CAS No. 00098–86–2). Changes in the ratio of chronaxies of antagonist muscles, decreases in the albumin/globulin ratio of the blood, congestion of the cardiac vessels, and pronounced dystrophy of the liver was observed in male rats continuously exposed to acetophenone vapor at 0.07 milligrams per cubic meter (mg/m^3) for 70 days. A lowest-observed-adverse-effect level (LOAEL) and a no-observed-adverse-effect level (NOAEL) of 0.0446 milligram per kilogram per day (mg/kg/day) and 0.00446 mg/kg/day were determined, respectively. A supporting study reported degeneration of olfactory bulb cells in rats continuously exposed to acetophenone vapor at 9 mg/m^3 (5.7 mg/kg/day) for up to 3 months (Ref. 40). Therefore, there is sufficient evidence for listing acetophenone on EPCRA section 313 pursuant to section 313(d)(2(B) based on the available toxicity data for this chemical.

2. *Amitrole* (CAS No. 00061–82–5). Amitrole is classified as a B2 carcinogen by EPA; i.e., a probable human carcinogen. It is classified as a Group 2B carcinogen by the International Agency for Research on Cancer (IARC); i.e., the compound is a possible human carcinogen based on sufficient evidence of carcinogenicity in animals and inadequate evidence in humans. Animal studies indicate that amitrole administered in the diet to rats or mice induced thyroid carcinomas (rats) and thyroid adenomas (mice) (Ref. 37). Therefore, there is sufficient evidence for listing amitrole on EPCRA section 313 pursuant to section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

3. *Azaserine* (CAS No. 00115–02–6). Azaserine is classified as a Group B2 carcinogen by EPA; the compound is a probable human carcinogen based on sufficient data in animals and lack of data in humans. It is classified as a Group 2B carcinogen by IARC; i.e., possibly carcinogenic to humans. Animal studies indicate that azaserine administered in drinking water or by gavage to Wistar rats induced pancreatic tumors and that intraperitoneal injection induced both pancreatic and kidney adenocarcinomas. Additional animal studies support the conclusion that azaserine induces pancreatic tumors in Fischer and Lewis rats (Ref. 16). Therefore, there is sufficient evidence for listing azaserine on EPCRA section 313 pursuant to section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

4. *Benz(c)acridine* (CAS No. 00225–51–4). Based on the lack of human data and limited evidence of carcinogenicity in animals, IARC classified benz(c)acridine as a Group 3 carcinogen; i.e., the agent is not classifiable as to its carcinogenicity. The compound has been placed on EPA's Carcinogen Assessment Group's list of carcinogens. However, it has no EPA carcinogenicity classification. Benz(c)acridine was a weak lung and liver carcinogen following intraperitoneal administration to newborn mice. Papillomas of the bladder were noted in a few rats which received the chemical via implantation into the bladder. Squamous-cell carcinomas were observed in a limited number of animals after the chemical was dermally applied to the neck of mice. It should be noted, however, that benz(c)acridine is a heterocyclic analogue of benz(a)anthracene, which is classified as a Group B2 carcinogen by EPA. Like benz(a)anthracene, benz(c)acridine has a bay-region benzo ring which could be metabolized to a bay-region diol-epoxide, a reactive intermediate that can interact with DNA to initiate carcinogenesis. Benz(c)acridine has been shown to be mutagenic in bacteria and mammalian cells. Furthermore, several methyl-substituted benz(c)acridines are moderately or highly carcinogenic (Refs. 34, 37, and 46). Therefore, there may be sufficient evidence for listing benz(c)acridine on EPCRA section 313 pursuant to section 313(d)(2)(B) based on the available mutagenicity data for this chemical and analogy to benz(a)anthracene.

5. *Benz(a)anthracene* (CAS No. 00056–55–3). Benz(a)anthracene is classified as a Group B2 carcinogen by EPA; i.e., the compound is a probable human carcinogen based on sufficient data from animal bioassays and the lack of data in humans. It is classified as a Group 2A carcinogen by IARC; i.e, a probable human carcinogen. Benz(a)anthracene produced tumors in mice exposed by gavage (pulmonary adenoma, hepatoma, and forestomach papillomas), intraperitoneal injection (pulmonary adenoma and liver carcinomas), subcutaneous injection (sarcoma), or intramuscular injection (fibrosarcomas and hemangioendotheliomas), and topical application. Benz(a)anthracene produced mutations in bacteria and in mammalian cells, and transformed mammalian cells in culture (Refs. 37 and 38). Therefore, there is sufficient evidence for listing benz(a)anthracene on EPCRA section 313 pursuant to section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

Acute aquatic toxicity test data indicate that based on a measured daphnid 96–hour LC_{50} of 10 parts per billion (ppb), and estimated toxicity values of 61 ppb for fish 96–hour LC_{50}, 85 ppb for daphnid 48–hour LC_{50}, and 65 ppb for an algae 96–hour EC_{50}, benz(a)anthracene is highly toxic to aquatic organisms. Estimated toxicity values were derived using Quantitative Structure-Activity Relationship (QSAR) analysis based on the equation for neutral organic chemicals and an octanol-water partition coefficient (log

P) of 5.66 (Refs. 3 and 45). There is sufficient evidence for listing benz(a)anthracene on EPCRA section 313 pursuant to section 313(d)(2)(C) based on available ecotoxicity information for this chemical, because the aquatic toxicity of benz(a)anthracene is less than 100 ppb and the estimated chemical half-life is greater than 100 days.

6. *Benzo(rst)pentaphene* (CAS No. 00189-55-9). Benzo(rst)pentaphene is classified as a Group B2 carcinogen by EPA; i.e., the compound is a probable human carcinogen based on the lack of human data and sufficient evidence of carcinogenicity in animals. It is classified as a Group 2B carcinogen by IARC; i.e., possibly carcinogenic to humans. Carcinomas of the skin were observed in mice following dermal exposure to the chemical. Pulmonary and hepatic tumors were noted in mice receiving intraperitoneal injections of the chemical (Ref. 37). Therefore, there is sufficient evidence for listing benzo(rst)pentaphene on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

7. *Benzo(a)phenanthrene* (CAS No. 00218-01-9). Benzo(a)phenanthrene is classified as a Group B2 carcinogen by EPA; i.e., the compound is a probable human carcinogen based on sufficient data from animal bioassays and the lack of human data. It is classified as a Group 3 carcinogen by IARC; i.e., not classifiable as to its carcinogenicity to humans. Benzo(a)phenanthrene produced carcinomas and malignant lymphomas in mice after intraperitoneal injection and skin carcinomas in mice following dermal exposure. Although there are no human data that specifically link exposure to benzo(a)phenanthrene to human cancers, it is a component in mixtures that have been associated with human cancer (Refs. 37 and 38). Therefore, there is sufficient evidence for listing benzo(a)phenanthrene on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

8. *Benzo(a)pyrene* (CAS No. 00050-32-8). Benzo(a)pyrene is classified as a Group B2 carcinogen by EPA; i.e., the compound is a probable human carcinogen based on inadequate human carcinogenicity data and sufficient data in animals. It is classified as a Group 2A carcinogen by IARC. IARC reported that there is sufficient evidence that benzo(a)pyrene is an animal carcinogen and limited evidence that it is a human carcinogen. Human data specifically linking benzo(a)pyrene to a carcinogenic effect are lacking. There are multiple animal studies in rodent and nonrodent species reported by IARC which demonstrate benzo(a)pyrene to be carcinogenic following administration by oral, intratracheal, inhalation, and dermal routes. Benzo(a)pyrene administered orally to rats and hamsters produced stomach tumors. Respiratory tract tumors have been observed in hamsters exposed to benzo(a)pyrene via the inhalation route of exposure (Refs. 14 and 38). Therefore, there is sufficient evidence for listing benzo(a)pyrene on EPCRA section 313 pursuant to section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

Acute aquatic toxicity test data for benzo(a)pyrene indicate measured values of 5 ppb for a daphnid 96-hour LC_{50}, whereas 72-hour EC_{50} values for algae range from 5 ppb to greater than 4,000 ppb. Estimated toxicity values based on QSAR analysis using the equation for neutral organics and a log P of 6.12 give 96-hour and 48-hour LC_{50} values for fish and daphnid of 25 and 36 ppb, respectively, and an algae 96-hour EC_{50} of 28 ppb. Bioconcentration factors (BCF) for fish are 920 (measured) and 27,214 (QSAR estimation) (Refs. 3 and 45). There is sufficient evidence for listing benzo(a)pyrene on EPCRA section 313 pursuant to section 313(d)(2)(C) based on the available ecotoxicity information for this chemical, because the acute aquatic toxicity of benzo(a)pyrene is less than 1 parts per million (ppm) and the BCF is approximately or greater than 1,000.

9. *Bis(2-chloroethoxy)methane* (CAS No. 00111-91-1). Inhalation of 120 ppm (0.85 milligram per liter (mg/L)) of bis(2-chloroethoxy)methane for 4 hours resulted in deaths of six of six rats. It has a high degree of toxicity in the rat orally and in the guinea pig by skin contact (Ref. 37). However, the dose levels were not reported. Therefore, there may be sufficient evidence for listing bis(2-chloroethoxy)methane on EPCRA section 313 pursuant to section 313(d)(2)(A) based on the available acute toxicity data for this chemical.

10. *4-Bromophenyl phenyl ether* (CAS No. 00101-55-3). Aquatic toxicity test data for 4-bromophenyl phenyl ether range from 0.36 ppm for the daphnid 48-hour LC_{50} to 5.9 ppm for the fish 96-hour LC_{50}. Using QSAR analysis based on the equation for neutral organics and a log P of 5.24, acute toxicity values for aquatic organisms were consistently less than 1 ppm (0.17 ppm for fish and algae and 0.22 ppm for daphnids) (Ref. 3). These aquatic toxicity values, most of which are greater than 100 ppb and less than 1 ppm, indicate that there may be sufficient evidence for listing 4-bromophenyl phenyl ether on EPCRA section 313 pursuant to EPCRA section 313 (d)(2)(C) based on the available ecotoxicity information for this chemical.

11. *Carbonic difluoride* (CAS No. 00353-50-4). Acute inhalation exposures to carbonic difluoride gas may induce hemorrhage and pulmonary edema in rats. A suitable NOAEL or LOAEL for this effect was not established. The rat LC_{50} for carbonic difluoride ranges from 243 to 1,215 mg/m^3 (0.24 to 1.2 mg/L). Although several other acute inhalation studies suggest that the lung may be a target organ, none of the studies identified suitable NOAELs or LOAELs (Ref. 48). Therefore, the available evidence may be sufficient for listing carbonic difluoride on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(A) based on the available toxicity data for this chemical.

12. *Chlorambucil* (CAS No. 00305-03-3). Chlorambucil is classified as a Group A carcinogen by EPA; i.e., the compound is carcinogenic to humans based on sufficient evidence of carcinogenicity in humans and animals. It is classified as a Group 1 carcinogen by IARC; i.e., carcinogenic to humans. In a National Cancer Institute (NCI) bioassay, there was clear evidence of carcinogenicity of chlorambucil to rats and mice. Significant increases in malignant tumors of the mammary gland, central and peripheral nervous system, hematopoietic and lymphatic systems, and external auditory canal have been reported in female rats given chlorambucil by gavage. Chlorambucil also produced lymphosarcomas in male rats, lymphosarcomas and lung tumors in male and female mice, and ovarian tumors in female mice following intraperitoneal injection. Human data indicate that chlorambucil treatment is associated with an increased risk of developing acute leukemia (Refs. 18, 37, and 46). Therefore, there is sufficient evidence for listing chlorambucil on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

13. *Chlornaphazine* (CAS No. 00494-03-1). Using the Konemann equation for QSAR analysis, the 96-hour LC_{50} for fish is estimated to be less than 2.2 ppm based on a molecular weight of 268.2 and a log P of 4.5. Chlornaphazine is an alkylating agent and these chemicals are known to have excess toxicity (Ref. 45). Therefore, there is sufficient evidence for listing chlornaphazine on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available

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ecotoxicity data for this chemical because the estimated aquatic toxicity values are less than 2.2 ppm and the chemical will have excess toxicity.

14. *p-Chloro-m-cresol* (CAS No. 00059-50-7). Although there is little data on the toxicity of p-chloro-m-cresol in humans, it has been rated as very toxic, with a probable lethal dose to humans of 50 to 500 mg/kg. No chronic toxicity data were available for this chemical; however, acute data suggest that the compound may be hepatotoxic and/or neurotoxic. In male rats, a single oral or subcutaneous dose of 400 mg/kg p-chloro-m-cresol induced cellular changes in the liver and irregularities in the bile canaliculi. In mice, exposure to p-chloro-m-cresol via subcutaneous injection induced tremors, resulting in an LD_{50} of 360 mg/kg, whereas exposure via intravenous injection induced coma, resulting in an LD_{50} of 70 mg/kg (Refs. 37 and 46). Therefore, there may be sufficient evidence for listing p-chloro-m-cresol on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(A) based on the acute toxicity data available for this chemical.

15. *4-Chloro-o-toluidine hydrochloride* (CAS No. 03165-93-3). 4-Chloro-o-toluidine hydrochloride is classified as a Group B2 carcinogen by EPA; i.e., the compound is a probable human carcinogen based on inadequate evidence from human data and sufficient evidence from animal studies. It is classified as a Group 2B carcinogen by IARC; i.e., a probable human carcinogen. Epidemiology studies are inadequate in evaluating the carcinogenic potential of 4-chloro-o-toluidine hydrochloride in humans. In a long-term feeding study by NCI, 4-chloro-otoluidine hydrochloride induced hemangiomas, hemangiosarcomas, and vascular tumors in mice. An increase in the incidence of pituitary chromophobe adenomas, although not clearly treatment-related, was observed in female rats following dietary administration (Refs. 17 and 37). Therefore, there is sufficient evidence for listing 4-chloro-o-toluidine hydrochloride on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

16. *Crotonaldehyde* (CAS No. 04170-30-3). Aquatic toxicity test data indicate measured fish 96-hour LC_{50} values of 0.65 to 3.5 ppm, a daphnid 48-hour LC_{50} of 2.0 ppm, and an algal 96-hour EC_{50} of 0.88 ppm (Refs. 3 and 31). There may be sufficient evidence for listing crotonaldehyde on EPCRA section 313 pursuant to section 313(d)(2)(C) based on the available ecotoxicity information for this chemical, because the measured aquatic toxicity values for crotonaldehyde are less than 1 ppm but greater than 100 ppb.

17 *Cyclophosphamide* (CAS No. 00050-18-0). Cyclophosphamide is classified as a Group B1 carcinogen by EPA; i.e., the compound is a probable human carcinogen based on sufficient data in animals and limited data in humans. It is classified as a Group 1 carcinogen by IARC; i.e., the compound is carcinogenic to humans. In an NCI bioassay, there was clear evidence of its carcinogenicity in mice and rats. Cyclophosphamide is carcinogenic in animals following oral or parenteral administration producing tumors in the bladder and other organs in rats, and leukemia, mammary tumors, and hematopoietic system tumors in mice. In humans it is associated with an increased incidence of bladder cancer and acute nonlymphocytic leukemia in patients treated with cyclophosphamide (Refs. 19 and 37). Therefore, there is sufficient evidence for listing cyclophosphamide on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

18. *Daunomycin* (CAS No. 20830-81-3). Daunomycin is classified as a Group B2 carcinogen by EPA; i.e., the compound is probably carcinogenic to humans. It is classified as a Group 2B carcinogen by IARC; the compound is probably carcinogenic to humans based on the lack of human data and sufficient evidence of carcinogenicity data in animals. There was clear evidence of carcinogenicity in rats in NCI studies. In other studies, increased incidences of reticulosarcomas or leukemia were noted in mice receiving weekly oral doses of 12.5 mg/kg daunomycin for 22 weeks. Renal tumors, mammary tumors, and fibroadenomas have been observed following the intravenous injection of daunomycin in rats (Refs. 37 and 46). Therefore, there is sufficient evidence for listing daunomycin on EPCRA section 313 pursuant to section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

19. *DDD* (CAS No. 00072-54-8). DDD, a metabolite of DDT, is classified as a Group B2 carcinogen by EPA; i.e., the compound is a probable human carcinogen based on an increased incidence of lung tumors in male and female mice, liver tumors in male mice, and thyroid tumors in male rats receiving DDD in the diet. In NCI studies, there was clear evidence of carcinogenicity in rats but not in mice (Refs. 4, 38, and 46). Therefore, there is sufficient evidence for listing DDD on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

Aquatic toxicity test data indicate that measured 96-hour LC_{50} values for fish range from 2.5 ppb to 740 ppb; the 96-hour LC_{50} value for shrimp is 2.4 ppb, and for daphnids is 3.2 ppb. Estimated aquatic toxicity values, based on QSAR analysis using the neutral organic equation and a log P of 6.96, are between 4 ppb for fish 96-hour LC_{50} and 6 ppb for daphnid 48-hour LC_{50}, indicating that DDD is highly toxic to aquatic organisms (Refs. 3 and 45). There is sufficient evidence for listing DDD on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available ecotoxicity information for this chemical, because the aquatic toxicity values for DDD are less than 100 ppb and the estimated lop P value is greater than 5.5.

20. *DDT* (CAS No. 00050-29-3). DDT is classified as a Group B2 carcinogen by EPA; i.e., the compound is a probable human carcinogen based on increased incidence of hepatic tumors in various mouse strains and in rats treated with DDT in the diet. It is classified as a Group 2B carcinogen by IARC; i.e., the compound is a probable human carcinogen (Refs. 38 and 43). In NCI studies, DDT was noncarcinogenic to mice and rats. DDT is a canceled pesticide (Ref. 30). Therefore, there is sufficient evidence for listing DDT on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

Aquatic toxicity test data include measured fish 96-hour LC_{50} values ranging from 0.4 ppb to 20 ppb. Estimated BCFs for DDT range from 44,594 to 114,524. The biodegradation half-life is estimated to be greater than 20 days and possibly greater than 100 days; the hydrolysis half-life may exceed 1,000 days (Refs. 3 and 41). There is sufficient evidence for listing DDT on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available ecotoxicity information for this chemical because the measured aquatic acute toxicity of DDT is consistently less than 100 ppb.

21. *Dibenzo(a,h)anthracene* (CAS No. 00053-70-3). Dibenzo(a,h)anthracene is classified as a Group B2 carcinogen by EPA; i.e., the compound is a probable human carcinogen based on sufficient data from animal bioassays and no human data. Numerous studies that demonstrate complete carcinogenic activity and initiating activity of dibenzo(a,h)anthracene are summarized

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by IARC, which has classified it as a Group 2B carcinogen. Dibenzo(a,h)anthracene produced carcinomas (pulmonary and mammary) in rats when administered by the oral route. Mammary carcinomas were observed in two strains of mice following gavage (Ref. 38). Therefore, there is sufficient evidence for listing dibenzo(a,h)anthracene on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

22. *1,4-Dichloro-2-butene* (CAS No. 00764-41-0). 1,4-Dichloro-2-butene is classified as a Group B2 carcinogen by EPA; i.e., the compound is a potential human carcinogen based on an increased incidence of nasal carcinomas in male and female rats in two inhalation studies. It is classified as a Group 3 carcinogen by IARC; i.e., not classifiable as to its carcinogenicity to humans. 1,4-Dichloro-2-butene induced germ cell mutation and was mutagenic in *in vivo* and *in vitro* assays (Ref. 37). Therefore, there is sufficient evidence for listing 1,4-dichloro-2-butene on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based upon the available carcinogenicity and mutagenicity data for this chemical.

23. *1,2-Diethylhydrazine* (CAS No. 01615-80-1). Several animal studies have demonstrated the tumorigenicity of this chemical in rats following subcutaneous or intravenous injection. The assessment of the carcinogenicity of 1,2-diethylhydrazine is currently under review by EPA. 1,2-Dimethylhydrazine, an analogous compound, is classified as a B2 Group carcinogen by EPA based on sufficient evidence from animal studies (the compound induced tumors at a number of sites in mice and rats) (Refs. 38 and 46). Therefore, there may be sufficient evidence for listing 1,2-diethylhydrazine on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical and based on analogy with 1,2-dimethylhydrazine.

24. *O,O-Diethyl S-methyl dithiophosphate* (CAS No. 03288-58-2). Estimated aquatic toxicity values, derived using QSAR analysis with the equation for esters and a log P of 2.8, are 11.3 ppm for fish 96-hour LC_{50}, 29.8 ppm for daphnid 48-hour LC_{50}, and 0.9 ppm for algae 96-hour EC_{50} (Ref. 45). Because the algal estimated acute aquatic toxicity value is less than 1 ppm and O,O-diethyl S-methyl dithiophosphate is a pesticide component known to inhibit cholinesterase activity, there is sufficient evidence to list O,O-diethyl S-methyl dithiophosphate on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available ecotoxicity data for this compound.

25. *Diethylstilbestrol* (CAS No. 00056-53-1). Diethylstilbestrol is classified as a Group A carcinogen by EPA; the agent is carcinogenic to humans based on sufficient evidence in humans and animals. It is classified as a Group 1 carcinogen by IARC; i.e., carcinogenic to humans. Vaginal adenocarcinoma in young women was associated in seven out of eight cases with diethylstilbestrol treatment of the mother of the patients during the first trimester of pregnancy. Vaginal adenosis in female patients exposed in utero to diethylstilbestrol has also been reported. Animal studies indicate the induction of breast tumors in mice fed diethylstilbestrol in the diet, the induction of pituitary and hepatic tumors in rats fed diethylstilbestrol in the diet, and reproductive tract neoplasms in hamsters given diethylstilbestrol via gastric intubation. In addition, the compound is considered to be a known carcinogen by the National Toxicology Program (NTP) (Refs. 37, 46, and 47). Therefore, there is sufficient evidence for listing diethylstilbestrol on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

26. *Dihydrosafrole* (CAS No. 00094-58-6). Dihydrosafrole is classified as a Group 2B carcinogen by IARC; i.e., the compound is a probable human carcinogen based on the lack of data in humans and sufficient evidence of carcinogenicity in animals. Chronic oral administration of dihydrosafrole induced liver tumors in mice and esophageal tumors in rats (Ref. 37). Therefore, there is sufficient evidence for listing dihydrosafrole on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data.

27. *7,12-Dimethylbenz(a)anthracene* (CAS No. 00057-97-6). 7,12-Dimethylbenz(a)anthracene is classified as a Group B2 carcinogen by EPA; i.e., the compound is a probable human carcinogen based on sufficient evidence from animal studies and lack of data in humans. It is classified as a Group 2B carcinogen by IARC; i.e., possibly carcinogenic to humans. In animal studies, single or multiple doses of 7,12-dimethylbenz(a)anthracene induced mammary tumors in mice and rats exposed by gastric intubation or gavage, and topical application induced various tumors in rats, mice, and hamsters (Ref. 20). Therefore, there is sufficient evidence for including 7,12-dimethylbenz(a)anthracene on EPCRA section 313 pursuant to EPCRA section 313 (d)(2)(B) based on the available carcinogenicity data for this chemical.

28. *1,2-Dimethylhydrazine* (CAS No. 00540-73-8). 1,2-Dimethylhydrazine is classified as a Group B2 carcinogen by EPA; i.e., the compound is a probable human carcinogen based on the lack of data in humans and sufficient evidence from animal studies. It is classified as a Group 2B carcinogen by IARC; i.e., possibly carcinogenic to humans. Chronic oral exposure to 1,2-dimethylhydrazine induced angiomas and angiosarcomas in Swiss mice, and oral administration induces angiosarcomas and lung adenomas in mice, angiosarcomas in hamsters, and intestinal tumors in rats. Single and multiple subcutaneous injections of 1,2-dimethylhydrazine induced tumors of the colon, large intestine, and kidney in rats and mice (Ref. 21). Therefore, there is sufficient evidence for including 1,2-dimethylhydrazine on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

29. *Ethylenebisdithiocarbamic acid, salts and esters* (NA). Ethylenebisdithiocarbamates are pesticides regulated under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Products containing ethylenebisdithiocarbamates are restricted (Refs. 8, 30, and 33). A major toxicological concern from exposure to ethylenebisdithiocarbamic acid is the hazard to human health from the presence of ethylenethiourea, a contaminant, degradation product, and metabolite present in ethylenebisdithiocarbamic acid. Ethylenethiourea is carcinogenic, mutagenic, and teratogenic and causes thyroid toxicity (Refs. 37 and 42). No dose levels are available for these effects. Therefore, there may be sufficient evidence for listing ethylenebisdithiocarbamic acid, salts and esters on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available chronic toxicity data. Additional toxicity data on ethylenebisdithiocarbamic acid, salts and esters may be available on EPA/Office of Pesticide Program's (OPP) One-Liner data base; however, it is confidential business information (CBI) under FIFRA.

30. *Ethylidene dichloride* (CAS No. 00075-34-3). Ethylidene dichloride is classified as a Group C carcinogen by EPA; i.e., the compound is a possible human carcinogen based on the lack of human data and limited evidence of carcinogenicity in two animal species (rats and mice) as shown by an increased incidence of mammary gland

adenocarcinomas and hemangiosarcomas in female rats and an increased incidence of hepatocellular carcinomas and benign uterine polyps in mice in NCI bioassay. Because of similarities in structure and target organs, the carcinogenicity evidence for 1,2-dichloroethane is considered to support the classification of ethylidene dichloride as a possible human carcinogen (Refs. 5 and 38). Therefore, there may be sufficient evidence for including ethylidene dichloride on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

31. *Ethyl methanesulfonate* (CAS No. 00062-50-0). Ethyl methanesulfonate, an alkylating agent, is classified as a Group B2 carcinogen by EPA; i.e., the compound is a probable human carcinogen based on sufficient evidence from animal studies. It is classified as a Group 2B carcinogen by IARC; i.e., possibly carcinogenic in humans. In animal studies, ethyl methanesulfonate produced mammary carcinomas and renal tumors in rats following oral administration. Intraperitoneal injection of ethyl methanesulfonate induced lung carcinomas, renal tumors, and adenocarcinomas of the mammary gland in rats, and intraperitoneal or subcutaneous injection produced lung adenomas in mice (Refs. 22 and 37). Therefore, there is sufficient evidence for including ethyl methanesulfonate on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

32. *Fluoranthene* (CAS No. 00206-44-0). Measured aquatic toxicity test data for fluoranthene ranges from 3.9 to greater than 560 ppm for fish 96-hour LC_{50}, 320 ppm for daphnid 48-hour LC_{50}, and between 45 and 54.6 ppm for the algae 96-hour EC_{50}. Only mysid shrimp show significant toxicity with a 96-hour LC_{50} of 40 ppb. Estimated aquatic toxicity values, derived with QSAR analysis using the equation for neutral organics and a log P of 4.95, are 0.25 ppm for the fish 96-hour LC_{50}, 0.33 ppm for the daphnid 48-hour LC_{50}, and 0.25 ppm for the algae 96-hour EC_{50}. A BCF of 1,130 was also estimated (Refs. 37, 41, and 45). Therefore, there is sufficient evidence for listing fluoranthene on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on available ecotoxicity data for this chemical, because some of the aquatic toxicity values are less than 100 ppb and because of the persistence and the bioaccumulation potentials.

33. *Formic acid* (CAS No. 00064-18-6). The oral LD_{50} values for rats and mice are 1,210 mg/kg and 1,100 mg/kg, respectively. No chronic systemic, carcinogenicity, teratogenicity, or reproductive studies could be located in the available literature for formic acid. The principal hazard of formic acid is that of severe damage to the skin, eyes, or mucosal surfaces due to the chemical's corrosive properties. In humans, swallowing formic acid has caused a number of cases of severe poisoning and death with symptoms such as salivation, vomiting, burning sensation in the mouth, diarrhea, and pain (Ref. 38). Therefore, there may be sufficient evidence for listing formic acid on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(A) based on the available acute toxicity data for this chemical.

34. *Glycidaldehyde* (CAS No. 00765-34-4). Glycidaldehyde is classified as a Group B2 carcinogen by EPA; i.e., the compound is a probable human carcinogen based on an increased incidence of unspecified tumors in rats and malignant tumors (fibrosarcomas, squamous cell carcinoma, adenocarcinomas, and undifferentiated sarcomas) in mice following subcutaneous injection and of skin carcinomas in mice following dermal application. The compound is classified as a Group 2B chemical by IARC; i.e., possibly carcinogenic to humans (Ref. 38). Therefore, there is sufficient evidence for listing glycidaldehyde on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

35. *Hexachlorophene* (CAS No. 00070-30-4). Dogs fed hexachlorophene at 0.75, 1.5, or 3.0 mg/kg/day in the diet for 13 weeks had status spongiosis in the brain, optic nerve, spinal cord, and sciatic nerve at all dose levels tested. A NOAEL was not established. In a 16-week dietary study, cerebral edema and vacuolization in the white matter in the CNS were observed at 5 mg/kg/day (Ref. 46). Therefore, there is sufficient evidence for listing hexachlorophene on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available neurotoxicity data for this chemical.

Aquatic toxicity test data for hexachlorophene show that the measured 96-hour LC_{50} for the fathead minnow is 21 ppb whereas the estimated fish 96-hour LC_{50}, based on QSAR analysis using the equation for phenols and a log P of 7.78, is 20 ppb. Measured terrestrial toxicity data for wildlife indicate that the oral LD_{50} for bobwhite quail is 575 mg/kg (ppm) and the oral LD_{50} for female mallard ducks is 1,450 mg/kg (ppm) (Refs. 3, 37, and 45). There is sufficient evidence to list hexachlorophene on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available ecotoxicity information for this chemical, because the estimated and measured aquatic acute toxicity values for hexachlorophene are less than 100 ppb.

36. *Hexachloropropene* (CAS No. 01888-71-7). No carcinogenicity, neurotoxicity, teratogenicity, reproductive toxicity, or chronic systemic toxicity studies could be located in the available literature. The 30-minute inhalation LC_{50} value in rats is 425 ppm, and the intraperitoneal LD_{50} value in rats is 400 mg/kg (Ref. 46). Therefore, there may be sufficient evidence for listing hexachloropropene on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(A) based on the available toxicity data for this chemical.

The estimated aquatic toxicity values for hexachloropropene, based on QSAR analysis using the equation for neutral organics and a log P of 4.36, are 1.1 ppm for the fish 96-hour LC_{50}, 1.4 for the daphnid 48-hour LC_{50}, and 1.0 for the algae 96-hour EC_{50} (Ref. 45). There may be sufficient evidence to list hexachloropropene on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available ecotoxicity information for this chemical, because the aquatic acute toxicity values for hexachloropropene are consistently greater than 1 ppm but less than 10 ppm and the chemical half-life is estimated to be greater than 15 days.

37. *Hydrogen sulfide* (CAS No. 07783-06-4). The available information for the respiratory effects of hydrogen sulfide in humans is taken largely from reports of accidental exposures and/or occupational exposures; therefore, it is not possible to determine NOAELs or LOAELs from these data. Acute inhalation exposures to low levels of hydrogen sulfide have resulted in respiratory irritation effects in humans. Acute exposures to large amounts of hydrogen sulfide (approximately 250 ppm or more) have produced pulmonary edema, unconsciousness, respiratory paralysis, asphyxiation, and/or death in some individuals. Similar effects are also noted in animals. In a subchronic study, inflammation of the nasal mucosa occurred in mice following 90-day inhalation of hydrogen sulfide, resulting in a NOAEL of 42.5 mg/m^3 (30.5 ppm; Human Equivalent Concentration (HEC) is 0.93 mg/m^3) and a LOAEL of 110 mg/

m^3 (80 ppm; HEC is 2.4 mg/m^3). Other respiratory effects, such as alveolar edema, infiltrates in the bronchioles, cellular necrosis, hyperplasia, and exfoliation in various respiratory tissues, have been reported in rats (Ref. 38). Therefore, there is sufficient evidence for listing hydrogen sulfide on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based upon the available respiratory toxicity data for this chemical.

Aquatic toxicity test data for hydrogen sulfide show that measured fish 96-hour LC_{50} values range from 7 to 776 ppb (Ref. 3). There is sufficient evidence to list hydrogen sulfide on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available ecotoxicity information for this chemical, because the acute fish toxicity values for hydrogen sulfide include values less than 100 ppb.

38. *Indeno[1,2,3-cd]pyrene* (CAS No. 00193-39-5). Indeno[1,2,3-cd]pyrene is classified as a Group B2 carcinogen by EPA; i.e., the compound is a probable human carcinogen based on increased incidence of epidermoid carcinomas in a lung implantation study in rats, skin tumors from dermal application in several strains of mice, and sarcomas following subcutaneous injection in mice. Also, positive results were obtained by indeno[1,2,3-cd]pyrene in bacterial gene mutation assays. The compound is classified as a Group 2B carcinogen by IARC; i.e., possibly carcinogenic to humans (Refs. 37 and 38). Therefore, there is sufficient evidence for listing indeno[1,2,3-cd]pyrene on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

39. *Kepone* (CAS No. 00143-50-0). Kepone is classified as a Group B2 carcinogen by EPA, i.e., the compound is a probable human carcinogen. It is classified as a Group 2B carcinogen by IARC; i.e., possibly carcinogenic to humans. The compound has been shown to induce hepatocellular carcinomas in mice and rats following dietary exposure (Refs. 24 and 37). Kepone is a canceled pesticide (Ref. 30). Therefore, there is sufficient evidence for listing kepone on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

Aquatic toxicity test data for kepone show that the measured 48-hour EC_{50} for daphnids is 260 ppb and that the 96-hour LC_{50} values for fish range from 30 to 72 ppb. The BCF for kepone in fish is greater than 1,000 (1,100 to 2,200 in fathead minnow) (Ref. 37). Because kepone is very stable in the environment (no degradation after 56 days) and the aquatic toxicity is less than 100 ppb, there is sufficient evidence for listing kepone on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available ecotoxicity data for this chemical.

40. *Lasiocarpine* (CAS No. 00303-34-4). Lasiocarpine is classified as a Group B2 carcinogen by EPA; i.e., the compound is a probable human carcinogen. Lasiocarpine is classified as a Group 2B carcinogen by IARC; i.e., possibly carcinogenic to humans. Lasiocarpine induced angiosarcoma of the liver and metastatic angiosarcomas in the lungs of rats via dietary ingestion. Lasiocarpine induced hepatocellular carcinomas, squamous-cell carcinomas of the skin, pulmonary adenomas, and tumors in the testes and intestines in rats via intraperitoneal injection. In an NTP bioassay, lasiocarpine was carcinogenic to male and female rats (Refs. 25 and 37). Therefore, there is sufficient evidence for listing lasiocarpine on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

41. *Malononitrile* (CAS No. 00109-77-3). Humans injected with 1 to 6 mg/kg malononitrile for treatment of schizophrenia and depression exhibited tachycardia, nausea, flushing, vomiting, headache, shivering, muscle spasms, and numbness within minutes of exposure. Subcutaneous injection of 14 mg/kg malononitrile produced dyspnea and convulsions in rats. Acute exposure to 200 to 300 mg/m^3 (0.2 to 0.3 mg/L) malononitrile induced restlessness, changes in respiratory rate, incoordination, tremors, convulsions and death in mice and rats. Some of these effects may have been secondary to cyanosis which accompanied the effects in both humans and animals (Ref. 37). None of these data are sufficient to derive NOAEL or LOAEL values. However, taken together, there is sufficient evidence for listing malononitrile on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available neurotoxicity data for this chemical.

Aquatic toxicity test data for measured fish 96-hour LC_{50} values range from 0.57 ppm to 1.8 ppm. Estimated 48-hour LC_{50} for daphnid derived from QSAR analysis is 0.64 ppm. The estimated hydrolysis half-life is 21 days and the estimated photolysis half-life is 2.7 years. Based on a water solubility of 133,000 mg/L, the BCF is estimated to be 0.8 (Refs. 37, 41, and 45). There may be sufficient evidence to list malononitrile on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available ecotoxicity data for this chemical, because the aquatic toxicity values for malononitrile are less than 1 ppm but greater than 100 ppb.

42. *Melphalan* (CAS No. 00148-82-3). Melphalan is classified as a Group 1 carcinogen by IARC; the agent is carcinogenic to humans. Leukemia and reticulosarcoma developed in cancer patients following treatment with melphalan (Refs. 37 and 46). Dermal exposure to melphalan induced papillomas and skin carcinoma in mice. Lung tumors and lymphosarcomas were induced in mice and peritoneal sarcomas were induced in rats following intraperitoneal injection of melphalan. In an NCI bioassay, melphalan was carcinogenic to mice and rats. Melphalan is considered as a known carcinogen by NTP. Therefore, there is sufficient evidence for listing melphalan on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

43. *Methacrylonitrile* (CAS No. 00126-98-7). In dogs, methacrylonitrile induced convulsions, loss of motor control in the hindlimbs, and histopathological brain lesions following a 90-day inhalation exposure, resulting in a NOAEL of 9 mg/m^3 (3.2 ppm; the adjusted dose (ADJ) is 0.34 mg/kg/day) and a LOAEL of 24 mg/m^3 (8.8 ppm; the ADJ is 0.85 mg/kg/day). No toxic effects occurred in rats when exposed to higher levels than those given to the dogs. In other studies, convulsions have been reported in rats and mice when acute exposures were in excess of 600 ppm methacrylonitrile (Ref. 38). Therefore, there is sufficient evidence for listing methacrylonitrile on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based upon the available neurotoxicity data for this chemical.

44. *Methyl chlorocarbonate* (CAS No. 00079-22-1). No chronic systemic, carcinogenicity, teratogenicity, or reproductive studies could be located in the available literature for methyl chlorocarbonate. A 10-minute exposure to 190 ppm (1 mg/L) by inhalation is reported to be lethal in humans; other conditions of the exposure were not reported. The 1-hour inhalation LC_{50} for rats is 88 ppm (0.5 mg/L) (Ref. 38). Therefore, there may be sufficient evidence for listing methyl chlorocarbonate on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(A) based on the available acute toxicity data for this chemical.

45. *3-Methylcholanthrene* (CAS No. 00056-49-5). There are numerous studies that suggest that 3-methylcholanthrene is carcinogenic to mice, rats, rabbits,

guinea pigs, hamsters, dogs, and cats exposed via the oral and dermal routes and by injection at various sites. For instance, oral exposures have induced lymphoma in the blood of rats and mice; lung tumors in mice; and skin tumors in rats and hamsters. Dermal exposures have induced skin tumors in rats, mice, and hamsters. Tumors at the site of injection have occurred in the skin, brain, lungs, reproductive organs, musculoskeletal system, and kidneys in rats, mice, rabbits, and guinea pigs. Finally, 3-methylcholanthrene was positive in a battery of mutagenicity assays (Ref. 46). Therefore, there is sufficient evidence for listing 3-methylcholanthrene on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

Measured aquatic toxicity test data indicate that the oyster 7-day BCF is 3. The estimated aquatic toxicity, based on QSAR analysis, is 38.5 ppb for the fish 96-hour LC_{50} (Refs. 3 and 41). There is sufficient evidence for listing 3-methylcholanthrene on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available ecotoxicity information for this chemical, because the estimated aquatic acute toxicity of 3-methylcholanthrene is less than 100 ppb.

46. *Methyl mercaptan* (CAS No. 00074-93-1). Methyl mercaptan (thiomethanol) induced coma in one individual following daily inhalation exposures for 1 week (no dose levels available). Three workers experienced adverse CNS effects following exposure to an unknown level of a mixture of chemicals containing methyl mercaptan. These effects include unconsciousness, dizziness, convulsions, apnea, and general weakness. Coma induction also was noted in rats following exposure to methyl mercaptan via acute inhalation, resulting in a NOAEL of 1,200 ppm (2.3 mg/L) and a LOAEL of 1,400 ppm (2.7 mg/L). Intraperitoneal injection of 4.8 mg/kg thiomethanol also induced coma in rats (Refs. 1 and 6). Therefore, there may be sufficient evidence for listing methyl mercaptan on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based upon the available neurotoxicity data for this chemical.

47. *N-Methyl-N'-nitro-N-nitrosoguanidine* (CAS No. 00070-25-7). N-methyl-N'-nitro-N-nitrosoguanidine (MNNG) is classified as a Group B2 carcinogen by EPA; i.e., the compound is a probable human carcinogen. N-methyl-N'-nitro-N-nitrosoguanidine is classified as a Group 2A carcinogen by IARC; probably carcinogenic to humans. N-methyl-N'-nitro-N-nitrosoguanidine induced gastrointestinal tumors (adenomas, adenocarcinomas, carcinomas, fibrosarcomas, papillomas, sarcomas) in mice, rats, rabbits, hamsters, and dogs via oral exposure (in drinking water, intragastrically, or by gavage). In addition, skin papillomas, fibrosarcomas, and carcinomas were noted in mice and rats following dermal application of N-methyl-N'-nitro-N-nitrosoguanidine. Finally, the compound was genotoxic in a battery of *in vivo* and *in vitro* assays (Refs. 23 and 37). Therefore, there is sufficient evidence for listing N-methyl-N'-nitro-N-nitrosoguanidine on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

48. *2-Methylpyridine* (CAS No. 00109-06-8). In humans, 2-methylpyridine is reported to induce weight loss, nausea, diarrhea, vomiting, weakness, ataxia, unconsciousness, facial flushing, skin rash, giddiness, headache, and increases in heartand respiration rates. However, no information was provided as to the incidence of these effects or the exposure conditions. Two of six rats surviving a single oral dose of 950 mg/kg 2-methylpyridene showed signs of encephalomalacia (areas devoid of neuronal elements, neurons, and supportive cells, normally found in brain tissues). In another study in rats, exposure to 300 mg/kg/day of the chemical for 10 days decreased the number of cells of the hypothalamic-hypophyseal neurosecretory system. Doses (route unspecified) of 2-methylpyridene as low as 0.0025 mg/kg for 6 months induced functional and dystrophic changes in the cerebral cortex and morphological changes in neurons. The highest dose (0.05 mg/kg) resulted in constant demyelination of nerve pathways in the brain. In mice, oral sublethal doses induced short periods of excitation followed by depression of the CNS and sleepiness (Refs. 12 and 37). Therefore, there is sufficient evidence for listing 2-methylpyridine on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available neurotoxicity data for this chemical.

49. *Methylthiouracil* (CAS No. 00056-04-2). Methylthiouracil is classified as a B2 carcinogen by EPA; i.e., the compound is a probable human carcinogen. Methylthiouracil is classified as a Group 2B carcinogen by IARC; i.e., possibly carcinogenic to humans. Methylthiouracil induced thyroid adenomas in mice, rats, and hamsters and thyroid carcinomas in hamsters via oral dietary or drinking water exposure. In addition, pituitary and thyroid adenomas and tumors at the site of implantation were induced in rats via subcutaneous implantation of methylthiouracil. Also, kidney adenomas and adenocarcinomas were induced in rats via oral dietary or drinking water exposure to methylthiouracil (Refs. 26 and 37). Therefore, there is sufficient evidence for listing methylthiouracil on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

50. *Mitomycin C* (CAS No. 00050-07-7). Mitomycin C is classified as a Group B2 carcinogen by EPA; i.e., the compound is probably carcinogenic in humans. It is classified as a Group 2B carcinogen by IARC; i.e., the compound is a possible human carcinogen based on sufficient evidence of carcinogenicity in animals and the lack of human data. Mitomycin C produced tumors in mice treated by subcutaneous injection (local sarcomas) and in rats treated by intraperitoneal injection (peritoneal sarcomas), and intravenous injection (malignant tumors). In an NCI bioassay, there was clear evidence of the carcinogenicity of mitomycin C to rats (Ref. 37). Therefore, there is sufficient evidence for listing mitomycin C on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

51. *N-Nitrosodiethanolamine* (CAS No. 01116-54-7). N-Nitrosodiethanolamine is classified as a Group B2 carcinogen by EPA; i.e., the compound is a probable human carcinogen based on an increased incidence of liver tumors and tumors of the nasal cavity in two strains of rats via oral exposure in drinking water. Carcinomas of the nasal cavity and papillomas of the trachea were induced in hamsters following either subcutaneous injection, oral swabbing, or skin painting exposures to N-nitrosodiethanolamine. The compound is classified as a Group 2B carcinogen by IARC; i.e., possibly carcinogenic to humans. In an NCI bioassay, there was clear evidence of its carcinogenicity in rats (Refs. 37, 38, and 46). Therefore, there is sufficient evidence for listing N-nitrosodiethanolamine on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

52. *N-Nitroso-N-methylurethane* (CAS No. 00615-53-2). N-Nitroso-N-methylurethane is classified by EPA as a Group B2 carcinogen; i.e., the compound is a probable human carcinogen. N-Nitroso-N-methylurethane is classified as Group 2B carcinogen by

IARC; i.e., the compound is possibly carcinogenic to humans. Exposures in utero, by either intravenous or intraperitoneal injection, induced tumors of the nervous system, kidney, lungs, mammary and adrenal glands, and thyroid in the offspring of rats. Drinking water and gavage exposures induced tumors of the forestomach and the esophagus in rats; intragastric exposures induced tumors of the forestomach and esophagus in hamsters; and drinking water exposures induced stomach tumors in guinea pigs. Tumors of the respiratory system, primarily the lung, were observed in guinea pigs via drinking water; in mice, guinea pigs, and hamsters via subcutaneous injection; in mice via intraperitoneal injection; and in rats and rabbits via intravenous injection (Refs. 27, 37, and 46). Therefore, there is sufficient evidence for listing N-nitroso-N-methylurethane on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

53. *N-Nitrosopyrrolidine* (CAS No. 00930-55-2). N-Nitrosopyrrolidine is classified as a Group B2 carcinogen by EPA; i.e., the compound is a probable human carcinogen based on the induction of liver carcinomas and/or adenomas in two strains of rats and papillary mesotheliomas of the testes in one strain of rat via oral exposure. Also, there was a low incidence of lung adenomas in mice via drinking water exposure. The compound is classified as a Group B2 carcinogen by IARC; i.e., it is possibly carcinogenic to humans (Ref. 38). Therefore, there is sufficient evidence for listing N-nitrosopyrrolidine on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

54. *5-Nitro-o-toluidine* (CAS No. 00099-55-8). 5-Nitro-o-toluidine is classified as a Group C carcinogen by EPA; i.e., the compound is possibly carcinogenic to humans. It is classified as a Group 3 chemical by IARC, based on limited evidence of carcinogenicity in animals. In an NCI bioassay, hepatocarcinomas, hemangiomas, and hemangiosarcomas were observed in mice following dietary exposure. No carcinogenic effects were noted in rats when exposed to lower doses than those used in mice. In addition, two structural analogues of 5-nitro-o-toluidine, o-toluidine, and 2-methoxy-5-nitro-aniline, were carcinogenic in both rats and mice. 5-Nitro-o-toluidine is expected to be bioactivated and to exert its carcinogenicity via the same mechanism as these two aromatic compounds. 5-Nitro-o-toluidine also has been shown to be mutagenic in the Ames test (Refs. 34 and 37). Therefore, there may be sufficient evidence for listing 5-nitro-o-toluidine on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical and on analogy to similar aromatic compounds.

55. *Paraldehyde* (CAS No. 00123-63-7). In humans, paraldehyde induces coma, severe hypotension, cardiac failure, sciatic nerve injury, and CNS depression. Chronic exposure may produce hallucinations; delusions; memory, intellect, and speech impairment; unsteady gait, tremors, anorexia, and weight loss. Nerve injury resulted from intramuscular exposure; other routes of exposure were not reported. Exposure levels were not reported for these effects. Convulsions occurred in a man following intramuscular exposure to 568 mg/kg paraldehyde (Refs. 37 and 46). Because the dose levels were not indicated in case studies, the lowest level for the CNS effects in humans could not be determined. Therefore, the available evidence may be sufficient for listing paraldehyde on EPCRA section 313 pursuant to section 313(d)(2)(B) based on the available neurotoxicity data.

56. *Pentachlorobenzene* (CAS No. 00608-93-5). The measured aquatic toxicity test data for pentachlorobenzene ranged from 0.25 to 0.83 ppm for fish 96-hour LC_{50} to 5.3 ppm for the daphnid 48-hour LC_{50}. A 21-day daphnid chronic LC_{50} of 0.24 ppm was also determined. BCFs for fish ranged from 3.3 to 55 for 31-day tests. Estimated aquatic toxicity values, based on QSAR analysis using the equation for neutral organics and a log P of 5.71, are 0.06 ppm for the fish 96-hour LC_{50}, 0.08 ppm for the daphnid 48-hour LC_{50}, and 0.07 ppm for the algae 96-hour EC_{50}. The estimated chemical half-life of pentachlorobenzene is 0.5 to 1 year; the estimated volatilization half-life from water is 60 days; and the atmospheric photolysis half-life is estimated to be 271 days (Refs. 3 and 45). Based on measured and estimated acute aquatic toxicity values that are consistently less than 1 ppm and the persistence of pentachlorobenzene, there is sufficient evidence for listing pentachlorobenzene on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available ecotoxicity data for this chemical.

In rats, pentachlorobenzene induced anomalous rib number in the offspring of female rats that were exposed by stomach tube to 50 to 200 mg/kg/day during days 6 to 15 of gestation. At the high dose, sternal defects and decreased mean fetal weight were also noted in these offspring. Pentachlorobenzene also induced tremors in the offspring of rats following maternal dietary exposure to greater than 250 to 1,000 ppm. The high dose was lethal for most of these offspring. It is not known if the tremors were the result of gestational exposure or exposure through lactation. No maternal effects were noted. Pentachlorobenzene induced unspecified developmental effects and decreased fetal body weight in the offspring of rats following maternal dietary exposure during gestation (Ref. 37). Duration and exposure levels were not reported and these effects did not occur in mice. Therefore, there may be sufficient evidence for listing pentachlorobenzene on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available developmental toxicity data for this chemical.

57. *Pentachloroethane* (CAS No. 00076-01-7). Pentachloroethane is reported to induce headaches, dizziness, confusion, drowsiness, convulsion, coma, and respiratory arrest in humans. No exposure information was provided. Exposure to pentachloroethane induced narcosis preceded by restlessness and excitement in dogs following repeated inhalation of 10 ml and CNS depression in cats following inhalation of 146 ppm (1.5 mg/L) 8 to 9 hours daily for 23 days. Pentachloroethane induced the behavioral effects of altered sleep in rats and dogs; the rats also exhibited ataxia. The LD_{50} values associated with these effects are 920 mg/kg in rats following subcutaneous injection, and 500 mg/kg in dogs following oral exposure (Refs. 7, 37, and 46). Therefore, there may be sufficient evidence for listing pentachloroethane on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available neurotoxicity data for this chemical.

58. *Phenacetin* (CAS No. 00062-44-2). Phenacetin is classified as a Group 2A carcinogen by IARC; i.e., the compound is probably carcinogenic to humans. It has been associated with renal tumors in humans and animals. In humans, carcinoma of the renal pelvis, ureter, and bladder were noted in chronic users of phenacetin (Ref. 37). Therefore, there is sufficient evidence for listing phenacetin on EPCRA section 313 based on the available carcinogenicity data for this chemical.

59. *Pronamide* (CAS No. 23950-58-5). There are several studies that suggest that pronamide induces liver tumors in mice following oral exposure to doses as low as 500 ppm (Refs. 9, 10, 29, and 37).

Therefore, there may be sufficient evidence for listing pronamide on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical. The use of pronamide as a pesticide is restricted under FIFRA (Refs. 9, 10, and 30). Additional toxicity data may be available on EPA's One-Liner data base; however, it is CBI under FIFRA.

60. *Reserpine* (CAS No. 00050-55-5). Reserpine induced coma, hypothermia, and bradycardia in three children who ingested large doses of the drug (specific quantity not specified). In dogs, CNS depression, muscle tremors, and parkinsonian-like syndrome resulted from daily exposure (route unspecified) to 18 to 39 micrograms/kilogram (ug/kg) for up to 1 year. In another study in dogs, chronic oral administration of low dose levels of reserpine (0.137 mg/kg) caused CNS depression and muscle tremors (Ref. 37). Therefore, there is sufficient evidence for listing reserpine on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available neurotoxicity data for this chemical.

61. *Streptozotocin* (CAS No. 18883-66-4). Streptozotocin is classified as a Group 2B carcinogen by IARC; i.e., the compound is possibly carcinogenic to humans. No carcinogenicity data are available in humans; however, there is sufficient evidence of carcinogenicity in animals. In male and female mice, intraperitoneal injection of streptozotocin induced tumors of the lungs, kidneys (males only), and uterus (females only). Kidney tumors and pancreatic cell tumors also resulted from intravenous injection of streptozotocin in rats. In addition, hamsters developed tumors of the bile duct and liver following intraperitoneal injection of streptozotocin (Refs. 37 and 44). Therefore, there is sufficient evidence for listing streptozotocin on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity toxicity data for this chemical.

62. *1,2,4,5-Tetrachlorobenzene* (CAS No. 00095-94-3). In rats, 1,2,4,5-tetrachlorobenzene induced kidney lesions in males following dietary exposure for 13 weeks, resulting in a LOAEL of 50 ppm (3.4 mg/kg/day). In addition, liver lesions were observed in female rats exposed to 500 ppm under the same conditions. In another study in rats, 1,2,4,5-tetrachlorobenzene caused liver and kidney pathology following 28-day exposure to doses as low as 3.4 mg/kg/day. The NOAEL for this study was 0.4 mg/kg/day. In the same study, 1,2,4,5-tetrachlorobenzene (32 mg/kg/day) significantly increased liver weights (20 to 30 percent) and induced hepatic microsomal enzymes 2 to 12-fold (Ref. 38). Although systemic toxicity in other animal species could not be located in the available literature on 1,2,4,5-tetrachlorobenzene, there is sufficient evidence for listing 1,2,4,5-tetrachlorobenzene on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based upon the available hepatotoxicity and renal toxicity data for this chemical.

The measured aquatic toxicity test data for 1,2,4,5-tetrachlorobenzene shows that acute fish 96-hour LC_{50} values range from 1.2 to 10 ppm whereas the daphnid 48-hour LC_{50} value is greater than 530 ppm. Estimated aquatic toxicity values, based on QSAR analysis using the equation for neutral organics and a log P of 4.99, are 0.25 ppm for the fish 96-hour LC_{50}, 0.33 ppm for the daphnid 48-hour LC_{50}, and 0.24 ppm for the algae 96-hour EC_{50}. A fish BCF of 3,484 was also estimated based on the log P (Refs. 3 and 45). Estimated aquatic toxicity values for fish, daphnid, and algae are all greater than 100 ppb but less than 1 ppm. Based on the estimated aquatic acute toxicity of 1,2,4,5-tetrachlorobenzene, there may be sufficient evidence for listing 1,2,4,5-tetrachlorobenzene on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available ecotoxicity information for this chemical.

63. *1,1,1,2-Tetrachloroethane* (CAS No. 00630-20-6). 1,1,1,2-Tetrachloroethane is classified as a Group C carcinogen by EPA; i.e., the compound is a possible human carcinogen based on an increased incidence of combined hepatocellular adenomas and carcinomas in female mice following oral exposure. The maximum tolerated dose (MTD) was exceeded at the high dose. There is inadequate evidence from human studies. The compound is classified as a Group 3 chemical by IARC; i.e., it is not classifiable as to its carcinogenicity to humans. The study conducted by NTP was inadequate for evaluating carcinogenicity (Refs. 38 and 46). Therefore, there may be sufficient evidence for listing 1,1,1,2-tetrachloroethane on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

Oral exposure to 250 mg/kg/day of 1,1,1,2-tetrachloroethane caused inactivity and incoordination in rats. No NOAEL was established. CNS involvement (sluggishness, incoordination, and weakness) also was seen in mice exposed to 500 mg/kg/day of 1,1,1,2-tetrachloroethane via the oral route; the NOAEL was 250 mg/kg/day (Ref. 38). Therefore, there may be sufficient evidence for listing 1,1,1,2-tetrachloroethane on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available neurotoxicity data for this chemical.

64. *Thiram (Thioperoxydicarbonic diamide)* (CAS No. 00137-26-8). The measured aquatic toxicity test data for the fish 96-hour LC_{50} range from 0.67 to 270 ppb, with a daphnid 48-hour LC_{50} of 210 ppb, and an algae 96-hour EC_{50} of 1,000 ppb. A daphnid 21-day chronic LC_{50} of 8 ppb was also measured. Estimated aquatic toxicity values, based on QSAR analysis, are 7.0 to 10.1 ppm for the fish 96-hour LC_{50} and 8.2 ppm for daphnid 96-hour LC_{50} (Refs. 3 and 41). Based on measured acute aquatic toxicity values of less than 100 ppb and an estimated chemical half-life of greater than 14 days, there is sufficient evidence to list thiram on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available ecotoxicity information for this chemical.

In rats, thiram (thioperoxydicarbonic diamide) induced weakness, ataxia, varying degrees of hindlimb paralysis, and calcified masses in the basal ganglia and in the cerebellum following dietary exposure for 2 years, resulting in a LOAEL of 300 ppm (The ADJ is 15 mg/kg/day) and a NOAEL of 100 ppm (The ADJ is 5 mg/kg/day). In another study in rats, dietary exposure to thioperoxydicarbonic diamide for 80 weeks resulted in alopecia, ataxia, and hind limb paralysis. The LOAEL and NOAEL were 25.5 mg/kg/day and 6.1 mg/kg/day, respectively. In another study, thiram caused convulsions, thyroid hyperplasia, and calcification of the cerebellum, hypothalamus, and medulla oblongata in rats following dietary exposure for 2 years (Refs. 37 and 38). No NOAEL or LOAEL values were available for these data. Although neurotoxicity data in other animal species could not be located in the available literature, there may be sufficient evidence for listing thiram on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available neurotoxicity data for this chemical.

65. *p-Toluidine* (CAS No. 00106-49-0). Although o-toluidine has been shown to be carcinogenic in rats and mice, there is only limited evidence on the carcinogenicity of p-toluidine (induction of liver tumors in male and female mice). p-Toluidine is expected to be a

weaker carcinogen than o-toluidine because it is believed that the ortho methyl group contributes to the carcinogenic effects of o-toluidine. Previous structure activity relationship analysis has suggested that the ortho methyl group in o-toluidine and in other aromatic amines appears to have an enhancing effect on the activation of the amino group in these compounds. In addition, p-toluidine was not mutagenic in a number of genotoxicity studies (Refs. 13 and 42). Therefore, there may be sufficient evidence for listing p-toluidine on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the limited carcinogenicity data available for this chemical and based on analogy with o-toluidine.

66. *2,4,5-TP (Silvex)* (CAS No. 00093-72-1). The use of 2,4,5-TP is canceled pursuant to FIFRA primarily due to 2,4,5-TP's contamination with dioxins. 2,4,5-TP as a separate chemical has not been widely studied.

Cleft palate was observed in mice fed 379 mg/kg 2,4,5-TP daily during gestation. At 50 mg/kg/day, reduced pup weight and incomplete skull ossification were noticed in rats. The NOAEL for developmental toxicity was 25 mg/kg/day (Ref. 38). Therefore, there may be sufficient evidence for listing 2,4,5-TP on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available developmental toxicity data for this chemical.

Unspecified histopathological changes in the liver were observed in dogs fed diets containing 2,4,5-TP for 2 years. A LOAEL of 100 ppm (2.5 mg/kg/day) and a NOAEL of 30 ppm (0.75 mg/kg/day) were determined. However, no adverse effects were seen in rats fed diets containing 0, 10, 30, 100 ppm 2,4,5-TP for 2 years. There may be sufficient evidence for listing 2,4,5-TP on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available toxicity data for this chemical.

Aquatic toxicity test data indicate that measured 96-hour LC_{50} values for fish range from 0.35 ppm for mosquito fish to 86 ppm for bluegills; the daphnid 48-hour LC_{50} is 140 ppm; and the oyster 48-hour EC_{50} is 5.9 ppm. These data indicate that 2,4,5-TP is highly toxic to some aquatic organisms at values less than 1 ppm but only moderately toxic to other organisms, such as daphnids where the values exceed 100 ppb (Ref. 3). Therefore, because the aquatic toxicity values for 2,4,5-TP are less than 1 ppm but greater than 100 ppb, there may be sufficient evidence to list 2,4,5-TP on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available ecotoxicity information for this chemical.

67. *1,3,5-Trinitrobenzene* (CAS No. 00099-35-4). In rats, oral exposure to 1,3,5-trinitrobenzene induced depression, hyperpnea, gasping, salivation, cyanosis, loss of normal reflexes, tachycardia, coma, and death, resulting in an approximate LD_{50} of 505 mg/kg. A lower oral LD_{50} value (280 mg/kg) was reported for rats in a more recent study (Refs. 36, 38, and 46). Therefore, there may be sufficient evidence for listing 1,3,5-trinitrobenzene on EPCRA section 313 pursuant to EPCRA section313(d)(2)(B) based on the neurotoxicity data available for this chemical.

68. *Trypan blue* (CAS No. 00072-57-1). Trypan blue is classified as a Group B2 carcinogen by EPA; i.e., it is probably carcinogenic to humans, based on sufficient evidence in animals and no evidence in humans. The compound is classified as a Group 2B carcinogen by IARC; i.e., the compound is possibly carcinogenic to humans. Following subcutaneous injection in rats, trypan blue induced tumors of the reticuloendothelial system, hepatic lymph nodes, mesenteric lymph nodes, thymus, thymic lymph nodes, nonabdominal lymph nodes, and kidney (Refs. 37 and 46). Therefore, there is sufficient evidence for listing trypan blue on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

69. *Uracil mustard* (CAS No. 00066-75-1). Uracil mustard is classified as a Group B2 chemical by EPA; i.e., it is a possible human carcinogen. The compound is classified as a Group 2B carcinogen by IARC; i.e., it is possibly carcinogenic to humans. In an NCI bioassay, uracil mustard was carcinogenic to mice and rats. No carcinogenicity data are available in humans; however, there is sufficient evidence of carcinogenicity in animals. Following intraperitoneal injection, uracil mustard induced lung adenomas and adenocarcinomas in mice. In another study in mice, uracil mustard induced lung tumors, liver tumors, ovarian tumors, and lymphomas following intraperitoneal injection. Following intraperitoneal injection in rats, uracil mustard induced lymphomas, pancreatic tumors, ovarian tumors, and mammary carcinomas (Refs. 37 and 46). Therefore, there is sufficient evidence for listing uracil mustard on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

70. *Warfarin and salts (NA).* Several studies in humans suggest that warfarin induces fetal death, and/or structural abnormalities in fetuses and newborns following oral exposure (doses as low as 8.4 mg/kg) or intramuscular injection (12 mg/kg). In mice, warfarin affected female fertility causing preimplantation mortality following intravenous injection (240 mg/kg). In rabbits, intravenous injection of warfarin (10 mg/kg) to pregnant does resulted in structural abnormalities of fetuses and stillbirth (Refs. 38 and 46). Therefore, there is sufficient evidence for listing warfarin on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available reproductive/developmental toxicity data for this chemical.

C. Chemicals that Are Insufficient for Listing

EPA is not proposing to add those chemicals listed below to EPCRA section 313 because the available information does not indicate that these chemicals meet the toxicity criteria of section 313(d)(2).

All chemicals are listed as RCRA hazardous wastes at 40 CFR 261.33(f) for toxicity only unless otherwise noted.

1. *Acetyl chloride* (CAS No. 00075-36-5). Acetyl chloride is listed at 40 CFR 261.33(f) for corrosivity, reactivity, and toxicity. Acetyl chloride hydrolyzes in moist air to acetic acid and hydrogen chloride. Acute toxicity data in humans indicate that inhalation of 2 ppm acetyl chloride is irritating to humans. Acetyl chloride is classified as a Group D chemical by EPA; i.e., the compound is not classifiable as to human carcinogenicity based on the lack of human or animal data (Refs. 37 and 38). No data regarding the systemic toxicity of acetyl chloride could be located. Therefore, there is insufficient evidence for listing acetylchloride on EPCRA section 313 based on the available toxicity and carcinogenicity data for this chemical.

Aquatic toxicity test data give measured 96-hour LC_{50} values of 42 ppm for the fathead minnow (Refs. 3 and 41). Because this aquatic toxicity value is greater than 1 ppm and the BCF is less than 1,000, there is insufficient evidence for listing acetyl chloride on EPCRA section 313 based on available ecotoxicity information for this chemical.

2. *Chloral* (CAS No. 00075-87-6). In a mouse oral subchronic study, administration of chloral in water was associated with dose-related increased relative liver weights in males, increases in serum lactate dehydrogenase (LDH), serum glutamic oxalacetic transaminase (SGOT), microsomal cytochrome b5 content, aminopyrine N-demethylase, and aniline hydroxylase activities.

These results suggest that the liver may be a target organ. However, no histopathology was performed and a NOAEL was not determined. The LOAEL was 15.7 mg/kg/day (Ref. 38). Therefore, there is insufficient evidence for listing chloral on EPCRA section 313 based on the available toxicity data for this chemical.

Aquatic toxicity test data for chloral indicate a measured 48-hour LC_{50} of 1,720 ppm for the golden orfe. The estimated acute aquatic toxicity value, using QSAR analysis based on the equation for aldehydes and a log P of 1.66, is approximately 12 ppm for fish, daphnid, and algae (Refs. 39 and 45). Because the measured and estimated aquatic acute toxicity values for chloral are greater than 1 ppm and the bioaccumulation potential is limited, based on the low log P value, there is insufficient evidence for listing chloral on EPCRA section 313 based on available ecotoxicity information for this chemical.

3. *2-Chloroethyl vinyl ether* (CAS No. 00110-75-8). Only limited data could be located regarding the acute toxicity of 2-chloroethyl vinyl ether. The oral LD_{50} for the rat is 250 mg/kg (Ref. 37). No subchronic or chronic toxicity could be located. Therefore, there is insufficient evidence for including 2-chloroethyl vinyl ether on EPCRA section 313 based on the available toxicity data for this chemical.

The measured aquatic toxicity test value for the bluegill 96-hour LC_{50} is 350 ppm. Estimated aquatic toxicity values using the QSAR equation for neutral organics and log P of 0.99 are 703 ppm for fish 96-hour LC_{50}, 702 ppm for daphnid 48-hour EC_{50}, and 415 ppm for algae 96-hour EC_{50} (Refs. 3 and 45). Because these aquatic toxicity values for 2-chloroethyl vinyl ether are greater than 1 ppm, there is insufficient evidence for listing 2-chloroethyl vinyl ether on EPCRA section 313 based on available ecotoxicity information for this chemical.

4. *b-Chloronaphthalene* (CAS No. 00091-58-7). Dyspnea, abnormal appearance, and liver enlargement were observed in mice administered β-chloronaphthalene by gavage for 13 weeks. A LOAEL and NOAEL of 600 mg/kg/day and 250 mg/kg/day were determined, respectively. A supporting study also reported liver effects in rats injected with 80 mg/kg/day β-chloronaphthalene by the intraperitoneal route (Ref. 38). Chronic developmental and reproductive toxicity following oral exposure to β-chloronaphthalene have not been tested. As β-chloronaphthalene induced effects only at relatively high doses, there is insufficient evidence for listing this chemical on EPCRA section 313 based on the available toxicity data for this chemical.

Estimated aquatic acute toxicity test data (48-hour LC_{50}) for daphnids is 10.1 to 23 mm/m^3. Estimated aquatic toxicity values, based on QSAR analysis using the equation for neutral organics and a log P of 4.03, are between 1.3 and 1.8 ppm for fish, daphnid, and algae (Refs. 3 and 45). Because β-chloronaphthalene has estimated aquatic acute toxicity values slightly greater than 1 ppm and its bioaccumulation potential is limited, based on a log P value of less than 5.5, there is insufficient evidence for listing β-chloronaphthalene on EPCRA section 313 based on available ecotoxicity information for this chemical.

5. *Ethyl methacrylate* (CAS No. 00097-63-2). Ethyl methacrylate causes irritation and CNS effects in humans (no dose levels available). In dogs, ethyl methacrylate administered intravenously increased respiratory rate, decreased heart rate, produced electrocardiographic changes, and caused a biphasic response in blood pressure (Ref. 37); dose levels were not given. There is no carcinogenicity data on ethyl methacrylate. An NTP bioassay on methyl methacrylate, a close analogue, showed no evidence for carcinogenicity in rats and mice (Ref. 34). Therefore, there is insufficient evidence for including ethyl methacrylate on EPCRA section 313 based on the available toxicity data for this chemical and for its analogue, methyl methacrylate.

6. *Isobutyl alcohol* (CAS No. 00078-83-1). Isobutyl alcohol is listed at 40 CFR 261.33(f) for ignitability and toxicity. In rats, isobutyl alcohol induced hypoactivity and ataxia following oral exposure, resulting in a NOAEL of 316 mg/kg/day and a LOAEL of 1,000 mg/kg/day (Ref. 38). As isobutyl alcohol induced effects only at relatively high doses, there is insufficient evidence for listing isobutyl alcohol on EPCRA section 313 based upon the available neurotoxicity data for this chemical.

Aquatic toxicity test data for isobutyl alcohol indicate that measured acute values for fish 96-hour LC_{50} range from 1,330 to 1,600 ppm whereas the 48-hour LC_{50} values for daphnids range from 1,080 to 1,350 ppm. Estimated aquatic toxicity values, based on QSAR analysis using the equation for neutral organics and a log P of 0.69, are 916 ppm and 935 ppm for the fish 96-hour and daphnid 48-hour LC_{50}, respectively, and 531.1 ppm for the algae 96-hour EC_{50} (Refs. 3 and 45). Based on aquatic toxicity values for isobutyl alcohol that are consistently greater than 100 ppm and a very low log P value, there is insufficient evidence for listing isobutyl alcohol on EPCRA section 313 based on available ecotoxicity information for this chemical.

7. *Maleic hydrazide* (CAS No. 00123-33-1). In rats, the monoethanolamine salt of maleic hydrazide (1,2-dihydro-3,6-pyridazinedione) induced maternal and fetal toxicity, and teratogenicity following dietary exposure in pregnant rats during gestation, resulting in a LOAEL of 3,000 mg/kg/day and a NOAEL of 1,500 mg/kg/day. Effects noted were increased resorptions, decreased mean fetal weight, and increased postimplantation loss. When exposure was continued through the lactation period, there was a delay in the pups' startle response. In pregnant rabbits, oral administration of potassium salt of maleic hydrazide induced fetal toxicity (malformed scapulae), resulting in a NOAEL of 100 mg/kg/day and a lowest-adverse-effect level (LOAEL) of 300 mg/kg/day (Ref. 28). As maleic hydrazide induced effects only at relatively high doses, there is insufficient evidence for listing maleic hydrazide on EPCRA section 313 based on the available developmental toxicity data for this chemical. Additional toxicity data are available from EPA/OPP's One-Liner data base, however, this is CBI under FIFRA.

8. *Methapyrilene* (CAS No. 00091-80-5). There are some cancer data that suggest that methapyrilene induces liver tumors in rats by intubation and dietary exposures (Refs. 37 and 44). However, the available carcinogenicity data are insufficient for listing methapyrilene on EPCRA section 313.

In humans, methapyrilene induces anticholinergic toxicity, hallucinations, delirium and confusion. Methapyrilene produces toxic psychosis which is temporary and benign. There are several reports of fatality due to oral exposures. The human data are generally taken from reports of overdoses and the exposure levels are not known. In dogs, intravenous injection of 40 mg/kg (only dose level administered) methapyrilene induced anticholinergic effects (Refs. 37 and 49). NOAEL and LOAEL values cannot be derived from the available data for methapyrilene. Therefore, there is insufficient evidence for listing methapyrilene on EPCRA section 313 based upon the available neurotoxicity data for this chemical.

9. *Methyl ethyl ketone peroxide* (CAS No. 01338-23-4). Methyl ethyl ketone peroxide is listed at 40 CFR 261.33(f) based on reactivity and toxicity. Methyl ethyl ketone peroxide is currently under short-term test by NTP for sub-chronic

toxicity. No chronic systemic, teratogenicity, or reproductive studies could be located in the available literature for methyl ethyl ketone peroxide. The inhalation LC_{50} values for rats and mice are 200 ppm (1.4 mg/L) and 170 ppm (1.2 mg/L) methyl ethyl ketone peroxide, respectively. The oral LD_{50} for rats is 484 mg/kg (Ref. 37). Therefore, there is insufficient evidence for listing methyl ethyl ketone peroxide on EPCRA section 313 based on the available toxicity data for this chemical.

10. *1,4-Naphthoquinone* (CAS No. 00130-15-4). In humans, 1,4-naphthoquinone decreases the number of erythrocytes and sulfhydryl compounds and hemoglobin levels in the blood. The compound also depresses the phagocytic activity of leukocytes and induces methemoglobin and heinz bodies formation in the blood. It was not reported whether these effects were noted *in vitro* and no exposure levels were reported for these effects. In rats, methemoglobin and heinz body formation, hemolytic anemia, and decreased total respiration were induced following acute (0.5 g/kg) and subchronic (0.3 g/kg) exposure to 1,4-naphthoquinone. The route of exposure was not reported. The oral LD_{50} values for rats and guinea pigs are 190 mg/kg and 400 mg/kg 1,4-naphthoquinone, respectively (Refs. 37 and 46). Therefore, there is insufficient evidence for listing 1,4-naphthoquinone on EPCRA section 313 based on the available toxicity data for this chemical.

The estimated aquatic toxicity values for 1,4-naphthoquinone, based on QSAR analysis using the equation for neutral organics and a log P of 1.12, are 788 ppm for the fish 96-hour LC_{50}, 794 ppm for the daphnid 48-hour LC_{50}, and 472 ppm for the algae 96-hour EC_{50} (Ref. 42). The aquatic acute toxicity values for 1,4-naphthoquinone are consistently greater than 100 ppm and the log P value is less than 5.5. 1,4-Naphthoquinone has moderate volatility and low solubility and is expected to biodegrade in soil (the half-life is 1.2 days) or water. Based on these aquatic toxicity, bioaccumulation, and persistence values, there is insufficient evidence for listing 1,4-naphthoquinone on EPCRA section 313 based on available ecotoxicity information for this chemical.

11. *n-Propylamine* (CAS No. 00107-10-8). n-Propylamine is listed at 40 CFR 261.33(f) for ignitability and toxicity. In studies conducted on rats, mice, rabbits, and guinea pigs, n-propylamine induced CNS excitation followed by inhibition after exposure by the inhalation or oral routes (Ref. 37). Details of the study, including effective doses, were not reported. Therefore, there is insufficient evidence for listing n-propylamine on EPCRA section 313 based on available neurotoxicity data for this chemical.

The measured aquatic toxicity test data for n-propylamine include a fathead minnow 96-hour LC_{50} value of 308 ppm. Estimated aquatic toxicity values, based on QSAR analysis using the equation for aliphatic amines and a log P of 0.39, are 175 ppm for the fish 96-hour LC_{50}, 10.5 ppm for the daphnid 48-hour LC_{50}, and 11.3 for the algae 96-hour EC_{50} (Refs. 3 and 45). Because the measured and estimated acute aquatic toxicity values for n-propylamine are consistently greater than 1 ppm and the log P value is less than 5.5, there is insufficient evidence for listing n-propylamine on EPCRA section 313 based on available ecotoxicity information for this chemical.

12. *Resorcinol* (CAS No. 00108-46-3). Resorcinol is classified as a Group 3 carcinogen by IARC; i.e., the compound is not classifiable as to its carcinogenicity in humans. There is inadequate evidence of carcinogenicity in animals, and no data are available in humans (Ref. 37). There was no evidence of carcinogenicity in mice and rats in NTP studies. Therefore, there is insufficient evidence for listing resorcinol on EPCRA section 313 based on the available carcinogenicity data for this chemical.

In rats, no maternal toxicity or fetotoxicity was observed following oral exposure to resorcinol (12.5 to 500 mg/kg) (Ref.37). Therefore, there is insufficient evidence for listing resorcinol on EPCRA section 313 based on the available developmental toxicity data for this chemical.

The measured aquatic toxicity test data for resorcinol range from 40 to greater than 100 ppm for the fish 96-hour LC_{50} and 900 ppb for the daphnid 96-hour LC_{50}. The estimated aquatic toxicity value for the fish 96-hour LC_{50}, based on QSAR analysis using the equation for substituted phenols and a log P of 0.81, is 84.7 ppm (Refs. 3 and 45). Because the estimated aquatic acute toxicity value for resorcinol is greater than 1 ppm and the log P value is considerably less than 5.5, there is insufficient evidence for listing resorcinol on EPCRA section 313 based on available ecotoxicity information for this chemical.

V. Rationale for Listing

EPA is proposing to add the chemical substances identified in Unit IV.B of this preamble because these chemicals meet the statutory criteria for listing under section 313(d)(2) of EPCRA. These determinations and the specific toxic effects are set forth in Unit IV.B of this preamble and in the rulemaking record.

VI. Alternative Proposal: Manufacturing Volume Threshold

A. Manufacturing Volume Threshold for Additions to the Section 313 List

Alternatively, EPA is proposing to add to the EPCRA section 313 list only those chemicals and chemical categories which are identified above in Unit IV.B which are manufactured, imported or processed (per facility) in quantities greater than an annual manufacturing volume threshold to be set by EPA. The selection of this manufacturing volume threshold would be guided by the EPCRA section 313 (f) reporting thresholds [The EPCRA section 313 manufacture (includes import) and process thresholds are 25,000 pounds per year per facility]. EPA anticipates that the addition of those chemicals manufactured, imported, or processed in quantities less than the manufacturing volume threshold would not be expected to result in the submission of Form R reports.

The Agency is specifically considering two different manufacturing volume thresholds for determining which chemicals of the petitioned chemicals would *not* be added to the section 313 list. EPA is seriously considering an annual per facility manufacturing volume threshold of 25,000 pounds, which is the EPCRA section 313(f)(1)(B) manufacturing threshold for section 313 reporting. The Agency does not believe that the addition of chemicals to the EPCRA section 313 list of toxic chemicals that are either not manufactured, imported, or processed or are manufactured, imported, or processed in quantities less than 25,000 pounds would provide a benefit to the public. If these chemicals were added to the EPCRA section 313 list, it is unlikely that any EPCRA section 313 Form R reports would be submitted. EPA recognizes, however, that it is possible that some chemicals may be manufactured, imported, or processed per facility annually in quantities less than 25,000 pounds, yet may be used by one or more facilities in excess of 10,000 pounds annually, thus subjecting those facilities to the section 313(f)(1)(A) use-triggered reporting requirements. Therefore, EPA is also considering a manufacturing volume threshold of 10,000 pounds per facility. EPA specifically requests comment on which manufacturing volume threshold should be used in making determinations to add

or not add petitioned chemicals to the EPCRA section 313 list.

When addressing petitions of this type, EPA believes that it is important to focus on those toxic chemicals that will yield data for the public. As such, EPA strongly believes that the use of a manufacturing volume threshold in responding to petitions submitted under section 313(e) is appropriate and within the authority granted by EPCRA. Section 313(e)(2) requires EPA, in responding to a petition submitted by a State Governor, to either add the petitioned chemical(s) to the section 313 list in accordance with section 313(d)(2) or to publish an explanation of why the Administrator believes the chemical(s) does not meet the requirements of section 313(d)(2). Section 313(d)(2) provides that "[a] chemical may be added if the Administrator determines, in his judgment, that there is sufficient evidence to establish any one [of the listed criteria]." EPA does not interpret section 313(d)(2) to *mandate* the addition of any chemical to the section 313 list, but, rather, gives the Agency discretion to do so ("A chemical *may* be added if the Administrator determines ..." emphasis added.), provided any one of the listed criteria are satisfied. In this instance, EPA's use of a manufacturing volume threshold is consistent with the section 313 list's purpose of generation of publicly available release data on listed chemicals and therefore a valid exercise of the Agency's discretion.

In addition to production volume considerations, EPA is interested in receiving comment on other criteria, such as risk, that would be consistent with the statute that can be used to determine which chemicals should be added to the EPCRA section 313 list.

B. Annual Manufacturing Volume

EPA used a 25,000 pound annual per facility manufacturing volume threshold as a benchmark in researching chemical marketing data in an effort to identify those chemicals which would be subject to the 25,000 pound per facility manufacturing volume threshold option described above. Thus, the largest potential group of petitioned chemicals which would be affected by the annual production volume threshold could be identified. EPA recognizes that the additions to the EPCRA section 313 list may be greater if a manufacturing volume threshold of 10,000 pounds per facility is chosen.

Information regarding production and use for each of the chemicals which were determined to meet the listing criteria under EPCRA section 313(d)(2) is contained in the support document *Economic Analysis of the Proposed Addition of 70 Chemicals to the EPCRA Section 313 List of Toxic Chemicals* (Ref. 2). For each chemical considered, both publicly-available and confidential information sources, i.e., Toxic Substance Control Act (TSCA) section 14 confidential business information (CBI), were reviewed in search of evidence of that chemical's recent manufacture, importation, or use. Information on the number of sites at which the chemical was likely to be found was also sought.

For most chemicals, information was available to allow EPA to make a determination that a particular chemical was either manufactured for commercial distribution (manufactured, imported, or processed in excess of 25,000 pounds, annually) or manufactured, imported, or processed in limited volumes. In cases where commercial distribution was indicated, reliable market data disclosed annual manufacture or importation in exceedence of 25,000 pounds, as well as the number of sites where the chemical was likely to be found. For the purposes of preparing the Economic Analysis (Ref. 2), where TSCA section 14 CBI was the only reliable source of evidence of a chemical's manufacture/importation, data retrieved from the data base were aggregated so as to prevent disclosure. In other cases, the manufacture/importation of a chemical was indicated, but only in relatively small amounts (typically for research purposes). Also, some chemicals were suspected as functioning only as intermediates, and no reliable data were available regarding manufacture/importation.

For approximately 33 percent of the chemicals considered, no evidence could be found of manufacture, importation, or use, commercial or otherwise. EPA's preliminary finding is that such chemicals are not manufactured, processed, or imported, and no reporting activities would be anticipated to result were they added to the section 313 list at this time.

EPA's analysis indicates that a subset of the 68 chemicals and 2 chemical categories proposed for addition to EPCRA section 313 consists of chemicals that are either (1) manufactured, imported, or processed in annual quantities greater than 25,000 pounds, and can be listed below without possibly revealing TSCA section 14 CBI or (2) those for which a determination and public disclosure of the chemicals annual manufacturing volume could not be made without possibly disclosing CBI in violation of TSCA section 14. For chemicals in the latter group, TSCA section 14 CBI may indicate annual production beneath the 25,000 pound threshold for each facility. However, EPA may not use TSCA section 14 CBI information to identify the manufacturing and/or import volume of a chemical if doing so would reveal CBI.

Should manufacturers of any chemicals appearing on the following list believe CBI would demonstrate that it's facility manufactures, imports, or processes the chemical below the 25,000 pound annual level, the company may waive its claim to CBI protection. CBI waivers would allow EPA to disclose, for the purpose of applying the proposed manufacturing volume threshold option, that such a chemical is manufactured, imported, or processed in a quantity of less than 25,000 pounds annually. However, EPA would need to receive waivers from all manufacturers, importers, and processors of a given chemical before using TSCA section 14 CBI information, if doing so would disclose CBI in violation of TSCA section 14. Companies should note that they may limit any TSCA section 14 CBI waiver to EPA's use of such information for purposes of today's proposed manufacturing volume threshold option. In addition, companies may make any CBI waiver conditional on EPA taking final action on this proposal and not listing a specific chemical on the EPCRA section 313 list, pursuant to the proposed manufacturing volume option. Alternatively, manufacturers are encouraged to submit to the Agency any publicly available information which would support a finding that a chemical is manufactured, imported, or processed in quantities less than 25,000 pounds. TSCA section 14 CBI waivers should be submitted by [Insert date 60 days after date of publication in the **Federal Register**] to: TSCA Document Receipt Office (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. ET-005, 401 M St., SW., Washington, DC 20460. Comments should include the docket control number "OPPTS-400060."

The following chemicals are manufactured, imported, or processed in quantities greater than 25,000 pounds per facility per year:

Acetophenone (00098-86-2)
Amitrole (00061-82-5)
p-Chloro-m-cresol (00059-50-7)
Bis(2-chloroethoxy)methane (00111-91-1)
Crotonaldehyde (04170-30-3)
1,4-Dichloro-2-butene (00764-41-0)
Dihydrosafrole (00094-58-6)
Ethylenebisdithiocarbamic acid, salts and esters (NA)
Ethylidene dichloride (00075-34-3)
Formic acid (00064-18-6)
Hydrogen sulfide (07783-06-4)
Malononitrile (00109-77-3)
Methacrylonitrile (00126-98-7)
Methyl chlorocarbonate (00079-22-1)

Methyl mercaptan (00074-93-1)
2-Methylpyridine (00109-06-8)
5-Nitro-o-toluidine (00099-55-8)
Pentachloroethane (00076-01-7)
Pronamide (23950-58-5)
1,1,1,2-Tetrachloroethane (00630-20-6)
Thiram (00137-26-8)
p-Toluidine (00106-49-0)

The following chemicals are manufactured, imported, or processed in quantities less than 25,000 pounds:

Benz[a]anthracene (00056-55-3)
Benzo[a]phenanthrene (00218-01-9)
Benzo[a]pyrene (00050-32-8)
4-Bromophenyl phenyl ether (00101-55-3)
Carbonic difluoride (00353-50-4)
Chlorambucil (00305-03-3)
Cyclophosphamide (00050-18-0)
Dibenzo(a,h)anthracene (00053-70-3)
1,2-Diethylhydrazine (01615-80-1)
Diethylstilbestrol (00056-53-1)
Fluoranthene (00206-44-0)
Glycidylaldehyde (00765-34-4)
Hexachlorophene (00070-30-4)
Hexachloropropene (01888-71-7)
Indeno[1,2,3-cd]pyrene (00193-39-5)
Melphalan (00148-82-3)
N-Nitrosopyrrolidine (00930-55-2)
Paraldehyde (00123-63-7)
Pentachlorobenzene (00608-93-5)
Reserpine (00050-55-5)
Streptozotocin (18883-66-4)
Trypan blue (00072-57-1)
Uracil mustard (00066-75-1)
Warfarin and salts (NA)

No information could be located that indicate that the following chemicals are manufactured, imported, or processed:

Azaserine (00115-02-6)
Benz[c]acridine (00225-51-4)
Benzo[rst]pentaphene (00189-55-9)
Chlornaphazine (00494-03-1)
4-Chloro-o-toluidine hydrochloride (03165-93-3)
Daunomycin (20830-81-3)
DDD (00072-54-8)
DDT (00050-29-3)
O,O-Diethyl-S-methyl dithiophosphate (03288-58-2)
7,12-Dimethylbenz[a]anthracene (00057-97-6)
1,2-Dimethylhydrazine (00540-73-8)
Ethyl methanesulfonate (00062-50-0)
Kepone (00143-50-0)
Lasiocarpine (00303-34-4)
3-Methylcholanthrene (00056-49-5)
Methylthiouracil (00056-04-2)
MNNG (N-methyl-N'-nitro-N-nitrosoguanidine) (00070-25-7)
Mitomycin C (00050-07-7)
N-Nitrosodiethanolamine (01116-54-7)
N-Nitroso-N-methylurethane (00615-53-2)
Phenacetin (00062-44-2)
1,2,4,5-Tetrachlorobenzene (00095-94-3)
2,4,5-TP (Silvex) (00093-72-1)
1,3,5-Trinitrobenzene (00099-35-4)

Nine of the chemicals listed above (benz[c]acridine, benz[a]anthracene, benzo[rst]pentaphene, benzo[a]phenanthrene, benzo[a]pyrene, dibenzo(a,h)anthracene, 7,12-dimethylbenz[a]anthracene, fluoranthene, and indeno[1,2,3-cd]pyrene) which either have manufacturing volumes less than 25,000 pounds or for which no information could be located on their production are components of coke oven emissions known as polycyclic organic compounds. Since these chemicals are generated primarily in coke ovens, it is not likely that individually any would exceed the 25,000 pound per facility manufacturing threshold. However, as a category these chemicals are expected to collectively exceed the 25,000 pound per facility manufacturing threshold.

EPA requests comment on public sources of annual manufacturing information, other than those used in the economic support document (Ref. 2), that could be used by the Agency to determine the production volume of those chemicals listed in Unit IV.B of this preamble.

VII. Proposed TSCA Section 5(a)(2) Significant New Use Rule

A. Statutory Authority

This proposal is issued under section 5(a)(2) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2604(a)(2).

B. TSCA Section 5(a)(2) SNUR

EPA recognizes that there may be future production in excess of the annual manufacturing volume threshold of any of the chemicals that based on the manufacturing volume threshold option are not added to the section 313 list. If EPA elects to adopt the manufacturing volume threshold option in a final rule, the Agency intends to promulgate a significant new use rule (SNUR) under TSCA section 5(a)(2) that would cover the substances manufactured, imported, or processed in amounts less than the manufacturing volume threshold specified in that rule (i.e., 25,000 or 10,000 pounds per year). For the purposes of this proposed SNUR, however, a manufacturing threshold of 25,000 pounds is used. The SNUR would require persons to submit a significant new use notice to EPA at least 90 days before manufacturing, importing, or processing any of the following chemical substances or chemical category, in amounts of 25,000 pounds or greater, per year, per facility, for any use:

CAS No.	Name
101-55-3	4-Bromophenyl phenyl ether
353-50-4	Carbon oxyfluoride (Carbonic difluoride)
50-29-3	DDT
56-53-1	Diethylstilbestrol
62-50-0	Ethyl methanesulfonate
70-30-4	Hexachlorophene

—Continued

CAS No.	Name
1888-71-7	Hexachloropropene
56-49-5	3-Methylcholanthrene
56-04-2	Methylthiouracil
70-25-7	MNNG (N-methyl-N'-nitro-N-nitrosoguanidine)
50-07-7	Mitomycin C
1116-54-7	N-Nitrosodiethanolamine
615-53-2	N-Nitroso-N-methylurethane
930-55-2	N-Nitrosopyrrolidine
123-63-7	Paraldehyde
608-93-5	Pentachlorobenzene
62-44-2	Phenacetin
50-55-5	Reserpine
95-94-3	1,2,4,5-Tetrachlorobenzene
99-35-4	1,3,5-Trinitrobenzene
72-57-1	Trypan blue
N/A	Warfarin and salts

For the category warfarin and salts, reporting under the SNUR would be triggered, for example, by the manufacture of 20,000 pounds of warfarin and 5,000 pounds of a warfarin salt at a given facility in any calendar year, for any use (or any combination of uses). However, the SNUR reporting thresholds would be determined separately for manufacturing, importing, and processing activities.

The chemical substances and chemical category which are included in this alternative are those that EPA believes are currently being manufactured, imported, or processed in amounts of less than 25,000 pounds per year per facility and that appear on the TSCA Inventory (the Inventory is a list of existing chemical substances compiled by EPA under TSCA section 8(b)). Accordingly, some substances identified in the EPCRA section 313 petition that appear to be in production in amounts less than 25,000 pounds per year per facility may be excluded from coverage under TSCA section 3(2)(B) because of their uses (e.g., as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. section 136, et seq.)). EPA discusses possible means of tracking production for those substances in Unit VII.D. below.

C. SNUR Statutory and Regulatory Background

Section 5(a)(2) of TSCA (15 U.S.C., 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." The Agency must make this determination by rule after considering all relevant factors, including those listed in TSCA section 5(a)(2). These factors include the volume of a chemical substance's production, the extent to which a use changes, the type, form, magnitude, or duration of exposure to it, and the reasonably anticipated manner of producing or

otherwise managing the substance. Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use.

Persons subject to a SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of premanufacture notices (PMNs) under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of TSCA section 5(b) and (d)(1), the exemptions authorized by TSCA sections 5(h)(1), (2), (3), and (5), and the regulations at 40 CFR part 720. General regulatory provisions applicable to SNURs are codified at 40 CFR part 721, subpart A. EPA may take regulatory action under sections 5(e), 5(f), 6, or 7 of TSCA to control the activities for which it has received a SNUR notice. If EPA does not take action, section 5(g) of TSCA requires EPA to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a chemical substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707. The export notification requirements of 40 CFR part 707 are triggered by this action. Should EPA determine it to be inappropriate to finalize the SNUR, the proposal will be withdrawn. In addition, should EPA select an annual manufacturing volume threshold lower than 25,000 pounds in a final rule (i.e., 10,000 pounds), the export notification would cease to apply to those chemicals in today's proposed SNUR which are not subject to a final SNUR.

D. Objectives and Rationale for the SNUR Alternative

To determine what would constitute a significant new use of the chemical substances and chemical category that are the subjects of this proposal, EPA considered relevant information on the toxicity of the chemical substances, likely exposures associated with possible uses, and the relevant factors listed in section 5(a)(2) of TSCA. Based on these considerations, EPA intends to achieve the following objectives with regard to the significant new use that is presented in this alternative. EPA would want to ensure that:

a. The Agency would receive notice of any company's intent to manufacture, import, or process per calendar year, per facility, for any use, the chemicals and chemical category listed under this alternative in amounts greater than the annual manufacturing volume threshold as discussed in Unit VI.A.

b. The Agency would have prospective manufacturing, importing, and processing data available from the significant new use notice that would allow it to make informed decisions regarding any possible listing under section 313 of EPCRA of the chemicals and chemical category listed in this alternative.

c. The Agency would have an opportunity to review and evaluate data submitted in a significant new use notice before the notice submitter begins manufacture, importation, or processing for a significant new use.

d. The Agency would be able to regulate prospective manufacturers, importers, or processors of the chemicals and chemical category listed in this alterative before a significant new use occurs, provided that the degree of potential health and/or environmental risk, or the uncertainty about the risks, is sufficient to warrant such regulation.

As discussed in Unit IV.B, EPA has concerns regarding the toxicity of the chemical substances and chemical category that would be included in the SNUR. Indeed EPA has proposed today to add each of these chemicals to the EPCRA section 313 list. EPA believes exposures to the substances listed in this proposal associated with manufacture, import, processing, use, and associated activities could increase should manufacture, import, or processing volumes equal or exceed an established manufacturing volume threshold (i.e., 25,000 or 10,000 pounds, per year, per facility). The notice that would be required by the SNUR would provide EPA with the opportunity to evaluate activities associated with the significant new use, and an opportunity to protect against unreasonable risks, if any, from exposure to the chemical substances which could result from the proposed significant new use.

Additionally, the information submitted with a SNUR notice could be used by EPA to consider initiating a rulemaking under EPCRA section 313 to list the chemical substance or chemical category that was the subject of the significant new use notice, if appropriate.

E. Other Means of Tracking of Future Production

Should EPA adopt the alternative proposal as a final rule, the Agency would have available in addition to a TSCA SNUR, several existing regulatory mechanisms for tracking production of the unlisted chemicals, to determine if any exceed the annual manufacturing volume threshold in future years such that EPA could reasonably anticipate that section 313 release reports would be filed were the chemical on the section 313 list.

1. *FIFRA section 7 information.* As stated in Unit VII.B, many of the chemicals identified in this proposal are solely pesticides for which the TSCA SNUR mechanism would be inappropriate. Section 7 of FIFRA (7 U.S.C. section 136 *et seq.*), however, provides the Agency with annual production information on registered pesticides. EPA regulations implementing FIFRA section 7 (40 CFR part 167) require all manufacturers of pesticidal products (which includes pesticides, active ingredients, or devices) to submit an annual report detailing the amount of each type of pesticidal product manufactured, sold or distributed during the past year, and estimated to be manufactured, imported, or processed during the current year (40 CFR 167.85). Although information obtained from manufacturers under FIFRA section 7 is confidential, EPA may be able to use such information as an internal device for tracking the manufacturing volume of chemicals that would not be added to the EPCRA section 313 list under today's alternative proposal, without violating FIFRA's confidentiality provision. EPA requests comment on other sources of information for this purpose.

2. *Food, drug, and cosmetics information.* A number of the chemicals in today's proposed action are excluded from coverage under TSCA section 5 because they meet the definition of "food," "food additive," "drug," "cosmetic," or "device" under the Federal Food, Drug, and Cosmetic Act (see TSCA section 3(2)(B)(vi)), and therefore cannot be subject to a SNUR. EPA requests comment on sources of annual manufacturing information on such chemicals which could be used by the Agency to track manufacturing volumes.

VIII. Rulemaking Record

The record supporting this proposed rule is contained in the docket number OPTS-400069. All documents, including an index of the docket, are available in the TSCA Public Docket Office from 8 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA Public Docket Office is located at EPA Headquarters, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

IX. Request for Public Comment

EPA welcomes comment on any aspect of today's **Federal Register** Notice. EPA requests specific comment as detailed in the following paragraphs.

EPA requests public comment on this proposal to add 68 chemicals and 2 chemical categories to the list of chemicals subject to EPCRA section 313. EPA carried out a limited hazard assesment and thus is specifically requesting toxicity information on those chemicals in Unit IV.B of this preamble that have been identified as "may be sufficient for listing" and on the chemicals listed above in Unit IV.C of this preamble.

EPA requests comment on the use of a manufacturing volume threshold to preclude the addition of chemicals to the EPCRA section 313 list, as described in Unit VI. In addition, EPA solicits comment on what manufacturing volume threshold (e.g., 25,000 or 10,000 pounds per year per facility) would be appropriate for making this determination.

EPA requests comment on whether the following nine polycyclic organic compounds should be listed as a category rather than individually: benz[c]acridine, benz[a]anthracene, benzo[rst]pentaphene, benzo[a]phenanthrene, benzo[a]pyrene, dibenzo[a,h]anthracene, 7,12-dimethylbenz[a]anthracene, fluoranthene, and indeno[1,2,3-cd]pyrene. Because these chemicals are generated in coke ovens, it is not likely they would individually trigger the manufacturing threshold at any given facility. However, if listed as a category it is expected that such coincidental manufacture would exceed the 25,000 pound manufacturing threshold.

EPA is aware that the information used to determine if a chemical is manufactured, imported, or processed in quantities greater than an established manufacturing volume threshold (e.g., 25,000 or 10,000 pounds) is limited. Thus, the Agency specifically requests any information on the production volume of those chemicals listed in Unit IV.B of this preamble.

EPA also requests comment on the suitability of using a TSCA SNUR as a mechanism for the Agency to use in tracking the future production of those chemicals listed in Unit IV.B of this preamble that are manufactured in quantities less than the threshold discussed in Unit VI.B of this preamble. EPA notes that a SNUR will capture only those chemicals subject to TSCA. Production information on chemicals that are used as pesticides, drugs, or cosmetics will not be captured by a SNUR. EPA requests comment on the use of other regulatory mechanisms for obtaining production volume information.

EPA requests comment on public sources of annual manufacturing information, other than those used in the economic support document (Ref. 2), that could be used by the Agency to determine the production volume of those chemicals listed in Unit IV.B of this preamble.

This petition does not request that any action be taken under RCRA, and today's proposal should not be inferred as a proposed RCRA action or a request for comment on the list of hazardous wastes.

Comments should be submitted to the address listed under the ADDRESSES unit at the front of this document. All comments must be submitted on or before November 9, 1992.

X. References

(1) Allied Chemical Corp. 1978. Letter to U.S. EPA submitting a medical review of an incident that occurred in one of the plants involving the exposure of methyl mercaptan, dimethyl disulfide, and acetonitrile with attachment. U.S. EPA/OTS Public Files, Document No. 8EHQ-0578-0149.

(2) Andrei, R. 1992. Economic Analysis of the Proposed Addition of 70 Chemicals to the EPCRA Section 313 List of Toxic Chemicals.

(3) AQUIRE. 1992. Aquatic Information Retrieval. Baltimore, MD: Chemical Information System.

(4) ATSDR. 1989. Toxicological Profile for DDE, DDT, DDD. U.S. Department of Health and Human Services, Public Health Service, Agency for Toxic Substances and Disease Registry, Atlanta, GA.

(5) ATSDR. 1989. Toxicological Profile for 1,1-Dichloroethene. U.S. Department of Health and Human Services, Public Health Service, Agency for Toxic Substances and Disease Registry, Atlanta, GA.

(6) ATSDR. 1992. Toxicological Profile for Methyl Mercaptan. U.S. Department of Health and Human Services, Public Health Service, Agency for Toxic Substances and Disease Registry, Atlanta, GA.

(7) Browning, E. 1965. Toxicity and Metabolism of Industrial Solvents. New York, NY: American Elsevier, 261-263.

(8) EPA. 1977. Notice of Rebuttable Presumption Against Registration and Continued Registration of Pesticide Products Containing Ethylenebisdithiocarbamates. U.S. Environmental Protection Agency: Part III. (42 FR 40618; August 10, 1977).

(9) EPA. 1977. Notice of Rebuttable Presumption Against Registration and Continued Registration of Pesticide Products Containing Pronamide. U.S. Environmental Protection Agency: Part III. (42 FR 25906; May 20, 1977).

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XI. Regulatory Assessment Requirements

A. Executive Order 12291

Executive Order (E.O.) 12291 requires each federal agency to classify as "major" any rule likely to result in:

(1) An annual effect on the economy of $100 million or more; or

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

EPA's economic analysis estimates up to 4,611 additional reports entailing annual costs to EPA, industry, and States of about $6.9 million as a result of the proposed addition of the 68 chemicals and 2 chemical categories to the section 313 list of toxic chemicals. EPA anticipates that this proposed addition will not have a significant effect on competition, costs, or prices. Therefore, EPA has determined that this proposed rule is not "major."

Should the alternative proposal to set a 10,000 pound production volume threshold for listing be adopted, additional costs were not estimated to be significant. This result is due principally to two factors. First, the statutory reporting threshold of 25,000 pounds for manufacturers would still be in force, regardless of any volume criteria set for listing. Second, it is unlikely that more than a minimal number of additional user sites would be required to report (chemicals used in annual volumes of at least 10,000 pounds but manufactured in volumes less than 25,000 pounds would generate additional Form R reports under the 10,000 pound production volume criterion; such chemicals would not generate user reports under a 25,000 pound production volume cutoff for listing, because the chemicals would not be added the EPCRA section 313 list).

Incremental costs attributable to the proposed SNUR and incremental costs attributable to a promulgated SNUR were considered but, due to the great uncertainty associated with the frequency of occurrence of potentially regulated activities, such costs could only be presented at the unit cost level. These estimates are discussed briefly below.

Unit costs to industry associated with the proposed SNUR would result from export notifications required under TSCA section 12(b), and were estimated to be $65 for each exported chemical subject to the proposed SNUR, per foreign country, per year. Unit costs to EPA were estimated to be about $22.

With regard to a promulgated SNUR, unit costs to industry were estimated to range between $2,000 and $10,000 for

each significant new use notice or modification request prepared, while costs to EPA for issuing and administering the SNUR were estimated to be $2,000. [Incremental costs to industry in connection with a response not to engage in a significant new use could not be estimated.] As costs would only be incurred in the event that a chemical listed in the rule were manufactured, imported, or processed in excess of the listing threshold, and as such chemicals are currently not manufactured, imported, or processed in excess of 25,000 pounds, it is expected that any overall increase in incremental costs resulting from a promulgated SNUR would be small.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires each Federal agency to perform a Regulatory Flexibility Analysis for all rules that are likely to have a "significant impact on a substantial number of small entities."

40 CFR part 372 exempts certain small businesses from reporting; specifically, those facilities with fewer than 10 full-time employees. This exclusion exempts about one-half of all manufacturing facilities in Standard Industrial Classification (SIC) codes 20 through 39 from section 313 reporting. Additionally, facilities which manufacture or process less than 25,000 pounds or otherwise use less than 10,000 pounds of these chemicals annually are not required to report for these chemicals. Therefore, EPA concludes that the rule is not likely to significantly impact a substantial number of small entities.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control numbers 2070–0093 and 2070–0038.

The public reporting burden for this collection of information is estimated to average 43 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC, 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects

40 CFR Part 372

Community right-to-know, Environmental protection, Reporting and recordkeeping requirements, Toxic chemicals.

40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: August 31, 1991.

Victor J. Kimm,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

Therefore it is proposed that 40 CFR Chapter I be amended as follows:

1. Subchapter J is amended in part 372 as follows:

PART 372—[AMENDED]

a. The authority citation for part 372 would continue to read as follows:

Authority: 42 U.S.C. 11013 and 11028.

b. In § 372.65 by adding chemicals to paragraph (a) alphabetically and to paragraph (b) by CAS No. sequence and to paragraph (c) by alphabetically adding the categories to read as follows:

§ 372.65 Chemicals and chemical categories to which this part applies.

* * * * *

(a) * * *

Chemical Name	CAS No.	Effective date
* * *	* * * *	
Acetophenone	98–86–2	1/1/94
* * *	* * * *	
Amitrole	61–82–5	1/1/94
* * *	* * * *	
Azaserine	115–02–6	1/1/94
* * *	* * * *	
Benz[c]acridine	225–51–4	1/1/94
* * *	* * * *	
Benz[a]anthracene	56–55–3	1/1/94
* * *	* * * *	
Benzo[rst]pentaphene	189–55–9	1/1/94
Benzo[a]phenanthrene	218–01–9	1/1/94
Benzo[a]pyrene	50–32–8	1/1/94
* * *	* * * *	
Bis(2-chloroethoxy)methane	111–91–1	1/1/94
* * *	* * * *	
4-Bromophenyl phenyl ether	101–55–3	1/1/94
* * *	* * * *	
Carbonic difluoride	353–50–4	1/1/94
* * *	* * * *	
Chlorambucil	305–03–3	1/1/94
* * *	* * * *	
Chlornaphazine	494–03–1	1/1/94
* * *	* * * *	
p-Chloro-m-cresol	59–50–7	1/1/94
* * *	* * * *	
4-Chloro-o-toluidine hydrochloride	3165–93–3	1/1/94
* * *	* * * *	
Crotonaldehyde	4170–30–3	1/1/94
* * *	* * * *	
Cyclophosphamide	50–18–0	1/1/94

Chemical Name	CAS No.	Effective date
* * *	* * * *	
Daunomycin	20830-81-3	1/1/94
DDD	72-54-8	1/1/94
DDT	50-29-3	1/1/94
* * *	* * * *	
Dibenzo(a,h)anthracene	53-70-3	1/1/94
* * *	* * * *	
1,4-Dichloro-2-butene	764-41-0	1/1/94
* * *	* * * *	
1,2-Diethylhydrazine	1615-80-1	1/1/94
O,O-Diethyl-S-methyldithiophosphate	3288-58-2	1/1/94
* * *	* * * *	
Diethylstilbestrol	56-53-1	1/1/94
* * *	* * * *	
Dihydrosafrole	94-58-6	1/1/94
* * *	* * * *	
7,12-Dimethyl-benz[a]anthracene	57-97-6	1/1/94
* * *	* * * *	
1,2-Dimethylhydrazine	540-73-8	1/1/94
* * *	* * * *	
Ethylidene dichloride	75-34-3	1/1/94
Ethyl methanesulfonate	62-50-0	1/1/94
* * *	* * * *	
Fluoranthene	206-44-0	1/1/94
* * *	* * * *	
Formic acid	64-18-6	1/1/94
* * *	* * * *	
Glycidylaldehyde	765-34-4	1/1/94
* * *	* * * *	
Hexachlorophene	70-30-4	1/1/94
Hexachloropropene	1888-71-7	1/1/94
* * *	* * * *	
Hydrogen sulfide	7783-06-4	1/1/94
* * *	* * * *	
Indeno[1,2,3-cd]pyrene	193-39-5	1/1/94
* * *	* * * *	
Kepone	143-50-0	1/1/94
Lasiocarpine	303-34-4	1/1/94
* * *	* * * *	
Malononitrile	109-77-3	1/1/94
* * *	* * * *	
Melphalan	148-82-3	1/1/94
* * *	* * * *	
Methacrylonitrile	126-98-7	1/1/94
* * *	* * * *	
Methyl chlorocarbonate	79-22-1	1/1/94
3-Methylcholanthrene	56-49-5	1/1/94
* * *	* * * *	
Methyl mercaptan	74-93-1	1/1/94
* * *	* * * *	
2-Methylpyridine	109-06-8	1/1/94
* * *	* * * *	
Methylthiouracil	56-04-2	1/1/94
* * *	* * * *	
Mitomycin C	50-07-7	1/1/94
MNNG (N-methyl-N'-nitro-N-nitrosoguanidine)	70-25-7	1/1/94
* * *	* * * *	
N-Nitrosodiethanolamine	1116-54-7	1/1/94
* * *	* * * *	
N-Nitroso-N-methylurethane	615-53-2	1/1/94
* * *	* * * *	
N-Nitrosopyrrolidine	930-55-2	1/1/94
5-Nitro-o-toluidine	99-55-8	1/1/94
* * *	* * * *	
Paraldehyde	123-63-7	1/1/94
* * *	* * * *	
Pentachlorobenzene	608-93-5	1/1/94
Pentachloroethane	76-01-7	1/1/94
* * *	* * * *	
Phenacetin	62-44-2	1/1/94
* * *	* * * *	
Pronamide	23950-58-5	1/1/94
* * *	* * * *	
Reserpine	50-55-5	1/1/94
* * *	* * * *	
Streptozotocin	18883-66-4	1/1/94
* * *	* * * *	
1,2,4,5-Tetrachlorobenzene	95-94-3	1/1/94
1,1,1,2-Tetrachloroethane	630-20-6	1/1/94
* * *	* * * *	

Chemical Name	CAS No.	Effective date
Thiram	137-26-8	1/1/94
* * *	* * * *	
p-Toluidine	106-49-0	1/1/94
* * *	* * * *	
2,4,5-TP (Silvex)	93-72-1	1/1/94
* * *	* * * *	
1,3,5-Trinitrobenzene	99-35-4	1/1/94
* * *	* * * *	
Trypan blue	72-57-1	1/1/94
Uracil mustard	66-75-1	1/1/94
* * *	* * * *	

(b) * * *

CAS No.	Chemical Name	Effective Date
* *	* * * * *	
50-07-7	Mitomycin C	1/1/94
50-18-0	Cyclophosphamide	1/1/94
50-29-3	DDT	1/1/94
50-32-8	Benzo[a]pyrene	1/1/94
50-55-5	Reserpine	1/1/94
* *	* * * * *	
53-70-3	Dibenzo(a,h)anthracene	1/1/94
* *	* * * * *	
56-04-2	Methylthiouracil	1/1/94
* *	* * * * *	
56-49-5	3-Methylcholanthrene	1/1/94
56-53-1	Diethylstilbestrol	1/1/94
56-55-3	Benz[a]anthracene	1/1/94
* *	* * * * *	
57-97-6	7,12-Dimethyl-benz[a]anthracene	1/1/94
* *	* * * * *	
59-50-7	p-Chloro-m-cresol	1/1/94
* *	* * * * *	
61-82-5	Amitrole	1/1/94
62-44-2	Phenacetin	1/1/94
62-50-0	Ethyl methanesulfonate	1/1/94
* *	* * * * *	
64-18-6	Formic acid	1/1/94
* *	* * * * *	
66-75-1	Uracil mustard	1/1/94
* *	* * * * *	
70-25-7	MNNG (N-methyl-N'-nitro-N-nitrosoguanidine)	1/1/94
70-30-4	Hexachlorophene	1/1/94
* *	* * * * *	
72-54-8	DDD	1/1/94
72-57-1	Trypan blue	1/1/94
* *	* * * * *	
74-93-1	Methyl mercaptan	1/1/94
* *	* * * * *	
75-34-3	Ethylidene dichloride	1/1/94
* *	* * * * *	
76-01-7	Pentachloroethane	1/1/94
* *	* * * * *	
79-22-1	Methyl chlorocarbonate	1/1/94
* *	* * * * *	
93-72-1	2,4,5-TP(Silvex)	1/1/94
* *	* * * * *	
94-58-6	Dihydrosafrole	1/1/94
* *	* * * * *	
95-94-3	1,2,4,5-Tetrachlorobenzene	1/1/94
98-86-2	Acetophenone	1/1/94
* *	* * * * *	
99-35-4	1,3,5-Trinitrobenzene	1/1/94
99-55-8	5-Nitro-o-toluidine	1/1/94
* *	* * * * *	
101-55-3	4-Bromophenyl phenyl ether	1/1/94
* *	* * * * *	
106-49-0	p-Toluidine	1/1/94
* *	* * * * *	
109-06-8	2-Methylpyridine	1/1/94
109-77-3	Malononitrile	1/1/94
* *	* * * * *	

CAS No.	Chemical Name	Effective Date
111-91-1	Bis(2-chloroethoxy)methane	1/1/94
* * *	* * * * *	
115-02-6	Azaserine	1/1/94
* * *	* * * * *	
123-63-7	Paraldehyde	1/1/94
* * *	* * * * *	
126-98-7	Methacrylonitrile	1/1/94
* * *	* * * * *	
137-26-8	Thiram	1/1/94
* * *	* * * * *	
143-50-0	Kepone	1/1/94
148-82-3	Melphalan	1/1/94
* * *	* * * * *	
189-55-9	Benzo[rst]pentaphene	1/1/94
193-39-5	Indeno[1,2,3-cd]pyrene	1/1/94
206-44-0	Fluoranthene	1/1/94
218-01-9	Benzo[a]phenanthrene	1/1/94
225-51-4	Benz[c]acridine	1/1/94
* * *	* * * * *	
303-34-4	Lasiocarpine	1/1/94
305-03-3	Chlorambucil	1/1/94
* * *	* * * * *	
353-50-4	Carbonic difluoride	1/1/94
* * *	* * * * *	
494-03-1	Chlornaphazine	1/1/94
* * *	* * * * *	
540-73-8	1,2-Dimethylhydrazine	1/1/94
* * *	* * * * *	
608-93-5	Pentachlorobenzene	1/1/94
* * *	* * * * *	
615-53-2	N-Nitroso-N-methylurethane	1/1/94
* * *	* * * * *	
630-20-6	1,1,1,2-Tetrachloroethane	1/1/94
* * *	* * * * *	
764-41-0	1,4-Dichloro-2-butene	1/1/94
765-34-4	Glycidylaldehyde	1/1/94
* * *	* * * * *	
930-55-2	N-Nitrosopyrrolidine	1/1/94
* * *	* * * * *	
1116-54-7	N-Nitrosodiethanolamine	1/1/94
* * *	* * * * *	
1615-80-1	1,2-Diethylhydrazine	1/1/94
* * *	* * * * *	
1888-71-7	Hexachloropropene	1/1/94
* * *	* * * * *	
3165-93-3	4-Chloro-o-toluidine hydrochloride	1/1/94
3288-58-2	O,O-Diethyl-S-methyl dithophosphate	1/1/94
* * *	* * * * *	
4170-30-3	Crotonaldehyde	1/1/94
* * *	* * * * *	
7783-06-4	Hydrogen sulfide	1/1/94
* * *	* * * * *	
18883-66-4	Streptozotocin	1/1/94
* * *	* * * * *	
20830-81-3	Daunomycin	1/1/94
23950-58-5	Pronamide	1/1/94
* * *	* * * * *	

(c) * * *

Category Name	Effective Date
* * *	* *
Ethylenebisdithiocarbamic acid, salts and esters	1/1/94
* * *	* *
Warfarin and salts	1/1/94
* * *	* *

2. Subchapter R is amended in part 721 as follows:

PART 721—[AMENDED]

a. The authority citation for part 721 would continue to read as follows:

Authority: 15 U.S.C. 2604, 2607 and 2625(c).

b. By adding new § 721.1430 to subpart E to read as follows:

§ 721.1430 Pentachlorobenzene.

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance pentachlorobenzene (CAS No. 608-93-5) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Manufacture, import, or processing of 25,000 pounds or more per year per facility for any use.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a), (b), and (c).

(2) [Reserved]

c. By adding new § 721.1435 to subpart E to read as follows:

§ 721.1435 1,2,4,5-Tetrachlorobenzene.

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance 1,2,4,5-tetrachlorobenzene (CAS No. 95-94-3) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Manufacture, import, or processing of 25,000 pounds or more per year per facility for any use.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a), (b), and (c).

(2) [Reserved]

d. By adding new § 721.1440 to subpart E to read as follows:

§ 721.1440 1,3,5-Trinitrobenzene.

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance 1,3,5-trinitrobenzene (CAS No. 99-35-4) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Manufacture, import, or processing of 25,000 pounds or more per year per facility for any use.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a), (b), and (c).

(2) [Reserved]

e. By adding new § 721.2084 to subpart E to read as follows:

§ 721.2084 Carbon oxyfluoride (Carbonic difluoride).

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance carbon oxyfluoride (CAS No. 353-50-4) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Manufacture, import, or processing of 25,000 pounds or more per year per facility for any use.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a), (b), and (c).

(2) [Reserved]

f. By adding new § 721.2092 to subpart E to read as follows:

§ 721.2092 3-Methylcholanthrene.

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance 3-methylcholanthene (CAS No. 56-49-5) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Manufacture, import, or processing of 25,000 pounds or more per year per facility for any use.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a), (b), and (c).

(2) [Reserved]

g. By adding new § 721.2287 to subpart E to read as follows:

§ 721.2287 DDT.

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance DDT (CAS No. 50-29-3) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Manufacture, import, or processing of 25,000 pounds or more per year per facility for any use.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a), (b), and (c).

(2) [Reserved]

h. By adding new § 721.2355 to subpart E to read as follows:

§ 721.2355 Diethylstilbestrol.

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance diethylstilbestrol (CAS No. 56-53-1) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Manufacture, import, or processing of 25,000 pounds or more per year per facility for any use.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a), (b), and (c).

(2) [Reserved]

i. By adding new § 721.3350 to subpart E to read as follows:

§ 721.3350 N-Nitrosodiethanolamine.

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance N-nitrosodiethanolamine (CAS No. 1116-54-7) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Manufacture, import, or processing of 25,000 pounds or more per year per facility for any use.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a), (b), and (c).

(2) [Reserved]

j. By adding new § 721.3430 to subpart E to read as follows:

§ 721.3430 4-Bromophenyl phenyl ether.

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance 4-bromophenyl phenyl ether (CAS No. 101-55-3) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Manufacture, import, or processing of 25,000 pounds or more per year per facility for any use.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a), (b), and (c).

(2) [Reserved]

k. By adding new § 721.4080 to subpart E to read as follows:

§ 721.4080 MNNG (N-methyl-N'-nitro-N-nitrosoguanidine).

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance MNNG (N-methyl-N'-nitro-N-nitrosoguanidine) (CAS No. 70-25-7) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Manufacture, import, or processing of 25,000 pounds or more per year per facility for any use.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a), (b), and (c).

(2) [Reserved]

l. By adding new § 721.4150 to subpart E to read as follows:

§ 721.4150 Hexachlorophene.

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance hexachlorophene (CAS No. 70-30-4) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Manufacture, import, or processing of 25,000 pounds or more per year per facility for any use.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a), (b), and (c).

(2) [Reserved]

m. By adding new § 721.4155 to subpart E to read as follows:

§ 721.4155 Hexachloropropene.

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance hexachloropropene (CAS No. 1888-71-7) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Manufacture, import, or processing of 25,000 pounds or more per year per facility for any use.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a), (b), and (c).

(2) [Reserved]

n. By adding new § 721.5175 to subpart E to read as follows:

§ 721.5175 Mitomycin C.

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance mitomycin C (CAS No. 50-07-7) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Manufacture, import, or processing of 25,000 pounds or more per year per facility for any use.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a), (b), and (c).

(2) [Reserved]

o. By adding new § 721.5640 to subpart E to read as follows:

§ 721.5640 Paraldehyde.

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance paraldehyde (CAS No. 123-63-7) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Manufacture, import, or processing of 25,000 pounds or more per year per facility for any use.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a), (b), and (c).

(2) [Reserved]

p. By adding new § 721.5710 to subpart E to read as follows:

§ 721.5710 Phenacetin.

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance phenacetin (CAS No. 62-44-2) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Manufacture, import, or processing of 25,000 pounds or more per year per facility for any use.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a), (b), and (c).

(2) [Reserved]

q. By adding new § 721.9000 to subpart E to read as follows:

§ 721.9000 N-Nitrosopyrrolidine.

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance N-nitrosopyrrolidine (CAS No. 930-55-2) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Manufacture, import, or processing of 25,000 pounds or more per year per facility for any use.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a), (b), and (c).

(2) [Reserved]

r. By adding new § 721.9470 to subpart E to read as follows:

§ 721.9470 Reserpine.

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance reserpine (CAS No. 50-55-5) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Manufacture, import, or processing of 25,000 pounds or more per year per facility for any use.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a), (b), and (c).

(2) [Reserved]

s. By adding new § 721.9660 to subpart E to read as follows:

§ 721.9660 Methylthiouracil.

(a) *Chemical substance and significant new use subject to reporting.*

(1) The chemical substance methylthiouracil (CAS No. 56–04–2) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Manufacture, import, or processing of 25,000 pounds or more per year per facility for any use.

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a), (b), and (c).

(2) [Reserved]

t. By adding new § 721.9957 to subpart E to read as follows:

§ 721.9957 N-Nitroso-N-methylurethane.

(a) *Chemical substance and significant new use subject to reporting*. (1) The chemical substance N-nitroso-N-methylurethane (CAS No. 615–53–2) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Manufacture, import, or processing of 25,000 pounds or more per year per facility for any use.

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a), (b), and (c).

(2) [Reserved]

u. By adding new § 721.9580 to subpart E to read as follows:

§ 721.9580 Ethyl methanesulfonate.

(a) *Chemical substance and significant new use subject to reporting*. (1) The chemical substance ethyl methanesulfonate (CAS No. 62–50–0) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Manufacture, import, or processing of 25,000 pounds or more per year per facility for any use.

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a), (b), and (c).

(2) [Reserved]

v. By adding new § 721.9967 to subpart E to read as follows:

§ 721.9967 Warfarin and salts.

(a) *Chemical substance and significant new use subject to reporting*. (1) The chemical substance warfarin and its salts is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Manufacture, import, or processing of 25,000 pounds or more per year per facility for any use.

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a), (b), and (c).

(2) [Reserved]

[FR Doc. 92–21534 Filed 9–4–92; 8:45 am]

BILLING CODE 6560–50–F

federal register

Tuesday
September 8, 1992

Part IX

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved amendment to Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority has approved the First Amendment to the April 6, 1992 Agreement Between the Assiniboine and Sioux Tribes of the Fort Peck Reservation and the State of Montana Concerning Video Keno, Poker and Bingo Games, Simulcast Racing and Other Class III Gaming, which was approved on June 24, 1992.

DATE: This action is effective September 8, 1992.

ADDRESS: Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, MS/MIB 4603, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Chief, Division of Tribal Government Services, Bureau of Indian Affairs, Washington, DC 20240, (202) 208–7446.

SUPPLEMENTARY INFORMATION: This is to give notice of a change in the Tribal-State Compact between the Assiniboine and Sioux Tribes of the Fort Peck Reservation and the State of Montana, which was published as a notice in the **Federal Register** in 57 FR 29408 on July 1, 1992. The compact has been amended to include "Lottery Games," which adds a new subsection "P" to part III and a new subsection "D" to part V.

Dated: September 1, 1992.

David J. Matheson,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 92–21543 Filed 9–4–92; 8:45 am]

BILLING CODE 4310–02–M

federal register

Tuesday
September 8, 1992

Part X

The President

Proclamation 6469—Childhood Cancer Month, 1992

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Title 3—

The President

Proclamation 6469 of September 3, 1992

Childhood Cancer Month, 1992

By the President of the United States of America

A Proclamation

This year nearly 8,000 American children will be diagnosed as having cancer. Such a diagnosis affects not only the young patient but also his or her entire family. Parents experience tremendous anguish knowing that their child is ailing or in pain. Brothers and sisters often share in that heartache, as well as in fears of the unknown. Daily life may be turned upside down for many months; for some, it may never be the same. As an expression of our concern for young cancer patients and their families, we set aside this month to reaffirm our support of continuing research and education.

Thanks to the many advances that have been made in cancer research, the majority of children who are diagnosed with cancer today will be alive and healthy 5 years from now. Indeed, the number of deaths from childhood cancers continues to drop as improved diagnostic and prognostic techniques, along with important breakthroughs in treatment, give hope to young people with leukemia, Wilm's tumor, Hodgkin's disease, and other cancers.

Such progress is testimony to the vitality of American science and to the contributions of the brave young patients who participate in clinical studies of new anti-cancer treatments. In recent years doctors have learned that bone marrow transplantation, which enables a child to receive very high doses of anti-cancer drugs, is an effective way of treating some types of leukemia. With this and other new techniques, nearly three-fourths of all children who are diagnosed as having leukemia can look forward to a complete cure. The treatment of Hodgkin's disease is yet another example of progress: today some 87 percent of children who are diagnosed as having this cancer of the lymphatic system can expect to be cured.

While these and other scientific advances are encouraging, they are but a part of the story of our increasing success in the fight against childhood cancer. This month, as we recognize the outstanding physicians and scientists who conduct pediatric cancer research in both the public and private sectors, we also honor the dedicated oncology nurses and social workers who comfort and assist young patients, the teachers and therapists who foster their intellectual and physical potential, and the many volunteers who provide family support groups, special camping and recreation facilities, and other helpful programs and services. Inspired by the extraordinary courage and optimism of young cancer patients, all of these Americans are making important contributions to the fight against childhood cancer. Their efforts merit our admiration and support.

The Congress, by House Joint Resolution 492, has designated September 1992 as "Childhood Cancer Month" and has requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim September 1992 as Childhood Cancer Month. I invite the Governors of the 50 States and the appropriate officials of all other areas under the jurisdiction of the United States to issue similar proclamations. I also encourage the American people to join with public health agencies, private voluntary associations, and other concerned organizations in observing this month with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of September, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and seventeenth.

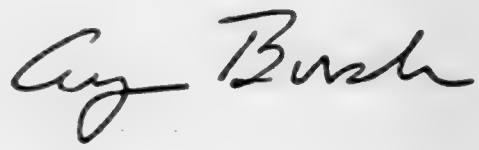

[FR Doc. 92-21731]
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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202-523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-2470).

H.J. Res. 492/P.L. 102-364

Designating September 1992 as "Childhood Cancer Month". (Sept. 2, 1992; 106 Stat. 970; 2 pages) Price: $1.00

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CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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3 (1991 Compilation and Parts 100 and 101)	(869–017–00002–7)	17.00	[1] Jan. 1, 1992
4	(869–017–00003–5)	16.00	Jan. 1, 1992
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1991. The CFR volume issued January 1, 1987, should be retained.

[5] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1991. The CFR volume issued April 1, 1990, should be retained.

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[7] No amendments to this volume were promulgated during the period July 1, 1989 to June 30, 1992. The CFR volume issued July 1, 1989, should be retained.

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WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

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WHEN: September 17, at 9:00 a.m.
WHERE: Centers for Disease Control
1600 Clinton Rd., NE.
Auditorium A
Atlanta, GA (Parking available)
RESERVATIONS: [404-639-3528 (Atlanta area)]
1-800-347-1997 (outside Atlanta area)

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Rules and Regulations

Federal Register
Vol. 57, No. 175
Wednesday, September 9, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 204

[INS No. 1421-91]

RIN 1115—AC45

Petition To Classify Alien as Immediate Relative of a United States Citizen or as a Preference Immigrant

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule amends 8 CFR part 204 in accordance with the Immigration Act of 1990 (IMMACT), by providing procedures and criteria for certain family members who were not previously eligible, but who now qualify for immigration benefits. Section 101 of IMMACT allows certain widows and widowers to apply for immigration benefits on their own behalf, and section 112 provides additional visa numbers for family members of legalized aliens during fiscal years 1992, 1993, and 1994. Although these provisions do not change the process for petitioning for family members, this rule implements the provisions of sections 101 and 112 of IMMACT for qualified widows, widowers, and legalized aliens, and also provides filing procedures. In addition, this final rule reorganizes the sections for clarity. This rule is necessary to provide United States citizens and lawful permanent residents who file relative visa petitions with clear instructions regarding eligibility and proper filing procedures.

EFFECTIVE DATE: September 9, 1992

FOR FURTHER INFORMATION CONTACT: Yolanda Sanchez-K., Rita Boie, or Susan Dugas, Senior Immigration Examiners, Adjudications Branch, Immigration and Naturalization Service, 425 I Street NW., room 7223, Washington, DC 20536, telephone (202) 514-5014.

SUPPLEMENTARY INFORMATION: The Immigration Act of 1990, Public Law 101-649, made substantial revisions to the immigration statutes and required corresponding changes to immigration-related regulations. This rule makes changes required by section 112 of IMMACT, which extends additional visa numbers to certain family members of legalized aliens during fiscal years 1992 through 1994, and section 101, which classifies a widow or widower of a United States citizen as an immediate relative when certain conditions are met. The rule also makes changes designed to promote clarity and ease of reference. Since the last major reform of the Immigration and Nationality Act of 1952, as amended, 8 CFR part 204 had undergone numerous revisions and amendments. These revisions not only expanded part 204 but also made it difficult to read and understand. The revisions also made the section difficult to research, since the requirements and procedures under certain paragraphs of the law were spread throughout the section.

On August 19, 1991, the Service published a proposed rule with request for comments in the **Federal Register** at 56 FR 41084-41097. The Service proposed to reorganize part 204 so that each petition classification would be discussed in a separate section for easy access. The proposed rule also included procedures for implementing sections 101 and 112 of IMMACT. During the 30-day comment period, which closed on September 18, 1991, the Service received thirty-nine constructive and useful comments from the public.

The following is a discussion of the issues raised in those comments, the Service's position on those issues, and the revisions adopted in the final rule.

1. General Comments

In general, commenters were supportive of and pleased with the reorganization of 8 CFR part 204 and indicated that the regulation would be easier to read and more easily understood by the average reader.

One commenter indicated that the rule does not provide for a certification to accompany true copies of documents which are submitted in lieu of originals. Because the petitioner's signature on the petition constitutes a certification that the petition and all supporting documentation consist of true statements, it is unnecessary to require a separate certification of documents submitted in support of a petition. Accordingly, the final rule will not require that copies be certified as true.

Thirty-two commenters suggested that an exemption to the blood test requirements be made available to persons who have religious objections to such tests. In general, blood tests are required only after other forms of evidence have proven inconclusive. Where a legitimate religious objection can be established, alternate forms of evidence may be considered based upon documentation already submitted. The final rule reflects this change.

Thirty-one commenters pointed out that 8 CFR 204.3(c)(2)(iii)(A) does not refer to individuals when using the term "agency" in that section. However, 8 CFR 204.3(c)(2)(i) contains the definition of "agency" as it is used in this part, which includes both organizations and individuals.

One commenter suggested that a United States passport, when used as proof of United States citizenship, be considered secondary evidence, or that 8 CFR 204.1(g)(1)(ii) be modified to require that a United States passport be accepted only after it is established to the satisfaction of an immigration officer that a birth certificate is unavailable. By law, a full validity unexpired United States passport is considered primary evidence of citizenship. See 22 U.S.C. 2705 (Pub. L. 97-241); 96 Stat 273. Accordingly, a United States passport shall continue to be considered primary evidence of United States citizenship. In addition, the rule will amend the definition of a full validity unexpired United States passport, as suggested by another commenter, to clarify that passports issued to persons who are under the age of eighteen are valid for five years.

One commenter expressed concern that, as evidence for preliminary processing of Amerasian children, sons, and daughters in 8 CFR 204.4, the Service does not require that the father be identified by name. Given the liberal intent of the statute, if United States citizen parentage is established, the name of the father is not relevant. This liberal intent should be considered when weighing evidence in these cases.

Two commenters suggested that 8 CFR 204.1(e) be amended to require that petitions be mailed directly to the Service Center having jurisdiction, thus changing the current jurisdictional provision. The Service believes that such a change is premature at this time and that this issue should not be considered until after the complete implementation of the "direct mail" program.

One commenter felt that 8 CFR 204.2(a)(2) should be amended to include photographs and signed G-325A forms for the petitioner and the spouse in the initial evidence requirements for spouse petitions. Although a Form G-325A and photographs of the petitioner and beneficiary are currently required as supporting documents with the Form I-130, they are not listed in 8 CFR 204.2(a)(2). On October 4, 1991, the Service published in the **Federal Register** a draft of a revised Form I-130. The revised Form I-130 incorporates vital information found in the Form G-325A and, therefore, eliminates the need for the submission of a Form G-325A in support of spouse petitions. This rule will not require the submission of signed G-325A forms in support of spouse petitions, but will add photographs of the petitioner and the beneficiary as part of the initial evidence for spouse petitions. Because color photographs or ADIT style photographs from some countries may be unavailable or cost prohibitive, specifications for the petitioner's photograph will be modified to permit the submission of black and white or non-ADIT style photographs in certain cases.

One commenter, citing considerations of cost and convenience, suggested that the Service should accept as evidence a signed, unsworn declaration under penalty of perjury in lieu of a sworn affidavit. While the suggested declaration may be less expensive and easier to obtain, a sworn affidavit is a more reliable form of secondary evidence and provides a mechanism for enforcing criminal perjury provisions. The final rule thus retains the requirement of a sworn affidavit.

2. Priority Dates

Thirty-five commenters suggested that the priority date of a petition should be the date the petition is received by the Service. These commenters expressed concern that delays in processing could cause a petition to be fee-receipted some time after the actual date on which the petition is received by the Service. If, during normal processing, a delay results from deficiencies in the initial filing, the priority date will be established only when the petition is properly signed by the petitioner and the fee has been collected by the Service. If questions arise concerning the filing of the petition which cannot be resolved through a check of the Service fee receipting system (FARES) or other fee collection system, then the director may consider the date of receipt of the petition to be the priority date.

3. Widow or Widower of a United States Citizen

Thirty-seven commenters felt that the Service's interpretation of the statute that the citizen spouse must have been a citizen for the entire two-year period before death was too restrictive. In other sections of law that make United States citizenship a prerequisite to an immigration benefit, Congress has been specific about the requisite period of citizenship. For example, under section 319(a) of the Act, a person married to a United States citizen may be naturalized only if the spouse was a citizen for the entire three-year period preceding the filing of an application for naturalization. No such requirement is contained in section 101 of IMMACT. Accordingly, the commenters' suggestion will be adopted. The final rule does not condition benefits upon a specific period of United States citizenship for the deceased spouse; he or she need only have been a United States citizen at the time of death.

In addition, section 302(a)(2) of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1992, Public Law 102-232, which was signed into law by President Bush on December 12, 1991, amends section 101 of IMMACT by providing a transitional filing period for a widow or widower whose United States citizen spouse died before the date of the enactment of IMMACT. This provision allows a widow or widower whose United States citizen spouse died before November 29, 1990, to file for immediate relative status before November 29, 1992. The rule will incorporate this amendment.

4. Orphans in the United States

One commenter noted that 8 CFR 204.1(b)(1)(iii) of the existing regulation had been omitted. It is important to advise adoptive parents of the restrictions outlined in this section and the effect they will have on the petitioning process and on adjustment of status. 8 CFR 204.1(b)(1)(iii) of the current rule will be redesignated as 8 CFR 204.3(e), Child in the United States, and will be made part of the final rule.

5. Living Arrangements of Adopted Children and Natural Parents

Thirty-five commenters suggested that the evidentiary requirements in 8 CFR 204.2(c)(2)(vii)(B) and 204.2(e)(2)(iv)(B) were burdensome and unnecessary to establish the residency requirement imposed by statute. The Service has learned through experience that evidence of the physical living arrangements of the adoptive child, adoptive parent(s), and natural parents is necessary to establish whether any unusual living conditions exist which warrant further consideration. Additionally, in *Matter of Cuello*, 20 I. & N. Dec. _____ (I.D. 3117, BIA 1990), the Board of Immigration Appeals held that, where an adoption has been effected but the adopted child continues to reside with the natural parent or parents, the petitioner has the burden of establishing that the adoptive parent exercised primary parental control during that period of residence. The Board further held that the evidence of parental control must indicate the physical living arrangements of the adopted child, the adoptive parents, and the natural parents for the period of time during which the adoptive parent claims to have met the residence requirement of the statute and, where a fraudulent or ad hoc adoption is suspected, for any period following the adoption which the adjudicating officer deems appropriate. The proposed evidentiary requirements will therefore be retained in the final rule.

6. Evidence of Marriage Fraud as it Relates to Section 204(c) of the Act

Thirty-five commenters suggested that the Service clarify the type and extent of the evidence necessary to substantiate a denial under 8 CFR 204.2(a)(1)(ii) for prior marriage fraud. The Service is currently required by regulation to notify the petitioner of any derogatory information contained in the record which will be used to support such a denial; however, there is room for further clarification based upon recent precedent decisions. Accordingly, the final rule will be amended to reflect that such evidence must be "substantial and probative," in accordance with the standard articulated in *Matter of Tawfik*, 20 I. & N. Dec. _____ (I.D. 3130, BIA 1990).

7. Illegitimate Child in Parent/Child Relationship

Thirty-eight commenters were concerned that 8 CFR 204.2(c)(2)(iii), 204.2(e)(2)(iii), and 204.2(f)(2)(iii), which contain additional evidentiary requirements to demonstrate a parent/

child relationship in visa proceedings relative to illegitimate children, are unnecessary and burdensome. The Service disagrees that these evidentiary requirements exceed reasonable standards since the requirements have been expanded to conform to current precedent. The more extensive evidentiary requirements of this section will give the adjudicator a broader range of evidence to consider. For example, the final rule states that "[t]here should be evidence that the father and child actually lived together or that the father held the child out as his own, that he provided for some or all of the child's needs, or that in general the father's behavior evidenced a genuine concern for the child." See *Matter of Vizcaino*, 19 I. & N. Dec. 644 (BIA 1988); *Matter of Pineda*, 20 I. & N. Dec. _____ (I.D. 3112, BIA 1989). The final rule also identifies "persuasive evidence" establishing a bona fide parent-child relationship and describes the types of primary evidence that must accompany the petition.

8. Denial of Visa Petitions for Lack of Initial Documentation

Thirty-eight commenters felt that the automatic denial provision contained in the proposed rule would lead to arbitrary and inconsistent denials of visa petitions throughout the Service and unfair losses of priority dates. Changes in the requirements for initial documentary evidence are currently being addressed in the proposed revision of 8 CFR part 103. It is the Service's view that initial evidentiary requirements are more efficiently addressed in 8 CFR part 103, rather than by specifying such requirements throughout part 204. Accordingly, 8 CFR 204.1(f)(4) and (5) have been eliminated from the final rule.

One commenter suggested that there were internal conflicts within the sections of 8 CFR part 204 that contain evidentiary requirements. The relocation of initial evidentiary requirements from part 204 to part 103 will resolve any perceived conflict.

9. Supervisory Review of Petition Denials

Thirty-three commenters suggested that automatic petition denials for lack of initial documentation should be subject to supervisory review and that only truly deficient visa petitions should be denied. The Service does provide for supervisory review of petition denials, and often conducts more than one supervisory review of a denial before it becomes final. This concern has been noted, however, and will be addressed with the relocation of initial documentary evidence requirements to 8 CFR part 103 when that section is revised.

10. Requests for Additional Documentation

Thirty-eight commenters opposed the proposed time limit for the submission of additional documentation, and one commenter suggested that no time limit should be set. The Service believes that such a time limit is necessary, but the final rule provides for an extension of time upon request, if appropriate justification is provided. If the director determines that the initial 60-day period for submission of additional documentation is insufficient, he or she may provide an additional sixty-day period for the submission. The total time for submission of additional documentation shall not exceed 120 days unless the director is satisfied that unusual circumstances exist. The final rule also specifies that the Service will provide an explanation of the evidentiary deficiency when requesting additional documentary evidence.

11. Evidentiary Requirements for Civil Documents

Thirty-four commenters argued that documentation from civil authorities is not always available for various reasons, including natural disasters, fires, wars, or the nonexistence of a recordkeeping authority. To determine whether primary documents are available in a specific country, the Service refers to the Foreign Affairs Manual (FAM) published by the Department of State. When the FAM shows that primary documents are generally unavailable in the country at issue for any reason, including those described by the commenters, the Service will accept secondary evidence and a letter from the appropriate registrar will not be required. However, when the FAM indicates that primary documents are generally available in the country at issue but the petitioner claims that his or her document is unavailable, a letter from the appropriate registrar attesting to the unavailability of the record will be necessary. Any time that secondary evidence is submitted, it will be evaluated for its authenticity and credibility.

12. Good Faith Marriage Under Section 204(g) of the Act

Thirty-four commenters felt that the Service's standard for interpreting the term "good faith" was contrary to established precedent and suggested that this terminology be clarified. The Service disagrees and seeks to interpret the term "good faith" in accordance with existing precedent. In *Matter of Laureano*, 19 I. & N. Dec. 1 (BIA 1983), the Board of Immigration Appeals ruled in part as follows: "In determining whether a marriage is fraudulent for immigration purposes, the conduct of the parties after the marriage is relevant as to their intent at the time of marriage, evidence to establish intent may take many forms, including, but not limited to, proof that the beneficiary has been listed as the petitioner's spouse on insurance policies, property leases, income tax forms, or bank accounts, and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences." The rule reflects this decision as well as other relevant precedent decisions by listing types of documentary evidence which may be submitted to establish "good faith". Other relevant decisions include: *Bark* v. *INS*, 511 F.2d 1200 (9th Cir. 1975); *Matter of McKee*, 17 I & N. Dec. 332 (BIA 1980); *Lutwak* v. *United States*, 344 U.S. 604 (1953); and *Matter of Phillis*, 15 I. & N Dec. 385 (BIA 1975).

13. Visas for Family Members of Legalized Aliens

Thirty-seven commenters were concerned that 8 CFR 204.2(d) of the proposed rule limits eligibility for immigrant visas under section 112 of IMMACT to those spouses and children who held that status at the time the petitioner achieved lawful permanent resident status. Some of the commenters believed that the Service interpretation of the statute was more restrictive than Congress had intended. They contend that the definition of legalized alien includes those who were merely granted temporary resident status. This contention is based upon the language in section 112(c) (1) and (2) of IMMACT, which defined "legalized alien" to include certain persons provided "temporary or permanent" residence status.

The view of the Service has been that the intent of section 112 of IMMACT was to provide visas for family members of legalized aliens who could not qualify in their own right for the legalization program but who are family members of permanent residents who acquired status through the program. Section 302(b)(1) of Public Law 102–232 amended section 112(c) of the IMMACT by striking the term "temporary or," thereby confirming the Service's view. The requirement that the legalized alien must have achieved permanent resident status will remain in the final rule.

On the other hand, the Service has determined that, although the primary intent of the statute was to benefit those aliens who were the spouses and

children of legalized aliens at the time the latter acquired permanent residence, a careful reading of the statute and the legislative history would permit dependents acquired after the legalized alien's date of permanent residence to qualify. Accordingly, the requirement that the dependent must have been the spouse or child of the "eligible alien" (as defined in the statute) at the time he or she became a permanent resident has been dropped from the final rule.

On June 20, 1991, an interim rule with a thirty-day comment period was published in the **Federal Register** at 56 FR 28311. This rule established a bona fide marriage exemption for aliens who marry while under deportation or exclusion proceedings. That interim rule revised § 204.1(a)(2)(iii). The final rule has redesignated the revised § 204.1(a)(2)(iii) as § 204.2(a)(1)(iii).

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule is not considered a major rule within the meaning of section 1(b) of Executive Order 12292, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

The information collection requirements contained in this regulation have been cleared by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The OMB control numbers for these collections are contained in 8 CFR 299.5.

List of Subjects in 8 CFR Part 204

Administrative practice and procedures, Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, part 204 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 204—IMMIGRANT PETITIONS

1. The title of Part 204 is revised as set forth above.

2. The authority citation for part 204 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186A, 1255; 8 CFR part 2.

3. Sections 204.1 through 204.4 are revised to read as follows:

§ 204.1 General information about relative petitions.

(a) *Types of relative petitions.* A petitioner seeking to accord a classification as an immediate relative under section 201(b) of the Act or a classification as a preference immigrant under section 203(a) of the Act on behalf of a qualifying relative must file a Form I-30, Petition for Alien Relative. A widow or widow seeking classification as an immediate relative must file a Form I-360, Petition for Amerasian, Widow, or Special Immigrant. A petitioner seeking classification on behalf of an orphan as defined in § 101(b)(1)(F) of the Act must file either Form I-600 or Form I-600A. A petitioner seeking classification as, or on behalf of, an Amerasian under Public Law 97-359 must file a Form I-360, Petition for Amerasian, Widow, or Special Immigrant. The Form I-130 and Form I-360 petitions are described in § 204.2; orphan petitions are described in § 204.3; and Amerasian petitions are described in § 204.4.

(b) *Filing fee.* Forms I-130 and I-360 must be accompanied by the appropriate fee under 8 CFR 103.7(b)(1).

(c) *Filing date.* The filing date of a petition shall be the date it is properly filed under paragraph (d) of this section and shall constitute the priority date.

(d) *Proper filing.* A petition shall be considered properly filed if:

(1) It is signed by the petitioner, and

(2) A fee has been received by the Service office or United States Consular office having jurisdiction.

(3) If, during normal processing, a delay results from deficiencies in the initial filing, the priority date will be established only when the petition is properly signed by the petitioner and the fee has been collected by the Service. If questions arise concerning the filing of the petition which cannot be resolved through a check of the Service fee receipting system (FARES) or other fee collection system, then the director may consider the date of receipt of the petition to be the priority date.

(e) *Jurisdiction.*—(1) *Petitioner residing in the United States.* The petition must be filed with the Service office having jurisdiction over the place where the petitioner is residing. When the petition is accompanied by an application for adjustment of status, the petition may be filed with the Service office having jurisdiction over the beneficiary's place of residence.

(2) *Petitioner residing in certain countries abroad.* The Service has overseas offices located in Vienna, Austria; Frankfurt, Germany; Athens, Greece; Hong Kong; New Delhi, India; Rome, Italy; Nairobi, Kenya; Seoul, Korea; Ciudad Juarez, Mexico City, Monterrey, Guadalajara, and Tijuana, Mexico; Manila, the Philippines; Singapore; Bangkok, Thailand; and London, the United Kingdom of Great Britain and Northern Ireland. If the petitioner resides in one of these countries, the petition must be filed with the Service office located in that country. The beneficiary does not have to reside in the same jurisdiction as the petitioner for the Service to accept the petition. The overseas Service officer may accept and adjudicate a petition filed by a petitioner who does not reside within the office's jurisdiction when it is established that emergent or humanitarian reasons for acceptance exist or when it is in the national interest.

(3) *Jurisdiction assumed by United States consular officer.* United States consular officers assigned to visa-issuing posts abroad, except those in countries listed in paragraph (e)(2) of this section, are authorized to accept and approve a relative petition or a petition filed by a widow or widower if the petitioner resides in the area over which the post has jurisdiction, regardless of the beneficiary's residence or physical presence at the time of filing. In emergent or humanitarian cases and cases in the national interest, the United States consular officer may accept a petition filed by a petitioner who does not reside within the consulate's jurisdiction. While consular officers are authorized to approve petitions, they must refer any petition which is not clearly approvable to the appropriate Service office. Consular officers may consult with the appropriate Service office abroad prior to stateside referral, if they deem it necessary.

(f) *Supporting documentation.* (1) Documentary evidence consists of those documents which establish the United States citizenship or lawful permanent resident status of the petitioner and the claimed relationship of the petitioner to the beneficiary. They must be in the form of primary evidence, if available. When it is established that primary evidence is not available, secondary evidence may be accepted. To determine the availability of primary documents, the Service will refer to the Department of State's Foreign Affairs Manual (FAM). When the FAM shows that primary documents are generally available in the country of issue but the petitioner claims that his or her document is unavailable, a letter from the appropriate registrar stating that the document is not available will not be required before the Service will accept secondary evidence.

(2) Original documents or legible, true copies of original documents are acceptable. The Service reserves the right to require submission of original documents when deemed necessary.

Documents submitted with the petition will not be returned to the petitioner, except when originals are requested by the Service. If original documents are requested by the Service, they will be returned to the petitioner after a decision on the petition has been rendered, unless their validity or authenticity is in question. When an interview is required, all original documents must be presented for examination at the interview.

(3) Foreign language documents must be accompanied by an English translation which has been certified by a competent translator.

(g) *Evidence of petitioner's United States citizenship or lawful permanent residence.*—(1) *Primary evidence.* A petition must be accompanied by one of the following:

(i) A birth certificate that was issued by a civil authority and that establishes the petitioner's birth in the United States;

(ii) An unexpired United States passport issued initially for a full ten-year period to a petitioner over the age of eighteen years as a citizen of the United States (and not merely as a noncitizen national);

(iii) An unexpired United States passport issued initially for a full five-year period to the petitioner under the age of eighteen years as a citizen of the United States (and not merely as a noncitizen national);

(iv) A statement executed by a United States consular officer certifying the petitioner to be a United States citizen and the bearer of a currently valid United States passport;

(v) The petitioner's Certificate of Naturalization or Certificate of Citizenship;

(vi) Department of State Form FS–240, Report of Birth Abroad of a Citizen of the United States, relating to the petitioner;

(vii) The petitioner's Form I–151 or I–551 Alien Registration Receipt Card, or other proof given by the Service as evidence of lawful permanent residence. The Service will accept copies of Forms I–151 or I–551, Certificate of Naturalization, or Certificate of Citizenship when submitted as evidence of United States citizenship or lawful permanent residence.

(2) *Secondary evidence.* If primary evidence is unavailable, the petitioner must present secondary evidence. Any evidence submitted as secondary evidence will be evaluated for authenticity and credibility. Secondary evidence may include, but is not limited to, one or more of the following documents:

(i) A baptismal certificate with the seal of the church, showing the date and place of birth in the United States and the date of baptism;

(ii) Affidavits sworn to by persons who were living at the time and who have personal knowledge of the event to which they attest. The affidavits must contain the affiant's full name and address, date and place of birth, relationship to the parties, if any, and complete details concerning how the affiant acquired knowledge of the event;

(iii) Early school records (preferably from the first school) showing the date of admission to the school, the child's date and place of birth, and the name(s) and place(s) of birth of the parent(s);

(iv) Census records showing the name, place of birth, and date of birth or age of the petitioner; or

(v) If it is determined that it would cause unusual delay or hardship to obtain documentary proof of birth in the United States, a United States citizen petitioner who is a member of the Armed Forces of the United States and who is serving outside the United States may submit a statement from the appropriate authority of the Armed Forces. The statement should attest to the fact that the personnel records of the Armed Forces show that the petitioner was born in the United States on a certain date.

(h) *Requests for additional documentation.* When the Service determines that the evidence is not sufficient, an explanation of the deficiency will be provided and additional evidence will be requested. The petitioner will be given 60 days to present additional evidence, to withdraw the petition, to request a decision based on the evidence submitted, or to request additional time to respond. If the director determines that the initial 60-day period is insufficient to permit the presentation of additional documents, the director may provide an additional 60 days for the submission. The total time shall not exceed 120 days, unless unusual circumstances exist. Failure to respond to a request for additional evidence will result in a decision based on the evidence previously submitted.

§ 204.2 Relative petitions.

(a) *Petition for a spouse.*—(1) *Eligibility.* A United States citizen or alien admitted for lawful permanent residence may file a petition on behalf of a spouse.

(i) *Marriage within five years of petitioner's obtaining lawful permanent resident status.* (A) A visa petition filed on behalf of an alien by a lawful permanent resident spouse may not be approved if the marriage occurred within five years of the petitioner being accorded the status of lawful permanent resident based upon a prior marriage to a United States citizen or alien lawfully admitted for permanent residence, unless:

(*1*) The petitioner establishes by clear and convincing evidence that the marriage through which the petitioner gained permanent residence was not entered into for the purposes of evading the immigration laws; or

(*2*) The marriage through which the petitioner obtained permanent residence was terminated through death.

(B) *Documentation.* The petitioner should submit documents which cover the period of the prior marriage. The types of documents which may establish that the prior marriage was not entered into for the purpose of evading the immigration laws include, but are not limited to:

(*1*) Documentation showing joint ownership of property;

(*2*) A lease showing joint tenancy of a common residence;

(*3*) Documentation showing commingling of financial resources;

(*4*) Birth certificate(s) of child(ren) born to the petitioner and prior spouse;

(*5*) Affidavits sworn to or affirmed by third parties having personal knowledge of the bona fides of the prior marital relationship. (Each affidavit must contain the full name and address, date and place of birth of the person making the affidavit; his or her relationship, if any, to the petitioner, beneficiary or prior spouse; and complete information and details explaining how the person acquired his or her knowledge of the prior marriage. The affiant may be required to testify before an immigration officer about the information contained in the affidavit. Affidavits should be supported, if possible, by one or more types of documentary evidence listed in this paragraph.); or

(*6*) Any other documentation which is relevant to establish that the prior marriage was not entered into in order to evade the immigration laws of the United States.

(C) The petitioner must establish by clear and convincing evidence that the prior marriage was not entered into for the purpose of evading the immigration laws. Failure to meet the "clear and convincing evidence" standard will result in the denial of the petition. Such a denial shall be without prejudice to the filing of a new petition once the petitioner has acquired five years of lawful permanent residence. The director may choose to initiate deportation proceedings based upon

information gained through the adjudication of the petition; however, failure to initiate such proceedings shall not establish that the petitioner's prior marriage was not entered into for the purpose of evading the immigration laws. Unless the petition is approved, the beneficiary shall not be accorded a filing date within the meaning of section 203(c) of the Act based upon any spousal second preference petition.

(ii) *Fraudulent marriage prohibition.* Section 204(c) of the Act prohibits the approval of a visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director will deny a petition for immigrant visa classification filed on behalf of any alien for whom there is substantial and probative evidence of such an attempt or conspiracy, regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of the attempt or conspiracy must be contained in the alien's file.

(iii) *Marriage during proceedings—general prohibition against approval of visa petition.* A visa petition filed on behalf of an alien by a United States citizen or lawful permanent resident spouse shall not be approved if the marriage creating the relationship occurred on or after November 10, 1986, and while the alien was in deportation or exclusion proceedings, or judicial proceedings relating thereto.

(A) *Commencement of proceedings.* The period during which the alien is in deportation or exclusion proceedings, or judicial proceedings relating thereto, commences:

(*1*) With the issuance of the Order to Show Cause and Notice of Hearing (Form I–221) prior to June 20, 1991;

(*2*) With the filing of an Order to Show Cause and Notice of Hearing (Form I–221), issued on or after June 20, 1991, with the Office of the Immigration Judge; or

(*3*) With the issuance of the Notice to Applicant for Admission Detained for Hearing before Immigration Judge (Form I–122).

(B) *Termination of proceedings.* The period during which the alien is in deportation or exclusion proceedings, or judicial proceedings relating thereto, terminates:

(*1*) When the alien departs from the United States while an order of deportation is outstanding or before the expiration of the voluntary departure time granted in connection with an alternate order of deportation under 8 CFR 243.5;

(*2*) When the alien departs from the United States pursuant to an order of exclusion;

(*3*) When the alien is found not to be excludable or deportable from the United States;

(*4*) When the Order to Show Cause is canceled pursuant to 8 CFR 242.7(a);

(*5*) When proceedings are terminated by the immigration judge or the Board of Immigration Appeals; or

(*6*) When a petition for review or an action for habeas corpus is granted by a Federal Court on judicial review.

(C) *Exemptions.* This prohibition shall no longer apply if:

(*1*) The alien is found not to be excludable or deportable from the United States;

(*2*) The Order to Show Cause is canceled pursuant to 8 CFR 242.7(a);

(*3*) Proceedings are terminated by the immigration judge or the Board of Immigration Appeals;

(*4*) A petition for review or an action for habeas corpus is granted by a Federal Court on judicial review;

(*5*) The alien has resided outside the United States for two or more years following the marriage; or

(*6*) The petitioner establishes eligibility for the bona fide marriage exemption under section 204(g) of the Act by providing clear and convincing evidence that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place, was not entered into for the purpose of procuring the alien's entry as an immigrant, and no fee or other consideration was given (other than to an attorney for assistance in preparation of a lawful petition) for the filing of the petition.

(D) *Request for exemption.* No application or fee is required to request an exemption. The request must be made in writing and submitted with the Form I–130. The request must state the reason for seeking the exemption and must be supported by documentary evidence establishing eligibility for the exemption.

(E) *Evidence to establish eligibility for the bona fide marriage exemption.* The petitioner should submit documents which establish that the marriage was entered into in good faith and not entered into for the purpose of procuring the alien's entry as an immigrant. The types of documents the petitioner may submit include, but are not limited to:

(*1*) Documentation showing joint ownership of property;

(*2*) Lease showing joint tenancy of a common residence;

(*3*) Documentation showing commingling of financial resources;

(*4*) Birth certificate(s) of child(ren) born to the petitioner and beneficiary;

(*5*) Affidavits of third parties having knowledge of the bona fides of the marital relationship (Such persons may be required to testify before an immigration officer as to the information contained in the affidavit. Affidavits must be sworn to or affirmed by people who have personal knowledge of the marital relationship. Each affidavit must contain the full name and address, date and place of birth of the person making the affidavit and his or her relationship to the spouses, if any. The affidavit must contain complete information and details explaining how the person acquired his or her knowledge of the marriage. Affidavits should be supported, if possible, by one or more types of documentary evidence listed in this paragraph); or

(*6*) Any other documentation which is relevant to establish that the marriage was not entered into in order to evade the immigration laws of the United States.

(F) *Decision.* Any petition filed during the prohibited period shall be denied, unless the petitioner establishes eligibility for an exemption from the general prohibition. The petitioner shall be notified in writing of the decision of the director.

(G) *Denials.* The denial of a petition because the marriage took place during the prohibited period shall be without prejudice to the filing of a new petition after the beneficiary has resided outside the United States for the required period of two years following the marriage. The denial shall also be without prejudice to the consideration of a new petition or a motion to reopen the visa petition proceedings if deportation or exclusion proceedings are terminated after the denial other than by the beneficiary's departure from the United States. Furthermore, the denial shall be without prejudice to the consideration of a new petition or motion to reopen the visa petition proceedings, if the petitioner establishes eligibility for the bona fide marriage exemption contained in this part: *Provided,* That no motion to reopen visa petition proceedings may be accepted if the approval of the motion would result in the beneficiary being accorded a priority date within the meaning of section 203(c) of the Act earlier than November 29, 1990.

(H) *Appeals.* The decision of the Board of Immigration Appeals concerning the denial of a relative visa petition because the petitioner failed to establish eligibility for the bona fide

marriage exemption contained in this part will constitute the single level of appellate review established by statute.

(l) *Priority date.* A preference beneficiary shall not be accorded a priority date within the meaning of section 203(c) of the Act based upon any relative petition filed during the prohibited period, unless an exemption contained in this part has been granted. Furthermore, a preference beneficiary shall not be accorded a priority date prior to November 29, 1990, based upon the approval of a request for consideration for the bona fide marriage exemption contained in this part.

(2) *Evidence for petition for a spouse.* In addition to evidence of United States citizenship or lawful permanent residence, the petitioner must also provide evidence of the claimed relationship. A petition submitted on behalf of a spouse must be accompanied by a recent ADIT-style photograph of the petitioner, a recent ADIT-style photograph of the beneficiary, a certificate of marriage issued by civil authorities, and proof of the legal termination of all previous marriages of both the petitioner and the beneficiary. However, non-ADIT-style photographs may be accepted by the district director when the petitioner or beneficiary reside(s) in a country where such photographs are unavailable or cost prohibitive.

(3) *Decision on and disposition of petition.* The approved petition will be forwarded to the Department of State's Processing Center. If the beneficiary is in the United States and is eligible for adjustment of status under section 245 of the Act, the approved petition will be retained by the Service. If the petition is denied, the petitioner will be notified of the reasons for the denial and of the right to appeal in accordance with the provisions of 8 CFR 3.3.

(4) *Derivative beneficiaries.* No alien may be classified as an immediate relative as defined in section 201(b) of the Act unless he or she is the direct beneficiary of an approved petition for that classification. Therefore, a child of an alien approved for classification as an immediate relative spouse is not eligible for derivative classification and must have a separate petition filed on his or her behalf. A child accompanying or following to join a principal alien under section 203(a)(2) of the Act may be included in the principal alien's second preference visa petition. The child will be accorded second preference classification and the same priority date as the principal alien. However, if the child reaches the age of twenty-one prior to the issuance of a visa to the principal alien parent, a separate petition will be required. In such a case, the original priority date will be retained if the subsequent petition is filed by the same petitioner. Such retention of priority date will be accorded only to a son or daughter previously eligible as a derivative beneficiary under a second preference spousal petition.

(b) *Petition by widow or widower of a United States citizen.*

(1) *Eligibility.* A widow or widower of a United States citizen may file a petition and be classified as an immediate relative under section 201(b) of the Act if:

(i) He or she had been married for at least two years to a United States citizen.

(**Note:** The United States citizen is not required to have had the status of United States citizen for the entire two year period, but must have been a United States citizen at the time of death.)

(ii) The petition is filed within two years of the death of the citizen spouse or before November 29, 1992, if the citizen spouse died before November 29, 1990;

(iii) The alien petitioner and the citizen spouse were not legally separated at the time of the citizen's death; and

(iv) The alien spouse has not remarried.

(2) *Evidence for petition of widow or widower.* If a petition is submitted by the widow or widower of a deceased United States citizen, it must be accompanied by evidence of citizenship of the United States citizen and primary evidence, if available, of the relationship in the form of a marriage certificate issued by civil authorities, proof of the termination of all prior marriages of both husband and wife, and the United States citizen's death certificate issued by civil authorities. To determine the availability of primary documents, the Service will refer to the Department of State's Foreign Affairs Manual (FAM). When the FAM shows that primary documents are generally available in the country at issue but the petitioner claims that his or her document is unavailable, a letter from the appropriate registrar stating that the document is not available will be required before the Service will accept secondary evidence. Secondary evidence will be evaluated for its authenticity and credibility. Secondary evidence may include:

(i) Such evidence of the marriage and termination of prior marriages as religious documents, tribal records, census records, or affidavits; and

(ii) Such evidence of the United States citizen's death as religious documents, funeral service records, obituaries, or affidavits. Affidavits submitted as secondary evidence pursuant to paragraphs (b)(2)(i) and (b)(2)(ii) of this section must be sworn to or affirmed by people who have personal knowledge of the event to which they attest. Each affidavit should contain the full name and address, date and place of birth of the person making the affidavit and his or her relationship, if any, to the widow or widower. Any such affidavit must contain complete information and details explaining how knowledge of the event was acquired.

(3) *Decision on and disposition of petition.* The approved petition will be forwarded to the Department of State's Processing Center. If the widow or widower is in the United States and is eligible for adjustment of status under section 245 of the Act, the approved petition will be retained by the Service. If the petition is denied, the widow or widower will be notified of the reasons for the denial and of the right to appeal in accordance with the provisions of 8 CFR 3.3.

(4) *Derivative beneficiaries.* A child or unmarried son or daughter of an alien widow or widower classified as an immediate relative is not eligible for derivative classification as an immediate relative and must have a petition filed on his or her behalf if seeking immigrant classification.

(c) *Petition for a child or son or daughter*—(1) *Eligibility.* A United States citizen may file a petition on behalf of an unmarried child under twenty-one years of age for immediate relative classification under section 201(b) of the Act. A United States citizen may file a petition on behalf of an unmarried son or daughter over twenty-one years of age under section 203(a)(1) or for a married son or daughter for preference classification under section 203(a)(3) of the Act: An alien lawfully admitted for permanent residence may file a petition on behalf of a child or an unmarried son or daughter for preference classification under section 203(a)(2) of the Act.

(2) *Evidence to support petition for child or son or daughter.* In addition to evidence of United States citizenship or lawful permanent resident, the petitioner must also provide evidence of the claimed relationship.

(i) *Primary evidence for a legitimate child or son or daughter.* If a petition is submitted by the mother, the birth certificate of the child showing the mother's name must accompany the petition. If the mother's name on the birth certificate is different from her name on the petition, evidence of the

name change must also be submitted. If a petition is submitted by the father, the birth certificate of the child, a marriage certificate of the parents, and proof of legal termination of the parents' prior marriages, if any, issued by civil authorities must accompany the petition. If the father's name has been legally changed, evidence of the name change must also accompany the petition.

(ii) *Primary evidence for a legitimated child or son or daughter.* A child can be legitimated through the marriage of his or her natural parents, by the laws of the country or state of the child's residence or domicile, or by the laws of the country or state of the father's residence or domicile. If the legitimation is based on the natural parents' marriage, such marriage must have taken place while the child was under the age of eighteen. If the legitimation is based on the laws of the country or state of the child's residence or domicile, the law must have taken effect before the child's eighteenth birthday. If the legitimation is based on the laws of the country or state of the father's residence or domicile, the father must have resided—while the child was under eighteen years of age—in the country or state under whose laws the child has been legitimated. Primary evidence of the relationship should consist of the beneficiary's birth certificate and the parents' marriage certificate or other evidence of legitimation issued by civil authorities.

(iii) *Primary evidence for an illegitimate child or son or daughter.* If a petition is submitted by the mother, the child's birth certificate, issued by civil authorities and showing the mother's name, must accompany the petition. If the mother's name on the birth certificate is different from her name as reflected in the petition, evidence of the name change must also be submitted. If the petition is submitted by the purported father of a child or son or daughter born out of wedlock, the father must show that he is the natural father and that a bona fide parent-child relationship was established when the child or son or daughter was unmarried and under twenty-one years of age. Such a relationship will be deemed to exist or to have existed where the father demonstrates or has demonstrated an active concern for the child's support, instruction, and general welfare. Primary evidence to establish that the petitioner is the child's natural father is the beneficiary's birth certificate, issued by civil authorities and showing the father's name. If the father's name has been legally changed, evidence of the name change must accompany the petition. Evidence of a parent/child relationship should establish more than merely a biological relationship. Emotional and/or financial ties or a genuine concern and interest by the father for the child's support, instruction, and general welfare must be shown. There should be evidence that the father and child actually lived together or that the father held the child out as being his own, that he provided for some or all of the child's needs, or that in general the father's behavior evidenced a genuine concern for the child. The most persuasive evidence for establishing a bona fide parent/child relationship and financial responsibility by the father is documentary evidence which was contemporaneous with the events in question. Such evidence may include, but is not limited to: money order receipts or cancelled checks showing the father's financial support of the beneficiary; the father's income tax returns; the father's medical or insurance records which include the beneficiary as a dependent; school records for the beneficiary; correspondence between the parties; or notarized affidavits of friends, neighbors, school officials, or other associates knowledgeable about the relationship.

(iv) *Primary evidence for a stepchild.* If a petition is submitted by a stepparent on behalf of a stepchild or stepson or stepdaughter, the petition must be supported by the stepchild's or stepson's or stepdaughter's birth certificate, issued by civil authorities and showing the name of the beneficiary's parent to whom the petitioner is married, a marriage certificate issued by civil authorities which shows that the petitioner and the child's natural parent were married before the stepchild or stepson or stepdaughter reached the age of eighteen; and evidence of the termination of any prior marriages of the petitioner and the natural parent of the stepchild or stepson or stepdaughter.

(v) *Secondary evidence.* When it is established that primary evidence is not available, secondary evidence may be accepted. To determine the availability of primary documents, the Service will refer to the Department of State's Foreign Affairs Manual (FAM). When the FAM shows that primary documents are generally available in the country at issue but the petitioner claims that his or her document is unavailable, a letter from the appropriate registrar stating that the document is not available will be required before the Service will accept secondary evidence. Secondary evidence will be evaluated for its authenticity and credibility. Secondary evidence may take the form of historical evidence; such evidence must have been issued contemporaneously with the event which it documents any may include, but is not limited to, medical records, school records, and religious documents. Affidavits may also by accepted. When affidavits are submitted, they must be sworn to by persons who were born at the time of and who have personal knowledge of the event to which they attest. Any affidavit must contain the affiant's full name and address, date and place of birth, relationship to the party, if any, and complete details concerning how the affiant acquired knowledge of the event.

(vi) *Blood tests.* The director may require that a specific Blood Group Antigen Test be conducted of the beneficiary and the beneficiary's father and mother. In general, blood tests will be required only after other forms of evidence have proven inconclusive. If the specific Blood Group Antigen Test is also found not to be conclusive and the director determines that additional evidence is needed, a Human Leucocyte Antigen (HLA) test may be requested. Tests will be conducted, at the expense of the petitioner or beneficiary, by the United States Public Health Service physician who is authorized overseas or by a qualified medical specialist designated by the district director. The results of the test should be reported on Form G–620. Refusal to submit to a Specific Blood Group Antigen or HLA test when requested may constitute a basis for denial of the petition, unless a legitimate religious objection has been established. When a legitimate religious objection is established, alternate forms of evidence may be considered based upon documentation already submitted.

(vii) *Primary evidence for an adopted child or son or daughter.* A petition may be submitted on behalf of an adopted child or son or daughter by a United States citizen or lawful permanent resident if the adoption took place before the beneficiary's sixteenth birthday, and if the child has been in the legal custody of the adopting parent or parents and has resided with the adopting parent or parents for at least two years. A copy of the adoption decree, issued by the civil authorities, must accompany the petition.

(A) *Legal custody* means the assumption of responsibility for a minor by an adult under the laws of the state and under the order or approval of a court of law or other appropriate government entity. This provision requires that a legal process involving the courts or other recognized government entity take place. If the

adopting parent was granted legal custody by the court or recognized governmental entity prior to the adoption, that period may be counted toward fulfillment of the two-year legal custody requirement. However, if custody was not granted prior to the adoption, the adoption decree shall be deemed to mark the commencement of legal custody. An informal custodial or guardianship document, such as a sworn affidavit signed before a notary public, is insufficient for this purpose.

(B) Evidence must also be submitted to show that the beneficiary resided with the petitioner for at least two years. Generally, such documentation must establish that the petitioner and the beneficiary resided together in a familial relationship. Evidence of parental control may include, but is not limited to, evidence that the adoptive parent owns or maintains the property where the child resides and provides financial support and day-to-day supervision. The evidence must clearly indicate the physical living arrangements of the adopted child, the adoptive parent(s), and the natural parent(s) for the period of time during which the adoptive parent claims to have met the residence requirement. When the adopted child continued to reside in the same household as a natural parent(s) during the period in which the adoptive parent petitioner seeks to establish his or her compliance with this requirement, the petitioner has the burden of establishing that he or she exercised primary parental control during that period of residence.

(C) Legal custody and residence occurring prior to or after the adoption will satisfy both requirements. Legal custody, like residence, is accounted for in the aggregate. Therefore, a break in legal custody or residence will not affect the time already fulfilled. To meet the definition of child contained in sections 101(b)(1)(E) and 101(b)(2) of the Act, the child must have been under 16 years of age when the adoption is finalized.

(3) *Decision on and disposition of petition.* The approved petition will be forwarded to the Department of State's Processing Center. If the beneficiary is in the United States and is eligible for adjustment of status under section 245 of the Act, the approved petition will be retained by the Service. If the petition is denied, the petitioner will be notified of the reasons for the denial and of the right to appeal in accordance with the provisions of 8 CFR 3.3.

(4) *Derivative beneficiaries.* A spouse or child accompanying or following to join a principal alien as used in this section may be accorded the same preference and priority date as the principal alien without the necessity of a separate petition. However, a child of an alien who is approved for classification as an immediate relative is not eligible for derivative classification and must have a separate petition approved on his or her behalf.

(5) *Name change.* When the petitioner's name does not appear on the child's birth certificate, evidence of the name change (such as the petitioner's marriage certificate, legal document showing name change, or other similar evidence) must accompany the petition. If the beneficiary's name has been legally changed, evidence of the name change must also accompany the petition.

(d) *Relatives of legalized aliens.* A second preference petition which is filed to accord an alien immigrant classification under section 203(a)(2) of the Act will also be considered for immigrant visa numbers which will be issued during fiscal years 1992, 1993, and 1994 for spouses and children of legalized aliens in accordance with section 112 of the Immigration Act of 1990. To be eligible, the lawful permanent resident alien petitioner must have obtained permanent resident status through legalization under section 245A or section 210 of the Act or section 202 of the Immigration Reform and Control Act of 1986. The relationship may have been created either before or after the date that the petitioner was admitted to the United States as a lawful permanent resident, as long as it existed prior to the filing of a relative petition.

(e) *Petition for a parent*—(1) *Eligibility.* Only a United States citizen who is twenty-one years of age or older may file a petition on behalf of a parent for classification under section 201(b) of the Act.

(2) *Evidence to support a petition for a parent.* In addition to evidence of United States citizenship as listed in § 204.1(g) of this part, the petitioner must also provide evidence of the claimed relationship.

(i) *Primary evidence if petitioner is a legitimate son or daughter.* If a petition is submitted on behalf of the mother, the birth certificate of the petitioner showing the mother's name must accompany the petition. If the mother's name on the birth certificate is different from her name as reflected in the petition, evidence of the name change must also be submitted. If a petition is submitted on behalf of the father, the birth certificate of the petitioner, a marriage certificate of the parents, and proof of legal termination of the parents' prior marriages, if any, issued by civil authorities must accompany the petition. If the father's name on the birth certificate has been legally changed, evidence of the name change must also accompany the petition.

(ii) *Primary evidence if petitioner is a legitimated son or daughter.* A child can be legitimated through the marriage of his or her natural parents, by the laws of the country or state of the child's residence or domicile, or by the laws of the country or state of the father's residence or domicile. If the legitimation is based on the natural parent's marriage, such marriage must have taken place while the child was under the age of eighteen. If the legitimation is based on the laws of the country or state of the child's residence or domicile, the law must have taken effect before the child's eighteenth birthday. If the legitimation is based on the laws of the country or state of the father's residence or domicile, the father must have resided—while the child was under eighteen years of age—in the country or state under whose laws the child has been legitimated. Primary evidence of the relationship should consist of petitioner's birth certificate and the parents' marriage certificate or other evidence of legitimation issued by civil authorities.

(iii) *Primary evidence if the petitioner is an illegitimate son or daughter.* If a petition is submitted on behalf of the mother, the petitioner's birth certificate, issued by civil authorities and showing the mother's name, must accompany the petition. If the mother's name on the birth certificate is different from her name as reflected in the petition, evidence of the name change must also be submitted. If the petition is submitted on behalf of the purported father of the petitioner, the petitioner must show that the beneficiary is his or her natural father and that a bona fide parent-child relationship was established when the petitioner was unmarried and under twenty-one years of age. Such a relationship will be deemed to exist or to have existed where the father demonstrates or has demonstrated an active concern for the child's support, instruction, and general welfare. Primary evidence to establish that the beneficiary is the petitioner's natural father is the petitioner's birth certificate, issued by civil authorities and showing the father's name. If the father's name has been legally changed, evidence of the name change must accompany the petition. Evidence of a parent/child relationship should establish more than merely a biological relationship. Emotional and/or financial ties or a genuine concern and interest by the father for the child's support, instruction,

and general welfare must be shown. There should be evidence that the father and child actually lived together or that the father held the child out as being his own, that he provided for some or all of the child's needs, or that in general the father's behavior evidenced a genuine concern for the child. The most persuasive evidence for establishing a bona fide parent/child relationship is documentary evidence which was contemporaneous with the events in question. Such evidence may include, but is not limited to: money order receipts or cancelled checks showing the father's financial support of the beneficiary; the father's income tax returns; the father's medical or insurance records which include the petitioner as a dependent; school records for the petitioner; correspondence between the parties; or notarized affidavits of friends, neighbors, school officials, or other associates knowledgeable as to the relationship.

(iv) *Primary evidence if petitioner is an adopted son or daughter.* A petition may be submitted for an adoptive parent by a United States citizen who is twenty-one years of age or older if the adoption took place before the petitioner's sixteenth birthday and if the two year legal custody and residence requirements have been met. A copy of the adoption decree, issued by the civil authorities, must accompany the petition.

(A) *Legal custody* means the assumption of responsibility for a minor by an adult under the laws of the state and under the order or approval of a court of law or other appropriate government entity. This provision requires that a legal process involving the courts or other recognized government entity take place. If the adopting parent was granted legal custody by the court or recognized governmental entity prior to the adoption, that period may be counted toward fulfillment of the two-year legal custody requirement. However, if custody was not granted prior to the adoption, the adoption decree shall be deemed to mark the commencement of legal custody. An informal custodial or guardianship document, such as a sworn affidavit signed before a notary public, is insufficient for this purpose.

(B) Evidence must also be submitted to show that the beneficiary resided with the petitioner for at least two years. Generally, such documentation must establish that the petitioner and the beneficiary resided together in a parental relationship. The evidence must clearly indicate the physical living arrangements of the adopted child, the adoptive parent(s), and the natural parent(s) for the period of time during which the adoptive parent claims to have met the residence requirement.

(C) Legal custody and residence occurring prior to or after the adoption will satisfy both requirements. Legal custody, like residence, is accounted for in the aggregate. Therefore, a break in legal custody or residence will not affect the time already fulfilled. To meet the definition of child contained in sections 101(b)(1)(E) and 101(b)(2) of the Act, the child must have been under 16 years of age when the adoption is finalized.

(v) *Name change.* When the petition is filed by a child for the child's parent, and the parent's name is not on the child's birth certificate, evidence of the name change (such as the parent's marriage certificate, a legal document showing the parent's name change, or other similar evidence) must accompany the petition. If the petitioner's name has been legally changed, evidence of the name change must also accompany the petition.

(3) *Decision on and disposition of petition.* The approved petition will be forwarded to the Department of State's Processing Center. If the beneficiary is in the United States and is eligible for adjustment of status under section 245 of the Act, the approved petition will be retained by the Service. If the petition is denied, the petitioner will be notified of the reasons for the denial and of the right to appeal in accordance with the provisions of 8 CFR 3.3.

(4) *Derivative beneficiaries.* A child or a spouse of a principal alien who is approved for classification as an immediate relative is not eligible for derivative classification and must have a separate petition approved on his or her behalf.

(f) *Petition for a brother or sister*—(1) *Eligibility.* Only a United States citizen who is twenty-one years of age or older may file a petition of a brother or sister for classification under section 203(a)(4) of the Act.

(2) *Evidence to support a petition for brother or sister.* In addition to evidence of United States citizenship, the petitioner must also provide evidence of the claimed relationship.

(i) *Primary evidence if the siblings share a common mother or are both legitimate children of a common father.* If a sibling relationship is claimed through a common mother, the petition must be supported by a birth certificate of the petitioner and a birth certificate of the beneficiary showing a common mother. If the mother's name on one birth certificate is different from her name as reflected on the other birth certificate or in the petition, evidence of the name change must also be submitted. If a sibling relationship is claimed through a common father, the birth certificates of the beneficiary and petitioner, a marriage certificate of the parents' and proof of legal termination of the parents, prior marriage(s), if any, issued by civil authorities must accompany the petition. If the father's name has been legally changed, evidence of the name change must also accompany the petition.

(ii) *Primary evidence if either or both siblings are legitimated.* A child can be legitimated through the marriage of his or her natural parents, by the laws of the country or state of the child's residence or domicile, or by the laws of the country or state of the father's residence or domicile. If the legitimation is based on the natural parents' marriage, such marriage must have taken place while the child was under the age of eighteen. If the legitimation is based on the laws of the country or state of the child's residence or domicile, the law must have taken effect before the child's eighteenth birthday. If based on the laws of the country or state of the father's residence or domicile, the father must have resided—while the child was under eighteen years of age—in the country or state under whose laws the child has been legitimated. Primary evidence of the relationship should consist of the petitioner's birth certificate, the beneficiary's birth certificate, and the parents' marriage certificate or other evidence of legitimation issued by civil authorities.

(iii) *Primary evidence if either sibling is illegitimate.* If one or both of the siblings is (are) the illegitimate child(ren) of a common father, the petitioner must show that they are the natural children of the father and that a bona fide parent-child relationship was established when the illegitimate child(ren) was (were) unmarried and under twenty-one years of age. Such a relationship will be deemed to exist or to have existed where the father demonstrates or has demonstrated an active concern for the child's support, instruction, and general welfare. Primary evidence is the petitioner's and beneficiary's birth certificates, issued by civil authorities and showing the father's name, and evidence that the siblings have or had a bona fide parent/child relationship with the natural father. If the father's name has been legally changed, evidence of the name change must accompany the petition. Evidence of a parent/child relationship should establish more than merely a biological

relationship. Emotional and/or financial ties or a genuine concern and interest by the father for the child's support, instruction, and general welfare must be shown. There should be evidence that the father and child actually lived together or that the father held the child out as being his own, that he provided for some or all of the child's needs, or that in general the father's behavior evidenced a genuine concern for the child. The most persuasive evidence for establishing a bona fide parent/child relationship is documentary evidence which was contemporaneous with the events in question. Such evidence may include, but is not limited to: money order receipts or canceled checks showing the father's financial support of the beneficiary; the father's income tax returns; the father's medical or insurance records which include the beneficiary as a dependent; school records for the beneficiary; correspondence between the parties; or notarized affidavits of friends, neighbors, school officials, or other associates knowledgeable about the relationship.

(iv) *Primary evidence for stepsiblings.* If the petition is submitted on behalf of a brother or sister having a common father, the relationship of both the petitioner and the beneficiary to the father must be established as required in paragraphs (f)(2)(ii) and (f)(2)(iii) of this section. If the petitioner and beneficiary are stepsiblings through the marriages of their common father to different mothers, the marriage certificates of the parents and evidence of the termination of any prior marriages of the parents must be submitted.

(3) *Decision on and disposition of petition.* The approved petition will be forwarded to the Department of State's Processing Center. If the beneficiary is in the United States and is eligible for adjustment of status under section 245 of the Act, the approved petition will be retained by the Service. If the petition is denied, the petitioner will be notified of the reasons for the denial and of the right to appeal in accordance with the provisions of 8 CFR 3.3.

(4) *Derivative beneficiaries.* A spouse or a child accompanying or following to join a principal alien beneficiary under this section may be accorded the same preference and priority date as the principal alien without the necessity of a separate petition.

(5) *Name change.* If the name of the petitioner, the beneficiary, or both has been legally changed, evidence showing the name change (such as a marriage certificate, a legal document showing the name change, or other similar evidence) must accompany the petition.

(g) *Validity of approved petitions*—(1) *General.* Unless terminated pursuant to section 203(g) of the Act or revoked pursuant to part 205 of this chapter, the approval of a petition to classify an alien as a preference immigrant under paragraphs (a)(1), (a)(2), (a)(3), or (a)(4) of section 203 of the Act, or as an immediate relative under section 201(b) of the Act, shall remain valid for the duration of the relationship to the petitioner and of the petitioner's status as established in the petition.

(2) *Subsequent petition by same petitioner for same beneficiary.* When a visa petition has been approved, and subsequently a new petition by the same petitioner is approved for the same preference classification on behalf of the same beneficiary, the latter approval shall be regarded as a reaffirmation or reinstatement of the validity of the original petition, except when the original petition has been terminated pursuant to section 203(g) of the Act or revoked pursuant to Part 205 of this chapter, or when an immigrant visa has been issued to the beneficiary as a result of the petition approval.

(h) *Automatic conversion of preference classification*—(1) *By change in beneficiary's marital status.* (i) A currently valid petition previously approved to classify the beneficiary as the unmarried son or daughter of a United States citizen under section 203(a)(1) of the Act shall be regarded as having been approved for preference status under section 203(a)(3) of the Act as of the date the beneficiary marries. The beneficiary's priority date is the same as the date the petition for classification under section 203(a)(1) of the Act was properly filed.

(ii) A currently valid petition previously approved to classify a child of a United States citizen as an immediate relative under section 201(b) of the Act shall be regarded as having been approved for preference status under section 203(a)(3) of the Act as of the date the beneficiary marries. The beneficiary's priority date is the same as the date the petition for 201(b) classification was properly filed.

(iii) A currently valid petition classifying the married son or married daughter of a United States citizen for preference status under section 203(a)(3) of the Act shall, upon legal termination of the beneficiary's marriage, be regarded as having been approved under section 203(a)(1) of the Act if the beneficiary is over twenty-one years of age. The beneficiary's priority date is the same as the date the petition for classification under section 203(a)(3) of the Act was properly filed. If the beneficiary is under twenty-one years of age, the petition shall be regarded as having been approved for classification as an immediate relative under section 201(b) of the Act as of the date the petition for classification under section 203(a)(3) of the Act was properly filed.

(2) *By the beneficiary's attainment of the age of twenty-one years.* A currently valid petition classifying the child of a United States citizen as an immediate relative under section 201(b) of the Act shall be regarded as having been approved for preference status under section 203(a)(1) of the Act as of the beneficiary's twenty-first birthday. The beneficiary's priority date is the same as the date the petition for section 201(b) classification was filed.

(3) *By the petitioner's naturalization.* Effective upon the date of naturalization of a petitioner who had been lawfully admitted for permanent residence, a currently valid petition according preference status under section 203(a)(2) of the Act to the petitioner's spouse and unmarried children under twenty-one years of age shall be regarded as having been approved for immediate relative status under section 201(b) of the Act. Similarly, a currently valid petition according preference status under section 203(a)(2) of the Act for the unmarried son or daughter over twenty-one years of age shall be regarded as having been approved under section 203(a)(1) of the Act. In any case of conversion to classification under section 203(a)(1) of the Act, the beneficiary's priority date is the same as the date the petition for classification under section 203(a)(2) of the Act was properly filed.

§ 204.3 Orphans.

(a) *Eligibility.* An alien is eligible for classification under section 201(b) of the Act as an orphan if he or she meets the definition of "child" contained in section 101(b)(1)(F) of the Act. To obtain immigration benefits on behalf of an orphan, the United States citizen and spouse, if married, must file a Form I-600, Petition to Classify Orphan as an Immediate Relative. In some cases, it may be advantageous for the petitioner(s) to file a Form I-600A, Application for Advance Processing of Orphan Petition, prior to filing the petition.

(b) *Advance processing.* (1) The prospective petitioner(s) may file a Form I-600A, Application for Advance Processing of Orphan Petition, when:

(i) A prospective adoptive child has not been located and identified;

(ii) The prospective petitioner, and/or spouse if married, is traveling abroad to locate a child for adoption in the United States or to adopt while abroad; or

(iii) The prospective petitioner, and/or spouse if married, is traveling abroad to a country with no Service office to adopt a known child while abroad, or to facilitate the adoption of a known child in the United States, and wants to file a petition, Form I-600, at the American consulate or embassy having jurisdiction over the child's place of residence.

(2) *Filing the application for advance processing.* A United States citizen and spouse, if married, may file Form I-600A. The prospective petitioner(s) must complete the certification required on the form. The form must be accompanied by the fee specified in 8 CFR 103.7(b)(1). If the petitioner is married, the petitioner's spouse shall also sign the Form I-600A. If unmarried, the petitioner must be at least twenty-four years of age at the time of filing Form I-600A and at least twenty-five years of age at the time of the child's adoption and the filing of a petition, Form I-600, on behalf of the child.

(3) *Evidence to be furnished with application for advance processing of orphan petition.* An Application for Advance Processing of Orphan Petition, Form I-600A, must be accompanied by:

(i) Two sets of fingerprints on Form FD-258 for the United States citizen petitioner and two sets for the spouse, if the petitioner is married;

(ii) Proof of the petitioner's United States citizenship and age;

(iii) Proof of marriage, if the petitioner is married;

(iv) Proof of the termination of any prior marriages; and

(v) A valid home study as described in paragraph (c)(2)(iii) of this section, if available. If not available, the home study must be submitted within one year from the date of submission of the advance processing application or the application will be considered to have been abandoned.

(4) *Decision and disposition of application for advance processing*—(i) *Favorable determination.* If the district director or officer in charge makes a favorable determination concerning the ability of the adoptive parent of parents to furnish proper care to a beneficiary orphan if admitted to the United States, the district director of officer in charge shall advise the petitioner of that determination. The district director or officer in charge shall also advise the petitioner that the advance processing application will be retained for one year from the date of completion of all advance processing; that, if a child is not identified to the Service within that year, the application will be considered to have been abandoned; and that any further proceedings will require the filing of a new advance processing application or an orphan petition.

(ii) *Unfavorable determination on completed advance processing application.* When information about the prospective adoptive parent or parents indicates that an orphan petition should not be approved because the prospective adoptive parent or parents would be unable to furnish proper care to a beneficiary orphan, the district director or officer in charge shall render an unfavorable determination concerning the advance processing application. The district director or officer in charge shall advise the petitioner(s) of the reasons for the unfavorable determination and of the right to appeal in accordance with the provisions of Part 103 of this chapter. When an unfavorable determination is made concerning an advance processing application, the fee will not be refunded.

(5) *When a child is identified*—(i) *Pending advance processing.* When a child is identified while an advance processing application is pending, the petitioner(s) shall submit a completed Form I-600 with all documentary evidence relating to the child. A new fee is not required.

(ii) *After advance processing has been completed.* When a child has been identified after a favorable determination concerning an advance processing application, the petitioner(s) shall submit a completed Form I-600 with all documentary evidence relating to the child. A new fee is not required if the petitioner submits the Form I-600 within one year from the date of completion of all advance processing.

(c) *Petition for orphan*—(1) *Filing.* A petition for an orphan as defined in section 101(b)(1)(F) of the Act must be filed on a Form I-600 by a United States citizen and spouse, if the petitioner is married. The petition must identify the child and must be accompanied by the fee required under 8 CFR 103.7(b)(1). If the petitioner is married, the Form I-600 must also be signed by the petitioner's spouse. If unmarried, the petitioner must be at least twenty-five years of age at the time of the adoption and when the petition is filed.

(2) *Evidence to support a petition for an orphan*—(i) *General.* As used in this part, the term "agency" includes both organizations and individuals, and the term "responsible state agency" means the public adoption agency in any state in the United States authorized by statute or license to perform home studies. A petition filed on behalf of an orphan under § 204.1(b) must be accompanied by:

(A) A valid home study which has been favorably recommended by an agency of the state of the child's proposed residence, by an agency authorized by that state to conduct such a study, or, in the case of a child adopted abroad, by an appropriate public or a private adoption agency licensed in the United States;

(B) Fingerprints on Form FD-258 of the United States citizen petitioner, and of the spouse, if the petitioner is married;

(C) Evidence of the age and the United States citizenship of the petitioner;

(D) A marriage certificate for the petitioner and spouse, if the petitioner is married, and evidence of the termination of any previous marriages;

(E) The child's birth certificate or, if a certificate is not available, other proof of age;

(F) If the child has only one parent, evidence that the sole or surviving parent is incapable of providing for the orphan's care and has irrevocably released the orphan for emigration and adoption;

(G) Death certificate(s) of the child's parent(s), if applicable; and

(H) A legible, true copy of the adoption decree together with a copy of a certified translation if the child has been adopted abroad.

(ii) A child shall be considered as having a sole maternal parent when it is established that the child is illegitimate and has not acquired a stepparent within the contemplation of section 101(b)(2) of the Act. A child shall be considered as having a surviving parent when it is established that one of the child's parents is living while one is deceased and the child has not acquired a stepparent within the meaning of section 101(b)(2) of the Act. When a child who has a sole or surviving parent has been adopted abroad, the requirement for an irrevocable release in writing for the child's emigration and adoption shall be considered to have been met if the adoption decree clearly sets forth that the adoptive petitioner and spouse, if married, reside in the United States and that the child's only parent has agreed to release the child for adoption. A child who has been unconditionally abandoned to an orphanage shall be considered as having no parents. However, a child who has been placed temporarily in an orphanage shall not be considered as having been abandoned when the parent or parents intend to retrieve the child; the parent or parents are contributing or attempting to contribute to the child's support; or the parent or

parents otherwise exhibit that they have not terminated their parental obligations to the child. If the child was adopted abroad by an unmarried United States citizen, the latter must have been at least twenty-five years of age at the time the child was adopted. If the child was adopted abroad by a married United States citizen, the decree shall show that the adoption was undertaken jointly by both husband and wife.

(iii) *Valid home study.*—(A) *Child coming to the United States for adoption.* A home study for a child to be adopted in the United States is considered to be valid if it contains the following:

(*1*) A factual evaluation of the financial, physical, mental, and moral capabilities of the prospective parent or parents to rear and educate the child properly;

(*2*) A detailed description of the living accommodations where the prospective parent or parents currently reside;

(*3*) A detailed description of the living accommodations in the United States where the child will reside, if known; and

(*4*) A statement or attachment recommending the proposed adoption and signed by an official of the responsible state agency in the state of the child's proposed residence, or signed by an official of an agency authorized by that state. When a home study contains a favorable recommendation by an agency claiming to be authorized by the state of the child's proposed residence, it will not be accepted as valid unless the district director is satisfied that the recommending agency is authorized to conduct the home study. If the recommending agency is a licensed adoption agency, the recommendation shall indicate that fact as well as the state in which it is licensed, its license number, if any, and the period of validity of its license. The district director may require such proof of licensure as is deemed necessary. The authorized agency need not be located in the state of the child's proposed residence or anywhere in the United States.

(B) *Child adopted abroad.* A home study for a child adopted abroad is considered to be valid if it contains the following:

(*1*) A factual evaluation of the financial, physical, mental, and moral capabilities of the adoptive parent or parents to rear and educate the child properly;

(*2*) A detailed description of the living accommodations where the adoptive parent or parents currently reside;

(*3*) A detailed description of the living accommodations in the United States where the child will reside, if known; and,

(*4*) A statement or attachment recommending or approving the adoption signed by an official of an appropriate public or private adoption agency which is licensed in any state in the United States. For purposes of this part, the responsible state agency in any state of the United States shall be considered to be an appropriate public agency which is licensed in the United States. The home study of any agency other than a responsible state agency will not be considered valid unless the district director is satisfied that the agency is licensed by a state in the United States. The recommendation from such licensed agency shall indicate the fact that it is licensed as well as the state in which it is licensed, its license number, if any, and the period of validity of its license. The district director may require such proof of licensure as is deemed necessary. The licensed agency need not be located in the United States.

(C) *Research and preparation of home study.* Research, including interviewing, and the preparation of the home study may be performed by an individual or group, in the United States or abroad, approved or authorized by the agency which makes the determination that the home study supports a favorable recommendation.

(3) *Preadoption requirements.* If the orphan is to be adopted in the United States, the petitioner(s) must submit evidence of compliance with the preadoption requirements, if any, of the state of the orphan's proposed residence, except for any such requirements that cannot be complied with prior to the child's arrival in the United States. If the child is to be adopted in the United States by an unmarried United States citizen, the petitioner must also establish that adoption by an unmarried person is permitted in the state of the child's proposed residence.

(4) *Beneficiary whose adoption abroad is not deemed valid or who is adopted abroad without having been seen and observed.* An orphan whose adoption abroad is determined by the Service to be invalid for the purposes of granting benefits under the immigration or nationality laws, or who is adopted abroad without having been personally seen and observed by the petitioner (and by the spouse, if the petitioner is married) prior to or during the adoption proceedings, shall be processed as a child coming to the United States for adoption. Before a petition on behalf of such a child is approved, the petitioner (and spouse, if the petitioner is married) must submit a statement indicating the petitioner's (and, if the petitioner is married, the spouse's) willingness and intent to readopt the child in the United States. Unless the Service has already ascertained from the appropriate state authority that readoption is permissible in that state, the petitioner shall be required to submit a statement from the court having jurisdiction over adoption, the state department of welfare, or the attorney general of the state indicating that readoption is permissible. As in the case of a petition for any other orphan coming to the United States for adoption, evidence of compliance with the preadoption requirements, if any, of the state of proposed residence must be submitted. If the child is to be readopted in the United States by an unmarried United States citizen, the petitioner must also establish that adoption by an unmarried person is permitted in the state of the child's proposed residence.

(5) *Preliminary processing of orphan petition without full documentation or home study.* When a child has been identified but the documentary evidence relating to the child or the home study is not yet available, an orphan petition may be filed without such evidence or home study. All other evidence required in paragraph (c)(2) of this section, including fingerprints, must be submitted. The petition will not be considered properly filed until complete documentary evidence relating to the child and the home study are furnished. If the necessary evidence and home study are not submitted within one year from the date of submission of the petition, the petition will be considered as having been abandoned and the fee will not be refunded. Any further proceedings will require the filing of a new petition.

(6) *Decision and disposition of petition.* (i) *Favorable determination.* If the district director or officer in charge makes a favorable determination concerning the ability of the adoptive parent or parents to furnish proper care to a beneficiary orphan if admitted to the United States, the district director or officer in charge shall advise the petitioner of that determination.

(ii) *Unfavorable determination.* If the petitioner submits a petition, Form I-600, on behalf of a child when there has been an unfavorable determination concerning an advance processing application, the fee specified in 8 CFR 103.7(b)(1) must be submitted. If the grounds for the unfavorable determination have not been overcome, the district director shall deny the petition.

(d) *Jurisdiction.*—(1) *Petitioner residing in the United States.* A petitioner residing in the United States shall file a petition on behalf of a child defined in section 101(b)(1)(F) of the Act or an application for advance processing with the Service office having jurisdiction over the place where the petitioner resides.

(2) *Petitioner residing abroad.*—(i) *General.* A petitioner residing outside of the United States shall file an orphan petition or an application for advanced processing with the overseas or stateside office of the Service designated to act on the petition or application. This can be ascertained by consulting an American consulate.

(ii) *Petitioner residing in Canada.* A petitioner residing in Canada shall file an orphan petition or an application for advance processing with the office of the Service having jurisdiction over the place of the child's intended residence in the United States.

(iii) *Petitioner proceeding abroad when a district director at a stateside office has made a favorable determination concerning an application for advance processing.*—(A) *Jurisdiction retained by stateside office.* When a district director at a stateside office has made a favorable determination concerning an application for advance processing and an unmarried petitioner or a married petitioner and/or spouse are traveling abroad to locate or adopt a child, the petition on behalf of the child may be filed at the stateside office if such filing will facilitate the processing of the petition.

(B) *Jurisdiction assumed by American consulate or embassy.* In an advance processing case where the petitioner does not wish to have jurisdiction retained by the stateside Service office, the orphan petition may be filed at the American consulate or embassy having jurisdiction over the place where the child is residing, unless the child is residing in Austria, Germany, Greece, Hong Kong, India, Italy, Kenya, Korea, Mexico, the Philippines, Singapore, Thailand, or the United Kingdom of Great Britain and Northern Ireland.

(C) *Authority of consular officers.* An American consular officer is authorized to approve an orphan petition when the District Director at a stateside Service office has made a favorable determination concerning an advance processing application and the unmarried petitioner or the married petitioner and/or spouse have traveled abroad either to locate or adopt a child or facilitate the adoption in the United States of a known child who resides in a country with no Service office. A consular officer, however, shall refer any petition which is not clearly approvable for a decision by the Service office having jurisdiction over the place where the child is residing. The consular officer's adjudication shall include all aspects of eligibility for classification as an orphan under section 101(b)(1)(F) of the Act other than the ability of the prospective adoptive parent or parents to furnish proper care to the beneficiary orphan.

(D) *Jurisdiction assumed by overseas Service office.* If the child is residing in Austria, Germany, Greece, Hong Kong, India, Italy, Kenya, Korea, Mexico, the Philippines, Singapore, Thailand, or the United Kingdom of Great Britain and Northern Ireland, the orphan petition may be filed at the overseas Service office having jurisdiction over the child's place of residence.

(e) *Child in the United States.* A child who is in parole status and who has not been adopted in the United States is eligible to receive the benefits of an orphan petition and to adjust status to permanent residence when all the requirements of sections 101(b)(F) and 204(e) of the Act have been met. A child in the United States either illegally or as a nonimmigrant, however, is ineligible to receive the benefits of an orphan petition and to adjust status on that basis.

§ 204.4 Amerasian child of a United States citizen.

(a) *Eligibility.* An alien is eligible for benefits under Public Law 97–359 as the Amerasian child or son or daughter of a United States citizen if there is reason to believe that the alien was born in Korea, Vietnam, Laos, Kampuchea, or Thailand after December 31, 1950, and before October 22, 1982, and was fathered by a United States citizen. Such an alien is eligible for classification under sections 201(b), 203(a)(1), or 203(a)(3) of the Act as the Amerasian child or son or daughter of a United States citizen, pursuant to section 204(f) of the Act.

(b) *Filing petition.* Any alien claiming to be eligible for benefits as an Amerasian under Public Law 97–359, or any person on the alien's behalf, may file a petition, Form I–360, Petition for Amerasian, Widow, or Special Immigrant. Any person filing the petition must either be eighteen years of age or older or be an emancipated minor. In addition, a corporation incorporated in the United States may file the petition on the alien's behalf.

(c) *Jurisdiction.* The petition must be filed with the Service office having jurisdiction over the place of the alien's intended residence in the United States or with the overseas Service office having jurisdiction over the alien's residence abroad.

(d) *Two-stage processing.*—(1) *Preliminary processing.* Upon initial submission of a petition with the documentary evidence required in paragraph (f)(1) of this section, the director shall adjudicate the petition to determine whether there is reason to believe the beneficiary was fathered by a United States citizen. If the preliminary processing is completed in a satisfactory manner, the director shall advise the petitioner to submit the documentary evidence required in paragraph (f)(1) of this section and the fingerprints of the sponsor on Form FD–258, if not previously submitted. The petitioner must submit all required documents within one year of the date of the request or the petition will be considered to have been abandoned. To reactivate an abandoned petition, the petitioner must submit a new petition, Form I–360, without the previously submitted documentation, to the Service office having jurisdiction over the prior petition.

(2) *Final processing.* Upon submission of the documentary evidence required in paragraph (f)(1) of this section, the director shall complete the adjudication of the petition.

(e) *One-stage processing.* If all documentary evidence required in paragraph (f)(1) of this section is available when the petition is initially filed, the petitioner may submit it at that time. In that case, the director shall consider all evidence without using the two-stage processing procedure set out in paragraph (d) of this section.

(f) *Evidence to support a petition for an Amerasian child of a United States citizen.*—(1) *Two-stage processing of petition.*—(i) *Preliminary processing.* (A) A petition filed by or on behalf of an Amerasian under this section must be accompanied by evidence that the beneficiary was born in Korea, Vietnam, Laos, Kampuchea, or Thailand after December 31, 1950, and before October 22, 1982. If the beneficiary was born in Vietnam, the beneficiary's ID card must be submitted, if available. If it is not available, the petitioner must submit an affidavit explaining why the beneficiary's ID card is not available. Evidence that the beneficiary was fathered by a United States citizen must also be presented. The putative father must have been a United States citizen at the time of the beneficiary's birth or at the time of the father's death, if his death occurred prior to the beneficiary's birth. It is not required that the name of the father be given. Such evidence may include, but need not be limited to:

(1) The beneficiary's birth and baptismal certificates or other religious documents;

(2) Local civil records;

(3) Affidavits from knowledgeable witnesses;

(4) Letters or evidence of financial support from the beneficiary's putative father;

(5) Photographs of the beneficiary's putative father, especially with the beneficiary; and

(6) Evidence of the putative father's United States citizenship.

(B) The beneficiary's photograph must be submitted.

(C) The beneficiary's marriage certificate, if married, and evidence of the termination of any previous marriages, if applicable, is required.

(D) If the beneficiary is under eighteen years of age, a written irrevocable release for emigration must be received from the beneficiary's mother or legal guardian. The mother or legal guardian must authorize the placing agency or agencies to make decisions necessary for the child's immediate care until the sponsor receives custody. Interim costs are the responsibility of the sponsor. The mother or legal guardian must show an understanding of the effects of the release and state before signing the release whether any money was paid or any coercion was used. The signature of the mother or legal guardian must be authenticated by the local registrar, the court of minors, or a United States immigration or consular officer. The release must include the mother's or legal guardian's full name, date and place of birth, and current or permanent address.

(ii) *Final processing.* (A) If the director notifies the petitioner that all preliminary processing has been completed in a satisfactory manner, the petitioner must then submit Form I-361, Affidavit of Financial Support and Intent to Petition for Legal Custody for Public Law 97-359 Amerasian, executed by the beneficiary's sponsor, along with the documentary evidence of the sponsor's financial ability required by that form. If the beneficiary is under eighteen years of age, the sponsor must agree to petition the court having jurisdiction, within thirty days of the beneficiary's arrival in the United States, for legal custody under the laws of the state where the beneficiary will reside until the beneficiary is eighteen years of age. The term "legal custody" as used in this section means the assumption of responsibility for a minor by an adult under the laws of the state in a court of law. The sponsor must be a United States citizen or lawful permanent resident who is twenty-one years of age or older and who is of good moral character.

(B) Other documents necessary to support the petition are:

(1) Evidence of the age of the beneficiary's sponsor;

(2) Evidence of United States citizenship or lawful permanent residence of the sponsor as provided in § 204.1(f); and

(C) If the beneficiary is under eighteen years of age, evidence that a public, private, or state agency licensed in the United States to place children and actively involved, with recent experience, in the intercountry placement of children has arranged the beneficiary's placement in the United States. Evidence must also be provided that the sponsor with whom the beneficiary is being placed is able to accept the beneficiary for care in the sponsor's home under the laws of the state of the beneficiary's intended residence. The evidence must demonstrate the agency's capability, including financial capability, to arrange the placement as described in paragraph (f)(1) of this section, either directly or through cooperative agreement with other suitable provider(s) of service.

(iii) *Arrangements for placement of beneficiary under eighteen years of age.* (A) If the beneficiary is under eighteen years of age, the petitioner must submit evidence of the placement arrangement required under paragraph (f)(1) of this section. A favorable home study of the sponsor is necessary and must be conducted by an agency in the United States legally authorized to conduct that study. If the sponsor resides outside the United States, a home study of the sponsor must be conducted by an agency legally authorized to conduct home studies in the state of the sponsor's and beneficiary's intended residence in the United States and must be submitted with a favorable recommendation by the agency.

(B) A plan from the agency to provide follow-up services, including mediation and counselling, is required to ensure that the sponsor and the beneficiary have satisfactorily adjusted to the placement and to determine whether the terms of the sponsorship are being observed. A report from the agency concerning the placement, including information regarding any family separation or dislocation abroad that results from the placement, must also be submitted. In addition, the agency must submit to the Director, Outreach Program, Immigration and Naturalization Service, Washington, DC, within 90 days of each occurrence, reports of any breakdowns in sponsorship that occur, and reports of the steps taken to remedy these breakdowns. The petitioner must also submit a statement from the agency:

(1) Indicating that, before signing the sponsorship agreement, the sponsor has been provided a report covering pre-placement screening and evaluation, including a health evaluation, of the beneficiary;

(2) Describing the agency's orientation of both the sponsor and the beneficiary on the legal and cultural aspects of the placement;

(3) Describing the initial facilitation of the placement through introduction, translation, and similar services; and

(4) Describing the contingency plans to place the beneficiary in another suitable home if the initial placement fails. The new sponsor must execute and submit a Form I-361 to the Service office having jurisdiction over the beneficiary's residence in the United States. The original sponsor nonetheless retains financial responsibility for the beneficiary under the terms of the guarantee of financial support and intent to petition for legal custody which that sponsor executed, unless that responsibility is assumed by a new sponsor. In the event that the new sponsor does not comply with the terms of the new guarantee of financial support and intent to petition for legal custody and if, for any reason, that guarantee is not enforced, the original sponsor again becomes financially responsible for the beneficiary.

(iv) *Fingerprints of sponsor.* The petitioner must submit the fingerprints of the sponsor on Form FD-258. The petitioner may submit Form FD-258 at any time during the processing of the petition. The Form FD-258 must reflect the originating agency (ORI) number or special office code relating to the Service office where the petition is filed, if that office has Forms FD-258 with the relating ORI number.

(2) *One-stage processing of petition.* If the petitioner chooses to have the petition processed under the one-stage processing procedure described in paragraph (e) of this section, the petitioner must submit all evidence required by paragraph (f)(1) of this section.

(g) *Decision*—(1) *General.* The director shall notify the petitioner of the decision and, if the petition is denied, of the reasons for the denial. If the petition is denied, the petitioner may appeal the decision under Part 103 of this chapter.

(2) *Denial upon completion of preliminary processing.* The director may deny the petition upon completion of the preliminary processing under paragraph (d) of this section for:

(i) Failure to establish that there is reason to believe the alien was fathered by a United States citizen; or

(ii) Failure to meet the sponsorship requirements if the fingerprints of the sponsor, required in paragraph (f)(1) of this section, were submitted during the preliminary processing and the completed background check of the sponsor discloses adverse information resulting in a finding that the sponsor is not of good moral character.

(3) *Denial upon completion of final processing.* The director may deny the petition upon completion of final processing if it is determined that the sponsorship requirements, or one or more of the other applicable requirements, have not been met.

(4) *Denial upon completion of one-stage processing.* The director may deny the petition upon completion of all processing if any of the applicable requirements in a case being processed under the one-stage processing described in paragraph (e) of this section are not met.

(h) *Classification of Public Law 97-359 Amerasian.* If the petition is approved the beneficiary is classified as follows:

(1) An unmarried beneficiary under the age of twenty-one is classified as the child of a United States citizen under section 201(b) of the Act;

(2) An unmarried beneficiary twenty-one years of age or older is classified as the unmarried son or daughter of a United States citizen under section 203(a)(1) of the Act; and

(3) A married beneficiary is classified as the married son or daughter of a United States citizen under section 203(a)(3) of the Act.

(i) *Enforcement of affidavit of financial support and intent to petition for legal custody.* A guarantee of financial support and intent to petition for legal custody on Form I-361 may be enforced against the alien's sponsor in a civil suit brought by the Attorney General in the United States District Court for the district in which the sponsor resides, except that the sponsor's estate is not liable under the guarantee if the sponsor dies or is adjudicated as bankrupt under title 11, United States Code. After admission to the United States, if the beneficiary of a petition requires enforcement of the guarantee of financial support and intent to petition for legal custody executed by the beneficiary's sponsor, the beneficiary may file Form I-363 with the Service office having jurisdiction over the beneficiary's residence in the United States. If the beneficiary is under eighteen years of age, any agency or individual (other than the sponsor) having legal custody of the beneficiary, or a legal guardian acting on the alien's behalf, may file Form I-363.

Dated: August 25, 1992.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 92-21525 Filed 9-8-92; 8:45 am]

BILLING CODE 4410-10-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Regulations; Restatement to Accrual Method of Accounting

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: On January 22, 1992, the Small Business Administration (SBA) published in the **Federal Register** (57 FR 2443) an interim rule amending its size regulations to provide that small business concerns whose size status is determined pursuant to annual receipts must restate their books of account to the accrual method of accounting only with respect to fiscal years beginning on or after January 1, 1990. This rule makes final, as published, the interim regulation.

DATES: This rule is effective September 9, 1992.

FOR FURTHER INFORMATION CONTACT: John W. Klein, Chief Counsel for Special Programs, (202) 205-6645.

SUPPLEMENTARY INFORMATION: On January 22, 1992, SBA published an interim rule which substantively amended SBA's size regulations to explicitly apply, for size determination purposes, the requirement for restatement of receipts to the accrual method of accounting only as to fiscal years beginning on or after January 1, 1990, the date such restatement requirement was added to the regulation. The revision applied to all size self-certifications made after January 22, 1992, the effective date of the interim rule, and to all size determinations begun *or* completed after that date. In those cases, a firm could elect to show revenues for fiscal years beginning *prior to* January 1, 1990, on either a cash or an accrual basis of accounting. (For a complete description of the regulatory history leading to the interim rule, see the preamble to the January 22, 1992, interim rule. 57 FR 2443.)

In promulgating the interim rule, the Agency adopted the interpretation given SBA's January 1, 1990, regulation announced in SBA Size Policy Statement No. 2 and the rationale contained therein. (See **Federal Register** November 19, 1990, 55 FR 48106.) Size Policy Statement No. 2 was not intended to create a new substantive regulation, but merely to provide an interpretation of the January 1, 1990, regulation. However, in two separate size appeals decisions, SBA's Office of Hearings and Appeals (OHA) held that SBA Size Policy Statement No. 2 could be applied only to size self-certifications occurring on or after its publication date of November 19, 1990. Size Appeal of Geofon, Inc., No. 3429 (March 4, 1991); Size Appeal of Research Analysis and Maintenance, Inc. and Stewart Associates, Inc., No. 3445 (March 28, 1991); Appellant petition for reconsideration denied, No. 3486 (June 20, 1991); SBA petition for reconsideration denied, No. 3489 (July 3, 1991). Thus, the interim rule was needed to ensure the uniform application of the regulations as intended and to promote stability in the procurement process.

SBA received one comment on the interim rule which objected to the possibility of retroactive application of the rule. SBA responds to this comment by restating that the rule applies only prospectively to self-certifications or size determinations that occur after the effective date of the interim rule, January 22, 1992. Further, this assertion is reinforced by a decision of OHA to the same effect. See Size Appeal of Nations, Inc., No. 3611 (April 24, 1992). As such, SBA is adopting the interim rule a final without change.

Compliance With Executive Orders 12291 and 12612, the Regulatory Flexibility Act (55 U.S.C. 601, et. seq.), and the Paperwork Reduction Act (44 U.S.C. Chap. 35)

SBA certifies that this final rule is not a major rule within the meaning of Executive Order 12291 and will not have a significant economic impact on a substantial number of entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The change in the size regulations will affect a very limited number of concerns and procurements. In theory, the change in the size regulations will affect all size certifications made between January 1, 1990, and November 19, 1990. However, because size with respect to those certifications has been, for the most part, already decided in accord with the interpretation set forth in Size Policy Statement No. 2, the interim rule, and this final rule, there should be very little impact on any concerns or Government acquisitions currently being finalized. In addition, this rule does not affect any of

the size standards contained in § 121.601. This rule, in and of itself, would not impose costs upon the businesses which might be affected by it. Because the rule will have no affect on the amount or dollar value of any contract requirement or the number of requirements reserved for the small business set-aside and 8(a) programs, it is not likely to have an annual economic effect of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this rule contains no new reporting or recordkeeping requirements.

For purposes of Executive Order 12612, SBA certifies that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth above, SBA amends part 121 of Title 13, Code of Federal Regulations (CFR), as follows.

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for 13 CFR part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a) and 644(c).

2. Paragraph 121.402(d)(1) is amended to read as follows:

§ 121.402 Annual receipts.

(d)(1) *Method of determining annual receipts.* Revenue may be taken from the regular books of account of the concern. If the concern so elects, or has not kept regular books of account, or the IRS has found such records to be inadequate and has reconstructed income of the concern, then revenues shown on the Federal Income Tax return of the concern may be used in determining annual receipts. Subject to the exception in paragraph (d)(2) of this section, revenue shown on the regular books of account or the Federal Income Tax return on a basis other than accrual must be restated to show revenue on an accrual basis for all fiscal years beginning on or after January 1, 1990. For purposes of either a self-certification as to size made, or any size determination initiated or completed, subsequent to January 22, 1992, a firm may elect to show revenues for fiscal years beginning *prior to* January 1, 1990, on either a cash or an accrual basis of accounting. Further, where the completed contract method of determining income has been used, revenue must be restated to a percentage of completion method prior to determining annual receipts.

* * * * *

Dated: July 8, 1992.

Patricia Saiki,

Administrator.

[FR Doc. 92-21506 Filed 9-8-92; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 097CE, Special Conditions 23-ACE-65]

Special Conditions; Extra-Flugzeugbau GmbH Model 300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Special Conditions.

SUMMARY: This special condition is being issued for the Extra-Flugzeugbau GmbH Model 300 Series airplanes. These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the airworthiness standards for normal, utility, acrobatic, and commuter category airplanes. These design features include the use of composite materials for primary structure for which the regulations do not contain adequate or appropriate airworthiness standards and structural design criteria utilizing higher design load factors, because the design flight envelope of the Extra 300 far exceeds the minimum required design limits of part 23. This special condition contains the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the current airworthiness standards.

EFFECTIVE DATE: October 7, 1992.

FOR FURTHER INFORMATION CONTACT: Mike Downs, Aerospace Engineer, Standards Office (ACE-110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, room 1544, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426-5688.

SUPPLEMENTARY INFORMATION:

Background

On July 2, 1989, Extra-Flugzeugbau GmbH located in Germany applied to the FAA for type certification of the model Extra 300. The Extra 300 is a single-engine, acrobatic category FAR part 23 airplane capable of performing "Flick Rolls" producing high angular rotation rates. The configuration is conventional with a low horizontal tail, and tubular steel frame fuselage. The wing and empennage are constructed with composite material. The airplane is designed for high performance acrobatic maneuvers with a design flight envelope of ±10g. The current FAR part 23 acrobatic category design requires that the flight envelope shall not be less than +6.0g, −3.0g.

Type Certification Basis

The type certification basis for the Extra 300 airplane is as follows: Part 21 of the Federal Aviation Regulations (FAR), § 21.29 and § 21.183(c); part 23 of the FAR, effective February 1, 1965, including amendments 23-1 through 23-34; part 36 of the FAR, effective December 1, 1969, including amendments 36-1 through the amendment effective on the date of type certification; exemptions, if any, and the special conditions adopted by this rulemaking action.

Discussion

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become a part of the type certification basis as provided by § 21.17(a)(2).

The type design of the Extra 300 contains novel or unusual design features not envisaged by the applicable part 23 airworthiness standards. Special conditions are considered necessary because the airworthiness standards of part 23 do not contain adequate or appropriate safety standards for the novel or unusual design features of the Model Extra 300 airplane.

Composite Flight Structure

The Extra-Flugzeugbau GmbH Model Extra 300 airplane is made of composite

material and is assembled differently from the typical semi-monocoque aluminum airframes that have been predominant since the early 1940's. Composite materials of the type used on the Extra 300 are generally not susceptible to initiation of fatigue cracks by the application of repetitive loads, but are susceptible to damage in the form of cracks, breaks, and delaminations from intrinsic and discrete sources growing under application of repetitive loads. Because of this and other factors, the FAA has determined that the fatigue requirements of § 23.572 are inadequate to ensure that composite material structure can withstand the repeated loads of variable magnitude expected in service. The use of composite materials and bonding of these materials in primary flight structure is a novel and unusual design feature with respect to the type of airplane construction envisaged by the existing airworthiness standards of part 23. Because the requirements of part 23 do not require the level of substantiation necessary for composite material structure, a special condition is being issued to include the necessary airworthiness standards as a part of the certification basis for the Model Extra 300 airplane. This special condition is being issued to ensure that a level of safety exists for airplanes made from composite materials equivalent to those existing for aluminum airplanes.

The special conditions will require composite structural components critical to safe flight be evaluated by damage tolerance criteria. The damage tolerance consideration includes principal structural elements, such as the fuselage, and the vertical and horizontal stabilizers and their carry-through structure, since failure of these structures could have catastrophic results. When damage tolerance is shown to be impractical, the special condition is worked to permit approval based on safe-life testing. Metal detail designs may continue to be evaluated to the fatigue requirements of § 23.572. Damage tolerance criteria for composite structure, in combination with the existing material requirements of part 23, such as §§ 23.603 and 23.613, will provide a level of safety for the composite material airframe structure used in the Model Extra 300 airplane equivalent to that required by the airworthiness standards of part 23.

In addition to those components requiring fatigue/damage tolerance evaluations, other components that are critical to flight safety, such as movable control surfaces and wing flaps, must also be protected against loss of strength or stiffness. Protection conventionally is provided through design and inspection. Since composite material strength is susceptible to manufacturing defects and damage from discrete sources, including lightning strikes, process controls and inspectability are limited; therefore, structures design must provide for these limits with adequate protection allowances.

The lack of adequate service experience with composite material structures in airplanes type certificated to the airworthiness standards of part 23, the unusual mechanical properties characteristics, and the experience with composite material structural bonding, to date, necessitate issuing special conditions to ensure an appropriate level of safety for the Model Extra 300 airframe structure. This special condition is intended to require: (1) Accounting for environmental effects, that is, temperature and humidity on material mechanical properties in all structural substantiation analyses and tests; (2) limit load residual strength with impact damage from discrete sources; (3) ability to carry ultimate load with realistic intrinsic and discrete impact damage at the threshold of detectability; and (4) design features to prevent disbonds greater than the disbonds for which limit load capability has been shown. Proof testing of each production component to limit load and reliance on manufacturing quality control procedures between limit and ultimate load may be used instead of design features provided each bonded joint is subjected to its critical design limit load during the proof testing. Acceptable nondestructive testing techniques do not yet exist in state of the art composite technology to reliably identify weak bonds. However, proof testing of each production article may be discontinued if such tests are developed and accepted by the FAA. Because the composite material and bonding may require maintenance and inspection procedures different from those commonly utilized for existing aluminum airframes, this special condition requires that instructions for continued airworthiness be established in addition to those required by § 23.1529.

Structural Design and Loads Criteria

An analysis of world championship acrobatic sequences shows a significant number of occurrences of high load factors, up to ±10g.

Wing

For airplanes capable of performing "flick rolls" (snap rolls), the wing should be designed for 100/0 percent maximum wing load distribution, in addition to the roll maneuver criteria of § 23.349(b), unless lower values can be substantiated. These load conditions are based on a V_A and $C_{l\ max}$ corresponding to the selected positive 10g design load factor. Unbalanced aerodynamic moments about the center of gravity must be reacted in a rational or conservative manner, considering the principal masses furnishing the reacting interia forces. Furthermore, consideration should be given to the fact that pilots may make significant aileron control inputs above V_A; therefore, a warning prohibiting unrestricted control system input above V_A should be included in the Pilot Operating Handbook/Airplane Flight Manual (POH/AFM) and on a cockpit placard.

Empennage

Extra conducted flight tests to develop and record acrobatic generated unsymmetrical load values in the horizontal tail and torsion load values in the fuselage. Flight tests were conducted to specifically generate maximum unsymmetric loading by varying speed and phasing of maximum elevator and rudder inputs (elevator and rudder inputs were made to full deflection in approximately 0.15 seconds).

The use of rational flight test results is preferred as a basis for design. Pilots may make significant rudder and elevator control inputs above V_A; therefore, adequate pilot warnings such as discussed above are necessary.

In lieu of the 1.3 factor specified for rudder maneuver conditions of § 23.441(a)(2), a value of 1.5 for the overswing factor should be used unless a lower value can be substantiated by flight test.

Rational chord load distributions should be used for the vertical and horizontal tail surfaces. These may be developed by flight test data, wind tunnel test data, theoretical analysis, or a combination thereof.

Gyroscopic Forces

Since the aircraft will be performing maneuvers which generate high pitch and yaw rates, the airplane, including the engine, engine mount, and fuselage attachment, must be designed for rational gyroscopic forces generated in specific acrobatic maneuvers.

Fatigue

The fatigue load should be developed from representative sequences and cross country flight profiles.

Discussion

Notice of proposed special condition, Docket No. 097CE, Notice No. 23 ACE-65 (57 FR 23165, June 2, 1992) proposed a special condition for the Extra-Flugzeugbau GmbH Model 300 Series airplane. The comment period closed August 3, 1992.

No comments pertaining to the notice were received. The special condition, as proposed by Notice No. 23 ACE-65, is issued without change.

Conclusion

This action affects only novel and unusual design features on the Extra-Flugzeugbau GmbH Model 300 Series airplane. It is not a rule of general applicability and affects only those applicants who apply to the FAA for approval of these features on these airplanes.

List of Subjects in 14 CFR Parts 21 and 23

Aircraft, Air transportation, Aviation safety, and Safety.

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g); 14 CFR 21.16 and 21.17; and 14 CFR 11.28 and 11.49(b).

Adoption of the Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special condition is issued as part of the type certification basis for the Extra-Flugzeugbau GmbH Model 300 Series airplane.

Evaluation of Composite Structures

In lieu of complying with § 23.572, and in addition to the requirements of §§ 23.603 and 23.613, airframe structure, the failure of which would result in catastrophic loss of the airplane, i.e., each wing, wing carry-through and its attaching structure, horizontal stabilizer, and horizontal stabilizer carry-through and its attaching structure, fuselage, vertical stabilizer and its attaching structure, and all movable control surfaces and their attaching structure must be evaluated to damage tolerance criteria prescribed in paragraphs (a) through (i) of this special condition, unless shown to be impractical. In cases shown to be impractical, the aforementioned structure must be evaluated in accordance with the criteria of paragraphs (a) and (j) of this special condition. Where bonded joints are used, the structure must also be evaluated in accordance with the residual strength criteria in paragraph (g) of this special condition.

(a) It must be demonstrated by tests, or by analysis supported by tests, that the structure is capable of carrying ultimate load with impact damage. The level of impact damage considered need not be more than the established threshold of detectability considering the inspection procedures employed.

(b) The growth rate of damage that may occur from fatigue, corrosion, intrinsic defects, manufacturing defects; e.g., bond defects, or damage from discrete sources under repeated loads expected in service; i.e., between the time at which damage becomes initially detectable and the time at which the extent of damage reaches the value selected by the applicant for residual strength demonstration, must be established by tests or by analysis supported by tests.

(c) The damage growth, between initial detectability and the value selected for residual strength demonstration, factored to obtain inspection intervals, must permit development of an inspection program suitable for application by operations and maintenance personnel.

(d) Instructions for continued airworthiness for the airframe must be established consistent with the results of the damage tolerance evaluations. Inspection intervals must be set so that, after the damage initially becomes detectable by the inspection method specified, the damage will be detected before it exceeds the extent of damage for which residual strength is demonstrated.

(e) Loads spectra, load truncation, and the locations and types of damage considered in the damage tolerance evaluations must be documented in test proposals.

(f) Each wing and horizontal stabilizer carry-through and attaching structure, and vertical stabilizer and attaching structure, and all movable control surfaces and their attaching structure must be shown by residual strength tests, or analysis supported by residual strength tests, to be able to withstand critical limit flight loads, considered as ultimate loads, with the extent of damage consistent with the results of the damage tolerance evaluations.

(g) In lieu of a non-destructive inspection technique which ensures ultimate strength of each bonded joint, the limit load capacity of each bonded joint critical to safe flight must be substantiated by either of the following methods used singly or in combination:

(1) The maximum disbonds of each bonded joint consistent with the capability to withstand the loads in paragraph (f) of this special condition must be determined by analysis, test, or both. Disbonds of each bonded joint greater than this must be prevented by design features.

(2) Proof testing must be conducted on each production article which will apply the critical limit design load to each critical bonded joint.

(h) The effects of material variability and environmental conditions; e.g., exposure to temperature, humidity, erosion, ultraviolet radiation, and/or chemicals, on the strength and durability properties of the composite materials must be accounted for in the damage tolerance evaluations and in the residual strength tests.

(i) The airplane must be shown to be free from flutter with the extent of damage for which residual strength is demonstrated.

(j) For those structures where the damage tolerance method is shown to be impractical, the strength of such structures must be demonstrated by tests, or analysis supported by tests, to be able to withstand the repeated loads of variable magnitude expected in service. Sufficient component, subcomponent, element, or coupon test must be performed to establish the fatigue scatter and environmental effects. Impact damage in composite materials components that may occur may be considered in the demonstration. The impact damage level considered must be consistent with detectability of the inspection procedures employed.

Structural Design and Loads Criteria

Wing

In addition to the roll maneuver criteria of § 23.349(b), for airplanes designed to perform "flick-rolls" (snap rolls), the wing must be designed for a 100/0 percent maximum wing load distribution. Accurate flight test load measurements may be used in lieu of 100/0 percent maximum airload distribution. A notation shall be placed in the Limitations Section of the POH/AFM, and an appropriate warning placard shall be installed on the main instrument panel prohibiting full or abrupt control inputs above V_A.

Empennage

The horizontal tail and its attachments to the fuselage, and the aft fuselage must be designed for the worst case load condition using either accurate flight test load measurements or an acceptable analytical method.

Unsymmetrical load combinations acting on the wing and on the horizontal tail are assumed to be turning the airplane in the same direction around the roll axis. A notation shall be placed in the limitation section of the POH/

AFM, and an appropriate warning placard shall be installed on the main instrument panel prohibiting full or abrupt control inputs above V_A. In lieu of the 1.3 factor specified for rudder maneuver, conditions of § 23.441(a)(2), a value of 1.5 for the overswing factor must be used, unless a lower value is substantiated by flight test. Rational chord load distributions must be used for the vertical and horizontal tail surfaces. Appropriate data must be used to develop unsymmetrical loading of the horizontal tail surface and as a basis for fuselage torsion. This must include simultaneous application of full rudder and elevator input.

Gyroscopic Forces

The airplane, including the engine, engine mount and fuselage attachment, must be designed for representative gyroscopic forces generated in acrobatic maneuvers.

Fatigue

Representative acrobatic maneuver sequences and cross-country flight profiles must be used in establishing a rational fatigue load spectrum.

Issued in Kansas City, Missouri, on August 28, 1992.

Joseph H. Snitkoff,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-21655 Filed 9-8-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 21 and 23

[Docket No. 096CE, Special Conditions 23-ACE-64]

Special Conditions; FFT Model Eurotrainer 2000 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Special Conditions.

SUMMARY: This special condition is being issued for the FFT Gesellschaft Fur Flugzeug und Faserverbund Technologie mbH Model Eurotrainer 2000 Series airplanes. These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the airworthiness standards for normal, utility, acrobatic, and commuter category airplanes. These design features include the use of composite materials for primary structure for which the regulations do not contain adequate or appropriate airworthiness standards. This special condition contains the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the current airworthiness standards.

EFFECTIVE DATE: October 7, 1992.

FOR FURTHER INFORMATION CONTACT: Mike Downs, Aerospace Engineer, Standards Office (ACE-110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, Room 1544, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426-5688.

SUPPLEMENTARY INFORMATION:

Background

On April 8, 1991, FFT Gesellschaft Fur Flugzeug and Faserverbund Technologie mbh, located in Germany applied to the FAA for type certification of their model Eurotrainer 2000 Series airplane. The Eurotrainer 2000 Series airplane is a 4-seat, low-wing, conventional airplane with Fowler flaps and retractable landing gear. The powerplant consists of a 6 cylinder, 270 hp, piston engine and a 3 bladed constant speed propeller. Construction of the airplane structure is of all composite materials.

Type Certification Basis

The type certification basis for the FFT Model Eurotrainer 2000 Series airplane is as follows: Part 21 of the Federal Aviation Regulations (FAR), § 21.29 and § 21.183(c); part 23 of the FAR, effective February 11, 1965, including amendments 23-1 through 23-42; part 36 of the FAR, effective December 1, 1969, as amended by amendments 36-1 through the amendment effective on the date of type certification; exemptions, if any, and the special condition adopted by this rulemaking action.

Discussion

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and § 11.29(b), effective October 14, 1980, and become a part of the type certification basis as provided by § 21.17(a)(2).

The proposed type design of the FFT Model Eurotrainer 2000 Series airplane contains a number of novel or unusual design features not envisaged by the applicable part 23 airworthiness standards. Special conditions are considered necessary because the airworthiness standards of part 23 do not contain adequate or appropriate safety standards for the novel or unusual design features of the FFT Model Eurotrainer 2000 Series airplane.

Composite Flight Structure

The FFT Model Eurotrainer 2000 Series airplane is made of composite material and is assembled differently from the typical semi-monocoque aluminum airframes that have been predominant since the early 1940's. Composite materials of the type used on the FFT Model Eurotrainer 2000 Series airplane are generally not susceptible to initiation of fatigue cracks by the application of repetitive loads, but are susceptible to damage in the form of cracks, breaks, and delaminations from intrinsic and discrete sources growing under application of repetitive loads. Because of this and other factors, the FAA has determined that the fatigue requirements of § 23.572 are inadequate to ensure that composite material structure can withstand the repeated loads of variable magnitude expected in service. The use of composite materials and bonding of these materials in primary flight structure is a novel and unusual design feature with respect to the type of airplane construction envisaged by the existing airworthiness standards of part 23. Because the requirements of part 23 do not require the level of substantiation necessary for composite material structure, a special condition is being issued to include the necessary airworthiness standards as a part of the certification basis for the FFT Model Eurotrainer 2000 Series airplane. This special condition is being issued to ensure that a level of safety exists for airplanes made from composite materials equivalent to those existing for aluminum airplanes.

The special conditions will require composite structural components critical to safe flight to be evaluated by damage tolerance criteria. The damage tolerance consideration includes principal structural elements, such as the fuselage, and the vertical and horizontal stabilizers and their carry through structure, since failure of these structures could have catastrophic results. When damage tolerance is shown to be impractical, the special condition is worked to permit approval based on safe-life testing. Metal detail designs may continue to be evaluated to the fatigue requirements of § 23.572. Damage tolerance criteria for composite structure, in combination with the existing material requirements of part 23, such as §§ 23.603 and 23.613, will provide a level of safety for the

composite material airframe structure used in the FFT Model Eurotrainer 2000 Series airplane equivalent to that required by the airworthiness standards of part 23.

In addition to those components requiring fatigue/damage tolerance evaluations, other components that are critical to flight safety, such as movable control surfaces and wing flaps, must also be protected against loss of strength or stiffness. Protection conventionally is provided through design and inspection. Since composite material strength is susceptible to manufacturing defects and damage from discrete sources, including lightning strikes, process controls and inspectability are limited; therefore, structures design must provide for these limits with adequate protection allowances.

The lack of adequate service experience with composite material structures in airplanes type certificated to the airworthiness standards of part 23, the unusual mechanical properties characteristics, and the experience with composite material structural bonding, to date, necessitate issuing special conditions to ensure an appropriate level of safety for the FFT Eurotrainer Model 2000 Series airframe structure. This special condition is intended to require: (1) Accounting for environmental effects, that is, temperature and humidity on material mechanical properties in all structural substantiation analyses and tests; (2) limit load residual strength with impact damage from discrete sources; (3) ability to carry ultimate load with realistic intrinsic and discrete impact damage at the threshold of detectability; and (4) design features to prevent disbonds greater than the disbonds for which limit load capability has been shown. Proof testing of each production component to limit load and reliance on manufacturing quality control procedures between limit and ultimate load may be used instead of design features provided each bonded joint is subjected to its critical design limit load during the proof testing. Acceptable nondestructive testing techniques do not yet exist in state of the art composite technology to reliably identify weak bonds. However, proof testing of each production article may be discontinued if such tests are developed and accepted by the FAA. Because the composite material and bonding may require maintenance and inspection procedures different from those commonly utilized for existing aluminum airframes, this special condition requires that instructions for continued airworthiness be established in addition to those required by § 23.1529.

Discussion of Comments

Notice of Proposed Special Condition, Docket No. 096CE, Notice No. 23-ACE-64 (57 FR 11691, April 7, 1992) proposed a special condition for the FFT Gesellschaft Fur Flugzeug und Faserverbund Technologie mbH Model Eurotrainer 2000 Series airplanes. The comment period closed August 5, 1992.

No comments pertaining to this Notice were received. The special condition, as proposed by Notice No. 23-ACE-64, is issued without change.

Conclusion

This action affects only novel and unusual design features on the FFT Model Eurotrainer 2000 Series airplane. It is not a rule of general applicability and affects only those applicants who apply to the FAA for approval of these features on these airplanes.

List of Subjects in 14 CFR Parts 21 and 23

Aircraft, Air transportation, Aviation safety, and Safety.

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g); 14 CFR 21.16 and 21.17; and 14 CFR 11.28 and 11.49(b).

Adoption of the Special Condition

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special condition is issued as part of the type certification basis for the FFT Model Eurotrainer 2000A Series airplane:

1. Evaluation of Composite Structures

In lieu of complying with §§ 23.571 and 23.572, and in addition to the requirements of §§ 23.603 and 23.613, airframe structure, the failure of which would result in catastrophic loss of the airplane, each wing, wing carry through and its attaching structure, horizontal stabilizer, horizontal stabilizer carry through and attaching structure, fuselage, vertical stabilizer and its attaching structure, and all movable control surfaces and their attaching structure must be evaluated to damage tolerance criteria prescribed in paragraphs (a) through (j) of this special condition, unless shown to be impractical. In cases shown to be impractical, the aforementioned structure must be evaluated in accordance with the criteria of paragraphs (a) and (k) of this special condition.

Where bonded joints are used, the structure must also be evaluated in accordance with the residual strength criteria in paragraph (h) of this special condition.

(A) It must be demonstrated by tests, or by analysis supported by tests, that the structure is capable of carrying ultimate load with impact damage. The level of impact damage considered need not be more than the established threshold of detectability considering the inspection procedures employed.

(b) The growth rate of damage that may occur from fatigue, corrosion, intrinsic defects, manufacturing defects; for example, bond defects, or damage from discrete sources under repeated loads expected in service; that is, between the time at which damage becomes initially detectable and the time at which the extent of damage reaches the value selected by the applicant for residual strength demonstration, must be established by tests or by analysis supported by tests.

(c) The damage growth, between initial detectability and the value selected for residual strength demonstration, factored to obtain inspection intervals, must permit development of an inspection program suitable for application by operations and maintenance personnel.

(d) Instructions for continued airworthiness for the airframe must be established consistent with the results of the damage tolerance evaluations. Inspection intervals must be set so that, after the damage initially becomes detectable by the inspection method specified, the damage will be detected before it exceeds the extent of damage for which residual strength is demonstrated.

(e) Loads spectra, load truncation, and the locations and types of damage considered in the damage tolerance evaluations must be documented in test proposals.

(f) The structure of the fuselage must be shown by residual strength tests, or by analysis supported by residual strength test, to be able to withstand the loads listed in subparagraphs (1) and (2) below, considered as ultimate loads, with damage consistent with the results of the damage tolerance evaluations.

(g) Each wing, wing carry through and its attaching structure, and horizontal stabilizer carry through and attaching structure, and vertical stabilizer, horizontal stabilizer and its attaching structure, and all movable control

surfaces and their attaching structure must be shown by residual strength tests, or analysis supported by residual strength tests, to be able to withstand critical limit flight loads, considered as ultimate loads, with the extent of damage consistent with the results of the damage tolerance evaluations.

(h) In lieu of a nondestructive inspection technique that ensures ultimate strength of each bonded joint, the limit load capacity of each bonded joint critical to safe flight must be substantiated by either of the following methods used singly or in combination.

(1) The maximum disbonds of each bonded joint consistent with the capability to withstand the loads in paragraph (f) and (g) of this special condition must be determined by analysis, test, or both. Disbonds of each bonded joint greater than this must be prevented by design features.

(2) Proof testing must be conducted on each production article that will apply the critical limit design load to each critical bonded joint.

(i) The effects of material variability and environmental conditions; for example, exposure to temperature, humidity, erosion, ultraviolet radiation, and/or chemicals, on the strength and durability properties of the composite materials must be accounted for in the damage tolerance evaluations and in the residual strength tests.

(j) The airplane must be shown to be free from flutter with the extent of damage for which residual strength is demonstrated.

(k) For those structures where the damage tolerance method is shown to be impractical, the strength of such structures must be demonstrated by tests, or analysis supported by tests, to be able to withstand the repeated loads of variable magnitude expected in service. Sufficient component, subcomponent, element, or coupon tests must be performed to establish the fatigue scatter and environmental effects. Impact damage in composite material components that may occur must be considered in the demonstration. The impact damage level considered must be consistent with the detectability of the inspection procedures employed.

Issued in Kansas City, Missouri on August 28, 1992.

Joseph H. Snitkoff,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-21656 Filed 9-8-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 26955; Amdt. No. 1507]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated

at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC, on August 28, 1992.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revise Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective December 10, 1992

Nick Wilson Field, AR—Pocahontas, VOR RWY 36, Amdt. 6

Riverside, CA—Riverside Muni, VOR-B, Orig.

Marianna, FL—Marianna Muni, VOR-B, Amdt. 3

. . . Effective November 12, 1992

Kaunakakai, Molokai, HI—Molokai, VOR or TACAN-A, Amdt. 14

. . . Effective October 15, 1992

Phoenix, AZ—Phoenix Sky Harbor Intl, ILS RWY 26R, Orig.

Orlando, FL—Orlando Intl, RADAR-1, Amdt. 5

Atlanta, GA—Peachtree City-Falcon Field, LOC RWY 31, Orig.

Atlanta, GA—Peachtree City-Falcon Field, NDB RWY 31, Orig.

Peachtree City, GA—Falcon Field, VOR/DME-B, Amdt. 1, CANCELLED

Peachtree City, GA—Falcon Field, RNAV RWY 31, Amdt. 3, CANCELLED

Klye-Oakley Field, KY—Murray, NDB RWY 23, Amdt. 6

Las Vegas, NV—McCarran Intl, VOR/DME RWY 1R, Orig.

Gwinner-Roger Melroe Field, ND—Gwinner, NDB RWY 34, Orig.

Eagle Lake, TX—Eagle Lake, VOR RWY 17, Amdt. 3

Salt Lake City, UT—Salt Lake City Intl, ILS/DME RWY 16R, Amdt. 6

*** * * Effective September 17, 1992**

Detroit, MI—Detroit Metropolitan Wayne County, RADAR-1, Amdt. 22

Portsmouth, NH—Pease International Tradeport, VOR/DME or TACAN RWY 16, Orig., CANCELLED

Portsmouth, NH—Pease International Tradeport, VOR or TACAN RWY 16, Orig.

Portsmouth, NH—Pease International Tradeport, VOR/DME or TACAN RWY 34, Orig., CANCELLED

Portsmouth, NH—Pease International Tradeport, VOR or TACAN RWY 34, Orig.

Clermont County, OH—Batavia, NDB RWY 22, Orig.

Medford, OR—Medford-Jackson County, ILS/DME RWY 14, Amdt. 14

Erie, PA—Erie Intl, NDB RWY 6, Orig.

Dallas, TX—Dallas Love Field, ILS RWY 31L, Amdt. 17

[FR Doc. 92-21657 Filed 9-8-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 26956; Amtd. No. 1508]

Standard Instrument Approach Procedures: Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards

Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The Provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPs criteria were applied to only these specific conditions existing at the affected airports.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the US Standard for Terminal Instrument Approach Procedures (TERPs). Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore-(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC on August 28, 1992.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

NFDC TRANSMITTAL LETTER

Effective	State	City	Airport	FDC No.	SIAP
08/13/92	TN	Athens	McMinn County	FDC 2/4751	NDB Rwy 20 Amdt 5.
08/17/92	MA	Worcester	Worcester Muni	FDC 2/4799	NDB Rwy 11 Amdt 17.
08/17/92	MA	Worcester	Worcester Muni	FDC 2/4800	ILS Rwy 11 Amdt 18.
08/18/92	CT	Meriden	Meriden Markham Muni	FDC 2/4827	VOR Rwy 36 Amdt 2.
08/20/92	TX	Brownwood	Brownwood Muni	FDC 2/4895	VOR/DME Rwy 35 Amdt 1.
08/24/92	PA	Carlisle	Carlisle	FDC 2/5018	NDB Rwy 28 Amdt 1.
08/25/92	CA	San Francisco	San Francisco Intl	FDC 2/5021	LDA/DME Rwy 28R Orig.

Carlisle

Carlisle

Pennsylvania
NDB RWY 28 AMDT 1...
Effective: 08/24/92
FDC 2/5018/N94/ FI/P Carlisle, Carlisle, Pa. NDB Rwy 28 Amdt 1...Lancaster Initial—LRP VORTAC to latle distance should read 33.1NM. This becomes NDB Rwy 28 Amdt 1A.

Athens

McMinn County

Tennessee
NDB RWY 20 AMDT 5...
Effective: 08/13/92
FDC 2/4751/MMI/ FI/P McMinn County, Athens, Tn. NDB Rwy 20 Amdt 5...terminal route... gross Int to MMI NDB Min Alt 3100. This becomes NDB Rwy 20 Amdt 5A.

Brownwood

Brownwood Muni

Texas
VOR/DME RWY 35 AMDT 1...
Effective: 08/20/92
FDC 2/4895/BWD/ FI/P Brownwood Muni, Brownwood, Tx. VOR/DME Rwy 35 Amdt 1...terminal route... LLO Vortac (IAF) to zannf/BWD 22DME (NOPT) minimum alt 5000. This is VOR/DME Rwy 35 Amdt 1A.

NFDC Transmittal Letter Attachment

San Francisco

San Francisco Intl

California
LDA/DME RWY 28R ORIG...
Effective: 08/25/92
FDC 2/5021/SFO/ FI/P San Francisco Intl, San Francisco, Ca. LDA/DME RWY 28R Orig...add note...ILS Rwy 28R I-GWQ Freq 111.7. This Becomes LDA/DME Rwy 28R Orig-A.

Meriden

Meriden Markham Muni

Connecticut
VOR RWY 36 AMDT 2...
Effective: 08/18/92
FDC 2/4827/MMK/ FI/P Meriden Markham Muni, Meriden, Ct. VOR Rwy 36 Amdt 2...delete missed approach point DME, MAD R-345/13 DME in Profile view. This is VOR Rwy 36 Amdt 2A.

Worcester

Worcester Muni

Massachusetts
NDB RWY 11 AMDT 17...
Effective: 08/17/92
FDC 2/4799/ORH/ FI/P Worcester Muni, Worcester, Ma. NDB Rwy 11 Amdt 17...S-NDB-11 CAT A/B MDA 1780/HAT 799 RVR 4000, CAT C MDA 1780/HAT 799 VIS 1-3/4, CAT D MDA 1780/HAT 799 VIS 2-1/4. For inoperative MALSR increase CAT B S-11 TO RVR 6000. Circling CAT D MDA 2100/HAA 1092 VIS 3. This is NDB Rwy 11 Amdt 17A.

Worcester

Worcester Muni

Massachusetts
ILS RWY 11 AMDT 18...
Effective: 08/17/92
FDC 2/4800/ORH/ FI/P Worcester Muni, Worcester, Ma. ILS Rwy 11 Amdt 18...S-ILS-11 all cats DH 1231/HAT 250, VIS RVR 4000. INOPERATIVE TABLE DOES NOT APPLY. S-LOC-11 CAT A/B VIS RVR 4000. for inoperative MALSR increase S-LOC-11 to RVR 5000. Circling CAT D MDA 2100/HAA 1092 VIS 3. This is ILS Rwy-11 Amdt 18A.

[FR Doc. 92-21658 Filed 9-8-92; 8:45 am]

BILLING CODE 4910-13-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1214

Space Shuttle

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA is adopting 14 CFR part 1214, subpart 1214.9, "Use of Small Self-Contained Payloads," as a final rule. This rule revises the prices for standard launch support of Small Self-Contained Payloads (SSCP's) by adjusting previous prices to compensate for the impact of inflation from fiscal years 1975 through 1991. In addition, this rule clarifies and revises various other features of the previous policy: flight scheduling, provision of optional services, conditions upon which a reflight is provided, rules on transfer of reservation ownership, and rules on the apportionment, and assignment of SSCP services.

EFFECTIVE DATE: August 31, 1992.

FOR FURTHER INFORMATION CONTACT: Robert L. Tucker, Jr., 202-453-2347.

SUPPLEMENTARY INFORMATION: NASA published this rule in the **Federal Register** on September 18, 1991, as an interim final rule (56 FR 47146). Any comments from concerned parties were to be received by NASA Headquarters on or before October 18, 1991.

One letter was received regarding the revised rule. The letter was generally favorable, but did express concerns with the price increases. NASA's response reiterated its rationale for the decision to raise the prices as strictly one of an increase for the effects of inflation from 1975 to 1991. However, for domestic education purposes, NASA plans a new policy whereby domestic educational institutions will have an option to qualify for reduced prices subject to their agreement to certain conditions and their meeting certain criteria. This new policy will be separately published in the **Federal Register**. Questions on the new policy should be referred to the Education Division, Code FE, NASA Headquarters, Washington, DC 20546.

Since no significant changes were made to this regulation, the interim final rule amending 14 CFR part 1214, subpart 1214.9, which was published at 56 FR 47146 on September 18, 1991, is adopted as a final rule without change.

Dated: August 31, 1992.

Daniel S. Goldin,

Administrator.

[FR Doc. 92-21588 Filed 9-8-92; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF STATE

Bureau of Politico-Military Affairs

22 CFR Part 121

[Public Notice 1690]

Amendment to the International Traffic in Arms Regulations (ITAR)

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule is the result of a notice of proposed rulemaking published in the **Federal Register**, 57 FR 1886, January 16, 1992. It amends the regulations implementing section 38 of the Arms Export Control Act, which governs the export of defense articles and defense services. Specifically, this rule moves military Global Positioning System (GPS) receivers into Category XV, which covers spacecraft and related equipment, from Category XI (a)(2), which covers military electronics equipment, where military GPS receivers were previously controlled. This rule reduces the burden on exporters by identifying the specific parameters for a GPS receiver that justify its control as a defense article. Any GPS receiver not meeting these parameters is deemed to be predominantly commercial rather than military in nature and subject to the export licensing controls of the U.S. Department of Commerce. The Department of Commerce has long

controlled exports of "commercial GPS receivers" while the Department of State controlled "military GPS receivers"; however, no attempt had previously been made to differentiate between the two. The Department of Commerce will soon be amending the Commerce Control List (CCL) to reflect this clarification.

EFFECTIVE DATE: September 9, 1992.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Peoples, Office of Defense Trade Controls, Department of State, tel. 703-875-6619.

SUPPLEMENTARY INFORMATION: On November 16, 1990, the President signed Executive Order 12735 on Chemical and Biological Weapons Proliferation and directed various other export control measures. The measure directed by the President included removal from the USML of all items contained on the COCOM dual-use list (also known as the "CORE" list) unless significant U.S. national security interests would be jeopardized.

In implementing this directive, the Department headed an interagency working group which reviewed coverage of spacecraft and related components. Chaired by the Department of State, the Space Technical Working Group (STWG) is comprised of representatives of the Departments of State, Commerce, Defense, and other executive agencies. The group was established to identify and recommend removal from the USML of commercial satellites and related articles covered by the COCOM Industrial List (IL) except where such movement would jeopardize U.S. national security interests. On September 5, 1991, the Department published a notice of advanced rulemaking, establishing a new Category XV on the USML for spacecraft and related systems, including military GPS receivers (56 FR 43894). A final rule formally creating Category XV for Spacecraft Systems and Associated Equipment was published in the **Federal Register**, 57 FR 15227, April 27, 1992.

On January 16, 1992, the Department published a proposed rule on military GPS receivers (57 FR 1886). This final rule derives from the January 16 proposed rule and marks the first actual movement from another category in the USML of a defense article into Category XV. Additional **Federal Register** Notices will follow as the working group completes its review, moving articles from the USML to Cateogry XV or to the CCL, as appropriate.

Three responses were received during the 30-day public comment period for the January 16, 1992, proposed rule, raising three major comments on the proposed language. Regarding industry's remarks, the working group is unable to comply with some of the requests, because the parameters contained in the proposed rule derive from commitments made by the United States Government under the multilateral Missile Technology Control Regime (MTCR) and are specifically cited in the Guidelines to that regime. In addition, any GPS receivers specifically designed for capabilities such as those outlined in the parameters are intended primarily for military, rather than commercial, end-use and should properly be controlled under the U.S. Munitions List.

As for other industry concerns, it should be noted that the Department of Commerce intends to publish a **Federal Register** Notice advising industry of this change and modifying the CCL as appropriate. Accordingly, the advisory notice published herein is intended to assist both U.S. industry and its foreign customers by providing the U.S. Government's parameters for military GPS receivers which are controlled on the USML. The "notice" as published at the end of this paragraph is an advisory notice and is not regulatorily binding.

This final rule creates a new paragraph (c) in Category XV for GPS receivers. Because GPS receivers are not themselves complete satellites, it was more appropriate to control them in a separate paragraph instead of within a paragraph controlling complete satellites, as was the case in the proposed rule. Except for moving them into their own separate paragraph, the actual language controlling GPS receivers in Category XV has not been changed from the language of the January 16 proposed rule. Note, however, that the language of paragraph (d) on components, parts, etc., and paragraph (e) on technical data and defense services will change when complete spacecraft are added to Category XV. (See the proposed rule published in the **Federal Register**, 57 FR 14671, April, 22, 1992.

List of Subjects in 22 CFR Part 121

Arms and munitions, Classified information, Exports.

Accordingly, for the reasons set forth above, title 22, chapter I, subchapter M (consisting of parts 120 through 130) of the Code of Federal Regulations is amended as set forth below:

PART 121—THE UNITED STATES MUNITIONS LIST

1. The authority citation or part 121 continues to read as follows:

Authority: Sec. 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

2. In section 121.1, Category XV is added to read as follows:

§ 121.1 General. The United States Munitions List.

* * * * *

Category XV—Spacecraft Systems and Associated Equipment

(a) [Reserved]

(b) [Reserved]

(c) Global Positioning System (GPS) receiving equipment specially designed, modified or configured for military use; or GPS receiving equipment with any of the following characteristics:

(1) Designed for encryption or decryption (e.g.: Y-Code) of GPS precise positioning service (PPS) signals;

(2) Designed for producing navigation results above 60,000 feet altitude and at 1,000 knots velocity or greater;

(3) Specifically designed or modified for use with a null steering antenna or including a null steering antenna designed to reduce or avoid jamming signals;

(4) Designed or modified for use with unmanned air vehicle systems capable for delivering at least a 500 kg payload to a range of at least 300 km.

Note: GSP receivers designed or modified for use with military unmanned air vehicle systems with less capability are considered to be specifically designed, modified, or configured for military use and therefore covered under this paragraph (c).

Note: Any GPS equipment not meeting this definition is subject to the jurisdiction of the Department of Commerce (DOC). Manufacturers or exporters of equipment under DOC jurisdiction are advised that the U.S. Government does not assure the availability of the GPS P-Code for civil navigation. It is the policy of the Department of Defense (DOD) that GPS receivers using P-Code without clarification as to whether or not those receivers were designed or modified to use Y-Code will be presumed to be Y-Code capable and covered under this paragraph (c). The DOD policy further requires that a notice be attached to all P-Code receivers presented for export. The notice must state the following:

Advisory Notice: This receiver uses the GPS P-Code signal, which by U.S. policy may be switched off without notice.

(d) Components, parts, accessories, attachments, and associated equipment specifically designed, modified, or configured for the articles in paragraph (c) if this category.

(e) Technical data (as defined in § 120.21) and defense services (as defined in § 120.8) related to the defense

articles listed in paragraphs (c) and (d) of this category. (See § 125.4 for exemptions.) Technical data directly related to manufacture and production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated as SME.

Dated: August 24, 1992.

Frank G. Wisner,

Under Secretary of State for International Security Affairs.

[FR Doc. 92-21495 Filed 9-8-92; 8:45 am]

BILLING CODE 4710-25-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1 and 602

[T.D. 8434]

RIN 1545-AM16

Treatment of Dual Consolidated Losses

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations implementing section 1503(d) of the Internal Revenue Code of 1986. Section 1503(d) was added to the Code by section 1249 of the Tax Reform Act of 1986 (Pub. L. 99-514) and was amended by section 1012(u) of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100-647). Section 1503(d) generally provides that a dual consolidated loss of a dual resident corporation may not be used to offset the taxable income of any domestic corporate affiliate. These regulations provide guidance needed to comply with section 1503(d) and generally affect domestic corporations that are subject to an income tax of a foreign country on their worldwide income or on a residence basis.

EFFECTIVE DATE: These regulations are effective for taxable years commencing on or after October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Sim Seu of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CC:CORP:T:R (INTL-0399-88) (202-622-3840, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545-1083. The estimated annual burden per respondent/recordkeeper varies from 0.5 to 1 hour, with an estimated average of .75 hour.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents/recordkeepers may require greater or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attn: IRS Reports Clearance Officer T:FP, Washington, D.C. 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

On September 8, 1989, proposed and temporary regulations implementing section 1503(d) were published in the **Federal Register** at 54 FR 37314. Written comments were received in response to the proposed regulations and a public hearing was held on March 2, 1990. After consideration of all the comments, these final regulations are adopted by this Treasury Decision. The revisions made in the final regulations and relevant comments are discussed below.

Explanation of Provisions

Section 1503(d)

Section 1503(d) generally provides that a "dual consolidated loss" of a domestic corporation cannot offset the taxable income of any other member of the corporation's affiliated group. The statute generally defines a dual consolidated loss as a net operating loss of any domestic corporation that is subject to an income tax of a foreign country without regard to the source of its income or on a residence basis (a "dual resident corporation"). The statute authorizes the issuance of regulations permitting the use of a dual consolidated loss to offset the income of a domestic affiliate if the loss does not offset the income of a foreign corporation under foreign law.

Section 1503(d) further states that, to the extent provided in regulations, similar rules shall apply to any loss of a "separate unit" of a domestic corporation as if such unit where a wholly-owned subsidiary of the corporation. Although the statute does not define the term separate unit, the legislative history to the provision refers to the loss of any "separate and clearly identifiable unit of a trade or business of a taxpayer" and cites as an example a foreign branch of a domestic corporation. See H.R. Rep. No. 795, 100th Cong., 2d Sess. July 26, 1988) at 293.

Section 1503(d) was enacted to prevent a single economic loss from being used to reduce tax on two separate items of income—one of which is subject to current tax in a foreign country but not in the United States and the other of which is taxed in the United States but not in the foreign jurisdiction. Through such "double dipping," worldwide economic income can be rendered partially or fully exempt from current taxation. Moreover, even if the foreign income against which the loss is used will eventually be subject to U.S. tax (upon a repatriation of earnings), there are timing benefits of double dipping that the statute was intended to prevent.

The Temporary Regulations

The temporary regulations apply substantially different rules to dual resident corporations and most separate units. (The temporary regulations, previously designated as § 1.1503-2T, have been redesignated by this Treasury Decision as § 1.1503-2A).

1. Rules Governing Dual Resident Corporations

The temporary regulations provide that, unless one of three exceptions applies, a dual consolidated loss of a dual resident corporation cannot offset the income of any other member of the dual resident corporation's affiliated group. Specifically, the dual consolidated loss shall be treated as a loss incurred in a separate return limitation year (SRLY) within the meaning of § 1.1502-21(c).

The first exception to this loss limitation rule is set forth in § 1.1503-2A(c)(1). To qualify, two conditions must be satisfied. First, the dual resident corporation must have been in "stand alone" status since December 31, 1986 (or single engaging in a pre-1991 "qualified restructuring"). This means that, at no time since December 31, 1986, have the laws of a foreign country permitted the losses, expenses, or deductions of the dual resident

corporation to be used currently to offset the income of another person (*e.g.*, under a consolidated return provision). Second, at no time since December 31, 1986, can the laws of a foreign country have permitted the losses, expenses, or deductions of the dual resident corporation to be carried forward or back to offset the income of another person (*e.g.*, pursuant to a reorganization). Because almost all countries provide for loss carryovers in at least some circumstances, this exception rarely is applicable.

The second exception to the loss limitation rule is set forth in § 1.1503–2A(c)(2). It applies if the dual resident corporation elects to deduct the loss in the United States pursuant to an agreement entered into between the United States and a foreign country that puts into place an elective procedure through which losses offset income in only one of the countries. At the time of publication of these regulations, there are not such agreements in force.

The third exception to the loss limitation rule is set forth in § 1.1503–2A(c)(3). It provides relief for dual resident corporations that satisfy the stand alone requirement, but fail to satisfy the carryover requirement, under the first exception. To qualify for this exception, the U.S. consolidated group must enter into an agreement (a so-called "(c)(3) agreement") pursuant to which, for a 15 year period following the taxable year in which the dual consolidated loss is incurred, the consolidated group is required to file with its income tax return (i) an annual certification that the dual resident corporation continues to be in stand alone status, and (ii) a waiver of the statute of limitations with respect to the dual consolidated loss. If at any time during the 15 year period a "triggering event" occurs, the consolidated group must amend its tax return for the year which the dual consolidated loss was incurred (and for all other affected years), treating the dual consolidated loss as a SRLY loss. Triggering events include (i) a failure of the dual resident corporation to be in stand alone status; (ii) the dual resident corporation's ceasing to be a member of the consolidated group; and (iii) a failure of the group to file an annual certification or waiver of the statute of limitations.

2. Rules Governing Separate Units

Under the temporary regulations, a separate unit owned by a domestic corporation is generally treated as if it were a wholly-owned subsidiary of the domestic corporation. However, eligibility for relief from the loss limitation rule in the case of a separate unit differs depending on whether the unit is governed by the provisions of § 1.1503–2A(d)(1) or § 1.1503–2A(d)(2). A "(d)(1)" unit generally consists of an interest in a hybrid entity that is classified as a partnership for U.S. purposes but is taxed as a corporation under foreign law. A hybrid unit must qualify for one of the three exceptions discussed above, applicable to dual resident corporations, to obtain relief from the loss limitation rule.

All other types of separate units are classified as "(d)(2)" units. Less restrictive rules apply to such units. Most importantly, a (d)(2) unit need not be in stand alone position to qualify for relief from the SRLY limitation. Rather, in the year that the loss is recognized, the domestic owner of the separate unit simply must file a certification that the loss has not been actually used to offset income of a foreign person and will not been so used in the future. The domestic owner is not required to file subsequent annual certifications or a waiver of the statue of limitations with regard to the loss.

If, after certification, the (d)(2) unit's loss is actually used to offset income of a foreign person, the domestic owner must recapture the loss as income in the year of such foreign use. In addition, the domestic owner must pay interest, computed as if the tax on the recaptured amount accrued in the year that the loss reduced the tax liability of the domestic owner or consolidated group.

Comments on Temporary Regulations

Commentators generally have criticized the temporary regulations as being unnecessarily restrictive. In particular, they have contended that the application of a stand alone requirement to dual resident corporations is inconsistent with Congressional intent and that a SRLY limitation should apply only if a dual consolidated loss is actually used to offset income of another person for foreign tax purposes. Commentators have also argued that the conditions for obtaining relief through a (c)(3) agreement are excessively burdensome, including the requirement that the statute of limitations be waived for 15 years and the requirement that taxpayers amend their returns if a triggering event occurs.

In response to such comments, the final regulations contain a more narrowly targeted application of the loss limitation rule. In particular, the stand alone requirement has been eliminated as a prerequisite for obtaining relief. The regulations instead apply an actual use standard to both dual resident corporations and separate units. If a triggering event occurs, the dual consolidated loss must be recaptured in the year of the triggering event, subject to an interest charge. Amended returns need not be filed.

The Final Regulations

1. *Limitation on the Use of a Dual Consolidated Loss*

Section 1.1503–2 (b) retains the general rule that a dual consolidated loss of a dual resident corporation is not available to offset the income of any other member of the corporation's consolidated group. The same limitation applies to a dual consolidated loss of a separate unit of a domestic corporation as if the separate unit were a wholly-owned subsidiary of such corporation.

The final regulations also provide that a dual consolidated loss of a dual resident corporation cannot be used to offset the income of another corporation by means of a transaction in which the other corporation succeeds to the tax attributes of the dual resident corporation under section 381 of the Code. Similarly, a dual consolidated loss of a separate unit of a domestic corporation cannot be used to offset income of the corporation following the termination, liquidation, sale or other disposition of the separate unit.

However, in contrast to the temporary regulations, the final regulations provide that, if a dual resident corporation transfers its assets to another corporation in a transaction subject to section 381, and the acquiring corporation is a dual resident corporation of the same foreign country of which the transferor dual resident corporation is a resident or a domestic corporation that carries on the business activities of the transferor dual resident corporation as a separate unit, then income generated by the transferee dual resident corporation, or separate unit, may be offset by the carryover losses of the transferor dual resident corporation. In addition, if a domestic corporation transfers a separate unit to another domestic corporation in a transaction subject to section 381, then the income generated by the separate unit following the transfer may be offset by the carryover losses of the separate unit.

2. Definitions

Section 1.1503–2 (c) defines terms used in the final regulations, including the following.

a. *Dual resident corporation.* The definition of "dual resident corporation" has been modified in the final regulations to conform to the language of the statute. Thus, the regulations define a dual resident corporation as a

domestic corporation that is subject to the income tax of a foreign country on its worldwide income or on a residence basis. An "S corporation" is not treated as a dual resident corporation because it cannot have a domestic corporation as one of its shareholders.

Many commentators have criticized the application of the dual consolidated loss regulations to section 1504(d) corporations, stating that the statute was not intended to apply to such corporations. The final regulations, however, continue to treat section 1504(d) corporations as dual resident corporations because the language of the statute and legislative history do not support an exclusion for such corporations.

b. *Dual consolidated loss.* Commentators have suggested that the definition of "dual consolidated loss" in the temporary regulations be amended to exclude any item of loss, expense, or deduction that cannot be used to offset the income of a foreign person. Such an item-by-item analysis has not been adopted in the final regulations because of the administrative complexity of such an approach and because the statutory language and legislative history reflect an intent to disallow a dual resident corporation's entire net operating loss, not specific components thereof. For the same reasons, the Service has not adopted the suggestion that the disallowance or recapture of a dual consolidated loss be limited to the portion of the loss that is actually used to offset income of another person for foreign tax purposes.

c. *Separate unit.* Commentators have argued that branches should not be treated as separate units unless, under the laws of a foreign country, the branch is taxed on its worldwide income or on a residence basis, regardless of the source of its income. The potential for "double dipping" of losses, however, is not limited to such cases and the legislative history to the statute does not evidence an intent that the regulations be applied so narrowly. This suggestion, therefore, has not been adopted.

"Commentators have also argued that the treatment of partnership interests a separate units should be limited in the final regulations. Commentators do not question the application of the regulations to partnership interests that are defined as "(d)(1)" units under the temporary regulations (*i.e.*, an interest in an entity that is characterized as a partnership for federal income tax purposes but is taxed as a corporation under foreign law), in cases where the entity can file, under foreign tax law, a form of consolidated return with a foreign affiliate. Such a partnership interest is defined as a "hybrid entity separate unit" under the final regulations. Commentators, however, have suggested that, apart from such a case, the regulations should not apply to partnership interests on the general ground that a loss of a pass-through entity cannot be used twice.

The final regulations have not been limited in this manner because the potential for abusive double dipping exists with respect to interests in ordinary partnerships, as well as interests in hybrid entities. The Service is considering including within the definition of a dual consolidated loss items of partnership loss in at least two circumstances where, because of a special allocation, the loss is used to offset one stream of income for U.S. tax purposes and a separate stream of income for foreign tax purposes. The first case involves a special allocation, under an ordinary partnership, of a single item of loss to a domestic partner for U.S. tax purposes and to a foreign partner for foreign tax purposes. The second situation involves a loss allocation to a domestic partner of a hybrid entity for U.S. tax purposes in a case where there are no affiliates with which the entity can consolidate under foreign law but where the loss represents a special allocation that is disproportionate to the partner's income allocations.

The final regulations reserve a paragraph that will address the treatment of such loss allocations. The Service solicits comments on how the regulations should apply in such cases, including comments on appropriate ways of limiting the application of the regulations so as not to affect adversely the use of special allocations for legitimate business or investment purposes. Comments should be directed to the Commissioner of Internal Revenue, Attention: CC:CORP:T:R (INTL-0037-92), Washington, DC 20224.

Several commentators have requested that section 1503(d) be applied to separate units prospectively, as of the date the temporary regulations were published, rather than retroactively, as of the general effective date of the statute. Although the final regulations generally are effective for taxable years commencing on or after October 1, 1992, the effective date of the temporary regulations has not been modified in response to this suggestion. This is because the 1988 amendment to section 1503(d) pertaining to separate units was made applicable to net operating losses occurring in taxable years commencing after December 31, 1986.

d. *Actual use.* Section 1.1503-2(c)(15) of the final regulations describes events that will be considered a use of a dual consolidated loss to offset the income of another person under the laws of a foreign country. These new rules are necessary to implement an "actual use" standard.

The final regulations, in contrast to the temporary regulations, provide that the use of the losses, expenses, or deductions of a dual resident corporation or separate unit under the laws of a foreign country to offset the income of another dual resident corporation or separate unit within the same consolidated group (or another separate unit owned by the unaffiliated domestic owner of the first separate unit) is not considered a use of the losses, expenses, or deductions to offset the income of another person under the laws of a foreign country for purposes of the regulations. Such use of a dual consolidated loss does not result in double dipping because the income of the other dual resident corporation or separate unit is subject to current U.S. taxation. The regulations provide an ordering rule that applies in the absence of applicable rules under foreign law, under which the losses, expenses, or deductions of the dual resident corporation or separate unit shall be deemed to offset the income of such other dual resident corporation or separate unit before being considered to offset the income of other persons.

In addition, the final regulations retain the "mirror legislation" provision under which, if a foreign country prohibits a loss of a dual resident corporation from offsetting the income of another person because the dual resident corporation is subject to income taxation by another country on its worldwide income or on a resident basis, the loss shall be deemed to offset the income of another person for foreign purposes.

3. Accounting for Dual Consolidated Losses

a. *Calculation of dual consolidated loss.* Commentators have noted that the calculation of a dual consolidated loss under the temporary regulations could result in the inclusion of a dual resident corporation's capital losses as part of its dual consolidated loss, which is inconsistent with legislative intent. Such a result is unintended. Therefore, the final regulations provide that a dual consolidated loss shall be computed by taking into account a dual resident corporation's items of income, gain, loss, and deduction for the taxable year, other than any net capital loss incurred by the dual resident corporation, or any carryover or carryback losses. If the dual resident corporation has a net

capital loss for the year, the loss shall be included in the computation of the consolidated group's net capital gain (or loss).

Commentators have also noted that the non-application of the deferral or elimination rules of § 1.1502–13 (b)(2) or (c) and § 1.1502–14 under the temporary regulations results in a mismatching of intercompany items. Addressing these concerns, the final regulations do not override the application of § § 1.1502–13 and 1.1502–14 or the provisions of sections 267 and 163(e)(3).

b. *Basis adjustments.* Commentators have criticized the basis adjustment rules of the temporary regulations, stating that the disallowance of a positive basis adjustment for the amount of unabsorbed dual consolidated loss results in a double penalty to the taxpayer and is contrary to the principles of § 1.1502–32(b). The final regulations, however, retain the basis adjustment rules because the application of § 1.1502–32(b), without modification, could result in an indirect deduction of a dual consolidated loss.

4. Tainted Assets

Section 1.1503–2(e) retains the tainted asset provision of the temporary regulations. However, in response to comments that the tainted asset rules, as contained in the temporary regulations, are overbroad, the final regulations incorporate the following modifications. First, the exceptions to the definition of a tainted asset have been broadened to cover assets contributed after the corporation ceases to be a dual resident corporation, as well as assets contributed prior to such date. Second, the exceptions to the definition of a tainted asset have been expanded to include (i) assets contributed in a year in which the corporation did not incur a dual consolidated loss (or have a carryover of a dual consolidated loss) and (ii) assets acquired as replacement property in the ordinary course of business. The final regulations also contain a rule for determining the amount of income attributable to tainted assets.

5. Computation of Foreign Tax Credit Limitation

The final regulations clarify that, if the loss limitation rule applies to a dual consolidated loss of a dual resident corporation or separate unit, the loss shall be disregarded for purposes of computing the consolidated groups or unaffiliated domestic owner's foreign tax credit limitation. The dual consolidated loss shall be taken into account for foreign tax credit limitation purposes in the year in which it is absorbed.

6. Exceptions

a. *Overview.* The final regulations substantially modify the provisions for obtaining relief from the loss limitation rule. In contrast to the temporary regulations, the final regulations contain a uniform set of rules applicable to both dual resident corporations and separate units. The final regulations retain the exception to the loss limitation rule set forth in paragraph (c)(2) of the temporary regulations, applicable in a case where the Untied States has entered into an agreement with a foreign country that provides the taxpayer with an election to use the dual consolidated loss in one country. In addition, the final regulations have incorporated as a qualification to the definition of a dual consolidated loss the exception contained in paragraph (c)(1) of the temporary regulations, applicable in a case where the laws of a foreign country do not permit a dual consolidated loss to offset the income of another person either in the taxable year in which the loss is incurred or in a carryover year.

The final regulations, however, have eliminated the exception contained in paragraph (c)(3) of the temporary regulations, applicable in a case where the dual resident corporation is in stand alone status but the laws of the foreign country permit a carryover of losses. In place of this exception, § 1.1503–2(g)(2) of the final regulations permits a taxpayer to elect to use a dual consolidated loss of a dual resident corporation or separate unit by entering into an agreement under which the taxpayer certifies that the dual consolidated loss has not been, and will not be, used to offset the income of another person under the laws of a foreign country. The requirements of this election are similar to, but in important ways different from, the certification provisions applicable to separate units under paragraph (d)(2) of the temporary regulations. The following is a summary of these requirements.

b. *Consistency rule.* Section 1.1503–2(g)(2)(ii) of the final regulations contains a new consistency rule. Under the rule, if any losses, expenses, or deductions taken into account in computing the dual consolidated loss of a dual resident corporation or separate unit are used to offset the income of another person under the laws of a foreign country, the losses, expenses, or deductions taken into account in computing the dual consolidated losses of other dual resident corporations or separate units within the same consolidated group (or other separate units owned by the unaffiliated domestic owner of the first separate unit) shall be deemed to offset income of another person in the foreign country if such losses, expenses, or deductions are recognized in the foreign country in the same taxable year. This rule, however, shall not apply if, under foreign law, the other dual resident corporation or separate unit cannot use its losses, expenses, or deductions to offset income of another person in such taxable year. The purpose of this rule is to ensure that a consolidated group applies consistent treatment to all dual consolidated losses that are available for use in a foreign country in a given year.

c. *Triggering events.* Section 1.1503–2(g)(2)(iii) of the final regulations provides that, in the year of a triggering event, the taxpayer must recapture and report as gross income the amount of dual consolidated loss computed under § 1.1503–2 (g)(2)(vii). The triggering events under the final regulations differ somewhat from those contained in the temporary regulations. The primary triggering event under the regulations is the use of any portion of the losses, expenses, or deductions that make up the dual consolidated loss to offset the income of another person under the laws of a foreign country in any taxable year up to and including the 15th taxable year following the year in which the dual consolidated loss was incurred.

With respect to other triggering events, an effort has been made to target more closely than under the temporary regulations transactions that either increase the likelihood that the dual consolidated loss will be used to offset the income of another person for foreign tax purposes or increase the difficulty of monitoring such foreign use. The triggering events are as follows: (1) A dual resident corporation or domestic owner of a separate unit ceases to be a member of the consolidated group that filed the agreement at a time when there is a continuing ability to use the dual consolidated loss to offset income of another person for foreign tax purposes; (2) an unaffiliated dual resident corporation or unaffiliated domestic owner of a separate unit becomes a member of a new consolidated group; (3) a dual resident corporation or separate unit transfers its assets in a transaction that results, under the laws of a foreign country, in a carryover of the losses, expenses, or deductions that make up the dual consolidated loss to the transferee of the assets; (4) a domestic owner of a separate unit disposes of 50% or more of its interest in the separate unit at a time when there is a continuing ability to use the dual consolidated loss

to offset income of another person for foreign tax purposes; (5) an unaffiliated dual resident corporation or unaffiliated domestic owner of a separate unit becomes a foreign corporation in a transaction that, for foreign tax purposes, is not treated as involving a transfer of assets to a new entity; and (6) the taxpayer fails to file an annual certification required under § 1.1503–2(g)(2)(vi).

The final regulations provide an exception to these triggering events in cases where the dual resident corporation or separate unit, or its assets, is acquired by another member of the dual resident corporation's or separate unit's consolidated group. In addition, subject to certain conditions, transactions in which the dual resident corporation or domestic owner of a separate unit becomes disaffiliated from its consolidated group, or in which an unaffiliated domestic corporation or new consolidated group acquires the dual resident corporation or separate unit, or its assets, shall not constitute triggering events.

d. *Ordering rules.* Section 1.1503–2(g)(2)(iv) of the final regulations provides general rules for determining whether a dual resident corporation's losses are used to offset the income of another person for foreign tax purposes in cases where the laws of the foreign country do not provide rules sufficient to make this determination.

e. *Reporting requirements.* It is anticipated that questions pertaining to dual consolidated losses will be added to Form 1120 (or the Schedules thereto). In general, these questions will monitor the occurrence of triggering events.

Until these questions are added to the income tax return, dual resident corporations and domestic owners of hybrid entity separate units will be required to file annual certifications in accordance with the provisions of § 1.1503–2(g)(2)(vi), for the 15 year period following the year in which the dual consolidated loss has been incurred. The annual certification must warrant that the dual consolidated loss has not been used to offset the income of another person under foreign law. Owners of separate units other than hybrid entities will not be required to file such annual certifications but must answer the applicable questions on Form 1120.

f. *Recapture rules.* Section 1.1503–2(g)(2)(vii) of the final regulations adopts the recapture and interest charge provisions of the temporary regulations applicable to separate units, with important modifications. Thus, upon a triggering event, a taxpayer is not required to amend its income tax return for the year in which the dual consolidated loss was incurred, reporting the dual consolidated loss as a loss subject to the SRLY limitation. However, the Service recognizes that the amended return procedure of the temporary regulations permits dual consolidated losses to be used, on a SRLY basis, to offset subsequently earned income of the dual resident corporation. Therefore, the final regulations adopt recapture provisions intended to put the taxpayer in approximately the same tax position it would have been in had it filed an amended return upon a triggering event, without imposing on the taxpayer the burden of actually filing an amended return.

First, § 1.1503–2(g)(2)(vii)(A) contains a rule under which the recapture amount is presumed to equal the total amount of the dual consolidated loss. Upon a triggering event, the taxpayer is required to recapture this amount as income on its tax return for the year in which the triggering event occurs. In addition, § 1.1503–2(g)(2)(vii)(A)(*2*) requires the taxpayer to pay an interest charge on the additional amount of tax owed as a result of the recapture, computed as if the tax had accrued and been due and owing for the taxable year in which the losses, expenses, or deductions that make up the dual consolidated loss were used to offset the income of a domestic affiliate (or in the case of a separate unit, income not attributable to the separate unit).

Section 1.1503–2(g)(2)(vii)(B) provides rules under which the taxpayer may rebut the presumptive amount of recapture. The taxpayer may reduce the amount of recapture if the taxpayer demonstrates, to the satisfaction of the Commissioner, that the dual consolidated loss would have been absorbed by subsequently earned income of the dual resident corporation had the dual consolidated loss been treated as a net operating loss subject to the limitation of § 1.1503–2(b) (and therefore had been treated as a SRLY loss for the taxable year in which it was incurred and for all subsequent years up to and including the year of recapture). Under this rule, if the triggering event also results in loss recapture under section 367(a)(3)(C) or section 904(f), the income recognized under those sections could reduce the amount of recapture. Under § 1.1503–2(g)(2)(vii)(D), recapture income is treated as ordinary income having the same source and falling within the same separate category under section 904 as the dual consolidated loss being recaptured.

Section 1.1503–2(g)(2)(vii)(C) provides that, once the recapture amount has been determined, the taxpayer generally may not compute its taxable income by offsetting the recapture amount with any current, carryover or carryback losses. However, the taxpayer may compute its taxable income for the year of recapture by offsetting the amount of recapture with any net operating loss carryover attributable to the dual consolidated loss being recaptured.

Section 1.1503–2(g)(2)(vii)(B)(*2*) provides that the taxpayer may reduce the interest charge by demonstrating, to the satisfaction of the Commissioner, that the net interest owed would have been less than that provided in § 1.1503–2(g)(2)(vii)(A)(*2*) had the taxpayer filed an amended return treating the dual consolidated loss as a loss subject to the limitation of § 1.1503–2(b) (and therefore as a SRLY loss for the year in which the loss was incurred and for all subsequent years up to and including the year of recapture).

Commentators have argued that an interest charge should not be imposed upon a triggering event since the tax on the recapture amount is not owed until the year of the triggering event. The statute, however, disallows the use of dual consolidated losses to offset the income of a domestic affiliate. It is only by electing to use a relief provision provided in the regulations that a taxpayer can use a dual consolidated loss to offset an affiliate's income. Thus, imposing an interest charge is appropriate because it most closely approximates the results that would occur if the taxpayer were required to file an amended return, treating the recaptured loss as a SRLY loss in the year it was incurred.

In order to approximate the results of filing an amended return further, § 1.1503–2(g)(2)(vii)(E) provides that, commencing in the taxable year following the year of recapture, the taxpayer shall be deemed to have a net operating loss subject to the limitation of § 1.1503–2(b) in an amount equal to the recapture amount. This loss may be utilized only on a carryforward basis. The allowable carryover period shall be determined by treating the loss as if it had been recognized in the taxable year in which the dual consolidated loss that is the basis of the recapture was incurred.

Section 1.1503–2(g)(2)(vii)(F) provides generally that, if a taxpayer fails to comply with the recapture provisions of paragraph (g)(2)(vii) upon the occurrence of a triggering event, the dual resident corporation or separate unit cannot elect to use the relief provision of § 1.1503–2(g)(2) for any dual consolidated loss incurred in the five

taxable years beginning with the year in which the recapture is required.

7. Effective Date

Section 1.1503-2(h) provides that the final regulations are effective for taxable years commencing on or after October 1, 1992. The temporary regulations have been finalized as § 1.1503-2A and apply to taxable years commencing after December 31, 1986, but before October 1, 1992. Eligible taxpayers, however, may elect to replace agreements filed under § 1.1503-2A(c)(3) or certifications filed under § 1.1503-2A(d)(3) of the temporary regulations with an agreement described in § 1.1503-2(g)(2) of the final regulations. In addition, taxpayers that are in compliance with the temporary regulations but have not filed for relief under § 1.1503-2A may elect to apply the provisions of § 1.1503-2 retroactively to dual consolidated losses incurred in all open years. If the taxpayer is a consolidated group, the election to replace existing agreements or certifications, or to otherwise apply the final regulations retroactively, must be made with respect to all dual resident corporations or separate units within the consolidated group. Likewise, if the taxpayer is an unaffiliated domestic owner, the election must be made with respect to all separate units of the domestic owner. In the case of any taxpayer, the election must be made with respect to all dual consolidated losses for all open years.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 6) does not apply to these regulations, and therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

List of Subjects

26 CFR §§ 1.1501-1 through 1.1564-1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAX, TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

Par. 2. § 1.1503-2 is added to read as follows:

§ 1.1503-2 Dual consolidated loss.

(a) *Purpose and scope.* This section provides rules for the application of section 1503(d), concerning the determination and use of dual consolidated losses. Paragraph (b) of this section provides a general rule prohibiting a dual consolidated loss from offsetting the taxable income of a domestic affiliate. Paragraph (c) of this section provides definitions of the terms used in this section. Paragraph (d) of this section provides rules for calculating the amount of a dual consolidated loss and for adjusting the basis of stock of a dual resident corporation. Paragraph (e) of this section contains an anti-avoidance provision. Paragraph (f) of this section applies the rules of paragraph (d) of this section to the computation of foreign tax credit limitations. Paragraph (g) of this section provides certain exceptions to the limitation rule of paragraph (b) of this section. Finally, paragraph (h) of this section provides the effective date of the regulations and a provision for the retroactive application of the regulations to qualifying taxpayers.

(b) *In general*—(1) *Limitation on the use of a dual consolidated loss to offset income of a domestic affiliate.* Except as otherwise provided in this section, a dual consolidated loss of a dual resident corporation cannot offset the taxable income of any domestic affiliate in the taxable year in which the loss is recognized or in any other taxable year, regardless of whether the loss offsets income of another person under the income tax laws of a foreign country and regardless of whether the income that the loss may offset in the foreign country is, has been, or will be subject to tax in the United States. Pursuant to paragraph (c) (1) and (2) of this section, the same limitation shall apply to a dual consolidated loss of a separate unit of a domestic corporation as if the separate unit were a wholly owned subsidiary of such corporation.

(2) *Limitation on the use of a dual consolidated loss to offset income of a successor-in-interest.* A dual consolidated loss of a dual resident corporation also cannot be used to offset the taxable income of another corporation by means of a transaction in which the other corporation succeeds to the tax attributes of the dual resident corporation under section 381 of the Code. Similarly, a dual consolidated loss of a separate unit of a domestic corporation cannot be used to offset income of the domestic corporation following the termination, liquidation, sale, or other disposition of the separate unit. However, if a dual resident corporation transfers its assets to another corporation in a transaction subject to section 381, and the acquiring corporation is a dual resident corporation of the same foreign country of which the transferor dual resident corporation is a resident, or a domestic corporation that carries on the business activities of the transferor dual resident corporation as a separate unit, then income generated by the transferee dual resident corporation, or separate unit, may be offset by the carryover losses of the transferor dual resident corporation. In addition, if a domestic corporation transfers a separate unit to another domestic corporation in a transaction subject to section 381, the income generated by the separate unit following the transfer may be offset by the carryover losses of the separate unit.

(3) *Application of rules to multiple tiers of separate units.* If a separate unit of a domestic corporation is owned indirectly through another separate unit, the principles of paragraph (b) (1) and (2) of this section shall apply as if the upper-tier separate unit were a subsidiary of the domestic corporation and the lower-tier separate unit were a lower-tier subsidiary.

(4) *Examples.* The following examples illustrate the application of this paragraph (b).

Example 1. P, a domestic corporation, owns all of the outstanding stock of DRC, a domestic corporation. P and DRC file a consolidated U.S. income tax return. DRC is managed and controlled in Country W, a country that determines the tax residence of corporations according to their place of management and control. Therefore, DRC is a dual resident corporation and any net operating loss it incurs is a dual consolidated loss. In Years 1 through 3, DRC incurs dual consolidated losses. Under this paragraph (b), the dual consolidated losses may not be used to offset P's income on the group's consolidated U.S. income tax return. At the end of Year 3, DRC sells all of its assets and discontinues its business operations. DRC is then liquidated into P, pursuant to the provisions of section 332. Normally, under section 381, P would succeed to, and be permitted to utilize, DRC's net operating loss carryovers. However, this paragraph (b)

prohibits the dual consolidated losses of DRC from reducing P's income for U.S. tax purposes. Therefore, DRC's net operating loss carryovers will not be available to offset P's income.

Example 2. The facts are the same as in *Example 1*, except that DRC does not sell its assets and, following the liquidation of DRC, P continues to operate DRC's business as a separate unit (*e.g.*, a branch). DRC's loss carryovers are available to offset P's income generated by the assets previously owned by DRC and now held by the separate unit.

(c) *Definitions.* The following definitions shall apply for purposes of this section.

(1) *Domestic corporation.* The term "domestic corporation" has the meaning assigned to it by section 7701(a) (3) and (4). The term also includes any corporation otherwise treated as a domestic corporation by the Code, including, but not limited to, sections 269B, 953(d), and 1504 (d). For purposes of this section, any separate unit of a domestic corporation, as defined in paragraph (c) (3) and (4) of this section, shall be treated as a separate domestic corporation.

(2) *Dual resident corporation.* A dual resident corporation is a domestic corporation that is subject to the income tax of a foreign country on its worldwide income or on a residence basis. A corporation is taxed on a residence basis if it is taxed as a resident under the laws of the foreign country. An S corporation, as defined in section 1361, is not a dual resident corporation. For purposes of this section, any separate unit of a domestic corporation, as defined in paragraph (c) (3) and (4) of this section, shall be treated as a dual resident corporation. Unless otherwise indicated, any reference in this section to a dual resident corporation refers also to a separate unit.

(3) *Separate unit*—(i) The term "separate unit" shall mean any of the following:

(A) A foreign branch, as defined in § 1.367(a)-6T(g) (or a successor regulation), that is owned either directly by a domestic corporation or indirectly by a domestic corporation through ownership of a partnership or trust interest (regardless of whether the partnership or trust is a United States person);

(B) an interest in a partnership; or

(C) an interest in a trust.

(ii) If two or more foreign branches located in the same foreign country are owned by a single domestic corporation and the losses of each branch are made available to offset the income of the other branches under the tax laws of the foreign country, within the meaning of paragraph (c)(15)(ii) of this section, then the branches shall be treated as one separate unit.

(4) *Hybrid entity separate unit.* The term "separate unit" includes an interest in an entity that is not taxable as an association for U.S. income tax purposes but is subject to income tax in a foreign country as a corporation (or otherwise at the entity level) either on its worldwide income or on a residence basis.

(5) *Dual consolidated loss*—(i) *In general.* The term "dual consolidated loss" means the net operating loss (as defined in section 172(c) and the regulations thereunder) of a domestic corporation incurred in a year in which the corporation is dual resident corporation. The dual consolidated loss shall be computed under paragraph (d)(1) of this section. The fact that a particular item taken into account in computing a dual resident corporation's net operating loss is not taken into account in computing income subject to a foreign country's income tax shall not cause such item to be excluded from the calculation of the dual consolidated loss.

(ii) *Exceptions.* A dual consolidated loss shall not include the following—

(A) A net operating loss incurred by a dual resident corporation in a foreign country whose income tax laws—

(*1*) Do not permit the dual resident corporation to use its losses, expenses or deductions to offset the income of any other person that is recognized in the same taxable year in which the losses, expenses or deductions are incurred; and

(*2*) Do not permit the losses, expenses or deductions of the dual resident corporation to be carried over or back to be used, by any means, to offset the income of any other person in other taxable years; or

(B) A net operating loss incurred during that portion of the taxable year prior to the date on which the domestic corporation becomes a dual resident corporation or subsequent to the date on which the domestic corporation ceases to be a dual resident corporation. For purposes of determining the amount of the net operating loss incurred in that portion of the taxable year prior to the date on which the domestic corporation becomes a dual resident corporation or subsequent to the date on which the domestic corporation ceases to be a dual resident corporation, in no event shall more than the aggregate of the equal daily portion of the net operating loss commensurate with the portion of the taxable year during which the domestic corporation was not a dual resident corporation be allocated to that portion of the taxable year in which the domestic corporation was not a dual resident corporation.

(iii) *Dual consolidated losses of separate units that are partnership interests, including interests in hybrid entities.* [Reserved].

(6) *Subject to tax.* For purposes of determining whether a domestic corporation is subject to the income tax of a foreign country on its income, the fact that the corporation has no actual income tax liability to the foreign country for a particular taxable year shall not be taken into account.

(7) *Foreign country.* For purposes of this section, possessions of the United States shall be considered foreign countries.

(8) *Consolidated group.* The term "consolidated group" means an affiliated group, as defined in section 1504(a), with which a dual resident corporation or domestic owner files a consolidated U.S. income tax return.

(9) *Domestic owner.* The term "domestic owner" means a domestic corporation that owns one or more separate units.

(10) *Affiliated dual resident corporation or affiliated domestic owner.* The term "affiliated dual resident corporation" or "affiliated domestic owner" means a dual resident corporation or domestic owner that is a member of a consolidated group.

(11) *Unaffiliated dual resident corporation or unaffiliated domestic owner.* The term "unaffiliated dual resident corporation" or "unaffiliated domestic owner" means a dual resident corporation or domestic owner that is an unaffiliated domestic corporation.

(12) *Successor-in-interest.* The term "successor-in-interest" means an acquiring corporation that succeeds to the tax attributes of an acquired corporation by means of a transaction subject to section 381.

(13) *Domestic affiliate.* The term "domestic affiliate" means any member of an affiliated group, without regard to the exceptions contained in section 1504(b) (other than section 1504(b)(3)) relating to includible corporations.

(14) *Unaffiliated domestic corporation.* The term "unaffiliated domestic corporation" means a domestic corporation that is not a member of an affiliated group.

(15) *Use of loss to offset income of a domestic affiliate or another person*—(i) A dual consolidated loss shall be deemed to offset income of a domestic affiliate in the year it is included in the computation of the consolidated taxable income of a consolidated group. The fact that no tax benefit results from the inclusion of the dual consolidated loss

in the computation of the group's consolidated taxable income in the taxable year shall not be taken into account.

(ii) Except as provided in paragraph (c)(15)(iii) of this section, a loss, expense, or deduction taken into account in computing a dual consolidated loss shall be deemed to offset income of another person under the income tax laws of a foreign country in the year it is made available for such offset. The fact that the other person does not have sufficient income in that year to benefit from such an offset shall not be taken into account. However, where the laws of a foreign country provide an election that would enable a dual resident corporation or separate unit to use its losses, expenses, or deductions to offset income of another person, the losses, expenses, or deductions shall be considered to offset such income only if the election is made.

(iii) The losses, expenses, or deductions taken into account in computing a dual resident corporation's or separate unit's dual consolidated loss shall not be deemed to offset income of another person under the income tax laws of a foreign country for purposes of this section, if under the laws of the foreign country the losses, expenses, or deductions of the dual resident corporation or separate unit are used to offset the income of another dual resident corporation or separate unit within the same consolidated group (or income of another separate unit that is owned by the unaffiliated domestic owner of the first separate unit). If the losses, expenses, or deductions of a dual resident corporation or separate unit are made available under the laws of a foreign country to offset the income of other dual resident corporations or separate units within the same consolidated group (or other separate units owned by the unaffiliated domestic owner of the first separate unit), as well as the income of another person, and the laws of the foreign country do not provide applicable rules for determining which person's income is offset by the losses, expenses, or deductions, then for purposes of this section, the losses, expenses or deductions shall be deemed to offset the income of the other dual resident corporations or separate units, to the extent of such income, before being considered to offset the income of the other person.

(iv) Except to the extent paragraph (g)(1) of this section applies, where the income tax laws of a foreign country deny the use of losses, expenses, or deductions of a dual resident corporation to offset the income of another person because the dual resident corporation is also subject to income taxation by another country on its worldwide income or on a residence basis, the dual resident corporation shall be treated as if it actually had offset its dual consolidated loss against the income of another person in such foreign country.

(16) *Examples.* The following examples illustrate this paragraph (c).

Example 1. X, a member of a consolidated group, conducts business through a branch in Country Y. Under Country Y's income tax laws, the branch is taxed as a permanent establishment and its losses may be used under the Country Y form of consolidation to offset the income of Z, a Country Y affiliate of X. In Year 1, the branch of X incurs an overall loss that would be treated as a net operating loss if the branch were a separate domestic corporation. Under paragraph (c)(3) of this section, the branch of X is treated as a separate domestic corporation and a dual resident corporation. Thus, under paragraph (c)(5), its loss constitutes a dual consolidated loss. Unless X qualifies for an exception under paragraph (g) of this section, paragraph (b) of this section precludes the use of the branch's loss to offset any income of X not derived from the branch operations or any income of a domestic affiliate of X.

Example 2. A and B are members of a consolidated group. FC is a Country X corporation that is wholly owned by B. A and B organize a partnership, P, under the laws of Country X. P conducts business in Country X and its business activity constitutes a foreign branch within the meaning of paragraph (c)(3)(i)(A) of this section. P also earns U.S. source income that is unconnected with the branch operations and, therefore, is not subject to tax by Country X. Under the laws of Country X, the branch can consolidate with FC. The interests in P held by A and B are each treated as a dual resident corporation. The branch is also treated as a separate dual resident corporation. Unless an exception under paragraph (g) of this section applies, any dual consolidated loss incurred by P's branch cannot offset the U.S. source income earned by P or any other income of A or B.

Example 3. X is classified as a partnership for U.S. income tax purposes. A, B, and C are the sole partners of X. A and B are domestic corporations and C is a Country Y corporation. For U.S. income tax purposes, each partner has an equal interest in each item of partnership profit or loss. Under Country Y's law, X is classified as a corporation and its income and losses may be used under the Country Y form of consolidation to offset the income of companies that are affiliates of X. Under paragraph (c)(3) and (4) of this section, the partnership interests held by A and B are treated as separate domestic corporations and as dual resident corporations. Unless an exception under paragraph (g) of this section applies, losses allocated to A and B can only be used to offset profits of X allocated to A and B, respectively.

Example 4. P, a domestic corporation, files a consolidated U.S. income tax return with its two wholly-owned domestic subsidiaries, DRC1 and DRC2. Each subsidiary is also treated as a Country Y resident for Country Y tax purposes. Thus, DRC1 and DRC2 are dual resident corporations. DRC1 owns FC, a Country Y corporation. Country Y's tax laws permit affiliated resident corporations to file a form of consolidated return. In Year 1, DRC1 incurs a $200 net operating loss for both U.S. and Country Y tax purposes, while DRC2 recognizes $200 of income under the tax laws of each country. FC also earns $200 of income for Country Y tax purposes. DRC1, DRC2, and FC file a Country Y consolidated return. However, Country Y has no applicable rules for determining which income is offset by DRC1's $200 loss. Under paragraph (c)(15)(iii) of this section, the loss shall be treated as offsetting DRC2's $200 of income. Because DRC1 and DRC2 are members of the same consolidated group, for purposes of this section, the offset of DRCI's loss against the income of DRC2 is not considered a use of the loss against the income of another person under the laws of a foreign country.

Example 5. DRC, a domestic corporation, files a consolidated U.S. income tax return with its parent, P. DRC is also subject to tax in Country Y on its worldwide income. Therefore, DRC is a dual resident corporation and any net operating loss incurred by DRC is a dual consolidated loss. Country Y's tax laws permit corporations that are subject to tax on their worldwide income to use the Country Y form of consolidation, thus enabling eligible corporations to use their losses to offset income of affiliates. However, to prevent corporations like DRC from offsetting losses against income of affiliates in Country Y and then again offsetting the losses against income of foreign affiliates under the tax laws of another country, Country Y prevents a corporation that is also subject to the income tax of another country on its worldwide income or on a residence basis from using the Country Y form of consolidation. There is no agreement, as described in paragraph (g)(1) of this section, between the United States and Country Y. Because of Country Y's statute, DRC will be treated as having actually offset its losses against the income of affiliates in Country Y under paragraph (c)(15)(iv) of this section. Therefore, DRC will not be able to file an agreement described in paragraph (g)(2) of this section and offset its losses against the income of P or any other domestic affiliate.

(d) *Special rules for accounting for dual consolidated losses*—(1) *Determination of amount of dual consolidated loss*—(i) *Dual resident corporation that is a member of a consolidated group.* For purposes of determining whether a dual resident corporation that is a member of a consolidated group has a dual consolidated loss for the taxable year, the dual resident corporation shall compute its taxable income (or loss) in accordance with the rules set forth in

the regulations under section 1502 governing the computation of consolidated taxable income, taking into account only the dual resident corporation's items of income, gain, deduction, and loss for the year. However, for purposes of this computation, the following items shall not be taken into account:

(A) Any net capital loss of the dual resident corporation; and

(b) Any carryover or carryback losses.

(ii) *Dual resident corporation that is a separate unit of a domestic corporation.* For purposes of determining whether a separate unit has a dual consolidated loss for the taxable year, the separate unit shall compute its taxable income (or loss) as if it were a separate domestic corporation and a dual resident corporation in accordance with the provisions of paragraph (d)(1)(i) of this section, using only those items of income, expense, deduction, and loss that are otherwise attributable to such separate unit.

(2) *Effect of a dual consolidated loss.* For any taxable year in which a dual resident corporation or separate unit has a dual consolidated loss to which paragraph (b) of this section applies, the following rules shall apply.

(i) If the dual resident corporation is a member of a consolidated group, the group shall compute its consolidated taxable income without taking into account the items of income, loss, or deduction taken into account in computing the dual consolidated loss. The dual consolidated loss may be carried over or back for use in other taxable years as a separate net operating loss carryover or carryback of the dual resident corporation arising in the year incurred. It shall be treated as a loss incurred by the dual resident corporation in a separate return limitation year and (without regard to whether the dual resident corporation is a common parent) shall be subject to all of the limitations of § 1.1502–21(c) (relating to limitations on net operating loss carryovers and carrybacks from separate return limitation years).

(ii) The unaffiliated domestic owner of a separate unit, or the consolidated group of an affiliated domestic owner, shall compute its taxable income without taking into account the items of income, loss or deduction taken into account in computing the separate unit's dual consolidated loss. The dual consolidated loss shall be treated as a loss incurred by a separate corporation and its use shall be subject to all of the limitations of § 1.502–21(c), as if the separate unit were filing a consolidated return with the unaffiliated domestic owner or with the consolidated group of the affiliated domestic owner.

(3) *Basis adjustments for dual consolidated losses*—(i) *Dual resident corporation that is a member of an affiliated group.* When a dual resident corporation is a member of a consolidated group, each other member owning stock in the dual resident corporation shall adjust the basis of the stock in the following manner.

(A) *Positive adjustments.* Positive adjustments shall be made in accordance with the principles of § 1.1502–32(b)(1), except that there shall be no positive adjustment under § 1.1502–32(b)(1)(ii) for any amount of the dual consolidated loss that is not absorbed as a result of the application of paragraph (b) of this section. In addition, there shall be no positive adjustment for any amount included income pursuant to paragraph (g)(2)(vii) of this section.

(B) *Negative adjustments.* Negative adjustments shall be made in accordance with the principles of § 1.1502–32(b)(2), except that there shall be no negative adjustment under § 1.1502–32(b)(2)(ii) for the amount of the dual consolidated loss subject to paragraph (b) of this section that is absorbed in a carryover year.

(ii) *Dual resident corporation that is a separate unit arising from an interest in a partnership.* Where a separate unit is an interest in a partnership, the domestic owner shall adjust its basis in the separate unit in accordance with section 705, except that no increase in basis shall be permitted for any amount included as income pursuant to paragraph (g)(2)(vii) of this section.

(4) *Examples.* The following examples illustrate this paragraph (d).

Example 1. (i) P, S1, S2, and T are domestic corporations. P owns all of the stock of S1 and S2. S2 owns all of the stock of T. T is a resident of Country FC for Country FC income tax purposes. Therefore, T is a dual resident corporation. P, S1, S2, and T file a consolidated U.S. income tax return. X and Y are corporations that are not members of the consolidated group.

(ii) At the beginning of Year 1, P has a basis of $1000 in the stock of S2. S2 has a $500 basis in the stock of T.

(iii) In Year 1, T incurs interest expense in the amount of $100. In addition, T sells a noncapital asset, *u*, in which it has a basis of $10, to S1 for $50. T also sells a noncapital asset, *v*, in which it has a basis of $200, to S1 for $100. The sales of *u* and *v* are deferred intercompany transactions described in § 1.1502–13(a)(2). T also sells a capital asset, *z*, in which it has a basis of $180, to Y for $90. In Year 1, S1 earns $200 of separate taxable income, calculated in accordance with § 1.1502–12, as well as $90 of capital gain from a sale of an asset to X. P and S2 have no items of income, loss, or deduction for Year 1.

(iv) In Year 1, T has a dual consolidated loss of $100 (attributable to its interest expense). T's $90 capital loss is not included in the computation of the dual consolidated loss. Instead, T's capital loss is included in the computation of the consolidated group's capital gain net income under § 1.1502–22(a) and is used to offset S1's $90 capital gain.

(v) No elective agreement, as described in paragraph (g)(1) of this section, exists between the United States and Country FC. For Country FC tax purposes, T's $100 loss is offset against the income of a Country FC affiliate. Therefore, T is not eligible for the exception provided in paragraph (g)(2) of this section.

(vi) Because T has a dual consolidated loss for the year, the consolidated taxable income of the consolidated group is calculated without regard to T's items of income, loss or deduction taken into account in computing the dual consolidated loss. Therefore, the consolidated taxable income of the consolidated group is $200 (the sum of $200 of separate taxable income earned by S1 plus $90 of capital gain earned by S1 minus $90 of capital loss incurred by T). The $40 gain recognized by T upon the sale of item *u* to S1 and the $100 loss recognized by T upon the sale of item *v* to S1 are deferred pursuant to § 1.1502–13(c)(1).

(vii) S2 may not make the positive adjustment provided for in § 1.1502–32(b)(1)(ii) to its basis in the stock of T for the $100 dual consolidated loss incurred by T. In addition, no positive adjustment in the basis of the stock is required for T's $90 capital loss because the loss has been absorbed by the consolidated group. S2, however, must make the negative adjustment provided for in § 1.1502–32(b)(2)(i) for its allocable part of T's deficit in earnings and profits for the taxable year attributable to both T's $100 dual consolidated loss and T's $90 capital loss. Thus, as provided in § 1.1502–32(e)(1), S2 must make a $190 net negative adjustment to its basis in the stock of T, reducing its basis to $310. As provided in § 1.1502–33(c)(4)(ii)(a), S2's earnings and profits for Year 1 will reflect S2's decrease in its basis in T stock for the taxable year. Since S2 has no other earnings and profits for the taxable year, S2 has a $190 deficit in earnings and profits for the year. As provided in § 1.1502–32(b)(2)(i), P must make a negative adjustment to its basis in the stock of S2 for its allocable part of S2's deficit in earnings and profits for the taxable year. Thus, P must make a $190 net negative adjustment to its basis in S2 stock, reducing its basis to $810.

Example 2. (i) The facts are the same as in *Example 1*, except that in Year 2, S1 sells items *u* and *v* to X for no gain or loss. The disposition of items *u* and *v* outside of the consolidated group restores the deferred loss and gain to T. T also incurs $100 of interest expense in Year 2. In addition, T sells a noncapital asset, *r*, in which it has a basis of $100, to Y for $300. P and S2 have no items of income, loss, or deduction for Year 2.

(ii) T has $40 of separate taxable income in Year 2, computed as follows:

($100)	interest expense
($100)	sale of item *v* to S1

$ 40	sale of item *u* to S1
$200	sale of item *r* to Y
$ 40	

Thus, T has no dual consolidated loss for the year.

(iii) Since T does not have a dual consolidated loss for the taxable year, the group's consolidated taxable income is calculated in accordance with the general rule of § 1.1502–11 and not in accordance with paragraph (d)(2) of this section. T is the only member of the consolidated group that has any income or loss for the taxable year. Thus, the consolidated taxable income of the group, computed without regard to T's dual consolidated loss carryover, is $40.

(iv) As provided by § 1.1502–21(c), the amount of the dual consolidated loss arising in Year 1 that is included in the group's consolidated net operating loss deduction for Year 2 is $40 (that is, the consolidated taxable income computed without regard to the consolidated net operating loss deduction minus such consolidated taxable income recomputed by excluding the items of income and deduction of T). Thus, the group has no consolidated taxable income for the year.

(v) S2 must make the positive adjustment provided for in § 1.502–32(b)(1)(i) to its basis in T stock for its allocable part of T's undistributed earnings and profits for the taxable year. S2 cannot make the negative adjustment provided for in § 1.1502–32(b)(2)(ii) for the dual consolidated loss of T incurred in Year 1 and absorbed in Year 2. Thus, as provided in § 1.1502–32(e)(2), S2 must make a $40 net positive adjustment to its basis in T stock, increasing its basis to $350. As provided in § 1.1502–33(c)(4)(ii)(a), S2's earnings and profits for Year 2 will reflect S2's increase in its basis in T stock for the taxable year. Since S2 has no other earnings and profits for the taxable year, S2 has $40 of earnings and profits for the year. As provided in § 1.1502–32(b)(1)(i), P must make a positive adjustment to its basis in the stock of S2 for its allocable part of the undistributed earnings and profits of S2 for the taxable year. Thus, P must make a $40 net positive adjustment to its basis in S2 stock, increasing its basis to $850.

(e) *Special rule for use of dual consolidated loss to offset tainted income*—(1) *In general.* The dual consolidated loss of any dual resident corporation that ceases to be a dual resident corporation shall not be used to offset income of such corporation to the extent that such income is tainted income, as defined in paragraph (e)(2) of this section.

(2) *Tainted income defined.* Tainted income is any income derived from tainted assets, as defined in paragraph (e)(3) of this section, beginning on the date such assets are acquired by the dual resident corporation. In the absence of evidence establishing the actual amount of income that is attributable to the tainted assets, the portion of a corporation's income in a particular taxable year that is treated as tainted income shall be an amount equal to the corporation's taxable income for the year multiplied by a fraction, the numerator of which is the fair market value of the tainted asset at the end of the taxable year and the denominator of which is the fair market value of the total assets owned by the corporation at the end of the taxable year. Documentation submitted to establish the actual amount of income that is attributable to the tainted assets must be attached to the consolidated group's or unaffiliated dual resident corporation's timely filed tax return for the taxable year in which the income is recognized.

(3) *Tainted assets defined.* Tainted assets are any asset acquired by a dual resident corporation in a non-recognition transaction, as defined in section 7701(a)(45), or any assets otherwise transferred to the corporation as a contribution to capital, at any time during the three taxable years immediately preceding the taxable year in which the corporation ceases to be dual resident corporation or at any time thereafter. Tainted assets shall not include assets that were acquired by such dual resident corporation on or before December 31, 1986.

(4) *Exceptions.* Income derived from assets acquired by a dual resident corporation shall not be subject to the limitation described in paragraph (e)(1) of this section, if—

(i) For the taxable year in which the assets were acquired, the corporation did not have a dual consolidated loss (or a carry forward of a dual consolidated loss to such year); or

(ii) The assets were acquired as replacement property in the ordinary course of business.

(f) *Computation of foreign tax credit limitations.* If a dual resident corporation or separate unit is subject to paragraph (d)(2) of this section, the consolidated group or unaffiliated domestic owner shall compute its foreign tax credit limitation by applying the limitations of paragraph (d)(2). Thus, the dual consolidated loss is not taken into account until the year in which it is absorbed.

(g) *Exception*—(1) *Elective agreement in place between the United States and a foreign country.* Paragraph (b) of this section shall not apply to a dual consolidated loss to the extent the dual resident corporation, or domestic owner of a separate unit, elects to deduct the loss in the United States pursuant to an agreement entered into between the United States and a foreign country that puts into place an elective procedure through which losses offset income in only one country.

(2) *Elective relief provision*—(i) *In general.* Paragraph (b) of this section shall not apply to a dual consolidated loss if the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner elects to be bound by the provisions of this paragraph (g)(2). In order to elect relief under this paragraph (g)(2), the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner must attach to its timely filed U.S. income tax return for the taxable year in which the dual consolidated loss is incurred an agreement described in this paragraph (g)(2)(i). The agreement must be signed under penalties of perjury by the person who signs the return and must include the following items, in paragraphs labeled to correspond with the items set forth below:

(A) A statement that the document submitted is an election and an agreement under the provisions of § 1.1503–2(g)(2) of the Income Tax Regulations;

(B) The name, address, identifying number, and place and date of incorporation of the dual resident corporation, and the country or countries that tax the dual resident corporation on its worldwide income or on a residence basis, or, in the case of a separate unit, identification of the separate unit, including the name under which it conducts business, its principal activity, and the country in which its principal place of business is located;

(C) An agreement by the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner to comply with all of the provisions of paragraphs (g)(2) (iii) through (vii) of § 1.1503–2;

(D) A statement of the amount of the dual consolidated loss covered by the agreement;

(E) A certification that no portion of the dual resident corporation's or separate unit's loss, expenses, or deductions taken into account in computing the dual consolidated loss has been, or will be, used to offset the income of any other person under the income tax laws of a foreign country; and

(f) A certification that arrangements have been made to ensure that no portion of the dual consolidated loss will be used to offset the income of another person under the laws of a foreign country and that the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner will be informed of any

such foreign use of any portion of the dual consolidated loss.

(ii) *Consistency rule*—(A) If any loss, expense, or deduction taken into account in computing the dual consolidated loss of a dual resident corporation or separate unit is used under the laws of a foreign country to offset the income of another person, then the following other dual consolidated losses (if any) shall be treated as also having been used to offset income of another person under the laws of such foreign country, but only if the income tax laws of the foreign country permit any loss, expense, or deduction taken into account in computing the other dual consolidated loss to be used to offset the income of another person in the same taxable year:

(*1*) Any dual consolidated loss of a dual resident corporation that is a member of the same consolidated group of which the first dual resident corporation or domestic owner is a member, if any loss, expense, or deduction taken into account in computing such dual consolidated loss is recognized under the income tax laws of such country in the same taxable year; and

(*2*) Any dual consolidated loss of a separate unit that is owned by the same domestic owner that owns the first separate unit, or that is owned by any member of the same consolidated group of which the first dual resident corporation or domestic owner is a member, if any loss, expense, or deduction taken into account in computing such dual consolidated loss is recognized under the income tax laws of such country in the same taxable year.

(B) The following examples illustrate the application of this paragraph (g)(2)(ii).

Example 1. P, a domestic corporation, owns A and B, which are domestic corporations, and C, a Country X corporation. A is subject to the income tax laws of Country X on a residence basis and, thus, is a dual resident corporation. B conducts business in Country X through a branch, which is a separate unit under paragraph (c)(3) of this section. The income tax laws of Country X permit branches of foreign corporations to elect to file consolidated returns with Country X affiliates. In Year 1, A incurs a dual consolidated loss, which is used to offset the income of C under the Country X form of consolidation. The branch of B also incurs a net operating loss. However, B elects not to use the loss on a Country X consolidated return to offset the income of foreign affiliates. The use of A's loss to offset the income of C in Country X will cause the separate unit of B to be treated as if it too had used its dual consolidated loss to offset the income of an affiliate in Country X. Therefore, an election and agreement under this paragraph (g)(2) cannot be made with respect to the separate unit's dual consolidated loss.

Example 2. The facts are the same as in *Example 1*, except that the income tax laws of Country X do not permit branches of foreign corporations to file consolidated income tax returns with Country X affiliates. Therefore, an election and agreement described in this paragraph (g)(2) may be made for the dual consolidated loss incurred by the separate unit of B.

(iii) *Triggering events requiring the recapture of dual consolidated losses*—(A) The consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner must agree that, if there is a triggering event described in this paragraph (g)(2)(iii), and no exception applies under paragraph (g)(2)(iv) of this section, the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner will recapture and report as income the amount of the dual consolidated loss provided in paragraph (g)(2)(vii) of this section on its tax return for the taxable year in which the triggering event occurs (or, when the triggering event is a use of the loss for foreign purposes, the taxable year that includes the last day of the foreign tax year during which such use occurs). In addition, the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner must pay any applicable interest charge required by paragraph (g)(2)(vii). For purposes of this section, any of the following events shall constitute a triggering event:

(*1*) In any taxable year up to an including the 15th taxable year following the year in which the dual consolidated loss that is the subject of the agreement filed under this paragraph (g)(2) was incurred, any portion of the losses, expenses, or deductions taken into account in computing the dual consolidated loss is used by any means to offset the income of any other person under the income tax laws of a foreign country;

(*2*) An affiliated dual resident corporation or affiliated domestic owner ceases to be a member of the consolidated group that filed the election. For purposes of this paragraph (g)(2)(iii)(A)(*2*), a dual resident corporation or domestic owner shall be considered to cease to be a member of the consolidated group if it is no longer a member of the group within the meaning of § 1.1502–1(b), or if the group ceases to exist because the common parent is no longer in existence or is no longer a common parent or the group no longer files on the basis of a consolidated return. Such disaffiliation, however, shall not constitute a triggering event if the taxpayer demonstrates, to the satisfaction of the Commissioner, that the dual resident corporation's or separate unit's losses, expenses, or deductions cannot be used to offset income of another person under the laws of a foreign country at any time after the affiliated dual resident corporation or affiliated domestic owner ceases to be a member of the consolidated group;

(*3*) An unaffiliated dual resident corporation or unaffiliated domestic owner becomes a member of a consolidated group. Such affiliation of the dual resident corporation or domestic owner, however, shall not constitute a triggering event if the taxpayer demonstrates, to the satisfaction of the Commissioner, that the losses, expenses, or deductions of the dual resident corporation or separate unit cannot be used to offset the income of another person under the laws of a foreign country at any time after the dual resident corporation or domestic owner becomes a member of the consolidated group.

(*4*) A dual resident corporation transfers assets in a transaction that results, under the laws of a foreign country, in a carryover of its losses, expenses, or deductions. For purposes of this paragraph (g)(2)(iii)(A)(*4*), a transfer, either in a single transaction or a series of transactions within a twelve-month period, of 50% or more of the dual resident corporation's assets (measured by the fair market value of the assets at the time of such transfer (or for multiple transactions, at the time of the first transfer)) shall be deemed a triggering event, unless the taxpayer demonstrates, to the satisfaction of the Commissioner, that the transfer of assets did not result in a carryover under foreign law of the dual resident corporation's losses, expenses, or deductions to the transferee of the assets;

(*5*) A domestic owner of a separate unit transfers assets of the separate unit in a transaction that results, under the laws of a foreign country, in a carryover of the separate unit's losses, expenses, or deductions. For purposes of this paragraph (g)(2)(iii)(A)(*5*), a transfer, either in a single transaction or a series of transactions over a twelve-month period, of 50% or more of the separate unit's assets (measured by the fair market value of the assets at the time of the transfer (or for multiple transfers, at the time of the first transfer)), shall be deemed a triggering event, unless the taxpayer demonstrates, to the satisfaction of the Commissioner, that the transfer of assets did not result in a

carryover under foreign law of the separate unit's losses, expenses, or deductions to the transferee of the assets;

(*6*) An unaffiliated dual resident corporation or unaffiliated domestic owner becomes a foreign corporation by means of a transaction (*e.g.*, a reorganization) that, for foreign tax purposes, is not treated as involving a transfer of assets (and carryover of losses) to a new entity. Such a transaction, however, shall not constitute a triggering event if the taxpayer demonstrates, to the satisfaction of the Commissioner, that the dual resident corporation's or separate unit's losses, expenses, or deductions cannot be used to offset income of another person under the laws of the foreign country at any time after the unaffiliated dual resident corporation or unaffiliated domestic owner becomes a foreign corporation.

(*7*) A domestic owner of a separate unit, either in a single transaction or a series of transactions within a twelve-month period, sells, or otherwise disposes of, 50% or more of the interest in the separate unit (measured by voting power or value) owned by the domestic owner on the last day of the taxable year in which the dual consolidated loss was incurred. For purposes of this paragraph (g)(2)(A)(iii)(*7*), the domestic owner shall be deemed to have disposed of its entire interest in a hybrid entity separate unit if such hybrid entity becomes classified as a foreign corporation for U.S. tax purposes. The disposition of 50% or more of the interest in a separate unit, however, shall not constitute a triggering event if the taxpayer demonstrates, to the satisfaction of the Commissioner, that the losses, expenses, or deductions of the separate unit cannot be used to offset income of another person under the laws of the foreign country at any time after the disposition of the interest in the separate unit; or

(*8*) The consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner fails to file a certification required under paragraph (g)(2)(vi)(B) of this section.

(B) A taxpayer wishing to rebut the presumption of a triggering event described in paragraphs (g)(2)(iii)(A)(*2*) through (*7*) of this section, by demonstrating that the losses, expenses, or deductions of the dual resident corporation or separate unit cannot be carried over or otherwise used under the laws of the foreign country, must attach documents demonstrating such facts to its timely filed U.S. income tax return for the year in which the presumed triggering event occurs.

(C) The following example illustrates this paragraph (g)(2)(iii):

Example. DRC, a domestic corporation, is a member of CG, a consolidated group. DRC is a resident Country Y for Country Y income tax purposes. Therefore, DRC is a dual resident corporation. In Year 1, DRC incurs a dual consolidated loss of $100. CG files an agreement described in paragraph (g)(2) of this section and, thus, the $100 dual consolidated loss is included in the computation of CG's consolidated taxable income. In Year 6, all of the stock of DRC is sold to P, a domestic corporation that is a member of NG, another consolidated group. The sale of DRC to P is a triggering event under paragraph (g)(2)(iii)(A) of this section, requiring the recapture of the dual consolidated loss. However, the laws of Country Y provide for a five-year carryover period for losses. At the time of DRC's disaffiliation from CG, the losses, expenses and deductions that were included in the computation of the dual consolidated loss had expired for Country Y purposes. Therefore, upon adequate documentation that the losses, expenses, or deductions have expired for Country Y purposes, CG can rebut the presumption that a triggering event has occurred.

(iv) *Exceptions*—(A) *Acquisition by a member of the consolidated group.* The following events shall not constitute triggering events, requiring the recapture of the dual consolidated loss under paragraph (g)(2)(vii) of this section:

(*1*) An affiliated dual resident corporation or affiliated domestic owner ceases to be a member of a consolidated group solely by reason of a transaction in which a member of the same consolidated group succeeds to the tax attributes of the dual resident corporation or domestic owner under the provisions of section 381;

(*2*) Assets of an affiliated dual resident corporation or assets of a separate unit of an affiliated domestic owner are acquired by a member of its consolidated group in any other transaction; or

(*3*) An affiliated domestic owner of a separate unit transfers its interest in the separate unit to another member of its consolidated group.

(B) *Acquisition by an unaffiliated domestic corporation or a new consolidated group*—(*1*) If the requirements of paragraph (g)(2)(iv)(B)(*2*) of this section are met, the following events shall not constitute triggering events, requiring the recapture of the dual consolidated loss under paragraph (g)(2)(vii) of this section:

(*i*) An affiliated dual resident corporation or affiliated domestic owner becomes an unaffiliated domestic corporation or a member of a new consolidated group;

(*ii*) An unaffiliated dual resident corporation or unaffiliated domestic owner becomes a member of a consolidated group;

(*iii*) Assets of a dual resident corporation or a separate unit are acquired by an unaffiliated domestic corporation or a member of a new consolidated group; or

(*iv*) A domestic owner of a separate unit transfers its interest in the separate unit to an unaffiliated domestic corporation or to a member of a new consolidated group.

(*2*) If all of the following requirements are satisfied, the events listed in paragraph (g)(2)(iv)(B)(*1*) of this section shall not constitute triggering events requiring recapture under paragraph (g)(2)(vii) of this section.

(*i*) The consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner that filed the agreement under this paragraph (g)(2) and the unaffiliated domestic corporation or new consolidated group must enter into a closing agreement with the Internal Revenue Service providing that the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner and the unaffiliated domestic corporation or new consolidated group will be jointly and severally liable for the total amount of the recapture of dual consolidated loss and interest charge required in paragraph (g)(2)(vii) of this section, if there is a triggering event described in paragraph (g)(2)(iii) of this section;

(*ii*) The unaffiliated domestic corporation or new consolidated group must agree to treat any potential recapture amount under paragraph (g)(2)(vii) of this section as unrealized built-in gain for purposes of section 384(a), subject to any applicable exceptions thereunder;

(*iii*) The unaffiliated domestic corporation or new consolidated group must file an agreement described in paragraph (g)(2)(i) of this section with its timely filed income tax return for the taxable year in which the event described in paragraph (g)(2)(iv)(B)(*1*) of this section occurs. The agreement must be signed under penalties of perjury by the person who signs the tax return of the unaffiliated domestic corporation or new consolidated group.

(C) *Subsequent triggering events.* Any triggering event described in paragraph (g)(2)(iii) of this section that occurs subsequent to one of the transactions described in paragraph (g)(2)(iv) (A) or (B) of this section and does not fall within the exceptions provided in paragraph (g)(2)(iv) (A) or (B) of this section shall require recapture under paragraph (g)(2)(vii) of this section.

(v) *Ordering rules for determining the foreign use of losses.* If the laws of a foreign country provide for the use of losses of a dual resident corporation to offset the income of another person but do not provide applicable rules for determining the order in which such losses are used to offset the income of another person in a taxable year, then for purposes of this section, the following rules shall govern:

(A) If under the laws of the foreign country the dual resident corporation has losses from different taxable years, the dual resident corporation shall be deemed to use first the losses from the earliest taxable year from which a loss may be carried forward or back for foreign law purposes.

(B) Any net loss, or income, that the dual resident corporation has in a taxable year shall first be used to offset net income, or loss, recognized by affiliates of the dual resident corporation in the same taxable year before any carryover of the dual resident corporation's losses is considered to be used to offset any income from the taxable year.

(C) Where different losses, expenses, or deductions (*e.g.*, capital losses and ordinary losses) of a dual resident corporation incurred in the same taxable year are available to offset the income of another person, the different losses shall be deemed to offset such income on a pro rata basis.

Example. DRC, a domestic corporation, is taxed as a resident under the tax laws of Country Y. Therefore, DRC is a dual resident corporation. FA is a Country Y affiliate of DRC. Country Y's tax laws permit affiliated corporations to file a form of consolidated return. In Year 1, DRC incurs a capital loss of $80 which, for Country Y purposes, offsets completely $30 of capital gain recognized by FA. Neither corporation has any other taxable income or loss for the year. In Year 1 (and in other years), DRC recognizes the same amount of income for U.S. purposes as it does for Country Y purposes. Under paragraph (d)(1)(i) of this section, however, DRC's $80 capital loss is not a dual consolidated loss. In Year 2, DRC incurs a net operating loss of $100, while FA incurs a net operating loss of $50. DRC's $100 loss is a dual consolidated loss. Since the dual consolidated loss is not used to offset the income of another person under Country Y law, DRC is permitted to file an agreement described in this paragraph (g)(2). In Year 3, DRC has a net operating loss of $10 and FA has capital gains of $60. For Country Y purposes, DRC's $10 net operating loss is used to offset $10 of FA's $60 capital gain. DRC's $10 loss is a dual consolidated loss. Because the loss is used to offset FA's income, DRC will not be able to file an agreement under this paragraph (g)(2) with respect to the loss. Country Y permits FA's remaining $50 of Year 3 income to be offset by carryover losses. However, Country Y has no applicable rules for determining which carryover losses from Years 1 and 2 are used to offset such income. Under the ordering rules of paragraph (g)(2)(v)(A) of this section, none of DRC's $100 Year 2 loss will be deemed to offset FA's remaining $50 of Year 3 income. Instead, the $50 of capital loss carryover from Year 1 will be considered to offset the income.

(vi) *Reporting requirements*—(A) *In general.* The consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner must answer the applicable questions regarding dual consolidated losses on its U.S. income tax return filed for the year in which the dual consolidated loss is incurred and for each of the following fifteen taxable years.

(B) *Annual certification.* Except as provided in paragraph (g)(2)(vi)(C) of this section, until and unless Form 1120 (or the Schedules thereto) contains questions pertaining to dual consolidated losses, the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner must file with its income tax return for each of the fifteen taxable years following the taxable year in which the dual consolidated loss is incurred a certification that the losses, expenses, or deductions that make up the dual consolidated loss have not been used to offset the income of another person under the tax laws of a foreign country. The annual certification must be signed under penalties of perjury by a person authorized to sign the agreement described in paragraph (g)(2)(i) of this section. The certification must identify the dual consolidated loss to which it pertains by setting forth the taxpayer's year in which the loss was incurred and the amount of such loss. In addition, the certification must warrant that arrangements have been made to ensure that the loss will not be used to offset the income of another person under the laws of a foreign country and that the taxpayer will be informed of any such foreign use of any portion of the loss. If dual consolidated losses of more than one taxable year are subject to the rules of this paragraph (g)(2)(vi)(B), the certifications for those years may be combined in a single document but each dual consolidated loss must be separately identified.

(C) *Exception.* A consolidated group or unaffiliated domestic owner is not required to file annual certifications under paragraph (g)(2)(vi)(B) of this section with respect to a dual consolidated loss of any separate unit other than a hybrid entity separate unit.

(vii) *Recapture of loss and interest charge*—(A) *Presumptive rule*—(*1*) *Amount of recapture.* Except as otherwise provided in this paragraph (g)(2)(vii), upon the occurrence of a triggering event described in paragraph (g)(2)(iii) of this section, the taxpayer shall recapture and report as gross income the total amount of the dual consolidated loss to which the triggering event applies on its income tax return for the taxable year in which the triggering event occurs (or, when the triggering event is a use of the loss for foreign tax purposes, the taxable year that includes the last day of the foreign tax year during which such use occurs).

(*2*) *Interest charge.* In connection with the recapture, the taxpayer shall pay an interest charge. Except as otherwise provided in this paragraph (g)(2)(vii), such interest shall be determined under the rules of section 6601(a) as if the additional tax owed as a result of the recapture had accrued and been due and owing for the taxable year in which the losses, expenses, or deductions taken into account in computing the dual consolidated loss gave rise to a tax benefit for U.S. income tax purposes. For purposes of this paragraph (g)(2)(vii)(A)(*2*), a tax benefit shall be considered to have arisen in a taxable year in which such losses, expenses or deductions reduced U.S. taxable income.

(B) *Rebuttal of presumptive rule*—(*1*) *Amount of recapture.* The amount of dual consolidated loss that must be recaptured under this paragraph (g)(2)(vii) may be reduced if the taxpayer demonstrates, to the satisfaction of the Commissioner, the offset permitted by this paragraph (g)(2)(vii)(B). The reduction in the amount of recapture is the amount by which the dual consolidated loss would have offset other taxable income reported on a timely filed U.S. income tax return for any taxable year up to and including the year of the triggering event if such loss had been subject to the restrictions of paragraph (b) of this section (and therefore had been subject to the separate return limitation year restrictions of § 1.1502–21(c)) commencing in the taxable year in which the loss was incurred. A taxpayer utilizing this rebuttal rule must attach to its timely filed U.S. income tax return a separate accounting showing that the income for each year that offsets the dual resident corporation's or separate unit's recapture amount is attributable only to the dual resident corporation or separate unit.

(*2*) *Interest charge.* The interest charge imposed under this paragraph (g)(2)(vii) may be appropriately reduced if the taxpayer demonstrates, to the satisfaction of the Commissioner, that the net interest owed would have been

less than that provided in paragraph (g)(2)(vii)(A)(*2*) of this section if the taxpayer had filed an amended return for the year in which the loss was incurred, and for any other affected years up to and including the year of recapture, treating the dual consolidated loss as a loss subject to the restrictions of paragraph (b) of this section (and therefore subject to the separate return limitation year restrictions of § 1.1502–21(c)). A taxpayer utilizing this rebuttal rule must attach to its timely filed U.S. income tax return a computation demonstrating the reduction in the net interest owed as a result of treating the dual consolidated loss as a loss subject to the restrictions of paragraph (b) of this section.

(C) *Computation of taxable income in year of recapture*—(1) *Presumptive rule.* Except as otherwise provided in paragraph (g)(2)(vii)(C)(*2*), for purposes of computing the taxable income for the year of recapture, no current, carryover or carryback losses of the dual resident corporation or separate unit, of other members of the consolidated group, or of the domestic owner that are not attributable to the separate unit, may offset and absorb the recapture amount

(*2*) *Rebuttal of presumptive rule.* The recapture amount included in gross income may be offset and absorbed by that portion of the taxpayer's (consolidated or separate) net operating loss carryover that is attributable to the dual consolidated loss being recaptured, if the taxpayer demonstrates, to the satisfaction of the Commissioner, the amount of such portion of the carryover. A taxpayer utilizing this rebuttal rule must attach to its timely filed U.S. income tax return a computation demonstrating the amount of net operating loss carryover that, under this paragraph (g)(2)(vii)(C)(*2*), may absorb the recapture amount included in gross income.

(D) *Character and source of recapture income.* The amount recaptured under this paragraph (g)(2)(vii) shall be treated as ordinary income in the year of recapture. The amount recaptured shall be treated as income having the same source and falling within the same separate category for purposes of section 904 as the dual consolidated loss being recaptured.

(E) *Reconstituted net operating loss.* Commencing in the taxable year immediately following the year in which the dual consolidated loss is recaptured, the dual resident corporation or separate unit shall be treated as having a net operating loss in an amount equal to the amount actually recaptured under paragraph (g)(2)(vii) (A) or (B) of this section. This reconstituted net operating loss shall be subject to the restrictions of paragraph (b) of this section (and therefore, the separate return limitation year restrictions of § 1.1502–21(c)). The net operating loss shall be available only for carryover, under section 172(b), to taxable years following the taxable year of recapture. For purposes of determining the remaining carryover period, the loss shall be treated as if it had been recognized in the taxable year in which the dual consolidated loss that is the basis of the recapture amount was incurred.

(F) *Consequences of failing to comply with recapture provisions*—(*1*) *In general.* If the taxpayer fails to comply with the recapture provisions of this paragraph (g)(2)(vii) upon the occurrence of a triggering event, then the dual resident corporation or separate unit that incurred the dual consolidated loss (or a successor-in-interest) shall not be eligible for the relief provided in paragraph (g)(2) of this section with respect to any dual consolidated losses incurred in the five taxable years beginning with the taxable year in which recapture is required.

(*2*) *Exceptions.* In the case of a triggering event other than a use of the losses, expenses, or deductions taken into account in computing the dual consolidated loss to offset income of another person under the income tax laws of a foreign country, this rule shall not apply in the following circumstances:

(*i*) The failure to recapture is due to reasonable cause; or

(*ii*) A taxpayer seeking to rebut the presumption of a triggering event satisfies the filing requirements of paragraph (g)(2)(iii)(B) of this section.

(G) *Examples.* The following examples illustrate this paragraph (g)(2)(vii).

Example 1. P, a domestic corporation, files a consolidated return with DRC, a dual resident corporation. In Year 1, DRC incurs a dual consolidated loss of $100 and P earns $100. P files an agreement under this paragraph (g)(2). Therefore, the consolidated group is permitted to offset P's $100 of income with DRC's $100 loss. In Year 2, DRC earns $30, which is completely offset by a $30 net operating loss incurred by P. In Year 3, DRC earns income of $25 while P recognizes no income or loss. In addition, there is a triggering event in Year 3. Therefore, under the presumptive rule of paragraph (g)(2)(vii)(A) of this section, DRC must recapture $100. However, the $100 recapture amount may be reduced by $25 (the amount by which the dual consolidated loss would have offset other taxable income if it had been subject to the separate return limitation year restrictions from Year 1) upon adequate documentation of such offset under paragraph (g)(2)(vii)(B)(*1*) of this section. Commencing in Year 4, the $100 (or $75) recapture amount is treated as a loss incurred by DRC in a separate return limitation year, subject to the restrictions of § 1.1502–21(c). The carryover period of the loss, for purposes of section 172(b), will start from Year 1, when the dual consolidated loss was incurred.

Example 2. The facts are the same as in **Example 1**, except that in Year 2, DRC earns $75 and P earns $50. In Year 3, DRC earns $25 while P earns $30. A triggering event occurs in Year 3. The $100 presumptive amount of recapture can be reduced to zero by the $75 and $25 earned by DRC in Years 2 and 3, respectively, upon adequate documentation of such offset under paragraph (g)(2)(vii)(B)(*1*) of this section. Nevertheless, an interest charge will be owed. Under the presumptive rule of paragraph (g)(2)(vii)(A)(*2*) of this section, interest will be charged on the additional tax owed on the $100 of recapture income as if the tax had accrued in Year 1 (the year in which the dual consolidated loss reduced the income of P). However, the net interest will be reduced to the amount that would have been owed if the consolidated group had filed amended returns, treating the dual consolidated loss as a loss subject to the separate return limitation year restrictions of § 1.1502–21(c), upon adequate documentation of such reduction of interest under paragraph (g)(2)(vii)(B)(*2*) of this section.

Example 3. P, a domestic corporation, owns DRC, a domestic corporation that is subject to the income tax laws of Country Z on a residence basis. DRC owns FE, a Country Z corporation. In Year 1, DRC incurs a net operating loss for U.S. tax purposes. Under the tax laws of Country Z, the loss is not recognized until Year 3. The Year 1 net operating loss is a dual consolidated loss under paragraph (c)(5) of this section. The consolidated group elects relief under paragraph (g)(2) of this section by filing the appropriate agreement and uses the dual consolidated loss on its U.S. income tax return. In Year 3, the dual consolidated loss is used under the laws of Country Z to offset the income of FE, which is a triggering event under paragraph (g)(2)(iii) of this section. However, the consolidated group does not recapture the dual consolidated loss. The consolidated group's failure to comply with the recapture provisions of this paragraph (g)(2)(vii) prevents DRC from being eligible for the relief provided under paragraph (g)(2) of this section for any dual consolidated losses incurred in Years 3 through 7, inclusive.

(h) *Effective date*—(1) *In general.* These regulations are effective for taxable years beginning on or after October 1, 1992. Section 1.1503–2A is effective for taxable years beginning after December 31, 1986, and before October 1, 1992.

(2) *Taxpayers that have filed for relief under § 1.1503–2A*—(i) *In general.* Except as provided in paragraph (h)(ii)(b) of this section, taxpayers that have filed agreements described in § 1.1503–2A(c)(3) or certifications described in § 1.1503–2A(d)(3) shall continue to be subject to the provisions

of such agreements or certifications, including the amended return or recapture requirements applicable in the event of a triggering event, for the remaining term of such agreements or certifications.

(ii) *Special transition rule.* A taxpayer that has filed an agreement described in § 1.1503-2A(c)(3) or a certification described in § 1.1503-2A(d)(3) and that is in compliance with the provisions of the temporary regulations may elect to replace such agreement or certification with an agreement described in paragraph (g)(2)(i) of this section. However, a taxpayer making this election must replace all agreements and certifications filed under § 1.1503-2A. If the taxpayer is a consolidated group, the election must be made with respect to all dual resident corporations or separate units within the group. Likewise, if the taxpayer is an unaffiliated domestic owner, the election must be made with respect to all separate units of the domestic owner. The taxpayer must file the replacement agreement with its timely filed income tax return for its first taxable year commencing on or after October 1, 1992, stating that such agreement is a replacement for the agreement filed under § 1.1503-2A(c)(3) or the certification filed under § 1.1503-2A(d)(3) and identifying the taxable year for which the original agreement or certification was filed. A single agreement described in paragraph (g)(2)(i) of this section may be filed to replace more than one agreement or certification filed under § 1.1503-2A; however, each dual consolidated loss must be separately identified. A taxpayer may also elect to apply § 1.1503-2 for all open years, with respect to agreements filed under § 1.1503-2A(c)(3) or certifications filed under § 1.1503-2A(d)(3), in cases where the agreement or certification is no longer in effect and the taxpayer has complied with the provisions of § 1.1503-2A. For example, a taxpayer may have had a triggering event under § 1.1503-2A that is not a triggering event under § 1.1503-2. If the taxpayer fully complied with the requirements of the agreement entered into under § 1.1503-2A(c)(3) and filed amended U.S. income tax returns within the time required under § 1.1503-2A(c)(3), the taxpayer may file amended U.S. income tax returns consistent with the position that the earlier triggering event is no longer a triggering event.

(3) *Taxpayers that are in compliance with § 1.1503-2A but have not filed for relief thereunder.* A taxpayer that is in compliance with the provisions of § 1.1503-2A but has not filed an agreement described in § 1.1503-2A(c)(3) or a certification described in § 1.1503-2A(d)(3) may elect to have the provisions of § 1.1503-2 apply for all open years. In particular, a taxpayer may elect to apply the provisions of § 1.1503-2 in a case where the dual consolidated loss has been subjected to the separate return limitation year restrictions of § 1.1502-21(c) but the losses, expenses, or deductions taken into account in computing the dual consolidated loss have not been used to offset the income of another person for foreign tax purposes. However, if a taxpayer is a consolidated group, the election must be made with respect to all dual resident corporations or separate units within the group. Likewise, if the taxpayer is an unaffiliated domestic owner, the election must be made with respect to all separate units of the domestic owner.

Par. 3. A new undesignated center heading is added immediately following § 1.1502-51A to read as follows: "DUAL CONSOLIDATED LOSSES INCURRED IN TAXABLE YEARS BEGINNING BEFORE OCTOBER 1, 1992."

§ 1.1503-2T [Redesignated as 1.1503-2A]

Par. 4. § 1.1503-2T is redesignated as § 1.1503-2A, and the word "(temporary)" is removed from the section heading.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

PART 602—[AMENDED]

Par. 5. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 6. Section 602.101(c) is amended by removing the entry for "1.1503-2T" and adding the following entry to the table:

"1.1503-2A ..... 1545-1083"

Shirley D. Peterson,

Commissioner of Internal Revenue.

Approved: August 26, 1992.

Alan J. Wilensky,

Deputy Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 92-21539 Filed 9-4-92; 8:45 am]

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Office of the Secretary

31 CFR Part 10

Practice Before the Internal Revenue Service; Advertising and Solicitation

AGENCY: Office of the Secretary, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document contains final regulations governing practice before the Internal Revenue Service (Treasury Department Circular Number 230). These regulations relate to the provisions of the regulations addressing advertising and solicitation by those eligible to practice before the Internal Revenue Service and is occasioned by judicial determinations impacting on the subject.

DATES: These regulations are effective on September 9, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Scott M. Rosenzweig, Office of Director of Practice, Internal Revenue Service, Washington DC 20224, (202) 376-1428.

SUPPLEMENTARY INFORMATION:

Background and Comments

The regulations governing practice before the Internal Revenue Service, 31 CFR part 10, reprinted as Treasury Department Circular No. 230 (Circular 230), traditionally have contained rules governing permissible advertising and solicitation by those eligible to engage in such practice. In the past two decades, the United States Supreme Court has issued decisions liberalizing permissible advertising and solicitation. Circular 230 was modified substantially in the area a number of years ago (44 FR 4940) to reflect the early liberalization. However, Supreme Court decisions since then require that further modifications be made. On April 22, 1991, the Treasury Department published in the **Federal Register** (56 FR 16289) a proposed rule to amend the regulations governing practice before the Internal Revenue Service. The proposed rule was designed to bring the current regulations contained in Circular 230 into line with recent Supreme Court decisions in the area of professional advertising and solicitation.

The notice of proposed rulemaking discussed three decisions in the area of advertising (by attorneys). Because of their relevance, they also are discussed herein. All three are based on the premise that attorney advertising is commercial speech protected by the First Amendment of the Constitution to

insure the flow of consumer information to the public.

The Supreme Court, in *Zauderer* v. *Office of Disciplinary Counsel*, 471 U.S. 626 (1985), approved an attorney's advertisement of the availability of his services using an illustration of the Dalkon Shield along with statements advising readers that their legal rights may not have lapsed with respect to harm suffered as the result of use of the device. These advertising methods were held unobjectionable because they were not deceptive or misleading. However, the Court agreed that other statements made by the attorney were misleading. Among them were representations made in connection with an earlier advertisement in which the attorney offered a full refnd of his fee to persons accused of drunk driving if such persons hired him and were later convicted. This statement was held to be false or misleading because it referred to something the attorney could not do, namely, accept a criminal case on a contingent-fee basis. In addition, the Dalkon Shield advertisement was found deceptive in that it offered representation on a contingent-fee basis, but neglected to include information on client responsibility for costs. Since the general public is unfamiliar with the fee/costs distinction, the advertisement was considered misleading.

In *Shapero* v. *Kentucky Bar Ass'n*, 486 U.S. 466 (1988), the lawyer sent a letter to persons facing foreclosure actions urging them to contact him to find out what he could do to assist them. This was in violation of the Kentucky rules prohibiting attorneys from direct mailing tailored to the recipients' unique circumstances. The Supreme Court held the prohibition unconstitutional, finding that states may not categorically ban lawyers from soliciting business by sending a truthful, nondeceptive letter to persons known to face particular legal problems. However, the opinion suggested that states may retain some control over direct mail in the interest of preventing abuse. The Court wrote that such control means something "far less restrictive and more precise" than a total ban, but will include controls such as a requirement that attorneys wishing to engage in direct mailings submit a form of the letter to a state commission or requiring advertisements to be clearly marked as such. In addition, a distinction was made between targeted direct mail from in-person solicitation, the latter still being prohibited.

Peel v. *Attorney Registration and Disciplinary Commission of Illinois*, 110 S. Ct. 2281 (1990) is the most recent pronouncement on the subject. In *Peel*, the lawyer included as part of his letterhead the phrase "Certified Civil Trial Specialist By the National Board of Trial Advocacy." This was in violation of the Illinois Code of Professional Responsibility which prohibited attorneys from holding themselves out as "certified" or a "specialist" except as specifically permitted. The plurality opinion of the Court held that blanket prohibitions on truthful advertising related to lawful activities are unconstitutional. While the state may enact legislation governing misleading advertising, the mere fact that such advertising may have the potential to confuse is not sufficient grounds to deny first amendment protection.

Eight written comments on the proposed rule were received. After consideration of all comments regarding the proposed rule, it is hereby adopted with modifications as explained below.

Comments

1. Six of the comments expressed concerns about the proposal to prohibit the use for the term "certified" by enrolled agents. Such proposal stemmed in large part from concerns about confusion by taxpayers through the use of the term. In this connection, it should be read in the appropriate context, i.e. misleading in the narrow field of tax practice. The term "certified" by tax practitioners when used in either correspondence or advertisements relating to taxation is closely identified by the public with certified public accountants. This is a unique circumstance. While the authority of enrolled agents and certified public accountants to practice before the Internal Revenue Service may be the same, it is an important protection to the public that there be a distinction between the two categories of practitioners. However, the prohibition is intended to be limited to descriptive or acronymic designations dealing with tax practice. If the term "certified" is used in a descriptive phrase dealing with a bona fide attainment clearly not applicable to tax services per se, it would be permitted. The term "Certified Financial Planner" is an example of an attainment that is not in the prohibited area. Concern also has been expressed over the allowability of enrolled agents to employ the designation "EA" or "E.A." There has been nothing in the regulations prohibiting the use of abbreviations, so long as the abbreviations clearly represent an enrolled agent's status. Further, the initials are widely used and reflect the custom of the enrolled agent community. The designation is equally appropriate for enrolled actuaries. The final rule has been clarified in these respects.

2. Comments were received regarding the proposed requirement that all letters of solicitation need be marked as such, in capital letters, on the envelope and the top of each page. Commentators expressed concern that such requirement was onerous, lending an unprofessional appearance to the solicitation. In light of these comments, the rule will reflect a requirement that only the first page and envelopes of targeted solicitations be so marked. We view the references not only as being helpful to taxpayers so as not to alarm or unduly confuse them, but an honest and clear representation of the mailings. Since envelopes may not be kept with correspondence, the final rule requires the dual notice. Typeface, weight, color or point size requirements are not being set forth. Legibility will be the sole criterion to be used by this office in determining compliance. This requirement applies to targeted mailings, i.e. mailings to those whose unique circumstances are the basis for the solicitation. Examples of targeted mailings are those sent to taxpayers whose assets have been levied upon by the Internal Revenue Service or who have filed for bankruptcy. Examples of non-targeted mailings are ones soliciting referral work from peers and those sent to former and existing clients.

3. Concern has been expressed over the use of the term "unduly influencing" in the proposed rule. Such language has been used historically in Circular 230. The phrase "unduly influencing" continues to apply generally to the use of highly colored language or hyperbole employed to influence without imparting information. For example, advertisements that state or imply a guaranteed refund or "win" based upon the practitioner's past record would be considered unduly influencing.

4. Some commentators have expressed concern about restricting non-written solicitations to situations involving new business from an existing or former client in a related matter. Specifically, it has been pointed out that this restriction does not permit soliciting family members or making one's availability known to other practitioners. It is agreed that the proposal is too restrictive in this regard. The rule has been expanded to permit solicitation of family members. There has not been a limitation on the means by which a practitioner may make the availability of his or her professional services known within the practitioner community. Announcements and mailings directed to the practitioner

community seeking referrals are permitted.

Special Analysis

This rule relates solely to professional services in connection with Internal Revenue Service and Treasury Department proceedings and is not expected to have any significant economic consequences.

Therefore, it has been determined that this rule is not a major rule as defined in Executive Order 12291 and a regulatory impact analysis is not required. It is hereby certified that this rule is not expected to have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

Drafting Information

The author of these regulations is Mr. Scott M. Rosenzweig, attorney advisor in the Office of Director of Practice, Department of the Treasury. Other personnel in the Treasury Department participated in the development of the final rule, both as to substance and style.

List of Subjects in 31 CFR Part 10

Administrative practice and procedure, Lawyers, Accountants, Enrolled agents, Enrolled actuaries, appraisers, Reporting and recordkeeping requirements, Taxes.

Amendments to Regulations

Accordingly, part 10 of subtitle A, Title 31 of the Code of Federal Regulations is amended as follows:

PART 10—[AMENDED]

1. The authority for subtitle A, part 10 continues to read as follows:

Authority: Sec. 3, 23 Stat. 258, secs. 2–12, 60 Stat. 237 et seq.; 5 U.S.C. 301, 500, 551–559; 31 U.S.C. 1026; Reorg. Plan No. 26 of 1950, 15 FR 4935, 64 Stat. 1280, 3 CFR, 1949–1953 Comp., p. 1017.

2. In Part 10 remove the phrase "attorney(s), certified public accountant(s), (or) enrolled agent(s)" and add, in their place, the words "attorney, certified public accountant, enrolled agent, or enrolled actuary" in the following places:

Section 10.0;
Section 10.20 (a), (b);
Section 10.21;
Section 10.22 introductory text;
Section 10.23;
Section 10.24 introductory text;
Section 10.26 (a)(4);
Section 10.27;
Section 10.28;
Section 10.29;
Section 10.30 (c)(1) introductory text, (c)(2), (c)(3), (e);
Section 10.31;
Section 10.50;
Section 10.51 introductory text;
Section 10.52 (a);
Section 10.53;
Section 10.54;
Section 10.55 (a), (b).

3. Section 10.30, paragraph (a) is revised as follows:

§ 10.30 Solicitation.

(3) *Advertising and solicitation restrictions.*

(1) No attorney, certified public accountant, enrolled agent, enrolled actuary, or other individual eligible to practice before the Internal Revenue Service shall, with respect to any Internal Revenue Service matter, in any way use or participate in the use of any form of public communication containing (i) A false, fraudulent, unduly influencing, coercive, or unfair statement or claim; or (ii) a misleading or deceptive statement or claim.

Enrolled agents, in describing their professional designation, may not utilize the term of art "certified" or indicate an employer/employee relationship with the Internal Revenue Service. Examples of acceptable descriptions are "enrolled to represent taxpayers before the Internal Revenue Service," "enrolled to practice before the Internal Revenue Service, and "admitted to practice before the Internal Revenue Service." Enrolled agents and enrolled actuaries may abbreviate such designation to either EA or E.A.

(2) No attorney, certified public accountant, enrolled agent, enrolled actuary, or other individual eligible to practice before the Internal Revenue Service shall make, directly or indirectly, an uninvited solicitation of employment in matters related to the Internal Revenue Service. Solicitation includes, but is not limited to, in-person contacts and telephone communications. This restriction does not apply to (i) Seeking new business from an existing or former client in a related matter; (ii) communications with family members; (iii) making the availability of professional services known to other practitioners, so long as the person or firm contacted is not a potential client; (iv) solicitation by mailings; or (v) non-coercive in-person solicitation by those eligible to practice before the Internal Revenue Service while acting as an employee, member, or officer of an exempt organization listed in sections 501(c)(3) or (4) of the Internal Revenue Code of 1954 (26 U.S.C.).

Any targeted direct mail solicitation, i.e. a mailing to those whose unique circumstances are the basis for the solicitation, distributed by or on behalf of an attorney, certified public accountant, enrolled agency, enrolled actuary, or other individual eligible to practice before the Internal Revenue Service shall be clearly marked as such in capital letters on the envelope and at the top of the first page of such mailing. In addition, all such solicitations must clearly identify the source of the information used in choosing the recipient.

* * * * *

§ 10.30 [Amended]

4. In § 10.30, paragraph (b) is removed.

5. In § 10.30, paragraph (c) is redesignated as paragraph (b), and is amended by adding the following undesignated sentence after paragraph (b)(1)(iv):

"Any statement of fee information concerning matters in which costs may be incurred shall include a statement disclosing whether clients will be responsible for such costs."

6. In § 10.30, paragraph (d) is redesignated as paragraph (c), and is revised to read as follows:

§ 10.30 Solicitation.

* * * * *

(c) *Communications.* Communication, including fee information, may include professional lists, telephone directories, print media, mailings, radio and television, and any other method: *Provided,* that the method chosen does not cause the communication to become untruthful, deceptive, unduly influencing or otherwise in violation of these regulations. It shall be construed as a violation of these regulations for a practitioner to persist in attempting to contact a prospective client, if such client has made known to the practitioner a desire not to be solicited. In the case of radio and television broadcasting, the broadcast shall be pre-recorded and the practitioner shall retain a recording of the actual audio transmission. In the case of direct mail communications, the practitioner shall retain a copy of the actual mailing, along with a list or other description of persons to whom the communication was mailed or otherwise distributed. Such copy shall be retained by the practitioner for a period of at least 36 months from the date of the last transmission or use.

* * * * *

§ 10.30 [Amended]

6. Section 10.30 (e) is redesignated as paragraph (d).

Dated: August 28, 1992.

Jeanne S. Archibald,

General Counsel, Department of the Treasury.

[FR Doc. 92-21532 Filed 9-8-92; 8:45 am]

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DEPARTMENT OF DEFENSE

32 CFR Part 220

RIN 0790-AD32

Collection From Third Party Payers of Reasonable Costs of Healthcare Services

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule would amend the DoD regulation that implements 10 U.S.C. 1095. This statute generally provides for collection by the United States from third party payers of reasonable costs of healthcare services provided in facilities of the Uniformed Services to DoD beneficiaries who are also beneficiaries under the third party payer's plan. This final rule also implements recent legislative amendments that expanded their third party collection authority to cover outpatient services, automobile liability and no-fault insurance policies, and Medicare supplemental insurance plans. Active duty members are included in collections from automobile liability and no-fault insurance carriers. In addition the final rule revises methods for determining reasonable costs for inpatient care services.

EFFECTIVE DATE: This final rule is effective October 9, 1992.

ADDRESSES: Office of the Deputy Assistant Secretary of Defense (Health Services Operations), Attn: Operations and Management Support, room 3E343, The Pentagon, Washington, DC 20301-1600.

FOR FURTHER INFORMATION CONTACT: CDR Steven D. Olsen, MSC, USN at (703) 693-2570.

SUPPLEMENTARY INFORMATION:

I. Background

Congress enacted 10 U.S.C. 1095 as part of the Consolidated Omnibus Budget Reconciliation Act of 1985, Public Law 99-272, section 2001(a)(1), to permit the Department of Defense to collect from third party payers reasonable inpatient hospital care costs incurred on behalf of most DoD health care beneficiaries. This legislation was based on the premise that private health care plans should not avoid payment for inpatient healthcare services provided to their beneficiaries solely because those beneficiaries also happen to be entitled to space available care in military facilities. To implement this statute, DoD issued a proposed rule October 8, 1986, and a final rule September 25, 1987.

After several years of experience, Congress indicated its disappointment regarding the relatively low level of collections being made under the program. As one step to address this, in 1989, Congress amended the statute to provide that funds collected, rather than being turned over to the general treasury, would be credited to the appropriations account supporting the facility that provided the care. Public Law 101-189, section 727. The intent of this amendment was to provide an incentive for facilities of the Uniformed Services to aggressively implement this program.

Improved implementation was also the objective of regulatory revisions promulgated by DoD in 1990. A proposed rule was issued January 16, 1990, 55 FR 1473, and a final rule, May 29, 1990, 55 FR 21742. The result was a significantly revised regulation setting forth DoD's interpretations of key statutory provisions and related requirements and procedures.

Two government reports in 1990 are also noteworthy as background. The DoD Inspector General released an exhaustive audit report calling for a much more active collection program. I.G Audit No. 9FR-0031. Draft versions of this report stimulated much of the 1990 rule making activity. On a related front, the General Accounting Office issued a report entitled, "Military Health Care: Recovery of Medical Care Costs from Liable Third Parties Can be Improved." This report addressed collections in tort liability cases, such as automobile accident cases, under the Federal Medical Care Recovery Act (FMCRA), and recommended expanding that authority to cover no-fault automobile insurance policies and to permit retention of collected funds at the facility that provided the care.

These two reports stimulated further Congressional action in 1990. In the National Defense Authorization Act for Fiscal Year 1991, Public Law 101-510, section 713, Congress made three significant changes to 10 U.S.C. 1095. First, Congress expanded the collection authority to cover outpatient services. The original statute only covered inpatient hospital care. Second, based on the GAO report, Congress supplemented current legal authority to collect in tort liability cases with new authority to also collect from no-fault insurance carriers. Congress folded both the pre-existing tort liability case authority and the new no-fault authority under the framework of 10 U.S.C. 1095, thus allowing retention of funds collected at the facility in both types of cases. Third, reacting to one of the Inspector General's recommendations, Congress expanded 10 U.S.C. 1095 to cover Medicare supplemental insurance plans. Similar statutory changes (but not including the outpatient care provision) were made in the Department of Defense Appropriations Act for FY 1991, Public Law 101-511, section 8075.

The Senate Appropriations Committee explained its proposed provision, which was enacted, as one which:

> would allow the Department of Defense to collect from Medicare supplemental insurance policy carriers and from automobile liability and no-fault insurance carriers for treatment of eligible patients in military hospitals. As an incentive for military hospitals to make these collections, net proceeds would remain at the collecting medical facility.

S. Rept. 101-521, p. 48.

In making these statutory revisions, Congress clearly expressed its intent regarding the operation of the third party collection program. The Conference Committee Report on the Authorization Act said "the conferees are disappointed to note" the "major flaws" in the program identified by the Inspector General, which if not corrected, could result in a failure "to collect approximately $318 million from primary health insurance plans for fiscal years 1990 through 1994." The Conference Report concluded:

> The conferees expect that the Department of Defense will correct these deficiencies, and will aggressively implement the expanded authority provided in this section.

H. Conf. Rept. 101-923, p. 618.

This final rule is to implement the expanded authority. It is important to note that active duty members are excluded from third party collections except in cases involving automobile liability and no-fault insurance. In addition, the final rule revises current methods for calculating reasonable costs of inpatient hospital care services.

This final rule is based on the proposed rule issued December 23, 1991 (56 FR 66381). A 60-day comment period was provided. We received five public comments, four of which were from businesses in the insurance industry (two of those four on behalf of a particular company). These comments have been carefully considered, and a number of changes to the rule have been made. A discussion of the major comments received is included in the summary of the final rule which follows.

II. Provisions of the Final Rule

A. Outpatient Services

1. Expansion of Authority

The recent statutory amendment added outpatient services to the 10 U.S.C. 1095 collection program by replacing the previous references to "inpatient hospital care" with the new authority to collect for all "healthcare services." We are making a comparable revision to the regulation at various places. Specifically, this change is made in the heading for part 220, § § 220.1, 220.2, 220.8, and 220.9.

2. Per Visit Rate

Another revision to § 220.8 involves the calculation of reasonable costs for outpatient services. Congress addressed this by authorizing "all-inclusive per visit rates" as the basis for outpatient services collections 10 U.S.C. 1095(f)(2). Based on this authority, the Department of Defense is adopting this method for computing reasonable costs for most outpatient care. Thus, collections for most outpatient services will be based on a standard per visit fee, representing the average cost in facilities of the Uniformed Services of an outpatient visit. Multiple outpatient visits on the same day to different clinics will result in one charge for each clinic visit. Multiple visits on the same day to the same clinic will only have one charge. As a general rule, the standard per visit amount will be all-inclusive. No additional charge will be made for routine laboratory, radiology, pharmacy or other services provided in conjunction with an outpatient visit.

Although most outpatient services will be billed based on the standard per visit fee, there are several special rules for particular types of care. One special rule is that a separate charge for same day/ambulatory surgery will be published annually.

Another special rule, under § 220.8, applies when the provision of services is at the request of a provider outside of the Military Health Service System (MHSS) rather than in conjunction with an outpatient visit at a military medical treatment facility (MTF). In these cases, charges shall be made for certain high cost ($100 or more) ancillary services and procedures such as laboratory, radiology, pharmacy, pulmonary function, cardiac catheterization, hemodialysis, hyperbaric medicine, electrocardiography, electroencephalography, electroneuromyography, pulmonary function, inhalation and respiratory therapy and physical therapy services. For example, patients seen by civilian practitioners under the CHAMPUS program often obtain prescribed laboratory and radiology tests as well as prescription drugs from a local MTF. (DoD Partnership Program providers acting in their MHSS role are not considered outside providers for this purpose.)

The per visit rate, described above, will not vary based on the precise medical procedures involved in the visit. The rate for certain outside provider requested high cost ancillary services, however, will be based on the cost of the type of service provided. The particular high cost services, drugs or procedures covered by the special rule will be published annually, along with the rate applicable to each service. These costs are accounted for separately from other costs, and thus are not part of the standard per visit or per diem charges.

Other special rules relate to PRIMUS and NAVCARE clinics and services purchased by a facility of the Uniformed Services from civilian providers.

The adoption of this method of computing costs of third party collection conforms to the method currently followed in cases in which private payment is required, including automobile accident cases under the Federal Medical Care Recovery Act. In addition, it will rely upon the same data and computation systems as were used to establish the per diem rates that have been used for inpatient hospital services collections under this program. Also, this method provides a simple, economical method for third party collections. As in the case of the per diem amounts, the applicable visit charge, the same day/ambulatory surgery charge, the PRIMUS and NAVCARE charge, and the rates for externally requested high cost ancillary services shall be updated and published annually. For treatment rendered in fiscal year 1992, the standard per visit amount is $77.

3. Effective Date

A new § 220.6(d) reflects the Congressional effective date for the expansion of the third party collection program to outpatient care. It does not apply to plans that have been in continuous effect without amendment or renewal since prior to the effective date of the statutory amendment (November 5, 1990), to the extent that such plans clearly exclude payment to the Federal government for care in military facilities.

4. Timetable for Actual Billings

In issuing this final rule, our purpose is to establish all regulatory requirements that will be needed to carry out this expansion to the program. However, with respect to outpatient services billings, we note that for some facilities of the Uniformed Services, a number of internal systems adjustments are not completed that are necessary to the operation of the program. Therefore, in some areas of the country, actual billings for outpatient services may not begin promptly. Activities are permitted to back bill for care provided between the effective date of this rule and the provision of internal systems to implement the program. Of course, any such back bills are subject to the third party plan's normal rules for timeliness of claims.

B. Medicare Supplemental Insurance Plans

1. Extension of Collection Authority

The current § 220.6(b) excludes Medicare supplemental insurance plans from 10 U.S.C. 1095. Based on the recent Congressional action, we are including such plans in the program by amending § 220.6 and the definition section (to be redesignated as § 220.12). In addition, we are adding a new § 220.10 concerning special rules applicable to Medicare supplemental insurance plans.

2. Services Covered

Because Medicare is excluded as a third party payer under this program, and because Medicare supplemental insurance plans generally define themselves relative to the primary Medicare coverage, there is a need for a special rule for third party collections from Medicare supplemental plans for care provided in facilities of the Uniformed Services. Congress provided the special rule. The House Armed Services Committee, which originated this provision, explained:

> In authorizing collection from Medicare supplemental policies, the committee intends that the right of the United States to collect would be comparable to the obligation that the third party payer would incur if the healthcare services were provided under Medicare.

H. Rept. 101–665, p. 214; see also H. Conf. Rept. 101–923, p. 618. Similarly, the Appropriations Act general provision states that in connection with Medicare supplemental policies:

> the facility of the uniformed services shall be treated as if it were a Medicare eligible provider and the services provided as if they were Medicare-covered services.

Public Law 101–511, section 8075.

The basic policy Congress put in place is that Medicare supplemental plans should be no better or worse off when their insured beneficiaries receive care

in a facility of the Uniformed Services than those plans are when their insured beneficiaries receive care from civilian providers. In this way, these plans do not enjoy a windfall when their insured beneficiaries receive care in a facility of the Uniformed Services. Our § 220.10(a) adopts a general policy consistent with this Congressional intent.

Most of the public comments we received related to the extension of collection authority to Medicare supplemental insurance plans and the special rules we proposed for accomplishing this. Some commenters took issue with the basic assertion of authority to collect from Medicare supplemental plans on the grounds that, by the terms of their specific insurance contracts, their sole liability is as a second payer to Medicare, and they cannot be liable when Medicare is not liable. Our interpretation of the statutory authority is inchanged. As indicated above, both statutory text and legislative history make clear that Medicare supplemental plans are covered by 10 U.S.C. 1095, notwithstanding that Medicare excludes payment for services provided by military facilities. Moreover, the argument that would render the statute subject to the terms of the insurance contract with respect to basic statutory applicability (as opposed to particular coverage features, and the like) would also nullify the specific statutory amendment that extended the collection program to Medicare supplemental plans.

Separate from the jurisdictional issue, several commenters argued that our proposed rule reflected a lack of understanding of many complexities concerning the Medicare program and the operations of Medicare supplemental plans. Among the specific problems cited were: that some supplemental plans do not cover the Medicare inpatient deductible; that our proposed rule could be interpreted as requiring the supplemental plan to pay the deductible twice in cases in which a beneficiary might have both a military facility and a civilian hospital inpatient admission within a single Medicare benefit period; that most supplemental plans do not cover the Medicare Part B deductible; that it would be very difficult to apply many Medicare and Medicare supplemental plan particular benefit exclusions and limitations under the DoD billing method based on all-inclusive per diem or per visit rates; and other complexities. In considering these comments, we also consulted with officials of the Health Care Financing Administration of the Department of Health and Human Services, the agency that administers the Medicare program and is responsible for Federal oversight of Medicare supplemental plans, and reviewed the National Association of Insurance Commissioners Model Regulation for Medicare supplemental insurance policies.

Based on this, we have made significant changes to the proposed rule. Under the final rule, we are deferring any efforts to collect from Medicare supplemental policies for covered services, with the exception of inpatient hospital deductible amounts.

With respect to the inpatient hospital deductibles, we have refined and clarified the rule, specifically, § 220.10(b). Of course, the obligation to pay the inpatient deductible amount which in 1992 is $652, only applies to policies which cover the inpatient deductible. In response to comments, we have added a provision to assure that the supplemental insurer will not be obliged to pay the facility of the Uniformed Services if the benefit is required to satisfy a patient's inpatient deductible in a civilian hospital arising from an admission within the same benefit period. If the benefit has already been paid to the facility of the Uniformed Services, it will be refunded to permit the benefit to be paid to the civilian hospital. This assures that double payment from the insurer will not occur and that beneficiaries will not be left without their insurance coverage for an out-of-pocket expense in connection with the inpatient deductible.

We will not now implement the statutory authority to collect with respect to supplemental plan coverage of inpatient services, other than the deductible coverage, or of Medicare Part B services. As provided in § 220.10(c), if we subsequently decide to begin such collections, this will only be initiated after we have established specific special payment amounts and collection procedures to accommodate the special complexities of Medicare supplemental plans. We have no immediate plans to proceed with this, but reserve the right to do so at later time.

3. Medicare Claim Not Required

In regard to claims procedures, another special rule is necessary to accomplish the outcome intended by Congress. The usual procedure for Medicare supplemental carriers is to accept claims only after the primary claim has been processed and paid by Medicare. In this way, the remaining liability, which becomes the responsibility of the supplemental policy, is apparent. However, a different process is required in 10 U.S.C. 1095 cases because there will be no claim to Medicare. Instead, the third party payer is statutorily required to accept the claim as involving Medicare covered services from an authorized provider.

More than one commenter took exception to our position that a Medicare claim is not required. One commenter said that without a Medicare adjudication, the Medicare supplemental insurer could not determine if the services were covered by the Medicare supplemental plan. Another commenter insisted that if a Medicare claim was not required, DoD would be legally required to establish a mirror image system of claims adjudication to simulate a Medicare claim adjudication.

We disagree. Although we acknowledge that our proposed rule failed to address a number of complicated operational issues, we reject the thesis that supplemental insurers have some sort of statutory entitlement to a particular adjudicatory process being completed by the government. In any event, by limiting collections under the final rule to the inpatient deductible amount, when it is covered by the supplemental policy, we have eliminated any argument that a complex set of benefit coverage or payment amount rules is needed.

On a related point, with respect to validating the medical necessity of a hospital admission for purposes of determining whether the supplemental plan should pay, the fact of the admission represents a federal government determination of the need for acute care services, which can be verified by the supplemental plan under our regulation (including §§ 220.4(c)(2) and 220.5).

4. Effective Date

Section 220.10(e) reflects the statutory effective date of the expansion of the 10 U.S.C. 1095 authority to cover Medicare supplemental plans. The provision is similar to that mentioned above in connection with outpatient services.

One commenter pointed out that the effective date provision contained in the National Defense Authorization Act for Fiscal Year 1991, section 713(e) did not specifically address the effective date of the extension of collection authority to Medicare supplemental plans. This is correct; however, it does not change the result. Absent a more specific effective date in a statute, a statutory change takes effect upon the date of enactment, which was November 5, 1990. We construe the effective date of this change consistent with explicit

Congressional policy regarding establishment of the third party collection program and other extensions of the authority. As a result, it does not apply to plans which have been in continuous effect since prior to the effective date, without amendment or renewal, and which exclude coverage of these services. This protects supplemental insurers from having the statutory change affect them until they have had, since the statute took effect, the opportunity to revise their policies to accommodate the new statute.

C. Automobile Liability and No-Fault Automobile Insurance Policies

1. Extension of Collection Authority

In the recent statutory amendments, Congress amended the definition of "third party payer" to include policies issued by "an automobile liability insurance or no-fault insurance carrier" 10 U.S.C. 1095(h)(1). We are making a comparable amendment in proposed § 220.12. Most of the normal rules and procedures of part 220 will apply to these types of cases. However, as with Medicare supplemental plans, some special rules are needed in connection with automobile liability and no-fault policies.

2. Active Duty Members Covered

The first special rule is that the third party collection authority in automobile cases applies to active duty members. The usual rule of 10 U.S.C. 1095 is that active duty members are excluded. This is likely based on the fact that active duty members typically do not have other health insurance. However, under the Federal Medical Care Recovery Act, automobile liability cases have long followed a different rule, which Congress has now adopted for automobile cases under the third party collection program. 10 U.S.C. 1095 (i)(1). Thus, under § 220.11(a), medical services provided in a facility of the Uniformed Services to an active duty member in cases in which a third party automobile liability insurance or no-fault insurance carrier is a responsible payer, the carrier has a duty to pay.

3. Relation to Federal Medical Care Recovery Act

Under the Federal Medical Care Recovery Act (FMCRA), Public Law 87-693 (42 U.S.C. 2651 et seq.), the United States has a right to collect in cases "creating a tort liability upon some third person." 42 U.S.C. 2651(a). In the recent amendments, Congress intended to expand collection authority to no-fault insurance cases and to bring both tort liability and no-fault cases under the framework of 10 U.S.C. 1095. However, in cases based on tort liability, Congress did not intend to reinvent a new body of law on determining tort liability. Tort liability is determined by state law. The House Armed Services Committee stated that the statutory amendment "would not affect the current tort liability recovery authority governed by the Medical Care Recovery Act." H. Rept. 101-665, p. 214. Similarly, the Appropriations Act general provision makes clear that in automobile insurance cases, "should tort liability be a basis for payment, the standards of the Federal Medical Care Recovery Act * * * shall apply." Public Law 101-511, section 8075.

Section 220.11(b) sets forth our interpretation that in tort liability cases, 10 U.S.C. 1095 and the FMCRA provide concurrent authority and that in such 10 U.S.C. 1095 cases, matters regarding the determination of tort liability shall be governed by the same substantive standards as would be applied under the FMCRA (i.e., state law). In addition, the Department of Justice FMCRA regulations, 28 CFR part 43, shall apply to these concurrent authority cases. The FMCRA, however, has no relevance to 10 U.S.C. 1095 collections involving no-fault insurance carriers. Finally, in both types of cases under 10 U.S.C. 1095, other matters and procedures, such as the amount billed, billing procedures, etc., are governed by part 220.

4. Effective Date

Section 220.11(c) reflects the effective date enacted by Congress for the extension of 10 U.S.C. 1095 collection authority to automobile liability insurance and no-fault insurance carriers. It is the same as that referenced above for Medicare supplemental policies and outpatient services.

D. Inpatient Services

1. Rate Structure

DoD has historically used a single rate for reimbursement for various healthcare services. The rate has taken the form of a single per diem charge, per visit charge or procedure charge and has been based on the actual costs of rendering healthcare services as reflected in the Medical Expense and Performance Reporting System (MEPRS). MEPRS is the standard expense reporting system for all fixed medical treatment facilities (MTFs) within the Department of Defense (DoD) and is the accepted source of healthcare information for Congress and offices and agencies of the Executive Branch. A single rate has the advantage of administrative simplicity and enables use by all MTFs including those with limited automated capabilities. Although a single rate based on the average cost of healthcare services results in some paying more than actual cost, others pay less and the assumption is that the over and under payments offset each other and collections approximate costs.

It is DoD's intent to transition to a multiple rate structure. The proposed multiple rates will result in charges that more closely approximate the actual costs of delivering specific categories of medical services, such as surgical care, obstetrical care, pediatric care, etc., while maintaining the simplicity still needed by most MTFs because of limited automated support. The movement to multiple rates is an interim step toward patient level rates based on a classification system such as Diagnosis Related Groups.

As with the single rate, data to support computation of multiple rates will be obtained from MEPRS data consolidated from all DoD MTFs. Cost data will be aggregated for each of the clinical services identified below and an average cost computed for each clinical service. This average cost, adjusted for certain personnel costs such as bonuses, incentive pays, permanent change of station costs, medical training costs, retirement benefit accrual costs, and recruiting costs, shall form the basis for the rates established for reimbursement for healthcare services under the provisions of the third party collection program. Patients treated in an intensive care unit any time during the 24 hour nursing period shall be charged the intensive care per diem charge in lieu of a charge for the clinical service to which the patient is currently assigned.

a. Medical Care Services. Includes Internal Medicine, Cardiology, Dermatology, Endocrinology, Gastroenterology, Hematology, Nephrology, Neurology, Oncology, Pulmonary and Upper Respiratory Disease, Rheumatology, Physical Medicine, Clinical Immunology, HIV III—Acquired Immune Deficiency Syndrome (AIDS), Infectious Disease, Allergy, and Medical Care Not Elsewhere Classified.

b. Surgical Care Services. Includes General Surgery, Cardiovascular and Thoracic Surgery, Neurosurgery, Ophthalmology, Oral Surgery, Otolaryngology, Pediatric Surgery, Plastic Surgery, Proctology, Urology, Peripheral Vascular, Trauma Service, Head and Neck Service and Surgical Care Not Elsewhere Classified.

c. Obstetrical and Gynecological Care.

d. Pediatric Care: Includes Pediatrics, Nursery, Adolescent Pediatrics and Pediatric Care Not Elsewhere Classified.

e. Orthopaedic Care: Includes Orthopaedics, Podiatry and Hand Surgery.

f. Psychiatric Care and Substance Abuse Rehabilitation.

g. Family Practice Care.

h. Burn Unit Care.

i. Medical Intensive Care/Coronary Care.

j. Surgical Intensive Care.

k. Neonatal Intensive Care.

l. Organ and Bone Marrow Transplants.

In accordance with current practice, the per diem rate for each of the above categories of care shall be subdivided into three categories: Hospital charges, Professional charges, and Ancillary charges.

2. Effective Date.

The effective date for implementation of a multiple rate schedule shall be the effective date of this rule, barring unforeseen difficulties in automation support. (In the event of such difficulties, the effective date may be postponed by a document in the **Federal Register**.

E. Other Issues

1. Recodified Provisions of Rule

The proposed rule restated a number of provisions of the current regulation, with conforming and technical amendments. One commenter objected to the references to a third party payer's obligation to pay, saying that it did not necessarily flow from the government's right to collect. We have made no change. We believe the context of the regulation adequately identifies those circumstances in which the third party payer does not have an obligation to pay in response to a request for payment.

A similar comment proposed revision to proposed § 220.8(1), which is a recodification, with conforming revisions, of the current § 220.8(c), concerning the provision which allows payers to limit payments to their prevailing payment rates, if lower than our charges, based on a showing by the payer of such rates. The suggestion was for us to restrict the government's authority not to accept a payer's evidence of lower rates. We have made no change. We believe the current provision allows all facts to be properly considered. A related suggestion was that utilization considerations be included in consideration of alternative determinations of cost. Again, we made no change. This is because utilization review procedures of the third party payer are permitted under other provisions of the regulation.

2. Effective Date

Several commenters protested the applicability of this regulation to services provided prior to the effective date of this final regulation. We have made no change. This is because the right of the government to collect is not established by this regulation; it was established by the statutory amendment. This regulation merely establishes certain implementation procedures and payment amounts. Third party payers have been on notice of the new collection authority. There is nothing exotic about this final regulation that would render the notice provided by the statute somehow inadequate. Moreover, the new collection authorities do not apply to plans which clearly exclude payment for these services and which have been in continuous force and effect without amendment or renewal since prior to the statutory effective date. And finally, we do not seek an exception to the normal claims filing period under any policy. If a claim from a facility of the Uniformed Services is untimely under the generally applicable requirements of a third party payer's plan, that is permissible grounds to deny payment. Thus, this final rule does not seek to impose impermissible retroactive obligations on any payer.

3. Former Public Health Service Hospitals

The proposed rule included a restatement of policy under the current regulation that reasonable costs under the former Public Health Service hospitals that are designated as Uniformed Services Treatment Facilities (USTFs) are determined on the basis of approximate government costs under CHAMPUS for similar services. One of the USTFs proposed changing this to allow them to charge third party payers the USTF's normal charges and rates. We have not made this change because 10 U.S.C. 1095 allows DoD to recover costs only, not what might be a civilian facilities normal charges. Government costs under CHAMPUS are a good, objectively verifiable approximation of the costs of providing services in the former Public Health Service hospitals.

4. Standard Billing Forms

DoD has elected to follow the generally accepted practice of standardizing the use of billing forms to prepare bills for both inpatient and outpatient medical care and services rendered to dependents and retirees. The MTF shall use the DD Form 2502, "Uniform Billing for Inpatient Hospital Costs" (UB82), to prepare bills for inpatient and outpatient care to third party payers until supplies of the form are depleted. Once depleted, the MTFs will utilize commercial forms such as the UB82 or the HCFA 1500. Data element usage shall be consistent with the standards defined by the National Uniform Billing Committee and the Uniform Claim Forms Task Force.

F. Definitions

Section 220.12 revises current § 220.10 in connection with the definition of several key terms used in part 220. We have revised the proposed rule by refining the definitions of "Medicare supplemental insurance plan" to conform with standards of the Health Care Financing Administration, HHS, and by adding a new definition of "Medicare eligible provider."

III. Regulatory Procedures

This final rule is not a major rule under Executive Order 12291. It will not have an impact of $100 million or other significant economic impacts. Similarly, the rule does not significantly affect a substantial number of small entities within the meaning of the Regulatory Flexibility Act. As stated above, for the most part, this rule simply incorporates into the third party collection program regulation the recently enacted statutory requirements and establishes basic procedures for their implementation.

List of Subjects in 32 CFR Part 220

Claims, Health insurance, Medical records.

For the reasons stated in the preamble, 32 CFR part 220 is amended as follows:

PART 220—COLLECTION FROM THIRD PARTY PAYERS OF REASONABLE COSTS OF HEALTHCARE SERVICES

1. The authority citation for part 220 is revised to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. 1095.

2. The heading for part 220 is revised as set forth above.

3. Section 220.1 is revised to read as follows:

§ 220.1 Purpose and applicability.

This part implements the provisions of 10 U.S.C. 1095. In general, 10 U.S.C. 1095 establishes the statutory obligation of third party payers to reimburse the United States the reasonable costs of healthcare services provided by facilities of the Uniformed Services to most Uniformed Services medical care beneficiaries who are also covered by a

third party payer's plan. This part establishes the Department of Defense interpretations and requirements applicable to all healthcare services subject to 10 U.S.C. 1095.

4. Section 220.2 is amended by revising paragraph (a) to read as follows:

§ 220.2 Statutory obligation of third party payer to pay.

(a) *Basic rule.* Pursuant to 10 U.S.C. 1095(a)(1), a third party payer has an obligation to pay the United States the reasonable costs of healthcare services provided in any facility of the Uniformed Services to a Uniformed Services beneficiary who is also a beneficiary under the third party payer's plan. The obligation to pay is to the extent that the beneficiary would be eligible to receive reimbursement or indemnification from the third party payer if the beneficiary were to incur the costs on the beneficiary's own behalf.

* * * * *

5. Section 220.3 is amended by revising paragraph (b)(1) to read as follows:

§ 220.3 Exclusions impermissible.

* * * * *

(b) *General rules.* * * *

(1) Express exclusions or limitations in third party payer plans that are inconsistent with 10 U.S.C. 1095(b) are inoperative.

* * * * *

6. Section 220.6 is amended by revising paragraph (b) and adding a new paragraph (d) to read as follows:

§ 220.6 Certain payers excluded.

* * * * *

(b) *Supplemental plans.* CHAMPUS (see 32 CFR part 199) supplemental plans and income supplemental plans are excluded from any obligation to pay under 10 U.S.C. 1095.

* * * * *

(d) *Third party payer plans prior to November 5, 1990, in connection with outpatient care.* The provisions of 10 U.S.C. 1095 and this section concerning outpatient services are not applicable to third party payer plans:

(1) That have been in continuous effect without amendment or renewal since prior to November 5, 1990; and

(2) For which the facility of the Uniformed Services or other authorized representative for the United States makes a determination, based on documentation provided by the third party payer, that the policy or plan clearly excludes payment for such services. Plans entered into, amended or renewed on or after November 5, 1990, are subject to this section, as are prior plans that do not clearly exclude payment for services covered by this section.

* * * * *

7. Section 220.8 is revised to read as follows:

§ 220.8 Reasonable costs.

(a) *Per diem rates—In general.*

(1) As authorized by 10 U.S.C. 1095(f)(1), the computation of reasonable costs for purposes of collections for inpatient hospital care under 10 U.S.C. 1095 and this part shall be based on per diem rates. The per diem charge shall be equal to the inpatient full reimbursement rate, as provided in paragraphs (b) and (c) of this section. Per diem rates shall be updated and published annually. For purposes of billing third party payers other than automobile liability and no-fault insurance carriers, per diem rates shall be subdivided into three categories:

(i) Hospital charges (which refers to routine service charges associated with the hospital stay).

(ii) Professional charges (which refers to professional services provided by physicians and certain other providers).

(iii) Ancillary charges (which refers to diagnostic and treatment services, other than professional services, provided by components of the hospital in connection with inpatient care.

(2) The October 1, 1992, date established in paragraphs (b) and (c) of this section for a change from unified per diem rates to clinical groups per diem rates may be postponed by a document published in the **Federal Register** at least 30 days prior to that date.

(b) *Unified per diem rates for care provided prior to October 1, 1992.* For inpatient hospital care provided prior to October 1, 1992, the computation of reasonable costs shall be based on the unified per diem full reimbursement rate for all clinical categories of hospital care. For purposes of this paragraph (and paragraph (c) of this section), charges for patients hospitalized before and after the October 1 start date shall be based on the determination method in effect for the respective periods of hospitalization.

(c) *Clinical groups per diem rates for care provided on or after October 1, 1992.* For inpatient hospital care provided on or after October 1, 1992, the computation of reasonable costs shall be based on the per diem full reimbursement rate applicable to the clinical category of services involved. Patients treated in an intensive care unit any time during the 24 hour nursing period shall be charged the intensive care per diem charge in lieu of a charge to the clinical service to which the patient is currently assigned. For this purpose, 12 clinical groups are established, as follows:

(1) Medical Care Services. This includes internal medicine, cardiology, dermatology, endocrinology, gastroenterology, hematology, nephrology, neurology, oncology, pulmonary and upper respiratory disease, rheumatology, physical medicine, clinical immunology, HIV III—Acquired Immune Deficiency Syndrome (AIDS), infectious disease, allergy, and medical care not elsewhere classified.

(2) Surgical Care Services. This includes general surgery, cardiovascular and thoracic surgery, neurosurgery, ophthalmology, oral surgery, otolaryngology, pediatric surgery, plastic surgery, proctology, urology, peripheral vascular, trauma service, head and neck service and surgical care not elsewhere classified.

(3) Obstetrical and Gynecological Care.

(4) Pediatric Care. This includes pediatrics, nursery, adolescent pediatrics and pediatric care not elsewhere classified.

(5) Orthopaedic Care. This includes orthopaedics, podiatry and hand surgery.

(6) Psychiatric Care and Substance Abuse Rehabilitation.

(7) Family Practice Care.

(8) Burn Unit Care.

(9) Medical Intensive Care/Coronary Care.

(10) Surgical Intensive Care.

(11) Neonatal Intensive Care.

(12) Organ and Bone Marrow Transplants.

(d) *Medical services and subsistence charges included.* Medical services charges pursuant to 10 U.S.C. 1078 or subsistence charges pursuant to 10 U.S.C. 1075 are included in the claim filed with the third party payer pursuant to 10 U.S.C. 1095. For any patient of a facility of the Uniformed Services who indicates that he or she is a beneficiary of a third party payer plan, the usual medical services or subsistence charge will not be collected from the patient to the extent that payment received from the payer exceeds the medical services or subsistence charge. Thus, except in cases covered by § 220.8(j), payment of the claim made pursuant to 10 U.S.C. 1095 which exceeds the medical services or subsistence charge, will satisfy all of the third party payer's obligation arising from the inpatient hospital care provided by the facility of the Uniformed Services on that occasion.

(e) *Per visit rates.* As authorized by 10 U.S.C. 1095(f)(2), the computation of reasonable costs for purposes of collections for most outpatient services shall be based on an all-inclusive per visit rate. The per visit charge shall be equal to the outpatient full reimbursement rate and includes all routine ancillary services. These rates shall be updated and published annually.

(f) *Same day/ambulatory surgery rate.* A separate charge will be calculated for cases that are same day/ambulatory surgeries.

(g) *Special rule for services ordered and paid for by a facility of the Uniformed Services but provided by another provider.* In cases where a facility of the Uniformed Services purchases ancillary services or procedures, from a source other than a Uniformed Services facility, the cost of the purchased services will be added to the per diem on per visit rate. Examples of ancillary services and other procedures covered by this special rule include (but are not limited to): laboratory, radiology, pharmacy, pulmonary function, cardiac catheterization, hemodialysis, hyperbaric medicine, electrocardiography, electroencephalography, electroneuromyography, pulmonary function, inhalation and respiratory therapy and physical therapy services.

(h) *Special rule for certain high cost ancillary services ordered by outside providers and provided by a facility of the Uniformed Services.* If a Uniformed Services facility provides certain high cost ancillary services, prescription drugs or other procedures based on a request from a source other than a Uniformed Services facility and are not incident to any outpatient visit or inpatient services, the reasonable cost will not be based on the usual per visit or per diem rate. Rather, a separate standard rate shall be established based on the cost of the particular high-cost service, drug or procedure provided. This special rule applies only to services, drugs or procedures having a cost of at least $100. The reasonable cost for the services, drugs or procedures to which this special rule applies shall be calculated and published annually.

(i) *Special rule for PRIMUS and NAVCARE clinics.* The Uniformed Services maintain certain contract clinics called PRIMUS clinics by the Army and Air Force and NAVCARE clinics by the Navy. These are outpatient clinics, operated by independent contractors, which generally provide only primary care services. Services provided by these clinics are paid for by the Uniformed Service. As a financial matter, PRIMUS or NAVCARE clinics are considered operationally to be extensions of facilities of the Uniformed Services. A separate, uniform per visit charge, representing the average cost to the Department of Defense for a visit in all PRIMUS and NAVCARE clinics shall be the basis of the charge for these clinics. This rate shall be calculated and published annually.

(j) *Special rule for former Public Health Service facilities.* In connection with the former Public Health Service facilities described in § 220.12(c), the computation of reasonable costs for purposes of collections under 10 U.S.C. 1095 and this part may differ from such computations under § 220.8. Reasonable costs for such facilities shall be determined by the Department of Defense based on approximate government costs for similar services under CHAMPUS.

(k) *Special rule for Partnership Program providers.* In cases in which the professional provider services are provided under the Partnership Program (or similar program operated under the authority of 10 U.S.C. 1096), the professional charges component of the total per diem rate will be deleted, as applicable, from the claim from the facility of the Uniformed Services. The third party payer will receive a claim for professional services directly from the individual healthcare provider, who is not an employee or agent of the Department of Defense. Such claims are not covered by 10 U.S.C. 1095 or this part, but are governed by statutory and regulatory requirements of the CHAMPUS program (see 32 CFR part 199). The same is true for professional services provided on an outpatient basis under the Partnership Program.

(l) *Alternative determination of reasonable costs.* Any third party payer that can satisfactorily demonstrate a prevailing rate of payment in the same geographic area for the same or similar aggregate groups of services that is less than the per diem or per visit rate (or other amount as determined under paragraphs (f) through (k) of this section) of the facility of the Uniformed Services may, with the agreement of the facility of the Uniformed Services (or other authorized representatives of the United States), limit payments under 10 U.S.C. 1095 to that prevailing rate for that aggregate category of services. The determination of the third party payer's prevailing rate shall be based on a review of valid contractual arrangements with other facilities or providers constituting a majority of the services for which payment is made under the third party payer's plan. This paragraph does not apply to cases covered by § 220.11.

8. Section 220.9 is amended by revising paragraph (b) to read as follows:

§ 220.9 Rights and obligations of beneficiaries.

* * * * *

(b) *Availability of healthcare services unaffected.* The availability of healthcare services in any facility of the Uniformed Services will not be affected by the participation or nonparticipation of a Uniformed Services beneficiary in a health care plan of a third party payer. Whether or not a Uniformed Services beneficiary is covered by a third party payer's plan will not be considered in determining the availability of healthcare services in a facility of the Uniformed Services.

* * * * *

9. Section 220.10 is revised and §§ 220.11 and 220.12 are added to read as follows:

§ 220.10 Special rules for Medicare supplemental plans.

(a) *Statutory obligation of Medicare supplemental plans to pay.* The obligation of a Medicare supplemental plan to pay shall be determined as if the facility of the Uniformed Services were a medicare-eligible provider and the services provided as if they were Medicare-covered services. A Medicare supplemental plan is required to pay only to the extent that the plan would have incurred a payment obligation if the services had been furnished by a Medicare eligible provider.

(b) *Inpatient hospital care charges.* (1) Notwithstanding the provisions of § 220.8, charges to Medicare supplemental plans for inpatient hospital care services provided to beneficiaries of such plans shall not, for any admission, exceed the Medicare inpatient hospital deductible amount.

(2) Only one deductible charge shall be made per hospital admission (or Medicare benefit period), regardless of whether the admission is to a facility of the Uniformed Services or a Medicare certified civilian hospital. To ensure that a Medicare supplemental insurer is not charged the inpatient hospital deductible twice when an individual who is entitled to benefits under both DoD retiree benefits and Medicare, the following payment rules apply:

(i) If a dual beneficiary is first admitted to a Medicare-certified hospital and is later admitted to a facility of the Uniformed Services within

the same benefit period initiated by the admission to the Medicare-certified hospital, the facility of the Uniformed Services shall not charge the Medicare supplemental insurance plan an inpatient hospital deductible.

(ii) If a dual beneficiary is admitted first to a facility of the Uniformed Services and secondly to a Medicare-certified hospital within 60 days of discharge from the facility of the Uniformed Services, the facility of the Uniformed Services shall refund to the Medicare supplemental insurer any inpatient hospital deductible that the insurer paid to the facility of the Uniformed Services so that it may pay the deductible to the Medicare-certified hospital.

(c) *Charges for health care services other than the inpatient hospital deductible amount.* (1) The Assistant Secretary of Defense (Health Affairs) may establish special charge amounts for Medicare supplemental plans to collect reasonable costs for inpatient and outpatient copayments and other services covered by the Medicare supplemental plan. Any such schedule of charge amounts shall:

(1) Be based on percentage amounts of the per diem, per visit and other rates established by § 220.8 comparable to the percentage amounts of beneficiary financial responsibility under Medicare for the service involved;

(ii) Include adjustments, as appropriate, to identify major components of the all inclusive per diem or per visit rates for which Medicare has special rules;

(iii) Provide for offsets and/or refunds to ensure that Medicare supplemental insurers are not required to pay a limited benefit more than one time in cases in which beneficiaries receive similar services from both a facility of the uniformed services and a Medicare certified provider; and

(iv) Otherwise conform with the requirements of this section and this part.

(2) If collections are sought under paragraph (c) of this section, the effective date of such collections will be prospective from the date the Assistant Secretary of Defense (Health Affairs) provides notice of such collections, and will exempt policies in continuous effect without amendment or renewal since the date the Assistant Secretary of Defense (Health Affairs) provides notice of such collections.

(d) *Medicare claim not required.* Notwithstanding any requirement of the Medicare supplemental plan policy, a Medicare supplemental plan may not refuse payment to a claim made pursuant to this section on the grounds that no claim had previously been submitted by the provider or beneficiary for payment under the Medicare program.

(e) *Exclusion of Medicare supplemental plans prior to November 5, 1990.* This section is not applicable to Medicare supplemental plans:

(1) That have been in continuous effect without amendment since prior to November 5, 1990; and

(2) For which the facility of the Uniformed Services (or other authorized representative of the United States) makes a determination, based on documentation provided by the Medicare supplemental plan, that the plan agreement clearly excludes payment for services covered by this section. Plans entered into, amended or renewed on or after November 5, 1990, are subject to this section, as are prior plans that do not clearly exclude payment for services covered by this section.

§ 220.11 Special rules for automobile liability insurance and no-fault automobile insurance.

(a) *Active duty members covered.* In addition to Uniformed Services beneficiaries covered by other provisions of this part, this section also applies to active duty members of the Uniformed Services. As used in this section, "beneficiaries" includes active duty members.

(b) *Effect of concurrent applicability of the Federal Medical Care Recovery Act.*—(1) *In general.* In many cases covered by this section, the United States has a right to collect under both 10 U.S.C. 1095 and the Federal Medical Care Recovery Act (FMCRA), Pub. L. 87–693 (42 U.S.C. 2651 et seq.). In such cases, the authority is concurrent and the United States may pursue collection under both statutory authorities.

(2) *Cases involving tort liability.* In cases in which the right of the United States to collect from the automobile liability insurance carrier is premised on establishing some tort liability on some third person, matters regarding the determination of such tort liability shall be governed by the same substantive standards as would be applied under the FMCRA including reliance on state law for determinations regarding tort liability. In addition, the provisions of 28 CFR part 43 (Department of Justice regulations pertaining to the FMCRA) shall apply to claims made under the concurrent authority of the FMCRA and 10 U.S.C. 1095. All other matters and procedures concerning the right of the United States to collect shall, if a claim is made under the concurrent authority of the FMCRA and this section, be governed by 10 U.S.C. 1095 and this part.

(c) *Exclusion of automobile liability insurance and no-fault automobile insurance plans prior to November 5, 1990.* This section is not applicable to automobile liability insurance and no-fault automobile insurance plans:

(1) That have been in continuous effect without amendment since prior to November 5, 1990; and

(2) For which the facility of the Uniformed Services (or other authorized representative of the United States) makes a determination, based on documentation provided by the third party payer, that the policy or plan clearly excludes payment for services covered by this section. Plans entered into, amended or renewed on or after November 5, 1990, are subject to this section, as are prior plans that do not clearly exclude payment for services covered by this section.

§ 220.12 Definitions.

(a) *Automobile liability insurance.* Automobile liability insurance means insurance against legal liability for health and medical expenses resulting from personal injuries arising from operation of a motor vehicle. Automobile liability insurance includes:

(1) Circumstances in which liability benefits are paid to an injured party only when the insured party's tortious acts are the cause of the injuries; and

(2) Uninsured and underinsured coverage, in which there is a third party tortfeasor who caused the injuries (i.e., benefits are not paid on a no-fault basis), but the insured party is not the tortfeasor.

(b) *CHAMPUS supplemental plan.* A CHAMPUS supplemental plan is an insurance, medical service or health plan exclusively for the purpose of supplementing an eligible person's benefit under CHAMPUS. (For information concerning CHAMPUS, see 32 CFR part 199.) The term has the same meaning as set forth in the CHAMPUS regulation (32 CFR 199.2).

(c) *Facility of the Uniformed Services.* A facility of the Uniformed Services means any medical or dental treatment facility of the Uniformed Services (as that term is defined in 10 U.S.C. 101(43)). Contract facilities such as Navy NAVCARE clinics and Army and Air Force PRIMUS clinics that are funded by a facility of the Uniformed Services are considered to operate as an extension of the local military treatment facility and are included within the scope of this program. Facilities of the Uniformed Services also include several former Public Health Services facilities that are

deemed to be facilities of the Uniformed Services pursuant to section 911 of Pub. L. 97–99 (often referred to as "Uniformed Services Treatment Facilities" or "USTFs").

(d) *Healthcare services.* Healthcare services include inpatient, outpatient, and designated high-cost ancillary services.

(e) *Inpatient hospital care.* Treatment provided to an individual other than a transient patient, who is admitted (i.e., placed under treatment or observation) to a bed in a facility of the uniformed services that has authorized beds for inpatient medical or dental care.

(f) *Insurance, medical service or health plan.* Any plan or program (subject to the limitations of § 220.6) that provides compensation or coverage for expenses incurred by a beneficiary for health or medical services and supplies. It includes:

(1) Plans or programs offered by insurers, corporations, organized health care groups or other entities.

(2) Plans or programs for which the beneficiary pays a premium to an issuing agent as well as those plans or programs to which the beneficiary is entitled as a result of employment or membership in, or association with, an organization or group; and

(3) Medicare supplemental insurance plans.

(g) *Medicare eligible provider.* Medicare participating (institutional) providers and physicians, suppliers and other individual providers eligible to participate in the Medicare program.

(h) *Medicare supplemental insurance plan.* A Medicare supplemental insurance plan is an insurance, medical service or health plan primarily for the purpose of supplementing an eligible person's benefit under Medicare. The term has the same meaning as "Medicare supplemental policy" in section 1882(g)(1) of the Social Security Act. In addition, consistent with 42 CFR 403.206(c), a Medicare supplemental insurance plan may consist of two policies issued in conjunction with one another, one by a nonprofit hospital association and the other by a medical association, in cases in which state law prohibits the inclusion of all benefits in a single policy.

(i) *No-fault insurance.* No-fault insurance means an insurance contract providing compensation for health and medical expenses relating to personal injury arising from the operation of a motor vehicle in which the compensation is not premised on who may have been responsible for causing such injury. No-fault insurance includes personal injury protection and medical payments benefits in cases involving personal injuries resulting from operation of a motor vehicle.

(j) *Third party payer.* A third party payer is an entity that provides an insurance, medical service or health plan by contract or agreement. It includes:

(1) State and local governments that provide such plans.

(2) Insurance underwriters and private employers (or employer groups) offering self-insured or partially self-insured and/or partially underwritten health insurance plans; and

(3) Automobile liability insurance and no-fault insurance carriers.

(k) *Third party payer plan.* A third party payer plan is any plan provided by a third party payer, but not an income supplemental plan or workers compensation plan.

(l) *Uniformed Services beneficiary.* For purposes of this part, a Uniformed Services beneficiary is any person who is covered by 10 U.S.C. 1074(b), 1076(a), or 1076(b). For purposes of § 220.11 (but not for other sections), a Uniformed Services beneficiary also includes active duty members of the Uniformed Services.

Dated: September 2, 1992

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–21503 Filed 9–8–92; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 135, 136, and 137

[CGD 91–035]

RIN 2115–AD90

Claims Under the Oil Pollution Act of 1990; Correction

AGENCY: Coast Guard, DOT.

ACTION: Correction to interim rule.

SUMMARY: This document corrects the interim rule (CGD 91–035) published on Wednesday, August 12, 1992, (57 FR 36314) concerning the filing of claims under the Oil Pollution Act of 1990 (Pub. L. 101–380; August 18, 1990).

EFFECTIVE DATE: August 12, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. L.E. Burgess, National Pollution Funds Center, (703) 235–4796.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published, the interim rule contains some minor errors which require correction:

In the preamble the telephone number listed to call for further information on this rulemaking is incorrect. The correct number is (703) 235–4796.

Comments on this rulemaking are not due on, but on or before, December 10, 1992.

In § 136.101(b) the word "Commander's" should be deleted. The person in charge of the National Pollution Funds Center is now known as the Director, rather than the Commander.

Corrections of Publication

Accordingly, the publication on August 12, 1992, of the interim rule (CGD 91–035), which is the subject of FR Doc. 92–19080, is corrected as follows:

1. On page 36314, in the first column, in the "**DATES**" section, "received December 10, 1992" is corrected to read "received on or before December 10, 1992".

2. On page 36314, in the first column, in the "**FOR FURTHER INFORMATION CONTACT**" section, "(703) 235–4795" is corrected to read "(703) 235–4796".

3. On page 36314, in the second column, in the "Regulatory Information" section, "incurred cost" is corrected to read "incurred costs".

4. On page 36317, in the third column, in § 136.101(b), remove "Commander's".

5. On page 36317, in the third column, in § 136.103(a), "$136.305" is corrected to read "§ 136.305".

Dated: September 2, 1992.

Daniel F. Sheehan,

Director, National Pollution Funds Center.

[FR Doc. 92–21650 Filed 9–8–92; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7548]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule identities communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management

measures. The communities' participation in the program authorizes the sale of flood insurance to owners to property located in the communities listed.

EFFECTIVE DATE: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 457, Lanham, MD 20706, (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646-2717.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 11291, Federal Regulation, February 17, 1981, 3 CFR, 1981 Comp., p. 127. No regulatory impact analysis has been prepared.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et. seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date
New Eligibles—Emergency program			
Ohio: Englewood, City of Montgomery County	390826	Aug. 13, 1992	Nov. 3, 1978
New Hampshire: Freedom, Town of Carroll County	330013	Aug. 20, 1992	Aug. 13, 1976
Louisiana: Campti, Town of Natchitoches Parish	220401	Aug. 28, 1992	
Reinstatements—Regular program			
South Dakota: Revillo, Town of Grant County	460031	June 30,1975, Emerg.; Oct. 1, 1986, Reg.; Aug. 15, 1989, Susp.; Aug. 13, 1992; Rein.	Oct. 1, 1986.
New Hampshire: Wentworth, Town of Grafton County	330078	Oct. 30, 1975, Emerg.; Apr. 18, 1983, Reg.; May 3, 1990, Susp.; Aug. 17, 1992, Rein.	Apr. 18, 1983.
Oklahoma:			
Binger, Town of Caddo County	400020	Sept. 16, 1975, Emerg.; Nov. 19, 1987, Reg.; July 2, 1992, Susp.; Aug. 28, 1992, Rein.	Sept. 27, 1991.
Fort Cobb, Town of Caddo County	400022	Nov. 1, 1974, Emerg.; Sept. 27, 1991, Reg.; July 2, 1992, Susp.; Aug. 28, 1992, Rein.	Sept. 27, 1991.
Pennsylvania: Porter, Township of Clinton County	420333	June 1, 1973, Emerg.; July 15, 1988, Reg.; July 15, 1988, Susp.; Aug. 31, 1992.	July 15. 1988
Regular Conversions—Region I			
Massachusetts: Amesbury, Town of Essex County	250075	Aug. 3, 1992, Suspension withdrawn	Aug. 3, 1992.
Region II			
New Jersey:			
Fairfield, Township of Cumberland County	340158	....do	Aug. 3, 1992.
Greenwich, Township of Cumberland County	340159	....do	Aug. 3, 1992.
Region III			
Pennsylvania: Butler, Township of Schuylkill County	421999	....do	Aug 3, 1992.
Region VI			
Louisiana: St. Mary Parish Unincorporated Areas	220192	Aug. 3, 1992	Aug. 3, 1992.

State and location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date
Region III			
New Jersey:			
Hopewell, Township of Cumberland County	340248	Aug. 18, 1992, Suspension withdrawn	Aug. 18, 1992.
Lawrence, Township of Cumberland County	340171	do	Aug. 18, 1992.
New York: Rutland, Town of Jefferson County	360350	do	Aug. 18, 1992.
Region III			
West Virginia:			
Lewis County, Unincorporated Areas	540065	do	Aug. 18, 1992.
Weston, City of Lewis County	540067	do	Aug. 18, 1992.
Pennsylvania: Ambler, Borough of Montgomery County	420947	do	Aug. 18, 1992.
Region IV			
Georgia: Kennesaw, City of Cobb County	130055	Aug. 3, 1992	Aug. 18, 1992.
Tennessee: Newport, City of Cocke County	475440	do	Aug. 18, 1992.
Region V			
Minnesota:			
Aitkin County, Unincorporated Areas	260417	do	Aug. 18, 1992.
Dayton, City of Hennepin County	270158	do	Aug. 18, 1992.
McLeod County, Unincorporated Areas	270616	do	Aug. 18, 1992.
Greenfield, City of Hennepin County	270673	do	Aug. 18, 1992.
Rockford, City of Hennepin/Wright Counties	270182	do	Aug. 18, 1992.
Watertown, City of Carver County	270056	do	Aug. 18, 1992.
Region IV			
Louisiana: Gonzales, City of Ascension Parish	220015	Aug. 18, 1992	Aug. 18, 1992.
Texas: Galveston County, Unincorporated Areas	485470	do	Aug. 18, 1992.

Code for reading fourth column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension, Rein.—Reinstatement.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Issued: September 2, 1992.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 92-21639 Filed 9-8-92; 8:45 am]

BILLING CODE 6718-21-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 63

[CC Docket No. 87-266; FCC 92-327]

Telephone Company-Cable Television Cross-Ownership Rules

AGENCY: Federal Communications Commission (FCC).

ACTION: Final rule; recommendation to Congress.

SUMMARY: The Commission is amending its rules to permit, but not require, local telephone companies to provide video dialtone. This rule is intended to advance the Commission's goals of creating opportunities and incentives to develop an advanced telecommunications infrastructure, increasing competition in the video marketplace, and enhancing the diversity of video services to the American public in order to promote consumer choice. The Commission has also recommended to Congress that it amend the Cable Act to permit telephone companies to provide video programming directly to subscribers in their telephone service areas, subject to appropriate safeguards.

EFFECTIVE DATE: December 8, 1992.

FOR FURTHER INFORMATION CONTACT: Donna N. Lampert, Daniel Gonzalez, or John S. Morabito, Common Carrier Bureau, (202) 632-9342.

SUPPLEMENTARY INFORMATION:

Background

Common Carrier Docket 87-266: Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54-63.58, Notice of Inquiry, 2 FCC Rcd 5092 (1987) (52 FR 34818 (9/15/87)); Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54-63.58, Further Notice of Inquiry and Notice of Proposed Rulemaking, 3 FCC Rcd 5849 (1988) (53 FR 38042 (9/29/88)); Further Notice of Proposed Rulemaking, First Report and Order, and Second Further Notice of Inquiry, 7 FCC Rcd 300 (1991) (56 FR 65445 (12/17/91), 56 FR 65464 (12/17/91)).

Summary of Second Report and Order and Recommendation to Congress

1. This is a summary of the Second Report and Order and Recommendation to Congress in Common Carrier Docket 87-266: Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54-63.58, Adopted July 16, 1992 and Released August 14, 1992. The full texts of Commission decisions are available for inspection and copying, Monday through Friday, 9 a.m.-4:30 p.m., in the FCC Reference Room (room 239), 1919 M Street, NW., Washington, DC 20554. The complete text of this Second Report and Order and Recommendation to Congress may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1114 21st Street, NW., Washington, DC 20036.

2. In the Second Report and Order, the Commission concluded that market and technological developments were creating significant potential for greater telephone company participation in the video marketplace through provision of advanced video capabilities and related services. The Commission envisioned that telephone companies could provide a wide range of new and existing services including basic common carrier video transmission services, video gateways and enhanced services related to provision of video programming. The Commission determined that allowing telephone company participation in the video marketplace by provision of advanced services and functions would advance the Commission's goals of creating opportunities and incentives to develop an advanced telecommunications infrastructure, increasing competition in the video marketplace, and enhancing the diversity of video services to the American public in order to promote consumer choice. The Commission modified § 63.54 of the Commission's rules to permit, but not require, local telephone companies to participate in the video marketplace through provision of video dialtone.

3. The Commission took the following steps to assure that its decision to allow telephone companies to provide video dialtone would achieve its public interest objectives. First, as a prerequisite to telephone company participation in the video marketplace, the Commission required that telephone companies provide a common carrier platform containing sufficient capacity to service multiple video programmers. The Commission determined that this requirement was necessary to assure that the platform provide multiple video programmers nondiscriminatory access to a common carrier transmission service enabling them to deliver, and consumers to receive, video programming and video programming services. The Commission required that telephone companies demonstrate in their section 214 applications for authority to provide video dialtone that the basic platform will have the ability to serve multiple programmers.

4. Second, the Commission amended § 63.54 of the rules to permit telephone company participation in the video marketplace beyond the "carrier-user" relationship, by provision of enhanced and nonregulated services related to provision of video programming, only with video programmers that are customers of, interconnect with, or share construction and/or operation of the common carrier platform. The Commission determined that this restriction was necessary to assure that, in exceeding the carrier-user relationship, telephone companies will provide both the basic platform to video programmers and use it as the basis for their own participation in the video marketplace.

5. Consistent with the Further Notice of Proposed Rulemaking, 56 FR 65464, in this proceeding the amended rules adopted by the Commission provide that telephone companies will not be permitted to select video programming by determining how programming is presented for sale to consumers, including making decisions concerning the bundling or "tiering," or the price, terms and conditions of video programming offered to consumers, or otherwise have a cognizable financial interest in, or exercise editioral control over, video programming provided directly to subscribers within their telephone service areas.

6. In the Second Report and Order, the Commission also amended § 63.54 to increase the permitted level of non-cognizable telephone company ownership in video programmers from 1 percent up to 5 percent. The Commission determined that allowing a slightly increased level of ownership would increase the ability and enhance the incentives of telephone companies to engage in activities with video programmers involving joint ownership and operation of facilities.

7. The Commission addressed whether its amendments to Section 63.54 were lawful under the Cable Act. The Commission determined that because a telephone company offering video dialtone, with its common carrier platform, will not be providing video programming directly to its subscribers in the manner of traditional cable operators, video dialtone is fully consistent with the statutory telephone company-cable television cross-ownership restrictions of the Cable Act, 47 U.S.C. 533(b). The Commission determined that Congress had not intended in the Cable Act to codify Notes 1 and 2 of the Commission's telephone company-cable television cross-ownership rule, and that the Commission could lawfully amend Notes 1 and 2 otherwise consistent with the statutory ban.

8. In other actions in the Second Report and Order, the Commission determined that video dialtone is fully consistent with the existing regulatory framework for telephone company provision of basic and enhanced non-video services; that existing safeguards against anticompetitive conduct by telephone companies for provision of basic and enhanced services will apply to telephone company provision of video dialtone and that the Commission will assess whether additional safeguards would serve the public interest in the context of specific video dialtone service proposals; that the decision to permit telephone companies to provide video dialtone establishes sufficient incentives to encourage local telephone companies to invest in infrastructure and deploy advanced networks and that it was not necessary to adopt or propose at this time additional financial or other special incentives as part of the video dialtone regulatory framework; and that it would be premature to adopt or propose specific changes to parts 32, 36, 64 or 69 of the Commission's rules.

9. The Commission also determined that allowing telephone companies merely to acquire existing cable facilities in the telephone companies' service areas for the purpose of providing video dialtone would not serve its goals of creating opportunities and incentives to develop an advanced telecommunications infrastructure, increasing competition in the video marketplace, and enhancing the diversity of video services to the American public in order to promote consumer choice. The Commission determined that it will not permit telephone companies to purchase existing cable systems for the purpose of providing video dialtone, but will continue to permit telephone companies to acquire existing cable physical plant for the purpose of providing common carrier channel service via those facilities.

10. Finally, the Commission recommended to Congress that it repeal the statutory telephone company-cable television cross-ownership ban to permit local telephone companies to provide video programming directly to subscribers in their telephone service areas. The Commission concluded that telephone company provision of video programming directly to subscribers, subject to appropriate safeguards, would further help assure the attainment of its public interest goals. The Commission will review the rules and regulatory framework of video dialtone beginning in three years.

Paperwork Reduction Act

11. In the Second Report and Order the Commission required telephone companies in their Section 214 applications for authority to provide video dialtone to explain how the common carrier platform will have sufficient capacity to serve multiple video programmers. Public reporting burden for this collection of information is estimated to average 50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Office of Managing Director, Paperwork Reduction Project (3060–0149), Washington, DC 20554 and to the Office of Management and Budget, Paperwork Reduction Project (3060–0149), Washington, DC 20503. Implementation of this new collection of information requirement will be subject to approval by the Office of Management and Budget, 44 U.S.C. 3507.

Final Regulatory Flexibility Analysis Statement

12. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–12, the Commission considered whether this decision could disadvantage small non-vertically integrated cable systems.

wireless cable systems, and broadcasters because it could supplant these video distribution mechanisms. The Commission also considered whether this decision could threaten small businesses involved in the video rental market by eliminating the current video distribution chain. On the basis of the record, however, the Commission determined that the public interest in a competitive video marketplace, increased opportunities for development of an advanced infrastructure and the promotion of a diversity of video services, would be best served by permitting local telephone companies to offer video dialtone.

13. Copies of the final regulatory flexibility analysis are available for inspection and copying, Monday through Friday, 9 a.m.–4:30 p.m., in the FCC Dockets Reference Room (Room 239), 1919 M Street, NW., Washington, DC 20554. The final regulatory flexibility analysis may also be purchased, as part of the Second Report and Order, from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422 1114 21st Street, NW., Washington, DC 20036. *See* 5 U.S.C. 604(b).

Ordering Clause

14. *It is ordered* that, pursuant to sections 1, 4, 201–205, and 214 of the Communications Act, as amended, and sections 613 of the Cable Communications Policy Act of 1984, 47 U.S.C. 151, 154, 214, and 533, the Second Report and Order is adopted amending Section 63.54 of the Commission's rules, 47 CFR 63.54.

15. *It is furthered ordered* that, the Secretary shall cause a copy of the Recommendation to Congress to be sent to the President of the Senate and the Speaker of the House of Representatives.

List of Subjects in 47 CFR Part 63

Cable television, Communications common carriers, Reporting and recordkeeping requirements, Telephone, Video dialtone.

Final Rule Changes

PART 63—[AMENDED]

Part 63 of title 47 of the Code of Federal Regulations is amended to read as follows:

1. The authority citation for part 63 continues to read:

Authority: Sec. 4, 48 Stat. 1066, as amended 47 U.S.C. 154. Interpret or apply sec. 214, 48 Stat. 1075, as amended 47 U.S.C. 214.

2. Section 63.54 is amended by removing Notes 1 and 2 of paragraph (b), revising paragraph (b), and adding paragraphs (c), (d) and (e), to read as follows:

§ 63.54 Facilities for provision of video programming by a telephone common carrier in its telephone service area.

* * * * *

(b) No telephone common carrier subject in whole or in part to the Communications Act of 1934 shall provide channels of communications or pole line conduit space, or other rental arrangements, to any entity which is directly or indirectly owned by, operated by, controlled by, or under common control with such telephone common carrier, where such facilities or arrangements are to be used for, or in connection with, the provisions of video programming to the viewing public in the telephone service area of the telephone common carrier.

(c) As used above, the terms "control" and "affiliate" bar any financial or business relationship whatsoever by contract or otherwise, directly or indirectly between the carrier and the customer, except only the carrier-user relationship.

Note: Examples of situations in which a carrier and its customer will be deemed to be controlled or having a relationship include the following, among others: Where one is the debtor or creditor of the other (except with respect to charges for communication services); where they have a common officer, director, or other employee at the management level; where there is any element of ownership or other financial interest by one in the other; and where any party has a financial interest in both.

(d)(1) Except as provided in paragraph (d)(3) of this section, nothing in this section shall be construed to prohibit the provision of video dialtone services.

(2) Telephone companies may exceed the carrier-user relationship with a video programmer or programmers by providing services, and engaging in activities, not related to provision of video programming directly to subscribers by the telephone company. Telephone companies may exceed the carrier-user limitation with a video programmer or video programmers by providing services, and engaging in activities, related to the provision of video programming, provided that: the video programmer is a customer of, interconnects with, or shares the construction and/or operation of, the basic common carrier platform; and the telephone company does not: (i) Determine how video programming is presented for sale to consumers; including making decisions concerning the bundling or "tiering," or the price, terms, and conditions of programming offered to consumers, or (ii) Otherwise have a cognizable financial interest in, or exercise editorial control over, video programming provided directly to subscribers within their telephone service areas.

(3) Telephone companies are prohibited from acquiring cable facilities in their service areas and using such facilities to provide video dialtone services or to engage in activities related to the provision of video programming directly to subscribers as described in paragraph (d)(2) of this section. Telephone companies are not prohibited from acquiring such facilities for purposes of providing common carrier channel service via those facilities, subject to section 214 certification and compliance with the Commission's rules.

(e) In applying the provisions of this section:

(1) Only those ownership interests which amount to 5 percent or more shall be considered a cognizable ownership "affiliation" for purposes of this section. Such interests include partnership interests, direct ownership interests, and stock interests in a corporation where such stockholders are officers or directors or who directly or indirectly own 5 percent or more of the outstanding stock, whether voting or non-voting stock.

(2) Stock ownership by an investment company in a corporation, as defined in 15 U.S.C. 80a-3 (commonly called a mutual fund), need be considered only if it directly or indirectly owns 5 percent or more of the outstanding stock, whether voting or non-voting stock, or if officers or directors of the corporation are representatives of the investment company. Holdings by investment companies under common management shall be aggregated. If an investment company directly or indirectly owns stock in an intermediate company which in turn directly or indirectly owns 50 percent or more of the stock of the corporation, the investment company shall be considered to own the same percentage of the outstanding shares of such corporation as it owns of the intermediate company. *Provided, however,* that the holding of the investment company need not be considered where the intermediate company owns less than 50 percent of the stock, but officers or directors of the corporation who are representatives of the intermediate company shall be deemed to be representatives of the investment company.

(3) In cases where record and beneficial ownership of voting stock is not identical (*e.g.*, bank nominees holding stock as record owners for the

benefit of mutual funds, brokerage houses holding stock in street name for the benefit of customers, trusts holding stock as record owners for the benefit of designated parties), the party having the right to determine how the stock will be voted will be considered to own it for the purposes of this section.

(4) The word "control" as used in this section is not limited to ownership, but includes actual working control in whatever manner exercised.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-21500 Filed 9-8-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 63

[CC Docket No. 87-266; FCC 92-326]

Telephone Company-Cable Television Cross-Ownership Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule; interpretation.

SUMMARY: In a Memorandum Opinion and Order on Reconsideration in Common Carrier Docket 87-266 the Commission affirmed and clarified its prior interpretive ruling in the First Report and Order that a local telephone company providing video dialtone is not subject to franchise requirements of the Cable Act.

EFFECTIVE DATE: October 9, 1992.

FOR FURTHER INFORMATION CONTACT: Donna N. Lampert or John S. Morabito, Common Carrier Bureau, (202) 632-9342.

SUPPLEMENTARY INFORMATION:

Background

Common Carrier Docket 87-266: Telephone Company-Cable Television Cross-Ownership Rules, §§ 63.54-63.58, Notice of Inquiry, 2 FCC Rcd 5092 (1987) (52 FR 34818 (9/15/87)); Telephone Company-Cable Television Cross-Ownership Rules, §§ 63.54-63.58, Further Notice of Inquiry and Notice of Proposed Rulemaking, 3 FCC Rcd 5849 (1988) (53 FR 38042 (9/29/88)); Further Notice of Proposed Rulemaking, First Report and Order, and Second Further Notice of Inquiry, 7 FCC Rcd 300 (1991) (56 FR 65445 (12/17/91), 56 FR 65464 (12/17/91)).

Summary of Memorandum Opinion and Order on Reconsideration

1. This is a summary of the Memorandum Opinion and Order on Reconsideration in Common Carrier Docket 87-266: Telephone Company-Cable Television Cross-Ownership Rules, §§ 63.54-63.58, adopted July 16, 1992 and released August 14, 1992. The full texts of Commission decisions are available for inspection and copying, Monday through Friday, 9 a.m.-4:30 p.m., in the FCC Dockets Reference Room (room 239), 1919 M Street, NW., Washington, DC 20554. The complete text of this Memorandum Opinion and Order on Reconsideration may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1114 21st Street, NW., Washington, DC 20036.

2. The Memorandum Opinion and Order on Reconsideration affirmed the conclusion of the First Report and Order that a local telephone company providing video dialtone does not need to obtain a cable television franchise. In the First Report and Order the Commission concluded that the Cable Act does not impose a franchise requirement on a local telephone company providing video dialtone because the telephone company would not be providing cable service, and would not, therefore, be a cable operator, as that term is defined in the Cable Act, subject to the Cable Act's franchise requirements. On reconsideration, the Commission found that its previous conclusion was consistent with both the language and legislative history of the Cable Act. The Commission concluded that Congress did not intend to require that an entity obtain a cable television franchise when it is not providing video programming directly to subscribers and that to impose such a requirement would conflict with practice in existence at the time the Cable Act was passed.

3. The Memorandum Opinion and Order on Reconsideration also granted in part GTE's petition for reconsideration to the extent of clarifying why telephone companies providing video dialtone service would not be providing "cable service," as defined in section 602(5) of the Cable Act, 47 U.S.C. 522(5), and why telephone companies' video dialtone service facilities would not comprise a "cable system" as defined in section 602(6) of the Cable Act, 47 U.S.C. 522(6).

4. Under section 602(5) of the Cable Act, cable service consists of the one-way transmission to subscribers of video programming, or other programming service, and subscribe interaction, if any, required for the selection of such video programming or other programming service. The Commission clarified that video dialtone does not constitute cable service because Congress intended "transmission" of video programming to include active participation by the telephone company in the selection and distribution of that video programming, activities that are foreclosed to telephone companies under video dialtone.

5. Section 602(6) of the Cable Act, 47 U.S.C. 552(6), defines a "cable system" to be a facility consisting of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming. Exempted from this definition is a facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Communications Act. The Cable Act creates an exception to the exemption for the telephone company facilities to the extent that such facilities are used in the transmission of video programming directly to subscribers.

6. The Commission concluded that under these statutory provisions, a telephone company facility used to provide video dialtone is not a cable system. The Commission explained that under existing regulatory requirements, the facilities used to provide video dialtone would be subject, in whole or in part, to title II, and that to the extent Congress expressed any intent regarding the existing regulations for common carrier, that intent was that the Cable Act not alter existing regulatory control by imposing cable television franchise requirements on common carriers. The Commission also explained that the exception to the common carrier exemption for facilities used in the transmission of video programming directly to subscribers applies only when a telephone company is acting like a cable operator by providing cable service. The Commission further concluded that video dialtone facilities typically would not constitute a "cable system" for the additional reason that they will not ordinarily include the necessary signal generation, reception and control equipment.

Ordering Clause

7. *It is ordered* that GTE's Petition for Reconsideration is granted to the extent discussed herein and is otherwise denied.

List of Subjects in 47 CFR Part 63

Cable television, Communications common carriers, Telephone, Video dialtone.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-21507 Filed 9-8-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 74

[MM Docket 86-112, FCC 92-387]

Satellite and Terrestrial Microwave Feeds to Noncommercial Educational FM Translators

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, in this Second Report and Order, is modifying its rules to allow independently owned and operated noncommercial educational FM (NCE-FM) translators assigned to reserved frequencies (channels 201-220) and providing service in the fill-in areas of their primary stations to receive signals by terrestrial microwave or other terrestrial means. Currently, the Commission allows only NCE-FM translator stations assigned to reserved channels, and owned and operated by their primary stations, to rebroadcast signals that are relayed by any technical means. The Commission is also adopting rules to allow broadcast intercity relay microwave facilities to be used to deliver signals to NCE-FM translators owned by their primary stations, on a secondary basis; and, to independently owned and operated NCE-FM translators operating in the fill-in areas of their primary stations, also on a secondary basis. These rule modifications will benefit the public by expanding opportunities for providing quality noncommercial FM service to unserved and underserved areas.

EFFECTIVE DATE: October 16, 1992.

FOR FURTHER INFORMATION CONTACT: Scott Roberts, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report and Order in MM Docket No. 86-112, adopted August 19, 1992, and released August 28, 1992. The full test of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1990 M St. NW., Washington, DC 20036.

Summary of the Second Report and Order

1. In the Report and Order in this proceeding, the Commission amended its rules so that NCE-FM translator stations assigned to reserved channels and owned and operated by their primary stations could receive signals for rebroadcast via any technical means the licensee deems suitable. Concurrently, the Commission adopted a Further Notice of Proposed Rule Making (Further Notice) that proposed to extend this rule change to all NCE-FM translators assigned to reserved channels. The Commission also proposed to allow broadcast intercity relay microwave facilities to be used to deliver signals to NCE-FM translators, on a secondary basis. Finally, the Commission solicited comment on whether to adopt procedures that would give local noncommercial broadcasters priority in acquiring NCE-FM translators located within their 1 mV/m contour, or extending their service to adjacent areas.

2. First, with respect to eliminating all alternative signal delivery restrictions to independently owned NCE-FM translators, we continue to believe that service to the public will be enhanced by permitting independently owned NCE-FM translators to receive signals by other means in addition to off-the-air. However, our concern for maintaining a balance between the public interest embodied in ensuring the development and expansion of local public radio service and increasing NCE-FM service by the use of translators persuades us to retreat from our original proposal to allow all independently owned NCE-FM translators to use all forms of alternative signal delivery and to adopt, instead, a more limited relaxation of the signal delivery rule. We have concluded that independently owned NCE-FM translators assigned to reserved frequencies and serving fill-in areas should be afforded the same alternative signal delivery authority as we allow for commercial FM translators providing fill-in service. Thus, independently owned NCE-FM translators assigned to reserved frequencies and serving fill-in areas will be permitted to receive signals by any terrestrial transmission facilities including, but not limited to, microwave, phone company circuits, and dedicated cable. We will also be favorably disposed toward requests for waivers of the prohibitions contained in this rule for "white areas"—those areas beyond the coverage contour of all full-time noncommercial aural services. This modest relaxation of the signal delivery rule for independently owned NCE-FM fill-in translators will afford licensees added flexibility while not posing any appreciable risk to eventual development of full-service educational stations or their continued support.

3. Second, with regard to the usage of broadcast auxiliary frequencies, we recognize that continued congestion exists in the broadcast auxiliary frequencies in larger markets, but that it is likely that broadcast channel space is available in more remote areas. We believe it is in the public interest to maximize the potential for service to such areas. We are also mindful of the need to maintain the balance between the public interest embodied in ensuring the development and expansion of local public radio service and in increasing NCE-FM service to areas unable to receive service due to distance or intervening terrain obstructions. We are, therefore, authorizing the use of broadcast auxiliary channels to feed NCE-FM translators on channels 201-220 for translators that are co-owned and operated by their primary stations, and for those independently owned NCE-FM translators operating in the fill-in areas of their primary stations, but on a secondary basis only.

4. Finally, we decline to adopt additional procedures granting NCE-FM broadcasters priority in acquiring NCE-FM translators within their service area or extending their service into adjacent areas. The Commission already has safeguards in place that protect the demand by local public broadcasters for translators to fill in their service areas. First, for mutually exclusive applications, the Commission gives highest priority to translator applicants proposing fill-in service of the commonly owned primary station. Second, in its Memorandum Opinion and Order addressing petitions for reconsideration of the Report and Order, the Commission established a transition period that affords local public broadcasters time to acquire NCE-FM translators. During this transition period, which expires on October 2, 1992, an applicant for NCE-FM translator seeking authorization to use alternative signal delivery has to make a showing that an alternative NCE-FM frequency is available that would potentially serve the same areas as the applicant's proposed contour. We believe that these two measures adequately resolve our concerns in this area.

5. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

I. Need for and Purpose of the Rules

The Commission concludes that these rule changes will permit the expansion of noncommercial FM translator service to areas in which direct reception of radio broadcast stations is unsatisfactory due to distance or intervening terrain barriers, while striking a balance between the public interest embodied in ensuring the

development and expansion of local public radio service.

II. Summary of Issues Raised by Public Comment in Response to the Initial Regulatory Flexibility Analysis, Commission Assessment, and Changes Made as a Result

A. Issues Raised

No issues were raised specifically in response to the initial regulatory flexibility analysis. All of the comments were directed to proposed extension of the alternative signal delivery rule to independently owned translators.

B. Assessment

We believe our initial assessment with regard to the use of broadcast auxiliary frequencies to be correct and that such usage will increase the potential for additional NCE–FM service to areas with reception problems. However, we have modified our original proposal to extend to independently owned NCE–FM translators operating within the coverage area of their primary stations, the permissible alternative signal delivery already afforded NCE–FM translators owned and operated by their primary stations.

C. Changes Made as a Result of Comments

We are authorizing independently owned and operated NCE–FM translators operating in fill-in areas of their primary stations to use terrestrial signal feed.

III. Significant Alternatives Considered and Rejected

We have considered and rejected alternatives and have concluded that the action taken herein balances the benefits of expanded NCE–FM service with the enhancement of local public radio service.

Ordering Clauses

6. Accordingly, *It Is Ordered* That under the authority contained in sections 4(i) and 303 of the Communications Act of 1934, as amended, part 74 of the Commission's rules and regulations *Is Amended* as set forth below effective.

7. *It Is Further Ordered* That this proceeding *Is Terminated.*

List of Subjects in 47 CFR Part 74

Experimental, auxiliary, and special broadcast and other program distributional services, Radio broadcasting.

Part 74 of Title 47 of the Code of Federal Regulations is amended to read as follows:

PART 74—[AMENDED]

1. The authority citation for part 74 continues to read as follows:

Authority: Sects. 4, 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154 and 303, unless otherwise noted. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended; 47 U.S.C. 301, 303, 307.

2. 47 CFR 75.501 is amended by revising paragraph (b) to read as follows:

§ 74.501 Classes of aural broadcast auxiliary stations.

* * * * *

(b) *Aural broadcast intercity relay (ICR) station.* A fixed station for the transmission of aural program material between radio broadcast stations, other than international broadcast stations, between FM radio broadcast stations and their co-owned FM booster stations, between noncommercial educational FM radio stations and their co-owned noncommercial educational FM translator stations assigned to reserved channels (Channels 201 to 220), between FM radio stations and FM translator stations operating within the coverage contour of their primary stations, or for such other purposes as authorized in § 74.531.

* * * * *

3. 47 CFR 74.531 is amended by revising paragraph (c) to read as follows:

§ 74.531 Permissible service.

* * * * *

(c) An aural broadcast intercity relay station is authorized to transmit aural program material between noncommercial educational FM radio stations and their co-owned noncommercial educational FM translator stations assigned to reserved channels (Channels 201 to 220) and between FM radio stations and FM translator stations operating within the coverage contour of their primary stations. This use shall not interfere with or otherwise preclude use of these broadcast auxiliary facilities by broadcast auxiliary stations transmitting aural programming between broadcast stations as provided in paragraph (b) of this section.

* * * * *

4. 47 CFR 74.532 is amended by revising paragraph (a) to read as follows:

§ 74.532 Licensing requirements.

(a) An aural broadcast STL or an aural broadcast intercity relay station will be licensed only to the licensee or licensees of broadcast stations, other than international broadcast stations, and for use with broadcast stations owned entirely by or under common control of the licensee or licensees. An aural broadcast intercity relay station also will be licensed for use by noncommercial educational FM translator stations assigned to reserved channels (Channels 201–220) and owned and operated by their primary station, by FM translator stations operating within the coverage contour of their primary stations, and by FM booster stations.

* * * * *

5. 47 CFR 74.1231 is amended by revising paragraph (b) introductory text to read as follows:

§ 74.1231 Purpose and permissible service.

* * * * *

(b) An FM translator may be used for the purpose of retransmitting the signals of a primary FM radio broadcast station or another translator station which have been received directly through space, converted, and suitably amplified. However, an FM translator providing fill-in service may use any terrestrial facilities to receive the signal that is being rebroadcast. An FM booster station or a noncommercial educational FN translator station operating on a reserved channel (Channels 201–220) and owned and operated by the licensee of the primary noncommercial educational FM station it rebroadcasts may use alternative signal delivery means, including, but not limited to, satellite and terrestrial microwave facilities. *Provided,* however, that an applicant for a noncommercial educational FM translator station operating on a reserved channel (Channel 201–220) and owned and operated by the licensee of the primary noncommercial educational FM station it rebroadcasts complies with either paragraph (b)(1) or (b)(2) of this section:

* * * * *

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–21466 Filed 9–8–92; 8:45 am]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1003

[Ex Parte No. 55 (Sub-No. 90)]

List of Forms

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission is discontinuing publication in the Code of Federal Regulations of the list of forms prescribed for use in Commission proceedings under subchapters A and B of chapter X. The list satisfies no legal requirement, and serves no useful purpose, because the information is available elsewhere in the rules. Its elimination will shorten and simplify agency regulations.

EFFECTIVE DATE: October 8, 1992.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder (202) 927-5610. [TDD for hearing impaired: (202) 927-5721.]

SUPPLEMENTARY INFORMATION: On May 27, 1992, the Commission issued a notice of proposed rulemaking, (57 FR 22204) in this proceeding which proposed the elimination of the list of current forms prescribed for use in the various Commission proceedings under subchapters A and B of the rules (General Rules and Regulations and Rules of Practice). We indicated in the proposed rule that this listing is redundant because each required form is reproduced in the related CFR section; that publication of such a list is not a legal requirement; and that its elimination will shorten and simplify our rules. We also suggested that if such a listing is shown to be needed, the regulations could provide that the Commission's Secretary will maintain it and make a copy available upon request.

Attorney Gordon MacDougall filed a comment opposing the elimination of the list. Mr. MacDougall finds the list useful, and suggests that its elimination will give Commission staff an advantage over practitioners in that staff will assertedly have knowledge not readily accessible to practitioners. He also believes that elimination of the list will encourage undesirable "ex parte" contacts between staff and practitioners, and that staff time could be better utilized.

We will adopt the rules proposed in our prior Notice of Proposed Rulemaking. Any opportunity to shorten and simplify our regulations should not be foregone lightly. While Mr. MacDougall finds the listing useful, he does not claim that its elimination would be a serious inconvenience to his practice. We also fail to understand how eliminating the list from the CFR will contribute to any kind of "knowledge gap" between the Commission's staff and practitioners. Staff attorneys and paralegals generally must rely upon the same research aids as outside practitioners. We also do not foresee any significant impact upon the number of inquiries received from practitioners and the public. As we noted in the prior notice, the prescribed forms are reproduced in the pertinent section of the regulations dealing with the proceeding or regulatory requirement involved. Thus, practitioners contemplating participation in a Commission proceeding will be aware of the proper forms to request upon familiarizing themselves with the regulations applicable to that type of proceeding. Finally, we will direct the Secretary of the Commission to maintain a current list of forms and provide copies to interested persons upon request.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

This action will not have a substantial adverse impact upon a significant number of small entities.

List of Subjects in 49 CFR Part 1003

Brokers, Freight forwarders, Insurance, Motor carriers, Securities, Surety bonds.

Decided: August 31, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set out in the preamble, title 49, chapter X, part 1003 of the Code of Federal Regulations is amended as follows:

1. Part 1003 is revised to read as follows:

PART 1003—FORMS

Authority: 5 U.S.C. 551(a), 5 U.S.C. 553(1)(c), 49 U.S.C. 10321.

§ 1003.1 General information.

(a) Printed forms are prescribed for various applications under the Interstate Commerce Act and the Commission's regulations contained in this chapter.

(b) All prescribed forms include instructions for their completion.

(c) Copies of all prescribed forms except insurance forms are available upon request from the Office of the Secretary, Publications Unit, Interstate Commerce Commission, Washington, DC 20423.

[FR Doc. 92-21662 Filed 9-8-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 9201092009]

Pacific Coast Groundfish Fishery; Correction

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of fishing restrictions; request for comments; corrections.

SUMMARY: NMFS corrects errors in the effective date of the notice of fishing restrictions that reduced the daily trip landing limit from 1,500 pounds to 500 pounds for sablefish caught with nontrawl gear off Washington, Oregon, and California in 1992.

EFFECTIVE DATES: FR Document 92-6977, published March 26, 1992, at 57 FR 10429 is effective from 0001 hours March 21, 1992.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at (206) 526-6140 or Rodney R. McInnis at (310) 980-4040.

SUPPLEMENTARY INFORMATION: In FR Doc. 92-6977 beginning on page 10429, in the issue of Thursday, March 26, 1992, make the following corrections:

(1) On page 10429, in the first column, under the "**DATES**" caption, on the first and second line, "March 20, 1992." should read "March 21, 1992.".

(2) On the same page, in the second column, under the "Secretarial Action" caption, in item (1), first line, "April 20, 1992," should read "March 21, 1992,".

Dated: September 2, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-21581 Filed 9-8-92; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 681

[Docket No. 920517-2220]

Western Pacific Crustacean Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: The 1992 final quota for crustaceans in the Northwestern Hawaiian Islands.

SUMMARY: NMFS announces that the final quota for lobsters taken in the Northwestern Hawaiian Islands (NWHI) crustacean fisheries in 1992 is 438,000 lobsters. This action is necessary to

inform the public of the quota, which is less than the interim final quota announced on May 22, 1992 (57 FR 21752). This action is intended to carry out the objectives of Amendment 7 under the Fishery Management Plan for the Crustacean Fisheries of the Western Pacific Region (FMP).

EFFECTIVE DATES: Effective September 9, 1992.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Fisheries Management Division, Southwest Region, NMFS, 310-980-4034; or Alvin Z. Katekaru, Pacific Area Office, Southwest Region, NMFS, 808-955-8831.

SUPPLEMENTARY INFORMATION: The crustacean fisheries of the NWHI are managed by the Secretary of Commerce (Secretary) according to the FMP. The FMP was prepared by the Western Pacific Fishery Management Council under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act) and is implemented by regulations for the U.S. crustacean fishery in the western Pacific region at 50 CFR part 681. General regulations that also pertain to the U.S. fishery are implemented at 50 CFR part 620.

Under authority of the Magnuson Act, the Secretary approved Amendment 7 to the FMP (implemented by a final rule published at 57 FR 10437, March 26, 1992). This amendment establishes a seasonal closure, a limited entry program, and a process (including a formula) to set an annual harvest quota for the lobster fishery in the NWHI. The first year of fishing under the quota is 1992, and the fishing year began July 1, 1992.

The quota is announced in two steps. First, based on the previous years' fishery data, and research sampling and other data sources, if necessary, the Regional Director, Southwest Region, NMFS (Regional Director), determines an initial quota, which is announced in the **Federal Register** by the Assistant Administrator for Fisheries (§ 681.31(b)). The final quota for the year is then determined based on actual fishery results (catch and effort data) in July, the first month of fishing (§ 681.31(c)). These data are believed to reflect more accurately the condition of the stocks.

The Regional Director applied the formula in the FMP amendment to 1991 and early 1992 fishery catch and effort data to derive the initial quota for 1992 of 750,000 lobsters (spiny and slipper lobsters combined). The initial (interim final) quota was published in the **Federal Register** on May 22, 1992 (57 FR 21752). The Regional Director has now determined, based on actual catch and effort data provided by fishermen for July 1992, that the final quota for the 1992 season is 438,000 lobsters.

The decrease of the final quota from the initial quota is primarily attributed to continued poor recruitment of spiny lobster to Maro Reef. Spiny lobster recruitment to the NWHI varies considerably between banks, and appears to fluctuate in response to changes in oceanographic processes related to El Niño Southern Oscillation events. These events are cyclical, and the magnitude and temporal scale of their effect on lobster population dynamics remains unknown. Before the 1992 lobster season, there was some indication, based on a sea level and commercial catch correlation, that recruitment of spiny lobster to Maro Reef would improve in 1992. Maro Reef accounted for approximately 50 percent of the commercial landings in NWHI until recently. However, research catch and effort data for Maro Reef in June 1992 and commercial lobster catch and effort data in July 1992 indicated poor recruitment through mid-1992. The final quota reflects this current estimate of the condition of the stocks.

If the catch and effort rates experienced during the first month of fishing continue, the final quota is expected to be reached late in October or early in November 1992. NMFS will continue to monitor the progress of the fishery toward the quota. The specific dates on which the NWHI lobster fishery will be closed, and further landings of lobsters taken from the NWHI prohibited, will be published in the **Federal Register** not less than 7 days prior to the date of closure. All NWHI lobster fishery permit holders will be notified by NMFS of the specific dates of the closure and landing prohibition.

No comments were received on the interim final (initial) quota; however, as discussed above, additional data became available leading to the reduced final quota.

Classification

This action is taken under the FMP and 50 CFR part 681 and complies with E.O. 12291.

An environmental assessment (EA) was prepared for Amendment 7, which established the process and formula for setting the quota for the NWHI crustacean fisheries. The final quota set by this notice is within the range of alternatives considered in the EA. Therefore, this action is categorically excluded from the NEPA requirement to prepare an EA in accordance with section 6.02c.3.(f) of NOAA Administrative Order 216-6.

List of Subjects in 50 CFR Part 681

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 2, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 92-21582 Filed 9-8-92; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 175
Wednesday, September 9, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-CE-39-AD]

Airworthiness Directives; Beech Model 1900C Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would be applicable to certain Beech Model 1900C airplanes. The proposed action would require an inspection of the pneumatic deice lines and the deice distributor valve for fuel leakage, replacement of any fuel contaminated parts, and modification of the wet wing fuel barriers. The Federal Aviation Administration (FAA) has received reports of fuel leakage from the wet wing fuel barriers into the pneumatic deice system and deice boots, which could enter into the electrically-heated stall warning vane housing. The actions specified by the proposed AD are intended to prevent an airplane fire caused by this condition.

DATES: Comments must be received on or before November 23, 1992.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-CE-39-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that is applicable to this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. James M. Peterson, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946-4145; Facsimile (316) 946-4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 92-CE-39-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-CE-39-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received three reports of fuel leakage in the pneumatic deice system of certain Beech Model 1900C airplanes. In one instance, the deice distributor valve was full of fuel and fuel was running from the vacuum ejector exhaust tube. The source of the fuel leaks was the structural bond joint between the pneumatic deice barrier and the leading edge. Once fuel had accumulated in the leading edge, the fuel deteriorated the rubber nipple on the deice boot to the point that a hole was created. When the deice system was in the vacuum mode, fuel was then drawn into the system and distributed to all leading edge boots by activation of the deice system.

The fuel leakage path described in the referenced incident could allow fuel to enter the electrically-heated stall vane cavity. The potential for fire exists in this scenario because fuel with auto-ignition temperatures as low as 446 degrees Fahrenheit (F) can come in contact with the stall warning heating element. Normal ground operation temperature of the heating element is limited to the 300 to 400 degrees F by the landing gear squat switch. If the squat switch functioned improperly, the heating element could reach temperatures of 800 to 900 degrees F, which greatly exceeds the 446-degree F fuel auto-ignition temperature.

Beech has issued Service Bulletin No. 2430, dated March 1992, which specifies procedures for (1) inspecting the pneumatic deice lines and deice distributor valve for fuel leakage; (2) and modifying the wet wing fuel barriers. This service bulletin proposes that the inspection be performed repetitively until the modification is accomplished. The FAA has determined that the modification and inspection should be accomplished simultaneously, which would eliminate the need for repetitive inspections.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent an airplane fire caused by fuel entering the electrically-heated stall warning vane housing.

Since the condition described is likely to exist or develop in other Beech Model 1900C airplanes of the same type design, the proposed AD would require an inspection of the pneumatic deice lines and the deice distributor valve for fuel leakage, replacement of any fuel contaminated parts, and modification of the wet wing fuel barriers. The proposed actions would be accomplished in accordance with the Accomplishment

Instructions section of the above-referenced service information.

The FAA estimates that 145 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 21 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $119 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $184,730.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Beech: Docket No. 92–CE–39–AD.

Applicability: Model 1900C airplanes, serial numbers UC–1 through UC–174 and UD–1 through UD–6 (Model C–12J), certificated in any category.

Compliance: Required within the next 200 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent an airplane fire caused by fuel entering the electrically-heated stall warning vane housing, accomplish the following:

(a) Inspect the pneumatic deice lines and the deice distributor valve for fuel leakage in accordance with parts I and II of the Accomplishment Instructions section of Beech Service Bulletin (SB) No. 2430, dated March 1992. Prior to further flight, replace any fuel contaminated parts in accordance with Part II of the Accomplishment Instructions section of the referenced service information.

(b) Modify the wet wing fuel barriers in accordance with Parts III and IV of the Accomplishment Instructions section of Beech SB No. 2430, dated March 1992.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and send it to the Manager, Wichita Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(e) Service information that is applicable to this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information may also be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri. Issued in Kansas City, Missouri, on September 2, 1992.

Dwight A. Young,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–21593 Filed 9–8–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 92–CE–44–AD]

Airworthiness Directives; Ayres Corporation S2D and S2R Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would be applicable to certain Ayres Corporation (Ayres) S2D and S2R series airplanes. The proposed action would require repetitive inspections of the wing front spar for corrosion, and repair of any corroded areas. Investigation of an accident involving one of the affected airplanes revealed extensive corrosion of the upper and lower portions of the front spar. The actions specified by the proposed AD are intended to prevent wing structural damage that could progress to the point of failure.

DATES: Comments must be received on or before November 16, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–CE–44–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that is applicable to this AD may be obtained from the Ayres Corporation, P.O. Box 3090, Albany, Georgia 31708; Telephone (912) 883–1440. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Lorenzen, Aerospace Engineer, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; Telephone (404) 991–3810; Facsimile (316) 991–3606.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 92-CE-44-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-CE-44-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion:

Recent investigation of an accident involving an Ayres Model S2R-T34 airplane revealed extensive corrosion of the upper and lower portion of the front spar, in particular the attachment area of the steel spar caps to the aluminum spar web and the huckbolt fasteners. Two other Ayres S2D and S2R series airplanes were found to have similar corrosion during an annual maintenance inspection. If not detected and corrected, a corroded wing front spar could result in wing structural damage.

Ayres has issued Service Bulletin (SB) No. SB-AG-29, dated June 15, 1992, which specifies procedures for (1) inspecting the wing front spar for corrosion; and (2) repairing any corrosion-damaged area. This service information covers areas and procedures not normally accomplished through routine maintenance inspections.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent wing structural damage that could progress to the point of failure.

Since the condition described is likely to exist or develop in other Ayres S2D and S2R series airplanes of the same type design, the proposed AD would require repetitive inspections of the wing front spar for corrosion, and repair of any corroded areas. The proposed actions would be accomplished in accordance with the Accomplishment Instructions section of Ayres SB No. SB-AG-29, dated June 15, 1992.

The compliance time for this AD is presented in calendar time instead of hours time-in-service (TIS). The FAA has determined that a calendar time for compliance is the most desirable method because the unsafe condition described by the proposed AD is caused by corrosion. Corrosion can occur on airplanes regardless of whether the airplane is in service. In addition, the utilization rate of the affected airplanes varies throughout the fleet. For example, one operator may utilize the airplane 50 hours TIS in one week, while another operator may not operate the airplane 50 hours TIS in one month. Therefore, to ensure that corrosion is detected and corrected on all airplanes within a reasonable period of time without inadvertently grounding any airplanes, a compliance schedule based upon calendar time instead of hours time-in-service is utilized.

The FAA estimates that 1,700 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 8 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $180 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,054,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Ayres Corporation: Docket No. 92-CE-44-AD.

Applicability: The following model and serial number airplanes, certificated in any category:

Models	Serial Numbers
S2D	All serial numbers.
S2R	5000 through 5099, 1380R, and 1416R through 2583R.
S2R-R1340	R1340-001 through R1340-030 (with or without DC suffix).
S2R-R3S	R3S-001 through R3S-011 (with or without DC suffix).
S2R-R1820	R1820-001 through R1820-035 (with or without DC suffix).
S2R-T11	T11-001 through T11-005 (with or without DC suffix).
S2R-T15	T15-001 through T15-029 (with or without DC suffix) and T15-031 (with or without DC suffix); and T27-001 through T27-029 (with or without DC suffix) and T27-031 (with or without DC suffix).
S2R-T34	6000 through 6049, T34-001 through T34-178 (with or without DC suffix) and T34-180 (with or without DC suffix); and T41-001 through T41-178 (with or without DC suffix) and T41-180 (with or without DC suffix).
S2R-T45	T45-001 through T45-003 (with or without DC suffix).
S2R-T65 and	T65-001 through T65-010 (with or without DC suffix).
S2R-G6	G6-101 through G6-107 (with or without DC suffix).

Compliance: Required within the next 3 calendar months, unless already accomplished, and thereafter at intervals not to exceed 12 calendar months.

To prevent wing structural damage that could progress to the point of failure, accomplish the following:

(a) Inspect the wing front spar in accordance with the "ACCOMPLISHMENT INSTRUCTIONS: I. Inspection of Front Spar" section of Ayres Service Bulletin (SB) No. SB-AG-29, dated June 15, 1992.

(b) If corrosion is found as a result of the inspection required in paragraph (a) above, prior to further flight, treat and repair the corrosion damage in accordance with the "ACCOMPLISHMENT INSTRUCTIONS: II. Repairs" section of Ayres SB No. SB-AG-29, dated June 15, 1992.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent

level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta Aircraft Certification Office.

(e) All persons affected by this directive may obtain copies of the document referred to herein upon request to the Ayres Corporation, P.O. Box 3090, Albany, Georgia 31708; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on September 1, 1992.

Dwight A. Young,

Acting Manager, Small Airplane Directorate Aircraft Certification Service.

[FR Doc. 92-21594 Filed 9-8-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 270

RIN No. 1510-AA31

Availability of Records

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Financial Management Service proposes to revise its regulations to provide more accurate information to the public concerning where to send requests for information and the fees that will be charged for services. This revision also includes editorial changes for clarity and address changes.

DATES: Comments must be submitted on or before October 9, 1992.

ADDRESSES: Comments should be sent to Director, Facilities Management Division, Financial Management Service, 401 14th Street, SW., Washington, DC 20227.

FOR FURTHER INFORMATION CONTACT: Rita Franklin on (202) 874-8300.

SUPPLEMENTARY INFORMATION: The Department of the Treasury has statutory responsibilities, with respect to the general public, to implement uniformly and consistently the Freedom of Information Act (5 U.S.C. 552) and to provide maximum allowable disclosure of agency records upon request by any individual.

To fulfill these responsibilities, the Financial Management Service (FMS) is proposing this rule to clarify instructions for submitting requests for information and to consolidate FMS's fee schedule with the Department of Treasury regulations found at 31 CFR part 1 (52 FR 26305, July 14, 1987). The proposed rule also will clarify that some sections of the Treasury Financial Manual do not affect the public and therefore, may not be made available.

In addition, claims for the redemption of mutilated currency of the United States now shall be submitted to the Bureau of Engraving and Printing pursuant to 31 CFR part 100 (47 FR 32044, July 23, 1982, as amended at 56 FR 10170, Mar. 11, 1991). This rule is not a major rule for the purpose of Executive Order 12291 of February 17, 1981, and a regulatory impact analysis is not required. As explained above, this revision merely updates and clarifies existing practices. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

List of Subjects in 31 CFR Part 270

Freedom of information.

For the reasons set forth in the preamble, title 31 part 270 of the Code of Federal Regulations, is proposed to be revised to read as set forth below:

PART 270—AVAILABILITY OF RECORDS

Sec.
270.1 Rules governing availability of information.
270.2 Materials available for inspection and copying.
270.3 Requests for identifiable records.
270.4 Fees for services.

Authority: 5 U.S.C. 552.

The records of the Financial Management Service required by 5 U.S.C. 552 to be made available to the public shall be made available in accordance with the definitions, procedures and other provisions of the regulations on the Disclosure of Records of the Office of the Secretary and of other bureaus and offices of the Department issued under 5 U.S.C. 552 and published as part 1 of title 31 of the Code of Federal Regulations, except as provided in these regulations.

§ 270.2 Materials available for inspection and copying.

(a) *Materials available.* The materials in the Financial Management Service which are required by 5 U.S.C. 552(a)(2) to be made available for public inspection and copying are the following:

(1) Final opinions, as well as orders, made in the adjudication of cases. These will include final dispositions of claims on Government checks which are of a precedential nature. Generally, however, the Financial Management Service does not issue orders in the adjudication of cases.

(2) Statements of policy and interpretations which have been adopted by the Service and are not published in the **Federal Register**.

(3) Administrative staff manuals and instructions to staff that affect a member of the public. These materials include sections of the Treasury Financial Manual and such Department Circulars applicable to Financial Management Service operations that have been determined by the agency to affect a member of the public, as have not been incorporated into that manual or published as parts of title 31 of the Code of Federal Regulations.

(4) Current indices for the foregoing materials.

(b) *Location.* The materials listed in paragraph (a) of this section issued on or after the effective date of these regulations are available for inspection and copying during office hours in the public reading room of the Treasury Department, 15th Street and Pennsylvania Avenue, NW., Washington, DC 20220. Materials issued prior thereto are available in the public reading room to the extent feasible. If not so available, they may be requested as identifiable records.

§ 270.3 Requests for identifiable records.

(a) *Procedure.* A written request for an identifiable record shall be addressed to: Freedom of Information Disclosure Officer, Financial Management Service, 401 14th Street, SW., Washington, DC 20227.

(b) *Determination of request.* Determination as to the disclosure of record request shall be made, subject to appeal to the Commissioner of the Financial Management Service, by the head of the division in which the record belongs and by the Disclosure Officer of the agency. The decision of the Commissioner shall constitute final agency action, unless the Commissioner refers the appeal to the Fiscal Assistant Secretary, in which case the decision of the Fiscal Assistant Secretary shall constitute final agency action.

§ 270.4 Fees for services.

Fees for services performed by the Financial Management Service will be imposed and collected as set forth in

part 1 of title 31 of the Code of Federal Regulations.

Russell D. Morris,

Commissioner.

[FR Doc. 92-21169 Filed 9-8-92; 8:45 am]

BILLING CODE 4810-35-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 63

[CC Docket No. 87-266; FCC 92-327]

Telephone Company-Cable Television Cross-Ownership Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In a Second Further Notice of Proposed Rulemaking in Common Carrier Docket 87-266, the Commission requested comment on proposed rule changes that would amend the Commission's rules, to allow telephone companies to provide video programming directly to subscribers in areas of fewer than 10,000 persons.

DATES: Comments must be submitted on or before September 28, 1992. Reply Comments are due on or before October 28, 1992.

ADDRESSES: Comments and Reply Comments may be mailed to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Donna N. Lampert, Common Carrier Bureau, (202) 632-9342 or Greg Lipscomb, Common Carrier Bureau, (202) 634-4216.

SUPPLEMENTARY INFORMATION:

Background

Common Carrier Docket 87-266: Telephone Company-Cable Television Cross-Ownership Rules, §§ 63.54-63.58, Notice of Inquiry, 2 FCC Rcd 5092 (1987) (52 FR 34818 (9/15/87)); Telephone Company-Cable Television Cross-Ownership Rules §§ 63.54-63.58, Further Notice of Inquiry and Notice of Proposed Rulemaking, 3 FCC Rcd 5849 (1988) (53 FR 38042 (9/29/88)); Further Notice of Proposed Rulemaking, First Report and Order, and Second Further Notice of Inquiry, 7 FCC Rcd 300 (1991) (56 FR 65445 (12/17/91), 56 FR 65464 (12/17/91)).

Summary of Second Further Notice of Proposed Rulemaking

1. This is a summary of the Second Further Notice of Proposed Rulemaking in Common Carrier Docket 87-266: Telephone Company-Cable Television Cross-Ownership Rules, §§ 63.54-63.58, Adopted July 16, 1992 and Released August 14, 1992. The full texts of Commission decisions are available for inspection and copying, Monday through Friday, 9 a.m.-4:30 p.m., in the FCC Dockets Reference Room (room 239), 1919 M Street, NW., Washington, DC 20554. The complete text of this Second Further Notice of Proposed Rulemaking may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1114 21st Street, NW., Washington, DC 20036.

2. In the Second Further Notice of Proposed Rulemaking, the Commission proposed to amend the rural exemption to the telephone company-cable television cross-ownership restrictions to permit telephone companies to provide video programming directly to subscribers in areas of fewer than 10,000 persons. The rural exemption is currently applicable to places of fewer than 2,500 persons not in an "urbanized area." The Cable Act specifically gives the Commission authority to define areas eligible for the rural exemption. The Notice tentatively concluded that changing the definition of "rural" to areas of less than 10,000 persons would advance one of the goals of the Cable Act, that is, to provide diverse video programming to rural America by expanding significantly the number of areas, now unserved, that would be eligible to receive cable service from telephone companies. The Commission observed that there are substantial areas of the United States that are without cable service or are underserved by cable.

3. The Commission requested comment on its proposal to expand the rural exemption. The Commission asked commenters to address the nature of rural areas, including the population of such areas, and how many homes are in areas with a population under 10,000. The Commission asked parties to comment on whether relative efficiencies that could be achieved by an increased definition of rural areas would encourage local telephone to expand cable service to the most remote homes. The Commission asked for comments on the effect a 10,000 population threshold would have on the deployment of advanced video technologies in those areas.

Paperwork Reduction Act

4. The proposals have been analyzed with respect to the Paperwork Reduction Act of 1980, as amended, 44 U.S.C. 3501-20, and found to impose no new or modified form, information collection and/or recordkeeping, labeling, disclosure or record retention requirements; and will not increase burden hours imposed on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by that Act.

Initial Regulatory Flexibility Analysis Statement

5. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601-12, this Second Further Notice of Proposed Rulemaking, Proposing to amend the Commission's rules to expand the definition of rural for purposes of the rural exemption, may directly affect entities that are small business entities, as defined in section 601(c) of the Regulatory Flexibility Act.

6. The Secretary shall send a copy of the Second Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act. See 5 U.S.C. 601-12.

Ordering Clause

7. *It is ordered* that, pursuant to Sections 1, 4, 201-205, 215, 218, and 220 of the Communications Act of 1934, as amended, and Sections 601 and 613 of the Cable Communications Policy Act of 1984, as amended, 47 U.S.C. 151, 154, 201-205, 215, 218, 220, 521, and 533; and 5 U.S.C. 553, a Second Further Notice of Proposed Rulemaking is hereby adopted to amend § 63.58 of the Commission's rules, 47 CFR 63.58.

8. *It is furthered ordered* that, the Secretary shall send a copy of this Second Further Notice of Proposed Rulemaking, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

List of subjects in 47 CFR Part 63

Cable television, Communications common carriers, Telephone, Video dialtone.

Proposed Rule Changes

Part 63 of title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 63 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended 47 U.S.C. 154. Interpret or apply sec. 214, 48 Stat. 1075, as amended 47 U.S.C. 214.

2. Section 63.58 is amended by revising paragraphs (a)(1), removing paragraph (a)(2), redesignating existing paragraph (a)(3) as the new paragraph (a)(2), and revising the note in paragraph (b), to read as follows:

§ 63.58 Exemption.

(a) * * *

(1) Any incorporated or unincorporated place of 10,000 inhabitants or more, or any part thereof;

* * * * *

(b) * * *

Note: The Census Bureau has defined some incorporated places of 2,500 inhabitants or more as "extended cities." Such cities consist of an urban part and a rural part. If the proposed service area includes a rural part of an extended city, but otherwise includes no territory described in paragraph (a)(1) or (2) of this section, an exemption shall apply.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-21508 Filed 9-8-92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. PS-115; Notice 2]

RIN—2137 AB53

Gas Pipelines Operating Above 72 Percent of SMYS

AGENCY: Research and Special Programs Administration (RSPA).

ACTION: Withdrawal of advance notice of proposed rulemaking.

SUMMARY: RSPA's gas pipeline safety regulations allow certain steel pipelines put into service before the regulations were issued to be operated at pressures that result in a hoop stress higher than 72 percent of the specified minimum yield strength (SMYS) of the pipe. This is the highest hoop stress at which all other steel pipelines subject to the regulations may be operated. Because of accidents involving time-dependent defects on a few gas pipelines operating above 72 percent of SMYS and a National Transportation Safety Board (NTSB) recommendation that RSPA require reductions of hoop stress in those lines, RSPA published an advance notice of proposed rulemaking to invite public participation in determining an appropriate course of action. RSPA has concluded that NTSB's recommended hoop stress reductions would not contribute significantly to pipeline safety. The advance notice is, therefore, withdrawn.

FOR FURTHER INFORMATION CONTACT: L. M. Furrow, (202) 366-2392, regarding the subject matter of this notice, or the Dockets Unit, (202) 366-5046, regarding copies of this notice or other material in the docket that is referenced in this notice.

SUPPLEMENTARY INFORMATION:

Background

A RSPA regulation that limits the maximum allowable operating pressure (MAOP) of steel or plastic gas pipelines (49 CFR 192.619) contains a grandfather exception (§ 192.619(c)). This exception applies to pipelines in satisfactory condition that were put into service before the MAOP limitations were adopted. For these grandfathered lines, operators may set MAOP at the highest actual operating pressure the pipeline experienced during the 5 years before July 1, 1970, or, for offshore gathering lines, before July 1, 1976, if the operator finds the pipeline is in satisfactory condition considering its operating and maintenance history. (The grandfather exception has practical effect only for pipelines in Class 1 locations (essentially rural or offshore locations, as defined by § 192.5) because of the additional limits on MAOP that § 192.611 places on pipelines in more populated locations (Classes 2-4).)

In its proposed form, § 192.619 would have required operators to lower the pressure in many existing Class 1 pipelines. (35 FR 5486; April 2, 1970). DOT decided, however, that it lacked evidence that pressure reduction would materially increase the safety of these lines. Thus, it adopted the grandfather exception for them. (35 FR 13248; August 19, 1970). As a result, grandfathered lines may be operated with hoop stresses higher than § 192.619 permits for new pipelines in Class 1 locations. For new steel Class 1 pipelines, the maximum hoop stress allowed is 72 percent of SMYS.

In 1985 and 1986, NTSB investigated two corrosion-related accidents on two grandfathered lines near Beaumont and Lancaster, Kentucky. The pipelines were operated by the Texas Eastern Gas Pipeline Company at stresses above 72 percent of SMYS. In its report on the investigations (NTSB/PAR-87-1; February 18, 1989), NTSB recommended that RSPA repeal the provision that allows pipelines to be operated above 72 percent of SMYS. (Recommendation P-87-009). The primary basis for this recommendation was NTSB's judgment that it is not sound engineering practice to operate old pipelines at a hoop stress higher than Part 192 permits for new pipelines. A further rationale was NTSB's belief that if the MAOP of the pipelines had been lowered to no more than 72 percent of SMYS, the accidents probably would not have occurred until a later date, and in the Lancaster case, probably not before Texas Eastern had time to replace the damaged segment. (Texas Eastern had begun a rehabilitation program on the Lancaster line about a year before the corrosion-related accident occurred.)

In addition to the NTSB investigations, RSPA and the Kentucky Public Service Commission jointly formed a task force to inquire into the Lancaster and Beaumont accidents. This task force also examined two other contemporaneous accidents on Texas Eastern's pipelines in Kentucky that were operating above 72 percent of SMYS. One of these accidents was caused by a material defect; the other by construction errors. Because all the pipelines involved were grandfathered, the task force recommended that RSPA study the need to limit the operating hoop stress of grandfathered pipelines to 72 percent of SMYS. (See "Texas Eastern Gas Pipeline Company Operations and Maintenance Procedures Evaluation," dated November 1986.)

Heeding the task force's recommendation, RSPA researched the safety consideration s pertinent to the operation of pipelines above 72 percent of SMYS, and produced a report titled, "A Safety Evaluation of Gas Pipelines Operating Above 72 Percent of SMYS," dated August 1987. This report identified two operators as having the large majority of grandfathered lines that operate above 72 percent of SMYS: Texas Gas Transmission Corporation and Texas Eastern Gas Pipeline Company (now a subsidiary of the Panhandle Eastern Corporation).

According to the report, since 1970 the incident rate on Texas Gas's and Texas Eastern's grandfathered lines operating above 72 percent of SMYS ranged from 1/10 to 1/2 the incident rate on lines those companies operate below 72 percent of SMYS. Although the report does not explain this variation, testimony from company representatives at an advisory committee meeting (discussed below) sheds light on it.

Texas Eastern attributed the safety record of its grandfathered lines (about 4,200 miles) to two things: an aggressive inspection and maintenance program; and post-construction hydrostatic testing to at least 100 percent of SMYS. (In contrast, the minimum test level

required by Part 192 for new Class 1 steel pipelines operating at 72 percent of SMYS is 79.2 percent of SMYS.) Texas Eastern outlined its maintenance program as: (1) Intelligent pig inspection, (2) visual inspection and removal of anomalies detected by the pig, and (3) selective high pressure hydrostatic retesting to validate the pig inspection and ensure the integrity of replaced pipe.

Like Texas Eastern, Texas Gas attributed the safety record of its grandfathered lines (about 1,183 miles) to a strong maintenance program, which includes (1) reconditioning, (2) replacement of pipe where necessary, and (3) hydrostatic retesting.

The research report further states that the primary factors contributing to the failure of pipelines operating between 72 and 80 percent of SMYS are the number and size of defects present and their rate of growth. Because of the overriding importance of these factors, RSPA concluded that lowering operating hoop stress to 72 percent of SMYS, as NTSB recommended, would increase the time to failure only slightly, and would not prevent failures. RSPA concluded in the report that the margin between operating pressure and hydrostatic test pressure, rather than an operating hoop stress limit of 72 percent of SMYS, provides primary protection against leaks or ruptures caused by growth of time-dependent defects.

All grandfathered lines operating above 72 percent of SMYS that RSPA examined in its research project had been pressure tested to a level above 1.1 times their operating pressure. This test pressure is the minimum that Part 192 requires for new gas pipelines in Class 1 locations. So the grandfathered lines RSPA examined had been adequately tested by current standards.

RSPA presented the research report for consideration by the Technical Pipeline Safety Standards Committee (TPSSC) at a meeting on September 22, 1987. The TPSSC is RSPA's gas pipeline safety advisory committee, comprised of individuals who are experienced in the safety regulation of gas pipeline transportation or who are technically qualified to evaluate gas pipeline safety standards. No consensus was reached on the report, although there was much discussion about whether grandfathered lines should be subjected to additional integrity testing. This discussion came about because in the report RSPA recognized additional hydrostatic testing as a way to reduce the likelihood of failure in service from the growth of time-dependent defects. Then, on September 13, 1988, the TPSSC again took up the issue of grandfathered lines, this time voting 11 to 1 to disapprove a proposal to repeal the grandfather exception. The TPSSC's objections centered on the insufficiency of data showing that grandfathered lines are unsafe, the need to determine the cost of repeal, and the need to justify repeal in light of RSPA's research report.

Still RSPA remained concerned about the merits of NTSB's recommendation, particularly because it thought grandfathered lines operating above 72 percent of SMYS may provide somewhat less protection against external loads that could cause pipe failure, such as landslides or earthquakes, than similar lines operating at lower stress levels. Consequently, RSPA published an advance notice of proposed rulemaking (ANPRM) (54 FR 50780; Dec. 11, 1989) to request public comments on three alternative courses of action: (1) Repeal the grandfather exception with respect to pipelines operating above 72 percent of SMYS; (2) require integrity testing of pipelines operating above 72 percent of SMYS; or (3) leave the grandfather exception as is.

The TPSSC discussed the ANPRM at a meeting on April 4, 1990. Some members expressed doubt that the safety problem NTSB perceived really exists. Others indicated that older pipelines properly constructed, pressure tested, and maintained should not be considered inferior compared to newer systems. As a whole, the committee was not convinced from the information available that grandfathered lines present a risk to public safety for which further rulemaking action is warranted.

Discussion of comments in response to ANPRM. RSPA received letters from 25 persons commenting on the ANPRM. These commenters were distributed as follows:

Pipeline trade association—2 (AGA, INGAA)
State agency—3 (KY, DC, OR)
Federal agency—1 (DOI)
Pipeline operator—19

Only two commenters favored the first alternative of limiting the MAOP of grandfathered lines to 72 percent of SMYS. One of these commenters, the Kentucky Public Service Commission, argued that the grandfather exception was intended as a temporary measure to allow operators time to replace or reduce the pressure in their grandfathered lines. RSPA, however, has been unable to confirm from a search of the regulatory history that DOT intended the grandfather exception to be temporary. Clearly the plain language of the exception does not indicate that intent.

The second commenter, the Arco Pipe Line Company, said it does not operate gas pipelines above 50 percent of SMYS. Arco backed NTSB's contention that it is not sound engineering practice to allow old lines to operate indefinitely at higher hoop stress levels than those permitted for new lines.

To determine what constitutes sound engineering practice in the operation of pipelines, RSPA looks at available safety data and at engineering standards, literature, or expert testimony. In this proceeding, such information points in a direction contrary to NTSB's view. As noted above, our research disclosed that the grandfathered lines examined had a better safety record than non-grandfathered lines, probably because of sound maintenance practices and hydrostatic retesting. An even more significant research finding was that lowering operating hoop stress to 72 percent of SMYS would not have prevented failures due to the growth of time-dependent defects, and would have postponed failures only slightly. In addition, the TPSSC did not find that it is unsafe to operate older lines at stress levels higher than new ones. For further information, we considered the American Society of Mechanical Engineers' B31.8 Code, a set of voluntary standards for gas transmission and distribution piping systems that is widely recognized as representing acceptable safe practices in the industry. DOT relied heavily on the 1968 edition of this code as a basis for most of the standards in Part 192. The current edition of the B31.8 Code does not forbid the practice of operating old pipelines in Class 1 locations at hoop stress levels above the limit the code sets for new lines. In sum, the record in this proceeding does not support NTSB's view regarding sound engineering practice.

Neither commenter that favored repeal of the grandfather exception did so because of the need to provide greater protection against accidental overloading (such as from earthquakes, landslides, or the motion of heavy construction equipment), an idea RSPA had propounded in the ANPRM. The commenters that addressed the overload issue did not see it as a significant safety problem. Upon further analysis, RSPA agrees. First, pipeline failures due to overloading are rare. Second, grandfathered lines do not provide significantly less protection against overloads than other pipelines, judging by the average margin above 72 percent of SMYS at which the grandfathered lines RSPA has examined operate.

Finally, overloading that can cause a steel pipeline to fail is likely to be of such magnitude that operation at 72 percent of SMYS would not provide sufficient protection.

Four commenters favored the second alternative of maintaining the grandfather exception but requiring operators to take remedial action, such as hydrostatic testing, on lines that operate above 72 percent of SMYS. Of this group, a State agency and a distribution operator said hydrostatic testing should be required to remove as many latent defects as possible. Another State agency recommended increased monitoring by RSPA after the operators demonstrate the safety of their grandfathered lines. Finally, the Minerals Management Service (MMS) recommended limiting the MAOP of grandfathered lines to a line's test pressure divided by 1.25, which is the limit MMS imposes on offshore pipelines under its jurisdiction.

None of these commenters, however, presented information to explain why grandfathered lines operating above 72 percent of SMYS are in need of more remedial action to demonstrate or preserve their integrity than pipelines operating at 72 percent of SMYS or less. In fact, from a testing standpoint, the grandfathered lines operating above 72 percent of SMYS that RSPA examined in its research, which we believe comprised the large majority of the total mileage of all such lines, had a greater margin between test pressure and MAOP than Part 192 requires for new Class 1 pipelines operating at 72 percent of SMYS or less. For example, although Part 192 requires that new Class 1 pipelines operating at 72 percent of SMYS or less be tested to a least 1.1 times the pipeline's MAOP, the average test pressure of the four Texas Eastern grandfathered lines in Kentucky that were the subject of the task force investigation was 1.3 times the pipeline's MAOP.

Other than the four government agencies and two of the pipeline operators, the commenters unequivocally favored retention of the grandfather exception. The reason given most often was that RSPA's own research found that grandfathered lines operating above 72 percent of SMYS have a better safety record, based on fewer incidents per mile, than lines operating below that level.

This group of commenters also agreed with RSPA's research conclusions that reducing pipeline pressure to 72 percent of SMYS would not prevent accidents attributable to the growth of time-dependent defects in pipe, and would extend only slightly the time before such defects grow to failure. None of the commenters who favored the other alternatives disputed these points.

In view of this response by commenters, RSPA believes the research conclusions are persuasive in assessing the merits of NTSB's recommendation to repeal the grandfather exception. Besides arguing that repeal is necessary for sound engineering practice, an issue addressed above, NTSB speculated that operation of the Beaumont and Lancaster pipelines at 72 percent of SMYS might have extended the times to failure. In the Lancaster case, NTSB also said that such a postponement might have been long enough for Texas Eastern to complete its remedial program on the line. The implication of this reasoning for grandfathered lines is that pressure reduction to 72 percent of SMYS would provide operators time to detect and remove time-dependent defects before failures occur, assuming that grandfathered lines as a group deserve such remedial treatment. RSPA's research showed that any extension of the time to failure would be only slight. Also, experts agree that because of the many variables and uncertainties involved in the growth of time-dependent unidentified defects, the additional time before failure that might be expected from pressure reduction cannot be quantified. RSPA believes, therefore, that since the prolongation of time to failure would only be slight and could not be quantified, pressure reduction to 72 percent of SMYS could not reasonably be expected to provide enough time for operators to prevent failures through remedial actions, assuming remedial actions were taken because of an identified safety problem.

Another reason commenters gave frequently for not changing the grandfather exception was the alleged enormous impact that would be created, perhaps industry wide, if the MAOP of grandfathered lines had to be reduced to 72 percent of SMYS. The comments indicated that aside from the cross-country grandfathered lines that were the focus of the research report, there is a myriad of short segments of pipeline throughout the industry for which the MAOP has been established under § 192.619(c). One operator commented that it has 1,032 such segments, totaling 238 miles. According to the comments, numerous operators lack proof of the SMYS of such segments, and they would have to be tensile tested or replaced to conform to a pressure limitation of 72 percent of SMYS.

RSPA recognizes that repealing or modifying the grandfather exception would affect the operation of numerous short segments of existing pipeline in addition to the pipelines covered by the research report. No doubt we would have to weigh this impact against potential benefits should we decide to change the grandfather exception. However, the comments to the ANPRM did not suggest that these grandfathered short segments would benefit more from a change in the grandfather exception than the longer grandfathered lines examined in the research report. Indeed the potential benefits should not differ, considering that time-dependent defects are undoubtedly present in both groups of pipelines. Therefore, we have treated the two groups alike for purposes of this rulemaking proceeding.

Conclusions. The record shows that when DOT adopted the grandfather exception, it did not have information to justify requiring operators to lower the pressure in their grandfathered lines. We believe the same is true today with respect to pressure reduction to achieve a hoop stress no higher than 72 percent of SMYS. In fact, the prevailing information in this proceeding (primarily the research report, the TPSSC report, and the comments we received) indicates that restricting operation to 72 percent of SMYS would not contribute significantly to the safety of grandfathered lines. For example, operation at 72 percent of SMYS would not have prevented the Lancaster and Beaumont accidents discussed above, and would not have significantly increased the time to failure.

Neither does the information indicate that an acceptable level of safety for grandfathered lines operating above 72 percent of SMYS depends on taking remedial measures beyond what Part 192 requires for gas pipelines in general. Clearly Texas Eastern's and Texas Gas's enhanced testing and maintenance practices have resulted in better safety records on their grandfathered lines operating above 72 percent of SMYS than on their other lines. Nevertheless, we cannot conclude that the safety of grandfathered lines as a group demands such special treatment when they operate above 72 percent of SMYS. Operation above 72 percent of SMYS is neither the source of, nor a contributor to, the time-dependent defect problems at which the enhanced testing and maintenance are directed.

Consequently, RSPA hereby withdraws the ANPRM.

This action is consistent with the President's January 28, 1992, memorandum to agency heads on reducing the burden of government regulation. In addition to establishing a moratorium on issuing certain proposed

or final regulations, that memorandum called for agencies to review their existing regulations and eliminate those that are not cost-effective. As part of this review, we have considered § 192.619(c) and the ANPRM. We conclude that among the ANPRM alternatives, maintaining the grandfather exception is the clear choice to assure that expected benefits outweigh expected costs.

Authority: 49 U.S.C. 1672 and 1804; 49 CFR 1.53 and App. A of Part 106.

Issued in Washington, DC on September 3, 1992.

George W. Tenley, Jr.

Associate Administrator for Pipeline Safety.

[FR Doc. 92-21661 Filed 9-8-92; 8:45 am]

BILLING CODE 4910-60-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1039 and 1145

[Ex parte No. 394 (Sub-No. 10)]

Railroad Rates on Recyclables; Exemptions

AGENCY: Interstate Commerce Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is seeking public comment on whether to exempt from regulation rail transportation of nonferrous recyclable commodities that appear to recover revenues that are lower than the variable costs of the transportation. If the proposed exemption is adopted, rates on exempted commodities would be deregulated, and would not be subject to the evidentiary requirements associated with the annual compliance proceedings that govern other recyclable commodities.

DATES: Any person interested in participating in this proceeding as a party of record by filing and receiving written comments must file a notice of intent to do so by September 29, 1992. We will issue a service list of the parties of record shortly thereafter. Comments and replies must be served on all parties on the service list. Comments are due October 29, 1992. Replies are due on November 30, 1992.

ADDRESSES: Send notices of intent and an original and 10 copies of pleadings referring to Ex parte No. 394 (Sub-No. 10) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: David Groves (202) 927-6395. Craig Keats (202) 927-6046. [TDD for hearing impaired: (202) 927-5721].

SUPPLEMENTARY INFORMATION: The provisions of 49 U.S.C. 19731(e) limit rail rates on recyclable commodities, other than iron and steel, to revenue-to-variable cost (R/VC) ratios that are prescribed annually by the Commission. The regulations implementing these statutory provisions, found at 49 CFR part 1145, are designed to ensure that rates on recyclables, in the aggregate, remain below the statutory rate cap, and to preclude railroads from increasing individual recyclables rates that are already above the cap. Under the regulations, each year the Commission conducts an annual compliance proceeding to determine, on a regional and a national basis, aggregate rate levels for specific recyclable commodity groups. As part of the compliance process, carriers can justify their own rates rather than relying on the group data; and shippers can present evidence to demonstrate that specific rates that they pay are above the permissible level.

The provisions of 49 U.S.C. 10505 authorize the Commission to exempt particular services from regulation where (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 1010a (RTP); and (2) the service is of limited scope, or regulation is not necessary to protect shippers from the abuse of market power. Over the past 12 years, we have exempted from regulation numerous commodities and services when we found that the existence of substantial competitive pressures would protect shippers and advance the goals of the RTP without involvement by the Commission.

In our decision in Ex Parte No. 394 (Sub-No. 9), *Cost Ratio For Recyclables–1992 Determination* (not printed), served May 6, 1992 (*1992 Determination*), we reported the results of our first annual recyclables compliance proceeding. We generally measured compliance on the basis of certain 5-digit Standard Transportation Commodity Code designations, although pursuant to our rules we also permitted shippers to make more detailed showings for specific movements of individual commodities. We found that rates for certain commodities, in the aggregate or on an individual basis when challenged by a shipper, were above the appropriate R/VC ratio level. We also found, however, certain commodity groups whose revenues, both in the aggregate and for carriers reporting individually, appeared to be less than their variable costs for movements in the East, West, and throughout the United States.[1]

It appears to us that the railroads are subject to substantial competition as to these commodity groups, and that for such commodity groups regulation is not necessary to advance the rail transportation policy or to protect shippers from abuses of market power. Accordingly, under the provisions of 49 U.S.C. 10505, we propose to exempt from regulation commodity groups whose revenues have been found to be below the variable costs associated with the service in all of the presentations made during the prior annual compliance proceeding. Commodity groups will not be exempted if, during the annual proceeding, a shipper has shown that any movement of a commodity in the group has moved at rates above the cap level.

We are aware of the special attention that Congress gave to recyclables in the Staggers Rail Act, but we do not view the statutory language indicating that the rate limitations in section 10731(e) apply "[n]otwithstanding any other provision of this title or any other law" as precluding an exemption in appropriate circumstances. In our view, that language was intended to clarify that the important recyclables provisions of the Act superseded other statutory provisions limiting the Commission's authority over maximum railroad rates, such as the market dominance provisions of section 10709. Where a commodity is subject to substantial competition, however, market forces themselves should advance the goals of the RTP and of section 10731(e). Thus it seems to us that while an exemption would relieve the railroads of certain burdens that they would otherwise face, it would not deprive shippers of the protection that Congress gave them in enacting section 10731(e). We solicit comments on this essentially legal question.

Particularly in light of the fact that each commodity group comprises various commodities with different R/VC characteristics, we also recognize the possibility that individual rates could be above the proper level even though a commodity group is in

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[1] As reflected in appendix A to our decision, on the basis of 1990 data, six 5-digit Standard Commodity Classification Code (STCC) commodity groups appeared to return less than their variable costs for all territories and carrier groupings sampled. The six are: STCC 20511, Bakery Products; STCC 22994, Packing or Wiping Cloths or Rags (Processed Textile Matter); STCC 30311, Reclaimed Rubber; STCC 34012, Steel shipping Containers; STCC 40281, Rubber or Plastic Scrap or Waste; and STCC 41115, Articles, Used, Returned for Repair or Reconditioning.

aggregate compliance. Under such circumstances, an exemption could arguably leave a shipper without a remedy that it would otherwise enjoy under section 10731(e). The R/V cap, however, generally falls some 40–60 percent above the carrier's R/VC break-even point. Our proposed exemption is limited to commodity groups whose aggregate experience reflects below-cost pricing for all carriers and territories sampled. We think that it is very unlikely that carriers would be able to maintain any rates that are above the cap as to such commodity groups. Moreover, we believe that shippers should be protected by our determination not to exempt any commodity group as to which a shipper has shown any movement above the statutory cap level. We solicit comments on this essentially practical question.

Finally, we note that there are other commodities (e.g., STCC 40241, Paper Waste or Scrap, and STCC 40212, Brass, Bronze, Copper or Alloy Scrap) whose rates as shown in Appendix A to our *1992 Determination* are just above the R/VC break even point. Although we are not in this decision proposing to exempt those commodities, we would be receptive to a petition for exemption, particularly if the principal shippers and carriers involved with the traffic are all amenable to one.

We preliminarily conclude that implementation of this proposal would not have a significant impact on a substantial number of small entities. The proposal would not likely change the rates paid by most shippers of recyclables, and the parties most affected by the slightly lessened regulatory burdens are primarily larger railroads.

This action will not significantly affect either the quality of the human environment or conservation of energy resources.

List of Subjects

49 CFR Part 1039

Agricultural commodities, Intermodal transportation, Manufactured commodities, Railroads.

49 CFR Part 1145

Administrative practice and procedure, Freight, Railroads.

Decided: August 28, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett. Vice Chairman McDonald dissented.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble title 49, chapter X, parts 1039 and 1145 of the Code of Federal Regulations are proposed to be amended as follows:

PART 1039—EXEMPTIONS

1. The authority citation for part 1039 continues to read as follows:

Authority: 49 U.S.C. 10321, 10505, 10708, 10761, 10762, 11105, 11902, 11903, and 11904; 5 U.S.C. 553.

§ 1039.11 [Amended]

2. Section 1039.11(a) is proposed to be amended by adding the words "(except for those recyclable commodities exempted pursuant to the provisions of 49 CFR 1145.8)" after the words "by the Commission at 356 I.C.C. 445–447".

PART 1145—RAILROAD RATES ON RECYCLABLE COMMODITIES

3. The authority citation for part 1145 is proposed to be revised to read as follows:

Authority: 49 U.S.C. 10321, 10505, 10731, and 10707a; 5 U.S.C. 553.

4. Part 1145 is proposed to be amended by adding a new § 1145.9, reading as follows:

§ 1145.9 [Amended]

Commodity groups whose revenues, both in the aggregate and for any carriers reporting individually, have been found in an annual compliance proceeding under these regulations to be below the variable costs of providing the service for all territories will not be subject to these regulations. Such commodity groups will be added to the list of miscellaneous commodities exempted in 49 CFR 1039.11, and will remain on that list unless and until they are removed from it in a revocation proceeding. Recyclable commodity groups will not be exempted if any individual movements of a commodity in the group have been shown by a shipper to exceed the statutory rate cap.

[FR Doc. 92–21663 Filed 9–8–92; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 217 and 227

[Docket No. 910779–1179]

RIN 0648–AE12

Threatened Fish and Wildlife; Threatened Marine Reptiles; Revisions To Enhance and Facilitate Compliance With Sea Turtle Conservation Requirements Applicable to Shrimp Trawlers; Restrictions Applicable to Shrimp Trawlers and Other Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: NMFAS published a proposed rule to amend the regulations protecting sea turtles on April 30, 1992, at 57 FR 18446. Under the Endangered Species Act (ESA) and regulations implemented thereunder, it is unlawful to take sea turtles. The incidental taking of turtles during scientific research and fishing is exempted from the prohibitions in certain specified circumstances. Shrimp trawlers in the southeastern Atlantic and Gulf of Mexico are so exempted if they employ specified measures (sea turtle conservation measures) to reduce the mortality of sea turtles incidentally taken. The intent of the proposed amendments was to strengthen the sea turtle conservation measures.

Written comments on the proposed rule were requested through July 29, 1992. In response to public interest in the proposed regulations and in order to receive input on impacts of Hurricane "Andrew" on the shrimp fishery in the Gulf of Mexico, NMFS is reopening the public comment period on the proposed rule from September 8, 1992 through October 23, 1992.

DATES: Comments on the proposed rule must be received on or before October 23, 1992.

ADDRESSES: Comments on the proposed rule and requests for copies of the combined Environmental Assessment and supplemental Regulatory Impact Review/Regulatory Flexibility Analysis

for the proposed rule, and comments on it, should be addressed to Dr. Nancy Foster, Director, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Phil Williams, NMFS National Sea Turtle Coordinator, 301-713-2322, or Charles A. Oravetz, Chief, Protected Species Program, NMFS Southeast Regional Office, 813-893-3366.

SUPPLEMENTARY INFORMATION: Based on information discussed in the preamble of the proposed rule, NMFS concluded that the measures shrimp trawlers were required to employ in order to reduce the mortality of sea turtles incidentally taken in the shrimp trawl fishery were inadequate to conserve sea turtles. Moreover, the proposed rule recognized there were problems with compliance and enforcement of the existing regulations.

An interim final rule filed with the Office of the Federal Register on September 1, 1992, implemented certain measures contained in the proposed rule, provided additional discussion of the issues presented in the proposed rule, and responded to comments received during the original public comment period for the proposed rule. The interim final rule also requested public comments on the implemented measures.

NMFS has not taken final action with respect to many measures proposed on April 30, 1992, because of the complexity of the issues, public interest, and possible impacts of Hurricane "Andrew" on the shrimp fishery of the Gulf of Mexico. Therefore, NMFS is reopening the public comment period on the proposed rule to receive information relative to the proposed measures and their expected impact on the shrimp fishery and the conservation of sea turtles. Comments on the proposed rule and the interim final rule will be considered prior to issuing a final rule.

(Authority: 16 U.S.C. 1531 *et seq.*)

Dated: September 2, 1992.

Michael F. Tillman,
Acting Assistant Administrator for Fisheries.

[FR Doc. 92-21671 Filed 9-8-92; 8:45 am]
BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 57, No. 175
Wednesday, September 9, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Judicial Review; Change of Meeting Time

The September 10, 1992 meeting, 2:30 p.m., of the Committee on Judicial Review of the Administrative Conference, notice of which appeared in the **Federal Register**, Friday, August 28, 1992, Vol. 57, No. 168, page 39175 has now been scheduled for 9 a.m.

Dated: September 3, 1992.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 92-21686 Filed 9-8-92; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF COMMERCE

[A-533-805]

Postponement of Preliminary Antidumping Duty Determination: Sulfur Dyes, Including Sulfur Vat Dyes, From India

AGENCY: Import Administration, International Trade Administration, Commerce.

FOR FURTHER INFORMATION CONTACT: Stefanie Amadeo, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th street and Constitution Avenue, NW., Washington, DC 20230, at (202) 377-1174.

POSTPONEMENT: On April 30, 1992, the Department of Commerce (the Department) initiated an antidumping duty investigation on sulfur dyes, including sulfur vat dyes, from India. The notice stated that we would issue our preliminary determination on or before September 17, 1992 (57 FR 19600, May 7, 1992).

On August 24, 1992, counsel for petitioner made a timely request for a thirty day postponement of the Department's preliminary determination in the above-referenced investigation. On August 26, 1992, counsel for Atul Products Limited, respondent in this investigation, submitted comments in opposition to petitioner's request. We determined that respondent's arguments did not provide compelling reason to deny petitioner's request. Therefore, pursuant to 19 CFR 353.15(c), we are postponing the date of the preliminary determination in this investigation until not later than October 19, 1992. The U.S. International Trade Commission is being advised of this postponement in accordance with section 733(f) of the Tariff Act of 1930, as amended (the Act).

This notice is published pursuant to section 733(c)(2) of the Act and 18 CFR 353.15(d).

Dated: September 1, 1992.

Rolf Th. Lundberg, Jr.,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 92-21573 Filed 9-8-92; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-570-504]

Petroleum Wax Candles From the People's Republic of China; Intent To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on petroleum wax candles from the People's Republic of China. Interested parties who object to this revocation must submit their comments in writing no later than thirty days from September 9, 1992.

EFFECTIVE DATE: September 9, 1992.

FOR FURTHER INFORMATION CONTACT: Robert J. Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On August 28, 1986, the Department of Commerce (the Department) published an antidumping duty order on petroleum wax candles from the People's Republic of China (51 FR 30686). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

In accordance with 19 CFR 353.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. Accordingly, as required by 19 CFR 353.25(d)(4)(i), we are notifying the public of our intent to revoke this order.

Opportunity To Object

No later than thirty days from September 9, 1992, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by August 31, 1992, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke within thirty days from September 9, 1992, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: August 31, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92-21574 Filed 9-8-92; 8:45 am]

BILLING CODE 3510-DS-M

National Institute of Standards and Technology

[Docket No. 920772-2172]

RIN 0693-AB05

Proposed Revision of Federal Information Processing Standard (FIPS) 127-1, Database Language SQL

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; Request for comments. The purpose of this notice is to announce the proposed revision of Federal Information Processing Standard (FIPS) 127-1, Database Language SQL.

SUMMARY: This proposed revision to FIPS 127-1, Database Language SQL, will adopt the draft proposed American National Standard: Database Language SQL (dpANS X3.135-199X). The American National Standards Institute is expected to approve this specification as an American National Standard later in 1992. This revision to FIPS 127-1 will provide a substantial, upward-compatible enhancement of Database Language SQL.

Prior to the submission of this proposed revision to FIPS 127-1 to the Secretary of Commerce for review and approval, it is essential to assure that consideration is given to the needs and views of manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views.

This proposed revision contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section, which deals with the technical requirements of the standard. Only the announcement section of the standard is provided in this notice. Interested parties may obtain copies of the FIPS requirements for conformance to ANSI SQL from the Standards Processing Coordinator (ADP), National Institute of Standards and Technology, Technology Building, Room B-64, Gaithersburg, MD 20899, telephone (301) 975-2816. For copies of the draft proposed American National Standard (dpANS X3.135-199X), contact the Global Engineering Documents, Inc., 2805 McGaw Avenue, Irvine, CA 92714, (1-800-854-7179).

DATES: Comments on this proposed revision must be received on or before December 8, 1992.

ADDRESSES: Written comments concerning the adoption of this proposed revision should be sent to: National Institute of Standards and Technology, ATTN: Proposed Revision of FIPS 127-1, Technology Building, room B-154, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Dr. Leonard Gallagher, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975-3251.

John W. Lyons,

Director.

Dated: September 2, 1992.

Federal Information Processing Standards Publication 127-2

[Draft 4/14/92]

Announcing the Standard for Database Language SQL

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100-235.

1. *Name of Standard.* Database Language SQL (FIPS PUB 127-2).

2. *Category of Standard.* Software Standard, Database.

3. *Explanation.* This publication is a revision of FIPS PUB 127-1 and supersedes that document in its entirety. It provides a substantial, upward-compatible enhancement of Database Language SQL. It includes three levels of conformance: Entry SQL, Intermediate SQL, and Full SQL. Entry SQL is a minor enhancement over the minimum requirements of FIPS PUB 127-1, Intermediate SQL is a major enhancement over Entry SQL, and Full SQL is a major enhancement over Intermediate SQL. Implementations that support Entry SQL should conform to FIPS SQL. Section 13 identifies the minimum requirements for FIPS PUB 127-2 that differ from those of FIPS PUB 127-1.

This publication announces adoption of American National Standard Database Language SQL, ANSI X3.135-1992, as the Federal Information Processing Standard for Database Language SQL (FIPS SQL). The exact specification is in Section 10 of this standard.

ANSI SQL is a revision and replacement of two previous American National Standards, ANSI X3.135-1989 and ANSI X3.168-1989. It specifies the syntax and semantics of SQL language facilities for defining and accessing SQL databases. These facilities include:

—Schema definition, to declare the structures, integrity constraints, and access privileges of a database.
—Schema manipulation, to alter a schema definition.
—Data manipulation, to populate a database and access SQL-data.
—Transaction management, to define and manage SQL-transactions.
—Connection management, to establish and manage SQL-connections.
—Session management, to set the attributes of an SQL-session.
—Dynamic SQL, to provide facilities for dynamic construction and execution of SQL statements.
—Diagnostics management, to communicate constraint violations and warnings to applications.
—Information schema tables, to provide an SQL description of schema definitions.
—Programming language bindings, to declare database procedures that may be called from various programming languages.
—Embedded SQL, to define how SQL statements may be syntactically embedded into one of the following programming languages: Ada, C, COBOL, FORTRAN, MUMPS, Pascal, or PL/I. Embedded SQL was formerly defined in ANSI X3.168-1989.

ANSI SQL is specified in three levels: Entry SQL, Intermediate SQL, and Full SQL. Entry SQL is a minor enhancement of ANSI X3.135-1989 (see Section 13). Intermediate SQL adds provisions for schema manipulation, dynamic SQL, diagnostics management, long identifiers, multiple module support, cascade delete for referential integrity, multiple schemas per authorization identifier, DATE and TIME data types, domains, variable length character strings, support for national character sets, and substantial enhancements for data manipulation. The data manipulation enhancements in Intermediate SQL include: a CASE expression, CAST functions between data types, string operations, natural join, outer join, union join, row value expressions, and subqueries in value expressions, as well as table operations for union, intersection, and complement. Full SQL adds provisions for connection management, session management, pre-defined character translations and form-of-use conversions, a BIT string data

type, deferrable integrity constraints, derived tables in the FROM clause, subqueries in CHECK clauses, insensitive cursors, self-referencing data operations, assertions, and temporary tables. A list of optional FIPS SQL packages, comprising all of the features in Intermediate SQL and in Full SQL, is defined in Section 14 of this standard.

The purpose of FIPS SQL is to promote portability and interoperability of database application programs and exchange of programmers among different data processing environments. The standard is used by implementors as the reference authority in developing a FIPS conforming relational model database management system, with standard programming language interfaces to that database management system. The standard is used by application programmers to help write SQL conforming applications and by other computer professionals who need to know the precise syntactic and semantic rules of Database Language SQL.

4. *Approving Authority.* Secretary of Commerce.

5. *Maintenance Agency.* Department of Commerce, National Institute of Standards and Technology (Computer Systems Laboratory)

6. *Cross Index*

a. American National Standard Database Language SQL, ANSI X3.135–1992 (revision of ANSI X3.135–1989 and replacement of ANSI X3.168–1989).

b. ISO/IEC 9075:1992, Database Language SQL (revision of ISO/IEC 9075:1989).

Note: Except for a different Foreword, Introduction, and Normative references, ANSI X3.135-1992 and ISO/IEC 9075:1992 are identical documents.

7. Related Documents

a. Federal Information Resources Management Regulations (FIRMR) subpart 201.20.303, Standards, and subpart 201.39.1002, Federal Standards.

b. Federal ADP and Telecommunication Standards Index, U.S. General Services Administration, Information Resources Management Service, October 1991 (updated periodically).

c. NIST, Validated Products List: Programming Languages, Database Language SQL, Graphics, GOSIP, POSIX, Security; Judy B. Kailey, Editor, NISTIR 4739, 1992, issue No. 1, January 1992 (republished quarterly). Available by subscription from the National Technical Information Service (NTIS).

d. A revision to FIPS PUB 146–1, Government Open Systems Interconnection Profile (GOSIP), is planned for May 1993. To be issued in conjunction with IGOSS and will reference IGOSS.

e. IGOSS, Industry/Government Open Systems Specification, review draft planned August 1992, publication planned May 1993. This specification will reference "stable agreements" from the NIST OSI Implementor's Workshop as of December 1992. [Update this reference just before publication].

f. NIST SP 500-xxx, Stable Implementation Agreements for Open Systems Interconnection Protocols, Version xx, Edition x, NIST Workshop for Implementors of Open Systems Interconnection, December 1992. [Update this reference just before publication].

g. ISO/IEC DIS 9579–1, Information technology—Open Systems Interconnection—Remote Database Access—Part 1: Generic model, service, and protocol, document ISO/IEC JTC1/SC21 N6375, August 1991.

h. ISO/IEC DIS 9579–2, Information technology—Open Systems Interconnection—Remote Database Access—Part 2: SQL specialization, document ISO/IEC JTC1/SC21 N6376, August 1991.

i. SQL Information Bulletin, Number 1, SQLIP–1, Interpretations of ANSI X3.135–1989, available from Global Engineering Documents, April 1991.

j. FIPS PUB 29–2, Interpretation Procedures for FIPS Software, 14 September 1987.

k. ISO 646, Information processing—ISO 7-bit coded character set for information interchange, 2nd edition, July 1983.

l. ANSI/ISO 4873, Information processing—ISO 8-bit code for information interchange—Structure and rules for implementation, 1986. Replaces ANSI X3.134.1, 8-bit ASCII.

m. ANSI/ISO 8859–1, Information processing—8-bit single-byte coded graphic character sets—Part 1: Latin alphabet No. 1, February 1987. Replaces ANSI X3.134.2.

n. ISO/IEC CD 11404, Information Technology—Programming Languages—Common Language Independent Data Types (CLID), document JTC1/SC22 N970, May 1991.

o. NIST SP 500-xxx, Future directions for Database Language SQL, planned Late 1992. [Update this reference just before publication].

p. FIPS PUB 124, Guideline on Functional Specifications for Database Management Systems, September 1986.

q. FIPS PUB 110, Guideline for Choosing a Data Management Approach, December 1984.

r. NBS SP 500–108, Guide on Data Models in the Selection and Use of Database Management Systems, January 1984.

8. Objectives. the FIPS for Database Language SQL permits Federal departments and agencies to exercise more effective control over the production, management, and use of the Government's's information resources. The primary objectives are:

—To encourage more effective utilization and management of database application programmers by ensuring that skills acquired on one project are transportable to other projects, thereby reducing the cost of data base programmer retraining.

—To reduce overall software costs by making it easier and less expensive to maintain database definitions and database application programs and to transfer those definitions and programs among different computers and database management systems, including replacement database management systems.

—To promote communication and interoperability among data installations conforming to FIPS SQL and related GOSIP communications standards.

—To reduce the cost of software development by achieving increased database application programmer productivity through the understanding and use of database methods employing standard structures and operations, standard data types, standard constraints, and standard interfaces to programming languages.

—To protect the software assets of the Federal government by ensuring to the maximal feasible extent that Federal database management system standards are technically sound and that subsequent revisions are compatible with the installed base.

Government-wide attainment of the above objectives depends upon the widespread availability and use of comprehensive and precise standard database management system specifications.

9. Applicability

9.1 Database Language SQL is one of the database language standards provided for use by all Federal departments and agencies. These database language standards should be used for all computer database applications and programs that are either developed or acquired for government use. FIPS SQL is particularly well suited for use in database applications that employ the relational data model. The relational data model is appropriate for applications requiring flexibility in the

data structures and access paths of the database. The relational data model is desirable where there is a substantial need for ad hoc data manipulation, and data restructuring, in addition to the need for access by static applications under production control.

9.2 A FIPS for database languages shall be used for database applications and programs when one or more of the following situations exist:

—It is anticipated that the life of the database application will be longer than the life of the presently utilized equipment or database management system, if any.

—The database application is under constant review for updating of the specifications, and changes may result frequently.

—The database application is being designed and developed centrally for a decentralized system that employs computers of different makes and models or database software acquired from a different vendor.

—The database application will or might be run under a database management system other than that for which the database application is initially written.

—The database application is to be understood and maintained by programmers other than the original ones.

—The database application is one part of a distributed application that requires exchange of data or interoperation of the various parts.

—The database application is or is likely to used by organizations outside the Federal government (e.g., Federal government contractors, State and local governments, and others).

9.3 Nonstandard language features shall be used only when the needed operation or function cannot reasonably be implemented with the standard features alone. A needed language feature not provided by the FIPS database languages should, to the extent possible, be acquired as part of an otherwise FIPS database management system. Although nonstandard language features can be very useful, it should be recognized that their use may make the interchange of programs and future conversion to a revised standard or replacement database management system more difficult and costly.

9.4 Although this standard does not specifically address interactive database access through graphical user interfaces, the SQL statements specified by this standard are appropriate for such use. This standard may be used to define the semantics of database access through such interfaces.

9.5 Although this standard does not specifically address distributed database management systems or distributed database application, the connection management statements defined in this standard may be used, along with facilities for remote database access (ISO/IEC 9579) and distributed transaction processing (ISO/IEC 10026), to access SQL-data at remote nodes in a distributed system and to present a distributed database view to application programs.

9.6 Although this standard does not specifically address user-defined data types, class hierarchies, inheritance, polymorphism, or other features of object database management systems, such capabilities are upward compatible extensions of this standard and may be specified in a future revision of FIPS SQL. A NIST special publication, "Future directions for Database Language SQL", NIST SP 500-xxx, discusses potential future directions for FIPS SQL.

9.7 It is recognized that programmatic requirements may be more economically and efficiently satisfied through the use of a database management system employing a different data model than those provided by the FIPS database languages or the use of a database management system that functionally conforms to a FIPS database language but does not conform to all other aspects of the FIPS. The use of any facility should be considered in the context of system life, cost, data integrity, and the potential for data sharing.

9.8 Programmatic requirements may be more economically and efficiently satisfied by the use of automatic program generators or by database access through other high-level language information processing systems. However, if the final output of a program generator or high-level language system is language that accesses a relational database then that language shall conform to the conditions and specifications of SQL.

10. Specifications. FIPS SQL adopts all provisions of ANSI X3.135–1992, Database Language SQL, with the exceptions listed below, and as specified in the technical specifications section of this standard.

a. FIPS SQL requires conformance to Entry SQL. Conformance to Intermediate SQL or Full SQL are options that may be specified explicitly in SQL procurements. Other packages of optional specifications that may be specified by name, either as requirements or as desirable features, are listed in Section 14.

b. FIPS SQL does not include PL/I language bindings, since PL/I is not a FIPS programming language.

c. FIPS SQL does not recognize conformance solely by "direct invocation and processing of SQL language" as specified in Subclause 23.2 of ANSI X3.135–1992, because direct invocation does not mandate all of the facilities desired in a FIPS SQL conforming product. Conformance to FIPS SQL requires a Module or Embedded SQL binding style to one or more FIPS programming languages.

d. FIPS SQL requires that the "SQL Flagger" be implemented in Entry SQL in addition to Intermediate SQL and Full SQL. This is because FIPS SQL has always included a flagger requirement, even from its first specification in 1987. For conformance to Entry SQL, FIPS SQL requires "Entry SQL flagging" with the "Syntax only" extent of checking option as defined in Subclause 4.33 of ANSI X3.135–1992. The SQL Flagger is required for all language binding styles, including "Interactive Direct SQL" (see Section 16.5).

e. For conformance to Intermediate SQL and to Full SQL, FIPS SQL requires implementation of the following named character sets: SQL CHARACTER, ASCII GRAPHIC, LATIN1, ASCII FULL, and SQL TEXT. The form-of-use and default collation requirements for these character sets are defined in Section 16.7 of this standard.

f. For conformance to Intermediate SQL and to Full SQL, FIPS SQL requires implementation of the FIPS DOCUMENTATION schema, as specified in Section 15 of this standard.

11. Implementation. Implementation of this standard involves four areas of consideration: the effective date, acquisition of FIPS SQL implementations, interpretation of FIPS SQL, and validation of FIPS SQL implementations.

11.1 Effective Date. This publication is effective six (6) months after date of publication of final document in the *Federal Register* of its approval by the Secretary of Commerce. Prior to that date the requirements of FIPS PUB 127-1 apply to Federal SQL procurements. This delayed effective date is intended to give implementations that conform to FIPS PUB 127-1 time to make the modest enhancements necessary to enable conformance to Entry SQL (see Section 13). No further transition period is necessary.

11.2 Acquisition of SQL Implementations. Relational model database management systems acquired for Federal use shall implement FIPS SQL. Conformance to FIPS SQL shall be considered whether SQL implementations are developed internally, acquired as part of an ADP system procurement, acquired by separate procurement, used under an

ADP leasing arrangement, or specified for use in contracts for programming services. Recommended terminology for procurement of FIPS SQL is contained in the U.S. General Services Administration publication *Federal ADP & Telecommunications Standards Index*, Chapter 4 Part 1.

11.3 Interpretation of FIPS SQL. NIST provides for the resolution of questions regarding FIPS SQL specifications and requirements, and issues official interpretations as needed. Procedures for interpretations are specified in FIPS PUB 29-2. All questions about the interpretation of FIPS SQL should be addressed to: Director, Computer Systems Laboratory, ATTN: Database Language SQL Interpretation, National Institute of Standards and Technology, Gaithersburg, MD 20899, Telephone: (301) 975–2833.

11.4 Validation of SQL Implementations. Implementations of FIPS SQL shall be validated in accordance with NIST Computer Systems Laboratory (CSL) validation procedures for FIPS SQL. Recommended procurement terminology for validation of FIPS SQL is contained in the U.S. General Services Administration publication *Federal ADP & Telecommunications Standards Index*, Chapter 4 Part 2. This publication provides terminology for three validation options: Delayed Validation, Prior Validation Testing, and Prior Validation. The agency shall select the appropriate validation option and shall specify whether a Validation Summary Report or Certificate of Validation is required. In determining which of the validation options should be required, the agency should consider the impact on system benchmark performance of using SQL implementations that have not been fully validated prior to benchmarking. The agency shall specify appropriate time frames for validation and correction of nonconformities. The agency is advised to refer to the NIST publication *Validated Products List* for information about the validation status of SQL products. This information may be used to specify validation time frames that are not unduly restrictive of competition.

The agency shall specify the criteria used to determine whether a Validation Report (VSR) or Certificate is applicable to the hardware/software environment of the SQL implementation offered. The criteria for applicability of a VSR or Certificate should be appropriate to the size and timing of the procurement. A large procurement may require that the offered version/release of the SQL implementation shall be validated in a specified hardware/software environment and that the validation shall be conducted with specified hardware/software features or parameter settings; e.g. the same parameter settings to be used in a performance benchmark. An agency with a single-license procurement may review the *Validated Products List* to determine the applicability of existing VSRs or Certificates to the agency's hardware/software environment.

Implementations shall be evaluated using the NIST SQL Test Suite, a suite of automated validation tests for SQL implementations. The NIST SQL Test Suite was first released in August 1988 to help users and vendors determine compliance with FIPS SQL. Version 3.0 of the test suite was released in January 1992, to be used for validating conformance to FIPS PUB 127–1 after July 1, 1992. It is expected that Version 4.0 of the test suite will be available in early 1993, to be used for testing conformance to Entry SQL of FIPS PUB 127–2 after the effective date. The results of validation testing by the SQL Testing Service are published on a quarterly basis in the *Validated Products List*, available from the National Technical Information Service (NTIS).

Each release of the test suite has provided additional interfaces and test cases to increase the test suite's coverage of the SQL language. Version 3.0 of the NIST SQL Test Suite provides 11 test suite types (interfaces): Embedded (pre-processor) Ada, Embedded C, Embedded COBOL, Embedded FORTRAN, Embedded Pascal, module language Ada, module language C, module language COBOL, module language FORTRAN, module language Pascal, and Interactive SQL. Version 3.0 does not include tests for Embedded MUMPS or module language MUMPS because the MUMPS programming language interface is not defined in FIPS 127–1; such tests may be available in Version 4.0 for testing of FIPS 127–2. There are additional tests in Version 3.0 for the optional Integrity Enhancement Feature, default database sizing constructs, and the FIPS Flagger requirement of FIPS 127–1.

An SQL Test Suite license includes all of the tests described above, documentation, and automatic notifications of approved changes to the SQL Test Suite for a six month period. A license for SQL Test Suite Version 3.0 is a necessary requirement for an organization that wishes to be tested by the NIST SQL Testing Service between July 1, 1992 and June 30, 1993.

Current information about the NIST SQL Validation Service and validation procedures for FIPS SQL is available from: National Institute of Standards and Technology, Computer Systems Laboratory, Software Standards Validation Group, Building 225, Room A266, Gaithersburg, Maryland 20899, (301) 975–2490.

12. Waivers. Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, U.S. Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Government-wide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: National Institute of Standards and Technology; ATTN: FIPS Waiver Decisions, Technology Building, Room B–154; Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the **Federal Register**.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the *Commerce Business Daily* as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. Sec.

552(b), shall be part of the procurement documentation and retained by the agency.

[FR Doc. 92-21628 Filed 9-8-92; 8:45 am]

BILLING CODE 3510-CW-M

National Oceanic and Atmospheric Administration

Florida Keys National Marine Sanctuary Advisory Council Meeting

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Florida Keys National Marine Sanctuary Advisory Council, notice of open meeting.

SUMMARY: The Council was established in December 1991 to advise and assist the Secretary of Commerce in the development and implementation of the comprehensive management plan for the Florida Keys National Marine Sanctuary.

TIME AND PLACE: September 24 and 25, 1992 from 9 a.m. until adjournment. The meeting location will be at the Hawks Cay Resort, Mile Marker 61, Route 1, Duck Key, Florida.

AGENDA: 1. Presentations related to zoning and water quality issues.

2. Discussion of management alternatives.

PUBLIC PARTICIPATION: The meeting will be open to public participation and the last thirty minutes will be set aside for oral comments and questions. Seats will be set aside for the public and the media. Seats will be available on a first-come first-served basis.

FOR FURTHER INFORMATION CONTACT: Pamala James at (305) 743-2437 or Ben Haskell at (202) 606-4016.

Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program.

Dated: September 1, 1992.

Frank W. Maloney,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 92-21566 Filed 9-8-92; 8:45 am]

BILLING CODE 3510-08-M

Gulf of Mexico Fishery Management Council; Correction Regarding Public Meeting Location; Correction Regarding Adjournment Time of Public Committee Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The location for the public meeting of the Gulf of Mexico Fishery Management Council (Council) and its Committees, to be held September 14-17, 1992, and the adjournment time for public meetings of the Council's Habitat Protection and Reef Fish Management Committees, originally published in the **Federal Register** at 57 FR 37955 on August 21, 1992, are corrected as noted below. All other information originally published on August 21, 1992, remains unchanged.

Location of public meetings as published at 57 FR 37955: Doubletree Hotel, 300 Canal Street, New Orleans, LA (telephone: 504-581-1300).

Corrected Location: The New Orleans Airport Hilton and Conference Center, 901 Airline Highway, Kenner, LA (telephone: 504-469-5000).

Adjournment time for public meetings of the Habitat Protection Committee and the Reef Fish Management Committee as published at 57 FR 37955: 5 p.m.

Corrected Adjournment Time: 5:30 p.m.

For more information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 331, Tampa, FL; telephone: (813) 228-2815.

Dated: September 3, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-21595 Filed 9-8-92; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council's recently formed Bycatch Cap Committee (Committee) will convene a public meeting on September 11, 1992, at 8:30 a.m., at the National Marine Fisheries Service Montlake Facility auditorium, 2725 Montlake Boulevard, East, Seattle, WA. The Committee was appointed to review the issue of halibut bycatch caps, halibut mortality, the validity of data used in setting the caps and mortality rates, and the equity of caps.

For more information contact the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271-2809.

Dated: September 3, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-21598 Filed 9-8-92; 8:45 am]

BILLING CODE 3510-22-M

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council's Hawaii Bottomfish Advisory Panel (AP) and its Bottomfish Advisory Review Board will convene a joint public meeting on September 15, 1992, at the State of Hawaii Department of Land and Natural Resources Boardroom, 1151 Punchbowl Street, Honolulu, HI. The meeting will begin at 1 p.m.

The agenda for the joint meeting is as follows: (1) Limited entry for the Northwestern Hawaiian Islands Mau Zone and permit transferability issues); (2) data collection (logbooks, educating fishermen about the need for accurate state catch reports, recreational data, and enforcement issues); and (3) the AP's role, organization and other AP business.

FOR MORE INFORMATION CONTACT: Kitty M. Simonds, Executive Director, 1164 Bishop Street, suite 1405, Honolulu, HI 96813; telephone: (808) 526-0824.

Dated: September 3, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-21596 Filed 9-8-92; 8:45 am]

BILLING CODE 3510-22-M

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council's Hawaii Pelagics Advisory Panel (AP) will convene a public meeting on September 14, 1992, at the Ala Moana Hotel, 410 Atkinson Drive, Honolulu, HI. The meeting will begin at 8 a.m.

The following agenda items will be discussed: (1) The National Marine Fisheries Service 1991 longline annual report, limited entry issues (future of the longline moratorium, control date for the offshore handline fishery, limiting access to other pelagic fisheries in Hawaii and limited entry permit transferability); (2) data collection and

reporting issues (logbooks, educating fishermen about the need for accurate state catch reports, recreational data, and enforcement issues); (3) bycatch issues, fish size restrictions, update on the vessel tracking initiative; and (4) the AP's role, organization and other AP business.

FOR MORE INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, HI 96813; telephone: (808) 526-0824).

Dated: September 3, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Services.

[FR Doc. 92-21597 Filed 9-8-92; 8:45 am]

BILLING CODE 3510-22-M

Patent and Trademark Office

Performance Review Board

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Announcement of Membership of the Patent and Trademark Office Performance Review Board.

SUMMARY: In conformance with the Civil Service Reform Act of 1978, 5 U.S.C. 4314(c)(4), the Patent and Trademark Office announces the appointment of persons to serve as members of its Performance Review Board.

This notice announces the appointment of Assistant Commissioner for Finance and Planning Bradford R. Huther as Chairman. Mr. Huther replaces Douglas B. Comer who currently is Acting Assistant Secretary and Commissioner of Patents and Trademarks. It also announces the retirement of James E. Denny as Assistant Commissioner for Patents.

ADDRESS: Comments should be addressed to Personnel Officer, Patent and Trademark Office, Office of Personnel, One Crystal Park, suite 700, Washington, DC 20231.

FOR FURTHER INFORMATION CONTACT: Colleen Woodard at the above address on (703) 305-8062.

SUPPLEMENTARY INFORMATION: The new membership of the Patent and Trademark Office Performance Review Board is as follows:

Bradford R. Huther, Chairman
Assistant Commissioner for Finance and Planning
Patent and Trademark Office
Washington, DC 20231 Term—permanent
Edward R. Kubasiewicz, Member
Counselor to the Assistant Secretary and Commissioner of Patents and Trademarks
Patent and Trademark Office
Washington, DC 20231 Term—permanent
Jeffrey M. Samuels, Member
Assistant Commissioner for Trademarks
Patent and Trademark Office
Washington, DC 20231 Term—permanent
Theresa A. Breisford, Member
Assistant Commissioner for Public Services and Administration
Patent and Trademark Office
Washington, DC 20231 Term—permanent
Thomas P. Giammo, Member
Assistant Commissioner for Information Systems
Patent and Trademark Office
Washington, DC 20231 Term—permanent
John F. Terapane, Jr., Member
Director, Patent Examining Group 120
Patent and Trademark Office
Washington, DC 20231
Term—expires September 30, 1994
J. David Sams, Member
Chairman, Trademark Trial and Appeal Board
Patent and Trademark Office
Washington, DC 20231
Term—expires September 30, 1994
Dr. Michael G. Hansen, (Outside) Member
Assistant Director, Office of Executive and Management Development
Human Resources Development Group
Office of Personnel Management
Washington, DC 20415
Term—expires September 30, 1994.

Dated: August 28, 1992.

Douglas B. Comer,

Acting Assistant Secretary and Acting Commissioner of Patents and Trademarks.

[FR Doc. 92-21572 Filed 9-8-92; 8:45 am]

BILLING CODE 3510-16-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Extension of the Scoping Comment Period for the Environmental Impact Statement for the Institute of Advanced Science and Technology at the University of Pennsylvania, Philadelphia, PA

The United Stares Air Force has extended the scoping comment period for the Environmental Impact Statement (EIS) on the University of Pennsylvania Institute for Advanced Science and Technology (IAST). The scoping comment period has been extended from September 11, 1992 to October 1, 1992 in order to provide additional opportunity for the public to provide input on issues to be considered in the EIS.

The IAST is a proposed program to construct new facilities at the University of Pennsylvania, Philadelphia, Pennsylvania.

Interested persons who seek further information concerning the IAST project or wish to provide comments on issues to be considered for inclusion in the EIS should contact: Lt Col Gary P. Baumgartel, AFCEE/ESE, Building 1155, Brooks AFB, Texas 78235-5000, (512) 536-3869.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92-21630 Filed 9-8-92; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board Technology Strategy Panel will meet on 26-27 Sep 1992 from 9 a.m. to 5 p.m. at the National Academy of Sciences Woods Hole Center, Woods Hole, MA.

The purpose of this meeting is to discuss and formulate a plan to make the TSP an effective and useful forum to croo-flow information to senior Air Force leaders. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697-8404.

Patsy J. Conner

Air Force Federal Register Liaison Officer.

[FR Doc. 92-21558 Filed 9-8-92; 8:45 am]

BILLING CODE 3910-01-M

Department of the Navy

Board of Visitors to the United States Naval Academy; Meeting

Pursuant to the provisions to the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Board of Visitors to the United States Naval Academy will meet 28 September 1992, at the U.S. Naval Academy, Annapolis, Maryland. The session, which is open to the public, will commence at 8:30 am and terminate at 2:30 pm, 28 September 1992, in the Bo Coppedge Dining Room Alumni Hall.

The purpose of the meeting is to make such inquiry as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal attairs and academic method of the Naval Academy.

For further information concerning this meeting contact: Lieutenant Commander Craig M. Diffie, U.S. Navy, Secretary to the Board of Visitors, Administration Building, United States

Naval Academy, Annapolis, Maryland, 21402-5000, telephone (410) 267-2402.

Dated: August 28, 1992.

Wayne T. Baucino,

Lieutenant, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 92-21570 Filed 9-8-92; 8:45 am]

BILLING CODE 3810-AE-F

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. JD92-08947T Texas-68]

State of Texas; NGPA Determination by Jurisdictional Agency Designating Tight Formation

September 2, 1992.

Take notice that on August 31, 1992, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Travis Peak Formation underlying a portion of Limestone County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The recommended area lies within Railroad Commission District 5 and consists of portions of the following surveys:

Juan L. Chavert, A-4
Manuel C. Rejon, A-26

The notice of determination also contains Texas' findings that the referenced portion of the Travis Peak Formation meets the requirements of the Commission's regulations set forth in 18 CFR Part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21619 Filed 9-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-08946T Texas-67]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

September 2, 1992.

Take notice that on August 31, 1992, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Travis Peak Formation underlying a portion of Smith County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The 1790.415 acre area specifically includes all of the Thomas P. Payne Survey A-763 except 332 acres in the southeast corner and except 36 acres in the southwest portion; 200 acres in the northwest corner of the M.E. Barbee A-82; 138.56 acres in the southwest corner of the Francis Ariola Survey A-24; 202.25 acres in the south part of the W.J. Parchman Survey A-792.

The notice of determination also contains Texas' findings that the referenced portion of the Travis Peak Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary

[FR Doc. 92-21620 Filed 9-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-27-000]

Alabama Tennessee Natural Gas Co.; Notice of Prefiling Conference

September 2, 1992.

Take notice that a prefiling conference will be convened in this proceeding on October 16, 1992, at 10 a.m. at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC. If it becomes necessary to change the location of the conference, a future notice will state a new location.

The purpose of this conference is to address revisions to the summary of proposal prepared by Alabama-Tennessee to comply with Order No. 636. The pipeline initially served all parties in the proceeding with the summary on July 7, 1992.

All interested parties are invited to attend. However, attendance at the conference will not confer party status. For additional information please contact Michael D. Cotleur at (202) 208-1076.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21622 Filed 9-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-57-000]

Canyon Creek Compression Company; Notice of Prefiling Conference

September 2, 1992.

Take notice that a prefiling conference will be convened in this proceeding on September 19, 1992, at 1:30 p.m. It will be held at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC. The conference will address the proposal for compliance with Order No. 636 circulated by Canyon Creek Compression Company under letter dated June 5, 1992, as supplemented on July 7, 1992, together with any further modifications circulated before or at the September 19 conference. All interested parties are invited to attend. Attendance at the conference will not confer party status. For additional information, interested persons may contact Jacqueline S. Holmes at (202) 208-1212.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21625 Filed 9-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-22-000]

CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 2, 1992.

Take notice that CNG Transmission Corporation ("CNG"), on August 31, 1992, pursuant to section 4 of the Natural Gas Act, § 154.38(d)(6) of the Commission's Regulations providing for the Annual Charge Adjustment, and section 14 of the General Terms and Conditions of CNG's tariff, filed the following revised tariff sheets of its FERC Gas Tariff.

First Revised Volume No. 1

Twenty-Second Revised Sheet No. 31
Alternate Twenty-Second Revised Sheet No. 31
Fourteenth Revised Sheet No. 32
Eighteenth Revised Sheet No. 34
Alternate Eighteenth Revised Sheet No. 34
Thirteenth Revised Sheet No. 35

Original Volume No. 2

Fifth Revised Sheet Nos. 250 and 290

Original Volume No. 2A

Fifth Revised Sheet Nos. 18, 28, 35, 48, and 87

CNG requests an effective date for these proposed tariff sheets of October 1, 1992. CNG states that the proposed tariff sheets reflect a new ACA unit rate of 0.22 cents per dekatherm.

CNG states that copies of the filing were served upon CNG's jurisdictional customers and interested state commissions. Copies of the filing are also available during regular business hours at CNG's offices in Clarksburg, West Virginia.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21617 Filed 9-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-227-000]

Eastern Shore Natural Gas Co.; Tariff Filing Restating Base Tariff Rates

September 2, 1992.

Take notice that on August 31, 1992 Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing with the Commission the revised tariff sheets, listed below, in its FERC Gas Tariff, First Revised Volume No. 1, for effectiveness on October 1, 1992:

First Revised Volume No. 1

Twenty-Fifth Revised Sheet No. 5
Twenty-Fifth Revised Sheet No. 6
Twenty-Fifth Revised Sheet No. 10
Twenty-Fifth Revised Sheet No. 11
Twenty-Fifth Revised Sheet No. 12
Twenty-Fifth Revised Sheet No. 13
Twenty-Fifth Revised Sheet No. 14
First Revised Sheet No. 255
First Revised Sheet No. 256
First Revised Sheet No. 258
Second Revised Sheet No. 259
First Revised Sheet No. 260
First Revised Sheet No. 261

According to Eastern Shore, the revised tariff sheets comprise the restatement of its Base Tariff Rates in compliance with § 154.303(e) of the Commission's Regulations. Eastern Shore's filing is accompanied by a cost of service study and supporting data to support the restated Base Tariff Rates.

Eastern Shore states that its existing Base Tariff Rates were established in a settlement of its last section 4 rate filing in Docket Nos. RP89-164-000; 001. According to Eastern Shore, the filing in Docket Nos. RP89-164-000; 001 was accepted, subject to refund, on May 31, 1989 and Eastern Shore moved the suspended rates into effect on November 1, 1989, thus establishing the date for the commencement of the thirty-six month period for the restatement of the Base Tariff Rates.

It is further stated that the cost of service study developed for this filing is fully consistent with the provisions of the settlement in Docket Nos. RP89-164-000; 001.

Eastern Shore further states that copies of its filing have been served on its jurisdictional customers and the regulatory commissions of the states of Delaware and Maryland.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21604 Filed 9-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RS92-64-000 and RS92-88-000]

High Island Offshore System U-T Offshore System; Notice of Prefiling Conference

September 2, 1992.

Take notice that a prefiling conference will be convened in these proceedings on September 29, 1992, at 10 a.m., in the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC. The conference will address the proposals of High Island Offshore System and U-T Offshore System to comply with the Commission's Order Nos. 636 and 636-A. Parties, as defined by 18 CFR 385.102(c), and Commission Staff are invited to attend.

For additional information contact Thomas J. Burgess at (202) 208-2058.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21623 Filed 9-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-226-000]

Kern River Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

September 2, 1992.

Take notice that on August 31, 1992, Kern River Gas Transmission Company (Kern River) filed an original and six (6) copies of Revised Sheet Nos. 5 and 6 to Original Volume No. 1 of its FERC Gas Tariff to be effective October 1, 1992.

Kern River states that the revised tariff sheets increase Kern River's firm and interruptible Part 284 transportation rates primarily to reflect the costs of constructing and operating Kern River's pipeline system, which went into service on February 15, 1992. Kern River states further that it is proposing to implement the Straight Fixed-Variable (SFV) method of cost classification for all shippers except those shippers with whom Kern River has contractual commitments that prevent it from initiating unilateral changes in rate design.

Kern River states that a copy of its filing was served on each of its customers and affected state commissions pursuant to § 154.16(b) of the Commission's Regulations.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21609 Filed 9-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-15-000]

Mid Louisiana Gas Co. Proposed Change of Rates

September 2, 1992.

Take notice that Mid Louisiana Gas Company ("Mid Louisiana") on August 31, 1992, tendered for filing as part of First Revised Volume No. 1 of its FERC Gas Tariff the Tariff Sheets and proposed effective date as set forth below:

Ninety-Third Revised Sheet No. 3a.	Sub. Ninety-Second Rev. Sheet No. 3a	October 1, 1992.
Eleventh Revised Sheet No. 3a.1.	Tenth Revised Sheet Sheet No. 3a.1	October 1, 1992.

Mid Louisiana states that the purpose of the filing of the Revised Tariff Sheets is to reflect a revision to the unit rates for the collection of the Annual Charges imposed by Section 382 of the Commission's regulations.

This filing is being made in accordance with Section 22 of Mid Louisiana's FERC Gas Tariff. Mid Louisiana states that copies of this filing have been mailed to Mid Louisiana's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a Petition to Intervene or Protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with §§ 385.214 and 385.211 Commission's Rules of Practice and Procedure 18 CFR 385.211 and 385.214. All such petitions or protests should be filed on or before September 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a Petition to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21607 Filed 9-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-25-000]

Mississippi River Transmission Corp., Proposed Change in FERC Gas Tariff

September 2, 1992.

Take notice that on August 31, 1992 Mississippi River Transmission Corporation (MRT) tendered for filing the following tariff sheets:

Second Revised Volume No. 1

Eighty-Second Revised Sheet No. 4
Forty-First Revised Sheet No. 4.1
Tenth Revised Sheet No. 4D

Original Volume No. 1-A

Tenth Revised Sheet No. 2
Tenth Revised Sheet No. 3
Fifth Revised Sheet No. 4

MRT states that the purpose of the instant filing is to adjust the currently effective ACA charge in its jurisdictional sales and transportation rates to the new fiscal 1993 FERC approved surcharge of $.0022 per MMBtu effective October 1, 1992.

MRT states that a copy of the revised tariff sheets is being mailed to each of its jurisdictional customers and to the State Commissions of Arkansas, Missouri, and Illinois.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure 18 CFR 385.211 and 385.214. All such motions or protests should be filed on or before September 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21610 Filed 9-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-37-000]

Northwest Pipeline Corp. Proposed Change in FERC Gas Tariff

September 2, 1992.

Take notice that on August 28, 1992, Northwest Pipeline Corporation ("Northwest") tendered for filing and acceptance the following tariff sheets:

Second Revised Volume No. 1

Twentieth Revised Sheet No. 10
Nineteenth Revised Sheet No. 11
Fourteenth Revised Sheet No. 13

First Revised Volume No. 1-A

Fifteenth Revised Sheet No. 201

Original Volume No. 2

Twenty-Ninth Revised Sheet No. 2.3
Twenty-Fifth Revised Sheet No. 2-B

Northwest states that the purpose of this filing is to update its Commodity SSP Surcharge effective October 1, 1992, to reflect (1) interest applicable to July, August, and September 1992, and 2) the amortization of principal and interest. The proposed Commodity SSP Charge contained in this instant filing is 4.05¢ per MMBtu for the three months commencing October 1, 1992. Northwest states that this instant filing, and the Commodity SSP Surcharge included herein, was prepared in a manner consistent with the provisions of Commission orders, issued in Docket Nos. TM91-8-37 and TM92-2-37, which relate to the level of billing determinants to be used in the calculation of the Commodity SSP Surcharge.

Northwest has challenged the Commission's orders requiring it to calculate its Commodity SSP Surcharge based upon billing determinants other than those approved in the settlement of Phase I of Docket No. RP88-47. Northwest reserves the right and gives notice that it will refile its Commodity SSP Surcharge rates for any affected periods, including the three months beginning October 1, 1992, should Northwest ultimately be successful in its court appeals.

The tariff sheets listed reflect the current PGA adjustment and the Commission approved revised ACA surcharge of .23¢ per MMBtu, effective October 1, 1992.

Northwest states that a copy of this filing has been served upon all parties of record in Docket No. RP89-137 and upon Northwest's jurisdictional customer list and affected state regulatory commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene of protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21605 Filed 9-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-224-000]

Northwest Pipeline Corp.; Change in FERC Gas Tariff

September 2, 1992.

Take notice that on August 31, 1992, Northwest Pipeline Corporation (Northwest) tendered the following for filing and acceptance to be a part of its FERC Gas Tariff:

Second Revised Volume No. 1

Second Revised Sheet No. 101

First Revised Volume No. 1-A

Third Revised Sheet No. 202
Second Revised Sheet No. 320
Second Revised Sheet No. 401
Second Revised Sheet No. 419
second Revised Sheet No. 420
First Revised Sheet No. 421
First Revised Sheet No. 422
Original Sheet No. 422-A

Northwest states that the purpose of this filing is to propose modifications to (1) the tariff definition of "Gas Day" and (2) the nomination procedures of the "Operating Conditions" section of its Volume No. 1-A tariff and that the revised operating procedures are needed for the upcoming heating season.

Northwest has requested an effective date of October 1, 1992 for the tendered sheets. Northwest states that copies of the filing were served on Northwest's jurisdictional customer list and affected state regulatory commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21606 Filed 9-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-78-000]

Overthrust Pipeline Co.; Tariff Filing

September 2, 1992.

Take notice that on August 31, 1992, Overthrust Pipeline Company, pursuant to § 154.38(d)(6) and Part 382 of the Commission's Regulations, tendered for filing and acceptance Thirteenth Revised Sheet No. 6 and Second Revised Sheet No. 4 to Original Volume Nos. 1 and 1-A of its FERC Gas Tariff.

Overthrust states that this filing implements the annual charge unit rate of $0.0023 per Mcf in each of its transportation rate schedules. Overthrust requests an effective date of October 1, 1992, for the tendered tariff sheets.

Overthrust states that copies of the filing were served on Overthrust jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure 18 CFR 385.211 and 385.214. All such motions or protests should be filed on or before September 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21164 Filed 9-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-73-000]

Ozark Gas Transmission System; Proposed Changes in FERC Gas Tariff

September 2, 1992.

Take notice that Ozark Gas Transmission System ("Ozark") on August 31, 1992, tendered for filing the following revised tariff sheet in its FERC Gas Tariff, First Revised Volume No. 1:

Third Revised Sheet No. 4

The proposed effective date is October 1, 1992.

Ozark states that it is amending its transportation rate schedule to reflect its Commission-authorized Annual Charge Adjustment ("ACA") unit charge of $.0023. Ozark states that this filing is submitted in compliance with § 154.38(d)(6)(iii) of the Commission's Regulations. Ozark also proposes to revise the fuel retention provision on that tariff sheet in compliance with the Commission's letter order of June 15, 1992 in Docket No. RP92-155-001.

Ozark states that copies of the filing were served upon Ozark's firm and interruptible shippers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules of Regulations. All such motions or protests should be filed on or before September 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21611 Filed 9-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-64-000]

Pacific Interstate Offshore Co.; Change in Rate

September 2, 1992.

Take notice that on August 31, 1992, Pacific Interstate Offshore Company ("PIOC") submitted for filing, to be part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet:

First Revised Volume No. 1

First Revised Sheet No. 4

PIOC states the purpose of this filing is to set forth the applicable Annual Charge Adjustment (ACA) surcharge of .23 cents per Mcf in its Rate Schedule G-10 as provided for by Order No. 472. PIOC requests an effective date of October 1, 1992.

PIOC states that copies of the filing have been served on PIOC's sole customer, the Southern California Gas Company, the Public Utilities Commission of the State of California and other interested parties.

Any persons desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E. Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protesters parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21615 Filed 9-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-229-000]

Panhandle Eastern Pipe Line Company; Notice of Conference

September 2, 1992.

Take notice that a conference will be convened in this proceeding on Wednesday, September 16, 1992, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC. The purpose of the conference is to discuss the stipulation of issues to be submitted to the Presiding Administrative Law Judge in the above-referenced docket.

Any party, as defined in 18 CFR 385.102(c) or any participant, as defined in 18 CFR 385.102(b) is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations, 18 CFR 385.214.

For additional information, contact Carmen Gastilo at (202) 208-2182 or Joanne Leveque at (202) 208-5705.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21621 Filed 9-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-55-000]

Questar Pipeline Co.; Tariff Filing

September 2, 1992.

Take notice that on August 31, 1992, Questar Pipeline Company, pursuant to § 154.38(d)(6) and Part 382 of the Commission's Regulations, tendered for filing and acceptance the following tariff sheets of its FERC Gas Tariff:

Original Volume No. 1

Twenty-first Revised Sheet No. 12
Fifth Revised Sheet No. 12A

Original Volume No. 1-A

Eighth Revised Sheet No. 5
Third Revised Sheet No. 5A

Original Volume No. 2-A

Third Revised Sheet No. 4

Original Volume No. 3

Ninth Revised Sheet No. 8

Questar states that this filing incorporates into its sales, storage and transportation rates the annual charge unit rate of $0.0023 per Mcf adjusted to $0.00216 per Dth. Questar requests an effective date of October 1, 1992, for the tendered tariff sheets.

Questar states that copies of the filing has been provided to Questar's jurisdictional customers and interested state public service commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure 18 CFR 385.211 and 385.214. All such motions or protests should be filed on or before September 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21618 Filed 9-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM9 3-1-66-000]

Superior Offshore Pipeline Co.; Proposed Changes in FERC Gas Tariff

September 2, 1992.

Take notice that on August 28, 1992, Superior Offshore Pipeline Company ("SOPCO") tendered for filing the following revised tariff sheet to its FERC Gas Tariff, Original Volume No. 1.

FERC Gas Tariff, Original Volume No. 1

Seventh Revised Sheet No. 5 Superseding Sixth Revised Sheet No. 5.

This revised tariff sheet is being filed to amend SOPCO's initial FERC Annual Charge Adjustment ("ACA") related tariff sheet to reflect the change in the FERC ACA Unit Charge. SOPCO had received an Annual Charges Billing from the Commission for the fiscal year 1992 and has already remitted to the Commission SOPCO's portion of the Commission deficit. For the purpose of recovering this payment, SOPCO has elected, pursuant to the authority outlined in Order No. 472, to institute the ACA Unit Charge. As set forth by the Commission on SOPCO's Annual Charges Bill, SOPCO's ACA Unit Charge will change from $0.0023/MMBtu to $0.0022/MMBtu. SOPCO proposed that this change be made effective October 1, 1992.

Any person desiring to be heard or protest said filing should file a motion to intervene or protect with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with the Rules 211 and 214 of the Commission's Rules of Practice and Procedure 18 CFR 385.211 and 385.214. All such motions or protests should be filed on or before September 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell

Secretary.

[FR Doc. 92-21613 Filed 9-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-85-000]

Trailblazer Pipeline Company; Notice of Prefiling Conference

September 2, 1992.

Take notice that a prefiling conference will be convened in this proceeding on September 19, 1992, at 9 a.m. It will be held at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC. The conference will address the proposal for compliance with Order No. 636 circulated by Trailblazer Pipeline Company under letter dated June 8, 1992, as supplemented on July 7, 1992, together with any further modifications circulated before or at the September 19 conference. All interested parties are invited to attend. Attendance at the conference will not confer party status. For additional information, interested

persons may contact Jacqueline S. Holmes at (202) 208-1212.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21624 Filed 9-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-24-000]

Texas Gas Transmission Corp., Conference

September 2, 1992.

Take notice that on September 17 and September 18, 1992, a conference will be convened in the above-captioned docket to discuss Texas Gas Transmission Corporation's summary of its proposed plan for implementation of Order No. 636 and Order No. 636-A.

The conference will be held at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, DC 20426 in Hearing Room Number One. The conference will begin at 1 p.m. on September 17, 1992. All interested parties are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested persons may call Robert Szekely at (202) 208-0442 or Bill Zoller at (202) 208-1203.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21602 Filed 9-8-92; 8:45 am]

BILLING CODE 6717-01

[Docket No. RP92-225-000]

Texas Eastern Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 2, 1992.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on August 31, 1992 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1 and Original Volume No. 2, six copies each of the tariff sheets listed in appendix A of the filing.

Texas Eastern states that the tariff sheets listed in appendix A of the filing revise certain firm and interruptible transportation rate schedules for the purpose of incorporating into such rate schedules imbalance charges comparable to the currently effective imbalance charges under Texas Eastern's open-access Rate Schedules FT-1 and IT-1.

Texas Eastern states that the Commission has previously approved the imbalance charges reflected in Rate Schedules FT-1 and IT-1 under Texas Eastern's blanket, open-access transportation certificate. Under currently effective section 6 of Texas Eastern's Rate Schedules FT-1 and IT-1, Texas Eastern and its shippers must enter into an agreement in writing, regarding the resolution of transportation imbalances, within forty-five (45) days after Texas Eastern notifies its shippers that imbalances exist, or imbalance charges will be imposed. With respect to the rate schedules affected by this filing, however, while there currently is an obligation to maintain a balance between receipts and deliveries, no expressly applicable imbalance charges are applied when such balancing obligation is not satisfied.

Texas Eastern states that on July 2, 1992, it filed tariff sheets in Docket No. RP92-200-000 ("July Filing"), which were rejected by Commission order issued in that docket on July 31, 1992 ("July 31 Order"), without prejudice to Texas Eastern filing revised tariff sheets consistent with the July 31 Order. The July 31 Order stated that if Texas Eastern desires to revise its Volume No. 1 and Volume No. 2 tariffs, then it should file such change in each applicable rate schedule. Accordingly, Texas Eastern states that, consistent with the Commission directive in the July 31 Order, the instant filing is comprised of tariff sheets that modify each rate schedule proposed to be affected by the imbalance charge. Texas Eastern states that its filing is expressly without prejudice to its right to seek rehearing of the Commission's July 31 Order.

Texas Eastern states that appendix A of the filing lists (i) the tariff sheets and rate schedules affected, and (ii) the appropriate article and sheet numbers for reference to the "Memphis Clause" of each Volume No. 2 rate schedule service agreement and each Volume No. 1 rate schedule in which Texas Eastern proposes to include the imbalance charges. It is pursuant to these contractual rights that Texas Eastern files the tariff sheets in this proceeding. The inclusion of the proposed imbalance charges into these affected rate schedules is a prospective change only. The inclusion of the proposed imbalance charges into these affected rate schedules is a prospective change only. The tariff changes will not affect the character or quality of the affected services. Moreover, the tariff changes will have no impact on the existing charges and/or the rates for the services to which they apply, unless shippers refuse to cooperate with Texas Eastern in resolving imbalances.

Texas Eastern states that it is taking all reasonable measures to control, reduce, and eliminate transportation imbalances, which have dramatically increased as a result of the pipelines' traditional merchant function being replaced by open-access transportation service initiated by the Commission's Order Nos. 436 and 500. The filing states that Texas Eastern's imbalance resolution program has and continues to achieve relative success in resolving transportation imbalances arising under Texas Eastern's Rate Schedules FT-1 and IT-1 but has been less successful in resolving imbalances under its other transportation rate schedules. Texas Eastern states that without express imbalance charges such as it is proposing in this filing, shippers apparently are not sufficiently motivated to resolve imbalances in accordance with their contractual obligations. The application of the imbalance charges set forth in Rate Schedules FT-1 and IT-1 to other Texas Eastern rate schedules, as proposed in the filing, is Texas Eastern's attempt to provide the motivation necessary to resolve these imbalances in a timely manner.

The proposed effective date of the tariff sheets listed on appendix A of the filing is October 1, 1992.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21606 Filed 9-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-11-000]

United Gas Pipe Line Co. Filing of Revised Tariff Sheets

September 2, 1992.

Take notice that on August 31, 1992, United Gas Pipe Line Company (United)

tendered for filing the following tariff sheets to be effective October 1, 1992:

Third Revised Volume No. 1

Second Revised Sheet No. 4, Second Revised Sheet No. 4A, Second Revised Sheet No. 4B, Second Revised Sheet No. 4D, Second Revised Sheet No. 4E, Second Revised Sheet No. 4F, Second Revised Sheet No. 4G, Second Revised Sheet No. 4H.

United states that the above referenced tariff sheets reflect a downward revision to the unit rate of the Annual Charge Adjustment (ACA) Clause to be generally applied to interstate natural gas pipeline rates for the recovery of the 1992 Annual Charges, pursuant to Order No. 472.

This revision authorizes United to collect $0.0023 per each jurisdictional Mcf ($0.0022 per MMBtu as converted on United's system) of natural gas sold or transported applicable to the 1992 Annual Charge assessed United by the Commission under Part 382 of the Commission's Regulations.

United also states that the tariff sheets are being mailed to its jurisdictional customers and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street, N.E., Washington, D.C. 20426, in accordance with sections 385.214 and 385.211 of the Commission's regulations. All such motions or protests should be filed on or before September 10, 1992.

Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21616 Filed 9-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-43-000]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

September 2, 1992.

Take notice that Williams Natural Gas Company (WNG) on August 28, 1992, tendered for filing Twelfth Revised Sheet No. 6, Thirteenth Revised Sheet No. 6A, and Twelfth Revised Sheet No. 9 to its FERC Gas Tariff, First Revised Volume No. 1.

WNG states that pursuant to Article 21 of the General Terms and Conditions of such Tariff, it proposes to decrease its rates effective October 1, 1992, to reflect a decrease in the FERC Annual Charge Adjustment from $.0024 to $.0023 per Dth for the fiscal year beginning October 1, 1992, per the Commission's Annual Charges Billing issued July 27, 1992.

WNG states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21612 Filed 9-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-49-000]

Williston Basin Interstate Pipeline Co.; Federal Energy Regulatory Commission Annual Charge Adjustment Filing

September 2, 1992.

Williston Basin Interstate Pipeline Company (Williston Basin), on August 31, 1992, submitted for filing as part of its FERC Gas Tariff the following tariff sheets:

First Revised Volume No. 1

4th Rev Alt 43rd Revised Sheet No. 10.

Original Volume No. 1-A

4th Rev Alt 36th Revised Sheet No. 11, 4th Rev Alt 41st Revised Sheet No. 12.

Original Volume No. 1-B

4th Rev Alt 31st Revised Sheet No. 10, 4th Rev Alt 31st Revised Sheet No. 11.

Original Volume No. 2

4th Rev Alt 43rd Revised Sheet No. 10, 4th Rev Alt 37th Revised Sheet No. 11B.

The proposed effective date of the tariff sheets is October 1, 1992.

Williston Basin states that the instant filing reflects a revision to the Federal Energy Regulatory Commission's Annual Charge Adjustment (ACA) unit charge amount pursuant to the Commission's Statement of Annual Charges (18 CFR part 382) and the General Terms and Conditions of Williston Basin's FERC Gas Tariff, First Revised Volume No. 1, section 30; Original volume No. 1-A, section 27; and Original Volume No. 1-B, Section 25. The filing incorporates the Commission approved ACA surcharge of .230 cents per Mcf (.217 cents per dkt on the Williston Basin system), a decrease of .01 cents per Mcf from the current amount as authorized by the Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21603 Filed 9-8-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

Fusion Energy Advisory Committee Notice of Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

NAME: Fusion Energy Advisory Committee (FEAC).

DATE AND TIME: Tuesday, September 22, 1992—9:00 a.m.—5:30 p.m. Wednesday, September 23, 1992—8:30 a.m.—5 p.m.

PLACE: Ramada Renaissance Hotel, 13869 Park Center Road, Sully Road Exit, Dulles Airport, Herndon, VA 22071.

CONTACT: Deborah Lonsdale, U.S. Department of Energy, GTN, Office of Fusion Energy (ER-50), Office of Energy Research, Washington, DC 20585, Telephone: 301-903-4941.

PURPOSE OF THE COMMITTEE: To provide advice on a continuing basis to the Department of Energy on the complex scientific and technical issues that arise

in the planning, management, and implementation of its Fusion Energy Program.

Tentative Agenda

Tuesday, September 22, 1992

Report on Panel IV on Intermediate Confinement Experiments, Report on Panel V on Strategic Program Planning, Public Comment (10-minute Rule).

Wednesday, September 23, 1992

New Charge to FEAC, FEAC Deliberations, Public Comment (10-minute Rule).

PUBLIC PARTICIPATION: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact: Deborah Lonsdale at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

TRANSCRIPTS: The transcript of the meeting will be available for public review and copying at the Freedom of Information Reading Room, 1E-190, Forrestal Building 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on September 3, 1992.

Howard H. Raiken,

Advisory Committee, Management Officer.

[FR Doc. 92-21670 Filed 9-8-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Notice of Cases Filed During the Week of August 7 through August 14, 1992

During the Week of August 7 through August 14, 1992, the appeals and applications for exception or other relief listed in the appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: September 2, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of August 7 through August 14, 1992]

Date	Name and Location of Applicant	Case No.	Type of Submission
Aug. 10, 1992	COMPUSA, McLean, VA	LFA-0232	Appeal of an information request denial. If Granted: COMPUSA would receive access to information about DOE employees.
Aug. 11, 1992	Gulf/Teague Industries, Inc., Atlantic Beach, FL	RR300-197	Request for modification/rescission in the Gulf refund proceeding. If granted: The June 17, 1992 Dismissal Letter (Case No. FR300-12769) issued to Teague Industries, Inc. would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.

REFUND APPLICATIONS RECEIVED

[Week August 7 to August 14, 1992]

Date received	Name of refund proceeding/name of refund applicant	Case number
Aug. 10, 1992	CTS International	RF272-93804
Aug. 10, 1992	Cherokee Brick and Tile Co.	RF272-93805
Aug. 10, 1992	Highland Butane	RF340-175
Aug. 11, 1992	Gilmer Independent School Dist.	RF272-93806
Aug. 11, 1992	Rand's, Inc.	RF272-93807
June 23, 1992	Riverview Consolidated School	RF272-93808
Aug. 07, 1992 thru Aug. 14, 1992	Texaco Refund Applications Received	RF321-19096 thru RF321-19109
Aug. 07, 1992 thru Aug. 14, 1992	Gulf Oil Refund Applications Received	RF300-20455 thru RF300-20461
Aug. 07, 1992 thru Aug. 14, 1992	Atlantic Richfield Applications Received	RF304-13244 thru RF304-13252

[FR Doc. 92-21668 Filed 9-8-92; 8:45am]

BILLING CODE 6450-01-M

Southwestern Power Administration

Sam Rayburn Dam Power Rate; Order Approving Temporary Power Rate Extension on an Interim Basis

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of a Temporary Power Rate Extension—Sam Rayburn Dam Project.

SUMMARY: The Assistant Secretary, Conservation and Renewable Energy, acting under Amendment No. 2 to Delegation Order No. 0204-108, dated August 23, 1991, 56 FR 41835, and pursuant to the implementation authorities in 10 CFR 903.22(h) and 903.23(b), has approved Rate Order No. SWPA-26 which extends the existing power rate for the Sam Rayburn Dam Project. This is a temporary interim rate action effective October 1, 1992, and extending for a period of six months through March 31, 1993.

FOR FURTHER INFORMATION CONTACT: George C. Grisaffe, Director,

Administration and Rates, Southwestern Power Administration, Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101.

SUPPLEMENTARY INFORMATION: The existing rate for the Sam Rayburn Dam project is $1,810,368 per year. The rate was approved on a final basis by the Federal Energy Regulatory Commission on October 11, 1988, for a period ending September 30, 1991. The rate was extended on an interim basis by the Assistant Secretary, Conservation and Renewable Energy, on September 28, 1991, for a period of one year, effective October 1, 1991. 10 CFR 903.22(h) and 903.23(b) provide implementation authority for such interim extension to the Deputy Secretary. This authority has been redelegated to the Assistant Secretary, Conservation and Renewable Energy, by Amendment No. 2 to Delegation Order No. 0204-108, effective August 23, 1991.

Following review of Southwestern's proposal within the Department of Energy, I approved, Rate Order No. SWPA-26, on September 1, 1992, which extends the existing Sam Rayburn Dam Rate for six months beginning October 1, 1992.

Issued at Washington, DC, the 1 day of September, 1992.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 92-21669 Filed 9-8-92; 8:45 am]

BILLING CODE 5450-01-M

ENVIRONMENTAL PROTECTION AGENCY (EPA)

[FRL-4203-1]

Gulf of Mexico Program Policy Review Board Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Meeting of the Policy Review Board of the Gulf of Mexico Program.

SUMMARY: The Gulf of Mexico Program Policy Review Board will hold a meeting on September 16, 1992 at the Innisbrook Hotel in Tarpon Springs, Florida.

FOR FURTHER INFORMATION CONTACT: Mr. Doug Lipka, Acting Director, Gulf of Mexico Program Office, Building 1103, John C. Stennis Space Center, Stennis Space Center, MS 39529-6000, at (601) 688-3726.

SUPPLEMENTARY INFORMATION: A meeting of the Policy Review Board (PRB) on the Gulf of Mexico Program will be held on September 16, 1992 at the Innisbrook Hotel in Tarpon Springs, Florida, starting at 8:30 a.m. and ending at 5 p.m. Agenda items will include reports to the committee on planning for the Gulf Symposium, the five-year strategy, "Year of the Gulf" activities, Gulf of Mexico action projects, public health action plan, coastal and shoreline erosion action plan, habit degradation action plan, and the activities of the Citizens Advisory Committee and the Technical Steering Committee. The meeting is open to the public.

Alan Fox,

Acting Assistant Administrator, Office of Water.

[FR Doc. 92-21654 Filed 9-8-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

September 1, 1992.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1990 M Street, NW, suite 640, Washington, DC 20036, (202) 452-1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 3953-4814.

OMB Number: 3060-0149.

Title: Part 63—Section 214 Application and Supplemental Information Requirements (Sections 63.01 through 63.601)—(Second Report and Order, Recommendation to Congress, and Second Further Notice of Proposed Rulemaking, CC Docket No. 87-266).

Action: Revision of a currently approved collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting and semi-annually.

Estimated Annual Burden: 510 responses; 12.98 hours average burden per response; 6,620 hours total annual burden.

Needs and Uses: In the attached CC Docket No. 87-266, Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54-63.58, the Commission modified its rules to enable local telephone companies to participate in the video marketplace through video dialtone. The Commission concluded that allowing telephone company involvement in the video marketplace, consistent with statutory telephone company-cable television cross-ownership restrictions, will advance the FCC's goals of creating opportunities and incentives to develop an advanced telecommunications infrastructure, increasing competition in the video marketplace, and enhancing the diversity of video services to the American public in order to promote consumer choice. The Commission decided that it will permit, but not require, local telephone companies to provide video dialtone to the public consistent with the existing regulatory framework for non-video enhanced services and subject to additional requirements. These additional requirements provided that: local telephone companies wishing to offer video dialtone, must make available to multiple service providers, on a nondiscriminatory common carrier basis, a basic platform that will deliver video programming and potentially other services to end users; local telephone companies will be permitted to provide some additional enhanced and non-common carrier services to customers of the common carrier platform; the Commission will apply existing safeguards against anticompetitive conduct, and will assess whether additional safeguards would serve the public interest in the context of specific video dialtone service proposals and the Commission will review its rules and regulatory framework beginning in three years. In addition to the requirements of Part 63, telephone companies that wish to offer video dialtone must describe how their proposed construction and operation of the basic platform will serve multiple video programmers and expand as demand increases. This is necessary to ensure that telephone companies offer sufficient capacity to

serve multiple video programmers when the telephone company is constructing video dialtone facilities. The information will be used by the Common Carrier Bureau of the FCC when it evaluates filings pursuant to 47 U.S.C. 214. The information will help the Bureau decide whether to give the telephone company permission to build and operate a basic platform that will allow the Commission's video dialtone policy to be implemented. If the information were not collected, the Commission could not effectively determine if telephone companies offering video dialtone would have sufficient capacity to serve multiple video programmers.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-21559 Filed 9-8-92; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

August 31, 1992.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452-1422. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0024.

Title: Section 76.29, Special temporary authority rules in the cable television service.

Action: Extension of a currently approved collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 1 response, 3 hours average burden per response; 3 hours total annual burden.

Needs and Uses: The Commission has established procedures for parties to obtain variances of special relief from the provisions of the cable television rules. Section 76.29 permits additional flexibility as well as procedural specificity in applying for special deviations from the rules in situations requiring temporary and immediate action that would not be possible under the more extended pleading requirement of the general rules. The data is used by FCC staff to assure that a grant of special temporary authority will not cause interference to other stations.

OMB Number: 3060-0287.

Title: Section 78.69 (Cable Relay) Station Records.

Action: Extension of a currently approved collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: Recordkeeping requirement.

Estimated Annual Burden: 2,166 recordkeepers; 26 hours average burden per recordkeeper, 56,316 hours total annual burden.

Needs and Uses: Section 78.69 requires that licensees of cable relay stations maintain records of certain inspections, observations and repairs. The records provide a history of station operation used by FCC staff in field investigations to assure that proper operation of the station is being maintained.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-21560 Filed 9-8-92; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Amboy Bancorporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 2, 1992.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Amboy Bancorporation, Old Bridge, New Jersey; to acquire Woodhaven at South Brunswick, L.P., Cranbury, New Jersey, and thereby engage in community development activities pursuant to § 225.25(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 2, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-21645 Filed 9-8-92; 8:45 am]

BILLING CODE 6210-01-F

Brooke Corporation, et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation

Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 2, 1992.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Brooke Holdings, Inc., Jewell, Kansas; to acquire Brooke Corporation, Jewell, Kansas, which, in turn, has applied to become a bank holding company by acquiring Brooke State Bank, Jewell, Kansas.

In connection with this application, Brooke Corporation has applied to retain the insurance agency activities of its wholly-owned subsidiaries, Gypsum Valley Agency and Brooke Management, Inc., both of Jewell, Kansas. These activities are acting as agenct in the sale of general insurance in the Jewell, Kansas, community pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y, and the sale of general insurance for a small bank holding company pursuant to § 225.25(b)(8)(vi) of the Board's Regulation Y.

2. TeamBanc, Inc. Employees Stock Ownership Plan, Paola, Kansas, and TeamBanc, Inc., Paola, Kansas; to acquire 100 percent of the voting shares of Century BancShares, Inc., Parsons, Kansas, and thereby indirectly acquire First National Bank & Trust Company, Parsons, Kansas.

In connection with this application, Applicants also propose to acquire Century BancShares, Inc., Parsons, Kansas, and thereby engage in the sale of credit related insurance pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 2, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-21646 Filed 9-8-92; 8:45 am]

BILLING CODE 6210-01-F

Mansura Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 2, 1992.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Mansura Bancshares, Inc., Mansura, Louisiana; to acquire 9.69 percent of the voting shares of Union Bancshares, Inc., Marksville, Louisiana, and thereby indirectly acquire Union Bank, Marksville, Louisiana.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. H & H Holding Company, Alton, Illinois; to become a bank holding company by acquiring at least 86.9 percent of the voting shares of Greene County National Bank in Carrollton, Carrollton, Illinois, and 100 percent of the voting shares of Godfrey State Bank, Godfrey, Illinois.

Board of Governors of the Federal Reserve System, September 2, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-21647 Filed 9-8-92; 8:45 am]

BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION

Record of Decision

ACTION: Notice.

The General Services Administration (GSA) in cooperation with the Department of the Treasury's Internal Revenue Service (IRS) announces its decision to purchase land at the Metroview site in Prince George's County, Maryland, to consolidate the IRS National Office.

The 30.22 acre Metroview site, is located between Harkins Road and Ellin Road approximately 230 feet northwest of the New Carrollton Metrorail/Amtrak Station.

The IRS National Office is currently housed in 13 leased and 3 Government-owned buildings throughout Washington, DC (11 locations) and Northern Virginia (5 locations); in addition, space procurements are underway for 4 additional locations. A large percentage of these leases will expire during the next 3 to 5 years. Originally acquired at favorable rates for 15 or 20-year terms, these leases would be replaced at rates reflecting the sharp rise in rental rates following steady economic growth in the Washington area. In fulfilling its role of satisfying Federal work space requirements in a cost-effective manner, GSA has noted with concern its steeply rising leasing costs, and has decided to consolidate the IRS National Office in a Government-owned facility.

The proposed building will contain approximately 1,200,000 gross square feet (gsf) of space with approximately 885,000 occupiable square feet (osf) of space. The building will house 4,444 employees and will provide up to 2,600 parking spaces. The Metroview site has potential for the construction of an

additional 300,000 gsf with approximately 221,000 osf of office space and 650 parking spaces. The building will include the typical Federal building amenities and support systems; Office space, cafeteria, fitness center, daycare facility, data processing area, and training/conference facilities.

GSA's decision to purchase land at the Metroview site is in accordance with section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality (40 CFR parts 1500–1508), and GSA Order PBS P 1095.4B, GSA.

Alternative Considered

The Government received four proposals in response to its Solicitation for Offers. Each site evaluated in the Environmental Impact Statement (EIS) also satisfied the Government's site selection criteria and was considered as a potential IRS site.

The EIS evaluated potential environmental impacts which would result from the proposed project. These include, but were not limited to, short-term impacts during construction as well as long-term changes in traffic, socio-economic concerns and physical conditions in the areas.

The alternative sites considered were the following:

Metroview

This 30.22-acre site is located between Harkins Road and Ellin road, approximately 230 linear feet northwest of the New Carrollton Metrorail/Amtrak Station. The site is currently zoned M–X–T (mixed use development). The area consists primarily of residential and office industrial development. Office buildings and the Ardwick/Ardmore Industrial Park are within one mile of the site. There are no wetlands on the site. The site is outside the 100-year floodplain area. The site is expected to meet air quality standards in 1996. There exist adequate community and utility services. There are no known threatened or endangered species, and no known historic or archaeological resources on the site.

First Capital Realty

This 73.69-acre site is located approximately 1,200 feet south of Central Avenue between Addison Road and Rollins Avenue. The First Capital Realty site is currently zoned R–R (rural residential). The area is primarily residential in character. There is no existing commercial development and little industrial development within one mile of the site. There are wetlands areas within the northwest and southeast portions of the site. Portions of the site are subject to flooding. The site is expected to exceed air quality standard in 1996. There exist adequate community and utility services. There are no known threatened or endangered species, and no known historic or archaeological resources on the site.

Meridian

This 45-acre site is located adjacent to Central Avenue between Shady Glen Drive and the Addision Road Metrorail Station. The site is currently zoned M–X–T (mixed use development). The area is primarily residential in character. There is no existing commercial development and limited industrial development within one mile of the site. There are wetland areas along steeply eroded stream and bank areas. A ditch crossing the site east to west carries storm water. The site is expected to exceed air quality standards in 1996. There exist adequate community and utility services. There are no known threatened or endangered species, and no known historic or archaeological resources on the site.

Riverside

This 47.17-acre site is located between Kenilworth Avenue, Calvert Road, Baltimore Avenue, and East-West Highway. The site is currently zoned M–X–T (mixed use development). There are two well-defined office/industrial areas located within one mile of the site. Wetland areas along the northern boundary of the site are permitted to be filled. Flooding occurs in the north and northeastern portions of the site. The site is expected to exceed air quality standards in 1966. There exist adequate community services. The utilities infrastructure is currently under construction. There are no known threatened or endangered species, and no known historic or archaeological resources on the site.

No Action Alternative

The EIS also considered a No Action Alternative, i.e., no change in the current pattern of office space usage by the IRS National Office. This alternative was rejected because of GSA's goal of consolidating government agencies to make better use of space and increase government efficiency. Additionally, this action would necessitate the continued leasing of unsuitable space at high cost to the Government.

Preferred Alternative

The Metroview site was identified as both the "environmentally preferred alternative" and GSA's preferred alternative. The site was identified as the "environmentally preferred alternative" in the Draft Environmental Impact Statement distributed to the public on March 20, 1992, and in the Final Environmental Impact Statement distributed to the public on July 17, 1992. The site was identified as GSA's preferred alternative in the Site Acquisition Report issued by GSA in September 1992. The decision was based on other technical and economic factors included in GSA's site selection criteria.

Relevant GSA Site Selection Factors

During the technical evaluation of the sites, GSA considered other factors such as: (i) The site location (in Prince George's County, Maryland, not exceeding 2,000 convenient walkable feet from a Metrorail station); (ii) the existance of good marketable title to the site without defects or objection restrictions; (iii) the absence of hazardous and toxic materials on the site; and (iv) the site's development potential to support at least 1.2 million gsf of office space and related parking. GSA also evaluated the sites based on economic factors such as the cost for land and road infrastructure improvements.

Metroview Environmental Mitigation

All practicable means to avoid or minimize impacts to the Metroview site are being considered in the development of this project. As part of the action, GSA worked closely with the Prince George's County government and the Maryland-National Capital Park and Planning Commission to identify the necessary off-site road infrastructure improvements; GSA has obtained the developer's agreement to accomplish these improvements in a timely manner. The off-site infrastructure improvements will allow the site to operate at a level of service acceptable to Prince George's County.

Although an increase in carbon monoxide from vehicle exhaust will occur as a result of the projected increases in traffic in the area where the Metroview site is located, the site is expected to meet air quality standards in 1996.

GSA and IRS will implement a Transportation Management Plan (TMP) that will, at a minimum, include a market-based fee system designed to encourage high-occupancy vehicle use (carpool and vanpool), a carpool and vanpool incentive program, and reservation of approximately 90 percent of on-site parking for carpools and vanpools. The TMP may also include implementation of a "guaranteed ride

home program," preferential parking locations for high-occupancy vehicles, vehicle storage, showers and locker room facilities for bicycle commuters, and additional TMP elements designed to increase the use of public transportation. GSA and IRS will coordiante preparation of the TMP with Prince George's County and with the National Capital Planning Commission.

Further, the Metroview site is mostly a wooded site, with slopes of 10 to 15 percent. GSA included in the Request for Proposals a requirement that the design development respect and reinforce the natural features and characteristics of that site. The site's natural features will be preserved to the greatest extent possible.

GSA and the IRS believe that there are no outstanding environmental issues to be resolved with respect to the IRS National Office Consolidation in Prince George's County, Maryland. Questions regarding the EIS prepared for this action may be directed to Ms. Sonia I. Hersha, NCR Planning Staff (WPL), GSA National Capital Region, room 7618, 7th and D Streets, SW., Washington, DC 20407, telephone 202/708-5334.

Dated: September 2, 1992.

James C. Handley,

Regional Administrator, General Services Administration.

[FR Doc. 92-21641 Filed 9-8-92; 8:45am]

BILLING CODE 6820-23-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Food and Drug Industry Exchange Meetings Concerning Avoidance of Illegal Animal Drug Residues through Proper Drug Use; Notice of Public Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meetings.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it is holding three public meetings on the avoidance of illegal animal drug residue through proper drug use. These meetings are the last of a series of six meetings organized by FDA to help the agency prepare regulatory and educational initiatives directed at the on-farm use of animal drugs.

DATES: The industry exchange meetings will be held on Tuesday, September 22, 1992; Thursday, September 24, 1992; and Friday September 25, 1992, from 10 a.m. to 2 p.m.

ADDRESSES: The industry exchange meetings will be held at the following locations:

September 22, 1992: The Elks Lodge, 999 North M St., Tulare, CA 93275.

September 24, 1992: Holiday Inn, 1911 Interstate 40 and Ross St., Amarillo, TX 79102.

September 25, 1992: University of South Florida, University Center, 2d floor ballroom, 4202 Fowler Ave., Tampa, FL 33620.

FOR FURTHER INFORMATION CONTACT: Gary E. Stefan, Food and Drug Administration (HFV-244), Center for Veterinary Medicine, 7500 Standish Pl., Rockville, MD 20855, 301-295-8769.

Those persons interested in attending these meetings should call the contact person listed above to preregister.

SUPPLEMENTARY INFORMATION: FDA has organized a series of six industry exchange meetings to discuss avoidance of illegal animal drug residues through proper drug use. These meetings will be held at six separate locations. The agency announced the first three meetings in the **Federal Register** of August 14, 1992 (57 FR 36653). This notice announces the last three meetings.

FDA is responsible for programs and regulatory activities associated with prevention of illegal drug residues in food derived from treated animals. Illegal drug residues in edible products can constitute a health hazard to persons consuming such food. The principal causes of illegal drug residues are the failure to observe proper withdrawal periods prior to slaughter or milk discard times, the failure to follow label dosage directions, the failure to use drugs properly, and negligence. Regardless of the reason, it is FDA's policy to hold responsible any individual in the production and marketing chain who can be shown to have caused (by an act of commission or omission) illegal residues in edible animal products. These individuals may be charged with violations of the Federal Food, Drug, and Cosmetic Act.

As a partial response to a task force report concerning residue avoidance, FDA will be developing specific guidance for its investigators concerning proper animal drug use by producers of livestock and poultry. This information will be used to determine when it is appropriate to take regulatory action against an individual associated with a violative residue in meat, milk, or eggs. Before preparation of this guidance, the agency is holding a series of meetings to obtain information from interested persons concerning proper animal drug use by livestock producers. Information is needed by the agency on the following subjects: drug use, drug storage, recordkeeping, and animal identification. The information obtained at these meetings will also support development of educational initiatives directed at the on-farm use of animal drugs.

Dated: September 2, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-21599 Filed 9-8-92; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 92D-0323]

Suggested State Regulations for Control of Radiation; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of Volume I (Ionizing Radiation) of the publication entitled "Suggested State Regulations for Control of Radiation," 8th edition, (HHS publication FDA 91-8203). This edition has been prepared to reflect changes in Federal regulations and performance standards not contained in the previous edition. Copies have been distributed to the State and local radiation control agencies by the Conference of Radiation Control Program Directors, Inc.

ADDRESSES: The publication "Suggested State Regulations for Control of Radiation," 8th ed., vol. I (Ionizing Radiation) may be purchased from Superintendent of Documents, U.S. Government Printing Office (GPO), Washington DC 20402, 202-783-3238. Orders should reference GPO Stock No. 017-015-00240 and include payment of $37 for each copy of the document. Also, the document may be ordered from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161. Orders must reference NTIS order number PB 92-121029 and include payment of $59 for each copy of the document. Payment may be made by check, money order, charge card (American Express, Visa, or Mastercard), or billing arrangements made with NTIS. Charge card orders must include the charge card account number and expiration date. For telephone orders or further information on placing an order, call NTIS at 703-487-4650.

Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm.

1-23, 12420 Parklawn Dr., Rockville, MD 20857. Comments should be identified with the docket number found in brackets in the heading of this document. The "Suggested State Regulations for Control of Radiation," 8th ed., vol. I (Ionizing Radiation) and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Charles P. Froom, Center for Devices and Radiological Health (HFZ-83), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3426.

SUPPLEMENTARY INFORMATION: The "Suggested State Regulations for Control of Radiation" was initially published in 1962 by the Council of State Governments with the advice and assistance of the U.S. Atomic Energy Commission (now the U.S. Nuclear Regulatory Commission) and the U.S. Public Health Service. The suggested regulations were updated and revised in 1964, 1966, 1970, 1974, 1978, 1982, 1984, and 1990. Since 1970, development and revision of the "Suggested State Regulations for Control of Radiation"has been accomplished by working groups of the Conference of Radiation Control Program Directors, Inc. (CRCPD), representing the State and local agencies, with the support and assistance of the Nuclear Regulatory Commission (NRC); the Center for Device and Radiological Health, FDA; and the Environmental Protection Agency (EPA).

The Atomic Energy Act of 1954, as amended in section 274 (42 U.S.C. 2021), authorizes NRC to cooperate with the States in formulating standards for protection against hazards of radiation. FDA, under the broad responsibility conferred by the Public Health Service Act (42 U.S.C. 241 and 243), advises and promotes cooperation between the States on matters relating to protecting the public against specified radiation hazards. The Radiation Control for Health and Safety Act of 1968 further provides for the establishment by FDA of an electronic product radiation control program designed to protect the public health and safety (21 U.S.C. 360ii and 360jj (previously 42 U.S.C. 263d and 263e)). In implementing this program, the agency is authorized to make such recommendations relating to such hazards and controls as it considers appropriate. Acting on these authorities and responsibilities, NRC and the FDA's Center for Devices and Radiological Health cooperated with CRCPD and EPA in the preparation of these model State regulations.

This edition and previous revisions of the "Suggested State Regulations for Control of Radiation" have been prepared to be consistent with Federal radiation control regulations issued by Federal agencies to carry out responsibilities vested in them by law. Changes in Federal regulations, radiation guidance, or recommended standards, and the experience and suggestions of the State radiation control agencies and others provide a basis for revision of the "Suggested State Regulations for Control of Radiation." This edition reflects amendments to the NRC regulations (10 CFR chapter I), and the electronic product radiation safety performance standards issued by FDA (21 CFR part 1020).

Purpose of Suggested State Regulations for Control of Radiation

The Suggested State Regulations are basically designed as guidance for developing and amending of State radiation control regulations to encourage uniform regulations among the States, to complement Federal regulations, and to help States maintain regulations compatible with, identical to, or as effective as, Federal regulations. Because of requirements placed on State regulatory agencies in promulgating regulations consistent with the standards of a number of Federal agencies, it is especially important that Federal and State agencies cooperate in their development. These model regulations can serve as a means of assisting the States in issuing regulations that are consistent with Federal radiation control standards to the extent required, for example:

1. The Atomic Energy Act of 1954, as amended by Pub. L. 86-373, specifies in section 274 (42 U.S.C. 2021), as a condition for a State to enter into an agreement with NRC to assume regulatory responsibility for byproduct, source, and special nuclear material in quantities not sufficient to form a critical mass, that the State program be compatible with the NRC's program for regulation of such material, and that the State program be adequate to protect the public health and safety with respect to the materials covered by the agreement.

2. The Federal Food, Drug, and Cosmetic Act specifies in section 542 (previously, section 360F of the Public Health Service Act (42 U.S.C. 263n), as added by the Radiation Control for Health and Safety Act of 1968, Pub. L. 90-602), that no State or political subdivision of a State may either establish or continue in effect any standard that applies to the same aspect of performance of an electronic product for which a Federal standard is in effect and which is not identical to the Federal standard.

3. Section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) indicates that, for a State plan to be approved, the State regulations must be at least as effective as the Federal standards issued under section 6 of this act which relate to the same issues.

These statutory requirements emphasize the importance of cooperation among the Federal agencies, and with the State representatives, to ensure consistency in radiation control regulations.

Scope and Content

The "Suggested State Regulations for Control of Radiation," includes a new part T—Transportation of Radioactive Material and a new section F.11 on Computed Tomography X-Ray Systems. Part G, retitled "Use of Radionuclides in the Healing Arts," has been extensively revised to incorporate the amendments to 10 CFR parts 30, 31, 32, and 35 on Medical Use of Byproduct Material. Part U—Licensing Requirements for Source Material Milling Facilities, was to be incorporated into "Suggested State Regulations for Control of Radiation," 8th ed. However, in the final stages of approval, legal questions regarding aspects of implementation of the original legislation created major difficulties in obtaining Federal concurrence on the final draft. It was determined necessary to proceed without inclusion of this part with the understanding that part U and the associated rationale would be added at a later date.

Earlier revisions of the "Suggested State Regulations for Control of Radiation" have added new parts including: Part H—Radiation Safety Requirements for Analytical X-Ray Equipment; Part I—Radiation Safety Requirements for Particle Accelerators; Part J—Notices, Instructions, and Reports to Workers; Inspections; Part M—Licensing Requirements for Land Disposal of Radioactive Waste; and Part W—Radiation Safety Requirements for Wireline Service Operations and Subsurface Tracer Studies. Part J incorporates provisions of 10 CFR part 19 of NRC's regulations. These provisions are comparable to those of the Department of Labor for inspections pursuant to the Occupational Safety and Health Act of 1970, under 29 CFR part 1903. Volume I (Ionizing Radiation) of

the "Suggested State Regulations for Control of Radiation," 8th ed., consists of the following parts:

Part A—General Provisions.
Part B—Registration of Radiation Machine Facilities and Services.
Part C—Licensing of Radioactive Material.
Part D—Standards for Protection Against Radiation.
Part E—Radiation Safety Requirements for Industrial Radiographic Operations.
Part F—X Rays in the Healing Arts.
Part G—Use of Radionuclides in the Healing Arts.
Part H—Radiation Safety Requirements for Analytical X-Ray Equipment.
Part I—Radiation Safety Requirements for Particle Accelerators.
Part J—Notices, Instructions, and Reports to Workers; Inspections.
Part M—Licensing Requirements for Land Disposal of RadioactiveWaste.
Part T—Transportation of Radioactive Material.
Part U—Licensing Requirements for Source Material Milling Facilities (to be added).
Part W—Radiation Safety Requirements for Wireline Service Operations and Subsurface Tracer Studies.

A rationale is included for each of the revised and new part(s) of the "Suggested State Regulations for Control of Radiation," 8th ed., with documentation on the basis for the amendments or new provisions. The amendments to Federal standards, which served as a basis for changes and additions to the "Suggested State Regulations for Control of Radiation," are referenced in the rationale to provide needed background information. Certain proposed changes were not included in the document at this time, but were recorded in the rationale for future consideration by the CRCPD and appropriate Federal agencies.

Use of Suggested State Regulations

The Suggested State Regulations provide a comprehensive set of ionizing radiation control regulations covering a number of sources, including performance requirements applicable to equipment, safe use of radiation sources, and requirements on the facility wherein the sources are used. Thus, they provide a comprehensive code of radiation control provisions to ensure, at the State level, protection of the public health from radiation. In addition, these model regulations can be used as a resource document by Federal agencies using radiation sources in instituting a total radiation safety program for Federal facilities. For those States that have or are entering into an agreement with NRC, the model regulations include provisions for the control of byproduct, source, and special nuclear material in quantities not sufficient to form a critical mass; however, these materials when used within Federal agencies are under the direct control of NRC. This model can serve as a basis for meeting the requirements of section 19 of the Occupational Safety and Health Act of 1970 and Executive Order 12196 (Occupational Safety Second Health Programs for Federal Employees), as they relate to radiation control, enabling each Federal department and agency to establish an occupational safety and health program.

In essence, these suggested radiation control regulations can be used as: (1) An aid in revising current State codes, (2) an aid in developing comprehensive codes at the State level when no regulations are in force, (3) an aid to Federal installations, or (4) an aid to manufacturers to know what type of controls may exist at the State level. It is recommended that applicable Federal or State agency regulations also be consulted directly.

Review and Comments

Interested persons are invited to submit written comments and recommendations at any time regarding this document to the Dockets Management Branch (address above). Comments should be identified with the docket number found in brackets in the heading of this document. Each recommendation should be supported by appropriate rationale and background data that clearly establishes the scientific, technical, and public health bases for the recommendation. Such comments will be provided to the appropriate working groups and kept on file for consideration by those individuals given responsibility for review and development of their part of the "Suggested State Regulations for Control of Radiation."

Dated: August 31, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-21600 Filed 9-8-92; 8:45 am]

BILLING CODE 4160-01-F

Health Resources and Services Administration

Statement of Organization, Functions, and Delegations of Authority

Part H, chapter HB (Health Resources and Services Administration) of the statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (47 FR 38409-24, August 31, 1982, as amended most recently at 57 FR 32803-08, July 23, 1992) is amended to reflect title changes for three organizations with the Bureau of Primary Health Care, Health Resources and Services Administration.

Under Section HB-20, Functions, change the following organizational titles within the *Bureau of Primary Health Care (HBC):*

1. Change the organizational title of the *Division of Primary Care Services (HBC4)* to read *Division of Community and Migrant Health (HBC4);*

2. Change the organizational title of the *Division of Health Services Scholarships (HBC7)* to read *Division of Scholarships and Loan Repayments (HBC7); and*

3. Change the organizational title of the *Division of Special Populations Program Development (HBCB)* to read *Division of Programs for Special Populations (HBCB).*

All authorities continue in effect in the retitled organizations that were in existence prior to the retitling.

This retitling is effective upon date of signature.

Dated: August 31, 1992.

Robert G. Harmon,

Administrator.

[FR Doc. 92-21575 Filed 9-8-92; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting of the Sickle Cell Disease Advisory Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Sickle Cell Disease Advisory Committee, National Heart, Lung, and Blood Institute, October 16, 1992. The meeting will be held at the National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 9, C-Wing, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 9 a.m. to adjournment, to discuss recommendations on the implementation and evaluation of the Sickle Cell Disease Program. Attendance by the public will be limited to space available.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A21, Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Clarice D. Reid, Chief, Sickle Cell Disease Branch, Divison of Blood Diseases and Resources, NHLBI, Federal Building, room 508, Bethesda, Maryland 20892, (301) 496-6931, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: September 1, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-21586 Filed 9-8-92; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Meeting of the Developmental Therapeutics Contracts Review Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Developmental Therapeutics Contracts Review Committee, National Cancer Institute, National Institutes of Health, September 11, 1992, Bethesda Ramada Inn, 8400 Wisconsin Avenue, Bethesda, Maryland 20814.

This meeting will be open to the public on September 11, 1992 from 8:30 a.m. to 9:30 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public on September 11 from 9:30 a.m. to adjournment for the review, discussion, and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Office, National Cancer Institute, Building 31, room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide a summary of the meeting and a roster of committee members upon request.

Dr. Susan E. Feinman, Scientific Review Administrator, Developmental Therapeutics Contracts Review Committee, 5333 Westbard Avenue, room 809, Bethesda, Maryland 20892 (301/402-0944) will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: September 2, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-21791 Filed 9-8-92; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Environmental Health Sciences; Meeting of National Advisory Environmental Health Sciences Council

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Advisory Environmental Health Sciences Council, September 17-18, 1992, at the National Institute of Environmental Health Sciences, Building 101 Conference Room, South Campus, Research Triangle Park, North Carolina.

This meeting will be open to the public on September 17 from 9 a.m. to approximately 3 p.m. for the report of the Director, NIEHS, and for discussion of the NIEHS budget, program policies and issues, recent legislation, and other items of interest. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public on September 17, from approximately 3:00 to adjournment on September 18, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Winona Herrell, Committee Management Officer, NIEHS, Bldg. 31, rm. B1C02, NIH, Bethesda, MD 20892 (301) 496-3511, will provide summaries of the meeting and rosters of council members.

Dr. Anne Sassaman, Director, Division of Extramural Research and Training, NIEHS, P.O. Box 12233, Research Triangle Park, North Carolina 27709, (919) 541-7723, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos 93.113, Biological Response to Environmental Agents; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 93.894, Resource and Manpower Development, National Institutes of Health)

Dated: September 2, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-21790 Filed 9-8-92; 8:45 am]

BILLING CODE 4140-01-M

Social Security Administration

Privacy Act of 1974; Report of New Routine Uses

AGENCY: Social Security Administration (SSA), Department of Health and Human Services (HHS).

ACTION: New routine uses.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(11)), we are issuing public notice of our intent to establish new routine uses of information maintained in the system of records entitled "Master Representative Payee File (MRPF), HHS/SSA/ORSI, 09-60-0222." We invite public comment on this publication.

DATES: The proposed routine uses will become effective as proposed, without further notice, on October 9, 1992, unless we receive comments on or before that date which would warrant our preventing the routine uses from taking effect.

ADDRESSES: Interested individuals may comment on this publication by writing to the SSA Privacy Officer, Social Security Administration, Room 3-D-1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235. All comments received will be available for public inspection at that address.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Sailor, Division of Benefit Continuity, Office of Retirement and Survivors Insurance, Social Security Administration, 3-A-21 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone 410-965-7884.

SUPPLEMENTARY INFORMATION:

I. Discussion of Proposed Routine Uses

On April 12, 1991, we published a notice of the MRPF in the **Federal Register** (FR) (56 FR 14941, April 12, 1991). The MRPF maintains information which we use to asssist us in appointing representative payees for Social Security claimants and beneficiaries who are incapable of handling their Social Security benefits. We are proposing to revise the notice of the system to include five new statements of routine use which allow the disclosures described below. In order to establish the routine uses, SSA must publish a notice of the routine uses in the FR. These routine uses which will appear as

numbers 11 through 15 in the MRPF are as follows:

11. Information may be disclosed to contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We contemplate disclosing information under this routine use only in situations in which SSA may enter into a contractual or similar agreement to obtain assistance in accomplishing an SSA function relating to this system of records.

In the administration of SSA programs, we find that it is not always administratively feasible nor cost effective to do certain operations "in-house." In such instances, we may use the services of contractors or other Federal agencies pursuant to interagency reimbursable or nonreimbursable agreements to assist us in performing various SSA functions. This proposed routine use will permit us to disclose to contractors and other Federal agencies selected information from the MRPF about representative payees and payments to Social Security and Supplemental Security Income beneficiaries through representative payees in order to accomplish Social Security programmatic purposes. Decisions will be made during each procurement process or negotiation about the types and amount of information which must be disclosed to the contractor or Federal agency. Disclosures will be limited to the minimum information needed to complete the task.

12. Information may be disclosed to a third party such as a physician, social worker, or community service worker, who has, or is expected to have, information which is needed to evaluate one or both of the following:

a. The claimant's capability to manage or direct the management of his/her affairs.

b. Any case in which disclosure aids investigation of suspected misuse of benefits, abuse or fraud, or is necessary for program integrity, or quality appraisal activities.

We contemplate disclosing information from the MRPF under 12.a. only to the extent necessary to make decisions about the need for a representative payee. We will make disclosures of information under 12.b. only as needed to investigate reports of programmatic abuse or fraud and to otherwise ensure the integrity or improve the quality and efficiency of the representative payee selection and monitoring process.

13. Information pertaining to the identity of a payee or payee applicant, the fact of the person's application for or service as a payee, and, as necessary, the identity of the beneficiary, may be disclosed to a third party where necessary to obtain information on employment, sources of income, criminal justice records, stability of residence and other information relating to the qualifications and suitability of representative payees or representative payee applicants to serve as representative payees or their use of the benefits paid to them under section 205(j) or section 1631(a) of the Social Security Act.

We contemplate disclosing information under this routine use from the MRPF when necessary to obtain the information we need to make sound representative payee appointments and to determine whether representative payees are fulfilling their fiduciary obligations to beneficiaries and otherwise are qualified and suitable to continue serving as representative payees. Information disclosed under this provision would be limited to the identity of the payee or payee applicant, the fact of the person's application for or service as a payee, and, as necessary, the identity of the beneficiary as stated in this routine use.

Information pertaining to the address of a representative payee applicant or a selected representative payee may be disclosed to a claimant or other individual authorized to act on his/her behalf when this information is needed to pursue a claim for recovery of misapplied or misused benefits.

We contemplate disclosing information from the MRPF under this routine use only as necessary to help protect the claimant's property rights to benefits determined to have been misused or misapplied by a representative payee. Information disclosed under this provision would be limited to the current address of the representative payee applicant or selected representative payee (if such information is available in the MRPF).

15. Information may be disclosed to the Railroad Retirement Board (RRB) for the administration of RRB's representative payment program.

We contemplate disclosing information to RRB under this routine use only in situations in which a representative payee applicant has filed to serve on behalf of an RRB annuitant and there is information maintained in this system of records about the applicant's qualifications or past performance as a representative payee on behalf of Social Security Supplemental Security Income beneficiaries which should be considered by RRB in evaluating the suitability of an applicant to serve as representative payee for our RRB annuitant.

II. Compatibility of Proposed Routine Uses

We are proposing the routine uses discussed above in accordance with the Privacy Act (5 U.S.C. 552a(a)(7) and 5 U.S.C. 552a(b)(3)) and our disclosure regulation (20 CFR part 401).

The Privacy Act permits us to disclose information about individuals without their consent for routine uses where the information will be used for a purpose which is compatible with the purpose for which we collected the information. As stated in § 401.310 of our regulation (20 CFR 401.310), we consider disclosures necessary to assist in administering SSA programs and disclosures to assist in administering similar programs of other agencies to be disclosures for compatible purposes.

The proposed routine uses described in item I. above will serve purposes directly relating to SSA programs and the RRB representative payment program to which records in the MRPF relate. Thus, all of the disclosures described in the proposed routine use statements meet the criteria in the Privacy Act for routine uses.

III. Effect of the Proposed Routine Use Disclosures on Individual Rights

As discussed in items I. and II. above, the proposed routine uses will permit SSA to disclose information, as necessary, to assist in the representative payee selection and monitoring process of SSA and the selection process of RRB. All of the disclosures will meet statutory and SSA's regulatory requirements for disclosure. Thus, we do not anticipate that the disclosures would have an unwarranted effect on the privacy or other rights of individuals.

Dated: August 26, 1992.

Gwendolyn S. King,

Commissioner of Social Security.

09-60-0222

SYSTEM NAME:

Master Representative Payee File, HHS/SSA/ORSI.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

The system database will be available by direct electronic access by Social Security field offices (FO). Addresses of FOs can be found by calling the number listed in local telephone directories under "United States Department of

Health and Human Services, Social Security Administration" or under "Social Security Administration."

The database is housed at the National Computer Center, Social Security Administration, 6201 Security Boulevard, Baltimore, MD 21235.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system maintains information about persons whose certifications of payment of benefits as representative payees have been revoked or terminated on or after January 1, 1991; persons who have been convicted of a violation of section 208 or section 1632 of the Social Security Act (the Act); persons who are acting or have acted as representative payees, representative payee applicants who were not selected to serve as representative payees, and beneficiaries/applicants who are being served by representative payees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Data in this system consist of:

- Names and SSNs (or employer identification numbers (EIN)) of representative payees whose certifications of payment of benefits have been revoked or terminated on or after January 1, 1991, because of misuse of benefits under title II or title XVI of the Act;
- Names and SSNs (or EINs) of all persons convicted of a violation of section 208 or 1632 of the Act;
- Names, addresses, and SSNs (or EINs) of representative payees who are receiving benefit payments pursuant to section 205(j) or section 1631(a)(2) of the Act;
- Names, addresses, and SSNs of individuals for whom representative payees are reported to be providing representative payee services under section 205(j) or section 1631(a)(2) of the Act;
- Names, addresses, and SSNs of representative payee applicants who were not selected as representative payees;
- Names, addresses, and SSNs of persons who were terminated as representative payees for reasons other than misuse of benefits paid to them on behalf of beneficiaries/recipients;
- Information on the representative payees' relationship to the beneficiaries/recipients they serve;
- Names, addresses, and EINs of organizations authorized to charge a fee for providing representative payee services;
- Codes which indicate the relationship (other than familial) between the beneficiaries/recipients and the individuals who have custody of the beneficiaries/recipients;
- Dates and reasons for payee terminations (e.g., performance not acceptable, death of payee, beneficiary in direct payment, etc.), and revocations;
- Codes indicating whether representative payee applicants were selected or not selected;
- Dates and reasons representative payee applicants were not selected to serve as payees and dates and reasons for changes of payees (e.g., beneficiary in direct payment, etc.);
- Amount of benefits misused;
- Identification number assigned to the claim on which the misuse occurred;
- Date of the determination of misuse; and
- Information about a felony conviction reported by the representative payee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 205(a), 205(j) and 1631(a) of the Act.

PURPOSE(S):

Information maintained in this system will assist SSA in the representative payee selection process by enabling Social Security field offices to more carefully screen applicants and to determine their suitability to become representative payees. SSA also will use the data for management information and workload projection purposes and to prepare annual reports to Congress on representative payee activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed for routine uses as indicated below.

1. Information may be disclosed to the Department of Justice (DOJ), to a court or other tribunal, or to another party before such tribunal, when

(a) SSA, or any component thereof; or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity where DOJ (or SSA, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where SSA determines that the litigation is likely to affect SSA or any of its components,

Is a party to litigation or has an interest in such litigation. Disclosure will occur only if SSA determines that the use of such records before the tribunal is relevant and necessary to the litigation, would help in the effective representation of the governmental party, and, in each case, such disclosure is compatible with the purpose for which the records were collected.

2. Information pertaining to an individual may be disclosed to a congressional office in response to an inquiry from that office made at the request of the subject of the records.

3. Information may be disclosed to the General Services Administration and the National Archives and Records Administration for the purpose of conducting records management studies under 44 U.S.C. 2904 and 2906, when such disclosure is not prohibited by Federal law.

4. Information may be disclosed to the Department of Veterans Affairs (DVA) Regional Office in the Philippines for the administration of the Social Security Act in the Philippines through services and facilities of that agency.

5. Information may be disclosed to the Department of State for administration of the Social Security Act in foreign countries through services and facilities of that agency.

6. Information may be disclosed to the Department of Interior for administration of the Social Security Act in the Trust Territory of the Pacific Islands through services and facilities of that agency.

7. Information may be disclosed to the American Institute in Taiwan for administration of the Social Security Act in Taiwan through services and facilities of that agency.

8. Information may be disclosed to DOJ for:

(a) Investigating the prosecuting violations of the Act to which criminal penalties attach,

(b) Representing the Secretary, and

(c) Investigating issues of fraud or violations of civil rights by officers or employees of SSA.

9. Information about an individual may be disclosed to the Office of the President for responding to an inquiry received from that individual or from a third party acting on that individual's behalf.

10. Information may be disclosed to DVA for the shared administration of that Department's and SSA's representative payee programs.

11. Information may be disclosed to contractors and other Federal Agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We contemplate disclosing information under this routine use only in situations in which SSA may enter into a contractual or similar agreement to obtain assistance in accomplishing an SSA function relating to this system of records.

12. Information may be disclosed to a third party such as a physician, social worker, or community service worker, who has, or is expected to have, information which is needed to evaluate one or both of the following:

a. The claimant's capability to manage or direct the management of his/her affairs.

b. Any case in which disclosure aids investigation of suspected misuse of benefits, abuse or fraud, or is necessary for program integrity, or quality appraisal activities.

13. Information pertaining to the identity of a payee or payee applicant, the fact of the person's application for or service as a payee, and, as necessary, the identity of the beneficiary, may be disclosed to a third party where necessary to obtain information on employment, sources of income, criminal justice records, stability of residence and other information relating to the qualifications and suitability of representative payees or representative payee applicants to serve as representative payees or their use of the benefits paid to them under section 205(j) or section 1631(a) of the Act.

14. Information pertaining to the address of a representative payee applicant or a selected representative payee may be disclosed to a claimant or other individual authorized to act on his/her behalf when this information is needed to pursue a claim for recovery of misapplied or misused benefits.

15. Information may be disclosed to the Railroad Retirement Board (RRB) for the administration of RRB's representative payment program.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records will be stored in magnetic media (e.g., magnetic tape and disc).

RETRIEVABILITY:

Data will be retrieved from the system by the name, SSN or EIN, and the ZIP code (in a situation where the representative payee is an institution) of the representative payee, or the name or SSN of the beneficiary/recipient.

SAFEGUARDS:

Safeguards for automated data have been established in accordance with the HHS Information Resources Management Manual, Part 6, Automated Information Systems Security Program Handbook. Magnetic tapes are in secured storage areas accessible only to authorized personnel.

RETENTION AND DISPOSAL:

The magnetic media are updated periodically. Out-of-date tapes are erased.

SYSTEM MANAGER(S) AND ADDRESS:

Associated Commissioner, Office of Retirement and Survivors Insurance, 6401 Security Boulevard, Baltimore, MD 21235

NOTIFICATION PROCEDURE:

An individual can determine if this system contains data about him/her by writing to the system manager at the address shown above and providing his/her name, address and SSN or EIN. An individual requesting notification of data in person need not furnish any special documents of identity. Documents he/she would normally carry on his/her person would be sufficient (e.g., credit cards, driver's license, or voter registration card). An individual requesting notification via telephone must furnish a minimum of his/her name, SSN or EIN, date of birth, and address in order to establish identity, plus any additional information which may be specified in this section. An individual requesting notification via mail must submit sufficient evidence (i.e., the individual's notarized signature or a signed statement that he/she is the individual to whom the record pertains and that he/she understands that there are criminal penalties for making a knowing and willful request for access to records concerning another individual under false pretenses) to establish identity. These procedures are in accordance with HHS Regulations 45 CFR part 5b.

RECORD ACCESS PROCEDURES:

Same as notification procedures above. Also, a requester should reasonably identify and specify the information he/she is attempting to obtain. These procedures are in accordance with HHS Regulations 45 CFR part 5b.

CONTESTING RECORD PROCEDURES:

Same as notification procedures above. Also, an individual contesting records in the system should identify the record, specify the information he/she is contesting, state the corrective action sought, and the reasons for the correction with supporting justification showing how the record is incomplete, untimely, inaccurate, or irrelevant. These procedures are in accordance with HHS Regulations 45 CFR part 5b.

RECORD SOURCE CATEGORIES:

Data in this system will be obtained from representative payee applicants and representative payees, the HHS Office of Inspector General, and other SSA systems of records (e.g., Claims Folder System (09-60-0089), Master Beneficiary Record (09-60-0090), Supplemental Security Income Record (09-60-0103), Master Files of SSN Holders (09-60-0058), Recovery, Accounting for Overpayments (09-60-0094)).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Billing Code: 4190-29

[FR Doc. 92-21571 Filed 9-8-92; 8:45 am]

BILLING CODE 4190-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collections Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information reproduced below has been submitted to the Office of Management and Budget (OMB) for approval under the provision of the Paperwork Reduction Action (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau of Indian Affairs' Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Office and to the Office of Management and Budget, Paperwork Reduction Project (1076-0017), Washington, DC 20503, Telephone 202-395-7340.

Title: Financial Assistance and Social Services Program, 25 CFR 20.

OMB Approval Number: 1076-0017.

Abstract: These forms request financial, demographic, and employment information on clientele for the purpose of determining eligibility to receive financial assistance. These forms allow the Bureau Social Worker to determine the degree of unmet need and arrange for a monthly payment.

Bureau Form Number: 5-6601, 5-6603, 5-6604, 5-6605.

Frequency: Annually.

Description of Respondents: Individuals whose needs have not been met and some form of subsistence is required.

Estimated Completion Time: 40 minutes.

Annual Response: 234,000.

Annual Burden Hours: 39,200.

Bureau Clearance Officer: Gail Sheridan (202) 208-2721.

Dated: July 30, 1992.

Ron Eden,

Director, Office of Tribal Services.

[FR Doc. 92-21631 Filed 9-3-92; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[CA-920-4141-02; CACA 17570 and CACA 8713]

Revocation of the Brawley and the Westmorland Known Geothermal Resource Areas; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of revocation.

SUMMARY: Pursuant to the authority vested in the Secretary of the Interior by section 21(a) of the Geothermal Steam Act of 1970 (84 Stat. 1566, 1572; 30 U.S.C. 1020), and delegations of authority in 220 Departmental Manual 4.1 H, and Secretarial Orders 3071 and 3087, the following described lands in the Brawley and the Westmorland Known Geothermal Resource Areas are revoked in their entirety.

EFFECTIVE DATE: October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Tanina Scimemi, Bureau of Land Management, California State Office, Division of Mineral Resources, 2800 Cottage Way, Sacramento, California 95825, (916) 978-4735.

Brawley Known Geothermal Resource Area

San Bernardino Meridian

T. 12 S., R. 14 E.,
Secs. 27 through 29 and 31 through 34.
T. 13 S., R. 14 E.,
Secs. 2 through 30 and 33 through 35.

The area described contains 28,885 acres more or less.

Westmorland Known Geothermal Resource Area

San Bernardino Meridian

T. 13 S., R. 13 E.,
Sec. 9, E½, also described as lots 1, 2, 11 through 15, 25 through 30, E½NE¼, NE¼SE¼;
Sec. 10, all;
Sec. 11, NW¼, S½, also described as lots 3 through 7, 14 through 29, N½NW¼, NE¼SW¼, NE¼SE¼;
Sec. 14, N½, SW¼, also described as lots 1 through 16, 19 through 28, NE¼NE¼, NE¼NW¼, NE¼SW¼;
Sec. 15, all;
Sec. 16, E½, also described as lots 1, 2, 14 through 18, 27 through 31, E½NE¼, NE¼SE¼;
Sec 22, N½, also described as lots 1 through 21.

The area described contains 3,200 acres more or less. The subject lands will be made available to the first qualified applicant under the regulation appearing in 43 CFR Part 3210 beginning with the first calendar month following the date of this notice.

Dated: August 25, 1992.

Robert M. Anderson,

Deputy State Director, Mineral Resources.

[FR Doc. 92-21307 Filed 9-3-92; 8:45 am]

BILLING CODE 4310-40-M

[OR-020-00-4370-12; G2-419]

Oregon: Wild Horse Gathering Schedule; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Burns District Office: Statewide wild horse gathering schedule public meeting.

SUMMARY: In accordance with Public Law 92-195, this notice sets forth the public meeting date to discuss the use of helicopters in gathering wild horses and the proposed gathering schedule in Oregon for FY 93.

EFFECTIVE DATE: September 29, 1992, 3 p.m. to 4:30 p.m.

ADDRESSES: The meeting will take place at the BLM Burns District Office in Hines, Oregon.

FOR FURTHER INFORMATION CONTACT: Donald R. Cain, Associate District Manager, Burns District, Bureau of Land Management, HC 74-12533 Hwy. 20 West, Hines, Oregon 97738—Telephone (503) 573-5241.

SUPPLEMENTARY INFORMATION: The use of helicopters to gather wild horses throughout southeastern Oregon in Fiscal year 1993 will be discussed along with other aspects of the program and adoption process. Information concerning the gathering of all Oregon wild horse herds will be presented at the meeting. The total number of horses expected to be gathered will be between 350 and 800 depending on the availability of funds and the capability of the Burns District to process and adopt out the horses gathered.

This meeting is open to the public. Persons interested in making an oral statement at this meeting are asked to notify the District Manager, Burns District Office, HC 74-12533 Hwy. 20 West, Hines, Oregon 97738 by September 22, 1992. Written statements must be received by this date.

Summary minutes of the meeting will be available for public inspection and duplication within 30 days following the meeting.

Dated: August 24, 1992.

Donald R. Cain,

Acting District Manager.

[FR Doc. 92-21564 Filed 9-8-92; 8:45 am]

BILLING CODE 4310-84-M

[MT-060-02-4333-11]

Montana Off-Road Vehicle Designation

AGENCY: Bureau of Land Management, Lewistown District, Interior.

ACTION: Notice to limit off-road vehicle use on public lands.

SUMMARY: Notice is hereby given that effective immediately the use of off-road vehicles (ORVs) is limited on public lands within the Chain Buttes/Dunn Ridge area, in northern Petroleum County, Montana. This will be in effect during the bird and big game hunting season as established by the Montana Department of Fish, Wildlife and Parks in accordance with the authority and requirements of regulation 43 CFR 8364.1.

DATES: This designation will only be in effect during the bird and big game hunting season. The designation will terminate on December 1, 1992.

FOR FURTHER INFORMATION CONTACT: Chuck Otto, Judith Resource Area Manager, Bureau of Land Management (BLM), Airport Road, Lewistown, Montana 59457.

SUPPLEMENTARY INFORMATION: The 92,810 acre area is administered by the BLM, Judith Resource Area, Lewistown District. This designation is the result of a cooperative effort among BLM, private landowners, U.S. Fish and Wildlife Service, Montana Department of Fish, Wildlife and Parks, and Montana Department of State Lands. The purpose of the designation is to prevent damage to soil, vegetative and scenic resources, to open additional private and state lands for hunting, and to reduce landowner/recreationist conflicts so as to provide a higher quality hunt.

The off-road vehicle limitation area is located in northern Petroleum County, Montana. It includes all public lands administered by the BLM north of the Crooked Creek and Dunn Ridge roads.

Hunting within the described block will be subject to the following restrictions:

1. No motorized vehicle use is allowed on closed roads with the exclusive exception of retrieving downed big game. Big game retrieval is allowed between 10 a.m. and 3 p.m. daily on

open or closed roads. Prior to or after these hours, motorized vehicles are not permitted on closed roads or off roads. No off road vehicle use will be allowed on any lands within this block management area.

2. Camps involving motorized travel must be within 100 yards of designated routes.

3. Camping is prohibited on Montana Department of State Lands property.

4. A recreational use license is required to hunt or fish on Montana Department of State Lands property.

5. Limitations and regulations as found in 43 CFR part 8340 apply.

Dated: August 31, 1992.

David L. Mari,

District Manager.

[FR Doc. 92-21629 Filed 9-8-92; 8:45 am]

BILLING CODE 4310-DN-M

Fish and Wildlife Service

Meeting: Klamath Fishery Management Council

AGENCY: Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a) of the Federal Advisory Committee Act (5 U.S.C. app. I), this notice announces a meeting of the Klamath Fishery Management Council, established under the authority of the Klamath River Basin Fishery Resource Restoration Act (16 U.S.C. 460ss *et seq.*). The meeting is open to the public.

DATES: The Klamath Fishery Management Council will meet from 8 a.m. to 5 p.m. on Tuesday, September 29, 1992.

PLACE: The meeting will be held at the Brookings Inn, Highway 101 North, Brookings, Oregon.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006, Yreka, California 96097-1006, telephone (916) 842-5763.

SUPPLEMENTARY INFORMATION: For background information on the Management Council, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639) The Council will meet to review their final long range plan and discuss the need for a successor to the five year harvest allocation agreement. The council may adopt goals and a process to follow to begin writing a new five year agreement.

William E. Martin,

Acting Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 92-21642 Filed 9-8-92; 8:45 am]

BILLING CODE 4310-55-M

INTERSTATE COMMERCE COMMISSION

Motor Passenger Carrier or Water Carrier Finance Applications Under 49 U.S.C. 11343-11344

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties of, or acquire control of motor passenger carriers or water carriers under 49 U.S.C. 11343-11344. The applications are governed by 49 CFR part 1182, as revised in *Pur., Merger & Cont.—Motor Passenger & Water Carriers*, 5 I.C.C.2d 786 (1989). The findings for these applications are set forth at 49 CFR 1182.18. Persons wishing to oppose an application must follow the rules under 49 CFR part 1182, subpart B. If no one timely opposes the application, this publication automatically will become the final action of the Commission.

MC-F-20136, filed August 24, 1992. F. E. Kaiser—Continuance in Control—SGK, Inc., d/b/a Grayline of San Antonio. Applicant's representative: Jerry Prestridge, 500 West Sixteenth Street, Suite 101, Austin, TX 78767. F. E. Kaiser (Kaiser), a non-carrier individual, controls through stock ownership Kerrville Bus Company, Inc. (Kerrville) (MC-27530), and through stock ownership and partnership interest, Jefferson Partners, d/b/a Jefferson Lines (Jefferson) (MC-252540), motor common and contract carriers of passengers. Kaiser's control of Kerrville and Jefferson was approved in MC-F-20061. Kaiser owns all of the issued and outstanding capital stock of SGK, Inc., d/b/a Grayline of San Antonio (SGK) (MC-255435), a new carrier seeking its initial common carrier authority to transport passengers, in charter and special operations, between points in the United States. Upon issuance of authority to SGK, Kaiser will be in control of three carriers.

Decided: September 1, 1992.

By the Commission, the Motor Carrier Board.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-21664 Filed 9-8-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-25,369]

Microflite Simulation International a/k/a AAI/Microflite Simulation International Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification for Worker Adjustment Assistance on March 27, 1991 applicable to all workers of Microflite Simulation International, Binghamton, New York. The notice was published in the **Federal Register** on April 12, 1991 (56 FR 14956).

New information received from the company shows that it was purchased by the AAI Corporation and the company has the new name of AAI/Microflite Simulation International. AAI Microflite has the same workforce and produces the same products as before the purchase. The review shows that AAI Microflite meets all the requirements for a successor-in-interest firm.

The amended notice applicable to TA-W-25,369 is hereby issued as follows:

"All workers of Microflite Simulation International, also known as (a/k/a) AAI/Microflite Simulation International, Binghamton, New York who become totally or partially separated from employment on or after January 25, 1990 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC, this August 24, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-21638 Filed 9-8-92; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of August 1992.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-27,449; Mountain Fir Lumber Co., Inc. Tygh, OR

TA-W-27,250; Flour City Architectural Metals, Minneapolis, MN

TA-W-27,500; Damron Products, Butler, PA

TA-W-27,272; Canton Drop Forge, Canton, OH

TA-W-27,420; Shepard Niles, Inc., Montour Falls, NY

TA-W-27,254; Devlieg-Bullard Service Group, Muskegon Heights, MI

TA-W-27,352; The Goodyear Tire & Rubber Co., Madisonville, KY

TA-W-27,430; Pope & Talbot, Ladysmith, WI

TA-W-27,431; Aberdeen Petroleum (USA), Inc., Denver, CO

TA-W-27,423; Pirelli Armstrong Tire Corp., Des Moines, IA

TA-W-27,408; Smith International, Inc., Ponca City, OK

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-27,422; Secorp Industries, Partnership, Lafayette, LA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-27,417; Schitzer U.S., Inc., Rolla, MO

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-27,403; Pennzoil Exploration & Production Co., Houston TX

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-27,451; Phillips 66 Co., Phillips Petroleum Co., Advanced Composites Center, Bartlesville, OK

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

TA-W-27,255; Triquint Semiconductor, Inc., Packaging Group, Beaverton, OR

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

TA-W-27,377; Dresser Industries, Guiberson Div., Wichita Falls Service Center, Wichita Falls, TX

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations, of threat thereof, and to the absolute decline in sales or production.

TA-W-27,379; Dresser Industries, Guiberson Div., Manufacturing Center, Dallas, TX

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Affirmative Determinations

TA-W-27,372; Tecumseh Products Co., Peerless Gear Div., Clinton, MI

A certification was issued covering all workers separated on or after March 30, 1991.

TA-W-27,433; ASARCO, Inc., Galena Unit, Wallace, ID

A certification was issued covering all workers separated on or after June 18, 1991.

TA-W-27,442; Frontier Exploration, Inc., Englewood Co

A certification was issued covering all workers separated on or after June 10, 1991.

TA-W-27,438, TA-W-27,439; Grace Petroleum Corp., Oklahoma City, OK and Jackson, MS

A certification was issued covering all workers separated on or after June 17, 1991.

TA-W-27,408; Cluett Peabody & Co., Inc., The Boulder Ridge Dr Facility, Atlanta, GA

A certification was issued covering all workers separated on or after July 29, 1992.

TA-W-27,440; Geotrace Technologies, Inc., Denver, CO & Operating out of The Following Locations: A; Houston, TX, B; Dallas, TX,

A certification was issued covering all workers separated on or after June 19, 1991.

TA-W-26,378; Glassboro Shirt Co., Glassboro, NJ

A certification was issued covering all workers separated on or after June 3, 1991.

TA-W-26,556; Roydon Wear, Inc., Soperton, GA

A certification was issued covering all workers separated on or after July 20, 1991.

TA-W-27,434; Pittsburgh Forgings, Coraopolis, PA

A certification was issued covering all workers separated on or after June 16, 1991.

TA-W-27,354; Flournoy Drilling Co., Alice, TX

A certification was issued covering all workers separated on or after May 29, 1991.

TA-W-27,400; Ballet Makers, Inc., Fairlawn, NJ

A certification was issued covering all workers separated on or after June 4, 1991.

TA-W-27,235; United Stars Industries, Inc., Beloit, WI

A certification was issued covering all workers separated on or after April 19, 1992.

I hereby certify that the aforementioned determinations were issued during the month of August 1992. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: August 31, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-21636 Filed 9-8-92; 8:45 am]

BILLING CODE 4510-30-M

Job Training Partnership Act: Announcement of Proposed Noncompetitive Grant Award

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of intent to award a noncompetitive grant.

SUMMARY: The Employment and Training Administration (ETA) announces its intent to award a noncompetitive grant to The Institute for Workplace Learning of the American Society for Training and Development of Alexandria, Virginia for the provision of specialized services under the authority of the Job Training Partnership Act (JTPA)

DATES: It is anticipated that this grant award will be executed by September 25, 1992, and will be funded for twelve months. Submit comments by 4:45 p.m. (Eastern Time), on September 24, 1992.

ADDRESSES: Submit comments regarding this proposed assistance award to: US Department of Labor, Employment and Training Administration, room C-4305, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Willie Harris; Reference FR-DAA-004.

SUPPLEMENTAL INFORMATION: The Employment and Training Administration (ETA) announces its intent to award a noncompetitive grant to The Institute for Workplace Learning of the American Society for Training and Development. The Grantee shall extract multicultural instruments for dissemination to the public sector. The compilation of multicultural programming tools will represent the state-of-the-art in the private sector and will be complied in a practitioners toolkit. This kit will be made available to JTPA staff members throughout the nation, thus providing a valuable resource for the JTPA system, as well as, providing JTPA practitioners with information they can share with employers in need of Technical Assistance.

Funds for this activity are authorized by the Job Training Partnership Act, as amended, Title IV—Federally Administered Programs. The proposed funding is approximately $92,000 for twelve months.

Signed at Washington, DC on August 27, 1992.

James C. DeLuca,

ETA Grant Officer.

[FR Doc. 92-21637 Filed 9-8-92; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Mechanical and Structural Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Date and Time: September 17, 1992; 10 a.m. to 5 p.m. September 18, 1992; 8:30 a.m. to 5 p.m.

Place: Holiday Inn, The Governor's House, Rhode Island Avenue at 17th Street, NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Drs. John B. Scalzi and Ken P. Chong, Program Directors, Division of Mechanical and Structural Systems, room 1108, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357-9542.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Large Structural and Building Systems and Structural Systems and Construction Processes research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Reason for Late Notice: Difficulty arranging a suitable meeting time for all committee members.

Dated: September 3, 1992.

Modestine Rogers,

Acting Committee Management Officer.

[FR Doc. 92-21674 Filed 9-8-92; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Two-Year Trial Program for Conducting Open Enforcement Conferences; Availability of Toll-Free Phone Number

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement; supplement.

SUMMARY: The Nuclear Regulatory Commission (NRC) is issuing a supplement to its policy statement that establishes a two-year trial program for conducting open enforcement conferences. The purpose of this supplement is to inform the public of the toll-free phone number that may be used to get information on upcoming open enforcement conferences.

EFFECTIVE DATE: September 9, 1992.

FOR FURTHER INFORMATION CONTACT: James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (301-504-2741).

SUPPLEMENTARY INFORMATION: On July 10, 1992 (57 FR 30762), the Commission published a policy statement on the implementation of a two-year trial program to allow selected enforcement conferences to be open to public observation. The policy statement explained that the NRC would announce open enforcement conferences to the public normally at least 10 working days in advance of the enforcement conference through the following mechanisms:

(1) Notices posted in the Public Document Room;

(2) Toll-free telephone messages; and

(3) Toll-free electronic bulletin board messages.

At the time the policy statement was published, the toll-free message systems were not available and a commercial phone number was provided pending establishment of the toll-free message systems. Although the toll-free electronic bulletin board message system is still unavailable, the public may call (800) 952-9674 to obtain a recording of upcoming open enforcement conferences. The NRC will issue another **Federal Register** notice after the toll-free electronic bulletin board message system is established.

Dated at Rockville, MD, this 2d day of September 1992.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 92-21634 Filed 9-8-92; 8:45 am]

BILLING CODE 7590-01-M

Intent To Establish a Local Public Document Room in the Vicinity of Hematite, Missouri, for records pertaining to the Combustion Engineering, Inc. Uranium Fuel Facility

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of intent to establish a local public document room in the vicinity of Hematite, Missouri, for

records pertaining to the Combustion Engineering, Inc. uranium fuel facility.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) is intending to establish a local public document room (LPDR) in the vicinity of Hematite, Missouri, for records pertaining to the Combustion Engineering, Inc. uranium fuel facility.

DATES: Comment period expires October 9th, 1992. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments filed on or before this date.

ADDRESSES: Written comments may be submitted to Mr. David L. Meyer, Chief, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Jona L. Souder, LPDR Program Manager, Freedom of Information Act/ Local Public Document Room Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone 301-492-4344 or Toll-Free 1-800-638-8081.

Among the factors the NRC will consider in selecting a location for the collection are:

(1) Whether the institution is an established document repository with a history of impartially serving the public;

(2) The physical facilities available, including shelf space, patron work space, and copying and micrographic equipment;

(3) The willingness and ability of the library staff to maintain the LPDR collection and assist the public in locating records;

(4) The public accessibility of the library, including parking, ground transportation, and hours of operation, particularly evening and weekend hours;

(5) The accessibility of the library to the handicapped;

(6) The proximity of the library to the Combustion Engineering, Inc. facility located in Hematite, Missouri;

Public comments are requested on libraries in the vicinity of the Hematite, Missouri, facility that might be considered for selection as the location for this NRC local public document room collection.

Dated at Bethesda, Maryland, this 3 day of September, 1992.

For the Nuclear Regulatory Commission.

Donnie H. Grimsley,

Director, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 92-21635 Filed 9-8-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 030-22060]

Nuclear Energy Services; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that, by letter dated August 14, 1992, Ernest C. Hadley, counsel for We the People, Inc., has requested on behalf of Arnold Gundersen (Petitioner) that the Commission take "prompt and decisive" enforcement action against Nuclear Energy Services (NES): for (1) procedural and license violations, (2) harassment of Mr. Arnold Gundersen for identifying and disclosing those violations, and (3) making material misstatements in connection with the NRC's inspection into these matters. The Petitioner also requests that the Commission immediately review the status of all pending investigations and the reasons for delay in imposing any enforcement actions against NES.

As a basis for this request, the Petitioner asserts that he was terminated from his position as senior vice president with NES after asserting to his management that certain violations had occurred, including that NES had no Radiation Safety Officer, had not posted its license, and had not posted notices to inform employees of their rights. He further asserts that when the Region I inspection report was submitted to NES which erroneously found that there was no merit to his assertions, NES knew, or should have know, that the report contained material misstatements of fact and failed to notify the NRC of such misstatements in violation of 10 CFR 50.9.

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The request has been referred to the Director of Enforcement. As provided by § 2.206, appropriate action will be taken on the Petition within a reasonable time.

A copy of the Petition is available for inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland this 31st day of August 1992.

For The Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 92-21632 Filed 9-8-92; 8:45 am]

BILLING CODE 7590-01-M

Westinghouse Electric Corp.; Receipt of Application for Design Certification

Notice is hereby given that the Nuclear Regulatory Commission (the Commission) has received an application from Westinghouse Electric Corporation dated June 26, 1992, filed pursuant to section 103 of the Atomic Energy Act and 10 CFR part 52, for the standard design certification of the AP600 Standard Plant Design. A motive relating to the rulemaking pursuant to 10 CFR 52.51 for design certification, including provisions for participation of the public and other parties, will be published in the future.

The AP600 design is a 600 MWe pressurized water reactor plant design in which passive safety systems are used for the ultimate safety protection of the plant. All of the safety systems are designed to be passive, where natural forces, such as gravity, natural circulation, and stored energy (in the form of pressurized accumulators and batteries), are used as the motive forces of these systems. The AP600 has a number of unique features that distinguish it from both the current generation of LWRs and the evolutionary ALWRs. The AP600 application includes the entire power generation complex, except those elements and features considered site-specific, and is not a modular design in which major components are shared.

The application is incomplete in several important respects, and cannot, therefore, be accepted formally at this time for docketing as a rulemaking petition for design certification. However, the NRC staff plans some substantive review activities at this early stage to give Westinghouse early notice of issues and concerns. A docket number is being assigned to the application to facilitate public access to correspondence and review information. No formal review schedule has been established yet, although, assuming the missing material is supplied by December 15, 1992, and the NRC staff's review progresses favorably, the staff estimates that a final design approval for the design would be issued in June 1995.

A copy of the application is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW.,

Washington, DC. Previous correspondence on this application is filed under Project Number 676. The new docket established for this application is STN-52-003.

Dated at Rockville, Maryland this 28th day of August 1992.

For the Nuclear Regulatory Commission.

Robert C. Pierson,

Director, Standardization Project Directorate, Associate Directorate for Advanced Reactors and License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 92-21633 Filed 9-8-92; 8:45 am]

BILLING CODE 7590-01-M

THE PRESIDENTIAL COMMISSION ON THE ASSIGNMENT OF WOMEN IN THE ARMED FORCES

Meeting

SUMMARY: The Presidential Commission on the Assignment of Women in the Armed Forces will hold its next hearing September 10th through September 12th. Presentations will be made on: The 1992 Survey of Army Women; policies pertaining to the assignment of women in the military by representatives from the Air Force, Army, Navy, and Marines; American cultural values by theologians; and an initial briefing on public views about women in the military. Panels of the Commission's four Fact Finding Panels will meet to discuss women's roles in the Armed Forces.

LOCATION: Sheraton/Crystal City Hotel, Ballroom A&B, Eads Street at 18th, Arlington, Virginia 22202, (703) 486-1111.

DATES: Thursday, September 10th & Friday, September 11th, 8 a.m. to 5:30 p.m./General Session, Saturday, September 12th, 8 a.m. to 3:45 p.m./General Session, 3:45 p.m. to COB/panel meetings, (rooms to be announced).

NOTE: The next hearings of the Presidential Commission on the Assignment of Women in the Armed Forces are scheduled in Washington, DC, October 1-3, October 22-24, and November 2-3 or November 9-10. Please call the Commission office for further details.

STATUS: Open to Public.

CONTACT: Please call for more information and possible schedule changes: Contact: Magee Whelan or Kevin Kirk (202) 376-6905.

The Presidential Commission on the Assignment of Women in the Armed Forces was established by Congress in the National Defense Authorization Act of 1992 (Pub. L. 102-190). The 15-member commission shall assess the laws and policies governing the assignment of women in the military and shall make recommendations on such matters to the President by November 15, 1992.

W. S. Orr,

Staff Director.

[FR Doc. 92-21732 Filed 9-8-92; 8:45 am]

BILLING CODE 6820-CD-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) *Collection title:* Repayment of Debt (ORSP).

(2) *Form(s) submitted:* G-421f.

(3) *OMB Number:* 3220-0169.

(4) *Expiration date of current OMB Clearance:* Three years from date of OMB approval.

(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(6) *Frequency of response:* On occasion.

(7) *Respondents:* Individuals or households.

(8) *Estimated annual number of respondents:* 100.

(9) *Total annual responses:* 100.

(10) *Average time per response:* .08 hours.

(11) *Total annual reporting hours:* 8.

(12) *Collection description:* Section 2 of the Railroad Retirement Act (RRA) provides for payment of annuities to retired or disabled railroad employees, their spouses and eligible survivors. When the Railroad Retirement Board (RRB) determines that an overpayment of RRA benefits has occurred, it initiates prompt action to notify the claimant of the overpayment and to recover the amount owned the RRB.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312-751-4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611-2092 and the OMB reviewer, Laura Oliven (202-395-7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 92-21502 Filed 9-8-92; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-31131; File No. SR-NASD-92-29]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Periodic Account Statements

September 1, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 24, 1992, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change [1] as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend the Rules of Fair Practice by adding a new section to Article III requiring members to send periodic account statements at least once every quarter to customers having securities positions, funds, or any change in their account from the time the previous statement was sent. Below is the text of the proposed rule change to Article III of the Rules of Fair Practice. Proposed new language is italicized.

Rules of Fair Practice

Article III

Customer Account Statements

Sec. _____

(a) Each general securities member shall, with a frequency of not less than once every calendar quarter, send a statement of account containing a description of any securities positions,

[1] On August 6, 1992, the NASD filed Amendment No. 1 with the Commission. Amendment No. 1 reports the results of a member vote on the proposed rule change, which was published for member vote in NASD Notice to Members 92-30 (June 1992). The results of the member vote are as follows: 1827 voting in favor, 329 opposed, and 18 not voting, out of 2174 ballots received.

money balances, or account activity to each customer whose account had a security position, money balance, or account activity during the period since the last such statement was sent to the customer.

(b) For purposes of this section, the term "account activity" shall include, but not be limited to, purchases, sales, interest credits or debits, charges or credits, dividend payments, transfer activity, securities receipts or deliveries, and/or journal entries relating to securities or funds in the possession or control of the member.

(c) For purposes of this section, the term "general securities member" shall refer to any member which conducts a general securities business and is required to calculate its net capital pursuant to the provisions of SEC Rule 15c3-1(a), except for paragraphs (a)(2) and (a)(3). Notwithstanding the foregoing definition, a member which does not carry customer accounts and does not hold customer funds and securities is exempt from the provisions of this section.

(d) The Association, acting through its Operations Committee, may, pursuant to a written request for good cause shown, exempt any member from the provisions of this section.

II. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD does not currently require members to send periodic account statements to customers. SEC Rule 15c3-2 requires broker-dealers to send statements to customers every three months notifying them that the free credit balances may be used by broker-dealers or paid on demand to the customers. The requirement of Rule 15c3-2, however, only applies if a customer has a free credit balance.

The NASD is aware that some broker-dealers send only the notice required by Rule 15c3-2 of the amount of the customer's free credit balance, but do not send account statements of all securities positions, money balances, and account activity since the last statement. As a result, these customers are not advised of the current status of their accounts, regardless of whether the status of the accounts may have changed.

The NASD believes that, in the interest of customer protection, customers should be more fully informed of the status of their accounts. The NASD is proposing to require that members send periodic account statements at least once every quarter to customers having securities positions, funds, or any change in their account during the period since the previous statement was sent. The proposed rule would require that the statement include a description of all securities positions, money balances, and account activity in the account during the period.

Subsection (a) of the proposed rule would require each general securities member to send a statement of account containing a description of all account activity to each customer not less than once every quarter. The requirement may be met by any account statements showing all account activity that are sent more frequently than quarterly.

Subsection (b) of the proposed rule defines the term "account activity" to include all types of activity that may occur in a securities account with respect to "securities or funds in the possession or control of the member." Thus, this limitation exempts account activity relating to funds or securities not in control of the member, such as direct participation program ("DPP") securities where, after the initial purchase through the distributing broker-dealer, the general partner communicates directly with investors.

Subsection (c) defines the phrase "general securities member" as a member that calculates its net capital under SEC Rule 15c3-1(a), except for paragraphs (a)(2) or (a)(3)—that is, a broker-dealer required to maintain at least $25,000 in net capital. Subsection (c) further defines "general securities member" to *exclude* members who do not carry customer accounts or hold customer funds or securities. Thus, members whose business is limited to the sale of variable contract insurance products, mutual funds and unit trusts, among other products, or who do not carry accounts or hold customer funds or securities, are exempt from the provisions of the rule. The member carrying the account or holding the funds or securities for such member will be responsible for complying with the rule.

The NASD believes that customers of members conducting a limited business are adequately informed and protected under various statutory and regulatory systems. The Investment Company Act of 1940, for example, currently requires issuers of variable contracts, mutual funds, and unit investment trusts to send semi-annual statements of portfolio and financial condition to contractholders and shareholders. Also, activity such as purchase, distribution, or redemption in connection with variable contracts, mutual funds, or unit trusts usually triggers a statement to the customer from the issuer, its agent, or a member firm.

Both subsections (b) and (c) exempt members from the periodic account statements requirement if the member does not carry customer accounts or hold customer funds or securities. The NASD does not believe members, whether limited or general broker-dealers, should bear the burden of reporting information on securities or funds not in their possession—information which they may not be able to obtain or independently confirm. In the case of DPPs and similar products, when a customer purchases DPP units through a member, the funds received from the customers are forwarded to the general partner (through an escrow account), admission to the partnership is confirmed directly to the purchaser by the general partner, and all subsequent communications are usually between the general partner and the investor.

Subsection (d) of the proposed rule permits the NASD's Operations Committee to exempt any member from the provisions of the rule upon a showing of good cause. This would permit the NASD under unusual circumstances to exempt a member if application of the rule would be unnecessarily burdensome given the type of business it conducts and the nature of the accounts, securities, or funds involved, and if the goal of customer protection and information could be met under alternative arrangements.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Exchange Act,[2] which require that the rules of the Association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and in general to protect investors and the public interest. The NASD believes

[2] 15 U.S.C. 78o-3

that requiring members to send periodic account statements to customers will serve the interests of customer protection.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by September 30, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz,

Secretary.

[FR Doc. 92-21577 Filed 9-8-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31135; File No. SR-PTC-92-11]

Self-Regulatory Organizations; Filing of Proposed Rule Change by Participants Trust Company Relating to the Elimination of Pennies From the Face Amount of Certain GNMAs

September 2, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] Notice is hereby given that on August 21, 1992, Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the rule filing is to eliminate "pennies" (*i.e.*, any amount after the decimal point) from the face value of GNMA I and II securities that are carried on deposit at PTC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(a) *Purpose.* The purpose of the rule filing is to eliminate pennies from the face value of GNMA I and II securities that are carried on deposit at PTC. In addition, the trading multiple will be changed from $5,000 for GNMA I's and II's to $1.00 so that any portion of a GNMA which is a multiple of 1 will be deliverable through PTC, provided the minimum $25,000 denomination is met.

Pennies

The Truncation Program. In accordance with discussions among PTC, GNMA and the MBS Operations Committee of the Public Securities Association ("PSA"), in order to aid the efficiency in trading the GNMA securities, pennies will be eliminated on PTC files from GNMA securities issued prior to October 1, 1988. GNMA securities issued subsequent to that time were and are issued without pennies. This change makes GNMAs, for depository purposes, similar to FNMAs and Freddie Macs, which are both issued without pennies.

PTC will perform a one-time elimination of pennies on PTC's records of Participant positions, including securities position reports, Repo In, Repo Out and CLF Positions, for the portion of each GNMA pool the Participant holds which was issued prior to October 1, 1988 (the "Affected Securities"). PTC will create a "dropped penny file" which will record, by pool number and Participant, the amount of pennies which were eliminated. After the initial elimination of pennies, Participants will be unable to enter data for the Affected Securities with pennies because that data entry field will be eliminated.

The act of eliminating pennies from the records of PTC will be only a change in PTC's record description of the GNMAs it holds on deposit for its Participants. The act will have no other financial or economic impact on PTC, but will have modest financial effect on Participants over the remaining life of the Affected Securities, as hereinafter described.

The "jumbo certificate" for Affected Securities held by PTC's custodian, Chemical Bank, at the time of the pennies elimination and for any Affected Securities deposited after the conversion, will continue to reflect the pennies (*i.e.* they will reflect the original face value of those securities).

Issuers will not be eliminating pennies on their records. Accordingly, issuers will pay monthly principal and interest ("P&I") to PTC (as the registered owner through its nominee, MBSCC & Co.) on the Affected Securities based on the face amount of the GNMAs with the pennies. PTC will not, however, directly pass that portion of the P&I attributable to pennies on to Participants.

[1] 15 U.S.C. 78s(b)(1)

Financial Impact of Penny Truncation. The actual financial effect on Participants of eliminating pennies will be negligible, and well within the industry practice for reconciling *de minimis* differences in deliveries, deposits and the like. The scale and scope of the financial impact of the pennies truncation can be illustrated, making certain assumptions as follows:

—*Assumptions:*

1. All 53 PTC Participants hold positions of equal amounts of Affected Securities.

2. Such Participant positions remain constant for the 12 year (assumed) remaining time to maturity of Affected Securities.

3. PTC maintains 53 Participants for the next 12 years.

—*Illustrations:*

Total face amount of Affected Securities.	$663 billion.
Total amortized amount of Affected Securities (58.3%).	$386.5 billion.
Estimated remaining time to maturity of Affected Securities.	12 years.
Number of GNMA pools affected.	148,681 pools.
Total face amount of *pennies* on Affected Securities.	$76,000
Amortized Value of *pennies* on Affected Securities (58.3%).	$44,892
Less estimated penny recapture at pool maturity.[2].	−$3,717
Net amount of pennies truncated by PTC.	$40,975
Net amount of truncated pennies per year (net pennies divided by 12).	$3,415
Net amount of truncated pennies per Participant per year (*i.e.* net amount of truncated pennies per year divided by 53 Participants).	$64

[2] The amount of the recapture upon redemption is subtracted because when an Affected Security is redeemed, consistent with the procedures for P&I payments, the issuer will remit to PTC the redemption amount calculated on the original face amount (including pennies). PTC will not deduct any amount from the redemption value, but rather, will pass along to Participants the amount received from the issuers.

Because PTC operates on a not-for-profit basis, it will, in effect, pass along the value of the truncated pennies in the form of a rebate to Participants or, alternatively, its fee structure will reflect the value. Accordingly, the scale and scope of the economic loss to Participants, on the basis of the assumptions described above, is the loss of the use of funds by Participants.

Assumed annual rate of return for truncated pennies: 4% year

Economic Loss Per Participant Per Year: $2.56

Of course, many Participants are themselves merely custodians. Therefore, their customers, rather than PTC's Participants will bear the ultimate loss of their pro rata share of PTC's Participants' $2.56 per year loss.

With regard to securities withdrawals, since PTC's custodian, Chemical Bank, will be holding the jumbo certificate based on the original face value (with pennies) when a Participant requests a withdrawal, Chemical Bank will issue two certificates. One will be issued to the Participant (or other registered owner) in the amount requested, minus any pennies. Another certificate will be issued for the balance including pennies, to MBSCC & Co., PTC's nominee name. PTC will request that the GNMA issuers refrain from paying PTC P&I on a balance which is only comprised of pennies.

Change in Multiple

In addition to eliminating pennies, PTC also proposes to change the multiple on GNMA I and II securities from $5,000 to $1.00. Currently, the portion of a GNMA pool not divisible by $5,000 is called a "tail" and cannot be delivered through PTC. By changing the multiple to $1.00 Participants can deliver any portion of a pool, including a "tail," provided the minimum $25,000 denomination is met.

Industry Support for Pennies Program

PTC is undertaking the proposal after extensive consultation with the PSA and GNMA. In addition, the proposal has been discussed during ten separate meetings of PTC's Operations Committee, the members of which represent PTC's participating banks and dealers, and has the full support of that Committee. The change is desirable to Participants, which, through the PSA, have expressed a need for the elimination of pennies due to the administrative difficulty pennies produce in their systems. Most significantly, we have been advised that the elimination of pennies will result in cost savings to the industry (*e.g.*, the key strokes and record surveillance to account for and reconcile penny amounts). In addition, pennies create a reconciliation problem because, we understand, many banks and dealers delete pennies from their records and, therefore, may have discrepancies with the records they receive from PTC. Also, input of face values including pennies to PTC for inclusion in PTC's records are prone to error.

PTC has thoroughly tested its processing system for the proposal and the system can successfully accommodate the elimination of pennies and change in the multiple.

(b) *Statutory Basis.*

Since the proposed rule change provides for the prompt and accurate clearance and settlement of securities transactions it is consistent with section 17A of the Act and the rules and regulations thereunder applicable to PTC.

B. Self-Regulatory Organization's Statement on Burden on Competition

PTC does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

PTC has not solicited, and does not intend to solicit, any written comments on this proposed rule change. PTC has not received any unsolicited written comments from Participants or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change or,

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

PTC has requested that the Commission approve the proposed rule change on an accelerated basis in order for it to be effective October 1, 1992. PTC intends to implement the change on November 1, 1992, and must notify Participants by October 1, 1992 in order to provide them sufficient time to prepare for the change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW.,

Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of PTC. All submissions should refer to file number SR-PTC-92-11 and should be submitted by September 18, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-21580 Filed 9-8-92; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Rel. No. 18922; International Series Rel. No. 447; 812-8040]

The Fontaine Trust and Richard Fontaine Associates, Inc.; Notice of Application

September 2, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: The Fontaine Trust (the "Trust"), and Richard Fontaine Associates, Inc. (the "Adviser").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from the provisions of section 12(d)(3) and rule 12d3-1.

SUMMARY OF APPLICATION: Applicants seek a conditional order permitting each of them to acquire equity and convertible debt securities of foreign issuers that, in each of their most recent fiscal years, derived more than 15% of their gross revenue from their activities as a broker, dealer, underwriter, or investment adviser ("foreign securities companies"), provided that such investments comply with the provisions of proposed amended rule 12d3-1 under the Act.

FILING DATE: The application was filed on August 10, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 28, 1992, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 210 W. Pennsylvania Avenue, suite 240, Towson, Maryland 21204.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 272-3023, or Barry D. Miller, Senior Special Counsel, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is an open-end management investment company registered under the Act. The Trust currently consists of three series. The Adviser serves as investment adviser to each series of the Trust. Applicants request that any relief given by the Commission pursuant to this application also apply to any other registered investment companies or series thereof which in the future are advised by the Adviser or any of its affiliates.

2. Applicants wish to invest in equity and convertible debt securities of foreign securities companies. Applicants seek relief from section 12(d)(3) of the Act and rule 12d3-1 thereunder to invest in equity and convertible debt securities of foreign securities companies to the extent allowed by the proposed amendments to rule 12d3-1. See Investment Company Act Release No. 17096 (Aug. 3, 1989).

Applicants' Legal Conclusions

1. Section 12(d)(3) prohibits an investment company from acquiring any security issued by any person who is a broker, a dealer, an underwriter, or investment adviser. Rule 12d3-1 provides an exemption from section 12(d)(3) for investment companies acquiring securities of an issuer that derived more than 15% of its gross revenues in its most recent fiscal year from securities-related activities, provided the acquisitions satisfy certain conditions set forth in the rule.

2. Subparagraph (b)(4) of rule 12d3-1 provides that "any equity of the issuer * * * [must be] a 'margin security' as defined in Regulation T promulgated by the Board of Governors of the Federal Reserve System." While "margin security" status is generally available only to securities that are traded principally in the United States markets, the Board of Governors of the Federal Reserve System amended Regulation T in 1990 to include "foreign margin stock[s]." However, because the requirements for inclusion on the Board's "List of Foreign Margin Stocks" are generally more restrictive than the requirements for inclusion on its "List of Marginable OTC Stocks," securities issued by many foreign securities companies are not "foreign margin stocks," and thus are not "margin securities" under Regulation T. See 12 C.F.R. 220.2 (i) and (q)(6). Accordingly, applicants seek an exemption from the "margin security" requirements of rule 12d3-1.

3. The proposed amendments to rule 12d3-1 provide that the "margin security" requirement would be excused if the acquiring company purchases equity securities of foreign securities companies that meet criteria comparable to those applicable to equity securities of United States securities-related businesses. The criteria, as set forth in the proposed amendments, "are based particularly on the policies that underlie the requirements for inclusion on the list of over-the-counter margin stocks." See Investment Company Act Release No. 17096 (Aug. 3, 1989), 54 FR 33027 (Aug. 11, 1989).

Applicant's Condition

Applicants agree to the following condition in connection with the relief requested:

Applicants will comply with the provisions of the proposed amendments to rule 12d3-1, [Investment Company Act Release No. IC 17096 (Aug. 3, 1989); 54 FR 33027 (Aug. 11, 1989)], and as such amendments may be reproposed, adopted, or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-21579 Filed 9-8-92; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Rel. No. 18923; International Series Rel. No. 448; 812-7986]

Pioneer Fund, et al.; Application

September 2, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: Pioneer Fund, Pioneer II, Pioneer Three, Pioneer Growth Trust and Pioneer Europe Fund, and each other registered investment company for which The Pioneer Group, Inc. (the "Adviser") or any affiliate or subsidiary may in the future serve as investment adviser or manager.

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from the provisions of section 12(d)(3) and rule 12d3-1.

SUMMARY OF APPLICATION: Applicants seek a conditional order permitting them to invest in equity and convertible debt securities of foreign issuers that, in each of their most recent fiscal years, derived more than 15% of their gross revenues from their activities as a broker, dealer, underwriter, or investment adviser ("foreign securities companies"), provided that such investments comply with the provisions of proposed amended rule 12d3-1 under the Act.

FILING DATE: The application was filed on July 14, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 28, 1992, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 60 State Street, Boston, Massachusetts 92109.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 272-3023, or Barry D. Miller, Senior Special Counsel, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from SEC's Public Reference Branch.

Applicant's Representations

1. Each applicant is a Massachusetts business trust and is an open-end management investment company registered under the Act. The Adviser serves as investment adviser to each applicant.

2. Applicants with to invest in securities of foreign securities companies. Applicants seek relief from section 12(d)(3) and rule 12d3-1 to invest in securities of foreign securities companies to the extent allowed in the proposed amendments to rule 12d3-1. See Investment Company Release No. 17096 (Aug. 3, 1989), 54 FR 33027 (Aug. 11, 1989).

Applicants' Legal Conclusions

1. Section 12(d)(3) prohibits an investment company from acquiring any security issued by any person who is a broker, dealer, underwriter, or investment adviser. Rule 12d3-1 provides an exemption from section 12(d)(3) for investment companies acquiring securities of an issuer that derived more than 15% of its gross revenues in its most recent fiscal year from securities related activities, provided the acquisitions satisfy certain conditions set forth in the rule.

2. Subparagraph (b)(4) of rule 12d3-1 provides that "at the time of acquisition, any equity security of the issuer * * * [must be] a 'margin security' as defined in Regulation T promulgated by the Board of Governors of the Federal Reserve System." In 1990, the Board of Governors began to designate foreign securities as margin securities and, to date, has designed specified securities of issuers located in only two countries, the United Kingdom and Japan. Thus, "margin securities" status is, generally speaking, available only to securities traded in United States, and to a limited extent, the United Kingdom and Japanese markets. Accordingly, applicants seek an exemption from the margin security requirements of rule 12d3-1.

3. The proposed amendments to rule 12d3-1 provide that the margin security requirement would be excused if the acquiring company purchases equity securities of foreign securities companies that meet criteria comparable to those applicable to equity securities of United States securities-related businesses. The criteria, as set forth in the proposed amendments, "are based particularly on the policies that underlie the requirements for inclusion on the list of over-the-counter margin stocks." Investment Company Act Release No. 17096 (Aug. 3, 1989), 54 FR 33027 (Aug. 11, 1989).

Applicants' Condition

Applicants agree to the following condition in connection with relief requested:

Applicants will comply with the provisions of the proposed amendments to rule 12d3-1 [Investment Company Act Release No. IC 17096 (Aug. 3, 1989); 54 FR 33027 (Aug. 11, 1989)], and as such amendments may be reproposed, adopted, or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-21578 Filed 9-8-92; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Investment Advisory Council Meeting; Change of Date

Time and Date: 8:30 a.m.-5 p.m., Wednesday, September 23, 1992.

Place: The meeting will be held in the Administrator's Conference Room on the seventh floor of SBA Central Office at 409 3rd Street, SW., Washington, DC.

Purpose: The meeting is being held to discuss such matters concerning the Small Business Investment Company (SBIC) and Specialized Small Business Investment Company (SSBIC) Programs as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, contact Wm. H. Malloy III, Esq. room 6300, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416, telephone (202) 205-6510.

Dated: September 1, 1992.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 92-21648 Filed 9-8-92; 8:45 am]

BILLING CODE 8025-01-M

[Delegation of Authority No. 23-C, Revision 2]

Inspector General; Delegation of Authority and Line of Succession

Delegation of authority No. 23-C is hereby revised to effect a delegation of authority and to provide a line of succession from the Inspector General as follows:

I. Pursuant to authority vested in me by the Inspector General Act of 1978, as amended, in the event of the death,

disability, absence, resignation, or removal of the Inspector General, Small Business Administration, the officials designated below, in the order indicated, and in the absence of the specific designation of another official in writing by the Inspector General or the Acting Inspector General, are hereby authorized to and shall serve as Acting Inspector General and shall perform the duties and are delegated the full authority and power ascribed to the Inspector General by law and regulation as well as those authorities delegated to the Inspector General by the Administrator, Small Business Administration:

1. Deputy Inspector General.
2. Counsel to the Inspector General.
3. Assistant Inspector General for Auditing.
4. Assistant Inspector General for Investigations.
5. Assistant Inspector General for Management and Policy.

II. Anyone designated by the Inspector General as acting in one of the positions listed above remains in the line of succession; otherwise, the authority moves to the next position.

III. This delegation is not in derogation of any authority residing in the above officials relating to the operations of their respective programs nor does it affect the validity of any delegations currently in force and effect and not specifically cited as revoked or revised herein.

IV. The authorities delegated herein may not be redelegated.

Dated: August 28, 1992.

James F. Hoobler,

Inspector General.

[FR Doc. 92-21649 Filed 9-8-92; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

Bureau of Diplomatic Security

[Public Notice 1689]

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

SUMMARY: The Department of State is requesting approval for the Affidavit of Identifying Witness. The Affidavit is executed by an identifying witness for a person applying for a passport who is unable to properly identify himself, herself. It is used by the Department of State in making a determination of the applicant's eligibility to be documented as a citizen of the United States. It may also be used as evidence in the prosecution of any individual who makes a false statement on the passport application. The following summarizes the information collection proposal submitted to OMB:

Type of request—Existing information collection without an OMB control number.

Originating office—Bureau of Consular Affairs.

Title of information collection—Affidavit of Identifying Witness.

Frequency—On occasion.

Form No.—DSP-71.

Respondents—Persons bearing witness to a passport applicant's identity.

Estimated number of respondents—60,000.

Average hours per response—5 minutes.

Total estimated burden hours—5,000.

44 U.S.C. 3504(h) does not apply, as no rulemaking is being conducted in connection with this information collection.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents may be obtained from Gail J. Cook (202) 647-3538. Comments and questions should be directed to (OMB) Lin Liu (202) 395-7340.

Dated: August 27, 1992.

Clark M. Dittmer,

Acting Assistant Secretary for Diplomatic Security.

[FR Doc. 92-21563 Filed 9-8-92; 8:45 am]

BILLING CODE 4710-43-M

[Public Notice 1697]

The Commission on Broadcasting to the Peoples Republic of China

ACTION: Notice of meeting.

SUMMARY: The Commission will hold a Press Conference.

DATE: September 14, 1992, 2:30 p.m.

ADDRESS: The National Press Club, Zenger Room, 529 14th Street, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Marge Cook, Deputy Executive Director 703-235-9000.

Dated: September 4, 1992

Marjorie S. Cook,

Deputy Executive Director

[FR Doc. 92-21826 Filed 9-8-92; 8:45 am]

BILLING CODE 4710-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Rotorcraft Subcommittee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Rotorcraft Subcommittee of the Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on September 23, 1992, at 9 a.m. Arrange for oral presentations by September 14, 1992.

ADDRESSES: The meeting will be held in the Conference Room, Helicopter Association International, 3d floor, 1619 Duke Street, Alexandria, VA 22314-3406.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Ball, Aircraft Certification Service (AIR-1), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-8325.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. II), notice is hereby given of a meeting of the Rotorcraft Subcommittee to be held on September 23, 1992, in the Conference Room, Helicopter Association International, 3d floor, 1619 Duke Street, Alexandria VA 22314-3406. The agenda will include:

- Report from the External Load Working Group.
- Report from the Occupant Restraint Working Group.
- Discussion of future activities.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by September 14, 1992, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 16 copies to the Executive Director, or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading "**FOR FURTHER INFORMATION CONTACT**."

Issued in Washington, DC, on August 31, 1992.

William J. Sullivan,

Executive Director, Rotorcraft Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 92-21659 Filed 9-8-92; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Morton County, North Dakota

AGENCY: Federal Highway Administration, (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Morton County, North Dakota.

FOR FURTHER INFORMATION CONTACT: George A. Jensen, Division Administrator, Federal Highway Administration, 1471 Interstate Loop, Bismarck, ND 58501. Telephone number is (701) 250-4204 (FTS 783-4204).

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the North Dakota Department of Transportation, will prepare an Environmental Impact Statement (EIS) on a proposal for improvements to ND Highway 1806. The proposed improvement would involve reconstruction of the existing highway from the Heart River Bridge, which is located at the south edge of the city of Mandan, southerly for about 2.2 miles. At that point a new roadway will be constructed that passes around the west side of Fort Lincoln State Park and will connect back to the existing highway just south of the park. The existing highway passes through Fort Lincoln State Park. The entire project is approximately 8 miles long.

Improvements to the corridor are considered necessary to eliminate existing geometric deficiencies and provide for the existing and projected traffic demand. Several alternate routes are under consideration for locating the highway around Fort Lincoln State Park. The "No Action" alternate is also under consideration.

Letters soliciting views and comments on the proposed project were sent to various federal, state, and local agencies. The project has been discussed at local meetings. The Draft EIS will be available for public and agency review and comment. A public hearing will be held to discuss alternates and impacts of the proposed action. Public notice will be given for the time and place of the public hearing. No formal scoping meeting will be held.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

George A. Jensen,

Division Administrator, Federal Highway Administration, Bismarck.

[FR Doc. 92-21561 Filed 9-8-92; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of 49 CFR 236

Pursuant to 49 CFR part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

Block Signal Application (BS-AP)—No. 3186

Applicants: National Railroad Passenger Corporation, Mr. P. A. Cannito, Vice President—Engineering, 30th and Market Streets, Philadelphia, Pennsylvania 19104.

New Orleans Union Passenger Terminal, Mr. G. E. Ellis, Chief Engineer, 1001 Loyola Avenue, New Orleans, Louisiana 70113.

The National Railroad Passenger Corporation and New Orleans Union Passenger Terminal jointly seek approval of the following proposed signal changes within the New Orleans Union Passenger Terminal area, near New Orleans, Louisiana:

1. The discontinuance and removal of KCS Junction Interlocking, Milepost 3.0, consisting of the removal of controlled signals 166 and 172, the conversion of power-operated switch 171 to hand operation equipped with an electric lock, and the conversion of controlled signal 174 to an inoperative approach signal;

2. The discontinuance and removal of South Wye Junction Interlocking, milepost 1.2, consisting of the removal of signals 198, 200, and 202 and the conversion of power-operated crossover 197 and power-operated switch 199 to hand operation;

3. The discontinuance and removal of signals 204, 206, and 208 between South Wye Junction, milepost 1.2 and Earhart Junction, milepost 1.6 and the installation of a "stop" board just south of Earhart Junction; and

4. The Conversion of the method of operation on the associated main tracks from Interlocking Rules to Norac Rule 261 and Automatic Block Signal Rules.

The reason given for the proposed changes is the installation of electronic track circuits associated with pole line elimination and the reduced traffic through the area.

BS-AP—No. 3187

Applicant: Burlington Northern Railroad Company, Mr. W. G. Peterson, Chief Engineer—Control Systems, 9401 Indian Creek Parkway, P.O. Box 29136, Overland Park, Kansas 66201-9136.

The Burlington Northern Railroad Company seeks approval of the following proposed reduction of the limits of the traffic control system (TCS), on the Nebraska Division, near Lincoln, Nebraska:

1. The conversion of the TCS to interlocking limits on the single main track between Hall Tower Interlocking Wye Switch, milepost 62.67 and CP Lancaster, milepost 60.36, on the First Subdivision;

2. The conversion of the TCS to interlocking limits on the two main tracks between Baird Interlocking, milespost 58.88 and 33rd Street, milepost 56.80, on the Third Subdivision; and

3. The conversion of the TCS to interlocking limits on the two main tracks between CP West Cushman, milepost 4.55 and CP Plamor, milepost 6.0, on the Second Subdivision.

The reason given for the proposed change is to reduce the workload of the dispatchers/control operators, relieving them of the responsibility for switching movements.

BS-AP—3188

Applicant: Burlington Northern Railroad Company, Mr. W. G. Peterson, Chief Engineer—Control Systems, 9401 Indian Creek Parkway, P.O. Box 29136, Overland Park, Kansas 66201-9136.

The Burlington Northern Railroad Company seeks approval of the proposed modification of the traffic control system, on the single main track, between Southwest Plains, Missouri,

milepost 316.0 and Thayer, Missouri, milepost 338.0, on the Springfield Division, Fourth Subdivision; consisting of the discontinuance and removal of 8 automatic signals and the installation of 12 automatic signals.

The reason given for the proposed changes is to equalize track circuit lengths in connection with the installation of coded track circuits.

BS–AP—No. 3189

Applicant: Burlington Northern Railroad Company, Mr. W. G. Peterson, Chief Engineer—Control Systems, 9401 Indian Creek Parkway, P.O. Box 29136, Overland Park, Kansas 66201–9136.

The Burlington Northern Railroad Company seeks approval of the proposed modification of the traffic control system, on the single main track, between West Inland, milepost 148.0 and East Brick Yard Wye, milepost 154.0, near Hastings, Nebraska, on the Springfield Division, Fourth Subdivision; consisting of the discontinuance and removal of the two automatic signals and the installation of four automatic signals.

The reason given for the proposed changes is to equalize track circuit lengths in connection with the installation of coded track circuits.

BS–AP—No. 3190

Applicant: Burlington Northern Railroad Company, Mr. W. G. Peterson, Chief Engineer—Control Systems, 9401 Indian Creek Parkway, P.O. Box 29136, Overland Park, Kansas 66201–9136.

The Burlington Northern Railroad Company seeks approval of the proposed modification of the traffic control system, on the single main track, between South Henrietta, Oklahoma, milepost 512.0, on the Ft. Worth Division, Fourth Subdivision; consisting of the discontinuance and removal of 14 automatic signals and the installation of 16 automatic signals.

The reason given for the proposed changes is to equalize track circuit lengths in connection with the installation of coded track circuits.

BS–AP—No. 3191

Applicants: Burlington Northern Railroad Company, Mr. W. G. Peterson, Chief Engineer—Control Systems, 9401 Indian Creek Parkway, P.O. Box 29136, Overland Park, Kansas 66201–9136.

Mr. G. M. Short, Chief Engineer Signals, Soo Line Railroad Company, Soo Line Building, Box 530, Minneapolis, Minnesota 55440.

The Burlington Northern Railroad Company (BN) and the Soo Line Railroad Company jointly seek approval of the proposed discontinuance and removal of the automatic interlocking near Minneapolis, Minnesota, milepost 0.9, on BN's Dakota Division, 15th Subdivision, where the BN single main track crosses at grade a single main of the Soo Line. The proposed changes consist of the removal of four interlocking signals and two approach signals, and the installation of gates with stop signs normally lined and locked across the Soo Line track.

The reason given for the proposed changes is that reduced traffic patterns do not justify high cost to maintain an aging signal system.

BS–AP—No. 3192

Applicant: Southern Pacific Transportation Company, Mr. J. A. Turner, Engineer—Signals, Southern Pacific Building, One Market Plaza, San Francisco, California 94105.

The Southern Pacific Transportation Company seeks approval of the proposed modification of the automatic block signal system on the two main tracks between milepost C–765.7 and milepost C–767.9, on the Oregon Division, Brooklyn District, near Brooklyn, Oregon; consisting of the discontinuance and removal of the automatic block signal system on main track No. 1 and operate the track under yard limit rules.

The reason given for the proposed changes is that the traffic no longer requires the signal system for present day operations.

BS–AP—No. 3193

Applicant: Burlington Northern Railroad Company, Mr. W. G. Peterson, Chief Engineer—Control Systems, 9401 Indian Creek Parkway, P.O. Box 29136, Overland Park, Kansas 66201–9136.

The Burlington Northern Railroad Company seeks approval of the proposed modification of the traffic control system, on the two main tracks, between Kewanee, Illinois, milepost 131.1 and Galva, Illinois, milepost 139.3, on the Galesburg Division, Fourth Subdivision; consisting of the discontinuance and removal cf four automatic signals and the installation of eight automatic signals.

The reason given for the proposed changes is to equalize track circuit lengths in connection with the installation of coded track circuits.

BS–AP—No. 3194

Applicant: Burlington Northern Railroad Company, Mr. W.G. Peterson, Chief Engineer—Control Systems, 9401 Indian Creek Parkway, P.O. Box 29136, Overland Park, Kansas 66201–9136.

The Burlington Northern Railroad Company seeks approval of the proposed modification of the traffic control system, on the single main track, between Mark, Missouri, milepost 134.1 and NS Crossing, milepost 120.8, on the Galesburg Division, Eighth Subdivision; consisting of the relocation of four automatic signals.

The reason given for the proposed changes is to equalize track circuit lengths in connection with the installation of coded track circuits.

BS–AP—No. 3195

Applicant: Consolidated Rail Corporation, Mr. J.F. Noffsinger, Chief Engineer—C&S, 15 North 32nd Street, room 1215, Philadelphia, Pennsylvania 19104–2849.

Consolidated Rail Corporation seeks approval of the proposed discontinuance and removal of "CP 237" Interlocking, milepost 237.7, at Utica, New York, on the Albany Division, Chicago Line, consisting of the discontinuance and removal of six controlled signals and the conversion of the remaining power-operated switch to hand operation equipped with an electric lock.

The reason given for the proposed changes is to retire facilities no longer required for present operations.

BS–AP—No. 3196

Applicant: Arkansas and Missouri Railroad Company, Mr. G.B. McCready, Vice President and General Manager, 107 North Commercial, Springdale, Arkansas 72764.

The Arkansas and Missouri Railroad Company seeks approval of the proposed discontinuance and removal of block signals 3749 and 3756 and associated inoperative approach signals, near Winslow, Arkansas, milepost 375.6 on the First Subdivision.

The reason given for the proposed changes is to reduce operative expenses.

Rules Standards and Instructions Application (RS&I–AP)—No. 1083 (Filed concurrently with BS–AP—No. 3187)

Applicant: Burlington Northern Railroad Company, Mr. W.G. Peterson, Chief Engineer—Control Systems, 9401 Indian Creek Parkway, P.O. Box 29136, Overland Park, Kansas 66201–9136.

The Burlington Northern Railroad Company seeks relief from §§ 236.301 and 236.314 of the Rules, Standards, and Instructions (49 CFR, part 236) in connection with the proposed changes in BS–AP—No. 3187 to the extent that;

1. Signals not be required to govern train movements over each hand-operated switch located at milepost 61.02 and milepost 60.41, within

proposed interlocking limits, on the single main track, Nebraska Division, First Subdivision, near Lincoln, Nebraska;

2. Derails not be provided at the clearance point on each hand-operated electrically locked switch located at milepost 57.31 and milepost 58.30, within proposed interlocking limits, on the two main tracks, Nebraska Division, Third Subdivision, near Lincoln, Nebraska; and

3. Operator control not be required for the electrically locked hand-operated switches, located at milepost 57.31 and milepost 58.30, within proposed interlocking limits, on the two main tracks, Nebraska Division, Third Subdivision, near Lincoln, Nebraska.

The applicant's justification for relief is the proposed changes sought in BS-AP—No. 3187.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the protestant in the proceeding. The original and two copies of the protest shall be filed with the Associate Administrator for Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590 within 45 calendar days of the date of issuance of this notice. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on September 2, 1992.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 92-21660 Filed 9-8-92; 8:45 am]

BILLING CODE 4910-01-M

Research and Special Programs Administration

[Docket Nos. IRA-40B, IRA-45, IRA-46 & IRA-49]

Administrator's Action Dismissing Appeals for Mootness

IR-23(A): City of New York, Appeal of Inconsistency Ruling IR-23 on Regulations Governing Routing and Time Restrictions on Transportation of Hazardous Cargo Through the City of New York (Docket No. IRA-40B)

IR-28(A): City of San Jose, CA, Appeal of Inconsistency Ruling IR-28 on Restrictions for Storage of Hazardous Materials (Docket No. IRA-45)

IR-31(A): City of Louisiana and Union Pacific Railroad Company Appeals of IR-31 on Louisiana Statutes and Regulations for Rail Transportation of Hazardous Materials (Docket No. IRA-49)

IR-32(A): Chemical Waste Transportation Institute, Appeal of IR-32 on City of Montevallo, Al, Requirements for Transportation of Hazardous Waste (Docket No. IRA-46)

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Administrator's Dismissal of Appeals from inconsistency Rulings (IR) Nos. 23, 28, 31 and 32.

APPLICABLE FEDERAL REGULATIONS: Hazardous Materials Transportation Act (HMTA), 49 App U.S.C. 1801 *et seq.*, and the Hazardous Materials Regulations (HMR), 49 CFR Parts 171-180, issued thereunder.

SUMMARY: The Administrator of the Research and Special Programs Administration (RSPA) of the U.S. Department of Transportation (DOT) is dismissing, on the ground of mootness, the appeals from four inconsistency rulings issued by RSPA's Director of the Office of hazardous Materials Transportation (OHMT). (The title of Director of OHMT has been changed to Associate Administrator for Hazardous Materials Safety.) These inconsistency rulings were issued, and the appeals from those rulings filed, prior to the enactment of the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA), which amended the preemption provisions of the HMTA, including the criteria for preemption. The regulations implementing the HMTUSA amendments also have eliminated the appeal from the decision of OHMT to the RSPA Administrator.

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of the Chief Counsel, Research & Special Programs Administration, Department of Transportation, Washington, DC 20590-0001 (Tel. No. 202-366-4400).

I. General Authority and Preemption Under the HMTA

The HMTA was enacted in 1975 to give the Department of Transportation greater authority "to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce." 49 App. U.S.C. 1801. It replaced a patchwork of Federal, State and local laws. The HMR were originally promulgated under the Explosives and Other Dangerous Articles Act, 18 U.S.C. 831-835, which was repealed in 1979 (*see* Pub. L. 96-129, November 30, 1979). The HMR were reissued, and subsequent revisions have been made, pursuant to the HMTA's authority for the Secretary of Transportation to issue regulations for the safe transportation of hazardous materials. HMTA, Pub. L. 93-633 105(a), 88 Stat. 2157 (1975) (amended 1990, *see* 49 App. U.S.C. 1804(a)(1)).

As enacted in 1975, the HMTA preempted "any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement set forth in [the HMTA], or in a regulation issued under [HMTA]." Pub. L. 93-633 112(a), 88 Stat. 2161 (1975) (amended 1990, *see* 49 App. U.S.C. 1811(a)). This provision was intended by Congress "to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation." S. Rep. No. 1192, 93rd Cong., 2d Sess. 37 (1974), as quoted in Inconsistency Ruling No. 2 (IR-2) (State of Rhode Island Rules and Regulations Governing the Transportation of Liquefied Natural Gas and Liquefied Propane Gas, etc.), 44 FR 75566, 75567 (Dec. 20, 1979).

The HMTA also authorized the Secretary of Transportation to determine that a State or local requirement was not preempted by the HMTA and the HMR, upon finding "that such requirement (1) affords an equal or greater level of protection to the public than is afforded by the requirements of this chapter or of regulations issued under this chapter and (2) does not unreasonably burden commerce." HMTA, Pub. L. 93-633 112(b), 88 Stat. 2161 (1975) (amended 1990, *see* 49 App. U.S.C. 1811(d)).

In 49 CFR part 107, subpart C, the Materials Transportation Board (RSPA's predecessor agency) "published procedures that implement the preemption language of the HMTA by providing for the issuance of inconsistency rulings." IR-2, 44 FR at 75567. Such inconsistency rulings, while advisory in nature, were "an alternative to litigation for a determination of the relationship of Federal and State or local relationships," and also a possible "basis for an application . . . [for] a waiver of preemption pursuant to section 112(b) of the HMTA." *Id.* RSPA's procedures for issuing inconsistency rulings incorporated the following criteria for determining whether a State or local requirement was consistent with, and thus not preempted by, the HMTA:

(1) Whether compliance with both the State or political subdivision requirement and the Act or the

regulations issued under the Act is possible; and

(2) The extent to which the State or political subdivision requirement is an obstacle to the accomplishment and execution of the Act and the regulations issued under the Act.

41 FR 38167, 38171 (Sept. 9, 1976), 49 CFR 107.209(c) (Oct. 1, 1990 ed.) These "dual compliance" and "obstacle" criteria, respectively, are based on U.S. Supreme Court decisions on preemption. *Hines* v. *Davidowitz*, 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132 (1963); *Ray* v. *Atlantic Richfield, Inc.*, 435 U.S. 151 (1978). In 1990, the preemption provisions of the HMTA were amended by HMTUSA, and now:

—set forth in the statute the "dual compliance" and "obstacle" criteria which RSPA had applied in issuing 32 inconsistency rulings between 1978 and 1990, 49 App. U.S.C. 1811(a);

—include as an additional preemption criterion that any State, local or Indian tribe requirement concerning five "covered subjects" is preempted unless it "is substantively the same" of the HMTA or the HMR, 49 app. U.S.C. 1804(a)(4);

—authorize States and Indian tribes to "establish, maintain, and enforce" highway routing requirements applicable to the transportation of hazardous materials, in accordance with procedural and substantive standards to be established by the Secretary of Transportation, and provide that two years after the issuance of such Federal standards any State or Indian tribe highway routing requirement not in accordance with those standards is preempted, 49 app. U.S.C. 1804(b);

—replace RSPA's inconsistency ruling process with explicit authority for the Secretary of Transportation to make administrative determinations whether State, local or Indian tribe requirements are preempted by the HMTA and the HMR, 49 app. U.S.C. 1811(c)(1);

—continue, but make discretionary, the authority of the Secretary of Transportation to waive preemption of State, local or Indian tribe requirements, if the same findings previously applicable to findings of non-preemption are made, 49 app. U.S.C. 1811(d); and

—provide that such administrative decisions on preemption and waiver of preemption are judicially reviewable, 49 app. U.S.C. 1811(e).

The Secretary of Transportation has delegated to RSPA the authority to issue preemption determinations and waivers of preemption under the HMTA, except for those concerning highway routing which were delegated to the Federal Highway Administration (FHWA). 56 FR 31343 (July 10, 1991).

RSPA has revised its procedures to implement the HMTUSA amendments to the HMTA preemption provisions. See 56 FR 8616 (February 28, 1991), 56 FR 15510 (April 17, 1991), and 57 FR 20424 (May 13, 1992). In those revisions, RSPA: (1) Replaced the procedures for an inconsistency ruling with procedures for a "preemption determination," 94 CFR 107.203—107.211, 107.227 (2) defined "substantively the same" to mean "that the non-Federal requirement conforms in every significant respect to the Federal requirement," 49 CFR 107.202, and (3) eliminated the administrative appeal within RSPA of decisions on preemption and waiver of preemption, but provided a more limited petition for consideration. 49 CFR 107.211.

RSPA has also indicated that "[a]s under the previous inconsistency ruling process, only the question of statutory preemption under the HMTA will be considered under the preemption determination process." 56 FR at 8618. Other reasons for preemption, such as another Federal statute, State law, and the Commerce Clause of the Constitution, will not be examined. However, it may be necessary to examine other statutes when it is claimed that a particular state, local or Indian tribe requirement is "otherwise authorized by federal law, . . ." 49 App. U.S.C. 1804(a)(4)(A), 1811(a).

In making decisions on preemption and waiver of preemption under HMTA, as in issuing inconsistency rulings, RSPA will be guided by the principles and policy set forth in Executive Order No. 12,612, entitled "Federalism" (52 FR 41685, Oct. 30, 1987). Section 4(a) of that Executive Order authorizes preemption of state laws only when a Federal statute contains an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, or the exercise of State authority directly conflicts with the exercise of Federal authority. The HMTA contains an express preemption provision, which RSPA has implemented through regulations and applied in the 32 inconsistency rulings issued between 1978 and 1990.

II. The Four Inconsistency Rulings

On the effective date of the HMTUSA amendments to the HMTA, appeals were pending from four inconsistency rulings issued by OHMT. Those rulings and the appeals therefrom are summarized here.

A. IR-23: New York City—Hazardous Cargo Through Traffic

In April 1987, National Tank Truck Carriers, Inc. (NTTC) and American Trucking Associations, Inc. (ATA) applied for an administrative ruling to determine whether certain New York City regulations were inconsistent with the HMTA and the HMR, and therefore preempted by the HMTA. Such regulations included the Fire Department Regulations for the Transportation of Hazardous Cargo Through the City of New York by Motor Vehicle.

In IR-23 (53 FR 16840, May 11, 1988), OHMT found six provisions of New York City's through traffic regulations inconsistent with the HMTA and the HMR, and preempted by the HMTA. The provisions were:

(1) The inclusion in the regulations of traffic movements "passing through the City without pickup or delivery and to deliveries to piers, airports and shipping terminals out of the City." Section II.B.

(2) The requirement for specific Fire Department authorization "to enter or pass through New York City" for trucks carrying materials which are "prohibited by City, State, Federal law or regulation" and then only when "no practicable alternative route . . . exists, or that critical emergency requires delivery in the City." Section II.C.

(3) The exemption from these regulations for trucks which meet separate permit requirements for pickups and deliveries in New York City. Section II.D.

(4) The time restrictions which prohibit through traffic during rush hours, defined as 7:00–9:00 a.m. and 4:00–6:00 p.m., Monday through Friday (6:00–10:00 a.m. and 3:00–7:00 p.m. for trucks carrying explosives). Section III.

(5) The requirement that trucks follow 24 specified routing patterns (primarily interstate highways) through New York City, or from points outside New York City to piers, airports and shipping terminals (or the reverse). Section IV.

(6) The prohibition against through traffic stopping for fuel or any other reason within New York City, "except as required by traffic." Section V.D.

RSPA found consistent with the HMTA and the HMR, and not preempted, Section V.F., which requires trucks carrying hazardous cargo through New York City to avoid congested areas so far as possible and to use highway exits as close as possible to the truck's final destination.

New York City appealed OHMT's ruling in IR-23 to the RSPA Administrator. On August 23, 1988,

RSPA published a public notice and invitation to comment on the appeal. 53 FR 32184. In response, comments in opposition to the appeal were submitted jointly by NTTC, ATA, National Paint & Coatings Association, Inc., and National Private Truck Council. Rebuttal comments were submitted by New York City.

B. IR-28: San Jose, CA—Storage of Hazardous Materials

In September 1988, Yellow Freight Systems, Inc. (Yellow Freight) applied for an administrative ruling to determine whether San Jose, California's Hazardous Materials Storage Ordinance (HMSO), contained in chapter 17.68 of the San Jose Municipal Code, was inconsistent with the HMTA and the HMR, and therefore preempted by the HMTA. Under the HMSO, the storage of hazardous materials within the City of San Jose is prohibited without a permit. To obtain a permit, one must submit and receive approval of a Hazardous Materials Management Plan and pay an annual fee.

The ruling in IR-28 (55 FR 8884, March 8, 1990) addressed the San Jose HMSO only as it applied to activities involving the transportation of hazardous materials, including the loading, unloading and storage incidental to that transportation. As limited to that context, OHMT found seven parts of chapter 17.68 of the San Jose Municipal Code inconsistent with the HMTA and the HMR, and therefore preempted by the HMTA:

(1) The definitions of "hazardous material" in sections 17.68.040D and 17.68.100;

(2) The requirement to obtain a permit in section 17.68.150 and part 8 and related documentation requirements throughout chapter 17.68;

(3) All other information and documentation requirements, including those relating to emergency response information, throughout chapter 17.68;

(4) The hazardous materials storage requirements of section 17.68.160;

(5) The hazardous materials loading and unloading requirements of section 17.68.210;

(6) The incident reporting requirements of section 17.68.450, insofar as they apply to incidents involving irradiated reactor fuel; and

(7) The civil penalty provisions of section 17.68.1050, insofar as they apply to inconsistent provisions of chapter 17.68.

RSPA found consistent with the HMTA and the HMR, and not preempted, the incident reporting requirements of section 17.68.450, except as they apply to incidents involving irradiated nuclear fuel, and the civil penalty provisions of section 17.68.1050, insofar as they apply to consistent provisions of chapter 17.68.

San Jose appealed OHMT's ruling in IR-28 to the RSPA administrator. On June 5, 1990, RSPA published a public notice and invitation to comment on the appeal. 55 FR 22986. In response, comments in opposition to the City's appeal were submitted by Yellow Freight, ATA, Hazardous Materials Advisory Council (HMAC), National Small Shipments Traffic Conference, Inc., Health and Personal Care Distribution Conference, Inc., and National Motor Freight Traffic Association, Inc. A rebuttal comment was submitted by San Jose.

C. IR-31: Louisiana—Hazardous Materials by Rail

In September 1989, the State of Louisiana applied to RSPA for an administrative ruling that La. Rev. Stat. 32:1501-1520 and the regulations thereunder [La. Admin. Code, Title 33, Part V, Sections 10501-10505, 10901-10905) are consistent with the HMTA and the HMR, and therefore not preempted by the HMTA. In its application, Louisiana stated that it had simply adopted "in toto the provisions of 49 Code of Federal Regulations, parts 171-179 as they pertain to rail carriers and shippers of hazardous materials under the" HMTA.

In IR-31 (55 FR 25572, June 21, 1990), OHMT examined only questions of preemption under the HMTA and did not address the issues of whether the Louisiana statutes and regulations are preempted under the Federal Railroad Safety Act (FRSA), 45 U.S.C. § 421 *et seq.*, the Motor Carrier Safety Act, 49 U.S.C. *et seq.*, or other federal statutes. OHMT determined that La. Rev. Stat. 32:1501-1520 and the regulations thereunder are consistent with the HMTA and the HMR, except for the following provisions which were found to be inconsistent and preempted to the extent indicated.

(1) La. Rev. Stat. 32:1502(5)(a) and (8), insofar as they authorize the designation as hazardous materials of any materials other than those so designated in the HMR;

(2) La. Rev. Stat. 32:1502(5)(b), to the extent it defines as "explosives" any material not so defined in the HMR;

(3) La. Admin. Code, Title 33 §§ 10501(c) and 10901(c), containing definitions of "train";

(4) La. Rev. Stat. 32:1503, imposing hazardous transportation insurance requirements;

(5) La. Rev. Stat. 32:1510, requiring written incident/accident reports;

(6) La. Rev. Stat. 32:1512-1514, insofar as those penalty provisions relate to the enforcement of inconsistent substantive requirements;

(7) La. Rev. Stat. 32:1512, insofar as it imposes civil penalties for other than "knowing" violations; and

(8) La. Rev. Stat. 32:1504B, 32:1505, 32:1508, and 32:1509A(3), insofar as those inspection and enforcement provisions relate to inconsistent substantive requirements.

The State of Louisiana appealed three of OHMT's findings in IR-31, concerning the designation of hazardous materials, the definition of "explosive," and the requirement of written incident/accident reports (Nos. 1, 2 and 5 in the list above). Union Pacific Railroad Company (Union Pacific) appealed the refusal of OHMT to consider the preemption provision in the FRSA and two parts of IR-31 which found consistent a requirement for State licensing of locomotive engineers domiciled in the State and authorized State enforcement officials to stop and inspect any transport vehicle, including trains.

On September 6, 1990, RSPA published a public notice and invitation to comment on the appeals by the State of Louisiana and Union Pacific. 55 FR 36735. In response, comments on the appeals were submitted by Union Pacific, Norfolk Southern Corporation, and the Association of American Railroads.

D. IR-32: Montevallo, AL—Hazardous Waste Shipments

In January 1989, Chemical Waste Transportation Council (CWTC) applied for an administrative ruling to determine whether Sections 7-40 through 7-50 of the City of Montevallo, Albama code, concerning the transportation of hazardous waste, are inconsistent with the HMTA and the HMR, and therefore preempted by the HMTA. In IR-32 (55 FR 367336, September 6, 1990), OHMT found that the following provisions are inconsistent with the HMTA and the HMR, and therefore preempted by the HMTA, as those provisions applied to the transportation of hazardous materials, including the loading, unloading and storage incidental to transportation:

(1) The definition of hazardous waste in section 7-41;

(2) The routing requirements in section 7-42;

(3) The time restrictions in section 7-45;

(4) The weather-related restrictions in section 7-46(a) and (b);

(5) The citizens band radio requirement in section 7–45(d) as it relates to radioactive materials;

(6) The prenotification requirements in section 7–47(a);

(7) The accident reporting requirement in section 7–48(b) as it relates to irradiated reactor fuel;

(8) The liability insurance requirement in section 7–48(c); and

(9) The section 7–49 prohibition on storage of hazardous waste as it relates to storage of hazardous waste incidental to transportation.

RSPA also found several requirements of the Montevallo City Code consistent with the HMTA and the HMR, and not preempted, on the following subject: (1) Speed limits, Sec. 7–43; (2) separation distance, Sec. 7–44; (3) headlights, Sec. 7–46(c); (4) citizens band radios, except as related to radioactive materials, Sec. 7–46(d); (5) placarding, Sec. 7–47(b); (6) manifest in possession of driver, Sec. 7–47(a); and (7) accident reporting, except as related to irradiated reactor fuel, Sec. 7–48(b).

III. Dismissal of Appeals on Grounds of Mootness

While RSPA's inconsistency rulings in these four proceedings set forth RSPA's opinions at the time, as to the consistency or inconsistency with the HMTA and the HMR of State and local regulations, the statute and regulations underlying these rulings have changed significantly. As outlined in Part I, above, the HMTA now expressly preempts all State and local requirements in five "covered subjects," which are not "substantively the same" as Federal requirements. Regulations implementing the 1990 amendments to the HMTA (a) define "substantively the same," (b) delegate to FHWA, rather than RSPA, the authority to decide preemption issues involving State and local routing requirements; and (c) no longer provide for an appeal within RSPA from a decision on inconsistency or preemption by OHMT (now the Associate Administrator for Hazardous Materials Safety).

In order to consider these appeals, RSPA would be forced to assume the fiction that these changes had not occurred, or somehow adapt the statutory and regulatory changes to these appeals. Two of the appeals (IR–28 and IR–31) involve State or local requirements on "covered subjects." Three (IR–23, IR–28, and IR–32) expressly or arguably concern highway routing requirements, a subject which is now within the purview of FHWA. And in at least two cases (IR–23 and IR–32), the local governmental body has indicated that it has made revisions to the challenged regulations.

In light of all these changes since these advisory rulings were issued, due process would require reopening the docket to allow the submission of further comments. This would involve essentially the same time, effort and procedures as if a new preemption determination proceding were initiated in accordance with 49 App. U.S.C 1811(c)(1), without (1) a judicially-reviewable result, or (2) any assurance that the applicants, appellants, or other parties to these appeals would benefit from decisions on the appeals.

In summary, RSPA has concluded that proceeding to decisions on these appeals would not provide a meaningful result for the applicants who sought these inconsistency rulings, the appellants who have sought review of them, or DOT itself. Should any of the parties to these inconsistency rulings desire a more definitive, different, or legally binding statement than already set forth, regarding the preemptive effect of the HMTA on the State or local requirement in question, it may seek an administrative or judicial determination of preemption under 39 App. U.S.C. 1811(c) or an administrative waiver of preemption under 49 App. U.S.C. 1811(d). In doing so, that party may make any of the arguments on which an appeal of RSPA's inconsistency rulings was based (if still relevant), and it may rely upon any of the arguments and materials submitted in the prior proceedings.

IV. Ruling

In light of the changes to the HMTA, RSPA's procedural regulations, and the factual circumstances, and for the reasons set forth above, the appeals from IR–23, IR–28, IR–31, and IR–32 are dismissed, because the issues raised in those appeals are moot and no meaningful result would be obtained in deciding those appeals.

This decision on appeal constitutes the final administrative action in this proceeding.

Issued in Washington, DC on August 31, 1992.

Douglas B. Ham,

Acting Administrator.

[FR Doc. 92–21626 Filed 9–9–92; 8:45 am]

BILLING CODE 4910–60–M

UNITED STATES INFORMATION AGENCY

Donated Book Assistance Awards

AGENCY: United States Information Agency.

ACTION: Notice; Changes in funding level.

SUMMARY: The Book Promotion Branch of the U.S. Information Agency is announcing a new funding level for the Donated Book Assistance awards in the East European area made in the original solicitation announcement in Vol 57, No. 23, page 4243 dated February 4, 1992 to non-profit U.S. institutions and organizations to administer donated book projects during FY'92. That portion of the RFP as pertains to Eastern Europe that reads "$150,000 for this region" is amended to read "$225,000 for this region". All other information remains the same. USIA proposes to award 3 or more grants totaling $225,000. Institutions which have not previously submitted proposals under this RFP may do so by contacting Ms. Carol Nelson at the U.S. Information Agency, room 320, 301 4th Street, SW., Book Program Division, E/CBP, Washington, DC 20547, tele: (202) 619–4895 to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington DC time on September 21, 1992. Faxed documents will not be accepted, nor will documents postmarked on September 21, 1992 but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline.

ADDRESSES: One signed original and twelve copies of the completed application, including required forms, should be submitted by the deadline to: U.S. Information Agency, Ref.: Donated Book Assistance Awards, Grants Management Division, E/XE, room 357, 301 4th Street, SW., Washington, DC 20547.

Notification

All applicants will be notified of the results of the review process on or about November 30, 1992. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: September 2, 1992.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 92–21672 Filed 9–8–92; 8:45 am]

BILLING CODE 8230–01–M

Fulbright Foreign Student Enhancement Seminars

AGENCY: United States Information Agency.

ACTION: Request for proposals.

SUMMARY: The Bureau of Educational and Cultural Affairs of the United States Information Agency (USIA) seeks applications from non-profit organizations, universities and university consortia to implement professional enhancement programs for Fulbright foreign students in Washington, DC; Chicago, Illinois; and San Francisco, California. Seminar participants will be Fulbright foreign students in the greater metropolitan areas of these cities and other Fulbright foreign students whose travel costs to the program would not exceed an average of $400 round trip per person. Interested organizations may propose to conduct programs in one or more of the designated cities. However, a separate budget and program agenda must be proposed for each city. The program in each city will consist of a three-day seminar for 150 students with an agenda combining some introductory material on the United States with in-depth coverage of an economic, political, or cultural issue characteristic of the region. Programs should take advantage of the local resources of the city.

DATES: Deadline for proposals: Must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Friday, October 30, 1992. Proposals received by the Agency after this deadline will not be eligible for consideration. Faxed documents will not be accepted, nor will documents postmarked on October 30, 1992, but received at a later date. It is the responsibility of each grant applicant to ensure that its proposal is received by the above deadline. Programs should be held in March or April 1993. No funds may be expended until the grant agreement has been signed.

ADDRESSES: The original and 14 copies of the completed application, including required forms, should be submitted by the deadline to: U.S. Information Agency, Ref: Fulbright Foreign Student Enhancement Seminars, Office of Grants Management, E/XE, room 357, 301 4th Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions should contact Dr. Winnie D. Emoungu at the U.S. Information Agency, Academic Exchange Programs Division, E/AE, room 234, 301 4th Street, SW., Washington, DC. 20547, telephone 202-619-4360, to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparation information.

SUPPLEMENTARY INFORMATION: Overall authority for the program is contained in the Mutual Educational and Cultural Exchange Act of 1961 as amended, Public Law 87-256 (Fulbright-Hays Act). The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments and achievements of the people of the United States and other nations and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life. Programs and projects must conform with all Agency requirements and are subject to final review by the USIA contracting officer.

Guidelines

Program description: The major goals of the seminar are: (1) To provide for first year Fulbright students, in an off-campus setting, an introduction of some of the key features of the U.S. economic, political, and social system; (2) to enable them to meet community and civic leaders, people who have had a significant impact on the city or community hosting the seminar; and (3) to broaden and expand students' view of the U.S. beyond the somewhat limited and stereotyped view they may have known prior to their Fulbright grant. The goals will be accomplished through a series of lectures, interactive panel discussions as well as contacts with local leaders and other citizens through home hospitality with American families and field trips.

Program components should include:

(1) Interactive discussions, led by experts on intercultural awareness, of some of the distinctive features of U.S. culture as they relate to the customary goals and expectations of foreign students.

(2) Panel discussions, with audience participation, on selected major features of the U.S., such as the role of the private sector and private enterprise in the U.S. economy; the federal system; the role of the media in politics; U.S. society, ethnicity, and the absorption of new immigrants; a regional economic issue, etc.

(3) Opportunities for representatives of USIA to discuss with the students the goals and structure of the Fulbright Program, its current and future significance to them and the responsibilities as well as rights and privileges of being a Fulbrighter.

(4) Events to allow students to meet with local business, civic, educational, cultural and media leaders.

(5) Homestays and other home hospitality opportunities so that the students interact on at least one occasion with people other than those typically encountered on campus.

(6) Field trips to sites of local cultural, historical or recreational interest.

A detailed outline of a proposed seminar agenda should be included in the proposal. The outline should demonstrate the organization's ability to enlist the participation of informed lecturers, keynote speakers and/or presenters whose credentials and experience show evidence of in-depth knowledge of seminar topics. Invited speakers should provide international students with access to expertise and insights not otherwise available to them.

The application should include information on previous programs conducted for foreign students and detailed information on the volunteer services the organization anticipates using in program implementation. Proposals should include a listing of names, titles, addresses, and telephone numbers of the executive officer(s) of the organization and of the person(s) directly responsible for the project. Resumes or vitae of key personnel should be provided. USIA recommends the inclusion of brochures and general information concerning the organization and evidence of previous experience with international students in the proposal package.

Budget

A comprehensive line item budget must be submitted with the proposal by the application deadline. Specific details are available in the application packet. The grant requested from USIA may not exceed $90,000 for each program. Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not adhere to the guidelines established herein and

in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the Agency's budget and contracts offices. Proposals may also be reviewed by the Agency's Office of the General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the following criteria:

1. Quality, rigor, and appropriateness of the proposed program to seminar objectives.

2. Program Planning. Detailed agenda and relevant work should demonstrate rigor and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above. The proposal should demonstrate evidence of flexibility to accommodate grantee needs.

3. Institutional Capacity. Proposed personnel and institutional resources should be adequate and appropriate to achieve program goals. The proposal should demonstrate the ability to recruit experts to participate in the seminar as presenters, lecturers, or keynote speakers.

4. Evidence of strong administrative and managerial experience with similar programs (at least four years).

5. Effective use of community and regional resources, including volunteers.

6. Evaluation Plan. Proposals should provide a plan for evaluation by the grantee institution and by participants.

7. Cost Effectiveness. The overhead and administrative components of grants, as well as salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

8. Cost-Sharing. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

9. Institutional Track Record/Ability. Proposals should demonstrate a track record of successful programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts (M/KG). The Agency will consider the past performance of prior grantees and the demonstrated potential of new applicants.

Options for Renewals

Subject to availability of funds and subject to satisfactory performance of grantee organization, USIA may invite proposals for renewals of grants.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about January 15, 1993. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: September 1, 1992.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 92-21567 Filed 9-8-92; 8:45 am]

BILLING CODE 8230-01-M

Advisory Commission on Public Diplomacy; Meeting

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: A meeting of the U.S. Advisory Commission on Public Diplomacy will be held on September 17 in room 600, 301 4th Street, SW., Washington DC. from 10:15 a.m.–12 p.m.

At 10:15 a.m. the Commission will met with Mr. Stanley Silverman, Comptroller, USIA and Mr. Lynn Noah, Chief, Resource Management Committee Staff, USIA, to discuss budget and management issues. At 11 a.m. the Commission will meet with Mr. Harlan Rosacker, Director of Personnel, USIA; Mr. Jeff Lite, Chief, Foreign Service Personnel, and Ms. Patricia Noble, Chief, Civil Service Personnel, to discuss personnel issues.

FOR FURTHER INFORMATION CONTACT: Please call Gloria Kalamets, (202) 619-4468 for further information.

Dated: September 1, 1992.

Rose Royal,

Management Analyst, Federal Register Liaison.

[FR Doc. 92-21566 Filed 9-8-92; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Ann Bickoff, Veterans Health Administration (161B3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 535-7407.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, Room 3002, Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by October 9, 1992.

Dated: September 1, 1992.

By direction of the Secretary.

Frank E. Lalley,

Associate Deputy, Assistant Secretary for Information Resources Policies and Oversight.

New Collection

1. Prosthetic Patient Satisfaction Survey, VA Form 10-0142A and B.

2. The information will be used to demonstrate that VA is providing timely, high quality prosthetic services to patients and to monitor and measure prosthetic improvements.

3. Individuals or households.

4. 1,558 hours.

5. 3 minutes.

6. Semi-annually.

7. 31,150 respondents.

[FR Doc. 92-21584 Filed 9-8-92; 8:45 am]

BILLING CODE 8320-01-M

Medical Research Service Merit Review Boards; Meetings

Merit Review Board for	Date	Time	Location
The Department of Veterans Affairs gives notice under the Federal Advisory Committee, Act, 5 U.S.C. app., of the meetings of the following Federal Advisory Committees.			
Hematology	September 21, 1992	8 a.m. to 5 p.m	Holiday Inn Central.[1]
Nephrology	September 23, 1992	do	Holiday Inn Central.
Do	September 24, 1992	do	
Alcoholism and Drug Dependence	September 25, 1992	do	Washington Vista.[2]
Oncology	October 1, 1992	do	Washington Vista.
Do	October 2, 1992	do	
Gastroenterology	October 1, 1992	do	Washington Vista.
Do	October 2, 1992	do	
Respiration	October 5, 1992	do	Holiday Inn Central.
Do	October 6, 1992	do	
Mental Health and	October 8, 1992	do	Holiday Inn Central.
Behavioral Sciences	October 9, 1992	do	
Surgery	October 11, 1992	do	New Orleans Marriott.[3]
Infectious Diseases	October 13, 1992	do	Washington Vista.
Do	October 14, 1992	do	
Endocrinology	October 15, 1992	do	Washington Vista.
Do	October 16, 1992	do	
Basic Sciences	October 16, 1992	do	Holiday Inn Central.
Do	October 17, 1992	do	
Neurobiology	October 19, 1992	do	Holiday Inn Central.
Do	October 20, 1992	do	
Do	October 21, 1992	do	
Immunology	October 22, 1992	do	Washington Vista.
Do	October 23, 1992	do	
Cardiovascular Study	October 29, 1992	do	Washington Vista.
Do	October 30, 1992	do	

[1] Holiday Inn Central, 1501 Rhode Island Avenue, NW., Washington DC 20005.
[2] Washington Vista, 1400 M. Street, NW., Washington, DC 20005.
[3] New Orleans Marriott, 555 Canal Street, New Orleans, LA 70140.

These meetings will be for the purpose of evaluating the scientific merit of research conducted in each specialty by Department of Veterans Affairs (VA) investigators working in VA Medical Centers and Clinics.

These meetings will be open to the public up to the seating capacity of the rooms at the start of each meeting to discuss the general status of the program. All of the Merit Review Board meetings will be closed to the public after approximately one-half hour from the start, for the review, discussion and evaluation of initial and renewal projects.

The closed portion of the meeting involves: discussion, examination, reference to, and oral review of site visits, staff and consultant critiques of research protocols and similar documents. During this portion of the meeting, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action regarding such research projects. As provided by subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, closing portions of these meetings is in accordance with 5 U.S.C., 552b(c) (6) and (9)(B). Because of the limited seating capacity of the rooms, those who plan to attend should contact Dr. LeRoy Frey, Chief, Program Review Division, Medical Research Service, Department of Veterans Affairs, Washington, DC, (202) 523–5942 at least five days prior to each meeting. Minutes of the meetings and rosters of the members of the Boards may be obtained from this source.

Dated: August 20, 1992.

Diane H. Landis,

Committee Management Officer.

[FR Doc. 92–21583 Filed 9–8–92; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 175
Wednesday, September 9, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, September 15, 1992.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

5473A Marine Accident Report: Capsizing and Sinking of the Fishing Vessel SEA KING near Astoria, Oregon on January 11, 1991.

5846 Highway Special Investigation Report: Heavy Truck Wheel Separation.

NEWS MEDIA CONTACT: Telephone (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Bea Hardesty,
Federal Register Liaison Officer.
September 4, 1992.
[FR Doc. 92–21800 Filed 9–4–92; 2:56 pm]
BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of September 7, 14, 21, and 28, 1992.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of September 7

Tuesday, September 8

10:00 a.m.
Briefing on Advanced and Evolutionary Reactor Topics: Form and Content for a Design Certification Rule and Follow-up to SECY–90–016 (Public Meeting) (Contact: Dennis Crutchfield, 301/504–1199)

Wednesday, September 9

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, September 11

8:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 and 6)

8:30 a.m.
Briefing by Charles Meinhold on 1990 Recommendations of the International Commission on Radiological Protection (ICRP Publication 60) (Public Meeting)

10:00 a.m.
Periodic Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (Contact: Raymond Fraley, 301/492–8049)

Week of September 14—Tentative

Monday, September 14

2:00 p.m.
Briefing on Electricity Forecast from Energy Information Administration (EIA) Annual Energy Outlook (Public Meeting)

Thursday, September 17

2:00 p.m.
Status Briefing on Shutdown and Low Power Risk Issues (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of September 21—Tentative

Thursday, September 24

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of September 28—Tentative

Wednesday, September 30

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION: By a vote of 4–0 (Commissioner Remick not present) on September 1, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Discussion of Litigative and Related Internal Personnel Matters" (Closed—Ex. 2, 6, 9B, and 10) be held on September 1 and on less than one week's notice to the public.

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETING CALL (RECORDING): (301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504–1661.

William M. Hill, Jr.,
Office of the Secretary.
September 4, 1992.
[FR Doc. 92–21837 Filed 9–4–92; 2:58 pm]
BILLING CODE 7590-01-M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Meeting of the Board of Directors

TIME AND DATE: 1:00 p.m. (closed portion), 2:30 p.m. (open portion), Tuesday, September 22, 1992.

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

STATUS: The first part of the meeting from 1:00 p.m. to 2:30 p.m. will be closed to the public. The open portion of the meeting will commence at 2:30 p.m. (approximately).

MATTERS TO BE CONSIDERED: (Closed to the public 1:00 p.m. to 2:20 p.m.):

1. President's Report
2. Information Reports
3. Finance and Insurance Project in Colombia
4. Finance Project in Hungary
5. Finance Project in West Africa
6. Finance Project in Guyana
7. Finance Project in Zambia
8. Insurance Project in Slovakia
9. Pending Major Projects
10. Disposition of Guaranty Reserve and Allocation of Retained Earnings
11. Proposed Defense Conversion Policy
12. Approval of 4/21/92 and 7/14/92 Minutes (Closed Portion)

FURTHER MATTERS TO BE CONSIDERED: (Open to the public 2:30 p.m.)

1. Approval of 4/21/92 and 7/14/92 Minutes (Open Portion)
2. Information Reports
3. Recommendation for meeting schedule through end of September 1993

CONTACT PERSON FOR INFORMATION: Information with regard to the meeting may be obtained from the Corporation Secretary on (202) 336–8403.

Dennis K. Dolan,
OPIC Corporate Secretary.
[FR Doc. 92–21835 Filed 9–4–92; 2:57 pm]
BILLING CODE 3210-01-M

Corrections

Federal Register
Vol. 57, No. 175
Wednesday, September 9, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 148, 260, 261, 262, 264, 265, 268, 270, and 271

[FRL-4132-4]

RIN 2050-AD35

Land Disposal Restrictions for Newly Listed Wastes and Hazardous Debris

Correction

In the issue of Friday August 28, 1992, on page 39275 in the correction to rule document 92-15997, in the last line, "November 19, 1992" should read "November 9, 1992".

BILLING CODE 1505-01-D

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

Exemption for Commodity Pool Operators With Respect to Offerings to Qualified Eligible Participants; Exemption for Commodity Trading Advisors With Respect to Qualified Eligible Clients

Correction

In rule document 92-18642 beginning on page 34853 in the issue of Friday, August 7, 1992, make the following corrections:

1. On page 34854, in the first column, in footnote 8, in the first line, "CPOs" should read "CPO's".

2. On page 34855, in the 3d column, in the 1st full paragraph, in the 16th line, "was sufficient" should read "was a sufficient".

3. On page 34857, in the third column, in footnote 28, in the third line, "invest" should read "investee".

4. On page 34859, in the first column, in the first full paragraph, in the last line, "provisions" should read "provision".

5. On the same page, in the same column, in footnote 33:

a. Beginning in the tenth line, "revoked or refused, persons who are subject to an injunction from" should be deleted.

b. In the last line, after "investment-related" insert "activities, and persons who have been found to have violated specified investment-related".

§ 4.7 [Corrected]

6. On page 34864, in the first column, under § 4.7(b)(1)(ii)(B)(*2*)(*xi*), in the fourth line, "$500,000,000" should read "$5,000,000".

7. On the same page, in the second column, under § 4.7(b)(2)(i), in the first line, "(a)" should read "(A)", and in the next to last line, "BROCHURE OF" should read "BROCHURE OR".

§ 4.8 [Corrected]

8. On page 34865, in the second column, under § 4.8, the second paragraph designated "(a)" should read "(b)".

BILLING CODE 1505-01-D

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federal register

Wednesday
September 9, 1992

Part II

Environmental Protection Agency

Final NPDES General Permits for Storm Water Discharges From Construction Sites; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4202-4]

Final NPDES General Permits for Storm Water Discharges from Construction Sites

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final NPDES general permits.

SUMMARY: The Regional Administrators of Regions I, II, III, IV, V, VI, VIII, IX, and X (the "Regions" or the "Directors") are issuing final National Pollutant Discharge Elimination System (NPDES) general permits for storm water discharges associated with industrial activity from construction sites in 10 States (Alaska, Arizona, Idaho, Louisiana, Maine, New Hampshire, New Mexico, Oklahoma, South Dakota, and Texas); the Territories of Puerto Rico, Johnston Atoll, and Midway and Wake Islands; on Indian lands in Alaska, Arizona, California, Colorado, Florida, Idaho, Maine, Massachusetts, Mississippi, Montana, New Hampshire, Nevada, North Carolina, North Dakota, Utah, Washington, and Wyoming; from Federal facilities in Colorado, and Washington; and from Federal facilities and Indian lands in Louisiana, New Mexico, Oklahoma, and Texas.

These general permits establish Notice of Intent (NOI) requirements, special conditions, requirements to develop and implement storm water pollution prevention plans, and requirements to conduct site inspections for facilities with discharges authorized by the permit.

ADDRESSES: Notices of Intent to be authorized to discharge under these permits should be sent to: Storm Water Notices of Intent, PO Box 1215, Newington, VA 22122.

Other submittals of information required under these permits or individual permit applications should be sent to the appropriate EPA Regional Office. The addresses of the Regional Offices and the name and phone number of the Storm Water Regional Coordinator is provided in section IV.F of the Fact Sheet.

The index to the administrative records for these permits are available at the appropriate Regional Office. The complete administrative record is located at EPA Headquarters, EPA Public Information Reference Unit, room 2402, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying. Specific record information will be made available at the appropriate Regional Office as requested.

DATES: These general permits shall be effective on September 9, 1992. This effective date is necessary to provide appropriate dischargers with the opportunity to comply with the October 1, 1992 deadline for submitting an NPDES application for storm water discharges associated with industrial by submitting a Notice of Intent (NOI) to be covered by the permits.

Deadlines for submittal of Notices of Intent (NOIs) are provided in section IV.A.1 of the Fact Sheet and part II.A of the general permits. Today's general permits also provide additional dates for compliance with the terms of the permit.

FOR FURTHER INFORMATION CONTACT: For further information on the final NPDES general permits and for copies of the Notice of Intent form (the Notice of Intent form in appendix C of this notice can be copied and submitted) contact the NPDES Storm Water Hotline at (703) 821-4823, or the appropriate EPA Regional Office. The name, address and phone number of the Regional Storm Water Coordinators are provided in section IV.F of the Fact Sheet.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Coverage of General Permits
III. Summary of Options for Controlling Pollutants; and
IV. Summary of Permit Conditions
A. Notice of Intent Requirements
1. Deadlines for Submitting NOIs
2. Authorization to Discharge
3. Contents of the NOI
4. Additional Notification
B. Special Conditions
1. Prohibition on Non Storm Water Discharges
2. Releases of Reportable Quantities of Hazardous Substances and Oil
C. Storm Water Pollution Prevention Plan Requirements
1. Contents of the Plan
a. Site Description
b. Controls to Reduce Pollutants
c. Maintenance
d. Inspections
e. Non-Storm Water Discharges
2. Deadlines for Plan Preparation and Compliance
3. Signature and Plan Review
4. Keeping Plans Current
5. Additional Requirements
6. Contractors
D. Retention of Records
E. Notice of Termination Requirements
F. Regional Offices
V. Cost Estimates
VI. Economic Impact (Executive Order 12291)
VII. Paperwork Reduction Act
VIII. Section 401 Certification
IX. Regulatory Flexibility Act

I. Introduction

The Regional Administrators of the United States Environmental Protection Agency (EPA) are issuing final general permits for the majority of storm water discharges associated with industrial activity as follows:

Region I—For the States of Maine and New Hampshire; for Indian lands located in Massachusetts, New Hampshire, and Maine.

Region II—For the Commonwealth of Puerto Rico.

Region IV—For Indian lands located in Florida (two tribes), Mississippi, and North Carolina.

Region VI—For the States of Louisiana, New Mexico, Oklahoma, and Texas; and for Indian lands located in Louisiana, New Mexico (except Navajo lands and Ute Mountain Reservation lands), Oklahoma, and Texas.

Region VIII—For the State of South Dakota; for Indian lands located in Colorado (including the Ute Mountain Reservation in Colorado), Montana, North Dakota, Utah (except Goshute Reservation and Navajo Reservation lands), and Wyoming; for Federal facilities in Colorado; and for the Ute Mountain Reservation New Mexico.

Region IX—For the State of Arizona; for the Territories of Johnston Atoll, and Midway and Wake Island; and for Indian lands located in California, and Nevada; and for the Goshute Reservation in Utah and Nevada, the Navajo Reservation in Utah, New Mexico, and Arizona, the Duck Valley Reservation in Nevada and Idaho.

Region X—For the State of Alaska, and Idaho; for Indian lands located in Alaska, Idaho (except Duck Valley Reservation lands), and Washington; and for Federal facilities in Washington.

This notice contains four sets of appendices. Appendix A summarizes EPA's response to major comments received on the draft general permits published on August 16, 1991, (56 FR 40948). Appendix B provides the language of the final general permits. The permits in appendix B are similar. Appendix B provides the language of the final general permits. Except as provided in part X of the permits, parts I through IX apply to all permits. Part X of the permit contains conditions which only apply in the State indicated. Appendix C is a copy of the Notice of Intent (NOI) form (and associated instructions) to be used by dischargers wanting to obtain coverage under the general permits. Appendix D is a copy of the Notice of Termination (NOT) form (and associated instructions) that can be used by dischargers wanting to notify

EPA that their storm water discharges associated with industrial activity have been terminated or that the permittee has transferred operation of the facility.

On August 16, 1991, (56 FR 40948) EPA requested public comment on draft general permits that were the basis for today's final general permits. In addition to addressing storm water discharges from construction activities, the August 16, 1991, draft general permits addressed storm water discharges from other industrial activities. The permits in this notice only address storm water associated with construction activity. Elsewhere in today's **Federal Register**, EPA is publishing NPDES permits for storm water discharges from nonconstruction industrial facilities.

EPA received over 125 comments on construction issues associated with the draft general permits. In addition, public hearings to discuss the draft general permits were held in Dallas, TX; Oklahoma City, OK; Baton Rouge, LA; Albuquerque, NM; Seattle, WA; Boise, ID; Juneau, AK; Pierre, SD; Phoenix, AZ; Orlando, FL; Tallahassee, FL; Augusta, ME; Boston, MA; and Manchester, NH.

EPA is incorporating portions of the detailed fact sheet for the draft general permits published on August 16, 1991, as part of the final fact sheet and statement of basis for today's final permits. The sections of the prior fact sheet being incorporated are Section 1, Background; Section 2, Types of Discharges Covered; and Section 3, Description of Discharges Covered; and Section 5, The Federal/Municipal Partnership: The Role of Municipal Operators of Large and Medium Municipal Separate Storm Sewers.

II. Coverage of General Permits

Section 402(p) of the Clean Water Act (CWA) clarifies that storm water discharges associated with industrial activity to waters of the United States must be authorized by an NPDES permit. On November 16, 1990, EPA published regulations under the NPDES program which defined the term "storm water discharge associated with industrial activity" to include storm water discharges from construction activities (including clearing, grading, and excavation activities) that result in the disturbance of five or more acres of total land area, including areas that are part of a larger common plan of development or sale (40 CFR 122.26(b)(14)(x)).[1] The term "storm water discharge from construction activities" will be used in this document to refer to storm water discharges from construction sites that meet the definition of a storm water discharge associated with industrial activity.

These final general permits may authorize storm water discharges from existing construction sites (facilities where construction activities began before October 1, 1992, and final stabilization is to occur after October 1, 1992) and new construction sites. New construction sites are those facilities where disturbances associated construction activities commence after October 1, 1992. To obtain authorization under today's permits, a discharger must submit a complete NOI and comply with the terms of the permit. The terms of the permit, including the requirements for submitting an NOI, are discussed in more detail below.

The following discharges are not authorized by these final general permits:

- Storm water discharges associated with industrial activity that originate from the site after construction activities have been completed and the site has undergone final stabilization;
- Non-storm water discharges (except certain non-storm water discharges specifically listed in today's general permits). However, today's permits can authorize storm water discharges from construction activities where such discharges are mixed with non-storm water discharges that are authorized by a different NPDES permit;
- Storm water discharges from construction sites that are covered by an existing NPDES individual or general permit. However, storm water discharges associated with industrial activity from a construction site that are authorized by an existing permit may be authorized by today's general permit after the existing permit expires, provided the expired permit did not establish numeric limitations for such discharges;
- Storm water discharges from construction sites that the Director has determined to be or may reasonably be expected to be contributing to a violation of a water quality standard; and
- Storm water discharges from construction sites if the discharges are likely to adversely affect a listed endangered or threatened species or a species that is proposed to be listed as endangered or threatened or its critical habitat.

III. Summary of Options for Controlling Pollutants

Most controls for construction activities can be categorized into two groups: (1) Sediment and erosion controls; and (2) storm water management measures. Sediment and erosion controls generally address pollutants in storm water generated from the site during the time when construction activities are occurring. Storm water management measures generally are installed during and before competition of the construction process, but primarily result in reductions of pollutants in storm water discharged from the site after the construction has been completed. Additional measures include housekeeping best management practices.

A. Sediment and Erosion Controls

Erosion controls provide the first line of defense in preventing offsite sediment movement and are designed to prevent erosion through protection and preservation of soils. Sediment controls are designed to remove sediment from runoff before the runoff is discharged from the site. Sediment and erosion controls can be further divided into two major classes of controls: Stabilization practices and structural practices. Major types of sediment and erosion practices are summarized below. A more complete description of these practices is given in "Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices", U.S. EPA, 1992.

1. Sediment and Erosion Controls: Stabilization Practices

Stabilization, as discussed here, refers to covering or maintaining an existing cover over soils. The cover may be vegetation, such as grass, trees, vines, or shrubs. Stabilization measures can also include nonvegetative controls such as geotextiles, riprap, or gabions (wire mesh boxes filled with rock). Mulches, such as straw or bark, are most effective when used in conjunction with establishing vegetation, but can be used without vegetation. Stabilization of exposed and denuded soils is one of the most important factors in minimizing erosion while construction activities occur. A vegetation cover reduces the erosion potential of a site by absorbing the kinetic energy of raindrops that would otherwise disturb unprotected soil; intercepting water so that it infiltrates into the ground instead of running off the surface; and slowing the velocity of runoff, thereby promoting deposition of sediment in the runoff. Stabilization measures are often the

[1] On June 4, 1992, the United States Court of Appeals for the Ninth Circuit remanded the exemption for construction sites of less than five acres to the EPA for further rulemaking (*Natural Resources Defense Council* v. *EPA*, Nos. 90-70671 and 91-70200, slip op. at 6217 (9th Cir. June 4, 1992).

most important measures taken to prevent offsite sediment movement and can provide large reductions of suspended sediment levels in discharges and receiving waters.[2] Examples of stabilization measures are summarized below.

a. Temporary seeding. Temporary seeding provides for temporary stabilization by establishing vegetation at areas of the site where activities will temporarily cease until later in the construction project. Without temporary stabilization, soils at these areas are exposed to precipitation for an extended time period, even though work is not occurring on these areas. Temporary seeding practices have been found to be up to 95 percent effective in reducing erosion.[3]

b. Permanent seeding. Permanent seeding involves establishing a sustainable ground cover at a site. Permanent seeding stabilizes the soil to reduce sediment in runoff from the site by controlling erosion and is typically required at most sites for aesthetic reasons.

c. Mulching. Mulching is typically conducted as part of permanent and temporary seeding practices. Where temporary and permanent seeding is not feasible, exposed soils can be stabilized by applying plant residues or other suitable materials to the soil surface. Although generally not as effective as seeding practices, mulching by itself, does provide some erosion control. Mulching in conjunction with seeding provides erosion protection prior to the onset of vegetation growth. In addition, mulching protects seeding activities, providing a higher likelihood of successful establishment of vegetation. To maintain optimum effectiveness, mulches must be anchored to resist wind displacement.

d. Sod stabilization. Sod stabilization involves establishing long-term stands of grass with sod on exposed surfaces. When installed and maintained properly, sodding can be more than 99 percent effective in reducing erosion,[4] making it the most effective vegetation practice available. The cost of sod stabilization (relative to other vegetative controls) typically limits its use to exposed soils where a quick vegetative cover is desired and sites which can be maintained with ground equipment. In addition, sod is sensitive to climate and may require intensive watering and fertilization.

e. Vegetative buffer strips. Vegetative buffer strips are preserved or planted strips of vegetation at the top and bottom of a slope, outlining property boundaries, or adjacent to receiving waters such as streams or wetlands. Vegetative buffer strips can slow runoff flows at critical areas, decreasing erosion and allowing sediment deposition.

f. Protection of trees. This practice involves preserving and protecting selected trees that exist on the site prior to development. Mature trees provide extensive canopy and root systems which help to hold soil in place. Shade trees also keep soil from drying rapidly and becoming susceptible to erosion. Measures taken to protect trees can vary significantly, from simple measures such as installing tree fencing around the drip line and installing tree armoring, to more complex measures such as building retaining walls and tree wells.

2. Sediment and Erosion Controls: Structural Practices

Structural practices involve the installation of devices to divert flow, store flow, or limit runoff. Structural practices have several objectives. First, structural practices can be designed to prevent water from crossing disturbed areas where sediment may be removed. This involves diverting runoff from undisturbed upslope areas through use of earth dikes, temporary swales, perimeter dike/swales, or diversions to stable areas. A second objective of structural practices can be to remove sediment from site runoff before the runoff leaves the site. Approaches to removing sediment from site runoff include diverting flows to a trapping or storage device or filtering diffuse flow through silt fences before it leaves the site. All structural practices require proper maintenance (removal of sediment) to remain functional.

a. Earth dike. Earth dikes are temporary berms or ridges of compacted soil that channel water to a desired location. Earth dikes should be stabilized with vegetation.

b. Silt fence. Silt fences are a barrier of geotextile fabric (filter cloth) used to intercept sediment in diffuse runoff. They must be carefully maintained to ensure structural stability and to remove excess sediment.

c. Drainage swales. A drainage swale is a drainage channel lined with grass, riprap, asphalt, concrete, or other materials. Drainage swales are installed to convey runoff without causing erosion.

d. Sediment traps. Sediment traps can be installed in a drainage way, at a storm drain inlet, or other points of discharge from a disturbed area.

e. Check dams. Check dams are small temporary dams constructed across a swale or drainage ditch to reduce the velocity of runoff flows, thereby reducing erosion of the swale or ditch. Check dams should not be used in a live stream. Check dams reduce the need for more stringent erosion control practices in the swale due to the decreased velocity and energy of runoff.

f. Level spreader. Level spreaders are outlets for dikes and diversions consisting of an excavated depression constructed at zero grade across a slope. Level spreaders convert concentrated runoff into diffuse runoff and release it onto areas stabilized by existing vegetation.

g. Subsurface drain. Subsurface drains transport water to an area where the water can be managed effectively. Drains can be made of tile, pipe, or tubing.

h. Pipe slope drain. A pipe slope drain is a temporary structure placed from the top of a slope to the bottom of a slope to convey surface runoff down slopes without causing erosion.

i. Temporary storm drain diversion. Temporary storm drain diversions are used to re-direct flow in a storm drain to discharge into a sediment trapping device.

j. Storm drain inlet protection. Storm drain inlet protection can be provided by a sediment filter or an excavated impounding area around a storm drain inlet. These devices prevent sediment from entering storm drainage systems prior to permanent stabilization of the disturbed area.

k. Rock outlet protection. Rock protection placed at the outlet end of culverts or channels can reduce the depth, velocity, and energy of water so that the flow will not erode the receiving downstream reach.

l. Other controls. Other controls include temporary sediment basins, sump pits, entrance stabilization measures, waterway crossings, and wind breaks.

B. Storm Water Management Measures

Storm water management measures are installed during the prior to completion of the construction process, but primarily result in reductions of pollutants in storm water discharged from the site after the construction has been completed. Construction activities often result in significant changes in

[2] "Performance of Current Sediment Control Measures at Maryland Construction Sites", January 1990, Metropolitan Washington Council of Governments.

[3] "Guides for Erosion and Sediment Control in California," USDA, Soil Conservation Service, Davis CA, Revised 1985.

[4] "Guides for Erosion and Sediment Control in California," USDA Soil Conservation Service, Davis CA, Revised 1985.

land use. Such changes typically involve an increase in the overall imperviousness of the site, which can result in dramatic changes to the runoff patterns of a site. As the amount within a drainage area increases, the amount of pollutants carried by the runoff increases. In addition, activities such as automobile travel on roads can result in higher pollutant concentrations in runoff compared to preconstruction levels. Traditional storm water management controls attempt to limit the increases in the amount of runoff and the amount of pollutants discharged from a site associated with the change in land use.

Major classes of storm water management measures include infiltration of runoff onsite; flow attenuation by vegetation or natural depressions; outfall velocity dissipation devices; storm water retention structures and artificial wetlands; and storm water detention structures. For many sites, a combination of these controls may be appropriate. A summary of storm water management controls is provided below. A more complete description of storm water management controls is found in "Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices", U.S. EPA, 1992, and "A Current Assessment of Urban Best Management Practices," Metropolitan Washington Council of Governments, March 1992.

1. Onsite Infiltration

A variety of infiltration technologies, including infiltration trenches and infiltration basins, can reduce the volume and pollutant loadings of storm water discharges from a site. Infiltration devices tend to mitigate changes to predevelopment hydrologic conditions. Properly designed and installed infiltration devices can reduce peak discharges, provide ground water recharge, augment low flow conditions of receiving streams, reduce storm water discharge volumes and pollutant loads, and protect downstream channels from erosion. Infiltration devices are a feasible option where soils are permeable and the water table and bedrock are well below the surface. Infiltration basins can also be used as sediment basins during construction.[5] Infiltration trenches can be more easily placed into under-utilized areas of a development and can be used for small sites and infill developments. However, trenches may require regular maintenance to prevent clogs, particularly where grass inlets or other pollutant removing inlets are not used. In some situations, such as low density areas of parking lots, porous pavement can provide for infiltration.

2. Flow Attenuation by Vegetation or Natural Depressions

Flow attenuation provided by vegetation or natural depressions can provide pollutant removal and infiltration and can lower the erosive potential of flows.[6] In addition, these practices can enhance habitat values and the appearance of a site. Vegetative flow attenuation devices include grass swales and filter strips as well as trees that are either preserved or planted during construction.

Typically the costs of vegetative controls are less than other storm water practices. The use of check dams incorporated into flow paths can provide additional infiltration and flow attenuation.[7] Given the limited capacity to accept large volumes of runoff, and potential erosion problems associated with large concentrated flows, vegetative controls should usually be used in combination with other storm water devices.

Grass swales are typically used in areas such as low or medium density residential development and highway medians as an alternative to curb and gutter drainage systems.[8]

3. Outfall Velocity Dissipation Devices

Outfall velocity dissipation devices include riprap and stone or concrete flow spreaders. Outfall velocity dissipation devices slow the flow of water discharged from a site to lessen erosion caused by the discharge.

4. Retention Structures/Artificial Wetlands

Retention structures include ponds and artificial wetlands that are designed to maintain a permanent pool of water. Properly installed and maintained retention structures (also known as wet ponds) and artificial wetlands [9] can achieve a high removal rate of sediment, BOD, organic nutrients and metals, and are most cost-effective when used to control runoff from larger, intensively developed sites.[10] These devices rely on settling and biological processes to remove pollutants. Retention ponds and artificial wetlands can also create wildlife habitat, recreation, and landscape amenities, as well as corresponding higher property values.

5. Water Quality Detention Structures

Storm water detention structures include extended detention ponds, which control the rate at which the pond drains after a storm event. Extended detention ponds are usually designed to completely drain in about 24 to 40 hours, and will remain dry at other times. They can provide pollutant removal efficiencies that are similar to those of retention ponds.[11] Extended detention systems are typically designed to provide both water quality and water quantity (flood control) benefits.[12]

C. Housekeeping BMPs

Pollutants that may enter storm water from construction sites because of poor housekeeping include oils, grease, paints, gasoline, concrete truck washdown, raw materials used in the manufacture of concrete (e.g., sand, aggregate, and cement), solvents, litter, debris, and sanitary wastes. Construction site management plans can address the following to prevent the discharge of these pollutants:

- Designate areas for equipment maintenance and repair;
- Provide waste receptacles at convenient locations and provide regular collection of wastes;
- Locate equipment washdown areas on site, and provide appropriate control of washwaters;
- Provide protected storage areas for chemicals, paints, solvents, fertilizers, and other potentially toxic materials; and
- Provide adequately maintained sanitary facilities.

IV. Summary of Permit Conditions

These general permits contain Notice of Intent requirements, a prohibition on discharging sources of non-storm water, requirements for releases of hazardous substances or oil in excess of reporting

[5] "Controlling Urban Runoff: A Practical Manual for Planning and Designing Urban BMPs", July, 1987, Metropolitan Washington Council of Governments.

[6] "Urban Targeting and BMP Selection", United States EPA, Region V, November 1990.

[7] "Standards and Specifications for Infiltration Practices", 1984, Maryland Water Resources Administration.

[8] "Controlling Urban Runoff: A Practical Manual for Planning and Designing Urban BMPs", Metropolitan Washington Council of Governments, July 1987.

[9] See "Wetland basins for Storm Water Treatment: Discussion and Background", Maryland Sediment and Stormwater Division, 1987 and "The Value of Wetlands for Nonpoint Source Control—Literature Summary", Strecker, E., et.al., 1990.

[10] "Controlling Urban Runoff, A Practical Manual for Planning and Designing Urban BMPs", Metropolitan Washington Council of Governments, 1987.

[11] "Urban Targeting and BMP Selection", United States EPA, Region V, November 1990.

[12] "Urban Surface Water Management", Walesh, S.G., Wiley, 1989

quantities, requirements for developing and implementing storm water pollution prevention plans, and requirements for site inspections.

A. Notice of Intent Requirements

NPDES general permits for storm water discharges associated with industrial activity require that dischargers submit a Notice of Intent (NOI) to be covered by the permit prior to the authorization of their discharges under such permit (see 40 CFR 122.28(b)(2), (April 2, 1992, (57 FR 11394)). Consistent with these regulatory requirements, today's permits establish NOI requirements. Dischargers that submit a complete NOI are not required to submit an individual permit application for such discharge, unless the Director specifically notifies the discharger that an individual permit application must be submitted.

Dischargers who want to obtain coverage under these permits must submit NOIs using the form provided by EPA (or a photocopy thereof). The NOI form is provided in appendix C of this notice and can be photocopied for use in submittals. NOI forms are also available from EPA's Storm Water Hotline ((703) 821–4823) and EPA Regional Offices (see part F of today's notice). Completed NOI forms must be submitted to the following address: Storm Water Notices of Intent, PO Box 1215, Newington, VA 22122.

Dischargers operating under approved State or local sediment and erosion plans, grading plans, or storm water management plans, must, in addition to filing copies of the NOI with EPA, submit signed copies of the NOI to the State or local agency approving such plans by the deadlines stated below.

1. Deadlines for Submitting NOIs

Deadlines for submittal of NOIs to be authorized to discharge under these permits are as follows:

- On or before October 1, 1992, for storm water discharges from construction sites where disturbances associated with a construction project occur on or before October 1, 1992, and final stabilization [13] is completed at the site after October 1, 1992;
- At least 2 days prior to the commencement of construction activities (e.g., the initial disturbance of soils associated with clearing, grading, excavation activities, or other construction activities), where such activities commence after October 1, 1992; and
- For storm water discharges from construction sites where the operator changes, (including projects where an operator is selected after an NOI has been submitted), an NOI shall be submitted at least 2 days prior to when the operator commences work at the site.

EPA will accept an NOI at a later date. However, in such instances, EPA may bring appropriate enforcement actions.

2. Authorization

Dischargers who submit a complete NOI in accordance with the requirements of these permits are authorized to discharge storm water from construction sites under the terms and conditions of this permit 2 days after the date that the NOI is postmarked, unless notified by EPA.

EPA may deny coverage under this permit and require submittal of an individual NPDES permit application based on a review of the completeness and/or content of the NOI or other information (e.g., water quality information, compliance history, etc.). Where EPA requires a discharger authorized under the general permit to apply for an individual NPDES permit or an alternative general permit, EPA will notify the discharger in writing that a permit application is required. Coverage under this general permit will automatically terminate if the discharger fails to submit the required permit application in a timely manner. Where the discharger does submit a requested permit application, coverage under this general permit will automatically terminate on the effective date of the issuance or denial of the individual NPDES permit or the alternative general permit as it applies to the individual permittee.

3. Contents of the NOI

A photocopy of the NOI in appendix C of today's notice may be completed and submitted to EPA's central address to obtain authorization to discharge under today's permits. The NOI form requires the following information:

- The mailing address of the construction site for which the notification is submitted. Where a mailing address for the site is not available, the location of the approximate center of the site must be described in terms of the latitude and longitude to the nearest 15 seconds, or the section, township, and range to the nearest quarter;
- The site owner's name, address, and telephone number;
- The name, address, and telephone number of the operator(s) with day-to-day operational control who have been identified at the time of the NOI submittal, and their status as a Federal, State, private, public, or other entity. Where multiple operators have been selected at the time of the initial NOI submittal, NOIs must be attached and submitted in the same envelope. When an additional operator submits an NOI for a site with a preexisting NPDES permit, the NOI of the additional operator must indicate the preexisting NPDES permit number for discharge(s) from the site;
- The name of the receiving water(s), or if the discharge is through a municipal separate storm sewer, the name of the municipal operator of the storm sewer and the ultimate receiving waters);
- The permit number of any NPDES permit(s) for any other discharge(s) (including any other storm water discharges or any non-storm water discharges) from the site;
- An indication of whether the operator has existing sampling data that describe the concentration of pollutants in storm water discharges. Existing data should not be included as part of the NOI and should not be submitted unless and until requested by EPA; and
- An estimate of project start date and completion dates, estimates of the number of acres of the site on which soil will be disturbed, and a certification that a storm water pollution prevention plan has been prepared for the site in accordance with the permit and that such plan complies with approved State and/or local sediment and erosion plans or permits and/or storm water management plans or permits. A copy of the plans or permits should not be included with the NOI submission, and should not be submitted unless and until requested by EPA.

The NOI must be signed in accordance with the signatory requirements of 40 CFR 122.22. A complete description of these signatory requirements is provided in the instructions accompanying the NOI (see appendix C).

4. Additional Notification

In addition to submitting the NOI to EPA, facilities operating under approved State or local sediment and erosion plans, grading plans, or storm water management plans are required to submit signed copies of the NOI to the State or local agency approving such plans by the deadlines stated above. Failure to do so constitutes a violation of the permit.

[13] The term "final stabilization" is defined in today's permits and is discussed in more detail in the Notice of Termination section of today's fact sheet

B. Special Conditions

1. Prohibition on Non-Storm Water Discharges

Today's permits do not authorize non-storm water discharges that are mixed with storm water except for specific classes of non-storm water discharges specified in the permits. Non-storm water discharges that can be authorized under today's permits include discharges from firefighting activities; fire hydrant flushings; waters used to wash vehicles or control dust in accordance with permit requirements; potable water sources including waterline flushings; irrigation drainage; routine external building washdown that does not use detergents; pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used; air conditioning condensate; springs; uncontaminated ground water; and foundation or footing drains where flows are not contaminated with process materials such as solvents.[14]

To be authorized under today's permits, these sources of non-storm water (except flows from firefighting activities) must be specifically identified in the storm water pollution prevention plan prepared for the facility. (Plan requirements are discussed in more detail below). Where such discharges occur, the plan must also identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water components of the discharge. For example, to reduce pollutants in irrigation drainage, a plan could identify low maintenance lawn areas that do not require the use of fertilizers or biocides; for higher maintenance lawn areas, a plan could identify measures such as limiting fertilizer use based on seasonal and agronomic considerations, decreasing biocide use with an integrated pest management program, introducing natural vegetation or more hearty species, and reducing water use (thereby reducing the volume of irrigation drainage).

Today's permits do not require pollution prevention measures to be identified and implemented for non-storm water flows from firefighting activities since these flows will usually occur as unplanned emergency situations where it is necessary to take immediate action to protect the public.

[14] These discharges are consistent with the allowable classes of non-storm water discharges to municipal separate storm sewer systems (40 CFR 122.26(d)(iv)(D)).

The general prohibition on non-storm water discharges in today's permits ensures that non-storm water discharges (except for those classes of non-storm water discharges that are conditionally authorized) are not inadvertently authorized by these permits. Where a storm water discharge is mixed with process wastewaters or other sources of non-storm water prior to discharge, and the discharge is currently not authorized by an NPDES permit, the discharge cannot be covered by today's permits and the discharger should (1) submit the appropriate application forms (Forms 1 and 2C) to obtain permit coverage or (2) discontinue the discharge.

2. Releases of Reportable Quantities of Hazardous Substances and Oil

Today's permits provide that the discharge of hazardous substances or oil from a facility must be eliminated or minimized in accordance with the storm water pollution plan developed for the facility. Where a permitted storm water discharge contains a hazardous substance or oil in an amount equal to or in excess of a reporting quantity established under 40 CFR 110, 40 CFR 117, or 40 CFR 302, during a 24-hour period, today's permits require the following actions:

- The permittee must notify the National Response Center (NRC) (800-424-8802; in the Washington, DC metropolitan area 202-426-2675) in accordance with the requirements of 40 CFR 110, 40 CFR 117, and 40 CFR 302, as soon as they have knowledge of the discharge;
- The permittee must modify the storm water pollution prevention plan for the facility within 14 calendar days of knowledge of the release to provide (1) a description of the release, (2) the date of the release and (3) the circumstances leading to the release. In addition, the permittee must modify the plan, as appropriate, to identify measures to prevent the reoccurrence of such releases and to respond to such releases.
- Within 14 calendar days of the knowledge of the release, the permittee must submit to EPA (1) a written description of the release (including the type and estimated amount of material released), (2) the date that such release occurred, (3) the circumstances leading to the release, and (4) any steps to be taken to modify the storm water pollution prevention plan for the facility.

Where a discharge of a hazardous substance or oil in excess of reporting quantities is caused by a non-storm water discharge (e.g., a spill of oil into a separate storm sewer), the spill is not authorized by this permit. The discharger must report the spill as required under 40 CFR 110. In the event of a spill, the requirements of section 311 of the CWA and otherwise applicable provisions of sections 301 and 402 of the CWA continue to apply. This approach is consistent with the requirements for reporting releases of hazardous substances and oil-requirements that make a clear distinction between hazardous substances typically found in storm water discharges and those associated with spills that are not considered part of a normal storm water discharge (see 40 CFR 117.12(d)(2)(i)).

C. Storm Water Pollution Prevention Plan Requirements

The pollution prevention plans required by today's permits focus on two major tasks: (1) Providing a site description that identifies sources of pollution to storm water discharges associated with industrial activity from the facility and (2) identifying and implementing appropriate measures to reduce pollutants in storm water discharges to ensure compliance with the terms and conditions of these permits.

In developing these permits, the Agency reviewed a significant number of existing State and local sediment and erosion control and storm water management requirements. State and local data were reviewed for a wide range of climates and varying types of construction activities.

1. Contents of the Plan

Storm water pollution prevention plans must include a site description; a description of controls that will be used at the site (e.g., erosion and sediment controls, storm water management measures); a description of maintenance and inspection procedures; and a description of pollution prevention measures for any non-storm water discharges that exist.

a. Site description. Storm water pollution prevention plans must be based on an accurate understanding of the pollution potential of the site. The first part of the plan requires an evaluation of the sources of pollution at a specific construction site. The plan must identify potential sources of pollution that may reasonably be expected to affect the quality of storm water discharges from the construction site. In addition, the source identification components for pollution prevention plans must provide a description of the site and the construction activities. This information is intended to provide a better understanding of site runoff and major

pollutant sources. At a minimum, plans must include the following:

• A description of the nature of the construction activity. This would typically include a description of the ultimate use of the project (e.g., low-density residential, shopping mall, highway).

• A description of the intended sequence of major activities that disturb soils for major portions of the site (e.g., grubbing, excavation, grading).

• Estimates of the total area of the site and the total area of the site that is expected to be disturbed by excavation, grading, or other activities. Where the construction activity is to be staged, it may be appropriate to describe areas of the site that will be disturbed at different stages of the construction process.

• Estimates of the runoff coefficient of the site after construction activities are completed as well as existing data describing the quality of any discharge from the site or the soil. The runoff coefficient is defined as the fraction of total rainfall that will appear at the conveyance as runoff. Runoff coefficients can be estimated from site plan maps, which provide estimates of the area of impervious structures planned for the site and estimates of areas where vegetation will be precluded or incorporated. Runoff coefficients are one tool for evaluating the volume of runoff that will occur for a site when construction is completed. These coefficients assist in evaluating pollutant loadings, potential hydraulic impacts to receiving waters, and flooding impact. They are also used for sizing of post-construction storm water management measures.

• A site map indicating drainage patterns and approximate slopes anticipated after major grading activities, areas of soil disturbance; and outline of areas that will not be disturbed; the location of major structural and nonstructural controls identified in the plan; the location of areas where stabilization practices are expected to occur; the location of surface waters (including wetlands); and locations where storm water is discharged to a surface water. Site maps should also include other major features and potential pollutant sources, such as the location of impervious structures and the location of soil piles during the construction process.

• The name of the receiving water(s), and areal extent of wetland acreage at the site.

b. Controls to reduce pollutants. The storm water pollution prevention plan must describe and ensure that implementation of practices that will be used to reduce the pollutants in storm water discharges from the site and assure compliance with the terms and conditions of the permit. Permittees are required to develop a description of four classes of controls appropriate for inclusion in the facility's plan, and implement controls identified in the plan in accordance with the plan. The description of controls must address (1) erosion and sediment controls, (2) storm water management, (3) a specified set of other controls, and (4) any applicable procedures and requirements of State and local sediment and erosion plans or storm water management plans.

The pollution prevention plan must clearly describe the intended sequence of major activities and when, in relation to the construction process, the control will be implemented. Good site planning and preservation of mature vegetation are primary control techniques for controlling sediment in storm water discharges during construction activities as well as for developing a strategy for storm water management that controls pollutants in storm water discharges after the completion of construction activities. Properly staging major earth disturbing activities can also dramatically decrease the costs of sediment and erosion controls. The description of the intended sequence of major activities will typically describe the intended staging of activities on different parts of the site.

Permittees must develop and implement four classes of controls in the pollution prevention plan, each of which is discussed below.

i. Erosion and sediment controls. The requirements for erosion and sediment controls for construction activities in these permits have three goals: (1) To divert upslope water around disturbed areas of the site; (2) to limit the exposure of disturbed areas to the shortest duration possible; and (3) to remove sediment from storm water before it leaves the site. Erosion and sediment controls include both stabilization practices and structural practices.

Stabilization Practices. Pollution prevention plans must include a description of interim and permanent stabilization practices, including site-specific scheduling of the implementation of the practices. The plans should ensure that existing vegetation is preserved where attainable and that disturbed portions of the site are stabilized as quickly as possible. Stabilization practices are the first line of defense for prevention erosion; they include temporary seeding, permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees, preservation of mature vegetative buffer strips, and other appropriate measures. Temporary stabilization practices are often cited as the single most important factor in reducing erosion at construction sites.[15]

Stabilization also involves preserving and protecting selected trees that were on the site prior to development. Mature trees have extensive canopy and root systems, which help to hold soil in place. Shade trees also keep soil from drying rapidly and becoming susceptible to erosion. Measures taken to protect trees can vary significantly, from simple measures such as installing tree fencing around the drip line and installing tree armoring, to more complex measures such as building retaining walls and tree wells.

Since stabilization practices play such an important role in preventing erosion, it is critical that they are rapidly employed in appropriate areas. These permits provide that, except in three situations, stabilization measures be initiated on disturbed areas as soon as practicable, but no more than 14 days after construction activity on a particular portion of the site has temporarily or permanently ceased. The three exceptions to this requirement are the following:

• Where construction activities will resume on a portion of the site within 21 days from when the construction activities ceased.

• Where the initiation of stabilization measures is precluded by snow cover, in which case, stabilization measures must be initiated as soon as practicable.

• In arid areas (areas with an average annual rainfall of 0 to 10 inches) and semi-arid areas (areas with an average annual rainfall of 10 to 20 inches), where the initiation of stabilization measure is precluded by seasonal arid conditions, in which case, stabilization measures must be initiated as soon as practicable.

Structural Practices. The pollution prevention plan must include a description of structural practices to the degree economically attainable, to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from exposed areas of the site. Structural controls are necessary because vegetative controls cannot be employed at areas of the site that are continually disturbed and because a finite time period is required before vegetative practices are fully effective. Options for such controls include silt fences, earth dikes, drainage swales, check dams, subsurface drains,

[15] "New York Guidelines for Urban Erosion and Sediment Control", USDA, Soil Conservation Service, March 1988.

pipe slope drains, level spreaders, storm drain inlet protection, rock outlet protection, sediment traps, rock outlet protection, reinforced soil retaining systems, gabions, and temporary or permanent sediment basins. Structural measures should be placed on upland soils to the degree possible.

For sites with more than 10 disturbed acres at one time that are served by a common drainage location, a temporary or permanent sediment basin providing 3,600 cubic feet of storage per acre drained, or equivalent control measures (such as suitably sized dry wells or infiltration structures), must be provided where economically attainable until final stabilization of the site has been accomplished. Flows from offsite areas and flows from onsite areas that are either undisturbed or have undergone final stabilization may be diverted around both the sediment basin and the disturbed area. The requirement to provide 3,600 cubic feet of storage area per acre drained does not apply to such diverted flows.

For the drainage locations which serve more than 10 disturbed acres at one time and where a sediment basin providing storage or equivalent controls for 3,600 cubic feet per acre drained is not economically attainable, smaller sediment basins or sediment traps should be used. At a minimum, silt fences, or equivalent sediment controls are required for all sideslope and downslope boundaries of the construction area. Diversion structures should be used on upland boundaries of disturbed areas to prevent runon from entering disturbed areas.

For drainage locations serving 10 or less acres, smaller sediment basins or sediment traps should be used and at a minimum, silt fences, or equivalent sediment controls are required for all sideslope and downslope boundaries of the construction area. Alternatively, the permittee may provide a sediment basin providing storage for 3,600 cubic feet of storage per acre drained. Diversion structures should be used on upland boundaries of disturbed areas to prevent runon from entering disturbed areas.

ii. Storm water management. The plan must include a description of "storm water management" measures [16]. These permits address only the installation of storm water management measures and not the ultimate operation and maintenance of such structures after the construction activities have been completed and the site has undergone final stabilization. Permittees are responsible only for the installation and maintenance of storm water management measures prior to final stabilization of the site and are not responsible for maintenances after storm water discharges associated with construction activities have been eliminated from the site.

Land development can significantly increase storm water discharge volumes and peak velocities where appropriate storm water management measures are not implemented. In addition, storm water discharges will typically contain higher levels of pollutants, including total suspended solids (TSS), heavy metals, nutrients, and oxygen demanding constituents.[17]

Storm water management measures that are installed during the construction process can control the volume of storm water discharged and peak discharge velocities, as well as reduce the amount of pollutants discharged after the construction operations have been completed. Reductions in peak discharge velocities and volumes can also reduce pollutant loads, as well as reduce physical impacts such as stream bank erosion and stream bed scour. Storm water management measures that mitigate changes to predevelopment runoff characteristics assist in protecting and maintaining the physical and biological characteristics of receiving streams and wetlands.

Structural measures should be placed on upland soils to the degree attainable. The installation of such devices may be subject to section 404 of the CWA if the devices are placed in wetlands (or other waters of the United States).

Options for storm water management measures that are to be evaluated in the development of plans include infiltration of runoff on site; flow attenuation by use of open vegetated swales and natural depressions; storm water retention structures and storm water detention structures (including wet ponds); and sequential systems that combine several practices.

The pollution prevention plan must include an explanation of the technical basis used to select the practices to control pollution where flows exceed predevelopment levels. The explanation of the technical basis for selecting practices should address how a number of factors were evaluated, including the pollutant removal efficiencies of the measures, the costs of the measure, site specific factors that will affect the application of the measures, the economic achievability of the measure at a particular site, and other relevant factors.

EPA anticipates that storm water management measures at many sites will be able to provide for the removal of at least 80 percent of total suspended solids (TSS).[18] A number of storm water management measures can be used to achieve this level of control, including properly designed and installed wet ponds, infiltration trenches, infiltration basins, sand filter system, manmade storm water wetlands, and multiple pond systems. The pollutant removal efficiencies of various storm water management measures can be estimated from a number of sources, including "Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices", U.S. EPA, 1992, and "A Current Assessment of Urban Best Management Practice", prepared for U.S. EPA by Metropolitan Washington Council of Governments, March 1992. Proper selection of a technology depends on site factors and other conditions.

In selecting storm water management measures, the permittee should consider the impacts of each method on other water resources, such as ground water. Although storm water pollution prevention plans primarily focus on storm water management, EPA encourages facilities to avoid creating ground water pollution problems. For example, if the water table is unusually high in an area or soils are especially sandy and porous, an infiltration pond may contaminate a ground water source unless special preventive measures are taken. Under EPA's July 1991 Ground Water Protection Strategy, States are encouraged to develop Comprehensive State Ground Water Protection Programs (CSGWPP). Efforts to control storm water should be compatible with State ground water objectives as reflected in CSGWPPs.

The evaluation of whether the pollutant loadings and the hydrologic conditions (the volume of discharge) of flows exceed predevelopment levels can be based on hydrologic models which consider conditions such as the natural vegetation which is typical for the area.

Increased discharge velocities can greatly accelerate erosion near the

[16] For the purpose of the special requirements for construction activities, the term "storm water management" measures refers to controls that will primarily reduce the discharge of pollutants in storm water from sites after completion of construction activities.

[17] See "Nationwide Urban Runoff Program," EPA, 1984.

[18] TSS can be used as an indicator parameter to characterize the control of other pollutants, including heavy metals, oxygen demanding pollutants, and nutrients, commonly found in storm water discharges.

outlet of onsite structural measures. To mitigate these effects, these permits require that velocity dissipation devices be placed at discharge locations and along the length of any outfall channel as necessary to provide a non-erosive velocity flow from the structure to a water course. Velocity dissipation devices maintain and protect the natural physical and biological characteristics and functions of the watercourse, e.g., hydrologic conditions, such as the hydroperiod and hydrodynamics, that were present prior to the initiation of construction activities.

iii. Other controls. Other controls to be addressed in storm water pollution prevention plans for construction activities require that no non-storm water solid materials, including building material wastes shall be discharged at the site, except as authorized by a section 404 permit.

These final permits require that offsite vehicle tracking of sediments and the generation of dust be minimized. This can be accomplished by measures such as providing gravel or paving at access entrance and exit drives, parking areas, and unpaved roads on the site carrying significant amounts of traffic (e.g., more than 25 vehicles per day); providing entrance wash racks or stations for trucks; and/or providing street sweeping.

In addition, these permits require that the plan shall ensure and demonstrate compliance with applicable State and/or local sanitary sewer, septic system, and waste disposal regulations.[19]

iv. State and local controls. Many municipalities and States have developed sediment and erosion control requirements for construction activities. A significant number of municipalities and States have also developed storm water management controls. These general permits require that storm water pollution prevention plans for facilities that discharge storm water associated with industrial activity from construction activities include procedures and requirements of State and local sediment and erosion control plans or storm water management plans. Permittees are required to provide a certification that their storm water pollution prevention plan reflects requirements related to protecting water resources that are specified in State or local sediment and erosion plans or storm water management plans.[20]

In addition, permittees are required to amend their storm water pollution prevention plans to reflect any change in a sediment and erosion site plan or site permit or storm water management site plan or site permit approved by State or local officials for which the permittee receives written notice. Where such amendments are made, the permittee must provide a recertification that the storm water pollution prevention plan has been modified. This provision does not apply to provisions of master plans, comprehensive plans, nonenforceable guidelines, or technical guidance documents, but rather to site-specific State or local permits or plans.

c. Maintenance. Erosion and sediment controls can become ineffective if they are damaged or not properly maintained. Maintenance of controls has been identified as a major part of effective erosion and sediment programs. Plans must contain a description of prompt and timely maintenance and repair procedures addressing all erosion and sediment control measures (e.g., sediment basins, traps, silt fences), vegetation, and other measures identified in the site plan to ensure that such measures are kept in good and effective operating condition.

d. Inspections. Procedures in a plan must provide that specified areas on the site are inspected by qualified personnel provided by the discharger a minimum of once every seven calendar days and within 24 hours after any storm event of greater than 0.5 inches. Areas of the site that must be observed during such inspections include disturbed areas, areas used for storage of materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site. Where sites have been temporarily or finally stabilized, or during seasonal arid periods in arid areas (areas with an average annual rainfall of 0 to 10 inches) and semi-arid areas (with an average annual rainfall of 10 to 20 inches) the inspection must be conducted at least once every month.

Disturbed areas and areas used for storage of materials that are exposed to precipitation must be inspected for evidence of, or the potential for, pollutants entering the runoff from the site. Erosion and sediment control measures identified in the plan must be observed to ensure that they are operating correctly. Observations can be made during wet or dry weather conditions. Where discharge locations or points are accessible, they must be inspected to ascertain whether erosion control measures are effective in preventing significant impacts to receiving waters. This can be done by inspecting receiving waters to see whether any signs of erosion or sediment are associated with the discharge location. Locations where vehicles enter or exit the site must be inspected for evidence of offsite sediment tracking.

Based on the results of the inspection, the site description and the pollution prevention measures identified in the plan must be revised as soon as possible after an inspection that reveals inadequacies. The inspection and plan review process must provide for timely implementation of any changes to the plan within 7 calendar days following the inspection.

An inspection report that summarizes the scope of the inspection, name(s) and qualifications of personnel conducting the inspection, the dates of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken must be retained as part of the storm water pollution prevention plan for at least three years after the date of inspection. The report must be signed in accordance with the signatory requirements in the Standard Conditions section of these permits.

Diligent inspections are necessary to ensure adequate implementation of onsite sediment and erosion controls, particularly in the later stages of construction when the volume of runoff is greatest and the storage capacity of the sediment basins has been reduced.[21]

e. Non-storm water discharges. Today's permits may authorize storm water discharges from construction

[19] In rural and suburban areas that are served by septic systems, malfunctioning septic systems can contribute pollutants to storm water discharges. Malfunctioning septic tanks may be a more significant surface runoff pollution problem than a ground water problem. This is because a malfunctioning septic system is less likely to cause ground water contamination where a bacterial mat in the soil retards the downward movement of wastewater. Surface malfunctions are caused by clogged or impermeable soils, or when stopped up or collapsed pipes force untreated wastewater to the surface. Surface malfunctions can vary in degree from occasional damp patches on the surface to constant pooling or runoff of wastewater. These discharges have high bacteria, nitrate, and nutrient levels and can contain a variety of household chemicals. This permit does not establish new criteria for septic systems, but rather addresses existing State or local criteria.

[20] Operators of storm water discharges from construction activities which, based on an evaluation of site specific conditions, believe that State and local plans do not adequately represent BAT and BCT requirements for the facility may request to be excluded from the coverage of the general permit by submitting to the Director an individual application with a detailed explanation of the reasons supporting the request, including any supporting documentation showing that certain permit conditions are not appropriate.

[21] "Performance of Current Sediment Control Measures at Maryland Construction Sites", January 1990, Metropolitan Washington Council of Governments.

activities that are mixed with discharges from firefighting activities, fire hydrant flushings, waters used to wash vehicles or control dust in accordance with efforts to minimize offsite sediment tracking, potable water sources including waterline flushings, irrigation drainage from watering vegetation, routine exterior building washdown that does not use detergents, pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used, air conditioning condensate, springs, uncontaminated ground water (including dewatering ground water infiltration), and foundation or footing drains where flows are not contaminated with process materials such as solvents, provided the non-storm water component of the discharge is specifically identified in the pollution prevention plan. In addition, the plan must identify and ensure the implementation of appropriate pollution prevention measures for each of the non-storm water component(s) of the discharge.[22]

EPA believes that where these classes of non-storm water discharges are identified in a pollution prevention plan and where appropriate pollution prevention measures are evaluated, identified, and implemented, they generally pose low risks to the environment. The Agency also notes that it can request individual permit applications for such discharges where appropriate. The Agency is not requiring that flows from fire-fighting activities be identified in plans because of the emergency nature of such discharges coupled with their low probability and the unpredictability of their occurrence.

2. Deadlines for Plan Preparation and Compliance

Today's permits establish the following deadlines for storm water pollution prevention plan development and compliance:

- The plan must be completed prior to the submittal of an NOI to be covered under this permit and updated as appropriate.
- For construction activities that have begun on or before October 1, 1992, except for sediment basins, the plan shall provide for compliance with the terms and schedule of the plan beginning on October 1, 1992. The plan shall provide for compliance with sediment basins required under the permits by no later than December 1, 1992.
- For construction activities that have begun after October 1, 1992, the plan must provide for compliance with the terms and schedule of the plan beginning with the initiation of construction activities.

3. Signature and Plan Review

Signature and plan review requirements are as follows:

- The plan must be signed by all permittees for a site in accordance with the signatory requirements in the Standard Permit Conditions section of the permit, and must be retained on site at the facility that generates the storm water discharge.
- The permittee must make plans available, upon request, to EPA, and State or local agency approved sediment and erosion plans, grading plans, or storm water management plans. In the case of a storm water discharge associated with industrial activity that discharges through a municipal separate storm sewer system with an NPDES permit, permittees must make plans available to the municipal operator of the system upon request.
- EPA may notify the permittee at any time that the plan does not meet one or more of the minimum requirements. Within 7 days of such notification from EPA (or as otherwise requested by EPA), the permittee must make the required changes to the plan and submit to EPA a written certification that the requested changes have been made.

4. Keeping Plans Current

The permittee must amend the plan whenever there is a change in design, construction, operation, or maintenance, that has a significant effect on the potential for the discharge of pollutants to waters of the United States or to municipal separate storm sewer systems. The plan must also be amended if it proves to be ineffective in eliminating or significantly minimizing pollutants in the storm water discharges from the construction activity. In addition, the plan shall be amended to identify any new contractor and/or subcontractor that will implement a measure of the storm water pollution prevention plan. Amendments to the plan will be reviewed by EPA as described above.

5. Additional Requirements

These permits authorize a storm water discharge associated with industrial activity from a construction site that is mixed with a storm water discharge from an industrial source other than construction, only under the following conditions:

- The industrial source other than construction is located on the same site as the construction activity; and
- Storm water discharges from where the construction activities are occurring are in compliance with the terms of this permit.

6. Contractors

The storm water pollution prevention plan must clearly identify for each measure identified in the plan, the contractor(s) and/or subcontractor(s) that will implement the measure. All contractors and subcontractors identified in the plan must sign a copy of the certification statement presented below before conducting any professional service at the site identified in the pollution prevention plan:

> "I certify under penalty of law that I understand the terms and conditions of the general National Pollutant Discharge Elimination System (NPDES) permit that authorizes the storm water discharges associated with industrial activity from the construction site identified as part of this certification."

All certifications must be included in the storm water pollution prevention plan.

D. Retention of Records

The permittee is required to retain records or copies of all reports required by this permit, including storm water pollution prevention plans and records of all data used to complete the NOI to be covered by the permit, for a period of at least three years from the date of final stabilization. This period may be extended by request of the Director.

E. Notice of Termination

A discharger may submit a Notice of Termination (NOT) to EPA in two sets of circumstances: (1) After a site has undergone final stabilization and the facility no longer discharges storm water associated with industrial activity from a construction site and (2) when the permittee has transferred operational control to another permittee and is no longer an operator for the site. NOTs must be submitted using the form provided by the Director (or a photocopy thereof). A copy of the NOT form is in Appendix D and can be photocopied for use. NOTs will assist EPA in tracking the status of the discharger.

Today's permits define final stabilization for the purpose of submitting an NOT as occurring when all soil disturbing activities are completed and a uniform perennial

[22] This is consistent with the allowable types of non-storm water discharges to municipal separate storm sewer systems (40 CFR 122.26(d)(2)(iv)(A)).

vegetative cover with a density of 70 percent for the unpaved areas and areas not covered by permanent structures has been established or equivalent stabilization measures have been employed. Equivalent stabilization measures include permanent measures other than establishing vegetation, such as the use of rip-rap, gabions, and/or geotextiles.

A copy of the NOT, and instructions for completing the NOT, are provided in Appendix D of today's notice. The NOT form requires the following information:

- The mailing address of the construction site for which the notification is submitted. Where a mailing address for the site is not available, the location of the approximate center of the site must be described in terms of the latitude and longitude to the nearest 15 seconds, or the section, township, and range to the nearest quarter.
- The name, address, and telephone number of the operator addressed by the NOT.
- The NPDEs permit for the storm water discharge identified by the NOT.
- The following certification:

"I certify under penalty of law that all storm water discharges associated with industrial activity from the identified facility that are authorized by an NPDES general permit have been eliminated or that I am no longer the operator of the facility or construction site. I understand that by submitting this notice of termination, I am no longer authorized to discharge storm water associated with industrial activity under this general permit, and that discharging pollutants in storm water associated with industrial activity to waters of the United States is unlawful under the Clean Water Act where the discharge is not authorized by a NPDES permit. I also understand that the submittal of this notice of termination does not release an operator from liability for any violations of this permit form the Clean Water Act."

Notices of Termination are to be sent to the following address: Storm Water Notice of Termination, P.O. Box 1185, Newington, Virginia 22122.

The NOT must be signed by the appropriate individual in accordance with the signatory requirements of 40 CFR 122.22. A description of these signatory requirements is provided in the instructions accompanying the NOT (see appendix D).

Submittal of a NOT, by itself, does not relieve permittees from the obligations of the permit, such as the requirement to stabilize the site. Appropriate enforcement actions may still be taken for permit violations where a permittee submits a NOT but the permittee has not transferred operational control to another permittee or the site has not undergone final stabilization.

F. Regional Offices

Notices of Intent to be authorized to discharge under these permits should be sent to: Storm Water Notices of Intent, P.O. Box 1215, Newington, VA 22122.

Other submittals of information required under these permits or individual permit applications or other written correspondence concerning discharges in any State, Indian land, or from any Federal Facility covered, should be sent to the appropriate EPA Regional Office listed below:

CT, MA, ME, NH, RI, VT

United States EPA, Region I, Water Management Division, (WCP-2109), Storm Water Staff, John F. Kennedy Federal Building, room 2209, Boston, MA 02203. Contact: Veronica Harrington, (617) 565-3525.

NJ, NY, PR, VI

United States EPA, Region II, Water Management Division, (2WM-WPC), Storm Water Staff, 26 Federal Plaza, New York, NY 10278. Contact: Jose Rivera, (212) 264-2911.

AL, FL, GA, KY, MS, NC, SC, TN

United States EPA, Region IV, Water Management Division, (FPB-3), Storm Water Staff, 345 Courtland Street, NE., Atlanta, GA 30365. Contact: Chris Thomas, (404) 347-3012.

AR, LA, NM (except see Region IX for Navajo lands and see Region VIII for Ute Mountain Reservation land), OK, TX

United States EPA, Region VI, Water Management Division, (6W-EA), Storm Water Staff, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, 12th Floor, Suite 1200, Dallas, TX 75202. Contact: Region VI Storm Water Hotline at (214) 655-xxxx.

CO, MT, ND, SD, WY, UT (except see Region IX for Goshute Reservation and Navajo Reservation lands)

United States EPA, Region VIII, Water Management Division, NPDES Branch (8WM-C), Storm Water Staff, 999 18th Street, Denver, CO 80202-2466. Contact: Vern Berry, (303) 293-1630.

Note.—For *Montana Indian Lands*, please use the following address:

United States EPA, Montana Operations Office, Federal Office Building, Drawer 10096, 301 South Park, Helena, MT 59620-0026. Contact: Paul Montgomery, (406) 449-5486.

AZ, CA, HI, NV, American Samoa, Guam, the Goshute Reservation in UT and NV, the Navajo Reservation in UT, NM, and AZ, the Duck Valley Reservation in NV and ID, Johnston Atoll, Midway and Wake Island

United States EPA, Region IX, Water Management Division, (W-5-1), Storm Water Staff, 75 Hawthorne Street, San Francisco, CA 94105. Contact: Eugene Bromley, (415) 744-1906.

AK, ID (except see Region IX for Duck Valley Reservation lands), OR, WA

United States EPA, Region X, Water Management Division, (WD-134), Storm Water Staff, 1200 Sixth Street, Seattle, WA 98101. Contact: Steve Bubnick, (202) 553-8399.

V. Cost Estimates

The two major costs associated with pollution prevention plans for construction activities include the costs of sediment and erosion controls (see Table 1) and the costs of storm water management measures (see Table 2). Today's permits provide flexibility in developing controls for construction activities. Typically, most construction sites will employ several types of sediment and erosion controls and storm water management controls, but not all the controls listed in Tables 1 and 2. In general, sites that disturb a large area will incur higher pollution prevention costs.

TABLE 1.—SEDIMENT AND EROSION CONTROL COSTS

Temporary seeding	$1.00 per square foot.
Permanent seeding	$1.00 per square foot.
Mulching	$1.25 per square foot.
Sod stabilization	$4.00 per square foot.
Vegetative buffer strips	$1.00 per square foot.
Protection of trees	$30.00 to $200.00 per tree set.
Earth dikes	$5.50 per linear foot.
silt fences	$6.00 per linear foot.

TABLE 1.—SEDIMENT AND EROSION CONTROL COSTS—Continued

drainage swales—grass	$3.00 per square yard.
drainage swales—sod	$4.00 per square yard.
drainage swales—riprap	$45.00 per square yard.
drainage swales—asphalt	$35.00 per square yard.
drainage swales—concrete	$65.00 per square yard.
check dams—rock	$100.00 per dam.
check dams—covered straw bales	$50.00 per dam.
level spreader—earthen	$4.00 per square yard.
level spreader—concrete	$65.00 per square yard.
subsurface drain	$2.25 per linear foot.
Pipe slope drain	$5.00 per linear foot.
Temporary storm drain diversion	variable.
storm drain inlet protection	$300.00 per inlet.
rock outlet protection	$45.00 per square yard.
sediment traps	$500 to $7,000 per trap.
temporary sediment basins	$5,000 to $50,000 per basin.
sump pit	$500 to $7,000.
Entrance stabilization	$1,500 to $5,000 per entrance.
Entrance wash rack	$2,000 per rack.
Temporary waterway crossing	$500 to $1,500.
Wind breaks	$2.50 per linear foot.

Practices such as sod stabilization and tree protection increase property values and satisfy consumer aesthetic needs.
Sources: "Means Site Work Cost Data", 9th edition, 1990, R.S. Means Company.
"Sediment and Erosion Control, An Inventory of Current Practices", prepared by Kamber Engineering for U.S. EPA, April 1990.

TABLE 2.—ANNUALIZED COSTS OF SEVERAL STORM WATER MANAGEMENT OPTIONS FOR CONSTRUCTION SITES

	Annualized cost for 9-acre developed area	Annualized cost for 20-acre developed area
Wet Ponds	$5,872	$5,820
Dry Ponds	3,240	5,907
Dry Ponds with Extended Detention	3,110	5,413
Infiltration Trenches	4,134	6,359

Estimates based on methodology presented in "Cost of Urban Runoff Quality Controls", Wiegand, C., Schueler, T., Chittenden, W., and Jellick, D., Urban Runoff Quality-Impact and Quality Enhancement Technology, Proceedings of an Engineering Foundation Conference, ASCE, 1986, edited by B. Urbonas and L.A. Roesner.
Costs are presented in 1992 dollars. Annualized costs are based on a 10 year period and 10 percent discount rate. Estimates include a contingency cost of 25 percent of the construction cost and operation and maintenance costs of 5 percent of the construction cost. Land costs are not included.

VI. Economic Impact (Executive Order 12291)

EPA has submitted this notice to the Office of Management and Budget for review under Executive Order 12291.

VII. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities in these final general permits under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et. seq. EPA did not prepare an Information Collection Request (ICR) document for today's permits because the information collection requirements in these permits have already been approved by the Office of Management and Budget (OMB) in submissions made for the NPDES permit program under the provisions of the Clean Water Act.

VIII. Section 401 Certification

Section 401 of the CWA provides that no Federal license or permit, including NPDES permits, to conduct any activity that may result in any discharge into navigable waters shall be granted until the State in which the discharge originates certifies that the discharge will comply with the applicable provisions of sections 301, 302, 303, 306, and 307 of the CWA. The section 401 certification process has been completed for all States, Indian lands and Federal facilities covered by today's general permits. The following summary indicates where additional permit requirements have been added as a result of the certification process and also provides a more detailed discussion of additional requirements for Puerto Rico and Arizona in particular.

Region I

Maine: No additional 401 conditions.

Maine: Indian lands only, no additional 401 conditions.

Massachusetts: Indian lands only, no additional 401 conditions.

New Hampshire: No additional 401 conditions.

New Hampshire: Indian lands only, no additional 401 conditions.

Region II

Puerto Rico: See the following discussion and part X.A of the general permit for additional 401 conditions.

The Environmental Quality Board (EQB) of Puerto Rico issued on June 25, 1992, the General Water Quality Certificate (GWQC) in accordance with section 401 of the Clean Water Act for storm water discharges from construction activities that are classified as associated with industrial activity. This action was taken in response to the Region II Environmental Protection Agency's certification request of November 1, 1991.

The EQB's draft GWQC incorporated special conditions that must be met by all storm water discharges from construction activities that are classified as associated with industrial activity. A public notice was prepared including a notification to interested parties about the intention to issue a GWQC. The public notice provided a thirty (30) day public comment period. The EQB did not receive any comments regarding the GWQC; therefore, the EQB has finalized the GWQC.

The special conditions included in the GWQC are intended to assure that the general permit applicant will comply with the applicable requirements of the

Commonwealth of Puerto Rico Law and section 301(b)(1)(c) and 401(d) of the Clean Water Act. The GWQC contains, among others, the following special conditions:

• Prior to the construction of any treatment system of waters composed entirely of storm water, the permittee shall obtain the approval of the engineering report, plans, and specifications from the EQB.

• The permittee shall submit to EQB with copy to the Regional Office the following information regarding its storm water discharge(s) associated with industrial activity: the number of storm water discharges associated with industrial activity covered by this permit and a drawing indicating the drainage area of each storm water discharge associated with industrial activity:

—For construction activities that have begun on or before October 1, 1992, the permittee is required to submit the information listed above no later than November 15, 1992.

—For construction activities that have begun after October 1, 1992, the permittee is required to submit the information listed above within forty-five (45) days of submission of the NOI.

• All discharges covered by the GWQC shall be free of oil sheen at all times.

• The storm water discharges from construction activities covered by the GWQC will not cause violation of the applicable water quality standards.

• From construction activities that have begun on or before October 1, 1992, the plan shall provide for compliance with the terms and schedule of the plan beginning on October 1, 1992. On or before November 1, 1992, the permittee shall submit to EQB with copy to the Regional Office, a certification stating that the Plan has been developed and implemented in accordance with the requirements established in this permit. This certification should be signed by the person who fulfills the signatory requirements of the general permit.

• For construction activities that have begun after October 1, 1992, that plan shall provide for compliance with the terms and schedule of the plan beginning with the initiation of construction activities. Within thirty (30) days of submission of the NOI, the permittee shall submit to EQB with copy to the Regional Office, a certification stating that the Plan has been developed and implemented in accordance with the requirements established in this permit. This certification should be signed by the person who fulfills the signatory requirements of the general permit.

• Compliance with the pollution prevention plan requirements does not relieve the permittee of his or her responsibility to comply with the provisions of the Sediment and Erosion Control Plant (Plan CEST, as referred to in Spanish) required by EQB.

Review and appeals of special conditions attributable to the GWQC shall be made through the applicable procedures of the Commonwealth of Puerto Rico and may not be through EPA procedures. Copies of the GWQC may be obtained by writing to the EQB, P.O. Box 11488, Santurce, Puerto Rico, 00910, or by calling at (809) 767-8181.

Region IV

Florida: Indian lands only, no additional 401 conditions (two separate permits for two different tribes).

Mississippi Indian lands: No additional 401 conditions.

North Carolina Indian lands: No additional 401 conditions.

Region VI

Louisiana and Indian lands in Louisiana: No additional 401 conditions.

New Mexico and Indian lands in New Mexico (except Navajo lands and Ute Mountain Reservation lands): No additional 401 conditions.

Oklahoma and Indian lands in Oklahoma: No additional 401 conditions.

Texas and Indian lands in Texas: No additional 401 conditions.

Region VIII

South Dakota and Indian lands in South Dakota: No additional 401 conditions.

Montana Indian lands only: No additional 401 conditions.

North Dakota Indian lands only: No additional 401 conditions.

Wyoming Indian lands only: No additional 401 conditions.

Utah Indian lands only (except the Goshute Reservation in Utah and Navajo reservation lands in Utah): No additional 401 conditions.

Colorado Federal facilities, Colorado Indian lands, and New Mexico Indian lands (including the Southern Ute Reservation and the Ute Mountain reservation, which includes the entire reservation, which is located in Colorado and New Mexico): See part X.B for additional 401 conditions.

Region IX

Arizona: See the following discussion and part X.C of the general permit for additional 401 conditions.

A special condition (see part X.C of the permit) was added to ensure compliance with the water quality standards of the State of Arizona. Although the general permit excludes from coverage facilities which contribute to a violation of a state water quality standard, the State of Arizona is concerned about the practical implementation of this exclusion. The State believes that there is considerable uncertainty regarding the quality of storm water runoff from different types of facilities and which facilities should be excluded from coverage. In addition, the State has expressed concern regarding the performance of the BMPs which would be required by the permit. There, part X.C was added to ensure compliance with State water quality standards for facilities which are covered by the permit.

The special condition in part X.C of the permit (well registration numbers) was added primarily to ensure protection of State groundwater resources. The State is concerned that in Arizona, many facilities may dispose of some storm water to dry wells or injection wells rather than discharge to surface waters. This special condition will allow the State to gather additional information concerning discharges to groundwater. The State also wishes to receive a copy of the actual NOI forms for its files. The special condition in part X.C of the permit will allow the State to receive NOTs as well as NOIs.

The special condition in part X.C of the permit was added to provide a definition of the term "significant sources of non-storm water" which was not otherwise defined. The State is particularly concerned about discharges which may cause or contribute to a violation of a water quality standard.

Arizona Indian lands only (including the Navajo reservation lands in Utah, New Mexico): No additional 401 conditions. California Indian lands only: No additional 401 conditions. Nevada Indian lands only (including the Duck Valley reservation lands in Nevada and Idaho, including the Goshute territory in Utah): No additional 401 conditions. Johnston Atoll: No additional 401 conditions. Midway and Wake Island: No additional 401 conditions.

Region X

Alaska: See part X.D for additional 401 conditions. Alaska Indian lands: No additional 401 conditions. Idaho: See part X.E for additional 401 conditions. Idaho Indian lands (except the Duck Valley reservation lands in Nevada and Idaho): No additional 401 conditions. Washington Indian lands: No additional 401 conditions. Washington Federal facilities, see part X.F for additional 401 conditions.

IX. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, U.S.C. 601 et. seq., EPA is required to prepare a Regulatory Flexibility Analysis to assess the impact of rules on small entities. No Regulatory Flexibility Analysis is required, however, where the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Today's permits provide small entities with an application option that is less burdensome than individual applications or participating in a group application. The other requirements have been designed to minimize significant economic impacts of the rule on small entities and does not have a significant impact on industry. In addition, the permits reduce significant administrative burdens on regulated sources. Accordingly, I hereby certify pursuant to the provisions of the Regulatory Flexibility Act, that these permits will not have a significant impact on a substantial number of small entities.

Authority: Clean Water Act, 33 USC 1251 *et seq.*

Dated: August 28, 1992.

Patricia Meaney,

Acting Regional Administrator, Region I.

Fact Sheet for Final National Pollutant Discharge Elimination System General Permit for Storm Water Discharges from Construction Activities That Are Classified as "Associated With Industrial Activity" Located in the Commonwealth of Puerto Rico (PRR100000)

(The following signature indicates approval of the Fact Sheet developed for the permit indicated above.)

Dated: August 28, 1992.

William J. Muszynski,

Acting Regional Administrator, Region II.

Dated: August 28, 1992.

Patrick M. Tobin,

Acting Regional Administrator, Region IV.

Dated: August 27, 1992.

B.J. Wynne,

Regional Administrator, Region VI.

Dated: August 28, 1992.

Kerrigan Clough,

Acting Regional Administrator, Region VIII.

Dated: August 28, 1992.

Daniel W. McGovern,

Regional Administrator, Region IX.

Dated: August 27, 1992.

Dana Rasmussen,

Regional Administrator, Region X.

Appendix A—Summary of Responses to Public Comments on the August 16, 1991, Draft General Permits

NOI Deadlines

In the August 16, 1991, draft general permits, EPA proposed that NOIs to obtain coverage under the permits be submitted within 180 days of the date of issuance of the general permits or at least 30 days prior to the commencement of construction of a new storm water discharge associated with industrial activity.

Subsequent to the August 16, 1991, notice, EPA extended to October 1, 1992 the regulatory deadlines for submitting individual permit applications (see November 5, 1991, (56 FR 56549)), and part 2 of group applications (see April 2, 1992 (57 FR 11394)), for storm water discharges associated with industrial activity.

Today's final general permits provide that NOIs for construction activities that commence before October 1, 1992, and continue past that date must be submitted on or before October 1, 1992. As discussed in the November 5, 1991, and April 2, 1992, rules, the October 1, 1992, date provides consistency with the deadlines for submitting individual permit applications and Part 2 of group applications. Using the October 1, 1992, deadline will minimize confusion regarding these deadlines, particularly where EPA issues permits for different States on different dates, and will provide an equitable framework for complying with permit application requirements.

As discussed in more detail below, some commenters on the August 16, 1991, draft general permits indicated that, in some cases, general contractors would not have been selected 30 days prior to the commencement of the construction activities. These commenters indicated that if general contractors were required to submit NOIs 30 days prior to commencing construction activities, then delays in project initiation could result. In response to these concerns, today's permits provide that NOIs for construction activities that commence after October 1, 1992, be submitted at least 2 days prior to the commencement of construction. EPA believes that shortening the deadline for submitting NOIs for storm water discharges from construction sites that commence after October 1, 1992, will minimize delays in project starts and, as discussed below, address concerns regarding who needs to apply. Today's rule also clarifies that where an operator has not yet been identified at the point in time during the planning process when an NOI for the site is initially submitted, the owner may submit an initial NOI with the operator submitting an NOI at a later date (but prior to the time when that operator commences work at the site).

Some commenters requested clarification as to whether dischargers that missed the deadlines for submitting an NOI may ultimately obtain general permit coverage. A number of these commenters were particularly concerned about situations where a discharger is unaware of the requirement to obtain an NPDES permit for their discharge by October 1, 1992. These commenters urged EPA to provide flexibility in allowing them to submit an NOI to be authorized to discharge under the general permit after the deadlines specified in the general permit.

In response, EPA recognizes that there will be situations where it will be appropriate to allow a discharge to be authorized under the general permit after the deadline for submitting an NOI. For example, some facilities may only become aware of the general permit or even that their storm water discharge must be authorized by an NPDES permit after the deadline for submitting an NOI has passed. The Agency recognizes that the NPDES storm water program is relatively new, at least in terms of implementation activities, and that the application deadlines have changed on several occasions, which may have confused some dischargers. While ignorance of NPDES storm water requirements is not a shield from enforcement for discharging without a permit, the Agency recognizes the administrative advantages to allowing an existing discharger to obtain coverage under the general permit. For example, an existing facility that missed the October 1, 1992, deadline for submitting an NOI may experience significant project delays if it is required to wait until an individual permit is issued for the site.

In response to these concerns, today's permit clarifies that a discharger that misses either the October 1, 1992 deadline or the 48-hour deadline for facilities that commence construction after October 1, 1992, may submit an NOI and be authorized to discharge under the general permits However, EPA wants to clarify that in such instances, the Agency may bring an appropriate enforcement action against the discharger.

NOI Requirements—Who Applies?

A number of commenters requested that EPA clarify which parties associated with a construction project must submit an NOI to be covered by the general permit. Some commenters indicated that different parties (e.g., site owner, developer, general contractor), can have different roles at different construction projects. Some of the commenters suggested that EPA should establish flexible requirements for who must submit an NOI to address the roles of the different parties responsible for the project, roles that can vary from site to site.

The commenters raised two major sets of concerns on this issue. The first set of concerns addressed the relationship between permit compliance and business practices in the construction industry. Several commenters indicated that, in situations where competitive bids are used to award construction contracts, they believed it was critical that the party that controls the specifications of the project incorporate prior to the bidding process the project specifications for sediment and erosion controls and storm water management measures necessary for permit compliance. These commenters indicated that they thought successful program implementation depended on ensuring that the specifications and costs associated with compliance with the permit be considered during the bid process. They indicated that the contractors bidding on the job should know the requirements of a storm water pollution prevention plan for a site to ensure that all of the bidders will be able to take the costs of complying with the plan into consideration in preparing a bid for the project. Several commenters raised concerns that contractors that were considering the costs associated with permit compliance may be at a competitive disadvantage when bidding on a project where sediment and erosion controls and/or storm water management measures were not addressed in the project specifications used during the bid process. These commenters thought that such an approach may result in economic incentives for other contractors to short change the pollution controls necessary under the permit in an attempt to submit a more competitive bid. Other commenters raised concerns that contractors may not be able to unilaterally build certain storm water management devices or sediment and erosion controls that are not identified in job specifications. In addition, some commenters indicated that if the party controlling the job specification (typically an owner or developer) were not permittees or co-permittees, then the costs of modifying plans after project initiation to address changes in site conditions would fall on the contractor, who may not be able to recoup the costs from the owner/developer.

The second set of concerns involved timing issues and the potential for delayed project starts. Several commenters indicated that in the construction industry, the site owner or developer (or their representative) often obtains required permits before the construction contract is awarded. This is done to prevent delays and to give the owner/developer an opportunity to modify job specifications to address issues raised in seeking permits. Some of these commenters noted the connection between the issues of who is required to submit an NOI and when an NOI is required. They indicated that in a significant number of situations, a contractor will not have been selected 30 days prior to initiation of the construction project.[23] Many of these commenters raised concerns that projects could be delayed if EPA required the contractor to submit the NOI 30 days prior to initiation of the project. Other commenters suggested that multiple general contractors could be used at some sites, with the first contractor initiating work (such as initial clearing and grading) long before the second contractor is selected.

In response, today's permits require the "operator" of a construction site to submit the NOI for coverage under a permit. For the purposes of submitting NOIs under these general permits, the Agency wants to clarify that the "operator" is the party or parties that either individually or taken together meet the following two criteria: (1) They have operational control over the site specifications (including the ability to make modifications in specifications); and (2) they have the day-to-day operational control of those activities at the site necessary to ensure compliance with plan requirements and permit conditions (e.g. are authorized to direct workers at the site to carry out activities identified in the plan).

Control over site specifications is necessary to ensure that the site plan allows for the design of storm water management measures and other controls necessary to comply with the permit. In addition, control over site specifications is necessary to modify specifications based on information obtained during the construction process or as otherwise required by EPA. Day-to-day operational control over activities at the site is necessary to ensure that plans are effectively implemented. This is particularly true in the construction industry where conditions and activities are continually changing.

EPA anticipates that different types of parties (e.g., owners, developers, general contractors, etc.) will satisfy the two criteria for the operator that must submit the NOI at different projects. In addition, the Agency anticipates that in many instances, more than one party will have to submit an NOI for the same project in order to satisfy both criteria. For example, at a given site, the property owner may have operational control over site specifications, while a general contractor may have day-to-day control over activities at the site. In this situation, both the property owner and the general contractor must submit an NOI. EPA believes that this approach is necessary to ensure that the relevant parties are aware of their responsibilities under the permit.

EPA believes that this approach also addresses concerns about timing issues and minimizes the potential for delayed project starts. The Agency has incorporated a considerable amount of flexibility into the NOI requirements of today's permits to minimize the potential for project delays. Where multiple parties are required to submit NOIs for the same site, and all parties are known before the NOIs are submitted, then an NOI must be submitted for each party, with all NOIs for the project sent to EPA together in the same envelope. In situations where the party that controls the site specifications (such as an owner or developer) wants to submit an NOI before the operator(s) with day-to-day control of activities at the site is selected, they may do so. However, after an operator with day-to-day control of site activities is selected, the newly selected operator must submit an NOI before commencing activities on the site. Similarly, where a second operator with day-to-day control is selected after the first operator has commenced work, the newly selected operator must submit an NOI before they commence activities on the site. This flexibility should ensure that projects are not delayed.

EPA strongly recommends that pollution prevention plans be prepared

[23] The August 16, 1991 draft general permits would have required for many construction sites that NOIs be submitted 30 days before construction starts.

well in advance of submitting an NOI. Preparing plans as part of the project design phase will ensure that sediment and erosion controls and storm water management concepts are incorporated into the site design in the most cost-effective manner. Where competitive bids are used to award construction contracts, the Agency strongly recommends that the party that controls the specifications of the project prepare the pollution prevention plan prior to initiation of the bid process to ensure that bidders will clearly understand what controls will be necessary. One of the major advantages to a general permit for storm water discharges from construction activities is that it provides a known framework for developing storm water pollution prevention plans. The regulatory certainty provided by a general permit is intended to provide site developers with an opportunity to develop storm water pollution prevention plans well in advance of initiating construction at a site. The Agency recommends that developers take advantage of the opportunity to develop a storm water pollution prevention plan well in advance of initiating construction activities, and to make the design of sediment and erosion controls and storm water management measures an integral phase of the site design process. Early plan preparation will allow the costs of plan compliance to be considered during the bid process and will encourage the maximization of net environmental benefits by considering sediment and erosion controls and storm water management before site plan parameters and procedures are locked in.

Other commenters requested clarification on whether a NOI must be submitted where the property changes ownership, for example, when a developer sells a graded lot to a builder for residential buildings. A number of these commenters indicated that ownership and general contractors frequently change during the construction process. One example given was for residential land development, where an initial land owner acts as the initial developer, and hires a general contractor to put in roads, rough grading and major utility trunks (e.g., sewer and water lines). The developer then sells off parcels to one or more builders, and the builder, or the builder's contractors erect structures, tap into utilities, and put a final grade on the lot. Builders may continue to own the property or sell it (as in the case of a detached single family home) either after or prior to the establishment of final vegetative cover.

Today's permits provide that NOIs must identify and be signed by the party(s) that has operational control of the site. As discussed above, two criteria are to be evaluated when determining the operator(s) for the purpose of NOI submission, the operator must (1) have operational control of the site specifications (including the ability to make modifications in specifications); and (2) have the day-to-day operational control of those activities at the site necessary to ensure compliance with plan requirements and permit conditions. For many construction projects, more than one party (such as a site owner and general contractor for the project) will have to submit an NOI to ensure that both criteria are met. Where one of the parties that exhibits operational control changes, as determined by applying the two criteria, then the new party meeting the criteria must submit a new NOI. Thus, if the original developer sells a parcel to a builder, and the builder takes over operational control of site specifications and/or day-to-day operational control of activities at the site necessary to ensure compliance with plan requirements and permit conditions, than the builder must submit a new NOI.

In response to concerns about multiple parties involved in the construction process, and to provide additional clarification, today's permits also require that all contractors and subcontractors that will implement measures identified in the plan be identified in the plan, and certify that they understand the terms and conditions of today's permit. The Agency believes that this is an appropriate mechanism for ensuring that the responsibilities of the various parties involved are clearly understood. However, the Agency wants to clarify that subcontractors themselves do not need to submit an NOI provided the operator with day-to-day operational control of activities at the site (such as a general contractor) has submitted an NOI. Subcontractors need only certify their knowledge of permit requirements.

EPA believes that the approach taken to NOI requirements in today's permits will have a number of benefits. First, the Agency believes that it is critical that the parties with operational control over both site specifications and day-to-day activities at the site be identified in the NOI. This will assist in identifying responsible parties, provide for an opportunity for the various parties involved to clarify the terms and responsibilities of the plan among themselves, and ensure that effective enforcement may take place.

Second, the Agency believes that it is appropriate to provide flexibility, consistent with the NPDES regulations,[24] by allowing the owner to submit an NOI prior to selection of a general contractor or other operator, as long as the new operator submits an updated NOI after they are selected. This approach will minimize delays to conducting construction activities. In addition, it will address situations where a second operator or general contractor is selected during the construction process to either replace an earlier operator/general contractor or to conduct a different phase of the project.

The Agency believes that shortening the minimum time period between when an NOI is submitted and when a discharge is authorized to 2 days will simplify the NOI process and minimize any project delays. The NOI process will be simplified by allowing more time for all of the operators at the site to be identified, which will increase the likelihood that all or most site operators will be selected prior to the deadline for submitting an NOI. This will allow all operators to be identified in the initial submittal.

Concerns About Project Delays

A number of comments raised concerns that the NPDES requirements for storm water discharges from construction activities may result in significant delays to construction projects. Several of these commenters indicated that they believed EPA's review of detailed pollution prevention plans prior to the issuance of permits could not be accomplished in a short period of time. Other commenters requested clarification as to when dischargers would be authorized to discharge under the permit. Some commenters expressed concerns that EPA would not be able to approve NOIs in a timely manner. As discussed above, some commenters were concerned about

[24] The NPDES regulations at 40 CFR 122.21(b) provide that when a facility or activity is owned by one person, but is operated by another person, it is the operator's duty to obtain a permit. However, EPA's regulations do not preclude an owner from applying for a permit where the operator has not yet been identified or where the owner and operator are the same entity. Thus, in the case of storm water discharges from construction sites, the Agency's regulations do not preclude the owner of a planned construction site during the plan development phase before the bid process has been completed so long as when a different operator is chosen (such as a general contractor), the new operator becomes a co-permittee. EPA considers the term "operator" to include a general contractor in certain circumstances where the contractor has operational control over activities at the site (see November 16, 1990 (55 FR 48034).

the issues of deadlines for submitting NOIs and who must submit NOIs.

In response, the Agency has taken a number of steps to minimize delays to construction projects. As discussed above, shortening the deadline for submitting NOIs and providing flexibility to allow owners to submit NOIs before contractors are selected will minimize project delays. In addition, EPA wants to clarify that, unless the discharger is notified by EPA to the contrary, storm water discharges form construction sites identified in a complete NOI are authorized to discharge storm water from construction sites under the terms and conditions of this permit 2 days after the date that the NOI is postmarked, provided a pollution prevention plan has been prepared in accordance with the requirements of the permit. This short time period between submitting NOIs and being authorized to discharge under the general permit will minimize delays to construction project starts.

The Agency also wants to clarify that it does not intend to conduct detailed reviews of all pollution prevention plans prior to authorizing such storm water discharges under today's permit. Today's permits do not require permittees to submit pollution prevention plans to EPA before commencing discharges. As discussed above, today's permits base authorization on the submittal of an NOI rather than on EPA review and approval of individual site pollution prevention plans. However, under the permits, EPA retains authority to request and review storm water pollution prevention plans and to require dischargers to adjust plans or submit individual permit applications where appropriate.

NOI Requirements

A number of commenters on the August 16, 1991, draft general permits indicated that NOI requirements were generally less burdensome than individual permit applications. However, commenters raised several concerns with specific requirements of the NOI.

The August 16, 1991, draft permits would have required that NOIs include the mailing address of the facility. One commenter indicated that construction sites may not have mailing addresses. In response today's permits provide that where a mailing address for a construction site is not available, the location can be described in terms of the latitude and longitude to the nearest 15 seconds, or the section, township, range to the nearest quarter section of the approximate center of the facility that the construction site is located in. However, a mailing address must be provided for the site owner and the operator. These addresses can be different than address of the construction site.

The August 16, 1991, draft permits would have required up to four 4 digit standard industrial classification (SIC) codes that best describe the principal products of the facility. EPA notes that while this requirement may be appropriate for other classes of facilities it is generally not necessary for construction activities.

A number of commenters suggested additional information that should be included in NOIs for construction sites, including area to be disturbed, a schedule of activities, erosion and sediment control plans approved by State and local governments. In response, as discussed above, EPA does not intend to conduct intensive plan reviews prior to approving NOIs. Rather, the Agency intends to use information in NOIs primarily for tracking purposes. However, today's permits require more detailed information be included in pollution prevention plans. Therefore, the Agency believes that the NOI requirements of today's permits will provide sufficient information to satisfy the limited purpose for which the Agency intends to use the NOI, and that additional information will be available to the Agency, where necessary, in the required pollution prevention plans or from other sources.

Notice of Termination

Some commenters requested clarification as to when requirements to discharge according to a permit for storm water discharges from construction activities end. Other commenters requested clarification on who is responsible for maintaining vegetation and structures after construction was completed. Some commenters requested that EPA provide a mechanism for reporting to EPA when construction activities at a site have been completed. Several commenters suggested that the general permits provide the discharger with the opportunity to file a notice of termination at the completion of construction.

In response to these concerns, today's permits have been modified to allow permittees to submit a Notice of Termination (NOT) to EPA indicating that the specific activities in the pollution prevention plan have ended and either the area has been stabilized or the operator has changed and the next steps in the plan are the responsibility of a different operator. NOTs must include a certification that disturbed soils at the identified facility have been finally stabilized and temporary erosion and sediment control measures have been removed, or that all storm water discharges associated with industrial activity from the identified facility that are authorized by a NPDES general permit have otherwise been eliminated, or that the person submitting the NOT is no longer the operator.

For the purpose of these general permits, EPA is defining the term "final stabilization" to mean that all soil disturbing activities at the site have been completed, and that a uniform perennial vegetative cover with a density of 70 percent of the cover for the area has been established or that equivalent stabilization measures have been employed. The 70 percent criteria applies to the minimum density of vegetation associated with all disturbed areas where vegetative stabilization is to be established. (The criteria is not met when 30 percent of the exposed area is not stabilized and 70 percent of the exposed area is fully stabilized). Equivalent stabilization measures would include situations where adequate and appropriate geotextiles and/or mulches are used to stabilize a site until vegetation is established. In addition, equivalent measures would include situations where a site is completely covered with impervious structures, and therefore is generally not susceptible to soil and erosion from precipitation.

The Agency believes that final stabilization is a critical component of a construction project. The 70 percent criterion provides a completion point that is directly tied to the key sediment and erosion objectives of the plan. The 70 percent criterion also is consistent with several State and local program requirements (see for example, "Pennsylvania Soil and Erosion Control Manual", 1983). The 70 percent criterion has been identified as economically achievable for several of the management measures for construction activities in the "Proposed Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters", EPA, May 1991, proposed under section 6217(g) of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA).

The Agency wants to also clarify that after the site is finally stabilized and all storm water discharges associated with industrial activity are eliminated from a facility, then the NPDES program generally does not require the discharger to continue to maintain vegetation or storm water measures at the site. Thus, a storm water discharge from a non-industrial site will generally

not be subject to existing NPDES requirements after construction activities, including final stabilization, at the site have been completed pending the expiration of the storm water permit moratorium and EPA regulations under section 402(p)(6) of the CWA [25].

Discharges from Asphalt Plants

A number of commenters indicated that construction activities frequently use mobile asphalt plants and mobile concrete plants at a construction site on a temporary basis. These facilities mix asphalt cement or portland cement with aggregate to produce asphalt pavement or concrete. One commenter indicated that for highway and related public works projects, such plants are often located on leased property immediately adjacent to the construction site. Some commenters recommended that mobile asphalt or concrete plants used at a construction site be covered under the general permit for construction activities. In addition, one commenter recommended that storm water discharges from mobile asphalt or concrete plants used at a construction site that otherwise did not have a storm water discharge associated with industrial activity (e.g., a site that disturbed less than 5 acres), should not be required to obtain an NPDES permit.

In response, the Agency agrees that a number of construction sites will employ the services of mobile asphalt or concrete plants. The Agency notes that this situation is similar to that of a construction project that is conducted at an existing industrial facility (e.g., for the purpose of expanding or otherwise modifying the industrial facility). The Agency has noted that the storm water concerns, along with the appropriate controls, are somewhat different for construction projects than for other traditional industrial facilities, including mobile asphalt or concrete plants. Accordingly, the August 16, 1991, draft general permits contained requirements for pollution prevention plans for storm water discharges from construction sites that were significantly different from plan requirements for other types of industrial facilities. The Agency notes that the operator of mobile asphalt or concrete plants can be different from the site operator. Today's permits reflect EPA's attempts to address these concerns without imposing significant administrative burdens or increasing the potential for delay. Today's general permits clarify that storm water discharges associated with industrial activity from a construction site that are mixed with a storm water discharge from an industrial source other than construction (including storm water discharges from dedicated asphalt or concrete plants) may be covered by the permit under the following conditions:

- The industrial source other than construction is located on the same site as the construction activity;
- Storm water discharges associated with industrial activity from the areas of the site where construction activities are occurring are in compliance with the terms of this permit; and
- Storm water discharges associated with industrial activity from the areas of the site where industrial activity other than construction are occurring (including storm water discharges from dedicated asphalt plants and dedicated concrete plants) are in compliance with the terms, including applicable NOI or application requirements, of a different NPDES general permit or individual permit authorizing such discharges.

This approach will ensure that appropriate pollution prevention measures are implemented for the various components of industrial activity occurring at the site. The Agency also intends to issue general permits for storm water discharges associated with industrial activity from facilities other than construction activities in the near future. The Agency intends that, similar to today's permits, the permits for storm water discharges from traditional industries will establish simplified procedures for permit coverage that will minimize project delays and burdens on permittees with temporary or permanent industrial facilities.

With respect to mobile asphalt or concrete plants at construction sites of less than five acres, the Agency notes that storm water discharges from the asphalt plant or concrete will generally be associated with industrial activity. The regulatory definition of storm water discharge associated with industrial addresses both concrete plants and asphalt plants (see 40 CFR 122.26(b)(14)(ii)). However, the storm water discharges from the rest of the construction site would generally not meet the definition of "storm water associated with industrial activity" if the site did not disturb more than five acres. Thus, the operator of the mobile asphalt or concrete plant would be required to obtain NPDES permit coverage (under a permit other than today's permit), while other storm water discharges from the site would generally not need NPDES permit coverage.

Non-Storm Water Discharges

The August 16, 1991, draft permit required that all discharges covered by the permits had to be composed entirely of storm water, and that discharges of material other than storm water must be in compliance with a different NPDES permit issued for the non-storm water discharge. EPA indicated that it was taking this approach because these general permits were not intended to authorize process wastewaters.

A number of commenters strongly supported the prohibition, or noted that it appeared reasonable. However, a number of comments addressing this provision raised technical concerns that certain non-storm water discharges are commonly allowed to discharge via a separate storm sewer or are otherwise mixed with storm water discharges. These commenters indicated that some classes of non-storm water discharges could not easily be separated from drainage or separate storm sewer systems, and that separating such discharges from a storm system would typically not provide any environmental benefits. Some of these commenters indicated that they believed that a strict prohibition on non-storm water discharges would significantly limit the number of facilities that obtained coverage under the general permit.

In response to these comments, EPA believes that it is important to retain a modified version of this provision in the permit to clarify that certain non-storm water discharges, such as process waste waters, or discharges from portable toilets, are not authorized by these storm water general permits. However, today's permits provide for two sets of circumstances where storm water discharges that are mixed with storm water may be authorized by this permit.

Consistent with the proposal, the permit authorizes storm water discharges associated with industrial activity that are mixed with non-storm water discharges that are in compliance with a different NPDES permit. Typically, the compliance point for numeric limitations for the non-storm water discharge will be before the discharges are mixed. Similarly, where a permit for a non-storm water discharge requires monitoring, such monitoring should be conducted prior to mixing or during dry weather conditions when the storm water discharges are not

[25] However, where a construction project results in an industrial facility or activity, an NPDES permit is still required to authorize any storm water discharges associated with industrial activity (as defined at 40 CFR 122.26(b)(14)). In addition, section 402(p)(2)(E) of the CWA provides EPA and authorized NPDES States with authority to designate storm water discharges that are a significant contributor of pollutants to waters of the United States or that contribute to a violation of a water quality standard as needing an NPDES permit.

occurring. This will allow a discharger to use the same conveyance or outfall for both process discharges authorized by a different NPDES permit and storm water discharges authorized by today's permits.

In response to comments, the Agency recognizes that discharging some classes of non-storm water via separate storm sewers or otherwise mixed with storm water discharges are largely unavoidable and/or may pose little if any environmental risk. Therefore, the Agency has clarified that today's permits authorize storm water discharges from construction activities that may mix with discharges from fire fighting activities, fire hydrant flushings, waters used to wash vehicles or control dust in accordance with efforts to minimize offsite sediment tracking, potable water sources (including waterline flushings), irrigation drainage from watering vegetation, routine exterior building washdown that does not use detergents, pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used, air conditioning condensate, springs, uncontaminated ground water (including dewatering ground water infiltration), and foundation or footing drains where flows are not contaminated with process materials such as solvents, provided the non-storm water component of the discharge is specifically identified in the pollution prevention plan. In addition, the plan must identify and ensure the implementation of appropriate pollution prevention measures for each of the non-storm water component(s) of the discharge. EPA believes that where these classes of non-storm water discharges are identified in a pollution prevention plan and where appropriate pollution prevention measures are evaluated, identified and implemented, they generally pose low risks to the environment. The Agency also notes that EPA can request individual permit applications for such discharges where appropriate. The Agency is not requiring that flows from fire-fighting activities be identified in plans because of the emergency nature of such discharges and because of their low probability and the unpredictability of their occurrence. The Agency notes that the approach in today's permits taken for non-storm water discharges is parallel to the approach taken for non-storm water discharges to large and medium municipal separate storm sewer systems in its November 16, 1990 rulemaking (55 FR 47990).

One commenter on the August 16, 1991, draft permits suggested that EPA exempt discharges from a 25-year, 24-hour storm event from the prohibition on non-storm water discharges, because during such an event non-storm water discharges may occur that are beyond the permittee's ability to control. EPA does not agree that the occurrence of a 25-year, 24-hour storm event should result in a wholesale exemption from NPDES requirements for non-storm water discharges. Large storm events should not be used as an excuse for dumping non-storm water discharges to waters of the United States; such discharges remain point source discharges under the CWA. Typically, systems that can result in non-storm water discharges should be designed to ensure no unpermitted discharge during large storm events. The Agency believes that the approach taken in today's permits is suitable for such releases, and does not want to create confusion or encourage such releases by providing such an exemption. Factors such as extreme or hazardous weather conditions can be evaluated as a matter of enforcement discretion where appropriate.

Releases of Reportable Quantities of Hazardous Substances

The August 16, 1991, draft general permits provided that the permits would not relieve the permittee of reporting requirements for releases of hazardous substances in excess of reporting quantities established under 40 CFR 117 and 40 CFR 302. The draft permits further provided that the discharge of hazardous substances in storm water discharges are to be minimized in accordance with the applicable storm water pollution prevention plan and that in no case shall storm water discharges contain a hazardous substance equal to or in excess of a reporting quantity.

A number of commenters strongly supported the provision or noted that it appeared reasonable. However, several other commenters indicated that the prohibition on releases of hazardous substances in excess of reporting quantities acted as a series of effluent limitations, and that the Agency had not established such limitations consistent with the technology-based or water quality-based standards of the CWA. These commenters indicated that the reporting quantities established under 40 CFR 117 and 40 CFR 302 were not developed as numeric effluent limitations under the NPDES program. One of these commenters indicated that some hazardous substances still had reporting quantities of 1 pound which had been arbitrarily established by Congress. However, a number of the commenters that objected to the prohibition as an perceived effluent limitation agreed that the reporting such discharges was appropriate and that a facility with such a discharge should not be exempt from liability provisions under CERCLA or the CWA. Some of these commenters also noted that the use of best management practices aimed at preventing and/or cleaning up the release, instead of numeric end-of-pipe limitations, is the most effective way to address these discharges.

In response, the Agency has modified this provision in today's permits for the purposes of providing additional consistency with the reporting requirements for releases of hazardous substances and oil in excess of reporting quantities at 40 CFR 110, 40 CFR 117 and 40 CFR 302, to provide clarification that the Agency does not intend for the prohibition on releases in excess of reporting quantities to act as numeric effluent limitations, and to address such releases in a manner consistent with the approach taken in today's permits with respect to pollution prevention plan implementation.

Today's permits require that the discharge of hazardous substances or oil in the storm water discharge(s) from a facility must be minimized in accordance with the applicable storm water pollution prevention plan for the facility. Where a release containing a hazardous substance in an amount equal to or in excess of a reporting quantity established under either 40 CFR 117 or 40 CFR 302, occurs during a 24 hour period, the permittee must:

- Notify the National Response Center (NRC) as soon as he or she has knowledge of the discharge;
- Notify the appropriate EPA Regional Office within 14 calendar days of knowledge of the release; and
- Modify the storm water pollution prevention plan for the facility within 14 days of knowledge of the release to provide a description of the release, the circumstances leading to the release, and the date of the release. In addition, the permittee must modify the plan as appropriate to identify measures to prevent the reoccurrence of such releases and to respond to such releases.

The Agency has clarified that today's permits do not authorize the discharge of hazardous substances or oil resulting from an on-site spill. This is consistent with CWA and CERCLA requirements for hazardous substances and oil for anticipated intermittent point source discharges at 40 CFR 117.12(d)(2)(i).

The Agency believes that this approach will result in the same objectives as the approach laid out in the August 16, 1991, draft permits (i.e., to provide the Agency with information that allows for considering whether an individual permit is appropriate), while minimizing confusion and concerns regarding the provision. Further, this approach provides additional flexibility for implementing appropriate pollution prevention measures. The Agency also believes that ample enforcement authority exists under the CWA and CERCLA for addressing releases of hazardous substances in excess of reportable quantities. The approach taken in the today's permits also supplements those authorities by providing additional notification requirements and by addressing pollution prevention measures in addition to the response/enforcement authorities under CERCLA and section 311 of the CWA.

One commenter raised concerns that the prohibition implied that discharges of a hazardous substance up to an applicable reporting quantity was acceptable and that a permittee was not required to do anything unless such a release occurred. In response, EPA does not intend to imply that discharges of hazardous substances of amounts up to an applicable reporting quantity are acceptable in the sense that a discharger must do nothing until they discharge a hazardous substance or oil in excess of a reportable quantity. The Agency notes that these permits do not establish numeric effluent limitations for storm water discharges from construction activities. Rather, the permits require dischargers to develop and implement best management practices and pollution prevention measures to reduce and/or control pollutants in the discharge even in cases where the discharge does not contain hazardous substances or contains hazardous substances at levels significantly lower than reporting quantities.

One commenter suggested that EPA exempt discharges from a 25-year, 24-hour storm event from the prohibition on reportable quantities because such releases may be beyond the discharger's ability to control. In response, the Agency has, except for spills, modified today's permit by replacing the prohibition on reporting quantities with a requirement the discharge of hazardous substances or oil must be minimized in accordance with the applicable storm water pollution prevention plan for the facility. Today's permits are not intended to authorize spills of hazardous substances from non-storm sources, and the Agency does not believe that it would be appropriate to authorize such discharges during a 25-year, 24-storm event.

Pollution Prevention Plan Requirements

At the heart of the August 16, 1991, draft permits were flexible requirements for the development and implementation of storm water pollution prevention plans. The draft general permits proposed that plans identify of pollutant sources and specify implementation of measures to prevent or otherwise reduce pollutants in storm water discharges. For construction activities, the draft general permits proposed a flexible framework for the development of control measures to be implemented in accordance with pollution prevention plans. The flexible framework for controls primarily addressed sediment and erosion measures, and storm water management measures.

A number of commenters encouraged EPA to maintain flexibility in controls because of the site-specific nature of construction activities. These commenters expressed their belief that adequate flexibility allows for the most efficient and cost-effective implementation of pollution prevention plans for sediment and erosion control and storm water management. The Agency agrees that flexibility is important to establishing effective and workable general permits.

A large construction industry trade association noted that, generally, the pollution prevention plans requirements of the August 16, 1991, draft general permits reflected an appropriate level of erosion and storm water management control for most construction projects. Their comments indicated that most development projects already employ the controls set forth in the plan.

A number of commenters stressed the importance of appropriate timing of controls, for example, that perimeter controls should be established before conducting major grubbing and grading activities. Other commenters stressed the importance of good site planning as a primary control technique for controlling sediment in storm water discharges from construction sites. Some of these commenters pointed to a number of benefits of good site planning, such as limiting the amount of disturbed area at any given time. Other commenters raised concerns that because activities at construction site typically change during the course of the project, permittees could not provide for compliance with all provisions of the plan at all times. In other words, the timing of certain controls would be dependent on the timing associated with construction activities that were relevant to that control.

The Agency agrees with these comments that the timing of controls and site planning are critical components to the success of the measures identified in a plan. As is discussed in more detail later, the Agency believes that good site planning also provides a number of significant economic incentives to dischargers. In addition, the Agency recognizes that sediment and erosion controls and other pollution prevention measures need to be coordinated with site activities, and that not all measures will be taken at the same time at a given site. For example, it is generally not appropriate to attempt to establish vegetation on portions of a site unless construction activities which will disturb that portion of the site have been completed or are temporary inactive.

In response to these concerns, the Agency has modified the permit to require that the plan clearly describe the intended sequence of major activities, and that for each control measure, the timing during the construction process for which the measure will be implemented. For example, perimeter controls for one portion of the site might be installed after the clearing and grubbing necessary for installation of the measure, but before the clearing and grubbing for the remaining portions of the site. In that instance, perimeter controls would be actively maintained until final stabilization of portions of the site that are upward of the perimeter control. Requiring that plans clearly describe the intended sequence of major activities will assist in ensuring that measures are implemented at appropriate times. In addition, as discussed in more detail below, the Agency believes that this provision will encourage sound site planning, which can provide economic incentives to the discharger while at the same time minimize the discharge of pollutants to waters of the United States.

Several commenters urged EPA to impose sediment and erosion controls such as sediment traps and stabilization measures on all storm water discharges from construction activities over 1 or 2 acres is size. In response, EPA wants to clarify that these general permits only address storm water discharges from construction activities that are classified as "associated with industrial activity" pursuant to 40 CFR 122.26(b)(14). The regulatory definition of "storm water discharge associated with industrial activity" is limited to those construction activities or common plans of development or sale that will result in

the disturbance of five or more acres total land area.

A number of other commenters suggested that storm water discharges from construction activities subject to State and local requirements where local regulations are more or less in conformance with Federal guidelines should be exempted from either NPDES permit requirements altogether or from the requirement to develop pollution prevention plans. In response, the Agency wants to clarify that today's general permits can allow coverage of all storm water discharges from construction activities that result in the disturbance of five or more acres.

Section 402(p)(2)(B) of the CWA provides that storm water discharges associated with industrial activity must be authorized by an NPDES permit. EPA has defined the term "storm water discharge associated with industrial activity" to include storm water discharges from construction sites that disturb 5 or more acres (see 40 CFR 122.26(b)(14)).[26] Storm water discharges that are classified as a storm water discharge associated with industrial activity are not exempted from the requirement to obtain an NPDES permit even though they are in compliance with stringent State or local requirements. The Agency has attempted to develop the requirements in today's permits such that they will not conflict with State or local requirements. As part of this effort, today's permits require that pollution prevention plans for construction sites include requirements in applicable sediment and erosion site and/or storm water management plans or site permits approved by State or local officials.

Several commenters indicated that the amount of detail required in a plan was unduly burdensome for small sites. In response, EPA has attempted to provide a flexible framework for developing pollution prevention plans for construction activities, which minimizes burdens on construction site operators consistent with the requirements of the CWA. The Agency notes that many State or local governments typically require sediment and erosion plans, grading plans and/or storm water management plans that are significantly more detailed than those required under today's permits and that are accompanied by a more burdensome review process, and that such requirements usually apply to most sites that are smaller than 5 acres, as well as those sites that are 5 or more acres. The Agency has attempted to ensure that dischargers would be able to build on plans developed in accordance with State and local requirements and thereby minimize the burdens of today's permit requirements. The Agency also wants to clarify that under the NPDES regulations, only construction activities with a "storm water discharge associated with industrial activity" (e.g., those sites that disturb more than five acres) are generally required to obtain NPDES permit coverage.

A number of commenters indicated their belief that large linear construction projects, such as highway, pipeline, or utility corridor projects should be exempt from NPDES requirements. In response, the Agency again wants to clarify that the regulatory definition of "storm water associated with industrial activity" defines applicability in terms of whether a construction project disturbs more than five acres, and that storm water discharges from linear construction projects that satisfy this criterion are required to obtain NPDES permit coverage.

Several commenters indicated that projects that crossed State lines would be subject to different permits. The Agency wants to clarify that where a construction project with storm water discharges associated with industrial activity crosses State lines, the discharger must obtain permit coverage in each of the States where construction activities associated with the project will occur.

Pollutant Source Identification Requirements

The August 16, 1991, draft permits contained tailored pollutant source identification requirements for pollution prevention plans for construction activities. The draft permits required that plans provide a description of the nature of the construction activity; estimates of the total area of the site and the area of the site that is expected to undergo excavation or grading; an estimate of the runoff coefficient of the site and existing data describing the soil or the quality of any discharge from the site; a site map indicating drainage patterns and approximate slopes after major grading activities, the location of major control structures identified in the plan, and the location of surface waters; and the name of receiving waters.

One commenter indicated that runoff coefficients would typically change during the construction process, and requested clarification as to when during the construction process that coefficient should be estimated. In response, the Agency has clarified in the final permit that the site description in the plan should contain an estimate of the runoff coefficient when construction at the site is completed. The Agency believes that an estimate of the runoff coefficient after construction is completed is important for characterizing the discharge and sizing drainage and storm water management devices. The Agency believes that dischargers will generally have access to site plans that will allow the estimation of such coefficients.

A number of commenters urged EPA to require additional information describing other major features that could be pollutant sources. Various items that were suggested by commenters included areas used for storage of soils, chemicals and wastes, as well as areas where spills of toxic or hazardous materials may occur (such as areas where fueling activities are conducted).

In response to these comments, the Agency encourages dischargers to identify additional major pollutant sources in the plan where appropriate, such as soil stockpiles, vehicle maintenance areas, waste storage area, and portable sanitary units. However, today's permits do not specify that additional activities or features of sites be identified to ensure flexibility and to avoid confusion.

One commenter recommended that EPA not require the location of soil stockpiles to be identified in pollution prevention plans, since soil stockpiles are typically stored for short durations or are moved from location to location several times over short periods of time. Another commenter indicated that sites for soil storage are usually not identified until construction actually begins.

In response, today's permits require permittees to provide a description of potential sources of pollution that may reasonably be expected to affect the quality of storm water discharges from the site, such as exposed, unstabilized soil stockpiles. The Agency wants to clarify that where major sources of pollutants are identified in a storm water pollution prevention plan for a site, and the pollutant source is moved, or conditions at the site change, then the plan is to be modified to address the change in condition. Identifying a pollutant source, such as a soil stockpile, in a storm water pollution prevention plan does not preclude a discharger from moving the pollutant source during the construction process, as long as the plan is updated in an appropriate manner. Similarly, if a major pollutant source, such as a soil

[26] On June 4, 1992, the United States Court of Appeals for the Ninth Circuit remanded the exemption for construction sites of less than five acres to the EPA for further rulemaking. *Natural Resources Defense Council* v. *EPA*, Nos. 90-70671 and 91-70200 (9th Cir., June 4, 1992).

stockpile, is not initially identified in a plan, the discharger is not precluded from establishing the stockpile at a later date as long as the plan is updated in an appropriate manner. This approach is consistent with good planning practices that are necessary for successful implementation of sediment and erosion controls.

Several commenters indicated that large, linear construction projects, such as pipeline projects, road construction, and powerline installation offered unique circumstances and would have difficulty in providing source identification information. One commenter gave the example that it would not be possible to provide a concise description of a project occurring over a 150 mile corridor.

In response, the Agency believes that the requirements in today's permits should be applicable to large, linear construction projects. The Agency believes that the basic information required in the plan is important for evaluating and designing pollution prevention measures. The Agency agrees that a 150 mile long construction project is a complex undertaking, and as a result, that storm water pollution prevention plans for such projects may not be "concise statements". However, the Agency recognizes the amount of preplanning that goes into such a project, and believes that most of the information required in the source identification portions of the permits will either already be available or can be developed with a reasonable effort. For example, operations involving the construction of roads or other structures will be concerned with evaluating and/or modifying grades. Information used in the construction process can be used to develop estimates or descriptions of drainage patterns and approximate slopes anticipated after grading activities.

Sediment and Erosion Controls—General Comments

The August 16, 1991, draft general permits recognized that measures to control sediment and erosion at construction activities could be broken into two major classes: (1) Vegetation measures that are intended to cover or maintain an existing cover over soils; and (2) structural practices to divert flows from upland areas or to remove sediment from site runoff. The draft general permits required that pollution prevention plans for construction activities contain a description of both vegetation measures and structural practices that would be used at the site.

A number of commenters indicated that the primary water quality concern with construction sites is the control of suspended solids. These commenters implied that the Agency should focus efforts primarily or exclusively on sediment and erosion controls at construction sites. The Agency agrees that controlling the discharge of sediment is a primary objective of today's permits. However, the Agency also notes that in some circumstances, material handling practices at a site may result in the discharge of toxic pollutants via a storm water conveyance to waters of the United States and should be addressed in the storm water pollution prevention plans for construction sites. In addition, studies such as the Nationwide Urban Runoff Program (NURP) show that after construction is completed, storm water from the site can contain a variety of toxic metals and other constituents. The storm water management measures in today's permits can be designed to reduce the discharge of these pollutants.

Some commenters indicated they believed that the mandatory controls listed should be provided as guidelines to be considered on a case-by-case basis. Another commenter did not support the inclusion of design standards into sediment controls, but rather favored the development of guidelines to be considered on a case-by-case basis, with individual site controls selected by the permittee based on a consideration of the area, terrain, climate, type of construction, duration of construction and any other relevant factors. In response, the Agency believes that it has provided an appropriate amount of flexibility in today's general permits. However, where dischargers believe that the measures required by the permit are not appropriate for their site, they may submit an individual application to the appropriate EPA Regional Office rather than submit an NOI to be covered by these permits.

One commenter suggested that a simple performance standard for sediment and erosion control, such as requiring "measures to keep silt out of streams" should be incorporated into the permit. Another commenter noted that one State (which is an authorized NPDES State), requires that turbidity downstream from the construction site not exceed upstream turbidity by more than 60 nephelometric turbidity units (NTUs). In response, the Agency will continue to evaluate appropriate design and performance standards for storm water discharges from construction activities. However, at this time, the Agency does not have sufficient data to support the application of the performance standard suggested by the commenter to the variety of site-specific conditions that the facilities covered by today's permits will face.

Sediment and Erosion Controls—Stabilization Measures

The August 16, 1991, draft general permits required that storm water pollution prevention plans from construction activities contain a description of vegetative practices designed to preserve existing vegetation where attainable and to revegetate open areas as soon as practicable after grading or construction. The draft permits provided that vegetative practices are to be initiated on all disturbed areas within 7 calendar days of the last activity at the area. The permit recognized that vegetative practices may include: temporary seeding, permanent seeding, mulching, sod stabilization, vegetative buffer strips, and protection of trees.

Several commenters requested that EPA clarify whether commonly used stabilization measures such as mulching, providing a straw cover, or the use of geotextiles would be considered "vegetative practices" under the permits. In response, the Agency has replaced the term "vegetative practices" with the term "stabilization measures" in the final permits. The Agency believes that replacing the term "vegetative practices" (used in the August 16, 1991, draft general permits), with the term "stabilization measures" will ensure adequate flexibility to allow the use of erosion control measures, such as mulch or geotextiles, other than establishing vegetative cover. The Agency had intended such flexibility in the August 16, 1991, draft permits, but a number of commenters were concerned that a more limited interpretation of the term "vegetative practices" might result. The Agency believes that these misinterpretations will be minimized by this terminology change.

One commenter suggested that gabions (wire mesh boxes filled with rock and used for bank or slope stabilization) be listed as a sediment and erosion control. The Agency agrees that gabions, where installed correctly, are an effective measure for stabilizing channels and steep slopes and can act as a retaining wall. The Agency wants to clarify that in some situations, gabions can be used as a component of a strategy to comply with the stabilization provisions of today's permits and has listed them as an available measure. However, the Agency believes that attempting to list every possible soil and erosion measure in the permit would cause confusion and

has added the term "other appropriate measures" to the list of stabilization measures in the permit to ensure the intended flexibility in selecting measures.

A number of commenters addressed the requirement in the August 16, 1991, draft general permits that vegetative practices (stabilization measures) be initiated within 7 calendar days of the last activity at disturbed areas. Several of these commenters requested clarification of the phrase "last activity at that area". These commenters indicated that some dischargers may argue that the provision could be interpreted not to apply until after final rough grading occurs even where portions of a site undergo initial grading followed by an extended period (several months or even years) where no construction activity occurs on that part of the site. In response to this concern, the Agency has modified the language in the final permit to address stabilization requirements "after the construction activity in that portion of the site has temporarily or permanently ceased". The Agency recognizes that at some construction sites, a large area can be denuded of vegetation by initial grading or other activities, even though subsequent construction activity will not be conducted on significant portions of the site for several months or even years. The Agency also recognizes that disturbed areas where no construction is occurring for extended periods can create significant amounts of pollutants if interim stabilization measures are not taken. The Agency agrees with commenters that an interpretation of this provision that does not address situations where construction activities temporarily cease for an extended length of time is not consistent with the stabilization measures required under the permits. The Agency has therefore clarified that the stabilization requirements in today's permits apply to when activities temporarily and permanently cease.

A number of commenters questioned the length of the seven day time period in the draft permits. Some commenters suggested a number of alternatives that would provide additional flexibility, such as requiring that vegetative practices be initiated "within a reasonable period upon completion of final grading", expanding the time frame to a longer period (such as 14 or 30 days), conditioning the requirement to apply only during periods of the year when rain is reasonably expected, or specifying that any State or local requirements for the initiation of vegetative practices take precedence over the general permit requirement. These comments generally noted that, although the 7 day period is used by some States and local governments, a 14 day period is more commonly used.

In response to these comments, the Agency is modifying the language in the final permits to provide that, except for three situations, stabilization measures may be initiated as soon as practicable, but in no case more than 14 days after construction activity on a portion of the site has temporarily or permanently ceased. The three exceptions to this requirement are the following:

- Where construction activities will resume on a portion of the site within 21 days from when the construction activities ceased;
- Where the initiation of stabilization measures is precluded by snow cover, in which case, stabilization measures must be initiated as soon as practicable.
- In arid areas (areas with an average annual rainfall of 0 to 10 inches) and semi-arid areas (areas with an average annual rainfall of 10 to 20 inches), where the initiation of stabilization measures is precluded by seasonal arid condition, in which case, stabilization measures must be initiated as soon as practicable.

This modification has been made so that the requirement in these permits is more consistent with the various State and local requirements in areas where the permits will apply and to provide construction site operators additional flexibility in providing for stabilization measures. This modification also provides flexibility in situations where activities at a portion of a site are discontinued for only a relatively short period of time (i.e., more than 14 days, but less than 21 days).

One commenter expressed concern that a 7 day period was too long and that even a short rainstorm during the 7 day period could result in damaging sediment and erosion of streams. This commenter urged EPA to require stabilization within 72 hours. The commenter indicated that the 72 hour time period was consistent with the Agency's proposed guidance specifying management measures for sources of Nonpoint Pollution in Coastal Waters.

The Agency agrees that storm events during the period prior to stabilization can result in the discharge of significant amounts of sediments to waters of the United States. The Agency also notes that EPA requested comment on a 72 hour stabilization requirement for particularly sensitive watersheds (but not for general usage) in "Proposed Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters", May 1991. While the Agency agrees that a 72 hour stabilization requirement should be considered for sensitive watersheds, the Agency does not agree that this criterion is appropriate for today's general permits, which are intended to address a wide range of facilities occurring under a wide range of conditions.

Several commenters urged EPA to require that stabilization measures be completed within a specified time after the last activity, rather than just initiated. These commenters pointed out that where seeding occurred without mulcing or geotextiles, a significant amount of erosion could occur prior to germination and establishment of a protective cover. In response, the Agency is concerned that establishing deadlines for when stabilization measures must be completed may not provide enough flexibility, given the variety of conditions that facilities covered by today's permits will face. While the Agency recognizes that erosion can occur during the time between initiation of stabilization measures and when an area is finally stabilized, the Agency believes that establishing a time period by which vegetation must be established in these general permits may in some cases limit the ability of the discharger to determine with certainty that initiated measures will be fully successful within the minimum time frame. Therefore, today's permits only address when stabilization measures must be initiated. However, the Agency does encourage dischargers to complete stabilization measures as quickly as possible and to use measures such as mulch or geotextiles where there will be a significant lag between initiation of vegetative measures and establishing a satisfactory vegetative cover.

One commenter suggested that the time period for initiating stabilization measures should correspond to the time period that the NPDES authority plans to conduct routine site inspections. In other words, the commenter suggested that if EPA intended to conduct a site inspection every two weeks, dischargers should be given at least 2 weeks before initiating stabilization measures otherwise the requirements may not be adequately enforced. In response, the Agency is not basing the time period on the frequency at which the Agency is likely to conduct inspections. The Agency will rely on a number of tools, such as permittee inspection and compliance evaluation reports and unannounced EPA site inspections to ensure compliance with this provision.

A number of commenters raised concerns that the draft provision did not

take into account different climatic conditions in the various States where EPA was issuing permits. In particular, a number of commenters questioned the feasibility of initiating vegetative practices within 7 days of the last activity during periods that were not conducive to revegetation efforts, such as in dry weather periods or during winter conditions.

A number of these commenters urged the Agency to provide for special considerations in arid regions or for time periods where there was snow cover.

Some of these commenters noted that seeding, planting, or sodding within seven days may not be appropriate because the best success with planting occurs during limited seasons. Other commenters noted that in arid regions, hot, dry summer months are not conductive to good seed germination and that plants have little chance of survival without a great investment of time, money, and water. In such arid areas, water for artificial irrigation is often not available and, where available, is expensive and may not be the best use of limited water resources. Some of these commenters indicated that revegetation efforts should be well coordinated with seasonal weather conditions to minimize the loss and costs of vegetation.

One commenter indicated that in arid regions or regions with predictably long durations of dry weather, it may be more cost effective for the builder to wait to complete two or three homes and landscape simultaneously rather than landscape each home site as construction is completed. If rainfall is not expected during this period and perimeter sediment controls are maintained, this practice would pose limited threats to water quality. Other commenters indicated their belief that rapid stabilization measures may not always be necessary, especially in areas of the country which go many weeks in the summer without any rain, because of the lower likelihood of discharging storm water. One commenter indicated that EPA should allow the option of "equivalent measures" such as proper slope design and construction, with seeding or planting to occur as soon as conditions are favorable, for protecting exposed soils during dry seasons.

While the Agency agrees that some phases of the stabilization process, such as spreading grass or wildflower seeds, should be coordinated with seasonal climatic conditions, measures such as the application of mulch and/or geotextiles do not depend on conditions that allow grass or wildflower seeds to germinate or become established. However, at this point in time, the Agency believes it is appropriate to provide additional flexibility with respect to stabilization requirements during dry seasons in arid or semi-arid climates while the Agency continues to evaluate appropriate stabilization measures for arid and semi-arid climates. Therefore, today's permits provide that where stabilization measures are precluded by seasonal arid conditions, the 14 day criteria is replaced by the criteria that stabilization measures shall be initiated as soon as practicable. In general, the determination of when stabilization measures are practicable should consider seasonal rainfall patterns. In the August 16, 1991, notice, the Agency requested comment on defining "arid areas" as areas with an average annual rainfall of less than 10 inches and "semi-arid areas" as areas with an average annual rainfall of 10 to 20 inches. Most comments addressing this issue generally agreed that this was an acceptable way to characterize arid and semi-arid conditions. Therefore, today's permits incorporate these criteria for defining arid and semi-arid regions.

Other commenters noted that snow cover could preclude the initiation of stabilization measures, and that frozen ground could interfere with establishing vegetation. The Agency agrees that snow cover may preclude the initiation of stabilization measures, and has modified today's permits to provide additional flexibility in such cases. The Agency recognizes that frozen ground conditions will generally slow vegetative growth, but will not preclude the initiation of stabilization measures such as the use of mulches, geotextiles and even seeding. The Agency also recognizes that initiating vegetative measures on frozen ground conditions differs from such activities in arid conditions in several respects. First, initiating vegetative measures in arid conditions may require artificial watering to avoid having seed and seedlings die, whereas on frozen ground, seeds generally will remain dormant but undergo less harm. Second, the potential for storm water discharges during arid conditions and during winter conditions in non-arid climates is significantly different. The additional flexibility in today's permits is limited to snow cover and arid conditions, the conditions that EPA has identified as creating the most difficulty and expense for initiating stabilization measures.

One commenter suggested that selective location of small detention basins for removal of runoff sediments would be more successful and cost effective than vegetative measures. The Agency disagrees with this comment. As discussed in the August 16, 1991, notice, stabilization measures are generally recognized as being the most important measures taken to prevent off-site sediment movement, and can provide up to a six-fold reduction in discharge suspended sediment levels. Stabilization measures, such as restoring vegetative cover, can prevent erosion by protecting soils. Stabilization measures should be viewed as the first line of defense in preventing off-site sediment movement. Structural sediment measures are generally recognized as a second line of defense for portions of the site where stabilization practices cannot be immediately employed due to construction activity. Structural sediment measures focus on removing pollutants from runoff. It is typically more effective to stabilize a portion of a site (where possible) than to provide structural controls that attempt to remove pollutants from runoff. Structural controls typically only remove 50 to 95 percent of the sediment in a discharge. In addition, small basins are expected to have discharges from a significant percentage of storm events. However, stabilization measures can be difficult to employ while construction activities are occurring on a specific portion of the site.

One commenter urged the Agency to specify a minimum amount or percentage of area at construction sites where vegetation must be preserved. While the Agency agrees with the commenter that preserving vegetation during construction activities can often be the most efficient and cost-effective sediment and erosion practice, the Agency does not believe that a numeric criterion could be established that would be appropriate for all facilities covered by these general permits. For some sites, such as infill projects in densely developed areas, requiring dischargers to preserve a minimum amount of vegetation could result in significant modifications to project designs. The Agency does not believe that today's general permit is the appropriate tool for establishing such site-specific criteria for finished sites. Rather, today's permits require that plans ensure that existing vegetation is preserved where attainable. The Agency believes that an approach using this narrative criterion is more appropriate because it will provide more flexibility in meeting the objective of preserving existing vegetation. While today's permit does not establish a minimum amount of vegetation that must be preserved at a site, it does provide that a site must undergo final stabilization prior to eliminating a storm water

discharge associated with industrial activity from a construction site. Today's permits require that plans ensure that existing vegetation is preserved where attainable. Planning to preserve existing vegetation where attainable can significantly reduce the compliance costs of today's permits by minimizing the amount of disturbed areas where stabilization measures must occur. This will also decrease pollutant discharges.

Sediment and Erosion Controls—Structural Measures

The August 16, 1991, draft permits required storm water pollution plans for construction activities to include a description of structural practices to the degree attainable to divert flows or otherwise limit runoff from exposed areas of the site. The draft permits required that detention basins providing storage for a 10 year, 24 hour storm or equivalent measures be established where attainable where more than 10 disturbed acres at one time are served by a common drainage location. The draft permits required that silt fences, straw bale dikes, or equivalent sediment controls be provided for all sideslope and downslope boundaries of the construction area where a sediment basin was not attainable for drainage locations serving more than 10 disturbed acres and for drainage locations which serve 10 or less disturbed acres.

A number of commenters indicated that straw bales and brush barriers have limited effectiveness for successful use in controlling sediment in runoff from construction activities. Some of these commenters indicated that these controls are seldom if ever installed properly or maintained, and must be replaced frequently. Some commenters indicated that encouraging straw bales or brush barriers might conflict with State or local requirements that might not allow their use as a sediment control measure. These commenters recommend that straw bales and brush barriers should not be identified in the permit as methods of structural control. In response to comments, and based on further evaluation of the administrative record, the Agency agrees with these commenters and has modified the final general permits so that these controls are not specifically listed as an appropriate structural control. The permits indicate that structural practices may include silt fences, earth dikes, drainage swales, sediment traps, check dams, subsurface drains, pipe slope drains, level spreaders, storm drain inlet protection, rock outlet protection, reinforced soil retaining systems, gabions, and temporary or permanent sediment basins. In addition, today's permits require that pollution prevention plans include requirements specified in applicable sediment and erosion and/or storm water management site plans or site permits that have been approved by State or local officials.

Several commenters indicated that temporary sediment traps should be required for discharge points where temporary sediment basins were not required, including where the area served by a drainage location was less than 5 acres and had concentrated flows or which drained an area of greater than 2 acres. The Agency agrees that properly installed and maintained temporary sediment traps can provide effective sediment removal where sediment basins are not economically attainable. The Agency also recognizes that installing sediment traps can be less expensive than installing larger sediment basins, and that in some situations where it is not economically attainable to install a sediment basin, it is easier to find locations for siting smaller sediment traps. In response, today's permits continue to specifically list sediment traps as a structural practice, and the Agency strongly recommends the use of sediment traps where more effective sediment basins are not economically attainable.

In the August 16, 1991, notice, the Agency requested comment on the minimum size criteria for the temporary sediment basins and on whether a 10 acre threshold for requiring sediment control basins was appropriate. The Agency received a number of commenters addressing the minimum size criteria for the temporary sediment basins. A number of the industry commenters supported the 10-year, 24-hour storm as being a reasonable basis for sediment basin design, and noted that the rule provided the necessary flexibility to be appropriate. One regulatory Agency suggested use of a more stringent 25-year, 24-hour storm. However, other commenters urged the Agency to use a smaller storm as the basis for design, and offered various alternates. One of these commenters indicated its belief that a majority of sites would find the 10-year, 24-hour criteria to be unattainable, and that the use of sediment basins would be rejected at these sites in favor of less effective controls.

In response to comments, today's permits are providing additional flexibility for requirements for sediment basins by using a criteria based on the 2-year, 24-hour storm rather than the 10-year, 24-hour storm. (As discussed below, today's permits use a criterion expressed in terms of cubic feet of water storage per drainage acre as a surrogate for the 2-year, 24-hour storm). The Agency has selected the 2-year, 24-hour storm in response to concerns that the 10-year, 24-hour storm was too stringent in some cases, and based on further consideration of standards of practice in the construction industry and by a number of State and local governments as the basis for basin design. As discussed below, the 2-year, 24-hour storm event is consistent with the Agency's approach in the "Proposed Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters", EPA, May 1991.

Several commenters indicated that expressing the size criteria for sediments basins in terms of a storm event was too vague or that permittees would have difficulty ascertaining the size of a design storm in a particular region. Several other commenters that supplied calculations or other information exhibited some confusion regarding the manner in which they calculated basin volumes based on a storm event. Other commenters indicated that different models or equations would result in significantly different basin volumes for the same site and design-storm. While the Agency does not agree that permittees would necessarily have a difficult time ascertaining the size of a design storm,[27] the Agency is concerned about the possible confusion among the construction industry associated with basing the size of basins on a design storm, and the possible variation in basin volume based solely on the equation or model used. In order to minimize confusion among permittees, the Agency has decided to define the minimum size of basins in terms of a volume criterion (cubic feet of water storage per disturbed acre) rather than using a design storm. Using a criterion of 3,600 cubic feet per acre as a surrogate for a two-year storm will provide clarity to the requirement. In addition, a criterion based on cubic feet per acre can be more equitable than a criterion based on a storm size, since applying a criterion based on a storm size requires the use of a hydraulic model. Since hydraulic models can differ, and different parameters can be used in models to lead to different results,

[27] This information is available from a number of sources, including from the National Climatic Center of the Environmental Data Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce; and "Weather Bureau Technical Paper No. 40", May 1961 and "NOAA Atlas 2", 1973 for the 11 Western States.

dischargers using different models and applying different criterion to their models could end up with different size specifications for essentially the same size storm. However, a criterion based on the number of cubic feet of water storage per disturbed acre will be much more equitably applied since it is based on only one parameter (the number of disturbed acres) which is easily and uniformly estimated.

EPA has established the 3,600 cubic feet per disturbed acre criteria based on an evaluation of the 2-year, 24-hour storm for a number of areas addressed by today's permits. The Agency selected a 3-inch storm event as representative of the 2-year, 24-hour storm, based on the evaluation of the 2-year, 24-hour storm in a number of locations. The Agency further assumed that a 3-inch storm will generate 1 inch of runoff which is approximately 3,600 cubic feet. (This assumes that one-third of the rainfall runs off the site, and two-thirds of the rainfall is infiltrated at the site). The 3,600 cubic foot criterion has also been identified in "Proposed Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters", EPA, May 1991, as being able to handle 90 percent of the storms each year.[28]

A number of commenters objected to the allowing an exemption from the requirement to provide basins where such basins are not attainable. One commenter implied that the exemption from the requirement to install a basin was akin to an exemption from the requirement to obtain an NPDES permit. Several industry commenters indicated that this would give operators who are unconcerned about good design/construction practices a competitive advantage by providing an overly broad loophole, and requested that EPA remove the exemption to provide a "level playing field" for all. Other commenters indicated that other structural controls such as silt fences were not as effective as sediment basins.

In response, the Agency remains concerned about eliminating the exemption in this permit. The Agency believes there will be circumstances where it is not technically feasible to provide sediment basins, and does not believe that it would be appropriate to effectively preclude coverage of such sites under today's permits. Today's permits are intended to address a large number of construction sites. Sufficient flexibility is necessary to accommodate differences between sites. Further, it should be recognized that sediment basins are just one component of the comprehensive pollution prevention approach required under today's permits. As part of this comprehensive approach, today's permits requires that for drainage locations which serve 10 or more disturbed acres and where a sediment basin or equivalent controls are not economically attainable, sediment traps, silt fences, or equivalent sediment controls are required for all sideslope and downslope. While the Agency notes that these substitute structural controls may not be as effective as sediment basins at removing sediment from runoff, the Agency notes that it has limited this exemption for drainage locations that serve more than 10 disturbed acres to situations where basins are unattainable. In such cases, dischargers are still required to comply with the other provision of the permit, and are encouraged to emphasize other aspects of the pollution prevention plan, such as preserving mature vegetation, sequencing project activities to minimize the amount of exposed area, and quickly stabilizing disturbed areas when activities have temporarily or permanently ceased.

A number of commenters requested clarification of the factors that should be considered when determining whether a sediment basin would be attainable. One commenter indicated that in heavily populated, densely developed areas, it may be physically impossible to implement sediment basins. One commenter indicated that detention basins should be required when an area will be disturbed for a certain length of time rather than being based on the size of the disturbance, and that other factors, such as the receiving stream, should also be factored into any decision. One commenter indicated that regulatory hurdles associated with obtaining any Federal, State or local permit for installing of a basin may make a basin unattainable.

In response, the Agency wants to clarify that an evaluation of whether a sediment basin is unattainable at a particular site should be based on the reasonableness of the relationship between the costs of attaining a reduction in effluent and the effluent reduction benefits derived. This evaluation should be based on a consideration of factors related to the availability of space for the basin, and difficulties in construction (e.g. removing underlying bedrock). Construction activities that commence prior to October 1, 1992 may consider the existing site plan when evaluating whether sediment basins are unattainable. For example, a basin may be unattainable because of space limitations associated with site design. However, the attainability of sediment basins at sites which began construction prior to October 1, 1992 should be reevaluated prior to commencing subsequent phases of the project.

The Agency does not agree that the length of time that an area is disturbed and the nature of the receiving stream are appropriate factors when considering whether a basin is 'attainable'. The Agency believes that concerns about 'unexpected' storm events in arid regions, the potential for significant amounts of precipitation during relatively short time periods, and potential project delays make a criterion based on the disturbance time inappropriate. Basing a decision on whether a basin is attainable on factors such as the ability of the stream to accept sediment is inappropriate, as the requirement for sediment basins in today's permit is technology-based and not water quality-based. Further, the Agency has concerns about the ability of dischargers to evaluate the capability of a receiving water to accept sediment. While Federal, State or local legal prohibitions on such a basin would clearly make a basin not attainable, EPA does not believe that the requirement to obtain a Federal, State or local permit (other than an NPDES permit) for basin installation and potential delays associated with obtaining such permits, per se, should not be considered as making a basin not attainable. The Agency believes that it has provided sufficient flexibility in the permit by providing additional alternatives for drainage locations that serve less than 10 disturbed acres at any one time. EPA believes that this approach provides dischargers with economic incentives to schedule activities at the site so as to minimize the area disturbed at any one time. In addition, the Agency believes that such scheduling activities will result in less pollutant discharges than would occur if appropriate scheduling is not conducted.

One commenter raised concerns about possible water quality impacts associated with the timing of releases from temporary sediment basins. The commenter suggested that EPA should coordinate the requirement for basins with other activities within a basin. In response, EPA notes that the construction process in general will have significant changes to the hydrology of the runoff from a site. Generally, construction sites will discharge a considerably higher volume

[28] See also "Performance of Current Sediment Control Measures at Maryland Construction Sites" Schuller and Lugbill, 1990.

of runoff after preexisting vegetation is disturbed. Sediment basins can change the timing associated with when runoff is discharged, and will often result in a decreased volume of runoff discharged. EPA notes that the potential for impacts on receiving streams of the increased volume of runoff generated by a site depends on a complex array of variables, including the nature and locations of other activities within the watershed, that are generally beyond the scope of this permit. In addition, the Agency notes that concerns about timing the hydraulic release of a temporary sediment basin are generally significantly less than when siting storm water management basins within a watershed because of the temporary nature of sediment basins and differences in typical outlet designs. The Agency recommends that dischargers consider potential impacts to receiving waters associated with increases in the volume of runoff from the construction site when it develops its pollution prevention plan.

Several commenters indicated that the construction of roads should be specifically exempted from the requirement to install sediment basins because the linear nature of road construction would render such a containment system impracticable. In response, the Agency wants to clarify that the requirement for basins applies to drainage locations serving more than 10 acres. As discussed above, space availability is one factor to consider when determining that a sediment basin is not attainable. EPA recognizes that in some cases, limited space will make the installation of a sediment basin not attainable.

Several commenters recommended that temporary sediment basins should be required for all drainage locations larger than five acres. In response, today's permit requires that all permittees identify and implement structural practices to divert flows from exposed soils, store flows or otherwise limit runoff and the discharge of pollutants from exposed areas of the site to the degree attainable. EPA recognizes that a number of technologies can be used to remove sediment in storm water discharges from construction sites, including sediment basins, sediment traps, and silt fences. The effectiveness of the various technologies depends on a number of factors, including the volume of flow to the control measure. For a given storm event, the volume of storm water from disturbed areas of a construction site depends on the disturbed area drained.

Silt fences generally cannot handle large flows. When exposed to large flows, silt fences can be knocked over, torn, or covered with silt. For this reason, the applicability of silt fences is often limited to under two acres. Sediment traps can generally handle larger flows than silt fences, but generally have less capacity than sediment basins. The capacity of a sediment basin depends on a number of factors, including the size of the sediment trap. A number of State and local governments generally limit the use of sediment traps to drainages of below 10 acres.[29]

In developing today's permits, the Agency recognizes that the selection of appropriate structural measures for sediment control will depend on a number of factors, including the size of the drainage area. The Agency believes that today's permits provide the appropriate amount of flexibility, consistent with the physical limitations of the various types of control techniques.

While the Agency recognizes that basins will be the most appropriate sediment control for some drainage locations that serve an area of less than 10 acres, the Agency believes it is appropriate to retain additional flexibility in these general permits for implementing sediment controls for drainage locations serving less than 10 acres. Today's general permits are anticipated to authorize discharge from a large, diverse set of sites, and therefore this additional flexibility is appropriate. The Agency also notes, that in general, drainage locations serving smaller areas may be faced with more obstacles in siting such basins.

One commenter requested guidance on when temporary sediment basins could be removed. Another commenter indicated that temporary sediment basins should remain in place until full vegetative and/or mechanical stabilization is achieved, whereupon removal is accepted practice. In response, EPA agrees that generally basins should not be removed until the final stabilization of basin's drainage area is completed. However, in some cases, basins may not be attainable during the final phases of the project when space becomes limited. In such cases, the determination of the basins attainability may change with time, with the basin being attainable during the initial stages of the project, but becoming unattainable during the later stages of the project.

One commenter, while indicating that the requirement for sediment basins to a 10-year, 24-hour storm was reasonable, requested clarification whether a facility that only discharged during a 10-year, 24-hour storm was required to obtain a permit. In response, the regulatory definition of storm water discharge associated with industrial activity does not exempt from NPDES requirements discharges that result from a 10-year, 24-hour storm. The Agency believes that the requirements of today's permits are appropriate for construction sites that only discharge during a 10-year, 24-hour storm. The Agency notes that such storm events can sweep out significant amounts of sediment from basins, and that other measures required under today's permits, such as stabilization measures can limit the amount of sediment in basins that can be subsequently discharged. In addition, the stabilization measures and other measures of today's permits are often necessary to keep sediment basins from losing significant capacity which can lead to basin failure. The Agency also notes that basins that are not drawn down (allowed to discharge in a controlled fashion) in between storm events can overflow after a series of storms, which individually are substantially less than the 10-year, 24-hour storm.

Storm Water Management Controls

The August 16, 1991, draft permits required that pollution prevention plans provide a description of storm water management measures (i.e. measures to control pollutants in storm water discharges that will occur after construction operations have been completed). The draft permits indicated that such practices may include a variety of measures, and that the plan must provide a justification based on site conditions for rejecting each measure. In addition, the draft permits provided that velocity dissipation devices were to be placed at the outfall location for all detention or retention structures and along the length of any outfall channel as necessary to provide a non-erosive velocity flow.

A number of commenters requested that EPA clarify who had responsibility to maintain storm water management controls after construction was completed. In response to these

[29] See for example, discussion of sediment traps in "Maryland Standards and Specifications for Soil Erosion and Sediment Control", Maryland Department of the Environment in cooperation with Soil Conservation Service, 1991 (10 acre limit). "Wisconsin Construction Site Best Management Practice Handbook", Wisconsin Department of Natural Resources, 1989 (5 acre limit); and "Erosion and Sediment Control Planning and Design Manual", North Carolina Department of Natural Resources and Community Development, 1988 (5 acre limit).

concerns, the Agency had modified today's permits to clarify that the permits only address the initial installation, establishment and operation of storm water management measures during the time that construction activities are occurring, and do not establish requirements for the ongoing operation and maintenance of such structures after the construction activities have been completed and the site has undergone final stabilization. Permittees are only responsible for the installation and maintenance of storm water management measures prior to final stabilization of the site, and are not responsible for maintenance after storm water discharges associated with industrial activity have been eliminated from the site. Of course, if the construction operation is for the purpose of building a manufacturing facility or other industrial facility which will have storm water discharges associated with industrial activity (as defined at 40 CFR 122.26(b)(12)) after the construction is completed, then the permit for such a discharge may require the subsequent operator of the industrial activity discharge to maintain storm water management measures.

Several commenters expressed their belief that permits for construction activities should not address storm water management controls, where such controls primarily mitigate the increase in pollutants in storm water discharges that will not be subject to the NPDES program after the construction activity is completed. As discussed above, some of these commenters were concerned about possible liability for storm water discharges that occur after construction has been completed.

The Agency disagrees with these comments. First, as discussed above, the Agency has clarified in today's permits that construction site operators will generally not be liable for maintaining storm water structures after construction is completed. Second, the Agency notes that one of the major reasons for deciding to address certain construction activities under the definition of storm water discharge associated with industrial activity was to ensure that storm water management practices were incorporated at such sites (see November 16, 1991, (55 FR 48034)). The Agency also notes that developing a drainage system for storm water is an essential component of a construction project. It is generally much more cost effective to design storm water management controls that reduce the discharge of pollutants into sites during the construction process than it is to retrofit such controls afterwards.[30]

Section 402(a)(1) of the CWA provides that NPDES permits may impose "conditions as the Administrator determines are necessary to carry out the provisions of the Act". In addition, EPA is authorized under 40 CFR 122.44(k)(3) to impose BMPs which are "reasonably necessary * * * to carry the purposes of the Act".[31] The Agency recognizes that construction projects which do not incorporate appropriate storm water management practices can result in dramatic increases in the peak flow rates and volumes of storm water from a site after the construction activities have been completed. Increased discharge volumes can result in increased pollutant loads. In addition, pollutant loads in storm water discharges from the site may increase beyond predevelopment levels because the activities at the site are more intensive after the construction than before construction. These changes, along with increased peak flow rates, can have significant impacts on receiving surface waters. The Agency believes that addressing storm water management controls during the construction phase recognizes that the installation of storm water management and other drainage devices is an integral part of the construction process and is consistent with the objective of maintaining the chemical, physical, and biological integrity of receiving waters.[32]

Two commenters pointed out that storm water management controls could result in significant long term changes to the hydrology of streams and that facilities which modify flood hydrographs (modify the volume of flow with time) should be carefully designed and coordinated with other such facilities in the basin so that the combined effect does not actually increase flood peaks downstream and adversely affect downstream riparian habitat. In response, the Agency recognizes that the addition of impervious structures during the construction process can cause significant changes to the flow patterns of a site. These changes can result in downstream flooding and increases in peak stream velocities and volumes which can have significant negative impacts on the structures of the stream and its ability to act as an aquatic habitat. The Agency also notes that storm water management devices, which generally attempt to restore the natural drainage patterns of a site as much as possible, can influence the volume and rate of peak storm water discharges. The Agency has modified today's permits in two ways to address these concerns. First, the Agency has clarified that velocity dissipation devices at discharge locations and along the length of any outfall channel must be provided as necessary to provide a non-erosive velocity flow from the structure to a water course to better protect and maintain the natural physical and biological characteristics and functions of receiving streams. In addition, as discussed below, today's permit requirements for storm water management encourage dischargers to provide storm water management measures that will mitigate the adverse effects of increases in the volume of storm water discharges beyond predevelopment levels.

The Agency also recognizes the importance of considering various aspects of a watershed when planning development within a watershed. Although such watershed planning is beyond the scope of this permit, the Agency encourages municipalities to develop a watershed approach when planning development and associated storm water management for such new development.[33]

Performance Standards for Storm Water Management Controls

As part of the August 16, 1991, notice, the Agency requested comments on the appropriateness of establishing performance standards or design standards in general permits for storm water management measures to be installed at construction sites. A number of commenters expressed concern regarding the lack of a standard. They indicated that without standards, the permit requirements were too weak, and would not provide the control intended under the CWA. One of these commenters indicated that storm water management controls for new development were perhaps the single most crucial aspect of the general permit, because such controls had the greatest potential for resulting in cost-effective measures that would limit

[30] For example, see the National Urban Runoff Program (NURP) report, EPA, 1984.

[31] This standard for BMPs was recognized in *NRDC* v. *Costle*, 568 F.2d at 1380.

[32] See section 101(a)(1) of the CWA.

[33] Consistent with this objective, NPDES permit applications for discharges from large and medium municipal separate storm sewer systems require that municipal applicants address planning procedures for a comprehensive master plan to develop storm water controls for new development in proposed storm water management programs. (see 40 CFR 122.26(d)(2)(iv)(A)(2)).

impacts to water quality and water resources.

Commenters suggested a number of different approaches to standards for storm water management measures. Several commenters indicated that both performance and design standards were intimately related and needed to be considered in an integrated fashion for successful storm water measures programs. Representatives from several States with successful storm water management programs recommended that EPA establish a performance standard for storm water measures for new development of 80% removal of suspended solids. Another commenter indicated that standards should be developed that put a cap on the total imperviousness of sites, and require a minimum level of mature vegetation preservation. This commenter cited studies that indicated that where total imperviousness of a watershed was greater than 10 to 15 percent, significant declines in stream health would result.

Some commenters indicated that performance standards would promote flexibility to allow the selection of efficient, effective storm water measures. Other commenters asserted that the general permits should rely on design standards rather than performance standards because design standards are effective, easily understood by the regulated community and successfully used in existing State storm water programs. Some of these commenters recognized the need to ensure that design standards did not conflict with existing State and local requirements.

Other commenters urged EPA not to establish design or performance standards for storm water management measures to operate at completed construction sites. Several of these commenters indicated that flexibility is needed to determine the most appropriate site-specific methods for storm water measures, taking into account a number of conditions at individual sites, and that flexibility to determine the most appropriate site-specific controls would not be available if specific standards were mandated for all facilities. Some of these commenters supported deferring to owners and State and local regulators to establish appropriate requirements for storm water measures. One commenter encouraged EPA not to establish national BMP design and performance standards, but rather encouraged the Agency to require States to establish pollution reduction goals.

In response, the Agency remains concerned that NPDES general permits which address a large number of sites which are subject to different State and local requirements and that establish rigid performance standards or design standards for storm water management may not provide a mechanism with sufficient flexibility to address site specific factors. While the Agency recognizes that such requirements will often be appropriate in individual permits in other permit issuing efforts, or other regulatory efforts, the Agency has concerns about the extensive use of such standards in this Tier I general permit. The Agency will continue to evaluate appropriate standards for storm water management applicable to new developments along with the need to provide flexibility in allowing for site-specific adaptation of standards based on project constraints, local conditions and the location of the discharge within the watershed. Therefore, today's general permits do not establish extensive mandatory performance standards or design standards for storm water management measures.

Rather than establish specific performance or design standards, today's permits require that the pollution prevention plan must include an explanation of the technical basis used to select the practices to control pollution where flows exceed predevelopment levels. The explanation of the technical basis for selecting practices should address how a number of factors were evaluated, including the pollutant removal efficiencies of the measures, the costs of the measure, site specific factors that will affect the application of the measures, the economic achievability of the measure at a particular site, and other relevant factors.

However, the Agency does recognize the importance of installing storm water management measures during the construction process, and the need to provide additional guidance on what is expected for permit compliance. EPA anticipates that storm water management measures at many sites will be able to provide for the removal of at least 80 percent of total suspended solids (TSS) [34]. A number of storm water management measures can be used to achieve this level of control, including properly designed and installed wet ponds, infiltration trenches, infiltration basins, sand filter system, manmade storm water wetlands, and multiple pond systems.

[34] TSS can be used as an indicator parameter to characterize the control of other pollutants, including heavy metals, oxygen demanding pollutants, and nutrients, commonly found in storm water discharges.

In addition, the 80 percent control level for TSS is required in a number of State and local programs for storm water management, including programs in Florida, Delaware and the Lower Colorado River Authority (Texas) [35] As noted in the August 16, 1991, draft permits, the limiting runoff volumes to predevelopment levels is consistent with goals or requirements for storm water management developed by a number of local governments. Limiting increases in runoff volumes above predevelopment levels is generally consistent with flood control measures and provides the additional benefits of mitigating significant long-term changes to the hydrology of streams (such as streambed scour and streambank erosion), increases in flood peaks downstream and adverse impacts to downstream riparian habitat.

No Discharge of Solid Materials

The August 16, 1991, draft permits contained a provision that no solid waste, including building materials, shall be discharged. Today's permits use the term "solid materials" instead of the term "solid waste" to avoid confusion with the use of the term "solid waste" under RCRA. Solid materials include non-storm water related discharges such as waste building materials, demolition debris, water used to wash concrete trucks, and discharges from sanitary facilities.

One commenter indicated that certain building materials can be left behind without any impact on water quality or sediment run-off, and that the permit should allow environmentally benign materials to be buried on site. The Office of the Governor in Alaska indicated that the broad prohibition on disposal of wastes at a construction site was inappropriate for Alaskan conditions, where waste disposal sites may not exist off-site and that sound waste disposal management practices can be achieved onsite in many cases. In response, the Agency remains concerned that inappropriate disposal of building materials, plastics, and other solid materials at construction facilities adversely impacts surface waters. However, to ensure that this provision is not interpreted too broadly, today's

[35] The Agency notes that these programs provide some flexibility in meeting this goal by providing for variances or waivers which can be granted based on a review of site plans. The Agency remains hesitant to require that storm water management measures provide for 80 percent removal in today's general permits because of concerns that the Agency would not be able to provide flexibility to sites where such controls were not economically achievable.

permits have been modified to clarify that no solid materials, including building materials, shall be discharged to waters of the United States, except as authorized by a CWA section 404 permit. This modification is also intended to clarify that today's permits are not intended to supersede section 404 requirements.

Off-Site Tracking

The August 16, 1991, draft permits contained a provision that required that off-site vehicle tracking of sediment be minimized. The fact sheet noted that off-site vehicle tracking of sediment could be minimized by paving or graveling roads at the site. Several commenters requested that EPA clarify what constitutes compliance with minimizing the tracking of sediments. Several commenters indicated that in some situations, washing the undercarriage of trucks and other dust control measures are preferable methods for minimizing off-site vehicle tracking. One commenter suggested that where off-site tracking occurs, there should be provisions for street cleaning.

The Agency believes that off-site vehicle tracking of sediment can be an important pollutant source to waters of the United States. The Agency recognizes that there are a number of techniques that can be used to minimize off-site tracking, including providing gravel or paving at site exit locations, parking areas, and roads that carry significant amounts of traffic (e.g., more than 25 vehicles per day), establishing truck washing racks to wash the undercarriage of trucks and other dust control measures. Often, a combination of these measures is required to effectively minimize off-site tracking. The selection of measures depends on the nature of the site. For example, it may be more cost-effective to gravel an onsite road that receives heavy traffic than to rely solely on truck washing racks to prevent the truck from becoming heavily covered with mud. The Agency believes that it is appropriate to provide some flexibility for facilities to select technologies to minimize off-site tracking. However, the Agency also believes that it is important for dischargers to evaluate whether problems associated with off-site tracking have arisen. As discussed in more detail below, the Agency has modified requirements for site inspection to ensure that visual inspections of site entrances and exits evaluate the effectiveness of measures to minimize off-site tracking. In general, significant amounts of sediment coming from a construction site should not be seen on public roads at site exit locations.

Compliance With State or Local Requirements for Sediment and Erosion Control or Storm Water Management

A number of commenters indicated the importance of ensuring that NPDES requirements are consistent with State and local requirements. Several commenters attested to the effectiveness of several State and local program requirements, although some commenters pointed out that in some areas of the country there are no State or local soil and erosion controls or storm water management requirements. Some commenters urged EPA to use the existing framework of erosion and sediment control measures required by various State and local governments. Some of these commenters indicated that many cities had existing institutional frameworks for inspections and permitting in the form of planning and zoning reviews, building and grading permits, and inspectors.

Several commenters asked EPA to clarify that the provision requiring compliance with State and local erosion and sediment/storm water management plans applied to site plans and permits as opposed to comprehensive plans or master plans which provide a framework for issuing site plans and permits. These commenters indicated that a particular site may be operating under permits or plans which were approved based on exceptions or deviations from a master plan or comprehensive plan. Other commenters indicated similar concerns regarding State or local guidelines which are not legally binding, but again provide a framework for developing site plans or permits. In response, EPA has revised the general permit language to clarify that provisions of master plans, comprehensive plans, or technical guidance documents that are not identified in a specific plan or permit that is issued for the construction site are not incorporated by reference into the NPDES permit. Further, the term 'site' has been introduced into the permit language before the terms plan or permit to help distinguish between site plans/permits and master plan requirements.

One commenter objected to the requirement to incorporate those requirements of State and local plans or permits that are independent of water pollution control concerns. In response, the Agency has revised the permit language to more clearly indicate that only those requirements in State or local plans or permits that are applicable to protecting surface water resources need to be incorporated into the storm water pollution prevention plans required under the NPDES permits.

One commenter indicated that EPA should ensure that a minimum level of controls be instituted for construction activities even where the State or local government does not have adequate controls. This commenter indicated that a key reason for a national NPDES program was to assure national consistency and to prevent economic disincentives to lock in States with progressive storm water programs. EPA agrees with this commenter that the NPDES permit should establish a minimum level of controls for construction activities. As discussed in greater detail above, storm water pollution prevention plans addressing the implementation of sediment and erosion controls and storm water management measures are required for all sites authorized to discharge by the permits.

One commenter supported the inclusion of State and locally approved storm water plans in the NOI as a way to ensure that the NPDES requirements are compatible with State and local requirements. This would in turn reduce duplication of efforts. In response, while EPA recognizes that a goal of today's permits is to avoid conflicts between NPDES permit requirements and State and local permit requirements, it is not requiring the submission of plans with NOIs. Rather, today's permits provide that NOIs must contain a certification that a storm water pollution prevention plan has been prepared for the facility, and such plan provides compliance with approved State and/or local sediment and erosion plans or permits and/or storm water management plans or permits. The Agency believes that the flexible nature of the permits' requirements for storm water pollution prevention plans coupled with the requirement that plans must include procedures and requirements specified in applicable sediment and erosion site plans or site permits or storm water management site plans or site permits approved by State or local officials will avoid conflicts and reduce duplication of efforts.

Several commenters were concerned that the requirement for storm water discharges associated with industrial activity from construction activity to be authorized by an NPDES permit was duplicative. Some of these commenters requested a waiver from NPDES permit requirements where other State or local controls are in place. In response, NPDES permits are required under the CWA for storm water discharges

associated with industrial activity. EPA has defined the term at 40 CFR 122.26(b)(14) to include storm water discharges from those construction sites which disturb five or more acres. Compliance with State or local requirements does not waive the requirement to obtain an NPDES permit. The Agency believes that requiring that plans provide for compliance with State or local requirements for sediment and erosion control and/or storm water management will support the goal of minimizing conflicts between NPDES permit requirements and State and local requirements. The Agency believes that this approach will minimize the administrative burdens associated with these general permits, consistent with the requirements of the CWA. In addition, the Agency notes that the potential for these permits to delay projects is greatly reduced by this approach.

One commenter indicated that EPA should not incorporate State and local requirements into NPDES permits because EPA has not shown that States and local enforcement of sediment and erosion control requirements has been ineffective, that federal enforcement of State and local requirements may result in interpretations that are contrary to those of State and local officials, and that incorporating these requirements by reference would discourage State and local governments from regulation.

In response, the Agency does remain concerned that State and local enforcement and implementation of sediment and erosion controls are not always effectively enforced.[36] In addition, NPDES permits for storm water discharges associated with industrial activity from construction activities must establish conditions in accordance with the CWA, and the Agency does not have to make a showing that State and local programs are ineffective to establish today's permit requirements.

The Agency does not intend to discourage State and local governments from implementing sediment and erosion and/or storm water management requirements. The Agency will be working with municipal operators of large and medium municipal separate storm sewer systems to ensure that such municipalities implement effective local soil and erosion and storm water management programs.[37] In addition, the Agency is continuing to work with State and local governments under section 319 of the CWA and section 6217(g) of the CZARA to develop State and local storm water management and soil and erosion programs.

The Agency believes that in a general permit context, the best way to ensure NPDES permit requirements are compatible with State and local requirements is to build on the requirements of State and local plans or permits. In addition, the process of issuing State and local plans typically represents identification of controls and measures that are achievable at a particular site. The Agency encourages dischargers with concerns that federal enforcement of State and local requirements may result in interpretations contrary to those of State and local officials, to provide a clear description of such requirements in their storm water pollution prevention plans. The Agency intends to work with State and local officials to resolve these issues when they arise. In addition, the general permits specifically provide that dischargers seeking NPDES permit requirements that do not require the provisions of an approved State or local plan or permit be in a storm water pollution prevention plan required by the NPDES permit must submit an individual permit application along with a description of why requirements in approved State or local plans or permits should not be applicable as a condition of an NPDES permit.

One commenter, while supporting the concept that NPDES permit requirements should be compatible with requirements in State and local plans or permits, opposed the extension of federal enforcement to State and local requirements which exceed the NPDES permit requirements. EPA disagrees with the commenter. As stated above, the Agency believes that requiring permittees to provide a certification in their storm water pollution prevention plan that their storm water pollution prevention plan reflects requirements in sediment and erosion site plans or site permits or storm water management site plans or site permits approved by State or local officials is the best way to ensure that the NPDES permit requirements are compatible with State and local requirements. In addition, the process of issuing State and local plans typically represents identification of controls and measures that are achievable and otherwise appropriate at a particular site. Today's permit provides dischargers with a mechanism for obtaining alternative NPDES permit conditions where the discharger believes that the State or local measures should not be applicable as a condition of an NPDES permit. This approach allows EPA to provide considerable flexibility in the requirements of today's permit while ensuring that adequate and appropriate measures are required.

One commenter indicated that State administrative review procedures may not have been used in the development of State or local plans. In response, the Agency believes that adequate administrative review procedures will be provided in the development of most State or local requirements. Where this is not the case, dischargers may submit an individual application along with an explanation of why requirements in approved State or local plans or permits should not be applicable as a condition of an NPDES permit. However, in response to concerns raised by the commenter, today's permit requires that permittees provide a certification in their storm water pollution prevention plan that their storm water pollution prevention plan reflects requirements in sediment and erosion site plans or site permits or storm water management site plans or site permits approved by State or local officials. In addition, today's permit requires that storm water pollution prevention plans must be amended to reflect any change in a sediment and erosion site plans or site permits or storm water management site plans or site permits approved by State or local officials for which the permittee receives written notice. Where the permittee receives such written notice of a change, the permittee must provide a recertification in the storm water pollution plan that the storm water pollution prevention plan has been modified to address such changes. This will ensure that the permittee is only responsible under today's permits for requirements for which they have received adequate notice.

One commenter indicated that allowing facilities the opportunity to seek NPDES permit requirements that did not require the provisions of an approved State or local plan or permit was not consistent with the objective of environmental protection. In response, the Agency wants to clarify that this process does not preempt State or local requirements. A discharger may still face State or local enforcement actions for a violation of a State or local

[36] See "Performance of Current Sediment Control Measures at Maryland Construction Sites", January 1990, Metropolitan Washington Council of Governments. Also, some commenters noted that some State and local programs are subject to significant rates of non-compliance and technology failure

[37] For example, the permit application requirements for discharges from large and medium municipal separate storm sewer systems require that municipal applicants submit proposed management plans to reduce pollutants in storm water discharges from construction sites (see 40 CFR 122.26(d)(2)(iv)(D)).

requirement even where EPA issues an individual NPDES permit that does not specifically require compliance with the State or local requirement. Rather, the process is intended to ensure compliance with the pollution control measures of the CWA.

Discharge Monitoring

On August 16, 1991, EPA requested comment on modifying the regulatory provision at 40 CFR 122.44(i)(2), addressing the establishment of discharge monitoring reporting requirements in NPDES permits for storm water discharges associated with industrial activity. The regulation existing at the time of the proposal provided that requirements in NPDES permits, including NPDES permits for storm water discharges, to report monitoring results are to be established with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year.

In the August 16, 1991, notice, EPA specifically identified six options for modifying requirements to report monitoring results for storm water discharges associated with industrial activity. In addition, the draft general permits in the same August 16, 1991, notice requested comment on annual discharge sampling of storm water discharges from most classes of storm water discharges associated with industrial activity, including those from construction activities, because this approach was consistent with the option EPA favored in the August 16, 1991, notice for the regulatory change. However, in the August 16, 1991, notice, the Agency indicated that the monitoring requirements in the final permits could be less stringent if the regulatory change provided additional flexibility with respect to minimum monitoring requirements.

On April 2, 1992, (57 FR 11394), EPA published final regulatory modifications to the minimum discharge monitoring and reporting requirements for storm water discharges. Under the modified regulatory framework, monitoring requirements for NPDES permits for storm water discharges associated with industrial activity are to be established on a case-by-case basis, with minimum requirements relating to site inspections rather than discharge monitoring.

A number of commenters on the August 16, 1991, draft general permits indicated that they did not believe that discharge sampling was appropriate for storm water discharges from construction sites due to their temporary nature and variability associated with ground cover, topography, soil types or other factors. Other commenters noted that monitoring efforts can be difficult and expensive to implement due to the intermittent nature of discharges. Several commenters questioned the usefulness of data generated by untargeted sampling requirements and indicated that resources would be better utilized planning, implementing and maintaining effective onsite runoff controls. These commenters indicated their belief that monitoring may be unnecessary where a permittee has developed, implemented, and maintained an effective storm water management control plan. Another commenter indicated that instream sampling used in one State (which is an authorized NPDES State) to evaluate the contribution of a construction site to increased turbidity levels.

Several commenters indicated that sampling of the outfalls associated with long linear projects would present logistic problems. Several commenters from State Departments of Transportation suggested that sampling should only be required for a percentage of their sites, which would be fairly similar in nature throughout the State. Another commenter representing a State Department of Transportation suggested that sampling should not be required unless the project is greater than 5 acres and goes beyond 12 weeks.

Several commenters suggested that EPA require that a Registered Professional Engineer or certified erosion control specialist certify that a storm water pollution plan is being properly implemented at a construction site in lieu of sampling, or that EPA focus on requirements for site inspections or other means of evaluating the effectiveness of controls and permit compliance.

Based on a consideration of the comments received on the draft general permits, and consistent with the regulatory modifications at 40 CFR 122.44 published on April 2, 1992, today's permits do not require construction operators to conduct storm water monitoring. While, the Agency recognizes that storm water monitoring from construction sites can be appropriate in some situations, the Agency is concerned about requiring storm water monitoring for all facilities covered by today's permit for a number of reasons. The Agency has concerns that sampling data may not reflect the transient nature of construction activities. As discussed below, the Agency believes that inspection requirements can be as or more effective than monitoring discharges for evaluating compliance with permit conditions. In addition, the Agency has concerns regarding the possible burdens placed on industries and EPA regarding the review of this information.

Site Inspections

The August 16, 1991, draft permits required that all erosion controls on the site be inspected by the discharger at least once every seven calendar days. Subsequent to the August 16, 1991, notice, the Agency published regulatory modifications on April 2, 1992, (57 FR 11394), to provide that NPDES permits for storm water discharges must, at a minimum, require the discharger to conduct an annual inspection of the facility site to identify areas contributing to a storm water discharge associated with industrial activity and to evaluate whether pollution prevention measures are adequate and properly implemented. The April 2, 1992 rule also requires that permits for storm water discharges require operators to maintain records summarizing the results of the inspection and a certification that the facility is in compliance with the permit.

As discussed above, the issue of site inspections is related to the issue of discharge monitoring. A number of commenters on the August 16, 1991, notice generally supported the use of site inspections as a method for evaluating the performance and effectiveness of strategies to reduce pollutants in storm water discharges. These commenters indicated that site inspections can be a more appropriate tool than discharge monitoring for ensuring effective implementation of best management practices. One commenter believed an active inspection program could be instrumental in preventing erosion of soil or stock piles.

EPA generally agrees with these commenters, and consistent with the April 2, 1992, regulatory modifications has decided to focus more on site inspection requirements in these general permits rather than on discharge monitoring requirements. Today's permits require, with several exceptions, that qualified personnel (provided by the discharger) inspect disturbed areas, structural control measures, and locations where vehicles enter or exit the site at least once every seven calendar days and within 24 hours of the end of a storm that is 0.5 inches or greater. The Agency believes that such inspections are a critical component of a pollution prevention strategy and are necessary to ensure that measures are being properly implemented. The Agency believes that inspections play a particularly important role in pollution prevention strategies for construction activities. Frequent and thorough

inspections are necessary because of the transient nature of construction activities and the nature of measures to reduce pollutants in storm water discharged from construction sites. Because construction sites can be complex, transient operations, frequent inspections are necessary to ensure that new pollutant sources are identified, measures are implemented for new activities at the site, and existing measures are kept operational. Measures to reduce pollutants in storm water discharges, such as silt fences, mulching, sediment ponds, and vegetation, must be properly maintained in order to be effective. Often, these types of controls may become altered by construction activities or by storm events such that their ability to remove pollutants is severely limited. For example silt fences can be run over by equipment, blown out of position by wind, broken during significant storm events, or backfilled with sediment. Sediment basins can lose capacity when they are filled with sediment or when they are not appropriately drawn down in between storm events. In addition, basins can be short-circuited by incorrect flow patterns. Areas that are restabilized with new vegetation can develop severe gullies before vegetation can be established or vegetation may die due to a number of conditions. Given these concerns, the Agency believes that frequent inspections (e.g., once a week and after significant storms that may limit the effectiveness of measures) for construction activities are appropriate and necessary for successful program implementation. The Agency agrees with comments that the major sources of pollutants, as well as major control measures should be observed as part of routine inspections. Today's general permits require inspections of: (1) Disturbed areas, (2) areas used for storage of materials that are exposed to precipitation, (3) erosion and sediment control measures identified in the plan, (4) accessible discharge locations or points, and (5) locations where vehicles enter or exit the site.

One commenter noted the importance of requiring adequate documentation of visual inspections by the dischargers. In response, today's permits clarify that for inspections required under the permit, dischargers must develop a report summarizing the scope of the inspection, name and qualifications of personnel making the inspection, the date of the inspection, major observations made, and actions taken to revise implementation of the plan where appropriate. The Agency believes that this requirement is particularly important given the lack of requirements to collect discharge monitoring data under the permit and the increased importance placed on using site inspections to ensure the effective implementation of pollution prevention plans. The Agency also notes that this approach is consistent with the April 2, 1992 regulatory revisions which require that, at a minimum, NPDES permits for storm water discharges require the discharger to maintain a record summarizing the results of the inspection and a certification that the facility is in compliance with the plan and the permit, and to identify any incidents of non-compliance. Such report and certification must be signed in accordance with the signatory requirements at 40 CFR 122.22.

Several commenters requested that EPA clarify that sediment and erosion controls must be maintained as well as inspected. One commenter urged EPA to clarify that the inspection procedure should include requirements to maintain pollution prevention controls or reevaluate requirements in pollution prevention plans. In response to these comments, today's permits have been clarified to require that plans include a description of procedures to maintain vegetation in good and effective operating conditions, as well as erosion and sediment control measures and other protective measures identified in the site plan. Today's permits also require that pollution prevention measures identified in a facility's plan be revised as appropriate within 7 calendar days based on the results of the inspection.

One commenter requested clarification as to whether the permittee or EPA would be responsible for the inspection. In response, EPA has clarified that the discharger, and not a local, State or EPA regulatory official, will be responsible for conducting the site inspection.

A number of commenters indicated that EPA should specify the qualification of site inspectors. Various types of qualifications were suggested by the commenters, including registered landscape architects, professional engineers, erosion and sediment control specialists certified by the International Soil and Water Conservation Society, and representatives of Soil and Water Conservation Districts. In response, although today's permits do not specify the qualifications of inspectors, the Agency agrees that certain specialists may be appropriate for conducting inspections in some situations. While such qualifications may not be necessary for weekly inspections, use of personnel with specific expertise or training may be helpful during the initial development of plans or to evaluate whether the installation of major structural devices, such as sediment basins, has been conducted properly. However, the Agency is concerned that specifying the qualifications of the inspector could limit flexibility and create problems where an inspector with specified qualifications is not readily available. The Agency will continue to evaluate such approaches, although today's permits maintain flexibility with respect to the qualifications of the person(s) conducting site inspections.

Several commenters raised concerns that inspection requirements were excessive in certain circumstances. One commenter raised concerns about construction projects located in remote areas that are not actively staffed for long periods of time, particularly during the winter months when such operations are typically idled. This commenter raised additional concerns about having to conduct inspections after 24 hour storm events exceeding 0.5 inches because such a condition would require operators to locate and maintain meteorological equipment continuously. Another commenter indicated that requiring weekly inspections in arid areas may waste resources and time, because several months may pass between measurable storm events. This commenter suggested that for arid areas, inspections should be require on a monthly basis or after major storms. Another commenter indicated that weekly inspections are warranted while construction activities are taking place, but would not be warranted throughout the life of the facility.

In response to these comments, EPA is modifying the permits to provide that where sites have been temporarily stabilized, or during seasonal dry periods in arid (average annual rainfall of 0 to 10 inches) and semi-arid (average annual rainfall of 10 to 20 inches) regions, inspections are to be conducted at least once every month. The Agency believes that temporary stabilization measures are generally appropriate prior to suspending activities during winter conditions. Where temporary stabilization measures are not undertaken, weekly inspections should be conducted to ensure that winter rains, snowmelt, or spring rains do not create significant erosion problems, and that other sediment and erosion controls are working properly. The Agency also believes that less frequent inspections can be appropriate during seasonal arid periods in arid and semi-arid regions

given the lower potential for storm events.

One commenter raised concerns that if EPA tied inspections to a specific set of rainfall events, costly meteorological equipment would be needed to measure rainfall events accurately. EPA wants to clarify that today's permits do not require that construction operators maintain meteorological equipment to monitor the magnitude of local rainfall events. Rather, dischargers can rely on other information, such as weather reports and readings from the nearest Weather Bureau gauge station.

Procedures for Plan Modifications

One commenter, while recognizing the need to make sediment and erosion controls and storm water management measures flexible, indicated that a mechanism to amend plans was critical. This commenter indicated that although a plan may initially look good on paper, the implementation at a particular site may not be as effective as expected due to site conditions. The commenter indicated further that construction activities affecting sediment and erosion control require modification after the initial plan has been developed. In response, the Agency wants to clarify that plans may be modified, consistent with the requirements of the permits, to address changing site conditions. The site inspection requirements of today's permits provide that the description of potential pollutant sources identified in the plan and pollution prevention measures identified in the plan are to be revised as appropriate as soon as practicable after inspection. The discharger should provide rationale for these changes (e.g., measures were not as effective as anticipated or that changes were necessary to address amendments to the construction activities plan) should be provided in the storm water pollution prevention plan.

Costs

One commenter indicated that the cost estimates for complying with the requirements of the general permit were five years old and that costs had increased considerably since that time. The commenter indicated that EPA should update its cost estimates to reflect present conditions.

In response, EPA notes that estimates of the costs of compliance with the various conditions of the draft general permits for construction activities were published in two tables in the August 16, 1991, **Federal Register** notice. Table 7 provided estimates of sediment and erosion control costs that were primarily based on the 1990 edition of "Means Site Work Cost Data", 9th edition, R.S. Means Company. These estimates were supplemented by Agency bond price lists from the Washington DC area for 1990. The Washington DC unit costs were used to make the estimates more conservative based on the assumption that material costs for that area were generally higher than other areas of the country.[38] Table 8 provided estimates of the costs of storm water management measures for construction sites. The estimates in Table 8 were based on methodology developed from 1986 data. The Agency notes that these cost estimates can be updated by a variety of methods, including use of the construction cost and building cost indexes of the Engineering News Record (ENR) Index. Using this method, costs can be updated by multiplying a cost estimate from an earlier date by the ratio of the building and/or construction index for the current data over the index for the date of the cost estimate. The value of the construction index at the beginning of 1990 was 4680, while the value of the building index was 2664. The average value of the construction index during 1986 was 4732, while the average value of the building index was 2483. The value of the construction index for March 1992 was 4927, while the value of the building index was 2799. These multipliers have been calculated into the cost estimates in today's permits.

The Agency notes, however, that cost estimates will vary from site to site depending on such factors as the nature of the site, the nature of the project, the degree to which controls were identified early in the process and planning was undertaken to minimize costs, and the existing State or local requirements.

Several commenters indicated that the requirements of the permits would result in adding substantial costs to the consumer price of a finished lot. In response, the Agency has evaluated the costs of the various controls required under today's permits (see August 16, 1991, notice, (56 FR 40989)) and recognizes that in the construction industry, a significant portion of such costs will be passed on to the current or ultimate site owner.

Economic Incentives Associated With Good Site Planning

A number of commenters representing a diverse cross section of industry, trade associations, environmental groups, States, and local governments stressed the importance of good site planning and preservation of mature vegetation as a primary technique for both controlling sediment in storm water discharges during construction activities and for developing a strategy for storm water management that controls pollutants in storm water discharges after construction activities have been completed.

The Agency agrees that good site planning should be a critical component of sediment and erosion controls and storm water management and can provide significant economic incentives to construction site owners and operators. Site planning allows dischargers to identify areas where native vegetation can be preserved, thereby reducing costs associated with temporary and permanent stabilization, structural controls, and storm water management devices. Site planning promotes coordinating activities that limit the amount of area disturbed at one time. Again, this can reduce costs associated with temporary and permanent stabilization, structural controls, and storm water management devices.

The sale value of a construction project can be significantly increased by preserving mature vegetation, preserving streams and natural drainage ways, and providing storm water management devices, such as wet ponds that serve as aesthetic amenities as well as water pollution control devices. Providing "soft" drainage technologies, such as using grass swales and measures that reduce the amount of runoff generated by a site, can dramatically decrease the capital costs of a more traditional drainage system of large underground pipes and conduits.

Appendix B—NPDES General Permits for Storm Water Discharges From Construction Activities That Are Classified as "Associated With Industrial Activity"

Authorization to Discharger Under the National Pollutant Discharge Elimination System

[Permit No. *NHR*10000IF]

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et seq.; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges from construction activities that are classified as "associated with industrial activity", for Indian Tribes located in the State of New Hampshire, are authorized to discharge in accordance with the conditions and requirements set forth herein.

[38] See "Draft—Sediment and Erosion Control, An Inventory of Current Practices", Kamber Engineering, April 20, 1990.

Operators of storm water discharges from construction activities within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 28th day of August, 1992.

Ronald Manfredonia,

Acting Director, Water Management Division.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities with stormwater discharges, for Indian Tribes located in the State of New Hampshire.

Authorization to Discharge Under the National Pollutant Discharge Elimination System

[Permit No. *MER*10000IF]

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et seq.; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges from construction activities that are classified as "associated with industrial activity", for Indian Tribes located in the State of New Hampshire, are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges from construction activities within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 28th day of August, 1992.

Ronald Manfredonia,

Acting Director, Water Management Division.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities with stormwater discharges, for Indian Tribes located in the State of Maine.

Authorization to Discharge Under the National Pollutant Discharge Elimination System

[Permit No. *MAR*10000 IF]

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et. seq; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges from construction activities that are classified as "associated with industrial activity", for Indian Tribes located in the State of Massachusetts, are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges from construction activities within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 28th day of August, 1992.

Ronald Manfredonia,

Acting Director, Water Management Division.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities with stormwater discharges, for Indian Tribes located in the State of Massachusetts.

Authorization to Discharge Under the National Pollutant Discharge Elimination System

[Permit No. *MER*100000 IF]

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et. seq; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges from construction activities that are classified as "associated with industrial activity", located in the State of Maine, are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges from construction activities within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 28th day of August, 1992.

Ronald Manfredonia,

Acting Director, Water Management Division.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located in the State of Maine.

Authorization to Discharge Under the National Pollutant Discharge Elimination System

[Permit No. *NHR*10000]

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et. seq; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges from construction activities that are classified as "associated with industrial activity", located in the State of New Hampshire, are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges from construction activities within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 28th day of August, 1992.

Ronald Manfredonia,

Acting Director, Water Management Division.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located in the State of New Hampshire.

Authorization To Discharge Under the National Pollutant Discharge Elimination System

[NPDES Permit Number PRR100000]

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 *et seq*, the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges from construction activities that are classified as "associated with industrial activity," located in the Commonwealth of Puerto Rico are authorized to

discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water dishcarges from construction activities within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 28th day of August, 1992.

Kevin Bricke,

Acting Director, Water Management Division, U.S. Environmental Protection Agency, Region II.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located in the Commonwealth of Puerto Rico.

Region IV

Authorization To Discharge Under the National Pollutant Discharge Elimination System

[General Permit Number MSR10000F]

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 *et seq*, the "Act") except as provided in Part I.B.3 of this permit, operators of storm water discharges from construction activities that are classified as "associated with industrial activity," located on Indian land in Mississippi belonging to the Mississippi Band of Choctaw Indians are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges from construction activities within the general permit area who intend to be authorized by this permit must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued: August 28, 1992.

Robert F. McGhee,

Acting Director, Water Management Division.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located within the general permit area.

Region IV

[General Permit Number FLR10001F]

Authorization to Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 *et seq.*, the "Act") except as provided in Part I.B.3 of this permit, operators of storm water discharges from construction activities that are classified as "associated with industrial activity", located on Indian land in Florida belonging to the Miccosukee Indian Tribe of Florida are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges from construction activities within the general permit area who intend to be authorized by this permit must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued: August 28, 1992.

Robert F. McGhee,

Acting Director, Water Management Division.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located within the general permit area.

Region IV

[General Permit Number FLR10000F]

Authorization to Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 *et seq.*, the "Act") except as provided in Part I.B.3 of this permit, operators of storm water discharges from construction activities that are classified as "associated with industrial activity", located on Indian land in Florida belonging to the Seminole Tribe of Florida are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges from construction activities within the general permit area who intend to be authorized by this permit must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued: August 28, 1992.

Robert F. McGhee,

Acting Director, Water Management Division.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located within the general permit area.

Region IV

[General Permit Number NCR10000F]

Region IV

Authorization to Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 *et seq.*, the "Act") except as provided in Part I.B. 3 of this permit, operators of storm water discharges from construction activities that are classified as "associated with industrial activity", located on Indian land in North Carolina belonging to the Eastern Band of Cherokee Indians in the State of North Carolina are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges from construction activities within the general permit area who intend to be authorized by this permit must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight September 9, 1997.

Signed and issued: August 28, 1992.

Robert F. McGhee,

Acting Director, Water Management Division.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located within the general permit area.

[Permit No. T X R100000]

Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended (33 U.S.C. 1251 et seq.; the Act), except as provided in Part I.B.3 of this permit, operators of stormwater discharges from construction activities that are classified as "associated with industrial activity", located in the State of Texas, are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges from construction activities within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 27th day of August, 1992.

Myron O. Knudson, P.E.,

Water Management Director, Region VI.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located in the State of Texas.

[Permit No. O K R100000]

Authorization to Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et seq.; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges from construction activities that are classified as "associated with industrial activity", located in the State of Oklahoma, are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges from construction activities within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 27th day of August, 1992.

Myron O. Knudson,

Water Management Director, Region VI.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located in the State of Oklahoma.

[Permit No. NMR100000]

Authorization to Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et seq.; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges from construction activities that are classified as "associated with industrial activity", located in the State of New Mexico, are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges from construction activities within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 27th day of August, 1992.

Myron O. Knudson,

Water Management Director, Region VI.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located in the State of New Mexico.

[Permit No. LAR100000]

Authorization to Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended (33 U.S.C. 1251 et seq; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges from construction activities that are classified as "associated with industrial activity", located in the State of Louisiana, are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges from construction activities within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 27th day of August, 1992.

Myron O. Knudson,

Water Management Director, Region VI.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located in the State of Louisiana.

[Permit No. WYR10000F]

Authorization to Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended (33 U.S.C. 1251 et seq; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges from construction activities that are classified as "associated with industrial activity", located in the Wind River Indian Reservation in the State of Wyoming, are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges from construction activities within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 28th day of August, 1992.

Kerrigan Clough,

Acting Regional Administrator.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located in the States of Wyoming.

Authorization to Discharge Under the National Pollutant Discharge Elimination System

[Permit No. UTR10000F]

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et. seq; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges from construction activities that are classified as "associated with industrial activity", located in the following Indian Reservations in Utah (except for the portions of the Navajo Reservation and Goshute Reservation located in Utah)

Northern Shoshoni Reservation;
Paiute Reservations—several very small reservations located in the southwest quarter of Utah;
Skull Valley Reservation; and Uintah & Ouray Reservation.

are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges from construction activities within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 28th day of August, 1992.

Kerrigan Clough,
Acting Regional Administrator.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located in the State of Utah.

Authorization to Discharge Under the National Pollutant Discharge Elimination System

[Permit No. SDR100000]

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et. seq; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges from construction activities that are classified as "associated with industrial activity", located in the entire State of South Dakota including the Indian reservations noted below (with the exception of the portion of the Standing Rock Reservation located in South Dakota), and the portion of the Lake Traverse Reservation located in North Dakota

Cheyenne River Reservation; Crow Creek Reservation;
Flandreau Reservation; Lake Traverse Reservation—Also known as the Sisseton Reservation. Includes the entire Reservation, which is located in North Dakota and South Dakota;
Lower Brule Reservation;
Pine Ridge Reservation—Includes only the portion of the Reservation located in South Dakota; Rosebud Reservation; and, Yankton Reservation.

are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges from construction activities within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 28th day of August, 1992.

Kerrigan Clough,
Acting Regional Administrator.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located in the State of South Dakota and the portion of the Lake Traverse Reservation located in the State of North Dakota.

Authorization to Discharge Under the National Pollutant Discharge Elimination System

[Permit No. NDR10000F]

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et. seq; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges from construction activities that are classified as "associated with industrial activity", in all the Indian Reservations located in the State of North Dakota including the following (with the exception of the portion of the Lake Traverse Reservation, also known as the Sisseton Reservation, located in North Dakota)

Fort Totten Reservation—Also known as Devils Lake Reservation;
Fort Berthold Reservation;
Standing Rock Reservation—Includes the entire Reservation, which is located in both North Dakota and South Dakota; and,
Turtle Mountain Reservation.

are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges from construction activities within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight September 9, 1997.

Signed and issued this 28th day of August, 1992.

Kerrigan Clough,
Acting Regional Administrator.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located in the State of North Dakota and the portion of the Standing Rock Reservation located in the State of South Dakota.

Authorization to Discharge Under the National Pollutant Discharge Elimination System

[Permit No. MTR10000F]

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et. seq; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges from construction activities that are classified as "associated with industrial activity", in all Indian Reservations in Montana including the following Reservations:

Blackfeet Reservation;
Crow Reservation;
Flathead Reservation;
Fort Belknap Reservation;
Fort Peck Reservation;
Northern Cheyenne Reservation; and,
Rocky Boys Reservation.

are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges from construction activities within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm

water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight September 9, 1997.

Signed and issued this 28th day of August, 1992.

Kerrigan Clough,

Acting Regional Administrator.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located in the State of Montana.

Authorization to Discharge Under the National Pollutant Discharge Elimination System

[Permit No. COR10000F]

In compliance with the provisions of the Clean Water Act, as amended (33 U.S.C. 1251 et. seq.; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges from construction activities that are classified as "associated with industrial activity" in applicable federal facilities located in the State of Colorado, and in the following Indian Reservations

Southern Ute Reservation; and,

Ute Mountain Reservation—Includes the entire Reservation, which is located in Colorado and New Mexico

are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges from construction activities within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight September 9, 1997.

Signed and issued this 28th day of August, 1992.

Kerrigan Clough,

Acting Regional Administrator.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located in the State of Colorado and the portion of the Ute Mountain Reservation located in the State of New Mexico.

Storm Water General Permit for Construction Activities

Authorization to Discharge Under the National Pollutant Discharge Elimination System

[Permit No. AZR1000IF]

In compliance with the provisions of the Clean Water Act, as amended (33 U.S.C. 1251 et. seq.; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges from construction activities that are classified as "associated with industrial activity", located on

Indian Lands in the State of Arizona, Including Navajo Territory in the States of New Mexico and Utah

are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges from construction activities within the general permit area who intend to be authorized by this permit must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight September 9, 1997.

Signed and issued this 28th day of August, 1992.

Daniel W. McGovern,

Regional Administrator, Region 9.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located on the Indian lands specified above.

Authorization To Discharge Under the National Pollutant Discharge Elimination System

[Permit No. AZR100000]

In compliance with the provisions of the Clean Water Act, as amended, (U.S.C. 1251 et seq.; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges from construction activities that are classified as "associated with industrial activity", located in the

State of Arizona (Excluding Indian Lands)

are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges from construction activities within the general permit area who intend to be authorized by this permit must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight September 9, 1997.

Signed and issued this 28th day of August, 1992.

Daniel W. McGovern,

Regional Administrator, Region 9.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located in the State of Arizona (excluding Indian lands).

Authorization To Discharge Under the National Pollutant Discharge Elimination System

[Permit No. NVR1000IF]

In compliance with the provisions of the Clean Water Act, as amended, (U.S.C. 1251 et seq.; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges from construction activities that are classified as "associated with industrial activity", located on

Indian Lands in the State of Nevada, Including Goshute Territory in the State of Utah, and the Duck Valley Reservation in Nevada and Idaho

are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges from construction activities within the general permit area who intend to be authorized by this permit must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 28th day of August, 1992.

Daniel W. McGovern,

Regional Administrator, Region 9.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located on the Indian lands specified above.

Authorization to Discharge Under the National Pollutant Discharge Elimination System

[Permit No. CAR1000IF]

In compliance with the provisions of the Clean Water Act, as amended, (U.S.C. . . . 1251 et. seq.; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges from construction activities that are classified as "associated with industrial activity", located on

Indian Lands in the State of California

are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges from construction activities within the general permit area who intend to be authorized by this permit must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 28th day of August, 1992.

Daniel W. McGovern,

Regional Administrator, Region 9.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located on Indian lands in the State of California.

Authorization to Discharge Under the National Pollutant Discharge Elimination System

[Permit No. MWR100000]

In compliance with the provisions of the Clean Water Act, as amended, (U.S.C. . . . 1251 et. seq.; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges from construction activities that are classified as "associated with industrial activity", located on

Midway Island or Wake Island

are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges from construction activities within the general permit area who intend to be authorized by this permit must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 28th day of August, 1992.

Daniel W. McGovern,

Regional Administrator, Region 9.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located on Midway Island or Wake Island.

Authorization To Discharge Under the National Pollutant Discharge Elimination System

[Permit No. JAR100000]

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 *et seq.*; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges from construction activities that are classified as "associated with industrial activity", located on

Johnston Atoll

are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges from construction activities within the general permit area who intend to be authorized by this permit must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 28th day of August 1992.

Daniel W. McGovern,

Regional Administrator, Region 9.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located on Johnston Atoll.

Authorization To Discharge Under the National Pollutant Discharge Elimination System for Storm Water Discharges From Construction Activities That Are Classified as Associated With Industrial Activity

[General Permit No.: ID-R-10-000F]

In compliance with the provisions of the Clean Water Act, (33 U.S.C. 1251 *et seq.*), as amended by the Water Quality Act of 1987, Pub. L. 100-4, the "Act".

Owners and operators engaged in discharging storm water from construction activities that are classified as "associated with industrial activity" which are located on Indian lands in the State of Idaho, except for those sites identified in Part I hereof, are authorized to discharge to waters of the United States, in accordance with effluent limitations, monitoring requirements, and other conditions set forth herein.

A copy of this general permit must be kept at the site where the discharges occur.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed this 27th day of August 1992.

Harold E. Geren,

Acting Director, Water Division, Region 10, U.S. Environmental Protection Agency.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to activities located on Indian lands in the State of Idaho.

Authorization to Discharge Under the National Pollutant Discharge Elimination System for Storm Water Discharges From Construction Activities That Are Classified as Associated With Industrial Activity

[General Permit No.: AK-R-10-000F

In compliance with the provisions of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, as amended by the Water Quality Act of 1987, P.L. 100-4, the "Act".

Owners and operators engaged in discharging storm water from construction activities that are classified as "associated with industrial activity" which are located on Indian lands in the State of Alaska, except for those sites identified in Part I hereof, are authorized to discharge to waters of the United States, in accordance with effluent limitations, monitoring requirements, and other conditions set forth herein.

A copy of this general permit must be kept at the site where the discharges occur.

This permit shall become effective September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, on September 9, 1997.

Signed this 27 day of August 1992.

Harold E. Geren,

Acting Director, Water Division, Region 10, U.S. Environmental Protection Agency.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to activities located on Indian lands in the State of Alaska.

Authorization to Discharge Under the National Pollutant Discharge Elimination System for Storm Water Discharges From Construction Activities That Are Classified as Associated With Industrial Activity

[General Permit No.: WA-R-10-001F]

In compliance with the provisions of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, as amended by the Water Quality Act of 1987, P.L. 100-4, the "Act".

Owners and operators engaged in discharging storm water from construction activities that are classified as "associated with industrial activity" which are located on Indian lands in the State of Washington, except for those sites identified in Part I hereof, are authorized to discharge to waters of the United States, in accordance with effluent limitations, monitoring requirements, and other conditions set forth herein.

A copy of this general permit must be kept at the site where the discharges occur.

This permit shall become effective September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, on September 9, 1997.

Signed this 27 day of August 1992.

Harold E. Geren,

Acting Director, Water Division, Region 10, U.S. Environmental Protection Agency.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to activities located on Indian lands in the State of Washington.

Authorization to Discharge Under the National Pollutant Discharge Elimination System for Storm Water Discharges from Construction Activities That Are Classified as Associated with Industrial Activity

[General Permit No.: WA-R-10-000F]

In compliance with the provisions of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, as amended by the Water Quality Act of 1987, P.L. 100-4, the "Act".

Owners and operators of federal facilities in the State of Washington engaged in discharging storm water from construction activities that are classified as "associated with industrial activity", except for those sites identified in Part I hereof and except those sites located on Indian lands within the State of Washington, are authorized to discharge to waters of the State of Washington and waters of the United States adjacent to State waters, in accordance with effluent limitations, monitoring requirements, and other conditions set forth herein.

A copy of this general permit must be kept at the site where the discharges occur.

This permit shall become effective September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, on September 9, 1997.

Signed this 27th day of August 1992.

Harold E. Geren,

Acting Director, Water Division, Region 10, U.S. Environmental Protection Agency.

This signature is for the permit conditions in Parts I through IX and any additional conditions in Part X which apply to federal facilities in the State of Washington.

Authorization to Discharge Under the National Pollutant Discharge Elimination System for Storm Water Discharges from Construction Activities That Are Classified as Associated with Industrial Activity

[General Permit No.: ID-R-10-0000]

In compliance with the provisions of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, as amended by the Water Quality Act of 1987, P.L. 100-4, the "Act".

Owners and operators engaged in discharging storm water from construction activities that are classified as "associated with industrial activity", except for those sites identified in Part I hereof and except those sites located on Indian lands within the State of Idaho, are authorized to discharge to waters of the State of Idaho and waters of the United States adjacent to State waters, in accordance with effluent limitations, monitoring requirements, and other conditions set forth herein.

A copy of this general permit must be kept at the site where the discharges occur.

This permit shall become effective September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, on September 9, 1997.

Signed this 27th day of August 1992.

Harold E. Geren,

Acting Director, Water Division, Region 10, U.S. Environmental Protection Agency.

This signature is for the permit conditions in Parts I through IX and any additional conditions in Part X which apply to federal facilities in the State of Idaho.

Authorization to Discharge Under the National Pollutant Discharge Elimination System for Storm Water Discharges From Construction Activities That Are Classified as Associated With Industrial Activity

[General Permit No.: AK-R-10-0000]

In compliance with the provisions of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, as amended by the Water Quality Act of 1987, P.L. 100-4, the "Act".

Owners and operators engaged in discharging storm water associated with construction activities that are classified as associated with industrial activities, except those sites identified in Part I hereof and except those sites located on Indian lands within the State of Alaska and waters of the United States adjacent to State waters, in accordance with effluent limitations, monitoring requirements, and other conditions set forth herein.

A copy of this general permit must be kept at the site where discharges occur.

This permit shall become effective September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, on September 9, 1997.

Signed this 27 day of August 1992.

Harold E. Geren,

Acting Director, Water Division, Region 10, U.S. Environmental Protection Agency.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to activities located in the State of Alaska.

Authorization to Discharge Under the National Pollutant Discharge Elimination System

[Permit No. ____ R100000 or ____R10000F (for only Indian lands and/or Fed. fac]

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et seq.; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges from construction activities that are classified as "associated with industrial activity", located in the State(s) of _____, are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges from construction activities within the general permit area who intend to be authorized by these permits must submit

a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this ____ day of _____, 1992.

_____

(Signature of Water Management Director or Regional Administrator)

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located in the State of _____.

NPDES General Permits for Storm Water Discharges From Construction Activities That are Classified as "Associated With Industrial Activity"

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Preface

The Clean Water Act (CWA) provides that storm water discharges associated with industrial activity from a point source (including discharges through a municipal separate storm sewer system) to waters of the United States are unlawful, unless authorized by a National Pollutant Discharge Elimination System (NPDES) permit. The terms "storm water discharge associated with industrial activity", "point source" and "waters of the United States" are critical to determining whether a facility is subject to this requirement. Complete definitions of these terms are found in the definition section (Part IX) of this permit.

The United States Environmental Protection Agency (EPA) has established the Storm Water Hotline at (703) 821-4823 to assist the Regional Offices in distributing notice of intent forms and storm water pollution prevention plan guidance, and to provide information pertaining to the storm water regulations.

Part I. Coverage Under This Permit

A. Permit Area

The permit covers all areas of:

Region I—for the States of Maine and New Hampshire; for Indian lands located in Massachusetts, New Hampshire, and Maine.

Region II—for the Commonwealth of Puerto Rico.

Region IV—for Indian lands located in Florida (two tribes), Mississippi, and North Carolina.

Region VI—for the States of Louisiana, New Mexico, Oklahoma, and Texas; and for Indian lands located in Louisiana, New Mexico (except Navajo lands and Ute Mountain Reservation lands), Oklahoma, and Texas.

Region VIII—for the State of South Dakota; for Indian lands located in Colorado (including the Ute Mountain Reservation in Colorado), Montana, North Dakota, Utah (except Goshute Reservation and Navajo Reservation lands), and Wyoming; for Federal facilities in Colorado; and for the Ute Mountain Reservation New Mexico.

Region IX—for the State of Arizona; for the Territories of Johnston Atoll, and Midway and Wake Island; and for Indian lands located in California, and Nevada; and for the Goshute Reservation in Utah and Nevada, the Navajo Reservation in Utah, New Mexico, and Arizona, the Duck Valley Reservation in Nevada and Idaho.

Region X—for the State of Alaska, and Idaho; for Indian lands located in Alaska, Idaho (except Duck Valley Reservation lands), and Washington; and for Federal facilities in Washington.

B. Eligibility

1. This permit may authorize all discharges of storm water associated with industrial activity from construction sites, (those sites or common plans of development or sale that will result in the disturbance of five or more acres total land area [1]), (henceforth referred to as storm water discharges from construction activities) occurring after the effective date of this permit (including discharges occurring after the effective date of this permit where the construction activity was initiated before the effective date of this permit), except for discharges identified under paragraph I.B.3.

2. This permit may only authorize a storm water discharge associated with industrial activity from a construction site that is mixed with a storm water discharge from an industrial source other than construction, where:

A. the industrial source other than construction is located on the same site as the construction activity;

b. storm water discharges associated with industrial activity from the areas of the site where construction activities are occurring are in compliance with the terms of this permit; and

c. storm water discharges associated with industrial activity from the areas of the site where industrial activity other than construction are occurring (including storm water discharges from dedicated asphalt plants and dedicated concrete plants) are covered by a different NPDES general permit or

[1] On June 4, 1992, the United States Court of Appeals for the Ninth Circuit remanded the exemption for construction sites of less than five acres to the EPA for further rulemaking. (Nos. 90-70671 and 91-70200).

individual permit authorizing such discharges.

3. Limitations on Coverage

The following storm water discharges from construction sites are not authorized by this permit:

a. storm water discharges associated with industrial activity that originate from the site after construction activities have been completed and the site has undergone final stabilization.

b. discharges that are mixed with sources of non-storm water other than discharges which are identified in Part III.A of this permit and which are in compliance with Part IV.D.5 (non-storm water discharges) of this permit.

c. storm water discharges associated with industrial activity that are subject to an existing NPDES individual or general permit or which are issued a permit in accordance with paragraph VI.L (requiring an individual permit or an alternative general permit) of this permit. Such discharges may be authorized under this permit after an existing permit expires provided the existing permit did not establish numeric limitations for such discharges

d. storm water discharges from construction sites that the Director (EPA) has determined to be or may reasonably be expected to be contributing to a violation of a water quality standard; and

e. storm water discharges from construction sites if the discharges may adversely affect a listed or proposed to be listed endangered or threatened species or its critical habitat.

C. Authorization

1. A discharger must submit a Notice of Intent (NOI) in accordance with the requirements of Part II of this permit, using a NOI form provided by the Director (or a photocopy thereof), in order for storm water discharges from construction sites to be authorized to discharge under this general permit.[2]

2. Where a new operator is selected after the submittal of an NOI under Part II, a new Notice of Intent (NOI) must be submitted by the operator in accordance with Part II, using a NOI form provided by the Director (or a photocopy thereof).

3. Unless notified by the Director to the contrary, dischargers who submit an NOI in accordance with the requirements of this permit are authorized to discharge storm water from construction sites under the terms and conditions of this permit 2 days after the date that the NOI is postmarked. The Director may deny coverage under this permit and require submittal of an application for an individual NPDES permit based on a review of the NOI or other information (see Part VI.L of this permit).

Part II. Notice of Intent Requirements

A. Deadlines for Notification

1. Except as provided in paragraphs II.A.2, II.A.3, and II.A.4, individuals who intend to obtain coverage for storm water discharges from a construction site (where disturbances associated with the construction project commence before October 1, 1992), under this general permit shall submit a Notice of Intent (NOI) in accordance with the requirements of this Part on or before October 1, 1992;

2. Individuals who intend to obtain coverage under this general permit for storm water discharges from a construction site where disturbances associated with the construction project commence after October 1, 1992, shall submit a Notice of Intent (NOI) in accordance with the requirements of this Part at least 2 days prior to the commencement of construction activities (e.g. the initial disturbance of soils associated with clearing, grading, excavation activities, or other construction activities);

3. For storm water discharges from construction sites where the operator changes, (including projects where an operator is selected after a NOI has been submitted under Parts II.A.1 or II.A.2) a NOI in accordance with the requirements of this Part shall be submitted at least 2 days prior to when the operator commences work at the site; and

4. EPA will accept an NOI in accordance with the requirements of this part after the dates provided in Parts II.A.1, 2 or 3 of this permit. In such instances, EPA may bring appropriate enforcement actions.

B. Contents of Notice of Intent

The Notice(s) of Intent shall be signed in accordance with Part VI.G of this permit by all of the entities identified in Part II.B.2 and shall include the following information:

1. The mailing address of the construction site for which the notification is submitted. Where a mailing address for the site is not available, the location of the approximate center of the site must be described in terms of the latitude and longitude to the nearest 15 seconds, or the section, township and range to the nearest quarter section;

2. The name, address and telephone number of the operator(s) with day to day operational control that have been identified at the time of the NOI submittal, and operator status as a Federal, State, private, public or other entity. Where multiple operators have been selected at the time of the initial NOI submittal, NOIs must be attached and submitted in the same envelope. When an additional operator submits an NOI for a site with a preexisting NPDES permit, the NOI for the additional operator must indicate the number for the preexisting NPDES permit;

3. The name of the receiving water(s), or if the discharge is through a municipal separate storm sewer, the name of the municipal operator of the storm sewer and the ultimate receiving water(s);

4. The permit number of any NPDES permit(s) for any discharge(s) (including any storm water discharges or any non-storm water discharges) from the site;

5. An indication of whether the operator has existing quantitative data which describes the concentration of pollutants in storm water discharges (existing data should not be included as part of the NOI); and

6. An estimate of project start date and completion dates, estimates of the number of acres of the site on which soil will be disturbed, and a certification that a storm water pollution prevention plan has been prepared for the site in accordance with Part IV of this permit, and such plan provides compliance with approved State and/or local sediment and erosion plans or permits and/or storm water management plans or permits in accordance with Part IV.D.2.d of this permit. (A copy of the plans or permits should not be included with the NOI submission).

C. Where to Submit

1. Facilities which discharge storm water associated with industrial activity must use a NOI form provided by the Director (or photocopy thereof). The form in the Federal Register notice in which this permit was published may be photocopied and used. Forms are also available by calling (703) 821–4823. NOIs must be signed in accordance with Part VI.G of this permit. NOIs are to be submitted to the Director of the NPDES program in care of the following address: Storm Water Notice of Intent, PO Box 1215, Newington, VA 22122.

2. A copy of the NOI or other indication that storm water discharges from the site are covered under an NPDES permit, and a brief description of the project shall be posted at the construction site in a prominent place for public viewing (such as alongside a building permit).

[2] A copy of the approved NOI form is provided in Appendix C of this notice.

D. Additional Notification

Facilities which are operating under approved State or local sediment and erosion plans, grading plans, or storm water management plans shall submit signed copies of the Notice of Intent to the State or local agency approving such plans in accordance with the deadlines in Part II.A of this permit (or sooner where required by State or local rules), in addition to submitting the Notice of Intent to EPA in accordance with paragraph II.C.

E. Renotification

Upon issuance of a new general permit, the permittee is required to notify the Director of his intent to be covered by the new general permit.

Part III. Special Conditions, Management Practices, and Other Non-Numeric Limitations

A. Prohibition on Non-Storm Water Discharges

1. Except as provided in paragraph I.B.2 and III.A.2, all discharges covered by this permit shall be composed entirely of storm water.

2. a. Except as provided in paragraph III.A.2.(b), discharges of material other than storm water must be in compliance with a NPDES permit (other than this permit) issued for the discharge.

b. The following non-storm water discharges may be authorized by this permit provided the non-storm water component of the discharge is in compliance with paragraph IV.D.5: discharges from fire fighting activities; fire hydrant flushings; waters used to wash vehicles or control dust in accordance with Part IV.D.2.c.(2); potable water sources including waterline flushings; irrigation drainage; routine external building washdown which does not use detergents; pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used; air conditioning condensate; springs; uncontaminated ground water; and foundation or footing drains where flows are not contaminated with process materials such as solvents.

B. Releases in Excess of Reportable Quantities

1. The discharge of hazardous substances or oil in the storm water discharge(s) from a facility shall be prevented or minimized in accordance with the applicable storm water pollution prevention plan for the facility. This permit does not relieve the permittee of the reporting requirements of 40 CFR part 117 and 40 CFR part 302. Where a release containing a hazardous substance in an amount equal to or in excess of a reporting quantity established under either 40 CFR 117 or 40 CFR 302, occurs during a 24-hour period:

a. The permittee is required to notify the National Response Center (NRC) (800-424-8802; in the Washington, DC metropolitan area 202-426-2675) in accordance with the requirements of 40 CFR 117 and 40 CFR 302 as soon as he or she has knowledge of the discharge;

b. The permittee shall submit within 14 calendar days of knowledge of the release a written description of: the release (including the type and estimate of the amount of material released), the date that such release occurred, the circumstances leading to the release, and steps to be taken in accordance with Part III.B.3 of this permit to the appropriate EPA Regional office at the address provided in Part V.C (addresses) of this permit; and

c. The storm water pollution prevention plan required under Part IV of this permit must be modified within 14 calendar days of knowledge of the release to: Provide a description of the release, the circumstances leading to the release, and the date of the release. In addition, the plan must be reviewed to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and the plan must be modified where appropriate.

2. *Spills.* This permit does not authorize the discharge of hazardous substances or oil resulting from an on-site spill.

Part IV. Storm Water Pollution Prevention Plans

A storm water pollution prevention plan shall be developed for each construction site covered by this permit. Storm water pollution prevention plans shall be prepared in accordance with good engineering practices. The plan shall identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges from the construction site. In addition, the plan shall describe and ensure the implementation of practices which will be used to reduce the pollutants in storm water discharges associated with industrial activity at the construction site and to assure compliance with the terms and conditions of this permit. Facilities must implement the provisions of the storm water pollution prevention plan required under this part as a condition of this permit.

A. Deadlines for Plan Preparation and Compliance

The plan shall:

1. Be completed (including certifications required under Part IV.E) prior to the submittal of an NOI to be covered under this permit and updated as appropriate;

2. For construction activities that have begun on or before October 1, 1992, except for sediment basins required under Part IV.D.2.a(2) (structural practices) of this permit, the plan shall provide for compliance with the terms and schedule of the plan beginning on October 1, 1992. The plan shall provide for compliance with sediment basins required under Part IV.D.2.a.(a) of this permit by no later than December 1, 1992;

3. For construction activities that have begun after October 1, 1992, the plan shall provide for compliance with the terms and schedule of the plan beginning with the initiation of construction activities.

B. Signature and Plan Review

1. The plan shall be signed in accordance with Part VI.G, and be retained on-site at the facility which generates the storm water discharge in accordance with Part V (retention of records) of this permit.

2. The permittee shall make plans available upon request to the Director; a State or local agency approving sediment and erosion plans, grading plans, or storm water management plans; or in the case of a storm water discharge associated with industrial activity which discharges through a municipal separate storm sewer system with an NPDES permit, to the municipal operator of the system.

3. The Director, or authorized representative, may notify the permittee at any time that the plan does not meet one or more of the minimum requirements of this part. Such notification shall identify those provisions of the permit which are not being met by the plan, and identify which provisions of the plan requires modifications in order to meet the minimum requirements of this part. Within 7 days of such notification from the Director, (or as otherwise provided by the Director), or authorized representative, the permittee shall make the required changes to the plan and shall submit to the Director a written certification that the requested changes have been made.

C. Keeping Plans Current

The permittee shall amend the plan whenever there is a change in design,

construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the waters of the United States and which has not otherwise been addressed in the plan or if the storm water pollution prevention plan proves to be ineffective in eliminating or significantly minimizing pollutants from sources identified under Part IV.D.2 of this permit, or in otherwise achieving the general objectives of controlling pollutants in storm water discharges associated with industrial activity. In addition, the plan shall be amended to identify any new contractor and/or subcontractor that will implement a measure of the storm water pollution prevention plan (see Part IV.E). Amendments to the plan may be reviewed by EPA in the same manner as Part IV.B above.

D. Contents of Plan

The storm water pollution prevention plan shall include the following items:

1. *Site description.* Each plan shall, provide a description of pollutant sources and other information as indicated:

a. A description of the nature of the construction activity;

b. A description of the intended sequence of major activities which disturb soils for major portions of the site (e.g. grubbing, excavation, grading);

c. Estimates of the total area of the site and the total area of the site that is expected to be disturbed by excavation, grading, or other activities;

d. An estimate of the runoff coefficient of the site after construction activities are completed and existing data describing the soil or the quality of any discharge from the site;

e. A site map indicating drainage patterns and approximate slopes anticipated after major grading activities, areas of soil disturbance, an outline of areas which not be disturbed, the location of major structural and nonstructural controls identified in the plan, the location of areas where stabilization practices are expected to occur, surface waters (including wetlands), and locations where storm water is discharged to a surface water; and

f. The name of the receiving water(s), and areal extent of wetland acreage at the site.

2. *Controls.* Each plan shall include a description of appropriate controls and measures that will be implemented at the construction site. The plan will clearly describe for each major activity identified in Part IV.D.1.b appropriate control measures and the timing during the construction process that the measures will be implemented. (For example, perimeter controls for one portion of the site will be installed after the clearing and grubbing necessary for installation of the measure, but before the clearing and grubbing for the remaining portions of the site. Perimeter controls will be actively maintained until final stabilization of those portions of the site upward of the perimeter control. Temporary perimeter controls will be removed after final stabilization). The description and implementation of controls shall address the following minimum components:

a. *Erosion and sediment controls*—(1). *stabilization practices.* A description of interim and permanent stabilization practices, including site-specific scheduling of the implementation of the practices. Site plans should ensure that existing vegetation is preserved where attainable and that disturbed portions of the site are stabilized. Stabilization practices may include: temporary seeding, permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees, preservation of mature vegetation, and other appropriate measures. A record of the dates when major grading activities occur, when construction activities temporarily or permanently cease on a portion of the site, and when stabilization measures are initiated shall be included in the plan. Except as provided in paragraphs IV.D.2.(a).(1).(a), (b), and (c) below, stabilization measures shall be initiated as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, but in no case more than 14 days after the construction activity in that portion of the site has temporarily or permanently ceased.

(a). Where the initiation of stabilization measures by the 14th day after construction activity temporary or permanently cease is precluded by snow cover, stabilization measures shall be initiated as soon as practicable.

(b). Where construction activity will resume on a portion of the site within 21 days from when activities ceased, (e.g. the total time period that construction activity is temporarily ceased is less than 21 days) then stabilization measures do not have to be initiated on that portion of site by the 14th day after construction activity temporarily ceased.

(c). In arid areas (areas with an average annual rainfall of 0 to 10 inches) and semi-arid areas (areas with an average annual rainfall of 10 to 20 inches), where the initiation of stabilization measures by the 14th day after construction activity has temporarily or permanently ceased is precluded by seasonal arid conditions, stabilization measures shall be initiated as soon as practicable.

(2). *Structural practices.* A description of structural practices to divert flows from exposed soils, store flows or otherwise limit runoff and the discharge of pollutants from exposed areas of the site to the degree attainable. Such practices may include silt fences, earth dikes, drainage swales, sediment traps, check dams, subsurface drains, pipe slope drains, level spreaders, storm drain inlet protection, rock outlet protection, reinforced soil retaining systems, gabions, and temporary or permanent sediment basins. Structural practices should be placed on upland soils to the degree attainable. The installation of these devices may be subject to Section 404 of the CWA.

(a) For common drainage locations that serve an area with 10 or more disturbed acres at one time, a temporary (or permanent) sediment basin providing 3,600 cubic feet of storage per acre drained, or equivalent control measures, shall be provided where attainable until final stabilization of the site. The 3,600 cubic feet of storage area per acre drained does not apply to flows from offsite areas and flows from onsite areas that are either undisturbed or have undergone final stabilization where such flows are diverted around both the disturbed area and the sediment basin. For drainage locations which serve 10 or more disturbed acres at one time and where a temporary sediment basin providing 3,600 cubic feet of storage per acre drained, or equivalent controls is not attainable, smaller sediment basins and/or sediment traps should be used. At a minimum, silt fences, or equivalent sediment controls are required for all sideslope and downslope boundaries of the construction area.

(b) For drainage locations serving less than 10 acres, sediment basins and/or sediment traps should be used. At a minimum, silt fences or equivalent sediment controls are required for all sideslope and downslope boundaries of the construction area unless a sediment basin providing storage for 3,600 cubic feet of storage per acre drained is provided.

b. *Storm water management.* A description of measures that will be installed during the construction process to control pollutants in storm water discharges that will occur after construction operations have been completed. Structural measures should be placed on upland soils to the degree attainable. The installation of these devices may be subject to Section 404 of the CWA. This permit only addresses

the installation of storm water management measures, and not the ultimate operation and maintenance of such structures after the construction activities have been completed and the site has undergone final stabilization. Permittees are only responsible for the installation and maintenance of storm water management measures prior to final stabilization of the site, and are not responsible for maintenance after storm water discharges associated with industrial activity have been eliminated from the site.

(1). Such practices may include: storm water detention structures (including wet ponds); storm water retention structures; flow attenuation by use of open vegetated swales and natural depressions; infiltration of runoff onsite and sequential systems (which combine several practices). The pollution prevention plan shall include an explanation of the technical basis used to select the practices to control pollution where flows exceed predevelopment levels.

(2). Velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel for the purpose of providing a non-erosive velocity flow from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected (e.g., no significant changes in the hydrological regime of the receiving water).

c. *Other controls*—(1) *waste disposal.* No solid materials, including building materials, shall be discharged to waters of the United States, except as authorized by a Section 404 permit.

(2) Off-site vehicle tracking of sediments and the generation of dust shall be minimized.

(3) The plan shall ensure and demonstrate compliance with applicable State and/or local waste disposal, sanitary sewer or septic system regulations.

d. *Approved State or local plans.* (1) Permittees which discharge storm water associated with industrial activity from construction activities must include in their storm water pollution prevention plan procedures and requirements specified in applicable sediment and erosion site plans or site permits, or storm water management site plans or site permits approved by State or local officials. Permittees shall provide a certification in their storm water pollution prevention plan that their storm water pollution prevention plan reflects requirements applicable to protecting surface water resources in sediment and erosion site plans or site permits, or storm water management site plans or site permits approved by State or local officials. Permittees shall comply with any such requirements during the term of the permit. This provision does not apply to provisions of master plans, comprehensive plans, non-enforceable guidelines or technical guidance documents that are not identified in a specific plan or permit that is issued for the construction site.

(2) Storm water pollution prevention plans must be amended to reflect any change applicable to protecting surface water resources in sediment and erosion site plans or site permits, or storm water management site plans or site permits approved by State or local officials for which the permittee receives written notice. Where the permittee receives such written notice of a change, the permittee shall provide a recertification in the storm water pollution plan that the storm water pollution prevention plan has been modified to address such changes.

(3) Dischargers seeking alternative permit requirements shall submit an individual permit application in accordance with Part VI.L of the permit at the address indicated in Part V.C of this permit for the appropriate Regional Office, along with a description of why requirements in approved State or local plans or permits, or changes to such plans or permits, should not be applicable as a condition of an NPDES permit.

3. *Maintenance.* A description of procedures to ensure the timely maintenance of vegetation, erosion and sediment control measures and other protective measures identified in the site plan in good and effective operating condition.

4. *Inspections.* Qualified personnel (provided by the discharger) shall inspect disturbed areas of the construction site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site at least once every seven calendar days and within 24 hours of the end of a storm that is 0.5 inches or greater. Where sites have been finally stabilized, or during seasonal arid periods in arid areas (areas with an average annual rainfall of 0 to 10 inches) and semi-arid areas (areas with an average annual rainfall of 10 to 20 inches) such inspection shall be conducted at least once every month.

a. Disturbed areas and areas used for storage of materials that are exposed to precipitation shall be inspected for evidence of, or the potential for, pollutants entering the drainage system. Erosion and sediment control measures identified in the plan shall be observed to ensure that they are operating correctly. Where discharge locations or points are accessible, they shall be inspected to ascertain whether erosion control measures are effective in preventing significant impacts to receiving waters. Locations where vehicles enter or exit the site shall be inspected for evidence of offsite sediment tracking.

b. Based on the results of the inspection, the site description identified in the plan in accordance with paragraph IV.D.1 of this permit and pollution prevention measures identified in the plan in accordance with paragraph IV.D.2 of this permit shall be revised as appropriate, but in no case later than 7 calendar days following the inspection. Such modifications shall provide for timely implementation of any changes to the plan within 7 calendar days following the inspection.

c. A report summarizing the scope of the inspection, name(s) and qualifications of personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with paragraph IV.D.4.b of the permit shall be made and retained as part of the storm water pollution prevention plan for at least three years from the date that the site is finally stabilized. Such reports shall identify any incidents of non-compliance. Where a report does not identify any incidents of non-compliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with Part VI.G of this permit.

5. *Non-Storm Water Discharges.* Except for flows from fire fighting activities, sources of non-storm water listed in Part III.A.2 of this permit that are combined with storm water discharges associated with industrial activity must be identified in the plan. The plan shall identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge.

E. Contractors

1. The storm water pollution prevention plan must clearly identify for each measure identified in the plan, the contractor(s) and/or subcontractor(s) that will implement the measure. All contractors and subcontractors identified in the plan must sign a copy of the certification statement in Part IV.E.2

of this permit in accordance with Part VI.G of this permit. All certifications must be included in the storm water pollution prevention plan.

2. *Certification Statement.* All contractors and subcontractors identified in a storm water pollution prevention plan in accordance with Part IV.E.1 of this permit shall sign a copy of the following certification statement before conducting any professional service identified in the storm water pollution prevention plan:

I certify under penalty of law that I understand the terms and conditions of the general National Pollutant Discharge Elimination System (NPDES) permit that authorizes the storm water discharges associated with industrial activity from the construction site identified as part of this certification.

The certification must include the name and title of the person providing the signature in accordance with Part VI.G of this permit; the name, address and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification is made.

Part V. Retention of Records

A. The permittee shall retain copies of storm water pollution prevention plans and all reports required by this permit, and records of all data used to complete the Notice of Intent to be covered by this permit, for a period of at least three years from the date that the site is finally stabilized. This period may be extended by request of the Director at any time.

B. The permittee shall retain a copy of the storm water pollution prevention required by this permit at the construction site from the date of project initiation to the date of final stabilization.

C. *Addresses.* Except for the submittal of NOIs (see Part II.C of this permit), all written correspondence concerning discharges in any State, Indian land or from any Federal Facility covered under this permit and directed to the U.S. Environmental Protection Agency, including the submittal of individual permit applications, shall be sent to the address of the appropriate Regional Office listed below:

1. CT, MA, ME, NH, RI, VT

United States EPA, Region I, Water Management Division (WCP-2109), Storm Water Staff, John F. Kennedy Federal Building, Room 2209, Boston, MA 02203.

2. NJ, NY, PR, VI

United States EPA, Region II, Water Management Division (2WM-WPC), Storm Water Staff, 26 Federal Plaza, New York, NY 10278.

3. DE, DC, MD, PA, VA, WV

United States EPA, Region III, Water Management Division (3WM55), Storm Water Staff, 841 Chestnut Building, Philadelphia, PA 19107.

4. AL, FL, GA, KY, MS, NC, SC, TN

United States EPA, Region IV, Water Management Division (FPB-3), Storm Water Staff, 345 Courtland Street, N.E., Atlanta, GA 30365.

5. IL, IN, MI, MN, OH, WI

United States EPA, Region V; Water Quality Branch (5WQP), Storm Water Staff, 77 West Jackson Boulevard, Chicago, IL 60604.

6. AR, LA, NM (Except See Region IX for Navajo Lands, and See Region VIII for Ute Mountain Reservation Lands), OK, TX

United States EPA, Region VI, Water Management Division (6W-EA), Storm Water Staff, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, 12th Floor, Suite 1200, Dallas, TX 75202.

7. IA, KS, MO, NE

United States EPA, Region VII, Water Management Division, Compliance Branch, Storm Water Staff, 726 Minnesota Avenue, Kansas City, KS 66101.

8. CO, MT, ND, SD, WY, UT (Except See Region IX for Goshute Reservation and Navajo Reservation Lands)

United States EPA, Region VIII, Water Management Division, NPDES Branch (8WM-C), Storm Water Staff, 999 18th Street, Denver, CO 80202-2466.

Note—For *Montana Indian Lands,* please use the following address: United States EPA, Region VIII, Montana Operations Office, Federal Office Building, Drawer 10096, 301 South Park, Helena, MT 59620-0026.

9. AZ, CA, HI, NV, Guam, American Samoa, the Goshute Reservation in UT and NV, the Navajo Reservation in UT, NM, and AZ, the Duck Valley Reservation in NV and ID

United States EPA, Region IX, Water Management Division (W-5-1), Storm Water Staff, 75 Hawthorne Street, San Francisco, CA 94105.

10. AK, ID (Except See Region IX for Duck Valley Reservation Lands), OR, WA

United States EPA, Region X, Water Management Division (WD-134), Storm Water Staff, 1200 Sixth Street, Seattle WA 98101.

Part VI. Standard Permit Conditions

A. Duty to Comply

1. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of CWA and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

2. Penalties for Violations of Permit Conditions

a. Criminal

(1). *Negligent Violations* The CWA provides that any person who negligently violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or both.

(2). *Knowing Violations* The CWA provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or both.

(3). *Knowing Endangerment* The CWA provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act and who knows at that time that he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than $250,000, or by imprisonment for not more than 15 years, or both.

(4). *False Statement* The CWA provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than 2 years, or by both. If a conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or by both. (See Section 309.c.4 of the Clean Water Act).

b. *Civil Penalties*—The CWA provides that any person who violates a

permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed $25,000 per day for each violation.

c. *Administrative Penalties.* The CWA provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to an administrative penalty, as follows:

(1). *Class I penalty* Not to exceed $10,000 per violation nor shall the maximum amount exceed $25,000.

(2). *Class II penalty* Not to exceed $10,000 per day for each day during which the violation continues nor shall the maximum amount exceed $125,000.

B. Continuation of the Expired General Permit

This permit expires on October 1, 1997. However, an expired general permit continues in force and effect until a new general permit is issued. Permittees must submit a new NOI in accordance with the requirements of Part II of this permit, using a NOI form provided by the Director (or photocopy thereof) between August 1, 1997 and September 29, 1997 to remain covered under the continued permit after October 1, 1997. Facilities that had not obtained coverage under the permit by October 1, 1997 cannot become authorized to discharge under the continued permit.

C. Need to Halt or Reduce Activity Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

D. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

E. Duty to Provide Information

The permittee shall furnish to the Director; an authorized representative of the Director; a State or local agency approving sediment and erosion plans, grading plans, or storm water management plans; or in the case of a storm water discharge associated with industrial activity which discharges through a municipal separate storm sewer system with an NPDES permit, to the municipal operator of the system, any information which is requested to determine compliance with this permit or other information.

F. Other Information

When the permittee becomes aware that he or she failed to submit any relevant facts or submitted incorrect information in the Notice of Intent or in any other report to the Director, he or she shall promptly submit such facts or information.

G. Signatory Requirements

All Notices of Intent, storm water pollution prevention plans, reports, certifications or information either submitted to the Director or the operator of a large or medium municipal separate storm sewer system, or that this permit requires be maintained by the permittee, shall be signed as follows:

1. All Notices of Intent shall be signed as follows:

a. For a corporation: By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (1) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or (2) the manager of one or more manufacturing, production or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25,000,000 (in second-quarter 1980 dollars) if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

c. For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes (1) the chief executive officer of the agency, or (2) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

2. All reports required by the permit and other information requested by the Director or authorized representative of the Director shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described above and submitted to the Director.

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of manager, operator, superintendent, or position of equivalent responsibility or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position).

c. *Changes to authorization.* If an authorization under paragraph II.B.3. is no longer accurate because a different operator has responsibility for the overall operation of the construction site, a new notice of intent satisfying the requirements of paragraph II.B must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

d. *Certification.* Any person signing documents under paragraph VI.G shall make the following certification:

> I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

H. Penalties for Falsification of Reports

Section 309(c)(4) of the Clean Water Act provides that any person who knowingly makes any false material statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including reports of compliance or moncompliance shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or by both.

I. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under section 311 of the CWA or section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

J. Property Rights

The issuance of this permit does not convey any property rights of any sort,

nor any exclusive privilieges, nor does it authorize any injury to private property nor any invasion of personal rights, nor any infringement of Federal, State of local laws or regulations.

K. Severability

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit shall not be affected thereby.

L. Requiring an Individual Permit or an Alternative General Permit

1. The Director may require any person authorized by this permit to apply for and/or obtain either an individual NPDES permit or an alternative NPDES general permit. Any interested person may petition the Director to take action under this paragraph. Where the Director requires a discharger authorized to discharge under this permit to apply for an individual NPDES permit, the Director shall notify the discharger in writing that a permit application is required. This notification shall include a brief statement of the reasons for this decision, an application form, a statement setting a deadline for the discharger to file the application, and a statement that on the effective date of issuance or denial of the individual NPDES permit or the alternative general permit as it applies to the individual permittee, coverage under this general permit shall automatically terminate. Applications shall be submitted to the appropriate Regional Office indicated in Part V.C of this permit. The Director may grant additional time to submit the applciation upon request of the applicant. If a discharger fails to submit in a timely manner an individual NPDES permit application as required by the Director under this paragraph, then the applicability of this permit to the individual NPDES permittee is automatically terminated at the end of the day specified by the Director for application submittal.

2. Any discharger authorized by this permit may request to be excluded from the coverage of this permit by applying for an individual permit. In such cases, the permittee shall submit an individual application in accordance with the requirements of 40 CFR 122.26(c)(1)(ii), with reasons supporting the request, to the Director at the address for the appropriate Regional Office indicated in part V.C of this permit. The request may be granted by issuance of any individual permit or an alternative general if the reasons cited by the permittee are adequate to support the request.

3. When an individual NPDES permit is issued to a discharger otherwise subject to this permit, or the discharger is authorized to discharge under an alternative NPDES general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the effective date of the individual permit or the date of authorization of coverage under the alternative general permit, whichever the case may be. When an individual NPDES permit is denied to an owner or operator otherwise subject to this permit, or the owner or operator is denied for coverage under an alternative NPDES general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the date of such denial, unless otherwise specified by the Director.

M. State/Environmental Laws

1. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority preserved by section 510 of the Act.

2. No condition of this permit shall release the permittee from any responsibility or requirements under other environmental statutes or regulations.

N. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit and with the requirements of storm water pollution prevention plans. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. Proper operation and maintenance requires the operation of backup or auxiliary facilities or similar systems, installed by a permittee only when necessary to achieve compliance with the conditions of the permit.

O. Inspection and Entry

The permittee shall allow the Director or an authorized representative of EPA, the State, or, in the case of a construction site which discharges through a municipal separate storm sewer, an authorized representative of the municipal operator or the separate storm sewer receiving the discharge, upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit;

2. Have access to and copy at reasonable times, any records that must be kept under the conditions of this permit; and

3. Inspect at reasonable times any facilities or equipment (including monitoring and control equipment).

P. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

Part VII. Reopener Clause

A. If there is evidence indicating potential or realized impacts on water quality due to any storm water discharge associated with industrial activity covered by this permit, the discharger may be required to obtain individual permit or an alternative general permit in accordance with Part I.C of this permit or the permit may be modified to include different limitations and/or requirements.

B. Permit modification or revocation will be conducted according to 40 CFR 122.62, 122.63, 122.64 and 124.5.

Part VIII. Termination of Coverage

A. Notice of Termination

Where a site has been finally stabilized and all storm water discharges from construction activities that are authorized by this permit are eliminated, or where the operator of all storm water discharges at a facility changes, the operator of the facility may submit a Notice of Termination that is signed in accordance with Part VI.G of this permit. The Notice of Termination shall include the following information:

1. The mailing address of the construction site for which the notification is submitted. Where a mailing address for the site is not available, the location of the approximate center of the site must be described in terms of the latitude and longitude to the nearest 15 seconds, or the section, township and range to the nearest quarter section;

2. The name, address and telephone number of the operator addressed by the Notice of Termination:

3. The NPDES permit number for the storm water discharge identified by the Notice of Termination;

4. An indication of whether the storm water discharges associated with industrial activity have been eliminated or the operator of the discharges has changed; and

5. The following certification signed in accordance with Part VI.G (signatory requirements) of this permit:

I certify under penalty of law that all storm water discharges associated with industrial activity from the identified facility that are authorized by an NPDES general permit have been eliminated or that I am no longer the operator of the facility or construction site. I understand that by submitting this notice of termination, I am no longer authorized to discharge storm water associated with industrial activity under this general permit, and that discharging pollutants in storm water associated with industrial activity to waters of the United States is unlawful under the Clean Water Act where the discharge is not authorized by a NPDES permit. I also understand that the submittal of this notice of termination does not release an operator from liability for any violations of this permit or the Clean Water Act.

For the purposes of this certification, elimination of storm water discharges associated with industrial activity means that all disturbed soils at the identified facility have been finally stabilized and temporary erosion and sediment control measures have been removed or will be removed at an appropriate time, or that all storm water discharges associated with construction activities from the identified site that are authorized by a NPDES general permit have otherwise been eliminated.

B. Addresses

All Notices of Termination are to be sent, using the form provided by the Director (or a photocopy thereof),[3] to the following address: Storm Water Notice of Termination, PO Box 1185, Newington, VA 22122.

Part IX. Definitions

Best Management Practices ("BMPs") means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Commencement of Construction—The initial disturbance of soils associated with clearing, grading, or excavating activities or other construction activities.

CWA means the Clean Water Act or the Federal Water Pollution Control Act.

Dedicated portable asphalt plant—A portable asphalt plant that is located on or contiguous to a construction site and that provides asphalt only to the construction site that the plant is located on or adjacent to. The term dedicated portable asphalt plant does not include facilities that are subject to the asphalt emulsion effluent limitation guideline at 40 CFR 443.

Dedicated portable concrete plant—A portable concrete plant that is located on or contiguous to a construction site and that provides concrete only to the construction site that the plant is located on or adjacent to.

Director means the Regional Administrator of the Environmental Protection Agency or an authorized representative.

Final Stabilization means that all soil disturbing activities at the site have been completed, and that a uniform perennial vegetative cover with a density of 70% of the cover for unpaved areas and areas not covered by permanent structures has been established or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.

Flow-weighted composite sample means a composite sample consisting of a mixture of aliquots collected at a constant time interval, where the volume of each aliquot is proportional to the flow rate of the discharge.

Large and Medium municipal separate storm sewer system means all municipal separate storm sewers that are either: (i) Located in an incorporated place (city) with a population of 100,000 or more as determined by the latest Decennial Census by the Bureau of Census (these cities are listed in Appendices F and G of 40 CFR part 122); or (ii) located in the counties with unincorporated urbanized populations of 100,000 or more, except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties (these counties are listed in appendices H and I of 40 CFR part 122); or (iii) owned or operated by a municipality other than those described in paragraph (i) or (ii) and that are designated by the Director as part of the large or medium municipal separate storm sewer system.

NOI means notice of intent to be covered by this permit (see Part II of this permit.)

NOT means notice of termination (see Part VIII of this permit).

Point Source means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharges. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

Runoff coefficient means the fraction of total rainfall that will appear at the conveyance as runoff.

Storm Water means storm water runoff, snow melt runoff, and surface runoff and drainage.

Storm Water Associated with Industrial Activity means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program. For the categories of industries identified in paragraphs (i) through (x) of this definition, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined at 40 CFR 401); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the categories of industries identified in paragraph (xi) of this definition, the term includes only storm water discharges from all areas (except access roads and rail lines) listed in the previous sentence where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery are exposed to storm water. For the purposes of this paragraph, material handling activities include the: storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product or waste

[3] A copy of the approved NOT form is provided in Appendix D of this notice.

product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are Federally, State or municipally owned or operated that meet the description of the facilities listed in this paragraph (i)–(xi) of this definition) include those facilities designated under 122.26(a)(1)(v). The following categories of facilities are considered to be engaging in "industrial activity" for purposes of this subsection:

(i) Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR subchapter N (except facilities with toxic pollutant effluent standards which are exempted under category (xi) of this definition);

(ii) Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, 373;

(iii) Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR 434.11(1) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of non-coal mining operations which have been released from applicable State or Federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations; inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator;

(iv) Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of RCRA;

(v) Landfills, land application sites, and open dumps that have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under Subtitle D of RCRA;

(vi) Facilities involved in the recycling of materials, including metal scrap yards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;

(vii) Steam electric power generating facilities, including coal handling sites;

(viii) Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221–25), 43, 44, 45 and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (i)–(vii) or (ix)–(xi) of this subsection are associated with industrial activity;

(ix) Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program under 40 CFR 403. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with 40 CFR 503;

(x) Construction activity including clearing, grading and excavation activities except: operations that result in the disturbance of less than five acres of total land area which are not part of a larger common plan of development or sale;

(xi) Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221–25, (and which are not otherwise included within categories (i)–(x)).[4]

Waters of the United States means:

(a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(b) All interstate waters, including interstate "wetlands";

(c) All other waters such as interstate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, praire potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(1) Which are or could be used by interstate or foreign travelers for recreational or other purposes;

(2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

(3) Which are used or could be used for industrial purposes by industries in interstate commerce;

(d) All impoundments of waters otherwise defined as waters of the United States under this definition;

(e) Tributaries of waters identified in paragraphs (a) through (d) of this definition;

(f) The territorial sea; and

(g) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA are not waters of the United States.

Part X. State Specific Conditions

The provisions of this Part provide modifications or additions to the applicable conditions of Parts I through IX of this permit to reflect specific additional conditions identified as part of the State section 401 certification process. The additional revisions and requirements listed below are set forth in connection with particular State, Indian lands and Federal facilities and only apply to the States, Indian lands and Federal facilities specifically referenced.

Region II

A. *Puerto Rico.* Puerto Rico 401 certification special permit conditions revise the permit as follows:

1. Part I.A of the permit is revised to read as follows:

Part I. Coverage Under This Permit

A. *Permit Area.* The permit covers all areas administered by EPA Region 2 in the Commonwealth of Puerto Rico.

* * * * *

2. Part III of the permit are revised to read as follows:

[4] On June 4, 1992, the United States Court of Appeals for the Ninth Circuit remanded the exclusion for manufacturing facilities in category (xi) which do not have materials or activities exposed to storm water to the EPA for further rulemaking. (Nos. 90-70671 and 91-70200).

Part III. Special Conditions, Management Practices, Commonwealth Special Conditions, and Narrative Effluent Limitations.

* * * * *

C. Commonwealth Special Conditions

1. Prior to the construction of any treatment system of waters compose entirely of storm water, the permittee shall obtain the approval of the engineering report, plans and specifications from the Environment Quality Board (EQB) of Puerto Rico.

2. The permittee shall submit to EQB with copy to the Regional Office the following information regarding its storm water discharge(s) associated with industrial activity: The number of storm water discharges associated with industrial activity covered by this permit and a drawing indicating the drainage area of each storm water outfalls:

a. For construction activities that have begun on or before October 1, 1992, the permittee is required to submit the information listed above no later than November 15, 1992.

b. For construction activities that have begun after October 1, 1992, the permittee is required to submit the information listed above within forty five (45) days of submission of the NOI.

D. Narrative Effluent Limitations

1. All discharges covered by this Permit shall be free of oil sheen at all times.

2. The storm water discharges associated with industrial activity from construction activities covered by this permit will not cause violation to the applicable water quality standards.

* * * * *

3. Part IV of the permit is revised to read as follows:

Part IV. Storm Water Pollution Prevention Plans

* * * * *

A. Deadlines for Plan Preparation and Compliance

The plan shall: 1. Be completed prior to the submittal of an NOI to be covered under this permit and updated as appropriate;

2. For construction activities that have begun on or before October 1, 1992, the plan shall provide for compliance with the terms and schedule of the plan beginning on October 1, 1992. On or before November 1, 1992, the permittee shall submit to EQB with copy to the Regional Office, a certification stating that the Plan has been developed and implemented in accordance with the requirements established in this permit. The certification should be signed by the person who fulfills the signatory requirements in accordance with Part VI.G of this permit.

3. For construction activities that have begun after October 1, 1992, the plan shall provide for compliance with the terms and schedule of the plan beginning with the initiation of construction activities. Within thirty (30) days of submission of the NOI, the permittee shall submit to EQB with copy to the Regional Office, a certification stating that the Plan has been developed and implemented in accordance with the requirements established in this permit. This certification should be signed by the person who fulfills the signatory requirements in accordance with Part VI.G of this permit.

* * * * *

C. *Keeping Plans Current.* The permittee shall amend the plan whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the waters of the United States and which has not otherwise been addressed in the plan or if the storm water pollution prevention plan proves to be ineffective in eliminating or significantly minimizing pollutants from sources identified under Part IV.D.2 of this permit, or in otherwise achieving the general objectives of controlling pollutants in storm water discharges associated with industrial activity. Amendments to the plan may be reviewed by EPA in the same manner as Part IV.B above. If events have occurred which require the modification of the Plan, the engineer who performs the corresponding revision must submit to EQB with copy to the Regional Office, a certification stating the modifications performed to the plan. As soon as the modifications performed to the Plan are implemented, the person who fulfills the signatory requirements in accordance with Part VI.G of this permit shall submit to EQB with copy to the Regional Office, a certification stating that the modifications of the Plan have been implemented.

* * * * *

D. Contents of Plan

* * * * *

2. *Controls.*

* * * * *

d. Approved State or Local Plans

* * * * *

(4) Compliance with the Plan requirements does not relieve the permittee of his responsibility to comply with the provisions of the Sediment and Erosion Control Plan (Plan CEST, as referred to in Spanish) required by EQB.

* * * * *

4. Part VI.N of the permit is revised to read as follows:

Part VI. Standard Permit Conditions

* * * * *

N. *Proper Operation and Maintenance.* The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit and with the requirements of storm water pollution prevention plans. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. Proper operation and maintenance requires the operation of backup or auxiliary facilities or similar systems, installed by a permittee only when necessary to achieve compliance with the conditions of the permit. Also, proper operation and maintenance includes, but is not limited to, the effective performance based on designed facility removals, adequate funding, effective management, qualified operator staffing, adequate training, adequate laboratory and process controls including appropriate quality assurance procedures.

Region VIII

B. *Colorado (Federal facilities and Indian lands).* There are no special conditions pursuant to Colorado 401 certification in this permit for storm water discharges associated with industrial activity from construction activities located on Indian lands in Colorado. Colorado 401 certification special permit conditions for storm water discharges associated with industrial activity from construction activities from Federal facilities is revised as follows:

1. Part I.A of the permit is revised to read as follows:

Part I. Coverage Under This Permit

A. *Permit Area.* The permit covers all Federal Facilities and Indian Lands administered by EPA Region 8 in the State of Colorado.

* * * * *

2. Part III of the permit is revised to read as follows:

Part III. Special Conditions

A. *Prohibition on non-storm water discharges.*

* * * * *

2.

* * * * *

b. The following non-storm water discharges may be authorized by this permit provided the non-storm water component of the discharge is in compliance with paragraph IV.D.5: Discharges from fire fighting activities; fire hydrant flushings; waters used to wash vehicles or control dust in accordance with Part IV.D.2.c.(2); potable water sources including waterline flushings; irrigation drainage; routine external building washdown which does not use detergents or other compounds; pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used; air conditioning condensate that has not been contaminated by industrial activity and no chemicals have been added to it; naturally occurring springs which have not been altered by the industrial activity; uncontaminated ground water; and foundation or footing drains where flows are not contaminated with process materials such as solvents.

* * * * *

B. Releases in Excess of Reportable Quantities

* * * * *

1.

* * * * *

b. The permittee shall submit within 14 calendar days of knowledge of the release a written description of: the release (including the type and estimate of the amount of material released), the date that such release occurred, the circumstances leading to the release, and steps to be taken in accordance with paragraph III.B.3 of this permit to the appropriate EPA Regional Office at the address provided in Part V.C (addresses) of this permit and to the Colorado Water Quality Control Division at the following address: Colorado Department of Health, Water Quality Control Division, 4300 Cherry Creek Drive South, Denver, Colorado 80222–1530, Attention: Permits and Enforcement.

* * * * *

3. Part IV.B.2 of the permit is revised to read as follows:

Part IV. Storm Water Pollution Prevention Plans

* * * * *

B. Signature and Plan Review

* * * * *

2. The permittee shall make plans available upon request to the Director, or authorized representative, or in the case of a storm water discharge associated with industrial activity which discharges through a municipal separate storm sewer system, to the operator of the municipal system. Federal Facilities located on non-Indian lands in Colorado shall make plans available upon request to the Colorado Water Quality Control Division.

* * * * *

4. Part VII.A of the permit is revised to read as follows:

Part VII. Reopener Clause

* * * * *

A. If there is evidence indicating potential or realized impacts on water quality due to any storm water discharge associated with industrial activity covered by this permit, the discharger may be required to obtain individual permit or an alternative general permit in accordance with Part I.C of this permit or the permit may be modified to include different limitations and/or requirements. If EPA develops new regulations which specifically impact storm water permit requirements or there is a change in statute which imposes additional requirements, this permit may be reopened and modified (following administrative procedures) to include the appropriate requirements.

* * * * *

Region IX

C. *Arizona.* Arizona 401 certification special permit conditions revise the permit as follows:

1. Part I.A of the permit is revised to read as follows:

Part I. Coverage Under This Permit

A. *Permit Area.* The permit covers all areas administered by EPA Region 9 in the State of Arizona, excluding all Indian lands.

* * * * *

2. Part II of the permit is revised to read as follows:

Part II. Notice of Intent Requirements

* * * * *

F. Special NOI Requirements for the State of Arizona. NOIs shall also be submitted to the State of Arizona Department of Environmental Quality at the following address: Storm Water Coordinator, Arizona Department of Environmental Quality P.O. Box 600, Phoenix, Arizona 85001–0600.

NOIs submitted to the State of Arizona shall include the well registration number if storm water associated with industrial activity is discharged to a dry well or an injection well.

* * * * *

3. Part III of the permit is revised to read as follows:

Part III. Special Conditions

* * * * *

C. *Compliance with Water Quality Standards of the State of Arizona.* Discharges authorized by this permit shall not cause or contribute to a violation of any applicable water quality standards of the State of Arizona (A.G. Rule No. R92–006).

* * * * *

4. Part VIII of the permit is revised to read as follows:

Part VIII. Termination of Coverage

* * * * *

C. *Special NOT Requirement for the State of Arizona.* NOTs shall also be submitted to the State of Arizona Department of Environmental Quality at the following address:

Storm Water Coordinator, Arizona Department of Environmental Quality, P.O. Box 600, Phoenix, Arizona 85001–0600.

* * * * *

5. The following definition has been added to Part IX of the permit:

Part IX. Definitions

* * * * *

Significant sources of non-storm water includes, but is not limited to: Discharges which could cause or contribute to violations of water quality standards of the State of Arizona, and discharges which could include releases of oil or hazardous substances in excess of reportable quantities under section 311 of the Clean Water Act (see 40 CFR 110.10 and 40 CFR 117.21) or section 102 of CERCLA (see 40 CFR 302.4).

* * * * *

Region X

D. *Alaska.* Alaska 401 certification special permit conditions revise the permit as follows:

1. Part I.A of the permit is revised to read as follows:

Part I. Coverage Under This Permit

A. *Permit Area.* The permit covers all areas administered by EPA Region 10 in the State of Alaska.

* * * * *

2. Part II.C of the permit is revised to read as follows:

Part II. Notice of Intent Requirements

* * * * *

C. *Where to Submit.*

* * * * *

3. A copy of initial Notice of Intent (NOI), any NOI for the continuation of the general permit, and any Notice of Termination shall be submitted to the appropriate State regional office, attention Storm Water Coordinator, as follows:

Alaska Department of Environmental Conservation, Northern Regional Office, 1001 Noble Street, suite 350, Fairbanks, Alaska 99701, (907) 452-1714, Fax: 451-2187.

Alaska Department of Environmental Conservation, Southeastern Regional Office, 410 W. Willoughby, suite 105, Juneau, Alaska 99801, (907) 465-5350, Fax: 465-5362.

Alaska Department of Environmental Conservation, Southcentral Regional Office, 3601 "C" Street, suite 1334, Anchorage, Alaska 99503, (907) 563-6529, Fax: 562-4026.

Alaska Department of Environmental Conservation, Pipeline Corridor Regional Office, 411 W. 4th Ave., suite 2C, Anchorage, Alaska 99502, (907) 278-8594, Fax: 272-0690.

4. With the NOI to the State, a brief description of the activities to be covered shall be submitted. This shall be on a single sheet and shall describe the area to be disturbed to the nearest acre, the primary pollutants expected from the activities and the type of treatment to be provided.

* * * * *

3. Part III.B.1.b is revised to read as follows:

Part III. Special Conditions, Management Practices, and Other Non-Numeric Limitations

* * * * *

B. *Releases in excess of Reportable Quantities.*

1.

* * * * *

b. The permittee shall submit within 14 calendar days of knowledge of the release a written description of: the release (including the type and estimate of the amount of material released), the date that such release occurred, the circumstances leading to the release, and steps to be taken in accordance with Part III.B.3 of this permit to the appropriate EPA Regional Office at the address provided in Part V.C (addresses) of this permit and to the appropriate State regional office (see section II.C for addresses;

* * * * *

4. Part IV.D.4 of the permit is revised to read as follows:

Part IV. Storm Water Pollution Prevention Plans

* * * * *

D. *Contents of Plan.*

* * * * *

4. *Inspections.* Qualified personnel (provided by the discharger) shall inspect disturbed areas of the construction site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site at least once every seven calendar days and within 24 hours of the end of a storm that is 0.5 inches or greater. Where sites have been finally stabilized, or during seasonal arid periods in arid areas (areas with an average annual rainfall of 0 to 10 inches) and semi-arid areas (areas with an average annual rainfall of 10 to 20 inches) such inspection shall be conducted at least once every month. Monthly inspections shall be conducted for areas finally until a Notice of Termination (NOT) has been submitted for the area.

* * * * *

E. *Idaho.* Idaho 401 certification special permit conditions revise the permit as follows:

1. Part I.A of the permit is revised to read as follows:

Part I. Coverage Under This Permit

A. *Permit Area.* The permit covers all areas administered by EPA Region 10 in the State of Idaho.

* * * * *

2. Part III of the permit is revised to read as follows:

Part III. Special Conditions

* * * * *

C. All storm water shall be treated and disposed of in such a manner that the ground water standards of Idaho are not violated. Such standards are specified in Section 1.02299 of the "Idaho Water Quality Standards and Wastewater Treatment Requirements."

* * * * *

F. *Washington (Federal facilities and Indian lands).* Washington 401 certification special permit conditions revise the permit as follows:

1. Part I.A of the permit is revised to read as follows:

Part I. Coverage Under This Permit

A. *Permit Area.* The permit covers all Federal Facilities administered by EPA Region 10 in the State of Washington.

* * * * *

2. Part III of the permit is revised to read as follows:

Part III. Special Conditions

* * * * *

C. Washington State Standards

1. This permit does not authorize the violation of ground water standards (Chapter 173-200 WAC), surface water standards (Chapter 173-201 WAC), or sediment management standards (Chapter 173-204 WAC) of the State of Washington. The point of compliance with surface water standards shall be determined after consideration of the assignment of a dilution zone as allowed under Chapter 173-201 WAC. The point of compliance with ground water standards shall be determined by applying the provisions of Chapter 173-200 WAC. The point of compliance with sediment management standards shall be determined in accordance with Chapter 173-204 WAC.

2. Diversion of storm water discharges to ground water from existing discharges to surface water shall not be authorized by this permit if this causes a violation or the potential for violation of ground water standards (Chapter 173-200 WAC). Such discharges below the surface of the ground are also regulated by the Underground Injection Control Program (Chapter 173-218 WAC).

3. Washington Department of Ecology (WDOE) is currently developing a "Storm Water Pollution Prevention Plan" which will require facilities to assess the potential of their storm water discharges to violate the Washington State surface water, ground water, or sediment management standards. Those discharges with a high potential to violate standards will be required to develop and implement a monitoring program.

Upon issuance of the "Storm Water Pollution Prevention Plan" by WDOE, EPA may reopen this permit to require facilities to assess their storm water discharges and to require additional monitoring.

BILLING CODE 6560-50-M

Appendix C — NOI Form Instructions

See Reverse for Instructions

Form Approved. OMB No. 2040-0086 Approval expires: 8-31-95

NPDES FORM

EPA

United States Environmental Protection Agency
Washington, DC 20460

Notice of Intent (NOI) for Storm Water Discharges Associated with Industrial Activity Under the NPDES General Permit

Submission of this Notice of Intent constitutes notice that the party identified in Section I of this form intends to be authorized by a NPDES permit issued for storm water discharges associated with industrial activity in the State identified in Section II of this form. Becoming a permittee obligates such discharger to comply with the terms and conditions of the permit. ALL NECESSARY INFORMATION MUST BE PROVIDED ON THIS FORM.

I. Facility Operator Information

Name: Phone:

Address: Status of Owner/Operator:

City: State: ZIP Code:

II. Facility/Site Location Information

Name: Is the Facility Located on Indian Lands? (Y or N)

Address:

City: State: ZIP Code:

Latitude: Longitude: Quarter: Section: Township: Range:

III. Site Activity Information

MS4 Operator Name:

Receiving Water Body:

If You are Filing as a Co-permittee, Enter Storm Water General Permit Number: Are There Existing Quantitative Data? (Y or N) Is the Facility Required to Submit Monitoring Data? (1, 2, or 3)

SIC or Designated Activity Code: Primary: 2nd: 3rd: 4th:

If This Facility is a Member of a Group Application, Enter Group Application Number:

If You Have Other Existing NPDES Permits, Enter Permit Numbers:

IV. Additional Information Required for Construction Activities Only

Project Start Date: Completion Date: Estimated Area to be Disturbed (in Acres): Is the Storm Water Pollution Prevention Plan in Compliance with State and/or Local Sediment and Erosion Plans? (Y or N)

V. Certification: I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Print Name: Date:

Signature:

EPA Form 3510-6 (8-92)

Instructions - EPA Form 3510-6
Notice Of Intent (NOI) For Storm Water Discharges Associated With Industrial Activity
To Be Covered Under The NPDES General Permit

Who Must File A Notice Of Intent (NOI) Form

Federal law at 40 CFR Part 122 prohibits point source discharges of storm water associated with industrial activity to a water body(ies) of the U.S. without a National Pollutant Discharge Elimination System (NPDES) permit. The operator of an industrial activity that has such a storm water discharge must submit a NOI to obtain coverage under the NPDES Storm Water General Permit. If you have questions about whether you need a permit under the NPDES Storm Water program, or if you need information as to whether a particular program is administered by EPA or a state agency, contact the Storm Water Hotline at (703) 821-4823.

Where To File NOI Form

NOIs must be sent to the following address:

Storm Water Notice of Intent
PO Box 1215
Newington, VA 22122

Completing The Form

You must type or print, using upper-case letters, in the appropriate areas only. Please place each character between the marks. Abbreviate if necessary to stay within the number of characters allowed for each item. Use one space for breaks between words, but not for punctuation marks unless they are needed to clarify your response. If you have any questions on this form, call the Storm Water Hotline at (703) 821-4823.

Section I Facility Operator Information

Give the legal name of the person, firm, public organization, or any other entity that operates the facility or site described in this application. The name of the operator may or may not be the same as the name of the facility. The responsible party is the legal entity that controls the facility's operation, rather than the plant or site manager. Do not use a colloquial name. Enter the complete address and telephone number of the operator.

Enter the appropriate letter to indicate the legal status of the operator of the facility.

F = Federal	M = Public (other than federal or state)
S = State	P = Private

Section II Facility/Site Location Information

Enter the facility's or site's official or legal name and complete street address, including city, state, and ZIP code. If the facility or site lacks a street address, indicate the state, the latitude and longitude of the facility to the nearest 15 seconds, or the quarter, section, township, and range (to the nearest quarter section) of the approximate center of the site.

Indicate whether the facility is located on Indian lands.

Section III Site Activity Information

If the storm water discharges to a municipal separate storm sewer system (MS4), enter the name of the operator of the MS4 (e.g., municipality name, county name) and the receiving water of the discharge from the MS4. (A MS4 is defined as a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) that is owned or operated by a state, city, town, borough, county, parish, district, association, or other public body which is designed or used for collecting or conveying storm water.)

If the facility discharges storm water directly to receiving water(s), enter the name of the receiving water.

If you are filing as a co-permittee and a storm water general permit number has been issued, enter that number in the space provided.

Indicate whether or not the owner or operator of the facility has existing quantitative data that represent the characteristics and concentration of pollutants in storm water discharges.

Indicate whether the facility is required to submit monitoring data by entering one of the following:

1 = Not required to submit monitoring data;
2 = Required to submit monitoring data;
3 = Not required to submit monitoring data; submitting certification for monitoring exclusion

Those facilities that must submit monitoring data (e.g., choice 2) are: Section 313 EPCRA facilities; primary metal industries; land disposal units/incinerators/SIFs; wood treatment facilities; facilities with coal pile runoff; and, battery reclaimers.

List, in descending order of significance, up to four 4-digit standard industrial classification (SIC) codes that best describe the principal products or services provided at the facility or site identified in Section II of this application.

For industrial activities defined in 40 CFR 122.26(b)(14)(i)-(xi) that do not have SIC codes that accurately describe the principal products produced or services provided, the following 2-character codes are to be used:

HZ = Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under subtitle C of RCRA [40 CFR 122.26 (b)(14)(iv)];
LF = Landfills, land application sites, and open dumps that receive or have received any industrial wastes, including those that are subject to regulation under subtitle D of RCRA [40 CFR 122.26 (b)(14)(v)];
SE = Steam electric power generating facilities, including coal handling sites [40 CFR 122.26 (b)(14)(vii)];
TW = Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage [40 CFR 122.26 (b)(14)(ix)]; or,
CO = Construction activities [40 CFR 122.26 (b)(14)(x)].

If the facility listed in Section II has participated in Part 1 of an approved storm water group application and a group number has been assigned, enter the group application number in the space provided.

If there are other NPDES permits presently issued for the facility or site listed in Section II, list the permit numbers. If an application for the facility has been submitted but no permit number has been assigned, enter the application number.

Section IV Additional Information Required for Construction Activities Only

Construction activities must complete Section IV in addition to Sections I through III. Only construction activities need to complete Section IV.

Enter the project start date and the estimated completion date for the entire development plan.

Provide an estimate of the total number of acres of the site on which soil will be disturbed (round to the nearest acre).

Indicate whether the storm water pollution prevention plan for the site is in compliance with approved state and/or local sediment and erosion plans, permits, or storm water management plans.

Section V Certification

Federal statutes provide for severe penalties for submitting false information on this application form. Federal regulations require this application to be signed as follows:

For a corporation: by a responsible corporate officer, which means: (i) president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

For a partnership or sole proprietorship: by a general partner or the proprietor; or

For a municipality, state, Federal, or other public facility: by either a principal executive officer or ranking elected official.

Paperwork Reduction Act Notice

Public reporting burden for this application is estimated to average 0.5 hours per application, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate, any other aspect of the collection of information, or suggestions for improving this form, including any suggestions which may increase or reduce this burden to: Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, or Director, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Appendix D — NOT Form Instructions

Please See Instructions Before Completing This Form

Form Approved. OMB No. [illegible] Approval expires [illegible]

NPDES FORM

EPA

United States Environmental Protection Agency
Washington, DC 20460

Notice of Termination (NOT) of Coverage Under the NPDES General Permit for Storm Water Discharges Associated with Industrial Activity

Submission of this Notice of Termination constitutes notice that the party identified in Section II of this form is no longer authorized to discharge storm water associated with industrial activity under the NPDES program. ALL NECESSARY INFORMATION MUST BE PROVIDED ON THIS FORM.

I. Permit Information

NPDES Storm Water General Permit Number: _____

Check Here if You are No Longer the Operator of the Facility: ☐

Check Here if the Storm Water Discharge is Being Terminated: ☐

II. Facility Operator Information

Name: _____ Phone: _____

Address: _____

City: _____ State: ____ ZIP Code: _____

III. Facility/Site Location Information

Name: _____

Address: _____

City: _____ State: ____ ZIP Code: _____

Latitude: _____ Longitude: _____ Quarter: ____ Section: ____ Township: _____ Range: _____

IV. Certification: I certify under penalty of law that all storm water discharges associated with industrial activity from the identified facility that are authorized by a NPDES general permit have been eliminated or that I am no longer the operator of the facility or construction site. I understand that by submitting this Notice of Termination, I am no longer authorized to discharge storm water associated with industrial activity under this general permit, and that discharging pollutants in storm water associated with industrial activity to waters of the United States is unlawful under the Clean Water Act where the discharge is not authorized by a NPDES permit. I also understand that the submittal of this Notice of Termination does not release an operator from liability for any violations of this permit or the Clean Water Act.

Print Name: _____ Date: _____

Signature: _____

Instructions for Completing Notice of Termination (NOT) Form

Who May File a Notice of Termination (NOT) Form

Permittees who are presently covered under the EPA issued National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Industrial Activity may submit a Notice of Termination (NOT) form when their facilities no longer have any storm water discharges associated with industrial activity as defined in the storm water regulations at 40 CFR 122.26 (b)(14), or when they are no longer the operator of the facilities.

For construction activities, elimination of all storm water discharges associated with industrial activity occurs when disturbed soils at the construction site have been finally stabilized and temporary erosion and sediment control measures have been removed or will be removed at an appropriate time, or that all storm water discharges associated with industrial activity from the construction site that are authorized by a NPDES general permit have otherwise been eliminated. Final stabilization means that all soil-disturbing activities at the site have been completed, and that a uniform perennial vegetative cover with a density of 70% of the cover for unpaved areas and areas not covered by permanent structures has been established, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.

Where to File NOT Form

Send this form to the the following address:

Storm Water Notice of Termination
P.O. Box 1165
Newington, VA 22122

Completing the Form

Type or print, using upper-case letters, in the appropriate areas only. Please place each character between the marks. Abbreviate if necessary to stay within the number of characters allowed for each item. Use only one space for breaks between words, but not for punctuation marks unless they are needed to clarify your response. If you have any questions about this form, call the Storm Water Hotline at (703) 821-4823.

PLEASE SEE REVERSE OF THIS FORM FOR FURTHER INSTRUCTIONS

EPA Form 3510-7 (8-92)

Instructions - EPA Form 3510-7
Notice of Termination (NOT) of Coverage Under The NPDES General Permit for Storm Water Discharges Associated With Industrial Activity

Section I Permit Information

Enter the existing NPDES Storm Water General Permit number assigned to the facility or site identified in Section III. If you do not know the permit number, contact the Storm Water Hotline at (703) 821-4825.

Indicate your reason for submitting this Notice of Termination by checking the appropriate box:

If there has been a change of operator and you are no longer the operator of the facility or site identified in Section III, check the corresponding box.

If all storm water discharges at the facility or site identified in Section III have been terminated, check the corresponding box.

Section II Facility Operator Information

Give the legal name of the person, firm, public organization, or any other entity that operates the facility or site described in this application. The name of the operator may or may not be the same name as the facility. The operator of the facility is the legal entity which controls the facility's operation, rather than the plant or site manager. Do not use a colloquial name. Enter the complete address and telephone number of the operator.

Section III Facility/Site Location Information

Enter the facility's or site's official or legal name and complete address, including city, state and ZIP code. If the facility lacks a street address, indicate the state, the latitude and longitude of the facility to the nearest 15 seconds, or the quarter, section, township, and range (to the nearest quarter section) of the approximate center of the site.

Section IV Certification

Federal statutes provide for severe penalties for submitting false information on this application form. Federal regulations require this application to be signed as follows:

For a corporation: by a responsible corporate officer, which means: (i) president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

For a partnership or sole proprietorship: by a general partner or the proprietor; or

For a municipality, State, Federal, or other public facility: by either a principal executive officer or ranking elected official.

Paperwork Reduction Act Notice

Public reporting burden for this application is estimated to average 0.5 hours per application, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate, any other aspect of the collection of information, or suggestions for improving this form, including any suggestions which may increase or reduce this burden to: Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, or Director, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

[FR Doc. 92-21385 Filed 9-8-92; 8:45 am]
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federal register

Wednesday
September 9, 1992

Part III

Environmental Protection Agency

Final NPDES General Permits for Storm Water Discharges Associated With Industrial Activity; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4202-5]

Final NPDES General Permits for Storm Water Discharges Associated With Industrial Activity

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final NPDES general permits.

SUMMARY: The Regional Administrators of Regions I, IV, VI, VIII, IX, and X (the "Regions" or the "Directors") are issuing final National Pollutant Discharge Elimination System (NPDES) general permits for storm water discharges associated with industrial activity (except discharges from construction activity) in 11 States (Alaska, Arizona, Florida, Idaho, Louisiana, Maine, New Hampshire, New Mexico, Oklahoma, South Dakota, and Texas); the Territories of Johnston Atoll, Midway and Wake Islands; on Indian lands in Alaska, Arizona, California, Colorado, Florida, Idaho, Maine, Massachusetts, Mississippi, Montana, New Hampshire, Nevada, North Carolina, North Dakota, Utah, Washington, and Wyoming; from Federal facilities in Colorado, and Washington; and from Federal facilities and Indian lands in Louisiana, New Mexico, Oklahoma, and Texas.

These general permits establish Notice of Intent (NOI) requirements, prohibitions, requirements to develop and implement storm water pollution prevention plans, and requirements to conduct site inspections for facilities with dischargers authorized by the permit. In addition, these general permits establish monitoring requirements for certain classes of facilities and a numeric effluent limitation for discharges of coal pile runoff subject to the general permits.

ADDRESSES: Notices of Intent to be authorized to discharge under these permits should be sent to: Storm Water Notices of Intent, PO Box 1215, Newington, VA 22122.

Other submittals of information required under these permits or individual permit applications should be sent to the appropriate EPA Regional Office. The addresses of the Regional Offices and the name and phone number of the Storm Water Regional Coordinator is provided in section IV.G of the Fact Sheet.

The index to the administrative records for these permits are available at the appropriate Regional Office. The complete administrative record is located at EPA Headquarters, EPA Public Information Reference Unit, room 2402, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying. Specific record information will be made available at the appropriate Regional Office as requested.

DATES: These general permits shall be effective on September 9, 1992. This effective date is necessary to provide appropriate dischargers with the opportunity to comply with the October 1, 1992 deadline for submitting an NPDES application for storm water discharges associated with industrial by submitting a Notice of Intent (NOI) to be covered by the permits.

Deadlines for submittal of Notices of Intent (NOIs) are provided in section IV.A.2 of the Fact Sheet and Part II.A of the general permits. Today's general permits also provide additional dates for compliance with the terms of the permit and for submitting monitoring data where required.

FOR FURTHER INFORMATION CONTACT: For further information on the final NPDES general permits, contact the NPDES Storm Water Hotline at (703) 821-4823 or the appropriate EPA Regional Office. The name, address and phone number of the Regional Storm Water Coordinators are provided in section IV.G of the Fact Sheet.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Pollutants in Storm Water Discharges Associated With Industrial Activity
III. Coverage of General Permits
IV. Summary of Permit Conditions
A. Notification Requirements
1. Contents of NOIs
2. Deadlines
3. Additional Notification
4. Notice of Termination
B. Special Conditions
1. Prohibition on Non-Storm Water Discharges
2. Releases of Reportable Quantities of Hazardous Substances and Oil
C. Tailored Pollution Prevention Plan Requirements
1. Pollution Prevention Team
2. Description of Potential Pollution Sources
a. Drainage
b. Inventory of Exposed Materials
c. Significant Spills and Leaks
d. Non-storm Water Discharges
e. Sampling Data
f. Risk Identification and Summary of Potential Pollutant Sources
3. Measures and Controls
a. Good Housekeeping
b. Preventive Maintenance
c. Spill Prevention and Response Procedures
d. Inspections
e. Employee Training
f. Recordkeeping and Internal Reporting Procedures
g. Sediment and Erosion Control
h. Management of Runoff
4. Comprehensive Site Compliance Evaluation
D. Special Requirements
1. EPCRA Section 313
2. Salt Piles
3. Discharges to Large and Medium Municipal Separate Storm Sewer Systems
4. Coal Piles
E. Monitoring and Reporting Requirements
F. Regional Offices
G. Compliance Deadlines
V. Cost Estimates
VI. Economic Impact (Executive Order 12291)
VII. Paperwork Reduction Act
VIII. 401 Certification
IX. Regulatory Flexibility Act

I. Introduction

The Regional Administrators of the United States Environmental Protection Agency (EPA) are issuing final general permits for the majority of storm water discharges associated with industrial activity as follows:

Region I—For the States of Maine and New Hampshire; for Indian lands located in Massachusetts, New Hampshire, and Maine.

Region IV—For the State of Florida; and for Indian lands located in Florida, Mississippi, and North Carolina.

Region VI—For the States of Louisiana, New Mexico, Oklahoma, and Texas; and for Indian lands located in Louisiana, New Mexico (except Navajo lands and Ute Mountain Reservation lands), Oklahoma, and Texas.

Region VIII—For the State of South Dakota; for Indian lands located in Colorado, Montana, South Dakota, North Dakota, Utah (except Goshute Reservation and Navajo Reservation lands), and Wyoming; for Federal facilities in Colorado; and for the Ute Mountain Reservation in Colorado and New Mexico.

Region IX—For the State of Arizona; for the Territories of Johnston Atoll, and Midway and Wake Island; and for Indian lands located in California and Nevada; and for the Goshute Reservation in Utah and Nevada, the Navajo Reservation in Utah, New Mexico, and Arizona, the Duck Valley Reservation in Nevada and Idaho.

Region X—For the States of Alaska and Idaho; for Indian lands located in Alaska, Idaho (except Duck Valley Reservation lands), and Washington; and for Federal facilities in Washington.

These general permits may authorize the majority of storm water discharges associated with industrial activity to waters of the United States, including discharges through large and medium municipal separate storm sewer systems and through other municipal separate

storm sewer systems. As discussed below, these permits do not authorize storm water discharges associated with industrial activity from construction activities [1] and several additional classes of storm water discharges.

This notice contains four appendices. Appendix A summarizes EPA's response to major comments received on the draft general permits published on August 16, 1991 (56 FR 40948). Appendix B provides the language of the final general permits. Except as provided in part XI of the permits, parts I through X apply to all permits. Part XI of the permit contains conditions which only apply in the State indicated. Appendix C is a copy of the Notice of Intent (NOI) form (and associated instructions) for dischargers to obtain coverage under the general permits. Appendix D is a copy of the Notice of Termination (NOT) form (and associated instructions) that can be used by dischargers wanting to notify EPA that their storm water discharges associated with industrial activity have been terminated or that the permittee has transferred operation of the facility.

On August 16, 1991 (56 FR 40948), EPA requested public comment on draft general permits forming the basis for today's final general permits. In addition to addressing those storm water discharges from industrial activity addressed in today's permits, the August 16, 1991, draft general permits addressed storm water discharges from construction activities. The permits in this notice only address storm water associated with industrial activity other than construction activities. Elsewhere in today's **Federal Register**, EPA is publishing NPDES permits for storm water discharges from construction industrial facilities.

EPA received more than 330 comments on the August 16, 1991, draft general permits. In addition, public hearings to discuss the draft general permits were held in Dallas, TX; Oklahoma City, OK; Baton Rouge, LA; Albuquerque, NM; Seattle, WA; Boise, ID; Juneau, AK; Pierre, SD; Phoenix, AZ; Orlando, FL; Tallahassee, FL; Augusta, ME; Boston, MA; and Mancheser, NH.

EPA is incorporating, by reference, portions of the detailed fact sheet for the draft general permits published on August 16, 1991, as part of the final fact sheet and statement of basis for today's final permit. The sections of the prior fact sheet being incorporated are section 1, Background; section 4, Summary of Options for Controlling Pollutants; and section 5, The Federal/Municipal Partnership: The Role of Municipal Operators of Large and Medium Municipal Separate Storm Sewers.

II. Pollutants in Storm Water Discharges Associated With Industrial Activity

The volume and quality of storm water discharges associated with industrial activity depend on a number of factors, including the industrial activities occurring at the facility, the nature of precipitation, and the degree of surface imperviousness. Rain water may pick up pollutants from structures and other surfaces as it drains from the land. In addition, sources of pollutants other than storm water, such as illicit connections,[2] spills, and other improperly dumped materials, may increase the pollutant loads discharged from separate storm sewers. The sources of pollutants in storm water discharges differ with the type of industry operation and specific facility features. For example, air emissions may be a significant source of pollutants at some facilities, material storage operations at others, and still other facilities may discharge storm water associated with industrial activity with relatively low levels of pollutants.

From 1978 through 1983, EPA provided funding and guidance to the Nationwide Urban Runoff Program (NURP) to study runoff from commercial and residential areas. NURP included 28 projects across the Nation conducted separately at the local level but centrally reviewed, coordinated, and guided.

One focus of the NURP program was to characterize the water quality of discharges from separate storm sewers that drain residential, commercial, and light industrial (industrial parks) sites. The majority of samples collected in NURP were analyzed for seven conventional pollutants and three metals. Table 1 summarizes the data in the NURP data base on concentrations for these 10 pollutants and fecal coliform. The data collected in NURP indicated that on an annual loading basis suspended solids in discharges from separate storm sewers draining runoff from residential, commercial, and light industrial areas are approximately an order of magnitude or more greater than effluent from sewage treatment plants receiving secondary treatment. The study also found that annual loadings of chemical oxygen demand (COD) are comparable to effluent from sewage treatment plants receiving secondary treatment. When analyzing annual loadings associated with urban runoff, it is important to recognize that discharges of urban runoff are highly intermittent and that the short-term loadings associated with individual events will be high and may have shock loading effects on receiving water, such as sag in dissolved oxygen levels.

[1] Elsewhere in today's **Federal Register**, EPA is publishing final general permits for storm water discharges associated with industrial activity from construction sites in a number of States.

[2] Illicit connections are contributions of unpermitted nonstorm water discharges to storm sewers from any of a number of sources including sanitary sewers, industrial facilities, commercial establishments, or residential dwellings.

TABLE 1.—QUALITY CHARACTERISTICS OF RUNOFF FROM RESIDENTIAL AND COMMERCIAL AREAS

Constituent	Average residential or commercial site concentration	Weighted mean residential or commercial site concentration	NURP recommendations for load estimates
TSS	239 mg/l	180 mg/l	180–548 mg/l
BOD	12 mg/l	12 mg/l	12–19 mg/l
COD	94 mg/l	82 mg/l	82–178 mg/l
Total Phosphorus	0.5 mg/l	0.42 mg/l	0.42–0.88 mg/l
Soluble Phosphorus	0.15 mg/l	0.15 mg/l	0.15–0.28 mg/l
Total Kjeldahl Nitrogen	2.3 mg/l	1.90 mg/l	1.90–4.18 mg/l
Nitrate-Nitrite	1.37 mg/l	0.86 mg/l	0.86–2.21 mg/l
Total Copper	53 µg/l	43 µg/l	43–118 µg/l
Total Lead	238 µg/l	182 µg/l	182–443 µg/l
Total Zinc	353 µg/l	202 µg/l	202–633 µg/l
Fecal Coliform:			
Warm Weather	50,240 counts/100 gml	27,605 counts/100 ml	
Cold Weather	22,918 counts/100 gml	7,075 counts/100 ml	

Source: Developed from Results of the Nationwide Urban Runoff Program, Vol. 1—Final Report, EPA 1983.

NURP also involved monitoring 120 priority pollutants. Seventy-seven priority pollutants, including 14 inorganic and 63 organic pollutants, were detected in samples of storm water discharges from residential, commercial, and light industrial lands taken during NURP. Table 2 shows the priority pollutants detected in at least 10 percent of the discharge samples that were tested for priority pollutants. The NURP data also showed that a significant number of these samples exceeded various freshwater water quality criteria.

Although NURP did not evaluate oil and grease, other studies have demonstrated that urban runoff is an extremely important source of oil pollution to receiving waters,[3] with hydrocarbon levels in urban runoff typically being reported at a range of 2 mg/l to 10 mg/l. These hydrocarbons tend to accumulate in bottom sediments where they may persist for long periods of time and can adversely affect benthic organisms.

TABLE 2.—PRIORITY POLLUTANTS DETECTED IN AT LEAST 10 PERCENT OF NURP SAMPLES

	Frequency of Detection (percent)
Metals and Inorganics:	
Antimony	13
Arsenic	52
Beryllium	12
Cadmium	48
Chromium	58
Copper	91
Cyanides	23
Lead	94
Nickel	43
Selenium	11
Zinc	94
Pesticides:	
Alpha-hexachlorocyclohexane	20
Alpha-endosulfan	19
Chlordane	17
Lindane	15
Halogenated Aliphatics:	
Methane, dichloro-	11
Phenols and Cresols:	
Phenol	14
Phenol, pentachloro-	19
Phenol, 4-nitro	10
Phthalate Esters:	
Phthalate, bis (2-ethylhexyl)	22
Polycyclic Aromatic Hydrocarbons:	
Chrysene	10
Fluoranthene	16
Phenanthrene	12
Pyrene	15

[3] For example, see "Controlling Urban Runoff: A Practical Manual for Planning and Designing Urban BMPs", Metropolitan Washington Council of Governments, July 1987.

Other studies have shown that many storm sewers contain illicit non-storm water discharges and that large amounts of wastes are disposed of improperly in storm sewers. Removal of these discharges presents opportunities for dramatic improvements in the quality of storm water discharges. Storm water discharges from industrial facilities may contain, in addition to illicit connections and improperly disposed wastes, toxics and conventional pollutants when material management practices allow exposure to storm water.

In some municipalities, illicit connections of sanitary, commercial, and industrial discharges to storm sewer systems have had a significant impact on the water quality of receiving waters. Although NURP did not emphasize identification of illicit connections to storm sewers other than to ensure that monitoring sites used in the study were free from sanitary sewage contamination, the study concluded that illicit connections can result in high bacterial counts and dangers to public health.

Studies have shown that illicit connections to storm sewers can create severe, widespread contamination problems. For example, the Huron River Pollution Abatement Program inspected 660 businesses, homes, and other buildings located in Washtenaw County, Michigan, and found that 14 percent of the buildings had improper storm drain connections. Illicit discharges were detected at a higher rate of 60 percent for automobile-related businesses, including service stations, automobile dealerships, car washes, body shops, and light industrial facilities. While some of the problems discovered in this study were due to improper plumbing or illegal connections, a majority were approved connections at the time they were built, but have since become unlawful discharges.

NURP and other studies of urban runoff insight on what can be considered background levels of pollutants for urban runoff, as these studies have focused primarily on monitoring runoff from residential, commercial, and light industrial areas. However, NURP concluded that the quality of urban runoff can be impacted adversely by several sources of pollutants that were not evaluated directly in the study and that are generally not reflected in the NURP data, such as illicit connections, construction site runoff, industrial site runoff, and illegal dumping.

For some industrial facilities, the types and concentrations of pollutants in storm water discharges are similar to the types and concentrations of pollutants generally found in storm water discharges from residential and commercial areas. However, storm water discharges from other industrial facilities have a significant potential for higher pollutant levels. In addition, pollutant loadings per unit area from some industrial facilities may be high because of a high degree of imperviousness.

Six activities can be identified as major potential sources of pollutants in storm water discharges associated with industrial activity: (1) Loading or unloading of dry bulk materials or liquids; (2) outdoor storage of raw materials or products; (3) outdoor process activities; (4) dust or particulate generating processes; (5) illicit connections or inappropriate management practices; and (6) waste disposal practices.[4] The potential for pollution from many of these activities may be influenced by the presence and use of toxic chemicals. These activities are discussed in more detail below.

1. Loading and unloading operations typically are performed along facility access roads and railways and at loading/unloading docks and terminals. These operations include pumping of liquids or gases from truck or rail car to a storage facility or vice versa, pneumatic transfer of dry chemicals to or from the loading or unloading vehicle, transfer by mechanical conveyor systems, and transfer of bags, boxes, drums, or other containers from vehicle by forklift trucks or other materials handling equipment. Material spills or losses may discharge directly to the storm drainage systems or may accumulate in soils or on surfaces and

[4] See "Best Management Practices: Useful Tools for Cleaning Up", Rogoshewski, P. 1982. Proceedings of the 1982 Hazardous Material Spills Conference; "Manual of Practice: On Site Identification of Illicit Connections", The Cadmus Group, 1990; "Design of Urban Runoff Quality Controls", American Society of Civil Engineers, 1988; "Urban Stormwater Quality Enhancement-Source Control, Retrofitting, and Combined Sewer Technology", Torno, American Society of Civil Engineers, 1989; "NPDES Best Management Practices Guidance Document", EPA, 1979; "Guidelines to Pollution Prevention: The Pesticide Formulating Industry", 1990, EPA/625/7-90/004; "Guides to Pollution Prevention: The Paint Manufacturing Industry", 1990, EPA/625/7-90/005; "Guides to Pollution Prevention: The Fabricated Metal Products Industry", 1990, EPA/625/7-90/006; and "Analysis of Implementing Permitting Activities for Storm Water Discharges Associated with Industrial Activity", EPA, 1991.

be washed away during a storm or facility washdown.

2. Outdoor storage activities include the storage of fuels, raw materials, byproducts, intermediates, final products and process residuals. Methods of material storage include using storage containers (e.g., drums or tanks), platforms or pads, bins, silos, boxes, or piles. Materials, containers, and material storage areas that are exposed to rainfall and/or runoff may contribute pollutants to storm water when solid materials wash off or materials dissolve into solution.

3. Other outdoor activities include certain types of manufacturing and commercial operations and land-disturbing operations. Although many manufacturing activities are performed indoors, some activities, such as equipment maintenance and/or cleaning, timber processing, rock crushing, vehicle maintenance and/or cleaning, and concrete mixing, typically occur outdoors. Processing operations may result in liquid spillage and losses of material solids to the drainage system or surrounding surfaces, or creation of dusts or mists, which can be deposited locally. Some outdoor industrial activities cause substantial physical disturbance of land surfaces that result in soil erosion by storm water. For example, disturbed land occurs in construction and mining. Disturbed land may result in soil losses and other pollutant loadings associated with increased runoff rates. Facilities whose major process activities are conducted indoors may still apply chemicals such as herbicides, pesticides, and fertilizer outdoors for a variety of purposes.

4. Dust or particulate generating processes include industrial activities with stack emissions or process dusts that settle on plant surfaces. Localized atmospheric deposition is a particular concern with heavy manufacturing industries. For example, monitoring of areas surrounding smelting industries has shown much higher levels of metals at sites nearest the smelter. Other industrial sites, such as mines, cement manufacturing, and refractories, generate significant levels of dusts.

5. Illicit connections or inappropriate management practices result in improper non-storm water discharges to storm sewer systems. The likelihood of illicit discharges to storm water collection systems is expected to be higher at older facilities, due to past practices, as well as for facilities that use high volumes of process water or dispose of significant amounts of liquid wastes, including process waste waters, cooling waters, and rinse waters.

Pollutants from non-storm water discharges to the storm sewer system of individual facilities are caused typically by a combination of improper connections, spills, improper dumping, and the belief that the absence of visible solids in a discharge is equivalent to the absence of pollution. Illicit connections are often associated with floor drains that are connected to separate storm sewers. Rinse waters used to clean or cool objects discharge to floor drains connected to separate storm sewers. Large amounts of rinse waters may originate from industries that use regular washdown procedures; for example, bottling plants use rinse waters for removing waste products, debris, and labels. Rinse waters can be used to cool materials by dipping, washing, or spraying objects with cool water, for example, rinse water is sometimes sprayed over the final products of a metal plating facility for cooling purposes. Condensate return lines of heat exchangers often discharge to floor drains. Heat exchangers, particularly those used under stressed conditions (such as exposure to corrosive fluids) such as in the metal finishing and electroplating industry, may develop pinhole leaks that result in contamination of condensate by process wastes. These and other non-storm water discharges to a storm sewer may be intentional, based on the belief that the discharge (condensate in the example previously discussed) does not contain pollutants, or they may be inadvertent, if the operator is unaware that a floor drain is connected to the storm sewer.

6. Waste management practices include temporary storage of waste materials, operating landfills, waste piles, and land application sites that involve land disposal. Outdoor waste treatment operations also include waste water and solid waste treatment and disposal processes, such as waste pumping, additions of treatment chemicals, mixing, aeration, clarification, and solids dewatering. Facilities often conduct some waste management on site.

Coal Pile Runoff

The following description of coal pile runoff is summarized from the "Final Development Document for Effluent Limitations Guidelines and Standards and Pretreatment Standards for the Steam Electric Point Source Category" (EPA-440/1-82/029), EPA, November 1982. A more complete description of coal pile runoff can be found in the development document.

The pollutants in coal pile runoff can be classified into specific types according to chemical characteristics. Each type relates to the pH of the coal pile drainage. The pH tends to be of an acidic nature, primarily as a result of the oxidation of iron sulfide in the presence of oxygen and water. The potential influence of pH on the ability of toxic and heavy metals to leach from coal piles is of particular concern. Many of the metals are amphoteric with regard to their solubility behavior. These factors affect acidity, pH, and the subsequent leaching of trace metals:

- Concentration and form of pyritic sulfur in coal;
- Size of the coal pile;
- Method of coal preparation and clearing prior to storage;
- Climatic conditions, including rainfall and temperature;
- Concentrations of calcium carbonate and other neutralizing substances in the coal;
- Concentration and form of trace metals in the coal; and
- The residence time of water in the coal pile.

Coal piles can generate runoff with low pH values, with the acid values being quite variable. The suspended solids levels can be significant, with levels of 2,500 mg/l not uncommon. Metals present in the greatest concentrations are copper, iron, aluminum, nickel, and zinc. Others present in trace amounts include chromium, cadmium, mercury, arsenic, selenium, and beryllium.[5]

III. Coverage of General Permits

These final general permits may authorize all new and existing discharges composed of storm water associated with industrial activity. To be authorized under today's general permit, the owner or operator of a facility with a storm water discharge associated with industrial activity must submit a Notice of Intent (NOI) to be covered, using an NOI form (or photocopy thereof) provided by the Director. Unless notified by the Director to the contrary, owners or operators who submit such notification are authorized to discharge storm water associated with industrial activity under the terms and conditions of this permit. Upon review of the NOI, the Director may deny coverage under this permit and require submittal of an application for an individual National Pollutant

[5] A more complete description of pollutants in coal pile runoff is provided in the "Final Development Document for Effluent Limitations Guidelines and Standards and Pretreatment Standards for the Steam Electric Point Source Category," (EPA-440/1-82/029), EPA, November 1982.

Discharge Elimination System (NPDES) permit.

Dischargers that have previously submitted an individual permit application or participated in a group application are not precluded from submitting an NOI to obtain coverage under today's general permits.

Seven types of storm water discharges associated with industrial activity are not authorized by and may not be covered by today's general permit. Each of these is discussed in turn below:

- Storm water discharges associated with industrial activity that are mixed with sources of non-storm water other than discharges that are either (1) in compliance with a different NPDES permit or (2) identified in the permit as being a class of non-storm water discharge that can be authorized by the permit and comply with the requirements of the permit.
- Storm water discharges associated with industrial activity that are subject to an existing effluent limitation guideline for storm water or a combination of storm water and process water;[6]
- Storm water discharges associated with industrial activity from facilities with an existing NPDES individual or general permit for the storm water discharges. Storm water discharges that are authorized by an existing NPDES individual or general permit may be authorized by this permit after the existing permit expires, provided that the permit did not establish numeric limitations for such discharges. In addition, storm water discharges that are not covered by an existing NPDES permit may be authorized by this permit even where other storm water discharges from the same facility are covered by a different NPDES permit;
- Storm water discharges associated with industrial activity from construction activities;[7]
- Storm water discharges associated with industrial activity that the Director has determined to be or may reasonably expect to be contributing to a violation of a water quality standard;
- Storm water discharges associated with industrial activity that may adversely affect a listed or proposed to be listed endangered or threatened species or its critical habitat; and
- Storm water discharges associated with industrial activity from inactive mining, inactive landfills, or inactive oil and gas operations occurring on Federal lands where an operator cannot be identified.

IV. Summary of Permit Conditions

The conditions of today's general permits have been designed to comply with the technology-based standards of the Clean Water Act (CWA). The general permits contain a prohibition on discharging sources of non-storm water, requirements for releases of hazardous substances or oil in excess of reporting quantities, a set of tailored requirements for developing and implementing storm water pollution prevention plans, monitoring requirements for selected discharges, and numeric effluent limitations for coal pile runoff.

A. Notification Requirements

General permits for storm water discharges associated with industrial activity must require the submittal of an NOI prior to the authorization of such discharges (see 40 CFR 122.28(b)(2)(i), April 2, 1992, [57 FR 11394]). Consistent with these regulatory requirements, today's general permits establish NOI requirements that operate instead of individual permit application requirements.

Dischargers submitting an NOI must use the form provided by the Director (or photocopy thereof). A copy of the NOI and accompanying instructions are provided in appendix C. NOI forms are also generally available from the Storm Water Hotline ((703) 821-4823) and appropriate EPA Regional offices (see the Regional Offices section of today's notice).

1. Contents of NOIs

The NOI must include the following information:

- Name, mailing address, and location of the facility for which the notification is submitted. Where a mailing address for the site is not available, the location can be described in terms of the latitude and longitude of the facility to the nearest 15 seconds that the facility is located in;
- Up to four 4-digit Standard Industrial Classification (SIC) codes that best represent the principal products or activities provided by the facility or for hazardous waste treatment, storage or disposal facilities, land disposal facilities that receive or have received any industrial waste, steam electric power generating facilities, or treatment works treating domestic sewage, a narrative identification of those activities;
- The operator's name, address, telephone number, and status as Federal, State, private, public, or other entity;
- The permit number of any NPDES permit for any discharge (including non-storm water discharges) from the site that is currently authorized by an NPDES permit;
- The name of the receiving water(s), or if the discharge is through a municipal separate storm sewer, the name of the municipal operator of the storm sewer and the receiving water(s) for the discharge through the municipal separate storm sewer;
- An indication of whether the owner or operator has existing quantitative data describing the concentration of pollutants in storm water discharges (existing data should not be included as part of the NOI);
- An indication as to whether the facility has previously participated in the group application process.[8] Where a facility has participated in a group application, the number EPA assigned to the group application shall be supplied; and
- For any facility that begins to discharge storm water associated with industrial activity after October 1, 1992, a certification that a storm water pollution prevention plan has been prepared for the facility in accordance with Part IV of this permit. (A copy of the plan should not be included with the NOI submission).

The NOI must be signed in accordance with the signatory requirements of 40 CFR 122.22. A complete description of these signatory requirements are provided in the instructions accompanying the NOI (see appendix C). Completed NOI forms must be submitted to the Director of the NPDES program in care of the following

[6] For the purpose of this permit, the following effluent limitations guidelines address storm water or a combination of storm water and process water: cement manufacturing (40 CFR 411); feedlots (40 CFR 412); fertilizer manufacturing (40 CFR 418); petroleum refining (40 CFR 419); phosphate manufacturing (40 CFR 422); steam electric (40 CFR 423); coal mining (40 CFR 434); mineral mining and processing (40 CFR 436); ore mining and dressing (40 CFR 440); and asphalt emulsion (40 CFR 443). This permit may authorize storm water discharges associated with industrial activity that are not subject to an effluent limitation guideline even where a different storm water discharge at the facility is subject to an effluent limitation guideline.

[7] EPA is in the process of issuing separate general permits for storm water discharges associated with industrial activity from construction activities. In situations where construction activities occur at an existing industrial facility, or where industrial activities addressed by 40 CFR 122.26(b) (i) through (ix) or (xi), such as asphalt plants and concrete plants, are employed at a construction site, the storm water discharge associated with industrial activity from the industrial activity addressed by 40 CFR 122.26(b) (i) through (ix) or (xi) can be authorized by the permit addressed by this fact sheet.

[8] As discussed above, dischargers that have previously participated in a group application are not precluded from submitting an NOI to be covered by today's permits.

address: Storm Water Notices of Intent, P.O. Box 1215, Newington, VA 22122.

2. Deadlines

Except for the special circumstances discussed below, dischargers who intend to obtain coverage under today's general permit for a storm water discharge from an industrial activity that is in existence prior to October 1, 1992, must submit an NOI on or before October 1, 1992, and facilities that begin industrial activities after October 1, 1992, are required to submit an NOI at least 2 days prior to the commencement of the new industrial activity.

Oil and gas exploration, production, processing, or treatment operations or transmission facilities that are not required to submit a permit application as of October 1, 1992, in accordance with 40 CFR 122.26(c)(1)(iii) but that have a discharge after October 1, 1992, of a reportable quantity of oil or a hazardous substance for which notification is required pursuant to 40 CFR 110.6, 40 CFR 117.21 or 40 CFR 302.6 are required to submit an NOI within 14 calendar days of the first knowledge of such release.

Storm water discharges associated with industrial activity from any facility owned or operated by a municipality that has participated in a timely part 1 group application and where either the group application is rejected or the municipally owned or operated facility is denied participation in the group application by EPA must submit an NOI on or before the 180th day following the date on which the group is rejected or the denial is made, or on or before October 1, 1992, whichever is later. This deadline is consistent with section 1068(b) of the Intermodal Surface Transportation Efficiency Act of 1991.

A discharger is not precluded from submitting an NOI at a later date. However, in such instances, EPA may bring appropriate enforcement actions.

EPA may deny coverage under this permit and require submittal of an individual NPDES permit application based on a review of the completeness and/or content of the NOI or other information (e.g., water quality information, compliance history, history of spills, etc.). Where EPA requires a discharger authorized under the general permit to apply for an individual NPDES permit or an alternative general permit, EPA will notify the discharger in writing that a permit application is required. Coverage under this general permit will automatically terminate if the discharger fails to submit the required permit application in a timely manner. Where the discharger does submit a requested permit application, coverage under this general permit will automatically terminate on the effective date of the issuance or denial of the individual NPDES permit or the alternative general permit as it applies to the individual permittee.

3. Additional Notification

Operators of storm water discharges associated with industrial activity that discharge through a large or medium municipal separate storm sewer system * must, in addition to submitting an NOI to the Director, submit a copy of the NOI to the municipal operator of the system receiving the discharge.

4. Notice of Termination

Where a discharger is able to eliminate the storm water discharges associated with industrial activity from a facility, the discharger may submit a Notice of Termination (NOT) form (or photocopy thereof) provided by the Director. This will assist EPA in tracking the status of the discharger.

A copy of the NOT and instructions for completing the NOT are provided in appendix D of today's notice. The NOT form requires the following information:

- Name, mailing address, and location of the facility for which the notification is submitted. Where a street address for the site is not available, the location of the approximate center of the site must be described in terms of the latitude and longitude to the nearest 15 seconds, or the section, township and range to the nearest quarter;
- The name, address and telephone number of the operator addressed by the Notice of Termination;
- The NPDES permit number for the storm water discharge associated with industrial activity identified by the NOT;
- An indication of whether the storm water discharges associated with industrial activity have been eliminated or the operator of the discharges has changed; and
- The following certification:

"I certify under penalty of law that all storm water discharges associated with industrial activity from the identified facility that are authorized by a NPDES general permit have been eliminated or that I am no longer the operator of the facility or construction site. I understand that by submitting this Notice of Termination, I am no longer authorized to discharge storm water associated with industrial activity under this general permit, and that discharging pollutants in storm water associated with industrial activity to waters of the United States is unlawful under the Clean Water Act where the discharge is not authorized by a NPDES permit. I also understand that the submittal of this notice of termination does not release an operator from liability for any violations of this permit or the Clean Water Act."

NOTs are to be sent to the Director of the NPDES program in care of the following address: Storm Water Notice of Termination, P.O. Box 1185, Newington, Virginia 22122.

The NOT must be signed in accordance with the signatory requirements of 40 CFR 122.22. A complete description of these signatory requirements is provided in the instructions accompanying the NOT (see appendix D).

B. Special Conditions

1. Prohibition on Non-Storm Water Discharges

Today's general permits do not authorize non-storm water discharges that are mixed with storm water except as provided below. Non-storm water discharges that can be authorized under today's permits include discharges from fire fighting activities; fire hydrant flushings; potable water sources, including waterline flushings; irrigation drainage; lawn watering; routine external building washdown without detergents; pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used; air conditioning condensate; springs; uncontaminated ground water; and foundation or footing drains where flows are not contaminated with process materials such as solvents that are combined with storm water discharges associated with industrial activity.

To be authorized under the general permits, these sources of non-storm water (except flows from fire fighting activities) must be identified in the storm water pollution prevention plan prepared for the facility. (Plans and other plan requirements are discussed in more detail below). Where such discharges occur, the plan must also identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge. For example, to reduce pollutants in irrigation drainage, a plan could identify low maintenance lawn areas that do not require the use of fertilizers or herbicides; for higher maintenance lawn areas, a plan could identify measures

* The terms large and medium municipal separate storm sewer systems (systems serving a population of 100,000 or more) are defined at 40 CFR 122.26(b)(4) and (7). Some of the cities and counties in which these systems are found are listed in Appendices F, G, H, and I to 40 CFR part 122. Other large and medium systems have been designated by EPA on a case-by-case basis.

such as limiting fertilizer use based on seasonal and agronomic considerations, decreasing herbicide use with an integrated pest management program, introducing natural vegetation or more hardy species, and reducing water use (thereby reducing the volume of irrigation drainage).

Today's permits do not require pollution prevention measures to be identified and implemented for non-storm water flows from fire-fighting activities because these flows will generally be unplanned emergency situations where it is necessary to take immediate action to protect the public.

The prohibition on unpermitted non-storm water discharges in these permits ensures that non-storm water discharges (except for those classes of non-storm water discharges that are conditionally authorized) are not inadvertently authorized by these permits. Where a storm water discharge is mixed with non-storm water that is not authorized by today's general permits or another NPDES permit, the discharger should submit the appropriate application forms (Forms 1, 2C, and/or 2E) to gain coverage of the non-storm water portion of the discharge.

2. Releases of Reportable Quantities of Hazardous Substances and Oil

These general permits provide that the discharge of hazardous substances or oil from a facility must be eliminated or minimized in accordance with the storm water pollution plan developed for the facility. Where a permitted storm water discharge contains a hazardous substance or oil in an amount equal to or in excess of a reporting quantity established under 40 CFR 110, 40 CFR 117, or 40 CFR 302 during a 24 hour period, the following actions must be taken:

- Any person in charge of the facility is required to notify the National Response Center (NRC) (800–424–8802; in the Washington, DC, metropolitan area, 202–426–2675) in accordance with the requirements of 40 CFR 110, 40 CFR 117, and 40 CFR 302 as soon as they have knowledge of the discharge;
- The storm water pollution prevention plan for the facility must be modified within 14 calendar days of knowledge of the release to provide a description of the release, an account of the circumstances leading to the release, and the date of the release. In addition, the plan must be reviewed to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and it must be modified where appropriate.
- The permittee must also submit to EPA within 14 calendar days of knowledge of the release a written description of the release (including the type and estimate of the amount of material released), the date that such release occurred, the circumstances leading to the release, and steps to be taken to modify the pollution prevention plan for the facility.

Anticipated discharges containing a hazardous substance in an amount equal to or in excess of reporting quantities are those caused by events occurring within the scope of the relevant operating system. Facilities that have more than one anticipated discharge per year containing a hazardous substance in an amount equal to or in excess of a reportable quantity are required to:

- Submit notifications for the first release that occurs during a calendar year (or for the first year of this permit, after submittal of an NOI); and
- Provide a written description in the storm water pollution prevention plan of the dates on which such releases occurred, the type and estimate of the amount of material released, and the circumstances leading to the release. In addition, the plan must be reviewed to identify measures to minimize such releases and the plan must be modified where appropriate.

Where a discharge of a hazardous substance or oil in excess of reporting quantities is caused by a nonstorm water discharge (e.g., a spill of oil into a separate storm sewer), that discharge is not authorized by this permit and the discharger must report the discharge as required under 40 CFR 110, 40 CFR 117, or 40 CFR 302. In the event of a spill, the requirements of section 311 of the CWA and other applicable provisions of sections 301 and 402 of the CWA continue to apply. This approach is consistent with the requirements for reporting releases of hazardous substances and oil that make a clear distinction between hazardous substances typically found in storm water discharges and those associated with spills that are not considered part of a normal storm water discharge (see 40 CFR 117.12(d)(2)(i)).

C. Tailored Pollution Prevention Plan Requirements

All facilities covered by today's general permits for storm water discharges associated with industrial activity must prepare and implement a storm water pollution prevention plan. The storm water permits address pollution prevention plan requirements for a number of categories of industries, including: Baseline requirements for all industries; special requirements for certain facilities subject to Emergency Planning and Community Right-to-Know Act (EPCRA) section 313; special requirements for storm water discharges associated with industrial activity through large and medium municipal separate storm sewer systems; and special requirements for facilities with outdoor salt storage piles. These tailored requirements allow the implementation of site-specific measures that address features, activities, or priorities for control associated with the identified storm water discharges. This framework provides the necessary flexibility to address the variable risk for pollutants in storm water discharges associated with the different types of industrial activity addressed by these permits. This approach also assures that facilities have the opportunity to identify procedures to prevent storm water pollution at a particular site that are appropriate, given processes employed, engineering aspects, functions, costs of controls, location, and age of the facility (as contemplated by 40 CFR 125.3). The approach taken also allows the flexibility to establish controls that can appropriately address different sources of pollutants at different facilities.

The pollution prevention approach adopted in today's general permits focuses on these two major objectives: (1) To identify sources of pollution potentially affecting the quality of storm water discharges associated with industrial activity from the facility; and (2) to describe and ensure implementation of practices to minimize and control pollutants in storm water discharges associated with industrial activity from the facility and to ensure compliance with the terms and conditions of this permit.

The storm water pollution prevention plan requirements in the general permit are intended to facilitate a process whereby the operator of the industrial facility thoroughly evaluates potential pollution sources at the site and selects and implements appropriate measures designed to prevent or control the discharge of pollutants in storm water runoff. The process involves the following four steps: (1) Formation of a team of qualified plant personnel who will be responsible for preparing the plan and assisting the plant manager in its implementation, (2) assessment of potential storm water pollution sources, (3) selection and implementation of appropriate management practices and controls, and (4) periodic evaluation of the ability of the plan to prevent storm water pollution and comply with the terms and conditions of this permit.

EPA believes the pollution prevention approach is the most environmentally sound and cost-effective way to control the discharge of pollutants in storm water runoff from industrial facilities. This position is supported by the results of a comprehensive technical survey EPA completed in 1979.[10] The survey found that there are two classes of management practices industry uses to control the non-routine discharge of pollutants from sources such as storm water runoff, drainage from raw material storage and waste disposal areas, and discharges from places where spills or leaks have occurred. The first class of management practices includes those that are low in cost, applicable to a broad class of industries and substances, and generally are considered essential to a good pollution control program. Some examples of practices in this class are good housekeeping, employee training, and spill prevention procedures. The second class includes management practices that provide a second line of defense against the release of pollutants. This class addresses containment, mitigation, cleanup, and treatment.

Since publication of the 1979 survey, EPA has imposed management practices and controls in NPDES permits on a case-by-case basis. The Agency also has continued to review the appropriateness and effectiveness of such practices,[11] as well as the techniques used to prevent and contain oil spills.[12] Experience with these practices and controls has shown that they can be used in permits to reduce pollutant discharges in storm water in a cost-effective manner. EPA has developed guidance entitled "Storm Water Management for Industrial Activities; Developing Pollution Prevention Plans and Best Management Practices", EPA, 1992 to assist permittees in developing and implementing pollution prevention measures.

1. Pollution Prevention Team

As a first step in the process of developing and implementing a storm water pollution prevention plan, permittees must identify a qualified individual or team of individuals to be responsible for developing the plan and assisting the facility or plant manager in its implementation. When selecting members of the team, the plant manager should draw on the expertise of all relevant departments within the plant to ensure that all aspects of plant operations are considered when the plan is developed. The plan must clearly describe the responsibilities of each team member as they relate to specific components of the plan. In addition to enhancing the quality of communication between team members and other personnel, clear delineation of responsibilities will ensure that every aspect of the plan is addressed by a specified individual or group of individuals. Pollution Prevention Teams may consist of one individual where appropriate (e.g., in certain small businesses with limited storm water pollution potential).

2. Description of Potential Pollution Sources

Each storm water pollution prevention plan must describe activities, materials, and physical features of the facility that may contribute significant amounts of pollutants to storm water runoff or, during periods of dry weather, result in pollutant discharges through the separate storm sewers or storm water drainage systems that drain the facility. This assessment of storm water pollution risk will support subsequent efforts to identify and set priorities for necessary changes in materials, materials management practices, or site features, as well as aid in the selection of appropriate structural and nonstructural control techniques. Plans must describe the following elements:

a. Drainage. The plan must contain a map of the site that shows the pattern of storm water drainage, structural features that control pollutants in runoff,[13] surface water bodies (including wetlands), places where significant materials [14] are exposed to rainfall and runoff, and locations of major spills and leaks that occurred in the 3 years prior to the effective date of this permit. The map also must show areas where the following activities take place: Fueling, vehicle and equipment maintenance and/or cleaning, loading and unloading, material storage (including tanks or other vessels used for liquid or waste storage), material processing, and waste disposal. For areas of the facility that generate storm water discharges with a reasonable potential to contain significant amounts of pollutants, the map must indicate the probable direction of storm water flow and the pollutants likely to be in the discharge. Flows with a significant potential to cause soil erosion also must be identified.

b. Inventory of exposed materials. Facility operators are required to carefully conduct an inspection of the site and related records to identify significant materials that are or may be exposed to storm water. The inventory must address materials that within 3 years prior to the effective date of the permit have been handled, stored, processed, treated, or disposed of in a manner to allow exposure to storm water. Findings of the inventory must be documented in detail in the pollution prevention plan. At a minimum, the plan must describe the methods and location of on-site storage or disposal; practices used to minimize contact of materials with rainfall and runoff; existing structural and nonstructural controls that reduce pollutants in runoff; and any treatment the runoff receives before it is discharged to surface waters or a separate storm sewer system. The description must be updated whenever there is a significant change in the types or amounts of materials, or material management practices, that may affect the exposure of materials to storm water.

c. Significant spills and leaks. The plan must include a list of any significant spills and leaks of toxic or hazardous pollutants that occurred in the 3 years prior to the effective date of the permit. Significant spills include, but are not limited to, releases of oil or hazardous substances in excess of quantities that are reportable under section 311 of CWA (see 40 CFR 110.10 and 117.21) or section 102 of the Comprehensive Environmental Response, Compensation and Liability

[10] See "NPDES Best Management Practices Guidance Document," U.S. EPA, December 1979, EPA-600/9-79-045.

[11] For example, see "Best Management Practices: Useful Tools for Cleaning Up", Thron, H. Rogoshewski, P., 1982, Proceedings of the 1982 Hazardous Material Spills Conference; "The Chemical Industries' Approach to Spill Prevention", Thompson, C., Goodier, J. 1980, Proceedings of the 1980 National Conference of Control of Hazardous Materials Spills; a series of EPA memorandum entitled "Best Management Practices in NPDES Permits—Information Memorandum", 1983, 1985, 1986, 1987, 1988; Review of Emergency Systems: Report to Congress", EPA, 1988; and "Analysis of Implementing Permitting Activities for Storm Water Discharges Associated with Industrial Activity", EPA, 1991.

[12] See for example, "The Oil Spill Prevention, Control and Countermeasures Program Task Force Report", EPA, 1988; and "Guidance Manual for the Development of an Accidental Spill Prevention Program", prepared by SAIC for EPA, 1988.

[13] Nonstructural features such as grass swales and vegetative buffer strips also should be shown.

[14] Significant materials include, but are not limited to the following: raw materials; fuels; solvents, detergents, and plastic pellets; finished materials, such as metallic products; raw materials used in food processing or production; hazardous substances designated under section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA); any chemical the facility is required to report pursuant to EPCRA Section 313; fertilizers; pesticides; and waste products, such as ashes, slag, and sludge that have the potential to be released with storm water discharges. (See 40 CFR 122.26(b)(8)).

Act (CERCLA) (see 40 302.4). Significant spills may also include releases of oil or hazardous substances that are not in excess of reporting requirements and releases of materials that are not classified as oil or a hazardous substance.

The listing should include a description of the causes of each spill or leak, the actions taken to respond to each release, and the actions taken to prevent similar such spills or leaks in the future. This effort will aid the facility operator as she or he examines existing spill prevention and response procedures and develops any additional procedures necessary to fulfill the requirements of part IV.D.3.c. of this permit.

d. Non-storm water discharges. Each pollution prevention plan must include a certification, signed by an authorized individual, that discharges from the site have been tested or evaluated for the presence of non-storm water discharges. The certification must describe possible significant sources of non-storm water, the results of any test and/or evaluation conducted to detect such discharges, the test method or evaluation criteria used, the dates on which tests or evaluations were performed, and the on-site drainage points directly observed during the test or evaluation. Acceptable test or evaluation techniques include dye tests, television surveillance, observation of outfalls or other appropriate locations during dry weather, water balance calculations, and analysis of piping and drainage schematics[15].

Except for flows that originate from fire fighting activities, sources of non-storm water that are specifically identified in the permit as being eligible for authorization under the general permit must be identified in the plan. Pollution prevention plans must identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water discharge.

EPA recognizes that certification may not be feasible where facility personnel do not have access to an outfall, manhole, or other point of access to the conduit that ultimately receives the discharge. In such cases, the plan must describe why certification was not feasible. Permittees who are not able to certify that discharges have been tested or evaluated must notify the Director in accordance with part VI.A. of the permit.

[15] In general, smoke tests should not be used for evaluating the discharge of non-storm water to a separate storm sewer as many sources of non-storm water typically pass through a trap that would limit the effectiveness of the smoke test.

e. Sampling data. Any existing data on the quality or quantity of storm water discharges from the facility must be described in the plan. These data may be useful for locating areas that have contributed pollutants to storm water. The description should include a discussion of the methods used to collect and analyze the data. Sample collection points should be identified in the plan and shown on the site map.

f. Risk identification and summary of potential pollutant sources. The description of potential pollution sources culminates in a narrative assessment of the risk potential that sources of pollution pose to storm water quality. This assessment should clearly point to activities, materials, and physical features of the facility that have a reasonable potential to contribute significant amounts of pollutants to storm water. Any such activities, materials, or features must be addressed by the measures and controls subsequently described in the plan. In conducting the assessment, the facility operator must consider the following activities: loading and unloading operations; outdoor storage activities; outdoor manufacturing or processing activities; significant dust or particulate generating processes; and on-site waste disposal practices. The assessment must list any significant pollution sources at the site and identify the pollutant parameter or parameters (i.e., biochemical oxygen demand, suspended solids, etc.) associated with each source.

3. Measures and Controls

Following completion of the source identification and assessment phase, the permittee must evaluate, select, and describe the pollution prevention measures, best management practices (BMPs), and other controls that will be implemented at the facility. BMPs include processes, procedures, schedules of activities, prohibitions on practices, and other management practices that prevent or reduce the discharge of pollutants in storm water runoff.

EPA emphasizes the implementation of pollution prevention measures and BMPs that reduce possible pollutant discharges at the source. Source reduction measures include, among others, preventive maintenance, chemical substitution, spill prevention, good housekeeping, training, and proper materials management. Where such practices are not appropriate to a particular source or do not effectively reduce pollutant discharges, EPA supports the use of source control measures and BMPs such as material segregation or covering, water diversion, and dust control. Like source reduction measures, source control measures and BMPs are intended to keep pollutants out of storm water. The remaining classes of BMPs, which involve recycling or treatment of storm water, allow the reuse of storm water or attempt to lower pollutant concentrations prior to discharge.

The pollution prevention plan must discuss the reasons each selected control or practice is appropriate for the facility and how each will address one or more of the potential pollution sources identified in part IV.D.2. of the plan. The plan also must include a schedule specifying the time or times during which each control or practice will be implemented. In addition, the plan should discuss ways in which the controls and practices relate to one another and, when taken as a whole, produce an integrated and consistent approach for preventing or controlling potential storm water contamination problems. The portion of the plan that describes the measures and controls must address the following minimum components.

a. Good housekeeping. Good housekeeping involves using common sense to identify ways to maintain a clean and orderly facility and keep contaminants out of separate storm sewers. It includes establishing protocols to reduce the possibility of mishandling chemicals or equipment and training employees in good housekeeping techniques. These protocols must be described in the plan and communicated to appropriate plant personnel.

b. Preventive maintenance. Permittees must develop a preventive maintenance program that involves regular inspection and maintenance of storm water management devices and other equipment and systems. The program description should identify the devices, equipment, and systems that will be inspected; provide a schedule for inspections and tests; and address appropriate adjustment, cleaning, repair, or replacement of devices, equipment, and systems. For storm water management devices such as catch basins and oil/water separators, the preventive maintenance program should provide for periodic removal of debris to ensure that the devices are operating efficiently. For other equipment and systems, the program should reveal and enable the correction of conditions that could cause breakdowns or failures that may result in the release of pollutants.

c. Spill prevention and response procedures. Based on an assessment of possible spill scenarios, permittees must

specify appropriate material handling procedures, storage requirements, containment or diversion equipment, and spill cleanup procedures that will minimize the potential for spills and in the event of a spill enable proper and timely response. Areas and activities that typically pose a high risk for spills include loading and unloading areas, storage areas, process activities, and waste disposal activities. These activities and areas, and their accompanying drainage points, must be described in the plan. For a spill prevention and response program to be effective, employees should clearly understand the proper procedures and requirements and have the equipment necessary to respond to spills.

d. Inspections. In addition to or as part of the comprehensive site evaluation, qualified facility personnel must be identified to inspect designated equipment and areas of the facility at appropriate intervals specified in the plan. A set of tracking or followup procedures must be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections must be maintained.

e. Employee training. The pollution prevention plan must describe a program for informing personnel at all levels of responsibility of the components and goals of the storm water pollution prevention plan. The training program should address topics such as good housekeeping, materials management, and spill response procedures. A schedule for conducting training must be provided in the plan. Where appropriate, contractor personnel also must be trained in relevant aspects of storm water pollution prevention.

f. Recordkeeping and internal reporting procedures. The pollution prevention plan must describe procedures for developing and retaining records on the status and effectiveness of plan implementation. At a minimum, records must address spills, monitoring, and inspection and maintenance activities. The plan also must describe a system that enables timely reporting of storm water management-related information to appropriate plant personnel.

g. Sediment and erosion control. The pollution prevention plan must identify areas that, due to topography, activities, soils, cover materials, or other factors have a high potential for significant soil erosion. The plan must identify measures that will be implemented to limit erosion in these areas.

h. Management of runoff. The plan must contain a narrative evaluation of the appropriateness of traditional storm water management practices (i.e., practices other than those that control pollutant sources) that divert, infiltrate, reuse, or otherwise manage storm water runoff so as to reduce the discharge of pollutants. Appropriate measures may include, among others, vegetative swales, collection and reuse of storm water, inlet controls, snow management, infiltration devices, and wet detention/retention basins.

Based on the results of the evaluation, the plan must identify practices that the permittee determines are reasonable and appropriate for the facility. The plan also should describe the particular pollutant source area or activity to be controlled by each storm water management practice. Reasonable and appropriate practices must be implemented and maintained according to the provisions prescribed in the plan.

In selecting storm water management measures, it is important to consider the potential effects of each method on other water resources, such as ground water. Although storm water pollution prevention plans primarily focus on storm water management, facilities must also consider potential ground water pollution problems and take appropriate steps to avoid adversely impacting ground water quality. For example, if the water table is unusually high in an area, an infiltration pond may contaminate a ground water source unless special preventive measures are taken. Under EPA's July 1991 Ground Water Protection Strategy, States are encouraged to develop Comprehensive State Ground Water Protection Programs (CSGWPP). Efforts to control storm water should be compatible with State ground water objectives as reflected in CSGWPPs.

4. Comprehensive Site Compliance Evaluation

The storm water pollution prevention plan must describe the scope and content of comprehensive site inspections that qualified personnel will conduct to (1) confirm the accuracy of the description of potential pollution sources contained in the plan, (2) determine the effectiveness of the plan, and (3) assess compliance with the terms and conditions of the permit. The plan must indicate the frequency of such evaluation which in most cases must be at least once a year.[16] The individual or individuals who will conduct the inspections must be identified in the plan and should be members of the pollution prevention team.

Material handling and storage areas and other potential sources of pollution must be visually inspected for evidence of actual or potential pollutant discharges to the drainage system. Inspectors also must observe erosion controls and structural storm water management devices to ensure that each is operating correctly. Equipment needed to implement the pollution prevention plan, such as that used during spill response activities, must be inspected to confirm that it is in proper working order.

The results of each site inspection must be documented in a report signed by an authorized company official. The report must describe the scope of the inspection, the personnel making the inspection, the date(s) of the inspection, and any major observations relating to implementation of the storm water pollution prevention plan. Inspection reports must be retained for at least three years after the date that the permit expires.

Based on the results of each inspection, the description of potential pollution sources in part IV.D.2. and measures and controls in part IV.D.3 of the plan must be revised as appropriate within two weeks after each inspection. Changes in the measures and controls must be implemented on the site in a timely manner, and never more than 12 weeks after completion of the inspection.

D. Special Requirements

1. EPCRA Section 313

Today's permits establish special requirements for certain permittees subject to reporting requirements under section 313 of the Emergency Planning and Community-Right-to-Know Act (EPCRA) (also known as title III of the Superfund Amendments and Reauthorization Act (SARA)). EPCRA section 313 requires operators of certain facilities that manufacture (including import), process, or otherwise use listed toxic chemicals to report annually their releases of those chemicals to any environmental media. Listed toxic chemicals include more than 300 chemicals listed at 40 CFR 372.

The criteria for facilities that must report under section 313 are given at 40 CFR 372.22. A facility is subject to the annual reporting provisions of section

[16] Where annual site inspections are shown in the plan to be impractical for inactive mining sites, due to remote location and inaccessibility, site inspections must be conducted at least once every three years. However, at least one inspection must take place before October 1, 1994. For mining sites that become inactive after October 1, 1994, the first site inspection must take place on the date two years after such a site becomes inactive

313 if it meets all three of the following criteria for a calendar year:

• It is included in Standard Industrial Classification (SIC) codes 20 through 39;

• It has 10 or more full-time employees; and

• It manufactures (including imports), processes, or otherwise uses a chemical listed in 40 CFR 372.65 in amounts greater than the "threshold" quantities specified in 40 CFR 372.25.

There are more than 300 individually listed Section 313 chemicals, as well as 20 categories of Toxic Release Inventory (TRI) chemicals for which reporting is required. EPA has the authority to add to and delete from this list. The Agency has identified approximately 175 chemicals that it is classifying for the purposes of this general permit as "Section 313 water priority chemicals". For the purposes of this general permit, section 313 water priority chemicals are defined as chemicals or chemical categories that (1) are listed at 40 CFR 372.65 pursuant to EPCRA section 313; (2) are manufactured, processed, or otherwise used at or above threshold levels at a facility subject to EPCRA section 313 reporting requirements; and (3) meet at least one of the following criteria: (i) Are listed in appendix D of 40 CFR part 122 on either Table II (organic priority pollutants), Table III (certain metals, cyanides, and phenols), or Table V (certain toxic pollutants and hazardous substances); (ii) are listed as a hazardous substance pursuant to section 311(b)(2)(A) of the CWA at 40 CFR 116.4; or (iii) are pollutants for which EPA has published acute or chronic toxicity criteria. A list of the water priority chemicals is provided in addendum B to the permit in appendix B.

Summary of Special Requirements

The special requirements in today's permits for facilities subject to reporting requirements under EPCRA Section 313 for a water priority chemical state that storm water pollution prevention plans, in addition to the baseline requirements for plans, must contain special provisions addressing areas where Section 313 water priority chemicals are stored, processed, or otherwise handled. The permit provides that appropriate containment, drainage control, and/or diversionary structures must be provided for such areas. At a minimum, one of the following preventive systems or its equivalent must be used:

• Curbing, culverting, gutters, sewers, or other forms of drainage control to prevent or minimize the potential for storm water run-on to come into contact with significant sources of pollutants; or

• Roofs, covers, or other forms of appropriate protection to prevent storage piles from exposure to storm water and wind.

In addition, the permit establishes requirements for priority areas of the facility. Priority areas of the facility including the following:

• Liquid storage areas where storm water comes into contact with any equipment, tank, container, or other vessel used for section 313 water priority chemicals;

• Material storage areas for section 313 water priority chemicals other than liquids;

• Truck and rail car loading and unloading areas for liquid section 313 water priority chemicals; and

• Areas where section 313 water priority chemicals are transferred, processed, or otherwise handled.

The permit provides that site runoff from other industrial areas of the facility that may contain section 313 water priority chemicals or spills of section 313 water priority chemicals must incorporate the necessary drainage or other control features to prevent the discharge of spilled or improperly disposed material and to ensure the mitigation of pollutants in runoff or leachate. The permit also establishes special requirements for preventive maintenance and good housekeeping, facility security, and employee training.

Storm water pollution prevention plans for facilities subject to these special requirements must be reviewed by a Registered Professional Engineer (PE). The PE must be able to certify that the storm water pollution prevention plan has been prepared in accordance with good engineering practices. The PE must personally examine the facility and be familiar with the requirements of today's permit before making a certification. The permit requires that a PE certification be made every three years. Where significant modifications are made to the facility, such as the addition of material handling areas or chemical storage units, permittees are required to obtain an additional PE certification as soon as practicable. The PE certifications do not relieve the discharger of the duty to prepare and implement fully a storm water pollution prevention plan that is in accordance with the permit.

Sampling requirements for storm water discharges from EPCRA section 313 are discussed below. Facilities should review monitoring data and evaluate pollution prevention measures suitable for reducing pollutants in discharges.

Requirements for Priority Areas

The permit provides that drainage from priority areas should be restrained by valves or other positive means to prevent the discharge of a spill or other excessive leakage of section 313 water priority chemicals. Where containment units are employed, such units may be emptied by pumps or ejectors; however, these must be manually activated. Flapper-type drain valves must not be used to drain containment areas, as these will not effectively control spills. Valves used for the drainage of containment areas should, as far as is practical, be of manual, open-and-closed design. If facility drainage does not meet these requirements, the final discharge conveyance of all in-facility storm sewers must be equipped to be equivalent with a diversion system that could, in the event of an uncontrolled spill of section 313 water priority chemicals, return the spilled material or contaminated storm water to the facility. Records must be kept of the frequency and estimated volume (in gallons) of discharges from containment areas.

Additional special requirements are related to the types of industrial activities that occur within the priority area. These requirements are summarized below:

• *Liquid storage areas.* Where storm water comes into contact with any equipment, tank, container, or other vessel used for section 313 water priority chemicals, the material and construction of tanks or containers used for the storage of a section 313 water priority chemical must be compatible with the material stored and conditions of storage, such as pressure and temperature. Liquid storage areas for section 313 water priority chemicals must be operated to minimize discharges of section 313 chemicals. Appropriate measures to minimize discharges of section 313 chemicals may include secondary containment provided for at least the entire contents of the largest single tank plus sufficient freeboard to allow for precipitation, a strong spill contingency and integrity testing plan, and/or other equivalent measures. A strong spill contingency plan would typically contain, at a minimum, a description of response plans, personnel needs, and methods of mechanical containment (such as use of sorbants, booms, collection devices, etc.), steps to be taken for removal of spill chemicals or materials, and procedures to ensure access to and availability of sorbents and other equipment. The testing component of the plan would provide for conducting

integrity testing of storage tanks at set intervals such as once every five years, and conducting integrity and leak testing of valves and piping at a minimum frequency, such as once per year. In addition, a strong plan would include a written and actual commitment of manpower, equipment and materials required to comply with the permit and to expeditiously control and remove any quantity of spilled or leaked chemicals that may result in a toxic discharge.

• *Other material storage areas.* Material storage areas for section 313 water priority chemicals other than liquids that are subject to runoff, leaching, or wind must incorporate drainage or other control features to minimize the discharge of section 313 water priority chemicals by reducing storm water contact with section 313 water priority chemicals.

• *Truck and rail car loading and unloading areas.* Truck and rail car loading and unloading areas for liquid section 313 water priority chemicals must be operated to minimize discharges of section 313 water priority chemicals. Appropriate measures to minimize discharges of section 313 chemicals may include the placement and maintenance of drip pans (including the proper disposal of materials collected in the drip pans) where spillage may occur (such as hose connections, hose reels, and filler nozzles) when making and breaking hose connections; a strong spill contingency and integrity testing plan; and/or other equivalent measures.

• *Other transfer, process, or handling areas.* Processing equipment and materials handling equipment must be operated to minimize discharges of section 313 water priority chemicals. Materials used in piping and equipment must be compatible with the substances handled. Drainage from process and materials handling areas must minimize storm water contact with section 313 water priority chemicals. Additional protection such as covers or guards to prevent exposure to wind, spraying or releases from pressure relief vents to prevent a discharge of section 313 water priority chemicals to the drainage system, and overhangs or door skirts to enclose trailer ends at truck loading/unloading docks must be provided as appropriate. Visual inspections or leak tests must be provided for overhead piping conveying section 313 water priority chemicals without secondary containment.

2. Salt Piles

Today's general permits contain special requirements for storm water discharges associated with industrial activity from salt storage facilities. Storage piles of salt used for deicing or other commercial or industrial purposes must be enclosed or covered to prevent exposure to precipitation, except for exposure resulting from adding or removing materials from the pile. This requirement only applies to runoff from storage piles discharged to waters of the United States. Facilities that collect all of the runoff from their salt piles and reuse it in their processes or discharge it subject to a separate NPDES permit do not need to enclose or cover their piles. Permittees must comply with this requirement as expeditiously as practicable, but in no event later than three years from the date of permit issuance.

3. Discharges to Large and Medium Separate Storm Water Systems

Permittees which discharge storm water associated with industrial activity through large or medium municipal separate storm water systems [17] are required to submit a signed copy of their NOI to the operator of the municipal separate storm sewer system.

Facilities covered by these permits must comply with applicable requirements in municipal storm water management programs developed under NPDES permits issued for the discharge of the municipal separate storm sewer system that receives the facility's discharge, provided the discharger has been notified of such conditions. In addition, permittees that discharge storm water associated with industrial activity through a municipal separate storm sewer system serving a population of 100,000 or more must make their pollution prevention plans available to the municipal operator of the system upon request by the municipal operator.

4. Coal Piles

Today's permits establish effluent limitations of 50 mg/1 total suspended solids and a pH range of 6.0–9.0 for coal pile runoff. Any untreated overflow from facilities designed, constructed, and operated to treat the volume of coal pile runoff associated with a 10 year, 24 hour rainfall event is not subject to the 50 mg/1 limitation for total suspended solids. Permittees must comply with this requirement as expeditiously as practicable, but in no event later than three years from the date of permit issuance.

E. Monitoring and Reporting Requirements

Today's permits establish discharge monitoring requirements for certain classes of industrial facilities. These monitoring requirements are summarized in Table 3. For the most part, special monitoring requirements are limited to discharges associated with specific industrial activities at facilities within the identified class, such as landfills or coal piles. Facilities with storm water discharges that are subject to monitoring requirements are not required to monitor storm water discharges that are not addressed by a monitoring requirement so long as the two discharges are segregated and the flows do not commingle.

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[17] Large and medium municipal separate storm sewer systems are systems located in an incorporated city with a population of 100,000 or more, or in a county identified as having a large or medium system (see 40 CFR 122.26(b)(4) and (7) and appendices F through I to part 122).

Table 3. GENERAL PERMIT MONITORING REQUIREMENTS

Type of Facility	Type of Storm Water Discharge	Parameters	Monitoring Frequency	Reporting Frequency
EPCRA, Section 313 Facilities Subject to Reporting Requirements for Water Priority Chemicals	Storm water discharges that come into contact with any equipment, tank, container, or other vessel or area used for storage of a Section 313 water priority chemical, or located at a truck or rail car loading or unloading area where a Section 313 water priority chemical is handled	Oil and Grease, BOD5, COD, TSS, Total Kjeldahl Nitrogen, Total Phosphorus, pH, acute whole effluent toxicity, any Section 313 water priority chemical for which the facility reports	Semi-annual	Annual
Primary Metal Industries (SIC 33)	All storm water discharges associated with industrial activity	Oil and Grease, COD, TSS, pH, acute whole effluent toxicity, Total Recoverable Lead, Total Recoverable Cadmium, Total Recoverable Copper, Total Recoverable Arsenic, Total Recoverable Chromium, and any pollutant limited in an effluent guideline to which the facility is subject	Semi-annual	Annual
Land Disposal Units/ Incinerators/ BIFs	Storm water discharges from active or inactive land disposal units without a stabilized cover that have received any waste from industrial facilities other than construction sites; and storm water discharges from incinerators and BIFs that burn hazardous waste	Ammonia, Total Recoverable Magnesium, Magnesium (dissolved), Total Kjeldahl Nitrogen, COD, TDS, TOC, Oil and Grease, pH, Total Recoverable Arsenic, Total Recoverable Barium, Total Recoverable Cadmium, Total Recoverable Chromium, Total Cyanide, Total Recoverable Lead, Total Mercury, Total Recoverable Selenium, Total Recoverable Silver, Acute Whole Effluent Toxicity	Semi-annual	Annual
Wood Treatment Facilities	Storm water discharges from areas that are used for wood treatment, wood surface application or storage of treated or surface protected wood	Oil and Grease, pH, COD, TSS	Semi-annual	Annual
	Facilities that use chlorophenolic formulations	Plus Pentachlorophenol and Acute Whole Effluent Toxicity		
	Facilities that use creosote formulations	Plus Acute Whole Effluent Toxicity		
	Facilities that use chromium-arsenic formulations	Plus Total Recoverable Arsenic, Total Recoverable Chromium, Total Recoverable Copper		

Table 3. GENERAL PERMIT MONITORING REQUIREMENTS

Type of Facility	Type of Storm Water Discharge	Parameters	Monitoring Frequency	Reporting Frequency
Industrial Facilities with Coal Piles	Storm water discharges from coal pile runoff	Oil and Grease, pH, TSS, Total Recoverable Copper, Total Recoverable Nickel, Total Recoverable Zinc	Semi-annual	Annual
Battery Reclaimers	Storm water discharges from areas for storage of lead acid batteries, reclamation products, or waste products, and areas used for lead acid battery reclamation	Oil and Grease, COD, TSS, pH, Total Recoverable Copper, Total Recoverable Lead	Semi-annual	Annual
Airports (with over 50,000 flight operations per year)	Storm water discharges from aircraft or airport deicing areas	Oil and Grease, BOD5, COD, TSS, pH, and the primary ingredient used in the deicing materials	Annual	Retain onsite
Coal-fired Steam Electric Facilities	Storm water discharges from coal handling sites (other than runoff from coal piles which is not eligible for coverage under this permit)	Oil and Grease, pH, TSS, Total Recoverable Copper, Total Recoverable Nickel, Total Recoverable Zinc	Annual	Retain onsite
Animal Handling/ Meat Packing Facilities	Storm water discharges from animal handling areas, manure management areas, production waste management areas exposed to precipitation at meat packing plants, poultry packing plants, facilities that manufacture animal and marine fats and oils	BOD5, Oil and Grease, COD, TSS, Total Kjeldahl Nitrogen (TKN), Total Phosphorus, pH, Fecal Coliform	Annual	Retain onsite
Chemical and Allied Product Manufacturers/ Rubber Manufacturers (SIC 28 and 30)	Storm water discharges that come into contact with solid chemical storage piles	Oil and Grease, COD, TSS, pH, any pollutant limited in an effluent guideline to which the facility is subject	Annual	Retain onsite
Automobile Junkyards	Storm water discharges exposed to: (a) over 250 auto/truck bodies with drivelines, 250 drivelines, or any combination thereof (b) over 500 auto/truck units (c) over 100 units dismantled per year where automotive fluids are drained or stored	Oil and Grease, COD, TSS, pH, any pollutant limited in an effluent guideline to which the facility is subject	Annual	Retain onsite

Table 3. GENERAL PERMIT MONITORING REQUIREMENTS

Type of Facility	Type of Storm Water Discharge	Parameters	Monitoring Frequency	Reporting Frequency
Lime Manufacturing Facilities	Storm water discharges that have come into contact with lime storage piles	Oil and Grease, COD, TSS, pH, any pollutant limited in an effluent guideline to which the facility is subject	Annual	Retain onsite
Oil-fired Steam Electric Power Generating Facilities	Storm water discharges from oil handling sites	Oil and Grease, COD, TSS, pH, any pollutant limited in an effluent guideline to which the facility is subject	Annual	Retain onsite
Cement Manufacturing Facilities and Cement Kilns	All storm water discharges associated with industrial activity (except those from material storage piles that are not eligible for coverage under this permit)	Oil and Grease, COD, TSS, pH, any pollutant limited in an effluent guideline to which the facility is subject	Annual	Retain onsite
Ready-mix Concrete Facilities	All storm water discharges associated with industrial activity	Oil and Grease, COD, TSS, pH, any pollutant limited in an effluent guideline to which the facility is subject	Annual	Retain onsite
Ship Building and Repairing Facilities	All storm water discharges associated with industrial activity	Oil and Grease, COD, TSS, pH, any pollutant limited in an effluent guideline to which the facility is subject	Annual	Retain onsite

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Where a given storm water discharge is addressed by more than one class of monitoring requirements, then the monitoring requirements for the applicable classes of activities are additive. Monitoring requirements must be evaluated on a outfall-by-outfall basis. If a particular discharge fits under more than one set of monitoring requirements, the facility must comply with both sets of sampling requirements.

Discharges composed entirely of runoff from coal piles must be monitored in a manner that ensures that the runoff is not diluted or otherwise intermingled with storm water from other sources or other types of discharges. This is necessary to ensure that coal pile runoff complies with the numeric effluent limitations in today's permit.

As noted in Table 3, only those facilities required to conduct semiannual monitoring must report monitoring results to EPA on a regular basis. Other facilities required to conduct monitoring must only submit the results of their sampling data if the data are requested by EPA. Facilities that are not identified in Table 3 are not required to conduct discharge monitoring unless the Director provides written notice that monitoring is necessary.

All samples must be collected from the discharge resulting from a storm event greater than 0.1 inches in magnitude and that occurs at least 72 hours after the previously measurable (greater than 0.1 inch rainfall) storm event. A minimum of one grab sample may be taken for discharges from holding ponds or other impoundments with a retention period greater than 24 hours. For all other discharges, data must be reported for both a grab sample and a composite sample. The grab sample must be taken during the first thirty minutes of the discharge. If the collection of a grab sample during the first thirty minutes is practicable, a grab sample can be taken during the first hour of the discharge. In such cases the discharger must submit with the monitoring report a description of why a grab sample during the first thirty minutes was impracticable. The composite sample must either be flow-weighted or time-weighted. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes. Composite samples do not have to analyzed for pH, cyanide, whole effluent toxicity, and oil and grease. Only grab samples need to be analyzed for these parameters where these parameters are specified. Samples must be analyzed in accordance with the analytic methods approved under 40 CFR 136.

The permit allows the use of substantially identical outfalls to reduce the monitoring burden on a facility. Permittees that intend to use this provision must justify and document in writing why one outfall is representative of others. All facilities must include the written justification in the facility storm water pollution prevention plan. Where a facility that is subject to semi-annual monitoring requirements (EPCRA section 313, waste disposal sites, wood preserving facilities, battery reclaimers, coal pile runoff, and primary metal facilities) does not monitor a substantially identical outfall, the permittee must submit the justification of why an outfall(s) is representative of others with the discharge monitoring report. Other facilities required to conduct monitoring under the permit (e.g. those with annual monitoring requirements) are not required to submit the justification unless it is requested by the Director. These facilities must keep the justification in the storm water pollution prevention plan.

The permit allows for temporary waivers from sampling based on adverse climatic conditions. This temporary sampling waiver is only intended to apply to insurmountable weather conditions such as drought or dangerous conditions such as lightning, flash flooding, or hurricanes. These events tend to be isolated incidents and should not be used as an excuse for not conducting sampling under more favorable conditions associated with other storm events. The sampling waiver is not intended to apply to difficult logistical conditions, such as remote facilities with few employees or discharge locations which are difficult to access.

The location for submittal of all reports is contained in the permit. Consistent with Office of Management and Budget Circular A-105, facilities located on certain Indian Lands in Arizona, Utah, New Mexico, Idaho, Nevada, and Colorado should note that permitting authority has been consolidated in one EPA Region where a reservation crosses the boundaries between the Regions. For example, all NPDES permitting for Navajo lands is handled by EPA Region IX. The permits require dischargers that must submit monitoring information annually to provide copies to receiving large or medium municipal separate storm sewer systems and States that have requested this information.

The permit requires retention of monitoring records for six years, since not all facilities who monitor will be required to submit the results annually. In addition, pollution prevention plans must be kept for the life of the permit.

F. Regional Offices

Notices of Intent to be authorized to discharge under these permits should be sent to: Storm Water Notices of Intent, PO Box 1251, Newington, VA 22122.

Other submittals of information required under these permits or individual permit applications should be sent to the appropriate EPA Regional Office:

CT, MA, ME, NH, RI, VT

United States EPA, Region I,
Water Management Division, (WCP-2109),
Storm Water Staff,
John F. Kennedy Federal Building, room 2209,
Boston, MA 02203.
Contact: Veronica Harrington, (617) 565-3525.

NJ, NY, PR, VI

United States EPA, Region II, Water Management Division, (2WM-WPC), Storm Water Staff, 26 Federal Plaza, New York, NY 10278. Contact: Jose Rivera, (212) 262-2911.

AL, FL, GA, KY, MS, NC, SC, TN

United States EPA, Region IV, Water Management Division, (FPB-3), Storm Water Staff, 345 Courtland Street, NE., Atlanta, GA 30365. Contact: Chris Thomas, (404) 347-3012.

AR, LA, NM (except see Region IX for Navajo lands and see Region VIII for Ute Mountain Reservation land), OK, TX

United States EPA, Region VI, Water Management Division, (6W-EA), Storm Water Staff, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, 12th Floor, Suite 1200, Dallas, TX 75202. Contact: Region VI Storm Water Hotline at (214) 655-7185.

CO, MT, ND, SD, WY, UT (except see Region IX for Goshute Reservation and Navajo Reservation lands)

United States EPA, Region VIII, Water Management Division, NPDES Branch (8WM-C), Storm Water Staff, 999 18th Street, Denver, CO 80202-2466. Contact: Vern Berry, (303) 293-1630.

Note—For Montana Indian Lands, please use the following address:

United States EPA, Montana Operations Office, Federal Office Building, Drawer 10096, 301 South Park, Helena, MT 59620-0026. Contact: Paul Montgomery, (406) 449-5486.

AZ, CA, HI, NV, American Samoa, Guam, the Goshute Reservation in UT and NV, the Navajo Reservation in UT, NM, and AZ, the Duck Valley Reservation in NV and ID, Johnston Atoll, Midway and Wake Island

United States EPA, Region IX, Water Management Division, (W-5-1), Storm Water Staff, 75 Hawthorne Street, San Francisco, CA 94105. Contact: Eugene Bromley, (415) 744-1906.

AK, ID (except see Region IX for Duck Valley Reservation lands), OR, WA

United States EPA, Region X, Water Management Division, (WD-134), Storm Water Staff, 1200 Sixth Street, Seattle, WA 98101. Contact: Steve Bubnick, (206) 553-8399.

G. Compliance Deadlines

For most permittees, today's permits establish deadlines of April 1, 1993 for development of pollution prevention plans and October 1, 1993 for compliance with the terms of the plan. Alternative deadlines are provided for facilities where industrial activities commence after October 1, 1992; certain oil and gas operations; and municipal operators of facilities that have participated in a timely part 1 group application where either the group application is rejected or the facility is denied participation in the group application by EPA.

For facilities where industrial activity commences after October 1, 1992, but on or before December 31, 1992, the storm water pollution prevention plan must be prepared and provide for compliance with the terms of the plan and the permit on or before 60 calendar days after the commencement of industrial activity. For facilities where industrial activity commence on or after January 1, 1993, the storm water pollution prevention plan must be prepared, and provide for compliance with the terms of the plan and the permit, on or before the date of submission of a NOI to be covered under this permit.

For storm water discharges associated with industrial activity from an oil and gas exploration, production, processing, or treatment operation or transmission facility that is not required to submit a permit application on or before October 1, 1992 in accordance with 40 CFR 122.26(c)(1)(iii), but after October 1, 1992 has a discharge of a reportable quantity of oil or a hazardous substance for which notification is required pursuant to either 40 CFR 110.6, 40 CFR 117.21 or 40 CFR 302.6, the storm water pollution prevention plan must be prepared and must provide for compliance with the terms of the plan on or before the date 60 calendar days after the first knowledge of such release.

For storm water discharges associated with industrial activity from a facility that is owned or operated by a municipality that has participated in a timely group application and where either the group application is rejected or the facility is denied participation in the group application by EPA, the pollution prevention plan must be prepared on or before the 365th day following the date on which the group is rejected or the denial is made, and must provide for compliance with the terms of the plan and this permit on or before the 545th day following the date on which the group is rejected or the denial is made.

The permits provide additional time for complying with the additional requirements for EPCRA section 313 facilities and for salt storage facilities. The portions of a plan addressing these additional requirements must provide for compliance with the plan on or before October 1, 1995. In addition, the permits provide that facilities with coal pile runoff are required to comply with the numeric effluent limitations of the permit by October 1, 1995. However, storm water pollution prevention plans for facilities subject to these additional requirements must be prepared by April 1, 1993 (or, for facilities that commence industrial activity after October 1, 1992, before the facility commences industrial activity) and provide for compliance with the baseline terms and conditions of the permit (other than the numeric effluent limitation) as expeditiously as practicable, but by no later than October 1, 1993 (or, for facilities that commence industrial activity after October 1, 1992, on or before 60 calendar days after the commencement of industrial activity).

V. Cost Estimates

1. Pollution Prevention Plan Implementation

Storm water pollution prevention plans for the majority of facilities will address relatively low cost baseline controls for the majority of industrial facilities. EPA's analysis of storm water pollution prevention plans indicates that the cost of developing and implementing the costs of these plans is variable and will depend on a number of the following factors: The size of the facility, the chemicals stored or used at a facility, the nature of the plant operations, and the plant designs (e.g., the processes used and layout of a plan), and the housekeeping measures employed. Table 4 provides estimates of the range of costs of preparing and implementing a storm water pollution prevention plan. It is expected that the low cost estimates provided in Table 4 are appropriate for the majority of smaller facilities. High cost estimates are also provided.

b. SARA title III facilities. Table 5 provides estimates of the range of costs of preparing and implementing a storm water pollution prevention plan for facilities subject to the special requirements for facilities subject to SARA Title III section 313 reporting requirements for chemicals classified as "Section 313 water priority chemicals". EPA expects the majority of facilities to have existing containment systems that meet the majority of the requirements of these permits. High cost estimates correspond to facilities that are expected to be required to undertake some actions to upgrade existing containment systems to meet the requirements of these permits.

TABLE 4.—SUMMARY OF ESTIMATED RANGES OF COSTS FOR COMPLIANCE WITH STORM WATER POLLUTION PREVENTION PLANS WITH BASELINE REQUIREMENTS

	Low Costs		High Costs	
	First Year Costs	Annual Costs	First Year Costs	Annual Costs
Submittal of NOI	$14		$14	
Notification of Municipality	14		14	
Plan Preparation	1,518		76,153	
Plan Implementation	90	$284	35,400	$9,371

TABLE 4.—SUMMARY OF ESTIMATED RANGES OF COSTS FOR COMPLIANCE WITH STORM WATER POLLUTION PREVENTION PLANS WITH BASELINE REQUIREMENTS—Continued

	Low Costs		High Costs	
	First Year Costs	Annual Costs	First Year Costs	Annual Costs
Comprehensive Site Compliance Evaluation/Plan Revision		267		8,675
Reportable Quantities	[1]	[1]	6,501	
Total	1,636	561	120,062	16,246

[1] No costs.

This table identifies estimated low and high costs to develop and implement storm water pollution prevention plans.

Low costs of implementing program components are zero where existing programs or procedures is assumed adequate.

Costs in 1992 dollars.

The estimated costs for plan preparation and plan revisions includes costs of preparing/revising plan to address baseline requirements and any applicable special requirements, such as EPCRA Section 313 requirements. However, the costs of implementing special requirements, such as those for EPCRA Section 313 facilities are not otherwise addressed in this table.

The high cost estimate for requirements to address reportable quantities of hazardous substances will occur in the year the reportable quantity release occurs and will not necessarily occur in the first year of permit compliance.

TABLE 5.—SUMMARY OF ESTIMATED ADDITIONAL COSTS FOR COMPLIANCE WITH STORM WATER POLLUTION PREVENTION PLANS FOR FACILITIES SUBJECT TO SECTION 313 OF EPCRA FOR WATER PRIORITY CHEMICALS

	Low Costs		High Costs	
	Costs during first 3 years	Annual Costs	Costs during first 3 years	Annual Costs
Plan Preparation	$630			
Liquid Storage Areas			$11,200	
Material Storage Areas			560	
Loading Areas			21,000	
Process Areas			11,190	
Drainage/Runoff			7,750	
Housekeeping/Maintenance				$5,957
Facility Security			3,240	
Employee Training				1,403
PE Certification		53		1,000
Monitoring Costs		2,424		4,847
Toxicity Reduction				3,046
TOTALS	630	2,477	54,940	16,253

This table identifies estimated additional low and high costs to develop and implement storm water pollution prevention plans for EPCRA section 313 facilities subject to special conditions.

Low costs of implementing program components are zero where existing programs, procedures or security is assumed adequate.

The high costs for preparing pollution prevention plans to include EPCRA section 313 additional requirement were addressed as part of the estimated high costs for preparation of baseline pollution prevention plans (see Table 4).

PE Certification is only required once every three years. Cost shown if averaged over three year period.

Costs for toxicity reductions will only be incurred during the last two years of the permit. Thus, this cost has been averaged over a five year period.

2. Salt Storage Facilities

Salt pile covers or tarpaulins are anticipated to have a fixed cost of $400 and an annual cost of $160 for medium-sized piles and a fixed cost of $4,000 and an annual cost of $2,000 for very large piles. Structures such as salt domes are generally expected to have a fixed cost of between $30,000 for small piles ($70 to $80 per cubic yard) and $100,000 for larger piles ($18 per cubic yard) with costs depending on size and other construction parameters.

3. Coal Pile Runoff

The effluent limitations for coal pile runoff in the draft permits can be achieved by these two primary methods: limiting exposure to coal by use of covers or tarpaulins and collecting and treating the runoff. In some cases, coal pile runoff may be in compliance with the effluent limitations without covering of the pile or collection or treatment of the runoff. In these cases, the operator of the discharge would not have a control cost.

The effluent limitations for coal pile runoff in the draft permits can be achieved by limiting exposure of storm water to coal by use of covers or tarpaulins and storm water runon berms. The use of tarpaulins and berms to prevent exposure is expected to be practical for coal piles smaller than 30,000 cubic meters. EPA expects the majority of industrial facilities subject to the requirement will have coal piles smaller than 30,000 meters.

The cost of covering up to a 30,000 cubic meter coal pile with covers or tarpaulins is anticipated to cost approximately $0.70 per cubic yard, or $0.91 per cubic meter. For a 30,000 cubic meter pile the cost of tarpaulins alone would be $27,440. The cost of a berm to divert storm water runon that may flow under a covered pile and exit as

polluted runoff is expected to be $7 per linear foot of berm. For a 30,000 cubic meter coal pile that is twenty feet in height, it is anticipated that a 450 foot berm at a cost of $3,150 would be needed. Therefore, the total cost of tarpaulins and a berm to avert exposure of storm water to a coal pile 30,000 cubic meters in size would be $30,590.

For those facilities which manage coal piles greater than 30,000 cubic meters, EPA assumes that these facilities will use the technology specified in the steam/electric effluent guidance based upon costs indicated in the guidance. If facilities can not meet permit limits using this control technology and cannot afford another control technology, they have the opportunity of seeking an individual permit.

Table 6 provides estimates of the costs of treating coal pile runoff.[18] These costs are based on a consideration of a treatment train requiring equalization, pH adjustment, and settling, including the costs for impoundment (for equalization), a lime feed system and mixing tanks for pH adjustment, and a clarifier for settling. The costs for the impoundment area include diking and containment around each coal pile and associated sumps and pumps and piping from runoff areas to the impoundment area. The costs for land are not included. The lime feed system employed for pH adjustment includes a storage silo, shaker, feeder, and lime slurry storage tank, instrumentation, electrical connections, piping, and controls.

Additional costs may be incurred if a polymer system is needed. In this case, costs would include impoundment for equalization, a lime feed system, mixing tank, and polymer feed system for chemical precipitation, a clarifier for settling, and an acid feeder and mixing tank to readjust the pH within the range of 6 to 9. The equipment and system design, with the exception of the polymer feeder, acid feeder, and final mixing tank, are essentially the same as shown in Table 6. Two tanks are required for a treatment train with a polymer system, one for precipitation and another for final pH adjustment with acid. The cost of mixing is therefore twice that shown in Table 6. The polymer feed system includes storage hoppers, chemical feeder, solution tanks, solution pumps, interconnecting piping, electrical connections, and instrumentation. The costs of clarification are identical to that of Table 6. A treatment train with a polymer system requires the use of an acid addition system to readjust the pH within the range of 6 to 9. The components of this system include a lined acid storage tank, two feed pumps, an acid pH control loop, and associated piping, electrical connections, and instrumentation.

Additional information regarding the cost of these technologies can be found in "Development Document for Effluent Limitations Guidelines and Standards and Pretreatment Standards for the Steam Electric Point Source Category." (EPA-440/182/029), November 1982, EPA.

TABLE 6.—SUMMARY OF ESTIMATED COSTS FOR TREATMENT OF COAL PILE RUNOFF

	30,000 cubic meter coal pile	120,000 cubic meter coal pile
Impoundment:		
Installed Capital Cost ($)	6,850	6,850
Operation and Maintenance ($/year)	[1]	[1]
Lime Feed System:		
Installed Capital Cost ($)	138,800	255,700
Operation and Maintenance ($/year)	5,780	10,655
Energy Requirements (kwh/yr)	3.6×10**4	3.6×10**4
Land Requirements (ft**2)	5,000	5,000
Mixing Equipment:		
Installed Capital Cost ($)	65,750	91,320
Operation and Maintenance ($/year)	2,280	2,430
Energy Requirements (kwh/yr)	1.3×10**3	3.3×10**3
Land Requirements (ft**2)	2,000	2,000
Clarification:		
Installed Capital Cost ($)	182,650	237,450
Operation and Maintenance ($/year)	3,200	3,650
Energy Requirements (kwh/yr)	1.3×10**3	3.3×10**3
Land Requirements (acres)	0.1	0.1

[1] Negligible.

Source: "Development Document for Effluent Limitations Guidelines and Standards and Pretreatment Standards for the Steam Electric Point Source Category", (EPA-440/182/029), November 1982, EPA). Costs estimates are in 1992 dollars.

[18] The type and degree of treatment required to meet the effluent limitations of these permits vary depending on factors such as the amount of sulfur in the coal. This section describes a model treatment scheme for estimating costs for compliance with the effluent limitations. Dischargers may implement other less expensive treatment approaches to enable them to discharge in accordance with these limits where appropriate.

VI. Economic Impact (Executive Order 12291)

EPA has submitted this notice to the Office of Management and Budget for review under Executive Order 12291.

VII. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities in these final general permits under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. EPA did not prepare an Information Collection Request (ICR) document for today's permits because the information collection requirements in these permits have already been approved by the Office of Management and Budget (OMB) in submissions made for the NPDES permit program under the provisions of the Clean Water Act.

VIII. 401 Certification

Section 401 of the CWA provides that no Federal license or permit, including NPDES permits, to conduct any activity that may result in any discharge into navigable waters shall be granted until the State in which the discharge originates certifies that the discharge will comply with the applicable provisions of sections 301, 302, 303, 306, and 307 of the CWA. The section 401 certification process has been completed for all States, Indian lands and Federal facilities covered by today's general permits. The following summary indicates where additional permit requirements have been added as a result of the certification process and also provides a more detailed discussion of additional requirements for Maine, Louisiana, New Mexico, Oklahoma and Texas.

Region I

Maine: See the following and part XI.A for additional 401 conditions.

The State of Maine included the following requirements as conditions for Certification of the Storm Water General Permit. Test organisms for certain whole effluent toxicity testing requirements pertaining to discharges of storm water associated with industrial discharges shall include *Ceriodaphnia dubia* and *Salvelinus fontinalis* (Brook Trout). The EPA and the State of Maine currently agree to require that half of all freshwater vertebrate whole effluent toxicity testing for most individual permits, shall be conducted using the State's Brook Trout, *Salvelinus fontinalis* Chronic or Acute protocols. The remainder of the toxicity tests utilize the Region I, fathead minnow acute or chronic protocols.

The State of Maine includes the requirement for the substitution of the

State's protocols for the EPA's protocols, as part of the State Certification for each permit. The Region I EPA received a December 18, 1990, MOU from the State defining the freshwater vertebrate species substitution requirement. To expedite permit issuance, draft individual permits and fact sheets include the State's brook trout protocol based on the MOU. The Region does not object to the certification conditions requiring the use of the Maine protocols for the species *Ceriodaphnia dubia* and *Salvelinus fontinalis* (Brook Trout). The State of Maine shall provide the appropriate brook trout protocol.

Maine Indian lands: No 401 conditions.

Massachusetts: Indian lands only, no 401 conditions.

New Hampshire: no 401 conditions. New Hampshire: Indian lands only, no 401 conditions.

Region IV

Florida: no 401 conditions. Florida: Indian lands only, no 401 conditions (two separate permits for two different tribes).

Mississippi: Indian lands only, no 401 conditions.

North Carolina: Indian lands only, no 401 conditions.

Region VI

Louisiana: see the following and Part XLB for 401 conditions. Louisiana Indian Lands: see the following and Part XLB for 401 conditions.

As a condition for certification under Section 401 of the CWA, the State of Louisiana required inclusion of the following limitations necessary to insure compliance with State water quality standards. These limitations are required under Louisiana Annotated Code 33:IX.708 (LAC 33:IX.708). In accordance with a July 17, 1992, letter from the State clarifying certification requirements, the Oil and Gas Exploration and Production facility limitations will be effective on the effective date of the permit. Oil and gas exploration facilities in Louisiana have been subject to the LAC 33:IX.708 limitations since March 20, 1991. The general permit establishes a three year compliance date for facilities other than oil and gas exploration and production facilities; the General Limitations will become effective October 1, 1995. This compliance schedule is included to allow the facilities not currently regulated under NPDES or State discharge permits time to implement the pollution prevention plan components necessary to achieve the discharge limitations.

(1) General Limitations: Effective 10/1/95.

Parameter	Daily Maximum
Total Organic Carbon (TOC)	50 mg/l
Oil & Grease	15 mg/l

(2) Oil & Gas Exploration and Production Facilities: Effective 10/1/92.

Parameter	Daily Maximum
Chemical Oxygen Demand (COD)	100 mg/l
Total Organic Carbon (TOC)	50 mg/l
Oil & Grease	15 mg/l

Chlorides: (a) Maximum chloride concentration of the discharge shall not exceed two times the ambient concentration of the receiving water in brackish marsh areas.

(b) Maximum chloride concentration of the discharge shall not exceed 500 mg/l in freshwater or intermediate marsh areas and upland areas.

Monitoring requirements for Total Organic Carbon (TOC) and Oil and Grease have been added to all facilities required to monitor annually or semi-annually. Facilities without monitoring requirements must insure the pollution prevention plan developed in accordance with part IV will insure compliance with these effluent limitations. The definitions of brackish marsh, freshwater marsh, intermediate marsh, upland area, and saline marsh at LAC 33:IX.708 have been included in part X. of the permit.

New Mexico: See the following and part X.C for 401 conditions. New Mexico Indian lands (except Navajo lands and Ute Mountain Reservation lands): see the following and part X.C. for 401 conditions.

As a condition for certification under Section 401 of the CWA, the State of New Mexico required inclusion of the following conditions necessary to insure compliance with State water quality standards. These conditions apply only to permittees with facilities discharging into waters of the State of New Mexico designated by the latest edition of Water Quality Standards for Interstate and Intrastate Streams in New Mexico for use as a domestic water supply. A list of these waters as of June 29, 1991, is included with the final permit. For all discharges to domestic water supply waterbodies, the final permit establishes an annual monitoring requirement for all parameters for which the state has established a domestic water supply water quality standard. This testing requirement is in addition to any other annual or semi-annual monitoring required under the permit. Should any test result exceed the following action levels (the water quality standard), the permittee must submit the monitoring results to the State within 24 hours of receiving the test results from the laboratory. The parameters to be tested and the associated action levels are:

Parameter	Reportable Quantity Action Level
Dissolved arsenic	0.05 mg/l
Dissolved barium	1.0 mg/l
Dissolved cadmium	0.010 mg/l
Dissolved chromium	0.05 mg/l
Dissolved lead	0.05 mg/l
Total mercury	0.002 mg/l
Dissolved nitrate (as N)	10.0 mg/l
Dissolved selenium	0.05 mg/l
Dissolved silver	0.05 mg/l
Dissolved cyanide	0.2 mg/l
Dissolved uranium	5.0 mg/l
Radium-226 + radium-228	30.0 pCi/l

Results of the domestic water supply testing requirement will be used to evaluate whether a public health risk was present after mixing (dilution) with the stream and further determine if an individual or alternative general permit was necessary. To insure protection of domestic water supplies, this condition applies to all affected waterbodies within the State of New Mexico where EPA Region 6 is the permitting authority, including Indian Nations and Federal Facilities. The 24-hour report for discharges on Indian Nations must be sent directly to EPA Region 6, with a copy provided to the governing body of the Indian Nation.

Much of the State of New Mexico is characterized as arid or semi-arid, with long periods between rain events. Due to this climate pattern, characterized by seasonal precipitation and a build-up of pollutants on the ground between storm events, the State requested inclusion of a requirement for a minimum of 60 days between sampled events and a minimum of 150 hours since the previous measurable storm event. These requirements would insure the sampling results would be more representative of the quality of storm water discharges in the State. For consistency, this condition applies to all areas within the State of New Mexico where EPA Region 6 is the permitting authority, including Indian Nations and Federal Facilities.

Oklahoma: See the following and part XI.D for 401 conditions.

Oklahoma Indian lands: See the following and part XI.D for 401 conditions.

Under section 301 of the CWA and 40 CFR 122.44, EPA is required to include

permit conditions necessary to insure compliance with more stringent conditions of State law. On April 28, 1992, the Agency published a supplemental notice for the draft Oklahoma General permit in the **Federal Register** (57 FR 17909). This notice added a requirement based on the 1988 Oklahoma Water Quality Standards, prohibiting new point source discharges to several classes of high quality waterbodies of the State. On June 25, 1992, the Oklahoma Water Quality Standards were revised, modifying the discharge prohibition section upon which the April 28, 1992, proposed permit conditions were based. The final permit conditions reflect the requirements of Oklahoma Annotated Code Title 785, chapter 45 (OAC 785:45–5–25), effective June 25, 1992. Today's notice of the final permit also serves as final notice of the Agency's decision on the April 28, 1992, **Federal Register** Notice.

In order to comply with OAC 785:45–5–25, the permit will not authorize any new point source discharge of storm water associated with industrial activity to "new" point source discharges of storm water associated with industrial activity (those commencing after the June 25, 1992, effective date of the Oklahoma Water Quality Standards—OAC 785:45) to the following waters:

(i) Waterbodies designated as "Outstanding Resource Waters" and/or "Scenic Rivers" in appendix A of the Oklahoma Water Quality Standards;

(ii) Oklahoma waterbodies located within the watersheds of waterbodies designated as "Scenic Rivers" in appendix A of the Oklahoma Water Quality Standards; and

(iii) Waterbodies located within the boundaries of Oklahoma Water Quality Standards appendix B areas which are specifically designated as "Outstanding Resource Waters" in appendix A of the Oklahoma Water Quality Standards.

In addition to this general permit exclusion on coverage, the Agency would like to emphasize that OAC 785:45–5–25 also prohibits the issuance of any NPDES discharge permit (other than for storm water runoff from temporary construction activity) for new point source discharges to ORWs or Scenic Rivers, that commences after June 25, 1992.

Outstanding Resource Waters and Scenic Rivers are located in the following river basins identified in Oklahoma Water Quality Standards.

Basin 1—Middle Arkansas River: Barren Fork and certain listed tributaries; and the Upper Illinois River above Barren Fork confluence and certain listed tributaries.

Basin 2—Lower Arkansas River: Lee Creek and certain listed tributaries.

Basin 4—Lower Red River: Upper Mountain Fork River and certain listed tributaries.

For specific applicability, or a complete listing affected waterbodies, permittees should refer to the Oklahoma Water Quality Standards, appendices A and B, or contact the Oklahoma Water Resources Board.

To address possible statutory changes regarding the "new discharge" prohibition, the following reopener clause has been added at the request of the State. "This permit may be reopened and modified if the State of Oklahoma adopts new or revises existing water quality requirements regarding the discharge of storm water."

Texas: See the following and part XI.E for 401 conditions. Texas Indian lands: See the following and part XI.E. for 401 conditions.

As a condition for certification under section 401 of the CWA, the State of Texas required inclusion of the following conditions necessary to insure compliance with State water quality standards.

The following effluent limitations are required under the Texas Water Quality Standards (31 TAC 319.22 and 319.23). All pollution prevention plans developed pursuant to this permit must enable the discharger to comply with the limitations listed below.

All Discharges to Inland Waters

The maximum allowable concentrations of each of the hazardous metals, stated in terms of milligrams per liter (mg/l), for discharges to inland waters are as follows:

Total metal	Monthly average	Daily composite	Single grab
Arsenic	0.1	0.2	0.3
Barium	1.0	2.0	4.0
Cadmium	0.05	0.1	0.2
Chromium	0.5	1.0	5.0
Copper	0.5	1.0	2.0
Lead	0.5	1.0	1.5
Manganese	1.0	2.0	3.0
Mercury	0.005	0.005	0.01
Nickel	1.0	2.0	3.0
Selenium	0.05	0.1	0.2
Silver	0.05	0.1	0.2
Zinc	1.0	2.0	6.0

All Discharges to Tidal Waters

The maximum allowable concentrations of each of the hazardous metals, stated in terms of milligrams per liter (mg/1), for discharges to tidal waters are as follows:

Total metal	Monthly average	Daily composite	Single grab
Arsenic	0.1	0.2	0.3
Barium	1.0	2.0	4.0
Cadmium	0.1	0.2	0.3
Chromium	0.5	1.0	5.0
Copper	0.5	1.0	2.0
Lead	0.5	1.0	1.5
Manganese	1.0	2.0	3.0
Mercury	0.005	0.005	0.01
Nickel	1.0	2.0	3.0
Selenium	0.1	0.2	0.3
Silver	0.05	0.1	0.2
Zinc	1.0	2.0	6.0

The definitions of "inland" and "tidal" waters has been included in part XI.E of the Texas permit. Inland waters are those not defined as tidal waters. Tidal waters include those waters of the Gulf of Mexico within the jurisdiction of the State of Texas, bays and estuaries thereto, and those portions of the river systems which are subject to the ebb and flow of the tides, and to the intrusion of marine waters.

Since the majority of discharges covered by this permit have never before been regulated by NPDES permit, a three year compliance schedule for the limitations has been included to allow dischargers an opportunity to develop and implement the pollution prevention plan controls necessary to achieve compliance. Unless already required under semi-annual or annual monitoring requirements of the permit, sampling for the hazardous metals listed above will not be required. The permittee will, however, be responsible for compliance with the discharge limitations at all times following the October 1, 1995, effective date of the limitations.

The Texas Surface Water Quality Standards also contain a whole effluent toxicity standard requiring all discharges to exhibit greater than 50% survival of the appropriate test organisms in 100% effluent for a 24-hour period (i.e. 24-hr LC50 > 100%). As a condition for certification, the State required modification of the toxicity test protocol contained in the permit to conform to that specified to demonstrate compliance with the State standard. The test protocol for the Texas general permit requires the use of a five dilution acute freshwater toxicity test, reporting of pass/fail on 50% or greater survival in the 100% effluent dilution, and reporting of pass/fail on statistically significant difference in toxicity between the control the 100% effluent dilution. In addition, the State required inclusion of acute toxicity testing for the chromium-arsenic formulations category of wood treatment facilities. The results of the toxicity testing will be used to demonstrate compliance with the State

water quality standard and identify discharges that will require more stringent pollution prevention plans and/or individual or alternative general permit coverage.

General Permits for EPA Region 6

With regard to reporting the results of any toxicity testing required under the permit, the permits for Louisiana, New Mexico, Oklahoma, and Texas have been modified to require the submittal of a summary of the results, with the full toxicity report retained by the permittee. The results are to include pass/fail information on 50% survival in the 100% dilution after 24 hours in addition to the pass/fail information on a statistically significant difference in toxicity between 100% effluent and the control. The format to be used is included as Tables in the final permit. The Texas permit also requires only submittal of the summary table, which are modified to include the five-dilution series test required as a condition for State certification. The net cost to the permittee is expected to be minimal, since the information necessary to determine 50% or greater survival in the 100% dilution is readily available from the results of the test used to determine a statistically significant difference between the control and the 100% dilution. No additional testing is required. The additional information gained will allow the permittee and the Agency to prioritize action on discharges exhibiting relatively greater toxicity (i.e. those showing greater than 50% lethality would be more toxic than those exhibiting only a statistically significant difference in survival). The use of simple test report summaries will reduce the report mailing cost and simplify completion of Discharge Monitoring Reports (DMRs) for the permittee; while also reducing the administrative burden on the permitting authority, both for review and document storage.

In addition to conditions required for State Section 401 certification, EPA Region 6 has made the following modifications to the Louisiana, New Mexico, Oklahoma, and Texas general permits. First, the area covered by each permit has been clarified to include all administered by EPA Region 6 in the appropriate State. This clarification was included to insure coverage on federal lands and Indian Nations. EPA Region 6 does not administer NPDES authority on Navajo Nation lands in New Mexico (administered by EPA Region 9) and Ute Mountain Tribal lands in New Mexico (administered by EPA Region 8).

Region VIII

South Dakota: No 401 conditions. South Dakota Indian Lands: No 401 conditions.

Montana Indian Lands: No 401 conditions.

North Dakota Indian lands: No 401 conditions.

Wyoming Indian lands: No 401 conditions.

Utah Indian lands (except the Goshute Reservation and Navajo reservation lands in Utah): No 401 conditions.

Colorado federal facilities: See Part XI.F for 401 conditions.

Colorado Indian lands and New Mexico Indian lands (including only the Navajo Reservation lands and Ute Mountain Reservation lands located in Colorado and New Mexico): See part XI.F for 401 conditions.

Region IX

Arizona: See part XI.G for 401 conditions. Arizona Indian lands (including Navajo reservation lands in Utah and New Mexico): No 401 conditions. California Indian lands: No 401 conditions. Nevada Indian lands (including the Goshute Territory in Utah and the Duck Valley reservation lands in Idaho): No 401 conditions. Johnston Atoll: No 401 conditions. Midway and Wake Island: No 401 conditions.

Region X

Alaska: See part XI.H for 401 conditions. Alaska Indian lands: No 401 conditions. Idaho: See part XI.I for 401 conditions. Idaho Indian lands (except the Duck Valley reservation lands in Nevada and Idaho): No 401 conditions. Washington Indian lands: See part XI.J for 401 conditions. Washington federal facilities: See part XI.J for 401 conditions.

IX. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, U.S.C. 601 et. seq., EPA is required to prepare a Regulatory Flexibility Analysis to assess the impact of rules on small entities. No Regulatory Flexibility Analysis is required, however, where the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Today's permits provide small entities with an application option that is less burdensome than individual applications or participating in a group application. The other requirements have been designed to minimize significant economic impacts of the rule on small entities and does not have a significant impact on industry. In addition, the permits reduce significant administrative burdens on regulated sources. Accordingly, I hereby certify pursuant to the provisions of the Regulatory Flexibility Act, that these permits will not have a significant impact on a substantial number of small entities.

Authority: Clean Water Act, 33 USC 1251 *et seq.*

Dated: August 28, 1992.

Patricia Meaney,

Acting Regional Administrator, Region I.

Dated: August 28, 1992.

Patrick M. Tobin,

Acting Regional Administrator, Region IV.

Dated: August 27, 1992.

B.J. Wynne,

Regional Administrator, Region VI.

Dated: August 28, 1992.

Kerrigan Clough,

Acting Regional Administrator, Region VIII.

Dated: August 28, 1992.

Daniel W. McGovern,

Regional Administrator, Region IX.

Dated: August 27, 1992.

Dana Rasmussen,

Regional Administrator, Region X.

Appendix A—Summary of Responses to Public Comments on the August 16, 1991 Draft General Permits

Definition of Storm Water Discharge Associated With Industrial Activity

Some commenters on the August 16, 1991 draft general permits expressed or suggested confusion over the scope of the regulatory definition of "storm water discharge associated with industrial activity" which the Agency had promulgated on November 16, 1990 (55 FR 47990). In EPA's view, however, while the August 16, 1991 notice did not request comments on modifying the regulatory definition, the Agency believes that it is appropriate to add a preface to today's general permit that clarifies the NPDES regulatory framework for storm water discharges associated with industrial activity. In addition, the Agency has corrected several typographical errors and inadvertent omissions to the text of the definition of "storm water discharge associated with industrial activity" in the "Definitions" section of today's general permits.

Coverage Issues

Consistent with Tier I of United States Environmental Protection Agency's (EPA) long-term permitting strategy, the August 16, 1991 draft general permits were intended to allow the majority of storm water discharges associated with

industrial activity (located in the State for which the permit was issued) the opportunity to obtain coverage. However, the draft permits provided four limitations on coverage. The draft permits proposed to exclude certain storm water discharges associated with industrial activity, including those (1) that storm water effluent limitations guidelines cover; (2) that an existing National Pollutant Discharge Elimination System (NPDES) permit authorizes; (3) that the Director designates as causing or expected to cause a water quality standard violation; and (4) that originate from inactive mining or oil and gas operations on Federal lands where an operator cannot be identified.

Several commenters urged EPA to provide maximum opportunities for facilities with storm water discharges associated with industrial activity to obtain coverage under the general permits. A number of commenters were concerned that several provisions of the August 16, 1991 draft permits could be interpreted to mean that if one storm water discharge at a facility was ineligible for coverage under the general permit, then any remaining storm water discharges on site would also be ineligible.

In response, EPA intends that the limitations on coverage be applied on a discharge-by-discharge basis, as opposed to a facility-by-facility basis. In response to concerns raised in the comments, the Agency has clarified two provisions of the permit to reflect this concept. The first provision addresses storm water discharges that are subject to an effluent limitation guideline.[19] The Agency wants to clarify that if a facility has multiple storm water discharges, with one or more storm water discharges subject to an effluent limitation guideline and one or more discharges not subject to an effluent limitation guideline, then the discharge(s) that are not subject to an effluent limitation guideline may obtain coverage under today's permits. However, the discharges from the facility that are subject to an effluent limitation guideline may not be covered by today's permits because today's permits do not incorporate the limitations for these discharges.

The second provision in the August 16, 1991 draft general permits addressed storm water discharges associated with industrial activity from facilities with an existing NPDES permit. The Agency notes that this language was somewhat ambiguous, in that it could apply to storm water discharges with an existing NPDES permit or to facilities with an existing NPDES permit. Thus, today's permits have been clarified to provide that only storm water discharges that are authorized by a different NPDES permit cannot be authorized by today's permit.

One commenter indicated that the proposed general permit language implied that coverage under the general permit would be permanently restricted for facilities that are currently permitted under the NPDES program for their storm water discharges.

In response, EPA has clarified today's general permits to provide that for storm water discharges currently subject to an individual NPDES permit, dischargers may apply for coverage under the general permit when the existing permit expires, provided that the existing individual permit does not contain numeric effluent limitations. Facilities with existing NPDES permits for storm water discharges that have established numeric limits for these discharges are generally not eligible for coverage under the general permit.

One commenter requested that EPA clarify that a given industrial facility may be issued two separate NPDES permits, one for process wastewater and another for storm water. In response, EPA wants to clarify that facilities with an existing NPDES permit for process wastewaters and/or other non-storm water discharges are allowed to obtain coverage for their storm water discharges under today's general permits.

Two commenters expressed confusion regarding the exclusion of inactive and abandoned mining and oil and gas operations on Federal lands from coverage under the draft general permit. These commenters thought that EPA was exempting such sites from regulation under the November 16, 1990 rule by excluding these sites from coverage under the general permit.

In response, the Agency explained in the August 16, 1991 draft permits that it is developing a distinct set of general permits that more appropriately control pollutants from inactive mining and inactive oil and gas operations on Federal lands where an operator cannot be identified due to the unique nature of these types of storm water discharges. EPA wishes to reaffirm that today's general permits do not provide coverage for storm water discharges from these inactive sites because an alternate draft general permit is currently being developed. Such discharges do, however, remain subject to the requirement to submit a NPDES permit application.

The Department of the Interior, which has extensive land management responsibilities, requested that storm water discharges from inactive landfills on Federal lands where an operator cannot be identified be addressed in a similar manner as inactive mining and inactive oil and gas operations on Federal lands. The commenter indicated that the significant number and geographic distribution of such sites on Federal lands favored an approach that was similar to controlling storm water from inactive mines and oil and gas operations on Federal lands. The commenter also indicated that NPDES requirements should be coordinated with ongoing efforts by Federal land managers to address inactive landfills, and that the best way to accomplish this is to issue different general permits tailored for these discharges. In response, EPA has excluded from coverage under today's permit those storm water discharges from inactive landfills on Federal lands where an operator cannot be identified. The Agency will address these discharges in conjunction with distinct permitting efforts addressing storm water discharges from inactive mining operations and inactive oil and gas operations on Federal lands.

One commenter thought that EPA was requiring facilities with storm water discharges associated with industrial activity to obtain coverage under the general permit, and was precluding dischargers from submitting individual permit applications or participated in appropriate group applications.

The Agency wants to clarify that by encouraging the use of general permits to address storm water discharges associated with industrial activity, and August 16, 1991 proposal was not limiting the application options to Notice of Intents (NOIs) and coverage under a general permit. The submittal of an NOI to be covered by a general permit is only one of three application options for storm water discharges associated with industrial activity identified by the November 16, 1990, NPDES storm water application regulations.

A number of commenters expressed confusion as to whether they must apply for coverage under today's general

[19] For the purposes of this permit, the following effluent limitations guidelines address storm water or a combination of storm water and process water: cement manufacturing (40 CFR 411); feedlots (40 CFR 412); fertilizer manufacturing (40 CFR 418); petroleum refining (40 CFR 419); phosphate manufacturing (40 CFR 422); steam electric power generation (40 CFR 423); coal mining (40 CFR 434); mineral mining and processing (40 CFR 436); ore mining and dressing (40 CFR 440); and asphalt (40 CFR 443).

permit if a group application has already been submitted. EPA wishes to clarify that while facilities that had participated in approved and completed group applications are not required to obtain coverage under today's general permit, they do have the option to do so.

Requiring an Individual Permit Application

The August 16, 1991 draft general permit provided that EPA may require the submission of an individual permit application at any time during the term of the permit. The draft permit further provided that where EPA requests an individual permit application and an owner or operator fails to submit a timely application, the coverage of the permit must be terminated on the date the application is due.

Several commenters questioned EPA's authority to terminate permit coverage. They believed that EPA must specify requirements for permit coverage termination, such as an adjudicatory process that would allow the permittee a formal appeal. Additionally, one commenter was concerned with the discretionary authority granted to EPA in requiring individual permit applications and felt that certain guidelines should be set forth.

In response, today's permits reflect 40 CFR 122.28(b)(3) (as amended on April 2, 1992, (57 FR 11412)), which establish procedures for EPA to require a discharger authorized by a general permit to apply for and obtain an individual permit and for any interested person to petition the Director to require an individual permit. EPA also has broad authority under Section 308 of the Clean Water Act (CWA) to require information, such as individual applications.

Where the discharger fails to submit a timely application, such a failure would constitute noncompliance by the permittee with a permit condition and would constitute grounds for permit termination (see 40 CFR 122.64). EPA would follow the applicable procedures in 40 CFR 124 in terminating permit coverage. In addition, 40 CFR 124.52 provides guidelines for EPA to determine that a facility required covered by a general permit be required to obtain an individual permit.

This discretionary authority is critical because it allows the Director to identify facilities that may be significant contributors to water pollution or facilities that have other site-specific conditions that would be better addressed under an individual permit. In general, EPA will make decisions on terminating coverage under the general permit in a manner that is consistent with the goals and objectives of the Agency's four-tiered, long-term permitting strategy for storm water discharges associated with industrial activity (see April 2, 1992, (57 FR 11394)).

One commenter disagreed with the statement in the draft general permit that storm water discharges associated with industrial activity that are not authorized by the general permit or another NPDES permit are not in compliance with the CWA. This commenter stated that the simple submission of an individual permit application or participation in an approved group application should satisfy the discharger's legal obligations under the CWA. While timely submittal of an individual permit application or participation in an approved group application constitutes compliance with EPA's storm water permit application regulations, it does not, by itself, provide for compliance with the CWA requirement that storm water discharges associated with industrial activity to waters of the United States be authorized by an NPDES permit.

NOI Requirements

The August 16, 1991 draft permits included a requirement that each discharger submit an NOI to be authorized to discharge under the permits. Under the August 16, 1991 draft permits, NOIs had to provide the name, mailing address, and location of the facility for which notification was submitted; up to four 4-digit SIC codes describing the facility; the operator's name, address, and telephone number; the latitude and longitude of the facility; the name of the receiving water or, if the discharge is through a municipal separate storm sewer, the name of the municipal operator of the storm sewer; and existing sampling data.

A number of commenters on the August 16, 1991 draft general permits indicated that NOI requirements were generally less burdensome than individual permit applications and that NOIs are a useful tool in the permitting process. A number of commenters indicated that a standardized NOI form would be extremely useful and would ease burdens on the regulated community. In response, the Agency has developed a standardized NOI form, which is included in Appendix C of today's notice. Copies of the NOI form are available from EPA Regional Offices (see the **ADDRESSES** section of today's notice) or from the Storm Water Hotline at (703) 821-4823.

Some commenters noted that the information required in the NOI was adequate, sufficient, and/or appropriate. However, commenters raised several concerns with specific requirements of the NOI. Several commenters suggested that NOIs should require additional information describing the facility. These commenters suggested a number of additional information requirements, including descriptions of raw materials that are received by the facility; materials that are produced or processed by the facility; raw materials that are used or stored at the facility in substantial amounts; approximate amounts of materials at the facility that fall under the above categories each year; how these materials are handled; any precautions taken to prevent pollutants in storm water runoff; and the size of the facility and a characterization of the surrounding area. The commenters indicated that this information would assist EPA in identifying priority facilities. Several of these commenters indicated that the limited information in an NOI is not sufficient to support further conclusions or determinations on when and whether Tier II-IV permits should be required or other evaluations of the risks posed by storm water discharges from various industrial categories.

In response, the Agency notes that it will use information from a number of sources to evaluate appropriate Tier II, III, and IV permits. For example, the Agency will use information from group applications and from monitoring data collected pursuant to today's permit to assist in the development of Tier III (industry-specific) permits. The Agency can use information in section 305(b) reports, along with information from other sources, to develop Tier II (watershed) permits. In addition, the Agency will review individual permit applications, information from municipal operators of large and medium municipal separate storm sewer systems, and other information to develop Tier IV (individual) permits. In addition, today's permits require facilities to develop storm water pollution prevention plans that contain more detailed, facility-specific information, which the Agency can request for review. Given these other sources of information and the initial status of program development, the Agency does not believe that such additional information is necessary in NOIs at this time. The Agency is requiring that dischargers provide the permit number of any NPDES permit for other discharges from the facility and the group application number if the facility has participated in a group application. Obtaining this information will allow the Agency to coordinate permitting and compliance monitoring

efforts associated with other discharges with actions taken with respect to today's permits. Obtaining the permit numbers of non-storm water NPDES permits will allow EPA to have access to information about a permittee's activities with a minimal burden placed on the discharger and EPA. This information will be particularly useful in identifying priorities for storm water permit issuance and in developing Tier II, III, and IV permits.

One commenter suggested that EPA provide expanded instructions to assist facilities in accurately determining their Standard Industrial Classification (SIC) code(s), their locations by latitude and longitude, and the names of the receiving waters. In response, EPA notes that the NOI only requires dischargers to provide a latitude and longitude where a street address for the site is not available. In addition, EPA has provided additional guidance on obtaining this type of information in the "Guidance Manual for the Preparation of NPDES Permit Applications for Storm Water Discharges Associated with Industrial Activity," April 1991, EPA-505/8-91-002. This manual is available from the National Technology Information Service (NTIS) by calling (703) 487-4650 (NTIS publication number PB-92114578, $35.00). EPA believes that identifying the longitude and latitude of a site presents a minimal burden to a small number of dischargers.

One commenter raised concerns about being required to submit sampling data that have been collected by a facility without the intention of having the data submitted in order to evaluate potential problems. They were concerned that such data may not be reliable, and in some cases may be meaningless. Other commenters suggested that the requirement to submit quantitative data be limited to the previous three years. One mining company suggested that EPA delete the requirement to submit existing quantitative data because processing and classifying the data would impose a substantial burden on Agency resources.

Based on additional consideration of this provision, the NOI requirements for today's permits do not require the submittal of existing quantitative data (sampling data), but rather require dischargers to indicate whether they have sampling data available describing their storm water discharges. As discussed below, the Agency believes that these data can serve useful purposes, and is requiring facilities to maintain records of existing data in their storm water pollution prevention plans. The Agency believes that this approach will provide dischargers with an opportunity to explain problems with data quality. The Agency has made this change to reduce the administrative burdens associated with submitting and handling NOIs. The Agency notes that it can request this information from the discharger where appropriate.

One commenter recommended that the NOI be used to cross-check with other requirements and available data. In response, EPA is requiring that NOIs include the number of any NPDES permit for any discharge (including non-storm water discharges) from the site that is currently authorized by an NPDES permit. In addition, dischargers are required to indicate whether the facility has previously participated in the group application process. EPA believes that this information will greatly assist in its efforts to cross-check other information regarding the facility.

Several commenters requested that EPA clarify whether a pollution prevention plan must be included in the NOI. In response, the Agency has modified the language in today's permits to clarify that dischargers are not required to submit a pollution prevention plan when they submit an NOI.

One commenter indicated that dischargers should only have to submit information required in the NOI if that information is available. In response, the Agency believes that the information required in the NOIs by today's permits will not impose excessive burdens on dischargers. The Agency believes that the information required in the NOIs is appropriate given the goals and functions of these permits. For example EPA must know where the industrial facility is located in order to conduct site visits. The street address of the facility, or, where it is not available the facility's latitude and longitude (or section, township, and range), can be used to identify the site location. The SIC codes that best represent the principal products made or activities conducted by the facility will give EPA an indication of the nature of the industrial activity at the facility. An alternative indicator of the industrial activity is required for classes of facilities that do not have SIC codes that accurately describe the principal products or services provided (e.g. hazardous waste treatment, storage or disposal facilities, land disposal facilities that receive or have received any industrial waste, steam electric power generating facilities, or treatment works treating domestic sewage). This information gives an indication of the pollution potential of the facility and is necessary to evaluate oversight and enforcement priorities for followup actions by EPA. In addition, this information can be used to identify particular classes of discharges where industry-specific general permits may be appropriate or where individual permits may be necessary. Today's permits require up to four SIC codes to characterize facilities that conduct multiple activities that are addressed by more than one SIC code. The operator's name, address, and telephone number are necessary to support communications with the permittee and to allow EPA to request information or provide guidance. The permit number(s) of additional NPDES permit(s) for any discharge(s) (including non-storm water discharges) from the site that are currently authorized by an NPDES permit will allow EPA to coordinate oversight and compliance monitoring activities taken under today's permits, such as inspections, with other actions taken pursuant to other NPDES permits. The name of the receiving water(s) will allow EPA to identify discharges to impaired, sensitive water bodies, or high-value water resources that require additional oversight and compliance evaluation. Permittees that discharge to a large or medium municipal separate storm water permits require the applicant to provide the name of the municipal operator of the storm sewer. The name of the municipal operator of the storm sewer provides EPA with the opportunity to coordinate compliance monitoring activities and the identification of priority discharges with municipalities. An indication of whether the owner or operator has existing quantitative data describing the concentration of pollutants in storm water discharges informs EPA of additional data to review in characterizing the nature of the discharge. An indication of whether the facility has previously participated in the group application process allows EPA to implement the group application process better and eliminates redundancy or overlap between that process and coverage with general permits. The certification that a storm water pollution prevention plan has been prepared for the facility in accordance with the permit ensures that plans for new facilities have been developed and assists the Agency's compliance monitoring efforts.

One commenter indicated that facilities such as remote oil and gas operations may not have mailing addresses. In response, the Agency has modified today's permits so that where a mailing address for a site is not

available, the location can be described in terms of the latitude and longitude of the facility.

One commenter suggested that it would be more reasonable to allow permittees to be automatically covered by a renewed general permit. EPA disagrees with this comment. The Agency believes that it is appropriate for permittees to reapply every five years under a general permit in the same manner as they would with an individual permit application, and does not believe that the requirement to resubmit an NOI every five years creates excessive burdens on dischargers. This information also allows EPA to update its record of permittees.

One commenter indicated that identification of Department of Defense (DOD) facilities by a single SIC code may present a problem because there may not be an appropriate code or several activities may be taking place at different portions of the installation. In response, the Agency wants to clarify that the NOIs associated with today's permits provide for up to four SIC codes that best describe the facility. In general, a Federal facility, such as a DOD installation, that has an industrial activity on the facility should use the SIC code that would describe the same specific industrial activity at a private facility. The Agency also notes that some DOD bases or installations will have different industrial activities at multiple locations at the installation. In such cases, the facility should submit one NOI for each location conducting a different industrial activity.

One commenter recommended that in addition to the signature by a responsible corporate officer (as defined by 40 CFR 122.22) the person having overall responsibility for environmental matters should be required to sign the NOI. The commenter indicated that this information would simplify EPA's efforts to contact a permittee. In response, EPA is concerned that such a requirement may cause confusion among dischargers during the initial application process. The Agency notes that today's permits require permittees to develop storm water pollution prevention plans that provide for a description of a storm water pollution prevention team. This requirement is intended to provide a clear description of personnel that are responsible for implementing permit requirements. Therefore, the Agency does not believe that it is necessary to require the person having overall responsibility for environmental matters to sign the NOI.

NOI Deadlines

In the August 16, 1991 draft general permits, EPA proposed that NOIs to obtain coverage under the permits be submitted within 180 days of the date of issuance of the general permits or at least 30 days prior to the commencement of construction of a new storm water discharge associated with industrial activity. Subsequent to the August 16, 1991 notice, EPA extended the regulatory deadlines for submitting individual permit applications (see November 5, 1991 (56 FR 56549)) and part 2 of group applications (see April 2, 1992 (57 FR 11394)) for storm water discharges associated with industrial activity to October 1, 1992.

Today's final general permits provide that NOIs for storm water discharges associated with industrial activity from industrial facilities existing on or before October 1, 1992, must be submitted on or before October 1, 1992. The Agency has selected the October 1, 1992 date to provide consistency with the deadlines for submitting individual permit applications and Part 2 of group applications. Using the October 1, 1992 deadline will minimize confusion regarding these deadlines, particularly where EPA issues permits for different States on different dates. In addition, the October 1, 1992 deadline provides an equitable framework for complying with permit application requirements.

Today's permits provide that facilities with industrial activity addressed by the storm water program that begin to operate after October 1, 1992, must submit an NOI at least 2 days prior to the commencement of the industrial activity at the facility. The Agency believes that this short time period is appropriate for new discharges or new sources which begin operation after October 1, 1992 because development of a storm water pollution prevention plan and submittal of an NOI can be anticipated and planned for prior to the initiation of operations.

Several commenters requested clarification of whether a new NOI must be submitted where the operator of the discharge changes. In response, 40 CFR 122.61 requires that permittees notify EPA when a permit is transferred to a new owner or operator. In addition, 40 CFR 122.28(b)(2)(i) requires that dischargers seeking coverage under a general permit submit an NOI. The Agency considers an operator change at a facility to be analogous to a new discharger seeking coverage under the permit, and has clarified in today's permits that where an operator of a facility with a discharge covered by the permit changes, the new operator of the facility must submit an NOI at least 2 days prior to the change.

One commenter requested that EPA clarify that not all oil and gas operations are required to obtain NPDES permit coverage for their storm water discharges associated with industrial activity and asked EPA to clarify the deadlines for submitting an NOI for those facilities that are required to obtain NPDES permit coverage.

In response, section 402(1)(2) of the CWA provides that EPA shall not require a permit for discharges of storm water runoff from mining operations or oil and gas exploration, production, processing or treatment operations, or transmission facilities if the storm water discharge is not contaminated by contact with, or does not come into contact with, any overburden, raw material, intermediate product, finished product, byproduct, or waste product located on the site of such operations. EPA's regulations at 40 CFR 122.26(a)(2) codify this provision, and today's permit does not attempt to require coverage for discharges that are excluded under the CWA from the NPDES program. EPA's regulations at 40 CFR 122.26(c)(1)(iii) state that the operator of an oil and gas operation is not required to submit a permit application for their storm water discharge associated with industrial activity unless the facility has a discharge of storm water resulting in the release of oil or a hazardous substance that exceeds the reporting quantities established under 40 CFR 110.6, 40 CFR 117.21, or 40 CFR 302.6 or contributes to a violation of a water quality standard.

The Agency wants to clarify that oil and gas operations that discharge contaminated storm water at any time between November 16, 1987 and October 1, 1992, and that are currently not authorized by an NPDES permit, must submit an NOI, an individual permit application, or participate in an approved group application by no later than October 1, 1992. The Agency also wants to clarify that facilities that evaluate their storm water discharge after a release of a reportable quantity of oil or a hazardous substance that occurs after October 1, 1992, and determine that their storm water discharge is contaminated must either submit an NOI to be covered by today's permits within 14 days of their first knowledge of the release or submit an individual permit application. This provision does not require operators of oil and gas operations to submit an NOI where they do not have a contaminated storm water discharge. Operators of oil and gas operations that release a reportable quantity of oil or a hazardous

substance in a storm water discharge who do not believe that their storm water discharge is contaminated may submit an individual permit application in accordance with the requirements of 40 CFR 122.26(c)(1)(iii).

EPA believes the 14-day time frame is appropriate because of the risk associated with such facilities. The Agency also notes that facilities with a reportable quantity release of a hazardous substance or oil are required to notify the National Response Center (NRC) as soon as they know of the release, and that the facility should have the information necessary for submitting an NOI readily on hand.

Some commenters requested clarification of whether dischargers that missed the deadlines for submitting an NOI may ultimately obtain general permit coverage. A number of these commenters were particularly concerned about dischargers unaware of the requirement to obtain an NPDES permit for their discharge by October 1, 1992. These commenters urged EPA to provide flexibility in allowing them to submit an NOI to be authorized to discharge under the general permit after the deadlines specified in the general permit.

In response, EPA recognizes that there will be situations where it will be appropriate to allow a discharge to be authorized under the general permit after the deadline for submitting an NOI. For example, some facilities may only become aware of the general permit or that their storm water discharge must be authorized by an NPDES permit after the deadline for submitting an NOI has passed. The Agency recognizes that the NPDES storm water program is relatively new, at least in terms of implementation activities, and the application deadlines have changed on several occasions, which may have confused some dischargers. While ignorance of NPDES storm water requirements is *not* a shield from enforcement for discharging without a permit, the Agency recognizes the administrative advantages in allowing an existing discharger to obtain coverage under the general permit.

In response to these concerns, today's permits clarify that a discharger that misses either the October 1, 1992 deadline or the 48-hour deadline for facilities that commence construction after October 1, 1992, is not precluded from submitting an NOI and being authorized to discharge under the general permits at a later date. EPA wants to clarify that where a discharger has submitted an NOI after the deadlines specified in the permit, the Agency has the authority and reserves the right to bring appropriate enforcement actions.

Notice of Termination

Some commenters noted that facilities with "paragraph (xi)" storm water discharges could eliminate their storm water discharges associated with industrial activity by eliminating exposure of material to storm water. In addition, several commenters indicated that a facility can change industrial activity or otherwise discontinue industrial activity and can eliminate its storm water discharge associated with industrial activity where significant materials no longer remain exposed to storm water. Some of these commenters requested that EPA provide a mechanism for reporting to EPA when storm water discharges associated with industrial activity at a facility have been eliminated.

In response, the Agency wants to clarify that the regulatory definition of storm water discharge associated with industrial activity is provided at 40 CFR 122.26(b)(14). Paragraph (xi) of the regulatory definition provides that facilities under Standard Industrial Classification (SIC) codes 20, 21, 22, 23, 2434, 25, 265, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, or 4211–25 which are not otherwise addressed by other categories of the definition have a storm water discharge associated with industrial activity only where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery are exposed to storm water.[20]

In response to these concerns, today's permits have been modified to allow permittees to submit a Notice of Termination (NOT) to EPA indicating that the storm water discharges associated with industrial activity from their facility have been eliminated.

Non-Storm Water Discharges

The August 16, 1991 draft permit required all discharges covered by the permits to be composed entirely of storm water and discharges of material other than storm water to be in compliance with a different NPDES permit issued for the non-storm water discharge. EPA indicated that it was taking this approach because these general permits were not intended to authorize process wastewater discharges.

A number of commenters strongly supported the prohibition or noted that it appeared reasonable. However, a number of comments addressing this provision raised technical concerns that certain non-storm water discharges are commonly allowed to discharge via a separate storm sewer or are otherwise mixed with storm water discharges. These commenters indicated that some classes of nonstorm water discharges could not easily be separated from drainage or separate storm sewer systems and that separating such discharges from storm sewer systems usually would not provide any environmental benefits. Some of these commenters maintained that a strict prohibition on non-storm water discharges would significantly limit the number of facilities obtaining coverage under the general permit.

In response to these comments, EPA believes that it is important to retain a modified version of this provision in the permit to clarify that certain non-storm water discharges, such as process waste waters or wastes improperly disposed through a storm drain, are not authorized by today's general permits for storm water discharges. However, today's permits provide for two sets of circumstances where storm water discharges that are mixed with storm water may be authorized by this permit.

Consistent with the proposal, today's permit authorizes storm water discharges associated with industrial activity that are mixed with non-storm water discharges in compliance with a different NPDES permit. However, the monitoring requirements and compliance point for numeric limitations for the non-storm water discharge must be addressed in the permit for the non-storm water discharge. In addition, the Agency also recognizes that discharging some classes of non-storm water via separate storm sewers or otherwise mixed with storm water discharges is largely unavoidable and/or poses little if any environmental risk. Therefore, the Agency has clarified that today's permits authorize storm water discharges associated with industrial activity that are mixed with discharges from firefighting activities, fire hydrant flushing, potable water sources including waterline flushings, landscape irrigation drainage, routine exterior building washdown which does not use

[20] The exclusion contained in paragraph (xi) was, however, vacated and remanded to EPA for further proceedings. *NRDC* v. *EPA*, No. 90-70671 (9th Cir., June 4, 1992). EPA interprets the effect of the Court's remand as requiring the Agency to conduct further proceedings to address the Court's decision. Thus, EPA will not require that facilities identified by paragraph (xi) without exposure to submit storm water applications until the Agency has had the opportunity to complete additional proceedings in a manner consistent with the Ninth Circuit decision and the provisions of section 402(p)(2)(B) of the CWA.

detergents, pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and detergents are not used, air conditioning condensate (but not including cooling water from cooling towers, heat exchangers or other sources), springs, uncontaminated ground water, and foundation or footing drains where flows are not contaminated with process materials such as solvents provided that the non-storm water component of the discharge is identified in the pollution prevention plan. In addition, the plan must identify and ensure the implementation of appropriate pollution prevention measures for each of the non-storm water component(s) of the discharge.

As a general matter, EPA believes that where these classes of non-storm water discharges are identified in a pollution prevention plan and where appropriate pollution prevention measures are evaluated, identified and implemented, they can be effectively controlled under today's permit. The Agency also notes that it can request individual permit applications for such discharges where appropriate and necessary. The Agency is not requiring that flows from firefighting activities be identified in plans because of the emergency nature of such discharges coupled with their low probability and the unpredictability of their occurrence. The Agency notes that the approach in today's permits taken for non-storm water discharges is parallel to the approach taken for non-storm water discharges to large and medium municipal separate storm sewer systems in its November 16, 1990 rulemaking (55 FR 47990). The non-storm water discharges addressed in today's permits are similar to those addressed in the November 16, 1990 rulemaking, although several modifications to the list have been made that provide additional clarity and that recognize the industrial nature of facilities covered by today's permits. The modifications also reflect the generally higher degree of control that industrial facilities can exercise over the generation of non-storm water discharges on a site. For example, routine exterior building washdown that does not use detergents and pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used have been specified in today's permits to specifically identify nonstorm water discharges that are commonly expected from industrial sites. The reference to spills is to ensure that washwaters used to clean spills are not flushed to the storm sewer and directly to waters of the United States.

Releases of Reportable Quantities of Hazardous Substances

The August 16, 1991 draft general permits provided that the permits would not relieve the permittee of reporting requirements for releases of hazardous substances in excess of reportable quantities established under 40 CFR 117 and 40 CFR 302. The draft permits further provided that discharges of hazardous substances in storm water discharges are to be minimized in accordance with the applicable storm water pollution prevention plan and can in no case contain a hazardous substance equal to or in excess of a reportable quantity.

A number of commenters strongly supported the prohibition, or noted that it appeared reasonable. However, several other commenters indicated that the prohibition on releases of hazardous substances in excess of reportable quantities acted as a series of effluent limitations and that the Agency had not established such limitations consistent with the technology-based or water quality-based standards of the CWA. These commenters indicated that the reportable quantities established under 40 CFR 117 and 40 CFR 302 were not developed as numeric effluent limitations under the NPDES program. One of these commenters indicated that some hazardous substances still had reportable quantities of 1 pound that had been originally established by Congress. However, a number of the commenters that objected to the prohibition as a perceived effluent limitation agreed that the reporting of such discharges was appropriate and that a facility with such a discharge should not be exempt from liability provisions under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or the CWA. Some of these commenters also noted that the use of best management practices aimed at preventing and/or cleaning up the release, instead of numeric end-of-pipe limitations, is the most effective way to address these discharges.

In response, the Agency has modified this provision in today's permits to provide additional consistency with the reporting requirements for releases of hazardous substances and oil in excess of reporting quantities at 40 CFR 110, 40 CFR 117, and 40 CFR 302, to provide clarification that the Agency does not intend for the prohibition on releases in excess of reporting quantities to act as numeric effluent limitations, and to address such releases in a manner consistent with the approach taken in today's permits with respect to pollution prevention plan implementation.

Today's permits require that the discharge of hazardous substances or oil in the storm water discharge(s) from a facility must be minimized in accordance with the applicable storm water pollution prevention plan for the facility. Where a release containing a hazardous substance in an amount equal to or in excess of a reporting quantity established under either 40 CFR 117 or 40 CFR 302 occurs during a 24-hour period, the permittee must:

- Notify the National Response Center (NRC) as soon as he or she has knowledge of the discharge;
- Notify the appropriate EPA Regional Office within 14 calendar days of knowledge of the release. The notice must contain a written description of: the release (including the type and estimate of the amount of material released), the date that such release occurred, the circumstances leading to the release, and steps to be taken to identify measures to prevent the reoccurrence of such releases and to respond to such releases as needed; and
- Modify the storm water pollution prevention plan for the facility within 14 days of knowledge of the release to describe the release, the circumstances leading to the release, and the date of the release. In addition, the plan must be reviewed and where appropriate modified by the permittee to identify measures to prevent the reoccurrence of such releases and to respond to such releases as needed.

The Agency has clarified that today's permits do not authorize the discharge of hazards substances or oil resulting from an on-site spill of non-storm water materials. This is consistent with CWA and CERCLA requirements for hazardous substances and oil for anticipated intermittent point source discharges at 40 CFR 117.12(d)(i).[21]

The Agency believes that this approach will result in the same objectives as the approach in the August 16, 1991 draft permits (i.e., to provide the Agency with information that allows for considering whether an individual permit is appropriate), while minimizing confusion and concerns regarding the provision. Further, this approach

[21] 40 CFR 117.12(d)(2)(i) excludes discharges that are continuous or anticipated intermittent discharges from a point source, identified in an NPDES permit from reporting requirements if the discharge of the hazardous substance results from the contamination of storm water, provided that the storm water is not contaminated by an on-site spill of a hazardous substance.

provides additional flexibility for implementing appropriate pollution prevention measures. The Agency also believes that ample enforcement authority under the CWA and CERCLA exists for addressing releases of hazardous substances in excess of reportable quantities and that the approach taken in today's permits complements those authorities.

One discharger raised concerns that the prohibition implied that discharges of a hazardous substance up to an applicable reportable quantity was acceptable and that a permittee was not required to do anything unless such a release occurred. In response, EPA does not intend to imply that discharges of hazardous substances up to an applicable reportable quantity are acceptable in the sense that a discharger should do nothing until discharging a hazardous substance or oil in excess of a reportable quantity. The Agency notes that any point source discharge of pollutants to waters of the United States without a permit is prohibited under section 301 of the CWA. In addition, today's permits do not establish numeric effluent limitations for such storm water discharges from industrial activities (except for coal pile runoff). Rather, the permits requires dischargers to develop and implement best management practices and pollution prevention measures to reduce and/or control pollutants in the discharge even in cases where the discharge does not contain hazardous substances or contains hazardous substances at levels significantly lower than reportable quantities.

Pollution Prevention Plan Requirements

At the heart of the August 16, 1991 draft permits were flexible requirements for site-specific storm water pollution prevention plans to be developed and implemented to minimize and control pollutants in storm water discharges. The Agency adopted this approach in order to address adequately the variable storm water management/pollution prevention opportunities at different types of industrial facilities.

In general, many commenters supported requiring storm water pollution prevention plans to achieve Best Available Technology Economically Achievable (BAT) and Best Conventional Pollutant Control Technology (BCT) requirements in lieu of numeric limitations. Many of these commenters indicated that pollution prevention measures (e.g., source reduction measures and elimination of pollutant sources) were for many industrial facilities the most practicable and cost-effective approaches to reducing pollutants in storm water discharges.

A number of commenters supported the flexibility that the proposed requirements provided for developing tailored plans and pollution prevention strategies. Some of these commenters indicated that this approach allowed facilities to use their own expertise and knowledge of the facilities and that industrial operators were in the best position to develop and implement storm water pollution prevention strategies. Other commenters noted that it was essential for facilities to take the lead role in determining requirements that are reasonable and necessary for their facility. Others urged the Agency to maintain flexibility to address unique industry-specific or facility-specific conditions. Several commenters indicated that they believed that broad effluent limitations or national performance standards for pollution prevention requirements were not appropriate at this time and that industry should be given flexibility to establish specific pollution prevention measures for their facilities.

One commenter indicated that based on experience at industrial sites, the most effective means of controlling pollutants in storm water was the requirement for each permittee to develop and implement a pollution prevention plan. This commenter indicated that the plan requirements in the August 16, 1991 proposal appeared to be both effective and enforceable, as well as easily understood by the people responsible for complying with the general permit.

Several commenters indicated that requirements to develop and implement storm water pollution prevention measures should be limited to a subset of all facilities with storm water discharges associated with industrial activity. One commenter, while noting that pollution prevention measures can be effective in some cases, indicated that industrial facilities should have the option of preparing a pollution prevention plan or meeting a numeric effluent limitation or other performance standard. This commenter alternatively suggested that only facilities that have been shown to contribute significantly to storm water-related impacts on receiving waters should be required to comply with requirements to develop a plan. Another commenter suggested that numeric limitations be provided as a floor. The commenter further suggested that facilities should not be required to implement pollution prevention measures for storm water discharges that contain pollutants at levels lower than the concentrations provided in the numeric limitation. One commenter indicated that permittees should only be required to develop pollution prevention plans if monitoring data shows that these are appropriate or necessary. A mining company indicated that runoff from an industrial facility may actually be of better quality than the receiving water and that a blanket requirement that all facilities with storm water discharges associated with industrial activity prepare plans is not appropriate.

In response, EPA notes that the CWA requires NPDES permits for storm water discharges associated with industrial activity (see section 402(p)(2)(B)). In addition, the CWA requires NPDES permits for storm water discharges that are significant contributors of pollutants to waters of the United States or that contribute to a violation of a water quality standard (see section 402(p)(2)(E) of the CWA). All NPDES permits for storm water discharges associated with industrial activity must, at a minimum, establish BAT/BCT requirements (see section 402(p)(3) of the CWA). Thus, consistent with the requirements of the CWA, the requirements in today's permits to develop and implement storm water pollution prevention plans apply to all permittees whether the Agency has made a showing that a facility is contributing to a water quality impact or not, or whether pollutants in the discharge from a facility exceed the concentrations in discharges from surrounding land uses.

The Agency believes that Congress establishes this technology-based framework because it was aware of the technical and administrative difficulties of making a showing that a single facility is a significant contributor to specific water quality impacts and it determined that mandatory minimum pollution control requirements were appropriate for industrial facilities with storm water discharges. Today's permit establishes BAT/BCT requirements in terms of requirements to develop and implement storm water pollution prevention plans.[22] These requirements apply to all permittees.

The Agency notes that the requirement to develop and implement storm water pollution prevention plans is not the only option the Agency had for establishing BAT/BCT requirements, and that many NPDES permits incorporate numeric limitations to reflect application of BAT/BCT requirements. However, the Agency

[22] In addition, today's permits establish a numeric effluent limitation for coal pile runoff.

currently does not have sufficient data to develop appropriate numeric effluent limitations for all of the varied sources of storm water discharges associated with industrial activity covered by these permits. The Agency also notes that facilities covered by today's permits have varied potential for having many different pollutants in their storm water discharges. While today's permits do not provide permittees with the option of meeting a numeric effluent limitation in lieu of developing and implementing pollution prevention measures, the Agency notes that facilities that wish to pursue numeric effluent limitations for their storm water discharges may submit data sufficient to support the development of such limitations either through the individual or group permit application process.

One commenter thought plans should not be required where facilities do not have a previous history of spills or any materials on site to create a spill. In response, EPA wants to clarify that spills are only one potential source of pollutants in storm water discharges. Other major potential sources of pollutants in storm water discharges associated with industrial activity include the following: loading and unloading of materials; outdoor storage of raw materials or products; outdoor process activities; dust or particulate generating processes; illicit connections or management practices; waste disposal; and vehicle maintenance.[23] The requirements for storm water pollution prevention plans in today's permits have been designed to address these sources of pollutants as well as spills. The potential for spills at a facility is only one factor that pollution prevention plans should address.

One commenter suggested that facilities should be allowed to have a Registered Professional Engineer (PE) conduct a site review to identify pollutant sources and establish a schedule for elimination of those sources as an alternative to implementing a pollution prevention plan. EPA has not adopted this approach in today's permit. Perhaps most importantly, EPA needs well documented plans to conduct its own review of the adequacy of pollution prevention measures and is concerned that a PE certification without an accompanying plan may be inadequate for this purpose. While PE certifications can play an important role in pollution prevention strategies, the Agency also has concerns that a PE evaluation, by itself; may not ensure successful elimination of all potential sources of pollutants to storm water. The Agency believes that PE certifications are best suited for evaluations of structural controls, spill prevention and response measures, and the effectiveness of comprehensive pollution prevention plans. For many facilities, however, complying with today's permits means relying on nonstructural controls as part of a comprehensive plan. In addition, the Agency believes that this approach would create unnecessary confusion regarding the requirements of the permit.

Several commenters urged EPA to ensure that requirements for developing and implementing storm water pollution prevention plans were feasible, particularly for small businesses. Some commenters suggested that a less resource-intensive approach should be developed for smaller facilities. Other commenters indicated that they thought the requirements for plans were too complex or burdensome, particularly for small businesses and small municipalities with industrial facilities.[24] A few commenters suggested that EPA delete some of the components of the plan or phase in some plan requirements to ease the burden of development and implementation of plans. Others suggested that facility size should be considered when developing the plan.

EPA agrees that the varying sizes and complexities of facilities should be reflected in the storm water pollution prevention plans. This is one reason that EPA favors having each permittee develop and implement site-specific storm water pollution prevention plans under today's general permits. EPA believes that today's permits generally provide flexibility for those smaller facilities which have smaller potential for contributing pollutants to storm water to develop and implement less complex, and less costly, plans than larger, more complex facilities.

EPA does not agree, however, that some of the components of the plan should be deleted for smaller facilities. EPA believes that all of the components for the plans required by today's permits are essential for reducing pollutants in storm water discharges and cannot be selectively deleted or phased in without hindering the effectiveness of the overall pollution prevention efforts. Therefore, EPA has determined that all components of the storm water pollution prevention plan required under today's permits are necessary to reflect BAT/BCT. The pollution prevention plan requirements of today's permits can be described in terms of four components. In addition, some facilities are required to conduct discharge monitoring.

The first component, formation of a pollution prevention team is critical to identifying individual responsibilities and ensuring accountability for implementing plans. The formation of the Team formalizes the identification of responsibilities and is not expected to incur significant costs in and of itself. The role of the Team will depend on the engineering aspects of the application of various types of control techniques identified in the plan and the processes employed at the facility.

Successful plan implementation must be based on adequate identification of pollutant sources. The second component of the plan, description of pollutant sources, is achievable because it is based on the information that should generally either be readily available from the normal business practices of the facility (e.g. materials inventories) or from standard evaluations or observations. The costs of these descriptions depend on such factors as the nature of the process employed, the age of the equipment and facilities, and the engineering aspects of the application of various types of control techniques.

The third component of the plan is identifying and implementing measures and controls. The costs of complying with other measures and controls of the plan depend on the nature of the process employed, the age of the equipment and facilities, and the engineering aspects of the application of various types of control techniques. Good housekeeping, preventive maintenance, spill prevention and response, inspections, employee training, and recordkeeping and internal reporting have been identified as measures that are broadly applicable to all industry types and acitivities [25] and are achievable through good engineering practices. The Agency has identified a number of methods for testing or evaluating the presence of non-storm water discharges, such as inspecting outfalls during dry weather conditions, conducting dye testing, and evaluating accurate schematics

[23] A more complete discussion of these potential pollutant sources can be found in the section 3 of the August 16, 1991 draft fact sheets (56 FR 40965).

[24] Subsequent to the August 16, 1991 proposal, EPA has reserved the regulatory deadlines for storm water discharges associated with industrial activities from facilities that are owned or operated by a municipality with a population of 100,000 or less, other than discharges from airports, powerplants or uncontrolled sanitary landfills (see April 2, 1992, (57 FR 11409)).

[25] See "NPDES Best Management Practices Guidance Document," EPA, 1979 and "Staff Analysis of Implementing Permitting Activities for Storm Water Discharges Associated with Industrial Activity," EPA, 1991.

available for meeting this requirement. Where a certification that the discharge has been tested or evaluated for the presence of non-storm water discharges is not feasible, today's permits do not require a certification, provided that the storm water pollution prevention plan indicates why the certification is not feasible and identifies potentially significant sources of non-storm water at the site, and the discharger notifies EPA. Today's permits require permittees to identify structural, vegetative, and/or stabilization measures to limit erosion and in a narrative consideration evaluating the appropriateness of traditional storm water management practices used to divert, infiltrate, reuse, or otherwise manage storm water runoff in a manner that reduces pollutants in storm water discharges from the site. The flexibility of these provisions will ensure that attainable practices are implemented based on an consideration of the costs of the measures and the application of the control techniques to a given facility.

The fourth component of the plan are comprehensive site compliance evaluations. The requirements for these evaluations include annual inspections of the facility, which are consistent with practices at well run facilities. In addition, the permit establishes targeted monitoring requirements for selected industrial activities. These monitoring requirements, which are authorized by section 308 of the CWA, are necessary to ensure compliance with the requirements of today's permits and to protect water quality. Monitoring requirements have been kept at a low frequency and apply only to targeted activities to limit cost of these requirements.

The Agency has developed specific guidance to assist facilities in developing plans that comply with the requirements of today's permits (see "Storm Water Management for Industrial Activities: Developing Pollution Prevention Plans and Best Management Practices," EPA, 1992). This guidance contains worksheets, checklists, and model forms that should significantly reduce the burdens of smaller facilities and help assist in the development of plans under today's permits in an achievable manner.

Several commenters indicated that the pollution prevention requirements in the August 16, 1991 draft permits were directed too heavily towards "traditional" industry and may not be the most cost-effective requirements for their facilities. Some of these commenters indicated that some facilities would be better off pursuing group applications or submitting individual applications.

In response, as discussed above, EPA believes that all of the components for the plans required by today's permits are essential and cannot be selectively deleted or phased in without hindering the effectiveness of the overall storm water pollution prevention efforts at a facility. However, the Agency notes that it has built considerable flexibility into today's pollution prevention plan requirements. Under today's permits, while permittees must comply with all applicable components of the plan, facilities can focus most heavily on those pollution prevention measures that will most effectively reduce pollutants to storm water discharges from their industrial activities. The Agency believes that the requirements in today's permits can be tailored for the different types of industrial facilities that generate storm water discharges associated with industrial activity. The Agency also wants to clarify that today's permits do not preclude operators of storm water discharges associated with industrial activity from continuing participation in an approved group application where they are already an approved member or submitting an individual application where they believe that the requirements of today's permits are not appropriate for their discharges.

One commenter noted that the requirements in the August 16, 1991 draft permits appeared reasonable, but that permit writers should have additional discretionary authority to waive some of the components of the general permit. In response, the Agency notes that today's permits do provide considerable flexibility in developing site-specific pollution prevention plans. Again, the Agency wants to clarify its view that all components of a storm water pollution prevention plan outlined in today's permits are needed to comply with the BAT/BCT standards of the CWA.

Industry comments regarding the level of specificity of requirements were mixed. A number of commenters commended the Agency on its efforts to promote flexibility in storm water management. Some industrial commenters urged EPA to provide greater detail in plan requirements or additional technical guidance to assist them in developing site specific plans and to allow facilities to better determine whether they are in compliance with the permit. One commenter noted that additional technical guidance could greatly reduce the burdens on small industries because facilities could then prepare their plans without the significant expense of an outside consultant.

In response to these concerns, the Agency has rearranged and reordered the requirements of the pollution prevention plans in today's permits and clarified several points found confusing by commenters. These changes have been made to simplify preparation and implementation of plans and to minimize confusion. As mentioned above, the Agency has also developed specific guidance to assist facilities in developing plans that comply with the requirements of today's permits (see "Storm Water Management for Industrial Activities: Developing Pollution Prevention Plans and Best Management Practices", EPA 1992). This guidance contains worksheets, checklists and model forms which should assist facilities which are not using outside consultants to develop plans under today's permits in an achievable manner.

Other commenters urged EPA to specify the objectives of the plans without prescribing the means by which the objectives must be achieved (e.g., to establish guidelines for pollution prevention measures, but to not specify how they will be achieved). In response, the Agency has considered the issue of the appropriate balance between flexibility and specifying requirements, and believes that the approach taken in today's permits is appropriate, (e.g. to identify specific classes of measures that must be addressed in a pollution prevention plan, but to provide sufficient flexibility in meeting such requirements as good housekeeping, preventive maintenance, spill prevention and response procedures, and employee training, so that specific procedures or actions are not prescribed). Today's permits require the development of plans that identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges from the facility and describe and ensure the implementation of practices which are to be used to reduce the pollutants in storm water discharges. Today's permits identify specific components that the plan must address, including requirements for a pollution prevention team, description of potential pollutant sources, measures and controls appropriate for the facility, and comprehensive site compliance evaluations.

Other commenters indicated that several provisions of the August 16, 1991 general permits (such as certain recordkeeping provisions) appeared to be redundant. In response, today's

permits have been modified to eliminate any such redundancy.

One environmental group, while noting that the concepts identified in the plan were sound and important and supporting the idea of having industrial facilities create well-targeted plans that contain the identified elements, indicated its belief that the approach was far too open-ended to ensure that any given facility will go beyond "business as usual" in preventing pollutants to its storm water discharges. The commenter urged the Agency to require specific practices or preventive actions or specific menus of practices. The commenter suggested that the requirements for traditional storm water controls and sediment and erosion practices should at a minimum contain both a Best Management Practices (BMP) menu and a minimum number of practices that each facility must select from the menu.

In response, the Agency disagrees with this commenter, and believes that today's permits establish requirements with a reasonable amount of specificity that will result in substantial reduction in the discharge of pollutants in storm water. As discussed above, the permit establishes a prohibition on the discharge of most non-storm water discharges, specific requirements for releases of hazardous substances, and requirements for the development and implementation of storm water pollution prevention plans. The provisions for pollution prevention plans require that permittees specifically address eight different types of measures and controls, as well as meet requirements for a pollution prevention team, identify potential pollutant sources, conduct comprehensive site compliance evaluations, and meet special requirements for specific industry categories.

The Agency has not established a menu of traditional storm water controls and sediment and erosion practices because the significant variability in facilities covered by today's permits precludes the identification of universal standards or practices that are appropriate or can be implemented by all permittees. For examples, small facilities where the entire facility is covered by impervious structures may not have areas where significant erosion occurs, and may have limited space for traditional storm water measures. Other facilities may have extensive areas with significant erosion potential and/or more opportunities for traditional storm water management measures.

However, the permit has been modified to provide that plans must contain a narrative consideration of the appropriateness of traditional storm water management practices used to divert, infiltrate, reuse, or otherwise manage storm water runoff in a manner that reduces pollutants in storm water discharges from the site. The plan must provide that measures determined to be reasonable and appropriate shall be implemented and maintained. The permit specifies that appropriate measures may include vegetative swales and practices, reuse of collected storm water (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, and wet detention/retention devices. With respect to sediment and erosion controls, the permit has been modified to provide that the plan must identify structural, vegetative, and/or stabilization measures to be used to limit erosion in areas with a high potential for significant soil erosion. The Agency believes that the additional clarity added to these provisions ensures that the permit is not too open-ended and that permittees will implement reasonable and appropriate storm water management measures and measures to limit erosion in areas that have a high potential for significant soil erosion.

In addition, the guidance manual "Storm Water Management for Industrial Activities: Developing Pollution Prevention Plans and Best Management Practices," U.S. EPA, 1992 identifies a number of specific storm water management measures and sediment and erosion controls that can be used to satisfy these requirements and discusses their general applicability to industrial sites. Storm water management measures addressed in the document include flow diversion practices; water reuse; vegetative practices, such as flow attention by use of open vegetated swales and natural depressions; infiltration of runoff on site via filter strips, swales, level spreaders, infiltration trenches, concrete grids, and modular pavement; and sequential systems (which combine several practices). Sediment and erosion practices discussed in the manual include the use of mulching, matting, temporary seeding, permanent seeding, permanent planting, sodding, chemical stabilization, interceptor dikes and swales, pipe slope drains, subsurface drains, filter fences, gravel or stone filter berms, storm drain inlet protection, sediment traps, sediment basins, outlet protection, check dams, and gradient terraces.

One commenter indicated that the permits should clarify the specific factors, including processes employed, engineering aspects, functions, costs of controls, location, and age of facility, that permittees should take into account when developing pollution prevention measures.

In response, today's permits require that permittees consider the relevant BAT and BCT factors when developing and implementing storm water pollution prevention plans. The following factors are to be considered when evaluating BAT requirements: the age of equipment and facilities involved; the process employed; the engineering aspects of the application of various types of control techniques; process changes; the cost of achieving such effluent reduction; and non-water quality environmental impacts (including energy requirements). The following factors are to be considered when evaluating BCT requirements; the reasonableness of the relationship between the costs of attaining a reduction in effluent and the effluent reduction benefits derived; the comparison of the cost and level of reduction of such pollutants from the discharge from publicly owned treatment works to the cost and level of reduction of such pollutants from a class or category of industrial sources; the age of equipment and facilities involved; the process employed; the engineering aspects of the application of various types of control techniques; process changes; and non-water quality environmental impacts (including energy requirements).

Other commenters suggested that similar plans, such as Spill Prevention Control and Countermeasure (SPCC) or BMP plans, could substitute as storm water pollution prevention plans. There were numerous comments on consistency with other plans, specifically expressing a concern about duplication of permitting. Many commenters argued that it was not effective to have three different plans covering safety, storm water pollution prevention, and/or SPCC. They felt that these plans should be consolidated.

Other program plans and requirements such as those listed by commenters contain provisions that meet some elements of the storm water pollution plan, but none, either alone or in conjunction with others, specifically addresses storm water concerns or the requirements for plans in today's general permits. EPA does, however, encourage facilities to use applicable practices and provisions from existing plans when developing their storm water pollution prevention plans. During the development of the storm water pollution prevention plan, EPA believes the use and incorporation of other

existing plans will help reduce the burdens associated with their development and implementation.

Pollution Prevention Team

The August 16, 1991 draft general permits contained a provision requiring that plans identify a pollution prevention committee of individuals within the plant organization who are responsible for developing the pollution prevention plan and assisting the plant manager in its implementation, maintenance, and revision.

In today's permits, the Agency has changed the name of the committee to "Pollution Prevention Team." The Agency believes that the term "Team" will better convey the purposes of the provision.

A number of commenters requested that the Agency simplify requirements for small businesses to implement pollution prevention committees. Some commenters indicated that many small businesses may only have one person dedicated to all aspects of environmental and safety and health regulatory compliance, or that facility owners or operators address regulatory compliance matters.

In response, the Agency believes that it is critical for plans to identify those employees who will be responsible for implementing the various provisions identified in the plan. EPA agrees that the storm water pollution prevention committee size will vary based on the facility size and complexity. The Agency agrees that in some situations it will be appropriate for the "Team" to be comprised of one employee. Today's permits have been clarified to reflect that the team or committee may be comprised of one employee where appropriate.

Several commenters indicated that because many facilities already have individuals who are responsible for environmental compliance, the creation of a pollution control committee only adds another layer to a compliance strategy. Several commenters indicated that the committee may interfere with the facility manager and that the facility manager should have ultimate responsibility and accountability for the content and implementation of the storm water pollution prevention plan.

The Agency agrees that many facilities have already identified individuals responsible for environmental compliance and that often the facility manager should have ultimate responsibility and accountability for the content and implementation of the plan. The Agency believes that it is important that the plan specifically identify those individuals responsible for developing the pollution prevention plan and having specific roles in its implementation, maintenance and revision. The Agency believes that the commenters' situation is a fairly common practice among industrial facilities and that today's permits are designed along compatible principles intended to identify such individuals and their relationships to others who have critical roles in implementing measures identified in pollution prevention plans. The Agency believes that identifying a pollution prevention team will ensure the structure and organization necessary for successful plan implementation. The Agency strongly recommends that individuals who have already been identified as being responsible for environmental compliance at industrial facilities be given central roles in Pollution Prevention Teams. The Agency does not intend the Pollution Prevention Team in any way to interfere with the facility manager, but rather to assist the facility manager in developing and implementing the plan. In addition, the Agency anticipates that in many instances the plant manager or his/her equivalent will be a prominent member of the Pollution Prevention Team. EPA disagrees that the requirement to identify the Team in the plan will create undue burdens on facilities where responsible individuals have already been identified, since such individuals should generally play a major role on the Team.

One commenter indicated that the pollution prevention committee/team should not be required to "address all aspects of the facility storm water pollution prevention plan." The Agency disagrees with this comment; it is critical that responsibility be assigned for implementing each activity identified in the plan.

One commenter indicated that the pollution prevention committee is unnecessary and noted that most individual NPDES permits do not require such committees. In response, the Agency believes that a pollution prevention team is necessary for the successful implementation of a source control-oriented pollution prevention-based approach. The Agency agrees that most individual permits for process wastewaters do not require the identification of pollution prevention measures. However, most individual permits for process wastewaters take a different approach to regulating pollutant discharges, that of numeric effluent limitations, and do not focus on comprehensive source controls.

Description of Potential Pollutant Sources

The August 16, 1991 draft general permits contained provisions requiring that plans contain certain information to assist in identifying and characterizing potential sources that may contribute pollutants to storm water discharges. The pollutant source identification requirements in the August 16, 1991 draft permits addressed requirements for a site map, a topographic map, a narrative description of significant materials used at the site, a lost of spills and leaks, an estimate of the types of pollutants likely to be present in the storm water, and a summary of sampling data.

Several industry commenters agreed that successful pollution prevention strategies must be based on an accurate understanding of the pollution potential of the site being considered.

Some commenters felt that the requirement for the plan to include a topographic map was too burdensome. They indicated that a topographic map would not be useful and suggested that a site map would be adequate. In response to these comments, the Agency is concerned about the confusion with respect to how facilities intend to use the topographic map. As a result, to simplify these requirements, today's permits do not specifically require the inclusion of a topographic map. The Agency believes that a site map indicating an outline of the drainage area of each storm water outfall, and other appropriate information,[26] will generally serve the purposes that a topographic map would be used for in the context of pollution prevention plan. The agency also notes that under the August 16, 1991 draft general permits facilities could utilize a site map as an alternative to a topographic map, thus today's permits do not constitute a significant change.

One commenter indicated that it would be difficult to delineate off-site portions of the drainage areas of some outfalls. The commenter suggested that they only be required to show the parts of the drainage that are on site. In response, the Agency has clarified in today's permits that only the portions of

[26] In today's permits, drainage site maps must indicate an outline of the portions of the drainage area of each storm water outfall, each existing structural control measure to reduce pollutants in storm water runoff, surface water bodies, locations where significant materials are exposed to precipitation, locations where major spills or leaks have occurred, and locations of the fueling stations, vehicle and equipment maintenance and/or cleaning area, loading/unloading area, locations used for treatment, storage or disposal of wastes, liquid storage tanks, processing areas and storage areas

the drainage area within the facility's boundaries need to be identified.

A number of commenters indicated that certain industrial activities, such as loading and unloading operations, may occur under covered areas such as in buildings or loading docks with sufficient cover to prevent exposure to precipitation and that spills are not normally exposed to storm water. One commenter requested that EPA clarify that the list of significant spills and leaks should be confined to those materials that cannot be fully cleaned and removed and could potentially come in contact with storm water. Another commenter suggested that EPA only require spill information for areas to be covered by the general permit. One commenter suggested that the listing of spills and leaks should not include releases to impervious surfaces that are automatically drained to waste treatment sumps and that do not go to storm drains, or to impervious surfaces that are cleaned up without any chemicals entering a storm drain. Another commenter suggested that spills and leaks into secondary containment structures should not be listed, as the presence of a secondary containment system gives adequate notice that care is exercised, and that this requirement was unnecessary and unduly burdensome.

In response, EPA recognizes that some spills, such as those that occur inside buildings that drain to a sanitary sewer, are not potential sources of pollution to storm water discharges, and thus do not need to be identified in the storm water pollution prevention plan. However, the agency believes that spills to sumps or secondary containment areas that receive storm water discharges should generally be identified in the storm water pollution prevention plan because such devices can overflow during large or repeated storm events, or storm water may be drained and discharged from such devices. The Agency also believes that it is important to identify spills that occur on impervious surfaces that are exposed to precipitation or that otherwise drain to a storm drain even when the spill is cleaned up before any of it enters a storm drain. Listing such events provides an indication of potential pollutant sources that may occur in the future, and helps direct priorities for developing and implementing spill response measures. In response to the concerns raised in these comments, the Agency has limited this provision to significant spills and leaks at areas that are exposed to precipitation or that otherwise drain to a storm water conveyance at the facility.

One commenter recommended that spill prevention and response procedures be deleted because EPCRA and the Resources Conservation Recovery Act (RCRA) already address accidental releases. Another commenter suggested that the list of spills be deleted and that the need for such a list is adequately addressed by reportable quantities, as spills of such size must be reported and are already on file with the government.

In response, the Agency wants to clarify that the central reason for requiring this information in the pollution prevention plan is to ensure that dischargers adequately consider potential sources of pollution when identifying and implementing storm water pollution prevention measures. The Agency believes that such site evaluation is critical for appropriate implementation of storm water pollution prevention measures. Similarly, such information provides EPA with a better basis for reviewing and evaluating the adequacy of specific plans. The Agency also notes that the spill reporting measures under the other statutes identified above have limited scope and objectives, and in general, do not specifically consider the potential of pollutant discharges in storm water or controls for such pollutant discharges in a comprehensive manner.[27] [28] The Agency also notes that spill reporting requirements have been developed under section 311 of the CWA and under section 102 of CERCLA. However, the Agency notes that these requirements only apply to releases of hazardous substances or oil in excess of reportable quantities, and that this reporting requirement focuses primarily on emergency response to such incidents. These reporting requirements do not address releases of materials that are not classified as hazardous substances or oil, or releases of hazardous substances or oil that are less than reporting quantities. The Agency believes that many spills, leaks, and releases that are not considered to be reportable quantities of a hazardous substance can still contribute significant amounts of pollutants to storm water discharges.

One commenter indicated that numerous local, State, and/or Federal spill reporting requirements already in place require spill reporting and recommended that any spill reports prepared in accordance with these existing spill reporting regulations be referenced or attached to the storm water plan.

In response, the Agency agrees that these spill reports can, in some cases, provide useful information for identifying potential pollutant sources, and encourages permittees to review such information when developing and modifying plans. However, the Agency is not specifically requiring that such information be included in the plan in order to allow the permittee to best determine the appropriate form of such information.

One commenter requested clarification of whether the term "significant spills" included spills that were not in excess of reporting quantities established under section 311 of the CWA or section 102 of CERCLA. In response, EPA notes that the definition section of the permit contains a definition of "significant spills" that includes, but is not limited to, releases of oil or hazardous substances in excess of reportable quantities under section 311 of the Clean Water Act (see 40 CFR 110.10 and CFR 117.21) or section 102 of CERCLA (see 40 CFR 302.4). The Agency believes that it is appropriate to include certain releases that are not releases of oil or hazardous substances in excess of reportable quantities for several reasons. The materials that are considered hazardous substances do not identify all materials that can cause water quality impacts. In addition, discharges of hazardous substances in amounts less than reportable quantities can cause water quality impacts. Other significant spills include spills that could potentially add significant amounts of pollutants. Such listing should address other materials in addition to materials that are listed as hazardous substance or as oil. In addition, instances of chronically repeated smaller spills can constitute significant spills if such spills, taken together, add significant amounts of pollutants to storm water discharges.

Another commenter requested that EPA clarify whether the list of spills

[27] Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) (also known as title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986), requires operators of certain facilities that manufacture, import, process, or otherwise use listed toxic chemicals to report annually their releases of those chemicals to the environment. Only those facilities that manufacture, import, process, or otherwise use a listed toxic chemical in excess of applicable threshold quantities of the chemical, have a primary SIC code of 20 through 39, and have 10 or more full-time employees must report. Section 313 of EPCRA focuses on the annual reporting of releases, and not on the control of such releases.

[28] Subtitle C of the Resources Conservation and Recovery Act (RCRA) authorizes EPA to establish requirements for facilities that generate, transport, or treat, store or dispose of materials that meet the regulatory definition of hazardous wastes. The RCRA Subtitle C regulations include requirements for certain generators and treatment, storage, and disposal facilities to develop and implement contingency plans and emergency procedures to minimize hazards to human health or the environment from fires, explosions, or any unplanned release of hazardous waste or hazardous waste constituents to air, soil, or surface water. In general, RCRA does not address materials that are not considered to be wastes, and does not address wastes that are not regulated as hazardous wastes.

needed to be updated to identify significant spills and leaks that occur after the effective date of the permit. In response, the Agency wants to clarify that plans are to be updated to address significant spills and leaks that occur during the term of the permit. This information is necessary to ensure that major potential sources of pollution to storm water discharges are identified.

One commenter indicated that existing quantitative data describing the concentration of pollutants in storm water discharges may be unrepresentative of typical events and good sampling protocols may not have been used. The commenter indicated that the discharger may have conducted the sampling in order to evaluate potential problems without intending to submit the data.

In response, the Agency believes that existing quantitative data can in many cases be a useful, readily available source of information to identify potential pollutant sources. The Agency recognizes that often the discharger did not intend to submit such data, but believes that such data can still be useful for evaluating potential pollutant sources. The Agency also recommends that, where possible, dischargers provide a description of procedures and protocols that were used when collecting and analyzing samples. This type of information can be useful in evaluating the validity and accuracy of the data. It should also be emphasized again that EPA is not requiring this data to be submitted with the NOI. Rather, today's permits provide only that such data be identified in the NOI and made available only when the permitting authority requests it.

One commenter requested clarification of whether sampling data collected during the term of the permit must be summarized in the plan. In response, EPA is clarifying that sampling data collected during the term of the permits must be summarized in the storm water pollution prevention plan.

One commenter urged the Agency to examine requirements for the narrative description of significant materials that have been treated, stored, or disposed. The commenter suggested that a requirement for a materials storage and handling report for all chemicals and compounds listed for the facility's effluent guidelines under the NPDES program and for other chemicals used and byproducts formed at the site be added to the narrative description of significant materials and to the risk identification and assessment/material inventory portion of the permit.

In response, the Agency wants to clarify that the inventory of exposed materials is intended to address materials that potentially may be exposed to precipitation, including chemicals used and byproducts formed at the site that may be exposed to precipitation. Among the items that should be included on the inventory area materials related to chemicals or compounds listed in effluent limitations guidelines to which the facility is subject or chemicals or compounds specifically controlled or limited in any other NPDES permit for the facility should be addressed to the extent that such materials may be exposed to precipitation.

One commenter suggested that a current list and description of materials is adequate; a description of materials that may have been exposed to storm water and the management practices in the past three years is excessive. However, another commenter indicated that a three year period for this requirement was too short, and that many sites have been used for purposes other than those for which the sites are currently operated. This commenter suggested that any historical activities at the site that now contribute to storm water pollution should be identified.

In response, the Agency agrees that past activities may result in pollutant sources for present storm water discharges, and that it is appropriate to address materials that may have been exposed to storm water in the past three years. EPA believes that the three year period is reasonable and does not impose excessive burdens for collecting information on permittees. The Agency notes that the three year period is consistent with similar requirements for individual applications for storm water discharges associated with industrial activity at 40 CFR 122.26(c)(1)(i) (B) and (D) and general NPDES records retention requirements under 40 CFR 122.21(p) and 40 CFR 112.7(d)(8).

The August 16, 1991 draft permits proposed that the plan provide a prediction of flow and an estimate of the types of pollutants likely to be present in the storm water for areas of the plant that generate storm water discharges associated with industrial activity with a reasonable potential for containing significant amounts of pollutants. Several commenters requested clarification of what constitutes a "reasonable potential for containing significant amounts of pollutants." One commenter recommended that the "reasonable potential" language be removed.

In response, EPA believes that permittees can evaluate whether areas of the facility have a reasonable potential for containing significant amounts of pollutants based on a consideration of structures and activities in that area of the facility. Activities such as loading and unloading of materials, outdoor storage of raw materials or products, outdoor process activities, outdoor equipment or vehicle maintenance activities, dust or particulate generating processes, illicit connections or management practices, and waste disposal will generally have a reasonable potential for containing significant amounts of pollutants in storm water discharges. Process or storage equipment which is exposed to precipitation or structures such as metal roofs can have a reasonable potential for containing significant amounts of pollutants. Significant amounts of pollutants would include pollutant concentrations or unit loadings above those typically found in runoff from areas where there is no industrial activity or other significant sources of pollutants exposed to precipitation and minimal potential for deposition of pollutants, or that had potential to adversely affect water quality. EPA is retaining the "reasonable potential" language, but has modified the requirement to limit it only to areas of the facility with a potential for contributing pollutants to storm water discharges.

One commenter indicated that the requirement to predict the total quantity of pollutants likely to be in storm water discharges is unreasonable, and could not accurately be based on one sample per year. Several commenters also recommended that a facility be required to make data estimates only when there has been a demonstration that a facility's storm water will be contaminated.

In response, the Agency wants to clarify that an estimate of the total quantity of pollutants likely to be in storm water discharges is not required by this provision. Rather, the intent of the language used in the August 16, 1991 draft permits was to require dischargers to identify the types of pollutants likely to be present in storm water discharges associated with industrial activity. Today's permits have been modified to clarify this point. Since today's permits do not require all facilities to sample their storm water discharge, the Agency believes that this provision has additional importance in ensuring that information in the plan is evaluated and potential pollutant sources and pollutants are identified. EPA believes that it is consistent with the objectives of a preventive strategy that pollution prevention measures be implemented in situations where there is a potential for a facility's storm water to contain a particular pollutant. For example, spill prevention measures and/or good housekeeping measures, which prevent pollutants from getting pollutants into

storm water, can be appropriate where spills have not occurred or where good housekeeping is currently preventing pollutants from entering the storm water. Thus, EPA does not agree with the comments that all dischargers should be required to identify pollutants in storm water only when there has been a demonstration that such pollutants are present. Today's permits establish monitoring requirements for targeted industrial activities to provide more detailed information regarding the nature and extent of pollutants in storm water discharges from these facilities.

One commenter indicated that the requirements to provide drainage maps, a narrative description of material management practices and control measures, and a history of significant spills were too extensive, and that some dischargers would find it preferable to submit individual permit applications. In response, the Agency has considered the burdens associated with developing such information and believes that the requirements are necessary to begin to identify potential pollutant sources. The Agency does not believe that the pollutant source identification requirements in today's permits are excessive. Much of the information required in the description of potential pollutant sources, such as the inventory of exposed materials, can be obtained from facility records, or site inspections. A list of significant spills and leaks can be obtained from facility maintenance records, reporting records and discussions with employees. EPA expects that many facilities will have existing site maps indicating the major features of the facility or will be able to develop such maps based on site inspections. Plant managers or other employees should be readily able to develop descriptions of potential pollutant sources and use best professional judgement in evaluating the pollution potential of the various activities. A prediction of the direction of flow can be based on site topography and simple observations of drainage patterns. The identification of the types of pollutants likely to be present in storm water discharges associated with industrial activity can be based on knowledge of the plant activities and processes. EPA has issued technical guidance that will provide permittees with additional assistance in complying with these requirements. EPA also notes that the source identification requirements in today's permits are comparable with the source identification requirements in individual permit applications. In addition, the individual permit applications requirements for storm water discharges require the submittal of sampling data, whereas today's general permits do not require dischargers to sample their storm water discharges as part of the NOI application.

Measures and Controls

The August 16, 1991 draft general permits requested comments on eleven baseline pollution prevention measures. The measures addressed pollution prevention committees; risk identification and assessment/material inventory; preventive maintenance; good housekeeping; spill prevention and response procedures; storm water management; sediment and erosion prevention; employee training; visual inspections; recordkeeping and internal reporting procedures; and non-storm water discharges. As discussed earlier in today's notice, these requirements have been rearranged and reordered to provide additional clarity and minimize confusion.

One commenter suggested that the permit specifically require and pollutant generating material to be completely sheltered from precipitation and wind. In response, the Agency recognizes that covering or sheltering pollutant generating material can be an effective means of reducing pollutants in storm water discharges. However, the Agency recognizes that in some situations, this may not be the most cost-effective approach to controlling pollutants. For example, the Agency has defined an effluent limitation guideline for coal pile runoff from steam electric facilities that is typically met by collecting and treating the runoff rather than covering the piles. Thus, the Agency is not prepared at this time to mandate that all pollutant generating material be completely sheltered from precipitation and wind.

One commenter indicated that EPA has not shown that existing plant maintenance practices and recordkeeping are insufficient. In response, NPDES permits for storm water discharges associated with industrial activity must establish conditions in accordance with the CWA, and the Agency does not have the burden of showing that existing plant maintenance practices and recordkeeping are insufficient to establish today's permit requirements. In fact, the Agency has considered typical industry practices at well operated facilities when establishing the requirements in today's permits. The Agency believes that plant maintenance practices and recordkeeping are an important component to a storm water pollution prevention strategy. The Agency recognizes that some facilities will have adequate maintenance practices and recordkeeping that have been successful in preventing pollutant discharges in storm water. Under today's permits, these facilities are only required to document such practices in a pollution prevention plan and continue them.

Several commenters indicated that requirements such as good housekeeping should be limited to areas with a tangible connection to the storm water discharge. In other words, the pollution prevention requirements should not apply to indoor locations with no potential to contribute pollutants to storm water discharges. In response, the Agency agrees with this commenter. The Agency notes that under the August 16, 1991 draft permits, priorities for controls in a plan were to reflect identified potential sources of pollutants at the facility. Where indoor activities are not a potential source of pollutants, good housekeeping measures do not have to be addressed for such areas. The Agency has clarified today's permits with regard to this point.

One commenter suggested that the inventory of types of material handled should be limited to those materials that could impact storm water. In response, the Agency has clarified today's permits to provide that the inventory of materials handled at the site is limited to materials that potentially may be exposed to precipitation.

One commenter suggested that oil and gas operations in arid areas should not be required to develop certain plan components, such as the certification for non-storm water discharges, risk identification, and assessment/material inventory, because such operations do not have conventional storm drains and facilities have little potential to discharge to navigable waters.

In response, EPA notes that a facility that does not have a storm water discharge associated with industrial activity is not required to obtain permit coverage. However, storm water discharges associated with industrial activity that occur as the result of infrequent storms or as the result of overflowing detention ponds must be authorized by an NPDES permit. The Agency believes that pollution prevention measures identified in today's permits are appropriate because they will reduce the potential for sources to contribute pollutants to storm water under various climatic conditions, including arid conditions. Pollution prevention activities such as risk identification, and developing an assessment/material inventory are important in arid regions to identify

potential sources of pollutants to storm water. Improper non-storm water discharges to storm water conveyances can occur in arid conditions since most sources of non-storm water are not related to precipitation events but rather are related to process waters from other sources such as wash waters or produced waters. The Agency also wants to clarify that dischargers may seek alternative permit requirements by submitting an individual permit application or participating in a group application.

One commenter indicated that the requirement to perform a "risk assessment" was not realistic for small businesses. In response, the Agency noted that different commenters appeared to be interpreting the requirement for a risk assessment differently, with some facilities apparently assuming that extensive monitoring and evaluation would be required. In an effort to minimize confusion, the language in today's permits has been modified by removing the term "assessment" from the risk identification section. This provision does not require a formal risk assessment, but rather requires a narrative description of the potential pollutant sources at specified material handling areas (loading and unloading operations, outdoor storage activities, outdoor manufacturing or processing activities, significant dust or particulate generating processing, and on-site water disposal practices), an identification of significant potential sources of pollutants at the site, and, for each potential source, an identification of pollutants of concern.

Several industry commenters requested that the requirements for storm water management be clarified. In response, today's permits have been modified to explain that storm water management measures are used to divert, contain, reuse, or otherwise manage storm water runoff in manner that reduces pollutants in storm water discharges from the site. In addition, the permit has been modified to list several classes of typically used storm water management measures: vegetative swales and practices, reuse of collected storm water (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, and wet detention/retention devices.

One commenter suggested that EPA define a criterion for determining whether the use of traditional storm water management measures are reasonable and appropriate. When evaluating whether the use of traditional storm water management measures are reasonable and appropriate, dischargers should evaluate the costs of the measure, the potential pollutants removed, and the potential for ground water impacts.

EPA requested comments on providing facilities that reuse substantially all storm water with an exemption from certain storm water pollution prevention plan requirements. Several commenters supported this option, arguing that by reducing discharge volumes facilities pose less environmental risk.

EPA believes that the collection of storm water for later uses, such as irrigation, dust control, or process water, can in some cases reduce the immediate potential for pollutants to be discharged to waters of the United States by decreasing the amount of storm water that is directly discharged. In addition, the use of storm water at a facility can reduce the demand on other water supplies and/or reduce energy consumption. However, the Agency notes that some forms of storm water reuse lead to the ultimate discharge of the pollutants in the storm water to waters of the United States. For example, use of storm water for dust control, lawn irrigation, or washings in outdoor areas may result in pollutants migrating to waters of the United States via wind deposition or subsequent storm events. Use of storm water for cooling water may allow pollutants to pass through a process and be discharged to waters of the United States. In such cases, pollution prevention measures prior to reuse are still appropriate. Therefore, EPA has decided against adopting an exemption based on water reuse.

EPA encourages facilities to incorporate storm water reuse as a site-specific pollution prevention practice where such practices will result in the reduction of the discharge of pollutants to waters of the United States. Today's general permits have been modified to specifically list storm water reuse as a potential practice related to the management of runoff. The Agency believes that this approach will allow facilities employing storm water reuse management practices as part of their pollution prevention plans to minimize the costs associated with storm water management measures where appropriate water reuse is the most cost effective storm water management measure.

The August 16, 1991 draft permits provided that permittees are to certify that the facility's storm water discharge (or conveyance) has been tested for the presence of non-storm water discharges. This provision is similar to a provision in the requirements for individual permit applications that requires a certification that all outfalls have been tested or evaluated for the presence of non-storm water discharges (see 40 CFR 122.26(c)(1)(i)(C)).

One commenter recommended that the certification requirement for non-storm water discharges be consistent with the language used for individual permit applications for storm water discharges. Another commenter suggested that permits should allow certifications based on evaluations other than testing (as provided in the individual permit application requirements). One commenter indicated that requiring permittees to check for and remedy possible entrance of non-storm water discharges could be more efficient and less costly than other tests.

In response, the November 16, 1990 permit application regulations require applicants to certify that storm water discharges be tested or evaluated for the presences of non-storm water discharges. In the August 16, 1991 draft permits, the Agency inadvertently limited the certification to testing, and did not specify evaluation as a method for certification, although such evaluations were discussed earlier in the fact sheet. The Agency has modified today's permits to make them more consistent with the November 16, 1990 permit application requirements by providing that a facility may certify based on an evaluation of illicit connections.

Two commenters raised concerns that the requirement for facilities to certify that they have tested for the presence of non-storm water discharges to storm sewers could be onerous, particularly to very small businesses. The commenters indicated that some facility operators may not be able to locate floor plans, drainage maps, and other materials required to identify and remedy illicit connections.

In response, as discussed above, the Agency has modified today's permits to clarify that permittees may either test or evaluate their facility for the presence of non-storm water discharges. This approach provides flexibility for complying with the certification requirement and does not require permittees to locate floor plans, or drainage maps where they can inspect storm water discharge points or conduct evaluations on another basis. The Agency believes that most facilities can evaluate or test for the presence of non-

storm water discharges in a manner that is not onerous or overly costly. For example, at many facilities, the discharger can observe for flow in downstream portions of storm drains during dry weather conditions when sources that generate non-storm water are operating or when water from a hose or other source is added to potential entry ways, such as floor drains, to the storm sewer system.[29] Today's permits also provides that where a certification is not feasible, a certification is not required, provided that the storm water pollution prevention plan indicates why the certification is not feasible and identifies potential significant sources of non-storm water at the site, and that the discharger notifies EPA.

One commenter suggested that the permits contain a limited waiver for small businesses faced with the costs of removing illicit connections. Another commenter suggested that costs to correct improper connections may be prohibitive for small businesses. In response, the CWA requires that point source discharges of pollutants to waters of the United States are illegal except as authorized by an NPDES permit. EPA cannot waive this requirement for small businesses. Non-storm water discharges to waters of the United States that are not authorized by an NPDES permit that establishes appropriate technology-based and water quality-based requirements are in violation of the CWA. Today's permit only establishes requirements for a specific set of non-storm water discharges. Addressing requirements for other classes of non-storm water discharges in today's permits is beyond the scope of today's permits. Although today's permits authorize several specific classes of non-storm water discharges that are in compliance with pollution prevention measures, today's permits cannot authorize all non-storm water discharges from small businesses. Thus, facilities with non-storm water discharges to their storm water conveyance system that are not authorized by today's permit are required to either obtain an NPDES permit for such discharge or eliminate the discharge.

One commenter noted that EPA does not require discharge permits for "total retention" systems and requested that EPA define a design storm to determine whether a retention system could qualify. The commenter noted that the limitations in several effluent guidelines for storm water do not apply to discharges resulting from a storm event greater than the 25-year, 24-hour event. EPA would like to clarify that any point source discharge of storm water associated with industrial activity to waters of the United States (including those through a municipal separate storm sewer system to waters of the United States) legally requires a discharge permit. This includes any potential discharge from a retention or detention device, regardless of the size of the storm. Discharges as a result of a catastrophic event could be subject to enforcement discretion by the permitting authority, in consultation with the State water quality agency. The Agency recognizes that several effluent limitations guidelines for classes of storm water do not apply to discharges resulting from events of greater magnitude than a specified design storm. This is primarily because these guidelines are based on a consideration of treatment techniques which typically involve collection and storage of the storm water prior to treatment. The design storm threshold in the guidelines allows dischargers to design the storage units necessary in the treatment system. The requirements in today's permits for storm water pollution prevention plans do not require the discharger to provide storage for storm water. Rather, the pollution prevention measures that are identified in today's permits can be implemented regardless of storm size, and therefore, an exemption for discharges that exceed a specific design storm is not necessary.

One commenter requested clarification of who certifies that storm water discharges have been tested for the presence of non-storm water discharge and how the certification is made. In response, part V.G of today's permits specify signatory requirements for certifications, including the certification regarding non-storm water discharges.

One commenter suggested that EPA should specify a frequency for testing storm sewers for illicit connections and recommended a frequency of more than once per year. In response, the Agency believes that conducting the testing or evaluation required by today's permits once per permit term may be appropriate for some facilities where new sources of non-water are not added at the facility. Thus, today's permits do not establish a frequency of testing of once per year.

One commenter suggested that smoke tests should be listed as a method for identifying non-storm water discharges to separate storm sewers. In response, the Agency has specifically not listed smoke tests because of the potential to misapply such tests in evaluating the presence of non-storm water discharges to storm sewers. Smoke testing (blowing smoke from a downstream point in a pipe up through the pipe) can be a useful technique for detecting storm drains to sanitary sewers. However, smoke tests are often ineffective at finding non-storm water discharges to separate storm sewers. This is because line traps which are intended to block sewer gas (and will prevent the passage of smoke) are commonly used on non-storm water drain systems. (Line traps are less frequently used on storm drains).

Several commenters requested clarification on which employees require training. One commenter indicated that some industrial facilities would have large numbers of clerical and administrative personnel who would have no opportunity to create or abate storm water pollution. The Agency agrees with this commenter. Today's permit has been modified to provide that employee training programs are to inform personnel responsible for implementing activities identified in the storm water pollution prevention plan or otherwise responsible for storm water management at all levels of responsibility of the components and goals of the storm water pollution prevention plan.

Several commenters recommended that the pollution prevention measures used for the construction industry be used for the mining industry. In response, while many of the land disturbing operations and subsequent stabization measures at mining sites are similar to practices and activities at construction sites, the Agency notes possible differences between the two classes of activities, such as the greater use of toxic chemicals at some classes of mining sites. The Agency also notes that there is an overlap between the types of controls the August 16, 1991 draft permits required for construction sites and those required for other industrial activities, particularly with respect to erosion and sediment measures and storm water management (or maanagement of runoff) measures. The Agency notes that the greater

[29] A more complete discussion of methods to identify illicit connections can be found in the draft "Manual of Practice: Identification of Illicit Connections," U.S. EPA, September 1990.

overlap between measures used at mining sites and those used at construction sites generally involves erosion and sediment measures and storm water management measures. The Agency believes that the requirements in today's permits are appropriate for storm water discharges from mining operations that are covered by today's permits, and recommends that where such operations are similar to construction activities plans emphasize sediment and erosion controls and storm water management measures. Again, the Agency wants to clarify that dischargers may seek alternative permit requirements by submitting an individual permit application or participating in a group application.

A number of State and local agencies indicated that they generally opposed diverting storm water to sewage treatment plants as an option for preventing pollutants in storm water. These commenters indicated that efforts should be focussed on controlling pollutants in storm water at the source, and that the option should be limited to discharges containing significant amounts of pollutants. Treatment plants serving a separate sanitary sewer system were not designed to handle the large amounts of storm water volume that can be produced in an urban area. These commenters requested that EPA clarify that wastewater treatment agencies have authority to approve or reject any application to introduce storm water into the sanitary sewer system. In response, the Agency notes that diversion of storm water discharges to sewage treatment plants was only raised as an option for consideration in the fact sheet to the August 16, 1991 draft permits. Today's permits do not specifically require permittees to discharge their storm water to sewage plants. As noted in the August 16, 1991 notice, such diversion must be coordinated with the operators of the sewage treatment plant and the collection system to avoid worsening any existing problems with either combined sewer overflows (CSOs), basement flooding, or wet weather operation of the treatment plant. The Agency agrees the operators of treatment plants (or operators of collection systems) typically have authority to approve or reject the introduction of storm water into the sanitary sewer system.

Comprehensive Site Compliance Evaluation/Monitoring

The August 16, 1991 draft permits provided that storm water pollution prevention plans are to include provisions for qualified plant personnel to inspect designated equipment and plant areas. In addition, the August 16, 1991 draft permits required an annual site inspection to verify that the description of potential pollutant sources in the plan is up to date and accurate and that the pollution prevention measures identified in the plan are being implemented and are adequate.

On April 2, 1992, (57 FR 11394) EPA published final regulatory modifications at 40 CFR 122.44(i)(4) that require NPDES permits for storm water discharges associated with industrial activity to require, at a minimum, the discharger to conduct an annual inspection of the facility site to identify areas contributing to a storm water discharge associated with industrial activity and evaluate whether measures to reduce pollutant loadings identified in a storm water pollution prevention plan are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. In addition, the April 2, 1992 regulations provide that NPDES permits for storm water discharges associated with industrial activity must require the discharger to maintain for a period of three years a record summarizing the results of the inspection and a certification stating that the facility is in compliance with the plan and the permit and identifying any incidents of noncompliance. Such reports and certification must be signed in accordance with 40 CFR 122.22. The April 2, 1992 regulatory modifications were made in response to comments generally indicating that site inspections are an appropriate tool for assisting in evaluating compliance with pollution prevention measures for storm water discharges.

A number of commenters on the August 16, 1991 notice supported the use of inspections to ensure compliance with storm water pollution prevention plan requirements. Some commenters indicated that routine inspections and maintenance by qualified persons, along with adequate records of such inspections, were critical to ensuring adequate and properly implemented pollution prevention measures.

Several commenters encouraged EPA to require annual, in-depth inspections of facilities to identify the potential for pollutants to enter drainage systems. Some of these commenters suggested that more frequent but less comprehensive inspections could supplement the detailed annual inspection and would ensure that potential pollution sources of significant concern are detected. However, several commenters requested that EPA clarify the differences between the two inspection provisions of the August 16, 1991 draft permits. Several of these commenters indicated that the requirements appeared to be duplicative and suggested that EPA eliminate one of the inspection requirements.

In response, the Agency has renamed the term "site inspection" as used in the context of annual inspections to be "Comprehensive Site Compliance Evaluation" to clarify the difference between comprehensive, in-depth evaluations of all areas of the facility that generate storm water associated with industrial activity and more frequent, less comprehensive inspections that may focus specifically on one or two potential pollutant sources, such as inspecting drip pans for accumulation of materials.

The requirements in today's permits for comprehensive site compliance evaluations are consistent with the minimum requirements at 40 CFR 122.44(i)(4) for inspections in NPDES permits for storm water discharges. Evaluations conducted under this provision are to be based on in-depth inspections and are to evaluate the discharger's compliance with its storm water pollution prevention plan and with today's permits. As part of these evaluations, the portions of the site that generate storm water discharges associated with industrial activity must be inspected for potential pollutant sources and for the effectiveness of controls developed as part of the storm water pollution prevention plan. The pollution prevention plan for the facility must be revised where necessary to address the findings and reflect the recommendations of the inspection. Additionally, an annual certification must be prepared indicating that the storm water pollution prevention plan was evaluated as part of an inspection, that the plan is adequate for control of facility storm water discharges, and that the facility is in compliance with the plan.

In addition to the requirements for comprehensive site compliance evaluations, today's permits also require inspections of designated equipment and areas of the facility. This requirement recognizes that periodic routine inspections of certain equipment or areas of the facility are appropriate pollution prevention measures. The Agency has included this provision of the permit separately to ensure that facilities conduct more frequent inspections of certain activities (e.g., leak detection measures for specified equipment or daily or weekly

walkthroughs to ensure good housekeeping) without the burdens of a more intensive comprehensive site compliance evaluation.

Several commenters requested clarification of what constituted qualified personnel for the purpose of conducting comprehensive site compliance evaluations and inspections. In response, the Agency is hesitant to define specific plant officials that must conduct either comprehensive site compliance evaluations or more frequent inspections. The Agency believes that qualified personnel must have sufficient technical abilities to conduct the inspection or evaluation. With respect to inspections, the personnel conducting the inspection must be aware of the goals of the inspection. (For example, personnel inspecting a site to ensure that good housekeeping practices are being implemented must be able to identify potential sources of pollutants associated with poor housekeeping efforts. Personnel inspecting spill response procedures must be able to evaluate the readiness, accessibility, and adequacy of equipment necessary to respond to potential spills.)

In addition, the personnel conducting the inspection must be familiar enough with the portion of the industrial process being inspected to appropriately accomplish the goals of the inspection. With respect to comprehensive site compliance evaluations, the personnel conducting the evaluation must be knowledgeable of the contents and objectives of the facility's storm water pollution prevention plan and the permit. In addition, the personnel must have sufficient knowledge of the operations at the facility to evaluate the effectiveness of pollution prevention measures and to identify potential sources of pollutants to storm water discharges. In addition, the personnel should generally be key members of the storm water pollution prevention team identified in the plan.

Some commenters expressed concerns about monitoring or inspection requirements for inactive mining sites. The April 2, 1992 rule provides that NPDES permits for storm water discharges associated with industrial activity from inactive mining operations may, where annual inspections are impracticable, require certification once every three years by a Registered Professional Engineer (PE) that the facility is in compliance with the permit, or alternative requirements. Today's permits provide that where annual site inspections are shown in the plan to be impracticable for inactive mining sites due to remote location and inaccessibility of the site, comprehensive site compliance evaluations are to be conducted at least once every three years. EPA has selected this lesser frequency in response to comments that inactive mining operations are often in remote areas that are not necessarily supported by infrastructure that allows easy access.

A number of commenters urged EPA to require that a PE be required to certify that plans "be prepared in accordance with good engineering practices". Some of these commenters urged the Agency to model PE certification requirements after similar requirements under Spill Prevention Countermeasure and Containment (SPCC) requirements at 40 CFR 112.3. In response, the Agency recognizes that a PE certification can be a useful tool, particularly when evaluating the pollutant removal abilities of structural controls or of spill control/response procedures. However, EPA is concerned about requiring PE certifications at this time for all facilities with storm water discharges associated with industrial activity. The Agency recognizes that today's permits cover a significant range of industrial facilities that will emphasize different components of pollution prevention strategies. PE certifications may not be useful for some types of facilities because they manage minimum amounts of toxic chemicals or other potential pollution generating materials, and have limited opportunities for structural controls, storm water management or erosion control. The Agency does recognize, as discussed below in the context of special requirements of EPCRA section 313 facilities, that such PE certification requirements can be useful tools in ensuring that targeted facilities have adequate and appropriate storm water pollution prevention measures in place.

One commenter recommended a minimum frequency of inspection of once per three years, as this frequency is consistent with SPCC requirements. In response, the Agency disagrees with this comment for a number of reasons. First, the NPDES regulations at 40 CFR 122.44(i)(2) require, at a minimum, annual inspections of facilities with storm water discharges associated with industrial activity. Second, it should be noted that SPCC requirements primarily focus on preventing and containing major spills. These requirements rely on structural controls such as secondary containment, which are generally less likely to change with time than typical storm water pollution controls, such as material handling practices. Third, there is a wide variety of potential pollutant sources to storm water discharges, such as material handling activities and loading/unloading activities, that can significantly change with time at an industrial facility.

Additional Requirements for EPCRA Section 313 Facilities

EPA identified storm water discharges associated with industrial activity from facilities that are subject to reporting requirements under EPCRA section 313 for water priority chemicals as priority discharges for targeted special requirements in the August 16, 1991 draft general permits. The Agency requested comments on two major approaches for developing special requirements for storm water discharges associated with industrial activity from these facilities. Under the first approach, Option A, the general permit would establish special semi-annual monitoring requirements, special pollution prevention requirements, including secondary containment for targeted areas, and a whole effluent toxicity (WET) effluent limitation. Under the second approach, Option B, the general permits would establish a WET limitation, and special monitoring requirements at a frequency of greater than twice per year. Under Option B, the general permit would not contain special pollution prevention plan requirements.

Targeting EPCRA Section 313 Facilities

A number of commenters addressed the issue of whether storm water discharges from facilities subject to reporting requirements under EPCRA section 313 for water priority chemicals should be subject to special conditions. A number of commenters generally supported the Agency's efforts to target priority industries for more specific permit requirements. Some of these commenters indicated that special requirements for EPCRA section 313 facilities were appropriate because of the toxic nature of chemicals handled by the facilities and the significant amounts of chemicals handled by these facilities. Several commenters suggested that the special requirements should apply to all facilities which manage toxic chemicals, regardless of whether they are subject to EPCRA section 313.

However, some commenters questioned the appropriateness of targeting storm water discharges from EPCRA section 313 facilities for special requirements. A major concern of these facilities was that facilities subject to FPCRA section 313 requirements do not necessarily have significant amounts of

toxic chemicals in their storm water discharges. Some of these commenters suggested that EPA be required to demonstrate that these facilities have more pollutants in their storm water discharges than other classes of industries or that special requirements should be triggered where sampling of storm water indicates that releases are occurring.

In response, the Agency believes that the additional pollution prevention plan requirements in today's permits are appropriate for facilities with large amounts of EPCRA section 313 water priority chemicals for several reasons. First, the Agency has identified leaks and spills of toxic chemicals associated with material management practices as a major potential source of pollutants in storm water discharges (see August 16, 1991, (56 FR 40980)). Based on a number of studies, the Agency believes that storage systems, truck and rail transfer facilities, and other process areas where significant amounts of toxic chemicals are used and exposed to precipitation may release pollutants if basic accepted engineering practices are not employed. For example, FPA's "Hazardous Waste Tank Risk Analysis", EPA, 1986, indicates that the principal causes of reported tank failures are external corrosion, installation problems, structural failure, spills, and overfills due to operator errors, and ancillary equipment failure, and that inadequate practices, including those observed at the time of the study, lead to a substantial probability of releases to the environment from such tank failures. The analysis indicated that the major causes of releases from tank systems are usually unrelated to the characteristics of the material stored in the tanks. The analysis also indicated that inadequate management practices allow significant releases to continue undetected until the release becomes obvious. Information from the Spill Prevention Control and Countermeasure (SPCC) data base and the Pollution Incident Reporting System (PIRS) data base indicates that operator error, structural failures, and corrosion were both significant causes of releases for aboveground tanks and failures of ancillary equipment is a significant cause of releases from above ground systems. These data bases indicate that 85 percent to 90 percent of more than 2,000 reported incidents of the spills of oil or hazardous substances from ancillary equipment resulted from failures of piping systems (including failures of pumps, flanges, couplings, interconnecting hoses, and valves). Some of the most significant sources of pollutants at these facilities can be attributed to intermittent events, such as significant spills or leaks. The Agency believes that a preventive approach that does not wait for large spills or leaks to occur is the most sensible approach and is consistent with the goals of the CWA as well as the pollution prevention emphasis of the storm water program.

Second, the Agency believes that the management practices identified in the additional requirements for EPCRA 313 facilities are typically employed at well operated facilities that use large amounts of toxic chemicals. The Agency notes that industry practices have been developed in response to concerns about spills and other health and safety issues. Based on the Agency's evaluation of material management practices, the Agency believes that it is appropriate to identify specific types of management practices that reflect the best available technology for facilities which use large amounts of toxic materials. Today's permits are intended to reflect the Best Available Technology Economically Achievable. The Agency believes that the additional requirements in today's permits for EPCRA section 313 facilities are consistent with the purposes, objectives, and content of a significant number of industry standards.[30] In addition, these requirements are consistent with practices identified under other regulatory programs for the management of other materials, such as the SPCC program for oil and tank requirements under subtitle C of RCRA for hazardous wastes.[31] Many industry commenters indicated that, typically, well run industrial facilities with large amounts of toxic materials already conduct the practices identified in the August 16, 1991 draft permits. Although many of these commenters argued that permit conditions addressing these controls were not necessary because facilities are already conducting these practices, the Agency believes that facilities with large amounts of toxic chemicals generally do take extra precautions in handling their chemicals, and that the special requirements for EPCRA section 313 represents the best available technology currently being used at these facilities.

The Agency has selected the universe of facilities subject to the EPCRA section 313 program reporting requirements to represent a "front end" of the toxics program to which EPA is already committed. This class of facilities is appropriate for targeting for better controls for routine toxics releases and improved industrial practices to prevent and respond to releases involving toxics. The Agency already has substantial data base which identifies facilities subject to these requirements and the type and amount of toxic chemicals which are manufactured, processed or otherwise used at these facilities. EPA will continue to evaluate the appropriateness of applying these special types of requirements to other facilities as more information becomes available.

A number of commenters noted that special measures for managing toxic chemicals were already being conducted by many industrial facilities. For example, one commenter speculated that heightened public scrutiny of EPCRA section 313 facilities has lead to enhanced reporting and training which has already been implemented to decrease contamination. Another trade association thought EPCRA section 313 facilities pose a lower risk because storage of large amounts of the section 313 substances is typically subject to careful controls, including secondary containment, that would prevent the possibility of storm water contamination. This commenter indicated that such facilities generally maintain control programs that include release prevention procedures, training in pollution prevention, spill prevention and cleanup, and other appropriate management practices. Several of these commenters assumed that EPA was targeting EPCRA section 313 facilities because the Agency believed that they were not careful with the materials they handle.

[30] Examples of industry standards evaluated in this rulemaking include ASME/ANSI B31.3 (Chemical Plant and Petroleum Refinery Piping); ASME/ANSI B96.1 (Welded Aluminum-Alloy Storage Tanks); ASME/ANSI B96.1 (Welded Alumimum-Alloy Storage Tanks); NFPA 30 (Flammable and Combustible Liquid Codes); NACE Recommended Practice (Standard Recommended Practice—Control of External Corrosion on Metallic Buried, Partially Buried or Submerged Liquid Storage Systems); API Standard 620 (Recommended Rules for Design and Construction of Large, Welded, Low-Pressure Storage Tanks); API Standard 650 (Welded Steel Tanks for Oil Storage); API Recommended Practice 651 (Cathodic Protection of Above-Ground Petroleum Storage Tanks); API Recommended Practice 652 (Lining of Above-Ground Petroleum Storage Tank Bottoms); API Standard 653 (Tank Inspection, Repair, Alteration, and Reconstruction); and API 2008 (Safe Operation of Inland Bulk Plants).

[31] Examples of requirements under other Federal programs evaluated in this rulemaking include: underground storage tank requirements (40 CFR 280); Occupational Safety and Health Administration general safety and health regulations for flammable and combustible surrounding tanks (49 CFR 1910) Department of Transportation requirements for oil pipelines (49 CFR 195); the Department of Interior requirements for the containment and collection of oil discharges from offshore drilling (30 CFR 250).

In response, as discussed in more detail above, the Agency agrees with the commenters to the extent that it believes that the management practices identified in the additional requirements for EPCRA section 313 facilities are typically employed at well operated facilities that manufacture, process or otherwise use large amounts of toxic chemicals. However, the Agency disagrees with the commenters to the extent that they are contending that the additional requirements in today's permits for EPCRA section 313 facilities (facilities that manufacture, process or otherwise use large amounts of toxic chemicals) are not appropriate. Rather, as discussed above, the Agency believes that the additional requirements for EPCRA section 313 facilities represents the Best Available Technology Economically Achievable for these facilities, and therefore are appropriate for technology-based permits for these facilities.

Some commenters suggest that special requirements be limited to storm water discharges from facilities that are subject to EPCRA section 312. EPCRA section 312 applies to any facility that is required to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act. EPCRA section 312 establishes reporting requirements for facilities with hazardous chemicals present at the facility in amounts equal to or greater than 10,000 pounds, or that are extremely hazardous substances present at the facility in an amount greater than or equal to 500 pounds (or 55 gallons) or the threshold planning quantity (TPQ) for an extremely hazardous substance as defined in 40 CFR part 355 (see 40 CFR 370.20). In addition, EPCRA reporting requirements apply to facilities where a local emergency planning committee has requested the submittal of a MSDS. EPCRA section 313 establishes threshold amounts for the purposes of reporting of 25,000 pounds of toxic chemical manufactured (including imported) or processed at a facility during a calendar year or 10,000 pounds of a toxic chemical otherwise used at a facility during a calendar year. These commenters noted that the applicability of EPCRA section 313 is based on the amount of toxic chemical manufactured, processed or otherwise used per year, and that it was possible for some facilities to meet this requirement with a relatively low average inventory level of perhaps less than 500 pounds.

In response, the Agency believes that the threshold established by EPCRA section 313 represents a group of facilities that is better for targeting the special requirements of today's permit than EPCRA section 312. Although facilities that are subject to EPCRA section 313 may have less than 10,000 pounds on site at any one time, these facilities receive and handle significant amounts of toxic chemicals during the course of a year. In addition, EPCRA section 312 applies to any facility in any SIC code required to prepare MSDSs, whereas EPCRA section 313 applicability is limited to facilities with a primary SIC code of 20 through 39. EPCRA section 312 applies to a much broader class of facilities, including many not subject to storm water permit requirements. The Agency believes that establishing special requirements for EPCRA section 312 facilities would create additional confusion among facilities which are subject to EPCRA section 312 requirements, but do not have storm water discharges associated with industrial activity. Furthermore, the amount of hazardous chemicals present at a facility which triggers section 312 requirements may be quite low, as noted above. Thus, section 313 facilities may not be appreciably different from section 312 facilities in terms of the level of chemicals present at any one time.

A number of commenters that objected to certain special requirements for all EPCRA section 313 facilities suggested that any facility (regardless if they are subject to EPCRA section 313) that has had a release of a hazardous substance or oil in excess of reportable quantities under 40 CFR parts 110, 117 or 302 should be subject to special requirements because of their proven history of releases. Other commenters indicated that only those facilities that have reported releases of EPCRA section 313 chemicals in their storm water should be subject to special conditions and that the Agency should shield or exempt from special requirements those facilities that report zero or de minimis releases. However, other commenters indicated that many of the facilities that are currently reporting zero or small releases of toxic chemicals via their storm water discharges have not monitored pollutants in their storm water discharge.

EPA disagrees with these commenters. First, the Agency believes that large spills or releases that are generally associated with releases of a hazardous substance or oil in excess of reportable quantities under 40 CFR parts 110, 117 or 302 are only one potential source of pollutants at EPCRA section 313 facilities. Other potential sources of pollutants at these facilities include chronic leaks, smaller spills, management of containers and storage and/or use of chemicals in solid form. These potential sources can contribute significant amounts of pollutants that are nonetheless below reportable quantities under 40 CFR parts 110, 117 or 302. Second, as discussed above, some of the most significant sources of pollutants at facilities identified in the SPCC and PIRS data bases can be attributed to intermittent events, and will not necessarily be identified by periodic monitoring. Without monitoring data, releases of toxic chemicals could go unreported, and therefore a report of zero release may not reflect the true pollutant potential of the storm water discharge. Today's permits establish semi-annual monitoring requirements for certain facilities subject to EPCRA section 313. However, this low monitoring frequency, while appropriate for the limited purposes articulated in today's notice, are not intended to sufficiently identify relatively infrequent intermittent releases in a manner that would ensure that other controls are not necessary to minimize the discharge of toxic chemicals in storm water discharges. Rather, such low-frequency monitoring requirements are only a part of a more comprehensive approach to controlling toxic pollutants in storm water discharges from EPCRA section 313 facilities. Similarly, regulations developed under EPCRA section 313 allow facility operators to estimate the amount of toxic chemicals in storm water without the use of monitoring data. Such estimates, while appropriate for developing the TRI data, do not provide adequate safeguards that toxic chemicals are not being released in storm water discharges. Third, conditions at EPCRA section 313 facilities can change with time, and operator errors, structural failures, and corrosion can lead to failures of process, handling and storage equipment used for EPCRA water priority chemicals which result in the release of toxic chemicals to storm water discharges. Such releases can continue undetected until the release becomes obvious [32] and are not necessarily linked to past releases. The Agency believes that a preventive approach that does not wait for spills or other releases to occur is the most sensible approach and is consistent with the goals of the CWA as well as the pollution prevention emphasis of the

[32] See "Hazardous Waste Tank Risk Analysis" EPA, 1986

storm water program. Fourth, the Agency believes that management practices identified in the additional requirements for EPCRA section 313 facilities are representative of well operated facilities that use large amounts of toxic chemicals even though a facility may not have had a release of a hazardous substance or oil in excess of reportable quantities.

One commenter indicated that the Toxics Release Inventory (TRI) database for 1989 indicated that only 6 percent (88 of 1,470 facilities reporting storm water discharges) of the EPCRA section 313 facilities reported releases of more than 1,000 pounds per year of toxic chemicals in their storm water during the previous reporting year. This commenter speculated that facilities that reported these releases already had an NPDES permit because they otherwise would not have conducted the monitoring required to support the release estimates.

In response, EPA recognizes that 6 percent per year of the EPCRA section 313 facilities that reported toxic chemicals in storm water reported releases of over 1,000 pounds per year of toxic materials in their storm water. However, the Agency strongly disagrees with the commenter that this is an indication that EPCRA section 313 facilities represent a low risk as a class. First, the Agency believes that the release of less than 1,000 pounds of toxic chemicals via storm water can be very significant, and that the 1,000 pound of toxic chemical threshold limit does not represent acceptable levels of pollutants in releases. Many of the EPCRA section 313 water priority chemicals can have significant toxic effects at low concentrations, even though the total amount of toxic chemical released annually is less than 1,000 pounds. In addition, facilities can have intermittent releases of toxic chemicals of less than 1,000 pounds such as spills or concentrated leaks that can have significant water quality impacts. Facilities that have released low levels of toxic chemicals one year can have significantly larger releases in subsequent years due to spills, leaks which have developed from older equipment, or changes in management practices. Thus, over a longer time period, such as five or ten years, more than six percent of the facilities may have releases of greater than 1,000 pounds per year of toxic chemicals reported in their storm water discharges. The Agency does not believe that 6 percent of the facilities is a trivial number when considering such large releases of toxic chemicals. The Agency also recognizes that many, if not most, EPCRA section 313 facilities did not have actual monitoring data to establish their 1989 estimates of releases of toxic chemicals to storm water. The Agency believes that this could have caused significant under reporting of toxic chemical releases. The Agency does not agree with the commenter's argument that only those facilities which monitored their storm water discharges prior to 1989 pursuant to an NPDES permit are of concern. The Agency remains concerned about the potential for releases from facilities that have not been required to monitor their storm water discharges in the past.

Some commenters indicated that Congress or EPA may expand the criteria for coverage under EPCRA section 313 after the permits were issued. These commenters requested that EPA clarify what storm water general permit requirements would apply to facilities that would not be subject to EPCRA section 313 requirement at the time of permit issuance, but, due to the change in defining the EPCRA section 313 universe, would be subject to EPCRA section 313 requirements in the future. Applicability to EPCRA section 313 could change in 3 ways: (1#) The threshold amount of toxic chemicals required to trigger reporting could change; (2) requirements could be expanded to facilities other than those classified as SIC 20–39; and (3) specific chemicals or classes of chemicals could be added or deleted from the list of toxic chemicals.

EPA intends to base applicability of the special requirements for storm water discharges associated with industrial activity from EPCRA section 313 facilities on the date of permit issuance. Thus, if the applicability of EPCRA section 313 requirements is expanded to include facilities that use less than current threshold amounts, additional chemicals, or facilities other than those classified as SIC code 20–39, the special requirements in today's general permits would not apply to those additional facilities.

If, on the other hand, the applicability of EPCRA section 313 reporting requirements are restricted (e.g. a chemical is deleted from the list of toxic chemicals, the threshold amount of chemicals is raised, or facilities within SIC 20–39 are exempted), the Agency wants to clarify that it will not require facilities which are not subject to reporting requirements under the newly restricted requirements under EPCRA section 313 to comply with the special requirements for storm water discharges in today's permits. While the Agency recognizes that discharges from these facilities were considered in developing today's permits, it believes that this approach will minimize confusion and address concerns that special requirements would no longer be required at such facilities. The agency also notes that it may consider the factors that lead to the decision to restrict reporting requirements under EPCRA section 313 in the same manner as it would with respect to the special requirements of today's permits.

Other commenters requested that EPA clarify the applicability of the special requirements in the storm water general permits for facilities that met the threshold requirements of EPCRA section 313 during some years, but did not meet the requirements in other years (even though the EPCRA section 313 thresholds did not change). One commenter indicated that continuing special NPDES requirements for facilities that have reduced their use of EPCRA section 313 chemicals removed the incentive for the facility to reduce their toxic chemicals.

In response, EPA wants to clarify that permittees that had to report releases under EPCRA section 313, but during the term of the permit have modified their industrial practices such that they no longer manufacture, process or otherwise use EPCRA section 313 water priority chemicals onsite in amounts that exceed the applicable thresholds under EPCRA section 313, are not subject to the special requirements of today's permit after reductions in use have been made. The Agency also wants to clarify that facilities that meet the EPCRA section 313 thresholds for the first time during the term of the permit will be required to comply with the additional requirements in today's permits for EPCRA section 313 facilities three years after the date they are first required to report under EPCRA section 313.

Some commenters expressed a considerable amount of confusion regarding whether the additional requirements applied to materials other than section 313 water priority chemicals. For example, a number of commenters indicated that containment and other special requirements were inappropriate for products which were not made of section 313 chemicals, such as products made of polystyrene materials. Some of these commenters correctly indicated that many polystyrene products are intended to be exposed to water and water resources.

The Agency wants to clarify that the special requirements in today's permits

for facilities that are subject to EPCRA section 313 reporting requirements only apply to areas of the facilities where EPCRA section 313 chemicals are managed. With respect to products made of polystyrene, the Agency wants to clarify that the feedstock for polystyrene, styrene, is a EPCRA section 313 chemical. However, polystyrene, which results from the polymerization of the monomer styrene, is not a EPCRA section 313 water priority chemical. The Agency notes there are significant chemical and physical differences between polystyrene and its monomer, styrene. The Agency agrees that polystyrene has much less potential to contribute pollutants to waters of the United States (other than in the form of floatables such as litter or improperly disposed pellets) then styrene, and believes that styrene should be managed in a way to eliminate contamination to storm water.

One commenter indicated that many facilities are required to report under section 313 because they have ammonia refrigeration systems or chlorine used for disinfection, and the nature of the use of these chemicals poses a very limited potential for discharge of pollutants through storm water. In response, the Agency notes that significant spills or releases of such materials can result in significant water quality impacts. As discussed in more detail below, the Agency believes the Agency has added sufficient flexibility to the requirements of today's permits to allow facilities to develop and implement pollution prevention strategies that are appropriate and are not overly burdensome for such situations.

One commenter noted that some facilities may use one or more section 313 water priority chemicals in excess of the 10,000 pound threshold, but use other section 313 water priority chemicals in amounts of less than the threshold. The commenter requested that EPA clarify if the special requirements for managing EPCRA section 313 apply to all parts of the facility where any toxic chemical is managed, or only those parts of the facility where section 313 water priority chemicals that the facility must report for (e.g. those toxic chemicals managed in amounts in excess of 10,000 pounds) are used. In response, the Agency want to clarify that the special requirements for EPCRA section 313 facilities in today's permits only apply to those portions of a facility where toxic chemicals that a facility must report releases for under EPCRA section 313 are managed. The Agency notes however, that the other baseline requirements of today's permits apply to other parts of the facility that generate storm water discharges associated with industrial activity.

Some commenters expressed concern that the special requirements placed unnecessary burdens on facilities that manage their toxic materials indoors. Other commenters suggested that EPA provide incentives for industries to eliminate exposure of raw materials and EPCRA section 313 toxic chemicals to precipitation.

In response, the special requirements for storm water pollution prevention plans at facilities that are subject to EPCRA section 313 for section 313 water priority chemicals primarily focus on areas of the facility where equipment used for the management, storage and processing of section 313 water priority chemicals is exposed to precipitation or can otherwise contribute pollutants to a storm drainage system. The Agency believes that the burdens associated with the requirements of today's permit are significantly reduced for facilities that manage (including loading and unloading activities) their toxic chemicals in buildings or under cover such that there is no exposure to precipitation and where the floor drainage in the building is known to be segregated from the storm water collection system. The Agency believes that this approach provides incentives for facilities to manage toxic chemicals in a way that ensures there is no exposure to precipitation.

EPCRA Section 313 Facilities: Types of Controls

With respect to the two approaches for establishing permit conditions, Options A and B, commenters expressed a wide diversity of opinions. Some commenters favored the design standards approach of Option A. These commenters provided a number of reasons for this support. Some commenters indicated that secondary containment and other measures are an essential part of storm water management at facilities that use large amounts of toxic materials. Some commenters stated that this approach would encourage facilities to develop additional measures to control potential releases of materials into storm water. Other commenters indicated that this approach would reward companies that have already installed such controls by reducing monitoring and reporting requirements. Other commenters indicated that this approach promoted pollution prevention measures and provided a check on runoff before it is discharged. Another commenter indicated that requirements for containing storm water and monitoring each discharge event were necessary to ensure water quality standards were met. One commenter indicated that design standards were necessary because the acute WET limitation, by itself, underestimated the true environmental risks of storm water discharges.

A number of commenters favored the performance standards approach of Option B. These commenters indicated that performance standards provide flexibility to industry, and allowed industry to pursue the most cost-effective control approach. Some of these commenters felt that this approach would better allow for consideration of local or facility specific factors in developing controls. One commenter thought performance standards were the best way to encourage innovative approaches. Some of the commenters indicated that the compliance obligations under either of the two proposed options could be substantial. Some commenters indicated that this approach would allow some industrial facilities to avoid the costs of secondary containment. Several commenters indicated that they viewed design standards as inefficient, ineffective methods for reducing pollutants.

In addition, some commenters urged the Agency to adopt an alternative approach. A number of commenters expressed their belief that both approaches were excessive or otherwise inappropriate. Some commenters indicated that they thought that pollution prevention measures (without a WET limitation) were adequate, and that an effluent limitation defeated the purpose of a plan to eliminate or reduce sources of pollutants. Several commenters suggested that dischargers be given the opportunity to select either a performance standard or design standards, and that this approach provided flexibility while at the same time recognizing the advantages of both approaches. One commenter favored voluntary measures as providing the utmost flexibility and representing the lowest cost approach.

After consideration of these comments, the Agency has decided to adopt an approach that is a hybrid of Options A and B. Today's permits provide targeted pollution prevention plan requirements that have been designed to address storm water discharges associated with industrial activities that are subject to EPCRA section 313 reporting requirements for water priority chemicals. These additional plan requirements have been designed to provide a reasonable

amount of flexibility to address concerns that specific design criteria, such as containment for specified design storms, were inappropriate.

In addition, as discussed in more detail elsewhere in today's notice, today's permits establish targeted monitoring requirements for EPCRA section 313 facilities where storm water discharges associated with industrial activity come into contact with any equipment, tank, container or other vessel or area used for storage of a section 313 water priority chemical, or located at a truck or rail car loading or unloading area where a section 313 water priority chemical is handled. In this manner, additional data will be used to identify the need for more stringent controls and further pollution prevention efforts will be targeted to facilities where sampling data demonstrates the need for further scrutiny and controls.

The Agency feels that this approach has several advantages and can lead to the achievement of the goals articulated in the August 16, 1991 draft permits. First, this approach establishes a framework for facilities to develop and implement site-specific pollution prevention measures in a manner that ensures appropriate flexibility. Second, the approach ensures that the facilities develop methods and protocols, including discharge sampling, that allow for continued evaluation of the discharge and potential pollutant sources at the facility. Third, this approach is similar to a performance standard in that it establishes a benchmark that triggers additional evaluation of pollutant sources at the facility and of pollution prevention measures.

WET Limitation

Comments received on the proposed WET limitation in the August 16, 1991 draft general permits were mixed. Several commenters recommended the use of chronic WET limitations instead of acute limitations. These commenters indicated that acute WET tests underestimated the toxic impacts of intermittent discharges such as storm water. One commenter indicated that recent research indicates that organisms subject to periodic exposure of toxics typically found in storm water suffer greatly at concentrations much lower than acute toxicity levels based on continuous exposure. One commenter indicated that it was meaningless to require secondary containment without requirements for testing water discharged from the structure or effluent limitations. This commenter implied that even with a requirement to provide containment, facilities could still discharge contaminated storm water. The commenter indicated that if a facility properly implements an appropriate storm water pollution prevention plan, it will be virtually impossible for pollutants from the facility to contaminate storm water from the facility.

Several commenters thought it was premature and inappropriate that technology-based effluent limits be established for storm water discharges. These commenters raised a number of concerns about the WET limitation. Several of these commenters contended that EPA did not have adequate data at this time to demonstrate the proposed WET limitation could be met in a cost effective manner after application of the model technologies. Several commenters suggested that EPA had only considered several technologies for reducing toxicity, but had made an inadequate showing that all dischargers could comply with the limitation without resorting to expensive treatment schemes or alternative forms of disposal. Some of these commenters thought that reducing toxicity would be a complex undertaking at some facilities, and that some dischargers would have to develop extensive treatment strategies rather than solely rely on pollution prevention measures. These commenters contended that the cost of compliance with the WET limitation could be significantly higher than was estimated by EPA.

Other commenters suggested that whole effluent toxicity should be addressed through best management practices and pollution prevention measures rather than through numeric toxicity limitations.

Based on additional consideration, today's permit does not contain an acute WET effluent limitation. The Agency believes that acute toxicity is an appropriate parameter for evaluating priority storm water discharges associated with industrial activity. However, based on a consideration of comments indicating that source controls by themselves may not always be adequate to control toxicity in storm water discharges, and that reducing the toxicity of storm water discharges from some facilities may be a more difficult task than was originally anticipated, the Agency is not including the WET limitation in today's permits.

Toxicity Reduction Evaluations

The August 16, 1991 draft general permits provided that facilities that are subject to the Wet effluent limitation that detected acute WET in their storm water discharge and that where notified by the Director were required to conduct a toxicity reduction evaluation (TRE).

Several commenters objected to the requirement to conduct an expensive toxicity reduction evaluations (TRE) without more research into the methods to identify sources of toxicity to storm water, methods to reduce toxicity in storm water and applicability of current TRE procedures to storm water discharges. Consistent with these concerns, another commenter indicated that industry has little experience with conducting TREs for storm water discharges. One commenter indicated that if a discharge is found to fail the WET test, it should be allowed the opportunity to implement a storm water pollution plan and/or conduct additional WET tests before undergoing a formal toxicity reduction evaluation.

In response to concerns raised about conducting formal TREs, the Agency has modified today's permits to provide that a formal TRE is not required at this time where acute WET is detected. Rather, the Agency recommends that if acute whole effluent toxicity (statistically significant difference between the 100% dilution and the control) is detected in storm water discharges after October 1, 1995, the permittee should review the storm water pollution prevention plan and make appropriate modifications to assist in identifying the source(s) of toxicity and to reduce the toxicity of their storm water discharges. While today's permit does not specifically require dischargers that detect acute WET to conduct a formal TRE, the Agency may request a formal toxicity identification evaluation (TIE) or a TRE pursuant to the authority of section 308 of the CWA.

The Agency believes that this approach provides additional flexibility for facilities to evaluate their storm water discharges for toxicity and to take appropriate steps to reduce toxicity. The Agency believes that this additional flexibility is appropriate in light of concerns raised in the comments that the source(s) of toxicity may be difficult to initially determine and that facilities need an opportunity to evaluate whether specific pollutant prevention measures will successfully reduce toxicity, or whether the facility will need to pursue a treatment strategy. In addition, the approach taken in today's permits provides facilities with an opportunity to develop and implement pollution prevention strategies prior to the October 1, 1995. This provides discharges with an opportunity to implement site-specific and innovative measures to reduce toxicity. In addition, this approach recognizes the difficulties

in ascertaining whether a specific measure or approach will successfully reduce toxicity at a given facility. The Agency believes that this approach will provide additional opportunities to evaluate pollution prevention measures suitable for reducing toxicity and for evaluating the role of treatment technologies in such toxicity reduction strategies.

The Agency also recognizes that sources or activities other than handling toxic chemicals to be used in the industrial process may cause toxicity in some cases. However, the Agency believes that it is important to ensure that these sources of toxicity have been identified, and that the plan be reviewed to identify any appropriate steps be taken to reduce the toxicity of the storm water discharges. Appropriate steps may include diverting storm water flows which originate from offsite, or providing other appropriate storm water management measures. However, today's permits do not require that such offiste sources of pollutants be eliminated. The Agency believes that the approach taken in today's permits provide sufficient flexibility to address these toxicity sources.

Containment Requirements

The August 16, 1991 draft general permits requested comments on requiring secondary containment for two types of areas where liquid section 313 water priority chemicals are managed. The first type of areas was where liquid section 313 water priority chemicals are stored and storm water comes into contact with equipment, tanks, containers or other vessels used for such storage. The second type of areas was truck and rail care loading and unloading areas for liquid section 313 water priority chemicals. The provisions of the August 16, 1991 draft general permits required secondary containment structures to be sufficiently impervious to contain spilled section 313 water priority chemicals until they can be removed or treated. The August 16, 1991 draft general permits requested comment on specifying that secondary containment structures for such areas provide sufficient excess holding capacity for the contents of the largest container in the drainage area plus an allowance for drainage from a 25 year, 24 hour storm.

A number of commenters supported the concepts of secondary containment for targeted areas of facilities which manage toxic chemicals. One commenter urged EPA to require secondary containment for water priority chemicals at all sites, indicated that earthen dikes are easily made, relatively inexpensive, easily maintained and can usually be created, altered or removed within a day. Another commenter indicated that secondary containment for toxic chemicals is clearly a simple, easily verifiable method for preventing spills, and that too much flexibility would result in industrial facilities avoiding implementing appropriate requirements. Another commenter indicated that if the containment of toxic materials is not economically possible, the process should not be in existence. One commenter noted that an added benefit of increased containment is the reduction in fire hazards.

While most industry commenters addressing the containment issue recognized that secondary containment was a commonly used practice, a number of commenters noted that many industrial facilities have already installed secondary containment, but that many existing secondary containment units did not provide sufficient volume to accommodate runoff from a 25 year, 24-hour storm event [33]. The concern raised by these commenters was that they believed that many existing containment systems would not satisfy the 25-year, 24-hour standard and would have to be replaced or retrofitted. A number of these commenters raised concerns about facilities that, in good faith, had already constructed containment requirements would have to face the difficulties and expense of expanding existing secondary containment units. One commenter recommended that facilities with existing containment be allowed to grandfather in their existing facility.

Several other commenters indicated that a requirement to provide secondary containment could result in significant economic burdens for facilities without containment systems but with alternative control strategies. These commenters suggested alternatives such as requirements to develop and implement spill response strategies to reduce the size of the spill, provide drainage systems to isolate spills or other BMP requirements. Some commenters raised specific concerns regarding containment requirements for truck and rail car loading and unloading areas for liquid section 313 water priority chemicals. Some commenters indicated that drip and/or spill sump systems with high level alarms are in common use and provide ample protection against all but rare catastrophic releases. Another commenter, while supporting secondary containment requirements for liquid storage tanks indicated that the risk of spills at a truck or rail unloading area is not great where chemical transfers are not frequent and trucks are only at the loading station for a short time.

In response to a number of concerns raised on the requirements in the draft permits, today's permits contain a considerable amount of additional flexibility with respect to the use of secondary containment or other equivalent management practices for areas of the facility where liquid Section 313 chemicals are stored or loading and/or unloaded. Today's permit provides that liquid storage areas and truck and rail car loading and unloading areas for liquid section 313 water priority chemicals must be operated to minimize discharges of section 313 chemicals. For liquid storage areas, appropriate measures to minimize discharges of section 313 chemicals may include secondary containment provided for at least the entire contents of the largest single tank plus sufficient freeboard to allow for precipitation, a strong spill contingency and integrity testing plan, and/or other equivalent measures. For truck and rail car loading and unloading areas, appropriate measures to minimize discharges of section 313 chemicals may include: the placement and maintenance of drip pans (including the proper disposal of materials collected in the drip pans) where spillage may occur (such as hose connections, hose reels and filler nozzles) for use when making and breaking hose connections; a strong spill contingency and integrity testing plan; and/or other equivalent measures.

This approach will allow permittees to select the most cost effective technology for controlling releases of section 313 chemicals at their site consistent with the requirement that the discharge of section 313 water priority chemicals is minimized. As discussed earlier in

[33] Commenters gave numerous examples of alternative design volumes for containment units. One commenter indicated that industry often develops its own design standard, for example, the petroleum industry has developed a number of standards, including a standard that bermed areas must contain liquid contents but not be greater than 6 feet high. A large chemical industry trade association indicated that most company guidelines require containment systems that are capable of holding the contents of the largest tank within the containment area. A number of other industrial commenters indicated that they had similar guidelines. Commenters indicated that containment systems for flammable liquids were expressly designed to conform to the National Fire Protection Association (NFPA) 30 code which states that dike walls should contain the potential liquid contents and be less than 6 feet tall. Some commenters anticipated that expanding existing containment structures would create conflicts with the 6 foot maximum wall height specified by the NFPA 30 code. Several commenters indicated that many existing containment systems do not comply with any specific volumetric requirements.

today's notice, today's permits also require that a registered PE certify that the storm water pollution prevention plan, including controls to minimize the discharge of section 313 water priority chemicals from areas of the facility where liquid section 313 chemicals are stored or loading and/or unloaded, has been prepared in accordance with good engineering practices. The PE certification will assist in ensuring that good engineering practices are used in selecting an approach to minimize the discharge of section 313 water priority chemicals.

In providing this additional flexibility with respect to containment requirements, EPA is particularly concerned that many existing secondary containment units would have to be retrofitted in order to comply with the requirement to provide sufficient storage for the 25-year, 24-hour storm. The additional flexibility provided by today's permits will ensure that this provision is attainable for facilities with existing controls, such as secondary containment, to minimize the discharge of section 313 water priority chemicals, and that such facilities will not have to provide for retrofitting of existing systems which currently meet the standard. At the same time, this approach addresses concerns regarding facilities where secondary containment measures are not economically achievable. Under today's permits, these facilities may implement alternative approaches to controlling pollutants in their storm water discharges in lieu of secondary containment.

EPCRA Section 313 Facilities: Other Concerns

One commenter indicated that the requirement in the August 16, 1991 draft permits that permittees either take immediate corrective action or shut down a unit or process if a leak is discovered which may result in a significant release of a section 313 water priority chemical to the drainage system was an unreasonable requirement because a release to the drainage system may not result in a release to waters of the United States.

In response, the Agency wants to clarify that the requirements in today's permits do not apply to facilities that do not discharge storm water associated with industrial activity to waters of the United States. The Agency has modified the language in today's permit to limit this requirement to leaks or other conditions which may result in significant releases of section 313 water priority chemicals to waters of the United States. The Agency has also replaced the term "corrective action" with the phrase "action to stop the leak or otherwise prevent the significant release of section 313 water priority chemicals to waters of the United States" to avoid confusion. The Agency also wants to clarify that the temporary use of drip pans, diversions to sumps, or other measures that prevent toxic chemicals from being discharged to waters of the United States until permanent repairs can be made may, where appropriate, constitute appropriate action within the meaning of today's permits. The Agency believes that such requirements are reasonable, are common industrial practices, and are necessary to prevent discharges of toxic chemicals to waters of the United States.

One commenter indicated that integrity testing of storage tanks is not economically achievable and did not reflect current industry practice, but rather visual inspection of above ground tanks and pipes is general industry practice. One commenter indicated that visual inspection was less expensive than integrity testing. One commenter indicated that integrity testing should not be required for straight runs of pipe without connections or joints or to welded joints. However, other commenters indicated that integrity testing was a viable alternative to containment. One commenter indicated that integrity testing should be required at reasonable intervals, and indicated that such testing is not an alternative to containment as most spills are the result of human error, not mechanical failure. One commenter indicated that many local and State standards exist for integrity testing for tanks and piping.

In response to comments, the Agency recognizes that integrity testing can be an important part of a sound spill prevention program. However, to minimize confusion and address concerns raised about specific integrity testing procedures, the Agency has added flexibility to today's permits by listing spill contingency plans and integrity testing as one type of management measure that is appropriate for liquid storage areas or areas of the facility that are used for truck and rail car loading and unloading of liquid section 313 water priority chemicals.

A number of commenters supported the requirement that plans for EPCRA section 313 facilities be certified by a registered PE. Some of these commenters indicated that this approach would allow the Agency to incorporate additional flexibility into some provisions of the permit, while still ensuring that the objectives of the permit are met. Several commenters suggested that additional flexibility be given to EPCRA section 313 facilities, and that the Agency continue to require PE certifications as a means to ensure that adequate measures are being implemented. One commenter requested clarification on whether the PE certification applied to the entire plan for the facility or for only those portions of the plan that addressed areas where section 313 water priority chemicals are managed.

However, some commenters raised concerns about PE certifications. One commenter indicated that PEs hired by a facility will not provide the appropriate level of assurance unless penalties for misrepresentation are possible. Other commenters stated their belief that industries and Federal facilities have historically been unable to monitor themselves. One commenter indicated that only a few registered PEs work for the chemical industry or many manufacturing industries, and suggested that the permits provide that employees other than registered PEs be allowed to provide a certification in addition to registered PEs. The commenter indicated that given their knowledge and experience, employees that were not a registered PE could result in equivalent or better certifications than those provided by a registered PE who was not an employee. One commenter suggested that the plant manager should be able to certify compliance based on information provided by his or her staff in lieu of a registered PE certification. One commenter recognized that a PE would be qualified to certify that secondary containment is designed and constructed in accordance with good engineering practices. However, most PEs have no special qualifications to certify certain other major elements of the plan, such as training, and the pollution prevention committee. Another commenter indicated that a PE certification could be expensive for small businesses.

In response, the Agency believes that PE certifications are appropriate for EPCRA section 313 facilities with storm water discharges associated with industrial activity for two reasons. First, the nature of the storm water concerns at these facilities dictates that storm water pollution prevention plans should be as reliable as possible. EPCRA section 313 facilities manage large amounts of toxic chemicals, and the material handling equipment and practices are a potential source of pollutants to storm water. EPA believes that certification by a PE will add a measure of independent reliability to

ensure adequate implementation of the plan requirements.

Second, the Agency's experience with the SPCC program indicates that PE certifications can be a useful component of a spill prevention program for facilities that manage large amounts of liquids and that PEs are particularly well qualified to evaluate controls at such facilities. Studies have indicated that a principal leak prevention measure for chemical handling systems and ancillary equipment is proper design and installation and that a quality audit of storage and handling equipment will prevent many leaks, particularly from loose fittings, poor welding, and maligned gaskets.[34]

The Agency believes that PE certifications will assist in ensuring that chemical handling systems are properly designed, installed and operated and that permittees comply with the terms of the permit and adequately implement measures identified in their pollution prevention plan. The Agency believes that the costs of a PE certification are achievable. For facilities that do not have an appropriate PE on staff to conduct the certification, the Agency encourages permittees to have employees with appropriate knowledge and experience assist a PE that is not regularly employed by the facility in making the certification.

The Agency further believes that a PE certification is appropriate for all plan components at EPCRA section 313 facilities can involve various aspects of the industrial process. For example, the training requirements of today's permits apply to all facility employees and contractor personnel that work in areas where SARA title III, section 313 water priority chemicals are used or stored. These training measures must ensure that such personnel are trained in and informed of preventive measures at the facility. The Agency believes that it is cost effective to have a PE that has begun to review parts of the plan to review the entire plan.

One commenter objected to the requirement to maintain records of the frequency and estimated volume of discharges from secondary containment areas. The commenter raised concerns that this provision triggered testing requirements. In response, the Agency wants to clarify that this provision does not trigger sampling requirements.

One commenter indicated that providing curbing and roofing for many forms of metals storage is not practical and provides no environmental benefit, and that roofs made of galvanized steel or copper present a greater potential source than industrial laydown areas for insoluble metals. In response, the Agency wants to clarify that today's permit (and the August 16, 1991 draft permits) provide dischargers with the option of either providing drainage controls to prevent or minimize the potential for storm water runon to come into contact with Section 313 water priority chemicals or to provide roofs, covers or other forms of appropriate protection to prevent storage piles from exposure to wind and storm water. The Agency recognizes that in some situations where metal storage areas pose little potential as a pollutant source, roofs may not be necessary. In such case, facilities should pursue appropriate runon or drainage controls. The Agency notes that such drainage is typically provided for exposed portions of industrial activities to prevent ponding or flooding.

Special Requirements for Salt Storage

The August 16, 1991 draft general permits contained a provision requiring storage piles of salt to be enclosed or covered to prevent exposure to precipitation.

Several commenters identified several situations where storm water runoff from salt piles did not lead to a discharge of storm water to waters of the United States. Examples cited by the commenters included lined salt impoundments (such as those used for salt dome petroleum storage activities); situations where runoff from salt piles is used as a brine source in a manufacturing process; and certain storage piles associated with solar ponds. These commenters requested clarification as to whether salt piles where storm water runoff is not discharged to water of the United States needed to be covered or enclosed.

In response, the Agency did not intend to address these situations. The Agency has clarified today's permit to provide that salt piles do not need to be enclosed or covered where storm water from the pile is not discharged to waters of the United States.

One commenter noted that economics dictates that every effort is made to limit the working face of salt piles to exposure to precipitation, but that a requirement that salt piles be covered at all times was not feasible because portions of the pile must be uncovered during the time salt is being placed on or removed from the pile. In response, the Agency recognizes that it will not always be feasible to ensure that working faces of the pile are covered when materials are being added or removed from the pile. Accordingly, today's permits provide that salt piles shall be enclosed or covered to prevent exposure to precipitation, except for exposure resulting from adding or removing materials from the pile.

One commenter indicated that salt piles should not be singled out, and that numerous other bulk commodities (e.g. potash, trona, sodium sulfate) are stored outside and are readily dissolved by precipitation. In response, at the time that the draft general permits were published, the Agency had appropriate information on the practices of the salt industry and information on the nature of pollutants in salt pile runoff that was used in the support of the proposed requirement. The Agency will continue to evaluate industry practices for other types of bulk commodities, and pollutants associated with runoff from storage practices.

One commenter argued that covers for very large stockpiles, (such as piles of 400,000 tons) were not feasible. As discussed below, the Agency has expanded its cost model to evaluate these discharges, and believes that such controls are in fact reasonable for such piles. The Agency also wants to clarify the dischargers who want to seek alternative permit conditions may submit an individual permit application with a description of why alternative requirements would be appropriate.

Several commenters indicated that additional time would be needed to comply with this requirement, particularly where a facility had a significant number of piles. In response, the Agency has extended the compliance date for this requirement until three years after issuance of the permit, consistent with section 402(p)(4) of the CWA.

Effluent Limitation for Coal Pile Runoff

The August 16, 1991 draft general permits requested comment on an effluent limitation for coal pile runoff of 50 mg/1 total suspended solids and pH within a range of 6.0 to 9.0. The draft permit provided that any untreated overflow from facilities designed, constructed and operated to treat the volume of coal pile runoff which is associated with a 25-year, 24-hour rainfall event shall not be subject to the limitation.

A number of commenters indicated their belief that the 10 year, 24-hour storm was adequately protective for coal pile runoff, as is evidenced by the Agency use of the standard in the Coal Mining Effluent Limitation Guidelines. One commenter complained that EPA failed to consider the costs of implementing a storm design system to

[34] For example, see "Hazardous Waste Tank Risk Analysis", EPA, 1986.

accommodate a 25-year, 24-hour storm event. The commenter indicated that the cost differential to construct a system to accommodate a 25-year, 24-hour storm event versus a 10-year, 24-hour storm event would be significant, and the incremental pollutant reduction associated with the larger design system would be small. The commenter indicated that the higher costs would be associated with the number or capacity of catch basins or inlet structures, the capacity of the conveyance system (e.g. the size of pipes or ditches), and pumping station capacity.

In response to comments, EPA has modified the effluent limitation in today's permits to be consistent with the effluent limitation guideline for coal pile runoff in the steam electric category (40 CFR 434). Therefore, the numeric limitation for coal pile runoff in today's permits uses the 10-year, 24-hour storm instead of the 25-year, 24-hour storm. EPA recognizes that the initial analysis used to develop the proposed limitations in the August 16, 1991 notice relied heavily on coast data from the steam electric guideline background document. The Agency believes that it is appropriate to tie the limitation in today's permit more closely to the limitation that was evaluated in the study until it can better evaluate the incremental costs associated with alternative approaches.

One commenter expressed concern that the proposed limitations may apply to coal pile runoff from steam electric facilities which is already subject to an effluent limitation guideline. In response, the Agency wants to clarify that the effluent limitation in today's permit for coal pile runoff is not intended to apply to coal pile runoff from steam electric facilities. As noted in the August 16, 1991 draft permit, coal pile runoff from steam electric facilities are already subject to an effluent limitation guideline (see 40 CFR 423). In addition, today's permits (and the August 16, 1991 draft permits), specifically exclude from coverage storm water discharges that are subject to an effluent limitation guideline.

One commenter expressed their belief that coal piles at mining sites and preparation plants should not be subject to the effluent limitation because such piles are already subject to SMCRA monitoring and performance standards at 30 CFR 730.21(j), 30 CFR 816.42 and 816.45), and the proposed limitations go beyond these requirements. The commenter indicated that they thought that all activities presently permitted under SMCRA at coal mining, ore mining and dressing, and mineral mining and processing facilities are not subject to the conditions of the general permit.

In response, the Agency wants to clarify that today's permits do not cover storm water discharges which are subject to an effluent limitation guideline. Most coal pile runoff from active mining sites and preparation plants are subject to the coal mining effluent limitation guideline at 40 CFR 434, and therefore can not obtain coverage under today's permit. The Agency notes that the imposition of SMCRA requirements does not preclude CWA requirements,[35] and that generally such requirements are intended to work together. For example, 30 CFR 816.42 requires that discharges of waters from areas disturbed by surface mining activities must be in compliance with all application Federal and State water laws and regulations. 30 CFR 816.45 establishes sediment control measures that do not specifically address toxic discharges from coal pile runoff.

One commenter requested clarification as to whether pre-SMCRA disturbed coal mining sites were subject to this requirement. The commenter argued that Congress intended that pre-SMCRA coal mining sites are to be handled under Title IV of SMCRA which established the Abandoned Mine Lands Program. In response, the effluent limitation for coal pile runoff in today's permits is intended to apply to all coal pile runoff covered by the permit. Today's permit can cover storm water discharges associated with industrial activity from pre-SMCRA disturbed lands where the discharger has submitted an NOI to be covered by the permit. While Congress intended that Title IV of SMCRA addressed pre-SMCRA coal mining sites, nothing in the legislative history of the provision suggests that it was intended as the exclusive means of addressing these sites.[36] Discharges that do not believe that this requirement is appropriate for a given discharge may submit an individual permit application or participate in an applicable group application. The Agency expects that inactive mining sites will generally have fewer coal piles than active coal mining sites, as it is expected that materials with a commercial value will often be removed from the site. In addition, the Agency recognizes that additional options are available to inactive sites, such as removing the coal piles, or reclaiming/stabilizing the site to ensure that storm water is not contaminated by contact with a coal pile.

Several commenters indicated that they believed that storm water permits should not impose numeric effluent limitations. EPA disagrees with this comment in connection with coal pile runoff. The Agency remains concerned about imposing broad national numeric effluent limitations which would apply to all storm water discharges associated with industrial activity. However, the Agency believes that numeric effluent limitations may be appropriate when applied to storm water discharges from specific, priority unit operations or types of industrial facilities. For example, as discussed above, the Agency has developed a number of effluent limitation guidelines for runoff from various industrial categories. The Agency intends to continue to evaluate the use of numeric effluent limitations for priority storm water discharges.

Several commenters thought the pH limitation of between 6.0 and 9.0 was unreasonable because the levels in rainfall and receiving waters often exceed the 6.0 to 9.0 range. Some of these commenters suggested that the Agency should consider allowing a wider range of values when it can be demonstrated that "natural" storm water is outside this range. Another commenter indicated that the pH limit was impossible to reach without treatment in areas of acid rain.

In response, the Agency recognizes that rainfall may have a pH of lower than 6.0 (or higher than 9.0). In such cases, dischargers will typically have to provide treatment for coal pile runoff prior to discharge, even where they are using low sulfur coal. Such treatment is anticipated and consistent with today's effluent limitation. The Agency also notes that the pH and TSS parameters in the coal pile limitation are indicator parameters for other toxic constituents, including a number of heavy metals. The pH of the storm water affects the availability and solubility of these parameters. Storm water with a low pH will leach metals from coal. Thus it is appropriate to control pollutants in coal pile runoff events where a low pH is caused by low pH rain instead of sulfur in the coal. In addition, metals in a low pH solution will tend to be in a form that is more available to organisms. Thus, the pH typically needs to be controlled to provide for appropriate control of these constituents.

One commenter indicated that EPA should only impose coal pile limitations where site-specific impacts to receiving streams are identified. The commenter also noted that the pollutant

[35] See *American Mining Congress* v. *EPA*, 965 F.2d 759 (9th Cir. 1992).

[36] *See American Mining Congress* v. *EPA*, *Supra*.

characteristics of coal pile runoff can depend on a number of factors, such as the size of the pile, the type of foundation under the pile, and the pH of the precipitation, and that the Agency should consider such factors at each site before imposing a limitation on that site.

In response, the Agency notes that the effluent limitations for coal pile runoff in today's permits are technology-based requirements based on BAT considerations, and do not consider site-specific water quality impacts. EPA does not agree with the commenter that it should be precluded from issuing technology-based requirements unless it specifically identifies water quality impacts associated with a discharge. This approach is not authorized by the CWA, which requires that NPDES permits for storm water discharges associated with industrial activity establish, at a minimum, technology-based BAT/BCT requirements. The Agency notes that it has considered a number of factors, including size of piles, type of coal, and other appropriate factors in developing the limitation for coal pile runoff in today's permits.

One commenter suggested that any modifications to numeric discharge limits on coal piles be done through changes in the effluent limitation guidelines, and that the establishment of new effluent limitations for coal pile runoff in a storm water permit was confusing.

In response, the Agency has authority to establish effluent limitations in NPDES permits on a case-by-case basis outside of the effluent limitation guidelines process. Section 402(a)(1) of the CWA authorizes EPA to issue permits imposing effluent limitations based on best professional judgement for activities for which EPA-promulgated effluent limitation guidelines have not been developed. Again, the Agency wants to clarify that today's permits do not modify requirements for coal pile runoff which are already subject to an effluent limitation guideline.

Deadlines for Plan Preparation and Compliance

The August 16, 1991 draft general permits provided that plans should be completed within 180 days of the effective date of the permit (and updated as appropriate) and provide for compliance within 365 days of the effective date of the permit. The August 16, 1991 draft general permits also required that NOIs be submitted within 180 days of the effective date of the permit.

One commenter indicated that with general permits, the effective date of the general permit is not the date that the discharger is subject to the permit. Rather, with a general permit, a discharger will need time to review the permit and understand the alternatives prior to selecting this option and submitting the Notice of Intent. Other commenters expressed confusion over plan deadlines and requested clarification.

In response, the Agency has modified the permit to provide specific dates for plan preparation and compliance. While the Agency does not agree that it cannot establish compliance dates based on the effective date of the permit, the Agency believes that specifying specific dates will minimize confusion regarding these dates, particularly where EPA issues permits for different States on different dates.

A number of commenters indicated that they thought that it was inappropriate to require that plans be developed at the same time that an NOI was required. In response, as discussed above, the Agency has modified the deadline for submitting most NOIs to be covered by today's permits to October 1, 1992 to provide consistency with the deadlines for individual permit applications and for part 2 of group applications. In addition, to reflect this date for submitting NOIs and to address the concerns of the commenters, pollution prevention plans for dischargers with facilities in operation on or before October 1, 1992 shall be prepared by April 1, 1993, and provide for implementation and compliance with the terms of the plan on or before October 1, 1993.

However, the Agency believes that operators of new industrial activity that commence after October 1, 1992 will have opportunities to prepare storm water pollution prevention plans prior to commencement of the industrial activity. Thus, today's permits require that such new dischargers be prepared to comply with their pollution prevention plan upon commencement of their discharge. The Agency believes that this approach will ensure that new facilities adequately incorporate pollution prevention concepts into their plans for new industrial activities.

Some commenters suggested different times for complying with plans. One commenter recommended that facilities be given 270 days after the effective date of the permit to prepare the plan. Some of these recommended that facilities be given a full year to develop the plan and an additional 180 days to implement baseline requirements. Other commenters suggested that permittees be given one year from the effective date of the permit to complete its plan and one and one half years from the effective date of the permit to comply with the conditions of the permit. One commenter thought permittees should be given one year from the effective date of the permit to prepare plans, and an additional year to comply with the plan to allow facilities to incorporate storm water management planning into the normal budgeting and operation of the facility. Another commenter indicated that the storm water control measures of the draft permit may require significant technical and management input for testing and evaluation prior to final implementation. One commenter urged EPA to stretch out compliance deadlines based on their belief that such action would provide industries with additional opportunities to plan and implement more comprehensive solutions to storm water management, thereby increasing the effectiveness of integrated pollution prevention methods.

In response, EPA notes that today's permits provide that plans can be modified after the initial compliance date to address information that comes from testing and the evaluation that occurs during the term of the permit. Given this flexibility, and based on a consideration of the requirements of the permit, the Agency believes that the time frames established in today's permits are reasonable. To ensure adequate flexibility and in response to comments, today's permits allow the Director to establish a later date for preparing and complying with plans based on a showing of good cause. However, it should be noted that section 402(p)(4)(A) of the CWA requires that any permit for a storm water discharge associated with industrial activity shall provide for compliance as expeditiously as practicable, but in no event later than three years after the date of issuance of such permit.

One commenter suggested that permittees be given one year to comply with the requirement to test for (or evaluate) illicit connections. In response, today's permit has been modified to provide that permittees have one year to certify that they have tested for or otherwise evaluated their storm water conveyance system for the presence of non-storm water discharges. This has been done to provide consistency between the deadline for certifying that storm water discharges have been tested for the presence of non-storm water and the deadline for implementing the pollution prevention plan.

One commenter suggested that small business be given 3 to 5 years to comply with permit requirements. In response,

the Agency believes that the complexity of the flexible, site-specific storm water pollution prevention plans required by today's permits will to some degree be related to the size of the facility. Thus, EPA believes that the time frames established in today's permits are appropriate for small businesses. However, in response to comments, today's permits provide additional flexibility for the Director to establish a later date for preparing and complying with plans based on a showing of good cause.

One commenter indicated that Federal facilities would have unique problems with the compliance dates in the August 16, 1991 draft permits because of the complexities of the Federal budgetary process. In response, the Agency notes that the draft permits were first publicly noticed on August 16, 1991. Federal facilities have had since that time to make planning decisions necessary to support plan preparation. In addition, today's permits require that plans for existing storm water discharges associated with industrial activity be developed by April 1, 1993, six months after the beginning of the 1993 fiscal year for the Federal government. Again, the Agency wants to clarify that today's permits provide additional flexibility for the Director to establish a later date for preparing and complying with plans based on a showing of good cause.

Some commenters indicated that it generally would take additional time to comply with the more complex requirements of the permit. Many of these commenters focussed on the special requirements for EPCRA section 313 facilities. For example, several commenters indicated the proposed plan requirements for EPCRA section 313 facilities can require substantial planning and design efforts. One commenter indicated that it would generally not be possible for many facilities to provide measures requiring significant construction, such as secondary containment, within one year because of the demand on environmental engineering firms, the time needed to prepare plans, the lead time required for planning and designing activities to construct secondary containment structures, and the delays that industrial facilities through the North will experience due to winter weather. Several commenters, including a large water pollution trade organization indicated that three years from the effective date of the permit be provided for any measure, such as installing secondary containment, that requires construction. Other commenters indicated that they thought four years would be needed by most facilities to complete installation of any required containment structures.

In response, the Agency believes that it is appropriate to provide permittees with more complex requirements which may require significant construction activities, such as those for EPCRA section 313 facilities, salt storage, and coal pile runoff, additional time to comply with today's permit requirements, and has established a three year compliance date for complying with these special requirements. In addition, facilities which trigger EPCRA section 313 thresholds for the first time during the permit term will have three years from the time they first have to report to comply with the additional requirements for EPCRA section 313 facilities. This deadline is consistent with section 402(p)(4)(A) of the CWA which requires that any permit for a storm water discharge associated with industrial activity shall provide for compliance as expeditiously as practicable, but in no event later than 13 years after the date of issuance of such permit. However, the Agency wants to clarify that such facilities must prepare a storm water pollution prevention plan address the baseline requirements (e.g. requirements other than the special requirements) by April 1, 1993, and provide for compliance with this portion of the plan by October 1, 1993.

One commenter requested that EPA clarify requirements for oil and gas operations that prior to October 1, 1992, did not require an NPDES permit for their storm water discharge, but that have a discharge of storm water resulting in the discharge of a reportable quantity of oil or a hazardous substance after October 1, 1992. In response, today's permits establish special deadlines for certain oil and gas operations. Oil and gas operations having a discharge of a reportable quantity of oil or a hazardous substance after October 1, 1992 are required to submit an NOI within 14 days after knowledge of the reportable quantity release and prepare and comply with the terms of a storm water pollution prevention plan within 60 days of the reportable quantity release. EPA believes this shorter time frame is appropriate because the potential for spills associated with such facilities and the additional expertise expected in the oil industry that has developed to comply with SPCC requirements.

Subsequent to the publication of the August 16, 1991 draft general permits, Congress established special permit application deadlines in the Transportation Act of 1991 for storm water discharges associated with industrial activity from facilities that are owned or operated by a municipality that has participated in a timely part 1 group application and where either the group application is rejected or the facility is denied participation in the group application by EPA. As discussed above, the deadline for such facilities to submit NOIs to be covered by today's permits is consistent with the Transportation Act. Today's permits provide that the plan for storm water discharges associated with industrial activity from a facility that is owned or operated by a municipality that has participated in a timely group application and where either the group application is rejected or the facility is denied participation in the group application by EPA must be prepared on or before the 365th day following the date on which the group is rejected or the denial is made, (and updated as appropriate). In addition, such permittees must provide for compliance with the terms of the plan on or before the 545th day following the date on which the group is rejected or the denial is made. These deadlines will give facilities that are part of a rejected group application sufficient time to comply with the pollution prevention plan requirements of today's permits.

Procedures for Reviewing Plans

The August 16, 1991 draft general permits provided that permittees were not required to submit a storm water pollution prevention plan to EPA unless EPA requested the plan on a case-by-case basis. The permit also provided that EPA may notify the permittee that the plan does not meet one or more of the requirements of the permit. Unless otherwise provided by EPA, permittees would have 30 days after such notification to make necessary changes and submit to the Director a written certification that the requested changes had been made.

Several commenters indicated that they thought, depending on the extent to which the Director required changes, 30 days could be an insufficient period of time to make the required changes. Some of these commenters suggested 90 days as a time period to make required revisions.

In response, the Agency notes that the permit provides flexibility for EPA to establish a longer or shorter time period for permittees to make and implement modifications to their plans. In general, EPA will consider factors such as whether the change is procedural in nature or will require structural

modifications, the extent of the modifications, and the environmental risk of the discharge when establishing alternative time periods for modifying plans.

One commenter indicated that they believed that plans should be dynamic documents which are revised as appropriate to reflect changes in the facility's operations. The Agency agrees with this comment. The Agency has modified today's permits to clarify and highlight this principle. Today's permits require that the permittee shall amend the plan whenever there is a change in design, construction, operation, or maintenance which has a significant effect on the potential for the discharge of pollutants to waters of the United States or if the storm water pollution prevention plan proves to be ineffective in eliminating or significantly minimizing pollutants. In addition, the requirements in today's permits for comprehensive site compliance evaluations have been developed based on the concept that permittees need to inspect their sites and evaluate the accuracy and effectiveness of their plans and make plan modifications as necessary.

Some commenters indicated that requiring permittees to submit plans to EPA upon request for review and approval would decrease plan effectiveness by discouraging facilities from revising their plans as necessary in light of new information and to meet changing circumstances. They indicated that this approach would also impose a heavy burden on EPA's limited reviewing resources.

The Agency does not agree that submitting plans to EPA upon request for review and approval would decrease plan effectiveness by discouraging facilities from revising their plans as necessary in light of new information and to meet changing circumstances. As discussed above, today's permit requires permittees to evaluate the accuracy and effectiveness of their plan, and to make modifications as necessary. The Agency believes that most discharges will realize that modifying their plan to make it more effective and will decrease the chances that EPA will require modifications. Nonetheless, as discussed below; plans must be submitted to EPA only on request.

Some commenters suggested submitting the storm water pollution prevention plans to EPA for their approval, thus avoiding compliance problems later. One commenter indicated that they thought some businesses will want their plans approved by EPA prior to implementing them, to avoid wasting money on a plan which is later deemed inadequate.

The Agency wants to clarify that it does not intend to conduct detailed reviews of all storm water pollution prevention plans prior to authorizing storm water discharges under the general permit because of limited resources. However, EPA retains authority to request and review storm water pollution prevention plans and to require changes to the plans and/or submittal of an individual permit application where appropriate. The Agency wants to clarify that if plans are voluntarily submitted to EPA for Agency review, the Agency is not precluded from requesting additional modifications at a later date based on additional information, changing conditions, evaluation of the effectiveness of the plan, or other relevant factors. Neither is the Agency precluded from requiring plan modifications where a plan had been voluntarily submitted earlier, and the Agency did not respond.

One commenter recommended that the permit should provide that no enforcement action could be brought against a permittee for violation of several provisions of the permit that provided dischargers with flexibility in selection of practices.

In response, the Agency will exercise enforcement discretion where appropriate when evaluating permit compliance. The Agency recognizes that several provisions of the permit provide flexibility for selecting controls to be implemented, and will consider good faith attempts at compliance when exercising its enforcement discretion. However, the Agency is concerned that specific language in the permit as requested by the commenter would create unnecessary confusion, and that some permittees would inappropriately argue that such language precluded EPA from enforcing permit conditions in all cases.

One commenter requested that EPA clarify that when requesting modifications to a storm water pollution prevention plan, the Agency identify with reasonable specificity which provisions of the plan require change and which of the minimum requirements the existing plan violates. In response, the Agency has made this clarification.

One commenter raised concerns that EPA has not provided administrative procedures for reviewing plans and requiring modifications, and it is unclear whether the permittee has the right to meet with the Agency, submit comments on the required changes, or file any sort of appeal. The commenter indicated that a discharger and EPA may legitimately differ on whether a plan meets appropriate requirements, and that facilities should have the opportunity to request review of the agency's initial determination that a plan does not meet requirements, and explain exactly why a particular element of a plan is appropriate for a specific facility.

In response, the ultimate resolution of disagreements concerning the adequacy of pollution prevention plans is a compliance issue. However, permittees always have the opportunity to make their disagreements known to the Agency and to resolve compliance concerns on an informal or formal basis. It can also be noted that EPA's regulations, and today's permits provide dischargers with the opportunity to submit an individual permit application. In cases where the Agency decides to issue an individual permit, dischargers will have additional opportunities for input.

Monitoring and Reporting Requirements

I. Overall Approach to Monitoring Requirements

On August 16, 1991, EPA requested comment on modifying the regulatory provision at 40 CFR 122.44(i)(2), addressing the establishment of discharge monitoring reporting requirements in NPDES permits for storm water discharges associated with industrial activity. The regulation existing at the time of the proposal provided that NPDES permits, including NPDES permits for storm water discharges, require discharge monitoring reports at a minimum of once a year. As part of the August 16, 1991 notice, EPA specifically identified six options for modifying requirements to report monitoring results for storm water discharges associated with industrial activity.

In addition, the draft general permits in the same August 16, 1991 notice requested comment on annual discharge sampling of storm water discharges from most classes of storm water discharges associated with industrial activity as this approach was consistent with the option EPA favored in the August 16, 1991 notice for the regulatory change. However, in the August 16, 1991 notice, the Agency also indicated that the monitoring requirements in the final permits could be less stringent if the regulatory change provided additional flexibility with respect to minimum monitoring requirements.

The draft baseline general permit proposed on August 16, 1991, required a minimum of annual monitoring for all discharges of storm water associated

with industrial activity except those from certain oil and gas operations. Most facilities were subject to a baseline monitoring requirement of eight parameters plus any pollutant limited by an effluent guideline to which the facility was subject. Six classes of industries were selected for more extensive semi-annual monitoring with additional industry-specific parameters. Oil and gas exploration or production operations were given the option of obtaining a PE certification that a pollution prevention plan was being implemented in accordance with the permit in lieu of monitoring.

On April 2, 1992, (57 FR 11394), EPA published final revisions to the Agency's baseline NPDES monitoring requirements for storm water discharges. Under the modified regulatory framework, monitoring requirements for NPDES permits for storm water discharges associated with industrial activity are to be established on a case-by-case basis, with minimum requirements relating to site inspections rather than discharge monitoring.

II. Comments on Proposed General Permit Monitoring Requirements

Several commenters thought that the monitoring requirements in the August 16, 1991 draft permits should be retained or expanded. These commenters indicated that monitoring was necessary to adequately identify pollutant sources, determine the effectiveness of pollution prevention measures, and build a data base to support future permit issuing activities. However, the majority of commenters addressing this issue raised concerns regarding proposed requirements for all permittees to sample their discharges. A number of these commenters suggested that it was important to sample storm water discharges from priority classes of activities or facilities, but that across-the-board monitoring requirements for all facilities covered by the permit may not be an appropriate or cost-effective use of resources. While most commenters in the regulated community supported the necessity for controlling pollutants discharged via storm water runoff, the expense and difficulties of storm water monitoring were of major concern. Some of these commenters indicated that overly broad discharge monitoring requirements at this point in time could be counterproductive toward the goals of the program, as significant resources would have to be expended collecting and analyzing discharge samples, thereby limiting available resources at some facilities to develop and implement measures that would result in the removal of pollutants in their storm water discharges. Other concerns raised by the commenters included the difficulties in characterizing storm water discharges with sampling data, the belief that in some situations, site inspections would be more appropriate than monitoring for determining permit compliance, and EPA's limited ability to effectively review data. An underlying theme that emerged from the comments was that a number of factors, such as the potential for discharges to contain significant amounts of pollutants, the nature of permit conditions, and the nature of the operation of the facility should be considered when establishing monitoring conditions in NPDES permits for storm water discharges.

In response, the Agency has modified the monitoring requirements of the final general permit to be consistent with the flexibility afforded by the changes to minimum monitoring requirements at 40 CFR 122.44(i)(2) made on April 2, 1992. Monitoring requirements for discharges from many classes of industrial facilities have been reduced or eliminated. Monitoring requirements have been retained for selected industries or industrial activities which, due to the nature of industrial activities or materials stored or used onsite, have significant potential for contributing pollutants to storm water. These requirements are discussed in more detail below.

As discussed in more detail earlier in today's notice, the Agency has also added requirements to conduct comprehensive annual site compliance evaluations which have been designed to evaluate the effectiveness of permit implementation and identify pollutant sources consistent with the April 2, 1992, regulatory modifications. The Agency believes that these compliance evaluations can provide an efficient and cost-effective approach for evaluating the effectiveness of permit program implementation.

In adopting this approach, the Agency recognizes that discharge monitoring data can play several important functions, including assisting in identifying pollutant sources, evaluating the effectiveness of pollution prevention measures, evaluating the risk of discharges by indicating the type and concentration of pollutant parameters in the discharge, and provide information which can be used in efforts to identify water quality impacts, and supporting future permitting activities, such as Tier II, III and IV activities described in EPA's long-term permitting strategy.[37]

However, the Agency also recognizes that other types of information can be used to supplement or in some cases replace monitoring information. For example, the requirements in today's permits for the narrative description of potential pollutant sources, inspections, testing for non-storm water discharges, and comprehensive site compliance evaluations will assist in identifying pollutant sources associated with industrial activity. In addition, the Agency notes that the effectiveness of some types of pollution prevention measures can be observed without monitoring, such as removal or elimination of pollutant sources, eliminating exposure of materials to precipitation, and eliminating non-storm water discharges to the storm sewer system. Other measures, such as maintaining vegetation to prevent erosion, silt fences, and screens or other devices to collect floatables can be evaluated without sampling discharges.

The approach taken in today's permits represents an approach which uses both comprehensive site compliance evaluations and monitoring requirements for targeted industrial activities and facilities to pursue the goals of the program. In accordance with 40 CFR 122.44, today's permits require permittees to conduct comprehensive site compliance evaluations. In addition, all permittees are required to develop and implement pollution prevention plans. These requirements establish a baseline for ensuring facilities evaluate pollutant sources and evaluate the effectiveness of pollution prevention measures for storm water discharges. Today's permits also establish monitoring requirements for facilities where EPA has identified targeted activities that are potential sources of significant amounts of pollutants. These requirements will provide additional information that will assist and supplement efforts to identify pollutant sources and evaluate the effectiveness of pollution prevention requirements. The Agency believes that this approach represents a balanced approach that addresses the concerns raised in the comments. Those facilities that are not required to conduct monitoring will be able to dedicate their efforts at this time to developing and implementing pollution prevention plans which involve identifying pollutant sources

[37] EPA's long term permit issuance strategy for storm water discharges associated with industrial activity is described in the April 2, 1992 **Federal Register** (57 FR 11394).

and evaluating the effectiveness of pollution prevention measures. Additional monitoring requirements have been limited to facilities which EPA believes, based on a general evaluation of industry practices, may have sources of significant amounts of pollution that warrant further evaluation.

Today's permits provide an exemption from monitoring requirements for outfalls at targeted facilities that do not have any materials, material handling equipment, industrial machinery or industrial operations exposed to storm water located within the drainage area of the outfall. In such cases, a discharger must provide an annual certification that material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, industrial machinery or operations, or, in the case of airports, deicing activities, within the drainage area of the outfall will not be exposed to storm water. Where the certification is provided, the permittee will not be required to monitor storm water discharges from the outfall. (However, the permittee must still comply with other applicable permit requirements which do not address sampling pollutants in discharges). This approach is consistent with the general monitoring scheme of today's permits which focuses monitoring requirements on specific targeted sources of pollution. The Agency believes that this approach will provide an incentive for permittees to eliminate exposure of potential pollutant sources to storm water. Eliminating exposure of these materials to storm water is one of the most effective pollution prevention measures available for these sources and is consistent with the objectives of the permit and the CWA. The Agency also believes that this approach will lower burdens on facilities that have taken steps to eliminate exposure of materials and equipment to storm water discharges.

In developing the monitoring strategy in today's permits, EPA recognizes that it has other sources of information available to assist in achieving the broader national objectives supported by monitoring data, such as developing additional targetted controls for storm water discharges from priority industries. Examples of other sources of monitoring data include, group applications [38], individual applications, information in State Storm Water Permitting Plans[39], and storm water monitoring data required under other EPA or authorized NPDES State permits that are entered into the permit compliance system (PCS) data base. In addition, EPA is authorized under section 308 of the CWA to require dischargers to, on a case-by-case basis, submit sampling monitoring data necessary to carry out the objectives of the CWA. This authority can be used to obtain storm water monitoring data that is not otherwise required under the permit. For example, EPA could request facilities from targetted industries that have certified that they do not have materials or equipment exposed to storm water to report storm water monitoring data in order to characterize other potential pollutant sources or to identify background levels of pollutants from facilities that have been able to eliminate exposure of these activities to storm water.

Other commenters raised issues regarding the appropriateness of the proposed monitoring parameters to particular industries. In general, EPA has modified some of the parameters associated with the monitoring requirements in today's permits in response to comments and to provide a better relationship between the monitoring requirements and potential pollutant sources associated with classes of industrial activities. These concerns and changes are addressed below.

Several commenters also requested clarification on, or objected to, potential overlap between the industrial categories. While the comments were directed at the EPCRA section 313 facilities, the Agency's response applies to all annual and semi-annual monitoring categories in the final permit. Generally, the industry-specific monitoring requirements are additive and not intended to be mutually exclusive. Monitoring requirements must be evaluated on a outfall by outfall basis. If a particular discharge fits under more than one set of monitoring requirements, the facility must comply with both sets of sampling requirements. This will ensure adequate data to evaluate all of the appropriate pollutant sources. The Agency notes that this approach often will not result in requiring dischargers to collect extra samples, but rather to analyze samples that are collected for additional parameters.

On the other hand, sampling parameters often overlap between the categories. For example, an outfall subject to the semi-annual EPCRA and annual "Other Facility" sampling requirements could sample semi-annually for EPCRA parameters and satisfy both sampling requirements by analyzing for parameters in an applicable effluent guideline to either of the two semi-annual samples. However, coal pile runoff should be addressed somewhat differently because it is subject to a numeric effluent limitation under today's permit. Coal pile runoff should be monitored before it is commingled with flows from other sources. Thus, coal pile runoff from a primary metal facility, for example, should only be monitored for the parameters specified for coal pile runoff. The Agency believes that this approach will adequately support the effluent limitation of today's permit.

The monitoring requirements of today's permits can be broken into two general classes, semi-annual monitoring, and annual monitoring. Facilities that are required to conduct semi-annual monitoring are required to report data annually. Facilities that are required to conduct annual monitoring are required only to report data if the data is requested by the permitting authority. EPA believes that higher monitoring frequency for facilities that are required to report data will assist EPA in efforts to establish program priorities and will support future permitting efforts, as well as gives these facilities more data to consider. Not requiring facilities to submit data unless it is specifically requested will lower reporting burdens on facilities where data is not specifically requested, while still providing facilities with a means to evaluate pollution prevention plans.

III. Certification of Testing For Non-storm Water Discharges

The draft permit prohibited the discharge of all non-storm water and required certification under the pollution prevention plan that all storm water outfalls had been tested for the presence of illicit connections. If unable to provide certification within the 180 day pollution prevention plan development period, the permittee was required to notify the Director. One commenter felt the certification date should be changed to correspond to the deadline for pollution prevention plan compliance.

The Agency concurs with this comment and has modified the "Failure to Certify" reporting requirement. Any

[38] EPA has received over 1,200 Part 1 group applications from a wide variety of industrial groups. Part 2 of the group applications, which contains representative monitoring data from the industrial group, are due on October 1, 1992.

[39] State Storm Water Permitting Plans are to contain a description of activities addressing priority issuing permits for storm water discharges from priority industrial facilities (see April 2, 1992 (57 FR 11394)).

facility that is unable to provide the certification regarding testing for non-storm water discharges, must notify the Director by October 1, 1993 or, for facilities which begin to discharge storm water associated with industrial activity after October 1, 1992, within 180 days after submitting a NOI to be covered by this permit. The October 1, 1993 date is appropriate for existing facilities because it is consistent with the timing provided for these facilities to prepare (April 1, 1993) and implement (October 1, 1993) a plan. The 180 days provided to facilities which begin to discharge storm water associated with industrial activity after October 1, 1992 is consistent with the requirement that these facilities must have their plan developed before beginning the industrial activity that will generate the storm water discharge.

IV. Monitoring and Reporting Requirements for Classes of Targeted Industrial Activities

Semi-Annual Monitoring Requirements

In today's permits, EPA has retained, with some modifications, the semi-annual (twice per year) monitoring requirements proposed in the August 16, 1991 draft permits for certain storm water discharges associated with industrial activity from: EPCRA section 313 facilities with water priority chemicals; primary metal facilities; land disposal units/incinerators/boiler and industrial furnaces (BIFs); wood treatment facilities (wood preservers); and coal pile runoff. As discussed below, semi-annual monitoring requirements have been added for battery reclaimers. These facilities have a significant potential to contribute toxic pollutants to storm water due to the nature of activities occurring onsite and the types of materials handled.

In response to comments, EPA has clarified the requirements as they pertain to each industrial category. For the most part, monitoring requirements are limited to discharges associated with specific industrial activities, and do not necessarily apply to all storm water discharges from a site.

EPCRA Section 313 Facilities with Water Priority Chemicals. Comments were received both objecting to and supporting additional monitoring requirements for EPCRA section 313 facilities. In both cases, commenters indicated that any EPCRA monitoring conditions should be applied only to those areas where section 313 water priority chemicals were stored or handled. Other commenters suggested that sampling parameters be limited to those section 313 water priority chemicals actually stored within the drainage area. Several individual companies and trade organizations argued that typical pollution prevention measures at their facilities are already stringent enough to prevent uncontrolled releases into the environment and that monitoring should either be eliminated or reduced. Comments regarding acute whole effluent toxicity testing are addressed separately below.

In response, as discussed above, EPA believes that facilities that manufacture, import or process, or other use of large amounts of toxic chemicals can potentially be a significant source of toxic pollutants to storm water. Failures of process, handling and storage equipment used for EPCRA water priority chemicals associated with operator error, structural failures, and corrosion can result in the release of toxic chemicals. Such releases can continue undetected until the release becomes obvious.[40] In such cases, monitoring data can provide valuable insight with respect to these pollutant sources. For example, monitoring data can show that leaks from seals, values or piping are a source of pollution to storm water. The Agency also believes that EPCRA thresholds are appropriate for identifying priorities for the purposes of establishing storm water monitoring requirements, as these thresholds identify a well known set of facilities which manage large amounts of toxic chemicals. One of the major purposes of monitoring storm water discharges from EPCRA section 313 facilities is to provide data that can assist in identifying pollutant sources associated with the storage, use or management of EPCRA section 313 water priority chemicals. Dischargers will also be able to review monitoring data as a means of evaluating the effectiveness of pollution prevention measures. Assessment of data will also allow the Agency to develop the controls and monitoring requirements in the Tiers II, III, and IV storm water permits.

In response to comments, the Agency has limited special EPCRA monitoring requirements to the areas where section 313 water priority chemicals are stored or handled. The final permit clarifies that these monitoring requirements apply only to those facilities subject to EPCRA section 313 reporting requirements for section 313 water priority chemicals, and then only for those storm water discharges associated with industrial activities that allow storm water to come into contact with any equipment, tank, container or other vessel or area used for storage of a section 313 water priority chemical, or storm water discharges from a truck or rail car loading or unloading area where a section 313 water priority chemical is handled.

Primary Metal Facilities

Primary metal facilities (SIC 33) are engaged in the manufacturing of ferrous metals and metal products and the primary and secondary smelting and refining of nonferrous metals. In addition, facilities engaged in the molding, casting, or forming of ferrous or nonferrous metals are included in this group. Due to the nature of processes and activities commonly occurring at these facilities, a number of sources can potentially contribute significant amounts of pollutants to storm water. Sources of pollutants include outdoor storage and material handling activities, particulate and dust generating processes, and slag quench processes. Open air storage and handling of raw materials, products, and wastes is a common practice at many of these facilities. In addition, dust and particulate-generating processes, particularly at smelting and refining facilities, are considered potential sources of pollutants in storm water discharges. Many of these types of facilities also use a high volume of water for operations such as spray quenching, heat treating, and die cooling, which when coupled with the old age of many primary metals industry facilities, can create the potential for non-storm water to be discharged to the storm water collection systems.

One commenter suggested that monitoring requirements should be limited to those in effluent guidelines applicable to specific facilities. In response, the Agency does not agree with the commenter because the effluent guidelines for process discharges may not address all of the pollutants that potentially can be found in storm water discharges. In some cases, the effluent guidelines use indicator parameters such as TSS to characterize the removal of other pollutants, such as metals. While such an indicator can be appropriate for evaluating the effectiveness of treatment technologies, TSS will not differentiate between inert solids and other pollutants, such as heavy metals. EPA has modified today's permits by not including total Kjeldahl nitrogen, nitrate plus nitrite nitrogen, and total phosphorus as parameters required for primary metal facilities. High levels of these parameters are not typically associated with the activities of primary metal facilities, and not requiring these parameters will reduce the costs of

[40] See "Hazardous Waste Tank Risk Analysis," EPA, 1986.

sampling for these facilities. In addition, the Agency has added the requirement that these facilities monitor any pollutant limited in an effluent guideline to which the facility is subject. The Agency believes that the addition of these parameters is appropriate, because they represent parameters which have been identified as being associated with the various subcategories of primary metal activities. In addition, the Agency notes that it was an oversight in the August 16, 1991 draft permit to not require monitoring of any pollutant limited in an effluent guideline to which the facility is subject, and that most other sampling requirements for other categories of industries addressed (including the category of additional facilities described below), required monitoring of these parameters.

One company requested silicon manufacturing and semiconductor grade silicon manufacturing be exempted due to lower heavy metal content of ores. In response, data indicates that raw silicon metal for manufacture of silicones begins with the reduction of quartz rock which typically contains relatively minor amounts of heavy metals relative to other ores. In addition, the manufacture of semiconductor grade silicon begins with distilled chlorosilanes which are free of heavy metals and that heavy metals cannot be in the starting material or they would contaminate the product. Based on a consideration of these factors, the Agency has limited the monitoring requirements for these facilities.

Two trade organizations questioned EPA's legal authority to require additional monitoring of the primary metal industry and indicated that many of their members already recover particulate that can contaminate storm water and that facilities that did not perform primary smelting operations did not generate dust. One of these commenters suggested that EPA wait until it collects and reviews information from other sources, such as group applications, before requiring monitoring.

The Agency has broad authority under sections 308(a) and 402(a)(2) of the Clean Water Act to establish any monitoring conditions deemed necessary to develop or insure compliance with effluent standards or insure protection of water quality. The monitoring conditions in today's permits have a number of purposes, including providing information to identify pollutant sources, and evaluating the effectiveness of pollution prevention measures. In addition, as summarized above, the Agency notes that industrial activities which typically occur at SIC 33 facilities can contribute pollutants other than by dust generation.

Land Disposal Units/Incinerators/BIFs

Land disposal units and incinerators and boilers and industrial furnaces (BIFs) that burn hazardous waste may receive a diverse range of industrial wastes. Waste receiving, handling, storage and processing, in addition to actual waste disposal can be a significant source of pollutants at waste disposal facilities. The surface water impacts associated with land disposal units are well characterized. EPA has summarized case studies documenting surface water impacts and ground water contamination of land disposal units (see August 30, 1988). Evaluation of 163 case studies revealed surface water impacts at 73 facilities. Elevated levels of organics, including pesticides, and metals have been found in ground water and/or surface water at many sites.

The August 16, 1991 draft permits proposed special sampling requirements for land disposal units. Today's permits contains modified monitoring requirements for land disposal units and incinerators and boilers and industrial furnaces (BIFs) that burn hazardous waste and are at facilities with storm water associated with industrial activity. BIFs are those boilers and industrial furnaces burning hazardous waste for fuel that are subject to regulations promulgated under the Resource Conservation and Recovery Act (RCRA) and published February 21, 1991 (56 FR 7134), are similar to hazardous waste incinerators in that they burn hazardous materials such as spent solvents, contaminated fuels, etc., but the primary purpose of the facility is not waste disposal and the hazardous material is typically burned to provide heat, steam or generate electricity for use in manufacturing processes.

Incinerators and BIFs that burn hazardous wastes have been added to this category because these facilities will typically manage the same types of wastes as landfills, and therefore present similar risks with respect to waste transportation, handling, and storage. In addition, a wide range of toxic pollutants potentially present in fuel stocks, material accepted for disposal, air emission particulate, and ash at these facilities have the potential to contaminate storm water runoff.

A number of commenters objected to the number of parameters associated with the monitoring requirements proposed for land disposal units. In response, monitoring parameters for this class were selected due to the wide range of potential pollutants at land disposal facilities. The parameters listed in the August 16, 1991 draft permits are similar to the parameters addressed by proposed ground water monitoring requirements for municipal solid waste landfills established under subtitle D of RCRA (see August 30, 1988 (53 FR 33372)). In developing the list of parameters for the sampling requirements for land disposal units and incinerators in today's permits, the Agency has deleted several parameters which are monitored in a ground water context primarily to detect plume migration, and are not necessarily of concern in and of themselves. These parameters include carbonate, calcium, chloride, iron, potassium, sodium, and sulfate. Not requiring these parameters to be analyzed will reduce monitoring costs. Comments regarding acute whole effluent toxicity testing are addressed separately below.

Several commenters felt landfill runoff was already adequately addressed by State regulatory programs. In response, the Agency notes that the criteria the Agency has published for solid waste disposal facilities under subtitle D of RCRA does not include sampling or treatment requirements for storm water discharged from landfills (see October 9, 1991 (56 FR 51054)). In the October 9, 1991, notice establishing criteria for solid waste disposal facilities, the Agency noted that the NPDES permit under the CWA would be the appropriate mechanism for ensuring that point source discharges of runoff from landfills are protective of human health and the environment.

Several commenters requested clarification on whether inactive or closed land disposal sites were also subject to these monitoring requirements. In response, the Agency is clarifying that today's permits establish monitoring requirements for storm water discharge from an active or inactive landfill, open dump or land application site without a stabilized final cover that has received any industrial wastes (other than wastes from a construction site).

In general, inactive land disposal sites with a final cover that is consistent with specifications for a final cover system for municipal solid waste landfills developed under subtitle D of RCRA will satisfy the requirement of a stabilized final cover for the purposes of monitoring requirements under today's permits. The subtitle D specifications for a final cover system are provided at 40 CFR 258.60 and include an erosion layer underlain by an infiltration layer as follows:

• The infiltration layer must be comprised of a minimum of 18 inches of earthen material that has a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present, or a permeability no greater than $1 \times 10^{**-5}$ cm/sec, whichever is less, and

• The erosion layer must consist of a minimum of 6 inches of earthen material that is capable of sustaining native plant growth.

States may approve alternative final cover designs that include an infiltration layer that achieves an equivalent reduction in infiltration, and an erosion layer that provides equivalent protection from wind and water erosion.

The Agency believes that inactive facilities meeting these requirements will generally not be a significant source of pollutants to storm water discharges.

Wood Treatment Facilities (Wood Preservers)

Pollutants in storm water runoff from treated material storage yards at wood-preserving facilities were studied by EPA in 1981 in support of effluent guidelines development, and in support of a proposed hazardous waste listing in 1988 (December 30, 1988 (53 FR 53287)). Several organic pollutants were found at significant concentrations, including pentachlorophenol, fluoranthene, benzo(a)anthracene, chrysene, phenanthrene, and pyrene.

One commenter suggested combining the two categories of wood treating facilities identified in the August 16, 1991 draft permits into one category, with monitoring requirements based on the type of wood preservative used. In response, the Agency has modified these monitoring requirements so that there is only one wood preserving monitoring category in today's permits. Under the combined category, all wood treatment facilities will be required to monitor for oil and grease, pH, COD, and TSS. Requirements for monitoring phosphorus, nitrate plus nitrite, Kjeldahl nitrogen, and BOD5 have been eliminated. Nutrients are not expected to be present in significant amounts at these facilities. Metals or other toxic materials in samples can limit the accuracy of BOD5 analysis. Facilities that use chlorophenolic formulations must measure pentachlorophenol and acute whole effluent toxicity; facilities which use creosote formulations must measure acute whole effluent toxicity; and facilities that use chromium-arsenic formulations must measure total arsenic, total chromium, and total copper. In addition, the final permit clarifies that areas that are used for wood treatment, wood surface application or storage of treated or surface protected wood at any wood preserving or wood surface application facilities are subject to these monitoring requirements.

Another commenter suggested reducing the monitoring frequency due to material management regulations established under other environmental programs such as RCRA. In response, the Agency notes that no provision of RCRA or the CWA limits EPA's authority to regulate storm water discharges from wood preserving facilities under the CWA. EPA published regulations addressing several wastes from wood preserving facilities, including storage yard drippage, on December 6, 1990 (55 FR 50450). The RCRA requirements do not require monitoring of storm water discharges to assist in characterizing pollutants in such discharges. Rather, the RCRA requirements establish a set of controls, including certain management practices, to control wastes addressed by the rule. While several of these requirements, where properly implemented, should decrease pollutants in storm water discharges, the Agency continues to believe that a minimum of twice per year sampling is appropriate for these facilities to adequately characterize pollutant sources and to evaluate the effectiveness of the pollution control measures required under RCRA and today's permits.

Comments regarding acute whole effluent toxicity testing are addressed separately below.

Coal Pile Runoff

Pollutants in storm water runoff from coal piles are discussed in detail earlier in today's notice. Monitoring requirements are necessary to support the numeric effluent limitation in today's permits. Commenters did not emphasize concerns regarding monitoring requirements for coal pile runoff. However, the final permit does modify the coal pile runoff limitations to correspond to those at 40 CFR part 423. As a result, grab sampling of the parameters will be required to be consistent with the instantaneous maximum limitations.

Battery Reclaimers

Today's permit establishes special semi-annual monitoring requirements for storm water discharges from areas used for storage of lead acid batteries, reclamation products, or waste products, and areas used for lead acid battery reclamation (including material handling activities) at facilities that reclaim lead acid batteries. Based on an evaluation of the battery reclamation industry, the Agency has identified handling, storage and processing of lead acid batteries, as well as byproduct and waste handling at reclamation facilities as having a significant potential for pollutants in storm water discharges.

Only those areas used for storage of lead acid batteries, reclamation products, or waste products, and areas used for lead acid battery reclamation (including material handling activities) are subject to this monitoring requirement.

Acute Whole Effluent Toxicity Monitoring Requirements

The August 16, 1991, draft permit proposed acute whole effluent toxicity (WET) monitoring for EPCRA section 313 facilities; primary metal (SIC 33) facilities; land disposal facilities; and wood treatment facilities using creosote or chlorophenolic compounds. WET testing was included as both an efficient method of assessing the toxicity potential of complex mixtures of pollutants in storm water and as a measure of the effectiveness of a facilities pollution prevention plan.

A number of concerns regarding acute WET testing were raised in the comments. The usefulness of testing storm water for toxicity without allowing for instream dilution was questioned. These commenters indicated concerns that storm water discharges that exhibited toxicity may not create toxic conditions in receiving waters due to the dilution provided by the receiving stream.

In response, the Agency wants to clarify a primary purpose of the WET monitoring requirements in today's permits is to assist in the identification of pollutant sources, particularly where complex mixtures of pollutants in storm water may result, and assist in the evaluation of the effectiveness of pollution prevention practices, not to consider the ability of receiving streams to dilute toxicity. The Agency believes that testing 100 percent storm water effluent (no dilution) is appropriate for this purpose because testing 100 percent storm water effluent is preferable to testing diluted effluent where the object of conducting the test is to detect the presence of toxicity in the effluent. The Agency also notes that tests conducted on 100 percent effluent can serve as an initial screen for evaluating whether a discharge potentially contributes to water quality impairment.

Several commenters questioned the particular acute toxicity test proposed (48-hr invertebrate and 96-hour vertebrate) with regard to its use on short, intermittent, and variable storm water discharges. In response, today's

permits have been modified to provide for a 24-hour test period for the acute WET parameter. EPA believes that in certain situations, such as where several storm events occur over a period of several days, storm water discharges can result in exposures to toxic chemicals of longer than 24 hours, and that in some situations, monitoring the acute WET parameter using longer time periods (such as 48-hr for invertebrate species and 96-hour for vertebrate species) will be appropriate. However, the primary reasons for establishing monitoring requirements for the acute WET parameter in today's permit is to assist in identifying pollutant sources and to evaluate the effectiveness of pollution measures. Since the WET monitoring requirements in today's permits are generally not intended to directly evaluate toxic effects on organisms in receiving waters, the Agency believes that it is appropriate to allow for 24 hour testing of the WET parameter to reduce monitoring costs.[41] This approach is consistent with the EPA policy of allowing for shorter toxicity testing time intervals when conducting toxicity screening tests.[42]

Several commenters suggested the use of indigenous species. In response, the WET monitoring requirements in many of today's permits allow flexibility for the selection of appropriate invertebrate and fish species, consistent with EPA recommendations in "Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms", EPA, 1991, (EPA-600/4-90/027). However, the permits for Louisiana, New Mexico, Oklahoma, Texas, Colorado, Wyoming, Montana, North Dakota, South Dakota, and Utah specify specific species to be tested. EPA believes that specifying the species in standardized test methods will allow direct comparison to similar discharges at different facilities, and is consistent with WET procedures generally used in other NPDES permits issued for discharges in these States. In addition, the use of sensitive standardized test species helps avoid problems that arise when indigenous organisms may be diseased or impaired. Many laboratories across the country maintain healthy cultures of standardized toxicity test organisms. A similar problem may arise in using indigenous organisms when the organisms may have built up a tolerance to certain toxicants that they are exposed to. Again, the Agency wants to emphasize that the primary purposes of requiring WET monitoring is to assist in identifying pollutant sources and to evaluate the effectiveness of pollution prevention measures, and is generally not intended to directly evaluate toxic effects on organisms in receiving waters.

Additional comments were received questioning the usefulness of toxicity testing prior to implementation of a facility's pollution prevention plan. In response, the Agency believes that acute WET monitoring data can be used to assist in the development of storm water pollution prevention plans by assisting in identifying potential pollutant sources which can be targeted for control, and therefore monitoring for this parameter before implementing plans is appropriate. In addition, sampling data obtained before storm water pollution prevention plans have been implemented can assist in developing a baseline to evaluate the effectiveness of pollution prevention measures.

Several commenters raised concerns regarding the costs of analyzing samples for the WET parameter. In response, an informal survey of commercial laboratories indicated 24-hour acute toxicity tests conducted on 100 percent effluent would be in the neighborhood of $250 per species, or $500 total. Based on a consideration of these costs and other factors, the Agency maintains that monitoring for the WET parameter is appropriate. The Agency has made several modifications to WET monitoring procedures to reduce the costs of monitoring for the WET parameter, including reducing the test period to 24 hours and only requiring testing on 100 percent effluent. Since the monitoring requirement is not designed to directly measure water quality impacts on the receiving water, use of freshwater test species and reconstituted dilution water will be allowed for all discharges.

Some commenters indicated that monitoring the acute WET parameter would not necessarily indicate the source of pollutants causing the toxicity. In response, the Agency agrees that monitoring for the WET parameter, by itself, will not necessarily indicate sources of pollutants or the chemical constituents affecting the WET parameter. Rather, the WET parameter serves as a screen that gives a general indication of the toxicity of the discharge. One of the biggest advantages to the WET parameter is its ability to characterize complex mixes of chemicals with a single, easily understood, parameter. When using the WET parameter, it is not necessary to specifically identify and consider all of the potential pollutants that could be present in a discharge. Once toxicity is detected, the discharger can use a variety of methods to identify sources of pollutants causing the toxicity, including evaluating information in the description of potential pollutant sources required in the storm water pollution prevention plan, evaluating other information regarding the nature of industrial activities at the facility, and conducting additional monitoring and analyzing for specific pollutants.

However, in response to concerns raised on this issue, the sampling requirements of today's permits for wood preserving facilities, land disposal units, hazardous waste incinerators or BIFs, primary metals facilities, and facilities subject to Section 313 of the EPCRA for water priority chemicals (e.g. those classes of facilities where the acute WET parameter was identified in the draft general permits) provide that these dischargers, in addition to monitoring for parameters specified for the industrial class, can either analyze samples for the WET parameter or for the pollutants identified in Tables II and III of appendix D of 40 CFR 122 that the discharger knows or has reason to believe are present at the facility site. Permittees that monitor for selected pollutants identified in Tables II and III of appendix D of 40 CFR 122 should base their determination of whether a particular chemical is known or believed to be present at the facility site on a consideration of the activities at the facility.

The determination of whether a chemical is known or reasonably expected to be present at a facility site will involve the reasonable best effort of the permittee to identify that significant quantities of materials or chemicals are present at the facility. The Agency's intention is to focus monitoring on constituents (pollutants) that are present in quantities large enough so that it is likely that they may potentially be present in storm water. The Agency generally believes that, unless there is other evidence to suggest the likelihood of discharge in storm water, where quantities are less than 100 kilograms or one barrel within the monitoring period the likelihood of detection in storm water is relatively low. This determination can be based on an evaluation of information such as material inventories, the industrial

[41] Today's permits for discharges in CO, WY, MT, ND, and UT require 48 hour testing for invertebrate species, and 96 hour testing for fish species. These procedures are consistent with the procedures generally used in NPDES permits for WET testing other discharges within these States. Use of the same procedures will assist EPA in evaluating this data.

[42] "Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms", EPA, 1991, (EPA-600/4-90/027).

activities, raw materials, products, waste materials, and other site specific considerations. EPA does not intend that dischargers know with an exact measurement or absolute certainty whether a chemical is present in amounts that exceed this threshold. For example, where the chemical is a minor constituent of various materials and products used at the facility, where the chemical is present in various products, such as cleaning supplies, or other incidental materials not used in an industrial process, or where it is held as a small laboratory stock, there would be no requirement for monitoring.

This change provides permittees with two approaches for attempting to identify sources of pollution to storm water discharges. The first approach, use of the WET parameter, focuses on the use of a single parameter with the ability to identify the potentially toxic character of mixtures of chemicals in water. This approach might be used, for example, at industrial facilities where the storm water may contain a wide range of chemicals, or where the chemicals used at the facility are not well characterized. The WET parameter can be used to provide an initial indication of whether the level of toxic constituents in a discharge reaches toxic levels.

The second approach focuses on analyzing storm water samples for specific chemicals that the discharger knows or has reason to believe are present at the facility site. This approach might be used, for example, where the discharger can characterize the chemicals at the facility site. This monitoring approach provides chemical specific information that may provide a more direct indication than the WET parameter of specific pollutant sources.

EPA suggests that permittees consider the following factors when evaluating which approach to monitoring to pursue: the types of chemicals present at the site; the feasibility of collecting sample volumes necessary to conduct WET monitoring; and analytical laboratory costs.

Toxicity Reductions

A number of commenters requested clarification as to whether facilities that detected acute WET in their storm water discharge would be required to conduct a toxicity reduction evaluation (TRE). Several commenters objected to the requirement to conduct a toxicity reduction evaluations (TRE) without more research into the applicability of current TRE procedures to storm water discharges. One commenter indicated that if a discharge is found to fail the WET test, it should be allowed the opportunity to conduct additional WET tests before undergoing a formal toxicity reduction evaluation.

In response, today's permits provide that if acute whole effluent toxicity (statistically significant difference between the 100 percent dilution and control) is detected after October 1, 1995 in storm water discharges required to conduct toxicity testing under this permit, the permittee must review the storm water pollution prevention plan and make appropriate modifications to assist in identifying the source(s) of toxicity and to reduce the toxicity of their storm water discharges. The Agency believes it is appropriate that the permit require the permittee to review the pollution prevention plan and study ways to reduce demonstrated toxicity. The Agency believes that the approach taken in today's permits provide considerably more flexibility than requirements to conduct formal TREs.

The Agency believes that this approach addresses the need to reduce demonstrated toxicity while providing flexibility for facilities to evaluate their storm water discharges for toxicity and to take appropriate steps to reduce toxicity prior to October 1, 1995. This provides dischargers with an opportunity to implement site-specific and innovative measures to reduce toxicity. In addition, this approach recognizes the difficulties in ascertaining whether a specific measure or approach will successfully reduce toxicity at a given facility. The Agency believes that this approach will provide additional opportunities to evaluate pollution prevention measures suitable for reducing toxicity and for evaluating the role of treatment technologies in such toxicity reduction strategies.

While today's permit does not specifically require dischargers that detect acute WET to conduct a formal TRE, the Agency may request a TIE or a TRE pursuant to the authority of Section 308 of the CWA where toxicity is reported. Similarly, where facilities detect significant levels of other pollutant parameters, the Agency may, where appropriate, request additional information, such as an additional pollutant source evaluation or a pollution prevention evaluation.

Annual Monitoring Requirements

The August 16, 1991 draft general permits required, at a minimum, annual monitoring of storm water discharges associated with industrial activity except for certain storm water discharges from oil and gas operations. As discussed above, the Agency is limiting monitoring requirements to selected industrial activities with significant pollutant sources. Annual monitoring requirements have been retained for certain discharges of storm water associated with industrial activity at: Larger airports, coal fired steam electric facilities; animal handling/meat packing; facilities classified as SIC 30 (Rubber and Miscellaneous Plastics Products); facilities classified as SIC 28 (Chemicals and Allied Products) facilities; larger automobile junkyards; lime manufacturing facilities; oil fired steam electric power generating facilities; cement manufacturing facilities and kilns; ready-mixed concrete facilities; and ship building and repairing facilities.

Permittees subject to annual monitoring requirements are not required to submit the results of their monitoring unless EPA specifically requests the information. However, monitoring results must be retained for a minimum of six years. Monitoring results must be made available to the Director upon request, or upon permit renewal. The specific monitoring parameters were chosen to provide information on the overall quality of the discharge, concentrate on industry-specific pollutants of concern, aid in determining the effectiveness of pollution prevention plan controls, and assist in development of Tier II, III, and IV permitting efforts.

Airports

Deicing activities at airports can be a significant source of pollutants to storm water discharges. The amount of deicing fluids used depend on temperature and the amount and type of precipitation (freezing rain may require more deicing fluids than many snowfalls) as well. Ethylene glycol, urea and ammonium nitrate are the primary ingredients of other deicing compounds used at airports. These chemicals can have a significant oxygen demand in water. When deicing operations are performed, large volumes of ethylene glycol are sprayed on aircraft and runways. Data from Stepleton International Airport show that 62,986 gallons of concentrated ethylene glycol were used during the month of February 1988 (Denver Public Works 1988). Data from Stepleton International Airport indicate that storm water discharges contained levels of up to 5,050 mg/L ethylene glycol during a monitoring period from December 1986 to January 1987. Deicing fluids have been implicated in several fish kills across the nation.

One State Agency specifically identified airport deicing operations as the area of most concern at airports. In

response, the Agency agrees that deicing operations can be a significant potential source of pollutants in storm water discharges. Given these concerns, the Agency is retaining monitoring requirements for deicing activities at large airports. Facilities with storm water discharges associated with industrial activity from areas where aircraft or airport deicing operations occur (including runways, taxiways, ramps, and dedicated aircraft deicing stations) are required to monitor for parameters indicative of the overall quality of the discharge and to identify deicing materials used at the site that are entering the storm water discharge.

Several commenters requested reduced or eliminated sampling for smaller airports. In response, today's monitoring requirements for airports are limited to have been limited to airports with over 50,000 flight operations per year and apply only to those areas where deicing activities occur. A flight operation consists of a single takeoff or landing by an aircraft. The Agency believes that the number of operations is one of the key factors for determining the amount of deicing activity and other industrial activities occurring at an airport, and that in general, airports with a higher number of operations are expected to discharge more pollutants in their storm water. In addition, some smaller airports may not conduct deicing activities, and a requirement targeting monitoring of deicing activities at such smaller airports may cause confusion.

According to information obtained from the Aircraft Owners and Pilots Association (AOPA) and based on 1990 Federal Aviation Administration data, there are approximately 5078 public use airports in the United States. Of these, approximately 376 airports (7.4%) have 50,000 or more flight operations per year.

Coal-fired Steam Electric Facilities

Coal-fired steam electric facilities use large amounts of coal. Coal handling activities at these facilities can be a significant source of pollutants in storm water discharges. Runoff from coal handling areas can have pollutant characteristics that are similar to coal pile runoff, and can have high levels of total suspended solids, sulfate, iron, aluminum, mercury, copper, arsenic, selenium and manganese, as well as an acidic pH.[43] The Agency believes that it is appropriate to retain monitoring requirements in these coal handling areas to adequately quantify the effect of these pollutant sources on storm water discharges. Monitoring parameters will be the same as those required semi-annually under this permit for coal piles, with the same justification on their selection. Because this monitoring requirement does not support a numeric effluent limitation, and due to the more diffuse nature of coal in the coal handling areas, the monitoring frequency of once per year was deemed adequate. Compared to the basic monitoring required under the August 16, 1991, draft permits, this monitoring requirement focuses more on the pollutants of particular concern and should be less costly for the facility.

Animal Handling/Meat Packing

The nature of potential pollutant sources to runoff from animal handling, manure management areas, and production waste management areas at meat packing plants, poultry packing plants, and facilities that manufacture animal and marine fats with animal waste and/or production wastes is similar to runoff from confined animal feeding operations (feedlots). Animal waste products can be a significant source of pollutants to storm water runoff which can contribute high levels of oxygen demanding pollutants, nutrients and fecal bacteria.[44] Monitoring data can be used to detect if these materials are entering the storm water. The monitoring requirements for animal handling facilities in today's permit are more tailored than the August 16, 1991 draft permits. Tailoring these requirements is expected to reduce the costs of these requirements relative to the August 16, 1991 draft permits.

Additional Facilities

Today's permits retain monitoring requirements for storm water discharges from seven additional classes of industrial activities. These storm water discharges will have to be monitored annually for a basic set of parameters (oil and grease, COD, TSS, pH, and any pollutant limited in an effluent limitation guideline for which the facility is subject). The Agency has identified these industrial classes based on a consideration of specific activities at these facilities that have a significant potential for contributing pollutants to storm water. If the listed activity does not occur at a particular site, or the runoff from that area is treated as a process wastewater, is discharged to a municipal sanitary sewer (with the municipality's permission), or is retained onsite, no sampling will be required. The sampling required for these facilities is generally less restrictive than would have been required under the draft permit.

Chemical storage piles can have a significant potential for contributing pollutants to storm water discharges. Today's permits include monitoring requirements for storm water that comes into contact with solid chemicals used as raw materials that are exposed to precipitation at facilities classified as SIC 30 (Rubber and Miscellaneous Plastics Products) or SIC 28 (Chemicals and Allied Products). In addition, today's permits require monitoring of storm water that comes into contact with lime storage piles that are exposed to storm water at lime manufacturing facilities. Lime can significantly raise the pH of such discharges.

Automotive fluids and greases from automobile drivelines are a significant potential source of pollutants to storm water discharges from automobile junkyards. Drivelines include the engine, transmission, differential/transaxle, fuel, brake, and coolant (radiator) systems. Automotive fluids/greases from these areas would typically include engine oil, fuel, transmission fluid or oil, rear end oil, suspension joint and bearing greases, antifreeze, brake fluid, power steering fluid, and the oil and grease leaking from and covering various components (for example, oil and grease on exterior of an engine). The procedures used for fluids capture during the dismantling process will affect the potential to contribute pollutants to storm water.[45]

The Agency has attempted to reduce the burden on the auto salvage industry by retaining monitoring requirements only from priority facilities with dismantling or storage practices that are generally thought to have a higher potential for contributing significant amounts of pollutants to storm water discharges than other yards. Two factors, the number of units stored, and exposure of automotive fluid drainage and storage areas, are used to determine the applicability of monitoring requirement. Facilities were (A) over 250 auto/truck bodies with drivelines, 250 drivelines, or any combination thereof (in whole or in parts) are exposed to

[43] See "Final Development Document for Effluent Limitations Guidelines and Standards and Pretreatment Standards for the Steam Electric Point Source category", 1982, (EPA-440/1-82/-29).

[44] See "Proposed Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters", May 1991, EPA and "Development Document for Effluent Limitations Guidelines and New Source Performance Standards—Feedlots Point Source Category", EPA, 1974, EPA-440/1/74-004-a.

[45] Summary of site inspections by CA State Department of Health Services, March 19, 1992.

storm water; (B) over 500 auto/truck units (bodies with or without drivelines in whole or in parts) are stored exposed to storm water; or (C) over 100 units per year are dismantled and drainage or storage of automotive fluids occurs in areas exposed to storm water; will be required to monitor storm water discharges from these areas.

Spills and leaks from fuel handling sites, including loading/unloading areas and storage tanks, at oil fired steam electric power generating facilities are potential significant sources of pollutants to storm water runoff.[46] Monitoring data from these sites can be used to identify pollutant sources and allow the Agency to assess the effectiveness of the facility's material management and spill prevention/response practices.

Loading and unloading activities, raw material storage, processing operations, at cement manufacturing facilities, cement kilns, and ready-mix concrete facilities, can be a significant potential source of pollutant to storm water.[47] Dust generating processes and air deposition of pollutants from smokestacks at cement kilns could also be significant sources of pollutants to storm water. Discharges from cement manufacturing facilities and cement kilns and discharges from ready-mixed concrete facilities could contain the same constituents limited in the storm water effluent limitations guidelines for cement kilns material storage piles.

A number of industrial activities at ship building and repairing facilities can be significant sources of pollutants to storm water discharges, including improper controls on activities such as ship bottom cleaning, bilge water disposal, loading/unloading of fuels, metal fabrication and cleaning operations, and surface preparation and painting.[48]

[46] Given the large amounts of oil managed at these facilities, many of the pollutant sources associated with oil handling and storage are expected to be similar to those at petroleum refineries. A more complete description of the pollution potential of these types of operations is provided in the "Development Document for Effluent Limitations Guidelines and Standards for Pretreatment Standards for the Petroleum Refineries Point Source Category", EPA, 1979, 440/1/-79/014b.

[47] See "Development Document for Effluent Limitation Guidelines and New Source Performance Standards for the Cement Manufacturing Point Source Category", EPA, 1974, EPA/440/1-79-005-a. The effluent limitation guidelines for the cement manufacturing category address runoff derived from the storage of materials used in or derived from the manufacture of cement (see 40 CFR 411.30). Discharges that are covered by the guideline cannot be authorized under today's permits.

[48] See "Development Document for Proposed Effluent Limitations Guidelines and Standards for the Shipbuilding and Repair Point Source Category", EPA, December 1979, EPA 440/1/-79/076-b and "Proposed Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters", May 1991, EPA.

[49] See "NPDES Storm Water Sampling Guidance Document," EPA 833-B-92-001, July 1992, EPA.

III. Sample Collection

One State agency requested a requirement for more accurate flow measurement to provide more accurate flow proportioning for composite sampling and pollutant loading calculations. In response, EPA agrees there are more accurate flow measuring methods than the flow estimation methods required by the permit. Where a State requires, or a particular facility wishes, more accurate flow measurement is certainly desirable. However, the Agency also recognizes that there is a variety of methods for providing more accurate flow proportioning for composite sampling,[49] with different methods having very different costs. The Agency is concerned about possible confusion in the regulated community leading to the use of overly expensive techniques and methods for measuring flow. In addition, the Agency notes that the monitoring data collected pursuant to today's permits will serve a number of purposes, such as identification of pollutant sources and possible contaminants, which do not require flow estimates. Therefore, today's permits do not require more precise flow measurement techniques, such as primary flow measurement devices, for all discharges required to sample at this time.

Several commenters questioned the necessity for both first flush grab sampling and composite event sampling. Other commenters supported the proposed sampling requirements. In response, EPA believes that it is necessary to require sampling that will provide information on the typically more polluted "first flush" as well as a measure of the average concentration of pollutants discharged during an event. First flush sampling (a grab sample during the first 30 minutes of the discharge) is also necessary to evaluate the effectiveness of detention and retention devices which may only provide controls for the first portion of the discharge.

Commenters also questioned whether the first flush must be collected during the first 30 minutes of the storm event or the first thirty minutes of discharge. The Agency would like to clarify that first flush sampling applies to the first thirty minutes of discharge, rather than rainfall. In some instances, particularly where detention or retention systems are used, there will be a delay between the start of a storm event and the first measurable discharge.

With regard to the provision allowing a single grab sample from detention devices with a 24 hour holding time, one commenter suggested establishing a design storm to calculate holding times. In response, the Agency believes that defining the residence time of the detention device (e.g. 24 hours) is adequate to achieve the objective of the requirement. Devices with a 24 hour residence time for a given storm should provide adequate mixing to allow a single grab sample to provide a reasonably accurate characterization of the average concentration of the discharge and will mitigate first flush effects. The Agency believes that by not establishing a design storm to calculate holding times, more flexibility will be provided for applying this provision on a storm-by-storm basis.

One commenter suggested that composite sampling be eliminated and only grab sampling of the first flush be required in the baseline general permit, with the results used to target industries for more extensive monitoring at a later date. In response, the Agency believes that composite sampling will provide more information for estimating pollutant loads, evaluating certain concentration-based water quality impacts, and generally characterizing storm water discharges. The permit authorizes either time-weighted or flow-weighted composite samples which may be manually or automatically collected.

The use of pH paper rather than a pH meter was recommended by many commenters based on the cost differential. In response, EPA approved test methods at 40 CFR 136.3 require an accuracy for pH measurements of plus or minus 0.1 pH unit. The test method only describes the electrometric method using a glass electrode. pH paper generally ranges in accuracy from plus or minus 0.5 pH unit to 1.0 pH unit. Other potential problems with pH paper are that it is judged subjectively by comparison to a color chart, is affected by humidity, age and method of storage, and may be affected by turbidity or suspended solids. The Agency notes that some pH measuring devices which use the electrometric method, such as pH, can provide the required accuracy at a reasonable price ($50.00 to $200.00).

Commenters from arid regions and those with unattended remote sites pointed out the difficulties in conducting sampling of representative storm events in areas characterized by infrequent storm events and/or when no personnel were stationed onsite. In response, under the sampling requirements

developed for the final permit, many industries, including inactive remote mining sites, will not be required to collect monitoring data. In addition, monitoring from any event greater than 0.1 inch is acceptable.

IV. Sampling Waiver

All comments on the proposed waiver for sampling based on adverse climatic conditions supported this provision. Several commenters did request clarification on the applicability. In response, EPA would like to clarify that the sampling waiver is only intended to apply to unsurmountable weather conditions such as drought or dangerous conditions such as lightning, flash flooding, or hurricanes. These events tend to be isolated incidents, and should not be used as an excuse for not conducting sampling under more favorable conditions associated with other storm events. The sampling waiver is not intended to apply to difficult logistical conditions.

V. Use of Representative Outfalls for Sampling

The permit allows the use of substantially identical outfalls to reduce the monitoring burden on a facility. All comments received on this issue supported this provision. EPA has maintained this provision. However, the permittee must develop justification on why one outfall is representative of others and keep this information onsite, available to the Director upon request.

VI. Submittal and Availability of Reports and Monitoring Results

The issue of whether monitoring results should be retained onsite or submitted to EPA (and how often) received comments supporting both positions. Several commenters suggested that all monitoring data be kept onsite, available to the Director upon request. Other commenters suggested all monitoring results be submitted, with frequencies ranging from twice per year to once per permit term. In the final permit, EPA has adopted a monitoring approach that targets selected industrial activity. Facilities required to monitor semi-annually are required to report results annually. Facilities required to monitor annually are not required to report information unless the information is requested by the Director.

This approach maintains closer oversight of targeted facilities, while reducing the overall burden on the regulated community and EPA.

Several commenters supported the requirement to submit copies of discharge monitoring reports to the operator of municipal separate storm sewer systems when at least one outfall discharges to that system. Several State agencies also requested copies of all discharge monitoring results. The final permit requires those dischargers required to submit monitoring information annually to provide copies to receiving large or medium municipal separate storm sewer systems and States that have requested this information.

The location for submittal of all reports is contained in the permit. Facilities located on certain Indian Lands in Arizona, Utah, New Mexico, Idaho, Nebraska, Nevada and Oregon and Colorado should note that permitting authority has been consolidated in one EPA Region or another where a reservation crosses the boundaries of the Regions. For example, all NPDES permitting for Navajo lands is handled by EPA Region 9.

VII. Retention of Records

The draft permit required retention of all records for a minimum of three years. Several commenters suggested that records be kept for the entire permit term. In response, the final permit requires retention of monitoring records for six years since not all facilities who monitor will be required to submit the results annually. In addition, pollution prevention plans must be kept for the life of the permit.

Costs

The August 16, 1991 draft notice summarized EPA's estimates of the costs for compliance with the draft permits. The Agency has revised these estimates to reflect changes made when issuing the final permits, and additional evaluation made in response to comment.

One commenter indicated that they thought that to meet the conditions of the permit most small companies will have to hire a full-time engineer which many small businesses cannot afford and that other companies will use staff with general technical backgrounds. In response, the Agency has reordered and simplified the requirements in today's permit and believes that small facilities will generally not have to hire a full-time engineer to implement storm water pollution prevention plans. In addition, the Agency has developed guidance entitled "Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices", U.S. EPA, 1992 to assist facilities with limited storm water technical expertise in preparing and implementing their storm water pollution prevention plan.

Appendix B—NPDES General Permits for Storm Water Discharges Associated with Industrial Activity

Permit No. MER00000IF

Authorization to Discharger Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et. seq.; the Act), except as provided in part I.B.3 of this permit, operators of storm water discharges associated with industrial activity, for Indian Tribes located in the State of Maine, are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges associated with industrial activity within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with part II of this permit are not authorized under this general permit.

This permit shall become effective on _____.

This permit and the authorization to discharge shall expire at midnight, _____.

Signed and issued this 28th day of August, 1992.

Ronald Manfredonia,

Acting Director, Water Management Division.

This signature is for the permit conditions in parts I through IX and for any additional conditions in part XI which apply to facilities with storm water discharges, for Indian Tribes located in the State of Maine.

Permit No. NHR00000IF

Authorization to Discharger Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et. seq.; the Act), except as provided in part I.B.3 of this permit, operators of storm water discharges associated with industrial activity, for Indian Tribes located in the State of New Hampshire, are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges associated with industrial activity within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with part II of this permit. Operators of storm water discharges

associated with industrial activity who fail to submit a Notice of Intent in accordance with part II of this permit are not authorized under this general permit.

This permit shall become effective on _____.

This permit and the authorization to discharge shall expire at midnight, _____.

Signed and issued this 28th day of August, 1992.

Ronald Manfredonia,

Acting Director, Water Management Division.

This signature is for the permit conditions in parts I through IX and for any additional conditions in part XI which apply to facilities with storm water discharges, for Indian Tribes located in the State of New Hampshire.

Authorization to Discharger Under the National Pollutant Discharge Elimination System

Permit No. MAR00000IF

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et. seq; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges associated with industrial activity, for Indian Tribes located in the State of Massachusetts, are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges associated with industrial activity within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on _____.

This permit and the authorization to discharge shall expire at midnight, _____.

Signed and issued this 28th day of August, 1992.

Ronald Manfredonia,

Acting Director.

This signature is for the permit conditions in parts I through IX and for any additional conditions in part XI which apply to facilities and storm water discharges, for Indian Tribes located in the State of Massachusetts.

Authorization to Discharger Under the National Pollutant Discharge Elimination System

Permit No. MER000000

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et. seq; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges associated with industrial activity, located in the State of Maine, are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges associated with industrial activity within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on _____.

This permit and the authorization to discharge shall expire at midnight, _____.

Signed and issued this 28th day of August, 1992.

Ronald Manfredonia,

Acting Director.

This signature is for the permit conditions in parts I through IX and for any additional conditions in part XI which apply to facilities located in the State of Maine.

Authorization to Discharger Under the National Pollutant Discharge Elimination System

Permit No. NHR000000

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et. seq; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges associated with industrial activity, located in the State of New Hampshire, are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges associated with industrial activity within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity, who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on _____.

This permit and the authorization to discharge shall expire at midnight, _____.

Signed and issued this 28th day of August, 1992.

Ronald Manfredonia,

Acting Director.

This signature is for the permit conditions in parts I through IX and for any additional conditions in part XI which apply to facilities located in the State of New Hampshire.

General Permit No. FLR000000

Region IV

Authorization to Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 *et seq*, the "Act") except as provided in part I.B.3 of this permit, operators of storm water discharges associated with industrial activity, located in the State of Florida are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges associated with industrial activity within the general permit area who intend to be authorized by this permit must submit a Notice of Intent in accordance with part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with part II of this permit are not authorized under this general permit.

This permit shall become effective on _____.

This permit and the authorization to discharge shall expire at midnight, _____.

Dated: August 28, 1992.

Robert F. McGhee,

Acting Director, Water Management Division.

This signature is for the permit conditions in parts I through X and for any additional conditions in part XI which apply to facilities located in the State of Florida.

General Permit No. NCR00000F

Region IV

Authorization to Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 *et seq*, the "Act") except as provided in part I.B.3 of this permit, operators of storm water discharges associated with industrial activity, located on Indian land in North Carolina belonging to the Eastern Band of Cherokee Indians in the State of North Carolina are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges associated with industrial activity within the general permit area who intend to be authorized by this permit must submit a Notice of Intent in accordance with part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with part II of this permit are not authorized under this general permit.

This permit shall become effective on _____.

This permit and the authorization to discharge shall expire at midnight, _____.

Dated: August 28, 1992.

Robert F. McGhee,

Acting Director, Water Management Division.

This signature is for the permit conditions in parts I through X and for any additional conditions in part XI which apply to facilities located within the general permit area.

General Permit No. FLR00000F

Region IV

Authorization to Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 *et seq*, the "Act") except as provided in part I.B.3 of this permit, operators of storm water discharges associated with industrial activity, located on Indian land in Florida belonging to the Seminole Tribe of Florida are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges associated with industrial activity within the general permit area who intend to be authorized by this permit must submit a Notice of Intent in accordance with part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with part II of this permit are not authorized under this general permit.

This permit shall become effective on _____.

This permit and the authorization to discharge shall expire at midnight, _____.

Dated: August 28, 1992.

Robert F. McGhee,

Acting Director, Water Management Division.

This signature is for the permit conditions in parts I through X and for any additional conditions in part XI which apply to facilities located within the general permit area.

General Permit No. MSR00000F

Region IV

Authorization to Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 *et seq*, the "Act") except as provided in part I.B.3 of this permit, operators of storm water discharges associated with industrial activity, located on Indian land in Mississippi belonging to the Mississippi Band of Choctaw Indians are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges associated with industrial activity within the general permit area who intend to be authorized by this permit must submit a Notice of Intent in accordance with part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with part II of this permit are not authorized under this general permit.

This permit shall become effective on _____.

This permit and the authorization to discharge shall expire at midnight, _____.

Dated: August 28, 1992.

Robert F. McGhee,

Acting Director, Water Management Division.

This signature is for the permit conditions in parts I through X and for any additional conditions in part XI which apply to facilities located within the general permit area.

General Permit No. FLR00001F

Region IV

Authorization to Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 *et seq*, the "Act") except as provided in part I.B.3 of this permit, operators of storm water discharges associated with industrial activity, located on Indian land in Florida belonging to the Miccosukee Indian Tribe of Florida are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges associated with industrial activity within the general permit area who intend to be authorized by this permit must submit a Notice of Intent in accordance with part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with part II of this permit are not authorized under this general permit.

This permit shall become effective on _____.

This permit and the authorization to discharge shall expire at midnight, _____.

Dated: August 28, 1992.

Robert F. McGhee,

Acting Director, Water Management Division.

This signature is for the permit conditions in parts I through X and for any additional conditions in part XI which apply to facilities located within the general permit area.

Permit No. LAR000000

Cover Page

Authorization to Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 *et seq*, the "Act") except as provided in part I.B.3 of this permit, operators of storm water discharges associated with industrial activity, located in the State of Louisiana, are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges associated with industrial activity within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 27th day of August, 1992.

Myron O. Knudson, P.E.,

Water Management Director, Region VI.

This signature is for the permit conditions in parts I through X and for any additional conditions in part XI which apply to facilities located in the State of Louisiana.

Permit No. N M R000000

Cover Page

Authorization To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et. seq; the Act), except as

provided in Part I.B.3 of this permit, operators of storm water discharges associated with industrial activity, located in the State of New Mexico, are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges associated with industrial activity within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 27th day of August, 1992.

Myron O. Knudson, P.E.,

Water Management Director, Region VI.

This signature is for the permit conditions in Parts I through X and for any additional conditions in Part XI which apply to facilities located in the State of Louisiana.

Permit No. O K R000000

Cover Page

Authorization To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et. seq; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges associated with industrial activity, located in the State of Oklahoma, are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges associated with industrial activity within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 27th day of August, 1992.

Myron O. Knudson, P.E.,

Water Management Director, Region VI.

This signature is for the permit conditions in Parts I through X and for any additional conditions in Part XI which apply to facilities located in the State of Louisiana.

Permit No. T X R000000

Cover Page

Authorization To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et. seq; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges associated with industrial activity, located in the State of Texas, are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges associated with industrial activity within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 27th day of August, 1992.

Myron O. Knudson, P.E.,

Water Management Director, Region VI.

This signature is for the permit conditions in Parts I through X and for any additional conditions in Part XI which apply to facilities located in the State of Louisiana.

Permit No. COR00000F

Authorization To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. . . . 1251 et. seq; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges associated with industrial activity in applicable federal facilities located in the State of Colorado, and in the following Indian Reservations:

Southern Ute Reservation; and,

Ute Mountain Reservation—Includes the entire Reservation, which is located in Colorado and New Mexico.

Are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges associated with industrial activity within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 28th day of August, 1992.

Kerrigan Clough,

Acting Regional Administrator.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part XI which apply to facilities located in the State of Colorado and the portion of the Ute Mountain Reservation located in the State of New Mexico.

Permit No. MTR00000F

Authorization To Discharger Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. . . . 1251 et. seq; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges associated with industrial activity, in all Indian Reservations in Montana including the following Reservations:

Blackfeet Reservation;
Crow Reservation;
Flathead Reservation;
Fort Belknap Reservation;
Fort Peck Reservation;
Northern Cheyenne Reservation; and,
Rocky Boys Reservation.

Are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges associated with industrial activity within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 28th day of August, 1992.

Kerrigan Clough,

Acting Regional Administrator.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part XI which apply to facilities located in the State of Montana.

Permit No. NDR00000F

Authorization To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et. seq; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges associated with industrial activity in all the Indian Reservations located in the State of North Dakota including the following (with the exception of the portion of the Lake Traverse Reservation, also known as the Sisseton Reservation, located in North Dakota)

Fort Totten Reservation—Also known as Devils Lake Reservation;
Fort Berthold Reservation;
Standing Rock Reservation—Includes the entire Reservation, which is located in both North Dakota and South Dakota; and,
Turtle Mountain Reservation.

Are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges associated with industrial activity within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 28th day of August, 1992.

Kerrigan Clough,

Acting Regional Administrator.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part XI which apply to facilities located in the State of North Dakota and the portion of the Standing Rock Reservation located in the State of South Dakota.

Permit No. SDR000000

Authorization To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et seq.; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges associated with industrial activity, located in the entire State of South Dakota including the Indian reservations noted below (with the exception of the portion of the Standing Rock Reservation located in South Dakota), and the portion of the Lake Traverse Reservation located in North Dakota

Cheyenne River Reservation;
Crow Creek Reservation;
Flandreau Reservation;
Lake Traverse Reservation—Also known as the Sisseton Reservation. Includes the entire Reservation, which is located in North Dakota and South Dakota;
Lower Brule Reservation;
Pine Ridge Reservation—Includes only the portion of the Reservation located in South Dakota;
Rosebud Reservation; and,
Yankton Reservation.

are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges associated with industrial activity within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 28th day of August, 1992.

Kerrigan Clough,

Acting Regional Administrator.

This signature is for the permit conditions in parts I through IX and for any additional conditions in part XI which apply to facilities located in the State of South Dakota and the portion of the Lake Traverse Reservation located in the State of North Dakota.

Permit No. UTR00000F

Authorization To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et seq.; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges associated with industrial activity, located in the following Indian Reservations in Utah (except for the portions of the Navajo Reservation and Goshute Reservation located in Utah)

Northern Shoshoni Reservation;
Paiute Reservations—several very small reservations located in the southwest quarter of Utah;
Skull Valley Reservation; and,
Uintah & Ouray Reservation.

are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges associated with industrial activity within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 28th day of August, 1992.

Kerrigan Clough,

Acting Regional Administrator.

This signature is for the permit conditions in parts I through IX and for any additional conditions in part XI which apply to facilities located in the State of Utah.

Permit No. WYR00000F

Authorization To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et seq.; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges associated with industrial activity, located in the Wind River Indian Reservation in the State of Wyoming, are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges associated with industrial activity within the general permit area who intend to be authorized by these permits must submit a Notice of Intent in accordance with part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in

accordance with part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 28th day of August, 1992.

Kerrigan Clough,

Acting Regional Administrator.

This signature is for the permit conditions in parts I through IX and for any additional conditions in part XI which apply to facilities located in the State of Wyoming.

Storm Water General Permit for Industrial Activity (Excluding Construction Activities)

Permit No. CAR0000IF

Authorization To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended (U.S.C. . . 1251 et. seq.; the Act), except as provided in part I.B.3 of this permit, operators of storm water discharges associated with industrial activity (excluding construction activity), located on

Indian Lands in the State of California

are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges associated with industrial activity within the general permit area who intend to be authorized by this permit must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 28th day of August, 1992.

Daniel W. McGovern,

Regional Administrator, Region 9.

This signature is for the permit conditions in parts I through IX and for any additional conditions in Part XI which apply to facilities located on Indian lands in California.

Storm Water General Permit for Industrial Activity (Excluding Construction Activities)

Permit No. AZR000000

Authorization To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (U.S.C. . . 1251 et. seq.; the Act), except as provided in part I.B.3 of this permit, operators of storm water discharges associated with industrial activity (excluding construction activity), located in the

State of Arizona (Excluding Indian Lands)

are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges associated with industrial activity within the general permit area who intend to be authorized by this permit must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 28th day of August, 1992.

Daniel W. McGovern,

Regional Administrator, Region 9.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part XI which apply to facilities located in the State of Arizona (excluding Indian lands).

Storm Water General Permit for Industrial Activity (Excluding Construction Activities)

Permit No. JAR000000

Authorization To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended (U.S.C. . . 1251 et. seq.; the Act), except as provided in part I.B.3 of this permit, operators of storm water discharges associated with industrial activity (excluding construction activity), located on

Johnston Atoll

are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges associated with industrial activity within the general permit area who intend to be authorized by this permit must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 28th day of August, 1992.

Daniel W. McGovern,

Regional Administrator, Region 9.

This signature is for the permit conditions in parts I through IX and for any additional conditions in Part XI which apply to facilities located on Johnston Atoll.

Storm Water General Permit for Industrial Activity (Excluding Construction Activities)

Permit No. MWR000000

Authorization To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (U.S.C. . . 1251 et seq.; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges associated with industrial activity (excluding construction activity), located on

Midway Island or Wake Island

are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges associated with industrial activity within the general permit area who intend to be authorized by this permit must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 28th day of August, 1992.

Daniel W. McGovern,

Regional Administrator, Region 9.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part XI which apply to facilities located on Midway Island or Wake Island.

Storm Water General Permit for Industrial Activity (Excluding Construction Activities)

Permit No. AZR0000IF

Authorization To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (U.S.C. . . 1251 et seq.; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges associated with industrial activity (excluding construction activity), located on

Indian Lands in the State of Arizona, Including Navajo Territory in the States of New Mexico and Utah

are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges associated with industrial activity within the general permit area who intend to be authorized by this permit must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 28th day of August, 1992.

Daniel W. McGovern,

Regional Administrator, Region 9.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part XI which apply to facilities located on the Indian lands specified above.

Storm Water General Permit for Industrial Activity (Excluding Construction Activities)

Permit No. NVR0000IF

Authorization To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (U.S.C. . . 1251 et seq.; the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges associated with industrial activity (excluding construction activity), located on

Indian Lands in the State of Nevada, Including Goshute Territory the State of Utah

are authorized to discharge in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges associated with industrial activity within the general permit area who intend to be authorized by this permit must submit a Notice of Intent in accordance with Part II of this permit. Operators of storm water discharges associated with industrial activity who fail to submit a Notice of Intent in accordance with Part II of this permit are not authorized under this general permit.

This permit shall become effective on September 9, 1992.

This permit and the authorization to discharge shall expire at midnight, September 9, 1997.

Signed and issued this 28th day of August, 1992.

Daniel W. McGovern,

Regional Administrator, Region 9.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part XI which apply to facilities located on the Indian lands specified above.

General Permit No.: AK-R-00-0000

Region 10

Authorization To Discharge Under the National Pollutant Discharge Elimination System for Storm Water Discharges Associated With Industrial Activity

In compliance with the provisions of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, as amended by the Water Quality Act of 1987, P.L. 100-4, the "Act".

Owners and operators of facilities engaged in discharging storm water associated with industrial activities, except facilities identified in Part I hereof and except facilities located on Indian lands within the State of Alaska, are authorized to discharge to waters of the State of Alaska and waters of the United States adjacent to State waters, in accordance with effluent limitations, monitoring requirements, and other conditions set forth herein.

A copy of this general permit must be kept at the facility where the discharges occur.

This permit shall become effective

This permit and the authorization to discharge shall expire at midnight, on

Signed this 27th day of August 1992.

Harold E. Geren,

Acting Director, Water Division, Region 10. U.S. Environmental Protection Agency.

This signature is for the permit conditions in Parts I through X and for any additional conditions in Part XI which apply to facilities in the State of Alaska.

General Permit No.: ID-R-00-000F

Region 10

Authorization To Discharge Under the National Pollutant Discharge Elimination System for Storm Water Discharges Associated With Industrial Activity

In compliance with the provisions of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, as amended by the Water Quality Act of 1987, P.L. 100-4, the "Act".

Owners and operators of facilities located on Indian lands in the State of Idaho that are engaged in discharging storm water associated with industrial activities, except facilities identified in Part I hereof, are authorized to discharge to waters of the United States, in accordance with effluent limitations, monitoring requirements, and other conditions set forth herein.

A copy of this general permit must be kept at the facility where the discharges occur.

This permit shall become effective

This permit and the authorization to discharge shall expire at midnight, on

Signed this 27th day of August 1992.

Harold E. Geren,

Acting Director, Water Division, Region 10. U.S. Environmental Protection Agency.

This signature is for the permit conditions in Parts I through X and for any additional conditions in Part XI which apply to facilities in the State of Idaho.

General Permit No.: AK-R-00-000F

Region 10

Authorization To Discharge Under the National Pollutant Discharge Elimination System for Storm Water Discharges Associated With Industrial Activity

In compliance with the provisions of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, as amended by the Water Quality Act of 1987, P.L. 100-4, the "Act".

Owners and operators of facilities located on Indian lands in the State of Alaska that are engaged in discharging storm water associated with industrial activities, except facilities identified in Part I hereof, are authorized to discharge to waters of the United States, in accordance with effluent limitations, monitoring requirements, and other conditions set forth herein.

A copy of this general permit must be kept at the facility where the discharges occur.

This permit shall become effective

This permit and the authorization to discharge shall expire at midnight, on

Signed this 27th day of August 1992.

Harold E. Geren,

Acting Director, Water Division, Region 10, U.S. Environmental Protection Agency.

This signature is for the permit conditions in Parts I through X and for any additional conditions in Part XI which apply to facilities located on Indian lands in the State of Alaska.

General Permit No.: WA-R-00-001F

Region 10

Authorization To Discharge Under the National Pollutant Discharge Elimination System for Storm Water Discharges Associated With Industrial Activity

In compliance with the provisions of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, as amended by the Water Quality Act of 1987, P.L. 100-4, the "Act".

Owners and operators of facilities located on Indian lands in the State of Washington that are engaged in discharging storm water associated with industrial activities, except facilities identified in Part I hereof, are authorized to discharge to waters of the United States, in accordance with effluent limitations, monitoring requirements, and other conditions set forth herein.

A copy of this general permit must be kept at the facility where the discharges occur.

This permit shall become effective

This permit and the authorization to discharge shall expire at midnight, on

Signed this 27th day of August 1992.

Harold E. Geren,

Acting Director, Water Division, Region 10, U.S. Environmental Protection Agency.

This signature is for the permit conditions in Parts I through X and for any additional conditions in Part XI which apply to facilities located on Indian lands in the State of Washington.

General Permit No.: WA-R-00-000F

Region 10

Authorization To Discharge Under the National Pollutant Discharge Elimination System for Storm Water Discharges Associated With Industrial Activity

In compliance with the provisions of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, as amended by the Water Quality Act of 1987, P.L. 100-4, the "Act".

Owners and operators of federal facilities in the State of Washington, that are engaged in discharging storm water associated with industrial activities, except facilities identified in Part I hereof and except facilities located on Indian lands within the State of Washington, are authorized to discharge to waters of the State of Washington and waters of the United States adjacent to State waters, in accordance with effluent limitations, monitoring requirements, and other conditions set forth herein.

A copy of this general permit must be kept at the facility where the discharges occur.

This permit shall become effective

This permit and the authorization to discharge shall expire at midnight, on

Signed this 27th day of August 1992.

Harold E. Geren,

Acting Director, Water Division, Region 10, U.S. Environmental Protection Agency.

This signature is for the permit conditions in Parts I through X and for any additional conditions in Part XI which apply to federal facilities in the State of Washington.

General Permit No.: ID-R-00-0000

Region 10

Authorization To Discharge Under the National Pollutant Discharge Elimination System for Storm Water Discharges Associated With Industrial Activity

In compliance with the provisions of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, as amended by the Water Quality Act of 1987, P.L. 100-4, the "Act".

Owners and operators of facilities engaged in discharging storm water associated with industrial activities, except facilities identified in Part I hereof and except facilities located on Indian lands within the State of Idaho, are authorized to discharge to waters of the State of Idaho and waters of the United States adjacent to State waters, in accordance with effluent limitations, monitoring requirements, and other conditions set forth herein.

A copy of this general permit must be kept at the facility where the discharges occur.

This permit shall become effective

This permit and the authorization to discharge shall expire at midnight, on

Signed this 27th day of August 1992.

Harold E. Geren,

Acting Director, Water Division, Region 10, U.S. Environmental Protection Agency.

This signature is for the permit conditions in Parts I through X and for any additional conditions in Part XI which apply to facilities in the State of Idaho.

NPDES General Permit for Storm Water Discharges Associated With Industrial Activity

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PREFACE

The CWA provides that storm water discharges associated with industrial activity from a point source (including discharges through a municipal separate storm sewer system) to waters of the United States are unlawful, unless authorized by a National Pollutant Discharge Elimination System (NPDES) permit. The terms "storm water discharge associated with industrial activity", "point source" and "waters of the United States" are critical to determining whether a facility is subject to this requirement. Complete definitions of these terms are found in the definition section (Part X) of this permit. In order to determine the applicability of the requirement to a particular facility, the facility operator must examine its activities in relationship to the eleven categories of industrial facilities described in the definition of "storm water discharge associated with industrial activity".

Category (xi) of the definition, which address facilities with activities classified under Standard Industrial Classifications (SIC) codes 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 31 (except 311), 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221–25, (and which are not otherwise included within categories (i)–(x)), differs from other categories listed in that it only addresses storm water discharges where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery *are exposed to storm water.*[1]

The United States Environmental Protection Agency (EPA) has established the Storm Water Hotline at (703) 821–4823 to assist the Regional Offices in distributing notice of intent forms and storm water pollution prevention plan guidance, and to provide information pertaining to the NPDES storm water regulations.

[1] On June 4, 1992, the United States Court of Appeals for the Ninth Circuit remanded the exclusion for manufacturing facilities in category (xi) which do not have materials or activities exposed to storm water to the EPA for further rulemaking. (*Natural Resources Defense Council v. EPA*, Nos. 90–70671 and 91–70200).

Part I. Coverage Under This Permit

A. Permit Area

The permit covers all areas of:

Region I—for the States of Maine and New Hampshire; for Indian lands located in Massachusetts, New Hampshire, and Maine.

Region IV—for the State of Florida; and for Indian lands located in Florida, Mississippi, and North Carolina.

Region VI—for the States of Louisiana, New Mexico, Oklahoma, and Texas; and for Indian lands located in Louisiana, New Mexico (except Navajo lands and Ute Mountain Reservation lands), Oklahoma, and Texas.

Region VIII—for the State of South Dakota; for Indian lands located in Colorado, Montana, North Dakota, South Dakota, Utah (except Goshute Reservation and Navajo Reservation lands), and Wyoming; for Federal facilities in Colorado; and for the Ute Mountain Reservation in Colorado, and New Mexico.

Region IX—for the State of Arizona; for the Territories of Johnston Atoll, and Midway and Wake Island; and for Indian lands located in California, and Nevada; and for the Goshute Reservation in Utah and Nevada, the Navajo Reservation in Utah, New Mexico, and Arizona, the Duck Valley Reservation in Nevada and Idaho.

Region X—for the State of Alaska, and Idaho; for Indian lands located in Alaska, Idaho (except Duck Valley Reservation lands), and Washington; and for Federal facilities in Washington.

B. Eligibility

1. This permit may cover all new and existing point source discharges of storm water associated with industrial activity to waters of the United States, except for storm water discharges identified under paragraph I.B.3.

2. This permit may authorize storm water discharges associated with industrial activity that are mixed with storm water discharges associated with industrial activity from construction activities provided that the storm water discharge from the construction activity is in compliance with the terms, including applicable notice of intent (NOI) or application requirements, of a different NPDES general permit or individual permit authorizing such discharges.

3. *Limitations on Coverage.* The following storm water discharges associated with industrial activity are not authorized by this permit:

a. storm water discharges associated with industrial activity that are mixed with sources of non-storm water other than non-storm water discharges that are:

(i) in compliance with a different NPDES permit; or

(ii) identified by and in compliance with Part III.A.2 (authorized non-storm water discharges) of this permit.

b. storm water discharges associated with industrial activity which are subject to an existing effluent limitation guideline addressing storm water (or a combination of storm water and process water) [2];

c. storm water discharges associated with industrial activity that are subject to an existing NPDES individual or general permit; are located at a facility that where an NPDES permit has been terminated or denied; or which are issued in a permit in accordance with paragraph VII.M (requirements for individual or alternative general permits) of this permit. Such discharges may be authorized under this permit after an existing permit expires provided the existing permit did not establish numeric limitations for such discharges;

d. storm water discharges associated with industrial activity from construction sites, except storm water discharges from portions of a construction site that can be classified as an industrial activity under 40 CFR 122.26(b)(14) (i) through (ix) or (xi) (including storm water discharges from mobile asphalt plant, and mobile concrete plants);

e. storm water discharges associated with industrial activity that the Director (EPA) has determined to be or may reasonably be expected to be contributing to a violation of a water quality standard;

f. storm water discharges associated with industrial activity that may adversely affect a listed or proposed to be listed endangered or threatened species or its critical habitat; and

g. storm water discharges associated with industrial activity from inactive mining, inactive landfills, or inactive oil and gas operations occurring on Federal lands where an operator cannot be identified.

[2] For the purpose of this permit, the following effluent limitation guidelines address storm water (or a combination of storm water and process water): cement manufacturing (40 CFR 411); feedlots (40 CFR 412); fertilizer manufacturing (40 CFR 418); petroleum refining (40 CFR 419); phosphate manufacturing (40 CFR 422); steam electric (40 CFR 423); coal mining (40 CFR 434); mineral mining and processing (40 CFR 436); ore mining and dressing (40 CFR 440); and asphalt emulsion (40 CFR 443 Subpart A). This permit may authorize storm water discharges associated with industrial activity which are not subject to an effluent limitation guideline even where a different storm water discharge at the facility is subject to an effluent limitation guideline.

4. Storm water discharges associated with industrial activity which are authorized by this permit may be combined with other sources of storm water which are not classified as associated with industrial activity pursuant to 40 CFR 122.26(b)(14), so long as the discharger is in compliance with this permit.

c. Authorization

1. Dischargers of storm water associated with industrial activity must submit a Notice of Intent (NOI) in accordance with the requirements of Part II of this permit, using a NOI form provided by the Director (or photocopy thereof), to be authorized to discharge under this general permit [3].

2. Unless notified by the Director to the contrary, owners or operators who submit such notification are authorized to discharge storm water associated with industrial activity under the terms and conditions of this permit 2 days after the date that the NOI is postmarked.

3. The Director may deny coverage under this permit and require submittal of an application for an individual NPDES permit based on a review of the NOI or other information.

Part II. Notice of Intent Requirements

A. Deadlines for Notification

1. Except as provided in paragraphs II.A.4 (rejected or denied municipal group applicants), II.A.5 (new operator) and II.A.6 (late NOIs), individuals who intend to obtain coverage for an existing storm water discharge associated with industrial activity under this general permit shall submit a Notice of Intent (NOI) in accordance with the requirements of this part on or before October 1, 1992;

2. Except as provided in paragraphs II.A.3 (oil and gas operations), II.A.4 (rejected or denied municipal group applicants), II.A.5 (new operator), and II.A.6 (late NOI) operators of facilities which begin industrial activity after October 1, 1992 shall submit a NOI in accordance with the requirements of this part at least 2 days prior to the commencement of the industrial activity at the facility;

3. Operators of oil and gas exploration, production, processing, or treatment operations or transmission facilities, that are not required to submit a permit application as of October 1, 1992 in accordance with 40 CFR 122.26(c)(1)(iii), but that after October 1, 1992 have a discharge of a reportable quantity of oil or a hazardous substance for which notification is required pursuant to either 40 CFR 110.6, 40 CFR 117.21 or 40 CFR 302.6, must submit a NOI in accordance with the requirements of Part II.C of this permit within 14 calendar days of the first knowledge of such release.

4. Storm water discharges associated with industrial activity from a facility that is owned or operated by a municipality that has participated in a timely Part 1 group application and where either the group application is rejected or the facility is denied participation in the group application by EPA, and that are seeking coverage under this general permit shall submit a NOI in accordance with the requirements of this part on or before the 180th day following the date on which the group is rejected or the denial is made, or October 1, 1992, whichever is later.

5. Where the operator of a facility with a storm water discharge associated with industrial activity which is covered by this permit changes, the new operator of the facility must submit an NOI in accordance with the requirements of this part at least 2 days prior to the change.

6. An operator of a storm water discharge associated with industrial activity is not precluded from submitting an NOI in accordance with the requirements of this part after the dates provided in Parts II.A.1, 2, 3, or 4 (above) of this permit. In such instances, EPA may bring appropriate enforcement actions.

B. *Contents of Notice of Intent.* The Notice of Intent shall be signed in accordance with Part VII.G (signatory requirements) of this permit and shall include the following information:

1. The street address of the facility for which the notification is submitted. Where a street address for the site is not available, the location of the approximate center of the facility must be described in terms of the latitude and longitude to the nearest 15 seconds, or the section, township and range to the nearest quarter section;

2. Up to four 4-digit Standard Industrial Classification (SIC) codes that best represent the principal products or for hazardous waste treatment, storage or disposal facilities, land disposal facilities that receive or have received any industrial waste, steam electric power generating facilities, or treatment works treating domestic sewage, a narrative identification of those activities;

3. The operator's name, address, telephone number, and status as Federal, State, private, public or other entity;

4. The permit number(s) of additional NPDES permit(s) for any discharge(s) (including non-storm water discharges) from the site that are currently authorized by an NPDES permit;

5. The name of the receiving water(s), or if the discharge is through a municipal separate storm sewer, the name of the municipal operator of the storm sewer and the ultimate receiving water(s) for the discharge through the municipal separate storm sewer;

6. An indication of whether the owner or operator has existing quantitative data describing the concentration of pollutants in storm water discharges (existing data should not be included as part of the NOI);

7. Where a facility has participated in Part 1 of an approved storm water group application, the number EPA assigned to the group application shall be supplied; and

8. For any facility that begins to discharge storm water associated with industrial activity after October 1, 1992, a certification that a storm water pollution prevention plan has been prepared for the facility in accordance with Part IV of this permit. (A copy of the plan should not be included with the NOI submission).

C. *Where to Submit.* Facilities which discharge storm water associated with industrial activity must use a NOI form provided by the Director (or photocopy thereof). The form in the **Federal Register** notice in which this permit was published may be photocopied and used. Forms are also available by calling (703) 821–4823. NOIs must be signed in accordance with Part VII.G (signatory requirements) of this permit. NOIs are to be submitted to the Director of the NPDES program in care of the following address: Storm Water Notice of Intent, P.O. Box 1215, Newington, VA 22122.

D. *Additional Notification.* Facilities which discharge storm water associated with industrial activity through large or medium municipal separate storm sewer systems (systems located in an incorporated city with a population of 100,000 or more, or in a county identified as having a large or medium system (see definition in Part X of this permit and Appendix E of this notice)) shall, in addition to filing copies of the Notice of Intent in accordance with paragraph II.D, also submit signed copies of the Notice of Intent to the operator of the municipal separate storm sewer through which they discharge in accordance with the deadlines in Part II.A (deadlines for notification) of this permit.

[3] A copy of the approved NOI form is provided in Appendix C of this notice.

E. *Renotification.* Upon issuance of a new general permit, the permittee is required to notify the Director of their intent to be covered by the new general permit.

Part III. Special Conditions

A. Prohibition on Non-Storm Water Discharges

1. Except as provided in paragraph III.A.2 (below), all discharges covered by this permit shall be composed entirely of storm water.

2. a. Except as provided in paragraph III.A.2.b (below), discharges of material other than storm water must be in compliance with a NPDES permit (other than this permit) issued for the discharge.

b. The following non-storm water discharges may be authorized by this permit provided the non-storm water component of the discharge is in compliance with paragraph IV.D.3.g.(2) (measures and controls for non-storm water discharges): discharges from fire fighting activities; fire hydrant flushings; potable water sources including waterline flushings; irrigation drainage; lawn watering; routine external building washdown which does not use detergents or other compounds; pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used; air conditioning condensate; springs; uncontaminated ground water; and foundation or footing drains where flows are not contaminated with process materials such as solvents.

B. Releases in Excess of Reportable Quantities

1. The discharge of hazardous substances or oil in the storm water discharge(s) from a facility shall be prevented or minimized in accordance with the applicable storm water pollution prevention plan for the facility. This permit does not relieve the permittee of the reporting requirements of 40 CFR part 117 and 40 CFR part 302. Except as provided in paragraph III.B.2 (multiple anticipated discharges) of this permit, where a release containing a hazardous substance in an amount equal to or in excess of a reporting quantity established under either 40 CFR 117 or 40 CFR 302, occurs during a 24 hour period.

a. The discharger is required to notify the National Response Center (NRC) (800–424–8802; in the Washington, DC metropolitan area 202–426–2675) in accordance with the requirements of 40 CFR 117 and 40 CFR 302 as soon as he or she has knowledge of the discharge;

b. The storm water pollution prevention plan required under Part IV (storm water pollution prevention plans) of this permit must be modified within 14 calendar days of knowledge of the release to: provide a description of the release, the circumstances leading to the release, and the date of the release. In addition, the plan must be reviewed by the permittee to identify measures to prevent the reoccurence of such releases and to respond to such releases, and the plan must be modified where appropriate; and

c. The permittee shall submit within 14 calendar days of knowledge of the release a written description of: the release (including the type and estimate of the amount of material released), the date that such release occurred, the circumstances leading to the release, and steps to be taken in accordance with paragraph III.B.1.b (above) of this permit to the appropriate EPA Regional Office at the address provided in Part VI.D.1.d (reporting: where to submit) of this permit.

2. *Multiple Anticipated Discharges*—Facilities which have more than one anticipated discharge per year containing the same hazardous substance in an amount equal to or in excess of a reportable quantity established under either 40 CFR 117 or 40 CFR 302, which occurs during a 24 hour period, where the discharge is caused by events occurring within the scope of the relevant operating system shall:

a. submit notifications in accordance with Part III.B.1.b (above) of this permit for the first such release that occurs during a calendar year (or for the first year of this permit, after submittal of an NOI); and

b. shall provide in the storm water pollution prevention plan required under Part IV (storm water pollution prevention plan) a written description of the dates on which all such releases occurred, the type and estimate of the amount of material released, and the circumstances leading to the release. In addition, the plan must be reviewed to identify measures to prevent or minimize such releases and the plan must be modified where appropriate.

3. *Spills.* This permit does not authorize the discharge of hazardous substances or oil resulting from an on-site spill.

Part IV. Storm Water Pollution Prevention Plans

A storm water pollution prevention plan shall be developed for each facility covered by this permit. Storm water pollution prevention plans shall be prepared in accordance with good engineering practices and in accordance with the factors outlined in 40 CFR 125.3(d) (2) or (3) as appropriate. The plan shall identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges associated with industrial activity from the facility. In addition, the plan shall describe and ensure the implementation of practices which are to be used to reduce the pollutants in storm water discharges associated with industrial activity at the facility and to assure compliance with the terms and conditions of this permit. Facilities must implement the provisions of the storm water pollution prevention plan required under this part as a condition of this permit.

A. Deadlines for Plan Preparation and Compliance

1. Except as provided in paragraphs IV.A.3 (oil and gas operations) 4 (facilities denied or rejected from participation in a group application) 5 (special requirements) and 6 (later dates) the plan for a storm water discharge associated with industrial activity that is existing on or before October 1, 1992:

a. shall be prepared on or before April 1, 1993 (and updated as appropriate);

b. shall provide for implementation and compliance with the terms of the plan on or before October 1, 1993;

2. a. The plan for any facility where industrial activity commences after October 1, 1992, but on or before December 31, 1992 shall be prepared, and except as provided elsewhere in this permit, shall provide for compliance with the terms of the plan and this permit on or before the date 60 calendar days after the commencement of industrial activity (and updated as appropriate);

b. The plan for any facility where industrial activity commences on or after January 1, 1993 shall be prepared, and except as provided elsewhere in this permit, shall provide for compliance with the terms of the plan and this permit, on or before the date of submission of a NOI to be covered under this permit (and updated as appropriate);

3. The plan for storm water discharges associated with industrial activity from an oil and gas exploration, production, processing, or treatment operation or transmission facility that is not required to submit a permit application on or before October 1, 1992 in accordance with 40 CFR 122.26(c)(1)(iii), but after October 1, 1992 has a discharge of a

reportable quantity of oil or a hazardous substance for which notification is required pursuant to either 40 CFR 110.6, 40 CFR 117.21 or 40 CFR 302.6, shall be prepared and except as provided elsewhere in this permit, shall provide for compliance with the terms of the plan and this permit on or before the date 60 calendar days after the first knowledge of such release (and updated as appropriate);

4. The plan for storm water discharges associated with industrial activity from a facility that is owned or operated by a municipality that has participated in a timely group application where either the group application is rejected or the facility is denied participation in the group application by EPA,

a. shall be prepared on or before the 365th day following the date on which the group is rejected or the denial is made, (and updated as appropriate);

b. except as provided elsewhere in this permit, shall provide for compliance with the terms of the plan and this permit on or before the 545th day following the date on which the group is rejected or the denial is made; and

5. Portions of the plan addressing additional requirements for storm water discharges from facilities subject to Parts IV.D.7 (EPCRA Section 313 and IV.D.8 (salt storage) shall provide for compliance with the terms of the requirements identified in Parts IV.D.7 and IV.D.8 as expeditiously as practicable, but except as provided below, not later than either October 1, 1995. Facilities which are not required to report under EPCRA Section 313 prior to July 1, 1992, shall provide for compliance with the terms of the requirements identified in Parts IV.D.7 and IV.D.8 as expeditiously as practicable, but not later than three years after the date on which the facility is first required to report under EPCRA Section 313. However, plans for facilities subject to the additional requirements of Part IV.D.7 and IV.D.8 shall provide for compliance with the other terms and conditions of this permit in accordance with the appropriate dates provided in Part IV.1, 2, 3, or 5 of this permit.

6. Upon a showing of good cause, the Director may establish a later date in writing for preparing and compliance with a plan for a storm water discharge associated with industrial activity that submits a NOI in accordance with Part II.A.2 (deadlines for notification—new dischargers) of this permit (and updated as appropriate).

B. Signature and Plan Review

1. The plan shall be signed in accordance with Part VII.G (signatory requirements), and be retained on-site at the facility which generates the storm water discharge in accordance with Part VI.E (retention of records) of this permit.

2. The permittee shall make plans available upon request to the Director, or authorized representative, or in the case of a storm water discharge associated with industrial activity which discharges through a municipal separate storm sewer system, to the operator of the municipal system.

3. The Director, or authorized representative, may notify the permittee at any time that the plan does not meet one or more of the minimum requirements of this Part. Such notification shall identify those provisions of the permit which are not being met by the plan, and identify which provisions of the plan requires modifications in order to meet the minimum requirements of this Part. Within 30 days of such notification from the Director, (or as otherwise provided by the Director), or authorized representative, the permittee shall make the required changes to the plan and shall submit to the Director a written certification that the requested changes have been made.

C. Keeping Plans Current

The permittee shall amend the plan whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the waters of the United States or if the storm water pollution prevention plan proves to be ineffective in eliminating or significantly minimizing pollutants from sources identified under Part IV.D.2 (description of potential pollutant sources) of this permit, or in otherwise achieving the general objectives of controlling pollutants in storm water discharges associated with industrial activity. Amendments to the plan may be reviewed by EPA in the same manner as Part IV.B (above).

D. Contents of Plan

The plan shall include, at a minimum, the following items:

1. *Pollution Prevention Team.* Each plan shall identify a specific individual or individuals within the facility organization as members of a storm water Pollution Prevention Team that are responsible for developing the storm water pollution prevention plan and assisting the facility or plant manager in its implementation, maintenance, and revision. The plan shall clearly identify the responsibilities of each team member. The activities and responsibilities of the team shall address all aspects of the facility's storm water pollution prevention plan.

2. *Description of Potential Pollutant Sources.* Each plan shall provide a description of potential sources which may reasonably be expected to add significant amounts of pollutants to storm water discharges or which may result in the discharge of pollutants during any dry weather from separate storm sewers draining the facility. Each plan shall identify all activities and significant materials which may potentially be significant pollutant sources. Each plan shall include, at a minimum:

a. *Drainage.*

(1) A site map indicating an outline of the portions of the drainage area of each storm water outfall that are within the facility boundaries, each existing structural control measure to reduce pollutants in storm water runoff, surface water bodies, locations where significant materials are exposed to precipitation, locations where major spills or leaks identified under Part IV.D.2.c (spills and leaks) of this permit have occurred, and the locations of the following activities where such activities are exposed to precipitation: fueling stations, vehicle and equipment maintenance and/or cleaning areas, loading/unloading areas, locations used for the treatment, storage or disposal of wastes, liquid storage tanks, processing areas and storage areas.

(2) For each area of the facility that generates storm water discharges associated with industrial activity with a reasonable potential for containing significant amounts of pollutants, a prediction of the direction of flow, and an identification of the types of pollutants which are likely to be present in storm water discharges associated with industrial activity. Factors to consider include the toxicity of chemical; quantity of chemicals used, produced or discharged; the likelihood of contact with storm water; and history of significant leaks or spills of toxic or hazardous pollutants. Flows with a significant potential for causing erosion shall be identified.

b. *Inventory of Exposed Materials.* An inventory of the types of materials handled at the site that potentially may be exposed to precipitation. Such inventory shall include a narrative description of significant materials that have been handled, treated, stored or disposed in a manner to allow exposure to storm water between the time of three years prior to the date of the issuance of this permit and the present; method and location of on-site storage or disposal; materials management practices employed to minimize contact of materials with storm water runoff

between the time of three years prior to the date of the issuance of this permit and the present; the location and a description of existing structural and non-structural control measures to reduce pollutants in storm water runoff; and a description of any treatment the storm water receives.

c. *Spills and Leaks.* A list of significant spills and significant leaks of toxic or hazardous pollutants that occurred at areas that are exposed to precipitation or that otherwise drain to a storm water conveyance at the facility after the date of three years prior to the effective date of this permit. Such list shall be updated as appropriate during the term of the permit.

d. *Sampling Data.* A summary of existing discharge sampling data describing pollutants in storm water discharges from the facility, including a summary of sampling data collected during the term of this permit.

e. *Risk Identification and Summary of Potential Pollutant Sources.* A narrative description of the potential pollutant sources from the following activities: loading and unloading operations; outdoor storage activities; outdoor manufacturing or processing activities; significant dust or particulate generating processes; and on-site waste disposal practices. The description shall specifically list any significant potential source of pollutants at the site and for each potential source, any pollutant or pollutant parameter (e.g. biochemical oxygen demand, etc.) of concern shall be identified.

3. *Measures and Controls.* Each facility covered by this permit shall develop a description of storm water management controls appropriate for the facility, and implement such controls. The appropriateness and priorities of controls in a plan shall reflect identified potential sources of pollutants at the facility. The description of storm water management controls shall address the following minimum components, including a schedule for implementing such controls:

a. *Good Housekeeping.*—Good housekeeping requires the maintenance of areas which may contribute pollutants to storm waters discharges in a clean, orderly manner.

b. *Preventive Maintenance.* A preventive maintenance program shall involve timely inspection and maintenance of storm water management devices (e.g. cleaning oil/water separators, catch basins) as well as inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters, and ensuring appropriate maintenance of such equipment and systems.

c. *Spill Prevention and Response Procedures.* Areas where potential spills which can contribute pollutants to storm water discharges can occur, and their accompanying drainage points shall be identified clearly in the storm water pollution prevention plan. Where appropriate, specifying material handling procedures, storage requirements, and use of equipment such as diversion valves in the plan should be considered. Procedures for cleaning up spills shall be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a clean up should be available to personnel.

d. *Inspections.* In addition to or as part of the comprehensive site evaluation required under Part IV.4 of this permit, qualified facility personnel shall be identified to inspect designated equipment and areas of the facility at appropriate intervals specified in the plan. A set of tracking or followup procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspection shall be maintained.

e. *Employee Training.* Employee training programs shall inform personnel responsible for implementing activities identified in the storm water pollution prevention plan or otherwise responsible for storm water management at all levels of responsibility of the components and goals of the storm water pollution prevention plan. Training should address topics such as spill response, good housekeeping and material management practices. A pollution prevention plan shall identify periodic dates for such training.

f. *Recordkeeping and Internal Reporting Procedures.* A description of incidents (such as spills, or other discharges), along with other information describing the quality and quantity of storm water discharges shall be included in the plan required under this part. Inspections and maintenance activities shall be documented and records of such activities shall be incorporated into the plan.

g. *Non-Storm Water Discharges.*

(1) The plan shall include a certification that the discharge has been tested or evaluated for the presence of non-storm water discharges. The certification shall include the identification of potential significant sources of non-storm water at the site, a description of the results of any test and/or evaluation for the presence of non-storm water discharges, the evaluation criteria or testing method used, the date of any testing and/or evaluation, and the on-site drainage points that were directly observed during the test. Certifications shall be signed in accordance with Part VII.G of this permit. Such certification may not be feasible if the facility operating the storm water discharge associated with industrial activity does not have access to an outfall, manhole, or other point of access to the ultimate conduit which receives the discharge. In such cases, the source identification section of the storm water pollution plan shall indicate why the certification required by this part was not feasible, along with the identification of potential significant source of non-storm water at the site. A discharger that is unable to provide the certification required by this paragraph must notify the Director in accordance with Part VI.A (failure to certify) of this permit.

(2) Except for flows from fire fighting activities, sources of non-storm water listed in Part III.A.2 (authorized non-storm water discharges) of this permit that are combined with storm water discharges associated with industrial activity must be identified in the plan. The plan shall identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge.

h. *Sediment and Erosion Control.* The plan shall identify areas which, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify structural, vegetative, and/or stabilization measures to be used to limit erosion.

i. *Management of Runoff.* The plan shall contain a narrative consideration of the appropriateness of traditional storm water management practices (practices other than those which control the generation or source(s) of pollutants) used to divert, infiltrate, reuse, or otherwise manage storm water runoff in a manner that reduces pollutants in storm water discharges from the site. The plan shall provide that measures that the permittee determines to be reasonable and appropriate shall be implemented and maintained. The potential of various sources at the facility to contribute pollutants to storm water discharges, associated with industrial activity (see Parts IV.D.2. (description of potential pollutant sources) of this permit) shall be considered when determining reasonable and appropriate measures. Appropriate measures may include: vegetative swales and practices, reuse of collected storm water (such as for a process or as an irrigation source), inlet controls (such as oil/water separators),

snow management activities, infiltration devices, and wet detention/retention devices.

4. *Comprehensive Site Compliance Evaluation.* Qualified personnel shall conduct site compliance evaluations at appropriate intervals specified in the plan, but, except as provided in paragraph IV.D.4.d (below), in no case less than once a year. Such evaluations shall provide:

a. Areas contributing to a storm water discharge associated with industrial activity shall be visually inspected for evidence of, or the potential for, pollutants entering the drainage system. Measures to reduce pollutant loadings shall be evaluated to determine whether they are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Structural storm water management measures, sediment and erosion control measures, and other structural pollution prevention measures identified in the plan shall be observed to ensure that they are operating correctly. A visual inspection of equipment needed to implement the plan, such as spill response equipment, shall be made.

b. Based on the results of the inspection, the description of potential pollutant sources identified in the plan in accordance with Part IV.D.2 (description of potential pollutant sources) of this permit and pollution prevention measures and controls identified in the plan in accordance with paragraph IV.D.3 (measures and controls) of this permit shall be revised as appropriate within two weeks of such inspection and shall provide for implementation of any changes to the plan in a timely manner, but in no case more than twelve weeks after the inspection.

c. A report summarizing the scope of the inspection, personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with paragraph IV.D.4.b (above) of the permit shall be made and retained as part of the storm water pollution prevention plan for at least one year after coverage under this permit terminates. The report shall identify any incidents of non-compliance. Where a report does not identify any incidents of non-compliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with Part VII.G (signatory requirements) of this permit.

d. Where annual site inspections are shown in the plan to be impractical for inactive mining sites due to the remote location and inaccessibility of the site, site inspections required under this part shall be conducted at appropriate intervals specified in the plan, but, in no case less than once in three years.

5. *Additional requirements for storm water discharges associated with industrial activity through municipal separate storm sewer systems serving a population of 100,000 or more.*

a. In addition to the applicable requirements of this permit, facilities covered by this permit must comply with applicable requirements in municipal storm water management programs developed under NPDES permits issued for the discharge of the municipal separate storm sewer system that receives the facility's discharge, provided the discharger has been notified of such conditions.

b. Permittees which discharge storm water associated with industrial activity through a municipal separate storm sewer system serving a population of 100,000 or more shall make plans available to the municipal operator of the system upon request.

6. *Consistency with other plans.* Storm water pollution prevention plans may reflect requirements for Spill Prevention Control and Countermeasure (SPCC) plans developed for the facility under section 311 of the CWA or Best Management Practices (BMP) Programs otherwise required by an NPDES permit for the facility as long as such requirement is incorporated into the storm water pollution prevention plan.

7. *Additional requirements for storm water discharges associated with industrial activity from facilities subject to EPCRA Section 313 requirements.* In addition to the requirements of Parts IV.D.1 through 4 of this permit and other applicable conditions of this permit, storm water pollution prevention plans for facilities subject to reporting requirements under EPCRA Section 313 for chemicals which are classified as 'Section 313 water priority chemicals' in accordance with the definition in Part X of this permit, shall describe and ensure the implementation of practices which are necessary to provide for conformance with the following guidelines:

a. In areas where Section 313 water priority chemicals are stored, processed or otherwise handled, appropriate containment, drainage control and/or diversionary structures shall be provided. At a minimum, one of the following preventive systems or its equivalent shall be used:

(1) Curbing, culverting, gutters, sewers or other forms of drainage control to prevent or minimize the potential for storm water run-on to come into contact with significant sources of pollutants; or

(2) Roofs, covers or other forms of appropriate protection to prevent storage piles from exposure to storm water, and wind.

b. In addition to the minimum standards listed under Part IV.D.7.a (above) of this permit, the storm water pollution prevention plan shall include a complete discussion of measures taken to conform with the following applicable guidelines, other effective storm water pollution prevention procedures, and applicable State rules, regulations and guidelines:

(1) *Liquid storage areas where storm water comes into contact with any equipment, tank, container, or other vessel used for section 313 water priority chemicals.*

(a) No tank or container shall be used for the storage of a Section 313 water priority chemical unless its material and construction are compatible with the material stored and conditions of storage such as pressure and temperature, etc.

(b) Liquid storage areas for Section 313 water priority chemicals shall be operated to minimize discharges of Section 313 chemicals. Appropriate measures to minimize discharges of Section 313 chemicals may include secondary containment provided for at least the entire contents of the largest single tank plus sufficient freeboard to allow for precipitation, a strong spill contingency and integrity testing plan, and/or other equivalent measures.

(2) *Material storage areas for Section 313 water priority chemicals other than liquids.* Material storage areas for Section 313 water priority chemicals other than liquids which are subject to runoff, leaching, or wind shall incorporate drainage or other control features which will minimize the discharge of Section 313 water priority chemicals by reducing storm water contact with Section 313 water priority chemicals.

(3) *Truck and rail car loading and unloading areas for liquid Section 313 water priority chemicals.* Truck and rail car loading and unloading areas for liquid Section 313 water priority chemicals shall be operated to minimize discharges of Section 313 water priority chemicals. Protection such as overhangs or door skirts to enclose trailer ends at truck loading/unloading docks shall be provided as appropriate. Appropriate measures to minimize discharges of Section 313 chemicals may include: the

placement and maintenance of drip pans (including the proper disposal of materials collected in the drip pans) where spillage may occur (such as hose connections, hose reels and filler nozzles) for use when making and breaking hose connections; a strong spill contingency and integrity testing plan; and/or other equivalent measures.

(4) *Areas where Section 313 water priority chemicals are transferred, processed or otherwise handled.* Processing equipment and materials handling equipment shall be operated so as to minimize discharges of Section 313 water priority chemicals. Materials used in piping and equipment shall be compatible with the substances handled. Drainage from process and materials handling areas shall minimize storm water contact with section 313 water priority chemicals. Additional protection such as covers or guards to prevent exposure to wind, spraying or releases from pressure relief vents from causing a discharge of Section 313 water priority chemicals to the drainage system shall be provided as appropriate. Visual inspections or leak tests shall be provided for overhead piping conveying Section 313 water priority chemicals without secondary containment.

(5) *Discharges from areas covered by paragraphs (1), (2), (3) or (4).*

(a) Drainage from areas covered by paragraphs (1), (2), (3) or (4) of this part should be restrained by values or other positive means to prevent the discharge of a spill or other excessive leakage of Section 313 water priority chemicals. Where containment units are employed, such units may be emptied by pumps or ejectors; however, these shall be manually activated.

(b) Flapper-type drain valves shall not be used to drain containment areas. Valves used for the drainage of containment areas should, as far as is practical, be of manual, open-and-closed design.

(c) If facility drainage is not engineered as above, the final discharge of all in-facility storm sewers shall be equipped to be equivalent with a diversion system that could, in the event of an uncontrolled spill of Section 313 water priority chemicals, return the spilled material to the facility.

(d) Records shall be kept of the frequency and estimated volume (in gallons) of discharges from containment areas.

(6) *Facility site runoff other than from areas covered by (1), (2), (3) or (4).* Other areas of the facility (those not addressed in paragraphs (1), (2), (3) or (4)), from which runoff which may contain Section 313 water priority chemicals or spills of Section 313 water priority chemicals could cause a discharge shall incorporate the necessary drainage or other control features to prevent discharge of spilled or improperly disposed material and ensure the mitigation of pollutants in runoff or leachate.

(7) *Preventive maintenance and housekeeping.* All areas of the facility shall be inspected at specific intervals identified in the plan for leaks or conditions that could lead to discharges of Section 313 water priority chemicals or direct contact of storm water with raw materials, intermediate materials, waste materials or products. In particular, facility piping, pumps, storage tanks and bins, pressure vessels, process and material handling equipment, and material bulk storage areas shall be examined for any conditions or failures which could cause a discharge. Inspection shall include examination for leaks, wind blowing, corrosion, support or foundation failure, or other forms of deterioration or noncontainment. Inspection intervals shall be specified in the plan and shall be based on design and operational experience. Different areas may require different inspection intervals. Where a leak or other condition is discovered which may result in significant releases of Section 313 water priority chemicals to waters of the United States, action to stop the leak or otherwise prevent the significant release of section 313 water priority chemicals to waters of the United States shall be immediately taken or the unit or process shut down until such action can be taken. When a leak or noncontainment of a Section 313 water priority chemical has occurred, contaminated soil, debris, or other material must be promptly removed and disposed in accordance with Federal, State, and local requirements and as described in the plan.

(8) *Facility security.* Facilities shall have the necessary security systems to prevent accidental or intentional entry which could cause a discharge. Security systems described in the plan shall address fencing, lighting, vehicular traffic control, and securing of equipment and buildings.

(9) *Training.* Facility employees and contractor personnel that work in areas where Section 313 water priority chemicals are used or stored shall be trained in and informed of preventive measures at the facility. Employee training shall be conducted at intervals specified in the plan, but not less than once per year, in matters of pollution control laws and regulations, and in the storm water pollution prevention plan and the particular features of the facility and its operation which are designed to minimize discharges of Section 313 water priority chemicals. The plan shall designate a person who is accountable for spill prevention at the facility and who will set up the necessary spill emergency procedures and reporting requirements so that spills and emergency releases of Section 313 water priority chemicals can be isolated and contained before a discharge of a Section 313 water priority chemical can occur. Contractor or temporary personnel shall be informed of facility operation and design features in order to prevent discharges or spills from occurring.

(10) *Engineering certification.* The storm water pollution prevention plan for a facility subject to EPRCA Section 313 requirements for chemicals which are classified as 'section 313 water priority chemicals' shall be reviewed by a Registered Professional Engineer and certified to by such Professional Engineer. A Registered Professional Engineer shall recertify the plan every three years thereafter or as soon as practicable after significant modification are made to the facility. By means of these certifications the engineer, having examined the facility and being familiar with the provisions of this part, shall attest that the storm water pollution prevention plan has been prepared in accordance with good engineering practices. Such certifications shall in no way relieve the owner or operator of a facility covered by the plan of their duty to prepare and fully implement such plan.

8. Additional Requirements for Salt Storage

Storage piles of salt used for deicing or other commercial or industrial purposes and which generate a storm water discharge associated with industrial activity which is discharged to a waters of the United States shall be enclosed or covered to prevent exposure to precipitation, except for exposure resulting from adding or removing materials from the pile. Dischargers shall demonstrate compliance with this provision as expeditiously as practicable, but in no event later than October 1, 1995. Piles do not need to be enclosed or covered where storm water from the pile is not discharged to waters of the United States.

Part V. Numeric Effluent Limitations

A. Coal Pile Runoff

Any discharge composed of coal pile runoff shall not exceed a maximum concentration for any time of 50 mg/1 total suspended solids. Coal pile runoff

shall not be diluted with storm water or other flows in order to meet this limitation. The pH of such discharges shall be within the range of 6.0–9.0. Any untreated overflow from facilities designed, constructed and operated to treat the volume of coal pile runoff which is associated with a 10 year, 24 hour rainfall event shall not be subject to the 50 mg/1 limitation for total suspended solids. Failure to demonstrate compliance with these limitations as expeditiously as practicable, but in no case later than October 1, 1995, will constitute a violation of this permit.

Part VI. Monitoring and Reporting Requirements

A. Failure to Certify

Any facility that is unable to provide the certification required under paragraph IV.D.3.g.(1) (testing for non-storm water discharges), must notify the Director by October 1, 1993 or, for facilities which begin to discharge storm water associated with industrial activity after October 1, 1992, 180 days after submitting a NOI to be covered by this permit. If the failure to certify is caused by the inability to perform adequate tests or evaluations, such notification shall describe: the procedure of any test conducted for the presence of non-storm water discharges; the results of such test or other relevant observations; potential sources of non-storm water discharges to the storm sewer; and why adequate tests for such storm sewers were not feasible. Non-storm water discharges to waters of the United States which are not authorized by an NPDES permit are unlawful, and must be terminated or dischargers must submit appropriate NPDES permit application forms.

B. Monitoring Requirements

1. *Limitations on Monitoring Requirements.*

a. Except as required by paragraph b., only those facilities with activities specifically identified in Parts VI.B.2 (semi-annual monitoring requirements) and VI.B.3 (annual monitoring requirements) of this permit are required to conduct sampling of their storm water discharges associated with industrial activity.

b. The Director can provide written notice to any facility otherwise exempt from the sampling requirements of Parts VI.B.2 (semi-annual monitoring requirements) or VI.B.3 (annual monitoring requirements), that it shall conduct the annual discharge sampling required by Part VI.B.3.d (additional facilities), or specify an alternative monitoring frequency or specify additional parameters to be analyzed.

2. *Semi-Annual Monitoring Requirements.* During the period beginning on the effective date and lasting through the expiration date of this permit, permittees with facilities identified in Parts VI.B.2.a through f must monitor those storm water discharges identified below at least semi-annually (2 times per year) except as provided in VI.B.5 (sampling waiver), VI.B.6 (representative discharge), and VI.C.1 (toxicity testing). Permittees with facilities identified in Parts VI.B.2.a through f (below) must report in accordance with Part VI.D (reporting: where to submit). In addition to the parameters listed below, the permittee shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled;

a. *Section 313 of EPCRA Facilities.* In addition to any monitoring required by Parts VI.B.2.b through f. or Parts VI.B.3.a through d, facilities with storm water discharges associated with industrial activity that are subject to Section 313 of EPCRA for chemicals which are classified as 'Section 313 water priority chemicals' are required to monitor storm water that is discharged from the facility that comes into contact with any equipment, tank, container or other vessel or area used for storage of a Section 313 water priority chemical, or located at a truck or rail car loading or unloading area where a Section 313 water priority chemical is handled for: Oil and Grease (mg/L); Five Day Biochemical Oxygen Demand (B0D5) (mg/L); Chemical Oxygen Demand (COD) (mg/L); Total Suspended Solids (mg/L); Total Kjeldahl Nitrogen (TKN) (mg/L); Total Phosphorus (mg/L): pH; acute whole effluent toxicity; and any Section 313 water priority chemical for which the facility is subject to reporting requirements under section 313 of the Emergency Planning and Community Right to Know Act of 1986.

b. *Primary Metal Industries.* Facilities with storm water discharges associated with industrial activity classified as Standard Industrial Classification (SIC) 33 (Primary Metal Industry) are required to monitor such storm water that is discharged from the facility for: oil and grease (mg/L); Chemical Oxygen Demand (COD) (mg/L); total suspended solids (mg/L); pH; acute whole effluent toxicity; total recoverable lead (mg/L); total recoverable cadmium (mg/L); total recoverable copper (mg/L); total recoverable arsenic (mg/L); total recoverable chromium (mg/L); and any pollutant limited in an effluent guideline to which the facility is subject. Facilities that are classified as SIC 33 only because they manufacture pure silicon and/or semiconductor grade silicon are not required to monitor for total recoverable cadmium, total recoverable copper, total recoverable arsenic, total recoverable chromium or acute whole effluent toxicity, but must monitor for other parameters listed above.

c. *Land Disposal Units/Incinerators/BIFs.* Facilities with storm water discharges associated with industrial activity from any active or inactive landfill, land application sites or open dump without a stabilized final cover that has received any industrial wastes (other than wastes from a construction site); and incinerators (including Boilers and Industrial Furnaces (BIFs)) that burn hazardous waste and operate under interim status or a permit under Subtitle C of RCRA, are required to monitor such storm water that is discharged from the facility for: Magnesium (total recoverable) (mg/L), Magnesium (dissolved) (mg/L), Total Kjeldahl Nitrogen (TKN) (mg/L), Chemical Oxygen Demand (COD) (mg/L), Total Dissolved Solids (TDS) (mg/L), Total Organic Carbon (TOC) (mg/L), oil and grease (mg/L), pH, Total recoverable arsenic (mg/L), Total recoverable Barium (mg/L), Total recoverable Cadmium (mg/L), Total Chromium (mg/L), Total recoverable Cyanide (mg/L), Total recoverable Lead (mg/L), Total Mercury (mg/L), Total recoverable Selenium (mg/L), Total recoverable Silver (mg/L), and acute whole effluent toxicity.

d. *Wood Treatment.* Facilities with storm water discharges associated with industrial activity from areas that are used for wood treatment, wood surface application or storage of treated or surface protected wood at any wood preserving or wood surface facilities are required to monitor such storm water that is discharged from the facility for: oil and grease (mg/L), pH, COD (mg/L), and TSS (mg/L). In addition, facilities that use chlorophenolic formulations shall measure pentachlorophenol (mg/L) and acute whole effluent toxicity; facilities which use creosote formulations shall measure acute whole effluent toxicity; and facilities that use chromium-arsenic formulations shall measure total recoverable arsenic (mg/

L), total recoverable chromium (mg/L), and total recoverable copper (mg/L).

e. *Coal Pile Runoff.* Facilities with storm water discharges associated with industrial activity from coal pile runoff are required to monitor such storm water that is discharged from the facility for: oil and grease (mg/L), pH, TSS (mg/L), total recoverable copper (mg/1), total recoverable nickel (mg/1) and total recoverable zinc (mg/1).

f. *Battery Reclaimers.* Facilities with storm water discharges associated with industrial activity from areas used for storage of lead acid batteries, reclamation products, or waste products, and areas used for lead acid battery reclamation (including material handling activities) at facilities that reclaim lead acid batteries are required to monitor such storm water that is discharged from the facility for: Oil and Grease (mg/L); Chemical Oxygen Demand (COD) (mg/L); Total Suspended Solids (TSS) (mg/L); pH; total recoverable copper (mg/1); and total recoverable lead (mg/1).

3. *Annual Monitoring Requirements.* During the period beginning on the effective date and lasting through the expiration date of this permit, permittees with facilities identified in Parts VI.B.3.a through d. (below) must monitor those storm water discharges identified below at least annually (1 time per year) except as provided in VI.B.5 (sampling waiver), and VI.B.6 (representative discharge). Permittees with facilities identified in parts VI.B.3.a through d. (below) are not required to submit monitoring results, unless required in writing by the Director. However, such permittees must retain monitoring results in accordance with Part VI.E (retention of records). In addition to the parameters listed below, the permittee shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled;

a. *Airports.* At airports with over 50,000 flight operations per year, facilities with storm water discharges associated with industrial activity from areas where aircraft or airport deicing operations occur (including runways, taxiways, ramps, and dedicated aircraft deicing stations) are required to monitor such storm water that is discharged from the facility when deicing activities are occurring for: Oil and Grease (mg/L); Five Day Biochemical Oxygen Demand (B0D5) (mg/L); Chemical Oxygen Demand (COD) (mg/L); Total Suspended Solids (TSS) (mg/L); pH; and the primary ingredient used in the deicing materials used at the site (e.g. ethylene glycol, urea, etc.).

b. *Coal-fired Steam Electric Facilities.* Facilities with storm water discharges associated with industrial activity from coal handling sites at coal fired steam electric power generating facilities (other than discharges in whole or in part from coal piles subject to storm water effluent guidelines at 40 CFR 423—which are not eligible for coverage under this permit) are required to monitor such storm water that is discharged from the facility for: Oil and grease (mg/L), pH, TSS (mg/L), total recoverable copper (mg/L), total recoverable nickel (mg/L) and total recoverable zinc (mg/L).

c. *Animal Handling / Meat Packing.* Facilities with storm water discharges associated with industrial activity from animal handling areas, manure management (or storage) areas, and production waste management (or storage) areas that are exposed to precipitation at meat packing plants, poultry packing plants, and facilities that manufacture animal and marine fats and oils, are required to monitor such storm water that is discharged from the facility for: Five Day Biochemical Oxygen Demand (B0D5) (mg/L); oil and grease (mg/L); Total Suspended Solids (TSS) (mg/L); Total Kjeldahl Nitrogen (TKN) (mg/L); Total Phosphorus (mg/L); ph; and fecal coliform (counts per 100 mL).

d. *Additional Facilities.* Facilities with storm water discharges associated with industrial activity that:

(i) come in contact with storage piles for solid chemicals used as raw materials that are exposed to precipitation at facilities classified as SIC 30 (Rubber and Miscellaneous Plastics Products) or SIC 28 (Chemicals and Allied Products);

(ii) are from those areas at automobile junkyards with any of the following: (A) over 250 auto/truck bodies with drivelines (engine, transmission, axles, and wheels), 250 drivelines, or any combination thereof (in whole or in parts) are exposed to storm water; (B) over 500 auto/truck units (bodies with or without drivelines in whole or in parts) are stored exposed to storm water; or (C) over 100 units per year are dismantled and drainage or storage of automotive fluids occurs in areas exposed to storm water;

(iii) come into contact with lime storage piles that are exposed to storm water at lime manufacturing facilities;

(iv) are from oil handling sites at oil fired steam electric power generating facilities;

(v) are from cement manufacturing facilities and cement kilns (other than discharges in whole or in part from material storage piles subject to storm water effluent guidelines at 40 CFR 411—which are not eligible for coverage under this permit);

(vi) are from ready-mixed concrete facilities; or

(vii) are from ship building and repairing facilities;

are required to monitor such storm water discharged from the facility for: Oil and Grease (mg/L); Chemical Oxygen Demand (COD) (mg/L); Total Suspended Solids (TSS) (mg/L); pH; and any pollutant limited in an effluent guideline to which the facility is subject.

4. *Sample Type.* For discharges from holding ponds or other impoundments with a retention period greater than 24 hours, (estimated by dividing the volume of the detention pond by the estimated volume of water discharged during the 24 hours previous to the time that the sample is collected) a minimum of one grab sample may be taken. For all other discharges, data shall be reported for both a grab sample and a composite sample. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first thirty minutes of the discharge. If the collection of a grab sample during the first thirty minutes is impracticable, a grab sample can be taken during the first hours of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first thirty minutes was impracticable. The composite sample shall either be flow-weighted or time-weighted. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes. Grab samples only must be collected and analyzed for the determination of pH, cyanide, whole effluent toxicity, fecal coliform, and oil and grease.

5. *Sampling Waiver.* When a discharger is unable to collect samples due to adverse climatic conditions, the discharger must submit in lieu of sampling data a description of why

samples could not be collected, including available documentation of the event. Adverse weather conditions which may prohibit the collection of samples includes weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.). Dischargers are precluded from exercising this waiver more than once during a two year period.

6. *Representative Discharge.* When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may test the effluent of one of such outfalls and report that the quantitative data also applies to the substantially identical outfalls provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explaining in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area (e.g. low (under 40 percent), medium (40 to 65 percent) or high (above 65 percent)) shall be provided in the plan. Permittees required to submit monitoring information under Parts VI.D.1.a, b or c of this permit shall include the description of the location of the outfalls, explanation of why outfalls are expected to discharge substantially identical effluents, and estimate of the size of the drainage area and runoff coefficient with the Discharge Monitoring Report.

7. *Alternative Certification.* A discharger is not subject to the monitoring requirements of Parts VI.B.2 or 3 of this permit provided the discharger makes a certification for a given outfall, on an annual basis, under penalty of law, signed in accordance with Part VII.G (signatory requirements), that material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, industrial machinery or operations, significant materials from past industrial activity, or, in the case of airports, deicing activities, that are located in areas of the facility that are within the drainage area of the outfall are not presently exposed to storm water and will not be exposed to storm water for the certification period. Such certification must be retained in the storm water pollution prevention plan, and submitted to EPA in accordance with Part VI.D of this permit.

8. *Alternative to WET Parameter.* A discharger that is subject to the monitoring requirements of Parts VI.B.2.a through d may, in lieu of monitoring for acute whole effluent toxicity, monitor for pollutants identified in Tables II and III of Appendix D of 40 CFR 122 (see Addendum A of this permit) that the discharger knows or has reason to believe are present at the facility site. Such determinations are to be based on reasonable best efforts to identify significant quantities of materials or chemicals present at the facility. Dischargers must also monitor for any additional parameter identified in Parts VI.B.2.a through d.

C. *Toxicity Testing.* Permittees that are required to monitor for acute whole effluent toxicity shall initiate the series of tests described below within 180 days after the issuance of this permit or within 90 days after the commencement of a new discharge.

1. *Test Procedures.*

a. The permittee shall conduct acute 24 hour static toxicity tests on both an appropriate invertebrate and an appropriate fish (vertebrate) test species (EPA/600/4-90-027 Rev. 9/91, Section 6.1).[2] Freshwater species must be used for discharges to freshwater water bodies. Due to the non-saline nature of rainwater, freshwater test species should also be used for discharges to estuarine, marine or other naturally saline waterbodies.

b. All test organisms, procedures and quality assurance criteria used shall be in accordance with *Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms,* EPA/600/4-90-027 (Rev. September 1991). EPA has proposed to establish regulations regarding these test methods (December 4, 1989, 53 *FR* 50216).

c. Tests shall be conducted semiannually (twice per year) on a grab sample of the discharge. Tests shall be conducted using 100 effluent (no dilution) and a control consisting of synthetic dilution water. Results of all tests conducted with any species shall be reported according to EPA/600/4-90-027 (Rev. September 1991), Section 12, Report Preparation, and the report submitted to EPA with the Discharge Monitoring Reports (DMR's). On the DMR, the permittee shall report "O" if there is no statistical difference between the control mortality and the effluent mortality for each dilution. If there is statistical difference (exhibits toxicity), the permittee shall report "1" on the DMR.

2. If acute whole effluent toxicity (statistically significant difference between the 100% dilution and the control) is detected on or after October 1, 1995, in storm water discharges, the permittee shall review the storm water pollution prevention plan and make appropriate modifications to assist in identifying the source(s) of toxicity and to reduce the toxicity of their storm water discharges. A summary of the review and the resulting modifications shall be provided in the plan.

D. Reporting: Where to Submit.

1. a. Permittees which are required to conduct sampling pursuant to Parts VI.B.2.(a) (EPCRA Section 313), and (d) (Wood Treatment facilities), shall monitor samples collected during the sampling periods running from January to June and during the sampling period from July to December. Such permittees shall submit monitoring results obtained during the reporting period running from January to December on Discharge Monitoring Report Form(s) postmarked no later than the 28th day of the following January. A separate Discharge Monitoring Report Form is required for each sampling period. The first report may include less than twelve months of information.

b. Permittees which are required to conduct sampling pursuant to Parts VI.B.2.(b) (Primary Metal facilities), (e) (Coal Pile Runoff), and (f) (Battery Reclaimers) shall monitor samples collected during the sampling period running from March to August and during the sampling period running from September to February. Such permittees shall submit monitoring results obtained during the reporting period running from April to March on Discharge Monitoring Report Form(s) postmarked no later than the 28th day of the following April. A separate Discharge Monitoring Report Form is required for each event sampling period. The first report may include less than twelve months of information.

c. Permittees which are required to conduct sampling pursuant to Parts VI.B.2.(c) (Land disposal facilities), shall monitor samples collected during the sampling period running from October to March and during the sampling period running from April to September. Such permittees shall submit monitoring

results obtained during the reporting period running from October to September on Discharge Monitoring Report Form(s) postmarked no later than the 28th day of October. A separate Discharge Monitoring Report Form is required for each sampling period. The first report may include less than twelve months of information.

d. Signed copies of discharge monitoring reports required under Parts VI.D.1.a, VI.D.1.b, and VI.D.1.c, individual permit applications and all other reports required herein, shall be submitted to the Director of the NPDES program at the address of the appropriate Regional Office:

1. CT, MA, ME, NH, RI, VT

United States EPA, Region I, Water Management Division, (WCP-2109), Storm Water Staff, John F. Kennedy Federal Building, Room 2209, Boston, MA 02203.

2. NJ, NY, PR, VI

United States EPA, Region II, Water Management Division, (2WM-WPC), Storm Water Staff, 26 Federal Plaza, New York, NY 10278.

3. DE, DC, MD, PA, VA, WV

United States EPA, Region III, Water Management Division, (3WM55), Storm Water Staff, 841 Chestnut Building, Philadelphia, PA 19107.

4. AL, FL, GA, KY, MS, NC, SC, TN

United States EPA, Region IV, Water Management Division, (FPB-3), Storm Water Staff, 345 Courtland Street, NE, Atlanta, GA 30365.

5. IL, IN, MI, MN, OH, WI

United States EPA, Region V, Water Quality Branch, (5 WQP), Storm Water Staff, 77 West Jackson Boulevard, Chicago, IL 60604.

6. AR, LA, NM (except see Region IX for Navajo lands, and see Region VIII for Ute Mountain Reservation lands), OK, TX

United States EPA, Region VI, Water Management Division, (6W-EA), Storm Water Staff, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, 12th Floor, Suite 1200, Dallas, TX 75202.

7. IA, KS, MO, NE

United States EPA, Region VII, Water Management Division, Compliance Branch, Storm Water Staff, 726 Minnesota Avenue, Kansas City, KS 66101.

8. CO, MT, ND, SD, WY, UT (except see Region IX for Goshute Reservation and Navajo Reservation lands)

United States EPA, Region VIII, Water Management Division, NPDES Branch (8WM-C), Storm Water Staff, 999 18th Street, Denver, CO 80202-2466.

Note.—For *Montana Indian Lands*, please use the following address:
United States EPA, Region VIII, Montana Operations Office, Federal Office Building, Drawer 10096, 301 South Park, Helena, MT 59620-0020.

9. AZ, CA, HI, NV, Guam, American Samoa, the Goshute Reservation in UT and NV, the Navajo Reservation in UT, NM, and AZ, the Duck Valley Reservation in NV and ID

United States EPA, Region IX, Water Management Division, (W-5-1), Storm Water Staff, 75 Hawthorne Street, San Francisco, CA 94105.

10. AK, ID (except see Region IX for Duck Valley Reservation lands), OR, WA

United States EPA, Region X, Water Management Division, (WD-134), Storm Water Staff, 1200 Sixth Street, Seattle, WA 98101(i).

e. Permittees with facilities identified in Parts VI.B.3 (annual monitoring) are not required to submit monitoring results, unless required in writing by the Director.

2. Additional Notification.

In addition to filing copies of discharge monitoring reports in accordance with Part VI.D.1 (reporting: where to submit), facilities with at least one storm water discharge associated with industrial activity through a large or medium municipal separate storm sewer system (systems serving a population of 100,000 or more) must submit signed copies of discharge monitoring reports to the operator of the municipal separate storm sewer system in accordance with the dates provided in paragraph VI.D.1 (reporting: where to submit). Facilities not required to report monitoring data under Part VI.B.3 (annual monitoring requirements), and facilities that are not otherwise required to monitor their discharges, need not comply with this provision.

E. Retention of Records.

1. The permittee shall retain the pollution prevention plan developed in accordance with Part IV (storm water pollution prevention plans) of this permit until at least one year after coverage under this permit terminates. The permittee shall retain all records of all monitoring information, copies of all reports required by this permit, and records of all data used to complete the Notice of Intent to be covered by this permit, until at least one year after coverage under this permit terminates. This period may be explicitly modified by alternative provisions of this permit (see paragraph VI.E.2 (below) of this permit) or extended by request of the Director at any time.

2. For discharges subject to sampling requirements pursuant to Part VI.B (monitoring requirements), in addition to the requirements of paragraph VI.E.1 (above), permittees are required to retain for a six year period from the data of sample collection or for the term of this permit, which ever is greater, records of all monitoring information collected during the term of this permit. Permittees must submit such monitoring results to the Director upon the requests of the Director, and submit a summary of such result as part of renotification requirements in accordance with Part II.F (renotification).

Part VII. Standard Permit Conditions

A. Duty to Comply.

1. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of CWA and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

2. Penalties for Violations of Permit Conditions.

a. *Criminal.*

(1). *Negligent violations.*—The CWA provides that any person who negligently violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or both.

(2). *Knowing violations.*—The CWA provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or both.

(3). *Knowing endangerment.*—The CWA provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act and who knows at that time that he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than $250,000, or by

imprisonment for not more than 15 years, or both.

(4). *False statement.*—The CWA provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than 2 years, or by both. If a conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or by both. (See section 309(c)(4) of the Clean Water Act).

b. *Civil penalties.*—The CWA provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed $25,000 per day for each violation.

c. *Administrative penalties.*—The CWA provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to an administrative penalty, as follows:

(1). *Class I penalty.*—Not to exceed $10,000 per violation nor shall the maximum amount exceed $25,000.

(2). *Class II penalty.*—Not to exceed $10,000 per day for each day during which the violation continues nor shall the maximum amount exceed $125,000.

B. Continuation of the Expired General Permit

This permit expires on October 1, 1997. However, an expired general permit continues in force and effect until a new general permit is issued. Permittees must submit a new NOI in accordance with the requirements of Part II of this permit, using a NOI form provided by the Director (or photocopy thereof) between August 1, 1997 and September 29, 1997 to remain covered under the continued permit after October 1, 1997. Facilities that had not obtained coverage under the permit by October 1, 1997 cannot become authorized to discharge under the continued permit.

C. Need to Halt or Reduce Activity Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

D. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

E. Duty to Provide Information

The permittee shall furnish to the Director, within a time specified by the Director, any information which the Director may request to determine compliance with this permit. The permittee shall also furnish to the Director upon request copies of records required to be kept by this permit.

F. Other Information

When the permittee becomes aware that he or she failed to submit any relevant facts or submitted incorrect information in the Notice of Intent or in any other report to the Director, he or she shall promptly submit such facts or information.

G. Signatory Requirements

All Notices of Intent, Notices of Termination, storm water pollution prevention plans, reports, certifications or information either submitted to the Director (and/or the operator of a large or medium municipal separate storm sewer system), or that this permit requires be maintained by the permittee, shall be signed.

1. All Notices of Intent shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (1) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or (2) the manager of one or more manufacturing, production or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25,000,000 (in second-quarter 1980 dollars) if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

c. For a municipality: State, Federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes (1) the chief executive officer of the agency, or (2) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g. Regional Administrators of EPA).

2. All reports required by the permit and other information requested by the Director shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described above and submitted to the Director.

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of manager, operator, superintendent, or position of equivalent responsibility or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position).

c. *Changes to authorization.* If an authorization under paragraph VII.G.2. is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new notice of intent satisfying the requirements of paragraph II.C must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

d. *Certification.* Any person signing documents under this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

H. Penalties for Falsification of Reports

Section 309(c)(4) of the Clean Water Act provides that any person who knowingly makes any false material statement, representation, or certification in any record or other

document submitted or required to be maintained under this permit, including reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or by both.

I. Penalties for Falsification of Monitoring Systems

The CWA provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by fines and imprisonment described in section 309 of the CWA.

J. Oil and Hazardous Substances Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under section 311 of the CWA or section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

K. Property Rights

The issuance of this permit does not convey any property rights of any sort, nor any exclusive privileges, nor does it authorize any injury to private property nor any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

L. Severability

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit shall not be affected thereby.

M. Requiring an Individual Permit or an Alternative General Permit

1. The Director may require any person authorized by this permit to apply for and/or obtain either an individual NPDES permit or an alternative NPDES general permit. Any interested person may petition the Director to take action under this paragraph. The Director may require any owner or operator authorized to discharge under this permit to apply for an individual NPDES permit only if the owner or operator has been notified in writing that a permit application is required. This notice shall include a brief statement of the reasons for this decision, an application form, a statement setting a deadline for the owner or operator to file the application, and a statement that on the effective date of issuance or denial of the individual NPDES permit or the alternative general permit as it applies to the individual permittee, coverage under this general permit shall automatically terminate. Individual permit applications shall be submitted to the address of the appropriate Regional Office shown in Part VI.D.1.d (reporting: where to submit) of this permit. The Director may grant additional time to submit the application upon request of the applicant. If an owner or operator fails to submit in a timely manner an individual NPDES permit application as required by the Director, then the applicability of this permit to the individual NPDES permittee is automatically terminated at the end of the day specified for application submittal.

2. Any owner or operator authorized by this permit may request to be excluded from the coverage of this permit by applying for an individual permit. The owner or operator shall submit an individual application (Form 1 and Form 2F) with reasons supporting the request to the Director. Individual permit applications shall be submitted to the address of the appropriate Regional Office shown in Part VI.D.1.c. of this permit. The request may be granted by the issuance of any individual permit or an alternative general permit if the reasons cited by the owner or operator are adequate to support the request.

3. When an individual NPDES permit is issued to an owner or operator otherwise subject to this permit, or the owner or operator is authorized for coverage under an alternative NPDES general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the effective date of the individual permit or the date of authorization of coverage under the alternative general permit, whichever the case may be. When an individual NPDES permit is denied to an owner or operator otherwise subject to this permit, or the owner or operator is denied for coverage under an alternative NPDES general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the date of such denial, unless otherwise specified by the Director.

N. State/Environmental Laws

1. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority preserved by section 510 of the Act.

2. No condition of this permit shall release the permittee from any responsibility or requirements under other environmental statutes or regulations.

O. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit and with the requirements of storm water pollution prevention plans. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. Proper operation and maintenance requires the operation of backup or auxiliary facilities or similar systems, installed by a permittee only when necessary to achieve compliance with the conditions of the permit.

P. Monitoring and Records

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

2. The permittee shall retain records of all monitoring information including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of the reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 6 years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time.

3. *Records contents.*—Records of monitoring information shall include:

a. The date, exact place, and time of sampling or measurements;

b. The initials or name(s) of the individual(s) who performed the sampling or measurements;

c. The date(s) analyses were performed;

d. The time(s) analyses were initiated;

e. The initials or name(s) of the individual(s) who performed the analyses;

f. References and written procedures, when available, for the analytical techniques or methods used; and

g. The results of such analyses, including the bench sheets, instrument readouts, computer disks or tapes, etc., used to determine these results.

4. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit.

Q. Inspection and Entry

The permittee shall allow the Director or an authorized representative of EPA, the State, or, in the case of a facility which discharges through a municipal separate storm sewer, an authorized representative of the municipal operator or the separate storm sewer receiving the discharge, upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit;

2. Have access to and copy at reasonable times, any records that must be kept under the conditions of this permit; and

3. Inspect at reasonable times any facilities or equipment (including monitoring and control equipment).

R. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

S. Bypass of Treatment Facility

1. Notice:

a. Anticipated bypass. If a permittee subject to the numeric effluent limitation of Part V.A of this permit knows in advance of the need for a bypass, he or she shall submit prior notice, if possible, at least ten days before the date of the bypass; including an evaluation of the anticipated quality and effect of the pass.

b. Unanticipated bypass. The permittee subject to the numeric effluent limitation of Part V.A of this permit shall submit notice of an unanticipated bypass. Any information regarding the unanticipated bypass shall be provided orally within 24 hours from the time the permittee became aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee became aware of the circumstances. The written submission shall contain a description of the bypass and its cause; the period of the bypass; including exact dates and times, and if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurance of the bypass.

2. Prohibition of bypass:

a. Bypass is prohibited and the Director may take enforcement action against a permittee for a bypass. Unless:

(1) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if the permittee should, in the exercise of reasonable engineering judgment, have installed adequate backup equipment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee submitted notices of the bypass.

b. The Director may approve an anticipated bypass after considering its adverse effects, if the Director determines that it will meet the three conditions listed in Part VII.S.2.a.

T. Upset Conditions

1. An upset constitutes an affirmative defense to an action brought for noncompliance with technology-based numeric effluent limitations in Part V.A of this permit if the requirements of paragraph 2 below are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, if final administrative action subject to judicial review.

2. A permittee who wishes to establish the affirmative defense of an upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence, that:

a. An upset occurred and that the permittee can identify the specific cause(s) of the upset:

b. The permitted facility was at the time being properly operated; and

c. The permittee provided oral notice of the upset to EPA within 24 hours from the time the permittee became aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee became aware of the circumstances. The written submission shall contain a description of the upset and its cause; the period of the upset; including exact dates and times, and if the upset has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the upset.

3. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

Part VIII. Reopener Clause

A. If there is evidence indicating potential or realized impacts on water quality due to any storm water discharge associated with industrial activity covered by this permit, the owner or operator of such discharge may be required to obtain individual permit or an alternative general permit in accordance with Part VII.M (requiring an individual permit or alternative general permit) of this permit or the permit may be modified to include different limitations and/or requirements.

B. Permit modification or revocation will be conducted according to 40 CFR 122.62, 122.63, 122.64 and 124.5.

Part IX. Termination of Coverage

A. Notice of Termination *

Where all storm water discharges associated with industrial activity that are authorized by this permit are eliminated, or where the operator of storm water discharges associated with industrial activity at a facility changes, the operator of the facility may submit a Notice of Termination that is signed in accordance with Part VII.G (signatory requirements) of this permit. The Notice of Termination shall include the following information:

1. Name, mailing address, and location of the facility for which the notification is submitted. Where a street address for the site is not available, the location of the approximate center of the site must be described in terms of the latitude and longitude to the nearest 15 seconds, or the section, township and range to the nearest quarter section;

2. The name, address and telephone number of the operator addressed by the Notice of Termination;

3. The NPDES permit number for the storm water discharge associated with industrial activity identified by the Notice of Termination;

4. An indication of whether the storm water discharges associated with industrial activity have been eliminated or the operator of the discharges has changed; and

5. The following certification signed in accordance with Part VII.G (signatory requirements) of this permit:

"I certify under penalty of law that all storm water discharges associated with industrial activity from the identified facility that are authorized by a NPDES general permit have been eliminated or

that I am no longer the operator of the industrial activity. I understand that by submitting this notice of termination, that I am no longer authorized to discharge storm water associated with industrial activity under this general permit, and that discharging pollutants in storm water associated with industrial activity to waters of the United States is unlawful under the Clean Water Act where the discharge is not authorized by a NPDES permit. I also understand that the submittal of this notice of termination does not release an operator from liability for any violations of this permit or the Clean Water Act."

B. Addresses

All Notices of Termination are to be sent, using the form provided by the Director (or a photocopy thereof),[4] to the Director of the NPDES program in care of the following address: Storm Water Notice of Termination, PO Box 1185, Newington, VA 22122.

Part X. Definitions

Best Management Practices ("BMPs") means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control facility site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Bypass means the intentional diversion of waste streams from any portion of a treatment facility.

Coal pile runoff means the rainfall runoff from or through any coal storage pile.

CWA means Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972).

Director means the Regional Administrator or an authorized representative.

Flow-weighted composite sample means a composite sample consisting of a mixture of aliquots collected at a constant time interval, where the volume of each aliquot is proportional to the flow rate of the discharge.

Landfill means an area of land or an excavation in which wastes are placed for permanent disposal, and which is not a land application unit, surface impoundment, injection well, or waste pile.

Land application unit means an area where wastes are applied onto or incorporated into the soil surface (excluding manure spreading operations) for treatment or disposal.

Large and medium municipal separate storm sewer system means all municipal separate storm sewers that are either: (i) located in an incorporated place (city) with a population of 100,000 or more as determined by the latest Decennial Census by the Bureau of Census (these cities are listed in Appendices F and G of 40 CFR Part 122); or (ii) located in the counties with unincorporated urbanized populations of 100,000 or more, except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties (these counties are listed in Appendices H and I of 40 CFR Part 122); or (iii) owned or operated by a municipality other than those described in paragraph (i) or (ii) and that are designated by the Director as part of the large or medium municipal separate storm sewer system.

NOI means notice of intent to be covered by this permit (see Part II of this permit.)

NOT means notice of termination (see Part II of this permit.)

Point source means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharges. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

Section 313 water priority chemical means a chemical or chemical categories which: 1) Are listed at 40 CFR 372.65 pursuant to Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) (also known as Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986); 2) are present at or above threshold levels at a facility subject to EPCRA Section 313 reporting requirements; and 3) that meet at least one of the following criteria: (i) Are listed in Appendix D of 40 CFR 122 on either Table II (organic priority pollutants), Table III (certain metals, cyanides, and phenols) or Table V (certain toxic pollutants and hazardous substances); (ii) are listed as a hazardous substance pursuant to section 311(b)(2)(A) of the CWA at 40 CFR 116.4; or (iii) are pollutants for which EPA has published acute or chronic water quality criteria. See Addendum B of this permit.

Significant materials includes, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under section 101(14) of CERCLA; any chemical the facility is required to report pursuant to EPCRA Section 313; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

Significant spills includes, but is not limited to: releases of oil or hazardous substances in excess of reportable quantities under section 311 of the Clean Water Act (see 40 CFR 110.10 and CFR 117.21) or section 102 of CERCLA (see 40 CFR 302.4).

Storm water means storm water runoff, snow melt runoff, and surface runoff and drainage.

Storm water associated with industrial activity means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program. For the categories of industries identified in paragraphs (i) through (x) of this definition, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined at 40 CFR 401); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the categories of industries identified in paragraph (xi) of this definition, the term includes only storm water discharges from all areas (except access roads and rail lines) listed in the previous sentence where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery are exposed to storm water. For the purposes of this paragraph, material handling activities include the:

[4] A copy of the approved NOT form is provided in Appendix D of this notice.

storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are Federally, State or municipally owned or operated that meet the description of the facilities listed in this paragraph (i)–(xi) of this definition) include those facilities designated under 122.26(a)(1)(v). The following categories of facilities are considered to be engaging in "industrial activity" for purposes of this subsection:

(i) Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR subchapter N (except facilities with toxic pollutant effluent standards which are exempted under category (xi) of this definition);

(ii) Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, 373;

(iii) Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR 434.11(1) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of non-coal mining operations which have been released from applicable State or Federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations; inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator;

(iv) Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of RCRA;

(v) Landfills, land application sites, and open dumps that have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under Subtitle D of RCRA;

(vi) Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;

(vii) Steam electric power generating facilities, including coal handling sites;

(viii) Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221–25), 43, 44, 45 and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (i)–(vii) or (ix)–(xi) of this subsection are associated with industrial activity;

(ix) Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program under 40 CFR 403. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with 40 CFR 503;

(x) Construction activity including clearing, grading and excavation activities except: operations that result in the disturbance of less than five acres of total land area which are not part of a larger common plan of development or sale;

(xi) Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221–25, (and which are not otherwise included within categories (i)–(x)).[5]

[5] On June 4, 1992, the United States Court of Appeals for the Ninth Circuit remanded the exclusion for manufacturing facilities in category (xi) which do not have materials or activities exposed to storm water to the EPA for further rulemaking. (Nos. 90–70671 and 91–70200).

Time-weighted composite means a composite sample consisting of a mixture of equal volume aliquots collected at a constant time interval.

Upset means an exceptional incident in which there is unintentional and temporary noncompliance with the numeric effluent limitations of part V of this permit because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

Waste pile means any noncontainerized accumulation of solid, nonflowing waste that is used for treatment or storage.

Waters of the United States means:

(a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(b) All interstate waters, including interstate "wetlands";

(c) All other waters such as interstate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(1) Which are or could be used by interstate or foreign travelers for recreational or other purposes;

(2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

(3) Which are used or could be used for industrial purposes by industries in interstate commerce;

(d) All impoundments of waters otherwise defined as waters of the United States under this definition;

(e) Tributaries of waters identified in paragraphs (a) through (d) of this definition;

(f) The territorial sea; and

(g) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA are not waters of the United States.

Part XI. State Specific Conditions

The provisions of this part provide modifications or additions to the applicable conditions of parts I through

IX of this permit. Part X of this permit does not establish special provisions for the States of Maine, New Hampshire, South Dakota, Johnson Atoll, Midway, Wake Island, New Mexico (Indian lands), Montana (Indian lands), North Dakota (Indian lands), Utah (Indian lands), Wyoming (Indian lands).

Region 1

A. *Maine.* Maine 401 certification special permit conditions revise the permit as follows:

1. Part I.A of the permit is revised to read:

Part I. Coverage Under This Permit

A. *Permit Area.* This permit covers all areas administered by EPA Region 1 in the State of Maine.

* * * * *

2. The following section is added to Part VI of the permit:

Part VI. Monitoring and Reporting Requirements

* * * * *

c. *Toxicity Testing.*

* * * * *

3. The discharge described will not lower the quality of the receiving waters below the minimum requirements of their classification and will satisfy the appropriate requirements of Maine Law provided that the test organisms include ceriodaphnia dubia and brook trout, salvelinus fontinalis, to meet the whole effluent toxicity requirements for certain storm water discharges associated with industrial activity.

Region 6

B. *Louisiana.* Louisiana 401 certification special permit conditions revise the permit as follows:

1. Part I.A of the permit is revised to read:

Part I. Coverage Under This Permit

A. *Permit Area.* The permit covers all areas administered by EPA Region 6 in the State of Louisiana.

* * * * *

2. Part IV of the permit is revised to read:

Part IV. Storm Water Pollution Prevention Plans

A storm water pollution prevention plan shall be developed for each facility covered by this permit. The pollution prevention plan shall provide for compliance with numeric effluent limitations as part V.B. Storm water pollution prevention plans shall be prepared in accordance with good engineering practices. The plan shall identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges associated with industrial activity from the facility. In addition, the plan shall describe and ensure the implementation of practices which are to be used to reduce the pollutants in storm water discharges associated with industrial activity at the facility and to assure compliance with the terms and conditions of this permit. Facilities must implement the provisions of the storm water pollution prevention plan required under this part as a condition of this permit.

* * * * *

3. The following section is added to part V of the Permit:

Part V. Numeric Effluent Limitations

A. *Coal Pile Runoff.*

* * * * *

B. *Limitations For All Discharges of Storm Water Associated With Industrial Activity.*

1) General Limitations: Effective 10/1/95.

Parameter	Daily maximum
Total Organic Carbon (TOC)	50 mg/1
Oil & Grease	15 mg/1

2) Oil & Gas Exploration and Production Facilities: Effective 10/1/92.

Parameter	Daily maximum
Chemical Oxygen Demand (COD).	100 mg/1
Total Organic Carbon (TOC)	50 mg/1
Oil & Grease	15 mg/1
Chlorides	

a) Maximum chloride concentration of the discharge shall not exceed two times the ambient concentration of the receiving water in brackish marsh areas.

b) Maximum chloride concentration of the discharge shall not exceed 500 mg/l in freshwater or intermediate marsh areas and upland areas.

Facilities without monitoring requirements must insure the pollution prevention plan developed in accordance with part IV will insure compliance with these effluent limitations.

* * * * *

4. Part VI.B.2 of the permit is revised to read:

Part VI. Monitoring and Reporting Requirements

* * * * *

B. *Monitoring Requirements.*

* * * * *

2. *Semi-Annual Monitoring Requirements.*

* * * * *

a. *Section 313 of SARA Title III Facilities.* In addition to any monitoring required by parts VI.B.2.b through f or parts VI.B.3.a through d, facilities with storm water discharges associated with industrial activity that are subject to requirements to report releases into the environment under section 313 of EPCRA for chemicals which are classified as 'section 313 water priority chemicals' are required to monitor storm water that is discharged from the facility that comes into contact with any equipment, tank, container or other vessel or area used for storage of a section 313 water priority chemical, or located at a truck or rail car loading or unloading area where a section 313 water priority chemical is handled for: Oil and Grease (mg/L); Total Organic Carbon (TOC) (mg/l); Five Day Biochemical Oxygen Demand (BOD5) (mg/L); Chemical Oxygen Demand (COD) (mg/L); Total Suspended Solids (mg/L); Total Kjeldahl Nitrogen (TKN) (mg/L); Total Phosphorus (mg/L); pH; acute whole effluent toxicity; and any section 313 water priority chemical for which the facility is subject to reporting requirements under section 313 of the Emergency Planning and Community Right to Know Act of 1986.

b. *Primary Metal Industries.* Facilities with storm water discharges associated with industrial activity classified as Standard Industrial Classification (SIC) 33 (Primary Metal Industry) are required to monitor such storm water that is discharged from the facility for: Oil and Grease (mg/L); Total Organic Carbon (TOC) (mg/l); Five Day Biochemical Oxygen Demand (BOD5) (mg/L); Chemical Oxygen Demand (COD) (mg/L); Total Suspended Solids (mg/L); pH; Acute Whole Effluent Toxicity; Total Lead (mg/L); Total Cadmium (mg/L); Total Copper (mg/L); Total Arsenic (mg/L); Total Chromium (mg/L); and any pollutant limited in an effluent guideline to which the facility is subject.

c. *Land Disposal Units/Incinerators/BIFs.* Facilities with storm water discharges associated with industrial activity from any active or inactive landfill, land application sites or open dump without a stabilized final cover that has received any industrial wastes (other than wastes from a construction site); and incinerators (including Boilers and Industrial Furnaces (BIFs)) that burn hazardous waste and operate under interim status or a permit under Subtitle C of RCRA, are required to monitor such storm water that is discharged from the facility for: Ammonia (mg/L),

Magnesium (total) (mg/L), Magnesium (dissolved) (mg/L), Nitrate plus Nitrite Nitrogen (mg/L), Chemical Oxygen Demand (COD) (mg/L), Total Dissolved Solids (TDS) (mg/L), Total Organic Carbon (TOC) (mg/L), Oil and Grease (mg/L), pH, Total Arsenic (mg/L), Total Barium (mg/L), Total Cadmium (mg/L), Total Chromium (mg/L), Total Cyanide (mg/L), Total Lead (mg/L), Total Mercury (mg/L), Total Selenium (mg/L), Total Silver (mg/L), and Acute Whole Effluent Toxicity.

d. *Wood Treatment.* Facilities with storm water discharges associated with industrial activity from areas that are used for wood treatment, wood surface application or storage of treated or surface protected wood at any wood preserving or wood surface facilities are required to monitor such storm water that is discharged from the facility for: Oil and Grease (mg/L), Total Organic Carbon (TOC) (mg/l); pH, Five Day Biochemical Oxygen Demand (BOD5) (mg/L), Chemical Oxygen Demand (COD) (mg/L), and Total Suspended Solids (TSS) (mg/L). In addition, facilities that use chlorophenolic formulations shall measure Pentachlorophenol (mg/L) and Acute Whole Effluent Toxicity; facilities which use creosote formulations shall measure Acute Whole Effluent Toxicity; and facilities that use chromium-arsenic formulations shall measure Total Arsenic (mg/L), Total Chromium (mg/L), and Total Copper (mg/L).

e. *Coal Pile Runoff.* Facilities with storm water discharges associated with industrial activity from coal pile runoff are required to monitor such storm water that is discharged from the facility for: Oil and Grease (mg/L); Total Organic Carbon (TOC) (mg/l); pH; Total Suspended Solids (TSS) (mg/L); Total Copper (mg/l); Total Nickel (mg/l) and Total Zinc (mg/l).

f. *Battery Reclaimers.* Facilities with storm water discharges associated with industrial activity from areas used for storage of lead acid batteries, reclamation products, or waste products, and areas used for lead acid battery reclamation (including material handling activities) at facilities that reclaim lead acid batteries are required to monitor such storm water that is discharged from the facility for: Oil and Grease (mg/L); Total Organic Carbon (TOC) (mg/l); Chemical Oxygen Demand (COD) (mg/L); Total Suspended Solids (TSS) (mg/L); pH; Total Copper (mg/l); and Total Lead (mg/l).

5. Part VI.B.3 of the permit is revised to read:

Part VI. Monitoring and Reporting Requirements

* * * * *

B. *Monitoring Requirements.*

* * * * *

3. *Annual Monitoring Requirements.*

* * * * *

a. *Airports.* At airports with over 50,000 flight operations per year, facilities with storm water discharges associated with industrial activity from areas where aircraft or airport deicing operations occur (including runways, taxiways, ramps, and dedicated aircraft deicing stations) are required to monitor such storm water that is discharged from the facility when deicing activities are occurring for: Oil and Grease (mg/L); Total Organic Carbon (TOC) (mg/l); Five Day Biochemical Oxygen Demand (BOD5) (mg/L); Chemical Oxygen Demand (COD) (mg/L); Total Suspended Solids (TSS) (mg/L); pH; and the primary ingredient used in the deicing materials used at the site (e.g. ethylene glycol, urea, etc.).

b. *Coal-fired Steam Electric Facilities.* Facilities with storm water discharges associated with industrial activity from coal handling sites at coal fired steam electric power generating facilities (other than discharges in whole or in part from coal piles subject to storm water effluent guidelines at 40 CFR 423—which are not eligible for coverage under this permit) are required to monitor such storm water that is discharged from the facility for: Oil and Grease (mg/L), Total Organic Carbon (TOC) (mg/l); pH, Total Suspended Solids (TSS) (mg/L), Total Copper (mg/l), Total Nickel (mg/l) and Total Zinc (mg/l).

c. *Animal Handling/Meat Packing.* Facilities with storm water discharges associated with industrial activity from animal handling areas, manure management (or storage) areas, and production waste management (or storage) areas that are exposed to precipitation at meat packing plants, poultry packing plants, and facilities that manufacture animal and marine fats and oils, are required to monitor such storm water that is discharged from the facility for: Oil and Grease (mg/l); Total Organic Carbon (TOC) (mg/l); Five Day Biochemical Oxygen Demand (BOD5) (mg/L); Chemical Oxygen Demand (COD) (mg/L); Total Suspended Solids (TSS) (mg/L); Total Kjeldahl Nitrogen (TKN) (mg/L); Total Phosphorus (mg/L); pH; and Fecal Coliform (counts per 100 ml).

d. *Additional Facilities.* Facilities with storm water discharges associated with industrial activity that:

(i) come in contact with storage piles for solid chemicals used as raw materials that are exposed to precipitation at facilities classified as SIC 30 (Rubber and Miscellaneous Plastics Products) or SIC 28 (Chemicals and Allied Products);

(ii) are from those areas at automobile junkyards with any of the following: (A) over 250 auto/truck bodies with drivelines (engine, transmission, axles, and wheels), 250 drivelines, or any combination thereof (in whole or in parts) are exposed to storm water; (B) over 500 auto/truck units (bodies with or without drivelines in whole or in parts) are stored exposed to storm water; or (C) over 100 units per year are dismantled and drainage or storage of automotive fluids occurs in areas exposed to storm water;

(iii) come into contact with lime storage piles that are exposed to storm water at lime manufacturing facilities;

(iv) are from oil handling sites at oil fired steam electricpower generating facilities;

(v) are from cement manufacturing facilities and cement kilns (other than discharges in whole or in part from material storage piles subject to storm water effluent guidelines at 40 CFR 411—which are not eligible for coverage under this permit);

(vi) are from ready-mixed concrete facilities; or

(vii) are from ship building and repairing facilities;

Are required to monitor such storm water discharged from the facility for: Oil and Grease (mg/L); Total Organic Carbon (TOC) (mg/L); Chemical Oxygen Demand (COD) (mg/L); Total Suspended Solids (TSS) (mg/L); pH; and any pollutant limited in an effluent guideline to which the facility is subject.

* * * * *

6. Part VI.C of the permit is revised to read:

Part VI. Monitoring and Reporting Requirements

* * * * *

c. *Toxicity Testing.* Permittees that are required to monitor for acute whole effluent toxicity shall initiate the series of tests described below within 180 days after the issuance of this permit or within 90 days after the commencement of a new discharge.

1. *Test Procedures*

* * * * *

c. Tests shall be conducted semiannually (twice per year) on a grab sample of the discharge at 100 percent strength (no dilution) and a control consisting of synthetic dilution water.

Results of all tests conducted with any species shall be prepared according to EPA/600/4-90-027 (Rev. September 1991), Section 12, Report Preparation, and the report retained on-site. Results of the testing shall be summarized on Table VI-A and submitted to EPA with the Discharge Monitoring Reports (DMR's). On the DMR, the permittee shall report results of the testing in accordance with questions 1-4 of Table VI-A.

Table VI-A (Sheet 1 of 2)

Permittee: _____
NPDES permit: _____
Outfall(s): _____

Daphnia pulex Survival

	Time	Date
Composite sample collected		
Test initiated		

Dilution water used: _____ Receiving stream _____ synthetic water.

Time	Replicate	Percent effluent (%)	
		0	100
24 Hr.	A		
	B		
	C		
	D		
	Mean		

1. Is the mean survival at 24 hours >50% in the 100% dilution?

Yes _____ No _____

If you report a NO, enter a *1* on the DMR Form, Parameter No. TEE3D. Otherwise, enter a *0*.

2. Is there a statistically significant difference in survival at the 100% dilution as compared to the control (0%)?

No _____ Yes _____

If you report a YES, enter a *1* on the DMR Form, Parameter No. TGE3D. Otherwise, enter a *0*.

Table VI-A (Sheet 2 of 2)

Permittee: _____
NPDES permit: _____
Outfall(s): _____

Fathead minnow *(Pimephales promelas)* Survival

	Time	Date
Composite sample collected		
Test initiated		

Dilution water used: _____ Receiving stream _____ synthetic water.

Time	Replicate	Percent effluent (%)	
		0	100
24 Hr.	A		
	B		
	C		
	D		
	Mean		

3. Is the mean survival at 24 hours >50% in the 100% dilution?

Yes _____ No _____

If you report a NO, enter a *1* on the DMR Form, Parameter No. TGE6C. Otherwise, enter a *0*.

4. Is there a statistically significant difference in survival at the 100% dilution as compared to the control (0%)?

Yes _____ No _____

If you report a YES, enter a *1* on the DMR Form, Parameter No. TEE6C. Otherwise, enter a *0*.

* * * * *

7. The following definitions are added to Part X of the permit:

Part X. Definitions

Brackish Marshes—those areas that are inundated or saturated by surface water or groundwater of moderate salinity at a frequency and duration sufficient to support, and that under normal circumstances do support, emergent vegetation characterized by a prevalence of species typically adapted for life in these soil and contiguous surface water conditions. Typical vegetation includes wiregrass *(Spartina patens)*, three-cornered grass *(Scirpus olneyi)*, coco *(Scirpus robustus)*, and widgeongrass *(Ruppia maritima)*. Interstitial water salinity normally ranges between 7 and 15 parts per thousand. (LAC 33:IX.708)

Freshwater Swamps and Marshes—those areas that are inundated or saturated by surface water or groundwater of negligible to very low salinity at a frequency and duration sufficient to support, and that under normal circumstances do support, emergent vegetation characterized by a prevalence of species typically adapted for life in these soil and contiguous surface water conditions. Typical vegetation includes maiden cane *(Panicum hemitomon)*, *Hydrocotyl sp.*, water hyacinth *(Eichhornia crassipes)*, pickerelweed *(Pontederia cordata)*, alligatorweed *(Alternanthera philoxeroides)*, and bulltongue *(Sagittaria sp.)*. Interstitial water salinity is normally less than 2 parts per thousand. (LAC 33:IX.708)

Intermediate Marshes—those areas that are inundated or saturated by surface water or groundwater of salinity at a frequency and duration sufficient to support, and that under normal circumstances do support, emergent vegetation characterized by a prevalence of species typically adapted for life in these soil and contiguous surface water conditions. Typical vegetation includes wiregrass *(Spartina patens)*, deer pea *(Vigna repens)*, bulltongue *(Sagittaria sp.)*, wild millet *(Echinochloa walteri)*, bullwhip *(Scirpus californicus)*, and sawgrass *(Cladium jamaicense)*. Interstitial water salinity normally ranges between 3 and 6 parts per thousand. (LAC 33:IX.708)

Saline Marshes—those wetland areas that are inundated or saturated by surface water or groundwater of salinity characteristic of near Gulf of Mexico ambient water at a frequency and duration sufficient to support, and that under normal circumstances do support, emergent vegetation characterized by a prevalence of species typically adapted for life in these soil and contiguous surface water conditions. Typical vegetation includes oystergrass *(Spartina alterniflora)*, glasswort *(Salicornia sp.)*, black rush *(Juncus roemericanus)*, *Batis maritima*, black mangrove *(Avicennia nitida)*, and saltgrass *(Distichlis spicata)*. Interstitial water salinity normally exceeds 16 parts per thousand. (LAC 33:IX.708)

Upland—any land area that is not normally inundated with water and that would not, under normal circumstances, be characterized as swamp or fresh, intermediate, brackish, or saline marsh. The term shall have both a regional and site-specific connotation; for example, naturally occurring and man-made topographic highs that are partially or totally surrounded by swamp, marsh, or open water will be considered upland on a local basis, but will not necessitate characterization of the surrounding area as upland. The land and water bottoms of all parishes north of the nine parishes contiguous with the Gulf of Mexico shall be determined on a case-by-case basis with reference to the presences of a regional expanse of emergent aquatic vegetation or open water. (LAC 33:IX.708)

C. *New Mexico*. New Mexico 401 certification special permit conditions revise the permit as follows:

1. Part I.A. of the permit is revised to read:

Part I. Coverage Under this Permit

A. *Permit Area.* The permit covers all areas administered by EPA Region 6 in the State of New Mexico.

* * * * *

2. Part VI.B of the permit is revised to read:

Part VI. Monitoring and Reporting Requirements

* * * * *

B. *Monitoring Requirements.*

* * * * *

2. *Semi-Annual Monitoring Requirements.* During the period beginning on the effective date and lasting through the expiration date of this permit, permittees with facilities identified in parts VI.B.2.a through f. must monitor those storm water discharges identified below at least semi-annually (2 times per year) except as provided in VI.B.6 (sampling waiver), VI.B.7 (representative discharge), and VI.C.1 (toxicity testing). Permittees with facilities identified in parts VI.B.2.a through f (below) must report in accordance with part VI.D (reporting: where to submit). In addition to the parameters listed below, the permittee shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled;

* * * * *

3. *Annual Monitoring Requirements.* During the period beginning on the effective date and lasting through the expiration date of this permit, permittees with facilities identified in parts VI.B.3.a through d. (below) must monitor those storm water discharges identified below at least annually (1 time per year) except as provided in VI.B.6 (sampling waiver), and VI.B.7 (representative discharge). Permittees with facilities identified in parts VI.B.3.a through d. (below) are not required to submit monitoring results. However, such permittees must retain monitoring results in accordance with part VI.E (retention of records). In addition to the parameters listed below, the permittee shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled.

* * * * *

4. *Discharges to Domestic Water Supplies.*

a. During the period beginning on the effective date and lasting through the expiration date of this permit, permittees with facilities discharging into waters of the State of New Mexico designated by the latest design of *Water Quality Standards for Interstate and Intrastate Streams in New Mexico* for use as a domestic water supply (See Appendix * * *) must monitor those storm water discharges into the domestic water supply waterbody at least annually (once per year) except as provided in VI.B.6 (sampling waiver), and VI.B.7 (representative discharge). These monitoring requirements for the parameters listed below are in addition to any monitoring required under parts VI.B.2 (semi-annual monitoring) or part VI.B.3 (annual monitoring requirements). Monitoring results must be reported in accordance with part VI.D. (reporting: where to submit). In addition to the parameters listed below, the permittee shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled;

Parameter	Reportable quantity action level
Dissolved arsenic	0.05 mg/1.
Dissolved barium	1.0 mg/1.
Dissolved cadmium	0.010 mg/1.
Dissolved chromium	0.05 mg/1.
Dissolved lead	0.05 mg/1.
Total mercury	0.002 mg/1.
Dissolved nitrate (as N)	10.0 mg/1.
Dissolved selenium	0.05 mg/1.
Dissolved silver	0.05 mg/1.
Dissolved cyanide	0.2 mg/1.
Dissolved uranium	5.0 mg/1.
Radium-226 + radium-228	30.0 pCi/1.

b. If the concentration of any sample exceeds a Reportable Quantity Action Level listed above, the permittee shall, within 24 hours of receipt of the sampling data, submit the results of the sample analysis to the State at the address specified in part VI.D.2.b (additional notification: where to submit). Dischargers occurring on Indian Nations shall submit the required report directly to EPA Region 6 at the address specified in part VI.D., with a copy provided to the Governing Body of the Indian Nation.

5. *Sample Type.* For discharges from holding ponds or other impoundments with a retention period greater than 24 hours, (estimated by dividing the volume of the detention pond by the estimated volume of water discharged during the 24 hours previous to the time that the sample is collected) a minimum of one grab sample may be taken. For all other discharges, data shall be reported for both a grab sample and a composite sample. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 150 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. There shall be a minimum of 60 days between sampled events for facilities required to monitor semi-annually (twice per year). The grab sample shall be taken during the first thirty minutes of the discharge. If the collection of a grab sample during the first thirty minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first thirty minutes was impracticable. The composite sample shall either be flow-weighted or time-weighted. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes. Only grab samples must be collected and analyzed for the determination of pH, cyanide, whole effluent toxicity, and oil and grease.

* * * * *

6. *Sampling Waiver*

* * * * *

7. *Representative Discharge*

* * * * *

8. *Alternative Certification*

* * * * *

9. *Alternative to WET Parameter*

* * * * *

3. Part VI.C of the permit is revised to read:

Part VI. Monitoring and Reporting Requirements

* * * * *

C. *Toxicity Testing.* Permittees that are required to monitor for acute whole effluent toxicity shall initiate the series

of tests described below within 180 days after the issuance of this permit or within 90 days after the commencement of a new discharge.

1. Test Procedures

* * * * *

C. Tests shall be conducted semiannually (twice per year) on a grab sample of the discharge at 100 percent strength (no dilution) and a control consisting of synthetic dilution water. Results of all tests conducted with any species shall be prepared according to EPA/600/4-90-027 (Rev. September 1991), Section 12, Report Preparation, and the report retained on-site. Results of the testing shall be summarized on Table VI-A and submitted to EPA with the Discharge Monitoring Reports (DMR's). On the DMR, the permittee shall report results of the testing in accordance with questions 1-4 of Table VI-A.

Permittee: _____
NPDES Permit: _____
Outfall(s): _____

Daphnia pulex Survival

	Time	Date
Composite sample collected		
Test initiated		

Dilution water used: _____ Receiving stream _____ Synthetic water.

Time	Replicate	Percent effluent (%)	
		0	100
24 Hr	A		
	B		
	C		
	D		
	Mean		

1. Is the mean survival at 24 hours >50% in the 100% dilution?

Yes _____ No _____

If you report a NO, enter a *1* on the DMR Form, Parameter No. TGE3D. Otherwise, enter a *0*.

2. Is there a statistically significant difference in survival at the 100% dilution as compared to the control (0%)?

Yes _____ No _____

If you report a YES, enter a *1* on the DMR Form, Parameter No. TEE3D. Otherwise, enter a *0*.

Permittee: _____
NPDES Permit: _____
Outfall(s): _____

Fathead Minnow (*Pimephales promelas*) Survival

	Time	Date
Composite sample collected		
Test initiated		

Dilution water used: _____ Receiving stream _____ Synthetic water.

Time	Replicate	Percent effluent (%)
	0	100
24 hr	A	
	B	
	C	
	D	
	Mean	

3. Is the mean survival at 24 hours >50% in the 100% dilution?

Yes _____ No _____

If you report a NO, enter a *1* on the DMR Form, Parameter No. TGE6C. Otherwise, enter a *0*.

4. Is there a statistically significant difference in survival at the 100% dilution as compared to the control (0%)?

Yes _____ No _____

If you report a YES, enter a *1* on the DMR Form, Parameter No. TEE6C. Otherwise, enter a *0*.

4. Part VI.D.1.e of the permit is revised to read:

Part VI. Monitoring and Reporting Requirements

* * * * *

D. Reporting: Where to Submit.

1.

* * * * *

e. Permittees with facilities identified only in Part VI.B.3 (annual monitoring) or VI.B.4 (discharges to domestic water supplies), are not required to submit monitoring results, unless required in writing by the Director or by the provisions of Part VI.B.4.b. (discharges to domestic water supplies: 24 hour reporting).

* * * * *

5. Part VI.D.2.b of the permit is revised to read:

Part VI. Monitoring and Reporting Requirements

* * * * *

D. Reporting: Where to Submit.

* * * * *

2. *Additional Notification.*

* * * * *

b. Facilities located in the following States shall provide copies of discharge monitoring reports required under Parts VI.D.1.a, VI.D.1.b, and VI.D.1.c, individual permit applications and all other reports required herein, to the Director of the appropriate State Agency at the address listed below:

New Mexico

Program Manager, New Mexico Environment Department, Surface Water Quality Bureau, Surface Water Section, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, New Mexico, 87502

APPENDIX * * *.—NEW MEXICO RIVER SEGMENTS DESIGNATED FOR USE AS A DOMESTIC WATER SUPPLY

No.	Description
2-106	The Jemez River and all its tributaries above State Highway 4 near the town of Jemez Springs and the Guadalupe River and all its tributaries.
2-107	Perennial reaches of Bluewater Creek, Rio Moquino, Seboyeta Creek, Rio Paguate, the Rio Puerco within the Santa Fe National Forest, and all other perennial reaches of tributaries to the Rio Puerco including the Rio San Jose in Cibola County from the USGS gaging station at Correo upstream to Horace Springs.
2-112	The perennial reaches of Rio Vallecitos and its tributaries, and Rio del Oso, and El Rito Creek above the town of El Rito.
2-116	All perennial reaches of tributaries to the Rio Chama above Abiquiu Reservoir except the Rio Gallina and Rio Puerco se Chama north of State Highway 96 and the main stem of the Rio Chama from the headwaters of El Vado Reservoir upstream to the New Mexico-Colorado line.
2-118	Perennial tributaries to the Rio Grande in Bandelier National Monument and their headwaters in Sandoval County, all perennial reaches of tributaries to the Rio Grande in Santa Fe County unless included in other segments.
2-120	The Red River upstream of the mouth of Placer Creek, all tributaries to the Red River, and all other perennial reaches of tributaries to the Rio Grande in Taos and Rio Arriba counties unless included in other segments.
2-209	Eagle Creek above the Alto Reservoir, Bonito Creek upstream of Angus, and the Rio Ruidoso and its tributaries above Seeping Springs Lakes.
2-212	The Gallinas River and all its tributaries above the diversion for the Las Vegas municipal reservoir and perennial reaches of Tecolote Creek and its perennial tributaries.

APPENDIX * * *.—NEW MEXICO RIVER SEGMENTS DESIGNATED FOR USE AS A DOMESTIC WATER SUPPLY—Continued

No.	Description
2-214	Cow Creek and all its tributaries and the main stem of the Pecos Rover from one river mile below the bridge on State Highway 223 upstream to its headwaters, including all tributanes thereto.
2-306	The Mora River and its tributaries above Mora, all tributaries to the Mora River upstream from State Highway 518, Coyote Creek, the Cimarron River above State Highway 21 in Cimarron, all tributaries to the Cimarron River, Rayado Creek above Miami Lake Diversion, Ocate Creek and its tributaries upstream of Ocate, and all other tributanes to the Canadian River northwest and north of U.S. Highway 64 in Colfax County unless included in other segments.
2-503	The main stem of Gila River from Gila Hot Springs upstream to the headwaters and all perennial tributaries to the Gila River at or above the town of Cliff.
2-603	All perennial reaches of tributaries to the San Francisco River at or above the town of Glenwood.
2-802	Perennial reaches of Three Rivers.
2-804	The Mimbres River upstream of the USGS gaging station at Mimbres and all perennial tributaries thereto.
2-805	Perennial reaches of the Sacramento River (Sacramento-Salt Flat Closed Basin) and all perennial tributaries thereto.

D. *Oklahoma.* Oklahoma 401 certification special permit conditions revise the permit as follows:

1. Part I.A of the permit is revised to read:

Part I. Coverage under this Permit

A. *Permit Area.* The permit covers all areas administered by EPA Region 6 in the State of Oklahoma.

2. The following section is added to Part I.B.3 of the permit:

B. *Eligibility.*

* * * * *

3. *Limitations on Coverage.* The following storm water discharges associated with industrial activity are not authorized by this permit:

* * * * *

h. "new" point source discharges of storm water associated with industrial activity (those commencing after the June 25, 1992, effective date of the Oklahoma Water Quality Standards—Oklahoma Annotated Code Title 785, Chapter 45) to the following waters:

(i) waterbodies designated as "Outstanding Resource Waters" and/or "Scenic Rivers" in Appendix A of the Oklahoma Water Quality Standards;

(ii) Oklahoma waterbodies located within the watersheds of waterbodies designated as "Scenic Rivers" in Appendix A of the Oklahoma Water Quality Standards; and

(iii) waterbodies located within the boundaries of Oklahoma Water Quality Standards Appendix B areas which are specifically designated as "Outstanding Resource Waters" in Appendix A of the Oklahoma Water Quality Standards.

* * * * *

3. Part VI.C.1.c of the permit is revised to read:

Part VI. Monitoring and Reporting Requirements

* * * * *

c. *Toxicity Testing.*

* * * * *

1. *Test Procedures*

* * * * *

c. Tests shall be conducted semiannually (twice per year) on a grab sample of the discharge at 100 percent strength (no dilution) and a control consisting of synthetic dilution water. Results of all tests conducted with any species shall be prepared according to EPA/600/4-90-027 (Rev. September 1991), Section 12, Report Preparation, and the report retained on-site. Results of the testing shall be summarized on Table VI-A and submitted to EPA with the Discharge Monitoring Reports (DMR's). On the DMR, the permittee shall report results of the testing in accordance with questions 1-4 of Table VI-A.

Table VI-A (Sheet 1 of 2)

Permittee: _____
NPDES Permit: _____
Outfall(s): _____

Daphnia pulex Survival

	Time	Date
Composite Sample Collected		
Test Initiated		

Dilution Water Used: _____ Receiving Stream _____ Synthetic Water.

Time	Replicate	Percent Effluent (%)	
		0	100
24 Hr.	A		
	B		
	C		
	D		
	Mean		

1. Is the mean survival at 24 hours >50% in the 100% dilution?

Yes _____ No _____

If you report a NO, enter a *1* on the DMR Form, Parameter No. TGE3D. Otherwise, enter a *0*.

2. Is there a statistically significant difference in survival at the 100% dilution as compared to the control (0%)?

Yes _____ No _____

Yes _____ No _____

If you report a YES, enter a *1* on the DMR Form, Parameter No. TEE3D. Otherwise, enter a *0*.

Table VI-A (Sheet 2 of 2)

Permittee: _____
NPDES Permit: _____
Outfall(s): _____

Fathead Minnow (*Pimephales promelas*) Survival

	Time	Date
Composite Sample Collected		
Test Initiated		

Dilution Water Used: _____ Receiving Stream _____ Synthetic Water

Time	Replicate	Percent Effluent (%)	
		0	100
24 Hr.	A		
	B		
	C		
	D		
	Mean		

3. Is the mean survival at 24 hours >50% in the 100% dilution?

Yes _____ No _____

If you report a NO, enter a *1* on the DMR Form, Parameter No. TGE6C. Otherwise, enter a *0*.

4. Is there a statistically significant difference in survival at the 100% dilution as compared to the control (0%)?

Yes _____ No _____#

If you report a YES, enter a *1* on the DMR Form, Parameter No. TEE6C. Otherwise, enter a *0*.

4. The following section is added to Part VIII of the permit:

Part VIII. Reopener Clause

* * * * *

C. This permit may be reopened and modified if the State of Oklahoma

adopts new or revises existing water quality requirements regarding the discharge of storm water.

E. *Texas.* Texas 401 certification special permit conditions revise the permit as follows:

1. Part I.A of the permit is revised to read:

Part I. Coverage Under This Permit

* * * * *

A. *Permit Area.* This permit covers all areas administered by EPA Region 6 in the State of Texas.

* * * * *

2. The following sections are added to Part V of the permit:

Part V. Numeric Effluent Limitations

* * * * *

B. All Discharges to Inland Waters

The maximum allowable concentrations of each of the hazardous metals, stated in terms of milligrams per liter (mg/l), for discharges to inland waters are as follows:

Total metal	Monthly average	Daily composite	Single grab
Arsenic	0.1	0.2	0.3
Barium	1.0	2.0	4.0
Cadmium	0.05	0.1	0.2
Chromium	0.5	1.0	5.0
Copper	0.5	1.0	2.0
Lead	0.5	1.0	1.5
Manganese	1.0	2.0	3.0
Mercury	0.005	0.005	0.01
Nickel	1.0	2.0	3.0
Selenium	0.05	0.1	0.2
Silver	0.05	0.1	0.2
Zinc	1.0	2.0	6.0

C. All Discharges to Tidal Waters

The maximum allowable concentrations of each of the hazardous metals, stated in terms of milligrams per liter (mg/l), for discharges to tidal waters are as follows:

Total metal	Monthly average	Daily composite	Single grab
Arsenic	0.1	0.2	0.3
Barium	1.0	2.0	4.0
Cadmium	0.1	0.2	0.3
Chromium	0.5	1.0	5.0
Copper	0.5	1.0	2.0
Lead	0.5	1.0	1.5
Manganese	1.0	2.0	3.0
Mercury	0.005	0.005	0.01
Nickel	1.0	2.0	3.0
Selenium	0.1	0.2	0.3
Silver	0.05	0.1	0.2
Zinc	1.0	2.0	6.0

3. Part VI.B.2.d of the permit is revised to read:

Part VI. Monitoring and Reporting Requirements

* * * * *

B. Monitoring Requirements

* * * * *

2. Semi-Annual Monitoring Requirements

* * * * *

d. *Wood Treatment.* Facilities with storm water discharges associated with industrial activity from areas that are used for wood treatment, wood surface application or storage of treated or surface protected wood at any wood preserving or wood surface facilities are required to monitor such storm water that is discharged from the facility for: oil and grease (mg/L), pH, BOD5 (mg/L), COD (mg/L), and TSS (mg/L). In addition, facilities that use chlorophenolic formulations shall measure pentachlorophenol (mg/L) and acute whole effluent toxicity; facilities which use creosote formulations shall measure acute whole effluent toxicity; and facilities that use chromium-arsenic formulations shall measure acute whole effluent toxicity, total arsenic (mg/L), total chromium (mg/L), and total copper (mg/L).

4. Parts VI.C and VI.C.1 of the permit are revised to read:

Part VI. Monitoring and Reporting Requirements

* * * * *

C. *Toxicity Testing.* Permittees that are required to monitor for acute whole effluent toxicity shall initiate the series of tests described below within 180 days after the issuance of this permit or within 90 days after the commencement of a new discharge.

The permittee shall test the effluent for lethality in accordance with the provisions of this section. Such testing will determine if an effluent sample meets the Texas Surface Water Quality Standard listed at 31 TAC § 307.6(e)(2)(B) of greater than 50% survival of the appropriate test organisms in 100% effluent for a 24-hour period.

1. Test Procedures

a. The permittee shall conduct acute 24 hour static toxicity tests on both an appropriate invertebrate and an appropriate fish (vertebrate) test species (EPA/600/4-90-027 Rev. 9/91, Section 6.1.). Freshwater species must be used for discharges to freshwater water bodies. Due to the non-saline nature of rainwater, freshwater test species should also be used for discharges to estuarine, marine or other naturally saline waterbodies.

The following tests shall be used:

1. Acute static 24-hour definitive toxicity test using *Daphnia pulex.* A minimum of four (4) replicates with a minimum of five (5) organisms per replicate shall be used for this test.

2. Acute static 24-hour definitive toxicity test using fathead minnow (*Pimephales promelas*). A minimum of four (4) replicates with a minimum of ten (10) organisms per replicate shall be used for this test.

b. Five dilutions in addition to an appropriate control (0% effluent), shall be used in the toxicity tests. These effluent concentrations shall be 6%, 13%, 25%, 50% and 100%. The control and/or dilution water shall consist of a standard, synthetic, moderately hard, reconstituted water. If more than 10% of the test organisms in any control die, that test, including the control and all effluent dilution(s), shall be repeated, with all results from *both* tests reported as per paragraph d. of this section.

c. All test organisms, procedures and quality assurance criteria used shall be in accordance with *Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms,* EPA/600/4-90-027 (Rev. September 1991). EPA has proposed to establish regulations regarding these test methods (December 4, 1989, 53 *FR* 50216).

d. Tests shall be conducted semiannually (twice per year) on a grab sample of the discharge at 100% strength (no dilution), the dilutions specified in paragraph b. above, and a control consisting of either receiving water or synthetic dilution water. Results of all tests conducted with any species shall be reported according to EPA/600/4-90-027 (Rev. September 1991), Section 12, Report Preparation, and the report retained onsite. The test results shall be summarized in the format used on Table VI-A and submitted to EPA with the Discharge Monitoring Reports (DMR's). On the DMR, the permittee shall report test results in accordance with the instructions on Table VI-A.

* * * * *

Table VI-A (Sheet 1 of 2)

Permittee: _____

NPDES Permit: _____

Outfall(s): _____

Daphnia pulex Survival

	Time	Date
Composite Sample Collected		
Test Initiated		

Dilution Water Used: _____ Receiving Stream _____ Synthetic Water.

Time	Replicate	Percent Effluent (%)					
		0	100	50	25	13	6
24 Hr.	A						
	B						
	C						
	D						
	Mean						

1. Is the mean survival at 24 hours >50% in the 100% dilution?

Yes_____ No_____

If you report a NO, enter a *1* on the DMR Form, Parameter No. TGE3D. Otherwise, enter a *0*.

2. Is there a statistically significant difference in survival at the 100% dilution as compared to the control (0%)?

Yes_____ No_____

If you report a YES, enter a *1* on the DMR Form, Parameter No. TEE3D. Otherwise, enter a *0*.

Table VI-A (Sheet 2 of 2)

Permittee: _____

NPDES Permit: _____

Outfall(s): _____

Fathead Minnow (*Pimephales promelas*) Survival

	Time	Date
Composite Sample Collected		
Test Initiated		

Dilution Water Used: _____ Receiving Stream _____ Synthetic Water.

Time	Replicate	Percent Effluent (%)					
		0	100	50	25	13	6
24 Hr.	A						
	B						
	C						
	D						
	Mean						

3. Is the mean survival at 24 hours >50% in the 100% dilution?

Yes_____ No_____

If you report a NO, enter a *1* on the DMR Form, Parameter No. TGE6C. Otherwise, enter a *0*.

4. Is there a statistically signficant difference in survival at the 100% dilution as compared to the control (0%)?

Yes_____ No_____

If you report a YES, enter a *1* on the DRM Form, Parameter No. TEE6C. Otherwise, enter a *0*.

5. The following definitions are added to Part X of the permit:

Part X. Definitions

"Inland Waters"—all surface waters in the State other than "tidal waters" as defined below.

"Tidal Waters"—those waters of the Gulf of Mexico within the jurisdiction of the State of Texas, bays and estuaries thereto, and those portions of the river systems which are subject to the ebb and flow of the tides, and to the intrusion of marine waters.

Region 8

F. *Colorado (Federal facilities and Indian lands).* There are no special conditions pursuant to Colorado 401 certification in this permit for storm water discharges associated with industrial activity located on Indian lands in Colorado. Colorado 401 certification special permit conditions for storm water discharges associated with industrial activity from Federal facilities is revised as follows:

1. Part I.A of the permit is revised to read:

Part I. Coverage Under this Permit

A. *Permit Area.* The permit covers all Federal Facilities administered by EPA Region 8 in the State of Colorado.

2. Part III.A.2.b of the permit is revised to read:

Part III. Special Conditions

A. Prohibition on non-storm water discharges

* * * * *

2.

* * * * *

b. The following non-storm water discharges may be authorized by this permit provided the non-storm water component of the discharge is in compliance with paragraph IV.D.3.g. (2) (measures and controls for non-storm water discharges): discharges from fire fighting activities; fire hydrant flushings; potable water sources including waterline flushings; irrigation drainage; lawn watering; routine external building washdown which does not use detergents or other compounds; pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used; air conditioning condensate that has not been contaminated by industrial activity and no chemicals have been added to it; naturally occurring springs which have not been altered by the industrial activity; uncontaminated ground water; and foundation or footing drains where flows are not contaminated with process materials such as solvents.

3. Part III.B.c of the permit is revised to read:

Part III. Special Conditions

* * * * *

B. Releases in excess of Reportable Quantities

* * * * *

c. The permittee shall submit within 14 calendar days of knowledge of the release a written description of: the release (including the type and estimate of the amount of material released), the date that such release occurred, the circumstances leading to the release, and steps to be taken in accordance with paragraph III.B.1.b (above) of this permit to the appropriate EPA Regional Office at the address provided in Part VI.D.1.d (reporting: where to submit) of this permit and to the Colorado Water Quality Control Division at the following address: Colorado Department of Health, Water Quality Control Division,

4300 Cherry Creek Drive South, Denver, Colorado, 80222–1530. Attention: Permits and Enforcement.

* * * * *

4. Part IV.B.2 of the permit is revised to read:

Part IV. Storm Water Pollution Prevention Plans

* * * * *

B. Signature and Plan Review

* * * * *

2. The permittee shall make plans available upon request to the Director, or authorized representative, or in the case of a storm water discharge associated with industrial activity which discharges through a municipal separate storm sewer system, to the operator of the municipal system. Federal Facilities located on non-Indian lands in Colorado shall make plans available upon request to the Colorado Water Quality Control Division.

5. Part VIII of the permit is revised to read:

Part VIII. Reopener Clause

A. If there is evidence indicating potential or realized impacts on water quality due to any storm water discharge associated with industrial activity covered by this permit, the owner or operator of such discharge may be required to obtain individual permit or an alternative general permit in accordance with Part VII.M (requiring an individual permit or alternative general permit) of this permit or the permit may be modified to include different limitations and/or requirements. If EPA develops new regulations which specifically impact storm water permit requirements or there is a change in statute which imposes additional requirements, this permit may be reopened and modified (following administrative procedures) to include the appropriate requirements.

* * * * *

Region 9

G. *Arizona.* Arizona 401 certification special permit conditions revise the permit as follows:

1. Part I.A of the permit is revised to read:

Part I. Coverage Under This Permit

A. *Permit Area.* The permit covers all areas administered by EPA Region 9 in the State of Arizona, excluding all Indian lands.

* * * * *

2. The following section is added to Part II of the permit:

Part II. Notice of Intent Requirements

* * * * *

F. Special NOI Requirements for the State of Arizona. NOIs shall also be submitted to the State of Arizona Department of Environmental Quality at the following address: Storm Water Coordinator, Arizona Department of Environmental Quality, P.O. Box 600, Phoenix, Arizona, 85001–0600.

NOIs submitted to the State of Arizona shall include the well registration number if storm water associated with industrial activity is discharged to a dry well or an injection well.

* * * * *

3. The following section is added to Part III of the permit:

Part III. Special Conditions

* * * * *

C. *Compliance with Water Quality Standards of the State of Arizona.* Discharges authorized by this permit shall not cause or contribute to a violation of any applicable water quality standard of the State of Arizona (A.G. Rule No. R92–006).

* * * * *

4. Part IV.D.7.b.(1).(b) of the permit is revised to read as follows:

Part IV. Storm Water Pollution Prevention Plans

* * * * *

D. Contents of Plan

* * * * *

7. *Additional requirements for storm water discharges associated with industrial activity from facilities subject to EPCRA Section 313 requirements.*

* * * * *

b.

* * * * *

(1) *Liquid storage areas where storm water comes into contact with any equipment, tank, container, or other vessel used for Section 313 water priority chemicals.*

* * * * *

(b) Liquid storage areas for Section 313 water priority chemicals shall be operated to minimize discharges of Section 313 chemicals. Appropriate measures to minimize discharges of Section 313 chemicals shall include secondary containment provided for at least the entire contents of the largest single tank plus sufficient freeboard to allow for the 25-year, 24-hour precipitation event, a strong spill contingency and integrity testing plan, and/or other equivalent measures.

* * * * *

5. The following section is added to Part IX of the permit:

Part IX. Termination of Coverage

* * * * *

C. *Special NOT Requirement for the State of Arizona.* NOTs shall also be submitted to the State of Arizona Department of Environmental Quality at the following address: Storm Water Coordinator, Arizona Department of Environmental Quality, P.O. Box 600, Phoenix, Arizona 85001–0600.

* * * * *

6. The following definition is added to Part X of the permit:

Part X. Definitions

* * * * *

"Significant sources of non-storm water" includes, but is not limited to: discharges which could cause or contribute to violations or water quality standards of the State of Arizona, and discharges which could include releases of oil or hazardous substances in excess of reportable quantities under section 311 of the Clean Water Act (see 40 CFR 110.10 and CFR 117.21) or section 102 of CERCLA (see 40 CFR 302.4).

* * * * *

Region 10

H. *Alaska.* Alaska 401 certification special permit conditions revise the permit as follows:

1. Part I.A of the permit is revised to read:

Part I. Coverage Under This Permit

A. *Permit Area.* The permit covers all areas administered by EPA Region 10 in the State of Alaska, except Federal Indian reservations.

* * * * *

2. Part II.C of the permit is revised to read:

Part II. Notice of Intent Requirements

* * * * *

C. *Where to Submit.*

1. Facilities which discharge storm water associated with industrial activity must use a NOI form provided by the Director (or photocopy thereof). The form in the Federal Register notice in which this permit was published may be photocopied and used. Forms are also available by calling (703) 821–4823. NOIs must be signed in accordance with Part VII.G (signatory requirements) of this permit. NOIs are to be submitted to the Director of the NPDES program in care of the following address: Storm Water Notice of Intent, PO Box 1215, Newington, VA, 22122.

2. A copy of initial Notice of Intent (NOI), any NOI for the continuation of

the general permit, and any Notice of Termination shall be submitted to the appropriate State regional office, attention Storm Water Coordinator, as follows:

Alaska Department of Environmental Conservation, Northern Regional Office, 1001 Noble Street, Suite 350, Fairbanks, Alaska 99701, (907) 452–1714. Fax: 451–2187.

Alaska Department of Environmental Conservation, Southeastern Regional Office, 410 W. Willoughby, Suite 105, Juneau, Alaska 99801, (907) 465–5350. Fax: 465–5362.

Alaska Department of Environmental Conservation, Southcentral Regional Office, 3601 "C" Street, Suite 1334, Anchorage, Alaska 99503, (907) 563–6529. Fax: 562–4026.

Alaska Department of Environmental Conservation, Pipeline Corridor Regional Office, 411 W. 4th Ave., Suite 2C, Anchorage, Alaska, 99502, (907) 278–8594, Fax: 272–0690.

3. With the NOI to the State, a brief description of the activities to be covered shall be submitted. This shall be on a single sheet and shall describe the area to be disturbed to the nearest acre, the primary pollutants expected from the activities and the type of treatment to be provided.

* * * * *

3. Part III.B.1.c is revised to read as follows:

Part III. Special Conditions

* * * * *

B. Releases in excess of Reportable Quantities

1.

* * * * *

c. The permittee shall submit within 14 calendar days of knowledge of the release a written description of: the release (including the type and estimate of the amount of material released), the date that such release occurred, the circumstances leading to the release, and steps to be taken in accordance with paragraph III.B.1.b (above) of this permit to the appropriate EPA Regional Office at the address provided in Part VI.D.1.d (reporting: where to submit) of this permit and to the appropriate State regional office at the address provided in Part II.C.

* * * * *

4. Part IV.D of the permit is revised as follows:

Part IV. Storm Water Pollution Prevention Plans

* * * * *

D. Contents of Plan

Note: A copy of the Inventory of Exposed Materials (IV.D.2.b) and Spills and Leaks (IV.D.2.c) from the Pollution Prevention Plan shall be submitted by the plan preparation date stated in Part IV.A to the appropriate State Regional office.

* * * * *

5. The following section is added to Part VI.D.2 of the permit:

Part VI. Monitoring and Reporting Requirements

* * * * *

D. Reporting: Where to Submit

* * * * *

2. Additional Notification

* * * * *

b. Facilities located in Alaska shall provide copies of the discharge monitoring reports required under Parts VI.D.1.a, VI.D.1.b, and VI.D.1.c, individual permit applications and all other reports required herein, to the Director of the appropriate State Agency at the addresses listed below:

Alaska Department of Environmental Conservation, Northern Regional Office, 1001 Noble Street, suite 350, Fairbanks, Alaska 99701, (907) 452–1714. Fax: 451–2187.

Alaska Department of Environmental Conservation, Southeastern Regional Office, 410 W. Willoughby, suite 105, Juneau, Alaska 99801, (907) 465–5350. Fax: 465–5362.

Alaska Department of Environmental Conservation, Southcentral Regional Office, 3601 "C" Street, suite 1334, Anchorage, Alaska 99503, (907) 563–6529. Fax: 562–4026.

Alaska Department of Environmental Conservation, Pipeline Corridor Regional Office, 411 W. 4th Ave., suite 2C, Anchorage, Alaska 99502, (907) 278–8594. Fax: 272–0690.

* * * * *

I. Idaho.

Idaho 401 certification special permit conditions revise the permit as follows:

1. Part I.A of the permit is revised as follows:

Part I. Coverage Under This Permit

A. Permit Area

The permit covers all areas administered by EPA Region 10 in the State of Idaho.

* * * * *

2. The following section is added to Part III of the permit:

Part III. Special Conditions

* * * * *

C. All storm water shall be treated and disposed of in such a manner that the round water standards of Idaho are not violated. Such standards are specified in Section 1.02299 of the "Idaho Water Quality Standards and Wastewater Treatment Requirements."

* * * * *

J. *Washington (Federal facilities and Indian lands).* Washington 401 certification special permit conditions revise the permit as follows:

1. Part I.A of the permit is revised to read:

Part I. Coverage Under This Permit

A. *Permit Area.* The permit covers all Federal Facilities administered by EPA Region 10 in the State of Washington.

2. The following section is added to Part III of the permit:

Part III. Special Conditions

* * * * *

C. Washington State Standards

1. This permit does not authorize the violation of ground water standards (Chapter 173–200 WAC), surface water standards (Chapter 173–201 WAC), or sediment management standards (Chapter 173–204 WAC) of the State of Washington. The point of compliance with surface water standards shall be determined after consideration of the assignment of a dilution zone as allowed under Chapter 173–201 WAC. The point of compliance with ground water standards shall be determined by applying the provisions of Chapter 173–200 WAC. The point of compliance with sediment management standards shall be determined in accordance with Chapter 173–204 WAC.

2. Diversion of storm water discharges to ground water from existing discharges to surface water shall not be authorized by this permit if this causes a violation or the potential for violation of ground water standards (Chapter 173–200 WAC). Such discharges below the surface of the ground are also regulated by the Underground Injection Control Program (Chapter 173–218 WAC).

3. Washington Department of Ecology (WDOE) is currently developing a "Storm Water Pollution Prevention Plan" which will require facilities to assess the potential of their storm water discharges to violate the Washington State surface water, ground water, or sediment management standards. Those discharges with a high potential to violate standards will be required to develop and implement a monitoring program.

Upon issuance of the "Storm Water Pollution Prevention Plan" by WDOE, EPA may reopen this permit to require facilities to assess their storm water

discharges and to require additional monitoring.

Addendum A

Pollutants identified in Tables II and III of Appendix D of 40 CFR 122.

Addendum A

Table II—Organic Toxic Pollutants in Each of Four Fractions in Analysis by Gas Chromatography/Mass Spectroscopy (GS/MS)

Volatiles

acrolein
acrylonitrile
benzene
bromoform
carbon tetrachloride
chlorobenzene
chlorodibromomethane
chloroethane
2-chloroethylvinyl ether
chloroform
dichlorobromomethane
1,1-dichloroethane
1,2-dichloroethane
1,1-dichloroethylene
1,2-dichloropropane
1,3-dichloropropylene
ethylbenzene
methyl bromide
methyl chloride
methylene chloride
1,1,2,2-tetrachloroethane
tetrachloroethylene
toluene
1,2-trans-dichloroethylene
1,1,1-trichloroethane
1,1,2-trichloroethane
trichloroethylene
vinyl chloride

Acid Compounds

2-chlorophenol
2,4-dichlorophenol
2,4-dimethylphenol
4,6-dinitro-o-cresol
2,4-dinitrophenol
2-nitrophenol
4-nitrophenol
p-chloro-m-cresol
pentachlorophenol
phenol

Table II—Organic Toxic Pollutants in Each of Four Fractions in Analysis by Gas Chromatography/Mass Spectroscopy (GS/MS)—Continued

2,4,6-trichlorophenol

Base/Neutral

acenaphthene
acenaphthylene
anthracene
benzidine
benzo(a)anthracene
benzo(a)pyrene
3,4-benzofluoranthene
benzo(ghi)perylene
benzo(k)fluoranthene
bis(2-chloroethoxy)methane
bis(2-chloroethyl)ether
bis(2-chloroisopropyl)ether
bis(2-ethylhexyl)phthalate
4-bromophenyl phenyl ether
butylbenzyl phthalate
2-chloronaphthalene
4-chlorophenyl phenyl ether
chrysene
dibenzo(a,h)anthracene
1,2-dichlorobenzene
1,3-dichlorobenzene
1,4-dichlorobenzene
3,3'-dichlorobenzidine
diethyl phthalate
dimethyl phthalate
di-n-butyl phthalate
2,4-dinitrotoluene
2,6-dinitrotoluene
di-n-octyl phthalate
1,2-diphenylhydrazine (as azobenzene)
fluroranthene
fluorene
hexachlorobenzene
hexachlorobutadiene
hexachlorocyclopentadiene
hexachloroethane
indeno(1,2,3-cd)pyrene
isophorone
napthalene
nitrobenzene
N-nitrosodimethylamine
N-nitrosodi-n-propylamine
N-nitrosodiphenylamine
phenanthrene
pyrene
1,2,4-trichlorobenzene

Table II—Organic Toxic Pollutants in Each of Four Fractions in Analysis by Gas Chromatography/Mass Spectroscopy (GS/MS)—Continued

Pesticides

aldrin
alpha-BHC
beta-BHC
gamma-BHC
delta-BHC
chlordane
4,4'-DDT
4,4'-DDE
4,4'-DDD
dieldrin
alpha-endosulfan
beta-endosulfan
endosulfan sulfate
endrin
endrin aldehyde
heptachlor
heptachlor epoxide
PCB-1242
PCB-1254
PCB-1221
PCB-1232
PCB-1248
PCB-1260
PCB-1016
toxaphene

Addendum A

Table III—Other Toxic Pollutants (Metals and Cyanide) and Total Phenols

Antimony, Total
Arsenic, Total
Beryllium, Total
Cadmium, Total
Chromium, Total
Copper, Total
Lead, Total
Mercury, Total
Nickel, Total
Selenium, Total
Silver, Total
Thallium, Total
Zinc, Total
Cyanide, Total
Phenols, Total

ADDENDUM B—SECTION 313 WATER PRIORITY CHEMICALS.

CAS number	Common name
75-07-0	Acetaldehyde
75865	Acetane cynohydrin
107-02-8	Acrolein
107-13-1	Acrylonitrile
309-00-2	Aldrin [1,4:5,8-Dimethanonaphthalene, 1,2,3,4,10, 10-hexachloro-1,4,4a,5,8,8a-hexahydro-(1.alpha., 4.alpha.,4a.beta., 5.alpha.,8.alpha.,8a.beta.)-]
107-05-1	Allyl Chloride
7429-90-5	Aluminum (fume or dust)
7664-41-7	Ammonia
62-53-3	Aniline
120-12-7	Anthracene
7440-36-0	Antimony
7647189	Antimony pentachloride
28300745	Antimony potassium tartrate

ADDENDUM B—SECTION 313 WATER PRIORITY CHEMICALS.—Continued

CAS number	Common name
7789619	Antimony tribromide
10025919	Antimony trichloride
7783564	Antimony trifluoride
1309644	Antimony trioxide
7440-38-2	Arsenic
1303328	Arsenic disulfide
1303282	Arsenic pentoxide
7784341	Arsenic trichloride
1327533	Arsenic trioxide
1303339	Arsenic trisulfide
1332-21-4	Asbestos (friable)
542621	Barium cyanide
71-43-2	Benzene
92-87-5	Benzidine
100470	Benzonitrile
98-88-4	Benzoyl chloride
100-44-7	Benzyl chloride
7440-41-7	Beryllium
7787475	Beryllium chloride
7787497	Beryllium fluoride
7787555	Beryllium nitrate
111-44-4	Bis(2-chloroethyl) ether
75-25-2	Bromoform
74-83-9	Bromomethane (Methyl bromide)
85-68-7	Butyl benzyl phthalate
7440-43-9	Cadmium
543908	Cadmium acetate
7789426	Cadmium bromide
10108642	Cadmium chloride
7778441	Calcium arsenate
52740166	Calcium arsenite
13765190	Calcium chromate
592018	Calcium cyanide
133-06-2	Captan [1H-Isoindole-1,3(2H)-dione,3a,4,7,7a-tetrahydro-2-[(trichloromethyl)thio]-]
63-25-2	Carbaryl [1-Naphthalenol, methylcarbamate]
75-15-0	Carbon disulfide
56-23-5	Carbon tetrachloride
57-74-9	Chlordane [4,7-Methanoindan,1,2,4,5,6,7,8,8- octachloro-2,3,3a,4,7,7a-hexahydro-]
7782-50-5	Chlorine
59-50-7	Chloro-4-methyl-3-phenol *p*-Chloro-*m*-cresol
108-90-7	Chlorobenzene
75-00-3	Chloroethane (Ethyl chloride)
67-66-3	Chloroform
74-87-3	Chloromethane (Methyl chloride)
95-57-8	2-Chlorophenol
106-48-9	4-Chlorophenol
1066304	Chromic acetate
11115745	Chromic acid
10101538	Chromic sulfate
7440-47-3	Chromium
1308-14-1	Chromium (Tri)
10049055	Chromous chloride
7789437	Cobaltous bromide
544183	Cobaltous formate
14017415	Cobaltous sulfamate
7440-50-8	Copper
108-39-4	*m*-Cresol
9548-7	*o*-Cresol
106-44-5	*p*-Cresol
1319-77-3	Cresol (mixed isomers)
142712	Cupric acetate
12002038	Cupric acetoarsenite
7447394	Cupric chloride
3251238	Cupric nitrate
5893663	Cupric oxalate
7758987	Cupric sulfate
10380297	Cupric sulfate, ammoniated
815827	Cupric tartrate
57-12-5	Cyanide
506774	Cyanogen chloride
110-82-7	Cyclohexane

ADDENDUM B—SECTION 313 WATER PRIORITY CHEMICALS.—Continued

CAS number	Common name
94-75-7	2,4-D [Acetic acid, (2,4-dichlorophenoxy)-]
106-93-4	1,2-Dibromoethane (Ethylene dibromide)
84-74-2	Dibutyl phthalate
25321-22-6	Dichlorobenzene (mixed isomers)
95-50-1	1,2-Dichlorobenzene
541-73-1	1,3-Dichlorobenzene
106-46-7	1,4-Dichlorobenzene
91-94-1	3,3'-Dichlorobenzidine
75-27-4	Dichlorobromomethane
107-06-2	1,2-Dichloroethane (Ethylene dichloride)
540-59-0	1,2-Dichloroethylene
120-83-2	2,4-Dichlorophenol
78-87-5	1,2-Dichloropropane
542-75-6	1,3-Dichloropropylene
62-73-7	Dichlorvos [Phosphoric acid, 2,2-dichloroethenyl dimethyl ester]
115-32-2	Dicofol [Benzenemethanol, 4-chloro-.alpha.-(4-chlorophenyl)-.alpha.-(trichloromethyl)-]
177-81-7	Di-(2-ethylhexyl phthalate (DEHP)
84-66-2	Diethyl phthalate
105-67-9	2,4-Dimethylphenol
131-11-3	Dimethyl phthalate
534-52-1	4,6-Dinitro-*o*-cresol
51-28-5	2,4-Dinitrophenol
121-14-2	2,4-Dinitrotoluene
606-20-2	2,6-Dinitrotoluene
117-84-0	*n*-Dioctyl phthalate
122-66-7	1,2-Diphenylhydrazine (Hydrazobenzene)
106-89-8	Epichlorohydrin
100-41-4	Ethylbenzene
106934	Ethylene dibromide
50-00-0	Formaldehyde
76-44-8	Heptachlor [1,4,5,6,7,8,8-Heptachloro-3a,4,7,7a-tetrahydro-4,7-methano-1H-indene]
118-74-1	Hexachlorobenzene
87-68-3	Hexachloro-1,3-butadiene
77-47-4	Hexachlorocyclopentadiene
67-72-1	Hexachloroethane
7647-01-0	Hydrochloric acid
74-90-8	Hydrogen cyanide
7664-39-3	Hydrogen fluoride
7439-92-1	Lead
301042	Lead acetate
7784409	Lead arsenate
7645252	Do.
10102484	Do.
7758954	Lead chloride
13814965	Lead fluoborate
7783462	Lead fluoride
10101630	Lead iodide
10099748	Lead nitrate
7428480	Lead stearate
1072351	Do.
52652592	Do.
7446142	Lead sulfate
1314870	Lead sulfide
592870	Lead thiocyanate
58-89-9	Lindane [Cyclohexane, 1,2,3,4,5,6-hexachloro-(1.alpha.,3.beta.,4.alpha.,5.alpha.,6.beta.)-]
14307358	Lithium chromate
108-31-6	Maleic anhydride
592041	Mercuric cyanide
10045940	Mercuric nitrate
7783359	Mercuric sulfate
592858	Mercuric thiocyanate
7782867	Mercurous nitrate
7439-97-6	Mercury
72-43-5	Methoxychlor [Benzene, 1,1'-(2,2,2-trichloroethylidene)bis[4-methoxy-]
80-62-6	Methyl methacrylate
91-20-3	Naphthalene
7440-02-0	Nickel
15699180	Nickel ammonium sulfate
37211055	Nickel chloride
7718549	Do.
12054487	Nickel hydroxide

ADDENDUM B—SECTION 313 WATER PRIORITY CHEMICALS.—Continued

CAS number	Common name
14216752	Nickel nitrate
7786814	Nickel sulfate
7697-37-2	Nitric acid
98-95-3	Nitrobenzene
88-75-5	2-Nitrophenol
100-02-7	4-Nitrophenol
62-75-9	*N*-Nitrosodimethylamine
86-30-6	*N*-Nitrosodiphenylamine
621-64-7	*N*-Nitrosodi-*n*-propylamine
56-38-2	Parathion [Phosphorothioic acid, O,O-diethyl-O-(4-nitrophenyl) ester]
87-86-5	Pentachlorophenol (PCP)
108-95-2	Phenol
75-44-5	Phosgene
7664-38-2	Phosphoric acid
7723-14-0	Phosphorus (yellow or white)
1336-36-3	Polychlorinated biphenyls (PCBs)
7784410	Potassium arsenate
10124502	Potassium arsenite
7778509	Potassium bichromate
7789006	Potassium chromate
151508	Potassium cyanide
75-56-9	Propylene oxide
91-22-5	Quinoline
7782-49-2	Selenium
7446084	Selenium oxide
7440-22-4	Silver
7761888	Silver nitrate
7631892	Sodium arsenate
7784465	Sodium arsenite
10588019	Sodium bichromate
7775113	Sodium chromate
143339	Sodium cyanide
10102188	Sodium selenite
7782823	Do.
7789062	Strontium chromate
100-42-5	Styrene
7664-93-9	Sulfuric acid
79-34-5	1,1,2,2-Tetrachloroethane
127-18-4	Tetrachloroethylene (Perchloroethylene)
935-95-5	2,3,5,6-Tetrachlorophenol
78002	Tetraethyl lead
7440-28-0	Thallium
10031591	Thallium sulfate
108-88-3	Toluene
8001-35-2	Toxaphene
52-68-6	Trichlorfon [Phosphonic acid, (2,2,2-trichloro-1-hydroxyethyl)-dimethylester]
120-28-1	1,2,4-Trichlorobenzene
71-55-6	1,1,1-Trichloroethane (Methyl chloroform)
79-00-5	1,1,2-Trichloroethane
79-01-6	Trichloroethylene
95-95-4	2,4,5-Trichlorophenol
88-06-2	2,4,6-Trichlorophenol
7440-62-2	Vanadium (fume or dust)
108-05-4	Vinyl acetate
75-01-4	Vinyl chloride
75-35-4	Vinylidene chloride
108-38-3	*m*-Xylene
95-47-6	*o*-Xylene
106-42-3	*p*-Xylene
1330-20-7	Xylene (mixed isomers)
7440-66-6	Zinc (fume or dust)
557346	Zinc acetate
14639975	Zinc ammonium chloride
14639986	Do.
52628258	Do.
1332076	Zinc borate
7699458	Zinc bromide
3486359	Zinc carbonate
7646857	Zinc chloride
557211	Zinc cyanide
7783495	Zinc fluoride

ADDENDUM B—SECTION 313 WATER PRIORITY CHEMICALS.—Continued

CAS number	Common name
557415	Zinc formate
7779864	Zinc hydrosulfite
7779886	Zinc nitrate
127822	Zinc phenolsulfonate
1314847	Zinc phosphide
16871719	Zinc silicofluoride
7733020	Zinc sulfate

Addendum C

Large and Medium Municipal Separate Storm Sewer Systems

BILLING CODE 6560-50-M

Addendum C

State	Large and Medium Municipalities Located in the Non-Delegated States *(Including Colorado, Delaware and Washington because they do not have Federal Facility permitting authority)*		
AK	Anchorage		
AZ	Mesa		
	Phoenix		
	Pima County		
	Tempe		
	Tucson		
FL	Apopka	Davie	Homestead
	Atlantis	Deerfield Beach	Hypoluxo
	Bal Harbor Village	Delray Beach	Indian Creek Village
	Bay Harbour Island	Duvall	Islandia
	Bay Lake	Eatonville	Jacksonville
	Belle Glade	Edgewood	Juno Beach
	Belle Isle	El Portal	Jupiter
	Belleair	Escambia County	Lake Buena Vista
	Belleair Beach	Florida City	Lake Clark Shores
	Belleair Bluffs	Ft. Lauderdale	Lake Park
	Belleair Shore	Glen Ridge	Lake Worth
	Biscayne Park	Golden Beach	Lantana
	Boca Raton	Golf Village	Lauderdale-by-the-Sea
	Boynton Beach	Golfview	Lauderdale Lakes
	Briny Breezes	Greenacres City	Lauderhill
	Broward County	Gulf Stream	Lazy Lake Village
	Century	Hacienda Village	Lighthouse Point
	Clearwater	Hallandale	Maitland
	Cloud Lake	Haverville	Mangonia Park
	Coconut Creek	Hialeah	Margate
	Cooper City	Hialeah Gardens	Medley
	Coral Gables	Highland Beach	Miami
	Coral Springs	Hillsboro Beach	Miami Beach
	Dade County	Hillsborough County	Miami Shores
	Dania	Hollywood	Miami Springs

Addendum C

State	Large and Medium Municipalities Located in the Non-Delegated States *(Including Colorado, Delaware and Washington because they do not have Federal Facility permitting authority)*		
FL (Cont.)	Miramar	Palm Springs	South Miami
	North Bay	Parkland	South Palm Beach
	North Miami	Pembroke Park	Sunrise
	North Miami Beach	Pembroke Pines	Surfside
	North Lauderdale	Pennsuco	Sweetwater
	Oakland	Pensacola	Tamarac
	Oakland Park	Pinellas	Tampa
	Ocean Ridge	Plantation	Temple Terrace
	Ocoee	Plant City	Tequesta Village
	Opa-Locka	Polk	Virginia Gardens
	Orange County	Pompano Beach	Walton Manor
	Orlando	Riviera Beach	West Miami
	Pahokee	Royal Palm Beach	West Palm Beach
	Palm Beach	Sarasota	Windermere
	Palm Beach Gardens	Sea Ranch Lakes	Winter Gardens
	Palm Beach Shores	South Bay	Winter Park
ID	Boise City		
LA	Baton Rouge		
	Jefferson County		
	New Orleans		
	Shreveport		
MA	Boston		
	Lowell		
	Springfield		
	Worcester		
ME			
NH			
NM	Albuquerque		
OK	Oklahoma City		
	Tulsa		

Addendum C

State	Large and Medium Municipalities Located in the Non-Delegated States *(Including Colorado, Delaware and Washington because they do not have Federal Facility permitting authority)*		
SD			
TX	Abilene	El Paso	Lubbock
	Amarillo	Fort Worth	Mesquite
	Arlington	Garland	Pasadena
	Austin	Harris County	Plano
	Beaumont	Houston	San Antonio
	Corpus Christi	Irving	Waco
	Dallas	Laredo	
CO	Aurora		
	Colorado Springs		
	Denver		
	Lakewood		
	Pueblo		
DE	New Castle County		
WA	King County		
	Pierce County		
	Seattle		
	Snohomish County		
	Spokane		
	Tacoma		

APPENDIX C—Notice of Intent and Instructions

See Reverse for Instructions

Form Approved. OMB No. 2040-0086
Approval expires: 8-31-95

NPDES FORM

EPA

United States Environmental Protection Agency
Washington, DC 20460

Notice of Intent (NOI) for Storm Water Discharges Associated with Industrial Activity Under the NPDES General Permit

Submission of this Notice of Intent constitutes notice that the party identified in Section I of this form intends to be authorized by a NPDES permit issued for storm water discharges associated with industrial activity in the State identified in Section II of this form. Becoming a permittee obligates such discharger to comply with the terms and conditions of the permit. ALL NECESSARY INFORMATION MUST BE PROVIDED ON THIS FORM.

I. Facility Operator Information

Name: Phone:

Address: Status of Owner/Operator:

City: State: ZIP Code:

II. Facility/Site Location Information

Name: Is the Facility Located on Indian Lands? (Y or N)

Address:

City: State: ZIP Code:

Latitude: Longitude: Quarter: Section: Township: Range:

III. Site Activity Information

MS4 Operator Name:

Receiving Water Body:

If You are Filing as a Co-permittee, Enter Storm Water General Permit Number: Are There Existing Quantitative Data? (Y or N) Is the Facility Required to Submit Monitoring Data? (1, 2, or 3)

SIC or Designated Activity Code: Primary: 2nd: 3rd: 4th:

If This Facility is a Member of a Group Application, Enter Group Application Number:

If You Have Other Existing NPDES Permits, Enter Permit Numbers:

IV. Additional Information Required for Construction Activities Only

Project Start Date: Completion Date: Estimated Area to be Disturbed (in Acres): Is the Storm Water Pollution Prevention Plan in Compliance with State and/or Local Sediment and Erosion Plans? (Y or N)

V. Certification: I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Print Name: Date:

Signature: _____

EPA Form 3510-6 (8-92)

Instructions - EPA Form 3510-6
Notice Of Intent (NOI) For Storm Water Discharges Associated With Industrial Activity To Be Covered Under The NPDES General Permit

Who Must File A Notice Of Intent (NOI) Form

Federal law at 40 CFR Part 122 prohibits point source discharges of storm water associated with industrial activity to a water body(ies) of the U.S. without a National Pollutant Discharge Elimination System (NPDES) permit. The operator of an industrial activity that has such a storm water discharge must submit a NOI to obtain coverage under the NPDES Storm Water General Permit. If you have questions about whether you need a permit under the NPDES Storm Water program, or if you need information as to whether a particular program is administered by EPA or a state agency, contact the Storm Water Hotline at (703) 821-4823.

Where To File NOI Form

NOIs must be sent to the following address:

Storm Water Notice of Intent
PO Box 1215
Newington, VA 22122

Completing The Form

You must type or print, using upper-case letters, in the appropriate areas only. Please place each character between the marks. Abbreviate if necessary to stay within the number of characters allowed for each item. Use one space for breaks between words, but not for punctuation marks unless they are needed to clarify your response. If you have any questions on the form, call the Storm Water Hotline at (703) 821-4823.

Section I Facility Operator Information

Give the legal name of the person, firm, public organization, or any other entity that operates the facility or site described in this application. The name of the operator may or may not be the same as the name of the facility. The responsible party is the legal entity that controls the facility's operation, rather than the plant or site manager. Do not use a colloquial name. Enter the complete address and telephone number of the operator.

Enter the appropriate letter to indicate the legal status of the operator of the facility.

F = Federal M = Public (other than federal or state)
S = State P = Private

Section II Facility/Site Location Information

Enter the facility's or site's official or legal name and complete street address, including city, state, and ZIP code. If the facility or site lacks a street address, indicate the state, the latitude and longitude of the facility to the nearest 15 seconds, or the quarter, section, township, and range (to the nearest quarter section) of the approximate center of the site.

Indicate whether the facility is located on Indian lands.

Section III Site Activity Information

If the storm water discharges to a municipal separate storm sewer system (MS4), enter the name of the operator of the MS4 (e.g., municipality name, county name) and the receiving water of the discharge from the MS4. (A MS4 is defined as a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) that is owned or operated by a state, city, town, borough, county, parish, district, association, or other public body which is designed or used for collecting or conveying storm water.)

If the facility discharges storm water directly to receiving water(s), enter the name of the receiving water.

If you are filing as a co-permittee and a storm water general permit number has been issued, enter that number in the space provided.

Indicate whether or not the owner or operator of the facility has existing quantitative data that represent the characteristics and concentration of pollutants in storm water discharges.

Indicate whether the facility is required to submit monitoring data by entering one of the following:

1 = Not required to submit monitoring data;
2 = Required to submit monitoring data;
3 = Not required to submit monitoring data; submitting certification for monitoring exclusion

Those facilities that must submit monitoring data (e.g., choice 2) are: Section 313 EPCRA facilities; primary metal industries; land disposal units/incinerators/SIF's; wood treatment facilities; facilities with coal pile runoff; and, battery reclaimers.

List, in descending order of significance, up to four 4-digit standard industrial classification (SIC) codes that best describe the principal products or services provided at the facility or site identified in Section II of this application.

For industrial activities defined in 40 CFR 122.26(b)(14)(i)-(xi) that do not have SIC codes that accurately describe the principal products produced or services provided, the following 2-character codes are to be used:

HZ = Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under subtitle C of RCRA [40 CFR 122.26 (b)(14)(iv)];
LF = Landfills, land application sites, and open dumps that receive or have received any industrial wastes, including those that are subject to regulation under subtitle D of RCRA [40 CFR 122.26 (b)(14)(v)];
SE = Steam electric power generating facilities, including coal handling sites [40 CFR 122.26 (b)(14)(vii)];
TW = Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage [40 CFR 122.26 (b)(14)(ix)]; or,
CO = Construction activities [40 CFR 122.26 (b)(14)(x)].

If the facility listed in Section II has participated in Part 1 of an approved storm water group application and a group number has been assigned, enter the group application number in the space provided.

If there are other NPDES permits presently issued for the facility or site listed in Section II, list the permit numbers. If an application for the facility has been submitted but no permit number has been assigned, enter the application number.

Section IV Additional Information Required for Construction Activities Only

Construction activities must complete Section IV in addition to Sections I through III. Only construction activities need to complete Section IV.

Enter the project start date and the estimated completion date for the entire development plan.

Provide an estimate of the total number of acres of the site on which soil will be disturbed (round to the nearest acre).

Indicate whether the storm water pollution prevention plan for the site is in compliance with approved state and/or local sediment and erosion plans, permits, or storm water management plans.

Section V Certification

Federal statutes provide for severe penalties for submitting false information on this application form. Federal regulations require this application to be signed as follows:

For a corporation: by a responsible corporate officer, which means: (i) president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

For a partnership or sole proprietorship: by a general partner or the proprietor; or

For a municipality, state, Federal, or other public facility: by either a principal executive officer or ranking elected official.

Paperwork Reduction Act Notice

Public reporting burden for this application is estimated to average 0.5 hours per application, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate, any other aspect of the collection of information, or suggestions for improving this form, including any suggestions which may increase or reduce this burden to: Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, or Director, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

APPENDIX D—Notice of Termination and Instructions

Please See Instructions Before Completing This Form

Form Approved. OMB No. 2040-0086 Approval expires: 5-31-95

NPDES FORM

EPA

United States Environmental Protection Agency
Washington, DC 20460

Notice of Termination (NOT) of Coverage Under the NPDES General Permit for Storm Water Discharges Associated with Industrial Activity

Submission of this Notice of Termination constitutes notice that the party identified in Section II of this form is no longer authorized to discharge storm water associated with industrial activity under the NPDES program. ALL NECESSARY INFORMATION MUST BE PROVIDED ON THIS FORM.

I. Permit Information

NPDES Storm Water General Permit Number: _____ Check Here if You are No Longer the Operator of the Facility: ☐ Check Here if the Storm Water Discharge is Being Terminated: ☐

II. Facility Operator Information

Name: _____ Phone: _____

Address: _____

City: _____ State: ____ ZIP Code: _____

III. Facility/Site Location Information

Name: _____

Address: _____

City: _____ State: ____ ZIP Code: _____

Latitude: _____ Longitude: _____ Quarter: ____ Section: ____ Township: _____ Range: _____

IV. Certification: I certify under penalty of law that all storm water discharges associated with industrial activity from the identified facility that are authorized by a NPDES general permit have been eliminated or that I am no longer the operator of the facility or construction site. I understand that by submitting this Notice of Termination, I am no longer authorized to discharge storm water associated with industrial activity under this general permit, and that discharging pollutants in storm water associated with industrial activity to waters of the United States is unlawful under the Clean Water Act where the discharge is not authorized by a NPDES permit. I also understand that the submittal of this Notice of Termination does not release an operator from liability for any violations of this permit or the Clean Water Act.

Print Name: _____ Date: _____

Signature: _____

Instructions for Completing Notice of Termination (NOT) Form

Who May File a Notice of Termination (NOT) Form

Permittees who are presently covered under the EPA issued National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Industrial Activity may submit a Notice of Termination (NOT) form when their facilities no longer have any storm water discharges associated with industrial activity as defined in the storm water regulations at 40 CFR 122.26 (b)(14), or when they are no longer the operator of the facilities.

For construction activities, elimination of all storm water discharges associated with industrial activity occurs when disturbed soils at the construction site have been finally stabilized and temporary erosion and sediment control measures have been removed or will be removed at an appropriate time, or that all storm water discharges associated with industrial activity from the construction site that are authorized by a NPDES general permit have otherwise been eliminated. Final stabilization means that all soil-disturbing activities at the site have been completed, and that a uniform perennial vegetative cover with a density of 70% of the cover for unpaved areas and areas not covered by permanent structures has been established, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.

Where to File NOT Form

Send this form to the the following address:

Storm Water Notice of Termination
P.O. Box 1185
Newington, VA 22122

Completing the Form

Type or print, using upper-case letters, in the appropriate areas only. Please place each character between the marks. Abbreviate if necessary to stay within the number of characters allowed for each item. Use only one space for breaks between words, but not for punctuation marks unless they are needed to clarify your response. If you have any questions about this form, call the Storm Water Hotline at (703) 821-4823.

PLEASE SEE REVERSE OF THIS FORM FOR FURTHER INSTRUCTIONS

EPA Form 3510-7 (6-92)

Instructions - EPA Form 3510-7
Notice of Termination (NOT) of Coverage Under The NPDES General Permit for Storm Water Discharges Associated With Industrial Activity

Section I Permit Information

Enter the existing NPDES Storm Water General Permit number assigned to the facility or site identified in Section III. If you do not know the permit number, contact the Storm Water Hotline at (703) 821-4823.

Indicate your reason for submitting this Notice of Termination by checking the appropriate box:

If there has been a change of operator and you are no longer the operator of the facility or site identified in Section III, check the corresponding box.

If all storm water discharges at the facility or site identified in Section III have been terminated, check the corresponding box.

Section II Facility Operator Information

Give the legal name of the person, firm, public organization, or any other entity that operates the facility or site described in this application. The name of the operator may or may not be the same name as the facility. The operator of the facility is the legal entity which controls the facility's operation, rather than the plant or site manager. Do not use a colloquial name. Enter the complete address and telephone number of the operator.

Section III Facility/Site Location Information

Enter the facility's or site's official or legal name and complete address, including city, state and ZIP code. If the facility lacks a street address, indicate the state, the latitude and longitude of the facility to the nearest 15 seconds, or the quarter, section, township, and range (to the nearest quarter section) of the approximate center of the site.

Section IV Certification

Federal statutes provide for severe penalties for submitting false information on this application form. Federal regulations require this application to be signed as follows:

For a corporation: by a responsible corporate officer, which means: (i) president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions, or (ii) the manager of one or more manufacturing , production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

For a partnership or sole proprietorship: by a general partner or the proprietor; or

For a municipality, State, Federal, or other public facility: by either a principal executive officer or ranking elected official.

Paperwork Reduction Act Notice

Public reporting burden for this application is estimated to average 0.5 hours per application, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate, any other aspect of the collection of information, or suggestions for improving this form, including any suggestions which may increase or reduce this burden to: Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, or Director, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

[FR Doc. 92-21384 Filed 9-8-92; 8:45 am]
BILLING CODE 6560-50-C

federal register

Wednesday
September 9, 1992

Part IV

Environmental Protection Agency

40 CFR Part 122

National Pollutant Discharge Elimination System, Request for Comment on Alternative Approaches for Phase II Storm Water Program; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 122

[FRL-4202-9]

National Pollutant Discharge Elimination System, Request for Comment on Alternative Approaches for Phase II Storm Water Program

AGENCY: Environmental Protection Agency.

ACTION: Request for comment.

SUMMARY: In a memorandum dated January 28, 1992, the President asked regulatory agencies to review existing and proposed rules to improve cost effectiveness, minimize economic impact, and reduce regulatory burden. In response, today's notice requests information and public input on Phase II of the national storm water program mandated under section 402(p)(6) of the Clean Water Act (CWA). More specifically, EPA is today requesting public comment on a number of issues including scope of coverage under Phase II, identification of high risk Phase II discharges, alternative control strategies, and appropriate deadlines. With respect to each of these issues, the Agency is requesting input on how to meet environmental objectives and requirements set forth under section 402(p)(6) while at the same time identifying cost-effective control strategies that minimize the economic impact on the regulated community as well as the administrative burden on Federal, State and local government.

DATES: Comments on this notice must be received on or before November 9, 1992.

ADDRESSES: Respondents should send an original and two copies of their comments to Michael Plehn, Office of Wastewater Enforcement and Compliance (EN-336), United States Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460, (202) 260-6929. The public record for this notice is located at EPA Headquarters, NE Mall room 220, 401 M Street, SW., Washington, DC, 20460. Appointments to view the record can be made by contacting Michael Plehn at the above address. A reasonable fee may be charged for copying. The public record for previous rulemaking activity related to Phase I of the storm water program is located at EPA Headquarters, EPA Public Information Reference Unit, room 2402, 401 M Street, SW., Washington, DC, 20460.

FOR FURTHER INFORMATION CONTACT: For further information on this notice, contact the NPDES Storm Water Hotline at (703) 821-4823, or Michael Plehn, Office of Wastewater Enforcement and Compliance (EN-336), United States Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260-6929.

SUPPLEMENTARY INFORMATION:

I. Background

A. Environmental Impacts
B. Water Quality Act of 1987
C. Current (Phase I) Storm Water Permitting Program

II. Today's Notice

A. Purpose and Intent
B. Alternative Approaches

1. Targeting

(a) Seek Amendments to the CWA to eliminate Phase II and use designation authority to bring additional sources under Phase I
(b) Identify targeted MS4s as needing an NPDES permit under section 402(p)(6) of the CWA
(c) Continued reliance on Phase I MS4s to control Phase II source which discharge through their system
(d) Identify additional Phase II activities other than MS4s based on comparative loadings
(e) Geographic targeting
(f) Establish requirements for State storm water management programs
(g) Rensselaerville focus groups

2. Control Strategies

(a) Continued reliance on NPDES program
(b) Continued reliance on nonpoint source program
(c) Mandatory performance standards, guidelines, management practices and/or treatment requirements
(d) Rensselaerville focus groups

3. Deadlines

III. Request for Comments

A. General Issues for Comment
B. Current Classification of Regulated Discharges

IV. Review and Analysis Requirements

I. Background

The 1972 amendments to the Federal Water Pollution Control Act (FWPCA, later referred to as the Clean Water Act or CWA) prohibit the discharge of any pollutant to the navigable waters of the United States from a point source unless the discharge is authorized by a National Pollutant Discharge Elimination System (NPDES) permit. Efforts to improve water quality under the NPDES program have focused traditionally on reducing pollutants in discharges of industrial process wastewater and discharges from municipal sewage treatment plants. This program emphasis developed because many industrial and municipal sources were not controlled at that time and were easily identified as contributing to water quality impairment. Over time, as pollution control measures were implemented for these discharges and as data collection efforts have provided additional information, it has become evident that more diffuse sources of water pollution, such as agricultural and urban runoff, are important contributors to water quality problems and use impairment. Some diffuse sources of water pollution, such as agricultural runoff and irrigation return flows, are exempted statutorily from the NPDES program. Controls for other point source discharge of storm water runoff, however, are addressed in this notice.

A. Environmental Impacts

Several national assessments have been conducted to evaluate the impacts of diffuse sources of storm water runoff on receiving water quality. The "National Water Quality Inventory, 1990 Report to Congress" provides a general assessment of water quality based on biennial reports submitted by the States under section 305(b) of the CWA. In section 305(b) Reports, States indicate the fraction of the States' waters that have been assessed, the fraction of those assessed waters that are not supporting designated uses, and the sources of use impairment for those waters (e.g., diffuse sources, point sources, and natural sources). The Report indicates that roughly 30 to 40 percent of assessed rivers, lakes and estuaries are not supporting the uses for which they are designated. Based on information from 51 States and Territories that reported on sources of pollution, the Report indicates that storm water runoff from a number of diffuse sources, including agricultural areas, urban areas, construction sites, land disposal activities, and resource extraction activities, is the leading cause of water quality impairment cited by States. For those States reporting in each category, diffuse sources were cited as causing use impairments in the following magnitudes: For rivers and streams, 11 percent of impaired river miles are caused by separate storm sewers, 6 percent are caused by construction activities, and 14 percent are caused by resource extraction. For lakes, 28 percent of impaired lake acres are caused by separate storm sewers and 25 percent are caused by land disposal. For the Great Lakes' shoreline, 6 percent of impaired shoreline miles are caused by separate storm sewers, and 41 percent are caused by land disposal. For estuaries, 30 percent of impaired acres are caused by separate storm sewers. For coastal areas, 36 percent of impairments are caused by separate

storm sewers, and 37 percent are caused by land disposal.

In 1985, the States conducted a different study of diffuse pollution sources under the sponsorship of the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) and EPA. The study resulted in the report entitled "America's Clean Water—The States' Nonpoint Source Assessment, 1985." In that study, 38 States reported urban storm water runoff as a major cause of beneficial use impairment. In addition, 21 States reported construction site runoff as a major cause of use impairment.

Studies conducted by the National Oceanic and Atmospheric Administration (NOAA) indicate that urban storm water runoff is indeed a major pollutant source that adversely affects shellfish growing waters.[1] The NOAA studies concluded that urban runoff affects 39 percent of harvest-limited area on the East Coast, 59 percent in the Gulf of Mexico, and 52 percent on the West Coast.

B. Water Quality Act of 1987

In response to growing concerns with the environmental impact of storm water runoff, Congress addressed this issue as part of the Water Quality Act of 1987 (WQA) by adding section 402(p) to the CWA to require the establishment of a comprehensive two-phased approach for the control of storm water discharges. Section 402(p)(1) prohibits EPA or NPDES States from requiring permits for storm water discharges until October 1, 1992, except for 5 classes of storm water discharges specifically listed under section 402(p)(2) (see appendix A). These 5 classes of discharges make up Phase I of the existing national storm water program and include storm water discharges:

(A) Permitted before February 4, 1987;

(B) Associated with industrial activity;

(C) From a municipal separate storm sewer system serving a population of 250,000 or more;

(D) From a municipal separate storm sewer system serving a population of 100,000 or more, but less than 250,000;

(E) Which EPA or a NPDES State determines contributes to a violation of a water quality standard or is a significant contributor of pollutants to the waters of the United States.

Section 402(p)(3) confirms that, like all other point source discharges under the CWA, discharges of storm water associated with industrial activity must meet all applicable provisions of CWA sections 402 and 301, including technology-based requirements and any necessary water quality-based requirements. Permits for discharges from municipal separate storm sewer systems may be issued on a system- or jurisdiction-wide basis and must meet a new statutory standard requiring controls to reduce pollutant discharges to the maximum extent practicable (MEP).

Phase II of the storm water program covers all storm water discharges not addressed under the five Phase I classes described above. Under the current provisions of section 402(p), the existing statutory prohibition against permitting Phase II storm water discharges expires on October 1, 1992 (see appendix B).

Under CWA section 402(p)(5), EPA, in consultation with the States, is required to conduct two studies on Phase II storm water discharges for which permits cannot be required before October 1, 1992. The first study will identify those sources or classes of discharges that may be addressed in Phase II and determine the nature and extent of pollutants in such discharges. The second study is to establish procedures and methods to control Phase II storm water discharges to the extent necessary to mitigate impacts on water quality. These studies have not been completed.

Under section 402(p)(6), EPA, in consultation with State and local officials and based on the two studies, is required to issue regulations by October 1, 1992, which designate particular sources or classes of Phase II storm water discharges to be regulated to protect water quality and which establish a comprehensive program to regulate such designated sources. This program must establish priorities, requirements for State storm water management programs, and expeditious deadlines. The program may include performance standards, guidelines, guidance, and management practices and treatment requirements, as appropriate.

The approach mandated by section 402(p)(2) is fully consistent with the intent and requirements of Section 319 of the WQA of 1987. Section 319 was enacted to require States to prevent and control nonpoint source pollution.

Under section 319 States are required to submit Nonpoint Source Assessment Reports identifying State waters which, without additional control of nonpoint sources of pollution, cannot be expected to attain or maintain designated uses. States were also required to prepare and submit for EPA approval a statewide management program for controlling nonpoint source water pollution to navigable waters within the State and improving the quality of such waters to levels sufficient for attaining or maintaining applicable water quality standards or goals. Furthermore, the State program submittal was to identify specific best management practices and measures which the state proposes to implement, in the first four years after program submission, to reduce pollutant loadings from identified nonpoint sources to levels required to achieve the stated water quality objectives.

Although the State nonpoint source programs are not enforceable under Federal law, States were encouraged to adopt both regulatory and non-regulatory approaches under State and local law. Section 319(b)(2)(B) specifies that a combination of "non-regulatory or regulatory programs for enforcement, technical assistance, financial assistance, education, training, technology transfer, and demonstration projects" may be used, as necessary, to achieve implementation of the best management practices or measures identified in the section 319 submittal.

To date, all States have approved section 319 assessments and approved management programs. EPA has awarded approximately $38 million in FY90 funds, $51 million in FY91 funds, and is in the process of awarding $52.5 million in FY92 funds to assist States in implementing the section 319 programs. EPA expects that State nonpoint source management programs will be revised and refined periodically in response to re-evaluated priorities and new strategies and technologies.

Numerous States and local governments have implemented regulations and enforceable policies to control nonpoint source pollution. States such as Delaware and Florida as well as local governments such as the Lower Colorado River Authority are aggressively pursuing storm water management goals through numerical treatment standards for new development. Many States and local governments have enforceable erosion and sediment control regulations. On a broader scale, nonpoint source pollution is being addressed at the watershed level by programs such as those being implemented by the State of Wisconsin and the Puget Sound Water Quality Authority and the states which are parties to the International Agreement on the Great Lakes. A number of individual States and local communities have adopted legislation or regulations like Maryland's Critical Areas Bill which limits development and/or

[1] "The Quality of Shellfish Growing Waters on the East Coast of the United States," 1989; "The Quality of Shellfish Growing Waters in the Gulf of Mexico," 1988; and "The Quality of Shellfish Growing Waters on the West Coast of the United States," 1989

requires special management practices in areas surrounding water resources of special concern. California has also recently created Storm water management districts to better address the control of nonpoint source pollution.

A further development in the area of Federally-mandated nonpoint source management occurred in 1990 with the enactment of section 6217 of the Coastal Zone Act Reauthorization Amendments (CZARA). Section 6217 provides that States with approved coastal zone management programs must develop and submit to EPA and NOAA for approval a coastal nonpoint pollution control program. Failure to submit an approvable program will result in the loss of Federal grants under both the Coastal Zone Management Act and section 319 of the CWA. State nonpoint pollution control programs must also include enforceable policies and mechanisms which ensure implementation of the management measures throughout the coastal management area. Management measures as defined in section 6217(g)(5) are: "Economically achievable measures for the control of the addition of pollutants from existing and new categories and classes of nonpoint sources of pollution, which reflect the greatest degree of pollutant reduction achievable through the application of the best available nonpoint pollution control practices, technologies, processes, siting criteria, operating methods, or other alternatives."

The section 6217(g) guidance was issued for public comment in May, 1991. Final guidance is expected by October, 1992. The technology-based approach used in the guidance provides State Officials flexibility to meet the management measures using best management practices identified in the guidance or other methods and strategies which achieve equivalent or higher levels of pollutant control. If the technology-based approach fails to achieve and maintain applicable water quality standards and protect designated uses, additional management measures are required under CZARA section 6217(b)(3). Congress mandated a technology-based approach founded on technical and economic achievability under the rationale that neither States nor EPA have the money, time, or other resources to create and implement a program which depends on establishing cause and effect linkages between particular land use activities and specific water quality problems. Nonpoint sources addressed in the proposed guidance include: urban runoff from both developing and developed areas, roads, highways and bridges, agriculture, forestry, marinas, hydromodification, dams and levees.

C. Current (Phase I) Storm Water Permitting Program

EPA promulgated permit application regulations for Phase I storm water discharges on November 16, 1990 (55 FR 47990). The November 16, 1990 regulations established the scope of the Phase I storm water program by defining two major classes of storm water discharges identified under section 402(p)(2)(B), (C), and (D) of the CWA: Storm water discharges associated with industrial activity;[2] and discharges from municipal separate storm sewer systems (MS4s) serving a population of 100,000 or more.[3] In addition, the November 16, 1990 regulations established permit application requirements, including deadlines for these two classes of discharges (for a summary of Phase I see appendix A).

The November 16, 1990 regulations defined municipal separate storm sewer system serving a population of 100,000 or more to include municipal separate storm sewers within the boundaries of 173 incorporated cities, and within unincorporated portions of 47 counties that were identified as having populations of 100,000 or more in unincorporated, urbanized portions of the county.[4] In addition, the regulations allowed for additional municipal separate storm sewers to be designated by the Director of the NPDES program as being part of a large or medium MS4. The November 16, 1990 regulations establish comprehensive two part permit applications for discharges from large or medium MS4s. The permit application requirements for large and medium MS4s, among other things, require municipal applicants to propose municipal storm water management programs to control pollutants to the maximum extent practicable and to effectively prohibit non-storm water discharges to the MS4.[5]

The November 16, 1990 regulations also defined the term "storm water discharges associated with industrial activity" to include 11 categories of industrial facilities (see 40 CFR 122.26(b)(14)). The November 16, 1990 regulations establish two sets of application requirements for storm water discharges associated with industrial activity: Individual applications and group applications. In addition, the notice recognizes a third set of application procedures for storm water discharges associated with industrial activity referred to as "notice of intent" (NOI) requirements associated with general permits.

The Phase I storm water program takes two very different approaches to defining the roles of EPA and authorized NPDES States in controlling pollutants in storm water discharges. With respect to permits for large and medium MS4s, the efforts of the NPDES permitting authority (EPA or an authorized NPDES State) are directed to ensuring that municipalities develop and implement storm water management programs to control pollutants to the maximum extent practicable. Municipal programs address the control of pollutants in storm water from all areas within the boundaries of the MS4 that discharge to the system, including privately-owned lands, as well as modifying municipal activities (e.g. road deicing and maintenance, flood control efforts, maintenance of municipal lands, etc.) to address storm water quality concerns. The Agency has defined the role of municipalities under this program in a flexible manner that allows local governments to assist in defining priority pollutant sources within the municipality, and to develop and implement appropriate controls for such discharges. With respect to permits for storm water discharges associated with industrial activity, the NPDES permitting authority has a more direct role in regulating facilities.[6]

While today's request for comments focuses on developing Phase II of the storm water program, readers may find that a brief summary of progress to date

[2] On June 4, 1992 the United States Court of Appeals for the Ninth Circuit found that EPA's rational for exempting construction sites of less than five acres and certain uncontaminated storm water discharges from light industrial facilities from Phase I of the storm water program to be invalid and has remanded these exemptions for further proceedings (see *Natural Resources Defense Council* versus *EPA* No. 91-70176).

[3] Consistent with Section 402(p)(2) of the CWA, the November 16, 1990 regulations address two subclasses of municipal separate storm sewer systems serving a population of 100,000 or more. Large municipal separate storm sewer systems are defined as systems serving a population of 250,000 or more (see 40 CFR 122.26(b)(4)). Medium municipal separate storm sewer systems are defined as systems serving a population of 100,000 or more, but less than 250,000 (see 40 CFR 122.26(b)(7)).

[4] See appendices F, G, H, and I to 40 CFR part 122.

[5] See 40 CFR 122.26(d)(2)(iv).

[6] NPDES permits for discharges from large and medium MS4s will establish municipal responsibilities for assisting EPA and authorized NPDES States in implementing controls to reduce pollutants in storm water discharges associated with industrial activity which discharge through large and medium MS4s. A more detailed description of the role of municipalities in addressing industrial storm water sources under this Federal/State/Municipal partnership, is provided at 56 FR 40972 (August 19, 1991).

in implementing the first phase of the program would be helpful. Part of current implementation activities include outreach efforts and two rulemakings discussed in more detail below which are specifically designed to provide more flexibility and minimize regulatory and administrative burdens where possible.

As discussed above, the November 1990 storm water rule provided for three different options for storm water discharges associated with industrial activity to seek coverage under the program: individual, group, and general permit applications. Since November 1990, there has been a great deal of activity as EPA and the States have worked with the regulated community to provide guidance and implement the program. The Agency has established a four tier risk-based storm water permitting strategy which emphasizes the use of general permits (April 2, 1992, (57 FR 11394)). As part of the strategy, EPA called for the development of State storm water management programs to track permit issuance, provide for prioritization of risk, and create baselines against which to assess environmental results. As part of the same rule, the Agency extended the deadline for Part 2 of group applications until October 1, 1992, and also deferred regulation of storm water discharges from industrial activities owned or operated by municipalities with a population under 100,000 until Phase 2 of the program, pursuant to section 1068(c) of the Intermodal Surface Transportation Efficiency Act of 1991. In providing for greater flexibility, reduced burdens, extended deadlines, and deferred regulation, this recent storm water rulemaking addresses many of the goals underlying the President's January 28, 1992 request to review existing regulations.

Since November 1990, the Agency has received over 1,200 Part I group applications representing more than 60,000 facilities. EPA is currently processing these applications. Final decisions have been reached on over 1,000 to date. Approximately 75% have been approved, 20% withdrawn or determined not to be covered, and 5% denied. Part I group applications were due on September 30, 1991. Part II sampling information from approved groups is due on October 1, 1992.

At the same time that EPA has been receiving and processing group applications, States have been actively moving to provide for storm water general permit issuance. When the storm water application rules were issued in November 1990, only 17 out of 39 States authorized to administer the NPDES program were also approved to issue NPDES general permits. Since then, an additional 16 States have requested and received Federal approval to issue general permits. Over two thirds of the States that now have general permit authority are presently developing specific general permits to cover storm water discharges.

For the 12 States without NPDES authority, EPA is in the process of issuing storm water general permits that rely heavily upon industrial facilities developing and implementing their own storm water pollution prevention plans.

As part of the four tier risk-based permitting strategy referred to above and discussed in more detail in the Agency's April 2, 1992 notice, EPA believes that the majority of storm water discharges associated with industrial activities should be covered by general permits. The Agency urges all authorized NPDES States without general permit approval to obtain NPDES general permit authority.[7] EPA places a high priority on this effort and is providing direct technical guidance and assistance to support States both in obtaining general permit approval and in developing specific general storm water permits.

With regard to guidance, training, and outreach, EPA has undertaken a number of efforts to provide technical assistance and also to get public input on ways to streamline the existing program. In the area of guidance, EPA has published and distributed thousands of municipal and industrial permit application manuals in addition to numerous summaries, fact sheets and work shop materials over the past eighteen months. The Agency has issued additional guidance on storm water sampling, pollution prevention plan development, and storm water best management practices (BMPs), and is developing guidance for part 2 municipal applications. A list of EPA technical guidance, summaries, and storm water fact sheets can be obtained by calling the Agency's storm water hotline at (703) 821-4823.

In the area of training and outreach, EPA staff has participated in over 60 workshops and presentations throughout the country, training permitting authorities and educating the regulated community. For example, EPA Regions held fourteen public hearings to receive public comment on the Agency's proposed general permits in August and September of 1991. EPA held an additional 26 storm water workshops across the country this summer and would welcome hearing from groups or organizations interested in receiving workshop materials for further in-house or local training.

While EPA recognizes the importance of ongoing training and outreach efforts to provide information on the storm water program, the Agency also regards these activities as an effective mechanism for getting feedback on the program and identifying areas for further improvement. The new guidance documents referred to above and presently being developed reflect input from States and the regulated community on high priority areas requiring clarification and further technical assistance.

In addition to these activities, EPA has recently completed a study, in conjunction with the Rensselaerville Institute, to obtain direct public input and develop recommendations for streamlining the program and making it more effective. This study has two objectives. The first is to develop recommendations to streamline program implementation under existing regulations and legislation (Phase I). The second is to develop cost-effective options for addressing risks from storm water sources not currently required to be permitted that could potentially be addressed under Phase II of the storm water program.

Under the first objective, the Rensselaerville Institute sponsored 6 focus groups across the country with members representing state and local government, the regulated community, and environmental interests for uninterrupted full day discussions on ways to improve the storm water program. Five key issues were raised by all groups: (1) Groups felt that EPA has not been very clear about the intended goals of the regulations and should communicate storm water risks, objectives, and requirements more clearly to the general public as well as the regulated community, (2) participants noted that the cost of program implementation is significantly higher than original EPA estimates and there is great concern regarding the real costs of the program and of achieving compliance, (3) there was consensus that EPA and States must accelerate general permit issuance and focus on general permits to achieve efficient implementation of the program, (4) participants felt that technical outreach should be targeted at the State and local level as opposed to the national level and should provide better guidance on the regulations and how to implement

[7] Currently, DE, IA, KS, MI, NV, NY, OH, SC, VT and the Virgin Islands have authorized NPDES programs, but do not have general permit authority.

them, and (5) groups noted that coverage under certain industrial storm water categories should be clarified.[8] EPA agrees with these recommendations and is taking steps, some of which are outlined above, to follow up in each of these areas.

The second objective of the Rensselaerville study, consistent with the purpose of today's notice, is to get as much input as possible on different options for identifying and addressing those Phase II storm water discharges not regulated under the current program. Under the study, however, the mechanism for encouraging feedback was more targeted and interactive. The Rensselaerville Institute has obtained input from national experts (representing permitting authorities, the environmental community, and regulated interests) and then followed up with a series of 3 expert discussion forums that were open to the public in June.

The public meetings were held in Denver, San Francisco and Washington, DC. Attendees were divided into task teams and asked to develop their own strategy for addressing Phase II sources. There were 16 task teams: Five each at the Denver and San Francisco meetings, and six in Washington, DC. They were given a strategy template to guide them in their discussion, but were not confined to the template in developing their strategies and recommendations.

Each team considered and then presented the option they had developed over a four hour period. There were common strategy characteristics mentioned across groups within meetings and also across meetings. The recommendations of the focus groups covered four specific areas: Targeting strategies, controls that should be put in place, timetable, and the role of EPA in Phase II. The recommendations made by focus groups regarding the first three areas are discussed below along with the options presented for comment.

With regard to the role of EPA, participants identified the areas of responsibility they felt it would be appropriate for EPA to assume under Phase II. Their recommendations can be classified by four common themes: (1) Teams felt that EPA should provide technical assistance, information dissemination, and do any research necessary as a part of Phase II; (2) participants suggested that EPA should provide funding for research or demonstration projects, but not for program implementation; (3) groups stressed that EPA should set broad guidelines for the program, but allow State and local governments to determine the level of specificity needed to effectively implement the program; and (4) teams felt that EPA should be responsible for training regulators in the program.

II. Today's Notice

A. Purpose and Intent

CWA sections 402(p)(5) and (6) require EPA to identify storm water discharges not covered under Phase I which should be regulated to protect water quality.[9] The purpose of this notice is to solicit public comment on ways to implement the second phase of the storm water permitting program for sources and activities not regulated under the existing program. EPA is seeking comments on approaches for meeting CWA Phase II storm water requirements while at the same time minimizing the economic impacts and regulatory and administrative burdens associated with additional Phase II storm water controls. There are a number of ways to identify additional categories of storm water activities for further controls and EPA requests comment on the alternatives listed below as well as on any other approaches that may not be identified in today's notice.

B. Alternative Approaches

EPA is interested in comments from the general public, state and local government, the regulated community and environmental groups on each of the options outlined below. The goal of the CWA is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. In practice, programs implemented under the Clean Water Act have two basic goals: To reduce pollutant loadings to the environment and to require more stringent controls where necessary to assure attainment of State water quality standards and designated uses. These goals are compatible. However, the specific regulatory strategy and pollution reduction alternatives to be chosen for addressing Phase II storm water discharges could have a large impact on the size of the regulated universe and regulatory burden associated with the program.

To generate discussion and input from commenters, today's notice discusses several alternative approaches for controlling storm water discharges from currently unregulated sources under Phase II of the storm water program. A number of different control strategies, with variations in scope and timing, are outlined below. They range from comprehensive permitting of all municipal, light industrial, and commercial activities that generate storm water runoff to little or no NPDES permitting of Phase II sources.

A major distinction between several of the options listed below is whether Phase II efforts should focus on developing requirements for targeted municipalities to develop source controls and management programs for storm water discharges within their jurisdictions (for example, see options (b) and (c) below) or whether Phase II should, instead, focus on point source discharges of storm water without reference to the municipality in which they may be located. Under the first approach, EPA would develop NPDES requirements that required targeted municipalities to develop and implement storm water management programs which address storm water discharges within their jurisdiction [10] to the maximum extent practicable. This approach would allow for flexibility based on local factors, but could lead to varying levels of control from one area to another. EPA requests comments on the ability of municipalities to effectively regulate storm water discharges. In addition, the Agency requests comment on appropriate funding mechanisms for municipal programs, in particular the feasibility of implementing storm water utilities, which are currently being used in more than 100 communities nationwide.[11]

To facilitate comment and analysis, the following discussion is organized in terms of three issues: Targeting, control strategies, and deadlines. Each of these areas overlap and any final decision must reflect choices from each group. However, the objective is to solicit input

[8] The regulatory definition of storm water discharge associated with industrial activity identifies 11 categories of industrial facilities (see 40 CFR 122.26(b)(14)). In particular, category viii (certain transportation facilities) and category xi (certain manufacturing facilities with materials and/or materials handling equipment exposed to precipitation) were identified as needing clarification.

[9] Section 502(14) of the CWA excludes agricultural storm water runoff from the definition of point source. Section 402(1)(2) prohibits EPA from requiring an NPDES permit for certain "uncontaminated" storm water discharges from mining sites and oil and gas operations. EPA cannot regulate these discharges under section 402(p)(6) of the CWA.

[10] One issue that needs to be resolved is whether targeted municipalities should be responsible for controlling all priority storm water discharges within their jurisdiction or only those that discharge directly to the MS4.

[11] For more information see "Storm Water Utilities: Innovative Financing for Storm Water Management", EPA, Water Policy Branch, OPPE, 1992.

on three basic questions. First, what should be covered under Phase II; that is, what additional municipal separate storm sewer systems, municipal industrial activities, commercial, light industrial, retail, or residential activities not presently covered under Phase I of the storm water program should be targeted or identified as needing additional controls? Second, what control strategies should be developed and implemented to address these Phase II activities? Third, what deadlines or time frames should apply in implementing Phase II of the storm water program?

In addressing each of these questions, commenters are requested not only to provide their views on appropriate alternatives (including approaches that may not be included in this notice), but also where possible detailed rationales and additional data or other information which address the practical, administrative and legal feasibility and/or the environmental benefits, of a particular option. In addition, each of the approaches presented could be combined with others to achieve specific environmental objectives. For example, dischargers of specific pollutants in particular water bodies could be targeted for permits or more stringent controls. Along with input on individual options EPA requests comments on possible combinations or other approaches not outlined above. Commenters are also asked to address the roles and responsibilities of Federal, State and local governments under various approaches, particularly with respect to: (1) Identifying approaches that target MS4s in currently unregulated municipal areas as needing permits, and (2) approaches that identify classes of individual facilities (e.g. commercial or retail facilities) as needing permits.

The Agency also requests input on what type of information should be used in identifying sources to be covered and whether commenters believe there is presently sufficient information or monitoring data at the state and local level to expeditiously implement a particular option listed below. If on a national or regional basis there are not sufficient data, the next question to be addressed is whether a comprehensive monitoring and data gathering effort is warranted to assure effective implementation of one approach over another. In other words, there may be a trade off between: (1) Near term general targeting approaches combined with flexible control strategies based on information currently available, and (2) a heavier reliance on longer term specific geographic, watershed, or water body related targeting mechanisms which may require more comprehensive data gathering efforts on both a facility and stream reach basis.

1. Targeting

(a) Seek amendments to the CWA to eliminate Phase II and use designation authority to bring additional sources under Phase I. Section 402(p)(2)(E) presently provides that EPA or a State may designate non-industrial storm water discharges and discharges from MS4s other than those serving a population of 100,000 or more for control under Phase I where the discharge contributes to water quality violations or is a significant contributor of pollutants to waters of the U.S. Some commenters may conclude that the remaining unregulated discharges of storm water (associated with smaller municipalities, commercial activities, and some retail or residential activities) constitute, on the whole, a negligible source of environmental risks, relative to the discharges already regulated.

Under this option, Congress would amend the CWA to eliminate section 402(p)(6) (Phase II requirements) as a part of the NPDES program and expand use of the existing designation authority under 402(p)(2)(E) to designate individual or classes of storm water activities on a category, watershed, stream reach, loadings, or other basis for specific regulation under existing Phase I requirements. Under this option, those storm water activities not designated for Phase I controls could be addressed by an alternative means, possibly under the State nonpoint source management programs funded under section 319 of the CWA or coastal nonpoint pollution control programs developed pursuant to section 6217 of the CZARA. The Agency requests comments on: (1) Whether State programs funded under Section 319 can better ensure appropriate control of diffuse pollutant sources and; (2) whether heavier reliance on State nonpoint source programs to address Phase II storm water point source discharges would have adverse impacts on States' program resources and the ability of States to address agricultural sources. The selective nature of this designation option could reduce the potential economic impact on the economy and small entities. However, using 402(p)(2)(E) may be viewed by some commenters as a reactive approach which does not recognize the advantages of prevention of storm water pollution problems over remediation of these problems after they have been identified. This approach may also increase the administrative burden on States and local government to identify and undertake the necessary administrative process to include additional storm water activity under Phase I.

(b) Identify targeted MS4s as needing an NPDES permit under section 402(p)(6) of the CWA. The Phase I MS4 program currently only applies to municipal separate storm sewer systems serving a population of 100,000 or more. EPA has defined the scope of these Phase I requirements to specifically identify 173 incorporated cities with a population of 100,000 or more and 47 counties with a population of 100,000 or more in unincorporated, urbanized areas.[12] In general, this approach focuses on core cities of large metropolitan areas, but with the exceptions of 47 counties addressed, does not address urban fringes or suburban areas in large metropolitan areas, urbanized areas without large core cities, or smaller isolated cities or population centers.[13] EPA requests comments on factors that should be considered when evaluating options for addressing Phase II MS4s.[14]

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[12] The 220 cities and counties addressed by these definitions have a combined population of over 87.5 million people under the 1990 Census. However, a significant percentage of the population of the 220 municipalities are served by combined sewers (not addressed by the storm water program), which are found primarily in areas of older development.

[13] The 1990 Census indicates that 87.3 million people lived in areas designated as urbanized areas but outside of incorporated cities with a population of 100,000 or more. Portions of over 5,400 incorporated cities, towns and villages, 900 counties and about 1,500 minor civil divisions (unincorporated towns and townships) are in Phase II municipalities that are part of urbanized areas.

[14] EPA outlined seven factors it considered when defining the scope of large and medium MS4s (see December 7, 1988 (53 FR 49444), and November 16, 1990 (55 FR 48038)). These factors included: the advantages of developing system-wide storm water management programs for municipal systems; the inter-jurisdictional complexities associated with municipal governments; the fact that many municipal storm water programs have traditionally focused on water quantity concerns, and have not evaluated water quality concerns; the geographic basis necessary for planning comprehensive management programs to reduce pollutants in discharges from MS4s; the geographic basis necessary to provide flexibility to target controls on areas where water quality impacts associated with discharges from MS4s are the greatest and to provide an opportunity to develop cost effective controls; the need to establish a reasonable number of permits; Congressional intent to allow the development of jurisdiction-wide, comprehensive storm water programs with priorities given to the most heavily populated areas of the country. The Agency requests comment on which of these factors should be considered in identifying Phase II MS4 sources.

The Agency also requests comment on the advantages of municipalities associated with urbanized areas coordinating storm water management efforts on a regional basis. The Agency notes that a number of municipalities have developed regional administrative approaches to flood control management.[15] Regional administrative approaches appear to provide opportunities for municipalities to lower overall administrative burdens, consolidate efforts to study or evaluate approaches, and adequately plan cost-effective approaches to consider and address the needs of all represented municipalities. The Agency requests input on how it could or should encourage the development and use of regional approaches to storm water management under the NPDES program. Specifically, EPA requests comments on the following targeting options as well as any that may not be included in this notice.

(i) *Focus on population.* Expand coverage to address additional municipalities based on population. Following the Phase I approach, coverage of municipalities could be expanded by lowering the minimum population requirement across the board or by designating additional municipalities or municipal systems by name. EPA requests comments on the appropriate role of county governments and appropriate ways to characterize the population of counties under this approach.[16] This approach controls more sources of storm water, but imposes regulatory burdens on additional municipal entities.

(ii) Focus on population density. Alternatively, EPA could focus on the population density of metropolitan areas instead of the population within a particular municipality or municipal system, and require permits for discharges from municipal separate storm sewers in areas of a specified density. Urban storm water runoff is related to the density of urban development, the increase in impervious areas, and the reduction in the area of recharge and infiltration zones. EPA requests comment on the use of urbanized areas designed by the Bureau of Census as a tool for characterizing population density and development patterns.[17]

(iii) Focus on population growth. Focussing on population growth in addition to, or in place of, population density might be an additional consideration in implementing this option.[18] Studies have shown that it is much more cost effective to develop measures to prevent or reduce pollutants in storm water during new development than it is to correct these problems later on.[19] In addition, appropriate storm water measures for new development can prevent or minimize irreversible degradation to surface waters. This approach might serve to minimize the impact of small and lightly-developed population centers, but it would still increase the burden on a number of municipalities not presently regulated under Phase I.

(c) *Continued reliance on Phase I MS4s to control Phase II sources which discharge through their system.* Under this approach, EPA would generally not designate additional individual sources (such as commercial and light industrial sources) which discharge through a large or medium MS4 as needing their own NPDES permit. Instead, EPA would continue to rely on municipalities to identify priority storm water discharges and develop appropriate controls for those discharges as part of requirements to develop and implement municipal storm water management programs. This option addresses some currently unregulated sources, allows for flexibility and consideration of local factors, and avoids duplicative regulation at the local, national and State level. This approach also relies on existing institutional frameworks of municipalities[20] as well as the institutional framework that EPA envisions municipalities will develop pursuant to NPDES requirements.[21] However, it imposes additional administrative and regulatory costs on local governments and may result in varying levels of control among municipal programs. The Agency requests comment on whether municipalities are in the best position (with assistance from EPA and authorized NPDES States through technical guidance) to identify priority sources which discharge through their MS4, or whether EPA should attempt to designate such additional sources as needing an NPDES permit. The Agency also requests comments on the appropriate funding mechanisms for MS4s (e.g. storm water utilities, various fees, general revenues, etc.), and opportunities for municipalities to modify existing functions to address storm water concerns.

(d) *Identify additional Phase II activities other than MS4s based on comparative loadings.* EPA could use available information (such as case studies and other research) to prioritize Phase II sources in terms of their relative pollutant loadings as well as the type and nature of those loadings. On this basis the Agency could issue regulations to target those general activities which contribute the highest loadings of pollutants to receiving waters as needing an NPDES permit. This option is consistent with the technology-based approach reflected in the existing CWA. It would provide more comprehensive coverage and clarify the program. It would also avoid expensive and time consuming debates regarding the specific causal relationship between a particular storm water discharge and site by site specific receiving water quality impact. However, it would impose further administrative and analytical burdens in terms of gathering additional loadings information on a national basis. This approach may also result in including

[15] For more information see: William A. Macaitis, "Regional Storm Water Management Trends", and: L. Scott Tucker, "Current Programs and Practices in Storm Water Management", Water and the City: the Next Century, Public Works Historical Society, 1991.

[16] The 19[illegible] Census indicates that 447 counties have a popula[illegible]n of 100,000 or more. The current definitions of large and medium MS4 address 47 of these counties not already covered by Phase I of the program.

[17] The Bureau of Census defines urbanized areas comprised of a central city (or cities) with a surrounding closely settled area. The population of the entire urbanized area must be greater than 50,000 people, and the closely settled area outside the city, the urban fringe, must have a population density generally greater than 1,000 persons per square mile (just over 1.5 persons per acre) to be included. The Bureau of Census defined 396 urbanized areas in the United States based on the 1990 Census. These urbanized areas have a combined population of 158.3 million, or 63.6 percent of the nation's total population. However, these areas only account for 1.5 to 2 percent of the land surface of the country.

[18] Most Urban growth occurs in urban fringe areas outside of large core cities. For example, between 1970 and 1980, the population in those parts of Census designated urbanized areas that are outside of incorporated cities with a population of 100,000 or more increased by 18.9 million. During this same time period, the population of incorporated cities with a population of 100,000 or more (Phase I cities) increased by only 0.6 million, with the population of many of these cities decreasing.

[19] For example, see "Results from the Nationwide Urban Runoff Program, Vol 1—Final Report", EPA, 1983.

[20] Examples of municipal functions that can be adapted to provide for consideration of storm water concerns include oversight of new development, fire safety inspections, pretreatment program implementation, flood control activities, management of municipal lands and activities, and maintenance of public roads.

[21] The NPDES regulatory framework for permits for large and medium MS4s envision that municipalities will be required to develop and implement storm water management programs to reduce pollutants in non-storm water discharges (e.g. illicit connections and improper dumping); storm water from residential and commercial areas; storm water discharges from industrial activities; and storm water discharges from construction activities.

more sources than necessary due to differences in loadings and existing storm water controls, both structural and non-structural, across similar activities. The regulatory burden would be determined in large part by the overall control strategy chosen to implement this approach.

This approach differs from those outlined under options (b) and (c) in that it relies on direct permitting by EPA and authorized NPDES States rather than requiring municipalities to develop programs to address sources. The Agency requests comments on which sources of pollutants are better addressed by specific NPDES permit requirements rather than through municipal storm water management programs required pursuant to NPDES permits for MS4s. For example, activities generally located in rural areas such as feedlots, orchards, and golf courses most likely are not suited for control through municipal storm water management programs required under permits for MS4s. Although large feedlots (those subject to effluent limitations guidelines) presently are covered under Phase I, smaller feedlots represent a significant source of pollutants such as suspended solids, BOD, and nutrients such as nitrates and phosphates. In addition, storm water discharges from commercial activities such as greenhouses, nurseries, and golf courses might be more effectively controlled under a separate NPDES permit requirement than through a MS4 program. As another example, many commenters from all levels of State and local government have expressed concern about municipalities being required to control pollutants from State highways (see November 16, 1990 (55 FR 48041)).

(e) Geographic targeting. EPA could regulate Phase II storm water activities on a watershed, waterbody, or regional basis to protect water quality, control water quality problems and attain designated uses in specific areas. EPA could:

(i) Designate additional municipal and individual sources for permitting in specific areas. A key aspect of this approach would be developing a list of waters that are not meeting designated uses due to pollution from storm water runoff (from section 305(b) reports or from the section 304(l) list of waters) or where sensitive waters or outstanding national resource waters need special protection. This approach could help to achieve water quality goals and would avoid imposing a burden on other dischargers, but would not be uniformly applied on a national basis. This option is also reactive in nature, and overlooks the advantages of prevention over remediation. The availability of technical information and water quality data limitations and the administrative and regulatory burden associated with collecting and analyzing additional data would have to be carefully considered in evaluating the feasibility of this approach.

(ii) Designate additional sources for permitting or special requirements within rainfall zones. The nature of storm water problems varies between areas with frequent rainfall, where storm water flows are high with continual pollutant loadings, and areas with low or seasonal rainfall, where intermittent flows carry highly concentrated loadings of pollutants accumulated during dry weather which result in high shock loadings to receiving waters. This option would recognize these regional variations and tailor regulatory requirements for Phase II discharges (monitoring, best management practices, reporting) to the local nature of rain events. However, immediate environmental benefits could be delayed due to the inexact nature of rainfall zones and the scarcity of comprehensive information upon which to base regulatory requirements.

(f) Establish requirements for State storm water management programs. Under this approach, EPA could develop requirements for State storm water management programs under section 402(p)(6) for the CWA which would require States to identify additional classes of storm water discharges for control. This approach may offer the advantages of additional flexibility for States to target sources based on State specific factors (climate, water resources, development patterns) and provide additional flexibility in the type of administrative program developed. However, the disadvantages of this approach include the need for generating additional resources at the State level at a time when State capacity is also strained, and possible disparities in programs in different States. Such disparities could make it hard for a State to develop an aggressive program when neighboring States have lesser requirements. Further, this approach may create additional burdens on EPA to provide adequate oversight of the State programs. EPA also requests comments on the appropriate role of EPA in reviewing State plans or developing minimum requirements for State plans and how that role should change, if at all, for States without authorized NPDES programs. The Agency requests comments on appropriate criteria for evaluating the adequacy of State programs, and appropriate procedures for periodic review and evaluation of such programs. EPA also requests comments on whether this approach could be harmonized with the requirements of section 402(p)(6) for EPA to take the lead in developing management practices and controls for Phase II sources, or whether this approach might also require statutory change.

(g) Rensselaerville focus groups. There were several common themes recognized by the focus groups with regard to identifying potential sources to be included in Phase II:

(i) Groups suggested that targeting be done on a watershed basis, with information gathered as a part of Phase I used to help identify sensitive watersheds. It was noted that this type of targeting approach may require intergovernmental agreements for effective implementation.

(ii) Teams emphasized that the focus of Phase II should be on "bad actors", i.e. those sources that are known to cause significant water quality problems. Sources identified by team members included: Gas/auto service industries, transportation, highway systems, land use development and agricultural sources. There was a consensus among groups that facilities not contributing to impairment of water quality should be able to gain an exemption from controls, permits, fees, and implementation of BMP's. Teams concluded that SIC categories are an ineffective way to designate covered sources and that targeting should be done based on the degree of risk that a given facility poses, due to possible differences between facilities in any one industry.

(iii) Focus groups recommended that small municipalities be included in Phase II but with simplified application requirements. Participants felt that municipalities impacting watersheds of concern or those connected to larger MS4s should be targeted.

(iv) Participants in the study felt that EPA should hold off on selecting sources for Phase II until the Agency has carefully looked at the date gathered during Phase I. It was noted that numerous sources of information are available which could help determine targeting priorities, for example, 305(b) reports, information from Phase I program sources, NURP, and the first Report to Congress.

2. Control Strategies

The current Phase I storm water program for industrial sources is implemented through the NPDES program with a heavy emphasis on the use of general NPDES permits which require the implementation of best management practices including development of site specific pollution prevention plans. Phase I requirements for large and medium MS4s focus on system-wide permits which require the development and implementation of municipal storm water management programs:

Regardless of how additional Phase II storm water activities are identified—whether they are designated under 402(p)(2)(E), comprehensively covered, or selectively targeted for further controls, a key issue on which EPA requests comment is what are the appropriate tools or control strategies to put in place which assure pollutant loading reductions and water quality improvement?

(a) Continued reliance on NPDES program. One option is the continued reliance on individual or general NPDES permits for individual sources, and system-wide permits for MS4s. Developing or processing specific application forms for and issuing individual permits for all Phase II sources may well be the most resource intensive of any control approach. Consistent with EPA's four tier Phase I permitting strategy for industrial storm water sources, individual permits may be most appropriate in those case specific situations where a particularly difficult or complex discharge situation needs to be addressed. By contrast, input from the public and regulated community to date suggests that heavy reliance on general permits may well be a very effective alternative within the NPDES system. EPA solicits comments on whether continued reliance on NPDES permitting as the overall control strategy for Phase II is the most appropriate approach. An extensive State and national administrative NPDES infrastructure already exists and is being relied upon for Phase I and reliance on the general permit is increasingly favored as an appropriate storm water control strategy. However, the capacity of the current system with its existing resources to accommodate a significant number of additional permittees has already been called into question for Phase I. A very real issue exists as to whether the permitting Agencies have the resources to address more than a limited number of additional Phase II permittees.

(b) Continued reliance on nonpoint source program. Another approach includes continued reliance on the State nonpoint source programs under section 319 of the CWA and future reliance on programs under section 6217 of the CZARA in coastal areas to control Phase II storm water sources not explicitly addressed or designated under Phase I.

The structure, organization, and working relationship within EPA and State offices for the section 319 program are established and proven successful. The States have taken the lead under section 319 to develop assessments of storm water/nonprofit source impacts and management programs to implement controls. EPA has approved all States assessments, 44 complete management programs, and portions of all the remaining State management programs. The States management programs typically include continued problem assessments and monitoring, voluntary control measures, mandatory control measures established under State and local authorities, State funding assistance, public outreach, technical assistance, enforcement, targeting of priority waters, and coordination with other Federal and State programs and agencies. Therefore, the section 319 program's potential ability to control Phase II sources is high. Also, section 319 programs are founded on a watershed planning and pollution prevention/source reduction approach which may be an effective vehicle to provide program and technical assistance to State and local governments.

In addition, the new CZARA program provides an excellent tool to address Phase II sources in the coastal zone in a comprehensive manner. EPA emphasizes that the goals of the NPDES and CZARA programs are complementary. Many of the techniques and practices used to control urban runoff are equally applicable to both programs. While different legal authorities and geographic coverage may apply to specific sources, States have the option to implement CZARA section 6217(g) management measures throughout the coastal zone, as long as NPDES requirements are met for those entities subject to NPDES requirements. States outside of the coastal zone may also voluntarily incorporate the management measures appropriate to particular sources or specific problems into the State's CWA section 319 program.

(c) Mandatory performance standards, guidelines, management practices and/or treatment requirements. An alternative option might also be to develop a set of mandatory national Phase II control guidelines that apply directly to Phase II storm water activities without a permit. The national pretreatment categorical effluent guidelines is an example of this approach. Permits by rule or general permits without application or reporting requirements are a similar concept. A variation on this approach might include the development of minimum categories or classes of BMP's or pollution prevention approaches with a requirement that elements from each class be chosen and implemented on a facility or system specific basis. At one level, this approach would appear to reduce the regulatory and administrative burden associated with submission of Phase II storm water applications. However, as a technical matter, it may be extremely difficult to develop one national rule that appropriately addresses all Phase II storm water activities. Developing such a rule may take a significant amount of time and may also entail substantial monitoring and data collection. A further issue upon which EPA solicits comment is whether a national rule would be the most effective approach given that many members of the Phase II universe may not be familiar with national regulations and may not even be aware that such requirements apply to them. EPA recognizes that implementation of control strategies other than NPDES permitting would probably require statutory change and requests comments on what changes would be appropriate.

(d) Rensselaerville focus groups. Focus groups identified several common themes with regard to controls that should be put in place for Phase II:

(i) Focus groups recommended that if a permitting process is to be continued for Phase II sources, NPDES general permits should be used, and the focus should be on the implementation of effective BMP's. Participants felt that permits should be simpler, less costly, and that EPA should make absolutely clear to applicants what information is required through the use of checklists of inclusion, a menu of potential BMP's, and other documents to assist permitees. The team members again stressed that exemptions from permitting should be available for sources not contributing to water quality problems.

(ii) The teams concluded that education is often overlooked and that it should be a primary component of any Phase II program. Team members felt that education is important for all audiences and that local level education

for the public and affected industry is critical to the success of the program.

(iii) There was an agreement among teams that there should be more emphasis on voluntary programs, perhaps similar to those under the 319 nonpoint source program. Groups also suggested that for facilities that have contact with storm water, there should be limited additional governmental intervention, but rather an emphasis on pollution prevention incentives, BMP's, and specific pollution prevention techniques. Participants stressed that pollution prevention should be emphasized, particularly with new development. Some suggested prevention methods included: recycling storm water, good housekeeping practices, plantings to minimize runoff, street sweeping of work areas on a daily basis, storm water collection methods, coverage of storage areas, changing manufacturing processes to minimize pollutants and better controls of air emissions.

(iv) Groups felt that there should be correlation between the severity of the problem and the degree of controls required and that fines and fee structures could be used as "carrot-stick" measures to aid implementation.

3. Deadlines

Section 402(p) presently provides that the current prohibition against permitting Phase II sources expires on October 1, 1992. EPA solicits comment on the possible options for alternative deadlines for Phase II permit application requirements and statutory revisions of the CWA. One option is for Congress to extend the current October 1, 1992 deadline for Phase II sources. Under this option, EPA requests comment on what the new Phase II date should be and why one particular extension is more appropriate than another. For example, one possible date might be October 1, 1995, to allow one year for additional data gathering and public input on appropriate Phase II sources and control strategies and then two additional years to propose and finalize Phase II regulations.

Another strategy might be to adopt a phased set of Phase II deadlines with high priority storm water sources covered first and lower risk sources addressed at a later date.

A third approach follows option 1 under Targeting; that is, to eliminate the Phase II deadlines and follow option 1 or direct EPA to follow some other option.

Focus group recommendations from the Rensselaerville study suggested that a minimum of 2–3 years is needed to prepare for Phase II, with at least a year dedicated to looking at data gained from Phase I of the storm water program and other documents such as the first Report to Congress. Participants also felt that the effectiveness of presently used BMP's needs to be looked at to determine variations in effectiveness between different geographic locations and pollutants.

III. Request for Comments

EPA is requesting comments on all aspects of the Phase II storm water permitting program. EPA is soliciting general comments on environmental objectives and economic impacts, as well as specific recommendations and implementation advice on each of the options outlined above. Based on comments received and the results of the two studies required under CWA section 402(p)(5), EPA may propose a rule under section 402(p)(6) or solicit additional comments on options again when more data becomes available. In addition, EPA welcomes data or information from ongoing studies that support specific comments or recommendations.

A. General Issues for Comment

Based on the discussion above and the President's memorandum on reducing the burden of government regulation, EPA requests comment on the advantages and disadvantages of each option outlined above as well as any other potential approaches in terms of the following factors.

1. How well does the approach perform with respect to the environmental goals of protecting water quality, reducing pollutant loadings, and achieving designated uses in impaired waters? EPA requests comment on which of these approaches most lends itself to the documentation and establishment of environmental baselines and identification of appropriate environmental indicators against which to evaluate progress. EPA specifically solicits input on appropriate environmental indicators in connection with any of the approaches outlined above or identified by a commenter.

2. Does the option balance the need for regulation to protect/improve the environment with the desire to minimize the regulatory burden and maximize the cost effectiveness of the approach?

3. Does the option help to reduce the regulatory burden on potential permittee, while still maintaining environmental benefits?

4. Does the option help to reduce the administrative burden on Federal, State and local government, so that resources are used to address important environmental problems efficiently?

5. To what extent does the option support or provide an incentive or additional flexibility for implementing pollution prevention and other innovative permit approaches?

6. Does the option allow or encourage the use of market incentives or trading to promote greater or more effective loadings reductions and water quality improvements?

7. What is the impact of the proposed approach on small businesses [22] and communities?

8. does the option allow consideration of the issue of affordability as a factor in determining which Phase II sources should be controlled? For example, some data indicates that average per capita income in suburban fringe areas is substantially higher than in core cities. Does the option allow this to be factored in when identifying high priority groups or selecting appropriate control strategies?

EPA requests specific implementation recommendations based on the respondent's general evaluation of the options outlined above. EPA also seeks detailed comments on how the option will be implemented and ways to refine the respondent's preferred approach. For example, address issues of affordability, cost effectiveness and possible funding mechanisms and sources, in addition to providing case examples where available of successful State or local implementation of a preferred option. Respondents should also consider the need for statutory changes or rulemaking to implement recommended approaches.

B. Current Classification of Regulated Discharges

The current regulatory framework of Phase I is summarized in appendix A. This information may help respondents to understand which types of municipalities and commercial and light industrial activities are not currently regulated under Phase I of the program. Sources exempted from Phase II and some sources potentially covered under Phase II are summarized in appendix B.

IV. Review and Analysis Requirements

Various reviews and analyses are required to assess the economic or paperwork impact of new rulemaking activities under Executive Order 12291, the Paperwork Reduction Act (44 U.S.C. 3501, et. seq.), and the Regulatory Flexibility Act (5 U.S.C. 601, et. seq.).

[22] With respect to impacts on municipalities, the agency requests comments on options municipalities have for generating the revenue required to run such programs.

These assessments are not necessary for this notice, which merely requests comments on ways to reduce the regulatory burden of potential future rulemaking.

Dated: September 1, 1992.

Martha G. Prothro,

Acting Assistant Administrator.

Appendix A. Facilities Covered in Phase 1

1. Industrial Facilities

EPA has defined the term "storm water discharge associated with industrial activity" in a comprehensive manner to address over 100,000 facilities. All storm water discharges associated with industrial activity that discharge directly to waters of the United States or through municipal separate storm sewer systems are required to obtain NPDES permits, including those which discharge through systems located in municipalities with populations of less than 100,000. Discharges of storm water to a combined sewer system or to a Publicly Owned Treatment Works (POTW) are excluded. Facilities with storm water discharges associated with industrial activity include: manufacturing/industrial facilities; construction operations disturbing five or more acres; hazardous waste treatment, storage, or disposal facilities; landfills; certain sewage treatment plants; recycling facilities; powerplants; mining operations; some oil and gas operations; airports; and certain other transportation facilities. Operators of industrial facilities that are Federally, State or municipally owned or operated (with the exception of certain facilities owned or operated by a municipality of less than 100,000 people [1] that meet the description of the facilities listed in 122.26(b)(14) (i)–(xi), described below, must also submit applications.

SUMMARY OF INDUSTRIAL ACTIVITIES COVERED UNDER PHASE I OF THE STORM WATER PROGRAM

40 CFR 122.26(b)(14) Subpart	
(i)	Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutants effluent standards under 40 CFR, Subchapter N [except facilities which are exempt under category (xi)].
(ii)	Facilities classified as: SIC 24 (except 2434)—Lumber and wood products. SIC 26 (except 265 and 267)—Paper and allied products. SIC 28 (except 283 and 285)—Chemicals and allied products. SIC 29—Petroleum and coal products. SIC 311—Leather tanning and finishing. SIC 32 (except 323)—Stone, clay and glass products. SIC 33—Primary metal industries. SIC 3441—Fabricated structural metal. SIC 373—Ship and boat building and repairing.
(iii)	Facilities classified as: SIC 10—Metal mining. SIC 11—Anthracite mining. SIC 12—Coal mining. SIC 13—Oil and gas extraction. SIC 14—Nonmetallic minerals, except fuels.
(iv)	Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of the Resource Conservation and Recovery Act (RCRA).
(v)	Landfills, land application sites, and open dumps that receive or have received any industrial wastes including those that are subject to regulation under subtitle D or RCRA.
(vi)	Facilities involved in the recycling of material, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as: SIC 5015—Motor vehicle parts, used. SIC 5093—Scrap and waste materials.
(vii)	Steam electric power generating facilities, including coal handling sites.
(viii)	Transportation facilities covered by the following SIC codes which have vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, or airport de-icing operations, or which are otherwise listed in another category, are included. SIC 40—Railroad transportation. SIC 41—Local and suburban transit. SIC 42 (except 4221-25)—Motor freight and warehousing. SIC 43—U.S. Postal Service. SIC 44—Water transportation. SIC 45—Transportation by air. SIC 5171—Petroleum bulk stations and terminals.
(ix)	Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including lands dedicated to the disposal of the sewage sludge that are located within the confines of the facility, with a design flow of 1.0 Million Gallons per Day (MGD) or more, or required to have an approved pretreatment program under 40 CFR Part 403. Not included are farm lands, domestic gardens, or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with Section 405 of the CWA.
(x)	Construction activity including clearing, grading, and excavation activities except operations that result in the disturbance of less than 5 acres of total land area which are not part of a larger common plan of development or sale[1].
(xi)	Facilities under the following SICs [which are not otherwise included in categories (ii)–(x)], including only storm water discharges where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, byproducts, or industrial machinery are exposed to storm water[1]. SIC 20—Food and kindred products. SIC 21—Tobacco products. SIC 22—Textile mill products.

[1] In the Intermodal Surface Transportation Efficiency Act of 1991, Congress provided that industrial activities owned or operated by municipalities with a population of less than 100,000 be placed into Phase II of the storm water program with the exception of airports, power plants and uncontrolled sanitary landfills.

SUMMARY OF INDUSTRIAL ACTIVITIES COVERED UNDER PHASE I OF THE STORM WATER PROGRAM—Continued

40 CFR 122.26(b)(14) Subpart	
	SIC 23—Apparel and other textile products.
	SIC 2434—Wood kitchen cabinets.
	SIC 25—Furniture and fixtures.
	SIC 265—Paperboard containers and boxes.
	SIC 267—Converted paper and paper board products (except containers and boxes).
	SIC 27—Printing and publishing.
	SIC 283—Drugs.
	SIC 285—Paints, varnishes, lacquer, enamels.
	SIC 30—Rubber and misc. plastics products.
	SIC 31—(except 311)—Leather and leather products.
	SIC 323—Products of purchased glass.
	SIC 34 (except 3441)—Fabricated metal products.
	SIC 35—Industrial machinery and equipment, except electrical.
	SIC 36—Electronic and other electric equipment.
	SIC 37 (except 373)—Transportation equipment.
	SIC 38—Instruments and related products.
	SIC 39—Miscellaneous manufacturing industries.
	SIC 4221—Farm products warehousing and storage.
	SIC 4222—Refrigerated warehousing and storage.
	SIC 4225—General warehousing and storage.

[1] On June 4, 1992 the United States Court of Appeals for the Ninth Circuit found that EPA's rational for exempting construction sites of less than five acres and certain uncontaminated storm water discharges from category xi light industrial facilities from Phase I of the storm water program to be invalid and has remanded these exemptions for further proceedings (see *Natural Resources Defense Council* v. *EPA* No. 91-70176).

Source: FEDERAL REGISTER, Vol. 55, No. 222, p. 48065, November 16, 1990.

2. Municipal Facilities

"Municipal separate storm sewer" is defined as any conveyance or system of conveyances that is owned or operated by a State or local government entity designed for collecting and conveying storm water which is not part of a Publicly Owned Treatment Works. The application requirements do not apply to discharges from combined sewers (systems designed as both a sanitary sewer and a storm sewer). Municipal separate storm sewer systems that are addressed by the November 16, 1990 regulations include storm sewers located in one of 173 cities with a population of 100,000 or more; located in one of the 47 counties identified by EPA as having large populations in unincorporated, urbanized areas; and systems that are designated by the Director based on consideration of the location of the discharge with respect to waters of the United States, the size of the discharge, the quantity and nature of the pollutants discharged to waters of the United States, and other relevant factors. These are named in Appendices F–L of the November 16, 1990, regulation.

INDUSTRIAL AND MUNICIPAL PERMIT APPLICATION DEADLINES

Type of Application	Deadline	
● Individual	October 1, 1992	
● Group	Part 1	Part 2
All industrial activities except those owned or operated by a municipality with a population of less than 250,000..	September 30, 1991	October 1, 1992
Industrial activities owned or operated by a municipality with a population of 100,000 to 250,000..	May 18, 1992	May 17, 1993
● General Permit NOI	Deadline established in the general permit, but no later than October 1, 1992 for existing sources.	
	Part 1	Part 2
Large Municipalities	November 18, 1991	November 16, 1992
Medium Municipalities	May 18, 1992	May 17, 1993

Appendix B. Potential Universe of Phase II Dischargers

Phase II potentially includes all point source discharges of storm water to waters of the United States (including Municipal Separate Storm Sewer Systems) that are not regulated under Phase I of the storm water program (See Appendix A). The following table illustrates those types of operations which have been statutorily exempted from both Phase I and Phase II of the NPDES storm water program along with a general list of potential Phase II sources:

Statutory / Regulatory exemptions:	● Non Point Source Silviculture Activities. ● Agricultural Runoff and Irrigation Return Flows. ● Uncontaminated discharges from Mining, Oil and Gas Operations
General categories of sources	● All municipalities with populations less than 100,000.

	• All industrial activities not regulated under Phase I (including those owned/operated by municipalities under 100,000) (tank farms, "auxiliary facilities"). • Commercial activities with industrial components (gas stations, dry cleaners). • Construction activities involving less than 5 acres [1] • Large parking lots (shopping malls, stadiums). • Residential property. • Recreational areas (ski areas, golf courses, amusement parks). • Livestock facilities (stables, feedlots not addressed by Phase I regulations [2], etc.). • Greenhouses, nurseries.

[1] On June 4, 1992 the United States Court of Appeals for the Ninth Circuit found that EPA's rational for exempting construction sites of less than five acres from Phase I of the storm water program to be invalid and has remanded the exemption for further proceedings (see *Natural Resources Defense Council* v. *EPA* No. 91-70176).

[2] Feedlots, as a class of facilities, have been associated with high loadings of pollutants such as suspended solids, BOD, and nutrients such as nitrogen and phosphorus, and could be an example of a targeting approach based on high loadings.

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Wednesday
September 9, 1992

Part V

Federal Emergency Management Agency

Radiological Emergency Preparedness Program Interim-Use Portal Monitor Standard; Availability Announcement; Notice

FEDERAL EMERGENCY MANAGEMENT AGENCY

Availability of Radiological Emergency Preparedness Program Interim-Use Portal Monitor Standard

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: FEMA announces the availability of two documents: "Contamination Monitoring Standard for a Portal Monitor Used for Emergency Response" (the Standard); and "Background Information for the Portal Monitor Standard for Emergency Response" (Background Information), and requests comments on either or both documents. In the event of an accident at a commercial nuclear power plant, the public may become exposed to airborne or deposited radioactive material if significant amounts of radioactive particulates are released to the atmosphere. The Standard sets the level for detection of radioactive contamination for the general public that, if detected, would necessitate decontamination measures. The objective is to minimize the risk of radiation effects to an individual from external contamination on the skin and clothing. The Background Information is a more detailed discussion of the scientific basis and rationale supporting selection of the level for this Standard.

DATES: Comments should be sent on or before December 31, 1992.

ADDRESSES: Comments on either or both documents should be sent to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (fax) 646-4536.

FOR FURTHER INFORMATION CONTACT: Marlow J. Stangler, Office of Technological Hazards, State and Local Programs and Support, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-2856.

SUPPLEMENTARY INFORMATION: The portal monitor must have the capability to detect at least one microcurie (μCi) of radionuclides that emit beta and gamma radiation, regardless of the distribution of this contamination over an individual. One or more cesium-137 (Cs-137) sealed source(s) with a total activity not exceeding one μCi must be used for determining compliance with the Standard. Detectability of this amount of radioactivity shall be demonstrated with the Cs-137 source(s) located at several points along a vertical line centered between the two side columns of the unit between 1½ feet and 5½ feet above the base upon which the individual stands when being monitored.

One microcurie, as a minimum level for detection, is also incorporated in the Radiological Emergency Preparedness (REP) Exercise Manual, FEMA-REP-14, as an interim-use standard. This is used in conjunction with FEMA evaluation of offsite emergency planning and preparedness when determining the capability of response personnel in providing adequate radiological monitoring of an individual (adult or child) when a whole-body portal monitor is used.

Comments on this standard will be reviewed and evaluated by FEMA, in consultation with other Federal agencies. Changes will be made as appropriate and the final Standard will be published as a notice in the **Federal Register**. The final Standard will also be incorporated in a revision of FEMA-REP-14, as indicated at 57 FR 10957, Tuesday, March 31, 1992.

Dated: August 3, 1992.

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

[FR Doc. 92-21640 Filed 9-8-92; 8:45 am]

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Wednesday
September 9, 1992

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Part 21, et al.
Primary Category; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21, 36, 43, 91, and 147

[Docket No. 23345; Amdt. Nos. 21-70, 36-19, 43-34, 91-230, 147-6]

RIN 2120-AB53

Primary Category

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This final rule establishes a new primary category of aircraft, and new simplified procedures for type, production, and airworthiness certification, and associated maintenance procedures. Aircraft in this category are of simple design intended exclusively for pleasure and personal use. Primary category aircraft (airplanes, gliders, rotorcraft, manned free balloons, etc.) may be unpowered or powered by a single, naturally aspirated engine, with a 61-knot or less stall speed limitation for airplanes and a 6-pound per square foot main rotor disc loading limitation for rotorcraft. Primary category aircraft may have a maximum certificated weight of no more than 2,700 pounds, maximum seating capacity of four, and unpressurized cabins. Although these aircraft may be available for rental and flight instruction under certain conditions, the carrying of persons or property for hire is prohibited. This final rule also adds a new section addressing the falsification of documents submitted as part of certification for products and parts.

EFFECTIVE DATE: December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Manuel Macedo, Aircraft Engineering Division (AIR-110), Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-9566.

SUPPLEMENTARY INFORMATION:

Availability of Final Rule

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Public Affairs (APA-200), 800 Independence Avenue SW., Washington, DC 20591, or by calling the Office of Public Affairs at (202) 267-3484. Communications must identify the docket number of this amendment.

Persons interested in being placed, on a mailing list for future notices should request a copy of Advisory Circular 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

On March 7, 1989, the Federal Aviation Administration (FAA) published Notice of Proposed Rulemaking (NPRM) Notice No. 89-7 (54 FR 9738), which proposed the adoption of a new category of aircraft to be known as "primary category." Such aircraft would be of simple design and intended exclusively for pleasure and personal use. These aircraft (airplanes, gliders, rotorcraft, manned free balloons, etc.) would be unpowered or powered by a single, naturally aspirated engine having a certificated takeoff rating of 200 horsepower or less, would have a maximum weight of 2,500 pounds or less, and would have unpressurized cabins. The NPRM also discussed proposals for type, production, and airworthiness certification standards and procedures that would be simpler than those currently contained in Federal Aviation Regulations (FAR) parts 21, 23, and 27 that are applicable to aircraft of this size and type.

The NPRM incorrectly stated that, within the primary category, only small propeller-driven airplanes would be subject to the noise requirements of FAR part 36. On August 1, 1991, the FAA published a Supplemental Notice of Proposed Rulemaking (SNPRM) (56 FR 36972) that indicated that helicopters in the primary category would also be subject to part 36 requirements.

On August 1, 1991, the FAA also published Notice No. 89-7A (56 FR 36976) which reopened the comment period on the NPRM. The reopening was based on a February 1990 meeting between representatives of the Experimental Aircraft Association (EAA), the Aircraft Owners and Pilots Association (AOPA), and the FAA. The EAA and AOPA requested an opportunity to discuss and revise their original comments concerning primary category aircraft maintenance, the parameters used to define primary category aircraft, and the rental and use of those aircraft for pilot training. During the meeting, the EAA stated that there had been significant developments in the general aviation industry since the date of its original petition in 1984. Specifically, the EAA pointed out that many small aircraft manufacturers had gone out of business, and that kit manufacturers would not want to begin large-scale production of primary category aircraft if the rules were adopted as proposed. Because of the higher cost of preassembled kit aircraft, the EAA indicated that kit manufacturers believe that the major domestic market would consist of fixed-base operators (FBO's) and flying clubs, not individuals.

The EAA also stated that kit manufacturers export 36.5% of their total kit production and believe this percentage would be the same for preassembled kit aircraft. However, the EAA was concerned that other civil airworthiness authorities might not accept preassembled kit aircraft into their respective countries because the aircraft would not meet International Civil Aviation Organization Annex 8 requirements which, the EAA believes, compel the exporting State's certification authority to set aircraft airworthiness standards, and no airworthiness standard was envisioned for primary category aircraft. Consequently, the EAA wished to submit additional comments based on its re-evaluation of the proposed rules. A summary of this meeting has been placed in Docket No. 23345. Following the meeting, the FAA received additional written comments from the EAA, which have also been placed in the docket.

Since the EAA was afforded the opportunity to revise its original proposal, the FAA determined that it was necessary to reopen the comment period for Notice No. 89-7 to afford interested persons the opportunity to comment on those issues addressed by the EAA.

The EAA recommends changing the criteria for primary category aircraft from a maximum weight of 2,500 pounds and a single, naturally aspirated engine with a takeoff rating of 200 shaft horsepower or less, to a maximum weight of 2,700 pounds and a single, naturally aspirated engine, with a stall speed of 61 knots or less for airplanes, and a 6-pound per square foot main disc loading limitation for rotorcraft. According to the EAA, the increased weight would permit manufacturers to produce a four-place aircraft with sufficient performance to operate in high-density altitude conditions. The EAA recommends a stall speed limit instead of an engine horsepower limit because stall speed would better define airplane performance and the airplane's landing speed in the event of a power failure. The EAA believes that, for the last 50 years, the 61-knot stall speed limitation in part 23 has established acceptable levels of single-engine airplane performance for safe operation by general aviation pilots. The EAA also states that 6-pound per square foot disc loading limitation more accurately describes rotorcraft performance but did not provide any rationale for this belief.

The EAA also urges that the proposed rule be revised to permit the rental of primary category aircraft for pilot training and personal use, noting that the number of normal, utility and acrobatic category training aircraft available has decreased dramatically since the time of its original petition. The EAA asserts that rental for personal use would open a substantial market with FBO's. The EAA continues to support the concept of pilot-owners performing certain maintenance and inspection functions on their own aircraft after appropriate training. The EAA views the conversion of aircraft from the normal, utility and acrobatic categories to the primary category as a means to extend this maintenance privilege. This conversion would be made through the already existing supplemental type certificate (STC) process. For example, an individual owner or a type certificate holder of an aircraft originally type certificated under FAR part 23 or CAR 3 would submit an application for a STC to convert a specific aircraft or a number of specifically identified aircraft to primary category. As part of the application, the applicant would also submit its proposed special inspection and maintenance program that specifically identifies the inspection and preventive maintenance tasks that may be performed by a pilot-owner. The EAA recommends that those primary category aircraft used for rental or pilot training be maintained only by certificated mechanics or repair stations. However, the EAA states that these aircraft maintenance requirements should not apply to those primary category aircraft, maintained by the pilot-owner, when the pilot-owner is giving a demonstration in the operation of that individual aircraft.

At the request of the EAA, the FAA extended the comment period for the two notices to November 29, 1991 (56 FR 49660). The EAA stated that the extent of the issues involved in the reopening required extensive evaluation and review by the aviation community. Many of the organization's members and others in the aviation community receive notification of rulemaking actions through aviation magazines. The EAA stated that it intended to publish the NPRM in it publication Sport Aviation, and believed that other aviation magazines would also publish information on the NPRM.

Discussion of Comments

The FAA received 369 comments in response to the original NPRM and 773 comments in response to the reopening of the comment period and the SNPRM regarding noise. The comments were evaluated to determine the nature of the commenters (individuals, flying clubs, FBO's, manufacturers) and their major concerns. The number of comments received breaks down as follows: Individuals—546 comments; Pilots—447 comments; Manufacturers—29 comments; Associations—32 comments; Businesses—50 comments; State and local government—6 comments; and Other—23 comments. The following is a discussion of comments by issue.

Pilot-Owner Maintenance

In the original NPRM, the FAA proposed to allow properly qualified pilot-owners to perform inspection and maintenance tasks prescribed and specifically identified as preventive maintenance. To be properly qualified, a pilot-owner would have to successfully complete an FAA-approved course given by an FAA-approved aviation maintenance technician school, or by the holder of the production certificate for the pilot-owner's aircraft.

This proposal generated 246 responses of which 184 favored the proposal. The commenters generally agreed that safety will actually increase since owner-pilots would be encouraged to perform maintenance as soon as the need arises rather than wait until an annual inspection and/or the availability of a certified mechanic. By being allowed to perform maintenance, the FAA anticipates that owner-pilots will also become more familiar with the maintenance needs of their aircraft and thus maintain them more diligently.

Almost all of the 62 responses that oppose the proposal were from individuals who are in maintenance-related occupations or who are members of maintenance-related associations.

The FAA is not persuaded by comments that suggest that the level of safety will decrease as a result of pilot-owner maintenance. Any pilot-owners who aspire to perform additional maintenance tasks on their primary category aircraft must be licensed as private pilots. Each must also be issued a certificate of competency upon completion of an approved inspection and maintenance course. Such courses may be offered by a certificated school, by the holder of the production certificate for the individual aircraft, or by another entity that has a course approved by the Administrator. These special inspection and maintenance courses must be specific to the make and model of the owner's aircraft. With these conditions, the FAA expects that pilot-owner maintenance on these primary category aircraft will not result in decreased safety. Accordingly, pilot-owner maintenance provisions are included in the final rule.

The availability of an optional maintenance program in this rule does not in any way exempt primary category aircraft from the maintenance provisions of part 43. The FAA does not anticipate approving any special inspection and maintenance program that allows pilot-owners to do their own annual inspections, work on engines, or accomplish any inspection or repair required by an airworthiness directive. Further, all special inspection and maintenance programs will be subject to the recordkeeping requirements that exist for other aircraft under the regulations.

If a pilot-owner operates a primary category aircraft that has had an inspection or maintenance task that is part of its special program performed improperly, certificate action may be taken against that pilot-owner.

Weight Limit

The weight limit of 2,500 pounds proposed in the original NPRM generated 55 comments. Four commenters oppose the concept, suggesting that the horsepower and occupancy restrictions in the proposal would serve to effectively keep the weight within reason. The majority of commenters suggest increasing the weight limit, and offer a variety of suggestions ranging up to 4,000 pounds.

The weight limit of 2,700 pounds proposed in the reopening of the comment period generated 165 comments of which 134 favor the increase. AOPA states that the revised weight limit more accurately reflects the type of aircraft that will be designated as primary category. The EAA states that the increased weight limit allows for a broader scope of design, including additional weight from additional safety features. A number of commenters and other individuals favor the increased limit because it would embrace a larger number of aircraft on the market and allow more aircraft to convert from the normal, utility and acrobatic categories, allowing more pilot-owners to take advantage of the opportunity to do more of their own maintenance.

A few commenters, including the Sport Aircraft Manufacturers Association, suggested adopting the Canadian microlight weight limit of 3,200 pounds. The Professional Aircraft Maintenance Association (PAMA) opposes the increase, suggesting that it would encompass complex aircraft never intended to be included in the primary category. The PAMA also suggests that the increase would allow

greater conversion from the normal, utility and acrobatic categories, thus allowing many older aircraft to avoid annual inspections. The Joint Aviation Authorities (JAA) opposes the 2,700 pound weight limit, suggesting that it would undermine attempts to develop a common code of aircraft certification regulations, resulting in primary category aircraft facing European import restrictions.

In response to the proposed 6-pound per square foot main disc loading limitation for rotorcraft, one commenter states that this is twice the average disc loading limitation of a training helicopter. A 4-pound per square foot main disc loading limitation was offered as an alternative. Another commenter states that the 6-pound per square foot limit is unsafe and unrealistic but gave no rationale for this claim. The FAA disagrees. The FAA is aware of at least one rotorcraft model that is compatible with the proposed primary category rule. It is of simple design, weighs less than 2,700 pounds and has a main disc loading of slightly over 5 pounds per square foot.

The FAA agrees that the proposed weight limit of 2,700 pounds best describes the type of aircraft that the FAA envisions as primary category. The weight of an aircraft is not necessarily indicative of its complexity. The 2,700 pound limit allows sufficient design latitude to accommodate new technology, safety features, and the conversion of a greater number of aircraft from the normal, utility and acrobatic categories.

The FAA does not agree that the 2,700 pound weight limit will undermine efforts toward the harmonization of aircraft certification regulations. As discussed below in the section on the development of certification standards, primary category was developed to provide a stimulus to small aircraft manufacturers in the United States, not to facilitate exportable products. Nor are new aircraft designed and certificated as primary category barred from export; a person wishing to export one must simply obtain the approval of the importing country. Accordingly, the final rule adopts the 2,700 pounds weight limit.

Horsepower/Stall Speed Limitations

The 200-horsepower engine limitation proposed in the original NPRM generated 28 comments. Five commenters favor the 200-horsepower limitation and 23 offer alternatives, ranging from 210–350 horsepower. Five of these alternatives suggest a weight-to-horsepower ratio as more appropriate in defining a primary category aircraft.

The EAA proposed to replace the 200-horsepower limitation with a 61-knot or less stall speed limitation. This suggestion generated 165 comments of which 150 favor the concept. Those in favor indicate that a stall speed limitation provides a superior indication of an aircraft's handling predictability and performance, whereas a horsepower limitation dictates only cruising speed. A low stall speed, they urge, would enhance safety because most accidents occur during landing and take-off.

Six commenters oppose the use of a stall speed limitation. Of these, two believe that 61 knots is too high, two suggest there should be no stall speed if the pilot can demonstrate proficiency, and two do not give any reason for their opposition.

Nine commenters offer some alternative to the proposal. Of these, seven propose stall speeds varying from 45 to 55 knots and two believe that the 61-knot stall speed limitation should accompany rather than replace the 200-horsepower limitation.

The FAA agrees that a 61-knot or less stall speed limitation is appropriate and that it will encourage the production of safe primary category aircraft. The FAA is persuaded that the 50-year track record of the 61-knot stall speed limitation in part 23 has established it as an acceptable level of single-engine airplane performance for safe operation by general aviation pilots. Accordingly, the final rule adopts the 61-knot or less stall speed limitation.

Rental and Flight Instruction

The original NPRM stated that primary category aircraft were not intended for compensation, hire, or flight instruction. Eight comments were received on this issue, suggesting that the proposal be revised to allow primary category aircraft rental and flight instruction. The notice reopening the comment period included an EAA-requested change that would allow such rental and flight instruction provided that the aircraft is maintained by an FAA-certificated mechanic or repair station.

This change in the proposal generated 174 comments, 167 favoring the concept, three opposing it, and four offering alternatives. Those in favor indicate that allowing aircraft rental and flight instruction is essential to the success of the proposal, since the possibility of aircraft rental is a primary motivation to produce primary category aircraft. Commenters stress that the largest market for new primary category aircraft will be FBO's and flight schools. Only after the aircraft have depreciated will private parties be able to afford them. Therefore, if the largest anticipated market is unable to use these aircraft, manufacturers will not produce them.

Three helicopter associations oppose the rental of primary category aircraft. They state that rental of primary category helicopters will have an adverse impact on the rental revenue of operators of existing normal and transport category helicopters. Four commenters offer alternatives that permit rental and pilot training. One recommends allowing flight training in primary category aircraft but only for the pilot-owner's immediate family. One recommends that rental be expanded to include transportation of cargo and passengers. One recommends that rental be allowed for crop dusting. One recommends that primary category be expanded to include complex single-engine designs suitable for training commercial and certified flight instructor applicants.

The FAA agrees that it is reasonable to allow the rental of primary category aircraft, provided that these aircraft are maintained by an FAA-certificated mechanic or repair station. This maintenance requirement is necessary to ensure the most consistent performance of maintenance for aircraft used by non-owner pilots. The FAA does not agree that usage should be expanded to include use for compensation or hire, such as the transport of goods or passengers. The primary category was intended to create a new class of personal and recreational use aircraft, not an additional vehicle for commercial purposes. Thus, the rule allows rental of primary category aircraft for the personal use of the pilot, but would not extend this use to that pilot's taking on paying passengers, hauling freight, or any other compensated activity.

Subject to the operating limitations of § 91.325 and § 91.409(b), primary category aircraft may be used for flight instruction. Pilot certification in these aircraft is limited to aircraft that otherwise meet the requirements of FAR § 61.45.

Primary Category-Light

The original NPRM proposed "Primary category-light" as a sub-category of aircraft. This proposal generated considerable opposition from the ultralight community, as well as some confusion. Of the 148 comments received on this issue, 106 opposed the proposed new designation.

The NPRM did not identify clearly that primary category-light was proposed as an option for ultralights of

expanded design. It would have offered optional certification for certain ultralights to become certificated and issued special airworthiness certificates as primary category aircraft, provided that they weighed no more than 1,000 pounds. Currently these expanded-design ultralights must receive either special or standard airworthiness certificates since they exceed the weight criteria to be considered an ultralight vehicle under part 103. In general, the commenters suggest that the proposed classification would separate the two-seat ultralight trainers from the rest of ultralight aircraft, forcing aspiring ultralight pilots to obtain flight training in heavier, conventional aircraft. This would cause problems, many believe, because ultralight student pilot would be unaccustomed to the handling qualities of an ultralight. Approximately 90 ultralight advocates suggest revising part 103 as an alternative to the primary category-light classification. One ultralight manufacturer makes a similar suggestion, recommending that part 103 be revised to accommodate a two-seat ultralight trainer. The commenter also notes that several foreign countries are operating mandatory ultralight programs in airworthiness, pilot and instructor ratings, and aircraft registration.

The FAA agrees that the primary category-light classification is in appropriate, and it is not included in the final rule. Comments concerning amendments to part 103 are beyond the scope of this rulemaking, since no amendments to part 103 were proposed.

Impact on Manufacturers

The FAA requested comments on the EAA/AOPA claim that a primary category aircraft would be less costly to manufacture, thereby allowing manufacturers to fill a demand for low cost aircraft. In response to the original NPRM, 11 commenters responded to this claim. Ten state that it will have a positive impact, but submitted no support for their statements. One manufacturer states that the creation of a primary category will not offer any substantial benefits to manufacturers unless savings reach 35% compared to existing certification costs. The commenter claims that anything less would offer no incentive to divert production from aircraft that qualify for standard airworthiness certificates, which offer greater marketability. However, the manufacturer submitted no support for this claim.

The reopening of the comment period generated 128 comments on the impact of the primary category on manufacturers. All but two commenters state that the proposed rule would have a positive impact. The commenters agree that the proposal will encourage manufacturing and offer incentives to employ new technology. The FAA agrees with the original petitioners that this rule will stimulate aircraft manufacturing and benefit the general aviation industry overall.

The final rule permits kit aircraft supplied by the holder of a production certificate to be assembled by another person under the supervision and quality control of the production certificate holder. Under these circumstances, the production certificate holder retains its responsibilities under FAR § 21.165; these responsibilities cannot be delegated to the person assembling the aircraft. Enforcement may be taken against the production certificate holder for any noncompliance with its approved qualify control procedures discovered by the FAA at the assembly location. Further, the reporting requirements of § 21.3 remain the responsibility of the type certificate holder.

Alternatively, if a kit aircraft supplied by the holder of a production certificate is assembled by another person who is not under the supervision and quality control of the production certificate holder, the completed aircraft is eligible only for an experimental airworthiness certificate.

Pilot-Owner Cost Reduction

The FAA requested comments on whether primary category aircraft would be less costly to own and operate as a result of the pilot-owner's ability to perform certain maintenance tasks. Forty comments were received in response to the original NPRM, and 78 in response to the reopening of the comment period. All but two indicate a belief that aircraft in the new primary category would benefit from reduced operational costs. Almost all of the commenters suggest that the reduced costs that result from the ability to perform additional maintenance would allow owner-pilots to afford additional flight time, which would benefit the industry as a whole. However, the PAMA states that any savings would be nominal and not worth the trade-off in safety that would result from increased pilot-owner maintenance, although PAMA did not submit any analysis to support its claim.

The FAA does not agree that increased pilot-owner maintenance tasks will result in reduced safety. All pilot-owners who aspire to perform additional maintenance tasks on their primary category aircraft must hold a private pilot's certificate and be issued a certificate of competency upon completion of an approved special inspection and maintenance course offered by a certificated school, by the holder of the production certificate for the specific aircraft, or by another entity that has a course approved by the Administrator. The FAA anticipates that this feature of the rule will encourage regular maintenance and provide pilot-owners an economic incentive to become more familiar with their aircraft.

Growth in Personal-Use Aircraft

The FAA requested comments on the petitioners' claim that primary category aircraft would stimulate the introduction of new, less costly, personal-use aircraft. All 99 commenters responding to the original NPRM and the reopening state that the proposal would have a positive impact on the number of personal-use aircraft, indicating that there is an untapped market for kit aircraft in completed form. Twenty-two of the commenters note that the need to replace aging training aircraft will ensure the demand, while the proposed rule offers sufficient incentive to ensure the supply.

Limited Checkouts

The reopening of the comment period included a proposal by the FAA to allow the use of primary category aircraft that are maintained by the pilot-owner to be used for limited checkouts. A limited checkout is an opportunity for a pilot to become familiar with the aircraft flight manual, receive a briefing on the aircraft characteristics from the pilot-owner, and conduct a short local flight that includes at least three takeoffs and landings. Of the 91 responses to this issue, 89 favor allowing limited checkouts. Only nine commenters offer any rationale for their support of limited checkouts in pilot-owner maintained primary category aircraft, stating that they are necessary to the eventual commercial resale of these aircraft.

The FAA agrees. Pilot-owners authorized to perform additional maintenance tasks who wish to allow a prospective buyer to examine the aircraft, or wish to receive flight instruction in their own aircraft are not required to have their aircraft maintained by an FAA-certificated mechanic or repair station. Without this allowance, the pilot-owners would be forced to use FAA-certificated mechanics or repair stations to maintain their aircraft in order to eventually offer it for sale and allow a prospective purchaser to fly it, or the pilot-owners would be forced to rent an aircraft in order to receive flight instruction. Accordingly, § 91.325 permits a person

other than the pilot-owner to operate a primary category aircraft maintained by the pilot-owner as long as the pilot-owner is not compensated for its use. This allows a pilot-owner to lend the aircraft to a pilot friend, for example, or to demonstrate the aircraft to a prospective buyer.

In addition, a pilot-owner whose certificate is not current may regain currency using a certificated flight instructor in the pilot-owner's self-maintained primary category aircraft. Flight instruction for hire in self-maintained primary category aircraft is limited by the restrictions in § 91.325, and by § 91.409(b), which prohibits paid flight instruction from being given in an aircraft provided by the instructor unless that aircraft has been inspected as described in § 91.409(b).

Development of Certification Standards

The original NPRM proposed that private industry be allowed to develop certification design standards through associations and consensus groups, and submit those standards to the FAA for approval. The original NPRM generated 36 comments on this issue, while 46 were received in response to the reopening. Approximately 75 of the commenters favor using the private sector to develop and streamline certification standards. Only 7 commenters oppose the concept. Commenters recommend that FAR part 23, Civil Aviation Regulations (CAR) part 3, and the Civil Aeronautics Manuals (CAM) 3 and 18 are viable bases from which primary category aircraft certification standards could be established. Eleven commenters suggest that reliance on the private sector would be the best way to develop standards for approving design and materials use. The Australian Civil Aviation Authority suggests part 23 Appendix B as an appropriate resource from which to develop suitable simplified control surface loadings.

Nineteen commenters suggest streamlining the current certification process rather than creating a new one. The benefits of this streamlined certification process would include a stimulation of light aircraft production, the development of new technology, and the introduction of training aircraft of new design.

One manufacturer states that part 23 certification standards are neither difficult nor costly, and suggests revising part 23 appendix A instead of allowing industry to submit new standards. The commenter states that small manufacturers will not benefit from the creation of a primary category because the lack of certification standards will inhibit the international marketability of the products.

The FAA agrees that the development of certification standards by the private sector represents the most productive and cost-effective manner of streamlining the certification process. The development of airworthiness design criteria by the private sector would be similar to the FAA's Technical Standards Order (TSO) authorization program. The FAA's TSO program has been highly successful in promoting design, production, and quality control of many articles which are critical to aircraft safety. The FAA's TSO approval process enables the public to benefit from the collective technical knowledge of the private sector. This is discussed in more detail in the following section on type certification.

The FAA does not agree that the creation of a primary category will not benefit small manufacturers. The rule is intended to provide an economic stimulus to the U.S. small aircraft industry by reducing certification and manufacturing costs. Moreover, although the rule was not designed to facilitate the development of aviation products for export, primary category aircraft may be eligible for export certificates of airworthiness issued under part 21 subpart L.

Comments received on this issue reflect a misunderstanding of the requirements for the export and import of aeronautical products. Under the provisions of the Chicago Convention, a signatory country may permit aircraft from other countries to operate in its airspace. To do so, an aircraft must have an airworthiness certificate issued by the country of registration, based on a detailed and comprehensive airworthiness code as described in ICAO Annex 8 to the Chicago Convention. An aircraft that does not meet Annex 8 Standards may nonetheless be permitted to fly in an ICAO country, but only with the prior permission of the cognizant airworthiness authority. Thus, owners of U.S.-registered primary category aircraft seeking to operate outside of the United States would require prior permission of the appropriate airworthiness authority.

Annex 8 represents an operating limitation entirely separate from the ability to export or import a product. Under § 21.329, export certificates of airworthiness may be issued only for aircraft eligible for a standard airworthiness or restricted airworthiness certificate unless the importing country indicates that an aircraft with a special airworthiness certificate is acceptable. Thus, an applicant can obtain an export certificate of airworthiness for a primary category aircraft if it presents the evidence required under § 21.327(e)(4) that the importing country's airworthiness authority has agreed. The export certificate of airworthiness would include a notation that the product does not meet Annex 8 Standards.

Type Certification

Excluding the weight and horsepower/stall speed issues discussed previously, 39 comments were received concerning development of other primary category criteria. One manufacturer suggests that powerplant certification be addressed in the type certification process, as suggested in the original NPRM.

The JAA suggests that occupancy be limited to two people. The PAMA suggests that the definition of primary category aircraft be revised to exclude complex systems such as constant speed propellers, retractable landing gear, and hydraulic systems.

The FAA disagrees with the limitations suggested by some commenters because those limits would exclude many present simple aircraft types that have excellent safety records from converting to primary category. These lower limits would also preclude a number of kit aircraft currently being manufactured and certificated in the experimental category from obtaining a primary category type certificate, production certificate, and a special airworthiness certificate. The FAA finds no safety-related reason to restrict primary category eligibility to less than that contained in the revised proposal. The FAA suggests that the conversion of aircraft originally type certificated under FAR part 23 or CAR 3 to the primary category could be accomplished using the STC process. The FAA agrees with this method as an acceptable means of conversion. When making an STC application for conversion, the applicant must submit the special inspection and maintenance program which specifically identifies the inspection and preventive maintenance tasks that may be performed by the pilot-owner as provided in new § 21.184(c).

The simplified type certification process envisioned for primary category aircraft is expected to draw heavily from airworthiness standards already in the regulations, existing delegation procedures, and statements of compliance made by applicants for type certification. Applicable airworthiness standards may be approved using a procedure similar to the FAA's Technical Standards Order

authorization program, which is used currently to approve the design and production quality control of aviation products that are critical to safety and that are installed on normal category aircraft.

To complete its type certification program, an applicant must submit a compliance checklist addressing all applicable airworthiness standards. This checklist must contain a summary of the methods used to determine compliance with the airworthiness standards previously approved, and must reference all reports or records of engineering analysis and test data used to establish compliances. This checklist must be retained by the applicant as a permanent part of its certification file. These simplified procedures will result in less FAA involvement as compared to current aircraft certification procedures. While the ultimate responsibility to make findings regarding the issuance of type certificates remains with the FAA, the agency anticipates remaining selectively involved in the administration of individual type certification applications.

Primary Category Aircraft Operating Limitations

The original NPRM proposed three basic operating limitations: (1) Primary category aircraft could not be used for carrying persons or property for hire or compensation, (2) primary category-light aircraft could not be used in any controlled area, and (3) primary category-light aircraft could only be operated using visual flight rules (VFR). The notice reopening the comment period included an FAA-requested change that would allow the use of primary category aircraft for training and for rental if the aircraft is maintained by an FAA-certificated mechanic or repair station. Thirty-five comments were submitted in response to the original NPRM, while the reopening generated four comments on this issue. Four commenters suggest that the proposed prohibition against carrying persons or property for compensation or hire is unreasonable for those primary category aircraft certificated to a level of safety equivalent to aircraft having standard airworthiness certificates.

The FAA disagrees. As discussed previously, primary category is an effort to develop a simplified certification process to stimulate the production and use of simpler personal use and recreational aircraft. The process was never intended to create another form of commercial aircraft. The FAA considers the current choice of aircraft certification categories and standards sufficient for the safe development of commercial aircraft. Since no commercial use was ever intended or proposed, discussions of specific uses for compensation or hire are beyond the scope of this rulemaking.

Also as discussed previously, the FAA agrees that primary category aircraft may be used for rental or flight instruction. Primary category aircraft rental is permitted under § 91.325 if the aircraft is maintained by an FAA-certificated mechanic, and for flight instruction pursuant to the limitations of §§ 91.325 and 91.409(b). This availability for rental and flight instruction is expected to create a demand for privately owned aircraft that is sufficient to stimulate their production.

Inspections

The original NPRM included a proposal that (1) would allow properly qualified pilot-owners to perform specific inspection tasks that are specifically identified in an FAA-approved special inspection and maintenance program developed for the particular aircraft, and (2) would allow a 24-month inspection in place of the standard annual inspection. A total of 27 comments were received concerning these proposals. Thirteen comments favor the proposal but offer no rationale. Eight comments suggest various alternative periods for the periodic inspection, but offer no justifications for the suggested alternatives. Six comments oppose the proposal, stating that safety will decrease by allowing pilot-owners to perform inspection functions and by extending the periodic inspection period. The FAA disagrees with the statements that pilot-owner inspection and maintenance would reduce safety. Pilot-owners will be required to satisfactorily complete an FAA-approved special inspection and preventive maintenance training program, and to obtain a certificate of competency for the particular aircraft involved, before being allowed to perform the specified inspection and maintenance tasks.

The FAA agrees that an increase in the required inspection interval could be detrimental to overall safety. There is significant, successful history supporting the standard 12-month inspection period required for all other certificated aircraft, and little viable rationale was submitted in support of extending it for primary category aircraft. Accordingly, the 12-month annual inspection interval required by FAR § 91.409(a) (or the 100-hour interval required by § 91.409(b)) is applicable to primary category aircraft.

Noise Standards

Five commenters object to the application of part 36 noise standards to primary category aircraft, suggesting that compliance with appendix H, in particular, will jeopardize the production of primary category helicopters. As stated previously, the applicability of part 36 Appendix H noise standards is mandated for all aircraft for which a type certificate is sought on or after March 6, 1986. As discussed in the SNPRM, the FAA is required to determine whether noise abatement is achievable by prescribing standards. The Noise Control Act of 1972 amended the Federal Aviation Act, leaving the FAA no discretion in this matter when issuing a type certificate.

In general, no noise certification under part 36 is required for a small airplane that was type certificated before the requirements of part 36 became effective. However, these airplanes must demonstrate compliance with part 36 if there is an acoustical change made to the airplane, or if there is a change in the type or airworthiness certification, such as a change from a normal to a special type certificate, or from a standard to a restricted airworthiness certificate.

The final rule makes an exception for certain older airplanes that were type certificated before part 36 existed, that are to be converted to primary category, and that have not undergone an acoustical change. Section 36.501(a)(3) states that an airplane that (1) was type certificated in the normal, utility or acrobatic category, (2) has a standard airworthiness certificate, (3) has not undergone an acoustical change from its type design, (4) has not previously been certificated under appendix F or G of part 36, and (5) that will be converted to primary category need not undergo noise certification under part 36.

Without this exception, an owner of an older airplane that seeks to gain the other benefits of primary category certification would have to show compliance with part 36 through a noise certification test because of the simple paperwork conversion to a primary category type certificate. Such tests may be beyond the financial resources of many of the pilot-owners that were meant to benefit by the creation of the primary category and its optional maintenance program features.

This exception will be narrowly construed to include only those older airplanes for which noise certification was not required at the time the original type certificate was issued. Any airplane that has undergone an

alteration from its original type design that would cause an acoustical change is not covered by this exception, and must demonstrate compliance with part 36 appendix G before a primary category type certificate will be issued. Only airplanes with the noted type and airworthiness certifications are eligible for this exception; other airplanes that change their type certification to primary category must demonstrate compliance with part 36 appendix G.

Section 36.805(d)(2) makes this same exception for helicopters that have type or airworthiness certificates that are not subject to compliance with part 36.

Pilot Certification

The proposed rule did not allow pilot schools to use primary category aircraft for pilot certification. Two manufacturers and one pilot objected to this prohibition, indicating that pilot certification should be allowed.

Upon further review, the FAA has concluded that primary category aircraft are appropriate for pilot certification. The FAA anticipates that many normal category aircraft that could have been used for pilot certification will be converted to primary category. The FAA has found no reason why these aircraft, or newly type certificated primary category aircraft, should not be used for pilot certification, provided that the aircraft meet the requirements of FAR § 61.45. Conversely, any primary category aircraft, whether converted or newly type certificated, that does not meet the requirements of § 61.45 may not be used for pilot certification. However, experience gained in these aircraft may be creditable toward other pilot certification requirements.

Falsification of Documents

The NPRM proposed a new § 21.2 addressing the falsification of certificates, approvals, and delegations submitted under part 21. Section 21.2 is intended to deter fraudulent or intentionally false information from being submitted. The regulation was modeled after similar provisions found in FAR parts 43, 61, 63, 65, and 143 for certificates, authorizations, and ratings issued under those parts.

No comments were received regarding this proposal. Accordingly, § 21.2 is adopted as proposed.

Other Airworthiness Issues

Section 21.184(c) provides for an aircraft with a standard airworthiness certificate to obtain a primary category airworthiness certificate. The FAA cautions, however, that these same aircraft cannot reconvert to a standard airworthiness certificate without a showing that they meet all of the criteria for a standard airworthiness certificate as prescribed by the regulations. Such showings have historically been difficult when an aircraft has remained in a different classification or category for a lengthy period. To facilitate the return to a standard airworthiness certificate, the aircraft records should indicate that the aircraft has been maintained according to the manufacturer's instructions, and that any modifications to the aircraft were either removed or are approved by the FAA, in addition to indicating that all other applicable requirements have been met.

Section 21.184(b) creates a new classification of special airworthiness certificate designated special airworthiness certificate-primary category. Section 21.184(a) allows an applicant to obtain this primary category special airworthiness certificate when the provisions of FAR part 21 are met for a specific primary category aircraft.

Maintenance Training

The reopening of the comment period on the proposed rule included an amendment to FAR part 141, Pilot Schools, to include provisions for the instruction of pilot-owners in the maintenance of their primary category airplanes. After further consideration, the FAA has determined that this proposal is inappropriate. The FAA does not consider pilot schools to be the proper forum for instruction in maintenance tasks. The maintenance tasks for primary category aircraft must be tailored for the specific make and model aircraft. In most cases, this would present a curriculum development burden on pilot schools. The FAA considers FAR part 147, Aviation Maintenance Technician Schools, to be the proper vehicle for such regulations. The amendments to part 147 containing these provisions are adopted as proposed. In addition, the final rule allows the holder of the production certificate for a primary category aircraft to give instruction in maintenance and to issue certificates of competency in maintenance for that aircraft. Such maintenance programs and instruction must be approved as part of the aircraft's type certificate. The final rule also allows other entities to provide maintenance instruction to pilot-owners provided that the course is approved by the Administrator.

Aircraft Identification

To remain consistent with current regulations and policy concerning the identification of an aircraft with a data plate, the FAA found that kit-built aircraft had to be included in FAR § 21.182(b). No comments were received on this proposal. Accordingly, the final rule incorporates this addition.

Regulatory Evaluation Summary

This section summarizes the full regulatory evaluation prepared by the FAA that provides information on the economic consequences of this regulatory action. This summary and the full evaluation quantify, to the extent practicable, estimates of the costs and benefits to the private sector, consumers, and Federal, State, and local governments.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or to modify existing regulations only if potential benefits to society outweigh potential costs for each regulatory change. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly-defined exigencies. A "major" rule is one that is likely to have an annual impact on the economy of $100 million or more, to have a major increase in consumer costs, or to have a significant adverse effect on competition.

The FAA has determined that this rule is not major as defined in the Executive Order. Therefore, a full regulatory analysis that includes the identification and evaluation of cost-reducing alternatives to the rule has not been prepared. Instead, the agency has prepared a more concise regulatory evaluation that analyzes only this rule without identifying alternatives. In addition to a summary of the regulatory evaluation, this section also contains a regulatory flexibility determination required by the 1980 Regulatory Flexibility Act (5 U.S.C. 601 *et seq.)* and an international trade impact assessment. The complete regulatory evaluation is available for inspection in the docket.

Cost-Benefit Analysis

Because of several confounding factors, the FAA is unable to plausibly estimate the number of aircraft that will be certificated under the provisions of this rule and the associated cost differentials. These factors include alternative certification options, manufacturers' legal liability, owner's insurance, resale value of primary category aircraft, and the cost of pilot-owner maintenance training. Nevertheless, the rule can be deemed to be cost-beneficial by virtue of its optional nature and retention of current

safety levels. Manufacturers and pilot-owners will elect primary category certification only if it is in their economic interests to do so.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) requires Federal agencies to review rules that may have a "significant economic impact on a substantial number of small entities." The entities that will be affected by this rule are aircraft manufacturers. Based on FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, a small aircraft manufacturer is one with fewer than 75 employees; a substantial number is one that is not less than eleven and that is more than one-third of the affected small entities; and the significant economic threshold for aircraft manufacturers is an annualized cost of $18,200 in 1992 dollars.

Based on the identification and analysis of 17 small manufacturers of conventional categories of aircraft and 110 kit manufacturers of amateur-built airplanes and helicopters, the FAA concludes that this rule could have a significant positive economic impact on a substantial number of small entities. Because of the optional nature of the rule, however, an analysis of alternatives as would otherwise be required by the RFA is unwarranted.

International Trade Impact Assessment

This rule will have little impact on international trade. Both foreign and domestic manufacturers applying for certification in the United States will have the option of using this final rule or an alternative means of certification. Other aviation authorities may not accept primary category aircraft; however, kit manufacturers may continue to sell their unassembled kits abroad.

Federalism Implications

The regulations herein will not have substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this final rule is not major under Executive Order 12291. The FAA certifies that this regulation could have a significant positive economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects

14 CFR Part 21

Aviation safety, Aircraft, Safety, Type certification.

14 CFR Part 36

Aircraft noise.

14 CFR Part 43

Aircraft, Aviation safety, Safety.

14 CFR Part 91

Aircraft, Aviation safety, Safety.

14 CFR Part 147

Aircraft, Aviation safety, Education, Educational facilities, Schools.

The Amendments

The Federal Aviation Administration amends 14 CFR parts 21, 36, 43, 91, and 147 of the Federal Aviation Regulations as follows:

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

1. The authority citation for part 21 continues to read as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 7572; E.O. 11514; 49 U.S.C. 106(g).

2. A new § 21.2 is added to read as follows:

§ 21.2 Falsification of applications, reports, or records.

(a) No person shall make or cause to be made—

(1) Any fraudulent or intentionally false statement on any application for a certificate or approval under this part;

(2) Any fraudulent or intentionally false entry in any record or report that is required to be kept, made, or used to show compliance with any requirement for the issuance or the exercise of the privileges of any certificate or approval issued under this part;

(3) Any reproduction for a fraudulent purpose of any certificate or approval issued under this part.

(4) Any alteration of any certificate or approval issued under this part.

(b) The commission by any person of an act prohibited under paragraph (a) of this section is a basis for suspending or revoking any certificate or approval issued under this part and held by that person.

3. Section 21.17 is amended by adding a new paragraph (f) to read as follows:

§ 21.17 Designation of applicable regulations.

* * * * *

(f) For primary category aircraft, the requirements are:

(1) The applicable airworthiness requirements contained in parts 23, 27, 31, 33, and 35 of this subchapter, or such other airworthiness criteria as the Administrator may find appropriate and applicable to the specific design and intended use and provide a level of safety acceptable to the Administrator.

(2) The noise standards of part 36 applicable to primary category aircraft.

4. A new § 21.24 is added to read as follows:

§ 21.24 Issuance of type certificate: primary category aircraft.

(a) The applicant is entitled to a type certificate for an aircraft in the primary category if—

(1) The aircraft—

(i) Is unpowered; is an airplane powered by a single, naturally aspirated engine with a 61-knot or less V_{so} stall speed as defined in § 23.49; or is a rotorcraft with a 6-pound per square foot main rotor disc loading limitation, under sea level standard day conditions;

(ii) Weighs not more than 2,700 pounds;

(iii) Has a maximum seating capacity of not more than four persons, including the pilot; and

(iv) Has an unpressurized cabin.

(2) The applicant has submitted—

(i) Except as provided by paragraph (c) of this section, a statement, in a form and manner acceptable to the Administrator, certifying that: the applicant has completed the engineering analysis necessary to demonstrate compliance with the applicable airworthiness requirements; the applicant has conducted appropriate flight, structural, propulsion, and systems tests necessary to show that the aircraft, its components, and its equipment are reliable and function properly; the type design complies with the airworthiness standards and noise requirements established for the aircraft under § 21.17(f); and no feature or characteristic makes it unsafe for its intended use;

(ii) The flight manual required by § 21.5(b), including any information required to be furnished by the applicable airworthiness standards;

(iii) Instructions for continued airworthiness in accordance with § 21.50(b); and

(iv) A report that: summarizes how compliance with each provision of the type certification basis was determined; lists the specific documents in which the type certification data information is provided; lists all necessary drawings and documents used to define the type design; and lists all the engineering reports on tests and computations that the applicant must retain and make available under § 21.49 to substantiate compliance with the applicable airworthiness standards.

(3) The Administrator finds that—

(i) The aircraft complies with those applicable airworthiness requirements approved under § 21.17(f) of this part; and

(ii) The aircraft has no feature or characteristic that makes it unsafe for its intended use.

(b) An applicant may include a special inspection and preventive maintenance program as part of the aircraft's type design or supplemental type design.

(c) For aircraft manufactured outside of the United States in a country with which the United States has a bilateral airworthiness agreement for the acceptance of these aircraft, and from which the aircraft is to be imported into the United States—

(1) The statement required by paragraph (a)(2)(i) of this section must be made by the civil airworthiness authority of the exporting country; and

(2) The required manuals, placards, listings, instrument markings, and documents required by paragraphs (a) and (b) of this section must be submitted in English.

§ 21.31 [Amended]

5. Section 21.31(c) is amended by adding after the word "chapter" the phrase ", or as otherwise required by the Administrator."

6. Section 21.31 is further amended by redesignating paragraph (d) as (e) and adding a new paragraph (d) to read as follows:

§ 21.31 Type design.

* * * * *

(d) For primary category aircraft, if desired, a special inspection and preventive maintenance program designed to be accomplished by an appropriately rated and trained pilot-owner.

* * * * *

§ 21.35 Flight tests.

7. Section 21.35(a) introductory text is amended removing the reference "§ 21.25" and adding the reference "§ 21.24" in its place.

§ 21.93 [Amended]

8. Section 21.93(b)(3) introductory text is amended by adding the word "primary," before the world "normal,".

9. Section 21.163 is revised to read as follows:

§ 21.163 Privileges.

(a) The holder of a production certificate may—

(1) Obtain an aircraft airworthiness certificate without further showing, except that the Administrator may inspect the aircraft for conformity with the type design; or

(2) In the case of other products, obtain approval for installation on type certificated aircraft.

(b) Notwithstanding the provisions of § 147.3 of this chapter, the holder of a production certificate for a primary category aircraft, or for a normal, utility, or acrobatic category aircraft of a type design that is eligible for a special airworthiness certificate in the primary category under § 21.184(c), may—

(1) Conduct training for persons in the performance of a special inspection and preventive maintenance program approved as a part of the aircraft's type design under § 21.24(b), provided the training is given by a person holding a mechanic certificate with appropriate airframe and powerplant ratings issued under part 65 of this chapter; and

(2) Issue a certificate of competency to persons successfully completing the approved training program, provided the certificate specifies the aircraft make and model to which the certificate applies.

§ 21.165 [Amended]

10. Section 21.165(b) is amended by adding the phrase ", including primary category aircraft assembled under a production certificate by another person from a kit provided by the holder of the production certificate," after the word "product".

§ 21.175 [Amended]

11. Section 21.175(b) is amended by adding the word "primary," after the word "are".

§ 21.181 [Amended]

12. Section 21.181(a)(1) is amended by adding the words "; special airworthiness certificates-primary category," after the words "Standard airworthiness certificates".

13. Section 21.182 is amended by revising paragraph (b)(2) as follows:

§ 21.182 Aircraft identification.

* * * * *

(b) * * *

(2) An experimental certificate for an aircraft that is not amateur-built or kit-built.

* * * * *

14. A new § 21.184 is added to read as follows:

§ 21.184 Issue of special airworthiness certificates for primary category aircraft.

(a) *New primary category aircraft manufactured under a production certificate.* An applicant for an original, special airworthiness certificate-primary category for a new aircraft that meets the criteria of § 21.24(a)(1), manufactured under a production certificate, including aircraft assembled by another person from a kit provided by the holder of the production certificate and under the supervision and quality control of that holder, is entitled to a special airworthiness certificate without further showing, except that the Administrator may inspect the aircraft to determine conformity to the type design and condition for safe operation.

(b) *Imported aircraft.* An applicant for a special airworthiness certificate-primary category for an imported aircraft type certificated under § 21.29 is entitled to a special airworthiness certificate if the civil airworthiness authority of the country in which the aircraft was manufactured certifies, and the Administrator finds after inspection, that the aircraft conforms to an approved type design that meets the criteria of § 21.24(a)(1), and is in a condition for safe operation.

(c) *Aircraft having a current standard airworthiness certificate.* An applicant for a special airworthiness certificate.primary category, for an aircraft having a current standard airworthiness certificate that meets the criteria of § 21.24(a)(1), may obtain the primary category certificate in exchange for its standard airworthiness certificate through the supplemental type certification process. For the purposes of this paragraph, a current standard airworthiness certificate means that the aircraft conforms to its approved normal, utility, or acrobatic type design, complies with all applicable airworthiness directives, has been inspected and found airworthy within the last 12 calendar months in accordance with § 91.409(a)(1) of this chapter, and is found to be in a condition for safe operation by the Administrator.

(d) *Other aircraft.* An applicant for a special airworthiness certificate-primary category for an aircraft that meets the criteria of § 21.24(a)(1), and is not

covered by paragraph (a), (b), or (c) of this section, is entitled to a special airworthiness certificate if—

(1) The applicant presents evidence to the Administrator that the aircraft conforms to an approved primary, normal, utility, or acrobatic type design, including compliance with all applicable airworthiness directives;

(2) The aircraft has been inspected and found airworthy within the past 12 calendar months in accordance with § 91.409(a)(1) of this chapter and;

(3) The aircraft is found by the Administrator to conform to an approved type design and to be in a condition for safe operation.

(e) *Multiple-category airworthiness certificates* in the primary category and any other category will not be issued; a primary category aircraft may hold only one airworthiness certificate.

15. Section 21.187 is amended by revising paragraph (a) introductory text to read as follows:

§ 21.187 Issue of multiple airworthiness certification.

(a) An applicant for an airworthiness certificate in the restricted category, and in one or more other categories except primary category, is entitled to the certificate, if—

* * * * *

16. Section 21.191 is amended by adding a new paragraph (h) to read as follows:

§ 21.191 Experimental certificates.

* * * * *

(h) *Operating kit-built aircraft.* Operating a primary category aircraft that meets the criteria of § 21.24(a)(1) that was assembled by a person from a kit manufactured by the holder of a production certificate for that kit, without the supervision and quality control of the production certificate holder under § 21.184(a).

PART 36—NOISE STANDARDS; AIRCRAFT TYPE AND AIRWORTHINESS CERTIFICATION

17. The authority citation for part 36 continues to read as follows:

Authority: 49 U.S.C. 1344, 1348, 1354(a) 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430, 1431(b) 1651(b)(2), 2121 through 2125; 42 U.S.C. 4321 *et seq.*; Sec. 124 of Pub. L. 96–473, E.O. 11514; 49 U.S.C. 106(g).

§ 36.1 [Amended]

18. The introductory text of § 36.1(h) is amended by adding the word "primary," before the word "normal,".

§ 36.9 [Amended]

19. The introductory text of § 36.9 is amended by adding the word "primary," before the word "normal,".

§ 36.11 [Amended]

20. The introductory text of § 36.11 is amended by adding "primary," before the word "normal,".

21. Section 36.501 is amended by adding a new paragraph (a)(3) to read as follows:

§ 36.501 Noise limits.

(a) * * *

(3) Airplanes in the primary category:

(i) Except as provided in paragraph (a)(3)(ii) of this section, for an airplane for which application for a type certificate in the primary category is made, and that was not previously certificated under appendix F of this part, compliance with appendix G of this part must be shown.

(ii) For an airplane in the normal, utility or acrobatic category that (A) has a type certificate issued under this chapter, (B) has a standard airworthiness certificate issued under this chapter, (C) has not undergone an acoustical change from its type design, (D) has not previously been certificated under appendix F or G of this part, and (E) for which application for conversion to the primary category is made, no further showing of compliance with this part is required.

* * * * *

§ 36.801 [Amended]

22. Section 36.801 is amended by adding the word "primary," before the word "normal,".

§ 36.805 [Amended]

23. Section 36.805(b) is amended by removing the phrase "paragraph (c)," and adding the phrase "paragraph (c) or (d)(2) of this section," in its place.

24. Section 36.805 is further amended by adding a new paragraph (d) to read as follows:

§ 36.805 Noise limits.

* * * * *

(d) Helicopters in the primary category:

(1) Except as provided in paragraph (d)(2) of this section, for a helicopter for which application for a type certificate in the primary category is made, and that was not previously certificated under appendix H of this part, compliance with appendix H of this part must be shown.

(2) For a helicopter that (i) has a normal or transport type certificate issued under this chapter, (ii) has a standard airworthiness certificate issued under this chapter, (iii) has not undergone an acoustical change from its type design, (iv) has not previously been certificated under appendix H of this part, and (v) for which application for conversion to the primary category is made, no further showing of compliance with this part is required.

PART 43—MAINTENANCE, PREVENTIVE MAINTENANCE, REBUILDING, AND ALTERATION

25. The authority citation for part 43 continues to read as follows:

Authority: 49 U.S.C. App. 1354, 1421 through 1430; 49 U.S.C. 106(g).

26. Appendix A to part 43 is amended by adding a new paragraph (c)(30) to read as follows:

Appendix A—Major Alterations, Major Repairs, and Preventive Maintenance

* * * * *

(c) * * *

(30) The inspection and maintenance tasks prescribed and specifically identified as preventive maintenance in a primary category aircraft type certificate or supplemental type certificate holder's approved special inspection and preventive maintenance program when accomplished on a primary category aircraft provided:

(i) They are performed by the holder of at least a private pilot certificate issued under part 61 who is the registered owner (including co-owners) of the affected aircraft and who holds a certificate of competency for the affected aircraft (1) issued by a school approved under § 147.21(f) of this chapter; (2) issued by the holder of the production certificate for that primary category aircraft that has a special training program approved under § 21.24 of this subchapter; or (3) issued by another entity that has a course approved by the Administrator; and

(ii) The inspections and maintenance tasks are performed in accordance with instructions contained by the special inspection and preventive maintenance program approved as part of the aircraft's type design or supplemental type design.

PART 91—GENERAL OPERATING AND FLIGHT RULES

27. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 *et seq.*; E.O. 11514; 49 U.S.C. 106(g).

28. A new § 91.325 is added to read as follows:

§ 91.325 Primary Category Aircraft: Operating limitations.

(a) No person may operate a primary category aircraft carrying persons or property for compensation or hire.

(b) No person may operate a primary category aircraft that is maintained by the pilot-owner under an approved special inspection and maintenance program except—

(1) The pilot-owner; or

(2) A designee of the pilot-owner, provided that the pilot-owner does not receive compensation for the use of the aircraft.

PART 147—AVIATION MAINTENANCE TECHNICIAN SCHOOLS

29. The authority citation for part 147 continues to read as follows:

Authority: Section 313(a), 314, 601 and 607, 72 Stat. 752 49 U.S.C. 1354(a), 1355, 1421, and 1427.

30. Section 147.21 is amended by adding a new paragraph (e) to read as follows:

§ 147.21 General curriculum requirements.

* * * * *

(e) Notwithstanding the provisions of paragraphs (a) through (d) of this section and § 147.11, the holder of a certificate issued under subpart B of this part may apply for and receive approval of special courses in the performance of special inspection and preventive maintenance programs for a primary category aircraft type certificated under § 21.24(b) of this chapter. The school may also issue certificates of competency to persons successfully completing such courses provided that all other requirements of this part are met and the certificate of competency specifies the aircraft make and model to which the certificate applies.

Issued in Washington, DC on September 1, 1992.

Thomas C. Richards,

Administrator.

[FR Doc. 92-21541 Filed 9-8-92; 8:45 am]

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federal register

Wednesday
September 9, 1992

Part VII

The President

Proclamation 6470—National Consumers Week, 1992

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Title 3—

The President

Proclamation 6470 of September 4, 1992

National Consumers Week, 1992

By the President of the United States of America

A Proclamation

American consumers enjoy access to a marketplace of goods and services that is unparalleled in terms of variety and quality. This thriving marketplace has been made possible by our Nation's free enterprise system, which provides opportunities and incentives for businesses to improve productivity and performance while generating the competition and accountability that lead to greater options for consumers. During National Consumers Week, we recognize that the decisions that consumers make help to encourage innovation and technological progress, thereby spurring our Nation's economy.

The theme of this year's observance, "Operation Wise Buy," underscores the fact that educated, informed, and responsible consumers have an important role to play in ensuring the success of our free enterprise system. Education, of course, begins at home: where we choose safe, healthy foods and products, where we teach our children the value of saving and investing for the future, and where we help them develop the knowledge and skills that are necessary to perform basic tasks such as reading labels and following written instructions, comparing costs and balancing a checkbook, and protecting themselves against fraud. By instruction and example, we can help our children to become wise, responsible consumers.

Recognizing the rights and interests of consumers as well as the impact that their choices have on the marketplace, the United States has been working to empower consumers of all social and economic backgrounds through education. By supporting consumer education and basic economic instruction in schools and other institutions, and by encouraging the dissemination of consumer-related news and information through government agencies, civic organizations, business, and the media, we are giving consumers the tools they need to navigate successfully through the increasingly complex global marketplace.

Here in the United States, we have traditionally relied on consumers and private industry to balance each other's needs and interests in the marketplace, with government intervening only when it is required to ensure fairness and the safety of goods and services. As history shows, the strongest economies are those marked not by excessive government regulation, but by a philosophy of government, businesses, and consumers working together to build a brighter future for all.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week beginning October 25, 1992, as National Consumers Week. I encourage all Americans—particularly business owners, educators, public officials, consumer advocates and members of the media—to observe this week with appropriate programs and activities that emphasize the role that consumers play in keeping our markets open, competitive, and fair. I also urge them to highlight the importance of education in helping citizens to become responsible consumers.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of September, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and seventeenth.

George Bush

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H.R. 2607/P.L. 102-365

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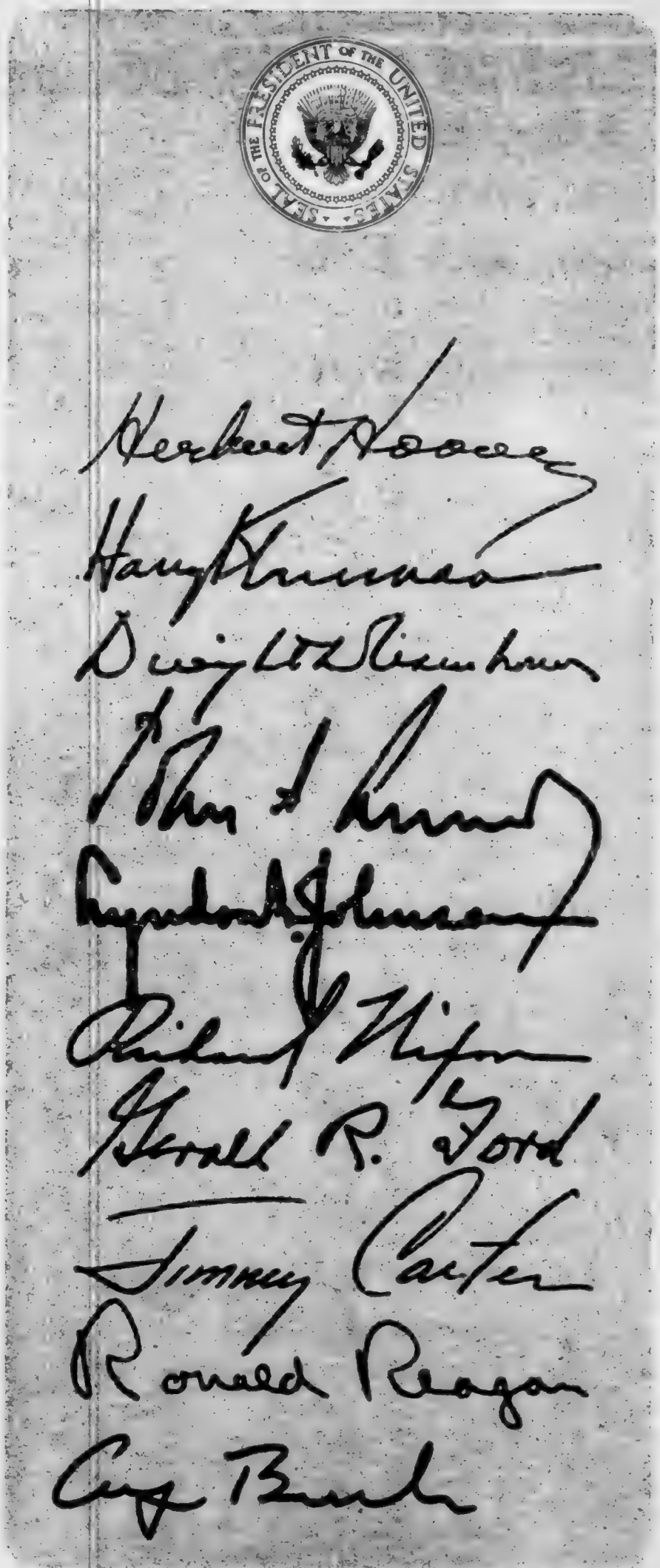

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Briefing on How To Use the Federal Register
For information on a briefing in Atlanta, GA, see announcement on the inside cover of this issue.

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Rules and Regulations

Federal Register
Vol. 57, No. 176
Thursday, September 10, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 11 and 25

RIN 3150-AE32

Access Authorization Fee Schedule for Licensee Personnel

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to revise the fee schedule for background investigations of licensee personnel who require access to National Security Information and/or Restricted Data and access to or control over Special Nuclear Material. These amendments comply with current regulations that provide that NRC will publish fee adjustments concurrent with notifications of any changes in the rate charged the NRC by the Office of Personnel Management (OPM) for conducting investigations. This rule also inserts full identification (NRC Form number and name) of several forms used in the NRC personnel security process.

EFFECTIVE DATE: October 13, 1992.

FOR FURTHER INFORMATION CONTACT: Duane G. Kidd, Assistant to the Director, Division of Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-4127.

SUPPLEMENTARY INFORMATION: The OPM conducts access authorization background investigations for the NRC and sets the rate charged for these investigations. Effective October 1, 1992, OPM will increase the rate it charges NRC for conducting access authorization background investigations. Because the fees that NRC charges its licensees for material access authorizations and personnel security clearances are determined by the rates charged by OPM for conducting the background investigations, the fee schedules in NRC regulations must be amended to reflect the OPM rate increase. OPM is increasing the rate it charges for background investigations by approximately 15 percent. NRC is passing this additional cost to licensees. These changes comply with current regulations that provide that NRC will publish fee adjustments concurrent with notification of any changes in the rate charged the NRC by OPM for conducting the investigations. This rule also inserts full identification (NRC Form number and name) of several forms used in the NRC personnel security process into §§ 25.21(b) and 25.27. The previous text contained only the name or the form number, but not both.

Because these amendments deal solely with agency practice and procedure, the notice and comment provisions of the Administrative Procedure Act do not apply pursuant to 5 U.S.C. 553(b)(A).

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et. seq.). Existing requirements were approved by the Office of Management and Budget, approval numbers 3150-0046 and 3150-0062.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this final regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Duane G. Kidd, Division of Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 492-4127.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, applies to this rulemaking initiative because it falls within the criteria of 10 CFR 50.109(a)(1), but that a backfit analysis is not required because this rulemaking qualifies for exemption under 10 CFR 50.109(a)(4)(iii) that reads "That the regulatory action involves * * * redefining what level of protection to the * * * common defense and security should be regarded as adequate."

List of Subjects

10 CFR Part 11

Hazardous materials—transportation, Investigations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Special nuclear material.

10 CFR Part 25

Classified information, Criminal penalty, Investigations, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 11 and 25.

PART 11—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO OR CONTROL OVER SPECIAL NUCLEAR MATERIAL

1. The authority citation for part 11 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 11.15(e) also issued under sec. 501, 85 Stat. 290 (31 U.S.C. 483a).

2. In § 11.15 paragraph (e)(1) is revised to read as follows:

§ 11.15 Application for special nuclear material access authorization.

* * * * *

(e)(1) Each application for special nuclear material access authorization, renewal, or change in level must be accompanied by the licensee's remittance, payable to the U.S. Nuclear

Regulatory Commission, according to the following schedule:

i. NRC–U requiring full field investigation	$3,000
ii. NRC–U requiring full field investigation (expedited processing)	3,400
iii. NRC–U based on certification of comparable full field background investigation	[1] 0
iv. NRC–U or R renewal	[1] 52
v. NRC–R	[1] 52
vi. NRC–R based on certification of comparable investigation	[2] 0

* * * * *

[1] If the NRC determines, based on its review of available data, that a full field investigation is necessary, a fee of $3,000 will be assessed prior to the conduct of the investigation.

[2] If the NRC determines, based on its review of available data, that a National Agency Check and Credit Investigation is necessary, a fee of $52.00 will be assessed prior to the conduct of the investigation; however, if a full field investigation is deemed necessary by the NRC, based on its review of available data, a fee of $3,000 will be assessed prior to the conduct of the investigation.

PART 25—ACCESS AUTHORIZATION FOR LICENSEE PERSONNEL

3. The authority citation for part 25 continues to read as follows:

Authority: Secs. 145, 161, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242 as amended (42 U.S.C. 5841); E.O. 10865, as amended, 3 CFR 1959–1963 COMP., p. 398 (50 U.S.C. 401, note); E.O. 12356, 47 FR 14874, April 6, 1982.

Appendix A also issued under 96 Stat. 1051 (31 U.S.C. 9701).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 25.13, 25.17(a), 25.33 (b) and (c) are issued under sec. 161i, 68 Stat. 949, as amended, (42 U.S.C. 2201(i)); and §§ 25.13 and 25.33(b) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

4. In § 25.21 paragraph (b) is revised to read as follows:

§ 25.21 Determination of initial and continued eligibility for access authorization.

* * * * *

(b) The NRC Division of Security must be promptly notified of developments that bear on continued eligibility for access authorization throughout the period for which the authorization is active (e.g., persons who marry subsequent to the completion of a personnel security packet must report this change by submitting a completed NRC Form 354, "Data Report on Spouse").

5. Section 25.27 is revised to read as follows:

§ 25.27 Reopening of cases in which requests for access authorizations are cancelled.

(a) In conjunction with a new request for access authorization (NRC Form 237) for individuals whose cases were previously cancelled, new fingerprint cards (FD–257) in duplicate and a new Security Acknowledgment (NRC Form 176) must be furnished to the NRC Division of Security along with the request.

(b) Additionally, if 90 days or more have elapsed since the date of the last Questionnaire for Sensitive Positions (SF–86), the individual must complete a personnel security packet (see § 25.17(c)). The NRC Division of Security, based on investigative or other needs, may require a complete personnel security packet in other cases as well. A fee, equal to the amount paid for an initial request, will be charged only if a new or updating investigation is required.

6. Appendix A is revised to read as follows:

APPENDIX A.—FEES FOR NRC ACCESS AUTHORIZATION

Category	Fee
Initial "L" Access Authorization	[1] $52
Reinstatement of "L" Access Authorization	[1] 52
Extension or Transfer of "L" Access Authorization	[1] 52
Initial "Q" Access Authorization	3,000
Initial "Q" Access Authorization (expedited processing)	3,400
Reinstatement of "Q" Access Authorization	[2] 3,000
Reinstatement of "Q" Access Authorization (expedited processing)	[2] 3,400
Extension or Transfer of "Q"	[2] 3,000
Extension or Transfer of "Q" (expedited processing)	[2] 3,400

[1] If the NRC determines, based on its review of available data, that a full field of investigation is necessary, a fee of $3,000 will be assessed prior to the conduct of the investigation.

[2] Full fee will only be charged if investigation is required.

Dated at Rockville, MD this 24th day of August 1992.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 92–21752 Filed 9–9–92; 8:45 am]

BILLING CODE 7590-01-M

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10 CFR Part 35

RIN 3150-AC85

Quality Management Program and Misadministrations; NRC Override of OMB Disapproval of NRC Information Collection Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission has voted to override the Office of Management and Budget (OMB) disapproval of the information collection requirements imposed in the final rule entitled "Quality Management Program and Misadministrations" (July 25, 1991; 56 FR 34104). As part of this final rule, the Commission is amending its regulations to reflect OMB's assignment of a new control number to these information collection requirements. The Commission reevaluated the need for this final rule and the information collection requirements it contains. The Commission continues to believe that its requirements for written quality management programs and misadministration reports, if complied with, have a reasonable likelihood of decreasing misadministrations (e.g., wrong dose or wrong patient) with a small incremental cost to licensees. Without the reporting and recordkeeping requirements, it would not be possible to implement and enforce these regulations effectively.

EFFECTIVE DATE: September 10, 1992.

FOR FURTHER INFORMATION CONTACT: Anthony N. Tse, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3797.

SUPPLEMENTARY INFORMATION:

On July 25, 1991 (56 FR 34104), the Commission published in the **Federal Register** a final rule amending 10 CFR parts 2 and 35, entitled "Quality Management Program and Misadministrations." The final rule became effective on January 27, 1992. The final rule requires that applicable part 35 licensees implement Quality Management (QM) programs, continue to report misadministrations but at higher reporting thresholds, and keep certain records.

The Commission published two proposed rules related to this subject. The first proposed rule was published on October 2, 1987 (52 FR 36942). This proposed rule was prescriptive in that it contained specific basic quality assurance practices. In response to public comments and recommendations from the Advisory Committee on the Medical Uses of Isotopes (ACMUI), the Commission reexamined its approach and published the second proposed rule, containing performance-based requirements, on January 16, 1990 (55 FR 1439). Following publication of the January 1990 proposed rule a pilot program was conducted to provide a real-world test of the proposed rule in licensee hospitals and clinics and to gain insights beyond those generally obtained from the public comment process. Sixty-four volunteers (23 NRC

licensees and 41 Agreement State licensees) participated in the pilot program. The staff also conducted public workshops to discuss the results of the pilot program and to obtain recommendations on how to modify the proposed rule with professional organizations and Agreement States, and sought guidance from ACMUI.

During more than 20 public meetings, the impact of the recordkeeping and reporting requirements on medical use licensees received substantial attention from the NRC and the regulated community. As a result, the Commission believes that recordkeeping and reporting requirements contained in the final rule were reduced by more than half from those presented in the January 1990 proposed rule. These reductions included the removal of the recordkeeping and misadministration reporting requirements for nearly all diagnostic procedures. Considering the modifications to the proposed rule and the performance-oriented approach, the Commission concluded that the cost-effectiveness of the final rule had been optimized without significantly reducing the level of protection.

In December 1991, the NRC was notified by OMB that notwithstanding its earlier approval of the proposed rule, which received the appropriate OMB control number, it had concerns with the information collection requirements of the final rule. In order to resolve OMB's concerns, the NRC both corresponded and met with OMB. However, NRC and OMB staff interactions failed to resolve OMB concerns. In light of OMB approval of the information collection requirements contained in the proposed rule and because the final rule did not substantially change those requirements that were retained in the final rule from the proposed rule, the information collection requirements contained in the final rule became effective on January 27, 1992.

In February 1992, the American College of Nuclear Physicians and the Society of Nuclear Medicine petitioned the U.S. Court of Appeals for the District of Columbia Circuit for review of the final rule. On May 22, 1992, the Court found no basis to overturn the Quality Management and Misadministration Rule. Accordingly, the Court denied the petition for review. The Court found that the NRC had acted within its broad statutory mandate to establish "such standards * * * as the Commission may deem necessary or desirable to * * * protect health or to minimize danger to life." It also concluded that the substantive requirements of the QM rule were not arbitrary, capricious, or an abuse of discretion.

Subsequently, in a letter dated June 26, 1992, OMB stated that it disapproved the information collection request (ICR) associated with the July 1991 final rule. OMB concluded that "this information collection request is not necessary for the proper performance of the functions of the agency and that the information collection will not have practical utility for the agency." However, the Paperwork Reduction Act (PRA) provides that an independent regulatory agency such as NRC may override the OMB disapproval by a majority vote of its Commissioners (44 U.S.C. 3507).

The Commission fully supports the objectives of the PRA and strives to ensure that the private sector is requested to maintain or provide only such information as is needed to carry out regulatory responsibilities. For reasons specified below, pursuant to 44 U.S.C. 3507(c), the Commission has overridden the OMB determination. In a letter dated August 14, 1992, the Commission certified that it had overridden OMB's disapproval and requested that OMB promptly assign a new control number to the ICR associated with the Quality Management and Misadministration Rule for a period of 3 years.

In its implementing regulations OMB specifies (5 CFR 1320.11, 1320.4(b) and (c)) that in approving an ICR it evaluates whether (1) the agency has chosen the least burdensome means to obtain the information, (2) the information sought is available to the agency through some other means, and (3) the information sought has practical utility. Practical utility is defined (5 CFR 1320.7(o)) only as usefulness to the agency, taking into account the information's accuracy, adequacy, and reliability, and the agency's ability to process the information in a timely fashion.

OMB disapproval of the ICR does not indicate that the information collection requirements are an unnecessarily burdensome way to obtain information about misadministrations and medical quality management programs, or that the information is available through some other means. OMB disapproval relied on the third evaluation criterion described above and made a finding of no practical utility. But, contrary to 5 CFR 1320.7(o), OMB does not discount the accuracy, reliability, or adequacy of the information sought, or challenge the Commission's ability to process the information in a timely fashion. OMB disapproval indicates that OMB has concluded that there is no need for the Commission's final rule and regulatory program to reduce injuries from misadministration and that, therefore, any paperwork burden that the rule would impose is unreasonable.

The Commission—which is the agency charged with substantive responsibility for making such judgments—continues to believe that its requirements for written quality management programs and misadministration reports, if complied with, have a reasonable likelihood of decreasing misadministrations (e.g. wrong dose or wrong patient) with a small incremental cost to licensees. Without the reporting and recordkeeping requirements, it would not be possible to implement and enforce these regulations effectively.

On August 21, 1992, OMB assigned a new control number. Therefore, the effective period for these information collection requirements is from January 27, 1992 through August 31, 1995.

The Commission will continue to monitor implementation and inspection under the rule to ensure that it provides the Commission with necessary information without imposing undue burden on the private sector. If the Commission finds the rule, in whole or in part, to be overly burdensome or ineffective, it will consider modifying or deleting portions of the rule. Further, the NRC will hold a public workshop with the medical community and other interested parties, to ensure that there is mutual understanding as to the intent of the rule, especially its information collection requirements, and to discuss effective implementation. In particular, NRC will discuss the extent to which the industry's self-auditing guidelines can be used. Following the workshop, the Commission will develop additional guidance on compliance with the rule, written in clear language appropriate to the medical community.

Environmental Impact: Categorical Exclusion

The NRC has determined that this is the type of action described in categorical exclusion 10 CFR 51.22(c)(3)(ii). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act

In a letter dated June 26, 1992, OMB stated that it disapproved the NRC's information collection request associated with the rule entitled "Quality Management Program and Misadministrations."

As required by the Paperwork Reduction Act, the Commission has

certified to OMB, in a letter dated August 14, 1992, that by unanimous vote the Commission had overridden the OMB's disapproval of the information collection request associated with this rule.

On August 21, 1992, OMB assigned the following new control number: 3150-0171, effective until August 31, 1995.

This new control number is only applicable to the sections in 10 CFR part 35 amended by this rule. Information collection authority for all other sections of 10 CFR part 35 remains under the existing general control number: 3150-0010.

List of Subjects in 10 CFR Part 35

Byproduct material, Criminal penalty, Drugs, Health facilities, Health professions, Incorporation by reference, Medical devices, Nuclear materials, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements.

Text of Final Regulations

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 35.

PART 35—MEDICAL USE OF BYPRODUCT MATERIAL

1. The authority citation for part 35 continues to read in part as follows:

Authority: Secs. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841) * * *.

2. In § 35.8, paragraph (b) is revised and paragraph (d) is added to read as follows:

§ 35.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 35.12, 35.13, 35.14, 35.21, 35.22, 35.23, 35.27, 35.29, 35.31, 35.50, 35.51, 35.53, 35.59, 35.60, 35.61, 35.70, 35.80, 35.92, 35.204, 35.205, 35.310, 35.315, 35.404, 35.406, 35.410, 35.415, 35.606, 35.610, 35.615, 35.630, 35.632, 35.634, 35.636, 35.641, 35.643, 35.645, and 35.647.

* * * * *

(d) OMB has assigned control number 3150-0171 for the information collection requirements contained in §§ 35.32 and 35.33.

Dated at Rockville, Maryland, this 3d day of September 1992.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 92-21754 Filed 9-9-92; 8:45 am]

BILLING CODE 7590-01-M

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10 CFR Part 50

RIN 3150-AE12

Minor Modifications to Nuclear Power Reactor Event Reporting Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) has amended its regulations to make minor modifications to the current nuclear power reactor event reporting requirements. The final rule applies to all nuclear power reactor licensees and deletes reporting requirements for some events that have been determined to be of little or no safety significance. The final rule reduces the industry's reporting burden and the NRC's response burden in event review and assessment.

EFFECTIVE DATE: October 13, 1992.

FOR FURTHER INFORMATION CONTACT: Raji Tripathi, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492-4435.

SUPPLEMENTARY INFORMATION:

Background

The Commission is issuing a final rule that amends the nuclear power reactor event reporting requirements contained in 10 CFR 50.72, "Immediate Notification Requirements for Operating Nuclear Power Reactors," and 10 CFR 50.73, "Licensee Event Report System." The final rule is issued as part of the Commission's ongoing activities to improve its regulations. Specifically, this final rule amends 10 CFR 50.72 (b)(2)(ii) and 10 CFR 50.73 (a)(2)(iv). On June 26, 1992 (57 FR 28642), the Commission issued a proposed rule requesting public comments on these amendments.

Over the past several years, the NRC has increased its attention to event reporting issues to ensure uniformity, consistency, and completeness in reporting. In September 1991, the NRC's Office for Analysis and Evaluation of Operational Data (AEOD) issued for comment a draft NUREG-1022, Revision 1,[1] "Event Reporting Systems 10 CFR 50.72 and 10 CFR 50.73—Clarification of NRC Systems and Guidelines For Reporting." Following resolution of public comments, the NUREG will be issued in the final form. The NUREG will contain improved guidance for event reporting.

NRC's reviews of operating experience and the patterns of licensees' reporting of operating events since 1984 have indicated that reports on some of these events are not necessary for the NRC to perform its safety mission and that continued reporting of these events would not contribute useful information to the operating reactor events database. Additionally, these unnecessary reports would have continued to consume both the licensees' and the NRC's resources that could be better applied elsewhere. The NRC has determined that certain types of events, primarily those involving invalid engineered safety feature (ESF) actuations, are of little or no safety significance.

Valid ESF actuations are those actuations that result from "valid signals" or from intentional manual initiation, unless it is part of a preplanned test. Valid signals are those signals that are initiated in response to actual plant conditions or parameters satisfying the requirements for ESF initiation.

Invalid actuations are by definition those that do not meet the criteria for being valid. Thus, invalid actuations include actuations that are not the result of valid signals and are not intentional manual actuations. Invalid actuations include instances where instrument drift, spurious signals, human error, or other invalid signals caused actuation of the ESF (e.g., jarring a cabinet, an error in use of jumpers of lifted leads, an error in actuation of switches or controls, equipment failure, or radio frequency interference).

NRC's evaluation of both the reported events since January 1984, when the existing rules first became effective, and the comments received during the Event Reporting Workshops conducted in Fall of 1990 identified needed improvements in the rules. The NRC determined that invalid actuation, isolation, or realignment of a limited set of ESFs including the systems, subsystems, or components [i.e., an invalid actuation, isolation, or realignment of only the reactor water clean-up (RWCU) system,

[1] Free single copy may be requested by writing to the Distribution and Mail Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy is also available for inspection or copying for a fee at the NRC Public Document Room, 2120 L Street, NW., (Lower Level), Washington, DC 20555.

the control room emergency ventilation (CREV) system, the reactor building ventilation system, the fuel building ventilation system, or the auxiliary building ventilation system, or their equivalent ventilation systems] are of little or no safety significance. However, these events are currently reportable under 10 CFR 50.72 (b)(2)(ii) and 10 CFR 50.73 (a)(2)(iv).

The final rules for the current event reporting regulations, 10 CFR 50.72 and 10 CFR 50.73 (48 FR 39039; August 29, 1983, and 48 FR 33850; July 26, 1983, respectively), stated that ESF systems, including the reactor protection system (RPS), are provided to mitigate the consequences of a significant event. Therefore, ESFs should (1) work properly when called upon and (2) should not be challenged frequently or unnecessarily. The Statements of Consideration for these final rules also stated that operation of an ESF as part of a pre-planned operational procedure or test need not be reported. The Commission noted that ESF actuations, including reactor trips, are frequently associated with significant plant transients and are indicative of events, that are of safety significance. At that time, the Commission also required all ESF actuations, including the RPS actuations, whether manual or automatic, valid or invalid—except as noted, to be reported to the NRC by telephone within 4 hours of occurrence followed by a written Licensee Event Report (LER) within 30 days of the incident. This requirement on timeliness of reporting remains unchanged.

The reported information is used by the NRC in confirmation of the licensing bases, identification of precursors to severe core damage, identification of plant specific deficiencies, generic lessons, review of management control systems, and licensee performance assessment.

Discussion

The NRC has determined that some events that involve only invalid ESF actuations are of little or no safety significance. However, not all invalid ESF actuations are being exempted from reporting through this rule. The relaxations in event reporting requirements contained in the final rule apply only to a narrow, limited set of specifically defined invalid ESF actuations. These events include invalid actuation, isolation, or realignment of a limited set of ESFs including systems, subsystems, or components (i.e., an invalid actuation, isolation, or realignment of only the RWCU system, or the CREV system, reactor building ventilation system, fuel building ventilation system, auxiliary building ventilation system, or their equivalent ventilation systems). The actuation of the standby gas treatment system following an invalid actuation of the reactor building ventilation system is also exempted from reporting. In addition, the final rule excludes invalid actuations of these ESFs (or their equivalent systems) from signals that originated from non-ESF circuitry.

However, invalid actuations of other ESFs would continue to be reportable. For example, emergency core cooling system isolations/actuations; containment isolation valve closures that affect cooling systems, main steam flow, essential support systems, etc.; containment spray actuation; and residual heat removal system isolations (or systems designated by any other names but designed to fulfill the function similar to these systems and their equivalents), are still reportable. If an invalid ESF actuation reveals a defect in the system so that the system failed or would fail to perform its intended function, the event continues to be reportable under other requirements of 10 CFR 50.72 and 10 CFR 50.73. If a condition or deficiency has (1) an adverse impact on safety-related equipment and consequently on the ability to shut down the reactor and maintain it in a safe shutdown condition, (2) has a potential for significant radiological release or potential exposure to plant personnel or the general public, or (3) would compromise control room habitability, the event/discovery continues to be reportable.

Invalid ESF actuations that are excluded by this final rule, but occur as a part of a reportable event, continue to be described as part of the reportable event. These amendments are not intended to preclude submittal of a complete, accurate, and thorough description of an event that is otherwise reportable under 10 CFR 50.72 or 10 CFR 50.73. The Commission relaxed only the selected event reporting requirements specified in this final rule.

Licensees are still required under 10 CFR part 50, appendix B, "Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants," to address corrective actions for events or conditions that are adverse to quality whether the event is reportable or not. In addition, minimizing ESF actuations (such as RWCU isolations) to reduce operational radiation exposures associated with the investigation and recovery from the actuations, are consistent with ALARA requirements.

This rule excludes three categories of events from reporting:

(1) The first category excludes events in which an invalid ESF or RPS actuation occurs when the system is already properly removed from service if all requirements of plant procedures for removing equipment from service have been met. This includes required clearance documentation, equipment and control board tagging, and properly positioned valves and power supply breakers.

(2) The second category excludes events in which an invalid ESF or RPS actuation occurs after the safety function has already been completed (e.g., an invalid containment isolation signal while the containment isolation valves are already closed, or an invalid actuation of the RPS when all rods are full inserted).

(3) The third category excludes events in which an invalid ESF actuation occurs that involes only a limited set of ESFs [i.e., when an invalid actuation, isolation, or realignment of only the RWCU system, or any of the following ventilation systems: CREV system, reactor building ventilation system, fuel building ventilation system, auxiliary building ventilation system, or their equivalent ventilation systems, occurs]. Invalid actuations that involve other ESFs not specifically excluded, (e.g., emergency core cooling system isolations or actuations; containment isolation valve closures that affect cooling systems, main steam flow, essential support systems, etc.; containment spray actuation; residual heat removal system isolations, or their equivalent systems), continue to be reportable.

Licensees continue to be required to submit LERs if a deficiency or condition associated with any of the invalid ESF actuations of the RWCU or the CREV systems (or other equivalent ventilation systems) satisfies any reportability criteria under § 50.72 and § 50.73.

Impact of the Amendments on the Industry and Government Resources

Relaxing the requirement for reporting of certain types of ESF actuations reduces the industry's reporting burden and the NRC's response burden. This reduction is consistent with the objectives and the requirements of the Paperwork Reduction Act. These amendments have no impact on the NRC's ability to fulfill its mission to ensure public health and safety because the deleted reportability requirements have little or no safety significance.

It is estimated that the changes to the existing rules will result in about 150 (or

5–10 percent) fewer Licensee Event Reports each year. Similar reductions are expected in the number of prompt event notifications reportable under 10 CFR 50.72. Some respondents, in their comments on the proposed rule, dated June 26, 1992, submitted an estimate of approximately 15 percent reduction in their reporting burden.

Summary of Comments

The NRC received 19 comments—2 from individuals, 3 from industry-supported organizations, and 14 from utilities. Except for two respondents, all commenters welcomed the Commission's efforts to reduce the licensee burden and to save the agency's resources in event review and processing. The utilities and the industry-supported organizations expressed their desire for a broader relaxation to include all invalid ESF actuations from reporting.

Other comments from the respondents concerned the following: clarification of the definition of "invalid" actuations; examples of events being exempted from reporting; consideration of plant-specific situations; exemption from reporting of the actuation of the standby gas treatment system following an invalid actuation of the reactor building ventilation system; and possibly extending relaxation of invalid actuations/isolations of RWCU from reporting to include those of the chemical and volume control system in a pressurized water reactor. The Statement of Considerations for this final rule addresses most of these concerns. Other issues and clarifications concerning event reportability will be addressed in NUREG–1022, Revision 1. However, it is not practical to address a plant-specific situation unless it relates to a generic concern.

The Commission stresses that only certain specific invalid ESF actuations are being exempted from reporting through the present amendments. NUREG–1022, Revision 1 will contain specific examples and additional guidance on events which are presently reportable as well as those which are being exempted from reporting through these amendments. In the future, the Commission will give due consideration to other proposed relaxations from event reporting after the NRC staff has had an opportunity to reassess the data needs of the agency and performed safety assessments to justify initiating a separate general rulemaking. Until such time, all events not specifically exempted in these amendments continue to be reportable.

The two respondents who opposed the proposed amendments expressed their concerns about eliminating the selected event reporting requirements. These commenters believe that the elimination of these event reporting requirements may adversely affect the NRC's information database and ultimately affect the agency's ability to carry out its mission to protect public health and safety. For many years, the NRC staff has been systematically reviewing information obtained from Licensee Event Reports. These assessments of reactor operational experience have included data on the types of events included in the three categories that the NRC is deleting from reporting. The staff's reviews and assessments of nearly 1000 reactor-years of operational experience have identified essentially no safety significance associated with the type of events included in the aforementioned three categories. The Commission has reviewed the scope of these amendments, and on the basis of the staff's assessment of the past reactor operational experience, has subsequently concluded with a reasonable confidence that relaxation from reporting of events in the three categories does not affect the agency's ability to protect public health and safety.

Based on the input from the utilities, these amendments will reduce the industry's reporting burden by about 15 percent. The estimated savings of the NRC's response burden in event review and assessment is about 5–10 percent.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusions 10 CFR 51.22 (c)(3)(ii) and (iii). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These amendments were approved by the Office of Management and Budget approval numbers 3150–0011 and 3150–0104.

Because the rule will relax existing reporting requirements, public reporting burden of information is expected to be reduced. It is estimated that about 150 fewer Licensee Event Reports (NRC Form 366) and a similarly reduced number of prompt event notifications, made pursuant to 10 CFR 50.72, will be required each year. The resulting reduction in burden is estimated to average 50 hours per licensee response, including the time required reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and reviewing the collection of information. Send comments regarding the estimated burden reduction or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB–7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–3019, (3150–0011 and 3150–0104), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this final rule. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street, NW., Lower Level, Washington, DC 20555. Single copies of the analysis may be obtained from: Raji Tripathi, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492–4435.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605 (B)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. The final rule affects only the event reporting requirements for operational nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration Act in 13 CFR part 121.

Backfit Analysis

As required by 10 CFR 50.109, the Commission has completed an assessment of the need for Backfit Analysis for this final rule. The proposed amendments include relaxations of certain existing requirements on reporting of information to the NRC. These changes neither impose additional reporting requirements nor require modifications to the facilities or their licenses.

Accordingly, the NRC has concluded that this final rule does not constitute a

backfit and, thus, a backfit analysis is not required.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalty, Fire prevention, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1964, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the Commission is adopting the following amendments to 10 CFR part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 is revised to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2133). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a, and Appendix Q also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80-50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); § § 50.5, 50.46(a) and (b), and 50.54(c) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); § § 50.5, 50.7(a), 50.10(a)-(c), 50.34(a) and (e), 50.44(a)-(c), 50.46(a) and (b), 50.47(b), 50.48(a), (c), (d), and (e), 50.49(a), 50.54(a), (i), (i)(l), (l)-(n), (p), (q), (t), (v), and (y), 50.55(f), 50.55a(a), (c)-(e), (g), and (h), 50.59(c), 50.60(a), 50.62(b), 50.64(b), 50.65, and 50.80(a) and (b) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and § § 50.9(d), (h), and (j), 50.54(w), (z), (bb), (cc), and (dd), 50.55(e), 50.59(b), 50.61(b), 50.62(b), 50.70(a), 50.71(a)-(c) and (e), 50.72(a), 50.73(a) and (b), 50.74, 50.78, and 50.90 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 50.72, paragraph (b)(2)(ii) is revised to read as follows:

§ 50.72 Immediate notification requirements for operating nuclear power reactors.

* * * * *

(b) Non-emergency Events. * * *

(2) Four-hour reports. * * *

(ii) Any event or condition that results in a manual or automatic actuation of any engineered safety feature (ESF), including the reactor protection system (RPS), except when:

(A) The actuation results from and is part of a pre-planned sequence during testing or reactor operation;

(B) The actuation is invalid and:

(*1*) Occurs while the system is properly removed from service;

(*2*) Occurs after the safety function has been already completed; or

(*3*) Involves only the following specific ESFs or their equivalent systems:

(*i*) Reactor water clean-up system;

(*ii*) Control room emergency ventilation system;

(*iii*) Reactor building ventilation system;

(*iv*) Fuel building ventilation system; or

(*v*) Auxiliary building ventilation system.

* * * * *

3. In § 50.73, paragraph (a)(2)(iv) is revised to read as follows:

§ 50.73 Licensee event report system.

(a) Reportable events. * * *

(2) The licensee shall report: * * *

(iv) Any event or condition that resulted in a manual or automatic actuation of any engineered safety feature (ESF), including the reactor protection system (RPS), except when:

(A) The actuation resulted from and was part of a pre-planned sequence during testing or reactor operation;

(B) The actuation was invalid and:

(*1*) Occurred while the system was properly removed from service;

(*2*) Occurred after the safety function had been already completed; or

(*3*) Involved only the following specific ESFs or their equivalent systems:

(*i*) Reactor water clean-up system;

(*ii*) Control room emergency ventilation system;

(*iii*) Reactor building ventilation system;

(*iv*) Fuel building ventilation system; or

(*v*) Auxiliary building ventilation system.

* * * * *

Dated at Rockville, MD, this 27th day of August, 1992.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 92-21750 Filed 9-9-92; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R-0706]

RIN 7100-AB09

Bank Holding Companies and Change in Bank Control

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending its Regulation Y to augment the list of permissible nonbanking activities for bank holding companies to include the provision of full service securities brokerage under certain conditions; and the provision of financial advisory services under certain conditions. The Board has by order previously approved these activities. Applications by bank holding companies to engage in activities included on the Regulation Y list of permissible nonbanking activities may be processed by the Reserve Banks under expedited procedures pursuant to delegated authority.

EFFECTIVE DATE: September 10, 1992.

FOR FURTHER INFORMATION CONTACT: Scott G. Alvarez, Associate General Counsel (202/452-3583), or Thomas M. Corsi, Senior Attorney (202/452-3275), Legal Division. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION:

Background

The Bank Holding Company Act of 1956, as amended (the "BHC Act"), generally prohibits a bank holding company from engaging in nonbanking activities or acquiring voting securities of any company that is not a bank. Section 4(c)(8) of the BHC Act provides an exception to this prohibition where the Board determines after notice and opportunity for hearing that the activities being conducted are "so closely related to banking or managing or controlling banks as to be a proper incident thereto." 12 U.S.C. 1843(c)(8). The Board is authorized to make this determination by order in an individual case or by regulation.

The Board's Regulation Y (12 CFR part 225) sets forth a list of nonbanking

activities that the Board has determined to be closely related to banking under section 4(c)(8) of the BHC Act and, therefore, generally permissible for bank holding companies. 12 CFR 225.25. Applications by bank holding companies to engage in activities listed in Regulation Y as permissible nonbanking activities may be processed by the Reserve Banks under expedited procedures pursuant to delegated authority.

The Board has previously determined, by order, that full service securities brokerage activities, *i.e.*, the provision of securities brokerage services and investment advisory services together by the same company to its customers, is closely related to banking and a proper incident thereto for purposes of section 4(c)(8) of the Bank Holding Company Act. The Board has also previously determined, by order, that the provision of the following financial advisory services is an activity that is closely related to banking and a proper incident thereto: (1) Providing financial advice to foreign governments and their municipalities and agencies, such as with respect to the issuance of their securities; (2) providing financial and transaction advice to institutional customers with respect to structuring, financing and negotiating mergers, acquisitions, divestitures, joint ventures, leveraged buyouts, recapitalizations, capital structurings, structuring and arranging loan syndications, financing and other corporate transactions (including private and public financings), rendering fairness opinions, providing valuation services, and conducting feasibility studies; and, (3) providing financial and transaction advice to institutional customers regarding the structuring and arranging of swaps, caps, and similar transactions relating to interest rates, currency exchange rates or prices, and economic and financial indices.

The Board has invited public comment on a proposal to amend its Regulation Y to add these activities to the Board's regulatory list of permissible nonbanking activities. 55 FR 36282, September 5, 1990.

In connection with this action, the Board proposed to modify certain restrictions previously imposed by order on bank holding companies engaged in full service securities brokerage activities. The Board also requested public comment on the appropriateness of modifying limitations imposed by order on financial advisory activities, and proposed to amend Regulation Y to include a definition of institutional customer applicable to full service securities brokerage services.

Description of the Final Rule

The Board has determined to add full service securities brokerage and financial advisory services to the regulatory list of permissible nonbanking activities. The final rule as adopted generally simplifies the conditions previously imposed by the Board on the conduct of full service securities brokerage activities and on financial advisory activities. Pursuant to the final rule, bank holding companies seeking to conduct these activities or acquire companies engaged in these activities will be able to take advantage of a number of streamlined procedures relating to listed nonbanking activities. These procedures substitute a notice period in lieu of an application procedure for companies seeking to engage *de novo* in these activities, and permit Reserve Banks to review proposals to conduct these activities under expedited procedures.

Full Service Securities Brokerage

The Board's regulations currently permit bank holding companies to provide securities brokerage and investment advisory services separately.[1] In addition, the Board has previously determined by order that bank holding companies may provide these services on a combined basis to institutional and retail customers.[2]

In its orders permitting bank holding companies to engage in full service securities brokerage activities, the Board established a framework for the conduct of the activity that was designed to address potential adverse effects, including conflicts of interests, that may result from the combination of investment advisory and securities brokerage activities.[3] This framework included requirements that:

- A majority of the brokerage company's board of directors not be officers or directors of any affiliated bank.
- The brokerage company hold itself out as a separate and distinct corporation with its own properties, assets and liabilities, capital, books and records and maintain separate operations from affiliated banks. The Board has permitted brokerage companies to share certain back-office employees with affiliated banks, where the employees do not have contact with the public or participate in the sales activities of the brokerage company.
- All of the brokerage company's notices, advice, confirmations, correspondence and other documentation clearly indicate the company's separate identity.
- The brokerage company specify in all customer agreements that it is solely responsible for its contractual obligations and commitments.
- Any back office services provided to the brokerage company by bank affiliates and research or investment advice purchased from affiliates be compensated for in accordance with section 23B of the Federal Reserve Act.
- The brokerage company provide discretionary investment management services only to institutional customers (as defined).
- The brokerage company provide notice to its customers that an affiliated bank may be a lender to an issuer of securities.
- The brokerage company not receive referrals from affiliates and not exchange customer lists or confidential information regarding customers with affiliates, except with the customers' consent.
- As required by section 23B of the Federal Reserve Act, no bank affiliated with the brokerage company engage in advertising for the brokerage company stating or suggesting that an affiliated bank is responsible for the brokerage company's obligations, or enter into any agreement so stating or suggesting.
- The brokerage company's offices either be separate from those of other affiliates or, in the case of offices established in a building in which another affiliate also has offices, in areas separate from areas utilized by such affiliate.
- The brokerage company not transmit advisory research or recommendations to the commercial lending department of any bank affiliate. The brokerage company may make available to affiliated banks the investment recommendations and research that it makes available to unaffiliated investor clients or that are non-confidential. The brokerage company may not be provided with position reports regarding the securities affiliates may hold in inventory.[4]
- If the brokerage company obtains customer lists from affiliates, it use such lists for general advertising purposes only (such as mass mailings) and not to solicit individual customers of its affiliates.
- The brokerage company charge fees only for transactions executed for the customer (and not separately for advice).[5]

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[1] See 12 CFR 225.25(b)(4) (investment advice); and 225.25(b)(15) (securities brokerage). Bank holding companies may still seek approval to engage separately in these activities, or to engage only in one of the activities.

[2] See, *e.g.*, National Westminster Bank PLC, 72 Federal Reserve Bulletin 564 (1986), *affirmed Securities Industry Ass'n* v. *Board of Governors*, 821 F.2d 810 (D.C. Cir. 1987), cert. denied, 484 U.S. 1005 (1988). See also PNC Financial Corp., 75 Federal Reserve Bulletin 396 (1989); Bank of New England Corporation, 74 Federal Reserve Bulletin 700 (1988) (combined services offered to institutional and retail customers); Manufacturers Hanover Corp., 73 Federal Reserve Bulletin 930 (1987).

[3] Id.

[4] The company may, at the time a research report is being released, disclose to customers its affiliates' positions in securities that are the subject of the research report.

[5] See, *e.g.*, Bank of New England Corporation, 74 Federal Reserve Bulletin 700 (1988).

In addition to these requirements imposed by the Board, the full service securities brokerage subsidiaries of bank holding companies are subject to the requirements applicable to broker-dealers under the Securities Exchange Act of 1934, as well as to applicable provisions of the Investment Advisers Act of 1940, applicable state securities laws, the general anti-fraud provisions of the securities laws, and a duty to deal fairly with customers.[6]

The Board proposed eliminating most of the restrictions noted above as part of this proposal. After careful review of the comments and the Board's experience in supervising the full service brokerage activities of bank holding companies, the Board has determined to eliminate duplication between the restrictions imposed by the Board on the conduct of this activity and the restrictions imposed under the securities laws or other applicable laws. In addition, the Board has determined to remove the other restrictions noted above, with three exceptions. First, the rule retains the limitation under current Board orders that a full service securities brokerage subsidiary may provide discretionary investment management services only to institutional customers.[7] Second, the rule retains in large part the Board's current disclosure requirements.[8] Third, the rule retains the restriction that prevents a brokerage company from exchanging confidential customer information with any affiliate without the customer's consent.

The final rule does not include the other restrictions listed above that were previously imposed by order on a bank holding company's conduct of full service securities brokerage. Bank holding companies and their subsidiaries engaged in full service brokerage activities will, of course, continue to be subject to all of the requirements imposed by federal and state securities laws, as well as to the other restrictions imposed by applicable statutes, including the prohibitions on tying products and services with bank products and services, and restrictions on transactions with affiliated banks imposed by other statutes. In addition, while the Board has determined not to retain all of the above noted restrictions in its final regulation, the Board believes that bank holding companies should, as a matter of sound practice and in order to obtain the benefits of the legal doctrine of corporate separateness, continue to operate full service brokerage subsidiaries as a distinct and separate corporation with separate books and records, capital, assets, liabilities, and management.

The Board believes that the restrictions it has retained in its regulation together with federal securities laws and regulations and federal banking statutes, particularly the affiliate transactions restrictions of sections 23A and 23B of the Federal Reserve Act, are adequate to address the potential conflicts of interests and other adverse effects that may be associated with the conduct of full service securities brokerage activities by a subsidiary of a bank holding company. In addition, the Board believes that under these conditions, this revision will benefit the public by providing increased customer convenience and increased efficiencies for bank holding companies that provide full service brokerage services.

Public Comments Regarding Full Service Securities Brokerage Activities

The Board received over 70 public comments in response to its request for comments on the proposal to add full service securities brokerage to the Regulation Y list of permissible nonbanking activities. No commenter opposed the addition of this activity to the Regulation Y list. The commenters included forty-five individuals; fifteen bank holding companies, including large national and regional companies; six small banks; several brokerage subsidiaries of bank holding companies; five trade associations; a law firm; and several Federal Reserve Banks. Although every commenter favored the addition of full service securities brokerage to the Regulation Y list of permissible nonbanking activities, various commenters addressed specific features of the proposal, especially the topics of discretionary investment management for retail customers and the disclosure requirements.

1. Need for Restrictions Generally

A number of commenters argued that many of the restrictions imposed by the Board on full service brokerage activities are not necessary. First, commenters argue that the Board need not duplicate restrictions contained in the securities laws because the securities brokerage subsidiaries of bank holding companies remain subject to state and federal securities laws and regulations. A number of the restrictions imposed by the Board are similar to the existing requirements of federal and state securities laws, or incorporate requirements contained in other statutory provisions (such as section 23B of the Federal Reserve Act). The commenters also note that the experience of the OCC has not indicated that the simpler framework used by the OCC that relies primarily on the securities laws adds significant risk to the conduct of the activity.[9]

2. Discretionary Investment Management

Thirteen commenters, including large national and regional bank holding companies and trade associations, suggested that the Board broaden the scope of authorized full service securities brokerage to permit discretionary investment management for retail customers. The commenters offered several reasons for permitting bank holding companies to offer discretionary investment management to retail customers through full service securities brokerage affiliates. In particular, the commenters argued that:

1. Brokerage companies affiliated with bank holding companies would be registered as broker-dealers with the Securities and Exchange Commission and the National Association of Securities Dealers, and customers would be protected by existing securities and common law requirements and duties.

2. Customers are generally free to limit a broker's exercise of discretion.

3. Retail customers have sufficient resources and incentive to monitor closely their account activities in order to identify possible abuses.

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[6] See, *e.g.*, 17 CFR 240.15c1-2 (anti-fraud rule).

[7] The Board has previously defined an "institutional customer." See The Chase Manhattan Corporation, 74 Federal Reserve Bulletin 704 (1988). The final rule amends Regulation Y to incorporate this definition. The final rule also retains the requirements that a brokerage company offering discretionary management services comply with applicable law, including fiduciary principles, and that it obtain the consent of its customer before engaging in discretionary securities transactions with itself or an affiliate. See J.P. Morgan & Co., Incorporated, 73 Federal Reserve Bulletin 810 (1987).

[8] The final rule requires specifically that the brokerage company disclose to all of its customers that the brokerage company is solely responsible for its contractual obligations and commitments; that the brokerage company is not a bank or insured institution, and is separate from any affiliated bank or insured institution; and that the securities sold, offered, or recommended by the brokerage company are not insured by the FDIC, and are not obligations of, or endorsed or guaranteed by, any bank, unless such is the case. The final rule requires that these disclosures be made before the brokerage company provides any brokerage or advisory services to its customers and, in the case of the statement that the brokerage company is solely responsible for its contractual obligations and commitments, again in each statement of accounts to customers. The initial disclosure may be oral provided that a written disclosure is provided immediately thereafter.

[9] *See, e.g.*, O.C.C. Interpretive Letter 403, *reprinted in* (1988–89 Transfer Binder) Fed. Banking L. Rep. (CCH) ¶ 85,627 (December 9, 1987). The OCC also has limited national banks to providing discretionary investment management only through the trust department of the bank.

4. Prohibiting such a service would disadvantage the brokerage companies that are affiliates of bank holding companies relative to those that are not affiliates of bank holding companies.

In determining in 1987 to limit discretionary account activities to institutional customers, the Board reasoned that institutional customers are generally financially sophisticated, less likely in general than retail customers to place undue reliance on investment advice, and better able to monitor the activities of, and potential conflicts of interests arising from, a brokerage company that provides discretionary investment management services.[10] The Board noted in particular that institutional customers would be better able than retail customers to detect account churning or unsuitable investments made on behalf of the customer by a brokerage firm.

Four commenters stated that the existing restriction on discretionary account activities should be retained. Two large regional bank holding companies supported retention of the existing limitation on the ground that the trust departments of banks are better suited than brokerage companies to providing discretionary investment management to retail customers.

The OCC also has recognized the possibility of abuses in connection with discretionary investment management services. Accordingly, the OCC has not to date permitted national banks to offer such services to retail brokerage customers other than through a trust department or trust company operations subsidiary. These entities operate under a number of restrictions to which the nonbank subsidiaries of bank holding companies are not subject, including the OCC's comprehensive rules governing trust activities.[11]

The final rule retains the prohibition on providing discretionary investment management services to retail customers. The Board believes this limitation is appropriate in light of the potential for abuse and conflicts of interest in connection with providing discretionary investment management services. However, because institutional customers are likely to be financially sophisticated and able to detect potential abuses and conflicts of interest, the Board continues to believe that these potential adverse effects are substantially mitigated in the case of the provision of discretionary investment management service to institutional customers. In addition, a prohibition on the provision of discretionary investment management services to retail customers through a full service securities brokerage company subsidiary would not preclude bank holding companies from offering the service through other appropriate means. Bank holding companies may provide such services to retail customers through a trust company subsidiary or the trust department of a bank, where specific fiduciary responsibilities govern the bank or trust company's actions.

3. Definition of Institutional Customer

Two commenters specifically addressed the Board's proposed definition of "institutional customer." As proposed, the definition of "institutional customer" included individuals whose net worth (or joint net worth with spouse) exceeds $1 million. The proposed definition also included broker-dealers and option traders registered under the Securities Exchange Act of 1934, as well as other securities professionals.

One commenter proposed adding to this list investment or banking professionals. The Board has previously determined that including investment and banking professionals within the definition of institutional customer is consistent with the purpose of the definition, which is to limit the provision of certain services to financially sophisticated customers, and would not materially increase the likelihood of significant adverse effects. Bankers Trust New York Company, 74 Federal Reserve Bulletin 695 (1988). Accordingly, the Board has adopted this suggestion in the final rule.

Another commenter suggested including all "accredited investors" as defined in Regulation D of the Securities and Exchange Commission within the definition of institutional customer.[12] The SEC's definition of accredited investor differs in a number of respects from the Board's definition of institutional customer. For example, to qualify as an accredited investor a corporation must meet a higher $5 million asset test than the $1 million asset test adopted in the board's definition of institutional customer; on the other hand, a natural person with income in excess of $200,000 in each of the two most recent years may qualify as an accredited investor, while the Board's definition of institutional customer includes only individuals with a net worth in excess of $1 million.

The definition of the term accredited investor was developed in the context of other safeguards and limitations imposed by the federal securities laws on the sale of unregistered securities. These include specific written disclosure requirements that must be made prior to each transaction. The definition of institutional customer on the other hand, is used in the context of the provision of discretionary management investment services, which, by definition, do not require detailed prior disclosures in connection with each investment. Because of these differences, the Board does not believe that it is appropriate to modify the definition of institutional customer to conform with the SEC's definition of accredited investor.

4. Disclosure Requirements

Seven commenters supported the disclosure requirements as proposed. Six commenters suggested a variety of changes intended to reduce the frequency and increase the efficiency of any required disclosure.

The proposal would have required that the brokerage company disclose in writing to all of its customers that the brokerage company is solely responsible for its contractual obligations and commitments. The proposed rule required that the disclosure be made before the brokerage company provides any brokerage or advisory services to its customers and again in its statements of accounts to customers. The rule as proposed also required that the bank holding company make a one-time written disclosure at the start of the customer relationship that the brokerage company is not a bank or insured institution, and is separate from any affiliated bank or insured institution; and that the securities sold, offered, or recommended by the brokerage company are not insured by the FDIC, and are not guaranteed by, or an obligation of, any bank, unless such is the case.

In a comment representative of those suggesting changes to the proposed disclosure requirements, a bank holding company argued that the regulation should allow each holding company to exercise discretion, within the limits established by the securities laws, to decide the timing and manner for providing the required disclosures. The commenter noted that the securities laws, for example, generally do not require pre-relationship disclosure. In certain instances when the securities laws do require pre-relationship disclosure, the rules permit oral disclosure, provided a written disclosure

[10] J.P. Morgan & Co., Incorporated, 73 Federal Reserve Bulletin 810 (1987).

[11] 12 CFR part 9.

[12] 17 CFR 230.215.

is made prior to the completion of the relevant contract.[13] Similarly, another commenter suggested that the brokerage company be granted discretion to deliver any required periodic written disclosure in the manner it finds most efficient, whether by order confirmations, customer statements or separate customer mailings. Another bank holding company proposed requiring written disclosures only in the brokerage company's initial written communication with a customer (for example, in a statement of account terms).

With respect to the substance of any required disclosure, one bank holding company suggested alternatives for certain aspects of the proposed disclosure language. This commenter stated that it is unnecessary to require the brokerage company to disclose that it is solely responsible for its obligations because the brokerage company is already required to state that it is separate from affiliated depository institutions.

The final rule continues to require that a full service securities brokerage subsidiary of a bank holding company provide the mandated disclosure to each customer before providing any brokerage or advisory service. The proposal has been amended, however, to permit the brokerage company to make the initial disclosure orally, provided that written disclosure is given to the customer promptly thereafter and that the disclosure complies with any securities law requirements. The final rule otherwise provides bank holding companies with discretion to include the mandated disclosures in the customer agreement required under NASD rules or in any other vehicle, including in a separate written statement provided to the customer.[14]

The final rule retains the content of the current disclosure requirements without modification. The Board believes at this time that these disclosures are appropriate for a brokerage company that is affiliated with a bank in order to ensure that customers understand that the brokerage company is separate from the bank and that securities sold, offered, or recommended are not FDIC-insured and are not obligations of a bank (unless such is the case). The Board continues to believe that these disclosures decrease the likelihood that customers will associate the advice received from full service brokerage subsidiaries of bank holding companies, or the financial strength of these brokerage subsidiaries, with their affiliated banks. The OCC requires national banks that provide full service brokerage services to make similar disclosures.

5. Restriction on Certain Interlocks With Bank Affiliates

Fourteen commenters, including bank trade associations and large national and regional bank holding companies, supported fully the proposed elimination of the restriction on director, officer, and employee interlocks between a brokerage company and affiliated banks. Two bank holding companies noted that the elimination of the interlock restriction would permit regional bank holding companies to offer full service securities brokerage without costly duplication of existing management structures.

The Board believes that existing requirements of federal and state securities laws are sufficient to address potential adverse effects that may be associated with officer and director interlocks between a bank and its securities brokerage affiliate. Moreover, the Board notes that the OCC and many states permit national and state banks to provide full service brokerage services directly within the bank. The experience of the OCC in permitting national banks directly to provide full service brokerage services to their customers has not indicated a need for the requirement imposed by the Board that limits officer, director and employee interlocks between a brokerage company and its affiliated bank. In this regard, the Board notes that any subsidiary of a bank holding company that provides full service brokerage services is subject to prohibitions on tying these services to services offered by an affiliated bank. 12 U.S.C. 1972; 12 CFR 225.4(d). Moreover, a full service brokerage affiliate is required to make the disclosures discussed above when providing full service brokerage services to a customer.

Thus, the final rule eliminates the restriction on interlocks between a bank and an affiliated full service securities brokerage company. This action does not remove the restriction currently imposed by the Board on interlocks between a bank and an affiliate that conducts securities underwriting and dealing activities permitted under section 20 of the Glass-Steagall Act, or any limitations imposed by section 32 of the Glass-Steagall Act and Board Regulation R.

6. Restrictions on Brokering or Recommending Certain Securities

One bank holding company requested that the Board modify certain restrictions on a brokerage firm's ability to recommend or broker securities underwritten by an affiliate or distributed by an investment company advised by an affiliate. These restrictions arise from the section 20 firewalls applicable to affiliates that underwrite and deal in securities, and from the Board's interpretive rule governing investment advisory activities (12 CFR 225.125).

The Board has recently revised the interpretive rule to permit bank holding companies or their subsidiaries to provide advice with respect to, and broker securities issued by, investment companies advised by the holding company or its nonbanking affiliates.[15] As noted above, the Board did not, in connection with these modifications, propose any revisions to either the section 20 firewalls applicable to companies with subsidiaries that underwrite or deal in bank-ineligible securities or the Board's interpretive rule governing investment advisory activities.

7. Cross-Marketing

Another bank holding company proposed that the Board permit cross-marketing activity between full service brokerage companies and bank affiliates, including allowing bank affiliates to act as agent for, or engage in marketing on behalf of, affiliated brokerage companies. Current restrictions regarding such cross-marketing activity derive from the section 20 firewalls and apply only to bank holding companies with subsidiaries that underwrite and deal in bank-ineligible securities. As noted, the rule does not modify this restriction or any of the other section 20 firewalls. The Board has proposed modifying the cross-marketing restrictions in other rulemaking and will consider this comment in that context.

Relief From Prior Restrictions

Bank holding companies that have received Board approval by order to conduct full service securities brokerage activities subject to the restrictions discussed above are relieved of their commitments to the Board to conduct

[13] See, *e.g.*, 17 CFR 240.15c1-5; National Association of Securities Dealers, Rules of Fair Practice, Art. III, sec. 13.

[14] Later disclosures that are required to be included in the company's statements of accounts to its customers are more limited. These disclosures include statements that the brokerage company is a separate and distinct corporation, and reinforce that the bank affiliate is not responsible for, and does not provide any financial guarantee regarding, the investments recommended by the brokerage affiliate.

[15] 57 FR 30387, July 9, 1992.

full service brokerage activities within the restrictions discussed above, except as noted, and may conduct full service brokerage activities subject to the limitations retained in this final rule and to other applicable laws.

The Board's action in this rule does not affect the framework governing bank holding company subsidiaries that underwrite or deal in bank-ineligible securities consistent with section 20 of the Glass-Steagall Act. A holding company affiliate engaged in such bank-ineligible securities underwriting or dealing continues to be bound by the restrictions imposed on those activities by the Board.[16] In addition, a bank holding company that operates a section 20 affiliate and conducts full service brokerage activities, either within the section 20 affiliate or in a separate subsidiary, is not relieved of commitments or conditions governing brokering or recommending securities underwritten by the section 20 company.[17]

The final rule does not expand the scope of full service securities brokerage activities beyond the scope previously approved by the Board by order. In addition, the final rule does not modify the Board's interpretive rule regarding the investment advisory activities of bank holding companies. See 12 CFR 225.125 as amended at 57 FR 30387, July 9, 1992.

Financial Advisory Services

The Board has previously determined by order that the provision of several types of financial advisory services is closely related to banking for purposes of section 4(c)(8) of the BHC Act. Specifically, the Board has by order permitted bank holding companies to provide:

- Advice to financial and nonfinancial institutions and high net worth individuals with respect to mergers, acquisitions, divestitures, joint ventures, reorganizations, recapitalizations, financing transactions, and the structuring of leveraged buyouts and capital raising vehicles, including providing valuations and fairness opinions in connection with mergers, acquisitions, and similar transactions; and
- Advice regarding the structuring of and arranging for loan syndications, interest rate swaps, interest rate caps, and similar transactions.

The Board has also permitted bank holding companies to conduct feasibility studies for corporations.[18] In making these determinations, the Board has relied on several limitations designed to mitigate the effects of possible conflicts of interests that could arise from the activity, and to ensure that bank holding companies and their nonbanking subsidiaries do not exert undue control over the operations of the client institution through the provision of financial advisory services.[19]

Comments Regarding Financial Advisory Activities

No commenter opposed the addition of the proposed financial advisory activities to the Regulation Y list of permissible nonbanking activities. Various commenters suggested modifications to, or clarifications of, certain specific features of the proposal, including removal of the limitations on this activity. No commenter suggested that restrictions more rigorous than those proposed would be appropriate.

The final rule adds the provision of the financial advisory services listed above to the regulatory list of activities permissible for bank holding companies, thereby simplifying the process under which bank holding companies obtain approval to conduct these activities. While the Board previously has permitted bank holding companies to provide feasibility studies only for corporations, the final rule permits bank holding companies to conduct feasibility studies for high net worth individuals, as well as corporations, and financial and nonfinancial institutions.

The rule retains two limitations on the conduct of financial advisory activities. First, the rule prohibits bank holding companies that provide financial advisory activities from performing routine tasks or operations for a financial advisory customer on a daily or continuous basis. The Board believes it is appropriate to retain this limitation at this time in order to assure that bank holding companies do not exercise daily control over companies under the guise of providing financial advisory services.[20] Second, the rule prohibits a financial advisor from making available to any of its affiliates confidential information regarding a customer or other party obtained in the course of providing any of the financial advisory services, except with the consent of the customer or party.

The Board's experience in supervising bank holding companies that conduct financial advisory services has not indicated that the other restrictions imposed by the Board by order are necessary to prevent adverse effects in the conduct of this activity. Of course, holding company affiliates that provide financial advisory services are bound by the restrictions against tying of products and services contained in section 106 of the Bank Holding Company Act

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[16] For example, the Board's action does not relieve a bank holding company subsidiary that engages in underwriting and dealing activities consistent with section 20 of the Glass-Steagall Act as well as full service brokerage activities from the restrictions imposed on having interlocking officers, directors or employees with an affiliated bank.

[17] For example, in conducting securities brokerage activities, the company conducting securities brokerage activities must disclose to any customer that it advises any interest of the company or affiliate as underwriter or market maker in the securities being purchased or recommended. In addition, this rule does not relieve any insured depository institution of the restriction imposed by Board order on expressing an opinion on the value or advisability of the purchase or sale of ineligible securities underwritten or dealt in by an affiliate without appropriate disclosure. J.P. Morgan & Co. Incorporated, The Chase Manhattan Corporation, Bankers Trust New York Corporation, Citicorp, Security Pacific Corporation, 75 Federal Reserve Bulletin 192, 215 (1989).

[18] See, *e.g.*, SunTrust Banks, Inc., 74 Federal Reserve Bulletin 256 (1988) (provision of financial advisory services to nonaffiliated institutions in connection with mergers, acquisitions, divestitures, and the structuring of and arranging for loan syndications, interest rate swaps, caps, and similar transactions, and conducting feasibility studies for corporations); Skandinavian Bank Group plc, 75 Federal Reserve bulletin 311 (1989) (provision of financial advisory services concerning joint ventures and the structuring of leveraged buyouts and capital raising vehicles); First Regional Bancorp, Inc., 76 Federal Reserve Bulletin 859 (1990) (provision of financial advisory services in connection with reorganizations and recapitalizations); Banc One Corporation, 76 Federal Reserve Bulletin 756 (1990) (provision of financial advisory services to high net worth individuals).

[19] The limitations are the following:

1. The advisor's financial advisory activities will not encompass the performance of routine tasks or operations for a client on a daily basis;

2. Disclosure will be made to each potential client of the advisor that the advisor is an affiliate of its parent bank holding company and affiliated banks.

3. Advice rendered by the advisor on an explicit fee basis will be rendered without regard to correspondent balances maintained at the advisor's depository institution affiliates;

4. The advisor will not make available to its parent bank holding company or to any of its affiliates confidential information received by a client, except with the client's consent.

[20] Two commenters addressed specifically the proposed prohibition on providing financial advice on a daily or continuous basis. One bank holding company opposed the limitation, on the ground that certain of the financial advisory services lend themselves to recurring or regular provision, especially those involving long-standing clients with ongoing advisory requirements. The commenter argued that the limitation would unnecessarily restrict the ability of a bank holding company to advise its clients. By contrast, another bank holding company supported the proposed limitation, noting, as has the Board in its orders approving the provision of these services, that daily or continuous advice could involve the bank holding company in the direct management of its client, thereby resulting in a possible control relationship. The Board has previously determined that the performance of management consulting services other than for depository institutions pursuant to Regulation Y (12 CFR 225.25(b)(11)) is not so closely related to banking or managing or controlling banks as to be a proper incident thereto. 12 CFR 225.126(f); First Commerce Corporation, 58 Federal Reserve Bulletin 674 (1972).

Amendments of 1970. Accordingly, the final rule does not retain these restrictions and bank holding companies that conduct financial advisory services subject to these restrictions are granted relief from these two requirements.

The final rule reflects several revisions to the published proposal in response to suggestions made by commenters. In particular, at the request of commenters, the rule has been clarified to indicate that the provision of financial advice with respect to joint ventures, the structuring of leveraged buyouts and capital raising vehicles, restructurings, reorganizations, interest rate collars, and interest rate floors is permissible. The proposal has also been expanded at the request of several commenters to add references to providing financial advice regarding swaps, caps and similar transactions relating to currency exchange rates or prices, and economic and financial indices. Finally, the rule has been amended in response to comments to add the activity of providing financial advice to foreign governments, including foreign municipalities and agencies of foreign governments. The Board has previously determined by order that each of these activities is closely related to banking for purposes of section 4(c)(8) of the BHC Act in connection with proposals to conduct other financial advisory activities.[21]

Final Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 95-354, 5 U.S.C. 601 *et seq.*), the Board of Governors of the Federal Reserve System certifies that adoption of this final rule will not have a significant economic impact on a substantial number of small entities that would be subject to the regulation.

This amendment will add to the list of permissible bank holding company activities in the Board's Regulation Y activities that have been previously approved for bank holding companies by order. The addition will have the effect of reducing the burden on bank holding companies, including small bank holding companies, that wish to conduct these activities by simplifying the regulatory review process. The amendment does not impose more burdensome requirements on bank holding companies than are currently applicable.

Effective Date

The provisions of 5 U.S.C. 553(d) generally prescribing 30 days prior notice of the effective date of a rule have not been followed in connection with the adoption of this amendment because adoption of the rule reduces a regulatory burden. Section 553(d)(1) grants a specific exemption from the deferred effective date requirements in these instances.

List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, the Board is amending 12 CFR part 225 as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831i, 1843(c)(8), 1844(b), 3106, 3108, 3907, 3909, 3310, and 3331–3351.

In part 225, the footnotes are redesignated as shown below:

Section and paragraph	Current footnote number	New footnote number
§§ 225.25(b)(5)(i)(C)	3	4
(b)(5)(i)(D)	4	5
	5	6
(b)(5)(i)(F)	6	7
(b)(5)(ii)(D)	7	8
(b)(8)(i)(B)	8	9
(b)(8)(ii) (introductory text)	9	10
(b)(8)(ii)(B)	10	11
(b)(8)(iv) (introductory text)	11	12
	12	13
(b)(10)(ii)	13	14
(b)(11) (introductory text)	14	15
(b)(11)(iv)	15	16

3. In § 225.2, paragraphs (g) through (o) are redesignated as paragraphs (h) through (p) and a new paragraph (g) is added to read as follows:

§ 225.2 Definitions

* * * * *

(g) *Institutional customer* means:

(1) A bank (acting in an individual or fiduciary capacity); a savings and loan association; an insurance company; an investment company registered under the Investment Company Act of 1940; or a corporation, partnership, proprietorship, organization, or institutional entity, with net worth exceeding $1,000,000;

(2) An employee benefit plan with assets exceeding $1,000,000, or whose investment decisions are made by a bank, insurance company, or investment advisor registered under the Investment Advisors Act of 1940;

(3) A natural person whose individual net worth (or joint net worth with a spouse) at the time of receipt of the brokerage, advisory, or other relevant service exceeds $1,000,000;

(4) A broker-dealer or option trader registered under the Securities Exchange Act of 1934, or other securities, investment or banking professional; or

(5) An entity all of the equity owners of which are institutional customers.

* * * * *

4. In § 225.25, the word "and" is removed at the end of paragraph (b)(4)(iv), paragraph (b)(4)(v) is revised, a new paragraph (b)(4)(vi) is added, and paragraph (b)(15) is revised to read as follows:

§ 225.25 List of permissible nonbanking activities.

* * * * *

(b) * * *

(4) * * *

(v) Providing financial advice to state and local governments and foreign governments (including foreign municipalities and agencies of foreign governments), such as with respect to the issuance of their securities; and

(vi) (A)(*1*) Providing advice, including rendering fairness opinions and providing valuation services, in connection with mergers, acquisitions, divestitures, joint ventures, leveraged buyouts, recapitalizations, capital structurings, and financing transactions (including private and public financings and loan syndications); and conducting financial feasibility studies;[3] and,

(*2*) Providing financial and transaction advice regarding the structuring and arranging of swaps, caps, and similar transactions relating to interest rates, currency exchange rates or prices, and economic and financial indices, and similar transactions.

(B) The financial advisory services described in this subparagraph may be provided only to corporations, to financial and nonfinancial institutions, and to natural persons whose individual net worth (or joint net worth with a

[21] See, *e.g.*, The Dai-Ichi Kangyo Bank, Ltd., 77 Federal Reserve Bulletin 184 (1991) (advice regarding joint ventures, leveraged buyouts, restructurings, recapitalizations, and other corporate transactions, and advice regarding the structuring and arranging of swaps, caps and similar transactions relating to interest rates, currency exchange rates and prices, and economic and financial indices); The Bank of Tokyo, Ltd., 78 Federal Reserve Bulletin 654 (financial advice to foreign governments).

[3] Feasibility studies do not include assisting management with the planning or marketing for a given project or providing general operational or management advice.

spouse) at the time the service is provided exceeds $1,000,000.

(C) Financial advisory activities under this subparagraph may not encompass the performance of routine tasks or operations for a customer on a daily or continuous basis, and the financial advisor shall not make available to any of its affiliates confidential information regarding a party obtained in the course of providing any financial advisory services except as authorized by the party.

* * * * *

(15) *Securities brokerage.* (i) Providing securities brokerage services, related securities credit activities pursuant to the Board's Regulation T (12 CFR Part 220), and incidental activities such as offering custodial services, individual retirement accounts, and cash management services, if the securities brokerage services are restricted to buying and selling securities solely as agent for the account of customers and do not include securities underwriting or dealing; and

(ii) Providing securities brokerage services under paragraph (b)(15)(i) of this section in combination with investment advisory services permissible under paragraph (b)(4) of this section [17] subject to the following requirements:

(A) The company must prominently disclose in writing [18] to each customer before providing any brokerage or advisory services, and, in the case of disclosures required under paragraph (b)(15)(ii)(A) (*1*) of this section, again in each customer account statement, that:

(*1*) The company is solely responsible for its contractual obligations and commitments;

(*2*) The company is not a bank and is separate from any affiliate bank; and

(*3*) The securities sold, offered, or recommended by the company are not insured by the Federal Deposit Insurance Corporation, and are not obligations of, or endorsed or guaranteed in any way by, any bank, unless this is the case; and

(B) The company and its affiliates may not share any confidential information concerning their respective customers without the consent of the customer.

* * * * *

By order of the Board of Governors of the Federal Reserve System, August 31, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-21341 Filed 9-9-92; 8:45 am]

BILLING CODE 6210-01-M

[17] Investment advisory services authorized under paragraph (b)(4) include the exercise of discretion in buying and selling securities on behalf of a customer provided that investment discretion is exercised only on behalf of institutional customers and only at the request of the customer. A bank holding company or its subsidiary providing these discretionary investment management services must comply with applicable law, including fiduciary principles, and obtain the consent of its customers before engaging, as principal or as agent in a transaction in which an affiliate acts as principal, in securities transactions on the customer's behalf.

[18] These disclosures may be made orally provided that a written disclosure is provided to the customer immediately thereafter.

FEDERAL TRADE COMMISSION

16 CFR Part 305

RIN 3084-AA26

Rules for Using Energy Cost and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act; Ranges of Comparability for Water Heaters

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission announces that the present ranges of comparability for water heaters will remain in effect until new ranges are published.

Under the Appliance Labeling Rule, each required label on a covered appliance must show a range, or scale, indicating the range of energy costs or efficiencies for all models of a size or capacity comparable to the labeled model. The Commission publishes the ranges annually in the **Federal Register** if the upper or lower limits of the range change by 15% or more from the previously published range. If the Commission does not publish a revised range, it must publish a notice that the prior range will be applicable until new ranges are published. The Commission is today announcing that the ranges for water heaters published on September 13, 1991, will remain in effect until new ranges are published.

EFFECTIVE DATE: September 10, 1992.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, 202-326-3035, Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On November 19, 1979, the Commission issued a final rule, [1] pursuant to section 324 of the Energy Policy and Conservation Act of 1975,[2] covering certain appliance categories, including water heaters. The rule requires that energy cost and related information be disclosed on labels and in retail sales catalogs for all water heaters presently manufactured. Certain point-of-sale promotional materials must disclose the availability of energy usage information. If a water heater is advertised in a catalog from which it may be purchased by cash, charge account or credit terms, then the range of estimated annual energy costs for the product must be included on each page of the catalog that lists the product. The required disclosures and all claims concerning energy consumption made in writing or in broadcast advertisements must be based on the results of test procedures developed by the Department of Energy, which are referenced in the rule.

Section 305.8(b) of the rule requires manufacturers to report the energy usage of their models annually by specified dates for each product type. [3] Because the costs for the various types of energy change yearly, and because manufacturers regularly add new models to their lines, improve existing models and drop others, the data base from which the ranges of comparability are calculated is constantly changing.

To keep the required information in line with these changes, the Commission is empowered, under § 305.10 of the rule, to publish new ranges (but not more often than annually) if an analysis of the new data indicates that the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission must publish a statement that the prior range or ranges remain in effect for the next year.

The annual reports for water heaters have been received and analyzed and it has been determined to retain the ranges that were published on September 13, 1991.[4] In consideration of the foregoing, the present ranges for water heaters, which are based on National Average Representative Unit Costs of 60.54 cents per therm for natural gas, 89 cents per gallon for propane, 8.24 cents per kilowatt-hour for electricity, and $1.29 a gallon for No. 2 heating oil, will remain in effect until the Commission publishes new ranges for these products.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, labeling, Reporting and recordkeeping requirements.

The authority citation for part 305 continues to read as follows:

[1] 44 FR 66466, 16 CFR 305.

[2] Public Law 94-163, 89 Stat. 871 (Dec. 22, 1975).

[3] Reports for water heaters are due by May 1.

[4] 56 FR 46524. **List of Subjects in 16 CFR**

Authority: Sec. 324 of the Energy Policy and Conservation Act (Pub. L. 94–163) (1975), as amended by the National Energy Conservation Policy Act, (Pub. L. 95–619) (1978), the National Appliance Energy Conservation Act, (Pub. L. 100–12) (1987), and the National Appliance Energy Conservation Amendments of 1988, (Pub. L. 100–357) (1988), 42 U.S.C. 6294; sec. 553 of the Administrative Procedure Act, 5 U.S.C. 553.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 92–21727 Filed 9–9–92; 8:45 am]

BILLING CODE 6750-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 19

Reporting Cash Positions in the Grains (Including Soybeans) and Cotton

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rulemaking.

SUMMARY: The Commodity Futures Trading Commission (Commission) is amending part 19 of its regulations generally to reduce the frequency with which large traders must file information concerning fixed price cash positions from a weekly to a monthly basis. However, the Commission will continue to require information from cotton traders concerning call purchases and sales on a weekly basis. This change will reduce by about 83 percent the number of reports that are required without materially reducing the Commission's ability to monitor compliance with its speculative position limit rules or to publish its weekly "Cotton on Call" report.

EFFECTIVE DATE: October 13, 1992.

FOR FURTHER INFORMATION CONTACT: Lamont L. Reese, Division of Economic Analysis, 2033 K Street, NW., Washington, DC 20581, Telephone (202) 254–3310.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission periodically reviews information that it receives through its large trader reporting system to determine its adequacy for effective market surveillance. In this regard, the Commission also is mindful of the reporting burden associated with these requirements and reviews them with an eye to ameliorating that burden to the extent compatible with its regulatory mission while maintaining adequate market coverage.

The Commission currently requires that persons owning or controlling futures positions in commodities for which the Commission has established speculative limits file reports concerning their long and short cash positions, i.e., stocks of the commodities owned and the quantity of their fixed-price purchase and sale commitments, 17 CFR part 19 (1991). These commodities include the grains, the soybean complex and cotton. 17 CFR part 150 (1992). The primary purpose for these reports is to determine if the futures positions of traders that exceed the Commission's speculative limits qualify as bona fide hedging transactions or positions as defined in § 1.3(z) of the Commission's regulations.[1] Additionally, merchants and dealers in cotton must provide information on the quantity of their "call purchases and sales." [2] Information concerning call purchases and sales is used as a basis for the Commission's weekly "Cotton on Call" report.

With the exception of merchants and dealers in cotton, reporting levels for cash position reports (CFTC Forms 204 and 304) are set at the speculative limit levels defined in rule 150.2, 17 CFR 150.2 (1992). Merchants and dealers in cotton must file reports at the lower levels specified in 17 CFR 15.03. This lower level for cotton is to ensure adequate coverage of call sales and purchases on the "Cotton on Call" report. The above classes of reportable traders currently are required to file cash position reports on a weekly basis.

As explained in the notice of proposed rulemaking, the cash position information provided on the series 04 reports informs the Commission of a traders' level of activity in the cash market with respect to stocks of the Commodity on hand and fixed-price purchases and sales. This level of activity on the long (or short) side of the market provides a maximum for the quantity of long (short) futures contracts held by a trader which could be considered as hedging under the appropriate sections of the Commission's hedging definition.[3] If the level of cash activity reported by the trader appears not to justify futures positions which exceed speculative limits after adjusting such position for cash market offsets, the Commission may use its authority under § 18.05 of the regulations to more thoroughly explore the matter.[4]

After reviewing its requirements under part 19 with respect to the burden imposed on traders filing weekly series 04 reports and with respect to its surveillance requirements, the Commission proposed that the frequency of filing series 04 reports be reduced from weekly to monthly. The Commission noted that this would achieve a 77 percent reduction in the burden on the industry without materially affecting the Commission's surveillance program. The Commission noted that adoption of this proposal would reduce the frequency of publication of the "Cotton on Call" report and asked for specific comment on the impact of this change.

The Commission received eleven comment letters. Nine primarily concerned the Commission's "Cotton on Call" Report. The other two comment letters supported the proposed reduction in reporting of fixed price cash positions. One commenter, a producer association opined that "this is an example of regulatory relief that would remove a time consuming reporting burden from traders with no real loss of regulatory control by the Commission."

In contrast, the nine persons commenting on the reporting of cotton call purchases and sales adamantly opposed monthly versus weekly reporting.[5] These nine commenters argued that the weekly report provided important information for making marketing decisions, particularly for small firms. Several commenters argued that publication of the "Cotton on Call" report provides the smaller trader with access to information that would otherwise be available only to the larger traders because of their market share. One commenter noted that the "* * * hours devoted to compiling the weekly reports are clearly offset by the value of the information provided to those filing

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[1] Among other things, the Commission enumerates as bona fide hedges those short futures positions that do not exceed the quantities of the commodity owned and the quantities of fixed-price purchases of the commodity and those long futures positions that do not exceed the quantities of fixed-priced sales of the commodity. 17 CFR 1.3(z) (1992).

[2] Call purchases and sales are unfixed price purchase and sales commitments transacted as a basis price referenced to a particular cotton futures delivery month.

[3] In particular, see 17 CFR 1.3(z)(2)(i)(A), (2)(ii)(A) and (B), and (iv) (1992).

[4] Section 18.05 of the regulations requires large futures traders to keep books and records of all positions and transactions in a cash commodity that the trader hedges in futures and upon request furnish to the Commission pertinent information concerning such positions and transactions. 17 CFR 18.05 (1992).

[5] Commenters included three associations representing cotton producers, manufacturers and merchants, as well as cotton merchants who file the report.

the reports, to those utilizing the cotton contract."

In view of the fact that members of the cotton industry are willing to accept the burden associated with reporting cotton call purchases and sales, the Commission is not amending this requirement as proposed and will instead continue to require weekly reporting of call purchases and sales in cotton. With respect to reporting stocks and fixed price purchases and sales, however, the Commission is adopting its amendments as proposed. As the producer association noted, this will reduce reporting burdens for a number of traders with no impact on the Commission's regulatory program.

Under part 19, as amended, all traders in the grains, soybean complex, or cotton (if they have no open call purchase and sales commitments), would file a CFTC Form 204 or 304 as of the last Friday of each month showing components of their fixed price cash position if their futures positions are reportable pursuant to § 15.00(b)(1)(ii), 17 CFR 15.00(b)(i)(ii)(1991).[6] The Commission also retains the authority to call for this information on a more frequent basis for selected firms as needed. Merchants and dealers in cotton would additionally file a CFTC Form 304 on a weekly basis showing open call purchase and sale commitments on their books if their futures positions in cotton are reportable pursuant to § 15.00(b)(1)(i), 17 CFR 15.00(b)(1)(i)(1992).[7] This maintains the current coverage and frequency of the "Cotton on Call" report yet affords relief to traders who do not make call purchases or sales in cotton. The Commission estimates that adoption of its proposal as amended will reduce the current reporting burden by about 63 percent.

II. Related Matters

A. The Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires that agencies, in proposing rules, consider the impact of those rules on small businesses. These amendments affect large traders. The Commission has previously defined "small entities" in evaluating the impact of its rule in accordance with the RFA, 47 FR 18618–18621 (April 30, 1982). In that statement, the Commission concluded that large traders are not considered to be small entities for purposes of the RFA. Moreover, in its notice of proposed rulemaking the Commission noted that the proposed amendments lessen an existing burden on large traders. Pursuant to section 3(a) of the RFA (5 U.S.C. 605(b)), the Chairman, on behalf of the Commission, certified in its issuance of proposed rulemaking that the proposed rules would not have a significant economic impact on a substantial number of small entities. The Commission invited comments from any firm which believed that these rules would have a significant economic impact upon its operations. No comments were received.

b. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. 3501 *et seq.*, imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission previously submitted this rule in proposed form and its associated information collection requirements to the Office of Management and Budget. The Office of Management and Budget approved the collection of information associated with this rule on May 13, 1992 and assigned OMB control number 3038–0009 to the rule. The burden associated with this entire collection, including this amended rule, is as follows:

Average burden hours per response	.174
Number of respondents	3709
Frequency of response	Daily

The burden associated with this specific rule is as follows:

Average burden hours per response	1.0693
Number of respondents	294
Frequency of response	Weekly

Persons wishing to comment on the information which would be required by these rules should contact Gary Waxman, Office of Management and Budget, room 3228, NEOB, Washington, DC 20503, (202) 395–7304. Copies of the information collection submission to OMB are available from Joe F. Mink, CFTC Clearance Officer, 2033 K Street, NW., Washington, DC 20581, (202) 254–9735.

List of Subjects in 17 CFR Part 19

Brokers, Commodity futures, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Act and, in particular, sections 4g, 4i, 5 and 8a of the Act, 7 U.S.C. 6g, 6i, 7 and 12a, the Commission hereby amends part 19 of chapter I of title 17 of the Code of Federal Regulations as follows:

PART 19—REPORTS BY PERSONS HOLDING BONAFIDE HEDGE POSITIONS PURSUANT TO SECTION 1.3(Z) OF THIS CHAPTER AND BY MERCHANTS AND DEALERS IN COTTON

1. The authority citation for part 19 continues to read as follows:

Authority: 7 U.S.C. 6(g)(1), 6i and 12a(5).

§ 19.00 [Amended]

2. Section 19.00 is amended by revising the introductory language of paragraph (b) as follows:

§ 19.00 General provisions.

* * * * *

(b) *Manner of Reporting.* The manner of reporting the information required in § 19.10 is subject to the following:

* * * * *

§ 19.01 [Amended]

3. Section 19.01 is amended by revising the section heading; by revising the introductory text and designating it as paragraph (a); redesignating paragraphs (a), (b) and (c) as (a)(1), (a)(2) and (a)(3) respectively; by revising newly designated paragraph (a)(3); and by adding a new paragraph (a)(4), (a)(5), and (b) to read as follows:

§ 19.01 Reports on stocks and fixed price purchases and sales pertaining to futures positions in wheat, corn, oats, soybeans, soybean oil, soybean meal or cotton.

(a) *Information Required*—Persons required to file '04 reports under § 19.00(a)(1) or § 19.00(a)(3) of this chapter shall file CFTC Form 304 reports for cotton and form 204 reports for other commodities showing the composition of the fixed price cash position of each commodity hedged in the futures contract market including:

* * * * *

(3) The quantity of fixed price sale commitments open in such cash commodities and their products and byproducts; and in addition for cotton,

(4) The quantity of equity in cotton held by the Commodity Credit Corporation under the provisions of the Upland Cotton Program of the

[6] Rule 15.00(b)(1)(ii) defines a reportable futures position as any open contract position in any one future or in all futures combined which at the close of the market on the last business day of the week exceeds the net quantity limit in spot, single or in all months in rule 150.2, 17 CFR rule § 150.2(1992).

[7] Rule 15.00(b)(1)(i) defines a reportable position as any open contract position in any one future of any commodity on any one contract market which equals or exceeds the quantity specified in Section 15.03, 17 CFR 15.03 (1992). The level specified in Rule 15.03 for cotton is 50 contracts. This compares to levels of 300, 450 and 1200 contracts for spot, single and all months combined specified in Rule 150.2, which is the reportable level for cotton traders who do not have open call commitments.

Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture.

(5) The quantity of certificated cotton owned.

(b) *Time and place of filing reports*—Except for reports filed in response to special calls made under § 19.00(a)(3), each report shall be made monthly, as of the close of business on the last Friday of the month, and filed at the appropriate Commission office specified in paragraph (b) (1) or (2) of this section not later than the second business day following the date of the report in the case of the 304 report and not later than the third business day following the date of the report in the case of the 204 report. Reports may be transmitted by facsimile or, alternatively, information on the form may be reported to the appropriate Commission office by telephone and the report mailed to the same office, not later than midnight of its due date.

(1) CFTC Form 204 reports with respect to transactions in wheat, corn, oats, soybeans, soybean meal and soybean oil should be sent to the Commission's office in Chicago, Il. unless otherwise specifically authorized by the Commission or its designee.

(2) CFTC Form 304 reports with respect to transactions in cotton should be sent to the Commission's office in New York, NY, unless otherwise specifically authorized by the Commission or its designee.

§ 19.02 [Amended]

4. Section 19.02 is revised to read as follows:

§ 19.02 Reports pertaining to cotton call purchases and sales.

(a) *Information Required*—Persons required to file '04 reports under § 19.00(a)(2) of this chapter shall file CFTC Form 304 reports showing the quantity of call cotton bought or sold on which the price has not been fixed, together with the respective futures on which the purchase or sale is based. As used herein, call cotton refers to spot cotton bought or sold, or contracted for purchase or sale at a price to be fixed later based upon a specified future.

(b) *Time and place of filing reports*—Each report shall be made weekly as of the close of business on Friday and filed at the Commission's office in New York, NY, not later than the second business day following the date of the report. Reports may be transmitted by facsimile or, alternatively, information on the form may be reported to the appropriate Commission office by telephone and the report mailed to the same office, not later than midnight of its due date.

§ 19.10 [Removed]

5. Section 19.10 is removed and reserved.

Issued in Washington, DC, this 1st day of September, 1992, by the Commission.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

[FR Doc. 92-21513 Filed 9-9-92; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Initial Hearings for Prisoners With Minimum Terms of 10 Years or More

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The Parole Commission is amending a procedural rule to clarify the procedures for conducting initial hearings for prisoners serving minimum terms of parole ineligibility of 10 years or more. The Commission's procedural change does not change the Commission's policy with regard to conducting initial hearings for inmates with minimum terms of 10 years or more with the exception that the initial hearing will be conducted earlier at six months prior to the completion of the minimum term, rather than 90 days prior to the completion of the minimum term. The earlier initial hearing will give a parole applicant who is paroled at his eligibility more time to make release plans and to have an opportunity to be transferred to a halfway house prior to his release on parole.

EFFECTIVE DATE: September 10, 1992.

FOR FURTHER INFORMATION CONTACT: Richard K. Preston, Attorney, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland, 20815. Telephone (301) 492-5959.

SUPPLEMENTARY INFORMATION: The previous language relating to when an initial hearing should be conducted for a prisoner who has a 10-year minimum term was unclear. The prior rule reflected the Commission's intention to wait until 90 days prior to the completion of the minimum term to conduct that hearing, however, it erroneously implied that the Commission's policy was that hearings could be conducted at any time prior to 90 days. The amended provision advances when an initial hearing will be conducted and makes it clear that the Commission does not intend to conduct an initial hearing before six months prior to the completion of the minimum term.

The Commission has modified the regulation to provide that an initial hearing could be conducted six months prior to the completion of the minimum term so that prisoners who receive parole dates at their parole eligibility would qualify for halfway house placement. The Commission decided to set the initial hearing at six months prior to eligibility so that an effective parole date (rather than a presumptive parole date) could be set for those inmates who received parole dates on their eligibility date at their initial hearing.

Executive Order 12291 and Regulatory Flexibility Act Statement

The U.S. Parole Commission has determined that this rule is not a major rule in the meaning of Executive Order 12291. This procedural regulation will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, crime, juvenile delinquency, prisoners, privacy, probation, parole, and youth.

Accordingly, the Parole Commission adopts an interpretative regulation amending 28 CFR part 2 as follows:

PART 2—[AMENDED]

1. The authority citation for 28 CFR part 2 continues to read:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. 28 CFR 2.12(a) is revised to read as follows:

§ 2.12 Initial hearings: Setting presumptive release dates.

(a) An initial hearing shall be conducted within 120 days of a prisoner's arrival at a federal institution or as soon thereafter as practicable; except that in a case of a prisoner with a minimum term of parole ineligibility of ten years or more, the initial hearing will be conducted six months prior to the completion of such a minimum term, or as soon thereafter as practicable.

* * * * *

Dated: August 20, 1992.

Jasper R. Clay,

Vice Chairman, U.S. Parole Commission.

[FR Doc. 92-21833 Filed 9-9-92; 8:45 am]

BILLING CODE 4410-01-M

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Effect of a Conspiracy Conviction on a Prisoner's Parole Guidelines

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The U.S. Parole Commission is revising its guidelines to clarify its policy that a prisoner who is convicted on a conspiracy charge is rated according to the offense carried out, or intended, by the entire conspiracy. The guidelines already provide for joint accountability among co-conspirators if the criminal activities of the prisoner's associates were either under his control or reasonably foreseeable. The guidelines have not, however, specified that a conspiracy conviction itself provides the basis for such a finding by the Commission. A recent court decision holding that proof of control or foreseeability is required under the Commission's guidelines, notwithstanding a conspiracy conviction, has made it necessary for the Commission to specify the effect of a conspiracy conviction on the parole guideline evaluation.

EFFECTIVE DATE: October 13, 1992.

FOR FURTHER INFORMATION CONTACT: Richard Preston, Office of General Counsel, Telephone (301) 492-5959.

SUPPLEMENTARY INFORMATION: Following the decision in *U.S. ex rel. John Farese* v. *Dennis Luther*, 953 F.2d 49 (3d Cir. 1992), the Commission published a proposed rule at 57 FR 21209 (May 19, 1992) to clarify the Commission's policy that, when a prisoner has been convicted of a conspiracy, he must be held accountable for the criminal activities committed by his confederates, provided such activities were committed in furtherance of the conspiracy and subsequent to the date the prisoner joined the conspiracy. In brief, it was the Commission's intent to continue assigning guideline offense severity ratings in accord with the traditional legal liability of conspirators. See *Pinkerton* v. *United States*, 328 U.S. 640 (1946).

Public comment brought to the Commission's attention a proposed amendment by the U.S. Sentencing Commission to USSG sec. 1B.3(a)(1), under which sentencing guidelines are to be based only on that aspect of a conspiracy in which the defendant was directly engaged. The premise for a policy of considering only "the criminal activity the particular defendant agreed to jointly undertake (*i.e.*, the scope of the specific conduct and objectives embraced by the defendant's agreement)", is that a conspiracy count " * * * may be worded broadly and include the conduct of many participants over a period of time * * * " so that it may not be fair to hold each co-conspirator accountable for the size and extent of the entire conspiracy.

The Parole Commission is not persuaded that this is necessarily a good model to follow. The real underlying concern, however, is a valid one. This is the potential unfairness of rating "minor cogs" who operate on the fringes of large conspiracies, as if they were responsible for the whole organization. The Parole Commission believes that a more specific exclusion for this type of case is the more appropriate way to avoid the possibility of Draconian punishments. Otherwise, a rating system that allows substantial participants in a conspiracy to "carve out" a limited role for themselves in what they know to be a larger organization would not permit a true measure of the seriousness of the offense.

As the dissent in *Farese* v. *Luther* pointed out, with respect to an independent wholesaler in a "spoke and wheel" narcotics conspiracy, the existence of additional co-conspirators is usually obvious because the offender knows that he is not the exclusive distributor for his source of supply, and that the conspiracy in which he is involved necessarily extends beyond himself and his source. 953 F.2d 54-55. An adequate accounting must be made for a decision to participate in, and benefit from, the existence of the larger organization. As pointed out in *Cerullo* v. *Gunnell*, 586 F. Supp. 211, 215 (D.Conn. 1983):

> The essence of the crime of conspiracy is the illegal and dangerous combination of persons to pursue unlawful ends. The criminal synergy created by such a cabal threatens society more than do the isolated acts of individuals.

Hence, the marijuana importer who functions as part of a diversified conspiracy that includes both marijuana and cocaine operations indirectly makes possible the continued life of a multi-faceted (and therefore more socially-threatening) conspiracy. He should not be permitted to evade his contributory responsibility for the entire structure by " * * * hiding his head in the sand and blaming others." See *McArthur* v. *U.S. Board of Parole*, 434 F.Supp. 163 (S.D. Ind. 1976).

Moreover, the Commission is unwilling to start down the road of disregarding the indictments that support guilty pleas and jury verdicts in any type of case. The integrity of our criminal justice system requires that convictions be respected in sentencing and parole decisions. If indictments can be reargued in conspiracy cases on the ground that they are too "broadly worded", then there is no reason why indictments may not also be challenged in other types of cases (*e.g.*, complex financial frauds) where indictments may also be challenged as overly broad. Parole hearings will not become forums for rearguing convictions.

However, in response to the legitimate concern that "minor cogs" in vast conspiracies should be fairly punished, the Commission has added to the proposed rule an exclusion for an independent, small-scale operator whose role in the conspiracy was neither established nor significant.

Executive Order 12291 and Regulatory Flexibility Statement

The U.S. Parole Commission has determined that this rule is not a major rule within the meaning of Executive Order 12291. This rule will not have a significant economic impact upon a substantial number of small entities, within the meaning of the regulatory flexibility act, 5 U.S.C. 605(b).

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, probation and parole, prisoners.

Accordingly, the U.S. Parole Commission adopts a final rule amending 28 CFR part 2 as follows:

PART 2—[AMENDED]

1. The authority citation for 28 CFR part 2 continues to read:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. The following sentence is added to § 2.20, chapter 13, subchapter A, general note 4:

§ 2.20 Parole policy guidelines: Statement of general policy.

Chapter Thirteen General Notes and Definitions

Subchapter A—General Notes

4. * * * However, if the prisoner has been convicted of a conspiracy, he must be held accountable for the criminal activities committed by his co-conspirators, provided such activities were committed in furtherance of the conspiracy and subsequent to the date the prisoner joined the conspiracy, except in the case of an independent, small-scale operator whose role in the conspiracy was neither established nor significant. An offender has an "established" role in a conspiracy if, for example, he takes orders to

perform a function that assist others to further the objectives of the conspiracy, even if his activities did not significantly contribute to those objectives. For such offenders, however, a "peripheral role" reduction may be considered.

* * * * *

Dated: August 21, 1992.

Jasper R. Clay, Jr.,

Vice Chairman, U.S. Parole Commission.

[FR Doc. 92-21829 Filed 9-9-92; 8:45 am]

BILLING CODE 4410-01-M

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28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Defining Value of Property Loss in the Parole Guidelines for Theft, Forgery, and Frauds

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The U.S. Parole Commission is amending its guidelines to improve upon the definition of the term "value of the property", which is used in the guidelines for rating cases of theft, forgery, and fraud. The purpose of the amended rule is to clarify how these offenses are to be rated on the guidelines when the victim has recovered his money or property following detection of the crime, and when the victim was unlawfully exposed to risk of loss without actual loss having been sustained.

EFFECTIVE DATE: October 13, 1992.

FOR FURTHER INFORMATION CONTACT: Richard Preston, Office of General Counsel, Telephone (301) 492-5959.

SUPPLEMENTARY INFORMATION: The Commission published a proposed rule to improve upon the definition of the term "value of the property" at 28 CFR 2.20, chapter 13, subchapter B, definition No. 21, at 57 FR 21221 (May 19, 1992). A favorable comment was received from a U.S. Probation Office, but not other comment on this proposal was submitted to the Commission.

As explained in the proposed rule, the new definition of the term "value of the property" is intended to conform to existing Commission practice with respect to theft, forgery, and frauds wherein the crime has resulted in no dollar loss to the victim, or the victim has recovered all or part of the value lost. The Commission has consistently rated such offenses according to the loss that the offender intended to cause, or the total amount of the victim's property or money unlawfully placed at risk of loss through the offender's criminal conduct. Moreover, the Commission has consistently evaluated such crimes without discounting money or property which the victim has been able to recover following completion of the crime. These policies are reflected in the final rule, which is adopted unchanged from the proposed rule.

Executive Order 12291 and Regulatory Flexibility Statement

The U.S. Parole Commission has determined that this is not a major rule within the meaning of Executive Order 12291. This rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, probation and parole, prisoners.

Accordingly, the Parole Commission adopts a final rule amending 28 CFR part 2 as follows:

PART 2—[AMENDED]

1. The authority citation for 28 CFR part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. Section 2.20 is amended by revising the definition of the term "value of the property" contained in Chapter 13, Subchapter B, Definition 20, to read as follows:

§ 2.20 Paroling policy guidelines: Statement of general policy.

Chapter Thirteen General Notes and Definitions

* * * * *

Subchapter B—Definitions

* * * * *

20. The "value of the property" is determined by estimating the actual or potential replacement cost to the victim. The "actual replacement cost" is the value or money permanently lost to the victim through theft/forgery/fraud. The "potential replacement cost" refers to the total loss the offender specifically intended to cause by theft/forgery/fraud, or the total amount of the victim's money or property unlawfully exposed to risk of loss through theft/forgery/fraud notwithstanding subsequent recovery by the victim. The highest of these three values is the value to be used in rating the offense on the guidelines.

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Dated: August 27, 1992.

Jasper R. Clay, Jr.,

Vice Chairman, U.S. Parole Commission.

[FR Doc. 92-21831 Filed 9-9-92; 8:45 am]

BILLING CODE 4410-01-M

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Applicability of Mandatory Maximum and Minimum Terms to Prisoners Transferred by Treaty

AGENCY: Parole Commission.

ACTION: Final rule.

SUMMARY: The Parole Commission has adopted an interpretative regulation to clarify the applicability of various maximum and minimum terms found in the U.S. Code to release date determinations for prisoners transferred pursuant to prisoner exchange treaties. The Commission has concluded that the maximum and minimum terms that govern sentencing decisions in U.S. District Courts are applicable to prisoners transferred pursuant to treaty, when the U.S. Parole Commission sets a release date and a term of supervised release.

EFFECTIVE DATE: September 10, 1992.

FOR FURTHER INFORMATION CONTACT: Richard K. Preston, Attorney, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, Telephone: (301) 492-5959.

SUPPLEMENTARY INFORMATION: Pursuant to 18 U.S.C. 4106A, the Parole Commission must set a release date and a term of supervised release for prisoners who have been transferred pursuant to treaty to continue serving their foreign sentences in the United States. In setting a release date for any exchange treaty prisoner who committed his offense on or after November, 1987, the Parole Commission is required to apply the sentencing guidelines that pertain to the U.S. Code offense that is most similar to the foreign offense the prisoner committed. However, the sentencing guidelines contain a provision at section 25G1.1 that describes how United States Code offenders (as opposed to foreign code offenders) will be sentenced where the offense of conviction is limited by statutory maximum and minimum terms. In essence, the sentencing guidelines provide that if there is a statutory maximum sentence for a particular U.S. Code violation that is less than the minimum of the applicable guideline range, then the statutorily authorized maximum sentence becomes the guideline sentence. Additionally, if there is a statutorily required minimum sentence for a U.S. Code offense, and that minimum sentence is greater than the maximum of the applicable guideline

range, then the statutorily required minimum sentence would become the guideline sentence.

In reviewing the history of the Parole Commission's authority to set release dates for prisoners transferred pursuant to treaty and the developing case law, the Commission adopted an interpretative regulation that concludes that the statutory maximum and minimum terms required for U.S. Code violators are not applicable to prisoners transferred pursuant to treaty at its April, 1992, meeting. The Commission founded this interpretation on several grounds.

First, the Parole Commission is not imposing a sentence when it determines a release date pursuant to 18 U.S.C. 4106A. *See Hansen* v. *U.S. Parole Commission,* 904 F.2d 306 (5th Cir. 1990). A foreign court imposed the sentence based upon a violation of foreign law which, obviously, did not contain the statutory minimum or maximum terms applicable to U.S. Code violators.

Second, the transferred offenders have not been charged or convicted of violating any U.S. Code offense to which Congress has deemed the mandatory maximum and minimum provisions applicable. In certain circumstances, a U.S. prosecutor must specifically plead in an indictment that the accused U.S. Code offender has a prior conviction before a mandatory minimum term may be imposed. See, e.g., 21 U.S.C. 841(b). Since foreign code offenders have not been convicted of violating any U.S. Code provision, there would have been no opportunity for the foreign prosecutor to make the requisite pleading required of U.S. prosecutors for U.S. Code offenders.

Third, the applicability of mandatory minimum or maximum terms would be inconsistent with the treatment of prisoners transferred pursuant to treaty who committed their offenses before November 1, 1987. Prisoners who committed their offenses before November 1, 1987, are immediately eligible for parole and the U.S. Code provisions restricting or prohibiting parole for certain offenses do not apply to those "old law" treaty cases. Additionally, the foreign sentences are not reduced if they exceed the statutory maximum applicable to the equivalent U.S. Code offense.

Finally, the Commission finds that Congress did not want to alter the length of the sentences imposed by the foreign court as it might breach the bilateral treaties and conventions in force between the United States and various foreign governments.

Those treaties and conventions require that the foreign sentence be respected. Therefore, it is apparent that Congress did not intend for foreign code violators serving sentences imposed by foreign courts in a U.S. institution to serve the mandatory minimum term that might have been applicable to a similar U.S. Code offender if that minimum term were greater than the foreign term imposed.

Executive Order 12291 and Regulatory Flexibility Statement

The U.S. Parole Commission has determined that this rule is not a major rule in the meaning of Executive Order 12291. This procedural regulation will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, crime, juvenile delinquency, prisoners, privacy, probation, parole, and youth.

Accordingly, the Parole Commission adopts an interpretative regulation amending 28 CFR part 2 as follows:

PART 2—[AMENDED]

1. The authority citation for 28 CFR part 2 continues to read:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. The provisions relating to applicability and jurisdiction over transfer treaty cases found at 28 CFR 2.62(a)(1) is revised to read as follows:

§ 2.62 Prisoners transferred pursuant to treaty.

(a) *Applicability and jurisdiction.* (1) Prisoners transferred by treaty who committed their offenses on or after November 1, 1987, shall receive a special transferee hearing pursuant to the procedures found in this section and 18 U.S.C. 4106A as amended by the Anti-Drug Abuse Act of 1988. Prisoners transferred by treaty who committed their offenses prior to November 1, 1987, are immediately eligible for parole and shall receive a parole hearing pursuant to the procedures found at 28 CFR 2.13. The scope of the Commission's authority to set a release date and terms and conditions of supervised release in either case is the limit of the sentence imposed by the foreign court, and the Commission shall treat the foreign conviction as though it were a lawful conviction in a U.S. District court. It is the Commission's interpretation of 18 U.S.C. 4106A that the U.S. Code provisions restricting parole or requiring mandatory minimum terms or minimum periods of supervised release shall not apply to release decisions concerning prisoners transferred pursuant to treaty who are serving terms of imprisonment imposed by foreign courts for violating foreign laws.

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Dated: August 20, 1992.

Jasper R. Clay, Jr.,

Vice Chairman, U.S. Parole Commission.

[FR Doc. 92–21834 Filed 9–9–92; 8:45 am]

BILLING CODE 4410–01–M

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28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Interim Procedures for Prisoners Serving Aggregated U.S. and D.C. Code Sentences

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The U.S. Parole Commission has adopted a final rule that sets forth parole procedures for prisoners serving aggregated U.S. and D.C. Code sentences. An interim rule was published in 1989, pending the outcome of class-action litigation in the U.S. District Court for the District of Columbia, which has now been resolved. The final rule contains changes from the interim rule in order to comply with a decision of the U.S. Court of Appeals for the Seventh Circuit (adopted in the class-action ruling), holding that the Commission may not delay an eligible prisoner's D.C. parole hearing beyond completion of the "federal time" that is assessed by the Commission to satisfy the U.S. parole guidelines. The overall purpose of the rule remains that of reconciling both U.S. and D.C. parole statutes and regulations within the framework of a single aggregated sentence.

EFFECTIVE DATE: Effective October 13, 1992.

FOR FURTHER INFORMATION CONTACT: Richard Preston, Staff Attorney, at (301) 492–5959.

SUPPLEMENTARY INFORMATION: The interim regulation was originally published at 54 FR 27841 (June 30, 1989) in order to comply with a class-action decision in *Cosgrove* v. *Thornburgh,* Civil Action No. 80–5016–NHJ, in the U.S. District Court for the District of Columbia. Because the status of mixed sentence cases in this class-action lawsuit had not yet been resolved at that time, the Commission did not publish a final rule.

Subsequent to the publication of this interim rule, litigation arose in other circuits over the application of the

interim rule to individual class members. In *Thomas* v. *Brennan*, 961 F.2d 612 (7th Cir. 1992), the court upheld the interim regulation with the exception of the provision at 28 CFR 2.66(f), which sets forth the method by which the Commission determines whether a "mixed sentence" prisoner should serve his D.C. "minimum time" consecutively to his "federal time" before receiving a "D.C. parole hearing" to determine his suitability for release under the guidelines of the D.C. Board of Parole. The Court held that the Commission may delay the D.C. parole hearing for a mixed sentence prisoner until completion of his federal time in order to satisfy applicable U.S. Code parole laws and regulations, but that the Commission may not postpone the prisoner's D.C. parole hearing thereafter in order to establish a "D.C. minimum time" to satisfy the offense severity requirements of the D.C. guidelines. Instead, the court required the Commission to hold the D.C. parole hearing for an eligible prisoner prior to completion of the "federal time." This holding was subsequently adopted in *Cosgrove* v. *Thornburgh*. By the time *Cosgrove* v. *Thornburgh* was finally decided (on August 14, 1992), the Commission had already elected to amend the interim rule on a nationwide basis in response to *Thomas* v. *Brennan*. Therefore, a final rule is now appropriate.

Compliance with the final rule will result, for many prisoners whose cases have already been heard by the Commission, in advancements of their scheduled D.C. parole hearings. Advancements will be ordered as such cases come before the Commission for review, or upon a request from a prisoner or case manager. Moreover, eligible prisoners will be given the benefit of retroactive application of the procedures applicable at a D.C. parole hearing (including rehearings), if that hearing is held after completion of the prisoner's "federal time." All "mixed sentence" prisoners whose cases are initially heard after the effective date of this regulation will have their D.C. parole hearings scheduled in accordance therewith.

The final rule includes an expanded statement of the Commission's policy for granting parole at a D.C. parole hearing. The decisions in *Thomas* v. *Brennan* and *Cosgrove* v. *Thornburgh* concern only the timing of a "mixed sentence" prisoner's D.C. parole hearing, and do not remove the Commission's obligation to ensure that all grants of parole in such cases must conform to the requirements of D.C. law and regulations relating to the need to account for the seriousness of the crime and the danger release would pose to the public welfare. That is, the seriousness of the D.C. Code offense behavior, including mitigating and aggravating offense circumstances, as well as the nature and extent of the prisoner's criminal history, must be fully taken into account in any parole decision pursuant to D.C. laws and regulations.

Moreover, at the D.C. parole hearing, the Commission will make a comprehensive evaluation of the prisoner's suitability for parole in light of all the offense behaviors he may have committed during his criminal career. In some situations, for example, a comprehensive review of the U.S. and D.C. Code offense behaviors committed by the prisoner will reveal a pattern of sustained, assaultive, or otherwise dangerous behavior warranting a denial of parole notwithstanding a favorable D.C. point score. Many "mixed sentence" offenders are individuals convicted of multiple, often violent offenses under both the U.S. and D.C. Codes, reflecting extreme (or unusually sustained) criminal tendencies. Such individuals should not expect the Commission to make two separate parole decisions, each exclusively focusing on the U.S. or D.C. Code offenses under consideration. There must be an adequate accounting of the prisoner's actual criminal propensities if the Commission is to arrive at a realistic evaluation of the prisoner's suitability for parole.

Executive Order 12291 and Regulatory Flexibility Statement

The U.S. Parole Commission has determined that this rule is not a major rule within the meaning of Executive Order 12291. This amended rule will not have a significant economic impact upon a substantial number of small entities, within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, probation and parole, prisoners.

Accordingly, the Parole Commission adopts an interim rule amending 28 CFR part 2 as follows:

PART 2—[AMENDED]

Accordingly, 28 CFR part 2 is amended as follows:

1. The authority citation for part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. Section 2.66(e) is revised to read as follows:

§ 2.66 Paroling policy for prisoners serving aggregate U.S. and D.C. Code sentences.

* * * * *

(e) *Scheduling the D.C. parole hearing.* The Commission shall then schedule a D.C. parole hearing to be conducted not later than four months prior to the parole eligibility date, or the expiration of the "federal time," whichever is later. At the D.C. parole hearing the Commission shall apply the point score system of the D.C. Board of Parole, pursuant to the regulations of the D.C. Board of Parole, to determine the prisoner's suitability for release on parole.

* * * * *

3. Section 2.66(f), as it presently reads, is removed, and § 2.66(g) is redesignated as § 2.66(f). The newly redesignated § 2.66(f) is revised to read as follows:

* * * * *

(f) *Granting parole.* In determining whether or not to grant parole pursuant to the point score system of the D.C. Board of Parole, and the length of any continuance for a rehearing if parole is denied, the Commission shall presume that the eligible prisoner has satisfied basic accountability for the D.C. Code offense behavior. However, the Commission retains the authority to consider any unusual offense circumstances pursuant to 28 DCMR 204.22 to deny parole despite a favorable point score, and to set a rehearing date beyond the ordinary schedule. The Commission shall also consider whether the totality of the prisoner's offense behaviors (U.S. and D.C. Code) warrants a continuance to reflect the true seriousness or the degree of the risk that the release of the prisoner would pose for the public welfare. Nonetheless, the Commission shall not deny parole or order a continuance, solely on the ground of punishment for the U.S. Code offenses standing alone, or on grounds that have been adequately accounted for in a decision to exceed the federal guideline range.

* * * * *

4. Section 2.66(h) is redesignated as § 2.66(g), and amended by removing the words "and to determine when the D.C. minimum time shall be satisfied" from the first sentence in that paragraph. In addition, the last sentence of the newly redesignated § 2.66(g) is revised to read as follows:

* * * * *

* * * After the D.C. parole hearing, rehearings shall be conducted pursuant to the rules and policy guidelines of the D.C. Board of Parole, if release on parole is not granted.

* * * * *

5. Sections 2.66(i) and 2.66(j) are hereby redesignated as §§ 2.66(h) and 2.66(i), respectively.

Dated: August 21, 1992.

Jasper R. Clay, Jr.,

Vice Chairman, U.S. Parole Commission.

[FR Doc. 92-21630 Filed 9-9-92; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 806

RIN 0701-AA31

Air Force Freedom of Information Act Program

AGENCY: Department of the Air Force, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Air Force revised its regulations on disclosure of records to provide substantive and administrative changes. The intended effect is to provide current information on Air Force policy and procedures for the disclosure of records to the public under the Freedom of Information Act. This revision implements the provisions set forth by the Department of Defense Directive 5400.7, May 13, 1988 and Department of Defense Regulation 5400.7, October 1990, and Change 1, May 10, 1991.

EFFECTIVE DATE: July 31, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Anne W. Turner, Department of the Air Force, SAF/AAIA, Pentagon, room 4A1088E, Washington, DC 20330-1000, telephone (703) 697-3491.

SUPPLEMENTARY INFORMATION: Because this part implements a higher authority directive, it is not published as a proposed rule for public comment. The Department of the Air Force has determined that this regulation is not a major rule as defined by Executive Order 12291; is not subject to the relevant provisions of the Regulatory Flexibility Act (5 U.S.C. 601-611); and does not contain reporting or recordkeeping requirements under the criteria of the Paperwork Reduction Act (44 U.S.C. chapter 35). Part 806 is Air Force Regulation (AFR) 4-33, Air Force Freedom of Information Act Program, July 31, 1992.

List of Subjects in 32 CFR Part 806

Freedom of information, Classified information, Records.

Accordingly, 32 CFR part 806 is revised as follows:

PART 806—AIR FORCE FREEDOM OF INFORMATION ACT PROGRAM

Subpart A—General Information

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806.0 Purpose.
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806.19 Responsibilities of disclosure authorities.
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806.21 Records management office responsibilities.
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806.25 Host-tenant relationship.
806.26 Notice of administrative extension.
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Subpart F—Fee Assessment, Categories, Aggregations, Restrictions, Waivers, and Rates

806.28 Fee assessment.
806.29 Categories of requesters.
806.30 Aggregating requests.
806.31 Fee restrictions.
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806.33 Transferring fees collected to accounting and finance offices.
806.34 Fee rates.
806.35 Fee rates for technical data.

Subpart G—Processing Appeals

806.36 Appeals from denial of records.
806.37 Appeals from no records determinations, denials of fee waiver requests and category determinations.

Subpart H—For Official Use Only Information

806.38 For Official Use Only (FOUO) explained.
806.39 Prior FOUO application.
806.40 Time to mark records.
806.41 Distribution statement.
806.42 How to apply FOUO markings.
806.43 Procedures for releasing, disseminating, and transmitting FOUO material.
806.44 Sending FOUO information by United States Postal Service.
806.45 Electrically transmitted messages.
806.46 Safeguarding FOUO information.
806.47 The termination, disposal, and unauthorized disclosure of FOUO.

Authority: 5 U.S.C. 552.

Subpart A—General Information

§ 806.0 Purpose.

This part sets policy for the disclosure of records to the public and for the Air Force Freedom of Information Act (FOIA) Program. It gives procedures for processing FOIA requests and tells the public how to request copies of Air Force records using the FOIA (5 U.S.C. 552, as amended). It sets mandatory time limits for notifying requesters of the decision to release or deny records requested under the FOIA. Also, it prescribes the use of the FOIA system for FOIA management and reporting. It sets policy and procedures for marking, handling, transmitting, and safeguarding For Official Use Only (FOUO) material. This part implements Department of Defense (DoD) Directive 5400.7, 13 May 1988, (32 CFR 285) and DoD Regulation 5400.7-R, October 1990, and Change 1, 10 May 1991 (32 CFR 286). It applies to all Air Force activities, including the Air National Guard (when published in NGR (AF) 0-2), the US Air Force Reserve, and those specified commands supported by the Air Force and listed in AFR 23-14. In case this part conflicts with other Air Force publications, this part takes precedence over any that deals in whole or in part with the disclosure of records to the public.

§ 806.1 Freedom of Information Act requests.

This guidance applies to written FOIA requests for records (see § 806.2(i) and (o)), including those received by facsimile machine received from any member of the public, including foreign citizens, military and civilian personnel acting as private citizens, and organizations and businesses. This includes FOIA requests from individual members of the Congress (whether on their own behalf or on behalf of

constituents. Processing procedures for FOIA requests from individual members of the Congress are the same as they are for any other FOIA requester. This guidance does not apply to a request from a Federal agency or a fugitive from the law. Requesters should not use Government equipment, supplies, stationery, postage, telephones, or official Air Force mail channels for making FOIA requests. However, FOIA managers will process these FOIA requests but will advise requesters that using government resources to make FOIA requests is not an authorized official use.

§ 806.2 Terms explained.

(a) Appellate authority. The Administrative Assistant to the Secretary of the Air Force, who makes appellate decisions on FOIA appeals.

(b) Denial. A determination by a denial authority not to disclose requested records in its possession and control.

(c) Denial letter. A letter that informs the requester of the denial authority's determination to withhold some or all of the requested records or information.

(d) Determination. The decision to grant or deny all or part of a request from the public for records.

(e) Disclosure. Providing access to, or a copy of, a record.

(f) Disclosure authority. Official authorized to disclose records. See § 806.17 for qualifying positions.

(g) Electronic data. Records or information created, stored, and retrieved by electronic means. Electronic records do not include computer software used as a tool to create, store, or retrieve electronic data.

(h) FOIA manager. The person responsible for managing the FOIA program at each organizational level.

(i) FOIA request. A written request for records from the public (see § 806.1) that cites or implies the FOIA. This includes references to this part or the 32 CFR 286 (DOD 5400.7–R), the 10-workday statutory time limit (see paragraph (q) of this section) associated with the public release of agency records, 5 U.S.C. 552, the Law, the Statute, the Act, or references to FOIA in the address element on a letter or its envelope.

(j) Functional request. A request for records that does not specifically cite or imply the FOIA. See § 806.22(e)(5) for processing procedures.

(k) Glomar response. A reply that neither confirms nor denies the existence or nonexistence of the requested record. A Glomar response may be used with FOIA exemptions (1), (6), and (7)(C). See § 806.15(a), (f), and (g).

(l) Initial denial authority (IDA). Persons in authorized positions who may deny records under the FOIA. See § 806.18 for qualifying positions.

(m) Partial denial. Determination to withhold any part of a requested agency record.

(n) Public interest. Disclosures of official information that shed light on an agency's performance of its statutory duties are in the public interest for purposes of the FOIA because doing so informs citizens about what their government is doing. That statutory purpose, however, is not fostered by disclosure of information about private citizens that is accumulated in various governmental files that reveals little or nothing about an agency's or official's own conduct.

(o) Records. (1) The products of data compilation, such as all books, papers, maps, and photographs, machine readable materials or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the US Government in connection with the transaction of public business and in the agency's possession and control at the time it receives the request. Records such as notes, working papers, and drafts kept as historical evidence of actions are subject to the FOIA, but may be exempt from release under exemption (b)(5).

(2) In rare cases, computer software may qualify as an agency record. Evaluate the situations on a case-by-case basis. Some examples of when you may have to treat computer software as an agency record are:

(i) When the data is embedded within the software and cannot be extracted without the software. In this situation, both the data and the software must be reviewed for release or denial under the FOIA.

(ii) Where the software itself reveals information about organizations, policies, functions, decisions, or procedures of the DoD, such as computer models used to forecast budget outlays, to calculate retirement system costs, or to optimize models on travel costs.

(p) Search. The time expended to locate a requested record or a specific section of a record. This includes telephone, manual, or computer searches conducted to find and retrieve a record.

(q) Statutory time limits. The 10 workdays following receipt of the request imposed by the FOIA to inform the requester of the initial decision on releasability. This term also covers the additional 10-workday extension allowed under circumstances explained in § 806.26. The time limits begin only when the FOIA manager receives a properly filed request, reasonably describing the records requested with fee issues addressed either by an agreement to pay fees and satisfaction as to category determination, approval of a request for fee waiver or reduction of fees, or fees paid.

(r) Workday. An official duty day; excludes Saturdays, Sundays, and legal public holidays.

§ 806.3 Material outside the scope of the FOIA.

(a) Examples of non-agency records. Materials discussed in paragraphs (a) (1) through (4) of this section are not considered records under FOIA and should be handled according to paragraphs (b) (1), (2), and (3) of this section when procedures exist outside this part for processing those requests.

(1) Objects or articles, such as structures, furniture, vehicles, and equipment, whatever their historical value, or value as evidence.

(2) Administrative tools used to create, store, and retrieve records, if not created or used as sources of information about organizations, policies, functions, decisions, or procedures of DoD. Normally computer software, including source code, object code, and listings of source and object codes, regardless of medium, are not agency records. This does not include the supported data that is processed and produced by such software and that in some instances may be stored with the software.

(3) Personal notes of an individual not subject to agency creation or retention requirements, created and maintained primarily for the convenience of an agency employee, and not distributed to other agency employees for their official use.

(4) Information stored in a computer for which there is no existing computer program for retrieval of the requested information.

(b) Processing procedures. (1) Log the request and refer the request outside of the FOIA to the proper office for handling according to those policies governing the release and use of the requested materials.

(2) Acknowledge the requester's letter tell the individual where you referred the request, and that the material is not an agency record under the FOIA.

(3) If no alternative release procedures exist, process the request under FOIA, advise the requester that materials are not agency records under the FOIA, and give the requester appeal rights.

§ 806.4 Assigned responsibilities.

(a) The Administrative Assistant to the Secretary of the Air Force (SAF/AA) has the overall responsibility in the Air Force for complying with the Act and makes final decisions on appeals.

(b) The Director of Information Management (SAF/AAI), through the Access Programs Office of the Policy Division, SAF/AAIA, administers those policies and procedures prescribed in this part. SAF/AAIA submits required reports to the Office of the Assistant Secretary of Defense (Public Affairs), and provides guidance and instructions to major commands (MAJCOM) and field operating agencies (FOA).

(c) MAJCOM and FOA commanders implement this part in their commands and agencies.

(d) In addition to the duties specified in paragraph (f) of this section, FOIA managers, at all levels of the Air Force:

(1) Control and process FOIA requests.

(2) Obtain recommended determinations from the office of primary responsibility (OPR) for records.

(3) Assess and collect fees.

(4) Submit required reports.

(e) The OPR for the requested record provides the requested record and helps the disclosure authority to determine whether to release the record.

BILLING CODE 3910-01-M

(f)

RESPONSIBILITIES FOR FOIA ACTIONS

RULE	A If action is to	B then action is assigned to
1	obtain coordination on recommended release or denial of records	OPR for records.
2	release records	officials designated by paragraph 17.
3	provide releasable records to FOIA manager	OPR for records.
4	send records to requester	FOIA manager.
5	deny records	officials designated by paragraph 18.
6	invoke administrative extension on initial request	FOIA manager at any level (see note).
7	assess and collect fees	FOIA manager.
8	grant waiver of fees	FOIA manager at any level.
9	deny waiver of fees	FOIA manager at any level (see note in paragraph 18).

NOTE: OPRs must justify extensions with reasons outlined in paragraph 26.

BILLING CODE 3910-01-C

§ 806.5 Freedom of Information Act annual report.

MAJCOM and FOA FOIA managers submit a FOIA annual report on 5¼ inch floppy disk using the FOIA system, reflecting calendar year activity. They send the report by January 10 to SAF/AAIA. The Reports Control Symbol is DD–PA(A)1365. SAF/AAIA submits the report to the Office of the Assistant Secretary of Defense (Public Affairs) Directorate for Freedom of Information and Security Review on DD 2564, Annual Report—Freedom of Information Act.

§ 806.6 Records disposition.

Follow AFR 4–20, volume 2.

Subpart B—Submitting FOIA Requests

§ 806.7 Preparing a FOIA request.

Submit all requests in writing, giving enough information to reasonably identify and locate records. Include a statement in the request letter regarding fees.

§ 806.8 Mailing a FOIA request.

(a) To speed up proceeding, address requests as shown in paragraphs (b) and (c) of this section. Unless otherwise shown in paragraphs (b) and (c) of this section, send FOIA requests to the activity possessing the desired record. Address the letter and envelope to the attention of the FOIA Office. If the letter is sent to multiple addressees, indicate those addressees. This speeds up processing and improves coordination. Because a FOIA request is a personal and not an official government request, do not use official Air Force or other government letterhead or official mail channels when making FOIA requests.

BILLING CODE 3910-01-M

(b)

WHERE TO SEND FOIA REQUESTS

RULE	A	B
	If the request is for records	**then address the request to**
1	of civilian employees currently employed by the Air Force	the activity or base FOIA office where the civilian works.
2	of civilian employees no longer employed by the Federal service	National Personnel Records Center (Civilian Personnel Records) 111 Winnebago Street St Louis MO 63118-2001.
3	of members and former members of the Air Force, Air Force Reserve, or the Air National Guard	(see table 3).
4	of reports of investigation compiled by the Air Force OSI (see AFR 124-4)	HQ AFOSI/IOC--DIR Bolling AFB DC 20324-1700
5	of personnel security investigations	Defense Investigative Service Assistant for Information. 1900 Half Street, SW Washington DC 20330-1000.
6	when you know the location	the base FOIA office where the record is.
7	when you do not know the location	SAF/AAIS (FOIA) Washington DC 20330-1000

(c)

WHERE TO ADDRESS REQUESTS FOR RECORDS OF MILITARY PERSONNEL (SEE NOTE)

RULE	A	B	C
	If military member status is	**and present or past military rank is**	**then address the request to**
1	on extended active duty	a commissioned officer or warrant officer	organization of assignment, if known; otherwise to: HQ AFMPC/DPMDOD Randolph AFB TX 78150-6001.
2		an airman	organization of assignment, if known; otherwise to: HQ AFMPC/DPMDOA Randolph AFB TX 78150-6001.
3	a member of the Air Force Reserve or Air National Guard not on extended active duty	a commissioned officer, warrant officer, or airman	HQ ARPC/IMD Denver CO 80280-5000.
4	retired for temporary disability		HQ AFMPC/DPMDOM Randolph AFB TX 78150-6001.
5	retired with pay	a general officer	HQ AFMPC/DPMDOD Randolph AFB TX 78150-6001.
6		other than a general officer	National Personnel Records Center (Military Personnel Records) 9700 Page Blvd St Louis MO 63132-2001.
7	former member, no longer has an Air Force affiliation	a commissioned officer, warrant officer, or airman	
8	unknown	unknown	HQ AFMPC/DPMDO Randolph AFB TX 78150-6001.

NOTE: Air Force members' and former members' records are in different locations, depending on the member's current status. Send request for such records to the address indicated in this table.

BILLING CODE 3910-01-C

Subpart C—Records Disclosure Policies

§ 806.9 Basic policies on disclosure.

The Department of the Air Force discloses its records to the public, unless they are exempt from disclosure under the FOIA (see § 806.15). Disclosure authorities may make discretionary releases of exempt information. Discretionary releases are generally not appropriate for exemptions 1, 3, 4, 6, and 7(C). A discretionary release to one requester may prevent withholding the same record if someone else requests it. Denial authorities must not withhold a record simply because it might suggest administrative error or inefficiency, or might otherwise embarrass the Air Force or an official of the Air Force.

§ 806.10 Processing requests under FOIA and Privacy Act (PA).

If the requester cites FOIA and PA in the request letter, address both Acts in the response and tell the requester which Act applies to his or her request and why. When denying a request that cites both Acts, and the requested records are in a PA system of records, and not releasable under either Act, cite both the PA exemption and the FOIA exemption in the denial letter. Do not deny any records under the FOIA if they would be available under the PA. See 32 CFR 806b for further guidance on PA requests. To make sure requesters receive the most information, process requests under the :

(a) PA when requesters cite or imply the PA for records on themselves in a PA system of records.

(b) FOIA when requesters cite or imply the PA for records on themselves which are not in a PA system of records.

(c) PA using the time limits of the FOIA when requesters cite or imply the FOIA or both Acts for records on themselves in a PA system of records.

(d) FOIA for agency records when requesters cite or imply the PA, FOIA, or both Acts.

§ 806.11 Other methods of obtaining information.

So the public may have timely information concerning Air Force activities, do not tell a requester to use the FOIA to get a document that is clearly otherwise available to the public. Requesters may obtain records or information under other established procedures (for example, news media representatives through public affairs channels). Answer all requests for information or records promptly, including those not made under the FOIA. See § 806.22(e)(5) on functional requests.

§ 806.12 Records description.

On written request, make available any reasonably described material in the possession and control of the Air Force that qualifies as a record (see § 806.2(o)) and is not exempt from disclosure under § 806.15. Requesters must reasonably specify each record they want. Agencies must make reasonable efforts to find any such reasonably described records. This means searching all activities and locations considered most likely to have the records requested, including staged or retired records. Requesters must give enough data to help find the records, and agencies must conduct a reasonable search. The Air Force is not required to let requesters browse through entire files or large series of records to find one they can identify. If a record is not reasonably described, ask the requester, by letter, for more specific information. When possible, tell the requester what information would assist you in locating the desired records. Do not process the request unless you receive a reply. Do not deny a request for a specific record solely because the record is stored in a computer.

§ 806.13 Creating a record.

There is no obligation to create, compile, or obtain a record from outside the Air Force to fulfill a request. However, you may compile a new record when doing so would result in a more useful response to the requester, or is less burdensome to the agency than providing an existing record and the requester does not object. In these cases, do not charge the requester the cost of creating or compiling such a record unless the fee is equal to or less than the fee you would charge for providing the existing record. With respect to electronic data, the issue of whether you are actually creating or merely extracting records from an existing database is not always readily apparent. Consequently, when responding to FOIA requests for electronic data where creating, programming, or formatting a record is questionable, apply a standard of reasonableness. In other words, if the capability exists to respond to the request, and the effort would be a business as usual approach, then process the request. Do not process the request where the capability to respond does not exist without a significant expenditure of resources, which is not a normal business as usual approach.

§ 806.14 Disclosure policies for certain records.

(a) Specific directive govern disclosure policies for certain specialized types of records. Process FOIA requests for these records under this part and refer to sources listed in paragraph (b) of this section for additional disclosure procedures. However, in cases of denials of records, the only basis for denial is to cite a FOIA exemption. Process FOIA requests from foreign citizens, foreign governments, their representatives, or international commands under this part and coordinate with your foreign disclosure office (see paragraph (c), rule 1, of this section). If the command does not have a foreign disclosure office, refer the FOIA request to SAF/AAIS (FOIA) for SAF/IAD coordination through the MAJCOM FOIA Office. All referrals must be accepted by SAF/AAIS (FOIA) before referring the case. Refer requests from officials of foreign governments that do not invoke the FOIA to your foreign disclosure office and notify the requester. If you have a non-US Government record in your possession and control, coordinate with the originator of the record before release (see § 806.15(d), exemption (4)). The requirement to coordinate with the originator of the record before release includes records originated with foreign governments and such organizations as North Atlantic Treaty Organization (NATO) and North American Aerospace Defense (NORAD). Coordinate all releases of records that originated with a foreign government with the US Department of State through the MAJCOM FOIA Office. Coordinate proposed releases or denials of letters of offer and acceptance (LOA) with SAF/IA through SAF/AAIS (FOIA) (see paragraph (c), rule 5, of this section).

BILLING CODE 3910-01-M

(b)

DISCLOSURE AUTHORITIES AND GOVERNING DIRECTIVES FOR SPECIALIZED RECORDS

RULE	A	B	C
	If the type of record is	**then disclosure authority is**	**and the directive is**
1	primary mishap or incident safety investigations (including ground and explosive accidents)	as outlined in AFR 127-4	AFR 127-4
2	Air Force Office of Special Investigations (AFOSI) reports of investigation	as outlined in AFR 124-4	AFR 124-4
3	classified records	the original classifier or office currently responsible for the classification of the subject matter	DoD 5200.1-R AFR 205-1
4	collateral accident or incident investigations	as outlined in AFR 110-14	AFR 110-14
5	Drug and Alcohol Abuse Programs documentation		AFR 30-2
6	inspection reports	as outlined in AFR 123-1	AFR 123-1
7	Inspector General administrative inquiries and investigations	as outlined in AFRs 120-3, 123-2, and 123-11	AFRs 120-3, 123-2, 123-11
8	for use in litigation	the Judge Advocate General or other authority listed in AFR 110-5	AFR 110-5
9	medical records	the Director, Base Medical Services or a designated medical officer	AFR 168-4
10	trial by courts-martial	the Judge Advocate General or other authority listed in AFR 111-1	AFR 111-1
11	audit reports	as outlined in AFR 175-4	AFR 175-4
12	Fraud, Waste, and Abuse records	the Inspector General	AFR 123-2

(c)

SPECIAL HANDLING OF FOIA REQUESTS

RULE	A	B	C
	If the FOIA request is	and	then
1	from a foreign citizen, foreign government, representative of a foreign government, or an international command		process it according to this regulation, and coordinate with your Foreign Disclosure Office.
2	for a record originated by another government agency or Air Force activity	the other agency or activity confirms it originated the record and accepts the action	transfer it and notify the requester (paragraph 23).
3	for potentially newsworthy material or from the news media	is sent directly to the FOIA office	process it according to this regulation, and coordinate with the Public Affairs office.
4	for records retired to a records center or other respository		refer to AFR 12-50, volume I, for retrieval procedures.
5	for letters of offer and acceptance (which applies to foreign military sales data)		refer it to SAF/AAIS (FOIA) thru MAJCOM FOIA office with proposed reply for release or denial, and SAF/IA reviews case.

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§ 806.15 FOIA exemptions.

Denial authorities may withhold records or parts of records from public disclosure that fall in one or more of the following nine exemptions. Records exempt under 5 U.S.C. 552(b) include:

(a) *Exemption (1)—Classified records.* Those properly and currently classified in the interest of national defense or foreign policy, as authorized by Executive Order 12356 and implementing DOD and Air Force regulations. To make a proper release determination, review the requested record paragraph by paragraph. Review all unclassified parts before release. They may qualify for withholding under one or more of the other following exemptions. Minimally, review for segregating at the paragraph level. If a classified document is reviewed and declassified, line-through (do not obliterate) the classification markings with a single black line, so the classification markings are still legible, and stamp the document Unclassified. Review material, if appropriate, to determine if it should be classified, even though it was not classified at the time of the request. See AFR 205–1 for guidance on authority and procedures for classifying and declassifying records. Check information received from a foreign government or foreign source to see if it is classified according to AFR 205–1. Use Executive Order 12356 amd AFR 205–1 as classification authorities. Delete the exempt portions or records and disclose the remainder if it would not distort the meaning and you can reasonably assume that a skillful and knowledgeable person could not reconstruct the excised information. Denial letters must include a statement that unauthorized disclosure of such information could reasonably be expected to cause damage to national security and must also cite the Executive Order 12356 as authority for classification. When denying an entire classified record, state in the denial letter that there are no reasonably segregable portions to release. Coordinate with the local information security specialist when invoking this exemption. He or she will review the final response for consistency of classification policy and procedures. Also, apply this exemption when the denial authority determines (1) Disclosure of such information either by itself or in the context of other information could reasonably be expected to cause damage to national security; or (2) The fact of the existence or nonexistence of a record would reveal classified information. Use the refusal to confirm or deny response consistently, not only when a record exists, but also when a record does not exist. Otherwise, the pattern of using a no record response when a record does not exist, and a refusal to confirm or deny when a record does exist will disclose exempt information. Cite the FOIA exemption in the response when using the Glomar rationale. Coordinate with the MAJCOM or FOA staff judge advocate (SJA) through the MAJCOM FOIA office before using a Glomar response.

(b) *Exemption (2)—Internal personnel rules and practices.* Those containing or constituting rules, regulations, orders, manuals, directives, and instructions relating to internal personnel rules or practices.

(1) If their release to the public would either substantially hinder the effective performance of a significant function of the DoD by risking circumvention of a statute, Air Force regulation or policy (high (b)(2)); or

(2) If such internal agency matters relate to trivial administrative matters of no genuine public interest and the process of releasing such records would constitute an unwarranted administrative burden (low (b)(2)). To use the low (b)(2) exemption, do not search for, review or reproduce the requested records. Otherwise, you may eliminate the administrative burden justification. High (b)(2) examples include:

(i) Operating rules, guidelines, and manuals for investigators, inspectors, auditors, examiners, or classifiers that must remain undisclosed in order for the agency to fulfill a legal requirement or to preclude circumvention, or vulnerability assessments concerning such rules, practices and requirements.

(ii) Examination questions and answers used in training courses or in the determination of the qualifications of candidates for employment, entrance on duty, advancement or promotion.

(iii) Computer software meeting the standards of a record under this regulation, the release of which would allow circumvention of a statute or DoD rules, regulations, orders, manuals, directives, or instructions. In this situation, examine closely the use of the software to ensure a circumvention possibility exists. Examples for low (b)(2) are rules on use of parking facilities or regulations of lunch hours.

(c) *Exemption (3)—Other statutes.* Those concerning matters that a statute specifically exempts from disclosure by terms that permit no discretion on the issue of withholding or according to defined standards for withholding or referring to particular types of matters we must withhold. When denying records using this exemption, cite both exemption (b)(3) and the specific statute in the response to the requester. When citing certain statutes include the specific section that applies.

(d) *Exemption (4)—Confidential commercial information.* Records containing trade secrets and commercial or financial information submitted by any person or entity outside the Federal Government on a privileged or confidential basis that, if released, (1) is likely to cause substantial competitive harm to the submitter of the information or (2) impair the government's future ability to obtain necessary information. Contact the submitter of such data for views on releasability. At the same time, notify the requester that we must give the submitter of the data the opportunity to comment before the Air Force makes a release determination. Give the submitter a reasonable period of time to object to disclosure with justification (no more than 30 calendar days). If the submitter objects to release, but the Air Force release authority determines that records are releasable, notify the submitter of that decision before releasing the data. Examples of records covered by this exemption include:

(1) Trade secrets. These are commercially valuable plans, formulas, processes, or devices that are used for making, preparing, compounding, or processing of trade commodities, and are the end product of innovation or substantial effort and received in confidence.

(2) Commercial or financial information received in confidence, in connection with loans, bids, contracts, or proposals; and other information received in confidence, or privileged, such as trade secrets, inventions, and discoveries, or other proprietary data.

(3) Statistical data and commercial or financial information concerning contract performance, income, profits, losses, and expenditures, if offered and received in confidence from a contractor or potential contractor.

(4) Personal statements given in the course of inspections, investigations, or audits, if such statements are received in confidence from the individual and kept in confidence, because they reveal trade secrets or commercial or financial information normally considered confidential or privileged.

(5) Financial data provided in confidence by private employers for locality wage surveys, used to fix and adjust pay schedules that apply to prevailing wage rate employees in the DoD.

(6) Scientific and manufacturing processes or developments concerning technical or scientific data; or other information submitted with an application for a research grant, or with a report while research is in progress.

(7) Computer software qualifying as a record under this part that is copyrighted under the Copyright Act of 1976 (17 U.S.C. 106), the disclosure of which would have an adverse impact on the potential market value of a copyrighted work.

(8) Technical or scientific data developed by a contractor or subcontractor exclusively at private expense, and technical or scientific data developed in part with Federal funds and in part at private expense, where the contractor or subcontractor retains legitimate proprietary interests in such data according to 10 U.S.C. 2302–2321 and DoD Federal Acquisition Regulation Supplement (DFARS), chapter 2 of 48 CFR 227.4. Technical data developed exclusively with Federal funds may be withheld under Exemption 3 if it meets the criteria of 10 U.S.C. 130.

(e) *Exemption (5).—Inter or intra-agency records:*

(1) Intra-agency or interagency memoranda or letters that, according to recognized legal privileges are not routinely released to a party in litigation with the Air Force or DoD. Examples include:

(i) The deliberative process privilege—those portions of records which consist of internal advice, opinions, evaluations, or recommendations, the release of which would reveal the deliberative process of the Air Force or DoD. For example, advice, suggestions, or evaluations prepared for the Air Force by its members, employees, individual consultants or by boards, committees, councils, groups, panels, conferences, commissions, task forces, or other similar groups formed to obtain advice and recommendations.

(ii) Those nonfactual portions of Air Force personnel evaluations of contractors and their products.

(iii) Advance information of a speculative, tentative, or evaluative nature, on such matters as proposed plans to procure, lease, or otherwise acquire and dispose of materials, real estate, facilities, or functions, if such information provides undue or unfair competitive advantage of private personal interests or impedes legitimate governmental functions.

Note: Generally, this privilege does not permit withholding factual material. However, you may withhold facts when either the factual material is so inextricably connected to the deliberative material that disclosure of the factual material would necessarily disclose the Air Force's deliberative process, or when the factual material is so inextricably intertwined with the deliberative material that reasonable segregation is impracticable.

(iv) Official reports of inspection, audits, investigations, or surveys on the safety, security, or the internal management, administration, or operation of the Air Force.

(v) The attorney work product privilege—records prepared by an attorney or under an attorney's supervision in contemplation of or preparation for anticipated administrative proceedings or litigation before any federal, state, or military court.

(vi) The attorney-client privilege—confidential communication between an attorney and client. For example, a commander expresses certain concerns in confidence to his or her judge advocate and asks for a legal opinion. The legal opinion and all information expressed by the commander in confidence to the judge advocate would qualify.

Note: Unlike the deliberative process privilege, you may withhold both facts and opinions in attorney work product or privileged communications.

(vii) Trade secrets or other confidential research, development, or commercial information owned by Air Force or DoD, where premature release is likely to affect Air Force or DoD's negotiating position or other commercial interests.

(viii) Computer software qualifying as a record under this part which is deliberative in nature, the disclosure of which would inhibit or chill the decisionmaking process. In this situation, closely examine the use of the software to ensure its deliberative nature.

(ix) Planning, programming, and budgetary information involving the defense planning and resource allocation process.

(2) If any such intra-agency or interagency record or a reasonably segregable portion of such a record would be made available routinely through the discovery process, in the course of litigation with the agency, do not withhold the record from the general public. The discovery process is that process by which litigants get information from each other that is relevant to issues in a trial or hearing. If the information is only made available through the discovery process by special order of the court, then it is exempt from release to the general public. Unless the material is privileged or otherwise exempt, release factual intra-agency or interagency memorandums or letters, or those factual portions you can separate, if you would have to release them on a routine basis through the discovery process.

(3) Generally, do not withhold from a requester a direction or order from a superior to a subordinate, though contained in an internal communication, if it forms policy guidance or a decision, as distinguished from a discussion of preliminary or other matters that would compromise the decisionmaking process.

(4) Consult with your SJA to determine whether Exemption 5 material would be routinely made available through the discovery process.

(f) *Exemption (6)—Invasion of personal privacy.* Personnel and medical files, and similar personal information in other files that, if disclosed to a member of the public, would result in a clearly unwarranted invasion of personal privacy. To determine whether releasing information would result in a clearly unwarranted invasion of personal privacy, balance the degree to which satisfying the request aids the public in understanding how the Air Force functions (public interest) against the sensitivity of the privacy interest being threatened. Use the exemption only when the privacy interest exceeds the public interest. Do not use this exemption in an attempt to protect the privacy of a deceased person, but it may be used to protect the privacy interest of the deceased person's family. Withhold personnel, medical, or similar files from subjects of those records, or their designated legal representative, only according to 5 U.S.C. 552a, the Privacy Act of 1974 (part 806b of this chapter). Delete the identity of others in a record, where disclosure would result in a clearly unwarranted invasion of their privacy, even when providing it to the subject of the record. A Glomar response may be used under this exemption when acknowledging the existence of records would disclose a record that if released would constitute a clearly unwarranted invasion of personal privacy. Use the refusal to confirm or deny response consistently, not only when a record exists, but also when a record does not exist. Otherwise, the pattern of using a no record response when a record does not exist, and a refusal to confirm or deny when a record does exist will disclose exempt information. Cite the FOIA exemption in the response when using the Glomar rationale. Coordinate with the MAJCOM or FOA SJA through the MAJCOM FOIA office before using a

Glomar response. Examples of exemption (6) information include:

(1) Social Security numbers.

(2) Home addresses.

(3) Names and duty addresses of personnel serving overseas, or in classified, sensitive, or routinely deployable units.

(i) Routinely deployable units are those units that normally deploy from permanent home station on a periodic or rotating basis to meet peacetime operational requirements, or to participate in scheduled training exercises, which require deployment outside of the United States or US territories on a routine basis. Units normally qualifying under this definition that are based in the United States for an extended period of time, such as those undergoing extensive training or maintenance activities, would not qualify for the duration of that period. Units designated for deployment on contingency plans not yet executed and units that participate in exercises outside the United States or US territories on an infrequent basis (e.g. annual or semiannual) would not fall within this definition. However, units that are alerted for deployment outside the United States or US territories during actual execution of a contingency plan or in support of a crisis operation would qualify. Due to the method by which the Air Force deploys units, it is not easy to determine when a unit that has part of its personnel deployed becomes eligible for denial under the routinely deployable definition. The Air Force may consider a unit deployed on a routine basis or deployed fully overseas when 30 percent of the unit has been either alerted or actually deployed. In this context, alerted means that a unit has received an official written warning of an impending operational mission outside the United States or US territories.

(ii) Sensitive units are those units primarily involved in training for the conduct of special activities or classified missions, including units involved in collecting, handling, disposing, or storing classified information and materials. Also included are units engaged in training or advising foreign personnel. Examples of such units would include nuclear power training units, special operation units, security group commands, weapons stations, and communications stations.

(iii) The War and Mobilization Plans Division, Directorate of Operations, Deputy Chief of Staff, Plans and Operations (HQ USAF/XOXWX) compiles the list of Air Force units qualifying for exemption under the routinely deployable and sensitive definitions. Every 6 months, HQ USAF/XOXWX will review and update the listing. The Air Force Access Programs Office will send the list of all MAJCOM and FOA FOIA managers, when updated, to use when responding to requests for lists of names and duty addresses.

(4) Records compiled to evaluate or judge the suitability of candidates for employment (including membership in the armed forces), and the eligibility of individuals (civilian, military or industrial) for security clearances or for access to particularly sensitive classified information.

(5) Files containing reports, records, and other material pertaining to personnel matters, where there is a possibility of, or record of, administrative action, including disciplinary action.

(g) *Exemption (7)—Investigative records:*

(1) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings.

(ii) Would deprive a person of the right to a fair trial or an impartial adjudication.

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy.

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution that furnishes information on a confidential basis.

(v) Could disclose information furnished from a confidential source and obtained by a criminal law enforcement authority in a criminal investigation or by an agency conducting a lawful national security intelligence investigation.

(vi) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

(vii) Could reasonably be expected to endanger the life or physical safety of any individual.

(2) The right of individual litigants to investigative records currently available by law is not diminished by this exemption. When the subject of an investigative record is the requester of the record, see part 806b of this chapter.

(3) This exemption also applies when the fact of the existence or nonexistence of a responsive record would reveal personal information, and the public interest in disclosure is not enough to outweigh the privacy interest. Use the refusal to confirm or deny response consistently, not only when a record exists, but also when a record does not exist. Otherwise, the pattern of using a no record response when a record does not exist, and a refusal to confirm or deny when a record does exist will disclose exempt information. Cite the FOIA exemption in the response when using the Glomar rationale. Coordinate with the MAJCOM or FOA SJA through the MAJCOM FOIA office before using a Glomar response.

(h) *Exemption (8).—Financial institutions.* Those records contained in or related to examination, operation, or condition reports prepared by, on the behalf of, or for the use of, an agency responsible for regulating or supervising financial institutions.

(i) *Exemption (9).—Wells.* Those that have geological and geophysical information and data, including maps, concerning wells.

(j) *FOIA exclusions.* Under two limited situations, requests for law enforcement records are not subject to disclosure under FOIA or this part. In such cases, the denial procedures otherwise specified in this part do not apply; instead, state no records were found since they are not considered records under the FOIA. Coordinate with your SJA on such cases before responding to the requester. When communicating with the requester, do not provide the statutory citation to the exclusion or state the fact that you are relying on an exclusion. The two limited FOIA exclusions are:

(1) Requests for law enforcement records where the investigation involves a possible violation of criminal law, there is reason to believe that the subject of the investigation is not aware of it, and disclosure of the existence of the record could reasonably interfere with enforcement proceedings.

(2) Requests for informant records maintained by a criminal law enforcement agency under the informant's name or personal identifier made by a third party using the informant's name or personal identifier, but only when the informant's status as an informant has not been officially confirmed.

§ 806.16 Partial denial.

When withholding any part of a requested record, it is a partial denial. Only denial authorities as discussed in § 806.18 may withhold information. Delete exempt portions of a record and disclose the remaining reasonably segregable parts to the requester when it

reasonably can be assumed that a skillful and knowledgeable person could not reconstruct the excised information. When releasing parts of a record, specifically state in your response that you are providing all reasonably segregable portions of the requested record. It is Air Force policy to clearly identify to requesters where information has been withheld. When you deny parts of a record, excise records by eliminating the exempt information. A good method to use is to black out the exempt information or bracket the blank space (if the space is white) where the exempt information was removed. If using the blackout method, make sure it is sufficiently blackened to prevent disclosure of denied information. The best way is to cut out the information from a copy of the record and reproduce the pages. Justify use of each exemption in writing and cite the FOIA exemption. Describe the deleted material as stated in § 806.20(c).

Subpart D—Disclosure and Denial Authorities

§ 806.17 Disclosure authorities.

Except as specified in those Air Force parts cited in § 806.14(b), normally the authority to disclose records is at the division level at HQ USAF, the directorate or comparable level at MAJCOM and FOA headquarters, and at group comparable level. Individuals at those levels may delegate disclosure authority to a lower level. Ensure the level is high enough so a responsible authority makes the releases according to the policy outlined here.

§ 806.18 Denial authorities.

(a) Do not delegate denial authority to levels lower than those shown below.

(1) Deputy chiefs of staff and chiefs of comparable offices or higher level at HQ USAF.

(2) MAJCOM and FOA commanders.

(b) Note that these officials may designate one additional official to act as a denial authority. Send SAF/AAIA a letter with the position titles of denial authorities. In the letter to SAF/AAIA do not include names of individuals holding positions with denial authority since the authority to deny records is vested in the position, not with the person. Only the Administrative Assistant to the Secretary of the Air Force has the authority to approve a request for more than one designee. Send requests for more than one designee, with justification, to SAF/AAIA.

Note: FOIA managers may deny initial requests for fee waivers. However, coordinate with the MAJCOM or FOA FOIA manager by phone on all denials of fee waiver requests below MAJCOM and FOA level.

§ 806.19 Responsibilities of disclosure authorities.

Officials designated as disclosure authorities (see § 806.17):

(a) Determine, within statutory time limits (see § 806.2(q)), whether to disclose records. Ensure the OPR, if necessary, requests an administrative extension from the FOIA manager (see § 806.26).

(b) Make sure the OPR coordinates proposed partial and complete denials with the SJA and FOIA offices.

(c) Make releasable records available to the FOIA office, in the number of copies specified by that office.

§ 806.20 Responsibilities of initial denial authorities.

Officials designated as denial authorities (see § 806.18):

(a) Make a final determination on denials, within statutory time limits.

(b) Obtain SJA coordination before making a final determination.

(c) Tell requesters the nature of those records or parts of records denied, the reason for denial, and the exemption that supports the denial.

(d) Give the requester appeal rights and procedures.

(e) Make sure the OPR for the records gives the FOIA office a final package for processing to the requester. If required, the package should include a redacted copy of the record (denied parts removed), ready to send to the requester, and a copy of the record with the denied parts bracketed.

Subpart E—Processing FOIA Requests

§ 806.21 Records management office responsibilities.

Usually within each activity, the records management office is responsible for processing FOIA requests. As such, this office is the focal point for:

(a) Receiving and processing FOIA requests.

(b) Providing facilities and services (a reading room) for inspecting, copying, and furnishing copies of records to requesters.

(c) Assessing and collecting fees, if proper.

(d) Making available to the general public, for reference, master publication libraries established under AFR 4–61.

(e) Establishing coordination and local working agreements between administrative reference libraries and other functional areas that maintain technical, professional, and specialized types of documentation.

(f) Submitting required reports.

(g) Providing education and training on the FOIA Program.

(h) Reviewing publications before final printing to insure compliance with this part.

(i) Conducting periodic program reviews to insure compliance with the Act and established policies.

§ 806.22 Processing FOIA requests.

All FOIA offices must use the FOIA system to track and manage FOIA requests. AFM 4–196 is the FOIA system end users manual and gives information necessary to install and operate the system. When a request for records is received under the FOIA (see paragraph (n) of this section), the FOIA manager:

(a) Records the date and time of receipt, and assigns a case number and suspense date. Establishes a first-in, first-out system after receiving more than 10 FOIA requests, and processes the requests in the order of receipt. Considers a request received when the FOIA office responsible for processing the request receives it; and when the requester:

(1) When asked, states a willingness to pay fees appropriate for his or her category.

(2) Has satisfied all past-due obligations.

(3) Reasonably describes the records requested.

Does not process a FOIA request if the requester has not addressed fees and it appears that the request will involve chargeable fees in excess of $15. Writes the requester and asks for a fee declaration appropriate for his or her category (see § 806.24). Advises the requester of your category determination and the chargeable fees for that category. (The requester may appeal category determinations. Normal appeal procedures apply. See § 806.37) If the requester asks for a fee waiver, addresses that first before processing the request. Requests additional justification, if necessary, to make a proper decision. Does not consider this kind of notification a denial under § 806.2(b).

(b) Attaches DD Form 2086, Record of Freedom of Information (FOI) Processing Cost, or DD 2086–1, Record of Freedom of Information (FOI) Processing Cost for Technical Data, to each request. The OPR must complete and return this form to the FOIA office. This gives cost data for fee charges, if any, and is used in preparing the FOIA annual report.

(c) Acknowledges receipt of a request if 10 workdays or more have elapsed between the date on the request (or the

envelope postmark, whichever is later) and the data received, or where unusual problems are obvious.

(d) Tells the requester if the record is not sufficiently described and asks for further description. Offers assistance to the requester, when practicable, in identifying the records sought. Tells the requester what kind of information he or she needs to furnish to reduce search efforts.

(e) Sends the request to the OPR to locate the record and to determine if it is releasable or not.

(1) The OPR is the activity that has the responsibility for the information. If several OPRs have functional responsibility for the information, the one responsible for the majority of information contained in the document is designated the OPR.

(2) The OPR is responsible for obtaining coordination with the appropriate offices of collateral responsibility (OCR) internal and external to the Air Force, consolidating inputs, and making a final Air Force release determination. If coordination external to the Air Force is required, the OPR will forward the case to the MAJCOM or FOA FOIA office for referral to the outside activity FOI office for review and return.

(3) When the outside agency completes its determination, it will return the case to the Air Force OPR for a final release determination through the MAJCOM or FOA FOIA office.

(4) The OPR assists his or her designated FOIA disclosure and denial officials in making a release determination and acting as the declassification authority.

(5) The OPR or functional manager answers each functional request. And when doing so, provides the same records as if the request were a FOIA request. If denying part or all of a functional request, the OPR processes it as a FOIA request, through the FOIA office, with exemptions and appeal procedures.

(f) Sends classified records for which he or she cannot identify an OPR or functional equivalent to SAF/AAIS, through the MAJCOM or FOA FOIA office, for HQ USAF/SP review. In these cases, calls SAF/AAIS first and gets its agreement to accept the referral.

(g) Tells the requester, in writing, of the determination to release or deny records within 10 workdays after official receipt of the request.

(1) Denial letters and no records determinations must include the appropriate appeal paragraph (the appeal address will vary depending on what activity denied the record). In addition, denial letters will also include the reason for the denial (from § 806.15) and the statutory exemption citation.

(2) When replying to FOIA requests for lists of names and duty addresses, informs requesters at the earliest possible time of mass mailing restrictions outlined in AFR 4–50, "Official Mail, Small Parcel and Distribution Management Regulation," to try to prevent potential mailers from needlessly preparing materials that will not be delivered.

(h) Writes the requester with notification of time extension, if he or she cannot meet the 10-workday time limit. The time extension notification letter must state the reason for the delay (see § 806.26 for authorized reasons) and the date when the requester may expect a determination to release or deny. The date must not extend beyond 20 workdays after receipt of the request.

(i) Coordinates with the public affairs office if the request is for the records that have potentially newsworthy material, or if the request is from the news media.

(j) Takes actions outlined in AFR 12–50, volume I. Takes these actions if records are retired to a records center (or other repository).

(k) Consults with higher headquarters or other activities that have an interest in the material, or asks the OPR to do this.

(l) If the records are releasable, send them to the requester with a letter requesting fee remittance. (See § 806.31 on Fee Restrictions.) The time limits of the Act begin only after the FOIA manager receives a statement from the requester that he or she is willing to pay appropriate fees, the FOIA manager determines there are no charges involved, there is no disagreement on the category determination, or the requester pays fees (if appropriate).

(m) If the disclosure authority is not the authorized denial authority (see § 806.18), sends the proposed denial, through the MAJCOM or FOA FOIA Office, to the denial authority for a decision. The proposed denial package must include the original request, a copy of the requested records, a written recommendation from the OPR and the SJA, the exemption cited, and the reason for denial.

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(n)

HOW TO PROCESS FOIA REQUESTS AND RELATED ACTIONS

RULE	A If the action is a	B then the action is the responsibility of the	C and to complete the action
1	FOIA request received from general public (anyone acting as a private citizen)	FOIA office	record date and time received; assign case number and suspense date; locate OPR for records; and staff to OPR and indicate suspense date.
2	FOIA request received by an office other than the FOIA office	receiving office	immediately send the request to the FOIA office for processing.
		FOIA office	upon receipt of request, assign case number and suspense date.
3	FOIA request not received by the FOIA office within 10 days of request date		notify requester, in writing, of receipt date in the FOIA office.
4	time extension	OPR for records	immediately tell the FOIA office, by telephone, and give reason for extension.
		FOIA office	write requester giving reason for extension and the date final determination will be sent. (See note 1)
5	FOIA request and does not address fees		notify requester of category determination and related assessable fees.
6	FOIA request for fee waiver		address fee waiver before processing the request.
7	FOIA request and specifies a dollar amount	OPR for records	tell the FOIA office, before further processing, when you expect charges to exceed specified amount.
8	FOIA request not specific enough	OPR for records	tell the FOIA office why it is not specific enough and explain what further information requester needs to furnish.
		FOIA office	tell requester, in writing, and explain what further information is needed to process the request.
9	FOIA request recommended for denial or partial denial	OPR for records	according to MAJCOM or FOA supplement, send a denial letter to the requester or to the FOIA office recommending denial and include the reason for the denial. (See note 2)

NOTES:

1. Include total number, by reason, in the Annual Report.
2. SJA must coordinate on letter before the denial authority signs it.

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§ 806.23 How FOIA managers handle referrals.

(a) Normally, FOIA managers refer requests for records to another FOIA office when they:

(1) Receive a misaddressed request, or a request for records belonging to another activity. An example of a misaddressed request is AFMPC receiving a request for a copy of a SAC history.

(2) Have a no records response and another activity confirms it has, or is likely to have, the requested records.

(3) Surface records in response to a request that originated with another activity.

(4) Release or deny records in response to a request and the OPR indicates other activities may also have responsive records.

(b) Requests for unaltered publications and processed documents, such as maps, charts, regulations, and manuals that are available to the public through an established distribution system with or without charge are usually answered by referring FOIA requesters to the proper sales outlet or other appropriate sources and FOIA procedures normally do not apply. Normally, documents disclosed to the public by publication in the **Federal Register** also require no processing under the FOIA. Refer requesters to the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, for current Air Force standard numbered (departmental) publications. These procedures do not apply to superseded, obsolete, rescinded, classified, For Official Use Only (FOUO), limited (L), or X distribution Air Force publications. Process FOIA requests for these publications through normal FOIA channels.

(c) FOIA managers send requests direct to the FOIA office of other government agencies and other Air Force activities, after confirming that they originated the record. They:

(1) Confirm by calling the FOIA office for concurrence before referring the request.

(2) Refers a request for a classified record to an agency outside the DoD if the record or a portion of it originated in, or if the classification is derived from, the outside agency. Consult the outside agency before referral.

(3) Usually, tell the requester of the referral, identify the record referred consistent with security requirements, and tell the requester to expect an answer from the agency or activity receiving the referral.

(4) On requests that would involve many referrals, tell the requester where to address the request, rather than referring it.

(d) In handling exceptions to the policy in paragraph (c) of this section, FOIA managers:

(1) Do not send referrals to the National Security Council (NSC) or the White House. If the request is for records that originated with these agencies, they tell the requester to write them directly. However, if the requester insists that the Air Force respond to the request, they will then process it.

(2) Send Air Force records in which the NSC or White House has a concurrent reviewing interest, or NSC and White House records discovered in Air Force files, to OASD(PA)DFOISR, Washington, DC 20301 for coordination and return to the FOIA manager.

(3) Know that the General Accounting Office (GAO) is outside the executive Branch and so not subject to the FOIA. However, if the FOIA manager receives a FOIA request, either direct from the public or referred from GAO, for GAO documents that contain Air Force or DoD information, they process the request under FOIA.

§ 806.24 Categorizing requesters for fee assessment.

So that the Air Force is as responsive as possible to FOIA requests while minimizing unwarranted cots to the taxpayer, FOIA managers must adhere to the following procedures:

(a) Analyze each request to determine the category of the requester. See § 806.29 for a complete definition of each category. Requesters fall into one of three categories, which are listed in paragraphs (b) (1) through (3) of this section. If the determination regarding the category of the requester is different from that claimed by requester, ask the individual to provide additional justification to warrant the category claimed, and tell the requester you will not initiate a search for responsive records until you have reached an agreement on the category. If you do not receive further category justification from the requester within a reasonable period of time, normally 30 calendar days, make a final category determination and notify the requester of your decision, including normal administrative appeal rights on the category determination.

(b) Tell the requester that you will not initiate a search for records until he or she has indicated a willingness to pay assessable costs appropriate for the category determined. More specifically, requesters must submit a fee declaration appropriate for the following categories:

(1) Category 1. Commercial. Requesters must indicate a willingness to pay all search, review, and duplication costs.

(2) Category 2. Educational or noncommercial scientific institution or news media. Requesters must indicate a willingness to pay duplication charger sin excess of 100 pages, if they desire more than 100 pages.

(3) Category 3. Others. Requesters must indicate a willingness to pay assessable search costs if the request requires more than 2 hours of search, and duplication costs if they desire more than 100 pages of records.

(c) If requesters do not agree to the above conditions, tell them you cannot process their request until they indicate a willingness to pay the assessable costs.

(d) Provide an estimate of assessable fees if the requester desires one. Requesters are entitled to estimates before committing to a willingness to pay fees. Do not charge an amount in excess of the estimate or the amount agreed to by the requester, unless the requester first agrees to paying the excess.

§ 806.25 Host-tenant relationship.

Tenant units should process all FOIA requests according to parent command procedures.

§ 806.26 Notice of administrative extension.

In unusual circumstances, FOIA managers may authorize an administrative extension of the 10-day-time limit for processing a request. In doing so, they send a written notice to the requester within the initial 10 workdays, giving the reason for the extension and the date when they expect to send a notice of determination. The notice cannot give a date extending beyond an additional 10 workdays. Using the FOIA system, FOIA managers will record the total number of extensions taken, by reason. The FOIA system will compute those figures and include the totals in the annual FOIA Report. Unusual circumstances that my justify delay and that are allowed by law are:

(a) All or part of the requested records are at places other than the installation processing the request.

(b) The request requires the collection and evaluation of a substantial number of records.

(c) There is a need to consult with other Air Force activities or other agencies, to determine if all or part of requested records are exempt from release, or are releasable.

§ 806.27 Expedited handling required.

The Air Force gives priority handling, at each echelon, for any request for records from a member of the public. All Air Force personnel must make every effort to help requesters direct FOIA requests for records to proper authorities and not to create administrative obstacles. Specifically if personnel receive an improperly directed FOIA request for records, they will:

(a) Notify the proper FOIA office at once and asked for instructions on how to forward the request for processing.

(b) Give this the highest priority, because the disclosure or denial authority must make the determination within statutory time limits.

Subpart F—Fee Assessment, Categories, Aggregations, Restrictions, Waivers, and Rates

§ 806.28 Fee assessment.

FOIA fees are limited to standard charges for direct document search, review (only in the case of commercial requesters), and duplication (see paragraphs (c) through (e) of this section). Do not use fees to discourage requesters.

(a) Direct costs are those expenditures an activity actually makes in searching for, reviewing (in the case of commercial requesters), and duplicating documents to respond to a FOIA request.

(b) Assessable costs are direct costs after deductions mandated by fee restrictions (see § 806.31).

(c) Search includes all time spent looking for material responsive to a request. Personnel must perform searches in the most efficient and least expensive manner to minimize costs for both the Air Force and the requester. Search efforts must be thorough, which means conducting searches of all locations and activities considered most likely to have the requested records. Searches can include retired or staged records. Time spent reviewing documents to determine whether to apply one or more of the statutory exemptions is not search time, but review time.

(d) Review refers to the process of examining documents located in response to a request to determine if one or more of the statutory exemptions permits withholding. It also includes any excising if necessary. Review does not include time spent resolving general legal or policy issues on applying exemptions. FOIA managers may only assess commercial requesters charges for initial review. This would not include reviews at the appeal stage for exemptions already applied, but can include review to apply a new exemption not previously cited.

(e) Duplication refers to the process of making a copy of the requested document. Copies may take the form of paper copy, microfiche, audiovisual, or machine readable documentation (e.g., magnetic tape or disk), among others. FOIA managers must make every effort to ensure the copy provided is in a reasonably usable form. If it is not possible to provide a usable or readable copy, they must notify the requester that the copy is the best available and that they will make the master copy available for review by appointment. For duplication of computer tapes and audiovisual material, they will charge the actual cost, including the operator's time.

(f) FOIA managers may require advance payment of assessable fees before beginning or continuing work on a request only when:

(1) The requester has previously failed to pay fees in a timely fashion (usually 30 calendar days); or,

(2) The assessable fees or estimate will exceed $250, unless the requester has a history of prompt payments. Where the requester has a history of prompt payments and chargeable costs will exceed $250, notify the requester of the likely cost and obtain assurance of full payment.

(g) FOIA managers may require payment of assessable fees after processing a request but before forwarding documents when:

(1) There is no payment history regarding the requester, or

(2) The requester previously failed to pay fees in a timely fashion (normally 30 calendar days). However, when the requester has a history of prompt payment, the FOIA manager send the records and request payment simultaneously.

(h) Where the requester previously failed to pay fees in a timely fashion, FOIA managers may request payment of the full amount owed, plus any applicable interest, for the previous FOIA request (or show proof of payment) and request the full assessable or estimated fee in advance for the new or pending request before taking any action. FOIA managers should consult 31 U.S.C. 3717 for interest rates and coordinate with their accounting and finance office.

(i) FOIA managers may charge for search time even if that search fails to locate records responsive to the request, or if the records located are exempt from disclosure. When estimating search charges will exceed $25, notify the requester of the estimated fees, unless he or she has indicated in advance willingness to pay fees as high as those anticipated. Offer the requester the opportunity to reformulate the request to meet their needs at a lower cost.

§ 806.29 Categories of requesters.

(a) Category 1—Commercial requesters. Limit fees to reasonable standard charges for document search, review, and duplication when records are requested for commercial use.

(1) The term commercial use request refers to a request from, or on behalf of, one who seeks information for a use or purpose that furthers the commercial, trade, or profit interest of the requester or the person being represented. In deciding whether a requester properly belongs in this category, determine the use to which a requester will put the documents requested. When there is reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, seek additional clarification before assigning the request to a specific category.

(2) When you receive a request for documents for commercial use, assess charges to recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial requesters (unlike other requesters) are not entitled to 2 hours of free search time, nor 100 free pages of duplication. Moreover commercial requesters are not normally entitled to a waiver or reduction of fees based on an assertion that disclosure is in the public interest. Because use is the exclusive determining criterion, it is possible to envision a commercial enterprise making a request that is not for commercial use. It is also possible that a nonprofit organization could make a request that is for commercial use. Address these situations on a case-by-case basis.

(b) Category 2—(1) Educational institution requesters. Limit fees to only reasonable standard charges for document duplication (excluding charges for the first 100 pages), when an educational institution makes the request for the purpose of scholarly research. The term educational institution refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(2) Noncommercial scientific institution requesters Limit fees to reasonable standard charges for

document duplication (excluding the first 100 pages) when a noncommercial scientific institution whose purpose is scientific research makes the request. The term noncommercial scientific institution refers to an institution that is not operated on a commercial basis and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

Note: To be eligible for inclusion in the subcategories in paragraphs (b) (1) and (2) of this section, requesters must show they are making the request under the auspices of a qualifying institution and that they are not seeking the records for commercial use, but in furtherance of scholarly (from an educational institution) or scientific research (from a noncommercial scientific research institution).

(3) Representatives of the news media. Limit fees to only reasonable standard charges for document duplication, when appropriate, (excluding charges for the first 100 pages) when the request is from a representative of the news media.

(i) The term representative of the news media refers to any person actively gathering news for any entity that is organized and operated to publish or broadcast news to the public. The term news means information that is about current events or of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of news) who make their products available for purchase or subscription by the general public. These examples are not all inclusive. Moreover, include other methods of news delivery as they evolve (e.g., electronic dissemination of newspapers through telecommunications services). In the case of freelance journalists, regard them as working for a news organization if they can demonstrate a solid basis for expecting publication through a news organization, even though not actually employed by it. A publication contract is the clearest proof; however, a requester's past publication record may also constitute sufficient evidence of an expectation of publication.

(ii) To be eligible for inclusion in this category, a requester must meet the news media criteria, and the request must not be for commercial use. A request for records supporting the news dissemination function of the requester is not a commercial use request. For example, you can presume that a request by a newspaper for a report of investigation of public interest is a request from a representative of the news media eligible for inclusion in this category, and it receives the records for the cost of reproduction alone, (excluding charges for the first 100 pages) unless waived.

(c) Category 3. All other requesters. When appropriate, charge requesters who do not fit into either of the other two categories fees to recover the full direct cost of searching for and duplicating records except for the first 2 hours of search time and the first 100 pages of duplication, which is furnished free of charge. Treat requests from subjects of records about themselves that are in a PA system of records under the fee provisions of the Privacy Act of 1974, which permit fees only for duplication. This category of requester, and others, may qualify for a waiver or reduction of fees if it is in the public interest as defined in § 806.32(d).

§ 806.30 Aggregating requests.

A requester may attempt to file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. Where there is a reasonable belief that a requester or, on rare occasions, a group of requesters acting together, are attempting to break a request down into a series of requests for the purpose of evading assessment of fees, the FOIA manager may aggregate any such requests and charge accordingly. Before aggregating any requests, be sure to have solid evidence that avoidance of fees is the prime purpose. Do not aggregate multiple requests on unrelated subjects from one requester. Contact SAF/AAIA before taking any action.

§ 806.31 Fee restrictions.

Do not charge educational or noncommercial scientific institutions or news media requesters (Category 2) search fees or for the first 100 pages of duplication. Do not charge other requesters (Category 3) for the first 2 hours of search time and the first 100 pages of duplication. If after deducting the first 2 hours of search time and the first 100 pages of duplication, the cost is $15 or less, do not charge the requester. For example, in a request that involved 2 hours and 10 minutes of search time, and resulted in 105 pages of releasable documents, chargeable costs would include only the 10 minutes of search time and 5 pages of reproduction. Since the total chargeable costs are less than $15, you would waive fees.

(a) When a FOIA request from an other Category 3 requester involves search at more than 1 hourly rate, waive the first 2 hours of search with the highest hourly rate. Requesters receive the first 2 hours search (Category 3 requesters only) and the first 100 pages of duplication (Categories 2 and 3) free only once per request. If you refer the request to another FOI office for further action after completing your part, notify that FOI office of the search time you expended and reproduced pages furnished to the requester.

(b) For computer searches, determine the first 2 free hours against the salary scale of the person operating the computer.

(c) For the purposes of these restrictions, the word pages refers to paper copies of a standard size, normally 8½ by 11 or 11 × 14. Requesters would not receive 100 microfiche or 100 computer disks. However, a microfiche containing the equivalent of 100 pages or 100 pages of computer printout may meet the terms of the restriction.

§ 806.32 Fee waivers.

Furnish documents without charge under any one of the following circumstances:

(a) When direct costs for a FOIA request total $15 or less, waive fees for all requesters, regardless of category.

(b) A record is voluntarily created to save an otherwise burdensome effort in providing voluminous amounts of available records, including other information not requested.

(c) A previous denial is reversed in whole or in part, and assessable costs are not substantial (e.g., $15–$30).

(d) Disclosing the information is likely to contribute significantly to public understanding of the operations or activities of the DoD and is not primarily in the commercial interest of the requester. This final waiver standard establishes two basic requirements. Both must be satisfied before you waive or reduce fees. Use the following six factors. Begin with the first four factors to make the public interest determination and then, using the two remaining factors, determine whether disclosure of the information * * * is not primarily in the commercial interest of the requester.

Part 1 Disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government.

(1) Subject of the request. Analyze whether the subject matter of the request involves issues that will significantly contribute to the public understanding of the operations or activities of the DoD. Requests for

records in the possession of DoD that were originated by nongovernment organizations and are sought for their intrinsic content rather than informative value will likely not contribute to public understanding of the operations or activities of the DoD. Press clippings, magazine articles, or records forwarding a particular opinion or concern from a member of the public regarding a DoD activity are examples of such records. Disclosures of records of considerable age may or may not bear directly on the current activities of the DoD. Do not use the age of a record as the sole criterion for denying relative significance under this factor. For example, you could have an informative issue concerning the current activities of the DoD based on historical records. Review these kinds of requests closely consistent with the requester's stated purpose for desiring the records and the potential for public understanding of the operations and activities of the DoD.

(2) The informative value of the information you plan to disclose. This factor requires a close analysis of the substantive contents of a record, or portion of the record, to determine whether disclosure is meaningful, and will inform the public on the operations or activities of the DoD. While the subject of a request may contain information that concerns operations or activities of the DoD, it may not always hold great potential for contributing to a meaningful understanding of these operations or activities. An example is a heavily redacted record, the balance of which may contain only random words, fragmented sentences, or paragraph headings. Another example is information already known to be in the public domain.

(3) The contribution to an understanding of the subject by the general public likely to result from disclosure. The key element in determining the applicability of this factor is whether disclosure will inform, or have the potential to inform the public, rather than simply the individual requester or a small segment of interested persons. The identity of the requester is essential in this situation to determine whether he or she has the capability and intention to disseminate the information to the public. Assertions of plans to author a book, researching a particular subject, doing doctoral dissertation work, or indigency are insufficient without demonstrating the capacity to further disclose the information in a manner that will inform the general public. You may ask requesters to describe their qualifications, the nature of their research, the purpose of the requested information, and how they will disseminate it to the public.

(4) The significance of the contribution to public understanding. In applying this factor, components must balance the relative significance or impact of the disclosure against the current level of public knowledge or understanding which exists before the disclosure. Disclosure of records on a current subject of wide public interest should contribute previously unknown facts that will enhance public knowledge. It should not basically duplicate what the general public already knows. A decision regarding significance requires objective judgment, rather than subjective determination. Take care to determine whether disclosure will likely lead to a significant public understanding of the issue. Do not make value judgments as to whether the information is important enough to make public.

Part II—Disclosure of the information is not primarily in the commercial interest of the requester.

(5) The existence and magnitude of a commercial interest. If you determine the requester has a commercial interest, you should address the magnitude of that interest to determine if the commercial interest is primary, as opposed to any secondary personal or noncommercial interest. In addition to profit-making organizations, individual persons or other organizations may have a commercial interest in obtaining certain records. Where it is difficult to determine whether the request is of a commercial nature, the requester's identity and circumstances of the request may help. In these situations, you may write the requester and ask for additional details.

(6) The primary interest in disclosure. Once you have determined the requester's commercial interest, you then must determine if the disclosure is primarily in that interest. You may determine that the requester's commercial interests are primary only if the requester's commercial benefit clearly overrides any personal or nonprofit interest. This requires a balancing test between the commercial interest of the request against any benefit the public may gain as a result of that disclosure. You should waive or reduce fees when the public interest is served above and beyond that of the requester's commercial interest. Conversely, if the relative commercial interest of the requester is greater than the public interest, you should not waive or reduce fees even if a significant public interest exists. As examples, news media organizations have a commercial interest as business organizations; however, you can ordinarily presume their primary interest is their role of disseminating news to the general public. Any commercial interest becomes secondary to the primary interest in serving the public. Scholars writing books or engaged in other forms of academic research, may realize a commercial benefit, either directly, or indirectly (through the institution they represent); however, normally such pursuits are primarily undertaken for educational purposes. In these cases you would not usually assess fees. Conversely, you can normally presume a primarily commercial interest for data brokers or others who merely compile government information for marketing.

Note: Make each fee waiver decision on a case-by-case basis using the information provided in each request. When an element of doubt exists as to whether to charge or waive the fee, and you cannot resolve it, rule in favor of the requester.

§ 806.33 Transferring fees collected to accounting and finance offices.

The Treasurer of the United States has two accounts for FOIA receipts:

(a) Receipt Account 3210 Sales of Publications and Reproductions, Freedom of Information Act. Use this account when depositing funds received from providing existing publications and forms that meet the Receipt Account Series description found in Federal Account Symbols and Titles.

(b) Receipt Account 3210 Fees and Other Charges for Services, Freedom of Information Act. Use this account to deposit fees for search, duplication, and review (for commercial requesters) to satisfy requests you cannot fill with existing publications or forms.

Add your appropriate disbursing office prefix to the above account numbers. Use these accounts for depositing all FOIA receipts, except those for industrially funded and nonappropriated funded activities. Deposit industrially funded and nonappropriated funded activity FOIA receipts to the applicable fund.

§ 806.34 Fee rates.

These fee rates apply only to FOIA requests. Part 813 of this title contains the schedule of fees for non-FOIA services. Refer to part 806b of this title for guidance on fees for PA requests.

(a)

FEE RATES FOR SEARCH

RULE	A	B	C
	If the manual search type is	then the grade is	and the hourly rate is
1	Clerical	E9 and GS-8 and below	$12
2	Professional	01-06 and GS-9-GS/GM-15	$25
3	Executive	07 and GS-16/ES 1, and above	$45

(b) Computer search. Computer search is based on direct cost of the central processing unit, input-output devices, and memory capacity of the actual computer configuration. Include as part of the computer search the salary scale (equal to hourly rates above) for the computer operator or programmer who determined how to conduct and subsequently executed the search.

(c)

FEE RATES FOR DUPLICATION

RULE	A	B
	If the type is	then the cost per page is
1	preprinted material	$.02
2	office copy	.15
3	microfiche	.25
4	computer copies (tapes or printouts)	see note

NOTE: Actual cost of duplicating the tape or printout (includes operator's time and cost of tape).

(d)

FEE RATES FOR REVIEW

RULE	A	B	C
	If the review type is	then the grade is	and the hourly rate is
1	Clerical	E9 and GS-8 and below	$12
2	Professional	01-06 and GS-9-GS/GM-15	$25
3	Executive	07 and GS-16/ES 1, and above	$45

(e) Audiovisual Documentary Materials. Compute search costs the same as any other record. Duplication cost is the actual direct cost of reproducing the material, including the wage of the person doing the work. When you provide audiovisual materials to a requester, there is no obligation to provide them in a reproducible format or quality.

(f) Other Records. Compute search and duplication cost for any record not described above in the same manner as audiovisual material.

(g) Costs for Special Services. You may comply with requests for special services. These services may include certifying that records are true copies and sending records by special methods like express mail. You may recover the costs of these special services, if the requester expressly asks for them and agrees to pay for them.

§ 806.35 Fee rates for technical data.

Technical data is recorded information, regardless of the form or method of recording, of a scientific or technical nature (including computer software documentation). It does not include computer software, or data incidental to contract administration, such as financial and management information. If required under the FOIA, release technical data other than that discloses critical technology with military or space application, after the requester submits payment for all reasonable costs for search, duplication, and review of the released records. Apply the fee rates in paragraphs (b), (d) and (e) of this section. If the product does not appear in paragraph (d) of this section, use the fair market value. Search and review fees remain as listed in paragraphs (b) and (e) of this section.

(a) Fee waivers for technical data. Waive any charges required above that exceed costs chargeable for the same information under § 806.34 if:

(1) A citizen of the United States or a U.S. corporation makes the request, and the citizen or corporation certifies they require the technical data to enable it to submit an offer, or determine whether it is capable of submitting an offer to provide the product to which the technical data relates to the United States or a contractor with the United States. You may require the citizen or corporation to pay a deposit in an amount equal to not more than the cost of complying with the request, which you refund upon submission of an offer by the citizen or corporation.

(2) A requester asks for release of technical data to comply with the terms of an international agreement; or,

(3) You determine, using guidance in § 806.32, that a waiver is in the interest of the United States.

(b)

FEE RATES FOR SEARCH (TECH DATA)

RULE	A	B	C
	If the manual search type is	then the grade is	and the hourly rate is
1	Clerical	E9 and GS-8 and below	$13.25 (minimum charge is $8.30)
2	Professional	(see note 1)	actual. (Minimum ¼ of hourly rate.)

NOTE: Establish before search at actual hourly rate.

(c) Computer search. Computer search is based on the total cost of the central processing unit, input-output devices, and memory capacity of the actual computer configuration. Record as part of the computer search the wage (using the scale above) for the computer operator or programmer who determined how to conduct, and subsequently executed the search.

(d)

FEE RATES FOR DUPLICATION (TECH DATA)

RULE	A	B	C
	If the type of document is	and is	then the cost is
1	aerial photographs, specifications, permits, charts, blueprints, and other technical documents		$2.50
2	engineering data (microfilm aperture cards)	Silver duplicate negative	75 per card
3		Silver duplicate negative keypunched and verified	.85 per card
4		Diazo duplicate negative	.65 per card
5		Diazo duplicate negative keypunched and verified	75 per card
6	engineering data (film)	35mm roll film	50 per frame
7		16mm roll film	45 per frame
8	engineering data (paper)	prints (engineering drawings)	1.50 each
9		reprints of microfilm indices	10 each

(e)

FEE RATES FOR REVIEW (TECH DATA)			
RULE	A	B	C
	If the review type is	then the grade is	and the hourly rate is
1	Clerical	E9 and GS-8 and below	$12.25 (minimum charge is $6.20)
2	Professional	[illegible] 11	actual (Minimum ¼ of hourly rate.)

NOTE: Establish before search at actual hourly rate.

(f) Other technical data records. Charge for any other services not specifically mentioned in paragraphs (b), (d) and (e) of this section, at the rates in paragraph (g) of this section.

(g)

FEES FOR OTHER TECHNICAL DATA RECORDS		
RULE	A	B
	If the type of document is	then the cost is
1	office copy (up to six images)	$2.50
2	additional image	$.10 each
3	typewritten page	$3.00 each
4	certification and validation with seal	$5.20 each
5	hand-drawn plots and sketches	$12 each hour or fraction thereof

Subpart G—Processing Appeals

§ 806.36 Appeals from denial of records.

Requesters may appeal denials of records in writing to the Office of the Secretary of the Air Force, within 60 calendar days after the date of the denial letter. If the requester submits the appeal after the 60 calendar days, he or she should include justification explaining the reason for the delay. MAJCOM and FOA FOIA offices will forward all appeals, including late submissions, to Air Force Legal Services Agency (AFLSA/JACL) for determination, unless, on reconsideration, they release all records. Requesters have exhausted all administrative remedies within the Department of the Air Force when they file an appeal to an initial denial or a no records response, and The Administrative Assistant to the Secretary of the Air Force (SAF/AA) issues a final decision. SAF/AA's appeal decision is the final Air Force action on the request. Requesters must address all appeals to the Office of the Secretary of the Air Force, through the MAJCOM or FOA FOIA office that denied the request. (For example, if HQ ATC denied the request, the requester must send his or her appeal to the Office of the Secretary of the Air Force, through HQ ATC/IMD (FOIA), Randolph AFB TX 78150–5000.) Requesters should attach to their appeal a copy of the denial letter and give their reasons for disagreement. After coordinating with the local SJA (and the OPR, if appropriate), the MAJCOM or FOA FOIA office must immediately send the appeal to AFLSA/JACL for processing. MAJCOM and FOA FOIA offices must process appeals as priority actions. MAJCOM and base FOIA offices do not get 20 workdays to process an appeal. Requesters must appeal denials involving Office of Personnel Management's controlled civilian personnel records to the Office of the General Counsel, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415. When forwarding appeals to AFLSA/JACL, attach:

(a) Original appeal letter and envelope.

(b) Initial request and any attachments.

(c) Copy of the denial letter, with an index of the denied material, if applicable.

(d) Copies of all records previously provided; or if voluminous and AFLSA/JACL consents, an index or description of the released records.

(e) Copies of all administrative processing documents, including opinions and recommendations discussing the request.

(f) Copy of the denied record, or denied portions of the record, marked to indicate what you withheld. If the records are voluminous (several cubic feet or more), you may substitute a detailed description of the documents with the consent of AFLSA/JACL.

(g) Point-by-point discussion of any factual and legal arguments contained in the requester's appeal; and evidence that the denial authority considered and rejected these arguments and reasons for doing so.

(h) Other documents in the file of the initial denial authority that will help in processing the appeal.

(i) Intra-agency documents you may have denied under the deliberative process privilege, an explanation of the decision making process and how the denied material fits into that process.

(j) Copy of the extension letter to the requester if you took a time extension. Assemble appeal packages systematically, tabbing attachments in the order listed above. List all attachments on your cover letter and include a point of contact and phone number. AFLSA/JACL will send the appeal through the Office of the General Counsel to SAF/AA for final determination. The law requires a final decision on appeals within 20 workdays after receipt of the appeal letter. The 20 days begins on receipt of the appeal by the FOIA Office for the IDA that denied the records. The time limit includes processing actions by all levels. If a final determination cannot be made within the time limits, AFLSA/ JACL acknowledges in writing to the requester receipt of the appeal and explains the reasons for the delay. If SAF/AA upholds the denial, in whole or in part, SAF/AA tells the requester of the determination, explains reasons for the denial, and tells the requester of his or her right to a judicial review of that determination. If SAF/AA grants the appeal, that office notifies the requester in writing and releases the record or directs its release.

§ 806.37 Appeals from no records determinations, denials of fee waiver requests and category determinations.

Appeal procedures for processing no records determinations, category determinations and fees are the same as those for denied records. For appeals to no records determinations, conduct an additional records search, if warranted, or verify the initial search. Include with your package to AFLSA/JACL pertinent correspondence validating the efforts of the systematic search (for example, what functional areas/offices were searched; how the search was conducted—manually, by computer, telephone, etc.) On fee and category appeals, the FOIA office that made the initial denial must reconsider the requester's arguments. If, after reconsideration, the FOIA office determination remains the same, it will coordinate with the local SJA and MAJCOM FOIA office, and immediately send the appeal to AFLSA/JACL for processing, with:

(a) Original appeal letter and envelopes.

(b) Initial request and any attachments.

(c) Denial letter.

(d) Point-by-point discussion of any factual and legal arguments contained in the requester's appeal; and evidence that the official denying the request considered and rejected these arguments and reasons for doing so.

(e) Full accounting of costs incurred or projected in acting on the request with a copy of the DD 2086 (or DD 2086–1).

(f) Other documents in the file that will help in processing the appeal. Coordinate all appeals with the local SJA and MAJCOM and FOA FOIA office before sending them to AFLSA/JACL.

Subpart H—For Official Use Only Information

§ 806.38 For Official Use Only (FOUO) explained.

FOUO information is not classified according to Executive Order, but is exempt from disclosure to the public under exemptions 2 through 9 of the FOIA (see § 806.15). Do not consider or mark any other records FOUO. FOUO material must meet the criteria for exemptions 2 through 9, or you cannot withhold it. FOUO is not authorized as a form of classification to protect national security interests.

§ 806.39 Prior FOUO application.

A FOUO marking is not a conclusive basis for withholding a record under the FOIA. When such a record is requested, evaluate the information in it to determine if FOIA exemptions apply and whether a discretionary release is appropriate.

§ 806.40 Time to mark records.

Marking records when they are created gives notice of FOUO content but does not eliminate the need to review a record requested under the FOIA. Examine records with and without markings before release to identify information that needs continued protection and qualifies as exempt from public release.

§ 806.41 Distribution statement.

Information in a technical document that requires a distribution statement according to AFR 80–45, must show that statement. The originator may also apply the FOUO marking, as appropriate.

§ 806.42 How to apply FOUO markings.

(a) Mark an unclassified document containing FOUO information For Official Use Only at the bottom, on the outside of the front cover (if any), on each page containing FOUO information, on the back page, and on the outside of the back cover (if any).

(b) In unclassified documents, note that the originator may also mark individual paragraphs that contain FOUO information to alert the users and assist in the review process.

(c) Mark an individual paragraph in a classified document that contains FOUO information, but no classified information, by placing (FOUO) at the beginning of the paragraph.

(d) Mark an individual page in a classified document that has both FOUO and classified information at the top and bottom with the highest security classification of information on that page.

(e) Mark an individual page in a classified document that has FOUO information, but no classified information, For Official Use Only at the bottom of the page.

(f) If a classified document also contains FOUO information, or, if the classified material becomes FOUO when declassified, place the following statement on the bottom of the cover or the first page, under the classification marking: If declassified, review the document to ensure material is not FOUO and exempt under AFR 4–33 before making a public release.

(g) Mark other records, such as computer printouts, photographs, films, tapes, or slides, For Official Use Only or FOUO in a way that ensures the recipient or viewer knows the record contains FOUO information.

(h) For FOUO material sent outside the DoD to authorized recipients, place an expanded marking to explain its meaning. Do this by typing or stamping the following statement on the document before transfer: This document contains information Exempt From Mandatory Disclosure Under the FOIA. Exemption(s) * * * applies (apply). (Further distribution is prohibited without the approval of (enter OPR)).

§ 806.43 Procedures for releasing, disseminating, and transmitting FOUO material.

(a) FOUO information may be sent within DoD components and between officials of DoD components and authorized DoD contractors, consultants, and grantees to conduct official business for the DoD. Inform recipients of the status of such information, and send the material in a way that prevents unauthorized public disclosure. Make sure documents that transmit FOUO material call attention to any FOUO attachments. Normally, FOUO records may be sent over facsimile equipment. To preclude unauthorized disclosure, consider such factors as attaching special cover sheets (i.e., AF Form 3227 for Privacy Act information), location of sending and receiving machines, and availability of authorized personnel to receive the FOUO information. FOUO information may be passed to officials in other departments and agencies of the executive and judicial branches to fulfill a government function. Mark the records For Official Use Only, and tell the recipient the information is exempt from public disclosure under the FOIA, and if special handling instructions apply. If the records are subject to the PA, refer to 32 CFR part 806b for PA disclosure policies.

(b) AFR 11–7 governs the release of FOUO information to members of the Congress and AFR 11–8 governs release to the General Accounting Office (GAO). Review records before release to the Congress or to the GAO to determine if the information warrants FOUO status. If not, remove prior FOUO markings. If the material still warrants FOUO status, mark the records FOUO and explain to the recipient the appropriate exemption and marking.

§ 806.44 Sending FOUO information by United States Postal Service

Send records containing FOUO information in a way that will not disclose their contents. When not mixed with classified information, individuals may send FOUO information by First Class Mail or Parcel Post. Bulky shipments, such as distributions of FOUO directives or testing materials, that otherwise qualify under postal regulations, may be sent by Fourth-Class Mail.

§ 806.45 Electrically transmitted messages.

Mark each part of an electrically transmitted message that contains FOUO information. Unclassified messages containing FOUO information must show the abbreviation FOUO before the beginning of the text. Transmit such messages according to AFR 700–7.

§ 806.46 Safeguarding FOUO information.

(a) During duty hours. During normal duty hours, place FOUO records in an out-of-sight location, if the work area is open to nongovernmental people.

(b) During nonduty hours. At the close of business, store FOUO records to prevent unauthorized access. File such material with other unclassified records in unlocked files or desks, etc., when the Government or a Government contractor provides normal internal building security during nonduty hours. When

there is no such internal security, locked buildings or rooms usually provide adequate after-hours protection. If you desire additional protection, store FOUO material in locked containers, such as file cabinets, desks, or bookcases.

§ 806.47 The termination, disposal and unauthorized disclosure of FOUO.

(a) Terminating FOUO material. The originator or other competent authority should remove FOUO markings or indicate on the document the markings no longer apply when circumstances show that the information no longer needs protection from public disclosure. When a record is no longer FOUO, tell all known holders, to the extent practical. Do not to retrieve records in files or storage only for that purpose.

(b) Disposing of FOUO material. Dispose of record copies of FOUO documents according to AFR 4–20, volume 2. Destroy duplicate or extra copies of FOUO materials by tearing each copy into pieces to preclude reconstruction, and place these torn pieces in regular trash containers. When this destruction method does not sufficiently protect FOUO information, local authorities may direct other methods. However, balance any additional expense against the degree of sensitivity of the FOUO information in the records. Recycling FOUO material is an option. Safeguard the FOUO documents or information until recycling occurs to preclude unauthorized disclosure. Recycling contracts must include a clause to address FOUO and PA safeguarding and destruction methods.

(c) Unauthorized disclosure. The unauthorized disclosure of FOUO records is not an unauthorized disclosure of classified information. Air Force personnel have a duty to take reasonable actions to protect FOUO records under their control from unauthorized disclosure. Appropriate administrative actions should be taken to fix responsibility for such disclosures and disciplinary action taken where appropriate. Unauthorized disclosure of FOUO information protected by the PA may also result in civil or criminal sanctions against individuals or against the Air Force. Tell the originating organization about an unauthorized disclosure of its records.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92–21565 Filed 9–9–92; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09–92–18]

Special Local Regulations: The Fountain Powerboats Kilo Speed Challenge, Buffalo Outer Harbor, Lake Erie, Buffalo, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: Special Local Regulations are being adopted for The Fountain Powerboats Kilo Speed Challenge. This event will be held on the Buffalo Outer Harbor on September 18, 1992 from 8 a.m. (EDST) until 12 p.m. (EDST). The regulations are needed to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATE: These regulations become effective from 8 a.m. (EDST) until 12 p.m. (EDST) on September 18, 1992.

FOR FURTHER INFORMATION CONTACT: William A. Thibodeau, Marine Science Technician Third Class, U.S. Coast Guard, Search and Rescue Branch, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, Ohio 44199–2060, (216) 522–4420.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received until 7 August 1992, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are William A. Thibodeau, Marine Science Technician Third Class, U.S. Coast Guard, project officer, Search and Rescue Branch and M. Eric Reeves, Commander, U.S. Coast Guard, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Fountain Powerboats Kilo Speed Challenge will be conducted on the Buffalo Outer Harbor, Lake Erie, Buffalo, NY, on the 18th of September 1992. This event will have an estimated 40, 24 to 40 foot, offshore racing boats, which could pose hazards to navigation in the area. Any vessel desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (Officer in Charge, U.S. Coast Guard Station Buffalo, NY).

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectators into the area for the duration of the event. This should have a favorable impact on commercial facilities providing services to the spectators. Any impact on commercial traffic in the area will be negligible.

Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

Final Regulations

In consideration of the foregoing, part 100 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended to add a temporary § 100.35–T0918 to read as follows:

§ 100.35—T0918 The Fountain Powerboats Kilo Speed Challenge, Buffalo Outer Harbor, Lake Erie, Buffalo, NY.

(a) *Regulated Area.* That portion of the Buffalo Outer Harbor between the main line of the shore and the Outer Harbor Breakwall, from 100 yards northward of the Seaway Piers to one-half mile southward of the entrance to the Port of Buffalo Small boat Harbor. Recreational vessels located at marinas in the above regulated area will be allowed to transit the area when the

actual speed runs are not taking place, but only with the prior approval of the Coast Guard Patrol Commander.

(b) *Special Local Regulations.* (1) The above area will be closed to vessel navigation and anchorage, except when expressly authorized by the Coast Guard Patrol Commander, from 8 a.m. (EDST) until 12 p.m. (EDST) on the 18th of September 1992.

(2) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Any vessel, not authorized to participate in the event, desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Transiting vessels will be operated at bare steerageway, and will exercise a high degree of caution in the area.

(3) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Any vessel so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) The Patrol Commander may establish vessel size and speed limitations, and operating conditions.

(5) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(6) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

Dated: August 20, 1992.

G.A. Penington,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 92-21804 Filed 9-9-92; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD2 92-16]

Special Local Regulations: Fleur De Lis Regatta (Ohio River Mile 602.0 to Mile 604.0)

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for the Fleur De Lis Regatta. This event will be held near Jeffersonville, Indiana, on the Ohio River from mile 602.0 to mile 604.0, October 17 & 18 1992. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: The regulations will be effective daily, 11 a.m. to 5 p.m., October 17 & 18, 1992.

FOR FURTHER INFORMATION CONTACT: Ensign D. R. Dean, Chief, Boating Affairs Branch, Second Coast Guard District, 1222 Spruce Street, St. Louis, Missouri 63103-2832. The telephone number is (314) 539-3971, Fax (314) 539-2665.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received until July 28, 1992. There was not sufficient time remaining to publish proposed rules in advance of the event.

Drafting Information

The drafter of these regulations is Ensign D. R. Dean, Project Officer, Second Coast Guard District, Boating Safety Division.

Discussion of Regulations

The Fleur De Lis Regatta consists of a sailing exhibition with approximately seventy-five participants. These regulations are required to protect the boating public from possible dangers and hazards associated with the event. In order to provide for the safety of spectators and participants, the Coast Guard will restrict vessel movement in the regulated area. The river will be closed during portions of the effective period to all vessel traffic except participants, official regatta vessels, and patrol craft. Actual river closures will not exceed three hours in duration. Mariners will be afforded enough time between closure periods to transit the area.

The Ohio River from Clark Memorial (Highway) Bridge at mile 603.5, downstream to McAlpine Dam at mile 604.4, is a regulated navigation area as set forth in 33 CFR 165.202. No pleasure or fishing craft shall be operated within the regulated navigation area at any time without prior permission of the Captain of the Port, Louisville, Kentucky, except in case of emergency and except for passage through McAlPine Lock. With these Special Local Regulations in place, the Captain of the Port, Louisville, Kentucky, has given permission for the affected vessels to operate in the regulated navigation area during this event.

These regulations are issued pursuant to 33 U.S.C. 1233 and 33 CFR part 100.35.

List of Subjects in 33 CFR Part 100.

Marine Safety, Navigation (Water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35-T0216 is added, to read as follows:

§ 100.35-T0216 Fleur De Lis Regatta (Ohio River Mile 602.0 to Mile 604.0)

(a) *Regulated Area.* The Ohio River between mile 602.0 and mile 604.0.

(b) *Special Local Regulations.* (1) The U.S. Coast Guard and U.S. Coast Guard Auxiliary will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Vessels desiring to transit the regulated area may do so only with the prior approval and direction of the Patrol Commander.

(2) The Patrol Commander may direct the anchoring, mooring or movement of any vessel within the regulated area. A succession of sharp, short blasts by whistle or horn from a designated patrol vessel shall be the signal to stop. Failure or refusal to stop or comply with orders of the Patrol Commander may result in expulsion from the area, citation for failure or refusal to comply, or both.

(3) The Patrol Commander may establish vessel size and speed limitations, and operating conditions.

(4) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(5) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(6) The Patrol Commander will terminate enforcement of the special regulations at the conclusion of the marine event if earlier than the announced termination time.

(c) *Effective Dates.* These regulations are effective daily, 11 a.m., to 5 p.m., October 17 & 18, 1992.

Dated: August 28, 1992.

J. J. Lantry,

Captain, U.S. Coast Guard, Commander Second Coast Guard District, Acting.

[FR Doc. 92-21805 Filed 9-9-92; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[CGD1 92-101]

Safety Zone Regulations: Taste of Italy Norwich Style Fireworks, Norwich, CT

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone in Norwich Harbor at Norwich, CT. This safety zone is needed to protect the maritime community from possible navigation hazards associated with a fireworks display. Entry into this zone is prohibited unless authorized by the Captain of the Port, Long Island Sound.

EFFECTIVE DATES: This regulation is effective from 8:45 pm through 9:30 pm on September 12, 1992 unless terminated sooner by the Captain of the Port. The rain date for this event is September 13, 1992 at the same times.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander D.D. Skewes, Chief of Port Operations, Captain of the Port, Long Island Sound at (203) 468-4464.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are LCDR D.D. Skewes, project officer for Captain of the Port, Long Island Sound, and LCDR J. Astley, project attorney, First Coast Guard District Legal Office.

Regulatory History

As authorized by 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Due to the date the application was received, there was not sufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date. The sponsor of this event, the United Italian Society of Norwich, is a nonprofit organization. This event is taking place in conjunction with the Taste of Italy Norwich Style Festival and is of general benefit and interest to the public. The area affected by this event receives infrequent commercial traffic. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to respond to any potential hazards.

Background and Purpose

On August 3, 1992 the sponsor, United Italian Society of Norwich, Norwich, CT requested that a 45 minute fireworks display, launched from a floating platform, be permitted on the Thames River, in the port of Norwich in the vicinity of Norwich Harbor, Norwich, CT. This zone is required to protect the maritime community from the dangers and potential hazards to navigation, including falling debris and potential fireworks launching mishaps, associated with this fireworks display which is occurring over a navigable waterway. The zone covers all waters of Norwich Harbor within a square, 800' on a side, centered on the American Wharf Barge.

Regulatory Evaluation

These regulations are not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979).

The event will last approximately 45 minutes. The area affected by this event receives infrequent commercial traffic. Because of the short duration of the event, commercial entities will be able to adjust to any disruptions caused by this event. The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

For the reasons cited under the Regulatory Evaluation section above, the Coast Guard expects the impact of this regulation to be minimal and certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612, and has determined that these regulations do not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of these regulations and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, they will have no significant impact and they are categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Final Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. A new § 165.T01-101 is added to read as follows:

§ 165.T01-101 Safety Zone: Taste of Italy Norwich Style Fireworks, Norwich, CT.

(a) *Location.* The following area has been declared a safety zone: All waters of the Thames River in Norwich Harbor within a square marked by temporary buoys. The area is 800' on a side, centered on the American Wharf Barge, the fireworks launching platform, which will be located approximately 600' southeast of the Marina at American Wharf in approximate position 41°31'20" N 072°04'83" W.

(b) *Effective date.* This regulation is effective from 8:45 pm through 9:30 pm on September 12, 1992 unless terminated sooner by the Captain of the Port. The rain dates for this project are September 13, 1992 at the same times.

(c) *Regulations.* The general regulations covering safety zones contained in § 165.23 of this part, appiy to all persons, objects and vessel movement within this zone.

Dated: August 25, 1992.

H. Bruce Dickey,

Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.

[FR Doc. 92-21806 Filed 9-9-92; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF DEFENSE

48 CFR Parts 215, 252, and 270

Defense Federal Acquisition Regulation Supplement; Recoupment of Nonrecurring Costs on Sales or Licensing of U.S. Items

AGENCY: Department of Defense.

ACTION: Interim rule and request for comments.

SUMMARY: The Department of Defense is amending the Defense Federal Acquisition Regulation Supplement (DFARS) language on recoupment of nonrecurring costs to implement major policy changes that have been incorporated in DoD Directive 2140.2, Recoupment of Nonrecurring Costs (NC) on Sales or Licensing of U.S. Items. The revised DoD Directive 2140.2 was published as an interim rule on July 2, 1992 (57 FR 29619).

DATES: *Effective Date:* September 1, 1992.

Comment Date: Comments on the interim rule should be submitted in writing at the address shown below on or before October 26, 1992 to be considered in the formulation of a final rule. Please cite DFARS Case 92-D021 in all correspondence related to this rule.

ADDRESSES: Interested parties should submit written comments to The Defense Acquisition Regulations Council, ATTN: Mr. Charles W. Lloyd, OUSD(A), 3062 Defense Pentagon, Washington, DC 20301-3062.

FOR FURTHER INFORMATION CONTACT: Charles W. Lloyd, (703) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends the Defense Federal Acquisition Regulation (DFARS) language on Recovery of Nonrecurring Costs and Royalty Fees on Commercial Sales, which currently is in DFARS part 270 and the clause at 252.270-7000. This rule is the result of a major change in Department of Defense (DoD) policy on recoupment of nonrecurring costs. The change is described in detail in the summary statement included with the interim rule that was published in the **Federal Register** on July 2, 1992 (57 FR 29619) and codified at 32 CFR part 165. Under the revised DoD Policy, on new contracts only Major Defense Equipment that is to be used for military purposes will be subject to recoupment charges.

This interim DFARS rule supersedes the proposed rule that was published in the **Federal Register** on October 25, 1991, (56 FR 55264), under DAR Case 91-33.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act applies, but the proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* because the recoupment policies apply only to items which have at least a $50 million investment. An initial regulatory flexibility analysis has therefore not been performed. However, comments are invited from small businesses and other interested parties. Such comments must be submitted separately and must cite DAR Case 92-610 in all correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act applies and approval from OMB is being requested.

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This rule is necessary to implement in the Defense Federal Acquisition Regulation Supplement the revised Department of Defense recoupment policies which were published July 2, 1992.

List of Subjects in 48 CFR Parts 215, 252, and 270

Government procurement.

Claudia L. Naugle,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR parts 215, 252, and 270 are amended as follows:

1. The authority citation for 48 CFR part 215, 252, and 270 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, Defense FAR Supplement 201.301.

PART 215—CONTRACTING BY NEGOTIATION

2. Subpart 215.70 is added to read as follows:

Subpart 215.70—Recoupment of Nonrecurring Costs

Sec.
215.7000 Scope.
215.7001 Definitions.
215.7002 Policy.
215.7003 General.
215.7004 Contractor responsibilities.
215.7005 Waiver or reduction of recoupment charges.
215.7006 Contract clause.

Subpart 215.70—Recoupment of Nonrecurring Costs

215.7000 Scope

This subpart sets forth policy and procedures for recoupment from DoD contractors and their subcontractors of a fair share of the DoD's investment, or of a foreign military sale (FMS) customer's investment, in the nonrecurring costs of major defense equipment. It implements DoDD 2140.2, Recoupment of Nonrecurring Costs (NC) on Sales or Licensing of U.S. Items.

215.7001 Definitions

See the clause at 252.215-7004, Recoupment of Nonrecurring Costs, for definitions of the terms used in this subpart.

215.7002 Policy

(a) Consistent with section 21(e)(1)(B) of the Arms Export Control Act (22 U.S.C. 2761(e)(1)(B)), DoD will recoup a fair (pro rata) share of its investment in the nonrecurring costs of major defense equipment when the contractor or its subcontractor—

(1) Sells the equipment to any customer, unless the U.S. Government is the ultimate customer or the equipment is to be used for non military purposes; or

(2) Licenses others to produce for military purposes major defense equipment.

(b) DoD policy also is to recoup in selected cases, on behalf of a foreign government or international organization, a fair share of the nonrecurring costs for a special feature, unique requirement, or product paid for by the foreign government or international organization under an FMS case.

215.7003 General

(a) The fair share is recovered through assessment of nonrecurring cost recoupment charges established by DoD. The recoupment charges are determined in accordance with DoDD 2140.2, Recoupment of Nonrecurring Costs (NC) on Sales or Licensing of U.S. Items, and are administered through the following DoD focal points:

(1) U.S. Army Security Affairs Command, Attn: AMSAC-RP, 5001 Eisenhower Avenue, Alexandria, VA 22333-0001.

(2) U.S. Navy, Director, Navy International Programs Office (IPO-04B), Washington, DC 20350-5000.

(3) U.S. Air Force, Assistant for Security Assistance, SAF/FMBIS, Pentagon, Washington, DC 20330-1000.

(b) Contracting officers should refer immediately any issue raised by contractors concerning a recoupment charge to the appropriate DoD focal point.

215.7004 Contractor responsibilities

DoD contractors and their subcontractors are responsible, under the terms of the clause at 252.215-7004, Recoupment of Nonrecurring Costs, for—

(a) Contacting the appropriate DoD focal point to determine the recoupment charge before entering into any sale, coproduction agreement, license to produce, technical assistance agreement, or transfer agreement for major defense equipment that is subject to the recoupment policy in 215.7002;

(b) Notifying the appropriate DoD focal point of all sales to, or agreements or licenses with customers other than the U.S. Government, except when the U.S. Government is the eventual purchaser, for major defense equipment subject to the recoupment policy in 215.7002; and

(c) Paying the recoupment charges to the office specified by the DoD focal point.

215.7005 Waiver or reduction of recoupment charges

Requests for waiver or reduction of a recoupment charge are submitted in accordance with DoDD 2140.2, Recoupment of Nonrecurring Costs (NC) on Sales of Licensing of U.S. Items, to the Director, Defense Security Assistance Agency.

215.7006 Contract clause

Use the clause at 252.215-7004, Recoupment of Nonrecurring Costs, in all research, development, test, and evaluation and production contracts of $10 million or more.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.215-7004 is added to read as follows:

252.215-7004 Recoupment of nonrecurring costs

As prescribed in 215.7006, use the following clause:

Recoupment of Nonrecurring Costs (Aug 1992)

(a) *Definitions.*

As used in this clause—

(1) *Major defense equipment* means any item of significant military equipment on the United States Munitions List that has a nonrecurring research, development, test, and evaluation cost of more than $50 million or a total production cost of more than $200 million, as determined in accordance with DoD Directive 2140.2, Recoupment of Nonrecurring Costs (NC) on Sales or Licensing of U.S. Items.

(2) *Nonrecurring costs* means "nonrecurring production costs" and "nonrecurring research, development, test, and evaluation costs" as defined in DoD Directive 2140.2 and generally includes costs funded by a Department of Defense (DoD) RDT&E appropriation or one-time production costs, funded by a DoD procurement or other appropriation, such as preproduction engineering, rate and special tooling, special test equipment, production engineering, product improvement, destructive testing, and pilot model production, testing, and evaluation.

(b) The Contractor agrees to pay to the Government nonrecurring cost recoupment charges, determined in accordance with DoD Directive 2140.2, Recoupment of Nonrecurring Costs (NC) on Sales or Licensing of U.S. Items, in effect on the date this contract is executed by the Contracting Officer, when the Contractor or its subcontractor—

(1) Sells to a non-U.S. Government purchaser for military use major defense equipment of the type developed or produced under this contract; or

(2) Licenses others to produce for military purposes major defense equipment of the type developed or produced under this contract.

No such payment will be required if payment is waived in accordance with DoD Directive 2140.2.

(c) The Contractor shall—

(1) Before entering into any sale, coproduction agreement, license to produce, technical assistance agreement, or other transfer or rental agreement for major defense equipment of the type developed or produced under this contract, contact the appropriate Department of Defense (DoD) focal point listed in section 215.7003 of the Defense Federal Acquisition Regulation Shipment to determine the recoupment charge applied to such equipment.

(2) Within 30 days after entering into any sale or agreement of the type in paragraph (c)(1) of this clause, provide a notification to the appropriate DoD focal point to include—

(i) Brief description of the major defense equipment;

(ii) Name and address of the purchaser;

(iii) Whether the equipment or technology is to be used for a non military purpose;

(iv) Quantity;

(v) Delivery schedule;

(vi) Identification of the U.S. Government export license, if applicable; and

(vii) Recoupment charges identified by the DoD focal point.

(3) Within 30 days after delivery to or acceptance of the equipment by the purchaser, whichever comes first, pay the recoupment charges to the office specified by the DoD focal point.

(4) Within 60 calendar days after the end of each calendar year in which payment of a recoupment charge was due, submit the following certification to the DoD focal point:

Recoupment of Nonrecurring Costs Certification

I hereby certify that, to the best of my knowledge and belief, all notifications required by the Recoupment of Nonrecurring Costs clause of contract _____ have been provided and are accurate, complete, and current as of the end of calendar year _____

Contractor _____
Signature _____
Title _____
Date _____

(d) In the event of a sale of equipment subject to a recoupment charge, the Contractor agrees to relieve the Government of any and all loss or liability that might result from the use of Government data, tooling, test equipment, or facilities.

(e) The Contractor shall include this clause, including this paragraph (e), in all subcontracts of $10 million or more.

(End of clause).

252.270-7000 [Removed]

4. Section 252.270-7000 is removed.

PART 270—[REMOVED]

5. Part 270 is removed.

[FR Doc. 92-21666 Filed 9-9-92; 8:45 am]
BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74-09; Notice 27]

RIN 2127-AD45

Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This rule amends Federal Motor Vehicle Safety Standard 213, *Child Restraint Systems*, to require add-on child restraints to meet the requirements of the standard at each of the angles to which the seat back can be adjusted and at each of the restraint belt routing positions. This amendment improves safety by removing the possibility that a child restraint can be designed to transport a child in a motor vehicle or aircraft while the restraint is adjusted to a position in which the

restraint would not comply with the standard.

DATES: The amendment is effective on March 9, 1993.

Petitions for reconsideration of the final rule must be received by October 13, 1992.

ADDRESSES: Petitions for reconsideration of the final rule should refer to the docket number and notice number of this rule and be submitted to: Administrator, room 5220, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC, 20590.

FOR FURTHER INFORMATION CONTACT: Dr. George Mouchahoir, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. Telephone: (202) 366-4919.

SUPPLEMENTARY INFORMATION: This rule amends S5 of Standard 213, *Child Restraint Systems,* to expand the requirements for child restraint systems manufactured for use in motor vehicles, and motor vehicles and aircraft.

The requirements are expanded to apply to previously-excluded adjustment positions on child restraints. Child restraint systems typically have more than one seat back angle adjustment position and a number of restraint belt routing positions. Under the standard before this amendment, adjustment positions could be excluded from the excursion (S5.1.3) and seat inversion (S8.2) requirements of the standard if the manufacturer warned that the positions were not for use in motor vehicles or aircraft.

This rule eliminates that exclusion of adjustment positions, regardless of whether the manufacturer provides a warning. This rule also removes the related provisions (S5.5.2(i), S8.1) that required manufacturers of restraints with excluded adjustment positions to identify those positions on labels attached to the restraints. This rule also amends the conditions for the dynamic systems test and the inversion test to clarify the effect of removing these provisions.

The proposal for this rule was published on August 12, 1991 (56 FR 38105). NHTSA began this action in response to a petition for rulemaking from Consumer Action (CA) and the Center for Auto Safety (CAS).

Background

This rulemaking highlights the relationship between the test procedures specified in Standard 213 and the performance required of a child restraint system. The National Traffic and Motor Vehicle Safety Act requires child restraint manufacturers to certify each restraint as complying with Standard 213. NHTSA checks the validity of the certification by evaluating the restraint's performance when tested in accordance with the procedures specified in the standard (S6, S8). Generally, the procedures for the dynamic sled and seat inversion tests specify that the restraint be installed on a simulated car or aircraft seat "in accordance with the manufacturer's instructions" provided to the consumer. (However, the procedures for the dynamic sled test require that most restraints must be secured using only the standard vehicle lap belt. See, S6.1.2.1.1(a)). The procedures also specify that the test dummy used to test the restraint is positioned "according to the instructions for child positioning" provided by the manufacturer to the consumer. (See, e.g., S6.1.2.3.1, 6.1.2.3.2 and 6.1.2.3.3.) The installation instructions must provide a narrative discussion and diagrams to facilitate installing the restraint in motor vehicles or aircraft, positioning a child in the restraint, and adjusting the restraint to fit the child (S5.6.1 and S8.1).

Each adjustment position of a child restraint is currently subject to dynamic testing unless the restraint's manufacturer does not intend that position to be used in motor vehicles or aircraft and expressly states that intent on a label attached to the restraint. If the position is not intended to be so used, it is excluded from the standard's occupant excursion (S5.1.3) and inversion (S8.2) requirements. The purpose of the excursion and inversion requirements is to ensure that the child occupant is retained within the system in a crash.

Consumer Action and CAS requested that NHTSA amend Standard 213 by removing the provision, S5.5.2(i), which requires manufacturers to warn consumers, by way of a warning label on the restraint, against using an adjustment position in a vehicle if the manufacturer deems the position is unsuitable for such use. The petitioners believed that the S5.5.2(i) warning label is insufficient to ensure that a child restraint system will not be used in the restricted positions in a motor vehicle. It appeared that the basis for the petition was the petitioners' belief that warning labels are generally ineffective.

NHTSA issued a notice of proposed rulemaking (NPRM) to further consider the issue of restricted adjustment positions. NHTSA did not agree with the petitioners that warning labels are generally insufficient to produce desired behaviors. However, the agency was concerned about positions that are unsuitable for vehicle use, yet are made a part of a child restraint system for no reason that outweighs the likelihood that the seat will be misused and the risk to safety unacceptably increased. (56 FR at 38106.)

NHTSA developed a proposal to achieve the purpose of the requested amendment. With regard to restraints for motor vehicles, NHTSA proposed to amend S5.1.3, *Occupant excursion,* to remove the provision that excludes the restricted positions from the excursion requirement. Since the exclusion would be removed, NHTSA also proposed to remove S5.5.2(i), the labeling provision for restricting a position. To make clear the effect of these amendments, NHTSA proposed to amend S5 to require each restraint to "meet the requirements in [S5] at all adjustment positions (including, but not limited to each seat back angle adjustment position and each restraint belt anchorage and routing position), when tested in accordance with S6.1" of Standard 213.

With regard to restraints for aircraft, the NPRM proposed similar amendments. The NPRM proposed to remove the provision in Standard 213 that excludes restricted adjustment positions from the inversion test requirement (S8.2) and to remove the warning label requirement in S8.1.

In issuing the NPRM, NHTSA believed that most manufacturers had ceased designing child restraints with adjustment positions not intended for motor vehicle and aircraft use. However, the agency tentatively concluded the amendments were needed to ensure that no restricted position would be included in future restraint systems. *Id.*

Comments on the NPRM

NHTSA received comments from CAS, Advocates for Highway and Auto Safety, Cosco, Ford Motor Company, and the University of Michigan. These entities generally supported the NPRM, with comments relating to particular issues raised by the proposal.

Effect of S5

Cosco and the University of Michigan suggested that the language of the proposed amendment to S5 was unclear and overbroad. Cosco said that a number of adjustment positions on its child restraints could be unintentionally affected by the proposed S5, and that convertible restraints might be especially affected. (Convertible restraints are restraints designed for use by both infants and toddlers. For most convertible restraints, certain restraint adjustment positions are designed for infants only, while other positions are

suitable for toddlers only.) Emphasizing that the NPRM stated convertible restraints serve a safety need, Cosco argued that their manufacture should not be prohibited.

Cosco gave several examples of how it believed that the proposed language of S5 would create uncertainty about the permissibility of certain adjustment positions on convertible restraints. Cosco said that its "Dream Ride" restraint is a "car seat/car bed with an upright, rear-facing position and fully reclined, side-facing position." The instructions for the restraint state that it should not be used in a front-to-back position when fully reclined, i.e., placed in a vehicle so that its and the vehicle's longitudinal axes are parallel.

The commenter believed that the proposed language would subject the fully reclined position to Standard 213 requirements in the front-to-back position on the standard seat assembly. Cosco suggested that S5 should expressly permit manufacturers to "designate . . . that certain weights and seating positions are not acceptable under certain conditions, as long as there are no adjustment positions available which cannot be used in motor vehicles under any conditions."

To address Cosco's concerns, NHTSA has made several changes. The agency has revised the amendment to S5. The amendment retains the existing statement in S5 about child restraint requirements:

Each child restraint system certified for use in motor vehicles shall meet the requirements in this section when, as specified, tested in accordance with S6.1.

In addition, the agency is adding a statement specifying that each add-on system shall meet the requirements of S5 at each of the restraint's seat back angle adjustment positions and restraint belt routing positions, when the restraint is oriented in the direction recommended for use (e.g., forward, rearward or laterally) pursuant to S5.6, and used with the test dummy specified in S7 of the standard.

Under the first sentence in S5, the orientation and adjustment of a child restraint for compliance testing purposes is determined based upon the instructions given by manufacturers to consumers regarding the installation and use of that restraint. The second sentence qualifies the first sentence by limiting the extent to which a manufacturer's instructions affect how and to what extent a child restraint is subject to testing under the standard. Under the second sentence, regardless of the manufacturer's instructions, a child restraint is subject to testing in all seat back angles and belt routing positions. However, a manufacturer's instructions about a matter such as restraint orientation will still affect compliance testing. For example, if a manufacturer's instructions state that a car bed is to be installed side-to-side (perpendicular to the vehicle's longitudinal axis) but not front-to-back (parallel to that axis), the car bed will be subject to testing in the side-to-side orientation only.

It does not appear, however, that the originally proposed amendment to S5 would have caused the seat positioning problems Cosco described for its Dream Ride restraint. The proposed text retained the present provision in S5 that restraints are "tested in accordance with S6.1," the section in the standard that specifies the test conditions and procedures for the dynamic systems test. Under S6.1, a restraint is installed on a simulated vehicle seat in accordance with the manufacturer's instructions. A restraint that is designed to be adjusted to different configurations for different child weights is oriented forward, rearward or laterally, depending on the manufacturer's instructions for using the restraint.

The University of Michigan (UM) suggested S5 would be clearer if it stated: "Each child restraint system certified for use in motor vehicles shall meet the requirements in this section at each adjustment position (. . .) in at least one type of vehicle (ground or aircraft) when tested in accordance with the procedures of S6.1 for at least one specified range of child weight." As amended today, S5 is similar to UM's suggested text. However, the agency has not adopted the "ground or aircraft" language suggested by the commenter. When a manufacturer certifies its restraint as complying with the requirements for restraints for aircraft, the manufacturer states: "This Restraint Is Certified for Use in Motor Vehicles *and* Aircraft." (S5.5.2(m); emphasis added.) An adjustment position that meets Standard 213 for aircraft use but not for vehicle use would not be acceptable under the standard.

Other Amendments

This rule makes conforming changes to the test procedures for the excursion and inversion requirements. Currently, the test dummy used to test to these requirements is positioned in the restraint according to the manufacturer's instructions for child positioning. Under today's amendment, each of the restraint's seat back angles and belt routing positions will be subject to testing, notwithstanding the manufacturer's instructions not to use those adjustment positions in vehicles or aircraft.

Aircraft Use

Cosco commented that the proposed amendment to the requirements for restraints certified for aircraft use would have a negative impact on its Dream Ride restraint. NHTSA disagrees.

Cosco said it currently informs the consumer that the restraint should be used on aircraft only in the partially upright (rear-facing) position. Cosco said that it does not recommend the fully reclined position on aircraft since two aircraft seats are needed to accommodate the restraint in that adjustment position and consumers are unlikely to purchase those seats. Cosco indicated that the Dream Ride performs adequately in the car bed position, if the two aircraft seats are used. The commenter was concerned that it would have to eliminate the fully reclined position because the position is one that is not intended for use in aircraft.

NHTSA does not seek to have Cosco eliminate the fully reclined position on its restraint, or remove the Dream Ride from the models of restraints certified for both motor vehicles and aircraft. Safety is furthered by the availability of restraints manufactured for both vehicles and aircraft.

NHTSA does seek to ensure through today's amendment to the aircraft requirements that each seat back angle and belt routing position in restraints manufactured for both vehicles and aircraft passes the inversion requirement when tested according to the procedures in the standard. Cosco indicated that the Dream Ride, fully reclined, would pass the inversion test while fully-reclined and positioned crosswise, on two aircraft seats. If that is the case, the restraint already complies with the standard's amended aircraft requirements. As long as the restraint passes while fully reclined and positioned crosswise, the existence of that adjustment position does not prohibit Cosco from manufacturing and selling that child restraint. Further, nothing prohibits Cosco from recommending in its information to consumers that the seat not be used in that orientation on aircraft. Thus, the restraint must meet the inversion test in all of its back angles and belt routing positions. For example, the Dream Ride could be tested fully reclined with the six-month-old dummy while positioned crosswise, on two aircraft seats, even if Cosco recommends the fully reclined position not be used on aircraft.

Built-in Restraint Systems

Ford said the proposed amendments to S5 could complicate testing of built-in child restraints that form part of a reclining vehicle seat. Ford stated:

> Built-in child restraints can be installed in vehicle seats that can be adjusted to positions that are not intended for use while the vehicle is moving. For example, many vehicle seats can be reclined to allow weary drivers and passengers to rest at highway rest areas.

Ford suggested that the proposed amendment expressly apply to add-on restraints only. The commenter believed such application was intended by the agency, since no mention was made in the preamble for the NPRM about built-in restraints.

Ford also asked about an apparent discrepancy between the effect of the proposed S5 on built-in restraints and the specified test conditions (S6.1.1) for testing the restraints. The proposed S5 would have required built-in restraints to meet the standard's requirements "at all adjustment positions" when tested in accordance with the conditions and procedures of S6.1. However, under S6.1, if a specific vehicle is used (the second of two standard test devices that can be used, at the manufacturer's option, to test a built-in system), a built-in system is tested with the vehicle seat "in the manufacturer's nominal design riding position." Stated differently, S6.1 provides for testing only one adjustment position.

Ford is correct that the agency intended only to address add-on systems in this rulemaking action. NHTSA did not consider how the proposed amendment would affect adjustment positions on built-in seats. For those seats, a reclining vehicle seat back may also be the seat back of a child restraint built into the vehicle seat.

A built-in system that is part of a seat with a reclining seat back would probably fail to meet the standard if the seat back were reclined and if today's rule applied to it. Such an amendment could have required some redesigning of seats. The agency is uncertain whether there is sufficient reason to disallow the reclining feature. Reclining seats let weary drivers and passengers rest at highway rest areas (as discussed by Ford in its comment). Indeed, NHTSA has observed that some reclining seat backs in vans recline all the way down to the horizontal position so as to create a sleeping surface stretching from the rear of the third seating surface to the front of the second seating surface. Reclining seats also provide for easier loading of the vehicle.

Use of a built-in restraint when the vehicle seat back is reclined at a sharp angle would be undesirable. However, until the agency learns that vehicles being driven with children in such reclined positions occurs frequently enough to become a significant problem, the relative merits of the reclining vehicle seat need not be further addressed. There is sufficient justification for the reclinability of such seats to warrant their exclusion from today's S5 amendments. However, NHTSA recommends that manufacturers warn consumers against using an adjustment position on a built-in restraint while the vehicle is in motion if the position cannot provide adequate protection.

In response to an issue raised by Ford in its comment, today's rule adopts a technical amendment to the standard's test conditions for built-in restraints. As stated above, Standard 213 permits manufacturers the option of choosing to test a built-in system with the specific vehicle shell or the specific vehicle. (S6.1.1.1(a).) Ford pointed out that the conditions under which a built-in system is tested using the shell are inconsistent with those under which the vehicle is tested.

The conditions are specified in much greater detail for the vehicle test than the shell test. Some of the conditions are appropriate for the vehicle and not for the shell, e.g., vehicle loading specifications. However, many of the conditions specified in the vehicle test are relevant for the shell test but are not specified for the latter. For example, conditions for the longitudinal and vertical seat positioning, and seat back adjustment position, are relevant yet unspecified.

As a practical matter, the lack of specifications is inconsequential. The test procedures for built-in restraints direct NHTSA to "activate the restraint in the specific vehicle shell or the specific vehicle, in accordance with the manufacturer's instructions provided in the vehicle owner's manual in accordance with S5.6.2." (See S6.1.2.1.1 and S6.1.2.1.2.) Under these instructions, the vehicle seat that contains the built-in child restraint generally would be adjusted as the manufacturer directs, for both the vehicle and the shell tests.

This rule makes the test conditions for the vehicle and shell tests consistent, in response to Ford's request that the conditions be clarified. The amendment is merely technical; the agency believes there will be no changes in the manner in which built-in restraints are tested.

Other Comments

NHTSA stated in the NPRM that the agency conducted an informal survey of 15 restraint systems, and did not find any currently being manufactured that is labeled with the S5.5.2(i) warning. 56 FR at 38106. Both CAS and Advocates for Highway and Auto Safety (Advocates) said the NHTSA should survey all child seat manufacturers to determine whether restraints are being sold with restricted adjustment positions.

NHTSA dose not believe an additional survey is necessary. Child restraint manufacturers did not question the validity of the agency's survey, except to point out the issue about built-in restraints, discussed above. An additional survey is unlikely to yield knowledge more useful than the information that the agency already possesses.

CAS and Advocates commented also on issues that were outside the scope of the rulemaking proposal. They concurred with NHTSA that convertible restraints should continue to be available to consumers. However, both organizations suggested further large-scale testing of the restraints by NHTSA. CAS said the agency should determine whether the seats "provide adequate protection in any adjustment position." Advocates urged NHTSA to conduct tests on whether convertible seats are being properly used by the consumer. CAS and Advocates also commented on improving Standard 213's labeling requirements. Both said the agency should guide the industry toward developing improved consumer information on the appropriate use of a restraint system.

NHTSA regards these comments as suggestions for future rulemaking. The agency has placed copies of the comments in NHTSA docket 74-09-N21, which relates to planned research and possible upgrades to Standard 213.

Typographical Correction

No comments were received on the proposed correction of S5.3.1. The correction is made in this rule.

Concurrent Amendments

Readers should note that Standard 213's labeling requirements are further amended by a final rule published elsewhere in today's edition of the **Federal Register**. That rulemaking relates to an owner registration requirement for child restraint systems. In addition, NHTSA published an NPRM to amend certain labeling and other requirements for built-in restraint systems (57 FR 870; January 9, 1992). Any amendments that might ultimately

be adopted based on the January 1992 notice may modify existing labeling requirements, including the requirements adopted today.

This final rule does not have any retroactive effect. Under Section 103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has examined the impact of this rulemaking action and determined that it is not major within the meaning of Executive Order 12291 or significant within the meaning of the Department of Transportation's regulatory policies and procedures. NHTSA has further determined that the effects of this rulemaking are minor and that preparation of a full preliminary regulatory evaluation is not warranted. Based on available data, NHTSA believes that all child restraint systems currently in production are being manufactured to meet the requirements of Standard 213 at each of the restraint's seat back angle adjustment positions and belt routing positions. The agency therefore estimates that no additional costs will be incurred by manufacturers by this rule.

Because all currently manufactured restraint systems already meet the requirements adopted today, NHTSA does not anticipate a potential reduction in injuries or fatalities from this rule. However, the agency believes that amendments ensure that the current level of safety provided by restraint systems is maintained.

Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it would not have a significant economic impact on a substantial number of small entities. Only about six of the 11 manufacturers currently producing child restraint systems are not small businesses. Regardless of the number of small entities, NHTSA believes the economic impact on them is not significant, since the restraint systems currently manufactured meet the requirements adopted today. The agency believes this rule has no impact on the cost of child restraint systems, and that small organizations and governmental jurisdictions that purchase the systems will not be significantly affected by the rule. In view of the above, the agency has not prepared a final regulatory flexibility analysis.

Executive Order 12612

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and the agency has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

List of Subjects in 49 CFR Part 571

Imports, motor vehicle safety, motor vehicles.

PART 571—[AMENDED]

In consideration of the foregoing, NHTSA amends 49 CFR part 571 as set forth below.

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.213 [Amended]

2. The introductory text of S5 is revised to read as follows:

S5 *Requirements for child restraint systems certified for use in motor vehicles.* Each child restraint system certified for use in motor vehicles shall meet the requirements in this section when, as specified, tested in accordance with S6.1 and this paragraph. Each add-on system shall meet the requirements at each of the restraint's seat back angle adjustment positions and restraint belt routing positions, when the restraint is oriented in the direction recommended by the manufacturer (e.g., forward, rearward or laterally) pursuant to S5.6, and tested with the test dummy specified in S7.

* * * * *

3. S5.1.3 is revised to read as follows:

* * * * *

S5.1.3 *Occupant excursion.* When tested in accordance with S6.1, each child restraint system shall meet the application excursion limit requirements specified in S5.1.3.1–S5.1.3.3.

* * * * *

4. S5.3.1 is revised to read as follows:

* * * * *

S5.3.1 Each add-on child restraint system shall have no means designed for attaching the system to a vehicle seat cushion or vehicle seat back and no component (except belts) that is designed to be inserted between the vehicle seat cushion and vehicle seat back.

* * * * *

5. S5.5.2(i) is removed and reserved.

6. S5.5.5(g) is revised to read as follows:

* * * * *

(g) The statement specified in paragraph (1), and if appropriate, the statement in paragraph (2):

(1) WARNING! FAILURE TO FOLLOW THE MANUFACTURER'S INSTRUCTIONS ON THE USE OF THIS CHILD RESTRAINT SYSTEM CAN RESULT IN YOUR CHILD STRIKING THE VEHICLE'S INTERIOR DURING A SUDDEN STOP OR CRASH.

(2) In the case of each built-in child restraint system which is not intended for use in the motor vehicle at certain adjustment positions, the following statement, inserting the manufacturer's adjustment restrictions. DO NOT USE THE _____ ADJUSTMENT POSITION(S) OF THIS CHILD RESTRAINT WHILE THE VEHICLE IS IN MOTION.

* * * * *

7. S6.1.1.1(a) through (b) is revised and the introductory text of S6.1.1.1(c) is removed to read as follows:

* * * * *

S6.1.1.1(a) The test device for add-on restraint systems is the standard seat assembly specified in S7.3. The assembly is mounted on a dynamic test platform so that the center SORL of the seat is parallel to the direction of the test platform travel and so that movement between the base of the assembly and the platform is prevented.

(b) The test device for built-in child restraint systems is either the specific vehicle shell or the specific vehicle.

(1)(i) The specific vehicle shell, if selected for testing, is mounted on a dynamic test platform so that the longitudinal center line of the shell is parallel to the direction of the test platform travel and so that movement

between the base of the shell and the platform is prevented. Adjustable seats are in the adjustment position midway between the forwardmost and rearmost positions, and if separately adjustable in a vertical direction, are at the lowest position. If an adjustment position does not exist midway between the forwardmost and rearmost position, the closest adjustment position to the rear of the midpoint is used. Adjustable seat backs are in the manufacturer's nominal design riding position. If such a position is not specified, the seat back is positioned so that the longitudinal center line of the child test dummy's neck is vertical, and if an instrumented test dummy is used, the accelerometer surfaces in the dummy's head and thorax, as positioned in the vehicle, are horizontal. If the vehicle seat is equipped with adjustable head restraints, each is adjusted to its highest adjustment position.

(ii) The platform is instrumented with an accelerometer and data processing system having a frequency response of 60 Hz channel class as specified in Society of Automotive Engineers Recommended Practice J211 JUN80 "Instrumentation for Impact Tests." The accelerometer sensitive axis is parallel to the direction of test platform travel.

(2) For built-in child restraint systems, an alternate test device is the specific vehicle into which the built-in system is fabricated. The following test conditions apply to this alternate test device.

* * * * *

8. In S6.1.1, S6.1.1.5 is added to read as follows:

* * * * *

S.1.1.5 In the case of add-on child restraint systems, the restraint shall meet the requirements of S5 at each of its seat back angle adjustment positions and restraint belt routing positions, when the restraint is oriented in the direction recommended by the manufacturer (e.g., forward, rearward or laterally) pursuant to S5.6, and tested with the test dummy specified in S7.

9. S8.1 is revised to read as follows:

* * * * *

S8.1 *Installation instructions.* Each child restraint system manufactured for use in aircraft shall be accompanied by printed instructions in English that provide a step-by-step procedure, including diagrams, for installing the system in aircraft passenger seats, securing a child in the system when it is installed in aircraft, and adjusting the system to fit the child.

10. S8.2 is revised to read as follows:

* * * * *

S8.2 *Inversion test.* When tested in accordance with S8.2.1 through S8.2.5, each child restraint system manufactured for use in aircraft shall meet the requirements of S8.2.1 through S8.2.6. The manufacturer may, at its option, use any seat which is a representative aircraft passenger seat within the meaning of S4. Each system shall meet the requirements at each of the restraint's seat back angle adjustment positions and restraint belt routing positions, when the restraint is oriented in the direction recommended by the manufacturer (e.g., facing forward, rearward or laterally) pursuant to S8.1, and tested with the test dummy specified in S7. If the manufacturer recommendations do not include instructions for orienting the restraint in aircraft when the restraint seat back angle is adjusted to any position, position the restraint on the aircraft seat by following the instructions (provided in accordance with S5.6) for orienting the restraint in motor vehicles.

Issued on September 4, 1992.

Howard M. Smolkin,

Executive Director.

[FR Doc. 92-21717 Filed 9-9-92; 8:45 am]

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49 CFR Parts 571 and 588

[Docket No. 74-09; Notice 26]

RIN 2127-AD46

Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This rule amends Standard 213, *Child Restraint Systems,* to require manufacturers of child restraints to provide a postage paid registration form with each seat. The rule also amends the standard to require manufacturers to provide information to purchasers about the importance of registering the restraint, as well as information necessary to enable subsequent owners to register the restraint. In addition to amending Standard 213, this rule adds new regulations that require manufacturers to keep records of the names and addresses of persons who have returned a registration form.

These requirements will improve the effectiveness of manufacturer campaigns to recall child restraints that contain a safety-related defect or fail to conform to Standard 213 by requiring manufacturers to take steps that will increase their ability to inform owners of particular child restraints about defects or noncompliances in those restraints and by encouraging child restraint owners to register their restraints. The requirements will also assist NHTSA in determining whether a child safety seat manufacturer has complied with its notification responsibilities established by the National Traffic and Motor Vehicle Safety Act.

This rulemaking proceeding commenced in response to a December 1989 petition for rulemaking from the Center for Auto Safety and Consumer Action of San Francisco.

DATES: The amendment is effective on March 9, 1993.

Petitions for reconsideration of the final rule must be received by October 13, 1992.

ADDRESSES: Petitions for reconsideration should refer to the docket number and notice number of notice and be submitted to: Administrator, room 5220, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Dr. George Mouchahoir, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW, Washington, DC 20590. Telephone: (202) 366-4919.

SUPPLEMENTARY INFORMATION:

General Introduction

This rule amends Standard 213 to establish a registration program for child restraint systems. The rule requires manufacturers to provide a standardized, postage-paid registration form with each restraint system. Manufacturers of built-in restraints installed in new vehicles are excluded from the requirement because the manufacturers are able to identify the vehicle owners through motor vehicle registration files and directly notify them of a recall concerning the build-in restraints.

The rule standardizes the text and layout of the registration form to increase the likelihood that a purchaser will register the restraint. On each form, manufacturers must preprint their return address, along with information identifying the model name or number of the restraint to which the form is attached. The form must be attached to the restraint to ensure that a purchaser will notice the form.

This rule also requires manufacturers to keep records of the names and addresses of persons who have returned a registration form. The manufacturers must maintain the record for at least six years from the date of manufacture of the seat.

NHTSA proposed the registration program in a notice of proposed rulemaking (NPRM) published on February 19, 1991 (56 FR 6603). Today's rule differs from the NPRM in various respects. The registration form is simplified. The labeling on the restraint must include both an address and a telephone number for the manufacturer. Cost estimates are slightly higher. The recordkeeping requirement of six years from the restraint's date of manufacture is two years less than was proposed. These and other changes are discussed further below.

This rule is intended to improve the percentage of recalled restraints that are fixed in a recall campaign for a noncompliance or defect. During 1981–1991, almost 18 million child restraints were recalled. During this period, about 13 percent of the child restraints involved in completed recall campaigns were reported as "campaigned units." Campaigned units refer to those child restraints that were reported remedied as well as those restraints either removed from sale to the public or removed from use by the public. (During 1981–1989, approximately 6 million restraints were recalled. About 10.5 percent of the restraints involved in completed recall campaigns were reported as campaigned units during this period. During 1990–1991, almost 12 million child restraints were recalled. Only about 11 percent of the restraints involved in completed recall campaigns were reported as campaigned during this period.) In general, this indicates that the child restraint campaign rate is considerably lower than the campaign rate for motor vehicles (60.5 percent for 1981–1991).

(At the time of the NPRM, the child restraint average campaign completion rate was 22 percent. That rate reflected the number of seats that had been campaigned at the time of the NPRM. During the period 1990–1991, the average campaign completion rate increased to about 27 percent.) It should be noted that, even though the average campaign completion rate averaged about 27 percent during 1990–1991, for all campaigns in aggregate only about 11 percent of the restraints involved in completed recall campaigns were reported as campaigned.

The low response rate for child restraints does not seem a consequence of a lack of interest in recalls on the part of the owners. The public responded overwhelmingly to a December 1989 press conference by CAS on child seat recalls by calling NHTSA. In the eight months following that press conference, NHTSA's Auto Safety Hotline received over 30,000 calls from concerned parents asking about recalls and the safety of child seats. This intense interest in child safety indicates that many owners are highly motivated and would return a recalled seat for a remedy, if they knew it had been recalled. Stated differently, many owners might not have had the problem remedied because notification of the recall failed to reach them.

NHTSA proposed the registration program to improve the dissemination of the recall information directly to individual owners. In the past, efforts to improve notice of a recall focused on better disseminating the information indirectly, i.e., to the general public. The agency decided to change its focus to individual owners. If owners are directly notified that their seat is recalled, the response rate should increase.

Pursuant to a contract with the agency, National Analysts conducted a study of consumers' attitudes about the proposed registration program and other child safety issues during the time that the agency was developing the NPRM. A copy of the February 1991 report has been available in the docket. The researchers conducted four group interviews ("focus groups"). Two groups were interviewed in Orange, California and the other two in Philadelphia, Pennsylvania. The groups were comprised of people who acquired a child restraint new and who use the restraint with their child at least once a week. The participants were asked to evaluate five different registration forms, three of which corresponded exactly to the NPRM's alternative Figure 9a, options one through three. The alternatives differed in how they presented a motivational message for the registration form.

National Analysts reported that participants in all four groups were unanimous in their support for a registration program. National Analysts concluded that, based on the findings from the study, "the great majority of child safety seat buyers are likely to appreciate and respond to a recall registration program." The researchers reported that:

> Participants also indicated that they would be most likely to return a pre-addressed, postage-prepaid card with an uncluttered graphic design that clearly and succinctly communicates the benefits of recall registration, differentiates itself from a warrenty registration card, and requires minimal time and effort on the participant's part. "Child Safety Seat Registration: The Consumer View." National Analysts, February 1991.

Comments on the Proposal

The agency received 22 comments on the NPRM, from manufacturers, researchers, church and consumer groups, state governments and private individuals. The overwhelming majority of the commenters supported a registration program. With the exceptions discussed below, the comments generally consisted of specific suggestions regarding the format and language of the form, the labeling on the restraint, and the recordkeeping part of the rule. Evenflo, Cosco and Chrysler Corporation (a manufacturer of built-in systems) expressed concerns about the effectiveness of registration programs. Evenflo and Cosco also had cost concerns, which will be discussed in the section on "Costs."

Evenflo believed that a registration program would not be effective. Evenflo indicated that a registration program for child restraints can be compared to the "mandatory" registration requirements that Congress in 1982 specifically provided that the agency could not apply to independent tire dealers. *See*, section 158(b) of the National Traffic and Motor Vehicle Safety Act of 1966. The mandatory registration program had required all tire dealers, including independent dealers, to obtain and send specified information (i.e., the purchaser's name and address, the dealer's name and address, and the identification numbers of the tires) to the tire manufacturer. ("Independent tire dealers" means tire dealers and distributors whose businesses are not owned or controlled by a tire manufacturer or brand name owner.)

Compliance with the mandatory registration was uneven. While virtually all tires on new vehicles were registered, about half of all replacement tires were registered. Independent dealers had registered only 20 percent of the requirement tires they sold.

With the goals of improving the registration rate for tires sold by independent dealers and lessening the burden on the dealers, Congress prohibited NHTSA from requiring those dealers to comply with the mandatory registration program. In place of the mandatory program for the dealers, Congress directed NHTSA to establish a voluntary tire registration process. In the voluntary process, which is in effect today, the independent tire dealer furnishes a standardized registration form to each purchaser after the dealer has first filled in the tire identification number on the form. Purchasers wishing to register their tire fill in their name and address on the form and mail the

completed form to the tire manufacturer. The form's postage is paid by the purchaser. The registration rate for the voluntary tire registration program is about 11 percent.

In response to Evenflo, NHTSA disagrees that the proposed registration process for child restraints is comparable to the mandatory program that had applied to independent tire dealers. In contrast, the proposed child restraint program has some similarities to the voluntary tire registration program that Congress directed NHTSA to adopt for the independent dealers. They are similar because in both cases, the semi-completed registration from is provided to the purchaser. Persons wishing to register their product may then do so by filling in their name and address and mailing the completed form to the restraint manufacturer.

However, even though similarities would exist between the two programs, NHTSA does not believe that the voluntary tire program is a good surrogate for what might happen in the child restraint program. First, in the child registration program: (a) Every child restraint will be provided with a registration form attached to it; and (b) every registration form will describe to purchasers why the form should be filled and returned to the child restraint manufacturer. As previously mentioned, even though registration rates for independent tire dealers was about 11 percent, a consumer survey indicated that only 22 percent of these dealers' customers had received registration forms from their dealers, and that over 80 percent of the independent dealers' customers did not remember the dealer explaining the reasons why the registration form should be returned to the manufacturer. Second, consumers seem to be far more likely to be concerned with child safety than with tires, and therefore, they are more apt to fill in a registration form on child restraints than on tires. Third, the child restraint registration form is postage paid, a feature that the National Analysts study showed should have a positive effect on registration rates. Other information also shows the positive effect of providing the postage. According to information from the Consumer Product Safety Commission, warranty cards are returned for chain saws at a rate of 20 to 30 percent without postage paid; 40 percent with postage paid. Because of these differences, NHTSA does not believe the voluntary tire registration program is a good surrogate for what might happen in the child registration program.

Several commenters said that the registration process would be more effective if it involved more the retailer who sells the restraint to the purchaser. The CAS suggested that the process should "require consumers to register the child restraint at time of purchase and as a condition of the sale." The Coalition for Consumer Health and Safety said that the registration form should be "returned to the retailer at the point of sale, instead of enclosed with the seat to be mailed in by the consumer." Advocates for Highway and Auto Safety also believed that the form should be completed by the consumer with the assistance of the retailer at the time of purchase.

The NPRM explained why the agency did not propose a seller registration process. The preamble stated:

> In deciding whether to propose mandating registration by sellers or a lesser alternative, the agency was mindful that the Vehicle Safety Act does not provide NHTSA with explicit authority to require mandatory registration of child safety seats—i.e., to require sellers to register all seat purchases. Because of these concerns, and because child safety seats are sold to the public through a complex distribution system involving the manufacturer, major warehouse distributors, local distributors, and a wide variety of retail outlets, NHTSA concluded that a registration program for seats would have a greater likelihood of success in actual practice if the responsibility for registering were placed primarily on the manufacturer (to provide the card and registration information) and the first owner (to fill out the card and mail it) (56 FR 6604).

NHTSA continues to believe that mandatory registration would be undesirable for the reasons stated in the NPRM. Further, a comparison can be made to the tire registration program. Congress found mandatory tire registration to be overly burdensome for independent businesses. The manufacture, distribution and sale of child seats is accomplished through a complex distribution system involving numerous retail outlets, large and small. A mandatory registration program could impose substantial burdens on these retailers.

Chrysler expressed concerns about the need for registration. Chrysler stated, "we do question the need for and value of the proposed registration requirements, given that the agency's estimate for card return rate is about 20 to 40 percent, and no estimate is offered for the probable recall response rate." Chrysler also stated that, because the card return rate might be no higher than 20 to 40 percent, "the manufacturer should be allowed the flexibility to determine for each instance how owners are to be notified, taking into account the nature of the particular defect or cause of noncompliance." The agency does not have information that would indicate the potential reduction in injuries or fatalities resulting from a registration requirement. The NPRM requested comments about instances where a child was injured in a safety seat that had been recalled by the manufacturer, but not fixed before the accident. No information was provided. Nevertheless, the agency believes there is a need for registration, to improve the notice end of a recall campaign. Today's registration requirements standardize the form to increase the likelihood that the purchaser will register. Today's requirements will increase the likelihood that the registrant will hear of a recall and realize that the recall pertains to the seat. These requirements address the problems referred to by SafetyBeltSafe U.S.A. in its comment: "the vast majority of safety seat owners either do not learn of the recall/repair message; or * * * do not realize that publicized recall campaigns apply to them." These problems may have kept the recall response rate low.

Several factors might work to optimize the registration rate for the child restraint program. First of all, the public concern for child safety should have a decidedly positive effect on the return rate. Also, the child restraint registration form is conspicuous to the purchaser and is postage paid, features that should have a positive effect on registration rates.

With regard to flexibility, Chrysler implied that the registration program would obviate the need for public notice of a recall. NHTSA disagrees. Section 153(c)(3) of the Safety Act authorizes NHTSA to require the notification to be provided to known purchasers of the child restraint and to the general public. The agency anticipates that it would be appropriate to require public notice of the recall, in addition to direct notification of registrants, to ensure that notice is provided to the extent possible to owners who did not register, or to those whose address on registration records is not current or complete.

Cosco also had concerns about the program's effectiveness. Cosco said that the effectiveness of registration is lessened because "a significant number of restraints are passed down from family to family, sold in garage sales, etc."

NHTSA proposed the registration program keeping in mind that child restraints are frequently acquired "secondhand," as Cosco stated. To address that situation, the agency proposed labeling requirements to

inform secondhand owners how to register with the manufacturer. When the secondhand owners have registered, they can be directly notified by the manufacturer if the restraint is recalled. Thus, the purpose of the registration program would be fulfilled for secondhand owners through the labeling provisions.

The wording of the exclusion of built-in restraints has been slightly changed from the proposal. The proposal excluded "a built-in child restraint system installed in a vehicle by the vehicle manufacturer." The rule excludes a "factory-installed built-in child restraint system" from the registration requirements, and defines the term in S4 of Standard 213 as "a built-in child restraint system that was installed in a motor vehicle at the time of its delivery to a dealer or distributor for distribution." The change from the NPRM is intended only to simplify the wording of the requirements portion of the standard.

1. Standardized Registration Form

The NPRM proposed requirements to increase the likelihood that the purchaser will notice the form, fill it in and mail it.

Attached Form

The NPRM proposed that the form be attached to a "contactable surface" (the term is defined in S4) of the restraint so that the purchaser must, as a practical matter, notice and handle the form after purchasing the restraint and before putting it into use.

Several commenters addressed the proposal that the form be attached to a contactable surface. Evenflo said that "the location of the forms within the packaging or upon the product does not increase the likelihood of registration. Rather, it turns on the education of the consumer, their spare time and their ready access to the U.S. mail." In contrast, SafetyBeltSafe said having the form be attached so that the purchaser must actively detach it will make it less likely that the form will be lost.

National Analysts found that respondents in the focus group study indicated that seeing and handling the card are important to maximize registration rates:

> There is also strong support for the registration card's being attached to the seat in such a way that it cannot be used without first removing the card. It is thought particularly important for the card to be packaged separately from instructions, warranties and other material enclosed with the CSS [child safety seat]. Suggestions include directly attaching the card to the seat liner—although some question whether an adhesive tacky enough to securely attach to the seat would not leave the seat sticky—or attaching it by means of a plastic tie, similar to those used to attach price tags to clothes in department stores. "Make it so you can't rip it off but have to use scissors, because then you'll read it." (Participant's quotation emphasized in text.) (*Id.* at 29)

This rule adopts the requirement that the form must be attached to the child restraint. The National Analysts study indicates that the requirement will improve the likelihood that the form will be noticed and read by the purchaser. However, the rule permits the form to be attached to more surfaces than had been proposed. Under the NPRM, the only permissible surfaces were "contactable surfaces," i.e., surfaces contactable by a dummy's head or torso during a compliance test. Under the final rule, the form may be attached to any surface of the restraint that contacts any portion of the dummy when the dummy is positioned in the system in accordance with S6.1.2 of Standard 213. This change from the NPRM is made to allow more flexibility in selecting a location for attaching the form.

Under a contactable surfaces requirement, the form would have had to be attached to surfaces only contactable by a dummy's head or torso, since "contactable surface" in S4 is limited to head and torso contacts. Thus, attaching the form to parts of the seat cushion that contact the dummy's thighs would not have been allowed. Such a prohibition does not appear warranted, since attaching the form to surfaces other than "contactable" ones meets the goal of the requirement that the purchaser will notice and handle the form when detaching it.

Text and Format

The NPRM sought to standardize the text and format of the registration form to increase the likelihood that the purchaser will fill it in. The agency proposed a two-sided, two-part form that consisted of a motivational message and boxed statement (top part) and a postcard that the purchaser would fill in and mail (bottom part). NHTSA proposed the two-part form to ensure that the information on the form can be easily read, and that the allotted space for the purchaser's name and address would be sufficiently large to permit the easy, legible recording of all the necessary information.

Several commenters questioned the need to standardize the form. Cosco said that each manufacturer may have differing needs for the forms, which calls for flexibility. Ford Motor Company said that manufacturers should be allowed to use either a fold-over card or a two-part form, and that details of the proposed form should be optional to allow manufacturers the flexibility to design a form that would better facilitate the recording of the information from registrants.

In contrast, SafetyBeltSafe said that a definite, prescribed format is desirable because it "fits with the public image of important, official forms," which will encourage people to register.

NHTSA is requiring the form to be standardized to increase the likelihood that a purchaser will register. The National Analysts study showed that essentially the same text and format as those adopted in this rule were effective in presenting the necessary information legibly and eliciting a favorable response from the purchaser, factors, that are needed to maximize registration rates.

The focus groups widely and enthusiastically accepted the text and format of the parts of the form that did not vary among the proposed options (*id.* at 10–14). (The reaction to the part of the form that varied is also discussed below.) National Analysts found that the participants unanimously praised the boxed statement (top part of proposed Figure 9b—the address side of the form). "The boxed message * * * clearly and effectively communicates what are perceived to be the two most critical messages contained on the registration cards: That it is important * * * [and] [t]hat this is a recall registration, not a warranty card." *Id.* at 10.

The part of the form that the purchaser fills in (bottom part of proposed figure 9a, the product identification number and purchaser information side) was found to draw—

> A particularly positive response because it requires minimal information and effort to complete * * * CSS owners praise the fact that they are only required to fill in their name and address * * * There is a strong preference to have the serial, model number and manufacturing date preprinted on the card as indicated on the prototypes. Nearly all want the numbers printed on the card. They feel that is saves them the trouble of looking—and that *any* marginal addition of time and effort serves as a potential barrier to completion and return. *Id.* at 12–14.

The portion of the form indicating that the registration postcard is prestamped and preaddressed "is considered essential * * *. Reaction to this was uniformly enthusiastic." *Id.* at 12.

Because the focus groups' response to the text and format of the unvarying parts of the proposed form was extremely positive, NHTSA is requiring use of the text and format. Prescribing

the text and format has the added benefit of ensuring that commercial matters, such as marketing information, are excluded from the form. (In addition, the regulatory text expressly prohibits such information. See, S5.8(c).) If marketing information were allowed to be placed on the form, such information might cause purchasers to misidentify the registration form as a warranty card, which the agency seeks to avoid in view of National Analysts' finding that participants generally had negative feelings toward warranty registrations (*id.* at 14).

The rule prescribes the text and format for the motivational message, the part of the form that varied among the proposed options. National Analysts found that it is possible for the text and format of the message to elicit a negative response from the purchaser. The text for option two was widely criticized as appearing shallow or manipulative. *Id.* at 19. The text for option three was strongly criticized for its wording, tone and format. Focus group participants said that they would not read option three's message because of their dislike for the card. *Id.* at 20–22. These findings lead NHTSA to conclude that the text and format and text for the message must be prescribed so that the message itself does not discourage purchasers from registering.

The motivational message has elements that received general support in the National Analysts study. *Id.* at 28. The text is based on option 1, which received the most positive response in the focus group testing. *Id.* at 15. However, the focus groups found the text style of option 1 too hard to read. They preferred a bold print, and that the text be arranged in more of the "bullet" style of option 2. The agency has revised the format in accordance with those preferences.

The motivational message adopted today was suggested by National Analysts in its February 1991 report. National Analysts made the suggestion after evaluating the reaction of the focus groups to the messages proposed as options in the NPRM. Contrary to one commenter's belief, NHTSA did not receive National Analysts' suggestion for the "optimal" card until after the NPRM was developed. For that reason, the optimal card was not among those proposed in the NPRM. However, NHTSA placed the National Analysts report in the public docket when the NPRM was published, to make the card and the report publicly available for review. See, item number three in the NPRM docket, 74–09–N20.

One commenter suggested that the card should have a sentence in Spanish that directs the reader to a resource for a translated version of the registration form. The effect of such a requirement would be to require manufacturers to have forms available in Spanish. The burden of such a requirement on manufacturers does not appear warranted, for the reasons discussed in the agency's November 20, 1990 denial of Texas' petition for rulemaking on requiring Spanish instructions for child restraints. 55 FR 48262.

The focus group study showed that participants reacted favorably to the idea of being assured by the manufacturer that their names would not be placed on a mailing list if they registered their restraints. Although the agency is not restricting use of the names, it expects that manufacturers will respect owners' preferences that their names be kept separate from other customer lists.

This rule specifies a minimum size for the form so that the part to be returned to the manufacturer would be mailable as a postcard. That part of the form, i.e., the postcard part, and the part of the form to which the postcard is attached must both be not less than 3½ by 5 inches, and have a thickness of not less than 0.007 inches and not more than 0.0095 inches. These dimensions are taken from postal regulations for cards mailable without envelopes under first class postage.

2. Labeling Requirements

The NPRM proposed requirements to enable owners of secondhand restraints to register. The NPRM proposed that each restraint (other than factory-installed built-in ones) must be permanently labeled with information about the importance of registration, and instructions for telephoning or mailing the necessary registration information to the manufacturer. In addition, the labeling would have to include information about NHTSA's Auto Safety Hotline. The proposal also included requirements that the registration information be provided in the printed instructions that accompany the restraint.

Several commenters said that the proposed labeling is too long for the limited space available on the restraint, or has words that imply that the restraint is unsafe. NHTSA has shortened and revised the message in response to those comments. Some commenters suggested a new text and format and other changes (e.g., using a triangular warning symbol) that they believe would more effectively urge the purchaser to register. The agency reviewed the suggestions, but could not conclude that the suggestions improved what had been proposed, tested in the focus groups and revised for this rule.

Fisher Price said that labeling the NHTSA Hotline number is unnecessary since the owner can contact the manufacturer about recalls. The agency disagrees. The Hotline number is necessary to increase the public's awareness of that recall information resource. Also, consumer complaints to the Hotline have historically provided NHTSA an important source of data on safety-related defects. For that reason, the agency requires vehicle manufacturers to include the Hotline in the vehicle owner's manual. See, 49 CFR part 575. NHTSA is requiring the Hotline number on each child restraint to ensure that the Hotline can be readily used by each owner, even persons owning secondhand restraints that are missing the instructions.

This rule also requires manufacturers to provide a mailing address and telephone number on the label. The NPRM proposed either an address or telephone number, but several commenters said that both should be required to enable the owner to contact the manufacturer in more than one way. The CAS said that two companies (Virso/Pride-Trimble and Century) recently changed their toll-free telephone numbers which made it more difficult for owners to contact the companies. CAS stated, "Requiring *both* company address and telephone number will help consumers get the information they need." NHTSA is requiring both an address and telephone number to make it easier for a person to register.

Readers should note that Standard 213's labeling requirements are further amended by a final rule published elsewhere in today's edition of the **Federal Register**. That rule-making relates to a warning label requirement in the standard. In addition, NHTSA published an NPRM to amend certain labeling and other requirements for built-in restraint systems (57 FR 870; January 9, 1992). Any amendments that might ultimately be adopted based on the January 1992 notice may modify existing labeling requirements, including the requirements adopted today.

3. Recordkeeping

This rule establishes a new part 588 in title 49, CFR, to require manufacturers to establish a record of registrants and maintain this record for at least six years from the date of manufacture of the seat. The record includes the name and mailing address of each registrant, and the model name or number and date of manufacture (month, year) of the restraint.

The notice proposed an eight year period, but comments were requested on whether a shorter period, e.g., six years, should be required. Commenters were sharply divided about the recordkeeping requirement. Commenters suggested a length of recordkeeping ranging from four to 10 years.

The agency is adopting a six year requirement because NHTSA's records indicate that all restraints recalled to date were recalled within six years of the production date of the seat. (As stated above, during 1981–1991, almost 18 million child restraints were recalled. The average length of time between date of production and date of recall was about 28 months.) Some commenters said that a 10 year requirement is warranted because restraints more than 10 years old are still being used. NHTSA does not agree that those restraints, relatively few in number, justify recordkeeping for longer than six years, given the average age of recalled child restraints. NHTSA is concerned that a period longer than six years could impose an unwarranted recordkeeping burden on manufacturers.

Costs

The agency has revised its cost estimates for this rulemaking. The NPRM and preliminary regulatory evaluation (PRE) estimated that the rule would have an average cost impact of $0.25 to $0.31 per seat. The estimated cost was $0.13 to $0.19 for high volume sales, $0.33 to $0.39 for medium volume sales, and $0.93 to $0.99 for low volume sales. The estimate included the cost for providing and attaching the registration form, labeling the restraint, recordkeeping, and providing postage. The ranges in the cost estimate were based on a 20 percent to 40 percent return rate for the forms.

Evenflo and Cosco disagreed with NHTSA's cost estimates. Evenflo said that the estimated cost for the low volume manufacturer was too low. Evenflo also said that the agency's estimate does not account for the cost doubling or tripling for each level of the distribution chain through which the restraint passes. "The ultimate cost to the consumer (assuming that the cost is passed on the consumer) will actually be three to ten times the estimated $1 cost."

Cosco said that the agency's estimated costs are too low. Cosco believed that the true manufacturing costs would be about $1.00 per seat. "This cost translates into a retail price increase of as much as 10% for the moderately priced restraints and considerably more than that for lower-priced booster seats and infant-only restraints, which very well might result in lower purchases of new car seats."

NHTSA contacted Evenflo and Cosco for information about their cost estimates. Evenflo provided information showing some of the basis for its estimate. Cosco did not.

The agency used the information from Evenflo to revise the cost estimates. The final regulatory evaluation for this rule discusses the cost estimates in detail. The evaluation, available in the docket, explains that NHTSA did not agree with some of Evenflo's assumptions about costs. For example, the manufacturer's estimate for postage costs was very high. However, Evenflo's information enabled NHTSA to estimate that the rule will cost $0.47 to $0.52 per restraint for high volume manufacturers, and $0.95 to $1.26 for medium volume manufacturers. These costs are based on a manufacturing cost of $0.20 to $0.22 per restraint for high volume manufacturers, and $0.40 to $0.53 for medium volume manufacturers. The agency determined the retail cost increase based on Evenflo's information that the markup from manufacturing cost to retail price is 2.37 times.

These costs were based on a 30 to 40 percent return rate for the forms. The agency has decided to change the estimated return rate for the child restraint registration forms from 20 to 40 percent in the NPRM, to 30 to 40 percent, since, as explained above, the percentage of the remedied seats has increased.

Nomenclature Unchanged

The NPRM proposed nomenclature change to Standard 213, to replace the term "child restraint system" with "child safety seat." Two commenters supported the change. About nine commenters ranging from manufacturers to researchers to safety groups adamantly opposed it. Many of the commenters opposing the change said the term child safety seat could mislead consumers into believing that the device will provide absolute protection in a crash. Manufacturers said that such an expectation of absolute protection could result in severe liability implications for them in the event a child is injured or killed in the device. Some commenters said that the term child safety seat is not descriptive enough to make clear that it covers devices such as car beds, vests and harnesses. As a result, the term would be confusing in Standard 213.

By proposing the nomenclature change, the agency sought to get consumers to better understand the importance of the seat to the child's safety in the automobile and on aircraft. NHTSA did not intend to change manufacturers' potential legal liability, nor did NHTSA intend to unsettle or confuse the current understanding concerning which devices are included within the term "child restraint systems." While the effectiveness of child restraints is beyond question in view of data indicating they reduce a child's risk of death or serious injury by 70 percent, the agency agrees that the proposed nomenclature change could be confusing, and defers to commenters' assessment that the change might have unintended, undesirable effects on manufacturers' legal liability. NHTSA is therefore retaining the term "child restraint system" in Standard 213.

The final rule does not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has examined the impact of this rulemaking action and determined that it is not major within the meaning of Executive Order 12291. This rule is "significant" within the meaning of the Department of Transportation's regulatory policies and procedures because of the public and Congressional interest in improving recall campaigns involving child restraint systems. The final regulatory evaluation (FRE) of this rule describes the economic and other effects of the rulemaking action in detail. The FRE can be obtained from NHTSA's Docket Section.

To briefly summarize the FRE, the agency estimates that the average cost increase per child restraint will be $0.80. With sales of 4.5 million child restraints per year, the total cost increase will be $3.6 million per year. The agency believes that the child restraint registration program will result in a higher percentage of child restraints with noncompliances or defects being fixed, which in turn could result in lower

injury rates. However, the agency cannot estimate what the potential reduction in injuries or fatalities might be as a result of the registration program.

Regulatory Flexibility Act

NHTSA has considered the impact of this rulemaking action under the Regulatory Flexibility Act. I certify that this rule would not have a significant economic impact on a substantial number of small entities. With regard to businesses, there are approximately 11 manufacturers of child restraint systems. Of these, at most only six might be considered small businesses. These businesses do not comprise a substantial number of small entities that are affected by this rule.

Regardless of the number of small businesses, the rule will not have a significant economic impact on these entities. Infant seats range in cost between $20 and $82, with most costing about $30. Convertible seats (which are designed for use by both an infant and toddler) range in cost between $45 and $120, with most costing about $50. If the entire $0.80 cost of the rule were added to the cost of the restraint, the typical infant restraint would increase in price by only 2.7 percent and the typical convertible seat, by only 1.6 percent. Small organizations and governmental jurisdictional might be affected by the rule if these entities procure child restraint systems for programs such as loaner programs. Evenflo commented that fewer child restraints will be purchased in loaner programs if the cost of the restraint is increased due to the rule. While the cost of the restraint could increase, loaner program procurements would not be significantly affected. A program that had a fixed amount of money would have its procurements reduced by only 1.6 to 2.6 percent. Thus, regardless of the number of small organizations and governmental jurisdictions, NHTSA concludes the rule will not have a significant economic impact on these entities.

Executive Order 12612

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and the agency has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

Paperwork Reduction Act

The recordkeeping requirements associated with this rule have been submitted to the Office of Management and Budget (OMB) for approval, in accordance with 44 U.S.C. Chapter 35, under OMB No. 2127–0511; Administration: National Highway Traffic Safety Administration; Title 49 CFR § 571.213, Child Restraint Systems; Need for Information: To improve manufacturers' ability to contact owners in a recall campaign, to provide NHTSA a means of determining whether the manufacturer has complied with the recall responsibilities of the Vehicle Safety Act; Use of Information: Manufacturers will use the information to identify the owner of a recalled child restraint system and to notify them directly that the system has been recalled. NHTSA will use the information to determine whether the manufacturer has provided notice of a recall to owners of a defective or noncomplying restraint; Frequency: On occasion; Burden Estimate: 133,000 hours; Respondents: Manufacturers; Form(s): None; Average Burden Hours Per Respondent: 1.05 minutes. For further information contact: The information Requirements Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street SW., Washington, D.C. 20590, (202) 366–4735, or Edward Clark, Office of Management and Budget, New Executive Office Building, room 3228, Washington, DC 20503, (202) 395–7430.

List of Subjects

49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

49 CFR Part 588

Reporting and recordkeeping requirements.

PART 571—[AMENDED]

In consideration of the foregoing, NHTSA amends 49 CFR part 571 as set forth below.

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.213 [Amended]

2. S4 is amended by adding in a alphabetical order the following definition:

Factory-installed built-in child restraint system means a built-in child restraint system that was installed in a motor vehicle at the time of its delivery to a dealer or distributor for distribution.

3. S5.5.1 is revised to read as follows:

* * * * *

S5.5.1 Each add-on child restraint system shall be permanently labeled with the information specified in S5.5.2 (a) through (m).

* * * * *

4. S5.5.2 is amended by revising the introductory paragraph, by redesignating and republishing the existing text in paragraph (m) as paragraph (n) and by adding new paragraph (m), to read as follows:

* * * * *

S5.5.2 The information specified in paragraphs (a) through (m) of this section shall be stated in the English language and lettered in letters and numbers that are not smaller than 10 point type and are on a contrasting background.

* * * * *

(m) The following statement, inserting an address and telephone number: "Child restraints could be recalled for safety reasons. You must register this restraint to be reached in a recall. Send your name, address and the restraint's model number and manufacturing date to (*insert address*) or call (*insert telephone number*). For recall information, call the U.S. Government's Auto Safety Hotline at 1–800–424–9393 (202–366–0123 in D.C. area)."

(n) Child restraint systems that are certified as complying with the provisions of section S8 shall be labeled with the statement "This Restraint is Certified for Use in Motor Vehicles and Aircraft." This statement shall be in red lettering, and shall be placed after the certification statement required by paragraph (e) of this section.

* * * * *

5. S5.5.4 is revised to read as follows:

* * * * *

S5.5.4 Each built-in child restraint system shall be permanently labeled with the information specified in S5.5.5 (a) through (j) so that it is visible when the seat is activated for use as specified in S5.6.2, and, except a factory-installed built-in restraint, shall be permanently labeled with the information specified in S5.5.5(k).

* * * * *

6. S5.5.5 is amended by revising the introductory text and adding paragraph (k) to read as follows:

* * * * *

S5.5.5 The information specified in paragraphs (a) through (k) of this section shall be stated in the English language

and lettered in letters and numbers that are not smaller than 10-point type and are on a contrasting background. The information specified in paragraphs (a) through (j) shall be printed in the vehicle's owner's manual.

* * * * *

(k) The following statement, inserting an address and telephone number: "Child restraints could be recalled for safety reasons. You must register this restraint to be reached in a recall. Send your name, address and the restraint's model number and manufacturing date to (*insert address*) or call (*insert telephone number*). For recall information, call the U.S. Government's Auto Safety Hotline at 1-800-424-9393 (202-366-0123 in D.C. area)."

* * * * *

7. S5.6 would be amended by adding paragraphs S5.6.1.7 and S5.6.2.2, to read as follows:

S5.6 *Printed instructions for proper use.*

* * * * *

S5.6.1.7 The instructions shall include the following statement, inserting an address and telephone number: "Child restraints could be recalled for safety reasons. You must register this restraint to be reached in a recall. Send your name, address and the restraint's model number and manufacturing date to (*insert address*) or call (*insert telephone number*). For recall information, call the U.S. Government's Auto Safety Hotline at 1-800-424-9393 (202-366-0123 in D.C. area)."

* * * * *

S5.6.2.2 The instructions for each built-in child restraint system, except a factory-installed restraint, shall include the following statement, inserting an address and telephone number: "Child restraints could be recalled for safety reasons. You must register this restraint to be reached in a recall. Send your name, address and the restraint's model number and manufacturing date to (*insert address*) or call (*insert telephone number*). For recall information, call the U.S. Government's Auto Safety Hotline at 1-800-424-9393 (202-366-0123 in D.C. area)."

* * * * *

8. A new paragraph S5.8 is added to § 571.213 to read as follows:

* * * * *

S5.8 Information requirements—registration form.

(a) Each child restraint system, except a factory-installed built-in restraint system, shall have a registration form attached to any surface of the restraint that contacts the dummy when the dummy is positioned in the system in accordance with S6.1.2 of Standard 213.

(b) Each form shall:

(1) Consist of a postcard that is attached at a perforation to an informational card;

(2) Conform in size, content and format to Figures 9a and 9b of this section; and

(3) Have a thickness of at least 0.007 inches and not more than 0.0095 inches.

(c) Each postcard shall provide the model name or number and date of manufacture (month, year) of the child restraint system to which the form is attached, shall contain space for the purchaser to record his or her name and mailing address, shall be addressed to the manufacturer, and shall be postage paid. No other information shall appear on the postcard, except identifying information that distinguishes a particular child restraint system from other systems of that model name or number may be preprinted in the shaded area of the postcard, as shown in figure 9a.

9. The following figures 9a and 9b are added to the end of § 571.213:

BILLING CODE 4910-59-M

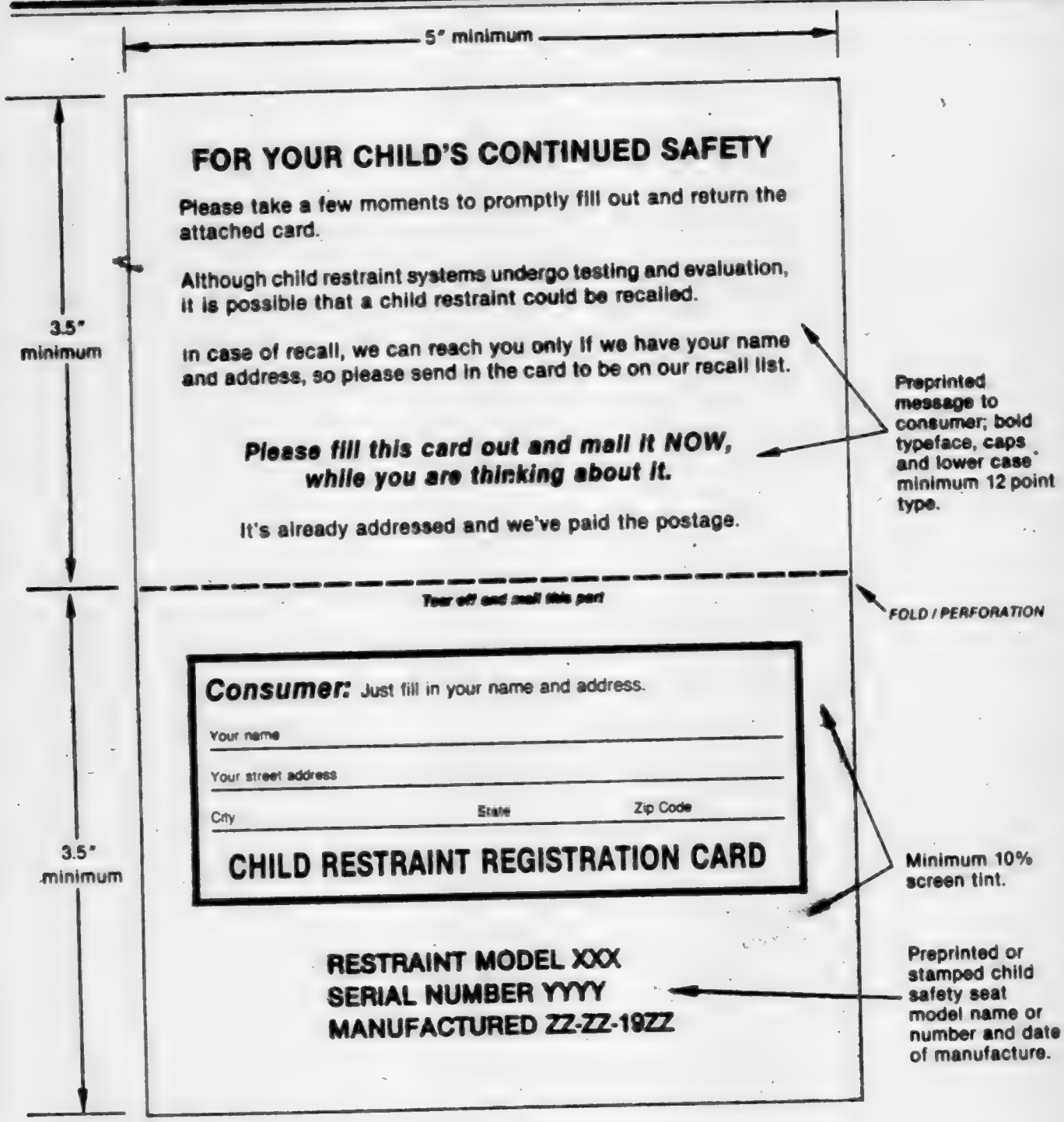

Figure 9a—Registration form for Child Systems—Product Identification Number and Purchaser Information Side.

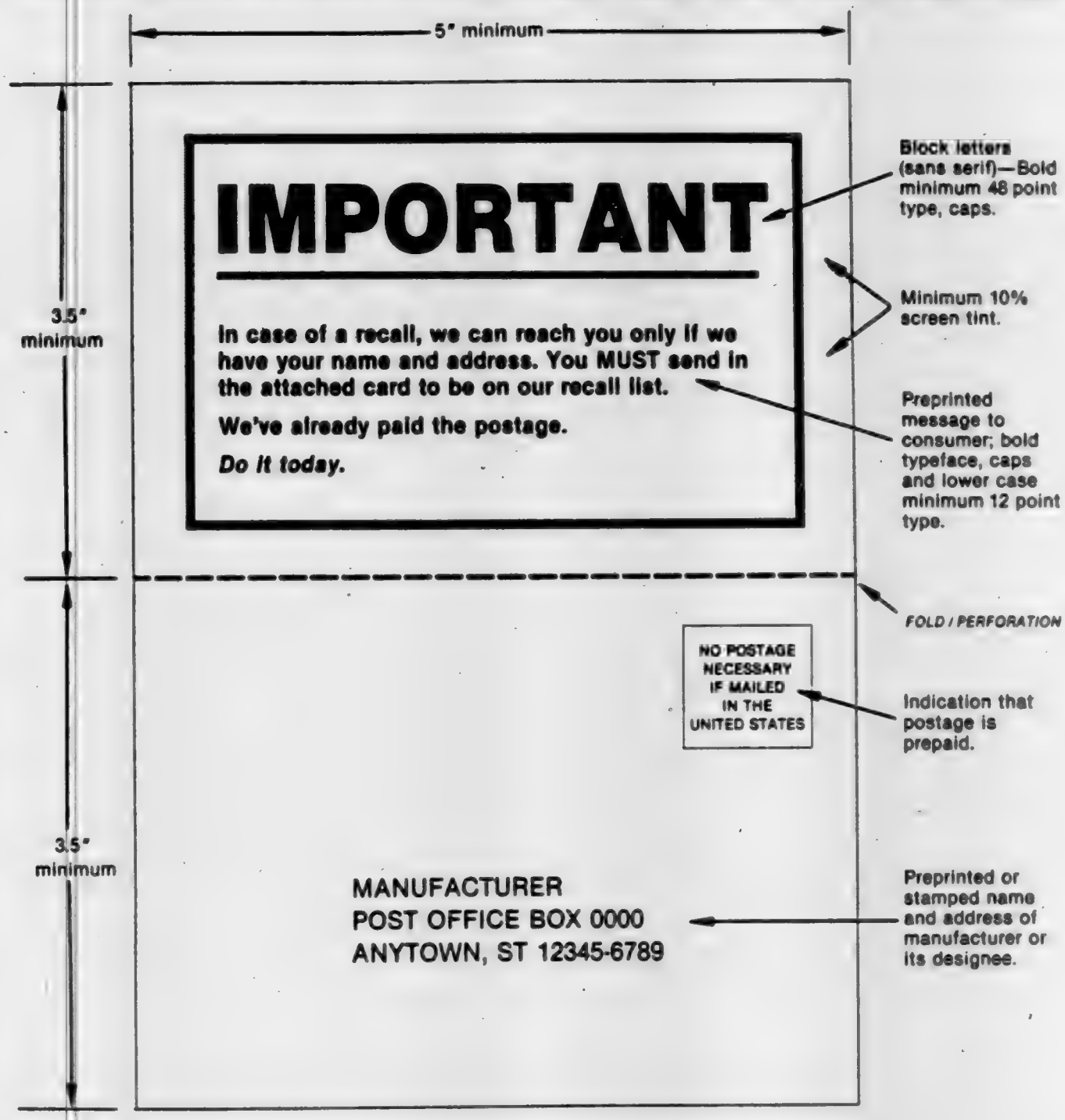

Figure 9b—Registration form for Child Restraint Systems—address side.

BILLING CODE 4910-59-C

1. Chapter V, title 49, Transportation, the Code of Federal Regulations, is amended by adding the following new Part:

PART 588—CHILD RESTRAINT SYSTEMS RECORDKEEPING REQUIREMENTS

Secs.
588.1 Scope.
588.2 Purpose.
588.3 Applicability.
588.4 Definitions.
588.5 Records.
588.6 Record retention.

Authority: 15 U.S.C. 1392, 1401, 1407; delegation of authority at 49 CFR 1.50.

§ 588.1 Scope.

This part establishes requirements for manufacturers of child restraint systems to maintain lists of the names and addresses of child restraint owners.

§ 588.2 Purpose.

The purpose of this part is to aid manufacturers in contacting the owners of child restraints during notification campaigns conducted in accordance with 49 CFR part 577, and to aid the National Highway Traffic Safety Administration in determining whether a manufacturer has met its recall responsibilities.

§ 588.3 Applicability.

This part applies to manufacturers of child restraint systems, except factory-installed built-in restraints.

§ 588.4 Definitions.

(a) *Statutory definitions.* All terms defined in section 102 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1391) are used in their statutory meaning.

(b) *Motor Vehicle Safety Standard definitions.* Unless otherwise indicated, all terms used in this part that are defined in the Motor Vehicle Safety Standards, part 571 of this subchapter (hereinafter "the Standards"), are used as defined in the Standards.

(c) *Definitions used in this part.*

Child restraint system is used as defined in S4 of 49 CFR 571.213, *Child Restraint Systems.*

Factory-installed built-in child restraint system is used as defined in S4 of 49 CFR 571.213.

Owners include purchasers.

Registration form means the form provided with a child restraint system in compliance with the requirements of 49 CFR 571.213, and any communication from an owner of a child restraint to the manufacturer that provides the restraint's model name or number and the owner's name and mailing address.

§ 588.5 Records.

Each manufacturer, or manufacturer's designee, shall record and maintain records of the owners of child restraint systems who have submitted a registration form. The record shall be in a form suitable for inspection such as computer information storage devices or card files, and shall include the names and mailing addresses of the owners, and the model name or number and date of manufacture (month, year) of the owners' child restraint systems.

§ 588.6 Record retention.

Each manufacturer, or manufacturer's designee, shall maintain the information specified in § 588.5 of this part for a registered restraint system for a period of not less than six years from the date of manufacture of that restraint system.

Issued on September 4, 1992.

Howard M. Smolkin,

Executive Director.

[FR Doc. 92-21716 Filed 9-9-92; 8:45 am]

BILLING CODE 4910-59-M

Proposed Rules

Federal Register
Vol. 57, No. 176
Thursday, September 10, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-CE-47-AD]

Airworthiness Directives; British Aerospace, Regional Aircraft Limited, HP 137 Mk1, Jetstream Models 200, 3101, and 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede Airworthiness Directive (AD) 91-15-08, which currently requires repetitive replacement of the engine power lever control cables on British Aerospace (BAe), Regional Aircraft Limited, HP 137 Mk1, Jetstream Models 200, 3101, and 3201 airplanes. Higher fatigue strength cables have been designed since AD 91-15-08 became effective and the Federal Aviation Administration (FAA) has determined that proper installation of these cables would eliminate the need for the repetitive cable replacements. The proposed action would incorporate this option into the current AD. The actions specified by the proposed AD are intended to prevent the loss of engine power control caused by engine power lever control failure.

DATES: Comments must be received on or before November 25, 1992.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-CE-47-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that is applicable to this AD may be obtained from British Aerospace, Regional Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; Telephone (44-292) 79888; Facsimile (44-292) 79703; or British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC, 20041; Telephone (703) 435-9100; Facsimile (703) 435-2628. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond A. Stoer, Program Officer, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B-1000 Brussels, Belgium; Telephone (322) 513.38.30 ext. 2710; Facsimile (322) 230.68.99; or Mr. John P. Dow, Sr., Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 601 E. 12th Street, Kansas City, Missouri 64106; Telephone (816) 426-6932; Facsimile (816) 426-2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 92-CE-47-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-CE-47-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion: AD 91-15-05, Amendment 39-7071 (56 FR 32075, July 15, 1991), currently requires repetitive replacement of the engine power lever control cables on BAe HP 137 Mk1, Jetstream Models 200, 3101, and 3201 airplanes. The actions are required to be accomplished in accordance with BAe Service Bulletin (SB) 76-A-JA 910542, dated May 30, 1991. This AD is a result of reports that two of the affected airplanes experienced engine power lever control cable failure during ground operation and that over 100 cable replacements have occurred on the affected airplanes because of broken wire strands within the cables.

Since AD 91-15-08 became effective, BAe has designed higher fatigue strength engine power lever control cables. The FAA has determined that the proper installation of these improved cables eliminates the need for the repetitive cable replacements required by AD 91-15-08.

BAe has issued Service Bulletin 76-JA 911042, dated May 15, 1992, which specifies procedures for installing higher fatigue strength engine power lever control cables on certain BAe HP 137 Mk1, Jetstream Models 200, 3101 and 3201 airplanes.

The Civil Aviation Authority (CAA) classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop in other BAe HP 137 Mk1, Jetstream Models 200, 3101, and 3201 airplanes of the same type design, the proposed AD would supersede AD 91-15-08 with a new AD that would (1) retain the repetitive replacements of the engine power lever control cables that are currently required by AD 91-15-08; and (2) incorporate the option of installing higher fatigue strength engine power lever control cables as terminating action for the repetitive cable replacements. Higher fatigue cable replacements would be required to be accomplished in accordance with BAe SB 76-JA 911042, dated May 15, 1992. The repetitive replacements would be required to be accomplished in accordance with BAe SB 76-A-JA 910542, which incorporates the following pages:

Pages	Revision level	Date
1-3	Revision 1	May 25, 1992.
4-11	Original	May 30, 1991.

The FAA estimates that 233 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 21 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Replacement cables (not the higher fatigue strength cables) would be provided by the manufacturer at no cost to the operator. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $269,115. The only difference between the proposed action and AD 91-15-08 is the option of eliminating the repetitive replacements if higher fatigue strength engine power lever control cables are installed. Since the installation of these higher fatigue strength cables is not required, the proposed AD imposes no additional cost impact upon U.S. operators than that which is already required by AD 91-15-08.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 91-15-08, Amendment 39-7071 (56 FR 32075, July 15, 1991), and by adding the following new airworthiness directive:

British Aerospace, Regional Aircraft Limited: Docket No. 92-CE-47-AD. Supersedes AD 91-15-08, Amendment 39-7071.

Applicability: Jetstream HP 137 Mk1, Models 200, 3101, and 3201 airplanes (all serial numbers), certificated in any category.

Compliance: Required initially as follows, unless already accomplished (superseded AD 91-15-08), and thereafter at intervals not to exceed 10,000 landings:

- For airplanes with less than 9,500 landings on the effective date of this AD, prior to the accumulation of 10,000 landings.
- For airplanes with 9,500 landings or more but less than 10,000 landings on the effective date of this AD, prior to the accumulation of 10,500 landings.
- For airplanes with 10,000 or more landings but less than 12,000 landings on the effective date of this AD, within the next 500 landings.
- For airplanes with 12,000 or more landings but less than 15,000 landings on the effective date of this AD, within the next 150 landings.
- For airplanes with over 15,000 landings on the effective date of this AD, within the next 50 landings.

Note 1: If no record of landings is maintained, hours time-in-service (TIS) may be used with one hour TIS equal to two landings. For example, 100 hours TIS is equal to 200 landings.

To prevent the loss of control of engine power, accomplish the following:

(a) Replace the engine power lever control cables (all 8) in accordance with the Accomplishment Instructions section of British Aerospace (BAe) Service Bulletin (SB) 76-A-JA 910542, which incorporates the following pages:

Pages	Revision level	Date
1-3	Revision 1	May 25, 1992.
4-11	Original	May 30, 1991.

(b) The repetitive replacements required by this AD may be terminated if the engine power lever control cables (all 8) are replaced with higher fatigue strength engine power lever control cables, part number 1379164E408, in accordance with the Accomplishment Instructions section of BAe SB 76-JA 911042, dated May 15, 1992.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B-1000 Brussels, Belgium. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Brussels Aircraft Certification Office.

(e) All persons affected by this directive may obtain copies of the documents referred to herein upon request to British Aerospace, Regional Aircraft Limited, Manager Product Support, Commercial Aircraft Airlines Division, Prestwick Airport, Ayrshire, KA9 2RW Scotland; or British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC, 20041; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) This amendment supersedes AD 91-15-08, Amendment 39-7071.

Issued in Kansas City, Missouri, on September 3, 1992.

Dwight A. Young,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-21824 Filed 9-9-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 92-AGL-13]

Proposed Transition Area Establishment; Princeton, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a transition area to be located at Princeton, MN, to accommodate a new nondirectional beacon (NDB) runway 15 Standard Instrument Approach Procedure (SIAP) to Princeton Municipal Airport, Princeton, MN. The intended effect of this action is to ensure segregation of the aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. If adopted, this proposal would change the airport status from visual flight rules (VFR) only to include operations under instrument flight rules (IFR).

DATES: comments must be received on or before October 26, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL-7, Attn: Rules Docket No. 92-AGL-13, 2300 East Devon Avenue, Des Plaines, IL 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL.

An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL, 60018, telephone (312) 694-7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92-AGL-13". The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, IL, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a transition area located at Princeton, MN, to accommodate a new NDB runway 15 SIAP to Princeton Municipal Airport, Princeton, MN. If this proposal is adopted, the status of the airport would change from VFR only, to include IFR operations.

The development of the procedure requires that the FAA establish the designated airspace to ensure that the procedure would be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts would reflect the defined area which would enable pilots to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Transition areas are published in § 71.181 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The transition area listed in this document would be published subsequently in the Handbook.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that the rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, Incorporation by reference, Transition Areas.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106 (g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.181 Designation

* * * * *

AGL MN TA Princeton, MN [New]
Princeton Municipal Airport, MN
(lat. 45° 33' 40" N, long 93° 36' 32" W)
Princeton NDB
(lat. 45° 33' 51" N, long 93° 36' 24" W)

That airspace extending upward from 700 feet above the surface within a 6.4 nautical mile radius of the Princeton Municipal Airport, and within 2.5 nautical miles each side of the 332° bearing from the Princeton

NDB extending from the 6.4 nautical mile radius to 7 nautical miles northwest of the airport.

* * * * *

Issued in Des Plaines, IL on August 28, 1992.

John P. Cuprisin,

Manager, Air Traffic Division.

[FR Doc. 92-21698 Filed 9-9-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 92-AGL-12]

Proposed Transition Area Establishment; Silver Bay, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a transition area to be located at Silver Bay, MN, to accommodate a new nondirectional beacon (NDB) runway 25 Standard Instrument Approach Procedure (SIAP) to Silver Bay Municipal Airport, Silver Bay, MN. The intended effect of this action is to ensure segregation of the aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. If adopted, this proposal would change the airport status from visual flight rules (VFR) only to include operations under instrument flight rules (IFR).

DATES: Comments must be received on or before October 26, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL-7, Attn: Rules Docket No. 92-AGL-12, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL.

An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL, 60018, telephone (312) 694-7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92-AGL-12". The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, IL, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a transition area located at Silver Bay, MN, to accommodate a new NDB runway 25 SIAP to Silver Bay Municipal Airport, Silver Bay, MN. If this proposal is adopted, the status of the airport would change from VFR only, to include IFR operations.

The development of the procedure requires that the FAA establish the designated airspace to ensure that the procedure would be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts would reflect the defined area which would enable pilots to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Transition areas are published in § 71.181 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The transition area listed in this document would be published subsequently in the Handbook.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that the rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Transition areas.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7,

Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.181 Designation

* * * * *

AGL MN TA Silver Bay, MN [New]
Silver Bay Municipal Airport, MN
(lat. 47°14'55" N, long 91°24'55" W)

That airspace extending upward from 700 feet above the surface within a 7 nautical mile radius of Silver Bay Municipal Airport.

* * * * *

Issued in Des Plaines, IL on August 28, 1992.

John P. Cuprisin,

Manager, Air Traffic Division.

[FR Doc. 92-21699 Filed 9-9-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 92-AGL-17]

Proposed Modification of Transition Area; Toledo, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify the existing Toledo, Ohio transition area to accommodate a new Standard Instrument Approach Procedure (SIAP) VOR/DME RNAV Runway 27 to Wood County Airport, Bowling Green, Ohio. The intended effect of this action is to ensure segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before October 26, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL-7, Attn: Rules Docket No. 92-AGL-17, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92-AGL-17". The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the existing Toledo, Ohio, transition area to accommodate a new SIAP VOR/DME RNAV Runway 27 at Wood County Airport, Bowling Green, Ohio.

The FAA finds it necessary to alter the designated airspace to ensure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts would reflect the defined area which would enable other aircraft to circumnavigate the area is order to comply with applicable visual flight rule requirements.

Transition areas are published in § 71.181 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The transition area listed in this document would be published subsequently in the Handbook.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore— (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Transition areas.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., P. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published

April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.181 Designation

* * * * *

AGL OH TA Toledo, OH [Revised]
Wood County Airport, Bowling Green, OH
(lat. 41°23'27" N., long. 83°37'49" W.)

That airspace extending upward from 700 feet above the surface within the area bounded by a line beginning at lat. 41°40'00" N., long. 84°20'00" W.; to lat. 41°49'00" N., long. 83°37'00" W.; to 41°34'00" N., long. 83°19'00" W.; to lat. 41°17'00" N., long. 83°33'00" W., to lat. 41°22'00" N., long. 84°05'00" W. to the point of beginning.

* * * * *

Issued in Des Plaines, Illinois on August 31, 1992.

John P. Cuprisin,
Manager, Air Traffic Division.

[FR Doc. 92-21700 Filed 9-9-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 92-AGL-9]

Proposed Transition Area Establishment; East Troy, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a transition area located at East Troy, WI, to accommodate a new VOR-A instrument approach procedure to East Troy Municipal Airport, East Troy, WI. The intended effect of this action is to ensure segregation of the aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. If adopted, this proposal would change the airport status from visual flight rules (VFR) only to include operations under instrument flight rules (IFR).

DATES: Comments must be received on or before October 21, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL-7, Attn: Rules Docket No. 92-AGL-9, 2300 East Devon Avenue, Des Plaines, IL 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL.

An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL, 60018, telephone (312) 694-7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92-AGL-9". The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Avenue, Des Plaines, IL, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-220, 800 Independence Avenue, SW., Washington, DC, 20591, or by calling (202) 267-3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a transition area located at East Troy, WI, to accommodate a new VOR-A instrument approach procedure to East Troy Municipal Airport, East Troy, WI. If this proposal is adopted, the status of the East Troy Municipal Airport would change for VFR only, to include IFR operations.

The development of this VOR-A procedure requires that the FAA establish the designated airspace to ensure that the procedure would be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts would reflect the defined area which would enable pilots to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Transition areas are published in § 71.181 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The transition area listed in this document would be published subsequently in the Handbook.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Transition areas.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510, E. O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389, 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.181 Designation

* * * * *

AGL WI TA East Troy, WI [New] East Troy Municipal Airport, WI
(lat. 42°47'48" N, long. 88°22'34" W)

That airspace extending upward from 700 feet above the surface within a 6.3 nautical mile radius of East Troy Municipal Airport; excluding the airspace within the Burlington, WI Transition Area.

* * * * *

Issued in Des Plaines, IL on July 14, 1992.

John P. Cuprisin,

Manager, Air Traffic Division.

[FR Doc. 92–21694 Filed 9–9–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 92–AGL–14]

Proposed Transition Area Alteration, Phillips, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the existing transition area to accommodate a new nondirectional beacon (NDB) runway 06 Standard Instrument Approach Procedure (SIAP) to Price County Airport, Phillips, WI. The intended effect of this action is to ensure segregation of the aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before October 23, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Attn: Rules Docket No. 92–AGL–14, 2300 East Devon Avenue, Des Plaines, IL 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL.

An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL, 60018, telephone (312) 694–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92–AGL–14". The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, IL, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the existing transition area airspace near Phillips, WI, to accommodate a new NDB runway 06 SIAP to Price County Airport, Phillips, WI.

The development of the procedure requires that the FAA alter the designated airspace to ensure that the procedure would be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts would reflect the defined area which would enable pilots to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Transition areas are published in § 71.181 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The transition area listed in this document would be published subsequently in the Handbook.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that the rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects In 14 CFR Part 71

Aviation Safety, Incorporation by reference, Transition Areas.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10654, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.161 Designation

* * * * *

AGL WI TA Phillips, WI [Revised]
Phillips, Price County Airport, WI
(lat. 45° 42′ 19″N, long 90° 24′ 10″W)
Phillips NDB
(lat. 45° 42′ 11″N, long 90° 24′ 46″W)

That airspace extending upward from 700 feet above the surface within a 6.3 nautical mile radius of the Price County Airport, and within 1.9 nautical miles each side of the 227° bearing from the Phillips NDB extending from the 6.3 nautical mile radius to 7 nautical miles southwest of the airport; and within 1.9 nautical miles each side of the 060° bearing from the Phillips NDB extending from the 6.3 nautical mile radius to 7 nautical miles northeast of the airport.

* * * * *

Issued in Des Plaines, IL on August 27, 1992.

John P. Cuprisin,
Manager, Air Traffic Division.

[FR Doc. 92–21697 Filed 9–9–92; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 191

Drawback; Application for Exporter's Summary Procedure

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations by permitting drawback claimants to file only one application for use of the exporter's summary procedure, instead of filing separate applications for the use of the procedure for each Customs region or district in which they file drawback claims. This will reduce the paperwork burden on the affected public and the administrative burden on the Customs Service.

DATES: Comments must be received on or before October 13, 1992.

ADDRESSES: Comments (preferably in triplicate) must be submitted to and may be inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., room 2119, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Bruce Friedman, Office of Trade Operations, 202–927–0260.

SUPPLEMENTARY INFORMATION:

Background

Drawback is a refund or remission, in whole or in part, of a Customs duty, internal revenue tax, or fee. There are a number of different kinds of drawback authorized under law including, for example, manufacturing drawback, same condition drawback, and rejected merchandise drawback. In order to quality for drawback, there must be an exportation (in some cases, destruction is allowed as an alternative to exportation) of either the imported merchandise or articles manufactured or processed from the imported merchandise. For some kind of drawback, substitution for the imported merchandise is allowed so that what must be exported (or destroyed, in those cases where destruction is permitted as an alternative to exportation) is either the substituted merchandise or articles manufactured or processed from the substituted merchandise. The statute providing for drawback is found in section 313, Tariff Act of 1930, as amended (19 U.S.C. 1313).

Part 191, Customs Regulations (19 CFR part 191), contains the general regulations applicable to drawback claims and specialized provisions applicable to specific types of drawback claims. The general procedures for establishing exportation of merchandise or articles for drawback purposes are provided for in subpart E of part 191. This subpart authorizes the use of several alternative procedures to establish exportation. One of there alternative procedures is the exporter's summary procedure, provided for in § 191.53.

Under this procedure, a drawback claimant may request the permission of the regional commissioner (or the district director in the case of a same condition drawback claim when the regional commissioner has delegated authority to approve such requests to the district director) to use the procedure in the region or district where drawback claims will be filed. The regional commissioner or district director shall approve the request if he or she determines that use of the procedure will contribute to administrative efficiency and that the claimant is not delinquent or otherwise remiss in transactions with Customs.

If the application is approved, the claimant is required to obtain a bond to assure that Customs will be reimbursed if any improper payments of drawback are made. The claimant is then permitted to establish exportation for drawback purposes with the use of a chronological summary of exports in a format acceptable to the appropriate regional commissioner or district director. The claimant is also required to maintain complete and accurate records of exportation for at least 3 years after payment of the drawback claim, but is not required to file these records with Customs at the time of filing the drawback claim.

Currently, a drawback claimant who desires to use the exporter's summary procedure must apply, and be approved, for use of the procedure with each regional commissioner, or district director if appropriate, in whose region or district drawback will be claimed. This can result in unnecessary paperwork in that applications by the same claimant may have to be filed in several different regions and districts and to be processed in there regions and districts by Customs.

The exporter's summary procedure was established to reduce paperwork. Regions and districts may consult as to whether there is any reason that permission to use the procedure should be not be granted to a particular applicant. Therefore, Customs is proposing to change the exporter's summary procedure so that drawback claimants need not file separate applications for the procedure for each region or district in which they file drawback claims. Approval, denial, or revocation of a claimant's application to use the procedure would determine the claimant's eligibility to use the procedure in all regions and districts. Implementation of this nationwide procedure would be less burdensome on the trade community than the existing system and it would reduce the administrative burden of Customs.

In accordance with the above discussion, an amendment to paragraph (c) of § 191.53, Customs Regulations (19 CFR 191.53(c)), is being proposed.

Comments

Before adopting this proposal, consideration will be given to any written comments that are timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30

p.m., at the Regulations and Disclosure Law Branch, room 2119, Customs Headquarters, 1301 Constitution Avenue, NW., Washington, DC.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendment set forth in this document will not have a significant economic impact on a substantial number of small entities, inasmuch as it is merely reducing a filing requirement. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis is required.

Drafting Information

The principal author of this document was Paul Hegland, Entry Rulings Branch. However, personnel from other offices participated in its development.

List of Subjects in Part 191

Customs duties and inspection, Imports, Exports, Drawback.

Proposed Amendment

It is proposed to amend part 191, Customs Regulations (19 CFR part 191), as set forth below.

PART 191—DRAWBACK

1. The general authority citation for part 191 would continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1313, 1624. * * *

§ 191.53 [Amended]

2. It is proposed to amend § 191.53 by adding a new sentence at the end of paragraph (c) to read as follows:

§ 191.53 Exporter's summary.

* * * * *

(c) *Approval.* * * * Approval, denial, or revocation of the right to use this procedure by one region, or district in the case of merchandise the subject of same condition drawback, determines the eligibility of the claimant to use this procedure in all regions or districts.

* * * * *

Approved: August 26, 1992.

Carol Hallett,

Commissioner of Customs.

Peter K. Nunez,

Assistant Secretary of the Treasury.

[FR Doc. 92-21678 Filed 9-9-92; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 626, 627, 628, 629, 630, 631, and 637

RIN 1205-AA

Job Training Partnership Act: Job Training Reform Amendments of 1992 Employment and Training Services for the Disadvantaged

AGENCY: Employment and Training Administration, Labor.

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: The purpose of this notice is to obtain comments on the areas of proposed regulatory change that relate to the department of labor's (Department of DOL) approach to implementing the Job Training Reform Amendments of 1992 Public Law 102-367 (September 7, 1992), which amends the Job Training Partnership Act (JTPA) (See Conference Report on H.R. 3033, the Job Training Reform Amendments of 1992, in the Congressional Record August 6, 1992, pp. H. 7646—H. 7686). Because of a tight implementation schedule for these changes, DOL has a need for early comment. A final rule is expected on or about December 18, 1992.

DATES: The Department invites written comments on this notice and will consider such comments at any time up to the publication of the Final Rule. To be most useful in the development of a Notice of Proposed Rulemaking, however, comments in response to this notice should be received on or before September 25, 1992. Comments received after that date will be considered in the development of the final rule.

ADDRESSES: Written comments shall be mailed to the Assistant Secretary for Employment and Training, Department of Labor, room N-4703, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Mr. Hugh Davies, Acting Director, Office of Employment and Training Programs. Commenters wishing acknowledgement of receipt of their comments must submit them by certified mail, return receipt requested.

FOR FURTHER INFORMATION CONTACT: Mr. Hugh Davies, Acting Director, Office of Employment and Training Programs. Telephone: (202) 535-0580 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Job Training Partnership Act (JTPA) was enacted in 1982 principally to establish a new program and delivery system of training and related assistance for economically disadvantaged youth and adults leading to permanent, private sector employment. Since the original enactment, the essential structure and design of the programs and activities under Titles I and II of JTPA have remained substantially the same. These programs have put together an impressive record of placement in jobs.

Ove the past few years, the JTPA system and JTPA programs have been the subject of extensive review and discussions. This process was largely initiated with an examination of the JTPA and its future by a JTPA Advisory Committee to the Secretary of Labor and has included extensive deliberations by the Congress. Throughout this review process there have been constructive comments and suggestions from a variety of parties, including business leaders, States, SDAs, labor organizations, community-based organizations, the Department's Office of the Inspector General, the General Accounting Office and others, with an interest in improving JTPA. Important topics of interest included how to identify and enroll those most in need of JTPA services, an emphasis on ways in which the program can maximize the delivery and effectiveness of training resources, and the broad areas of program administration improvements and integrity.

The culmination of this activity is the enactment of the Job Training Reform Amendments of 1992. The purposes of this Act are to improve the targeting or programs and resources to those facing serious barriers to employment, enhance the quality of services provided, strengthen fiscal and program accountability, and foster a comprehensive and coherent system of human resource services.

The Act and Regulations

The Department believes that in many instances the Act is sufficiently clear in setting forth requirements. The Department intends to limit regulations only to those areas in which they are specifically required by the Act or identified as necessary to provide guidance and clarification and to further the purposes of the Act. The Department intends that the regulations be sufficiently clear so that all parties with an interest in JTPA would understand

both the requirements and areas of flexibility inherent in the program.

The Job Training Reform Amendments require that the Secretary issue final implementing regulations by December 18, 1992. The Department has developed an ambitious schedule to meet this deadline, but intends to implement revisions to the JTPA regulations in an open and public manner and to solicit participation of all interested parties. This Advance Notice of Proposed Rulemaking initiates that process which will include opportunities for comment and other expressions of views. Other key points in the process of implementation are:

- Publication of a notice of proposed rulemaking on or about October 23, 1992.
- Issuance of final rules on or about December 18, 1992.
- Training of State and SDA staff on the provisions of the final rules during the period January—February 1993.
- The Job Training Reform Amendments of 1992 become effective July 1, 1993.

Framework for Implementation of the Amendments

The Department believes that certain principles are central to the JTPA and to the implementation of the Job Training Reform Amendments of 1992 amendments to the JTPA. These principles will be central to the Department's efforts to oversee and guide the implementation process including the development of regulations.

- An enhanced role for the private sector is key to an effective JTPA program. Building on their significant contribution to date, the Department wants to ensure that private sector leaders participate in JTPA private industry councils (PICs)—particularly in the design and operation of JTPA programs. This includes setting high standards for the content and acquisition of skills through training and linking training with job opportunities in the local and national labor market. The Department also wishes to assure that the PICs are full partners in the JTPA public-private planning and delivery system.
- Training services provided by JTPA should be of the highest quality and responsive to the needs of the individual participants. This is a cornerstone of the Job Training Reform Amendments of 1992, and is relevant to the findings and results of the JTPA Advisory Committee, the Secretary's Commission on Achieving Necessary Skills (SCANS) and the concepts embodied in the President's Job Training 2000 proposal. In issuing regulations, the Department wants to establish a framework under which the processes used to assess individuals and under which individuals are assigned to and receive training services—especially services required by the Act—will be most effective and efficient. At the same time, the Department recognizes that the JTPA system, within the framework of the Act and regulations, should be flexible and able to design and deliver programs to meet needs as they are determined locally.
- The JTPA performance standards will be the basic measure of the accomplishments of the JTPA system. In setting performance standards, the Department will encourage interventions, program strategies, and arrangements that enhance opportunities for long term employment and increase client earnings potential. The Department will also pursue cost effective reporting methods that quantify the results of these efforts.
- JTPA programs must meet the highest possible standards for the use of public funds. Substantial attention is given in the Job Training Reform Amendments of 1992 to strengthening program management, procurement, and fiscal and accountability standards for the JTPA system. The Department intends to advance fully the goals and implement the requirements placed in the Act for the Secretary to regulate in this area.
- JTPA and other human resource programs must have workable system of relationships to jointly serve their participants. There are a number of educational and training programs that provide services to disadvantaged individuals in addition to JTPA. It is unlikely that any single program will have the capacity to meet all the training, educational, and service needs of a participant. It will be the purpose of the Department to develop regulations that foster the development of joint relationships among programs in providing high quality services to individuals.

Regulatory Topics Which May Be of Special Interest to the JTPA System

In developing this Notice, the Department has undertaken a review of the Act, as amended, and the JPTA regulations to identify principal areas in which rulemaking my be necessary or desirable. In addition, the Department has received comments and suggestions from a variety of sources identifying areas in which policy direction my be necessary.

The Job Training Reform Amendments of 1992 contain revisions in titles I and II of the JTPA that may have relevance to the programs at title IV, sections 401 and 402. It is the Department's position that many of the Amendments have application to these nationally administered programs. Grantees under these national programs should review the entire Act, as amended, and this Advance Notice to determine how the provisions may apply to their programs.

In proposing regulations, the following areas may be addressed. All of the areas presented below will not necessarily be included in any final rulemaking as they are described. Other matters may be addressed that are either of a substantive or technical nature or the result of comments received as a result of this Advance Notice and during the rulemaking process.

The Department hereby requests comments on the areas listed below or on other areas of JTPA, as amended by the Job Training Reform Amendments of 1992. Comments should address specific proposed or recommended regulatory actions. Commenters are requested to identify the area of their comment by subject headings as listed below or as identified by the commenter. Comments are also requested as to possible recordkeeping and reporting requirements which might arise in connection with these proposals, and how we might keep these requirements at a minimum. The Department also requests comments on areas not listed.

A. Renew the Public-private Partnership by Providing for a Strengthened Private Industry Council Capacity and Role

1. Clarify and Reinforce the Role of the PIC with Regard to Program Development, Oversight, Coordination, Identifying Quality Job Opportunities and in Establishing Guidelines for the Level of Skills for Training Programs.
2. Guidance in Connection with the Requirements for PIC Membership.
3. Minimal Guidelines for the Governor's Certification of the PIC.
4. New requirements for the Periodic Validation of the PIC/Chief Elected Official Agreement.

B. Enhance Program Quality by Basing Training and Services on Individual and Labor Market Needs.

1. Guidance and Clarification on Activities and Services Including:
   - The intake and enrollment process, the appropriate provision of services and activities, documentation requirements, and other related matters.
   - Program requirements for assessment, development of service strategies, provision of required services (basic skills and occupational skills

training, and supportive services as identified) and referrals to other programs.

• Clarification of the requirement to provide or arrange for needed participant services including supportive services.

• Guidance on the conditions for the provision of job search assistance, job search skills training and job club activities.

• Requirements to ensure that women, minorities, and individuals with disabilities may benefit equitably from all JTPA program activities.

2. Requirements for Certain Authorized Program Activities (e.g., work experience, entry employment experience, case management services, skill upgrading and retraining, vocational exploration).

3. Guidelines and Standards Pertaining to On-the-Job Training (OJT) Including:

• Provisions to address issues and questions that have arisen in recent oversight activities such as reverse referrals, temporary employment, and extraordinary training costs.

• Conditions and specifications on OJT for out-of-school youth or summer youth.

4. Clarification of the Allowability, Requirements and Mechanisms for Certain Payments to Participants such as Allowances, Incentive Payments, Supportive Service Payments, Financial Assistance and Needs-based Payments.

5. Common Definitions That Might Apply across JTPA Programs Including All Programs under JTPA Title IV.

6. Clarification and Guidance on the New Requirements for Services to Older Workers.

C. Strengthen JTPA Program Outcomes.

1. Specifications and Standards To Apply in the Definition of Placement Including Possible Minimum Standards Pertaining to Hours Worked, Wages, or Other Criteria.

2. Clarification that the New Eligibility and Targeting Requirements Satisfy the Concept of "Most in Need" as Found in JTPA Sec. 141(a).

D. Improve Accountability by Raising Management and Fiscal Standards at all Levels of the JTPA System

1. Specification of Requirements and Standards for Procurement Systems.

• The extent of the requirements to be established by the Secretary and standards by the Governor regarding the establishment and maintenance of procurement systems consistent with the provisions of JTPA Sec. 164.

• Guidelines to be established by the Secretary for the selection of service providers (including community based organizations, proprietary schools and others), consistent with the provisions of JTPA Section 107.

• Guidelines on conflict of interest in the JTPA system with particular emphasis on PIC membership and issues of "actual and apparent" conflict of interest.

2. Rules Pertaining to program Income.

• Allowable uses of program income.

• Requirements with regard to the classification, availability and reporting of program income.

3. Monitoring System Requirements, including Minimum Elements, at the State, Local and Service Provider Levels.

4. Sanctions.

• The kinds of sanctions that may be applied by the Governor and the Secretary.

• The conditions under which sanctions will be applied by the Governor and the Secretary.

• The processes to be followed in applying sanctions.

5. The Adaptation of Allowable Cost Standards and Cost Principles Including the Extent to Which to Adopt Principles Generally Applicable to Recipients of Federal Grant Funds.

6. The Cost Limitations.

• Considerations in defining the cost categories.

• The application of the cost limitations to various JTPA programs.

• Determining compliance with the cost limitations.

• The exceptions to cost charging provided under JTPA Sec. 141(d)(3).

7. Requirements for Reporting Quarterly and by Year of Appropriation.

8. Recordkeeping.

• Requirements that relate to eligibility and the barrier provisions.

• Recordkeeping requirements quarterly and by year of appropriation.

• Tracking of stand-in costs (non-Federal costs that a recipient may seek to substitute for disallowed Federal costs) for purposes of JTPA allowability.

• Requirements that pertain to the derivation and use of program income.

• The need to maintain information on eligible applicants and referral of such eligible applicants to other programs and services.

9. Financial Liability and the Governor's Authority in Establishing Responsibility for Misexpenditure of JTPA Funds.

10. The Resolution of Questioned/Disallowed Costs and Debt Repayment.

• Conditions under which "stand-in" or substitute costs may be accepted for disallowed costs and standards for reprogramming of funds.

• Standards for application of offset under JTPA section 164(d) as a means of debt repayment.

11. The Federal Requirement That Should Apply with Regard to the Acquisition, Use and Disposition of Property.

12. The Complaint and Grievance System (Other than Discrimination Complaints).

• Differentiation between the Federal system of handling grievances, investigations and hearings and that at the State and local level.

• Incorporation of the new requirements as they pertain to complaints pursuant to JTPA Sec. 143.

13. Clarification of Audit and Audit Resolution Requirements Including the Adoption of Office of Management and Budget Circular A-133.

E. Foster a Comprehensive and Coherent System of Human Resource Services Delivered Through Interagency Collaboration

1. Establishment of the Human Resource Investment Council.

• Clarification regarding the constitution of the State Job Training Coordinating Council (SJTCC) as a Human Resource Investment Council and constitution of the PIC in single SDA States.

2. Clarification Pertaining to Single Points of Service Delivery, Including Delivery of Services and Allocation of Costs.

3. Agreements and Program Specification for Activities under the JTPA Section 123 Program of Education Coordination Grants.

4. Implementation and Operation of the Jobs for Employable Dependent Individuals (JEDI) Incentive Bonus Program under JTPA Title V.

5. Separate guidance will be issued on the Youth Fair Chance Program.

6. Development of joint relationships among job training programs to provide high quality services to individuals.

F. Other Important Clarifications

1. Service Delivery Area Designation and Redesignation.

• Clarification in the area of SDA designation and the designation process including such areas as necessary conditions for designation, incumbent SDAs, competing applications, and frequency of designations.

• The Governor's authority to attach areas to existing SDAs and to constitute SDAs (such as a Balance of State).

2. The Process for the Recapture, Reallocation or Reallotment of Unobligated Funds by the Governor, and Conditions under which the Secretary

might Exercise the Authority to Reallot State Funds.

3. Guidance on the Issue of Duplicate and Overlapping Payments Among Federal, State and Local Programs, including Pell Grants.

4. The Prohibition on Relocation Assistance.

- Clarification of the terms "encourage" and "induce" with regard to relocation.
- Specification with regard to when an establishment is to be considered as "relocating".
- Institute a requirement for pre-award reviews with regard to relocation.

5. The Extent to Which the Areas in This Notice may Affect Programs under JTPA Title IV, Sections 401 and 402.

6. Specific Guidance that May Be Necessary for the Transition Period.

Signed at Washington, D.C., this 8th day of September, 1992.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 92-21959 Filed 9-9-92; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Federal Parolees in HIV-Positive Status

AGENCY: Parole Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Parole Commission is proposing to amend its regulations at 28 CFR 2.40 to add a general condition of parole requiring a parolee with AIDS, or who has tested HIV-positive, to make that medical status known to any individual who is at a high risk of infection from the parolee, either through sexual transmission or intravenous needle use. The appropriateness of such a condition has been suggested to the Commission by the adoption in many states of statutes providing criminal penalties for deliberate failure to notify sexual partners in advance of an HIV-positive status, as well as by concern on the part of U.S. Probation Officers that some HIV-positive parolees are not likely to behave in a socially responsible manner without appropriate guidance from the Commission. The purpose of this general condition of parole will be limited to the prevention of crime (in those states wherein a failure to notify is punishable under a criminal statute) and to enhancing the rehabilitation of the parolee by setting a standard for socially responsible conduct.

DATES: Comments must be received by October 23, 1992.

ADDRESSES: Send comments to Office of General Counsel, U.S. Parole Commission, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

FOR FURTHER INFORMATION CONTACT: Pamela Posch, Office of General Counsel, Telephone (301) 492-5959.

SUPPLEMENTARY INFORMATION: Pursuant to 18 U.S.C. 4209, the U.S. Parole Commission is authorized to "* * * provide for such supervision and other limitations as are reasonable to protect the public welfare." The standard conditions that appear on every parolee's certificate of parole are set forth at 28 CFR 2.40, along with certain special conditions of parole which the Commission regularly imposes in certain situations (e.g., drug and alcohol aftercare).

In addition to conditions prohibiting criminal conduct and association with others engaged in criminal conduct, the standard conditions of parole include several conditions aimed at promoting the general rehabilitation of the parolee by requiring adherence to basic standards of socially responsible conduct. Thus, for example, parolees are required to obtain regular employment and to support their dependents to the best of their ability. 28 CFR 2.40(a)(8).

Parolees with AIDS or HIV (which leads to AIDS) present a special problem. On the one hand, the Commission recognizes that these individuals are liable to experience discrimination because of their medical status, and that the burden of their disease must not be allowed to contribute to recidivistic tendencies through a denial of job opportunities and other social adjustment problems. To this end, the Commission has required U.S. Probation Officers to conform to state confidentiality laws, and to defer to federal, state, and local health agencies to resolve the various difficulties that may arise from the parolee's HIV-positive status.

When an HIV-positive parolee is released from prison, it is appropriate for the Commission to help that parolee to adjust to the limitations and social obligations arising from his contagious disease, if that parolee is to achieve the goal of rehabilitation. The Commission is expected by law to provide conditions to parole that "* * * should be sufficiently specific to serve as a guide to supervision and conduct * * *" 18 U.S.C. 4209(b).

Accordingly, the Commission proposes to adopt a standard condition of parole containing the minimum requirement that a parolee who has been diagnosed as HIV-positive must provide notification of his or her medical status to any third party who is exposed to a high risk of contracting the disease from that parolee. The Commission limits the definition of "high risk" individuals to those individuals who would be at risk of contracting HIV through sexual relations with the parolee, and through intravenous needle sharing (itself indicative of illegal use of narcotics).

The Commission emphasizes that it does not intend this general condition to give U.S. Probation Officers the discretion to define broader categories of "high risk" potential victims. For example the condition will not authorize an instruction that a parolee inform co-workers in a restaurant, hospital, or other employment, of his or her HIV-positive status. Although other situations may arise that create a cause for concern, the Commission intends that U.S. Probation Officers refer such matters in the first instance to the appropriate governmental health agency. The Commission's intent, as stated above, is to prohibit clearly reckless behavior that places others at an unconscionable risk of contracting AIDS, and not to make the Commission or any U.S. Probation Officer a guarantor of public or individual health under any circumstance. This is a task that has been assigned by Federal and state legislatures to other agencies.

Executive Order 12291 and Regulatory Flexibility Statement

The U.S. Parole Commission has determined that this proposed rule is not a major rule within the meaning of Executive Order 12291. This proposed rule, if adopted, will not have a significant economic impact upon a substantial number of small entities, within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, probation and parole, prisoners.

Accordingly, the U.S. Parole Commission proposes the following amendment to 28 CFR part 2 as follows.

The Proposed Amendment

1. The authority citation for 28 CFR part 2 continues to read as follows:

Authority. 18 U.S.C. 4203 (a)(1) and 4204(a)(6).

2. In 28 CFR part 2, 2.40 is proposed to be amended by adding the following new paragraph (m):

§ 2.40 Conditions of release.

* * * * *

(m) A parolee with AIDS, or who has been diagnosed as HIV-positive, shall notify any potential high risk victim of his medical condition before the parolee exposes that person to a risk of contracting such disease, either through sexual relations with the parolee or intravenous needle sharing. Notification must be given prior to engaging in such conduct, and is required regardless of any other precaution the parolee may take to prevent transmission of the disease. The requirement is not excused by reason of the parolee's belief concerning the potential victim's probable prior knowledge of the parolee's medical condition.

Dated: September 2, 1992.

Jasper R. Clay, Jr.,

Vice Chairman, U.S. Parole Commission.

[FR Doc. 92-21832 Filed 9-9-92; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF DEFENSE

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900-AF52

Veterans Education; Disenrollment From the Post-Vietnam Era Veterans' Educational Assistance Program Following Election To Receive Other Benefits

AGENCY: Department of Defense and Department of Veterans Affairs.

ACTION: Proposed regulations.

SUMMARY: The Department of Veterans Affairs Nurse Pay Act of 1990 requires VA (Department of Veterans Affairs) to make payments to certain military officers and former officers who were commissioned in 1977 and 1978. The law provides that if any of these officers or former officers participated in VEAP (Post-Vietnam Era Veterans' Educational Assistance Program), they must disenroll from that program before receiving those benefits. The National Defense Authorization Act for Fiscal Year 1991 provides additional ways in which an individual may become eligible for the Montgomery GI Bill—Active Duty. One of these permits certain involuntarily separated veterans who ordinarily would be eligible for benefits under the Post-Vietnam Era Veterans' Educational Assistance Program (VEAP) to elect to receive benefits under the Montgomery GI Bill—Active Duty instead. These proposed regulations will acquaint the public with the way in which VA will administer these provisions of law.

DATES: Comments must be received on or before October 13, 1992. Comments will be available for public inspection until October 20, 1992. VA and the Department of Defense intend to make the amendment to that portion of § 21.5058 dealing with those who are involuntarily separated, like the provision of law it implements, retroactively effective on November 5, 1990. VA and the Department of Defense intend to make the amendment to that portion of § 21.5058 dealing with expanded benefits as well as all other regulations in this proposal, like the provisions of law they implement, retroactively effective on August 15, 1990.

ADDRESSES: Send written comments to: Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 170 of the above address between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until October 20, 1992.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, (202) 233-2092.

SUPPLEMENTARY INFORMATION: Section 207 of the Department of Veterans Affairs Nurse Pay Act of 1990 (Pub. L. 101-366) provides that VA make a benefit payment to certain officers and former officers who elect by January 1, 1992, to receive payments. This officer adjustment benefit is to be the equivalent of what they would have received under the Vietnam Era GI Bill had they been eligible for benefits under that program minus what they received under VEAP. The law provides that VEAP participants must disenroll from VEAP in order to get this benefit.

Section 561 of the National Defense Authorization Act for Fiscal Year 1991 (Pub. L. 101-510) contains provisions that will enable additional individuals to become eligible for the Montgomery GI Bill—Active Duty. Under these provisions some involuntarily discharged veterans may elect to receive benefits under the Montgomery GI Bill—Active Duty rather than VEAP. Such an election is irrevocable. Even if a veteran should subsequently return to active duty, he or she could not reenroll in VEAP. The proposed amendments to these regulations are designed to implement these sections of these acts.

The proposed amendments generally follow the provisions of the statutes. However, Public Law 101-366 does not specifically state when the election to receive an officer adjustment benefit is to be effective. Since this is necessary for a uniform administration of the law, this is addressed in the proposed amendment to § 21.5058(b).

There are four convenient points at which an election to receive an officer adjustment benefit could become effective. These are the date the veteran applied for the benefit; the date VA received the application; the date VA authorized the payment of the benefit; or the date the veteran negotiated a benefit check. The departments have chosen the last alternative.

To make a knowledgeable decision concerning whether VEAP is a better benefit than the officer adjustment benefit, a veteran would have to have a detailed knowledge of the rates payable under the Vietnam Era GI Bill. The average person would not have this knowledge. Since the individual would not ordinarily acquire this knowledge before each of the first three alternatives, the departments discarded them. However, by the time the benefit check was sent to the veteran, his or her claim would have been reviewed by a VA employee, and the individual would have received a letter either with the check or before receiving it. The letter would have informed him of the details of the election, so that his or her negotiation of the benefit check would be done in the full knowledge of the consequences of doing so. Therefore, the departments have chosen the last alternative.

Presently, § 21.5064(b)(2)(i) contains a provision which governs refunds when a veteran or servicemember elects to receive benefits under ch. 34, title 38, U.S. Code rather than under VEAP. That provision is deleted because benefits are no longer payable under that chapter.

The Department of Veterans Affairs and the Department of Defense have determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The

regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs and the Secretary of Defense have certified that these amended regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the amended regulations directly affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

VA and Department of Defense find that good cause exists for making the amendment to § 21.5058 dealing with those who are involuntarily separated, like the provision of law it implements, retroactively effective on November 5, 1990. VA and Department of Defense find that good cause exists for making the amendment to § 21.5058 as well as all other regulations dealing with the officer adjustment benefit, like the provision of law it implements, retroactively effective on August 15, 1990. These regulations are intended to achieve a benefit for individuals. The maximum benefits intended in the legislation will be achieved through prompt implementation. Hence, a delayed effective date would be contrary to statutory design, would complicate administration of the provision of law, and might result in the denial of a benefit to someone who is entitled to it.

The Catalog of Federal Domestic Assistance number for the program affected by this proposal is 64.120.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation

Approved: May 21, 1992.

Edward J. Derwinski,

Secretary of Veterans Affairs.

Approved: July 8, 1992.

Minter Alexander,

Lieutenant General, USAF, Deputy Assistant Secretary, (Military Manpower & Personnel Policy).

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart G—Post-Vietnam Era Veterans' Educational Assistance Under 38 U.S.C. Chapter 32

For the reasons set out in the preamble, 38 CFR part 21, subpart G is amended as set forth below.

1. The authority citation for part 21, subpart G continues to read as follows:

Authority: 38 U.S.C. 501(a)

2. In § 21.5058, paragraph (b) and its authority citation are revised to read as follows:

§ 21.5058 Resumption of participation.

* * * * *

(b) A person who has disenrolled in order to receive educational assistance allowance under 38 U.S.C., chapter 34 may not reenroll if he or she has negotiated a check under that chapter for pursuit of a program of education. A person who has disenrolled in order to receive an officer adjustment benefit payable under § 21.4703 of this part may not reenroll if he or she has negotiated a check representing benefits payable under that section. A person who has disenrolled in order to receive educational assistance under the Montgomery GI Bill—Active Duty, as provided in § 21.7045(b) of this part, may not reenroll. Any other person who has disenrolled may reenroll, but will have to qualify again for minimum participation as described in § 21.5052(a).

(Authority: 38 U.S.C. 3008A, 3202(1), 3222, Pub. L. 101–366, sec. 207; Pub. L. 98–223, Pub. L. 101–510) (Aug. 15, 1990) (Nov. 5, 1990)

* * * * *

3. In § 21.5064, paragraphs (b)(1) and (b)(2)(i) and the authority citation for paragraph (b)(2) are revised and an authority citation is added for paragraph (b)(1) to read as follows:

§ 21.5064 Refund upon disenrollment.

* * * * *

(b) * * *

(1) If an individual voluntarily disenrolls from the program before discharge or release from active duty, the time limit for providing the serviceperson with a refund will be determined as follows.

(i) If a serviceperson decides to disenroll in order to receive an officer adjustment benefit payable under § 21.4703 of this part, VA will refund the unused contributions not later than 60 days after receiving the serviceperson's valid election for the benefit.

(ii) In all other cases VA will refund the money on—

(A) The date of the participant's discharge or release from active duty; or

(B) Within 60 days of the receipt of notice by VA of the individual's discharge or disenrollment; or

(C) Any earlier date in an instance of hardship or for other good reasons.

(Authority: 38 U.S.C. 3223, 3232, Pub. L. 101–366, sec. 207) (Aug. 15, 1990)

(2) * * *

(i) If a veteran disenrolls by electing to receive an officer adjustment benefit payable under § 21.4703 of this part rather than receiving educational assistance under 38 U.S.C., chapter 32, VA shall refund his or her contributions not later than 60 days after receiving a valid election for the officer adjustment benefit.

* * * * *

(Authority: 38 U.S.C. 3202, 3223, 3232, Pub. L. 101–366, sec. 207)

* * * * *

[FR Doc. 92–21691 Filed 9–9–92; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–4203–2]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of intent to delete Metal Working Shop site from the National Priorities List; Request for comments.

SUMMARY: The U.S. Environmental Protection Agency (EPA), Region V, announces its intent to delete the Metal Working Shop Sité from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. The Medal Working Shop Site meets the NPL deletion criterion set forth in the NCP.

Specifically, the Site Remedial Investigation Report indicates that the risk at the Site poses no significant threat to public health and the environment. Therefore EPA, in consultation with the State of Michigan, has determined that no cleanup is appropriate for the Metal Working Shop Site. The purpose of this notice is to request public comment on the intent of EPA to delete the Metal Working Shop Site from the NPL.

DATES: Comments concerning the proposed deletion of the site from the NPL may be submitted October 13, 1992.

ADDRESSES: Comments may be mailed to Samuel F. Borries (HSRW 6J), Remedial Project Manager, Office of Superfund, U.S. Environmental Protection Agency, Region V, 77 West Jackson Blvd., Chicago, IL. 60604. Comprehensive information on this site is available at the local repository located at: Almira Township Office, 7276 Sweet Lake Road, Box 100, Lake Ann, MI, 49650, (616) 275-6348. Requests for comprehensive copies of documents should be directed formally to the appropriate Regional Docket Office: Janet Pfundheller, Waste Management Docket Control Officer, (5H-7J), Region V, U.S. EPA, 77 W. Jackson Boulevard, Chicago, IL. 60604, (312) 353-5821.

FOR FURTHER INFORMATION CONTACT: Samuel F. Borries (HSRW-6J), Remedial Project Manager, Office of Superfund, U.S. Environmental Protection Agency, Region V, 77 West Jackson Boulevard, Chicago, IL. 60604, (312) 353-3156; or Philip Schutte (P-19J), Office of Public Affairs, U.S. EPA, Region V, 77 West Jackson Boulevard, Chicago, IL. 60604, (312) 353-6685.

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I. Introduction

The United States Environmental Protection Agency (EPA) announces its intent to delete the Metal Working Shop site, Lake Ann, Michigan from the National Priorities List (NPL), which constitutes appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR part 300 (NCP), and requests comments on this deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. The Metal Working Shop was proposed for inclusion of the NPL on January 22, 1987, and became final on the NPL February 21, 1990. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Response Trust Fund (FUND). Pursuant to § 300.425(e)(3) of the NCP any site deleted from the NPL remains eligible for further Fund-financed remedial action should future conditions at the site warrant such action.

The EPA will accept comments on this Site for thirty days after publication of this notice in the **Federal Register**.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that the EPA is using for this action. Section IV discusses the history of the Site and how the Site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with § 300.425(e) of the NCP, sites may be deleted from or recategorized on the NPL where no further response is appropriate. In making this determination to delete a site from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria has been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Section 300.425(e)(2) of the NCP states that no site shall be deleted from the NPL until the state in which the site is located has concurred on the proposed deletion.

Deletion of a site from the NPL does not preclude eligibility for subsequent Fund-Financed actions if future conditions warrant such actions. Section 300.425(e)(3) states that whenever there is a significant release from a site deleted from the NPL, the site shall be restored to the NPL without application of the hazard ranking system (HRS).

Deletion of sites from the NPL does not in itself create, alter, or revoke any individual's rights or obligations. Furthermore, deletion from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist in Agency management.

III. Deletion Procedures

Upon determination that at least one of the criteria described in § 300.425(e)(1) of the NCP has been met, EPA may formally begin deletion procedures. The first steps are the preparation of a Closeout Report or No Action Record of Decision and the establishment of the local information repository and the Regional deletion docket. These actions have been completed. Please note that for this No-Action Site the Record of Decision represents the Closeout Report. This Federal Register notice, and a concurrent notice in the local newspaper in the vicinity of the Site, announce the initiation of a 30 day public comment period. The public is asked to comment on EPA's intention to delete the Site from the NPL; all critical documents needed to evaluate EPA's decision are generally included in the information repository and deletion docket.

Upon completion of the public comment period, the EPA Regional Office will prepare a Responsiveness Summary to evaluate and address concerns which were raised. The public is welcome to contact the EPA Regional Office to obtain a copy of this Responsiveness Summary, when available. If EPA still determines that deletion from the NPL is appropriate, a final notice of deletion will be published in the Federal Register.

IV. Basis for Intended Site Deletion

The following summary provides the Agency's rationale for intending to delete the Metal Working Shop Site, Lake Ann, Michigan from the NPL.

The Metal Working Shop (MWS) Site, occupying approximately 2.77 acres, is located in central Almira Township, Benzie County, Michigan, approximately 12 miles west of Traverse City Michigan. Metal Working Shop is located at 6892 N. Reynolds Road between Lake View and Lake Ann along the northwest corporate boundary of Lake Ann Village.

The surrounding land use is characterized as residential, recreational, agriculture, and timberland. Several summer resorts are located in the area. Both Lake View and Lake Ann have summer resorts located on their shores. Depth to ground water beneath the site is approximately 60 feet. The aquifer consists of glacial sands and gravel. Surrounding residents are currently using private well systems for drinking water.

The Site has been used for a variety of metal finishing and tool and die operations over the past 26 years. The

basis of environmental concern dates back to the period of October 1975 to February 1977, when the operator conducted metal finishing operations using an iron phosphate treatment process. The process consisted of five steps, each performed in a separate tank approximately three feet on a side with a capacity of approximately 200 gallons. First, the metal parts were cleaned in a heated sodium hydroxide solution. Following a rinsing step in ordinary water, the parts were treated in a heated hydrochloric acid solution containing iron phosphate. After a second rinse in ordinary water, the parts were dipped in a bath containing a water-soluble oil. It is reported that water from the two rinse tanks only, was then disposed of on the ground surface at the Site. The largest and current operator, Lake Ann Manufacturing, occupied the facility in 1983 and has assembled mechanical shaft seals for pumps and compressors since that time.

The Site was evaluated by the EPA in December 1984. EPA identified three suspected areas of disposal, an alleged disposal area, an alternate disposal area, and the septic system. No samples were collected at that time but historical information was gathered during the Site investigation. The Site was proposed to be placed on the National Priorities List (NPL) in January 1987 on the basis of its potential for causing groundwater contamination. The Site became final on the NPL in February 1990.

A soil and ground water investigation of the site was performed by a private contractor for the current operator in May 1987. This investigation included the collection of several soil samples and the installation of three ground water monitoring wells. Michigan Department of Natural Resources (MDNR) split samples with the contractor at the time of the investigation. Evaluated collectively, the analytical data from the May 1987 investigation did not indicate the presence of soil or ground water contamination; neither, however, did it prove the absence of potentially present contamination based on historical dumping. No enforcement or removal actions have been conducted at the MWS site.

Field activities during the remedial investigation began in April 1991. These activities included a ground penetrating radar survey, evaluations and sampling of existing monitoring wells, residential well sampling, surface and sub-surface soil sampling, surface water and sediment sampling, permeability test of the aquifer, and natural gamma logging of the monitoring wells. U.S. EPA completed the remedial investigation report in February 1992.

Ten residential wells, located on all sides of the Site, and three Site monitoring wells were sampled during the remedial investigation. No residential wells indicated the presence of significant Site contamination above background levels. Likewise, Site monitoring wells did not reveal the presence of significant contamination above background levels.

A baseline risk assessment of the Site was prepared as part of the remedial investigation. It concluded that the Site does not pose a threat to public health or the environment under current conditions because of the absence of human exposure to significant levels of hazardous substances. No significant environmental and human exposure pathways were identified during the risk assessment process.

On June 30, 1992, a Record of Decision (ROD) was signed which approved the "No Further Action" remedy. The State of Michigan concurred with the ROD.

Community Relations activities during and after the remedial investigation included discussing site concerns with residents and local officials, public meetings, and the publication of a factsheet on the RI and Proposed Plan.

The dates of the public comment period, the date and location of a public hearing and a summary of the Proposed Plan were announced through a legal notice in a local newspaper.

The Metal Working Shop Proposed Plan, which includes a description of the investigation findings and conclusions, was mailed to those on the community relations mailing list and was available along with the Administrative Record at the information repository at the Almira Township Office in Lake Ann.

The Proposed Plan public hearing was held at the Lake Ann Township Hall, Maple Street, Village of Lake Ann, on May 28, 1992 to discuss the RI and the preferred alternative. Nine people were at the hearing. Their concerns were addressed in the Community Relations Responsiveness Summary.

All completion requirements for this Site have been met as specified in OSWER Directive 9320.2-3A. Sampling has verified that ground water and Site soils are free of contamination. Therefore, the ROD of June 30, 1992 recommended "No Further Action". Because this remedy will not result in hazardous substances remaining on-site above health-based levels, the five-year review will not apply to this action.

Valdas V. Adamkus,

Regional Administrator, U.S. EPA, Region V.

[FR Doc. 92-21761 Filed 9-9-92; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 218

[FRA Docket Number RSOR-11, Notice No. 1]

RIN 2130—AA77

Railroad Operating Practices; Protection of Utility Employees; Notice of Proposed Rulemaking

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: FRA regulations prescribe minimum requirements for certain railroad operating rules and practices, including blue signal protection of railroad employees engaged in the inspection, testing, repair, and servicing of rolling equipment. Such activities may require employees to work on, under, or between such equipment and subject them to the danger of personal injury posed by any movement of such equipment. Train and yard crews are excluded from blue signal protection, unless assigned to perform such work on railroad rolling equipment that is not part of the train or yard movement they have been called to operate. FRA proposes to restate the exclusionary language to accommodate augmentation of a crew by using a "utility" employee. Alternative safety procedures are proposed to prevent injury.

DATES: (1) Written comments must be received on or before October 9, 1992. Comments received after that date will be considered to the extent practicable.

(2) Public hearing: A public hearing will be held at 10 a.m. on October 16, 1992. Any person who desires to make an oral statement at the hearing is requested to notify the Docket Clerk at least five working days prior to the hearing, by telephone or mail, and to submit three copies of the oral statement that he or she intends to make at the hearing.

ADDRESSES: (1) Written Comments: Address comments to the Docket Clerk, Office of Chief Counsel, RCC-30, Federal Railroad Administration, Department of Transportation, 400

Seventh Street, SW., room 8201, Washington, DC 20590. Comments should identify the docket number and five copies should be submitted. Persons wishing to receive confirmation of the receipt of their comments should include a self-addressed stamped postcard. The Docket Section is located in room 8201 of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Public dockets may be reviewed between the hours of 8:30 a.m. and 5 p.m., Monday through Friday, except holidays.

(2) Public hearing: A public hearing will be held at room 2230, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Persons making statements at the hearing should notify the Docket Clerk by telephone (202-366-0628) or by writing to the Docket Clerk at the address above, and provide five copies of their remarks at the hearing.

FOR FURTHER INFORMATION CONTACT: Edward Pritchard, Office of Safety, FRA, RRS-11, Washington, DC 20590 (telephone (202) 366-9252), or Sarah J. Landise, Office of Chief Counsel, FRA, Kansas City, Missouri 64106 (telephone (816) 426-2497).

SUPPLEMENTARY INFORMATION:

Background

The "blue signal" regulation (49 CFR part 218, subpart B) was promulgated to "prescribe minimum requirements for the protection of railroad employees engaged in the inspection, testing, repair, and servicing of rolling equipment whose activities require them to work on, under, or between such equipment and subjects them to the danger of personal injury posed by any movement of such equipment." 49 CFR 218.21. Examples of activities requiring blue signal protection include, but are not limited to, the following: Breaking or making steam and air hose connections (including connection by coupling irons), connecting or disconnecting electric control cables between equipment, replacing broken coach windows, making repairs beneath the car to blower motors or steam regulators, making electric pantograph inspections, repairing or replacing a rear end marker or telemetry device, and conducting initial terminal air brake tests when employees are required to go on, under, or between rolling equipment.

A person requiring blue signal protection is referred to as a "Workman." 49 CFR 218.5(a). Train and yard crews are excluded from blue signal requirements except when assigned to perform such work on railroad rolling equipment that is not part of the train or yard movement they have been called to operate. This exclusion is based on the rationale that, working together as an operating crew with their assigned engineer in control of the locomotive, the crew members have complete control over any movement of the equipment on which they are working.

Since promulgation of the regulation, the size of train and yard crews has been significantly reduced through the collective bargaining process and increased operating efficiencies. Implementation of the recommendations of Presidential Emergency Board No. 219 ("PEB 219") (see Pub. L. No. 102-29, 1991) is greatly accelerating this process of change. PEB 219 recommendations resulted in referral of train service crew consist issues for resolution on the individual railroad properties, initially through negotiation. Failing agreement, these issues were to be resolved through binding arbitration. Through this and prior processes, crews that once consisted of a locomotive engineer, fireman, conductor, and two trainmen, have in many cases been reduced to a locomotive engineer and conductor only.

Role of the Utility Employee

Both before and after the PEB 219 process, railroads have used utility employees to assist the train or yard crew on a temporary basis. FRA recently performed an internal survey which indicated that at least seven Class I railroads and three regional railroads are experimenting with the use of utility employees to supplement train and yard assignments. This practice involves approximately two hundred employees from the train service ranks at more than sixty-five locations. The following are examples of functions that are being performed by utility employees:

- Operating switches, except by remote control, in yard or terminal areas or at industrial sidings and sending or receiving hand or radio communications with respect to such switching movements;
- Working with the regular train or yard crew to assemble trains from pre-tested and pre-inspected blocks of cars by aligning couplers, coupling air hoses, and assisting switching movements;
- Participating in power brake inspections at initial terminals or intermediate terminals (49 CFR 232.12, 232.13);
- Participating in Freight Car Safety Standards inspections at initial terminals or elsewhere when cars are placed in a train (49 CFR 215.13); and
- Installing, testing, or replacing rear end marking devices (and/or telemetry devices) (see 49 CFR 221.16).

The blue signal regulations have, in the view of the railroads, constituted an impediment to the efficient use of these additional employees. The degree of perceived conflict between the regulatory requirements and efficient utilization of personnel has now reached a critical level. It is therefore appropriate to consider whether there are conditions under which train and yard crews may be temporarily augmented without a diminution of safety.

The Proposed Rule

Existing regulations require extensive blue signal protection where workers other than train and engine crews are required to go on, under, or between moving equipment to perform functions such as inspection, testing, repair, and servicing. It was determined that train and yard crews could safely be excluded from blue signal requirements because the characteristics of their activity provide alternative protection for the crew members. They work as a team and maintain communications with each other. The engineer at the controls of the locomotive is aware of the identify of those working on the train and can therefore prevent undesired movement of the equipment while any crew members are in the zone of danger. The engineer also is in contact with other trains in the vicinity and can prevent unexpected couplings.

Under the present regulation, however, the train and yard crew exclusion does not extend to utility employees. These employees are required to establish full blue signal protection prior to performing any work on, under, or between the equipment. To avoid that necessity, the railroad might instead assign a brakeman to a crew for an entire tour of duty, even though that person's services are only required for a small portion of the duty tour. The railroad is therefore thwarted in its efforts to efficiently deploy its personnel.

In situations where the utility employee is working independently of the crew, the requirement of full blue signal protection is justified, since that employee lacks those characteristics that afford alternative protection. However, when the utility employee actually becomes an integral part of the crew, even temporarily, it is difficult from a safety perspective to justify the different regulatory treatment of that employee from other crew members. FRA believes that the portion of the rule for which no identifiable safety issue exists is unduly restrictive and impedes the railroad industry's efforts to improve

the efficiency of its operations. Accordingly, FRA proposes to amend the blue signal regulations to allow a utility employee to become member of a train or yard crew (and thus entitled to the exclusion from blue signal requirements) under circumstances where safety will not be compromised.

The proposed rule seeks to define the appropriate safeguards under which a utility employee may safely function as a "part of the train or yard movement" for a limited period. This proposal is based on the premise that the utility employee should be able to work under essentially the same conditions as other yard or train crew members of the crew with which that employee is associated, provided appropriate communication is established and maintained. It remains essential that any employee who is not assigned to a train or yard crew, but who inspects, tests, repairs, or services rolling equipment and is on, under, or between that equipment, continues to be a "workman" (or "worker," as provided under the gender-neutral amendment that would be made by this proposal) requiring blue signal protection.

FRA has traditionally viewed the blue signal requirements as addressing functional rather than craft distinctions. For instance, if supervisors perform duties that constitute inspecting, testing, repairing, or servicing, and that cause them to go on, under, or between the equipment, they are not excused from blue signal requirements by virtue of their supervisory occupation. However, it must be noted that Congress, in excluding train and yard crews from blue signal requirements, took into consideration the types of duties traditionally performed by those crews. FRA is concerned that, should this proposed rule be adopted, some might attempt a material expansion of the categories of tasks performed by train and yard crews without blue signal protection in a way that would decrease the overall level of safety provided, particularly with respect to repair and servicing activities. FRA therefore requests comments regarding the effect this rule could have on the dutues assigned to the train or yard crew, and whether an expansion of those duties would cause a diminution of safety.

Moreover, FRA is aware that this rulemaking has the potential to affect a railroad's decisions regarding the class or craft of employees performing the crew's duties. FRA generally has no interest in which craft of employees performs work as long as it is done competently. However, FRA does recognize that the quality of inspection and testing may vary depending on the degree of qualification of the subject employees. This issue is most dramatically illustrated by reference to appendix D of 49 CFR part 215, which identifies for pre-departure inspection a subset of extremely hazardous and patent defects operating employees are expected to identify when performing inspections. Although railroads are not excused from compliance with the pre-departure inspection rule by virtue of their decisions with respect to placement of mechanical forces to perform more detailed inspections, there can be little doubt that it is in the interest of safety to encourage reasonable deployment of qualified personnel who can be expected to identify critical defects not included on the appendix D "short list." Comment is thus requested on whether permitting utility employees to work without blue signal protection is likely to favor use of these individuals to the detriment of adequate deployment of qualified mechanical employees. Comment is also requested on whether this is the proper context within which to address that concern.

Section-by-Section Analysis

Section 218.5 (Definitions) would be amended to remove the paragraph designations, reorder the existing definitions alphabetically, and add new definitions of "controlling locomotive," "utility employee," and "worker" (in lieu of "workman"). Under the proposed definition, a "utility employee" would be an individual assigned to and functioning as a part of a train or yard crew who is personally subject to both the railroad's operating rules and the Hours of Service Act. These definitional elements are necessary to ensure that the utility employee understands and can function safely in the operating environment.

If a utility employee is to be considered a temporary member of a train or yard crew, that individual is engaging in activities governed by the railroad's operating rules and must understand those rules. Section 217.11 requires that railroads periodically instruct employees on the railroad's operating rules in accordance with its program. FRA would expect a railroad to amend its present program if necessary to ensure that utility employees are thoroughly trained in applicable operating rules.

In addition, § 217.9 requires that railroads periodically conduct operational tests and inspections (efficiency tests) to determine the extent of compliance with its code of operating rules, timetables, and timetable special instructions in accordance with its program. FRA would expect a railroad to amend its present program if necessary to ensure that utility employees are included in the required testing and inspections.

A utility employee who is assigned to and functioning as a part of a train or yard crew is considered to be engaged in or connected with the movement of a train for hours of service purposes under section 2 of the Hours of Service Act. The "commingled service" provision would of course be applicable if the utility employees engage in any other service for the railroad.

Because utility employees may be performing both covered and non-covered service during a duty tour, it is anticipated that the utility employee would complete an individual hours of duty record. This generates concern that enforcement of this proposed rule would be difficult because FRA does not now require that an hours of duty record include the train or yard designation.

FRA therefore invites comments on the feasibility of a utility employee's identifying the train or yard designation he is assigned to and the beginning and ending times spent working as a temporary crew member. Another option would be for the regularly assigned ranking crew member of the train or yard assignment to record the name of the utility employee and the beginning and ending times that he spent working as a temporary member of the crew.

Section 218.24 (Utility Employee), a new provision proposed to be added to the existing part, would define the circumstances under which the utility employee would be permitted to function without the benefit of the protection provided by the blue signal regulations. It is not anticipated that this section will affect activity within locomotive servicing or car shop areas. However, FRA requests comments as to whether latitude should be extended to such areas and on what basis. FRA reserves the right to do so if comments warrant.

It is essential that a utility employee be assigned to only one crew at a time. This is necessary to prevent confusion as to the location and duties of that employee, and to ensure that the employee is, in reality, a member of the crew to which he or she is assigned for the duration of the assignment. For example, if an employee is assigned as a train crew member to one train for an entire tour of duty, that employee may not, while awaiting departure from the yard, be temporarily assigned to a second train crew to help them prepare to depart. On the other hand, a member

of an inbound train crew at a crew change point, whose assignment to the train is essentially completed, could then be assigned as a utility employee to the outbound crew to assist in preparation for departure of the train (assuming, of course, that hours of service limitations are not implicated). Furthermore, an employee could not simultaneously perform duties on two different trains. For the exclusion to apply, a utility employee would have to be virtually indistinguishable, in duties and location, from any other train crew member.

Communication and coordination among the entire crew, including the utility employee, would be crucial to the safety of the utility employee. Upon being assigned to a train or yard crew and arriving at the place where work is to be performed, the utility employee would have to establish personal contact with the locomotive engineer and become fully conversant about the tasks to be performed while assigned as a member of that crew and until released by the person in charge. While the assignment of a utility employee to a train or yard crew could be made by oral or written communication initiated by railroad supervision, the utility employee would be required to establish personal contact with the locomotive engineer by either a face-to-face discussion or telephone or radio communication. The engineer would be required to fully inform all crew members about the addition of the utility employee; and communication would have to be established in the normal manner with respect to the activities to be performed. Communication of the identity of the utility employee is necessary to prevent confusion, particularly in the event more than one utility employee is assigned to a particular crew. The release of the utility employee would have to be accomplished by the same process by which all crew members are fully informed, and may only occur after the utility employee has not only ceased work, but is no longer on, under, or between the equipment. If these procedures were not strictly followed, the potential for misunderstanding and failure to properly account for all employees within the zone of danger would be unacceptably high. When fulfilling the proposed communication requirements by radio, strict adherence to proper procedures under 49 CFR part 220 is essential.

FRA does not anticipate that a railroad would need to assign more than one or two utility employees to a particular crew. However, the level of safety provided by the above communication requirements might be compromised in some circumstances if several utility employees were assigned to a crew. As a number of utility employees increases, the ability of the locomotive engineer to monitor the location and activity of each crew member could diminish. FRA therefore invites comments on whether the establishment of a maximum number of utility employees assigned to a particular train is necessary or warranted.

The presence and vigilance of the engineer at the controls (or, at the very least, in the cab) of the controlling locomotive would also be imperative. The presence of the engineer at the controls was a central factor that led Congress initially to decide that train and yard crews could be safely excluded from blue signal protection. Not only can the engineer, by his presence, prevent another employee from gaining control of and moving the equipment, but he or she can further guard against any failure of the equipment (i.e., the air brakes) that may lead to unintended and unexpected movement of the equipment and can also guard against dangers posed by oncoming equipment. Should the engineer leave the controls of the locomotive, that protection is lost. Notwithstanding these views, FRA is willing to entertain comments regarding alternative protection that would provide a level of safety equivalent to that provided by the continuous presence of the engineer in the cab.

It necessarily follows from the requirement that the engineer remain at the controls of the locomotive, that the locomotive also must be coupled to the rolling equipment on which the work is being performed by the crew. If the locomotive is not attached, nothing protects that equipment from unexpected movement. Accordingly, the exclusion for train and yard crews is only applicable when that crew is working on a train, which is defined for the purpose of subpart B of 49 CFR part 218 as one or more locomotives coupled, with or without cars. An exception to this is preparation of a car for immediate coupling.

For example, if a train will be made up of two blocks of cars on separate tracks, a crew member (including a utility employee) would be permitted to perform work on the first block of cars only after the locomotive has been attached. The crew member may not perform work on the second block of cars (other than to prepare for an immediate coupling) until the train is completely made up.

There may be limited circumstances where crew members have an equivalent level of protection against unintended movement of the equipment even though the locomotive is not coupled to the rolling equipment upon which work is being performed. For example, a crew assembling a train at an industry siding where no other locomotives or rolling equipment are present is in no practical danger of unexpected coupling. FRA invites comments on whether in this or other circumstances crew members may be assured of an equivalent level of protection and therefore be permitted to perform work on rolling equipment without a locomotive coupled to that equipment.

FRA is also concerned that protection provided for one-person assignments (i.e., hostlers or other unaccompanied engineers) be consistent with safety and efficiency. FRA specifically invites comments on the circumstances under which these engineers acting along might be permitted to perform functions outside of the area under the control of mechanical forces without complete blue signal protection as provided under §§ 218.25 (main track) or 218.27 (other than main track).

Regulatory Impact Analysis

E.O. 12291 and DOT Regulatory Policies and Procedures

This proposed rule has been evaluated in accordance with existing policies and procedures and is considered to be major under Executive Order 12291 and significant under DOT regulatory policies and procedures (44 FR 11034, February 26, 1979). FRA has prepared and placed in the rulemaking docket a regulatory evaluation addressing the economic impact of this rule. FRA's initial estimate, based on preliminary data, is that the proposed rule will yield a total of approximately $600 million in discounted benefits over 10 years. The potential benefits are about $183 million a year. FRA expects to realize only 30 percent of that amount in the first year and 75 percent of the potential annual benefit in the tenth year. This estimate is preliminary and will be adjusted as FRA refines its data. A copy of the regulatory evaluation may be inspected and copied in room 8201, 400 Seventh Street, SW., Washington, DC 20590.

Economic Analysis

FRA estimates that the proposed rule could create as much as $183 million per

year in benefits, but, because of institutional constraints, the proposed rule will create about $600 million in discounted benefits over ten years. It appears that many of the railroads are not in a position to use utility employees and that many others will be limited in using utility employees, either by structural factors or by labor agreements. FRA estimates that only about 30 percent of the potential benefit will be available in the first year, but that more of the potential benefit will be realized each year, until 75 percent of the benefit is realized in the tenth year. The delay in realizing the potential benefits of utility employees will be accompanied by a corresponding delay in incurring the few costs associated with this rulemaking.

The main benefit to society is that railroads will operate more efficiently. This proposal will reduce the time needed to place and remove end-of-train markers, which will create most of the benefit of this rule. FRA estimates that this rule would save approximately $100 million per year in delay costs if all of the railroads were in a position to take advantage of it. The railroads will not have to employ a brakeman for an entire shift if it is only necessary to have the brakeman for yard operations. If will be much less costly to hire a utility employee to help switch cars than to attach an additional crew member. The savings will be proportional to the extent that labor agreements permit the railroads to take advantage of the more flexible safety rules. This would yield an estimated savings of $100 million per year. If one-third of the potential savings is an overlap with the expected savings from reduced train delay, then the estimated potential savings from reduced labor costs would be $100 million. The combined potential savings would be approximately $200 million per year.

If a railroad were not in a position to take advantage of the increased flexibility offered by FRA, the benefits and costs of this rule would be zero, as far as that railroad is directly concerned. Of course, if other railroads that were able to take advantage of this rule were competing more effectively with trucks, then more freight would move by rail, increasing the general level of prosperity for all railroads.

FRA believes that the communication provisions of this proposed rule will provide a level of safety at least as great as the current rules provide. There is no equivalent requirement for train crews to maintain communications under the current rules. Therefore, the utility workers will be at least as safe as brakemen are under current rules. FRA does not believe this rule will induce any safety costs.

The proposed rule says that the utility employees must join the crew either by direct contact or by establishing and maintaining communication. The most conservative approach to analyzing the economics of the proposal would be to assume that the railroads use radios to establish communications, since radio would provide the railroads with the greatest flexibility, but would also require the largest investment in equipment. This analysis is based on the assumption that railroads will use radios to establish communication. FRA estimates that railroads will purchase radio equipment costing $130,000 in discounted costs over ten years. This cost is not imposed by the rule, but railroads will make the expenditure in order to take advantage of the proposed rule.

In summary, FRA believes that the proposed rule will provide the same level of safety as the current rules, but will lower the cost of railroad operations by permitting railroads to utilize flexibility contained in collective bargaining agreements. FRA solicits comments on the benefits and costs of this proposal.

Regulatory Flexibility Act

FRA certifies that this rule may have a significant impact on a substantial number of small entities. FRA has prepared and placed in the rulemaking docket a regulatory flexibility analysis.

Paperwork Reduction Act

There are no new information collection requirements in these proposed FRA regulations. Consequently, no estimate of a public reporting burden is required.

Environmental Impact

These rule revisions will not have any identifiable environmental impact.

Federalism Implications

These rule revisions should not have substantial effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

Request for Comments

FRA proposes to amend part 218 of title 49, Code of Federal Regulations, as set forth below, and to make any conforming changes to related parts that may be appropriate. FRA solicits comments on all aspects of the proposed rule and the analysis advanced in explanation of the proposal, whether through written submissions, participation in the public hearing, or both. FRA may make changes in the final rules based on comments received in response to this notice.

List of Subjects in 49 CFR Part 218

Occupational safety and health, Penalties, Railroad employees, Railroads, Reporting and recordkeeping requirements.

In consideration of the foregoing, FRA proposes to amend part 218 of title 49, Code of Federal Regulations as follows:

PART 218—[AMENDED]

1. The authority citation for part 218 shall continue to read as follows:

Authority: 45 U.S.C. 431 and 438, as amended; Pub. L. 100-342; and 49 CFR 1.49(m).

2. Amend the part by removing the term "workman" wherever it appears and by adding in lieu thereof "worker," and by removing the term "workmen" wherever it appears and by adding in lieu thereof "workers."

3. Revise § 218.5 to read as follows:

§ 218.5 Definitions.

Absolute block means a block in which no train is permitted to enter while it is occupied by another train.

Blue signal means a clearly distinguishable blue flag or blue light by day and a blue light at night. When attached to the operating controls of a locomotive, it need not be lighted if the inside of the cab area of the locomotive is sufficiently lighted so as to make the blue signal clearly distinguishable.

Camp car means any on-track vehicle, including outfit, camp, or bunk cars or modular homes mounted on flat cars used to house rail employees. It does not include wreck trains.

Car shop repair track area means one or more tracks within an area in which the testing, servicing, repair, inspection, or rebuilding of railroad rolling equipment is under the exclusive control of mechanical department personnel.

Controlling locomotive means any locomotive, as defined in this section, with the exception of a locomotive in a consist that has its propulsion system, sanders, dynamic brakes, and power brake systems arranged to respond only to the controls of another locomotive in that consist.

Effective locking device when used in relation to a manually operated switch or a derail means one which is:

(1) Vandal resistant;
(2) Tamper resistant; and
(3) Capable of being locked and unlocked only by the class, craft or group of employees for whom the protection is being provided.

Flagman's signals means a red flag by day and a while light at night, and a specified number of torpedoes and fusees as prescribed in the railroad's operating rules.

Group of workers means two or more workers of the same or different crafts assigned to work together as a unit under a common authority and who are in communication with each other while the work is being done.

Interlocking limits means the tracks between the opposing home signals of an interlocking.

Locomotive means a self-propelled unit of equipment designed for moving other equipment in revenue service including a self-propelled unit designed to carry freight or passenger traffic, or both, and may consist of one or more units operated from a single control.

Locomotive servicing track area means one or more tracks, within an area in which the testing, servicing, repair, inspection, or rebuilding of locomotives is under the exclusive control of mechanical department personnel.

Main track means a track, other than an auxiliary track, extending through yards or between stations, upon which trains are operated by timetable or train order or both, or the use of which is governed by a signal system.

Rolling equipment includes locomotives, railroad cars, and one or more locomotives coupled to one or more cars.

Switch providing access means a switch which if traversed by rolling equipment could permit that rolling equipment to couple to the equipment being protected.

Utility employee means an employee assigned to and functioning as a temporary member of a train or yard crew (subject to the conditions set forth in § 218.24 of this chapter), who is subject to the railroad operating rules, including the programs of instruction and operational tests and inspections required in §§ 217.9 and 217.11 of this chapter, whose service is subject to the Hours of Service Act, and whose service is required to be recorded by part 228 of this chapter.

Worker means any railroad employee assigned to inspect, test, repair, or service railroad rolling equipment, or their components, including brake systems. Members of train and yard crews are excluded except when assigned such work on railroad rolling equipment that is not part of the train or yard movement they have been called to operate (or been assigned to as "utility employees"). Utility employees assigned to and functions as temporary members of a specific train or yard crew (subject to the conditions set forth in § 218.24 of this chapter), are excluded except when assigned such work on railroad rolling equipment that is not part of the train to which they have been assigned.

Note: As used in the definition, "worker". Servicing does not include supplying cabooses, locomotives, or passenger cars with items such as ice, drinking water, tools, sanitary supplies, stationary, or flagging equipment.

Testing does not include (1) visual observations made by an employee positioned on or alongside a caboose, locomotive, or passenger car; or (2) marker inspections made in accordance with the provisions of § 221.16(b) of this chapter.

4. Add a new § 218.24 to read as follows:

§ 218.24 Utility employee.

(a) A utility employee may be assigned to and serve as a member of only one train or yard crew at any given time (i.e., although service with more than one crew may be sequential, concurrent service is not permitted).

(b) A utility employee may be assigned to and serve as a member of a train or yard crew without the protection otherwise required by this subpart only under the following circumstances:

(1) The train or yard crew is assigned a controlling locomotive that is under the actual control of the assigned locomotive engineer as provided in this section.

(2) The locomotive engineer shall be at the controls of the controlling locomotive or, at least, in the cab of the controlling locomotive.

(3) Immediately upon arriving at the location of the train and controlling locomotive and before commencing any duties in association with the crew, the utility employee shall establish communication with the crew by contacting the locomotive engineer. Before each utility employee commences duties with the crew, the locomotive engineer shall provide actual notice to every other member of the crew of the presence and identity of the utility employee. Upon verbal acknowledgement by each other member of the crew that this notification has been received and understood, the utility employee shall be advised by the locomotive engineer that all such notifications have been made. The utility employee is then authorized to work as part of the crew. Thereafter, integral communication shall be maintained in the manner required by the railroad operating rules, such that each member of the working unit understands the duties to be performed and whether those duties will cause any member to go on, under, or between the rolling equipment.

(4) When the utility employee has ceased all work in connection with that train and is no longer on, under, or between the equipment, the utility employee shall so notify the locomotive engineer. The locomotive engineer shall then provide actual notice to every member of the crew that the utility employee is being released from the crew. Each crew member shall verbally acknowledge the notification. The locomotive engineer shall then notify the utility employee that he is released from the train or yard crew.

(5) Communications required by paragraphs (3) and (4) shall be conducted either through direct personal verbal contact, by radio in compliance with part 220 of this chapter, or by telecommunication procedures specified in the railroad's operating rules ensuring equivalent integrity.

(c) Any employee who is not assigned to a train or yard crew or who is not functioning as a member of a crew under the conditions set forth by this section is a worker required to be provided blue signal protection in accordance with §§ 218.23–218.30 of this chapter.

(d) Nothing in this section shall affect the alternative form of protection specified in § 221.16 of this chapter with respect to inspection of marking devices.

Issued in Washington, D.C., on August 27, 1992.

Gilbert E. Carmichael,
Federal Railroad Administration.

[FR Doc. 92-21585 Filed 9-9-92; 8:45 am]
BILLING CODE 4910-06-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1002, 1016, 1312, 1313, and 1314

[Ex Parte No. 508]

Fee Billing and Debt Collection

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this proceeding the Commission is proposing regulations which will codify the Commission's tariff filing fees and insurance service

fee account procedures and policies. The Commission also is proposing regulations which will establish the procedures that the Commission will follow to collect debts which are owed to it by entities or persons who are not employed by the Commission. These debt collection regulations are based upon the Federal Claims Collection Standards (FCCS) issued jointly by the General Accounting Office (GAO) and the U.S. Department of Justice (DOJ) at 4 CFR parts 101–105 and the provisions of the Deficit Reduction Act of 1984 (31 U.S.C. 3702A) that authorize agencies to report discharged debts to the Internal Revenue Service and to effect administrative offset against tax refunds due to debtors. The Commission also is codifying its procedures for handling returned checks and adopting a new fee for handling such matters. These procedures will enable the Commission to improve its collection of debts.

In order to facilitate data entry for the tariff filing fee collection system, these proposed regulations provide a standard format for information submitted in tariff and contract transmittal letters.

DATES: Comments are due October 12, 1992.

ADDRESSES: An original and 15 copies of comments, referring to Ex Parte No. 508, should be submitted to: Office of the Secretary, Case Control Branch, Room 1324, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Kathleen M. King, (202) 927–5493 (TDD for hearing impaired: (202) 927–5721).

SUPPLEMENTARY INFORMATION:

Background

In 1984 the Commission adopted a major revision of the Commission's user fee program in Regulations Governing Fees for Service, 1 ICC2d 61, 90 (1984). One of the new fees introduced in the revised user fee schedule was a fee for the filing of tariffs, supplements, and contracts. Since a substantial number of tariffs are filed daily, the Commission developed a tariff fee account system to facilitate collection of those fees. Previously in Motor Carrier and Freight Forwarder Insurance Procedures and Minimum Amounts of Liability, 133 M.C.C. 273, 276–277 (1983), the Commission established a fee billing system for insurance filings. However, the Commission did not formally adopt regulations pertaining to either billing procedure.

In this proceeding the Commission is proposing regulations which codify the Commission's procedures for establishing and maintaining these billing accounts. These proposed regulations also implement the government-wide debt collection procedures of the Federal Claims Collection Standards (FCCS), which are issued jointly by the GAO and DOJ and the provisions of the Deficit Reduction Act of 1984 (31 U.S.C. 3702A) which authorize agencies to report discharged debts to the Internal Revenue Service (IRS) and which enable agencies to seek administrative offset of claims against tax refunds due to persons who owe debts to the agency.

Billing Procedures

The Commission is proposing to codify its tariff fee and insurance service billing terms and procedures in 49 CFR 1002.2. These proposed regulation provide that:

(1) Each account will have a specific billing date within a month;

(2) The billing date will be the date on which the bill is prepared or printed;

(3) A bill for each account that had activity during a billing cycle, which is the period between the billing date in one month and the billing date in the next month, will be sent within 5 days of the billing date each month;

(4) Payment will be due 20 days from the billing date;

(5) Payment received before the next billing date will be applied to the account; and

(6) Interest will accrue from the date on which the initial invoice is mailed at the current Treasury rate, prorated over the number of days in the billing cycle on all unpaid principal outstanding during the billing cycle.

The proposed regulations also add a requirement that an account holder, who files bankruptcy or is the subject of an involuntary bankruptcy proceeding, must notify the Commission of the filing of the bankruptcy petition. This is necessary so that the Commission will be able to suspend all collection activities against a bankrupt as required under 11 U.S.C. 362.

Returned Check Policy and Fees

The Commission also is proposing to codify its returned check policy by adding additional language to 49 CFR 1002.2. That policy provides that if a check submitted to the Commission for a filing fee, other than a tariff filing fee, or service fee is dishonored by a bank or financial institution, the Commission will notify the person who submitted the check that: (1) All work will be suspended on the proceeding until the check is made good; (2) that the replacement fee must be paid by certified or cashier's check or money order; (3) that a returned check charge of $6.00 plus any bank charges incurred by the Commission as a result of the dishonored check must be submitted with the filing fee which is outstanding; and (4) if payment is not made within the time specified by the Commission, the application, proceeding, or filing, other than a tariff filing, will be rejected, dismissed, or denied.

The proposed regulations also provide that a person who repeatedly submits bad checks to the Commission may be required to submit a certified or cashier check, or money order for all future filings.

Debt Collection Procedures

All agencies are required to develop debt collection regulations that are based on the FCCS (4 CFR parts 101–105). The Commission adopted debt collection regulations (49 CFR part 1017) for debts owed to the Commission by Commission employees. In this proceeding the Commission is proposing debt collection regulations in 49 CFR part 1018, which will govern debts owed to the Commission by entities or persons who are not Commission employees. These proposed regulations will enable the Commission to disclose debts to consumer reporting agencies; to use collection agencies to encourage payment of debts owed to the Commission; and to seek administrative offset against other funds, including IRS refunds, that may be owed to the debtor by another government agency.

Sanctions

The FCCS (4 CFR 102.9) encourages agencies to give serious consideration to the suspension or revocation of licenses or other privileges for any inexcusable, prolonged, or repeated failure of a debtor to pay a claim. Accordingly, in proposed 49 CFR 1018.25 the Commission proposes the sanctions for those who fail to pay tariff or insurance bills. These proposed sanctions are: (1) Accounts which are 90 days past due will be frozen; (2) account holders who fail to pay their debts may be suspended or prohibited from filing tariffs or submitting insurance filings; and (3) the ICC certificates, permits, or licenses granted to an account holder may be suspended or revoked if the account holder continues to refuse to pay debts to the Commission.

Before any tariff or insurance filing privilege or certificate, license, or permit is suspended or revoked, the Commission will issue to the account holder an order to show cause why the tariff or insurance filing privilege or any certificate, license, or permit should not be suspended or revoked.

If certificates, permits, or licenses are revoked for nonpayment of filing fees, it will not be possible to use the Commission reinstatement procedures to reactivate such certificates, permits, or licenses. An application with payment of the appropriate fees must be filed with the Commission, and all previous delinquent debts of the debtor must be paid to the Commission before the Commission will consider the new application. Also the Commission reserves the right to refuse to maintain an account which is repeatedly delinquent.

Interest, Penalties, and Administrative Charges

In 49 CFR 1018.30 the Commission proposes regulations which assess interest, penalties, and administrative costs on debt owed to the Commission in accordance with the guidance provided in the FCCS at 4 CFR 102.13. Interest will be charged on all accounts that are not paid timely, and interest will accrue from the date of the billing. The interest rate is based upon the rate of the current value of funds to the United States Treasury (the tax and loan account rate). The current rate of interest is six percent. A penalty charge of six percent a year will be assessed on any portion of a debt that is delinquent for more than 90 days. The Commission also will assess a debtor administrative charges to cover administrative costs incurred as a result of a delinquent debt. these administrative costs may include costs incurred in obtaining a credit report or in using a private debt collector, to the extent they are attributable to the delinquency.

Reporting Discharged Debt to the IRS and Offset Against Tax Refund

In 49 CFR 1018.80–81 the Commission is proposing to adopt procedures to report discharged debt to the IRS and to effect administrative offset against tax refunds due to the debtor under 26 U.S.C. 6402 in accordance with the provisions of the Deficit Reduction Act (31 U.S.C. 3702A).

Standardization of Tariff and Contract Transmittal Letter

The Commission is proposing minor changes in the Commission tariff and contract regulations which will standardize a transmittal letter to facilitate the processing of tariff filing fees. These proposed modifications will be made in 49 CFR 1312.4, 1313.7, and 1314.4.

Implementation Date for New Fee Billing and Collection Regulations

The Commission anticipates that these proposed fee billing and collection regulations will become effective in early 1993. During the first month in which these regulations are effective, all account holders will receive a bill which will state all outstanding charges and specify the payment due date for that account. If accounts are not paid in full by the appropriate date, then interest, penalties, and administrative costs will be assessed as set forth in 49 CFR part 1018.

The Commission's program to collect outstanding debts is ongoing. However, when these proposed regulations become effective, the Commission will use all additional means which these regulations provide to collect its delinquent accounts including referral of accounts to private collection agencies and referral of claims to DOJ for litigation. After these new regulations are in effect, the Commission will review the records of account holders, and where appropriate the Commission will institute proceedings to suspend or revoke certificates, permits, or licenses or filing privileges of those debtors who inexcusably or repeatedly fail or refuse to pay delinquent debts.

Modification of Application to Open an Account for Billing Purposes

Form SE–132, which is submitted to establish a tariff filing or an insurance service fee account, will be updated to reflect the fee and debt collection regulations which are proposed in this proceeding. A copy of the revised form is set forth in Appendix 1 of this notice. Because the responsibilities for the ICC's fee and debt collection program are being transferred to the Commission's Budget and Fiscal Office, the form number will be changed to Form ICC–1032, and the address information on the form will be changed to read: Chief, Budget and Fiscal Office, Interstate Commerce Commission, room 1330, Washington, DC 20423.

The form also will be modified to require an account holder to identify any ICC certificates, licenses, or permits which it holds. The Account and Debt Collection Policy statement on the form will be revised to mirror the debt collection regulations, which are proposed to be adopted in this proceeding, and to reference the proposed requirement that an account holder notify the Commission if it files a petition in bankruptcy or is the subject of a backruptcy proceeding.

This revised form will become effective when final rules are adopted in this proceeding. A current account holder will not be required to file this new application unless the account holder changes its name and/or address.

It is estimated that no additional burden hours per response are required to complete this revised collection of information. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The information collection requirements contained in this proposal will be submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and 5 CFR part 1320. Respondents may direct comments concerning the paper work burden and burden estimates to the OMB and ICC by addressing them to:

Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: Ed Clark, Desk Officer (Form 3120–1032), Washington, DC 20503

Interstate Commerce Commission, Attn: Forms Clearance Officer, room 1312, Washington, DC 20423

Regulatory Flexibility Statement

The adoption of these regulations will allow the Commission to continue to provide tariff filing and insurance service fee accounts which facilitate the filing of such documents with the Commission for many small entities. Because these proposed regulations codify the Commission's existing fee policies and adopt collection regulations, which are based on the FCCS issued jointly by GAO and DOJ, the Commission believes that these proposed regulations will not have a significant effect on a substantial number of small entities.

This decision will not have a significant impact upon the quality of the human environment or the conservation of energy resources.

List of Subjects

49 CFR Part 1002

Administrative practice and procedure, Common carriers, Freedom of information, User fees.

49 CFR Part 1018

Administrative offset, Claims.

49 CFR Part 1312

Freight forwarders, Motor carriers, Moving of household goods, Pipelines, Railroads Tariffs.

49 CFR Part 1313

Administrative practice and procedure, Agricultural commodities, Forests and forest products, Railroads.

49 CFR Part 1314

Freight forwarder, Motor carriers, Railroads, Tariffs.

Decided: August 27, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips and Emmett. Commissioner Simmons, joined by Vice Chairman McDonald, commented with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X of the Code of Federal Regulations is proposed to be amended as follows:

PART 1002—FEES

1. The authority citation for part 1002 continues to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A), 5 U.S.C. 553, 31 U.S.C. 9701 and 49 U.S.C. 10321.

2. Section 1002.1 is proposed to be amended by revising paragraph (f)(11) to read as follows:

§ 1002.1 Fees for records search, review, copying, certification, and related services.

* * * * *

(f) * * *

(11) Interest charges will be assessed on any unpaid bill starting on the date specified in the bill, at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of the billing. The Debt Collection Act, 5 U.S.C. 5514 (1982), including disclosure to the consumer reporting agencies and the use of collection agencies, as prescribed in the Commission's Debt Collection Regulations in 49 CFR part 1018, will be utilized to encourage payment where appropriate.

* * * * *

3. In § 1002.2 paragraphs (a) and (b) are proposed to be revised and a new paragraph (g) is added to read as follows:

§ 1002.2 Filing Fees.

(a) *Manner of payment.* (1) Except as specified in paragraphs (a)(1)(i) through (a)(1)(iii) of this section, all filing fees will be payable at the time and place the application, petition, notice, tariff, contract, or other document is tendered for filing.

(i) When emergency temporary operating authority [Item 9] and emergency temporary operating authority extensions [Item 10] are initiated by telegram or telephone, the fee or fees are due when the OCCA-95 application is submitted to the appropriate Commission regional office.

(ii) The filing fee for tariffs, rate schedules, and contracts including supplements [Item 74] may be charged to tariff filing fee accounts established by the Commission in accordance with paragraph (a)(2) of this section.

(iii) The service fee for insurance, surety or self-insurer accepted certificate of insurance, surety bond or other instrument submitted in lieu of a broker surety bond must be charged to an insurance service account established by the Commission in accordance with paragraph (a)(2) of this section.

(2) *Billing Account Procedure.* Form ICC-1032 must be submitted to the Commission's Budget and Fiscal Office to establish a tariff filing fee account or an insurance service fee account.

(i) Each account will have a specific billing date within each month and a billing cycle. The billing date is the date that the bill is prepared and printed. The billing cycle is the period between the billing date in one month and the billing date in the next month. A bill for each account which has activity or an unpaid balance during the billing cycle will be sent on the billing date each month. Payment will be due 20 days from the billing date. Payments received before the next billing date are applied to the account. Interest will accrue in accordance with 49 CFR 1018.30.

(ii) The Debt Collection Act, including disclosure to the consumer reporting agencies and the use of collection agencies, as prescribed in the Commission's Debt Collection Regulations in 49 CFR part 1018, will be utilized to encourage payment where appropriate.

(iii) An account holder who files a petition in bankruptcy or who is the subject of a bankruptcy proceeding must provide the following information to the Chief, Budget and Fiscal Office, Room 1330, Interstate Commerce Commission, Washington, DC 20423:

(A) The filing date of the bankruptcy petition;

(B) The court in which the bankruptcy petition was filed;

(C) The type of bankruptcy proceeding;

(D) The name, address, and telephone number of its representative in the bankruptcy proceeding; and

(E) The name, address, and telephone number of the bankruptcy trustee, if one has been appointed.

(3) Fees will be payable to the Interstate Commerce Commission by a check drawn upon funds deposited in a bank or other financial institution in the United States, a money order payable in U.S. currency, or a credit card (VISA or MASTERCARD).

(b) Any filing, other than a tariff filing fee that is not accompanied by the appropriate filing fee is deficient except for filings that satisfy the deferred payment procedures in paragraph (a) of this section.

* * * * *

(g) *Returned Check Policy.* If a check submitted to the Commission for a filing, other than a tariff filing fee, or service fee is dishonored by a bank or financial institution on which it is drawn, the Commission will notify the person who submitted the check that:

(1) All work will be suspended on the proceeding until the check is made good;

(2) That a returned check charge of $6.00 and any bank charges incurred by the Commission as a result of the dishonored check must be submitted with the filing fee which is outstanding; and

(3) If payment is not made within the time specified by the Commission, the proceeding will be dismissed.

4. Part 1018 is proposed to be added to read as follows:

PART 1018—DEBT COLLECTION

Subpart A—Application and Coverage

Sec.
1018.1 Application.
1018.2 Definitions.
1018.3 Communications.
1018.4 Claims that are covered.
1018.5 Monetary limitation on Commission authority.
1018.6 Omissions not a defense.
1018.7 Conversion claims.
1018.8 Subdivision of claims.

Subpart B—Administrative Collection of Claims

1018.20 Written demand for payment.
1018.21 Telephone inquires and investigations.
1018.22 Personal interviews.
1018.23 Use of consumer reporting agencies.
1018.24 Contact with the debtor's employing agency.
1018.25 Sanctions.
1018.26 Disputed debts.
1018.27 Contracting for collection services.
1018.28 Collection by administrative offset.
1018.29 Payments.
1018.30 Interest, penalties, and administrative costs.
1018.31 Use of credit reports.
1018.32 Bankruptcy claims.
1018.33 Use and disclosure of mailing addresses.
1018.34 Additional administrative collection action.

Subpart C—Compromise of a Claim

1018.50 When a claim may be compromised.
1018.51 Reasons for compromising a claim.

Sec.
1018.52 Restrictions on the compromise of a claim.
1018.53 Finality of a compromise.

Subpart D—Suspension or Termination of Collection Action

1018.60 When collection action may be suspended or terminated.
1018.61 Reasons for suspending collection action.
1018.62 Reasons for terminating collection action.
1018.63 Termination of collection action.
1018.64 Transfer of a claim.

Subpart E—Referral of a Claim

1018.70 Prompt referral.
1018.71 Referral of a compromise offer.
1018.72 Referral to the Department of Justice.

Subpart F—Internal Revenue Procedure

1018.80 Reporting discharged debts to the Internal Revenue Service.
1018.81 Offset against tax refund.

Authority: 31 U.S.C. 3701; 31 U.S.C. 3711 et seq.; 5 U.S.C. 553; 4 CFR parts 101–105; 49 U.S.C. 10321.

Subpart A—Application and Coverage

§ 1018.1 Application.

(a) This part applies to claims for the payment of debts owed to the United States Government in the form of money or property and unless a different procedure is specified in a statute, regulation, or a contractual agreement with the Commission, prescribes procedures by which the Commission:

(1) Collects, compromises, suspends, and terminates collection actions for claims;

(2) Determines and collects interest and other charges on these claims; and

(3) Refers unpaid claims to the General Accounting Office (GAO) and the Department of Justice (DOJ) for litigation.

(b) The following are examples of the kinds of debts to which special statutory and administrative procedures apply:

(1) A claim against an employee for erroneous payment of pay and allowances subject to waiver under 5 U.S.C. 5584 and other claims against employees which are handled under 49 CFR part 1017.

(2) A claim involving the payment of civil penalties or forfeitures which may arise under provisions of the Interstate Commerce Act or legislation supplemental thereto. Those claims are handled under procedures set forth in 49 CFR part 1021.

(3) A claim involved in a case pending before any Federal Contract Appeals Board or Grant Appeals Board. However, nothing in this part prevents negotiation and settlement of a claim pending before a Board.

§ 1018.2 Definitions.

(a) *Administrative offset* means withholding money payable by the United States to, or held by the Government for, a person to satisfy a debt the person owes the Government.

(b) *Claim* and *debt* are used synonymously and interchangeably for purposes of this part. These terms refer to an amount of money or property which has been determined by an appropriate agency official to be owed to the United States by any person, organization, or entity except another Federal agency.

(c) *Delinquent.* A debt is considered delinquent if it has not been paid by the date specified in the initial written demand for payment or applicable contractual agreement with the Commission, unless other satisfactory payment arrangements have been made by that date. If the debtor fails to satisfy an obligation under a payment agreement with the Commission after other payment arrangements have been made, the debt becomes a delinquent debt.

(d) *Payment in full* means payment of the total debt due the United States, including any interest, penalty, and administrative costs of collection assessed against the debtor.

§ 1018.3 Communications.

Unless otherwise specified, all communications concerning the regulations in this part should be addressed to Chief, Budget and Fiscal Office, Interstate Commerce Commission, room 1330, Washington, DC 20423.

§ 1018.4 Claims that are covered.

(a) These procedures generally apply to any claim for payment of a debt which:

(1) Results from activities of the Commission including fees imposed under 49 CFR part 1002; or

(2) Is referred to the Commission for collection.

(b) These procedures do not apply to:

(1) A claim based on a civil monetary penalty for violation of a requirement of the Interstate Commerce Act or an order or regulation of the Commission unless 49 CFR part 1021 provides otherwise;

(2) A claim as to which there is an indication of fraud, the presentation of a false claim, or misrepresentation on the part of the debtor, or any other party having an interest in the claim;

(3) A claim between Federal agencies; and

(4) A claim once it becomes subject to salary offset which is governed by 5 U.S.C. 5514.

§ 1018.5 Monetary limitation on Commission authority.

The Commission's authority to compromise a claim or to terminate or suspend collection action on a claim covered by these procedures is limited by 31 U.S.C. 3711(a) to claims that:

(a) Have not been referred to another Federal agency, including the GAO, for further collection action; and

(b) Do not exceed $100,000, exclusive of interest, penalties, and administrative costs (the monetary limitation).

§ 1018.6 Omissions not a defense.

(a) The failure of the Commission to include in this part any provision of the Federal Claims Collection Standards, 4 CFR Parts 101–105, does not prevent the Commission from applying these provisions.

(b) A debtor may not use the failure of the Commission to comply with any provision of this part or the Federal Claims Collection Standards as a defense to the debt.

§ 1018.7 Conversion claims.

These procedures are directed primarily to the recovery of money on behalf of the Government. The Commission may demand:

(a) The return of specific property; or

(b) Either the return of property or the payment of its value.

§ 1018.8 Subdivision of claims.

The Commission shall consider a debtor's liability arising from a particular transaction or contract as a single claim in determining whether the claim is less than the monetary limitation for the purpose of compromising or suspending or terminating collection action. A claim may not be subdivided to avoid the monetary limitation established by 31 U.S.C. 3711(a)(2) and § 1018.5 of this part.

Subpart B—Administrative Collection of Claims

§ 1018.20 Written demand for payment.

(a) The Commission shall make appropriate written demand upon the debtor for payment of money in terms which specify:

(1) The basis for the indebtedness and the right of the debtor to request review within the Commission;

(2) The amount claimed;

(3) The date by which payment is to be made, which normally should not be more than 30 days from the date that the initial demand letter statement was mailed, unless otherwise specified by contractual agreement, established by

Federal statute or regulation, or agreed to under a payment agreement;

(4) The applicable standards for assessing interest, penalties, and administrative costs (4 CFR 102.13 and 49 CFR 1830.25); and

(5) The applicable policy for reporting the delinquent debt to consumer reporting agencies.

(b) The Commission normally shall send three progressively stronger written demands at not more than 30-day intervals, unless circumstances indicate that alternative remedies better protect the Government's interest, that the debtor has explicitly refused to pay, or that sending a further demand is futile. Depending upon the circumstances of the particular case, the second and third demands may:

(1) Offer or seek to confer with the debtor;

(2) State the amount of the interest and penalties that will be added on a daily basis as well as the administrative costs that will be added to the debt until the debt is paid; and

(3) State that the authorized collection procedures include any procedure authorized in this part including:

(i) Contacts with the debtor's employer when the debtor is employed by the Federal Government or is a member of the military establishment or the Coast Guard;

(ii) Possible referral of the debt to a private agency for collection;

(iii) Possible reporting of the delinquent debt to consumer reporting agencies in accordance with the guidance and standards contained in 4 CFR 102.5 and the Commission's procedures set forth in § 1018.23 of this part;

(iv) The suspension or revocation of a license or other remedy under § 1018.25 of this part;

(v) Installment payments possibly requiring security; and

(vi) The right to refer claims to GAO or DOJ for litigation.

(c) The failure to state in a letter of demand a matter described in § 1018.20 is not a defense for a debtor and does not prevent the Commission from proceeding with respect to that matter.

§ 1018.21 Telephone inquires and investigations.

(a) If a debtor has not responded to one or more written demands, the Commission shall make reasonable efforts by telephone to determine the debtor's intentions. If the debtor cannot be reached by telephone at the debtor's place of employment, the Commission may telephone the debtor at his or her residence between 8 a.m. and 9 p.m.

(b) The Commission may undertake an investigation to locate a debtor, if the whereabouts of a debtor is a problem, or if a debtor cannot be contacted by telephone. The Commission may also send a representative to a debtor's place of employment if the debtor cannot be contacted by phone or the debtor does not respond to written demands by the Commission for payment of claims.

(c) The Commission under 15 U.S.C. 1681(f) may obtain consumer credit information from private firms, including name, address, former address, place of employment, and former place of employment of a debtor.

§ 1018.22 Personal interviews.

(a) The Commission may seek an interview with the debtor at the offices of the Commission when:

(1) A matter involved in the claim needs clarification;

(2) Information is needed concerning the debtor's circumstances; or

(3) An agreement of payment might be negotiated.

(b) The Commission shall grant an interview with a debtor upon the debtor's request. The Commission will not reimburse a debtor's interview expenses.

§ 1018.23 Use of consumer reporting agencies.

(a) In addition to assessing interest, penalties, and administrative costs under § 1018.30 of this part, the Commission may report a debt that has been delinquent for 90 days to a consumer reporting agency, if all the conditions of this paragraph are met.

(1) The debtor has not:

(i) Paid or agreed to pay the debt under a written payment plan that has been signed by the debtor and agreed to by the Commission; or

(ii) Filed for review of the debt under § 1018.23(a)(2)(iv) of this section.

(2) The Commission has included a notification in the third written demand (see § 1018.20(b)) to the debtor stating:

(i) That the account has been reviewed and payment of the debt is delinquent;

(ii) That, within not less than 60 days after the date of notification, the Commission intends to disclose to a consumer reporting agency that the individual is responsible for the debt;

(iii) The specific information to be disclosed to the consumer reporting agency; and

(iv) That the debtor has the right to a complete explanation of the debt (if that has not already been given), to dispute information on the Commission records about the debt, and to request reconsideration of the debt by administrative appeal or review of the debt.

(3) The Commission has sent at least one written demand by either registered or certified mail with the notification described in paragraph (a)(2) of this section.

(4) The Commission has reconsidered its initial decision on the debt when the debtor has requested a review under § 1018.26(a)(2)(iv).

(5) The Commission has taken reasonable action to locate a debtor for whom the Commission does not have a current address to send the notifications provided for in paragraph (a)(2) of this section.

(b) If there is a substantial change in the condition or amount of the debt, the Commission shall:

(1) Promptly disclose that fact(s) to each consumer reporting agency to which the original disclosure was made;

(2) Promptly verify or correct information about the debt, on request of a consumer reporting agency for verification of any or all information so disclosed by the Commission; and

(3) Obtain satisfactory assurances from each consumer reporting agency that they are complying with all applicable Federal, state, and local laws relating to its use of consumer credit information.

(c) The information the Commission discloses to the consumer reporting agency is limited to:

(1) Information necessary to establish the identity of the individual debtor, including name, address, and taxpayer identification number;

(2) The amount, status, and history of the debt; and

(3) The Commission activity under which the claim arose.

§ 1018.24 Contact with the debtor's employing agency.

If a debtor is employed by the Federal government or is a member of the military establishment or the Coast Guard, and collection by offset cannot be accomplished in accordance with 5 U.S.C. 5514, the Commission shall contact the employing agency to arrange with the debtor for payment of the indebtedness by allotment or otherwise.

§ 1018.25 Sanctions.

(a) *Closure of accounts.* If a tariff filing fee or insurance filing fee account is past due more than 90 days, the Commission will freeze the account until the account is made current. The Commission will notify the account holder that the account has been frozen and that until the account balance including any applicable interest,

penalties, and administrative costs are paid, all future filings, must be accompanied by a money order. The Commission reserves the right to refuse to maintain an account which is repeatedly delinquent.

(b) *Suspension or revocation of tariff or insurance filing privileges.* If the account holder fails to satisfy all claims for tariff or insurance filing fees including applicable interest, penalties, and the administrative costs of collection of the debt, the Commission may suspend or prohibit a tariff or insurance filing fee account holder from submitting tariff or insurance filings in its own name or on behalf of others.

(c) *Suspension or revocation of certificate, licenses, or permits granted by the Commission.* The Commission may suspend or revoke any certificates, permits or licenses which the Commission has granted to an account holder or other debtor for any inexcusable, prolonged, or repeated failure or refusal to pay a delinquent debt.

(d) *Procedures for suspension or revocation of filing privileges or certificates, licenses, or permits for failure to pay tariff or insurance filing fees.* Before suspending or revoking an account holder's privilege to submit tariff or insurance filings or suspending or revoking any certificate, license, or permit which the Commission has granted to any account holder, the Commission shall issue to the account holder an order to show cause why the tariff or insurance filing privilege or any certificate, license, or permit should not be suspended or revoked. The Commission shall allow the debtor no more than 30 days to pay the debt in full including applicable interest, penalties, and administrative costs of collection of the delinquent debt. The Commission may suspend or revoke any certificate, license, permit, approval or filing privilege at the end of this period upon a finding of willful noncompliance with the Commission's order. If any certificate, license, permit, or filing privilege is revoked under this authority of this part, a new application with appropriate fees must be made to the Commission, and all previous delinquent debts of the debtor to the Commission must be paid before the Commission will consider such application.

(e) *Other sanctions.* The remedies and sanctions available to the Commission in this area are not exclusive. The Commission may impose other sanctions, where permitted by law for any inexcusable, prolonged, or repeated failure of a debtor to pay such claim. In such cases, the Commission will provide notice and a hearing, as required by law, to the debtor prior to the imposition of any such sanctions.

§ 1018.26 Disputed debts.

(a) A debtor who disputes a debt shall explain why the debt is incorrect in fact or law within 30 days from the date that the initial demand letter was mailed. The debtor may support the explanation by submitting affidavits, statements certified under penalty or perjury, canceled checks, or other relevant evidence.

(b) The Commission may extend the interest waiver period as described in § 1018.37 pending a final determination of the existence or amount of the debt.

(c) The Commission may investigate the facts involved in the dispute and if necessary, the Commission may arrange for a conference at which the debtor may present evidence and arguments in support of the debtor's positions.

§ 1018.27 Contracting for collection services.

The Commission may contract for collection services in order to recover delinquent debts. However, the Commission retains the authority to resolve disputes, compromise claims, suspend or terminate collection action, and initiate enforced collection through litigation. When appropriate, the Commission shall contract in accordance with 4 CFR 102.6.

1018.28 Collection by administrative offset.

(a) The Commission may administratively undertake collection by offset on each claim which is liquidated or certain in amount in accordance with the guidance and the standards contained in 4 CFR 102.2, 102.3, and 102.4 and 5 U.S.C. 5514, as applicable. The Commission may not initiate administrative offset to collect a debt more than 10 years after the Government's right to the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known to the Commission.

(b) Collection by administrative offset of amounts payable from the Civil Service Retirement and Disability Fund, the Federal Employees Retirement System, or other similar fund is made pursuant to 4 CFR 102.4 and the provisions of paragraphs (d) of this section.

(c) Salary offset is governed by 5 U.S.C. 5514.

(d) The following procedures apply when the Commission seeks to collect a debt by offset against any payment to be made to a debtor or against the assets of a holder of a certificate, permit, license, or authorization issued by the Commission.

(1) Before the offset is made, the Commission shall provide the debtor written notice of the nature and amount of the debt and:

(i) Notice of the Commission's intent to collect the debt by offset;

(ii) An opportunity to inspect and copy Commission records pertaining to the debt;

(iii) An opportunity to request reconsideration of the debt by the Commission, or if provided for by statute, waiver of the debt;

(iv) An opportunity to enter into a written agreement with the Commission to repay or pay the debt, as the case may be;

(v) An explanation of the debtor's rights under this subpart; and

(vi) An opportunity for a hearing when required under the provisions of 4 CFR 102.3(c).

(2) If the Commission learns that other agencies of the Government are holding funds payable to the debtor, the Commission shall provide the other agencies with written certification that the debt is owed to the Commission and that the Commission has complied with the provisions of 4 CFR 102.3. The Commission shall request that funds due the debtor which are necessary to offset the debt to the Commission be transferred to the Commission.

(3) The Commission may accept a repayment or payment agreement, as appropriate, in lieu of offset, but will do so only after balancing the Government's interest in collecting the debts against fairness to the debtor. If the debt is delinquent and the debtor has not disputed its existence or amount, the Commission may accept a repayment or payment agreement in lieu of offset only if the debtor is able to establish under sworn affidavit or statement certified under penalty of perjury that offset would result in financial hardship or would result in undue financial hardship or would be against equity and good conscience.

(4) Administrative offset is not authorized with respect to:

(i) Debts owed by any State or local government;

(ii) Debts once they become subject to the salary offset provisions of 5 U.S.C. 5514; or

(iii) Any case in which collection of the type of debt involved by administrative offset is explicitly provided for or prohibited by another statute.

(5) The Commission reserves the right to take any other action in respect to offset as is permitted under 4 CFR 102.3.

(e) The Commission shall make appropriate use of the cooperative efforts of other agencies including the Army Holdup List in effecting collections by offset. The Army Holdup List is a list of contractors indebted to the United States.

§ 1018.29 Payments.

(a) *Payment in full.* The Commission shall make every effort to collect a claim in full before it becomes delinquent. The Commission shall impose charges for interest, penalties, and administrative costs as specified in § 1018.30.

(b) *Payment in installments.* If a debtor furnishes satisfactory evidence of inability to pay a claim in one lump sum, payment in regular installments may be arranged. Evidence may consist of a financial statement or a signed statement certified under penalty of perjury to be true and correct that application for a loan to enable the debtor to pay the claim in full was rejected. Except for a claim described at 5 U.S.C. 5514, all installment payment arrangements must be in writing and require the payment of interest and administrative charges.

(1) Installment note forms including confess-judgment notes may be used. The written installment agreement must contain a provision accelerating the debt payment in the event the debtor defaults. If the debtor's financial statement discloses the ownership of assets which are free and clear of liens or security interests, or assets in which the debtor owns equity, the debtor may be asked to secure the payment of an installment note by executing a Security Agreement and Financial Statement transferring to the United States a security interest in the assets until the debt is discharged.

(2) If the debtor owes more than one debt and designates how a voluntary installment payment is to be applied among those debts, the Commission shall follow that designation. If the debtor does not designate the application of the payment, the Commission shall apply the payment to the various debts in accordance with the best interest of the United States as determined by the facts and circumstances of the particular case.

(c) *To whom payment is made.* Payment of a debt is made by check, money order, or credit card (VISA or MASTERCARD) payable to the Interstate Commerce Commission and mailed or delivered to the Budget and Fiscal Office, room 1330, Interstate Commerce Commission, Washington, DC 20423, unless payment is:

(1) Made pursuant to arrangements with the GAO or DOJ;

(2) Ordered by a Court of the United States; or

(3) Otherwise directed in any other part of this chapter.

§ 1018.30 Interest, penalties, and administrative costs.

(a) The Commission shall assess interest, penalties, and administrative costs on debts owed to the United States Government in accordance with the guidance provided under the Federal Claims Collection Standards, 4 CFR 102.13 unless otherwise directed by statute, regulation, or contract.

(b) Before assessing any charges on delinquent debts, the Commission shall mail a written notice to debtor explaining its requirements concerning these charges under 4 CFR 102.2 and 102.13.

(c) Interest begins to accrue from the date on which the initial invoice I first mailed to the debtor unless a different date is specified on a statute, regulation, or contract.

(d) The Commission shall assess interest based upon the rate of the current value of funds to the United States Treasury (the Treasury tax and loan account rate) prescribed by statute, regulation, or contract.

(e) Interest is computed only on the principal of the debt, and the interest rate remains fixed for the duration of the indebtedness, unless the debtor default on a repayment agreement and seeks to enter into a new agreement.

(f) The Commission shall assess against a debtor charges to cover administrative costs incurred a result of a delinquent debt. Administrative costs may include in obtaining a credit report or in using a private debt collector, to the extent they are attributable to the delinquency.

(g) The Commission shall assess a penalty charge of six percent a year on any portion of a debt that is delinquent for more than 90 days. The charge accrues retroactively to the date that the debt became delinquent.

(h) Amounts received by the Commission as partial or installment payments are applied first to outstanding penalty and administrative cost charges, second to accrue interest, and third to outstanding principal.

(i) The Commission shall waive collection of interest on the debt or any portion of the debt which is paid in full within 30 days after the date on which interest began to accrue.

(j) The Commission may waive interest during the period a debt disputed under § 1018.26 is under investigation or review before the Commission. This additional waiver is not automatic and must be requested before the expiration of the initial 30 day waiver period. The Commission may grant the additional waiver only when it finds merit in the explanation the debtor has submitted under § 1018.26.

(k) The Commission may waive the collection of interest, penalties, and administrative costs if it finds that one or more of the following conditions exists:

(1) The debtor is unable to pay any significant sum toward the debt within a reasonable time;

(2) Collection of interest, penalties, and administrative costs will jeopardize collection of the principal of the debt;

(3) The Commission is unable to enforce collection in full within a reasonable time by enforced collection proceedings; or

(4) Collection would be against equity and good conscience or not in the best interest of the United States, including the situation in which an administrative offset or installment payment agreement is in effect.

§ 1018.31 Use of credit reports.

The Commission may institute a credit investigation of the debtor at any time following receipt of knowledge of the debt in order to aid the Commission in making appropriate determinations as to:

(a) The collection and compromise of a debt;

(b) The collection of interest, penalties, and administrative costs;

(c) The use of administrative offset;

(d) The use of other collection methods; and

(e) The likelihood of collecting the debt.

§ 1018.32 Bankruptcy claims.

When the Commission receives information that a debtor has filed a petition in bankruptcy or is the subject of a bankruptcy proceeding, it shall suspend all collection actions against the debtor in accordance with 11 U.S.C. 362 and shall furnish information concerning the debt owed the United States to the Department of Justice's, Nationwide Central Intake Facility to permit the filing of a claim.

§ 1018.33 Use and disclosure of mailing addresses.

(a) When attempting to locate a debtor in order to collect or compromise a debt under this part, the Commission may send a written request to the

Secretary of the Treasury (or designee) in order to obtain a debtor's mailing address from the records of the Internal Revenue Service.

(b) The Commission may disclose a mailing address obtained under paragraph (a) of this section to other agents, including collection service contractors, in order to facilitate the collection or compromise of debts under this part, except that a mailing address may be disclosed to a consumer reporting agency only for the limited purpose of obtaining a commercial credit report on the particular taxpayer.

(c) The Commission and its agents, including consumer reporting agencies and collection services, must comply with the provisions of 26 U.S.C. 6103(p)(4) and applicable regulations of the Internal Revenue Service.

§ 1018.34 Additional administrative collection action.

Nothing contained in this part is intended to preclude any other administrative remedy which may be available.

Subpart C—Compromise of a Claim

§ 1018.50 When a claim may be compromised.

The Commission may compromise a claim not in excess of the monetary limitation if it has not been referred to GAO or DOJ for litigation. Only the Comptroller General of the United States or designee may effect the compromise of a claim that arises out of the exceptions made by the GAO in that account of an accountable officer, including a claim against the payee, prior to its referral by GAO for litigation.

§ 1018.51 Reasons for compromising a claim.

A claim may be compromised for one or more reasons set forth below:

(a) The full amount cannot be collected because:

(1) The debtor is unable to pay the full amount within a reasonable time; or

(2) The debtor refuses to pay the claim in full, and the Government is unable to enforce collection in full within a reasonable time; or

(b) There is a real doubt concerning the Government's ability to prove its case in Court for the full amount claimed, either because of the legal issues involved or a bona fide dispute as to the facts.

(c) The costs of collecting the claim do not justify the enforced collection of the full amount. The Commission shall apply this reason for compromise in accordance with the guidance in 4 CFR 103.4.

(d) The Commission shall determine the debtor's inability to pay, the Government's ability to enforce collection, and the amounts which are acceptable in compromise in accordance with the Federal Claims Collection Standards, 4 CFR part 103.

(e) Compromises payable in installments are discouraged, but, if necessary, must be in the form of a legally enforceable agreement for the reinstatement of the prior indebtedness less sums paid thereon. The agreement also must provide that in the event of default:

(1) The entire balance of the debt becomes immediately due and payable; and

(2) The Government has the right to enforce any security agreement.

§ 1018.52 Restrictions on the compromise of a claim.

(a) The Commission may not accept a percentage of a debtor's profits or stock in a debtor's corporation in compromise of a claim. In negotiating a compromise with a business concern, consideration is given to requiring a waiver of the tax-loss-carry-forward and tax-loss-carry-back rights of the debtor.

(b) If two or more debtors are jointly or severally liable, collection action is not withheld against one debtor until the other or others pay their share. The amount of a compromise with one debtor is not considered a precedent or as morally binding in determining the amount which will be required from other debtors jointly and severally liable on the claim.

§ 1018.53 Finality of a compromise.

An offer of compromise must be in writing and signed by the debtor. An offer of compromise which is accepted by the Commission is final and conclusive on the debtor and on all officials, agencies and courts of the United States, unless obtained by fraud, misrepresentation, the presentation of a false claim, or mutual mistake of fact.

Subpart D—Suspension or Termination of Collection Action

§ 1018.60 When collection action may be suspended or terminated.

The Commission may suspend or terminate collection action on a claim not in excess of the monetary limitation, exclusive of interest, penalties, and administrative costs, after deducting the amount of partial payments, if any, if it has not been referred to GAO or DOJ for litigation.

§ 1018.61 Reasons for suspending collection action.

Collection action may be suspended temporarily:

(a) When the debtor cannot be located after diligent efforts and there is reason to believe that future collection action may be sufficiently productive to justify periodic review and action on the claim considering the size of the claim and the amount which may be realized on it; or

(b) When the debtor owns no substantial equity in realty and is unable to make payments on the Government's claim or effect a compromise on it at the time but the debtor's future prospects justify retention of the claim for periodic review and action:

(1) The applicable statute of limitations has been tolled or started anew; or

(2) Future collection can be effected by offset notwithstanding the statute of limitations.

§ 1018.62 Reasons for terminating collection action.

Collection action may be terminated:

(a) When it becomes clear that the Government cannot collect or enforce collection of any significant sum from the debtor having due regard for the judicial remedies available to the Government, the debtor's future financial prospects, and the exemptions available to the debtor under State and Federal law;

(b) When the debtor cannot be located, there is no security remaining to be liquidated, the applicable statute of limitations has run and the prospects of collecting by offset, notwithstanding the bar of the statute of limitations, is too remote to justify retention of the claim; or

(c) When it is likely that the cost of collection action will exceed the amount recoverable.

§ 1018.63 Termination of collection action.

Collection action shall be terminated:

(a) Whenever it is determined that the claim is legally without merit; or

(b) When it is determined that the evidence necessary to prove the claim cannot be produced or necessary witnesses are unavailable and efforts to induce voluntary payments have been unavailing.

§ 1018.64 Transfer of a claim.

The Commission may transfer a claim to the GAO for advice when there is doubt whether collection action should be suspended or terminated.

Subpart E—Referral of a Claim

§ 1018.70 Prompt referral.

(a) A claim which requires enforced collection is referred to GAO or DOJ for litigation. A referral is made as early as possible consistent with aggressive collection action and, in, any event, well within the time required to bring a timely suit against the debtor. Ordinarily, referrals are made within 1 year of the Commission's final determination of the fact and the amount of the debt.

(b) When the merits of the Commission's claim, the amount owed on the claim, or the propriety of acceptance of a proposed compromise, suspension, or termination of collection actions is in doubt, the Commission shall refer the matter to GAO for resolution and instruction prior to proceeding with collection actions and/or referral to DOJ for litigation.

(c) The Commission may refer a claim to GAO or DOJ even though the termination of collection activity might otherwise be given consideration under § 1018.63 if:

(1) A significant enforcement policy is involved in reducing a statutory penalty or forfeiture to judgment; or

(2) Recovery of a judgment or a prerequisite to the imposition of administrative sanctions, such as suspension or revocation of a license or privilege of participating in a Government sponsored program.

(d) Once a claim has been referred to GAO or DOJ under this subpart, the Commission shall refrain from any contact with the debtor and shall direct the debtor to GAO or DOJ as appropriate, when questions concerning the claim are raised by the debtor. The Commission shall immediately advise GAO or DOJ, as appropriate, of any payments by the debtor.

§ 1018.71 Referral of a compromise offer.

The Commission may refer a debtor's firm written offer of compromise which is substantial in amount to GAO or to DOJ if the Commission is uncertain whether the offer should be accepted.

§ 1018.72 Referral to the Department of Justice.

(a) Claims for which the gross original amount is over $500,000 must be referred to the Commercial Litigation Branch, Civil Division, Department of Justice, Washington, DC 20530. Claims for which the gross original amount is $500,000 or less must be referred to the Department of Justice's Nationwide Central Intake Facility.

(b) A claim of less than $600, exclusive of interest, is not referred for litigation unless:

(1) Referral is important to a significant enforcement policy; or

(2) The debtor has the clear ability to pay the claim, and the government can effectively enforce payment.

(c) A claim on which the Commission holds a judgment is referred to DOJ for further action is renewal of the judgment lien or enforced collection proceedings are justified under the criteria discussed in this part.

(d) Claims must be referred to the Department of Justice in the manner prescribed by 4 CFR 105.2 Care must be taken to preserve all files, records, and exhibits on claims referred under paragraphs (a) and (b) of this section.

Subpart F—Internal Revenue Procedure

§ 1018.80 Reporting discharged debts to the Internal Revenue Service.

When the Commission discharges a debt for less than the full value of the indebtedness, it will report the outstanding balance discharged, not including interest to the Internal Revenue Service, using IRS Form 1099–G or any other form prescribed by the IRS; when:

(a) The principal amount of the debt not in dispute is $600 or more;

(b) The obligation has not been discharged in a bankruptcy proceeding; and

(c) The obligation is no longer collectible either because the time limit in the applicable statute for enforcing collection expired during the tax year, or because during the tax year a formal compromise agreement was reached in which the debtor was legally discharged of all or a portion of the obligation.

§ 1018.81 Offset against tax refund.

The Commission will take action to effect administrative offset against tax refunds due to debtors under 26 U.S.C. 6402 in accordance with the provisions of 31 U.S.C. 3720A and Treasury Department regulations.

PART 1312—REGULATIONS FOR THE PUBLICATION, POSTING AND FILING OR TARIFFS, SCHEDULES, AND RELATED DOCUMENTS

5. The authority citation for part 1312 continues to read as follows:

Authority: 49 U.S.C. 10321 and 10762; 5 U.S.C. 553.

6. Section 1312.4 is proposed to be amended by redesignating existing paragraph (b)(2) as paragraph (b)(2)(i) and adding a new paragraph (b)(2)(ii) to read as follows:

§ 1312.4 Filing tariffs.

* * * * *

(b) * * *

(2)(i) * * *

(ii) A letter of transmittal shall clearly indicate in the upper left-hand corner thereof:

(A) The assigned alpha code of the carrier or agent issuing the tariff publication(s);

(B) The number of series transmitted;

(C) The filing fee enclosed, the account number to be billed, or the credit card to be charged; and

(D) The tariff transmittal number, if the filer utilizes transmittal numbers.

If the filing fee is charged to a credit card, the information must include the credit card number and expiration date, and an authorized signature.

* * * * *

PART 1313—RAILROAD CONTRACTS ENTERED INTO PURSUANT TO 49 U.S.C. 10713

7. The authority citation for part 1313 continues to read as follows:

Authority: 49 U.S.C. 10321 and 10713; 5 U.S.C. 553.

8. Section 1313.7 is proposed to be amended by adding a new sentence to the end of paragraph (a)(6) introductory text and by adding paragraphs (a)(6)(i)–(iv) of that section to read as follows:

§ 1313.7 Contract filing, title pages and numbering.

(a) * * *

(6) * * *. Each transmittal letter shall clearly indicate in the upper left-hand corner thereof:

(i) The assigned alpha code of the issuing carrier;

(ii) The number of series transmitted;

(iii) The filing fee enclosed, the account number to be billed, or the credit card to be charged; and

(iv) The transmittal number if the filer utilizes transmittal numbers.

If the filing fee is charged to a credit card, the information must include the credit card number and expiration date, and an authorized signature.

* * * * *

PART 1314—REGULATIONS FOR THE PUBLICATION, POSTING AND FILING OF TARIFFS AND RELATED DOCUMENTS

9. The authority citation for part 1314 continues to read as follows:

Authority: 49 U.S.C. 10321, 10708, 10761, and 10762; 5 U.S.C. 553.

10. Section 1314.4 is proposed to be amended by adding a new sentence to the end of paragraph (a) introductory text and by adding paragraphs (a)(1)–(4) of that section to read as follows:

§ 1314.4 Filing of tariffs.

(a) * * *. Each transmittal letter shall clearly indicate in the upper left-hand corner thereof:

(1) The assigned alpha code of the issuing carrier;

(2) The number of series transmitted;

(3) The filing fee enclosed, the account number to be billed, or the credit card to be charged; and

(4) The transmittal number if the filer utilizes transmittal numbers.

If the filing fee is charged to a credit card, the information must include the credit card number and expiration date, and an authorized signature.

* * * * *

[FR Doc. 92–21725 Filed 9–9–92; 8:45 am]

BILLING CODE 7035–01–M

Notices

Federal Register
Vol. 57, No. 176
Thursday, September 10, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.
Title: Data Users Evaluation Survey.
Form Number(s): Will vary by survey.
Type of Request: New Collection.
Burden: 3,500 hours.
Number of Respondents: 7,000.
Avg Hours Per Response: 30 minutes.
Needs and Uses: The Census Bureau has become actively involved with the Total Quality Management effort and is anticipating a large number of requests for clearance of customer surveys. These surveys will be used by the Census Bureau to obtain feedback and information from customers to make quality improvements to products and services.
Affected Public: Individuals or households, State or local governments, Farms, Businesses or other for-profit institutions, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.
Frequency: On Occasion.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Maria Gonzalez, (202) 395-7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: September 3, 1992.

Edward Michals,
Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 92-21730 Filed 9-9-92; 8:45 am]

BILLING CODE 3510-07-F

Bureau of Export Administration

Subcommittee on Export Administration of the President's Export Council; Partially Closed Meeting

Federal Register citation of previous announcement: 57 FR 38464 of August 25, 1992.

ACTION: Postponement of meeting.

The notice published on August 25, 1992 announced a meeting of the Subcommittee on Export Administration of the President's Export Council. The meeting has been postponed until further notice.

Dated: September 3, 1992.

James M. LeMunyon,
Acting Assistant Secretary for Export Administration.

[FR Doc. 92-21711 Filed 9-9-92; 8:45 am]

BILLING CODE 3510-DT-M

Economics and Statistics Administration

Advisory Committee of the Task Force for Designing the Year 2000 Census and Census-Related Activities for 2000-2009

AGENCY: Economics and Statistics Administration, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463 as amended by Pub. L. 94-409) we are giving notice of a meeting of the Advisory Committee of the Task Force for Designing the Year 2000 Census and Census-Related Activities for 2000-2009. The meeting will convene on Friday, September 25, 1992, at The Holiday Inn—Eisenhower Metro, 2460 Eisenhower Avenue, Alexandria, Virginia 22314-4695.

The Advisory Committee is composed of a Chairperson, twenty-five member organizations, and eight *ex officio* members, all appointed by the Secretary of Commerce. The Advisory Committee will consider the goals of the census and user needs for information provided by the census, and provide a perspective from the standpoint of the outside user community on how proposed designs for the year 2000 Census realize those goals and satisfy those needs. The Advisory Committee shall consider all aspects of the conduct of the census of population and housing for the year 2000, and shall make recommendations for improving that census.

DATES: The meeting will begin at 9:30 a.m. and adjourn at 4:30 p.m. on Friday, September 25, 1992.

ADDRESSES: The meeting will take place at The Holiday Inn—Eisenhower Metro, 2460 Eisenhower Avenue, Alexandria, Virginia 22314-4695.

FOR FURTHER INFORMATION CONTACT: Persons wishing additional information regarding this meeting, or who wish to submit written statements or questions, may contact Thomas P. DeCair, Office of the Under Secretary, Economics and Statistics Administration, Department of Commerce, room 4838, Herbert C. Hoover Building, Washington, DC 20230. Telephone: (202) 377-3709.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include consideration of a final set of potential designs for the 2000 census, procedures for narrowing the designs to a limited number for testing in 1995, and other items that the Chair and Advisory Committee members deem appropriate for this meeting.

The meeting is open to the public. A brief period will be set aside for public comment and questions. However, persons with extensive questions or statements for the record must submit them in writing to the Commerce Department official named below at least three working days prior to the meeting.

Dated: September 1, 1992.

J. Antonio Villamil,
Under Secretary and Administrator, Economics and Statistics Administration.

[FR Doc. 92-21712 Filed 9-9-92; 8:45 am]

BILLING CODE 3510-EA-M

International Trade Administration

[A-549-502]

Certain Circular Welded Carbon Steel Pipes and Tubes From Thailand; Termination of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On April 13, 1992, the Department of Commerce ("the Department") initiated an administrative review of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Thailand. The Department is now terminating this review.

BACKGROUND: On April 13, 1992, the Department of Commerce published in the **Federal Register** a notice of initiation of administrative review of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Thailand (57 FR 12797) at the request of a respondent, the Saha Thai Steel Pipe Co. Ltd. ("Saha Thai"). This notice stated that we would review information submitted by Saha Thai for the period March 1, 1991 through February 29, 1992. Saha Thai subsequently withdrew its request for review on July 10, 1992. Under § 353.22(a)(5) of the Department's regulations, a party requesting a review may withdraw that request no later than 90 days after the date of publication of the notice of initiation. Because Saha Thai's withdrawal occurred within the time frame specified in 19 CFR 353.22(a)(5), and no other interested party has requested an administrative review for this period, the Department is now terminating this review.

EFFECTIVE DATE: September 10, 1992.

FOR FURTHER INFORMATION: Contact Alain Letort or Richard Weible, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone (202) 377-3793 or telefax (202) 377-1388.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to § 353.22(a)(5) of the Department's regulations (19 CFR 353.22(a)(5)).

Dated: September 2, 1992.

Rolf Th. Lundberg, Jr.,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-21720 Filed 9-9-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-807]

Commercial Grade Amorphous Silica Filament Fabric From Japan; Intent To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on commercial grade amorphous silica filament fabric from Japan. Interested parties who object to this revocation must submit their comments in writing no later than September 30, 1992.

EFFECTIVE DATE: September 10, 1992.

FOR FURTHER INFORMATION CONTACT: G. Leon McNeill or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-2923.

SUPPLEMENTARY INFORMATION:

Background

On September 23, 1987, the Department of Commerce ("the Department") published an antidumping duty order on commerical grade amorphous silica filament from Japan (52 FR 35750). The Department has not received a request to conduct an administrative review of this duty order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity To Object

No later than September 30, 1992, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by September 30, 1992, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by September 30, 1992, we shall conclude that the order/finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: September 1, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92-21722 Filed 9-9-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-028]

Roller Chain, Other Than Bicycle, From Japan; Preliminary Results of Antidumping Finding Administrative Review

AGENCY: International Trade Administration/Import Administration/ Department of Commerce.

ACTION: Notice of preliminary results of antidumping finding administrative review.

SUMMARY: In response to a request by the petitioner, the Department of Commerce has conducted an administrative review of the antidumping finding on roller chain, other than bicycle, from Japan. The review covers two manufacturers/ exporters of this merchandise to the United States, and the period April 1, 1990 through March 31, 1991.

We preliminarily determine that the dumping margins for Daido Kogyo Co., Ltd. (Daido) and Enuma Chain Manufacturing Co., Ltd. (Enuma) to be 0.02 percent and 0.00 percent, respectively. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: September 10, 1992.

FOR FURTHER INFORMATION CONTACT: Tom Prosser or Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On February 28, 1992, the Department of Commerce (the Department) published in the **Federal Register** (57 FR 6808) the final results of its last administrative review of the antidumping finding on roller chain, other than bicycle, from Japan (38 FR 9226, April 12, 1973). In April 1991, the petitioner, the American Chain Administration, requested, in accordance with § 353.22(a)(1) of the Department's regulations (19 CFR

353.22(a)(1)), that we conduct an administrative review of the period April 1, 1990 through March 31, 1991. We published a notice of initiation of review on May 21, 1991 (56 FR 23271). A timely request for revocation of the antidumping finding was submitted by Daido and Enuma. The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

Imports covered by this review are shipments of roller chain, other than bicycle, from Japan. The term "roller chain, other than bicycle," as used in this review, includes chain, with or without attachments, whether or not plated or coated, and whether or not manufactured to American or British standards, which is used for power transmission and/or conveyance. Such chain consists of a series of alternately-assembled roller links and pin links in which the pins articulate inside the bushings and the rollers are free to turn on the bushings. Pins and bushings are press fit in their respective link plates. Chain may be single strand, having one row of roller links, or multiple strand, having more than one row of roller links. The center plates are located between the strands of roller links. Such chain may be either single or double pitch and may be used as power transmission or conveyor chain.

This review also covers leaf chain, which consists of a series of link plates alternately assembled with pins in such a way that the joint is free to articulate between the adjoining pitches. This review further covers chain model numbers 25 and 35. Roller chain is currently classified under the Harmonized Tariff Schedule (HTS) item numbers 7315.11.00 through 7616.90.00. HTS numbers are provided for convenience and Customs purposes. The written description remains dispositive.

This review covers Daido and Enuma, both manufacturers/exporters of roller chain, other than bicycle, and the period April 1, 1990 through March 31, 1991.

United States Price

In calculating United States Price (USP), the Department used purchase price (PP) and exporter's sales price (ESP), both as defined in section 772 of the Tariff Act. For those sales made directly to unrelated parties prior to importation into the United States, we based USP on PP. PP was based on the packed, FOB Japanese port prices to unrelated purchasers in the United States. Where applicable, we made deductions for brokerage and handling, foreign inland freight, and bank charges. No other adjustments were claimed or allowed.

Where sales to the first unrelated purchaser occurred after importation into the United States, we based USP on ESP. We calculated ESP based on the packed, FOB customer's or Daido's warehouse price to unrelated purchasers in the United States. Where applicable, we made deductions for ocean freight, marine insurance, import duties, customs brokerage, U.S. inland freight, commissions, and U.S. indirect selling expenses. We disallowed a claimed deduction for antidumping-related legal expenses. No other adjustments were claimed or allowed.

Foreign Market Value

Because the home market was viable for both Daido and Enuma, the Department, where possible, used home market price to calculate foreign market value (FMV). Otherwise we used constructed value (CV) as defined in section 773 of the Tariff Act, as the basis for FMV.

Home market price was based on a packed, delivered price to unrelated purchasers in Japan. For PP comparisons, where applicable, we made deductions for inland freight. We also made adjustments, where applicable, for differences in packing and credit expenses. For ESP comparisons, we deducted inland freight and credit expenses, and, where applicable, we adjusted for differences in packing expenses. We also deducted indirect selling expenses, limited to the amount of U.S. commissions and U.S. indirect selling expenses. During verification Daido withdrew its claim for home market deductions for commissions, discounts, and rebates. No other adjustments were claimed or allowed.

Where there were no usable sales of such or similar merchandise for comparison, we used CV as the basis for FMV. We included the cost of materials, fabrication, general expenses, profit, and U.S. packing. We used: (1) Actual general expenses, or the statutory minimum of ten (10) percent of materials and fabrication, whichever was greater; (2) actual profit, or the statutory minimum of eight (8) percent of materials, fabrication costs, and general expenses, whichever was greater; and (3) packing costs for merchandise exported to the United States. Where appropriate, we made adjustments to CV, in accordance with 19 CFR 353.56, for differences in direct selling expenses. For comparisons involving ESP transactions, in accordance with 19 CFR 353.56(b)(2), we made further deductions from CV for indirect selling expenses and inventory carrying costs in the home market, capped by the indirect selling expenses and commissions incurred on ESP sales.

Preliminary Results of the Review

As a result of our comparison of USP to FMV, we preliminarily determine that the following weighted-average margins exists:

Manufacturer/exporter	Period	Margin (percent)
Daido Kogyo Co., Ltd.	4/1/90–3/31/91	0.02
Enuma Chain Manufacturing Co., Ltd.	4/1/90–3/31/91	0.00

On August 11, 1988, the Department published its tentative determination to revoke the antidumping finding with respect to Daido and Enuma (53 FR 30325) and, as a result, we are considering this tentative revocation under the pre-1989 regulations.

It was the Department's original intention to revoke the finding with respect to Daido and Enuma subsequent to completion of the administrative review of the 1986–1987 period, an "update" review period. However, in *Freeport Minerals Co.* v. *United States*, 776 F.2d 1029 (Fed. Cir., 1985), the Court of Appeals for the Federal Circuit emphasized the need to base revocation determinations on "current data", and held that such determinations should not be based on information more than three years old. By the time the final results of the 1986–1987 review were published (October 3, 1991, 56 FR 50092), the data on which the tentative revocation would be based were more than four years old. Accordingly, we concluded at that time that we would conduct a review of a more recent period before deciding whether to revoke the finding with respect to these two companies.

Pursuant to section 751(c) of the Tariff Act and 19 CFR 353.54(b) (1985), revocations may be extended based on at least two years of sales at either no margins or *de minimus* margins, the respondents' written agreements to an immediate suspension of liquidation and reinstatement in the finding should sales at less than fair value resume, and our determination that dumping by these firms is not likely to occur in the future. Daido and Enuma requested revocation of the finding and have agreed in writing to an immediate suspension of liquidation and reinstatement of the finding under circumstances specified in their written agreements with the

Department. However, because of confidential information in our possession, we are unable to make a determination at this time that sales at less than fair value will not occur in the future. Therefore, we will not consider revocation at this time.

Interested parties may request a disclosure within 5 days of publication and may request a hearing within 10 days of the date of publication. Any hearing, if requested, will be held as early as convenient for the parties but no later than 44 days after the date of publication or the first workday thereafter.

Case briefs and/or written comments on these preliminary results may be submitted not later than September 22, 1992. Rebuttal briefs and rebuttal comments, limited to the issues raised in the case briefs and comments, may be filed not later than September 29, 1992. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of roller chain, other than bicycle, from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rates for the reviewed firms will be those established in the final results of this review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in previous reviews or the original less-than-fair value investigation, the cash deposit rate will continue to be the rate published in the most recent final results or determination for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, earlier reviews, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review, earlier reviews, or the original investigation, whichever is the most recent; (4) the cash deposit rate for any future entries from all other manufacturers or exporters, who are not covered in this or prior administrative reviews and who are unrelated to the reviewed firms or any previously reviewed firm, will be the "All Others" rate established in the final results of this administrative review, pending completion of additional reviews covering the same period. This rate represents the highest rate for any firm in this administrative review (whose shipments to the United States were reviewed), other than those firms receiving a rate based entirely on the best information available. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1) and 19 CFR 353.22.

Dated: September 2, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-21721 Filed 9-9-92; 8:45 am]

BILLING CODE 3510-DS-M

[C-122-815]

Initiation of Changed Circumstances Countervailing Duty Administrative Reviews; Pure Magnesium and Alloy Magnesium From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 10, 1992.

FOR FURTHER INFORMATION CONTACT: Rick Herring or Magd Zalok, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-3530 or 377-4162, respectively.

INITIATION OF REVIEWS: In accordance with section 751(b) of the Tariff Act of 1930, as amended (the Act), we are initiating changed circumstances administrative reviews of the countervailing duty orders on pure magnesium and alloy magnesium from Canada. In these reviews, we will determine whether the electricity contract between Norsk Hydro Canada Inc. (NHCI) and Hydro-Quebec continues to provide a countervailable benefit.

Pursuant to 19 CFR 355.22(h)(1), we believe that there are changed circumstances sufficient to warrant review of these orders. The major subsidy program investigated with respect to pure and alloy magnesium from Canada involved the power contract between NHCI and Hydro-Quebec, the provincially-owned utility. See, the Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium from Canada (57 FR 30946, July 13, 1992). In those determinations, we stated that NHCI was in the process of negotiating a Letter of Intent regarding an amendment to the company's electricity contract. We requested that NHCI place the Letter of Intent on the record of the investigations. NHCI complied with our request and submitted the Letter of Intent before that date of our final determinations. In their request for changed circumstances reviews, NHCI and the Governments of Canada and Quebec have stated that NHCI and Hydro-Quebec have amended their electricity contract. Furthermore, they claim that the amended contract conforms fully with the Letter of Intent which was examined by the Department during the course of suspension agreement negotiations. Thus, we conclude that changed circumstances sufficient to warrant review of these orders exist.

Further, in accordance with 19 CFR 355.22(h)(3), we also find that good cause exists to initiate these reviews at this time. As discussed above, we entered into negotiations to suspend these investigations based, in part, on the stated willingness of the parties to amend their electricity contract. Information on the record indicates that the parties have gone through with the amendment despite the fact that the investigations were not suspended and, thus, may have eliminated a major subsidy practice and irritant to trade between Canada and the United States. Second, novel and important issues regarding the countervailability of variable rate utility contracts were not resolved in our previous analysis. Given that these types of contracts may be used by many utilities, we believe that an expeditious review may remove the uncertainty created by our final determinations. Third, the changed

circumstances reviews would involve a single company, NHCI. Therefore, the conduct of the reviews would not impose an undue administrative burden on the Department.

This notice is published in accordance with 19 CFR 355.22(h)(1)(i).

Dated: September 2, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-21723 Filed 9-9-92; 8:45 am]

BILLING CODE 3510-DS-M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Decision of Panel

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Decision of Panel in the binational panel review of the final determination of injury made by the Canadian International Trade Tribunal (CITT) respecting Certain Beer Originating In or Exported From the United States of America by or on behalf of Pabst Brewing Company, G. Heileman Brewing Company, Inc. and The Stroh Brewery Company, their Successors and Assigns, for Use or Consumption in the Province of British Columbia (Secretariat File No. CDA-91-1904-02).

SUMMARY: By a decision dated August 26, 1992, the Binational Panel affirmed in part and remanded in part the final determination of injury made by the CITT respecting Certain Beer Originating In or Exported From the United States of America by or on behalf of Pabst Brewing Company, G. Heileman Brewing Company, Inc. and The Stroh Brewery Company, their Successors and Assigns, for Use or Consumption in the Province of British Columbia published in the Canada Gazette Part I on October 12, 1991 (Vol. 125, No. 41). A copy of the complete Panel decision is available from the Binational Secretariat.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 377-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The panel review in this matter was conducted in accordance with these Rules.

Background

Panel review was requested and complaints were filed by G. Heileman Brewing Company, Inc. (Heileman), The Stroh Brewery Company (Stroh), Pabst Brewing Company (Pabst) (collectively referred to as Complainants) to contest the CITT's final determination of injury. Labatt Breweries of British Columbia, Molson Breweries B.C., Ltd. and Pacific Western Brewing Companies (collectively referred to as B.C. Brewers) appeared in support of the CITT.

Complainants challenged the CITT decision on the grounds that the CITT incorrectly found that:

1. British Columbia (B.C.) constitutes an isolated market under subparagraph 1(ii) of Article 4 of the GATT Antidumping Code (Code), in view of the recent agreement contemplating the dismantling of interprovincial barriers to the Canadian domestic beer trade;

2. There was a concentration of dumped imports into the B.C. isolated market, in light of the limited penetration of dumped imports into the B.C. market and as a percentage of total beer imports into Canada;

3. The dumped imports are causing injury to the producers of all or almost all of the production within the B.C. market, because the CITT did not make a separate injury determination as to each of the three B.C. beer producers but only an aggregate injury determination; and

4. The cost of the switch in packaging of the beer from bottles to cans must be included as a factor in determining that the dumped imports were causing material injury to the producers of all or almost all of the production in the B.C. market because the switch from bottles to cans was due to consumer preference and not to dumping, i.e., underpricing by the imports.

Panel Decision

The Panel remanded, with instructions, to the CITT for a redetermination as to whether the dumping of imports, rather than the presence of dumped imports, is causing material injury to the producers of all or almost all of the production within the B.C. market. The Panel affirmed the CITT decision in all other respects.

The CITT was instructed to provide a Determination on Remand to the Panel within 75 days of the issuance of the decision (by not later than November 9, 1992).

Dated: September 3, 1992.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 92-21713 Filed 9-9-92; 8:45 am]

BILLING CODE 3510-GT-M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Notice of Decision of Panel

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Decision of Panel in binational panel review of the final results of the fifth administrative review of the countervailing duty order respecting Live Swine from Canada, made by the Department of Commerce, International Trade Administration, Import Administration (Secretariat File No. USA-91-1904-04).

SUMMARY: By a decision dated August 26, 1992, the Binational Panel affirmed in part and remanded in part the Department of Commerce's final determination respecting Live Swine from Canada published in the **Federal Register** on October 7, 1991 (56 FR 50560). A copy of the complete Panel decision is available from the FTA Binational Secretariat.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 377-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement")

establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country either review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review whether it conforms with the antidumping or countervailing duty of the law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The Panel Review in this matter was conducted in accordance with these Rules.

Background

On October 11, 1991, the Canadian Pork Council (CPC) filed a Request for Panel Review with the United States Section of the Binational Secretariat pursuant to Article 1904 of the United States-Canada Free-Trade Agreement. Panel review was requested of the final results of the fifth administrative review of the countervailing duty order respecting Live Swine from Canada made by the Department of Commerce (Commerce), International Trade Administration, Import Administration, File No. C-122-404. In addition, the Government of Canada (Canada) and the Government of Quebec (Quebec) filed Requests for Panel Review in this matter.

In the proceedings before the Panel, Canada and the CPC challenged Commerce determinations regarding the National Tripartite Stabilization Scheme for Hogs (Tripartite). Tripartite is a farm income stabilization program funded by the Canadian Government, the Provincial Governments and farmers. The Government of Quebec challenged Commerce determinations regarding the Quebec Farm Income Stabilization Insurance Program (FISI). FISI is a provincial farm income stabilization program. In addition to its challenge to the Tripartite determinations, the CPC challenged Commerce determinations regarding (1) the Feed Freight Assistance Program (FFA); (2) the Alberta Crow Benefit Offset Program (ACBOP); and (3) the British Columbia Farm Income Insurance Plan—Swine Producers' Farm Income Stabilization Program FIIP). The FFA is a national grain transportation assistance program and ACBOP is a provincial program designed to compensate grain users in Alberta for the increased cost of grain resulting from the effect of the FFA on the grain market. FIIP is also a provincial farm income stabilization program.

Complainants contended that the Commerce determinations were not supported by substantial evidence on the record and were not otherwise in accordance with the law. Specifically, Complainants submitted, *inter alia*, that there were a number of findings upon which Commerce relied that were either not supported by substantial record evidence, or were contradicted by substantial record evidence that Commerce improperly ignored. Further, Complainants argued that Commerce had applied an inappropriate test for determining *de facto* specificity, and that it failed to provide a reasoned articulation of its determinations in the Final Results. In addition, Quebec argued that the counteravailability of FISI was a decided matter that Commerce was precluded from addressing. Complainant P. Quintaine & Son Ltd. (Quintaine) submitted further, that sows and boars were not within the scope of the Order. Likewise, Complainant Pryme Pork Ltd. (Pryme) argued that weanlings do not come within the scope of the Order. Alternatively, Pryme submitted that if weanlings were within the scope of the Order, then Commerce should have either established a separate rate and subclass for weanlings, or have assigned to Pryme a separate company rate on the basis that Pryme exported only weanlings to the United States during the Review Period.

Panel Decision

The Panel affirmed in part and remanded in part Commerce's final determinations. The Panel remanded by reconsideration some of Commerce's determinations regarding Tripartite, FISI, FIIP, ACBOP and the determination not to create a separate subclass for weanlings. The Panel affirmed Commerce in part in its determination regarding the FFA and its finding that sows and boars and weanlings were within the scope of the order.

Commerce was instructed to provide a determination on remand to the Panel within 60 days of this decision, (by not later than October 26, 1992).

Dated: September 3, 1992.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 92-21714 Filed 9-9-92; 8:45 am]

BILLING CODE 3510-GT-M

Minority Business Development Agency

Business Development Center Applications: Arizona IBDC

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its American Indian Program to operate an Indian Business Development Center (IBDC) for approximately a 3-year period, subject to Agency priorities, recipient performance, and the availability of funds. The cost of performance for the first budget period (12 months) is estimated at $197,825 in Federal funds. The Federal funds consist of a base amount of $193,000 and a $4,825 allowance for an audit fee. The period of performance will be from January 1, 1993 to December 31, 1993. The IBDC will operate in the Arizona Geographic Service Area.

The award number for this IBDC will be 09-10-93001-01.

The funding instrument for the IBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian Tribes and educational institutions.

The American Indian program is designed to provide business development services to the American Indian business community for the establishment and operation of viable American Indian businesses. To this end, MBDA funds organizations that can identify and coordinate public and private sector resources on behalf of American Indian individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding American Indian business.

Applications will be evaluated initially by regional staff on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of American Indian businesses, individuals and

organizations, (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purpose of the American Indian program. The application will then be forwarded to the Department for final processing and approval, if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

IBDCs performing satisfactorily may continue to operate after the initial competitive year for up to 2 additional budget periods. IBDCs with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an IBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an IBDC's performance, the availability of funds and Agency priorities.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

In accordance with OMB Circular A-129, "Managing Federal Credit Programs," applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department of Commerce are made to pay the debt.

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26.

The Department Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the IBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are unsatisfactory performance of IBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law. False information on the application can be grounds for denying or terminating funding.

On November 18, 1988, Congress enacted the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, title V, subtitle D). The statute requires contractors and grantees of Federal agencies to certify that they will provide a drug-free workplace. Pursuant to these requirements, the applicable certification form must be completed by each applicant as a precondition for receiving Federal grant or cooperative agreement awards.

15 CFR part 28 is applicable and prohibits recipients of Federal contracts, grants, and cooperative agreements from using appropriated funds for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a specific contract, grant, or cooperative agreement. Form CD-511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying" and, when applicable, the SF-LLL, "Disclosure of Lobbying Activities," are required.

CLOSING DATE: The closing date for submitting an application is October 14, 1992. Applications must be postmarked on or before October 14, 1992.

Proposals will be reviewed by the San Francisco Regional Office. The mailing address for submission is: San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, room 1280, San Francisco, California 94105, 415/744-3001.

A pre-application conference to assist all interested applicants will be held at the following address and time: San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, room 1280, San Francisco, California 94105. September 30, 1992 at 10 a.m.

FOR FURTHER INFORMATION CONTACT: Xavier Mena, Regional Director, San Francisco Regional Office at 415/744-3001.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained from the San Francisco Regional Office.

11.801 American Indian Program (Catalog of Federal Domestic Assistance)

Dated: September 2, 1992.

Linda Fraguela,

Acting Regional Director, San Francisco Regional Office.

[FR Doc. 92-21591 Filed 9-9-92; 8:45 am]

BILLING CODE 3510-25-M

Business Development Center Applications: California IBDC

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its American Indian Program to operate an Indian Business Development Center (IBDC) for approximately a 3-year period, subject to Agency priorities, recipient performance, and the availability of funds. The cost of performance for the first budget period (12 months) is estimated at $310,575 in Federal funds. The Federal funds consist of a base amount of $303,000 and a $7,575 allowance for an audit fee. The period of performance will be from January 1, 1993 to December 31, 1993. The IBDC will operate in the California Geographic Service Area.

The award number for this IBDC will be 09-10-93002-01.

The funding instrument for the IBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian Tribes and educational institutions.

The American Indian program is designed to provide business development services to the American Indian business community for the establishment and operation of viable American Indian businesses. To this end, MBDA-funds organizations that can identify and coordinate public and private sector resources on behalf of American Indian individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding American Indian business.

Applications will be evaluated initially by regional staff on the

following criteria; the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of American Indian businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purpose of the American Indian program. The application will then be forwarded to the Department for final processing and approval, if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

IBDCs performing satisfactorily may continue to operate after the initial competitive year for up to 2 additional budget periods. IBDCs with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 to 4 additional budget periods, respectively. Under no circumstances shall an IBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an IBDC's performance, the availability of funds and Agency priorities.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

In accordance with OMB Circular A-129, "Managing Federal Credit Programs," applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department of Commerce are made to pay the debt.

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26.

The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the IBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can caused termination are unsatisfactory performance of IBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law. False information on the application can be grounds for denying or terminating funding.

On November 18, 1988, Congress enacted the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, title V, subtitle D). The statute requires contractors and grantees of Federal agencies to certify that they will provide a drug-free workplace. Pursuant to these requirements, the applicable certification form must be completed by each applicant as a precondition for receiving Federal grant or cooperative agreement awards.

15 CFR part 28 is applicable and prohibits recipients of Federal contracts, grants, and cooperative agreements from using appropriated funds influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a specific contract, grant, or cooperative agreement. Form CD-511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying" and, when applicable, this SF-LLL, "Disclosure of Lobbying Activities," are required.

CLOSING DATE: The closing date for submitting an application is October 14, 1992. Applications must be postmarked on or before October 14, 1992.

Proposals will be reviewed by the San Francisco Regional Office. The mailing address for submission is: San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, room 1280, San Francisco, California 94105, 415/744-3001.

A pre-application conference to assist all interested applications will be held at the following address and time: San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, room 1280, San Francisco, California 94105. September 30, 1992 at 10 a.m.

FOR FURTHER INFORMATION CONTACT: Xavier Mena, Regional Director San Francisco Regional Office at 415/744-3001.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Questions concerning the preceding information, copies of applicable kits and applicable regulations can be obtained from the San Francisco Regional Office.

11.801 American Indian Program (Catalog of Federal Domestic Assistance)

Dated: September 2, 1992.

Linda Fraguela,

Acting Regional Director, San Francisco Regional Office.

[FR Doc. 92-21592 Filed 9-9-92; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Endangered Species; Issuance of Permit; Robert van Dam, Physiological Research Laboratory, Scripps Institution of Oceanography, University of California (P#790)

On April 28, 1992, notice was published in the **Federal Register** (57 FR 17895) that a permit application (P#509) had been filed by Robert van Dam, Physiological Research Laboratory, Scripps Institution of Oceanography, University of California, La Jolla, California 92092-0204, for a permit to take hawksbill sea turtles, *Eretmochelys imbricata*, directly within and adjacent to the reefs of Mona Island. Authorization for the direct take of 40 sea turtles, through the use of SCUBA, snorkeling gear, or by leaping from a boat to capture the animal by hand, is provided in the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS) regulations governing endangered fish and wildlife permits (50 CFR part 217-222).

The information collected under this permit will be assessed to increase our understanding of the ecological role of juvenile and subadult hawksbill sea turtles in the reef environment. The research will focus, more specifically, on the species' dietary habits and foraging patterns. Permit issuance will allow for the take of up to 40 hawksbill sea turtles (*Eretmochelys imbricata*) to be measured, tagged, photographed, and sampled for stomach contents for the

period of July 1, 1992, through December 30, 1992. All of the research activities conducted during this period will take place at Mona Island, Puerto Rico.

Notice is hereby given that on September 2, 1992, as authorized by the provisions of the ESA, NMFS issued a permit for the above taking, subject to certain conditions set forth therein.

Issuance of this permit, as required by the ESA is based on the finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of the modification; and (3) will be consistent with the purposes and policies set forth in section 2 of the ESA.

This permit was also issued in accordance with and is subject to parts 220–222 of title 50 CFR of the NMFS regulations governing endangered species permits.

The Permit is available for review in the following offices:

Office of Protected Resources, NOAA/NMFS, 1335 East-West Highway, SSMC#1, room 8268, Silver Spring, Maryland 20910, (301/713–2289); and

Director, Southeast Region, NOAA/NMFS, 9450 Koger Boulevard, room 206, St. Petersburg, Florida 33702.

Dated: September 2, 1992.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 92–21667 Filed 9–9–92; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Thailand

September 3, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: September 3, 1992.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6717. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Categories 338/339 and 638/639 are being increased for swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 56 FR 58559, published on November 20, 1991.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 3, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 15, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on September 3, 1992, you are directed to amend further the directive dated November 15, 1992 to increase the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Thailand:

Category	Adjusted twelve-month limit [1]
Sublevels in Group II	
338/339	1,510,320 dozen.
638/639	1,780,020 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1991.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92–21729 Filed 9–9–92; 8:45 am]

BILLING CODE 3510–DR–F

COPYRIGHT ROYALTY TRIBUNAL

[CRT Docket No. 92-1-90CD]

1990 Cable Royalty Distribution Proceeding

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice of partial distribution.

SUMMARY: The Tribunal announces that a 90 percent partial distribution of the 1990 cable copyright royalty funds will be made.

DATES: The partial distribution of the cable copyright royalties will take place on September 17, 1992.

FOR FURTHER INFORMATION CONTACT: Barbara Gray, Office Manager, Copyright Royalty Tribunal, 1825 Connecticut Avenue, #918, Washington, DC 20009, (202) 606–4400.

SUPPLEMENTARY INFORMATION: On July 31, 1992, the Tribunal published in the **Federal Register** a notice requesting comments regarding a request for a 90 percent distribution of the 1990 cable copyright royalty fund. The parties seeking distribution are all of those parties who had participated in the previous year's distribution, 1989, the Program Suppliers, National Association of Broadcasters, Joint Sports Claimants, Public Television Claimants, Canadian Claimants, American Society of Composers Authors and Publishers, Broadcast Music Inc., SESAC Inc., National Public Radio and the Devotional Claimants, all hereafter referred to as the moving parties. 57 FR 33944. On August 14th, the British Broadcasting Corporation (B.B.C.) filed comments in opposition to a preliminary distribution. BBC, a new claimant, objects that the preliminary distribution being sought is limited to those who previously participated in the 1989 cable royalty distribution and contends that no statutory authority exists for such a procedure. B.B.C. further contends that any such distribution would unfairly prejudice the positions of small parties.

The Tribunal has on numerous past occasions made partial distributions, as the moving parties cited in their reply of August 26, 1992, based upon the authority found in their reply of August 26, 1992, based upon the authority found in 17 U.S.C. 111(d). This long established practice, which has been reviewed by

the Court of Appeals, has been employed in several instances where not all the parties agreed to a partial distribution. See 51 FR 44331 and 54 FR 16386.

In those past situations, as well as in the present one, where there is a new claimant for whom the Tribunal has no prior experience, determining how much to distribute can be problematic. The Tribunal notes, however, that no offering has been made of the amount of the potential B.B.C. claim, nor has any suggestion been made that it would be in the area of 10 percent. The Tribunal further notes that only two of the past parties, participating in the 1989 proceeding, received more than a 10 percent award.

The Tribunal, thus, has determined in this case that it will distribute 90 percent of the fund to the moving parties while retaining 10 percent to satisfy the claims of remaining claimants. It is emphasized that this decision is not in any sense a determination of the ultimate award the Tribunal expects to make, and not a predetermination of the merits of B.B.C.'s case. Further, should the final award to B.B.C. exceed 10 percent, reimbursement from the other claimants shall be the amount owed plus the interest that would have accrued had the royalties remained with the Copyright Office. Similar procedures will be followed should the final award necessitate re-distribution of the 90 percent among the moving parties.

Accordingly, a 90 percent distribution of the 1990 cable copyright royalty funds is ordered distributed to the moving parties on September 17, 1992.

Dated: September 4, 1992.

Cindy Daub,

Chairman.

[FR Doc. 92-21827 Filed 9-9-92; 8:45 am]

BILLING CODE 1410-09-M

DEPARTMENT OF DEFENSE

US Strategic Command Strategic Advisory Group; Closed Meeting

AGENCY: USSTRATCOM, Department of Defense.

ACTION: Notice of closed meeting.

SUMMARY: The CINCSTRATCOM has scheduled a closed meeting of the Strategic Advisory Group.

DATE: The meeting will be held from 28 to 30 October 1992.

ADDRESSES: The meeting will be held at Offutt AFB, Nebraska.

FOR FURTHER INFORMATION CONTACT: USSTRATCOM Strategic Advisory Group, Offutt AFB, Nebraska 68113.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to discuss strategic issues that relate to the development of the Single Integrated Operational Plan (SIOP). Full development of the topics will require discussion of information classified TOP SECRET in accordance with Executive Order 12356, 2 April 1982. Access to this information must be strictly limited to personnel having requisite security clearances and specific need-to-know. Unauthorized disclosure of the information to be discussed at the SAG meeting could have exceptionally grave impact upon national defense. Accordingly, the meeting will be closed in accordance with 5 U.S.C. App II Para 10(d) (1976), as amended.

Dated: September 3, 1992.

Linda M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-21677 Filed 9-9-92; 8:45 am]

BILLING CODE 3810-01-M

Defense Logistics Agency

Privacy Act of 1974; Computer Matching Program Between the United States Department of Housing and Urban Development and the Department of Defense

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, Department of Defense.

ACTION: Notice of a computer matching program between the United States Department of Housing and Urban Development (HUD) and the Department of Defense (DoD) for public comment.

SUMMARY: The DoD, as the matching agency under the Privacy Act of 1974, as amended (5 U.S.C. 552a), is hereby giving constructive notice in lieu of direct notice to the record subjects of a computer matching program between HUD and DoD that their records are being matched by computer. The purpose of the match is to identify tenants of public housing who are receiving excess housing assistance resulting from unreported or underreported family income and to verify continuing eligibility in HUD's assisted housing programs. Collections of excess assistance and appropriate legal or administrative actions will be taken against tenants who falsely report or fail to report their income.

DATES: This proposed action will become effective October 13, 1992, and the computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget or Congress objects thereto. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, 400 Army Navy Drive, Room 205, Arlington, VA 22202-2884.

FOR FURTHER INFORMATION CONTACT: Mr. Aurelio Nepa, Jr., (703) 614-3027.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the DoD and HUD have concluded an agreement to conduct a computer matching program between the agencies. The purpose of the match is to exchange personal data between the agencies to identify tenants in public housing programs who may not be reporting income or may be underreporting income, to verify eligibility for public housing assistance, to collect excess assistance from tenants, and to initiate appropriate legal action against tenants who falsely report or fail to report their income. This match will also identify individuals who have reported invalid social security numbers (SSN) and to notify public housing authorities (PHA) and subsidized multifamily projects owners of invalid SSNs so they may request tenants take action to obtain correct SSNs.

The parties to this agreement have determined that a computer matching program is the most efficient, effective and expeditious method of determining instances where individuals fail to report employment to the PHAs or subsidized multifamily project owner or management agent or underreport wages. Without a computer matching program, HUD and PHAs would have to rely on voluntary disclosure and reporting of wages and unemployment benefits by tenants in HUD housing programs to verify eligibility and determine underreported or unreported income.

Computer matching appeared to be the most efficient and effective manner to accomplish this task with the least amount of intrusion on the personal privacy of the individuals concerned. It was therefore concluded and agreed upon that computer matching would be the best choice and least obtrusive manner for accomplishing this requirement.

A copy of the computer matching agreement between HUD and DoD is available upon request. Requests should be submitted to the address caption above or to the Assistant Inspector

General for Management and Policy, United States Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

Set forth below is a notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on Computer Matching published in the **Federal Register** at 54 FR 25818 on June 19, 1989.

The matching agreement as required by 5 U.S.C. 552a(r) and an advance copy of this notice was submitted on August 21, 1992, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4b of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records about Individuals," dated December 12, 1985 (50 FR 52738, December 24, 1985). This matching program is subject to review by OMB and Congress and shall not become effective until that review period has elapsed.

Dated: September 1, 1992.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

COMPUTER MATCHING PROGRAM BETWEEN THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND THE DEPARTMENT OF DEFENSE FOR VERIFICATION OF ELIGIBILITY FOR HOUSING ASSISTANCE

A. Participating Agencies: Participants in this computer matching program are: United States Department of Housing and Urban Development (HUD) and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD). The HUD is the source agency, i.e., the agency disclosing the records for the purpose of the match. The DMDC is the specific recipient agency or matching agency, i.e., the agency that actually performs the computer matching.

B. Purpose of the match: The purpose of the match is to identify tenants of public housing who are receiving excess housing assistance resulting from unreported or underreported family income and to verify continuing eligibility in HUD's assisted housing programs. Collections of excess assistance and appropriate legal or administrative actions will be taken against tenants who falsely report or fail to report their income.

The matching program will be performed to detect unwarranted benefit payments under the National Housing Act, 12 U.S.C. 1701–1750g; the United States Housing Act of 1937, 42 U.S.C. 1437o; and Section 101 of the Housing and Community Development Act of 1965, 12 U.S.C. 1701s. Such unwarranted benefits may be paid when family income is unreported or underreported, causing rental assistance payments to be set unduly low, and housing subsidies to be set correspondingly too high.

Based on experience, HUD and DMDC expect a computer matching program is the most effective and expedient way to identify tenants in public housing programs who may not be reporting income or may be underreporting income, to verify eligibility for public housing assistance, to collect excess assistance from tenants, and to initiate appropriate legal action against tenants who falsely report or fail to report their income. This match will also identify individuals who have reported invalid social security numbers (SSN) and to notify public housing authorities (PHA) and subsidized multifamily projects owners of invalid SSNs so they may request tenants take action to obtain correct SSNs. HUD expects to recoup approximately $360,000 in excess housing assistance. All recoveries will be reused as housing benefits for eligible families.

C. Authority for conducting the match: Section 904 of Public Law 100–628; 5 U.S.C. App 4(a); section 165 of Public Law 100–242; 12 U.S.C. 1701–1750g; 42 U.S.C. 1437–1437o; and 12 U.S.C. 1701s, contain the legal authority for conducting the matching program.

D. Records to be matched: The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

1. HUD will use the system of records identified as HUD–11, "Multifamily Tenant Characteristics Data", last published in the **Federal Register** at 55 FR 42909 on October 24, 1990. The system of records notice contains an appropriate routine use for disclosure for this purpose. There are approximately 55,300 records in the HUD–11 system.

2. The DoD system of records is S322.10 DMDC, "Defense Manpower Data Center Data Base", published at 57 FR 2715 on January 23, 1992. The DMDC files contain information on 5 million active, retired, and reserve military members and DoD civilian personnel.

E. Description of computer matching program: DMDC will compare information from the HUD file with the defense manpower database files.

The files to be provided by HUD contain the following data elements: (1) SSNs for each family member; (2) family control number to identify each tenant with a particular family; (3) Head of Household Indicator; (4) Last Name, First Name, Middle Initial, and Address for household; (5) Sex; (6) Birth Date; (7) Reported Income by source, description and amount; (8) Program Code; and (9) Recertification Date.

For matched employee SSNs (i.e. "hits") the DOD will disclose to HUD the following information from its file: name mismatch flag, service flag, SSN, Name, Date of Birth, Service Pay Plan, Pay Grade/Rank, Annual Salary, Retirement Flag, Personnel Office Identifier, agency flags, Bureau, Expiration of Term of Service/Date of Commission, Unit Identification Code, Current Pay Status, Annual gross Pay, Monthly VA Award, Reserve Category, Retired Monthly Gross Annuity, Sex, Address, Death Source, Death Name, Death DOB and Death Date.

Records matching on the Social Security Number will be sent to HUD which will screen the initial data, verify that the matched data are consistent with the source file, and resolve any discrepancies or inconsistencies on an individual basis. HUD will verify the match results by reviewing the information in the actual case file before an adverse action is taken.

Each individual identified as underreporting their income will be afforded all applicable due process standards including, but not limited to, being given an opportunity to contest the findings and proposed actions.

F. Inclusive dates of the matching program: This computer matching program is subject to review by the Office of Management and Budget and Congress. If no objections are raised by either, and the mandatory 30 day public notice period for comment has expired for this **Federal Register** notice with no significant adverse public comments in receipt resulting in a contrary determination, then this computer matching program becomes effective. The respective agencies may begin the exchange of data 30 days after the date of this published notice at a mutually agreeable time. Under no circumstances shall the matching program be implemented before this 30 day public

notice period for comment has elapsed as this time period cannot be waived. By agreement between HUD and DoD, the matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. Address for receipt of public comments or inquiries: Director, Defense Privacy Office, 400 Army Navy Drive, Room 205, Arlington, VA 22202-2884. Telephone (703) 614-3027.

[FR Doc. 92-21676 Filed 9-9-92; 8:45 am]

BILLING CODE 3810-01

Department of the Army

Patent and Patent Applications Available for Licensing

AGENCY: Department of the Army, Office of the Judge Advocate General, Intellectual Property Law Division, DOD.

ACTION: Notice.

SUMMARY: U.S. Patent No. 4,843,114 entitled "Rubber Compound for Tracked Vehicle Track Pads" and related U.S. Patent Application SN 07/793,074 filed 04 March 1992; foreign counterparts European Application No. 89300778.1 with designated countries of Austria, United Kingdom, Germany, France, and Sweden; Israeli Application No. 89,074; and Canadian Application No. 589,208 are all available for licensing.

FOR FURTHER INFORMATION CONTACT: Commander, U.W. Army Belvoir R, D, & E Center, ATTN: SATBE-D (Karen Gordon), Fort Belvoir, Virginia 22060-5606, telephone: 703-704-2279.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92-21917 Filed 9-9-92; 8:45 am]

BILLING CODE 3710-08-M

Department of the Army, Corps of Engineers

Availability of a Joint Draft Environmental Impact Statement/ Environmental Impact Report (EIS/ EIR) for the Proposed Bolsa Chica Project Orange County, California

AGENCY: U.S. Army Corps of Engineers, Los Angeles District (Federal); City of Huntington Beach (State).

ACTION: Notice of availability of a Joint Draft Environmental Imapct Statement/ Environmental Impact Report (DEIS/ EIR).

SUMMARY: The proposed Bolsa Chica Project area consists of approximately 1,712.3 acres of land located primarily in an unincorporated region within Orange County, California. The project area consists of the Bolsa Chica Mesa, portions of the Huntington Beach Mesa and the Bolsa Chica lowlands. The lowland area of the project site primarily consists of the Bolsa Chica Wetlands. The majority of the area is privately owned by Signal Landmark Company with Koll Company as Managing Agent. Other property owners include the Fieldstone Development Company, the City of Huntington Beach, the Ocean View School District, Donald Goodell, the Huntington Beach Company and the State of California.

An application has been filed by the Koll Company with the U.S. Army Corps of Engineers, Los Angeles District, for permits to dredge and fill waters of the United States pursuant to the Clean Water Act, section 404, and the Rivers and Harbors Act of 1899, section 10. The Applicant proposes to fill 134.6 acres of jurisdictional wetlands including the Fieldstone parcel and to facilitate the reintroduction of a 1,020 acre natural tidal marsh to the Bolsa Chica lowland and wetlands. Additional features of the proposed project include flood control improvements and construction of a regional roadway.

To facilitate restoration of the wetlands, approximately 775 acres of privately owned sections of the Bolsa Chica lowland would be transferred to public ownership by the landowner(s). A portion of the wetlands/lowlands would be restored by the applicant as mitigation for impacts associated with construction of the residential community in the wetland/lowland. The remainder of the wetlands would be available for restoration by third party restorers. Construction of the roadway is independent of the proposed development and restoration elements of the project.

The Corps of engineers intends to utilize the DEIS/EIR as part of its permit evaluation and decision-making process. The City of Huntington Beach will use the DEIS/EIR as part of its planning and permitting process. The primary purpose of the DEIS/EIR is to assess the potential environmental impacts associated with the proposed residential development and wetlands restoration and an array of alternative plans. The document also identifies and evaluates proposed mitigation for adverse impacts associated with the proposed project and alternative plans. The Corps is the Federal Lead Agency consistent with the National Environmental Policy Act (NEPA). The City of Huntington Beach is the State Lead Agency consistent with the California Environmental Quality Act (CEQA).

Comments concerning the Draft EIS/ EIR should be provided within ninety (90) days and addressed to: District Engineer, U.S. Army Corps of Engineers, Los Angeles District, Attn: Mr. Frank Piccola, Environmental Resources Branch, 300 North Los Angeles Street, Los Angeles, California 90012-2325, (213) 894-0244.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

The primary purpose of the proposed project is the construction of a residential community and related infrastructure on 118 acres of jurisdictional wetlands located in the Bolsa Chica lowland, the conveyance of 775 acres of lowland to public ownership to facilitate restoration, and the restoration of lowland area and the Applicant to mitigate for construction impacts. The project scope also includes the public agency actions required to amend local plans and to comply with State and Federal law and environmental regulatory programs. The residential construction on jurisdictional wetlands requires specific permit action (approval or disapproval) by the Corps.

2. Study Alternatives

The DEIS/EIR addresses a wide array of alternatives including the Proposed project.

3. Scoping Process

The purpose of this Notice is to advise interested persons of the availability of the DIES/EIR for public review and comment. Potentially significant issues identified to date include impacts to air quality, oceanographic and water resources, geology and seismicity, public services and utilities, transportation and circulation, biological resources and endangered species, land use, recreation, energy, public health and safety, aesthetics, noise, socioeconomic, and cultural resources. The DEIS/EIR includes the analysis of the above proposed project and alternatives; measures to avoid, minimize and/or mitigate for significant impacts which may result from project implementation; and the cumulative effects of the proposed action on the region.

A scoping meeting was held on April 23, 1991. The comments received during the scoping process were considered during the preparation of this DEIS/EIR. An extensive mailing list is being developed which includes Federal, state, and local agencies and other interested public and private organizations and

persons. Formal coordination with appropriate Federal, state, and local agencies will continue according to the requirements of NEPA and other applicable law.

4. Public Hearing(s)

A Public Hearing(s) will be held during the review period of the DEIS/EIR. Specific meeting date(s), time(s) and place(s) will be published in local newspapers and furnished to those on the mailing list.

5. Availability of the Draft EIS/EIR

The DEIS/EIR is available to the public for a ninety (90) day period from the date of publication in the **Federal Register**. Copies have been provided to concerned agencies and persons on the mailing list and are available for review at the Huntington Beach Main and Branch Libraries, Huntington Beach City Hall and the Corps of Engineers, Los Angeles District Offices.

Dated: August 28, 1992.

R.L. VanAntwerp,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 92-21741 Filed 9-9-92; 8:45 am]

BILLING CODE 3710-KF-M

Inland Waterways Users Board Meeting

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with paragraph 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), announcement is made of the following committee meeting:

Name of the Committee: Inland Waterways Users Board.

Date of the Meeting: October 9, 1992.

Place: Radisson Hotel Huntington, 1001 3rd Avenue, Huntington, West Virginia 25701 (Tel: 304-525-1001).

Time: 8:30 am to 5 pm.

Proposed Agenda:

AM Session

8:30 Registration
9:00 Welcoming Remarks
9:05 Business Session
—Administrative Announcements
—Chairman's Call to Order
—Executive Director's Comments
—Approval of Prior Meeting Minutes
9:30 Trust Fund Analysis
9:45 Innovative Design and Construction Techniques
10:00 Break
10:30 Huntington District Commander Remarks
10:45 Ohio River Division Navigation Program
11:00 Sargent Beach Project Update
11:15 Introduction to the Annual Report
12:00 Lunch

PM Session

1:30 Annual Report Recommendations
3:00 Break
3:30 Annual Report Recommendations (Continued)
4:00 Public Comment Period
5:00 Introductions to Board Staff/Adjourn

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee.

FOR FURTHER INFORMATION CONTACT: Mr. David B. Sanford, Jr., U.S. Army Corps of Engineers, CECW-P, Washington, DC 20314-1000.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92-21740 Filed 9-9-92; 8:45 am]

BILLING CODE 3792-10-M

DEPARTMENT OF ENERGY

Determination to Re-establish the Secretary of Energy Advisory Board Task Force on Energy Research Priorities

Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act (FACA) (Pub. L. 92-463), and in accordance with 41 CFR subpart 101-6.10, and following consultation with the Committee Management Secretariat, General Services Administration (GSA), notice is hereby given that the Secretary of Energy Advisory Board (SEAB) Task Force on Energy Research Priorities has been re-established for an additional year.

The committee will provide advice to the Secretary of Energy on priorities and program balance for the budget of the Office of Energy Research of the Department of Energy.

The membership of the Task Force shall include approximately 25 individuals, selected on the basis of their professional experience and broad competence in areas related to science and technology. Appointments will be made for up to 1 year. Particular attention will also be paid to obtaining a balance of interests, points of view, and geography.

The re-establishment of the SEAB Task Force on Energy Research Priorities has been determined necessary and in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Task Force will operate in accordance with the provisions of FACA, the Department of Energy Organization Act, the GSA Final Rule on Federal Advisory Committee Management, and other directives and instructions issued in implementation of those acts.

Further information regarding this advisory committee can be obtained from Rachel Murphy (202/586-3279).

Issued in Washington, DC on September 3, 1992.

Howard H. Raiken,

Advisory Committee Management Officer.

[FR Doc. 92-21807 Filed 9-9-92; 8:45 am]

BILLING CODE 6450-01-M

Morgantown Energy Technology Center; Cooperative Agreement; Financial Assistance Award to Institute of Gas Technology

AGENCY: Morgantown Energy Technology Center, Department of Energy (DOE).

ACTION: Notice of acceptance of an unsolicited financial assistance application for cooperative agreement award.

SUMMARY: Based upon a determination made pursuant to 10 CFR 600.7(b)(2)(i)(B) the DOE, Morgantown Energy Technology Center gives notice of its plans to award a 36 month Cooperative Agreement to the Institute of Gas Technology (IGT) with an associated budget of approximately $2.5M of which the Gas Research Institute (GRI) will cost share approximately 50 percent.

FOR FURTHER INFORMATION CONTACT: Laura E. Brandt, I-07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507-0880, Telephone: (304) 291-4079, Procurement Request No. 21-92MC28178.000.

SUPPLEMENTARY INFORMATION: The pending award is based on an application for the project entitled "Evaluation of High-Efficiency Gas-Liquid Contactors for Natural Gas Processing." This project involves a technology base program that will lead to the further development of a rotating, gas-liquid, novel contactor that has the potential of increased capacity, increased efficiency, reduced equipment size, and improved selectivity in natural gas processing. If successful, both the rate payer and the gas industry will benefit from this project since it will make more natural gas available by expanding the resource base from which natural gas can be economically recovered and will also reduce the cost for processing.

Issued in Washington, DC, September 2, 1992.

Louie L. Calaway,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 92-21821 Filed 9-9-92; 8:45 am]

BILLING CODE 6450-01-M

Morgantown Energy Technology Center; Cooperative Agreement; Financial Assistance Award to Massachusetts Institute of Technology

AGENCY: Morgantown Energy Technology Center, Department of Energy (DOE).

ACTION: Notice of acceptance of a noncompetitive financial assistance application for an award of a grant.

SUMMARY: Based upon a determination made pursuant to 10 CFR 600.7(b)(2)(i)(A) the DOE, Morgantown Energy Technology Center gives notice of its plans to award a three (3) year cooperative agreement to Massachusetts Institute of Technology (MIT), Office of Sponsored Programs, 77 Massachusetts Ave., room E19-702, Cambridge, MA 02139, with an associated budget of approximately $390,151.

FOR FURTHER INFORMATION CONTACT: Mary C. Spatafore, I-07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, WV 26507-0880, Telephone: (304) 291-4253, Procurement Request No. 21-92MC29264.000.

SUPPLEMENTARY INFORMATION: The pending award is an extension of MIT's ongoing activities related to scaling the hydrodynamic and heat transfer behavior of a fluidized bed combustor sponsored by the DOE. The proposed program extends the hot-to-cold scaling concept to examine the performance of a pressurized bubbling bed and to develop simplifications of the scaling laws for this case.

The first part of the program involves comparison of the Tidd pressurized bubbling bed with a cold model simulating a section of the Tidd cross section. Following verification of the scaling laws for pressurized bubbling beds, the cold model will be used to provide critical design information for the commercial design of pressurized bubbling beds. The value of the research and the unique capabilities of the proposed team of MIT and Babcock & Wilcox fully supports the DOE's ultimate demonstration and commercialization goals for larger pressurized fluid bed combustion (FBC) projects. DOE support of this activity will enhance the public benefits and accelerate the accomplishment of the effort. Availing this clean and efficient coal utilization technology commercially is definitely in the public's best interest.

Issued in Washington, DC September 1, 1992.

Louie L. Calaway,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 92-21823 Filed 9-9-92; 8:45 am]

BILLING CODE 6450-01-M

Morgantown Energy Technology Center; Financial Assistance Solicitation Available Notice (Cooperative Agreement)

AGENCY: U.S. Department of Energy (DOE), Morgantown Energy Technology Center.

ACTION: Notice of availability of a financial assistance solicitation.

SUMMARY: The DOE, Morgantown Energy Technology Center, plans to issue a Program Research and Development Announcement (PRDA) No. DE-RA21-92MC29244 for research titled "Management of Dry Flue Gas Desulfurization By-Products in Underground Mines." This PRDA was advertised in the Commerce Business Daily on June 24, 1992. A minimum cost sharing of 25% of the total cost is required. Authority for the PRDA is the DOE Organization Act (Pub. L. 95-91 (42 U.S.C. 7101) and the DOE Financial Assistance Regulations, 10 CFR part 600, subparts A and C. DOE anticipates award of Cooperative Agreements with project durations ranging from 24 to 48 months.

FOR FURTHER INFORMATION CONTACT: Mark L. Estel, I-07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, WV 26507-0880, Telephone: (304) 291-4085, PRDA No. DE-RA21-92MC29244.

SUPPLEMENTARY INFORMATION: The overall purpose of this solicitation is to determine whether disposal of coal use solid waste, especially from dry Flue Gas Desulfurization (FGD) processes, in underground mines is a viable management practice. The individual proposed projects must determine whether disposal of solid waste in underground mines is technically and economically viable. The work will address disposal of products to reduce or eliminate environmental problems sometimes associated with underground mining. It is anticipated that an initial laboratory phase will be followed by a pilot scale demonstration of the technology proposed.

Issued in Washington, DC September 2, 1992.

Louie L. Calaway,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 92-21809 Filed 9-9-92; 8:45 am]

BILLING CODE 6450-01-M

Morgantown Energy Technology Center; Financial Assistance Award (Cooperative Agreement)

AGENCY: U.S. Department of Energy (DOE), Morgantown Energy Technology Center.

ACTION: Notice of noncompetitive financial assistance application for a cooperative agreement.

SUMMARY: Based upon a determination pursuant to 10 CFR 600.14(e)(2)(ii), the DOE Morgantown Energy Technology Center gives notice of its plans to award a five year Cooperative Agreement to West Virginia University's National Research Center for Coal and Energy, in Morgantown, West Virginia, in the approximate amount of $5,000,000.

FOR FURTHER INFORMATION CONTACT: Thomas L. Martin, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, WV 26507-0880, Telephone: (304) 291-4087, Cooperative Agreement No.: DE-FC21-92MC29467.

SUPPLEMENTARY INFORMATION: The DOE will fund the allowable costs of the Cooperative Agreement. The pending award is based on an unsolicited application for a research project entitled, "Decontamination Systems Information and Research Program" which was submitted by West Virginia University's National Research Center for Coal and Energy. The objective of the research project is the development of a leading environmental technology development program focussing on all aspects of waste site decontamination. The R&D effort will address technological barriers through basic and applied studies using laboratory, bench, and process development unit (PDU) scale equipment for existing and advanced environmental technology concepts.

Issued in Washington, DC on: September 2, 1992.

Louie L. Calaway,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 92-21819 Filed 9-9-92; 8:45 am]

BILLING CODE 6450-01-M

Morgantown Energy Technology Center Financial Assistance Award (Grant Renewal)

AGENCY: U.S. Department of Energy (DOE), Morgantown Energy Technology Center.

ACTION: Notice of Noncompetitive Financial Assistance Award.

SUMMARY: Based upon a determination made pursuant to 10 CFR 600.7(b)(2)(i)(B) and (G) the DOE, Morgantown Energy Technology Center, gives notice of its plans to award a renewal under Grant No. DE-FG21-91MC28253, to METC Kids, Inc., Morgantown, West Virginia, in the amount of $48,000, of which $24,000 will be funded in the upcoming budget period ($50,000 was provided on the original grant award).

FOR FURTHER INFORMATION CONTACT: D. Denise Riggi, I-07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, WV 26507-0880, Telephone: (304) 291-4241, Procurement Request No. 21-92MC28253.503.

SUPPLEMENTARY INFORMATION: The purpose of the renewal award is to provide additional time and funding support to METC Kids for continued operation of the child care and development facility which provides child care and development services for METC. The child care and development center project is necessary to support the Department's mission. This relationship to mission was defined by the Secretary in the "Determination to Establish Child Care Centers in Department of Energy Facilities in Forrestal and Germantown," dated April 4, 1989. The DOE support of this program should assist the Department in furthering certain statutorily recognized social goals such as equal employment opportunities. METC Kids, Inc., a non-profit corporation established and controlled by DOE employees, was established in January, 1991, and is chartered specifically to provide child care and development services at the METC facility and is therefore uniquely positioned to operate and manage the facility. Based on the findings made above regarding the uniqueness of this corporate entity and the public interest served in the award of this renewal, the restriction of 10 CFR 600.7(c)(2) regarding eligibility of an organization substantially owned or controlled by one or more current DOE employees has been waived. The period of performance for the renewal is from October 16, 1992 through October 16, 1993.

Issued in Washington, DC, September 2, 1992.

Louie L. Calaway,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 92-21820 Filed 9-9-92; 8:45 am]

BILLING CODE 6450-01-M

Morgantown Energy Technology Center; Cooperative Agreement; Financial Assistance Award to West Virginia University Research Corporation

AGENCY: Morgantown Energy Technology Center, Department of Energy (DOE).

ACTION: Notice of acceptance of a noncompetitive financial assistance project revision application under a current cooperative agreement.

SUMMARY: Based upon a determination made pursuant to 10 CFR 600.7(b)(2)(i)(A) the DOE, Morgantown Energy Technology Center gives notice of its plans to award a project revision to the West Virginia University Research Corporation, West Virginia University, Appalachian Oil and Natural Gas Research Consortium (AONGRC), 213 Glenlock Hall, Morgantown, WV 26506 for additional effort under Cooperative Agreement DE-FC21-91MC28176. The additional effort will take three years to complete and will be performed concurrently with the current effort; overall it will require a one-year project extension. The additional effort has an associated budget of approximately $1,300,322; the budget includes a 10% participant cost share ($134,914).

FOR FURTHER INFORMATION CONTACT: Mary C. Spatafore, I-07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, WV 26507-0880, Telephone: (304) 291-4253, Procurement Request No. 21-91MC28079.000.

SUPPLEMENTARY INFORMATION: The objective of this action is to add a task to the current cooperative agreement with West Virginia Research Corporation to collect oil reservoir information; this information will be collected along with the gas production data currently being compiled under the project for the Appalachian region. The objectives of the additional task to collect oil reservoir information are: (1) To increase the coverage of oil reservoirs in the Appalachian Basin in the Tertiary Oil Recovery Information System (TORIS) Database; and (2) to evaluate data for reservoirs currently in TORIS, and change, delete, or add to the data as is necessary. The effort is considered a natural extension of the effort currently being conducted by the participant. Oil and gas reserves coexist side by side naturally in a reservoir. The oil and gas reserve data can therefore be collected at the same time. In addition, the same entities (the state surveys [WV, OH, PA and KY] and WVU) performing the current project are uniquely qualified to perform the additional effort; they possess the requisite data and expertise for satisfactory completion of the DOE objectives in the Appalachian Region. The benefits of this oil and natural gas data collection activity are that it will pull together the systematic compilation of reserve and production data and their placement in a reservoir play-defined framework which reveals the most prolific combinations of structures and producing facies. DOE support of this activity will enhance the public benefits and accelerate the accomplishment of the effort; furthermore, the DOE knows of no other entity which is planning to conduct the specifically proposed project. Overall, the public will benefit by this data collection as DOE support will allow for greater dissemination of the project results to industry in a timely fashion. Addition of this task to the current agreement is of real benefit from an economic and technical standpoint, as issuance of a separate agreement would be more costly, time consuming, and a duplication of effort.

Issued in Washington, DC on: September 1, 1992.

Louie L. Calaway,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 92-21822 Filed 9-9-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER92-90-000, et al.]

New England Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

September 1, 1992.

Take notice that the following filings have been made with the Commission:

1. New England Power Co.

[Docket No. ER92-90-000]

Take notice that on August 24, 1992, New England Power Company (NEP) tendered for filing an amendment to its submittal of October 7, 1991, relative to thirty Unit Power Contracts pursuant to

the Commission's directive in Central Maine Power Company, Docket No. ER91-457-000.

NEP states that this amendment provided additional data for review.

Comment date: September 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Northern Electric Power Co., L.P.

[Docket Nos. ER92-868-000, ES92-46-000, EC92-20-000]

Take notice that on August 21, 1992, Northern Electric Power Co., L.P. tendered for filing a supplement to the initial rate filing filed in the above-referenced dockets on June 26, 1992.

Comment date: September 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. Entergy Services, Inc. and Gulf States Utilities Co.

[Docket No. EC92-21-000]

Take notice that on August 28, 1992, Entergy Services, Inc. ("Entergy"), as agent for Entergy Corporation ("Entergy"), and Gulf States Utilities Company ("Gulf States") (collectively, "Applicants"), pursuant to section 203 of the Federal Power Act ("FPA"), 16 U.S.C. 824b (1988), tendered for filing a Joint Application for an order authorizing and approving a proposed merger and reorganization to combine their systems ("Joint Application").

Gulf States is engaged principally in the business of generating electric energy and transmitting, distributing, and retailing such energy in a 28,000 square mile area to more than 580,000 retail customers in southeastern Texas and in south Louisiana. Gulf States owns a 70 percent share of River Bend, a nuclear-fueled electric generating station, and operates the station near St. Francisville, Louisiana. In addition to the electric business, Gulf States produces and sells steam for industrial use and purchases and sells natural gas at retail in the Baton Rouge, Louisiana area. The gas and steam products businesses are conducted entirely in Louisiana. Gulf States wholly owns three subsidiaries: GSG&T, Inc., which owns a 520 MW generating facility; Varibus Corporation, which operates certain intrastates gas pipelines in Louisiana used primarily to transport fuel to two of Gulf States' generating stations and, through a division known as Vari Tech, markets computer-aided engineering and drafting technologies and related computer equipment and services; and Prudential Oil & Gas, Inc., an energy exploration and development company which is presently inactive.

Entergy Services is the service company for Entergy, a registered public utility holding company, organized under the laws of the State of Florida, with its principal place of business in New Orleans, Louisiana. Entergy owns all of the outstanding shares of common stock of four operating electric utility subsidiaries: Arkansas Power & Light Company ("AG&L"), Louisiana Power & Light Company ("LP&L"), Mississippi Power & Light Company ("MP&L"), and New Orleans Public Service Inc. ("NOPSI") (collectively, the "Operating Company"). The Operating Companies are engaged in the manufacture, generation, transmission, distribution, and sale of electric energy in portions of Arkansas, Louisiana, Mississippi and Tennessee. The Operating Companies provide service to more than 1.7 million retail customers in a 45,000 square mile distribution area. In addition, NOPSI provides natural gas service to approximately 160,000 retail customers in New Orleans, Louisiana.

Entergy wholly owns the outstanding common stock of five additional companies: Entery Services, Inc., Entergy Operations, Inc. ("EOI"), Entergy Power, Inc., System Energy Resources, Inc. ("SERI"), and Electec, Inc. Entergy Services is the service company for the Entergy System. EOI operates four nuclear-fueled electric generating stations: Arkansas Nuclear One, Units 1 and 2, located near Russellville, Arkansas; Grand Gulf Nuclear Station Unit 1 ("Grand Gulf 1"), located near Port Gibson, Mississippi; and Waterford Steam Electric Station, Unit 3, located near Taft, Louisiana. Entergy Power, Inc. is an affiliated power producer with 809 MW of generating capacity. SERI is a nuclear generating company that owns and leases a ninety percent undivided interest in Grand Gulf 1 and sells to the Operating Companies the capacity and energy to which it is entitled. Electec, Inc. is a non-utility subsidiary investing in projects beneficial to the Entergy System.

Applicants state that they have executed an Agreement and Plan of Reorganization to combine the systems of Entergy and Gulf States. Applicants state that pursuant to this Agreement and Plan of Reorganization, described more fully in the Joint Application, Entergy will ultimately merge into a new holding company (a Delaware corporation to be named Entergy Corporation), of which AP&L, Gulf States, LP&L, MP&L, and NOPSI will be operating company subsidiaries. Applicants state that there is an alternative reorganization in which Entergy and Gulf States will remain subsidiaries of the new holding company if the Internal Revenue Service does not issue certain rulings. Applicants further state that substantial efficiencies will result from the integration of the currently separate operations of Gulf States and the Operating Companies. Applicants also state that testimony in support of the Joint Application was filed with the Joint Application. The Applicants submit that the proposed merger will be consistent with the public interest.

Copies of the Joint Application have been served upon the state commissions of Arkansas, Louisiana, Mississippi, Tennessee, and Texas, and upon the Council of the City of New Orleans.

Applicants state that, concurrent with the filing of the Joint Application pursuant to Section 203 of the FPA, they are filing a related application under Section 205 of the FPA for Commission approval of an amendment to add Gulf States to the System Agreement among the Entergy Operating Company subsidiaries and Entergy Services, as well as a Motion for Consolidation, Expedited Action, and Limited Hearing Procedures.

Applicants state that an application will be filed with the Nuclear Regulatory Commission seeking approval to amend its license to add EOI as operator of River Bend, subject to such consents as may be required by law and by contract. An application for approval of the merger and reorganization and related transactions has been or will be filed with the Securities and Exchange Commission under the Public Utility Holding Company Act. Applicants further state that on July 1, 1992, separate applications for approval of the merger and reorganization were filed with the Louisiana Public Service Commission and the Public Utility Commission of Texas.

Comment date: September 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Northern States Power Co. (Minnesota) and Northern States Power Co. (Wisconsin)

[Docket No. ER92-302-000]

Take notice that on August 24, 1992, Northern State Power Company (Minnesota) and Northern States Power Company (Wisconsin) (hereinafter jointly "NSP Companies") tendered for filing an amendment supporting the terms and conditions of the Eastern Interconnection and Interchange Agreement (Agreement) between the NSP Companies and the Wisconsin Public Power, Inc. SYSTEM (WPPI). This filing constitutes a third amendment to NSP's original filing dated January 31,

1992, as previously amended by filings dated March 31, 1992, and April 15, 1992.

The Agreement between NSP and WPPI provides for certain sales of Peaking Power between NSP and WPPI pursuant to Service Schedules B attached to the Agreement, including the terms and conditions of such services. The proposed filing amendment supports the 20 percent capacity factor limitation contained in Service Schedule B. The amendment does not propose to change the rates or terms and conditions of service for Peaking Power under the Agreement.

NSP requests that the Agreement (as amended) be accepted for filing effective November 1, 1991, and request waiver of the Commission's notice requirements in order for the Agreement to be accepted for filing on the date requested.

Comment date: September 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. Entergy Services, Inc. and Gulf States Utilities Co.

[Docket No. ER92-806-000]

Take notice that on August 28, 1992, Entergy Services, Inc. ("Entergy Services") on behalf of Arkansas Power & Light Company ("AP&L"), Louisiana Power & Light Company ("LP&L"), Mississippi Power & Light Company ("MP&L"), and New Orleans Public Service Inc. ("NOPSI") (collectively, the "Operating Companies"), and Gulf States Utilities Company ("Gulf States"), jointly tendered for filing a rate schedule change, pursuant to section 205 of the Federal Power Act ("FPA"), 16 U.S.C. 824d (1988). The rate schedule filing consists of the following:

(1) Agreement among Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company, New Orleans Public Service Inc. and Middle South Services, Inc. dated April 23, 1982 ("System Agreement"); and

(2) Agreement among Arkansas Power & Light Company, Gulf States Utilities Company, Louisiana Power & Light Company, New Orleans Public Service Inc., and Entergy Services, Inc. to amend the system agreement ("Agreement to Amend").

Applicants state that the Agreement to Amend extends the System Agreement to Gulf States, which will become a "sister" company of the Operating Companies upon authorization and consummation of a proposed combination which is the subject of an Application under section 203 of the FPA.

The Agreement to Amend modifies the System Agreement and is filed as a supplement to the Operating Companies' rate schedules, which are designated as:

AP&L Rate Schedule FERC No. 94;
LP&L Rate Schedule FERC No. 69;
MP&L Rate Schedule FERC No. 262; and
NOPSI Rate Schedule FERC No. 8.

With respect to Gulf States, the Agreement to Amend and the System Agreement are together filed as a rate schedule, whose number will be designated by the Commission.

The Applicants state that an Agreement and Plan of Reorganization Between Entergy Corporation and Gulf States Utilities Company dated as of June 5, 1992 proposes to combine the Entergy and Gulf States systems. The combination will integrate Gulf States into the Entergy System by reorganizing Gulf States as an operating company subsidiary of a new holding company, also to be called Entergy Corporation. The Applicants state that the Agreement to Amend, which will subject Gulf States to the System Agreement in the same manner as AP&L, LP&L, MP&L and NOPSI, is necessary to achieve the full benefits of the proposed combination.

The Applicants state that the System Agreement provides for centralized planning, construction and operation of the electric generation and transmission facilities among the Operating Companies. Applicants state that, among other things, the System Agreement provides a method to equalize among the Operating Companies certain imbalances in costs associated with construction, ownership and operation of facilities. The System Agreement was initially approved by the Commission in Opinion No. 234. Middle South Energy, Inc., 31 FERC (CCH) ¶ 61,305 (1985).

Applicants state that the Agreement to Amend is a rate schedule change other than a rate increase. Applicants state that the rate schedule change only proposes to alter the System Agreement by adding Gulf States as an operating company under the System Agreement, including the modification of a service schedule formula to include Gulf States. Therefore, Applicants state that the rate schedule change will have an effect on rates that is neither a rate increase nor a rate decrease. Applicants further state that testimony describing this Amendment and its effect on Gulf States and the Operating Companies has been filed concurrently with this application.

Copies of the Joint Application have been served upon the state commissions of Arkansas, Louisiana, Mississippi, Tennessee and Texas, and the Council of the City of New Orleans.

Applicants state that, concurrent with the filing of the Application pursuant to section 205 of the FPA, they are filing a related application under section 203 of the FPA seeking a Commission order authorizing and approving the proposed merger and reorganization to combine their systems, as well as a motion for consolidation, expedited action and limited hearing procedures.

Comment date: September 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. Tampa Electric Co.

[Docket No. ER92-782-000]

Take notice that on August 24, 1992, Tampa Electric Company (Tampa Electric) tendered for filing a Service Schedule J (Negotiated Interchange Service) between Tampa Electric and the City of St. Cloud Electric Utilities (St. Cloud). The Service Schedule J was tendered as a supplement to the existing agreement for interchange service between Tampa Electric and St. Cloud.

Tampa Electric also tendered for filing, as a supplement to the Service Schedule J, a Letter of Commitment providing for negotiated sales of available power by Tampa Electric to St. Cloud.

Tampa Electric proposes an effective date of the earlier of October 24, 1992, or the date that the submittals are accepted for filing, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on St. Cloud and the Florida Public Service Commission.

Comment date: September 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Public Service Co. of Colorado

[Docket No. ER92-317-000]

Take notice that on August 21, 1992, Public Service Company of Colorado (Public Service) filed with the Commission an executed copy of the Power and Transmission Services Agreement among Public Service, Tri-State Generation and Transmission Association, Inc., and PacfiCorp (PTSA). Publice Service had previously committed to submit an executed copy of the PTSA when it filed, among other things, an unexecuted copy thereof on February 7, 1992.

Public Service states that copies of the filing have been served on the parties in this docket.

Comment date: September 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. Central Vermont Public Service Corp.

[Docket No. ER92-594-000]

Take notice that on August 14, 1992, Central Vermont Public Service Corporation tendered for filing an

amendment in the above-referenced docket.

Comment date: September 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. Northern States Power Co. (Minnesota)

[Docket No. ER92-551-000]

Take notice that on August 24, 1992, Northern States Power Company (NSP) tendered for filing a revised proposed rate for inclusion in the Transmission Exchange Agreement (Agreement) dated May 12, 1992, between NSP and Heartland Consumers Power District (Heartland). The revised rate schedule constitutes an amendment to NSP's original filing dated May 15, 1992.

The Agreement between NSP and Heartland provides certain transmission outlet service on essentially an exchange basis from Heartland's peaking generation located in Marshall, Minnesota, inside NSP's electrical control area, to NSP's interconnections with United Power Association. The proposed amendment (i) provides further cost justification for the Energy Accounting and Dispatch Service rate, (ii) revises the methodology by which NSP will collect capacity and energy losses from Heartland, and (iii) eliminates the $1 per MWH adder for difficult to quantify costs pursuant to Commonwealth Edison, 35 FERC para. 61,352 (1986).

NSP again requests that the Agreement (as amended) be accepted for filing effective May 16, 1992, and requests waiver of the Commission's notice requirements in order for the Agreement to be accepted for filing on the date requested.

Comment date: September 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. Onondaga Cogeneration Limited Partnership

[Docket No. QF87-429-002]

On August 18, 1992, Onondaga Cogeneration Limited Partnership (Applicant), c/o Energy Initiatives, Inc., One Upper Pond Road, Parsippany, New Jersey 07054, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207(B) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at Geddes, New York. The facility will consist of two combustion turbine generators, two waste heat recovery boilers and an extraction/condensing steam turbine generator. Steam produced by the facility will be provided to Crucible Materials Corporation and other purchasers for industrial processes. The primary energy source will be natural gas. The net electric power production capacity of the facility will be 79.9 MW.

The certification of the facility was originally issued on September 10, 1987 [40 FERC ¶ 62,311 (1987)]. A notice of selfcertification was filed on November 28, 1989 in Docket No. QF90-37-000. The instant recertification is requested by the Applicant due to the change of the steam host and the ownership structure of the facility, and the addition of a 6,000 feet transmission line.

Comment date: October 13, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21688 Filed 9-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP92-671-000, et al.]

Tennessee Gas Pipeline Company, et al.; Natural Gas Certificate Filings

September 1, 1992.

Take notice that the following filings have been made with the Commission:

1. Tennessee Gas Pipeline Co.

[Docket No. CP92-671-000]

Take notice that on August 25, 1992, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252 filed in Docket No. CP92-671-000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to add an additional delivery point under an existing firm sales service to Berkshire Gas Company, under the blanket certificate issued Docket No. CP82-413-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee states that it currently provides natural gas service to Berkshire under the terms and conditions of Tennessee's CD-6 Rate Schedule and the terms and conditions of a gas sales contract between Tennessee and Berkshire dated July 1, 1992, as filed with the commission in Docket No. RP88-228, *et al.*, on August 24, 1992. Pursuant to a request of Berkshire, Tennessee proposes to add the Bousquet delivery point located in Pittsfield, Massachusetts, as a delivery point under the contract. No new facilities are proposed.

Tennessee also states it does not propose to increase or decrease the total daily and/or annual quantities it is authorized to deliver to Berkshire. Tennessee further states that the establishment of the proposed new delivery point is not prohibited by Tennessee's currently effective tariff and that it has sufficient capacity to accomplish the deliveries at the proposed new delivery point without detriment or disadvantage to any of Tennessee's other customers.

Comment date: October 16, 1992, in accordance with Standard Paragraph G at the end of this notice.

2. Williams Natural Gas Co.

[Docket No. CP92-679-000]

Take notice that on August 28, 1992, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP92-679-000, a request pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon the transportation of natural gas for direct sale to Kizzar Well Service, Inc. (Kizzar) and to reclaim measuring, regulating and appurtenant facilities located in Rice County, Kansas, under the authorization issued in Docket No. CP82-479-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

WNG states that it has made the direct sale to Kizzar for use at the Sharpe lease operation located in section 8, T20S, R9W, Rice County, Kansas. It is stated that Kizzar has notified WNG that gas service is no longer required for the lease operation.

WNG states that the cost to reclaim the measuring, regulating and appurtenant facilities is estimated to be approximately $680.

Comment date: October 16, 1992, in accordance with Standard Paragraph G at the end of this notice.

3. Texas Gas Transmission Corp.

[Docket No. CP92-676-000]

Take notice that on August 27, 1992, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP92-676-000, a request pursuant to § 157.205 of the Commission's Regulations under the National Gas Act (18 CFR 157.205) for authorization to abandon by removal 19 sales taps currently serving 23 customers of Southern Indiana Gas and Electric Company (SIGECO) in Gibson County, Indiana, under its blanket certificate issued in Docket No. CP82-407-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas states that by letter dated August 4, 1992, SIGECO requested Texas Gas to abandon 19 sales taps currently serving 23 customers of SIGECO. SIGECO explains that it is extending its distribution mains and plans to serve these customers from its own distribution line rather than from Texas Gas' Slaughters-Montezuma 12-inch transmission line.

SIGECO will continue to serve these 23 customers directly off its distribution lines behind its Haubstadt Delivery Point with Texas Gas when these sales taps are abandoned, it is stated. Texas Gas asserts that service to these customers will not be affected by the abandonment of these facilities.

Comment date: October 16, 1992, in accordance with Standard Paragraph G at the end of this notice.

4. Tennessee Gas Pipeline Co.

[Docket No. CP91-1618-003]

Take notice that on August 26, 1992, Tennessee Gas Pipeline Company (Tennessee), 1010 Milam, Houston, Texas 77252, filed in Docket No. CP91-1618-003 a petition to amend an order issued on December 27, 1991, in Docket No. CP91-1618-000 pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon in-place approximately 280 feet of pipeline on the Westfield Delivery segment of the Massachusetts Lateral Replacement, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Tennessee states that the Commission's order issued on December 27, 1991, in Docket No. CP91-1618-000 authorized, among other things, to replace approximately 1.10 miles of 3.5-inch pipeline on its Westfield Delivery Line in Hampden County, Massachusetts with 8-inch pipeline. Tennessee proposes to abandon in place approximately 280 feet of this 3.5-inch pipeline instead of removing it as originally planned due to the difficulty in complying with certain environmental requirements and safety concerns

Comment date: September 22, 1992, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157. 205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21689 Filed 9-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-1-1-000]

Alabama-Tennessee Natural Gas Company; Proposed PGA Rate Adjustment

September 3, 1992.

Take notice that on August 31, 1992, Alabama-Tennessee Natural Gas Company ("Alabama-Tennessee"), Post Office Box 918, Florence, Alabama 35631, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet.

34th Revised Sheet No. 4.

The tariff sheet is proposed to become effective October 1, 1992. Alabama-Tennessee states that the purpose of this filing is to adjust its rates to conform to the rates of its suppliers and to reflect certain transportation costs as purchased gas costs as permitted under the Commission's order issued on February 7, 1992 in Docket No. RP92-89-000 (58 FERC ¶ 61,130). Alabama-Tennessee has requested any necessary waivers of the Commission's Regulations in order to permit the tariff sheet to become effective as proposed.

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional sales and transportation customers and affected state regulatory commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 11, 1992. Protests will be considered by the Commission in

determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21758 Filed 9-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-20-000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

September 3, 1992.

Take notice that Algonquin Gas Transmission Company ("Algonquin"), on September 1, 1992, tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 and Original Volume No. 2, tariff sheets listed in Attachment A attached to the filing and proposed to be effective October 1, 1992.

Algonquin states that pursuant to section 32 of the General Terms and Conditions of Algonquin's FERC Gas Tariff, Algonquin is filing the tariff sheets listed in Attachment A to track the increase in the Commission's Annual Charge Adjustment Surcharge for the Fiscal Year 1992.

Algonquin states that the net effect of the instant filing is to increase the commodity charge by 0.01¢ per MMBtu for Rate Schedules F-1, F-2, F-3, F-4, WS-1, I-1, E-1, I-2, T-1, T-LG, T-X, AFT-1, AFT-3, AFT-4, AIT-1, PSS-T, FTP, X-33, X-35 and X-37 and to increase the third party injection rate in Rate Schedules STB and SS-III by the same amount.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21766 Filed 9-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-1-31-000]

Arkla Energy Resources; Filing of Revised Tariff Sheets Reflecting Quarterly PGA Adjustment

September 3, 1992.

Take notice that on September 1, 1992, Arkla Energy Resources (AER), a division of Arkla, Inc., tendered for filing the following revised tariff sheets to become effective October 1, 1992:

Rate Schedule No. X-26, Original Volume No. 3, Twentieth Revised Sheet No. 185.1

Rate Schedule No. G-2, Second Revised Volume No. 1, Fifteenth Revised Sheet No. 11

Rate Schedule No. CD, Second Revised Volume No. 1, Fifteenth Revised Sheet No. 16

AER states that the tariff sheets reflect AER's second quarterly PGA filing made subsequent to its annual PGA effective April 1, 1992 under the Commission's Order Nos. 483 and 483-A.

AER also states that the proposed changes reflect an increase in AER's system cost of $41,981 and would increase its revenue from jurisdictional sales and service by $911 for the PGA period of October, November and December 1991 as adjusted.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92- 21757 Filed 9-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-46-000]

Black Marlin Pipeline Co.; Proposed Changes in FERC Gas Tariff

September 3, 1992.

Take notice that on August 31, 1992, Black Marlin Pipeline Company (Black Marlin) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet to be effective October 1, 1992.

Second Revised Sheet No. 4

Black Marlin states that the above-referenced tariff sheet is being filed pursuant to Section 18 of the General Terms and Conditions of Black Marlin's tariff to reflect the continuation of the ACA charge of .22¢/MMBtu based on the Commission's Annual Charge Billing for Fiscal Year 1992.

Black Marlin further states that a copy of its filing has been served on all customers receiving gas under its FERC Gas Tariff and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21778 Filed 9-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-21-000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

September 3, 1992.

Take notice that Columbia Gas Transmission Corporation (Columbia) on August 31, 1992, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, to be effective October 1, 1992:

Fifteenth Revised Sheet No. 28.1
Fifteenth Revised Sheet No. 28A.1
Twenty-first Revised Sheet No. 28C

Twelfth Revised Sheet No. 26D

Columbia states that the listed tariff sheets set forth the adjustment to its sales and transportation rates applicable to the Annual Charge Adjustment, pursuant to the Commission's Regulations as set forth in Order No. 472, *et seq.*

Columbia states that copies of the filing were served upon Columbia's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21767 Filed 9-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-70-000]

Columbia Gulf Transmission Co.; Proposed Changes in FERC Gas Tariff

September 3, 1992.

Take notice that Columbia Gulf Transmission Company (Columbia Gulf) on August 31, 1992, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, to be effective October 1, 1992:

Seventh Revised Sheet No. 021
Fourth Revised Sheet No. 022
Third revised Sheet No. 046

Columbia Gulf states that the listed tariff sheets set forth the adjustment to its sales and transportation rates applicable to the Annual Charge Adjustment, pursuant to the Commission's regulations as set forth in Order No. 472, *et seq.*

Columbia Gulf states that copies of the filing were served upon Columbia Gulf's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21771 Filed 9-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-1-2-000]

East Tennessee Natural Gas Co.; Rate Filing

September 3, 1992.

Take notice that on August 31, 1992, East Tennessee Natural Gas Company ("East Tennessee"), submitted for filing ten copies each of Twenty Seventh Revised Nos. 4 and 5 to First Revised Volume No. 1 of its FERC Gas Tariff to be effective October 1, 1992.

East Tennessee states that the purpose of the filing is to implement a Quarterly Gas Rate Adjustment to be effective for the period October 1 through December 31, 1992, pursuant to section 21.1(b) of the General Terms and Conditions of East Tennessee's FERC Gas Tariff.

East Tennessee states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest such filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20425, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before September 11, 1992. Protests will be considered by the Commission in determining appropriate action but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene; provided, however, that any person who had previously filed a petition to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21760 Filed 9-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA93-1-23-000]

Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff

September 3, 1992.

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on August 31, 1992 certain revised tariff sheets to First Revised Volume No. 1 of its FERC gas tariff. The proposed effective date of the tariff sheets is November 1, 1992.

ESNG states the filing is its Annual PGA filing pursuant to § 154.305 of the Commission's regulations and section 21 of its FERC Gas Tariff, First Revised Volume No. 1. The effect of the filing is to increase commodity rates by $0.2967 per dt and make no change in the demand rates over ESNG's rates established in its Out-of-Cycle PGA filing, Docket No. TQ92-7-23-000, proposed to be effective September 1, 1992 and reiterated in its Restatement of Base Tariff Rates filing, Docket No. RP92-227-000, proposed to be effective October 1, 1992. Other rates also change correspondingly.

ESNG states that the projected commodity and demand costs have been developed using a best estimate of available gas supply to meet its anticipated purchase requirements. Such projections reflect the continued implementation of ESNG's Stipulation and Agreement in Docket Nos. RP89-164-000 and 001, and more specifically Article II (as amended) thereof, which permits ESNG to include in its PGA calculations transportation-related (Account No. 858) costs.

ESNG states its filing also contains the calculations of its new surcharge adjustments which reflect the amortization of the respective commodity and demand current deferral balances accumulated during the period July 1, 1991 through June 30, 1992 over the twelve month period commencing November 1, 1992.

ESNG states that copies of the filing are being mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC

20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 21, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21777 Filed 9-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-33-000]

El Paso Natural Gas Company; Tariff Filing

September 3, 1992.

Take notice that on August 31, 1992, El Paso Natural Gas Company ("El Paso"), tendered for filing, pursuant to part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act, a notice of:

(i) A revision to El Paso's Take-or-Pay Buyout and Buydown Cost Recovery mechanism for interest in accordance with Sections 22 and 21, Take-or-Pay Buyout and Buydown Cost Recovery, of its First Revised Volume No. 1-A and Second Revised Volume No. 1 FERC Gas Tariffs, respectively; and

(ii) A revision in the Annual Charge Adjustment ("ACA") in accordance with Sections 21 and 23, Annual Charge Adjustment Provision, contained in the General Terms and Conditions in El Paso's First Revised Volume No. 1-A and Second Revised Volume No. 1 FERC Gas Tariffs, respectively.

El Paso states that in reference to item (i) the filing reflects that no additions have been made to the principal amount presently being amortized under El Paso's Take-or-Pay Cost Recovery mechanism as set forth in El Paso's filing made July 1, 1992 at Docket No. RP92-195-000. The only adjustments proposed are being made pursuant to §§ 21.4(d)(iii) and 21.5(c)(iii) contained in its Second Revised Volume No. 1 Tariff which provides for adjustments to El Paso's Monthly Direct Charge and Throughput Surcharge for interest calculated on the unrecovered balance of El Paso's buyout and buydown costs. El Paso states that interest is permitted to accrue, with respect to its buyout and buydown costs, commencing on the effective date of the rates including such costs or the date El Paso makes the take-or-pay payment, whichever is later. As a result, the Throughput Surcharge has been changed from a Maximum Rate of $0.0393 per dth to $0.0349 per dth.

In addition, in reference to item (ii) El Paso states that the proposed tariff sheets reflect an ACA charge of $0.0022 per dth to be collected for the fiscal year beginning October 1, 1992. This represents a decrease of $0.0001 per dth in the ACA charge currently being charged.

El Paso respectfully requested that the tendered tariff sheets be accepted and permitted to become effective on October 1, 1992, which is not less than thirty (30) days after the date of filing.

El Paso states that copies of the filing were served upon all interstate pipeline system transportation and sales customers of El Paso and interested regulatory commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21761 Filed 9-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-34-000]

Florida Gas Transmission Company; Proposed Changes in FERC Gas Tariff

September 3, 1992.

Take notice that on August 31, 1992, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, the following tariff sheets to be effective October 1, 1992:

Thirty-First Revised Sheet No. 8
Tenth Revised Sheet No. 8A
Eighth Revised Sheet No. 8B

FGT states that the above-referenced tariff sheets are being filed pursuant to Section 22 of the General Terms and Conditions of FGT's tariff to reflect the continuation of the ACA charge of .23¢/MMBtu (.023¢/therm) based on the Commission's Annual Charge Billing for Fiscal Year 1992.

FGT further states that a copy of its filing has been served on all customers receiving gas under its FERC Gas Tariff and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21774 Filed 9-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-6-34-000]

Florida Gas Transmission Company; Proposed Changes in FERC Gas Tariff

September 3, 1992.

Take notice that on August 31, 1992 Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet to be effective September 1, 1992:

Thirtieth Revised Sheet No. 8

FGT states that the above-referenced tariff sheet is being filed to reflect an increase in FGT's cost of gas purchased from that level reflected in its last Quarterly PGA filing effective August 1, 1992 in Docket No. TQ92-5-34-000.

On June 30, 1992, FGT made a filing in its Quarterly PGA in Docket No. TQ92-5-34-000 containing a projected cost of purchased gas for the period August 1, 1992 through October 31, 1992 of $2.1453/MMBtu saturated. Subsequent to the Quarterly filing, FGT has experienced an increase in its cost of purchased gas to a level that now exceeds the level of purchased gas cost established in FGT's last Quarterly PGA. However, FGT is precluded from adjusting its rates under Section 15.10 (Interim Adjustment Filings) of its FERC Gas Tariff to reflect a level of gas cost that exceeds the level established in its

last Quarterly PGA filing. Therefore, FGT is making the instant Out-of-Cycle PGA filing in order to reflect the increases in its cost of purchased gas to a level of $2.5088/MMBtu saturated.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426 in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21775 Filed 9-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-66-000]

Mojave Pipeline Company; Conference

September 3, 1992.

Take notice that on Wednesday, September 23, 1992, at 10 a.m., a conference will be convened in the above-captioned docket to discuss Mojave Pipeline Company's summary of its proposed plan for implementation of Order No. 636.

The conference will be held in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. All interested parties are invited to attend. Attendance at the conference will not confer party status. For additional information, interested persons can call Marilyn Rand at (202) 208-0327 or James Moody (202) 208-2050.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21763 Filed 9-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-16-000 and TQ93-1-16-000]

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

September 3, 1992.

Take notice that on August 31, 1992, National Fuel Gas Supply Corporation ("National") tendered for filing the following revised tariff sheets as part of its FERC Gas Tariff, Second Revised Volume No. 1, to become effective on October 1, 1992:

(A) Twenty-Third Revised Sheet No. 5
(B) Alt Twenty-Third Revised Sheet No. 5
(C) Sixth Revised Sheet No. 6

The purpose of this filing is to revise the ACA surcharge, implement a quarterly Purchased Gas Cost Adjustment ("PGA") and Transportation and Compression Cost Adjustment ("TCCA") rate change.

To cover the possible outcome of the compliance filing National made on August 28, 1992 regarding the recovery of the undercollected Account No. 858 costs through a 12-month surcharge, National submits primary tariff sheet (A) and alternate tariff sheet (B). However, both sheets (A) and (B) reflect identical gas cost projections in the quarter of October 1992. The revised RQ and CD sales commodity rate of 240.13 cents per Dt on the primary tariff sheet and 240.88 cents per Dt on the alternate tariff sheet are based upon a current average cost of purchased gas of 199.78 cents per Dt (in unit of purchases), or 204.84 cents per Dt (in unit of sales).

National submits tariff sheets (A), (B) and (C) with a revised ACA surcharge of 0.22 cents per Dt to become effective on October 1, 1992.

To reflect the latest projection of Account No. 858 costs, National revises the Current TCCA Unit Rate in demand and commodity to $4.00 per Dt and 25.81 cents per Dt respectively to become effective on October 1, 1992.

National further states that copies of this filing were served upon the Company's jurisdictional customers and the Regulatory Commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Docket No. TM93-1-16-000, TQ93-1-16-000, Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such motions to intervene or protests should be filed on or before September 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21779 Filed 9-9-92; 8:45 am]

BILLING CODE 6717-01-M

Federal Enegy Regulatory Commission

Sabine Pipe Line Co. Proposed Changes in FERC GAS Tariff

September 3, 1992.

Take notice that Sabine Pipe Line Company (Sabine) on September 1, 1992, tendered for filing the following proposed change to its FERC Gas Tariff, First Revised Volume No. 1, to be effective October 1, 1992:

Tenth Revised Sheet No. 20

Sabine states that the Commission has specified the Annual Charge Adjustment (ACA) unit charge of $.0023/Mcf to be applied to rates in 1993 for recovery of 1992 annual charges. The ACA unit rate of $.0023/Mcf converts to $.0022 MMBtu under Sabine's basis for billing.

Sabine states that copies of the filing were served upon Sabine's customers, the State of Louisiana, Department of Natural Resources, Office of Conservation and the Railroad Commission of Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the pubic reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21768 Filed 9-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-79-000]

Sea Robin Pipeline Company; Conference

September 3, 1992.

Take notice that on Wednesday, October 14, 1992, at 10 a.m., a conference will be convened in the above-captioned docket to discuss Sea Robin Pipeline Company's summary of its proposed plan for implementation of Order No. 636.

The conference will be held in Hearing Room 1, at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. All interested parties are invited to attend. Attendance at the conference will not confer party status. For additional information, interested persons can call Al Francese at (202) 208-0730 or Robert J. Szekely at (202) 208-0442.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21765 Filed 9-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ93-1-7-000 and TM93-1-7-000]

Southern Natural Gas Co.; Proposed Changes to FERC Gas Tariff

September 3, 1992.

Take notice that on August 31, 1992, Southern Natural Gas Company (Southern) tendered for filing the following revised sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1:

One Hundred Twenty-Third Revised Sheet No. 4A
Thirty-Sixth Revised Sheet No. 4B
Forty-Second Revised Sheet No. 4J
Eighth Revised Sheet No. 45M

Southern states that the proposed tariff sheets and supporting information are being filed with proposed effective date of October 1, 1992.

Southern states that the aforesaid tariff sheets reflect an increase of 41.5¢ per Mcf at 1,000 Btu in the commodity component of Southern's rates for its last scheduled PGA filing in Docket No. TQ92-3-7-000 as a result of projected changes in Southern's cost of purchased gas. Additionally, the aforesaid tariff sheets implement the Commission's revised annual charge adjustment of .23¢ per MMBtu.

Southern states that copies of the filing were served upon all of Southern's jurisdictional purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21769 Filed 9-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-69-000]

Stingray Pipeline Co.; Proposed Changes in FERC Gas Tariff

September 3, 1992.

Take notice that on September 1, 1992, Stingray Pipeline Company (Stingray) tendered for filing revised tariff sheets to be a part of its FERC Gas Tariff, First Revised Volume No. 1, to be effective October 1, 1992.

Stingray states that the purpose of the filing is to implement the Annual Charges Adjustment (ACA) charge necessary for Stingray to recover from its customers annual charges assessed it by the Commission pursuant to Part 382 of the Commission's Regulations. The rate authorized by the Commission to be effective October 1, 1992 is .23¢ per Mcf. Under Stingray's billing basis, this rate converts to .22¢ per Dekatherm.

Stingray also states it is refiling its ACA tariff provision which was inadvertently omitted when Stingray filed its tariff in electronic media format as part of its general rate case filed August 30, 1991 at Docket No. RP91-212-000.

Stingray requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective on October 1, 1992.

Stingray states that a copy of the filing is being mailed to Stingray's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21772 Filed 9-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-629-021, CP90-639-012]

Tennessee Gas Pipeline Co., System, L.P.; Notice of Compliance Filing, September 3, 1992.

Take notice that on July 15, 1992, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed supplemental information in compliance with the Commission's order, issued June 29, 1992 (59 FERC ¶61,386), in Docket Nos. RP92-181-000, CP89-629-021, and CP90-639-012, which required Tennessee to file all the information and data normally required to be submitted with an application for a certificate amendment including but not limited to revised Exhibits F, G, K, and N, all as more fully set forth in the compliance filing which is on file with the Commission and open to public inspection.

Tennessee states that it has revised its proposal such that Exhibits N and P reflect the cost factors established in the October 9, 1991 Phase II Order (57 FERC ¶61,047). Tennessee states that the proposed firm transportation rates thus reflect the updated costs for the facilities necessary to provide the 1992 certified services, as well as one-part, 100-percent demand rates for all such services except Selkirk Cogen Partners, L.P.

Tennessee states further that if the Commission grants the requested amendment, Tennessee will incorporate the revised initial rates in the compliance tariff filing that Tennessee submits in accordance with the Phase II Order and the Commission's Regulations. Tennessee requests waiver of the 30-day prior notice requirement of part 154 of the Commission's Regulations if the Commission fails to act on this application in time to allow

Tennessee to submit its compliance tariff filing at least 30 days before November 1, 1992, when Phase II service is scheduled to commence.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before September 14, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21687 Filed 9-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-68-000]

Trailblazer Pipeline Co.; Proposed Changes in FERC Gas Tariff

September 3, 1992.

Take notice that on September 1, 1992, Trailblazer Pipeline Company (Trailblazer) tendered for filing Thirteenth Revised Sheet No. 4 (Original Volume No. 1) and Second Revised Sheet No. 5 (First Revised Volume No. 1A) to be a part of its FERC Gas Tariff, to be effective October 1, 1992.

Trailblazer states that the purpose of filing is to implement the Annual Charges Adjustment (ACA) charge necessary for Trailblazer to recover from its customers annual charges assessed it by the Commission pursuant to part 382 of the Commission's Regulations. The rate authorized by the Commission to be effective October 1, 1992 is .23¢ per Mcf.

Trailblazer requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective on October 1, 1992.

Trailblazer states that a copy of the filing is being mailed to Trailblazer's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21773 Filed 9-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-23-000]

Transcontinental Gas Pipe Line Corporation

September 3, 1992.

Take notice that Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing on September 1, 1992 Fourth Revised Sheet No. 60 to its FERC Gas Tariff, Third Revised Volume No. 1. Such tariff sheet is proposed to be effective October 1, 1992.

TGPL states that the purpose of this filing is to reflect a decrease in the Annual Charge Adjustment (ACA) Charge in the commodity portion of TGPL's sales and transportation rates. Pursuant to Order No. 472, the Commission has assessed TGPL its ACA unit rate of $0.0023/Mcf (0.0022/dt on TGPL's system) for the annual period commencing October 1, 1992.

TGPL states that copies of the filing are being mailed to affected customers and interested State Commissions.

In accordance with the provisions of 154.16 of the Commission's Regulations, copies of the filing are available for public inspection, during regular business hours, in a convenient form and place at TGPL's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21762 Filed 9-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-196-000]

Transwestern Pipeline Co.; Rescheduling of Technical Conference

September 3, 1992.

Take notice that the technical conference, previously scheduled for Friday, September 11, 1992 at 10 a.m., has been rescheduled. The conference has been rescheduled for Tuesday, September 29, 1992 at 10 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21759 Filed 9-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-42-000]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

September 3, 1992.

Take notice that Transwestern Pipeline Company ("Transwestern") on August 31, 1992 tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Effective October 1, 1992

96th Revised Sheet No. 5
61st Revised Sheet No. 6
7th Revised Sheet No. 6C

Transwestern states that the tariff sheets referenced above are being filed to adjust Transwestern's Annual Charge Adjustment (ACA) pursuant to Section 23 of the General Terms and Conditions of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1. The adjustment of the ACA Surcharge is determined each fiscal year pursuant to the Commission's Order No. 472. The ACA Surcharge of $0.0022/dth as determined by the Commission on July 27, 1992, reflects a decrease of $0.0001/dth from the currently effective ACA Surcharge of $0.0023/dth.

Transwestern requested any waiver of any Commission Regulation and its tariff provisions as may be required to allow the tariff sheets referenced above to become effective on October 1, 1992.

Transwestern states that copies of the filing were served on its jurisdictional

customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21770 Filed 9-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-74-000]

U-T Offshore System; Proposed Changes In FERC Gas Tariff

September 3, 1992.

Take notice that U-T Offshore System (U-TOS) tendered for filing on August 31, 1992 Fifth Revised Sheet No. 5 to Second Revised Volume No. 1 of its FERC Gas Tariff. The proposed effective date of this tariff sheet is October 1, 1992.

U-TOS states that the purpose of the instant filing is to reflect a decrease of $0.0001 per Mcf in the Annual Charge Adjustment (ACA) Charge in the commodity portion of U-TOS' transportation rates. Pursuant to Order 472, the Commission has assessed U-TOS its annual ACA charges based on $0.0023 per Mcf for the annual period commencing October 1, 1992. In accordance with Sections 4.8 and 4.7 of Rate Schedules FT and IT, respectively, contained in Second Revised Volume No. 1 and Article 8 of Rate Schedules T-1 through T-11 contained in Original Volume No. 2 of U-TOS' FERC Gas Tariff, U-TOS is submitting herewith for filing Fifth Revised Sheet No. 5 which tracks the Commission approved ACA unit rate of $0.0023 per Mcf commencing October 1, 1992.

U-TOS states the copies of the filing are being mailed to each of its Shippers for whom transportation service is being provided.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21776 Filed 9-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-26-000]

United Gas Pipe Line Co.; Conference

September 3, 1992.

Take notice that on Thursday, September 17, 1992, and, if necessary, Friday, September 18, 1992, a conference will be convened in the above-captioned restructuring docket to discuss United Gas Pipe Line Company's summary of its proposed plan for implementation of Order No. 636.

The conference will be held at the Embassy Row Hotel, 2015 Massachussetes Avenue, NW., Washington, DC 20036. The conference will begin at 10 a.m. on September 17, 1992. All interested parties are invited to attend. Attendance at the conference will not confer party status. For additional information, interested persons can call Ingrid Olson at (202) 208-0691 or Bill Lansinger at (202) 208-2082.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21764 Filed 9-9-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

Special Research Grant Program Notice 92-21: Medical Applications Program

AGENCY: Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Health and Environmental Research (OHER) of the Office of Energy Research (ER), U.S. Department of Energy, announces its interest in receiving applications for Special Research Grants in support of the Medical Applications Program. This notice addresses one specific area, molecular nuclear medicine, within the Medical Applications Program. In particular, responses to this notice should involve development of new radioactive probes to target molecular sites with the potential for achieving improved diagnostic or therapeutic applications.

DATES: Formal applications submitted in response to this Notice must be received by the Acquisition and Assistance Management Division by 4:30 p.m., EST, January 8, 1993, to be accepted for a merit review in March 1993 and to permit timely consideration for award in Fiscal Year 1993.

ADDRESSES: Formal applications referencing Program Notice 92-21 should be forwarded to: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER-64, Washington, DC 20585, Attn: Program Notice 92-21. The following address must be used when submitting applications by U.S. Postal Service Express, any commercial mail delivery service, or when handcarried by the applicant: U.S. Department of Energy, Acquisition and Assistance Management Division, ER-64, 19901 Germantown Road, Germantown, Maryland 20874.

FOR FURTHER INFORMATION CONTACT: Dr. Gerald Goldstein, Office of Health and Environmental Research, ER-73 (GTN), Office of Energy Research, U.S. Department of Energy, Washington, DC 20585, (301) 903-5348.

SUPPLEMENTARY INFORMATION: Potential applicants are strongly encouraged to submit a brief preapplication in accordance with 10 CFR 600.10(d)(2), which consists of two or three pages of narrative describing the research project objectives and methods of accomplishment. These will be reviewed relative to the scope and research objectives of the Medical Applications Program. Preapplications referencing Program Notice 92-21 should be received by October 2, 1992, and sent to Dr. Gerald Goldstein, Office of Health and Environmental Research, ER-73, Washington, DC 20585, (301) 903-5348. Telephone and telefax numbers are required to be part of the preapplication. A response to the preapplications discussing the program relevance of a formal application will be communicated by October 30, 1992.

It is essential that responses to this Notice propose an integrated, multidisciplinary program blending research in molecular biology, radiochemistry, and nuclear medicine.

Research goals include development of new labeled probes designed to target selected disease-associated molecular sites such as neuroreceptors, hormone receptors, tumor-related membrane receptors, and other receptor sites associated with pathological conditions. Other important targets include genetic abnormalities leading to defects in metabolic pathways or normal physiology. Special emphasis should be placed on probes that bind very selectively to their target sites, are easily detected and measured in *in vivo* studies, and have potential application in diagnosis or therapy.

It is anticipated that approximately $3 million will be available for grant awards during FY 1993 contingent upon availability of appropriated funds. Previous awards have ranged from $100,000 per year up to $400,000 per year with terms lasting up to 3 years. Similar award sizes are anticipated for new grants. Funding of multiple year grant awards is expected, and is also contingent upon availability of funds.

Information about development and submission of applications, eligibility limitations, evaluation and selection processes, and other policies and procedures may be found in the ER Application and Guide for the Special Research Grants Program and 10 CFR part 605. The application kit and guide is available from the U.S. Department of Energy, Acquisition and Assistance Management Division, Office of Energy Research, ER-64, Washington, DC 20585. Instructions for preparation of an application are included in the application kit. Telephone requests may be made by calling (301) 903-5349. The Catalog of Federal Domestic Assistance Number for this program is 81.049.

Issued in Washington, DC, on September 2, 1992.

D. D. Mayhew,

Deputy Director for Management Office of Energy Research.

[FR Doc. 92-21808 Filed 9-9-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4230-9]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 13, 1992.

For Further Information or to obtain a copy of this ICR contact Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Prevention, Pesticides and Toxic Substances.

Title: Toxic Chemical Release Inventory (TRI) Reporting Activities Under Section 313 of the Emergency Planning and Community Right-to-Know Act; (EPA ICR No. 1363.05; OMB No. 2070-0093). This ICR requests renewal of the existing clearance.

Abstract: Under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), Form R must be used by owners and operators of certain facilities that manufacture, import, process or otherwise use listed toxic chemicals to annually report their release of those chemicals to each environmental medium. In addition, the Pollution Prevention Act of 1990 requires facilities subject to section 313 reporting to provide additional information on source reduction and recycling activities beginning with the 1991 calendar year.

EPA is required to make the data available to the public through an on-line computer data base as well as other means. The TRI data base is available through the National Library of Medicine's TOXNET computer system.

These reports are intended to ensure that communities through the country are prepared to respond to chemical accidents and to provide the public with information on hazardous and toxic chemicals used and released in their communities. The information is also intended to assist government agencies, researchers, and others in the conduct of research and data gathering, and to aid in the development of regulations, guidelines, and studies.

Burden Statement: The annual requirement of reporting by Form R is 211 hours per facility for those not required to comply with supplier notification. Given an average of 4 reports per facility, this is a burden of approximately 53 hours per report. For facilities which are required to comply with the supplier notification provision, the annual burden is 235 hours per facility, or 59 hours per report. The public reporting burden for submitting a petition is estimated to average 185 hours per response, including time for reviewing the guidance document, planning and conducting the literature searches, analyzing the information, and writing and reviewing the petition.

Respondents: Owners or operators of facilities that have 10 or more full-time employees and manufacture or process more than 25,000 pounds or otherwise use more than 10,000 pounds of a listed toxic chemical, and are in Standard Industrial Classification (SIC) codes 20-39; public interest groups, or anyone else concerned about adding or deleting a chemical from the list.

Estimated No. of Respondents: 160,232 for compliance determination only, 24,750 Form R submitting facilities, and 3,250 supplier notification facilities.

Estimated Total Annual Burden on Respondents: 6,470,000 hours.

Frequency of Collection: Annually for Form R, once per petition.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street, SW., Washington, DC 20460.

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20530.

Dated: September 3, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92-21783 Filed 9-9-92; 8:45 am]

BILLING CODE 6560-50-M

[EPA/OSW; FRL-4203-4]

Availability of the Draft 1993 Guidance for Capacity Assurance Planning

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 104(c)(9) of CERCLA requires states requesting remedial action funds to provide an assurance to EPA of the availability of hazardous waste treatment or disposal capacity to manage the hazardous wastes expected to be generated within their state over twenty years. The 1993 draft Guidance for Capacity Assurance Planning presents a national approach that focuses on sufficient capacity to treat and dispose of the projected demand of hazardous wastes. Also, available is an addendum to the draft guidance

describing alternative approaches on some issues. In this notice, we are requesting comments on the approach and methodology presented in the draft guidance and the addendum. The draft guidance was previously made available to the states and certain industrial and environmental groups for comment. Other interested parties should contact the Agency to receive a copy of the guidance and/or addendum. It is not necessary to resubmit comments previously made.

DATES: Comments on this notice must be received on or before October 13, 1992.

ADDRESSES: Written comments of any length will be accepted. Commenters must send an original and two copies of their comments to: RCRA Docket Information Center, Office of Solid Waste (OS-305), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street SW., Wash., DC 20460. Comments must include the docket number F-92-CAGA-FFFFF. The public docket is located at EPA HQ, room M2427 and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Public review of docket materials is by appointment only. Call (202) 260-9327 for appointments. Copies cost $.15/page.

FOR FURTHER INFORMATION CONTACT: For information on this notice and specific aspects of the guidance, contact Robert Burchard, Office of Solid Waste (OS-321W), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (703) 308-8450.

Don R. Clay,

Assistant Administrator.

[FR Doc. 92-21782 Filed 9-9-92; 8:45 am]

BILLING CODE 6560-50-M

[OPP-36184A; FRL-4163-5]

Workshop on Incentives for the Development, Registration, and Use of Reduced Risk Pesticides

AGENCY: Environmental Protection Agency.

ACTION: Notice; announcement of meeting and extension of comment period.

SUMMARY: The U.S. Environmental Protection Agency (EPA) published a notice on "Incentives for Development and Registration of Reduced Risk Pesticides" in the **Federal Register** of Monday, July 20, 1992 (57 FR 32140). That notice solicited comments on potential policies employing economic incentives to encourage the development, registration and use of pesticides or pest control practices that present reduced risks to public health and the environment. This notice announces a workshop sponsored by EPA to further explore the issues and suggestions raised in response to the July 20 notice. The Agency recognizes and intends that discussions at the workshop may stimulate comments or suggestions beyond those submitted in response to the July 20, 1992 notice, or those stated at the workshop. Therefore, this notice also extends the comment period.

DATES: The workshop will be held on Monday, October 5, 1992, from 8 a.m. to 5 p.m., and on Tuesday, October 6, 1992, from 8:30 a.m. to 11 a.m. The comment period is extended from September 16, 1992, until November 5, 1992.

ADDRESSES: The workshop will be held at the Doubletree Hotel, 300 Army Navy Drive, Arlington, VA 22202. Comments should be submitted in accordance with the information provided in the July 20, 1992 **Federal Register** notice, "Incentives for Development and Registration of Reduced Risk Pesticides."

FOR FURTHER INFORMATION CONTACT: For information on the workshop schedule, location and reservations (by mail): Marilyn Millane, Walcoff and Associates, 635 Slaters Lane, Suite 400, Alexandria, VA 22314. Telephone: (703) 684-5588, Fax: (703) 548-0426. For information on the workshop content, issues, agenda, or presentations (by mail): Stephanie R. Irene, Deputy Director, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location: Crystal Mall #2, Rm. 713, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Telephone: (703) 305-5447, Fax: (703) 305-6920.

SUPPLEMENTARY INFORMATION: EPA is interested in the views of the public on such issues as criteria for distinguishing reduced risk and higher risk pesticides; incentives and disincentives that would influence registrants and users to make decisions that favor reduced risk pesticides; whether the Agency should publish a list of higher risk pesticides; and requirements for registrants seeking to register alternatives to higher risk pesticides. We hope to use this forum to encourage constructive debate that will contribute to solutions. The workshop will feature presentations, breakout sessions, and opportunity to discuss these issues among a wide range of interested parties. The workshop will be open to the public but the seating capacity is limited to about 250. People interested in attending the workshop should register as soon possible.

Dated: September 12, 1992.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 92-21802 Filed 9-9-92; 8:45 am]

BILLING CODE 6560-50-F

[OPPTS-59311A; FRL-4163-4]

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME-92-16. The test marketing conditions are described below.

EFFECTIVE DATE: August 31, 1992.

FOR FURTHER INFORMATION CONTACT: Darlene Jones, New Chemicals Branch, Chemical Control Division (TS-794), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-611, 401 M St. SW., Washington, D.C. 20460, (202) 260-2279.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to human health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME-92-16. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to human health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in

the application and in this notice must be met.

The following additional restrictions apply to TME-92-16. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.

2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.

3. Copies of the bill of lading that accompanies each shipment of the TME substance.

TME-92-16.

Date of Receipt: July 21, 1992.

Notice of Receipt: August 12, 1992 (57 FR 36096).

Applicant: BASF Corporation.

Chemical: (G) Self-crossing butadiene styrene copolymer.

Use: (S) Binder for nonwovens.

Production Volume: Confidential.

Number of Customers: Confidential.

Test Marketing Period: Confidential.

Risk Assessment: EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market activities will not present any unreasonable risk of injury to human health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to human health or the environment.

Dated: August 31, 1992.

John W. Melone,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92-21803 Filed 9-9-92; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL MARITIME COMMISSION

The Georgia Ports Authority et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200102-005.

Title: Georgia Ports Authority/Ocean Star Container Line.

Parties:

The Georgia Ports Authority ("GPA")
Ocean Star Container Line ("Ocean")

Synopsis: The amendment revises the rate schedule that is applicable to the Agreement to reflect increases for certain marine operations between GPA and Ocean.

Agreement No.: 224-200230-004.

Title: Georgia Ports Authority/Wilhelmsen A/S.

Parties:

The Georgia Ports Authority ("GPA")
Wilhelmsen A/S ("Wilhelmsen")

Synopsis: The amendment revises the rate schedule that is applicable to the Agreement to reflect increases for certain marine operations between GPA and Wilhelmsen.

Agreements No.: (1) 224-200103-008, (2) 224-200421-003, (3) 224-200403-003, (4) 224-200371-004.

Title: (1) Georgia Ports Authority ("GPA")/A/S Ivarans Rederi Terminal Agreement, (2) GPA/Polish Ocean Terminal Agreement, (3) GPA/Safbank Terminal Agreement, (4) GPA/Compagnie Generale Maritime Terminal Agreement

Parties:

(1) Georgia Ports Authority
A/S Ivarans Rederi Line
(2) Georgia Ports Authority
Polish Ocean Line
(3) Georgia Ports Authority
Safbank
(4) Georgia Ports Authority
Compagnie Generale Maritime

Synopsis: The amendments revise the rate schedule of each agreement.

Agreement No.: 224-200381-003.

Title: Georgia Ports Authority/Zim-Israeli Shipping Company Marine Terminal Agreement.

Parties:

The Georgia Ports Authority ("GPA")
Zim Israeli Shipping Company ("Zim")

Synopsis: The Agreement revises the rate schedule to reflect increases for certain terminal operations between GPA and ZIM.

Agreement No.: 224-200416-006.

Title: Georgia Ports Authority/Croatia Line.

Parties:

The Georgia Ports Authority ("GPA")
Croatia Line ("Croatia")

Synopsis: The amendment revises the rate schedule that is applicable to the Agreement to reflect increases for certain marine operations between GPA and Croatia.

Agreement No.: 224-200647-001.

Title: Georgia Ports Authority/Tricontinental Service.

Parties:

The Georgia Ports Authority ("GPA")
Tricontinental Service
("Tricontinental")

Synopsis: The amendment revises the rate schedule that is applicable to the Agreement to reflect increases for certain marine operations between GPA and Tricontinental.

Agreement No.: 224-200696.

Title: South Carolina/Hoegh-Ugland Auto Carriers Terminal Agreement.

Parties:

South Carolina State Port Authority
("Port")
Hoegh-Ugland Auto Liners A/S
("HUAL")

Synopsis: The Agreement provides that the Port will provide receiving services for vehicles to be exported aboard Hauls' vessels. The Agreement has a term of three years.

Agreement No.: 224-200697.

Title: Ryan-Walsh, Inc., Cooper/T. Smith, Transocean Terminal Operators Terminal Agreement.

Parties:

Ryan-Walsh, Inc.
Transocean Terminal Operators, Inc.
Cooper/T. Smith Stevedoring
Company, Inc.

Synopsis: The proposed Agreement will permit the parties to discuss and exchange information to determine whether it would be feasible for them to establish a marine terminal joint venture company in the State of Louisiana. The parties have requested a shortened review period.

Dated: September 4, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92-21786 Filed 9-9-92; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

E.J. Heymans, Sr. Revocable Trust; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than September 30, 1992.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. E.J. Heymans, Sr. Revocable Trust, Menomonie, Wisconsin; to acquire 35.2 percent of the voting shares of Dunn County Bancshares, Inc., Menomonie, Wisconsin, and thereby indirectly acquire Bank of Menomonie, Menomonie, Wisconsin.

Board of Governors of the Federal Reserve System, September 3, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-21742 Filed 9-9-92; 8:45 am]

BILLING CODE 6210-01-F

MBNA Corporation, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 2, 1992.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. MBNA Corporation, Newark, Delaware; to engage *de novo* through its subsidiary, MBNA Consumer Services, Inc., Newark, Delaware, in making consumer loans that will be secured by second mortgages pursuant to § 225.25(b)(1)(iii); and offering credit insurance (life, disability, and involuntary unemployment) pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Claiborne Holding Company, Inc., Tazewell, Tennessee; to engage *de novo* through its subsidiary, Premier Insurance Agency, Inc., Tazewell, Tennessee, in insurance agency and underwriting activities pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y. These activities will be conducted in Tazewell, Tennessee.

Board of Governors of the Federal Reserve System, September 3, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-21753 Filed 9-9-92; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 081792 AND 082892

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Household International, Inc., Northeast Bancorp, Inc., Union Trust Company	92-1324	08/17/92
Hubbell Incorporated, Hipotronics, Inc., Hipotronics, Inc	92-1355	08/17/92

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 081792 AND 082892—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Aaron U. Jones, Champion International Corporation, Champion International Corporation	92-1369	08/17/92
Stanley J. Gulkin, CrossLand Federal Savings Bank, CrossLand Premium Funding, Inc	92-1313	08/18/92
Warburg, Pincus Capital Company, L.P., Warburg, Pincus Capital Company, L.P., Selkirk Cogen Partners II, L.P	92-1339	08/19/92
Union Camp Corporation, Robert H. Valentin, ABC Container Corporation & Puerto Rico Box Co., Inc	92-1356	08/19/92
Acadia Partners, L.P., BBA Group PLC (a British corporation), Page Avjet Airport Services, Inc	92-1065	08/20/92
BBA Group PLC, Acadia Partners, L.P., Butler Aviation International, Inc	92-1066	08/20/92
Bessemer Securities Corporation, Morgan Stanley Leveraged Equity Fund II, L.P., MS/Essex Holdings Inc	92-1357	08/20/92
Philips Electronics, N.V., Frederick W. Field, Interscope Holding Corporation	92-1370	08/20/92
NIKE, Inc., Oppenheimer-Palmieri Fund, L.P., OPF Acquisition Corp	92-1368	08/21/92
Franklin Resources, Inc., John M. Templeton, Templeton Global Investors, Inc. & Templeton	92-1386	08/21/92
John M. Templeton, Franklin Resources, Inc., Franklin Resources, Inc	92-1387	08/21/92
Tullett & Tokyo Forex International Limited, Gnubrokers Holding Inc., Gnubrokers Holding Inc	92-1402	08/21/92
Cascades Inc., Paperboard Industries Corporation, Paperboard Industries Corporation	92-1343	08/24/92
President Enterprises Corporation, Shansby Group (The), Famous Amos Chocolate Chip Cookie Corporation (The)	92-1345	08/24/92
Ferruzzi Finanziaria S.p.A., International Marine Holdings, Inc., International Marine Holdings, Inc	92-1377	08/24/92
Chemed Corporation, Omnicare, Inc., Medarco Corp., Omnia, Inc., Unidisco, Inc	92-1380	08/24/92
Equifax Inc., Halliburton Company, Health Economics Corporation	92-1401	08/24/92
Simon Engineering plc, Thomas E. Dalum, Hi-Ranger, Inc	92-1384	08/25/92
Hewlett-Packard Company, Texas Instruments Incorporated, Texas Instruments Incorporated	92-1328	08/26/92
Echlin Inc., Sprague Devices, Inc., Sprague Devices, Inc	92-1336	08/26/92
Petroleum Heat and Power Co., Inc., RAC Fuel Oil Corp., RAC Fuel Oil Corp	92-1340	08/26/92
Tele-Communications, Inc., Diversified Communications, Heritage Cablevision of Maine-I, Inc	92-1344	08/26/92
American General Corporation, Wachovia Corporation, Provident Financial Corporation	92-1385	08/26/92
First Western Corporation, Long-Term Credit Bank of Japan, Ltd., Greenwich Capital Financial, Inc	92-1390	08/27/92
Champion Healthcare Corporation, HCA—Hospital Corporation of America, HCA—Health Services of Texas, Inc	92-1338	08/28/92
McCown De Leeuw & Co. II, a California L.P., Industrial Capital Group, DEC International Corporation	92-1371	08/28/92
Trustees of the Estate of Bernice Pauahi Bishop, Peter Bedford, Hawaii Kai Development Company	92-1372	08/28/92
Jeffrey A. Marcus, Steven J. Simmons, Simmons Communications Company, L.P.	92-1378	08/28/92
Trustees of the Estate of Bernice Pauahi Bishop, Kemper Corporation, Hawaii Kai Development Company	92-1388	08/28/92
Alexander M. Vik, Prudential Insurance Company of America (The), Prudential-LMI Commercial Insurance Company	92-1396	08/28/92
Zell/Chilmark Fund, L.P., Carter Hawley Hale Stores, Inc., Carter Hawley Hale Stores, Inc	92-1410	08/28/92

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 92-21728 Filed 9-9-92; 8:45 am]

BILLING CODE 6750-01-M

[File No. 901 0019]

Realty Computer Associates, Inc., d/b/a Computer Listing Service; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Missouri-based real-estate multiple listing service (MLS) from refusing to publish exclusive-agency listings, or restricting its members from offering such listings. In addition, the respondent would be prohibited from requiring, as a condition of membership or use of its MLS, that any applicant or member engage in real-estate brokerage full time, or that any applicant or member maintain an office located on commercially zoned property or within the respondent's service area.

DATES: Comments must be received on or before November 9, 1992.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: C. Steven Baker, Chicago Regional Office, Federal Trade Commission, 55 East Monroe St., suite 1437, Chicago, IL 60603. (312) 353-8156.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

The Federal Trade Commission, having initiated an investigation of certain acts and practices of Realty Computer Associates, a corporation, d/b/a Computer Listing Service ("CLS"), and it now appearing that CLS is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between CLS, by its duly authorized officer and its attorney, and counsel for the Federal Trade Commission that:

(1) Proposed respondent CLS is a Missouri corporation with its principal office and place of business located at 6651 N. Oak Trafficway, No. 1, Gladstone, Missouri 64118.

(2) Proposed respondent admits all the jurisdictional facts set forth in the attached draft complaint.

(3) Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of the findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All rights under the Equal Access to Justice Act.

(4) This agreement shall not become part of the public record of the

proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information with respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

(5) This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint attached hereto.

(6) This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to its Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the attached draft and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto.When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

(7) Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

The following definitions shall apply to this order:

(1) "Multiple listing device" means a clearinghouse through which member real estate brokerage firms regularly exchange information on listings of real estate properties and share commissions with other members.

(2) "Listing agreement" means any agreement between a real estate broker and a property owner for the provision of real estate brokerage services.

(3) "Listing broker" means any broker who lists a real estate property with a multiple listing service pursuant to a listing agreement with the property owner.

(4) "Selling broker" means any broker, other than the listing broker, who locates the purchaser for a listed property.

(5) "Exclusive agency listing" means any listing under which a property owner appoints a broker as exclusive agent for the sale of the property, at an agreed commission, but reserves the right to sell the property personally to a direct buyer (one not procured in any way through the efforts of any broker) at an agreed reduction in the commission or with no commission owed to the agent broker.

(6) "CLS" means Realty Computer Associates, Inc., d/b/a Computer Listing Service and its successors, assigns, directors, officers, committees, agents, representatives, members, and employees.

I

It is ordered that respondent CLS, directly or indirectly, or through any corporation, subsidiary, division, or other device, in connection with the operation of a multiple listing service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall cease and desist from:

A. Restricting or interfering with:

(1) the publication on CLS's multiple listing service of any exclusive agency listing of a member; or

(2) any member's offering or accepting any exclusive agency listing:

Provided, however, that nothing contained in this subpart shall prohibit respondent from:

(a) including a simple designation, such as a code or symbol, that a published listing is an exclusive agency listing; or (b) applying reasonable terms and conditions equally applicable to the publication of any listing by CLS.

B. Adopting, maintaining or enforcing any bylaw, rule, regulation, policy, agreement or understanding, or taking any other action that has the purpose or effect of:

(1) Requiring as a condition of CLS membership or use of its multiple listing service that any applicant or member engage in real estate brokerage full time;

(2) Conditioning membership in CLS or use of its multiple listing service on any applicant or member maintaining a real estate office in a commercially zoned property; or

(3) Conditioning membership in CLS or use of its multiple listing service on any applicant or member maintaining a real estate office located within the confines of CLS's service area;

Provided, however, that nothing in this subpart shall prohibit respondent from adopting, maintaining, or enforcing any reasonable and nondiscriminatory policy to assure that its members are actively engaged in real estate brokerage and that listings published on respondent's multiple listing service are adequately serviced.

It is further ordered that CLS shall:

A. Within thirty (30) days after the date this order becomes final, furnish an announcement in the form shown in Appendix A to each member of CLS.

B. Within sixty (60) days after the date this order becomes final, amend its bylaws, rules and regulations, and all other of its materials to conform to the provisions of this order, and provide each member with a copy of the amended bylaws, rules and regulations, and other amended materials.

C. For a period of three (3) years after the date this order becomes final, furnish an announcement in the form shown in Appendix A to each new member of CLS within thirty (30) days of the new member's admission.

III

It is further ordered that CLS shall:

A. Within ninety (90) days after the date this order becomes final, submit a verified written report to the Federal Trade Commission setting forth in detail the manner and form in which CLS has complied and is complying with this order.

B. In addition to the report required by Paragraph III(A), annually for a period of three (3) years on or before the anniversary date on which this order becomes final, and at such other times as the Federal Trade Commission or its staff may by written notice to CLS require, file a verified written report with the Federal Trade Commission

setting forth in detail the manner and form in which CLS has complied and is complying with this order.

C. For a period of five (5) years after the date this order becomes final, maintain and make available to the Commission staff for inspection and copying, upon reasonable notice, all documents that relate to the manner and form in which CLS has complied with this order.

D. Notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in CLS, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in CLS that may affect compliance obligations arising out of this order.

Appendix A

[CLS's Regular Letterhead]

As you may be aware, the Federal Trade Commission has entered into consent decrees with several multiple listing services in order to halt certain multiple listing service practices that have been alleged to be unlawful restraints of trade. To avoid litigation, Realty Computer Associates, Inc., d/b/a Computer Listing Service ("CLS") has entered into such a consent agreement. The agreement is not an admission that CLS or any of its members has violated any law. For your information, CLS is prohibited from the following practices:

A. Restricting or interfering with:

(1) The publication on CLS's multiple listing service of any exclusive agency listing of a member; or

(2) Any member's offering or accepting any exclusive agency listing.

B. Adopting, maintaining or enforcing any bylaw, rule, regulation, policy, agreement or understanding, or taking any other action that has the purpose or effect of:

(1) Requiring as a condition of CLS membership or use of its multiple listing service that any applicant or member engage in real estate brokerage full time; or

(2) Conditioning membership in CLS or use of its multiple listing service on any applicant or member maintaining a real estate office in a commercially zoned property located within the confines of CLS's area map.

Realty Computer Associates, Inc.; Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from the Realty Computer Associates, Inc., d/b/a/ Computer Listing Service ("CLS").

The proposed consent order would settle charges by the Commission that CLS has violated Section 5 of the Federal Trade Commission Act by restraining competition among real estate brokers in Clay and Platte counties of metropolitan Kansas City, Missouri and its surroundings. The Commission charged CLS with injuring consumers by refusing to publish exclusive agency listings, requiring applicants and members to maintain offices in commercially zoned areas within the confines of CLS's service area; and, requiring real estate to be the primary business concern of members and applicants thereby possibly restricting access to the MLS by part-time brokers.

CLS has agreed to the proposed consent order for settlement purposes only and does not admit that it violated the law as alleged in the complaint.

The Commission has placed the proposed consent order on the public record for 60 days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After the close of the comment period, the Commission will again review the agreement, will review the comments received, and will decide whether it should make the agreement's proposed order final or withdraw the agreement.

The Complaint

The Commission has prepared a complaint to issue along with the proposed order. The complaint alleges the CLS is a corporation that represents the vast majority of real estate brokers that deal in residential real estate in Clay and Platte counties. CLS members compete among themselves and with other real estate brokers. In 1990 sales of residential real estate through CLS totaled about $284 million.

According to the complaint, CLS has adopted rules that restrain competition in the delivery of brokerage services. For example, CLS has refused to accept "exclusive agency" listings for publication. These are agreements between home sellers and brokers whereby the homeowner does not pay a commission, or pays a reduced commission, if he or she makes the sale directly, without the assistance from the broker. Instead, CLS has only accepted "exclusive right to sell" listings for publication. These listings require payment to the broker in the event of any sale, whether or not the broker helps make the sale.

The complaint further alleges that CLS has been and is now requiring that each member broker or applicant for membership maintain a real estate office in a commercially zoned property located within the confines of the CLS's service area. This requirement may have the effect of restraining competition from brokerage firms located outside of CLS's service area.

Finally, according to the complaint CLS has been and is now requiring that each member broker's or applicant for membership's primary business concern must be that of listing or selling real estate. This requirement may impede new membership in CLS by part time or less than full time real estate brokers and impede entry into the residential real estate business in CLS's service area.

According to the complaint, the effects of these restraints have been to restrain competition in the delivery of real estate brokerage services, deprive consumers of the ability to negotiate listing agreements with different terms that they might find more attractive or beneficial, and substantially reduce the ability of residential property owners to compete with real estate brokers in locating purchasers. In addition, the membership requirements can act as barriers to entry, unreasonably restrain applicants from membership, and therefore put them at a competitive disadvantage.

The Proposed Consent Order

Part I of the proposed consent order describes the conduct prohibited by the order. Part I(A) prohibits CLS from refusing to publish exclusive agency listings or restricting or interfering with any member's offering or accepting any exclusive agency listing.

Part I(B) of the order would prohibit CLS from requiring as a condition of CLS membership of use of its multiple listing service that any applicant or member engage in real estate brokerage full time. Also, this part of the order would prohibit CLS from requiring that a new member be located on commercially zoned property within the confines of the CLS service area.

Part II(A) requires CLS to furnish, within 30 days, an announcement of this order to each member of CLS. Part II(B) requires CLS to amend its bylaws to conform them with the terms of the order within 60 days of the final date of the order. Part II(C) requires, for three years, that CLS furnish a copy of the order to each new member who requests it.

The remainder of the order's provisions pertain to the filing of compliance reports and notification of changes of the MLS's corporate form, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any change in its incorporation that may

affect compliance obligations arising out of the order.

The purpose of this analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 92-21726 Filed 9-9-92; 8:45 am]

BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

Eligibility To Use GSA Sources of Supply and Services

AGENCY: Federal Supply Service, GSA.

ACTION: Notice.

SUMMARY: This notice provides information on the eligibility to use GSA sources of supply and services. This action is necessary to provide guidance concerning eligibility requirements to the U.S. Government and other organizations which need to know what activities may be eligible to use GSA sources of supply and services.

FOR FURTHER INFORMATION CONTACT: Raywood Holmes, Regulations Management Staff (703) 305-7525.

SUPPLEMENTARY INFORMATION: This notice contains text that was extracted from GSA Order ADM 4800.2D, dated August 10, 1992, Subject: Eligibility to use GSA sources of supply and services. The text reads as follows:

Subject: Eligibility To Use GSA, Sources of Supply and Services.

1. Purpose

This order provides definitions and listings of those agencies and other activities authorized to use GSA sources of supply and services. It also provides definitive guidelines concerning eligibility requirements.

2. Background

The Federal Property and Administrative Services Act of 1949, as amended, authorizes the Administrator to procure and supply personal property and nonpersonal services for the use of executive agencies, mixed-ownership Government corporations, as identified in the Government Corporation Control Act, and the District of Columbia. Other organizations may be eligible by reason of enabling statutory authority.

3. Definition

GSA sources of supply and services are defined as those support programs administered by GSA and prescribed in the Federal Property Management Regulations (FPMR) Parts 101-26—Procurement Sources and Programs, 101-39—Interagency Fleet Management Systems, 101-40—Transportation and Traffic Management, 101-43 thru 101-46, 101-48 and 101-49, Utilization and Disposal Programs; in the Federal Information Resources Management Regulation (FIRMR), 41 CFR ch. 201-32 for ADP and 41 CFR ch. 201-40 for telecommunications, and in the Federal Travel Regulation, 41 CFR 301-15, Travel Management Programs.

4. Authority to Use GSA Sources of Supply and Services

The authority to use GSA sources of supply and services is established by statute (see par. 5), regulation, and the specific terms of certain contracts.

5. Eligible Activities

Organizations eligible to use GSA sources of supply and services are covered by the provisions of the Federal Property and Administrative Services Act of 1949, as amended, hereafter referred to as the Property Act. Definitions of the organizations follow. It is noted, however, that although an organization may be eligible to use these sources, it does not necessarily mean that resources or assets are available, especially in the case of the Interagency Fleet Management System, or that it would always be practical for GSA to make such sources available, or further still, that all contracts allow participation by non-Federal organizations. Also, certain entities may be eligible to use only specific GSA sources and/or services.

a. Executive Agencies

Subsections 201(a) and 211(b) of the Property Act provide for executive agencies' use of GSA sources of supply and services. Executive agencies, as defined in subsection 3(a) of the Property Act, include:

(1) *Executive departments.* These are the cabinet departments defined in 5 U.S.C. 101 and are listed in app. A.

(2) *Wholly owned Government corporations.* These are defined in 31 U.S.C. 9101 and are listed in app. A.

(3) *Independent establishments in the executive branch of the Government.* These are generally defined by 5 U.S.C. 104. However, it is often necessary to consult specific statutes, legislative histories, and other references to determine whether a particular establishment is within the executive branch. To the extent that GSA has made such determinations, the organizations qualifying under this authority are listed in app. A.

b. Other Federal Agencies, Mixed-Ownership Government Corporations, and the District of Columbia

Subsections 201(b) and 211(b) of the Property Act authorize the Administrator of General Services to provide GSA sources of supply and services to these organizations upon request.

(1) *Other Federal agencies.* These are Federal agencies defined in subsection 3(b) of the Property Act that are not in the executive branch; i.e., any establishment in the legislative or judicial branch of the Government (except the Senate, the House of Representatives, and the Architect of the Capitol and any activities under his direction). To the extent that GSA has made such determinations, the organizations qualifying under this authority are listed in app. B.

(2) *Mixed-ownership Government corporations.* These are included in 31 U.S.C. 9101. They are listed in app. B.

(3) *District of Columbia.* The Government of the District of Columbia is eligible to use GSA sources of supply and services. The Government of the District of Columbia, and those parts thereof that have been determined by GSA to be eligible to use its sources of supply and services, are listed in app. B.

c. The Senate, House of Representatives, and Activities Under the Direction of the Architect of the Capitol

These organizations are eligible to use GSA sources of supply and services, under subsection 602(e) of the Property Act, upon request. To the extent that GSA has determined that various activities qualify under this authority, they are listed in app. B.

d. Other Organizations Authorized Under the Authority of the Property Act

GSA has further determined, under the Property Act, that certain other types of organizations are eligible to use its sources of supply and services.

(1) *Cost-reimbursement contractors (and subcontractors) as properly authorized.* Part 51 of the Federal Acquisition Regulation (FAR) provides that agencies may authorize certain contractors (generally cost-reimbursement contractors) to use GSA schedules, GSA stock, and GSA contract travel and transportation services. In each case, the written authorization must conform to the requirements of FAR part 51, Use of Government Sources by Contractors. Subpart 51.2 prescribes policies and procedures governing Federal agencies in authorizing cost-reimbursement contractors to obtain interagency fleet

management system vehicles and related services. The eligibility of agency-authorized cost-reimbursement contractors to obtain Government contract air/rail fares is limited to the city-pair routes of contract carriers that have agreed to furnish the GSA contract fare to such contractors. Regulations governing the use of contract air/rail passenger service by cost-reimbursement contractors are found at 41 CFR part 301-15, Subpart B, specifically, section 301-15.24(h). GSA contracts for other travel related services; e.g., travel management services or contractor-issued charge cards, generally do not include cost-reimbursement contractors.

(2) *Fixed-price contractors (and subcontractors) purchasing security equipment.* Under section 201 of the Property Act, the Administrator has determined that fixed-price contractors and lower-tier subcontractors who are required to maintain custody of security classified records and information may purchase security equipment from GSA. Procedures regarding these organizations are set forth in FRMR 101-26.507 and 101-26.407.

(3) *Non-Federal firefighting organizations cooperating with the Forest Service.* Under section 201 of the Property Act, it has been determined that certain non-Federal firefighting organizations may purchase wildfire suppression equipment and supplies from the Federal Supply Service (FSS) (Article V, Agreement No. FSS 87-1, May 26, 1987).

(4) *Department of the Interior, Bureau of Indian Affairs.* Under a Memorandum of Understanding between the Department of the Interior and the General Services Administration (FSS-83-3) and Public Law 93-638, tribal Government grantees of the Bureau of Indian Affairs may use GSA sources of supply and services.

e. Other Statutes

Other statutes authorize specific organizations to use GSA sources of supply and services. These organizations are listed in app. B, with appropriate annotations. The major categories of such organizations include:

(1) *Certain charitable institutions.* Pursuant to Public Law 95-355, the following activities are eligible to use GSA supply sources and are also listed in app. B:

(a) Howard University;

(b) Gallaudet University;

(c) National Technical Institute for the Deaf; and

(d) American Printing House for the Blind.

(2) *Certain territories.* Pursuant to Public Law 102-247, certain territories of the United States, as indicated in app. B, are eligible to use GSA sources of supply and services. (48 U.S.C. 1469e)

(3) *Foreign entities.* Section 607 of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2357, provides that the President may authorize certain countries and organizations to use GSA sources of supply and services as part of the foreign policy of the United States. To the extent that the Department of State has made determinations on behalf of the President, they are included in app. C. Purchases made by international organizations through GSA sources of supply and services must be for civilian use only.

(4) *Nonappropriated fund activities.* FPMR 101-26.000 provides that military commissaries and nonappropriated fund activities may use GSA sources of supply and services for their own use, not for resale, unless otherwise authorized by the individual Federal agency and concurred in by GSA.

6. Ineligible Activities

Except for the acquisition of excess personal property through sponsoring agencies, Federal grantees are ineligible to use GSA sources of supply and services. In addition, a cost-reimbursement contractor cannot transfer procurement authorization to a third party leasing company to use GSA sources of supply and services, unless the leasing company has an independent authorization to use GSA contracts.

7. Travel

Organizations seeking to use GSA sources of supply and services for travel/transportation must obtain a separate determination. This is necessary to determine whether or not the requesting entity is eligible under the language of the specific contract for the service being requested; i.e., travel management services, travel and transportation payment and expense control system (including contractor-issued charge cards for official travel), and/or air/rail passenger transportation.

8. Excess, Surplus, and Forfeited Property

The eligibility of activities and organizations to obtain supplies and services from GSA's personal property utilization and disposal programs is governed by FPMR parts 101-43 thru 101-46, 101-48, and 101-49, and not by this order.

9. Determination of Eligibility

Activities or organizations other than those covered in the appendixes to this order may be eligible to use GSA sources of supply and services. Requests to use these services received from activities or organizations whose eligibility is in question must be forwarded to the Office of the Controller, Attention: Regulations Management Staff (FPR), for determination.

Appendix A.—Executive Agencies

The following have been determined to be "executive agencies," or parts thereof, for the purpose of using GSA sources of supply and services. This list is not all-inclusive; other activities also may be eligible to use GSA on a case-by-case basis (see par. 9). Listed here are major Federal activities and their subordinate entities about which inquiries have been received.

ACTION
Agency for International Development
Agriculture, Department of
Air Force, Department of the
Alaska Natural Gas Transportation System
American Battle Monuments Commission
Army Corps of Engineers
Army, Department of the
Board of International Broadcasting
Bonneville Power Administration
(administrative and housekeeping items)
Bureau of Land Management
Central Intelligence Agency
Commerce, Department of
Commission on Civil Rights
Commission on Fine Arts
Commodity Credit Corporation
Commodity Futures Trading Commission
Consumer Products Safety Commission
Defense, Department of
Defense agencies and Joint Service Schools
Education, Department of
Energy, Department of
Environmental Protection Agency
Equal Employment Opportunity Commission
Executive Office of the President
Export-Import Bank of U.S.
Farm Credit Administration
Federal Communications Commission
Federal Election Commission
Federal Trade Commission
Forest Service, U.S.
General Services Administration
Government National Mortgage Association
Health and Human Services, Department of
Housing and Urban Development, Department of
Inter-American Foundation
Interior, Department of the
Interstate Commerce Commission
Justice, Department of
Kennedy Center
Labor, Department of
Merit Systems Protection Board
National Aeronautics and Space Administration
National Archives and Records Administration
National Credit Union Administration (not individual credit unions)
National Council on the Handicapped
National Endowment for the Arts
National Endowment for the Humanities
National Labor Relations Board
National Science Foundation

National Transportation Safety Board
Navy, Department of the
Nuclear Regulatory Commission
Occupational Safety and Health Review Commission
Office of Personnel Management
Overseas Private Investment Corporation
Panama Canal Commission
Peace Corps
Pennsylvania Avenue Development Corporation
Pension Benefit Guaranty Corporation
Postal Rate Commission
Railroad Retirement Board
Resolution Trust Corporation
St. Elizabeths Hospital
St. Lawrence Seaway Development Corporation
Securities and Exchange Commission
Selective Service System
Small Business Administration
Smithsonian Institution
State, Department of
Tennessee Valley Authority
Trade and Development Program
Transportation, Department of
Treasury, Department of the
U.S. Arms Control and Disarmament Agency
U.S. Information Agency
U.S. International Development Corporation Agency
U.S. International Trade Commission
U.S. Postal Service
Veterans Affairs, Department of

Appendix B—Other Eligible Users

The following have been determined to be eligible to use GSA sources of supply and services, in addition to the organizations listed in appendixes A and C. An asterisk indicates that special limitations may apply (see subpar. 5e(2)). This list is not all-inclusive; other activities also may be eligible to use GSA sources. The eligibility of those will be ruled upon by GSA on a case-by-case basis (see par. 9).

Administrative Conference of the U.S.
Administrative Office of the U.S. Courts
Advisory Commission on Intergovernmental Relations
Advisory Committee on Federal Pay
American Printing House for the Blind
American Samoa, territorial and local governments of
Architect of the Capitol
Architectural and Transportation Barriers Compliance Board
Banks for Cooperatives
Certain nonappropriated fund activities (generally, not for resale)
Coast Guard Auxiliary (through the U.S. Coast Guard)
Committee for Purchase from the Blind and other Severely Handicapped
Contractors and subcontractors—cost-reimbursement (as authorized by the applicable agency's contracting official)
Contractors and subcontracts—fixed-price (security equipment only when so authorized by the applicable agency's contracting official)
Courts, Federal (not court reporters)
Delaware River Basin Commission
District of Columbia, Government of the
Farm Credit Banks
Federal Deposit Insurance Corporation
Federal Emergency Management Agency
Federal Home Loan Banks
Federal Intermediate Credit Bank
Federal Land Bank
Federal Reserve Board of Governors
Firefighters, Non-Federal (as authorized by the Forest Service, U.S. Department of Agriculture)
Gallaudet University
General Accounting Office
Government Printing Office
Guam, territorial and local governments of
Harry S. Truman Scholarship Foundation
House of Representatives, U.S.
Howard University (including hospital)
Institute of Museum Services*
Japan-United States Friendship Commission
Land Grant Institutions**
Legal Services Corporation (not its grantees)
Library of Congress
Marine Mammal Commission
National Bank for Cooperatives (CoBank)
National Buildings Museum
National Capital Planning Commission*
National Gallery of Art
National Guard Activities (only through U.S. Property and Fiscal Officers)
National Railroad Passenger Corporation (i.e., AMTRAK)
National Technical Institute for the Deaf
Navajo and Hopi Indian Relocation Commission
Neighborhood Reinvestment Corporation
Northern Mariana Islands, Commonwealth of the territorial and local governments
Office of the Federal Inspector for the Alaska Natural Gas Transportation System
Prospective Payment Assessment Commission
Senate, U.S.
Susquehanna River Basin Commission
Trust Territory of the Pacific Islands, Government of
U.S. Railway Association
U.S. Representative, Office of Joint Economic Commission
CENPRO Project Saudi Arabia (when Saudi government cannot supply)
U.S. Soldiers' and Airmen's Home
U.S. Synthetic Fuels Corporation
Virgin Islands, territorial and local governments of (including Virgin Islands Port Authority)
Washington Metropolitan Area Transit Authority
Water Resources Council

*Financial service—payroll only.
**As cost-reimbursement contractors.

Appendix C—International Organizations

The following have been determined to be eligible to use GSA sources of supply and services, in addition to the organizations listed in appendixes A and B. This list is not all-inclusive; other activities also may be eligible to use GSA sources. Also, as stated in par. 5, certain entities may be eligible to use only specific GSA sources and/or services. The eligibility of activities not listed will be ruled upon by GSA on a case-by-case basis (see par. 9).

African Development Foundation
African Development Fund
American Red Cross
Asian Development Bank
Caribbean Organization
Customs Cooperation Council
European Space Research Organization
Food and Agriculture Organization of the United Nations
Great Lakes Fishery Commission
Inter-American Defense Board
Inter-American Development Bank
Inter-American Institute of Agriculture Sciences
Inter-American Investment Corporation
Inter-American Statistical Institute
Inter-American Tropical Tuna Commission
Intergovernmental Maritime Consultive Organization
Intergovernmental Committee for European Migration
International Atomic Energy Agency
International Bank of Reconstruction and Development (World Bank)
International Boundary Commission—United States and Canada
International Boundary and Water Commission—United States and Mexico
International Center for Settlement of Investment Disputes
International Civil Aviation Organization
International Coffee Organization
International Cotton Advisory Committee
International Development Association
International Fertilizer Development Center
International Finance Corporation
International Hydrographic Bureau
International Institute for Cotton (formerly International Cotton Institute)
International Joint Commission—United States and Canada
International Labor Organization
International Maritime Satellite Organization
International Monetary Fund
International Pacific Halibut Commission
International Pacific Salmon Fisheries Commission—Canada
International Secretariat for Volunteer Services
International Telecommunications Satellite Organization
International Telecommunications Union
International Wheat Council
Lake Ontario Claims Tribunal
Multinational Force and Observers
Multinational Investment Guarantee Agency (M.I.G.A.)
North American Treaty Organization (NATO)
Organization of African Unity
Organization of American States
Organization for Economic Cooperation and Development
Pan American Health Organization
Radio Technical Commission for Aeronautics
South Pacific Commission
United International Bureau for the Protection of Intellectual Property
United Nations
United Nations Educational, Scientific, and Cultural Organization
Universal Postal Union
World Health Organization
World Intellectual Property Organization
World Meteorological Organization
World Tourism Organization

Dated: September 2, 1992.

William Marshall,

Director, Regulations Management Staff.

[FR Doc. 92-21719 Filed 9-9-92; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notification of Expiring Project Periods for Community and Migrant Health Centers

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that a total of 244 Community Health Center and Migrant Health Center (C/MHC) grantees will reach the end of their project periods during fiscal year (FY) 1993. Assuming the availability of sufficient appropriated funds in FY 1993, it is the intent of HRSA to continue to support health services in these areas, given the unmet need inherent in their designation as medically underserved. HRSA will open competition for awards under sections 330 and 329 of the Public Health Service (PHS) Act (42 U.S.C. 254b and 254c respectively) to support health services in the areas currently served by these grants.

This notice will provide interested parties the opportunity to gather information and decide whether to pursue Federal funding for a community or migrant health center. During this process, communication with Regional Office staff is essential (see appendix I). A subsequent notice will be published in the **Federal Register** to announce the availability of funds for FY 1993 and provide detailed information on the grant application process and review criteria.

DATES: Current grant expiration dates vary by area throughout FY 1993. Applications for competing continuation grants are due 120 days prior to expiration of the current grant award.

SUPPLEMENTARY INFORMATION: The C/MHC programs are carried out under the authority of sections 330 and 329 of the Public Service Act. The program regulations are codified in title 42 of the Code of Federal Regulations (CFR), parts 51c and 56. The C/MHC programs are designed to promote the development and operation of community-based primary health care service systems in medically underserved areas for medically underserved populations.

The list of C/MHCs whose project periods expire in FY 1993 is set forth in appendix II. A project period is the total amount of time for which a project has been programmatically approved. A project period may consist of one or more budget periods. For the purposes of this notice, grant awards will be made for a one year budget period and project periods will be for up to three years.

Dated: August 3, 1992.

Robert G. Harmon,

Administrator.

Appendix I—Regional Office Staff

Region I: Rob Lawrence, Acting Director, Division of Health Services Delivery, DHHS—Region I, JFK Federal Building #1401, Boston, MA 02203

Region II: Ron Moss, Director, Division of Health Service Delivery, DHHS—Region II, JKJ Federal Building, 25 Federal Plaza, New York, NY 10278

Region III: Bruce Riegel, Director, Division of Health Services Delivery, DHHS—Region III, 3535 Market Street, Philadelphia, PA 19101

Region IV: Ms. Marlene Lockwood, Division of Health Services Delivery, DHHS—Region IV, 101 Marietta Tower, Atlanta, GA 30323

Region V: Caye Santiago, Director, Division of Health Services Delivery, DHHS—Region V, 105 West Adams Street, 17th floor, Chicago, IL 60603

Region VI: Fred Pintz, M.D., Director, Division of Health Services Delivery, DHHS—Region VI, 1200 Main Tower Building, Dallas, TX 75202

Region VII: Ray Maddox, Director, Division of Health Services Delivery, DHHS—Region VII, Federal Office Building, 601 East 12th Street, Kansas City, MO 64106

Region VIII: Barbara Bailey, Director, Division of Health Services Delivery, DHHS—Region VIII, Federal Office Building, 1961 Stout Street, Denver, CO 80294

Region IX: Irma Honda, Acting Director, Division of Health Services Delivery, DHHS—Region IX, 50 United Nations Plaza, San Francisco, CA 94102

Region X: Doug Woods, Director, Division of Health Services Delivery, DHHS—Region X, Blanchard Plaza, 2201 Sixth Avenue, Seattle, WA 98121

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Region IV: Ms. Marlene Lockwood, Division of Health Services Delivery, DHHS—Region IV, 101 Marietta Tower, Atlanta, GA 30323

Region V: Caye Santiago, Director, Division of Health Services Delivery, DHHS—Region V, 105 West Adams Street, 17th floor, Chicago, IL 60603

Region VI: Fred Pintz, M.D., Director, Division of Health Services Delivery, DHHS—Region VI, 1200 Main Tower Building, Dallas, TX 75202

Region VII: Ray Maddox, Director, Division of Health Services Delivery, DHHS—Region VII, Federal Office Building, 601 East 12th Street, Kansas City, MO 64106

Region/state/service area	Number of grants	Grant expiration date
Region I		
Connecticut: Avon, Bloomfield, Burlington, Canton, Farmington, Glastonbury, Granby, Hartford, Manchester, Newington, Rockville, Rocky Hill, Simsbury, Windsor, Wethersfield	1	01/31/93
Massachusetts:		
Lynn, Nahant, Swampscott, Barnstable County, North Dorchester, Mattapan, Roxbury, Holyoke	4	01/31/93
Boston	1	03/31/93
Maine:		
Southeast Washington County	1	12/31/92
Aroostook County, Northeast Washington County, Southeast Hancock, South Penobscot, Waldo Counties, Androscoggin, Aroostook, Kennebec, Washington Counties	4	03/31/93
York County, Franklin, Kennebec, Knox, Lincoln, Oxford, Somerset, Waldo Counties	2	05/31/93

Region/state/service area	Number of grants	Grant expiration date
New Hampshire: Rockingham County	1	05/31/93
Rhode Island:		
Northeast Providence County	1	01/31/93
Washington County, Fox Point, Olneyville, Smith Hill, South Side, West End	2	11/30/92
Region II		
New Jersey:		
Patterson, Cumberland County	2	12/31/92
Atlantic, Burlington, East Camden, Glouster, and Salem Counties	1	01/31/93
Trenton	1	03/31/93
Plainfield	1	05/31/93
New York:		
Southern Jefferson County, Northern Oswego County, Northern Genesee, Monroe, Orleans County, Greenburg, Mt. Pleasant, New Castle, Ossining, North Tarrytown, Valhalla, Southwest Bronx, Mt. Vernon, Yonkers, Buffalo, Rochester, Central Bronx, East Bronx, South Bronx, Southwest Bronx, Rochester	8	12/31/92
Beacon, Peekskill	1	01/31/93
Buffalo, Albany, Cohoes, Rensselaer, Troy, Watervliet, Syracuse	3	03/31/93
Greenburgh, White Plains, Newburgh	2	05/31/93
Chenango, Cortland, Madison, Brooklyn, Williamsburg	2	11/30/92
Puerto Rico:		
Florida	1	12/31/92
Ciales, Cidra	2	01/31/93
Lares, Santurce	2	03/31/93
Barceloneta, Loiza	2	03/31/93
Ponce	1	11/30/92
Virgin Islands: Frederiksted	1	05/31/93
Region III		
District of Columbia: District of Columbia	1	05/31/93
Delaware: Accomack (VA), Caroline (MD), Dorchester (MD), Kent (MD), Northhampton (VA), Queen Annes (MD), Somerset (MD), Sussex (VA), Talbot (MD), Wicomico (MD), Worcester (MD)	1	03/31/93
Maryland:		
Caroline County	1	12/31/92
Brooklyn, Cherry Hill, Curtis Bay, Lakeland, Morrell Park, Mt. Winans, Wagners Point, Westport	1	03/31/93
Dundalk, O'Donnell Heights	1	05/30/93
East and West Baltimore	1	11/30/92
Pennsylvania:		
Farrell, Mahoning Valley (OH), Sharon, Shenango, Bedford, Fulton, Huntington, Chester, Monroeville, Pittsburgh, Greene, Fayette, Washington, Westmoreland, Luzerne, Northern Schuylkill, Southern Wyoming, Philadelphia	7	01/31/93
Susquehanna, Wayne, Cameron, Potter, Southeast Lancaster, Harrisburg, Southeastern Greene, Southwestern Fayette	5	03/31/93
East Potter, South Steuben (NY), Tioga	1	05/31/93
Virginia:		
Brunswick, Dinwiddie	1	01/31/93
Southeast Newport News	1	11/30/92
West Virginia:		
Monroe County, McDowell County	2	01/31/93
Southern Boone, Raleigh, Wyoming, Berkeley, Clark (VA), Frederick (VA), Hampshire, Jefferson and Morgan Counties	2	03/31/93
Southeastern Hampshire, Eastern Hardy, Boone, Cabell, Kanawha, Lincoln, Northern Logan, Martin (KY), Northern Mingo, Putnam, Wayne, Mercer County	3	05/31/93
Eastern Fayette, Western Greenbrier, Meadow Bridge, Southern Nicholas, Quinwood, Rainelle, Summers	1	11/30/92
Region IV		
Alabama:		
Southern Montgomery, Wetumpka, Willow Springs, Autauga, Bibb, Chilton, Coosa, Elmore, Fayette, Lamar, Perry, Pickens, Walker	2	01/31/93
East and West Bullock, Macon, East and West Russell, Central and Southern Tallapoosa	1	03/31/93
Dade, Jackson, Madison	1	05/31/93
Butler, Conecuh, Covington, Athens, Dacatur, Huntsville, Mobile, Washington	3	11/30/92
Florida:		
Orlando, Sanford	1	12/31/92
Miami, Coral Gables, Florida City, Homestead, Perrine, Jefferson, Madison, Taylor, Lake, and Orange Counties	4	01/31/93
Coconut Grove, Coral Gables, South Miami, Franklin, Gulf, Wakulla	2	03/31/93
Columbia County, Lake City, St. Petersburg, Sarasota, Tampa, Gilchrist, Northern Levy	3	05/31/93
Pasco	1	11/30/92
Georgia:		
Decatur	1	12/31/92
Lamar, Pike, Plains, Stewart, Webster	2	01/31/93
Elbert, Madison, Oglethrope, Glascock, Taliaferro, Warren	2	03/31/93
Atkinson, Candler, Coffee, Crawford, Macon, Montgomery, Peach, Schley, Sumter, Tattnall, Taylor, Toombs, Wheeler, Atlanta, Howndes, Decatur, Morrow, Brooks, Cook, Crisp, Echols	2	05/31/93
Kentucky:		
Lexington, Floyd, Johnson, Magoffin, Pyke	2	01/31/93
Louisville	1	11/30/92
Mississippi		
Greene, Southern Wayne	1	01/31/93
Benton, Marshall, Tippah, Uni	1	03/31/93
Humphrey's, Madison, Yazoo, Clarke, Jasper, Wayne, Leake	2	05/31/93
Jackson City, Hinds, Issaquena, Sharkey, Warren, Southern Lawrence, Western Marion, Eastern Pike, and Walthall Counties, Northern Tangipahoa (LA), and Northern Washington (LA) Parishes, Bolivar, Sunflower, Washington	4	11/30/92
North Carolina:		
Duplin, Northern Pender, Eastern Sampson, Southern Wayne	1	12/31/92
West Charlotte	1	03/31/93

Region/state/service area	Number of grants	Grant expiration date
Caswell County	1	05/31/93
Vance and Warren Counties, Edgecombe, Green, Nash, Wilson, Beaufort, Pamlico, Raleigh	4	11/30/92
South Carolina:		
Cherokee, Clarendon, Dillon, Greenville, Lee, Oconee, Pickens, Spartanburg, Sumter, Union, Williamsburg	1	03/31/93
Western Chesterfield, Eastern Kershaw, Brunswick (NC), Horry, Beaufort, Hampton, Jasper	3	05/31/93
Tennessee:		
Meigs, Polk, Rhea, Dyer, Lake, Obion	2	01/31/93
West Hickman, North Lewis, Perry	1	03/31/93
Campbell, Scott, Fayette, Shelby Counties	2	05/31/93
Chattanooga	1	11/30/92
Region V		
Illinois:		
Henderson, Mercer, Warren	1	12/31/92
Englewood, West Englewood, New City	1	01/31/93
Franklin, Jackson, Johnson, Perry, Saline, Union, Williamson	1	03/31/93
Decatur, Humbolt Park, Logan Square, West Town	2	05/31/93
Urbana	1	11/30/92
Indiana: St. Joe	1	05/31/93
Michigan:		
Detroit, Clair, Crawford, Gladwin, Missaukee, Roscommon	2	12/31/92
Detroit, Alpena, Montmorency, Presque Isle, Kalamazoo	3	01/31/93
Grand Rapids, Beecher District, North Central Flint, North Kent	3	03/31/93
Lake, Manistee, Mason, Newaygo	1	11/30/92
Minnesota:		
Minneapolis, St. Paul	1	03/31/93
Central & South Koochiching, North Itaska, North St. Louis	1	05/31/93
Ohio:		
Cincinnati	1	12/31/92
Athens, Perry, Ross, Vinton, Belmont, Guernsey, Harrison, Monroe	2	01/31/93
Darke, Miami	1	03/31/93
Dorr, Parkside, Central West Toledo	1	11/30/92
Wisconsin:		
Southern Forest, Eastern Langlade, Western Marinette, Northern Oconto	1	01/31/93
Clark, Jackson, Marathon, Price, Rusk Taylor, Wood	1	05/31/93
Region VI		
Arkansas:		
Ashley, Chicot, Drew	1	01/31/93
Altheimer, College Station, Pine Bluff, Redfield, Monroe, South Prairie	2	05/31/93
Lee, Phillips, St. Francis	1	11/30/92
Louisiana:		
Catahoula, Concordia, and Franklin Parishes	1	12/31/92
Allen, Beauregard, East and West Carroll, Catahoula, Concordia, DeSoto, Jackson, Madison, Natchitoches, Red River, Sabine, Tensas, Vernon, Bienville, and Winn Parishes	1	01/31/93
Iberia, and St. Mary Parishes	2	05/31/93
New Mexico:		
Albuquerque, Los Lunas, Catron, Eddy McKinley, San Juan, San Miguel, Sandoval, Santa Fe, Taos, Torrance	2	12/31/92
Curry, Roosevelt	1	01/31/93
North Dona Ana, South Sierra, Cibola McKinley	2	03/31/93
Dona Ana, Santa Fe, Gaudalupe, Harding, Mora, Rio Arriba, San Miguel, Taos	3	05/31/93
Oklahoma:		
Northeast Oklahoma City	1	01/31/93
Tulsa	1	03/31/93
Texas:		
Brownsville, Port Isabel, Atascosa	2	01/31/93
Jasper, Newton, Sabine, San Augustine, Tyler	1	03/31/93
West Dallas, Angelina, Cherokee, Nacogdoches, Rusk, Sabine, San Augustine, Shelby, Kinney, Maverick, Val Verde, Durval, Jim Wells	4	05/31/93
Dallas, El Paso	2	11/30/92
Region VII		
Iowa: Scott, Rock Island, Waterloo	2	01/31/93
Missouri:		
St. Louis	1	01/31/93
Kansas City, Clark, Knox, Scotland, Dunklin, Mississippi, New Madrid, Pemiscot, Scott, Stoddard, Inner Kansas City, Adair	4	03/31/93
St. Louis	1	05/31/93
Nebraska: North & Northeast Omaha	1	01/31/93
Region VIII		
Colorado:		
Colorado Springs, Denver, Aurora, Bennett, Byers	3	12/31/92
Adams, Boulder	1	01/31/93
Boulder, Clear Creek, Gilpin, Pueblo, Rye	2	05/31/93
San Luis Valley	1	11/30/92
Montana:		
Big Horn, Carbon, Carter, Custer, Daniels, Dawson, Fallon, Garfield, McCone, Powder River, Prairie, Richland, Roosevelt, McKenzie (ND), Rosebud, Sheridan, Stillwater, Treasure Valley, Wibaux, Williams (ND), Yellowstone	2	01/31/93
Yellowstone	1	03/31/93
South Dakota:		
Northern Lincoln, Minnehaha	1	12/31/92

Region/state/service area	Number of grants	Grant expiration date
Aurora, Northeast Brule, East Buffalo, Jerauld, Sanborn	1	01/31/93
North & South Union	1	03/31/93
Hamlin, Kingsbury, Lake, Miner	1	11/30/92
Utah:		
Central Ogden	1	03/31/93
Emery, Grand	1	05/31/93
Wyoming: Big Horn, Fremont, Hot Springs, Park, Washakie	1	01/31/93
Region IX		
Arizona:		
Pima	1	01/31/93
Yuma, Northern Coconino, Santa Cruz	3	05/31/93
Maricopa	1	11/30/92
California:		
Bloomington, Colton, Fontana, Rialto, San Diego, Monterey	3	12/31/92
Fresno	1	01/31/93
Albany, Berkeley, Emeryville, East, North & West Oakland, Kern	2	03/31/93
Fountain Valley, Garden Grove, Orange, Santa Ana, Westminister, San Luis Obispo, Santa Barbara, Northern Mendocino	3	05/31/93
Greater East Los Angeles, Pico, Rivera, Santa Fe Springs, Los Angeles, Calaveras, San Joaquin, Eastern Solano, Yolo, Butte	4	11/30/92
Guam: Inarajan	1	03/31/93
Hawaii: Honokai Hale, Maili, Makaha, Makakilo, Nanakuli, Oahu, Waianae	1	01/31/93
Marshall Islands: Majuro	1	01/31/93
Nevada: Henderson, Las Vegas	1	03/31/93
Federated States of Micronesia: Pohnpei	1	12/31/92
Republic of Palau: Koror	1	12/31/92
Region X		
Alaska: Anchorage	1	05/31/93
Idaho:		
Gem, Payette, Malheur (OR), Washington, Blaine, Cassia, Gooding, Jerome, Lincoln, Minidoka, Twin Falls	2	01/31/93
Ada, Canyan, Gem, Owyhee, Payette	1	03/31/93
Oregon:		
Hood River, Klickitat (WA), Wasco	1	01/31/93
Klamath County	1	05/31/93
Salem, Gresham, Portland	2	11/30/92
Washington:		
Ferry, Pend Oreille, Sponkane, Stevens	1	01/31/93
Benton, Columbia, Morrow (OR), Umatilla (OR), Walla Walla, Yakima	1	03/31/93
Benton, Franklin, Grays Harbor, Jefferson, Pacific, Wahkiakum, Buckley, Carbonato, Dupont, Fife, Fircrest, Gig Harbor, Milton, Orting, Puyallup, Reston, Roy, Steilacoom, Tacoma, Wilkinson	1	05/31/93
Adams, Franklin, Grant	1	11/30/92

[FR Doc. 92-21715 Filed 9-9-92; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

National Advisory Council for Human Genome Research; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Advisory Council for Human Genome Research, National Center for Human Genome Research, September 20 and 21, 1992 in the Maryland Suites of the Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD.

This meeting will be open to the public on September 21, 1992, from 8:30 a.m. to 10 a.m. to discuss administrative details or other issues relating to committee activities as indicated in the notice. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public law 92-463, the meeting will be closed to the public on September 20, 1992 from 7 p.m. to recess and on September 21, 1992, from 10 a.m. to adjournment, for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Elke Jordan, Deputy Director, National Center for Human Genome Research, National Institutes of Health, Building 38A, Room 605, Bethesda, Maryland 20892, (301) 496-0844, will furnish the meeting agenda, rosters of Committee members and consultants, and substantive program information upon request.

(Catalogue of Federal Domestic Assistance Program No. 93.172, Human Genome Research.)

Dated: September 2, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-21798 Filed 9-9-92; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Meeting of the Biometry and Epidemiology Contract Review Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Biometry and Epidemiology Contract Review Committee, National Cancer Institute, National Institutes of Health, October 1-2, 1992, at the Executive Plaza North Building, Conference Room G, 6130 Executive Boulevard, Rockville, Maryland 20892.

This meeting will be open to the public on October 1 from 9 a.m. to 10 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public on October 1 from 10 a..m. to recess and on October 2 from 9 a.m. to adjournment for the review, discussion, and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or

commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Office, National Cancer Institute, Building 31, room 10A06, National Institutes of Health, Bethesda, Maryland 20892, Tel. 301/496-5708, will provide a summary of the meeting and a roster of committee members upon request.

Dr. Harvey P. Stein, Scientific Review Administrator, Biometry and Epidemiology Contract Review Committee, 5333 Westbard Avenue, room 807, Bethesda, Maryland 20892, telephone 301/496-7030, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: September 2, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-21797 Filed 9-9-92; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Diabetes and Digestive and Kidney Diseases; Meetings of Subcommittees B, C, and D of the Diabetes and Digestive and Kidney Diseases Special Grants Review Committee

Pursuant to Public Law 92-463, notice is hereby given of meetings of Subcommittees B, C, and D of the National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK).

These meetings will be open to the public to discuss administrative details at the beginning of the first session of the first day of the meetings. Attendance by the public will be limited to space available. Notice of the meeting rooms will be posted in the hotel lobby.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, for the review, discussion, and evaluation of individual research grant applications. Discussion of these applications could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winnie Martinez, Committee Management Officer, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, Building 31, room 9A19, Bethesda, Maryland 20892, 301-496-6917, will provide summaries of the meetings and rosters of the committee members upon request. Other information pertaining to the meetings can be obtained from the Scientific Review Administrators indicated.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, Subcommittee B

Scientific Review Administrator: Francisco O. Calvo, Westwood Building, room 605, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301-496-7697.

Dates of Meeting: October 22-23, 1992.

Place of Meeting: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Open: October 22, 5:30 p.m.—recess. October 23, 8 a.m.—8:15 a.m.

Closed: October 23, 8:15 a.m.—adjournment.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, Subcommittee C

Scientific Review Administrator: Daniel Matsumoto, Westwood Building, room 604, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301-496-8830.

Dates of Meeting: October 22-23, 1992.

Place of Meeting: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Open: October 22, 5:30 p.m.—recess. October 23, 8 a.m.—8:15 a.m.

Closed: October 23, 8:15 a.m.—adjournment.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, Subcommittee D.

Scientific Review Administrator: Ann A. Hagan, Westwood Building, room 604, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301-496-7841.

Dates of Meeting: October 22-23, 1992.

Place of Meeting: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Open: October 22, 5:30 p.m.—recess. October 23, 8:00 a.m.—8:15 a.m.

Closed: October 23, 8:15 a.m.—adjournment.

(Catalog of Federal Domestic Assistance Program No. 93.847-849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: September 2, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-21795 Filed 9-9-92; 8:45 am]

BILLING CODE 4140-01-M

National Institute of General Medical Sciences; Meetings

Pursuant to Public Law 92-463, notice is hereby given of the meetings of the committees of the National Institute of General Medical Sciences for November 1992.

These meetings will be open to the public to discuss administrative details relating to committee business for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available.

These meetings will be closed thereafter in accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, for the review, discussion, and evaluation of individual research training grant and research center grant applications. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Building 31, Room 4A52, Bethesda, Maryland 20892 (Telephone: 301-496-7301), will provide a summary of the meeting and a roster of committee members.

Substantive program information may be obtained from each scientific review administrator whose name, room number, and telephone number are listed below each committee.

Name of Committee: Genetic Basis of Disease Review Committee.

Scientific Review Administrator: Dr. Arthur Zachary, Room 9A14, Westwood Building, Telephone: 301-496-7125.

Dates of Meeting: November 2, 1992.

Place of Meeting: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Open: November 2, 8:30 a.m.-9:30 a.m.

Closed: November 2, 9:30 a.m.-adjournment.

Name of Committee: Cellular and Molecular Basis of Disease Review Committee.

Scientific Review Administrator: Dr. Carole Latker, Room 9A10, Westwood Building, Telephone: 301-496-7125.

Dates of Meeting: November 4-5, 1992.

Place of Meeting: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Open: November 4, 8:30 a.m.-9:30 a.m.

Closed: November 4, 9:30 a.m.-5 p.m., November 5, 8:30 a.m.-adjournment.

Name of Committee: Pharmacological Sciences Review Committee.

Scientific Review Administrator: Dr. Irene Glowinski, Room 9A10, Westwood Building, Telephone: 301-496-7125.

Dates of Meeting: November 6, 1992.

Place of Meeting: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Open: November 6, 8:30 a.m.-9:30 a.m.

Closed: November 6, 9:30 a.m.-adjournment.

Name of Committee: Minority Access to Research Careers Review Subcommittee.

Scientific Review Administrator: Dr. Richard Martinez, Room 9A18, Westwood Building, Telephone: 301-496-7585.

Dates of Meeting: November 9-10, 1992.

Place of Meeting: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Open: November 9, 8:30 a.m.-9:30 a.m.

Closed: November 9, 9:30 a.m.-5 p.m., November 10, 8:30 a.m.-adjournment.

Name of Committee: Minority Biomedical Research Support Review Subcommittee.

Scientific Review Administrator: Dr. Ernest Marquez, Room 9A13, Westwood Building, Telephone: 301-402-0635.

Dates of Meeting: November 23-24, 1992.

Place of Meeting: Building 31C, Conference Room 6, National Institutes of Health, Bethesda, Maryland 20892.

Open: November 23, 8:30 a.m.-9:30 a.m.

Closed: November 23, 9:30 a.m.-5 p.m., November 24, 8:30 a.m.-adjournment.

(Catalog of Federal Domestic Assistance Program No. 93.859, 93.862, 93.863, 93.880, National Institute of General Medical Sciences, National Institutes of Health.)

Dated: September 2, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-21794 Filed 9-9-92; 8:45 am]

BILLING CODE 4140-01-M

National Institute on Deafness and Other Communication Disorders; Meeting of the National Deafness and Other Communication Disorders Advisory Council and Its Research Subcommittee

Pursuant to Public Law 92-463, notice is hereby given to the meetings of the National Deafness and Other Communication Disorders Advisory Council and its Research Subcommittee on September 30-October 2, 1992, at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland. The meeting of the full Council will be held in Conference Room 6, Building 31C, and that of the subcommittee in Conference Room 7, Building 31C.

The meeting of the Research Subcommittee will be open to the public on September 30 from 2 p.m. until 3 p.m. for the discussion of policy issues. The meeting of the full Council will be open to the public on October 1 from 8:30 a.m. until approximately 3:30 p.m. for a report from the Institute Director and discussion of extramural policies and procedures at the National Institutes of Health and the National Institute on Deafness and Other Communication Disorders and on October 2 from 8:30 a.m. to approximately 9 a.m. for a report on extramural programs of the Division of Communication Sciences and Disorders.

In accordance with the provisions set forth in section 552b(c)(4) and 552(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting of the Research Subcommittee on September 30 will be closed to the public from 3 p.m. to adjournment. The meeting of the full Council will be closed to the public on October 1 from approximately 3:30 p.m. to recess and on October 2 from 9 a.m. until adjournment. The closed portions of the meeting will be for the review of reports of Board of Scientific Counselors, and the review, discussion, and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning the Council and Subcommittee meetings may be obtained from Dr. John C. Dalton, Executive Secretary, National Institute on Deafness and Other Communication Disorders, Executive Plaza South, Room 400B, National Institutes of Health, Bethesda, Maryland 20892, 301-496-8693. A summary of the meetings and rosters of the members may also be obtained from his office. Closed captioning will be available throughout the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Other Communicative Disorders)

Dated: September 2, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-21799 9-9-92; 8:45 am]

BILLING CODE 4140-01-M

National Library of Medicine; Meetings of the Board of Regents and Subcommittees

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Board of Regents of the National Library of Medicine on October 1-2, 1992, in the Board Room of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland. The Subcommittees will meet on September 30 as follows:

The Extramural Programs Subcommittee, 5th-floor Conference Room, Building 38A, 2 to approximately 3:30 p.m., the Subcommittee on Pricing of NLM Services, Conference Room B, Building 38, 3 to approximately 4 p.m., and the Planning Subcommittee in Conference Room B, Building 38, 4 to approximately 5 p.m. The Extramural Programs Subcommittee will be closed to the public.

The meeting of the Board will be open to the public from 9 a.m. to approximately 4:30 p.m. on October 1 and from 9 a.m. to adjournment on October 2 for administrative reports and program discussions. Attendance will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4), 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92-463, the entire meeting of the Extramural Programs Subcommittee on September 30 will be closed to the public, and the regular Board meeting on October 1 will be closed from approximately 4:30 p.m. to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Robert B. Mehnert, Chief, Office of Inquiries and Publications Management, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, Telephone Number: 301-496-6308, will furnish a summary of the meeting, rosters of Board members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.879—Medical Library Assistance, National Institutes of Health.)

Dated: September 2, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-21796 Filed 9-9-92; 8:45 am]

BILLING CODE 4140-01-M

National Library of Medicine; Meeting of the Literature Selection Technical Review Committee

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the Literature Selection Technical Review Committee, National Library of Medicine on October 15-16, 1992,

convening at 9 a.m. on October 15 and at 8:30 a.m. on October 16 in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting on October 15 will be open to the public from 9 a.m. to 10:30 a.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sec. 552b(c)(9)(B), Title 5, U.S.C. Public Law 92–463, the meeting will be closed on October 15 from 10:30 a.m. to approximately 5 p.m. and on October 16 from 8:30 a.m. to adjournment for the review and discussion of individual journals as potential titles to be indexed by the National Library of Medicine. The presence of individuals associated with these publications could hinder fair and open discussion and evaluation of individual journals by the Committee members.

Mrs. Lois Ann Colaianni, Scientific Review Administrator of the Committee, and Associate Director, Library Operations, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301–496–6921, will provide a summary of the meeting, rosters of the committee members, and other information pertaining to the meeting.

Dated: September 2, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–21793 Filed 9–9–92; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the following study sections for September through October 1992, and the individuals from whom summaries of meetings and rosters of committee members may be obtained.

These meetings will be open to the public to discuss administrative details relating to study section business for approximately one half hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available. These meetings will be closed thereafter in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–496–7534 will furnish summaries of the meetings and rosters of committee members. Substantive program information may be obtained from each scientific review administrator, whose telephone number is provided. Since it is necessary to schedule study section meetings months in advance, it is suggested that anyone planning to attend a meeting contact the scientific review administrator to confirm the exact date, time and location. All times are A.M. unless otherwise specified.

Study section	September-October 1992 meetings	Time	Location
Allergy & Immunology, Mr. Howard M. Berman, Tel. 301–496–7380.	Oct. 19–21	8:30	Holiday Inn, Chevy Chase, MD.
Bacteriology & Mycology-1, Dr. Timothy J. Henry, Tel. 301–496–7340.	Oct. 21–23	8:30	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Bacteriology & Mycology-2, Dr. William Branche, Jr., Tel. 301–496–7682.	Oct. 28–30	8:30	Holiday Inn, Chevy Chase, MD.
Behavioral Medicine, Ms. Carol Campbell, Tel. 301–496–7109.	Sept. 30–Oct. 2	8:30	Holiday Inn, Chevy Chase, MD.
Biochemical Endocrinology, Dr. Michael Knecht, Tel. 301–496–7430.	Sept. 30–Oct. 2	8:30	Embassy Suites Hotel, Washington, DC.
Biochemistry, Dr. Adolphus P. Toliver, Tel. 301–496–7516	Oct. 28–30	8:00	Rosslyn Westpark Hotel, Arlington, VA.
Bio-Organic & Natural Products Chemistry, Dr. Harold Radtke, Tel. 301–496–8823.	Oct. 22–24	9:00	Holiday Inn, Georgetown, DC.
Biophysical Chemistry, Dr. John Beisler, Tel. 301–496–7070	Oct. 15–17	8:30	St. James Hotel, Washington, DC.
Bio-Psychology, Dr. A. Keith Murray, Tel. 301–496–7058	Sept. 30–Oct. 2	9:00	Omni Georgetown Hotel, Washington, DC
Cardovascular, Dr. Gordon L. Johnson, Tel. 301–496–7316	Oct. 19–21	8:00	Holiday Inn, Crowne Plaza, Rockville, MD.
Cardiovascular & Renal, Dr. Anthony Chung, Tel. 301–496–7901.	Oct. 8–9	8:30	Marriott Hotel, Pooks Hill, Bethesda, MD.
Cellular Biology and Physiology-1, Dr. Gerald Greenhouse, Tel. 301–402–2689.	Oct. 7–9	8:00	American Inn, Bethesda, MD.
Cellular Biology and Physiology-2, Dr. Gerhard Ehrenspeck, Tel. 301–402–2691.	Oct. 14–16	8:30	Holiday Inn, Bethesda, MD.
Chemical Pathology, Dr. Edmund Copeland, Tel. 301–496–7078.	Oct. 21–23	8:00	Holiday Inn, Chevy Chase, MD.
Diagnostic Radiology, Dr. Catharine Wingate, Tel. 301–496–7650.	Oct. 14–16	8:30	Hyatt Regency Hotel, Bethesda, MD.
Endocrinology, Dr. Harry Brodie,Tel. 301–496–7346	Oct. 14–16	9:00	Hyatt Regency Hotel, Bethesda, MD.
Epidemiology & Disease Control-1, Dr. Scott Osborne, Tel. 301–496–7246.	Oct. 14–16	8:30	Residence Inn Marriott, Bethesda, MD.
Epidemiology & Disease Control-2, Dr. H. M. Stiles, Tel. 301–496–7246.	Oct. 7–9	8:30	Embassy Suites Hotel, Alexandria, VA.
Experimental Cardiovascular Sciences, Dr. Richard Peabody, Tel. 301–496–7940.	Oct. 14–16	8:00	Residence Inn Marriott, Bethesda, MD.
Experimental Immunology, Dr. Calbert Laing, Tel. 301–496–7238.	Oct. 1–3	8:30	Don Cesar Hotel, Petersburg, FL.
Experimental Therapeutics-1, Dr. Philip Perkins, Tel. 301–496–7839.	Oct. 14–16	8:30	Holiday Inn, Chevy Chase, MD.
Experimental Therapeutics-2, Dr. Marcia Litwack, Tel. 301–496–8548.	Oct. 28–30	8:30	Holiday Inn, Chevy Chase, MD.
Experimental Virology, Dr. Garrett V. Keefer, Tel. 301–496–7474.	Oct. 19–21	8:30	NIH, room 8, Bldg., 31C, Bethesda, MD.

Study section	September-October 1992 meetings	Time	Location
General Medicine A-1, Dr. Harold Davidson, Tel. 301-496-7797.	Oct. 26-28	8:30	NIH, room 6, Bldg. 31C, Bethesda, MD.
General Medicine A-2, Dr. Mushtaq Khan, Tel. 301-496-7140.	Oct. 14-16	8:30	NIH, room 6, Bldg. 31C, Bethesda, MD.
General Medicine B, Dr. Daniel McDonald, Tel. 301-496-7730.	Oct. 18-20	8:00	Holiday Inn, Chevy Chase, MD.
Genetics, Dr. David Remondini, Tel. 301-496-7271	Oct. 15-17	9:00	NIH, room 10, Bldg. 31C, Bethesda, MD.
Genome, Dr. Cheryl Corsaro, Tel. 301-496-7886	Oct. 26-28	9:00	The Georgetown Inn, Georgetown, DC.
Hearing Research, Dr. Joseph Kimm, Tel. 301-496-7494	Oct. 5-7	8:30	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Hematology-1, Dr. Clark Lum, Tel. 301-496-7506	Oct. 22-24	8:00	Hyatt Regency Hotel, Bethesda, MD.
Hematology-2, Dr. Jerrold Fried, Tel. 301-496-7506	Oct. 28-30	8:30	Holiday Inn, Georgetown, DC.
Human Development & Aging-1, Dr. Teresa Levitin, Tel. 301-496-7025.	Oct. 28-30	9:00	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Human Development & Aging-2, Dr. Peggy McCardle, Tel. 301-496-7640.	Oct. 21-23	8:30	Holiday Inn, Chevy Chase, MD.
Human Development & Aging-3, Dr. Anita Sostek, Tel. 301-496-8814.	Oct. 19-21	9:00	Embassy Suites Hotel, Chevy Chase Pavilion, Washington DC.
Human Embryology & Development-1, Dr. Arthur Hoversland, Tel. 301-496-7597.	Oct. 22-23	8:00	Holiday Inn, Bethesda, MD.
Immunobiology, Dr. Bruce Maurer, Tel. 301-496-7780	Oct. 14-16	8:30	Holiday Inn, Georgetown, DC.
Immunological Sciences, Dr. Anita Corman Weinblatt, Tel. 301-496-7179.	Oct. 14-16	8:30	Holiday Inn, Chevy Chase, MD.
Lung Biology and Pathology, Dr. Anne Clark, Tel. 301-496-4673.	Oct. 14-16	8:00	Holiday Inn, Chevy Chase, MD.
Mammalian Genetics, Dr. Jerry Roberts, Tel. 301-496-1462	Oct. 22-24	8:30	Holiday Inn, Bethesda, MD.
Medical Biochemistry, Dr. Alexander Liacouras, Tel. 301-496-7517.	Oct. 22-24	8:30	Holiday Inn, Chevy Chase, MD.
Medicinal Chemistry, Dr. Ronald Dubois, Tel. 301-496-7107.	Oct. 14-16	8:30	Holiday Inn, Georgetown, DC.
Metabolic Pathology, Dr. Marcelina Powers, Tel. 301-496-5251.	Oct. 28-30	8:00	Georgetown Inn, Georgetown DC.
Metabolism, Dr. Krish Krishnan, Tel. 301-496-7091	Oct. 28-30	8:00	Holiday Inn, Georgetown, DC.
Metallobiochemistry, Dr. Edward Zapolski, Tel. 301-496-7733.	Oct. 22-24	8:30	Omni Georgetown Hotel, Washington, DC.
Microbial Physiology & Genetics-1, Dr. Martin Slater, Tel. 301-496-7183.	Oct. 28-30	8:30	Embassy Suites Hotel, Chevy Chase Pavilion, Washington DC.
Microbial Physiology & Genetics-2, Dr. Gerald Liddel, Tel. 301-496-7130.	Oct. 21-23	8:30	Holiday Inn, Georgetown, DC.
Molecular & Cellular Biophysics, Dr. Nancy Lamontagne, Tel. 301-496-7060.	Oct. 22-24	8:00	Holiday Inn, Chevy Chase, MD.
Molecular Biology, Dr. Robert Su, Tel. 301-496-7830	Oct. 15-17	8:00	Omni Georgetown Hotel, Washington, DC.
Molecular Cytology, Dr. Ramesh Nayak, Tel. 301-496-7149	Oct. 1-2	8:00	Holiday Inn, Chevy Chase, MD.
Neurological Sciences-1, Dr. Andrew Mariani, Tel. 301-496-7279.	Oct. 14-16	8:00	Holiday Inn, Bethesda, MD.
Neurological Sciences-2, Dr. Stephan Gobel, Tel. 301-496-8008.	Oct. 13-15	8:00	Holiday Inn, Chevy Chase, MD.
Neurology A, Dr. Joe Marwah, Tel. 301-496-7095	Oct. 22-24	8:00	Sheraton Hotel, Los Angeles Area, San Pedro, CA.
Neurology B-1, Dr. Samuel Rawlings, Tel. 301-496-7846	Oct. 13-15	8:00	Hotel Washington, Washington, DC.
Neurology B-2, Dr. Herman Teitelbaum, Tel. 301-496-7422	Oct. 22-24	8:30	San Pedro Sheraton Hotel, Los Angeles, CA.
Neurology C, Dr. Kenneth Newrock, Tel. 301-496-5591	Oct. 14-17	8:30	Omni Georgetown Hotel, Washington, DC.
Nursing Research, Dr. Gertrude McFarland, Tel. 301-496-0558.	Oct. 20-22	8:30	Holiday Inn Crown Plaza, Rockville, MD.
Nutrition, Dr. Sooja Kim, Tel. 301-496-7178	Oct. 7-9	8:30	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Oral Biology & Medicine-1, Dr. Larry Pinkus, Tel. 301-496-7818.	Sept. 30-Oct. 2	8:30	Holiday Inn, Chevy Chase, MD.
Oral Biology & Medicine-2, Dr. Larry Pinkus, Tel. 301-496-7818.	Oct. 13-15	8:30	Holiday Inn, Chevy Chase, MD.
Orthopedics & Musculoskeletal, Ms. Ileen Stewart, Tel. 301-496-7581.	Oct. 26-28	8:30	Wyndham Hotel, San Antonio, TX.
Pathobiochemistry, Dr. Zakir Bengali, Tel. 301-496-7820	Oct. 21-23	8:30	Holiday Inn, Chevy Chase, MD.
Pathology A, Dr. Jeawant Bhorjee, Tel. 301-496-7305	Oct. 13-16	7:00 p.m.	Holiday Inn Crowne Plaza, Rockville, MD.
Pathology B, Dr. Martin Padarathsingh, Tel. 301-496-7244	Oct. 14-16	7:00 p.m.	Holiday Inn, Georgetown, DC.
Pharmacology, Dr. Joseph Kaiser, Tel. 301-496-7408	Oct. 21-23	8:30	American Inn, Bethesda, MD.
Physical Biochemistry, Dr. Gopa Rakhit, Tel. 301-496-7120	Oct. 19-21	8:30	Holiday Inn Crowne Plaza, Rockville, MD.
Physiological Chemistry, Dr. Jerry Critz, Tel. 301-496-7837	Oct. 22-24	8:30	Holiday Inn, Bethesda, MD.
Physiology, Dr. Michael A. Lang, Tel. 301-496-7878	Oct. 14-16	8:30	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Radiation, Dr. Paul Strudler, Tel. 301-496-7073	Oct. 19-21	8:00	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Reproductive Biology, Dr. Dharam Dhindsa, Tel. 301-496-7318.	Sept. 30-Oct. 2	8:00	Holiday Inn, Bethesda, MD.
Reproductive Endocrinology, Dr. Abubakar A. Shaikh, Tel. 301-496-8857.	Oct. 5-7	8:00	Holiday Inn, Chevy Chase, MD.
Respiratory & Applied Physiology, Dr. Everett Sinnett, Tel. 301-496-7320.	Oct. 19-21	8:30	Holiday Inn, Chevy Chase, MD.
Safety & Occupational Health, Dr. Gopal Sharma, Tel. 301-496-6723.	Oct. 14-16	8:00	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Sensory Disorders & Language, Dr. Jane Hu, Tel. 301-496-7605.	Oct. 21-23	8:00	Holiday Inn Capitol Hill, Washington, DC.

Study section	September-October 1992 meetings	Time	Location
Social Sciences & Population, Dr. Robert Weller, Tel. 301-496-7906.	Oct. 8-10	9:00	Holiday Inn, Chevy Chase, MD.
Surgery & Bioengineering, Dr. Paul F. Parakkal, Tel. 301-496-7506.	Oct. 26-27	8:00	Holiday Inn, Chevy Chase, MD.
Surgery, Anesthesiology & Trauma, Dr. Keith Kraner, Tel. 301-496-7771.	Oct. 21-23	2:00 p.m.	Holiday Inn, Bethesda, MD.
Toxicology-1, Dr. Alfred Marozzi, Tel. 301-496-7570	Oct. 28-30	8:00	American Inn, Bethesda, MD.
Toxicology-2, Dr. Alfred Marozzi, Tel. 301-496-7570	Oct. 14-16	8:00	American Inn, Bethesda, MD.
Tropical Medicine & Parasitology, Dr. Jean Hickman, Tel. 301-496-1190.	Oct. 14-16	8:30	Ramada Inn, Bethesda, MD.
Virology, Dr. Rita Anand, Tel. 301-496-7605	Oct. 14-16	8:30	Holiday Inn, Bethesda, MD.
Visual Sciences A, Dr. Anita Suran, Tel. 301-496-7000	Oct. 28-30	8:00	Holiday Inn, Bethesda, MD.
Visual Sciences B, Dr. Leonard Jakubzak, Tel. 301-496-7251.	Oct. 7-9	8:30	Omni Georgetown Hotel, Washington, DC.
Visual Sciences C, Dr. Samuel Rawlings, Tel. 301-496-7795.	Oct. 14-16	8:00	The Latham Hotel, Georgetown, DC

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 2, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-21792 Filed 9-9-92; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-680-00-4130-02]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1004-xxxx), Washington, DC 20503, telephone 202-395-7340.

Title: Occupancy and Use under the Mining Laws (43 CFR 3715).

OMB approval number: (not yet assigned).

Abstract: The Bureau of Land Management is proposing a new rule at 43 CFR part 3715 sets out the restrictions on use and occupancy of unpatented mining claims and mill sites on Federal lands and to provide field managers with the tools necessary to manage occupancy and use. The proposed rule would define those activities that are related to prospecting, mining, or processing operations and uses reasonably incident thereto. The rule would establish conditions for determining whether these criteria are met, procedures for initiation of occupancy, standards for the use of occupancy, prohibited acts, procedures for inspection and enforcement, and procedures for recognizing and managing existing occupancies. It would also provide for penalties and appeals procedures. The rules only apply to public land under the administration of the Bureau of Land Management.

Bureau Form Number: None.

Frequency: Once.

Description of respondents: Respondents may range from an individual to multi-national corporations.

Estimated completion time: 2.0 hours.

Annual responses: 125.

Annual burden hours: 250.

Bureau Clearance Officer (Alternate): Gerri Jenkins, 202-653-8853.

Adam A. Sokoloski,

Deputy Assistant Director for Energy and Mineral Resources.

[FR Doc. 92-21828 Filed 9-9-92; 8:45 am]

BILLING CODE 4130-84-M

[OR-020-4410-08-G2-418]

Intent To Prepare an Amendment to the Andrews Management Framework Plan, Harney County, Oregon

AGENCY: Burns District, Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an amendment to the Andrews Management Framework Plan and the announcement of (i) a scoping period during which written comments will be accepted and (ii) three public scoping meetings during which oral statements will be accepted.

SUMMARY: In accordance with 43 CFR 1610.2(c), notice is given that the Burns District intends to prepare an amendment to the Andrews Management Framework Plan. The first issue addresses keeping open the portion of the Steens Mountain Loop Road from four miles east of Blitzen Crossing (T. 33 S., R. 32-¾ E., Section 34, SW¼NW¼) to the Big Indian Scenic View (T. 33 S., R. 33 E., Section 14, SW¼SE¼). The existing land use plan called for closing of this section of road. The second issue would address what level of road reconstruction and maintenance is appropriate on the Loop Road, including access to existing and proposed recreation and interpretive sites. A third issue would address whether the Loop Road should remain closed to recreational use in the winter. The subject area is located in southeastern Oregon, in the south central portion of Harney County, between 60 and 80 miles south of Burns, Oregon.

Impacts to the environment from the following proposed actions would be analyzed. The Steens Mountain Loop Road would be reconstructed, primarily within the presently existing area of disturbance, surfaced with gravel and some form of stabilizing material applied to hold the gravel in place, and the road maintained. Several potential gravel sources would be investigated. Presently existing access roads to campgrounds, administrative sites, and overlooks would be upgraded to provide for passenger vehicles. Several new campground sites would be considered along the southern portion of the Loop Road, and evaluated in all but the No Action alternative. A small parking lot and a staging area would be proposed on the recently acquired Wildhorse property for hikers entering Wildhorse Canyon.

SUPPLEMENTARY INFORMATION: Disciplines to be represented on the interdisciplinary team preparing the plan amendment and environmental assessment are: Recreation, wilderness, cultural, range management, threatened and endangered plants and animals, wildlife and fisheries, watershed, road engineering, realty, and land use planning.

More detailed information on planning criteria, issues and preliminary management alternatives is available at the Burns District Office and has also been mailed to known interested parties. The comment period on preliminary issues and planning criteria for the plan amendment and associated environmental assessment will close October 30, 1992. Other public participation activities will include a 45-day review of the proposed plan amendment and environmental analysis and public meetings to receive comments and answer questions. Planning documents will be available for inspection at the Burns District Office during normal working hours.

Public Meetings: The agency will hold three public meetings for the receipt of oral statements regarding the scope of the Management Framework Plan amendment. The first meeting will be held on September 16, 1992 in the Harney County Museum Club Room in Burns, Oregon. Successive meetings will be held on September 17, 1992 at the Riverhouse Motor Inn in Bend, Oregon and on September 18, 1992 in the school at Frenchglen, Oregon. All public meetings will begin at 7 p.m., local time.

ADDRESSES: Written comments regarding the scope of the Management Framework Plan amendment would be mailed to Glenn T. Patterson, Andrews Resource Area Manager, Bureau of Land Management, HC 74, 12533 Highway 20 West Hines, Oregon 97738.

FOR FURTHER INFORMATION CONTACT: Detailed information, including proposed scoping issues, is available from Glenn T. Patterson, Area Manager or Steve Anderson, Steens Project Manager at the above address, or telephone 503–573–5241.

Dated: August 24, 1992.

Michael T. Green,

District Manager.

[FR Doc. 92–21739 Filed 9–9–92; 8:45 am]

BILLING CODE 4310-33-M

[UT-020-02-4212-14; U-68296]

Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, sale of public lands in Summit County, Utah.

SUMMARY: The Bureau of Land Management proposes the sale of approximately .7 acres of land in Summit County to United Park City Mines Company. This notice provides a public comment period and segregates the lands described from surface entry and mining under the public land laws including the United States mining laws.

DATES: Comments must be received by October 26, 1992.

ADDRESSES: Comments should be sent to the District Manager, Salt Lake District BLM, 2370 South 2300 West, Salt Lake City, Utah 84119.

FOR FURTHER INFORMATION CONTACT: Janice MaChipiness, BLM Salt Lake District Office, (801) 977–4300.

SUPPLEMENTARY INFORMATION: The following described lands have been examined and found suitable for disposal under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at not less than fair market value. The lands will not be offered for sale until at least 60 days after the date of this notice. The lands described will include all public lands within the following legal descriptions:

Salt Lake Meridian

T. 2 S., R. 4 E.,
Sec. 10, S½NE¼
Sec. 11, N½NW¼SW¼.

The area described contains approximately .7 acres in Summit County.

The appraised fair market value of the three tracts is $1,500. The above described lands will be sold to dispose of lands which are isolated and uneconomical to manage. The sale is consistent with the Bureau's planning system and the public interest will be served by offering these lands for sale.

The lands described are hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

The described lands will be sold at 10 a.m. on November 6, 1992, without competitive bidding at the above identified address to United Park City Mines Company. The appraised value as shown must be received by the Salt Lake District Office at the date and time of the sale. Payment may be made by the principal or a duly qualified agent. Payment shall be by certified check, money order, bank draft or cashier's check made payable to the Department of the Interior, BLM.

At the date of and prior to the sale of the lands, the Untied Park City Mines Company shall relinquish to the United States all interest and rights to the United Park Fraction No. 11, United Park Fraction No. 12 and United Park Fraction No. 13, UMC numbers 59470, 62110, and 59471, respectively.

The terms and conditions applicable to the sale are:

(1) The patent will contain a reservation for ditches and canals and be subject to all valid existing rights.

(2) All minerals will be reserved to the United States including the right of ingress and egress for mineral development.

Notice is hereby given that an opportunity for the public to comment is given within the comment period identified above. Any adverse comments will be evaluated by the District Manager who may modify or vacate this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Dated: August 19, 1992.

Deane H. Zeller,

District Manager.

[FR Doc. 92–21679 Filed 9–9–92; 8:45 am]

BILLING CODE 4310-DQ-M

[CA-066-4331-12]

Restricted Use Order; Palm Springs-South Coast Resource Area, Riverside County, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Prohibits discharge of firearms, except for the lawful taking of game, upon or within public lands in vicinity of Hayfield Springs.

SUMMARY: The area in and around Hayfield Spring has seen increased use in the past few years with some of the activity centered around indiscriminate and/or target shooting. Since the backdrop for such shooting contains prehistoric rock art, it is deemed necessary to restrict shooting.

The Restricted Use Area encompasses all of the public lands within the east half of T. 5 S., R. 13 E., SBM, situated north of a line which parallels and is 100 feet to the south of the centerline of the graded electrical transmission line access road and situated south of the 2,200 foot elevation line. This area is approximately 1,600 acres in size and comprises the southern face of the Eagle Mountains located due east of the Julian

Hinds Pumping Station and north of an electrical transmission line running in an east-west direction.

EFFECTIVE DATE: This Restricted Use Order is effective October 1, 1992 and will remain in effect for a period of four (4) years. At the end of the four years an evaluation of the Order's effectiveness and continued need shall be completed.

FOR FURTHER INFORMATION CONTACT: Michael Mitchell, Archaeologist, Palm Springs-South Coast Resource Area, 63-500 Garnet Ave., North Palm Springs, CA 92258-2000, (619) 251-0812.

SUPPLEMENTARY INFORMATION: Authority for this Restricted Use Order found in 43 CFR 8364.1. Violation of this closure is punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months. Resource monitoring over the last several years has shown that indiscriminate shooting and target practice use has caused irreparable damage to irreplaceable resources. Individuals duly licensed and hunting for game in accordance with State regulations and hunting rules are exempt from this Order.

Dated: August 28, 1992.

Russell L. Kaldenberg,

Area Manager.

[FR Doc. 92-21735 Filed 9-9-92; 8:45 am]

BILLING CODE 4310-40-M

Bureau of Reclamation

Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs (Operating Criteria)

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of proposed decision.

SUMMARY: The purpose of this action is to provide public notice that the Secretary of the Interior (Secretary) proposes no change to the existing Operating Criteria as a result of the current review process. The current review has been conducted as a public process including the formal consultation with representatives of the Governors of the seven Colorado River Basin States (Basin States). The results of the Bureau of Reclamation's (Reclamation) review indicate that modification of the Operating Criteria is not justified at the present time.

DATES: All written comments relevant to this proposed decision received by October 13, 1992 will be considered.

ADDRESSES: Interested parties should send comments to: Regional Director, Lower Colorado Region, Bureau of Reclamation, PO Box 61470, Boulder City, Nevada 89006-1470, Attention: Ms. Mary Webb, LC-153A.

FOR FURTHER INFORMATION CONTACT: Questions should be directed to Mr. Bruce Moore at 801-524-5415.

SUPPLEMENTARY INFORMATION: The public review process began with **Federal Register** notice 56 FR 534, January 7, 1991, announcing the review of the Operating Criteria and inviting comments during the 60 days following the notice. On January 15, 1991, over 250 letters enclosing a copy of the **Federal Register** notice and the Operating Criteria were sent to all known and anticipated interested parties inviting their review and comment. In response to requests, an additional 30-day comment period was announced in **Federal Register** 56 FR 14273, April 18, 1991.

Comments from the two **Federal Register** notices were received from 32 respondents. The comments were reviewed by Reclamation for identification and analysis of the issues. A public meeting was held on November 19, 1991, to discuss the identified issues and analyses. All those on the original mailing list were invited to this public meeting along with any others who had expressed interest. All of the 32 respondents and all who attended the meeting were provided with a document containing copies of all comments which had been received plus the identified issues and analyses. The analyses of the issues were revised to reflect information resulting from the public meeting. As required by Public Law (Pub. L.) 90-537, a formal consultation meeting with the designated Governors' representatives of the Basin States was held on March 24, 1992, to discuss the results of the review. This consultation meeting was open to the public for observation, and all on the original mailing list plus subsequent additions were notified of the meeting and invited. Immediately after the formal consultation, the meeting was extended for questions and comments from the general public.

Following analysis of comments received as a result of this notice, the National Environmental Policy Act (NEPA) will be applied to the Secretary's final decision. Following application of the NEPA process, the final decision will be published in the **Federal Register**.

Background

The Operating Criteria, promulgated pursuant to section 602 of Public Law 90-537 (U.S.C. 1552), were published in the **Federal Register** on June 10, 1970. The Operating Criteria provide for the coordinated long-range operation of the reservoirs constructed and operated under the authority of the Colorado River Storage Project Act, the Boulder Canyon Project Act, and the Boulder Canyon Project Adjustment Act for the purposes of complying with and carrying out the provisions of the Colorado River Compact (Compact), the Upper Colorado River Basin Compact, and the Mexican Water Treaty. The Operating Criteria provide that the Secretary will sponsor a formal review of the Operating Criteria at least every 5 years, with participation by such Basin State representatives as each Governor may designate and such other parties and agencies as the Secretary may deem appropriate. Public Law 90-537 allows the Secretary, as a result of actual operating experiences or unforeseen circumstances, to modify the Operating Criteria to better achieve their specified statutory purposes after consulting with the representatives of the Basin States.

In both 1975 and 1980, after consulting with the Basin States and others, the Secretary determined that there was not a need for a formal review. Review of the Operating Criteria in 1985 resulted in no changes. That review was conducted informally following a meeting among representatives of the Basin States (designated by the respective Governors) and Reclamation. The Secretary concluded that outstanding issues concerning the operation of the reservoir system and the Operating Criteria could be resolved without the necessity of a formal review of the Operating Criteria. The representatives of the Basin States were invited to participate in a technical work group with Reclamation to identify the extent of operational flexibility consistent with the Operating Criteria and to seek a consensus in the procedures used to formulate the Annual Operating Plan (AOP) for the following several years until the Basin States demands were more fully developed. Because the long-range operation of the Colorado River reservoirs is important to many agencies and individuals, this current review has involved the general public as well as a wider range of agencies and organizations.

The scope of this review has been consistent with the statutory purposes of the Operating Criteria, which are "to comply with and carry out the provisions of the Colorado River Compact and the Mexican Water Treaty." Long-range operations generally refers to the planning of reservoir operations over the next 5 to 20 years, as opposed to the AOP, which details reservoir operations for the next

operating year. When the flows of the Colorado River are augmented, as contemplated in section 602 of Public Law 90-537, the Operating Criteria will likely be revised.

Synopsis of Review Results

Many of the issues raised during the review are more properly dealt with during the development of the AOP. These include navigation, recognition of project purposes, minimizing spills, river conditions from Hoover Dam to Mexico, operations at Glen Canyon Dam, factors for determining 602(a) storage, rigorous application of the Operating Criteria, and storage equalization between Lakes Powell and Mead. The Operating Criteria were purposely designed to be flexible so that during the development of the AOP variations in weather patterns and changing demands for water use can be accommodated. The process for developing the AOP is open to the public and interested parties. Special studies that address some of the issues raised during the review of the Operating Criteria will be conducted during development of future AOP's.

Some issues such as short-term navigation concerns or specific issues relating to river conditions can often be handled on a case-by-case basis. Those with such concerns are invited to contact Reclamation so a cooperative solution can be worked out.

The minimum objective release from Lake Powell was carefully considered. Impacts of changing this parameter may be considerable and range from impacts on the levels in Lakes Powell and Mead to impacts on flows in the Grand Canyon. Insufficient data exist concerning these impacts and any change in the minimum objective releases a thorough analysis of the impacts would be premature. Studies are proposed to examine the combined effects of objective minimum releases, 602(a) storage determinations, and storage equalization between Lakes Powell and Mead. The decision on whether or not to change the Operating Criteria is subject to NEPA and appropriate compliance will be accomplished. It is not deemed appropriate to combine this process with the Glen Canyon Dam Environmental Impact Statement (GCDEIS) nor to delay this review and decision on the Operating Criteria until the GCDEIS is completed. With respect to the issues raised by the Indian Tribes, they are assured of their right to participate in reviews of the Operating Criteria and in the AOP development process.

Based on the results of the review and the analysis of public comments, it is proposed that the Operating Criteria not be modified at this time.

Analysis of Issues

Issue 1: Whether the Operating Criteria should include keeping the river navigable from Lake Mead Up to the Grand Canyon and below Hoover Dam, whether navigation should take precedence over power in determining dam releases, and whether river management should conform to the priorities in the Decree in *Arizona* v. *California* (Decree).

Analysis: Water releases by Reclamation from Hoover Dam on a monthly basis are normally controlled by water needs downstream (including reservoir regulation) or by flood control regulations if conditions require. Within the constraints imposed by water demands, daily and hourly releases are controlled by power demands and scheduling. Article II of the Decree lists river regulations, improvement of navigation, and flood control as the first priority uses of Hoover Dam and Lake Mead. However, the Compact states in Article IV that navigation shall be subservient to water supply and power. The Decree (Article VIII) also states that it (the Decree) shall not affect any issue of interpretation of the Compact.

It is the Department of the Interior's (Interior) position (which is supported by the findings in *Laughlin River Tours* v. *United States)* that the dams and reservoirs have already greatly improved navigation over the natural conditions and the operating in accordance with the Decree does not require maximizing the first priority elements to the great detriment of the other priorities. The Operating Criteria comport with the statute, the Compact, and the Decree for operating Hoover Dam and the other dams on the lower Colorado River.

Navigability of the river upstream of Lake Mead is dependent on releases from Lake Powell. Because the Decree deals with storage and release of water only with respect to Lower Basin reservoirs, it affords no priority to navigation on the river upstream of Lake Mead. The Operating Criteria do not specifically address priorities of purposes. Specific concerns of balancing priorities should be addressed during development of the AOP. The Operating Criteria need no changes with respect to priorities of purposes.

Issue 2: Whether the minimum objective release stated in the Operating Criteria should be changed.

Analysis: Article II (2) of the Operating Criteria states that "* * * the objective shall be to maintain a minimum release of water from Lake Powell of 8.23 million acre-feet * * *." The Operating Criteria make no explicit provisions for annual releases of less than 8.23 million acre-feet (MAF). There are conditions which prohibit annual releases greater than 8.23 MAF. They occur when the forecast for September 30 shows that either:

1. The Upper Basin storage will be less than 602(a) storage.

2. Lake Powell active storage will be less than the active storage of Lake Mead.

However, releases from Lake Powell greater than 8.23 MAF are made, if in the plan of operations, the forecast of September 30 shows that Upper Basin active storage will be greater than the quantity of 602(a) storage, in order to accomplish any or all of the following objectives:

1. If such releases can reasonably be applied in the lower division states to the uses specified in Article III(e) of the Compact and provided that active storage in Lake Powell is not less than active storage in Lake Mead.

2. To equalize active storage between Lakes Powell and Mead.

3. To avoid anticipated spills from Lake Powell.

The Compact requires that the Upper Division States shall not deplete the flow at Lee Ferry below an aggregate of 75 MAF for any period of 10 consecutive years. The principal purpose of the Operating Criteria is to make provision for the storage of water in Storage Units of the Colorado River Storage Project and Lake Mead and the release of water therefrom in accordance with Section 602 of the Colorado River Basin Project Act (Pub. L. 90-537). The Operating Criteria as recommended by the Secretary represent a compromise between Upper and Lower Basin positions on water use and delivery .

The application of the minimum release objective has several implications, including: (1) A lower Lake Powell storage volume during drought periods and a more stable Lake Mead storage volume, (2) a more consistent release regime through the Grand Canyon, and (3) a more consistent base for marketing the energy and capacity from the Glen Canyon Dam powerplant. The resulting releases have less variability than either the predam flows or the flows that would result from applying the delivery requirements contained in Articles III(c) and (d) of the Compact.

The Upper Division States object to the minimum release objective of 8.23 MAF per year and to the equalization provisions of the Operating Criteria. However, those states did not object to

the use of those provisions in the Operating Criteria at the present time. There are complicated and extensive impacts both negative and positive that could result from a change in the current minimum objective release of 8.23 MAF from Glen Canyon Dam including conditions such as storage levels in Lakes Powell and Mead, maximum and minimum streamflow levels, and the frequency of spills. The exact nature of these effects and their relationship to other parts of the Operating Criteria are currently unknown. Therefore, the minimum release provisions of the Operating Criteria should not been changed at this time. A comprehensive investigation is needed to determine the combined effects of possible changes to the Operating Criteria. These would include changes to minimum annual releases, the determination of 602(a) storage, and storage equalization between Lakes Powell and Mead.

Issue 3: Whether operations should give consideration to all listed project purposes and whether appropriate priorities between purposes should be reflected.

Analysis: Principal documents where project purposes are listed are the Operating Criteria, Colorado River Basin Project Act, Colorado River Storage Project Act, and Boulder Canyon Project Act.

The Operating Criteria (June 10, 1970), address project purposes as follows:

> The plan of operation * * * shall reflect appropriate consideration of the uses of the reservoirs for all purposes including flood control, river regulation, beneficial consumptive uses, power production, water quality control, recreation, enhancement of fish and wildlife, and other environmental factors.

The documents comprising the "Law of the River" do require consideration of all project purposes when making decisions on operation of the Colorado River system. In the development of each AOP, consideration must be given to all project purposes delineated in each specific facility's authorizing legislation. Modification of the long-term Operating Criteria is not necessary to provide such consideration. There is sufficient flexibility within the current Operating Criteria to give appropriate consideration to all project purposes.

Issue 4: Whether the Operating Criteria or AOP should include minimizing spills including minimizing high flows and flood control releases, whether full pool level should be identified in the Operating Criteria, and whether the probability of spills at Glen Canyon Dam should be reduced by removing the 602(a) storage requirement that prevents releases made to avoid anticipated spills.

Analysis: This issue relates to the monthly and annual operations of Glen Canyon Dam that are scheduled to avoid "spills," these being defined as releases in excess of those which can be utilized for project purposes. Reference to such releases is made in Public Law 90–537, Section 602(a)(3), and in the Operating Criteria, Sections II(3)(c) and II(4). Examples of such excess releases include powerplant bypasses and water released in excess of consumptive use requirements downstream of Lake Powell.

Both Public Law 90–537 and the existing Operating Criteria contain language directing that the operation of the Colorado River system reservoirs "* * * avoid anticipated spills from Lake Powell." The operation of all of the Colorado River reservoirs is forecast-based and includes mandatory flood control restrictions in the operation of Hoover Dam consistent with flood control as one of the purposes of the project. At each point during the year-round forecast period (typically the first of each month from January through July) evaluations of the current inflow forecast are made and the scheduled releases are adjusted in order to avoid spills from Glen Canyon Dam (while attempting to maximize storage available for future use). "Anticipated spills" have been interpreted as being those that are expected as a result of forecasted inflow.

The Operating Criteria are purposely general in many areas to provide the flexibility required to accommodate varying hydrologic conditions. To reduce the frequency of spills, operations have been implemented which include a combination of scheduling higher winter releases and "targeting" a full reservoir about 500,000 acre-feet lower than full capacity (as a buffer) until the peak runoff has clearly passed. Because the reservoir can still be filled after any danger of spills has passed, conservation storage is not affected.

The Operating Criteria are general enough to allow such adjustments to be part of the AOP development process. The AOP is developed annually and the current reservoir conditions, all project requirements, the probability of inflows, and alternative release strategies are all considered in a public forum.

The 602(a) storage requirement must be retained in the Operating Criteria because it is statutorily mandated. Furthermore, the quantification of the 602(a) storage level currently has no effect on spills from Glen Canyon Dam, although it may at some future time when Upper Basin uses are more fully developed.

The Operating Criteria are, and should remain, flexible enough to accommodate wide variations in hydrologic conditions, and therefore, need not be modified to accommodate avoidance of spills. Expected reservoir levels and risk of spills will be addressed during preparation of each AOP. Sufficient flexibility exists in the current Operating Criteria to allow development of AOP's with desired risks of spill.

Issue 5: What should be included in the GCDEIS and whether NEPA compliance for the current review of the Operating Criteria will be combined with the GCDEIS.

Analysis: The GCDEIS is a NEPA effort currently underway to assess alternative operations at Glen Canyon Dam.

Those issues which are pertinent to Glen Canyon Dam operations are being addressed in the GCDEIS. Issues which are pertinent to other specific reaches of the river or specific facilities or pertinent to daily or short-term operations would be properly addressed in NEPA analyses of the specific projects or facilities involved. The NEPA compliance to be accomplished on results of the review of the Operating Criteria should not be combined with the GCDEIS.

Issue 6: Whether the Operating Criteria should take into account riverine conditions below Hoover Dam along the river between reservoirs as well as within the reservoirs, particularly with respect to fish and wildlife, recreation, and other environmental and ecological factors.

Analysis: The only Lower Basin reservoirs to which the Operating Criteria apply are those constructed and operated under the authority of the Boulder Canyon Project Act and the Boulder Canyon Project Adjustment Act. The Operating Criteria are primarily concerned with the longer-term water operations in the Upper and Lower Basins.

Flows in the river system from Hoover Dam to Mexico are governed overall by the Compact, the Supreme Court Decree, the Mexican Water Treaty, flood control regulations, and contracts with water users. Within the limits imposed by these factors and the reservoir space available for regulation, flows are also affected by power operations. Fish and wildlife, recreation, and environmental considerations are taken into account, and flows can be modified (and have been in the past) to enhance these project purposes within the limits

defined by the governing factors mentioned above. The existing Operating Criteria are flexible enough to allow this and need not be modified. Considerations of all purposes are addressed during development of the AOP. State, Federal, and local agencies concerned primarily with fish and wildlife, recreation, and environmental purposes are part of the AOP process.

Issue 7: Whether the Operating Criteria should be flexible enough to accommodate interim flows and operational changes at Glen Canyon Dam.

Analysis: The Operating Criteria were developed to accomplish the objectives of section 602(a) of the 1968 Colorado River Basin Project Act (Pub. L. 90–537). Specific monthly, daily, and hourly operations were not detailed in Public Law 90–537, and correspondingly, they are not detailed in the Operating Criteria. The Operating Criteria are sufficiently flexible and need not be modified to deal with the changes in monthly, daily and hourly operations at Glen Canyon Dam.

Issue 8: Whether scheduled special releases, ecosystems, historical stream flow criteria, and a critical period should be factors considered in determining 602(a) storage.

Analysis: Section 602(a) of Public Law 90–537 provides for sufficient storage of water in the Upper Basin to assure certain required deliveries to the Lower Basin without impairing the annual Upper Basin consumptive uses pursuant to the Compact. Article II(1) of the Operating Criteria requires the Secretary to determine (for each AOP) the quantity of 602(a) storage, after consideration of all applicable laws and relevant factors. The article lists several of the relevant factors but specifically states that the Secretary is not limited to those listed. The Secretary is therefore allowed, and indeed required, to consider all factors which are relevant to the determination of the 602(a) storage quantity during the preparation of each AOP. The process for preparing AOP's has recently been expanded to include additional agencies, organizations, and representatives from the public who can provide input for the identification of the relevant factors. The Operating Criteria already provide for considering additional factors when determining 602(a) storage and should not be modified for that purpose.

Issue 9: Whether the review of the Operating Criteria should be subject to NEPA, and whether the Environmental Impact Statement process could be used to assess operational aspects at Colorado River dams.

Analysis: Reclamation is currently applying the NEPA process to several projects associated with the Colorado River where proposed actions are being considered. Two of these are:

1. GCDEIS.
2. Hoover Dam Modification.

NEPA compliance will be accomplished on the results of the review of the Operating Criteria. The form and extent of such compliance will depend on the final results of the review.

Issue 10: Whether the Colorado River System reservoirs are being operated in accordance with: The Operating Criteria as promulgated; provisions of the "Law of the River" as it currently exists; best management practices for the use, management and supply of water under current conditions and standards; whether the Operating Criteria, risk analysis, future use estimates, critical storage requirements, and maximizing beneficial use in operation of Colorado River reservoirs are subjected to loose definitions and piecemeal application; and whether the Operating Criteria need to be more rigorously applied during the AOP process.

Analysis: The State of California and its water users believe that attention to the above matters will allow greater beneficial uses of water in the Lower Basin without unduly increasing the risk of shortage to United States uses. Specifically, they want assurances that the system of reservoirs are being operated:

1. In accordance with the Operating Criteria as promulgated;
2. In accordance with provisions of the "Law of the River" as it currently exists;
3. In accordance with best management practices for the use, management, and supply of water under current conditions and standards.

Based on their review of the Operating Criteria and their experience with the AOP development process, they believe that:

1. The Operating Criteria are being implemented in a piecemeal fashion rather than being considered in their entirety.
2. Consideration of all applicable laws and relevant factors including water supply risk assessment are not being considered adequately in the development of the AOP.
3. Accurate and reasonable estimates of current and future consumptive use within the Colorado River Basin are not factored into the analyses of the reservoir operations and assessments of risk.
4. Critical reservoir storage requirements for meeting the need for water in the Upper Basin and the Lower Basin have not been developed.
5. The degree of confidence in the risk assessment related to water conservation is not commensurate with the degree of certainty being required for other parameters used to guide the operation of the system reservoirs.
6. Risk assessments and reservoir operations have not been modified in consideration of best management practices appropriate for the use, management, and supply of water under current conditions and standards.
7. Several provisions contained in the Operating Criteria lack precise definition or are being interpreted based on convenience rather than in accordance with the intent of the statutes.
8. Maximizing the beneficial use of the available water resources within the Colorado River Basin and each state's Colorado River apportionment are not primary considerations when the AOP is developed.

Interior agrees that these areas need to be considered and studied so that the Colorado River is operated in the best manner possible. Reclamation and the Basin States have committed to continued support and participation in the study effort (through the Colorado River Management Work Group) on the above issues and other related or affected matters.

Necessary studies will be completed and specific procedures will be recommended to the Commissioner of Reclamation for guiding preparation of future AOP's for the Colorado River System reservoirs.

Issue 11: Whether the Operating Criteria should recognize the Federal Indian trust responsibility and provide for participation in reviews by Indian Tribes to the same extent as participation by Basin States.

Analysis: Section 602(b) of Public Law 90–537 specifically requires the Secretary to consult with state representatives (as designated by the Governors) if modification of the Operating Criteria is considered. In addition, however, the Operating Criteria provide that "The Secretary will sponsor a formal review of the Operating Criteria at least every 5 years with participation by state representatives as each Governor may designate and such other parties and agencies as the Secretary may deem appropriate."

The Indian Tribes and many other parties and agencies were notified and invited to participate in this review and will be invited to participate in future reviews as well. No change should be

made in the Operating Criteria, but the Indian Tribes should be assured of their right to participate in reviews of the Operating Criteria, as well as in the AOP development process.

Issue 12: Whether a long range operation plan for Colorado River reservoirs should be developed before the decision is made on Glen Canyon Dam.

Analysis: It is presumed that the commenter is referring to the decision on whether to modify the existing Operating Criteria when mentioning a "long-range operational plan." Some operational parameters at Glen Canyon Dam may be altered as a result of the GCDEIS, but these need not be specified in the Operating Criteria since they will be addressed in the final Glen Canyon Dam operating criteria. Furthermore, the type of parameters that could change would be more appropriately addressed in the AOP development process. Therefore, it is not necessary to wait for results of the GCDEIS prior to making a decision on the long-range Operating Criteria.

Issue 13: Whether the Operating Criteria should be more flexible in the time allowed for equalization of storage between Lakes Powell and Mead to allow a more gradual reduction in annual flows when going from a wet period to a dry period.

Analysis: The storage equalization provision originates in Public Law 90-537, Section 602(a)(3)(ii) and is repeated in Article II(3)(b) of the Operating Criteria. The intent of the equalization provision is to maintain, as nearly as practicable, active storage in Lake Mead equal to the active storage in Lake Powell. Storage equalization releases shall be made from Lake Powell to the extent they can be reasonably applied in the Lower Basin States for the uses specified in Article III(e) of the Colorado River Compact unless the active storage in Lake Powell is less than the active storage in Lake Mead. Also, these releases can only be made if the storage in Lake Powell is greater than that required for 602(a) purposes.

This provision is the mechanism by which water excess to Upper Basin needs (and excess to 602(a) storage levels) is transferred to Lake Mead and the Lower Basin. It also helps to equalize power generation benefits and to keep the recreation pools of the two lakes relatively equal.

The decision on when and over what time period to equalize is made through the current AOP process. The flexibility inherent in the process allows storage equalization to be made in a way that benefits project purposes. The Operating Criteria should not be changed with respect to storage equalization.

Proposed Decision: Interior has considered issues arising from the review of the Operating Criteria. After a careful review of the issues, solicitation of involved parties' responses to Reclamation's analysis, consultation with the Governor's representatives of the Basin States, and revision of Reclamation's analysis in response to comments received, the Department proposes no modifications of the Operating Criteria at this time.

Dated: September 2, 1992.

Joe D. Hall,

Deputy Commissioner.

[FR Doc. 92-21681 Filed 9-9-92; 8:45 am]

BILLING CODE 4310-01-M

Minerals Management Service

Outer Continental Shelf (OCS) Advisory Board—Policy Committee; Notice and Agenda for Meeting

The Policy Committee of the OCS Advisory Board will meet Tuesday, October 20 and Wednesday, October 21, 1992, at the Ocean Place Hilton, One Ocean Boulevard, Long Branch, New Jersey (908) 571-4000.

The agenda will cover the following principal subjects:

Tuesday, October 20

—America's Energy Future and the National Energy Strategy
—The Lucas Decision: Implications for Moratoria and Buybacks
—Sand and Gravel Extraction: The United Kingdom and European Experience
—Future of the OCS: The Shirley Report Revisited

Wednesday, October 21

—Oil Spill Response Research
—Oil Pollution Act
—Subcommittee Report on OCS Sand, Gravel and Shell Resources
—Committee Roundtable

The meeting is open to the public. Upon request, interested parties may make oral or written presentations to the Policy Committee. Such requests should be made no later than October 2, 1992, to the Office of OCS Advisory Board Support, Minerals Management Service, 381 Elden Street, MS-4110, Herndon, Virginia 22070, Attention: Terry Holman.

Requests to make oral statements should be accompanied by a summary of the statement to be made. For more information, call Terry Holman at (703) 787-1211.

Minutes of the Policy Committee meeting will be available for public inspection and copying at the Minerals Management Service in Herndon, Virginia. This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Public Law No. 92-463, 5 U.S.C. appendix 1, and the Office of Management and Budget's Circular No. A-63, Revised.

Dated: August 28, 1992.

Thomas Gernhofer,

Associated Director for Offshore Minerals Management.

[FR Doc. 92-21710 Filed 9-9-92; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Register of Historic Places, Notification of Pending Nomination

In order to assist in its preservation, the commenting period for the following property has been shortened to seven days:

Iowa

Cerro Gordo County

Stockman, Dr. G. C., House (Prairie School Architecture in Mason City TR) 530 1st St. NE. Mason City, 80001441

Beth L. Savage,

Acting Chief of Registration, National Register.

[FR Doc. 92-21736 Filed 9-9-92; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-6 (Sub-No. 340X)]

Burlington Northern Railroad Co.; Discontinuance of Trackage Rights Exemption; Between East Dubuque, IL and Dubuque, IA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission is exempting from the prior approval requirements of 49 U.S.C. 10903-10904 Burlington Northern Railroad Company's discontinuance of trackage rights operations over the Dunleith and Dubuque Bridge, located between East Dubuque, IL and Dubuque, IA, subject to employee protective conditions.

DATES: This exemption will be effective on October 10, 1992. Petitions to stay must be filed by September 25, 1992. Petitions for reconsideration must be filed by October 5, 1992.

ADDRESSES: Send pleadings referring to Docket No. AB-6 (Sub-No. 340X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Michael E. Roper, Associate General Counsel, Burlington Northern Railroad, 3800 Continental Plaza, 777 Main Street, Ft. Worth, TX 76102.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927-5610, [TDD for hearing impaired: (202) 927-5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927-5721].

Decided: September 1, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-21724 Filed 9-9-92; 8:45 am]

BILLING CODE 7035-01-M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Criminal Rules

AGENCY: Judicial Conference of the United States.

SUBAGENCY: Advisory Committee on Rules of Criminal Procedure.

ACTION: Notice of open meeting.

SUMMARY: There will be a two-day meeting of the Advisory Committee on Criminal Rules. The meeting will be open to public observation but not participation. The meeting will commence each day at 9 a.m.

DATES: October 12-13, 1992.

ADDRESSES: Stouffer Madison Hotel, 515 Madison Street, Seattle, Washington 98104.

FOR FURTHER INFORMATION CONTACT: Joseph F. Spaniol, Jr., Secretary, Committee on Rules of Practice and Procedure, Washington, DC 20544, telephone (202) 633-6021.

Dated: September 1, 1992.

Joseph F. Spaniol, Jr.,

Secretary, Committee on Rules of Practice and Procedure.

[FR Doc. 92-21512 Filed 9-9-92; 8:45 am]

BILLING CODE 2210-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Presenting and Commissioning Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Presenting and Commissioning Advisory Panel (Festivals Overview Section) will be held on September 25, 1992 from 9 a.m.—5 p.m. in room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics will include introductory remarks and a discussion of issues facing the field.

Any interested person may observe meetings, or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5439.

Dated: September 8, 1992.

Yvonne M. Sabine,

Director Panel Operations, National Endowment for the Arts.

[FR Doc. 92-21995 Filed 9-9-92; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Genetic Biology; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Date and Time: Thursday, Friday, and Saturday, October 1, 2, and 3, 1992; 8:30 a.m. to 5 p.m.

Place: The National Science Foundation, 1800 G Street, Washington, DC 20550; room 1242.

Type of meeting: Closed.

Contact person: DeLill S. Nasser, Program Director for Eukaryotic Genetics, Division of Molecular and Cellular Biosciences, room 325, National Science Foundation, 1800 G St., NW., Washington, DC 20550. Telephone: (202) 357-0112.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Genetics Program in the Division of Molecular & Cellular Biosciences at NSF as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 4, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-21707 Filed 9-9-92; 8:45 am]

BILLING CODE 7555-01-M

Ocean Sciences Review Panel; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Date and time: September 29, 1992; 8:30 a.m. to 5 p.m.

Place: Room 1243, National Science Foundation, 1800 G St. NW., Washington, DC.

Type of meeting: Closed.

Contact person: Dr. Richard B. Lambert, Program Director, GEO, Physical Oceanography Program, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357-9639.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the WOCE (Indian Ocean) Interagency Panel as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 4, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-21705 Filed 9-9-92; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Advanced Scientific Computing, Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and time: September 29, 1992; 8:30 a.m. to 5 p.m.

Place: Room 417, 1800 G Street, NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Robert Voigt, Program Director, New Technologies, room 417, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7727.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Small Business Innovation Research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information: financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 4, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–21708 Filed 9–9–92; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Electrical and Communications Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Date and Time: September 30, 1992, 8 a.m. to 5 p.m.

Place: Room 1151, 1800 G Street NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Albert B. Harvey, Program Director, Division of Electrical and Communications Systems, room 1151, 1800 G Street NW., Washington, DC, 20550. Telephone (202) 357–9618.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Small Business Innovation Research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 4, 1992.

M. Rebecca Winkler,

Committee Management Office.

[FR Doc. 92–21704 Filed 9–9–92; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Elementary, Secondary and Informal Education; Notice Of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Date and Time: September 23, 1992, 6 p.m. to 8 p.m.; September 24–25, 1992, 8 a.m. to 5 p.m.

Place: The Pullman Highland Hotel, 1914 Connecticut Avenue, NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Barbara Butler, Program Director, Division of Elementary, Secondary Informal Education, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 375–7076.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Informal Science Education research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 4, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–21702 Filed 9–9–92; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Mathematical Sciences; Notice Of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Date and Time: October 1–2, 1992, 8:30 a.m. til 5 p.m.

Place: National Science Foundation, 1800 G Street, NW., room 543, Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Drs. Deborah Lockhart and Keith Crank, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–3453 or 357–3693.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Graduate Research Traineeship proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 4, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–21703 Filed 9–9–92; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Mechanical and Structural Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announced the following meeting:

Name: Special Emphasis Panel in Mechanical and Structural Systems.

Date and Time: September 28, 1992, 8:30 a.m. to 5 p.m.

Place: National Science Foundation, room 1133, Washington, DC 20550.

Notice of Meeting: Closed.

Contact Person: Dr. Mehmet T. Tumay, Program Director, 1800 G Street, NW. room 1108, Washington, DC 20550, Telephone: (202) 357–9542.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Review and evaluate Mechanical and Structural Systems NSF SBIR proposals.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b. (c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 4, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–21706 Filed 9–9–92; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Undergraduate Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Division of Undergraduate Education.

Date and Time: October 1, 1992, 7:30 p.m. to 9 p.m.; October 2, 1992, 8:30 a.m. to 5 p.m.; October 3, 1992, 8:30 a.m. to 3 p.m.

Place: The Saint James Hotel, 950 24th Street, NW., Washington, DC 20037.

Type of Meeting: Closed.

Contact Person: Dr. Marj Enneking, Program Director, 1800 G Street, NW., room 1210, Washington, DC 20550, Telephone: (202) 357-7051.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate unsolicited proposals submitted to the Teacher Preparation Panel Meeting.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 4, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-21709 Filed 9-9-92; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-77]

Environmental Assessment and Finding of No Significant Impact Regarding Proposed Order Approving Decommissioning Plan and Authorizing Decommissioning Catholic University of America

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an Order authorizing the Catholic University of America (CUA) to decommission and dismantle the Aerojet-General Nucleonics Corporation (AGN) AGN-201 Research Reactor located on the licensee's campus in Washington, DC, and to dispose of the components in accordance with the CUA application dated February 6, 1992.

Environmental Assessment

Identification of Proposed Action

By application dated February 6, 1992, CUA requested authorization to decommission, decontaminate and dismantle the CUA AGN-201 Research Reactor, and to dispose of its component parts in accordance with the proposed Decommissioning Plan for the AGN-201 Research Reactor Facility License No. R-31 (Decommissioning Plan). The CUA AGN-201 Research Reactor was shut down in December 1982, and has not operated since then. Following the reactor shutdown, the fuel was removed from the reactor and moved to the CUA fuel storage facility. Opportunity for hearing was afforded by a "Notice of Proposed Issuance of Orders Approving Decommissioning Plan, Authorizing Decommissioning, and Terminating Facility License" published in the **Federal Register** on August 20, 1992, (57 FR 37850). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

Need for Proposed Action

The proposed action is needed in order to decommission the facility and terminate the facility license to allow unrestricted use of the area by CUA.

Environmental Impact of the Proposed Action

All proposed activities in connection with decommissioning and decontamination of the CUA AGN-201 Research Reactor will be planned and controlled as specified in the CUA application dated February 6, 1992. All components that are determined to be contaminated and cannot be acceptably decontaminated, will be removed, packaged, and shipped offset. Radiological control requirements will be in place and implemented to ensure that releases of radioactive wastes from the facility are within the limits of 10 CFR part 20 and are as low as reasonably achievable (ALARA).

All decontamination will be performed by qualified personnel in accordance with the previously reviewed radiation safety manual and will be overseen by experienced Radiation Safety Office staff. Solid and liquid waste will be removed from the facility and managed in accordance with NRC requirements. The collective radiological dose equivalent to the CUA staff for the project has been estimated to be less than 0.1 person-rem.

Based on the review of the specific proposed activities associated with the dismantling and decontamination of the CUA AGN-201 Research Reactor, the staff has determined that there will be no significant increase in the amounts of effluents that may be released offsite, and no significant increase in individual or cumulative occupational or population radiation exposure.

The staff has also determined that the proposed activities will not result in any significant impacts on air, water, land, or biota in the area or have any other significant environmental impact.

Alternative Use of Resources

The only alternative to the proposed decommissioning, dismantling and decontamination activities is to have CUA maintain possession of the reactor. This approach would include monitoring and reporting during entombment of the facility or for the duration of the safe storage period. However, CUA intends to use the area for other purposes. The alternative of not decommissioning reactors was rejected in the Generic Environmental Impact Statement on Decommissioning, NUREG-0586. No alternative appears that will have different or lesser effect on the use of available resources, and other alternatives need not be evaluated.

Agencies and Persons Consulted

No outside agencies or persons were consulted in the evaluations of the proposed actions.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed action based upon the foregoing environmental assessment. The Commission concludes that the proposed action will not have a significant effect on the quality of the human environment for the reasons set out above.

For detailed information with respect to this proposed action, see the application for decommissioning, dismantling, decontamination and license termination dated February 6, 1992, and the Safety Evaluation prepared by the NRC staff. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland this 2nd day of September 1992.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director Non-Power Reactors, Decommissioning and Environmental Project Directorate, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-21749 Filed 9-9-92; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Meeting of the Joint Subcommittee on Thermal Hydraulic Phenomena and Core Performance

Postponed

A meeting of the ACRS joint Subcommittee on Thermal Hydraulic Phenomena and Core Performance scheduled to be held on Tuesday, September 15, 1992, 8:30 a.m., room P-110, 7920 Norfolk Avenue, Bethesda, MD has been postponed to Thursday,

September 17, 1992. Notice of this meeting was published in the **Federal Register** on Wednesday, September 2, 1992 (57 FR 40204). All other items pertaining to this meeting remain the same as previously published.

For further information contact: Mr. Paul Boehnert, cognizant ACRS staff engineer, (telephone 301/492-8558) between 7:30 a.m. and 4:15 p.m. (EST).

Dated: September 3, 1992.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 92-21755 Filed 9-9-92; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Meeting of the Subcommittee on Computers in Nuclear Power Plant Operations; Cancellation

A meeting of the ACRS Subcommittee on Computers in Nuclear Power Plant Operations scheduled to be held on Tuesday, September 8, 1992, room P-110, 7920 Norfolk Avenue, Bethesda, MD has been canceled since the matter scheduled for discussion by the Subcommittee will be discussed by the full Committee during its September 10-12, 1992 meeting. Notice of this meeting was published in the **Federal Register** on Wednesday, September 2, 1992 (57 FR 40205).

For further information contact: Mr. Douglas Coe, the cognizant ACRS staff engineer, (telephone 301/492-8972) between 7:30 a.m. and 4:15 p.m. (EST).

Dated: September 3, 1992.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 92-21756 Filed 9-9-92; 8:45 am]

BILLING CODE 7590-01-M

Issuance of Generic Communication; NRC Generic Letter 92-04: Resolution of the Issues Related to Reactor Vessel Water Level Instrumentation in BWRs Pursuant to 10 CFR 50.54(f)

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance of Generic Communication.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued the subject Generic Letter, dated August 19, 1992, to all Boiling Water Reactor (BWR) licensees of operating reactors. This Generic Letter was issued without prior notice because of the safety significance of the problem addressed. The purpose of the Generic Letter is to request information from BWR licensees regarding the adequacy of the reactor vessel water level instrumentation, in accordance with 10 CFR 50.54(f). The NRC staff has determined that there is a potential for significant error in reactor vessel water level indication resulting from the evolution of noncondensible gases out of solution in the reference leg following a rapid depressurization event. This is important to safety, as water level signals are used for actuating automatic safety systems and for guidance to operators during and after an event.

BWR licensees are required to respond to the Generic Letter by September 27, 1992. The responses will address the licensees' plant-specific determination of the impact of potential level indication errors on safety system performance and operator actions; short term actions implemented; and licensees' plans and schedules for long term corrective actions, including any proposed hardware modifications.

NRC generic communications are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC and at the local public document rooms (LPDRs) for the addressees of the communications. Information on the locations of LPDRs can be obtained by calling the NRC Local Public Document Room staff at (301) 492-4344, or toll-free at (800) 638-8081.

Dated at Rockville, Maryland, this 3rd day of September 1992.

For the Nuclear Regulatory Commission.

John N. Hannon,

Director, Project Directorate III-3, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-21751 Filed 9-9-92; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Revision of OMB Circular No. A-131; Invitation for Public Comment

AGENCY: Office of Federal Procurement Policy, OMB.

ACTION: The Office of Management and Budget (OMB) is requesting comments on OMB Circular No. A-131, "Value Engineering." The Circular is being revised in accordance with the sunset provisions contained in the January 1988 Circular.

PRESIDENT'S COUNCIL ON MANAGEMENT IMPROVEMENT: At the request of the Administrator for Federal Procurement Policy, the President's Council on Management Improvement (PCMI) made recommendations to OMB for a revised Government-wide policy on value engineering. The PCMI membership consists of senior-level officials from all the major agencies and their review of Circular A-131 has helped assure a truly Government-wide approach to value engineering. The attached draft revision of Circular A-131 is the culmination of the combined efforts of OFPP, a PCMI task force chaired by the General Services Administration, and extensive deliberations of the full PCMI.

SUMMARY: OMB Circular No. A-131 requires agencies to establish value engineering programs and to use value engineering techniques, where appropriate, to reduce nonessential procurement and program cost. As defined in OMB Circular No. A-131, VE is an organized effort to analyze the functions of systems, equipment, facilities, services, and supplies for the purpose of achieving the essential functions at the lowest life cycle cost consistent with required performance, reliability, quality and safety.

The Circular requires that agencies implement the following management and procurement practices: (1) Emphasize, through training and other means, the potential of value engineering to reduce unnecessary cost; (2) Establish a focal point within each agency to monitor, manage and maintain data on agency value engineering programs; (3) Establish criteria and guidelines for screening programs and projects which might benefit from the application of value engineering techniques; (4) Establish guidelines to evaluate value engineering proposals; and (5) Actively solicit value engineering ideas from contractors.

CHANGES FROM THE PREVIOUS CIRCULAR NO. A-131: This proposed revision adds new requirements to Circular A-131 by requiring each agency to develop annual VE plans. Agency plans must identify both the in-house and contractor projects, programs, systems, and products to which VE will be applied in the next fiscal year, and the estimated costs of those projects. In addition, the revision imposes a revised annual reporting requirement to OMB in lieu of the previous ad hoc requirement. The new reporting requirement has two parts: Part I requires agencies to report agency thresholds for VE, agency VE expenditures, agency VE cost savings, and VE cost savings by category (acquisition, program, or other). Part II requires agencies to identify their top twenty fiscal year VE projects and the associated net savings and quality improvements achieved by the agency through application of VE. Finally, the revision emphasizes that value

engineering is one of many management tools that can be used alone or in concert with other management techniques, such as total quality management, to improve operations and reduce costs.

DATES: Comments must be received on or before November 9, 1992.

ADDRESSES: Comments should be submitted to the Office of Management and Budget, Office of Federal Procurement Policy, Room 9001, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Amchin of the Office of Federal Procurement Policy at 395-6803.

Allan V. Burman,

Administrator.

Executive Office of the President, Office of Management and Budget, Washington, DC 20503

The Director

Draft Circular No. A-131—To The Heads of Executive Departments and Establishments

Subject: Value Engineering

1. *Purpose.* This Circular requires Federal Departments and Agencies to use value engineering (VE) as a management tool, where appropriate, in the operation of program and acquisition functions.

2. *Supersession Information.* This Circular supersedes and cancels OMB Circular No. A-131, *Value Engineering,* Dated January 26, 1988.

3. *Authority.* This Circular is issued pursuant to 31 U.S.C. 1111.

4. *Background.* For the purposes of this Circular, value analysis, value management, and value control are considered synonymous with VE. VE is an effective technique for reducing costs, increasing productivity, and improving quality. It can be applied to hardware and software; development, production, and manufacturing; specifications, standards, contract requirements, and other acquisition program documentation; facilities design and construction. It may be successfully introduced at any point in the life cycle of products, systems, or procedures. VE is a technique directed toward analyzing the functions of an item or process to determine "best value," or the best relationship between worth and cost. In other words, "best value" is represented by an item or process that consistently performs the required basic function and has the lowest total cost.

VE originated in the industrial community, and has spread to the Federal Government due to its ability to yield a large return on investment. VE has long been recognized as an effective technique to lower the Government's cost while maintaining necessary quality levels. Its most extensive use has been in Federal acquisition programs.

A recent audit of VE in the Federal Government by the President's Council on Integrity and Efficiency concluded that more can and should be done by Federal agencies to realize the benefits of VE. Reports issued by the General Accounting Office (GAO) and agency Inspectors General have also consistently concluded that greater use of this technique would result in additional savings to the Government.

5. *Relationship to Total Quality Management (TQM) and other management improvement processes.* VE is a management tool that can be used alone or with other management techniques and methodologies to improve operations and reduce costs. For example, VE can be incorporated into the TQM process by using it as an analytical technique in process/product improvement.

VE contributes to the overall management objectives of streamlining operations, improving quality, and reducing costs. The complementary relationship between VE and other management programs increases the likelihood that overall management objectives are achieved.

6. *Definitions.*

a. *Agency.* As used in this Circular, the term "agency" means an executive department or an independent establishment within the meaning of sections 101 and 104(1), respectively, of Title 5, United States Code.

b. *Life-cycle Cost.* The total cost of a system, building, or other product, computed over its useful life. It includes all relevant costs involved in acquiring, owning, operating, maintaining, and disposing of the system or product over a specified period of time.

c. *Savings.* A reduction in (actual savings), or the avoidance of (cost avoidance), expenditures that would have been incurred if program and projects were not evaluated using VE techniques.

(1) *In-house savings.* Net savings achieved by in-house agency staff using VE techniques.

(2) *Contracted savings.* Net savings realized by contracting for the performance of a VE study or by a Value Engineering Change Proposal submitted by a contractor.

d. *Total Quality Management (TQM).* A customer-based management philosophy for improving the quality of products and increasing customer satisfaction by restructuring traditional management practices. An integral part of TQM is continuous process improvement, which is achieved by using analytical techniques to determine the causes of problems. The goal is not just to fix problems but to improve processes so that the problems do not recur. Value engineering can be used as an analytical technique in the TQM process.

e. *Value Engineering.* An organized effort directed at analyzing the functions of systems, equipment, facilities, services, and supplies for the purpose of achieving the essential functions at the lowest life-cycle cost consistent with required performance, reliability, quality, and safety. These organized efforts can be performed by both in-house agency personnel and by contractor personnel.

f. *Value Engineering Change Proposal (VECP).* A proposal submitted by a contractor under the VE provisions of the Federal Acquisition Regulations (FAR) that, through a change in a project's plans, designs, or specifications as defined in the contract, would lower the project's cost to the Government.

g. *Value Engineering Proposal (VEP).* An in-house agency proposal, or a proposal developed by a contractor, to provide VE studies for a project/program.

7. *Policy.* Federal agencies shall use VE as a management tool, where appropriate, to ensure realistic budgets, identify and remove nonessential capital and operating costs, and improve and maintain optimum quality of program and acquisition functions. Senior management will establish and maintain VE procedures and processes to provide for the aggressive, systematic development and maintenance of the most effective, efficient, and economical arrangements for conducting the work of agencies, and to provide a sound basis for identifying and reporting accomplishments.

8. *Agency responsibilities.* To ensure that systemic VE improvements are achieved, agencies shall, at a minimum:

a. Designate a senior management official to monitor and coordinate agency VE efforts.

b. Develop criteria and guidelines for both in-house personnel and contractors to identify programs/projects with the most potential to yield savings from the application of VE techniques. The criteria and guidelines should recognize that the potential savings are greatest during the planning, design, and other early phases of project/program/system/product development. Agency guidelines will include:

(1) Measuring the net saving from value engineering. The net saving from value engineering is determined by subtracting the discounted present value of the Government's cost of performing the value engineering function from the discounted present value of the total saving generated by the function. Discounting should be done at the Treasury's borrowing rate for marketable debt of maturity comparable to the project life. (For more information on discounting see OMB Circular No. A-94).

(2) Return on investment The internal rate of return for a value engineering improvement is determined by calculating the discount rate that equates the discounted present value of the cost of performing the value engineering function with the discounted present value of the saving generated by the function.

(3) Dollar amount thresholds for projects/programs requiring the application of VE. The minimum threshold for agency projects and programs which require the application of VE is $1 million. Lower thresholds may be established at agency discretion for projects having a major impact on agency operations.

(4) Criteria for granting waivers to the requirement to conduct VE studies.

c. Assign responsibility to the senior management official designated pursuant to 6a above, to grant waivers of the requirement to conduct VE studies on certain programs and projects. This responsibility may be delegated to other appropriate officials.

d. Provide training in VE techniques to agency staff responsible for coordinating and monitoring VE efforts and for staff responsible for developing, reviewing, analyzing, and carrying out VE proposals, change proposals, and evaluations.

e. Ensure that funds necessary for conducting agency VE efforts are included in annual budget requests to OMB.

f. Maintain files on projects/programs/systems/products that meet agency criteria for requiring the use of VE techniques. Documentation should include reasons for granting waivers of VE studies on projects/programs which met agency criteria. Reasons for not implementing recommendations made in VE proposals should also be documented.

g. Adhere to the acquisition requirements of the FAR, including the use of VE clauses set forth in Parts 48 and 52.

h. Develop annual plans for using VE in the agency. At a minimum, the plans should identify both the in-house and contractor projects, programs, systems, products, etc., to which VE techniques will be applied in the next fiscal year, and the estimated costs of these projects. The projects, etc., should be listed by category. VEP's and VECP's should be included under the appropriate category. Annual plans will be made available for OMB review upon request.

i. Report annually to OMB on VE activities, as outlined below.

9. *Reports to OMB.* Each agency shall report the Fiscal Year results of using VE annually to OMB, except those agencies whose total budget is under $10 million or whose total procurement obligations do not exceed $10 million in a given fiscal year. The reports are due to OMB by December 31 of the calendar year, and should include the current name, address, and telephone number of the agency's VE manager.

The report format is provided in the Attachment.

Part I of the report asks for net savings achieved through VE. In addition, show the project/program dollar amount thresholds the agency has established for requiring the use of VE. If thresholds vary by category, show the thresholds for all categories. Savings resulting from VE proposals and VE change proposals should be included under appropriate categories.

Value engineering costs and savings should be recorded in the year in which they occur; i.e., a schedule should report the costs and savings for each year. Discounted present values of costs and savings should be reported in addition to undiscounted budget figures. Where total discounted or undiscounted values are reported, the time span represented by the total should also be reported.

Part II asks for a description of the top 20 fiscal year VE projects (or all projects if there are fewer than 20). List the projects by title and show the net savings and quality improvements achieved through application of VE.

10. *Inspectors General audits.* Two years after the final issuance of this revised Circular, Inspectors General (IGs) shall audit agency value engineering programs to (1) validate the accuracy of agency reported value engineering savings and (2) assess the adequacy of agency value engineering policies, procedures and implementation of this revised Circular. Periodically thereafter, agency IGs shall audit agency IGs shall audit agency reported VE savings as the need arises.

11. *Related Guidance.* For detailed guidance on value engineering refer to the appropriate sections of the Federal Acquisition Regulations. For guidance on discount rates to be used in evaluating cost and benefits, see OMB Circular No. A–94.

12. *Effective date.* This Circular is scheduled to take effect on January 30, 1993.

13. *Sunset review.* The policies contained in this Circular will be reviewed by OMB five years from the date of issuance.

14. *Inquiries.* Further information about this Circular may be obtained from: Charles Clark or Wayne Amchin, Office of Management and Budget (OMB), 725 17th Street, NW, Washington, DC 20503 Telephone (202) 395–[redacted].

Richard Darman,

Director.

Attachment

PART I.—ANNUAL VALUE ENGINEERING REPORT

Agency Name		Fiscal Year
Responsible Official	Title/Address/Telephone	Date

Agency VE Expenditures	Agency Thresholds for VE
Show the estimated amount of funds invested in VE by the agency:	Give the dollar thresholds by category for projects requiring VE:

Total Agency VE Cost Savings

Sum of net savings reported below by category:	Actual Savings		Cost Avoidance		Total Savings		Savings Grand Total (In-house + Contract)
	In-house	Contract	In-house	Contract	In-house	Contract	

VE Cost Savings by Category (Show the net savings for each category.)

Category	Actual Savings		Cost Avoidance		Total Savings		Savings Grand Total (In-house + Contract)
	In-house	Contract	In-house	Contract	In-house	Contract	
1. Acquisition							
2. Program							
3. Other (Please Specify)							
a							
b							
c							

PART II.—ANNUAL VALUE ENGINEERING (VE) REPORT

Agency Name	Fiscal Year

VE Project Description (List up to the top 20 VE projects by name. Show the net in-house/contractor VE savings. Provide any quality or other nonquantifiable improvements resulting from VE.)

Project title	Actual savings		Cost Avoidance		Quality improvements
	In-house	Contract	In-house	Contract	

Project title	Actual savings		Cost Avoidance		Quality improvements
	In-house	Contract	In-house	Contract	

Continue on additional sheets, if needed.

[FR Doc. 92-21734 Filed 9-9-92; 8:45 am]

BILLING CODE 3110-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Employer Service and Compensation Reports.

(2) *Form(s) submitted:* UI-41, UI-41a.

(3) *OMB Number:* 3220-0070.

(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.

(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(6) *Frequency of response:* On occasion.

(7) *Respondents:* Businesses or other for profit.

(8) *Estimated annual number of respondents:* 700.

(9) *Total annual responses:* 6,000.

(10) *Average time per response:* .1333 hours.

(11) *Total annual reporting hours:* 800.

(12) *Collection description:* The reports obtain the employee's service and compensation for a period subsequent to those already on file and the employee's base year compensation. The information is used to determine the entitlement to and the amount of benefits payable.

ADDITONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Dennis Eagan the agency clearance officer (312-751-4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611-2092 and the OMB reviewer, Laura Oliven (202-395-7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 92-21737 Filed 9-9-92; 8:45 am]

BILLING CODE 7905-01-M

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C., section 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning October 1, 1992, shall be at the rate of 31 cents.

In accordance with directions in section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning October 1, 1992, 33.0 percent of the taxes collected under sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 67.0 percent of the taxes collected under such sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 92-21738 Filed 9-9-92; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-31139; File No. SR-DTC-92-13]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Dividend Reinvestment Service and Optional Dividend Procedures

September 3, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 3, 1992, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-DTC-92-13) as described in Items I, II, and III below, which Items have been prepared by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change enables DTC's existing Dividend Reinvestment Service ("DRS") and existing Optional Dividend Procedures ("ODP") to be accessed through the existing Elective Dividends function ("EDS") on DTC's Participant Terminal System ("PTS").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in

[1] 15 U.S.C. 78s(b) (1988).

sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Existing DRS enables stockholders through their custodian participants to automatically reinvest part or all of a cash dividend. Existing ODP enables stockholders through their custodian participants to take all or part of a declared dividend in cash or stock. Under the proposed rule change, DRS and ODP will be available over PTS through the EDS function.

As described in a previous filing (File No. SR-DTC-91-14), the participant would first use the EDS function to call up the EDS menu to display the CUSIPs in its record date position for which any or all of DTC's elective dividend options are available.[2] If PTS identifies securities eligible for DRS or ODP in the participant's record date position, PTS will then guide the participant through the instruction screens, as shown in Exhibit 3 to the filing.

The proposed rule change is consistent with the requirements of the Act, as amended, and the rules and regulations thereunder because it promotes the prompt and accurate clearance and settlement of securities transactions by automating previously manual procedures.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

DTC announced in File No. SR-DTC-91-14 that DRS and ODP would be added to EDS at a future time. No written comments have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 because the proposed rule change effects a change in an existing service of DTC that (A) does not adversely affect the safeguarding of securities or funds in the custody or control of DTC for which DTC is responsible, and (B) does not significantly affect the respective rights or obligations of DTC or its participants. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW. Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to file number SR-DTC-92-13 and should be submitted by October 1, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-21743 Filed 9-9-92; 8:45 am]

BILLING CODE 8010-01-M

[2] Other EDS options currently available are the Foreign Currency Option and the Foreign Securities Option. See Securities Exchange Act Release No. 29814 (October 11, 1991), 56 FR 52563.

[Release No. 34-31138; File No. SR-GSCC-92-07]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Filing of a Proposed Rule Change Relating to Enhancements to the Comparison System

September 3, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 30, 1992, Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would allow GSCC to modify the criteria for comparison of trade data.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) An ongoing focus of attention by GSCC has been on the need to improve the overall comparison rate for members. Ordinarily, in order for a comparison to be generated by GSCC, each required match data item such as the identities of the parties to the trade, par value, CUSIP number, trade date, settlement date, and final money information need to match exactly. Often, however, as the result of a lack of submission by a counterparty of a particular required data item or a mistake in its data submission, a comparison cannot be generated by GSCC.

An appropriate means of addressing this problem is for GSCC to have the ability to, if the data submitted on each side does not meet all of the criteria for comparison and the nonmatch item(s) fits within certain predefined parameters, compare the trade based on a binding presumption (which is readily identifiable by a member) as to which party's data was submitted correctly. In this regard, for example, the Commission has authorized GSCC to have the discretion to presume that a match of trade data exists, and that a comparison should be issued, under the following circumstances:

[1] 15 U.S.C. 78s(b)(1) (1988).

• If, on submission of data on a side of a trade, an executing firm field is blank, GSCC would presume that the submitting member is the executing firm on that side of the trade. Also, if trade data does not compare due to unmatched executing firm information, GSCC may compare the trade based on a match between the two submitting members. Moreover, if a side submitted by a member against another member does not compare as submitted, but a matching side is submitted by a third member that is affiliated with the second member, GSCC may compare the trade as if the first member had submitted the trade against the third member.

• When the yield-to-price conversion feature is implemented, if the data submitted on a yield basis involving a trade between a broker member and a dealer member meet all of the criteria for comparison other than the information submitted regarding commission, and the dealer has submitted a commission amount that does not match the commission amount submitted by the broker, the trade will be compared based on the commission amount submitted by the broker (within a specified dollar tolerance).

Where a match has been presumed by GSCC, in order to facilitate the ability of members subsequently to reconcile GSCC's comparison data with their internal data, GSCC provides members with information noting each compared trade with a data difference.

GSCC is now requesting approval to enhance its ability, as described below, to compare a trade whether the data submitted does not meet all of the criteria for comparison and the nonmatch item(s) fits within certain predefined parameters:

(1) Summarization of Par Amounts

GSCC would have the ability to compare data on two buy sides with data on one or two sell sides, and vice versa, if the data matches except for par amount and final money amount, and the total of the par amounts and final money amounts is the same on both sides. This summarization process would apply to yield trades as well; the submitted yields when combined must match exactly, while the commissions, if different, must fall within GSCC's system tolerance.

(2) Trade Date

GSCC would have the ability to compare a buy or sell side with a contra sell or buy side that matches in all respects except for trade date, with the earlier trade date being presumed to be the correct trade date. GSCC would look to match a buy or sell side with a contra sell or buy side with the closest trade date.

The filing also makes clear that more than one presumption of a match of data may be used by GSCC to generate a comparison of a trade, and that final money amounts on the buy and sell sides of a trade will match if they fall within a dollar tolerance established by GSCC.

(b) The proposed rule change would assist members in comparing trades. This in turn would bolster reconciliation of unmatched trade data. In general, the proposed rule change would provide the benefits of GSCC's comparison process to a broader range of trades. Thus, it is consistent with the requirements of section 17A of the Act and the rules and regulations thereunder.

B. Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have an impact on, or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments on the proposed rule change have not yet been solicited or received. Members will be notified of the proposed rule change, and comments will be solicited by an Important Notice. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of GSCC. All submissions should refer to file number SR-GSCC-92-07 and should be submitted by October 1, 1992.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-21746 Filed 9-9-92; 8:45 am]

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[Release No. 34-31137; File No. SR-GSCC-92-08]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Fee Changes

September 3, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 14, 1992, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would allow GSCC to impose a fee of $500 on netting members for their netting system activity.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the

proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) GSCC incurs certain costs in the course of providing services to its members regardless of the level of activity of such members as reflected in trade data submitted to GSCC. These costs result from expenses related to, for example, providing communications facilities, operating and maintaining hardware, developing and maintaining software, conducting monitoring and surveillance activities, and processing applications for membership. As a result, GSCC currently imposes a minimum fee on all members for their comparison system activity of $500 per month. The minimum monthly fee for a comparison-only member that has an affiliate that is a netting member is $250.

GSCC does not impose an additional minimum fee for membership in the netting system, even though such membership creates certain increased costs for GSCC. These additional costs, which relate solely to netting system membership, include the evaluation of an additional membership application, enhanced surveillance measures, the administration of clearing fund requirements, greater participant services needs, and the costs of maintaining a clearance and settlement staff. GSCC believes that it is appropriate and equitable for netting members to bear an additional monthly minimum fee for netting system membership in order to cover fixed expenses that relate solely to netting system membership. A $500 per month fee is, in GSCC's view, a reasonable reflection of these additional costs.

This rule filing is intended to take effect on September 1, 1992. Its effect will first be reflected in the October billing.

(b) The proposed fee change will more closely and fairly reflect the costs incurred by GSCC in providing netting services to its members and, thus, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to self-regulatory organizations.

B. Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change imposes any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments on the proposed rule change have not yet been solicited or received. Members will be notified of the proposed rule change and comments will be solicited by an Important Notice. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of rule 19b-4 thereunder because the proposed rule change establishes a fee for a service provided by GSCC. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of GSCC. All submissions should refer to file number SR-GSCC-92-08 and should be submitted by October 1, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-21747 Filed 9-9-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31140; International Series Release No. 449; File No. SR-ISCC-92-02]

Self-Regulatory Organizations; International Securities Clearing Corporation; Filing and Immediate Effectiveness of a Proposed Rule Regarding a Revised Letter of Understanding That ISCC Will Use in Connection With Its Global Clearance Network Service

September 3, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 8, 1992, the International Securities Clearing Corporation ("ISCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Proposed rule change consists of a letter of understanding that ISCC will use in connection with its Global Clearance Network Service.[2] The revised letter eliminates the participant requirement to commit to a specified number of transactions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ISCC included statements concerning the purpose of and basis for the proposed rule change and discussed any

[1] 15 U.S.C. 78s(b)(1).

[2] ISCC's Global Clearance Network Service permits qualified ISCC members, utilizing standard input and output format, to obtain through ISCC, foreign clearing, settlement, and custody services offered by a bank selected by ISCC. ISCC currently has an arrangement with Citibank, N.A. ("Citibank") that permits ISCC members that independently qualify as Citibank customers to have access to clearance, settlement, and custody services in any of 25 markets worldwide in which Citibank does business. Securities Exchange Act Release No. 29841; International Series Release No. 333 (October 18, 1991), 56 FR 55960.

comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ISCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to file with the Commission a revised letter of understanding that ISCC will use in connection with its Global Clearance Network Service. The letter has been revised to eliminate the requirement of a participant to commit to a specified number of transactions.[3] This change is being made at the direction of the board of ISCC because it is believed that the requirement poses an impediment to the marketing of the service due to the industry's need for maximum flexibility as market conditions dictate. ISCC believes the proposed rule change will promote the prompt and accurate clearance and settlement of international securities transactions and is therefore consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder.

(B) Self-Regulatory Organization's Statement on Burden on Competition

ISCC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments have been solicited or received. ISCC will notify the Commission of any written comments received.

[3] ISCC, however, remains committed to a specified number of transactions with Citibank. See Securities Exchange Act Release No. 29841; International Series Release No. 333 (October 18, 1991), 56 FR 55980. Since January, however, when the Global Clearance Network Service began commercial operation, volume on the Global Clearance Network Service has exceeded ISCC's projections, and if volume continues at current levels it will comfortably exceed the guaranteed amount. Telephone conversation between Karen L. Saperstein, Associate General Counsel, ISCC, and Jack Drogin, Attorney Adviser, Division of Market Regulation, Commission (September 2, 1992). If, on the other hand, volume should fall off dramatically, ISCC can terminate the agreement with Citibank on ninety day's written notice after ISCC failed to meet minimum guaranteed volume levels for a consecutive three month period.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of rule 19b–4 thereunder, because the proposed rule change effects a change in an existing service of a clearing agency that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and (ii) does not significantly affect the respective obligations of the clearing agency or persons using the service. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room at the address above. Copies of such filing will also be available for inspection and copying at the principal office of ISCC. All submissions should refer to the File Number SR–ISCC–92–02 and should be submitted by October 1, 1992.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 92–21748 Filed 9–9–92; 8:45 am]

BILLING CODE 8010–01–M

[4] 17 CFR 200.30–3(a)(12).

[Release No. 34–31145; File No. SR–Phlx–91–27]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Amendments to and Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Listing of Options on the Keefe, Bruyette & Woods, Inc. Bank Index

September 3, 1992.

I. Introduction

On October 23, 1991, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to provide for the listing and trading of index options on the Keefe, Bruyette & Woods, Inc. ("KBW") Bank Index ("Bank Index" or "Index").[3] This order approves the Exchange's proposal.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19B–4 (1991).

[3] The Phlx has filed several amendments to the proposal. First, The Exchange submitted Amendment No. 1 to the filing on February 27, 1992. This amendment provides that the Exchange will submit a rule proposal pursuant to section 19(b) of the Act to continue listing the Index options if the number of component issues changes to either less than 15 or more than 30. See letter from Gerald D. O'Connell, Vice President, Market Surveillance, Phlx, to Thomas R. Gira, Branch Chief, Options Regulations, SEC, dated February 27, 1992 ("Amendment No. 1"). Second, the Exchange amended the proposal on June 15, 1992, to provide that at least 90% of the stocks within the Index must be options eligible at all times. See letter from William W. Uchimoto, General Counsel, Phlx, to Monica Michelizzi, Staff Attorney, Options Branch, SEC, dated June 15, 1992 ("Amendment No. 2"). Third, on July 2, 1992, the Phlx amended the proposal to provide that the final settlement value of expiring Index options will be based on the opening prices of the component stocks on the trading day prior to expiration, instead of their closing prices. *See* letter from William W. Uchimoto, General Counsel, Phlx, to Thomas R. Gira, Branch Chief, Options Regulation, SEC, dated July 2, 1992 ("Amendment No. 3"). In addition, the Phlx provided additional data concerning the composition and design of the Index. *See* letter from William W. Uchimoto, General Counsel, Phlx to Howard L. Kramer, Assistant Director, Division of Market Regulation ("Division"), Commission, dated January 22, 1992 ("Phlx Letter").

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 1, 2, and 3 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for

Continued

The proposed rule change was published for comment in Securities Exchange Act Release No. 30002 (November 26, 1991), 56 FR 63542 (December 4, 1991). No comments were received on the proposed rule change.

II. Description of Proposal

A. General

The Phlx proposes to trade European-style [4] options on the Bank Index, an index developed by KBW, a registered broker-dealer that specializes in U.S. bank stocks. The Index is a capitalization-weighted index [5] composed of 24 select, Federal Deposit Insurance Corporation ("FDIC") insured, geographically representative U.S. commercial bank stocks.

B. Composition of the Index

Currently, the Index is composed of 24 highly capitalized banking companies drawn from five broad groups: (1) Five companies represent the Northeast region of the United States; (2) four represent the Southeast; (3) five represent the Midwest; (4) four represent the West (including the Southwest); and (5) six represent money center banks, the business focus of which are more national in scope. Twenty-one of the companies are listed on the New York Stock Exchange, Inc. ("NYSE") and three are listed on the National Association of Securities Dealers' ("NASD") Automated Quotation System ("NASDAQ"). All NASDAQ stocks in the Index are designated as national market system securities, meaning, among other things, that real-time last sale reports are available for these stocks.[6]

As of November 27,1991, the market capitalizations of the individual stocks in the Index ranged from a high of $12.77 billion to a low of $552 million, with the mean and median being $3.88 billion and $6.68 billion, respectively. The market capitalization of all the stocks in the Index was 95 billion. The total number of shares outstanding for the stocks in the Index ranged from a high of 345.9 million shares to a low of 20.5 million shares. The average price per share of the stocks in the Index, for a six-month period between July 1991 and December 1991, ranged from a high of $77.13 to a low of $9.69. In addition, the average daily trading volume of the stocks in the Index, for the same six-month period, ranged from a high of 1.5 million shares per day to a low of 16,000 shares per day, with the mean and median being 336,000 and 759,000 shares, respectively. Lastly, no one stock comprised more than 13.72% of the Index's total value and the percentage weighting of the five largest issues in the Index accounted for 44.48% of the Index's value. The percentage weighting of the lowest weighted stock was .59% of the Index and the percentage weighting of the five smallest issues in the Index accounted for 6.41% of the Index's value.[7]

C. Maintenance

The Index will be maintained by KBW. In order to ensure that the Bank Index contains stocks that represent the performance of the bank stock segment of the market, KBW represents that it has selected and will continue to select component securities based on a variety of factors, including size, capitalization, earnings performance, liquidity, capitalization ratios, asset quality and profitability. At a minimum, the component stocks of the Index will be reviewed annually to determine whether they, as a group, represent a suitable proxy for the banking industry. A component security will be replaced only when it ceases to exist through merger or acquisition, declares bankruptcy, or if it alters its character so substantially that it no longer operates as a commercial bank. In order to maintain the geographic diversity of the Index, when choosing replacements, KBW represents that it will try to replace a stock with the stock of its acquiring bank, or, alternatively, a bank stock from the same region.

In addition, as noted above, the Phlx's proposal provides that at least 90% of the stocks in the Index must be options eligible in order for the Index options to remain eligible for listing.[8] The Phlx proposal also provides that, in the event that KBW and Phlx determine to change the number of component issues in the Index to less than 15 or more than 30, the Phlx must submit a filing pursuant to section 19(b) of the Act to receive Commission approval to continue listing the Index options.[9]

Finally, under the license agreement between the Phlx and KBW, KBW is required to give the Phlx advance notice of any additions, deletions, modifications or substitutions of the stocks comprising the Index. In addition, before any changes to the composition of the Index can be made, the Phlx must review and approve them. The Exchange believes the requirement for advance notification of changes to the Index will be sufficient to allow the Phlx time to notify adequately the public of any changes, which, according to the license agreement, normally will be ten business days prior to any changes. Further, the Exchange has represented that it will give public notice of any changes to the composition of the Index at least ten business days prior to the change.[10]

D. Calculation of the Index

Even though the Index will be maintained by KBW, the Phlx represents that the Exchange will be solely responsible for the calculation of the Index and that the Index value will be calculated and disseminated in such a way that neither KBW nor any other party will be in receipt of the Index value prior to the public dissemination of the value. In this connection, the Phlx has made arrangements for the Index to be calculated by an independent third party, Bridge Data, a vendor of financial information. Bridge Data will calculate and disseminate the Index value to the Options Price Reporting Authority ("OPRA") four times per minute during the trading day, using the last sale prices of the component stocks in the Index.[11] OPRA, in turn, will disseminate the Index value to other financial vendors such as Reuters, Telerate, and Quotron. The Phlx also represents that

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inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 1, 1992.

[4] A European-style option only can be exercised during a limited period of time before the option expires.

[5] The calculation of a capitalization-weighted index involves taking the summation of the product of the price of each stock in the index and the shares outstanding for each issue. In contrast, the calculation of a price-weighted index involves taking the summation of the prices of the stocks in the index.

[6] Real-time last sale reporting recently has been extended to all securities traded over NASDAQ, however, NASDAQ/NMS securities, among other things, are subject to higher listing standards.

[7] *See* Phlx Letter, *supra* note 3.

[8] See Amendment No. 2, *supra* note 3. The Phlx's options listing standards, which are uniform among the options exchanges, provide that a security underlying an option must, among other things, meet the following requirements: (1) The public float must be at least 7,000,000; (2) there must be a minimum of 2,000 stockholders; (3) trading volume must have been at least 2.4 million over the preceding twelve months; and (4) the market price must have been at least $7.50 for a majority of the business days during the preceding three calendar months. See Phlx Rule 1009.

[9] See Amendment No. 1, *supra* note 3.

[10] See letter from Murray L. Ross, Secretary, Phlx, to Thomas Gira, Branch Chief, Options Regulation, SEC, dated September 2, 1992 ("Phlx September 2 Letter").

[11] In order to provide continuity for the Index's value in the event of any changes or replacements in the Index occurring as a result of mergers, acquisitions, or other activities which affect the Index's capitalization, the Index divisor will be adjusted accordingly.

the formula for calculating the Index will be publicized in Exchange marketing brochures and Exchange circulars to members.[12] The Index value was set at a starting value of 250 on October 21, 1991. As of September 2, 1992, the Index was at 217.

The Index value for purposes of settling outstanding Index option contracts upon expiration will be calculated based upon the regular way opening sale prices for each of the Index's component stocks in their primary market on the last trading day prior to expiration.[13] In the case of securities traded through the NASDAQ-NMS system, the first reported sale price will be used. Once all of the component stocks have opened, the value of the Index will be determined and that value will be used as the settlement value for the options. If any of the component stocks do not open for trading on the last trading day before expiration, then the prior trading day's (*i.e.*, Thursday's) last sale price will be used in the Index calculation. In this regard, before deciding to use Thursday's closing value of a component stock for the purpose of determining the settlement value of the Index, the Phlx will wait until the end of the trading day on expiration Friday.[14]

E. Contract Specifications

The proposed options on the Index will be cashed-settled, European-style options. Standard options trading hours (9:30 a.m. to 4:10 p.m. Eastern Standard Time) will apply to the contracts. The Index multiplier will be 100. In addition, pursuant to Phlx Rule 1012, there will be five expiration months outstanding at any given time. Specifically, there will be three expiration months from the March, June, September, and December cycle plus two additional near-term months so that the three nearest term months will always be available.

The options on the Index will expire on the Saturday following the third Friday of the expiration month ("Expiration Friday"). Accordingly, since options on the Index will settle based upon opening prices of the component stocks on the last trading day before expiration (normally a Friday), the last trading day for an expiring Index option series will normally be the second to last business day before expiration (normally a Thursday).

F. Position and Exercise Limits, Margin Requirements, and Trading Halts

The proposal provides that Exchange rules that are applicable to the trading of options on narrow-based, industry indexes will apply to the trading of options on the Index.[15] Specifically, among others, Exchange rules governing margin requirements,[16] position and exercise limits,[17] and trading halt procedures,[18] that are applicable to the trading of industry index options will apply to options traded on the Index.

G. Surveillance

Surveillance procedures currently used to monitor trading in each of the Exchange's other index options will also be used to monitor trading in options on the Index. These procedures include complete access to trading activity in the underlying securities. In addition, the Intermarket Surveillance Group Agreement ("ISG Agreement"), dated July 14, 1983, as amended on January 29, 1990, will be applicable to the trading of options on the Index.[19] Further, the Phlx's Licence Agreement with KBW provides that the Phlx shall have the right to review trading account information pertaining to positions in Index options and related instruments (*i.e.*, stocks included in or deleted from the Index and options on such stocks) in the possession of KBW regarding KBW, its affiliates and customers. In this regard, the Phlx represents that the term affiliates will include persons associated with KBW, consistent with the definition of associated persons in Section 3(a)(18) of the Act, as well as all employees of KBW.[20]

III. Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[21] Specifically, the Commission finds that the trading of options on the Index will serve to protect investors, promote the public interest, and help to remove impediments to a free and open securities market by providing investors with a means to hedge exposure to market risk associated with securities in the banking industry. The Commission also believes that the trading of options on the Index will allow investors holding positions in some or all of the underlying securities in the Index to hedge the risks associated with their portfolios more efficiently and effectively.

The trading of options on the KBW Index, however, raises several concerns, namely issues related to index design, customer protection, surveillance, and market impact. The Commission believes, for the reasons discussed below, that the Phlx adequately has addressed these concerns.

A. Index Design and Structure

The Commission finds that the Index is narrow-based because it is only comprised of 24 stocks, all of which are within the banking industry. Accordingly, the Commission believes it is necessary for the Phlx to apply its rules governing narrow-based index options to trading in the Index options.[22]

The Commission also finds that the large capitalizations, liquid markets, and relative weightings of the Index's component stocks significantly minimize the potential for manipulation of the Index. First, the overwhelming majority of the stocks that comprise the Index are actively traded, with a mean and median average daily trading volume of 336,075 and 759,660 shares,

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[12] See Amendment No. 1, *supra* note 3.

[13] The last trading day prior to expiration is the third Friday of the expiration month. For a more detailed discussion of the trading days for the Index options, see *infra* Section II, E.

[14] For purposes of the daily dissemination of the Index value, if a stock included in the Index has not opened, the Phlx will use the closing value of that stock on the prior trading day when calculating the value of the Index, until the trading of the stock opens.

[15] See Phlx Rules 1000A–1103A.

[16] Pursuant to Phlx Rule 722, the margin requirements for the Index options will be: (1) For each short options positions, 100% of the current market value of the options contract plus 20% of the underlying aggregate index value, less any out-of-the-money amount, with a minimum requirement of the options premium plus 10% of the underlying index value; and (2) for long options positions, 100% of the options premium paid.

[17] Pursuant to Phlx Rule 1001A(b)(i) and 1002A, respectively, the position and exercise limits for the Index options will be 8,000 contracts, unless the Exchange determines, pursuant to Rules 1001A(b)(i) and 1002A that a lower limit is warranted.

[18] Pursuant to Phlx Rule 1047A, the trading on the Phlx of Index options will be halted or suspended whenever trading in underlying securities whose weighted value represents more than 10% of the Index value are halted or suspended.

[19] ISG was formed on July 14, 1983, to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. See Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates, the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. See Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990.

[20] See Phlx September 2 Letter, *supra* note 10, and letter from Murray L. Ross, Secretary, Phlx, to Thomas R. Gira, Branch Chief, Options Regulation SEC, dated September 3, 1992 ("Phlx September 3 Letter").

[21] 15 U.S.C. 78f(b)(5)(1988).

[22] See *supra* notes 16–18 and accompanying text

respectively.[23] Second, the market capitalizations of the stocks in the Index are very large, ranging from a high of $12.77 billion to a low of $552 million, with the mean and median being $3.88 billion and $6.66 billion, respectively. Third, although the Index is only comprised of 24 stocks, no particular stock or two or three stocks dominate the Index. Specifically, no one stock comprises more than 13.72% of the Index's total value and the percentage weighting of the three largest issues in the Index accounts for 33.36% of the Index's value.[24] Fourth, all of the component stocks in the Index currently are eligible for options trading.[25] Accordingly, the Commission believes it is unlikely that attempted manipulations of the prices of a small number of issues would affect significantly the Index's value.

The Commission also believes that the Phlx and KBW have developed several composition and maintenance criteria for the Index that will minimize the possibility that the Index could be manipulated through trading in less actively traded securities or securities with smaller prices or floats. First, under the License Agreement, KBW is required to give the Phlx advance notice of any changes in the composition of the Index and the Phlx is required to review and approve these changes. Second, at least 90% of the stocks in the Index must satisfy the options listing standards. Third, in the event that KBW and the Phlx determine to change the number of component issues in the Index to less than 15 or more that 30, the Phlx is required to submit a filing pursuant to section 19(b) of the Act to receive Commission approval to continue listing the Index options. Fourth, at a minimum, the Index will be reviewed annually to determine whether the stocks, as a group, represent a suitable proxy for the banking industry. Finally, KBW has represented that it will ensure that the Index maintains its representative sample of stocks from the various regions represented in the Index.

Lastly, the Commission notes that significant market integrity and customer protection concerns are raised when a broker-dealer, such as KBW, is involved in the development, maintenance, or calculation of a stock index that underlies an exchange-traded derivative product. Specifically, the Commission is concerned that the close involvement of a broker-dealer may result in the broker-dealer possessing significant informational advantages that can be exploited to engage in trading abuses, among other things. For several reasons, however, the Commission believes that the Phlx has adequately addressed this concern with respect to the Bank Index options. First, as noted above, the Licence Agreement provides that the Phlx shall have the right to review trading account information from KBW, its affiliates and customers pertaining to positions in Bank Index options and related instruments (*i.e.*, stocks included in or deleted from the Index and options on such stocks).[26] The Commission believes that access to this information is necessary for the Phlx adequately to detect and deter any trading abuses that may occur due to KBW's close involvement with the Index. Second, the Phlx has made arrangements for the Index to be calculated and disseminated by an independent third party, Bridge Data, in such a way that neither KBW nor any other party will be in receipt of the Index value prior to the public dissemination of the value. Third, the Licence Agreement provides that KBW will give the Phlx advance notice, subject to review and approval by the Phlx, regarding any changes in the composition of the Index. In addition, the agreement provides that such advance notice must be given long enough before the change so as to allow the Phlx time to give public notice of the change at least ten business days prior to the change. In this regard, the Phlx also has represented that it will ensure that the public is given notice of any change to the Index at least ten business days before the change.[27] The Commission believes that these procedures will help to ensure that KBW does not have any time advantage concerning advance knowledge of any modifications to the Index. Finally, the Exchange's existing surveillance procedures for stock index options will apply to the Index options and should provide the Phlx with adequate information to detect and deter trading abuses that may occur. Accordingly, the Commission believes the procedures developed by the Phlx will serve to reduce the likelihood that KBW could take advantage of material non-public information concerning the Index and that, if such action did occur, it could be readily detected.

B. Customer Protection

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as Bank Index options, can commence on a national securities exchange. The Commission notes that the trading of standardized exchange-traded options occurs in an environment that is designed to ensure, among other things, that: (1) The special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risks of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because the Index options will be subject to the same regulatory regime as the other standardized options currently traded on the Phlx, the Commission believes that adequate safeguards are in place to ensure the protection of investors in Bank Index options.

C. Surveillance

The Commission believes that a surveillance sharing agreement between an exchange proposing to list a stock index derivative product and the exchange(s) trading the stocks underlying the derivative product is an important measure for surveillance of the derivative and underlying securities markets. Such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the stock index product less readily susceptible to manipulation. In this regard, the Phlx, the NASD, and the NYSE, along with other U.S. securities exchanges, are members of the Intermarket Surveillance Group ("ISG"), which provides for the exchange of all necessary surveillance information.[28] Further, the Phlx's Licence Agreement with KBW provides that the Phlx shall have the right to review trading account information pertaining to positions in Index options and related positions in the possession of KBW regarding KBW, its affiliates and customers.

D. Market Impact

The Commission believes that the listing and trading of Bank Index options on the Phlx will not adversely impact the underlying securities markets. First, as described above, the stocks contained in the Index have large capitalizations and are actively traded and no one stock or group of stocks

[23] For the six-month period between July 1991 and December 1991, all but four of the companies within the Index had an average daily trading volume greater than 30,000 shares per day. PHLX letter, *supra* note 3.

[24] For an index with a significantly greater number of stocks than 24 issues, the Commission might come to a different conclusion if these stocks accounted for 33% of the index's weighting.

[25] For a description of the options listing standards, see *supra* note 8.

[26] As noted earlier, the Phlx represents that the term "affiliates" in the Licence Agreement includes persons associated with KBW, consistent with the definition of the term associated persons in Section 3(a)(18) of the Act, as well as all employees of KBW. See *supra* note 20 and accompanying text.

[27] *See* Phlx September 2 Letter, *supra* note 10.

[28] See *supra* note 19.

dominates the Index. Second, because 90% of the value of the Index must be accounted for by stocks that meet the options listing standards, the component securities generally with be actively-traded, highly-capitalized stocks. In fact, as noted above, all the stocks currently in the Index meet the options listing standards. Third, existing Phlx stock index options rules and surveillance procedures will apply to the Index options. Fourth, the 8,000 contract position and exercise limits will serve to minimize potential manipulation and other market impact concerns. Fifth, the risk to investors of contra-party non-performance will be minimized because the Index options will be issued and guaranteed by the Options Clearing Corporation just like any other standardized option traded on a national securities exchange in the United States. Lastly, the Commission believes that settling expiring Bank Index options based on the opening prices of component securities is reasonable and consistent with the Act because it may contribute to the orderly unwinding of Index options positions upon expiration.

The Commission finds good cause for approving Amendment Nos. 1, 2 and 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. First, Amendment No. 1 requires the Exchange to submit a rule filing with the Commission pursuant to section 19(b) of the Act if the Exchange proposes to modify the number of stocks in the Index to greater than 30 less than 15. The Commission believes that this proposal does not raise any new regulatory issues and it is designed to ensure that the composition of the Index will not change significantly without public comment and Commission review. Second, Amendment No. 2 requires that at least 90% of the Index's numerical index value be accounted for by stocks that meet the options listing standards. The Commission believes that this modification strengthens the integrity of the Index and does not raise new issues. Moreover, the Commission finds that this modification to the proposal is designed to reduce the likelihood that the Index could be susceptible to manipulation. Third, Amendment No. 3 provides that the final settlement value of expiring Index options will be based on the opening prices of the component stocks on the trading day prior to expiration, instead of their closing prices. The Commission believes that this contract design modification, while significant in terms of the potential market impact of the Index options, does not alter significantly the contract design specifications of the Index options contracts. Moreover, the Commission believes that this modification may contribute to the orderly unwinding of positions in Index options and related positions, thereby helping to ensure that the trading of Bank Index options will not have any adverse market impacts. Therefore, the Commission believes it is consistent with sections 6(b) and 19(b)(2) of the Act to approve Amendment Nos. 1, 2 and 3 to the Phlx's proposal on an accelerated basis.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[29] that the proposed rule change (SR-Phlx-91-27) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[30]

Jonathan G. Katz,

Secretary.

[FR Doc. 92-21744 Filed 9-9-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31143; International Series Release No. 450; File No. SR-PHLX-92-20]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to New Foreign Currency Options Floor Procedure Advice (FF-17) Defining the Perimeters of the Trading Pit Areas

September 3, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 6, 1992, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX proposes to amend its rules by adding a new Foreign Currency Options Floor Procedure Advice ("OFPA") FF-17 entitled "Foreign Currency Options ("FCO") Trades to be Effected in the Pit." The proposed OFPA will require each bid and offer represented for execution on the FCO floor to be voiced loudly and audibly in the option's trading pit. For purposes of OFPA FF-17, the proposal defines "trading pit" as "the common area immediately in front of the respective option post and, in case of an active trading crowd, all common areas immediately adjacent thereto necessary to contain such crowd." In addition, for any trading segment,[1] the proposal also authorizes a floor official to extend the boundaries of a trading pit to include other common areas available on the floor for trading, except booth spaces and the aisles between the booth spaces. The OFPA includes the following fine schedule for violations of its provisions: (1) $100 for the first occurrence; (2) $500 for the second occurrence; and (3) a sanction discretionary with the Business Conduct Committee ("BCC") for the third occurrence. The text of the proposed rule change is available at the Office of the Secretary, PHLX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed OFPA will require each bid and offer represented for execution on the FCO floor to be voiced loudly and audibly in the option's trading pit. For purposes of OFPA FF-17, the proposal defines "trading pit" as "the common area immediately in front of the respective option post and, in case of an active trading crowd, all common areas immediately adjacent thereto necessary to contain such crowd." For any trading segment, the proposal authorizes a floor official to extend the boundaries of a trading pit to include other common areas available on the floor for trading, except booth spaces and the aisles between the booth spaces.

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[29] 15 U.S.C. 78s(b) (1988).

[30] 17 CFR 200.30-3(a)(12) (1990).

[1] The PHLX expanded its foreign currency options trading hours on September 20, 1990, in order to coincide with the afternoon business hours in Japan and the Far East. The foreign currency options trading hours on the Exchange are 18 hours in duration lasting from 7 p.m. to 11 p.m. (EDT) and 12:30 a.m. to 2:30 p.m. (EDT). *See* Securities Exchange Act Release No. 28470 (September 25, 1990), 55 FR 40253.

The PHLX explains that the purpose of the proposed rule change is to define the perimeter of the trading pit areas and to police its enforcement through the minor disciplinary plan procedures. The proposal originated as an FCO night trading session issue to accommodate the various needs of the participants on the floor during the session. However, the Exchange concluded that the question of defining the trading pit was important to all FCO segments; accordingly, the proposal extends to all FCO trading segments. The proposal rule change is designed to reconcile the controversy between (1) traders situated in the common pit areas fronting the rows of broker booths who may be at risk of missing orders which emanate from the floor broker booths, and (2) floor brokers who want to remain on the telephone with a customer while an order is represented.

The PHLX states that the proposal will restrict the execution of orders from broker booths but will not thoroughly restrict the ability of a trading pit to contract or expand into adjacent common areas while activity fluctuates. Under the proposal, a floor official may extend for any trading segment the boundaries of a trading pit to include other common areas available on the floor for trading, except the booth spaces and the aisles between those spaces. Moreover, floor brokers will continue to have the option to shout their orders to two-dollar brokers who can then represent the order in the crowd.

The PHLX believes that the proposed rule change is consistent with the Act, in general, and with section 6(b)(5), in particular, in that it is designed to, among other things, prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade and foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, facilitating transactions in securities. In addition, the PHLX believes the proposal is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system and to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 1, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-21745 Filed 9-9-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18926; 812-7478]

The Idaho Company; Notice of Application

September 3, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: The Idaho Company.

RELEVANT ACT SECTIONS: Exemption requested from section 7, pursuant to sections 6(c) and 6(e), subject to and conditioned upon compliance with sections 9, 10, 15, 16(a), 17(g), 17(i), 18, 21, 23, 35, 36, 37, and, to the extent necessary to enforce the provisions of the Act, sections 38 through 53. In addition, applicant seeks an exemption from certain provisions of rule 17g-1.

SUMMARY OF APPLICATION: Applicant is a business and industrial development corporation licensed and regulated under Idaho law. Applicant was organized to foster economic development in the state of Idaho by making loans to and investments in small developing companies. Applicant seeks to be exempt from registration as an investment company, and has agreed to comply with certain provisions of the Act.

FILING DATES: The application was filed on February 9, 1990 and amended on December 19, 1990, July 16, 1991, April 9, 1992, and August 27, 1992. Applicant has agreed to file a further amendment during the notice period. This notice reflects the changes to be made to the application by such amendment.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 29, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing request should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, P.O. Box 6812, Boise, Idaho 83707.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Staff Attorney, (202) 272-2511, or C. David Messman, Branch Chief, (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant was incorporated under the laws of Idaho in 1986 to stimulate, develop, and advance the business prosperity of Idaho and its citizens. In 1989, the Idaho legislature passed the Idaho Business and Industrial Development Corporation Act (the "Idaho BIDCO statute"). The Idaho BIDCO statute promotes economic development in Idaho by the creation of business and industrial development corporations ("BIDCOs") to help meet the financial and management needs of Idaho businesses. On July 11, 1989, applicant was licensed as Idaho's first BIDCO.

2. The Idaho BIDCO statute and applicant's licensure thereunder are part of an economic development strategy for the state of Idaho to aid new, emerging, and expanding businesses. To achieve this purpose, applicant engages in debt financing, equity financing, and leasing transactions with businesses that may be unable to obtain conventional bank financing. It is anticipated that applicant will invest principally in loans of up to ten years duration. Because applicant will make only equity investments in and loans to closely-held firms that are not listed on any organized exchange, applicant's equity ownership in firms will not be evidenced by freely tradeable shares. In the event of ownership evidenced by stock, under no circumstances will stock be delivered blank or held in bearer form or street name. Consistent with its stated purpose, applicant will only provide financing to and invest in entities doing or proposing to do business in Idaho.

3. Applicant is governed by a board of directors elected by its shareholders. Each shareholder has one vote for each share held and shareholders elect all directors. Loans and equity investments must be approved by applicant's executive committee of seven directors appointed by the board.

4. Applicant's sources of revenue are interest income on loans and investments and fees charged for services rendered in providing assistance to Idaho businesses.

5. As a BIDCO, applicant is registered under and regulated by the Idaho BIDCO statute. Applicant is subject to reporting, record keeping, auditing, and minimum net worth requirements. The Idaho BIDCO statute requires a BIDCO's directors and officers to be of good character. The Director of the Department of Finance of the State of Idaho must approve any dividend policy adopted by a BIDCO and is empowered to enforce the provisions of the Idaho BIDCO statute. The Idaho BIDCO statute also limits the ability of a BIDCO to control other companies, and, for business transactions that involve potential conflicts of interest, requires the transactions to be on terms at least as favorable to the BIDCO as if the transaction did not involve a potential conflict of interest.

6. In order to raise funds to finance its operations, applicant made a public offering and a private placement of its securities in 1988. Of applicant's 467 shareholders purchasing stock in the public offering, 93% are Idaho residents, and businesses hold 83% of those shares. Another 10% of the publicly-held shares are owned by business owners, senior executives of large Idaho businesses, and employees of major corporations. Approximately 4% of the public shares were purchased by residents of towns immediately bordering Idaho or by large corporations having substantial business interests in the state. Less than 3% of the shares were purchased by persons who have since moved out of the state. In the private placement, a total of 95,500 shares were issued to 13 large Idaho-based companies that were accredited investors as defined by rule 501(a)(3) of Regulation D under the Securities Act of 1933. Through June 30, 1992, applicant had issued a total of 163,453 shares at $10.00 per share in the public offering and private placement. No further offerings currently are contemplated.

7. Although applicant is a for-profit corporation, profitability is not its primary goal. For this reason, applicant expected only persons interested in its public purpose would purchase its securities. Dividends are considered to be in the form of new jobs created and increased economic activity throughout the state. Applicant's prospectus also indicated that because of the civic nature of applicant, profit-oriented operation could not be guaranteed, dividends might never be paid, and there might never be a market for its stock.

8. Applicant has a "dormant funds policy" whereby funds not immediately employed in the making of loans and equity investments are invested in FDIC-insured certificates of deposit, U.S. Government securities, and obligations of U.S. Government agencies. Pursuant to its dormant funds policy, applicant invests primarily in certificates of deposit purchased through Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch"). Such purchases are paid for by funds on deposit in a Cash Management Account ("CMA") maintained with Merrill Lynch. When investments purchased through Merrill Lynch mature, Merrill Lynch automatically deposits the principal and interest in applicant's CMA account.

9. Applicant also maintains a safe deposit box and a checking account with West One Bank, Idaho, N.A. All local certificates of deposit, loan documentation, and stock certificates are held in the safe deposit box. The agreements for the holding of securities and cash at Merrill Lynch and in the safe deposit box and checking account have been approved by applicant's Board of Directors.

10. Applicant seeks an exemption from section 17(f), the custody requirements of the Act. In support of its exemption request, applicant has agreed to maintain its cash and securities according to certain safekeeping procedures set forth in Condition 2 below.

11. Applicant will comply with section 17(g) of the Act and rule 17g-1 thereunder, except that applicant will maintain a fidelity bond with a deductible clause. Rule 17g-1 requires each registered investment company to maintain a fidelity bond against larceny and embezzlement covering each officer and employee of the investment company who may singly, or jointly with others have access to securities or funds of the investment company. Applicant believes that the cost of a policy without a deductible clause would be unreasonable in relation to the financial assets of applicant. Applicant therefore requests partial exemption from rule 17g-1 to allow it to maintain a fidelity bond with a $5,000 deductible.

12. Applicant also seeks an exemption from the affiliated transaction provisions of sections 17(a), 17(d), and 17(e) of the Act. The Idaho BIDCO statute provides extensive regulation of activities that may create a potential conflict of interest. In particular, any transaction engaged in by a BIDCO that creates a potential conflict of interest must be on terms and conditions no less favorable to the BIDCO than would be required in the ordinary course of business if the transaction did not involve a potential conflict of interest. Certain other transactions are

prohibited by the Idaho BIDCO statute unless the Director of the Department of Finance of the State of Idaho approves an order exempting a BIDCO from the prohibitions. In so doing, the Director must find that the exemption is in the public interest and that the regulation of the transaction is not necessary for the purposes of the Idaho BIDCO statute. Applicant submits that such state regulation provides an appropriate substitute for the protections sought for investors under sections 17(a), 17(d), and 17(e).

Applicant's Legal Analysis

1. Section 3(a)(3) of the Act defines the term "investment company" to include any issuer that "is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis." Applicant concedes that by making loans and investments in Idaho businesses its holdings of investment securities may exceed the 40% test set forth in section 3(a)(3).

2. Section 6(c) of the Act provides that the Commission may exempt any person or transaction from any and all provisions of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 6(e) permits the Commission to provide, in exempting an investment company from registration pursuant to section 7, that specified sections will apply to the company, and all other persons in their dealings with the company, as if the company were registered under the Act.

3. Applicant seeks an order, pursuant to sections 6(c) and 6(e) or the Act, exempting the applicant from section 7 subject to and conditioned upon compliance with sections 9, 10, 15, 16(a), 17(g), 17(i), 18, 21, 23, 35, 36, 37, and, to the extent necessary to enforce the provisions of the Act, 38 through 53 of the Act. In addition, applicant would be exempted from certain provisions of rule 17g–1. Applicant submits that because of the state regulation to which it is subject and the public purpose for which it is organized, it is not necessary or appropriate for it to be subject to many of the provisions of the Act or the rules thereunder, other than the sections cited above.

4. Although applicant differs from other BIDCOs that have been granted exemptions from all provisions of the Act because it made a public offering of its securities, applicant asserts that it is organized for the same public purposes as other BIDCOs that have been granted exemptions. Applicant further asserts that it is subject to comprehensive state regulation that provides sufficient protection for investors to warrant a partial exemption from the Act, and that it would be unduly burdensome for applicant to comply with the Act.

5. Applicant submits that the system of licensing, regulation, and enforcement provided by the Idaho BIDCO statute, together with the provisions of the Act to which applicant will be subject, is sufficient to protect investors. Applicant thus asserts that an exemption under sections 6(c) and 6(e) of the Act is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

Applicant's Conditions

Applicant agrees that the order of the Commission granting the requested relief will be subject to the following conditions:

1. Applicant will not lend to or invest in any shareholder owning a five percent or greater interest in applicant. Applicant will not lend to or invest in any entity of which any director or officer of applicant is an affiliated person, as defined in section 2 of the Act, unless: (i) Such affiliation arises solely from such director or officer of applicant being an officer, director, partner, or employee of the entity, or (ii) the Director of the Idaho Department of Finance (pursuant to chapter 27, section 26–2730(9) of the Idaho Code, Business and Industrial Development Corporations) grants applicant an order exempting the loan or investment from the conflict of interest prohibitions of section 26–2730.

2. Applicant will maintain its cash and securities according to the following procedures:

(a) All securities and cash will be maintained in accounts with, or in the safekeeping of, banks (as defined in section 17(f) of the Act), or members of a national securities exchange (collectively, a "safekeeper") pursuant to written agreements ("Safekeeping Agreements") that will be approved initially, and will be reviewed and reapproved annually, by the Board of Directors of applicant.

(b) Any Safekeeping Agreement will provide that access to securities and cash (including any withdrawal of funds by check or otherwise) of applicant will be restricted to two Access Persons (as defined below) jointly, except as provided in paragraph (e), below.

(c) Except as otherwise provided by law, no person will be authorized or permitted to have access to the securities and cash deposited in accordance with paragraph (a) except pursuant to a resolution of the Board of Directors of applicant. Such resolution will designate not more than five persons, who will be either officers or responsible employees of applicant, and will provide that access to such securities and cash will be had only by two or more such persons jointly, at least one of whom will be an officer ("Access Persons"); except that access to such securities and cash will be permitted (i) to properly authorized officers and employees of the safekeeper holding such securities and cash, and (ii) to an independent public accountant, jointly with an Access Person or authorized officer or employee of the safekeeper, for the purposes of such accountant's examination of the assets of applicant. Such securities and cash will also at all times be subject to inspection by the SEC through its authorized employees or agents.

(d) Each person depositing or withdrawing (including withdrawals by check) securities or cash to or from any account or safekeeping arrangement of applicant, will sign a notation with respect to such deposit or withdrawal that will show (i) the date and time of the deposit or withdrawal, (ii) the manner of acquisition of the securities or cash deposited or the purpose for which they have been withdrawn, (iii) if securities, the title and amount of the securities deposited or withdrawn, and an identification thereof by certificate numbers or otherwise, and (iv) if withdrawn and delivered to another person, the name of such person. Such notation will be transmitted promptly to an officer or director of applicant designated by its Board of Directors who will not be an Access Person. Such notation will be on serially numbered forms and will be preserved for at least one year.

(e) All check disbursements will be made payable to a designated payee. Notwithstanding paragraphs (b) and (c), checks or cash disbursements in a maximum amount of $500 for authorized petty cash may be signed or authorized on the basis of one signature of an Access Person. If petty cash is withdrawn by check, such check will be made out to the order of "(Named Person) Petty Cashier."

(f) A person other than a person who disburses or authorizes disbursements of cash will be designated by the Board

of Directors of applicant to receive the account statements for any account maintained pursuant to paragraph (a) and will reconcile such statements monthly.

(g) Applicant will have a system reasonably designed to prevent unauthorized instructions to be given to any safekeeper. Such system will be approved by applicant's Board of Directors.

(h) A safekeeper will have no power or authority to assign, hypothecate, pledge, or otherwise dispose of any securities and investments except pursuant to applicant's direction and for applicant's account.

(i) All securities and cash held by or on behalf of applicant will be subject to a complete examination by an independent public accountant at least once during each fiscal year.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-21684 Filed 9-9-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-18925; File No. 812-8034]

Pacific Corinthian Life Insurance Co., et al.

September 2, 1992.

AGENCY: Securities and Exchange Commission (the "Commissioner" or "SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Pacific Corinthian Life Insurance Company ("Pacific Corinthian") and Pacific Corinthian VIP Separate Account of Pacific Corinthian Life Insurance Company ("PCL Separate Account") (collectively, the "Applicants").

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) of the 1940 Act for exemptions from sections 2(a)(32), 2(a)(35), 22(c), 26(a)(2)(C), 27(c)(2), and 27(d) of the 1940 Act and Rule 22c-1 thereunder. Also, order requested under section 17(b) of the 1940 Act for an exemption from section 17(a) of the 1940 Act and under section 17(d) of the 1940 Act and Rule 17d-1 thereunder approving the proposed transaction, and under section 11 of the 1940 Act approving the proposed offer of exchange.

SUMMARY OF APPLICATION: Applicants seek an order permitting the assessment and deduction of a mortality and expense risk charge from the assets of the PCL Separate Account under certain individual flexible deferred annuity and variable accumulation contracts (the "Contracts") and the assessment of a contingent deferred sales charge under those Contracts. Applicants also seek an order permitting the transfer of assets from the Shearson VIP Separate Account of First Capital Life Insurance Company—In Conservation ("FCL Separate Account") to the PCL Separate Account and an order permitting an offer of exchange of interests in the FCL Separate Account for interests in the PCL Separate Account.

FILING DATE: The Application was filed on August 6, 1992 and amended on August 28, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 24, 1992, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, DC 20549. Applicants, 700 Newport Center Drive, Newport Beach, California 92660.

FOR FURTHER INFORMATION CONTACT: Thomas E. Bisset, Attorney, at (202) 272-2058 or Wendell M. Faria, Deputy Chief, at (202) 272-2060, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Pacific Corinthian is a newly-formed stock life insurance company organized under the laws of the State of California. Pacific Corinthian is qualified to conduct business as a life insurance company under the laws of the State of California and is currently seeking qualification under the laws of other states deemed appropriate and necessary by its officers. Pacific Corinthian is a wholly-owned subsidiary of Pacific Mutual Life Insurance Company ("Pacific Mutual").

2. Pacific Mutual Life Insurance Company ("Pacific Mutual") is a mutual life insurance company organized under the laws of the State of California. It was authorized to conduct business as a life insurance company on January 2, 1868, as Pacific Mutual Life Insurance Company of California, and was reincorporated under its present name on July 22, 1936.

3. Pursuant to a resolution of its Board of Directors, Pacific Corinthian established the Pacific Corinthian VIP Separate Account (the "PCL Separate Account") as a separate account under California law. The PCL Separate Account is divided into subaccounts referred to as Variable Accounts. Pursuant to California law, the income and capital gains or losses of each Variable Account, whether realized or not, are credited to or charged against the assets held in that Variable Account, without regard to the income or capital gains or losses of any other Variable Account or of Pacific Corinthian's general account. The assets of the PCL Separate Account are not chargeable with liabilities arising out of any other business conducted by Pacific Corinthian. However, all obligations arising out of any variable contract issued (or assumed) by Pacific Corinthian and funded by the PCL Separate Account will be general corporate obligations of Pacific Corinthian. The PCL Separate Account is registered with the Commission as a unit investment trust on Form N-4 (File No. 33-50394).

4. Pacific Mutual organized Pacific Corinthian in connection with its plan for the rehabilitation of First Capital Life Insurance Company—In Conservation ("First Capital"). First Capital, a stock life insurance company domiciled in California, was placed in conservation on May 14, 1991, by order of the Superior Court of the State of California for the County of Los Angeles (the "Conservation Court"). The Conservation Court's order appointed the Insurance Commissioner of the State of California (the "Insurance Commissioner" or "Conservator") as Conservator of First Capital, and vested the Conservator with all title to First Capital's assets, exclusive jurisdiction of its property and any claims or rights respecting such property, and authority to conduct First Capital's business.

5. On July 1, 1992, the Conservation Court accepted the Conservator's recommendation and approved Pacific Mutual's rehabilitation plan. The rehabilitation plan will be effected through an agreement entered into between the Conservator of First Capital

and Pacific Mutual ("Rehabilitation Agreement"), dated as of July 28, 1992, in connection with the rehabilitation of First Capital.

6. Prior to being placed in conservation, First Capital offered an individual flexible premium deferred annuity and variable accumulation contract ("FCL VIP Contract"). The FCL VIP Contracts provide both a variable accumulation option and a fixed accumulation option during the Accumulation Period, and only a fixed option after the Annuity Date. The variable accumulation option is funded by the Shearson VIP Separate Account of First Capital Life ("FCL Separate Account"). The FCL Separate Account is registered under the 1940 Act as a unit investment trust. Interests in the FCL Separate Account are registered as securities under the Securities Act of 1933 (the "1933 Act") (File No. 2-84183). The FCL Separate Account is divided into subaccounts, called Variable Accounts. The FCL Separate Account currently consists of nine Variable Accounts, each of which invests in a Series of the Shearson VIP Fund ("VIP Fund").

7. The FCL VIP Contracts provide a death benefit upon the death of the Annuitant or Owner. Upon the death of the Annuitant on or before the fifth contract anniversary and before the Annuity Date, the Company will pay the Beneficiary or Beneficiaries a death benefit equal to the greater of (1) the aggregate premium payments less any reductions in the Contract Value due to withdrawals or (2) the Contract Value next determined following receipt of due proof of death by the Company at its home office. After the fifth contract anniversary, there is a minimum guaranteed death benefit equal to the death benefit as of the next previous Milestone Date (the fifth contract anniversary and each fifth anniversary thereafter), increased by any premiums paid since that Milestone Date and decreased by any withdrawals, net of contingent deferred sales charge, received since that Milestone Date. After the fifth anniversary, the death benefit proceeds will be the Contract Value, or, if larger, the minimum guaranteed death benefit.

8. The Rehabilitation Agreement provides that Pacific Corinthian will assume the life insurance policies and annuity contracts issued by First Capital including the FCL VIP Contracts, and will assume certain of the assets and certain liabilities of First Capital. This assumption will be effected by an Assumption Reinsurance Agreement between the (i) Insurance Commissioner of the State of California, as Conservator of First Capital, (ii) Pacific Corinthian, and (iii) Pacific Mutual. Upon closing on the Assumption Reinsurance Agreement ("Reinsurance Closing"), The First Capital life insurance policies and annuity contracts, including the FCL VIP Contracts, and the above-described assets and certain liabilities of First Capital will be transferred to Pacific Corinthian. The assets of the FCL Separate Account will be transferred intact to the PCL Separate Account. The Reinsurance Closing is subject to governmental approvals.

9. The Rehabilitation Agreement provides that owners of life insurance policies and annuity contracts issued by First Capital, including Owners of the FCL VIP Contracts, may elect to participate in the Rehabilitation Plan and "opt in," or elect not to participate in the Plan and "opt out". Pursuant to the Rehabilitation Agreement, this election will be described in a notice of election, which will be sent to owners of First Capital's policies and contracts, including Owners of the FCL VIP Contracts. In addition, Pacific Corinthian will provide Owners of the FCL VIP Contracts with the prospectus for the PCL Separate Account, which will describe the FCL VIP Contracts as modified under the Rehabilitation Agreement and assumed by Pacific Corinthian ("PCL VIP Contracts"). Any Owner of the FCL VIP Contracts who opts into the Rehabilitation Plan will be deemed to have agreed to the terms of his or her Contract as restructured pursuant to the Rehabilitation Agreement, and to have agreed to the assumption of his or her Contract by Pacific Corinthian. Any Owner of the Variable Annuity Contracts who does not opt out of the Rehabilitation Plan will be deemed to have opted in.

10. The FCL VIP Contracts of Owners who opt in to the Rehabilitation Plan will be modified in certain respects prior to their assumption by Pacific Corinthian. The modifications relate primarily to the Fixed Account; however, some modifications affect Contract Owners with Accumulation Value in the FCL Separate Account. For example, Contract Owners will no longer be permitted to transfer Accumulation Value from any of the Variable Accounts of the FCL Separate Account to the Fixed Account, or from the Fixed Account to any of the Variable Accounts. Transfers will continue to be permitted among the Variable Accounts. In addition, the annuity options under the Contract will be modified for Contract Owners with any Accumulation Value in the Fixed Account, including Contract Owners with Accumulation Value allocated to both the Fixed Account and the Separate Account so that annuity payments must be made over a period of at least seven years. The seven year minimum will not apply to Contract Owners with all of their Contract Value in the Separate Account. The Rehabilitation Agreement provides that Contract Owners who opt in to the Plan will receive an endorsement from First Capital that implements these modifications.

11. After the Reinsurance Closing, Applicants currently intend that the PCL Separate Account will continue to invest in the VIP Fund, and Applicants do not currently intend to recommend any change in the investment adviser or sub-advisers to the VIP Fund. On or before closing on the Rehabilitation Agreement ("Rehabilitation Closing"), it is anticipated that Pacific Corinthian will succeed First Capital as Manager of the VIP Fund.

12. After the Reinsurance Closing, the PCL VIP Contracts will have the same terms as the FCL VIP Contracts did before the closing (as modified pursuant to the Rehabilitation Agreement), except that the insurance company responsible for providing the benefits under the contract will be Pacific Corinthian. The charges under the PCL VIP Contracts with respect to amounts allocated for variable accumulation will be the same as for the FCL VIP Contracts, and they are described below as they pertain to the PCL VIP Contracts after the Reinsurance Closing.

13. A charge equal to 1.19% per year of each Variable Account's average daily net assets will be accrued daily and paid quarterly in order to reimburse Pacific Corinthian for undertaking the mortality and expense risks in connection with amounts subject to variable accumulation. Of the total annual charge, approximately 1.00% is attributable to the mortality risk and .19% is attributable to the expense risk.

14. Pacific Corinthian will assume an expense risk because of its guarantee that the ordinary expenses borne directly by the PCL Separate Account will not exceed .25% of average daily net assets on an annual basis. Pacific Corinthian further guarantees that the ordinary operating expenses of a Variable Account together with operating expenses incurred by the underlying Series Of the VIP Fund, exclusive of advisory and management fees, interest, taxes and brokerage commissions, transaction costs or extraordinary expenses, will not exceed

.60% of average daily net assets annually after consideration for any adjustment by the adviser (or manager) for fund expenses in excess of state expense limitations.

15. Pacific Corinthian will assume certain mortality risks from (i) its guarantee that during the Accumulation Period, and on or before the fifth Contract Anniversary, the death benefit will be at least equal to the aggregate premium payments received under the Contract, less any reductions in the Contract Value caused by withdrawals, and after the fifth contract anniversary, the death benefit proceeds will be the Contract Value, or if larger, the minimum guaranteed death benefit as described above, and (ii) its guarantee that annuity payments will not be affected by a change in mortality experience from the mortality assumptions used in connection with the annuity options provided under the Contract.

16. Each PCL VIP Contract will be assessed an annual contract maintenance charge of $30.00 during the Accumulation Period. This charge is to pay for administrative expenses related to the maintenance of each Contract, rather than the expense of administration of the PCL Separate Account. The contract maintenance charge is not guaranteed and may be increased in future years to the extent consistent with application law, including Rule 26a-1 under the 1940 Act. Pacific Corinthian does not anticipate that it will make any profit on the contract maintenance charge.

17. Any premium taxes with respect to the Contract will be paid by Pacific Corinthian when due and deducted from the Contract Value as of the annuity date if the contract is annuitized. However, if state law does not permit postponement of the deduction of premium taxes until annuitization, premium taxes will be deducted from premiums when received.

18. A Contingent Deferred Sales Charge may be imposed on a partial or complete withdrawal of the Contract Value allocated to the Separate Account during the Accumulation Period and on annuitization. Where there is a partial withdrawal, the Contingent Deferred Sales Charge is deducted from the remaining Accumulation Value under the Contract. Where there are insufficient funds in the Contract Value to cover the Contingent Deferred Sales Charge, the charge is deducted from the amount withdrawn. One withdrawal per Contract year will be exempt from any Charge, provided the amount of such withdrawal does not exceed 10% of the Contract Value at the time of such withdrawal.

When imposed, the Contingent Deferred Sales Charge is at the rate of 5% of the amount subject to the charge in the first Contribution Year of a premium payment, and declines by 1% in each subsequent Contribution Year of the applicable premium payment, so that there is no charge applied to withdrawal of amounts attributable to premium payments in the sixth Contribution Year and thereafter. For purposes of determining whether the Contingent Deferred Sales Charge will be imposed and, if so, the amount of the Charge, it is assumed that the initial source of a withdrawal is the earliest premium payment, even if that payment was allocated to an Account (including the Fixed Account) other than the Account from which the withdrawal is made. After consideration for any withdrawal amount exempt from the charge, in no event may the aggregate withdrawal amounts on which Contingent Deferred Sales Charges are imposed exceed the aggregate premium payments under the Contract. Consistent with the provisions of Rule 11a-2(d) of the Act, any applicable Contingent Deferred Sales Charge will be calculated as if the Contract had been issued by Pacific Corinthian as of the day when the Contract was issued by First Capital.

The Contingent Deferred Sales Charge also applies to any annuitization where the Contract Value includes an amount attributable to a premium payment for which the sixth Contribution Year has not been reached. The amount of the Charge will be determined in the same manner as for a withdrawal. However, the Charge will not be imposed on an annuitization if a Payment Plan offered under the Contract is elected or if the proceeds are applied to purchase a single premium immediate annuity then offered by Pacific Corinthian and the annuity payment period is five years or longer.

19. The PCL Separate Account will bear its own expenses, including fees and expenses for accounting and legal costs, data processing costs, registration fees, and expenses of preparation and distribution to Contract Owners of reports and prospectuses. Such expenses will be allocated among the Variable Accounts based on their relative net assets, unless they do not relate to all the Variable Accounts.

20. On the date of the Reinsurance Closing, First Capital will cede and transfer to Pacific Corinthian, and Pacific Corinthian will acquire and assume from First Capital, all life insurance policies and annuity contracts of First Capital, including the FCL VIP Contracts, that are in force on the closing date. In addition, Pacific Corinthian shall assume certain liabilities of First Capital as set out in the Assumption Reinsurance Agreement, which include liabilities related to life insurance policies and annuity contracts. First Capital shall also convey to Pacific Corinthian all of its rights, title, and interest to certain assets of First Capital. These assets shall include the assets in the FCL Separate Account which shall be transferred intact to the PCL Separate Account. The PCL Separate Account will have no assets prior to this intact transfer. Therefore, the assets of the PCL Separate Account immediately after the Reinsurance Closing shall be the same as the assets of the FCL Separate Account immediately before the closing, and each Contract Owner's Accumulation Value in the PCL Separate Account immediately after the Reinsurance Closing shall be funded by the same assets as immediately before the closing, and will be equal in value immediately before and after the Reinsurance Closing. In addition, Contract Owners will bear no expense in connection with their Accumulation in the FCL or PCL Separate Account, directly or indirectly, as a result of this assumption reinsurance transaction, including any brokerage or other transactional expenses.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any persons, securities, or transactions from any provision of the 1940 Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Applicants request an order under section 6(c) for exemptions from sections 26(a)(2)(C) and 27(c)(2) to deduct a mortality and expense risk charge from the assets of the PCL Separate Account. Section 27(c)(2) of the 1940 Act prohibits the sale of periodic payment plan certificates unless the proceeds of all payments (except such amounts as are deducted for sales load) are held under an indenture or agreement containing in substance the provisions required by sections 26(a)(2) and (3). Section 26(a)(2)(C) provides that no payment to the depositor of, or principal underwriter for, a registered unit investment trust shall be allowed as

the Commission may prescribe, as compensation for performing bookkeeping or other administrative services. The Commission has taken the position that sections 27(c)(2) and 26(a)(2)(C) of the 1940 Act preclude assessing a mortality and expense risk charge against a Variable Account in the absence of exemptive relief.

3. Applicants represent that the mortality and expense risk charge under the PCL VIP Contracts should compensate reasonably the insurer for its assumption of mortality and expense risks. If the asset charge proves to be insufficient to cover the actual cost of the mortality and expense risk undertakings, Pacific Corinthian will bear the loss. Conversely, if the deduction is more than sufficient, Pacific Corinthian will realize a profit that will be available for any proper corporate purpose, including distribution expenses. Although Pacific Corinthian may ultimately realize a profit from the charge to the extent it is not needed to meet the actual expenses incurred, the aggregate charge is guaranteed and will never be increased. Applicants represent that the level of the mortality and expense risk charge imposed is within the range of industry practice for comparable annuity products. Applicants state that this representation is based upon their analysis of publicly available information regarding comparable contracts of other companies, taking into consideration the particular annuity features of the comparable contracts, including such factors as: annuity purchase rate guarantees, death benefit guarantees, other contract charges, the frequency of charges, the administrative services performed by the companies with respect to the contracts, the distribution methods, investment options under the contracts, and the tax status of the contracts. Applicants therefore request an exemption from the provisions of section 26(a)(2)(C) and section 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of the mortality and expense risk charge. The Applicants undertake to make available to the SEC staff upon inspection of the PCL Separate Account's books and records and actuarial and other data used to establish the mortality and expense risk charge.

4. Applicants represent that they will maintain at their Home Office, and make available to the Commission, a memorandum setting forth in detail the comparable variable annuity products analyzed and the methodology, and results of, Applicants' comparable review. The Applicants also undertake that the PCL Separate Account will invest only in funds which undertake to have a board of directors with a disinterested majority that formulate and approve any plan under Rule 12b-1 to finance distribution expenses.

5. Applicants acknowledge that if the Contingent Deferred Sales Charge does not cover Pacific Corinthian's costs related to the distribution of the Contracts, if any, such costs will be paid from Pacific Corinthian's General Account, which may include any profit derived from the mortality and expense risk charge. Applicants represent that there is a reasonable likelihood that any distribution financing arrangement made with respect to the Contracts will benefit the Separate Account and the Contract Owners. Applicants represent that they will maintain at their Home Office, and make available to the Commission, a memorandum setting forth the basis for Pacific Corinthian's conclusion.

6. Applicants request exemptions from sections 2(a)(32), 2(a)(35), 27(d), 22(c) and Rule 22c-1 in order to deduct the Contingent Deferred Sales Charge under the PCL VIP contract. Section 2(a)(32) of the 1940 Act defines redeemable security as any security under the terms of which the holder is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof. Section 27(d) of the Act, in part, requires that the holder of a periodic payment plan certificate be able to surrender the certificate under certain circumstances with the recovery of certain front-end sales charge. Section 2(a)(35) of the Act, insofar as relevant, defines sales load as the difference between the price of a security to the public and that portion of proceeds from its sale which is received and invested or held for investment by the issuer.

Applicants submit that sections 2(a)(32), 2(a)(35) and 27(d) contemplate sales charges which are deducted from purchase payments at the time they are made only because that was the then current practice at the time those provisions were enacted. Applicants submit that for several reasons, the imposition of the Contingent Deferred Sales Charge is more preferable than a front-end charge deducted entirely from the initial premium. First, the amount of the Contract Owner's investment is not immediately reduced as it is when a front-end charge is deducted. Second, because of the contingent aspect of the Charge, Contract Owners may avoid it altogether.

7. Rule 22c-1, which was adopted pursuant to section 22(c) of the 1940 Act, prohibits a registered investment company issuing redeemable securities or a principal underwriter therefor from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security next computed after receipt of an order for purchase or tender for redemption. When a Contract Owner withdraws all or part of the Contract value from the PCL Separate Account during the Accumulation Period, the price on redemption will be based on the current net asset value next determined after receipt of the withdrawal request. As stated, the Contingent Deferred Sales Charge, if any, will merely be deducted at the time of withdrawal in arriving at the Contract Owner's proportionate share of the PCL Separate Account's current net assets. Applicants therefore request an exemption from the provisions of section 22(c) and Rule 22c-1 thereunder to the extent necessary to permit imposition of the Charge.

Consistent with the 9% limitation in Rule 11a-1(d)(b) of the 1940 Act, in no event will the charge imposed exceed 5% of the aggregate premium payments paid both before and after assumption of the Contracts by Pacific Corinthian. Further, consistent with Rule 11a-2(d)(1), any contingent charge will be calculated from the day the Contract was first issued by and premium payments made to, First Capital.

8. Applicants request an exemption from section 17(a) of the 1940 Act pursuant to section 17(b) because, to the extent that Pacific Corinthian and First Capital may be deemed to be affiliated by virtue of being under the common control of Pacific Mutual after the Rehabilitation Closing, the transaction would appear to be prohibited by section 17(a). Section 2(a)(3) of the 1940 Act defines "affiliated person" to include any person directly or indirectly under common control with such other person. Section 2(a)(9) of the 1940 Act defines control, as is relevant here, as the power to exercise controlling influence over the management or policies of a company. Section 17(a) of the 1940 Act prohibits any affiliated person or any affiliated person of such a person, acting as principal, from selling to or purchasing from a registered investment company, or any company controlled by such registered company, any security or other property. Section 17(b) of the 1940 Act provides, however, that the Commission, upon application, may exempt transactions from the provisions of section 17(a) if evidence establishes that the terms of the proposed transactions, including the

consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transactions are consistent with the policy of the registered investment company concerned and with the general purposes of the 1940 Act.

9. Applicants submit that the interests of Owners of the FCL Separate Account will not be adversely affected by the transfer of the assets and liabilities of the FCL Separate Account to PCL Separate Account. The proposed transfer will not result in any dilution of such Contract Owners' interests in the pertinent Separate Account, and will not result in any change in the assets underlying the Contract Value under the Contracts allocated for variable accumulation. Rather, the transfers will benefit such Contract Owners because they will look to Pacific Corinthian, the depositor of the PCL Separate Account, as reinsurer, to be responsible for the benefits under the PCL VIP Contracts rather than to an insurance company in conservation under state law. In addition, Contract Owners who do not wish to accept the plan for rehabilitation, including the assumption by Pacific Corinthian of the obligations under the Contracts, may elect to opt out of the plan. Accordingly, Applicants submit that the proposed transfer of the assets and liabilities of the FCL Separate Account to the PCL Separate Account is reasonable and fair, does not involve overreaching, and is consistent with the general purposes of the 1940 Act.

10. Both section 17(d) and Rule 17d-1 were intended to prohibit, or at least limit, conflicts of interest between affiliated persons entering into a joint transaction. Because Pacific Mutual has entered into the Rehabilitation Agreement with the Insurance Commissioner of the State of California, which sets forth the terms of the rehabilitation plan, and Pacific Mutual and Pacific Corinthian have entered into the Assumption Reinsurance Agreement with the Insurance Commissioner of the State of California, under which the assets of the FCL Separate Account will be transferred intact to the PCL Separate Account, the assumption reinsurance transaction may be deemed to be a joint transaction between Pacific Mutual, Pacific Corinthian, and The PCL Separate Account.

11. The Applicants submit that the proposed transaction does not create any conflicts of interest between Pacific Mutual, Pacific Corinthian, and the PCL Separate Account. Pacific Corinthian and the PCL Separate Account were, as stated above, specifically created for purposes of effecting the proposed transaction pursuant to an agreement to which the Insurance Commissioner of the State of California is a party and is part of a plan of rehabilitation that has been approved by the Conservation Court. This is not a transaction that is amenable to self-dealing by the affiliate of an investment company to the detriment of the investment company, and therefore it significantly differs from the type of "joint transactions" contemplated by the drafters of section 17(d) and of Rule 17d-1.

12. Finally, Applicants request an exemption from section 11 of the 1940 Act to permit the offer of exchange of interests in the FCL Separate Account for interests in the PCL Separate Account. Section 11 of the 1940 Act governs the exchange of securities of one investment company for another. Because FCL VIP Contract Owners will be given a right to "opt out" of, among other things, the assumption of their contracts by Pacific Corinthian and the resulting PCL VIP Contracts will be treated as new securities issued by a new investment company, the proposed assumption reinsurance arrangement may be deemed to be an offer of exchange for purposes of section 11 of the 1940 Act.

13. Section 11(a) was specifically designed to prevent the practices of "switching" and "reloading" whereby the holders of securities were induced to exchange their certificates for new certificates on which a new load would be payable. Since no charge will be assessed in connection with the assumption reinsurance of the Contracts by Pacific Corinthian with respect to Contract Value in the pertinent Separate Account, the principal abuse at which section 11(a) is directed will not be present. Moreover, Contract Owners will have the opportunity to allocate Accumulation Value among Variable Accounts of the PCL Separate Account that invest in the same series of the VIP Fund in which the Variable Accounts of the FCL Separate Account invest, and thus there will be no interruption in theVIP Fund serving as an investment medium for the Contracts before and after the transfer. Any applicable contingent deferred sales charge will be applied so that premiums are given credit for the time that the Contract was held by First Capital. Contract Owners who do not wish to accept the plan of rehabilitation may elect to opt out.

Applicants also represent that but for the absence of an affiliation between the FCL Separate Account and the PCL Separate Account at the time of the offer of exchange the Contracts would meet the conditions of, and the PCL Separate Account would comply with, Rule 11a-2. Accordingly, Applicants request an order pursuant to section 11 of the 1940 Act approving the offer of exchange involved in Pacific Corinthian's proposed assumption reinsurance of the Contracts.

Applicants' Conclusion

Applicants submit that the exemptions requested herein satisfy the standards of sections 6(c) and 17(b) of the 1940 Act, that the terms of the proposed joint transaction meet the standards of Rule 17d-1 under the 1940 Act, and that the terms of the exchange offer satisfies the standards of section 11, and request that the Commission issue an order granting the exemptions, approving the joint transaction, and approving the terms of the exchange offer as requested.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-21683 Filed 9-9-92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 91-57; Notice 2]

Denial of Petition for Import Eligibility Determination

This notice sets forth the reasons for the denial of a petition submitted to the National Highway Traffic Safety Administration ("NHTSA") under section 108(c)(3)(C)(i)(I) of the National Traffic and Motor Vehicle Safety Act ("the Act"), 15 U.S.C. 1397(c)(3)(C)(i)(I), and 49 CFR part 593. The petition, which was submitted by Liphardt & Associates, Inc. of Ronkonkoma, New York ("Liphardt"), a Registered Importer of motor vehicles, requested NHTSA to determine that a 1989 Volvo 240 passenger car that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to the version of the 1989 Volvo 240 that was originally manufactured for importation into and sale in the United States and that was certified by its original manufacturer as complying with the safety standards, and (2) it is capable of being readily

modified to conform to all applicable federal motor vehicle safety standards.

NHTSA published a notice in the **Federal Register** on December 18, 1991 (56 FR 65777) that contained a thorough description of the petition, and solicited public comments upon it. One comment was received in response to this notice, from Volvo Cars of North America ("VCNA"), the U.S. subsidiary of Volvo Car Corporation of Gothenburg, Sweden, the vehicle's original manufacturer.

In its comment, VCNA contended, among other things, that modifications in addition to those specified in the petition would be necessary for a non-U.S. certified 1989 Volvo 240 to comply with Standard Nos. 101 *Controls and Displays*, 108 *Lamps, Reflective Devices and Associated Equipment*, 109 *New Pneumatic Tires*, 111 *Rearview Mirrors*, 208 *Occupant Crash Protection*, 209 *Seat Belt Assemblies*, and 301 *Fuel System Integrity*. VCNA asserted that a major structural modification, consisting of the installation of rear side member reinforcements and corresponding modifications to the rear axle calipers, would be necessary to conform a non-U.S. certified 1989 Volvo 240 to Standard No. 301. In view of this circumstance, VCNA contended that the vehicle cannot be regarded as "capable of being readily modified to conform to all applicable Federal motor vehicle safety standards," precluding it from being determined eligible for importation.

On February 27, 1992, NHTSA furnished Liphardt with a copy of VCNA's comments and accorded it an opportunity to respond. As of the date of this notice, Liphardt has failed to submit such a response. This has compelled NHTSA to conclude, from the state of the record, that the petition does not clearly demonstrate that the non-U.S. certified version of the 1989 Volvo 240 is eligible for importation. The petition must therefore be denied under 49 CFR 593.7(e).

In accordance with section 108(c)(3)(C)(ii) of the Act, 15 U.S.C. 1397(c)(3)(C)(ii), and 49 CFR 593.7(e), NHTSA will not consider a new import eligibility petition covering this vehicle until at least three months from the date of this notice.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.7; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: September 3, 1992.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 92-21685 Filed 9-10-92; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 92-32; Notice 2]

Determination That Nonconforming 1990–1992 Citroen XM Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of determination that nonconforming 1990–1992 Citroen XM passenger cars are eligible for importation.

SUMMARY: This notice announces the determination by the National Highway Traffic Safety Administration (NHTSA) that 1990–1992 Citroen XM passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they have safety features that comply with, or are capable of being modified to comply with, all such standards.

DATE: The determination is effective as of the date of its publication in the September 10, 1992.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that:

(I) the motor vehicle is * * * substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 (of the Act), and of the same model year * * * as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards; or

(II) where there is no substantially similar United States motor vehicle * * * the safety features of the vehicle comply with or are capable of being modified to comply with all applicable Federal motor vehicle safety standards based on destructive test data or such other evidence as (NHTSA) determines to be adequate.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. After it receives a petition, NHTSA publishes notice in the **Federal Register** to solicit comments from interested members of the public. Based on the comments that it receives, NHTSA may request supplemental information from the petitioner. Following close of the comment period, NHTSA reviews the petition, comments, and any supplemental information it receives, and then publishes its determination in the **Federal Register**.

Automative Research and Design, Inc., T/A CXA, of Middlesex, New Jersey (Registered Importer No. R–92–012) petitioned NHTSA to determine that 1990–1992 Citroen XM passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on July 7, 1992 (57 FR 29926) to afford an opportunity for public comment.

As stated in that notice, CXA contended in its petition that the Citroen XM is eligible for importation under section 108(c)(3)(A)(i)(II) of the Act, 15 U.S.C. 1397(c)(3)(A)(i)(II), because it has safety features that comply with, or are capable of being modified to comply with, all applicable Federal motor vehicle safety standards.

Specifically, the petitioner claimed that the 1990–1992 Citroen XM has safety features that comply with Standard Nos. 101 *Controls and Displays*, 102 *Transmission Shift Lever Sequence* * * *, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 108 *Lamps, Reflective Devices and Associated Equipment*, 109 *New Pneumatic Tires*, 110 *Tire Selection and Rims*, 111 *Rearview Mirrors*, 113 *Hood Latch Systems*, 114 *Theft Protection*, 115 *Vehicle Identification Number*, 116 *Brake Fluids*, 118 *Power-Operated Window Systems*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 208 *Occupant Crash Protection*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 214 *Side Door Strength*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

The petitioner also contended that the 1990–1992 Citroen XM complies with the

Bumper Standard found in 49 CFR part 581.

NHTSA requested the petitioner to supply further explanation and documentation to support its claims that the subject vehicle complies with Standard Nos. 104, 105, 108, 109, 110, 111, 201, 202, 203, 207, 208, 210, 216, and 302, and with 49 CFR part 581. The petitioner responded to this request by letters dated June 29, 1992, and July 15, 1992, which were placed in the public docket so that they could be reviewed by anyone wishing to comment on the petition.

One comment was received in response to the notice of petition, from Automobiles Citroen ("Citroen"), the original manufacturer of the Citroen XM. Citroen presented arguments challenging CXA's claims that the 1990–1992 Citroen XM conforms to a number of Federal standards. NHTSA invited CXA to respond to these arguments. The discussion below presents Citroen's arguments, and CXA's responses.

Standard No. 105: Citroen noted that to demonstrate that the 1990–1992 Citroen XM complies with this standard, CXA submitted a report of a test conducted on another vehicle, a 1987 Citroen CX 25 GTI, based on the belief that the two vehicles were equipped with a similar service brake system. Citroen contended that there are "significant differences" between the two systems, and expressed the opinion that a separate test should be conducted on the Citroen XM. The only difference cited by Citroen, however, was that the service brakes on the two vehicles did not utilize the same friction material. CXA responded that it conducted in-house testing that showed the service brake performance of the XM to be superior to that of the CX with respect to stopping distance, fade and recovery, the spike test, and stability within a 12-foot lane.

Standard No. 108: Citroen noted that the CXA merely listed and furnished photographs of the various lighting devices present on the Citroen XM, without submitting test reports to demonstrate compliance with photometric and environmental requirements specified in the standard. Based on the photographs, Citroen observed that CXA had modified the front headlights, but contended that other items of original lighting equipment require modification to comply with the standard, including the rear turn signal, the stop/tail lamps located on the rear fenders, and the tail lamps located on the trunk of the vehicle. CXA responded that the turn signal/stop/tail light assembly has the required "DOT" markings that indicate compliance with the standard for both the sedan and the station wagon version of the Citroen XM.

Standard No. 203: Citroen noted that CXA submitted results of impact tests that were conducted on a Citroen CX Prestige Turbo steering column assembly to demonstrate that the Citroen XM complies with this standard. Contrary to the assertions in CXA's petition that the two vehicles use the same steering wheel, Citroen contended that substantive differences exist between the two designs, and that separate testing on the XM's steering column assembly should therefore be conducted. CXA responded that the steering wheels on the two vehicles only differ with respect to their covering materials, and that they have the same basic construction and means of attachment to the steering column.

Standard No. 208: Citroen noted that CXA submitted results on a 30 mph perpendicular frontal barrier crash test, but provided no data to demonstrate compliance with the occupant crash protection requirements of paragraph S5.1 of the standard at angles within 30 degrees of the perpendicular, as Citroen believes is required under paragraph S4.1.2.1(a) of the standard, or to demonstrate compliance with paragraph S5.1 by means of a manual lap belt and automatic restraints, as Citroen believes is required under paragraph S4.1.2.1(c). CXA responded that there is no need for it to conduct an angular test, as paragraph S5.1(a) only specifies that such a test may be run as an alternative to the perpendicular impact test that CXA did conduct. CXA further contended that the data it submitted demonstrates that the Citroen XM complies with paragraph S4.1.2.1(c) by means of automatic restraints alone, and in such a circumstance it may be assumed that the use of manual lap belts could only improve the vehicle's occupant crash protection, precluding the need for it to submit data demonstrating compliance through use of both automatic and manual restraints.

Standard No. 210: Citroen noted that CZA based its statement that the Citroen XM complies with this standard on documents purporting to demonstrate compliance with ECE regulation 14. Citroen contended that this European standard is not equivalent to its American counterpart, particularly with respect to time limits for maintaining specified force levels in testing seat belt anchorages, which are 10 seconds in paragraph S5.1 of Standard No. 210, but 0.2 second in paragraph 6.3 of ECE regulation 14. CXA responded that it demonstrated that the Citroen XM conforms to this standard not only be comparing the standard's requirements to those of ECE regulation 14, but also by conducting in-house testing, as described in its letter of June 29, 1992 that was placed in the public docket.

Standard No. 302: Citroen noted that CXA based its statement that the Citroen XM complies with this standard on a document described as a "Certificate of Conformity" issued by Germany that shows the vehicle to be in compliance with ECE Standard 302, which CXA claimed is identical to Federal motor vehicle safety standard 302. Citroen disputed this claim on the basis that it did not certify the XM in Germany using ECE Standard 302, as the requirements of that standard are not applicable within Germany. Citroen contended that its vehicles meet ISO 3795 Recommended Practice and ECE Resolution #3, which it claimed are much less stringent than Standard No. 302, specifying a maximum combustion speed of 250 mm per minute (approximately 9.8 inches per minute), as opposed to the four inch per minute maximum combustion speed specified in the U.S. standard. In responding to this comment, CXA reiterated that the vehicle's compliance with Standard No. 302 is established through the German Certificate of Conformity showing that it meets the requirements of ECE Standard 302, which are identical to those of Standard NO. 302.

Bumper Standard: Citroen noted that CXA did not submit any test results to demonstrate that the Citroen XM complies with this standard, as found in 49 CFR Part 581, but instead based its statement of compliance on a visual inspection of the vehicle and on the vehicle's ability to meet purportedly equivalent requirements in ECE Regulation No. 32. Citroen observed that the two standards differ in that the European standard permits testing to be conducted "in normal driving conditions as contemplated by the manufacturer," whereas the U.S. standard has been interpreted by NHTSA as requiring bumpers to be tested at all heights at which a vehicle is capable of being operated. Citroen stated that the XM is equipped with a hydropneumatic suspension system that permits its ground clearance to be adjusted by the driver to four heights with a maximum variation of 7.5 to 8 inches. Citroen contended that the vehicle is not capable of compliance with the Bumper Standard at its lowest adjustable position, as it would sustain damage to the front headlamps if tested at this level. CXA responded that the technical specifications contained in the Citroen XM manual identify the vehicle's total

suspension displacement as 163mm (6.4 inches), as opposed to the 7.5 to 8 inch figure given by Citroen. CXA further stated that based on measurements that it took from a number of XM vehicles, the bumper center height is at an average of 16 inches from the ground at the lowest suspension setting and a maximum average height of 20 inches from the ground at the highest suspension setting. CXA contended that these measurements place the center of the bumper face within the impact specifications of the test procedure at 49 CFR 581.7.

Sedan vs. Station Wagon: Citroen noted that in its letter of July 15, 1992, CXA informed NHTSA that the station wagon version of the Citroen XM was intended to be included in its petition, but provided no additional test data and/or engineering analysis to demonstrate that the station wagon is capable of being conformed to U.S. safety standards. Citroen stated that it had made a number of modifications to the subframe of the station wagon that would compel it, as a manufacturer, to conduct testing to verify compliance with Standard Nos. 108, 204, 208, 210, 212, 216, and 301, as well as with the bumper standard at 49 CFR part 581. CXA responded that because the station wagon version of the Citroen XM is slightly heavier and longer than the sedan version of the vehicle, and has been reinforced at many locations, "it should perform better than the sedan in all areas of crashworthiness." CXA further stated that all other components of the station wagon are identical to those found on the sedan.

Running Changes: Citroen expressed concern that CXA would be unaware of running changes that it makes on XM production vehicles that could affect their compliance with U.S. safety standards. As an example, Citroen stated that it has fitted new front pads and calipers on 1992 XM vehicles that are not interchangeable with older components, and it has changed the material used in its non-asbestos brake pad lining. CXA responded that running changes are normally made to improve the safety or performance of a vehicle, and never to diminish it, and that it can only obtain vehicles several months after they have been produced, at which time any running changes that were made are a matter of public knowledge.

NHTSA has reviewed each of the issues that Citroen has raised regarding CXA's petition. With respect to Standard No. 105, NHTSA is of the opinion that the specifications for the Citroen XM brake system are essentially equivalent to those of the CX model for which CXA supplied test data. NHTSA is willing to accept that data as demonstrating that the brake system on the XM is capable of complying with the standard. NHTSA is also satisfied that the lighting equipment on the Citroen XM is designed to comply with Standard No. 108 by virtue of the fact that the DOT certification symbol appears on that equipment.

With respect to Standard No. 203, CXA has shown to NHTSA's satisfaction that the steering control equipment tested on the Citroen CX is sufficiently similar to what is found on the Citroen XM to demonstrate the test vehicle's conformity to the standard. CXA also furnished satisfactory evidence that the test procedures utilized were those prescribed by the standard.

With respect to Standard No. 208, NHTSA agrees with CXA's position that there is no need for it to show compliance with the occupant crash protection requirements of paragraph S5.1 with both manual and automatic belts if compliance can be shown with automatic belts alone. NHTSA has also concluded that here is no need for CXA to conduct an angular frontal barrier crash test in addition to he perpendicular test that it has already run for the Citroen XM. The agency has reviewed certification data from many vehicle manufacturers that consistently show lower injury levels resulting when the test is conducted at a 30 degree angle. After reviewing the full frontal test results that CXA furnished on the Citroen XM, and considering the components that were contacted by the dummies in these tests, it is NHTSA's engineering judgment that the lower vehicle acceleration pulse that occurs in angular impact would not produce failing results in the Citroen XM if an angular test had been run. Additionally, NHTSA notes that if the manual pelvic restraint installed in the Citroen XM were used, the likelihood of more severe contacts with vehicle surfaces would be reduced.

With respect to Standard No. 210, the data from the in-house testing conducted by CXA demonstrates that the Citroen XM that was tested complies with the standard. With respect to Standard No. 302, NHTSA notes that in its petition, CXA described the Citroen XM as being upholstered in leather or flame retardant fabric which meets the requirements of the standard. CXA subsequently furnished information to verify the vehicle's compliance with Standard No. 302.

As far as the Bumper Standard in 49 CFR part 581 is concerned, NHTSA accepts, with one exception, the measurements furnished by CXA that show the center of the bumper face within the impact specifications of the standard's test procedure. The one exception is that when the vehicle is at its lowest suspension setting, the impact surface of the pendulum that is used as a test device for this standard would be above the top of the bumper. However, the recess of the headlamps (their longitudinal distance from the forward edge of the bumper) appears sufficient to prevent them from being contacted by the impact surface of the pendulum. As a consequence, NHTSA is satisfied that the Citroen XM meets the protective criteria for lamps that are specified in § 581.5(c)(1) of the standard.

Additionally, NHTSA is of the opinion that the station wagon version of the Citroen XM is sufficiently similar to the sedan version of that vehicle, with respect to all standards at issue, to be included within the same import eligibility determination without the need for additional testing or evidence of compliance. NHTSA does not believe that the prospect of running changes on XM production vehicles that could affect compliance with U.S. safety standards impedes the granting of CXA's petition. The basis for the petition is that the safety features of the vehicle comply with or are capable of being modified to comply with all applicable safety standards. It is unlikely that any running changes could so affect the vehicle's compliance with any of the standards at issue to render it incapable of being modified to comply.

In its petition, CXA noted that when tested to Standard No. 216, the Citroen XM sustained a minimum roof crush resistance of 4572 pounds at 5.0 inches, 272 pounds below the required minimum for a vehicle with an unloaded weight of 3230 pounds. CXA attributed this test failure to the fact that the vehicle tested had sustained significant damage in previous testing for compliance with Standard No. 204. NHTSA subsequently requested CXA to conduct additional testing to verify such compliance. Data verifying that the vehicle tested complies with Standard No. 216 was submitted to NHTSA following the close of the comment period. NHTSA did not submit this test data to Citroen for comment because that company did not question the ability of the XM to comply with Standard No. 216 in its comments on the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must

indicate on the Form HS-7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VCP #1 is the vehicle eligibility number assigned to vehicles admissible under this notice of final determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that 1990–1992 Citroen XM passenger cars are eligible for importation into the United States because they have safety features that comply with or are capable of being modified to comply with all applicable Federal motor vehicle safety standards.

This determination does not constitute a determination by the agency that any Citroen XM passenger car that may be imported under this notice in fact complies with any applicable Federal motor vehicle safety standard, and the importer of any such vehicle must, in accordance with 49 CFR 592.6, satisfy the Administrator that the vehicle has been brought into conformity with those standards.

Authority: 15 U.S.C. 1397(c)(3)(a)(i)(II) and (C)(II); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on September 4, 1992.

William A. Boehly,

Associated Administrator for Enforcement.

[FR Doc. 92–21789 Filed 9–9–92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Customs Service

Application for Recordation of Trade Name: Coast Foundry & Mfg. Co.

ACTION: Notice of application for recordation of trade name.

SUMMARY: Application has been filed pursuant to § 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "Coast Foundry & Mfg," used by Coast Foundry & Mfg Co., a corporation organized under the laws of the State of California, located at 2707 North Garey Avenue, Pomona, California 91769.

The application states that the trade name is used in connection with valves and fittings for toilet tanks.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the **Federal Register**.

DATES: Comments must be received on or before November 9, 1992.

ADDRESSES: Written comments should be addressed to U.S. Customs Service, Attention: Intellectual Property Rights Branch, 1301 Constitution Avenue, NW., (room 2104), Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Delois P. Cooper, Intellectual Property Rights Branch, 1301 Constitution Avenue, NW., Washington DC 20229 (202–566–6956).

Dated: September 1, 1992.

John F. Atwood,

Chief, Intellectual Property Rights Branch.

[FR Doc. 92–21690 Filed 9–9–92; 8:45 am]

BILLING CODE 4820-02-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 176
Thursday, September 10, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, September 15, 1992 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC. (Ninth Floor).

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Thursday, September 17, 1992 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC. (Ninth Floor).

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Title 26 Certification Matters
Proposed Final Repayment Determination and Statement of Reasons—Lyndon H. LaRouche, Jr., and the LaRouche Democratic Campaign
Advisory Opinion 1992-30; Bevan Morris of Natural Law Party of the United States of America
Advisory Opinion 1992-32: John L. Sharman of Mike Andrews for Congress
Notice of Proposed Rulemaking—Best efforts to obtain and report contributor identification

DATE AND TIME: Wednesday, September 30, 1992 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This oral presentation Will Be Open to the Public.

MATTER BEFORE THE COMMISSION: Jackson for President 1988 Committee.

DATE AND TIME: Wednesday, October 21, 1992 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This Oral Presentation Will Be Open to the Public.

MATTER BEFORE THE COMMISSION: Americans for Robertson Committee.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219-4155.

Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 92-22001 Filed 9-8-92; 2:43 pm]

BILLING CODE 6715-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11:30 a.m., Monday, September 14, 1992, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 4, 1992.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 92-21873 Filed 9-4-92; 4:56 pm]

BILLING CODE 6210-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 9:00 a.m., Monday, September 14, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposals to implement section 131 of the Federal Deposit Insurance Corporation Improvement Act of 1991 on prompt corrective action for troubled depository institutions. (Proposed earlier for public comment; Docket No. R-0763.)
2. Determination with respect to France under the Primary Dealers Act of 1988.
3. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to:

Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: September 4, 1992.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 92-21872 Filed 9-4-92; 4:56 am]

BILLING CODE 6210-01-M

NATIONAL MEDIATION BOARD

TIME AND DATE: 1:00 p.m., Thursday, September 17, 1992.

PLACE: Hearing Room, Suite 850, 1425 K. Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

(1) Representation determinations issued pursuant to the Delegation Order to the Executive Director.
(2) New Governmentwide Standards of Ethical Conduct.
(3) Representation Assistant Position.
(4) Availability of Automated Arbitral information.
(5) Case closings through FY-1992 to date.
(6) Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

CONTACT PERSON FOR MORE INFORMATION: Mr. William A. Gill, Jr., Executive Director, Tel: (202) 523-5920.

Date of Notice: September 8, 1992.

William A. Gill, Jr.,
Executive Director, National Mediation Board.

[FR Doc. 92-21978 Filed 9-8-92; 2:42 pm]

BILLING CODE 7550-01-M

Corrections

Federal Register
Vol. 57, No. 176
Thursday, September 10, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 86-101-2]

Importation of Birds

Correction

In proposed rule document 92-19912 appearing on page 37737 in the issue of Thursday, August 20, 1992, in the second column, under **SUPPLEMENTARY INFORMATION:**, in the first paragraph, in the fifth line from the bottom, after "United States" insert ", and the offspring of those birds, to be imported into the United States".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP92-657-000, et al.]

Southwest Gas Corporation, et al.; Natural Gas Certificate Filings

Correction

In notice document 92-21001 beginning on page 39678 in the issue of Tuesday, September 1, 1992 make the following corrections:

On page 39679, in the first column, in the table, the Docket numbers now reading "CI92-770-000, CI92-771-000, CI92-772-000, CI92-773-000, CI92-774-000, and CI92-775-000" should read "CI92-70-000, CI92-71-000, CI92-72-000, CI92-73-000, CI92-74-000 and CI92-75-000" respectively.

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—"Ultra Low Emission Engine Program"

Correction

In notice document 92-17464 appearing on page 33013 in the issue of Friday, July 24, 1992, in the first column, the heading should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 49

[PS-17-91]

RIN 1545-AP67

Facilities and Services Excise Tax on Communications

Correction

In proposed rule document 92-18060 appearing on page 33918 in the issue of Friday, July 31, 1992, make the following corrections:

On page 33918, in the 2d column, in the last paragraph, 11 lines from the bottom "not" should read "now".

2. On the same page, in the third column, in paragraph (1), in the fifth line "service" should read "services".

BILLING CODE 1505-01-D

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federal register

Thursday
September 10, 1992

Part II

Department of Justice

Antitrust Division

Federal Trade Commission

1992 Horizontal Merger Guidelines; Notice

DEPARTMENT OF JUSTICE

Antitrust Division

FEDERAL TRADE COMMISSION

1992 Horizontal Merger Guidelines

AGENCIES: Department of Justice Antitrust Division, and Federal Trade Commission.

ACTION: Notice.

SUMMARY: This notice announces the joint release by the Department and the Commission of the 1992 Horizontal Merger Guidelines, updating Guidelines issued by the Department on June 14, 1984 (published in the **Federal Register** June 29, 1984 (49 FR 26823)) and the Commission's 1982 Statement Concerning Horizontal Mergers (reprinted in 4 Trade Reg. Rep. (CCH) ¶13.200). The Guidelines have been revised to clarify the Agencies' enforcement policy concerning horizontal mergers and acquisitions subject to section 7 of the Clayton Act, section 1 of the Sherman Act, or section 5 of the Federal Trade Commission Act. The Guidelines describe the analytical process that the Department and the Commission will use in determining whether to challenge a horizontal merger or acquisition. Publication of the Guidelines is intended to assist businesses in complying with the applicable antitrust laws.

DATE: Issued April 2, 1992.

ADDRESSES: Department of Justice, 10th & Constitution Avenue, NW., Washington, DC 20530; Federal Trade Commission, Sixth & Pennsylvania Avenue, NW., Washington, DC 20580.

Dated: September 1, 1992.

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U.S. Department of Justice and Federal Trade Commission Statement Accompanying Release of Revised Merger Guidelines

April 2, 1992

The U.S. Department of Justice ("Department") and Federal Trade Commission ("Commission") today jointly issued Horizontal Merger Guidelines revising the Department's 1984 Merger Guidelines and the Commission's 1982 Statement Concerning Horizontal Merger Guidelines. The release marks the first time that the two Federal agencies that share antitrust enforcement jurisdiction have issued joint guidelines.

Central to the 1992 Department of Justice and Federal Trade Commission Horizontal Merger Guidelines is a recognition that sound merger enforcement is an essential component of our free enterprise system benefitting the competitiveness of American firms and the welfare of American consumers. Sound merger enforcement must prevent anticompetitive mergers yet avoid deterring the larger universe of procompetitive or competitively neutral mergers. The 1992 Horizontal Merger Guidelines implement this objective by describing the analytical foundations of merger enforcement and providing guidance enabling the business community to avoid antitrust problems when planning mergers.

The Department first released Merger Guidelines in 1968 in order to inform the business community of the analysis applied by the Department to mergers under the Federal antitrust laws. The 1968 Merger Guidelines eventually fell into disuse, both internally and externally, as they were eclipsed by developments in legal and economic thinking about mergers.

In 1982, the Department released revised Merger Guidelines which, reflecting those developments, departed dramatically from the 1968 version. Relative to the Department's actual practice, however, the 1982 Merger Guidelines represented an evolutionary not revolutionary change. On the same date, the Commission released its Statement Concerning Horizontal Mergers highlighting the principal considerations guiding the Commission's horizontal merger enforcement and noting the "considerable weight" given by the Commission to the Department's 1982 Merger Guidelines.

The Department's current Merger Guidelines, released in 1984, refined and clarified the analytical framework of the 1982 Merger Guidelines. Although the agencies' experience with the 1982 Merger Guidelines reaffirmed the soundness of its underlying principles, the Department concluded that there remained room for improvement.

The revisions embodied in the 1992 Horizontal Merger Guidelines reflect the next logical step in the development of the agencies' analysis of mergers. They reflect the Department's experience in applying the 1982 and 1984 Merger Guidelines as well as the Commission's experience in applying those Guidelines and the Commission's 1982 Statement. Both the Department and the Commission believed that their respective Guidelines and Statement presented sound frameworks for antitrust analysis of mergers, but that improvements could be made to reflect advances in legal and economic thinking. The 1992 Horizontal Merger Guidelines accomplish this objective and also clarify certain aspects of the Merger Guidelines that proved to be ambiguous or were interpreted by observers in ways that were inconsistent with the actual policy of the agencies.

The 1992 Horizontal Merger Guidelines do not include a discussion of horizontal effects from non-horizontal mergers (*e.g.*, elimination of specific potential entrants and competitive problems from vertical mergers). Neither agency has changed its policy with respect to non-horizontal mergers. Specific guidance on non-horizontal mergers is provided in section 4 of the Department's 1984 Merger Guidelines, read in the context of today's revisions to the treatment of horizontal mergers.

A number of today's revisions are largely technical or stylistic. One major objective of the revisions is to strengthen the document as an analytical road map for the evaluation of mergers. The language, therefore, is intended to be burden-neutral, without altering the burdens of proof or burdens of coming forward as those standards have been established by the courts. In addition, the revisions principally address two areas.

The most significant revision to the Merger Guidelines is to explain more clearly how mergers may lead to adverse competitive effects and how particular market factors relate to the analysis of those effects. These revisions are found in section 2 of the Horizontal Merger Guidelines. The second principal revision is to sharpen the distinction between the treatment of various types of supply responses and to articulate the framework for analyzing the timeliness, likelihood and sufficiency of entry. These revisions are found in sections 1.3 and 3.

The new Horizontal Merger Guidelines observe, as did the 1984 Guidelines, that because the specific standards they set out must be applied in widely varied factual circumstances, mechanical application of those standards could produce misleading results. Thus, the Guidelines state that the agencies will apply those standards reasonably and flexibly to the particular facts and circumstances of each proposed merger.

Department of Justice and Federal Trade Commission Horizontal Merger Guidelines

April 2, 1992.

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O. Purpose, Underlying Policy Assumptions and Overview

These Guidelines outline the present enforcement policy of the Department of Justice and the Federal Trade Commission (the "Agency") concerning horizontal acquisition and mergers ("mergers") subject to section 7 of the Clayton Act,[1] to section 1 of the Sherman Act [2], or to section 5 of the FTC Act.[3] They describe the analytical framework and specific standards normally used by the Agency in analyzing mergers.[4] By stating its policy as simply and clearly as possible, the Agency hopes to reduce the uncertainty associated with enforcement of the antitrust laws in this area.

Although the Guidelines should improve the predictability of the Agency's merger enforcement policy, it is not possible to remove the exercise of judgment from the evaluation of mergers under the antitrust laws. Because the specific standards set forth in the Guidelines must be applied to a broad range of possible factual circumstances, mechanical application of those standards may provide misleading answers to the economic questions raised under the antitrust laws. Moreover, information is often incomplete and the picture of competitive conditions that develops from historical evidence may provide an incomplete answer to the forward-looking inquiry of the Guidelines. Therefore, the Agency will apply the standards of the Guidelines reasonably and flexibily to the particular facts and circumstances of each proposed merger.

0.1 Purpose and Underlying Policy Assumptions of the Guidelines

The Guidelines are designed primarily to articulate the analytical framework the Agency applies in determining whether a merger is likely substantially to lessen competition, not to describe how the Agency will conduct the litigation of cases that it decides to bring. Although relevant in the latter context, the factors contemplated in the Guidelines neither dictate nor exhaust the range of evidence that the Agency must or may introduce in litigation. Consistent with their objective, the Guidelines do not attempt to assign the burden of proof, or the burden of coming forward with evidence, on any particular issue. Nor do the Guidelines attempt to adjust or reapportion burdens of proof or burdens of coming forward as those standards have been established by the courts.[5] Instead, the Guidelines set forth a methodology for analyzing issues once the necessary facts are available. The necessary facts may be derived from the documents and statements of both the merging firms and other sources.

Throughout the Guidelines, the analysis is focused on whether consumers or producers "likely would" take certain actions, that is, whether the action is in the actor's economic interest. References to the profitability of certain actions focus on economic profits rather than accounting profits. Economic profits may be defined as the excess of revenues over costs where costs include the opportunity cost of invested capital.

Mergers are motivated by the prospect of financial gains. The possible sources of the financial gains from mergers are many, and the Guidelines do not attempt to identify all possible sources of gain in every merger. Instead, the Guidelines focus on the one potential source of gain that is of concern under the antitrust laws: market power.

The unifying theme of the Guidelines is that mergers should not be permitted to create or enhance market power or to facilitate its exercise. Market power to a seller is the ability profitably to maintain prices above competitive levels for a significant period of time.[6] In some circumstances, a sole seller (a "monopolist") of a product with no good substitutes can maintain a selling price that is above the level that would prevail if the market were competitive. Similarly, in some circumstances, where only a few firms account for most of the sales of a product, those firms can exercise market power, perhaps even approximating the performance of a monopolist, by either explicitly or implicitly coordinating their actions. Circumstances also may permit a single firm, not a monopolist, to excercise market power through unilateral or non-coordinated conduct—conduct the success of which does not rely on the concurrence of other firms in the market or on coordinated responses by those firms. In any case, the result of the exercise of market power is a transfer of wealth from buyers to sellers or a misallocation of resources.

Market power also encompasses the ability of a single buyer (a "monopsonist"), a coordinating group of buyers, or a single buyer, not a monopsonist, to depress the price paid for a product to a level that is below the competitive price and thereby depress output. The exercise of market power by buyers ("monopsony power") has adverse effects comparable to those associated with the exercise of market power by sellers. In order to assess potential monopsony concerns, the Agency will apply an analytical framework analogous to the framework of these Guidelines.

While challenging competitively harmful mergers, the Agency seeks to avoid unnecessary interference with the larger universe of mergers that are either competitively beneficial or neutral. In

[1] 15 U.S.C. 18 (1988). Mergers subject to section 7 are prohibited if their effect "may be substantially to lessen competition, or to tend to create a monopoly."

[2] 15 U.S.C. 1 (1988). Mergers subject to section 1 are prohibited if they constitute a "contract, combination * * *, or conspiracy in restraint of trade."

[3] 15 U.S.C. 45 (1988). Mergers subject to section 5 are prohibited if they constitute an "unfair method of competition."

[4] These Guidelines update the Merger Guidelines issued by the U.S. Department of Justice in 1984 and the Statement of Federal Trade Commission Concerning Horizontal Mergers issued in 1982. The Merger Guidelines may be revised from time to time as necessary to reflect any significant changes in enforcement policy or to clarify aspects of existing policy

[5] For example, the burden with respect to efficiency and failure continues to reside with the proponents of the merger.

[6] Sellers with market power also may lessen competition on dimensions other than price, such as product quality, service, or innovation.

implementing this objective, however, the Guidelines reflect the congressional intent that merger enforcement should interdict competitive problems in their incipiency.

0.2 Overview

The Guidelines describe the analytical process that the Agency will employ in determining whether to challenge a horizontal merger. First, the Agency assesses whether the merger would significantly increase concentration and result in a concentrated market, properly defined and measured. Second, the Agency assesses whether the merger, in light of market concentration and other factors that characterize the market, raises concern about potential adverse competitive effects. Third, the Agency assesses whether entry would be timely, likely and sufficient either to deter or to counteract the competitive effects of concern. Fourth, the Agency assesses any efficiency gains that reasonably cannot be achieved by the parties through other means. Finally the Agency assesses whether, but for the merger, either party to the transaction would be likely to fail, causing its assets to exit the market. The process of assessing market concentration, potential adverse competitive effects, entry, efficiency and failure is a tool that allows the Agency to answer the ultimate inquiry in merger analysis: whether the merger is likely to create or enhance market power or to facilitate its exercise.

1. Market Definition, Measurement and Concentration

1.0 Overview

A merger is unlikely to create or enhance market power or to facilitate its exercise unless it significantly increases concentration and results in a concentrated market, properly defined and measured. Mergers that either do not significantly increase concentration or do not result in a concentrated market ordinarily require no further analysis.

The analytic process described in this section ensures that the Agency evaluates the likley competitive impact of a merger within the context of economically meaningful markets—*i.e.*, markets that could be subject to the exercise of market power. Accordingly, for each product or service (hereafter "product") of each merger firm, the Agency seeks to define a market in which firms could effectively exercise market power if they were able to coordinate their actions.

Market definition focuses solely on demand substitution factors—*i.e.*, possible consumer responses. Supply substitution factors—*i.e.*, possible production responses—are considered elsewhere in the Guidelines in the identification of firms that participate in the relevant market and the analysis of entry. See sections 1.3 and 3. A market is defined as a product or group of products and a geographic area in which it is produced or sold such that a hypothetical profit-maximizing firm, not subject to price regulation, that was the only present and future producer or seller of those products in that area likely would impose at least a "small but significant and nontransitory" increase in price, assuming the terms of sale of all other products are held constant. A relevant market is a group of products and a geographic area that is no bigger than necessary to satisfy this test. The "small but significnat and nontransitory" increase in price is employed solely as a methodological tool for the analysis of mergers: it is not a tolerance level for price increases.

Absent price discrimination, a relevant market is described by a product or group of products and a geographic area. In determining whether a hypothetical monopolist would be in a position to exercise market power, it is necessary to evaluate the likely demand responses of consumers to a price increase. A price increase could be made unprofitable by consumers either switching to other products or switching to the same product produced by firms at other locations. The nature and magnitude of these two types of demand responses respectively determine the scope of the product market and the geographic market.

In contrast, where a hypothetical monopolist likely would discriminate in prices charged to different groups of buyers, distinguished, for example, by their uses or locations, the Agency may delineate different relevant markets corresponding to each such buyer group. Competition for sales to each such group may be affected differently by a particular merger and markets are delineated by evaluating the demand response of each such buyer group. A relevant market of this kind is described by a collection of products for sale to a given group of buyers.

Once defined, a relevant market must be measured in terms of its participants and concentration. Participants include firms currently producing or selling the market's products in the market's geographic area. In addition, participants may include other firms depending on their likely supply responses to a "small but significant and nontransitory" price increase. A firm is viewed as a participant if, in response to a "small but significant and nontransitory" price increase, it likely would enter rapidly into production or sale of a market product in the market's area, without incurring significant sunk costs of entry and exit. Firms likely to make any of these supply responses are considered to be "uncommitted' entrants because their supply response would create new production or sale in the relevant market and because that production or sale could be quickly terminated without significant loss.[7] Uncommitted entrants are capable of making such quick and uncommitted supply responses that they likely influenced the market premerger, would influence it post-merger, and accordingly are considered as market participants at both times. This analysis of market definition and market measurement applies equally to foreign and domestic firms.

If the process of market definition and market measurement identifies one or more relevant markets in which the merging firms are both participants, then the merger is considered to be horizontal. Sections 1.1 through 1.5 describe in greater detail how product and geographic markets will be defined, how market shares will be calculated and how market concentration will be assessed.

1.1 Product Market Definition

The Agency will first define the relevant product market with respect to each of the products of each of the merging firms.[8]

1.11 General Standards

Absent price discrimination, the Agency will delineate the product market to be a product or group of products such that a hypothetical profit-maximizing firm that was the only present and future seller of those products ("monopolist") likely would impose at least a "small but significant and nontransitory" increase in price. That is, assuming that buyers likely

[7] Probable supply responses that require the entrant to incur significant sunk costs of entry and exit are not part of market measurement, but are included in the analysis of the significance of entry. See Section 3. Entrants that must commit substantial sunk costs are regarded as "committed" entrants because those sunk costs make entry irreversible in the short term without foregoing that investment; thus the likelihood of their entry must be evaluated with regard to their long-term profitability.

[8] Although discussed separately, product market definition and geographic market definition are interrelated. In particular, the extent to which buyers of a particular product would shift to other products in the event of a "small but significant and nontransitory" increase in price must be evaluated in the context of the relevant geographic market.

would respond to an increase in price for a tentatively identified product group only by shifting to other products, what would happen? If the alternatives were, in the aggregate, sufficiently attractive at their existing terms of sale, an attempt to raise prices would result in a reduction of sales large enough that the price increase would not prove profitable, and the tentatively identified product group would prove to be too narrow.

Specifically, the Agency will begin with each product (narrowly defined) produced or sold by each merging firm and ask what would happen if a hypothetical monopolist of that product imposed at least a "small but significant and nontransitory" increase in price, but the terms of sale of all other products remained constant. If, in response to the price increase, the reduction in sales of the product would be large enough that a hypothetical monopolist would not find it profitable to impose such an increase in price, then the Agency will add to the product group the product that is the next-best substitute for the merging firm's product.[9]

In considering the likely reaction of buyers to a price increase, the Agency will take into account all relevant evidence, including, but not limited to, the following:

(1) Evidence that buyers have shifted or have considered shifting purchases between products in response to relative changes in price or other competitive variables;

(2) Evidence that sellers base business decisions on the prospect of buyer substitution between products in response to relative changes in price or other competitive variables;

(3) The influence of downstream competition faced by buyers in their output markets; and

(4) The timing and costs of switching products.

The price increase question is then asked for a hypothetical monopolist controlling the expanded product group. In performing successive iterations of the price increase test, the hypothetical monopolist will be assumed to pursue maximum profits in deciding whether to raise the prices of any or all of the additional products under its control. This process will continue until a group of products is identified such that a hypothetical monopolist over that group of products would profitably impose at least a "small but significant and nontransitory" increase, including the price of a product of one of the merging firms. The Agency generally will consider the relevant product market to be the smallest group of products that satisfies this test.

In the above analysis, the Agency will use prevailing prices of the products of the merging firms and possible substitutes for such products, unless premerger circumstances are strongly suggestive of coordinated interaction, in which case the Agency will use a price more reflective of the competitive price.[10] However, the Agency may use likely future prices, absent the merger, when changes in the prevailing prices can be predicted with reasonable reliability. Changes in price may be predicted on the basis of, for example, changes in regulation which affect price either directly or indirectly by affecting costs or demand.

In general, the price for which an increase will be postulated will be whatever is considered to be the price of the product at the stage of the industry being examined.[11] In attempting to determine objectively the effect of a "small but significant and nontransitory" increase in price, the Agency, in most contexts, will use a price increase of five percent lasting for the foreseeable future. However, what constitutes a "small but significant and nontransitory" increase in price will depend on the nature of the industry, and the Agency at times may use a price increase that is larger or smaller than five percent.

1.12 Product Market Definition in the Presence of Price Discrimination

The analysis of product market definition to this point has assumed that price discrimination—charging different buyers different prices for the same product, for example—would not be profitable for a hypothetical monopolist. A different analysis applies where price discrimination would be profitable for a hypothetical monopolist.

Existing buyers sometimes will differ significantly in their likelihood of switching to other products in response to a "small but significant and nontransitory" price increase. If a hypothetical monopolist can identify and price differently to those buyers ("targeted buyers") who would not defeat the targeted price increase by substituting to other products in response to a "small but significant and nontransitory" price increase for the relevant product, and if other buyers likely would not purchase the relevant product and resell to targeted buyers, then a hypothetical monopolist would profitably impose a discriminatory price increase on sales to targeted buyers. This is true regardless of whether a general increase in price would cause such significant substitution that the price increase would not be profitable. The Agency will consider additional relevant product markets consisting of a particular use or uses by groups of buyers of the product for which a hypothetical monopolist would profitably and separately impose at least a "small but significant and nontransitory" increase in price.

1.2 Geographic Market Definition

For each product market in which both merging firms participate, the Agency will determine the geographic market or markets in which the firms produce or sell. A single firm may operate in a number of different geographic markets.

1.21 General Standards

Absent price discrimination, the Agency will delineate the geographic market to be a region such that a hypothetical monopolist that was the only present or future producer of the relevant product at locations in that region would profitably impose at least a "small but significant and nontransitory" increase in price, holding constant the terms of sale for all products produced elsewhere. That is, assuming that buyers likely would respond to a price increase on products produced within the tentatively identified region only by shifting to products produced at locations of production outside the region, what would happen? If those locations of production outside the region were, in the aggregate, sufficiently attractive at their existing terms of sale, an attempt to raise price would result in a reduction in sales large enough that the price increase would not prove profitable, and the tentatively identified geographic area would prove to be too narrow.

In defining the geographic market or markets affected by a merger, the Agency will begin with the location of each merging firm (or each plant of a multiplant firm) and ask what would happen if a hypothetical monopolist of

[9] Throughout the Guidelines, the term "next best substitute" refers to the alternative which, if available in unlimited quantities at constant prices, would account for the greatest value of diversion of demand in response to a "small but significant and nontransitory" price increase.

[10] The terms of sale of all other products are held constant in order to focus market definition on the behavior of consumers. Movements in the terms of sale for other products, as may result from the behavior of producers of those products, are accounted for in the analysis of competitive effects and entry. See Sections 2 and 3.

[11] For example, in a merger between retailers, the relevant price would be the retail price of a product to consumers. In the case of a merger among oil pipelines, the relevant price would be the tariff—the price of the transportation service.

the relevant product at that point imposed at least a "small but significant and nontransitory" increase in price, but the terms of sale at all other locations remained constant. If, in response to the price increase, the reduction in sales of the product at that location would be large enough that a hypothetical monopolist producing or selling the relevant product at the merging firm's location would not find it profitable to impose such an increase in price, then the Agency will add the location from which production is the next-best substitute for production at the merging firm's location.

In considering the likely reaction of buyers to a price increase, the Agency will take into account all relevant evidence, including, but not limited to, the following:

(1) Evidence that buyers have shifted or have considered shifting to relative changes in price or other competitive variables;

(2) Evidence that sellers base business decisions on the prospect of buyer substitution between geographic locations in response to relative changes in price or other competitive variables;

(3) The influence of downstream competition faced by buyers in their output markets; and

(4) The timing and costs of switching suppliers.

The price increase question is then asked for a hypothetical monopolist controlling the expanded group of locations. In performing successive iterations of the price increase test, the hypothetical monopolist will be assumed to pursue maximum profits in deciding whether to raise the price at any or all of the additional locations under its control. This process will continue until a group of locations is identified such that a hypothetical monopolist over that group of locations would profitably impose at least a "small but significant and nontransitory" increase, including the price charged at a location of one of the merging firms.

The "smallest market" principle will be applied as it is in product market definition. The price for which an increase will be postulated, what constitutes a "small but significant and nontransitory" increase in price, and the substitution decisions of consumers all will be determined in the same way in which they are determined in product market definition.

1.22 Geographic Market Definition in the Presence of Price Discrimination

The analysis of geographic market definition to this point has assumed that geographic price discrimination—charging different prices net of transportation costs for the same product to buyers in different areas, for example—would not be profitable for a hypothetical monopolist. However, if a hypothetical monopolist can identify and price differently to buyers in certain areas ("targeted buyers") who would not defeat the targeted price increase by substituting to more distant sellers in response to a "small but significant and nontransitory" price increase for the relevant product, and if other buyers likely would not purchase the relevant product and resell to targeted buyers,[12] then a hypothetical monopolist would profitably impose a discriminatory price increase. This is true even where a general price increase would cause such significant substitution that the price increase would not be profitable. The Agency will consider additional geographic markets consisting of particular locations of buyers for which a hypothetical monopolist would profitably and separately impose at least a "small but significant and nontransitory" increase in price.

1.3 Identification of Firms that Participate in the Relevant Market

1.31 Current Producers or Sellers

The Agency's identification of firms that participate in the relevant market begins with all firms that currently produce or sell in the relevant market. This includes vertically integrated firms to the extent that such inclusion accurately reflects their competitive significance in the relevant market prior to the merger. To the extent that the analysis under Section 1.1 indicates that used, reconditioned or recycled goods are included in the relevant market, market participants will include firms that produce or sell such goods and that likely would offer those goods in competition with other relevant products.

1.32 Firms That Participate Through Supply Response

In addition, the Agency will identify other firms not currently producing or selling the relevant product in the relevant area as participating in the relevant market if their inclusion would more accurately reflect probable supply responses. These firms are termed "uncommitted entrants." These supply responses must be likely to occur within one year and without the expenditure of significant sunk costs of entry and exit, in response to a "small but significant and nontransitory" price increase. If a firm has the technological capability to achieve such an uncommitted supply response, but likely would not (*e.g.*, because difficulties in achieving product acceptance, distribution, or production would render such a response unprofitable), that firm will not be considered to be a market participant. The competitive significance of supply responses that require more time or that require firms to incur significant sunk costs of entry and exit will be considered in entry analysis. See section 3.[13]

Sunk costs are the acquisition costs of tangible and intangible assets that cannot be recovered through the redeployment of these assets outside the relevant market, *i.e.*, costs uniquely incurred to supply the relevant product and geographic market. Examples of sunk costs may include market-specific investments in production facilities, technologies, marketing (including product acceptance), research and development, regulatory approvals, and testing. A significant sunk cost is one which would not be recouped within one year of the commencement of the supply response, assuming a "small but significant and nontransitory" price increase in the relevant market. In this context, a "small but significant and nontransitory" price increase will be determined in the same way in which it is determined in product market definition, except the price increase will be assumed to last one year. In some instances, it may be difficult to calculate sunk costs with precision. Accordingly, when necessary, the Agency will make an overall assessment of the extent of sunk costs for firms likely to participate through supply responses.

These supply responses may give rise to new production of products in the relevant product market or new sources of supply in the relevant geographic market. Alternatively, where price discrimination is likely so that the relevant market is defined in terms of a targeted group of buyers, these supply responses serve to identify new sellers to the targeted buyers. Uncommitted supply responses may occur in several different ways: by the switching or extension of existing assets to production or sale in the relevant market; or by the construction or

[12] This arbitrage is inherently impossible for many services and is particularly difficult where the product is sold on a delivered basis and where transportation costs are a significant percentage of the final cost.

[13] If uncommitted entrants likely would also remain in the market and would meet the entry tests of timeliness, likelihood and sufficiency, and thus would likely deter anticompetitive mergers or deter or counteract the competitive effects of concern (See section 3, *infra*), the Agency will consider the impact of those firms in the entry analysis.

acquisition of assets that enable production or sale in the relevant market.

1.321 Production Substitution and Extension: The Switching or Extension of Existing Assets to Production or Sale in the Relevant Market

The productive and distributive assets of a firm sometimes can be used to produce and sell either the relevant products or products that buyers do not regard as good substitutes. Production substitution refers to the shift by a firm in the use of assets from producing and selling one product to producing and selling another. Production extension refers to the use of those assets, for example, existing brand names and reputation, both for their current production and for production of the relevant product. Depending upon the speed of that shift and the extent of sunk costs incurred in the shift or extension, the potential for production substitution or extension may necessitate treating as market participants firms that do not currently produce the relevant product.[14]

If a firm has existing assets that likely would be shifted or extended into production and sale of the relevant product within one year, and without incurring significant sunk costs of entry and exit, in response to a "small but significant and nontransitory" increase in price for only the relevant product, the Agency will treat that firm as a market participant. In assessing whether a firm is such a market participant, the Agency will take into account the costs of substitution or extension relative to the profitability of sales at the elevated price, and whether the firm's capacity is elsewhere committed or elsewhere so profitably employed that such capacity likely would not be available to respond to an increase in price in the market.

1.322 Obtaining New Assets for Production or Sale of the Relevant Product

A firm may also be able to enter into production or sale in the relevant market within one year and without the expenditure of significant sunk costs of entry and exit, in response to a "small but significant and nontransitory" increase in price for only the relevant product, even if the firm is newly organized or is an existing firm without products or productive assets closely related to the relevant market. If new firms, or existing firms without closely related products or productive assets, likely would enter into production or sale in the relevant market within one year without the expenditure of significant sunk costs of entry and exit, the Agency will treat those firms as market participants.

1.4 Calculating Market Shares

1.41 General Approach

The Agency normally will calculate market shares for all firms (or plants) identified as market participants in Section 1.3 based on the total sales or capacity currently devoted to the relevant market together with that which likely would be devoted to the relevant market in response to a "small but significant and nontransitory" price increase. Market shares can be expressed either in dollar terms through measurement of sales, shipments, or production, or in physical terms through measurement of sales, shipments, production, capacity, or reserves.

Market shares will be calculated using the best indicator of firms' future competitive significance. Dollar sales or shipments generally will be used if firms are distinguished primarily by differentiation of their products. Unit sales generally will be used if firms are distinguished primarily on the basis of their relative advantages in serving different buyers or groups of buyers. Physical capacity or reserves generally will be used if it is these measures that most effectively distinguish firms.[15] Typically, annual data are used, but where individual sales are large and infrequent so that annual data may be unrepresentative, the Agency may measure market shares over a longer period of time.

In measuring a firm's market share, the Agency will not include its sales or capacity to the extent that the firm's capacity is committed or so profitably employed outside the relevant market that it would not be available to respond to an increase in price in the market.

1.42 Price Discrimination Markets

When markets are defined on the basis of price discrimination (Sections 1.12 and 1.22), the Agency will include only sales likely to be made into, or capacity likely to be used to supply, the relevant market in response to a "small but significant and nontransitory" price increase.

1.43 Special Factors Affecting Foreign Firms

Market shares will be assigned to foreign competitors in the same way in which they are assigned to domestic competitors. However, if exchange rates fluctuate significantly, so that comparable dollar calculations on an annual basis may be unrepresentative, the Agency may measure market shares over a period longer than one year.

If shipments from a particular country to the United States are subject to a quota, the market shares assigned to firms in that country will not exceed the amount of shipments by such firms allowed under the quota.[16] In the case of restraints that limit imports to some percentage of the total amount of the product sold in the United States (*i.e.*, percentage quotas), a domestic price increase that reduced domestic consumption also would reduce the volume of imports into the United States. Accordingly, actual import sales and capacity data will be reduced for purposes of calculating market shares. Finally, a single market share may be assigned to a country or group of countries if firms in that country or group of countries act in coordination.

1.5 Concentration and Market Shares

Market concentration is a function of the number of firms in a market and their respective market shares. As an aid to the interpretation of market data, the Agency will use the Herfindahl-Hirschman Index ("HHI") of market concentration. The HHI is calculated by summing the squares of the individual market shares of all the participants.[17] Unlike the four-firm concentration ratio, the HHI reflects both the distribution of the market shares of the top four firms and the composition of the market outside the top four firms. It also gives proportionately greater weight to the

[14] Under other analytical approaches, production substitution sometimes has been reflected in the description of the product market. For example, the product market for stamped metal products such as automobile hub caps might be described as "light metal stamping," a production process rather than a product. The Agency believes that the approach described in the text provides a more clearly focused method of incorporating this factor in merger analysis. If production substitution among a group of products is nearly universal among the firms selling one or more of those products, however, the Agency may use an aggregate description of those markets as a matter of convenience.

[15] Where all firms have, on a forward-looking basis, an equal likelihood of securing sales, the Agency will assign firms equal shares.

[16] The constraining effect of the quota on the importer's ability to expand sales is relevant to the evaluation of potential adverse competitive effects See Section 2.

[17] For example, a market consisting of four firms with market shares of 30 percent, 30 percent, 20 percent and 20 percent has an HHI of 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI ranges from 10,000 (in the case of a pure monopoly) to a number approaching zero (in the case of an atomistic market). Although it is desirable to include all firms in the calculation, lack of information about small firms is not critical because such firms do not affect the HHI significantly.

market shares of the larger firms, in accord with their relative importance in competitive interactions.

The Agency divides the spectrum of market concentration as measured by the HHI into three regions that can be broadly characterized as unconcentrated (HHI below 1000), moderately concentrated (HHI between 1000 and 1800), and highly concentrated (HHI above 1800). Although the resulting regions provide a useful framework for merger analysis, the numerical divisions suggest greater precision than is possible with the available economic tools and information. Other things being equal, cases falling just above and just below a threshold present comparable competitive issues.

1.51 General Standards

In evaluating horizontal mergers, the Agency will consider both the post-merger market concentration and the increase in concentration resulting from the merger.[18] Market concentration is a useful indicator of the likely potential competitive effect of a merger. The general standards for horizontal mergers are as follows:

(a) *Post-Merger HHI Below 1000.* The Agency regards markets in this region to be unconcentrated. Mergers resulting in unconcentrated markets are unlikely to have adverse competitive effects and ordinarily require no further analysis.

(b) *Post-Merger HHI Between 1000 and 1800.* The Agency regards markets in this region to be moderately concentrated. Mergers producing an increase in the HHI of less than 100 points in moderately concentrated markets post-merger are unlikely to have adverse competitive consequences and ordinarily require no further analysis. Mergers producing an increase in the HHI of more than 100 points in moderately concentrated markets post-merger potentially raise significant competitive concerns depending on the factors set forth in sections 2–5 of the Guidelines.

(c) *Post-Merger HHI Above 1800.* The Agency regards markets in this region to be highly concentrated. Mergers producing an increase in the HHI of less than 50 points, even in highly concentrated markets post-merger, are unlikely to have adverse competitive consequences and ordinarily require no further analysis. Mergers producing an increase in the HHI of more than 50 points in highly concentrated markets post-merger potentially raise significant competitive concerns, depending on the factors set forth in sections 2–5 of the Guidelines. Where the post-merger HHI exceeds 1800, it will be presumed that mergers producing an increase in the HHI of more than 100 points are likely to create or enhance market power or facilitate its exercise. The presumption may be overcome by a showing that factors set forth in sections 2–5 of the Guidelines make it unlikely that the merger will create or enhance market power or facilitate its exercise, in light of market concentration and market shares.

1.52 Factors Affecting the Significance of Market Shares and Concentration

The post-merger level of market concentration and the change in concentration resulting from a merger affect the degree to which a merger raises competitive concerns. However, in some situations, market share and market concentration data may either understate or overstate the likely future competitive significance of a firm or firms in the market or the impact of a merger. The following are examples of such situations.

1.521 Changing Market Conditions

Market concentration and market share data of necessity are based on historical evidence. However, recent or ongoing changes in the market may indicate that the current market share of a particular firm either understates or overstates the firm's future competitive significance. For example, if a new technology that is important to long-term competitive viability is available to other firms in the market, but is not available to a particular firm, the Agency may conclude that the historical market share of that firm overstates its future competitive significance. The Agency will consider reasonably predictable effects of recent or ongoing changes in market conditions in interpreting market concentration and market share data.

1.522 Degree of Difference Between the Products and Locations in the Market and Substitutes Outside the Market

All else equal, the magnitude of potential competitive harm from a merger is greater if a hypothetical monopolist would raise price within the relevant market by substantially more than a "small but significant and nontransitory" amount. This may occur when the demand substitutes outside the relevant market, as a group, are not close substitutes for the products and locations within the relevant market. There thus may be a wide gap in the chain of demand substitutes at the edge of the product and geographic market. Under such circumstances, more market power is at stake in the relevant market than in a market in which a hypothetical monopolist would raise price by exactly five percent.

2. The Potential Adverse Competitive Effects of Mergers

2.0 Overview

Other things being equal, market concentration affects the likelihood that one firm, or a small group of firms, could successfully exercise market power. The smaller the percentage of total supply that a firm controls, the more severely it must restrict its own output in order to produce a given price increase, and the less likely it is that an output restriction will be profitable. If collective action is necessary for the exercise of market power, as the number of firms necessary to control a given percentage of total supply decreases, the difficulties and costs of reaching and enforcing an understanding with respect to the control of that supply might be reduced. However, market share and concentration data provide only the starting point for analyzing the competitive impact of a merger. Before determining whether to challenge a merger, the Agency also will assess the other market factors that pertain to competitive effects, as well as entry, efficiencies and failure.

This section considers some of the potential adverse competitive effects of mergers and the factors in addition to market concentration relevant to each. Because an individual merger may threaten to harm competition through more than one of these effects, mergers will be analyzed in terms of as many potential adverse competitive effects as are appropriate. Entry, efficiencies, and failure are treated in Sections 3–5.

2.1 Lessening of Competition Through Coordinated Interaction

A merger may diminish competition by enabling the firms selling in the relevant market more likely, more successfully, or more completely to engage in coordinated interaction that harms consumers. Coordinated interaction is comprised of actions by a group of firms that are profitable for each of them only as a result of the accommodating reactions of the others.

[18] The increase in concentration as measured by the HHI can be calculated independently of the overall market concentration by doubling the product of the market shares of the merging firms. For example, the merger of firms with shares of 5 percent and 10 percent of the market would increase the HHI by 100 ($5 \times 10 \times 2 = 100$). The explanation for this technique is as follows: In calculating the HHI before the merger, the market shares of the merging firms are squared individually: $(a)^2 + (b)^2$. After the merger, the sum of those shares would be squared: $(a + b)^2$, which equals $a^2 + 2ab + b^2$. The increase in the HHI therefore is represented by 2ab.

This behavior includes tacit or express collusion, and may or may not be lawful in and of itself.

Successful coordinated interaction entails reaching terms of coordination that are profitable to the firms involved and an ability to detect and punish deviations that would undermine the coordinated interaction. Detection and punishment of deviations ensure that coordinating firms will find it more profitable to adhere to the terms of coordination than to pursue short-term profits from deviating, given the costs of reprisal. In this phase of the analysis, the Agency will examine the extent to which post-merger market conditions are conducive to reaching terms of coordination, detecting deviations from those terms, and punishing such deviations. Depending upon the circumstances, the following market factors, among others, may be relevant: The availability of key information concerning market conditions, transactions and individual competitors; the extent of firm and product heterogeneity; pricing or marketing practices typically employed by firms in the market; the characteristics of buyers and sellers; and the characteristics of typical transactions.

Certain market conditions that are conducive to reaching terms of coordination also may be conducive to detecting or punishing deviations from those terms. For example, the extent of information available to firms in the market, or the extent of homogeneity, may be relevant to both the ability to reach terms of coordination and to detect or punish deviations from those terms. The extent to which any specific market condition will be relevant to one or more of the conditions necessary to coordinated interaction will depend on the circumstances of the particular case.

It is likely that market conditions are conducive to coordinated interaction when the firms in the market previously have engaged in express collusion and when the salient characteristics of the market have not changed appreciably since the most recent such incident. Previous express collusion in another geographic market will have the same weight when the salient characteristics of that other market at the time of the collusion are comparable to those in the relevant market.

In analyzing the effect of a particular merger on coordinated interaction, the Agency is mindful of the difficulties of predicting likely future behavior based on the types of incomplete and sometimes contradictory information typically generated in merger investigations. Whether a merger is likely to diminish competition by enabling firms more likely, more successfully or more completely to engage in coordinated interaction depends on whether market conditions, on the whole, are conducive to reaching terms of coordination and detecting and punishing deviations from those terms.

2.11 Conditions Conducive to Reaching Terms of Coordination

Firms coordinating their interactions need not reach complex terms concerning the allocation of the market output across firms or the level of the market prices but may, instead, follow simple terms such as a common price, fixed price differentials, stable market shares, or customer or territorial restrictions. Terms of coordination need not perfectly achieve the monopoly outcome in order to be harmful to consumers. Instead, the terms of coordination may be imperfect and incomplete—inasmuch as they omit some market participants, omit some dimensions of competition, omit some customers, yield elevated prices short of monopoly levels, or lapse into episodic price wars—and still result in significant competitive harm. At some point, however, imperfections cause the profitability of abiding by the terms of coordination to decrease and, depending on their extent, may make coordinated interaction unlikely in the first instance.

Market conditions may be conducive to or hinder reaching terms of coordination. For example, reaching terms of coordination may be facilitated by product or firm homogeneity and by existing practices among firms, practices not necessarily themselves antitrust violations, such as standardization of pricing or product variables on which firms could compete. Key information about rival firms and the market may also facilitate reaching terms of coordination. Conversely, reaching terms of coordination may be limited or impeded by product heterogeneity or by firms having substantially incomplete information about the conditions and prospects of their rivals' businesses, perhaps because of important differences among their current business operations. In addition, reaching terms of coordination may be limited or impeded by firm heterogeneity, for example, differences in vertical integration or the production of another product that tends to be used together with the relevant product.

2.12 Conditions Conducive to Detecting and Punishing Deviations

Where market conditions are conducive to timely detection and punishment of significant deviations, a firm will find it more profitable to abide by the terms of coordination than to deviate from them. Deviation from the terms of coordination will be deterred where the threat of punishment is credible. Credible punishment, however, may not need to be any more complex than temporary abandonment of the terms of coordination by other firms in the market.

Where detection and punishment likely would be rapid, incentives to deviate are diminished and coordination is likely to be successful. The detection and punishment of deviations may be facilitated by existing practices among firms themselves, not necessarily antitrust violations, and by the characteristics of typical transactions. For example, if key information about specific transactions or individual price or output levels is available routinely to competitors, it may be difficult for a firm to deviate secretly. If orders for the relevant product are frequent, regular and small relative to the total output of a firm in a market, it may be difficult for the firm to deviate in a substantial way without the knowledge of rivals and without the opportunity for rivals to react. If demand or cost fluctuations are relatively infrequent and small, deviations may be relatively easy to deter.

By contrast, where detection or punishment is likely to be slow, incentives to deviate are enhanced and coordinated interaction is unlikely to be successful. If demand or cost fluctuations are relatively frequent and large, deviations may be relatively difficult to distinguish from these other sources of market price fluctuations, and, in consequence, deviations may be relatively difficult to deter.

In certain circumstances, buyer characteristics and the nature of the procurement process may affect the incentives to deviate from terms of coordination. Buyer size alone is not the determining characteristic. Where large buyers likely would engage in long-term contracting, so that the sales covered by such contracts can be large relative to the total output of a firm in the market, firms may have the incentive to deviate. However, this only can be accomplished where the duration, volume and profitability of the business covered by such contracts are sufficiently large as to make deviation more profitable in the long term than honoring the terms of coordination, and buyers likely would switch suppliers.

In some circumstances, coordinated interaction can be effectively prevented or limited by maverick firms—firms that have a greater economic incentive to deviate from the terms of coordination

than do most of their rivals (*e.g.*, firms that are unusually disruptive and competitive influences in the market). Consequently, acquisition of a maverick firm is one way in which a merger may make coordinated interaction more likely, more successful, or more complete. For example, in a market where capacity constraints are significant for many competitors, a firm is more likely to be a maverick the greater is its excess or divertible capacity in relation to its sales or its total capacity, and the lower are its direct and opportunity costs of expanding sales in the relevant market.[19] This is so because a firm's incentive to deviate from price-elevating and output-limiting terms of coordination is greater the more the firm is able profitably to expand its output as a proportion of the sales it would obtain if it adhered to the terms of coordination and the smaller is the base of sales on which it enjoys elevated profits prior to the price-cutting deviation.[20] A firm also may be a maverick if it has an unusual ability secretly to expand its sales in relation to the sales it would obtain if it adhered to the terms of coordination. This ability might arise from opportunities to expand captive production for a downstream affiliate.

2.2 Lessening of Competition Through Unilateral Effects

A merger may diminish competition even if it does not lead to increased likelihood of successful coordinated interaction, because merging firms may find it profitable to alter their behavior unilaterally following the acquisition by elevating price and suppressing output. Unilateral competitive effects can arise in a variety of different settings. In each setting, particular other factors describing the relevant market affect the likelihood of unilateral competitive effects. The settings differ by the primary characteristics that distinguish firms and shape the nature of their competition.

[19] But excess capacity in the hands of non-maverick firms may be a potent weapon with which to punish deviations from the terms of coordination.

[20] Similarly, in a market where product design or quality is significant, a firm is more likely to be an effective maverick the greater is the sales potential of its products among customers of its rivals, in relation to the sales it would obtain if it adhered to the terms of coordination. The likelihood of expansion responses by a maverick will be analyzed in the same fashion as uncommitted entry or committed entry (see sections 1.3 and 3) depending on the significance of the sunk costs entailed in expansion.

2.21 Firms Distinguished Primarily by Differentiated Products

In some markets the products are differentiated, so that products sold by different participants in the market are not perfect substitutes for one another. Moreover, different products in the market may vary in the degree of their substitutability for one another. In this setting, competition may be non-uniform (*i.e.*, localized), so that individual sellers compete more directly with those rivals selling closer substitutes.[21]

A merger between firms in a market for differentiated products may diminish competition by enabling the merged firm to profit by unilaterally raising the price of one or both products above the premerger level. Some of the sales loss due to the price rise merely will be diverted to the product of the merger partner and, depending on relative margins, capturing such sales loss through merger may make the price increase profitable even though it would not have been profitable premerger. Substantial unilateral price elevation in a market for differentiated products requires that there be a significant share of sales in the market accounted for by consumers who regard the products of the merging firms as their first and second choices, and that repositioning of the non-parties' product lines to replace the localized competition lost through the merger be unlikely. The price rise will be greater the closer substitutes are the products of the merging firms, *i.e.*, the more the buyers of one product consider the other product to be their next choice.

2.211 Closeness of the Products of the Merging Firms

The market concentration measures articulated in Section 1 may help assess the extent of the likely competitive effect from a unilateral price elevation by the merged firm notwithstanding the fact that the affected products are differentiated. The market concentration measures provide a measure of this effect if each product's market share is reflective of not only its relative appeal as a first choice to consumers of the merging firms' products but also its relative appeal as a second choice, and hence as a competitive constraint to the first choice.[22] Where this circumstance holds, market concentration data fall outside the safeharbor regions of section 1.5, and the merging firms have a combined market share of at least thirty-five percent, the Agency will presume that a significant share of sales in the market are accounted for by consumers who regard the products of the merging firms as their first and second choices.

Purchasers of one of the merging firms' products may be more or less likely to make the other their second choice than market shares alone would indicate. The market shares of the merging firms' products may understate the competitive effect of concern, when, for example, the products of the merging firms are relatively more similar in their various attributes to one another than to other products in the relevant market. On the other hand, the market shares alone may overstate the competitive effects of concern when, for example, the relevant products are less similar in their attributes to one another than to other products in the relevant market.

Where market concentration data fall outside the safeharbor regions of section 1.5, the merging firms have a combined market share of at least thirty-five percent, and where data on product attributes and relative product appeal show that a significant share of purchasers of one merging firm's product regard the other as their second choice, then market share data may be relied upon to demonstrate that there is a significant share of sales in the market accounted for by consumers who would be adversely affected by the merger.

2.212 Ability of Rival Sellers to Replace Lost Competition

A merger is not likely to lead to unilateral elevation of prices of differentiated products if, in response to such an effect, rival sellers likely would replace any localized competition lost through the merger by repositioning their product lines.[23]

[21] Similarly, in some markets sellers are primarily distinguished by their relative advantages in serving different buyers or groups of buyers, and buyers negotiate individually with sellers. Here, for example, sellers may formally bid against one another for the business of a buyer, or each buyer may elicit individual price quotes from multiple sellers. A seller may find it relatively inexpensive to meet the demands of particular buyers or types of buyers, and relatively expensive to meet others' demands. Competition, again, may be localized: sellers compete more directly with those rivals having similar relative advantages in serving particular buyers or groups of buyers. For example, in open outcry auctions, price is determined by the cost of the second lowest-cost seller. A merger involving the first and second lowest-cost sellers could cause prices to rise to the constraining level of the next lowest-cost seller.

[22] Information about consumers' actual first and second product choices may be provided by marketing surveys, information from bidding structures, or normal course of business documents from industry participants.

[23] The timeliness and likelihood of repositioning responses will be analyzed using the same methodology as used in analyzing uncommitted entry or committed entry (see sections 1.3 and 3), depending on the significance of the sunk costs entailed in repositioning.

In markets where it is costly for buyers to evaluate product quality, buyers who consider purchasing from both merging parties may limit the total number of sellers they consider. If either of the merging firms would be replaced in such buyers' consideration by an equally competitive seller not formerly considered, then the merger is not likely to lead to a unilateral elevation of prices.

2.22 Firms Distinguished Primarily by Their Capacities

Where products are relatively undifferentiated and capacity primarily distinguishes firms and shapes the nature of their competition, the merged firm may find it profitable unilaterally to raise price and suppress output. The merger provides the merged firm a larger base of sales on which to enjoy the resulting price rise and also eliminates a competitor to which customers otherwise would have diverted their sales. Where the merging firms have a combined market share of at least thirty-five percent, merged firms may find it profitable to raise price and reduce joint output below the sum of their premerger outputs because the lost markups on the foregone sales may be outweighed by the resulting price increase on the merged base of sales.

This unilateral effect is unlikely unless a sufficiently large number of the merged firm's customers would not be able to find economical alternative sources of supply, *i.e.*, competitors of the merged firm likely would not respond to the price increase and output reduction by the merged firm with increases in their own outputs sufficient in the aggregate to make the unilateral action of the merged firm unprofitable. Such non-party expansion is unlikely if those firms face binding capacity constraints that could not be economically relaxed within two years or if existing excess capacity is significantly more costly to operate than capacity currently in use.[24]

3. Entry Analysis

3.0 Overview

A merger is not likely to create or enhance market power or to facilitate its exercise, if entry into the market is so easy that market participants, after the merger, either collectively or unilaterally could not profitably maintain a price increase above premerger levels. Such entry likely will deter an anticompetitive merger in its incipiency, or deter or counteract the competitive effects of concern.

Entry is that easy if entry would be timely, likely, and sufficient in its magnitude, character and scope to deter or counteract the competitive effects of concern. In markets where entry is that easy (*i.e.*, where entry passes these tests of timeliness, likelihood, and sufficiency), the merger raises no antitrust concern and ordinarily requires no further analysis.

The committed entry treated in this section is defined as new competition that requires expenditure of significant sunk costs of entry and exit.[25] The Agency employs a three step methodology to assess whether committed entry would deter or counteract a competitive effect of concern.

The first step assesses whether entry can achieve significant market impact within a timely period. If significant market impact would require a longer period, entry will not deter or counteract the competitive effect of concern.

The second step assesses whether committed entry would be a profitable and, hence, a likely response to a merger having competitive effects of concern. Firms considering entry that requires significant sunk costs must evaluate the profitability of the entry on the basis of long term participation in the market, because the underlying assets will be committed to the market until they are economically depreciated. Entry that is sufficient to counteract the competitive effects of concern will cause prices to fall to their premerger levels or lower. Thus, the profitability of such committed entry must be determined on the basis of premerger market prices over the long-term.

A merger having anticompetitive effects can attract committed entry, profitable at premerger prices, that would not have occurred premerger at these same prices. But following the merger, the reduction in industry output and increase in prices associated with the competitive effect of concern may allow the same entry to occur without driving market prices below premerger levels. After a merger that results in decreased output and increased prices, the likely sales opportunities available to entrants at premerger prices will be larger than they were premerger, larger by the output reduction caused by the merger. If entry could be profitable at premerger prices without exceeding the likely sales opportunities—opportunities that include pre-existing pertinent factors as well as the merger-induced output reduction—then such entry is likely in response to the merger.

The third step assesses whether timely and likely entry would be sufficient to return market prices to their premerger levels. This end may be accomplished either through multiple entry or individual entry at a sufficient scale. Entry may not be sufficient, even though timely and likely, where the constraints on availability of essential assets, due to incumbent control, makes it impossible for entry profitably to achieve the necessary level of sales. Also, the character and scope of entrants' products might not be fully responsive to the localized sales opportunities created by the removal of direct competition among sellers of differentiated products. In assessing whether entry will be timely, likely, and sufficient, the Agency recognizes that precise and detailed information may be difficult or impossible to obtain. In such instances, the Agency will rely on all available evidence bearing on whether entry will satisfy the conditions of timeliness, likelihood, and sufficiency.

3.1 Entry Alternatives

The Agency will examine the timeliness, likelihood, and sufficiency of the means of entry (entry alternatives) a potential entrant might practically employ, without attempting to identify who might be potential entrants. An entry alternative is defined by the actions the firm must take in order to produce and sell in the market. All phases of the entry effort will be considered, including, where relevant, planning, design, and management; permitting, licensing, and other approvals; construction, debugging, and operation of production facilities; and promotion (including necessary introductory discounts), marketing, distribution, and satisfaction of customer testing and qualification requirements.[26] Recent examples of entry, whether successful or unsuccessful, may provide a useful starting point for identifying the necessary actions, time requirements, and characteristics of possible entry alternatives.

3.2 Timeliness of Entry

In order to deter or counteract the competitive effects of concern, entrants quickly must achieve a significant impact on price in the relevant market. The Agency generally will consider

[24] The timeliness and likelihood of non-party expansion will be analyzed using the same methodology as used in analyzing uncommitted or committed entry (*see* Sections 1.3 and 3) depending on the significance of the sunk costs entailed in expansion.

[25] Supply responses that require less than one year and insignificant sunk costs to effectuate are analyzed as uncommitted entry in section 1.3.

[26] Many of these phases may be undertaken simultaneously.

timely only those committed entry alternatives that can be achieved within two years from initial planning to significant market impact.[27] Where the relevant product is a durable good, consumers, in response to a significant commitment to entry, may defer purchases by making additional investments to extend the useful life of previously purchased goods and in this way deter or counteract for a time the competitive effects of concern. In these circumstances, if entry only can occur outside of the two year period, the Agency will consider entry to be timely so long as it would deter or counteract the competitive effects of concern within the two year period and subsequently.

3.3 Likelihood of Entry

An entry alternative is likely if it would be profitable at premerger prices, and if such prices could be secured by the entrant.[28] The committed entrant will be unable to secure prices at premerger levels if its output is too large for the market to absorb without depressing prices further. Thus, entry is unlikely if the minimum viable scale is larger than the likely sales opportunity available to entrants.

Minimum viable scale is the smallest average annual level of sales that the committed entrant must persistently achieve for profitability at premerger prices.[29] Minimum viable scale is a function of expected revenues, based upon premerger prices,[30] and all categories of costs associated with the entry alternative, including an appropriate rate of return on invested capital given that entry could fail and sunk costs, if any, will be lost.[31]

Sources of sales opportunities available to entrants include: (a) The output reduction associated with the competitive effect of concern,[32] (b) entrants' ability to capture a share of reasonably expected growth in market demand,[33] (c) entrants' ability securely to divert sales from incumbents, for example, through vertical integration or through forward contracting, and (d) any additional anticipated contraction in incumbents' output in response to entry.[34] Factors that reduce the sales opportunities available to entrants include: (a) The prospect that an entrant will share in a reasonably expected decline in market demand, (b) the exclusion of an entrant from a portion of the market over the long term because of vertical integration or forward contracting by incumbents, and (c) any anticipated sales expansion by incumbents in reaction to entry, either generalized or targeted at customers approached by the entrant, that utilizes prior irreversible investments in excess production capacity. Demand growth or decline will be viewed as relevant only if total market demand is projected to experience long-lasting change during at least the two year period following the competitive effect of concern.

3.4 Sufficiency of Entry

Inasmuch as multiple entry generally is possible and individual entrants may flexibly choose their scale, committed entry generally will be sufficient to deter or counteract the competitive effects of concern whenever entry is likely under the analysis of section 3.3. However, entry, although likely, will not be sufficient if, as a result of incumbent control, the tangible and intangible assets required for entry are not adequately available for entrants to respond fully to their sales opportunities. In addition, where the competitive effect of concern is not uniform across the relevant market, in order for entry to be sufficient, the character and scope of entrants' products must be responsive to the localized sales opportunities that include the output reduction associated with the competitive effect of concern. For example, where the concern is unilateral price elevation as a result of a merger between producers of differentiated products, entry, in order to be sufficient, must involve a product so close to the products of the merging firms that the merged firm will be unable to internalize enough of the sales loss due to the price rise, rendering the price increase unprofitable.

4. Efficiencies

The primary benefit of mergers to the economy is their efficiency-enhancing potential, which can increase the competitiveness of firms and result in lower prices to consumers. Because the antitrust laws, and thus the standards of the Guidelines, are designed to proscribe only mergers that present a significant danger to competition, they do not present an obstacle to most mergers. As a consequence, in the majority of cases, the Guidelines will allow firms to achieve available efficiencies through mergers without interference from the Agency.

Some mergers that the Agency otherwise might challenge may be reasonably necessary to achieve significant net efficiencies. Cognizable efficiencies include, but are not limited to, achieving economies of scale, better integration of production facilities, plant specialization, lower transportation costs, and similar efficiencies relating to specific manufacturing, servicing, or distribution operations of the merging firms. The Agency may also consider claimed efficiencies resulting from reductions in general selling, administrative, and overhead expenses, or that otherwise do not relate to specific manufacturing, servicing, or distribution operations of the merging firms, although, as a practical matter, these types of efficiencies may be difficult to demonstrate. In addition, the Agency will reject claims of efficiencies if equivalent or comparable savings can reasonably be achieved by the parties through other means. The expected net efficiencies must be greater the more significant are the competitive risks identified in sections 1–3.

5. Failure and Exiting Assets

5.0 Overview

Notwithstanding the analysis of sections 1–4 of the Guidelines, a merger is not likely to create or enhance market power or to facilitate its exercise, if imminent failure, as defined below, of one of the merging firms would cause the assets of that firm to exit the relevant market. In such circumstances,

[27] Firms which have committed to entering the market prior to the merger generally will be included in the measurement of the market. Only committed entry or adjustments to pre-existing entry plans that are induced by the merger will be considered as possibly deterring or counteracting the competitive effects of concern.

[28] Where conditions indicate that entry may be profitable at prices below premerger levels, the Agency will assess the likelihood of entry at the lowest price at which such entry would be profitable.

[29] The concept of minimum viable scale ("MVS") differs from the concept of minimum efficient scale ("MES"). While MES is the smallest scale at which average costs are minimized, MVS is the smallest scale at which average costs equal the premerger price.

[30] The expected path of future prices, absent the merger, may be used if future price changes can be predicted with reasonable reliability.

[31] The minimum viable scale of an entry alternative will be relatively large when the fixed costs of entry are large, when the fixed costs of entry are largely sunk, when the marginal costs of production are high at low levels of output, and when a plant is underutilized for a long time because of delays in achieving market acceptance.

[32] Five percent of total market sales typically is used because where a monopolist profitably would raise price by five percent or more across the entire relevant market, it is likely that the accompanying reduction in sales would be no less than five percent.

[33] Entrants' anticipated share of growth in demand depends on incumbents' capacity constraints and irreversible investments in capacity expansion, as well as on the relative appeal, acceptability and reputation of incumbents' and entrants' products to the new demand.

[34] For example, in a bidding market where all bidders are on equal footing, the market share of incumbents will contract as a result of entry.

post-merger performance in the relevant market may be no worse than market performance had the merger been blocked and the assets left the market.

5.1 Failing Firm

A merger is not likely to create or enhance market power or facilitate its exercise if the following circumstances are met: (1) The allegedly failing firm would be unable to meet its financial obligations in the near future; (2) it would not be able to reorganize successfully under Chapter 11 of the Bankruptcy Act; [35] (3) it has made unsuccessful good-faith efforts to elicit reasonable alternative offers of acquisition of the assets of the failing firm [36] that would both keep its tangible and intangible assets in the relevant market and pose a less severe danger to competition than does the proposed merger; and (4) absent the acquisition, the assets of the failing firm would exit the relevant market.

5.2 Failing Division

A similar argument can be made for "failing" divisions as for failing firms. First, upon applying appropriate cost allocation rules, the division must have a negative cash flow on an operating basis. Second, absent the acquisition, it must be that the assets of the division would exit the relevant market in the near future if not sold. Due to the ability of the parent firm to allocate costs, revenues, and intracompany transactions among itself and its subsidiaries and divisions, the Agency will require evidence, not based solely on management plans that could be prepared solely for the purpose of demonstrating negative cash flow or the prospect of exit from the relevant market. Third, the owner of the failing division also must have complied with the competitively-preferable purchaser requirement of section 5.1.

[35] 11 U.S.C. 1101–1174 (1988).

[36] Any offer to purchase the assets of the failing firm for a price above the liquidation value of those assets—the highest valued use outside the relevant market or equivalent offer to purchase the stock of the failing firm—will be regarded as a reasonable alternative offer.

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Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Recycled Used Oil Management Standards; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 266, 271 and 279

[FRL-4153-6]

RIN: 2050-AC17

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Recycled Used Oil Management Standards

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Agency is promulgating a final listing decision for used oils that are recycled and is simultaneously promulgating standards for the management of used oil under RCRA section 3014. EPA has made a final listing decision for used oils that are recycled based upon the technical criteria provided in sections 1004 and 3001 of RCRA. EPA determined that recycled used oil does not have to be listed as a hazardous waste since the used oil management standards issued in this rulemaking are adequately protective of human health and the environment. These standards cover used oil generators, transporters, processors and re-refiners, burners, and marketers. These standards are promulgated under the authority of section 3014 of RCRA and will be codified in a new part 279 of chapter 40 of the Code of Federal Regulations. When these management standards go into effect, service station dealers who collect used oil from do-it-yourself (DIY) generators and who are in compliance with the standards promulgated, may be eligible for the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) section 114(c) liability exemption. EPA is continuing to evaluate the potential hazards associated with management of used oil. When this analysis is completed, the Agency will publish Notice(s) of Data Availability in the **Federal Register** over the next several months, as necessary. EPA will also, at that time, solicit opinion from the public on what, if any, additional steps may be necessary regarding used oil management.

EFFECTIVE DATE: March 8, 1993.

ADDRESSES: The regulatory docket for this rulemaking is available for public inspection at room 2427, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays. The docket number is F-92-UO2F-FFFFF. The public must make an appointment to review docket materials by calling (202) 260-9327. The public may copy a maximum of 100 pages from any regulatory document at no cost. Additional copies cost $.20 per page.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline, Office of Solid Waste, U.S. Environmental Protection Agency 401 M Street, SW., Washington, DC 20460; Telephone (800) 424-9346 (toll free) or, in the Washington, DC, metropolitan area at (703) 920-9810.

For information on specific aspects of this rule, contact Ms. Rajani D. Joglekar, telephone (202) 260-3516, or Ms. Eydie Pines, telephone (202) 260-3509, U.S. EPA, 401 M Street SW., Washington, DC 20460.

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I. Authority

This regulatory decision and the regulations promulgated today are issued under the authority of sections 1004, 1006, 2002, 3001, 3014, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and as amended by the Used Oil Recycling Act, as amended, 42 U.S.C. 6901, 6905, 6912(a), 6921 through 6927, 6930, 6934, 6935, 6937 through 6939 and 6974.

II. Background

A. Authorities and Regulations Covering Used Oil Management

1. Statutory Authority

Section 3014 of RCRA requires EPA to establish standards applicable to recycled used oil that will protect public health and the environment and, to the extent possible within that context, not discourage used oil recycling. Section 3014 was added to the RCRA statute by the Used Oil Recycling Act (UORA) of 1980. The UORA required the Agency to establish performance standards and other requirements "as may be

necessary to protect the public health and the environment from hazards associated with recycled oil" as long as such regulations "do not discourage the recovery or recycling of used oil."

The Hazardous and Solid Waste Amendments of 1984 (HSWA) reemphasized that the protection of human health and the environment was to be of primary concern in the regulation of hazardous waste. Specific to used oil, HSWA slightly altered the language of RCRA section 3014 to direct the Administrator to promulgate regulations as may be necessary to protect human health and the environment from hazards associated with recycled oil. In developing such regulations, the Administrator shall conduct an analysis of the economic impact of the regulations on the oil recycling industry. The Administrator shall ensure that such regulations do not discourage the recovery or recycling of used oil *consistent with the protection of human health and the environment.* (Emphasis added to highlight HSWA language amending RCRA section 3014(a).)

EPA is therefore directed to promulgate standards for the handling and management of recycled oil. Section 1004 of RCRA, in defining the term "recycled oil," includes used oil being reused for any purpose, including used oil being re-refined or being processed into fuel. EPA believes that section 3014 also provides authority for establishing management standards that specifically include used oil being stored, collected or otherwise managed prior to recycling.

2. Regulatory Actions Related to Used Oil

On December 18, 1978, EPA initially proposed guidelines and regulations for the management of hazardous wastes as well as specific rules for the identification and listing of hazardous wastes under section 3001 of the Resource Conservation and Recovery Act (RCRA) (43 FR 58946). At that time, EPA proposed to list waste lubricating oil and waste hydraulic and cutting oil [1] as hazardous wastes on the basis of their toxicity. In addition, the Agency proposed recycling regulations to regulate (1) the incineration or burning of used lubricating, hydraulic, transformer, transmission, or cutting oil that was hazardous and (2) the use of waste oils in a manner that constituted disposal.[2]

In the May 19, 1980 regulations (45 FR 33084), EPA decided to defer promulgation of the recycling regulations for waste oils to consider fully whether waste- and use-specific standards may be implemented in lieu of imposing the full set of Subtitle C regulations on potentially recoverable and valuable materials. At the same time, EPA deferred the listing of waste oil for disposal so that the entire waste oil issue could be addressed at one time. Under the May 19, 1980 regulations, however, any waste oil exhibiting one of the characteristics of hazardous waste (ignitability, corrosivity, reactivity, and toxicity) that was disposed, or accumulated, stored, or treated prior to disposal, became regulated as a hazardous waste subject to all applicable Subtitle C regulations.

As explained above, HSWA made protection of human health and the environment the prominent concern in the Agency's regulatory decisions for used oil and required EPA to propose whether to identify or list used automobile and truck crankcase oil by November 8, 1985. HSWA also required EPA to make a final determination as to whether to identify or list any or all used oils by November 8, 1986. On November 29, 1985 (50 FR 49258), EPA proposed to list all used oils as hazardous waste, including petroleum-derived and synthetic oils, based on the presence of toxic constituents at levels of concern from contamination during use and adulteration after use. Also on November 29, 1985, the Agency proposed management standards for recycled used oil (50 FR 49212) and issued final regulations, incorporated at 40 CFR part 266, subpart E, prohibiting the burning of off-specification used oil fuels [3] in non-industrial boilers and furnaces (50 FR 49164). Marketers of used oil fuel and industrial burners of off-specification fuel are required to notify EPA of their activities and to comply with certain notice and recordkeeping requirements. Used oils that meet the fuel oil specification are exempt from most of the 40 CFR part 266, subpart E regulations.

On March 10, 1986 (51 FR 8206), the Agency published a Supplemental Notice requesting comments on additional aspects of the proposed listing of used oil as hazardous waste. In particular, commenters to the November 29, 1985, proposal suggested that EPA consider a regulatory option of only listing used oil as a hazardous waste when disposed, while promulgating special management standards for used oil that is recycled.

On November 19, 1986, EPA issued a decision not to list as a hazardous waste used oil that is recycled (51 FR 41900). The Agency determined that used oil being recycled should not be listed as a hazardous waste under RCRA. The EPA stated in the November 1986 decision that the Agency intended to issue recycled used oil management standards and was conducting studies necessary to determine what standards are appropriate under § 3014 of RCRA and to determine whether used oil being disposed of should be listed as a RCRA hazardous waste, or regulated under other statutes. At that time, it was the Agency's belief that the stigmatic effects associated with a hazardous waste listing might discourage the recycling of used oil, thereby resulting in increased disposal of used oil in uncontrolled manners. EPA stated that several residues, wastewaters, and sludges associated with the recycling of used oil may be evaluated to determine if a hazardous waste listing was necessary, even if used oil was not listed as a hazardous waste. EPA also outlined a plan that included making the determination whether to list used oil being disposed as hazardous waste and promulgation of special management standards for recycled oil.

EPA's decision not to list used oil as a hazardous waste based on the potential stigmatic effects was challenged by the Hazardous Waste Treatment Council, the Association of Petroleum Re-refiners, and the Natural Resources Defense Council. The petitioners claimed that (1) the language of RCRA indicated that in determining whether to list used oil as a hazardous waste, EPA may consider technical characteristics of hazardous waste, but not the "stigma" that a hazardous listing might involve, and (2) that Congress intended EPA to consider the effects of listing on the recycled oil industry only after the initial listing decision.

On October 7, 1988, the Court of Appeals for the District of Columbia found that EPA acted contrary to law in its determination not to list used oil under RCRA section 3001 based on the stigmatic effects. (See *Hazardous Waste Treatment Council* v. *EPA*, 861 F.2d 270 (D.C. Cir. 1988) [HWTC I].) The court ruled that EPA must determine whether

[1] The term "waste oil" included both used and unused oils that may no longer be used for their original purpose.

[2] "Use in a manner constituting disposal" means the placement of hazardous waste directly onto the land in a manner constituting disposal or the use of the solid waste to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land [40 CFR 261.2(c)(1)].

[3] Used Oil that exceeds any of the following specification levels is considered to be "off-specification" used oil under 40 CFR 266.40(e): Arsenic—5 ppm, Cadmium—2 ppm, Chromium—10 ppm, Lead—100 ppm, Flash Point-100 °F minimum, Total Halogens—4,000 ppm.

to list any used oils based on the technical criteria for waste listings specified in the statute.

After the 1988 court decision, EPA began to re-evaluate its basis for making a listing determination for used oil. EPA reviewed the statute, the proposed rule, and the many comments received on the proposed rule. Those comments indicated numerous concerns with the proposed listing approach. One of the most frequent concerns voiced by commenters was related to the quality and "representativeness" of the data used by EPA to characterize used oils in 1985. Numerous commenters indicated that "their oils" were not represented by the data and, if they were represented, those oils were characterized after being mixed with other more contaminated oils or with other hazardous wastes. Many commenters submitted data demonstrating that the used oils they generate, particularly industrial used oils, did not contain high levels of toxicants of concern.

In addition, the Agency recognized that much of the information in the 1985 used oil composition data was more than five years old, as most of the information was collected prior to 1985. Since the time of that data gathering effort, used automotive oil composition may have been affected by the phase-down of lead in gasoline. The Agency also recognized the need to collect analytical data addressing specific classes of used oils as collected and stored at the point of generation (*i.e.*, at the generator's facility).

Finally, the promulgation of the toxicity characteristic (TC) (55 FR 11798, March 29, 1990) is known to identify certain used oils as hazardous waste. Due to the possibility of changes in used oil composition since the Agency's 1985 proposed listing decision and the new TC, the Agency recognized that additional data on used oil characterization may be needed prior to making a final hazardous waste listing determination.

On September 23, 1991, EPA published a Supplemental Notice of Proposed Rulemaking for the identification and listing of used oil and for management standards for recycled used oil (56 FR 48000). The 1991 Supplemental Notice presented supplemental information gathered by EPA and provided to EPA by individuals commenting on previous notices on the listing of used oil and used oil management standards. As discussed above, numerous commenters on the 1985 proposal to list used oil as hazardous contended that the broad listing of all used oils unfairly subjects them to stringent Subtitle C regulations because their used oils are not hazardous. Based on those comments, the Agency collected a variety of additional information regarding various types of used oil, their management, and their potential health and environmental effects when mismanaged. The 1991 Supplemental Notice presented this new information to the public and requested comment on the information, particularly if and how the information suggests new concerns that EPA should consider in deciding whether to finalize all or part of its 1985 proposal to list used oil as a hazardous waste.

In addition, the 1991 Supplemental Notice expanded upon the November 29, 1985 (50 FR 49258) proposal to list used oils as hazardous and the March 10, 1986 (51 FR 8206) Supplemental Notice by discussing regulatory alternatives not previously presented in the **Federal Register**. Based on the public comments received relative to these two notices, the Agency investigated several important aspects of used oil regulation. The Supplemental Notice also contained a request for comments on additional issues related to the "mixture rule" (40 CFR 261.3(a)(2)(iii)), on test methods for determining halogen levels in used oils, and on new data on the composition of used oil and used oil processing residuals. For these aspects, the Agency identified alternative approaches that were not presented explicitly in the earlier notices. Those new alternatives were presented in the 1991 Supplemental Notice.

The 1991 Supplemental Notice also discussed the Agency's proposal to amend 40 CFR 261.32 by adding four waste streams from the reprocessing and re-refining of used oil to the list of hazardous wastes from specific sources. The wastes from the reprocessing and re-refining of used oil include process residuals from the gravitational or mechanical separation of solids, water, and oil (K152); spent polishing media used to finish used oil (K153); distillation bottoms from used oil processing and re-refining (K154); and treatment residues from primary wastewater treatment (K155).

The 1991 Supplemental Notice also included a description of some of the management standards (in addition to or in place of those proposed in 1985) that EPA considered in promulgating today's final rule.

On May 20, 1992, EPA proposed a Hazardous Waste Identification Rule describing two alternative approaches for hazardous waste identification under RCRA. The first proposed approach would establish concentration based exclusion criteria (CBEC) for listed hazardous wastes, waste mixtures, derivatives, and contaminated media. The second approach an expanded characteristic option (ECHO) would establish "characteristic" levels for listed hazardous wastes, waste mixtures, derivatives, and contaminated media. (57 FR 21450). Depending upon which approach the Agency finalizes, the manner in which EPA regulates mixtures of used oil and hazardous waste may change.

B. Summary of May 20, 1992 Federal Register Notice (Final Listing Decision for Used Oils Destined for Disposal)

On May 20, 1992, EPA published a final rule that addressed the listing of used oils that are disposed, excluded non-terne plated used oil filters that have been drained to remove used oil from the definition of hazardous waste, and deferred a final listing determination on residuals from the processing and re-refining of used oil (57 FR 21524). Four separate actions were taken and are discussed below.

First, the Agency promulgated a final decision not to list used oils destined for disposal. This decision was based primarily upon the finding that all used oils do not typically and frequently meet the technical criteria for listing a waste as hazardous. In making the final listing determination for used oil destined for disposal, EPA also gave considerable attention to the current federal regulations governing the management of used oils that are disposed. EPA evaluated the technical criteria for listing in light of the current regulatory structure that controls the management of used oils and concluded that any plausible mismanagement of used oil that is destined for disposal is addressed by current requirements. Existing regulations that cover used oil destined for disposal are discussed briefly at the end of this section. In addition, if a used oil that is destined for disposal exhibits a characteristic, it is regulated as a hazardous waste under subtitle C.

Second, the Agency decided to defer a decision on listing and management standards for used oil that is recycled (this decision is included in today's rule).

Third, the Agency promulgated a final exemption from the definition of hazardous waste in § 261.4 for certain used oil filters. The filters that received the exemption are non-terne-plated used oil filters that have been hot-drained to remove used oil. (Terne is an alloy of tin and lead.) Hot-drained means draining used oil from a filter while the engine is at operating temperature, when oil flows easily. Based on data submitted to EPA, non-terne-plated, hot-drained used oil

filters do not typically and frequently exhibit the Toxicity Characteristic.

Fourth, the Agency announced its deferral of a final decision on whether or not to list residuals from the processing and re-refining of used oil. The Agency stated that it will continue to evaluate the composition of used oil recycling residues and the management of these residues. The reason for continued evaluation of residuals is that recycling techniques and waste management practices that evolved during the past six years have resulted in residual composition changes.

C. Current Federal Regulations Governing Disposal of Used Oil

Currently, there are several regulatory programs in place to control the storage and transportation of used oil, to protect against releases to the ground, ground water, and surface waters, to protect against improper disposal of used oils, to prevent the burning of used oils with high levels of toxic constituents in certain units, and to control the management of used oils containing PCB's. Several of these programs have been proposed and/or promulgated since 1985, and some have been in place since before 1985. The Agency has decided that these current regulations are protective, but are not complete or sufficient to protect human health and the environment from potential mismanagement of used oils that are recycled. Therefore, in addition to the existing regulations, used oil handlers will have to comply with additional management standards that EPA is promulgating today, such as recordkeeping and analysis requirements, and a requirement for containment consisting of impervious floor and dikes/berms. The current regulatory programs are described below.

The storage of used oil in underground tanks is controlled under subtitle I of RCRA (40 CFR part 280). These regulations require that underground tanks be properly maintained, operated, protected from corrosion, and that any spills are properly cleaned up. Other existing storage tank standards are found under the Clean Water Act Spill Prevention Control and Countermeasures (SPCC) requirements. SPCC requirements regulate the storage of materials, including used oil, in aboveground *and* in underground tanks under certain circumstances. The Clean Water Act also requires reporting of releases of oil into navigable waters if a sheen appears on the water, if any water quality standards are violated, or if a sludge is deposited beneath the surface of the water. The recently enacted Oil Pollution Act revised the SPCC requirements of the Clean Water Act.

Regulations promulgated pursuant to MARPOL 73/78, Annex I, act to control shipboard management of used oil and releases of used oil to navigable waters. Bilge slops are a commonly generated waste on-board ships that contain used oil; MARPOL prevents this waste from being discharged into the sea in an unrestricted manner.

The transport of used oil is regulated under the Department of Transportation's Hazardous Materials Transportation Act (HMTA). Used oil that meets the criteria for being "combustible" or "flammable" is regulated under DOT requirements for classification, packaging, marking, labeling, shipping papers, placarding, recordkeeping and reporting.

The burning of used oil for energy recovery is subject to existing standards under RCRA (40 CFR part 266, subpart E). These standards include requirements for marketers of used oil, such as notification, analysis, recordkeeping, and invoices for each shipment. Off-specification used oil must be burned in industrial boilers or furnaces only. The "specification" levels for used oil that will be burned for energy recovery include levels for metals, halogens, and flash point. These existing standards promulgated in 1985 are recodified in part 279 today.

The manufacture, use, import, and disposal of polychlorinated biphenyls (PCBs) in used oils are controlled under the Toxic Substances Control Act (TSCA). TSCA controls the manufacture, import, use, and disposal of oils containing over 50 ppm PCBs. In addition, TSCA requires reporting of any spill of material containing 50 ppm or greater PCBs, into sewers, drinking water, surface water, grazing lands, or vegetable gardens. The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) requires reporting of any 1-pound spill of PCBs into the environment. Note that used oils containing less than 50 ppm of PCBs are covered under RCRA.

Used oils that are contaminated with CERCLA hazardous substances (*e.g.*, due to the presence of elevated levels of lead) are subject to CERCLA release reporting requirements. Therefore, releases of used oil containing such contaminants (*e.g.*, lead) into the environment in quantities greater than the reportable quantity for the contaminant must be reported to the National Response Center. The current RQs for CERCLA hazardous substances are listed in 40 CFR 302.4. In addition, under 40 CFR part 110, any discharge of oil that violates applicable water quality standards or causes a film or sheen on a water surface must be reported to the National Response Center.

As mentioned previously, used oil handlers will have to comply with all existing regulations (including any applicable State and local regulations), and in addition, the new management standards for recycled oil promulgated today. For the reasons discussed in more detail below, EPA believes that this network of regulations will be sufficient to ensure protection of human health and the environment.

III. Summary of Major Comments to 1985 Proposal and 1991 Supplemental Notice

A. Comments Received in Response to the 1985 Proposed Rulemaking

1. Comments on 1985 Proposed Listing Decision

On November 29, 1985 (50 FR 49239), EPA proposed to list all used oils as hazardous waste, including petroleum-derived and synthetic oils, based on the presence of toxic constituents at levels of concern as a result of contamination during and adulteration after use. In 1985, the Agency also proposed special management standards for used oils that are recycled. Essentially, used oils that are disposed would have been subject to full subtitle C regulation, while recycled used oils could be managed in accordance with the proposed management standards developed and proposed under the authority of RCRA § 3014.

Many comments were received on the various aspects of the proposed listing of used oil, which are summarized as follows. Most commenters opposed the listing of used oil as a hazardous waste. The reasons given included that EPA's sampling was unrepresentative and flawed (*i.e.*, used oil samples were taken from storage tanks at used oil facilities rather than from the point of generation), used oil is no more hazardous than virgin oil, and the belief that the levels of constituents EPA found in used oils that were sampled and analyzed do not present a threat to human health. Some commenters asserted that EPA's concern is not with used oil itself but the mixing of used oil with other constituents that may render the used oil hazardous only because of post-use adulteration. Therefore, instead of listing all used oils, commenters recommended that EPA should list used oils as hazardous only if other

substances have been added after the oil's initial use.

A large number of commenters challenged the scope of the listing (*i.e.*, definition) and provided a number of examples where certain used oils should not be included in the listing because they do not contain constituents of concern at concentrations exceeding health-based levels that would cause the used oil to be listed. Some commenters proposed that only those used oils that contain toxic constituents, such as lead, arsenic, cadmium, chromium, 1,1,1-trichloroethane, trichloroethylene, tetrachloroethylene, toluene, and naphthalene, should be included in the listing. A number of commenters requested that in the proposed definition of used oil, the phrase "but is not limited to" should be stricken because it creates tremendous uncertainty as to what constitutes a used oil. Commenters also challenged EPA and indicated that the Agency exceeded its statutory authority by including synthetic and other non-petroleum derived used oils in the definition of used oil. Commenters also requested that used oil destined for recycling be excluded from the definition of used oil. A few commenters also requested that food grade oils be excluded because the Food and Drug Administration regulates these oils and requires that they meet health standards based on human consumption because they may contact food products. A number of commenters requested that EPA exclude dielectric waste oil from the listing because electrical equipment is not a source of the contaminants of concern and that dielectric oils are already controlled by the Toxic Substances Control Act.

A number of commenters expressed concern regarding EPA's proposed regulatory scope of mixtures of used oil and other materials. The commenters were mixed on their support of EPA's proposed exclusion for wipers contaminated with used oil. Those that supported the exemption stated that as long as a wiper contains no free liquid, as determined by the paint filter test, it presents a minimal threat to human health or the environment. These commenters also expressed the belief that there should be no set concentration limit for used oil in wipers, but the exclusion should be based on whether the wiper contains free liquids. Those that opposed the exclusion indicated that contaminated wipers can contain significant quantities of PCBs and other toxic constituents and therefore present a risk to health.

Many commenters supported EPA's proposal to exempt wastewaters containing *de minimis* amounts of used oil from the definition of hazardous waste. However, commenters stated that no set concentration limit should be established as a *de minimis* level. A few commenters opposed this exclusion on the grounds that it could present a threat to human health and the environment. Some commenters requested that the halogen level promulgated as part of the rebuttable presumption for used oil fuels be increased because *de minimis* amounts of solvents may inadvertently become mixed with used oil.

There was overwhelming support to exempt mixtures of sorptive minerals and used oil. However, some commenters requested that the word minerals be replaced with materials. The commenters' rationale was that minerals are actually adsorbents, meaning attracted to the surface, whereas other materials, such as treated wood and paper fiber, are absorbents, meaning becoming part of the material and more difficult to remove. Thus, these commenters asserted, non-mineral sorbent materials also would pose no risk to the environment.

2. Major Comments on 1985 Proposed Management Standards for Recycled Used Oil

On November 29, 1985 (50 FR 49212), EPA proposed a comprehensive set of management standards for various entities handling used oils. These proposed standards were tailored after the hazardous waste management standards of subtitle C, and included requirements for notification, tracking, recordkeeping, preparedness and prevention, testing, storage, and closure. The handlers included generators, transporters, recyclers, marketers, burners, and road oilers.

a. Generator Standards. Concerning management standards for generators, commenters were generally supportive of EPA's proposed regulations except for the following comments relating to specific provisions. Commenters expressed concern that the quantity limit for small quantity generators was too low. Commenters also advocated a change from determining a generator's regulatory status on a monthly basis to a 12-month average limit to account for periodic and/or seasonal variations in generation patterns. Commenters thought that the proposed 90-day time limit on accumulation did not provide enough time for generators to accumulate a full tank of used oil. Because some facilities generate small amounts of used oil, some commenters felt that a 180- or 270-day time limit would be more appropriate.

One commenter stated that the requirement to empty a leaking or otherwise unfit for service tank within 24 hours is unreasonable and more strict than the hazardous waste requirements. One commenter stated that it is unreasonable to require that whenever a leak in a tank system occurs, the whole tank system must then be subject to the standards for new tank systems. An example of this inequity, provided by the commenters, could occur if the tank system develops a leak because of a faulty gasket and then the whole system has to be replaced rather than merely replacing the gasket. A few commenters expressed the opinion that the proposed standards for used oil storage tanks far exceed the necessary standards for protection of human health and the environment. Some commenters stated that requiring secondary containment for newly installed tanks beyond the SPCC requirements amounted to regulatory overkill. One commenter requested EPA to provide clarification on the definition of tank because many tank-like structures may be pulled into the system although they may not warrant regulation. Many commenters expressed concern that the regulation of storage in underground tanks under RCRA § 3014 would be duplicative of the standards promulgated under Subtitle I of RCRA. Many commenters disagreed with EPA that ground-water monitoring provides a superior approach to leak detection.

b. Transporter Standards. Some commenters thought that the 10-day time limit for storing used oil at transfer facilities was an inadequate period of time for transporters to accumulate and consolidate sufficient quantities of used oil. One commenter requested that an exemption be provided for generators that transport used oil from isolated locations to a central storage site, which would reduce the regulatory burden on oil and gas production operations, contract drillers, gas processors, and pipeline operators.

Commenters expressed concern with the requirement proposed in 1985 that collectors provide recycling facilities with lists of their customers. This could lead to solicitation of the collector's customers by used oil recyclers, which could adversely impact the collectors.

c. Recycling Facility Standards. A few commenters requested that EPA allow for the co-management of used oil with hazardous waste under a permit-by-rule rather than requiring such facilities to apply for and obtain a modification to their existing Subtitle C operating permit. Commenters also challenged the fact that while EPA required analysis of

halogens, there is no EPA-approved test method for halogens. Some commenters also objected to the proposed requirement that facilities that manage both used oil and other hazardous wastes test their used oil for indicator parameters for each hazardous waste stream. Although many comments were received concerning testing frequencies, commenters generally did not agree on any particular frequency or on whether or not the Agency should impose a set testing frequency.

EPA received many comments both for and against the proposed requirements that used oil recycling facilities that are not in compliance with the permit-by-rule provisions on the effective date of the rule comply with the interim status provisions of 40 CFR part 265. A few commenters pointed out that corrective action for releases of used oil to the environment was not adequately addressed in the 1985 proposed rulemaking.

d. Dust Suppression. The commenters were generally in favor of banning used oil for dust suppression. One commenter requested that EPA consider a case-by-case approval of used oil as a dust suppressant provided the activity is permitted and waste analysis is conducted. A state agency recommended that the dust suppression ban be extended to refined oil and oil/water mixtures.

B. Comments Received in Response to 1991 Supplemental Notice

1. Listing Used Oil

The Supplemental Notice of September 23, 1991 (56 FR 48041), presented three options for identifying used oil as a hazardous waste. Option One was to list all used oils as proposed on November 29, 1985 (50 FR 49239), based on the potential for adulteration during use and environmental damage when mismanaged. Option Two was to list categories of used oil that were found to be "typically and frequently" hazardous because of the presence of lead, PAHs, arsenic, cadmium, chromium, and benzene. "Typically and frequently" was defined to mean that 50 percent or more of the samples in a used oil category exceeded the levels of concern. Under Option Three, the Agency proposed not to list used oils as hazardous, but rely on management standards developed under section 3014 of RCRA to control mismanagement of oil.

Commenters overwhelmingly supported Option Three, not to list used oil as a hazardous waste, but rely on management standards. Many of these commenters suggested that EPA should encourage recycling through education, collection, and management standards instead of a hazardous waste listing. Many commenters expressed concern that listing used oil would have a negative effect on the used oil recycling system. These commenters stated that due to excessive liability and disposal costs associated with handling hazardous wastes, they would be forced out of business or out of the used oil management system. They stated that this would result in having fewer collection centers resulting in decreased acceptance of DIY-generated used oil, and may lead to further mismanagement. A few commenters pointed out that their lease prohibits the handling of hazardous materials or wastes and the listing of used oil as a hazardous waste would thus force them out of business or require them to negotiate a costly new lease. Additionally, some commenters, primarily service stations and oil changers, are currently voluntarily accepting DIY-generated used oil. They stated that listing used oil as a hazardous waste would lead to the discontinuation of this service because of the potential liability and the increased cost of handling used oil.

Some commenters noted that DIY-generated used oil presents the biggest threat to human health and the environment because it is often disposed of improperly. Another view point shared by many commenters was that used oil is a resource that is recyclable as lube oil feedstock or as a fuel substitute, and EPA should not designate a valuable commodity as hazardous waste.

A few commenters stated that used oil should not be listed because it is no longer hazardous due to EPA's lead phase-down program. In addition, EPA's analyses of used oil were based on too few samples and these were unrepresentative of actual conditions. Some commenters expressed a reluctance to have EPA list used oil as a hazardous waste, but urged EPA, if used oil is to be listed, to list only those used oils that are disposed and not list used oils that are recycled.

A few commenters supported the proposal to list all used oils as hazardous waste. They stated that used oil has been historically mismanaged and presents a threat to human health and the environment. In addition, they referenced the "California experience" in support of listing. These commenters said that when California listed used oil as a hazardous waste, the resulting recycling program within the state increased the amount of used oil entering the used oil management system.

2. De Minimis Mixtures

EPA proposed exempting wipers, sorptive minerals, and oil filters that have been drained of free-flowing used oil from the definition of hazardous waste, if used oil were listed as a hazardous waste. EPA expressed its belief that many of these materials may not pose a threat to human health and the environment because of the very small quantities of used oil involved. The Agency also proposed the "one-drop" standard for determining whether or not free-flowing used oil is present in the mixtures.

The commenters were nearly unanimous in support of EPA's proposal to exclude wipers and sorptive minerals contaminated with small amounts of used oil from the proposed listing. A number of commenters requested EPA to expand the definition of sorptive minerals beyond the current definition of clay and diatomaceous earth to include synthetic adsorbents and other natural filter/absorbent media. A few commenters requested clarification as to the status of laundered clean wipers that do not contain free flowing used oil A few commenters requested a clarification concerning recycling of used oil mixtures with high Btu value and instances where used oil cannot be separated from the mixture for burning a mixture as a used oil fuel.

3. Controlling Disposal of Used Oil

EPA believes that certain used oils may require disposal because they can not be recycled. In cases where the used oil is not recyclable and the disposal of the used oil is not controlled under the current subtitle C regulations (*e.g.*, because the used oil does not exhibit a hazardous waste characteristic), EPA wants to ensure that used oils are disposed of in an environmentally safe manner. EPA therefore requested comment on the appropriateness of developing guidelines for the disposal of used oil and the appropriateness of a total ban on the disposal of used oil.

Commenters supported EPA's proposal to develop specific guidelines for the disposal of nonhazardous oil under § 1008 of RCRA. Some commenters urged EPA not to impose a total ban on the disposal of nonhazardous oil. This is because some materials (*e.g.*, contaminated soil) can not be disposed elsewhere in an economically acceptable fashion. Some commenters supported a total ban on disposal of used oil mainly to ensure protection of the ground water and as a

method to promote recycling of all used oils.

4. DIY-Generated Used Oil

RCRA does not provide the authority to regulate household-generated waste prior to collection (*e.g.*, DIY-generated oil and filters), nor does it give EPA the authority to mandate collection programs for DIY-generated used oil. Over the past five years, EPA has developed public informational brochures to encourage DIY generators to recycle their used oil. EPA may develop more educational materials for the public and the regulated community on used oil recycling alternatives. EPA therefore requested comments on how to improve the recycling of DIY-generated used oil.

Many suggestions were received on ways EPA could encourage the acceptance and recycling of DIY-generated used oil. A majority of commenters, however, said that listing used oil as a hazardous waste would discourage recycling of DIY-generated used oil, primarily because many facilities indicated that they would no longer accept DIY-generated used oil because of the liability associated with collecting and handling hazardous waste. A state government agency stated that a primary reason service stations are not accepting DIY-generated used oil is the uncertainty over the past few years of whether EPA will list used oil as a hazardous waste and thus, require generators that have used oil on hand to pay for its disposal. Commenters indicated that the primary reason for the poor recycling rate of DIY-generated used oil is because of the lack of collection centers. Some major suggestions included the implementation of a curbside pickup program for DIY-generated used oil, requiring any entity selling motor oil to collect DIY-generated used oil, ensuring that used oil collection facilities be exempted from CERCLA liability requiring retailers to list nearby used oil collection centers, and establishment of a deposit-refund system.

5. Criteria for Recycling Presumption

EPA proposed to establish a presumption that all used oils, once collected, would be recycled and, therefore, would be subject to the proposed used oil recycling standards. However, EPA is aware of certain categories of used oils (*e.g.*, watery metalworking oils, oily bilge water) that may not be recyclable. Most used oils can be processed and treated to manufacture either burner fuel, lube oil base stock, to feedstock for refining. However, EPA gave consideration to providing an opportunity for used oil handlers to rebut the used oil recycling presumption and avoid compliance with the used oil recycling standards by documenting that their used oil is not recyclable in any manner. EPA requested comments on the suggested procedures for rebutting the recycling presumption and appropriate documentation.

The commenters were nearly unanimous in their support of the recycling presumption. However, the comments were mixed concerning the criteria for "recyclability" and the appropriate documentation. One commenter suggested that a one-time certification on the recyclability of a waste stream is adequate, assuming the facility's waste management plan does not change. Many of the commenters were supportive of the criteria EPA listed for determining recyclability, which included BTU content, water content, degree of emulsification, degree of viscosity, and the availability of economically and geographically acceptable recyclers. However, two commenters (refiners) stated that since none of the five criteria were examples of nonrecyclability and that all used oil can be recycled, whether used oil is actually recycled is strictly a matter of cost. One commenter questioned whether EPA had the authority to assume that all used oil was recyclable and, if not, to require certification and documentation.

Commenters were generally in agreement concerning the documentation requirements for the recycling presumption. There were only a few specific comments on the issue. One commenter suggested that a generator should not be allowed to determine recyclability but this should be the responsibility of a recycling facility. Another commenter suggested that documentation should be kept on-site and should not have to be sent to EPA.

6. Ban on Use as a Dust Suppressant

On November 29, 1985 (50 FR 49239), EPA proposed to ban the use of used oil as a dust suppressant (road oiling). The September 23, 1991, Supplemental Notice (56 FR 48041) stated that regardless of whether EPA lists used oils as a hazardous waste, EPA was still considering the ban of all used oils used for dust suppression. Specific comment was requested on how used oils could be used for dust suppression in an environmentally safe manner.

Most of the commenters supported the ban on using any used oil for dust suppression. Many of these commenters stated that used oil should not be used for road oiling given the potential adverse impact to water resources due to run-off. One commenter pointed out that surfactant additives in motor oil are generally anionic which prevents oil from bonding strongly to most negatively charged aggregate articles resulting in massive run-off. All of the state agencies commenting on this issue supported a ban.

Some commenters suggested that EPA should allow used oil to be used for dust suppression if it meets certain criteria such as not failing a characteristic test or the specification criteria for used oil fuel. Other commenters requested that nonhazardous used oil be allowed for road oiling. A few commenters urged the allowance of water contaminated with *de minimus amounts* of used oil to be used for dust suppression. On a related matter, some commenters wanted to know whether use of used oil for insect control or as a weed killer is allowed.

7. CERCLA Liability Issues

Section 114(c) of CERCLA contains the service station dealer's exemption from liability under the statute for used oil. To be eligible for the exemption, service stations are required to comply with the section 3014 of RCRA used oil management standards and accept DIY-generated used oil. EPA requested comment on how to ensure that small quantity generators could be eligible for this exclusion if they were conditionally excluded from most of the regulatory requirements similar to subtitle C.

The commenters were in agreement that the service station exclusion contained in section 114(c) of CERCLA should be implemented. Many commenters encouraged EPA to include facilities that collect DIY-generated used oil (*e.g.*, public facilities), regardless of whether they are service stations, to promote recycling of the DIY used oil segment. A commenter requested that EPA clarify that "quick oil change and lubrication facilities" are in the definition of "service station dealers" and that "used oil destined for recycling" should be included instead of just "recycled" used oil. One commenter requested that refiners and downstream users be included in the definition of service station to obtain the CERCLA liability exemption.

Many commenters expressed support for the elimination of generator category distinction (*i.e.*, small quantity generators versus large quantity generators). In addition to the reduction in confusion and handling requirements for used oil, these commenters noted that all generators could then benefit from the CERCLA liability exemption.

8. Storage

EPA proposed different requirements for storage for different segments of the used oil industry to respond to the potential risks associated with used oil handling. EPA requested comment on storage standards to address the potential hazards associated with used oil. EPA did not propose requirements for underground tanks used to store used oil, because the Agency believes that the current requirements for USTs in 40 CFR part 280 appear to be adequate.

Most commenters supported EPA's basic intent to establish minimum technical standards for the storage of used oil. A number of commenters supported the requirement that all generators should comply with minimal technical standards and that there should be no exclusion for small quantity generators; however, some opposed this approach and supported a distinction between generators based on the amount of used oil generated. The majority of commenters requested that the proposed requirement for daily inspections should be reduced to weekly, biweekly, or monthly. A number of commenters were against the proposed 50-foot buffer zone requirement primarily because it would be impossible for quick lube facilities to implement this requirement due to the limited size of their facility and it would be inappropriate because of the low flash point of motor oil. An alternative that was suggested was for facilities to comply with the NFPA's "Flammable and Combustible Liquids Code" for buffer zones. One commenter suggested that satellite accumulation areas that are exempt from the storage standards be allowed. One commenter pointed out that a definition and requirement for a continuously fed tank is necessary.

9. Secondary Containment for Tanks

EPA requested comment on its proposal to require Spill Prevention, Control and Countermeasure (SPCC)-recommended secondary containment or to require RCRA subtitle C secondary containment requirements for controlling releases and spills of used oil from aboveground storage tanks at used oil processing and re-refining facilities. The SPCC options include berms, dikes, or retaining walls along with an oil-impervious floor designed to contain used oil and avoid significant contamination of soil and nearby surface and ground water resources.

Most of the commenters agreed with EPA's proposal to require SPCC-recommended secondary containment but were not supportive of also requiring subtitle C secondary containment requirements for aboveground storage tanks. A few commenters noted that requiring compliance with subtitle C would not add a significant margin of safety compared to the cost of upgrading the tanks. Commenters argued that most of the aboveground storage tanks are already in compliance with SPCC and, with few exceptions, these requirements have been an acceptable vehicle for protecting human health and the environment. One commenter supported the measure to require owners/operators storing used oil in aboveground storage tanks to comply with both SPCC and subtitle C requirements. Their rationale was that such requirements address different management issues and are not unreasonably burdensome.

10. Financial Responsibility

In the 1985 proposed rule, used oil recycling facilities were to be subject to the subtitle C financial responsibility requirements (50 FR 49256). Many comments that were received on this proposal suggested that such requirements would have detrimental effects on the used oil recycling market. In the September 1991 Supplemental Notice, EPA requested comment on deferring the requirements.

The commenters were nearly evenly divided on EPA's proposal to defer the financial responsibility requirements for used oil recycling facilities. Those commenters that supported the deferral indicated that because recyclable used oil has economic value, there is an incentive to move as much oil as possible. These commenters also agreed with EPA's contention that requiring financial responsibility would impact the economic viability of used oil recyclers.

Those commenters that did not support EPA's proposal to defer the financial responsibility requirements questioned the practicality of requiring recyclers to comply with the closure and post-closure requirements while not requiring the financial mechanisms to ensure that these activities are done. A few commenters noted that there are 63 used oil recycling sites listed on the National Priorities List, which indicates that financial responsibility requirements are necessary. A state agency urged EPA to require some level of financial responsibility because used oil, when mismanaged, presents as much risk to human health and the environment as any other hazardous waste.

11. Permit-By-Rule

In the 1985 proposed rule, EPA used the authority under section 3014 of RCRA to propose permitting requirements for used oil recycling facilities (50 FR 49225, 49257). RCRA section 3014(d) provides that owners and operators of used oil recycling facilities are deemed to have a permit for their recycling activities and associated tank and container storage, provided they comply with the used oil management standards promulgated by EPA. Thus EPA proposed that owners/operators of used oil recycling facilities would be eligible for a permit-by-rule eligibility, including those undertaken by facilities that recycle or store used oil in surface impoundments and facilities that manage other hazardous waste in addition to used oil (co-management facilities).

Most of the comments pertaining to the permit-by-rule proposal were not supportive of EPA's proposal based on many concerns. A number of commenters opposed EPA's proposal that only those facilities that did not manage other hazardous wastes should be eligible. Their contention was that section 3014 of RCRA did not expressly state that co-management facilities were ineligible. A few commenters were against the permit-by-rule concept altogether and favored a site-by-site permitting approach. A few commenters requested EPA to allow permit-by-rules only for facilities that handled nonhazardous oil and require those facilities that handled hazardous oil to comply with subtitle C. Some commenters were in support of EPA's proposed permit-by-rule requirements.

IV. Definition of Used Oil

EPA's 1985 proposal to list used oil as a hazardous waste included the following proposed definition of used oil:

"Used oil" means petroleum-derived or synthetic oil including, but not limited to, oil which is used as a: (i) lubricant (engine, turbine, or gear); (ii) hydraulic fluid (including transmission fluid); (iii) metalworking fluid (including cutting, grinding, machining, rolling, stamping, quenching, and coating oils); (iv) insulating fluid or coolant, and which is contaminated through use or subsequent management.

During the 1985 comment period, many commenters criticized the vagueness of the proposed definition. One issue commenters raised was that it was unclear from the definition what constitutes "contamination." The use of the phrase "but not limited to" also was challenged. Commenters contended that such a phrase could be interpreted to

include varieties of oil such as food grade oils within the definition of used oil. Commenters suggested that EPA specifically list in the definition the types of oils they intended to regulate.

Another point that commenters disputed about the definition of used oil was use of the term "or subsequent management." They pointed out that the statutory definition of used oil specifies contamination only "as a result of use," not via subsequent management. Used oils that become adulterated after use should be subject to management standards that discourage this practice. Commenters agreed that used oils contaminated with hazardous wastes should be subject to full subtitle C requirements.

Many commenters questioned the basis for including synthetic oils in the definition of used oil. The statutory definition of used oil does not explicitly include synthetic oils; therefore, commenters asserted that used synthetic oils should not be considered "used oils." Several comments were received regarding metalworking oils as well. Commenters requested that copper and aluminum wire drawing solutions be excluded from the definition of used oil. Copper drawing solution is an emulsion of 1 to 2 percent oil in water. Aluminum drawing solution is considered a neat oil (*i.e.*, 100 percent oil). However, one commenter stated that aluminum drawing solution is nonhazardous and meets the EPA used oil fuel specification test.

EPA carefully evaluated the comments referring to synthetic oils, including those comments where the commenter submitted data. EPA has concluded that synthetic oils that are not petroleum-based (*i.e.*, those produced from coal or oil shale), those that are petroleum-based but are water soluble (*e.g.*, concentrates of metalworking oils/fluids), or those that are polymer-type, are all used as lubricants similar to petroleum-based lubricants, oils, and laminating surface agents. Upon use, synthetic oils become contaminated with physical or chemical impurities in a manner similar to petroleum-based lubricants. This contamination during (or as a result of) use is what makes used oil toxic or hazardous. Upon collection, these used oils are not distinguishable from non-synthetic used oils, except in the case of segregated, water-based metalworking oils/fluids. All used oils, in general, are managed in similar manners (*e.g.*, burned for energy recovery, re-refined to produce lube oil feedstock, or reconstituted as recycled products). Therefore, EPA believes that all used oils, including used synthetic oils, should be regulated in a similar fashion and, hence, EPA has decided to include synthetic oils in the definition of used oil as discussed below. For the large part, the definition of used oil includes used lubricants of all kinds that are used for a purpose of lubrication and become contaminated as a result of such use.

Today, EPA is promulgating a regulatory definition for "used oil" at 40 CFR 260.10 as follows:

> Used oil means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.

This regulatory definition of used oil is drawn from the statutory definition of used oil found at section 1004(36) of RCRA and is similar to the current definition of used oil found at 40 CFR 266.40(b). EPA believes that this definition covers the majority of oils used as lubricants, coolants (non-contact heat transfer fluids), emulsions, or for similar uses and are likely to get contaminated through use. Therefore, specific types of used oils are not identified in the definition.

The definition includes all used oils derived from crude oil, as well as used synthetic oils that are contaminated by physical (*e.g.*, high water content) or chemical (*e.g.*, lead, halogens, or other toxic or hazardous constituents) impurities as a result of such use. However, with today's rule, EPA is interpreting the definition of used oil contained in the statute to include used synthetic oils, including those derived from coal or shale or from a polymer based starting materials. The Agency explained its rationale for including synthetic oils in the definition of used oils in the preamble for the November 1985 proposed used oil listing (50 FR 49262). The Agency's position continues to be that synthetic oils should be included in the definition of used oil due to the fact that these oils are generally used for the same purposes as petroleum-derived oils, are usually mixed and managed in the same manner after use, and present the same level of hazard as petroleum-based oils. In addition, the Agency believes that Congress could not envision how prevalent synthetic oils would become when it passed the UORA in 1980. Congress surely would not have intended a result where large amounts of vehicle engine oils are not covered by RCRA section 3014.

The commenter-submitted data concerning synthetic oils suggest that properties of synthetic oils that are polymer based are akin to oils produced from crude base stock and can be used effectively as crude oil substitutes. When used, they become contaminated with physical or chemical impurities and are not readily distinguishable from used oils that are crude oil based.[4] Today's definition does not include oil-based products used as solvents refined from crude oil or manufactured from synthetic materials. The Agency has always viewed petroleum-based solvents as wastes separate and distinct from used oil. In the 1989 proposal for Land Disposal Restriction Standards, ignitable liquids encompass materials like solvents, paint thinners, contaminated oils, and various organic hydrocarbon. Some of these have been thought to contain organic constituents from the listed wastes F001–F005. (See 54 FR 48420, November 22, 1989.)

The definition of used oil promulgated today does not include used oil residues or sludges resulting from the storage, processing, or re-refining of used oils. EPA believes that the types and concentrations of hazardous constituents in used oil residues and sludges are different from those typically found in used oils, and therefore these residues and sludges warrant separate regulatory consideration. EPA is going to continue to study used oil residues and sludges, as well as all of the residuals from used oil re-refining activities. EPA may finalize the residual listings proposed in the 1991 Supplemental Notice or propose a listing determination for the specific used oil sludges and residuals in a future rulemaking. Residuals are covered under the existing RCRA regulations. Currently, these wastes are subject to the hazardous waste characteristics. If a residue, sludge, or residual resulting from used oil storage, processing, or re-refining exhibits one or more of the characteristics of hazardous waste, then it must be managed as a hazardous waste in accordance with all applicable Subtitle C requirements. However, as discussed later in this preamble, distillation bottoms derived from used oil re-refining are conditionally exempt from the used oil management standards promulgated today, as well as the Subtitle C hazardous waste regulations, when the distillation bottoms are used as ingredients in asphalt products. In the September 1991 Supplemental Notice, EPA proposed to list as a hazardous waste several residuals from used oil

[4] A letter from Mobil Corporation to EPA dated July 8, 1992. A report by Independent Lubricants Manufacturers Association, "Waste Minimization and Wastewater Treatment of Metalworking Fluids," 1990.

processing and re-refining operations. Distillation bottoms were among the residuals that EPA proposed to list. Following the 1991 Notice, EPA received data from several commenters indicating that distillation bottoms from the processing and re-refining of used oil do not fail the toxicity characteristic. EPA has no other recent data on the composition or toxicity of these residuals. In addition, commenters have indicated that the use of distillation bottoms as ingredients in asphalt materials is a very common practice. Furthermore, distillation bottoms, when used as asphalt extender materials, also may be regulated under the Toxic Substances Control Act, as applicable. EPA believes, based on the Toxicity Characteristic (TC) data provided by commenters, that the distillation bottoms from re-refining of used oil do not exhibit the characteristic of toxicity. Therefore, the Agency has deferred a listing decision for these residuals and has provided a conditional exemption from the hazardous waste regulations of parts 262 through 266, 268, 270, and 124 and the part 279 standards for certain residuals that are incorporated into asphalt (40 CFR 279.10(e)(4)).

V. Listing Determination for Recycled Used Oil

A. General

Section 3001 of RCRA provides the Agency with the general statutory authority under RCRA for identification and listing of hazardous wastes. In 1984, HSWA amended section 3014 of RCRA by specifically requiring EPA to exercise its hazardous waste identification and listing authorities and propose a listing determination for used automobile and truck crankcase oils and other used oils.

EPA's technical criteria for determining whether or not a solid waste should be listed as a hazardous waste are codified at 40 CFR 261.11. Section 261.11(a)(1) allows EPA to list a solid waste as a hazardous waste if the solid waste exhibits any of the characteristics of hazardous waste. Section 261.11(a)(3) directs that a waste shall be listed as hazardous if it contains any of the toxic constituents listed in appendix VIII and, after considering the following factors, the Administrator concludes that the waste is capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed. The factors to be considered in making this determination include toxicity, fate and transport, mobility and persistence, and the bioaccumulation potential of the constituents in the waste, as well as plausible mismanagement scenarios (40 CFR 261.11(a)(3)(vii)) and other Federal and state regulatory actions with respect to the waste (40 CFR 261.11(a)(3)(x)).

In making a listing determination for used oils destined for disposal, EPA paid considerable attention to the current Federal regulations governing the disposal of non-hazardous and hazardous wastes. EPA published a final listing determination for used oils destined for disposal on May 20, 1992 (57 FR 21524). EPA concluded that the existing EPA regulations, especially the toxicity characteristic, adequately regulate the disposal of used oils that exhibit a characteristic of hazardous waste. Other EPA programs (*e.g.*, the recently promulgated municipal solid waste landfill criteria, the stormwater requirements, and TSCA regulations), as well as other Federal and state regulations, adequately control the disposal of non-hazardous used oils that do not exhibit a characteristic of hazardous waste.

EPA has decided to use a similar regulatory approach for recycled used oils as the Agency used for used oils that are disposed. The Agency proposed in September 1991 that the listing of used oil as a hazardous waste may not be necessary if the Agency promulgates used oil management standards that are protective of human health and the environment. Commenters who responded to the September 1991 notice overwhelmingly supported this approach. EPA has decided to adopt this approach and consider the technical criteria for making a listing determination, given a universe of used oils that are managed in accordance with a protective set of management standards.

In making a listing determination for recycled used oils, EPA evaluated the technical criteria for listing a waste as hazardous, the fate and plausible mismanagement of used oils that are recycled, and the impacts of the management standards proposed in 1985 and 1991 and finalized today. EPA has determined that used oils that are recycled do not pose a substantial present or potential hazard to human health or the environment when the used oils are managed properly from the time they are generated until they are recycled. As discussed in the next section of this preamble, EPA believes that used oil that is recycled and handled in compliance with the used oil management standards promulgated today will not pose serious adverse risks to human health and the environment. Therefore, EPA is finalizing its decision not to list used oils that are recycled as hazardous waste. Integrally related to this "no listing" decision for recycled used oil, the Agency also is promulgating management standards for recycled used oils to assure protection of human health and the environment from potential damages due to the mismanagement of recycled used oils.

B. Summary of EPA's Listing Determination and Rationale for Recycled Used Oils

As discussed below, the Agency has determined that the major potential risks associated with the mismanagement of used oils during recycling can be adequately controlled through management standards promulgated under the authorities of RCRA section 3014. The used oil management standards promulgated today are designed to control the accumulation, storage, transportation, and general management of recycled used oils. The management standards promulgated today protect human health and the environment from potential mismanagement of recycled used oils without imposing undue regulatory and financial burdens upon the used oil recycling system. The goal of today's regulations is to ensure the recycling of all used oils in a safe and protective manner. These new Federal management standards address the major risks (discussed later) identified by the Agency, associated with management of used oil eliminating the need for the Agency to list used oils as hazardous waste per the listing criteria provided in § 261.11(a)(3).

Today's decision not to list recycled used oils is based on the adequacy of both existing Federal regulations and today's newly promulgated management standards to address the potential mismanagement of used oil, similar to the basis for the May 20, 1992 decision concerning used oil destined for disposal. Briefly, used oil mismanagement and related risks are controlled under other regulations and statutes; in particular, the 40 CFR part 280 underground storage tank (UST) regulations, the 40 CFR part 112 spill prevention, control and countermeasure (SPCC) program, the stormwater regulations, and the lead phase-down program. These regulations will be supplemented by the used oil management standards promulgated today for recycled used oils. As discussed in the preamble to the May 20, 1992 used oil regulation, the SPCC program requires facilities to have a contingency plan in place to ensure that

oil spills are prevented, controlled via containment measures, and responded to when oil spills occur and reach navigable waterways. The UST program similarly focuses on control and prevention of oil leaks from underground petroleum storage tanks including waste oil tanks. These two programs are clearly related to the management standards promulgated today and cover the used oil universe.

The management standards promulgated today specifically address the following major risks that EPA has identified with past practices in managing recycled used oil. These are:

1. *Improper storage.* EPA notes that in the past, used oil was both overaccumulated and handled carelessly, resulting in a number of release incidences, from used oil storage units. These releases have been documented at off-site processors and re-refiners.[8] Today's management standards have stringent secondary containment and spill cleanup provisions for used oil processors and re-refiners. Also, storage of used oil in unlined surface impoundments (unless only *de minimis* amounts of used oil are present) is banned outright.

2. *Road Oiling.* EPA has documented several cases of environmental degradation that were caused by oiling roads with adulterated used oil. Today's management standards ban the use of used oil for road oiling and dust suppression purposes. However, States that currently allow used oil to be used for road oiling, and/or those States that want to set standards to control the use of used oil as a road oiling agency, may petition EPA to allow road oiling in the individual States.

3. *Adulteration with hazardous waste.* In a number of documented instances used oil has been used either deliberately or inadvertently as a carrier for the illegal disposal of hazardous waste. The addition of hazardous waste, or "adulteration," results in a more toxic mixture that may be spilled, burned, or even dumped. Today's management standards address adulteration in four main ways:

- The "rebuttable presumption" provision of 40 CFR part 266, subpart E, which currently applies to used oil burned for energy recovery, has been expanded to cover all used oils, regardless of intended disposition;
- Used oil processing and re-refining facilities have to develop specific sampling and analytical plans to document that they do not accept hazardous waste/used oil mixtures;
- All used oil handlers must label their tanks and containers used to store used oil with the term "used oil," to assist employees in identifying which units are used exclusively for used oil storage and to avoid inadvertent mixing with other wastes; and
- The existing invoice system in 40 CFR part 266, subpart E for used oil fuels has been supplemented with a tracking system consisting of acceptance and delivery records. Tracking of used oil shipments applies to all used oil transporters and processing and re-refining facilities. The tracking system will assist in identifying accountability, should mixing be suspected.

Finally, EPA notes that two other areas of potential risk are not addressed by today's management standards, but these risks already have been reduced by in past agency actions. As noted above, the Agency is postponing listing determinations on used oil processing residuals. Although cases of environmental damages due to improper management of residuals have been documented, these cases involved residuals from old, out-of-date processes (*i.e.*, acid clay re-refining). Data received in response to the September 1991 Supplemental Notice indicate that residuals from newer processes do not exhibit the toxicity characteristic. Residuals that are destined for disposal are still subject to the hazardous waste characteristics, and in 1990, EPA promulgated the toxicity characteristic rule, which replaced the extraction procedure (EP) toxicity test. If used oil residuals, including distillation bottoms derived from used oil processing and re-refining, are recycled as used oil fuels, then the management of the residuals is subject to the management standards promulgated today. Distillation bottoms that are recycled as feedstocks in the production of asphalt materials are not subject to the management standards promulgated today. EPA will gather and assess information on newer technologies before reaching any further decisions on the regulatory status of residuals that are currently generated by used oil re-refiners.

EPA is aware of concerns raised over burning used oil as a fuel. The 1985 used oil fuel specification, however, was established to control the risks from burning used oil, thus it represents the Agency's best current judgment as to the level of control necessary to protect human health and the environment. Thus, the burning of used oil in compliance with the existing standards is not a "plausible mismanagement scenario" requiring the listing of recycled used oil as a hazardous waste. The concerns focus on the current lead specification of 100 ppm and whether this threshold provides adequate protection. RCRA restricts the burning of off-specification used oil for energy recovery to certain industrial facilities (e.g., industrial furnaces and utility burners) and space heaters. While facilities that burn off-specification used oil fuel are not required to control air emissions under RCRA, some of these facilities may be subject to Clean Air Act controls. The Agency plans to study these issues and, should regulatory controls be deemed necessary, EPA may take appropriate actions under RCRA or other statutory authority.

As discussed above, these rules address the major risks associated with used oil recycling including improper storage, road oiling, and adulteration with hazardous waste. These standards should prevent the kinds of mismanagement that has occurred in the past resulting in environmental damage. EPA has concluded that the management standards promulgated today in combination with other existing regulations provide adequate protection of human health and the environment and thus make it unnecessary to list used oil as a hazardous waste. EPA traditionally has based listing determinations on the risks posed by land-based management scenarios (*e.g.*, plausible land disposal mismanagement). Today's used oil management standards do address the technical criteria for listing of waste as hazardous under 40 CFR 261.11(a)(3).

EPA wishes to reemphasize that its decision not to list recycled used oil as a hazardous waste is based solely upon its evaluation of the technical listing criteria contained in 40 CFR 261.11(a)(3). In particular, EPA has not taken into account the potential stigma associated with classifying used oil as hazardous waste raised by commenters on the 1985 and 1991 proposals. Some consideration was given to the impacts of used oil management standards on used oil recycling in developing the standards, as required by section 3014(a) of RCRA. Once the standards were developed, however, EPA made today's listing determination by evaluating the resulting standards solely in terms of whether they would address the risks caused by plausible mismanagement of recycled used oil. EPA notes that the used oil standards address the same types of mismanagement, particularly spilling and improper land disposal, typically addressed by Subtitle C controls. In addition, the used oil management standards will be enforced under the same authorities (*i.e.*, section 3008 of RCRA) as are the hazardous waste regulations. For all of the above reasons, EPA determined that listing of recycled used oil as a hazardous waste is unnecessary.

[8] *Summary Descriptions of Sixty-Three "Used Oil" Superfund Sites.* Final Draft, U.S. EPA, May 1992.

VI. Final Management Standards for Recycled Used Oils

A. General Approach for Used Oil Management

On November 29, 1985 (50 FR 49212), EPA proposed a comprehensive set of management standards for generators, transporters and processing and re-refining facilities that handle and recycle used oil. The management standards proposed in 1985 were very similar to the management standards promulgated for handlers of RCRA hazardous wastes since the Agency also proposed to list used oils as hazardous wastes. EPA received substantial public comment on the 1985 proposed requirements. On September 23, 1991 (56 FR 48000), EPA published a Supplemental Notice of Proposed Rulemaking that discussed the Agency's recent data collection activities for the identification and listing of used oil and discussed several options for used oil management standards. The intent of the management standards alternatives identified and discussed in the 1991 Supplemental Notice was not to replace or withdraw the 1985 proposed standards but to set forth options to (a) clarify or modify certain 1985 proposed standards, (b) defer selected standards (*e.g.*, financial responsibility), and (c) add new requirements (*e.g.*, recordkeeping and reporting requirements for certain generators and transporters). The Agency requested and received a substantial number of comments on the specific approaches that the Agency was considering and that were discussed in the 1991 Supplemental Notice.[6]

After reviewing and analyzing comments in response to both the 1985 proposed rulemaking and the 1991 Supplemental Notice of Proposed Rulemaking, the Agency is adopting an approach for the management of used oils, described below, under which one set of management standards (with certain exemptions for used oil mixtures that contain de minimis quantities of used oil) will control the management of used oils that are recycled. The Agency's basis for setting these standards includes documented release and damage information, quantities of used oil managed by each segment of the used oil management system, the adequacy of current management practices, and the potential economic impacts that could be imposed on the regulated universe.

Based upon evidence provided by documented damages at sites on the National Priorities List (NPL) and by updating the site-specific information previously used to support alternative management standards discussed in the 1991 Supplemental Notice, EPA has concluded that storage practices at facilities that handled used oil have resulted in the vast majority of known instances of used oil mismanagement. EPA also confirmed this finding through a review of enforcement cases prepared by Regional enforcement officials to identify environmental damages that occurred at RCRA facilities managing used oil in solid waste management units. EPA has documented damage and release information from both NPL sites and RCRA-permitted facilities. Detailed descriptions of the damages at 63 NPL sites where used oil was managed are presented in "Summary Descriptions of Sixty-Three 'Used Oil' Superfund Sites." A summary of used oil-related damages at RCRA-permitted facilities where used oil was managed is presented in "Summary Descriptions of Used Oil-Related Damages at RCRA-Permitted Facilities." A copy of each of these documents is in the docket for today's rule.

The Agency has determined that it is necessary to develop management standards to address the major risks discussed earlier associated with management (and plausible mismanagement scenarios) of used oils within the used oil recycling system. Primarily, the management standards promulgated today focus heavily on used oil processors and re-refiners and include storage and release response requirements, tracking and recordkeeping requirements, and bans on certain practices that have caused problems (*i.e.*, road oiling and the storage of used oil in surface impoundments not regulated under subtitle C of RCRA). The management standards cover all sectors of the used oil universe and are codified in a new part, part 279, of title 40 of the CFR.

Generally, EPA is establishing (1) controls on the storage of used oil in aboveground tanks and containers to minimize potential releases from these units; (2) tracking and recordkeeping requirements for used oil transporters, processors and re-refiners to provide a level of confidence within the system that used oils destined for recycling are in fact recycled by authorized facilities; and (3) standards for the cleanup of releases to the environment during storage and transit and for the safe closure of storage units at processing and re-refining facilities to mitigate future releases and damages. The Agency believes this approach will address potential hazards to human health and the environment from the management (including plausible mismanagement scenarios), of all used oils by used oil handlers.

EPA believes that, irrespective of whether used oils exhibit a characteristic of hazardous waste, used oils can pose some threat to human health and the environment (*e.g.*, used oils can form a sheen on water and make it non-potable). Therefore, it is important that used oils are handled in a safe manner from the point of generation until recycling, reuse, or disposal.

As stated in the 1991 Supplemental Notice of Proposed Rulemaking and as supported by most of the public comments received by the Agency, the Agency has decided to implement used oil management standards using a two-phased approach. The proposed phased approach is designed first to develop basic management standards to address the potential risks associated with management (including plausible mismanagement) practices of used oil recycling industry. Used oil mismanagement scenarios include storage, collection/shipping, and processing or re-refining. At a later date, as the Agency monitors the effectiveness of regulatory approach and receives more information, the Agency may adopt additional measures as necessary to address other potential problems.

The management standards adopted today are designed to address the potential hazards associated with improper storage and handling of used oil by establishing minimal requirements applicable to used oil generators, transporters, used oil processors, and re-refiners, and off-specification used oil burners. These requirements are selected from both the 1985 proposed standards and the 1991 proposed alternative management standards, taking into account public comments, an assessment of economic impacts on the regulated community, an assessment of how the management standards will impact the market for recycled used oil, and an assessment of the effectiveness of today's regulations, combined with other requirements, in controlling the risks posed by the improper management of used oil.

Today's management standards cover all used oil handlers and requirements including detection and clean up of used oil releases associated with storage and transportation, controls on storage,

[6] EPA received more than 800 comments during the comment period for the September 1991 Supplemental Notice. EPA also received over 100 comments on the notice after the close of the comment period.

analytical requirements to assure that used oils are not mixed with hazardous wastes, recordkeeping requirements, and the existing 40 CFR part 266, subpart E standards for the rebuttable presumption of mixing. Today's requirements also include closure standards for used oil processing and re-refining facilities. These requirements also address hazards associated with road oiling and disposal practices. The Agency has previously evaluated disposal requirements for hazardous and non-hazardous used oils under RCRA to protect against potential hazards from land disposal of used oil in the context of the Agency's decision not to list used oil destined for disposal (57 FR 21524, May 20, 1992).

After today's rule is implemented, EPA intends to evaluate the protective nature of this initial set of requirements and the effects these standards have had on the used oil recycling market, prior to developing additional standards or developing non-regulatory incentive programs to promote and increase used oil recycling. After such an evaluation, EPA may impose additional management standards at a later date. EPA will weigh the increase in potential environmental benefits against economic impacts prior to developing and imposing additional RCRA requirements, as required by RCRA section 3014.

As part of a comprehensive approach to addressing the management of used oil, EPA encourages the recycling of DIY-generated used oils (*e.g.*, household-generated used oils). Currently, DIY-generated used oils (approximately 193 million gallons annually) are not widely recycled. In fact, DIY-generated used oils are often improperly disposed. The Agency does believe, however, that since 1985, the recycling rate for DIY-generated used oils has been increasing as a result of public and private sector efforts.[7] EPA discussed several non-regulatory approaches (*i.e.*, economic incentives) to encourage DIY used oil recycling in the 1991 Supplemental Notice. EPA received a significant number of comments on these approaches (summarized in Section II of this preamble). The comments generally indicated that EPA should not go forward with the development of economic incentive programs at this time, but allow private sector programs and state-initiated programs to address the issue of DIY used oil collection. Since the 1991 Supplemental Notice was published, EPA has initiated a study of non-regulatory approaches for promoting DIY used oil collection. If the results indicate that incentives can promote recycling, then the Agency may address the establishment or use of incentives for encouraging the recycling of DIY-generated used oils later.

The management standards promulgated today contain basic, good housekeeping standards for the management of used oil. EPA considered an alternative approach in which no management standards would be issued until the Agency had developed a comprehensive, risk-based management scheme for used oil, which would address DIY-generated oil, used oil fuels burned by industrial burners, used oil transportation, and other used oil recycling and re-refining activities. Although this type of approach may have the advantage of providing time for EPA to collect more information on used oil management practices and avoiding piecemeal regulation of the industry, factors in favor of the phased approach include providing immediate protection to human health and the environment by addressing the primary sources of hazards identified by EPA including, improper storage, road oiling, and adulteration with hazardous waste. As stated above, the 1991 proposed two-phased approach provides the opportunity for changing regulatory provisions (if necessary) in Phase II, based on feedback from the implementation of Phase I. EPA believes that the approach adopted today will allow for adjustments as problems of over- or under-regulation are identified in the future.

B. Recycling Presumption

Various authorities are available to the Agency to control the management of used oils. RCRA section 3014 provides EPA with the authority to regulate generators, transporters, processing and re-refining facilities, and burners that handle recycled used oil or used oils that are to be recycled, regardless of whether or not the used oils are identified as hazardous waste. Section 3014 of RCRA does not, however, provide the Agency with regulatory authority over used oils that are not recycled. As stated in the May 20, 1992 rulemaking, the Agency believes that other RCRA authorities and other EPA and non-EPA regulations adequately control the management of used oils that are not recycled.

In the 1991 Supplemental Notice, EPA proposed a presumption of recyclability for all used oils. The presumption was based on industry data which suggested that once used oil enters the recycling system the majority of the used oil is recycled by burning for energy recovery or some other manner, such as refining. Under the proposed presumption, the Agency would have presumed that all used oils would be recycled, unless a used oil handler documented that the used oil cannot be recycled. In the 1991 notice, EPA also proposed several criteria used oil handlers could use to rebut the recycling presumption. The comments that EPA received in response to the recycling presumption were very supportive. Commenters indicated that the recycling presumption would ensure that used oils remained in the used oil recycling system. However, many commenters also indicated that the criteria that the Agency proposed for rebutting the presumption are not necessary, since they argued that all used oils can be recycled and the selection of a recycling method depends on the physical characteristics of the used oil (*e.g.*, water content, level of contamination) and the corresponding cost of recycling the used oil.

After considering the public comments supporting the recycling presumption, and the difficulties associated with promulgating and enforcing the proposed "recyclability criteria," the Agency has decided that specific criteria to rebut the presumption are not necessary. The Agency agrees with the commenters that the physical characteristic of the used oil and the used oil recycling market will dictate the conditions for recycling of used oil. However, the Agency has retained the recycling presumption because the presumption simplifies the used oil management system by ensuring that generators and others may comply with one set of standards, the part 279 standards promulgated today, regardless of whether the used oil exhibits a hazardous characteristic and regardless of whether the used oil will ultimately be recycled or disposed. In other words, the generator (or any other person who handles the oil prior to the person who decides to dispose of the oil) need not decide whether the used oil eventually will be recycled or disposed and thus need not tailor its management of the oil based upon that decision (and, if destined for disposal, whether the used oil is hazardous). Rather, the part 279 standards apply to all used oils until a person disposes of the used oil, or sends it for disposal.

The recycling presumption will not apply once the generator or other person disposes or sends the used oil for

[7] A survey conducted by the Convenient Automotive Services Institute, which was undertaken earlier this year, indicates that half the states have private sector-operated DIY used oil collection programs. Also, more than 30% of the states have public sector-operated DIY used oil collection programs.

disposal. Today's rule does not impose any recordkeeping requirements on such persons to demonstrate that the oil is destined for disposal. Rather, they must continue to comply with existing requirements for used oil disposal as listed in part 279, subpart I. The used oil disposal must be done in compliance with all applicable regulations (*i.e.*, the generator must determine whether the used oil exhibits any characteristic and, if so, must manage it as a hazardous waste). If used oil is recycled, however, no characteristic determination is required, but all parties handling the used oil must comply with the part 279 management standards.

For used oil processing and re-refining residuals, a hazardous waste determination will be necessary when the residuals are managed in a manner other than recycling for energy recovery or when re-refining distillation bottoms are used as a feed material for asphalt products (see discussion in Section IV of this preamble).

C. Rebuttable Presumption of Mixing for Used Oil

The rebuttable presumption currently codified at 40 CFR 266.40(c) provides that used oil containing more than 1,000 ppm of total halogens is presumed to be mixed with chlorinated hazardous waste listed in 40 CFR part 261, subpart D. Persons may rebut the presumption by demonstrating that the used oil has not been mixed with hazardous waste. EPA does not presume mixing has occurred if the used oil does not contain significant concentrations of chlorinated hazardous constituents listed in appendix VIII of part 261.

In 1985, EPA promulgated the used oil fuel specification. EPA set the specification limit for total halogens at 4,000 ppm. EPA set this specification limit for total halogens based upon emission standards modelling results. EPA also promulgated the rebuttable presumption of mixing in 1985. The rebuttable presumption limit for halogen content was set at 1,000 ppm, based upon probable mixing scenarios. The Agency believes (due to enforcement experience) that used oils exhibiting a total halogen level greater than 1,000 ppm have most likely been mixed with chlorinated hazardous wastes.

The Agency wants to discourage all mixing of used oils and hazardous wastes. However, EPA understands that some used oils (e.g., metalworking oils with chlorinated additives) may exceed the 1,000 ppm total halogen limit without having been mixed with hazardous waste. In these cases, the generator can rebut the presumption of mixing by documenting the source of the halogens and the used oil is subject to the part 279 management standards and is not subject to the subtitle C management system. However, even if the presumption of mixing is rebutted, if the total halogen level in the used oil exceeds 4,000 ppm, the used oil will not meet the used oil specification limit for total halogens. Therefore, if the used oil is to be burned for energy recovery, and the used oil will have to undergo further processing to meet the used oil fuel specification (to lower the total halogen level) or the used oil must be burned as off-specification used oil fuel (in which case the used oil fuel handlers must be in compliance with the requirements of part 279, subpart G). In cases where the used oil generator cannot rebut the presumption of mixing, the used oil generator must manage the mixture of used oil and hazardous waste as a hazardous waste (in compliance with all applicable Subtitle C management requirements).

In the 1991 Supplemental Notice, EPA proposed to apply the rebuttable presumption for used oil fuels to all used oils. Commenters favored extending the applicability of the rebuttable presumption for used oil fuels to all used oils that are recycled in any manner. EPA has decided to expand the presumption to cover all used oils (with two exceptions, discussed below) and has amended 40 CFR 261.3 to make the provision applicable to all used oils. Under this presumption, used oils containing more than 1000 ppm total halogens are presumed to have been mixed with a halogenated hazardous waste and therefore must be managed as hazardous waste. Used oil handlers may rebut this presumption by demonstrating that the used oil does not contain hazardous waste. EPA is recommending the use of SW-846 method 8010 in rebutting the presumption of mixing.

In today's rule, EPA is removing the current requirements of 40 CFR part 266, subpart E and recodifying these requirements in the new part 279, as explained later in this preamble. In the case of the rebuttable presumption, EPA is reinstating the rebuttable presumption as part of the definition of hazardous waste at 40 CFR 261.3. The Agency is amending the definition of hazardous waste in this manner to clarify that the rebuttable presumption will now apply to all used oils and that all used oils that contain greater than 1,000 ppm halogens must be managed as a hazardous waste, unless the presumption can be rebutted.

EPA solicited comments on the possible elimination of a distinction between a 1,000 ppm halogen limit for rebuttable presumption of mixing and the 4,000 ppm level for total halogens in specification fuel. EPA received favorable comments from the public. EPA, however, has decided not to address this issue in today's rulemaking. The management standards established today cover basic management practices and establish 1,000 ppm level for the rebuttable presumption of mixing for all used oils. The 4,000 ppm total halogen limit for specification fuel remains unchanged for now.

Today, EPA is amending the rebuttable presumption of mixing to conditionally exempt two types of used oils from the requirement to document the rebuttal. EPA is providing a conditional exemption for both used metalworking oils containing chlorinated paraffins and used compressor oils containing CFCs.

1. Metalworking oils.

EPA is providing a conditional exemption from the rebuttable presumption of mixing for used metalworking oils/fluids containing chlorinated paraffins, on the condition that these oils/fluids are processed through a tolling agreement to reclaim the metalworking oils/fluids. Many metalworking oils/fluids contain greater than 1,000 ppm total halogens, not because they are mixed with chlorinated hazardous wastes, but due to the presence of chlorinated paraffins in the oils/fluids. Today's amendment to the rebuttable presumption is partially a clarification, because used metalworking oils that are not mixed with hazardous waste (but do contain greater than 1,000 ppm halogens) could have been the subject of a successful rebuttal. This exemption will relieve generators of such oils/fluids of the burden and responsibility of documenting the source of the halogens when the generator has entered into a tolling agreement to have metalworking oils/fluids recycled. Generators, as well as other handlers, of metalworking fluids/oils who have not entered into a tolling agreement to provide for the recycling of the oils/fluids remain subject to the rebuttable presumption and will have to continue to document that the oils/fluids are not mixed with chlorinated hazardous wastes. The Agency is providing and codifying this amendment for generators and processors/re-refiners with tolling agreements because the Agency believes that such private arrangements restrict the handling of the oils/fluids and provide for a mutual interest in preventing any potential contamination of the oils/fluids to assure that the oils/fluids can be recycled (*i.e.*, adding

solvents to metalworking oils would reduce the value of the used oil as a metalworking oil—adding solvents may not reduce the value of the used oil if it is used as a fuel, but it is possible that it may be deemed as a mixture of used oil and hazardous waste if significant quantities of F001 and F002-halogenated constituents are detected).

2. Compressor Oils From Refrigeration Units Containing CFCs

EPA also is amending the rebuttable presumption to exempt CFC-contaminated used oils generated and removed from refrigeration units and air conditioning equipment, on the condition that these used oils are not mixed with other wastes, that the used oils containing CFCs are subjected to CFC recycling and/or reclamation for further use, and that these used oils are not mixed with used oils from other sources. The remaining used oil must be recycled appropriately in compliance with today's standards. The presence of CFCs in compressor oils removed from refrigerant units will cause the use oils to exhibit a halogen level greater than 1,000 ppm, even after the majority of the CFCs are removed and/or recycled. This exemption, like the exemption provided for metalworking oils, will relieve generators of used compressor oils of the burden and responsibility of documenting the source of the halogens. Generators and other handlers of CFC-contaminated compressor oils must keep the used oils that are contaminated with CFCs separate from other used oils that are not exempt from the rebuttable presumption, since other used oils may be mixed with chlorinated hazardous wastes. It is important to note that although the rebuttable presumption does not apply to used compressor oils containing CFCs or used metalworking oils, these used oils remain subject to appropriate part 279 standards. For example, used oils must contain less than 4,000 ppm total halogens to be considered specification used oil fuels.

Used compressor oils containing residual levels of CFCs after the CFC recycling/reclamation and used metalworking oils are subject to the specification limits for used oil fuels if these oils are destined for burning. EPA wants to discourage the burning of used oils with significantly elevated levels of halogens in space heaters or non-industrial furnaces or boilers. Pending further study, the Agency may restrict the on-site burning of metalworking and CFC-contaminated used oils sometime in the future. All burning of used oil containing high levels of halogens must occur in compliance with the RCRA regulations established for the burning of hazardous waste or used oil as applicable.

D. Summary of New Part 279

As mentioned above, today's action promulgates management standards for recycled used oil to meet the legislative mandate of the Used Oil Recycling Act of 1980. These standards are a combination of the 1985-proposed management standards and the alternative management standards proposed in the 1991 Supplemental Notice. The detailed discussion concerning applicable requirements is provided under individual categories of used oil handlers; Tables VI.1 to VI.7 give specific regulatory citations for the individual management standards contained in today's rule.

1. Applicability

a. *General.* As indicated in the 1991 Supplemental Notice, the used oil management standards promulgated in today's rule will be codified in a new part 279 of Title 40 of the Code of Federal Regulations. The regulations in part 279 apply to all used oils, regardless of whether or not they exhibit a hazardous waste characteristic. The management standards promulgated today apply to household-generated and do-it-yourself (DIY)-generated used oils only when these used oils are collected and aggregated. Such used oils may be collected and aggregated at individual privately-owned or company-owned service stations with DIY oil collection programs, auto centers or other state or local government-approved, community-based used oil collection centers.

Today's requirements cover all used oil handlers and all types of used oils. Table VI.1 summarizes the general standards. EPA believes that all used oils, once generated, must be stored properly and must enter the used oil recycling system. In addition, as discussed below, EPA presumes that all used oils are recyclable either as a fuel or a feedstock.

TABLE VI.1.—USED OIL

[General standards]

Requirement	New or existing	Regulatory citation
Recycling presumption	New	§ 279.10(a).
Mixtures of used oil with hazardous waste	Existing	§ 279.10(b).
Rebuttable presumption for used oil	Existing	§ 279.10(b)(1)(ii) and § 261.3(a)(2)(v).
Exceptions from rebuttable presumption for CFC and metalworking oils.	New	§ 279.10(b)(1)(ii) (A) and (B) and § 261.3(a)(2)(v) (A) and (B).
Mixtures of used oil with non-hazardous waste	Existing	§ 279.10(c).
Mixtures of used oil with products	New	§ 279.10(d).
Materials derived from used oil	New	§ 279.10(e).
Conditional exemption—wastewater	New	§ 279.10(f).
Used oil introduced into crude oil or natural gas pipelines	New	§ 279.10(g).
Used oil on vessels	New	§ 279.10(e)(3), § 279.10(h), and § 279.20(a)(2).
PCB contaminated used oils	New	§ 279.10(i).
Used oil specification	Existing	§ 279.11.
Surface impoundment/waste pile prohibition except for units operated under Part 264/265 requirements.	New	§ 279.12(a).
Prohibition on use as a dust suppressant	New	§ 279.12(b).
Prohibition on burning in other than certain units	Existing	279.12(c).

b. *Recycling presumption.* The management standards in part 279 apply to all used oils that can be recycled. EPA presumes that all used oils are recyclable and, therefore, all used oils must be managed in accordance with the management standards promulgated today. In the event a used oil handler disposes used oil on site or sends for disposal, the handler must comply with the applicable regulations (*e.g.*, determine whether the used oil exhibits any characteristic of hazardous waste and if it does, must manage the used oil as a hazardous waste). This provision is

codified today as subpart I of part 279. See section VI. B. for additional discussion.

The commenters to the 1991 Supplemental Proposal overwhelmingly favored implementation of the recycling presumption. However, many commenters stated that the criteria provided for rebutting the recycling presumption (*e.g.*, water content, BTU value) would be difficult to comply with, and therefore EPA should not develop such criteria. In addition, commenters stated that all used oils are recyclable and the extent of recycling depends on the cost to generators. For example, if the used oil is actually a mixture of oil and water, then the cost of recycling the mixture would be higher than recycling used oil that is straight out of engines or from metalworking operations. Upon further evaluation of comments, the feasibility of applying these criteria for a rebuttal, and the analytical requirements accompanying the proposed criteria, the Agency decided against finalizing the specific criteria for rebutting the presumption of recycling. The Agency believes that recycling is a more viable alternative than disposing of used oil as a characteristic waste. Therefore, used oil handlers will react to market conditions, thus selecting recycling over disposal. The Agency therefore has decided to rely on the decision to dispose used oil as a *de facto* criterion for rebuttal of the recycling presumption promulgated today.

c. *Mixtures.* The following section discusses management of mixtures of used oil and used oil-contaminated wastes. Used oils mixed with other solid wastes or with other materials (*e.g.*, virgin fuel oil) are regulated as used oil under the part 279 standards.

i. Mixtures of used oil and hazardous waste. Used oils that are mixed with listed hazardous wastes are subject to regulation as hazardous waste under 40 CFR parts 262 through 266, 268, 270, and 124. Used oils that are mixed with characteristic hazardous wastes may be managed as used oils under part 279 if the resultant mixture does not exhibit a characteristic. In addition, used oils that exhibit a hazardous waste characteristic (*e.g.* ignitability or toxicity) by their own nature and are not mixed with a hazardous waste may be handled in accordance with today's part 279 used oil management standards and are exempt from (i.e., not subject to) additional Subtitle C requirements, if they are recycled.[8]

Mixtures of used oil and hazardous wastes generated by conditionally exempt small quantity generators regulated under 40 CFR 261.5 are subject to regulation as used oil. The hazardous waste from a conditionally exempt generator when mixed with used oil generated by this entity, may cause the used oil to exceed the halogen limit under the rebuttable presumption of mixing. This mixing has been permissible since 1985 under 40 CFR 260.40(d)(2) when used oil mixed with hazardous waste generated by a small quantity hazardous waste generator is burned for energy recovery. The existing requirement is recodified at 40 CFR 279.10(b)(3) today.

ii. Mixtures of used oil and other solid wastes. EPA encourages the separation of used oils from used oil/solid waste mixtures and from used oil-contaminated materials prior to management of the mixture. Used oils separated from mixtures containing other solid wastes should be recycled in accordance with the standards promulgated today. Used oils that have been separated from mixtures with other materials or solid wastes are subject to the management standards of part 279. For example, used oils recovered from oil filters, industrial wipers and other absorbent materials, and used oils recovered from scrap metals are all subject to the part 279 used oil management standards when they are recycled. Commenters were in favor of requiring proper management of wipers and sorptive materials contaminated with used oil, as long as the used oil has been removed and no free-flowing oil remains associated with the solid waste mixture.

In the September 1991 Supplemental Notice, EPA proposed a one drop test for determining when there is no free-flowing used oil remaining in a mixture. The Agency has decided against using the one drop test, because EPA is unable to address the question of how to determine when one drop is formulated. Instead, the Agency decided to apply a free-flowing concept to mixtures of used oil and other solid wastes. The used oil from such mixtures, when subjected to mechanical pressure devices such as cloth wringers/squeezers or gravity draining, can easily be removed so that no free-flowing oil remains associated with the other solid waste(s). Therefore, EPA has decided to apply the concept of no free-flowing oil, rather than a one drop test. EPA encourages the handlers of used oil and other solid wastes to remove used oil to the extent possible such that there is no visible sign of free-flowing oil in the remaining solid waste. The storage and handling of the mixtures prior to the separation of the used oil must be in compliance with the management standards for recycled used oil promulgated today. If any used oil that is removed from a mixture cannot be recycled, the generator of the used oil must manage the used oil in accordance with the disposal requirements of part 279, subpart I. Materials from which used oils have been removed must be managed safely and in accordance with all applicable RCRA regulations upon removal of used oil.

iii. Mixture of ignitable solvents and used oil. In the 1991 Supplemental Notice, EPA requested comments on whether the Agency should allow burning of mixtures of used oil and characteristic waste (i.e., waste exhibiting characteristics of ignitability) such as mineral spirits as a used oil fuel. The commenters stated that the burning of such mixtures can be performed in compliance with the used oil fuel specification requirements. The commenters also pointed out that mineral spirits, petroleum distillates are used in place of halogenated solvents as cleaning agents, degreasing fluids or part-cleaning solvents in automotive and vehicle maintenance industry and metalworking operations. The mineral spirits, petroleum distillates are then mixed with used oil to eliminate the characteristic of ignitability and then sent off-site for recycling as a used oil fuel. Based on the available data, the Agency has concluded that the mixing to manage ignitable solvents appears to be acceptable, provided the characteristic of ignitability of the ignitable solvents is removed.

EPA believes that if the solvents are hazardous only because of ignitability, and are not listed in part 261, subpart D, and do not exhibit the toxicity characteristic, then mixing the solvents in with used oil should not affect the chemical constituents or other properties of used oil. The solvents in question (i.e., mineral spirits) are petroleum fractions, are typically used by the same businesses that generate used oil, and are managed in a manner similar to used oil, i.e., burning for energy recovery or distillation to recover the solvent. As such, efficient and sound management can include mixing with used oil by used oil generators, and management by used oil processors and re-refiners. If the mixture exhibits the characteristic of ignitability, however,

[8] The Agency is currently evaluating several options to change the hazardous waste identification program (see 57 FR 21450; May 20, 1992). Depending upon which option(s) the Agency promulgates for hazardous waste identification, the mixture rule at § 261.3 may be altered or abolished. Hence, the regulation of used oils that are mixed with hazardous wastes may change.

this can mean that the mixing has changed the nature of hazards involved in managing the used oil, and this mixture should remain subject to hazardous waste controls.

d. *Used oil fuels.* Since the final used oil burning and blending rule was published on November 29, 1985, used oils burned for energy recovery have been regulated under 40 CFR part 266, subpart E. Today's rule removes subpart E from part 266 and incorporates (with minor modifications) the existing management standards for used oil marketers and burners (including the used oil fuel specification) into part 279. Used oil burned for energy recovery is subject to regulation under subpart G of part 279, unless the used oil is mixed with hazardous waste. Mixtures of used oil and hazardous waste that are burned as fuel for energy recovery in an industrial boiler or furnace will continue to be subject to 40 CFR part 266, subpart H, the standards for hazardous waste burned in boilers and industrial furnaces.[9]

(Note: Used oils that are identified as hazardous wastes may be burned for energy recovery in compliance with part 279 instead of 40 CFR part 266, subpart H, provided the used oil fuel is hazardous solely because it exhibits a characteristic of hazardous waste by its own nature or was mixed with hazardous waste generated by a conditionally exempt small quantity generator regulated under 40 CFR 261.5.)

e. *SPCC Program.* Today's rule regulates the storage of used oils in aboveground tanks and containers. Used oils stored in underground storage tanks remain subject to the standards of 40 CFR part 280. Under section 311 of the Clean Water Act, EPA has promulgated regulations for the prevention of oil spills into navigable waterways. These rules are known as the Spill Prevention Control and Countermeasure (SPCC) regulations and are codified at 40 CFR part 112. The SPCC requirements apply to non-transportation-related facilities located in the proximity of navigable waters; they cover facilities with underground storage capacity over 42,000 gallons, aboveground storage capacity greater than 1,320 gallons, or single tank capacity of 660 gallons. The SPCC definition of oil is very broad and covers all petroleum and oil product-storing facilities handling waste oil, fuel oil and "oil refuse;" therefore, persons and facilities storing used oil may already be subject to the SPCC regulations. The used oil facilities covered under the SPCC regulations will continue to be subject to those requirements independent of the used oil storage requirements promulgated today for the used oil industry participants.

The SPCC regulations are designed to address prevention of oil spills and the associated contamination or threat of contamination of surface water. However, the regulations do not specifically address the mitigation of discharges that contaminate soil and/or ground water without posing a threat of contamination of surface waters. In addition, the National Oil and Hazardous Substances Contingency Plan (NCP) at 40 CFR part 300 requires removal of oil forming a sheen on surface water but does not require cleanup of oil-contaminated areas that do not pose a threat of contamination of surface waters. EPA believes that approximately 50 percent of the used oil generator universe, most of the used oil transporters and processors and re-refiners, and more than half of the off-specification used oil burners are likely to be covered under the SPCC program. EPA also believes that less than 10 percent of the used oil industry participants are excluded from the SPCC program because they are not located in the vicinity of navigable waterways.[10] When today's used oil management standards become effective, the aboveground used oil storage and processing tanks and containers located at used oil transfer facilities owned or operated by used oil collectors/transporters, used oil processing and re-refining facilities, and off-specification used oil burner sites will be subjected to the RCRA section 3014 requirements. These used oil handlers also will be subject to the applicable SPCC regulations in 40 CFR part 112.

f. *Storage in Underground Tanks.* Used oil handlers who store used oil in underground storage tanks (USTs)[11] must comply with the standards in 40 CFR part 280. The technical standards for USTs, including USTs that are used to store used oils, were promulgated after the 1985 proposed used oil management standards. The Agency stated in the preamble to the UST final rule (53 FR 37112) that used oil, when stored in underground tanks, presents risks similar to other petroleum products stored in USTs. As a result, EPA determined that owners and operators of used oil USTs must comply with the standards promulgated for petroleum USTs.

g. Conditional Exemptions

i. Distillation Bottoms from Re-refining of Used Oil. As proposed in 1985, EPA is promulgating an exemption from the part 279 standards for distillation bottoms derived from used oil re-refining processes on the condition that the distillation bottoms are used as ingredients in asphalt paving and roofing materials. Commenters have indicated that the use of distillation bottoms to make asphalt paving materials is a common practice. Commenter-submitted data also indicate that distillation bottoms from re-refining processes do not exhibit the toxicity characteristic, and the Agency has no data to refute this claim. Therefore, EPA sees no reason to prohibit or restrict the use of re-refining distillation bottoms in the production of asphalt materials and is therefore excluding used oil residuals used in this manner from the definition of hazardous waste.

ii. Inserting of used oil in crude oil or natural gas pipelines. Several commenters, in response to the 1985 proposed management standards, requested that EPA exempt upstream crude oil operations from the used oil management standards. These commenters believed that the practice of returning used oil to the refinery through the crude oil pipeline affords a high level of protection to human health and the environment, and additional requirements are unnecessary. Some commenters suggested that natural gas processing plants who may introduce used oil in the natural gas process stream should be exempted as well.

In response to these comments, EPA agrees that once introduced to a pipeline at crude oil or natural gas processing facilities, the possibility of releases to the environment is not greater for used oil than for crude oil and, therefore, is providing an exemption from the management standards for used oils that are placed directly into a crude oil pipeline. Similar exemption is provided to the owners/operators of natural gas

[9] Used oil that is mixed with hazardous wastes and is incinerated (*i.e.*), burning does *not* include energy recovery) must be incinerated in units that are in compliance with subpart O of 49 CFR parts 264/265. Any used oil that is incinerated in units regulated under parts 264/265, subpart O, must be managed in accordance with all applicable part 279 requirements prior to its incineration.

[10] See the background document pertaining to how the costs and benefits of today's rule were derived for a further explanation of how many facilities are not subject to the SPCC requirements. The background document is available in the docket for today's rule.

[11] In 40 CFR 280.12, underground storage tank is defined as any one or combination of tanks that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is ten percent of more beneath the surface of the ground.

processing plants may choose to introduce used oil generated on site into a natural gas pipeline. The exemption applies to such used oils after the used oils are placed into the pipeline. Prior to being placed into a crude oil pipeline, the used oils are subject to all applicable used oil management standards promulgated today as part of part 279, including all used oil storage requirements, because at that point, the used oil could be released through leaks or spills, as could any other used oil.

iii. Used oil/diesel fuel mixtures. Some used oil generators blend the used oils they generate from the diesel-powered vehicles they own or operate with diesel fuel for use in these vehicles. As EPA explained in the 1985 proposed rule (50 FR 49220), this blending should result in fuel that is very low in toxic contaminants. EPA also explained in 1985 that mixing of used oils with diesel fuel is often recommended by diesel engine manufacturers. In addition, data available to EPA suggest that used diesel engine crankcase oils are quite low in contaminants as generated. Since diesel fuel is itself typically low in toxic metals, a dilution ratio that assures a high concentration of diesel fuel to used diesel crankcase oils would seem to ensure the resultant blended fuel will meet the used oil fuel specification. EPA also believes that such blending is not done on a very frequent basis and the resultant blended fuel is kept on site for use in the generator's own vehicles. Therefore, EPA is exempting this activity from the processing and re-refining facility standards of part 279 for generators who engage in this practice on-site and use the resultant fuel only in their own vehicles. Such generators are, however, still subject to the generator standards of subpart C of part 279, prior to mixing the used oils with diesel fuel, and the resulting fuel must be managed in accordance with the used oil fuel specification regulations.

iv. de minimis wastewater mixtures. As proposed in 1985, the Agency has decided to exempt wastewaters contaminated with *de minimis* quantities of used oil from the part 279 requirements. These wastewaters are covered under the Clean Water Act regulations. The majority of commenters supported such an exemption. EPA is today finalizing the definition for *de minimis* quantities of used oil that was proposed in 1985: "small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations or when small amounts of oil are lost to the wastewater treatment system during washing or draining operations." As discussed above, used oils recovered from wastewaters, however, will be subjected to the part 279 used oil management standards and must be managed accordingly. In addition, if such wastewaters are discharged to a surface water, the wastewater must meet all applicable NPDES limits promulgated under section 402 of the Clean Water Act. Wastewaters discharged to POTWs must meet the applicable pretreatment standards established pursuant to section 307(b) of the Clean Water Act.

v. PCB-contaminated used oils. Used oils that are contaminated with PCBs and regulated under 40 CFR part 761 are not subject to the used oil management standards promulgated today as 40 CFR part 279. The Agency believes that the current requirements in part 761 for PCB-contaminated wastes adequately control the management and disposal of used oils containing PCBs.

vi. Used Oils sprayed onto coal. When used oils are sprayed onto coal to suppress dust during the transport of coal, the used oil/coal mixture destined for energy recovery is considered a used oil fuel and is regulated under part 279 subpart G. However, used oils that remain in containers (including railroad tank cars and trucks) after the removal of the coal must be managed in accordance with all applicable part 279 standards.

h. *CERCLA Liability Exemption and Its Applicability to Service Station Dealers.* Service Station Dealers (SSDs), as defined by section 101(37) of CERCLA, will become eligible for the exemption from CERCLA liability for recycled oil as a result of today's rule, provided that they meet the requirements of section 114(c) of CERCLA. The exemption is limited to generator liability under section 107(a)(3) of CERCLA and transporter liability under section 107(a)(4); it does not cover owner and operator liability under section 107(a)(1) and (2). The exemption applies to liability for injunctive relief under section 106(a) and for cost recovery under section 107. In order to qualify for the exemption, an SSD must meet the following requirement of sections 114(c) and 101(37): (1) The SSD must be in compliance with the used oil management standards that EPA is promulgating today, discussed in sections VI.D.2 and VI.D.3, respectively, of the preamble; (2) the used oil must not be mixed with any other hazardous substance; and (3) the SSD must accept "do-it-yourself" generated used oil for recycling. Further, the exemption applies only to "recycled oil" as defined in section 1004(37) of RCRA.

The used oil management standards, in particular, include corrective action requirements for used oil releases after the effective date of the rule (i.e., response to used oil releases). The SSD must comply with these and with other applicable requirements, i.e., the part 280 standards for underground storage tanks, and part 112 standards for aboveground containers and tanks, as appropriate. In addition, the SSD complying with the corrective action requirements for underground storage tanks used for used oil storage will become eligible for the exemption. The exemption is not available for the SSD's own facility.

SSDs becomes eligible to assert the exemption on the effective date of the used oil regulations under section 3014 of RCRA that include, among other provisions, a requirement to conduct corrective action to respond to any releases of recycled oil under subtitle C or subtitle I of such Act. (See CERCLA section 114(c)(4).)[12] Today's rules provide for corrective action by cross-referencing subtitle I for releases from underground tanks and the part 112 regulations for aboveground SPCC tanks. For containers and other aboveground tanks, today's rule establishes new requirements for responding to releases under RCRA, section 3014, a subtitle C authority. In non-authorized States, the rules become effective (insert date 6 months from publication). In authorized States, the rules will not become effective until the State adopts rules under its own authorities. Prior to State adoption, an SSD may be eligible for the exemption if it can demonstrate compliance with EPA's regulations. In both authorized and non-authorized states, after the rules take effect, EPA would generally not pursue an enforcement action against SSD for which the exemption potentially applies unless it has reason to believe that the SSD is not complying with the section 3014 regulations, or fails to meet any other conditions of CERCLA section 114(c) and 101(37). EPA will determine whether a CERCLA enforcement action is appropriate on a case-by-case basis. EPA's determination, of course, is not binding on other persons, including states, that might bring an action under CERCLA. In such cases, the SSD may have to show

[12] The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Superfund) (Pub. L. 96-510), as amended by The Superfund Amendments and Reauthorization Act of 1986 (Pub L. 99-499). December 1986, p. 71.

that it has complied with the used oil management standards and met the other conditions of section 114(c) and 101(37) through record or other means.

As mentioned above, EPA has determined today that SSDs must follow existing regulations promulgated under Subtitle I of RCRA to respond to releases of recycled oil from underground storage tanks (USTs). SSDs and other owners of underground tanks had to begin complying with these regulations in 1988. The exemption for SSDs, however, could not take effect until EPA determined that compliance with these regulations would satisfy section 114(c) of CERCLA. In authorized states, the states themselves must adopt regulations governing underground tanks. While EPA encourages the states to rely on the subtitle I rules, the states may adopt more stringent requirements. Hence, EPA believes that the standards for underground tanks do not "take effect" for the purpose of the section 114(c) exemption in an authorized state until that state adopts used oil management standards under its own authorities.

Finally, section 101(37)(C) of CERCLA provides that the President shall promulgate regulations further defining "service station dealer" pertaining to the "significant" percentage of gross revenues from motor vehicle fueling, servicing including lube and tune up, or repairing activities provided to the public on a commercial basis. The legislative history states, "To prevent the creation and use of 'service station dealerships' as a front for hazardous waste management firms or commercial generators of hazardous substances that want the benefit of this exemption from liability, a significant percentage of the business' gross revenue must be derived from the fueling, repairing, or servicing of motor vehicles. Business operations, such as large retail establishments or car and truck dealerships that have a legitimate, commercial automotive service component, are intended to be covered by this definition. However, a retail establishment that does not derive revenue from fueling, repairing, or servicing motor vehicles does not qualify under this definition. To the extent establishments that do not qualify under this definition produce large quantities of used oil, they are industrial generators and are to be treated like other generators."[13]

2. Standards for Used Oil Generators

a. *Applicability.* The standards for used oil generators have been promulgated as subpart C of part 279. Table VI.2 lists applicable requirements and provides regulatory citations. These standards apply to used oil generators as defined in subpart B of part 279. A used oil generator is any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulations. For example, generators include all persons and businesses who produce used oil through commercial or industrial operations and vehicle services, including government agencies, and/or persons and businesses who collect used oil from households and "do-it-yourself" oil changers. Household "do-it-yourselfer" used oil generators or private individuals who generate used oil through the maintenance of their personal vehicles are not subject to the used oil generators standards.

[13] H. Rep. No. 99-962, 99th Cong., 2nd Sess. (1986), at 226.

TABLE VI.2.—USED OIL

[Generator standards]

Requirement	New or existing	Regulatory citation
Used oil on vessels	New	§ 279.20(a)(2).
Mixtures of used oil and diesel fuel	New	§ 279.20(a)(3).
Farmers	New	§ 279.20(a)(4).
Generators who perform other management activities	New	§ 279.20(b).
Hazardous waste mixing	New	§ 279.21.
Type of storage units	New	§ 279.22(a).
Good condition above ground tanks and containers	New	§ 279.22(b).
Labelling of tanks and containers	New	§ 279.22(c).
Response to used oil releases from above ground storage units	New	§ 279.22(d).
On-site burning in space heaters	Existing	§ 279.23.
Off-site shipment	New	§ 279.24.
SPCC requirements, including spill prevention and control	Existing (applicable independently)	40 CFR part 112.
UST requirements, including corrective action and financial responsibility.	Existing (applicable independently)	40 CFR part 280.
Accumulation limit	NA	None.
Inspection requirements	NA	None.
Closure	NA	None.
Collection Centers:		
Do-it-yourselfer collection centers	New	§ 279.30.
Used oil collection centers	New	§ 279.31.
Used oil aggregation points	New	§ 279.32.

The Agency has decided to regulate all used oil generators under one set of minimum management standards. Today's rule does not exempt any class of generators based upon a generation rate. In the September 1991 Supplemental Notice, FPA proposed to eliminate the regulatory distinction between small quantity and large quantity used oil generators (the Agency had proposed such a distinction in the November 1985 proposed rulemaking). The majority of commenters who responded to the September 1991 Supplemental Notice on this issue supported the proposed elimination of the regulatory distinction for generators.

In the 1991 Supplemental Notice, while proposing to cover all used oil generators under the RCRA section 3014 management standards, EPA discussed the advantages of such an approach to the regulated community, regulating agencies, and do-it-yourself used oil generators. The major advantages that EPA envisions are as follows. Such an

approach minimizes complexity by placing all used oil generators under uniform regulatory requirements; it eliminates the need for measuring quantities of used oils collected and stored each month; it eliminates the concerns that generators could be bumped into a more stringent regulatory category if the collect DIY-generated used oils; and above all, it allows for a system whereby all used oil is collected, recycled, and managed in an environmentally sound manner, thus reducing hazards to human health and the environment. Another major advantage, as discussed earlier in section V.D.1.h., is that approximately 30,000 used oil generators who meet the CERCLA section 114(c) "service station" definition qualify for the liability exemption if they accept DIY-generated used oil and comply with the used oil management standards, including corrective action (*i.e.*, used oil spill response and clean up requirements).

EPA decided against providing a small quantity generator exemption for the following reasons:

- The generator standards established today are basic and minimal good housekeeping practices that include maintaining all tanks and containers in good condition, labeling tanks and containers, and cleaning up spills and releases of used oil. They are substantially less than those proposed in 1985 and 1991.
- Large generators who use tanks that exceed the capacity limits and other prerequisites established under the SPCC and UST programs are subject to the containment and corrective action requirements in those programs. These programs provide additional protection necessary at used oil generator sites appropriately beyond the basic standards contained in today's rule.
- The collection of DIY-generated used oil would be discouraged due to the inherent concern for generators of being bumped into a higher category (*e.g.*, if an exemption was set at 100 kg/mo, generators would be unwilling to accept DIY-generated used oils because of the concern that the additional quantities of used oil would require them to comply with the management standards).
- Generators may have to keep records of used oil generation activities to demonstrate that they qualify from an exemption. It is probable that some generators may dump used oil to show that they only generate a quantity of used oil that is less than the quantity limit for defining a small quantity used oil generator.
- An extensive education and outreach program would be necessary to explain the interface between the used oil generator exemption and the CERCLA liability exemption.
- Existing mismanagement practices at certain generator sites would continue, resulting in ongoing risks to human health and the environment.
- As discussed in Section X of this preamble, the costs of compliance are relatively small on a per facility basis, even though total costs to generators may be 39 to 66 percent of the total costs to the regulated community.

b. *Used oil generated on ships.* In the case of used oils generated by ships or vessels (as defined in 40 CFR 260.10), these used oils are not subject to the used oil management standards until the used oils are transported ashore. When used oils are removed from a ship or vessel and taken ashore, the owner or operator of the ship or vessel and the person or persons removing or accepting the used oil from the vessel are co-generators of the used oil and both parties are responsible for managing the used oil in accordance with the used oil generator standards in subpart C of part 279. The co-generators may decide which party will fulfill the requirements of subpart C. Bilge water that contains used oil but does not contain listed hazardous waste when brought ashore must be managed in compliance with the generator standards in today's rule prior to subjecting it to separation steps that use oil/water separators. Bilge water containing listed hazardous waste is subject to RCRA subtitle C regulations once brought ashore. EPA believes that large quantities of bilge water are not generally stored for an extended period but are processed soon after their arrival on the shore. After separation the used oil portion of the bilge water must be maintained in compliance with the used oil generator standards. The remaining wastewater separated from bilge water must be managed in accordance with the applicable RCRA regulations and any discharged is subject to applicable Clean Water Act regulations. (See §§ 279.10(e)(3) and 279.20(a)(2).)

c. *Management of Materials Contaminated with Used Oil.* As discussed above, used oil that is mixed with a hazardous waste must be managed as a hazardous waste in accordance with all applicable RCRA requirements. Persons who generate mixtures of used oil and other materials or solid wastes (*e.g.*, used oil filters, rags, sorptive minerals, sorbent materials, scrap metals) are subject to part 279. Used oil removed from mixtures must be managed in accordance with the requirements of part 279 and either sent off-site for recycling or reused on-site. If the used oil removed from the mixture cannot be recycled, the generator must comply with the requirements of subpart I of part 279 for disposal of the used oil. Mixture of used oil and solid waste (e.g., natural or synthetic sorbent materials) from which used oil can not be separated when burned for energy recovery is subject to used oil specification fuel requirements.

After separating used oils from other materials or solid wastes, the remaining material or solid waste must be managed in accordance with any and all applicable RCRA requirements. The generator must determine whether or not the materials that previously contained used oil exhibit a characteristic of hazardous waste (with the exception of non-terne-plated used oil filters; see 57 FR 21534), and if so, manage them in accordance with existing RCRA controls. If the material does not exhibit a hazardous characteristic (and is not mixed with a listed hazardous waste) then the material can be managed as a solid waste.

d. *On-Site Management of Used Oil.* As discussed above, generators who blend used oil with diesel fuel for use in their own vehicles need not manage the used oil/diesel fuel mixture in accordance with the generator requirements of part 279. EPA believes that used oil/diesel fuel mixtures should be stored properly to ensure against possible spills, fire, and explosion hazards. Prior to mixing with diesel fuel, these used oils are subject to the part 279 generator standards. Generators may use such a mixture in their own vehicles.

Used oil generators who dispose of used oil on-site must test the used oil or apply their knowledge to determine whether or not the used oil exhibits a hazardous waste characteristic. If the used oil exhibits a characteristic of hazardous waste, the used oil must be disposed in accordance with all applicable RCRA requirements. When disposing used oil that cannot be recycled, the generator must comply with subpart I of part 279, relating to proper management and disposal of used oils. Used oil generators processing used oil on site are subject to standards for used oil processors/re-refiners promulgated today.

e. *On-Site Storage.* Used oil generators are required to store used oil in tanks or containers and must maintain all tanks and containers in good operating condition. In maintaining all tanks and containers in good condition, generators must ensure that all tanks and containers are free of any visible spills or leaks, as well as structural damage or deterioration.

Generators storing used oil in aboveground tanks and containers must clearly label all tanks and containers with the term "used oil." Generators who store used oil in underground tanks must label all fill pipes with the words

"used oil." The labeling requirements are meant to assist generator employees in identifying all tanks and containers used to store used oil and to avoid unintentional mixing. In the 1985 proposed rule, EPA solicited comment on a requirement to label all used oil tanks and containers with the words "recycled oil." Commenters overwhelmingly responded that such a term would be confusing because tanks and containers are used to store used oil before it is recycled. Therefore, the majority of commenters favored labeling used oil storage units with the words "used oil."

Used oil generators who are covered under the Spill Prevention, Control, and Countermeasure (SPCC) program will continue to be subject to the requirements of 40 CFR part 112. Similarly, generators storing used oil in underground storage tanks (whether or not the used oil exhibits any characteristics of hazardous waste) must comply with the standards in 40 CFR part 280, which are independently applicable and enforceable. As discussed in the Supplemental Proposal, technical standards for underground storage tanks (USTs) have been promulgated since publication of the 1985 proposed rule. The Agency stated in the preamble to the UST final rule (53 FR 37112; September 23, 1988) that EPA believes that used oil, when stored in underground tanks, presents risks similar to other petroleum products stored in USTs. As a result, EPA determined that owners or operators of used oil USTs (including used oil generators) must comply with the tank upgrading, operation and maintenance, corrosion protection, corrective action, closure, and financial responsibility requirements promulgated under part 280 for other petroleum product USTs. The Agency believes that the Subtitle I standards are sufficient to protect human health and the environment from potential releases of used oil from USTs. In addition, commenters to the 1991 Supplemental Notice felt that subjecting underground storage of used oil to standards beyond those in part 280 was unnecessarily burdensome and duplicative.

Storage of used oil in lagoons, pits, or surface impoundments is prohibited, unless the generator is storing only wastewaters containing *de minimis* quantities of used oil, or unless the unit is in full compliance with 40 CFR part 264/265, subpart K. The Agency believes that such units do not provide adequate protection of human health and the environment against potential releases and damages. In fact, the Agency has documented numerous cases of environmental damage from the storage of used oil in these units (see Environmental Damage from Used Oil Mismanagement, Final Draft Report, U.S. EPA, August 30, 1991, which is available in the docket for today's rule).

f. *Response to Releases.* Whenever a release occurs to the environment from the aboveground storage tanks and containers, a used oil generator must respond in a timely manner by taking the following steps: (1) Stop the release, (2) contain the released used oil, (3) clean up and properly manage released used oil and materials used for cleaning up/containing the release, and (4) remove the tank or container from service, repair, or replace the tank or container before returning it to service.

This above requirement applies only when there is a release to the environment. Under this rule, this would not include releases within contained areas such as concrete floors or impervious containment areas, unless the releases go beyond the contained areas. EPA believes that used oil spills or leaks occurring at generator facilities in an area with a concrete floor inside a building (*e.g.*, in service bays, maintenance garages, metalworking and fabricating locations) are cleaned up upon discovery as a general operating practice using appropriate sorbent materials before the used oil reaches the environment. Such clean up operations prevent the potential contamination of unprotected soils in the vicinity of the storage and work areas. The facility owners or operators must make sure that adequate quantities of sorbent materials are available on site all the time and is used to contain spills or leaks occurring during the normal activities.

The response to release provision does not require clean up of past releases to the environment which occurred prior to the effective date of the used oil program within an authorized state in which a used oil facility is located. Releases of used oil from underground storage tanks are subject to the requirements of 40 CFR part 280, subpart F independently as applicable.

In addition to the provisions listed above for releases of used oil from aboveground tanks and containers, and in addition to the corrective action requirements for releases from USTs provided in 40 CFR part 280, subpart F, used oil generators are required, under CERCLA section 103, to report a release of hazardous substances to the environment when the release is equal to or in excess of the reportable quantity (RQ) for the particular substance. Used oils that are contaminated with CERCLA hazardous substances (*e.g.*, due to the presence of elevated levels of lead) contain CERCLA hazardous substances. Therefore, releases of such contaminants (*e.g.*, lead) into the environment in quantities greater than the reportable quantity must be reported to the National Response Center. The current RQs for contaminants are listed in 40 CFR 302.4. In addition, under 40 CFR part 110, any discharge of oil that violates applicable water quality standards or causes a film or sheen on a water surface must be reported to the National Response Center.

g. *Off-site transport.* Used oil generators are required to ensure that all shipments of used oil in quantities greater than 55 gallons are transported off-site only by transporters who have an EPA identification number. Used oil generators may transport, in their own vehicles, up to 55 gallons of used oil, that is either generated on-site or collected from DIY used oil generators, to a DIY used oil collection center, used oil collection center, or aggregation point (*e.g.*, one that is licensed or recognized by a state or municipal government to manage used oil or solid waste). A used oil generator is not required to obtain an EPA identification number for this off-site transportation activity. A generator may also self-transport up to 55 gallons of used oil, in the generators's own vehicle, to an aggregation point owned by the used oil generator without obtaining an EPA identification number. EPA selected 55 gallons as a cut off quantity because that is the size of one drum. Also, the Agency feels that any quantity of used oil less than 55 gallons cannot be economically collected and transported by a used oil transporter.

The DIY used oil collection centers, used oil collection centers, and aggregation points referred to above are recognized by EPA as separate and legitimate entities in the used oil management system. Definitions of these terms are provided in § 279.1 and all three types of facilities fall within the definition of used oil generator. A used oil collection center is any site or facility registered/licensed/permitted/recognized by a state/county/municipal government to collect used oil from regulated generators prior to its pickup by a used oil transporter with an identification number for offsite recycling. EPA believes that these facilities handle small quantities of used oil on an occasional basis and local government would monitor their operations and make sure that these

sites are operating per the local-government specified guidelines. Such used oil collection centers must use used oil transporters with EPA identification number when sending used oil for offsite recycling.

Used oil collection centers may accept used oils from DIY generators as well as regulated used oil generators (in quantities less than or equal to 55 gallons per shipment). EPA believes that used oil quantities of less than 55 gallons (*i.e.*, content less than a 55-gallon drum/container) are unlikely to be accepted by the used oil collectors/transporters for offsite shipment.

A used oil collection center accepting only do-it-yourself generated used oil for recycling also must comply with the generator standards of part 279, subpart C. These DIY collection centers may or may not be recognized by the State or county/local authorities to accept DIY oil. DIY collection centers are centers that are not authorized to accept used oil from regulated generators. They are generally operated by voluntary organizations or local authorities as convenient "drop off" places for consumers to bring in their crankcase oil for recycling or proper disposal, similar to other household generated hazardous waste (e.g., paint thinners, degreasing fluids, over cleaners, insect killers). These establishments may be temporary by nature (*e.g.*, parking lots, schools, government office buildings). DIY collection centers that are operated to encourage DIY recycling are not equipped to handle or collect large quantities of used oil brought in for a drop-off by non-DIY generators. These centers have few drums/containers to collect small quantities of used oil stored in a milk jug or oil can/bottle, that are brought in for recycling by individual households. An example of a DIY used oil collection center is a site run by a state or municipal program established to collect used oil from commercial and household generators, such as Project ROSE in Alabama. Unlike used oil transfer facilities, DIY collection centers handle small quantities of used oil generated by DIYers on an occasional basis and after collection send the DIY used oil for off-site management.

A used oil aggregation point is any site or facility where an individual generator aggregates and/or stores shipments of used oil generated at any of several generation sites owned by the same generator. Aggregation points also may accept DIY-generated used oil. The major distinction between collection centers and aggregation points is that aggregation points and the generation sites from which they collect used oil are under common ownership. EPA views aggregation points of used oil generators, DIY collection centers, and used oil collection centers as similar to on-site facilities of used oil generators and, therefore, is subjecting them to the generator standards in subpart C of part 279.

EPA believes that it is necessary to allow used oil generators to self-transport small quantities of used oil to off-site collection centers or aggregation points to encourage generators of small quantities of used oil, and generators who have several generation points, but generate very small quantities of used oil at one or a few of the generator's sites, to recycle their used oils. EPA believes that used oil aggregation points are convenient drop-off point for satellite generator sites operated under the common ownerships. Used oil management at these aggregation points must be in compliance with the used oil generators standards and used oil must be send for offsite recycling using a used oil transporter with an EPA identification number.

If generators of small quantities of used oil were required to offer these small quantities of used oil to a used oil transporter with an EPA ID number, the cost of employing the transporter may discourage the generator from recycling the used oil. In addition, some used oil transporters may only accept shipments of used oil above a certain quantity. Therefore, by providing this self-transporting provision, EPA believes that generators who generate small quantities of used oil in any one calendar month will be discouraged from storing used oil on-site for long periods of time, or from disposing of the used oil. In addition, EPA believes that the risk of spills from transporting such small amounts of used oil is relatively low, thus, specific tracking of such shipments is unnecessary to protect human health and the environment.

h. *Accumulation limit.* Although EPA proposed, both in 1985 and in 1991, to restrict the accumulation of used oils stored by used oil generators, today's rule does not contain an accumulation limit for such used oil storage. EPA has decided not to impose an accumulation limit on generator storage since some amount of used oil is almost always stored at generator sites. Also, since used oil is a marketable commodity, there is an incentive for generators to send used oil off-site for recycling rather than storing it on-site for prolonged periods. EPA believes that used oil is not stored at the generator sites for a prolonged period since long-term storage requires purchasing of additional storage units for increasing storage capacity. This may result in additional costs to businesses or it may require that they comply with other federal or state regulations or local ordinance requirements.

i. *Tracking requirements.* In the 1991 Supplemental Notice, EPA proposed three options for the tracking of used oil from generators to used oil recycling facilities (*e.g.*, processors, re-refiners, burners) to ensure that all shipments of used oil reached recyclers of used oil. Commenters favored the concept of tracking shipments of used oil. Since the 1991 Notice, EPA has re-evaluated the proposed tracking requirements and the public comments. EPA also considered the costs associated with the tracking options for generators and the associated paperwork burden. In addition, EPA re-evaluated the recordkeeping requirements for used oil generators and assessed the information maintained by generators in normal operating records. Based on these analyses, EPA has determined that information maintained by used oil transporters will provide sufficient records of used oil transport activities without burdening used oil generators with additional tracking requirements. Information collected when accepting used oil shipments, such as quantities and type of used oil collected, the name and location of used oil generators, and analytical data for the rebuttable presumption, would be maintained by the used oil collectors/transporters as part of the recordkeeping requirements finalized today. Using this information maintained by used oil transporters, the Agency can track a used oil generator, if needed. Therefore, the Agency has eliminated the proposed tracking requirements for used oil generators. EPA believes that used oil generators maintain used oil collection and shipment records as standard business information.

j. *Inspection requirements.* In the 1985 and 1991 proposals, EPA proposed daily inspection requirements for used oil generators to assure the discovery of used oil spills and releases at used oil generator facilities. Commenters opposed the proposed daily inspection requirements. Most of these commenters claimed that when generators are loading/transferring used oils, they check for leaks and spills and take appropriate action at that time to clean up the released oil and contaminated materials. Transferring operations do not occur daily at generator sites. SPCC inspection and clean up requirements will be applicable independently.

k. *Closure Requirements.* In the 1985 and 1991 proposals, EPA considered deferring closure requirements for used oil generators, based on the lack of risk data supporting the need for closure requirements at generator sites. Since 1991, while reviewing the available Superfund site information and RCRA enforcement case data, the Agency has not located any damage information specific to generator sites. This leads the Agency to believe that damages at used oil generator sites are not a substantial concern (*i.e.*, have not resulted in environmental damage of a significant magnitude that it has resulted in the site being identified as the NPL site). Therefore, the Agency believes that closure requirements for used oil generator sites are unnecessary at this time, hence EPA is deferring such requirements.

l. *Exemption for Small Farmers.* In response to comments expressing concern over the expansion of RCRA requirements to small farmers generating used oils from heavy farming equipment, machinery, and vehicles, EPA is providing an exemption from the generator standards for small farming operations that generate on an average 25 gallons or less of used oil per month in a calendar year. EPA is providing this exemption to these generators because EPA believes that most of these generators, especially family farms, are similar to households, whose solid waste management is unregulated under RCRA. Family-run and other small farms are similar to households in a number of ways: They tend to have about the same number of vehicles owned for personal use; they tend to service and maintain their family-owned vehicles and heavy farming equipment on-site; and, indeed, small farms typically have residences on-site which generate used oil and other exempt household wastes. Also, unlike small industrial generators who usually are located within close proximity to used oil collection centers or who can easily arrange for used oils to enter the used oil recycling system via a used oil transporter, many family farms and other small farming operations are not readily accessible to collection centers. They may be using used oil on site in space heaters for heating purposes during the winter months and hence, do not accumulate more than 25 gallons of oil per month on average which can be provided to used oil transporters for recycling. Therefore, EPA believes that small farms who generate on an average 25 gallons or less per month of used oil in a calendar year should be exempted from regulation, as are households.

EPA has set the generation limit for the small farmer exemption at, on an average, 25 gallons or less of used oil per month in a calendar year to exempt only small farms that may have special difficulties in locating a used oil recycling center or in otherwise recycling the used oils they generate. The 25 gallon cutoff is roughly equivalent to the more general SQG exemption for used oil generators the Agency had considered in the 1985 and 1991 proposals and the 100 kg/month exemption for the conditionally exempt small quantity generators of hazardous waste. EPA believes that small farms will have few pieces of equipment and thus generate only small amounts of used oil. Of the approximately two million farms in the U.S., over 99 percent would be exempt under this provision. Finally, since small farms pose similar problems for the used oil management system as DIY from households, EPA believes it may be more appropriate to consider non-regulatory alternatives to encourage the collection of used oils from small farms, rather than the management standards promulgated today.

EPA's intention in providing this exemption is not to exempt large farming operations or businesses from today's standards. EPA believes that large farming operations do not face the same difficulties in recycling the used oil they generate and these operations are better able to provide the used oils they generate to the used oil recycling system. The Agency is aware of current activities undertaken by brokers who are involved in collecting used oil generated by large farming operations and business.

EPA encourages small farmers, as well as household used oil generators, to recycle their used oil, and when available, to participate in community collection programs or used oil collection facilities by cooperatives, brokers, etc. As is the case with used oils collected from households, used oil that is collected from these farms at used oil collection centers and DIY-collection centers is subject to the part 279 standards when collected and accumulated at these collection centers.

Any use of used oil that can be construed as application to land (e.g. weed killing, spraying on plants) that is performed by exempt farming operations (or others) is discouraged since EPA is concerned with long term impacts of land application of used oil on the environment. Also, exempted farmers may be subject to state regulations that may limit such practices.

3. Standards for Used Oil Transporters

a. *Applicability.* A used oil collector/transporter is any person or business who collects used oil from more than one generator or transporter or a generator who transports shipments of more than 55 gallons of used oil and transports the used oil off-site to another party or establishment for recycling, disposal, or continued transport. Used oil generators who transport shipments of used oil in their own vehicles, in quantities of 55 gallons or less (*i.e.*, a drum/container holding this quantity) to used oil collection centers or aggregation points[14] are not within the definition of a used oil transporter. Household do-it-yourselfers who transport used oil to generators, collection centers, or aggregation points also are not included in the definition of a used oil transporter. Table VI.3 lists requirements for used oil transporters and provides the regulatory citations.

[14] Used oil collection centers and aggregation points are defined in Subpart A of Part 279.

TABLE VI.3.—USED OIL

[Transporter and transfer facility standards]

Requirement	New or existing	Regulatory citation
General requirements	New	§ 279.40(a) through (c).
Transporters who perform other management activities	New	§ 279.40(d).
Restriction on processing used oil	New	§ 279.41.
Notification and EPA identification number	Existing for transporters who are marketers; new for others	§ 279.42.
Used oil deliveries	New	§ 279.43(a).
DOT requirements	Existing (applicable independently)	§ 279.43(b).

TABLE VI.3.—USED OIL—Continued

[Transporter and transfer facility standards]

Requirement	New or existing	Regulatory citation
Used oil discharges	New	§ 279.43(c).
Rebuttable presumption for used oil	Existing for transporters managing used oil fuel; new for others	§ 279.44(a), (b), and (c).
Exceptions from rebuttable presumption for CFC and metal-working oils.	New	§ 279.44(c)(1) and (2).
Record retention for rebuttable presumption	New	§ 279.44(d).
Recordkeeping	New	§ 279.44(d).
Storage limit	New	§ 279.45(a).
Type of storage units	New	§ 279.45(b).
Good condition above ground tanks and containers	New	§ 279.45(c).
Secondary containment for containers and existing and new above ground tanks.	New	§ 279.45(d), (e) and (f)
Labelling of containers and tanks	New	§ 279.45(g).
Response to releases	New	§ 279.45(h).
Tracking—acceptance, deliveries, export, and recordkeeping	Existing for transporters who are marketers (invoices); new for others.	§ 279.46(a), (b), and (c)
Tracking—exports	New	§ 279.46(d).
Management of residues	New	§ 279.47.
SPCC requirements, including spill prevention and control	Existing (applicable independently)	40 CFR part 112.
UST requirements, including corrective action and financial responsibility.	Existing (applicable independently)	40 CFR part 280.
Inspections	None	None.
Closure	None	None.

Owners and operators of used oil transfer facilities are also defined as used oil transporters. A used oil transfer facility is any transportation-related facility where used oil shipments are held for more than 24 hours during the course of normal transport prior to final transport to another transfer facility(ies), a used oil processor/re-refiner, or a used oil burner. Transfer facilities include such areas as loading docks, parking areas, and tank and container storage facilities. All used oil transporters are required to comply with the standards promulgated in subpart E of part 279. In addition, used oil transporters who also handle other hazardous waste must be in compliance with all applicable RCRA subtitle C regulations for hazardous waste transporters.

Used oil transporters who process used oils (including blending used oils with virgin oils) are subject to the standards for used oil processing and re-refining facilities in subpart F of today's rule.

Any person who transports used oil in a vehicle previously used to transport hazardous waste must ensure that the vehicle meets the definition of an empty container per 40 CFR 261.7 prior to transporting used oil. If the transporter does not comply with § 261.7, the used oil shipment is considered to be a hazardous waste and must be managed accordingly. The definition of "empty" requires that all non-acutely hazardous wastes be removed using common industry practices and that no more than 0.3 percent of the waste by weight remain in containers greater than 110 gallons and no more than 3 percent by weight remain in containers with a capacity of less than or equal to 110 gallons.

Transporters who import used oil into the United States and transporters who export used oil to points outside of the United States are subject to the used oil transporter requirements of subpart E of part 279 from the time the used oil enters the United States until the time the used oil exits the borders of the United States.

b. *Restrictions.* Used oil transporters are prohibited from blending used oils with virgin oil to meet the specification levels for used oil fuels in § 279.11. If an owner or operator of a transfer facility conducts any used oil processing, including blending to market the used oil as a fuel, the owner/operator must comply with the requirements provided for used oil processors and re-refiners in part 279, subpart F. EPA clarifies here that blending different used oils together to consolidate shipments is allowed by used oil transporters. The only blending activity that transporters are prohibited from undertaking is the blending of used oils with virgin oils to meet the fuel specifications. EPA has determined that "incidental processing" (*e.g.*, settling) that may occur at transporter sites when used oil is in storage does not pose any risks similar to those associated with processing of used oil. EPA considers "incidental processing" at transporter facilities during shipment consolidation or transfer not to be equivalent to blending or processing of used oil to meet the specification requirements for used oil fuels. Consolidation for a purpose of collecting a shipment full of used oil to transfer to a used oil processor/re-refiner does not necessarily require any treatment. When a used oil transporter markets a consolidation of different loads of used oil as an on-specification used oil fuel to non-industrial boilers and furnaces, the transporter must comply with the 1985 marketer requirements (*e.g.*, claiming that it meets the specification levels for used oil burned for energy recovery) recodified in part 279 today. A transporter may market used oil as off-specification fuel upon consolidation of different loads of used oil without making any specification claims and must comply with the 1985-established requirements for marketers of off-specification used oil that are recodified in part 279 today.

c. *Notification Requirements.* Any used oil transporter who has not previously complied with the notification requirements of RCRA section 3010 must do so and obtain an EPA identification number. An EPA identification number can be obtained by submitting EPA Form 8700–12 to the appropriate EPA Regional Administrator or State Director. An EPA identification number also can be obtained by submitting a letter to the EPA Regional Administrator requesting an EPA identification number and containing the following information: Company name, name of the owner of the transporter company, mailing address, telephone number and address of the point of contact, type of transport activity (*e.g.*, transporter only, transfer facility, or transporter and transfer facility), location of transfer facilities, and the name and phone number of the contact

at each transfer facility. Upon receipt of a completed notification form, EPA will provide the transporter with a unique 12-digit identification number, which is required to transport used oil. Transporters who have previously notified the Agency of their hazardous waste activities (or notified EPA under the 40 CFR part 266, subpart E used oil fuel regulations) and received an EPA identification number need not renotify.

d. *Delivery of Used Oil Shipments.* A used oil transporter is required to ensure that a shipment of used oil reaches an "authorized" used oil processing or re-refining facility, a used oil burning facility, or another used oil transporter. Entities deemed to be authorized are used oil processing and re-refining facilities subject to part 279, subpart F; used oil burning facilities in compliance with part 279, subpart G; hazardous waste management facilities with a permit or interim status; part 258 disposal facilities; or another used oil transporter who has an EPA identification number.

A transporter who markets used oil fuels must comply with the used oil marketer requirements of 40 CFR part 279, subpart H. In the event a transporter undertakes this activity, the transporter must comply with the recordkeeping (invoicing) requirements of § 279.74.

e. *Shipping requirements.* Transporters and collectors are required by existing U.S. Department of Transportation regulations to meet certain standards if the used oil is a hazardous material, including all applicable packaging, labeling, and placarding requirements in 49 CFR parts 173, 178, and 179. In addition, under today's rule, used oil transporters and collectors must clean up any used oil discharge that occurs during transportation or take such action as may be required or approved by Federal, state, or local officials so that the used oil discharge no longer presents a hazard to human health or the environment. The Agency believes that these provisions are necessary to reduce the potential impacts of used oil that could be released into the environment.

f. *Used oil storage at transfer facilities.* A used oil transfer facility is defined in 40 CFR 279.1 as "any transportation related facility [15] including loading docks, parking areas, storage areas, and other similar areas where shipments of used oil are held during the normal course of transportation for a period longer than 24 hours but not exceeding 35 days." A transfer facility is regarded as a site for the temporary storage of used oil that is picked up from one or more original generators and is on its way (1) to a processing or re-refining facility for further processing to produce used oil fuel, non-fuel recycled oil products, or lube oil feedstock; (2) to be reintroduced into refinery operations; or (3) to be burned as a used oil fuel. Storage of used oil at a transfer facility for a period exceeding 35 days will cause the transfer facility to become subject to the standards for used oil processors and re-refiners in subpart F of part 279.

The requirements established today cover all used oil transfer facilities owned/operated by used oil transporters regardless of their location and regardless of the size of any single tank at the facility or the total storage capacity of the facility. The SPCC (40 CFR part 112) and UST (40 CFR part 280) requirements are independently applicable to such facilities.

EPA believes that some regulatory controls are necessary to ensure proper management of used oils at used oil transfer facilities. Improper management at these facilities could allow for the release of used oil to the environment, cause spills during transfer and loading/unloading operations, or result in the inadvertent adulteration of used oil with hazardous waste while in storage or in transit. To prevent such mishaps, EPA is adopting "good housekeeping" standards for transfer facilities to ensure that units (containers and tanks) used to accumulate and/or store used oil are kept in good condition and to minimize potential releases of used oil to the environment.

Storage of used oil at a transfer facility must occur only in containers and aboveground or underground tanks. EPA believes that storage of used oil in units other than containers or tanks (*e.g.*, surface impoundments or lagoons) at transfer facilities does not occur since transfer facilities are typically temporary storage areas where used oil is stored for periods of very short duration. Furthermore, as discussed elsewhere in today's notice, EPA believes that storage of used oil in surface impoundment is generally a poor practice. Thus, EPA believes it is appropriate not to allow it at transfer facilities. EPA believes that transfer facilities are not likely to hold used oil in surface impoundments but in case, such use occurs only surface impoundments that are in compliance with parts 264/265 requirements can be used for used oil storage. Today's rule prohibits the use of an unlined surface impoundment for used oil storage.

All aboveground tanks [16] and containers at transfer facilities must be kept in good condition (*i.e.*, no visible signs of deterioration or leaks) and containers must be in compliance with all applicable DOT regulations. Aboveground tanks and containers and all fill pipes for underground used oil storage tanks must be clearly labeled with the words "used oil" to minimize accidental mixing. In addition, the storage areas around aboveground tanks and under the storage containers must be equipped with oil-impervious floors and secondary containment structures (dikes and berms or retaining walls) capable of containing all potential spills and releases of used oil until the discovery and cleanup of spills and releases.[17] The floor under existing storage tanks must cover the entire area within the dike, berm or retaining wall except areas where portions of existing tanks meet the ground. EPA has determined that it is not necessary to require retrofitting of the floors of the existing tanks that are in good condition; it is not necessary to remove tanks temporarily to install an impervious floor directly beneath an aboveground tank that is in good condition. Any releases from the walls of existing tanks will be captured within the containment area and will be removed, while releases to the area outside of the containment area must be cleaned as required by today's release response requirements. EPA believes that used oil releases from tank overfills, spills, and loading/unloading activities are more likely than from the bottom of a tank or due to the loss of structural integrity of a tank.

However, the floor surrounding the area where the tank meets the ground must be impervious to oil. When installing new aboveground tanks, replacing damaged or deteriorated tanks, or reinstalling unfit tanks after restoring the structural integrity, an impervious floor under the aboveground tanks must be installed. This requirement is applicable to the aboveground tanks that are existing when the states adopt the part 279 used oil management standards and when the state rule containing the Federal used oil management standards takes effect. The

[15] For facilities subject to the SPCC regulation, the term "transportation-related" is defined in Appendix I of 40 CFR part 112.

[16] Aboveground tank is defined in § 279.1 as a tank used to store or process used oil that is not an underground tank as defined in part 280.

[17] For further discussion of the basis for the secondary containment requirement and the materials suitable for constructing impervious floors and dikes, berms, or retaining walls, see section VI.E.5. of today's preamble.

impervious floor under new storage tanks must cover the entire area within the containment structure. The effective date is the same as that discussed for existing tanks.

In the 1985 proposed rule and in the 1991 Supplemental Notice, EPA proposed secondary containment requirements for used oil storage tanks that are similar to the secondary containment provisions of 40 CFR part 264, subpart J. The Agency received a substantial number of public comments that disagreed with EPA's proposed secondary containment requirements. Most commenters disagreed with the proposed secondary containment provisions on the basis that the cost of full secondary containment for tanks and containers would be prohibitive for most used oil generators and transporters. The secondary containment requirements promulgated today for aboveground tanks and containers are substantially less burdensome, both technically and financially. Although these requirements will still impose some costs upon used oil transporters, the Agency believes that some level of secondary containment is necessary at transfer facilities to protect human health and the environment from potential used oil spills and releases. In fact, as documented by the Agency in the background documents supporting this final rule, past storage practices at used oil management facilities, including transfer facilities, have resulted in releases of used oil to the environment and, in some cases, substantial damages to human health and the environment.[18] EPA believes that the secondary containment requirements established today adequately protect against used oil releases to ground water and the existing SPCC requirements provide protection against spills reaching navigable waters. EPA has determined that secondary containment requirements similar to those in 40 CFR parts 264/265, subpart J are not necessary since the requirements promulgated today will effectively contain any spilled or released used oil within the containment structures. Also, the requirement that the entire containment structure be made of a material impervious to used oil will prevent the migration of used oil to soils, surface waters, and ground water.

Although the secondary containment requirements promulgated today are somewhat less burdensome than those required under 40 CFR parts 264/265, subpart J, any used oil transfer facility that is currently in compliance with the subpart J requirements (*e.g.*, the facility has double-walled tanks with double-walled or otherwise contained pipes) will be deemed in compliance with the secondary containment requirements promulgated today. EPA does want to clarify that all aboveground tanks or containers must be within a secondary containment structure that is impervious to used oil and capable of preventing the migration of used oil spills or releases to the environment.

An April 29, 1992, memorandum from EPA's Assistant Administrator for Solid Waste and Emergency Response [19] addresses aboveground storage tank technologies that may be used to provide secondary containment at SPCC-regulated facilities. The memorandum states that alternative aboveground storage tank systems that have capacities generally less than 12,000 gallons may provide protection of navigable waters substantially equivalent to that provided by the secondary containment systems listed in 40 CFR 112.79(c) of the SPCC regulation. An example of an alternative aboveground storage tank system that generally would provide substantially equivalent protection of navigable waters is a shop-fabricated double walled tank installed and operated with overfill prevention measures that include an overfill alarm, an automatic flow restrictor or flow shut-off, and constant monitoring of all product transfers including used oil. Used oil tanks meeting with the secondary containment equivalency discussed in the memorandum of April 29, 1992, are considered to be in compliance with the secondary containment requirements for aboveground tanks established in today's rule.

g. *Storage Limit.* Commenters to the 1985 proposed rule felt that the proposed 10-day limit on storage at transfer facilities was too short a period of time to accumulate and consolidate sufficient amounts of used oil for cost effective transportation. The Agency agrees with the commenters. In 1991, EPA proposed an alternative time limit (*e.g.*, 35 days) as a limit specifying the length of time of which used oil must be delivered to the final destination (*e.g.*, processors, re-refiners, or burners). Based on the favorable comments, EPA believes that at transfer facilities, used oil storage in normal course of operation typically occurs for less than 35 days. The Agency, therefore, has decided to allow used oil storage for no more than 35 days at transfer facilities. A transfer facility at which used oil is stored for more than 35 days must comply with the requirements finalized today for processing/re-refining facilities established under the 40 CFR part 279, subpart F. Also, EPA notes that the 35-day storage limit applies to the in-use storage tanks at transfer facilities and does not apply to the abandoned aboveground storage tanks used to store used oil, or to such tanks taken out of service. The requirements for the abandoned storage tanks are those currently in effect. For example, the owners/operators of transfer facilities must evaluate residues left in aboveground tanks taken out of service to make a hazardous waste determination (*i.e.*, whether the residues exhibit characteristics of toxicity, ignitability, corrosivity, or reactivity). If an aboveground tank at a transfer facility contains a hazardous waste, the tank will be managed in accordance with existing RCRA controls, including subpart J standards for tank closure.

Finally, the Agency concluded that a storage limit of 35 days at transfer facilities is protective of human health and the environment when applied in conjunction with the secondary containment requirements for aboveground storage containers and tanks promulgated today. EPA believes that storage at transfer facilities will be for a short duration when used oil is in transit between generators to processors, re-refiners, fuel oil dealers, and transfer facilities before reaching the ultimate recycler or burners. Any spills and leaks occurring during storage must be contained within the containment area, discovered, and cleaned up in a timely manner. If EPA, in the future, determines a need for a closure standard for transfer facilities to ensure that used oil contamination at a facility prior to the facility closing must be addressed then the Agency may take such a step.

Underground storage tanks (*i.e.*, those with more than 10% of the surface area of the tank(s) and associated pipes underground) used to store used oil at used oil transfer facilities remain subject to the requirements of 40 CFR part 280, independently. Also, many facilities remain subject to the Spill Prevention Control and Countermeasure requirements of part 112 of 40 CFR, independently.

[18] See "Summary Descriptions of Sixty-Three 'Used Oil' Superfund Sites" and "Summary Descriptions of Used Oil-Related Damages at RCRA-Permitted Facilities."

[19] See memorandum from Don R. Clay, Assistant Administrator, to EPA Regional Directors regarding "Use of Alternative Secondary Containment Measures at Facilities Regulated under the Oil Pollution Prevention Regulation (40 CFR part 112)," April 29, 1992.

h. *Response to releases.* Any spill or release of used oil from aboveground storage units (tanks and containers) at a used oil transfer facility must be stopped, contained, and cleaned up upon detection. Spilled used oils must be cleaned up and properly managed. If necessary, the unit must be removed from service, the contents removed, and the unit repaired prior to returning it to service. These requirements do not apply to past releases that have occurred at transfer facilities prior to the effective date of the used oil program within an authorized state in which a used oil facility is located. This requirement applies only when there is a release to the environment. Under this rule, this would not include releases within contained areas such as concrete floors or impervious containment areas, unless the releases go beyond the contained areas.

In the case of a release of used oil from an underground storage tank, the owner or operator of the used oil transfer facility must comply with the requirements of 40 CFR part 280, subparts E and F.

In addition to the provisions listed above for releases of used oil, and in addition to the corrective action requirements for releases from USTs provided in 40 CFR part 280, subpart F, used oil transporters are required, under CERCLA section 103, to report a release of hazardous substances to the environment when the release is equal to or in excess of the reportable quantity (RQ) for the particular substance. Used oils that are contaminated with CERCLA hazardous substances (*e.g.*, due to the presence of elevated levels of lead) are subject to CERCLA release reporting requirements. Therefore, releases of such contaminants into the environment in quantities greater than the reportable quantity must be reported to the National Response Center. The current RQs for CERCLA hazardous substances are listed in 40 CFR 302.4. In addition, under 40 CFR part 110, any discharge of oil that violates applicable water quality standards or causes a film or sheen on a water surface must be reported to the National Response Center.

i. *Rebuttable Presumption.* Since the rebuttable presumption now will apply to all used oils, EPA is requiring used oil transporters to determine the total halogen content as used oil shipments prior to accepting the shipments for transport. EPA believes that the majority of used oil transporters are already complying with this requirement to ensure that used oil has not been mixed with halogenated solvents, since the majority of used oil that is currently recycled is used as fuel for energy recovery and is therefore subject to 40 CFR part 266, subpart E, recodified today as 40 CFR part 279, subpart G.

If the halogen level exceeds 1,000 ppm, the used oil is presumed to be mixed with a halogenated hazardous waste, and must be managed as a hazardous waste, unless the transporter rebuts the presumption as described above. The transporter may accept such shipments of used oil as a hazardous waste transporter, but if the original generator of the hazardous waste cannot be identified, the transporter may have to assume hazardous waste generator responsibilities and comply with both the generator standards of 40 CFR part 262 as well as the hazardous waste transporter requirements of 40 CFR part 263.

j. *Recordkeeping.* Transporters are required to maintain records (for at least three years) documenting the acceptance and delivery of each used oil shipment. For the purposes of complying with the recordkeeping requirements in today's rule, used oil transporters need only enter the required information or documentation for each used oil shipment into a collection or operating log.

Used oil transporters must keep records for each used oil shipment accepted for transport from an original used oil generator or another transporter and maintain copies of each record for a period of at least three years. Records for each shipment accepted by transporters must include: (1) The date; (2) the name, address, and EPA identification number (if applicable) of the party who provided the used oil for shipment; (3) the quantity and type of used oil accepted; and (4) the dated signature of the party offering the shipment.

Used oil collectors and transporters must also keep and maintain for at least three years records of each shipment of used oil that is delivered to another transporter, used oil burner, fuel marketer, or used oil processor/re-refiner. Records for each delivery must include: (1) The date; (2) the name, EPA identification number, and address of the receiving facility or transporter; (3) the quantity of used oil delivered; and (4) the dated signature of a representative of the receiving facility.

EPA believes that these recordkeeping requirements are necessary to monitor the flow of used oil within the used oil management system and to discourage any adulteration of used oil by any used oil handler, by providing a paper trail documenting all parties who handled the used oil. EPA believes that the rebuttable presumption, as well as the requirement that used oil collectors and transporters keep records, will provide sufficient incentive to discourage adulteration of used oils. Past practices of used oil collectors and transporters storing mixtures of used oil and hazardous waste have resulted in damages to the environment. Further discussion of such damages is provided in the background documents that accompany this rule.

It is EPA's understanding that most of the recordkeeping requirements established in today's rule are already being done as normal business and accounting practices by used oil transporters. As noted in the background information for the Regulatory Impact Analysis of today's rule, a used oil industry representative indicated that such records are maintained and the practice of keeping such records is not uncommon. The recordkeeping requirements promulgated today for used oil transporters are very similar to those proposed in the 1991 Supplemental Notice.

k. *Exports of used oil.* If a used oil transporter provides used oil for export or exports used oil from the United States, the transporter must maintain a record of the name and address of the receiving facility, the quantity of used oil exported to a foreign country, and the date the used oil is exported from the United States.

l. *Closure.* In 1985, EPA proposed closure requirements for used oil transfer facilities. Commenters opposed these requirements due to the fact that the requirements are overly burdensome. Since the secondary containment requirements promulgated today should mitigate the migration of almost all releases of used oil to the environment, and since today's requirements require used oil spills and releases to be cleaned up upon detection, EPA has decided that closure requirements for aboveground storage areas are not necessary and therefore, the Agency is not promulgating closure requirements for used oil transfer facilities with aboveground storage units. EPA also notes that the majority of damages from improper storage of used oil have occurred at recycling facilities, rather than transfer facilities, which suggests differential standards are appropriate. (Note: Used oil transporters that store used oils in underground storage tanks are required under the Subtitle I standards to close all units used to store used oil prior to closing or abandoning the facility.)

m. *Other applicable provisions.* In addition to the requirements provided in subpart E, used oil transporters who recycle used oil either by blending, processing or re-refining, must comply with the requirements of subpart F. Used oil transporters who burn used oil on-site must comply with the requirements of subpart G of part 279, as well as the provisions of subpart E. If a used oil transporter markets used oil fuels, the transporter must comply with the requirements for used oil fuel marketers in subpart H of part 279. Used oil transporters who either dispose of used oil or use used oil as a road oiling agent must comply with subpart I of part 279.

In the 1991 Supplemental Notice the Agency proposed inspection, facility preparedness, and corrective action provisions. EPA has decided against such requirements because (a) the SPCC program-based inspection, preparedness, and emergency response provisions, (b) response to releases provision for transfer facilities, and (c) limits on the storage period are adequately protective against potential environmental damages associated with used oil storage. A used oil transporter who stores used oil for greater than 35 days is considered to be a used oil processor and must comply with the standards for used oil processing and re-refiners.

4. Standards for Used Oil Processing and Re-refining Facilities

As discussed in section VI.A of this preamble, the past used oil management practices at used oil processing facilities has resulted in environmental damage. This is evident from the identification of approximately 25 sites on the National Priority List where used oil was identified as one of the major constituent of concern. Similarly, EPA has discovered environmental damage associated with used oil management at RCRA facilities managing used oil in solid waste management units. Of the used oil facilities that the Agency has studied, 16 facilities has used oil spills; 15 facilities had leaking tanks and/or containers; 32 facilities recycled and disposed of used oil and wastes in surface impoundments and pits; 5 facilities placed used oil recycling sludges in waste piles directly on the ground; and one facility land-farmed used oil recycling sludges. Virtually all the surface impoundments or pits at these facilities were unlined. These instances lead EPA to believe that used oil processing/re-refining facilities pose the biggest problems due to used oil mismanagement, justifying the toughest controls (e.g. preparedness, secondary containment, closure, analysis plan, and tracking) established today.

a. *Applicability.* A used oil processing or re-refining facility is defined in § 279.1 as "a facility that processes used oil." Used oil processing means chemical or physical operations designed to produce from used oil, or to make used oil more amenable for the production of, fuel oils, lubricants, or other used oil-derived product. Processing includes, but is not limited to: Blending used oil with virgin petroleum products, blending used oils to meet the fuel specification, filtration, simple distillation, chemical or physical separation and re-refining. Used oil re-refining may include settling, filtering, catalytic conversion, fractional/vacuum distillation, hydrotreating, or polishing. The products of used oil processing or re-refining are likely to include specification fuel, reconstituted lubricating oils/fluids, distillate fuel, lube feedstock, asphaltic bottoms, and other non-fuel oil-derived product.

In addition to the requirements of part 279 subparts C and E, used oil generators and collectors/transporters are subject to all applicable processor and re-refiner requirements, if they process/re-refine used oil on-site. Used oil processing and re-refining facilities that also burn used oil fuel on-site for energy recovery must comply with the provisions in subpart G of part 279, except burning that occurs incidental to processing at used oil processing and re-refining facilities in compliance with § 279.50(b)(3)(ii). Table VI.4 lists requirements and provides the regulatory citations.

TABLE VI.4.—STANDARDS FOR USED OIL PROCESSORS AND RE-REFINERS

Requirement	New or existing	Regulatory citation
Processors who perform other management activities	New	§ 279.50(a).
Notification and EPA identification number	Existing for processors/re-refiners who are marketers; new for others.	§ 279.51.
Preparedness and prevention	New	§ 279.52(a).
Contingency plan and emergency procedures	New	§ 279.52(b).
Rebuttable presumption for used oil	Existing for processors/re-refiners managing used oil fuel	§ 279.53 (a), (b), and (c).
Exceptions from rebuttable presumption for CFC and metal-working oils.	New	§ 279.53(c) (1) and (2).
Type of management units	New	§ 279.54(a).
Good condition above ground tanks and containers	New	§ 279.54(b).
Secondary containment for containers and existing and new above ground tanks.	New	§ 279.54 (c), (d), and (e).
Labelling of containers and tanks	New	§ 279.54(f).
Response to releases	New	§ 279.54(g).
Closure for containers and above ground tanks	New	§ 279.54(h).
Analysis plan	New	§ 279.55.
Indicator parameters	N.A.	None.
Tracking—acceptance, deliveries, and recordkeeping	Existing for processors/re-refiners who are marketers (invoices); new for others.	§ 279.56.
Operating record	New	§ 279.57(a).
Biennial reporting	New	§ 279.57(b).
Off-site shipment	New	§ 279.58.
Management of residues	New	§ 279.59.
SPCC requirements, including spill prevention and control	Existing (applicable independently)	40 CFR Part 112.
UST requirements, including corrective action and financial responsibility.	Existing (applicable independently)	40 CFR Part 280.
Inspections	N.A.	None.

b. *Notification Requirements.* An owner or operator of a used oil processing/re-refining facility must notify the appropriate EPA Regional Administrator using EPA Form 8700–12, stating the location and general description of used oil management activities. In lieu of using the EPA Form 8700–12, owners and operators may notify the EPA Regional Administrator of their location and general description of used oil management activities in a letter. Upon receipt of this form, EPA will issue an EPA identification number to the facility. Owner/operators who have previously notified the Agency of their hazardous waste management or used oil activities and received an ID number need not renotify.

In addition to notifying EPA of any recycling activities and receiving an EPA identification number, an owner or operator of a used oil processing or re-refining facility that receives used oil from foreign sources must comply with all applicable RCRA requirements for the importation of solid and hazardous wastes.

c. *Preparedness and Prevention.* Owners or operators of used oil processing and re-refining facilities must operate and maintain the facility in a manner that will minimize the possibility of any fire, explosion, or unplanned sudden or non-sudden release. The existing Federal (*e.g.*, SPCC), state, and local (*e.g.*, fire ordinances) preparedness and prevention requirements are specific to certain aspects of facility operation. The existing RCRA requirements for preparedness and prevention, by contrast, pertain to the toxic or hazardous nature of the material or waste. The Agency, therefore, believes that RCRA requirements are necessary to ensure that used oil processing and re-refining facilities are maintained and operated to prevent possible fires, explosions, or releases of used oil to the environment. EPA believes that the preparedness and prevention requirements promulgated today are merely incremental to those currently in place and the existing compliance procedures can easily be expanded to comply with these additional requirements. Section 279.52(a) requires owners and operators to comply with the requirements for preparedness and prevention similar to those established for hazardous waste management facilities in 40 CFR part 265, subpart C. These requirements include maintenance and operation of the facility, required equipment, testing and maintenance of the equipment, access to communication or alarm system, required aisle space, and arrangements with local authorities.

The 1985 proposal required preparedness and prevention measures as part of the Permit-by-rule requirements for recycling facilities. The proposed requirements were the same as those established for hazardous waste management facilities. EPA believes that the majority of processing and re-refining facilities have preparedness and prevention measures in place as a part of good business and operational practices, therefore the Agency does not think such requirements will be overly burdensome (see background document on cost analysis that is in the docket for today's rule). In addition, local fire regulations, state regulations, and the Occupational Safety and Health Act require some level of preparedness and prevention measures.

d. *Contingency Plan and Emergency Procedures.* Section 279.52(b) requires owners or operators of used oil processing and re-refining facilities to prepare a contingency plan designed to minimize hazards in case of a sudden or non-sudden release, fire, explosion, or similar emergency. The variable composition of used oil (*e.g.*, the possibility of very low flash point oil) makes this more of a concern than for other types of oil facilities. The requirements for contingency plans and emergency procedures were taken from 40 CFR part 265, subpart D, because of the similarity to hazardous waste facility operations. These requirements include purpose and implementation of the contingency plan, content of the contingency plan, copies of the contingency plan, amending the contingency plan, emergency coordinator, and emergency procedures.

EPA believes that the majority of processing and re-refining facilities have contingency plan and emergency procedures in place as a part of good business and operational procedures. Therefore, EPA believes that such requirements are not overly burdensome. In addition, local fire regulations, state regulations, and the Occupational Safety and Health Act require development of contingency plans and emergency procedures.

e. *Storage Requirements.* Owners and operators of used oil processing and re-refining facilities must store all used oils either in tanks or containers, and all tanks and containers must be maintained in good condition (*i.e.*, no visible signs of leaks or structural damage or deterioration). Based on the comments received in 1985 and 1991, EPA believes that the practice of storing used oil in lagoons, ponds, pits or surface impoundments is not common and, in addition, that such storage is inherently unsafe and poses an undue risk to human health and the environment. Both in 1985 and 1991, EPA proposed to ban the use of lagoons, ponds, pits, or surface impoundments for used oil treatment or storage due to the unreasonable risks posed to human health and the environment. Many commenters concurred with EPA on this point. Therefore, today's rule prohibits the storage of used oil in any surface impoundment, pond, pit, lagoon or similar land-based unit, unless the unit is kept in full compliance with the requirements in subpart K of part 264/265 or unless the unit contains only wastewaters with *de minimis* quantities of used oil as specified in 40 CFR 279.10(f).

In 1991 Supplemental Notice, EPA proposed inspection requirements for a discovery of used oil release or spill. Today, EPA is not finalizing the proposed inspection requirement because the preparedness requirement established today for used oil processing/re-refining facilities and the inspection provision of the SPCC program include inspection for used oil releases to the environment or oil spills, respectively.

The requirements established today cover all used oil processors/re-refiners, regardless of their location and regardless of the size of any single tank the facility or the total storage capacity of the facility. The SPCC and UST requirements are independently applicable to processing or re-refining facilities.

The owner or operator of a used oil processing or re-refining facility must label all aboveground tanks and containers used to store used oil and all fill pipes used to transfer used oil to underground storage tanks with the words "used oil." EPA is requiring owners and operators to clearly label storage units used to store oil to prevent accidental mixing by ensuring that only used oil is placed in tanks reserved for the storage of used oil.

Owners and operators of used oil processing and re-refining facilities who store used oil in containers or aboveground tanks as defined in § 279.1 must equip the storage area surrounding the tanks or containers with a floor made from material(s) that is impervious to used oil. Owners and operators must also equip the storage area with secondary containment structures (dikes, berms, and/or retaining walls) that are made of a material(s) that is impervious to used oil and capable of

containing all potential spills and releases of used oil from the tanks or containers until the facility owner or operator can take measures to clean up the released used oil. The floor under existing storage tanks must cover the entire area within the containment structure, except where existing tanks meet the ground. EPA believes that requiring owner/operators with existing tanks to retrofit the containment structure would be financially burdensome and that there is little opportunity for contamination to occur under the small area where the tank touches the ground. For new tanks, the floor must cover the entire area within the containment structure.

In 1985, EPA reserved several sections of the proposed rule for the soon-to-be promulgated secondary containment requirements for hazardous waste storage tanks. Many commenters disagreed with EPA's proposal to require used oil recycling facilities to comply with the hazardous waste tank secondary containment provisions. In the 1991 Supplemental Notice, EPA stated that secondary containment standards similar to those required by the SPCC program may be adequately protective of human health and the environment and may be less burdensome to used oil processing and re-refining facilities. In the 1991 Supplemental Notice, the Agency specifically discussed the provisions for maintaining berms, dikes, or retaining walls around existing aboveground storage tanks. The Supplemental Notice included a diagram depicting a secondary containment structure that the Agency was considering requiring. The Agency believes that a secondary containment structure constructed around the entire storage area will provide adequate protection to the environment against spills and releases of used oil that may occur during used oil storage. Many commenters agreed with the Agency's assessment that this type of secondary containment is adequate for used oil storage areas. Some commenters urged the Agency to include secondary containment requirements in Phase I management standards, suggesting that storage-related spills and releases should be controlled.

Upon evaluation of the comments, and a further consideration of past storage practices at used oil processing and re-refining facilities that have either become Superfund sites or have had RCRA enforcement actions taken against them, EPA has concluded that there is a need to control releases of used oil during storage at processing and re-refining facilities. In fact, as documented by the Agency in the background documents supporting this final rule, past storage practices at used oil management facilities have resulted in releases of used oil to the environment, and in some cases, substantial damages to human health and the environment.[20]

Of the used oil facilities that the Agency has studied, 16 facilities had used oil spills; 15 facilities had leaking tanks and/or containers; 32 facilities recycled and disposed of used oil and wastes in surface impoundments and pits; 5 facilities placed used oil recycling sludges in waste piles directly on the ground; and 1 facility land-farmed used oil recycling sludges. Virtually all the surface impoundments or pits at these facilities were unlined.

Of the facilities that had spills, two were disposing solely used oil/oil recycling wastes, one was a storage facility only, and the remaining 13 were used oil processing and re-refining facilities. Of the facilities that had leaking tanks, two facilities were used oil storage facilities, one was a used oil disposal facility, and the remaining 12 were used oil recyclers. Of the facilities that disposed of used oil and wastes after recycling used oil in surface impoundments, 3 were also generators, 4 were solely disposal facilities, 1 was a storage facility, and the remaining 24 were processing and re-refining facilities. All five facilities that stored used oil recycling sludges in waste piles were processing and re-refining facilities. The facility that land-farmed used oil recycling sludges was a used oil recycling facility.

EPA has concluded that the containment of used oil releases is necessary, since contamination of soil, ground water, or surface water resources with used oil could reduce water quality and make water non-potable or could cause significant ecological harm. EPA believes that used oil handling and storage-related releases at used oil processing and re-refining facilities can be effectively controlled by the use of floors and containment structures made from an oil-impervious material.

As discussed above, the storage areas around aboveground tanks and under storage containers must be equipped with oil-impervious floors and secondary containment structures (dikes and berms or retaining walls) capable of containing all potential spills and releases of used oil until the discovery and clean-up of released used oil.[21] The floor under existing storage tanks must cover the entire area within the dike, berm or retaining wall, except areas where portions of existing tanks meet the ground. This requirement is applicable to the aboveground tanks that are existing when the states adopt the part 279 used oil management standards and the state rule containing the Federal used oil management standards takes effect. The impervious floor under new storage tanks must cover the entire area within the containment structure. The effective date is the same as that discussed for existing tanks.

EPA believes that the secondary containment requirements established today adequately protect against used oil releases to ground water and the existing SPCC requirements provide protection against spills reaching navigable waters. EPA has determined that secondary containment requirements similar to those in 40 CFR parts 264/265, subpart J are not necessary since the requirements promulgated today will effectively contain any spilled or released used oil within the containment structures. Also, the requirement that the entire containment structure be made of a material impervious to used oil will prevent the migration of used oil to soils, surface waters, and ground water.

Although the secondary containment requirements promulgated today are somewhat less burdensome than those required under 40 CFR parts 264/265 subpart J, any used oil processing/re-refining facility that is currently in compliance with the subpart J requirements (*e.g.*, the facility has double-walled tanks with double-walled or otherwise contained pipes) will be deemed in compliance with the secondary containment requirements promulgated today, and therefore need not install a new secondary containment system at the facility. EPA does want to clarify that all aboveground tanks and containers must be within a secondary containment structure that is impervious to used oil, and capable of preventing the migration of used oil spills or releases to the environment.

An April 29, 1992, memorandum from EPA's Assistant Administrator for Solid Waste and Emergency Response (discussed above) addresses

[20] See "Summary Descriptions of Sixty-Three 'Used Oil' Superfund Sites," and "Summary Descriptions of Used Oil-Related Damages at RCRA-Permitted Facilities."

[21] For further discussion of the basis for the secondary containment requirement and the materials suitable for constructing impervious floor and dikes, berms, or retaining walls, see section VI.E.5. of today's preamble.

aboveground storage tank technologies that may be used to provide secondary containment at SPCC-regulated facilities. The memorandum states that alternative aboveground storage tank systems that have capacities generally less than 12,000 gallons may provide protection of navigable waters substantially equivalent to that provided by the secondary containment systems listed in 40 CFR 112.79(c) of the SPCC regulation. An example of an alternative aboveground storage tank system that generally would provide substantially equivalent protection of navigable waters is a shop-fabricated doubled walled tank installed and operated with overfill prevention measures that include an overfill alarm, an automatic flow restrictor or flow shut-off, and constant monitoring of all product transfers including used oil. Used oil tanks meeting with the secondary containment equivalency discussed in the memorandum of April 29, 1992, are considered to be in compliance with the secondary containment requirements for aboveground tanks established in today's rule.

In the 1991 Supplemental Notice, EPA requested comment on the types of material that could be used to construct oil-impervious structures including berms, dikes, retaining walls, and floors. EPA did not receive any comments specific to the request. Since publication of the 1991 Notice, the Agency has studied the permeability of some commonly used construction materials such as cement, clay, asphalt, plastic, and steel. EPA concluded that the selection of a suitable material for construction depends upon the size of the storage units and the site characteristics. As stated in the cost analysis section of this preamble, most of these materials are currently used for the purpose of containing releases under other regulatory programs. EPA believes that any of these materials can adequately prevent releases of used oil to the environment from storage units that are properly operated and maintained at used oil processing and re-refining facilities, therefore, the Agency feels there is no need to specify the type of oil-impervious construction material that must be used at all facilities. For the cost analysis that accompanies today's rule, EPA used a secondary containment scenario that includes a 3-inch asphalt floor with an annual application of sealant. EPA believes that a floor of this type is adequate to contain used oil releases since there should be minimal or no vehicular traffic around the storage tanks or within the bermed, diked, or walled area. When installing new tanks, however, facility owner/operator will have to take into considerations the size of the tank that the floor will be resting upon. Depending on the size of the floor's thickness, and the type of floor installed, the appropriate construction material may change.

f. *Applicable UST and SPCC requirements for used oil storage tanks.* If used oil is stored in underground tanks, the owner or operator of a used oil recycling facility must comply with the requirements of 40 CFR part 280, including the corrective action and closure requirements of part 280 subparts F and G. An underground storage tank used for storage of used oil that meets the underground storage tank definition under 40 CFR 280.12 must comply with part 280 requirements. As discussed in the 1991 Supplemental Notice, technical standards for underground storage tanks (USTs) have been promulgated since publication of the 1985 proposed rule. The Agency stated in the preamble to the UST final rule (53 FR 37112; September 23, 1988) that EPA believes tht used oil, when stored in underground tanks, presents risks similar to other petroleum products stored in USTs. As a result, EPA determined that used oil USTs must comply with the tank upgrading, operation and maintenance, corrosion protection, corrective action, closure, and financial responsibility requirements promulgated under part 280 for other petroleum product USTs. The Agency believes that the subtitle I standards are sufficient to protect human health and the environment from potential releases of used oil from USTs.

In addition to all of the storage requirements discussed above, used oil processing and re-refining facilities that meet the applicability criteria for the SPCC standards contained in 40 CFR part 112 also must comply with all applicable SPCC requirements, including maintaining containment and diversionary structures to control releases of oil from aboveground storage tanks.

g. *Response to releases.* Upon detection of any release or spill within the secondary containment area from transfer operations or from aboveground storage units (tanks and containers), owners or operators must take steps to stop and contain the release, to remove all released used oil from the containment area, and repair or replace the damaged tank or container. Release used oil must be removed from the area and must be managed (*i.e.*, treated, recycled, disposed) in accordance with the requirements of this part and any other applicable parts of this chapter. In addition, whenever there is a catastrophic release or spill of used oil and used oil migrates beyond the containment structure and reaches the environment, corrective measures must be taken to adequately protect human health and the environment from potential damages. This requirement does not apply to past releases of used oil that occurred prior to the effective date of the used oil program within an authorized state in which the facility is located. This above requirement applied only when there is a release to the environment. Under this rule, this would not include releases within contained areas such as concrete floors or impervious containment areas, unless the releases go beyond the contained areas.

In addition to the provisions listed above for releases of used oil and, in addition to the corrective action requirements for releases from USTs provided in 40 CFR part 280, subpart F, owners of used oil processing and re-refining facilities are required, under CERCLA section 103, to report a release of hazardous substances to the environment when the release is equal to or in excess of the reportable quantity (RQ) for the particular substance. Used oils that are contaminated with CERCLA hazardous substances (*e.g.*, due to the presence of elevated levels of lead) are subject to CERCLA release reporting requirements. Therefore, releases of used oil containing such contaminants into the environment in quantities greater than the reportable quantity must be reported to the National Response Center. The current RQs for CERCLA hazardous substances are listed in 40 CFR 302.4. In addition, under 40 CFR part 110, any discharge of oil that violates applicable water quality standards or clauses a film or sheen on a water surface must be reported to the National Response Center.

h. *Analysis Plan.* The owner or operator of a used oil processing or re-refining must establish analytical procedures to ensure a thorough knowledge of the contents of any used oil handled at the facility. These procedures are to be established through a written analysis plan describing the procedures to be used to comply with the analysis requirements, as required by § 279.55. Each facility must prepare an analysis plan which a facility will follow when performing sampling and analysis, keeping records, and when complying with the analytical requirements for documenting the used oil fuel specification.

For the analyses described below, the owner or operator must specify in the facility's analysis plan the frequency of sampling and analysis. The owner or operator must perform sampling and analysis on a schedule that is adequate to meet all applicable requirements and assures that all used oils managed at the facility are handled safely and in compliance with all applicable used oil and Subtitle C regulations.

i. Rebuttable presumption and halogen determination. An owner or operator of a used oil processor/re-refiner facility must ensure that any used oil handled (*i.e.*, received from a used oil generator or a collector/transporter) at the facility is not mixed with hazardous wastes. Procedures should be established within the facility's written analysis plan (required in § 279.55) and the results of each procedure documented as part of the facility operating record, to demonstrate that the owner or operator will assure against such mixing and comply with the halogen determination requirements of § 279.53. The analysis plan should specify how, or with what methods, the owner or operator will analyze used oil to assure that the used oil is not mixed with hazardous wastes. As discussed above, EPA presumes that any used oil containing more than 1,000 ppm halogens has been mixed with chlorinated hazardous wastes. To rebut this presumption, the owner or operator must be able to document (or provide a copy of documentation from prior used oil handlers) at any time that the used oil was not mixed with hazardous waste (*e.g.*, by demonstrating that the presence of 1,000 ppm or more of total halogens is from some other source). The Agency believes that a facility-prepared analysis plan will identify at what time during the chain of custody, the facility owner/operator will rebut the presumption of mixing. In addition, EPA believes that an analysis plan will also indicate a procedure for handling a shipment of the adulterated used oil if received by an used oil processor/re-refiner facility especially when the given facility is not a co-management facility (*i.e.*, permitted to manage hazardous waste). A facility may rebut the presumption of mixing when accepting used oil for processing, re-refining, or blending; upon producing a specification fuel; prior to marketing it as off-specification fuel; or both when accepting used oil and shipping recycled products (*e.g.*, burner fuel, lube feedstock, or reclaimed lubricants) to the end users.

Under § 279.53, analyzing for total halogens is required to determine whether used oil has been mixed with chlorinated (halogenated) listed hazardous wastes. If the total halogen content exceeds 1,000 ppm, it is presumed that mixing has occurred per the rebuttable presumption codified today as § 261.3(a)(2)(v).

As discussed above, the rebuttable presumption does not apply to: (1) Used metalworking oils/fluids containing chlorinated paraffins on the condition that these used oil/fluids are recycled under a tolling arrangement to produce reclaimed metalworking oils/fluids; or (2) used compressor oils removed from refrigeration units and that are contaminated with chlorinated fluorocarbons (CFCs), on the condition that these used oils are destined for reclamation of the CFCs at an off-site CFC reclamation facility. The exemption applies to these two types of oils that are not mixed with used oil from other sources or other halogenated hazardous wastes.

EPA is concerned about the burning of used oils containing high levels of halogens in uncontrolled burners. Both metalworking oils and used compressor oils that contain a high level of halogenated constituents (>4,000 ppm) can not be burned safely in uncontrolled boilers and furnaces. If such used oils are to be burned for energy recovery, they must be burned at facilities that are in compliance with subpart G of part 279 or, if the used oil has been mixed with hazardous waste, with subpart H of part 266.

ii. Specification used oil fuel. Owners or operators who claim an exemption from regulation under 40 CFR 279.11 for specification used oil fuel must analyze for the specification used oil fuel parameters (*i.e.*, arsenic, cadmium, chromium, lead, total halogens, and flash point) and provide documentation of testing and sampling methods used and the frequency of sampling in the facility's analysis plan. If an owner or operator of a used oil processor/re-refiner facility markets specification used oil fuel, the owner or operator must document that the used oil meets the specification levels in the facility operating record, and must cross reference documentation that the used oil meets the specification to the burner or marketer.

iii. Indicator parameters. In 1985, EPA proposed that all owners and operators of used oil processing and re-refining facilities that also manage hazardous wastes at the same facility, test their used oils for the presence of indicator parameters. Indicator parameters are those constituents that were commonly present in the hazardous wastes handled at the facility, but not commonly found in used oils.

The majority of commenters who commented on the proposed analytical requirements stated that there is no need for the proposed indicator parameter testing at co-management facilities. The commenters responding to the indicator parameter testing requirement argued that co-management facilities are hazardous waste facilities operating under interim status or a full permit. Commenters stated that intentional mixing of used oils and hazardous wastes does not occur at co-management facilities due to the fact that mixing would reduce the marketability and recyclability of the used oil. Upon consideration of the public comments, the Agency has decided not to finalize the proposed requirements for indicator parameter testing.

For the analyses described above, the owner or operator of a used oil recycling facility must specify in the facility's analysis plan the frequency of sampling and analysis. The owner or operator must perform sampling and analysis on a schedule that is adequate to meet all applicable requirements and assures that all used oils managed at the facility are handled safely and in compliance with all applicable used oil management standards.

In the 1985 proposed management standards, EPA requested comment on the need to specify a specific schedule for sampling and analysis at the processing and re-refining facilities. Although EPA received several comments on the subject, the commenters did not agree either on the need to set a specific schedule or what the schedule should be, if EPA specified a schedule. It is apparent from the public comments received on the subject that it is probably not possible to develop a testing frequency schedule that would be appropriate for all types and sizes of used oil processing and re-refining facilities and take into account the many facility-specific variables that affect sampling and analysis frequencies. Therefore, under today's rule, EPA is not providing a specific schedule, but is requiring owners or operators of used oil processing and re-refining facilities to establish a tailored sampling and analysis schedule that will be appropriate for their particular facility and that meets the intent of the sampling and analysis requirements. This schedule must be documented in the facility's analysis plan.

Records of all analyses conducted at the facility to comply with the sampling and analysis requirements must be

maintained at the facility in the facility's operating record for a period of three years, as specified in § 279.57(a).

i. *Tracking of Used Oil.* Commenters favored the 1991-proposed tracking requirements for used oil processors/re-refiners. EPA believes that these facilities are the ultimate decision makers for the fate of used oil. Therefore, the Agency is finalizing the majority of tracking requirements proposed in 1991 which include keeping the records of each used oil shipment accepted for management and the records of each shipment of used oil delivered to the endusers. The requirements are specified in § 279.56. Furthermore, these records may take the form of a log, invoice, manifest, bill of lading, or other shipping documents. These records will provide the information necessary for preparing biennial reports for the facilities' used oil activities required in § 279.57(b) discussed below.

j. *Operating Record.* Owners and operators of used oil processing and re-refining facilities are required to maintain operating records included in § 279.57(a) of today's rule, until closure of the facility. The records include used oil analyses performed in accordance with the analysis plan required under § 279.55 and summary reports detailing all incidences that require implementation of the contingency plan specified at § 279.52(b).

k. *Reporting requirements.* Owners and operators of used oil processing and re-refining facilities are required to report to EPA or an authorized state agency in a letter, on a biennial basis, the following information: (1) The facility's EPA identification number, name and address; (2) the calendar year covered by the report; and (3) the quantities of each type of used oil accepted for recycling and the manner in which used oil is recycled at the site (if the facility recycles used oil in more than one manner, the quantities of used oil recycled should be reported for each recycling method (*e.g.*, burning, processing)).

Reports documenting the information listed above must be submitted to EPA, or the authorized state agency, by March 1 of each even numbered year and cover used oil recycling activities conducted during the previous year. Reports need only be in the form of a letter or spreadsheet and no formal reporting form will be developed.

The information identified above is similar to that listed on the Hazardous Waste Biennial Report Form (No. 8700-13B). The information requests were designed in this manner to assist owners and operators of used oil processor and re-refiner facilities in preparing the used oil biennial report. Many owners and operators are familiar with the hazardous waste biennial reporting form.

Commenters supported the biennial reporting requirements proposed for used oil recyclers in the 1991 Supplemental Notice. As noted in the Supplemental Notice, EPA believes that the information provided by the used oil processing and re-refining facilities will help the Agency when developing Phase II management standards that may include incentives for encouraging DIY-generated used oil recycling and/or more stringent management standards for a particular form of recycling (*e.g.*, used oil burning). EPA also believes that the information collected from processors and re-refiners will allow the Agency to monitor the flow and disposition of used oil and to allow the Agency to assess the relative amounts of used oil that are recycled in different manners.

The reporting requirements promulgated today will apply only to used oil processors and re-refiners and not to used oil burners or to transporters who directly market used oil fuels. The Agency believes that the information that is required of processors and re-refiners will indicate quantities of specification fuel and off-specification fuel produced. In case the Agency wants more specific information on burning activities, EPA may obtain additional information through a survey or by reviewing shipping records maintained by burners and used oil transporters.

l. *Closure.* Owners and operators must ensure that the units and areas used to store and recycle used oil are closed to the extent necessary to protect human health and the environment and in a manner that controls, minimizes, or eliminates post-closure escape of used oil and used oil residues to the ground, atmosphere, and water. At the time of closure, owners and operators who store used oil in aboveground tanks must empty the tanks, remove or decontaminate residues from the tank system, remove and decontaminate containment system components, contaminated media, and any structures and equipment contaminated with used oil released after the effective date of today's rule. Contaminated media, components, structures and equipment, and any used oil removed from the site must be managed as a hazardous waste, if the media, waste, or material meets the definition of hazardous waste, per 40 CFR 261.3(d).

If the facility owner or operator cannot successfully remove and decontaminate all contaminated media at the facility, then the owner or operator must close the tank system(s) and perform closure and post-closure care in accordance with the requirements of 40 CFR 265.310 that apply to landfills. EPA deferred the financial responsibility requirement for used oil processors and re-refiners in the 1985 proposal and 1991 supplemental notice. EPA believes that the closure steps necessary under today's rule can be implemented without the financial responsibility requirements for facility closure established under subpart H of Part 264/265. The closure requirement promulgated today only requires unit closure and removal of contaminated media in the immediate vicinity of the used oil storage/processing unit. EPA believes these costs are not likely to be excessive and can be borne by owners/operators without the need for financial assurance that is necessary for RCRA subtitle C hazardous waste treatment, storage, and disposal facilities. In addition, the Agency believes that many used oil processors/re-refiners would as a business practice routinely set aside funds for complying with the business insurance requirements. (See Cost and Economics Impact of 1992 Used Oil Management Standards, August 1992, available in the docket accompanying this rule.)

Owners and operators who store used oil in underground storage tanks must comply with the closure requirements of 40 CFR part 280, subpart G.

Owners and operators who store used oil in containers must remove all containers from the site at the time of closure. The owner or operator must also remove and decontaminate all residues, contaminated containment system components, contaminated soils, and any structures and equipment contaminated with used oil and manage them as hazardous waste if the media, waste, or material meets the definition of hazardous waste, per 40 CFR 261.3(d) or 261.4(b).

Based on information gathered from documentation of Superfund sites where used oil was identified as one of the major constituents of concern managed at the site, EPA is convinced that closure requirements for tanks and containers and for the area at existing facilities are important. EPA believes that the secondary containment requirements for containers and tanks established today will minimize the need for extensive closure in the future since the potential for a release of used oil to migrate into the environment will be reduced. The requirements of today's rule should ensure against damages that could result at abandoned sites by: (a)

controlling (containing) used oil spills or releases that may occur during the operation of used oil processing and re-refining facilities and (b) requiring the removal of contaminated soils in the vicinity of or beneath the aboveground used oil storage and processing units at closure.

m. *Other applicable requirements.* In addition to complying with the requirements of subpart F, owners and operators of used oil processing and re-refining facilities who also transport used oil off-site must comply with the requirements for used oil transporters in subpart E. Owners and operators of used oil processing and re-refining facilities who market used oil fuels must comply with the requirements of subpart H; owners and operators who burn used oil fuels must comply with the requirements of subpart G. Disposal of used oil must be performed in compliance with the requirements specified in part 279, subpart I. Similarly, management of used oil processing and re-refining residuals must be performed in compliance with the existing RCRA requirements. In addition, used oil generators who recycle used oil on-site in a manner other than burning for energy recovery must comply with the standards promulgated today for used oil processors and re-refiners.

5. Standards for Burners of Off-Specification Used Oil Fuel

a. *Applicability.* 40 CFR part 279, subpart G applies to owners and operators of facilities where off-specification used oil fuel is burned for energy recovery in any boiler or industrial furnace and hazardous waste incinerator subject to regulation under 40 CFR part 264 or 265, subpart O. The requirements are shown in Table VI.5. The requirements of 40 CFR part 279, subpart G are applicable to: (1) Owners and operators of facilities that burn used oil fuel for energy recovery where the fuel does not meet the specification levels for the constituents listed in § 279.11 (previously 40 CFR 266.41); (2) transporters or marketers who burn used oil fuels that do not meet the specification for used oil fuels (used oil transporters are also subject to 40 CFR part 279, subpart E and marketers are also subject to 40 CFR part 279 subpart H); and (3) used oil processing and re-refining facilities that also burn off-specification used oil fuels (used oil processing and re-refining facilities also are subject to 40 CFR part 279, subpart F). Used oil fuel, or used oil sent off-site to be burned for energy recovery, includes any fuel produced from used oil through processing, blending, or other treatment. The requirements of subpart G are merely the existing requirements of the former part 266, subpart E, with minor modifications. EPA summarizes these requirements below.

TABLE VI.5.—STANDARDS FOR BURNERS OF OFF-SPECIFICATION USED OIL

Requirement	New or Existing	Regulatory citation
Burners who perform other management activities.	New	§ 279.60(b)
Restrictions on burning.	Existing	§ 279.61
Notification and EPA identification number.	Existing	§ 279.62
Rebuttable presumption for used oil.	Existing	§ 279.63(a), (b), and (c)
Exceptions from rebuttable presumption for CFC and metalworking oils.	New	§ 279.63(c)(1) and (2)
Record retention for rebuttable presumption.	New	§ 279.63(d)
Type of storage units.	New	§ 279.64(a)
Condition of tanks and containers.	New	§ 279.64(b)
Secondary containment for containers and existing and new above ground tanks.	New	§ 279.64(c), (d) and (e)
Labelling of containers and tanks.	New	§ 279.64(f)
Responses to releases.	New	§ 279.64(g)
Tracking—acceptance and recordkeeping.	Existing	§ 279.65
Certification	Existing	§ 279.66
Management of residues.	New	§ 279.67
SPCC requirements, including spill prevention and control.	Existing (applicable independently).	40 CFR Part 112
UST requirements, including corrective action and financial responsibility.	Existing (applicable independently).	40 CFR Part 280
Inspections	N.A	None
Closure	N.A	None

The requirements under part 279, subpart G are not applicable to persons burning used oil fuel that meets the used oil fuel specifications of 40 CFR 279.11,[22] provided the marketer or burner of such fuel complies with the requirements of that section.

Used oils that are hazardous wastes may be burned for energy recovery in compliance with subpart G of part 279, instead of 40 CFR part 266, subpart H (standards for burning hazardous waste in boilers and industrial furnaces), provided the used oil fuel is hazardous solely because it exhibits a characteristic of hazardous waste by its own nature or was mixed with hazardous waste generated by a conditionally exempt small quantity generator regulated under 40 CFR 261.5.

Burners who treat off-specification fuel by processing, blending, or other treatment to meet the specification levels contained in 40 CFR 279.11, must comply with the processing and re-refining facility standards of 40 CFR part 279, subpart F and the used oil marketer standards of subpart H of part 279.

b. *Restrictions.* Used oil fuel that is off-specification (*i.e.*, used oil fuel exceeding any of the specifications of 40 CFR 279.11) may be burned only in industrial furnaces or boilers (defined in 40 CFR 260.10) that meet the following criteria: (1) Are located on the site as part of a manufacturing process (*e.g.*, cement kilns, asphalt plants) where materials are transformed into new products, including the component parts of products, by mechanical or chemical processes; (2) are utility boilers that generate electric power, steam, heated or cooled air, or other gases or fluids for sale for energy purposes; (3) are used oil-fired space heaters, provided that the burner complies with 40 CFR 279.23; or (4) are incinerators in compliance with parts 264/265, subpart O. (See § 279.61 for the specific restrictions.)

c. *On-site Burning in Space Heaters.* Used oil may be burned in a used oil-fired space heater, provided that the space heater burns only used oil that the owner or operator generates and/or used oil obtained from household DIY oil changers. The space heater must have a maximum capacity of not more than 0.5 million BTU per hour and the combustion gases from the burner unit must be vented to the ambient air.

d. *Notification Requirements.* Burners of off-specification used oil fuel must notify the appropriate EPA Regional Administrator using EPA Form 8700–12 or by submitting a letter, stating the location and general description of used oil burning activities, unless the owner or operator of the facility has previously notified the Agency of their used oil burning activities. Upon receipt of this notification, EPA will issue an EPA identification number to the burner. This requirement does not apply to: (1)

[22] The specification levels are: arsenic = 5 ppm, maximum; cadmium = 2 ppm, maximum; chromium = 10 ppm, maximum; lead = 100 ppm, maximum; flash point = 100°F, minimum; total halogens = 4,000 ppm maximum.

Burners who only burn specification used oil fuels; (2) burners of specification used oil fuel who receive the fuel from used oil marketers who have notified EPA of their used oil management activities and who have provided appropriate information concerning specification fuel claims; or (3) generators who burn used oil that is generated on site only in used oil-fired space heaters.

e. *Certification.* Before a burner may accept the first shipment of off-specification used oil fuel from a marketer, the burner must provide a one-time written notice certifying that the burner has notified EPA stating the location and general description of the burner's used oil management activities and that the burner will burn used oil only in an industrial furnace or boiler identified in 40 CFR 279.61(a).

f. *Storage Requirements.* Owners or operators of facilities that burn used oil for energy recovery must store all used oils either in tanks or containers. All aboveground tanks and containers must be maintained in good condition (*i.e.*, no visible signs of leaks or structural damage). EPA believes that the practice of storing used oil in unlined lagoons, ponds, pits or surface impoundments is not very common and it is inherently unsafe and poses an undue risk to human health and the environment.[23] Therefore, today's rule requires that all used oils be stored in aboveground tanks or containers or in underground storage tanks.

The owner or operator of a facility that burns used oil must label all aboveground tanks and containers used to store used oil and all fill pipes used to transfer used oil to underground storage tanks with the words "used oil." EPA is requiring owners and operators to clearly label storage units used to store used oil to assure against accidental mixing and ensure that only used oil is placed in tanks reserved for the storage of used oil.

Owners or operators of facilities that burn off-specification used oil and who store used oil in aboveground tanks or containers must equip the storage area surrounding the existing tanks or storage area holding containers with a floor and secondary containment structures (dikes, berms, or retaining walls) that are made of a material that is impervious to oil and that are capable of containing all potential spills and releases of used oil to soil, surface water, and ground water from the tanks or containers until the facility owner or operator can take measures to clean up the release. The floor under existing storage tanks must cover the entire area within the containment structure, except where existing tank portions meet the ground. For new tanks, the floor must cover the entire area within the containment structure (for additional discussion, see section VI.5.f of this preamble).

EPA is requiring secondary containment for aboveground storage areas because the Agency has documented that past storage practices at used oil management facilities has resulted in releases of used oil to the environment. In the background documents supporting this final rule, EPA has documented damages that have occurred as a result of past storage practices at used oil management facilities.[24]

If used oil is stored in underground tanks, the owner or operator of a used oil burner facility must comply with the UST requirements of 40 CFR part 280. In addition, burner facilities that meet the applicability criteria for the SPCC standards in 40 CFR part 112 must comply with those provisions as well.

g. *Response to releases.* Owners and operators of used oil burning facilities who store used oil in aboveground tanks and containers must comply with the same release response requirements as those promulgated for used oil processing and re-refining facilities. Whenever there is a release or spill of used oil to the environment, the owner or operator must remove released used oil and contaminated media from the area, including used oils held in the containment area. Released used oils and contaminated media removed from the area must be managed (*i.e.*, treated, recycled, disposed) in accordance with the requirements of this part and any other applicable parts of this chapter. These requirements do not apply to past releases that occurred at the facility prior to the effective date of the used oil program within an authorized state in which the facility is located. This above requirement applies only when there is a release to the environment. Under this rule, this would not include releases within contained areas such as concrete floors or impervious containment area, unless the releases go beyond the contained area.

In addition to the provisions listed above for releases of used oil and, in addition to the corrective action requirements for releases from USTs provided in 40 CFR part 280, subpart F, used oil burners of off-specification fuel are required, under CERCLA Section 103, to report a release of hazardous substances to the environment when the release is equal to or in excess of the reportable quantity (RQ) for the particular substance. Used oils that are contaminated with CERCLA hazardous substances (*e.g.*, due to the presence of elevated levels of lead) are subject to these CERCLA release reporting requirements. Therefore, releases of used oil containing such contamination into the environment in quantities greater than the reportable quantity must be reported to the National Response Center. The current RQs for CERCLA hazardous substances are listed in 40 CFR 302.4. In addition, under 40 CFR part 110, any discharge of oil that violates applicable water quality standards or causes a film or sheen on a water surface must be reported to the National Response Center.

h. *Used oil fuel analysis (halogens).* A used oil burner must ensure that any used oil fuel handled at the burner's facility is not mixed with hazardous wastes. EPA will continue to presume (per § 261.3(a)(2)(v), previously § 266.40) that any used oil containing more than 1,000 ppm halogens has been mixed with chlorinated hazardous wastes. To rebut this presumption, the owner or operator must be able to document that the used oil fuel was not mixed with hazardous waste (*e.g.*, by demonstrating that the presence of 1,000 ppm or more of total halogens is from some other source).

Note: Used oil fuel processors or marketers may conduct analyses to document that the used oil contains less than 1000 ppm halogens. Used oil burners may use this information in making their own determination and in rebutting the presumption of mixing.

i. *Recordkeeping and Reporting Requirements.* A burner who receives an invoice from a used oil marketer under the requirements of Subpart H must maintain a copy of each invoice for at least three years. Documentation of any used oil fuel analyses also must be maintained for at least three years. A burner must maintain a copy of each certification sent to a marketer for at least three years from the date the burner received the last shipment of off-specification used oil fuel from that marketer. A burner may use an acceptance/delivery log in lieu of an invoice.

[23] Any and all storage in of used oil in surface impoundments or other land-based units is strictly prohibited unless the owner or operator of the unit operates the unit in full compliance with 40 CFR part 264/265, subpart K.

[24] See "Summary Descriptions of Sixty-Three 'Used Oil' Superfund Sites," and "Summary Descriptions of Used Oil-Related Damages at RCRA-Permitted Facilities." Both of these documents are available in the docket for today's rule.

No reporting requirements are being promulgated for used oil burners of off-specification fuel. EPA believes that the Agency will be able to obtain burner-specific information by inspecting invoices kept by burners and the acceptance/delivery logs kept by collectors/transporters, processors, and re-refiners.

j. *Possible future regulations for used oil burners.* EPA received several comments suggesting that EPA revise the used oil fuel specification levels, particularly for lead. Such comments are beyond the scope of today's rule, since EPA did not propose any changes and EPA does not address these comments here. None the less, as noted in the 1991 Supplemental Proposal, EPA intends to conduct additional studies of used oil burning activities to address public concerns regarding potential lead emissions from used oil burners. After such studies are complete, EPA may either develop emissions standards for used oil burners or may revise the current specification limits for used oil fuels, if analysis suggests that additional controls are necessary to protect human health and environment.

EPA believes that the phase-down of lead in gasoline over the past 6 to 8 years may have resulted in a significant reduction of lead levels in used oils generated from gasoline-powered engines. The Agency's pre-1985 data show that used automotive engine oils that were sampled from storage tanks at processing and re-refining facilities averaged around 1,200 ppm lead. On the other hand, the Agency's data that were collected in 1988 and 1989 and the data submitted by the commenters in response to the 1991 Supplemental Proposal suggest that used oils from gasoline-powered engines that were sampled from storage tanks averaged approximately 80 ppm lead. These data suggest that the Lead Phase-down Program may have had a significant effect on reducing the lead in gasoline. Based on these data, EPA believes that a significant amount of used oil does not fail the used oil fuel specification limit for lead. However, if the Agency determines that the specification limit for lead should be lowered, greater quantities of used oil may then exceed the specification requirements.

k. *Closure Requirements.* In the 1985 and 1991 proposals, EPA considered deferring closure requirements for used oil burners, based on the lack of risk data supporting the need for closure requirements at these sites. Since 1991, while reviewing the available Superfund site information and RCRA enforcement case data, the Agency has not located substantive damage information specific to burners. This leads the Agency to believe that environmental damages at used oil burner sites does not appear to be a substantial concern (*i.e.*, have not resulted in environmental damage of a significant magnitude that it has resulted in the site being identified as the NPL site). Therefore, the Agency believes that closure requirements for used oil burners are unnecessary at this time, hence, EPA is deferring such requirements.

6. Standards for Used Oil Fuel Marketers

On November 29, 1985, EPA promulgated notification, analysis, and recordkeeping requirements for marketers of used oil fuels as part of the used oil final Phase I burning regulations (40 CFR 266.43). Today EPA is consolidating all of the regulations related to recycled used oil into one part of the CFR to alleviate confusion on the part of the regulated community and to provide consistency in the regulations. Therefore, the used oil fuel marketer requirements previously codified as 40 CFR 266.43 will now be codified as 40 CFR part 279, subpart H (Standards for Used Oil Fuel Marketers). EPA is changing the designated codification of the used oil fuel marketer requirements and reordering the appearance of these requirements without modification. Table VI.6 summarizes the requirements established for the used oil fuel marketers.

TABLE VI.6.—STANDARDS FOR MARKETERS OF USED OIL FUEL

Requirement	New or existing	Regulatory citation
Prohibitions	Existing	§ 279.71.
On-specification used oil-analysis	Existing	§ 279.72.
Notification and EPA identification number	Existing	§ 279.73.
Tracking—off-specification fuel	Existing (invoices)	§ 279.74(a).
Tracking—on-specification fuel	Existing	§ 279.74(b).
Recordkeeping	Existing	§ 279.74(c).
Certification	Existing	§ 279.75.

The used oil fuel marketer requirements are applicable to all used oil handlers that market used oil fuels. Fuel marketing is an activity that may be undertaken by used oil generators, transporters, processors, re-refiners, and used oil burners. Used oil handlers may certify that they are marketing off-specification used oil fuel or first claim that the used oil fuel they are marketing to non-industrial boilers and furnaces meets the specification limits established for used oil fuel. Under today's regulation, no party in the used oil industry can be simply a marketer. EPA believes that marketing is an activity that a used oil handler undertakes when selling used oils as a fuel. An entity that is selling off-specification used oil fuel can either be a generator or a transporter or in some cases a processor or re-refiner. Similarly, an entity selling specification used oil fuel may be a generator, transporter, processor, re-refiner, or a fuel oil dealer. A decision to market used oil as an off-specification fuel is solely an economic decision depending on the costs associated with marketing used oil as on-specification fuel (*i.e.*, used oil fuel meeting the specification limits). In the former case, used oil is shipped, as generated or consolidated without any processing, to an industrial boiler or furnace. In the later case, however, used oil is blended or processed to produce on-specification used oil fuel and is analyzed to document the claim that it meets the specification limits. Therefore, the marketing requirements of 40 CFR part 279, subpart H, in addition to all other applicable provisions of part 279, apply to all used oil marketers.

Under today's definition of marketers, it is logically impossible for a facility to be only a marketer of used oil fuel. EPA believes that a marketer of used oil fuel must either have generated, transported/stored at a transfer facility, and/or processed the used oil before marketing the used oil fuel. EPA received comments stating that persons who blend used oils from other sources should be regulated only as marketers. EPA disagrees. EPA believes that any person who blends different used oils

should be treated as processor (recycler) under today's rules. The blending and fuel production processes, and the associated storage of oils and fuels, have posed environmental risks as documented in the information available for the fuel oil marketers identified as NPL sites and from the RCRA enforcement actions being pursued by the Agency. Thus, EPA believes it is appropriate to regulate those who blend used oils to produce fuels under the processor/re-refiner standards established today. However, those facilities who consolidate shipments of used oil before sending the consolidated oil for recycling are classified as transfer facilities and are subject to the transporter standards.

7. Standards for Disposal of Used Oil and Use as a Dust Suppressant

a. *Disposal of Used Oil.* As explained above, EPA believes that most used oils are recyclable. Since there are cases where particular types or batches of used oil are not recyclable, EPA understands the need to provide for the safe and proper disposal of used oils in these limited circumstances. EPA is today promulgating disposal standards for non-recyclable used oils under 40 CFR part 279, subpart I given in Table VI.7.

TABLE VI.7.—STANDARDS FOR USE AS A DUST SUPPRESSANT AND DISPOSAL OF USED OIL

Requirement	New or existing	Regulatory citation
Disposal	New	§ 279.81
Use as a dust suppressant	New	§ 279.82

On May 20, 1992 (57 FR 21524), EPA promulgated a listing determination for used oils that are disposed. EPA determined that it was not necessary to list these used oils because those used oils that present an undue risk to human health and the environment typically and frequently fail the toxicity characteristic leaching procedure. Since such used oils are identified as a RCRA hazardous waste, EPA saw no need to list any used oils as hazardous waste when they are disposed.

Used oils that are identified as hazardous wastes and are not recyclable must be handled and disposed of as hazardous wastes in accordance with all applicable subtitle C regulations. Used oils that are hazardous wastes because they exhibit one or more characteristics of hazardous waste and are destined for disposal must be accompanied by a hazardous waste manifest when shipped off-site and must be transported to a permitted or interim status subtitle C disposal facility. In addition, all wastes that fail the extraction procedure toxicity (EP) test are currently prohibited from land disposal under 40 CFR part 268.

Used oils that are not mixed with listed hazardous wastes and do not exhibit a characteristic may be disposed of in an industrial solid waste landfill or a municipal solid waste landfill. Used oils that are disposed in municipal solid waste landfills after October 9, 1993, must be managed in accordance with the requirements of 40 CFR part 258. In addition, all nonhazardous used oils that cannot be recycled must be disposed of in accordance with all applicable Federal and State solid waste regulations.

b. *Use as a Dust Suppressant.* In the 1985 proposed used oil management standards, EPA proposed to list all used oils as hazardous waste. Since the Hazardous and Solid Waste Amendments banned the use of all hazardous wastes (those that are either listed or exhibit a hazardous waste characteristic other than ignitability) as dust suppressants, the proposed listing of used oils had the effect of banning the use of any used oil as a dust suppressant. Used oils are banned from use as dust suppressants under the statute only when mixed with a listed hazardous waste or when they exhibit the Toxicity Characteristic.

Although the Agency has determined that used oils need not be listed as hazardous wastes, EPA still believes that used oils should not be used for road oiling or as dust suppressants due to the tendency for used oils to contain hazardous wastes or be contaminated with hazardous or toxic constituents. There was overwhelming support from commenters for a ban on the use of used oil for road application and dust suppression. Direct application of used oil to the land allows for direct exposure of used oils and all potential contaminants to the environment. Therefore, in today's final rule, EPA is banning the use of all used oils for road or land application.

EPA recognizes that some states have established road oil control programs. A recent survey of states, however, showed that road oiling is not widely practiced, even in states that have such programs. Today's rule provides for states who wish to continue to allow road oiling under programs designed to control such activities to petition EPA to exempt their state from the national ban. This petition would usually be part of the state authorization package, but it may be a separate petition (*i.e.*, from an unauthorized state). The petition should show how the state will prevent the road application of used oil that is mixed with hazardous waste or that exhibits the toxicity characteristic. The petition should generally demonstrate how the state will minimize environmental impacts of road oiling.

E. Response to Major Comments

1. Listing Used Oil as a Hazardous Waste

Commenters overwhelmingly supported the option not to list used oils as hazardous waste but to rely on management standards to control potential mismanagement of used oils. In fact, commenters to the 1991 Supplemental Notice overwhelmingly supported listing Option Three, no listing of used oils and reliance on management standards to control mismanagement of used oils. EPA has concluded that existing EPA regulations, and particularly the Toxicity Characteristic, adequately control the disposal of used oils that are hazardous wastes. The new Federal criteria for municipal solid waste landfills in part 258, as well as the stormwater regulations and TSCA requirements, adequately regulate the disposal of nonhazardous used oils.

Based on public comments and the recycling presumption discussed in the 1991 Supplemental Notice, EPA has determined that used oils that are recycled do not pose a substantial present or potential threat to human health and the environment when they are managed in accordance with the standards promulgated today from the time they are generated until they are recycled in addition to the existing requirements under other statutes or regulatory programs. In making a no-list determination, EPA considered the technical criteria for listing in 40 CFR 261.11, the fate and possible mismanagement of recycled used oils, and the impact of the management standards proposed in 1985 and 1991 on the recycling of used oils, and as discussed above, EPA has concluded that the management standards issued today control those problems that have occurred in used oil recycling. Therefore, listing used oil is not necessary to ensure adequate protection.

2. Mixtures

Commenters were nearly unanimous in support of EPA's proposal to exclude wipers and other materials contaminated with used oil from the proposed listing. Based on public

comments and commenter-submitted data, the Agency has decided not to list any used oils as hazardous wastes. Therefore, mixtures of used oils and other materials are not automatically hazardous wastes via the mixture rule. Mixtures of used oils and listed hazardous wastes will be regulated as hazardous wastes, whether they are recycled or not. Mixtures of used oil and characteristic hazardous waste that exhibit a hazardous waste characteristic also must be managed as a hazardous waste, whether they are recycled or not. However, mixtures of nonhazardous materials and used oils that exhibit a characteristic by their own nature (*i.e.*, the used oil is characteristically hazardous prior to mixing) or mixtures of used oil and characteristic hazardous waste that do not exhibit a characteristic are subject to the standards in part 279 if they are being recycled. Of course, if such a mixture cannot be recycled and the mixture exhibits a characteristic, it must be disposed in accordance with all applicable subtitle C regulations.

Mixtures of used oil and other materials generally will be regulated under part 279. However, as discussed above, EPA has exempted wastewaters contaminated with very small amounts of used oil, since such mixtures are not likely to pose a significant hazard. If mixtures of used oil and sorbent materials from which used oil can not be separated, however, are burned for energy recovery, the Agency believes that such recycling is acceptable. In addition, it is subjected to the existing used oil specification fuel requirements that are in effect since 1985 and recodified in part 279 today.

3. Controls on Disposal

Commenters supported EPA's proposal to develop guidelines for the disposal of non-hazardous used oil. The standards being promulgated today as part 279 apply to all used oils that are being recycled. Based upon the representations of commenters that most used oil is recyclable and is indeed recycled once it is collected, EPA has adopted a "recycling presumption," which means that the Agency presumes that all used oils will be recycled. A used oil handler who has used oils that cannot be recycled must dispose of the used oil properly. Hazardous used oils must be disposed in subtitle C facilities and new Federal Criteria for municipal solid waste landfills under part 258, which go into effect in October, 1993, will control nonhazardous used oils that are disposed. For these reasons, EPA believes that establishing guidelines for the disposal of used oils is unnecessary.

4. DIY-Generated Used Oils

Nearly all the commenters said that listing used oil as a hazardous waste would discourage the recycling of DIY-generated used oil. As discussed above, EPA is not listing any used oils as hazardous wastes. As a result, the major disincentive cited by commenters for used oil generators to continue accepting used oil from DIY generators has been removed. Nonetheless, in the September 1991 Supplemental Proposal, EPA put forth several non-regulatory incentive options for encouraging increased collection and recycling of DIY-generated used oils. EPA has not evaluated all of these incentive programs to date but will continue to assess the need for DIY incentives, and development of a non-regulatory scheme for DIY used oils may be part of a future used oil package.

5. Recycling Presumption Criteria

As discussed in VI.B of this preamble almost all commenters supported the concept of the recycling presumption, but few supported establishment of formal criteria of "nonrecyclability." Commenters were concerned that the criteria for rebutting the recycling presumption (*e.g.*, water content, BTU value, or any other measure) are not a meaningful measure of recyclability, since basically any used oil can be recycled and the degree of treatment prior to recycling is a function of the cost to the used oil generator. EPA has determined that it is not practical to set such criteria. Therefore, EPA is not establishing formal criteria on which to base a determination of nonrecyclability. Rather, a used oil handler who is not recycling used oils under part 279 must dispose of the used oil in compliance with applicable regulations. In other words, the used oil handler then must determine whether the used oil exhibits any characteristic of hazardous waste and manage the used oil accordingly.

6. Ban on Road Oiling

Commenters agreed that used oils are currently not widely used for road oiling and dust suppression. In fact, 41 out of 50 states prohibit the use of used oil for these purposes. The Agency is aware, however, that the other states allow this practice under certain permitting conditions and at least one commenter favored allowing road oiling under specified conditions. Today's final rule is promulgated pursuant to pre-HSWA authority, specifically, the Used Oil Recycling Act of 1980. Due to this fact, a Federal ban on road oiling will be effective only in unauthorized states on the effective date of this rule. The ban will not be effective in authorized states until the state modifies its program by adopting the ban provision and EPA approves the modification. Under the provisions being promulgated today, a state may submit a waiver to EPA to allow road oiling in that state in accordance with state laws and regulations.

7. CERCLA Liability

Most comments received in response to the 1991 Notice supported implementation of the liability exemption in CERCLA section 114(c). In addition, many commenters favored elimination of a small quantity generator category in the part 279 standards. EPA is not establishing any used oil generator cut-off based on generation rate. All used oil generators are subject to uniform standards in part 279. As a result, no change is necessary to trigger the applicability of the exemption from liability in CERCLA section 114(c). Any used oil generator who meets the statutory definition of a "service station dealer" is eligible for the liability exemption.

8. Storage

Most commenters agreed that minimum technical requirements (*e.g.*, tanks and containers kept in good condition, clean up of spills associated with used oil storage) are necessary for the storage of used oil under part 279. The regulations promulgated today require that used oil be stored in tanks and containers that are maintained in good condition, with no visible leaks or signs of deterioration. These minimum standards provide a certain level of control against leaks and releases from storage units. Additional controls, such as secondary containment for storage areas provide further assurance against migration of used oil and prevention against the contamination of soil, surface water, and ground water. EPA believes that at used oil facilities the use of continuously fed tanks for aboveground storage is limited and when such tanks are being used the owner/operator would install proper shut off valves and other controls to ensure that flow of material between the tanks is restricted in case of a tank rupture or other accidental releases.

9. Secondary Containment

Due to commenter's concerns regarding the technical and financial burden associated with the 40 CFR parts 264/265, subpart J secondary containment requirements, the Agency is not requiring full secondary

containment, such as double-walled tanks, for used oil storage. Used oil transporters, processing and re-refining facilities, and burner facilities must instead equip their tanks and containers with secondary containment consisting of dikes, berms, or retaining walls and a floor. All components of the containment system must be sufficiently impervious to oil to prevent any used oil released to the containment system from migrating out to the soil, ground water, or surface waters. EPA believes that the requirements promulgated today are less burdensome than the supart J requirements, yet they are sufficiently protective of human health and the environment. Although, subpart J standards are not required by today's rule, such requirements, such as a double-walled tank, however, would be sufficient for compliance with today's requirements.

10. Financial Responsibility

In the September 1991 Supplemental Notice, EPA proposed to defer the establishment of financial responsibility requirements for the clean up and closure of used oil generator sites and used oil facilities where used oil is stored in aboveground tanks and containers. Based on commenters' concerns regarding the costs and availability of financial assurance mechanisms, the Agency is not requiring used oil handlers to demonstrate financial responsibility for releases of used oil, except as provided under 40 CFR part 280 for underground storage tanks. EPA agrees with the commenters that a formal financial responsibility requirement similar to that in parts 264/265 is overly burdensome for the majority of used oil handlers. In addition, such a requirement should not be necessary because used oil generally is not stored for long periods of time due to its recyclability and marketability as a commodity. Thus, there is little likelihood of catastrophic spills that might require expensive clean up activities. EPA determined that financial responsibility requirements established in subpart H of part 264/265 is not necessary since unit closure requirement rather than a facility closure requirement is imposed today. The facilities managing used oil in land-based units, however, must be closed like RCRA subtitle C landfills, if the used oil contained in the units subject to closure exhibits characteristic of toxicity.

11. Permit-By-Rule

The majority of commenters believed that the permit-by-rule mechanism was unnecessary for implementation and enforcement of the used oil management system under part 279. EPA agrees with the commenters and has not established any permit-by-rule requirements for used oil facilities. The Agency believes that the recordkeeping requirements in part 279 will provide sufficient information for enforcement of the used oil management standards. The Agency decided against the permit-by-rule requirement because the requirements in today's rule are basic management practices that are largely self-implementing and do not require additional permit consideration of site-specific conditions.

12. Definition of Used Oil

In 1985 and in 1991, EPA proposed a definition of used oil that followed the statutory definition of used oil, but included used synthetic oils within the definition. Several commenters contended that synthetic oils should not be included because they are not in the statutory definition. The definition of used oil promulgated today, as the definition proposed in 1985 and 1991, is very similar to the existing definition in 40 CFR 266.40(b) and the statutory definition in section 1004(36) of RCRA. The only change is the inclusion of synthetic oils within the definition, including those derived from coal or shale. As discussed in the 1985 preamble, EPA believes that synthetic oils should be included in the definition of used oil due to the fact that these oils generally are used for the same purposes as petroleum-derived oils, are mixed and managed in the same manner after use, and present the same level of hazard as petroleum-based oils.

VII. Effective Date

Under RCRA section 3010(b), hazardous waste regulations are generally to become effective six months after final rule promulgation. EPA believes that the policy reasons for allowing facilities six months to come into compliance with new RCRA hazardous waste rules also apply to today's used oil management standards. Therefore, today's final rule for the used oil listing decision and used oil management standards will become effective on March 8, 1993. However, as explained below, in most states the rule will take effect in two to three years, as states adopt the new requirements.

VIII. State Authorization

A. Applicability in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified states to administer and enforce the RCRA program for hazardous wastes within the State. (See 40 CFR part 271 for the standards and requirements for authorization.) Section 3006(h) of RCRA allows EPA to authorize state used oil management programs in the same manner as state hazardous waste programs, even if EPA does not identify or list used oil as a hazardous waste. In addition, EPA retains enforcement authority under sections 3008, 7003, and 3013 of RCRA following authorization of State used oil programs, although authorized States have primary enforcement authority. Sections 3008(d)(4), (d)(5), and (d)(7) of RCRA further clarify that EPA may assess criminal penalties for violations of used oil standards even if it does not identify used oil as a hazardous waste.

For rules written under RCRA provisions that predate the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), States with final authorization administer their hazardous waste programs entirely in lieu of EPA's federal program. The Federal requirements no longer apply in the authorized State. When new, more stringent Federal requirements are promulgated or enacted, the State must develop equivalent authorities within the timeframe set out in the part 271 regulations. The new Federal requirements, however, do not take effect in an authorized State until the State adopts the requirements as a State law. EPA may not enforce them until it approves the State requirements as a revision to the authorized State program.

The Hazardous and Solid Waste Amendments of 1984 revised this system for requirements and prohibitions imposed under provisions added to the statute by the 1984 Amendments. New HSWA rules take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out the HSWA requirements in authorized States until the State is granted authorization to do so. While States must still revise State law to impose HSWA requirements to achieve or retain RCRA authorization, the Federal rules apply until they do so.

Today's rules are generally more stringent than the preexisting Federal rules, which exempted recycled used oils from regulation as hazardous wastes, but provided management standards only for the burning of off-specification used oils. (See former 40 CFR part 266, subpart E.) Thus, states will be required to revise their programs to address today's rules. Moreover, the requirements for burning off-specification used oil promulgated today are more extensive than the preexisting

rules. EPA consequently expects that all States that adopted rules to reflect the existing requirements will need to revise their rules to be equivalent to the new "off-spec" standards.

Today's rules, however, are promulgated under section 3014(a) of RCRA, a provision that predates the 1984 amendments. The rules will take effect in states that do not have final authorization six months from the date that this rule is published in the **Federal Register**. In authorized states, the rules will not be applicable until a State revises its program to adopt equivalent requirements under State law.

40 CFR 271.21(e)(2) requires States that have final authorization to modify their programs to reflect Federal program changes and to submit their modifications to EPA for approval. The deadline by which the State must modify its program to reflect today's rules is July 1, 1994, if a statutory change is not needed, or July 1, 1995, if a statutory change is necessary. These deadlines may be extended in certain cases under 40 CFR 271.21(e)(3). Once EPA approves the State's submission, the State requirements become federally enforceable subtitle C requirements.

Unauthorized States that submit their final applications for initial authorization less than 12 months after the effective date of this rule are not required to include standards equivalent to these in their applications. Such states, however, must modify their programs to reflect today's rules under the schedule described above. States that submit final applications for initial authorization more than 12 months after the effective date of this rule must include standards equivalent to these rules in their applications. 40 CFR 271.3 sets out the requirements a state must meet when submitting a final application for initial authorization.

States with authorized RCRA programs already may have requirements similar to those in today's rule. These States may continue to enforce and administer their standards as a matter of State law. Such State rules, however, have not been assessed against the Federal rules promulgated today to determine whether they meet the statutory and regulatory requirements for authorization. Thus, such State rules cannot be considered part of the Federal RCRA program. EPA may not enforce them at this time.

B. Administration

As discussed in section VI.D. of the preamble, a used oil handler (e.g., transporter, processor/re-refiner, burner of off-specification rule, and marketer) who has not notified the EPA of the used oil management activity (e.g. used oil transporting, used oil processing and re-refining, fuel oil marketing, and burning of used oil as off-specification fuel) must notify the Agency of used oil activities and obtain an EPA identification number. The used oil generators are not subjected to the notification or EPA identification number requirement. Since 1985, the existing used oil marketers and burners of off-specification fuel have notified and have obtained the EPA identification numbers.

Used oil handlers who would be new to used oil recycling business must notify of their activity under regulations established to implement section 3010 of RCRA.[25] That is, in the unauthorized states, a used oil handler who has not previously notified of the used oil management activities must obtain an EPA notification form from EPA and submit the form (or a letter) 90 days from publication of these rules. In authorized states, the notification deadline will be established under state law (which must be no later than 90 days from effective date of state's used oil rulers). The used oil handlers will obtain notification forms from state and submit forms (or letters) with state.

Those used oil generators who intend to become eligible for an exemption from the third-party liability under the CERCLA section 114(c) are required to use the used oil transporters with EPA identification number for sending used oil for offsite recycling. In authorized states, such generators must make sure that the used oil transporter they intend to use has notified the Agency and has an EPA identification number.

IX. Relationship of This Rule to Other Programs

A. RCRA

Land Disposal Restrictions

HSWA mandated that the Agency promulgate land disposal prohibition determinations under a specific schedule for wastes identified and listed prior to the enactment of HSWA (RCRA sections 3004(d), 3004(e), and 3004(g)(4), 42 U.S.C. 6924 (d), (e) and (g)(4). If the Agency failed to promulgate land disposal restrictions by the dates specified in section 3004(g)(4), the wastes were absolutely prohibited from land disposal after May 8, 1990 (or in some cases November 8, 1986, or July 8, 1987). HSWA also requires the Agency to make a land disposal prohibition determination for any hazardous waste that is newly identified or listed in 40 CFR part 261 after November 8, 1984, within six months of the date the new listing is promulgated (RCRA section 3004(g)(4), 42 U.S.C. 6924(g)(4). However, the statute does not provide for automatic restriction or prohibition of the land disposal of such wastes if EPA fails to meet this deadline.

Since used oils that are recycled are exempt from subtitle C regulation under § 261.6(a)(4), used oils that are recycled are not subject to the land disposal restrictions requirements of 40 CFR part 268. In effect, today's part 279 standards are crafted to restrict the land disposal of used oils and, therefore, the used oil management standards further the goals of the LDR program. Used oils that are disposed and exhibit a hazardous characteristic or are mixed with a listed hazardous waste remain subject to all applicable subtitle C requirements, including the land disposal restrictions requirements of 40 CFR part 268.

Wastes, including used oils that are destined for disposal, that exhibit the TC are considered newly identified wastes and are not yet covered by the LDR, unless also EP Toxic (see the Third Land Disposal Restrictions Rule, June 1, 1990, 55 FR 22520). EPA published an Advance Notice of Proposed Rulemaking for the land disposal restriction of TC wastes (56 FR 55160, October 24, 1991) and continues to evaluate the treatability and capacity analyses for these wastes. The Agency is currently developing a final rule to address this issue.

B. MARPOL 73/78

The International Convention for the Prevention of Pollution from Ships (1973), as modified by the 1978 Protocol addressing the same topic, is known as MARPOL 73/78. This is an international agreement that focuses on preventing ship-generated ocean pollution. Annexes I–V of MARPOL 73/78 address ocean pollution from oil, noxious liquid substances (*i.e.*, bulk liquid chemicals), harmful substances, sewage, and garbage, respectively.

Concerning today's rule, the Agency believes that used oil and hazardous waste management requirements apply to used oil generated upon ships only upon removal of the oily waste from the ship. Therefore, used oil on-board is not subject to RCRA requirements, and MARPOL requirements applicable to on-board oil wastes (hazardous and non-

[25] The regulations established today regulate used oil under the authority of section 3014(a) of RCRA. Since EPA is not listing or identifying recycled used oil as a hazardous waste under today's rule, section 3010 of RCRA technically does not apply. EPA is, however, incorporating the 3010 notification requirements into its used oil management standards.

hazardous) will not conflict with the part 279 requirements.

The Agency has determined that the ship owner/operator, the owner of the used oil, and the person removing the used oil from the ship can all be considered "generators" of the used oil for purposes of 40 CFR 260.10. Any of these parties could perform any or all of the duties of the generator.

C. Clean Water Act (CWA)

The Clean Water Act authorizes EPA to control the discharge of pollutants into navigable waters. Section 311(b)(5) of the Act establishes reporting requirements for the release of hazardous substances and oils into navigable waters, which include wetlands. Concerning used oil, releases of oil to navigable waters that (1) cause a sheen to appear on the surface, (2) violate applicable water quality standards, or (3) cause a sludge or emulsion to be deposited beneath the surface of the water or adjoining shorelines is reportable.

The Clean Water Act and recently enacted Oil Pollution Act authorize EPA to regulate activities that may harm navigable waters. As part of this mandate, EPA has established the Spill Prevention Control and Countermeasure (SPCC) program, which is designed to protect surface water from oil contamination. Each facility subject to the requirements is required to prepare and maintain an SPCC plan, which includes provisions for appropriate containment or diversionary structures to prevent discharged oil from reaching navigable waters. Concerning today's rule, used oil handlers must comply with all applicable SPCC requirements contained in 40 CFR part 112. EPA has, however, built the part 279 requirements upon the existing SPCC rules to minimize disruptions to existing regulatory programs.

D. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

Section 104 of CERCLA authorizes the federal government to respond to any release or substantial threat of a release into the environment of any hazardous substance and any release or threatened release of a pollutant or contaminant that may present an imminent and substantial danger to public health. Section 101(14) defines the term "hazardous substance" and section 101(33) defines "pollutant or contaminant." Both of these definitions expressly exclude "petroleum, including crude oil or any fraction thereof" unless a petroleum waste has been specifically listed under RCRA or other environmental statutes. The Agency has interpreted the petroleum exclusion to include crude oil and fractions of crude oil, including hazardous substances that are indigenous in petroleum substances. However, hazardous substances that are added to petroleum or that increase in concentration solely as a result of contamination of the petroleum are not part of the petroleum and thus are not excluded.[26] Therefore, used oil that contains a hazardous substance due to contamination is subject to CERCLA reporting, response, and liability provisions.

E. Hazardous Materials Transportation Act (HMTA)

The U.S. Department of Transportation (DOT) regulates the transportation of hazardous materials [27] in commerce (49 CFR parts 171 to 179). The regulations address: (a) Interstate transportation of hazardous materials by motor vehicle, rail car, aircraft and vessel and (b) intrastate transportation of certain hazardous materials (hazardous wastes, hazardous substances, and flammable cryogenic liquids in portable tanks and cargo tanks) by motor vehicle. Used oil may be flammable or combustible under DOT classifications. In addition, used oil that exhibits a characteristic of hazardous waste and is destined for disposal is classified as a hazardous material due to the requirement that hazardous used oils being disposed must be accompanied by a hazardous waste manifest.

Used oil generators (shippers) have to comply with any and all applicable DOT regulations for identification and classification, packaging, marking, labeling, and manifesting of used oil that is destined for disposal. Transporters (carriers) will have to comply with any and all applicable DOT regulations for placarding, manifesting, recordkeeping, reporting, and incident response for such used oils.

F. Toxic Substances Control Act (TSCA)

TSCA authorizes EPA to control the manufacture, import, use and disposal of chemical substances. Section 6(e) of TSCA mandates EPA to control the manufacture, import, use, and disposal of polychlorinated biphenyls (PCBs). A primary use of PCBs, a viscous oil, was as an insulating material for electrical equipment (dielectric). PCBs were almost always mixed with mineral oil, silicone, or other oily materials. Because of the potential hazards posed by the uncontrolled use and disposal of PCBs, EPA has established a comprehensive program to control PCBs from cradle to grave.

TSCA regulations control the use of PCBs used for dust suppression. 40 CFR 761.20(d) prohibits the use of "waste oil" that contains any detectable concentration of PCBs as a sealant, coating, or dust control agent. Concerning today's rule, used oil used for dust suppression must meet the requirements of both RCRA and TSCA.

A release of 1 pound of PCBs into the environment must be reported immediately to the National Response Center in accordance with section 103(c) of CERCLA. However, TSCA regulations require that any spill of material containing 50 ppm or greater PCBs into sewers, drinking water, surface water, grazing lands, or vegetable gardens must be reported. Concerning today's rule, if the used oil contains PCBs, the most stringent, applicable reporting requirement must be followed.

X. Regulatory Impact Analysis

Today's final rule combines a decision not to list recycled used oil with a set of tailored management standards for recycled used oil under section 3014 of RCRA applicable to used oil generators and subsequent handlers. This section of the preamble summarizes the cost and economic impact screening analysis of the 1992 used oil management standards.

Executive Order 12291 (46 FR 13193) requires that a regulatory agency determine whether a new regulation will be "major" and, if so, that a Regulatory Impact Analysis (RIA) be conducted. Three criteria are used to define a major rule: (1) That the rule has an annual effect on the economy of $100 million or more, (2) that the rule creates a major increase in costs or prices, or (3) that the rule has significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of US based enterprises to compete with foreign-based enterprises in domestic or export markets. The Environmental Protection Agency believes that the 1992 Used Oil Management Standards do not comprise a major rule, and therefore a complete RIA is not required. The results of this cost screening analysis support this conclusion. A further discussion of the cost screening analysis is available in the regulatory docket for today's rule in a report titled, "Cost and Economic Impact of 1992 Used Oil Management Standards," August 4, 1992.

[26] Memorandum from Francis Blake, EPA's General Counsel, concerning the CERCLA petroleum exclusion, July 31, 1987.

[27] Any material identified or classified as a hazardous waste under RCRA is classified a hazardous material under DOT (49 CFR 171.3).

Based on the preliminary cost screening analysis for the options presented in the September Supplemental Notice, public comments received, and subsequent analysis in response to comments, the Agency estimates that these management standards will most likely impose nationwide annualized compliance costs of less than $10 million per year, within a range of between $4 and $11 million. Costs of this magnitude are not expected to result in measurable changes in recycled used oil flows, either for on-site uses or within the commercial recycling sectors. With possible localized exceptions, the Agency does not expect the standards to result in a substantial number of business failures among used oil recycling companies or to affect employment, prices, or international trade in any measurable degree.

Although the Agency has not been able to adequately quantify the benefits to the environment or to human health of these management standards, due to the lack of comprehensive data on the frequency and extent of used oil releases to the environment, EPA believes that today's decisions will result in two principal types of benefits. First, by requiring specific secondary containment measures for used oil storage and other tankage at all major used oil handling facilities, the Agency is providing an additional safeguard against any substantial environmental release of used oil to the soil, to ground waters, or to surface waters at points where releases would be most likely to occur.

The Agency does not expect today's decisions by themselves to substantially expand used oil recycling. However, it is a relatively low cost insurance policy against the environmental mismanagement of used oil resources within the commercial recycling sectors. Implementation of section 3014 management standards limits CERCLA liability for those automobile servicing facilities that accept do-it-yourselfer (DIY) used oil for recycling and thus encourages expansion of collection locations. Thus, today's rule is consistent with the could provide a necessary complement to a wide variety of possible future private sector, State, or federal government initiatives to encourage increased recycling of household and other do-it-yourselfer used oil not presently being adequately managed and which is generally not effectively controlled by traditional regulatory approaches.

The remainder of this section of the preamble briefly describes the major options for management standards considered by the Agency in reaching today's decision, summarizes estimated compliance cost, and reviews expected impacts.

A. Regulatory Options Considered

EPA has considered a wide range of management standards options over the years, ranging from a listing of used oil as a hazardous waste under virtually full subtitle C standards for generators and handlers to various tailored options under section 3014(a) of RCRA. A summary of the approximate compliance costs for several of these alternatives is presented in Table X.1.

TABLE X-1.—HISTORICAL COMPARISON OF COMPLIANCE COSTS OF OPTIONS CONSIDERED FOR USED OIL MANAGEMENT STANDARDS

[Millions of 1991 dollars per year]

Listing recycled used oil as hazardous waste without tailored 3014 standards (1985 proposal option updated to 1991) [1]	$500
Section 3014 management options (1985 proposal updated to 1991) [2]	$204
1991 supplemental notice [3]	$2-25
1992 final rule	$4-11

[1] Option assumed burning as used oil fuel under part 266, subpart E, rather than as hazardous waste under subparts D and H. Costs are updated to 1991 from the 1985 RIA to allow for inflation and certain intervening regulatory changes such as the underground storage tank (UST) rule. However, costs for this historical proposal do not include estimates for corrective action for prior releases or cost implications of the mixture and derived from rules. Costs are not revised to address comments on the 1985 proposed rule.

[2] Costs updated from the 1985 RIA to allow for inflation, but not to respond to comments.

[3] Costs are as presented in table X.D.1. (56 FR 48071, September 23, 1991). They are not revised to address comments. However, see subsection A.2 below for discussion of other cost estimates.

1. Listing Recycled Used Oil Without Tailored Standards

Listing recycled used oil, without issuing special section 3014 Management Standards or otherwise exempting recycled used oil from subtitle C regulations, would have subjected recycled used oil generators, handlers, and users to the full spectrum of hazardous waste management standards. These would include recordkeeping and manifesting of all shipments, storage requirements including secondary containment, facility closure and financial assurance, and additional burning restrictions. In the extreme it would also impose facility corrective action for prior releases, although this was not covered in the 1985 RIA or in the present update.

Since this was not presented as an explicit option in the September 1991 Supplemental Notice, the Agency did not present compliance cost estimates for Full subtitle C management of recycled oil in the 1991 Cost and Impact Screening Analysis. However, a similar Full subtitle C management scenario was presented as Alternative 1 in the Regulatory Impact Analysis (November, 1985) accompanying the 1985 used oil proposed rulemaking. The Agency has subsequently revised and updated the 1985 estimate for this regulatory alternative to account for intervening changes in certain subtitle C requirements, recycle market changes and general cost inflation. We found that, even assuming retention of the present part 266 subpart E used oil burning requirements (in place of the part 266, subparts D and H hazardous waste burning standards for boilers and furnaces), the incremental annual cost of subtitle C management for recycled used oil would still cost about $500 million per year, or about $0.53 per gallon of oil recycled. This does not include consideration of additional possibly substantial costs for prior release corrective action or for implications of the mixing and derived-from rules.

The Agency has long recognized that used oil management standards drawn too stringently could be counterproductive: that by imposing too high a cost on acceptable forms of recycling, the regulations could actually encourage increased dumping and other environmentally undesirable practices by generators, commercial haulers, and others.

Although incremental management costs of $0.53 per gallon for recycling would still be substantially less than alternative subtitle C disposal options for most generators, costs in this range would also provide a strong incentive to avoid regulation altogether by engaging in illegal dumping and improper land disposal and burning activity. The Agency notes that virtually all used oil fuel is currently sold for little more than and in some instances less than 53 cents per gallon: Imposing regulatory requirements which cost this amount would virtually eliminate recycling incentives within most of the commercial recycling sector.

2. Tailored Standards Under Section 3014

More appropriate to today's final rule, the Agency has also considered a wide range of tailored standards under section 3014(a) of RCRA. The estimated annual cost in the RIA for the 1985 proposal was $167 million ($204 million updated to 1991). The 1985 proposal closely paralleled subtitle C Standards in many respects.

The September 1991 Supplemental Notice provided additional options which were substantially less costly than earlier proposals, but which still covered all sectors and a wide range of permitting, testing, spill prevention and cleanup, storage, recordkeeping and reporting requirements.

The nationwide annual costs estimated for the 1991 Supplemental Proposal ranged from $25 million per year (with no small quantity generator exemption) to about $2 million per year with an extensive SQG exemption.

Various commenters criticized the 1991 estimates as being too low. In a few instances it was argued that EPA's unit costs for specific activities or services were too low. Another criticism was that the Agency has overestimated the degree to which various standards were already being met, either through normal business practices at establishments (e.g., generator recordkeeping regarding used oil sales transactions) or due to the pre-existence of other federal, State or local regulatory requirements (e.g., OSHA workplace regulations, SPCC spill prevention and storage requirements, or local fire ordinances).

The Agency has reviewed its estimating assumptions in detail. While, in the main, most of the assumptions and resulting cost estimates in the September 1991 costs analysis are reasonable given the limited available data the Agency was able to gather, we agree that many of the estimates are subject to substantial uncertainties and should be interpreted accordingly. In addition, several possible management standard elements were not included in the cost screening, either due to oversight or to the premise of the Notice that certain elements might be considered subsequently in a Phase II proposal. Examples of additional management standard options and annual costs that could have been added in a more extensive analysis include the following:

- Subtitle C secondary containment for used oil collection and processor tankage—$8 million.
- Closure and financial responsibility for processors and rerefiners—$2 million.
- Mandatory testing of all incoming and outgoing shipments of used oil—$15–20 million.

Though not costed in detail, with these and other possible design features, especially more extensive requirements on the nation's nearly 700,000 commercial, industrial, and large farms used oil generators (though not necessarily included explicitly in the September Notice), the national cost estimates for used oil regulation in the 1991 Proposal could well have exceeded $100 million per year. On the other hand, several of the options discussed, especially combinations involving small quantity or other generator exemptions and only selective controls on other sectors, would have suggested costs on the order of $10 million or less.

Based on 750 million gallons per year of used oil entering the commercial used oil recycling system, national management standards costing $100 to $200 million per year would translate roughly into an average of 13 to 26 cents per gallon of oil recycled. As stated above, this additional cost (which EPA estimates to equal or comprise a significant fraction of the price of products derived from used oil) would have dramatically reduced used oil recycling and may have led to increased uncontrolled disposal.

B. Final Rule Compliance Costs

As described in section VI of this preamble, today's rulemaking pertains only to land based management standards for recycled used oil under section 3014(a) of RCRA. It does not impose hazardous waste listing or further regulation of used oil processing or rerefining residuals, which continue to be subject to testing for toxicity characteristics under existing regulations prior to disposal.

1. Nationwide Annual Costs

Table X.2 summarizes the nationwide annual compliance costs for today's rule, by affected sector and for each substantive requirement. Total estimated costs range between approximately $4.1 to $11.0 million per year, with a best estimate of about $7.5 million. The major portion of the total falls on the generating sector ($2.7 to $5.9 million, mostly for future spill cleanups of environmental releases) and on the used oil processing sector ($1.3 to $4.8 million, primarily for biennial reporting, secondary containment of tank storage areas, additional operational recordkeeping, and new closure requirements).

TABLE X-2.—NATIONWIDE ANNUAL COMPLIANCE COSTS FOR 1992 USED OIL MANAGEMENT STANDARDS

[In thousands of dollars]

Requirement	Generators	Independent collectors	Burners (off-spec)	Processors/ rerefiners/fuel oil dealers	Totals
Storage:					
Label tanks and drums	502	2	3	4–5	511–512
Drums and tanks in "good" condition	61–99	(*)	(*)	(*)	61–99
Secondary containment		15–179	11–138	59–964	85–1,281
Reporting, planning, recordkeeping:					
Identification numbers		1	(*)	(*)	1
Biennial report				118–155	118–155
Analysis plan				9–12	9–12
Contingency plan				86–116	86–116
Shipment and delivery records		(*)	(*)	(*)	
Operating record				435–590	435–590
Closure				613–2,938	613–2,938
Response to environmental releases	2,183–5,261	5	(*)	3–4	2,191–5,270
Totals	2,746–5863	23–187	14–141	1,327–4,784	4,110–10,975

* Indicates the facility type is subject to the requirement, but no incremental cost is incurred, while a blank space indicates the facility type is not subject to the requirement.

For several of the line item requirements, a wide range of estimated costs is presented, reflecting substantial uncertainty regarding the extent of existing baseline compliance with the newly imposed standards. As noted in the preamble to the September 1991 Supplemental Notice, many existing federal, State, and local government regulations already directly regulate or impinge upon many of the same practices addressed by today's rules.

For example, at least 7 States regulate used oils as hazardous wastes in varying degrees, and both the federal oil spill prevention and control and counter measures program (SPCC) and OSHA regulations relate to preparedness and prevention as well as cleanup of spilled oils including used oils.

In particular, it is notable that SPCC regulations cover all of the 90 percent or more of all major used oil handling facilities (collectors, processors, fuel oil dealers, and burners) that are located near surface waters. Although the presence of these other regulations has in some instances allowed the Agency to forgo new regulatory requirements, in other cases, lack of data or definitive standards contributes to considerable uncertainty regarding the adequacy of existing standards or extent of compliance. For some additional used oil requirements contained in today's rule, such as spill cleanup for non-SPCC generators or closure soil remediation at processing facilities, EPA does not have sufficiently comprehensive information on the frequency or extent of necessary compliance actions to estimate potential costs more precisely.

2. Individual Facility Costs

Costs at the individual facility level can vary widely, depending on baseline compliance assumptions and differing sector requirements in today's management standards. In general, the lowest unit costs will be experienced by generators, since they face the fewest and (usually) the least costly new requirements. The vast majority of generators will face no incremental costs other than tank or container labeling.

Compliance costs at the individual facility level are presented in Table X.3 for commercial used oil handlers and burners of off-specification used oil fuel. Within the commercial management sectors, the lowest facility-level costs will be born by smaller independent collectors and industrial boiler and furnace burners of off-specification fuel. Burners that only burn specification fuel experience no new requirements and are not considered within the scope of affected facilities in this analysis. For independent collectors and affected burners, the higher cost facilities are those requiring upgraded secondary containment, including both secondary release containment berms and impervious pavement in storage areas. Independent collectors may also incur environmental release costs for releases outside of secondary containment areas. Such facilities may or may not currently be in compliance with baseline SPCC and OSHA regulations. Facilities in these sectors with adequate preexisting secondary containment (50 to 90 percent of facilities according to EPA's costing assumptions) will otherwise face negligible new cost requirements.

TABLE X-3.—ANNUAL FACILITY-LEVEL COMPLIANCE COSTS: COMMERCIAL USED OIL HANDLERS AND BURNERS

Facility type	Total number of facilities [1]	Cost range for affected facilities (dollars per year)
Independent collector	383	$6–$1,976
Minor processors	70	4,280–22,389
Major processors	112	6,989–44,155
Re-refiners	4	9,246–64,671
Fuel oil dealers:		
Low estimate	25	4,280–22,389
High estimate	100	4,280–22,389
Total handlers:		
Low estimate	594	6–64,671
High estimate	669	6–64,671
Burners	1,155	2–335

[1] The number of facilities affected by individual requirements varies by requirement, from zero cost (unaffected) up to all facilities affected.

The most substantial unit costs will be born by facilities in the processing sectors (including processors, rerefiners, and fuel oil dealers that blend off-specification fuel). All facilities in this sector will face additional record keeping, reporting, and contingency planning as well as new tank closure requirements. In addition, the cost estimates assume that some fraction will require upgraded secondary containment, closure soil treatment, and release response costs to meet today's standards.

3. Cost Per Gallon of Used Oil

The total annual costs of these section 3014 management standards ($4.1 to $11.0 million per year), averaged across the nation's total annual recycling rate of about 900 million gallons per year, approximates 0.5 to 1.2 cents per gallon of recycled oil. Focusing only on the 775 million gallons per year flowing through the commercial recycling system, the total nationwide compliance cost of $1.3 to $4.8 million for the recycling sectors would translate into an average cost to commercial recyclers of about 0.2 to 0.6 cents per gallon by EPA's estimates.

Table X.4 summarizes the Agency's cost per gallon estimates in more detail for affected facilities in the commercial handling and burning sectors. The highest cost per gallon figures are at the small processor and fuel oil dealer-blender facilities, with costs at the most affected of these facilities possibly ranging as high as 2.2 cents per gallon. These high relative costs are explained primarily by the relatively low volume of used oil handled and the relatively high fixed costs of secondary containment and closure requiring soil cleanup.

TABLE X-4.—NATIONAL AVERAGE AND INDIVIDUAL FACILITY-LEVEL COMPLIANCE COST-PER-GALLON: COMMERCIAL USED OIL HANDLERS AND BURNERS

Facility type	Total number of facilities	Facility cost per gallon (cents)	National average cost per gallon (cents)
Independent collector	383	0.00–0.66	0.02–0.16
Minor processors	70	0.43–2.24	0.46–1.20
Major processors	112	0.14–0.88	0.16–0.50
Rerefiners	4	0.05–0.32	0.05–0.16
Fuel oil dealers:			
Low estimate	25	0.43–2.24	[1]0.17–0.45
High estimate	100	0.43–2.24	[1]0.69–1.82
Total handlers:			
Low estimate	594	0.00–2.24	0.16–0.20
High estimate	669	0.00–2.24	0.48–0.58
Burners	1,155	0.00–0.22	[1]0.00–0.03

[1] Includes both on-spec and off-spec oil, for a total of 86 million gallons for fuel oil dealers and 55.1 million gallons for burners. If considered separately, off-spec oil will be a fraction of this total, which would make the cost-per-gallon higher.

In contrast, larger processors and rerefiners, even those with similar more stringent requirements, would experience substantially lower per gallon compliance costs, due to the economies of scale inherent in their larger oil volumes and the nature of the major compliance activities. Among the larger facilities in the processing and rerefiner groups, even the worst case situations would still face per gallon costs of less than one cent per gallon of oil. Most facilities would see costs less than a half-cent per gallon, and a substantial fraction would be under a quarter-cent.

C. Final Rule Impacts

1. Effects on Used Oil Flows

Costs for generators are primarily fixed costs or spill clean-up costs which may correlate only weakly with the volume of used oil handled. Therefore, EPA does not expect generator compliance costs to influence acceptance of household Do-It-Yourself (DIY) used oil or to adversely change the relative costs of recycling compared

with dumping or disposal. Thus, used oil flows to recycling should not be negatively affected by these rules, and recycling flows could be positively affected due to reduced spills and spill losses and the CERCLA exemptions for service stations.

Costs for the commercial recycling sectors (including collectors, processors, rerefiners, and fuel oil dealers) total $1.3 to 4.8 million per year. If substantial enough, these costs should have affected recycle flows, either by causing a loss of collector/processor facilities or by being shifted back onto generators and providing a disincentive to recycle. However, set against 775 million gallon per year entering the commercial recycle flows, these total compliance costs average only 0.2 to 0.6 cents per gallon. These costs are not large enough to substantially affect generator decisions concerning recycling, even if all these costs were passed back to the generator in pickup charges. In the worst case, a few small processors could face unit costs as high as 2.2 cents per gallon if they have to install secondary containment and also face soil removal treatment closure costs. This does not suggest major repercussions for recycle flows, but could involve some small processing facility dislocations.

Burners face new compliance costs for storage of used oil derived fuel under today's rulemaking only if they burn off-specification fuel and are not already in compliance due to prior SPCC or OSHA requirements. Numbers of such burners are not known with any accuracy, although about 1200 in total have notified EPA as off-specification burners since 1985. Affected burners have three options:

(1) Incur the costs and either absorb them or pass them back to fuel marketers in negotiated lower prices. The total maximum cost here for the maximally affected burner is 0.2 cents per gallon. It is questionable whether this is a decision-changing level.

(2) Substitute fuel—either virgin fuel oil, currently at a higher cost of up to 15 percent, or specification used oil fuel from another used oil fuel dealer.

(3) Negotiate with the present used oil fuel supplier to pre-blend (with other used oil or virgin fuel) to meet the specification.

Basically the same analysis and options apply to fuel oil dealers that blend off-specification fuel as for burners. EPA's current estimate is that less than 25 percent of marketed used oil-derived fuel is routed through dealers. The fractions of total used oil fuel that is currently off-specification fuel is thought to be low, based on recent communications with used oil processing industry representatives and EPA's own sampling of unprocessed used oil. Based on the low compliance cost per gallon, flows in this sector will not be significantly affected one way or another.

2. Effects on Used Oil Management Structure

In general, the structure of the recycling industry could be somewhat influenced by today's rule. If anything, there will be a tendency for some small processors that do not now have adequate secondary containment to become less competitive (2.2 cents gallon maximum competitive disadvantage). These would generally be the same facilities with prior releases to the environment that would have to be cleaned up at closure (with soil treatment) and they may opt to close. Already-marginal operations with poor credit might not survive this requirement.

There may also be some tendency for rerefiners to be advantaged with respect to other processors because of lower cost/gallon compliance costs. The main factors influencing this judgment are:

1. Rerefiners are newer and are arguably (according to their comments) already in compliance with all or most of today's requirements.

2. Rerefiners are large and have economies of scale relative to smaller processors in terms of compliance cost per gallon.

3. Rerefiners are less affected by fuel market (burner) effects, because they typically produce only a small fraction of output as fuel and the rerefined fuel product is typically unregulated specification fuel.

In summary, the Agency expects no effects on generators. Generators ultimately pay the total costs (either directly or indirectly, via shifting) but these total costs spread over hundreds of thousands of generators will not measurably affect generator day-to-day decisions.

3. Effects on Human Health and the Environment

Since the Agency believes that recycle flows will not be obstructed or seriously altered by this rule, the Agency expects no negative effects on human health or the environment due to compliance costs. Do-It-Yourself oil recycling will not be decreased and may in fact be increased by the CERCLA exemption for service stations.

The four major effects of today's rule making would generally be positive, but of unknown magnitude. These include:

1. Increased spill cleanup and reduced environmental releases for generators.

2. Better secondary containment and future spill cleanup for larger handlers.

3. Closure requirements that provide for cleanup of prior tankage area releases at processor/handler facilities.

4. More comprehensive tracking at the collector level, due to expansion of notification and recordkeeping for all collectors and not just those who currently market directly to burners.

4. Relationship to Future Agency Actions Regarding Financial Incentives or Other Actions

Today's management standards are designed to protect human health and environmental risk from ground pathway damages with minimum effect on existing used oil recycling flows and markets. As such they provide minimum interference with used oil markets and thus are inherently neutral with respect to future incentive programs. Since the Agency believes they do not measurably redirect flows, today's rules do not preempt or compete with objectives or goals of incentives currently under study to improve recycling. Basically today's rules provide uniform standards to be met by used oil handlers in terms of storage and tracking. They do not compete with, preclude, or bias future Agency or other initiatives to expand recycling nor are the costs of today's rules large enough to affect the efficiency of such future programs.

The Agency believes that today's management standards are compatible with any future program designed to increase (or redirect) recycling since they do not in themselves introduce any arbitrary or unnecessary imbalances between or among recycling technologies or end-used used-oil-derived product markets.

XI. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 (Pub. L. 96–345), requires Federal agencies to consider "small entities" throughout the regulatory process. Section 603 of the RFA requires an initial screening analysis to be performed to determine whether a substantial number of small entities will be significantly affected by the regulation. If so, regulatory alternatives which eliminate or mitigate the impacts must be considered.

Based on employment or sales, the vast majority of all used oil generators, collectors and processors are small businesses; blenders of virgin and used oil fuel, re-refiners, and burners are less likely to be small businesses. Overall, the economic analysis indicates that impacts are not significant for over 99 percent of the generators and for all of the other facility types affected, with the possible exception of some minor processors and some fuel oil dealers that currently blend used oil fuel with virgin oil fuel. Only a small fraction of

the farm section (about 2.5 percent), including only large commercial farms, will be subject to today's rule as a result of the small farm generator exemption.

A very small fraction (less than 0.2 percent) of small business used oil generators may face incremental costs of approximately $1,300 per year to cleanup a 250 gallon spill. This annual cost would only be incremental if the facility would not have cleaned up this spill without these new requirements to address release to the environment. We believe this is not an unreasonable cost burden for a very small fraction of small businesses, especially given the potential environmental damage of a spill of this size. Approximately 90 percent of generators would incur cost of less than $1 per year for labels for tanks and drums.

For the remaining sectors, only some minor processors and some fuel blenders/fuel oil dealers would incur significant costs. Approximately 30 percent of minor processors in the high-cost scenario would face incremental compliance costs of 2.2 cents per gallon. This cost increase may be sufficient to put the facility at a competitive disadvantage with other used oil processors. These minor processors might not be able to pass these costs back to customers since other firms that had already invested in these measures would incur lower costs. If the facility were already a marginal operation with poor credit, it might be forced to close.

Similarly, some small business fuel oil dealers that blend used oil fuel with virgin oil fuel might incur cost as high as 2.2 cents per gallon of used oil. Since the used oil is blended with virgin fuel, the cost impact per gallon of final product would be substantially less (only 0.2 cents per gallon of finished product assuming a typical blending rate of 10 percent used oil). Furthermore, these blenders may have other, low cost option for avoiding compliance costs such as refusing to accept off-specification oil from used oil suppliers, or simply discontinuing blending used oil at all.

In general, although a large population of small businesses will be subject to various provisions of this rule, only an extremely small fraction of these businesses will incur substantial costs. Therefore the Agency certifies that the final rule will not have significant economic impacts on substantial numbers of small businesses or entities.

XII. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* When approved, or if not approved by the effective date of this rule, EPA will publish a technical amendment to that effect in the **Federal Register**. An information Collection Request document has been prepared by EPA [ICR No. 1286.03] and a copy may be obtained from Sandy Farmer, Information Policy Branch, EPA, 401 M Street, SW.,

Public reporting burden for this collection of information varies by sector. The public reporting burden for used oil transporters averages from 18 to 27 minutes annually per respondent. For used oil processing and re-refining facilities, the reporting burden averages from 48 minutes to 25 hours annually per respondent, and for burners of off-specification fuel, the reporting burden averages as 9 minutes annually per respondent. The type of information required includes, time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460; and to the Office of Management and Budget, Washington, DC, 20503, marked "Attention: Desk Officer for EPA."

List of Subjects

40 CFR Part 260

Administrative practice and procedure, Confidential business information, Hazardous waste.

40 CFR Part 261

Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 266

Energy, Hazardous waste, Petroleum, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 279

Petroleum, Recycling, Reporting and recordkeeping requirements, Used oil.

Dated: August 11, 1992.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, 40 CFR chapter I is amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

2. Section 260.10 is amended by adding a definition for "Used Oil", in alphabetical order to read as follows:

§ 260.10 Definitions.

* * * * *

Used oil means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use in contaminated by physical or chemical impurities.

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

3. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

4. Section 261.3(a)(2) is amended by adding paragraph (v) to read as follows:

§ 261.3 Definition of Hazardous Waste.

(a) * * *

(2) * * *

(v) *Rebuttable presumption for used oil.* Used oil containing more than 1000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in subpart D of part 261 of this chapter. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste (for example, by using an analytical method from SW-846, Third Edition, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in appendix VIII of part 261 of this chapter). EPA Publication SW-846, Third Edition, is available for the cost of $110.00 from the Government Printing Office, Superintendent of Documents, PO Box 371954, Pittsburgh, PA 15250-7954. 202-783-3238 (document number 955-001-00000-1).

(A) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling agreement, to reclaim metalworking

oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

(B) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

* * * * *

§ 261.5 [Amended]

5. Section 261.5(j) is amended by revising "subpart E of part 266" to read "subpart G of part 279".

§ 261.6 [Amended]

6. Section 261.6 is amended by removing paragraph (a)(2)(iii), and redesignating paragraphs (a)(2) (iv) and (v) as paragraphs (a)(2) (iii) and (iv).

7. Section 261.6 is amended by removing paragraph (a)(3) (iii), and redesignating paragraphs (a)(3) (iv) through (a)(3)(viii) as paragraphs (a)(3)(iii) through (a)(3)(vii).

8. Section 261.6 is amended by adding paragraph (a) (4) to read as follows:

§ 261.6 Requirements for recyclable materials.

(a) * * *

(4) Used oil that is recycled and is also a hazardous waste solely because it exhibits a hazardous characteristic is not subject to the requirements of parts 260 through 268 of this chapter, but is regulated under part 279 of this chapter. Used oil that is recycled includes any used oil which is reused, following its original use, for any purpose (including the purpose for which the oil was originally used). Such term includes, but is not limited to, oil which is re-refined, reclaimed, burned for energy recovery, or reprocessed.

* * * * *

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

9. The authority citation for part 266 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3004, and 3014 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6924, and 6934).

Subpart E—[Removed]

10. Subpart E of part 266 is removed and reserved.

11. Section 266.100 is amended by revising paragraph (b)(1) to read as follows:

§ 266.100 Applicability.

* * * * *

(b) * * *

(1) Used oil burned for energy recovery that is also a hazardous waste solely because it exhibits a characteristic of hazardous waste identified in subpart C of part 261 of this chapter. Such used oil is subject to regulation under part 279 of this chapter;

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

12. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

Subpart A—Requirements for Final Authorization

13. Section 271.1(a) is amended by revising paragraph (a) to read as follows:

§ 271.1 Purpose and Scope.

(a) This subpart specifies the procedures EPA will follow in approving, revising, and withdrawing approval of State programs and the requirements State programs must meet to be approved by the Administrator under sections 3006(b), (f) and (h) of RCRA.

* * * * *

14. Subpart A of part 271 is amended by adding § 271.26 to read as follows:

§ 271.26 Requirements for used oil management.

The State shall have standards for used oil management which are equivalent to 40 CFR part 279. These standards shall include:

(a) Standards for used oil generators which are equivalent to those under subpart C of part 279 of this chapter;

(b) Standards for used oil collection centers and aggregation points which are equivalent to those under subpart D of part 279 of this chapter;

(c) Standards for used oil transporters and transfer facilities which are equivalent to those under subpart E of part 279 of this chapter;

(d) Standards for used oil processors and re-refiners which are equivalent to those under subpart F of part 279 of this chapter;

(e) Standards for used oil burners who burn off-specification used oil for energy recovery which are equivalent to those under subpart G of part 279 of this chapter;

(f) Standards for used oil fuel marketers which are equivalent to those under subpart H of part 279 of this chapter; and

(g) Standards for use as a dust suppressant and disposal of used oil which are equivalent to those under subpart I of part 279 of this chapter. A State may petition (e.g., as part of its authorization petition submitted to EPA under § 271.5 EPA to allow the use of used oil (that is not mixed with hazardous waste and does not exhibit a characteristic other than ignitability) as a dust suppressant. The State must show that it has a program in place to prevent the use of used oil/hazardous waste mixtures or used oil exhibiting a characteristic other than ignitability as a dust suppressant. In addition, such programs must minimize the impacts of use as a dust suppressant on the environment.

15. Title 40 of the Code of Federal Regulations is amended by adding part 279 to read as follows:

PART 279—STANDARDS FOR THE MANAGEMENT OF USED OIL

Subpart A—Definitions

Sec.
279.1 Definitions.

Subpart B—Applicability

279.10 Applicability.
279.11 Used oil specifications.
279.12 Prohibitions.

Subpart C—Standards for Used Oil Generators

279.20 Applicability.
279.21 Hazardous waste mixing.
279.22 Used oil storage.
279.23 On-site burning in space heaters.
279.24 Off-site shipments.

Subpart D—Standards for Used Oil Collection Centers and Aggregation Points

279.30 Do-it-yourselfer used oil collection centers.
279.31 Used oil collection centers.
279.32 Used oil aggregate points owned by the generator.

Subpart E—Standards for Used Oil Transporter and Transfer Facilities

279.40 Applicability.
279.41 Restrictions on transporters who are not also processors or re-refiners.
279.42 Notification.
279.43 Used oil transportation.
279.44 Rebuttable presumption for used oil.
279.45 Used oil storage at transfer facilities.
279.46 Tracking.
279.47 Management of residues.

Subpart F—Standards for Used Oil Processors and Re-Refiners

279.50 Applicability.
279.51 Notification.
279.52 General facility standards.
279.53 Rebuttable presumption for used oil.

279.54 Used oil management.
279.55 Analysis plan.
279.56 Tracking.
279.57 Operating record and reporting.
279.58 Off-site shipments of used oil.
279.59 Management of residues

Subpart G—Standards for Used Oil Burners Who Burn Off-Specification Used Oil for Energy Recovery

279.60 Applicability.
279.61 Restriction on burning.
279.62 Notification.
279.63 Rebuttable presumption for used oil.
279.64 Used oil storage.
279.65 Tracking.
279.66 Notices.
279.67 Management of residues.

Subpart H—Standards for Used Oil Fuel Marketers

279.70 Applicability.
279.71 Prohibitions.
279.72 On-specification used oil fuel.
279.73 Notification.
279.74 Tracking.
279.75 Notices.

Subpart I—Standards for Use as a Dust Suppressant and Disposal of Used Oil

279.80 Applicability.
279.81 Disposal.
279.82 Use as a dust suppressant.

Authority: Sections 1006, 2002(a), 3001 through 3007, 3010, 3014, and 7004 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, and 6974); and Sections 101(37) and 114(c) of CERCLA (42 U.S.C. 9601(37) and 9614(c)).

Subpart A—Definitions

§ 279.1 Definitions.

Terms that are defined in §§ 260.10, 261.1, and 280.12 of this chapter have the same meanings when used in this part.

Aboveground tank means a tank used to store or process used oil that is not an underground storage tank as defined in § 280.12 of this chapter.

Container means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

Do-it-yourselfer used oil collection center means any site or facility that accepts/aggregates and stores used oil collected only from household do-it-yourselfers.

Existing tank means a tank that is used for the storage or processing of used oil and that is in operation, or for which installation has commenced on or prior to the effective date of the authorized used oil program for the State in which the tank is located. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin installation of the tank and if either (1) A continuous on-site installation program has begun, or

(2) The owner or operator has entered into contractual obligations—which cannot be canceled or modified without substantial loss—for installation of the tank to be completed within a reasonable time.

Household "do-it-yourselfer" used oil means oil that is derived from households, such as used oil generated by individuals who generate used oil through the maintenance of their personal vehicles.

Household "do-it-yourselfer" used oil generator means an individual who generates household "do-it-yourselfer" used oil.

New tank means a tank that will be used to store or process used oil and for which installation has commenced after the effective date of the authorized used oil program for the State in which the tank is located.

Processing means chemical or physical operations designed to produce from used oil, or to make used oil more amenable for production of, fuel oils, lubricants, or other used oil-derived product. Processing includes, but is not limited to: blending used oil with virgin petroleum products, blending used oils to meet the fuel specification, filtration, simple distillation, chemical or physical separation and re-refining.

Re-refining distillation bottoms means the heavy fraction produced by vacuum distillation of filtered and dehydrated used oil. The composition of still bottoms varies with column operation and feedstock.

Tank means any stationary device, designed to contain an accumulation of used oil which is constructed primarily of non-earthen materials, (e.g., wood, concrete, steel, plastic) which provides structural support.

Used oil means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use if contaminated by physical or chemical impurities.

Used oil aggregation point means any site or facility that accepts, aggregates, and/or stores used oil collected only from other used oil generation sites owned or operated by the owner or operator of the aggregation point, from which used oil is transported to the aggregation point in shipments of no more than 55 gallons. Used oil aggregation points may also accept used oil from household do-it-yourselfers.

Used oil burner means a facility where used oil not meeting the specification requirements in § 279.11 is burned for energy recovery in devices identified in § 279.61(a).

Used oil collection center means any site or facility that is registered/licensed/permitted/recognized by a state/county/municipal government to manage used oil and accepts/aggregates and stores used oil collected from used oil generators regulated under subpart C of this part who bring used oil to the collection center in shipments of no more than 55 gallons under the provisions of § 279.24. Used oil collection centers may also accept used oil from household do-it-yourselfers.

Used oil fuel marketer means any person who conducts either of the following activities:

(1) Directs a shipment of off-specification used oil from their facility to a used oil burner; or

(2) First claims that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in § 279.11 of this part.

Used oil generator means any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation.

Used oil processor/re-refiner means a facility that processes used oil.

Used oil transfer facility means any transportation related facility including loading docks, parking areas, storage areas, and other areas where shipments of used oil are held for more than 24 hours during the normal course of transportation and not longer than 35 days. Transfer facilities that store used oil for more than 35 days are subject to regulation under subpart F of this part.

Used oil transporter means any person who transports used oil, any person who collects used oil from more than one generator and transports the collected oil, and owners and operators of used oil transfer facilities. Used oil transporters may consolidate or aggregate loads of used oil for purposes of transportation but, with the following exception, may not process used oil. Transporters may conduct incidental processing operations that occur in the normal course of used oil transportation (e.g., settling and water separation), but that are not designed to produce (or make more amenable for production of) used oil derived products or used oil fuel.

Subpart B—Applicability

§ 279.10 Applicability.

This section identifies those materials which are subject to regulation as used oil under this part. This section also identifies some materials that are not subject to regulation as used oil under this part, and indicates whether these materials may be subject to regulation as hazardous waste under parts 260 through 266, 268, 270, and 124 of this chapter.

(a) *Used oil.* EPA presumes that used oil is to be recycled unless a used oil handler disposes of used oil, or sends used oil for disposal. Except as provided in § 279.11, the regulations of this part apply to used oil, and to materials identified in this section as being subject to regulation as used oil, whether or not the used oil or material exhibits any characteristics of hazardous waste identified in subpart C of part 261 of this chapter.

(b) *Mixtures of used oil and hazardous waste*—(1) *Listed hazardous waste.* (i) Mixtures of used oil and hazardous waste that is listed in subpart D of part 261 of this chapter are subject to regulation as hazardous waste under parts 260 through 266, 268, 270, and 124 of this chapter, rather than as used oil under this part.

(ii) *Rebuttable presumption for used oil.* Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in subpart D of part 261 of this chapter. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste (for example, by using an analytical method from SW-846, Edition III, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in appendix VIII of part 261 of this chapter). EPA Publication SW-846, Third Edition, is available for the cost of $110.00 from the Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954, (202) 783-3238 (document number 955-001-00000-1).

(A) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in § 279.24(c), to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

(B) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(2) *Characteristic hazardous waste.* Mixtures of used oil and hazardous waste that exhibits a hazardous waste characteristic identified in subpart C of part 261 of this chapter are subject to:

(i) Except as provided in paragraph (b)(2)(iii) of this section, regulation as hazardous waste under parts 260 through 266, 268, 270, and 124 of this chapter rather than as used oil under this part, if the resultant mixture exhibits any characteristics of hazardous waste identified in subpart C of part 261 of this chapter; or

(ii) Regulation as used oil under this part, if the resultant mixture does not exhibit any characteristics of hazardous waste identified under subpart C of part 261 of this chapter.

(iii) Regulation as used oil under this part, if the mixture is of used oil and a waste which is hazardous solely because if exhibits the characteristic of ignitability and is not listed in subpart D of part 261 of this chapter (e.g., mineral spirits), provided that the mixture does not exhibit the characteristic of ignitability under § 261.21 of this chapter.

(3) *Conditionally exempt small quantity generator hazardous waste.* Mixtures of used oil and conditionally exempt small quantity generator hazardous waste regulated under § 261.5 of this chapter are subject to regulation as used oil under this part.

(c) *Mixtures of used oil with non-hazardous solid wastes.* Mixtures of used oil and non-hazardous solid waste are subject to regulation as used oil under this part.

(d) *Mixtures of used oil with products.* (1) Except as provided in paragraph (d)(2) of this section, mixtures of used oil and fuels or other products are subject to regulation as used oil under this part.

(2) Mixtures of used oil and diesel fuel mixed on-site by the generator of the used oil for use in the generator's own vehicles are not subject to this part once the used oil and diesel fuel have been mixed. Prior to mixing, the used oil is subject to the requirements of subpart C of this part.

(e) *Materials derived from used oil.* (1) Materials that are reclaimed from used oil that are used beneficially and are not burned for energy recovery or used in a manner constituting disposal (e.g., re-refined lubricants) are:

(i) Not used oil and thus are not subject to this part, and

(ii) Not solid wastes and are thus not subject to the hazardous waste regulations of parts 260 through 266, 268, 270, and 124 of this chapter as provided in § 261.3(c)(2)(i) of this chapter.

(2) Materials produced from used oil that are burned for energy recovery (e.g., used oil fuels) are subject to regulation as used oil under this part.

(3) Except as provided in paragraph (e)(4) of this section, materials derived from used oil that are disposed of or used in a manner constituting disposal are:

(i) Not used oil and thus are not subject to this Part, and

(ii) Are solid wastes and thus are subject to the hazardous waste regulations of parts 260 through 266, 268, 270, and 124 of this chapter if the materials are identified as hazardous waste.

(4) Re-refining distillation bottoms that are used as feedstock to manufacture asphalt products are:

(i) Not subject to this part at this time, and

(ii) Not subject to the hazardous waste regulations of parts 260 through 266, 268, 270, and 124 of this chapter at this time.

(f) *Wastewater.* Wastewater, the discharge of which is subject to regulation under either section 402 or section 307(b) of the Clean Water Act (including wastewaters at facilities which have eliminated the discharge of wastewater), contaminated with *de minimis* quantities of used oil are not subject to the requirements of this part. For purposes of this paragraph, *"de minimis"* quantities of used oils are defined as small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations or small amounts of oil lost to the wastewater treatment system during washing or draining operations. This exception will not apply if the used oil is discarded as a result of abnormal manufacturing operations resulting in substantial leaks, spills, or other releases, or to used oil recovered from wastewaters.

(g) *Used oil introduced into crude oil or natural gas pipelines.* Used oil that is placed directly into a crude oil or natural gas pipeline is subject to the management standards of this part only prior to the point of introduction to the pipeline. Once the used oil is introduced to the pipeline, the material is exempt from the requirements of this part.

(h) *Used oil on vessels.* Used oil produced on vessels from normal shipboard operations is not subject to this part until it is transported ashore.

(i) *PCB contaminated used oil.* PCB-containing used oil regulated under part 761 of this chapter is exempt from regulation under this part.

§ 279.11 Used oil specifications.

Used oil burned for energy recovery, and any fuel produced from used oil by processing, blending, or other treatment is subject to regulation under this part unless it is shown not to exceed any of the allowable levels of the constituents and properties in the specification shown in Table 1. Once used oil that is to be burned for energy recovery has

been shown not to exceed any specification and the person making that showing complies with §§ 279.72, 279.73, and 279.74(b), the used oil is no longer subject to this part.

TABLE 1—USED OIL NOT EXCEEDING ANY SPECIFICATION LEVEL IS NOT SUBJECT TO THIS PART WHEN BURNED FOR ENERGY RECOVERY [1]

Constituent/property	Allowable level
Arsenic	5 ppm maximum.
Cadmium	2 ppm maximum.
Chromium	10 ppm maximum.
Lead	100 ppm maximum.
Flash point	100 °F minimum.
Total halogens	4,000 ppm maximum.[2]

[1] The specification does not apply to mixtures of used oil and hazardous waste that continue to be regulated as hazardous waste (see § 279.10(b)).

[2] Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste under the rebuttable presumption provided under § 279.10(b)(1). Such used oil is subject to subpart H of part 266 of this chapter rather than this part when burned for energy recovery unless the presumption of mixing can be successfully rebutted.

§ 279.12 Prohibitions.

(a) *Surface impoundment prohibition.* Used oil shall not be managed in surface impoundments or waste piles unless the units are subject to regulation under parts 264 or 265 of this chapter.

(b) *Use as a dust suppressant.* The use of used oil as a dust suppressant is prohibited, except when such activity takes place in one of the states listed in § 279.82(c).

(c) *Burning in particular units.* Off-specification used oil fuel may be burned for energy recovery in only the following devices:

(1) Industrial furnaces identified in § 260.10 of this chapter;

(2) Boilers, as defined in § 260.10 of this chapter, that are identified as follows:

(i) Industrial boilers located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes;

(ii) Utility boilers used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale; or

(iii) Used oil-fired space heaters provided that the burner meets the provisions of § 279.23.

Subpart C—Standards for Used Oil Generators

§ 279.20 Applicability.

(a) *General.* Except as provided in paragraphs (a)(1) through (a)(4) of this section, this subpart applies to all used oil generators. A used oil generator is any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation.

(1) *Household "do-it-yourselfer" used oil generators.* Household "do-it-yourselfer" used oil generators are not subject to regulation under this part.

(2) *Vessels.* Vessels at sea or at port are not subject to this subpart. For purposes of this subpart, used oil produced on vessels from normal shipboard operations is considered to be generated at the time it is transported ashore. The owner or operator of the vessel and the person(s) removing or accepting used oil from the vessel are co-generators of the used oil and are both responsible for managing the waste in compliance with this subpart once the used oil is transported ashore. The co-genenerators may decide among them which party will fulfill the requirements of this subpart.

(3) *Diesel fuel.* Mixtures of used oil and diesel fuel mixed by the generator of the used oil for use in the generator's own vehicles are not subject to this part once the used oil and diesel fuel have been mixed. Prior to mixing, the used oil fuel is subject to the requirements of this subpart.

(4) *Farmers.* Farmers who generate an average of 25 gallons per month or less of used oil from vehicles or machinery used on the farm in a calendar year are not subject to the requirements of this part.

(b) *Other applicable provisions.* Used oil generators who conduct the following activities are subject to the requirements of other applicable provisions of this part as indicated in paragraphs (b)(1) through (5) of this section:

(1) Generators who transport used oil, except under the self-transport provisions of § 279.24 (a) and (b), must also comply with subpart E of this part.

(2) Generators who process or re-refine used oil must also comply with subpart F of this part.

(3) Generators who burn off-specification used oil for energy recovery, except under the on-site space heater provisions of § 279.23, must also comply with subpart G of this part.

(4) Generators who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in § 279.11 must also comply with subpart H of this part.

(5) Generators who dispose of used oil, including the use of used oil as a dust suppressant, must also comply with subpart I of this part.

§ 279.21 Hazardous waste mixing.

(a) Generators shall not mix hazardous waste with used oil except as provided in § 279.10(b)(2) (ii) and (iii).

(b) The rebuttable presumption for used oil of § 279.10(b)(1)(ii) applies to used oil managed by generators. Under the rebuttable presumption for used oil of § 279.10(b)(1)(ii), used oil containing greater than 1,000 ppm total halogens is presumed to be a hazardous waste and thus must be managed as hazardous waste and not as used oil unless the presumption is rebutted. However, the rebuttable presumption does not apply to certain metalworking oils/fluids and certain used oils removed from refrigeration units.

§ 279.22 Used oil storage.

As specified in § 279.10(f), wastewaters containing "de minimis" quantities of used oil are not subject to the requirements of this part, including the prohibition on storage in units other than tanks or containers. Used oil generators are subject to all applicable Spill Prevention, Control and Countermeasures (40 CFR part 112) in addition to the requirements of this Subpart. Used oil generators are also subject to the Underground Storage Tank (40 CFR part 280) standards for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of this subpart.

(a) *Storage units.* Used oil generators shall not store used oil in units other than tanks, containers, or units subject to regulation under parts 264 or 265 of this chapter.

(b) *Condition of units.* Containers and aboveground tanks used to store used oil at generator facilities must be:

(1) In good condition (no severe rusting, apparent structural defects or deterioration); and

(2) Not leaking (no visible leaks).

(c) *Labels.* (1) Containers and aboveground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words "Used Oil."

(2) Fill pipes used to transfer used oil into underground storage tanks at generator facilities must be labeled or marked clearly with the words "Used Oil."

(d) *Response to releases.* Upon detection of a release of used oil to the environment not subject to the requirements of part 280, subpart F of this chapter which has occurred after the effective date of the authorized used oil program for the State in which the

release is located, a generator must perform the following cleanup steps:

(1) Stop the release;

(2) Contain the released used oil;

(3) Clean up and manage properly the released used oil and other materials; and

(4) If necessary to prevent future releases, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

§ 279.23 On-site burning in space heaters.

(a) Generators may burn used oil in used oil-fired space heaters provided that:

(1) The heater burns only used oil that the owner or operator generates or used oil received from household do-it-yourself used oil generators;

(2) The heater is designed to have a maximum capacity of not more than 0.5 million Btu per hour; and

(3) The combustion gases from the heater are vented to the ambient air.

(b) (Reserved)

§ 279.24 Off-site shipments.

Except as provided in paragraphs (a) through (c) of this section, generators must ensure that their used oil is transported only by transporters who have obtained EPA identification numbers.

(a) *Self-transportation of small amounts to approved collection centers.* Generators may transport, without an EPA identification number, used oil that is generated at the generator's site and used oil collected from household do-it-yourselfers to a used oil collection center provided that:

(1) The generator transports the used oil in a vehicle owned by the generator or owned by an employee of the generator;

(2) The generator transports no more than 55 gallons of used oil at any time; and

(3) The generator transports the used oil to a used oil collection center that is registered, licensed, permitted, or recognized by a state/county/municipal government to manage used oil.

(b) *Self-transportation of small amounts to aggregation points owned by the generator.* Generators may transport, without an EPA identification number, used oil that is generated at the generator's site to an aggregation point provided that:

(1) The generator transports the used oil in a vehicle owned by the generator or owned by an employee of the generator;

(2) The generator transports no more than 55 gallons of used oil at any time; and

(3) The generator transports the used oil to an aggregation point that is owned and/or operated by the same generator.

(c) *Tolling arrangements.* Used oil generators may arrange for used oil to be transported by a transporter without an EPA identification number if the used oil is reclaimed under a contractual agreement pursuant to which reclaimed oil is returned by the processor/re-refiner to the generator for use as a lubricant, cutting oil, or coolant. The contract (known as a "tolling arrangement") must indicate:

(1) The type of used oil and the frequency of shipments;

(2) That the vehicle used to transport the used oil to the processing/re-refining facility and to deliver recycled used oil back to the generator is owned and operated by the used oil processor/re-refiner; and

(3) That reclaimed oil will be returned to the generator.

Subpart D—Standards for Used Oil Collection Centers and Aggregation Points

§ 279.30 Do-it-yourselfer used oil collection centers.

(a) *Applicability.* This section applies to owners or operators of all do-it-yourselfer (DIY) used oil collection centers. A DIY used oil collection center is any site or facility that accepts/aggregates and stores used oil collected only from household do-it-yourselfers.

(b) *DIY used oil collection center requirements.* Owners or operators of all DIY used oil collection centers must comply with the generator standards in subpart C of this part.

§ 279.31 Used oil collection centers.

(a) *Applicability.* This section applies to owners or operators of used oil collection centers. A used oil collection center is any site or facility that accepts/aggregates and stores used oil collected from used oil generators regulated under subpart C of this part who bring used oil to the collection center in shipments of no more than 55 gallons under the provisions of § 279.24(a). Used oil collection centers may also accept used oil from household do-it-yourselfers.

(b) *Used oil collection center requirements.* Owners or operators of all used oil collection centers must:

(1) Comply with the generator standards in subpart C of this part; and

(2) Be registered/licensed/permitted/recognized by a state/county/municipal government to manage used oil.

§ 279.32 Used oil aggregation points owned by the generator.

(a) *Applicability.* This section applies to owners or operators of all used oil aggregation points. A used oil aggregation point is any site or facility that accepts, aggregates, and/or stores used oil collected only from other used oil generation sites owned or operated by the owner or operator of the aggregation point, from which used oil is transported to the aggregation point in shipments of no more than 55 gallons under the provisions of § 279.24(b). Used oil aggregation points may also accept used oil from household do-it-yourselfers.

(b) *Used oil aggregation point requirements.* Owners or operators of all used oil aggregation points must comply with the generator standards in subpart C of this part.

Subpart E—Standards for Used Oil Transporter and Transfer Facilities

§ 279.40 Applicability.

(a) *General.* Except as provided in paragraphs (a)(1) through (a)(4) of this section, this subpart applies to all used oil transporters. Used oil transporters are persons who transport used oil, persons who collect used oil from more than one generator and transport the collected oil, and owners and operators of used oil transfer facilities.

(1) This subpart does not apply to on-site transportation.

(2) This subpart does not apply to generators who transport shipments of used oil totalling 55 gallons or less from the generator to a used oil collection center as specified in § 279.24(a).

(3) This subpart does not apply to generators who transport shipments of used oil totalling 55 gallons or less from the generator to a used oil aggregation point owned or operated by the same generator as specified in § 279.24(b).

(4) This subpart does not apply to transportation of used oil generated by household do-it-yourselfers from the initial generator to a regulated used oil generator, collection center, aggregation point, processor/re-refiner, or burner subject to the requirements of this part. Except as provided in paragraphs (a)(1) through (a)(3) of this section, this subpart does, however, apply to transportation of collected household do-it-yourselfer used oil from regulated used oil generators, collection centers, aggregation points, or other facilities where household do-it-yourselfer used oil is collected.

(b) *Imports and exports.* Transporters who import used oil from abroad or export used oil outside of the United

States are subject to the requirements of this subpart from the time the used oil enters and until the time it exits the United States.

(c) *Trucks used to transport hazardous waste.* Unless trucks previously used to transport hazardous waste are emptied as described in § 261.7 of this chapter prior to transporting used oil, the used oil is considered to have been mixed with the hazardous waste and must be managed as hazardous waste unless, under the provisions of § 279.10(b), the hazardous waste/used oil mixture is determined not to be hazardous waste.

(d) *Other applicable provisions.* Used oil transporters who conduct the following activities are also subject to other applicable provisions of this part as indicated in paragraphs (d)(1) through (5) of this section:

(1) Transporters who generate used oil must also comply with subpart C of this part;

(2) Transporters who process or re-refine used oil, except as provided in § 279.41, must also comply with subpart F of this part;

(3) Transporters who burn off-specification used oil for energy recovery must also comply with subpart G of this part;

(4) Transporters who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in § 279.11 must also comply with subpart H of this partuel Marketers of this part; and

(5) Transporters who dispose of used oil, including the use of used oil as a dust suppressant, must also comply with subpart I of this part.

§ 279.41 Restrictions on transporters who are not also processors or re-refiners.

(a) Used oil transporters may consolidate or aggregate loads of used oil for purposes of transportation. However, except as provided in paragraph (b) of this section, used oil transporters may not process used oil unless they also comply with the requirements for processors/re-refiners in subpart F of this part.

(b) Transporters may conduct incidental processing operations that occur in the normal course of used oil transportation (e.g., settling and water separation), but that are not designed to produce (or make more amenable for production of) used oil derived products unless they also comply with the processor/re-refiner requirements in subpart F of this part.

§ 279.42 Notification.

(a) *Identification numbers.* Used oil transporters who have not previously complied with the notification requirements of RCRA section 3010 must comply with these requirements and obtain an EPA identification number.

(b) *Mechanics of notification.* A used oil transporter who has not received an EPA identification number may obtain one by notifying the Regional Administrator of their used oil activity by submitting either:

(1) A completed EPA Form 8700-12 (To obtain EPA Form 8700-12 call RCRA/Superfund Hotline at 1-800-424-9346 or 703-920-9810); or

(2) A letter requesting an EPA identification number.

Call RCRA/Superfund Hotline to determine where to send a letter requesting an EPA identification number. The letter should include the following information:

(i) Transporter company name;

(ii) Owner of the transporter company;

(iii) Mailing address for the transporter;

(iv) Name and telephone number for the transporter point of contact;

(v) Type of transport activity (i.e., transport only, transport and transfer facility, transfer facility only);

(vi) Location of all transfer facilities at which used oil is stored;

(vii) Name and telephone number for a contact at each transfer facility.

§ 279.43 Used oil transportation.

(a) *Deliveries.* A used oil transporter must deliver all used oil received to:

(1) Another used oil transporter, provided that the transporter has obtained an EPA identification number;

(2) A used oil processing/re-refining facility who has obtained an EPA identification number;

(3) An off-specification used oil burner facility who has obtained an EPA identification number; or

(4) An on-specification used oil burner facility.

(b) *Shipping.* Used oil transporters must comply with all applicable packaging, labeling, and placarding requirements of the U.S. Department of Transportation under 49 CFR parts 173, 178 and 179. Used oil that meets the definition of combustible liquid (flash point below 200 °F but at or greater than 100 °F) or flammable liquid (flash point below 100 °F) is subject to Department of Transportation Hazardous Materials Regulations at 49 CFR Parts 100 through 177.

(c) *Used oil discharges.* (1) In the event of a discharge of used oil during transportation, the transporter must take appropriate immediate action to protect human health and the environment (e.g., notify local authorities, dike the discharge area).

(2) If a discharge of used oil occurs during transportation and an official (State or local government or a Federal Agency) acting within the scope of official responsibilities determines that immediate removal of the used oil is necessary to protect human health or the environment, that official may authorize the removal of the used oil by transporters who do not have EPA identification numbers.

(3) An air, rail, highway, or water transporter who has discharged used oil must:

(i) Give notice, if required by 49 CFR 171.15 to the National Response Center (800-424-8802 or 202-426-2675); and

(ii) Report in writing as required by 49 CFR 171.16 to the Director, Office of Hazardous Materials Regulations, Materials Transportation Bureau, Department of Transportation, Washington, DC 20590.

(4) A water transporter who has discharged used oil must give notice as required by 33 CFR 153.203.

(5) A transporter must clean up any used oil discharged that occurs during transportation or take such action as may be required or approved by federal, state, or local officials so that the used oil discharge no longer presents a hazard to human health or the environment.

§ 279.44 Rebuttable presumption for used oil.

(a) To ensure that used oil is not a hazardous waste under the rebuttable presumption of § 279.10(b)(1)(ii), the used oil transporter must determine whether the total halogen content of used oil being transporter or stored at a transfer facility is above or below 1,000 ppm.

(b) The transporter must make this determination by:

(1) Testing the used oil; or

(2) Applying knowledge of the halogen content of the used oil in light of the materials or processes used.

(c) If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in subpart D of part 261 of this chapter. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste (for example, by using an analytical method from SW-846, Edition III, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents

listed in Appendix VIII of part 261 of this chapter). EPA Publication SW-846, Third Edition, is available for the cost of $110.00 from the Government Printing Office, Superintendent of Documents, PO Box 371954, Pittsburgh, PA 15250-7954. (202) 783-3238 (document number 955-001-00000-1).

(1) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in § 279.24(c), to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

(2) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units if the CFC are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(d) *Record retention.* Records of analyses conducted or information used to comply with paragraphs (a), (b), and (c) of this section must be maintained by the transporter for at least 3 years.

§ 279.45 Used oil storage at transfer facilities.

As specified in § 279.10(f), wastewaters containing "de minimis" quantities of used oil are not subject to the requirements of this part, including the prohibition on storage in units other than tanks or containers. Used oil transporters are subject to all applicable Spill Prevention, Control and Countermeasures (40 CFR part 112) in addition to the requirements of this subpart. Used oil generators are also subject to the Underground Storage Tank (40 CFR part 280) standards for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of this subpart.

(a) *Applicability.* This section applies to used oil transfer facilities. Used oil transfer facilities are transportation related facilities including loading docks, parking areas, storage areas, and other areas where shipments of used oil are held for more than 24 hours during the normal course of transportation and not longer than 35 days. Transfer facilities that store used oil for more than 35 days are subject to regulation under subpart F of this chapter.

(b) *Storage units.* Owners or operators of used oil transfer facilities may not store used oil in units other than tanks, containers, or units subject to regulation under parts 264 or 265 of this chapter.

(c) *Condition of units.* Containers and aboveground tanks used to store used oil at transfer facilities must be:

(1) In good condition (no severe rusting, apparent structural defects or deterioration); and

(2) Not leaking (no visible leaks).

(d) *Secondary containment for containers.* Containers used to store used oil at transfer facilities must be equipped with a secondary containment system.

(1) The secondary containment system must consist of, at a minimum:

(i) Dikes, berms or retaining walls; and

(ii) A floor. The floor must cover the entire area within the dikes, berms, or retaining walls.

(2) The entire containment system, including walls and floors, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(e) *Secondary containment for existing aboveground tanks.* Existing aboveground tanks used to store used oil at transfer facilities must be equipped with a secondary containment system.

(1) The secondary containment system must consist of, at a minimum:

(i) Dikes, berms or retaining walls; and

(ii) A floor. The floor must cover the entire area within the dike, berm, or retaining wall except areas where existing portions of the tank meet the ground; or

(iii) An equivalent secondary containment system.

(2) The entire containment system, including walls and floors, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(f) *Secondary containment for new aboveground tanks.* New aboveground tanks used to store used oil at transfer facilities must be equipped with a secondary containment system.

(1) The secondary containment system must consist of, at a minimum:

(i) Dikes, berms or retaining walls; and

(ii) A floor. The floor must cover the entire area within the dike, berm, or retaining wall; or

(iii) An equivalent secondary containment system.

(2) The entire containment system, including walls and floors, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(g) *Labels.* (1) Containers and aboveground tanks used to store used oil at transfer facilities must be labeled or marked clearly with the words "Used Oil."

(2) Fill pipes used to transfer used oil into underground storage tanks at transfer facilities must be labeled or marked clearly with the words "Used Oil."

(h) *Response to releases.* Upon detection of a release of used oil to the environment not subject to the requirements of part 280 subpart F which has occurred after the effective date of the authorized used oil program for the State in which the release is located, the owner/operator of a transfer facility must perform the following cleanup steps:

(1) Stop the release;

(2) Contain the release used oil;

(3) Clean up and manage properly the released used oil and other materials; and

(4) If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

§ 279.46 Tracking.

(a) *Acceptance.* Used oil transporters must keep a record of each used oil shipment accepted for transport. Records for each shipment must include:

(1) The name and address of the generator, transporter, or processor/re-refiner who provided the used oil for transport;

(2) The EPA identification number (if applicable) of the generator, transporter, or processor/re-refiner who provided the used oil for transport;

(3) The quantity of used oil accepted;

(4) The date of acceptance; and

(5) The signature, dated upon receipt of the used oil, of a representative of the generator, transporter, or processor/re-refiner who provided the used oil for transport.

(b) *Deliveries.* Used oil transporters must keep a record of each shipment of used oil that is delivered to another used oil transporter, or to a used oil burner, processor/re-refiner, or disposal facility. Records of each delivery must include:

(1) The name and address of the receiving facility or transporter;

(2) The EPA identification number of the receiving facility or transporter;

(3) The quantity of used oil delivered;

(4) The date of delivery;

(5) The signature, dated upon receipt of the used oil, of a representative of the receiving facility or transporter.

(c) *Exports of used oil.* Used oil transporters must maintain the records described in paragraphs (b)(1) through (b)(4) of this section for each shipment of used oil exported to any foreign country.

(d) *Record retention.* The records described in paragraphs (a), (b), and (c) of this section must be maintained for at least three years.

§ 279.47 Management of residues.

Transporters who generate residues from the storage or transport of used oil must manage the residues as specified in § 279.10(e).

Subpart F—Standards for Used Oil Processors and Re-Refiners

§ 279.50 Applicability.

(a) The requirements of this subpart apply to owners and operators of facilities that process used oil. Processing means chemical or physical operations designed to produce from used oil, or to make used oil more amenable for production of, fuel oils, lubricants, or other used oil-derived products. Processing includes, but is not limited to: blending used oil with virgin petroleum products, blending used oils to meet the fuel specification, filtration, simple distillation, chemical or physical separation and re-refining. The requirements of this subpart do not apply to:

(1) Transporters that conduct incidental processing operations that occur during the normal course of transportation as provided in § 279.41; or

(2) Burners that conduct incidental processing operations that occur during the normal course of used oil management prior to burning as provided in § 279.61(b).

(b) *Other applicable provisions.* Used oil processors/re-refiners who conduct the following activities are also subject to the requirements of other applicable provisions of this part as indicated in paragraphs (b)(1) through (b)(5) of this section.

(1) Processors/re-refiners who generate used oil must also comply with subpart C of this part;

(2) Processors/re-refiners who transport used oil must also comply with subpart E of this part;

(3) Except as provided in paragraphs (b)(3)(i) and (b)(3)(ii) of this section, processors/re-refiners who burn off-specification used oil for energy recovery must also comply with subpart G of this part. Processor/re-refiners burning used oil for energy recovery under the following conditions are not subject to subpart G of this part:

(i) The used oil is burned in an on-site space heater that meets the requirements of § 279.23; or

(ii) The used oil is burned for purposes of processing used oil, which is considered burning incidentally to used oil processing;

(4) Processors/re-refiners who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in § 279.11 must also comply with subpart H of this part; and

(5) Processors/re-refiners who dispose of used oil, including the use of used oil as a dust suppressant, also must comply with subpart I of this part.

§ 279.51 Notification.

(a) *Identification numbers.* Used oil processors and re-refiners who have not previously complied with the notification requirements of RCRA section 3010 must comply with these requirements and obtain an EPA identification number.

(b) *Mechanics of notification.* A used oil processor or re-refiner who has not received an EPA identification number may obtain one by notifying the Regional Administrator of their used oil activity by submitting either:

(1) A completed EPA Form 8700–12 (To obtain EPA Form 8700–12 call RCRA/Superfund Hotline at 1–800–424–9346 or 703–920–9810); or

(2) A letter requesting an EPA identification number.

Call RCRA/Superfund Hotline to determine where to send a letter requesting an EPA identification number. The letter should include the following information:

(i) Processor or re-refiner company name;

(ii) Owner of the processor or re-refiner company;

(iii) Mailing address for the processor or re-refiner;

(iv) Name and telephone number for the processor or re-refiner point of contact;

(v) Type of used oil activity (i.e., process only, process and re-refine);

(vi) Location of the processor or re-refiner facility.

§ 279.52 General facility standards.

(a) *Preparedness and prevention.* Owners and operators of used oil processors and re-refiners facilities must comply with the following requirements:

(1) *Maintenance and operation of facility.* Facilities must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of used oil to air, soil, or surface water which could threaten human health or the environment.

(2) *Required equipment.* All facilities must be equipped with the following, unless none of the hazards posed by used oil handled at the facility could require a particular kind of equipment specified in paragraphs (a)(2)(i) through (iv) of this section:

(i) An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel;

(ii) A device, such as a telephone (immediately available at the scene of operations) or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or State or local emergency response teams;

(iii) Portable fire extinguishers, fire control equipment (including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals), spill control equipment and decontamination equipment; and

(iv) Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

(3) *Testing and maintenance of equipment.* All facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, must be tested and maintained as necessary to assure its proper operation in time of emergency.

(4) *Access to communications or alarm system.* (i) Whenever used oil is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation must have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless such a device is not required in paragraph (a)(2) of this section.

(ii) If there is ever just one employee on the premises while the facility is operating, the employee must have immediate access to a device, such as a telephone (immediately available at the scene of operation) or a hand-held two-way radio, capable of summoning external emergency assistance, unless such a device is not required in paragraph (a)(2) of this section.

(5) *Required aisle space.* The owner or operator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency,

unless aisle space is not needed for any of these purposes.

(6) *Arrangements with local authorities.* (i) The owner or operator must attempt to make the following arrangements, as appropriate for the type of used oil handled at the facility and the potential need for the services of these organizations:

(A) Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of used oil handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes;

(B) Where more than one police and fire department might respond to an emergency, agreements designating primary emergency authority to a specific police and a specific fire department, and agreements with any others to provide support to the primary emergency authority;

(C) Agreements with State emergency response teams, emergency response contractors, and equipment suppliers; and

(D) Arrangements to familiarize local hospitals with the properties of used oil handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.

(ii) Where State or local authorities decline to enter into such arrangements, the owner or operator must document the refusal in the operating record.

(b) *Contingency plan and emergency procedures.* Owners and operators of used oil processors and re-refiners facilities must comply with the following requirements:

(1) *Purpose and implementation of contingency plan.* (i) Each owner or operator must have a contingency plan for the facility. The contingency plan must be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of used oil to air, soil, or surface water.

(ii) The provisions of the plan must be carried out immediately whenever there is a fire, explosion, or release or used oil which could threaten human health or the environment.

(2) *Content of contingency plan.* (i) The contingency plan must describe the actions facility personnel must take to comply with paragraphs (b) (1) and (6) of this section in response to fires, explosions, or any unplanned sudden or non-sudden release of used oil to air, soil, or surface water at the facility.

(ii) If the owner or operator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with part 112 of this chapter, or part 1510 of chapter V of this title, or some other emergency or contingency plan, the owner or operator need only amend that plan to incorporate used oil management provisions that are sufficient to comply with the requirements of this part.

(iii) The plan must describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services, pursuant to paragraph (a)(6) of this section.

(iv) The plan must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see paragraph (b)(5) of this section), and this list must be kept up to date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates.

(v) The plan must include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list must be kept up to date. In addition, the plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities.

(vi) The plan must include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan must describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of used oil or fires).

(3) *Copies of contingency plan.* A copy of the contingency plan and all revisions to the plan must be:

(i) Maintained at the facility; and

(ii) Submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.

(4) *Amendment of contingency plan.* The contingency plan must be reviewed, and immediately amended, if necessary, whenever:

(i) Applicable regulations are revised;

(ii) The plan fails in an emergency;

(iii) The facility changes—in its design, construction, operation, maintenance, or other circumstances—in a way that materially increases the potential for fires, explosions, or releases of used oil, or changes the response necessary in an emergency;

(iv) The list of emergency coordinators changes; or

(v) The list of emergency equipment changes.

(5) *Emergency coordinator.* At all times, there must be at least one employee either on the facility premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristic of used oil handled, the location of all records within the facility, and facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan.

Guidance: The emergency coordinator's responsibilities are more fully spelled out in paragraph (b)(6) of this section. Applicable responsibilities for the emergency coordinator vary, depending on factors such as type and variety of used oil handled by the facility, and type and complexity of the facility.

(6) *Emergency procedures.* (i) Whenever there is an imminent or actual emergency situation, the emergency coordinator (or the designee when the emergency coordinator is on call) must immediately:

(A) Activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and

(B) Notify appropriate State or local agencies with designated response roles if their help is needed.

(ii) Whenever there is a release, fire, or explosion, the emergency coordinator must immediately identify the character, exact source, amount, and a real extent of any released materials. He may do this by observation or review of facility records of manifests and, if necessary, by chemical analysis.

(iii) Concurrently, the emergency coordinator must assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment must consider both direct and indirect effects of the release, fire, or explosion (e.g., the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run-offs from water of chemical agents used to control fire and heat-induced explosions).

(iv) If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health, or the environment, outside the facility, he must report his findings as follows:

(A) If his assessment indicated that evacuation of local areas may be advisable, he must immediately notify appropriate local authorities. He must be available to help appropriate officials decide whether local areas should be evacuated; and

(B) He must immediately notify either the government official designated as the on-scene coordinator for the geographical area (in the applicable regional contingency plan under part 1510 of this title), or the National Response Center (using their 24-hour toll free number 800/424-8802). The report must include:

(*1*) Name and telephone number of reporter;

(*2*) Name and address of facility;

(*3*) Time and type of incident (e.g., release, fire);

(*4*) Name and quantity of material(s) involved, to the extent known;

(*5*) The extent of injuries, if any; and

(*6*) The possible hazards to human health, or the environment, outside the facility.

(v) During an emergency, the emergency coordinator must take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other used oil or hazardous waste at the facility. These measures must include, where applicable, stopping processes and operation, collecting and containing released used oil, and removing or isolating containers.

(vi) If the facility stops operation in response to a fire, explosion, or release, the emergency coordinator must monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.

(vii) Immediately after an emergency, the emergency coordinator must provide for recycling, storing, or disposing of recovered used oil, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility.

(viii) The emergency coordinator must ensure that, in the affected area(s) of the facility:

(A) No waste or used oil that may be incompatible with the released material is recycled, treated, stored, or disposed of until cleanup procedures are completed; and

(B) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

(C) The owner or operator must notify the Regional Administrator, and appropriate State and local authorities that the facility is in compliance with paragraph (h) of this section before operations are resumed in the affected area(s) of the facility.

(ix) The owner or operator must note in the operating record the time, date and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, he must submit a written report on the incident to the Regional Administrator. The report must include:

(A) Name, address, and telephone number of the owner or operator;

(B) Name, address, and telephone number of the facility;

(C) Date, time, and type of incident (e.g., fire, explosion);

(D) Name and quantity of material(s) involved;

(E) The extent of injuries, if any;

(F) An assessment of actual or potential hazards to human health or the environment, where this is applicable;

(G) Estimated quantity and disposition of recovered material that resulted from the incident.

§ 279.53 Rebuttable presumption for used oil.

(a) To ensure that used oil managed at a processing/re-refining facility is not hazardous waste under the rebuttable presumption of § 279.10(b)(1)(ii), the owner or operator of a used oil processing/re-refining facility must determine whether the total halogen content of used oil managed at the facility is above or below 1,000 ppm.

(b) The owner or operator must make this determination by:

(1) Testing the used oil; or

(2) Applying knowledge of the halogen content of the used oil in light of the materials or processes used.

(c) If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in subpart D of part 261 of this chapter. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste (for example, by using an analytical method from SW-846, Edition III, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in appendix VIII of part 261 of this chapter). EPA Publication SW-846, Third Edition, is available for the cost of $110.00 from the Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh PA 15250-7954, (202) 783-3238 (document number 955-001-00000-1).

(1) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling agreement, to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

(2) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

§ 279.54 Used oil management.

As specified in § 279.10(f), wastewaters containing "de minimis" quantities of used oil are not subject to the requirements of this part, including the prohibition on storage in units other than tanks or containers. Used oil processor/re-refiners are subject to all applicable Spill Prevention, Control and Countermeasures (40 CFR part 112) in addition to the requirements of this subpart. Used oil generators are also subject to the Underground Storage Tank (40 CFR part 280) standards for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of this subpart.

(a) *Management units.* Used oil processors/re-refiners may not store or process used oil in units other than tanks, containers, or units subject to regulation under part 264 or 265 of this chapter.

(b) *Condition of units.* Containers and aboveground tanks used to store or process used oil at processing and re-refining facilities must be:

(1) In good condition (no severe rusting, apparent structural defects or deterioration); and

(2) Not leaking (no visible leaks).

(c) *Secondary containment for containers.* Containers used to store or process used oil at processing and re-refining facilities must be equipped with a secondary containment system.

(1) The secondary containment system must consist of, at a minimum:

(i) Dikes, berms or retaining walls; and

(ii) A floor. The floor must cover the entire area within the dike, berm, or retaining wall.

(2) The entire containment system, including walls and floor, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(d) *Secondary containment for existing aboveground tanks.* Existing aboveground tanks used to store or process used oil at processing and re-refining facilities must be equipped with a secondary containment system.

(1) The secondary containment system must consist of, at a minimum:

(i) Dikes, berms or retaining walls; and

(ii) A floor. The floor must cover the entire area within the dike, berm, or retaining wall except areas where existing portions of the tank meet the ground; or

(iii) An equivalent secondary containment system.

(2) The entire containment system, including walls and floor, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(e) *Secondary containment for new aboveground tanks.* New aboveground tanks used to store or process used oil at processing and re-refining facilities must be equipped with a secondary containment system.

(1) The secondary containment system must consist of, at a minimum:

(i) Dikes, berms or retaining walls; and

(ii) A floor. The floor must cover the entire area within the dike, berm, or retaining wall; or

(iii) An equivalent secondary containment system.

(2) The entire containment system, including walls and floor, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(f) *Labels.* (1) Containers and aboveground tanks used to store or process used oil at processing and re-refining facilities must be labeled or marked clearly with the words "Used Oil."

(2) Fill pipes used to transfer used oil into underground storage tanks at processing and re-refining facilities must be labeled or marked clearly with the words "Used Oil."

(g) *Response to releases.* Upon detection of a release of used oil to the environment not subject to the requirements of part 280, subpart F of this chapter which has occurred after the effective date of the authorized used oil program for the State in which the release is located, an owner/operator must perform the following cleanup steps:

(1) Stop the release;

(2) Contain the released used oil;

(3) Clean up and mange properly the released used oil and other materials; and

(4) If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

(h) *Closure.*—(1) *Aboveground tanks.* Owners and operators who store or process used oil in aboveground tanks must comply with the following requirements:

(i) At closure of a tank system, the owner or operator must remove or decontaminate used oil residues in tanks, contaminated containment system components, contaminated soils, and structures and equipment contaminated with used oil, and manage them as hazardous waste, unless the materials are not hazardous waste under this chapter.

(ii) If the owner or operator demonstrates that not all contaminated soils can be practicably removed or decontaminated as required in paragraph (h)(1)(i) of this section, then the owner or operator must close the tank system and perform post-closure care in accordance with the closure and post-closure care requirements that apply to hazardous waste landfills (§ 265.310 of this chapter).

(2) *Containers.* Owners and operators who store used oil in containers must comply with the following requirements:

(i) At closure, containers holding used oils or residues of used oil must be removed from the site;

(ii) The owner or operator must remove or decontaminate used oil residues, contaminated containment system components, contaminated soils, and structures and equipment contaminated with used oil, and manage them as hazardous waste, unless the materials are not hazardous waste under part 261 of this chapter.

§ 279.55 Analysis plan.

Owners or operators of used oil processing and re-refining facilities must develop and follow a written analysis plan describing the procedures that will be used to comply with the analysis requirements of § 279.53 and, if applicable, § 279.72. The owner or operator must keep the plan at the facility.

(a) *Rebuttable presumption for used oil in § 279.53.* At at minimum, the plan must specify the following:

(1) Whether sample analyses or knowledge of the halogen content of the used oil will be used to make this determination.

(2) If sample analyses are used to make this determination:

(i) The sampling method used to obtain representative samples to be analyzed. A representative sample may be obtained using either:

(A) One of the sampling methods in appendix I of part 261 of this chapter; or

(B) A method shown to be equivalent under §§ 260.20 and 260.21 of this chapter;

(ii) The frequency of sampling to be performed, and whether the analysis will be performed on-site or off-site; and

(iii) The methods used to analyze used oil for the parameters specified in § 279.53; and

(3) The type of information that will be used to determine the halogen content of the used oil.

(b) *On-specification used oil fuel in § 279.72.* At a minimum, the plan must specify the following if § 279.72 is applicable:

(1) Whether sample analyses or other information will be used to make this determination;

(2) If sample analyses are used to make this determination:

(i) The sampling method used to obtain representative samples to be analyzed. A representative sample may be obtained using either:

(A) One of the sampling methods in appendix I of part 261 of this chapter; or

(B) A method shown to be equivalent under § 260.20 and 260.21 of this chapter;

(ii) Whether used oil will be sampled and analyzed prior to or after any processing/re-refining;

(iii) The frequency of sampling to be performed, and whether the analysis will be performed on-site or off-site; and

(iv) The methods used to analyze used oil for the parameters specified in § 279.72; and

(3) The type of information that will be used to make the on-specification used oil fuel determination.

§ 279.56 Tracking.

(a) *Acceptance.* Used oil processors/re-refiners must keep a record of each used oil shipment accepted for processing/re-refining. These records may take the form of a log, invoice, manifest, bill of lading or other shipping documents. Records for each shipment must include the following information:

(1) The name and address of the transporter who delivered the used oil to the processor/re-refiner;

(2) The name and address of the generator or processor/re-refining from

whom the used oil was sent for processing/re-refining;

(3) The EPA identification number of the transporter who delivered the used oil to the processor/re-refiner;

(4) The EPA identification number (if applicable) of the generator or processor/re-refiner from whom the used oil was sent for processing/re-refining;

(5) The quantity of used oil accepted; and

(6) The date of acceptance.

(b) *Delivery.* Used oil processor/re-refiners must keep a record of each shipment of used oil that is shipped to a used oil burner, processor/ re-refiner, or disposal facility. These records may take the form of a log, invoice, manifest, bill of lading or other shipping documents. Records for each shipment must include the following information:

(1) The name and address of the transporter who delivers the used oil to the burner, processor/re-refiner or disposal facility;

(2) The name and address of the burner, processor/re-refiner or disposal facility who will receive the used oil;

(3) The EPA identification number of the transporter who delivers the used oil to the burner, processor/re-refiner or disposal facility;

(4) The EPA identification number of the burner, processor/re-refiner, or disposal facility who will receive the used oil;

(5) The quantity of used oil shipped; and

(6) The date of shipment.

(c) *Record retention.* The records described in paragraphs (a) and (b) of this section must be maintained for at least three years.

§ 279.57 Operating record and reporting.

(a) *Operating record.* (1) The owner or operator must keep a written operating record at the facility.

(2) The following information must be recorded, as it becomes available, and maintained in the operating record until closure of the facility;

(i) Records and results of used oil analyses performed as described in the analysis plan required under § 279.55; and

(ii) Summary reports and details of all incidents that require implementation of the contingency plan an specified in § 279.52(b).

(b) *Reporting.* A used oil processor/re-refiner must report to the Regional Administrator, in the form of a letter, on a biennial basis (by March 1 of each even numbered year), the following information concerning used oil activities during the previous calendar year;

(1) The EPA identification number, name, and address of the processor/re-refiner;

(2) The calendar year covered by the report; and

(3) The quantities of used oil accepted for processing/re-refining and the manner in which the used oil is processed/re-refined, including the specific processes employed.

§ 279.58 Off-site shipments of used oil.

Used oil processors/re-refiners who initiate shipments of used oil off-site must ship the used oil using a used oil transporter who has obtained an EPA identification number.

§ 279.59 Management of residues.

Owners and operators who generate residues from the storage, processing, or re-fining of used oil must manage the residues as specified in § 279.10(e).

Subpart G—Standards for Used Oil Burners Who Burn Off-Specification Used Oil for Energy Recovery

§ 279.60 Applicability.

(a) *General.* The requirements of this subpart apply to used oil burners except as specified in paragraphs (a)(1) and (a)(2) of this section. A used oil burner is a facility where used oil not meeting the specification requirements in § 279.11 is burned for energy recovery in devices identified in § 279.61(a). Facilities burning used oil for energy recovery under the following conditions are not subject to this Subpart:

(1) The used oil is burned by the generator in an on-site space heater under the provisions of § 279.23; or

(2) The used oil is burned by a processor/re-refiner for purposes of processing used oil, which is considered burning incidentally to used oil processing.

(b) *Other applicable provisions.* Used oil burners who conduct the following activities are also subject to the requirements of other applicable provisions of this part as indicated below.

(1) Burners who generate used oil must also comply this subpart C of this part;

(2) Burners who transport used oil must also comply with subpart E of this part;

(3) Except as provided in § 279.61(b), burners who process or re-refine used oil must also comply with subpart F of this part;

(4) Burners who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in § 279.11 must also comply with subpart H of this part; and

(5) Burners who dispose of used oil, including the use of used oil as a dust suppressant, must comply with subpart I of this part.

(c) *Specification fuel.* This subpart does not apply to persons burning used oil that meets the used oil fuel specification of § 279.11, provided that the burner complies with the requirements of subpart H of this part.

§ 279.61 Restrictions on burning.

(a) Off-specification used oil fuel may be burned for energy recovery in only the following devices:

(1) Industrial furnaces identified in § 260.10 of this chapter;

(2) Boilers, as defined in § 260.10 of this chapter, that are identified as follows:

(i) Industrial boilers located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes;

(ii) Utility boilers used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale; or

(iii) Used oil-fired space heaters provided that the burner meets the provisions of § 279.23; or

(3) Hazardous waste incinerators subject to regulation under subpart O of parts 264 or 265 of this chapter.

(b)(1) With the following exception, used oil burners may not process used oil unless they also comply with the requirements of subpart F of this part.

(2) Used oil burners may aggregate off-specification used oil with virgin oil or on-specification used oil for purposes of burning, but may not aggregate for purposes of producing on-specification used oil.

§ 279.62 Notification

(a) *Identification numbers.* Used oil burners who have not previously complied with the notification requirements of RCRA section 3010 must comply with these requirements and obtain an EPA identification number.

(b) *Mechanics of notification.* A used oil burner who has not received an EPA identification number may obtain one by notifying the Regional Administrator of their used oil activity by submitting either:

(1) A completed EPA Form 8700-12 (To obtain EPA Form 8700-12 call RCRA/Superfund Hotline at 1-800-424-9346 or 703-920-9810); or

(2) A letter requesting an EPA identification number. Call the RCRA/Superfund Hotline to determine where to send a letter requesting an EPA identification number. The letter should include the following information:

(i) Burner company name;

(ii) Owner of the burner company;

(iii) Mailing address for the burner;

(iv) Name and telephone number for the burner point of contact;

(v) Type of used oil activity; and

(vi) Location of the burner facility.

§ 279.63 Rebuttable presumption for used oil.

(a) To ensure that used oil managed at a used oil burner facility is not hazardous waste under the rebuttable presumption of § 279.10(b)(1)(ii), a used oil burner must determine whether the total halogen content of used oil managed at the facility is above or below 1,000 ppm.

(b) The used oil burner must determine if the used oil contains above or below 1,000 ppm total halogens by:

(1) Testing the used oil;

(2) Applying knowledge of the halogen content of the used oil in light of the materials or processes used; or

(3) If the used oil has been received from a processor/refiner subject to regulation under subpart F of this part, using information provided by the processor/re-refiner.

(c) If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste/because it has been mixed with halogenated hazardous waste listed in subpart D of part 261 of this chapter. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste (for example, by using an analytical method from SW-846, Edition III, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in appendix VIII of part 261 of this chapter). EPA Publication SW-846, Third Edition, is available for the cost of $110.00 from the Government Printing Office, Superintendent of Documents, PO Box 371954, Pittsburgh, PA 15250-7954. 202-783-3238 (document number 955-001-00000-1).

(1) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in § 279.24(c), to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

(2) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(d) *Record retention.* Records of analyses conducted or information used to comply with paragraphs (a), (b), and (c) of this section must be maintained by the burner for at least 3 years.

§ 279.64 Used oil storage.

As specified in § 279.10(f), wastewaters containing "de minimis" quantities of used oil are not subject to the requirements of this Part, including the prohibition on storage in units other than tanks or containers. Used oil burners are subject to all applicable Spill Prevention, Control and Countermeasures (40 CFR part 112) in addition to the requirements of this subpart. Used oil generators are also subject to the Underground Storage Tank (40 CFR part 280) standards for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of this subpart.

(a) *Storage units.* Used oil burners may not store used oil in units other than tanks, containers, or units subject to regulation under parts 264 or 265 of this chapter.

(b) *Condition of units.* Containers and aboveground tanks used to store oil at burner facilities must be:

(1) In good condition (no severe rusting, apparent structural defects or deterioration); and

(2) Not leaking (no visible leaks).

(c) *Secondary containment for containers.* Containers used to store used oil at burner facilities must be equipped with a secondary containment system.

(1) The secondary containment system must consist of, at a minimum:

(i) Dikes, berms or retaining walls; and

(ii) A floor. The floor must cover the entire area within the dike, berm, or retaining wall.

(2) The entire containment system, including walls and floor, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(d) *Secondary containment for existing aboveground tanks.* Existing aboveground tanks used to store used oil at burner facilities must be equipped with a secondary containment system.

(1) The secondary containment system must consist of, at a minimum:

(i) Dikes, berms or retaining walls; and

(ii) A floor. The floor must cover the entire area within the dike, berm, or retaining wall except areas where existing portions of the tank meet the ground; or

(iii) An equivalent secondary containment system.

(2) The entire containment system, including walls and floor, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(e) *Secondary containment for existing aboveground tanks.* New aboveground tanks used to store used oil at burner facilities must be equipped with a secondary containment system.

(1) The secondary containment system must consist of, at a minimum:

(i) Dikes, berms or retaining walls; and

(ii) A floor. The floor must cover the entire area within the dike, berm, or retaining wall; or

(iii) An equivalent secondary containment system.

(2) The entire containment system, including walls and floor, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(f) *Labels.* (1) Containers and aboveground tanks used to store used oil at burner facilities must be labeled or marked clearly with the words "Used Oil."

(2) Fill pipes used to transfer used oil into underground storage tanks at burner facilities must be labeled or marked clearly with the words "Used Oil."

(g) *Response to releases.* Upon detection of a release of used oil to the environment not subject to the requirements of part 280 subpart F which has occurred after the effective date of the authorized used oil program for the State in which the release is located, a burner must perform the following cleanup steps:

(1) Stop the release;

(2) Contain the released used oil;

(3) Clean up and manage properly the released used oil and other materials; and

(4) If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

§ 279.65 Tracking.

(a) *Acceptance.* Used oil burners must keep a record of each used oil shipment accepted for burning. These records may take the form of a log, invoice, manifest, bill of lading, or other shipping documents. Records for each shipment must include the following information:

(1) The name and address of the transporter who delivered the used oil to the burner;

(2) The name and address of the generator or processor/re-refiner from whom the used oil was sent to the burner;

(3) The EPA identification number of the transporter who delivered the used oil to the burner;

(4) The EPA identification number (if applicable) of the generator or processor/re-refiner from whom the used oil was sent to the burner;

(5) The quantity of used oil accepted; and

(6) The date of acceptance.

(b) *Record retention.* The records described in paragraph (a) of this section must be maintained for at least three years.

§ 279.66 Notices.

(a) *Certification.* Before a burner accepts the first shipment of off-specification used oil fuel from a generator, transporter, or processor/re-refiner, the burner must provide to the generator, transporter, or processor/re-refiner a one-time written and signed notice certifying that:

(1) The burner has notified EPA stating the location and general description of his used oil management activities; and

(2) The burner will burn the used oil only in an industrial furnace or boiler identified in § 279.61(a).

(b) *Certification retention.* The certification described in paragraph (a) of this section must be maintained for three years from the date the burner last receives shipment of off-specification used oil from that generator, transporter, or processor/re-refiner.

§ 279.67 Management of residues.

Burners who generate residues from the storage or burning of used oil must manage the residues as specified in § 279.10(e).

Subpart H–Standards for Used Oil Fuel Marketers

§ 279.70 Applicability.

(a) Any person who conducts either of the following activities is subject to the requirements of this section:

(1) Directs a shipment of off-specification used oil from their facility to a used oil burner; or

(2) First claims that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in § 279.11.

(b) The following persons are not marketers subject to this subpart:

(1) Used oil generators, and transporters who transport used oil received only from generators, unless the generator or transporter directs a shipment of off-specification used oil from their facility to a used oil burner. However, processors/re-refiners who burn some used oil fuel for purposes of processing are considered to be burning incidentally to processing. Thus, generators and transporters who direct shipments of off-specification used oil to processor/re-refiners who incidently burn used oil are not marketers subject to this Subpart;

(2) Persons who direct shipments of on-specification used oil and who are not the first person to claim the oil meets the used oil fuel specifications of § 279.11.

(c) Any person subject to the requirements of this Subpart must also comply with one of the following:

(1) Subpart C of this part—Standards for Used Oil Generators;

(2) Subpart E of this part—Standards for Used Oil Transporters and Transfer Facilities;

(3) Subpart F of this part—Standards for Used Oil Processors and Re-refiners; or

(4) Subpart G of this part—Standards for Used Oil Burners who Burn Off-Specification Used Oil for Energy Recovery.

§ 279.71 Prohibitions.

A used oil fuel marketer may initiate a shipment of off-specification used oil only to a used oil burner who:

(a) Has an EPA identification number; and

(b) Burns the used oil in an industrial furnace or boiler identified in § 279.61(a).

§ 279.72 On-specification used oil fuel.

(a) *Analysis of used oil fuel.* A generator, transporter, processor/re-refiner, or burner may determine that used oil that is to be burned for energy recovery meets the fuel specifications of § 279.11 by performing analyses or obtaining copies of analyses or other information documenting that the used oil fuel meets the specifications. Such used oil that is to be burned for energy recovery is not subject to further regulation under this part.

(b) *Record retention.* A generator, transporter, processor/re-refiner, or burner who first claims that used oil that is to be burned for energy recovery meets the specifications for used oil fuel under § 279.11, must keep copies of analyses of the used oil (or other information used to make the determination) for three years.

§ 279.73 Notification.

(a) A used oil fuel marketer subject to the requirements of this section who has not previously complied with the notification requirements of RCRA Section 3010 must comply with these requirements and obtain an EPA identification number.

(b) A marketer who has not received an EPA identification number may obtain one by notifying the Regional Administrator of their used oil activity by submitting either:

(1) A completed EPA Form 8700–12; or

(2) A letter requesting an EPA identification number. The letter should include the following information:

(i) Marketer company name;

(ii) Owner of the marketer;

(iii) Mailing address for the marketer;

(iv) Name and telephone number for the marketer point of contact; and

(v) Type of used oil activity (i.e., generator directing shipments of off-specification used oil to a burner).

§ 279.74 Tracking.

(a) *Off-specification used oil delivery.* Any used oil generator who directs a shipment of off-specification used oil to a burner must keep a record of each shipment of used oil to a used oil burner. These records may take the form of a log, invoice, manifest, bill of lading or other shipping documents. Records for each shipment must include the following information:

(1) The name and address of the transporter who delivers the used oil to the burner;

(2) The name and address of the burner who will receive the used oil;

(3) The EPA identification number of the transporter who delivers the used oil to the burner;

(4) The EPA identification number of the burner;

(5) The quantity of used oil shipped; and

(6) The date of shipment.

(b) *On-specification used oil delivery.* A generator, transporter, processor/re-refiner, or burner who first claims that used oil that is to be burned for energy recovery meets the fuel specifications under § 279.11 must keep a record of each shipment of used oil to an on-specification used oil burner. Records for each shipment must include the following information:

(1) The name and address of the facility receiving the shipment;

(2) The quantity of used oil fuel delivered;

(3) The date of shipment or delivery; and

(4) A cross-reference to the record of used oil analysis or other information used to make the determination that the oil meets the specification as required under § 279.72(a).

(c) *Record retention.* The records described in paragraphs (a) and (b) of this section must be maintained for at least three years.

§ 279.75 Notices.

(a) *Certification.* Before a used oil generator, transporter, or processor/re-refiner directs the first shipment of off-specification used oil fuel to a burner, he must obtain a one-time written and signed notice from the burner certifying that:

(1) The burner has notified EPA stating the location and general description of used oil management activities; and

(2) The burner will burn the off-specification used oil only in an industrial furnace or boiler identified in § 279.61(a).

(b) *Certification retention.* The certification described in paragraph (a) of this section must be maintained for three years from the date the last shipment of off-specification used oil is shipped to the burner.

Subpart I—Standards for Use as a Dust Suppressant and Disposal of Used Oil

§ 279.80 Applicability.

The requirements of this subpart apply to all used oils that cannot be recycled and are therefore being disposed.

§ 279.81 Disposal.

(a) *Disposal of hazardous used oils.* Used oils that are identified as a hazardous waste and cannot be recycled in accordance with this part must be managed in accordance with the hazardous waste management requirements of parts 260 through 266, 268, 270 and 124 of this chapter.

(b) *Disposal of nonhazardous used oils.* Used oils that are not hazardous wastes and cannot be recycled under this part must be disposed in accordance with the requirements of parts 257 and 258 of this chapter.

§ 279.82 Use as a dust suppressant.

(a) The use of used oil as a dust suppressant is prohibited, except when such activity takes place in one of the states listed in paragraph (c) of this section.

(b) A State may petition (e.g., as part of its authorization petition submitted to EPA under § 271.5 of this chapter or by a separate submission) EPA to allow the use of used oil (that is not mixed with hazardous waste and does not exhibit a characteristic other than ignitability) as a dust suppressant. The State must show that it has a program in place to prevent the use of used oil/hazardous waste mixtures or used oil exhibiting a characteristic other than ignitability as a dust suppressant. In addition, such programs must minimize the impacts of use as a dust suppressant on the environment.

(c) *List of States.* [Reserved]

[FR Doc. 92-20085 Filed 9-9-92; 8:45 am]

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federal register

Thursday
September 10, 1992

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 101
Model Rocket Operations; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 101

[Docket No. 26965; Notice No. 92-12]

RIN: 2120-AB75

Model Rocket Operations

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to reduce the restrictions on the operation of model rockets that use not more than 125 grams (4.4 ounces) of propellant; that are made of paper, wood, or breakable plastic; that contain no substantial metal parts; and that weigh not more than 1,500 grams (53 ounces). The FAA believes that this amendment will foster an important aeronautical education activity while retaining appropriate safety precautions.

DATES: Comments must be received on or before December 9, 1992.

ADDRESSES: Comments on the proposal may be mailed or delivered in duplicate to: Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. [26965], 800 Independence Avenue, SW., Washington, DC 20591. Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph C. White, Air Traffic Rules Branch, ATP-230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting necessary written data, views, or arguments. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on the notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. [26965]." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered by the Administrator before taking further rulemaking action. The proposals contained in this notice may be changed in light of comments received. All comments submitted will be available, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future notices should also request a copy of Advisory Circular No. 11-2A "Notice of Proposed Rulemaking Distribution System," which describes the application procedures.

Background

On September 12, 1984, the FAA announced in the **Federal Register** (49 FR 35789) a Regulatory Review Program for Part 101 of the Federal Aviation Regulations (FAR) and invited comments and recommendations as part of this review. Comments received during the Regulatory Review addressed the following areas of concern: (1) Balloon operations, including moored vs. tethered balloon requirements, lighting requirements and operations in the proximity of airports; and (2) model rocket operations. Comments on model rockets concerned proximity of operators to airports, increased gross weight, and propellant standards. Response to the announcement of the review program was very limited, except for those issues regarding the operation of model rockets. This notice addresses only those issues related to the operation of unmanned (model) rockets.

National Association of Rocketry

On May 24, 1985, the National Association of Rocketry (NAR), an affiliate of the National Aeronautic Association, representing thousands of model rocket consumers, and the Hobby Industry Association (HIA), representing the manufacturers of model rocket kits, motors, and accessories, petitioned the FAA to consider rulemaking action to amend FAR § 101.1, Applicability. The petitioners seek to raise the upper weight limit on excepted model rockets from 16 ounces to 1,500 grams (approximately 53 ounces) and the allowable propellant mass from 4 ounces to 125 grams (approximately 4.4 ounces). According to the petitioners, these changes are based on studies conducted by the NAR and are recommended to help keep model rocketry in the U.S. abreast of advancements made in this educational aerospace hobby/sport.

Section of the FAR Affected

Section 101.1, in pertinent part, establishes the applicability of part 101 to the operation of any unmanned rockets using more than 4 ounces of propellant or having a total weight of more than 16 ounces, including the propellant.

A summary of the petitioners' request was published in the **Federal Register** on March 19, 1986 (51 FR 9458) for public comment. The only comment received was from one of the petitioners, who supported the petition.

Supporting Information

The petitioner stated that from 1959 to 1962, when the current part 101 was being drafted, the NAR played a major role in suggesting the present limits on propellant and gross weight for exclusion from Part 101, Applicability. At that time, model rocketry was strictly an American hobby/sport. The Federation Aeronautical International first established its "Sporting Code for Space Models" in 1964. Considering the construction techniques, materials, and design principles of model rockets that existed in the 1959-1962 time period, the NAR considered 4 ounces of propellant and 16 ounces of gross weight to be the maximum value likely to be achieved in the model rocketry hobby in the foreseeable future. The FAA accepted these limits which formed the basis for the current FAR § 101.1.

The petitioner further stated that the state of the art in model rocketry has progressed to the point where larger, heavier, and more powerful model rockets are both feasible and safe due to improved propellants, materials, and safety procedures. NAR stated that it had conducted an intensive and inclusive study of potential safety hazards of model rockets having increased gross weights. The study was undertaken by a special committee of the NAR that was established in 1983 and staffed by model rocketeers, aeronautical engineers, National Aeronautics and Space Administration sounding rocket experts, rocket propellant specialists, doctors of

medicine, licensed pilots, and computer engineers. The study purports to validate the conclusion that no degradation of aviation safety will result from the proposed increase in propellant and rocket weights.

The study included an evaluation of the effects of crosswinds on the launching of model rockets. It concluded that heavier rockets would be less susceptible to tip-over or course derogation from wind than the lighter rockets.

The study also included an investigation regarding the potential of an incident between a 1,500-gram model rocket and an aircraft in flight. NAR's researchers assumed that any probable hazards to aircraft would fall in the following two areas: (1) Airframe penetration during high-speed powered flight of models; and (2) foreign object damage, similar to that posed by a bird, during the model's low-speed drifting return to the ground under a miniature parachute or other recovery device.

Potential for Damaging an Aircraft in Flight

The study concluded that the probability of a model rocket causing foreign object damage to an aircraft in flight during the model's slow descent to the ground, via a recovery device, depends on how much the model weighs, how high it flies, and how long it takes to return to the ground. The increase of allowable propellant, coupled with more powerful, modern model rocket motors when used with a very light rocket (less than one pound) could cause an increase in the maximum achievable altitude of only 20 percent (to 7,200 feet for a single-stage rocket and to 10,000 feet for a two-stage rocket). This could allow a model rocket to stay aloft under its recovery device for up to 10 minutes. The probability of an aircraft encountering such a rocket was estimated (by the NAR special committee) to be 1 in 48 million flights of these high performance model rockets. When a maximum of 125 grams of propellant is used with a 1,500-gram model rocket, the maximum achievable altitude is much less approximately 2,400 feet. In addition, impact with an aircraft during the upward powered flight of a 1,500-gram model rocket might cause airframe damage comparable to the impact of large hailstones.

The worst possible collision scenario that could occur would be during the model's slow descent phase, if it were to be ingested by a turbine engine. NAR noted that, since current regulations require aircraft turbine engines to remain controllable following ingestion of tire treads and 4-pound birds, turbine engines also should be able to continue operating after ingesting gravel or 1.5-pound birds. According to the petitioner, low density, non-metallic, high performance model rockets weighing up to 1,500 grams would not pose greater damage potential than these.

To confirm the results obtained by computer analyses, literature searches, statistical analyses, and historical data, the petitioner conducted actual flight tests at a site 5 miles north of an airport. Sixteen high-powered, high-weight model rockets were launched. All models were tracked using the FAA-approved two station altitude/azimuth theodolite system. Comparisons were made between high-powered model rockets weighing up to 1,500 grams with 125 grams of propellant, and those currently excluded from regulation by the FAR. These flight tests confirmed the other analyses and data; however, these tests did not include verification of the potential for the occurrence of an impact with an aircraft in flight or the resulting consequences of such an occurrence.

The final report of the NAR Committee was presented to the NAR Board of Trustees in February 1985. The board accepted the committee's report and the recommendation that NAR-permissible model rocket gross weights be increased to 1,500 grams and propellant weights to 125 grams. The report also was accepted to the Model Rocket Division of the HIA. The recommendations were forwarded to the National Fire Protection Association's (NFPA) committee on pyrotechnics, for their consideration in revising NFPA 1122 Code for Unmanned Rockets. This is a voluntary standard that is widely accepted by state legislatures and public safety officials having rulemaking powers.

FAA Analysis

The FAA has reviewed the NAR study as well as other pertinent data. The FAA also notes that the NAR estimates that there have been approximately 250,000 launches of model rockets since the inception of the sport and that the National Transportation Safety Board (NTSB) reports that there have been no midair collisions between model rockets and aircraft in flight. The FAA considers that it is to the public's benefit to foster interest in aeronautics and that model rocketry provides a valuable means for hobbyists to purse that interest. The FAA further believes that the educational value of this activity is enhanced by remaining abreast of the state of the art technology.

The FAA commissioned a study of its own to evaluate the potential for a hazard to aviation safety resulting from the operation of model rockets.

The March 1991 final report included an analysis of the likelihood for damage to an aircraft in flight if impacted by a model rocket, as well as a conclusion of the probability of such an occurrence. The researchers, the Galaxy Scientific Corporation, of Mays Landing, NJ, made the following conclusions:

- Model rockets have the capability to reach the theoretical speed of 600 knots and the altitude of 4,000 feet based on the calculations performed in the report.
- Searches of FAA and NTSB data bases from 1984 to 1989 indicate that the probability of collision between model rockets and aircraft is remote.
- The two most vulnerable types of aircraft are general aviation aircraft and rotorcraft, due to lower operational altitude and velocity and different structural design conditions.
- The results of structural analysis show that model rockets under present and proposed rules have the capability to damage aircraft, assuming that a collision occurs.
- Some operational limits for model rockets should be specified, (i.e., do not operate model rockets in controlled airspace or within 5 miles of the boundary of any airport). This notice would limit the operations of model rockets at least 5 nautical miles from the airports and further reduce the chance of collision between a model rocket and an aircraft.

The study, in its entirety, has been placed in the docket for public inspection.

Conclusions

The FAA must balance considerations of advancing the study of and interest in aeronautics resulting from model rocket activities with concern for the protection of aircraft in flight. The Agency also must balance the remote likelihood of a collision between a model rocket and an aircraft and the consequences of such an occurrence. The FAA has concluded that the outstanding safety record of model rocketry to date is due, in part, to the establishment and compliance with voluntary standards such as the NAR's Model Rocket Safety Code. That code provides, in part, for a launch safety officer to terminate activity when aircraft are observed entering the area where model rockets are being launched. The FAA also believes that if the size and mass of model rockets are increased, there is an increase in the potential for harm to an aircraft in flight should a collision occur. It is therefore essential to ensure that persons

operating larger model rockets observe such safety precautions. The FAA has determined that it is in the public interest to accommodate the advancement of model rocketry with regulations that also will provide an adequate level of assurance that such rockets will not jeopardize the safety of aircraft in flight.

The Proposal

The FAA proposes to add § 101.22 to part 101 for the FAR to allow the operation of model rockets with up to 125 grams (approximately 4.4 ounces) of propellant and a maximum gross weight of 1,500 grams (approximately 53 ounces), including propellant, as long as certain precautions are taken. As is now the case, model rocketeers still would be prohibited from launching rockets into, or through, clouds, from flying near aircraft in flight, or from being hazardous to people or property. The prohibition against operating such model rockets in controlled airspace, within 5 miles of an airport, within 1,500 feet of any non-participant, or between sunset and sunrise, however, will not apply provided the person operating the model rocket complies with the provisions of § 101.25, which the FAA is proposing to modify in this NPRM requiring that model rocketeers provide pertinent information about the operation to the nearest FAA Air Traffic Control (ATC) facility. The FAA has determined that organizations that previously were excluded from the requirements regarding spectator proximity or night operations have demonstrated a very effective safety record. The FAA believes that reestablishing the threshold at not more than 125 grams (approximately 4.4 ounces) of propellant and not more than 1500 grams (approximately 53 ounces) of total rocket weight, does not warrant spectator restraint or operational time prohibitions.

The FAA is proposing to make an editorial change to § 101.25 to clarify the intent of the existing language dealing with notification of an intended operation. The current language requires FAA notification "within 24 to 48 hours" of an intended operation. A literal interpretation of the requirement would allow a proponent to notify the FAA anytime preceding the actual time of the operation and up to 48 hours prior to the operation. Such interpretation is not the original intent of the requirement. The intent is for the FAA to receive notification at least 24 hours prior to the operation but no more than 48 hours prior to the operation. The 24-hour prior notification is the minimum necessary for the FAA and airport management, as appropriate, to advise pilots planning to operate in the area where unmanned rocket operations are planned. The maximum 48-hour notification is the optimum amount of time that a proponent would have finalized his/her intended operation. Therefore, the FAA believes it minimizes the revisions to advisories given to pilots concerning a planned unmanned rocket operation. Accordingly, the language in the rule would be changed to reflect the original intent of the rule.

Regulatory Evaluation Summary

Introduction

This section summarizes the full regulatory evaluation that provides more detailed estimates of the economic consequences of this regulatory action. This summary and the full evaluation quantify, to the extent practicable, anticipated benefits and estimated costs to the private sector, consumers, and Federal, State, and local governments.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society outweigh potential costs for each regulatory change. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is controversial or likely to result in an annual effect on the economy of $100 million or more, a major increase in consumer costs, or a significant adverse effect on competition.

The FAA has determined that this rule is not "major" as defined in the Executive Order; therefore, a full regulatory analysis, which includes the identification and evaluation of cost-reducing alternatives to this rule, has not been prepared. Instead, the agency has prepared a more concise document, termed a regulatory evaluation, that analyzes only this rule without identifying alternatives. In addition to a summary of the regulatory evaluation, this section also contains a summary of the regulatory flexibility determination required by the 1980 Regulatory Flexibility Act (Pub. L. 96–354) and an international trade impact assessment. If more economic information is desired than is contained in this summary, the reader is referred to the full regulatory evaluation contained in the docket.

Benefits

The proposed rule likely would provide benefits. The FAA has determined that the proposed regulations will accommodate the advancement of model rocketry and simultaneously provide an adequate level of assurance that such rockets will not jeopardize the safety of aircraft in flight.

Costs

The proposed rule for unmanned rockets consists of provisions that specify the requirements for operating certain model rockets (rockets using not more than 125 grams of propellant; made of paper, wood, or breakable plastic; containing no substantial metal parts, and weighing not more than 1,500 grams including propellant). The proposed rule is designed to accommodate the advancement of model rocketry with regulations that also will provide an adequate level of assurance so that such rockets will not jeopardize the safety of aircraft in flight.

The FAA estimates that the proposed changes in the NPRM would have no cost impact to users of model rockets. In fact, the proposed changes might produce a cost savings. The savings associated with these changes, however, are considered negligible and unquantifiable.

This provision may impose minor costs on the FAA. Persons operating model rockets would have to provide the information required in existing § 101.25 to the airport manager and to the FAA ATC facility that is nearest the place of the intended operation. The FAA would incur costs associated with receiving, recording, and evaluating the material that has been received. The FAA believes that these costs would be minor.

Conclusions

Based on the fact that there are little or no compliance costs coupled with the potential benefits, the FAA concludes that the proposed rule would be cost-beneficial.

International Trade Impact Analysis

The proposed amendments would apply to users of model rockets in the United States only. There would be no economic impact resulting from any of the proposed amendments and the FAA has determined that these regulations would not have an impact on international trade, if promulgated.

Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires agencies to review

rules that may have "a significant cost impact on a substantial number of small entities."

With regard to this regulatory evaluation, there would be no cost associated with any of the proposed amendments. The FAA has determined that the proposed amendments contained in this NPRM would not have a significant economic impact on a substantial number of small entities.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that such a regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not major under Executive Order 12291. In addition, the FAA certifies that this proposal, if adopted, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). An initial regulatory evaluation of the proposal, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "**FOR FURTHER INFORMATION CONTACT**."

List of Subjects in 14 CFR Part 101

Aircraft, Kites, Moored balloons, Unmanned free balloons, Unmanned rockets.

The Proposed Amendment

In consideration of the foregoing, the FAA proposes to amend Part 101 of the Federal Aviation Regulations, as follows:

PART 101—[AMENDED]

1. The authority citation for part 101 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354, 1372, 1421, 1442, 1443, 1472, 1510, and 1522; E.O. 11514; 49 U.S.C. 106(g).

Subpart C—Unmanned Rockets

2. Section 101.22 is added to read as follows:

§ 101.22 Special provisions for large model rockets.

Persons operating model rockets that use not more than 125 grams of propellant; that are made of paper, wood, or breakable plastic; that contain no substantial metal parts, and that weigh not more than 1,500 grams, including the propellant, need not comply with subparagraphs 101.23 (b), (c), (g), and (h) provided:

(a) That person complies with all provisions of § 101.25; and

(b) The operation is not conducted within 5 nautical miles of an airport runway or other landing area unless the information required in § 101.25 is also provided to the manager of that airport.

3. Section 101.25 is amended by revising the introductory text and paragraphs (a), (b), (c), and (d) to read as follows:

§ 101.25 Notice requirements.

No person may operate an unmanned rocket unless that person gives the following information to the FAA ATC facility nearest to the place of intended operation no less than 24 hours prior to and no more than 48 hours prior to beginning the operation:

(a) The names and addresses of the operators, except when there are multiple participants at a single event, a single name may be designated for all operations in the event;

(b) The estimated number of rockets to be operated;

(c) The estimated size and the estimated weight of each rocket; and

(d) The estimated highest altitude or flight level to which each rocket will be operated.

* * * * * *

Issued in Washington, DC, on September 2, 1992.

L. Lane Speck,

Director, Air Traffic, Rules and Procedures Service.

[FR Doc. 92-21718 Filed 9-9-92; 8:45 am]

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federal register

Thursday
September 10, 1992

Part V

Department of Labor

Office of Labor-Management Standards

29 CFR Part 403

Abbreviated Annual Financial Reports for Small Labor Organizations; Proposed Rule

DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Part 403

RIN 1294-AA08

Abbreviated Annual Financial Reports for Small Labor Organizations

AGENCY: Office of Labor-Management Standards, Labor.

ACTION: Proposed rule.

SUMMARY: The Office of Labor-Management Standards (OLMS) is proposing an abbreviated labor organization financial report (Form LM-4) for small unions with annual receipts of less than $10,000. Section 201(b) of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), requires labor organizations to file annual financial reports with the Department of Labor. The proposed abbreviated financial reporting form, developed pursuant to the Secretary's authority in Section 208 of the LMRDA, will ease the reporting burden on small unions.

DATES: Interested parties may submit written comments on this proposal. All comments must be submitted by October 13, 1992.

ADDRESSES: Written comments should be submitted to Marshall J. Breger, Acting Assistant Secretary for Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., room S2203, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Marshall J. Breger, Acting Assistant Secretary for Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., room S2203, Washington, DC 20210, Telephone: (202) 523-9674.

SUPPLEMENTARY INFORMATION:

A. Background and Overview

Section 201(a) of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), requires each covered labor organization to, among other things, adopt a constitution and bylaws and file these documents and information on rates of dues and fees, as well as any subsequent changes in these items, with the Secretary of Labor. Section 201(b) of the LMRDA requires each covered labor organization to file annually a financial report signed by its president and treasurer or corresponding principal officers, disclosing its financial condition for the preceding fiscal year. The Secretary of Labor has delegated her authority under the LMRDA to the Assistant Secretary for Labor-Management Standards. See Secretary's Order No. 3-84 (49 FR 20578).

The requirements of section 201 apply to all labor organizations in the private sector including those representing employees under the provisions of the National Labor Relations Act, as amended, and the Railway Labor Act, as amended. Section 1209(b) of the Postal Reorganization Act made the LMRDA applicable to labor organizations representing employees of the U.S. Postal Service. Section 701 of the Civil Service Reform Act of 1978 (CSRA) and section 1017 of the Foreign Service Act of 1980 (FSA), as implemented by Department of Labor regulations at 29 CFR Parts 457-459, extended the LMRDA reporting requirements to labor organizations representing certain employees of the federal government.

Approximately 39,200 labor organizations are subject to the LMRDA, CSRA, and FSA and file reports with OLMS. Currently, labor organizations with total annual receipts of $100,000 or more must file the detailed Form LM-2 which has 14 supporting financial schedules. (Approximately 10,700 organizations now file Form LM-2.) Labor organizations with total annual receipts of less than $100,000 and not in trusteeship may file Form LM-3 which is shorter than the Form LM-2 and does not contain any supporting financial schedules. (Approximately 25,000 organizations now file Form LM-3.) Additionally, national organizations may file simplified reports on behalf of affiliated local labor organizations which have no assets, no liabilities, no receipts, and no disbursements and are not in trusteeship during the period covered by the report. (Approximately 3,500 organizations now have the simplified report filed on their behalf.)

On April 17, 1992, the Department published in the **Federal Register** (57 FR 14244) a notice of proposed rulemaking which would modify the existing Forms LM-2 and LM-3 in three significant respects. The proposed rule:

—Requires that reporting labor organizations disclose expenses on a functional basis when preparing Forms LM-2 or LM-3;

—Requires reporting labor organizations to utilize the accrual method of accounting when preparing Forms LM-2 or LM-3; and

—Raises the ceiling for filing the less complicated Form LM-3 to annual financial receipts of less than $200,000.

Section 208 of the LMRDA authorizes the Secretary to issue rules and regulations prescribing the form and publication of the annual financial report, and directs the Secretary to provide for an abbreviated report for labor organizations when she finds that by virtue of their size a detailed report would be unduly burdensome. The proposed Form LM-4 was developed pursuant to this authority.

B. Abbreviated Reports

The Department of Labor is proposing to issue an abbreviated annual financial report for labor organizations with less than $10,000 in annual receipts. Approximately 14,000 unions would be authorized to file the abbreviated Form LM-4 in addition to approximately 3,500 unions with no assets and no receipts which currently have reports filed on their behalf by the parent organizations.

Most of the officers of these small unions are rank and file members who work at their regular jobs and conduct union business on their own time in the evenings and on weekends. There are frequent changes of these officers who typically have minimal accounting or bookkeeping experience. Furthermore, due to limited resources, these unions cannot afford professional assistance for bookkeeping or reporting purposes. Therefore, the Department of Labor proposes the abbreviated financial report (Form LM-4) to ease the reporting burden for these small unions. The proposed Form LM-4 requires labor organizations to report summary financial information in the following five categories:

—Receipts

—Payments to officers and employees

—Other disbursements

—Assets

—Liabilities

In addition, the proposed Form LM-4 contains questions regarding:

—Changes to the organization's constitution and bylaws;

—Changes to the rates of dues or fees; and

—Loss or shortage of funds or property.

The Department of Labor believes that the proposed Form LM-4 will allow members to obtain adequate disclosure information concerning the financial conditions of their labor organizations, reduce the reporting burden for these small unions, and prevent an inordinate proportion of their income being used for mandated bookkeeping and reporting costs which would reduce the amount available for appropriate membership activities.

C. Related Comments

On April 17, 1992, the Department of Labor published a proposed rule in the **Federal Register** (57 FR 14244) to revise existing Labor Organization Annual Reports (Forms LM-2 and LM-3). That proposed rule also requested comments on the concept of an abbreviated financial report for unions with minimal reciepts and/or assets (less than $5,000 to $10,000). The Department received nine comments regarding the abbreviated financial report.

Four parent body labor organizations submitted comments supporting the abbreviated reports; three of these organizations suggested that the dollar level should be greater than $10,000. Two certified public accounting firms also expressed support for an abbreviated form. A former OLMS employee/consultant suggested that labor organizations with annual receipts of less than $10,000 be permitted to continue filing the current Form LM-3. One response indicated that an abbreviated report might be appropriate but suggested strict reporting requirements to include, among other things, functional reporting, and the inclusion of assets, receipts, and expenditures in the dollar threshold test to qualify to file an abbreviated report. Finally, another response suggested that the Department should more clearly define the proposal and stated that the simplification should not come at the expense of union members' access to revenue and expense information. The Department of Labor considered these comments in preparing the proposed Form LM-4 which will permit interested parties to comment in greater detail on the concept of an abbreviated report.

The April 17 proposed rule also requested specific comments on the proposal to require labor organizations to utilize the accrual method of accounting to complete the required LM-2 and LM-3 reports. A number of the comments received expressed opposition to this proposed requirement. Several recommended that the accrual method be optional for all unions and others recommended that the requirement for the accrual method should be based on some threshold of annual receipts. In light of these comments and the Department's desire to ease the reporting burden for small unions, the proposed Form LM-4 has been designed to be completed on the cash basis but labor organizations would have the option to complete the proposed Form LM-4 using the accrual basis of accounting. The Department of Labor is actively reviewing all of the comments received with respect to accrual reporting and other issues as they relate to the proposed Forms LM-2 and LM-3.

D. Regulatory Procedures

The Department of Labor has determined that this proposed rule is not a "major rule" under Executive Order 12291 in that it will not have an annual effect on the economy of $100 million or more, not cause a major increase in costs or prices, and not have an adverse effect on competition in the marketplace. Therefore, no regulatory impact analysis is required.

The Agency Head has certified that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act. The proposed rule would only apply to labor organizations and would decrease the reporting burden on labor organizations with annual receipts of less than $10,000. In accordance with the provisions of the Regulatory Flexibility Act, the Department of Labor has determined that the labor unions regulated pursuant to the statutory authority granted under the LMRDA do not constitute small entities. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

E. Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act of 1980, as amended, information collection requirements have been submitted to the Office of Management and Budget for approval. Send comments regarding these information collection requirements to Marshall J. Breger, Acting Assistant Secretary for Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., room S2203, Washington, DC 20210.

List of Subjects Affected in 29 CFR Part 403

Labor unions, reporting and recordkeeping requirements.

Text of Proposed Rule

In consideration of the foregoing, the Department of Labor, Office of Labor-Management Standards proposes that part 403 of title 29, Code of Federal Regulations, be amended as follows:

PART 403—LABOR ORGANIZATION ANNUAL FINANCIAL REPORTS

1. The authority citation for part 403 continues to read as follows:

Authority: Secs. 201, 208, 301, 73 Stat. 524, 529, 530; 29 U.S.C. 431, 438, 461; Secretary's Order No. 3-84 (49 FR 20578).

§ 403.4 [Amended]

2. Section 403.4 is amended by redesignating paragraph (a) as paragraph (a)(1) and adding a new paragraph (a)(2) as follows:

§ 403.4 Simplified annual reports for smaller labor organizations.

(a)(1) * * *

(2) If a labor organization, not in trusteeship, has gross annual receipts totaling less than $10,000 for its fiscal year, it may elect, subject to revocation of the privileges as provided in section 208 of the Act, to file the annual financial report called for in section 201(b) of the Act and § 403.3 of this part on United States Department of Labor Form LM-4 entitled "Labor Organization Annual Report" in accordance with the instructions accompanying such form and constituting a part thereof.

* * * * *

Signed in Washington, DC, this 4th day of September, 1992.

Marshall J. Breger,

Acting Assistant Secretary for Labor-Management Standards.

BILLING CODE 4510-86-M

U.S. Department of Labor
Office of Labor-Management Standards
Washington, DC 20210

Form approved
Office of Management and Budget

LABOR ORGANIZATION ANNUAL REPORT
FORM LM-4

FOR USE BY LABOR ORGANIZATIONS WITH LESS THAN $10,000 IN RECEIPTS

This report is mandatory under PL 86-257, as amended. Failure to comply may result in criminal prosecution, fines, or civil penalties as provided by 29 USC 439 or 440.

READ THE INSTRUCTIONS CAREFULLY BEFORE PREPARING THIS REPORT. SUBMIT THIS REPORT IN DUPLICATE.

IMPORTANT

If label is here → please peel off top part and place in same box on next copy of form.

If label information is correct, leave items 4 through 8 blank.

If label information is incorrect, complete items 4 through 8.

1. FILE NUMBER

2. PERIOD COVERED

	MO	DAY	YR
FROM			
THROUGH			

3. WHERE LOCATED OR CHARTERED TO OPERATE:
CITY _____ COUNTY _____ STATE _____

4. AFFILIATION OR ORGANIZATION NAME

5. DESIGNATION (Local, Lodge, etc.)

6. DESIGNATION NUMBER

7. UNIT NAME (if any)

8. MAILING ADDRESS:
(In care of) NAME OF PERSON
NUMBER AND STREET
CITY STATE ZIP CODE

9. During the reporting period, did your organization have any changes in its constitution or bylaws? *(If yes, attach a copy.)*	☐ Yes ☐ No
10. During the reporting period, did your organization change its rates of dues and fees? *(If yes, report the rates in item 16.)*	☐ Yes ☐ No
11. Enter the total receipts of your organization during the reporting period. *(If $10,000 or more, your organization must file Form LM-2 or LM-3 instead of this form.)*	$ _____
12. Disbursements made by your organization during the reporting period:	
(a) Enter all payments to officers & employees *(salaries, lost time pay, allowances, expenses, etc.).*	$ _____
(b) Enter all other disbursements *(per capita tax, loans made, payments for office supplies, etc.).*	$ _____
13. Enter the total value of all your organization's assets at the end of the reporting period *(cash, bank accounts, investments, equipment, buildings, etc.).*	$ _____
14. Enter the total liabilities (debts) of your organization at the end of the reporting period *(unpaid bills, loans owed, mortgages owed, etc.).*	$ _____
15. During the reporting period, did your organization discover any loss or shortage of funds or property? *(If yes, provide details in item 16.)*	☐ Yes ☐ No

16. ADDITIONAL INFORMATION *(If this is a terminal report, see Section X of the instructions.)*

Each of the undersigned, duly authorized officers of the above labor organization, declares, under the applicable penalties of law,* that all of the information submitted in this report (including the information contained in any accompanying documents) has been examined by the signatory and is, to the best of the undersigned's knowledge and belief, true, correct, and complete.

17. SIGNED: _____ PRESIDENT *(If other title, cross out and write in correct title above. Explain in item 16.)*
at: _____ on: _____
City State Date
( ) _____
Telephone Number

18. SIGNED: _____ TREASURER *(If other title, cross out and write in correct title above. Explain in item 16.)*
at: _____ on: _____
City State Date
( ) _____
Telephone Number

*See Section VI on "penalties" in the instructions.

Form LM-4 (1992)

Instructions for Labor Organization Annual Report, Form LM-4

General Instructions

I. Who Must File—Every labor organization subject to the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), the Civil Service Reform Act (CSRA), or the Foreign Service Act (FSA) must file a financial report, Form LM-2, LM-3, or LM-4, each year with the Office of Labor-Management Standards (OLMS) of the U.S. Department of Labor. These laws cover labor organizations that represent employees in private industry, employees of the U.S. Postal Service, and most Federal government employees. Labor organizations that represent only State, and municipal government employees are not required to file. If you have a question about whether your organization is required to file, contact the nearest OLMS field office listed on the last page of these instructions.

II. What Form to File.—A labor organization subject to the LMRDA, CSRA, or FSA may file its annual report on Form LM-4 only if it meets the following two conditions:

—The labor organization had total annual receipts of less than $10,000 in the 12-month period covered by the report. The term "total annual receipts" includes all receipts and other funds handled by the labor organization regardless of source and without exclusions or deductions of any kind.

—The labor organization was not in trusteeship at the end of its reporting period.

If not eligible to use Form LM-4, your organization may report on Form LM-3 if it had less than $200,000 in annual receipts and was not in trusteeship at the end of its reporting period. Your organization must file Form LM-2 if it had $200,000 or more in annual receipts or was in trusteeship.

III. When to File—Form LM-4 must be filed within ninety (90) days after the end of your organization's fiscal year (a calendar year or other 12-month reporting period). The law does not authorize the U.S. Department of Labor to grant an extension of time for filing reports for any reason.

If your organization went out of existence during its fiscal year, a terminal report must be filed within thirty (30) days after the date it ceased to exist. See Section X of these instructions for information on filing a terminal report.

IV. Where to File—The original and one duplicate copy of Form LM-4 and any required attachments must be filed with the U.S. Department of Labor at the following address: U.S. Department of Labor, Office of Labor-Management Standards, 200 Constitution Avenue, NW, Washington, DC 20210.

If available, use the pre-addressed envelope enclosed with the report package to file Form LM-4.

V. Public Disclosure—The LMRDA requires that the U.S. Department of Labor make labor organization financial reports available for inspection by the public. Reports may be examined and copies purchased at the OLMS Public Disclosure Room at the above address or at the OLMS field office in whose jurisdiction the reporting organization is located. See the last page of these instructions for a list of field offices.

VI. Responsibilities of Officers and Penalties—The president and treasurer or the corresponding chief executive and financial officers required to sign Form LM-4 are personally responsible for its filing and accuracy. Under the LMRDA, officers are subject to criminal penalties for willful failure to file a required report and for false reporting. False reporting includes making any false statement or misrepresentation of a material fact while knowing it to be false, or for knowingly failing to disclose a material fact in a required report or in the information required to be contained in it or in any information required to be submitted with it. Under the CSRA and FSA and implementing regulations, false reporting and failure to report may result in administrative enforcement action and litigation. The officers responsible for signing Form LM-4 are also subject to criminal penalties for false reporting under section 1001 of Title 18 of the United States Code.

VII. Record Keeping—The officers required to file Form LM-4 are responsible for maintaining records which will provide in sufficient detail the information and data necessary to verify the accuracy and completeness of the report. Under the LMRDA, the records must be kept for at least five years after the date the report is filed. Any record necessary to verify, explain, or clarify the report must be retained, including, but not limited to, vouchers, worksheets, receipts, and applicable resolutions.

VIII. Labor Organizations Under Trusteeship—The law requires any labor organization which has assumed a trusteeship over a subordinate labor organization to file, on behalf of the subordinate labor organization, the trusteed organization's annual report. Reports filed for any organization under trusteeship must be on Form LM-2, which can be obtained from the nearest OLMS field office listed on the last page of these instructions.

IX. Completing Form LM-4

Number of Copies

Three blank copies of Form LM-4 are included in this report package. The original and one duplicate copy must be filed with OLMS. A third copy should be maintained in your organization's records.

Legibility

Entries on Form LM-4 should be typed or clearly printed in ink. Do not use a pencil.

Report Only Dollar Amounts

Report amounts in Items 11 through 14 in dollars only. Round cents to the nearest dollar.

Address Label

If this form was mailed to you with an address label, peel off the top label and place it in the corresponding box on the second copy of the form, so that address labels are affixed to the two copies being mailed to OLMS. Use the pre-printed labels even if the information on them is incorrect.

Cash or Accrual Accounting

Form LM-4 is designed for Items 11 through 14 to be completed on the cash basis of accounting. However, if your organization's records are maintained on the accrual basis of accounting, Items 11 through 14 may be completed on that basis. In the cash method of accounting, receipts are recorded when money is actually received and disbursements are recorded when money is actually paid out by your organization. In the accrual method, income is recorded when earned and expenses are recorded when incurred.

If Items 11 through 14 are completed on the accrual basis of accounting, enter the following statement in Item 16 (Additional Information): "This report was prepared on the accrual basis."

Items 1–16

1. File Number—Enter the 6-digit number which OLMS assigned to your organization. If this form was mailed to you with an address label, your file number is the 6-digit number on the first line of the label. If you do not have a label and you cannot obtain the number from prior reports filed by your organization, contact the nearest OLMS field office listed on the last page of these instructions to obtain your organization's file number.

2. Period Covered—Enter the beginning and ending dates of the period covered by this report. The report should never cover more than a 12-month period. For example, if your organization's 12-month fiscal year ends on December 31, enter these dates as "1/1/9__" and "12/31/9__." It would not be correct to enter January 1 of one year to January 1 of the next year.

3. Where Located or Chartered to Operate—Enter the city, county, and State where your organization is located or chartered to operate. If no single city is named in your charter or is authorized by your national or international labor organization, enter the city, county, and State in which your organization's main office, other than a private residence, is located. If your organization has no office, enter the city, county and State where most of the members work. This city, county, and State reported should generally remain the same from year to year and should not be changed on your organization's report because of a change in officers or the mailing address reported in Item 8.

Note: If you do not have an address label or the information on the label is incorrect, complete Items 4 through 8 below in their entirety. If the label information is correct, leave Items 4 through 8 blank.

4. Affiliation or Organization Name—Enter the name of the national or international labor organization which granted your organization a charter. If your organization has no such affiliation, enter the name of your organization as currently identified in your organization's constitution and bylaws or other organizational documents.

5. Designation—Enter the designation that specifically identifies your organization, for example: Local, Lodge, Branch, Joint Board, Joint Council, District Council, etc. If your

organization has no such designation, enter "None" or "Not Applicable."

6. Designation Number—Enter the number or other descriptive term, if any, by which your organization is known. If your organization has no such designation number, enter "None" or "Not Applicable."

7. Unit Name—Enter any additional name by which your organization is known, such as "Chicago Area Local."

8. Mailing Address—Enter the current address where mail will most surely and quickly reach your organization. Be sure to indicate the name of the person, if any, to whom such mail should be sent and include any building and room number.

9. Changes in Constitution or Bylaws—Check Item 9 "Yes" if your organization made any changes in its constitution or bylaws during the reporting period. If "Yes" is checked, attach a copy of the revised constitution and/or bylaws to both copies of the Form LM-4 that your organization files with OLMS. Check "No" if your organization had no changes in its constitution or bylaws.

10. Changes in Rates of Dues and Fees—Check Item 10 "Yes" if your organization changed its rates of dues and fees during the reporting period. If "Yes" is checked, report the rates of dues and fees in Item 16. Dues and fees include initiation fees charged to new members, fees (other than dues) from transferred members, fees for work permits, and regular dues or fees. Include only the dues and fees of regular members and not the dues and fees of members with special rates, such as apprentices, retirees, and unemployed members. Check "No" if your organization did not change its rates of dues and fees.

11. Receipts—Enter in Item 11 the total amount of all receipts of your organization during the reporting period including, for example, dues from members, fees, fines, assessments, interest received, dividends, rent, money from the sale of assets, and loans received by your organization. Enter "00" if your organization had no receipts during the reporting period.

Note: If your organization's annual receipts are $10,000 or more, your organization must report on Form LM-2 or Form LM-3 as explained in Section II of these instructions.

12. Disbursements

(a) Payments to Officers and Employee—Enter in Item 12(a) the total amount of all payments to officers and employees made by your organization during the reporting period.

The amount reported should include gross salaries (before tax withholdings and other payroll deductions); lost time pay; monthly, weekly, or daily allowances; and expenses for conducting official business of the organization including travel expenses. Enter "00" if your organization made no payments to officers or employees during the reporting period.

(b) Other Disbursements—Enter in Item 12(b) the total amount of all other disbursements made by your organization during the reporting period including, for example, per capita tax and any other fees or assessments which your organization paid to any other organization, payments for administrative expenses, loans made by your organization, and taxes paid. Do not include payments to officers and employees, which must be reported in Item 12(a). Enter "00" if your organization made no other disbursements during the reporting period.

Note: Section 503(a) of the LMRDA prohibits labor organizations from making direct or indirect loans to any officer or employee of the labor organization which results in a total indebtedness on the part of such officer or employer to the labor organization in excess of $2,000.

13. Assets—Enter in Item 13 the total value of all your organization's assets at the end of the reporting period including, for example, cash on hand and in banks, property, buildings, loans owed to your organization, investments, office furniture, automobiles, and anything else owned by your organization. Enter "00" if your organization had no assets at the end of the reporting period.

14. Liabilities—Enter in Item 14 the total amount of your organization's liabilities at the end of the reporting period including, for example, unpaid bills, loans owed, total amount of mortgages owed, and other debts of your organization. Enter "00" if your organization had no liabilities at the end of the reporting period.

15. Losses or Shortages—Check Item 15 "Yes" if any loss or shortage of funds or other property of your organization was discovered during the reporting period even if there has been repayment or an agreement to make restitution. If Item 15 is checked "Yes," describe the loss or shortage in detail in Item 16 including such information as the amount of the loss or shortage of funds or a description of the property that was lost, how it was lost, and to what extent, if any, there has been any recovery by means of restitution, surety bond, insurance, or other means. Check "No" if no losses or shortages were discovered.

Note: Section 502(a) of the LMRDA requires every officer or employee of a labor organization (whose property and annual financial receipts exceed $5,000 in value) who handles funds or other property of the organization to be bonded. The amount of the bond must be at least 10% of the value of the funds handled by the individual during the last reporting period. The bond must be obtained from a surety company approved by the Secretary of the Treasury. If you have any questions or need more information about bonding requirements, contact the nearest OLMS field office listed on the last page of these instructions.

16. Additional Information—Use Item 16 to provide additional information as indicated in Items 10, 15, 17, and 18 and in the instructions for Section X concerning labor organizations which have terminated. If there is not enough space in Item 16, report the additional information on a separate letter-size page. At the top of the page clearly print the name of your organization, its 6-digit file number as shown in Item 1 of the form, and the ending date of the reporting period as shown on the second line of Item 2.

17–18. Signatures—The original and one copy of completed Form LM-4 filed with OLMS must be signed by the president (or chief executive officer) and treasurer (or chief financial officer) of your organization. If the duties of the chief executive or chief financial officer are performed by officers other than the president and treasurer, the report may be signed by the other officers. If the report is signed by an officer other than the president or treasurer, enter the correct title in Item 17 or 18, cross out the printed title, and explain in Item 16 why the president or treasurer did not sign the report. Indicate the city and State where the report was signed and the telephone number at which the signatories conduct official business; include the area code. You do not have to report a private, unlisted telephone number.

X. Labor Organizations Which Have Terminated—If your organization has gone out of existence as a reporting labor organization, the last president and treasurer or the official responsible for winding up the affairs of your organization must file a terminal financial report for the period from the beginning of the fiscal year to the date of termination. A terminal financial report must be filed if your organization has disbanded, merged into another organization, or consolidated with other organizations to form a new organization. A terminal financial report is not required if your organization changed its affiliation but continues to function as a separate reporting labor organization.

The terminal financial report may be filed on Form LM-4 only if your organization:

—Filed its previous annual report on Form LM-4;

—Had total annual receipts of less than $10,000 for the part of the last fiscal year during which your organization existed; and

—Was not in trusteeship.

If not eligible to use Form LM-4, your organization must report on Form LM-2 or LM-3, as explained in Section II of these instructions.

To complete a terminal report on Form LM-4 follow the instructions in Section IX and in addition:

—Print the words "TERMINAL REPORT" at the top of Form LM-4.

—Enter the date your organization ceased to exist in Item 2 after the word "THROUGH."

—Print the words "TERMINAL REPORT" as the first entry in Item 16 and provide a detailed statement of the reason why your organization ceased to exist. Also provide the name and address of the person or organization that will retain the records of the terminated organization. If your organization merged with another labor organization, give that organization's name, address, and 6-digit file number.

Your organization's terminal financial report must be filed within 30 days after the date of termination. Contact the nearest OLMS field office listed below if you have questions about filing a terminal report.

Assistance may be obtained from the field offices of the U.S. Department of Labor's Office of Labor-Management Standards located in the following cities:

Albany, NY
Atlanta, GA

Boston, MA
Buffalo, NY
Chicago, IL
Cincinnati, OH
Cleveland, OH
Dallas, TX
Denver, CO
Detroit, MI
Grand Rapids, MI
Hato Rey, PR
Honolulu, HI
Houston, TX
Iselin, NJ
Kansas City, MO
Los Angeles, CA
Miami, FL
Milwaukee, WI
Minneapolis, MN
Nashville, TN
New Haven, CT
New Orleans, LA
New York, NY
Philadelphia, PA
Pittsburgh, PA
St. Louis, MO
San Diego, CA
San Francisco, CA
Seattle, WA
Tampa, FL
Vestavia Hills, AL
Washington, DC

Consult local telephone directory listings under United States Government, Labor Department, Office of Labor-Management Standards, for the address and telephone number of the nearest field office.

[FR Doc. 92-21904 Filed 9-9-92; 8:45 am]

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Vol. 57, No. 176

Thursday, September 10, 1992

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CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

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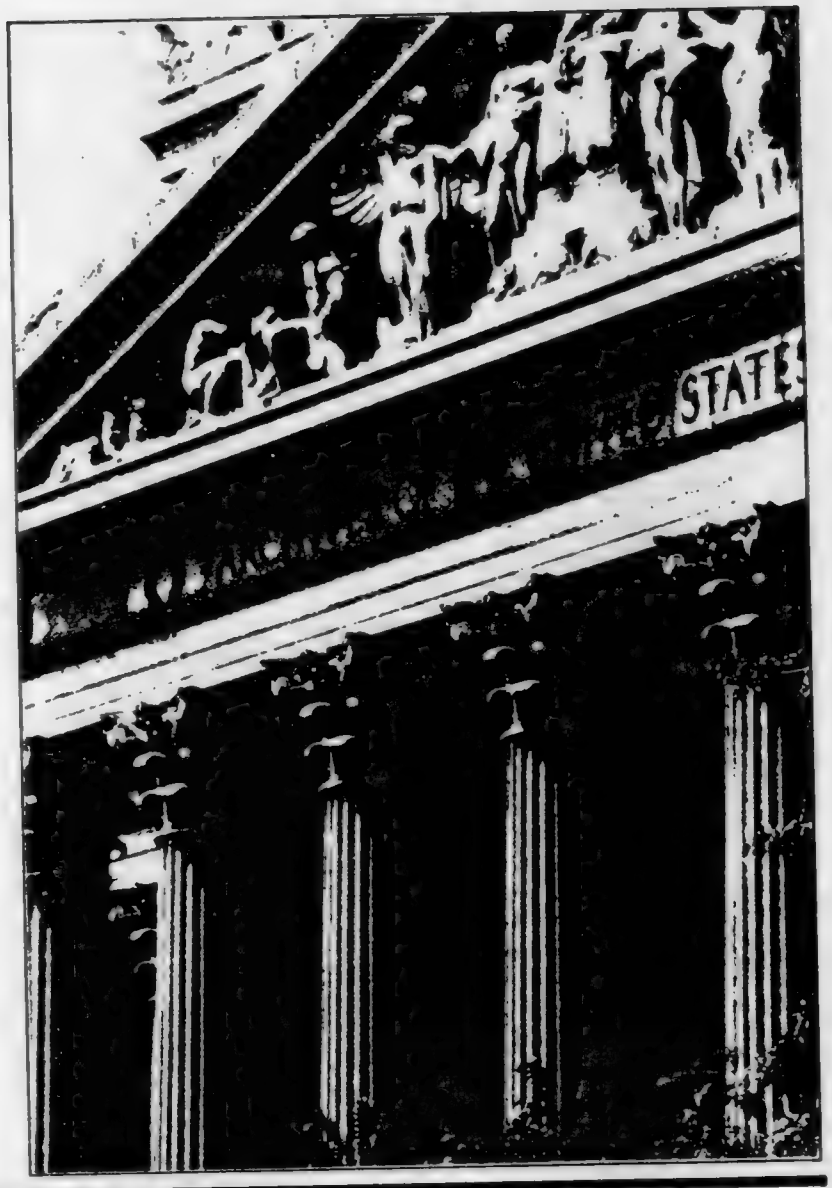

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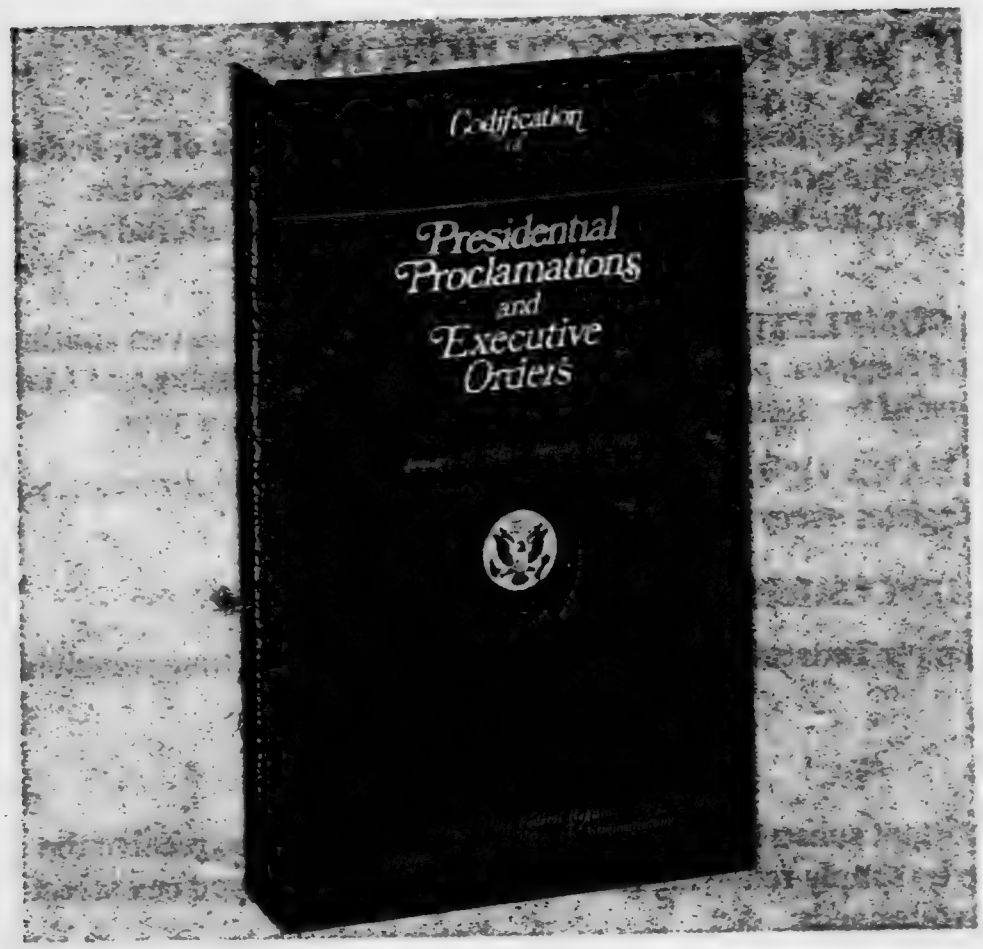

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For information on a briefing in Atlanta, GA, see announcement on the inside cover of this issue.

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Rules and Regulations

Federal Register
Vol. 57, No. 177
Friday, September 11, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL RESERVE SYSTEM

12 CFR Parts 225 and 262

[Regulation Y; Docket No. R-0760]

Bank Holding Companies and Change in Bank Control; Rules of Procedure

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board has revised the provisions of its Rules of Procedure (Rules) and the Board's Regulation Y, Bank Holding Companies and Change in Bank Control. Section 262.3(b) of the Rules requires applicants to publish two newspaper notices of applications filed with the Federal Reserve under section 9 of the Federal Reserve Act (for membership or to establish branches), the Bank Merger Act (if a state member bank is involved), and the Bank Holding Company Act (BHC Act) (to form a bank holding company or for a bank holding company to acquire a bank). These revisions would reduce from twice to once the number of times notice of an application must be published in a newspaper. The amendments would have no effect on public comment periods, which currently start when the first notice is published. Alternative sources of notice will continue to be available, such as the weekly list of pending applications prepared by the Board and the Reserve Banks and, in the case of BHC Act applications, notices published in the **Federal Register**.

EFFECTIVE DATE: October 13, 1992.

FOR FURTHER INFORMATION CONTACT: Scott G. Alvarez, Associate General Counsel (202/452-3583), Oliver I. Ireland, Associate General Counsel (202/452-3625), or Deborah M. Awai, Attorney (202/452-3594), Legal Division; Sidney M. Sussan, Assistant Director (202/452-2638), or Gary P. Knoblach, Senior Financial Analyst (202/452-3270), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452-3544); Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Administrative Procedure Act (5 U.S.C. 552(a)(1)) requires each agency to publish in the **Federal Register** statements that include requirements of all formal and informal procedures available and its rules of procedure. In order to fulfill this requirement, the Board has adopted Rules of Procedure (12 CFR part 262).

Currently, § 262.3(b)(1) of these Rules requires an applicant to publish notice of the following types of applications "on the same day of each of two consecutive weeks" in a newspaper of general circulation:

(i) Application by a state bank for membership in the Federal Reserve System;

(ii) Application by a State member bank to establish a domestic branch;

(iii) Application by a State member bank for the relocation of a domestic branch office;

(iv) Application by a bank for merger, consolidation, or acquisition of assets or assumption of liabilities, if the acquiring, assuming, or resulting bank is to be a State member bank;

(v) Application by a company to become a bank holding company; and

(vi) Application by a bank holding company to acquire ownership or control of shares or assets of a bank, or to merge or consolidate with any other bank holding company.

In July of this year, the Board invited public comment on a proposal to amend § 262.3(b)(1) of its Rules and a related policy statement regarding notice of applications (12 CFR 262.25) to reduce the newspaper publication requirement from twice to once. These revisions would reduce one regulatory burden associated with the filing of applications by reducing the newspaper publication costs and paperwork burden associated with applications that are subject to the publication requirement. The Board also proposed parallel amendments to § 225.14(b) of its Regulation Y (12 CFR part 225) to conform this provision with the revised notice requirements.

The Board sought comment on whether the action would have a serious adverse effect on actual notice of applications and on the opportunity for public comment. The Board also requested comment on the benefits that reducing the publication burden would have compared to the reduction in required newspaper notice. The Board received 17 public comments regarding this proposal. All except two of the commenters support the Board's proposal to reduce the number of newspaper publications. Twelve of the commenters, all bank holding companies, believe that the proposal would reduce the costs and paperwork burden associated with applications that are subject to the newspaper publication requirement.[1] These commenters also believe that the reduction of the newspaper publication requirement would not interfere with the public's ability to submit timely comments with respect to a proposed application since alternative sources of notice such as the **Federal Register** and lists of pending applications prepared by the Board and the Reserve Banks are available.

Two commenters opposed the proposal. Both commenters believe that the proposed reduction in the newspaper publication requirement would decrease the likelihood that the newspaper notice will reach the public making it more difficult for community groups to file comments, and would provide little cost savings to applicants. These commenters noted that because of cost constraints, very few community groups subscribe to the **Federal Register**. The commenters also indicate that the additional newspaper publication requirement would counteract any inaccuracies or omissions that may be contained in the Federal Reserve publications.

Newspaper notice is statutorily required for applications filed pursuant to the Bank Merger Act. For applications filed pursuant to section 9 of the Federal Reserve Act (to establish branch offices or for membership in the Federal Reserve System) or section 3 of the BHC Act (to form a bank holding company or for a bank holding company to acquire a bank), for which no statutory notice is required, newspaper notice has been provided as a matter of policy in order

[1] Three Reserve Banks and one trade association also commented in favor of the proposal.

to permit commenters an opportunity to provide the Board with additional information useful to the Board's evaluation of a pending proposal.[2]

Publication in the **Federal Register** has been the primary means of notice used by the Board to inform the public of pending proposals. The Board believes that a reduction from two to one of the newspaper notice requirement would reduce burden on applicants without significantly reducing the effectiveness of the notice given to the public. In addition to the remaining notice of publication in the newspaper, the public would continue to be made aware of pending applications through various other sources, including public announcement by the applicant (often well in advance of the actual regulatory filing) and weekly publications by both the Board and each Reserve Bank which list, at a minimum, the applications received involving banking organizations in the respective jurisdictions. The Board believes that the retention of at least one newspaper publication requirement is an effective way to notify those members of the general public that may wish to comment on a proposed transaction, and for commenters who may not have access to the **Federal Register** or the weekly publications by both the Board and the Reserve Banks which list pending applications.

The final rule would **not** reduce the amount of time that interested persons would have to provide comments to the Board. That period would continue to be 30 days in general. In addition, the final rule would retain the requirement that newspaper notice must appear no more than ninety calendar days prior to acceptance of an application. This requirement helps to assure that the notice is timely.

Following review of the comments, the Board believes that the elimination of one newspaper publication requirement would not unduly interfere with the ability of the public to submit comments with respect to a proposed application. At the same time, the reduction in a newspaper publication notice would reduce the costs and paperwork burden to applicants associated with filing such applications.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), the Board does not believe that the proposed amendments would have a significant adverse economic impact on a substantial number of small entities. The proposed amendments would reduce certain regulatory burdens for affected depository institutions, reduce certain burdens for small depository institutions, and have no particular adverse effect on other small entities.

Paperwork Reduction Act

The Board, acting pursuant to authority delegated to it by the Director of the Office of Management and Budget under 44 U.S.C. 3507(e), has approved the collection of information called for by part 225 of the Board's Rules.

List of Subjects

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 262

Administrative practice and procedure, Federal Reserve System.

For the reasons set forth in the preamble, the Board amends title 12 of the Code of Federal Regulations, parts 225 and 262, as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831(i), 1843(c)(8), 1844(b), 3106, 3108, 3907, 3909, 3310, and 3331-3351, and sec. 306 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102-242, 105 Stat. 2236 (1991)).

Subpart B—Acquisition of Bank Securities or Assets

2. Section 225.14 is amended by adding a new paragraph (b)(3) to read as follows:

§ 225.14 Procedures for applications, notices, and hearings.

* * * * *

(b) * * *

(3) *Newspaper notice.* The applicant shall cause to be published in a newspaper of general circulation in the affected community, in the form prescribed by the Board in 12 CFR 262.3(b), at least one notice soliciting public comment on the proposed acquisition.

* * * * *

PART 262—RULES OF PROCEDURE

1. The authority citation for part 262 continues to read as follows:

Authority: 5 U.S.C. 552.

2. Section 262.3 is amended by redesignating paragraphs (b)(1) introductory text, (b)(1)(i) through (vi), and the flush text beginning "the applicant" and ending with "the Board" as paragraphs (b)(1)(i) introductory text, (b)(1)(i)(A) through (F), and (b)(1)(i) concluding text, respectively; by removing the words "on the same day of each of two consecutive weeks" from the newly designated paragraph (b)(1)(i) concluding text; by designating the text, following newly designated paragraph (b)(1)(i) concluding text, which begins with the words "The notice shall be placed in the classified" as paragraph (b)(1)(ii); and by revising the first, second and third sentences of newly designated paragraph (b)(1)(ii) to read as follows:

§ 262.3 Applications.

* * * * *

(b) * * * (1)(i) * * *

* * * * *

(ii) The notice shall be placed in the classified advertising legal notices section of the newspaper, and must provide an opportunity for the public to give written comment on the application to the appropriate Federal Reserve Bank for at least thirty days after the date of publication. Within 7 days of publication, the applicant shall submit its application to the appropriate Reserve Bank for acceptance along with a copy of the notice. If the Reserve Bank has not accepted the application as complete within ninety days of the date of publication of the notice, the applicant may be required to republish notice of the application. * * *

* * * * *

§ 262.3 [Amended]

3. In § 262.3, paragraph (b)(2) is amended by removing the word "first" in the second sentence.

§ 262.25 [Amended]

4. In § 262.25, paragraph (a)(1) is amended by removing the word "first" in the first sentence.

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[2] This proposal would reduce the number of times newspaper notice must be published for acquisitions of savings associations to coincide with the publication requirements for acquisitions of banks. Generally, the Board has not required newspaper publication for other proposals to acquire nonbanking interests or engage in nonbanking activities pursuant to section 4 of the BHC Act. As a matter of policy, the Board has required bank holding companies to publish notice in appropriate newspapers of any proposals to acquire savings associations pursuant to 12 CFR 225.25(b)(9).

By order of the Board of Governors of the Federal Reserve System, September 4, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-21880 Filed 9-10-92; 8:45 am]

BILLING CODE 6210-01-F

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12 CFR Part 250

[Docket No. R-0762]

Transactions with Affiliates

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final Rule.

SUMMARY: The Board is adopting a rule to exclude from section 23A of the Federal Reserve Act transactions between affiliated insured depository institutions that are subject to the Bank Merger Act. The exclusion would be available only for transactions that are approved by the appropriate federal banking agency under the Bank Merger Act. The exemption would be available by regulation, and transactions that meet the proposed criteria will not require additional Board review under section 23A. The exclusion is intended to reduce unnecessary regulatory burden by eliminating the need for duplicative federal applications.

EFFECTIVE DATE: September 11, 1992.

FOR FURTHER INFORMATION CONTACT: Christopher J. Bellini, Attorney (202/452-3269), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Background

Section 23A of the Federal Reserve Act (12 U.S.C. 371c) governs the ability of an insured depository institution to lend to or purchase assets of an affiliate. Through its applicability to the purchase of assets, section 23A covers a situation in which an insured depository institution merges with, or purchases all or substantially all of the assets of, an affiliate insured depository institution, unless one of the exemptions in section 23A applies or the Board uses its general authority to grant a case specific exemption. Merger and similar asset acquisition transactions between insured depository institutions are also subject to review and approval by the primary federal banking or thrift authority under the Bank Merger Act (12 U.S.C. 1828(c)) for safety and soundness as well as competitive effects.

Section 23A provides an exemption from the quantitative and collateral restrictions of the statute for transactions between banks affiliated in a bank holding company system (12 U.S.C. 371c(d)(1)).[1] The Board also has not required a section 23A exemption to transfer low-quality assets between affiliated banks in a merger or similar asset acquisition transaction approved under the Bank Merger Act because of the review conducted under that statute of the safety and soundness aspects of the transaction. As a result, in such transactions, duplicative applications under the Bank Merger Act and section 23A have been avoided.

Affiliated thrift institutions became subject to section 23A in 1989 as a result of the enactment of FIRREA (12 U.S.C. 1468(a)(1)). While FIRREA applied section 23A to thrifts in the same manner as it applies to a member bank, FIRREA delayed until 1995 the ability of most thrifts to take advantage of the statutory exemption under section 23A for transactions between affiliated institutions in a holding company system (12 U.S.C. 1468(a)(2)).[2] Accordingly, before engaging in a merger or similar asset acquisition transaction, affiliated thrifts have since 1989 been required to obtain a specific exemption from the Board under section 23A even though the thrifts also must obtain an approval from the acquiring institution's primary federal regulator under the Bank Merger Act.

Section 23A provides the Board with general authority to act by order or regulation to grant specific exemptions from its provisions for transactions that the Board determines are in the public interest and consistent with the purposes of the statute. In considering requests for exemptions, the Board has reviewed carefully the effect of the transaction on the safety and soundness of the institutions involved. The legislative history of FIRREA further indicates that Congress intended this general exemptive authority to extend to transactions involving affiliated thrifts where an exemption is consistent with the purposes of section 23A and with prior Board exemptions. The Board has granted specific exemptions under section 23A for affiliated thrifts involved in merger transactions with the concurrence of the primary federal regulator (the Office of Thrift Supervision) which had conducted a safety and soundness review of the transaction under the Bank Merger Act.

In order to eliminate the need for these duplicative federal applications, the Board proposed to adopt an exemption from section 23A for transactions that are subject to review and approval under the Bank Merger Act.[3] Specifically, the Board proposed to exempt the purchase by one insured depository institution of all or substantially all of the assets of an affiliated insured depository institution, or the merger or consolidation of such institutions, in a transaction in which only one of the institutions continues to operate. The Board did so in light of the fact that in reviewing the Bank Merger Act application for such transactions, the primary federal regulator would conduct the safety and soundness analysis that the Board undertakes in reviewing the section 23A request.

Proposal as Adopted

The Board has determined to adopt the regulation as proposed with a modification to address an issue raised by several commentors and supported by the Office of the Comptroller of the Currency. The Board has determined that the exemption from section 23A should be modified to include all transactions between affiliated insured depository institutions that have been approved by the appropriate federal banking agency under the Bank Merger Act. In this regard, the Board has deleted the restriction in its proposal stipulating that as a result of the transaction only one of the insured depository institutions must continue to operate.

Response to Public Comments

In response to its proposal, the Board received 15 public comments: 10 by holding companies, 2 by law firms, and one each by a depository institution, a corporation, and a trade association. All the commentors favor the exemption because it would reduce regulatory burden and legal and compliance costs by eliminating duplicative regulatory filings. The commentors maintain that the proposal would pose no risk to the safety and soundness of the institutions involved in the transaction, the banking system, or the deposit insurance system because of the existing requirement for prior regulatory review of the transaction under the Bank Merger Act.

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[1] To be eligible for the exemption, the bank holding company must control at least 80 percent of the shares of the affiliated banks.

[2] Thrifts in a bank holding company system are eligible for the exemption if every thrift and bank controlled by the holding company meet all applicable fully phased-in capital rules without reliance on goodwill.

[3] 57 FR 28809, June 29, 1992.

Accordingly, the commentors feel the proposal is in the public interest.

Seven of the commentors also contend that the Board's reasoning supports broadening the proposal to include the other categories of merger or asset acquisition transactions that are subject to approval under the Bank Merger Act. These transactions are (1) the sale of a branch or a particular line of business by an insured depository institution to an affiliated insured depository institution,—a transaction in which both institutions continue to operate; and (2) a purchase of assets by an insured depository institution from a nonbank affiliate.

In light of these comments and in order to further reduce unnecessary regulatory burden, the Board has modified the proposal to include all transactions between affiliated insured depository institutions that are subject to review and approval under the Bank Merger Act. The Board notes that in such transactions a prior safety and soundness review under the Bank Merger Act will be performed and that such transactions permit the more flexible movement of assets to promote improved allocative efficiency among affiliated insured depository institutions.

The Board, however, has determined that transactions between an insured depository institution and a nonbank affiliate that are subject to the Bank Merger Act should not be automatically exempted from section 23A. The legislative history of section 23A and prior Board experience indicate that these transactions contain a greater potential for risk of loss to an insured depository institution and thus are appropriately subject to greater regulatory scrutiny. In this regard, certain of the 1982 amendments to section 23A were prompted by the adverse effect on banks that had resulted from transactions with their nonbank affiliates. Moreover, in analyzing prior section 23A requests, the Board has noted the potential adverse effect on an insured depository institution from such transactions and has granted exemptions only sparingly. Finally, an insured depository institution has no protection under FIRREA from losses incurred in transactions with its nonbank affiliates.[4] Accordingly, the Board has determined that these transactions should continue to be reviewed under section 23A on a case-by-case basis.

[4] The cross-guarantee provisions of FIRREA make insured depository institutions affiliated in holding company systems responsible for each others losses. 12 U.S.C. 1815(e).

Other Comments

Two commentors contend that the Board should include in the proposal all merger and asset acquisition transactions that are subject to approval by federal banking agencies under other federal statutes or regulations. The Board notes, however, that the factors or analysis that an agency considers under such statutes or regulations may be different from the factors or analysis considered under the Bank Merger Act or section 23A.

Finally, a commentor contends that the exemption should apply to all purchases of assets between affiliated insured depository institutions provided that the insured depository institutions perform the safety and soundness analysis required under the Bank Merger Act. The Board believes that such an exemption would not be consistent with the purposes of section 23A or in the public interest because of the potential for abuse to an insured depository institution from affiliate transactions that do not receive prior regulatory review and exceed the thresholds established in section 23A. Accordingly, the Board has determined not to modify the exemption to include these other two categories of transactions.

Final Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), the Board does not believe that the interpretation would have a significant adverse economic impact on a substantial number of small entities. The interpretation would reduce regulatory burdens imposed by section 23A of the Federal Reserve Act and have no particular adverse effect on other entities.

Effective Date

The provisions of the Administrative Procedures Act (APA) (5 U.S.C. 553(d)) that generally prescribe a 30 day prior notice of the effective date of a rule have not been followed in connection with the adoption of this rule because the Board is granting an exemption and reducing regulatory burden. The APA grants a specific exemption from the deferred effective date requirements in these instances (5 U.S.C. 553(d)(1)).

List of Subjects in 12 CFR Part 250

Federal Reserve System.

For the reasons set forth in the preamble, the Board is amending Title 12 of the Code of Federal Regulations, part 250, as follows:

PART 250—MISCELLANEOUS INTERPRETATIONS

1. The authority citation for part 250 is revised to read as follows:

Authority: 12 U.S.C. 248(i) and 371c(e).

2. Section 250.241 is added to read as follows:

§250.241 Exclusion from section 23A of the Federal Reserve Act for certain transactions subject to review under the Bank Merger Act.

(a) *Grant of Exemption.* Section 23A of the Federal Reserve Act shall not apply to a transaction between affiliated insured depository institutions if the transaction has been approved by the appropriate federal banking agency pursuant to the Bank Merger Act.

(b) *Definitions.* For purposes of this section, the terms "appropriate federal banking agency" and "insured depository institution" are defined as those terms are defined in section 3 of the Federal Deposit Insurance Act.

By order of the Board of Governors of the Federal Reserve System, September 4, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-21879 Filed 9-10-92; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8432]

RIN 1545-AJ73

Branch Profits Tax

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final Income Tax Regulations relating to the branch profits tax, branch-level interest tax and qualified resident rules issued under section 884 of the Internal Revenue Code of 1986 (the "Code"). Section 884 was added to the Code by section 1241 of the Tax Reform Act of 1986. These regulations provide guidance needed to comply with this section and generally affect foreign corporations engaged in trade or business in the United States. These regulations also provide guidance relating to the application of section 884 to foreign governments in light of the changes made by the Technical and

Miscellaneous Revenue Act of 1988 under section 892(a)(3) of the Code.

EFFECTIVE DATES: Except as otherwise provided, both the final and temporary regulations are effective for taxable years beginning on or after October 13, 1992. The fourth sentence of § 1.884–0(a) is effective for taxable years ending on or after September 11, 1992, subject to the conditions provided in § 1.884–0. The amendments to § § 1.884–2T(a)(2)(ii) and 1.884–2T(c)(2)(iii) are effective with respect to taxable years beginning after December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Elizabeth U. Karzon of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (202–622–3860, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 35049(h)) under control number 1545–1070. The estimated average annual burden per respondent recordkeeper varies from .1 hours to 8.0 hours depending on individual circumstances, with an estimated average of .3 hours.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents/recordkeepers may require greater or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attention: IRS Reports Clearance Officer T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

On September 2, 1988, proposed and temporary regulations § § 1.884–0T, 1.884–1T, 1.884–2T, 1.884–4T and 1.884–5T were adopted (as part of T.D. 8223) and published in the **Federal Register** at 53 FR 34045 (September 2, 1988). Written comments were received and a public hearing was held on February 19, 1989. Subsequently, several notices were issued by the Internal Revenue Service that set forth changes that would be made to the temporary regulations. Notice 88–133 (1988–2 C.B. 559) provided for transitional relief with respect to certain procedural requirements relating to the qualified resident rules; Notice 89–14 (1989–1 C.B. 633) provided for transitional relief with respect to compliance with the branch-level interest tax rules; Notice 89–73 (1989–1 C.B. 739) announced the branch profits tax rate for foreign corporations that are qualified residents of France; and Notice 89–80 (1989–2 C.B. 394) clarified the branch-level interest tax rules, announced certain changes to those rules for taxable years beginning on or after January 1, 1990, and modified certain of the qualified resident rules.

After consideration of all the comments relating to § § 1.844–0T, 1.844–1T, 1.844–4T, and 1.844–5T, these sections of the temporary regulations are adopted by this Treasury Decision as final regulations. The comments and revisions relating to these sections are discussed below. Section 1.844–2T is also amended by these regulations.

Explanation of the Provisions

I. Branch Profits Tax

A. Foreign Governments

Under section 892(a)(3) (added to the Code by the Technical and Miscellaneous Revenue Act of 1988), a foreign government is treated as a corporate resident of its country for all purposes of the Internal Revenue Code. The final regulations under § 1.844–0 provide that a foreign government is treated as a foreign corporation for purposes of section 884 and is subject to the branch profits tax and the branch-level interest tax. This amendment to the regulations will be effective for taxable years of a foreign government ending on or after September 11, 1992. However, for the first taxable year ending on or after September 11, 1992, no branch profits tax shall be imposed with respect to effectively connected earnings and profits ("ECEP") of a foreign government earned prior to such date or with respect to decreases in U.S. net equity of a foreign government attributable to the portion of the taxable year prior to such date. Nor shall the tax on branch interest or excess interest apply to interest apportioned to the effectively connected income of the foreign government that has been paid or accrued by its U.S. trade or business prior to such date. Pending issuance of final regulations under § 1.882–5, a foreign government may apply the rules in the proposed regulations under § 1.882–5, issued at 57 FR 15038 (April 24, 1992), to determine the amount of its U.S. liabilities for purposes of § 1.844–1 and for purposes of determining its interest expense apportioned to its income that is (or is treated as) effectively connected with its U.S. trade or business for purposes of applying § 1.844–4 of the regulations.

B. U.S. Assets

The rules regarding the definition of U.S. assets have been reorganized for purposes of clarity and revised as discussed below.

1. United States Real Property Interests

A United States real property interest that does not meet the general definition of a U.S. asset under § 1.884–1(d)(1) is no longer treated as a U.S. asset under the special rules of § 1.884–1(d)(2). For example, if a foreign corporation owns non-income producing real property in the United States, such as raw land or a condominium not used in the foreign corporation's trade or business, the property shall not be treated as a U.S. asset of the foreign corporation. The elimination of real property not used in a trade or business as a U.S. asset allows a foreign corporation to make a passive investment in real property in the United States without incurring a branch profits tax on the amount of its initial investment in the United States. Only subsequent appreciation recognized on a disposition of the investment will be subject to the tax. The rule is also consistent generally with the proposed regulations under § 1.882–5 that excludes United States real property interests not used in a trade or business from the definition of U.S. assets for purposes of computing a foreign corporation's interest expense, other than in the year of disposition.

2. Installment Obligations

Taxpayers commented that the rule in § 1.884–1T(d)(7) (relating to the amount of an installment obligation treated as a U.S. asset) inappropriately treats installment obligations arising in taxable years beginning prior to the effective date of the branch profits tax in the same manner as those arising after such date. The final regulations in § 1.884–1(d)(6)(ii)(B) provide that an installment obligation arising from a sale of a U.S. asset occurring in a taxable year prior to January 1, 1987, will have a zero basis (for purposes of computing earnings and profits) ("E&P basis").

The final regulations in § 1.884–1(d)(2)(iii) provide also that if interest or original issue discount received by a foreign corporation on an installment

obligation is not effectively connected with the conduct of a U.S. trade or business, the obligation will not be treated as a U.S. asset. Thus, a decrease in U.S. assets, and a dividend equivalent amount could arise in the year of an installment sale if the interest on the obligation does not give rise to effectively connected income. However, a foreign corporation may elect to treat the interest or original issue discount as effectively connected with the conduct of a trade or business in the United States if the interest or original issue discount would not otherwise be so considered. The U.S. asset rule for installment obligations now conforms more closely to the treatment of U.S. assets generally: An asset is a U.S. asset only if all the income and gain from the asset is (or is treated as) income effectively connected with the conduct of a trade or business in the United States. The rule also parallels the treatment of interest received on installment obligations held by domestic subsidiaries of foreign corporations. Since an installment obligation is generally no longer treated as a U.S. asset, a foreign corporation may completely terminate its U.S. trade or business, within the meaning of § 1.884–2T(a), while holding an installment obligation provided all other requirements of that section have been met.

3. Marketable Securities

The rules of § 1.884–1T(d)(8) describing when marketable securities will be treated as U.S. assets have been replaced by three separate rules in § 1.884–1(d)(2) (v) through (vii): One for bank deposits and credit balances, whether or not interest-bearing; a second for debt instruments; and a third for certain stock or securities owned by foreign corporations engaged in the active conduct of a banking, financing, or similar business in the United States, to the extent that such stock or securities do not otherwise qualify as U.S. assets under the general rule. The rules of § 1.884–1T(d)(8) that are relevant for an election by a foreign corporation to remain engaged in a U.S. trade or business under § 1.884–2T(a) have been moved to that section.

4. Expansion Capital

The expansion capital election provided in § 1.884–1T(d)(11) was intended to permit a foreign corporation to treat cash in excess of working capital as a U.S. asset so that it could accumulate earnings for later capital investment. The election was also intended to provide relief to a foreign corporation that sold a major U.S. asset shortly before the close of the year and was unable to purchase a substitute U.S. asset before the end of the year. Taxpayers commented that the election as drafted in the temporary regulations does not provide the intended relief because an expansion capital asset is treated as a U.S. asset for all purposes of section 884. Thus, a foreign corporation's U.S. liabilities increase proportionately with the amount of expansion capital elected and the foreign corporation cannot in fact increase its U.S. net equity on a dollar-for-dollar basis. Taxpayers also criticized the rule because it does not permit a foreign corporation to convert expansion capital into "real" U.S. assets during the course of the taxable year.

In response to the comments, the expansion capital election has been replaced with an election to reduce liabilities (discussed below). The election to reduce liabilities will accomplish many of the same objectives of the expansion capital election, but without the complexity of a properly drafted expansion capital rule.

5. Interest in a Trust or Estate

Section 1.884–1(d)(4) of the final regulations (relating to an interest in a trust or estate) has been reserved. Proposed regulations relating to this paragraph are being issued simultaneously with these final regulations.

6. U.S. Assets of Insurance Companies

Section 1.884–1T(g) provides a special rule for the computation of U.S. assets of an insurance company that includes in taxable income effectively connected net investment income computed under section 842(b). Taxpayers have commented that the rule produces significant fluctuations in the amount of U.S. assets of an insurance company from year to year, because an insurance company may or may not be subject to the special rule in a given year, and the amount of U.S. assets produced by the formula each year will vary depending on the profitability of the U.S. branch of the insurance company vis-a-vis the profitability of the company worldwide.

A number of alternative rules were considered that would have imputed an amount of U.S. assets to correspond to the additional net investment income computed under section 842(b). Because of the complexity of the other options and the problems inherent in § 1.884–1T(g), the special rule was deleted and the final regulations provide that foreign insurance companies will be subject to the same U.S. asset rules as all other foreign corporations.

C. U.S. Liabilities

1. U.S. Liabilities of an Insurance Company

The final regulations add a rule to clarify that an insurance company's U.S. liabilities include the amount of its total insurance liabilities on United States business within the meaning of section 842(b)(2)(B), as well as any other U.S.-connected liabilities determined under § 1.882–5.

2. Election to Reduce U.S. Liabilities

Under § 1.884–1T(e), a foreign corporation is required to compute its U.S. liabilities by multiplying its U.S. assets by the ratio of its worldwide liabilities to worldwide assets, or, if the foreign corporation computes the amount of its interest expense under § 1.882–5 using a fixed ratio of liabilities to assets, then by such fixed ratio. The use of this formulary approach to determine U.S. liabilities is retained in § 1.884–1(e) of the final regulations, with some minor adjustments. Taxpayers commented, however, that the formulary approach creates a hardship in certain circumstances, because a foreign corporation may reinvest all of its effectively connected earnings and profits in its U.S. trade or business and still have a dividend equivalent amount.

In response to this concern and as a replacement for expansion capital, the final regulations under § 1.884–1(e)(3) allow a foreign corporation to elect annually to reduce the amount of its U.S. liabilities for purposes of both §§ 1.884–1 and 1.884–4 down to the amount of liabilities actually shown on the books of the U.S. trade or business for purposes of § 1.882–5(b)(3) as of the last day of the taxable year. In return, a taxpayer must permanently forego the interest deduction attributable to the reduction in liabilities.

The election to reduce liabilities is similar to the expansion capital election because it would permit a foreign corporation to accumulate earnings to expand its U.S. trade or business. For example, if a foreign corporation has $50 of ECEP, it can retain $50 for expansion of its U.S. trade or business without triggering a $50 dividend equivalent amount if it elects to reduce its U.S. liabilities by $50, thereby increasing its U.S. net equity by $50.

If, however, a foreign corporation does not ultimately reinvest the retained earnings created by the election in additional U.S. assets, it will be required to recapture that amount in a year of complete termination, notwithstanding the complete termination rules in § 1.884–2T(a).

The election was also suggested by foreign corporations whose U.S. trades or businesses produce effectively connected losses. Although a foreign corporation with an effectively connected loss for a taxable year would generally not have a branch tax liability in that year, the interest apportioned to its effectively connected income would still be treated as U.S. source interest under section 884. Such a corporation may prefer to forego the interest deduction rather than be treated as paying U.S. source interest.

D. Treaty-Related Issues

The final regulations under § 1.884-1(g)(4)(iii) clarify the branch profits tax consequences for a foreign corporation with ECEP attributable to both a permanent establishment and a non-permanent establishment. The regulations in § 1.884-1(g)(1) also clarify that if a foreign corporation has more than one trade or business in the United States, and meets the requirements of the active trade or business test described in § 1.884-5(e) with respect to only one of the trades or businesses, the branch profits tax treaty benefits only apply to the ECEP related to the one trade or business. See, however, the new de minimis rule described in the active trade or business test (below).

II. Branch-Level Interest Tax

The final regulations under § 1.884-4 were revised to incorporate the rules announced in Notices 89-14 and 89-80. In response to taxpayers' comments, other technical changes were made in this section relating to the special rules for interest paid and excess interest. For purposes of the final regulations, interest paid by a U.S. trade or business is referred to as "branch interest".

A. Branch Interest of Banks

Notice 89-80 sets forth a new definition of branch interest of banks for taxable years beginning after January 1, 1990. Under this definition, branch interest of a bank includes interest paid with respect to certain liabilities of offshore "shell" branches of foreign banks. A liability of a shell branch does not give rise to branch interest, however, unless the bank notifies its depositors within two months following the close of the calendar year that the interest they have received from the shell branch is U.S. source.

Taxpayers criticized the notification requirement, however, because they believed it placed foreign banks in a competitive disadvantage vis-a-vis domestic banks that were not required to notify their shell branch depositors of the source of their interest payments. In response, the final regulations delete the notification requirements for banks. No inference should be drawn from this regulation regarding the source of interest received or paid with respect to shell branch liabilities. The Service is studying the circumstances under which a foreign branch of a domestic bank should be treated as a shell branch and not engaged in commercial banking business for purposes of section 861(a)(1)(B)(i). Comments are invited on this issue.

B. Nondeductible Interest

Section 1.884-4T(a)(2) of the temporary regulations defines excess interest as the excess of the amount of interest allowable as a deduction to the foreign corporation in computing its effectively connected taxable income under § 1.882-5 over the amount of interest paid by the U.S. trade or business, not including nondeductible amounts of branch interest. The final regulations define excess interest generally as the excess of the amount of interest apportioned to the effectively connected income of a foreign corporation under § 1.882-5, after application of § 1.884-1(e)(3) (relating to the election to reduce liabilities), over the foreign corporation's branch interest. The reference to nondeductible interest was deleted because the amount of interest expense apportioned to effectively connected income under § 1.882-5 includes both deductible and nondeductible interest. Provisions that permanently disallow or defer a deduction or result in the capitalization of interest expense apply after interest expense is apportioned to effectively connected income under § 1.882-5.

C. Excess Interest

The Treasury Department has concluded that the tax on excess interest is not prohibited by the nondiscrimination provision or any other provision in any income tax treaty to which the United States is a party.

III. Qualified Resident Rules

A majority of the comments with respect to this section related to clarifying and liberalizing the three "qualified resident" tests: The stock ownership and base erosion test, the publicly-traded test, and the active trade or business test.

A. Stock Ownership and Base Erosion Test

In the final regulations under § 1.884-5(b), a foreign corporation will satisfy the stock ownership test if more than 50 percent of its stock is beneficially owned by qualifying shareholders (individuals, governments, publicly-traded corporations, not-for-profit organizations and beneficiaries of certain pension trusts resident in the United States or the country of residence of the foreign corporation). As under the temporary regulations, a foreign corporation is required to obtain ownership statements from its qualifying shareholders showing the ownership of its stock by the due date of the corporation's return (including extensions). In addition, each individual shareholder (other than a U.S. citizen or resident) must obtain a certificate of residency from his or her Competent Authority or other relevant authority annually and submit it with the stock ownership statement. If a qualifying shareholder does not directly own stock in the foreign corporation seeking qualified resident status, both the qualifying shareholder and the intermediary in which it does have an interest must submit the appropriate documentation to the foreign corporation. Each intermediary must also submit sufficient information for the foreign corporation to determine the amount of stock (by value) that the qualifying shareholder (or other intermediary) beneficially owns in that intermediary for the requisite time period. The amount of information required has been streamlined where possible. The rules permitting intermediary verification statements as substitutes for certain documentation have been retained.

1. Form of Documentation

Commentators criticized as burdensome the documentation requirements, suggesting that documentation be required only once every three years, or that a resident tax return be provided in lieu of a certificate of residency. In response to these comments, the final regulations under § 1.884-5(b)(3)(iii) ease the documentation requirements for certain widely-held corporations, including mutual savings banks and insurance companies. If such a foreign corporation has at least 250 individual owners, it need not obtain ownership statements and certificates of residency from those of its owners that own less than one percent of the equity of the corporation and may generally rely instead on such individual owners' addresses of record.

2. Special Attribution Rules

Special attribution rules for stock owned by pension trusts were issued in Notice 89-80. Those rules have been incorporated into the regulations in § 1.884-5(b)(8) and expanded to cover

pension funds and other entities that provide pension benefits. The regulations under § 1.884–5(b)(2) also provide attribution rules for determining the ownership of mutual insurance companies, savings banks, and other similar non-stock entities, and revise the attribution rules for corporations and partnerships generally.

3. Documentation Received After Filing of Return

The final regulations will continue to require that the documentation be received by the due date of the return (including extensions). However, § 1.884–5(b)(3)(v) provides that, on a showing of good cause in a petition (prior to examination) to the District Director or Assistant Commissioner (International), as appropriate, a foreign corporation may be granted the right to perfect its documentation after the due date of the return (including extensions).

4. Base Erosion

Taxpayers commented that the base erosion test in § 1.884–5T(c) is too broad because the test treats as base eroding payments all deductible payments, including bona fide payments at arms' length to unrelated persons. The test has been retained in large part, however, because of the difficulty in administering a rule that would exclude such payments. It should be noted that payments by a foreign corporation included in its cost of goods sold are not considered base eroding payment since such payments are excluded from gross income.

B. Publicly-Traded Test

A foreign corporation can be a qualified resident of its country of residence if its stock is both primarily and regularly traded on an established securities market in its country of residence. With respect to the regularly traded portion of the test, taxpayers commented that the minimum turnover requirement for a class of stock in the temporary regulations was too high for many corporations listed on established securities exchanges. Consistent with Notice 89–80, the final regulations lower the turnover requirement for all corporations from 30 percent to 10 percent and the 10 percent rate is adopted in the final regulations in § 1.884–5(d)(4)(i)(B)(*2*).

The final regulations also liberalize the closely-held exception to the regularly traded test. Under § 1.884–5T(d)(4)(ii), a class of stock that is otherwise regularly traded will not meet the test if 100 or fewer persons own 50 percent or more of the stock. The final regulations under § 1.884–5(d)(4)(iii) treat a class of stock as closely held if 50 percent or more of the stock is beneficially owned by one or more five percent shareholders who are not qualifying shareholders. The test applies to both domestic and foreign corporations. The regulations under § 1.884–5(d)(5) clarify that corporations with registered shareholders can sustain the burden of proof with respect to the closely-held test if they maintain a list of their registered shareholders and have no knowledge and no reason to know that their stock is closely held. Corporations with bearer shares can meet the burden of proof with respect to this test as long as they have no knowledge and no reason to know that their stock is closely held. No inference should be drawn from this regulation regarding the definition of "property where there is public trading" for purposes of section 1273(b)(3).

C. Active Trade or Business Test

The active trade or business test generally requires that a foreign corporation have both an active and substantial business in its home country and that the trade or business that gives rise to the income for which a treaty benefit is claimed is an integral part of the home country business. The temporary regulations generally require that a minimum percentage of the foreign corporation's assets, income, and payroll be in the treaty country to meet the substantial presence portion of the test.

Commentators raised a number of issues regarding the regulation's standards for determining whether a foreign corporation has a substantial presence in its home country. In particular, it was argued that certain types of businesses, particularly trading companies, will frequently be unable to meet the minimum percentage of assets and income in the treaty country, although they may meet the payroll test. The suggestions made by commentators would have placed excessive weight on the payroll test, however, and thus were not adopted. While the final regulations retain the minimum asset and income ratios, they do provide an alternative to the income ratio for certain corporations. A foreign corporation engaged in selling tangible property or in manufacturing, producing, growing or extracting tangible property may use the ratio of its direct material costs attributable to tangible property manufactured, produced, grown or extracted in its country of residence to its total cost of goods sold rather than the ratio of its income derived from its country of residence to total income in computing whether it has a substantial presence in the treaty country.

Through the private letter ruling process, it was determined that the active trade or business test should also be available to foreign groups that form a wholly-owned subsidiary in their country of residence to conduct the U.S. operations of the group. In such a case, the subsidiary corporation could not have a substantial presence in its country of residence, nor could its U.S. business be integrated with a foreign trade or business, although its affiliated group as a whole might have a substantial presence in the subsidiary's country of residence and the U.S. business might be an integral part of the business conducted by one or more of the other corporations included in that group. In response to this situation, a rule has been added to the active trade or business test that would allow a foreign corporation to apply the active trade or business test to its entire affiliated group within the meaning of section 1504(a), but without regard to the exclusions under section 1504(b) (2) and (3), rather than just to the foreign corporation alone.

With respect to the integral part requirement of the active trade or business test, the temporary regulations provide that the U.S. and foreign business must be "complementary and mutually interdependent steps * * * in the production and sale or lease of goods or in the provision of services". The temporary regulations also provide a presumption that a U.S. branch of a foreign bank will be treated as an integral part of the foreign bank's activities if more than 50 percent of its loans to the public are to residents in the home country. The final regulations modify the presumption with regard to a bank so that a bank can meet the integral part test provided a substantial part of its business in its country of residence consists of receiving deposits and making loans and discounts. The final regulations also provide a rule that allows a foreign corporation with more than one trade or business in the United States to meet the integral part test with respect to all such trades or businesses provided that at least 80 percent of the foreign corporation's ECEP for a three-year period is attributable to one or more of such trades or businesses that would meet the test.

D. Ruling Process

The ruling process was designed to assist the Service in determining the extent to which the stock ownership test, publicly-traded test and active trade or business test did not adequately

deal with the range of corporations seeking qualified resident status. Many of the issues raised by the rulings have been addressed by changes in the final regulations. The Service recognizes that there are still cases that have to be handled individually, and the regulations retain a ruling request procedure for situations in which corporations do not meet any of the other tests, provided that the ruling request is filed by the due date (including extensions) of the return for the taxable year. The final regulations also indicate with greater specificity some of the factors that will be considered in issuing a ruling.

IV. Complete Termination, Liquidation or Reorganization of a Foreign Corporation

Section 1.884–2T(a)(2)(ii) provides that a foreign corporation must extend the period for assessment of the branch profits tax for the year of complete termination to a date not earlier than the sixth taxable year following that taxable year. Section 1.884–2T(c)(2)(iii) provides that a foreign corporation must also extend the period for assessment of the branch profits tax if it liquidates or reorganizes as part of a section 381(a) transaction and the transferee is a domestic corporation. These regulations provide guidance concerning compliance with this waiver requirement until such time as forms are published.

V. Effective Dates

Except as otherwise provided, the final regulations are effective for taxable years beginning on or after October 13, 1992. Taxpayers may elect, however, to apply § 1.884–1 together with § 1.884–4 to taxable years beginning after December 31, 1986 and before the effective date of these regulations, provided certain conditions are met. Taxpayers may also separately elect to apply § 1.884–5 retroactively to such date, provided certain conditions are met.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these regulations are Elizabeth U. Karzon, of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service and Richard M. Elliott, formerly of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from that office and other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR 1.881–1 Through 1.884–5

Foreign investments in United States, Income taxes.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 is amended by removing the entries for "Sections 1.884–OT through 1.884–5T", "Section 1.884–1T (d)", "Section 1.884–1T (e)" and "Section 1.884–5T (e) and (f)" and adding the following citations to read as follows:

Authority: 26 U.S.C. 7805. * * *

Section 1.884–0 also issued under 26 U.S.C. 884 (g).

Section 1.884–1 also issued under 26 U.S.C. 884 (g).

Section 1.884–1 (d) also issued under 26 U.S.C. 884 (c) (2) (A).

Section 1.884–1 (d) (13) (i) also issued under 26 U.S.C. 884 (c) (2).

Section 1.884–1 (e) also issued under 26 U.S.C. 884 (c) (2) (B).

Section 1.884–2T also issued under 26 U.S.C. 884 (g).

Section 1.884–4 also issued under 26 U.S.C. 884 (g).

Section 1.884–5 also issued under 26 U.S.C. 884 (g).

Section 1.884–5 (e) and (f) also issued under 26 U.S.C. 884 (e) (4) (C). * * *

§§ 1.884–OT, 1.884–1T, 1.884–4T, and 1.884–5T [Removed]

Par. 2. Sections 1.884–OT, 1.884–1T, 1.884–4T and 1.884–5T are removed.

§§ 1.884–0 and 1.884–1 [Added]

Par. 3. Sections 1.884–0 and 1.884–1 are added to read as follows:

§ 1.884–0 Overview of regulation provisions for section 884.

(a) *Introduction.* Section 884 consists of three main parts: a branch profits tax on certain earnings of a foreign corporation's U.S. trade or business; a branch-level interest tax on interest paid, or deemed paid, by a foreign corporation's U.S. trade or business; and an anti-treaty shopping rule. A foreign corporation is subject to section 884 by virtue of owning an interest in a partnership, trust, or estate that is engaged in a U.S. trade or business or has income treated as effectively connected with the conduct of a trade or business in the United States. An international organization (as defined in section 7701(a)(18)) is not subject to the branch profits tax by reason of section 884(e)(5). A foreign government treated as a corporate resident of its country of residence under section 892(a)(3) shall be treated as a corporation for purposes of section 884. The preceding sentence shall be effective for taxable years ending on or after September 11, 1992, except that, for the first taxable year ending on or after that date, the branch profits tax shall not apply to effectively connected earnings and profits of the foreign government earned prior to that date nor to decreases in the U.S. net equity of a foreign government occurring after the close of the preceding taxable year and before that date. Similarly, § 1.884–4 shall apply, in the case of branch interest, only with respect to amounts of interest accrued and paid by a foreign government on or after that date, or, in the case of excess interest, only with respect to amounts attributable to interest accrued by a foreign government on or after that date and apportioned to ECI, as defined in § 1.884–1(d)(1)(iii). Except as otherwise provided, for purposes of the regulations under section 884, the term "U.S. trade or business" includes all the U.S. trades or businesses of a foreign corporation.

(1) *The branch profits tax.* Section 1.884–1 provides rules for computing the branch profits tax and defines various terms that affect the computation of the tax. In general, section 884(a) imposes a 30-percent branch profits tax on the after-tax earnings of a foreign corporation's U.S. trade or business that are not reinvested in a U.S. trade or business by the close of the taxable year, or are disinvested in a later taxable year. Changes in the value of the equity of the foreign corporation's U.S. trade or business are used as the measure of whether earnings have been reinvested in, or disinvested form, a U.S. trade or business. An increase in the equity during the taxable year is

generally treated as a reinvestment of the earnings for the current taxable year; a decrease in the equity during the taxable year is generally treated as a disinvestment of prior years' earnings that have not previously been subject to the branch profits tax. The amount subject to the branch profits tax for the taxable year is the dividend equivalent amount. Section 1.884–2T contains special rules relating to the effect on the branch profits tax of the termination or incorporation of a U.S. trade or business or the liquidation or reorganization of a foreign corporation or its domestic subsidiary.

(2) *The branch-level interest tax.* Section 1.884–4 provides rules for computing the branch-level interest tax. In general, interest paid by a U.S. trade or business of a foreign corporation ("branch interest", as defined in § 1.884–4(b)) is treated as if it were paid by a domestic corporation and may be subject to tax under section 871(a) or 881, and to withholding under section 1441 or 1442. In addition, if the interest apportioned to ECI exceeds branch interest, the excess is treated as interest paid to the foreign corporation by a wholly-owned domestic corporation and is subject to tax under section 881(a).

(3) *Qualified resident.* Section 1.884–5 provides rules for determining whether a foreign corporation is a qualified resident of a foreign country. In general, a foreign corporation must be a qualified resident of a foreign country with which the United States has an income tax treaty in order to claim an exemption or rate reduction with respect to the branch profits tax, the branch-level interest tax, and the tax on dividends paid by the foreign corporation.

(b) *Outline of major topics in §§ 1.884–1 through 1.884–5.*

§ 1.884–1 Branch profits tax.

(a) General rule.
(b) Dividend equivalent amount.
(1) Definition.
(2) Adjustment for increase in U.S. net equity.
(3) Adjustment for decrease in U.S. net equity.
(4) Examples.
(c) U.S. net equity.
(1) Definition.
(2) Definition of amount of a U.S. asset.
(3) Definition of determination date.
(d) U.S. assets.
(1) Definition of a U.S. asset.
(2) Special rules for certain assets.
(3) Interest in a partnership.
(4) Interest in a trust or estate. [Reserved]
(5) Property that is not a U.S. asset.
(6) E&P basis of a U.S. asset.
(e) U.S. liabilities.
(1) Liabilities based on § 1.882–5.
(2) Insurance reserves.
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§ 1.884–2T Special rules for termination or incorporation of a U.S. trade or business or liquidation or reorganization of a foreign corporation or its domestic subsidiary (temporary).

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(2) Marketable security.
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(4) Treatment of income from deemed U.S. assets.
(5) Method of election.
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(c) Liquidation, reorganization, etc. of a foreign corporation.
(1) Inapplicability of paragraph (a)(1) to section 381 (a) transactions.
(2) Transferor's dividend equivalent amount for the taxable year in which a section 381 (a) transaction occurs.
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(4) Earnings and profits of the transferor carried over to the transferee pursuant to the section 381 (a) transaction.
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(6) Example.
(e) Certain transactions with respect to a domestic subsidiary.
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§ 1.884–3T Coordination of branch profits tax with secondtier withholding (temporary). [Reserved]

§ 1.884–4 Branch-level interest tax.

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(b) Branch interest.
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(7) Effect of election under paragraph (c)(1) of this section to treat interest as if paid in year of accrual.
(8) Effect of treaties.
(c) Rules relating to excess interest.
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(2) Interest paid by a partnership.
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§ 1.884–5 Qualified resident.

(a) Definition of qualified resident.
(b) Stock ownership requirement.
(1) General rule.
(2) Rules for determining constructive ownership.
(3) Required documentation.
(4) Ownership statements from qualifying shareholders.
(5) Certificate of residency.
(6) Intermediary ownership statement.
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(9) Availability of documents for inspection.
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(1) General rule.
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(e) Active trade or business.
(1) General rule.
(2) Active conduct of a trade or business.
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(4) Integral part of an active trade or business in the foreign corporation's country of residence.
(f) Qualified resident ruling.
(1) Basis for ruling.
(2) Factors.
(3) Procedural requirements.
(g) Effective dates.
(h) Transition rule.

§ 1.884–1 Branch profits tax.

(a) *General rule.* A foreign corporation shall be liable for a branch profits tax in an amount equal to 30 percent of the foreign corporation's dividend equivalent amount for the taxable year. The branch profits tax shall be in addition to the tax imposed by section 882 and shall be reported on a foreign corporation's income tax return for the taxable year. The tax shall be due and payable as provided in section 6151 and such other provisions of Subtitle F of the Internal Revenue Code as apply to the income tax liability of corporations. However, no estimated tax payments shall be due with respect to a foreign corporation's liability for the branch profits tax. See paragraph (g) of this section for the application of the branch profits tax to corporations that are residents of countries with which the United States has an income tax treaty, and § 1.884–2T for the effect on the branch profits tax of the termination or incorporation of a U.S. trade or business, or the liquidation or reorganization of a foreign corporation or its domestic subsidiary.

(b) *Dividend equivalent amount*—(1) *Definition.* The term "dividend equivalent amount" means a foreign corporation's effectively connected earnings and profits ("ECEP", as defined in paragraph (f)(1) of this section) for the taxable year, adjusted pursuant to paragraph (b) (2) or (3) of this section, as applicable. The dividend equivalent amount cannot be less than zero.

(2) *Adjustment for increase in U.S. net equity.* If a foreign corporation's U.S. net equity (as defined in paragraph (c) of this section) as of the close of the taxable year exceeds the foreign corporation's U.S. net equity as of the close of the preceding taxable year, then, for purposes of computing the foreign corporation's dividend equivalent amount for the taxable year, the foreign corporation's ECEP for the taxable year shall be reduced (but not below zero) by the amount of such excess.

(3) *Adjustment for decrease in U.S. net equity*—(i) *In general.* Except as provided in paragraph (b)(3)(ii) of this section, if a foreign corporation's U.S. net equity as of the close of the taxable year is less than the foreign corporation's U.S. net equity as of the close of the preceding taxable year, then, for purposes of computing the foreign corporation's dividend equivalent amount for the taxable year, the foreign corporation's ECEP for the taxable year shall be increased by the amount of such difference.

(ii) *Limitation based on accumulated ECEP.* The increase of a foreign corporation's ECEP under paragraph (b)(3)(i) of this section shall not exceed the accumulated ECEP of the foreign corporation as of the beginning of the taxable year. The term "accumulated ECEP" means the aggregate amount of ECEP of a foreign corporation for preceding taxable years beginning after December 31, 1986, minus the aggregate dividend equivalent amounts for such preceding taxable years. Accumulated ECEP may be less than zero.

(4) *Examples.* The principles of paragraph (b) (2) and (3) of this section are illustrated by the following examples.

Example 1. Reinvestment of all ECEP. Foreign corporation A, a calender year taxpayer, had $1,000 U.S. net equity as of the close of 1986 and $100 of ECEP for 1987. A acquires $100 of additional U.S. assets during 1987 and its U.S. net equity as of the close of 1987 is $1,100. In computing A's dividend equivalent amount for 1987, A's ECEP of $100 is reduced under paragraph (b)(2) of this section by the $100 increase in U.S. net equity between the close of 1986 and the close of 1987. A has no dividend equivalent amount for 1987.

Example 2. Partial reinvestment of ECEP. Assume the same facts as in *Example 1* except that A acquires $40 (rather than $100) of U.S. assets during 1987 and its U.S. net equity as of the close of 1987 is $1,040. In computing A's dividend equivalent amount for 1987, A's ECEP of $100 is reduced under paragraph (b)(2) of this section by the $40 increase in U.S. net equity between the close of 1986 and the close of 1987. A has a dividend equivalent amount of $60 for 1987.

Example 3. Disinvestment of prior year's ECEP. Assume the same facts as in *Example 1* for 1987. A has no ECEP for 1988. A's U.S. net equity decreases by $40 (to $1,060) as of the close of 1988. A has a dividend equivalent amount of $40 for 1988, even though it has no ECEP for 1988. A's ECEP of $0 for 1988 is increased under paragraph (b)(3)(i) of this section by the $40 reduction in U.S. net equity (subject to the limitation in paragraph (b)(3)(ii) of this section of $100 of accumulated ECEP).

Example 4. Accumulated ECEP limitation. Assume the same facts as in *Example 2* for 1987. For 1988, A has $125 of ECEP and its U.S. net equity decreases by $50. A's U.S. net equity as of the close of 1988 is $990 ($1,040–$50). In computing A's dividend equivalent amount for 1988, the $125 of ECEP for 1988 is not increased under paragraph (b)(3)(i) of this section by the full amount of the $50 decrease in U.S. net equity during 1988. Rather, the increase in ECEP resulting from the decrease in U.S. net equity is limited to A's accumulated ECEP as of the beginning of 1988. A had $100 of ECEP for 1987 and a dividend equivalent amount of $60 for that year, so A had $40 of accumulated ECEP as of the beginning of 1988. The increase in ECEP resulting from a decrease in U.S. net equity is thus limited to $40, and the dividend equivalent amount for 1988 is $165 ($125 ECEP + $40 decrease in U.S. net equity).

Example 5. Effect of deficits in ECEP. Foreign corporation A, a calendar year taxpayer, has $150 of accumulated ECEP as of the beginning of 1991 ($200 aggregate ECEP less $50 aggregate dividend equivalent amounts for years preceding 1991). A has U.S. net equity of $450 as of the close of 1990, U.S. net equity of $350 as of the close of 1991 (i.e., a $100 decrease in U.S. net equity) and a $90 deficit in ECEP for 1991. A's dividend equivalent amount is $10 for 1991, i.e., A's deficit of $90 in ECEP for 1991 increased by $100, the decrease in A's U.S. net equity during 1991. A portion of the reduction in U.S. net equity in 1991 ($90) is attributable to A's deficit in ECEP for that year. The reduction in U.S. net equity in 1991 ($100) triggers a dividend equivalent amount only to the extent it exceeds the $90 current year deficit in ECEP for 1991. As of the beginning of 1992, A has $50 of accumulated ECEP (i.e., 110 aggregate ECEP less $60 aggregate dividend equivalent amounts for years preceding 1992).

Example 6. Nimble dividend equivalent amount. Foreign corporation A, a calendar year taxpayer, had a deficit in ECEP of $100 for 1987 and $100 for 1988, and has $90 of ECEP for 1989. A had $2,000 U.S. net equity as of the close of 1988 and has $2,000 U.S. net equity as of the close of 1989. A has a dividend equivalent amount of $90 for 1989, its ECEP for the year, even though it has a net deficit of $110 in ECEP for the period 1987–1989.

(c) *U.S. net equity*—(1) *Definition.* The term "U.S. net equity" means the aggregate amount of the U.S. assets (as defined in paragraphs (c)(2) and (d)(1) of this section) of a foreign corporation as of the determination date (as defined in paragraph (c)(3) of this section), reduced (including below zero) by the U.S. liabilities (as defined in paragraph (e) of this section) of the foreign corporation as of the determination date.

(2) *Definition of the amount of a U.S. asset.* For purposes of this section, the term "amount of a U.S. asset" means the

U.S. asset's adjusted basis for purposes of computing earnings and profits ("E&P basis") multiplied by the proportion of the asset that is treated as a U.S. asset under paragraphs (d) (1) through (4) of this section. The amount of a U.S. asset that is money shall be its face value. See paragraph (d)(6) of this section for rules concerning the computation of the E&P basis of a U.S. asset.

(3) *Definition of determination date.* For purposes of this section, the term "determination date" means the close of the day on which the amount of U.S. net equity is required to be determined. Unless otherwise provided, the U.S. net equity of a foreign corporation is required to be determined as of the close of the foreign corporation's taxable year.

(d) *U.S. assets*—(1) *Definition of a U.S. asset*—(i) *General rule.* Except as provided in paragraph (d)(5) of this section, the term "U.S. asset" means an asset of a foreign corporation (other than an interest in a partnership, trust, or estate) that is held by the corporation as of the determination date if—

(A) All income produced by the asset on the determination date is ECI (as defined in paragraph (d)(1)(iii) of this section) (or would be ECI if the asset produced income on that date); and

(B) All gain from the disposition of the asset would be ECI if the asset were disposed of on that date and the disposition produced gain.

For purposes of determining whether income or gain from an asset would be ECI under this paragraph (d)(1)(i), it is immaterial whether the asset is of a type that is unlikely to, or cannot, produce income or gain. For example, money may be a U.S. asset although it does not produce income or gain. In the case of an asset that does not produce income, however, the determination of whether income from the asset would be ECI shall be made under the principles of section 864 and the regulations thereunder, but without regard to § 1.864-4(c)(2)(iii)(*b*). For purposes of determining whether an asset is a U.S. asset under this paragraph (d)(1), a foreign corporation may presume, unless it has reason to know otherwise, that gain from the sale of personal property (including inventory property) would be U.S. source if gain from the sale of that type of property would ordinarily be attributable to an office or other fixed place of business of the foreign corporation within the United States (within the meaning of section 865(e)(2)).

(ii) *Special rules for assets not described in paragraph (d)(1)(i) of this section.* An asset of a foreign corporation that is held by the corporation as of the determination date and is not described in paragraph (d)(1)(i) of this section shall be treated as a U.S. asset to the extent provided in paragraph (d)(2) of this section (relating to special rules for certain assets, including assets that produce income or gain at least a portion of which is ECI), and in paragraphs (d) (3) and (4) of this section (relating to special rules for interests in a partnership, trust, and estate).

(iii) *Definition of ECI.* For purposes of the regulations under section 884, the term "ECI" means income that is effectively connected with the conduct of a trade or business in the United States and income that is treated as effectively connected with the conduct of a trade or business in the United States under any provision of the Code. The term "ECI" also includes all income that is or is treated as effectively connected with the conduct of a U.S. trade or business whether or not the income is included in gross income (for example, interest income earned with respect to tax-exempt bonds).

(2) *Special rules for certain assets*—(i) *Depreciable and amortizable property.* An item of depreciable personal property or an item of amortizable intangible property shall be treated as a U.S. asset of a foreign corporation in the same proportion that the amount of the depreciation or amortization with respect to the item of property that is allowable as a deduction, or is includible in cost of goods sold, for the taxable year in computing the effectively connected taxable income of the foreign corporation bears to the total amount of depreciation or amortization computed for the taxable year with respect to the item of property.

(ii) *Inventory.* An item or pool of inventory property (as defined in section 865(i)(1)) shall be treated as a U.S. asset in the same proportion as the amount of gross receipts from the sale or exchange of such property for the three preceding taxable years (or for such part of the three-year period as the corporation has been in existence) that is effectively connected with the conduct of a U.S. trade or business bears to the total amount of gross receipts from the sale or exchange of such property during such period (or part thereof). If a foreign corporation has not sold or exchanged such property during such three-year period (or part thereof), then the property shall be treated as a U.S. asset in the same proportion that the anticipated amount of gross receipts from the sale or exchange of the property that is reasonably anticipated to be ECI bears to the anticipated total amount of gross receipts from the sale or exchange of the property.

(iii) *Installment obligations.* An installment obligation received in connection with an installment sale (as defined in section 453(b)) for which an election under section 453(d) has not been made shall be treated as a U.S. asset to the extent that it is received in connection with the sale of a U.S. asset. If an obligation is received in connection with the sale of an asset that is wholly a U.S. asset, it shall be treated as a U.S. asset in its entirety. If a single obligation is received in connection with the sale of an asset that is in part a U.S. asset under the rules of paragraphs (d) (2) through (4) of this section, or in connection with the sale of several assets including one or more non-U.S. assets, the obligation shall be treated as a U.S. asset in the same proportion as—

(A) The sum of the amount of gain from the installment sale that would be ECI if the obligation were satisfied in full on the determination date and the adjusted basis of the obligation on such date (as determined under section 453B) attributable to the amount of gain that would be ECI bears to

(B) The sum of the total amount of gain from the sale if the obligation were satisfied in full and the adjusted basis of the obligation on such date (as determined under section 453B).

However, the obligation will only be treated as a U.S. asset if the interest income or original issue discount with respect to the obligation is ECI or the foreign corporation elects to treat the interest or original issue discount as ECI in the same proportion that the obligation is treated as a U.S. asset. A foreign corporation may elect to treat interest income or original issue discount as ECI by reporting such interest income or original issue discount as ECI on its income tax return or an amended return for the taxable year. See paragraph (d)(6)(ii) of this section to determine the E&P basis of an installment obligation for purposes of this paragraph (d)(2)(iii).

(iv) *Receivables*—(A) *Receivables arising from the sale or exchange of inventory property.* An account or note receivable (whether or not bearing stated interest) with a maturity not exceeding six months that arises from the sale or exchange of inventory property (as defined in section 865(i)(1)) shall be treated as a U.S. asset in the proportion determined under paragraph (d)(2)(iii) of this section as if the receivable were an installment obligation.

(B) *Receivables arising from the performance of services or leasing of property.* An account or note receivable (whether or not bearing stated interest)

with a maturity not exceeding six months that arises from the performance of services or the leasing of property in the ordinary course of a foreign corporation's trade or business shall be treated as a U.S. asset in the same proportion that the amount of gross income represented by the receivable that is ECI bears to the total amount of gross income represented by the receivable. For purposes of this paragraph (d)(2)(iv)(B), the amount of income represented by a receivable shall not include interest income or original issue discount.

(v) *Bank and other deposits.* A deposit or credit balance with a person described in section 871(i)(3) or a Federal Reserve Bank that is interest-bearing shall be treated as a U.S. asset if all income derived by the foreign corporation with respect to the deposit or credit balance during the taxable year is ECI. Any other deposit or credit balance shall only be treated as a U.S. asset if the deposit or credit balance is needed in a U.S. trade or business within the meaning of § 1.864–4(c)(2)(iii)(*a*).

(vi) *Debt instruments.* A debt instrument, as defined in section 1275(a)(1) (other than an asset treated as a U.S. asset under any other subdivision of this paragraph (d)) shall be treated as a U.S. asset, notwithstanding the fact that gain from the sale or exchange of the obligation on the determination date would not be ECI, if—

(A) All income derived by the foreign corporation from such obligation during the taxable year is ECI; and

(B) The yield for the period that the instrument was held during the taxable year equals or exceeds the Applicable Federal Rate for instruments of similar type and maturity.

Shares in a regulated investment company that purchases solely instruments that, under this paragraph (d)(2)(vi), would be U.S. assets if held directly by the foreign corporation shall also be treated as a U.S. asset.

(vii) *Stocks or securities held by a foreign corporation engaged in a banking, financing or similar business.* Stocks or securities described in § 1.864–4(c)(5)(ii)(*b*)(*3*) held by a foreign corporation engaged in the active conduct of a banking, financing, or similar business in the United States during the taxable year shall be treated as U.S. assets in the same proportion that income, gain, or loss from such stocks or securities is ECI for the taxable year under § 1.864–4(c)(5)(ii).

(viii) *Federal income taxes.* An overpayment of Federal income taxes shall be treated as a U.S. asset to the extent that the tax would reduce a foreign corporation's ECEP for the taxable year but for the fact that the tax does not accrue during the taxable year.

(ix) *Losses involving U.S. assets.* A foreign corporation that sustains, with respect to a U.S. asset, a loss for which a deduction is not allowed under section 165 (in whole or in part) because there exists a reasonable prospect of recovering compensation for the loss shall be treated as having a U.S. asset ("loss property") from the date of the loss in the same proportion that the asset was treated as a U.S. asset immediately before the loss. See paragraph (d)(6)(iv) of this section to determine the E&P basis of the loss property.

(x) *Ruling for involuntary conversion.* If property that is a U.S. asset of a foreign corporation is compulsorily or involuntarily converted into property not similar or related in service or use (within the meaning of section 1033), the foreign corporation may apply to the Commissioner for a ruling to determine its U.S. assets for the taxable year of the involuntary conversion.

(xi) *Examples.* The principles of paragraphs (c) and (d) (1) and (2) of this section are illustrated by the following examples.

Example 1. Depreciable property. Foreign corporation A, a calendar year taxpayer, is engaged in a trade or business in the United States. A owns equipment that is used in its manufacturing business in country X and in the United States. Under § 1.861–8, A's depreciation deduction with respect to the equipment is allocated to sales income and is apportioned 70 percent to ECI and 30 percent to income that is not ECI. Under paragraph (d)(2)(ii) of this section, the equipment is 70 percent a U.S. asset. The equipment has an E&P basis of $100 at the beginning of 1993. A's depreciation deduction (for purposes of computing earnings and profits) with respect to the equipment is $10 for 1993. To determine the amount of A's U.S. asset at the close of 1993, the equipment's $90 E&P basis at the close of 1993 is multiplied by 70 percent (the proportion of the asset that is a U.S. asset). The amount of the U.S. asset as of the close of 1993 is $63.

Example 2. U.S. real property interest not connected to a U.S. business. Foreign corporation A owns a condominium apartment in the United States. Assume that holding the apartment does not constitute a U.S. trade or business and the foreign corporation has not made an election under section 882(d) to treat income with respect to the property as ECI. The condominium apartment is not a U.S. asset of A because the income, if any, from the asset would not be ECI. However, the disposition by A of the condominium apartment at a gain will give rise to ECEP.

Example 3. Stock in a domestically-controlled REIT. As an investment, foreign corporation A owns stock in a domestically-controlled REIT, within the meaning of section 897(h)(4)(B). Under section 897(h)(2), gain on disposition of stock in the REIT is not treated as ECI. For this reason the stock does not qualify as a U.S. asset under paragraph (d)(1) of this section even if dividend distributions from the REIT are treated as ECI. Thus, A will have a dividend equivalent amount based on the ECEP attributable to a distribution of ECI from the REIT, even if A invests the proceeds from the dividend in additional stock of the REIT. (Stock in a REIT that is not a domestically-controlled REIT is also not a U.S. asset. See § 1.884–1(d)(5)).

Example 4. Section 864(c)(7) property. Foreign corporation A is engaged in the equipment leasing business in the United States and Canada. A transfers the equipment leased by its U.S. trade or business to its Canadian business after the equipment is fully depreciated in the United States. The Canadian business sells the equipment two years later. Section 864(c)(7) would treat the gain on the disposition of the equipment by A as taxable under section 882 as if the sale occurred immediately before the equipment was transferred to the Canadian business. The equipment would not be treated as a U.S. asset even if the gain was ECI because the income from the equipment in the year of the sale in Canada would not be ECI.

(3) *Interest in a partnership*—(i) *General rule.* Except as provided in paragraph (d)(3)(ii) of this section, a foreign corporation's interest in a partnership shall be treated as a U.S. asset in the same proportion as its distributive share of partnership gross income for the partnership's taxable year that ends with or within its taxable year that is ECI bears to its distributive share of all partnership gross income for that taxable year.

(ii) *Partnership operated to increase a foreign corporation's U.S. assets artificially.* If the District Director determines that one of the principal purposes of the acquisition of a partnership interest or the acquisition or ownership of certain properties by a partnership is to increase the U.S. assets of a foreign corporation artificially, the District Director may compute the portion of the foreign corporation's interest in the partnership that is a U.S. asset using a method that more accurately reflects the foreign corporation's interest in the partnership property that would be U.S. assets if held directly by the foreign corporation. Whether a partnership interest is acquired, or partnership property is acquired or owned, for such purpose will depend on all the facts and circumstances of each case. Factors to be considered include whether the partnership conducts unrelated businesses or whether the partnership accumulates investment property unrelated to its trade or business or

liquid assets in excess of the reasonable needs of its business. For purposes of this paragraph (d)(3)(ii), to be one of the principal purposes, a purpose must be important, but it is not necessary that it be the primary purpose.

(iii) *Example.* The application of paragraph (d)(3)(ii) of this section is illustrated by the following example.

Example. Foreign corporation A is a partner in partnership X and is entitled to 50 percent of the income of X and 50 percent of the value of all property of X upon X's liquidation. X is engaged in an active U.S. real estate business which, during the taxable year, produces $100 of gross income that is ECI. In the same taxable year, X acquires securities (from funds that are either generated by its business, borrowed or contributed) that produce $50 of gross income that is not ECI. The securities are unrelated to the real estate business and substantially exceed the reasonable needs of the business. The real estate securities each have an adjusted basis of $1000. Under paragraph (d)(3)(i) of this section, two-thirds (50/75) of A's distributive share of partnership gross income is ECI, and two-thirds of A's basis in its partnership interest is therefore treated as a U.S. asset. However, because the securities acquired by X are unrelated to X's real estate business and exceed the reasonable needs of the business, the District Director may determine that a principle purpose of X's acquisition of the securities is to increase artificially the U.S. assets of A. The District Director may, therefore, compute the portion of A's interest in X that is treated as a U.S. asset by, for example, using the ratio of A's pro rata share of the adjusted basis of the property of X that produces income that is ECI ($500) to A's pro rata share of all property of X ($1000). As a result, 50 percent of A's partnership interest would be treated as a U.S. asset rather than 75 percent.

(iv) *Special rule for determining a partner's adjusted basis in a partnership interest.* For purposes of this paragraph (d)(3) and paragraph (d)(6) of this section, a partner's adjusted basis in a partnership interest shall be the partner's basis in such interest (as determined under section 705)—

(A) Reduced by the partner's share of the liabilities of the partnership (as determined under section 752); and

(B) Increased by a proportionate share of each liability of the partnership equal to the partner's proportionate share, for income tax purposes, of the interest expense attributable to such liability for the taxable year.

(v) *E&P basis of a partnership interest.* See paragraph (d)(6)(iii) of this section for special rules governing the calculation of a foreign corporation's E&P basis in a partnership interest.

(4) *Interest in a trust or estate.* [Reserved]

(5) *Property that is not a U.S. asset*—(i) *Property that does not give rise to ECEP.* Property described in paragraphs (d) (1) through (4) of this section shall not be treated as a U.S. asset of a foreign corporation if, on the determination date, income from the use of the property, or gain or loss from the disposition of the property, would be described in paragraph (f)(2) of this section (relating to certain income that does not produce ECEP).

(ii) *Assets acquired to increase U.S. net equity artificially.* U.S. assets shall not include assets acquired or used by a foreign corporation if one of the principal purposes of such acquisition or use is to increase artificially the U.S. assets of a foreign corporation on the determination date. Whether assets are acquired or used for such purpose will depend upon all the facts and circumstances of each case. Factors to be considered in determining whether one of the principal purposes in acquiring or using an asset is to increase artificially the U.S. assets of a foreign corporation include the length of time during which the asset was used in a U.S. trade or business, whether the asset was acquired from, or disposed of to, a related person, and whether the aggregate value of the U.S. assets of the foreign corporation increased temporarily on the determination date. For purposes of this paragraph (d)(5)(ii), to be one of the principal purposes, a purpose must be important, but it is not necessary that it be the primary purpose.

(iii) *Interbranch transactions disregarded.* All assets that arise from interbranch transactions will be disregarded.

(6) *E&P basis of a U.S. asset*—(i) *General rule.* The E&P basis of a U.S. asset for purposes of this section is its adjusted basis for purposes of computing the foreign corporation's earnings and profits. In determining the E&P basis of a U.S. asset, the adjusted basis of the asset (for purposes of computing taxable income) must be increased or decreased to take into account inclusions of income or gain, and deductions or similar charges, that affect the basis of the asset where such items are taken into account in a different manner for purposes of computing earnings and profits than for purposes of computing taxable income. For example, if section 312 (k) requires that depreciation with respect to a U.S. asset be determined using the straight line method for purposes of computing earnings and profits, but depreciation with respect to the asset is determined using a different method for purposes of computing taxable income, the E&P basis of the property for purposes of this section must be computed using the straight line method of depreciation.

(ii) *Installment obligations*—(A) *Sales in taxable year beginning on or after January 1, 1987.* For purposes of this section, the E&P basis of an installment obligation described in paragraph (d)(2)(iii) of this section that arises in connection with an installment sale occurring in a taxable year beginning on or after January 1, 1987, shall equal the sum of the total amount of gain from the sale if the obligation were satisfied in full and the adjusted basis of the property sold as of the date of sale, reduced by payments received with respect to the obligation that are not interest or original issue discount. See paragraph (j)(2)(ii) of this section, however, for a special E&P basis rule for an installment obligation arising in connection with a sale of a U.S. asset by a foreign corporation described in section 312(k)(4), where such sale occurs in a taxable year beginning in 1987.

(B) *Sales in taxable year prior to January 1, 1987.* For purposes of this section, the E&P basis of an installment obligation described in paragraph (d)(2)(iii) of this section that arises in connection with an installment sale occurring in a taxable year beginning before January 1, 1987, shall equal zero.

(iii) *Computation of E&P basis in a partnership.* For purposes of this section, a foreign corporation's E&P basis in a partnership interest shall be the foreign corporation's adjusted basis in such interest (as determined under paragraph (d)(3)(iv) of this section), further adjusted to take into account any differences between the foreign corporation's distributive share of items of partnership income, gain, loss, and deduction for purposes of computing the taxable income of the foreign corporation and the foreign corporation's distributive share of items of partnership income, gain, loss, and deductions for purposes of computing the earnings and profits of the foreign corporation.

(iv) *Computation of E&P basis of a loss property.* The E&P basis of a loss property (as defined in paragraph (d)(2)(ix) of this section) shall equal the E&P basis, immediately before the loss, of the U.S. asset with respect to which the loss was substained, reduced (but not below zero) by—

(A) The amount of any deduction claimed under section 165 by the foreign corporation with respect to the loss for earnings and profits purposes; and

(B) Any compensation received with respect to the loss.

(v) *Example.* The application of paragraph (d)(6)(ii) of this section is illustrated by the following example.

Example. Sale in taxable year beginning on or after January 1, 1987. Foreign corporation A, a calendar year taxpayer, sells a U.S. asset on the installment method in 1993. Under the terms of the sale, A is to receive $100, payable in ten annual installments of $10 beginning in 1994, plus an arm's-length rate of interest on the unpaid balance of the sales price. A's adjusted basis in the property sold is $70. The obligation received in connection with the installment sale is treated as a U.S. asset with an E&P basis of $100 ($30 (the amount of gain from the sale if the obligation were satisfied in full) + $70 (the adjusted basis of the property sold)). If A receives a payment of $10 (not including interest) in 1994 with respect to the obligation, the obligation is treated as a U.S. asset with an E&P basis of $90 ($100−$10) as of the close of 1994.

(e) *U.S. liabilities.* The term "U.S. liabilities" means the amount of liabilities determined under paragraph (e)(1) of this section decreased by the amount of liabilities determined under paragraph (e)(3) of this section, and increased by the amount of liabilities determined under paragraph (e)(2) of this section.

(1) *Liabilities based on § 1.882–5.* The amount of liabilities determined under this paragraph (e)(1) is the amount of U.S.-connected liabilities of a foreign corporation under § 1.882–5 if the U.S.-connected liabilities were computed using the assets and liabilities of the foreign corporation as of the determination date (rather than the average of such assets and liabilities for the taxable year) and without regard to paragraph (e)(3) of this section.

(2) *Insurance reserves.* The amount of liabilities determined under this paragraph (e)(2) is the amount (as of the determination date) of the total insurance liabilities on United States business (within the meaning of section 842(b)(2)(B)) of a foreign corporation described in section 842(a) (relating to foreign corporations carrying on an insurance business in the United States) to the extent that such liabilities are not otherwise treated as U.S. liabilities by reason of paragraph (e)(1) of this section.

(3) *Election to reduce liabilities*—(i) *General rule.* The amount of liabilities determined under this paragraph (e)(3) is the amount by which a foreign corporation elects to reduce its liabilities under paragraph (e)(1) of this section.

(ii) *Limitation.* For any taxable year, a foreign corporation may elect to reduce the amount of its liabilities determined under paragraph (e)(1) of this section by an amount that does not exceed the excess, if any, of the amount of liabilities in paragraph (e)(1) of this section over the amount of liabilities shown on the books of the U.S. trade or business (determined under either § 1.882–5(b)(3) (i) or (ii)) as of the determination date.

(iii) *Effect of election on interest deduction and branch-level interest tax.* A foreign corporation that elects to reduce its liabilities under this paragraph (e)(3) must, for purposes of computing the amount of its interest apportioned to ECI under § 1.882–5, reduce its U.S.-connected liabilities for the taxable year of the election by the amount of the reduction in liabilities under this paragraph (e)(3). The reduction of its U.S.-connected liabilities will also require a corresponding decrease in the amount of its interest apportioned to ECI under § 1.882–5 for purposes of § 1.884–4(a) and for all other Code sections for which the amount of interest apportioned under § 1.882–5 is relevant.

(iv) *Method of election.* A foreign corporation that elects the benefits of this paragraph (e)(3) for a taxable year shall state on its return for the taxable year (or on a statement attached to the return) that it has elected to reduce its liabilities for the taxable year under this paragraph (e)(3) and that it has reduced the amount of its U.S.-connected liabilities as provided in paragraph (e)(3)(iii) of this section, and shall indicate the amount of such reductions on the return or attachment. An election under this paragraph (e)(3) must be made before the due date (including extensions) for the foreign corporation's income tax return for the taxable year.

(v) *Effect of election on complete termination.* If a foreign corporation completely terminates its U.S. trade or business (within the meaning of § 1.884–2T (a)(2)), notwithstanding § 1.884–2T(a), the foreign corporation will be subject to tax on a dividend equivalent amount that equals the lesser of—

(A) The foreign corporation's accumulated ECEP that is attributable to an election to reduce liabilities; or

(B) The amount by which the corporation elected to reduce liabilities at the end of the taxable year preceding the year of complete termination.

For purposes of the preceding sentence, accumulated ECEP is attributable to an election to reduce liabilities to the extent that the ECEP was accumulated because of such an election rather than because of an increase in U.S. assets. For example, if a foreign corporation did not have positive ECEP in any year for which an election was made, it would not be required to include an amount as a dividend equivalent amount under this paragraph (e)(3)(v) because any accumulated ECEP that it may have is not attributable to an election to reduce liabilities.

(4) *Artificial decrease in U.S. liabilities.* If a foreign corporation repays or otherwise decreases its U.S. liabilities and one of the principal purposes of such decrease is to decrease artificially its U.S. liabilities on the determination date, then such decrease shall not be taken into account for purposes of computing the foreign corporation's U.S. net equity. Whether the U.S. liabilities of a foreign corporation are artificially decreased will depend on all the facts and circumstances of each case. Factors to be considered in determining whether one of the principal purposes for the repayment or decrease of the liabilities is to decrease artificially the U.S. liabilities of a foreign corporation shall include whether the aggregate liabilities are temporarily decreased on or before the determination date by, for example, the repayment of liabilities, or U.S. liabilities are temporarily decreased on or before the determination date by the acquisition with contributed funds of passive-type assets that are not U.S. assets. For purposes of this paragraph (e)(4), to be one of the principal purposes, a purpose must be important, but it is not necessary that it be the primary purpose.

(5) *Examples.* The application of this paragraph (e) is illustrated by the following examples.

Example 1. General rule for computation of U.S. liabilities. As of the close of 1993, foreign corporation A, a calendar year taxpayer computes its U.S.-connected liabilities under § 1.882–5(b) using its actual ratio of liabilities to assets. For purposes of computing its U.S.-connected liabilities under § 1.882–5(b), A must determine, the average total value of its assets that generate, have generated, or could reasonably have been or be expected to generate ECI. Assume that the average value of such assets is $100, while the amount of such assets as of the close of 1993 is $125. For purposes of § 1.882–5(b)(2), A must determine the ratio of the average of its worldwide liabilities for the year to the average total value of worldwide assets for the taxable year. Assume that A's average liabilities-to-assets ratio under § 1.882–5(b)(2) is 55 percent, while its liabilities-to-assets ratio at the close of 1993 is only 50 percent. Thus, assuming no further adjustments under paragraph (e)(3) of this section, A's U.S.-connected liabilities for purposes of § 1.882–5 are $55 ($100×55%). However, A's U.S. liabilities are $62.50 for purposes of this section, the amount of its assets determined under § 1.882–5(b)(1) as of the close of December ($125) multiplied by the liabilities-to-assets ratio of (50%) as of such date.

Example 2. Election made to reduce liabilities. (i) As of the close of 1993, foreign

corporation A, a real estate company, owns U.S. assets with an E&P basis of $1000. A has $800 of liabilities under paragraph (e)(1) of this section and $300 of liabilities shown on the books and records of its U.S. trade or business under § 1.882–5(b)(3). A has accumulated ECEP of $500 and in 1994, A has $60 of ECEP that it intends to retain for future expansion of its U.S. trade or business. A elects under paragraph (e)(3) of this section to reduce its liabilities by $60 from $800 to $740. As a result of the election, assuming A's U.S. assets and U.S. liabilities would otherwise have remained constant, A's U.S. net equity as of the close of 1994 will increase by the amount of the decrease in liabilities ($60) from $200 to $260 and its ECEP will be reduced to zero. Under paragraph (e)(3)(iii) of this section, A's interest expense for the taxable year is reduced by the amount of interest attributable to $60 of liabilities and A's excess interest is reduced by the same amount. A's taxable income and ECEP are increased by the amount of the reduction in interest expense attributable to the liabilities, and A may make an election under paragraph (e)(3) of this section to further reduce its liabilities, thus increasing its U.S. net equity and reducing the amount of additional ECEP created for the election.

(ii) In 1995, assuming A again has $60 of ECEP, A may again make the election under paragraph (e)(3) to reduce its liabilities. However, assuming A's U.S. assets and liabilities under paragraph (e)(1) of this section remain constant, A will need to make an election to reduce its liabilities by $120 to reduce to zero its ECEP in 1995 and to continue to retain for expansion (without the payment of the branch profits tax) the $60 of ECEP earned in 1994. Without an election to reduce liabilities, A's dividend equivalent amount for 1995 would be $120 ($60 of ECEP plus the $60 reduction in U.S. net equity from $260 to $200). If A makes the election to reduce liabilities by $120 (from $800 to $680), A's U.S. net equity will increase by $60 (from $260 at the end of the previous year to $320), the amount necessary to reduce its ECEP to $0. However, the reduction of liabilities will itself create additional ECEP subject to section 884 because of the reduction in interest expense attributable to the $120 of liabilities. A can make the election to reduce liabilities by $120 without exceeding the limitation on the election provided in paragraph (e)(3)(ii) of this section because $120 does not exceed the excess of $800 (the amount of A's liabilities under paragraph (e)(1) of this section) over $300 (the amount of liabilities on A's books.

(iii) If A terminates its U.S. trade or business in 1995 in accordance with the rules in § 1.884–2T(a), A would not be subject to the branch profits tax on the $60 of ECEP earned in that year. Under paragraph (e)(3)(v) of this section, however, it would be subject to the branch profits tax on the portion of the $60 of ECEP that it earned in 1994 that became accumulated ECEP because of an election to reduce liabilities.

(f) *Effectively connected earnings and profits*—(1) *In general.* Except as provided in paragraph (f)(2) of this section and as modified by § 1.884–2T (relating to the incorporation or complete termination of a U.S. trade or business or the reorganization or liquidation of a foreign corporation or its domestic subsidiary), the term "effectively connected earnings and profits" ("ECEP") means the earnings and profits (or deficits therein) determined under section 312 and this paragraph (f) that are attributable to ECI (within the meaning of paragraph (d)(1)(iii) of this section). Because the term "ECI" includes income treated as effectively connected, income that is ECI under section 842(b) (relating to minimum net investment income of an insurance business) or 864(c)(7) (relating to gain from property formerly held for use in a U.S. trade or business) gives rise to ECEP. ECEP also includes earnings and profits attributable to ECI of a foreign corporation earned through a partnership, and through a trust or estate. For purposes of section 884, gain on the sale of a U.S. real property interest by a foreign corporation that has made an election to be treated as a domestic corporation under section 897(i) will also give rise to ECEP. ECEP is not reduced by distributions made by the foreign corporation during any taxable year or by the amount of branch profits tax or tax on excess interest (as defined in § 1.884–4(a)(2)) paid by the foreign corporation. Earnings and profits are treated as attributable to ECI even if the earnings and profits are taken into account under section 312 in an earlier or later taxable year than the taxable year in which the ECI is taken into account.

(2) *Income that does not produce ECEP.* The term "ECEP" does not include any earnings and profits attributable to—

(i) Income excluded from gross income under section 883(a)(1) or 883(a)(2) (relating to certain income derived from the operation of ships or aircraft);

(ii) Income that is ECI by reason of section 921(d) or 926(b) (relating to certain income of a FSC and certain dividends paid by a FSC to a foreign corporation or nonresident alien) that is not otherwise ECI;

(iii) Gain on the disposition of a U.S. real property interest described in section 897(c)(1)(A)(ii) (relating to certain interests in a domestic corporation);

(iv) Income that is ECI by reason of section 953(3)(c)(C) (relating to certain income of a captive insurance company that a corporation elects to treat as ECI) that is not otherwise ECI;

(v) Income that is exempt from tax under section 892 (relating to certain income of foreign governments); and

(vi) Income that is ECI by reason of section 882(e) (relating to certain interest income of banks organized under the laws of a possession of the United States) that is not otherwise ECI.

(3) *Allocation of deductions attributable to income that does not produce ECEP.* In determining the amount of a foreign corporation's ECEP for the taxable year, deductions and other adjustments shall be allocated and apportioned under the principles of § 1.861–8 between ECI that gives rise to ECEP and income described in paragraph (f)(2) of this section (relating to income that is ECI but does not give rise to ECEP).

(4) *Examples.* The principles of paragraph (f) of this section are illustrated by the following examples.

Example 1. Tax-exempt income. Foreign corporation A owns a tax-exempt municipal bond that is a U.S. asset as of the close of its 1989 taxable year. The municipal bond gives rise in 1989 to ECI (even though the income is excluded from gross income under section 103(a) and is not gross income of a foreign corporation by reason of section 882(b)), and therefore gives rise to ECEP in 1989.

Example 2. Income exempt under a treaty. Foreign corporation A derives ECI that constitutes business profits that are not attributable to a permanent establishment maintained by A in the United States. The ECI is exempt from taxation under section 882(a) by reason of an income tax treaty and section 894(a). The income nevertheless gives rise to ECEP under this paragraph (f). However, a dividend equivalent amount attributable to such ECEP may be exempt from the branch profits tax by reason of paragraph (g) of this section (relating to the application of the branch profits tax to corporations that are residents of countries with which the United States has an income tax treaty).

(g) *Corporations resident in countries with which the United States has an income tax treaty*—(1) *General rule.* Except as provided in paragraph (g)(2) of this section, a foreign corporation that is a resident of a country with which the United States has an income tax treaty in effect for a taxable year in which it has a dividend equivalent amount and that meets the requirements, if any, of the limitation on benefits provisions of such treaty with respect to the dividend equivalent amount shall not be subject to the branch profits tax on such amount (or will qualify for a reduction in the amount of tax with respect to such amount) only if—

(i) The foreign corporation is a qualified resident of such country for the taxable year, within the meaning of § 1.884–5(a); or

(ii) The limitation on benefits provision, or an amendment to that

provision, entered into force after December 31, 1986.

If, after application of § 1.884–5(e)(4)(iv), a foreign corporation is a qualified resident under § 1.884–5(e) (relating to the active trade or business test) only with respect to one of its trades or businesses in the United States, i.e., the trade or business that is an integral part of its business conducted in its country of residence, and not with respect to another, the rules of this paragraph shall apply only to that portion of its dividend equivalent amount attributable to the trade or business for which the foreign corporation is a qualified resident.

(2) *Special rules for foreign corporations that are qualified residents on the basis of their ownership*—(i) *General rule.* A foreign corporation that, in any taxable year, is a qualified resident of a country with which the United States has an income tax treaty in effect solely by reason of meeting the requirements of § 1.884–5 (b) and (c) (relating, respectively, to stock ownership and base erosion) shall be exempt from the branch profits tax or subject to a reduced rate of branch profits tax under paragraph (g)(1) of this section with respect to the portion of its dividend equivalent amount for the taxable year attributable to accumulated ECEP only if the foreign corporation is a qualified resident of such country within the meaning of § 1.884–5(a) for the taxable years includable, in whole or in part, in a consecutive 36-month period that includes the taxable year of the dividend equivalent amount. A foreign corporation that fails the 36-month test described in the preceding sentence shall be exempt from the branch profits tax or subject to the branch profits tax at a reduced rate under paragraph (g)(1) of this section with respect to accumulated ECEP (determiend on a last-in-first-out basis) accumulated only during prior years in which the foreign corporation was a qualified resident of such country within the meaning of § 1.884–5(a).

(ii) *Rules of application.* A foreign corporation that has not satisfied the 36-month test as of the close of the taxable year of the dividend equivalent amount but satisfies the test with respect to such dividend equivalent amount by meeting the 36-month test by the close of the second taxable year succeeding the taxable year of the dividend equivalent amount shall be subject to the branch profits tax for the year of the dividend equivalent amount without regard to paragraph (g)(1) of this section on the portion of the dividend equivalent amount attributable to accumulated ECEP derived in a taxable year in which the foreign corporation was not a qualified resident within the meaning of § 1.884–5(a). Upon meeting the 36-month test, the foreign corporation shall be entitled to claim by amended return a refund of the tax paid with respect to the dividend equivalent amount in excess of the branch profits tax calculated by taking into account paragraph (g)(2)(i) of this section, provided the foreign corporation establishes in the amended return for the taxable year that it has met the requirements of such paragraph. For purposes of section 6611 (dealing with interest on overpayments), any overpayment of branch profits tax by reason of this paragraph (g)(2)(ii) shall be deemed not to have been made before the filing date for the taxable year in which the foreign corporation establishes that it has met the 36-month test.

(iii) *Example.* The application of this paragraph (g)(2) is illustrated by the following example.

Example. (i) Foreign corporation A, a calendar year taxpayer, is a resident of the United Kingdom. A has a dividend equivalent amount for its taxable year 1991 of $300, of which $100 is attributable to 1991 ECEP and $200 to accumulated ECEP. A is a qualified resident for its taxable year 1991 because for that year it meets the requirements of § 1.884–5 (b) and (c), relating, respectively, to stock ownership and base erosion. For 1991 A does not meet the requirements of § 1.884–5 (d), (e), or (f) for qualified residence. A is not a qualified resident of the United Kingdom for any taxable year prior to 1990 but is a qualified resident for its taxable years 1990 and 1992.

(ii) Because A is a qualified resident for the 3-year period (1990, 1991, and 1992) that includes the taxable year of the dividend equivalent amount (1991), A satisfies the 36-month test of this paragraph (g)(2) and no branch profits tax is imposed on the total $300 dividend equivalent amount. However, since A was not a qualified resident for any taxable year prior to 1990 and therefore cannot establish that it has satisfied the 36-month test until the taxable year following the year of the dividend equivalent amount, A must pay the branch profits tax for its taxable year 1991 with respect to the portion of the dividend equivalent amount attributable to accumulated ECEP relating to years prior to 1990 without regard to paragraph (g)(1) of this section. A may file for a refund of the branch profits tax paid with respect to its 1991 taxable year at any time after it establishes that it is a qualified resident for its 1992 taxable year.

(3) *Exemptions for foreign corporations resident in certain countries with income tax treaties in effect on January 1, 1987.* The branch profits tax shall not be imposed on the portion of the dividend equivalent amount with respect to which a foreign corporation satisfies the requirements of paragraphs (g) (1) and (2) of this section for a country listed below, so long as the income tax treaty between the United States and that country, as in effect on January 1, 1987, remains in effect, except to the extent the treaty is modified on or after January 1, 1987, to expressly provide for the imposition of the branch profits tax:

Aruba	Jamaica
Austria	Japan
Belgium	Korea
People's Republic of China	Luxembourg
	Malta
Cyprus	Morocco
Denmark	Netherlands
Egypt	Netherlands Antilles
Finland	Norway
Germany	Pakistan
Greece	Philippines
Hungary	Sweden
Iceland	Switzerland
Ireland	United Kingdom
Italy	

(4) *Modifications with respect to other income tax treaties*—(i) *Limitation on rate of tax*—(A) *General rule.* If, under paragraphs (g) (1) and (2) of this section, a corporation qualifies for a reduction in the amount of the branch profits tax and paragraph (g)(3) of this section does not apply, the rate of tax shall be the rate of tax on branch profits specified in the treaty between the United States and the corporation's country of residence or, if no rate of tax on branch profits is specified, the rate of tax that would apply under such treaty to dividends paid to the foreign corporation by a wholly-owned domestic corporation.

(B) *Certain treaties in effect on January 1, 1987.* The branch profits tax shall generally be imposed at the following rates on the portion of the dividend equivalent amount with respect to which a foreign corporation satisfies the requirements of paragraphs (g) (1) and (2) of this section for a country listed below, for as long as the relevant provisions of those income tax treaties remain in effect and are not modified or superseded by subsequent agreement:

Australia (15%)	Poland (5%)
Barbados (5%)	Romania (10%)
Canada (10%)	South Africa (30%)
France (5%)	Trinidad & Tobago (10%)
New Zealand (5%)	U.S.S.R. (30%)

However, for special rates imposed on corporations resident in France and Trinidad & Tobago that have certain amounts of dividend and interest income, see the dividend articles of the income tax treaties with those countries.

(ii) *Limitations other than rate of tax.* If, under paragraphs (g) (1) and (2) of this section, a foreign corporation qualifies for a reduction in the amount of branch profits tax and paragraph (g) (3) of this section does not apply, then—

(A) The foreign corporation shall be entitled to the benefit of any limitations on imposition of a tax on branch profits (in addition to any limitations on the rate of tax) contained in the treaty; and

(B) No branch profits tax shall be imposed with respect to a dividend equivalent amount out of ECEP or accumulated ECEP of the foreign corporation unless the ECEP or accumulated ECEP is attributable to a permanent establishment in the United States or, if not otherwise prohibited under the treaty, to gain from the disposition of a U.S. real property interest described in section 897(c)(1)(A)(i), except to the extent the treaty specifically permits the imposition of the branch profits tax on such earnings and profits.

No article in such treaty shall be construed to provide any limitations on imposition of the branch profits tax other than as provided in this paragraph (g)(4).

(iii) *Computation of the dividend equivalent amount if a foreign corporation has both ECEP attributable to a permanent establishment and not attributable to a permanent establishment.* To determine the dividend equivalent amount of a foreign corporation out of ECEP that is attributable to a permanent establishment, the foreign corporation may only take into account its U.S. assets, U.S. liabilities, U.S. net equity and ECEP attributable to its permanent establishment. Thus, a foreign corporation may not reduce the amount of its ECEP attributable to its permanent establishment by reinvesting all or a portion of that amount in U.S. assets not attributable to the permanent establishment.

(iv) *Limitations under the Canadian treaty.* The limitations on the imposition of the branch profits tax under the Canadian treaty include, but are not limited to, those described in paragraphs (g)(4)(iv) (A) and (B).

(A) *Effect of deficits in earnings and profits.* In the case of a foreign corporation that is a qualified resident of Canada, the dividend equivalent amount for any taxable year shall not exceed the foreign corporation's accumulated ECEP as of the beginning of the taxable year plus the corporation's ECEP for the taxable year. Thus, for example, if a foreign corporation that is a qualified resident of Canada has a deficit in accumulated ECEP of $200 as of the beginning of the taxable year and ECEP of $100 for the taxable year, it will have no dividend equivalent amount for the taxable year because it would have a cumulative deficit in ECEP of $100 as of the close of the taxable year. For purposes of this paragraph (g)(4)(iii)(A), any net deficit in accumulated earnings and profits attributable to taxable years beginning before January 1, 1987, shall be includible in determining accumulated ECEP.

(B) *One-time exemption of Canadian $500,000—(1) General rule.* In the case of a foreign corporation that is a qualified resident of Canada, the branch profits tax shall be imposed only with respect to that portion of the dividend equivalent amount for the taxable year that, when translated into Canadian dollars and added to the dividend equivalent amounts for preceding taxable years translated into Canadian dollars, exceeds Canadian $500,000. The value of the dividend equivalent amount in Canadian currency shall be determined by translating the ECEP for each taxable year that is includible in the dividend equivalent amount (as determined in U.S. dollars under the currency translation method used in determining the foreign corporation's taxable income for U.S. tax purposes) by the weighted average exchange rate for the taxable year (determined under the rules of section 989(b)(3)) during which the earnings and profits were derived.

(2) *Reduction in amount of exemption in the case of related corporations.* The amount of a foreign corporation's exemption under this paragraph (g)(4)(iii)(B) shall be reduced by the amount of any exemption that reduced the dividend equivalent amount of an associated foreign corporation with respect to the same or a similar business. For purposes of this paragraph (g)(4)(iii)(B), a foreign corporation is an associated foreign corporation if it is related to the foreign corporation for purposes of sectional 267(b) or it and the foreign corporation are stapled entities (within the meaning of section 269B(c)(2)) or are effectively stapled entities. A business is the same as or similar to another business if it involves the sale, lease, or manufacture of the same or a similar type of property or the provision of the same or a similar type of services. A U.S. real property interest described in section 897(c)(1)(A)(i) shall be treated as a business and all such U.S. real property interests shall be treated as businesses that are the same or similar.

(3) *Coordination with second-tier withholding tax.* The value of the dividend equivalent amount that is exempt from the branch profits tax by reason of paragraph (g)(4)(iii)(B)(1) of this section shall not be subject to tax under section 871(a) or 881, or to withholding under section 1441 or 1442, when distributed by the foreign corporation.

(5) *Benefits under treaties other than income tax treaties.* A treaty that is not an income tax treaty does not exempt a foreign corporation from the branch profits tax or reduce the amount of the tax.

(h) *Stapled entities.* Any foreign corporation that is treated as a domestic corporation by reason of section 269B (relating to stapled entities) shall continue to be treated as a foreign corporation for purposes of section 884 and the regulations thereunder, notwithstanding section 269B or the regulations thereunder. Dividends paid by such foreign corporation shall be treated as paid by a domestic corporation and shall be subject to the tax imposed by section 871(a) or 881(a), and to withholding under section 1441 or 1442, as applicable, to the extent paid out of earnings and profits that are not subject to tax under section 884(a). Dividends paid by such foreign corporation out of earnings and profits subject to tax under section 884(a) shall be exempt from the tax imposed by sections 871(a) and 881(a) and shall not be subject to withholding under section 1441 or 1442. Whether dividends are paid out of earnings and profits that are subject to tax under section 884(a) shall be determined under section 884(e)(3)(A) and the regulations thereunder. The limitation on the application of treaty benefits in section 884(e)(3)(B) (relating to qualified residents) shall apply to a foreign corporation described in this paragraph (h).

(i) *Effective date*—(1) *General rule.* This section is effective for taxable years beginning on or after October 13, 1992. With respect to a taxable year beginning before October 13, 1992 and after December 31, 1986, a foreign corporation may elect to apply this section in lieu of § 1.884–1T of the temporary regulations (as contained in the CFR edition revised as of April 1, 1992), but only if the foreign corporation also makes an election under § 1.884–4 (e) to apply § 1.884.4 in lieu of § 1.884–4T (as contained in the CFR edition revised as of April 1, 1992) for that taxable year, and the statute of limitations for assessment of a deficiency has not expired for that taxable year. Once an election has been made, an election under this section shall apply to all subsequent taxable years. However, paragraph (f)(2)(vi) of this section (relating to certain interest income of Possessions banks) shall not apply for taxable years beginning before January 1, 1990.

(2) *Election to reduce liabilities.* A foreign corporation may make an election to reduce its liabilities under paragraph (e)(3) of this section with respect to a taxable year for which an election under paragraph (i)(1) of this section is in effect by filing an amended return for the taxable year and recomputing its interest deduction and any other item affected by the election on an amended Form 1120F to take into account the reduction in liabilities for such year.

(3) *Separate election for installment obligations.* A foreign corporation may make a separate election to apply paragraphs (d)(2)(iii) and (d)(6)(ii) of this section (relating to installment obligations treated as U.S. assets) to any prior taxable year without making an election under paragraph (i)(1) of this section, provided the statute of limitations for assessment of a deficiency has not expired for that taxable year and each succeeding taxable year. Once an election under this paragraph (i)(3) has been made, it shall apply to all subsequent taxable years.

(j) *Transition rules*—(1) *General rule.* Except as provided in paragraph (j)(2) of this section, in order to compute its dividend equivalent amount in the first taxable year to which this section applies (whether or not such year begins before October 13, 1992, a foreign corporation must recompute its U.S. net equity as of close of the preceding taxable year using the rules of this section and use such recomputed amount, rather than the amount computed under § 1.884–1T (as contained in the CFR edition revised as of April 1, 1992), to determine the amount of any increase or decrease in the U.S. net equity as of the close of that taxable year.

(2) *Installment obligations*—(i) *Interest election.* In recomputing its U.S. net equity as of the close of the preceding taxable year, a foreign corporation that holds an installment obligation treated as a U.S. asset under § 1.884–1T(d)(7) (as contained in the CFR edition revised as of April 1, 1992) as of such date may apply the rules of paragraph (d)(2)(iii) of this section without regard to the rule in that paragraph that requires interest or original issue discount on the obligation to be treated as ECI in order for such obligation to be treated as a U.S. asset.

(ii) *1987 sales by certain foreign corporations.* The E&P basis of an installment obligation arising in connection with a sale of property by a foreign corporation described in section 312(k)(4), where such sale occurs in a taxable year beginning in 1987, shall equal the E&P basis of the property sold as of the determination date reduced by payments received with respect to the obligation that do not represent gain for earnings and profits purposes, interest or original issue discount.

Par. 4. Section 1.884–2T is amended as follows:

1. In paragraph (a)(2)(i), the first sentence of the concluding text, the reference to "§ 1.884–1T" is removed and the language "§ 1.884–1" is added in its place.

2. Paragraph (a)(2)(ii) is amended by adding three new sentences following the last sentence in that paragraph, which read as set forth below.

3. Paragraph (b) is revised to read as set forth below.

4. In paragraph (c)(2) introductory text, the reference to "§ 1.884—1T" is removed and the language "§ 1.884–1" is added in its place.

5. Paragraph (c)(2)(iii) is amended by adding three new sentences following the last sentence in that paragraph, which read as set forth below.

6. In paragraph (c)(3), the reference to "§ 1.884–1T (b)(3)(ii)" is removed and the language "§ 1.884–1(b)(3)(ii)" is added in its place.

7. In paragraph (c)(4)(iii), the reference to "§ 1.884–1T(h)(1) and (2)(i)" is removed and the language "§ 1.884–1(g)(1) and (2)(i)" is added in its place.

8. In paragraph (c)(5), the reference to "§ 1.884–1T" is removed and the language "§ 1.884–1" is added in its place.

9. In paragraph (c)(6), the concluding text, the reference to "§ 1.884–1T" is removed and the language "§ 1.884–1" is added in its place.

10. In paragraph (d)(3) introduction text, the reference to "§ 1.884–1T" is removed and the language "§ 1.884–1" is added in its place.

11. In paragraph (d)(3)(ii) the reference to "§ 1.884–1T(b)(3)(ii)" is removed and the language "§ 1.884–1(b)(3)(ii)" is added in its place.

12. In paragraph (d)(6), paragraph (iv) of the *Example*, the reference to "§ 1.884–1T" is removed and the language "§ 1.884–1" is added in its place.

§ 1.884–2T Special rules for termination or incorporation of a U.S. trade or business or liquidation or reorganization of a foreign corporation or its domestic subsidiary (temporary).

(a) * * *

(2) * * *

(ii) * * *. Until such time as forms are published, a foreign corporation may file Form 872 to extend the period for assessment of the branch profits tax for the year of complete termination. With respect to a complete termination occurring in a taxable year ending prior to September 11, 1992, a foreign corporation may also satisfy the requirements of this paragraph (a)(2)(ii) by attaching a statement to its income tax return that the foreign corporation agrees to extend the period for assessment of the branch profits tax for the year of complete termination in accordance with the terms of this paragraph (a)(2)(ii). A properly executed Form 872 or a statement authorized under the preceding sentence shall be deemed to be consented to and signed by a Service Center Director or the Assistant Commissioner (International) for purposes of § 301.6501(c)–1(d).

(b) Election to remain engaged in a U.S. trade or business—(1) *General rule.* A foreign corporation that would be considered to have completely terminated all of its U.S. trade or business for the taxable year under the provisions of paragraph (a)(2)(i) of this section, but for the provisions of paragraph (a)(2)(i)(B) of this section that prohibit reinvestment within a three-year period, may make an election under this paragraph (b) for the taxable year in which it completely terminates all its U.S. trade or business (as determined without regard to paragraph (a)(2)(i)(B) of this section) and, if it so chooses, for the following taxable year (but not for any succeeding taxable year). The election under this paragraph (b) is an election by the foreign corporation to designate an amount of marketable securities as U.S. assets for purposes of § 1.884–1. The marketable securities identified pursuant to the election under paragraph (b)(3) of this section shall be treated as being U.S. assets in an amount equal, in the aggregate, to the lesser of the adjusted basis of the U.S. assets that ceased to be U.S. assets during the taxable year in which the election is made (determined on the date or dates the U.S. assets ceased to be U.S. assets) or the adjusted basis of the marketable securities as of the end of the taxable year. The securities must be held from the date that they are identified until the end of the taxable year for which the election is made, or if disposed of during the taxable year, must be replaced on the date of disposition with other marketable securities that are acquired on or before that date and that have a fair market value as of the date of substitution is not less than their adjusted basis.

(2) *Marketable security.* For purposes of this paragraph (b), the term "marketable security" means a security (including stock) that is part of an issue

any portion of which is regularly traded on an established securities market (within the meaning of § 1.884–5(d)(2) and (4)) and a deposit described in section 871(i)(3) (A) or (B).

(3) *Identification requirements.* In order to qualify for this Section—

(i) The marketable securities must be identified on the books and records of the U.S. trade or business within 30 days of the date an equivalent amount of U.S. assets ceases to be U.S. assets; and

(ii) On the date a marketable security is identified, its adjusted basis must not exceed its fair market value.

(4) *Treatment of income from deemed U.S. assets.* The income or gain from the marketable securities (or replacement securities) subject to an election under this paragraph (b) that arises in a taxable year for which an election is made shall be treated as ECI (other than for purposes of section 864(c)(7)), and losses from the disposition of such marketable securities shall be allocated entirely to income that is ECI. In addition, all such securities shall be treated as if they had been sold for their fair market value on the earlier of the last business day of a taxable year for which an election is in effect or the day immediately prior to the date of substitution by the foreign corporation of a U.S. asset for the marketable security, and any gain (but not loss) and accrued interest on the securities shall also be treated as ECI. The adjusted basis of such property shall be increased by the amount of any gain recognized by reason of this paragraph (b).

(5) *Method of election.* A foreign corporation may make an election under this paragraph (b) by attaching to its income tax return for the taxable year a statement—

(i) Identifying the marketable securities treated as U.S. assets under this paragraph (b);

(ii) Setting forth the E&P bases of such securities; and

(iii) Agreeing to treat any income, gain or loss as provided in paragraph (b)(4) of this section.

Such statement must be filed on or before the due date (including extensions) of the foreign corporation's income tax return for the taxable year. A foreign corporation shall not be permitted to make an election under this paragraph (b) more than once.

(6) *Effective date.* This paragraph (b) is effective for taxable years beginning on or after October 13, 1992. However, if a foreign corporation has made a valid election under § 1.884–1(i) to apply that section with respect to a taxable year beginning before October 13, 1992 and after December 31 1986, this paragraph (b) shall be effective beginning with such taxable year.

(c) * * *

(2) * * *

(iii) * * * Until such time as forms are published, a foreign corporation may file Form 872 to extend the period for assessment of any additional branch profits tax for the taxable year in which the section 381(a) transaction occurs. With respect to a section 381(a) transaction occurring in a taxable year ending prior to September 11, 1992, a foreign corporation may also satisfy the requirements of this paragraph (c)(2)(iii) by attaching a statement to its income tax return that the foreign corporation agrees to extend the period for assessment of the branch profits tax in accordance with the terms of this paragraph (c)(2)(iii). A properly executed Form 872 or a statement authorized under the preceding sentence shall be deemed to be consented to and signed by a Service Center Director or the Assistant Commissioner (International) for purposes of § 301.6501(c)–1(d).

* * * * *

§§ 1.884–4 and 1.884–5 [Added]

Par. 5. Sections 1.884–4 and 1.884–5 are added to read as follows:

§ 1.884–4 Branch-level interest tax.

(a) *General rule*—(1) *Tax on branch interest.* In the case of a foreign corporation that, during the taxable year, is engaged in trade or business in the United States or has gross income that is ECI (as defined in § 1.884–1(d)(1)(iii)), any interest paid by such trade or business (hereinafter "branch interest," as defined in paragraph (b) of this section) shall, for purposes of subtitle A (Income Taxes), be treated as if it were paid by a domestic corporation (other than a corporation described in section 861(c)(1), relating to a domestic corporation that meets the 80 percent foreign business requirement). Thus, for example, whether such interest is treated as income from sources within the United States by the person who receives the interest shall be determined in the same manner as if such interest were paid by a domestic corporation (other than a corporation described in section 861(c)(1)). Such interest shall be subject to tax under section 871(a) or 881, and to withholding under section 1441 or 1442, in the same manner as interest paid by a domestic corporation (other than a corporation described in section 861(c)(1)) if received by a foreign person and not effectively connected with the conduct by the foreign person of a trade or business in the United States, unless the interest, if paid by a domestic corporation, would be exempt under section 871(h) or 881(c) (relating to exemption for certain portfolio interest received by a foreign person), section 871(i) or 881(d) (relating, in part, to exemption for certain bank deposit interest received by a foreign person), or another provision of the Code. Such interest shall also be treated as interest paid by a domestic corporation (other than a corporation described in section 861(c)(1)) for purposes of sections 864(c), 871(b) and 882(a) (relating to income that is effectively connected with the conduct of a trade or business within the United States) and section 904 (relating to the limitation on the foreign tax credit). For purposes of this section, a foreign corporation also shall be treated as engaged in trade or business in the United States if, at any time during the taxable year, it owns an asset taken into account under § 1.882–5(b)(1) (referring to assets that generate, or may generate, effectively connected income) for purposes of determining the amount of the foreign corporation's interest expense apportioned to ECI and the interest apportioned by reference to the value of such asset provides in any taxable year a tax benefit for U.S. tax purposes. See paragraph (b)(8) of this section for the effect of income tax treaties on branch interest.

(2) *Tax on excess interest*—(i) Definition of excess interest. For purposes of this section, the term "excess interest" means—

(A) The amount of interest apportioned to ECI of the foreign corporation under § 1.882–5 for the taxable year, after application of § 1.884–1(e)(3); minus

(B) The foreign corporation's branch interest (as defined in paragraph (b) of this section) for the taxable year, but not including interest accruing in a taxable year beginning before January 1, 1987; minus

(C) The amount of interest determined under paragraph (c)(2) of this section (relating to interest paid by a partnership).

(ii) *Imposition of tax.* A foreign corporation shall be liable for tax on excess interest under section 881(a) in the same manner as if such excess interest were interest paid to the foreign corporation by a wholly-owned domestic corporation (other than a corporation described in section 861(c)(1)) on the last day of the foreign corporation's taxable year. Excess interest shall be exempt from tax under section 881(a) only as provided in

paragraph (a)(2)(iii) of this section (relating to treatment of certain excess interest of banks as interest on deposits) or paragraph (c)(3) of this section (relating to income tax treaties).

(iii) *Treatment of a portion of the excess interest of banks as interest on deposits.* A portion of the excess interest of a foreign corporation described in paragraph (b)(2) of this section (relating to foreign banks) shall be treated as interest on deposits (as described in section 871(i)(3)), and shall be exempt from the tax imposed by section 881(a) as provided in such section. The portion of the excess interest of the foreign corporation that is treated as interest on deposits shall equal the product of the foreign corporation's excess interest and the greater of—

(A) The ratio of the amount of interest-bearing deposits, within the meaning of section 871(i)(3)(A), of the foreign corporation as of the close of the taxable year to the amount of all interest-bearing liabilities of the foreign corporation on such date; or

(B) 85 percent.

(iv) *Reporting and payment of tax on excess interest.* The amount of tax due under section 884(f) and this section with respect to excess interest of a foreign corporation shall be reported on the foreign corporation's income tax return for the taxable year in which the excess interest is treated as paid to the foreign corporation under section 884(f)(1)(B) and paragraph(a)(2) of this section, and shall not be subject to withholding under section 1441 or 1442. The tax shall be due and payable as provided in section 6151 and such other sections of Subtitle F of the Internal Revenue Code as apply, and estimated tax payments shall be due with respect to a foreign corporation's liability for the tax on excess interest as provided in section 6655.

(3) *Original issue discount.* For purposes of this section, the term "interest" includes original issue discount, as defined in section 1273(a)(1).

(4) *Examples.* The application of this paragraph (a) is illustrated by the following examples.

Example 1. Taxation of branch interest and excess interest. Foreign corporation A, a calendar year taxpayer that is not a corporation described in paragraph (b)(2) of this section (relating to banks), has $120 of interest apportioned to ECI under § 1.882–5 for 1993. A's branch interest (as defined in paragraph (b) of this section) for 1993 is as follows: $55 of portfolio interest (as defined in section 871(h)(2)) to B, a nonresident alien; $25 of interest to foreign corporation C, which owns 15 percent of the combined voting power of A's stock, with respect to bonds issued by A; and $20 to D, a domestic corporation. B and C are not engaged in the conduct of a trade or business in the United States. A, B and C are residents of countries with which the United States does not have an income tax treaty. The interest payments made to B and D are not subject to tax under section 871(a) or 881 and are not subject to withholding under section 1441 or 1442. The payment to C, which does not qualify as portfolio interest because C owns at least 10 percent of the combined voting power of A's stock, is subject to withholding of $7.50 ($25 × 30%). In addition, because A's interest apportioned to ECI under § 1.882–5 ($120) exceeds its branch interest ($100), A has excess interest of $20, which is subject to a tax of $6 ($20 × 30%) under section 881. The tax on A's excess interest must be reported on A's income tax return for 1993.

Example 2. Taxation of excess interest of a bank. Foreign corporation A, a calendar year taxpayer, is a corporation described in paragraph (b)(2) of this section (relating to banks) and is a resident of a country with which the United States does not have an income tax treaty. A has excess interest of $100 for 1993. At the close of 1993, A has $10,000 of interest-bearing liabilities (including liabilities that give rise to branch interest), of which $8,700 are interest-bearing deposits. For purposes of computing the tax on A's excess interest, $87 of the excess interest ($100 excess interest x ($8,700 interest-bearing deposits/$10,000 interest-bearing liabilities)) is treated as interest on deposits. Thus, $87 of A's excess interest is exempt from tax under section 881(a) and the remaining $13 of excess interest is subject to a tax of $3.90 ($13 × 30%) under section 881(a).

(b) *Branch interest*—(1) *Definition of branch interest of a foreign corporation that is not a bank.* For purposes of this section, the term "branch interest" means interest paid by a foreign corporation (other than a corporation described in paragraph (b)(2) of this section) with respect to a liability—

(i) Shown on the books of a U.S. trade or business of the foreign corporation for purposes of computing its interest apportioned to ECI under the branch book/dollar pool method of § 1.882–5(b)(3)(i) or the separate currency pool method of § 1.882–5(b)(3)(ii);

(ii) Secured (during at least half the days during the portion of the taxable year in which the interest accrues) predominantly by a U.S. asset (as defined in § 1.884–1(d)) of the foreign corporation unless such liability is secured by substantially all the property of the foreign corporation;

(iii) Taken into account by an insurance company described in section 842(a) on an annual statement approved by the National Association of Insurance Commissioners that is furnished to an insurance regulatory authority of a State or the District of Columbia;

(iv) Giving rise to interest for which no deduction is allowed and either—

(A) The liability is incurred or continued to purchase a U.S. asset (as defined in § 1.884–1(d)); or

(B) The basis of a U.S. asset is increased by the amount of the interest for which no deduction is allowed; or

(v) Specifically identified (as provided in paragraph(b)(3)(i) of this section) as a liability of a U.S. trade or business of the foreign corporation on or before the earlier of the date on which the first payment of interest is made (or deemed made under paragraph (c)(1) of this section) with respect to the liability or the due date (including extensions) of the foreign corporation's income tax return for the taxable year, provided that—

(A) The amount of interest attributable to specifically identified liabilities does not exceed 85 percent of the amount of interest of the foreign corporation that would be excess interest before taking into account interest treated as branch interest by reason of this paragraph (b)(1)(v);

(B) The requirements of paragraph (b)(3)(ii) of this section (relating to notification of recipient of interest) are satisfied; and

(C) The liability is not described in paragraph (b)(3)(iii) of this section (relating to liabilities incurred in the ordinary course of a foreign business or secured by foreign assets) or in paragraph (b)(1) (i) through (iv) of this section.

A foreign corporation may identify a liability under paragraph (b)(1)(v) of this section whether or not the foreign corporation is engaged in the conduct of a trade or business in the United States. See paragraph (b)(5) of this section for special rules relating to branch interest of a foreign corporation whose U.S. assets equal 80 percent or more of its worldwide assets. See paragraph (b)(6) of this section for a limitation on the amount of branch interest in certain situations in which branch interest exceeds the amount of interest apportioned to ECI under § 1.882–5 and paragraph (b)(7) of this section for the

treatment of interest that is paid and accrued in different taxable years.

(2) *Definition of branch interest of a bank.* In the case of a foreign corporation that maintains and operates a Federal branch, Federal agency, State branch or State agency (as these terms are defined in section 1(b) of the International Banking Act of 1978) (hereinafter "U.S. branch or agency"), the term "branch interest" means, for purposes of this section—

(i) Interest paid by the foreign corporation with respect to a liability described in paragraph (b)(1) (ii) or (iv) of this section (concerning liabilities related to U.S. assets);

(ii) Interest paid with respect to a liability that is treated as a liability of a U.S. branch or agency of the foreign corporation for purposes of regulatory requirements of the Federal Reserve Board, Comptroller of the Currency, Federal Deposit Insurance Corporation, or an equivalent bank regulatory authority of a State or the District of Columbia (including a deposit with an international banking facility (as defined in 12 CFR 204.8(a)(1)) of the foreign corporation that is treated as a liability of such U.S. branch or agency for purposes of such regulatory requirements); and

(iii) Interest paid with respect to a liability properly reflected on the books of a foreign branch, agency, or office of the foreign corporation if personnel of the U.S. branch or agency perform substantially all of the material activities required to incur the liability. However, with respect to the interest described in paragraph (b)(2)(iii) of this section, if less than 80 percent of the gross income of such foreign branch, agency, or office for the taxable year is ECI, the total amount of interest paid or accrued with respect to liabilities of the branch, agency, or office that is treated as branch interest of the foreign corporation for the taxable year shall not exceed the amount of gross income of the branch, agency, or office that is ECI for the taxable year.

(3) *Requirements relating to specifically identified liabilities*—(i) *Method of identification.* A liability described in paragraph (b)(1)(v) of this section is identified as a liability of a U.S. trade or business only if the liability is shown on the records of the U.S. trade or business, or is identified as a liability of the U.S. trade or business on other records of the foreign corporation or on a schedule established for the purpose of identifying the liabilities of the U.S. trade or business. Each such liability must be identified with sufficient specificity so that the amount of branch interest attributable to the liability, and the name and address of the recipient, can be readily identified from such records or schedule. However, with respect to liabilities that give rise to portfolio interest (as defined in sections 871(h) and 881(c)) or that are payable 183 days or less from the date of original issue, and form part of a larger debt issue, such liabilities may be identified by reference to the issue and maturity date, principal amount and interest payable with respect to the entire debt issue. Records or schedules described in this paragraph that identify liabilities that give rise to branch interest must be maintained in the United States by the foreign corporation or an agent of the foreign corporation for the entire period commencing with the due date (including extensions) of the income tax return for the taxable year to which the records or schedules relate and ending with the expiration of the period of limitations for assessment of tax for such taxable year.

(ii) *Notification to recipient.* Interest with respect to a liability described in paragraph (b)(1)(v) of this section shall not be treated as branch interest unless the foreign corporation paying the interest either—

(A) Makes a return, pursuant to section 6049, with respect to the interest payment; or

(B) Sends a notice to the person who receives such interest in a confirmation of the transaction, a statement of account, or a separate notice, within two months of the end of the calendar year in which the interest was paid, stating that the interest paid with respect to the liability is from sources within the United States.

(iii) *Liabilities that do not give rise to branch interest under paragraph (b)(1)(v) of this section.* A liability is described in this paragraph (b)(3)(iii) (and interest with respect to the liability may not be treated as branch interest of a foreign corporation by reason of paragraph (b)(1)(v) of this section) if—

(A) The liability is directly incurred in the ordinary course of the profit-making activities of a trade or business of the foreign corporation conducted outside the United States, as, for example, an account or note payable arising from the purchase of inventory or receipt of services by such trade or business; or

(B) The liability is secured (during more than half the days during the portion of the taxable year in which the interest accrues) predominantly by property that is not a U.S. asset (as defined in § 1.884–1(d)) unless such liability is secured by substantially all the property of the foreign corporation.

(4) *Interbranch interest disregarded.* Interest with respect to liabilities to another office or branch of the same foreign corporation shall be disregarded for purposes of computing branch interest.

(5) *Increase in branch interest where U.S. assets constitute 80 percent or more of a foreign corporation's assets—(i) General rule.* If a foreign corporation would have excess interest before application of this paragraph (b) (5) and the amount of the foreign corporation's U.S. assets as of the close of the taxable year equals or exceeds 80 percent of all money and the aggregate E&P basis of all property of the foreign corporation on such date, then all interest paid and accrued by the foreign corporation during the taxable year that was not treated as branch interest before application of this paragraph (b)(5) and that is not paid with respect to a liability described in paragraph (b)(3)(iii) of this section (relating to liabilities incurred in the ordinary course of a foreign business or secured by non-U.S. assets) shall be treated as branch interests. However, if application of the preceding sentence would cause the amount of the foreign corporation's branch interest to exceed the amount permitted by paragraph (b)(6)(i) of this section (relating to branch interest in excess of a foreign corporation's interest apportioned to ECI under § 1.882–5) the amount of branch interest arising by reason of this paragraph shall be reduced as provided in paragraphs (b)(6) (ii) and (iii) of this section, as applicable.

(ii) *Example.* The application of this paragraph (b)(5) is illustrated by the following example.

Example. Application of 80 percent test. Foreign corporation A, a calendar year taxpayer, has $90 of interest apportioned to ECI under § 1.882–5 for 1993. Before application of this paragraph (b)(5), A has $40 of branch interest in 1993. A pays $60 of other interest during 1993, none of which is attributable to a liability described in paragraph (b)(3)(iii) of this section (relating to liabilities incurred in the ordinary course of a foreign business and liabilities predominantly secured by foreign assets). As of the close of 1993, A has an amount of U.S. assets that exceeds 80 percent of the money and E&P bases of all A's property. Before application of this paragraph (b)(5), A would have $50 of excess interest (i.e., the $90 interest apportioned to its ECI under § 1.882–5 less $40 of branch interest). Under this paragraph (b)(5), the $60 of additional interest paid by A is also treated as branch interest. However, to the extent that treating the $60 of additional interest as branch interest would create an amount of branch interest that would exceed the amount of branch interest permitted under paragraph (b)(6) of this section (relating to branch interest that

exceeds a foreign corporation's interest apportioned to ECI under § 1.882–5) the amount of the additional branch interest is reduced under paragraph (b)(6)(iii) of this section, which generally allows a foreign corporation to specify certain liabilities that do not give rise to branch interest or paragraph (b) (6) (ii) of this section, which generally specifies liabilities that do not give rise to branch interest beginning with the most-recently incurred liability.

(6) *Special rule where branch interest exceeds interest apportioned to ECI of a foreign corporation*—(i) *General rule.* If the amount of branch interest that is both paid and accrued by a foreign corporation during the taxable year (including interest that the foreign corporation elects under paragraph (c)(1) of this section to treat as paid during the taxable year) exceeds the amount of interest apportioned to ECI of a foreign corporation under § 1.882–5 for the taxable year, then the amount of the foreign corporation's branch interest shall be reduced by the amount of such excess as provided in paragraphs (b)(6)(ii) and (iii) of this section, as applicable. The rules of paragraphs (b)(6) (ii) and (iii) of this section shall also apply where the amount of branch interest with respect to liabilities identified under paragraph (b)(1)(v) of this section exceeds the maximum amount that may be treated as branch interest under that paragraph. This paragraph (b)(6) shall apply whether or not a reduction in the amount of branch interest occurs as a result of adjustments made during the examination of the foreign corporation's income tax return, such as a reduction in the amount of interest apportioned to ECI of the foreign corporation under § 1.882–5.

(ii) *Reduction of branch interest beginning with most-recently incurred liability.* Except as provided in paragraph (b)(6)(iii) of this section (relating to an election to specify liabilities that do not give rise to branch interest), the amount of the excess in paragraph (b)(6)(i) of this section shall first reduce branch interest attributable to liabilities described in paragraph (b)(1)(v) of this section (relating to liabilities identified as giving rise to branch interest) and then, if such excess has not been reduced to zero, branch interest attributable to the group of liabilities described in paragraphs (b)(1)(i) through (iv) of this section. The reduction of branch interest attributable to each group of liabilities (i.e., liabilities described in paragraph (b)(1)(v) of this section and liabilities described in paragraphs (b)(1)(i) through (iv) of this section) shall be made beginning with interest attributable to the latest-incurred liability and continuing, in reverse chronological order, with branch interest attributable to the next-latest incurred liability. The branch interest attributable to a liability must be reduced to zero before a reduction is made with respect to branch interest attributable to the next-latest incurred liability. Where only a portion of the branch interest attributable to a liability is reduced by reason of this paragraph (b)(6)(ii), the reduction shall be made beginning with the last interest payment made with respect to the liability during the taxable year and continuing, in reverse chronological order, with the next latest payment until the amount of branch interest has been reduced by the amount specified in paragraph (b)(6)(i) of this section. The amount of interest that is not treated as branch interest by reason of this paragraph (b)(6)(ii) shall not be treated as paid by a domestic corporation and thus shall not be subject to tax under section 871(a) or 881(a).

(iii) *Election to specify liabilities that do not give rise to branch interest.* For purposes of reducing the amount of branch interest under paragraph (b)(6)(i) of this section, a foreign corporation may, instead of using the method described in paragraph (b)(6)(ii) of this section, elect for any taxable year to specify which liabilities will not be treated as giving rise to branch interest or will be treated as giving rise only in part to branch interest. Branch interest paid during the taxable year with respect to a liability specified under this paragraph (b)(6)(iii) must be reduced to zero before a reduction is made with respect to branch interest attributable to the next-specified liability. If all interest payments with respect to a specified liability, when added to all interest payments with respect to other liabilities specified under this paragraph (b)(6)(iii), would exceed the amount of the reduction under paragraph (b)(6)(i) of this section, then only a portion of the branch interest attributable to that specified liability shall be reduced under this paragraph (b)(6)(iii), and the reduction shall be made beginning with the last interest payment made with respect to the liability during the taxable year and continuing, in reverse chronological order, with the next-latest payment until the amount of branch interest has been reduced by the amount of the reduction under paragraph (b)(6)(i) of this section. A foreign corporation that elects to have this paragraph (b)(6)(iii) apply shall note on its books and records maintained in the United States that the liability is not to be treated as giving rise to branch interest, or is to be treated as giving rise to branch interest only in part. Such notation must be made after the close of the taxable year in which the foreign corporation pays the interest and prior to the due date (with extensions) of the foreign corporation's income tax return for the taxable year. However, if the excess interest in paragraph (b)(6)(i) of this section occurs as a result of adjustments made during the examination of the foreign corporation's income tax return, the election and notation may be made at the time of examination. The amount of interest that is not treated as branch interest by reason of this paragraph (b)(6)(iii) shall not be treated as paid by a domestic corporation and thus shall not be subject to tax under section 871 (a) or 881 (a).

(iv) *Examples.* The application of this paragraph (b)(6) is illustrated by the following examples.

Example 1. Branch interest exceeds interest apportioned to ECI with no election in effect. Foreign corporation A, a calendar year, accrual method taxpayer, has interest expense apportioned to ECI under § 1.882–5 of $230 for 1993. A's branch interest for 1993 is as follows:

(i) $130 paid to B, a domestic corporation, with respect to a note issued on March 10, 1993, and secured by real property located in the United States;

(ii) $60 paid to C, an individual resident of country X who is entitled to a 10 percent rate of withholding on interest payments under the income tax treaty between the United States and X, with respect to a note issued on October 15, 1992, which gives rise to interest subject to tax under section 871(a);

(iii) $80 paid to D, an individual resident of country Y who is entitled to a 15 percent rate of withholding on interest payments under the income tax treaty between the United States and Y, with respect to a note issued on February 15, 1993, which gives rise to interest subject to tax under section 871(a); and

(iv) $70 of portfolio interest (as defined in section 871(h) (2)) paid to E, a nonresident alien, with respect to a bond issued on March 1, 1993.

A's branch interest accrues during 1993 for purposes of calculating the amount of A's interest apportioned to ECI under § 1.882–5. A has identified under paragraph (b)(1)(v) of this section the liabilities described in paragraphs (ii), (iii) and (iv) of this example. A has not made an election under paragraph (b)(6)(iii) of this section to specify liabilities that do not give rise to branch interest. The amount of A's branch interest in 1993 is limited under paragraph (b)(6)(i) of this section to $230, the amount of the interest apportioned to A's ECI for 1993. The amount of A's branch interest must thus be reduced by $110 ($340–$230) under paragraph (b)(6)(ii) of this section. The reduction is first made with respect to interest attributable to liabilities described in paragraph (b)(1)(v) of this section (i.e., liabilities identified as giving rise to branch interest) and, within the group of liabilities described in paragraph (b)(1)(v) of this section, is first made with respect to the latest-incurred liability. Thus, the $70 of interest paid to E with respect to the bond issued on March 1, 1993, and $40 of the $80 of interest paid to D with respect to the note issued on February 15, 1993, are not treated as branch interest. The interest paid to D is

no longer subject to tax under section 871(a), and D may claim a refund of amounts withheld with respect to the interest payments. There is no change in the tax consequences to E because the interest received by E was portfolio interest and was not subject to tax when it was treated as branch interest.

Example 2. Effect of election to specify liabilities. Assume the same facts as in *Example 1* except that A makes an election under paragraph (b)(6)(iii) of this section to specify which liabilities are not to be treated as giving rise to branch interest. A specifies the liability to D, who would be taxable at a rate of 15 percent on interest paid with respect to the liability, as a liability that does not give rise to branch interest, and D is therefore not subject to tax under section 871 (a) and is entitled to a refund of amounts withheld with respect to the interest payments. A also specifies the liability to C as a liability that gives rise to branch interest only in part. As a result, $30 of the $60 of interest paid to C is not treated as branch interest, and C is entitled to a refund with respect to the $30 of interest that is not treated as branch interest.

(7) *Effect of election under paragraph (c)(1) of this section to treat interest as if paid in year of accrual.* If a foreign corporation accrues an interest expense in a taxable year earlier than the taxable year of payment and elects under paragraph (c)(1) of this section to compute its excess interest as if the interest expense were branch interest paid in the year of accrual, the interest expense shall be treated as branch interest that is paid at the close of such year (and not in the actual year of payment) for all purposes of this section. Such interest shall thus be subject to tax under section 871(a) or 881(a) and withholding under section 1441 or section 1442, as if paid on the last day of the taxable year of accrual. Interest that is treated under paragraph (c)(1) of this section as paid in a later year for purposes of computing excess interest shall be treated as paid only in the actual year of payment for all purposes of this section other than paragraphs (a)(2) and (c)(1) of this section (relating to excess interest).

(8) *Effect of treaties*—(i) *Payor's treaty.* In the case of a foreign corporation's branch interest, relief shall be available under an article of an income tax treaty between the United States and the foreign corporation's country of residence relating to interest paid by the foreign corporation only if, for the taxable year in which the branch interest is paid (or if the branch interest is treated as paid in an earlier taxable year under paragraph (b)(7) of this section, for the earlier taxable year)—

(A) The foreign corporation meets the requirements of the limitation on benefits provision, if any, in the treaty, and either—

(*1*) The corporation is a qualified resident (as defined in § 1.884–5(a)) of that foreign country in such year; or

(*2*) The corporation meets the requirements of paragraph (b)(8)(iii) of this section in such year; or

(B) The limitation on benefits provision, or an amendment to that provision, entered into force after December 31, 1986.

(ii) *Recipient's treaty.* A foreign person (other than a foreign corporation) that derives branch interest is entitled to claim benefits under provisions of an income tax treaty between the United States and its country of residence relating to interest derived by the foreign person. A foreign corporation may claim such benefits if it meets, with respect to the branch interest, the requirements of the limitation on benefits provision, if any, in the treaty and—

(A) The foreign corporation meets the requirements of paragraphs (b)(8)(i)(A) or (B) of this section; and

(B) In the case of interest paid in a taxable year beginning after December 31, 1988, with respect to an obligation with a maturity not exceeding one year, each foreign corporation that beneficially owned the obligation prior to maturity was a qualified resident (for the period specified in paragraph (b)(8)(i) of this section) of a foreign country with which the United States has an income tax treaty or met the requirements of the limitation on benefits provision in a treaty with respect to the interest payment and such provision entered into force after December 31, 1986.

(iii) *Presumption that a foreign corporation continues to be a qualified resident.* For purposes of this paragraph (b)(8), a foreign corporation that was a qualified resident for the prior taxable year because it fulfills the requirements of § 1.884–5 shall be considered a qualified resident with respect to branch interest that is paid or received during the current taxable year if—

(A) In the case of a foreign corporation that met the stock ownership and base erosion tests in § 1.884–5(b) and (c) for the preceding taxable year, the foreign corporation does not know, or have reason to know, that either 50 percent of its stock (by value) is not beneficially owned (or treated as beneficially owned by reason of § 1.884–5(b)(2)) by qualifying shareholders at any time during the portion of the taxable year that ends with the date on which the interest is paid, or that the base erosion test is not met during the portion of the taxable year that ends with the date on which the interest is paid;

(B) In the case of a foreign corporation that met the requirements of § 1.884–5(d) (relating to publicly-traded corporations) for the preceding taxable year, the foreign corporation is listed on an established securities exchange in the United States or its country of residence at all times during the portion of the taxable year that ends with the date on which the interest is paid and does not fail the requirements of § 1.884–5(d)(4)(iii) (relating to certain closely-held corporations) at any time during such period; or

(C) In the case of a foreign corporation that met the requirements of § 1.884–5(e) (relating to the active trade or business test) for the preceding taxable year, the foreign corporation continues to operate (other than in a nominal degree), at all times during the portion of the taxable year that ends with the date on which the interest is paid, the same business in the U.S. and its country of residence that caused it to meet such requirements for the preceding taxable year.

(iv) *Treaties other than income tax treaties.* A treaty that is not an income tax treaty does not provide any benefits with respect to branch interest.

(v) *Effect of income tax treaties on interest paid by a partnership.* If a foreign corporation is a partner (directly or indirectly) in a partnership that is engaged in a trade or business in the United States and owns an interest of 10 percent or more (as determined under the attribution rules of section 318) in the capital, profits, or losses of the partnership at any time during the partner's taxable year, the relief that may be claimed under an income tax treaty with respect to the foreign corporation distributive share of interest paid or treated as paid by the partnership shall not exceed the relief that would be available under paragraphs (b)(8) (i) and (ii) of this section if such interest were branch interest of the foreign corporation. See paragraph (c)(2) of this section for the effect on a foreign corporation's excess interest of interest paid by a partnership of which the foreign corporation is a partner.

(vi) *Examples.* The following examples illustrate the application of this paragraph (b)(8).

Example 1. Payor's treaty. The income tax treaty between the United States and country X provides that the United States may not impose a tax on interest paid by a corporation that is a resident of that country (and that is not a domestic corporation) if the recipient of the interest is a nonresident alien or a foreign corporation. Corp A is a qualified

resident of country X and meets the limitation on benefits provision in the treaty. A's branch interest is not subject to tax under section 871(a) or 881(a) regardless of whether the recipient is entitled to benefits under an income tax treaty.

Example 2. Recipient's treaty and interest received from a partnership. A, a foreign corporation, and B, a nonresident alien, are partners in a partnership that owns and operates U.S. real estate and each has a distributive share of partnership interest deductions equal to 50 percent of the interest deductions of the partnership. There is no income tax treaty between the United States and the countries of residence of A and B. The partnership pays $1,000 of interest to a bank that is a resident of a foreign country, Y, and that qualifies under an income tax treaty in effect with the United States for a 5 percent rate of tax on U.S. source interest paid to a resident of country Y. However, the bank is not a qualified resident of country Y and the limitation on benefits provision of the treaty has not been amended since December 31, 1986. The partnership is required to withhold at a rate of 30 percent on $500 of the interest paid to the bank (i.e., A's 50 percent distributive share of interest paid by the partnership) because the bank cannot, under paragraph (b)(8)(iv) of this section, claim greater treaty benefits by lending money to the partnership than it could claim, if it lent money to A directly and the $500 were branch interest of A.

(c) *Rules relating to excess interest—(1) Election to compute excess interest by treating branch interest that is paid and accrued in different years as if paid in year of accrual*—(i) *General rule.* If branch interest is paid in one or more taxable years before or after the year in which the interest accrues, a foreign corporation may elect to compute its excess interest as if such branch interest were paid on the last day of the taxable year in which it accrues, and not in the taxable year in which it is actually paid. The interest expense will thus reduce the amount of the foreign corporation's excess interest in the year of accrual rather than in the year of actual payment. Except as provided in paragraph (c)(1)(ii) of this section, if an election is made for a taxable year, this paragraph (c)(1)(i) shall apply to all branch interest that is paid or accrued during that year. See paragraph (b)(7) of this section for the effect of an election under this paragraph (c)(1) on branch interest that accrues in a taxable year after the year of payment.

(ii) *Election not to apply in certain cases.* An election under this paragraph (c)(1) shall not apply to an interest expense that accrued in a taxable year beginning before January 1, 1987, and shall not apply to an interest expense that was paid in a taxable year beginning before such date unless the interest was income from sources within the United States. An election under this paragraph (c)(1) shall not apply to branch interest that accrues during the taxable year and is paid in an earlier taxable year if the branch interest reduced excess interest in such earlier year. However, a foreign corporation may amend its income tax return for such earlier taxable year so that the branch interest does not reduce excess interest in such year.

(iii) *Requirements for election.* A foreign corporation that elects to apply this paragraph (c)(1) shall attach to its income tax return (or to an amended income tax return) a statement that it elects to have the provisions of this paragraph (c)(1) apply, or shall provide written notice to the Commissioner during an examination that it elects to apply this paragraph (c)(1). The election shall be effective for the taxable year to which the return relates and for all subsequent taxable years unless the Commissioner consents to revocation of the election.

(iv) *Examples.* The following examples illustrate the application of this paragraph (c)(1).

Example 1. Interest accrued before paid. Foreign corporation A, a calendar year, accrual method taxpayer, has $100 of interest apportioned to ECI under § 1.882–5 for 1993. A has $80 of branch interest in 1993 before application of this paragraph (c)(1). A has an interest expense of $20 that properly accrues for tax purposes in 1993 but is not paid until 1994. When the interest is paid in 1994 it will meet the requirements for branch interest under paragraph (b)(1) of this section. A makes a timely election under this paragraph (c)(1) to treat the accrued interest as if it were paid in 1993. A will be treated as having branch interest of $80 for 1993 and excess interest of $20 in 1993. The $20 of interested treated as branch interest of A in 1993 will not again be treated as branch interest in 1994.

Example 2. Interest paid before accrued. Foreign corporation A, a calendar year, accrual method taxpayer, has $80 of branch interest in 1993. The interest expense does not accrue until 1994 and the amount of interest apportioned to A's ECI under § 1.882–5 is zero for 1993 and $80 for 1994. A makes an election under this paragraph (c)(1) with respect to 1993. As a result of the election, A's $80 of branch interest in 1993 reduces the amount of A's excess interest for 1994 rather than in 1993.

(2) *Interest paid by a partnership*)—(i) *General rule.* Except as otherwise provided in paragraphs (c)(2) (i) and (ii) of this section, if a foreign corporation is a partner in a partnership that is engaged in trade or business in the United States, the amount of the foreign corporation's distributive share of interest paid or accrued by the partnership shall reduce (but not below zero) the amount of the foreign corporation's excess interest for the year to the extent such interest is taken into account by the foreign corporation in that year for purposes of calculating the interest apportioned to the ECI of the foreign corporation under § 1.882–5. A foreign corporation's excess interest shall not be reduced by its distributive share of partnership interest that is attributable to a liability described in paragraph (b)(3)(iii) of this section (relating to interest on liabilities incurred in the ordinary course of a foreign business or secured predominantly by assets that are not U.S. assets) or would be described in paragraph (b)(3)(iii) of this section if entered on the partner's books. See paragraph (b)(8)(v) of this section for the effect of income tax treaties on interest paid by a partnership.

(ii) *Special rule for interest that is paid and accrued in different years.* Paragraph (c)(2)(i) of this section shall not apply to any portion of a foreign corporation's distributive share of partnership interest that is paid and accrued in different taxable years unless the foreign corporation has an election in effect under paragraph (c)(1) of this section that is effective with respect to such interest and any tax due under section 871(a) or 881(a) with respect to such interest has been deducted and withheld at source in the earlier of the taxable year of payment or accrual.

(3) *Effect of treaties*—(i) *General rule.* The rate of tax imposed on the excess interest of a foreign corporation that is a resident of a country with which the United States has an income tax treaty shall not exceed the rate provided under such treaty that would apply with respect to interest paid by a domestic corporation to that foreign corporation if the foreign corporation meets, with respect to the excess interest, the requirements of the limitations on benefits provision, if any, in the treaty and either—

(A) The corporation is a qualified resident (as defined in § 1.884–5(a)) of that foreign country for the taxable year in which the excess interest is subject to tax; or

(B) The limitation on benefits provision, or an amendment to that provision, entered into force after December 31, 1986.

(ii) *Provisions relating to interest paid by a foreign corporation.* Any provision in an income tax treaty that exempts or reduces the rate of tax on interest paid by a foreign corporation does not prevent imposition of the tax on excess interest or reduce the rate of such tax.

(4) *Example.* The application of paragraphs (c)(2) and (3) of this section is illustrated by the following example.

Example. Interest paid by a partnership. Foreign corporation A, a calendar year taxpayer, is not a resident of a foreign country with which the United States has an income tax treaty. A is engaged in the conduct of a trade or business both in the United States and in foreign countries, and owns a 50 percent interest in X, a calendar year partnership engaged in the conduct of a trade or business in the United States. For 1993, all of X's liabilities are of a type described in paragraph (b)(1) of this section (relating to liabilities on U.S. books) and none are described in paragraph (b)(3)(iii) of this section (relating to liabilities that may not give rise to branch interest). A's distributive share of interest paid by X in 1993 is $20. For 1993, A has $150 of interest apportioned to its ECI under § 1.882–5, $120 of which is attributable to branch interest. Thus, the amount of A's excess interest for 1993, before application of paragraph (c)(2)(i) of this section, is $30. Under paragraph (c)(2)(i) of this section, A's $30 of excess interest is reduced by $20, representing A's share of interest paid by X. Thus, the amount of A's excess interest for 1993 is reduced to $10. A is subject to a tax of 30 percent on its $10 of excess interest.

(d) *Stapled entities.* A foreign corporation that is treated as a domestic corporation by reason of section 269B (relating to stapled entities) shall continue to be treated as a foreign corporation for purposes of section 884 (f) and this section, notwithstanding section 269B and the regulations thereunder. Interest paid by such foreign corporation shall be treated as paid by a domestic corporation and shall be subject to the tax imposed by section 871 (a) or 881 (a), and to withholding under section 1441 and 1442, as applicable, to the extent such interest is not subject to tax by reason of section 884(f) and this section.

(e) *Effective dates.* This section is effective for taxable years beginning October 13, 1992, and for payments of interest described in section 884 (f)(1)(A) made (or treated as made under paragraph (b)(7) of this section) during taxable years of the payor beginning after such date. With respect to taxable years beginning before October 13, 1992 and after December 31, 1986, a foreign corporation may elect to apply this section in lieu of § 1.884–4T of the temporary regulations (as contained in the CFR edition revised as of April 1, 1992) as they applied to the foreign corporation after issuance of Notice 89–80, 1989–2 C.B. 394, but only if the foreign corporation has made an election under § 1.884–1 (i) to apply § 1.884–1 in lieu of § 1.884–1T (as contained in the CFR edition revised as of April 1, 1992) for that year, and the statute of limitations for assessment of a deficiency has not expired for that taxable year. Once an election has been made, an election under this section shall apply to all subsequent taxable years.

(f) *Transition rules*—(1) *Election under paragraph (c)(1) of this section.* If a foreign corporation has made an election described in § 1.884–4T(b)(7) (as contained in the CFR edition revised as of April 1, 1992) with respect to interest that has accrued and been paid in different taxable years, such election shall be effective for purposes of paragraph (c)(1) of this section as if the corporation had made the election under paragraph (c)(1) of this section of these regulations.

(2) *Waiver of notification requirement for non-banks under Notice 89–80.* If a foreign corporation that is not a bank has made an election under Notice 89–80 to apply the rules in part 2 of section I of the Notice in lieu of the rules in § 1.884–4T(b) (as contained in the CFR edition revised as of April 1, 1992) to determine the amount of its interest paid and excess interest in taxable years beginning prior to 1990, the requirement that the foreign corporation satisfy the notification requirements described in paragraph (b)(3)(ii) of this section is waived with respect to interest paid in taxable years ending on or before the date the Notice was issued.

(3) *Waiver of legending requirement for certain debt issued prior to January 3, 1989.* For purposes of sections 871(h), 881(c), and this section, branch interest of a foreign corporation that would be treated as portfolio interest under section 871(h) or 881(c) but for the fact that it fails to meet the requirements of section 163(f)(2)(B)(ii)(II) (relating to the legend requirement), shall nevertheless be treated as portfolio interest provided the interest arises with respect to a liability incurred by the foreign corporation before January 3, 1989, and interest with respect to the liability was treated as branch interest in a taxable year beginning before January 1, 1990.

§ 1.884–5 Qualified resident.

(a) *Definition of qualified resident.* A foreign corporation is a qualified resident of a foreign country with which the United States has an income tax treaty in effect if, for the taxable year, the foreign corporation is a resident of that country (within the meaning of such treaty) and either—

(1) Meets the requirements of paragraphs (b) and (c) of this section (relating to stock ownership and base erosion);

(2) Meets the requirements of paragraph (d) of this section (relating to publicly-traded corporations);

(3) Meets the requirements of paragraph (e) of this section (relating to the conduct of an active trade or business); or

(4) Obtains a ruling as provided in paragraph (f) of this section that it shall be treated as a qualified resident of its country of residence.

(b) *Stock ownership requirement*—(1) *General rule*—(i) *Ownership by qualifying shareholders.* A foreign corporation satisfies the stock ownership requirement of this paragraph (b) for the taxable year if more than 50 percent of its stock (by value) is beneficially owned (or is treated as beneficially owned by reason of paragraph (b)(2) of this section) during at least half of the number of days in the foreign corporation's taxable year by one or more qualifying shareholders. A person shall be treated as a qualifying shareholder only if such person meets the requirements of paragraph (b)(3) of this section and is either—

(A) An individual who is either a resident of the foreign country of which the foreign corporation is a resident or a citizen or resident of the United States;

(B) The government of the country of which the foreign corporation is a resident (or a political subdivision or local authority of such country), or the United States, a State, the District of Columbia, or a political subdivision or local authority of a State;

(C) A corporation that is a resident of the foreign country of which the foreign corporation is a resident and whose stock is primarily and regularly traded on an established securities market (within the meaning of paragraph (d) of this section) in that country or the United States or a domestic corporation whose stock is primarily and regularly traded on an established securities market (within the meaning of paragraph (d) of this section) in the United States;

(D) A not-for profit organization described in paragraph (b)(1)(iv) of this section that is not a pension fund as defined in paragraph (b)(8)(i)(A) of this section and that is organized under the laws of the foreign country of which the foreign corporation is a resident of the United States; or

(E) A beneficiary of certain pension funds (as defined in paragraph (b)(8)(i)(A) of this section) administered in or by the country in which the foreign corporation is a resident to the extent provided in paragraph (b)(8) of this section.

Beneficial owners of an association taxable as a corporation shall be treated as shareholders of such association for purposes of this paragraph (b)(1). If stock of a foreign corporation is owned

by a corporation that is treated as a qualifying shareholder under paragraph (b)(1)(i)(C) of this section, such stock shall not also be treated as owned, directly or indirectly, by any qualifying shareholders of such corporation for purposes of this paragraph (b). Notwithstanding the above, a foreign corporation will not be treated as a qualified resident unless it obtains the documentation described in paragraph (b)(3) of this section to show that the requirements of this paragraph (b)(1)(i) have been met and maintains the documentation as provided in paragraph (b)(9) of this section. See also paragraph (b)(1)(iii) of this section, which treats certain publicly-traded classes of stock as owned by qualifying shareholders.

(ii) *Special rules relating to qualifying shareholders.* For purposes of applying paragraph (b)(1)(i) of this section—

(A) Stock owned on any day shall be taken into account only if the beneficial owner is a qualifying shareholder on that day or, in the case of a corporation or not-for-profit organization that is a qualifying shareholder under paragraph (b)(1)(i) (C) or (D) of this section, for a one-year period that includes such day; and

(B) An individual, corporation or not-for-profit organization is a resident of a foreign country if it is a resident of that country for purposes of the income tax treaty between the United States and that country.

(iii) *Publicly-traded class of stock treated as owned by qualifying shareholders.* A class of stock of a foreign corporation shall be treated as owned by qualifying shareholders if—

(A) The class of stock is listed on an established securities market in the United States or in the country of residence of the foreign corporation seeking qualified resident status; and

(B) The class of stock is primarily and regularly traded on such market (within the meaning of paragraphs (d) (3) and (4) of this section, applied as if the class of stock were the sole class of stock relied on to meet the requirements of paragraph (d)(4)(i)(A)).

For purposes of this paragraph (b), stock in such class shall not also be treated as owned by any qualifying shareholders who own such stock, either directly or indirectly.

(iv) *Special rule for not-for-profit organizations.* A not-for-profit organization is described in paragraph (b)(1)(iv) of this section if it meets the following requirements—

(A) It is a corporation, association taxable as a corporation, trust, fund, foundation, league or other entity operated exclusively for religious, charitable, educational, or recreational purposes, and it is not organized for profit;

(B) It is generally exempt from tax in its country of organization by virtue of its not-for-profit status;

(C) Either—

(*1*) More than 50 percent of its annual support is expended on behalf of persons described in paragraphs (b)(1)(i)(A) through (E) of this section or on qualified residents of the country in which the organization is organized; or

(*2*) More than 50 percent of its annual support is derived from persons described in paragraphs (b)(1)(i) (A) through (E) of this section or from persons who are qualified residents of the country in which the organization is organized.

For purposes of meeting the requirements of paragraph (b)(1)(iv)(C) of this section, a not-for-profit organization may rely on the addresses of record of its individual beneficiaries and supporters to determine if such persons are resident in the country in which the not-for-profit organization is organized, provided that the addresses of record are not nonresidential addresses such as a post office box or in care of a financial intermediary, and the officers, directors or administrators of the organization do not know or have reason to know that the individual beneficiaries or supporters do not reside at that address.

(2) *Rules for determining constructive ownership*—(i) *General rules for attribution.* For purposes of this section, stock owned by a corporation, partnership, trust, estate, or mutual insurance company or similar entity shall be treated as owned proportionately by its shareholders, partners, beneficiaries, grantors or other interest holders as provided in paragraph (b)(2)(ii) through (v) of this section. The proportionate interest rules of this paragraph (b)(2) shall apply successively upward through a chain of ownership, and a person's proportionate interest shall be computed for the relevant days or period that is taken into account in determining whether a foreign corporation is a qualified resident. Except as otherwise provided, stock treated as owned by a person by reason of this paragraph (b)(2) shall, for purposes of applying this paragraph (b)(2), be treated as actually owned by such person.

(ii) *Partnerships.* A partner shall be treated as having an interest in stock of a foreign corporation owned by a partnership in proportion to the least of—

(A) The partner's percentage distributive share of the partnership's dividend income from the stock;

(B) The partner's percentage distributive share of gain from disposition of the stock by the partnership;

(C) The partner's percentage distributive share of the stock (or proceeds from the disposition of the stock) upon liquidation of the partnership.

For purposes of this paragraph (b)(2)(ii), however, all qualifying shareholders that are partners of a partnership shall be treated as one partner. Thus, the percentage distributive shares of dividend income, gain and liquidation rights of all qualifying shareholders that are partners in a partnership are aggregated prior to determining the least of the three percentages.

(iii) *Trusts and estates*—(A) *Beneficiaries.* In general, a person shall be treated as having an interest in stock of a foreign corporation owned by a trust or estate in proportion to the person's actuarial interest in the trust or estate, as provided in section 318(a)(2)(B)(i), except that an income beneficiary's actuarial interest in the trust will be determined as if the trust's only asset were the stock. The interest of a remainder beneficiary in stock will be equal to 100 percent minus the sum of the percentages of any interest in the stock held by income beneficiaries. The ownership of an interest in stock owned by a trust shall not be attributed to any beneficiary whose interest cannot be determined under the preceding sentence, and any such interest, to the extent not attributed by reason of this paragraph (b)(2)(iii)(A), shall not be considered owned by a beneficiary unless all potential beneficiaries with respect to the stock are qualifying shareholders. In addition, a beneficiary's actuarial interest will be treated as zero to extent that a grantor is treated as owning the stock under paragraph (b)(2)(iii)(B) of this section. A substantially separate and independent share of a trust, within the meaning of section 663(c), shall be treated as a separate trust for purposes of this paragraph (b)(2)(iii)(A), provided that payment of income, accumulated income or corpus of a share of one beneficiary (or group of beneficiaries) cannot affect the proportionate share of income, accumulated income or corpus of another beneficiary (or group of beneficiaries).

(B) *Grantor trusts.* A person is treated as the owner of stock of a foreign corporation owned by a trust to the extent that the stock is included in the portion of the trust that is treated as owned by the person under sections 671

to 679 (relating to grantors and others treated as substantial owners).

(iv) *Corporations that issue stock.* A shareholder of a corporation that issues stock shall be treated as owning stock of a foreign corporation that is owned by such corporation on any day in a proportion that equals the value of the stock owned by such shareholder to the value of all stock of such corporation. If there is an agreement, express or implied, that a shareholder of a corporation will not receive distributions from the earnings of stock owned by the corporation, the shareholder will not be treated as owning that stock owned by the corporation.

(v) *Mutual insurance companies and similar entities.* Stock held by a mutual insurance company, mutual savings bank, or similar entity (including an association taxable as a corporation that does not issue stock interests) shall be considered owned proportionately by the policy holders, depositors, or other owners in the same proportion that such persons share in the surplus of such entity upon liquidation or dissolution.

(vi) *Pension funds.* See paragraphs (b)(8) (ii) and (iii) of this section for the attribution of stock owned by a pension fund (as defined in paragraph (b)(8)(i)(A)) to beneficiaries of the fund.

(vii) *Examples.* The rules of paragraph (b)(2)(ii) of this section are illustrated by the following examples.

Example 1. Stock held solely by qualifying shareholders through a partnership. A and B, residents of country X, are qualifying shareholders, within the meaning of paragraphs (b)(1)(i) (A) through (E) of this section, and the sole partners of partnership P. P's only asset is the stock of foreign corporation Z, a country X corporation seeking qualified resident status under this section. A's distributive share of P's income and gain on the disposition of P's assets is 80 percent, but A's distributive share of P's assets (or the proceeds therefrom) on P's liquidation is 20 percent. B's distributive share of P's income and gain is 20 percent and B is entitled to 80 percent of the assets (or proceeds therefrom) on P's liquidation. Under the attribution rules of paragraph (b)(2)(ii) of this section, A and B will be treated as a single partner owning in the aggregate 100 percent of the stock of Z owned by P.

Example 2. Stock held by both qualifying and non-qualifying shareholders through a partnership. Assume the same facts as in *Example 1* except that C, an individual who is not a qualifying shareholder, is also a partner in P and that C's distributive share of P's income is 60 percent. The distributive shares of A and B are the same as in *Example 1* except that A's distributive share of income is 20 percent. Under the attribution rules of paragraph (b)(2)(ii) of this section, A and B will be treated as a single partner owning in the aggregate 40 percent of the stock of Z owned by P (i.e., the least of A and B's aggregate distributive shares of dividend income (40 percent), gain (100 percent), and liquidation rights (100 percent) with respect to the Z stock).

Example 3. Stock held through tiered partnerships. Assume the same facts as in *Example 1*, except that P does not own the stock of Z directly, but rather is a partner in partnership P1, which owns the stock of Z. Assume that P's distributive share of the dividend income, gain and liquidation rights with respect to the Z stock held by P1 is 40 percent. Assume that of the remaining partners of P1 only D is a qualifying shareholder. D's distributive share of P1's dividend income and gain is 15 percent; D's distributive share of P1's assets on liquidation is 25 percent. Under the attribution rules of paragraph (b)(2)(ii) of this section, A and B, treated as a single partner, will own 40 percent of the Z stock owned by P1 (100 percent X 40 percent) and D will be treated as owning 15 percent of the Z stock owned by P1 (the least of D's dividend income (15 percent), gain (15 percent), and liquidation rights (25 percent) with respect to the Z stock). Thus, 55 percent of the Z stock owned by P1 is treated as owned by qualifying shareholders under paragraph (b)(2)(ii) of this section.

(3) *Required documentation*—(i) *Ownership statements, certificates of residency and intermediary ownership statements.* Except as provided in paragraphs (b)(3)(ii), (iii) and (iv) and paragraphs (b)(8) of this section, a person shall only be treated as a qualifying shareholder of a foreign corporation if—

(A) For the relevant period, the person completes an ownership statement described in paragraph (b)(4) of this section and, in the case of an individual who is not a U.S. citizen or resident, also obtains a certificate of residency described in paragraph (b)(5) of this section;

(B) In the case of a person owning stock in the foreign corporation indirectly through one or more intermediaries (including mere legal owners or recordholders acting as nominees), each intermediary completes an intermediary ownership statement described in paragraph (b)(6) of this section; and

(C) Such ownership statements and certificates of residency are received by the foreign corporation on or before the earlier of the date it files its income tax return for the taxable year to which the statements relate or the due date (including extensions) for filing such return or, in the case of a foreign corporation claiming treaty benefits under § 1.884–4(b)(8) (i) or (ii) (relating to branch interest) on or before the date on which such interest is paid.

(ii) *Substitution of intermediary verification statement for ownership statements and certificates of residency.* If a qualifying shareholder owns stock through an intermediary that is either a domestic corporation, a resident of the United States, or a resident (for treaty purposes) of a country with which the United States has an income tax treaty in effect, the intermediary may provide an intermediary verification statement (as described in paragraph (b)(7) of this section) in place of any relevant ownership statements and certificates of residency from qualifying shareholders, and in place of intermediary ownership statements (or, where applicable, intermediary verification statements) from all intermediaries standing in the chain of ownership between the qualifying shareholders and the intermediary issuing the intermediary verification statement. An intermediary verification statement generally certifies that the verifying intermediary holds the documentation described in the preceding sentence and agrees to make it available to the District Director on request. Such intermediary verification statements, along with an intermediary ownership statement from the verifying intermediary, must be received by the foreign corporation on or before the earlier of the date if files its income tax return for the taxable year to which the statements relate or the due date (including extensions) for filing such return. An indirect owner of a foreign corporation is thus treated as a qualifying shareholder of a foreign corporation if the foreign corporation receives, on or before the time specified above, an intermediary verification statement and an intermediary ownership statement from the verifying intermediary and an intermediary ownership statement from all intermediaries standing in the chain of the verifying intermediary's ownership of its interest in the foreign corporation.

(iii) *Special rule for registered shareholders of widely-held corporations.* An ownership statement and a certificate of residency shall not be required in the case of an individual who is a shareholder of record of a corporation that has at least 250 shareholders if—

(A) The individual owns less than one percent of the stock (by value) (applying the attribution rules of section 318) of the corporation at all times during the taxable year;

(B) The individual's address of record is in the corporation's country of residence and is not a nonresidential address such as a post office box or in care of a financial intermediary or stock transfer agent; and

(C) The officers and directors of the corporation do not know or have reason to know that the individual does not reside at that address.

The rule in this paragraph (b)(3)(iii) may also be applied with respect to individual owners of mutual insurance companies, mutual savings banks or similar entities, provided that the same conditions set forth in this paragraph are met with respect to such individuals.

(iv) *Special rule for pension funds.* See paragraphs (b)(8) (ii) through (v) of this section for special documentation rules applicable to pension funds (as defined in paragraph (b)(8)(i)(A) of this section).

(v) *Reasonable cause exception.* If a foreign corporation does not obtain the documentation described in this paragraph (b)(3) or (b)(8) of this section in a timely manner but is able to show prior to notification of an examination of the return for the taxable year that the failure was due to reasonable cause and not willful neglect, the foreign corporation may perfect the documentation after the deadlines specified in paragraph (b)(3) or (b)(8) of this section. It may make such a showing by providing a written statement to the District Director having jurisdiction over the taxpayer's return or the Office of the Assistant Commissioner (International), as applicable, setting forth the reasons for the failure to obtain the documentation in a timely manner and a describing the documentation that was received after the deadline had passed. Whether a failure to obtain the documentation in a timely manner was due to reasonable cause shall be determined by the District Director or the Office of the Assistant Commissioner (International), as applicable, under all the facts and circumstances.

(4) *Ownership statements from qualifying shareholders*—(i) *Ownership statements from individuals.* An ownership statement from an individual is a written statement signed by the individual under penalties of perjury stating—

(A) The name, permanent address, and country of residence of the individual and, if the individual was not a resident of the country for the entire taxable year of the foreign corporation seeking qualified resident status, the period during which it was a resident of the foreign corporation's country of residence;

(B) If the individual is a direct beneficial owner of stock in the foreign corporation, the name of the corporation, the number of shares in each class of stock of the corporation that are so owned, and the period of time during the taxable year of the foreign corporation during which the individual owned the stock (or, in the case of an association taxable as a corporation, the amount and nature of the owner's interest in such association);

(C) If the individual directly owns an interest in a corporation, partnership, trust, estate or other intermediary that owns (directly or indirectly) stock in the foreign corporation, the name of the intermediary, the number and class of shares or amount and nature of the interest of the individual in such intermediary (that is relevant for purposes of attributing ownership in paragraph (b)(2) of this section), and the period of time during the taxable year of the foreign corporation during which the individual held such interest; and

(D) To the extent known by the individual, a description of the chain of ownership through which the individual owns stock in the foreign corporation, including the name and address of each intermediary standing between the intermediary described in paragraph (b)(4)(i)(C) of this section and the foreign corporation.

(ii) *Ownership statements from governments.* An ownership statement from a government that is a qualifying shareholder is a written statement signed by either—

(A) An official of the governmental authority, agency or office that has supervisory authority with respect to the government's ownership interest who is authorized to sign such a statement on behalf of the authority, agency or office; or

(B) The competent authority of the foreign country (as defined in the income tax treaty between the United States and the foreign country).

Such statement shall provide the title of the official signing the statement and the name and address of the government agency, and shall provide the information described in paragraphs (b)(4)(i) (B) through (D) of this section (substituting "government" for "individual") with respect to the government's direct or indirect ownership of stock in the foreign corporation seeking qualified resident status.

(iii) *Ownership statements from publicly-traded corporations.* An ownership statement from a corporation that is a qualifying shareholder under paragraph (b)(1)(i)(C) of this section is a written statement signed by a person authorized to sign a tax return on behalf of the corporation under penalties of perjury stating—

(A) The name, permanent address, and principal place of business of the corporation (if different from its permanent address);

(B) The information described in paragraphs (b)(4)(i) (B) through (D) of this section (substituting "corporation" for "individual"); and

(C) That the corporation's stock is primarily and regularly traded on an established securities exchange (within the meaning of paragraph (d) of this section) in the United States or its country of residence.

(iv) *Ownership statements from not-for-profit organizations.* An ownership statement from a not-for-profit organization (other than a pension fund as defined in paragraph (b)(8)(i)(A) of this section) is a written statement signed by a person authorized to sign a tax return on behalf of the organization under penalties of perjury stating—

(A) The name, permanent address, and principal location of the activities of the organization (if different from its permanent address);

(B) The information described in paragraphs (b)(4)(i) (B) through (D) of this section (substituting "not-for-profit organization" for "individual") with respect to the not-for-profit organization's direct or indirect ownership of stock in the foreign corporation seeking qualified resident status; and

(C) That the not-for-profit organization satisfies the requirements of paragraph (b)(1)(iv) of this section.

(v) *Ownership through a nominee.* For purposes of this paragraph (b)(4) and paragraph (b)(6) of this section, a person who owns either stock in a foreign corporation seeking qualified resident status or an interest in an intermediary described in paragraph (b)(4)(i)(C) of this section through a nominee shall be treated as owning such stock or interest directly and must, therefore, provide the information described in paragraphs (b)(4) (i) through (iv) of this section, as applicable. Such person must also provide the name and address of the nominee.

(5) *Certificate of residency.* A certificate of residency must be signed by the relevant authorities (as described below) of the country of residence of the individual shareholder and must state that the individual is a resident of that country for purposes of its income tax laws or, if the authorities do not customarily make such a determination, that the individual has filed a tax return claiming resident status and subjecting the individual's income to tax on a resident basis for the taxable year or period that ends with or within the taxable year for which the corporation is seeking qualified resident status. In

the case of an individual who is not legally required to file a tax return in his or her country of residence or in any other country, a certificate of residency of a parent or guardian residing at such individual's address shall be considered sufficient to meet that individual's obligation under this paragraph (b)(5). The relevant authorities shall be the competent authority of the foreign country of which the foreign corporation is a resident, as defined in the income tax treaty between the foreign country and the United States, or such other governmental office of the foreign country (or political subdivision thereof) that customarily provides statements of residence. Notwithstanding the foregoing, the Commissioner may consult with the competent authority of a country regarding the procedures set forth in this paragraph (b)(5) and if necessary agree on additional or alternative procedures under which these certificates may be issued.

(6) *Intermediary ownership statement.* An intermediary ownership statement is a written statement signed under penalties of perjury by the intermediary (if the intermediary is an individual) or a person that would be authorized to sign a tax return on behalf of the intermediary (if the intermediary is not an individual) containing the following information:

(i) The name, address, country of residence, and principal place of business (in the case of a corporation or partnership) of the intermediary and, if the intermediary is a trust or estate, the name and permanent address of all trustees or executors (or equivalent under foreign law);

(ii) The information described in paragraphs (b)(4)(i) (B) through (D) (substituting "intermediary making the ownership statement" for "individual") with respect to the intermediary's direct or indirect ownership in the stock in the foreign corporation seeking qualified resident status;

(iii) If the intermediary is a nominee for a qualifying shareholder or another intermediary, the name and permanent address of the qualifying shareholder, or the name and principal place of business of such other intermediary;

(iv) If the intermediary is not a nominee for a qualifying shareholder or another intermediary, the proportionate interest in the intermediary of each direct shareholder, partner, beneficiary, grantor, or other interest holder (of if the direct holder is a nominee, of its beneficial shareholder, partner, beneficiary, grantor, or other interest holder) from which the intermediary received an ownership statement and the period of time during the taxable year for which the interest in the intermediary was owned by such shareholder, partner, beneficiary, grantor or other interest holder. For purposes of this paragraph (b)(6)(iv), the proportionate interest of a person in an intermediary is the percentage interest (by value) held by such person, determined using the principles for attributing ownership in paragraph (b)(2) of this section. If an intermediary is not required to receive an ownership statement from its individual registered shareholders or other interest holders by reason of paragraph (b)(3)(iii) of this section, then it must provide a list of the names and addresses of such registered shareholders or other interest holders and the aggregate proportionate interest in the intermediary of such registered shareholders or other interest holders.

(7) *Intermediary verification statement.* An intermediary verification statement that may be substituted for certain documentation under paragraph (b)(3)(ii) of this section is a written statement signed under penalties of perjury by the intermediary (if the intermediary is an individual) or by a person that would be authorized to sign a tax return on behalf of the intermediary (if the verifying intermediary is not an individual) containing the following information—

(i) The name, principal place of business, and country of residence of the verifying intermediary;

(ii) A statement that the verifying intermediary has obtained either—

(A) An ownership statement and, if applicable, a certificate of residency from a qualifying shareholder with respect to the foreign corporation seeking qualified resident status, and an intermediary ownership statement from each intermediary standing in the chain of ownership between the verifying intermediary and the qualifying shareholder; or

(B) An intermediary verification statement substituting for the documentation described in paragraph (b)(7)(ii)(A) and an intermediary ownership statement from such intermediary and each intermediary standing in the chain of ownership between such intermediary and the verifying intermediary;

(iii) The proportionate interest (as computed using the documentation described in paragraph (b)(7)(ii) of this section) in the intermediary owned directly or indirectly by qualifying shareholders;

(iv) An agreement to make available to the Commissioner at such time and place as the Commissioner may request the underlying documentation described in paragraph (b)(7)(ii) of this section; and

(v) A specific and valid waiver of any right to bank secrecy or other secrecy under the laws of the country in which the verifying intermediary is located, with respect to any qualifying shareholder ownership statements, certificates of residency, intermediary ownership statements or intermediary verification statements that the verifying intermediary has obtained pursuant to paragraph (b)(7)(ii) of this section.

A foreign corporation may combine, in a single statement, the information in an intermediary ownership statement and the information in an intermediary verification statement.

(8) *Special rules for pension funds*—(i) *Definitions*—(A) *Pension fund.* For purposes of this section, the term "pension fund" shall mean a trust, fund, foundation, or other entity that is established exclusively for the benefit of employees or former employees of one or more employers, the principal purpose of which is to provide retirement, disability, and death benefits to beneficiaries of such entity and persons designated by such beneficiaries in consideration for prior services rendered.

(B) *Beneficiary.* For purposes of this section, the term "beneficiary" of a pension fund shall mean any person who has made contributions to the pension fund, or on whose behalf contributions have been made, and who is currently receiving retirement, disability, or death benefits from the pension fund or can reasonably be expected to receive such benefits in the future, whether or not the person's right to receive benefits from the fund has vested.

(ii) *Government pension funds.* An individual who is a beneficiary of a pension fund that would be a controlled entity of a foreign sovereign within the principles of § 1.892–2T(c)(1) of the regulations (relating to pension funds established for the benefit of employees or former employees of a foreign government) shall be treated as a qualifying shareholder of a foreign corporation in which the pension fund owns a direct or indirect interest without having to meet the documentation requirements under paragraph (b)(3)(i)(A) of this section, if the foreign corporation is resident in the country of the foreign sovereign and the trustees, directors, or other administrators of the pension fund provide, with the pension fund's intermediary ownership statement described in paragraph (b)(6) of this section, a written statement that the

fund is a controlled entity described in this paragraphs (b)(8)(ii). See paragraph (b)(4)(ii) of this section regarding an ownership statement from a pension fund that is an integral part of a foreign government.

(iii) *Non-government pension funds* For purposes of this section, an individual who is a beneficiary of a pension fund not described in paragraph (b)(8)(ii) of this section shall be treated as a qualifying shareholder of a foreign corporation owned directly or indirectly by such pension fund without having to meet the documentation requirements under paragraph (b)(3)(i)(A) of this section, if—

(A) The pension fund is administered in the foreign corporation's country of residence and is subject to supervision or regulation by a governmental authority (or other authority delegated to perform such supervision or regulation by a governmental authority) in such country;

(B) The pension fund is generally exempt from income taxation in its country of administration;

(C) The pension fund has 100 or more beneficiaries;

(D) The beneficiary's address, as it appears on the records of the fund, is in the foreign corporation's country of residence or the United States and is not a nonresidential address, such as a post office box or in care of a financial intermediary, and none of the trustees, directors or other administrators of the pension fund know, or have reason to know, that the beneficiary is not an individual resident of such foreign country or the United States;

(E) In the case of a pension fund that has fewer than 500 beneficiaries, the beneficiary's employer provides (if the beneficiary is currently contributing to the fund) to the trustees, directors or other administrators a written statement that the beneficiary is currently employed in the country in which the fund is administered or is usually employed in such country but is temporarily employed by the company outside of the country; and

(F) The trustees, directors or other administrators of the pension fund provide, with the pension fund's intermediary ownership statement described in paragraph (b)(6) of this section, a written statement signed under penalties of perjury declaring that the pension fund meets the requirements in paragraphs (b)(8)(iii) (A), (B), and (C) of this section and giving the number of beneficiaries who meet the requirements of paragraph (b)(8)(iii)(D) of this section, and, if applicable, paragraph (b)(8)(iii)(E) of this section.

(iv) *Computation of beneficial interests in non-government pension funds.* The number of shares in a foreign corporation that are held indirectly by beneficiaries of a pension fund who are qualifying shareholders may be computed based on the ratio of the number of such beneficiaries to all beneficiaries of the pension fund (rather than on the basis of the rules in paragraph (b)(2) of this section) if—

(A) The pension fund meets the requirements of paragraphs (b)(8)(iii) (A), (B), and (C) of this section;

(B) The trustees, directors or other administrators of the pension fund have no knowledge, and no reason to know, that the ratio of the pension fund's beneficiaries who are residents of either the country in which the pension fund is administered or of the United States to all beneficiaries of the pension fund would differ significantly from the ratio of the sum of the actuarial interests of such residents in the pension fund to the actuarial interests of all beneficiaries in the pension fund (or, if the beneficiaries' actuarial interest in the stock held directly or indirectly by the pension fund differs from the beneficiaries' actuarial interest in the pension fund, the ratio of actuarial interests computed by reference to the beneficiaries' actuarial interest in the stock);

(C) Either—

(*1*) Any overfunding of the pension fund would be payable, pursuant to the governing instrument or the laws of the foreign country in which the pension fund is administered, only to, or for the benefit of, one or more corporations that are qualified residents of the country in which the pension fund is administered, individual beneficiaries of the pension fund or their designated beneficiaries, or social or charitable causes (the reduction of the obligation of the sponsoring company or companies to make future contributions to the pension fund by reason of overfunding shall not itself result in such overfunding being deemed to be payable to or for the benefit of such company or companies) or

(*2*) The foreign country in which the pension fund is administered has laws that are designed to prevent overfunding of a pension fund and the funding of the pension fund is within the guidelines of such laws; or

(*3*) The pension fund is maintained to provide benefits to employees in a particular industry, profession, or group of industries or professions and employees of at least 10 companies (other than companies that are owned or controlled, directly or indirectly, by the same interests) contribute to the pension fund or receive benefits from the pension fund; and

(D) The trustees, directors or other administrators provide, with the pension fund's intermediary ownership statement described in paragraph (b)(6) of this section, a written statement signed under penalties of perjury certifying that the requirements in paragraphs (b)(8)(iv) (A), (B), and either (C)(*1*), (C)(*2*) or (C)(*3*) of this section have been met.

The statement described in paragraph (b)(8)(iv) (D) of this section may be combined, in a single statement, with the information required in paragraph (b)(8)(iv) (F) of this section

(v) *Time for making determinations.* The determinations required to be made under this paragraph (b)(8) shall be made using information shown on the records of the pension fund for a date on or after the beginning of the foreign corporation's taxable year to which the determination is relevant

(9) *Availability of documents for inspection*—(i) *Retention of documents by the foreign corporation.* The documentation described in paragraphs (b)(3) and (b)(8) of this section must be retained by the foreign corporation until expiration of the period of limitations for the taxable year to which the documentation relates and must be made available for inspection by the District Director at such time and place as the District Director may request

(ii) *Retention of documents by an intermediary issuing an intermediary verification statement.* The documentation upon which an intermediary relies to issue an intermediary verification statement under paragraph (b)(7) of this section must be retained by the intermediary for a period of six years from the date of issuance of the intermediary verification statement and must be made available for inspection by the District Director at such time and place as the District Director may request

(10) *Examples.* The application of this paragraph (b) is illustrated by the following examples.

Example 1. Foreign corporation A is a resident of country L, which has an income tax treaty in effect with the United States. Foreign corporation A has one class of stock issued and outstanding consisting of 1,000 shares, which are beneficially owned by the following alien individuals, directly or by application of paragraph (b)(2) of this section:

Individual	Shares owned, directly or indirectly by application of paragraph (b)(2) of this section	Percentage
T—resident of the U.S.	200	20
U—resident of country L	400	40
V—resident of country M	100	10
W—resident of country L	210	21
X—resident of country N	90	9
Total	1,000	100

(i) T owns his 200 shares directly and is a beneficial owner.

(ii) U and V own, respectively, an 80 percent and a 20 percent actuarial interest in foreign trust FT, (which interest does not differ from their respective interests in the stock owned by FT), which beneficially owns 100 percent of the stock of a foreign corporation B with bearer shares, which beneficially owns 500 shares of foreign corporation A. Foreign corporation B is incorporated in a country that does not have an income tax treaty with the United States. The foreign trust has deposited the bearer shares it owns in B with a bank in a foreign country that has an income tax treaty with the United States.

(iii) W beneficially owns all the shares of foreign corporation C, which are registered in the name of individual Z, a nominee, who resides in country L; foreign corporation C beneficially owns a 70 percent interest in foreign corporation D, which beneficially owns 300 shares of A. D's shares are bearer shares that C (not a resident of a country with which the United States has an income tax treaty) has deposited with a bank in a foreign country that has an income tax treaty with the United States.

(iv) X beneficially owns a 30 percent interest in foreign corporation D.

(v) A is a qualified resident of country L if it obtains the applicable documentation described in paragraph (b)(3) of this section either with respect to ownership by individuals U and W or with respect to ownership by individuals T and U, since either combination of qualifying shareholders of foreign corporation A will exceed 50 percent.

Example 2. Assume the same facts as in *Example 1* and assume that foreign corporation A chooses to obtain documentation with respect to individuals T and U.

(i) A must obtain, pursuant to paragraph (b)(3)(i) of this section, an ownership statement (as described in paragraph (b)(4)(i) of this section) signed by T. T is not required to furnish a certificate of residency because T is a U.S. resident.

(ii) U must provide foreign trust FT with an ownership statement and certificate of residency, as described in paragraphs (b)(4) and (b)(5) of this section. The trustees of FT must provide the depository bank holding foreign corporation B's bearer shares with an intermediary ownership statement concerning its beneficial ownership of B's shares and must attach to it the documentation provided by U. The depository bank must provide B with an intermediary ownership statement regarding its holding of B shares on behalf of FT and has the choice of attaching—

(A) The documentation from U and the intermediary ownership statement from FT; or

(B) An intermediary verification statement described in paragraph (b)(7) of this section, in which case foreign corporation B would not be provided with U's individual documentation or FT's intermediary ownership statement, both of which are retained by the depository bank.

(iii) In either case, B must then provide foreign corporation A with an intermediary ownership statement regarding its direct beneficial ownership of shares in A and, as the case may be, either—

(A) U's documentation and the intermediary ownership statements by FT and the depository bank; or

(B) The depository bank's intermediary ownership and verification statements.

(iv) Thus, with respect to U, A must obtain under paragraph (b)(3)(i) of this section the individual documentation regarding U and an intermediary ownership statement from each intermediary standing in the chain of U's indirect beneficial ownership of shares in A, i.e., from FT, the depository bank and B. In the alternative, A must obtain under paragraph (b)(3)(ii) of this section an intermediary verification statement issued by the depository bank and an intermediary ownership statement from the bank and from B, which, in this example, are the only intermediaries standing in the chain of ownership of the verifying intermediary (i.e., the depository bank).

Example 3. Assume the same facts as in *Example 1.* In addition, assume that foreign corporation A chooses to obtain documentation with respect to individuals U and W. With respect to U, A must obtain the same documentation that is described in *Example 2.* With respect to W, A must obtain, under paragraph (b)(3)(i) of this section, individual documentation regarding W and an intermediary ownership statement from each intermediary standing in the chain of W's indirect beneficial ownership of shares in A, i.e., from individual Z, foreign corporation C, the depository bank in the foreign treaty country, and foreign corporation D. In the alternative, A must obtain, under paragraph (b)(3)(ii) of this section, either—

(i) An intermediary verification statement by the depository bank in the foreign treaty country and an intermediary ownership statement from the bank and from D; or

(ii) An intermediary verification statement from Z and an intermediary ownership statement from Z and from each intermediary standing in the chain of ownership of shares in foreign corporation A, i.e., from C, the depository bank in the foreign treaty country and D. C may not issue an intermediary verification statement because it is not a resident of a country with which the United States has an income tax treaty.

(c) *Base erosion.* A foreign corporation satisfies the requirement relating to base erosion for a taxable year if it establishes that less than 50 percent of its income for the taxable year is used (directly or indirectly) to make deductible payments in the current taxable year to persons who are not residents (or, in the case of foreign corporations, qualified residents) of the foreign country of which the foreign corporation is a resident and who are not citizens or residents (or, in the case of domestic corporations, qualified residents) of the United States. Whether a domestic corporation is a qualified resident of the United States shall be determined under the principles of this section. For purposes of this paragraph (c), the term "deductible payments" includes payments that would be ordinarily deductible under U.S. income tax principles without regard to other provisions of the Code that may require the capitalization of the expense, or disallow or defer the deduction. Such payments include, for example, interest, rents, royalties and reinsurance premiums. For purposes of this paragraph (c), the income of a foreign corporation means the corporation's gross income for the taxable year (or, if the foreign corporation has no gross income for the taxable year, the average of its gross income for the three previous taxable years) under U.S. tax principles, but not excluding items of income otherwise excluded from gross income under U.S. tax principles.

(d) *Publicly-traded corporations*—(1) *General rule.* A foreign corporation that is a resident of a foreign country shall be treated as a qualified resident of that country for any taxable year in which—

(i) Its stock is primarily and regularly traded (as defined in paragraphs (d) (3) and (4) of this section) on one or more established securities markets (as defined in paragraph (d)(2) of this section) in that country, or in the United States, or both; or

(ii) At least 90 percent of the total combined voting power of all classes of stock of such foreign corporation entitled to vote and at least 90 percent of the total value of the stock of such foreign corporation is owned, directly or by application of paragraph (b)(2) of this section, by a foreign corporation that is a resident of the same foreign country or a domestic corporation and the stock of such parent corporation is primarily and regularly traded on an established securities market in that foreign country or in the United States, or both.

(2) *Established securities market*—(i) *General rule.* For purposes of section

884, the term "established securities market" means, for any taxable year—

(A) A foreign securities exchange that is officially recognized, sanctioned, or supervised by a governmental authority of the country in which the market is located, is the principal exchange in that country, and has an annual value of shares traded on the exchange exceeding $1 billion during each of the three calendar years immediately preceding the beginning of the taxable year;

(B) A national securities exchange that is registered under section 6 of the Securities Act of 1934 (15 U.S.C. 78f); and

(C) A domestic over-the-counter market (as defined in paragraph (d)(2)(iv) of this section).

(ii) *Exchanges with multiple tiers.* If a principal exchange in a foreign country has more than one tier or market level on which stock may be separately listed or traded, each such tier shall be treated as a separate exchange.

(iii) *Computation of dollar value of stock traded.* For purposes of paragraph (d)(2)(i)(A) of this section, the value in U.S. dollars of shares traded during a calendar year shall be determined on the basis of the dollar value of such shares traded as reported by the International Federation of Stock Exchanges, located in Paris, or, if not so reported, then by converting into U.S. dollars the aggregate value in local currency of the shares traded using an exchange rate equal to the average of the spot rates on the last day of each month of the calendar year.

(iv) *Definition of over-the-counter market.* An over-the-counter market is any market reflected by the existence of an interdealer quotation system. An interdealer quotation system is any system of general circulation to brokers and dealers that regularly disseminates quotations of stocks and securities by identified brokers or dealers, other than by quotation sheets that are prepared and distributed by a broker or dealer in the regular course of business and that contain only quotations of such broker or dealer.

(v) *Discretion to determine that an exchange qualifies as an established securities market.* The Commissioner may, in his sole discretion, determine in a published document that a securities exchange that does not meet the requirements of paragraph (d)(2)(i)(A) of this section qualifies as an established securities market. Such a determination will be made only if it is established that—

(A) The exchange, in substance, has the attributes of an established securities market (including adequate trading volume, and comparable listing and financial disclosure requirements);

(B) The rules of the exchange ensure active trading of listed stocks; and

(C) The exchange is a member of the International Federation of Stock Exchanges.

(vi) *Discretion to determine that an exchange does not qualify as an established securities market.* The Commissioner may, in his sole discretion, determine in a published document that a securities exchange that meets the requirements of paragraph (d)(2)(i) of this section does not qualify as an established securities market. Such determination shall be made if, in the view of the Commissioner—

(A) The exchange does not have adequate listing, financial disclosure, or trading requirements (or does not adequately enforce such requirements); or

(B) There is not clear and convincing evidence that the exchange ensures the active trading of listed stocks.

(3) *Primarily traded.* For purposes of this section, stock of a corporation is "primarily traded" on one or more established securities markets in the corporation's country of residence or in the United States in any taxable year if, with respect to each class described in paragraph (d)(4)(i)(A) of this section (relating to classes of stock relied on to meet the regularly traded test)—

(i) The number of shares in each class that are traded during the taxable year on all established securities markets in the corporation's country of residence or in the United States during the taxable year exceeds

(ii) The number of shares in each such class that are traded during that year on established securities markets in any other single foreign country.

(4) *Regularly traded*—(i) *General rule.* For purposes of this section, stock of a corporation is "regularly traded" on one or more established securities markets in the foreign corporation's country of residence or in the United States for the taxable year if—

(A) One or more classes of stock of the corporation that, in the aggregate, represent 80 percent or more of the total combined voting power of all classes of stock of such corporation entitled to vote and of the total value of the stock of such corporation are listed on such market or markets during the taxable year;

(B) With respect to each class relied on to meet the 80 percent requirement of paragraph (d)(4)(i)(A) of this section—

(1) Trades in each such class are effected, other than in *de minimis* quantities, on such market or markets on at least 60 days during the taxable year (or 1/6 of the number of days in a short taxable year); and

(2) The aggregate number of shares in each such class that is traded on such market or markets during the taxable year is at least 10 percent of the average number of shares outstanding in that class during the taxable year (or, in the case of a short taxable year, a percentage that equals at least 10 percent of the number of days in the short taxable year divided by 365).

If stock of a foreign corporation fails the 80 percent requirement of paragraph (d)(4)(i)(A) of this section, but a class of such stock meets the trading requirements of paragraph (d)(4)(i)(B) of this section, such class of stock may be taken into account under paragraph (b)(1)(iii) of this section as owned by qualifying shareholders for purposes of meeting the ownership test of paragraph (b)(1) of this section.

(ii) *Classes of stock traded on a domestic established securities market treated as meeting trading requirements.* A class of stock that is traded during the taxable year on an established securities market located in the United States shall be treated as meeting the trading requirements of paragraph (d)(4)(i)(B) of this section if the stock is regularly quoted by brokers or dealers making a market in the stock. A broker or dealer makes a market in a stock only if the broker or dealer holds himself out to buy or sell the stock at the quoted price.

(iii) *Closely-held classes of stock not treated as meeting trading requirement*—(A) *General rule.* A class of stock shall not be treated as meeting the trading requirements of paragraph (d)(4)(i)(B) of this section (or the requirements of paragraph (d)(4)(ii) of this section) for a taxable year if, at any time during the taxable year, one or more persons who are not qualifying shareholders (as defined in paragraph (b)(1) of this section) and who each beneficially own 5 percent or more of the value of the outstanding shares of the class of stock own, in the aggregate, 50 percent or more of the outstanding shares of the class of stock for more than 30 days during the taxable year. For purposes of the preceding sentence, shares shall not be treated as owned by a qualifying shareholder unless such shareholder provides to the foreign corporation, by the time prescribed in paragraph (b)(3) of this section, the documentation described in paragraph (b)(3) of this section necessary to establish that it is a qualifying shareholder. For purposes of this paragraph (d)(4)(iii)(A), shares of stock

owned by a pension fund, as defined in paragraph (b)(8)(i)(A) of this section, shall be treated as beneficially owned by the beneficiaries of such fund, as defined in paragraph (b)(8)(i)(B) of this section.

(B) *Treatment of related persons.* Persons related within the meaning of section 267(b) shall be treated as one person for purposes of this paragraph (d)(4)(iii). In determining whether two or more corporations are members of the same controlled group under section 267(b)(3), a person is considered to own stock owned directly by such person, stock owned with the application of section 1563(e)(1), and stock owned with the application of section 267(c). Further, in determining whether a corporation is related to a partnership under section 267(b)(10), a person is considered to own the partnership interest owned directly by such person and the partnership interest owned with the application of section 267(e)(3).

(iv) *Anti-abuse rule.* Trades between persons described in section 267(b) (as modified in paragraph (d)(4)(iii)(B) of this section) and trades conducted in order to meet the requirements of paragraph (d)(4)(i)(B) of this section shall be disregarded. A class of stock shall not be treated as meeting the trading requirements of paragraph (d)(4)(i)(B) of this section if there is a pattern of trades conducted to meet the requirements of that paragraph. For example, trades between two persons that occur several times during the taxable year my be treated as an arrangement or a pattern of trades conducted to meet the trading requirements of paragraph (d)(4)(i)(B) of this section.

(5) *Burden of proof for publicly-traded corporations.* A foreign corporation that relies on this paragraph (d) to establish that it is a qualified resident of a country with which the United States has an income tax treaty shall have the burden of proving all the facts necessary for the corporation to be treated as a qualified resident, except that with respect to paragraphs (d)(4) (iii) and (iv) of this section, a foreign corporation, with either registered or bearer shares, will meet the burden of proof if it has no reason to know and no actual knowledge of facts that would cause the corporation's stock not to be treated as regularly traded under such paragraphs. A foreign corporation that has shareholders of record must also maintain a list of such shareholders and, on request, make available to the District Director such list and any other relevant information known to the foreign corporation.

(e) *Active trade or business*—(1) *General rule.* A foreign corporation that is a resident of a foreign country shall be treated as a qualified resident of that country with respect to any U.S. trade or business if, during the taxable year—

(i) It is engaged in the active conduct of a trade or business (as defined in paragraph (e)(2) of this section) in its country of residence;

(ii) It has a substantial presence (within the meaning of paragraph (e)(3) of this section) in its country of residence; and

(iii) Either—

(A) Such U.S. trade or business is an integral part (as defined in paragraph (e)(4) of this section) of an active trade or business conducted by the foreign corporation in its country of residence; or

(B) In the case of interest received by the foreign corporation for which a treaty exemption or rate reduction is claimed pursuant to § 1.884–4(b)(8)(ii), the interest is derived in connection with, or is incidental to, a trade or business described in paragraph (e)(1)(i) of this section.

A foreign corporation may determine whether it is a qualified resident under this paragraph (e) by applying the rules of this paragraph (e) to the entire affiliated group (as defined in section 1504 (a) without regard to section 1504(b) (2) or (3)) of which the foreign corporation is a member rather than to the foreign corporation separately. If a foreign corporation chooses to apply the rules of this paragraph (e) to its entire affiliated group as provided in the preceding sentence, then it must apply such rules consistently to all of its U.S. trades or businesses conducted during the taxable year.

(2) *Active conduct of a trade or business.* A foreign corporation is engaged in the active conduct of a trade or business only if either—

(i) It is engaged in the active conduct of a trade or business within the meaning of section 367(a)(3) and the regulations thereunder; or

(ii) It qualifies as a banking or financing institution under the laws of the foreign country of which it is a resident, it is licensed to do business with residents of its country of residence, and it is engaged in the active conduct of a banking, financing, or similar business within the meaning of § 1.864–4(c)(5)(i) in its country of residence.

A foreign corporation that is an insurance company within the meaning of § 1.801–3 (a) or (b) is engaged in the active conduct of a trade or business only if it is predominantly engaged in the active conduct of an insurance business within the meaning of section 952(c)(1)(B)(v) and the regulations thereunder.

(3) *Substantial presence test*—(i) *General rule.* Except as provided in paragraph (e)(3)(ii) of this section, a foreign corporation that is engaged in the active conduct of a trade or business in its country of residence has a substantial presence in that country if, for the taxable year, the average of the following three ratios exceeds 25 percent and each ratio is at least equal to 20 percent—

(A) The ratio of the value of the assets of the foreign corporation used or held for use in the active conduct of a trade or business in its country of residence at the close of the taxable year to the value of all assets of the foreign corporation at the close of the taxable year;

(B) The ratio of gross income from the active conduct of the foreign corporation's trade or business in its country of residence that is derived from sources within such country for the taxable year to the worldwide gross income of the foreign corporation for the taxable year; and

(C) The ratio of the payroll expenses in the foreign corporation's country of residence for the taxable year to the foreign corporation's worldwide payroll expenses for the taxable year.

(ii) *Special rules*—(A) *Asset ratio.* For purposes of paragraph (e)(3)(i)(A) of this section, the value of an asset shall be determined using the method used by the taxpayer in keeping its books for purposes of financial reporting in its country of residence. An asset shall be treated as used or held for use in a foreign corporation's trade or business if it meets the requirements of § 1.367(a)–2T(b)(5). Stock held by a foreign corporation shall not be treated as an asset of the foreign corporation for purposes of paragraph (e)(3)i)(A) of this section if the foreign corporation owns 10 percent or more of the total combined voting power of all classes of stock of such corporation entitled to vote. The rules of § 1.954–2T(b)—(3) (other than § 1.954–2T(b)(3)(x)) shall apply to determine the location of assets used or held for use in a trade or business. Loans originated or acquired in the course of the normal customer loan activities of a banking, financing or similar institution, and securities and derivative financial instruments held by dealers, traders and insurance companies for use in a trade or business shall be treated as located in the country in which an office or other fixed place of business is primarily responsible for the acquisition of the

asset and the realization of income, gain or loss with respect to the asset.

(B) *Gross income ratio*—(*1*) *General rule.* For purposes of paragraph (e)(3)(i)(B) of this section, the term "gross income" means the gross income of a foreign corporation for purposes of financial reporting in its country of residence. Gross income shall not include, however, dividends, interest, rent, or royalties unless such corporation derives such dividends, interest, rents, or royalties in the active conduct of its trade or business. Gross income shall also not include gain from the disposition of stock if the foreign corporation owns 10 percent or more of the total combined voting power of all classes of stock of such corporation entitled to vote. Except as provided in this paragraph (e)(3)(ii)(B), the principles of sections 861 through 865 shall apply to determine the amount of gross income of a foreign corporation derived within its country of residence.

(*2*) *Banks, dealers and traders.* Dividend income and gain from the sale of securities, or from entering into or disposing of derivative financial instruments by dealers and traders in such securities or derivative financial instruments shall be treated as derived within the country where the assets are located under paragraph (e)(3)(ii)(A) of this section. Other income, including interest and fees, earned in the active conduct of a banking, financing or similar business shall be treated as derived within the country where the payor of such interest or other income resides. For purposes of the preceding sentence, if a branch or similar establishment outside the country in which the payor resides makes a payment of interest or other income, such amounts shall be treated as derived within the country in which the branch or similar establishment is located.

(*3*) *Insurance companies.* The gross income of a foreign insurance company shall include only gross premiums received by the country.

(*4*) *Other corporations.* Gross income from the performance of services, including transportation services, shall be treated as derived within the country of residence of the person for whom the services are performed. Gross income from the sale of property by a foreign corporation shall be treated as derived within the country in which the purchaser resides.

(*5*) *Anti-abuse rule.* The Commissioner may disregard the source of income from a transaction determined under this paragraph (e)(3)(ii)(B) if it is determined that one of the principal purposes of the transaction was to increase the source of income derived within the country of residence of the foreign corporation for purposes of this section.

(C) *Payroll ratio.* For purposes of paragraph (e)(3)(i)(C) of this section, the payroll expenses of a foreign corporation shall include expenses for "leased employees" (within the meaning of section 414(n)(2) but without regard to subdivision (B) of that section) and commission expenses paid to employees and agents for services performed for or on behalf of the corporation. Payroll expense for an employee, agent or a "leased employee" shall be treated as incurred where the employee, agent or "leased employee" performs services on behalf of the corporation.

(iii) *Exception to gross income test for foreign corporations engaged in certain trades or businesses.* In determining whether a foreign corporation engaged primarily in selling tangible property or in manufacturing, producing, growing, or extracting tangible property has a substantial presence in its country of residence for purposes of paragraph (e)(3)(i) of this section, the foreign corporation may apply the ratio provided in this paragraph (e)(3)(iii) instead of the ratio described in paragraph (e)(i)(B) of this section (relating to the ratio of gross income derived from its country of residence). This ratio shall be the ratio of the direct material costs of the foreign corporation with respect to tangible property manufactured, produced, grown, or extracted in the foreign corporation's country of residence to the total direct material costs of the foreign corporation.

(*4*) *Integral part of an active trade or business in a foreign corporation's country of residence*—(i) *In general.* A U.S. trade or business of a foreign corporation is an integral part of an active trade or business conducted by a foreign corporation in its country of residence if the active trade or business conducted by the foreign corporation in both its country of residence and in the United States comprise, in principal part, complementary and mutually interdependent steps in the United States and its country of residence in the production and sale or lease of goods or in the provision of services. Subject to the presumption and de minimis rule in paragraphs (e)(4) (iii) and (iv) of this section, if a U.S. trade or business of a foreign corporation sells goods that are not, in principal part, manufactured, produced, grown, or extracted by the foreign corporation in its country of residence, such business shall not be treated as an integral part of an active trade or business conducted in the foreign corporation's country of residence unless the foreign corporation takes physical possession of the goods in a warehouse or other storage facility that is located in its country of residence and in which goods of such type are normally stored prior to sale to customers in such country.

(ii) *Presumption for banks.* A U.S. trade or business of a foreign corporation that is described in § 1.884-4(b)(2) shall be presumed to be an integral part of an active banking business conducted by the foreign corporation in its country of residence provided that a substantial part of the business of the foreign corporation in its country of residence consists of receiving deposits and making loans and making loans and discounts.

(iii) *Presumption if business principally conducted in country of residence.* A U.S. trade or business of a foreign corporation shall be treated as an integral part of an active trade or business of a foreign corporation in its country or residence with respect to the sale or lease of property (or the performance of services) if at least 50 percent of the foreign corporation's worldwide gross income from the sale or lease of property of the type sold in the United States (or from the performance of services of the type performed in the United States) is derived from the sale or lease of such property for consumption, use, or disposition in the foreign corporation's country of residence (or from the performance of such services in the foreign corporation's country of residence). In determining whether property or services are of the same type, a foreign corporation shall follow recognized industry or trade usage or the three-digit major groups (or any narrower classification) of the Standard Industrial Classification as prepared by the Statistical Policy Division of the Office of Management and Budget, Executive Office of the President. The determination of whether income is of the same kind must be made in a consistent manner from year-to-year.

(iv) *De minimis rule.* If a foreign corporation is engaged in more than on U.S. trade or business and if at least 80 percent of the sum of the ECEP from the current year and the preceding two years is attributable to one or more trades or businesses that meet the integral part test of this paragraph (e)(4), all of the U.S. trades or businesses of the foreign corporation shall be treated as an integral part of an active or business conducted by the foreign corporation. If a foreign corporation has more than one U.S. trade or business and does not meet the requirements of the preceding

sentence but otherwise meets the requirements of this paragraph (e)(4) with regard to one or more trade or business, see § 1.884–1(g)(1) to determine the extent to which treaty benefits apply to such corporation.

(f) *Qualified resident ruling*—(1) *Basis for ruling.* In his or her sole discretion, the Commissioner may rule that a foreign corporation is a qualified resident of its country or residence if the Commissioner determines that individuals who are not residents of the foreign country of which the foreign corporation is a resident do not use the treaty between that country and the United States in a manner inconsistent with the purposes of section 884. The purposes of section 884 include, but are not limited to, the prevention of treaty shopping by an individual with respect to any article of an income tax treaty between the country of residence of the foreign corporation and the United States.

(2) *Factors.* In order to make this determination, the Commissioner may take into account the following factors, including, but not limited to:

(i) The business reasons for establishing and maintaining the foreign corporation in its country of residence;

(ii) The date of incorporation of the foreign corporation in relation to the date that an income tax treaty between the United States and the foreign corporation's country of residence entered into force;

(iii) The continuity of the historical business and ownership of the foreign corporation;

(iv) The extent to which the foreign corporation meets the requirements of one or more of the tests described in paragraphs (b) through (e) of this section;

(v) The extent to which the U.S. trade or business is dependent on capital, assets, or personnel of the foreign trade or business;

(vi) The extent to which the foreign corporation receives special tax benefits in its country of residence;

(vii) Whether the foreign corporation is a member of an affiliated group (as defined in section 1504(a) without regard to section 1504(b) (2) or (3)), that has no members resident outside the country of residence of the foreign corporation; and

(viii) The extent to which the foreign corporation would be entitled to comparable treaty benefits with respect to all articles of an income tax treaty that would apply to that corporation if it had been incorporated in the country or countries of residence of the majority of its shareholders. For purposes of the preceding sentence, shareholders taken into account shall generally be limited to persons described in paragraph (b)(1)(i) of this section but for the fact that they are not residents of the foreign corporation's country of residence.

(3) *Procedural requirements.* A request for a ruling under this paragraph (f) must be submitted on or before the due date (including extensions) of the foreign corporation's income tax return for the taxable year for which the ruling is requested. A foreign corporation receiving a ruling will be treated as a qualified resident of its country of residence for the taxable year for which the ruling is requested and for the succeeding two taxable years. If there is a material change in any fact that formed the basis of the ruling, such as the ownership or the nature of the trade or business of the foreign corporation, the foreign corporation must notify the Secretary within 90 days of such change and submit a new private letter ruling request. The Commissioner will then rule whether the change affects the foreign corporation's status as a qualified resident, and such ruling will be valid for the taxable year in which the material change occurred and the two succeeding taxable years, subject to the requirement in the preceding sentence to notify the Commissioner of a material change.

(g) *Effective dates.* This section is effective for taxable years beginning on or after October 13, 1992. With respect to a taxable year beginning before October 13, 1992 and after December 31, 1986, a foreign corporation may elect to apply this section in lieu of the temporary regulations under 1.884–5T (as contained in the CFR edition revised as of April 1, 1992), but only if the statute of limitations for assessment of a deficiency has not expired for that taxable year. Once an election has been made, an election shall apply to all subsequent taxable years.

(h) *Transition rule.* If a foreign corporation elects to apply this section in lieu of § 1.884–5T (as contained in the CFR edition revised as of April 1, 1992) as provided in paragraph (g) of this section, and the application of paragraph (b) of this section results in additional documentation requirements in order for the foreign corporation to be treated as a qualified resident, the foreign corporation must obtain the documentation required under that paragraph on or before March 11, 1993.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 6. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 7. Section 602.101(c) is amended by removing the entries for "1.884–0T, 1.884–1T, and 1.884–5T" and adding the following entries to the table:

CFR part or section where identified or described	Current OMB control No.
* * * *	*
1.884–0	1545–1070
1.884–1	1545–1070
* * * *	*
1.884–4	1545–1070
1.884–5	1545–1070
* * * *	*

Shirley D. Peterson,
Commissioner of Internal Revenue.

Approved: July 30, 1992.

Fred T. Goldberg, Jr.,
Assistant Secretary of the Treasury.

[FR Doc. 92–21297 Filed 9–10–92; 8:45 am]

BILLING CODE 4830–01–M

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2200

Rules of Procedure

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Final rule.

SUMMARY: This document makes several revisions to the procedural rules governing practice before the Occupational Safety and Health Review Commission pursuant to the Occupational Safety and Health Act of 1970, 29 U.S.C. 651–678 ("the Act"). Although many of the revisions are technical and clarifying in nature, this document also contains several significant changes to Commission practice and procedure. For example, the Commission has eliminated fact pleading and instituted notice pleading at the complaint and answer stage. The Commission has also made substantial revisions to its rules on simplified proceedings, including the elimination of the right of any party to wield an absolute veto over the use of simplified proceedings by merely filing an objection. Under the new rules, the judge decides whether the objecting party has established that use of simplified proceedings would be inappropriate.

The Commission is also adopting certain changes in its discovery procedures. The new rules permit parties to file documents through facsimile transmission (or "FAX"), and

they formalize the rules governing all appearances before the Commission.

DATES: These revised rules will take effect on December 10, 1992. They apply to all cases docketed on or after that date. They also apply to further proceedings in cases then pending, except to the extent that their application would be infeasible or would work injustice, in which event the present rules apply.

FOR FURTHER INFORMATION CONTACT: Earl R. Ohman, Jr., General Counsel, (202) 634–4015.

SUPPLEMENTARY INFORMATION: On May 12, 1992, the Occupational Safety and Health Review Commission published in the **Federal Register** a proposal to adopt substantial revisions to its Rules of Procedure (57 FR 20220). The notice fully explained the procedures followed by the Commission in developing its proposal and the basis and purpose of the proposed rules. The notice included a request for public comment.

In response, a number of organizations and individuals who would be affected by the revised rules filed comments with the Commission. The Office of the Solicitor of Labor, which represents the Secretary of Labor in all adjudicative proceedings before the Commission, filed comments on behalf of the Secretary of Labor. The Administrative Law Judges ("Judges") in the Commission's four area offices also filed their comments. The following groups and individuals, listed alphabetically, also presented substantial comments on the proposed revisions to the rules: The Administrative Conference of the United States; the Dallas, Texas, Chapter of the Associated General Contractors of America; Eastern Contractors Association, Inc.; Eiberger, Stacy, Smith & Martin; the General Building Contractors Association; Hughes & Luce; Jones, Day, Reavis & Pogue; Professor Morrell E. Mullins; Organization Resources Counselors, Inc.; Phillips Petroleum Company; Rader, Smith, Campbell & Fisher; Reed, Smith, Shaw & McClay; Texaco, Inc.; and the United Steelworkers of America, AFL–CIO/CLC. The Commission gratefully acknowledges receipt of these comments and assures the commentators that their concerns about the proposed changes were fully considered, even where they are not specifically mentioned here.

Among the comments received were suggestions for changing Commission rules, or portions thereof, that were not among those for which the Commission proposed revisions on May 12, 1992. While the Commission will not address these unsolicited comments in the document here, they may be considered for future action.

In developing the final rules set forth in this document, the Commission considered not only the concerns of the commentators above, but also the suggestions of individual Commission members. The Commission also held a meeting on Tuesday, August 25, 1992, that was open for public attendance under the Government in the Sunshine Act, 5 U.S.C. 552b. After careful deliberation, the Commission has voted to make a number of changes to its procedural rules, including some changes to the proposed revisions. While some changes urged by the commentators were incorporated in the final rules, others were deemed unnecessary or inappropriate.

The Commission considers its notice-and-comment rulemaking to be an appropriate procedure for the revision of these selected rules. However, the Solicitor of Labor disagrees and would have the Commission follow the suggestion contained in the report of Professor Morrell Mullins that provides: "To the extent feasible and allowable under applicable law, future major OSHRC rulemakings on simplified proceedings should be preceded by some form of advisory committee studies. Or, 'negotiated rulemaking' might be considered." Mullins, The Use of Settlement Judges and Simplified Proceedings in Enforcement Actions Before the Occupational Safety and Health Review Commission (Report to the Administrative Conference of the United States) (September 1990), p. 79. We note that this suggestion, which addressed only simplified proceedings, recognized that the Commission should only proceed "[t]o the extent feasible" in its rulemaking methods. While the Commission recognizes that negotiated rulemaking has its merits, the Commission's resources have prevented it from using such procedures with regard to these revisions of the rules.

After careful consideration of all comments received, the Commission issues these final rules, amending its rules of procedure, in order to promote more effective and efficient proceedings before the Commission and its Judges, while maintaining fairness to all participants.

Rule 4 Computation of Time

Few comments were received on the proposed revisions to paragraphs (a) and (b) of this rule, and the proposed new paragraph (c). These changes were primarily for clarification. The Commission adopts the proposed revisions to paragraph (a) and new paragraph (c). With regard to paragraph (b), the Commission adopts the proposed revisions and, in response to comments, adds clarifying language regarding the relationship between the 3-day mail period and the actual response period.

Rule 5 Extensions of Time

The proposed rule required that, except in "exigent circumstances," all motions for extensions of time be made: (1) In writing; and (2) before the expiration of the time deadline. The present Commission rule at § 2200.5 already provides that a party may make an oral motion for extension of time, if followed by a written motion, in "exigent circumstances." The proposed change would require the written motion to follow within 3 working days. The other proposed change was to permit a motion to be filed after the designated time to file has expired only in "exigent circumstances." This was a change from the present rule, which permits late-filed motions for good cause. Several commentators objected to the "exigent circumstances" standard on the grounds that it was too vague and potentially too strict. The Commission disagrees with the vagueness argument and suggests that "exigent" has been defined as "urgent; critical" and "requiring more than is reasonable." See "Webster's New World Dictionary" 491, senses 1 & 2 (2d college ed. 1972). By intended contrast, the less strict "good cause" standard contained in the first sentence of this rule applies to consideration of motions for extension of time that are in writing and timely. The Commission believes that the "exigent circumstances" standard, already used in § 2200.5 for oral motions for extensions of time and in § 2200.40 for telephonic, general motions and requests, is the best way of discouraging the practice of requesting extensions of time after the time period has expired.

Rule 7 Service and Notice

The Commission proposed adding a sentence to paragraph (a) to clarify that "[e]very order required by its terms to be served shall be served upon each of the parties and intervenors." The proposal did not provoke substantial comment, and it is adopted.

The Commission also proposed amending paragraph (c) by requiring that, for service to be effective, a party need be served only at its last known address. As the Commission stated in its proposal, by explicitly limiting the obligation of the serving party to serve other parties only at their last known address, the amendment will, in effect,

provide a sanction for failure to comply with § 2200.6, which imposes a duty on the parties to keep the Commission informed of their current address. No objections to this amendment were received, and it is adopted. Also, the Commission proposed to make a further revision to paragraph (c) by making facsimile transmission (or "FAX") equivalent to personal delivery. Several commentators suggested that the Commission extend this amendment to overnight delivery services. Their suggestions are well taken. Therefore, paragraph (c) is further amended to explicitly state that service by an overnight delivery service is considered personal service and thus effective upon receipt by the party being served.

Rule 8 Filing

The Commission proposed revising § 2200.8 by redesignating paragraphs (a) through (d) as (b) through (e) and adding new paragraph (a) to clarify that all papers served on a party or intervenor, except those associated with a discovery request, shall be filed with the Commission shortly after service. One commentator suggested that the new paragraph (a) is unnecessary. The Commission disagrees. One of the purposes of the paragraph is to stress that discovery requests shall ordinarily not be served on the Commission or the Judge. The Commission finds that the proposed rule adequately conveys this intent, and the Commission adopts the change as proposed.

Another comment received suggested that the Commission amend proposed paragraph (e) to state that documents sent by an overnight delivery service are filed when received. The Commission finds substantial merit in light of the similar change that has been adopted as part of the service requirements of § 2200.7(c). Paragraph (e) is therefore revised to adopt the suggestion.

The Commission also proposed to add paragraph (f) setting forth the rules governing the facsimile transmission of documents. The suggestion was supported by the commentators and is adopted as proposed.

Rule 10 Severance

The purpose of this amendment is to clarify that the burden of showing good cause for severing a proceeding is upon the party or intervenor seeking severance. The proposed language received little comment, and it is adopted with one change, the substitution of "claims" for "issues" in the last phrase of the rule. This change recognizes, as one commentator suggested, that cases before the Commission are severed by claims, i.e., citations or citation items, not by issues within those claims.

Rule 20 Party Status

The proposed revision to paragraph (a) is grammatical and does not significantly alter the meaning of the rule. There were no comments on the proposal, and it is adopted.

Rule 24 Brief of an Amicus Curiae

The Commission proposed a new rule to explicitly set forth the requirements for an *amicus curiae* desiring to file a brief before the Commission or the Judge. Under the proposed rule, the brief of an *amicus curiae* may only be filed by leave of the Commission or Judge. The motion must identify the interest of the applicant and state the reasons why such a brief would be desirable. Unless the Commission or Judge, for good cause shown, allows a later filing, the brief must be filed within the period allowed the party whose position the brief will support.

The proposal received little comment, and it is adopted.

Rule 30 General Rules

The Commission proposed to redesignate paragraphs (d) through (g) as paragraphs (e) through (h) and to add a new paragraph (d) explicitly permitting adoption by reference of statements in different pleadings, in other parts of the same pleading, or in any motion. There were no comments on the proposal, and it is adopted.

Rule 32 Signing of Pleadings and Motions

The Commission proposed adding a provision to this rule making it explicit that a party is in violation of this section and subject to default as set forth in § 2200.41 if the party signs a document that, to the party's best knowledge and belief, is not well grounded in fact and law, or is interposed for an improper purpose. One commentator suggested that the rule reference § 2200.104, the rule on attorney discipline. The Commission finds the suggestion to be of merit because, in some instances, it would be unfair to penalize a party for the unethical practices of its attorney. The additional reference to § 2200.104 gives the Commission the flexibility needed to deal with such a situation.

Rule 34 Notice Pleading

The commentators were generally supportive of the Commission's proposal to return to notice pleading. One commentator, however, did express concern that the lack of factual detail in notice pleading puts the employer at a disadvantage that can only be cured through expensive discovery procedures. Fact pleading, this commentator noted, requires the Secretary of Labor to plead facts relevant to the case that would otherwise remain unknown to the employer. While the Commission is sympathetic to this problem, experience has shown that fact pleading does little to reduce the need for discovery. In most instances, the relevant details set forth in fact pleading are already known to the employer or are readily determined through discovery that would take place even with fact pleading. In the time the Commission has been operating under fact pleading, the Commission has found that the benefits have not justified the burden it places on the time and resources of the Secretary of Labor.

While most of the commentators supported the Commission's return to notice pleading, there was widespread opposition to the reduction in the time allowed for the filing of the initial pleadings. Several commentators objected to the discrepancy between the proposed time allowed the Secretary of Labor to file the complaint (20 days) and that allowed the employer for the filing of its answer (15 days). The Commission agrees with the commentators that this difference, though based on the burdens imposed on the parties by the requirements of the initial pleadings, does give the appearance of unfairness to the employer. Therefore, the Commission has equalized the time periods and will allow both parties 20 days to file their initial pleadings.

Some commentators expressed the opinion that once initial pleadings are filed, there is a reduced incentive to settle a case. Therefore, a reduction in the time for filing initial pleadings would cause a parallel reduction in the time available for settlement negotiations and lead to fewer settlements. The Commission disagrees. Although the Commission questions the premise that fact pleading, in and of itself, led to more settlements, it believes that any increase in settlements resulting from fact pleading would stem not from the longer time periods for filing, but rather from the burdens imposed by fact pleading. Since the small burden imposed on the parties by notice pleading would provide little inducement to settle, a shortened time frame should have no effect on the settlement rate.

Other commentators argued that the shortened filing periods would place an undue burden on the parties. The Commission disagrees. The time periods originally proposed were the same as those that existed previously, when the

Commission operated under notice pleading. During that time, practitioners before the Commission had little problem meeting the filing deadlines then in effect. The Commission finds nothing to justify maintaining the current filing periods which were extended to compensate for the substantial additional burdens placed on the parties when the Commission adopted fact pleading. The Commission has every reason to expect that the Commission's Judges will continue their practice of granting a party's motion for an extension of time to file a complaint or answer in those instances where circumstances justify such extensions.

One commentator suggested that paragraph (b)(3), which requires that affirmative defenses be pleaded in the answer, be further amended to list a more inclusive inventory of affirmative defenses. The Commission disagrees. The few defenses contained in the proposal were chosen for two reasons. First, the affirmative defenses listed are those most commonly pleaded in Commission proceedings. Second, the names of the affirmative defenses included in the proposal largely defined what the defenses are about, thus making it clearer to the *pro se* employer what types of matters must be pleaded in the answer. In our view, to expand the list further to include such matters as "preemption" would heighten the possibility of it being seen as an exclusive listing and would tend only to confuse the *pro se* litigant.

Several commentators suggested that paragraph (b)(4), which informs the parties that the failure to raise an affirmative defense in the answer may result in the party being prohibited from raising it later in the proceedings, was unnecessary because the matter is covered under Federal Rule of Civil Procedure 15(a). While this is true, the Commission believes that these basic pleading requirements are of sufficient importance to include in the Commission's own rules. It must be stressed that in the early stages of pleading, many employers have yet to retain legal counsel and rely instead on the initial packet of information they receive containing the Commission's rules of procedure. Because of their complexity, and because many of the Federal Rules are preempted by the Commission's own rules, copies of the Federal Rules of Civil Procedure are not included. It is, therefore, of the utmost importance that the Commission's rules be sufficiently comprehensive to inform the parties of their procedural rights and obligations and of the penalties they could incur for failure to follow the rules.

The Commission has made a minor wording revision to the proposed paragraph (b)(4). The original proposal would prohibit a party from raising an affirmative defense not raised in the answer unless the Judge finds that the party asserted the defense "as early as possible." The Commission believes that this phrase is unnecessarily vague and fails to give adequate guidance to either the parties or the Judge. Therefore, the Commission has substituted the phrase "as soon as practicable." This change is more in keeping with standard legal terminology and gives the parties clearer notice of what must be shown to justify a late-filed affirmative defense.

Rule 35 Disclosure of Corporate Parents, Subsidiaries, and Affiliates

The Commission proposed to add, as new § 2200.35, a rule that comprehensively addresses corporate disclosure requirements. The proposed rule extends the requirement of a corporate disclosure filing, that already must be included in the answer, to petitions for modifications to abate or other initial filings. Under the proposed rule, a party must notify the Commission and its Judges of the identity of all parents, subsidiaries, and corporate affiliates in its answer, petition for modification of abatement, or other initial filing. As the present rule regarding the content of the answer requires, a party has a "continuing duty" to notify the Commission of any change in its corporate status, subsidiaries, or affiliates. The Commission rejects one comment in favor of only periodic reporting because a periodic duty to disclose could create substantial periods of time between the development of a financial interest, due to a takeover or other change in corporate ownership, and the reporting of that development to the Judge or the Commission. A continuing duty to disclose would either eliminate or substantially reduce this time period and thus afford the Judge or the Commission adequate information to avoid conflicts of interest.

Rule 40 Motions and Requests

The Commission proposed to tighten paragraph (a) of the rule by requiring that motions made telephonically be put in writing as soon as possible, but no later than 3 working days following the time the motion was made. The proposed rule also would retain the current language prohibiting motions from being made in other documents, such as briefs.

Rule 50 Proposed Mandatory Interrogatories and Consultation

This proposal would have required all parties to answer certain mandatory interrogatories after all the filing of the initial pleadings. The purpose of these mandatory interrogatories was to have the parties exchange information central to the case as early as possible.

Several commentators felt that mandatory interrogatories would enhance the fairness of the proceedings to employers by minimizing any advantage the Secretary might otherwise obtain through her investigative resources. While other commentators agreed with the philosophy underlying the concept, most found fault with either the mandatory nature of the interrogatories proposed, the time frames involved, or the burdens the interrogatories would impose on the parties, especially *pro se* employers. Several commentators opined that the practical effect of mandatory interrogatories was merely to postpone fact pleading into the discovery process. Strong opposition was also voiced by the Commission's Judges, who believed that the rule would lead to additional delay and erode the Judge's discretion in handling the case.

Having reviewed these comments, the Commission has decided not to require mandatory interrogatories at this time. The Commission, however, will closely monitor how successful the return to notice pleading will be to ensure that the parties are provided, at the early stages of the proceedings, with sufficient information to enable them to effectively proceed with their case. The Commission is particularly concerned with the imbalance of information that tends to exist at the early stages between the Secretary of Labor and the employer. Should notice pleading exacerbate this problem, the Commission will reexamine the viability of imposing mandatory interrogatories or otherwise amending its rules.

Rule 51 Prehearing Conferences and Orders

The Commission proposed to revise this section by adding a new paragraph (a) to require the Judge to hold a scheduling conference and enter a scheduling order that limits the time (1) to join other parties and to amend the pleadings, (2) to file and hear motions and (3) to complete discovery. The scheduling order could also include: (1) the date or dates for conferences before hearing, a final prehearing conference, and hearing; and (2) any matters

appropriate to the circumstances of the case.

The commentators largely supported the concept of scheduling conferences, but were opposed to having them made mandatory. The Commission has examined these objections and has decided to retain the provision as mandatory. It has been brought to the Commission's attention that courts that have imposed a scheduling conference requirement have found it to be an effective method of accelerating the processing of cases. The Commission continues to believe that the schedules derived from the scheduling conference will encouarge the parties to keep the case moving at a reasonable pace and avoid needless delay and inaction.

Paragraph (b), the proposed rule on prehearing conferences, engendered little comment, and it is adopted as proposed. This rule explicitly adopts the prehearing procedures set forth in Rule 16 of the Federal Rules of Civil Procedure and allows the Judge, upon his own initiative or on the motion of a party, to direct the parties to confer among themselves to consider settlement, stipulation of facts, or any other matter that may expedite the hearing. Although not required, the Judge would not be prohibited from requiring the parties to submit an agreed prehearing order where the Judge, in his discretion, finds it appropriate.

Rule 52 General Provisions Governing Discovery

The Commission proposed to amend paragraph (d), its discovery rule on protective orders, by (1) requiring that the party seeking the protective order make a showing of good cause and (2) expanding the types of protective orders available. The current rule expressly states several justifications for a protective order: annoyance, embarrassment, oppression, or undue burden or expense. By replacing this list with a requirement that good cause be shown, the Commission intends to grant the Judge more flexibility in determining when a protective order is warranted. The expansion of the list of available protective orders should, similarly, increase the flexibility of the Judge in formulating a proper order. As with the current rule, however, the list is illustrative, not exclusive. Few comments were received addressing this proposed rule, with one commentator preferring maintenance of the current list of justifications. In the Commission's opinion, requiring a showing of "good cause" to obtain a protective order grants proper discretion to the Judge while adequately protecting the interests of the parties.

The Commission also proposed adding a paragraph (h) that set a specific time frame for prehearing discovery. The commentators unanimously objected to the time limits as too arbitrary and unrealistic. The Commission finds much merit in these objections. Because the Commission is making the scheduling conference mandatory, the Commission has found it adequate to leave the time frames for discovery to the discretion of the Judge.

Having eliminated the proposed paragraph (h), proposed paragraphs (i)–(m) have been redesignated (h)–(l). For example, redesignated paragraph (h) is the provision adopting Rule 26(e)(1)–(3) of the Federal Rules of Civil Procedure, requiring supplementation of responses to discovery requests. Redesignated paragraphs (h)–(l) received little comment, and their text is adopted as proposed, with a few changes. In paragraph (k), "issue" is changed to "claim" for clarity, as in § 2200.10, discussed above. Paragraph (l), as proposed, provided for "use on appeal." As one commentator observed, there remained some uncertainty as to whether the reference in the original proposal to "appeal" referred to appeal to the Commission or the Federal circuit courts. The wording of the paragraph has been modified from the proposal to clarify that the rule applies in either case, "on review or appeal."

Rule 53 Production of Documents and Things

This rule sets forth the procedures for requesting and the obligations for producing documents and other things during discovery. The proposed revisions address the possibility of a longer time for response where allowed by the requesting party. There was general support for the rule, and it is adopted as proposed.

Rule 56 Depositions

The Commission proposed adding paragraph (f) to § 2200.56 to set forth procedures for offering depositions at the hearing. No comments were received taking issue with the substantive provisions of this proposed paragraph. Paragraph (f) is therefore adopted as proposed.

To facilitate the use of depositions, and to reduce the expense to the parties, the Commission proposed adding paragraph (g) to § 2200.56 to allow the parties to take depositions by telephone. Comments received were generally supportive of adding paragraph (g), and it is adopted as proposed.

The Commission also proposed adding paragraph (h) to § 2200.56 to allow the taking of video depositions. The videotaped deposition would be simultaneously recorded by a qualified court reporter. The Commission rejects one comment that parties should be able to use the videotape itself as the official record. Because of the possibility of damage to the videotape, it cannot be relied upon as the official record of the deposition. A written transcript is therefore necessary. The Commission adopts the rule as proposed.

The Commission proposed paragraphs (h)(2)–(7) regarding the requirements for videotape recording. No comments were received taking issue with the substantive provisions of paragraphs (h)(2)–(7) of this rule, and they are adopted as proposed.

Proposed paragraph (h)(8) requires that the original of the videotape recording, together with the operator's log index and a certificate of the operator attesting to the accuracy of the tape, be filed with the Executive Secretary of the Commission. The Commission changes this proposed language, for clarification, by: (1) adding that the transcript also must be filed; and (2) substituting "the Judge" for the "Executive Secretary of the Commission" as the recipient of the filing. One commentator noted that there is no need to file a deposition of any kind with the Executive Secretary unless it is used at the hearing. The Commission agrees with this comment and responds by adding the qualification "[i]f a videotaped deposition is used at the hearing."

Requests for prehearing rulings on the admissibility of evidence obtained during a videotaped deposition would be required to be accompanied by appropriate pages of the written transcript under proposed paragraph (h)(9). No comments were received on this paragraph, and it is adopted as proposed.

Proposed paragraph (h)(10) requires that if only portions of the tape are to be used at the hearing, the parties must designate the parts to be included, and the offering party must prepare a version of the tape edited to allow continuous playback. One commentator argued that, because videotape machines have counters, the admissible portions of the tape can be found without trouble. This comment does not take into account that the counter on one tape machine may not correspond to the counter of another tape machine. The Commission adopts the proposed rule.

Concerning depositions in general, one commentator urged that employers should be able to take depositions as of right. The Commission rejects this

suggestion because it would cause undue delay and otherwise burden the adjudication of cases.

Rule 57 Issuance of Subpenas; Petitions to Revoke or Modify Subpenas; Right to Inspect or Copy Data

The Commission proposed a technical amendment to § 2200.57(a) to make it permissible, but not mandatory, to issue warrants ex parte. No substantial comments were received on this proposal, and the proposed language is adopted.

Rule 63 Stay of Proceedings

The Commission proposed to amend paragraph (c) by requiring that the length of time between the requisite periodic reports filed by the parties in stayed cases be no longer than 90 days, unless the Commission or the Judge directs otherwise. No substantial comments were received on this proposal, and the proposed language is adopted.

Rule 64 Failure to Appear

The Commission proposed to amend paragraph (c) by explicitly stating that the hearing be rescheduled as expeditiously as possible. No substantial comments were received on this proposal, and the proposed language is adopted.

Rule 93 Briefs Before the Commission

The Commission proposed to amend paragraph (c) to provide that a motion for extension of time must be filed "within three days prior to" the expiration of the time period for filing the brief. For clarity, the Commission has modified the language to require that any motion for extension of time be filed "no later than 3 days prior to" the expiration of the time period for filing the brief. One commentator asserted that emergencies can occur at the last minute, preventing the filing of the motion no later than 3 days prior to the expiration date. The Commission notes, however, that under § 2200.107, the Commission or Judge may, upon application by any party or intervenor or on their own motion, after 3 working days notice to all parties and intervenors, waive this rule as justice or the administration of the Act requires. The Commission therefore adopts the proposed language as modified.

The Commission also proposed adding paragraph (i) to the section explicitly permitting a party who has been granted the status of amicus curiae to file a brief. An amicus will not, however, be allowed to file a reply brief. A commentator asserted that there should not be an outright ban on reply briefs by an amicus curiae. As mentioned above, under § 2200.107, the Commission or Judge may waive this prohibition on amicus reply briefs as justice or the administration of the Act requires. The Commission therefore adopts the proposed language.

Rule 95 Oral Argument Before the Commission

The Commission proposed to amend paragraph (a) by explicitly informing all parties that motions for oral argument shall not be considered until after all briefs have been filed. No substantial comments were received on this proposal, and the proposed language is adopted.

The Commission proposed to add a sentence to paragraph (g) requiring that, within 10 days of the date of the scheduled argument, parties who are represented by multiple counsel inform the Commission of the name of the counsel who will argue. A commentator noted that counsel often does not know who will argue within 10 days of argument, and proposed allowing counsel to notify the Commission, by telephone, on the day before the argument. The Commission changes the sentence to paragraph (g) requiring that, no later than 3 days before the date of the scheduled argument, the Commission must be notified of the names of the counsel who will argue. The Commission notes, however, that under § 2200.107, the Commission or Judge may, upon application by any party or intervenor or on their own motion, after 3 working days notice to all parties and intervenors, waive this rule as justice or the administration the Act requires. The Commission therefore adopts the proposed language, modified by a few clarifying word changes.

The Commission would also add new paragraph (j) that would prohibit a party who has not filed a brief from being heard at oral argument, except by permission of the Commission. No substantial comments were received on this proposal, and the proposed language is adopted.

Finally, the Commission proposed to add new paragraph (k) that would set forth rules allowing oral argument by an amicus curiae. No substantial comments were received on this portion of the proposed rule, and the proposed language is adopted.

Rule 100 Settlement

The Commission proposed to revise paragraph (c) to add the phrase "or posting" to the requisite 10-day waiting period between the settlement and the order terminating the litigation before the Commission. The pertinent part of the paragraph is revised to read: "an order terminating the litigation before the Commission because of the settlement shall not be issued until at least 10 days after service or posting" to consider objections to the reasonableness of the abatement period.

Rule 107 Special Circumstances; Waiver of Rules

The Commission proposed to amend § 2200.107 to clarify the time period, after notice has been given and before the Commission or Judge can issue a waiver of the rules, as 3 "working" days. No substantial comments were received on this proposal, and the proposed language is adopted.

Simplified Proceedings

General Comments

The Commission first proposed amending its rules on simplified proceedings on February 18, 1987, 52 FR 4017. However, the Commission was unable to take official action on those proposed amendments due to lack of a quorum. Nevertheless, the Commission continues to recognize the merits of the 1987 proposed amendments and used them as the bases for the proposed amendments to the rules on simplified proceedings that were issued on May 12, 1992, 57 FR 20220, 20223.

The purpose of simplified proceedings is to facilitate the resolution of the many simple cases that constitute a significant portion of the caseload of the Commission's Judges. Many of these simple cases involve employers who are appearing *pro se* and would benefit significantly from these abridged procedures. As was noted in the preamble to the proposed revisions, 57 FR 20223 (May 12, 1992), simplified proceedings probably have been underutilized and their purpose not realized as a result of the automatic veto that a party, often the Secretary, has been permitted to effect, under present Commission rules, by filing an objection to institution of such proceedings in a case.

To address this problem, the Commission proposed that the rules be revised to eliminate a party's ability to unilaterally veto institution of simplified proceedings in a case by merely filing a timely objection. The proposed revisions to § 2200.203(b)(3) provided that a party could still object in writing to simplified proceedings, but it would have to show that it would "suffer prejudice" in the presentation of its case. Under the corresponding proposed language for § 2200.203(d), the Judge would then rule on whether the objecting party has

established prejudice, and, if it has not made that showing, the Judge would order the use of simplified proceedings. The Commission proposed making corresponding revisions to §§ 2200.201 (application) and 2200.204 (discontinuance).

Many comments, discussed more fully below, were received on these proposed changes. Several commentators expressed their views that "prejudice" was too stringent a burden upon the objecting party. Upon reconsideration of the proposed test, the Commission recognizes these concerns and, as set forth below in this document, adopts language in § 2200.203(b)(3) that requires the objecting party to show that simplified proceedings would be "inappropriate," instead of prejudicial. The Commission likewise amends § 2200.203 to provide that the Judge must determine whether an objecting party has shown that simplified proceedings would be "inappropriate." Corresponding changes in §§ 2200.201 and 2200.204 are adopted as well.

The Commission will monitor the use and effectiveness of these revised rules on simplified proceedings and may issue further revisions as appropriate in the future.

Rule 200 Purpose

The Commission proposed to restate the second goal of simplified proceedings set forth in paragraph (a) as "assuring due process and a hearing that meets the requirements of the Administrative Procedure Act, 5 U.S.C 554." No substantial comments were received on this proposal, and the proposed language is adopted.

Rule 201 Application

Under the proposed rule, the Chief Administrative Law Judge or the Judge to whom a case is assigned could overrule a party's objections, filed pursuant to § 2200.203(b), and approve a challenged request for simplified proceedings. As discussed more fully in the comments on § 2200.203(b) below, an objection to institution of simplified proceedings no longer has the effect of a unilateral veto.

Rule 202 Eligibility for Simplified Proceedings

The proposed changes would update the rule to reflect the Secretary's adoption of new occupational health standards in subpart Z of part 1910. A significant change that was proposed was the elimination of the outright prohibition of cases brought under section 5(a)(1) of the Act, 29 U.S.C. 654(a)(1), the Act's "general duty clause." There were no substantial comments received on these proposed changes, and they are adopted, with the exception of a technical change to one item in the list: "§§ 1910.1000 through 1910.1101."

One Commission member pointed out that there have been some cases involving one or more of the listed standards where only the penalty was contested. The Commission agrees that the use of simplified proceedings could prove very effective in such penalty cases, as well as in cases where other issues not concerned with the merits of the alleged violations of one of the listed standards are the only matters for adjudication. Therefore, the Commission hereby adds language to the rule that permits cases involving one of the listed standards to be eligible for simplified proceedings where the merits of the alleged violations are not at issue, and specifically where the penalty alone is contested. These changes also address the concern of one commentator that the eligibility rule has not considered the "suitability" of cases.

Rule 203 Commencing Simplified Proceedings (Requests and Objections)

The proposed rule included a new clause in paragraph (a)(2) that permits late-filed requests for good cause shown. No comments focussed on this particular clause, or on the other slight wording changes in that sentence. Therefore, the Commission adopts that proposed language.

The proposed change to paragraph (a)(3) is to add the sentence specifying that the request for simplified proceedings must be in writing. No comments were received regarding this proposed change or on the proposed separate listing of the parties to be served. The Commission adopts these proposed changes.

The proposed rule provides in paragraph (b)(2) that a party can object within 10 days after the request for simplified proceedings has been served. The 5-day reduction in time from that allowed by the present rule was not the subject of any comment, and the proposed rule is adopted by the Commission.

The Commission proposed that § 2200.203(b)(3) be revised to provide that a party can take issue with implementation of simplified proceedings by filing an objection in writing that explains why simplified proceedings would be prejudicial to presentation of its case. As noted above, the Commission appreciates the concern of the commentators who criticized prejudice as too heavy a burden. The Commission therefore votes to adopt language that requires: "The objection must be stated in writing and explain why, under the particular circumstances of the case, simplified proceedings would be "inappropriate." A clear example of "inappropriateness" would be where simplified proceedings would deny due process. Simplified proceedings could also be "inappropriate" where a party will introduce complex expert testimony or where a third party is involved.

Proposed language for new section 2200.203(b)(4) provides that where no objection has been filed, the Commission will notify all parties that simplified proceedings are in effect. No comments were received on this specific new provision, and it is adopted as proposed.

The Commission proposed in § 2200.203(c) that any party be permitted to file a statement of position within 10 days after service of an objection to simplified proceedings. No specific comments were received on this provision. The Commission adopts the proposed revision with a slight change in verb tense.

The proposed revision of § 2200.203(d) generated considerable comments, including the concern that, as with § 2200.203(b)(3), the requirement upon the objecting party to show prejudice is too strict. The Commission appreciates that concern and votes to change the rule such that the standard of proof is whether simplified proceedings would be "inappropriate" rather than "prejudicial." In addition, the Commission revises the proposed language to include the requirement that the Judge's ruling on a party's objection to simplified proceedings be in writing. The rule, as amended, now reads: "The Judge shall set forth in writing his reasons for his ruling on a party's objection to simplified proceedings. If the Judge concludes that the objecting party has shown that, under the particular circumstances of the case, simplified proceedings would be inappropriate, the Judge shall order that the case be conducted under conventional rules." Examples of where simplified proceedings would be "inappropriate" are discussed above regarding § 2200.203(b)(3). In response to several comments, the Commission reiterates the prohibition on interlocutory review in simplified proceedings. The Commission also notes that, where a party might suffer a denial of due process by the Judge's ruling on its objection to simplified proceedings, that party may seek a discontinuance of simplified proceedings under § 2200.204 and, after the Judge has rendered his

decision, relief from the Commission on review.

The proposed revision contained in § 2200.203(e), stating how the time for filing a complaint or answer interacts with the use or discontinuance of simplified proceedings, was not the subject of comment. The proposed paragraph is therefore adopted.

Rule 204 Discontinuance of Simplified Proceedings

The Commission proposed revising § 2200.204 to provide that "[a]t any time, but no later than thirty days before the hearing" the Judge may on his own motion or that of a party discontinue simplified proceedings. One commentator took issue with the time limitation, noting that it is sometimes only during the 30-day period preceding the hearing that facts become known that would support discontinuance of simplified proceedings. In response to that comment, the Commission revises the rule to provide that the Judge, upon his own or a party's motion, may discontinue simplified proceedings "at any time."

The proposed rule stated that "[a] motion to discontinue must be in writing and explain why, under the particular circumstances of the case, the moving party would be prejudiced in the presentation of its case by continuing under simplified proceedings." As noted above with regard to §§ 2200.203(b)(3) and 2200.203(d), commentators have taken exception to the heavy burden of showing "prejudice." As was done for those rules, the Commission revises § 2200.204 to require that the party moving for discontinuance of simplified proceedings show that simplified proceedings would be "inappropriate" under the particular circumstances of the case. This rule is further revised to clarify that, when ruling on his own or a party's written motion, the Judge must state in writing his reasons for finding simplified proceedings to be "inappropriate." The Commission also added a sentence stating that interlocutory review is not available to appeal orders granting or denying a discontinuance. The Commission adopts the above changes and combines the proposed paragraphs (a) and (b), with revisions, for clarity.

Rule 205 Filing of Pleadings

The Commission proposed making only technical changes to this rule to coordinate with the redesignated numbers of the referenced Commission rules on complaints, responses to petitions, and responses to employee contests. No comments were received on this rule, and it is adopted as proposed.

Rule 207 Conference/Hearing

As noted in the preamble to its proposed revisions, the Commission anticipates that the conference/hearing will be an important, cost-effective feature of simplified proceedings. To clarify a point raised by one commentator regarding the earlier preamble, the parties are required by § 2200.206 to discuss between themselves specific matters within a reasonable time before the conference/hearing. The Judge would then hold the conference and enter into the record any agreements reached and defenses raised during the discussions under § 2200.206. After attempting to resolve the remaining issues, the Judge would at the conclusion of the conference enter into the record any further agreements reached by the parties.

The proposed revisions included a technical change to correct the reference to another Commission rule in paragraph (b). It was also proposed that paragraph (c) be revised to provide: "The hearing shall be in accordance with Subpart E of these rules." The Commission further proposed amending subparagraph (c)(1) to add: "physical" evidence to the oral and documentary evidence already included; and "unreliable" to the irrelevant and unduly repetitious evidence that may be excluded. The proposed revision to subparagraph (c)(2) only involved moving phrases within the second sentence. No comments were received with regard to these proposed revisions, and they are adopted.

Rule 209 Decision of the Judge. Petition to Commission

The Commission proposed revising § 2200.209 to provide: "Any party may petition for Commission review of the Judge's decision as provided in § 2200.91. After issuance of the Judge's decision, the case shall proceed in the conventional manner prescribed in Subpart F." These revisions are clarifying in nature. There were no comments received on these proposed changes, and they are adopted.

Rule 210 Discovery

One of the major objections to simplified proceedings has been that, except were ordered by the Judge, discovery has not been permitted. To address this concern in an effort to encourage use of simplified proceedings, the Commission proposed revising § 2200.210 to provide: "Discovery, including requests for admissions, shall not be allowed except under the conditions and time limits set by the Judge." While discovery would continue to be allowed only through the Judge, the Judge's role would become more supervisory, by his setting the conditions and time limits. The Commission expects that by expressly granting to the Judge the authority to control the conditions and duration of discovery, the parties should find it easier to obtain the discovery needed for their cases. Some commentators expressed concern that this revision did not sufficiently liberalize discovery. The Commission notes that where difficulties in discovery under this rule might arise, there may be grounds for requesting discontinuance of simplified proceedings. The Commission adopts the proposed revision.

Rule 212 Applicability of Subparts A through G

The Commission proposed, and explained the need to make, several additions and deletions to the list of rules that do not apply to simplified proceedings. No substantial comments were received on these proposed changes, and the revisions are adopted.

List of Subjects in 29 CFR Part 2200

Administrative practice and procedure, Hearing and appeal procedures.

Text of Amendment

For the reasons set forth in the preamble, the Occupational Safety and Health Review Commission amends title 29, chapter XX, part 2200 of the Code of Federal Regulations as follows:

PART 2200—[AMENDED]

1. The authority citation continues to read as follows:

Authority: 29 U.S.C. 661(g).

2. Section 2200.4 is revised to read as follows:

§ 2200.4 Computation of time.

(a) *Computation.* In computing any period of time prescribed or allowed in these rules, the day from which the designated period begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday or Federal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or Federal holiday. When the period of time prescribed or allowed is less than 11 days, the period shall commence on the first day which is not a Saturday, Sunday, or Federal holiday, and intermediate Saturdays, Sundays, and

Federal holidays shall likewise be excluded from the computation.

(b) *Service by mail.* Where service of a document, including documents issued by the Commission or Judge, is made by mail pursuant to § 2200.7, a separate period of 3 days shall be allowed, in addition to the prescribed period, for the filing of a response. This additional 3-day period shall commence on the calendar day following the day on which service has been made and shall include all calendar days; that is, paragraph (a) of this section shall not apply to the extent it requires the exclusion of Saturdays, Sundays, or Federal holidays. The prescribed period for the responsive filing shall commence on the first day following the expiration of the 3-day period, except when the prescribed period is less than 11 days. Where the period is less than 11 days, it shall commence on the first day following the expiration of the 3-day period that is not a Saturday, Sunday, or Federal holiday.

(c) *Exclusion.* Paragraph (b) of this section does not apply to petitions for discretionary review. The period of time for filing a petition for discretionary review is governed by § 2200.91(b).

3. Section 2200.5 is revised to read as follows:

§ 2200.5 Extension of time.

Upon motion of a party, for good cause shown, the Commission or Judge may enlarge any time prescribed by these rules or prescribed by an order. All such motions shall be in writing but, in exigent circumstances in a case pending before a Judge, an oral request may be made and thereafter shall be followed by a written motion filed with the Judge within 3 working days. A request for an extension of time should be received in advance of the date on which the pleading or document is due to be filed. However, in exigent circumstances, an extension of time may be granted even though the request was filed after the designated time for filing has expired. In such circumstances, the party requesting the extension must show, in writing, the reasons for the party's failure to make the request before the time prescribed for the filing had expired. The motion may be acted upon before the time for response has expired.

4. Section 2200.7 is amended by revising paragraphs (a) and (c) to read as follows:

§ 2200.7 Service and notice.

(a) *When service is required.* At the time of filing pleadings or other documents, a copy thereof shall be served by the filing party or intervenor on every other party or intervenor. Every paper relating to discovery required to be served on a party shall be served on all parties and intervenors. Every order required by its terms to be served shall be served upon each of the parties and intervenors.

* * * * *

(c) *How accomplished.* Unless otherwise ordered, service may be accomplished by postage pre-paid first class mail at the last known address or by personal delivery. Service is deemed effected at the time of mailing (if by mail) or at the time of personal delivery (if by personal delivery). Facsimile transmission of documents and documents sent by an overnight delivery service shall be considered personal delivery. Legibility of documents served by facsimile transmission is the responsibility of the serving party.

* * * * *

5. Section 2200.8 is revised to read as follows:

§ 2200.8 Filing.

(a) *What to file.* All papers required to be served on a party or intervenor, except for those papers associated with part of a discovery request under Rules 52 through 56, shall be filed either before service or within a reasonable time thereafter.

(b) *Where to file.* Prior to assignment of a case to a Judge, all papers shall be filed with the Executive Secretary at 1825 K Street, NW., Washington, DC 20006. Subsequent to the assignment of the case to a Judge, all papers shall be filed with the Judge at the address given in the notice informing of such assignment. Subsequent to the docketing of the Judge's report, all papers shall be filed with the Executive Secretary, except as provided in § 2200.90(b)(3).

(c) *How to file.* Unless otherwise ordered, all filing may be accomplished by postage-prepaid first class mail or by personal delivery.

(d) *Number of copies.* Unless otherwise ordered or stated in this part:

(1) If a case is before a Judge or if it has not yet been assigned to a Judge, only the original of a document shall be filed.

(2) If a case is before the Commission for review, the original and four copies of a document shall be filed.

(e) *Filing date.* Filing is effective upon mailing (if by mail) or upon receipt by the Commission (if filing is by personal delivery, overnight delivery service, or facsimile transmission), except that the filing of petitions for discretionary review is effective only upon receipt by the Commission. See § 2200.91.

(f) *Facsimile transmissions.* (1) Any document may be filed with the Commission or its Judges by facsimile transmission. Filing shall be deemed completed at the time that the facsimile transmission is received by the Commission or the Judge. The filed facsimile shall have the same force and effect as the original.

(2) All facsimile transmissions shall include a facsimile of the appropriate certificate of service.

(3) Within 3 days after the Commission or the Judge has received the facsimile, the party filing the document shall forward to the Commission or the Judge a signed, original document and, where appropriate, the proper number of multiple copies.

(4) It is the responsibility of parties desiring to file documents by the use of facsimile transmission equipment to utilize equipment that is compatible with facsimile transmission equipment operated by the Commission. Legibility of the transmitted documents is the responsibility of the serving party.

6. Section 2200.10 revised to read as follows:

§ 2200.10 Severance.

Upon its own motion, or upon motion of any party or intervenor, where a showing of good cause has been made by the party or intervenor, the Commission or the Judge may order any proceeding severed with respect to some or all claims or parties.

7. Section 2200.20 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 2200.20 Party status.

(a) *Affected employees.* Affected employees and authorized employee representatives may elect party status concerning any matter in which the Act confers a right to participate. The election shall be accomplished by filing a written notice of election at least 10 days before the hearing. * * *

* * * * *

8. Section 2200.24 is added to subpart B to read as follows:

§ 2200.24 Brief of an amicus curiae.

The brief of an amicus curiae may be filed only by leave of the Judge or Commission. The brief may be conditionally filed with the motion for leave. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. Any amicus curiae shall file its brief within the time allowed the party whose position the amicus will support unless the Judge or

Commission, for good cause shown, grants leave for later filing. In that event, the Judge or Commission shall specify within what period an opposing party may answer.

9. Section 2200.30 is amended by redesignating paragraphs (d) through (g) as paragraphs (e) through (h) and adding a new paragraph (d) to read as follows:

§ 2200.30 General rules.

* * * * *

(d) *Adoption by reference.* Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

(e) *Alternative pleading.* A party may set forth two or more statements of a claim or defense alternatively or hypothetically. When two or more statements are made in the alternative and one of them would be sufficient if made independently, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may state as many separate claims or defenses as he has regardless of their consistency or the grounds on which based. All statements shall be made subject to the signature requirements of § 2200.32.

(f) *Content of motions and miscellaneous pleadings.* A motion shall contain a caption complying with § 2200.31, a signature complying with § 2200.32, and a clear and plain statement of the relief that is sought together with the grounds therefor. These requirements also apply to any pleading not governed by more specific requirements in this subpart.

(g) *Burden of persuasion.* The rules of pleading established by this subpart are not determinative in deciding which party bears the burden of persuasion on an issue. By pleading a matter affirmatively, a party does not waive its right to argue that the burden of persuasion on the matter is on another party.

(h) *Enforcement of pleading rules.* The Commission or the Judge may refuse for filing any pleading or motion that does not comply with the requirements of this subpart.

10. Section 2200.32 is amended by adding a sentence to the end of the section to read as follows:

§ 2200.32 Signing of pleadings and motions.

* * * If a pleading, motion or other paper is signed in violation of this rule, such signing party or its representative shall be subject to the sanctions set forth in § 2200.41 or § 2200.104.

11. Section 2200.34 is revised to read as follows:

§ 2200.34 Employer contests.

(a) *Complaint.* (1) The Secretary shall file a complaint with the Commission no later than 20 days after receipt of the notice of contest.

(2) The complaint shall set forth all alleged violations and proposed penalties which are contested, stating with particularity:

(i) The basis for jurisdiction;

(ii) The time, location, place, and circumstances of each such alleged violation; and

(iii) The considerations upon which the period for abatement and the proposed penalty of each such alleged violation are based.

(3) Where the Secretary seeks in his complaint to amend his citation or proposed penalty, he shall set forth the reasons for amendment and shall state with particularity the change sought.

(b) *Answer.* (1) Within 20 days after service of the complaint, the party against whom the complaint was issued shall file an answer with the Commission.

(2) The answer shall contain a short and plain statement denying those allegations in the complaint which the party intends to contest. Any allegation not denied shall be deemed admitted.

(3) The answer shall include all affirmative defenses being asserted. Such affirmative defenses include, but are not limited to, "infeasibility," "unpreventable employee misconduct," and "greater hazard."

(4) The failure to raise an affirmative defense in the answer may result in the party being prohibited from raising the defense at a later stage in the proceeding, unless the Judge finds that the party has asserted the defense as soon as practicable.

12. Section 2200.35 is revised to read as follows:

§ 2200.35 Disclosure of corporate parents, subsidiaries, and affiliates.

(a) *General.* All answers, petitions for modification of abatement period, or other initial pleadings filed under these rules by a corporation shall be accompanied by a separate declaration listing all parents, subsidiaries, and affiliates of that corporation or stating that the corporation has no parents, subsidiaries, or affiliates, whichever is applicable.

(b) *Failure to disclose.* The Commission or Judge in its discretion may refuse to accept for filing an answer or other initial pleading that lacks the disclosure declaration required by this paragraph. A party that fails to file an adequate declaration may be held in default after being given an opportunity to show cause why it should not be held in default.

(c) *Continuing duty to disclose.* A party subject to the disclosure requirement of this paragraph has a continuing duty to notify the Commission or the Judge of any change in the information on the disclosure declaration until the Commission issues a final order disposing of the proceeding.

(d) *Show cause orders.* All show cause orders issued by the Commission or Judge under paragraph (b) of this section shall be served upon the affected party by certified mail, return receipt requested.

§ 2200.36 [Reserved]

13. Section 2200.36 is removed and reserved.

14. Section 2200.40 is amended by revising paragraph (a) to read as follows:

§ 2200.40 Motions and requests.

(a) *How to make.* A request for an order shall be made by motion. Motions shall be in writing or, unless the Judge directs otherwise, may be made orally during a hearing on the record and shall be included in the transcript. In exigent circumstances in cases pending before Judges, a motion may be made telephonically if it is reduced to writing and filed as soon as possible but no later than 3 working days following the time the motion was made. A motion shall state with particularity the grounds on which it is based and shall set forth the relief or order sought. A motion shall not be included in another document, such as a brief or a petition for discretionary review, but shall be made in a separate document. Unless a motion is made by all parties, the moving party shall state in the motion any opposition or lack of opposition of which he is aware.

* * * * *

§ 2200.50 [Reserved]

15. Section 2200.50 is reserved.

16. Section 2200.51 is revised to read as follows:

§ 2200.51 Prehearing conferences and orders.

(a) *Scheduling conference.* (1) The Judge shall consult with all attorneys and any unrepresented parties, by a scheduling conference, telephone, mail, or other suitable means, and within 30

days after the filing of the answer, enter a scheduling order that limits the time:

(i) To join other parties and to amend the pleadings;

(ii) To file and hear motions; and

(iii) To complete discovery.

(2) The scheduling order also may include:

(i) The date or dates for conferences before hearing, a final prehearing conference, and hearing; and

(ii) Any other matters appropriate to the circumstances of the case.

(b) *Prehearing conference.* In addition to the prehearing procedures set forth in Rule 16 of the Federal Rules of Civil Procedure, the Judge may upon his own initiative or on the motion of a party direct the parties to confer among themselves to consider settlement, stipulation of facts, or any other matter that may expedite the hearing.

17. Section 2200.52 is amended by revising paragraph (d) and adding paragraphs (h)–(l) to read as follows:

§ 2200.52 General provisions governing discovery.

* * * * *

(d) *Protective orders.* In connection with any discovery procedures and where a showing of good cause has been made, the Commission or Judge may make any order including, but not limited to, one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(4) That certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the Commission or Judge;

(6) That a deposition after being sealed be opened only by order of the Commission or Judge;

(7) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;

(8) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the Commission or Judge.

* * * * *

(h) *Supplementation of responses.* A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement the response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement the response with respect to any question directly addressed to (i) The identity and location of persons having knowledge of discoverable matters and (ii) The identity of each person expected to be called as an expert witness at the hearing, the subject matter on which the person is expected to testify, and the substance of the person's testimony.

(2) A party is under a duty seasonably to amend a prior response if the party obtains information upon the basis of which (i) The party knows that the response was incorrect when made of (ii) The party that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to the hearing through new requests for supplementation of prior responses.

(i) *Filing of discovery.* Requests for production or inspection under Rule 53, requests for admission under Rule 54 and responses thereto, interrogatories under Rule 55 and the answers thereto, and depositions under Rule 56 shall be served upon other counsel or parties, but shall not be filed with the Commission or the Judge. The party responsible for service of the discovery material shall retain the original and become the custodian.

(j) *Relief from discovery requests.* If relief is sought under Rules 41 or 52 (d), (e), or (f) concerning any interrogatories, requests for production or inspection, requests for admissions, answers to interrogatories, or responses to requests for admissions, copies of the portions of the interrogatories, requests, answers, or responses in dispute shall be filed with the Judge or Commission contemporaneously with any motion filed under Rules 41 or 52 (d), (e), or (f).

(k) *Use at hearing.* If interrogatories, requests, answers, responses, or depositions are to be used at the hearing or are necessary to a prehearing motion which might result in a final order on any claim, the portions to be used shall be filed with the Judge or the Commission at the outset of the hearing or at the filing of the motion insofar as their use can be reasonably anticipated.

(l) *Use on review or appeal.* When documentation of discovery not previously in the record is needed for review or appeal purposes, upon an application and order of the Judge or Commission the necessary discovery papers shall be filed with the Executive Secretary of the Commission.

18. Section 2200.53 is amended by revising paragraph (b) to read as follows:

§ 2200.53 Production of documents and things.

* * * * *

(b) *Procedure.* The request shall set forth the items to be inspected, either by individual item or by category and describe each item and category with reasonable particularity. It shall specify a reasonable time, place and manner of making the inspection and performing related acts. The party upon whom the request is served shall serve a written response within 30 days after service of the request, unless the requesting party allows a longer time. The Commission or Judge may allow a shorter time or a longer time, should the requesting party deny an extension. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to in whole or in part, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, that part shall be specified. To obtain a ruling on an objection by the responding party, the requesting party shall file a motion with the Judge and shall annex thereto his request, together with the response and objections, if any.

19. Section 2200.56 is amended by adding paragraphs (f)–(h) to read as follows:

§ 2200.56 Depositions.

* * * * *

(f) *Excerpts from depositions to be offered at hearing.* Except when used for purposes of impeachment, at least 5 working days prior to the hearing, the parties or counsel shall furnish to the Judge and all opposing parties or counsel the excerpts from depositions (by page and line number) which they expect to introduce at the hearing. Four working days thereafter, the adverse party or counsel for the adverse party shall furnish to the Judge and all opposing parties or counsel additional excerpts from the depositions (by page and line number) which they expect to be read pursuant to Rule 32(a)(4) of the Federal Rules of Civil Procedure, as well as any objections (by page and line number) to opposing party's or counsel's depositions. With reasonable notice to the Judge and all parties or counsel, other excerpts may be read.

(g) *Telephone depositions.* (1) Telephone depositions may be

conducted pursuant to Rule 30(b)(7) of the Federal Rules of Civil Procedure.

(2) If a party objects to a telephone deposition, he shall make known his objections at least 5 days prior to the taking of the deposition. If the objection is not resolved by the parties or the Judge before the scheduled deposition date, the deposition shall be stayed pending resolution of the dispute.

(h) *Video depositions.* By indicating in its notice of a deposition that it wishes to record the deposition by videotape (and identifying the proposed videotape operator), a party shall be deemed to have moved for such an order under Rule 30(b)(4) of the Federal Rules of Civil Procedure. Unless an objection is filed and served within 10 days after such notice is received, the Judge shall be deemed to have granted the motion pursuant to the following terms and conditions:

(1) *Stenographic recording.* The videotaped deposition shall be simultaneously recorded stenographically by a qualified court reporter. The court reporter shall administer the oath or affirmation to the deponents on camera. The written transcript by the court reporter shall constitute the official record of the deposition for purposes of Rule 30(e) (submission to witness) of the Federal Rules of Civil Procedure.

(2) *Cost.* The noticing party shall bear the expense of both the videotaping and the stenographic recording. Any party may at its own expense obtain a copy of the videotape and the stenographic transcript.

(3) *Video operator.* The operator(s) of the videotape recording equipment shall be subject to the provisions of Rule 28(c) of the Federal Rules of Civil Procedure. At the commencement of the deposition the operator(s) shall swear or affirm to record the proceedings fairly and accurately.

(4) *Attendance.* Each witness, attorney, and other person attending the deposition shall be identified on camera at the commencement of the deposition. Thereafter, only the deponent (and demonstrative materials used during the deposition) will be videotaped. Identification on camera of each witness, attorney, and other person attending the deposition may be waived by the attorneys for the parties.

(5) *Standards.* The deposition will be conducted in a manner to replicate, to the extent feasible, the presentation of evidence at a hearing. Unless physically incapacitated, the deponent shall be seated at a table or in a witness box except when reviewing or presenting demonstrative materials for which a change in position is needed. To the extent practicable, the deposition will be conducted in a neutral setting, against a solid background, with only such lighting as is required for accurate video recording. Lighting, camera angle, lens setting, and field of view will be changed only as necessary to record accurately the natural body movements of the deponent or to portray exhibits and materials used during the deposition. Sound levels will be altered only as necessary to record satisfactorily the voices of counsel and the deponent. Eating and smoking by deponents or counsel during the deposition will not be permitted.

(6) *Interruptions.* Videotape recording will be suspended during all "off the record" discussions.

(7) *Index.* The videotape operator shall use a counter on the recording equipment and after completion of the deposition shall prepare a log, cross-referenced to counter numbers, that identifies the positions on the tape at which examination by different counsel begins and ends; at which objections are made and examination resumes; at which exhibits are identified; and at which any interruption of continuous tape recording occurs, whether for recesses, "off the record" discussions, mechanical failure, or otherwise.

(8) *Filing.* If a videotaped deposition is used at the hearing, the original of the videotape recording, together with the transcript, the operator's log index, and a certificate of the operator attesting to the accuracy of the tape, shall be filed with the Judge. No part of a videotaped deposition shall be released or made available to any member of the public unless authorized by the Commission or the Judge.

(9) *Objections.* Requests for prehearing rulings on the admissibility of evidence obtained during a videotaped deposition shall be accompanied by appropriate pages of the written transcript. If the objection involves matters peculiar to the videotaping, a copy of the videotape and equipment for viewing the tape shall also be provided to the Commission or Judge.

(10) *Use at hearing; purged tapes.* A party desiring to offer a videotape deposition at the hearing shall be responsible for having available appropriate playback equipment and a trained operator. After the designation by all parties of the portions of a videotape to be used at the hearing, an edited copy of the tape, purged of unnecessary portions (and any portions to which objections have been sustained), must be prepared by the offering party to facilitate continuous playback; but a copy of the edited tape shall be made available to other parties at least 10 days before it is used, and the unedited original of the tape shall also be available at the hearing.

20. Section 2200.57 is amended by revising paragraph (a) to read as follows:

§ 2200.57 Issuance of subpenas; petitions to revoke or modify subpenas; right to inspect or copy data.

(a) *Issuance of subpenas.* On behalf of the Commission or any member thereof, the Judge shall, on the application of any party, issue to the applying party subpenas requiring the attendance and testimony of witnesses and the production of any evidence, including relevant books, records, correspondence, or documents, in his possession or under his control. The party to whom the subpena is issued shall be responsible for its service. Applications for subpenas, if filed prior to the assignment of the case to a Judge, shall be filed with the Executive Secretary at 1825 K Street, NW., Washington, DC 20006. After the case has been assigned to a Judge, applications shall be filed with the Judge. Applications for subpena(s) may be made ex parte. The subpena shall show on its face the name and address of the party at whose request the subpena was issued.

* * * * *

21. Section 2200.63 is amended by revising paragraph (c) to read as follows:

§ 2200.63 Stay of proceedings.

* * * * *

(c) *Periodic reports required.* The parties in a stayed proceeding shall be required to submit periodic reports on such terms and conditions as the Judge may direct. The length of time between the reports shall be no longer than 90 days unless the Commission or the Judge otherwise orders.

22. Section 2200.64 is amended by revising paragraph (c) to read as follows:

§ 2200.64 Failure to appear.

* * * * *

(c) *Rescheduling hearing.* The Commission or the Judge, upon a showing of good cause, may excuse such failure to appear. In such event, the hearing will be rescheduled as expeditiously as possible from the issuance of the Judge's order.

23. Section 2200.93 is amended by revising paragraph 9(c) and adding paragraph (i) to read as follows:

§ 2200.93 Briefs before the Commission.

* * * * *

(c) *Motion for extension of time for filing brief.* An extension of time to file a brief will ordinarily not be granted except for good cause shown. A motion for extension of time to file a brief shall be filed at the Commission no later than 3 days prior to the expiration of the time limit prescribed in paragraph (b) of this section, shall comply with § 2200.40 and shall include the following information: When the brief is due, the number and duration of extensions of time that have been granted to each party, the length of extension being requested, the specific reason for the extension being requested, and an assurance that the brief will be filed within the time extension requested.

* * * * *

(i) *Brief of an amicus curiae.* The Commission may allow a brief of an amicus curiae pursuant to the criteria of § 2200.24. Any brief of an amicus curiae must meet the requirements of paragraphs (b) through (h) of this section. No reply brief of an amicus curiae will be received.

24. Section 2200.95 is amended by revising paragraph (a)(1), by adding a sentence to the end of paragraph (g), and by adding paragraphs (j) and (k) to read as follows:

§ 2200.95 Oral argument before the Commission.

(a) *When ordered.* (1) Upon motion of any party, or upon its own motion, the Commission may order oral argument. Normally, motions for oral argument shall not be considered until after all briefs have been filed.

* * * * *

(g) *Multiple counsel.* * * * No later than 3 days prior to the date of scheduled argument, the Commission must be notified of the names of the counsel who will argue.

* * * * *

(j) *Failure to file brief.* A party who fails to file a brief shall not be heard at the time of oral argument except by permission of the Commission.

(k) *Participation in oral argument by amicus curiae.* (1) An amicus curiae will not be permitted to participate in oral argument without leave of the Commission upon proper motion.

(2) A motion by amicus curiae seeking leave to participate in oral argument shall be filed no later than 14 days prior to the date oral argument is scheduled.

(3) The motion of an amicus curiae for leave to participate at oral argument shall identify the interest of the applicant and shall state the reason(s) why its participation at oral argument is desirable.

(4) Motions in opposition to the motion of an amicus curiae for leave to participate in the oral argument must be filed within 7 days of the date of the motion.

25. Section 2200.100 is amended by revising paragraph (c) to read as follows:

§ 2200.100 Settlement.

* * * * *

(c) *Filing; service and notice.* A settlement submitted for approval after the Judge's report has been directed for review shall be filed with the Executive Secretary. When a settlement agreement is filed with the Judge or the Executive Secretary, proof of service shall be filed with the settlement agreement, showing service upon all parties and authorized employee representatives in the manner prescribed by § 2200.7(c) and the posting of notice to non-party affected employees in the manner prescribed by § 2200.7(g). The parties shall also file a final consent order for adoption by the Judge. If the time has not expired under these rules for electing party status, or if party status has been elected, an order terminating the litigation before the Commission because of the settlement shall not be issued until at least 10 days after service or posting to consider any affected employee's or authorized employee representative's objection to the reasonableness of any abatement time. The affected employee or authorized employee representative shall file any such objection within this time. If such objection is filed or stated in the settlement agreement, the Commission or the Judge shall provide an opportunity for the affected employees or authorized employee representative to be heard and present evidence on the objection, which shall be limited to the reasonableness of the abatement time.

* * * * *

26. Section 2200.107 is revised to read as follows:

§ 2200.107 Special circumstances; waiver of rules.

In special circumstances not contemplated by the provisions of these rules and for good cause shown, the Commission or Judge may, upon application by any party or intervenor or on their own motion, after 3 working days notice to all parties and intervenors, waive any rule or make such orders as justice or the administration of the Act requires.

27. Section 2200.200 is amended by revising paragraph (a) to read as follows:

§ 2200.200 Purpose.

(a) The purpose of this subpart is to provide simplified procedures for resolving contests under the Occupational Safety and Health Act of 1970, so the parties before the Commission may save time and expense while assuring due process and a hearing that meets the requirements of the Administrative Procedure Act, 5 U.S.C. 554. The rules shall be construed and applied to accomplish these ends.

* * * * *

28. Section 2200.201 is revised to read as follows:

§ 2200.201 Application.

The rules in this subpart shall govern proceedings before an Administrative Law Judge in a case eligible for simplified proceedings under § 2200.202 upon the request of a party and, if there is objection, the approval of the Chief Administrative Law Judge or such other Judge to whom he has assigned the case.

29. Section 2200.202 is revised to read as follows:

§ 2200.202 Eligibility for simplified proceedings.

All cases in which only the penalty is contested shall be eligible for simplified proceedings. In all other instances, a case is eligible for simplified proceedings unless it concerns the merits of an alleged violation of a standard listed below:

§ 1910.94
§ 1910.95
§ 1910.96
§ 1910.97
§ 1910.1000 through 1910.1101
§ 1926.52
§ 1926.53
§ 1926.54
§ 1926.55
§ 1926.57
§ 1926.800(c) and

any occupational health standard that may be added to Subpart Z of Part 1910. (All standards listed are found in title 29 of the Code of Federal Regulations.)

30. Section 2200.203 is amended by revising paragraphs (a)(2), (a)(3), (b)(2), (b)(3), (b)(4), (c) and (d), by removing paragraph (a)(4), and by adding paragraph (e) as follows:

§ 2200.203 Commencing simplified proceedings.

(a) * * *

(2) *When to request.* After the Commission receives an employer's or employee's notice of contest or petition for modification of abatement, the Executive Secretary shall issue a notice indicating that the case has been docketed. Any request for simplified

proceedings shall be filed within 10 days after the notice of docketing is received, unless the notice of docketing states otherwise; a late-filed request may be considered only if good cause for the filing is shown.

(3) *How to request.* A simple statement is all that is necessary. For example, "I request simplified proceedings" will suffice. The request shall be in writing. The request shall be filed with the Executive Secretary and served on all of the following:

(i) The employer;

(ii) The Secretary of Labor; and

(iii) Any authorized employee representatives.

The request also shall be posted for the benefit of any unrepresented affected employees. (To serve the Secretary of Labor, the request should be mailed to the Regional Solicitor named in the notice of docketing.)

(b) * * *

(2) *When to object.* An objection shall be filed within 10 days after the request for simplified proceedings is served.

(3) *How to object.* The objection must be stated in writing and explain why, under the particular circumstances of the case, simplified proceedings would be inappropriate. An objection shall be filed with the Executive Secretary and served in the manner prescribed for requests for simplified proceedings in paragraph (a)(3) of this section.

(4) *No objection filed.* When the period for objecting to simplified proceedings expires and no objection has been filed, the Commission shall notify all parties that simplified proceedings are in effect.

(c) *Statements of position.* Any party may, within 10 days after an objection to simplified proceedings has been served, file with the Executive Secretary a statement of position on the objection.

(d) *Judge's ruling on objection.* The Judge shall set forth in writing his reasons for his ruling on a party's objection to simplified proceedings. If the Judge concludes that the objecting party has shown that, under the particular circumstances of the case, simplified proceedings would be inappropriate, the Judge shall order that the case be conducted under conventional rules. Otherwise, the Judge shall order the use of simplified proceedings. The order granting or denying the request shall not be subject to interlocutory review.

(e) *Time for filing complaint or answer under § 2200.34.* The times for filing a complaint or answer shall not run if a request for simplified proceedings is filed. If the Commission later notifies the parties under § 2200.203(d) that the case is to continue under conventional procedures, the periods for filing a complaint or answer shall begin upon receipt of the notice.

31. Section 2200.204 is revised to read as follows:

§ 2200.204 Discontinuance of simplified proceedings.

At any time, on his own motion or the written motion of a party, the Judge to whom the case has been assigned may discontinue simplified proceedings. A party's motion to discontinue must be in writing and explain why, under the particular circumstances of the case, it would be inappropriate to continue under simplified proceedings. All other parties shall have 5 days from the date of the motion to state their position on the motion and the reasons therefor. In response to his own motion or the written motion of a party, the Judge must set forth in writing his reasons for his ruling on whether simplified proceedings are inappropriate. Simplified proceedings shall be discontinued if all parties consent. If simplified proceedings are terminated, the Judge may issue such orders as are necessary for an orderly continuation under conventional rules. The order discontinuing simplified proceedings or denying a motion for discontinuance shall not be subject to interlocutory review.

32. Section 2200.205 is amended by revising paragraph (a) as follows:

§ 2200.205 Filing of pleadings.

(a) *Complaint and answer.* There shall be no complaint or answer in simplified proceedings. If the Secretary has filed a complaint under § 2200.34(a), a response to a petition under § 2200.37, or a response to an employee contest under § 2200.38, and simplified proceedings have been ordered or a motion for simplified proceedings is pending, no response to these documents shall be required.

* * * * *

33. Section 2200.207 is amended by revising paragraphs (b) and (c) as follows:

§ 2200.207 Conference/Hearing.

* * * * *

(b) *Conference.* At the beginning of the conference, the Judge shall enter into the record all agreements reached by the parties as well as defenses raised during the discussion set forth in § 2200.206. The parties and the Judge then shall attempt to resolve or narrow the remaining issues. At the conclusion of the conference, the Judge shall enter into the record any further agreements reached by the parties.

(c) *Hearing.* The Judge shall hold a hearing on any issue that remains in dispute at the conclusion of the conference. The hearing shall be in accordance with subpart E of these rules.

(1) *Evidence.* Oral, physical, or documentary evidence shall be received, but the Judge may exclude irrelevant, unduly repetitious or unreliable evidence. Testimony shall be given under oath or affirmation. The Federal Rules of Evidence shall not apply.

(2) *Oral and written argument.* Each party may present oral argument at the close of the hearing. At the conference/hearing, any party wishing to present written argument shall notify the Judge and all other parties so that the Judge may set a reasonable period for the prompt filing of written argument.

34. Section 2200.209 is amended by revising paragraph (b) to read as follows:

§ 2200.209 Decision of the Judge.

* * * * *

(b) Any party may petition for Commission review of the Judge's decision as provided in § 2200.91. After the issuance of the Judge's decision, the case shall proceed in the conventional manner prescribed in subpart F.

35. Section 2200.210 is revised to read as follows:

§ 2200.210 Discovery.

Discovery, including requests for admissions, shall not be allowed except under the conditions and time limits set by the Judge.

36. Section 2200.212 is revised to read as follows:

§ 2200.212 Applicability of subparts A through G.

The provisions of subpart D (except for § 2200.57) and §§ 2200.34, 2200.37(d)(5), 2200.38, 2200.71, and 2200.73 shall not apply to simplified proceedings. All other rules contained in subparts A through G of the Commission's rules of procedure shall apply when consistent with the rules in this subpart governing simplified proceedings.

Dated: September 4, 1992.

Edwin G. Foulke, Jr.,

Chairman.

Dated: September 4, 1992.

Donald G. Wiseman,

Commissioner.

Dated: September 4, 1992.

Velma Montoya,

Commissioner.

[FR Doc. 92-21871 Filed 9-10-92; 8:45 am]

BILLING CODE 7600-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Ohio Regulatory Program; Revision of Administrative Rule

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of proposed Program Amendment Number 58 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment is intended to make the Ohio program as effective as the corresponding Federal regulations. The amendment concerns the termination and possible reassertion of regulatory jurisdiction over all or part of a reclaimed goal mine following the release of performance bond.

EFFECTIVE DATE: September 11, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232; (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program
II. Submission of Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982, **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Submission of Amendment

By letter dated November 17, 1989 (Administrative Record Number OH-1240), the Director of OSM notified the Ohio Department of Natural Resources, Division of Reclamation (Ohio), of a number of Federal regulations promulgated between September 7, 1988, and November 8, 1988, for which OSM had determined that the corresponding Ohio rules were now less effective than the new Federal counterparts. One new Federal rule at 30 CFR 700.11(d) concerned the termination of regulatory jurisdiction over reclaimed mines.

In response to the OSM notification, Ohio submitted proposed Program Amendment Number 43 by letter dated January 16, 1990 (Administrative Record No. OH-1285). In part, this amendment proposed the addition of two new paragraphs at Ohio Administrative Code (OAC) 1501:13-1-01(D)(1) and (2) to establish corresponding State provisions for the termination and possible reassertion of Ohio's regulatory jurisdiction over reclaimed mines.

On January 7, 1991, OSM sent its comments to Ohio on Program Amendment Number 43 (Administrative Record No. OH-1430). In those comments, OSM noted that the U.S. District Court for the District of Columbia remanded the counterpart Federal rule at 30 CFR 700.11(d) concerning termination of jurisdiction as contrary to SMCRA (*National Wildlife Federation* v. *Lujan*, Nos. 88-2416, 88-3345, 88-3586, 88-3635, 89-0039, 89-0136, 89-0141 (D.D.C. August 30, 1990). OSM notified Ohio that OSM could not approve Ohio's proposed rules at OAC 1501:13-1-01(D) (1) and (2) because those provisions, as did the remanded counterpart Federal regulation at 30 CFR 700.11(d), permitted Ohio to conclude its role in enforcing SMCRA at the site of a surface mining activity when the operator has performed all of the required duties to reclaim the site. This proposed State provision would be contrary to the court's interpretation of SMCRA.

In response to OMS's letter, Ohio submitted Revised Program Amendment Number 43 on February 12, 1991 (Administrative Record Number OH-1454). In this revised amendment, Ohio deleted the previously proposed new rules on termination jurisdiction.

Subsequently, the Secretary of the Interior appealed the U.S. District Court's suspension of the Federal rule. On December 10, 1991, the U.S. Court of Appeals for the District of Columbia upheld the remanded Federal rule at 30 CFR 700.11(d). *National Wildlife Federal* v. *Lujan*, Nos. 90-5352, 90-5354, 90-5356, 90-5358, D.C. Cir. December 10, 1991.) On April 10, 1992 (57 FR 12461), OSM published the reinstatement of the remanded Federal rule as promulgated on November 2, 1988 (53 FR 44356). This reinstated rule became effective on May 11, 1992.

By letter dated May 12, 1992 (Administrative Record No. OH-1699), Ohio submitted proposed Program Amendment Number 58. This amendment resubmits the previously proposed State provisions for the termination and possible reassertion of regulatory jurisdiction over all or part of a reclaimed coal mine following the release of performance bond. Ohio is again proposing to add new paragraphs (D)(1) and (2) at OAC 1501:13-1-01.

OSM announced receipt of the proposed amendment in the June 22, 1992, **Federal Register** (57 FR 27718), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on July 22, 1992. The public hearing scheduled for July 17, 1992, was not held as no one requested an opportunity to testify.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Ohio program.

Ohio is adding paragraph (D) to OAC 1501:13-1-01 to clarify the authority of the Chief of the Division of Reclamation, Ohio Department of Natural Resources (the Chief), to terminate jurisdiction over all or part of a reclaimed site in accordance with OAC Section 1501:13-7 A new provision is also being added requiring the Chief to reassert jurisdiction over a site if it is demonstrated that the release of bond was based on fraud, collusion, or misrepresentation of a material fact.

The Federal regulations at 30 CFR 700.11(d) authorize the regulatory authorities to terminate jurisdiction over reclaimed sites of completed surface coal mining and reclamation operations when, (1) under initial or permanent programs, all requirements under the respective program regulations have been successfully completed, or (2) under permanent programs the regulatory authority has made a final decision in accordance with the State's counterpart to 30 CFR Part 800 of the Federal regulations to release the performance bond fully. Ohio has proposed to adopt language in rule 1501:13-1-01 which will establish the complete release of bond as the single criterion for the termination of jurisdiction. In administrative record information submitted with this proposed amendment, Ohio explained its rationale for choosing a single criterion of bond release rather than two

criteria as in the counterpart Federal regulations. Ohio notes that Ohio's pre-SMCRA and interim regulatory programs have, both before and after enactment of SMCRA, consistently required the posting of bond and conditioned final bond release on the completion of all reclamation work. Since 30 CFR 710.4(b) requires that States enforce the Federal initial program regulations in Subchapter B of 30 CFR Chapter VII, and 30 CFR 720.12 requires that initial program permits be amended to include a condition requiring compliance with these performance standards, we find this explanation to be acceptable, provided the bond release includes a written determination that all regulatory requirements and permit conditions have been met. The Director acknowledges Ohio's rationale and notes that Ohio's bond release form requires the completion of all program requirements prior to final bond release. The Director finds, therefore, that the proposed rule is consistent with SMCRA and no less effective than the Federal regulations.

IV. Summary and Disposition of Comments

Public Comments

The public comment period and opportunity to request a public hearing announced in the June 22, 1992, **Federal Register** (57 FR 27718) closed on July 22, 1992. The Ohio Historic Preservation Office (OHPO) commented that they did not object to the proposed amendment. The scheduled public hearing was not held as no one requested an opportunity to provide testimony.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Ohio Program. The U.S. Department of Agriculture, Soil Conservation Service, the U.S. Army Corps of Engineers, and the U.S. Department of Labor, Mine Safety and Health Administration, responded that they had no comments on the proposed amendment. No other comments were received.

V. Director's Decision

Based on the above findings, the Director is approving Ohio Program Amendment Number 58, as submitted by Ohio on May 12, 1992. The Federal regulations at 30 CFR part 935 codifying decisions concerning the Ohio program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no such provisions and that EPA concurrence is therefore, unnecessary.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determine that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs. Therefore, preparation of a regulatory impact analysis and OMB regulatory review is not required.

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumption for the counterpart Federal regulations.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under section 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the State must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR part 730, 731, and 732 have been met.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 24, 1992.

Vann Weaver,

Acting Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 935—OHIO

1. The authority citation for part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 935.15, a new paragraph (ggg) is added to read as follows:

§ 935.15 Approval of regulatory program amendments.

* * * * *

(ggg) The following amendment to the Ohio regulatory program, as submitted to OSM on May 12, 1992, is approved, effective September 11, 1992: Amendment Number 58 which consists of revisions to the Ohio Administrative Code (OAC) at 1501:13-1-01-(D) (1) and (2) which concern the termination and possible reassertion of regulatory jurisdiction over all or part of a

reclaimed coal mine following the release of performance bond.

[FR Doc. 92-21909 Filed 9-10-92 8:45 am]
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30 CFR Part 944

Utah Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule, approval of amendment.

SUMMARY: OSM is approving, with one exception and additional requirement, a proposed amendment to the Utah permanent regulatory program (hereinafter referred to as the "Utah program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Utah proposed changes to the Utah Coal Mining Rules pertaining to the definition of "valid existing rights," areas designated as unsuitable for mining by act of Congress, permit application requirements for identification of interests, revegetation success standards, air quality, coal mine waste, thick overburden, sedimentation ponds, cross sections and maps, and termination of jurisdiction. Utah also proposed "Guidelines for Examining and Evaluating Violations, Penalties, and Fees Under R645-300-110," and revisions to the Vegetation Information Guidelines. The amendment revises the Utah program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: September 11, 1992.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Telephone: (505) 776-1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program
II. Submission of Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Utah Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program. Information regarding the general background for the Utah program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Utah program can be found in the January 21, 1981, **Federal Register** (46 FR 5899). Actions pertaining to Utah's program taken subsequent to the original approval are codified at 30 CFR 944.15, 944.16, and 944.30.

II. Submission of Amendment

By letter dated November 20, 1991 (administrative record No. UT-691), Utah submitted the proposed amendment to its regulatory program pursuant to SMCRA. Utah submitted the proposed amendment in response to required program amendments at 30 CFR 944.16(a) through (m) that OSM placed on the Utah program in the August 23, 1991, final rule **Federal Register** notice (56 FR 41795, administrative record No. UT-673) for Utah's July 3, 1990, proposed amendment. The provisions of the Utah Coal Mining Rules that Utah proposed to amend are: R645-100-200, definition of "valid existing rights;" R645-103-220, areas designated unsuitable for mining by act of Congress; R645-301-111.400, permit application requirements for identification of interests; R645-301-356.231, revegetation success standards; R645-301-425, air quality; R645-301-528.320, coal mine waste, R645-301-533.800, thick overburden; R645-301-742.224, sedimentation ponds; R645-301-512.140 and R645-301-731.750, cross sections and maps; and R645-100-400, termination of jurisdiction. In addition, Utah proposed "Guidelines for Examining and Evaluating Violations, Penalties, and Fees under R654-300-110" regarding improvidently issued permits, and revisions to the Vegetation Information Guidelines. (Please note that on January 1, 1992, Utah recodified the prefix of its Coal Mining Rules from R614 to R645. Above OSM cites the rules with the R645 prefix, but in the original December 5, 1991, proposed rule **Federal Register** notice (discussed below) OSM cited the rules with the R614 prefix.)

OSM announced receipt of the proposed amendment in the December 5, 1991, **Federal Register** (56 FR 63699) and in the same notice opened the public comment period and provided an opportunity for a public hearing on the substantive adequacy of the proposed amendment (administrative record No. UT-697). The public comment period closed on January 6, 1992. The public hearing, scheduled for December 30, 1991, was not held because no one requested an opportunity to testify.

During its review of the amendment, OSM identified concerns relating to the provisions of the Utah Coal Mining Rules at R645-100-400 through 452, termination of jurisdiction; the "Guidelines for Examining and Evaluating Violation, Penalties, Fees under R645-300-110;" and the Vegetation Information Guidelines. OSM notified Utah of the concerns by letter dated January 29, 1992 (administrative record No. UT-722). Utah submitted, by letter dated February 28, 1992, a revised amendment (administrative record No. UT-737).

OSM announced receipt of the revised amendment in a notice in the April 17, 1992, **Federal Register** (57 FR 13684; administrative record No. UT-745). In this notice, OSM reopened the public comment period. The reopened public comment period closed on May 4, 1992.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings for the proposed amendment submitted by Utah on November 20, 1991, and revised by it on February 28, 1992.

1. Utah Program Provisions for Which the Director Required Program Amendments in the August 23, 1991, Final Rule **Federal Register** *Notice*

Utah submitted proposed revisions in response to required program amendments at 30 CFR 944.16(a) through (m) that OSM placed on the Utah program in the August 23, 1991, final rule **Federal Register** notice. As discussed below the Director finds that the proposed revisions to the Utah program are no less effective than the corresponding Federal regulations.

(a) Definition of "Valid Existing Rights," Rule R645-100-200

In response to the required amendment at 30 CFR 944.16(a) (finding No. 3(b); 56 FR 41795, 41796; August 23, 1991), Utah proposed to amend the definition of "valid existing rights" at rule R645-100-200 by removing the incomplete sentence "the prohibition caused by 40-10-24 of the Act" from subsection (c) of the definition, which pertains to the "needed for and adjacent" test. Utah's proposed deletion of the incomplete sentence from subsection (c) of the definition of "valid existing rights" at rule R645-100-200 is consistent with the corresponding Federal definition of "valid existing rights" at 30 CFR 761.5 as modified by the U.S. District Court for the District of Columbia (*In Re: Permanent Surface Mining Litigation*, 22 ERC 1557 and 2153 (D.D.C. March 22 and July 15, 1985)). Therefore, the Director approves the proposed revision and removes the required amendment at 30 CFR 944.16(a).

With respect to other valid existing rights requirements of the definition, the Director is taking this opportunity to make clear that, because Utah did not provide for a "takings" or a "good faith all permits" test, OSM determined in the

August 23, 1991, **Federal Register** notice (56 FR 41795, 41796) that Utah's definition of "valid existing rights" was no less effective than the Federal definition at 30 CFR 761.5.

(b) Areas Unsuitable for Coal Mining and Reclamation Operations, Rule R645-103-220

In response to the required amendment at 30 CFR 944.16(b) (finding No. 5; 56 FR 41795, 41797; August 23, 1991), Utah proposed to amend rule R645-103-220 to reference "section 523(a)" rather than "section 522(b)" of the Federal Act. Utah's proposed rule R645-103-220 is consistent with and no less stringent than section 523 of SMCRA and no less effective than the Federal regulations at 30 CFR Part 769. Therefore, the Director approves the proposed rule and removes the required amendment at 30 CFR 944.16(b).

(c) Improvidently Issued Permits, and the February 28, 1992 "Guideline for Examining and Evaluating Violations, Penalties, and Fees under R645-300-110"

In response to the required program amendment at 30 CFR 944.16(c) (finding No. 7; 56 FR 41795, 41797; August 23, 1991), Utah proposed revisions of the violations review criteria for improvidently issued permits in the "Guideline for Examining and Evaluating Violations, Penalties, and Fees under R645-300-110," dated February 28, 1992.

Utah proposed an effective date of (1) August 23, 1991 (the date Utah adopted rules for improvidently issued permits), for civil penalties, notice of violations (NOV's), and ownership and control relationships; (2) July 5, 1984 (the date OSM published the final rule at 30 CFR 773.17(g) (49 FR 27493) making the payment of reclamation fees as required by 30 CFR Subchapter R a permit condition), for delinquent abandoned mine reclamation fees; and (3) January 21, 1981 (the date of Utah's original program approval), for air and water quality environmental violations, bond forfeitures, and cessation orders. The effective dates relate to when a permit was issued, not when the violation became unabated or the penalty or fee became delinquent, either of which may have occurred at any time prior to permit issuance.

The review criteria and their effective dates are consistent with the violations review criteria for 30 CFR 773.20 as set forth in the April 28, 1989, final rule **Federal Register** notice (54 FR 18438, 18440-18441). Therefore, the Director approves the proposed guidelines that supplement rule R645-300-110 and removes the required program amendment at 30 CFR 944.16(c).

(d) Permit Application Requirements for the Identification of Interests, Rule R645-301-111.400

In response to the required amendment at 30 CFR 944.16(d) (finding No. 8; 56 FR 41795, 41797; August 23, 1991), Utah proposed to amend rule R645-301-111.400 to require permit applicants to submit applicant violator system information in "the format prescribed by OSM rules governing the applicant violator system information needs." Because Utah's proposed rule refers to OSM's format prescribed by rules and OSM may prescribe a format by procedure or guidance document rather than rules, OSM interprets the word "rules" in the phrase "OSM rules governing the applicant violator system information needs" as encompassing guidelines or procedures. Based on this interpretation, Utah's proposed rule R645-301-111.400 is no less effective than the corresponding Federal regulation at 30 CFR 778.13(j). Therefore, the Director approves the proposed rule and removes the required amendment at 30 CFR 944.16(d).

(e) Vegetation Success Standards, R645-301-356.231, and the February 1992 Vegetation Information Guidelines.

In response to required program amendments at 30 CFR 944.16 (e), (f), (g), and (h), Utah proposed to revise rule R645-301-356.231 and the Vegetation Information Guidelines. As discussed below, the Director finds that the following proposed revisions to the Utah Coal Mining Rules and Vegetation Information Guidelines are consistent with and are no less effective than the corresponding Federal regulations.

(1) *Minimum stocking and planting arrangements.* In response to the required program amendment at 30 CFR 944.16(e) (finding No. 9; 56 FR 41795, 41798; August 23, 1991), Utah proposed to revise R645-301-356.231 to require that (1) minimum stocking and planting arrangements be specified by the Utah Division of Oil, Gas and Mining (the Division) on the basis of local and regional conditions and after consultation with and approval by the agencies responsible for the administration of forestry and wildlife programs, and (2) consultation and approval be on a permit-specific basis and be performed in accordance with the Utah Vegetation Information Guidelines. In the revised Vegetation Information Guidelines, dated February 1992, Utah proposed in new item No. 8 the suggested steps in preparing premining vegetation information. This item specifies that, in accordance with R645-301-356.231, if fish and/or wildlife habitat, recreation, shelterbelts or forest products are to be a primary or secondary land use, the Division will provide in technical memoranda evidence of consultation and acceptance of proposed woody plant stocking densities with the Utah Division of Wildlife Resources and other appropriate land and wildlife management agencies. Utah's proposed revisions of Rule R645-301-356.231, as supplemented by the February 1992 revised Vegetation Information Guidelines, are no less effective than the Federal regulations at 30 CFR 816.116(b)(3)(i) and 817.116(b)(3)(i). Therefore, the Director approves the proposed revisions and removes the required program amendment at 30 CFR 944.16(e).

(2) *Minimum size for range sites used in establishing revegetation success standards.* In response to the required program amendment at 30 CFR 944.16(f) (finding No. 10(b); 56 FR 41795, 41798; August 23, 1991), Utah proposed in the revised Vegetation Information Guidelines, dated February 1992, that 1 acre be the minimum size for range sites used in establishing revegetation success standards.

This proposed revision of the Vegetation Information Guidelines is consistent with the Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1). Therefore, the Director approves the proposed revision and removes the required amendment at 30 CFR 944.16(f).

(3) *References for sampling methodologies.* In response to the required amendment at 30 CFR 944.16(g) (finding No. 10(a); 56 FR 41795, 41798; August 23, 1991), Utah proposed in the revised Vegetation Information Guidelines, dated February 1992, to reference documents describing in detail the procedures for each sampling methodology.

These proposed revisions of the Vegetation Information Guidelines are consistent with the Federal regulations at 30 CFR 816.116(a) (1) and 817.116(a) (1). Therefore, the Director approves the proposed revisions and removes the required amendment at 30 CFR 944.16(g).

(4) *Sampling size.* In response to the required program amendment at 30 CFR 944.16(h) (finding No. 10(b); 56 FR 41795, 41798; August 23, 1991), Utah proposed in revised Appendix A of the Vegetation Information Guidelines, dated February 1992, to delete all references to maximum sample sizes.

These proposed revisions of the Vegetation Information Guidelines are consistent with the Federal regulations

at 30 CFR 816.116(a)(1) and 817.116(a)(1). Therefore, the Director approves the proposed revisions and removes the required amendment at 30 CFR 944.16(h).

(f) Air Quality, Rules R645–301–424 and –425.

In response to the required amendment at 30 CFR 944.16(i) (finding No. 11; 56 FR 41795, 41799; August 23, 1991), Utah proposed to amend rule R645–301–424 to reference R645–301–424.300 rather than R645–424.300, and to specify that a mine permit application shall include an air quality monitoring program, if such a program is required by the regulatory authority. Utah's proposed rules R645–301–424 and 425 are no less effective than the corresponding Federal regulation at 30 CFR 780.15(b). Therefore, the Director approves the proposed rules and removes the required program amendment at 30 CFR 944.16(i).

(g) Coal Mine Waste, Rule R645–301–528.320

In response to the required amendment at 30 CFR 944.16(j) (finding No. 12; 56 FR 41795, 41799; August 23, 1991), Utah proposed to amend rule R645–301–528.320 by removing the phrase "as defined in 'A Dictionary of Mining, Mineral, and Related Terms' 1968, U.S. Bureau of Mines." Utah's proposed rule is no less effective than the corresponding Federal regulations at 30 CFR 816.81(a) and 817.81(a). Therefore, the Director approves the proposed rule and removes the required program amendment at 30 CFR 944.16(j).

(h) Thick Overburden, Rule R645–301–553.800

In response to the required amendment at 30 CFR 944.16(k) (finding No. 14; 56 FR 41795, 41799; August 23, 1991), Utah proposed to amend rule R645–301–553.800 by removing the words "mine plan." Utah's proposed revision to rule R645–301–553.800 is consistent with the corresponding Federal regulation at 30 CFR 816.105. The Director approves the proposed revision and removes the required amendment at 30 CFR 944.16(k).

In making this decision, the Director notes that OSM, on December 17, 1991 (56 FR 65636), promulgated new Federal regulations at 30 CFR 816.105 addressing thick overburden. OSM did so in compliance with the decision of the U.S. District Court for the District of Columbia (*In Re: Permanent Surface Mining Regulation Litigation*, 21 ERC 1724, 1746 (D.D.C. October 1, 1984)). OSM will notify Utah, pursuant to 30 CFR 732.17, at some future date if changes are required for Utah's rules to be no less effective than the new Federal regulations.

(i) Sedimentation Ponds, Rule R645–301–742.224

In response to the required amendment at 30 CFR 944.16(l) (finding No. 16(a); 56 FR 41795, 41800; August 23, 1991), Utah proposed to amend rule R645–301–742.224 by removing the words "or qualified professional land surveyor" and referencing R645–301–512.200 rather than R645–301–512.100. Utah's proposed rule R645–301–742.224 is no less effective than the corresponding Federal regulations at 30 CFR 816.49(c)(2) and 817.49(c)(2). Therefore, the Director approves the proposed rule and removes the required amendment at 30 CFR 944.16(l).

(j) Certification of Maps and Plans, Rules R645–301–512.140 and R645–301–731.750.

In response to the required amendment at 30 CFR 944.16(m) (finding Nos. 16(b); 56 FR 41795, 41800; August 23, 1991), Utah proposed to amend rules (1) R645–301–512.140 to reference R645–301–731.700 through R645–301–*740* rather than R645–301–731.740, and (2) R645–301–731.750 to reference to R645–301–512.200 rather than R645–301–512.100. In its review of the proposed amendment, OSM found that Utah's proposed rule R645–301–512.140 contains a typographical error. Utah refers to "R645–301–731.700 through R645–301–*740*" when it fact it should have referenced "R645–301–731.700 through R645–301–731.740." Utah acknowledged that the reference to "R645–301–731.740" is a typographical error and that it would correct the reference to the rules to read "R645–301–731.700 through R645–301–731.740" (administrative record No. UT–773). Utah's proposed rule R645–301–512.140 is no less effective than the corresponding Federal regulations at 30 CFR 780.25(a)(1)(i) and 784.16(a)(1)(i), and proposed rule R645–301–731–750 is no less effective than the corresponding Federal regulations at 30 CFR 780.25(a)(3)(i) and 784.16(a)(3)(i). The Director approves the proposed rules and removes the required amendment at 30 CFR 944.16(m).

2. *Proposed Rules for Termination of Jurisdiction, R645–100–450 through 452, That the Director Did Not Approve in the August 23, 1991, Final Rule* **Federal Register** Notice

On July 3, 1990, Utah proposed termination of jurisdiction rules at rules R645–100–450 through 452. OSM did not approve Utah's July 3, 1990, proposed rule at rule R645–100–450 (finding No. 4; 56 FR 41795, 41797; August 23, 1991) because the District Court for the District of Columbia held that the Federal regulation at 30 CFR 700.11(d) was inconsistent with sections 521(a)(1) and (a)(2) of SMCRA (*National Wildlife Fed'n* v. *Lujan*, 31 ERC 2034, 2040–41 (D.D.C. August 30, 1990)).

In accordance with the court's decision, OSM suspended 30 CFR 700.11(d) on June 3, 1991 (56 FR 25036, 25037). However, the U.S. Court of Appeals for the District of Columbia reversed the U.S. District Court's remand and found that 30 CFR 700.11(d) is consistent with SMCRA and is a reasonable interpretation of it (*National Wildlife Fed'n* v. *Lujan*, 950 F.2d 765 (D.C. Cir. December 10, 1991)). The appeals court agreed with the Secretary's decision to use bond release as the point at which termination of jurisdiction occurs. In accordance with the appeals court's decision, OSM reinstated 30 CFR 700.11(d) on April 10, 1992 (57 FR 12461).

On February 28, 1992, Utah reproposed termination of jurisdiction rules at R645–100–450 through 452 that, with one exception, are substantively identical to the Federal regulations at 30 CFR 700.11(d), which have been upheld by the U.S. Court of Appeals and reinstated by OSM. The exception is Utah's proposal at R645–100–452 that "[f]ollowing a termination under R614–100–451, the Division will reassert jurisdiction under the regulatory program over a site if it is demonstrated that the bond release or written determination referred to under R614–100–451 was based upon fraud, collusion, or misrepresentation of a material fact *by the permittee*" (emphasis added). The Federal regulation at 30 CFR 700.11(d)(2) does not include the phrase "by the permittee." Because fraud or collusion could apply to any party (not just the permittee) involved in the bond release process, OSM finds that Utah's proposed rule R645–100–452 is less effective than the Federal regulation at 30 CFR 700.11(d)(2). Also, OSM construes Utah's rule to be in accordance with the opinion of the court of appeals in *National Wildlife Fed'n* v. *Lujan*, Nos. 90–5352, 90–5356, 90–5358 (D.C. Cir. Dec. 10, 1991) in that misrepresentation by the permittee is measured by an objective standard. Thus misrepresentation of a material fact would occur whenever a permittee applies for a bond release if all the requirements of the regulatory program have not been met.

The Director finds that Utah's proposed rules R645–100–450 through R645–100–451 are no less effective than

the Federal regulations at 30 CFR 700.11(d)(1) and approves them. The Director finds that Utah's proposed rule R645–100–452 is less effective than the Federal regulation at 30 CFR 700.11(d)(2) to the extent that it limits findings of fraud or collusion to actions by the permittee. The Director requires Utah to revise rule R645–100–452 to remove the phrase "by the permittee" or to otherwise revise the rule to indicate that (1) the findings of fraud and collusion are not limited to just the permittee and (2) the findings of misrepresentation of fact apply only to the permittee.

IV. Summary and Disposition of Comments

1. Public comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No public comments were received, and because no one requested an opportunity to testify at a public hearing, no hearing was held.

2. Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments from the Administrator of the Environmental Protection Agency (EPA), the Secretary of Agriculture, and the heads of various other Federal agencies with an actual or potential interest in the Utah program.

By letter dated December 16, 1991, the U.S. Soil Conservation Service acknowledged receipt of the proposed amendment and stated that nothing in the amendment would impact its work (administrative record No. UT–705).

By letters dated December 23, 1991, and April 17, 1992, the Mine Safety and Health Administration (MSHA) acknowledged receipt of the proposed amendment and stated that Utah's proposed amendment did not conflict with MSHA's regulations (administrative record Nos. UT–706 and UT–753).

By letters dated December 25, 1991, and March 24, 1992, the U.S. Fish and Wildlife Service acknowledged receipt of the proposed amendment and stated that it had no comments (administrative record Nos. UT–714 and UT–745).

By letters dated December 11, 1991, and March 24, 1992, the U.S. Army Corps of Engineers acknowledged receipt of the proposed amendment and stated that the proposed amendment was satisfactory (administrative record Nos. UT–700 and UT–744).

By letter dated March 26, 1992, the U.S. Bureau of Mines acknowledged receipt of the proposed amendment and stated that it had no comments (administrative record No. UT–743).

By telephone conversation on April 22, 1992, the U.S. Forest Service stated that it had no comments (administrative record No. UT–755).

3. Environmental Protection Agency (EPA) Concurrence

Pursuant to 30 CFR 732.17(h)(11)(ii), the Director solicited the written concurrence of the Administrator of the EPA with respect to those provisions of the proposed program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Utah proposed to make in its rules pertain to air or water quality standards. Nevertheless, OSM requested EPA's concurrence with the proposed amendment (administrative record No. UT–691.1). EPA did not respond to this request.

4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), the Director provided the proposed amendment to the SHPO and ACHP for comment.

By letters dated December 6, 1991, and March 20, 1992, Utah's SHPO acknowledged receipt of the proposed amendment and stated that it had no comments (administrative record Nos. UT–699 and UT–740). ACHP did not provide any comments to OSM.

V. Director's Decision

Based upon the above findings the Director approves, with one exception and additional requirement, the proposed amendment as submitted by Utah on November 20, 1991, and as revised by it on February 28, 1992.

As discussed respectively in finding Nos. 1(a), (b), (d), (e), (f), (g), (h), (i), and (j), the Director approves the proposed provisions of the Utah rules pertaining to the definition of "valid existing rights," areas designated as unsuitable for mining by act of Congress, permit application requirements, revegetation success standards, air quality, coal mine waste, thick overburden, sedimentation ponds, and cross sections and maps. As discussed respectively in finding Nos. 1(c) and (e), the Director approves the "Guideline for Examining and Evaluating Violations, Penalties, and Fees under R645–300–110," dated February 28, 1992, and the revisions to the Vegetation Information Guidelines, dated February 1992. The Director approves these rules and guidelines with the provision that Utah fully promulgate them in identical form to those submitted to and reviewed by OSM and the public.

As discussed in finding No. 2, the Director does not approve Utah's proposed rule at R645–100–452 to the extent that it limits the findings of fraud or collusion to actions by the permittee. The Director requires Utah to revise this rule.

The Federal regulations at 30 CFR Part 944 codifying decisions concerning the Utah program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In oversight of the Utah program, the Director will recognize only the statutes, regulations and other materials approved by OSM, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Utah of only such provisions.

VI. Procedural Determinations

1. National Environmental Policy Act

Pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs. Therefore, preparation of a regulatory impact analysis and OMB regulatory review is not required.

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal

which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumption for the counterpart Federal regulations.

3. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under section 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h) (10), decisions on proposed State regulatory programs and program amendments submitted by the State must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR part 730, 731, and 732 have been met.

4. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the OMB under 44 U.S.C. 3507.1.

List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 12, 1992.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below.

PART 944—UTAH

1. The authority citation for part 944 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 944.15 is amended by adding paragraph (u) to read as follows:

§ 944.15 Approval of amendments to State regulatory program.

* * * * *

(u) With the exception of proposed R645–100–452 to the extent that it limits the findings of fraud or collusion to actions by the permittee, revisions to the following Utah permanent regulatory program rules as submitted to OSM on November 20, 1991, and revised on February 28, 1992, are approved effective September 11, 1992:

R645–100–200	Definition of "Valid Existing Rights".
R645–100–400 through 452.	Termination of Jurisdiction.
R645–103–220	Areas Designated Unsuitable for Mining by Act of Congress.
R645–301–111.400	Permit Application Requirements.
R645–301–356.231	Revegetation Success Standards.
R645–301–425	Air Quality.
R645–301–528.320	Coal Mine Waste.
R645–301–553.800	Thick Overburden.
R645–301–742.224	Sedimentation Ponds.
R645–301–512.140 and R645–301–731.750.	Cross Sections and Maps.

"Guideline for Examining and Evaluating Violations, Penalties, and Fees under R645–300–110," dated February 28, 1992.

Revisions to the Vegetation Information Guidelines, dated February 1992.

3. Section 944.16 is revised by removing and reserving paragraphs (a) through (m) and adding paragraph (p) to read as follows:

§ 944.16 Required regulatory program amendments

* * * * *

(a)—(m) [Reserved]

* * * * *

(p) By November 10, 1992, Utah shall submit a proposed amendment for the termination of jurisdiction rule at R645–100–452 removing the phrase "by the permittee," or otherwise revising the rule to indicate that the findings of fraud or collusion are not limited to just the permittee, and the misrepresentation of fact applies only to the permittee.

[FR Doc. 92–21910 Filed 9–10–92; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 550

Libyan Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Final rule, amendments.

SUMMARY: The Office of Foreign Assets Control ("FAC") is amending the Libyan Sanctions Regulations, 31 CFR part 550 (the "LSR") to revoke the authority in § 550.511 for transfers between blocked accounts in different domestic banking institutions, and to revoke § 550.515, which authorized receipt of payments from unblocked sources for obligations of the Government of Libya to persons in the United States. These classes of transactions are now prohibited unless specifically licensed by FAC. In addition, this final rule requires banking institutions to pay interest on blocked funds and authorizes debits to blocked accounts by U.S. banking institutions for normal service charges. Finally, this rule adds references to delegations of authority to the Director of FAC subsequent to the delegation made pursuant to Executive Order 12543.

EFFECTIVE DATE: September 11, 1992.

FOR FURTHER INFORMATION CONTACT: Steven I. Pinter, Chief of Licensing (tel.: 202/622–2480), or William B. Hoffman, Chief Counsel (tel.: 202/622–2410), Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION: LSR § 550.511 previously permitted transfers of funds between blocked accounts in different domestic banking institutions, provided the name or designation of the accounts remained identical. Out of concern for possible abuse of such funds movements, future transfers of this nature may only be authorized by specific license. The notification requirement in paragraph (g) of § 550.511 is also clarified. This rule also revokes LSR § 550.515, which authorized the transfer of fresh funds through or to any banking institution or other person within the United States solely for purposes of payment of obligations owed by the Libyan government to persons within the United States. "Fresh funds" are funds from an unblocked account outside the United States. To ensure that transfers from the Libyan government are received only for

obligations lawfully arising within the context of the Libyan Sanctions Regulations, such payments must now be authorized by specific license.

In addition, this final rule adds a general directive license as § 550.212, requiring that blocked funds be held in interest-bearing accounts, and a new general license as § 550.520, permitting banking institutions holding blocked accounts to debit the accounts for reimbursement for normal service charges incurred in the administration of the accounts.

Finally, § 550.805 is amended to note the delegation from the Secretary of the Treasury to the Director of FAC of the Secretary's authority pursuant to Executive Orders 12544 and 12801 and any further Executive orders issued pursuant to the President's declaration of a national emergency with respect to Libya in Executive Order 12543.

Because the Regulations involve a foreign affairs function, Executive Order 12291 and the provisions of the Administrative Procedures Act (5 U.S.C. 553), requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply.

List of Subjects in 31 CFR Part 550

Administrative practice and procedures, Banking, Blocking of assets, Investments, Libya, Transfers of assets.

For the reasons set forth in the preamble, 31 CFR chapter V is amended as follows:

PART 550—LIBYAN SANCTIONS REGULATIONS

1. The authority citation for part 550 is revised to read as follows:

Authority: 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 287c; 49 U.S.C. App. 1514; 22 U.S.C. 2349aa–8 & –9; E.O. 12543, 3 CFR, 1986 Comp., pp. 181–2; E.O. 12544, 3 CFR, 1986 Comp., p. 183; E.O. 12801, 57 FR 14319, April 17, 1992.

Subpart B—Prohibitions

2. Section 550.212 is added to read as follows:

§ 550.212 Holding of certain types of blocked property in interest-bearing accounts.

(a) (1) Any U.S. person, including a banking institution, currently holding property subject to § 550.209 which, as of the later of September 11, 1992 or the date of receipt, is not being held in an interest-bearing account, or otherwise invested in a manner authorized by the Office of Foreign Assets Control, shall transfer such property to, or hold such property or cause such property to be held in, an interest-bearing account or interest-bearing status, as of such date, in a banking institution in the United States, or, for property held outside the United States, the foreign branch of a U.S. banking institution, unless otherwise authorized or directed by the Office of Foreign Assets Control.

(2) The requirement in paragraph (a)(1) of this section shall apply to funds, currency, bank deposits, accounts, and any other financial assets, and any proceeds resulting from the sale of tangible or intangible property. If interest is credited to an account separate from that in which the interest-bearing asset is held, the name of the account party on both accounts must be the same and must clearly indicate the blocked Government of Libya entity having an interest in the accounts.

(b) For purposes of this section, the term "interest-bearing account" means a blocked account in a banking institution earning interest at rates that are commercially reasonable. "Commercially reasonable" means the rate currently offered other depositors on deposits of comparable size and maturity. Except as otherwise authorized, the funds may not be invested or held in instruments the maturity of which exceeds 90 days.

(c) This section does not apply to blocked tangible property, such as chattels or real estate, nor does it create an affirmative obligation on the part of the holder of such blocked tangible property to sell or liquidate the property and put the proceeds in a blocked account. However, the Office of Foreign Assets Control may issue licenses permitting or directing sales of tangible property in appropriate cases.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

3. Paragraph (a) of § 550.511 is amended by adding after the words "from any blocked account" the words "in another banking institution within the United States, or"; and the title of § 550.511 and paragraph (g) thereof are revised as follows:

§ 550.511 Payments and transfers to blocked accounts in domestic banks.

* * * * *

(g) Banking institutions receiving instructions to execute payments or transfers under paragraph (a) of this section must provide written notification to the Office of Foreign Assets Control, Compliance Programs Division, U.S. Treasury Department, 1500 Pennsylvania Avenue NW., Washington DC 20220, within 10 business days from the value date of the payment or transfer. The notification shall include a photocopy of the payment or transfer instructions received, shall confirm that the payment or transfer has been deposited into a new or existing blocked account established in the name of the Libyan entity pursuant to the requirements of this part, and shall provide the account number, the name of the account, the location of the account, the name and address of the transferee banking institution, the date of the deposit, and the amount of the payment transfer.

§ 550.515 [Removed]

4. Section 550.515 is removed and reserved.

5. Section 550.520 is added to read as follows:

§ 550.520 Entries in certain accounts for normal service charges.

(a) Any banking institution within the United States is hereby authorized to:

(1) Debit any blocked account with such banking institution (or with another office within the United States of such banking institution) in payment or reimbursement for normal service charges owed to such banking institution by the owner of such blocked account.

(2) Make book entries against any foreign currency account maintained by it with a banking institution in Libya for the purpose of responding to debits to such account for normal service charges in connection therewith.

(b) As used in this section, the term "normal service charge" shall include charges assessed according to the published fee schedule of the holder of such property and applicable to other depositors on deposits of comparable size and maturity.

Subpart H—Procedures

§ 550.805 [Amended]

6. Section 550.805 is amended by adding the words ", Executive Order 12544, Executive Order 12801, and any further Executive orders relating to the national emergency declared with respect to Libya in Executive Order 12543" after "Executive Order 12543."

Dated: August 25, 1992.

R. Richard Newcomb,

Director, Office of Foreign Assets Control

Approved: August 28, 1992.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 92–21846 Filed 9–8–92; 11:57 am]

BILLING CODE 4810–25–M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined that USS WARRIOR (MCM 10) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a mine countermeasures ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: August 28, 1992.

FOR FURTHER INFORMATION CONTACT: Captain R.R. Rossi, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (703) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS WARRIOR (MCM 10) is a vessel of the Navy, which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex 1, section 3(a), pertaining to the placement of the after masthead light and the horizontal distance between the forward and after masthead lights, without interfering with its special functions as a Navy vessel. The Judge Advocate General of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine Safety, Navigation (Water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR part 706 is amended as follows:

1. The authority citation for 32 CFR part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Five of § 706.2 is amended by adding the following vessel:

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. Annex I sec. 2(f)	Forward masthead light not in forward quarter of ship Annex I sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light Annex I, sec. 3(a)	Percentage horizontal separation attained.
USS WARRIOR	MCM 10			X	54

Dated: August 26, 1992.

Approved:

J.E. Gordon,

Rear Admiral, JAGC, U.S. Navy Judge Advocate General.

[FR Doc. 92-21935 Filed 9-10-92; 8:45 am]

BILLING CODE 3810-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket Nos. 87-410 and 88-159; RM-5802, RM-6204, RM-6206, and RM-6207; DA 92-1140]

FM Radio Broadcasting Services; Waterbury and Royalton, Vermont, New London, New Hampshire, and Plattsburgh, New York

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: We grant the request for reconsideration filed by Harvest Broadcasting, Inc. of the *Memorandum Opinion and Order* in this proceeding, 56 FR 46121, published September 10, 1991. We rescind the allotments of Channel 276A to Waterbury, Vermont, Channel 277A to Royalton, Vermont, and Channel 278A to Plattsburgh, New York, and allot instead Channel 277A at Waterbury, Channel 276A to Royalton, and Channel 286A at Plattsburgh. We also modify the authorization of Station WGLY, Waterbury, to specify the alternate Class A channel. See also Supplemental Information, *infra*.

EFFECTIVE DATE: October 19, 1992.

FOR FURTHER INFORMATION CONTACT: J. Bertron Withers, Jr., Mass Media Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, MM Docket Nos. 87-410 and 88-159, adopted August 18, 1992 and released September 4, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

Channel 277A can be allotted to Waterbury in compliance with the Commission's minimum interstation distance separation requirements at Station WGLY's current site, where it has operated under Special Temporary Authority since 1986, restricted to 14.2 kilometers (8.9 miles) west-northwest of Waterbury at coordinates North Latitude 44-21-52 and West Longitude 72-55-53. Channel 276A can be allotted to Royalton in compliance with the Commission's minimum interstation distance separation requirements using a site restricted to 9.4 kilometers (5.8 miles) south of Royalton at coordinates North Latitude 43-43-54 and West Longitude 72-31-58. Channel 286A can be allotted to Plattsburgh in compliance with the Commission's minimum interstation distance separation requirements with a site restricted to 5.7 kilometers (3.5 miles) south of Plattsburgh at coordinates North Latitude 44-38-57 and West Longitude 73-26-22. Canadian concurrence has

been obtained for all allotments, including the Waterbury and the Plattsburgh allotments, whose short-spacing to three Canadian allotments are permitted under specially negotiated agreement. With this action, the proceeding is terminated.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New York, is amended by removing Channel 278A and adding Channel 286A at Plattsburgh.

3. Section 73.202(b), the Table of FM Allotments under Vermont, is amended by removing Channel 276A and adding Channel 277A at Waterbury, and by removing Channel 277A and adding Channel 276A at Royalton.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 92-21913 Filed 9-10-92; 8:45 am]

BILLING CODE 6712-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-4204-9]

Arizona: Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Affirmation of Immediate Final Rule.

SUMMARY: This notice responds to the comment received on the immediate final rule published July 13, 1992 (57 FR 30905), and affirms the Agency's decision to authorize Arizona's revised program.

EFFECTIVE DATE: September 11, 1992.

FOR FURTHER INFORMATION CONTACT: April Katsura, U.S. EPA Region IX (H-2-2), 75 Hawthorne Street, San Francisco, California 94105, Phone: 415/744-2026.

SUPPLEMENTARY INFORMATION: On July 13, 1992, EPA published an immediate final rule (57 FR 30905) which announced the Agency's decision to authorize Arizona's revisions to its hazardous waste program—interim authorization for corrective action and final authorization for all other provisions. One comment was received during the public comment period. After considering the comment, the Regional Administrator has decided to affirm his decision to authorize the State of Arizona for the program revisions. The following is a summary of the comment and the Regional Administrator's response.

Comment: Arizona's enactment of Senate Bill 1053, 1992 Arizona Session Laws Ch. 107 impacts the State's ability to regulate hazardous waste in a manner equivalent to and consistent with the federal program. Pursuant to S.B. 1053, government actions to protect the public health and safety can be taken only in response to "real and substantial threats," must "significantly advance the health and safety purpose," and can be "no greater than necessary" to achieve the health and safety purpose. In addition, permit conditions can only be imposed if they are "expressly authorized by law" and "substantially advance" the purpose for which the permit is issued.

Response: S.B. 1053 provides restrictions on governmental actions to protect public health and safety in order to protect private property rights. S.B. 1053 was enacted by the Arizona legislature this past session and becomes effective September 30, 1992. However, the Arizona Attorney General is not required to publish guidelines necessary to implement this law until January 1, 1994. Until those guidelines are finalized, the potential impact of S.B. 1053 on Arizona's hazardous waste program remains speculative.

Nevertheless, the commenter was concerned that the "literal language" of the bill would prohibit Arizona from regulating its hazardous waste program in a manner equivalent to and consistent with the federal program. Because a response to this comment requires interpretation of the bill, on September 3, 1992 the State of Arizona provided Environmental Protection Agency with a preliminary opinion from its Office of the Attorney General discussing the impact of S.B. 1053 on Arizona's hazardous waste program. Arizona's Office of the Attorney General makes the following points.

First, the enforcement of existing RCRA regulations, which have been adopted by ADEQ, is not affected by S.B. 1053 because the definition of "governmental action" covered by the bill includes only rules proposed by a state agency, not its existing rules. In addition, S.B. 1053 does not cover "orders that are authorized by statute, that are issued by a state agency or a court of law and that were the result of a violation of state law." ADEQ has express authority to issue compliance orders and to obtain court orders to enforce its laws and rules encompassing the federal hazardous waste regulations. Therefore, RCRA regulations currently adopted by ADEQ as rules are enforceable under S.B. 1053.

Arizona states that while S.B. 1053 sets forth principles concerning governmental "takings" which may, when in effect, restrict certain government actions, the State's RCRA regulations are unaffected because they satisfy those principles. For example, RCRA regulations address real and substantial threats, significantly advance the health and safety purposes, and are no greater than necessary to achieve that purpose. Therefore, these restrictions would not present an additional burden on Arizona's ability to regulate hazardous waste.

S.B. 1053 also requires permit conditions to directly relate to the purpose for which the permit is issued, and to substantially advance that purpose and be expressly authorized by law. This subsection was enacted with the caveat that agencies shall comply with S.B. 1053 "to the extent permitted by law."

According to the Arizona Attorney General, permit conditions found in Arizona's RCRA regulations directly relate to the purpose for which any RCRA permit is issued and substantially advance that purpose. In addition, S.B. 1053's requirement that conditions imposed in permits be expressly authorized by law must be read in light of Arizona Revised Statutes (A.R.S.) section 49-922 which authorizes the Department of Environmental Quality's RCRA program. Specifically, section 49-922.A authorizes the Director to adopt rules to establish a hazardous waste management program equivalent to and consistent with the federal hazardous waste regulations. Thus, any permit conditions necessary to protect public health and safety are expressly authorized by A.R.S. section 49-922.A.

Finally, the Arizona Attorney General's letter points out that S.B. 1053 requires that any restriction imposed on the use of private property shall be proportionate to the extent the use contributes to the overall problem that the restriction is to redress. This restriction also applies only to the extent permitted by law and must be read in light of A.R.S. 49-922.A. Thus any proportionality requirement cannot be interpreted to cause the State's hazardous waste program to be inconsistent with or not equivalent to, federal RCRA regulations.

Based on the preliminary opinion of the Office of the Attorney General as to the impact of S.B. 1053 on Arizona's RCRA program, we affirm our decision to authorize Arizona's revisions to its hazardous waste program.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 42 U.S.C. 6912(a), 6926, 6974(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Arizona's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: September 4, 1992.

Daniel W. McGovern,

Regional Administrator.

[FR Doc. 92-22134 Filed 9-10-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91-180; RM-7699, RM-7818, RM-7819]

Radio Broadcasting Services; Seabrook, Huntsville, Bryan, Victoria, Kenedy and George West, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of KRTS, Inc., substitutes Channel 221C1 for Channel 221C2 at Seabrook, Texas, and modifies Station KRTS(FM)'s license accordingly (RM-7699). See 56 FR 30375, July 2, 1991. Channel 221C1 can be allotted to Seabrook in compliance with the Commission's minimum distance separation requirements with a site restriction of 40 kilometers (24.8 miles) southwest at the petitioner's requested site. The coordinates for Channel 221C1 at Seabrook are North Latitude 29-19-11 and West Longitude 95-19-44. The mutually exclusive proposal of Helen Maryse Casey to substitute Channel 258C2 in lieu of Channel 259A at Huntsville, Texas, is denied (RM-7818). With this action, this proceeding is terminated.

EFFECTIVE DATE: October 19, 1992.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91-180, adopted August 14, 1992 and released September 3, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 221C2 and adding Channel 221C1 at Seabrook.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-21843 Filed 9-10-92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN: 2900-AF98

Providing Outpatient Dental Services for Veterans Whose Dental Conditions are Complicating a Medical Condition Under Treatment

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Department of Veterans Affairs (VA) is amending its regulations that govern the eligibility of veterans for outpatient dental services. The Veterans Benefits Programs Improvement Act of 1991 authorized dental services when the treatment of dental conditions is medically necessary in preparation for hospital admission, or is medically necessary for a veteran otherwise receiving care and services in a VA medical center.

EFFECTIVE DATES: This amendment is effective August 14, 1991, the effective date of the Act upon which it is based.

FOR FURTHER INFORMATION CONTACT: Monica J. Wilkins, Policies and Procedures Division (161B2), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; Phone: (202) 535-7439.

SUPPLEMENTARY INFORMATION: The Veterans Benefits Programs Improvement Act of 1991, Public Law 102-86 enacted August 14, 1991, amended 38 U.S.C. 612(b), renumbered as 38 U.S.C. 1712(b), to authorize outpatient dental services for veterans whose dental conditions are complicating a medical condition under treatment. Specifically, this law applies to veterans preparing for hospital admission or for any other veteran receiving care or services in a VA medical center. This final regulatory amendment does not meet the criteria for a major rule as that term is defined by Executive Order 12291, Federal regulation. This regulatory amendment will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant adverse effects on the economy. Since this amendment conforms VA regulations to the law, prior publication for public notice and comment is unnecessary and will not be done; consequently, this change is not a rule subject to the Regulatory Flexibility Act. In any case, the Secretary hereby certifies that this regulation will not have a significant economic impact on the substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 United States Code 601-612. This regulatory amendment incorporates into VA regulations the new statutory criteria for eligibility for dental services. Any economic impact on small entities will be the result of the law, not this regulatory amendment. The Catalog of Federal Domestic Assistance Number is 64.011.

List of Subjects in 38 CFR Part 17

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations,

Government contracts, Grant programs—health, Health care, Health facilities, Health professions, Medical devices, Medical research, Mental health programs, Nursing home care, Philippines, Veterans.

Approved: July 31, 1992.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 17 is amended as set forth below:

PART 17—MEDICAL

1. The authority citation for part 17 is revised to read as follows:

Authority: 72 Stat. 1114, 38 U.S.C. 501, unless otherwise noted.

2. In § 17.123, paragraph (j) is redesignated as paragraph (j)(1); paragraph (j)(2) and its authority citation are added to read as follows:

§ 17.123 Authorization of outpatient dental treatment.

* * * * *

(j)(1) *Class VI.* * * *

(2) Any veteran scheduled for admission or otherwise receiving care and services under Chapter 17 of 38 U.S.C. may receive outpatient dental care which is medically necessary, i.e., is for a dental condition clinically determined to be complicating a medical condition currently under treatment.

(Authority: 38 U.S.C. 1712)

[FR Doc. 92-21692 Filed 9-10-92; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 920822-2222]

Taking and Importing of Marine Mammals; Import Requirements

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule revises the definition of "intermediary nation" in 50 CFR 216.3 to apply only to those nations that import yellowfin tuna or yellowfin tuna products harvested in the eastern tropical Pacific Ocean (ETP) by purse seine from a nation whose yellowfin tuna is subject to import restrictions. This revision is made in order to allow the importation of yellowfin tuna and yellowfin tuna products from nations that do not import ETP purse-seine caught yellowfin tuna or products containing yellowfin tuna directly or indirectly from nations whose yellowfin tuna is subject to such import restrictions.

DATES: This interim final rule is effective September 11, 1992. Comments are invited and must be received on or before October 13, 1992.

ADDRESSES: Comments should be mailed to Dr. Nancy Foster, Director, Office of Protected Resources, NMFS, 1335 East-West Hwy., Silver Spring, MD 20910. Copies of the Environmental Assessment (EA) are available from E. Charles Fullerton, Director, Southwest Region, NMFS, 501 W. Ocean Boulevard, suite 4200, Long Beach, CA 90802-4213.

FOR FURTHER INFORMATION CONTACT: Wanda L. Cain, Office of Protected Resources, NMFS (301-713-2055).

SUPPLEMENTARY INFORMATION: The MMPA requires the prohibition of imports of yellowfin tuna and yellowfin tuna products from intermediary nations unless those nations act to prohibit importation of the same yellowfin tuna prohibited from importation into the United States. On January 10, 1992, the U.S. District Court for the Northern District of California in *Earth Island Institute* v. *Mosbacher* issued an order that construed the scope of the Marine Mammal Protection Act's (MMPA) intermediary nation provisions. Prior to the Court's order, the Department of Commerce had interpreted the intermediary nation provision to require the prohibition of imports of yellowfin tuna from nations that were known to import yellowfin tuna from a nation subject to primary import prohibitions, and that also exported yellowfin tuna products to the U.S. market. Under that interpretation, the countries of France, Italy, Japan, Panama and Costa Rica were subject to an intermediary nation import prohibition, which went into effect on May 24, 1991. As a result of the Court's January 10, 1992, ruling, the following 15 nations, which were determined to have imported yellowfin tuna or yellowfin tuna products during 1991 and also to have exported yellowfin tuna to the United States, were added to the list of intermediary nations: Canada, Colombia, Ecuador, Indonesia, Rep. of Korea, Malaysia, Marshall Islands, Netherlands Antilles, Singapore, Spain, Taiwan, Thailand, Trinidad & Tobago, United Kingdom, and Venezuela.

The intermediary nation sanctions against these additional nations went into effect at 12:01 a.m. on January 31, 1992, as directed by the Court. Since that date, the intermediary nation import prohibition has been lifted for nine countries. The Marshall Islands, Ecuador, Panama, Indonesia and Korea have provided acceptable certification and proof that they have prohibited the importation of yellowfin tuna and yellowfin tuna products from nations subject to a primary import prohibition. Taiwan, Trinidad & Tobago, and Venezuela successfully demonstrated that they are not intermediary nations under the current definition. Thailand instituted an official control system that prohibits the importation of yellowfin tuna caught in the ETP with methods harmful to dolphins.

Shortly after the intermediary nation sanctions went into effect, NMFS was contacted by representatives of the tuna industry with respect to the possibility of changing the definition of an intermediary nation in order to lessen the trade burden of the sanctions on nations that demonstrate they are not trading with nations subject to the primary import prohibition. Earth Island Institute has indicated that it would support the substance of such a change.

On March 30, 1992, NMFS received a letter from the National Fisheries Institute (NFI) requesting a redefinition of intermediary nation that would exclude nations that import only dolphin-safe tuna. The letter indicates that the NFI believes such a change to be consistent with the reference in Section 101 of the MMPA to tuna caught with harmful fishing gear, and with the policy of the MMPA of encouraging dolphin-safe fishing practices.

NMFS has reviewed the NFI letter in light of the MMPA, the court's order, and support for a redefinition expressed by the other parties to the litigation. NMFS has concluded that a redefinition of intermediary nation is permissible under the language of the MMPA and the court's ruling and would carry out the congressional intent. Accordingly, NMFS has drafted the new definition for publication in the **Federal Register** subsequent to informing Judge Thelton E. Henderson of the United States District Court for the Northern District of California. This rulemaking was submitted to Judge Henderson in August, 1992.

This interim final rule modifies the definition of "intermediary nation" by excluding those nations that certify and provide reasonable proof that they do not import yellowfin tuna prohibited from entry into the United States. It will also increase the amount of "dolphin-safe" tuna authorized to enter the United States and reduce the number of nations subject to the yellowfin tuna intermediary nation sanctions.

NMFS believes that narrowing the definition of intermediary nation in this manner will not unjustly impact other nations, and will not result in the importation into the United States of yellowfin tuna prohibited from direct export to the United States.

The intermediary nation import prohibition applies unless the nation certifies and provides reasonable proof to the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), that it has not imported, within the preceding six months, any yellowfin tuna or yellowfin tuna products that are subject to a direct ban on importation into the United States pursuant to 16 U.S.C. 1371(a)(2)(B) and the Assistant Administrator, as soon as practicable after receiving complete information regarding certification and proof, makes an affirmative finding that the nation does not constitute an intermediary nation for purposes of § 216.24(e)(5)(xiv).

Classification

The Assistant Administrator has determined that this interim final rule will not have a significant impact on the human environment. This determination is based on the impact analyses provided in the environmental assessment (EA) prepared for the interim final yellowfin tuna import rule, which was published on March 7, 1989 (54 FR 9438). Therefore, an environmental impact statement is not required. The EA is available upon request (see **ADDRESSES**).

Because they involve a foreign affairs function of the United States, the provisions of this rule are being promulgated without an opportunity for prior public comment and without a delayed effectiveness period as provided by section 553(a)(1) of the Administrative Procedure Act. The modification to the definition of intermediary nation is intended to alleviate unnecessary burdens on nations that trade in yellowfin tuna but do not import ETP purse seine-harvested yellowfin tuna from nations that are prohibited from exporting that product to the United States, and is closely linked with the Government's foreign policy concerning relations with these nations. However, public comment is solicited while this rule is in effect and comments received will be considered in preparing the final rule.

The Assistant Administrator has determined that this interim final rule is not subject to review under E.O. 12291 because it involves a foreign affairs function of the United States (section 1(a)(2)). In accordance with section 4(a) of the President's January 28, 1992, Directive, this action is exempt from the 90-day moratorium on regulatory actions because it reduces the trade burden of sanctions imposed under the MMPA. Also, because notice-and-comment rulemaking are not required by law to be given for this rule, preparation of a regulatory flexibility analysis is not required by the Regulatory Flexibility Act and none was prepared.

This interim final rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act and does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

This rule does not directly affect the coastal zone of any state with an approved coastal management program.

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Imports, Indians, Marine mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

Dated: August 31, 1992.

William W. Fox, Jr.,

Assistant Administrator for Fisheries.

For reasons set forth in the preamble, 50 CFR part 216 is amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTATION OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. In § 216.3, the definition of "intermediary nation" is revised to read as follows:

§ 216.3 Definitions.

* * * * *

Intermediary nation means a nation that exports yellowfin tuna or yellowfin tuna products to the United States and that imports yellowfin tuna or yellowfin tuna products, unless the nation certifies and provides reasonable proof to the Assistant Administrator that it has not imported, within the preceding 6 months, any yellowfin tuna or yellowfin tuna products that are subject to a direct ban on importation into the United States pursuant to 16 U.S.C. 1371(a)(2)(B), and the Assistant Administrator, as soon as practicable after receiving complete information regarding certification and proof, makes an affirmative finding that the nation does not constitute an intermediary nation for purposes of § 216.24(e)(5)(xiv). Reasonable certification and proof for purposes of this paragraph shall mean the submission by a responsible government official from the nation of a document reflecting the nation's customs records for the required pre-certification period, together with a certificate attesting that the document is accurate. Shipments of yellowfin tuna or yellowfin tuna products through a nation on a through bill of lading or in another manner that does not enter the shipments into that nation as an importation do not make that nation an intermediary nation under this definition. An affirmative finding under this paragraph shall be valid for 12 months from the date of issuance, and may be renewed for any subsequent 12-month period on the submission of updated certification and proof covering the previous 12-month period and submitted 3 months prior to the date of expiration of the finding. An affirmative finding will be revoked at any time that the Assistant Administrator finds that the nation has imported yellowfin tuna or yellowfin tuna products subject to a direct ban on importation into the United States. The Assistant Administrator shall act to grant or deny any request to revoke an affirmative finding under this paragraph that is accompanied by specific and detailed supporting information or documentation within 30 days of receipt of such request.

* * * * *

3. In § 216.24, paragraphs (e)(3)(i) (C) and (D) and (e)(5)(xiv) are revised to read as follows:

§ 216.24 Taking and related acts incidental to commercial fishing operations.

* * * * *

(e) * * *

(3) * * *

(i) * * *

(C) *Intermediary nations.* No shipment containing an item listed in paragraph (e)(2)(i) of this section may be imported into the United States from an intermediary nation subject to paragraph (e)(5)(xiv) of this section if a ban is currently in force prohibiting the importation.

(D) *Harvesting and intermediary nations.* No shipment containing an item in paragraph (e)(2)(i) of this section may be imported into the United States from a nation that is both a harvesting nation subject to paragraph (e)(5)(i) of this section and an intermediary nation subject to paragraph (e)(5)(xiv) of this section unless the necessary findings have been made under both provisions and a ban is not currently in force.

* * * * *

(5) * * *

(xiv) Any yellowfin tuna or yellowfin tuna products in the classifications

listed in paragraph (e)(2)(i) of this section, from any intermediary nation, may not be imported into the United States unless the Assistant Administrator determines and publishes in the **Federal Register** that the intermediary nation has provided reasonable proof and has certified to the United States that it has acted to ban the importation into its nation of yellowfin tuna or yellowfin tuna products that are subject to a direct ban on importation into the United States. The intermediary nation's ban must be effective within 60 days of the effective date of the U.S. ban, and the intermediary nation must supply the Assistant Administrator with the reasonable proof and certification within 90 days of the effective date of the U.S. ban in order to avoid imposition of the intermediary nation ban on the 91st day. A prohibition on imports under this paragraph may be lifted by the Assistant Administrator upon a determination announced in the **Federal Register**, based upon new information supplied by the government of the intermediary nation, that the nation has acted to prohibit the importation of ETP purse seine-harvested yellowfin tuna and yellowfin tuna products from those nations from which the United States has banned the importation of ETP purse seine-harvested yellowfin tuna and tuna products. Where a prohibition on imports has been lifted under this paragraph, it shall be reinstated at any time that the Assistant Administrator finds that the nation has imported yellowfin tuna or yellowfin tuna products subject to the direct ban on importation.

* * * * *

[FR Doc. 92-21951 Filed 9-10-92; 8:45 am]
BILLING CODE 3510-22-M

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50 CFR Parts 217 and 227

[Docket No. 920928-2228]

Sea Turtle Conservation, Shrimp Traviing Requirements

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice and request for comments.

SUMMARY: NMFS issues this notice to allow limitations on tow times as an alternative to the requirement to use turtle excluder devices (TEDs) by shrimp trawlers in an area off the coast of Louisiana. This area was affected by Hurricane Andrew. NMFS has received complaints that the requirement to use TEDs makes trawling more difficult in this area. NMFS will monitor the situation to ensure there is adequate protection for sea turtles in this area and to determine whether impacts from the hurricane make TED use impracticable.

DATES: This notice is effective from September 4, 1992 through October 5, 1992. Comments on this notice must be submitted by October 5, 1992.

ADDRESSES: Comments on this notice should be sent to Dr. Nancy Foster, Director, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Phil Williams, NMFS National Sea Turtle Coordinator (301/713-2322) or Charles A. Oravetz, Chief, Protected Species Program, NMFS, Southeast Region (813/893-3366).

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973, U.S.C. 1531 *et seq.* (ESA). Incidental capture by shrimp trawlers has been documented for five species of sea turtles that occur in waters off of Louisiana. Regulations requiring the use of TEDs appear at 50 CFR parts 217 and 227 and were amended by an interim final rule filed on September 1, 1992. These regulations require shrimp trawlers 25 feet (7.6 m) long or longer in offshore waters of the Gulf Area, which includes waters off Louisiana, to use approved TEDs in trawls from March 1 through November 30, each year. Shrimp trawlers less than 25 feet long in offshore waters and all vessels in inshore waters of the Gulf Area may limit tow times to 90 minutes or less as an alternative to using TEDs. Tow time is defined as the interval from trawl doors entering the water to trawl doors being removed from the water.

Recent Events

On August 26, 1992, Hurricane Andrew struck the Louisiana coast with a devastating impact. Fishermen reported that TEDs clogged with debris stirred up by the storm caused shrimp to be excluded from their nets. NMFS conducted an aerial survey of the entire Louisiana coastal area from the Mississippi River to the Texas border, on September 3, 1992, and identified a limited area with floating logs, sea grass, plastic and other debris. The area in question is from near the mouth of the Mississippi River to Atchafalaya Bay, Louisiana extending 15 nautical miles offshore. NMFS is also placing observers on shrimp vessels conducting research to assess the effectiveness of TEDs in this and other areas.

Special Environmental Conditions

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator) finds that the impacts of Hurricane Andrew may have created special environmental conditions which may make trawling with TED-equipped nets impracticable. NMFS is investigating the situation, both with aerial surveys and observers on shrimp vessels. NMFS encourages the continued use of TEDs and suggests that the use of TEDs may help exclude debris generated by the hurricane. NMFS gear specialists are evaluating the usefulness of TEDs in dealing with this problem. Nonetheless, until further information is obtained, the Assistant Administrator issues this notice to authorize the use of restricted tow times, as an alternative to the requirement to use TEDs, in a restricted area off the coast of Louisiana, acting pursuant to the interim final regulations filed on September 1, 1992, to be codified at 50 CFR 227.72(e)(3)(iii).

NMFS TED Testing

NMFS studies have shown that the problem of clogging either by seagrass, algae or other debris is not unique to TED-equipped nets. When fishermen choose to trawl in such problem areas, they will experience clogging with or without TEDs. NMFS gear specialists have tested TEDs, specifically modified to exclude seagrass, debris and algae, and compared them to non-TED equipped nets. Shrimp catches with and without TEDs were highly variable; both TED and non-TED equipped nets clogged with debris.

NMFS and shrimpers have developed two TEDs that help resolve the clogging problem. One is known as the Anthony "weedless" TED, which allows algae and other debris to pass by the TED and wash into the cod end of the net. NMFS has had good experience with this device in the Gulf of Mexico. In addition, NMFS has tested a "supershooter" hard TED that also eliminates algae. NMFS tests have shown that shrimp loss with the supershooter TED in areas where clogging is experienced is negligible when compared to a net without a TED.

Sea Turtle Conservation Measures

The authorization provided by this notice applies to shrimp trawlers 25 feet (7.6 m) in length or longer in a restricted area off the coast of Louisiana. The "Louisiana restricted area" is the offshore waters of Louisiana from near

the mouth of the Mississippi River to near Atchafalaya Bay, Louisiana (from 89°25' W. longitude to 93° W. longitude) extending 15 nautical miles offshore. The offshore waters are delineated from the inshore waters by the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972).

A shrimp trawler utilizing this authorization must limit tow times to no more than 55 minutes (measured from the time trawl doors enter the water, until they are retrieved from the water). NMFS does not anticipate that there will be adverse effects to sea turtles by substituting tow times for TEDs if shrimpers comply with the tow time requirements. The 55-minute tow time limitation allows at least 40 minutes bottom time for trawling. The 55-minute tow time has also been determined to constitute an acceptable limit for forced submergence of sea turtles in shrimp trawls, and the more restricted tow time facilitates enforcement. The National Academy of Sciences report, "Decline of the Sea Turtles: Causes and Prevention," provided guidance on effects of tow times on sea turtles. The report concluded that tow times of 40 minutes in summer months and 60 minutes during winter months would provide protection comparable to that afforded by TEDs. Thus, a tow-time limitation appears to be an effective alternative to mandatory TED use and should provide comparable protection for sea turtles.

Shrimp trawlers are required to register with the Assistant Administrator in order to use restricted tow times in lieu of TEDs.

If required by the Assistant Administrator, the owner and operator of a shrimp trawler 25 feet (7.6 m) in length or longer trawling in the Louisiana restricted area must carry a NMFS-approved observer.

The owner or operator of a shrimp trawler 25 feet (7.6 m) in length or longer trawling in the Louisiana restricted area must register with the Regional Director, NMFS, Southeast Region by telephoning at (813) 893–3163. The following information is requested: The name and official number of the vessel; The time and date of the telephone registration; the number of the State permit authorizing fishing in the restricted area; A statement that the owner or operator intends to trawl in the Louisiana restricted area using the limited tow times option; and the dates trawling operators in the Louisiana restricted area are expected to be conducted.

Additional Conditions

The Assistant Administrator may impose additional conditions on shrimp trawlers operating in the Louisiana restricted area in order to mitigate the impacts of the hurricane, such as a requirement to retrieve debris entangeled in their nets and bring it to shore for disposal, rather than disposing of the debris at sea. Shrimp trawlers are reminded that regulations under 33 U.S.C. 1901 *et seq.* (Act to Prevent Pollution from Ships) may apply to disposal at sea.

Additional Sea Turtle Conservation Measures; Termination

The Assistant Administrator, at any time, may modify the required conservation measures through notice in the **Federal Register**, if necessary, to ensure adequate protection of endangered and threatened sea turtles. Under this procedure, the Assistant Administrator will impose any necessary additional or more stringent measures, including requiring more restrictive tow times or synchronized tow times, if the Assistant Administrator determines that conditions do not make trawling with TEDs impracticable, that there is insufficient compliance with the required conservation measures, that compliance cannot be monitored effectively. Likewise, conservation measures may be modified if monitoring to assess turtle mortality indicates that the incidental take level for the program is approaching the incidental take level established by the biological opinion for this action issued as a result of consultation under section 7 of the ESA. That level is one lethal take of a Kemp's ridley, green, hawksbill, or leatherback turtle; or twenty lethal takes of loggerhead turtles.

The Assistant Administrator will terminate this exemption for the Louisiana restricted area, if the incidental take level is exceeded, if significant or unanticipated levels of lethal or non-lethal takings or strandings of sea turtles associated with fishing activities in the Louisiana restricted area occur, if there is insufficient compliance with the required conservation measures, if compliance cannot be monitored effectively or if conditions do not make trawling with TEDs impracticable. Finally, the Assistant Administrator may terminate this exemption for the Louisiana restricted area, if shrimpers refuse to accept observers when requested to do so and the level of observer coverage is insufficient to adequately monitor incidental take. The Assistant Administrator may take such action, for these or other reasons, as appropriate, at any time. A notice will be published in the **Federal Register** announcing any additional sea turtle conservation measures or the termination of the tow time option in the Louisiana restricted area.

Classification

The Assistant Administrator has determined that this notice is necessary to respond to an emergency situation to allow more efficient fishing for shrimp, while providing adequate protection for listed sea turtles, and is consistent with the ESA and other applicable law. This notice does not require a regulatory impact analysis under Executive Order 12291 because it is not a "major rule."

Because neither section 553 of the Administrative Procedure Act (APA) nor any other law requires that general notice of proposed rulemaking be published for this action, under section 603(b) of the Regulatory Flexibility Act, an initial Regulatory Flexibility Analysis is not required.

The Assistant Administrator prepared an environmental assessment (EA) for the interim final rule filed on September 1, 1992. A supplemental EA was prepared specifically for this action concludes, that with specified mitigation measures, this action would have no significant impact on the human environment.

This notice allows the Assistant Administrator to establish a registration program. Such a program contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA), namely, requests for registration to trawl using restricted tow times in lieu of TEDs in the Louisiana restricted area. This collection has been approved by the Office of Management and Budget (OMB) under OMB control number 0648–0267.

The public reporting burden for this collection of information is estimated to average 7 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, may be sent to NMFS and OMB (see **ADDRESSES**). See OMB control number 0643–0267 and related analysis. The Assistant Administrator, pursuant to section 553(b)(B) of the APA, finds there is good cause to issue this notice on an emergency basis and that it is impracticable and contrary to the public interest to provide prior notice and opportunity for comment. Emergency action is needed so that fishermen are

able to catch shrimp as efficiently as possible in the Louisiana restricted area (consistent with protecting endangered and threatened sea turtles). Because this action relieves a restriction (the requirement to use TEDs), under section 553(d)(1) of the APA, this notice is being made immediately effective.

Dated: September 4, 1992.

William W. Fox, Jr.,

Assistant Administrator for Fisheries.

[FR Doc. 92-21884 Filed 9-4-92; 5:11 pm]

BILLING CODE 3510-22-M

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50 CFR Part 661

[Docket No. 920412-2112]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS announces the closure of the treaty Indian fishery in the exclusive economic zone from the U.S.-Canada border to Point Chehalis, Washington (46°53'18" N. latitude), at 2359 hours local time, August 5, 1992. The Director, Northwest Region, NMFS (Regional Director), has determined that the overall treaty Indian ocean quota of 68,000 coho salmon has been reached and the fishery should be closed for the remainder of its scheduled season. This action is necessary to conform to the preseason announcement of the 1992 management measures and is intended to ensure conservation of coho salmon.

DATES: Effective at 2359 hours local time, August 5, 1992. Actual notice to affected treaty Indian fishermen was provided by the treaty tribes and tribal regulations. Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. However, comments will be accepted through September 21, 1992.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE., BIN C15700—Bldg. 1, Seattle, WA 98115-0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at (206) 526-6140.

SUPPLEMENTARY INFORMATION: Treaty Indian fishing is subject to the regulations governing the ocean salmon fisheries at 50 CFR 661.21(a)(1), which state that "When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by notice issued under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

In its emergency interim rule and notice of 1992 management measures (57 FR 19388, May 6, 1992), NMFS announced that the 1992 treaty Indian ocean fishery for all salmon species except coho salmon would begin May 1 and continue through the earlier of June 30 or the attainment of the chinook quota, and the treaty Indian ocean fishery for all salmon species would begin no earlier than July 1 and continue through the earliest of September 30 or the attainment of either the chinook or coho salmon quota. The overall treaty Indian ocean quotas are 33,000 chinook and 68,000 coho salmon. Inseason adjustments during the season were imposed by treaty Indian tribal regulations. Based on the best available information, the treaty Indian ocean fishery reached the overall quota of 68,000 coho salmon on August 5. The treaty Indian tribes closed this fishery by tribal regulations, effective 2359 hours local time, August 5.

This notice does not apply to other fisheries that may be operating in other areas.

Classification

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 4, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-21849 Filed 9-4-92; 4:38 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 177
Friday, September 11, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL TRADE COMMISSION

16 CFR Parts 229 and 232

Request for Comments Concerning Guides for Advertising Fallout Shelters and Guides for Advertising Radiation Monitoring Instruments

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission (the "Commission") is requesting public comments on its Guides for Advertising Fallout Shelters ("Fallout Shelter Guides") and its Guides for Advertising Radiation Monitoring Instruments ("Radiation Monitoring Instruments Guides"). The Commission is soliciting the comments as part of its periodic review of rules and guides.

DATES: Written comments will be accepted until October 13, 1992.

ADDRESSES: Comments should be directed to: Secretary, Federal Trade Commission, room H-159, Sixth and Pennsylvania Ave., NW., Washington, DC 20580. Comments about the Fallout Shelter Guides should be identified as "16 CFR Part 229—Comment." Comments about the Radiation Monitoring Instruments Guides should be identified as "16 CFR Part 232—Comment." Comments about both guides should be identified as "16 CFR Parts 229, 232—Comment."

FOR FURTHER INFORMATION CONTACT: Kent C. Howerton, Attorney, Federal Trade Commission, Washington, DC 20580, (202) 326-3013.

SUPPLEMENTARY INFORMATION: The Commission has determined, as part of its oversight responsibilities, to review rules and guides periodically. These reviews will seek information about the costs and benefits of the Commission's rules and guides and their regulatory and economic impact. The information obtained will assist the Commission in identifying rules and guides that warrant modification or recision.

At this time, the Commission solicits written public comments concerning the Commission's Guides for Advertising Fallout Shelters ("Fallout Shelter Guides"), 16 CFR part 229, and the Commission's Guides for Advertising Radiation Monitoring Instruments ("Radiation Monitoring Instruments Guides"), 16 CFR part 232. These guides are being discussed together here because both pertain to products designed for home civil defense use in the event of nuclear war.

These two guides, like the other industry guides issued by the Commission, "are administrative interpretations of laws administered by the Commission for the guidance of the public in conducting its affairs in conformity with legal requirements. They provide the basis for voluntary and simultaneous abandonment of unlawful practices by members of industry." 16 CFR 1.5. Conduct inconsistent with the guides may result in corrective action by the Commission under applicable statutory provisions. The Commission promulgates industry guides "when it appears to the Commission that guidance as to the legal requirements applicable to particular practices would be beneficial in the public interest and would serve to bring about more widespread and equitable observance of laws administered by the Commission." 16 CFR 1.6.

The Fallout Shelter Guides concern acceptable and unacceptable claims for advertising and sale of fallout shelters for protection against radiation and the effects of a blast overpressure. Specifically, the guides pertain to claims about when structures can be designated as fallout and blast resistant. The guides also include guidance about installation, disclosures as to capacity, pictorial and other misrepresentations, deceptive prices, financial terms, guarantees, connection, approval or endorsement by government agencies, maintenance or repairs, use of terms such as "custom made" or "custom built", model shelters, combination or dual-purpose shelters, bait advertising, lottery schemes, and scare tactics.

The Radiation Monitoring Instruments Guides give guidance about acceptable and unacceptable claims made in advertising, labeling, or other promotional materials, however disseminated, of radiation monitoring instruments, devices, or other products that are represented in any manner to be of use to the general public for detecting or measuring fallout radiation. Specifically, the guides include guidance concerning claims that products are adequate for home civil defense use, that they are approved or endorsed by government agencies, and claims about product performance and other characteristics.

Accordingly, the Commission solicits public comments on the following questions:

(1) Have these guides had a significant economic impact (costs or benefits) on entities subject to their requirements?

(2) Is there a continuing need for these guides?

(3) What burdens does adherence with these guides place on entities subject to their requirements?

(4) What changes should be made to these guides to minimize the economic effect on such entities?

(5) Do either of these guides overlap or conflict with other federal, state, or local government laws or regulations?

(6) Have technology or economic conditions changes since these guides were issued, and, if so, what effect do the changes have on the guides?

Authority: 15 U.S.C. 41–58.

List of Subjects in 16 CFR Parts 229 and 232

Advertising, Civil defense, Fallout shelters, Radiation protection, Trade practices.

By direction of the Commission

Donald S. Clark,

Secretary.

Concurring Statement of Commissioner, Dennis A. Yao Concerning Commission Actions Pursuant to Commission Directive to Review All Regulations and Guides on a Recurring 10-Year Cycle

I dissented form the Commission's decision to schedule mandatory reviews of all regulations and guides on a recurring 10-year cycle because I was not persuaded that the Commission had sufficient information to show that the potential benefits from such a mandatory review process warranted diversion of resources from our positive enforcement agenda. A more flexible approach would have allowed the Commission, in my opinion, to identify

and modify or rescind potentially problematic rules or guides while balancing the costs and benefits of these reviews against those of our enforcement agenda. See Dissenting Statement of Commissioner Dennis A. Yao Concerning Commission Directive to Review All Regulations and Guides on a Recurring 10-Year Cycle.

Nevertheless, since the Commission did adopt the 10-year mandatory review process that I opposed, I am voting in favor of the current motion because it is consistent with the 10-year mandatory review process that is now Commission policy.

[FR Doc. 92-21953 Filed 9-10-92; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 230

Request for Comments Concerning Guides for Advertising Shell Homes

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission (the "Commission") is requesting public comments on its Guides for Advertising Shell Homes ("Shell Homes Guides"). The Commission is soliciting the comments as part of its periodic review of rules and guides.

DATES: Written comments will be accepted until October 13, 1992.

ADDRESSES: Comments should be directed to: Secretary, Federal Trade Commission, room H-159, Sixth and Pennsylvania Ave., NW., Washington, DC 20580. Comments about the Shell Homes Guides should be identified a "16 CFR Part 230—Comment."

FOR FURTHER INFORMATION CONTRACT: Kent C. Howerton, Attorney, Federal Trade Commission, Washington, DC 20580, (202) 326-3013.

SUPPLEMENTARY INFORMATION: The Commission has determined, as part of its oversight responsibilities, to review rules and guides periodically. These reviews will seek information about the costs and benefits of the Commission's rules and guides and their regulatory and economic impact. The information obtained will assist the Commission in identifying rules and guides that warrant modification or recision. At this time, the Commission solicits written public comments concerning the Commission's guides for Advertising Shell Homes ("Shell Homes Guides"), 16 CFR part 230.

These guides, like the other industry guides issued by the Commission, "are administrative interpretations of laws administered by the Commission for the guidance of the public in conducting its affairs in conformity with legal requirements. They provide the basis for voluntary and simultaneous abandonment of unlawful practices by members of industry." 16 CFR 1.5. Conduct inconsistent with the guides may result in corrective action by the Commission under applicable statutory provisions. The Commission promulgates industry guides "when it appears to the Commission that guidance as to the legal requirements applicable to particular practices would be beneficial in the public interest and would serve to bring about more widespread and equitable observance of laws administered by the Commission." 16 CFR 1.6.

The Shell Homes Guides pertain to a type of factory-built home. The Guides state that "the typical shell homes does not include such features as wiring, plumbing, heating, interior trim and finish, or other requisite components." 16 CFR 230.1. In general, the Shell Homes Guides pertain to claims about the extent of completion of a shell home and its immediate habitability. The Guides also address representations as to size or dimensions, pictorial representations, savings claims, financial terms, bait advertising, guarantees, model homes, delivery and installation.

Accordingly, the Commission solicits public comments on the following questions:

(1) Have these guides had a significant economic impact (costs or benefits) on entities subject to their requirements?

(2) Is there a continuing need for these guides?

(3) What burdens does adherence with these guides place on entities subject to their requirements?

(4) What changes should be made to these guides to minimize the economic effect on such entities?

(5) Do these guides overlap or conflict with other federal, state, or local government laws or regulations?

(6) Have technology or economic conditions changed since these guides were issued, and, if so, what effect do the changes have on the guides?

Authority: 15 U.S.C. 41-58.

List of Subjects in 16 CFR Part 230

Advertising, housing, trade practices.

By direction of the Commission.

Donald S. Clark,

Secretary.

Concurring Statement of Commissioner Dennis A. Yao Concerning Commission Actions Pursuant to Commission Directive to Review All Regulations and Guides on a Recurring 10-Year Cycle

I dissented from the Commission's decision to schedule mandatory reviews of all regulations and guides on a recurring 10-year cycle because I was not persuaded that the Commission had sufficient information to show that the potential benefits from such a mandatory review process warranted diversion of resources from our positive enforcement agenda. A more flexible approach would have allowed the Commission, in my opinion, to identify and modify or rescind potentially problematic rules or guides while balancing the costs and benefits of these reviews against those of our enforcement agenda. See Dissenting Statement of Commissioner Dennis A. Yoa Concerning Commission Directive to Review All Regulations and Guides on a Recurring 10-Year Cycle.

Nevertheless, since the Commission did adopt the 10-year mandatory review process that I opposed, I am voting in favor of the current motion because it is consistent with the 10-year mandatory review process that is now Commission policy.

[FR Doc. 92-21954 Filed 9-10-92; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL-0003-92]

RIN 1545-AQ58

Proposed Amendments to the Regulations on Branch Profits Tax and on Effectively Connected Income

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed Income Tax Regulations relating to the determination of effectively connected income under section 864 and the branch profits tax and branch-level interest tax under section 884 of the Internal Revenue Code of 1986 (the "Code"). Section 884 was added to the Code by section 1241 of the Tax Reform Act of 1986. These

regulations would provide guidance needed to comply with this section and would affect certain foreign corporate partners of partnerships engaged in a U.S. trade or business and foreign corporate beneficiaries of certain trusts and estates. The regulations also provide guidance regarding the definition of "branch interest".

DATES: Comments and requests for a public hearing must be received by November 10, 1992.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (INTL-0003-92) room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Elizabeth U. Karzon of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (202-622-3860, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attention: IRS Reports Clearance Officer T:FP: Washington, DC 20224.

The collection of information in this regulation is in § 1.884-1(d)(3)(ii)(B). The information collection in that section is required by the Internal Revenue Service in order to assure compliance with changes to the regulations under section 884. The likely respondents are business corporations that are affected by such changes.

The following estimates are an approximation of the average time expected to be necessary for the collection of information required by these regulations. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

Estimated total annual reporting burden: 25 hours.

The estimated annual burden per respondent is .25 hours.

Estimated number of respondents: 100.

Estimated annual frequency of responses: One.

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under sections 864 and 884 of the Internal Revenue Code of 1986. The amendments to section 884 are proposed to amend final regulations under §§ 1.884-0, 1.884-1, and 1.884-4 that appear in this issue of the **Federal Register** and temporary regulations under § 1.884-2T.

Explanation of the Provisions

Proposed Amendments to Section 864

Asset-Use Test

Section 1.864-4(c)(2)(i) provides that an asset-use test will ordinarily apply to determine if income, gain or loss of a passive type will be treated as income effectively connected for the taxable year with the conduct of a trade or business in the United States. Under the asset-use test, income, gain or loss from an asset will be effectively connected if the income, gain or loss is derived from assets used in, or held for use in, the conduct of the trade or business in the United States. Section 1.864-4(c)(2)(ii)(*a*) provides that an asset will be treated as used in, or held for use in, the conduct of a U.S. trade or business if it is held for the principal purpose of promoting the present conduct of the trade or business in the United States. The regulations provide as an example stock acquired and held to assure a constant source of supply for the trade or business. The proposed regulations delete that example and provide that stock is not treated as an asset used in, or held for use in, the conduct of a trade or business in the United States. The proposed regulations also eliminate the subsequent examples indicating that stock may be held in a direct relationship to a trade or business conducted in the United States. Comments are invited regarding the effect, if any, of this amendment on the treatment of income from stock portfolio investments of insurance companies.

Proposed Amendments to Section 884

Partnerships

Under the temporary and final regulations, a foreign corporate partner's interest in a partnership is treated as a U.S. asset in the same proportion that its distributive share of the partnership's gross income for the taxable year that is effectively connected with the conduct of a trade or business in the United States bears to its distributive share of all partnership gross income. The proposed regulations under § 1.884-4-1(d)(3) retain the rule in the final regulations for partners that have an interest of less than 10 percent in the capital, profits, and losses of the partnership at all times during the partner's taxable year.

With respect to a corporate partner with a 10 percent or more interest in the capital, profits or losses of a partnership, the proposed regulations change the method of apportioning the adjusted basis of its partnership interest between U.S. and non-U.S. assets from an income-based method to an asset based-method. If a partner has a substantially uniform economic interest in all the items of income, gain, loss, and deduction of the partnership, its partnership interest is treated as a U.S. asset in a proportion equal to the adjusted basis of the U.S. assets of the partnership over the adjusted basis of total assets of the partnership. If the partner does not have a substantially uniform economic interest in all such items of the partnership, the general rule is modified to take into account the partner's proportionate share of the adjusted basis of each asset held by the partnership. For example, if a foreign corporate partner is allocated all the items of income, gain, loss, and deduction with respect to one U.S. real property interest held by the partnership but no items with respect to another, in determining the extent to which the partner's interest in the partnership is a U.S. asset, the partner will take into account 100 percent of the adjusted basis of the one asset but none of the other, provided that the partnership allocations are valid under section 704(b). The rules also provide a set of presumptions to determine a partner's economic interest in a particular asset when its distributive share of the items of income, gain, loss or deduction generated by the asset is not substantially uniform. The asset-based method applicable to 10 percent or more partners may be elected by partners with less than a 10 percent interest in a partnership. The application of these rules to tiered partnerships is also set forth in this section of the regulations.

Trusts. Under the temporary and final regulations, a foreign corporation that is a beneficiary of a trust or estate is subject to the branch profits tax if it has effectively connected earnings and profits by virtue of its interest in the trust or estate. The temporary and final regulations reserve, however, on the issue of how to calculate the U.S. assets of a foreign corporation that is a beneficiary of a trust or estate. The proposed regulations under § 1.884-

1(d)(4) provide that a foreign corporate beneficiary of a trust will not be treated as owning a U.S. asset by virtue of its interest in a trust or estate, with one exception. If, under the rules of sections 671 through 678, a foreign corporation is required to include in computing its tax liability the income and gain with respect to a trust asset (or a pro rata portion of a trust asset), it will be treated as the owner of the trust asset (or pro rata portion thereof).

A special rule applies, however, upon the termination (by disposition or otherwise) of a foreign corporate beneficiary's interest in a trust, whether or not the foreign corporation continues to be engaged in another U.S. trade or business. The proposed regulations amend the temporary regulations by adding a provision that, notwithstanding § 1.884–2T(a), a foreign corporation whose beneficial interest in a trust terminates in any taxable year shall be subject to the branch profits tax on ECEP attributable to ECI distributed to such beneficiary in that taxable year.

Alternative approaches were considered that would have attributed to a corporate beneficiary a partial interest in the assets of the trust to the extent of the beneficiary's actuarial interest in each U.S. asset of the trust, following attribution principles similar to those in § 1.884–5(b)(2)(iii) (relating to attribution rules for stock held by trusts). This approach was not adopted because the amount of a U.S. asset attributed to a beneficiary based on its actuarial interest in the asset would not necessarily correspond to a beneficiary's share of earnings and profits attributable to the asset for the taxable year.

Another alternative would have been to allocate the E&P basis of the U.S. assets of a trust to a foreign corporate beneficiary of the trust in proportion to the beneficiary's share of gross income from the trust that is (or is treated as) effectively connected with the conduct of a trade or business in the United States to its share of total gross income of the trust. That alternative was also not adopted because, in the case of a discretionary trust, the amount of U.S. assets of the beneficiary could fluctuate dramatically from year to year.

Branch interest. The final regulations under § 1.884–4(b) define interest paid by a U.S. trade or business of a foreign corporation ("branch interest") to include interest paid with respect to certain liabilities set forth in that section. The proposed regulations under § 1.884–4(b) define branch interest as interest paid by a foreign corporation with respect to a liability that is a booked liability within the meaning of the proposed regulations under § 1.882–5(d)(2). This change and related conforming changes are being made to simplify to the extent possible the calculations a foreign corporation must make to comply with these sections.

Effective date. These regulations are proposed to be effective [the day that these regulations are published as final regulations in the **Federal Register**].

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Request for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments (preferably a signed original and eight copies) that are received by the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held upon written request by any person who submits timely written comments on the proposed rules. Notice of the time and place for a hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Elizabeth U. Karzon, of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and the Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects

26 CFR 1.861–1 through 1.864–12

Income taxes, United States investments abroad.

26 CFR 1.881–1 through 1.884–5T

Foreign investments in United States, Income taxes.

Proposed Amendments to the Regulations

Accordingly, the final regulations under § 1.864–4, the final regulations under §§ 1.884–0, 1.884–1 and 1.884–4 published in this issue of the **Federal Register**, and the temporary regulations under § 1.884–2T(a) are proposed to be amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 continues to read in part:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.864–4 is amended as follows:

1. The third sentence in paragraph (c)(2)(i) is revised.

2. Paragraph (c)(2)(ii) is revised.

3. Paragraph (c)(2)(iv) is amended by:

a. Revising the paragraph heading and introductory text for paragraph (iv).

b. In *"Example (1)"* removing the designation *"(1)"*.

c. Removing *Examples (2)* through *(5)*.

4. paragraph (c)(2)(v) is added.

5. The revised and added provisions read as follows:

§ 1.864–4 U.S. source income effectively connected with U.S. business.

* * * * *

(c) * * *

(2) * * *

(i) * * * The asset-use test is of primary significance where, for example, interest income is derived from sources within the United States by a nonresident alien individual or foreign corporation that is engaged in the business of manufacturing or selling goods in the United States. * * *

(ii) *Cases where applicable.* Ordinarily, an asset shall be treated as used in, or held for use in, the conduct of a trade or business in the United States if the asset is—

(A) Held for the principal purpose of promoting the present conduct of a trade or business in the United States; or

(B) Acquired and held in the ordinary course of the trade or business conducted in the United States, as, for example, in the case of an account or note receivable arising from that trade or business; or

(C) Otherwise held in a direct relationship to the trade or business conducted in the United States, as determined under paragraph (c)(2)(iii) of this section. Stock of a corporation (whether domestic or foreign) is not treated as an asset used in, or held for

use in, the conduct of a trade or business in the United States.

* * * * *

(iv) *Illustration.* The application of this paragraph (c) may be illustrated by the following example:

Example. * * *

(v) *Effective date.* This paragraph (c)(2) will be effective for taxable years beginning on or after [*the date that these regulations are published as final regulations in the* **Federal Register**.]

* * * * *

Par. 3. Section 1.884–0(b) is amended by revising the entries for §§ 1.884–1(d)(4) and 1.884–4(b) (1) and (2) and adding entries for 1.884–4(e) (1) and (2) to read as follows:

§ 1.884–0 Overview of regulation provisions for section 884.

* * * * *

(b) * * *

§ 1.884–1 Branch profits tax.

* * * * *

(d) * * *

(4) Interest in a trust or estate.

* * * * *

§ 1.884–4 Branch-level interest tax.

* * * * *

(b) * * *

(1) Definition of branch interest.

(2) [Reserved].

* * * * *

(e) * * *

(1) General rule.

(2) Special rule for branch interest.

* * * * *

Par. 4. Section 1.884–1 is amended as follows.

1. Paragraphs (d)(3) (i) through (iii) are revised to read as set forth below.

2. Paragraphs (d)(3) (vi) and (vii) are added to read as set forth below.

3. The text of paragraph (d)(4) is added to read as set forth below.

§ 1.884–1 Branch profits tax.

* * * * *

(d) * * *

(3) *Interest in a partnership*—(i) *Partners with 10 percent or greater interest in partnership*—(A) *10 percent or more partner.* For purposes of this paragraph (d)(3)(i), a "10 percent or more partner" is a partner with an interest of 10 percent or more (as determined under the attribution rules of section 318) in the capital, profits, or losses of a partnership at any time during the partner's taxable year.

(B) *Substantially uniform economic interest.* If a 10 percent or more partner in a partnership has a substantially uniform economic interest in all items of income, gain, loss, and deduction that may be generated by the assets of the partnership throughout the period that includes the taxable year of the foreign corporation, that partner's interest in the partnership shall be treated as a U.S. asset in the same proportion that the sum of the adjusted bases of all partnership assets as of the determination date, to the extent that the assets would be treated as U.S. assets if the partnership were a foreign corporation, bears to the sum of the adjusted bases of all partnership assets as of the determination date.

(C) *Economic interest not substantially uniform.* If a 10 percent or more partner does not have an interest in a partnership described in paragraph (d)(3)(i)(B) of this section, that partner's interest in the partnership shall be treated as a U.S. asset in the same proportion that the sum of the partner's proportionate share of the adjusted bases of all partnership assets as of the determination date, to the extent that the assets would be treated as U.S. assets if the partnership were a foreign corporation, bears to the sum of the partner's proportionate share of the adjusted bases of all partnership assets as of the determination date. A partner's proportionate share of the adjusted basis of a partnership asset shall be determined by reference to the partner's proportionate economic interest (reflected in the partnership agreement) in the items of income, gain, loss, and deduction that are expected to be generated by that asset. For purposes of this paragraph (d)(3)(i)(C), the following presumptions apply:

(*1*) If a partnership asset ordinarily generates directly identifiable income, a partner's proportionate share of the adjusted basis of the asset shall be presumed to equal the partner's proportionate share of gross income that may be generated by the asset for the partnership's taxable year ending with or within the partner's taxable year.

(*2*) If a partnership asset ordinarily generates current deductions and ordinarily generates no directly identifiable income, for example because the asset contributes equally to the generation of all the income of the partnership (such as an asset used in general and administrative functions), a partner's proportionate share of the adjusted basis of that asset shall be presumed to equal the partner's proportionate share of the total deductions that may be generated by the asset for the partnership's taxable year ending with or within the partner's taxable year.

(*3*) If a partnership asset ordinarily generates no income or deductions, a partner's proportionate share of the adjusted basis of that asset shall be presumed to equal the partner's proportionate share of the total gain to which that partner would be entitled if the asset were sold at a gain in the partnership's taxable year ending with or within the partner's taxable year.

A presumption described in this paragraph (d)(3)(i)(C) may be rebutted by the taxpayer or by the Service by showing that the presumption is inconsistent with the partner's true economic interest in the asset during the corporation's taxable year.

(ii) *Partners with less than 10 percent interest in partnership*—(A) *General rule.* If a partner is not a 10 percent or more partner in a partnership, that partner's interest in the partnership shall be treated as a U.S. asset in the same proportion that the partner's distributive share of partnership gross income for the partnership's taxable year that ends with or within the partner's taxable year that is ECI bears to its distributive share of all partnership gross income for that taxable year.

(B) *Election.* A foreign corporation that is a partner in a partnership may elect to apply the rules in paragraph (d)(3)(i) of this section rather than the rules of this paragraph (d)(3)(ii) with respect to an interest in any partnership in which it has a direct or indirect interest described in this paragraph (d)(3)(ii) by attaching a statement to its return for the taxable year stating that it elects to calculate its U.S. assets under the rules of paragraph (d)(3)(i) of this section. If a foreign corporation makes such an election with respect to a partnership interest, the election shall apply to the partnership interest for all subsequent taxable years in which the electing corporation has an interest in the partnership unless the Commissioner consents to a revocation of the election.

(C) *Special rule.* Where the Commissioner determines that the rules in this paragraph (d)(3)(ii) do not accurately reflect the U.S. assets that a foreign corporation with a partnership interest would have if the rules of paragraph (d)(3)(i) of this section applied (as, for example, if income from an asset held by the partnership is disproportionate to the adjusted basis of the asset or if the income from a partnership asset fluctuates substantially from year to year), the Commissioner may apply the rules of paragraph (d)(3)(i) of this section to such partnership interest.

(iii) *Tiered partnerships.* If an upper-tier partnership is a 10 percent or more partner in a lower-tier partnership, paragraph (d)(3)(i) of this section shall be applied to the assets of the lower-tier partnership to determine what proportion of the upper-tier

partnership's interest in the lower-tier partnership is a U.S. asset. If the upper-tier partnership is not a 10 percent or more partner in the lower-tier partnership, the rules of paragraph (d)(3)(ii) of this section shall apply to determine what proportion of the upper-tier partnership's interest in the lower-tier partnership is a U.S. asset.

* * * * *

(vi) The application of this paragraph (d)(3) is illustrated by the following examples.

Example 1. General rule—(i) *Facts.* Foreign corporation, FC, is a partner in partnership ABC, which is engaged in a trade or business within the United States. Assume FC and ABC are both calendar year taxpayers. ABC owns and manages two office buildings located in the United States, each with an adjusted basis of $50. ABC also owns a non-U.S. asset with an adjusted basis of $100. ABC has no liabilities. Under the partnership agreement, FC has a 50 percent interest in the capital of ABC and a 50 percent interest in all items of income, gain, loss, and deductions that may be generated by the partnership's assets.

(ii) *Results.* Because FC has a substantially uniform economic interest in all items of income, gain, loss or deduction of ABC as described in paragraph (d)(3)(i)(B) of this section, FC need not separately compute its proportionate share of the adjusted basis of each asset held by ABC to determine the proportion of its interest in ABC that is a U.S. asset. Rather, FC's interest in ABC is treated as a U.S. asset in the same proportion that the sum of the adjusted bases of all of ABC's assets, to the extent that they would be treated as U.S. assets if ABC were a foreign corporation ($100), bears to the sum of the adjusted bases of all of ABC's assets ($200). The proportion of FC's interest in ABC that is a U.S. asset is therefore 50 percent.

Example 2. Special allocation of gain with respect to real property—(i) *Facts.* Assume the same facts as in Example 1, except that under the partnership agreement, FC is allocated 20 percent of the gross income from the partnership property but 80 percent of the gain on disposition of the partnership property.

(ii) *Results.* Assuming that the buildings ordinarily generate directly identifiable income, there is a rebuttable presumption under paragraph (d)(3)(i)(C)(*1*) of this section that FC's proportionate share of the adjusted basis of the buildings is FC's distributive share of the gross income generated by the buildings (20%) rather than the total gain that it would be entitled to under the partnership agreement if the buildings were sold at a gain (80%). Thus, the sum of FC's share of the adjusted bases in ABC's U.S. assets (the buildings) is presumed to be $20 [(20% of $50)+(20% of $50)]. Assuming that the non-U.S. asset is not income-producing, there is a rebuttable presumption under paragraph (d)(3)(i)(C)(*3*) of this section that FC's proportionate share of the adjusted basis of that asset is FC's interest in the gain on the disposition of the asset (80%) rather its proportionate share of the gross income that may be generated by the asset (20%). Thus, FC's adjusted basis in ABC's non-U.S. asset is presumed to be $80 (80% of $100). FC's proportionate share of the adjusted basis in all of the assets of ABC will be $100 ($20+$80). The proportion of FC's interest in ABC that is treated as a U.S. asset is therefore 20 percent ($20 (the sum of FC's share of the adjusted basis of ABC's U.S. assets)/$100 (FC's share of the adjusted bases of all of ABC's assets)).

Example 3. Interest in a lower-tier partnership—(i) *Facts.* Assume the same facts as in *Example 1*, except that ABC has a 50 percent interest in the capital of partnership DEF. DEF owns and operates a commercial shopping center in the United States with an adjusted basis of $200 and also owns non-U.S. assets with an adjusted basis of $100. DEF has no liabilities. Assume that ABC's adjusted basis in its interest in DEF is $150 and that ABC has a 50 percent interest in all the items of income, gain, loss and deduction that may be generated by the assets of DEF.

(ii) *Results.* Because ABC has a 10 percent or greater interest in the capital, profits or losses of DEF, the rules of paragraph (d)(3)(i) of this section apply to determine what proportion of ABC's interest in DEF is a U.S. asset. Because ABC has a substantially uniform economic interest in the items of income, gain, loss, and deduction of DEF, ABC's interest in DEF is treated as a U.S. asset in the same proportion as the sum of the adjusted bases of all of DEF's assets, to the extent that they would be treated as U.S. assets if DEF were a foreign corporation ($200), bears to the sum of the adjusted bases of all of DEF's assets ($300). Thus, ABC's adjusted basis in DEF ($150) is treated in part as a U.S. asset with an adjusted basis of $100 ($150×$200/$300) and in part as a non-U.S. asset with an adjusted basis of $50 ($150×$100/$300). FC must then apply the rules of paragraph (d)(3)(i)(B) of this section to all the assets of ABC, including ABC's interest in DEF that is treated in part as a U.S. asset and in part as a non-U.S. asset. FC's interest in ABC is treated as a U.S. asset in the same proportion that the sum of the adjusted basis of the assets of ABC, to the extent that they would be treated as U.S. assets if held by FC directly (including ABC's interest in DEF), bears to the adjusted basis in all of ABC's assets. Thus, $200/$350 (or 57%) of FC's interest in ABC is treated as a U.S. asset, determined by adding the $100 aggregate adjusted bases of the U.S. assets that ABC holds directly to ABC's $100 adjusted basis in the portion of its interest in DEF that is treated as a U.S. asset and dividing the sum by $350 (the aggregate adjusted bases of ABC's assets (including ABC's interest in DEF).

(vii) *Effective date.* This paragraph (d)(3) shall be effective for taxable years beginning on or after [*the date that these regulations are published as final regulations in the* **Federal Register**].

(4) *Interest in a trust or estate*—(i) *Estates and non-grantor trusts.* A foreign corporation that is a beneficiary of a trust or estate shall not be treated as having a U.S. asset by virtue of its interest in the trust or estate.

(ii) *Grantor trusts.* If, under sections 671 through 678, a foreign corporation is treated as owning a portion of a trust that includes all the income and gain that may be generated by a trust asset (or pro rata portion of a trust asset), the foreign corporation will be treated as owning the trust asset (or pro rata portion thereof) for purposes of determining its U.S. assets under this section.

(iii) *Effective date.* This paragraph (d)(4) shall be effective for taxable years beginning on or after [*the date that these regulations are published as final regulations in the Federal Register*].

* * * * *

Par. 5. § 1.884–2T (a) is amended as follows:

1. Paragraph (a)(5) is redesignated as paragraph (a)(6).

2. New paragraph (a)(5) is added to read as set forth below.

§ 1.884–2T Special rules for termination or incorporation of a U.S. trade or business or liquidation or reorganization of a foreign corporation or its domestic subsidiary.

(a) * * *

(5) *Special rule if a foreign corporation terminates an interest in a trust.* A foreign corporation whose beneficial interest in a trust terminates (by disposition or otherwise) in any taxable year shall be subject to the branch profits tax on ECEP attributable to amounts (including distributions of accumulated income or gain) treated as ECI to such beneficiary in such taxable year notwithstanding any other provision of this paragraph (a). This paragraph (a)(5) shall be effective for taxable years beginning on or after [*the date that is 30 days after these regulations are published as final regulations in the Federal Register*].

* * * * *

Par. 6. Section 1.884–4 is amended as follows:

1. Paragraph (a)(2)(i)(B) is revised to read as set forth below.

2. Paragraph (a)(2)(i)(C) is removed.

3. In paragraph (a)(2)(ii), the reference to paragraph "(c)(3)" is removed and the language "(c)(2)" is added in its place.

4. Paragraph (a)(2)(iii) is revised.

5. In paragraph (a)(4), the references in *Examples 1* and *2* to paragraph "(b)(2)" are removed and the language "(a)(2)(iii)" is added in its place.

6. Paragraph (b)(1) is revised.

7. Paragraph (b)(2) is removed and reserved.

8. In paragraph (b)(3), the four references to paragraph "(b)(1)(v)" are

removed and the language "(b)(1)(ii)" is added in its place.

9. In paragraph (b)(6), the six references to paragraph "(b)(1)(v)" are moved and the language "(b)(1)(ii)" is added in its place; and (in paragraph (b)(6)(ii), the two references to paragraph "(b)(1)(i) through (iv)" is removed and the language "(b)(1)(i)" is added in its place.

10. Paragraph (b)(8)(v) is amended by removing the last sentence in that paragraph.

11. Paragraph (c)(2) is removed.

12. Paragraph (c)(3) is redesignated as paragraph (c)(2).

13. Paragraph (c)(4) is removed.

14. Paragraph (e) is amended as follows:

a. The text of paragraph (e) is designated as paragraph (e)(1), and paragraph heading for (e)(1) is added.

b. The first sentence of newly designated paragraph (e)(1) is revised.

15. New paragraph (e)(2) is added.

16. The revised, added and reserved provisions read as follows:

§ 1.884–4 Branch-level interest tax.

(a) * * *

(2) * * *

(i) * * *

(B) The foreign corporation's branch interest (as defined in paragraph (b) of this section) for the taxable year, but not including interest accruing in a taxable year beginning before January 1, 1987.

* * * * *

(iii) *Treatment of a portion of the excess interest of banks as interest on deposits.* A portion of the excess interest of a foreign corporation that maintains and operates a Federal branch, Federal agency, State branch or State agency (as those terms are defined in section 1(b) of the International Banking Act of 1978) shall be treated as interest on deposits (as described in section 871(i)(3)), and shall be exempt from the tax imposed by section 881(a) as provided in such section. The portion of the excess interest of the foreign corporation that is treated as interest on deposits shall equal the product of the foreign corporation's excess interest and the greater of—

(A) The ratio of the amount of interest-bearing deposits, within the meaning of section 871(i)(3)(A), of the foreign corporation as of the close of the taxable year to the amount of all interest-bearing liabilities of the foreign corporation on such date; or

(B) 85 percent.

* * * * *

(b) *Branch interest*—(1) *Definition of branch interest.* For purposes of this section, the term "branch interest" means interest paid by a foreign corporation with respect to a liability that is—

(i) A booked liability within the meaning of § 1.882–5(d)(2); or

(ii) In the case of a foreign corporation other than a corporation described in paragraph (a)(2)(iii) of this section, a liability specifically identified (as provided in paragraph (b)(3)(i) of this section) as a liability of a U.S. trade or business of the foreign corporation on or before the earlier of the date on which the first payment of interest is made with respect to the liability or the due date (including extensions) of the foreign corporation's income tax return for the taxable year, provided that—

(A) The amount of such interest does not exceed 85 percent of the amount of interest of the foreign corporation that would be excess interest before taking into account interest treated as branch interest by reason of this paragraph (b)(1)(ii);

(B) The requirements of paragraph (b)(3)(ii) of this section (relating to notification of recipient of interest) are satisfied; and

(C) The liability is not described in paragraph (b)(3)(iii) of this section (relating to liabilities incurred in the ordinary course of a foreign business or secured by foreign assets) or paragraph (b)(1)(i) of this section.

A foreign corporation may identify a liability under paragraph (b)(1)(ii) of this section whether or not the foreign corporation is engaged in the conduct of a trade or business in the United States. See paragraph (b)(5) of this section for special rules relating to branch interest of a foreign corporation whose U.S. assets equal 80 percent or more of its worldwide assets. See paragraph (b)(6) of this section for a limitation on the amount of branch interest in certain situations in which branch interest exceeds the amount of interest apportioned to ECI under § 1.882–5 and paragraph (b)(7) of this section for the treatment of interest that is paid and accrued in different taxable years.

(2) [Reserved].

* * * * *

(e) *Effective dates*—(1) *General rule.* Except as provided in paragraph (e)(2) of this section, this section is effective for taxable years beginning on October 13, 1992, and for payments of interest described in section 884(f)(1)(A) made (or treated as made under paragraph (b)(7) of this section) during taxable years of the payor beginning after such date. * * *

(2) *Special rule for branch interest.* The changes to paragraphs (a)(2)(i) (B) and (C), (a)(2) (ii) and (iii), (a)(4), (b)(1) through (b)(3), (b)(6), (b)(8)(v), (c)(2) through (c)(4) of this section will be effective for taxable years beginning on or after [*the date that these regulations are published as final regulations in the Federal Register.*]

* * * * *

Shirley D. Peterson,

Commissioner of Internal Revenue.

[FR Doc. 92–21298 Filed 9–10–92; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

Maryland Permanent Regulatory Program; Small Operators Assistance Program and Permit Application

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing receipt and requesting comments on a proposed amendment to the Maryland permanent regulatory program (hereinafter referred to as the Maryland program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment expands the coverage of the Maryland Bureau of Mines (MDBOM) Small Operator Assistance Program (SOAP) by increasing the coal production eligibility limit from 100,000 to 300,000 tons. The amendment also separates the public notice and hearing process on the permit application from the public notice and hearing process on the reclamation plan.

This notice sets forth the times and locations that the Maryland program and the proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the amendment and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on October 13, 1992 to ensure consideration in the rulemaking process. If requested, a public hearing on the amendment will be held at 9 a.m. on October 6, 1992. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on September 28, 1992.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand delivered to Robert J.

Biggi, Director, Harrisburg Field Office, at the address listed below. Copies of the Maryland program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays.

Each requestor may receive, free of charge, one copy of the proposed amendment by contacting OSM's Harrisburg Field Office.

Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Harrisburg Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101, Telephone: (717) 782-4036

Maryland Bureau of Mines, 160 South Water Street, Frostburg, Maryland 21532, Telephone (301) 689-4136.

A public hearing, if held, will be at the Penn Harris Motor Inn and Convention Center at the Camp Hill Bypass and U.S. Routes 11 and 15, Camp Hill, Pennsylvania, or at some other location in the area of interested parties.

FOR FURTHER INFORMATION CONTACT: Robert J. Biggi, Director, Harrisburg Field Office, (717) 782-4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program

The Secretary of the Interior approved the Maryland program on February 18, 1982. Information on the background of the Maryland program including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Maryland program can be found in the February 18, 1982, **Federal Register** (47 FR 7214-7217). Subsequent actions concerning amendments to the Maryland Program are in 30 CFR 920.15 and 30 CFR 920.16.

II. Discussion of Amendment

MDBOM submitted a program amendment to OSM on July 14, 1992. The amendment (Administrative Record Number MD-556.00) is a copy of the Maryland General Assembly's House of Delegates Bill Number 1284. The bill, non referenced as Chapter 609 of the 1992 laws of Maryland, revises Sections 7-205 and 7-505 and adds Section 7-206 to the Natural Resources Article, Annotated Code of Maryland.

On November 5, 1990, the President signed into law the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508 which includes the Abandoned Mine Lands Reclamation (AML) Act of 1990, as amended. Section 6011 (Small Operator Assistance), of the AML Act of 1990 amends section 507(c) of SMCRA by increasing the SOAP coal eligibility limit for any surface coal mining operator from 100,000 tons to 300,000 tons. Revised Section 7-505(c)(4) includes a similar change.

Under the Maryland program, the Land Reclamation Committee (Committee) must approve the reclamation plan required in the permit application. MDBOM must approve, except for the reclamation plan, the permit application. The public notice and public hearing process for both the permit application and the reclamation plan is conducted jointly by MDBOM and the Committee under section 7-505(d). The amendment separates this notice and hearing process by deleting reference to the committee. The new section 7-206 sets out the Committee's public notice and hearing procedures for a permit applicant's reclamation plan. Section 7-206 also includes provisions concerning the Committee's bond release and reclamation responsibilities that were deleted from section 7-205.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comments on whether the amendment proposed by Maryland satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Maryland program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Harrisburg Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. on September 28, 1992. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions. The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the Harrisburg Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made part of the Administrative Record.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs. Therefore, preparation of a regulatory impact analysis and OMB regulatory review is not required.

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumption for the counterpart Federal regulations.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these

standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under section 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the State must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR parts 730, 731, and 732 have been met.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under the Paperwork Reduction Act 44 U.S.C. 3507 *et. seq.*

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 28, 1992.

Jeffrey D. Jarrett,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 92-21906 Filed 9-10-92; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 950

Wyoming Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Wyoming permanent regulatory program (hereinafter, the "Wyoming program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment is intended to standardize State reporting requirements for all wildlife affected by coal mining and improve operational efficiency.

This notice sets forth the times and locations that the Wyoming program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., m.d.t. October 13, 1992. If requested, a public hearing on the proposed amendment will be held on October 6, 1992. Requests to present oral testimony at the hearing must be received by 4 p.m., m.d.t. on September 28, 1992.

ADDRESSES: Written comments should be mailed or hand delivered to Guy Padgett at the address listed below.

Copies of the Wyoming program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, room 2128, Casper, WY 82601-1918, Telephone: (307) 261-5776.

Department of Environmental Quality, Land Quality Division, Herschler Building—Third Floor West, 122 West 25th Street, Cheyenne, WY 82002, Telephone: (307) 777-7756.

FOR FURTHER INFORMATION CONTACT: Guy V. Padgett, Director, Telephone: (307) 261-5776.

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Program

On November 26, 1980, the Secretary of the Interior conditionally approved the Wyoming program. General background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Wyoming program can be found in the November 26, 1980 **Federal Register** (45 FR 78637). Subsequent actions concerning Wyoming's program and program amendments can be found at 30 CFR 950.12, 950.15, 950.16 and 950.20.

II. Proposed Amendment

By letter dated July 8, 1992, (Administrative Record No. WY-18-1) Wyoming submitted a proposed amendment to its program pursuant to SMCRA. The Wyoming proposed amendment is at its own initiative.

The regulations that Wyoming proposes to amend are: Department of Environmental Quality, Land Quality Division Rules and Regulations Chapter II, Section 3(b)(iv)(B), Permit Applications—Special Application Content for Wildlife Monitoring; Chapter IV, Section 3(o)(iv), Environmental Protection Performance Standards—Special Environmental Protection—Wildlife Monitoring; and the addition of Appendix B—Wildlife Monitoring Requirements for Surface Coal Mining Operations.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Wyoming program.

Written Comments

Written comments should be specific, pertain only to the issue proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.d.t. September 28, 1992. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible,

notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

National Environmental Policy Act

Pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs. Therefore, preparation of a regulatory impact analysis and OMB regulatory review is not required.

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumption for the counterpart Federal regulations.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under section 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the State must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR parts 730, 731, and 732 have been met.

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 28, 1992.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 92-21807 Filed 9-10-92; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 950

Wyoming Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Wyoming permanent regulatory program (hereinafter, the "Wyoming program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment is intended to clarify the unique differences in the State's revision, renewal, and amendment process, and improve operational efficiency.

This notice sets forth the times and locations that the Wyoming program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., m.d.t. October 13, 1992. If requested, a public hearing on the proposed amendment will be held on October 6, 1992. Requests to present oral testimony at the hearing must be received by 4 p.m., m.d.t. on September 28, 1992.

ADDRESSES: Written comments should be mailed or hand delivered to Guy Padgett at the address listed below.

Copies of the Wyoming program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, Room 2128, Casper, WY 82601-1918, Telephone: (307) 261-5776.

Department of Environmental Quality, Land Quality Division, Herschler Building—Third Floor West, 122 West 25th Street, Cheyenne, WY 82002, Telephone: (307) 777-7756.

FOR FURTHER INFORMATION CONTACT: Guy V. Padgett, Telephone: (307) 261-5776.

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Program

On November 26, 1980, the Secretary of the Interior conditionally approved the Wyoming program. General background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Wyoming program can be found in the November 26, 1980 **Federal Register** (45 FR 78684). Subsequent actions concerning Wyoming's program and program amendments can be found at 30 CFR 950.12, 950.15, 950.16 and 950.20.

II. Proposed Amendment

By letter dated July 24, 1992, (Administrative Record No. WY-19-1) Wyoming submitted a proposed amendment to its program pursuant to SMCRA. The Wyoming proposed amendment is at its own initiative.

The regulations that Wyoming proposes to amend are: Department of Environmental Quality, Land Quality Division Rules and Regulations Chapter XIII, Section 6. Exception; Chapter I, Section 2(e) Definitions, (Amendments).

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Wyoming program.

Written Comments

Written comments should be specific, pertain only to the issue proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Casper Field Office will not necessarily be

considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m., m.d.t. September 28, 1992. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed under "**FOR FURTHER INFORMATION CONTACT**." All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "**ADDRESSES**." A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

National Environmental Policy Act

Pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs. Therefore, preparation of a regulatory impact analysis and OMB regulatory review is not required.

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumption for the counterpart Federal regulations.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under section 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the State must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR part 730, 731, and 732 have been met.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under the Paperwork Reduction Act 44 U.S.C. 3507 *et seq.*

List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 11, 1992.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 92-21908 Filed 9-10-92; 8:45 am]

BILLING CODE 4310-05-M

POSTAL SERVICE

39 CFR Part 111

Vendor Presort Software Validation Program

AGENCY: Postal Service.

ACTION: Withdrawal of proposed rule.

SUMMARY: After receiving comments on its April 14, 1992, notice of proposed rulemaking (57 FR 12893-12901), the Postal Service has decided to withdraw the proposed rule on requirements for a Vendor Presort Software Validation Program.

DATES: This action is effective September 11, 1992.

ADDRESSES: Written questions should be mailed or delivered to the Director, Office of Classification and Rates Administration, U.S. Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260-5903.

FOR FURTHER INFORMATION CONTACT: Charles G. Delaney at (202) 268-5321 or George T. Hurst at (202) 268-5232.

SUPPLEMENTARY INFORMATION: After receiving written comments in response to its April 14, 1992, notice of proposed rulemaking (57 FR 12893-12901), and oral comments in response to its July 21, 1992, notice of public meeting (57 FR 32188), the Postal Service has decided to withdraw the previous proposed rule on requirements for a Vendor Presort Software Validation Program.

The Postal Service expects that a new proposed rule on this subject will be published in the **Federal Register** in the near future.

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 92-21870 Filed 9-10-92; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OAQPS CA21-4-5569; FRL-4264-3]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; San Joaquin Valley Unified Air Pollution Control District, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to approve revisions to the California State

Implementation Plan (SIP) adopted by the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) on May 16, 1991 and the South Coast Air Quality Management District (SCAQMD) on March 1, 1991. The California Air Resources Board submitted these revisions to EPA on October 25, 1991. The revisions concern the adoption of SJUAPCD's Rule 468.1, Rubber Tire Manufacturing, and SCAQMD's 1104, Wood Flat Stock Coating Operations. These rules control the emissions of volatile organic compounds (VOCs) from their respective source categories. EPA has evaluated each of these rules and is proposing to approve them under section 110 (k)(3) as meeting the requirements of section 110(a) and Part D of the Clean Air Act, as amended in 1990 (CAA).

DATES: Comments must be received on or before October 13, 1992.

ADDRESSES: Comments may be mailed to: Esther Hill, Northern California, Nevada and Hawaii Rulemaking Section (A-5-4), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1219 "K" Street, Sacramento, CA 95814

San Joaquin Valley Unified Air Pollution Control District, 1745 West Shaw, Suite 104, Fresno, CA 93711

South Coast Air Quality Management District, Planning & Rules Division, P.O. Box 4939, Diamond Bar, CA 91765-0939.

FOR FURTHER INFORMATION CONTACT: Wendy Colombo, Northern California, Nevada and Hawaii Rulemaking Section (A-5-4), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1190.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the 1977 Clean Air Act (1977 CAA or pre-amended Act), that included the South Coast Air Quality Management District and the following eight Air Pollution Control Districts (APCDs): Fresno County APCD, Kern County APCD,[1] Kings County APCD, Madera County APCD, Merced County APCD, San Joaquin County APCD, Stanislaus County APCD, and Tulare County APCD. 43 FR 8964, 40 CFR 81.305. Because these areas were unable to meet the statutory attainment date of December 31, 1982, California requested under § 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987.[2] 40 CFR 52.238. On May 26, 1988, EPA notified the Governor of California that the above districts' portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit correction of those deficiencies.

On March 20, 1991, the San Joaquin Valley Unified Air Pollution Control District was formed. The SJVUAPCD has authority over the San Joaquin Valley Air Basin which includes all of the above eight counties except for the Southeast Desert Air Basin portion of Kern County. Thus, the Kern County Air Pollution Control District (KCAPCD) still exists, but only has authority over the Southeast Desert Air Basin portion of Kern County.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amended guidance.[3] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. SCAQMD is classified as extreme and SJVUAPCD is classified as serious. Therefore, these two areas are subject to the RACT fix-up requirement and the May 15, 1991 deadline.[4] KCAPCD was subject to EPA's SIP-Call, but was not subject to the RACT fix-up requirement and the May 15, 1991 deadline.[5]

The State of California submitted many revised RACT rules for incorporation into its SIP on October 25, 1991, including the rules being acted on in this notice. This notice addresses EPA's proposed action for SJVUAPCD's Rule 468.1, Rubber Tire Manufacturing and SCAQMD's Rule 1104, Wood Flat Stock Coating Operations. These submitted rules were found to be complete on December 18, 1991 pursuant to EPA's completeness criteria adopted on February 16, 1990 (55 FR 5830) and set forth in 40 CFR part 51 Appendix V,[6] and are being proposed for approval into the SIP.

Both rules control the emission of VOCs, which contribute to the production of ground level ozone and smog. The rules were adopted as part of the districts' effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for these two rules.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements,

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[1] At that time, Kern County included portions of two air basins: The San Joaquin Valley Air Basin and the Southeast Desert Air Basin. The San Joaquin Valley Air Basin portion of Kern County was designated as nonattainment, and the Southeast Desert Air Basin portion of Kern County was designated as unclassified. See 40 CFR 81.305 (1991).

[2] This extension was not requested for Kern County. Thus, Kern County's attainment date remained December 31, 1982.

[3] Among other things, the pre-amended guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[4] The South Coast and the San Joaquin Valley Air Basins retained their nonattainment designations and were classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the Amendments. See 56 FR 56694 (November 6, 1991).

[5] KCAPCD was not subject to the RACT fix-up requirement and the May 15, 1991 deadline because the Southeast Desert Air Basin portion of Kern County was not a pre-amendment nonattainment area, and thus, was not automatically designated nonattainment on the date of enactment of the Clean Air Act Amendments of 1990. (See sections 107(d) and 182(a)(2)(A) of the Clean Air Act Amendments of 1990.) However, the KCAPCD is still subject to the requirements of EPA's SIP-Call because the SIP-Call included *all* of Kern County. The substantive requirements of the SIP-Call are the same as those of the Statutory RACT fix-up requirement.

[6] EPA has since adopted completeness criteria pursuant to section 110(k)(1)(A) of the CAA. See 56 FR 42216 (August 26, 1991).

which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 3. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific sources categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTG applicable to SJVUAPCD's Rule 468.1 is entitled, "Control of Volatile Organic Emissions from Manufacture of Pneumatic Rubber Tires", (EPA document No. EPA-450/2-Volatile Organic Emissions from Manufacture of Pneumatic Rubber Tires", (EPA document No. EPA-450/2-78-030). The CTG applicable to SCAQMD's Rule 1104 is entitled, "Control of Volatile Organic Emissions from Existing Stationary Sources Volume VII: Factory Surface Coating of Flat Wood Paneling", (EPA document No. EPA-450-/2-78-032). Further interpretations of EPA policy are found in the Blue Book. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

SJVUAPCD Rule 468.1, Rubber Tire Manufacturing

SJVUAPCD Rule 468.1 is a revision of Kings County Air Pollution Control District Rule 424 and will serve as a new rule (for all of the eight districts that were combined to form SJVUAPCD) adopted to control volatile organic compound emissions from rubber tire manufacturing operations. Proposed Rule 468.1 is a new SIP rule that will strengthen the SIP through meeting the requirements of the CAA, EPA regulations, and EPA policy. The rule controls VOC emissions from the following four areas in rubber tire manufacturing: (1) Undertread cementing operations; (2) green tire coating operations; (3) bead cementing operations; and (4) tread end cementing operations.

SCAQMD Rule 1104, Wood Flat Stock Coating Operations

SCAQMD Rule 1104 is a revision of the current SIP approved rule. The rule will have a strengthening effect on the SIP through increasing enforceability and clarity and is consistent with the CAA, EPA regulations, and EPA policy. The revisions generally include:

- Various definitional changes and additions;
- A reduction in the VOC limit for inks;
- Limiting VOC content for exterior wood siding coating;
- Deleting the equivalency provisions;
- Adding application method requirements for coatings, adhesives, and inks;
- Increasing add-on control device efficiency specifications;
- Adding efficiency requirements for the collection system;
- Adding recordkeeping requirements;
- Adding test methods; and
- Revising the exemption provisions.

EPA's technical support documents provide a more detailed discussion of the revisions to both SJVUAPCD Rule 468.1 and SCAQMD Rule 1104.

EPA has evaluated the two submitted rules for consistency with the CAA, EPA regulations, and EPA policy and has found that the revisions address and correct the deficiencies previously identified by EPA. These deficiency corrections have resulted in clearer, more enforceable rules. Therefore, SJVUAPCD's Rule 468.1 and SCAQMD's Rule 1104 are being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. Section 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. § 7410(a)(2).

This action has not been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401-7671q.

Dated: September 2, 1992.

John Wise,

Acting Regional Administrator.

[FR Doc. 92-21964 Filed 9-10-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 13

[FO Docket No. 92-206; FCC 394]

Privatization of Examinations for Commercial Radio Operator Licenses and Clarification of Certain Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing to delegate its authority to test applicants for commercial radio

operator licenses to one or more private entities. The rule changes would implement the Amendment to the Communications Act authorizing the Commission to delegate this function. The proposal is seen as necessary because resource constraints prevent the Agency from offering any more than two examination opportunities each year at 25 local offices. With advent of a new class of commercial radio operator license, the Global Maritime Distress and Safety System (GMDSS) license, the number of requests for examinations is expected to increase greatly. Other changes are intended to clarify existing application processing procedures.

DATES: Comments must be submitted on or before October 13, 1992, and reply comments on or before October 26, 1992.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Ana J. Curtis, Field Operations Bureau, (202) 632-7240.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking in FO Docket No. 92-206, adopted August 21, 1992 and released on September 8, 1992. The complete text of this Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Dockets Branch [room 230], 1919 M Street NW., Washington, DC, and also may be purchased from the Commission's Copy Center, at (202) 452-1422, 1990 M Street NW., suite 640, Washington, DC 20036.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-21911 Filed 9-10-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 92-202 RM-8051]

Radio Broadcasting Services; Newberry Springs, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Hills Broadcasting, seeking the allotment of FM Channel 247A to Newberry Springs, California, as that community's first local aural transmission service. Coordinates for this proposal are 34-51-00 and 116-40-42. Mexican concurrence will be requested for this allotment.

DATES: Comments must be filed on or before October 26, 1992, and reply comments on or before November 10, 1992.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Peter Gutmann, Esq., Pepper & Corazzini, 1776 K Street, NW., suite 200, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92-202, adopted August 19, 1992, and released September 3, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1990 M St., NW., suite 640, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-21845 Filed 9-10-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 92-205, RM-8059 DA 92-1150]

Radio Broadcasting Services; Belle Plaine, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Cynthia A. Siragusa seeking the substitution of Channel 238C3 for Channel 238A at Belle Plaine, Iowa, and the modification of her construction permit (BPH-910905MB) to specify the higher class channel. Channel 238C3 can be allotted to Belle Plaine in compliance with the Commission's minimum distance separation requirements with a site restriction of 16.8 kilometers (10.4 miles) south to avoid a short-spacing to Station KQMG-FM, Channel 237A, Independence, Iowa, and to accommodate petitioner's desired site restriction, at coordinates North Latitude 41-45-00 and West Longitude 92-19-00. In accordance with Section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 238C3 at Belle Plaine or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before October 26, 1992, and reply comments on or before November 10, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Denise B. Moline, Esq., Allen, Moline & Harold, 10500 Battleview Parkway, suite 200, P.O. Box 2126, Manassas, Virginia 22110 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92-205, adopted August 20, 1992, and released September 3, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1990 M Street NW., suite 640, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in

Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.1415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-21912 Filed 9-10-92; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 57, No. 177
Friday, September 11, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION MEETING

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation will meet on Friday, September 18, 1992. The meeting will be held in the Ballroom, 106th Floor, at the Windows On The World, One World Trade Center, New York City, New York, beginning at 8:30 a.m.

The Council was established by the National Historic Preservation Act of 1966 (16 U.S.C. 470) to advise the President and the Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The Council's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Housing and Urban Development, Treasury, and Transportation; the Director, Office of Administration; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; and eight non-Federal members appointed by the President.

The agenda for the meeting includes the following:

I. Chairman's Welcome/Opening
II. Implementation of the Theme: Federal Property Management and Historic Preservation in the Local Community
III. Executive Director's Report
IV. Section 106 Cases
V. New Business
VI. Adjourn

Note: The meetings of the Council are open to the public. If you need special accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., room 809, Washington, DC, 202-786-0503, at least seven (7) days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., #809, Washington, DC 20004.

Dated: September 4, 1992.

Robert D. Bush,
Executive Director.

[FR Doc. 92-21876 Filed 9-10-92; 8:45 am]

BILLING CODE 4310-10-M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

September 4, 1992.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 690-2118.

Revision

- Animal and Plant Health Inspection Service, Expedited Review Requested, National Animal Health Monitoring System (NAHMS), NAHMS 18, 19, 20, 21, 22, 23, 24, 25, Monthly, Farms; 10,300 responses; 8280 hours, David Cummings (303) 490-7895.
- Agricultural Research Service, Patent License Application, AD-761, On occasion, Individuals or households; State or local governments; Farms; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small Businesses or organizations; 150 responses; 450 hours, M. Ann Whitehead (301) 504-6786.
- Agricultural Stabilization and Conservation Service, 7 CFR Part 12, 718, 1492, 1404, 720.2, and 1497—Addendum AD-1026, 1026B, 1026C, 1026U/CCC-502, 1068, 1069, 1026A, Supplement; ASCS-578, 492, 211, 211-1; CCC-21, 36, 37, 251, 252, On occasion; Annually, Individuals or households; Farms; Small businesses or organizations; 5,747,538 responses; 2,024,723 hours, Lavonne Maas (202) 720-8128.

Extension

- Agricultural Stabilization and Conservation Service, 7 CFR part 702, Colorado River Basin Salinity Control Program, Regulations, CRSC-1, CRSC-2, CRSC-3, On occasion, Farms; 248 responses; 85 hours, Roberts Harris (202) 720-8774

New Collection

- National Agricultural Statistics Service, Expedited Review Requested, Water Quality/Environmental Survey Program, On occasion, Farms; Businesses or other for-profit; 3,515 responses; 2,956 hours, Larry Gambrell (202)720-5778.
- Food and Nutrition Service, The WIC Dynamics Study, One time only, State or local governments; Non-profit institutions; 804 responses; 768 hours, Denise Thomas (703) 305-2133.
- Rural Electrification Administration, Borrower Investments—Telephone Loan Program, On occasion, Small businesses or organizations; 240 responses; 760 hours, Jon Claffey (202) 720-9539.

Reinstatement

- Soil Conservation Service, Conservation Plan of Operations, SCS-LTP-011, SCS-LTP-11A, SCS-LTP-11B, SCS-LTP-012, Recordkeeping; On occasion; Annually, Individuals or households; Farms; 300,000 responses; 53,750 hours, Bobby E. Rakestraw (202) 720-1866.

Larry K. Roberson,
Deputy Departmental Clearance Officer.

[FR Doc. 92-21972 Filed 9-10-92; 8:45 am]

BILLING CODE 3410-01-M

Animal and Plant Health Inspection Service

[Docket No. 92-145-1]

Availability of an Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit to Field Test Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to allow the field testing of genetically engineered organisms. The environmental assessment provides a basis for our conclusion that the field testing of the genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For copies of the environmental assessment and finding of no significant impact, write to Mr. Clayton Givens at the same address. Please refer to the permit number listed below when ordering documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article may be introduced into the Untied States. The regulations set forth the procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing the permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued a permit for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessment and finding of no significant impact, which are based on data submitted by the applicant and on a review of other relevant literature, provide the public with documentation of APHIS's review and analysis of the environmental impact associated with conducting the field tests.

An environmental assessment and finding of no significant impact have been prepared by APHIS relative to the issuance of a permit to allow the field testing of the following genetically engineered organisms:

Permit number	Permittee	Date issued	Organisms	Field test location
92-164-01	DeKalb Plant Genetics.	08-10-92	Corn plants genetically engineered to express the enzyme 5-enolpyruvyl shikimate-3-phosphate synthase (EPSPS) for tolerance to the herbicide glyphosate.	Hawaii.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 FR 51272-51274, August 31, 1979).

Done in Washington, DC, this 8th day of September 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-21975 Filed 9-10-92; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 92-144-1]

Receipt of Permit Applications for Release into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that two applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: Copies of the applications referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. You may obtain copies of the documents by writing to the person listed under "**FOR FURTHER INFORMATION CONTACT.**"

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which are Plant

Pests or Which There is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application number	Applicant	Date received	Organisms	Field test location
92-230-01	Pioneer Hi-Bred International, Incorporated	8-17-92	Soybean plants genetically engineered to express the coat protein gene from soybean mosaic virus (SMV) for resistance to SMV.	Puerto Rico.
92-232-01	Monsanto Agricultural Company	8-19-92	Soybean plants genetically engineered to express a gene from *Bacillus thuringiensis* subsp. *kurstaki* (Btk) for resistance to lepidopteran insects.	Puerto Rico.

Done in Washington, DC, this 8th day of September 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-21974 Filed 9-10-92; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 92-134-1]

National Animal Damage Control Advisory Committee; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: We are giving notice of a meeting of the National Animal Damage Control Advisory Committee.

PLACE, DATES, AND TIME OF MEETING: The meeting will be held in the Idaho Room of the University Park Holiday Inn, Ft. Collins, Colorado 50526, (303) 482-2626, September 22 through September 24, 1992. Sessions will be held on September 22 from 1 p.m. to 5 p.m.; on September 23 from 8 a.m. to 5 p.m.; and on September 24 from 8 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Wadleigh, Acting Director, Operational Support Staff, ADC, APHIS, USDA, room 821, Federal Building, 6505 Belcrest Road, Hyattsville MD 20782, (301) 436-8281.

SUPPLEMENTARY INFORMATION: The National Animal Damage Control Advisory Committee (Committee) advises the Secretary of Agriculture concerning policies, program issues, and research needed to conduct the Animal Damage Control (ADC) program. The Committee also serves as a public forum enabling those affected by the ADC program to have a voice in the program's policies.

Tentative topics for discussion at the upcoming meeting include, among other things, the expectations of the Committee during its 1992-1994 term, distribution of Federal ADC funds to the States, review of ADC's "futuring" efforts, research prioritization and adequacy of ADC research, and the 1080 Livestock Protection Collar. The Committee will also develop recommendations and prepare comments on the results of the topics presented at the meeting.

The meeting will be open to the public. However, due to time constraints, the public will not be allowed to participate in the Committee's discussions. Written statements concerning meeting topics may be filed with the Committee before or after the meeting by sending them to Mr. Richard Wadleigh at the address listed under "*FOR FURTHER INFORMATION CONTACT*," or may be filed at the meeting. Please refer to Docket No. 92-134-1 when submitting your statements.

This notice is given in compliance with the Federal Advisory Committee Act (Pub. L. No. 92-463).

Done in Washington, DC, this 8th day of September 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-21973 Filed 9-10-92; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Exemption From Appeal, Hot Horse Timber Salvage Project, Boise National Forest, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of exemption from appeal.

SUMMARY: This is notification that timber salvage harvest, insect baiting and trapping, and reforestation activities to recover and rehabilitate natural resources from recent insect epidemics on the Hot Horse project area, Boise and Idaho City Ranger Districts, Boise National Forest, are exempt from appeal in accordance with 36 CFR 217.4(a)(11).

DATES: Effective September 11, 1992.

FOR FURTHER INFORMATION CONTACT: Terry Sexton, Resource Assistant, Idaho City Ranger District, Boise National Forest, P.O. Box 129, Idaho City, Idaho 83631, Telephone: 208-364-4330.

SUPPLEMENTARY INFORMATION: Several years of drought in southwest Idaho have reduced soil moisture and weakened conifer trees. Consequently, Douglas-fir beetle, mountain pine beetle and Douglas-fir tussock moth populations have dramatically increased and reached epidemic levels on the Boise National Forest. It is estimated that more than 400,000 trees larger than 12 inches in diameter have died on the Forest as a result of insect damage since 1986.

As part of the effort to recover and rehabilitate natural resources damaged by the insect epidemic, Boise and Idaho City Ranger District personnel have developed a proposal to harvest dead and dying timber, bait and trap insects, and reforest damaged acres. The Forest Service has completed the Hot Horse Timber Salvage Environmental Assessment (EA), identified issues, developed alternatives, and analyzed the affects of implementing timber salvage and other recovery activities.

The analysis area for the Hot Horse Timber Salvage EA is located 24 miles east of Idaho City, Idaho. The Forest will salvage dead and dying trees scattered throughout the 38,000-acre project area and recover approximately 8 MMBF. The Hot Horse project will harvest only dead and dying trees using helicopter, tractor and jammer logging systems. Cutting areas average less than 5 acres in size and will not exceed 20 acres. Cutover areas greater than 5

acres will be replanted, and smaller areas may be replanted depending on accessibility. Natural regeneration will be used to reforest smaller areas. Forest personnel will also bait and trap insects within the project area to help break up breeding cycles and reduce future insect populations. There is no road construction proposed for the salvage operations.

Management direction for the Hot Horse project area is established in the Boise National Forest Land and Resource Management Plan (Forest Plan). The Forest Plan provides for the removal of salvage timber from lands within the project areas. In addition, the Forest Plan prescribes standards to protect soil, water, wildlife, visual, and other onsite resources. The proposed action fro the Hot Horse project is consistent with standards and guidelines, objectives, and direction contained in the Forest Plan.

Forest Pest Management Specialists and District Foresters have analyzed the insect situation and have found no economical or practical means to control the insect epidemic. Although salvage harvesting, baiting/trapping and reforestation will not control the epidemic, these activities will: (1) Recover valuable timber that would otherwise deteriorate, (2) help break up insect breeding cycles, and (3) reforest those areas that have been left without tree cover as a result of the insect-caused mortality. It is extremely important to remove the dead and dying timber prior to deterioration and subsequent value losses. Through the timber salvage operations, breeding insects (principally bark beetles) can be removed in the logs and Knutson-Vandenburg (K-V) funds can be generated for use to restore forest resources that have been damaged by the insect epidemic.

The Forest Supervisor has determined through preliminary scoping and environmental analysis that there is justification to expedite this project.

The decision for the Hot Horse project will be implemented after publication of this notice in the **Federal Register**. If the project is delayed because of an appeal (delays of up to 150 days are possible), it is likely the salvage harvest could not be implemented during the 1992 normal operating season. This would result in a loss of volume and value of the timber due to deterioration. The total estimated value of the merchantable dead and dying timber is $700,000. Of this, approximately $175,000 would be returned to counties from 25 percent fund receipts. Delays resulting from appeals could cause the loss of up to one-fourth of this value and potentially make the salvage sale unattractive to timber purchasers. This would jeopardize the objectives of the recovery and rehabilitation project.

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt the Hot Horse Salvage and Recovery Project, Boise and Idaho City Ranger Districts, Boise National Forest, from appeal. The EA discloses the affects of the proposed actions on the environment and addresses issues resulting from the proposal.

Dated: September 4, 1992.

Robert C. Joslin,

Deputy Regional Forester, Intermountain Region, USDA Forest Service.

[FR Doc. 92-21916 Filed 9-10-92; 8:45 am]

BILLING CODE 3410-11-M

OSO/Canoncito Timber Sale; Santa Fe National Forest; Santa Fe County, NM

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service, USDA, will prepare an environmental impact statement (EIS) to disclose effects of alternative plans for harvesting timber, and/or prescribed burning and tree planting, road construction, reconstruction and obliteration.

DATES: Written comments concerning the scope of the analysis, the issues, or the alternatives should be received on or before October 30, 1992.

ADDRESSES: Send written comments to Lori D. Osterstock, District Ranger, P.O. Drawer R. Espanola, NM 87532.

FOR FURTHER INFORMATION CONTACT: John Bruin, Project Coordinator, Espanola Ranger District. (505) 753-7331.

RESPONSIBLE OFFICIAL: Alan S. Defler, Forest Supervisor, Santa Fe National Forest.

SUPPLEMENTARY INFORMATION: The proposed project will be in compliance with the Forest Plan which provides the overall guidance for management of the area. The site-specific environmental analysis provided by the EIS will assist the Forest Supervisor in determining which land management activities should be implemented. Alternative development plans will be carefully examined for their potential impacts on the physical, biological, and social environments so their tradeoffs are apparent to the public and the Forest Supervisor.

Public participation will be fully incorporated into preparation of the EIS. The first step is the scoping process during which the Forest Service seeks information, comments, and assistance from Federal, State, and local agencies, and other individuals or groups who may be interested or affected by the proposed action. This information will be used in preparing a Draft EIS. Scoping includes: inviting participation, determining the project's scope and potential issues, and eliminating from detailed study those issues which are not significant. The public is also invited to participate in developing alternatives, and identifying and reviewing the potential environmental effects of the proposed action and its alternatives.

The Forest Service predicts the Draft EIS will be filed in the spring of 1993 and the Final EIS in the summer of 1993. The comment period on the Draft EIS will be 60 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of Draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and conteptions. *Vermont Yankeee Nuclear Power Corp* v. *NRDC, 435 U.S., 519, 553 (1978).* Also, environmental objections that could be raised at the Draft EIS stage but that are not raised until after completion of the Final EIS may be waived or dismissed by the courts, *City of Angoon* v. *Hodel, 803 F.2d 1016m 1022 (9th Cir, 1986,* and *Wisconsin Heritages, Inc.* v. *Harris, 490 F. Supp. 1334, 1338 (E.D. Wis 1980).*

Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 60 day comment period on the Draft EIS so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the Final EIS.

To assist the Forest Service in identifying and considering issues on the proposed action, comments on the Draft EIS should be as specific as possible. It is also helpful if comments after to specific pages or chapters of the Draft EIS. Comments may also address the adequacy of the Draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

Dated: September 2, 1992.

Alan S. Defler/Jose Martinez,

Deputy Forest Supervisor.

[FR Doc. 92-21836 Filed 9-10-92; 8:45 am]

BILLING CODE 3410-11-M

National Urban and Community Forestry Advisory Council; Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The National Urban and Community Forestry Advisory Council will meet in Kennett Square, Pennsylvania, September 25 and 26, 1992, 8:30 a.m. to 4:30 p.m. The Council is comprised of 15 members appointed by the Secretary of Agriculture. The purpose of the meeting is for the Committee to begin development of the National Urban and Community Forestry Action Plan and develop criteria for the urban and community forestry challenge cost-share program. William Kruidenier of the International Society of Arboriculture will Chair this meeting which is open to the public. However, participation is limited to Forest Service personnel and Committee members. Persons who wish to bring urban and community forestry matters to the attention of the Committee may file written statements with the Committee before or after the meeting.

DATES: The meeting will be held September 25 and September 26, 1992.

ADDRESSES: The meeting will be held at Longwood Gardens Incorporated, P.O. Box 501, Kennett Square, Pennsylvania 19348-0501, September 25 and 26, 1992.

Send written statements to Brian McGuire, National Urban and Community Forestry Advisory Council, c/o Forest Service—Cooperative Forestry, USDA, P.O. Box 96090, Washington, DC 20090-6090, or phone (202) 205-1689.

FOR FURTHER INFORMATION CONTACT: Brian McGuire, Cooperative Forestry Staff, (202) 205-1689.

Dated: September 3, 1992.

Allan J. West,

Deputy Chief, State and Private Forestry.

[FR Doc. 92-21844 Filed 9-10-92; 8:45 am]

BILLING CODE 3410-11-M

Rocky Mountain Region; Fee Schedule For Communications Uses

AGENCY: Forest Service, USDA.

ACTION: Notice of availability.

SUMMARY: The Rocky Mountain Regional Forester had modified the fee schedule for communications uses authorized on National Forest System lands located in the States of Colorado, Wyoming, Nebraska, Kansas, and South Dakota.

ADDRESSES: Copies of the schedule may be obtained by writing to the Regional Forester, Rocky Mountain Region, 11177 West 8th Avenue, P.O. Box 25127, Lakewood, CO 80225-0127.

FOR FURTHER INFORMATION CONTACT: Questions about this policy should be addressed to Ben Wallingford, Lands Staff, Forest Service, Rocky Mountain Region, 11177 West 8th Ave., Box 25127, Lakewood, CO 80225-0127, (303) 236-9511.

SUPPLEMENTARY INFORMATION: On August 23, 1989, the Regional Forester for the Rocky Mountain Region published a notice of adoption of fee schedule for communication uses (54 FR No. 162, pages 35027 to 35030). Congress delayed implementation of the fee schedule and directed the Forest Service to review and report to the Appropriation Committee on the ability of the fee schedule to reflect values associated with local market conditions. The report was completed and sent to the Appropriations Committee in March of 1991. The fee schedule modifications are based on the findings of the report to Congress and additional administrative review. Most of the modifications either reduce the fees adopted in 1989, or require appraisals or other sound business management principles be used to establish fees. The modified fee schedule reflects the fair market value of the authorized use as required by the Federal Land Policy and Management Act.

Dated: September 3, 1992.

Tom L. Thompson,

Deputy Regional Forester.

[FR Doc. 92-21919 Filed 9-10-92; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

BACKGROUND: Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with § 353.22 or 355.22 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

OPPORTUNITY TO REQUEST A REVIEW: Not later than September 30, 1992, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in September for the following periods:

Antidumping duty proceedings	Period
Argentina: Silicon Metal (A-357-804).	03/29/91-08/31/92
Canada: Replacement Parts for Self-Propelled Bituminous Paving Equipment (A-122-057).	09/01/91-08/31/92
Canada: Steel Jacks (A-122-506)	09/01/91-08/31/92
Canada: Steel Rail (A-122-804)	09/01/91-08/31/92
Hong Kong: Sweaters of Man-Made Fibers (A-582-802)	09/01/91-08/31/92
Italy: Pads for Woodwind Instruments Keys (A-475-017)	09/01/91-08/31/92
Japan: Active Matrix LCD FPDs (A-588-817)	02/21/91-08/31/92
Japan: Electroluminoscent FPDs (A-588-817)	02/21/91-08/31/92
Japan: Filament Fabric (A-588-607)	09/01/91-08/31/92
Korea: Sweaters of Man-Made Fibers (A-580-806)	09/01/91-08/31/92
Taiwan: Chrome-Plated Lug Nuts (A-583-810)	04/18/91-08/31/92
Taiwan: Sweaters of Man-made Fibers (A-583-808)	09/01/91-08/31/92
The Federal Republic of Germany: Certain Forged Steel Crankshafts (A-428-604)	09/01/91-08/31/92
The People's Republic of China: Chrome-Plated Lug Nuts (A-570-808)	04/18/91-08/31/92
The People's Republic of China: Greige Polyester/Cotton Printcloth (A-570-504)	09/01/91-08/31/92
The United Kingdom: Certain Forged Steel Crankshafts (A-412-602)	09/01/91-08/31/92
Countervailing Duty Proceedings	
Argentina: Certain Welded-Carbon Steel Pipe and Tube Products (C-357-801)	01/01/01-12/31/91
Canada: New Steel Rail, Except Light Rail (C-122-805)	01/01/91-12/31/91
Israel: Fresh Cut Roses (C-508-064)	10/01/90-09/30/91
New Zealand: Lamb Meat (C-614-503)	04/01/91-03/31/92

Antidumping duty proceedings	Period
New Zealand: Steel Wire (C-614-601)	07/01/91-06/30/92
Thailand: Steel Wire Rope (C-549-806)	09/11/91-12/31/91

In accordance with §§ 353.22(a) and 355.22(a) of the Commerce regulations, an interested party may request in writing that the Secretary conduct an administrative review of specified individual producers or resellers covered by an order, if the requesting person states why the person desires the Secretary to review those particular producers or resellers. If the interested party intends for the Secretary to review sales of merchandise by a reseller (or a producer if that producer also resells merchandise from other suppliers) which was produced in more than one country of origin, and each country of origin is subject to a separate order, then the interested party must state specifically which reseller(s) and which countries of origin for each reseller the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230. Further, in accordance with § 353.31 or 355.31 of the Commerce Regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the Federal Register a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review", for requests received by September 30, 1992.

If the Department does not receive, by September 30, 1992, a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: September 3, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92-21877 Filed 9-10-92; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

[Docket No. 920925-2225]

Waiver of Cost-Share Requirements for Minority Business Development Centers Whose Clients Are Located in Hurricane Andrew Disaster Areas and, in the Future, Other Areas Determined by the President to be Major Disaster Areas

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) will waive cost-share requirements for Minority Business Development Centers (MBDCs) which service clients located in areas declared to be major disaster areas by the President as a result of Hurricane Andrew. In addition, in the future, MBDA will make a determination on a case-by-case basis regarding the waiver of cost-share requirements for clients located in other areas declared to be major disaster areas by the President.

EFFECTIVE DATE: September 4, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Bharat Bhargava, Associate Director For Operations, Minority Business Development Agency, U.S. Department of Commerce, Washington, DC 20230 (202) 377-8015.

SUPPLEMENTARY INFORMATION: Under Executive Order 11625, the MBDA provides business development assistance to persons who are members of groups determined by MBDA to be socially or economically disadvantaged, and to business concerns owned or controlled by such individuals. To deliver this assistance, MBDA funds MBDCs which offer a full range of management and technical assistance services, coordinate public and private resources on behalf of clients, and serve as a conduit for information concerning business development.

The funding instrument for the MBDCs is a cooperative agreement, which requires the MBDCs to contribute at least 15 percent of the total project cost. Contributions which may be utilized in satisfying the cost-share requirement include client fees, in-kind contributions and cash contributions.

Client fees consist of fees assessed by the MBDCs for management and technical assistance services rendered. These fees are set at a percentage of the total cost of the services rendered. Based on a standard hourly rate of $50.00, MBDCs charge client fees at 20 percent of the total cost for entities with gross sales of $500,000 or less and 35 percent of the cost for firms with gross sales of over $500,000.

The Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) defines a major disaster as any natural catastrophe (including any hurricane, tornado, storm, high water, winddriven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby. 42 U.S.C. 5122.

Two recent catastrophes, Hurricane Andrew and the civil disturbances in the Los Angeles area in May 1992, have been declared by the President as major disasters. Minority businesses in the areas of these disasters have an urgent need for management and technical assistance in packaging disaster/emergency loan applications, revising business plans, and other matters. Further, because of the disruption to their normal business operations caused by these disasters, many of these MBDC clients will be incapable of paying fees for services assessed by the MBDCS.

MBDA waived fee cost-share requirements for MBDCs assisting clients affected by the civil disturbances in Los Angeles (57 FR 20468). Based on this experience, MBDA has determined that the efficient provision of assistance to minority businesses located in the Hurricane Andrew disaster area will also be greatly facilitated by the waiver of fees normally assessed for management and technical assistance services. Accordingly, MBDA will instruct MBDCs assisting clients located in areas determined by the President to be major disaster areas as a result of Hurricane Andrew to waive the fees they normally would charge.

In the future, it may also be appropriate, in some instances, to waive fees for clients located in other areas determined by the President to be major disaster areas. Accordingly, MBDA will make a determination regarding the waiver of fees on a case-by-case basis.

Under current MBDA policy, the 15 percent minimum cost-share would remain applicable even if a substantial portion of it would have come from fees now waived. In light of the reduction in revenues resulting from the fee waivers and as a matter of equity to the MBDCs, where client fees are waived, MBDA is

revising its policy and will waive the 15 percent cost-share requirement as applicable to the portion of funds expended in assisting clients located in major disaster areas.

Executive Order 12291

MBDA has determined that this notice of policy revision is not a major rule within the meaning of section 1(b) of Executive Order 12291.

Administrative Procedure Act

Since this notice of policy revision is a matter relating to public property, loans, grants, benefits, or contracts, under section 553(a)(2) of the Administrative Procedure Act (5 U.S.C. 553(a)(2)) the requirements of section 553 do not apply.

Regulatory Flexibility Act

The Regulatory Flexibility act does not apply to this notice of policy revision because the notice was not required to be promulgated as a proposed rule before issuance in final form by section 553 of the Administrative Procedure Act or by any other law. As a result, neither an initial nor final Regulatory Flexibility Analysis was prepared.

Paperwork Reduction Act

This policy statement does not contain an information collection requirement for purposes of the Paperwork Reduction Act.

Executive Order 12612

This policy statement does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Authority: 15 U.S.C. 1512; Executive Order 11625 [36 FR 19967 (1971); Executive Order 12432 [48 FR 32551) (1983).

Policy Statement

Many minority businesses located in areas determined by the President to be major disaster areas under the Disaster Relief and Emergency Assistance Act as a result of Hurricane Andrew have an urgent need for management and technical assistance in packaging disaster/emergency loan applications, revising business plans, and other matters.

Because of the disruption to their normal business operations caused by the hurricane, many of these clients of Minority Business Development Centers (MBDCs) will be incapable of paying fees assessed by these MBDCs.

MBDA has determined that the efficient provision of assistance to businesses located in the Hurricane Andrew disaster area will be greatly facilitated by the waiver of fees normally assessed by MBDCs for management and technical assistance services. Accordingly, MBDA will instruct MBDCs assisting clients located in areas declared by the President to be major disaster areas as a result of Hurricane Andrew to waive the fee they normally would charge.

In the future, it may also be appropriate, in some instances, to waive fees for clients located in other areas declared by the President to be major disaster areas. MBDA will make a determination regarding waiver of fees on a case-by-case-basis.

In light of the reduction in revenues resulting from the fee waivers and as a matter of equity to the MBDCs, where client fees are waived, MBDA will waive the 15 percent cost-share requirement as applicable to the portion of funds expended in assisting clients located in areas determined by the President to be major disaster areas.

The waivers described above will remain in effect for one year after implementation. MBDA will review the situation after the expiration of the one-year period to determine whether continued waivers are warranted.

Dated: September 4, 1992.

William H. Bailey,

Acting Director, Minority Business Development Agency.

[FR Doc. 92-21900 Filed 9-8-92; 8:45 am]

BILLING CODE 3510-21-M

National Institute of Standards and Technology

[Docket No. 920801-2201]

RIN 0693-AB09

Proposed Reaffirmation of Federal Information Processing Standard (FIPS) 46-1, Data Encryption Standard (DES)

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; request for comments.

SUMMARY: Federal Information Processing Standard 46, Data Encryption Standard, issued in 1977, provides an algorithm to be implemented in electronic hardware devices and used for the cryptographic protection of computer data. The standard provided that it be reviewed within five (5) years to assess its adequacy. The first review was completed in 1983, and the standard was reaffirmed for Federal government use (48 FR 41062 dated September 13, 1983). The second review was completed in 1987, and the standard was reaffirmed for Federal government use (52 FR 7006).

The purpose of this notice is to announce the review to assess the continued adequacy of the standard to protect computer data. Comments from industry and the public are invited on the following alternatives for FIPS 46-1. The costs (impacts) and benefits of these alternatives should be included in the comments:

—Reaffirm the standard for another five (5) years. The National Institute of Standards and Technology would continue to validate equipment that implements the standard. FIPS 46-1 would continue to be the only approved method for protecting unclassified computer data.

—Withdraw the standard. The National Institute of Standards and Technology would no longer continue to support the standard. Organizations could continue to utilize existing equipment that implements the standard. Other standards could be issued by NIST as a replacement for the DES.

—Revise the applicability and/or implementation statements of the standard. Such revisions could include changing the standard to allow the use of implementations of the DES in software as well as hardware; to allow the iterative use of the DES in specific applications; to allow the use of alternative algorithms that are approved and registered by NIST.

Interested parties may obtain a copy of FIPS 46-1 from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, telephone (703) 487-4650.

DATES: Comments on this review of FIPS 46-1 must be received on or before December 10, 1992.

ADDRESSES: Written comments concerning this standard should be sent to: Director, Computer Systems Laboratory, ATTN: Review of FIPS 46-1, Technology Building, room B-154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. Miles Smid (301-975-2938) or Donna F. Dodson (301-975-2921), National Institute of Standards and Technology, Gaithersburg, MD 20899.

Dated: September 4, 1992.

John W Lyons,

Director.

[FR Doc. 92-21998 Filed 9-10-92; 8:45 am]

BILLING CODE 3510-CH-M

National Oceanic Atmospheric Administration

Coastal Zone Management: Federal Consistency Appeal by Mobil Exploration & Producing U.S. Inc. From an Objection by the State of Florida

AGENCY: National Oceanic and Atmospheric Administration.

ACTION: Notice of appeal and request for comments.

On April 29, 1992, Mobil Exploration & Producing U.S. Inc. (Appellant), through counsel, filed with the Secretary of Commerce (Secretary) a notice of appeal pursuant to section 307(c)(3)(B) of the Coastal Zone Management Act (CZMA), as amended, 16 U.S.C. 1451 *et seq.*, and the Department of Commerce's implementing regulations, 15 CFR part 930, Subpart H. The appeal is taken from an objection by the State of Florida (State) to the Appellant's consistency certification for a Supplemental Plan of Exploration to conduct oil and gas drilling activities on the Outer Continental Shelf at Pensacola Area Blocks 845, 846, 889, 890, 933 and 934, (Leases OCS-G 10401, 10402, 10406, 10407, 10411, and 10412), located between 10 and 20 miles offshore Pensacola, Florida.

The CZMA provides that a timely objection by a state to a consistency certification precludes any Federal agency from issuing licenses or permits for the activity unless the Secretary of Commerce finds that the activity is either "consistent with the objectives" of the CZMA (Ground I) or "necessary in the interest of national security" (Ground II). Section 307(c)(3)(B). To make such a determination, the Secretary must find that the proposed project satisifies the requirements of 15 CFR 930.121 or § 930.122.

The Appellant requests that the Secretary override the State's consistency objections based on Ground I and Ground II. To make the determination that the proposed activity is "consistent with the objectives" of the CZMA, the Secretary must find that: (1) The proposed activity furthers one or more of the national objectives or purposes contained in sections 302 or 303 of the CZMA, (2) the adverse effects of the proposed activity do not outweigh its contribution to the national interest, (3) the proposed activity will not violate the Clean Air Act or the Federal Water Pollution Control Act, and (4) no reasonable alternative is available that would permit the activity to be conducted in a manner consistent with the State's coastal management program. 15 CFR 930.121. To make the determination that the proposed activity is "necessary in the interest of national security," the Secretary must find that a national defense or other national security interest would be significantly impaired if the proposed activity is not permitted to go forward as proposed. 15 CFR 930.122.

Public comments are invited on the findings that the Secretary must make as set forth in the regulations at 15 CFR 930.121 and 930.122. Comments are due within 30 days of the publication of this notice and should be sent to Mary O'Donnell, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue NW., suite 603, Washington DC 20235. Copies of comments will also be forwarded to the Appellant and the State.

All nonconfidential documents submitted in this appeal are available for public inspection during business hours at the offices of the Florida Department of Environmental Regulation and the Office of the Assistant General Counsel for Ocean Services, NOAA.

FOR ADDITIONAL INFORMATION CONTACT: Mary O'Donnell, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue NW., suite 603, Washington, DC 20235, (202) 606-4200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Dated: September 4, 1992.

Thomas A. Campbell,

General Counsel.

[FR Doc. 92-21931 Filed 9-10-92; 8:45 am]

BILLING CODE 3510-08-M

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council (Council) and its Committees (Committee) will hold public meetings on September 16-17, 1992, at the Nonantum Resort, Ocean Avenue, Kennebunkport, MA, telephone: 207-967-4050. The meeting will begin at 10 a.m. on September 16, and reconvene at 9 a.m. on September 17.

The Council meeting will begin on September 16 with introductions and announcements, followed by a Lobster Oversight Committee report. The Committee report will concern the most recent stock assessment relative to the Council's definition of overfishing for American lobster and a review of the impacts of a five-inch maximum carapace length. The Herring Committee will report on a joint meeting with the Atlantic States Marine Fisheries Commission (ASMFC) Herring Board. A joint New England Council/ASMFC Herring Plan is currently under development. Areas for discussion will include the initial draft of the management program, plan objectives and a definition of overfishing. The Atlantic Sea Scallop Committee will update the Council on its efforts to finalize Amendment #4 to the Sea Scallop Fishery Management Plan (FMP).

After a break for lunch the Council will hear brief reports from the Council Chairman, Council Executive Director, National Marine Fisheries Service (NMFS) Regional Director, Northeast Fisheries Center liaison, Mid-Atlantic Fishery Management Council liaison, and representatives from the Department of State, Coast Guard, Fish and Wildlife Service, and ASMFC. The Interspecies Committee will report before the meeting adjourns on September 16. The discussion will focus on moratoria, whether a single overall moratorium or individual moratoria for each fishery should be considered and other criteria that might be considered.

On September 17, the Council meeting will begin at 9 a.m. with a presentation from Mr. Richard Stone of NMFS on the agency's plans to develop FMPs for highly migratory species under the Atlantic Tunas Convention and Magnuson Fishery Conservation and Management Acts.

Following that presentation, the joint New England/Mid-Atlantic Fishery Management Council Monkfish Committee will review the direction discussed by the committee to resolve gear conflicts between fishermen in waters greater than 100 fathoms. They also will discuss the development of conversation measures to be included in a Monkfish FMP or in a future amendment to other existing FMPs.

Before closing the meeting after a discussion of other business, the Groundfish Committee will report to the Council. It will outline progress to date

on draft measures under consideration for inclusion in Amendment #5 to the Northeast Multispecies Fishery Management Plan. The full Council will have an opportunity to review and comment on the measures at the meeting.

For more information contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906; telephone: (617) 231-0422.

Dated: September 4, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-21874 Filed 9-10-92; 8:45 am]

BILLING CODE 3510-22-M

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council (Council) will hold its 78th meeting on September 22-23, 1992, at the Ala Moana Hotel, 410 Atkinson Drive, Honolulu, HI. The meeting will begin at 8 a.m. on both days. The Council's Standing Committees will also meet on September 21 at the same location as the Council.

The Council agenda is as follows: Hear reports from islanders and government fisheries representatives from American Samoa, Guam, Hawaii, and the Northern Mariana Islands; discuss the status of fishery management plans for crustaceans, bottomfish/seamount groundfish, precious corals and pelagic species; and hear reports from Council Standing Committees (i.e., Fishery Rights of Indigenous People, Enforcement, Executive, Budget and Program, Crustaceans, Bottomfish/Seamount Groundfish, Precious Corals and Pelagics).

The Council will also discuss and take action, as appropriate, on the following:

Crustaceans: (1) Status of Northwestern Hawaiian Islands (NWHI) lobster fishery and the 1992 final quota; (2) monitoring and closing the fishery; and (3) consistency between Federal and State of Hawaii lobster regulations.

Bottomfish: (1) Status of pending actions; (2) report and recommendations of the Bottomfish Advisory Panel/Bottomfish Advisory Review Board joint meeting; (3) limited entry for Northwestern Hawaiian Islands Mau Zone (NWHIMZ); and (4) NWHI limited entry permit transferability.

Precious Corals: The need to maintain a Fishery Management Plan.

Pelagics: (1) Status of fisheries; (2) status of pending actions; (3) receive Advisory Panel report and recommendations; (4) future of Hawaii longline moratorium; (5) longline limited entry permit transferability; and (6) the need for new Endangered Species Act consultation for longline/turtles.

Other: (1) Global Surface Velocity programme; (2) data collection initiatives; (3) Guam fishery issues and program plan; (4) Billfish and tuna research and management; (5) fishery rights of indigenous people; (6) administrative matters; and (7) other business.

The Council will take comments from the public during its meeting. The public may also comment in writing to the address listed below.

FOR MORE INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1405, Honolulu, HI 96813; telephone: (808) 523-1368; fax: (808) 526-0824.

Dated: September 4, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-21875 Filed 9-10-92; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Denial of Scientific Research Permit (P462D).

On May 26, 1992, notice was published in the **Federal Register** (57 FR 21966) that an application had been filed by Ervin and Sonja Strong, Researchers and Owners, The Dolphin Connection, 315 Bridgeport Ave., Suite 4, Corpus Christi, TX 78402, to conduct scientific research activities on up to fifty (50) Atlantic bottlenose dolphins (*Tursiops truncatus*) in the Corpus Christi, TX, area over a five-year period. The activities would include: Accumulation of data to determine whether conditioning free-ranging dolphins to approach boats, to be fed by paying passengers aboard their commercial tour boats, constitutes a threat to the well-being of the dolphins involved.

Notice is hereby given that on September 2, 1992, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service denied the above request because the research, as proposed in the application, does not further a *bona fide* scientific purpose; will likely result in substantial disruption of normal behavior and feeding activities; and, is not consistent with the purposes and policies of the Marine Mammal Protection Act.

Documentation on this application and NMFS decision are available for review, by appointment, in the Permit Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., room 7324, Silver Spring, MD 20910 (301/713-2289); and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, FL 33702 (813/893-3141).

Dated: September 2, 1992.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92-21929 Filed 9-10-92; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Modification No. 2 to permit No. 588.

Notice is hereby given that pursuant to the provisions of §§ 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), Public Display Permit No 588 (P13S), issued to Mystic Marinelife Aquarium, 55 Coogan Boulevard, Mystic, Connecticut 06355 on May 11, 1987 (52 FR 19374), as modified on November 9, 1990 (55 FR 48153), is further modified as follows:

Section B.6, first sentence is changed to read:

"6. The authority to acquire the marine mammals authorized herein shall extend from the date of issuance through December 31, 1993."

This modification becomes effective upon publication in the **Federal Register**.

Documents submitted in connection with the above modification are available for review by appointment in the following offices:

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East West Highway, room 7324, Silver Spring, Maryland 20910 (301/713-2289);

Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, Massachusetts 01930 (508/281-9200); and

Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Boulevard, St. Petersburg, Florida 33702 (813/893-3141).

Dated: September 2, 1992.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92-21930 Filed 9-10-92; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List; Addition

AGENCY: Committee for Purchase From the Blind and Other Severely Handicapped.

ACTION: Addition to procurement list.

SUMMARY: This action adds to the procurement list a self-adjusting arming adapter to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: October 13, 1992.

ADDRESS: Committee for Purchase From the Blind and Other Severely Handicapped, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverely Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On June 5, 1992, the Committee for Purchase From the Blind and Other Severely Handicapped published a notice (57 FR 24026) of the proposed addition of this adapter to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodity, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

I certify that the following action will not have a significant impact on a substantial number of small of entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity.

3. The action will result in authorizing small entities to furnish the commodity to the Government.

4. There are no know regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C.46-48c) in connection with the commodity proposed for addition to the Procurement List.

Accordingly, the following commodity is hereby added to the Procurement List: Arming Adapter, Self-Adjusting, 1325-01-159-8083.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverely L. Milkman,

Executive Director.

[FR Doc. 92-21979 Filed 9-10-92; 8:45 am]

BILLING CODE 6820-33-M

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: October 13, 1992.

ADDRESSES: Committee for Purchase From the Blind and Other Severely Handicapped, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity and service.

3. The action will result in authorizing small entities to furnish the commodity and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodity and service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodity and service to the Procurement List:

Commodity

Can, water, plastic, 7240-00-089-3827.

Nonprofit Agency: Royal Maid Association for the Blind, Inc. Hazlehurst, Mississippi.

Service

Janitorial/Custodial, Agricultural Research Service, Southern Plains Range Research Station, 2000 18th Street, Woodward, Oklahoma.

Nonprofit Agency: Oklahoma's Action Rehabilitation Centers, Inc., Woodward, Oklahoma.

Beverly L. Milkman,

Executive Director.

[FR Doc. 92-21980 Filed 9-10-92; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Defense FAR Supplement (DFARS), Appendix F, Material Inspection and Receiving Report; DD Forms 250, 250C, and 250-1; OMB Control Number 0704-0248.

Type of Request: Expedited Submission-Approval Date Requested: October 31, 1992.

Average Burden Hours/Minutes per Response: 8 minutes.

Responses per Respondent: 1.

Number of Respondents: 7,800,000.

Annual Responses: 7,800,000.

Annual Burden Hours: 988,000.

Needs and Uses: This information collection requirement concerns information related to material inspection, acceptance, and contractor invoicing matters.

Affected Public: Businesses or other for-profit, Non-profit institutions, and Small businesses or organizations.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Peter N. Weiss. Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302.

Dated: September 4, 1992.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

BILLING CODE 3810-01-M

MATERIAL INSPECTION AND RECEIVING REPORT

Form Approved
OMB No. 0704-0248

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0248), Washington, DC 20503.
PLEASE DO NOT RETURN YOUR COMPLETED FORM TO EITHER OF THESE ADDRESSES.

DRAFT

1. PROC. INSTRUMENT IDEN. (CONTRACT)	(ORDER) NO.	6. INVOICE NO./DATE	7. PAGE	OF	8. ACCEPTANCE POINT

2. SHIPMENT NO.	3. DATE SHIPPED	4. B/L TCN	5. DISCOUNT TERMS

9. PRIME CONTRACTOR CODE	10. ADMINISTERED BY CODE

11. SHIPPED FROM (If other than 9) CODE FOB	12. PAYMENT WILL BE MADE BY CODE

13. SHIPPED TO CODE	14. MARKED FOR CODE

15. ITEM NO.	16. STOCK/PART NO. DESCRIPTION (Indicate number of shipping containers - type of container - container number)	17. QUANTITY SHIP/REC'D *	18. UNIT	19. UNIT PRICE	20. AMOUNT

21. CONTRACT QUALITY ASSURANCE

A. ORIGIN
☐ CQA ☐ ACCEPTANCE of listed items has been made by me or under my supervision and they conform to contract, except as noted herein or on supporting documents.

DATE | SIGNATURE OF AUTH GOVT REP
TYPED NAME AND OFFICE

B. DESTINATION
☐ CQA ☐ ACCEPTANCE of listed items has been made by me or under my supervision and they conform to contract, except as noted herein or on supporting documents.

DATE | SIGNATURE OF AUTH GOVT REP
TYPED NAME AND TITLE

22. RECEIVER'S USE
Quantities shown in column 17 were received in apparent good condition except as noted.

DATE RECEIVED | SIGNATURE OF AUTH GOVT REP
TYPED NAME AND OFFICE

** If quantity received by the Government is the same as quantity shipped, indicate by (✓) mark, if different, enter actual quantity received below quantity shipped and encircle.*

23. CONTRACTOR USE ONLY

DRAFT

DD Form 250, 920902 Draft *Previous edition may be used.*

MATERIAL INSPECTION AND RECEIVING REPORT - *CONTINUATION SHEET*

PAGE	OF	Form Approved OMB No. 0704-0248

Public reporting burden for this collection of information is estimated to average 35 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0248), Washington, DC 20503.

SHIPMENT NO.	DATE SHIPPED	PROC INSTRUMENT IDEN. (CONTRACT)	(ORDER) NO.	INVOICE NO.

ITEM NO.	STOCK/PART NO. DESCRIPTION (*Indicate number of shipping containers - type of container - container number.*)	QUANTITY SHIP/REC'D	UNIT	UNIT PRICE	AMOUNT

DRAFT

DD Form 250C, 920902 Draft *Previous edition may be used.* 144/004

TANKER/BARGE MATERIAL INSPECTION AND RECEIVING REPORT

Form Approved
OMB No. 0704-0246

Public reporting burden for this collection of information is estimated to average 35 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0246), Washington, DC 20503.

1. TANKER/BARGE
☐ LOADING REPORT ☐ DISCHARGE REPORT
2. INSPECTION OFFICE
3. REPORT NUMBER
4. AGENCY PLACING ORDER OR SHIPPER, CITY, STATE AND/OR LOCAL ADDRESS (Loading)
5. DEPARTMENT
6. PRIME CONTRACT OR P.O. NUMBER
7. NAME OF PRIME CONTRACTOR, CITY, STATE AND/OR LOCAL ADDRESS (Loading)
8. STORAGE CONTRACT
9. TERMINAL OR REFINERY SHIPPED FROM, CITY, STATE AND/OR LOCAL ADDRESS (Loading)
10. ORDER NUMBER ON SUPPLIER
11. SHIPPED TO (Receiving Activity, City, State and/or Local Address)
12. B/L NUMBER
13. REQN. OR REQUEST NO.
14. CARGO NUMBER
15. VESSEL
16. DRAFT ARRIVAL FORE AFT
17. DRAFT SAILING FORE AFT
18. PREVIOUS TWO CARGOES FIRST LAST
19. PRIOR INSPECTION
20. CONDITION OF SHORE PIPELINE
21. APPROPRIATION (Loading)
22. CONTRACT ITEM NO.
23. PRODUCT
24. SPECIFICATIONS

25. STATEMENT OF QUANTITY	LOADED	DISCHARGED	LOSS/GAIN	PER CENT
BARRELS (42 Gals) (Net)				
GALLONS (Net)				
TONS (Long)				

26. STATEMENT OF QUALITY

TESTS	SPECIFICATION LIMITS	TEST RESULTS

27. TIME STATEMENT	DATE	TIME
NOTICE OF READINESS TO LOAD DISCHARGE		
VESSEL ARRIVED IN ROADS		
MOORED ALONGSIDE		
STARTED BALLAST DISCHARGE		
FINISHED BALLAST DISCHARGE		
INSPECTED AND READY TO LOAD DISCHARGE		
CARGO HOSES CONNECTED		
COMMENCED LOADING DISCHARGE		
STOPPED LOADING DISCHARGING		
RESUMED LOADING DISCHARGING		
FINISHED LOADING DISCHARGING		
CARGO HOSES REMOVED		
VESSEL RELEASED BY INSPECTOR		
COMMENCED BUNKERING		
FINISHED BUNKERING		
VESSEL LEFT BERTH (Actual/Estimated)		

28. REMARKS (Note in detail cause of delays such as repairs, breakdown, slow operation, stoppages, etc.)

29. COMPANY OR RECEIVING TERMINAL

(Signature)

30. I CERTIFY THAT THE CARGO WAS INSPECTED, ACCEPTED AND LOADED/DISCHARGED AS INDICATED HEREON.

(Date) (Signature of Authorized Government Representative)

31. I HEREBY CERTIFY THAT THIS TIME STATEMENT IS CORRECT.

(Master or Agent)

346/604

DD Form 250-1, 920902 Draft Previous edition may be used

[FR Doc. 92-21970 Filed 9-10-92; 8:45 am]

BILLING CODE 3810-01-C

Department of the Army

Army Science Board; Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of the Meetings: 28–29 September 1992.

Time: 0800–1700 Hours.

Place: Ames Research Facility Sunnyvale, CA. Palo Alto Research Facility, Palo Alto Hoover Institute, Palo Alto, CA

Agenda: The Army science Board Ad hoc subgroup on "Evaluating and Selecting Proposals" will meet with representatives of government agencies and private industry to review concerns about unsolicited proposals. It is likely that the participants will present case studies and examples with classified and proprietary information. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraphs (1) and (4) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed is so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 92–22065 Filed 9–10–92; 8:45 am]

BILLING CODE 3710–08–M

Military Traffic Command; Rules and Accessorial Services Governing the Movement of Department of Defense Petroleum Products by Pipeline Carriers

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notification of procedural changes in DOD freight rate acquisition programs.

SUMMARY: On January 17, 1990, the Military Traffic Management Command published in the **Federal Register** (55 FR 1605) a notice of intent to modify the procedures used to acquire rates and charges from the commercial pipeline industry for the movement of its refined petroleum products by pipeline. These modifications to the procedures have been accomplished and can be found in the rules publication, MTMC Pipeline Rules Publication No. 6. Copies may be obtained by writing to HQ, Military Traffic Management Command, Attn: MTIN–NG, room 629, 5611 Columbia Pike, Falls Church, Virginia 22041–5050, telephone (703) 756–1585.

FOR FURTHER INFORMATION CONTACT: Mr. Blaise J. Guzzardo or Ms. Eunice Anderson, HQ, Military Traffic Management Command, MTIN–NG, 5611 Columbia Pike, Falls Church, Virginia 22041–5050, telephone (703) 756–1585.

SUPPLEMENTARY INFORMATION: The transportation regulatory reform legislation enacted over the past several years has brought an influx of new carriers doing business with DOD resulting in a corresponding proliferation of rate publications, and a great diversity in the manner in which carriers' rates, rules, and services are expressed within those publications. As a result, the standardization and automation of carriers' rates and charges are essential to the formulation of a successful and manageable rate comparison program. Automation is feasible, of course, only if these rates and charges are expressed in a uniform manner compatible with electronic data processing.

MTMC Pipeline Rules Publication No. 6 (MPRP No. 6) contains both rules and accessorial service requirements to govern the rates and services of pipeline carriers doing business with DOD. The publication has application to both interstate and intrastate commerce from, to, or between points in the continental United States (CONUS), and from, to, or between Alaska and/or Canada that are specified in carriers individual tenders filed with HQ, MTMC. The purpose in developing this publication is to define and clearly express the transportation needs of DOD for the movement of petroleum products requiring pipeline service and to provide the standardization necessary for achieving a fully automated system for routing and auditing DOD traffic.

This publication is designed to be used with DOD Standard Tender of Freight Services, MT Form 364–R. Pipeline tenders will be effective December 14, 1992 and must be submitted on MT Form 364–R. Tenders of carriers subject to MPRP No. 6 may not refer to any other publication for application of rates and charges therein.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92–21948 Filed 9–10–92; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Intention To Prepare an Environmental Impact Statement for MCAS Tustin Relocation to Twentynine Palms and Camp Pendleton, CA

Pursuant to section 102 (2)(C) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality Regulations (40 CFR parts 1500-1508) and the provisions of section 2905(c) of Public Law 101–510; 104 stat. 1808, 1813–1815; 10 U.S.C. section 2687 note, the U.S. Navy and Marine Corps announce their intent to prepare an Environmental Impact Statement (EIS) to describe and evaluate the environmental effects of a relocation of functions from Marine Corps Air Station (MCAS) Tustin, California, to both Marine Corps Air Ground Combat Center (MCAGCC) Twentynine Palms, California, and Marine Corps Air Station/Marine Corps Base (MCAS/MCB) Camp Pendleton, California. MCAS Tustin is scheduled for closure by July 10, 1997, in compliance with the Defense Base Closure and Realignment Act of 1990 (Pub. L. 101-510). To support the congressionally-mandated closure of MCAS Tustin and the associated relocation of functions, a new MCAS would be required at MCAGCC Twentynine Palms, and additional facilities would be required at MCAS/MCB Camp Pendleton.

The EIS will assess the relevant environmental issues pertaining to all government plans and actions associated with the construction and operation of new facilities at both MCAGCC Twentynine Palms and MCAS/MCB Camp Pendleton. The EIS will provide an equal treatment evaluation of environmental effects of the project at each of at least three alternative sites at both MCAGCC Twentynine Palms and MCAS/MCB Camp Pendleton; all addressed sites will be evaluated to determine environmentally-preferred locations for project components. Major environmental issues to be addressed include geology and soils, air quality, hydrology and water quality, public health and safety, biological resources, land use, military operations, cultural resources, socioeconomics, community services, transportation and circulation, aesthetics, utilities, noise, and hazardous materials and wastes. The EIS will also identify mitigation measures to lessen or avoid adverse effects. The analysis will be performed in accordance with NEPA and other applicable statutes and regulations and

will address direct and indirect, short-term and long-term, and cumulative impacts associated with the realignments.

The U.S. Navy and Marine Corps will initiate a scoping process for the purpose of identifying the significant issues relating to this action. Public scoping meetings are scheduled to occur at Twentynine Palms, California and at Oceanside, California, between September 13 and October 12, 1992. The specific date, time, and location of these meetings will be announced in local newspapers.

A short formal presentation will precede requests for public comment. U.S. Navy and Marine Corps representatives will be available at this meeting to receive comments from the public regarding issues of concern to the public. It is important that federal, state, and local agencies and interested individuals take this opportunity to identify environmental concerns that should be addressed during the preparation of the EIS. In the interest of available time, each speaker will be asked to limit their oral comments to five minutes.

Agencies and the public are also invited and encouraged to provide written comments in addition to, or in lieu of, oral comments at the public meetings. To be most helpful, scoping comments should clearly describe specific issues or topics which the commentor believes the EIS should address. Written comments will be considered equally with those provided at the public scoping meetings. Issues and concerns raised during the scoping process will be addressed in the Draft EIS, scheduled for release to the public by mid-1993. Written statements and or questions regarding the scoping process should be mailed no later than 30 days from the date of this notice to the Officer-in-Charge of Construction, Twentynine Palms, 1420 Kettner Blvd., suite 507, San Diego, CA 92101-2404 (Attn: Mr. Michael Barbusca, Code T09P).

Dated: September 2, 1992.

Geoffrey P. Lyon

LtCol, United States Marine Corps, Federal Register Liaison Officer

[FR Doc. 92-21937 Filed 9-10-92; 8:45 am]

BILLING CODE 3810-AE-F

CNO Executive Panel; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel will meet October 27-28, 1992, from 9 am to 5 pm, in Alexandria, Virginia.

The purpose of this meeting is to review maritime environment issues as they impact naval vessel construction and operation and shore establishment environmental protection. The agenda of the meeting will consist of discussions of key issues related to environmental implications for the Navy of ordnance manufacture and disposal.

For further information concerning this meeting, contact: Judith A. Holden, Executive Secretary to the CNO Executive Panel, 4401 Ford Avenue, room 601, Alexandria, Virginia 22302-0268, Phone (703) 756-1205.

September 3, 1992.

Geoffrey P. Lyon

LtCol, United States Marine Corps, Federal Register Liaison Officer.

[FR Doc. 92-21936 Filed 9-10-92; 8:45 am]

BILLING CODE 3810-AE-F

DEPARTMENT OF EDUCATION

[CFDA No. 84.116A&B]

Fund for the Improvement of Postsecondary Education—Comprehensive Program (Preapplications and Applications); Notice Inviting Applications for New Awards for Fiscal Year (FY) 1993

PURPOSE OF PROGRAM: To provide grants or enter into cooperative agreements to improve postsecondary education opportunities.

The Comprehensive Program supports AMERICA 2000, the President's strategy for moving the Nation toward achieving the National Education Goals. National Education Goal 5 calls for all Americans to be literate and to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

ELIGIBLE APPLICANTS: Institutions of higher education or combinations of such institutions and other public and private nonprofit institutions and agencies.

DEADLINE FOR TRANSMITTAL OF PREAPPLICATIONS: October 27, 1992.

DEADLINE FOR TRANSMITTAL OF FINAL APPLICATIONS: March 5, 1993.

Note: All applicants must submit a preapplication to be eligible to submit a final application.

DEADLINE FOR INTERGOVERNMENTAL REVIEW: May 4, 1993.

APPLICATIONS AVAILABLE: September 11, 1992.

AVAILABLE FUNDS: The Administration has requested a total of $16,000,000 for the Fund for the Improvement of Postsecondary Education (FIPSE) for FY 1993. Of this amount, it is anticipated that approximately $4,000,000 will be available for an estimated 60 new awards under the Comprehensive Program. The Congress has not yet completed action on the FY 1993 appropriation. The estimates in this notice assume passage of the Administration's Budget.

ESTIMATED RANGE OF AWARDS: $15,000 to $150,000 per year.

ESTIMATED AVERAGE SIZE OF AWARDS: $70,000.

ESTIMATED NUMBER OF AWARDS: 60.

Note: The Department is not bound by any estimates in this notice.

PROJECT PERIOD: Up to 36 months.

APPLICABLE REGULATIONS: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 630.

Priorities

Absolute Priority

Under 34 CFR 75.105(c)(3) and 34 CFR 630.11 the Secretary gives an absolute preference to applications that meet the following priority:

Projects to improve postsecondary education opportunities.

Invitational Priorities

Under 34 CFR 75.105(c)(1) and 34 CFR 630.12, the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

Invitational Priority 1—Applications to ensure that the undergraduate curricula provide the knowledge and skills needed by educated citizens.

Invitational Priority 2—Applications to ensure that recent increases in access to postsecondary education are made meaningful by improving retention and completion rates without compromising program standards.

Invitational Priority 3—Applications to make campus culture more conducive to academic commitment by all postsecondary students by developing a learning friendly campus ethos.

Invitational Priority 4—Applications to improve the scope and quality of international education.

Invitational Priority 5—Applications to improve the quality of undergraduate education and graduate education by

raising academic standards, strengthening the liberal arts component of undergraduate professional programs, developing means of assessing programs and institutions, and recognizing and rewarding outstanding undergraduate teaching through hiring, tenure, and promotion policies.

Invitational Priority 6—Applications to reform the education of school teachers by increasing current and prospective teachers' mastery of the subjects they teach, ensuring that prospective teachers have a solid grounding in the liberal arts, and attracting more people of commitment and high intellectual ability to the teaching profession.

Invitational Priority 7—Applications to reform graduate education by fostering the teaching skills of Ph.D. candidates bound for careers in teaching, and broadening the social and ethical perspectives of students in professional graduate programs generally.

Invitational Priority 8—Applications to improve financing and educational reform.

Invitational Priority 9—Applications to strengthen postsecondary educational institutions and organizations through faculty development, and by recognizing and rewarding good teaching.

Invitational Priority 10—Applications to make postsecondary education responsive to changes in the nation's economy.

Invitational Priority 11—Applications to develop educational uses of technology, including computers, television, and other electronic media.

Selection Criteria

In evaluating preapplications or applications for grants under this Comprehensive Program competition, the Secretary uses the following selection criteria chosen from those listed in 34 CFR 630.32:

(a) Significance for Postsecondary Education

Each proposed project will be reviewed for its significance in improving postsecondary education by determining the extent to which it would—

(1) Address an important problem or need;

(2) Represent an improvement upon, or important departure from, existing practice;

(3) Involve learner-centered improvements;

(4) Achieve far-reaching impact through improvements that will be useful in a variety of ways in a variety of settings; and

(5) Increase the cost-effectiveness of services.

(b) Feasibility

Each proposed project will be reviewed for its feasibility by determining the extent to which—

(1) The proposed project represents an appropriate response to the problem or need addressed;

(2) The applicant is capable of carrying out the proposed project as evidenced by, for example—

(i) The applicant's understanding of the problem or need;

(ii) The quality of the project design, including objectives, approaches, and evaluation plan;

(iii) The adequacy of resources, including money, personnel, facilities, equipment, and supplies;

(iv) The qualifications of key personnel who would conduct the project; and

(v) The applicant's relevant prior experience;

(3) The applicant and any other participating organizations are committed to the success of the proposed project, as evidenced by, for example—

(i) The contribution of resources by the applicant and by participating organizations;

(ii) Their prior work in the area; and

(iii) The potential for continuation of the proposed project beyond the period of funding (unless the project would be self-terminating); and

(4) The proposed project demonstrates potential for dissemination to or adaptation by other organizations, and shows evidence of interest by potential users.

(c) Appropriateness of Funding Projects

The Secretary reviews each application to determine whether support of the proposed project by the Secretary is appropriate in terms of the availability of other funding sources for the proposed activities.

For preapplications (preliminary applications), the Secretary will give greater weight to the selection criteria under *Significance for Postsecondary Education*. The Secretary will give equal weight to *Feasibility* and *Appropriateness of funding projects*. For applications (final applications), all criteria are equally important. Within each of these criteria equal weight will be given to each of the subcriteria. In applying the criteria, the Secretary first analyzes a preapplication or application in terms of each individual criterion. The Secretary then bases final judgment on an overall assessment of the degree to which the applicant addresses all selection criteria.

FOR APPLICATIONS OR INFORMATION CONTACT: Fund for the Improvement of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 3100, ROB-3, Washington, DC 20202-5175. Telephone: (202) 205-0082 to order applications; or (202) 708-5750 for information. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m. Eastern time.

Program Authority: 20 U.S.C. 1135.

Dated: September 4, 1992.

Carolynn Reid-Wallace,

Assistant Secretary for Postsecondary Education.

[FR Doc. 92-21901 Filed 9-10-92; 8:45 am]

BILLING CODE 4000-10-M

National Assessment Governing Board; Teleconference Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Amendment to notice.

SUMMARY: Notice is hereby given of an amendment to the notice of the teleconference meeting of the Achievement Levels Committee of the National Assessment Governing Board scheduled for September 9, 1992, at 800 North Capitol Street, NW., suite 825, Washington, DC, as published in the **Federal Register** on Monday, August 24, 1992, Vol. 57, page 38301. The teleconference meeting has been rescheduled for September 18, 1992 at 11 a.m.

Dated: September 8, 1992.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 92-21914 Filed 9-10-92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Environmental Restoration and Waste Management Advisory Committee (EMAC); Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770), notice is hereby given of the following Advisory Committee meeting:

Name: Environmental Restoration and Waste Management Advisory Committee (EMAC).

Date/Times: September 29, 1992: 1:30 p.m.–5:30 p.m.; 7 p.m.–10:30 p.m. September 30, 1992: 8 a.m.–5 p.m.

Place: Sheraton Springdale Hotel, 11911 Sheraton Lane (near intersection of I–275 and Ohio Rt. 4), Springdale, Ohio 45246.

Contact: James T. Melillo, U.S. Department of Energy, Executive Secretary, EMAC, AC–21, room 7A031, 1000 Independence Avenue, SW. Washington, DC 20585 (202) 586–0398.

Purpose of the Committee: The purpose of the Committee is to provide the Assistant Secretary, Environmental Restoration and Waste Management (EM) with advice and recommendations on both the substance and the process of the EM Programmatic Environmental Impact Statement (PEIS) and other EM projects from the perspectives of affected groups and State and local Governments. The EMAC will help to improve the Environmental Restoration and Waste Management Program by assisting in the process of securing consensus recommendations, and providing the department's numerous publics with opportunities to make their views known on the Environmental Restoration & Waste Management Program.

Tentative Agenda

Tuesday, September 29, 1992

1:30 p.m.
- Chairman Paulson Opens Meeting
- Fernald Site Overview
- National Environmental Policy Act (NEPA) Overview

5:30 p.m.
- Meeting Adjourns

7 p.m.
- Public Comment Session
  - —Committee Overview of Site Tour for Public
  - —Public Comments

10:30 p.m. Meeting Adjourns

Wednesday, September 30, 1992

8 a.m.
- Committee Business
  - —Comments on Implementation Plan for the Programmatic Environmental Impact Statement (PEIS)
  - —Committee Operations
  - —Future Meetings

12Noon Lunch

12 Noon Lunch

1:30 p.m.
- Committee Business Continued
  - —Selected Technical Issues

5 p.m. Meeting Ends

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ken Morgan, Director of Public Information, Fernald Environmental Management Project, P.O. Box 398705, Cincinnati, OH 45239–8705 (513) 738–9245. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. Questions relating to Committee operations should be directed to James T. Melillo, Executive Secretary for the Committee, at the address or telephone number listed above. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on September 8, 1992.

J. Robert Frank,

Acting Advisory Committee Management Officer.

[FR Doc. 92–21986 Filed 9–10–92; 8:45 am]

BILLING CODE 6450–01–M

Secretary of Energy Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Secretary of Energy Advisory Board Task Force on Energy Research Priorities.

Date and Time: Thursday, September 24, 1992, 8:30 a.m.–5 p.m.

Place: The Hyatts Fair Lakes, 12777 Fair Lakes Circle, Fairfax, Virginia 22033, 703–818–1234.

Contact: Dr. Robert M. Simon, Designated Federal Officer, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586–7092.

Purpose: The Task Force was established to advise Secretary of Energy on priorities and program balance for the research and development responsibilities, activities, and operations of the Office of Energy Research of the Department of Energy.

Tentative Agenda

Thursday, September 24, 1992, 8:30 a.m.–5 p.m.

8:30 a.m.–8:40 a.m.–Opening Remarks

8:40 a.m.–12 p.m.–The Future Role of the Office of Energy Research in the Support of Science and Technology

12:00 p.m.–12:45 p.m.–Lunch

12:45 p.m.–1:30 p.m.–Review of Response of Fusion Energy Advisory Committee to Previous Task Force Recommendations

1:30 p.m.–2:20 p.m.–Task Force Discussion

2:20 p.m.–2:45 p.m.–Break

2:45 p.m.–3:15 p.m.–Progress Report from BESAC Panel on Neutron Research and Sources

3:15 p.m.–4 p.m.–Task Force Discussion

4 p.m.–4:30 p.m.–Future Agenda for Task Force in Evaluating Energy Research Plans for Science and Technology Programs

4:30 p.m.–5 p.m.–Public Comment and Adjourn

Public Participation: The meeting is open to the public. The Chairman of the Task Force is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business.

Any member of the public who wishes to make an oral statement pertaining to agenda items should contact the Designated Federal Officer at the address or telephone number listed above. Requests must be received before 3 p.m. (E.D.T.) Monday, September 21, 1992, and reasonable provision will be made to include the presentation during the public comment period. It is requested that oral presenters provide 20 copies of their statements at the time of their presentations.

Written testimony pertaining to agenda items may be submitted prior to the meeting. Written testimony must be received by the Designated Federal Officer at the address shown above before 5 p.m. (E.D.T.) Monday, September 21, 1992, to assure that it is considered by Board members during the meeting.

Minutes: A transcript of the meeting will be available for public review and copying approximately 30 days following the meeting at the Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m.–4 p.m., Monday through Friday except Federal holidays.

Issued: Washington, DC, on: September 8, 1992.

J. Robert Franklin,

Acting Advisory Committee Management Officer.

[FR Doc. 92–21987 Filed 9–10–92; 8:45 am]

BILLING CODE 6450–01–M

Bonneville Power Administration

Proposed Tenaska Washington II Generation, Competitive Acquisition Project; Notice of Intent To Prepare an Environmental Impact Statement and Notice of Scoping Meeting

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of intent to prepare an Environment Impact Statement (EIS) and conduct a scoping meeting.

SUMMARY: BPA plans to prepare and consider an EIS on its proposal to purchase firm power produced by the proposed Tenaska Washington II Generation Project. This project was proposed by Tenaska Power Partners in response to a competitive bidding by BPA. BPA will evaluate the environmental effects associated with the proposed project to aid in its decision whether or not to purchase the power output from the plant.

The proposed project would be located within the Frederickson Industrial Park near Tacoma in Pierce County, Washington. The facility would consist of one General Electric Frame 7FA combustion turbine-generator, one heat recovery steam generator with supplemental firing capability, and one steam turbine-generator, all together

having a nominal output of 240 average megawatts (aMW).

The primary fuel would be natural gas and the back-up fuel would be oil. The natural gas would be delivered by an existing pipeline adjacent to the project site and connected to the facility by a short feeder pipe or stub. The back-up fuel would be delivered to the site by truck and stored on site. A cooling tower would be built on the site to cool the water before it is discharged into the Pierce County Sanitary Sewer System. Water for steam supply and cooling would be purchased from the City of Tacoma.

The electrical power generated at the plant would be sold to BPA for marketing through the regional power grid. In order to connect the proposed generation project to the Bonneville Power transmission system, a new 230-kV line with overhead ground wire, approximately one mile long, would be required. This line would connect the new generation plant to BPA's South Tacoma 230-kV Switching Station. At the South Tacoma Station, BPA would expand and modify existing facilities to include 230-kV power circuit breakers, disconnect switches, control and protective relaying, communications, and a control house. The South Tacoma Station would be tied into the exiting White River-Cowlitz Tap-Olympia 230-kV transmission line. Further details of the South Tacoma expansion would be determined during the preliminary and final design stages.

DATES: A public meeting will be held on September 29, at Bethel High School, 22215 38th Avenue East, Spanaway, Washington, to discuss the scope of the EIS for Tenaska Washington II Generation Project. During the scoping period, BPA is asking the public to identify significant issues that should be considered in the EIS. Comments on the scope of the EIS should be submitted to the address below by October 30, 1992.

After the scoping period, an Implementation Plan for the EIS will be prepared and made available to the public for information. The Draft EIS is scheduled to be circulated for public review and comment in the summer of 1993, and notice as to how copies may be obtained will be published at that time. A public hearing will be held during the 45-day comment period. Copies of the Draft EIS will be available from BPA's Area Offices and from BPA's Public Information Center. The Final EIS should be available in the winter of 1993. A Record of Decision is expected to be issued in the spring of 1994.

ADDRESSES: Written comments on the scope of the EIS should be submitted to the Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Ms. Nandranie Tuck, EIS Manager at 503-230-4389 or Mr. Charles Alton, Environmental Coordinator at 503-230-5878, or you may call the Public Involvement Office at 503-230-3478 in Portland; the toll free number is 800-622-4519. Information may also be obtained from:

Mr. George Bell, Lower Columbia Area Manager, suite 243, 1500 NE. Irving Street, Portland, Oregon 97232, 503-230-4551.

Mr. Robert N. Laffel, Eugene District Manager, room 206, 211 East Seventh Avenue, Eugene, Oregon 97410, 503-465-6592.

Mr. Wayne R. Lee, Upper Columbia Area Manager, room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509-353-2515.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406-329-3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, room 307, 301 Yakima Street, Wenatchee, Washington 98801, 509-662-4377, extension 379.

Mr. Terence G. Esvelt, Puget Sound Area Manager, suite 400, 201 Queen Anne Avenue North, Seattle, Washington 98109-1030, 206-553-4130.

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, 101 West Poplar, Walla Walla, Washington 99362, 509-522-6226.

Ms. Ruth Bennett, Idaho Falls District Manager (Acting), 1527 Hollipark Drive, Idaho Falls, Idaho 83401, 208-523-0276.

Mr. Jim Normandeau, Boise District Manager, room 494, 550 West Fort Street, Boise, Idaho 83724, 208-334-9137.

For general information on DOE's NEPA review procedures or status of a NEPA review, contact Carol M. Borgstrom, Director, Office of NEPA Oversight, EH-25, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; phone (202) 586-4600 or (800) 472-2756.

SUPPLEMENTARY INFORMATION:

Background

BPA is a Federal power marketing agency with statutory responsibilities to supply electrical power to its utility, industrial, and other customers in the Pacific Northwest. According to BPA's current load/resource balance study, the demand for energy now exceeds supply by about 500 aMW. The load/resource balance forecast projects a deficit of 1,500 to 2,600 aMW of energy by the year 2000. The underlying need for action is to satisfy BPA's customers' demand for electrical energy.

Guided by the recommendations in BPA's 1990 Resource Program, BPA has commenced a dynamic and multifaceted pilot resource acquisition effort to test various approaches for acquiring a diverse portfolio of cost-effective, reliable, and environmentally sound resources. One acquisition approach being tested is an all-source competitive bidding process to acquire about 300 aMW of energy.

In response to BPA's request for proposals under the competitive bidding process, over 100 proposals totalling 5,300 aMW of generation and 116 aMW of conservation energy were submitted.

Through an analysis of system cost, project viability, preliminary environmental evaluation and discussion with the developers BPA has proposed 17 conservation and 3 generation projects for further consideration and review toward satisfaction of the 300 aMW target. Tenaska and each of the remaining 19 proposals will be evaluated independently as they are neither connected to nor dependent upon each other for their justification. This EIS will include at a minimum the no action alternative.

Since the proposed Tenaska project would satisfy only a small portion of BPA's overall energy needs for this decade, whether or not BPA acquires the Tenaska energy output would not foreclose future considerations of other potential energy resources available to BPA through its various acquisition approaches.

Environmental Analysis

The Tenaska Washington II Generation Project would be used as "hydrofirming power" to guarantee the availability of energy from the hydropower system, which is subject to fluctuations due to weather variations.

The proposed combustion turbine would be operating as a combined cycle system. This turbine configuration is highly efficient because the waste heat from the turbine exhaust is captured to create steam for the steam turbine generator which also produces electricity.

The use of "cleaner burning" natural gas in combination with steam injection into the turbine and Selective Catalytic Reduction (SCR) would significantly reduce air emissions of this combustion turbine. The additional SCR and steam injection would reduce nitrous oxide

emissions to less than four parts per million (ppm). This is significantly below the current state threshold of 7–9 ppm. Additionally, the developer would fund cost-effective proposals for offsetting carbon dioxide emissions.

The site is designated as "M2" Heavy Industrial. There is property zoned Suburban-Agricultural (SA–12) within a quarter of a mile from the site. Residential zoned property is one-half mile from the site and is separated from the proposed plant property boundary by an existing railroad line, an oil products pipeline right of way, vacant M2 Heavy Industrial zoned property, and a 230–kV transmission line corridor. Further from the site are farmers and ranchers. Visual, auditory and air quality impacts upon area residents, tree farmers and ranchers will be carefully considered in the environmental analysis.

Steven Hickok,

Acting Administrator, Bonneville Power Administration.

[FR Doc. 92–21989 Filed 9–10–92; 8:45 am]

BILLING CODE 6450–01–M

Extension of Comment Period for Review of and Amendment to Section 6(c) Policy of the Pacific Northwest Electric Power Planning and Conservation Act

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Extend public comment period.

SUMMARY: On August 20, BPA published a notice dated August 6, 1992, in the **Federal Register**, 57 FR 37,792 (1992), for review of and amendment to its Policy for Section 6(c) of the Pacific Northwest Electric Power Planning and Conservation Act (ACT), 16 U.S.C. 839 d(c). BPA proposes to extend the period for receipt of comment on the proposed amendments through 5 p.m. on October 16, 1992.

SUPPLEMENTARY INFORMATION: BPA and the Northwest Power Planning Council (Council) are in the process of conducting a 5-year review of their respective Policies for section 6(c) of the Act. BPA is reviewing its Policy, in accordance with section B.1.c. of that Policy, and proposes to amend it to incorporate a provision relating to proposals to grant billing credits. BPA also proposes to incorporate provision for payment of investigation or preconstruction costs of a sponsor of a major resource. Finally, BPA proposes to incorporate a provision for expedited hearings procedures for section 6(c) review. BPA is seeking public comment on the proposed amendments. BPA is extending the deadline for receipt of comment through 5 p.m. on October 16, 1992, to coordinate with the Council's public process.

Responsible Official: Charles E. Meyer, Director, Division of Resource Planning, Office of Energy Resources, is the official responsible for this Policy.

ADDRESSES: Written comments should be submitted to the Public Involvement Manager, P.O. Box 12999, Portland, Oregon 97212 by 5 p.m. on October 16, 1992. For questions or to submit oral comments, call 503–230–3478 in Portland; or toll-free 800–622–4519. To request documents, call 800–622–4520.

FOR FURTHER INFORMATION CONTACT: Julie Pipher, Public Involvement Office, P.O. Box 12999, Portland, Oregon 97212, 503–230–3478.

Information may also be obtained from:

Mr. Terrence G. Esvelt, Puget Sound Area Manager, suite 400, 201 Queen Anne Avenue North, Seattle, Washington 98109–1030, 206–553–4130.

Mr. George Bell, Lower Columbia Area Manager, 1500 NE. Irving Street, Room 243, Portland, Oregon 97208, 503–230–4551.

Mr. Robert Laffel, Eugene District Manager, room 206, 211 East Seventh Street, Eugene, Oregon 97401, 503–687–6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–353–2518.

Ms. Carol S. Fleischman, Spokane District Manager, room 112, West 920 Riverside Avenue, Spokane, Washington 99201, 509–353–3279.

Mr. Ronald K. Rodewald, Wenatchee District Manager, 301 Yakima Street, room 307, Wenatchee, Washington 98801, 509–662–4379.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060.

Mr. Thomas Wagenhoffer, Snake River Area Manager, 101 West Poplar, Walla Walla, Washington 99362, 509–522–6226.

Ms. Ruth Bennett, Idaho Falls District Manager, 1527 Hollipark Drive, Idaho Falls, Idaho 83401, 208–523–2706.

Mr. Jim Normandeau, Boise District Manager, 304 North 8th Street Room 450, Boise, Idaho 83702, 208–334–9137.

Issued in Portland, Oregon, August 31, 1992.

Steven G. Hickok,

Acting Administrator.

[FR Doc. 92–21990 Filed 9–10–92; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. JD92–08950T, Oklahoma–26]

State of Oklahoma; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

September 4, 1992.

Take notice that on August 31, 1992, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Upper Atoka Formation underlying a portion of Custer and Washita Counties, Oklahoma qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area, which includes both state and restricted Tribal or alloted Indian lands, is described as follows:

Township 12 North, Range 19 West
Section 31
Township 12 North, Range 20 West
Sections 35–36
Township 11 North, Range 19 West
Sections 6–7
Township 11 North, Range 20 West
Sections 1–2 and 11–12

The notice of determination also contains Oklahoma's findings that the referenced portion of the Upper Atoka Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92–21886 Filed 9–10–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD92–08948T Texas–69]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designation Tight Formation

September 4, 1992.

Take notice that on August 31, 1992, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Vicksburg Second Massive Sand Formation underlying a

portion of Starr County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The recommended area covers approximately 815 acres in the following surveys:

Juan Vega, A-280
Section 38
Antonio Villareal, A-279
Section 39

The notice of determination also contains Texas' findings that the referenced portion of the Vicksburg Second Massive Sand Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21887 Filed 9-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-08949T Texas-70]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

September 4, 1992.

Take notice that on August 31, 1992, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Vicksburg K-3 Sand Formation underlying a portion of Starr County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The recommended area covers approximately 278 acres in the following surveys:

Juan Vega, A-280
Section 38
Ygnacio Trevino, A-269
Section 100

The notice of determination also contains Texas' findings that the referenced portion of the Vicksburg K-3 Sand Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21888 Filed 9-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-67-000]

Canyon Creek Compression Co.; Proposed Changes in FERC Gas Tariff

September 4, 1992.

Take notice that on September 1, 1992, Canyon Creek Compression Company (Canyon) tendered for filing Third Revised Sheet No. 7 (First Revised Volume No. 1) and Third Revised Sheet No. 5 (First Revised Volume No. 1A) to be a part of its FERC Gas Tariff, to be effective October 1, 1992.

Canyon states that the purpose of the filing is to implement the Annual Charges Adjustment (ACA) charge necessary for Canyon to recover from its customers annual charges assessed it by the Commission pursuant to part 382 of the Commission's Regulations. The rate authorized by the Commission to be effective October 1, 1992 is .23¢ per Mcf.

Canyon requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective on October 1, 1992.

Canyon states that a copy of the filing is being mailed to Canyon's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 14, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21889 Filed 9-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-84-000]

Caprock Pipeline Co.; Proposed Changes of FERC Gas Tariff

September 4, 1992.

Take notice that on September 1, 1992, Caprock Pipeline Company, (Caprock Pipeline) tendered for filing the following tariff sheets to its FERC Gas Tariff, Revised Original Volume No. 3, to become effective October 1, 1992:

Sixth Revised Sheet No. 4, Superseding Fifth Revised Sheet No. 4
Sixth Revised Sheet No. 5, Superseding Fifth Revised Sheet No. 5

Caprock Pipeline states that on July 27, 1992, the Commission notified Caprock Pipeline that the fiscal year 1992 Annual Charge Adjustment (ACA) surcharge would be $.0023 per Mcf. Caprock Pipeline requests that the Commission permit the tariff sheets filed herein to adjust the ACA surcharge rates to become effective October 1, 1992.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 14, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21882 Filed 9-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-7-21-000 TM93-1-21-001]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

September 4, 1992.

Take notice that Columbia Gas Transmission Corporation (Columbia) on September 1, 1992, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1.

September 2, 1992

Twenty-Third Revised Sheet No. 26
1 Rev Fourteenth Revised Sheet No. 26.1
1 Rev Twenty-Second Revised Sheet No. 26.A

1 Rev Fourteenth Revised Sheet No. 26A.1
Sub Twelfth Revised Sheet No. 26B.1
Seventh Revised Sheet No. 26C.1
1 Rev Eleventh Revised Sheet No. 26D
Twenty-Second Revised Sheet No. 163

October 1, 1992

Sub Fifteenth Revised Sheet No. 26.1
Sub Fifteenth Revised Sheet no. 26A.1
Sub Twenty-First Revised Sheet No. 26.C
Sub Twelfth Revised Sheet No. 26D

Columbia states the sales rates set forth on First Revised Fourteenth Revised Sheet No. 26.1 reflect an increase of 7.65¢ per Dth in the commodity rate when compared with the total CDS rates reflected in its last PGA filing which was accepted by letter Order dated August 27, 1992, with an effective date of August 1, 1992. In addition, the transportation rates set forth on Seventh Revised Sheet No. 26C.1 and First Revised Eleventh Revised Sheet No. 26D reflect an increase in the Fuel Charge component of 0.18¢ per Dth.

Columbia states that copies of the filing were served upon Columbia's jurisdictional customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 14, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21862 Filed 9-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-429-001]

Crockett Cogeneration, A California Limited Partnership; Amendment to Filing

September 4, 1992.

On August 31, 1992, Crockett Cogeneration, a California Limited Partnership (Applicant) tendered for filing a supplement to its filing in this docket.

The supplement provides additional information pertaining to upstream ownership structure of the facility. No determination has been made that the submittal constitutes a complete filing.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed by September 21, 1992, and must be served on the Applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a pétition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21867 Filed 9-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-2745-000]

George W. Edwards, Jr.; Filing

September 4, 1992.

Take notice that on August 21, 1992, George W. Edwards, Jr. (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Director, El Paso Electric Company
Director, Hubbell Incorporated

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 18, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21890 Filed 9-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-187-000, CP9 -2448-000 (consolidated) and FA91-23-001 (not consolidated)]

Florida Gas Transmission Co.; Informal Settlement Conference

September 4, 1992.

Take notice that an informal settlement conference will be convened in this proceeding on September 14, 1992, at 9 a.m., at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the issues in Docket Nos. RP91-187-000 and CP91-2448-000, which relate to cost of service, incentive rates, throughput and bidding procedures for interruptible capacity as well as the issues related to accounting for line pack gas in Docket No. FA91-23-001.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Warren C. Wood at (202) 208-2091 or Donald Williams at (202) 208-0743.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21868 Filed 9-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-51-000]

Great Lakes Gas Transmission Limited Partnership; Notice of Proposed Changes in FERC Gas Tariff

September 4, 1992.

Take notice that Great Lakes Gas Transmission Limited Partnership ("Great Lakes") on August 28, 1992, tendered for filing the following tariff sheets to its F.E.R.C. Gas Tariff:

First Revised Volume No. 1

Ninth Revised Sheet No. 57(iv)

Original Volume No. 3

Sixth Revised Sheet No. 2
Seventh Revised Sheet No. 3

Great Lakes states that the above tariff sheets reflect the new ACA rate to be charged pursuant to the Annual Charges Adjustment Clause provisions established by the Commission in Order No. 472, issued May 29, 1987. The new ACA rate to be charged by Great Lakes, was established by FERC notice given on July 27, 1992 and is to be effective October 1, 1992.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before September 14, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21885 Filed 9-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-65-000]

Jupiter Energy Corp., Proposed Changes in FERC Gas Tariff

September 4, 1992.

Take notice that Jupiter Energy Corporation ("Jupiter Energy" or the "Company") on August 31, 1992 tendered for filing the following sheets of its FERC Gas Tariff, Original Volume No. 1:

Sixth Revised Sheet No. 4A
Sixth Revised Sheet No. 5A
Sixth Revised Sheet No. 6A

Jupiter Energy states that the filed tariff are tendered to change the Annual Charge Adjustment ("ACA") rate to 0¢ per Mcf to reflect that the Commission sent a July 7, 1992 bill to Jupiter that imposes no annual billing charges for the 1992 Fiscal Year. Jupiter states that it is presently in discussions with the Commission Staff to determine whether the July 7 bill is accurate. Jupiter reserves the right to revise its ACA charge from the 0¢ surcharge proposed herein should the Commission assess an annual charge billing on Jupiter for the 1992 Fiscal Year.

Jupiter Energy proposes an effective date of October 1, 1992.

Jupiter Energy states that copies of the filing have been served on the Company's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 14, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Jupiter Energy's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21883 Filed 9-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-53-000]

K N Energy, Inc.; Tariff Filing

September 4, 1992.

On September 1, 1992, K N Energy, Inc. ("K N") tendered for filing the following revised tariff sheets:

Fourth Revised Volume No. 1

Twelfth Revised Sheet No. 4
Twelfth Revised Sheet No. 4B

First Revised Volume No. 1-A

Fifth Revised Sheet No. 4

K N states that these tariff sheets reflect the Commission's revised Annual Charge Adjustment (ACA) unit charge and requests that the tariff sheets be made effective on October 1, 1992.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214, 385.211). All such motions or protests should be filed on or before September 14, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21865 Filed 9-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-42-000]

MIGC, Inc.; Prefiling Conference

September 4, 1992.

Take notice that a prefiling conference will be convened in this proceeding on Thursday, October 1, 1992, at 10 a.m. at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC. The purpose of the conference is to address MIGC, Inc.'s summary of its proposal to comply with Order Nos. 636 and 636-A.

Any party, as defined in 18 CFR 385.102(c), or any participant, as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations, 18 CFR 385.214.

For additional information, contact David Cain at (202) 208-0909.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21891 Filed 9-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-103-000]

Moraine Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

September 2, 1992.

Take notice that on September 1, 1992, Moraine Pipeline Company (Moraine) tendered for filing Fourth Revised Sheet No. 4 to be a part of its FERC Gas Tariff, Original Volume No. 1, to be effective October 1, 1992.

Moraine states that the purpose of the filing is to implement the Annual Charges Adjustment (ACA) charge necessary for Moraine to recover from its customers annual charges assessed it by the Commission pursuant to part 382 of the Commission's Regulations. The rate authorized by the Commission to be effective October 1, 1992 is .23¢ per Mcf. Under Moraine's billing basis of 14.73 psia at 1,000 Btu, this rate converts to .23¢ per Mcf.

Moraine requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheet to become effective on October 1, 1992.

Moraine states that a copy of the filing is being mailed to Moraine's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 14, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21892 Filed 9-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-26-000]

Natural Gas Pipeline Co. of America; Notice of Proposed Changes in FERC Gas Tariff

September 4, 1992.

Take notice that on September 1, 1992, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, revised tariff sheets to be effective October 1, 1992.

Natural states that the purpose of the filing is to implement the Annual Charges Adjustment (ACA) charge necessary for Natural to recover from its customers annual charges assessed it by the Commission pursuant to part 382 of the Commission's Regulations. The rate authorized by the Commission to be effective October 1, 1992 is .23¢ per Mcf. Under Natural's billing basis of 14.73 psia at 1,000 Btu, this rate converts to .22¢ per Mcf.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective on October 1, 1992.

Natural states that a copy of the filing is being mailed to Natural's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 14, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21893 Filed 9-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-1-59-000 and TM93-1-59-000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

September 4, 1992.

Take notice that Northern Natural Gas Company, (Northern), on August 31, 1992, tendered for filing changes in its F.E.R.C. Gas Tariff, Third Revised Volume No. 1 (Volume No. 1 Tariff) and Original Volume No. 2 (Volume No. 2 Tariff).

Northern is filing the revised tariff sheets to adjust its Base Average Gas Purchase Cost in accordance with the Quarterly PGA filing requirements codified by the Commission's Order Nos. 483 and 483-A. The instant filing reflects a Base Average Gas Purchase Cost of $2.6560 per MMBtu to be effective October 1, 1992, through October 31, 1992.

Also the instant filing establishes, when necessary, new Demand rates in compliance with the above referenced PGA rulemaking. The PGA rulemaking required Northern to adjust its PGA demand rate components on a quarterly versus annual basis. This filing will establish a new Demand rate component of $7.942 per MMBtu. This rate will be effective October 1, 1992 through October 31, 1992.

Northern states that copies of the filing were served upon Northern's jurisdictional sales customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 14, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21894 Filed 9-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-28-000]

Panhandle Eastern Pipe Line Co.; Change in Tariff

September 4, 1992.

Take notice that on August 31, 1992, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1, as reflected in Appendix A attached to the filing, and to its FERC Gas Tariff, Original Volume No. 2, as reflected in Appendix B attached to the filing. Panhandle requests an effective date of October 1, 1992 for the tariff sheets.

Panhandle states that the revised tariff sheets are being submitted in accordance with section 20 (Annual Charge Adjustment Provision) of the General Terms and Conditions of Panhandle's FERC Gas Tariff, Original Volume No. 1. The Commission has changed the unit rate of the Annual Charge Adjustment Clause (ACA) to be applied to rates for recovery of 1992 Annual Charges pursuant to Order No. 472 in Docket No. RM87-3-000.

Panhandle states that copies of the filing are being served on all customers subject to the tariff sheets and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 14, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21895 Filed 9-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-1-30-000]

Trunkline Gas Co.; Change in Tariff

September 4, 1992.

Take notice that on August 31, 1992, Trunkline Gas Company (Trunkline) tendered for filing the revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1, as reflected in appendix No. 1, and to its FERC Gas Tariff,

Original Volume No. 2, as reflected in appendix No. 2 attached to the filing.

The proposed effective date of these revised tariff sheets is October 1, 1992.

Trunkline states that the above-referenced tariff sheets are being filed in accordance with Commission Order No. 472 and pursuant to section 20 (Annual Charge Adjustment (ACA) Provision) of the General Terms and Conditions of Trunkline's FERC Gas Tariff, Original Volume No. 1.

Trunkline's current ACA Unit Surcharge of $0.0023 per Dt effective October 1, 1991 as approved by the Commission's Order dated September 30, 1991 in Docket No. TM92-1-30-000 does not change with the tracking of the ACA Unit Surcharge authorized for the fiscal year 1992 and the additional increment for the fiscal year 1991 adjustment.

Several of Trunkline's rate schedules involve utilization of Trunkline's capacity in third party pipelines. This filing incorporates ACA revisions filed by these third party pipelines into Trunkline's FERC Gas Tariff, Original Volume No. 2.

Trunkline states that copies of the filing are being served on all customers subject to the tariff sheets and the applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 14, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21664 Filed 9-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-111-000]

Steuben Gas Storage Co.; Notice of Proposed Changes in FERC Gas Tariff Annual Charges Adjustment Clause Provisions

September 4, 1992.

Take Notice that Steuben Gas Storage Company ("Steuben") on August 28, 1992, tendered for filing the following tariff Sheets:

Original Volume No. 2

Original Sheet No. 1(A)
First Revised Sheet No. 11
Original Sheet No. 11(A)
First Revised Sheet No. 34
Original Sheet No. 34(A)
First Revised Sheet No. 57
Original Sheet No. 57(A)
First Revised Sheet No. 60
Original Sheet No. 60(A)

These sheets reflect Steuben's initial filing to recover the Annual Charge Adjustment ("ACA") as provided by the provisions established by the Commission in Order No. 472, issued on May 29, 1987. The new ACA rate to be charged by Steuben is per FERC notice given on July 27, 1992 and is to be effective October 1, 1992.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before September 14, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21696 Filed 9-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA93-1-82-000]

Viking Gas Transmission Co.; Annual Purchased Gas Adjustment Filing

September 4, 1992.

Take notice that on September 1, 1992, Viking Gas Transmission Company ("Viking") filed the following tariff sheet to be effective November 1, 1992:

Original Volume No. 1

Twenty First Revised Sheet No. 6

Viking states the purpose of this filing is to institute the annual purchased gas adjustment pursuant to Article XVII of its tariff. The Current Purchased Gas Cost Rate Adjustments reflected on Twenty First Revised Sheet No. 6 consist of a $.2841 per dekatherm adjustment to the gas rates, a $(.0871) per dekatherm adjustment to the Rate Schedule SR-2 commodity rate, and a $(1.06) per dekatherm adjustment to the demand rates. The revisions also reflect a $1.0477 per dekatherm surcharge adjustment to the gas rates and a $2.36 per dekatherm adjustment to the demand rates for amortizing the Unrecovered Gas Cost Account.

Viking further states that it has mailed copies of this filing to all of its customers and affected state regulatory commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 21, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21855 Filed 9-10-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 92-88-NG]

Nicholson & Associates, Inc.; Order Granting Blanket Authorization to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an Order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Nicholson & Associates, Inc. blanket authorization to import up to 146 Bcf of natural gas from Canada over a two-year term, beginning on the date of the first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., September 4, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-21988 Filed 9-10-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders; During the Week of July 13 through July 17, 1992

During the week of July 13 through July 17, 1992, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Linda Farnkoff, 7/13/92, LFA-0211

Linda Farnkoff filed an Appeal from determinations issued by the Director, Office of Communications, Department of Energy Field Office, Richland (DOE/RL), in response to a request for information submitted under the Privacy Act of 1974. In considering the Appeal, the DOE found that DOE/RL had searched all the systems of records under its control that might contain the material sought by Farnkoff and that the documents located in that search had been provided to her. Accordingly, Farnkoff's Appeal was denied.

Request for Exception

Ernest E. Latsha, Inc., 7/13/92, LEE-0035

Ernest E. Latsha, Inc. (Latsha), filed an Application for Exception from the provisions of the Energy Information Administration (EIA) reporting requirements in which the firm sought relief from filing Form EIA-863, entitled "Petroleum Product Sales Identification Survey." In considering the request, the DOE found that the firm was not adversely affected by the reporting burden in a way that is significantly different from the burden borne by similar reporting firms, and therefore determined that it would not be granted relief from filing. Accordingly, exception relief was denied.

Implementation of Special Refund Procedures

Oasis Petroleum Corporation, 7/16/92, LEF-0007

The DOE issued a Decision and Order implementing special refund procedures to distribute $1,064,798, plus accrued interest, remitted to the DOE by Oasis Petroleum Corporation (Oasis) pursuant to a settlement agreement between the DOE and Oasis. The DOE determined that it would direct 16 percent of the Oasis settlement agreement fund, plus accrued interest, into a crude oil refund pool, and that the remaining 84 percent of the fund, plus accrued interest, would be directed into a refined product refund pool. The crude oil pool will be disbursed to the federal government, the states, and eligible applicants in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases. The refined product portion of the Oasis settlement fund will be distributed in two stages. In the first stage, the DOE will accept applications for refund from those claiming injury as a result of Oasis's alleged violation of petroleum allocation regulations. If any funds remain after meritorious claims are paid in the first stage, they will be used for indirect restitution through the States in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986.

Refund Applications

Apex Oil Co. Clark Oil and Refining Corp./Jerry's Clark, 7/13/92, RF342-1759

The DOE issued a Decision and Order denying an Application for Refund filed by Federal Refunds, Inc. (FRI), on behalf of Jerry's Clark in the Apex/Clark special refund proceeding. The applicant, a Milwaukee Clark dealer, derived his claimed gallonage figure by a process FRI terms "area averaging," i.e., by multiplying the number of months he had been in business by the average monthly volume of gasoline pumped by an average gas station in Milwaukee, as listed on a chart provided by FRI. Due to the sweeping generalizations upon which the estimation methodology was based and deficiencies in the data provided by FRI, the DOE determined that the application be denied.

Exxon Corp./Hydrocarbon Trading and Transport Co., Inc., 7/15/92, RF307-9331

The DOE issued a Decision and Order concerning an Application for Refund filed on behalf of Hydrocarbon Trading & Transport Co., Inc. (HT&T). HT&T requested a refund based on the small claims presumption of injury for its purchases of 12,600,000 gallons of Exxon motor gasoline, and a refund based on its lost profits as a result of Exxon's allocation violations. HT&T obtained the motor gasoline for which it was requesting a price claim refund through exchange transactions with Exxon. The DOE determined that since the volumetric methodology applies only to product purchased from the consent order firm, HT&T was not entitled to receive the benefit of any presumptions. HT&T's price claim was therefore denied. With reference to the allocation claim, the DOE determined that this issue fell outside the scope of enforcement matters subject to the Exxon Consent Order. In addition, the DOE determined that HT&T was estopped from pursuing this before the DOE. That part of the Application for Refund which pertained to the allocation claim was therefore dismissed.

Florida Airmotive, Inc., 7/16/92, RR272-93

The DOE issued a Decision and Order concerning a Motion for Reconsideration that Florida Airmotive, Inc. (FAI) filed in response to the denial of its Application for Refund from the crude oil fund being disbursed under 10 CFR Part 205, Subpart V. FAI argued that, although it was a reseller of refined petroleum products, for those products claimed in its Application, FAI was an end-user, because the products had been used in its charter and school airplanes. Therefore, FAI asserted, it should not have to prove injury and it should be granted a refund for its claim. The DOE disagreed, noting that it had known that the gallons FAI claimed were used in the charter and school planes. But because FAI's reseller operations were not separate and distinct from its charter and school business, the DOE held that FAI should not be granted a refund for its end-user gallons. Therefore, the Motion for Reconsideration was denied.

Gulf Oil Corporation/Boss Linco Lines, Inc., 7/17/92, RF300-12740

The Department of Energy has issued a Decision and Order denying the Application of LK, on behalf of Boss Linco Lines Inc. in the Gulf Oil Corporation special refund proceeding. This Application was denied because LK, Inc. was found not to have demonstrated that it was authorized to file this Application for Refund.

Gulf Oil Corporation/Joy Oil Company Charles F. Ober & Son, Inc. Walter E. Schwab Company, 7/13/92, RR300-27, RR300-35, RR300-50

The Department of Energy (DOE) issued a Decision and Order denying Motions for Reconsideration filed by three applicants in the Gulf Oil Corporation special refund proceeding. Bassman, Mitchell & Alfano, on behalf of these applicants, sought refunds for gallons not included in Applications for Refund that these applicants previously filed. The DOE asked that the applicants explain the differences between their initial gallonage claims and the volumes for which they sought refunds in the Motions and that they certify that the revised gallonage claims were more reasonable. Because these applicants

were unable to explain these discrepancies, the Motions were denied.

Gulf Oil Corporation/Mumford, Inc., 7/17/92, RF300-12740

The Department of Energy has issued a Decision and Order denying the Application of Mumford, Inc. in the Gulf Oil Corporation special refund proceeding. This Application was denied because Mumford failed to provide any information in support of its refund claim other than a Gulf customer listing. That information is insufficient by itself to demonstrate the accuracy of this Application for Refund.

Mobil Oil Corp./Cantro Petroleum Corp., 7/14/92, RR225-41

On remand from the U.S. District Court for the District of Connecticut, the Department of Energy's Office of Hearings and Appeals (OHA) considered and rejected the Statement of Objections filed by Cantro Petroleum Corporation (Cantro) to a Proposed Decision and Order issued by OHA. In its Statement of Objections, Cantro asserted that it should receive an above-volumetric refund in order to compensate for the allegedly improper termination of an early payment discount by Mobil Oil Corp. OHA had found that Cantro should not receive an above-volumetric refund for those purchases or refined products from Mobil during the consent order period that were not paid for by Cantro within 10 days of delivery. OHA'S rejection of the Statement of Objections was based upon its finding that since purchases of products for which payment was not made within 10 days did not qualify for the early payment discount, Cantro was not overcharged or injured when Mobil refused to apply the discount to them.

Texaco Inc./Diablo Texaco, 7/15/92, RF321-18834

The Office of Hearing and Appeals (OHA) of the Department of Energy issued a Decision and Order concerning an Application for Refund that was filed in the Texaco refund proceeding by Wilson, Keller & Associates (WK&A) on behalf of Diablo Texaco and its owner, Gerald Greth. In that Decision, the OHA rescinded in part a refund that was granted to Mr. Greth on November 1, 1991. That refund was based upon Mr. Greth's certification in his application that he operated Diablo Texaco during the period from January 1979 through June 1983. In the course of investigating a possible conflict between Mr. Greth's application and one filed by another applicant at a later date, the OHA was informed by Mr. Greth that his actual dates of operation were July 1979 through June 1983. Mr. Greth and WK&A were therefore required to repay to the DOE $238, representing the amount of the refund attributable to the January-June 1979 period. The Decision also determined that because Mr. Greth's incorrect certification cast doubt upon the accuracy of the other representations made in his application, he would have to submit documentation in support of his amended dates of operation within 30 days of the date of the Decision.

Texaco Inc./Gene's Texaco, Gene's Texaco, 7/17/92, RF321-18283, RF321-18822

The DOE issued a Decision and Order concerning two Applications for Refund filed on behalf of Gene's Texaco in the Texaco Inc. special refund proceeding. On January 10, 1992, Wilson, Keller & Associates, Inc. filed an Application for Refund on behalf of Gene E. Yarrow (Yarrow), the owner of Gene's Texaco. Subsequently, on June 29, 1992, Yarrow filed another Application for Refund on behalf of Gene's Texaco using a form provided by Federal Refunds, Inc. (FRI). The DOE held that since Yarrow had falsely certified on his FRI application that he had not previously signed and authorized the filing of another Texaco refund application, it was appropriate to deny both of the applications. Consequently, both of Yarrow's applications were denied.

Wilbert Kampwerth, 7/13/92, RR272-91

The DOE issued a Decision and Order concerning a Motion for Reconsideration submitted in the Subpart V crude oil proceeding by Wilbert Kampwerth. Mr. Kampwerth had previously been granted a refund of $50 in *Charles Batschelett, et al.*, Case Nos. RF272-71403, *et al.* (July 10, 1989). The refund check was misplaced by Mr. Kampwerth and was never cashed. In accordance with the Limited Payability regulations (Public Law 100-86, Sec. 1003), on December 31, 1990, the Department of Treasury cancelled Mr. Kampwerth's refund check and the funds were retained by Treasury. On the basis of an explanation submitted by the applicant, the DOE granted the Motion for Reconsideration and will issue Mr. Kampwerth a new refund check for $50.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Co./Dick's Arco *et al*	RF304-3700	07/15/92
Atlantic Richfield Co./Highway Petroleum Sales, Inc. *et al*	RF304-2938	07/17/92
Atlantic Richfield Co./Salmon Creek Arco,	RF304-9837	07/15/92
Walter and Son's Service	RF304-9830	
Atlantic Richfield Co./Walker's Deep Rock	RF304-3700	07/15/92
Joseph L. Tancredy	RF304-4867	.....
Hartsville Garage	RF304-12919	.....
Atlantic Richfield Co./West End Arco *et al*	RF304-12967	07/17/92
City of Boston	RF272-70694	07/15/92
City of Jordan *et al*	RF272-88500	07/13/92
Clark Oil & Refining Corp./Louis McLaurin Super 100 *et al*	RF342-109	07/15/92
Clark Oil & Refining Corp./Northern Illinois Gas Co	RF342-215	07/15/92
Gulf Oil Corp./Arthur L. Lee *et al*	RF300-16328	07/17/92
Gulf Oil Corp./Budney Fuel Oil Co. *et al*	RR300-38	07/17/92
Gulf Oil Corp./Colorado Prime *et al*	RF300-17713	07/17/92
Gulf Oil Corp./Fisher's Gulf *et al*	RF300-14543	07/17/92
Gulf Oil Corp./Frank's Gulf Station *et al*	RF300-16042	07/17/92
Gulf Oil Corp./Keller Independent School District *et al*	RF300-19000	07/17/92
Gulf Oil Corp./Mac's Gulf *et al*	RF300-17404	07/15/92
Gulf Oil Corp./Mel's Market *et al*	RF300-17500	07/16/92
Gulf Oil Corp./National Lime & Stone Co. *et al*	RF300-18520	07/15/92
Gulf Oil Corp./Seagate Gulf Service *et al*	RF300-16901	07/16/92
Gulf Oil Corp./Texas Industrial Services, Inc. *et al*	RF300-16602	07/15/92

Gulf Oil Corp./Whitaker's Grocery *et al*	RF300-16963	07/16/92
Moranco Drilling, Inc.	RF272-14039	07/13/92
Moranco Drilling, Inc.	RD272-14039	
Sawyer Drilling & Servc., Inc.	RF272-16287	
Sawyer Drilling & Servc., Inc.	RD272-16287	
Shelby Community School District *et al*	RF272-81571	07/16/92
Shell Oil Company/The Permian Corp.	RF315-7842	07/13/92
Chevron USA, Inc.	RF315-8859	
St. Mary's Church *et al*	RF272-89500	07/16/92
Texaco Inc./Fondren Park Texaco *et al*	RF321-231	07/13/92
Texaco Inc./Harvey Watson Texaco *et al*	RF321-15002	07/13/92
Texaco Inc./Penn Central Trans. Co.	RF321-13304	07/17/92
Union De Transports Aeriens	RF321-13306	
Capital International Airways	RF321-14695	
Town of Weathersfield *et al*	RF272-82582	07/16/92

Dismissals

The following submissions were dismissed:

Name	Case No.
Avenue Oil Company	RF300-19897
Baldwinville Globe Texaco	RF321-7986
Borough of South Toms River, NJ	RF272-83764
Bud's Texaco on Filmore	RF272-5913
Bud's Texaco Service #2	RF321-13767
C.B. Concrete Co.	RF272-90457
Christy's Texaco	RF321-5939
Country Squire Texaco	RF321-7995
Ellis Brunner Texaco #1	RF321-12141
Fort Worth Independent School District.	RF272-76355
Fredrick A. Perry	RF304-12615
Frontier Transportation Co.	RF321-17606
Gulf to Bay Texaco	RF321-5321
Gurran Oil Company	RF321-8375
H & H Texaco	RF321-13356
Haskell's Texaco	RF321-7985
High Point Road Texaco	RF321-5907
Jim Hogg Rd. Texaco	RF321-12371
Joe's Texaco	RF321-18516
John Campbell's Texaco	RF321-10336
Kitch Texaco Service	RF321-7994
Layton's Texaco	RF321-8205
Lee Weitz Texaco	RF321-14664
Marks' Texaco Service	RF321-5324
Perry's Arco Service Station	RF304-12616
Quaker Village Texaco	RF321-5908
R. L. Drewry	RF321-8367
Ralph Leber Company, Inc.	RF321-18773
Rasdall Texaco	RF321-10136
Reisen Lumber & Millwork Co.	RF272-89913
Rogers Brothers Construction Co.	RF272-91224
S & S Trucking, Inc.	RF272-89665
Sagebiel's	RF321-8394
Schlegel Tennessee, Inc.	RF272-90194
Smithville Freight Lines, Inc.	RF321-18717
Sonny's Texaco	RF321-5330
South Main Texaco	RF321-5934
Thompson's Texaco	RF321-5323
Totman's Texaco	RF321-8223
Webb's Texaco	RF321-5418

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: September 4, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92-21991 Filed 9-10-92; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; During the Week of July 27 through July 31, 1992

During the week of July 27 through July 31, 1992, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Refund Applications

Du-Kane Asphalt Company, Inc., 7/27/92, RF272-24809, RD272-24809

The DOE issued a Decision and Order granting an Application for Refund filed by Du-Kane Asphalt Company, Inc., a producer of bituminous paving products, in the Subpart V crude oil refund proceeding. A group of States and Territories (States) objected to the Application on the grounds that the applicant was able to pass through increased petroleum costs to its customers. In support of their objection, the States submitted an affidavit of an economist stating that, in general, road construction firms were able to pass through increased petroleum costs. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury and that the applicant should receive a refund. The DOE also denied the States' Motion for Discovery, finding that discovery was not warranted where the States had not presented evidence sufficient to rebut the applicant's presumption of injury. The refund granted to the applicant in this Decision was $16,821.

Murphy Oil Corporation/Sky Petroleum, Ltd., et al., 7/29/92, RF309-496, et al.

The DOE issued a Decision and Order granting five Applications for Refund filed in the Murphy Oil Corporation special refund proceeding on behalf of Sky Petroleum, Ltd. (Sky), R.L. Jordan Oil Co., Inc., of North Carolina (Jordan) and its affiliates. Jordan and its affiliates are owned by Mr. R.L. Jordan. Mr. Jordan also owns a 50% partnership interest in Sky. The DOE determined that the Applications of Jordan and its affiliates should be considered together but that it would be inequitable to treat Sky as a part of the affiliated firm, because that would limit the portion of the refund due Mr. Jordan's partner in Sky. Therefore, the DOE granted the Applications filed on behalf of Jordan under the 40% presumption of injury and granted the Applications filed by Jordan and T.G. Proctor, Jr., respectively, under the $5,000 presumption of injury. The total amount of the refunds approved in this Decision and Order is $66,909 (comprised of $45,954 in principal and $20,955 in interest).

Shell Oil Company/Taugco, Inc., 7/27/92, RF315-4778

The DOE issued a Decision and Order granting an Application for Refund filed in the Shell Oil Company special refund proceeding on behalf of TAUGCO, Inc. (TAUGCO), a debtor-in-possession under Chapter 11 of the U.S. Bankruptcy Code. In its Application, TAUGCO claimed a refund based upon purchases of Shell petroleum products made by its predecessor, The Augsbury Corporation (Augsbury). Augsbury, prior to changing its name to TAUGCO, sold substantially all of its assets to Ultramar Petroleum, Inc. The DOE determined that the right to the refund was not among the assets transferred to Ultramar in the sale and

granted TAUGCO a refund of $9,035, including $2,777 in interest.

Texco Inc./Hercules Incorporated, 7/29/92, RF321-12257, RF321-14090

The DOE issued a Decision and Order concerning Applications for Refund filed by Hercules Incorporated (Hercules) and Magnox Pulaski Incorporated (Magnox), in the Texaco special refund proceeding. Both Applications were based upon purchases of Texaco refined products at a manufacturing facility located in Pulaski, Virginia (the Pulaski Plant). Although physical ownership of the facility had been transferred from Hercules to Magnox in 1986, the DOE found that the right to seek a refund based upon the Texaco purchases was retained by Hercules. Accordingly, the Magnox Application was denied and Hercules was granted a refund of $13,921, representing $10,541 principal and $3,380 interest.

Texaco Inc./Jim's Texaco, 7/29/92, RR321-25

Jim's Texaco, a retailer of Texaco refined products, filed a Motion for Reconsideration of a Decision and Order that denied duplicate Applications that had been filed on its behalf in the Texaco Inc. Subpart V special refund proceeding. According to the Motion, the owner of Jim's Texaco signed the second refund Application without knowing that his daughter had filed a previous claim on his behalf. Under these circumstances, the DOE approved the Motion for Reconsideration and granted a refund of $5,230, including accrued interest.

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Clark County *et al*	RF272-89690	07/28/92
Gulf Oil Corporation/America's Keswick *et al*	RF300-17601	07/28/92
Gulf Oil Corporation/Moose River Country Store *et al*	RF300-18700	07/28/92
Gulf Oil Corporation/Razorback Aircraft Services *et al*	RF300-19705	07/29/92
Gulf Oil Corporation/Town of Oakland *et al*	RF300-19314	07/29/92
Seneca School District *et al*	RF272-84515	07/28/92
Texaco Inc./Broomfield Texaco *et al*	RF321-7294	07/28/92
Texaco Inc./Danny Thomas Texaco *et al*	RF321-170	07/28/92
Texaco Inc./Harold's Texaco *et al*	RF321-343	07/28/92
Texaco Inc./KSL Tire & Auto, Inc.	RF321-18978	07/27/92
United Refining Company/Townsend Oil Corp.	RF333-6	07/29/92
Shaner Brothers	RF333-17	

Dismissals

The following submissions were dismissed:

Name	Case No.
Arco Service Station	RF304-3828
Baytown Electric Corporation	RF300-18341
Bottineau County, ND	RF272-66289
Dickson, TN	RF272-88627
Emerald Arco	RF304-6397
Fats Truck Stop	RF300-18419
Frank's Arco Service	RF304-6398
Jones Oil Co	RF304-9310
Kelley Gas & Oil Co	RF304-3832
Kwik Stop Food Store	RF300-19545
Lamb Oil & Supply	RF300-18434
Lowell Joint Elementary	RF272-79705
Morty Hometown Service	RF304-3850
Mrs. Jos. V. Herring	RF304-10772
Pawnee City Public Schools	RF272-91687
Ridley's Gulf	RF300-18333
Shawnee Local SD	RF272-87441
Stuart Public Schools	RF272-80524
Texaco Service	RF321-17935
University Arco Service	RF304-6388
Valley City 2	RF272-81449
Westside Texaco	RF321-11639
Wetzel's Service Station	RF304-3841

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: September 4, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92-21992 Filed 9-10-92; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; During the Week of August 10 through August 14, 1992

During the week of August 10 through August 14, 1992, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Refund Applications

Gulf Oil Corp./Cargo Carriers, Inc., Caprock, Inc., 8/10/92, RF300-9683, RF300-9684

The DOE considered two Applications for Refund filed in the Gulf Oil Corporation refund proceeding by Cargo Carriers, Inc. (CCI) and Caprock, Inc. (Caprock). CCI requested a refund based on purchases of Gulf marine diesel fuel made by its reseller subsidiary, Tri-State Marine Service Company. It also requested a refund based on its own purchases of marine fuel from Tri-State. CCI, an end-user of this marine fuel in a tow-boat operation, requested that the end-user presumption of injury be applied to this refund claim. Caprock, a CCI affiliate, requested a refund based on purchases of Gulf fuel made for its end-use as a transporter of cattle and cattle feed. The DOE found that it would be proper to apply both the end-user and small claims presumptions of injury to the CCI/Tri-State purchases, and thereby allow the firms to receive more than a $5,000 refund. In this regard, the DOE noted that the two firms were not operationally distinct, and that the two refund requests should be considered together under the small claims injury presumption for resellers. CCI's total refund, including interest, was $9,317. In considering the Caprock refund, the DOE found that Caprock and CCI were operationally distinct, and that Caprock, as a transporter of cattle and cattle feed grain, was in a completely different business from CCI. Accordingly, Caprock was granted a full end-user refund of $1,114, including interest.

Northeast Petroleum Industries/Massachusetts, 8/10/92, RM25-260

The DOE issued a Decision and Order concerning the Motion for Modification filed by the Commonwealth of Massachusetts (Massachusetts) requesting approval to use $20,000 of its uncommitted Northeast second-stage monies to fund a national conference

and symposium about alternative fuel vehicle technology. While the DOE has not previously approved a proposal to fund an alternative fuel vehicle conference, it has granted second-stage monies in separate decisions to alternative fuel oriented-programs and energy conservation conferences. Since the conference would result in restitution to injured citizens, Massachusetts' proposal was approved.

Texaco Inc./Elks Texaco et al., 8/11/92, RR321-13 et al.

Eight Texaco retailers each filed a Motion for Reconsideration of a Decision and Order that denied duplicate Texaco refund applications, that each had previously filed. In the Motions, the retailers stated that they had signed the second application, and certified in it that no other application had been filed, because they believed that this was in accordance with the instructions that they had received from Texaco. In considering the Motion, the DOE found that the retailers erroneously filed the second application because they were confused by Texaco's sending another application form and not for the purpose of obtaining a duplicate refund. Accordingly, the Motions for Reconsideration were approved and the retailers were granted refunds totalling $27,367.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Gulf Oil Corporation/Arnholt Gulf Service *et al*	RF300-19538	08/12/92
Gulf Oil Corporation/Atkins Petroleum Products, Inc. *et al*	RF300-20200	08/14/92
Gulf Oil Corporation/Camillus Police Dept. *et al*	RF300-19500	08/12/92
Gulf Oil Corporation/Freeway Gulf *et al*	RF300-15828	08/11/92
Gulf Oil Corporation/Genesco, Inc. *et al*	RF300-18900	08/12/92
Gulf Oil Corporation/Linger Trucking Company *et al*	RF300-16906	08/11/92
Nelson-Deppe, Inc	RF272-48587	08/12/92
Springfield School District *et al*	RF272-79139	08/11/92
Texaco Inc./Bernie Widener's Texaco #1 *et al*	RF321-817	08/12/92
Texaco Inc./Bill's Falcon Texaco *et al*	RF321-832	08/11/92
Texaco Inc./C.A. Dillon Supply Company *et al*	RF321-15869	08/14/92
Texaco Inc./Edwards' South End Texaco *et al*	RF321-10691	08/14/92
Texaco Inc./Guy's Texaco *et al*	RF321-325	08/12/92
Texaco Inc./Rock's Texaco Truck Center	RF321-11351	08/11/92
J.H. Buhrmaster Co., Inc	RF321-14290	
Conservative Gas	RF321-14328	
Texaco Inc./USAIR, Inc	RF321-4439	08/13/92
Norfolk & Western Railway Co	RF321-14264	
Northeast Airlines, Inc	RF321-14265	
Southern Railway Co	RF321-14266	

Dismissals

The following submissions were dismissed:

Name	Case No.
Bowlin's Flying C Ranch	RF321-14252
Carnival Cruise Lines, Inc	RF307-10215
East End Motors, Inc	RF321-10895
Gainesville Regional Utilities	RF307-10216
H.G. Hamilton	RF321-14258
Jack Orrand's Texaco	RF321-10903
Jack's Texaco	RF321-18612
Mc Cormick Texaco	RF321-18985
Robbie's Texaco	RF321-10942

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: September 4, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92-21993 Filed 9-10-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of hearings and Appeals, Department of Energy.

ACTION: Notice of proposed implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy (DOE) announces proposed procedures for the disbursement of $9,254, plus accrued interest, that Automatic Comfort Corporation remitted to the DOE pursuant to a consent order executed on April 14, 1983. The funds will be distributed in accordance with the DOE's special refund procedures, 10 CFR part 205, subpart V.

DATE AND ADDRESS: Comments must be filed in duplicate on or before October 13, 1992 and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to Case Number LEF-0005.

FOR FURTHER INFORMATION CONTACT: Max William Yano, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy (DOE), 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute monies that have been remitted by Automatic Comfort Corporation to the DOE to settle possible pricing and allocation violations with respect to its sale of refined petroleum products. The DOE is currently holding $9,254 in an interest-bearing escrow account pending distribution.

Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized. Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of the publication of this notice in the **Federal Register** and should be sent to the address set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: September 2, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Dated: September 2, 1992.

Name of Petitioner: Automatic Comfort Corporation.

Date of Filing: December 4, 1989.

Case Number: LEF-0005.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the Mandatory Petroleum Price and Allocation Regulations. See 10 CFR part 205, subpart V. On December 4, 1989, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a Consent Order entered into with Automatic Comfort Corporation (Automatic), which is now Connecticut Petroleum Marketers.

I. Background

Automatic was a branded independent marketer, as that term is defined in the Emergency Petroleum Allocation Act of 1973, located in East Hartford, Connecticut. During the period March 1, 1979, through September 30, 1979, the ERA conducted an audit of Automatic's records. Based upon the results of that audit, the ERA concluded that the firm had violated the provisions of the Mandatory Petroleum Price regulations. In order to settle these matters, on April 14, 1983, Automatic and the DOE entered into a Consent Order that resolved all alleged violations for the entire January 1, 1973, through January 28, 1981, regulatory period (the Consent Order period). Although the Consent Order does not state that Automatic committed any of the alleged violations and Automatic does not admit any of the violations, the remedy spelled out in the Consent Order involves refunds to specific wholesale and end-user purchasers and is based upon the ERA audit findings. The specific provisions of the Consent Order required Automatic to implement a program of refunds in the aggregate amount of one hundred fifteen thousand dollars ($115,000), and to distribute these refunds to Automatic's customers and to the United States Treasury as follows:

(a) Within thirty (30) days of the effective date of the Consent Order, Automatic shall pay the sum of forty thousand dollars ($40,000) by certified check payable to the United States Treasury;

(b) Within nine (9) months of the effective date of the Consent Order, Automatic shall refund the sum of eighteen thousand two hundred seventy-seven dollars and fifty cents ($18,277.50) to eligible end-user customers; and

(c) With eighteen (18) months of the effective date of the Consent Order, Automatic shall refund the sum of fifty-six thousand seven hundred twenty-two dollars and fifty cents ($56,722.50) to eligible dealer customers.

Automatic satisfied all of these requirements except that, in making the refunds pursuant to the provisions of paragraphs (b) and (c) above, the firm was unable to locate, and consequently unable to repay 36 of the specified end-user customers that were to receive refunds, and 3 of the specified dealer customers. As a result, Automatic was unable to refund $9,254 of the total refunds specified in paragraphs (b) and (c). That sum is the subject of the present proceeding.

II. Proposed Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR part 205 subpart V. The Subpart V process is generally used in situations where the DOE is unable to identify readily those persons who may have been injured by alleged regulatory violations or to determine the amount of such injuries. A more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds is set forth in the case of Office of Enforcement, 9 DOE ¶ 82,508 (1981); and Office of Enforcement, 8 DOE ¶ 82,597 (1981) (Vickers).

The Automatic case comes to us in a posture very different from the usual subpart V refund case. Ordinarily, there are no findings or even indications of specific injury in a subpart V proceeding. Empire Gas Corp., 21 DOE ¶ 85,101 (1991); and Time Oil Co., 20 DOE ¶ 85,698 (1990). It is precisely the absence of this material that led us to adopt the volumetric refund approach that is typically employed in these proceedings. Northeast Petroleum Industries, Inc., 20 DOE ¶ 85,405 (1990); Atlantic Richfield Co., 17 DOE ¶ 85,069 (1988); and Gulf Oil Corp., 16 DOE ¶ 85,381 (1987). In this case, not only are there very substantial indications of individual injury but the consent order firm has made specified refunds to most of a group of specified customers based upon this data. As a result, we see no reason to adopt the volumetric refund methodology in this proceeding. Underscoring this tentative conclusion is that any volumetric factor calculated in this proceeding—even were we in possession of reliable consent order period sales gallonage data for Automatic—would be infinitesimally small. This results because the remaining money to be distributed is small, and the Consent Order encompasses an eight-year period. Indeed, we think it very likely that any such volumetric would be so small that no purchaser could even approach the $15.00 minimum refund prescribed in above Subpart V proceedings. For these reasons, we proposed that we attempt to locate the named purchasers that Automatic could not find, and effectuate the refunds specified in the Consent Order. Since the Consent Order is silent as to the disposition of any remaining unrefunded monies, we also proposed that any residual funds be paid as indirect restitution under the Petroleum Overcharge Distribution and Restitution Act of 1986.

It is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Automatic Comfort Corporation pursuant to the Consent Order executed on April 14, 1983, will be distributed in accordance with the foregoing Decision.

[FR Doc. 92-21994 Filed 9-10-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4192-9]

Proposed Maximum Pressures for Rule-Authorized Enhanced Recovery Injection Wells in Michigan; First Group Fields

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed Maximum Injection Pressure in Fields with Rule-Authorized Enhanced Recovery Injection Wells in Michigan; First Group Fields.

SUMMARY: The United States Environmental Protection Agency (USEPA or Agency) today is proposing pressure gradients for calculating the maximum allowable liquid injection pressure for rule-authorized Class II enhanced recovery injection wells in 14 of 45 Michigan fields currently approved by the State of Michigan for enhanced recovery operations. (These 14 fields include 20 to 68 enhanced recovery units recognized by the State). Therefore, operators of rule-authorized enhanced recovery wells in the 14 fields must limit their liquid injection pressure as directed in this action, if the action is finalized as proposed. After final publication in the **Federal Register**,

these actions will become part of the applicable Underground Injection Control program for the State of Michigan, administered by Region 5 of USEPA, promulgated under the provisions of the Safe Drinking Water Act.

DATES: The USEPA requests public comments on today's proposed rules. Comments will be accepted until October 13, 1992. Comments post-marked after the close of the comment period will be stamped "Late". Notice was given on July 31 to those persons on a state-wide mailing list who indicated an interest in Class II injection wells in Michigan. To request that a public hearing be held, contact the person listed below.

ADDRESSES: The technical basis for each of the proposed pressure gradient is found in the Administrative Record for this action, which is available for viewing at the USEPA Region 5 office listed below. A packet of materials summarizing the basis is also available for viewing at three locations in Michigan. These locations can be obtained from the person listed as the contact for further information below. Submit written comments to: USEPA Region 5 (WD-17J), Underground Injection Control Section, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, Attn: Richard J. Zdanowicz, Chief.

FOR FURTHER INFORMATION CONTACT: Leah Haworth, Underground Injection Control Section, Water Division (312) 886-6556, 17th floor Metcalfe Building, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590.

SUPPLEMENTARY INFORMATION:

I. Background

The Underground Injection Control program for the State of Michigan is administered by the USEPA. Federal regulations at 40 CFR 147.1154 stipulate that the Regional Administrator shall establish maximum injection pressures for rule-authorized enhanced recovery injection wells in Michigan fields, after proper notice and opportunity for public comment and public hearing. This notice is the first step in that process. It concerns liquid injection in 14 of 45 approved enhanced recovery fields in Michigan. The Region intends to propose an action during 1993 for the remainder of the fields with rule-authorized enhanced recovery wells. Some of the 45 fields approved by the State of Michigan for enhanced recovery are authorized by permit, for example if injection wells were put into operation after June 1984.

The USEPA originally proposed on September 2, 1983, that injection pressure in rule-authorized, Class II enhanced recovery wells in Michigan be limited under the same regulation as was promulgated for similar wells for brine disposal (48 FR 40098 *et seq.*). Federal regulations at 40 CFR 147.1153 specify that the owner or operator of rule-authorized brine disposal wells shall limit injection pressure to the lesser of:

(a) A value which will ensure that operation of the well does not fracture the confining zone adjacent to the lowermost Underground Source of Drinking Water (USDW) or cause movement of fluids into USDWs; or

(b) A value of well head pressure calculated using a formula listed in § 147.1153. This formula used a fixed value for fracture pressure gradient of 0.80 pounds per square inch per foot (psi/ft).

In the final rule, issued May 11, 1984, USEPA determined that the use of a fixed fracture pressure gradient was not an appropriate option for enhanced recovery operations (49 FR 20138 *et seq.*). Instead, injection well owners and operators were required to submit site-specific data for the Regional Administrator to use as a basis for issuing maximum pressures. In the interim, owners and operators of rule-authorized enhanced recovery wells were required to limit their injection pressure as necessary to meet the standard listed in (a) above [40 CFR 144.28(f)(3)(ii)].

II. Proposed Field Rules

Today, USEPA is proposing to use the same pressure formula promulgated for brine disposal wells, but to replace the fixed fracture pressure gradient in use for brine disposal wells with the field-specific gradients listed in Table 1. Therefore, USEPA proposes that rule-authorized, enhanced recovery, injection wells in Michigan operate below a maximum liquid injection calculated using the following formula:

$$Pm = (FPG - 0.433\ Sg)d$$

Where:

Pm = Injection pressure at the wellhead (psi)

FPG = Fraction pressure gradient from Table 1 (psi/ft)

Sg = Specific gravity of the injection fluid (dimensionless)

d = Depth to top of injection zone (ft)

As explained in the May 11, 1984 final rule for the State of Michigan (49 FR 20163), USEPA used instantaneous shut-in pressures (ISIP) and step rate test results from the injection zones of enhanced recovery injection wells in the given fields to choose the pressure limit variables proposed in this notice. The Agency used data from the injection zone, rather than the confining zone adjacent to the USDW, not because it wished to change the regulatory standard, but because the injection zone typically is the only formation for which fracture pressure information is available.

In most cases, where multiple enhanced recovery injection wells are located in multiple sections of a field, at least one data point per section and at least three data points per field were used to establish the proposed fracture pressure gradient. Where fewer than three injection wells are operating, fewer data points were sometimes used. Where multiple data points were available from the same formation, the proposed regulatory limit was chosen as the average value of fracture pressure gradient for that formation. This is appropriate because using data from the injection zone rather the confining zone already confers an adequate degree of conservatism to the process.

III. Alternative Maximum Pressure

USEPA make no presumption of inherent danger in enhanced recovery injection pressures which exceed the fracture pressure of the injection zone, but these operations must be assessed more carefully than is provided for in this action process. Federal regulations make provision for this in two ways. First, after this action is finalized, owners and operators may submit a request that the USEPA establish an alternative maximum pressure for a particular field and formation. This request may allow injection at higher pressures if the operator can demonstrate to the satisfaction of the Agency that the desired injection pressure will not fracture the confining layer adjacent to the lowermost USDW and that there will be no migration of fluids into a USDW. The Agency may grant such a request after notice and opportunity for public comment and a public hearing, according to the provisions of 40 CFR part 124. Second, if this request is denied, the owner or operator may apply for a UIC permit under 40 CFR 144.25(c). The final permit decision, including permit conditions which the owner or operator considers to be inappropriate, may be subject to administrative review pursuant to 40 CFR 124.19. To be added to a mailing list to receive notice of Agency decisions in Michigan regarding Alternative Maximum Pressures or Class IIR permits, contact USEPA, Region 5 Underground Injection Control Section at the address given above.

IV. Notice to Owners and Operators

After this action is finalized, USEPA will send certified written notices to owners and operators informing them of the applicable formula to be used in determining the maximum allowable liquid injection pressure. Thereafter, owners and operators who exceed the injection pressure established under the formula or the alternative maximum pressure approved by USEPA will be considered in violation of 40 CFR 147.1154(a), and may be subject to enforcement action, including the assessment of civil penalties and the issuance of compliance orders. If an owner or operator does not receive a certified written notice from USEPA within thirty (30) days after the final notice is published in the **Federal Register**, he or she should immediately contact USEPA, Region 5 at the telephone number given above, to avoid the possibility of violating UIC regulations.

Dated: July 27, 1992.

Dale S. Bryson,

Director, Water Division, Region 5, U.S. Environmental Protection Agency.

TABLE 1.—FRACTURE PRESSURE GRADIENT VALUES

Field	Formation	County	Township/range/section	FPG (psi/ft)
Aurelius 35	Niagaran Reef	Ingham	T2N,R2W,S26,35,36	0.65
Beaver Creek	Richfield	Crawford/Kalkaska	T25N,R5W, S12,13,24 and T25N,R4W,S7,8,16–21,28,29.	1.07
Bentley-Dundee	Dundee	Gladwin	T17N,R2E,S18,19,20	1.15
Billings	Dundee	Gladwin	T17N,R1E, S2,3,10,11,T17N,R1E, S12,13 and T17N,R2E,S18.	1.12
Billings 2 Unit:				
Billings-Bentley Unit:				
Chester	A1 Carbonate & Niagaran	Otsego	T30N,R2W, S7,8,17,18,19,20, T30N,R2W, S21,22.	0.00
Chester 18 Unit:				0.78
Chester 21 Unit:				
Columbus 3	Niagaran	Saint Clair	T5N,R15E, S3,10 and T6N,R15E, S34.	0.79
Cranberry Lake	Richfield	Clare	T20N,R6W,S1,2,11,12	1.10
Hayes	Salina-Niagaran	Otsego	T29N,R4W,S15,T29N,R4W,S21,28	0.67
Hayes 15 Unit:				
Hayes 21A Unit:				
Headquarters	Richfield	Roscommon	T21N,R3W, S19,29,30, T21N,R3W, S29,30,32,33.	1.22
Headquarters Unit:				
Headquarters-Sour Unit:				
Ingham 13	Salina-Niagaran	Ingham	T2N,R1E,S13	0.76
Kalkaska "21"	Salina-Niagaran	Kalkaska	T27N,R8W,S22	0.92
Onondaga 10	Salina-Niagaran	Ingham	T1N,R2W,S2–4,10,11,14	0.61
Pennfield 35	Niagaran Reef	Calhoun	T1S,R7W,S35	0.60
Rose City	Richfield	Ogemaw	T23,24N,R2E, S3,19–21, 27–30,32–35, T24N,R1,2E,S25, T24N,R1E, S21.	1.07
Rose City Unit:				
Rose City Central Unit:				
Rose City West Unit:				

[FR Doc. 92–21971 Filed 9–10–92; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–4203–8]

Environmental Impact Statement and Regulations; Availability of EPA Comments

Availability of EPA comments prepared August 24, 1992 through August 28, 1992 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 20, 1992 (57 FR 12499).

Draft EISs

ERP No. D–BLM–J02023–WY Rating EC2, Methel Hanna Basin Coalbed Methane Gas Production Project, Construction, Operation, Maintenance and Abandonment, Approval, Drilling Control, COE section 404 and EPA RCRA Permits and Right-of-Way Grant, Carbon County, WY.

Summary

EPA had environmental concerns with the proposed project regarding the potential impacts to surface and ground water, wetlands and reasonable alternatives to the project.

ERP No. D–FHW–C40126–NJ Rating EC2, NJ–21 Freeway Extension Project, Construction and Modification, Monroe Street in Passaic to Route 46/Lexington Avenue Intersection, Funding, and section 10 and 404 Permits, Cities of Passaic and Clifton, Passaic County, NJ.

Summary

EPA expressed concerns about the proposed project because of insufficient mitigation of the preferred alternative's impacts to aquatic resources and water quality. Moreover, the document does not fully evaluate cumulative and secondary impacts of the proposed project. EPA requested additional information to assess the above issues/impacts be included in the final EIS.

ERP No. D–NPS–J61086–MT Rating LO1, Grant-Kohrs Ranch National Historic Site, General Management Plan and Development Concept Plan, Implementation, Northern Rockies, Powell County, MT.

Summary

EPA had no environmental objections with the proposed project.

ERP No. D–SWF–H64001–IA Rating LO, Walnut Creek National Wildlife Refuge and Prairie Learning Center Master Plan, Restoration and Reconstruction, Prairie City, Jasper County, IA.

Summary

EPA had no objections to the proposed project.

ERP No. D-TVA-E99014-00 Rating EU2, Tennessee River Chip Mill Barge Terminals, Construction and Operation, Issuance of Barge Terminal Permit, section 10 and 404 Permits, several Counties, AL and TN.

Summary

EPA individually rated each alternative: Alternative 1—LO, Alternative 2—EU2, Alternative 3—EO2. The major environmental issues associated with the implementation of the action alternatives relate to potential water quality and wetland impacts; loss of habitat, biodiversity, ecologically sensitive areas, threatened and endangered species and cumulative effects. Additional information requested for the FEIS includes compliance rates for the present voluntary BMPs for existing timber harvesting in affected TN, AL and GA.

ERP No. D-UAF-E11028-GA Rating EC2, Moody Air Force Base Beddown of a Composite Wing for F-16, A/OA-10 and C-130 Aircraft, Implementation, Lowndes and Lanier Counties, GA.

Summary

EPA had environmental concerns about certain unsubstantiated conclusions made regarding the proposed change in aircraft mix at Moody AFB. Additional information was requested in the final document to determine the validity of the assertion that the consequences associated with increased aircraft operations, changes in automobile traffic patterns, waste management and elevated noise were insignificant.

ERP No. DA-AFS-J65132-WY Rating EC2, Bighorn National Forest Land and Resource Management Plan, Updated Information, Amendment to the Timber Harvest Standards and Guidelines, Bighorn Mountain Range, Bighorn, Johnson, Sheridan and Washakie Counties, WY.

Summary

EPA expresses environmental concerns regarding the proposed project. Additional information on water quality, riparian and wetland areas and cumulative updates.

Final EISs

ERP No. F-BIA-K80563-00, Fort Mojave Indian Reservation Planned Community Development, Mojave Valley Resort, Lease Approval and Site Selection, section 404 Permit and Coast Guard Permit, San Bernardino Co., CA, Clark Co., NV and Mohave Co., AZ.

Summary

EPA expressed concern regarding whether the proposed project is in compliance with section 404 of the Clean Water Act. EPA recommended that a section 404 Permit should not be issued until this information is provided. EPA also requested clarification regarding the protection of the air quality and water quality standards and specifically who is the responsible party, the Fort Mohave Tribe or the State of Arizona.

ERP No. F-COE-E36168-FL Central and Southern Florida Project, Flood Control and Canal 51-West End, Control Structures 155A, 360, Pump Station 319 and Levee Construction, Implementation, Palm Beach County, FL.

Summary

EPA's major concerns with the original proposal have been satisfactorily addressed. The final design of this project remains to be determined, but it appears that a plan to collect a majority of the canal's discharges for use within the Everglades system is feasible.

ERP No. F-IBR-K34007-CA, Lake Berryessa Reservoir Area Management Plan, Land and Water Management, Implementation, Napa County, CA.

Summary

EPA's concerns were adequately addressed in the FEIS.

ERP No. F-UMT-C54005-NY, Queens Subway Improvement Options Study, 63rd Street to Archer Avenue, Funding, Queens, NY.

Summary

EPA's concerns with the draft EIS have been addressed in the final document. Accordingly, EPA believed that the project will not result in any significant adverse environmental impacts.

ERP No. FS-AFS-J65102-CO, San Juan National Forest Land and Resource Management Plan Amendment, Timber Management, Archuleta, Conejos, Hinsdale, La Plata, Mineral, Montezuma, Rio Grande, San Juan and San Miguel Counties, CO.

Summary

EPA had environmental concerns with the proposed project. There were some additional concerns relating to the adequacy of the water quality data that should be addressed.

ERP No. FS-AFS-J65167-MT, Lost Silver Timber Harvest Project, Timber Sale and Road Construction, Additional Information, Flathead National Forest, Hungry Horse Ranger District, Flathead County, MT.

Summary

EPA had environmental concerns regarding the increased sediment levels to area drainages.

Dated: September 7, 1992.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 92-21997 Filed 9-10-92; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-4203-7]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260-5076 or (202) 260-5075.

Availability of Environmental Impact Statements Filed August 31, 1992 Through September 4, 1992 Pursuant to 40 CFR 1506.9.

EIS No. 920355, Final EIS, AFS, NM, Hay Timber Sale, Timber Harvest and Road Construction, Implementation, Lincoln National Forest, Cloudcroft District, Otero County, NM, Due: October 13, 1992, Contact: Tim Meyer (505) 682-2551.

EIS No. 920356, Final EIS, SFW, VA, MD, Chincoteague National Wildlife Refuge (NWR) Comprehensive Management and Development Plan, Implementation and Land Acquisition, Accomack Co., VA and Worcester Co., MD, Due: October 13, 1992, Contact: John D. Schroer (804) 336-6122.

EIS No. 920357, Final EIS, AFS, OR, Bergan Fire Salvage Timber Sale and other Fire Recovery Projects, Silver Creek Wild and Scenic River Designation, Implementation, Snow Mountain Ranger District, Ochoco National Forest, Harney County, OR, Due: October 13, 1992, Contact: Jim Keniston (503) 573-7292.

EIS No. 920358, Final EIS, COE, HI, Kawainui Marsh Flood Control Project, Coconut Grove Residential Area, Implementation, Island of Oahu, City and County of Honolulu, HI, Due: October 13, 1992, Contact: Margo Stahl (808) 438-7006.

EIS No. 920359, Final SUPPLEMENT, NPS, CA. Yosemite National Park, General Management Plan, Implementation, Updated Information, Concession Services Plan, Tuolumne, Mariposa and Madera Counties, CA, Due: October 13, 1992, Contact: Michael Finley (209) 372-0202.

EIS No. 920360, Draft EIS, BLM, UT, UT-88 south of Ouray to I-70 Connector, Construction and Operation, Right-of-Way Approval and Funding, Uintah and Grand Counties, UT, Due: December 10,

1992, Contact: Daryl Trotter (801) 250-6111.

EIS No. 920361, Draft EIS, FTA, PA, Phase I Airport Busway/Wabash Hovway Corridor Construction, Downtown Pittsburgh to the Borough of Carnegie, Allegheny County, PA, Due: October 26, 1992, Contact: Ken Mowll (202) 366-0096.

EIS No. 920362, Final EIS, AFS, WA, Kettle River Key Open-Pit Gold Mining Expansion Project, Construction and Operation, Plan of Operation Approval and NPDES Permit, Colville National Forest, Republic Ranger District, Ferry County, WA, Due: October 13, 1992, Contact: Patricia Egan (509) 775-3305.

Dated: September 8, 1992.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 92-21996 Filed 9-10-92; 8:45 am]

BILLING CODE 6560-50-M

[OPP-00333; FRL-4072-4]

Alkyl Amine Hydrochloride; Pesticide Reregistration Eligibility Documents; Availability for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of reregistration eligibility documents; opening of public comment period.

SUMMARY: This Notice announces the availability of the Reregistration Eligibility Document (RED) for the active ingredient alkyl amine hydrochloride, and the start of a 60-day public comment period. The RED for alkyl amine hydrochloride is the Agency's formal regulatory assessment of the health and environmental data base of the subject chemical, and presents the Agency's determination regarding which pesticidal uses of alkyl amine hydrochloride are eligible for reregistration.

DATES: Written comments on the RED must be submitted by November 10, 1992.

ADDRESSES: Three copies of comments identified with the docket number "OPP-00333" should be submitted to: By mail: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment in response to this Notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. The public docket and docket index will be available for public inspection in rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

To request a copy of the above RED, or a Red Fact Sheet, contact the Public Response and Program Resources Branch, in rm. 1132, CM #2, at the address given above or call (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Technical questions on the RED should be directed to the chemical review manager, Betty Crompton, at (703) 308-8067.

SUPPLEMENTARY INFORMATION: The Agency has issued Reregistration Eligibility Documents for the pesticidal active ingredient: Alkyl amine hydrochloride. Under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1988, EPA is conducting an accelerated reregistration program to reevaluate existing pesticides to make sure they meet current scientific and regulatory standards. The data base to support the reregistration of the chemical alkyl amine hydrochloride is substantially complete. EPA has determined that all currently registered products containing alkyl amine hydrochloride as an active ingredient are eligible for reregistration.

All registrants of products containing alkyl amine hydrochloride have been sent the appropriate RED and must respond to the labeling requirements and the product specific data requirements (if applicable) within 8 months of receipt. These products will not be reregistered until adequate product specific data have been submitted and all necessary product label changes are implemented.

The reregistration program is being conducted under congressionally mandated time frames, and EPA recognizes both the need to make timely reregistration decisions and to involve the public. Therefore, EPA is issuing the RED as a final document with a 60-day comment period. Although the 60-day public comment period does not affect the registrant's response due date, it is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments will be carefully considered by the Agency and if any of those comments impact on the RED, EPA will issue an amendment to the RED and publish a **Federal Register** Notice announcing its availability.

Dated: August 11, 1992.

David Baralo,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 92-21801 Filed 9-10-92; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL MARITIME COMMISSION

City of Los Angeles/American President Lines, Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-003938-003.

Title: City of Los Angeles/American President Lines, Ltd. Terminal Agreement.

Parties:

The City of Los Angeles ("City")
American President Lines, Ltd. ("APL").

Synopsis: The modification adds 15.15 acres to the premises leased to APL by the City and sets the level of compensation for the third quarter of the period beginning January 1, 1992 and ending December 31, 1996.

Dated: September 8, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92-21940 Filed 9-10-92; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 92P-0187]

Canned Coho Salmon Deviating from Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Hegg and Hegg Smoked Salmon, Inc., to market test a product designated as "skinless and boneless coho salmon" that deviates from the U.S. standards of identity for canned Pacific salmon (21 CFR 161.170). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product.

DATES: This permit is effective for 15 months beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than December 10, 1992.

FOR FURTHER INFORMATION CONTACT: James F. Lin, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-4122.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Hegg and Hegg Smoked Salmon, Inc., 801 Marine Dr., Port Angeles, WA 98362-2103.

The permit covers limited interstate marketing tests of a product designated as "skinless and boneless coho salmon." The test product deviates from the U.S. standards of identity for canned Pacific salmon (21 CFR 161.170) in that the skin and all bones are removed, not just the backbone as provided in paragraph (a)(3)(ii) of this section. The test product meets all requirements of the standards with the exception of this deviation. The purpose of this variation is to more clearly identify the product for those consumers who desire skinless and boneless salmon.

For the purpose of this permit, the name of the test product is "skinless and boneless coho salmon." The label bears nutrition information in accordance with 21 CFR 101.9.

This permit provides for the temporary marketing of 11,000 cans of the test product, each can weighing 106.3 grams (3 3/4 ounces). The test product is to be manufactured at Hegg and Hegg Smoked Salmon, Inc., 801 Marine Dr., Port Angeles, WA 98362-2103 and distributed throughout the United States.

Each of the ingredients used in the food must be declared on the label as required by the applicable sections of 21 CFR part 101.

While the labeling of the test product complies with FDA's current regulations, the agency has published two proposals in the **Federal Register** that would (1) amend the current regulations pertaining to the content of nutrition information on food labels (56 FR 60366, November 27, 1991) and (2) revise the nutrition labeling format on food labels (57 FR 32058, July 20, 1992). A notice that will state the date after which labels must comply with the final regulations that the agency issues based on these proposals will be published shortly. The test product may need to be relabeled to comply with any changes in the nutrition labeling regulations that the agency ultimately adopts.

This permit is effective for 15 months beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than December 10, 1992.

Dated: August 28, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-21915 Filed 9-10-92; 8:45 a.m.]

BILLING CODE 4160-01-F

Advisory Committee Meeting; Cancellation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is canceling the meeting of the Food Advisory Committee scheduled for September 14 and 15, 1992. The meeting was announced by a notice in the **Federal Register** of August 19, 1992 (57 FR 37549). FDA plans to reschedule this meeting later this fall.

FOR FURTHER INFORMATION CONTACT: Lynn A. Larsen, Center for Food Safety and Applied Nutrition (HFF-6), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-5140.

Dated: September 8, 1992.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 92-22078 Filed 9-9-92; 11:20 am]

BILLING CODE 4160-01-F

Centers for Disease Control

[Announcement Number 282]

Demonstration of a Model Wellness Community in Wheeling, West Virginia

Introduction

The Centers for Disease Control (CDC), the Nation's prevention agency, announces the availability of fiscal year (FY) 1992 funds for a grant program to demonstrate a community wellness model in Wheeling, West Virginia. Funds were designated in Senate Report 102-104, the Departments of Labor, Health and Human Services, and Education and Related Agencies Appropriation Bill, 1992, for the demonstration in Wheeling, West Virginia, of a computerized system to track and analyze lifestyle and disease trends throughout the aging process, enhance health promotion and disease prevention programs, and thus, improve the health of participants.

The Public Health service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Educational and Community-Based Programs. (For ordering a copy of Healthy People 2000, see the section Where to Obtain Additional Information.)

Authority

This program is authorized under section 301(a) (42 U.S.C. 241(a)) of the Public Health Service Act, as amended.

Eligible Applicants

Assistance will be provided only to Wheeling Hospital, Wheeling, West Virginia. No other applications will be solicited.

Wheeling, West Virginia, is the most appropriate community and the Wheeling Hospital is the most appropriate organization to conduct the work under this grant because:

A. Congress, through Senate Committee Report 102-104, directed that CDC conduct a demonstration of a model wellness community in Wheeling, West Virginia.

B. Wheeling Hospital is the most comprehensive provider of health care services in the Wheeling, West Virginia area, and has implemented a major community-wide initiative to improve the health and well being of area residents through a comprehensive program of health education, fitness, prevention, rehabilitation, outreach, and research. As part of this effort, Wheeling Hospital has developed new models for the delivery of health education and wellness information and identified innovative methods to more effectively disseminate lifestyle-related health and wellness information by establishing and using an array of community outreach programs including:

1. Lifespan—A health and fitness education program with training manual for senior citizens.

2. Corporate Nutrition and Fitness Competition—A team health improvement competition implemented at area work sites.

3. Tobacco Free Youth—A community-wide initiative to reduce or eliminate the sale of tobacco products to minors.

4. Senior Wellness Outreach Program—A comprehensive series of lectures, presentations, and health screenings conducted at churches and elderly residences throughout the community. (This program received the Department of Health and Human Services' Community Health Promotion Award in 1988).

5. "Well-Prepared" Program—A comprehensive wellness education model program for elementary school children and their families which is currently being pilot tested in the Ohio County School System. Development of this program is funded by a $215,000 grant from the Claude Worthington Benedum Foundation.

6. Healthy Holiday Cookbook—A collection of recipes for traditional holiday dishes with reduced cholesterol levels.

7. Other—The Wheeling Hospital is also the primary sponsor of a comprehensive community outreach program originally funded by the Bayer Corporation. In addition, Wheeling Hospital has conducted a number of wellness-related research projects including studies on the effect of exercise on appetite, the effect of alcohol consumption on physiologic parameters during immersion in a hot tub, and the effect of handrail support upon the results of stress tests.

C. Wheeling Hospital has developed a computerized system to combine health self-assessments with longitudinal data collection to create a wellness database. This computerized system will be utilized to improve the health of the participants and track lifestyle trends throughout the aging process. The computerized wellness database will allow for innovative wellness modeling as recommended in the congressional appropriation report.

D. Since 1975, Wheeling Hospital has been the anchor of a major health care complex at its medical park campus location including the following operating divisions: Continuous Care Center, Wellness Center, Ambulatory Care Center, Wheeling Dialysis Center, Family Health Center, Professional Center, and an Emergency/Trauma Center.

E. Most recently, Wheeling Hospital has announced plans for a Wellness and Rehabilitation Center to be located at its Wheeling, West Virginia, medical park campus to consolidate existing wellness, rehabilitation, and health education programs into a comprehensive, modern facility to better meet the needs of Wheeling area residents. The project is designed not only to expand existing programs but also to continue to initiate innovative models for delivery of health education, fitness, and wellness services to improve the health and lifestyle of the entire Wheeling community.

Therefore, there is compelling evidence that the Wheeling Hospital, Wheeling, West Virginia, is uniquely capable of using their existing infrastructure to establish a computerized system to facilitate programs which improve the health of participants and demonstrate the effectiveness of a model wellness program for other communities throughout the nation.

Availability of Funds

Approximately $890,000 is available in FY 1992 to fund Wheeling Hospital, Wheeling, West Virginia. It is expected that the award will begin on or about September 30, 1992, for a 12-month budget period within a project period of up to 3 years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory performance and the availability of funds.

Purpose

The purpose of this grant is to demonstrate the effectiveness of a community wellness model program in Wheeling, West Virginia. A computerized system will be used to design and implement programs to improve the health of the participants by tracking lifestyle and disease trends throughout the aging process. Users' workstations, located throughout the community, will enable ordinary citizens to access and update their own health information over the course of their lives. The resulting data base will be used by health personnel, researchers, and public health planners to identify trends; compare health profiles; identify training needs; and research to prevent disease and injuries and improve health.

Program Requirements

CDC recognizes the diversity of activities and variations in the prevalence of disease inherent to this demonstration. However, during the first year, the grantee must meet the following minimum requirements:

A. Develop specific priorities.

B. Identify sufficient appropriately trained staff to conduct the proposed activities.

C. Conduct the activities described in the application in a manner that will ensure accomplishment of the objectives.

D. Conduct a strong, scientifically based evaluation designed to determine the effectiveness of the activities and achievement of the stated objectives.

During subsequent years, the recipient is expected to submit a progress report describing the accomplishments during the previous budget period and a program plan and objectives for the new budget period for obtaining/developing well documented intervention strategies.

Evaluation Criteria

The grant application will be reviewed and evaluated according to the following criteria:

A. Degree to which the applicant demonstrates an understanding of the problem and the purpose of the award. (20 Points).

B. Degree to which the objectives are consistent with the stated purpose of the application and the ability to meet the objectives and timetable within the specified period. (20 Points).

C. Adequacy of plans to monitor progress toward meeting the program activities and objectives, establishing computer access sites, total utilization and utilization by selected target populations. (20 Points).

D. Adequacy of the plan for developing data and criteria to conduct a comprehensive evaluation of both the general approach and specific accomplishments of the project. (20 Points).

E. Degree to which the applicant demonstrates the capability to provide the staff and resources necessary to perform and manage the project. (20 Points).

F. Degree to which the budget is reasonable, adequately justified, and consistent with the intended use of the grant funds. (Not Scored).

Executive Order 12372 Review

The application is subject to Intergovernmental Review of Federal Programs governed by Executive Order 12372. E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. The applicant (other than federally recognized Indian tribal governments) should contact their state Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC for each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on the application submitted to CDC, they should forward them to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, N.E., room 300, Mail Stop E-14, Atlanta, Georgia 30305. The due date for state process recommendations is 30 days after the application deadline date for this new award. (A waiver for the 60-day requirement has been requested.) The granting agency does not guarantee to "accommodate or explain" for state process recommendations it receives after that date.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.283.

Other Requirements

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 CFR part 46) regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

Application Submission and Deadline Date

The Wheeling Hospital, Wheeling, West Virginia, must submit an original and two copies of the application PHS Form 5161-1 to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mail Stop E-14, Atlanta, Georgia 30305.

Where to Obtain Additional Information

If you are interested in obtaining additional information regarding this program, please refer to Announcement Number 282 and contact Locke Thompson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mail Stop E-14, Atlanta, Georgia 30305, (404) 842-6508. Programmatic technical assistance may be obtained from John Livengood M.D., Division of Chronic Disease Control and Community Intervention, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, Mail Stop K-45, 1600 Clifton Road, NE., Atlanta, Georgia 30333, (404) 488-5532.

A copy of Health People 2000 (Full Report, Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report, Stock No. 017-001-00473-1) referenced in the Introduction may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325, (Telephone: 202-783-3238).

Dated: September 2, 1992.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control.

[FR Doc. 92-21918 Filed 9-10-92; 8:45 am]

BILLING CODE 4160-18-M

Health Care Financing Administration

Notice of Hearing: Reconsideration of Disapproval of Georgia State Plan Amendment (SPA)

AGENCY: Health Care Financing Administration, HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on October 21, 1992, in room 743, 101 Marietta Street, Atlanta, Georgia to reconsider our decision to disapprove Georgia SPA 92-10.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk by September 28, 1992.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, HCFA Hearing Staff, 1849 Gwynn Oak Avenue, Meadowwood East Building, Groundfloor, Baltimore, Maryland 21207, Telephone: (410) 597-3013.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Georgia State plan amendment (SPA) number 92-10.

Section 1116 of the Social Security Act (the Act) and 42 CFR part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. The Health Care Financing Administration (HCFA) is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will publish a separate notice.

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

Georgia SPA 92-10 contains a list of Medicaid obstetrical and pediatric (Ob/Ped) payment rates, data alleging at least 50 percent of obstetrical practitioners are full Medicaid participants, and data on the average statewide Medicaid payments for Ob/Ped services for the second previous year.

The issue here is whether Georgia SPA 92-10 meets the statutory provisions of section 1926(a)(2) of the Act and thus, also complies with section 1902(a)(30)(A) of the Act.

Section 1926 of the Act as added by section 6402 of the Omnibus Budget Reconciliation Act of 1989, Public Law 101-239, requires that, by no later than April 1 of each year (beginning in 1990), States are to submit plan amendments specifying their payment rates for Ob/Ped practitioner services. States also must provide specific information to document that those payment rates are

sufficient to enlist enough providers such that Ob/Ped services are available to Medicaid recipients at least to the extent that such services are available to the general population in the geographic area (section 1902(a)(30)(A) of the Act). Beginning in 1992, States must also submit data on the average statewide Medicaid payment for Ob/Ped services for the second previous year by procedure code and by practitioner. This data must be provided separately for each metropolitan statistical area (or similar area) in the State and for the remainder of the State.

HCFA has determined, on the basis of the statute and Congressional intent, that for Ob/Ped rate SPAs to be approvable under section 1926 of the Act, they must include the following:

1. Payment rates for July 1, 1992 through June 30, 1993 for Ob/Ped services, specified by procedure;

2. Data that document that payment rates for Ob/Ped services are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area;

3. Data that document that payment rates to health maintenance organizations (HMO) under section 1903(m) of the Act take into account the payment rates specified in number 1 above; and,

4. Average statewide Medicaid payments for Ob/Ped services for the second previous year (the period July 1, 1990 through June 30, 1991 for SPAs due April 1, 1992) by procedure code in effect at the time and by practitioner. The data must be provided separately for each metropolitan statistical area (or similar area) in the State and for the remainder of the State.

HCFA has also developed several guidelines that, if met by the State, would evidence that the State meets the statutory requirements of section 1926 of the Act.

Based upon the data submitted, HCFA has determined that Georgia's amendment does not comply with the statutory requirements of section 1926 of the Act, and, thus also does not comply with section 1902(a)(30)(A) of the Act. Georgia argues that it meets the statute under a combination of HCFA's guidelines number 1 and number 2. Guideline 1 permits the State to document its compliance with the statute by submitting data showing that at least 50 percent of Ob/Ped practitioners are full Medicaid participants or that Medicaid participation is at the same rate as Blue Shield participation. Guideline 2 permits the State to document its compliance with the statute by submitting data showing that their fee-for-service payment rates for Ob/Ped services are at least 90 percent of the average allowance (weighted by frequency) of private insurers.

For obstetrical services, Georgia demonstrates under guideline 1 that at least 50 percent of obstetrical practitioners are participating in the Medicaid program. Georgia attempts to meet the statutory requirements for pediatric services utilizing guideline 2. Under this guideline, Georgia compared its 1992 Resource Based Relative Value Scale (RBRVS) rates for pediatric Management and Evaluation procedures to its 1991 reimbursement rates rather than a private insurer. Georgia found the 1992 rates to be 20 percent higher in the aggregate than the 1991 reimbursement rates. Georgia argues that for this reason its reimbursement for pediatric services is sufficient to provide access at least to the extent these services are available to the general population.

However, HCFA believes Georgia did not meet the criteria for guideline 2 for pediatric services because Georgia did not compare its fees to those of a private insurer.

Georgia indicates that because of the revision of CPT–IV procedure codes effective in 1992, it was unable to obtain current payment data for private insurers because fees have not been established for the new pediatric Management and Evaluation procedure codes. However, HCFA believes the guideline might have been met had the State crosswalked the 1992 RBRVS codes with the existing codes which could have then been compared with a private insurer's existing fee schedule.

HCFA disapproved Georgia SPA 92–10 because the data supplied by the State for pediatric services was insufficient to establish the State's compliance with the requirements of sections 1902(a)(30)(A) and 1926 of the Act.

The notice to Georgia announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Mr. Russell B. Toal,
Commissioner,
Georgia Department of Medical Assistance,
1220–C West Tower,
2 Martin Luther King, Jr. Drive, SE.,
Atlanta, Georgia 30334–8500.

Dear Mr. Toal: I am responding to your request for reconsideration of the decision to disapprove Georgia State Plan Amendment (SPA) 92–10. Georgia submitted SPA 92–10 to establish compliance with section 1926 of the Social Security Act (the Act).

Section 1926 of the Act as added by section 6402 of the Omnibus Budget Reconciliation Act of 1989, Public Law 101–239, requires that, by no later than April 1 of each year (beginning in 1990), States are to submit plan amendments specifying their payment rates for obstetrical and pediatric (Ob/Ped) practitioner services. States also must provide specific information to document that those payment rates are sufficient to enlist enough providers such that Ob/Ped services are available to Medicaid recipients at least to the extent that such services are available to the general population in the geographic area (section 1902(a)(30)(A) of the Act). In addition, States must submit data on the average statewide Medicaid payment for Ob/Ped services for the second previous year by procedure code and by practitioner (beginning in 1992). The data must be provided separately for each metropolitan statistical area (or similar area) in the State and for the remainder of the State.

The issue in this matter is whether the plan amendment meets the statutory requirements of section 1926(a) of the Act and thus, also complies with section 1902(a)(30)(A) of the Act.

I am scheduling a hearing on your request for reconsideration to be held on October 21, 1992, in room 743, 101 Marietta Street, Atlanta, Georgia. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR part 430.

I am designating Mr. Stanley Krostar as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (410) 597–3013.

Sincerely,

William Toby, Jr.,

Acting Deputy Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. section 1316); 42 CFR section 430.18)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

William Toby, Jr.,

Acting Deputy Administrator, Health Care Financing Administration.

[FR Doc. 92–21569 Filed 9–10–92; 8:45 am]

BILLING CODE 4120–03–M

National Institutes of Health

National Cancer Institute; Meetings of the National Cancer Advisory Board and its Subcommittees

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Cancer Advisory Board, National Cancer Institute, and its Subcommittee on September 21–22, 1992. The full Board will meet in Conference Room 10, 6th Floor, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland

20892. Meetings of the Subcommittees of the Board will be held at the times and places listed below. Except as noted below, the meetings of the Board and its Subcommittees will be open to the public to discuss issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

A portion of the Board meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Office, National Cancer Institute, National Institutes of Health, room 10A06, Building 31, 9000 Rockville Pike, Bethesda, Maryland 20892 (301/496–5708) will provide a summary of the meeting and roster of the Board members, upon request.

Name of Committee: National Cancer Advisory Board

Executive Secretary: Mrs. Barbara Bynum, Building 31, room 10A03 Bethesda, MD 20892; (301) 496–5147

Dates of Meeting: September 21–22, 1992

Place of Meeting: Building 31C, Conference Room 10

Open: September 21—8 a.m. to approximately 3 p.m.

Agenda: Report on activities of the President's Cancer Panel; the Director's Report on the National Cancer Institute; and Scientific Presentations.

Closed: September 21—3 p.m. to recess

Agenda: For review and discussion of individual grant applications.

Open: September 22—8:30 a.m. to adjournment

Agenda: Policy and Scientific Presentations, Subcommittee Reports; and New Business.

Name of Committee: Subcommittee on Information and Cancer Control for the Year 2000

Executive Secretary: Mr. Paul Van Nevel, Building 31, room 10A31 Bethesda, MD 20892; (301) 496–6631

Date of Meeting: September 21, 1992

Place of Meeting: Building 31C, Conference Room 4

Open: 7 a.m. to 8 a.m.

Agenda: To discuss the Office of the Director contract concept review.

Name of Committee: Subcommittee on Minority Health, Research and Training

Executive Secretary: Dr. Vincent Cairoli, Executive Plaza North, room 232, Bethesda, MD 20892; (301) 496–8580

Date of Meeting: September 21, 1992

Place of Meeting: Building 31C, Conference Room 4

Open: 1 p.m. to 2 p.m.

Agenda: To discuss the status of the various NCI minority research training programs and future strategies.

Name of Committee: Subcommittee on Planning and Budget

Executive Secretary: Ms. Cherie Nichols, Building 31, Room 11A19, Bethesda, MD 20892; (301) 496–5155

Date of Meeting: September 21, 1992

Place of Meeting: Building 31C, Conference Room 9

Open: 1 p.m. to 2 p.m.

Agenda: Discussion of current 1993 budget, strategic plan update, innovative research grant mechanism, and POI grant mechanism.

Name of Committee: Subcommittee on Aging and Cancer

Executive Secretary: Dr. Marvin Kalt, Building 31, room 10A03, Bethesda, MD 20892; (301) 496–4218

Date of Meeting: September 21, 1992

Place of Meeting: Building 31C, Conference Room 9

Open: 2 p.m. to 3 p.m.

Agenda: TBA

Name of Committee: Subcommittee on Women's Health and Cancer

Executive Secretary: Ms. Iris Schneider, Building 31, room 11A48, Bethesda, MD 20892; (301) 496–5534

Date of Meeting: September 21, 1992

Place of Meeting: Building 31C, Conference Room 4

Open: 2 p.m. to 3 p.m.

Agenda: To discuss the role of a women's committee in a clinical cooperative group.

Name of Committee: AIDS Subcommittee

Executive Secretary: Dr. Judith Karp, Building 31, room 11A23, Bethesda, MD 20892; (301) 496–3505

Date of Meeting: September 21, 1992

Place of Meeting: Building 31C, Conference 4

Open: Immediately following the recess of the NCAB.

Agenda: TBA

Name of Committee: Subcommittee on Cancer Centers

Executive Secretary: Dr. Brian Kimes, Executive Plaza North, room 300 Bethesda, MD 20892; (301) 496–8537

Date of Meeting: September 21, 1992

Place of Meeting: Building 31C, Conference 9

Open: Immediately following the recess of the NCAB meeting.

Agenda: Update on Cancer Centers program.

Name of Committee: Subcommittee on Environmental Carcinogenesis

Executive Secretary: Dr. Richard Adamson, Building 31, room 11A03, Bethesda, MD 20892; (301) 496–6618

Date of Meeting: September 21, 1992

Place of Meeting: Building 31C, Conference 9

Open: 6 p.m. to adjournment

Agenda: To discuss Heterocyclic Aromatic Amines occurring in cooked foods.

Name of Committee: Subcommittees on Interaction Voluntary Organizations

Executive Secretary: Mr Paul Van Nevel, Building 31, room 11A31, Bethesda, MD 20892; (301) 496–6618

Date of Meeting: September 21, 1992

Place of Meeting: Building 31C, Conference 4

Open: 6 p.m. to adjournment

Agenda: To discuss collaborative efforts between NCI and non-government health groups foods.

Catalog of Federal Domestic Assistance Program Numbers: (93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: September 3, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–22060 Filed 9–10–92; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH & HUMAN SERVICES

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Normally on Fridays, the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96–511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on Friday, August 21, 1992.

(Call Reports Clearance Officer on (410) 965–4149 for copies of package)

1. Application for Survivors Benefits—0960–0062. The information on form SSA–24 is used by the Social Security Administration (SSA) to determine if an individual who is filing for benefits from the Veterans Administration (VA) may also be entitled by SSA. The respondents are claimants for VA benefits.

Number of Respondents: 3,200
Frequency of Response: 1
Average Burden Per Response: 15 minutes
Estimated Annual Burden: 800 hours

2. Modified Benefit Formula Questionnaire—0960–0395. The information on form SSA–150 is used by the Social Security Administration to determine the correct formula to be used in computing Social Security benefits. The respondents are claimants for benefits who also receive a benefit form

employment not covered by Social Security.

Number of Respondents: 90,000
Frequency of Response: 1
Average Burden Per Response: 8 minutes
Estimated Annual Burden: 12,000 hours

3. Report of Continuing Disability Interview—0960–0072. The information on form SSA–454 is used by the Social Security Administration to record information provided by disability beneficiaries to determine whether or not they should continue receiving those benefits. The respondents are selected beneficiaries who receive a continuing disability review.

Number of Respondents: 300,000
Frequency of Response: 1
Average Burden Per Response: 30 minutes
Estimated Annual Burden: 150,000 hours

4. Statement by School Official About Student's Attendance and Statement to U.S. Social Security Administration by School Outside the U.S.—0960–0090. The information on forms SSA–1371 and SSA–1371–FC is used by the Social Security Administration to determine a student's alleged full-time attendance at an educational institution in cases where such attendance is needed for continued entitlement to benefits.

Number of Respondents: 5,000
Frequency of Response: 1
Average Burden Per Response: 10 minutes
Estimated Annual Burden: 833 hours

5. Report of Student Beneficiary About to Attain Age 19—0960–0274. The information on form SSA–1390 is used by the Social Security Administration to determine whether a student beneficiary is entitled to benefits for the month of attainment of age 19 and subsequent months.

Number of Respondents: 50,000
Frequency of Response: 1
Average Burden Per Response: 5 minutes
Estimated Annual Burden: 4,167 hours

6. Child Relationship Statement—0960–0116. The information on form SSA–2519 is used by the Social Security Administration to entitle children to benefits under the deemed relationships provision. The respondents are individuals who have knowledge of a child's relationship to the insured worker.

Number of Respondents: 50,000
Frequency of Response: 1
Average Burden Per Response: 15 minutes
Estimated Annual Burden: 12,500

7. Reconsideration Disability Report—0960–0144. The information on form SSA–3441 is used by the Social Security Administration to determine if a claimant's medical or vocational situation has changed since the initial SSA determination on his/her claim for disability benefits. The respondents are applicants for disability benefits who request reconsideration of the initial determination made regarding their claims.

Number of Respondents: 400,000
Frequency of Response: 1
Average Burden Per Response: 30 minutes
Estimated Annual Burden: 200,000

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: September 4, 1992.

Judy Hasche,

Acting Reports Clearance Officer, Social Security Administration.

[FR Doc. 92–21840 Filed 9–10–92; 8:45 am]

BILLING CODE 4190–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–92–3498]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submissions including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, rein statement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 2, 1992.

David Cristy,

Acting Director, Information Resources, Policy and Management Division.

Proposal: Notice of Funding Availability for Planning Grants for Non-Profit Community Based Organizations and Resident Councils (FR–3288).

Office: Housing.

Description of the Need for the Information and Its Proposed Use: The Application is necessary to identify organizations eligible to receive funds for capacity building, to facilitate non-profit or resident council purchases of projects eligible under title II or title VI as specified in the Act. The information in the application will be used by HUD to determine the eligibility of each applicant for grant funds and the acceptability of the proposed use of such funds.

Form number: None.

Respondents: Non-Profit Institutions.

Frequency of submission: One-time.

Reporting burden:

	Number of respondents	×	Frequency of Response	×	Hours per Response	=	Burden Hours
Applications	60		2		5		600

Total Estimated Burden Hours: 600.

Status: New.

Contact: Kevin J. East, HUD, (202) 708–2300. Angela Antonelli, OMB, (202) 395–6880.

Dated: September 2, 1992.

[FR Doc. 92–21981 Filed 9–10–92; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. 92–3499]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, rein statement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 2, 1992.

David Cristy,

Acting Director, Information Resources Policy and Management Division.

Proposal: Employment Opportunities for Businesses and Lower Income Persons in Connection with Assisted Projects.

Office: Fair Housing and Equal Opportunity.

Description of the Need for the Information and Its Proposed Use: The information collection will facilitate the collection of Section 3 information to assess the impact of HUD-assisted activities on enhancing the employment opportunities for lower income persons and the use of businesses located in the area of the assisted project.

Form Number: HUD–60002.

Respondents: State or Local Governments, Businesses or Other For-Profit, Non-Profit Institutions and Small Businesses or Organizations.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–60002	175,000		1		2.14		375,000

Total Estimated Burden Hours: 375,000.

Status: New.

Contact: Maxine B. Cunningham, HUD, (202) 708–2251. Angela Antonelli, OMB, (202) 395–6880.

[FR Doc. 92–21982 Filed 9–10–92; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–92–3500]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members

of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 3, 1992.

David Cristy,

Acting Director, Information Resources, Policy and Management Division.

Proposal: Contract for Inspection Services-Turnkey.

Office: Public and Indian Housing.

Description of the Need for the Information and Its Proposed Use: This contract affects Public Housing Agencies (PHAs) and architects/engineers selected to inspect Turnkey projects. PHAs use this contract to establish legal obligations and conditions relating to services of the architect/engineer.

Form Number: HUD-5084.

Respondents: State or Local Governments and Non-Profit Institutions.

Frequency of Submission: On Occasion and Recordkeeping.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD-5084	135		1		1.5		203
Recordkeeping	135		1		.38		51

Total Estimated Burden Hours: 254.

Status: Reinstatement.

Contact: John Comerford, HUD, (202) 708-1872. Angela Antonelli, OMB, (202) 395-6880.

[FR Doc. 92-21983 Filed 9-10-92; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-92-3501]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, rein statement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 2, 1992.

John T. Murphy,

Director, Information Resources, Policy and Management Division.

Proposal: Section 8 Rental Voucher and Rental Certificate Utilization Study.

Office: Policy Development and Research.

Description of the Need for the Information and its Proposed Use: This information is needed in order to assist HUD and PHAs in improving success rates in the Section 8 Rental Voucher and Rental Certificate programs. The information will also serve as the basis for the Department's report to Congress and for recommendations on PHA administrative practices that could serve to increase Section 8 success rates.

Form Number: None.

Respondents: Individuals or Households and State or Local Governments.

Frequency of Submission: One-time.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	4,209		1.70		.47		3,352

Total Estimated Burden Hours: 3,352.
Status: New.
Contact: Garland E. Allan, HUD, (202) 708-3700. Angela Antonelli, OMB (202) 395-6880.

[FR Doc. 92-21984 Filed 9-10-92; 8:45 am]

BILLING CODE 4210-01-M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-92-1917; FR-2934-N-95]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1-800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88-2503-OG (D.D.C.).

Properties reviewed are listed in this notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll-free information line at 1-800-927-7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Air Force: John Carr, Realty Specialist, HQ-AFBDA/BDR, Pentagon, Washington, DC 20330-5130; (703) 693-0674; (This is not a toll-free number).

Dated: September 4, 1992.

Denise R. Alexander,

Deputy Assistant Secretary for Operations.

Title V, Federal Surplus Property Program Federal Register Report For 9/11/92

Arizona—Williams Air Force Base

Williams Air Force Base is located in Mesa, Arizona, 85240-5000. All the properties will be excess to the needs of the Air Force on or about September 30, 1993. Properties shown below as suitable/available will be available at that time. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The Base consists of approximately 4,072 acres, 179 Government-owned buildings and 700 residential buildings that have been reviewed by HUD for suitability for use to assist the homeless. The properties that HUD has determined suitable and which are available include various types of housing; office and administrative buildings; recreational, maintenance, and storage facilities; and other more specialized structures.

Suitable/Available Properties

Property Number: 199210096
Type Facility: Housing—700 units of military family housing; 1 story with 2 to 5 bedrooms
Property Number: 199210097
Type Facility: Temporary Living Quarters—15 buildings; 1, 2, and 3-story structures including dorms and lodging
Property Number: 199210098
Type Facility: Support and Service Facilities—5 buildings; one 3-story fire station, one 1-story brick chapel; a gate house, a post office and an education center
Property Number: 199210099
Type Facility: Miscellaneous Facilities—24 buildings; 1 and 2-story structures including a library, bowling center, gym, child care, youth and recreational centers, theater, commissary and stores
Property Numbers: 199210100-199210101
Type Facility: Recreation—20 facilities including golf club bldgs., bathhouses, swimming pools, baseball, softball and soccer fields, tennis courts, track, golf course, driving range and a camp
Property Number: 199210102
Type Facility: Medical Facilities—6 buildings; 1-story block and concrete

structures including a hospital, clinics and pharmacy
Property Number: 199210103
Type Facility: Laboratories—9 buildings; eight 1-story and one 3-story metal and concrete/block structures
Property Number: 199210104
Type Facility: Flight Training and Admin. Facilities—36 buildings; 1 to 3-story concrete block, wood and metal structures including law centers, offices, classrooms and flight training facilities
Property Number: 199210105
Type Facility: Warehouse and Storage Facilities—12 buildings; 1-story concrete, wood and steel structures including warehouses and storage bldgs
Property Number: 199210106
Type Facility: Base Support and Flight Maintenance Facilities—52 buildings; 1-story concrete/steel, concrete/block and steel structures including hangars, maintenance and jet engine shops
Property Number: 199210107
Type Facility: Hazardous and Explosive Storage—14 buildings; 1-story concrete and concrete/metal structures

Eaker Air Force Base is located in Blytheville, Arkansas 72317-5000. All the properties will be excess to the needs of the Air Force on or about December 15, 1992. Properties shown below as suitable/available will be available at that time. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The base covers 2,700 acres and contains 928 housing units and 199 government-owned buildings. The properties that HUD has determined suitable and which are available include various types of housing; office and administration buildings; indoor and outdoor recreational facilities; warehouses and multi-use buildings; child care centers; maintenance, storage and other more specialized structures.

Suitable/Available Properties

Property Numbers: 199210040–199210042
Type Facility: Housing—818 duplex units with two, three and four bedrooms; wood with brick veneer fronts; 10 single family houses with four and five bedrooms; and 25–4 unit buildings with two story four bedroom units; four playgrounds
Property Number: 199210045
Type Facility: Office/administration—28 buildings; 188 to 49,000 sq. ft.; one and two story; concrete block, metal, shingle or masonry construction
Property Numbers: 199210046–199210047
Type Facility: Recreation—20 outdoor areas which includes athletic fields (track, softball, baseball), swimming pools, golf courses, volleyball court, basketball courts, tennis court. Eight indoor facilities which includes gym, theatre, library, bowling, youth and recreation centers, hobby shop; concrete block; masonry or metal/brick construction
Property Numbers: 199210048–199210055
Type Facility: Temporary living quarters and dorms—8 buildings; 3,414 to 41,000 sq. ft.; one and two story; wood/brick veneer and brick masonry buildings.
Property Numbers: 199210056, 199210072
Type Facility: Warehouses/multi-use buildings—38; metal, concrete block, shingle, wood or plywood frame; one and two story; 64 to 45,960 sq. ft.; includes cold storage facilities, maintenance shops, traffic management facility, storage shed, thrift shops and other specialty type facilities
Property Numbers: 199210057–199210059
Type Facility: Hospitals—3 buildings; one story concrete block; 1,084 sq. ft. animal clinic; 5,249 sq. ft. dental clinic; and 54,089 sq. ft. composite medical bldg.
Property Numbers: 199210060–199210062
Type Facility: Child care centers—3 buildings; 2,098 to 8,365 sq. ft.; brick, concrete block and hadite block construction
Property Numbers: 199210063–199210065, 199210073
Type Facility: Stores and services—4 buildings; 4,299 sq. ft. exchange service station; 32,925 sq. ft., one story concrete block exchange sales store; 3,370 sq. ft., one story wood frame packaging store; 38,575 sq. ft., one story concrete block/metal commissary
Property Number: 199210066
Type Facility: Airfield related buildings—13; 96 to 49,000 sq. ft.; shingle, metal or concrete block structures, e.g. hangars, aircraft general purpose bldgs., jet engine maintenance shops, control centers
Property Number: 199210068
Type Facility: Vehicle maintenance facilities—3; 2,032 to 29,350 sq. ft.; one story metal frame buildings
Property Number: 199210069
Type Facility: Fuels/related storage facilities—37 buildings; steel, fiberglass and porcelain type; e.g. service stations, diesel storage, pump stations, jet fuel storage
Property Number: 199210070
Type Facility: Hazardous storage buildings—5; 96 to 3,000 sq. ft.; one story metal structures
Property Number: 199210071
Type Facility: Munitions facilities—11 buildings; 412 to 4,864 sq. ft.; concrete block; storage igloos and magazines
Property Number: 199210074
Type Facility: Fire Station—Building 100; 15,717 sq. ft.; concrete masonry/asbestos cement shingles frame
Property Number: 199210075
Type Facility: Chapel—Building 525; 17,602 sq. ft.; one story frame with brick veneer
Property Numbers: 199210076–199210077
Type Facility: Laboratories—2 buildings; 4,200 sq. ft. precision measurement equipment lab; and 3,775 sq. ft. audio-visual photo lab
Property Number: 199210078
Type Facility: Bank; 2,367 sq. ft.; one story concrete block; lease restrictions
Property Number: 199210079
Type Facility: Land; 1,962 acres; restrictive agricultural lease

Unsuitable Properties:

Property Number: 199210067
Type Facility: Detached latrines—3; 264 sq. ft. concrete block structures
Property Number: 199210043
Type Facility: Housing—23 buildings; cracked foundations, therefore, structural deficiencies

California—George Air Force Base

George Air Force Base is located in San Bernardino, California, 92394–5000. All the properties will be excess to the needs of the Air Force on or about December 31, 1992. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The Base covers 5,340 acres and contains 732 individual properties that have been reviewed by HUD for suitability for use to assist the homeless. The 668 properties that HUD has determined suitable include various types of housing; office and administrative buildings; recreational, maintenance, and storage facilities; and other more specialized structures. The Air Force has determined that all suitable properties are available for use to assist the homeless.

Extensive assistance, including maps, tours, and details on specific properties, is available for interested homeless assistance providers at the Base; interested parties should contact Lt. Col. Zernow at (619) 269–2020.

Suitable/Available Properties

Properties Numbers: 199120001–199120420
Type Facility: Housing—420 buildings with a total of 1,636 dwelling units; buildings have 1, 2, 3, 4, 6, or 8 units each; wood/stucco frame construction; possible asbestos
Property Numbers: 199120421–199120473

Type Facility: Office/administration—53 buildings ranging in size from 200 sq. ft. on 1 floor to 56,600 sq. ft. on 3 floors; wood or concrete block construction; several trailers; possible asbestos
Property Numbers: 199120474–199120505
Type Facility: Recreation—22 buildings including theatre, recreation center, bowling center, gym, library, craft center, shop, youth center, golf course buildings, pools, bathhouses; 7 baseball, softball, and soccer fields; track; golf course; driving range; possible asbestos
Property Numbers: 199120506–199120547
Type Facility: Temporary living quarters, dorms, lodges, and ancillary sheds—42 buildings; 1 and 2 story wood, concrete, and concrete block structures; 4700 sq. ft. to 25000 sq. ft. for living quarters; 380 sq. ft. to 2400 sq. ft. for sheds; possible asbestos
Property Numbers: 199120548–199120587
Type Facility: Aircraft and airport related facilities—40 structures including hangers, shops, tower, terminal, lab, docks, storage, control center navigation station, runways; sizes up to 86,000 sq. ft.; possible asbestos
Property Numbers: 199120588–199120608
Type Facility: Maintenance and engineering facilities—21 buildings; concrete and wood; 200 sq. ft. to 17,000 sq. ft.; possible asbestos
Property Numbers: 199120609–199120618
Type Facility: Training facilities—10 buildings; education center and 9 classroom buildings; concrete and wood; 1200 sq. ft. to 16,800 sq. ft.; possible asbestos
Property Numbers: 199120619–199120630
Type Facility: Stores and services—12 buildings; 10 stores and 2 gas stations; wood and concrete; 1800 sq. ft. to 30,700 sq. ft.; possible asbestos
Property Numbers: 199120631–199120632
Type Facility: Chapels—2 buildings; 4800 sq. ft. wood; 24,100 sq. ft. concrete; possible asbestos
Property Number: 199120633
Type Facility: Hospital—3 story, concrete block, 147,000 sq. ft.; possible asbestos
Property Numbers: 199120634–199120635
Type Facility: Fire facilities—2 buildings; fire station and command center; possible asbestos
Property Numbers: 199120636–199120638
Type Facility: Audio visual and photo lab—3 buildings; wood and concrete; 1800 sq. ft. to 2300 sq. ft.; possible asbestos
Property Numbers: 199120639–199120645
Type Facility: Vehicle shops—7 buildings; concrete; 74 sq. ft. to 33,000 sq. ft.; possible asbestos
Property Numbers: 199120646–199120655
Type Facility: Misc.—10 buildings; wood and concrete; 1 story; dining halls, mess halls, food service, child care centers; 1800 sq. ft. to 19,000 sq. ft.; possible asbestos
Property Numbers: 199120656–199120666
Type Facility: Communications/electronic—11 buildings; concrete block and wood; 1 story shops and sheds; 108 sq. ft. to 10,200 sq. ft.; possible asbestos
Property Numbers: 199120667–199120678
Type Facility: Warehouses—12 buildings; 1124 sq. ft. to 70,000 sq. ft.; wood, concrete, and concrete block; possible asbestos

Unsuitable Properties

Property Number: 199120679
Type Facility: Small arms
Reason: Within 2000 ft. of flammable or explosive material
Property Numbers: 199120680–199120687
Type Facility: Hazardous storage facilities—8 buildings
Reason: Within 2000 ft. of flammable or explosive material
Property Numbers: 199120688–199120713
Type Facility: Explosives and munitions facilities—26 buildings
Reason: Within 2000 ft. of flammable or explosive materials
Property Numbers: 199120714–199120732
Type Facility: Fuel facilities—19 structures
Reason: Within 2000 ft. of flammable or explosive materials

California—Mather Air Force Base

Mather Air Force Base is located in Sacramento County, California, 95655–5000. All the properties will be excess to the needs of the Air Force on or about September 30, 1993. Properties shown below as suitable/available will be available at that time. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The Base consists of approximately 5715 acres, 315 Government-owned buildings and 1271 housing units that have been reviewed by HUD for suitability for use to assist the homeless. The properties that HUD has determined suitable and which are available include various types of housing; office and administrative buildings; recreational, maintenance, and storage facilities; and other more specialized structures.

Suitable/Available Properties

Properties Numbers: 199210017–199210020
Type Facility: Housing—207 buildings/414 units Wherry duplexes (two to three bedrooms); 857 family houses (one to four bedrooms); buildings have reinforced concrete block, wood and stucco frame construction; presence of asbestos
Property Number: 199210021
Type Facility: Temporary Living Quarters—18 buildings; one, two, and three story wood, concrete block and stucco structures; presence of asbestos
Property Number: 199210022
Type Facility: Office/Administration—60 buildings; one, two and three story structures; presence of asbestos
Property Number: 199210023
Type Facility: Recreation—32 facilities including theater, gymnasium, library, bowling alley, recreation center, arts and crafts center, youth center, pools, bath houses, museum buildings; presence of asbestos
Property Number: 199210024
Type Facility: Aircraft and Airport Related Facilities—33 buildings; one to two story structures including hangars, storage facilities and maintenance shops; presence of asbestos
Property Number: 199210025
Type Facility: Maintenance and Engineering Facilities—36 buildings; one story structures including storage, shop and maintenance buildings; presence of asbestos
Property Number: 199210026
Type Facility: Training Facilities—15 buildings; one to two story concrete, wood and metal classroom/education buildings; presence of asbestos
Property Number: 199210027
Type Facility: Stores and Services—7 buildings; one story structures including stores, service station exchange and cold storage building; presence of asbestos
Property Number: 199210028
Type Facility: Chapels—2 buildings; one story concrete block and masonry concrete structures; presence of asbestos
Property Number: 199210029
Type Facility: Fire Facilities—2 fire facilities and 2 fire stations; presence of asbestos
Property Number: 199210030
Type Facility: Audio Visual—3 buildings; one story photo lab and training aid shops; presence of asbestos
Property Number: 199210031
Type Facility: Miscellaneous—6 buildings; one story child care centers, correction facility, dining and mess halls; presence of asbestos
Property Number: 199210032
Type Facility: Storage Facilities—61 buildings; one story metal, steel, wood or concrete storage buildings or sheds; presence of asbestos
Property Number: 199210033

Type Facility: Warehouses—7 buildings; one to two story structures; presence of asbestos
Property Number: 199210034
Type Facility: Vehicle Shops—6 buildings; one story concrete block, wood, steel frame and metal shops; presence of asbestos
Property Number: 199210035
Type Facility: Traffic Check House—1 building; two story concrete block structure
Property Number: 199210036
Type Facility: Fuel Facilities—8 buildings; one story structures
Property Number: 199210037
Type Facility: Explosives and Munitions Facilities—5 buildings; one story concrete or concrete block storage structures
Property Number: 199210038
Type Facility: Hazardous Storage Facilities—11 buildings; one story metal storage structures
Property Number: 199210039
Type Facility: Land—Recreation Areas and Airfield Properties including softball/football/soccer fields, running track, riding stables, golf course, taxiway and runways, (approximately 5716 acres)

Illinois—Chanute Air Force Base

Chanute Air Force Base is located in Champaign, Illinois, 61868. All the properties will be excess to the needs of the Air Force on or about September 30, 1993. Properties shown below as suitable/available will be available at that time. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The Base consists of approximately 2,174 acres, 164 Government-owned buildings and 463 residential buildings that have been reviewed by HUD for suitability for use to assist the homeless. The properties that HUD has determined suitable and which are available include various types of housing; office and administrative buildings; recreational, maintenance, and storage facilities; and other more specialized structures.

Suitable/Available Properties

Property Number: 199210139
Type Facility: Housing—463 houses with 1 to 8 units, brick and wood structure, possible asbestos
Property Number: 199210140
Type Facility: Temporary Living Quarters—24 buildings; 1 to 4-story dormitories and temporary living facilities, possible asbestos
Property Number: 199210141
Type Facility: Medical Facilities—2 buildings; 4-story concrete hospital and a 1-story concrete dental clinic, possible asbestos
Property Number: 199210142
Type Facility: Storage/Warehouses—28 buildings; concrete block, brick, metal and wood structures including supply and training bldgs., need repairs
Property Number: 199210143
Type Facility: Maintenance Bldgs.—15 buildings; 1-story maintenance facilities and shops, possible asbestos
Property Number: 199210144
Type Facility: Engine Test Cells/Warehouse—2 buildings; 1-story concrete storage/maintenance facilities, possible asbestos
Property Number: 199210145
Type Facility: Gas Stations—2 buildings; 1-story gas stations
Property Number: 199210146
Type Facility: Training Facilities—22 buildings; 1 to 4-story structures including training bldgs., classrooms, and labs, possible asbestos
Property Number: 199210147
Type Facility: Retail Stores—5 buildings; 1-story brick and wood structures including 4 branch exchanges and 1 commissary, possible asbestos
Property Number: 199210148
Type Facility: Chapel/Chapel Center—3 buildings; one 2-story brick chapel center and two 1-story wood chapels, possible asbestos
Property Number: 199210149
Type Facility: Fire Station—1 building; 2-story brick fire station, possible asbestos
Property Number: 199210150
Type Facility: Recreation—48 facilities; including gym, library, theater, golf bldgs., youth, child, bowling and recreation centers, track, softball fields, tennis courts, golf course and driving range
Property Number: 199210152
Type Facility: Administration—26 facilities; wood, brick and concrete structures including a band center, an education center, admin. bldgs. and offices, needs rehab, possible asbestos
Property Number: 199210153
Type Facility: Bldg. 386/Band Bldg.—31803 sq. ft., 2-story concrete block/wood band center, needs rehab

Louisiana—England Air Force Base

England Air Force Base is located in Alexandria, Louisiana 71311-5000. All the properties will be excess to the needs of the Air Force on or about December 15, 1992. Properties shown below as suitable/available will be available at that time. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The base covers 2,282 acres and contains 294 housing units and 193 government-owned buildings. The properties that HUD has determined suitable and which are available include one and two story family housing; office and administration buildings; recreational facilities and areas; educational, business and commercial buildings; maintenance, storage and other specialized structures.

Suitable/ Available Properties

Property Numbers: 199210080–199210081
Type Facility: Housing—294 buildings with 598 dwelling units; one and two story; wood or masonry frames; 1,190 to 5,701 sq. ft.
Property Number: 199210082
Type Facility: Office and administration—28 buildings; 228 to 40,006 sq. ft.; one and two story; wood, brick, block or masonry frame; presence of asbestos in several structures
Property Numbers: 199210083–199210084
Type Facility: Recreation—18 facilities and 10 parcels of land; i.e. swimming pools, gym, theatre, riding stables, bowling, library, golf course, arts and crafts center, baseball, soccer, and softball fields, track and tennis court; presence of asbestos in some structures
Property Number: 199210085
Type Facility: Dorms and dining areas—14 buildings; 3,902 to 24,715 sq. ft.; brick or masonry frame; one, two, and three story; presence of asbestos in some structures; includes dorms, officers club, NCO club and dining hall
Property Number: 199210086
Type Facility: Educational/training—14 buildings; 740 to 45,716 sq. ft.; wood or masonry frame; one and two story; presence of asbestos in a few structures; includes classrooms, child care center, school, education office and field training facility
Property Number: 199210087
Type Facility: Hospitals—3 related buildings—medical storage, hospital and bio environment; metal or masonry frame; presence of asbestos in hospital
Property Number: 199210088
Type Facility: Business and Commercial—6 buildings; 1,925 to 34,326 sq. ft.; masonry frame and possible asbestos in the commissary; other structures include mini mail, photo lab, post office, service station and base package store
Property Number: 199210089
Type Facility: Storage/Warehouses—38 buildings including igloos, supply and equipment warehouses, records storage, commissary warehouse, retail exchange warehouse, cold storage and open storage facilities; 225 to

60,960 sq. ft.; one story; wood, block, metal, brick or concrete construction; presence of asbestos in several structures
Property Number: 199210090
Type Facility: Maintenance shops—20 buildings; 228 to 34,176 sq. ft.; one story; block, metal or steel construction; presence of asbestos in several structures
Property Number: 199210091
Type Facility: Airfield related facilities—36 buildings including vehicle fuel station, petroleum operations builidng, aircraft general purpose, control center, shop avionics, air freight terminal, etc.; 240 to 79,537 sq. ft.; block, metal, wood, concrete or masonry frame; presence of asbestos in some structures
Property Number: 199210092
Type Facility: Fire facility—Building 500; 13,658 sq. ft.; one story masonry frame; presence of asbestos
Property Number: 199210093
Type Facility: Chapel—Building 1801; 11,484 sq. ft.; one story masonry frame

New Hampshire—Pease Air Force Base

Pease Air Force Base is located in Rockingham County, New Hampshire, 03803. The Base consists of approximately 4,257 acres, numerous Government-owned buildings and residential buildings that have been reviewed by HUD for suitability for use to assist the homeless. The New Hampshire Air National Guard is expected to continue operations on a portion of the Base. All suitable/available properties listed below are vacant.

Suitable/Available Properties

Property Number: 189040321–189040323
Type Facility: 2 open mess and 1 dining hall
Property Number: 189040326
Type Facility: 1 bachelor quarters buildings
Property Number: 189040327
Type Facility: Hospital heat plant
Property Number: 189040328
Type Facility: Hospital
Property Number: 189040329
Type Facility: Trailer (hospital office space)
Property Number: 189040330–198040322
Type Facility: 3 training facilities
Property Number: 189040333–198040334
Type Facility: 2 child care facilities
Property Number: 189040335
Type Facility: Fire station
Property Number: 189040059–189040148, 189040304–189040319
Type Facility: 106 4-unit residences
Property Number: 189040352
Type Facility: 1 chapel
Property Number: 189040383
Type Facility: Single family residence
Property Number: 189040384
Type Facility: Rod and gun club
Property Number: 189040387–189040394
Type Facility: 8 dormitories
Property Number: 189040395–189040404
Type Facility: 10 residences with detached garage
Property Number: 189040405–189040467
Type Facility: 63 2-unit residences with detached garage
Property Number: 189040468–189040471
Type Facility: 4 6-unit residences with attached garage
Property Number: 189040472–189040561
Type Facility: 90 detached housing storage sheds
Property Number: 189040726
Type Facility: 1 communications facility
Property Number: 189040737–189040740, 189040742
Type Facility: 5 recreational facilities
Property Number: 189040743–189040751
Type Facility: 9 small concrete munitions storage buildings
Property Number: 189040763–189040768, 189040770–189040771
Type Facility: 9 administrative facilities
Property Number: 189040774–189040775, 189040777–189040778, 189040787, 189040790, 189040792–189040793, 189040795–189040805
Type Facility: 19 miscellaneous buildings used for office, administrative, educational, laboratory, traffic check, storage, maintenance, and other purposes
Property Number: 189010535
Type Facility: Temp. lodging facility, Bldg. 94, Rockingham Drive

Unsuitable Properties

Property Number: 189040360
Type Facility: Golf course
Reason: Within airport runway clear zone
Property Number: 189010536
Type Facility: Vehicle fuel station
Reason: Within 2000 ft. of flammable or explosive material
Property Numbers: 189010537, 189010538
Type Facility: Jet fuel pumphouses
Reason: Within 2000 ft. of flammable or explosive material
Property Number: 189010539
Type Facility: Weapons storage area
Reason: Within 2000 ft. of flammable or explosive material
Property Numbers: 189040354–189040359
Type Facility: Bldgs. 399–401, 403, 405, 407
Reason: Within airport runway clear zone
Property Numbers: 189040361, 189040369, 189040373
Type Facility: Industrial facilities
Reason: Within 2000 ft. of flammable or explosive material
Property Number: 189040717
Type Facility: Utility plant
Reason: Other
Property Numbers: 189040772, 189040794
Type Facility: Bus shelters
Reason: Other
Property Numbers: 189040806, 189040825–189040829
Type Facility: Sewage pump stations
Reason: Other
Property Numbers: 189040820, 189040822–189040824
Type Facility: Pump stations
Reason: Other
Property Numbers: 189040830–189040851
Type Facility: Power stations
Reason: Other

South Carolina—Myrtle Beach Air Force Base

Myrtle Beach Air Force Base is located in Horry County, South Carolina 29579–5000. All the properties will be excess to the needs of the Air Force on or about March 31, 1993. Properties shown below as suitable/available will be available at that time. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The base covers approximately 3,800 acres, 190 Government-owned buildings and 448 residential buildings with 800 units of housing that have been reviewed by HUD for suitability for use to assist the homeless. The properties that HUD has determined suitable and which are available include various types of housing; office and administrative buildings; recreational, maintenance, and storage facilities; and other more specialized structures.

Suitable/Available Properties

Property Number: 199210001
Type Facility: Housing—448 buildings with a total of 800 dwelling units; two three, and four bedrooms single family dwellings and duplexes with attached carports
Property Number: 199210002
Type Facility: Dormitories/Quarters—13 buildings; two to three story masonry and block structures
Property Number: 199210003
Type Facility: Miscellaneous—14 buildings; one to two story structures including a chapel, theater, recreation center, child care centers, retail sales stores and dining hall
Property Number: 199210004
Type Facility: Hospital—1 three story base hospital and 6 one story medical support buildings
Property Number: 199210005
Type Facility: Office/Administration—53 buildings; one to two story

modular, block, wood and brick structures
Property Numbers: 199210006–199210008
Type Facility: Recreation—15 buildings and land including bath houses, bowling center, gymnasium, golf course buildings, three soccer fields, six tennis courts, three softball fields, four youth ball fields, track, campground, golf course and driving range
Property Number: 199210009
Type Facility: Utility Type Facilities—45 buildings; one story structures including warehouses, shops and sheds
Property Number: 199210010
Type Facility: Security—3 police buildings; one story masonry structures including a jail
Property Number: 199210011
Type Facility: Storage—15 buildings; one story metal, concrete and masonry ammunition storage structures
Property Numbers: 199210014–199210015
Type Facility: Land—approximately 17 acres used as a mobile home park and 1678 acres of forest

Suitable/Unavailable Properties

Property Numbers: 199210012–199210013
Type Facility: Airfield and Related Properties—25 support buildings and land including hangars, maintenance shops, fire station, eight-story control tower, runways, taxiways and aprons

Unsuitable Properties

Property Number: 199210016
Type Facility: Small Arms Building
Reason: Extensive Deterioration

Texas—Carswell Air Force Base

Carswell Air Force Base is located in Tarrant County, Texas, 76127. All the properties will be excess to the needs of the Air Force on or about September 30, 1993. Properties shown below as suitable/available will be available at that time. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The Base consists of approximately 2,308 acres, 214 Government-owned buildings and 352 residential buildings that have been reviewed by HUD for suitability for use to assist the homeless. The properties that HUD has determined suitable and which are available include various types of housing; office and administrative buildings; recreational, maintenance, and storage facilities; and other more specialized structures.

Suitable/Available Properties

Property Numbers: 199210108–199210122
Type Facility: Housing—352 military family residences; 1 and 2-story wood frame, concrete and brick/wood buildings
Property Number: 199210123
Type Facility: Dormitories—7 buildings; 3 and 4-story concrete block dorms
Property Number: 199210124
Type Facility: Temporary Living Quarters—6 buildings; 1 and 2-story brick and frame lodging facilities
Property Number: 199210125
Type Facility: Administration Facilities—45 buildings; 1 to 4-story concrete block, brick, metal and wood structures including education centers, child care, clinics and admin. bldgs.
Property Number: 199210126
Type Facility: Recreation Facilities—13 buildings; metal, concrete block, brick and wood structures including golf club equip. houses, bathhouse, gym, bowling, youth and recreation centers and NCO clubs
Property Number: 199210127
Type Facility: Recreation Areas—14 areas; approximately 172 acres including golf course, riding stables, playground and picnic area, camps and tennis courts
Property Numbers: 199210128–199210130
Type Facility: Miscellaneous Facilities—80 buildings; 1-story metal, concrete, block, wood, and brick structures including maintenance and storage bldgs., shops, warehouses, sheds and a commissary
Property Number: 199210131
Type Facility: Facility 1506—24,000 sq. ft., 1-story brick dining hall
Property Number: 199210132
Type Facility: Facility 3000—345,186 sq. ft., 5-story concrete hospital
Property Number: 199210133
Type Facility: Bank/Credit Union—2 buildings; a 1-story concrete bank and a 2-story brick credit union
Property Number: 199210134
Type Facility: Facility 1838—8790 sq. ft., 1-story brick chapel
Property Number: 199210135
Type Facility: Facility 1845—9967 sq. ft., 1-story brick theater
Property Number: 199210136
Type Facility: Fuel Stations—2 buildings; 1-story metal and brick/metal vehicle fuel and exchange service stations
Property Number: 199210137
Type Facility: Hazardous Storage and Igloos—40 buildings; 4 metal and concrete block hazardous storage bldgs. and 36 concrete igloo storage bldgs.
Property Number: 199210138
Type Facility: Airport Related Areas—26 areas; approximately 205 acres including runways, aprons, taxiways and pads

Suitable/Unavailable Properties

Property Number: 189120235
Type Facility: #237

Unsuitable Properties

Property Numbers: 189030043–189030218
Type Facility: Kings Branch Housing
Reason: Extensive deterioration

Maine—Loring Air Force Base

Suitable/Available Properties

Buildings

Bldgs. 1—16
Family Housing Annex, Loring Air Force Base
U.S. Route #1
Caswell, ME, Aroostook, Zip: 04750—
Federal Register Notice Date: 01/31/92
Property Numbers: 189010590–189010605
Status: Excess
Comment: 1116 sq. ft. each; 1 story frame residence; no utilities; asbestos and radon tests pending; fuel tanks removed; sewage line needs repair

Colorado—Lowry Air Force Base

Suitable/Available Properties

Land

NTMU—Partial Area
Lowry Air Force Base
Denver, CO, Denver, Zip: 80230–5000
Federal Register Notice Date: 01/31/92
Property Number: 189010254
Status: Excess
Location: West of Aspen Terr. housing area and South of (AFAFC) along the base boundary
Comment: Approximately 20 acres; sloping parts in the area

[FR Doc. 92–21839 Filed 9–10–92; 8:45 am]

BILLING CODE 4210-29-M

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-92-3286; FR-3063-N-02]

NOFA for the Public Housing Family Self-Sufficiency Program for Fiscal Year 1991; Announcement of Funding Awards

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the NOFA for the Public Housing Family Self-Sufficiency Program for Fiscal Year 1991. The announcement contains the

names and addresses of the award winners and the amounts of the awards.

DATES: September 11, 1992.

FOR FURTHER INFORMATION CONTACT: Further information on these awards is available from the Regional Offices indicated, or from the public housing agencies listed in this announcement. The telephone numbers listed are not toll-free.

SUPPLEMENTARY INFORMATION: On September 30, 1991 (56 FR 49604), the Department published a Notice of Fund Availability (NOFA) advising public housing agencies (PHAs) that $66.8 million in grant appropriations were available for the purpose of developing public housing units as incentive awards in exchange for PHA initiation of a Family Self-Sufficiency (FSS) Program, as provided under the provisions of section 23 of the U.S. Housing Act of 1937, 42 U.S.C. 1437u (section 23 was added by section 554 of the National Affordable Housing Act (NAHA)). The Public Housing FSS NOFA, published on September 30, 1991, set forth the application procedures and described the method that the Department would use to rate and rank approvable applications.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, the following lists (by HUD Region) the names and addresses of the PHAs that were awarded incentive development grants under the Public Housing FSS NOFA, and the amounts of the grants.

PUBLIC HOUSING DEVELOPMENT FAMILY SELF-SUFFICIENCY INCENTIVE FUND AWARDS

Region and PHA name	Amount
I—Boston Regional Office, Thomas P. O'Neill, Jr. Federal Bldg., Room 375, Boston, MA 02222-1092, (617) 565-5234:	
Cambridge Housing Authority, 270 Green St, Cambridge, MA	746,800
Gloucester Housing Authority, PO Box 1599, Gloucester, MA	882,900
Hartford Housing Authority, 475 Flatbush Avenue, Hartford, CT	987,350
Portland Housing Authority, 211 Cumberland Ave., Portland, ME	1,049,650
Westerly Housing Authority, 5 Chestnut Street, Westlery, RI	668,800
Woburn Housing Authority, 59 Campbell Street, Woburn, MA	734,400
II—New York Regional Office, 26 Federal Plaza, New York, NY 10278-0068, (212) 264-6500:	
Islip Housing Authority, 963 Montauk Highway, Oakdale, NY	3,046,200
New York City Hsg Auth, 250 Broadway, New York City, NY	3,723,600
Schenectady Housing Authority, 375 Broadway, Schenectady, NY	5,386,500
III—Philadelphia Regional Office, Liberty Square Bldg, 105 S. 7th Street, Philadelphia, PA 19106-3392, (215) 597-2560:	
Housing Opportunities Comm, 10400 Detrick Avenue, Kensington, MD	2,921,600
Norfolk Housing Authority, PO Box 968, Norfolk, VA	1,578,000
Petersburg Housing Authority, 128 S Sycamore Street, Petersburg, VA	1,663,200
IV—Atlanta Regional Office, Richard B. Russell Federal Bldg, 75 Spring Street SW., Atlanta, GA 30303-3388, (404) 331-5136:	
High Point Housing Authority, 500 E Russell Avenue, PO Box 1779, High Point, NC	1,504,050
Jackson Housing Authority, 3430 Albermarle Road, Jackson, MS	1,445,300
Jefferson County Housing Authority, 2100 Walker Chapel Road, Fultondale, AL	1,171,200
Kingsport Housing Authority, PO Box 44, Kingsport, TN	946,800
Mobile Housing Authority, PO Box 1345, Mobile, AL	1,057,800
Raleigh Housing Authority, PO Box 28007, Raleigh, NC	1,880,000
Tampa Housing Authority, PO Box 4766, Tampa, FL	1,212,450
V—Chicago Regional Office, Ralph H. Metcalf Federal Building, 77 W. Jackson Boulevard, Chicago, IL 60604, (312) 353-5680:	
Champaign County Housing Authority, PO Box 183, Urbana, IL	803,000
Duluth Hsg & Redevel Authority, 222 E 2nd Avenue, Duluth, MN	706,000
LaSalle County Housing Authority, PO Box 782, Ottawa, IL	1,563,300
Rochester Hsg & Redevel Authority, 2116 Campus Drive SE, Rochester, MN	859,500
Rockford Housing Authority, 330 15th Avenue, Rockford, IL	1,604,500
S.E. Minn. Multi-County Hsg Authority, Wabasha, MN	1,289,250
Warren County Housing Authority, 990 E Ridge Drive, Box 63, Lebenon, OH	1,748,200
Youngstown Metro Housing Authority, 131 W Boardman, Youngstown, OH	1,544,400
VI—Ft. Worth Regional Office, 1600 Throckmorton, PO Box 2905, Ft. Worth, TX 76113-2905, (817) 885-5401:	
Anthony Housing Authority, Drawer 1740, Anthony, TX	1,671,750
Dallas Housing Authority, 2525 Lucas Drive, Dallas, TX	802,500
Harlingen Housing Authority, PO Box 1669, Harlingen, TX	935,000
Pharr Housing Authority, 211 W Audrey, Pharr, TX	865,700
San Antonio Housing Authority, 818 S Flores, San Antonio, TX	1,001,000
VII—Kansas City Regional Office, Gateway Tower II, 400 State Avenue, Kansas City, KS 66101-2406, (913) 236-2162:	
Eastern Iowa Regional Hsg Authority, Suite 330, Nesler Center, Dubuque, IA	413,900
Kearney Housing Authority, 2715 Avenue I, Kearney, NE	616,850
Lincoln Housing Authority, 5700 R Street, Lincoln, NE	627,350
Waterloo Housing Authority, 215 E 4th Street, Waterloo, IA	741,200
VIII—Denver Regional Office, Executive Tower Building, 1405 Curtis Street, Denver, CO 80202-2349, (303) 844-4513:	
Billings Housing Authority, 2415 First Avenue, North, Billings, MT	421,600
Missoula Housing Authority, 1319 E Broadway, Missoula, MT	390,250
Pueblo Housing Authority, 1414 N Santa Fe, Pueblo, CO	397,500
Salt Lake City Housing Authority, 1600 SW Temple, Salt Lake City, UT	447,600
IX—San Francisco Regional Office, Phrlip Burton Federal Office Building and U.S. Courthouse, 450 Golden Gate Avenue, PO Box 36003, San Francisco, CA 94102-3448, (415) 556-4752:	
LA City Housing Authority, 515 Columbia Avenue, Los Angeles, CA	2,479,800
Las Vegas Housing Authority, PO Box 1897, Las Vegas, NV	2,448,900
Nogales Housing Authority, PO Box 777, Nogales, AZ	2,722,700
Phoenix Neighborhood Improv & Hsg Dept, 830 E. Jefferson, Phoenix, AZ	1,953,700
Yuma County Housing Department, 8450 W Highway 95, #88, Somerton, AZ	2,753,750
X—Seattle Regional Office, Arcade Plaza Bldg, 1321 Second Avenue, Seattle, WA 98101-2058, (206) 553-5414:	
Bellingham Housing Authority, 208 Unity, Bellingham, WA	439,350
Everett Housing Authority, 1401 Poplar, Everett, WA	370,050
Lincoln County Housing Authority, PO Box 1470, Newport, OR	616,200
Tacoma Housing Authority, 1728 E 44th Street, Tacoma, WA	554,900

PUBLIC HOUSING DEVELOPMENT FAMILY SELF-SUFFICIENCY INCENTIVE FUND AWARDS—Continued

Region and PHA name	Amount
Vancouver Housing Authority, 500 Omaha Way, Vancouver, WA	426,500

Dated: September 4, 1992.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 92-21838 Filed 9-10-92; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-060-92-4120-20]

Casper District Advisory Council; Nominations

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice availability of midterm appointment to Casper District Advisory Council.

SUMMARY: The three year term ending December 31, 1994 representing the non-renewable category on the Casper District Advisory Council has been vacated. Nominations for appointment can be sent to Casper District Manager. Nominations should include the name, address, telephone numbers, biological sketch outlining the qualifications for serving as an advisor to the District Manager on the Category of interest indicated.

ADDRESSES: Send nominations to Casper District Manager, Bureau of Land Management Casper District Office, 1701 East E Street, Casper, WY 82601.

FOR FURTHER INFORMATION CONTACT: Casper District Manager, Mike Karbs, (307)-261-7600.

Mike Karbs,

District Manager.

[FR Doc. 92-21922 Filed 9-10-92; 8:45 am]

BILLING CODE 4310-22-M

[CA-060-5440-10 ZBAF]

Intent to Prepare Supplemental Environmental Impact Statement on Direct Sale of Land to State of California, San Bernardino County

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM) will prepare a supplement to the Final Environmental Impact Report/Environmental Impact Statement (EIR/EIS) State of California Indemnity Selection & Low-Level Radioactive Waste Facility (April 1991). The final EIR/EIS analyzed the environmental impact of a proposed State of California indemnity selection that upon conveyance and the issuance of all applicable licenses and permits would be utilized as a low-level radioactive waste (LLRW) facility, located in Ward Valley, approximately 23 miles west of the City of Needles and one mile south of Interstate 40. The State recently filed an application (CA 30582) for a proposed conveyance though a direct sale process rather than the proposed conveyance through the indemnity selection process. The 1000 acres and the legal description of public land remains the same as in the final EIR/EIS; only the mode of proposed conveyance differs. The proposed future use of the subject land has not changed from that use analyzed in the final EIR/EIS. The supplemental EIS will analyze the change in the means of the proposed disposal and conveyance of public land from indemnity selection to direct sale. The supplement will not address technical, scientific or health issues. Those issues were addressed in the final EIR/EIS and the proposed future use of the subject land has not changed. Further, the State may conduct further hearings involving these issues as part of their licensing process.

DATES: Written comments will be accepted if received by October 10, 1992.

ADDRESSES: Please send your written comments to: California Desert District, Attn. Ward Valley, 6221 Box Springs Blvd., Riverside, California 92507.

Dated: August 28, 1992.

Jean Rivers-Council,

Acting District Manager.

[FR Doc. 92-21302 Filed 9-10-92; 8:45 am]

BILLING CODE 4310-40-M

[NM-010-4320-02; G-910-G2-0089]

Albuquerque District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Albuquerque District Grazing Advisory Board Meeting.

SUMMARY: The BLM's Albuquerque District Grazing Advisory Board will meet on October 15, 1992, at 10 a.m. in the BLM District Office located at 435 Montano NE, Albuquerque, New Mexico.

The meeting agenda will include the following:

- Introduction and Opening Remarks
- Animal Damage Control Update
- Range Improvement Progress Report FY 92
- Range Improvement Progress Report and Final Ranking for FY 93
- Public comment period at 1 p.m.

The meeting is open to the public. Anyone interested in attending this meeting to make a presentation must notify the District Manager by October 10, 1992. Written statements may also be filed for the Board's consideration.

Dated: September 4, 1992.

Robert T. Dale,

District Manager.

[FR Doc. 92-21955 Filed 9-10-92; 8:45 am]

BILLING CODE 4310-FB-M

[WY-060-92-4111-20]

Meetings; Casper District Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting of the Casper District Advisory Council.

SUMMARY: The Casper District Advisory Council will meet September 14 and September 15, 1992, for two separate tours and a business meeting. On September 14, the council will tour the Thunder Basin Coal Mine, Gillette, Wyoming, beginning about 9:30 a.m. and will meet for their business meeting at 2 p.m. at the Bureau of Land Management Newcastle Resource Area office, 1101 Washington Blvd., Newcastle,

Wyoming. The Public comment period is scheduled for 3 p.m. during that meeting. The council will reconvene 8 a.m., September 15, at the Newcastle Resource Area office for a tour of Whoop-up Canyon. The Bureau of Land Management manages the coal resources at West Black Thunder and administers the lands referred to as Whoo-up Canyon. The agenda items for September 14, 1992, business session are as follows: (1) State Director's Vision on Visitor & Interpretive Centers and potential funding of the same, (2) Status reports on wilderness designation, (3) Coal leasing, (4) Casper District road condition report, and any other issues brought forth by the public and/or council members.

FOR FURTHER INFORMATION CONTACT: Kate Padilla, Public Affairs, Specialist, 307-261-7600, Casper District.

Dated: August 24, 1992.

William H. Mortimer,

Associate District Manager.

[FR Doc. 92-21925 Filed 9-10-92; 8:45 am]

BILLING CODE 4310-22-M

[CA-060-02-4333-10]

Route Designation Update, California Desert District

AGENCY: Bureau of Land Management, Interior.

ACTION: Amendment to notice of intent to update route designations in portions of the California Desert District (CDD) of the Bureau of Land Management (BLM) and to extend the deadline for submission of public comments.

SUMMARY: On July 9, 1992, the BLM published a notice initiating an update of route designations in portions of the California Desert District and requesting public comments and recommendations on the inventory of routes to be considered for designation as "open", "limited", or "closed" to motorized vehicle use. The purpose of this amendment is to enlarge the area covered by the update and to extend the public comment period to December 11, 1992.

In addition to the areas listed in the July 9, 1992, **Federal Register** notice, the update will cover all or portions of the following Desert Access Guides (DAGs) which are located within the planning area for the West Mojave Coordinated Management Plan (CMP) being prepared cooperatively by the BLM, the California Department of Fish and Game, and the United States Fish and Wildlife Service: Panamint DAG, Jawbone/Dove Springs DAG (area within CDD boundaries), Dumont/Clark Mountain DAG (area within West Mojave CMP boundaries), Irwin DAG, Providence Mountains DAG (area within West Mojave CMP boundaries), and Sheephole Mountains DAG (area within West Mojave CMP boundaries).

Some, though not all, existing and previously designated routes are shown on the above-referenced Desert Access Guides published by the Bureau of Land Management. Copies of the Desert Access Guides can be purchased from any of the BLM offices listed in this notice for $4.00 per DAG.

Additional routes that have been identified by the BLM to be considered as part of the inventory base are not shown on the published DAGs; however, they are available for review on 7.5' and 15' USGS quad maps maintained in the resource area office responsible for managing the affected public lands. To view inventory and route data maintained by the BLM, please call the individuals listed below to arrange a convenient time to view such materials.

Members of the public are encouraged to review the DAGs and information on previously designated routes and provide written comments to the appropriate BLM office by December 11, 1992. Comments should identify additional routes to be added to the inventory of routes considered for designation, and make recommendations on specific routes that should be "open", "limited", or "closed" to motorized vehicle use. Recommendations for additional routes and for limiting or closing all or segments of existing routes should include rationale to support the recommendation. A "limited" route is one which is limited with respect to the number of vehicles allowed, the types of vehicles allowed, the time or season of vehicle use, permitted or licensed vehicle use only, or establishment of speed limits.

A change in the status of routes which have been previously designated as "open", "closed", or "limited" will be considered only on the basis of new information, data or changed circumstances which were not addressed when the route was designated.

Following the public review period, the BLM will identify the inventory of routes to be considered in the designation process incorporating the results of public comments as well as the BLM inventory efforts.

DATES: Written public comments should be submitted to the Resource Area Manager responsible for the affected public lands and postmarked no later than December 11, 1992.

ADDRESSES: Comments should be sent to the following locations:

Comments concerning	Mail to	BLM contact
Ridgecrest DAG, Red Mountain DAG, Jawbone/Dove Sprgs DAG, Panamint DAG, Dumont/Clark Mtn DAG.	Area Manager, Ridgecrest RA, Attn: Route Update, 300 So. Richmond Rd., Ridgecrest, CA 93555.	Margaret Phillips (619)-375-7125.
Stoddard Valley DAG, Johnson Valley DAG, Yucca Valley DAG, Irwin DAG, Sheephole DAG.	Area Manager, Barstow RA, Attn: Route Update, 150 Coolwater Lane, Barstow, CA 92311.	Harold Johnson (619) 256-2729.
New York Mtns. DAG, Providence DAG	Area Manager, Needles RA, Attn: Route Update, P.O. Box 888, Needles, CA 92363.	Jim Foote (619)-326-3896.
Palm Springs DAG, Chuckwalla DAG	Area Manager, Palm Springs/South Coast RA, Attn: Route Update, P.O. Box 2000, North Palm Springs, CA 92258-2000.	JoAnn Schiffer (619) 251-0812.
Imperial Valley South DAG, Salton Sea DAG, McCain Valley DAG.	Area Manager, El Centro RA, Attn: Route Update, 1661 South 4th Street, El Centro, CA 92243.	Arnold Schoeck (619) 353-1060.
Desertwide Issues or Process Comments	District Manager, California Desert District, Attn: Route Update, 6221 Box Springs Blvd., Riverside, CA 92507-0714.	Molly Brady (714) 697-5230.

FOR FURTHER INFORMATION CONTACT: Molly Brady, California Desert District, 6221 Box Springs, Blvd., Riverside, CA 92507-0714, Telephone (714) 697-5230.

SUPPLEMENTARY INFORMATION: The decision to extend the time for submission of comments on the route designation update was the result of concerns expressed by members of the public at public meetings held in early August. An additional 60 days were added to the comment period to allow sufficient time for members of the public to provide meaningful comments.

The area to be covered by this first round of route designation updates has been expanded to incorporate all of the routes within the planning area for the West Mojave Coordinated Management Plan (WMCMP). This plan is being prepared to address management and land use issues relative to the desert tortoise which has been federally-listed as threatened under the Endangered Species Act of 1973 and the Mohave ground squirrel which has been state-listed as threatened under the California Endangered Species Act. In a meeting with the WMCMP planning team leader and representatives of the U.S. Fish and Wildlife Service and the California Department of Fish and Game on August 4, 1992, the BLM agreed that all route designation updates on public lands administered by the BLM within the planning area for the West Mojave CMP would be accomplished as part of the planning effort. Given the target dates for completing the draft West Mojave Coordinated Management Plan, it was determined that the BLM should request public comments for the additional area as soon as possible so members of the public have adequate time to review the existing inventory and submit comments.

Jean Rivers-Council,

District Manager.

[FR Doc. 92-21942 Filed 9-10-92; 8:45 am]

BILLING CODE 4310-40-M

[MT-920-02-4111-14; MTM 80060; MT-920-02-4111-11; MTM 80071 & MTM 80076]

Notice of Proposed Reinstatement of Terminated Oil and Gas Leases

Under the provisions of Public Law 97-451, a petition for reinstatement of oil and gas leases MTM 80060, MTM 80071 and MTM 80076 all in Valley County, Montana, was timely filed and accompanied by the required rentals accruing from the date of termination.

No valid leases have been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre for oil and gas leases MTM 80071 and MTM 80076, $10 per acre for oil and gas lease MTM 80060, and 16⅔ percent respectively. Payment of a $500 administration fee for each lease has been made.

Having met all the requirements for reinstatement of the leases as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Lands Management is proposing to reinstate the leases, effective as of the date of termination, subject to the original terms and conditions of the leases, the increased rental and royalty rates cited above, and reimbursement for cost of publication of this Notice.

Dated: September 3, 1992.

Karen L. Skauge,

Chief Fluids Adjudication Unit.

[FR Doc. 92-21944 Filed 9-10-92; 8:45 am]

BILLING CODE 4310-DN-M

[NV-930-92-4212-13; N-54527]

Opening Order, Public Lands; Elko County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice, Opening order.

SUMMARY: This action provides for the opening of 5,908.36 public land acres previously segregated by a Notice of Realty Action for the Marys River reverse land exchange proposal, as published in the **Federal Register** on May 11, 1992, (57 FR 20127). That notice segregated 47,149.50 acres of public land in Elko and Eureka Counties. An exchange of a portion of the Federal lands was completed on August 20, 1992. The lands described below are no longer being considered in the subject exchange proposal and may now be opened to the public land laws, including the mining laws. The lands have been and remain open to the mineral leasing laws.

EFFECTIVE DATE: At 10 a.m. upon the date of publication of this Notice.

FOR FURTHER INFORMATION CONTACT: Mary Clark, BLM, Nevada State Office, 850 Harvard Way, Reno, NV 89520, (702) 785-6530.

SUPPLEMENTARY INFORMATION: Pursuant to 43 CFR 2091.2-2(a)(2), the segregative effect of the Notice of Realty Action is hereby terminated as to the following described lands and they are opened to entry as provided herein:

Mount Diablo Meridian, Nevada

T. 45 N., R. 51 E.,
Sec. 5, E½SE¼, E½NW¼SE¼;
Sec. 7, N½NE¼, SE¼NE¼, E½SE¼;
Sec. 8, N½, SW¼, N½SE¼, SE¼SE¼;
Sec. 16, SW¼NE¼, S½NW¼, N½SW¼, SW¼SW¼;
Sec. 17, E½E½, N½NW¼, SW¼NW¼, E½NW¼SE¼;
Sec. 18, E½NE¼.

T. 40 N., R. 52 E.,
Sec. 14, SW¼, W½SE¼;
Sec. 15, E½E½SE¼, E½W½E½SE¼;
Sec. 22, E½E½;
Sec. 23, W½E½, W½;
Sec. 26, N½NW¼NE¼, N½NE¼NW¼, NW¼NW¼;
Sec. 27, NE¼NE¼, E½E½NW¼NE¼;
Sec. 33, W½NW¼SE¼, SE½NW¼SE¼, W½W½SE¼SE¼.

T. 33 N., R. 54 E.,
Sec. 2, S½SE¼.

T. 30 N., R. 55 E.,
Sec. 12, NE¼NE¼NE¼.

T. 39 N., R. 55 E.,
Sec. 13, SW¼NW¼SW¼, NW¼SW¼SW¼;
Sec. 23 NE¼SE¼SE¼NE¼, SW¼SW¼SE¼SE¼;
Sec. 24, W½NW¼SW¼NW¼, NW¼SW¼SW¼NW¼;
Sec. 26, W½NE¼NE¼, E½NE¼NW¼NE¼, S½SW¼NW¼NE¼, SE¼NW¼NE¼, N½SW¼NE¼, NW¼SE¼NE¼, S½SW¼NW¼, NE¼SE¼NW¼, S½NW¼SE¼NW¼, S½SE¼NW¼, N½NW¼NE¼SW¼, N½N½NW¼SW¼.

T. 40 N., R. 55 E.,
Sec. 36, lots 5, 7, E½NW¼NE¼, E½W½NW¼NE¼, NE¼NW¼SW¼NE¼, N½NE¼SW¼NE¼, SE¼NE¼SW¼NE¼.

T. 30 N., R. 56 E.,
Sec. 6, lot 7, N½NE¼SE¼SW¼; NE¼SW¼SW¼SE¼;
Sec. 7, NE¼SW¼NE¼NE¼, NE¼NE¼SE¼NE¼;
Sec. 8, N½N½NW¼SE¼;
Sec. 9, N½N½NE¼SW¼, NE¼SW¼NE¼SE¼.

T. 32 N., R. 56 E.,
Sec. 28, E½SE¼;
Sec. 33, all;
Sec. 34, N½N½, SW¼NW¼, W½SE¼NW¼, W½E½SW¼, W½SW¼.

T. 33 N., R. 56 E.
Sec. 36, SE¼SW¼, W½W½SE¼SW¼.

T. 35 N., R. 56 E.
Sec. 20, NE¼NW¼.

T. 38 N., R. 56 E.,
Sec. 6, lots 1 & 2;
Sec. 18, Lot 4.

T. 39 N., R. 56 E.,
Sec. 6, NE¼SE¼SE¼, SE¼NW¼SE¼SE¼, NE¼SW¼SE¼SE¼, N½SE¼SE¼SE¼;
Sec. 31, S½NE¼SE¼, E½SE¼NW¼SE¼, SE¼SE¼.

T. 33 N., R. 61 E.,
Sec. 12, S½NE¼.

T. 33 N., R. 62 E.,
Sec. 7, lots 5, 8, NW¼NE¼, E½NE¼NE¼NW¼, NE¼SE¼NE¼NW¼;
Sec. 8, E½SE¼, SW¼SE¼, SE¼SW¼;
Sec. 17, NE¼, N½NW¼, N½SE¼NW¼.

T. 37 N., R. 62 E.,
Sec. 3, lots 3-8, 15, 16.

T. 38 N., R. 62 E.,
Sec. 30, lot 4, SE¼SW¼;
Sec. 31, N½NE¼NE¼NE¼, SE¼NE¼NE¼NE¼, NE¼NW¼NE¼NE¼;
Sec. 32, W½NW¼NW¼NW¼, NW¼SW¼NW¼NW¼.

T. 39 N., R. 63 E.,
Sec. 2, lot 4, SW¼NW¼;
Sec. 10, SE¼NE¼, S½;
Sec. 14, W½W½W½.

T. 43 N., R. 63 E.,
Sec. 10, E½NW¼NE¼, E½W½NW¼NE¼.

T. 44 N., R. 63 E.,
Sec. 8, NE¼SE¼;
Sec. 16, NW¼NE¼, E½SW¼NE¼;
Sec. 22, N½SW¼SW¼SW¼;

Sec. 28, E½NW¼NE¼, SW¼NW¼NE¼;
Sec. 33, E½SE¼NE¼;
Sec. 34, NW¼SE¼SW¼.
The area contains 5,908.36 acres in Elko County.

At 10 a.m. on the date of publication of this Notice in the **Federal Register**, the lands described above will be open to the operation of the public lands laws and to the operation of the mining laws, subject to valid existing rights. All valid applications received prior to or at 10 a.m. will be considered simultaneously filed. All other applications received will be considered in the order of filing. Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 30, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts. The land remains open to mineral leasing.

Billy R. Templeton,
State Director.

[FR Doc. 92-21967 Filed 9-10-92; 8:45 am]

BILLING CODE 4310-HC-M

[OR-943-4212-13; GP2-426; OR-41809]

Conveyance of Public Lands; Order Providing for Opening of Land; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 80 acres of public lands out of Federal ownership. This action will also open 160 acres of reconveyed land to surface entry, mining, and mineral leasing.

EFFECTIVE DATE: October 17, 1992.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171.

SUPPLEMENTARY INFORMATION: Notice is hereby given that in an exchange of lands made pursuant to section 206 of the Act of October 21, 1976, 43 U.S.C. 1716, a patent has been issued transferring 80 acres in Jackson County, Oregon, from Federal to private ownership.

In the exchange, the following described land has been reconveyed to the United States:

Willamette Meridian

Revested Oregon and California Railroad Grant Land

T. 35 S., R. 2 E.,
Sec. 30, SW¼NE¼, SE¼SW¼, and W½SE¼.
The area described contains 160 acres in Jackson County.

At 8:30 a.m., on October 17, 1992, the land will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on October 17, 1992, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

At 8:30 a.m. on October 17, 1992, the land will be opened to location and entry under the United States mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

At 8:30 a.m., on October 17, 1992, the land will be opened to applications and offers under the mineral leasing laws.

Dated: September 2, 1992.

Robert E. Mollohan,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 92-21920 Filed 9-10-92; 8:45 am]

BILLING CODE 4310-33-M

[OR-943-4212-13; GP2-425; OR-44409]

Conveyance of Public Land; Order Providing for Opening of Lands; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 1,320 acres of public land out of Federal ownership. This action will also open 460 acres of reconveyed lands to surface entry, and 300 acres to mining and mineral leasing. The minerals in the 160-acre balance are not in Federal ownership.

EFFECTIVE DATE: October 17, 1992.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171.

SUPPLEMENTARY INFORMATION:

1. Notice is hereby given that in an exchange of lands made pursuant to section 206 of the Act of October 21, 1976, 43 U.S.C. 1716, a patent has been issued transferring 1,320 acres in Harney County, Oregon, from Federal to private ownership.

2. In the exchange, the following described lands have been reconveyed to the United States:

Willamette Meridian

T. 39 S., R. 37 E.,
Sec. 14, N½NW¼NE¼;
Sec. 16, N½N½;
Sec. 35, NE¼NW¼;
Sec. 36, NW¼NW¼, S½NW¼, NE¼SW¼, and W½SE¼.
The areas described aggregate 460 acres in Harney County.

3. The minerals in the N½N½ of Sec. 16, T. 39. S., R. 37 E., W.M., are not in Federal ownership and will not be open to mining and mineral leasing.

4. At 8:30 a.m., on October 17, 1992, the lands described in paragraph 2 will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on October 17, 1992, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

5. At 8:30 a.m., on October 17, 1992, the lands described in paragraph 2, except as provided in paragraph 3, will be opened to location and entry under the United States mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

6. At 8:30 a.m., on October 17, 1992, the lands described in paragraph 2, except as provided in paragraph 3, will be opened to applications and offers under the mineral leasing laws.

Dated: September 2, 1992.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 92-21921 Filed 9-10-92; 8:45 am]

BILLING CODE 4310-33-M

[OR-943-4212-13; GP2-427; OR-40882]

Conveyance of Public Lands; Order Providing for Opening of Land; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 120 acres of public lands out of Federal ownership. This action will also open 160 acres of reconveyed land to surface entry, mining, and mineral leasing.

EFFECTIVE DATE: October 17, 1992.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171.

SUPPLEMENTARY INFORMATION: Notice is hereby given that in an exchange of lands made pursuant to section 206 of the Act of October 21, 1976, 43 U.S.C. 1716, a patent has been issued transferring 120 acres in Josephine County, Oregon, from Federal to private ownership.

In the exchange, the following described land has been reconveyed to the United States:

Willamette Meridian

T. 35 S., R. 1 E.,
Sec. 15, N½SE¼ and SW¼SE¼.

Revested Oregon and California Railroad Grant Land

T. 35 S., R. 1 E.,
Sec. 15, SE¼SE¼.
The area described contains 160 acres in Jackson County.

At 8:30 a.m., on October 17, 1992, the land will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on October 17, 1992, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

At 8:30 a.m., on October 17, 1992, the land will be opened to location and entry under the United States mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

At 8:30 a.m., on October 17, 1992, the land will be opened to applications and offers under the mineral leasing laws.

Dated: September 2, 1992.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 92-21934 Filed 9-10-92; 8:45 am]

BILLING CODE 4310-33-M

[FWS 93520-3210]

Realty Action To Segregate Public Lands in Kootenai, Benewah, Shoshone, Latah, Clearwater, and Idaho Counties, ID; Correction

In notice document 92-16988 beginning on page 32025 in the issue of Monday, July 20, 1992, make the following corrections:

1. On page 32025, in the third column, under T.40N., R.1E., add "Sec. 13, SW¼SW¼, excepting therefrom lot 1".

2. On the same page, in the third column, under T.40N., R.1e., "Sec. 14, S½NE¼, N½SE¼, and SW¼SE¼, excepting therefrom the interest of approved Mineral Survey 2806" should read "Sec. 14, S½NE¼, portion of SW¼ located in mining claims known as Rebel 15, 16, and 17 (formally known as Ruby Lode, Golden Wedge, and Golden Chest), and the SE¼ excepting therefrom lots 1 and 2".

3. On the same page, in the third column, under T.40N., R.1E., add "Sec. 23, N½NE¼, excepting therefrom lots 1 and 2".

4. On page 32026, in the first column, on line 21, "T.29N., R.2E. "should read "T.39N., R.2E.".

5. On the same page, in the first column, on line 26, "Sec. 4, NE¼SE¼", should read "Sec. 4, NW¼SE¼",

6. On the same page, in the first column, on line 42, "Sec. 32, W½NE¼" should read "Sec. 32, W½NW¼".

7. On the same page, in the first column, on line 66, "Sec. 12, SE¼SW¼" should read "Sec. 12, SW¼SW¼".

8. On the same page, in the second column, on line 11 within the description for Sec. 33, "W½SEW¼" should read "W½SE¼".

9. On the same page, in the second column, on the second line from the bottom, "T.44N., 1W." should read "T.44N., R.1W.".

Kemp Conn,

Deputy Assistant Director, Land and Renewable Resources.

[FR Doc. 92-21932 Filed 9-10-92; 8:45 am]

BILLING CODE 4310-55-M

[NV-940-4214-10; N-19622]

Determination Regarding Opening of Withdrawn Lands Known as the Department of Navy's Bravo 20 Bombing Range to Mineral Operation and Development; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with section 12(a) of Public Law 99-606, as amended by Public Law 100-338 in 1988, the Nevada State Director has determined, after conferring with the Commanding Officer, Naval Air Station, Fallon, that no withdrawn lands within the Bravo 20 Bombing Range are suitable to opening for operation under the Mining Law of 1872, the Mineral Lands Leasing Act of 1920, as amended, the Mineral Leasing Act for Acquired Lands of 1947, the Geothermal Steam Act of 1970, or any one or more of such Acts. The Bravo 20 Bombing Range is closed to the public.

FOR FURTHER INFORMATION CONTACT: Mike Phillips, Area Manager, Bureau of Land Management, Lahontan Resource Area, Carson City District, 1535 Hot Springs Road, suite 300, Carson City, Nevada 89706, 702-885-6115.

SUPPLEMENTARY INFORMATION: The Military Lands Withdrawal Act of 1986 (Pub. L. 99-606), as amended, provided for the withdrawal of lands for military purposes in four states, including 21,600 acres in Churchill County of Nevada for the Bravo 20 Bombing Range (see **Federal Register** notice, Vol. 52, No. 21, page 3176, dated February 2, 1987, and **Federal Register** notice, Vol. 52, No. 40, page 6227, dated March 2, 1987, for the legal description of the affected lands).

Section 12(a) of Public Law 99-606 requires a determination be made as to which, if any, of the withdrawn lands may be considered for opening to operation under the Mining Law of 1872, the Mineral Lands Leasing Act of 1920, as amended, the Mineral Leasing Act for Acquired Lands of 1947, the Geothermal Steam Act of 1970, or any one or more of such Acts. The Department of the Navy has closed the Bravo 20 Bombing Range lands from public access to protect the public from injury due to ordnance hazards and to ensure that military

programs can be conducted without disruption. Therefore, it has been determined that no withdrawn lands within Bravo 20 Bombing Range are suitable to opening for mineral exploration and development.

Billy R. Templeton,

State Director, Nevada.

[FR Doc. 92-21947 Filed 9-10-92; 8:45 am]

BILLING CODE 4310-HC-M

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: Harry Long, Valley Center, CA, PRT-770047.

The applicant requests a permit to import 28 captive-hatched scarlet chested parakeets (*Neophema splendida*) from Snavelhof Breeding Farms, Zuidwolde, The Netherlands for enhancement of propagation and survival of the species.

Applicant: National Zoological Park, Washington, DC, PRT-771380.

The applicant requests a permit to export samples of blood collected from captive-born Eld's deer (*Cervus eldi thamin*) and Pudu (*Pudu pudu*) for genetic analysis at the Zoological Society of London.

Applicant: Chicago Zoological Society, Brookfield, IL, PRT-770279.

The applicant requests a permit to import blood samples taken from captive-held black-handed spider monkeys (*Ateles geoffroyi frontatus* and *Ateles geoffroyi panamensis*) of wild origin from Panama, Costa Rica, Nicaragua, El Salvador, Honduras, Belize and Guatemala for the purposes of scientific research and enhancement of propagation and survival of the species.

Applicant: Kurt Landig, Fremont, OH, PRT-770790.

The applicant requests a permit to import one female brown-eared pheasant (*Crossoptilon mantchuricum*) from Dan Bruce, Speedwell Bird Sanctuary, Canada, for enhancement of propagation and survival of the species. The pheasant was hatched in captivity in England and previously exported to Canada.

Applicant: Omaha's Henry Doorly Zoo, Omaha, NE, PRT-771275.

The applicant requests a permit to import tissue samples collected from wild and captive-born gaur (*Bos gaur*) in Malaysia. DNA will be extracted for genetic evaluation of subspecies for enhancement of the propagation and survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45-4:15) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358-2104); FAX: (703/358-2281).

Dated: September 4, 1992.

Margaret Tieger,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 92-21898 Filed 9-10-92; 8:45 am]

BILLING CODE 4310-55-M

Notice of Availability of the Draft Environmental Assessment and Land Protection Plan; Proposed Establishment of Lake Wales Ridge National Wildlife Refuge; Highlands and Polk Counties, Florida

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of the Draft Environmental Assessment and Land Protection Plan for the proposed establishment of Lake Wales Ridge National Wildlife Refuge.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service, Southeast Region, proposes to establish a national wildlife refuge in the vicinity of Highlands and Polk Counties, Florida. The purpose of the proposed refuge is to protect and manage up to 12,200 acres of rare Florida scrub habitats and their associated endangered and threatened plants and animals along the Lake Wales Ridge in central Florida. A Draft Environmental Assessment and Land Protection Plan for the proposed refuge has been developed by Service biologists in coordination with the State of Florida, The Nature Conservancy, and the Archbold Biological Station. The assessment considers the biological, environmental, and socioeconomic effects of establishing the refuge. The assessment also evaluates three alternative actions and their potential impacts on the environment. Written comments or recommendations concerning the proposal are welcomed and should be sent to the address below.

DATES: Land acquisition planning for the project is currently underway. The draft assessment and land protection plan will be available to the public for review and comment on October 1, 1992. Written comments must be received no later than November 13, 1992, to be considered.

ADDRESSES: Comments and requests for copies of the assessment and further information should be addressed to Mr. Charles R. Danner, Chief, Branch of Project Development, Office of Refuges and Wildlife, U.S. Fish and Wildlife Service, 75 Spring Street SW., room 1240, Atlanta, Georgia 30303.

SUPPLEMENTARY INFORMATION: The primary objectives of the proposed Lake Wales Ridge National Wildlife Refuge are to (1) significantly enhance the recovery of 13 federally listed endangered and threatened plants, (2) support the recovery of 13 additional rare plants that are candidates for listing as endangered or threatened, and (3) protect four federally listed threatened wildlife species. Other species of resident and migratory wildlife would also benefit from the protection that would be afforded by the refuge.

The Lake Wales Ridge is an ancient system of beaches and sand dunes in central Florida, stretching from Ocala National Forest to southern Highlands County. This ridge was once a part of the old peninsula that existed when much of Florida was under the sea millions of years ago. The ridge's scrub vegetation is the remnant of an ancient ecosystem estimated to be of Miocene, Pliocene, or Pleistocene age (one to three million years old). It far exceeds the age of the ancient forests of the Pacific Northwest, some of which originated after the recession of continental glaciers about 10,000 years ago.

The interior scrubs of the Lake Wales Ridge are usually composed of dense but sometimes patchy stands of dwarfed evergreen shrubby oaks, sand pine, scrub hickory and Florida rosemary, often with a lichen-dominated ground cover. Because of their long period of biological evolution, these interior scrubs harbor a great number of endemic plants and animals, many of

which are found nowhere else in the world.

Scientists estimate that before the arrival of European settlers, about 80,000 acres of ancient scrub existed along the Lake Wales Ridge. Today, about 85% of the ridge's original scrub habitat has been lost to citrus farming and residential and commercial development. The remaining scrub habitats are now scattered throughout the ridge and are rapidly being destroyed to make way for new citrus groves, cattle pastures, and commercial and residential areas. In addition, the population of Highlands and Polk Counties is steadily increasing, with accompanying increases in real estate development. Many of the rare scrub communities are now threatened with extinction. This ancient ecosystem, which was once among the most distinctive in the country, is now at a crossroads.

The proposed Lake Wales Ridge National Wildlife Refuge represents an unprecedented opportunity to protect not only a number of endangered and threatened plants and animals, but also one of the rarest and most severely threatened vegetation communities in North America. The Endangered Species Act of 1973, as amended, seeks to provide "a means whereby the ecosystems upon which endangered and threatened species depend may be conserved" (Section 2[b]).

Dated: August 31, 1992.

James W. Pulliam, Jr.,

Regional Director.

[FR Doc. 92-21943 Filed 9-10-92; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Applications for Permit

The public is invited to comment on the following application for a permit to conduct certain activity with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.* and the regulations governing marine mammals (50 CFR part 18).

Applicant: U.S. Fish and Wildlife Service, Manatee Coordinator, Jacksonville, Florida.

Type of Permit: Take for enhancing the survival or recovery of the species [Sec 104 (c)(4)(A) of the Marine Mammal Protection Act].

Name and Number of Animals: West Indian manatee (*Trichechus manatus*) Exact amount unknown.

Summary of Activity to be Authorized: The applicant proposes to take (rescue and rehabilitate), transfer between facilities, and conduct research with West Indian manatees as outlined in the Florida Manatee Recovery Plan. Authorization is also requested to issue Letters of Authorization (LOA's) to private groups and facilities capable of conducting such activities for enhancement of survival of manatees. These activities were previously conducted under U.S. Fish and Wildlife Service's permit PRT-684532.

Source of Marine Mammals: Natural range of the West Indian manatee in the United States and Puerto Rico.

Period of Activity: September 1992 until May 1997.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of these applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the applications, or request for a public hearing on these applications should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203, within 30 days of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of a hearing is at the discretion of the Director.

Documents submitted in connection with the above applications are available for review during normal business hours (7:45 am to 4:15 pm) in room 432, 4401 North Fairfax Drive, Arlington, Virginia.

Dated: September 4, 1992.

Susan Jacobsen,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 92-21899 Filed 9-10-92; 8:45 am]

BILLING CODE 4310-55-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 303-TA-23 (Final)]

Ferrosilicon From Venezuela

AGENCY: United States International Trade Commission.

ACTION: Institution of a Final countervailing duty investigation.

SUMMARY: The Commission hereby gives notice of the institution of a final countervailing duty investigation (No. 303-TA-23 (final)) under section 303 of the Tariff Act of 1930 (19 U.S.C. 1303) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Venezuela of ferrosilicon,[1] provided for in subheadings 7202.21.10, 7202.21.50, and 7202.29.00 of the Harmonized Tariff Schedule of the United States (HTS), that are alleged to be subsidized by the Government of Venezuela.

Pursuant to a request from petitioner under section 705(a)(1) of the Act (19 U.S.C. 1671d(a)(1)), Commerce has extended the date for its final determination to coincide with that to be made in the ongoing antidumping investigation on ferrosilicon from Venezuela. Accordingly, the Commission will not establish a schedule for the conduct of the countervailing duty investigation until Commerce makes a preliminary determination in the antidumping investigation (currently scheduled for October 29, 1992).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: August 21, 1992.

FOR FURTHER INFORMATION CONTACT: Vera Libeau (202-205-3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 303 of the Act (19 U.S.C. 1303) are being provided to manufacturers,

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[1] The product covered by this investigation is ferrosilicon, a ferroalloy generally containing, by weight, not less than 4 percent iron, more than 8 percent but not more than 96 percent silicon, not more than 10 percent chromium, not more than 30 percent manganese, not more than 3 percent phosphorous, less than 2.75 percent magnesium, and not more than 10 percent calcium or any other element. Calcium silicon, ferrocalcium silicon, and magnesium ferrosilicon are specifically excluded from the scope of this investigation.

producers, or exporters in Venezuela of ferrosilicon. The investigation was requested in a petition filed on May 22, 1992, by AIMCOR, Pittsburgh, PA; Alabama Silicon, Inc., Bessemer, AL; American Alloys, Inc., Pittsburgh, PA; Globe Metallurgical, Inc., Cleveland, OH; Silicon Metaltech, Inc., Seattle, WA; Oil, Chemical & Atomic Workers Union (local 389); United Autoworkers of America Union (locals 523 and 12646); and United Steelworkers of America Union (locals 2528, 3081, and 5171).

Participation in the Investigation and Public Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

By order of the Commission.

Issued: September 4, 1992.

Paul R. Bardos,

Acting Secretary

[FR Doc. 92-21881 Filed 9-10-92; 8:45 am]

BILLING CODE 7020-02-M

[Inv. Nos. TA-131-19, 503(a)-24, and 332-331]

President's List of Articles Which May Be Designated or Modified as Eligible Articles for Purposes of the U.S. Generalized System of Preferences

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

SUMMARY: On August 17, 1992, the Commission received a request from the U.S. Trade Representative (USTR) requesting certain Commission advice under sections 131 and 503 of the Trade Act of 1974 and section 332(g) of the Tariff Act of 1930. Following receipt of that request, the Commission instituted investigation Nos. TA-131-19, 503(a)-24, and 332-331 in order to:

(1) Provide advice, pursuant to sections 131(b) and 503(a) of the Trade Act of 1974 (19 U.S.C. 2151(b) and 2463(a)), with respect to each article listed in part A of the attached Annex, as to the probable economic effect on U.S. industries producing like or directly competitive articles and on consumers of the elimination of U.S. import duties under Generalized System of Preferences (GSP);

(2) provide advice pursuant to section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g))—

(a) As to the probable economic effect on domestic industries producing like or directly competitive articles and on consumers of the removal of French doors, provided for in HTS subheading 4418.20.00(pt) (listed in part B of the attached Annex), from eligibility for duty-free treatment under the GSP;

(b) As to the probable economic effect on domestic industries producing like or directly competitive articles and on consumers of the removal of phthalic anhydride, provided for in HTS subheading 2917.35, from Mexico and/or Venezuela (listed in part C of the attached Annex), from eligibility for duty-free treatment under the GSP;

(c) In accordance with section 504(d) of the Trade Act of 1974, which exempts from one of the competitive need limits in section 504(c) of the Trade Act of 1974 articles for which no like or directly competitive article was being produced in the United States on January 3, 1985, with respect to whether products like or directly competitive with the articles in part A of the attached Annex were being produced in the United States on January 3, 1985.

(d) With respect to whether any industry in the United States is likely to be adversely affected by a waiver of the competitive need limits for countries specified with respect to the articles listed in part D of the attached Annex and for Thailand with respect to the article provided for in HTS subheading 2009.40.40, for Zimbabwe with respect to the article provided for in HTS subheading 7202.50.00, and for Malaysia with respect to HTS subheading 8527.31.50.

(e) With respect to whether any industry in the United States is likely to be adversely affected by a waiver of the competitive need limits specified in section 504(c)(2) of the 1974 Act, but not a waiver of the competitive need limits specified in section 504(c)(1) of the 1974 Act, for Brazil with respect to the article provided for in HTS subheading 8527.21.10 listed in part D, the foregoing article for which Brazil currently is subject to the reduced competitive need limits specified in section 504(c)(2)(B) of the 1974 Act.

In providing its advice under (1), the Commission will assume, as requested by USTR, that the benefits of the GSP would not apply to imports that would be excluded from receiving such benefits by virtue of the competitive need limits specified in section 504(c)(1) of the Trade Act of 1974 (except as noted in the USTR letter with respect to articles for Thailand included under HTS subheading 2009.40.40, for Zimbabwe included under HTS subheading 7202.50.00, and for Malaysia included under HTS subheading 8527.31.50).

As requested by USTR, the Commission will seek to provide its advice not later than November 30, 1992.

EFFECTIVE DATE: September 2, 1992.

FOR FURTHER INFORMATION CONTACT:

(1) Agricultural products, Mr. C.B. Stahmer (202-205-3321)
(2) Textiles and apparel, Ms. Jackie Jones (202-205-3466)
(3) Chemical products, Mr. James Raftery (202-205-3365)
(4) Minerals and metals, Ms. Linda White (202-205-3427)
(5) Machinery and equipment, Ms. Georgia Jackson (202-205-3399)
(6) Services and electronic technology, Mr. Tom Sherman (202-205-3389)

All of the above are in the Commission's Office of Industries. For information on legal aspects of the investigation contact Mr. William Gearhart of the Commission's Office of the General Counsel at 202-205-3091.

BACKGROUND: The letter from the USTR provided the following by way of background.

The Trade Policy Staff Committee (TPSC) announced in the **Federal Register** on August 21, 1992, the acceptance of product petitions for modification of the Generalized System of Preferences (GSP) received as part of the 1992 annual review. According to the announcement, modifications to the GSP which may result from this review will be announced in early 1993, and become effective July 1, 1993.

PUBLIC HEARING: A public hearing in connection with this investigation is currently scheduled to begin at 9:30 a.m. on October 8-9, 1992, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC.

All persons have the right to appear by counsel or in person, to present information, and to be heard. Persons wishing to appear at the public hearing should file a letter asking to testify with the Secretary, United States International Trade Commission, 500 E St., SW., Washington, DC 20436, not later than the close of business (5:15 p.m.) on September 18, 1992. In addition, persons testifying should file prehearing briefs (original and 14 copies) with the Secretary by the close of business on September 23, 1992. The deadline for filing post hearing briefs is the close of business on October 16, 1992.

WRITTEN SUBMISSIONS: In lieu of or in addition to appearances at the public hearing, interested persons are invited to submit written statements concerning the investigation. Written statements should be received by the close of business on October 16, 1992. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

Issued, September 3, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

Annex I (HTS Subheadings) [1]

A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences.

1302.39.00(pt)	4107.10.00
4011.50.00	2009.40.40 [2]
1604.13.10	6505.90.8015
2902.60.00	7202.50.00 [3]
2906.12.00	8527.31.50 [4]

[1] See USTR Federal Register Federal Register notice of August 21, 1992 (57 F.R. 38088) for article descriptions.

B. Petition to remove a product from the list of eligible articles for the Generalized System of Preferences.

4418.20.00(pt)

C. Petitions to remove duty-free status from beneficiary developing countries for a product on the list of eligible articles for the Generalized System of Preferences.[5]

2917.35.00 (Mexico and/or Venezuela)

D. Petitions for waiver of competitive need limit for products on the list of eligible products for the Generalized System of Preferences.

2909.19.10(pt) (Venezuela)
4104.31.20 (Thailand)
7614.90.20 (Venezuela)
8407.34.2060 (Brazil)
8521.10.0020 (Malaysia)
8527.11.60 (Malaysia)
8527.21.10 (Brazil)

[FR Doc. 92-21868 Filed 9-10-92; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32146]

Minnesota Transportation Museum, Inc.—Trackage Rights Exemption—Wisconsin Central Ltd.

Wisconsin Central Ltd. (WCL), has agreed to grant trackage rights to the Minnesota Transportation Museum, Inc. (MTM), to conduct passenger operations over its line between milepost 23.7 at Withrow, MN, and milepost 63.1 at Amery, WI, a distance of 39.4 miles. The exemption became effective on September 5, 1992.[1]

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Louis E. Gitomer, Taylor, Morell & Gitomer, 919 18th Street, NW., suite 210, Washington, DC 20006.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: September 4, 1992.

By the Commission. David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-21862 Filed 9-10-92; 8:45 am]

BILLING CODE 7035-01-M

[2] Advice is also requested on waiving the competitive need limit for Thailand on articles in this subheading.

[3] Advice is also requested on waiving the competitive need limit for Zimbabwe on articles in this subheading.

[4] Advice is also requested on waiving competitive need limit for Malaysia on articles in this subheading.

[5] While the Trade Policy Staff Committee (TPSC) review will focus on the specified countries, the TPSC reserves the right to address removal of GSP status for countries other than those specified by the petitioner as well as the GSP status of the entire article.

[1] By decision served September 4, 1992, the Commission granted MTM's request for waiver of 49 CFR 1180.4(g)(1) to permit an expedited effective date.

[Finance Docket No. 32133]

Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company—Control—Chicago and North Western Holdings Corp. and Chicago and North Western Transportation Company

AGENCY: Interstate Commerce Commission.

ACTION: Notice of prefiling notification and request for comments.

SUMMARY: Pursuant to 49 CFR 1180.4(b), applicants have notified the Commission of their intent to file an application seeking authority for Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company to acquire control of Chicago and North Western Holdings Corp. and Chicago and North Western Transportation Company. The Commission finds this to be a major transaction as defined in 49 CFR part 1180. Applicants have proposed an accelerated procedural schedule, and the Commission invites interested parties to comment on it.

DATES: Written comments must be filed with the Interstate Commerce Commission no later than September 28, 1992. Applicants' reply is due 10 days thereafter.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927-5610, (TDD for hearing impaired: (202) 927-5721.)

ADDRESSES: An original and 20 copies of all documents must refer to Finance Docket No. 32133 and be sent to: Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 32133, Interstate Commerce Commission, Washington, DC 20423.

In addition, one copy of all documents in this proceeding must be sent to each of applicants' representatives:

Fritz R. Kahn, Verner, Liipfert, Bernhard, McPherson and Hand, suite 700, 901 Fifteenth Street, NW., Washington, DC 20005.

Arvid E. Roach II, Covington & Burling, 1201 Pennsylvania Avenue, NW., P.O. Box 7566, Washington, DC 20044.

SUPPLEMENTARY INFORMATION: On August 12, 1992, Union Pacific Corporation (UPC), Union Pacific Railroad Company (UPRR), and Missouri Pacific Railroad Company (MPRR) (collectively UP), and Chicago and North Western Holdings Corp. (Holdings), and Chicago and North Western Transportation Company (CNWT) (UP, Holdings, and CNWT are referred to collectively as applicants), filed a notice of intent indicating that they will file an application seeking Commission approval and authorization under 49 U.S.C. 11343–45 for the common control of UPRR/MPRR and CNWT.

The proposal arises out of the 1989 acquisition of CNW Corporation, parent of CNWT, by a group of investors led by Blackstone Capital Partners L.P. (Blackstone). As a result of that transaction, CNWT became an indirect wholly owned subsidiary of Chicago and North Western Acquisition Corp. which, in turn, is a wholly-owned subsidiary of Holdings. CNWT is a Class I railroad and also controls or has an interest in various rail subsidiaries, including Western Railroad Properties, Inc., a Class II railroad, and Midwestern Railroad Properties, Inc., a non-operating Class III railroad.[1]

In connection with the Blackstone acquisition transaction, UP Rail, Inc. (UP Rail), a wholly owned subsidiary of UPC, purchased $100 million in Holdings' nonvoting, convertible preferred stock. UP Rail also received the right to appoint a director to the board of Holdings, and UPRR and MPRR, two Class I railroad subsidiaries of UPC, received trackage rights over certain CNWT lines. In approving the trackage rights,[2] the Commission issued a declaratory order that the above-described relationships and arrangements did not give UP control over CNWT.

On April 7, 1992, Holdings completed a public offering of its common stock and recapitalization. As part of those transactions, UP Rail agreed to exchange the preferred stock for non-voting common stock of Holdings, convertible at UP Rail's request into voting common stock, and to purchase additional shares of such non-voting common stock of Holdings for cash.

Although UP presently has no plans to acquire a majority ownership in CNWT, applicants are requesting authority for the common control of UPRR/MPRR and CNWT not only to allow UP to do so but to allow applicants to take certain actions without fear of violating the prior approval requirements for common control. Specifically, applicants are seeking common control authority to: (1) Permit UP to convert the non-voting common stock of Holdings into voting common stock (constituting approximately 24 percent of Holdings' outstanding voting common stock), and to exercise its right to vote that stock; (2) permit UP, if it wishes, to increase its stock ownership in Holdings; (3) permit UP to carry out various marketing and operating coordinations between UPRR/MPRR and CNWT, short of full integration of the railroads, which it believes will strengthen rail competition and enhance efficiency; and (4) permit UP, if it wishes, to acquire majority, or even 100%, ownership of CNWT if future market conditions and business considerations warrant.

Applicants will use the year 1991 for purposes of their impact analyses to be filed in the application. They intend to file their application approximately 4 to 5 months after the filing of their notice of intent.

The Commission finds that this is a major transaction, as defined at 49 CFR 1180.2(a), as it is a control transaction involving two or more Class I railroads. The application must conform to the regulations set forth at 49 CFR 1180, *et seq.*, and must contain all information required there for major transactions, except as modified by advance waiver.

By petition filed August 12, 1992, applicants sought approval of an attached protective order to protect confidential and proprietary information, including contract terms, shipper-specific traffic data, and other traffic data to be submitted in connection with the control application. In a decision served August 24, 1992, the Commission's Office of the Secretary granted applicants' request.

Also on August 12, 1992, applicants filed a petition for waiver or clarification of our consolidation procedures and a petition to establish a procedural schedule. The Commission will address the waiver/clarification petition in a separate decision. The Commission is, however, seeking comments now on applicants' proposed procedural schedule, as discussed below.

Applicants' proposed procedural schedule is as follows:

Proposed Procedural Schedule

F—Primary application filed
F+30—Commission notice of acceptance of primary application published
F+75—Comments on primary application (except DOJ, DOT) due
F+89—DOJ, DOT comments on primary application due
F+103—Second lists of protective conditions due
F+117—Responsive applications due; opposition to primary application due
F+147—Commission notice of acceptance of responsive applications published
F+207—Government parties' evidence due; opposition to responsive applications due; rebuttal in support of primary application due
F+237—Responses to government parties' evidence due; rebuttal in support of responsive applications due
F+258 to F+262—Hearing on all evidence; witnesses to be cross-examined only to the extent specific need is shown in order to resolve material issues of disputed fact
F+286—Opening briefs due
F+307—Reply briefs due
F+337—Oral argument
F+1 year—Final decision

Under the proposal, immediately upon each evidentiary filing, the filing party will place all documents relevant to the filing (other than documents that are privileged or otherwise protected from discovery) in a depository open to all parties, and will make its witnesses available for discovery depositions. Access to documents subject to protective order will be appropriately restricted. Parties seeking discovery depositions may proceed by agreement. Relevant excerpts of transcripts will be received in lieu of cross-examination at the hearing unless cross-examination is needed to resolve material issues of disputed fact. Discovery on responsive applications will begin immediately upon their filing. The Chief Administrative Law Judge will have the authority: (1) To revise the schedule as may appear necessary; and (2) initially to resolve any discovery disputes. The dates for filing post-hearing briefs and for oral argument before the Commission will be set upon completion of oral hearing before the Chief Administrative Law Judge.

Applicants state that this schedule is modeled closely after the schedule in

[1] The Commission authorized Blackstone's control of CNW Corporation and CNWT in *Blackstone Cap. Partners—Cont. Exempt.—CNW Corp. & Chicago, et al.*, 5 I.C.C.2d 1015 (1989), *aff'd sub nom. Brotherhood of Ry. Carmen (Div. of TCU) v. ICC*, 917 F.2d 1136 (8th Cir. 1990).

[2] See *Union Pacific R.R., et al.—Trackage Rights Over CNW*, 7 I.C.C. 2d 177 (1990).

Finance Docket No. 30800, *Union Pacific Corp., Union Pacific R.R. & Missouri Pacific R.R.—Control—Missouri-Kansas-Texas R.R.*, Decision No. 11, served March 19, 1987 (*UP–MKT*). That schedule was also entered following publication of a proposed schedule for comment. *See* 41 FR 39718 (1986).

Applicants, however, propose certain modifications to the schedule in *UP–MKT*. First, items relating to abandonment applications have been deleted, because no abandonment applications will be filed in this case. Second, a provision in the *UP–MKT* schedule for bifurcating responsive applications has been omitted, since, with early advance notice to all interested persons of the proposed schedule, applicants believe that there should be no difficulty in completing any necessary discovery and submitting any responsive applications 4 months after the primary application is filed. And third, the approach to setting dates for an oral hearing (if one is held), the oral argument, and a final decision is somewhat different from their treatment in *UP–MKT*. According to applicants, although the latter decision provided 2–3 weeks for oral hearing, no party ever requested a hearing, notwithstanding that there were nine responsive applicants. Applicants add that the *UP–MKT* decision also called for a 2-month hiatus between the filing of reply briefs and the holding of oral argument, and set no date for a final decision. Applicants suggest here that, tentatively, a single week be set aside for any hearing, that the time between the close of briefing and oral argument be shortened to 1 month, and that a target date of 1 year after the filing of the principal application be set for a final decision.[3]

Applicants believe that the *UP–MKT* schedule should be more than adequate for this proceeding, which, while involving the common control of Class I railroads, does not present, as an end-to-end transaction, the competitive issues that were present in *UP–MKT*, a largely parallel transaction. Accordingly, applicants request that the Commission publish the above schedule for comment, review any comments received, and enter the proposed schedule as soon as possible.

We invite interested parties to submit written comments on the proposed schedule. Comments must be filed within 15 days of publication of this notice in the **Federal Register**. Applicants may reply within 10 days thereafter.

Decided: September 2, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–21963 Filed 9–10–92; 8:45 am]

BILLING CODE 7035–01–M

[3] We note that this proposed schedule contains substantially shorter time periods that those provided for in our rules at 49 CFR 1180.4(a)–(e). For example, 1180.4(e) requires that the evidentiary proceeding for a major transaction be completed 24 months after acceptance of the primary application, with a final decision to be issued within 180 days thereafter. Other minor differences also exist.

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Certain Property Owned by Salomon Brothers Inc.; Comment and Response on Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), the United States publishes below the comment it received on the proposed Final Judgment in *United States* v. *Certain Property Owned by Salomon Brothers Inc., Salomon Brothers Inc., Real Party in Interest*, 92 Civ. 3700, filed in United States District Court for the Southern District of New York, together with the response of the United States to that comment.

Copies of the response and the public comment are available on request for inspection and copying in room 3233 of the Antitrust Division, U.S. Department of Justice, Tenth Street and Pennsylvania Avenue, NW., Washington, DC 20530 and for inspection at the Office of the Clerk for the United States District Court for the Southern District of New York, Foley Square, New York, New York.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

In the U.S. District Court for the Southern District of New York

United States of America, Plaintiff, against *Certain Property Owned by Salomon Brothers Inc.*, Defendant, *Salomon Brothers Inc.*, Real Party in Interest.

[92 Civ. 3700 (RPP)]

Response of the United States to Public Comments and Motion for Entry of Final Judgment

Pursuant to section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. 16(b)-(h)) ("APPA"), the United States of America hereby files its Response to Public Comments and moves for entry of the proposed Final Judgment in this *in rem* civil antitrust proceeding.

I

Introduction

The United States has carefully reviewed the comment submitted on the proposed Final Judgment and remains convinced that entry of the Final Judgment is in the public interest.

II

Background

This action was commenced on May 20, 1992, when the United States filed a complaint alleging that Salomon Brothers Inc. ("Salomon") and unnamed co-conspirators violated Section 1 of the Sherman Act by agreeing to coordinate their actions in trading May 1993 two-year notes issued by the United States Treasury on May 31, 1991 ("May two-year notes"). The complaint alleged that the conspiracy affected the price of the notes and the interest rate paid by persons, such as Salomon, who borrowed cash through repurchase agreements to finance their ownership of the notes. The complaint sought forfeiture of $27.5 million under 15 U.S.C. 6.

On the same date that it filed the complaint, the United States filed a proposed Final Judgment and a Stipulation between the United States and Salomon pursuant to which the United States and Salomon consented to the entry of the proposed Final Judgment. The proposed Final Judgment provides for a payment of $27.5 million (plus interest) to the United States. The United States and Salomon also stipulated that entry of the proposed Final Judgment would satisfy the claim of the United States in this action *in rem*.

Simultaneous with the filing of the complaint and proposed Final Judgment, the United States Department of Justice and Salomon also entered into a Civil Settlement Agreement pursuant to which Salomon agreed to pay $55 million to the United States Department of Justice Asset Forfeiture Fund, of which $27.5 million (plus interest) would be paid pursuant to the proposed Final Judgment in this action and $27.5 million would be paid pursuant to 18 U.S.C. 981(a)(1)(C). Salomon also agreed to pay $13 million to the United States to satisfy claims under 31 U.S.C. 3729 and under the common law. Salomon also agreed at that time to pay $122 million of civil penalties under the Securities Enforcement Remedies and Penny Stock Reform Act of 1990, Public Law 101–429, and to pay $100 million into a fund for

civil claimants. Any sums remaining in that fund will be paid to the United States Treasury. The total amount of the settlement was $290 million plus certain interest.

On June 18, 1992, the United States filed a Competitive Impact Statement in this action explaining the basis of the complaint and for the government's conclusion that entry of the proposed Final Judgment is in the public interest.

The Stipulation provides that the proposed Final Judgment may be entered by the Court after completion of the procedures required by the APPA.

III

Compliance With the APPA

Upon publication of this Response in the **Federal Register**,[1] the procedures required by the APPA prior to entry of the proposed Final Judgment will be completed, and the Court will be free to enter the proposed Final Judgment. The United States hereby certifies that it has complied with all the requirements of the APPA as follows:

A. Stipulation, Proposed Final Judgment and Competitive Impact Statement

The United States filed the Stipulation for Entry of the Final Judgment and the proposed Final Judgment with the court on May 20, 1992. The United States filed the Competitive Impact Statement, including the information required by 15 U.S.C. 16(b) with the Court on June 18, 1992. On July 6, 1992, the Complaint, proposed Final Judgment, Competitive Impact Statement, and Civil Settlement Agreement were published in the Federal Register (57 FR 29743).[2] The Department of Justice also furnished copies of those documents to all persons who requested them.

B. Newspaper Notices

The United States published newspaper notices of the proposed Final Judgment and the Competitive Impact Statement in *The New York Times* and *The Washington Post* daily from June 28, 1992 through July 4, 1992, as required by 15 U.S.C. 16(c).[3]

C. Statements Regarding Communications

As required by 15 U.S.C. 16(g), on June 4, 1992, Salomon filed a description of its communications (or communications made on its behalf) with officers and employees of the United States concerning the proposed Final Judgment. Salomon filed an amended statement on September 1, 1992.

D. Waiting Period, Comments and Publication of Comments and Responses

The sixty-day comment period proscribed in 15 U.S.C. 16(d) will expire on September 4, 1992. The Department has thus far received one comment on the Final Judgment.[4] The response to that comment is below.

IV

Response to Comment

The only comment the Department has received relating to the proposed Final Judgment was submitted by Three Crown Limited Partnership ("Three Crown"). Three Crown is suing Salomon and several other defendants for alleged violations of the Securities and Exchange Act of 1934, the Racketeer Influenced and Corrupt Organization Act, the Sherman Antitrust Act and other statutes based upon trading and certain alleged acts they undertook in relation to the April 1993 two-year Treasury notes auctioned on April 24, 1991 ("April two-year notes") and May two-year notes.

Three Crown raises five points in its comment:

1. It is not clear whether the government's settlement with Salomon relates to the April two-year notes as well as to the May two-year notes. If the settlement includes the April two-year notes, it is "far too low."

2. If the proposed Final Judgment does not bar the Department from bringing antitrust claims against Salomon relating to other Treasury issues, the proposed Final Judgment should be clarified.

3. The Competitive Impact Statement does not state why claims relating to the April two-year notes have been excluded from the settlement, although the "squeeze" relating to the April two-year notes lasted longer than the squeeze relating to the May notes and was more harmful to the government securities market and investors.

4. The Competitive Impact Statement does not state how the asset forfeiture "is apportioned between the various Treasury issues."

5. If the government's investigation is complete, "the discovery materials created and obtained by the Government * * * should in order to further the purposes of the Sherman Antitrust Act and Clayton Act be furnished or made available to private litigants."

On the first three points, the proposed Final Judgment resolves only the claim made in the complaint related to the May two-year notes. The Final Judgment must also be considered in light of the Civil Settlement Agreement as well as the size of the overall resolution reached by the United States.

The Civil Settlement Agreement does, however, affect other potential civil antitrust claims that could be brought by the United States. With the exception of an on-going industry-wide investigation of pre-auction conduct, the Civil Settlement Agreement releases any claims by the United States under the federal antitrust laws for damages, fines, penalties, forfeitures or other remedies relating to conduct covered by the agreement, including *inter alia:*

> * * * conduct of communications from January 1, 1989, through August 9, 1991 related to (i) bidding for itself and others in all auctions for United States Treasury bills, notes and bonds. * * * (ii) trading and financing on its own behalf or on behalf of others of all such United States Treasury and REFCORP securities and (iii) post-auction communications concerning the bidding, trading and financing of all such Treasury and REFCORP securities.

Any civil antitrust claim relating to Salomon's trading or financing of the April two-year notes is included in that release.[5]

The United States concluded that such a release was fully appropriate in the context of the overall $290 million settlement with Salomon. Moreover, the United States had not concluded that an antitrust action against Salomon based upon its activities relating to the April two-year notes should have been

[1] This Response was submitted to the **Federal Register** for publication on September 3, 1992, one day prior to the deadline for public comments. The United States will file a certification with the Court reflecting publication of this Response once it has occurred. If any additional comments should be received prior to the conclusion of the sixty-day waiting period on September 4, the United States will submit those comments and its Response to the **Federal Register** and the Court as soon thereafter as practicable. If no additional comments are received, the Court will be free to enter the proposed Final Judgment once the United States has filed with the Court its certificate of publication of this Response in the **Federal Register**.

[2] A copy of the **Federal Register** Notice is attached to this Response as Exhibit A.

[3] Copies of the newspaper notices and the certificates of publication are attached as Exhibit B.

[4] The comment, entitled "Request for Modification of the Proposed Final Judgment," is attached as Exhibit C. Copies of the exhibits attached to the comment can be obtained by contacting the Communications and Finance Section, Antitrust Division, United States Department of Justice, 555 Fourth St., NW., room 8104, Washington, DC 20001.

[5] The Civil Settlement Agreement does not bar the Department from bringing a criminal antitrust action against Salomon on any matter, although the Department announced on May 20 that it would not seek criminal charges against Salomon on the matters covered by the Civil Settlement Agreement.

alleged.[6] Further, whether the United States should have brought an action against Salomon relating to the April two-year notes is a matter of prosecutorial discretion and is beyond the scope of this proceeding.

The Department is satisfied that the sum to be paid is adequate to punish Salomon for the conduct alleged in the complaint and to release it from civil liability under the antitrust laws for other conduct covered by the Civil Settlement Agreement. The $27.5 million settlement would represent the largest forfeiture or other penalty ever paid to the government by a defendant in an antitrust case and is likely to have a substantial deterrent effect on future violations.[7]

Finally, even if the Department had charged Salomon with violating the antitrust laws for conduct related to the April two-year notes, the settlement of such an action would have had no precedential effect on any private litigation, such as the suit brought by Three Crown. In the resolution of this action, Salomon did not admit to having committed the violation charged. This is typical for antitrust settlements and is consistent with 15 U.S.C. 16(a).[8]

As its fourth point, Three Crown states that the Competitive Impact Statement does not explain how the $27.5 million asset forfeiture is "apportioned between the various Treasury issues." As the charge in the complaint relates only to the May two-year notes, there is no apportionment among "various Treasury issues." The settlement resolves Salomon's civil antitrust liability for the conduct covered by the Civil Settlement Agreement.

As a final matter, Three Crown requests that if the government's investigation has been completed, the "discovery materials created and obtained" by the government in the course of its investigation be made available to private litigants. The government's investigation is continuing and if materials created or obtained by the government were to be released at this time, the government's ability to investigate and prosecute violations of the law could be substantially impaired. As a litigant, Three Crown has the ability and ample opportunity to obtain discovery from Salomon and other parties. This issue, raised by a private litigant in another action, is unrelated to the purpose of this proceeding—determining whether the proposed Final Judgment is the public interest.

[6] Three Crown, of course, may be able to make a claim upon the $100 million fund established for civil claimants.

[7] It is worth noting that, absent applicability of 18 U.S.C. § 3571(d), the maximum fine for a violation of Section 1 of the Sherman Act is $10 million.

[8] Under 15 U.S.C. 16(a), antitrust final judgments and decrees are prima facie evidence in any action brought by another party except in the case of consent judgments and decrees entered before testimony has been taken.

V

Conclusion

For the reasons set forth in the Competitive Impact Statement and this Response, the proposed Final Judgment is in the public interest, and we ask the Court to enter the proposed Final Judgment.

Dated: September 4, 1992.

Respectfully submitted,

Jonathan M. Rich,

Attorney, United States Department of Justice, Antitrust Division, 555 Fourth Street, NW., room 8401, Washington, DC 20001, (202) 514-5621.

Exhibits A and B

Exhibit A, the Final Judgment as originally proposed, the Competitive Impact Statement, and the Stipulation previously were published in the **Federal Register** (57 FR 29743, July 6, 1992) and are not republished herein. Exhibit B, copies of affidavits of publication of newspaper notices of the proposed Final Judgment and Competitive Impact Statement, also are omitted from publication herein; these may be requested for inspection and copying at Room 3233, Antitrust Division, Department of Justice, Washington, DC 20530 and at the Office of the Clerk of the United States District Court for the Southern District of New York.

Exhibit C

July 30, 1992.

Re: Request for Modification of the Proposed Final Judgment in *United States of America* v. *Salomon Brothers Inc., 92 Civ. 3700 (RPP).*

Mr. Richard Rosen,

Acting Chief, Communications and Finance Section, U.S. Department of Justice, Antitrust Division, 555 Fourth Street, NW., Room 8104, Washington, DC 20001.

Dear Mr. Rosen: We represent Three Crown Limited Partnership ("Three Crown") in the action entitled *Three Crown Limited Partnership, et al.* v. *Caxton Corporation, et al.*, 92 Civ. 3142 (RLC) (*"Three Crown"*), pending in the United States District Court for the Southern District of New York before the Honorable Robert L. Carter. Salomon Brothers, Inc. is one of the defendants in this action.

Three Crown files this "Request for Modification of the Proposed Final Judgment" in *United States* v. *Salomon Brothers, Inc.*, 92 Civ. 3700 (RPP), pursuant to 15 U.S.C. § 16 (b) and (d) and Section V of the "Competitive Impact Statement" filed with the Court on June 18, 1992 in connection with the settlement of *United States* v. *Salomon Brothers.* (See Appendix,[1] Exhibit 1: Complaint, Stipulation, Final Judgment, Competitive Impact Statement, Civil Settlement Agreement and Final Judgment of Permanent Injunction and Other Relief as to Salomon Inc. and Salomon Brothers, Inc. [hereinafter referred to as the "Settlement Papers"].)

The *Three Crown* plaintiffs are familiar with the activities of Salomon Brothers and the other co-conspirators with regard to the manipulation of the Treasury markets. (See Exhibit 2, White Paper of H. Barndt Hauptfuhrer dated February 3, 1992.)

It is important to note that the *Three Crown* complaint, filed on April 30, 1992,[2] preceded the Justice Department's complaint by twenty days. The Justice Department complaint was filed on May 20, 1992 and contained antitrust allegations that were nearly identical to the *Three Crown* complaint, at least with respect to the May 1993 Two Year Notes and the financing mechanism of the May 1993 Two Year Notes. (See Exhibit 3, Three Crown Complaint dated April 30, 1992.)

Three Crown believes that the proposed Settlement Papers do not comply with the requirements of Section 2(e) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(e) in the following respects.[3]

1. The proposed Settlement Papers, if read in light of the Justice Department's May 20, 1992 Complaint, address only Salomon Brothers' manipulation of the May 1993 Two Year Notes and the financing mechanism surrounding the May 1993 Two Year Notes. It is not clear, however, whether the proposed settlement is intended to resolve all of the Justice Department's potential antitrust claims against Salomon Brothers, including settlement of any possible claims against Salomon Brothers relating to its conduct in other Treasury issues, including, but not limited to the April 1993 Two Year Notes auctioned by the United States Government on April 17, 1991. If that is the case, Three Crown believes the monetary settlement the Justice Department has tentatively reached with Salomon Brothers is far too low.

2. If the proposed Final Judgment does not preclude the government from asserting

[1] For ease of reference, a copy of all the documents referred to in this letter are assembled in the attached Appendix.

[2] Three Crown filed its First Amended Complaint on June 3, 1992.

[3] 15 U.S.C. 16(e) states as follows: Before entering any consent judgment proposed by the United States under this section, the court shall determine that their entry of such judgment is in the public interest. For purposes of such determination, the court may consider—

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modifications, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

antitrust claims against Salomon Brothers relating to Salomon Brothers' activities involving other Treasury issues, then Three Crown believes the proposed Final Judgment should clarify that point.

3. The Justice Department Competitive Impact Statement fails to state why the manipulation of the April 1993 Two Year Notes or the financing mechanism of the April 1993 Two Year market, which, on information and belief, Salomon controlled, has been omitted in its entirety from the settlement. The squeeze in the May 1993 Two Year Notes lasted from May 31, 1991, to on or about July 8, 1991. The squeeze in the April 1993 Two Year Notes lasted longer: from April 30, 1991, to on or about September 10, 1991. Even if the April 1993 Two Year Note squeeze did not apparently involve auction violations, it was far more harmful to the government securities market and market participants than the May 1993 Two Year Squeeze. (See Exhibit 4 Daily Yield Curve Analysis Charts.)

4. The Justice Department Competitive Impact Statement omits any information relating to how the $27.5 million forfeiture defined in the Civil Settlement Agreement between Salomon and the Justice Department is apportioned between the various Treasury issues.

5. The Settlement Papers should explicitly state whether the investigation against Salomon Brothers is complete. If the investigation is complete, then the discovery materials created and obtained by the Government in its investigation into Salomon Brothers' manipulation of the May 1993 Two Year Notes, including the financing mechanism surrounding the May 1993 Two Year Notes, as well as other Treasury issue (i.e., April 1993 Two Year Notes) should in order to further the purposes of the Sherman Antitrust Act and Clayton Act be furnished or made available to private litigants.

Three Crown believes the above issues must be explicitly addressed in the Settlement Papers in order for them to have the clarity of purpose required by section 2(e) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(e).

Respectfully submitted,

Louis F. Burke,

Richard and O'Neil.

Enclosure.

cc:

The Honorable Robert P. Patterson,
United States District Court, Southern District of New York, United States Courthouse, 40 Foley Square, New York, New York 10007

Hayes Gorey, Esq.,
Assistant United States Attorney, U.S. Department of Justice, Antitrust Division, 555 Fourth Street, N.W., Room 8104, Washington, D.C. 20001

[FR Doc. 92-21733 Filed 9-10-92; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984; National Center for Manufacturing Sciences, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), the National Center For Manufacturing Sciences, Inc. ("NCMS"), on July 28, 1992, filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notification was filed for the purpose of maintaining the protections of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

The following companies recently were accepted as active members of NCMS: Advanced Processing Technology, Inc., Norman, OK; Campbell Grinder Company, Muskegon, MI; Cimflex Teknowledge Corporation, Bridgeville, PA; Enterprise Integration Technologies Corporation, Palo Alto, CA; ICAD, Inc., Cambridge, MA; ICAMP, Inc., Los Alamos, NM: Onset BIDCO, Inc., Livonia, MI; Paradigm Shift International, Inc., Oakland, CA; Perceptron, Inc., Farmington Hills, MI; Saginaw Machine Systems, Inc., Saginaw, MI; Salerno Manufacturing Systems, Inc., Troy, MI; Spatial Technology, Inc., Boulder, CO; Spectrix Corporation, Evanston, IL; Timesavers, Inc., Minneapolis, MN; Utilase Systems, Inc., Detroit, MI; and W.D. Johnson, Inc., Sterling Heights, MI.

In addition to the foregoing additions to NCMS's active membership, one NCMS active member, Giddings & Lewis, Inc., acquired the Cross & Trecker Corporation and with that acquisition subsumed the memberships of two former NCMS active members, Kearney & Trecker Corporation (d/d/a KT-Swasey) and The Cross Company.

The following organizations recently were accepted as affiliate members of NCMS: Georgia Institute of Technology Manufacturing Research Center, Atlanta, GA; Metalworking Technology, Inc., Johnstown, PA; Pennsylvania Research Laboratory, State College, PA; and Rio Grande Technology Foundation, Albuquerque, NM.

Except as indicated above, no other changes have been made in the membership, objectives, or planned activities of NCMS.

On February 20, 1987, NCMS filed its original notification pursuant to section 6(a) of the Act, notice of which the Department of Justice published in the **Federal Register** pursuant to section 6(b) of the Act on March 17, 1987 (52 FR 8375). NCMS filed additional notifications on April 15, 1988, and May 5, 1988, notice of which the Department published in the **Federal Register** on June 2, 1988 (53 FR 20194). NCMS also filed additional notifications on July 11, 1988, September 13, 1988, December 8, 1988, March 9, 1989, August 10, 1989, November 3, 1989, January 29, 1990, April 27, 1990, July 31, 1990, November 7, 1990, February 5, 1991, March 18, 1991, April 29, 1991, July 25, 1991, October 31, 1991, January 27, 1992, and April 23, 1992, notices of which the Department published in the **Federal Register** on August 19, 1988 (53 FR 31771), November 4, 1988 (53 FR 44680), January 18, 1989 (54 FR 2006), April 13, 1989 (54 FR 14878), September 18, 1989 (54 FR 38461), November 29, 1989 (54 FR 49122), February 28, 1990 (55 FR 7045), June 5, 1990 (55 FR 22964), August 28, 1990 (55 FR 35194), December 10, 1990 (55 FR 50786), March 12, 1991 (56 FR 10444), May 16, 1991 (56 FR 22740–41), June 13, 1991 (56 FR 27273), September 4, 1991 (56 FR 43796), February 3, 1992 (57 FR 4062), March 11, 1992 (57 FR 8675–76), and June 11, 1992 (57 FR 24816) respectively.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-21928 Filed 9-10-92; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984; National Forest Products Association

Notice is hereby given that, on June 8, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq., ("the Act"), the National Forest Products Association filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the joint venture and (2) the nature and objectives of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the joint venture, and its general area of planned activities, are given below.

The parties to the joint venture are: Alpine Engineered Products, Inc., Pompano Beach, FL; American Institute of Timber Construction, Vancouver, WA; California Redwood Association, Novato, CA; Canadian Wood Council, Ottawa, Ontario, Canada; National Forest Products Association, Washington, DC; National Timber Piling

Council, Rye, NY; Southeastern Lumber Manufacturers Association, Forest Park, GA; Southern Forest Products Association, Kenner, LA; Southern Pine Inspection Bureau, Pensacola, FL; Structural Board Association, Willowdale, Ontario, Canada; Trus Joist Macmillan, Boise, ID; Truss Plate Institute, Madison, WI; West Coast Lumber Inspection Bureau, Portland, OR; Western Wood Products Association, Portland, OR; Willamette Industries, Inc., Portland, OR; and Wood Truss Council of America, Madison, WI.

The nature of the joint venture is to produce a new reliability-based wood design manual incorporating load and resistance factor design (LRFD). The objective of the research effort is to integrate a previously developed LRFD specification together with wood product engineering data to provide engineers and architects with an alternative to the currently used allowable stress design method, and to present this new comprehensive design methodology in an easy-to-use, published format.

Joseph H. Widmar,

Director of Operation, Antitrust Division.

[FR Doc. 92-21927 Filed 9-10-92; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to section 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on June 10, 1992, Abbott Laboratories, Attn: D-209, Abbott Park, Abbott Park, Illinois 60064-3500, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance Ecgonine (9180).

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than 30 days from publication.

Dated: September 3, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92-21960 Filed 9-10-92; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on June 10, 1992, Abbott laboratories, 14th Street and Sheridan Road, Attn: Customer Service D-345, North Chicago, Illinois 60064, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Dextropropoxyphene, bulk (non-dosage forms).	II
Fentanyl (9801)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than 30 days from publication.

Dated: September 3, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92-21957 Filed 9-10-92; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on June 9, 1992, Applied Science Labs Division of Alltech Associates Inc., 2701 Carolean Industries Drive, P.O. Box 440, State College, Pennsylvania 16801, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
N-Ethylamphetamine (1475)	I
N,N-dimethylamphetamine (1480)	I
cis-4-Methylaminorex (1590)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
3,4-methylenedioxyamphetamine (MDA) (7400).	I
N-hydroxy-3,4-methylenedioxyamphetamine (7402).	I
3,4-methylenedioxy-N-ethylemphetamine (7404).	I
3,4-methylenedioxymethamphetamine (MDMA) (7405).	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Ethlyamine analog of phencyclidine (7455).	I
Pyrrolidine analog of phencyclidine (7458).	I
1-[1-(2-Thienyl)cyclohexyl]piperidine (7470).	I
Dihydromorphine (9145)	I
Normorphine (9313)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
1-Piperidinocyclohexanecarbonitrile (8603).	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Benzoylecgonine (9180)	II
Morphine (9300)	II
Oxymorphone (9652)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than 30 days from publication.

Dated: September 3, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92-21956 Filed 9-10-92; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on May 12, 1992, Arenol Chemical Corporation, 189 Meister Avenue, Somerville, New Jersey 08876, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
3,4-Methylenedioxyamphetamine (7400).	I
Amphetamine (1100)	II
Methamphetamine (1105)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than 30 days from publication.

Dated: September 3, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92-21958 Filed 9-10-92; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Senior Executive Service Performance Review Board Membership

AGENCY: President's Council on Integrity and Efficiency (PCIE).

ACTION: Notice.

SUMMARY: Notice is hereby given of the current membership of the PCIE Performance Review Board.

EFFECTIVE DATE: September 11, 1992.

FOR FURTHER INFORMATION CONTACT: Individual Offices of Inspector General.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of title 5, U.S.C. requires each agency to establish in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. This board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

Members of the President's Council on Integrity and Efficiency Performance Review Board are:

Members	Title
Agency for International Development	
Corbett M. Flannery	Assistant Inspector General for Security.
Gene Richardson	Assistant Inspector General for Investigations.
Department of Agriculture	
Charles R. Gillum	Deputy Inspector General.
James R. Ebbitt	Assistant Inspector General for Audit.
Craig L. Beauchamp	Assistant Inspector General for Investigations.
Paula F. Hayes	Assistant Inspector General for Policy Development and Resources Management.
Richard Long	Deputy Assistant Inspector General for Audit.
Everett Mosley	Deputy Assistant Inspector General for Audit.
Jeffrey Rush	Deputy Assistant Inspector General for Investigations.
Richard F. Allen	Deputy Assistant Inspector General for Investigations.
Department of Commerce	
Michael Zimmerman	Deputy Inspector General.
J. Steven Sadler	Deputy Assistant Inspector General for Regional Audits.
Charles M. Hall	Assistant Inspector General for Inspections and Resources Management.
Department of Defense	
Derek J. Vander Schaaf	Deputy Inspector General.
Nicholas T. Lutsch	Assistant Inspector General for Administration and Information Management.
David A. Brinkman	Assistant Inspector General for Analysis and Followup.
Robert J. Lieberman	Assistant Inspector General for Auditing.
Edward R. Jones	Deputy Assistant Inspector General for Auditing, OAIG, AUD.
Nancy L. Hendricks	Director, Financial Management Directorate, OAIG, AUD.
Donald E. Reed	Director, Acquisition Management Directorate, OAIG, AUD.
David K. Steensma	Director, Contract Management Directorate, OAIG, AUD.
William F. Thomas	Director, Readiness and Operational Support Directorate, OAIG, AUD.
Donald E. Davis	Deputy Assistant Inspector General for Audit Policy and Oversight, OAIG, APO.
Michael B. Suessmann	Assistant Inspector General for Departmental Inquiries.
Katherine A. Brittin	Assistant Inspector General for Inspections.
Stephen A. Whitlock	Director, Inspections Directorate, OAIG, INS.
Donald Mancuso	Assistant Inspector General for Investigations.
William G. Dupree	Deputy Assistant Inspector General for Investigations, OAIG, INV.
C. Frank Broome	Deputy Assistant Inspector General for Administration and Information Management.
Michael G. Huston	Director of Audit Planning and Technical Support, OAIG, AUD.
John F. Keenan	Director of Investigative Operations, OAIG, INV.
Joel L. Leson	Director for Criminal Policy and Oversight, OAIG, INV.
Shelton R. Young	Director of Logistics Support, OAIG, AUD.

Members	Title
Department of Energy	
Gordon W. Harvey	Assistant Inspector General for Audits.
Michael W. Conley	Assistant Inspector General for Inspections.
Paul M. Misso	Assistant Inspector General for Investigations.
M. Thomas Abruzzo	Deputy Assistant Inspector General for Investigations.
Gregory H. Friedman	Deputy Assistant Inspector General for Audit Operations.
Stanley R. Sulak	Deputy Assistant Inspector General for Audit Policy, Plans and Programs.
Department of Health and Human Services	
Thomas D. Roslewicz	Deputy Inspector General for Audit Services.
Joseph E. Vengrin	Assistant Inspector General for Audit Policy and Oversight.
John A. Ferris	Assistant Inspector General for Audit Human, Family and Departmental Services
Dennis J. Duquette	Assistant Inspector General for Audit Financial Management.
Michael F. Mangano	Deputy Inspector General for Evaluation and Inspections.
George F. Grob	Assistant Inspector General for Evaluation and Inspections.
Larry D. Morey	Deputy Inspector General for Investigations.
Robert A. Simon	Assistant Inspector General for Criminal Investigations.
Eileen T. Boyd	Assistant Inspector General for Civil and Administrative Remedies.
Paul F. Conroy	Assistant Inspector General for Investigations Policy and Oversight.
Jane S. Tebbutt	Assistant Inspector General for Management and Policy.
Department of Housing and Urban Development	
John J. Connors	Deputy Inspector General.
John H. Greer	Assistant Inspector General for Audit.
Patrick J. Neri	Assistant Inspector General for Investigations.
Jacqulyn K. Howard	Assistant Inspector General for Management and Policy.
Robert H. Martin	Deputy Assistant Inspector General for Audit Operations.
Sebastian R. Lorigo	Deputy Assistant Inspector General for Investigations.
Department of the Interior	
Joyce N. Fleischman	Deputy Inspector General.
Thomas T. Sheehan	Assistant Inspector General for Investigations.
Harold Bloom	Assistant Inspector General for Audits.
Marvin E. Pierce	Deputy Assistant Inspector General for Audits.
Department of Justice	
Robert L. Ashbaugh	Deputy Inspector General.
Allen J. Vander-Staay	Assistant Inspector General, Management and Planning.
Guy Zimmerman	Assistant Inspector General, Audit.
Jerry Bullock	Assistant Inspector General, Investigations.
Howard Stribnick	General Counsel.
Department of Labor	
Charles C. Masten	Deputy Inspector General.
Gerald W. Peterson	Assistant Inspector General for Audit.
Sylvia T. Horowitz	Counsel to the Inspector General.
Joseph Fisch	Deputy Assistant Inspector General for Audit.
Irving A. Bassett	Assistant Inspector General for Investigations.
Gustave Schick	Assistant Inspector General for Labor Racketeering.
E. J. German	Assistant Inspector General for Resource Management and Legislative Assessment.
Department of State	
John C. Payne	Assistant Inspector General for Audit.
Milton M. MacDonald	Deputy Assistant Inspector General for Audit.
Beverly C. Lovelady	Assistant Inspector General for Policy, Planning and Management.
John Duncan	Counsel to the Inspector General.
Robert S. Terjesen	Assistant Inspector General for Investigations.
James K. Blubaugh	Deputy Assistant Inspector General for Inspections.
Department of Transportation	
Raymond J. DeCarli	Assistant Inspector General for Auditing.
John W. Lainhart IV	Assistant Inspector General for Policy, Planning and Resources.
Mario A. Lauro, Jr.	Assistant Inspector General for Inspections and Evaluations.
Alexis M. Stefani	Director, Office of Surface Transportation and Secretarial Programs.
Wilbur L. Daniels	Director, Office of Aviation, Marine, and Research Programs.
Department of the Treasury	
Robert P. Cesca	Deputy Inspector General.
Jay M. Weinstein	Assistant Inspector General for Audit.
Gary L. Whittington	Assistant Inspector General for Policy, Planning and Resources.
John N. Balakos	Assistant Inspector General for Oversight and Quality Assurance.
Dennis S. Schindel	Deputy Assistant Inspector General for Audit Operations.

Members	Title
Karla W. Corcoran	Deputy Assistant Inspector General for Audit Program.
Department of Veterans Affairs	
Michael J. Costello	Assistant Inspector General for Investigations.
Alastair M. Connell	Assistant Inspector General for Health Care Inspections.
Michael G. Sullivan	Assistant Inspector General for Auditing.
John M. Clarkson	Deputy Assistant Inspector General for Investigations.
Michael Slachta, Jr.	Deputy Assistant Inspector General for Auditing.
Jack H. Kroll	Assistant Inspector General for Policy, Planning and Resources.
Maureen T. Regan	Counselor to the Inspector General.
Environmental Protection Agency	
James O. Rauch	Deputy Assistant Inspector General for Audit.
Federal Emergency Management Agency	
William R. Partridge	Deputy Inspector General.
General Services Administration	
Edward F. Hefferon	Deputy Inspector General.
Joel S. Gallay	Counsel to the Inspector General.
James E. Henderson	Assistant Inspector General for Investigations.
Wiliam E. Whyte, Jr.	Assistant Inspector General for Auditing.
Lawrence J. Dempsey	Assistant Inspector General for Quality Management.
National Aeronautics and Space Administration	
Lewis D. Rinker	Deputy Inspector General.
William D. Hager	Assistant Inspector General for Investigators.
Office of Personnel Management	
Harvey D. Thorp	Assistant Inspector General for Audits.
Railroad Retirement Board	
William J. Doyle III	Inspector General.
Charles R. Sekerak	Assistant Inspector General for Investigations.
Small Business Administration	
Robert W. Gardner	Deputy Inspector General.
Stephen N. Marcia	Assistant Inspector General for Investigations.
Daniel B. Peyser	Counsel to the Inspector General.
Peter L. McClintock	Assistant Inspector General for Auditing.
United States Information Agency	
J. Richard Berman	Assistant Inspector General for Audit.

Dated: September 4, 1992.

Julian W. De La Rosa,

Inspector General, Department of Labor, and Vice-Chair, PCIE.

[FR Doc. 92-21965 Filed 9-10-92; 8:45 am]

BILLING CODE 4510-21-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large

volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page number(s).

Volume III

Wyoming:
WY91-7 (Sept. 11, 1992)..... p. All.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Georgia:
GA91-4 (Feb. 22, 1991)..... p. All.
Maryland:
MD91-11 (Feb. 22, 1991)..... p. All.
New York:
NY91-7 (Feb. 22, 1991)..... p. 837, pp. 838-856b.
Pennsylvania:
PA91-1 (Feb. 22, 1991)..... p. 953, pp. 954, 956, p. 957.
PA91-4 (Feb. 22, 1991)..... p. 985, pp. 986, 987.
PA91-10 (Feb. 22, 1991)..... p. 1047, p. 1048.
PA91-12 (Feb. 22, 1991)..... p. 1057, pp. 1058-1059.
PA91-14 (Feb. 22, 1991)..... p. 1063, pp. 1065, 1066, p. 1067.

Volume II

Illinois:
IL91-2 (Feb. 22, 1991)..... p. 97, p. 100.
IL91-3 (Feb. 22, 1991)..... p. 115, p. 116.
IN91-4 (Feb. 22, 1991)..... p. 121, p. 122.
LA91-5 (Feb. 22, 1991)..... p. 127, p. 128.
MO91-6 (Feb. 22, 1991)..... p. 133, p. 134.
MO91-7 (Feb. 22, 1991)..... p. 137, p. 138.
MO91-12 (Feb. 22, 1991)..... p. 171, pp. 172-173.
IL91-13 (Feb. 22, 1991)..... p. 183, p. 186.
IL91-14 (Feb. 22, 1991)..... p. 195, pp. 196, 198.
IL91-15 (Feb. 22, 1991)..... p. 205, p. 206.
IL91-16 (Feb. 22, 1991)..... p. 215, p. 216.
Kansas:
KS91-7 (Feb. 22, 1991)..... p. All.
KS91-9 (Feb. 22, 1991)..... p. All.
KS91-12 (Feb. 22, 1991)..... p. All.
KS91-14 (Feb. 22, 1991)..... p. All.
Michigan:
MI91-12 (Feb. 22, 1991)..... p. All.
Nebraska:
NE91-3 (Feb. 22, 1991)..... p. All.
NE91-9 (Feb. 22, 1991)..... p. All.
NE91-10 (Feb. 22, 1991)..... p. All.
NE91-11 (Feb. 22, 1991)..... p. All.

Volume III

Alaska:
AK91-1 (Feb. 22, 1991)..... p. All.
California:
CA91-2 (Feb. 22, 1991)..... p. All.
CA91-4 (Feb. 22, 1991)..... p. All.
Idaho:
ID91-1 (Feb. 22, 1991)..... p. All.
North Dakota:
ND91-2 (Feb. 22, 1991)..... p. 285, p. 287.
Utah:
UT91-1 (Feb. 22, 1991)..... p. All.
Washington:
WA91-2 (Feb. 22, 1991)..... p. All.
WA91-7 (Feb. 22, 1991)..... p. All.
WA91-10 (Feb. 22, 1991)..... p. All.
WA91-11 (Feb. 22, 1991)..... p. All.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from:

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 4th day of September 1992.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 92-21841 Filed 9-10-92; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

[TA-W-27,238]

Bates Fabrics, Incorporated; Lewiston, ME; Affirmative Determination Regarding Application for Reconsideration

On August 7, 1992, the New England Regional Joint Board of the Amalgamated Clothing and Textile Workers Union (ACTWU) requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Department's Negative Determination was issued on July 8, 1992 and published in the **Federal Register** on July 28, 1992 (57 FR 33367).

The union claims that the Department's survey was inadequate and submitted a list of customers who are importing bedspreads.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 31st day of August 1992.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 92-21903 Filed 9-10-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-27,455]

Noble Drilling (U.S.), Inc., Lafayette, LA; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on July 6, 1992 in response to a worker petition which was filed on July 6, 1992, on behalf of workers at Noble Drilling (U.S.), Lafayette, Louisiana.

An active certification covering the petitioning group of workers remains in effect (TA-W-27,074F). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 31st day of August 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-21902 Filed 9-10-92; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL COMMISSION ON FINANCIAL INSTITUTION REFORM, RECOVERY, AND ENFORCEMENT

Meeting

AGENCY: National Commission on Financial Institution Reform, Recovery, and Enforcement.

Time and Date: 1:30 p.m. to 4:30 p.m., Monday, September 21 and 9 a.m. to 3:30 p.m., Tuesday, September 22, 1992.

Place: Almas Temple, 1315 K. Street, NW, Washington, DC

Status: A portion of this meeting will be open to the public. Following the public meeting, the Commission will conduct a meeting which will be closed to the public pursuant to 5 U.S.C. 552b(c)(6), Government in the Sunshine Act.

Matters to be Considered: The Commission has invited Congressional sponsors of the Act creating the Commission and a representative from the executive branch to make presentations concerning the reasons for the Commission's creation and goals the Commission should accomplish. This portion of the meeting shall be open to the public.

Following the public portion of this meeting, the Commission shall consider and discuss, in a closed session, proposals concerning such additional staff and consulting arrangements as may be necessary to implement the Commission's work plan. Because consideration of these staffing proposals in relation to the Commission's work plan will require discussion of confidential information concerning the qualifications of individual candidates, personal financial information such as salaries or salary requirements and other personal information, the disclosure of which would constitute an unwarranted invasion of personal privacy, this portion of the meting will be closed to the public. These matters are within exemption (6) of 5 U.S.C. 552(c), Government in the Sunshine Act.

In addition, the Commission will consider any other such matters as may properly come before it. Due to limited seating, persons wishing to attend the public portion of the meeting should call the below-listed contact person in advance.

Contact Persons for More Information: Larry G. Hicks (202) 632-1556, or Linda R. Johnson (202) 632-1556.

Larry G. Hicks,

Director of Administration.

[FR Doc. 92-21897 Filed 9-10-92; 8:45 am]

BILLING CODE 6820-PD-M

NATIONAL SCIENCE FOUNDATION

Materials Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting a final revised "Important Notice" which advises universities of revisions to the "Grants for Research and Education in Science and Engineering" (GRESE) brochure proposed in the **Federal Register**, Volume 57, No. 102, pages 22257-22258 on May 27, 1992.

Effective Date: October 1, 1992. For Further Information Contact: Herman G. Fleming, Division of Human Resources Management, National Science Foundation, 1800 G Street NW., Washington, DC 20550, (202) 357-7335.

Title: Important Notice To Presidents Of Universities And colleges And Heads Of Other National Science Foundation Grantee Organizations.

Affected Public: Any institution/individual submitting a proposal to the National Science Foundation.

Respondents/Burden Hours: NSF expects to receive over 38,000 proposals during FY 1993. It is estimated that 120 hours are required to submit a proposal. While some additional information is being requested, some information currently collected will now no longer be required. Therefore, this information collection will not affect the total amount of time required to submit a proposal.

SUPPLEMENTARY INFORMATION:

A. Background

The National Science Foundation (NSF) issued a public notice on May 27, 1992, (57 FR 22257). This notice announced the "Draft Important Notice" which advised universities of revisions to the Grants for Research and Education in Science and Engineering (GRESE). NSF received 8 public comments, as well as comments from OMB. Two of those comments were from one institution. Comments regarding the encouragement of longer duration awards were positive. Most of the responses contained some negative comments. Some very positive comments were made regarding the 15-page limit. The comments have been considered in the preparation of the final Important Notice and revision of the GRESE. Significant comments received are discussed in detail below.

B. Public Notice

NSF Revised Proposal Guidelines and Forms.

NSF is revising the Grants for Research and Education in Science and Engineering (GRESE) brochure and related proposal and grant forms, effective October 1, 1992. Major changes will be as follows:

(1) Increased emphasis on the importance of conformance to the proposal preparation guidelines provided in the GRESE. Proposals not conforming to the guidelines will be returned to the sender unless prior approval to depart from them has been obtained from the appropriate NSF Assistant Director, or Division Director if approval authority has been delegated. In particular, the fifteen-page limit on the text of the proposal Project Description applies unless alternative or additional guidelines are provided in a specific program announcement or solicitation. The Project Description includes results of prior NSF support,

which is limited to five pages of the Project Description.

(2) Encouragement of submission of longer duration grant proposals. The GRESE now indicates a "norm" of three years for grant award durations.

(3) A requirement that biographical sketches be limited to 2 pages per investigator.

(4) Revised provisions on "group" proposals and equipment proposals.

(5) Clarification of the significance of the signature requirements in various grant-related forms for Principal Investigators, Co-Principal Investigators and Authorized Organizational Representatives.

(6) NSF has revised the proposal cover sheet and the final report Form 98A.

(7) NSF is now requiring a new annual progress report form for all ongoing NSF grants, which includes certification language.

(8) Clarification that bioengineering research, with diagnosis or treatment-related goals, that applies engineering principles to problems in biology and medicine while advancing engineering knowledge is eligible for support. Bioengineering research to aid persons with disabilities is also eligible.

(9) The requirement for a human resources statement for renewal proposals has been clarified to be applicable to academic institutions only.

(10) Various editorial and updating changes, consistent with changes in NSF programs and organization.

The principal thrust of these changes is to lessen the burden on proposers and reviewers by reducing proposal length and increasing the average award duration. At the same time, applicants and grantees are reminded that in signing proposals and other grant-related documents they are certifying as to the truthfulness of the statements and information submitted. The new proposals cover sheet includes certifications to this effect on pages 1 and 2 of the cover sheet, which must be completed by both the Principal Investigator(s) and by the Authorized Institutional Representative. The new Progress Report Form includes a similar certification by the Principal Investigator(s). All progress reports must include this form with the Investigator's signature for the certification on the form. Progress reports submitted electronically must include the text of the certification. An electronic version of the form, including the required certification, will be available on STIS. The forms in the GRESE must be used for all proposals and reports submitted on or after October 1, 1992.

The majority of comments NSF received regarding the revisions relate to the 15-page limit for the Project Description in note 1 above. A summary of the public comments received is given below along with NSF's response.

Public Comment. The University supports the Foundation's encouragement of proposals with longer durations of 3 to 5 years. Benefits to the University and the Foundation will be substantial and promote stability in the research activities of principal investigators.

Public Comment. The encouragement of longer duration grants will severely limit the number of new awards that will be made in non-research intensive programs such as programs in the EPSCOR states.

NSF Response. The NSF Director has asked each Directorate to develop plans to establish a "norm" of three years duration for research project support. Increasing the amount of time investigators have to carry out their research programs also helps to limit the number of proposals out for review at any given time. NSF is very concerned about providing opportunities in EPSCOR states and to other underrepresented scientists and engineers and will continue to place importance on the merits of these programs. Longer duration awards will not affect the number or size of awards under the EPSCOR program. The section in GRESE clarifies the Foundation's encouragement of proposals with duration of 3 to 5 years and communicates this objective to the research community.

(The following comments are grouped because each of the comments relates to the 15 page limitation.)

Public Comments. Limiting the page length of the Project Description does not provide adequate length for detail. Additional hours of editing increase the burden on Principal Investigators to condense the material to a shorter format. One comment also indicated that it may be more difficult for reviewers to determine if a proposal merits funding if it lacks sufficient detail. Another comment indicated that the quality of NSF proposals would be enhanced if limited to 15 pages, and would contain "digested and more precise views."

Public Comments. Inclusion of the results from prior support in the Project Description may use up too much of the allotted 15 pages for Principal Investigators who have received NSF funding previously. Researchers who have received previous funding from NSF who must include pages of material regarding results from prior support may be at a disadvantage. Another comment was that inclusion of results from prior support in the project description may put the less-experienced individual at a disadvantage because he/she has little or no material to write on this subject.

NSF Response. NSF has considered both comments and considers inclusion of prior results to be equitable to both new and experienced researchers. First, an experienced Principal Investigator will have a minimum of 10 pages to develop his/her proposal. Review will include information relating to the results of prior support, limited to five pages, upon which decisions of new support should be based. Second, a new Principal Investigator with no previous results to include in the project description has the full 15 pages to develop the proposal. This would allow for equitable review of information provided by the experienced Principal Investigator regarding prior support, and give a new Principal Investigator more pages to develop the proposal. Third, there is considerable support in the research community for shorter research proposals. This helps reduce the amount of paper flowing through sponsored research offices and NSF. Suggestions for implementing page limit changes and longer duration awards were the result of the Merit Review Task Force Report (NSF 90–113) and recommendations by a team of Division Directors at the request of the NSF Director.

Public Comment. One university's comments contained a suggestion that NSF provide a more definitive statement inviting grant applicants to provide names of suggested reviewers.

NSF Response. NSF has developed a more definitive statement in this regard. It will be included in the revised GRESE under Part One following the section titled "Information about Principal Investigators/Project Directors (NSF Form 1225)".

Public Comment: One comment recommended that the length of material in the Project Description devoted to prior results of research be restricted to a maximum number of pages.

NSF Response. NSF agrees that this may be an appropriate response to the concerns expressed about the overall page limit for the Project Description. The results from prior support will be limited to a maximum of five pages.

Public Comment. One comment suggested that NSF change the Principal Investigator's certification language from "true and complete" to "true and correct". This commentator wrote that it would be difficult to certify to the "completeness" of a proposal given the 15 page limitation.

NSF Response. The interpretation of the word "complete" in the certification means that no material omissions affecting the truthfulness of the proposal have been made. Consistent with other agencies' certification language and recommendations from the Office of Inspector General, the language will remain "true and complete". The Principal Investigator has an affirmative duty to include information which otherwise could be viewed as omission of a material fact which could impact the review of the proposal.

Public Comment. One comment suggested that use of a two-page cover sheet increases the risk of incomplete cover sheets. It also was suggested that NSF adopt a one-page cover sheet like the current version of the PHS Form which uses a "checklist" for representations and certifications.

NSF Response. NSF has considered redesign of the proposal cover sheet to a one-page format. However, the information necessary for proposal processing cannot be condensed to one page. The second page or "checklist" of the PHS Form is actually the second page of material necessary for proposal submission. The submission is incomplete without the certifications and representations. The NSF cover sheet will now be used to accommodate the full text of Lobbying Certification for awards over $100,000. The two-page format accommodates this change, as well as certifications required by other federal statutes and regulations. NSF is concerned that a significant number of certificates have been faxed to the Foundation at the time of award, in lieu of being attached to the proposal at the time of submission. Inclusion of Lobbying and other required certifications as a part of the proposal should assure that all Institutions and Principal Investigator certificates have been signed prior to award.

Revisions Effective Date. A revision to GRESE reflecting these changes will be effective for proposals submitted on or after October 1, 1992. The NSF Grant Policy Manual will be revised to reflect these changes. The full text of the GRESE Revision is available upon request. These changes will be incorporated into the next revision of "Grants for Research and Education in Science and Engineering" (GRESE).

Dated: September 4, 1992.

Herman G. Fleming,

NSF Reports Clearance Officer.

[FR Doc. 92-21848 Filed 9-10-92; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Chemical and Thermal Systems; Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation (NSF) announces the following meetings.

Date & Time: September 22, 1992; 8:30 a.m. to 5 p.m.

Place: Room 502, National Science Foundation, 1110 Vermont Avenue, NW., Washington, DC.

Contact Person: Drs. Maria K. Burka and Farley Fisher, Program Directors, Division of Chemical and Thermal Systems, room 1115, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357-9606.

Date & Time: September 29, 1992; 8:30 a.m. to 5 p.m.

Place: Room 500C, National Science Foundation, 1110 Vermont Avenue, NW., Washington, DC.

Contact Person: Drs. Michael Roco and Stephen Traugott, Program Directors, Division of Chemical and Thermal Systems, room 1115, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357-9606.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Agenda: To review and evaluate Small Business Innovation Research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 4, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-21847 Filed 9-10-92; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-70]

Environmental Assessment and Finding of No Significant Environmental Impact Regarding Proposed Renewal of Facility License No. TR-1, General Electric Co.

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility License No. TR-1 for the General Electric (the licensee) Test Reactor located on the Vallecitos Nuclear Center in Alemeda County, California.

Environmental Assessment

Identification of Proposed Action

This Environmental Assessment is written in connection with the proposed renewal date of January 26, 2016, for the facility license of the General Electric Test Reactor (GETR) in Alemeda County, California, in response to a timely application from the licensee dated July 9, 1990, as supplemented on December 17, 1990, and August 7, 1992. The proposed action would authorize continued possession, but not operation, of the facility.

Need for Proposed Action

The license for the facility was due to expire on October 1, 1992. The proposed action is required to authorize continued possession, but not operation of the facility, so that the licensee can complete their decommissioning plan, and implement decommissioning of the reactor facility.

Alternatives to the Proposed Action

An alternative to the proposed action that was considered was not renewing the license. This alternative would have led to possession of the facility and radioactive material without authorization by law. This alternative did not provide an acceptable way of decommissioning the facility in a controlled, coordinated manner. Another alternative, that was considered, was to renew the license for a lesser period of time; but this would also not have allowed for a controlled, coordinated decommissioning effort considering the other nuclear facilities on the Vallecitos Nuclear Center site, and would require license renewals until decommissioning is completed.

Environmental Impact of the Proposed Action

The reactor is defueled and all special nuclear material has been shipped from the facility. The only remaining radioactivity at the facility is activated components and fission product contamination. There is no potential for generation of further radioactive materials. The extension of the facility possession only license to January 26, 2016, gives the licensee the opportunity to consider their decommissioning plans in an integrated, well controlled manner for all applicable nuclear facilities at the Vallecitos Nuclear Center site. This time to develop integrated site-wide decommissioning plans should lessen the environmental impact, in that, radioactive materials will continue to be depleted by the radioactive decay process and the licensee should have an

opportunity to better plan and conduct the decommissioning activities thus further reducing the environmental impact.

Alternatives Use of Resources

This action does not involve the use of any resources beyond those normally allocated for such activities.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing Environmental Assessment, the Commission has concluded that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for this proposed action.

For further details with respect to this action, see the licensee's request for a license renewal application dated July 9, 1990, as supplemented on December 17, 1990, and August 7, 1992. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555.

Dated at Rockville, Maryland this 4th day of September 1992.

For The Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors, Decommissioning and Environmental Project Directorate, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-21923 Filed 9-10-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-368]

Energy Operations, Inc., Arkansas Nuclear One, Unit 2; Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations Correction

In notice document 92-21129 beginning on page 40205, in the issue of Wednesday, September 2, 1992, make the following correction:

In the third column on page 40210, the second line of the heading which reads "313, Arkansas Nuclear One, Unit 1" should be corrected to read "368, Arkansas Nuclear One, Unit 2."

Dated at Rockville, Maryland, this 4th day of September 1992.

For the Nuclear Regulatory Commission.

Thomas W. Alexion,

Project Manager, Project Directorate IV-1, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-21924 Filed 9-10-92; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Request for Reclearance of Form RI 25-2

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for reclearance of an information collection. Form RI 25-2, Application for Minimum Annuity, is used by the survivors of retired Federal employees to apply to have their survivor annuities increased to the minimum amount, as provided under the Minimum Annuity provisions of Public Law 99-273. This provision applies only to survivors whose annuities began before February 27, 1986.

Approximately 30 RI 25-2 forms are completed annually. The form requires approximately 15 minutes to complete. The annual burden is 8 hours.

For copies of this proposal, contact C. Ronald Trueworthy on (703) 908-8550.

DATES: Comments on this proposal should be received on or before October 11, 1992.

ADDRESSES: Send or deliver comments to—

Lorraine E. Dettman, Retirement and Insurance Group, Operations Support Division, U.S. Office of Personnel Management, 1900 E Street NW., room 3349, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building NW., room 3002, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Chief, Administrative Management Branch, (202) 606-0623.

U.S. Office of Personnel Management.

Douglas A. Brook,

Acting Director.

[FR Doc. 92-21861 Filed 9-10-92; 8:45 am]

BILLING CODE 6325-01-M

POSTAL SERVICE

[Resolution No. 92-4]

Resolution of the Governors; Adjustment of Preferred Rates

Resolved:

The Postal Service Appropriations Act for Fiscal Year 1992, contained instructions regarding the recovery of the reductions in the amount of appropriations to the Postal Service to support preferred rates for eligible mail, enabling the Postal Service to increase the rates in Fiscal Year 1993 for reduced-rate third-class pieces other than letter shape so as to recover as nearly as possible the reduction in the amount of subsidy for such mail resulting from the enactment of section 2401(c)(ii) of title 39, United States Code. The Postal Service Appropriations Act for Fiscal Year 1993, passed by the House and reported by the Senate Committee on Appropriations, affirms that authority. Accordingly, pursuant to section 3627 of title 39, United States Code, the Governors have determined that, effective at 12:01 a.m. on Sunday, October 4, 1992, the preferred rates will be adjusted to the levels shown in the attached schedule.

The foregoing resolution was adopted by the Governors on September 1, 1992.

David F. Harris,

Secretary.

RATE SCHEDULE 302—THIRD-CLASS MAIL NONPROFIT BULK [1]

	Piece rate (cents)	Pound rate (cents)
Non-Letters Size:		
Piece Rate [2]	16.4	
Discounts (Per Piece):		
Destination Entry		
BMC	1.2	
SCF	1.7	
Delivery Office [3]	2.2	
Presort Level:		
3- and 5-Digit	1.4	
Carrier Route	4.5	
125-Piece Walk-Sequence	4.7	
Saturation	5.2	
Pound Rate [2]		
Pound Rates Plus Per Piece Rate	7.1	64.6
Discounts:		
Destination Entry (Per Pound)		
BMC		5.8
SCF		8.1
Delivery Office [3]		10.4
Presort Level (Per Piece):		
3- and 5-Digit	1.4	
Carrier Route	4.5	
125-Piece Walk-Sequence	4.7	
Saturation	5.2	

Notes:

[1] A fee of $75.00 must be paid once each 12-month period for each bulk mailing permit.

[3] Applies only to carrier route presort, 125-piece walk-sequence and saturation mail.
[4] For letter size pieces meeting applicable Postal Service regulations.
[5] Among ZIP+4 and barcode discounts, only one discount may be applied.
[6] Deducted from the otherwise applicable 3- and 5-digit rate.
[7] Mailer pays either the piece of the pound rate, whichever is higher.

[FR Doc. 92-21878 Filed 9-10-92; 8:45 am]

BILLING CODE 7710-12-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

September 4, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Berlitz International, Inc.
Common Stock, $.01 Par Value (File No. 7-9043)
CCP Insurance, Inc.
Common Stock, No Par Value (File No. 7-9044)
Cone Mills Corp.
Common Stock, $.01 Par Value (File No. 7-9045)
Fleet Mortgage Group, Inc.
Common Stock, $.01 Par Value (File No. 7-9046)
Sears Roebuck Co.
Depository Shares, No Par Value (File No. 7-9047)
Westinghouse Electric
Depository Shares, $1.00 Par Value, Rep. ¼ Sh. Series B Conv. Pfd. (File No. 7-9048)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transactions reporting system.

Interested persons are invited to submit on or before September 28, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 92-21859 Filed 9-10-92; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for hearing; Cincinnati Stock Exchange, Inc.

September 4, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Abex, Inc.
Common Stock, $0.01 Par Value (File No. 7-8965)
American Medical Response, Inc.
Common Stock, $0.01 Par Value (File No. 7-8966)
American Strategic Income Portfolio, Inc. II
Common Stock, $0.01 Par Value (File No. 7-8967)
Applied Power, Inc.
Class A Common Stock, $0.20 Par Value (File No. 7-8968)
Authentic Fitness Corporation
Common Stock, $0.01 Par Value (File No. 7-8969)
Automated Security (Holdings), PLC
American Depository Shares (rep. 2 Ord. Shares of 10 p each) (File No. 7-8970)
Banco Comercial Portugues S.A.
American Depository Shares (File No. 7-8971)
Bandag, Inc.
Class A Common Stock, $1.00 Par Value (File No. 7-8972)
BankAmerica Corp.
Depository Shares (rep. 1/20 shares of 8.16% Cum. Pfd. Stock, Ser. L) (File No. 7-8973)
Boston Edison Co.
Depository Shares (rep. 1/4 Share Cum. Pfd. Stock, 8 ¼% Ser., $100.00 Par Value (File No. 7-8974)
Bradless, Inc.
Common Stock, $0.01 Par Value (File No. 7-8975)
British Telecommunications Plc
Second Interim American Depository Receipts (File No. 7-8976)
Broad, Inc.
9¼% Pfd. Ser. B. (Cum.), No Par Value (File No. 7-8977)
CCP Insurance, Inc.
Common Stock, No Par Value (File No. 7-8978)
Chase Manhattan Corp.
8½% Ser. K, No Par Value (File No. 7-8979)
China Fund, Inc.
Common Stock, $0.01 Par Value (File No. 7-8980)
Chiquita Brands International, Inc.
Common Stock, $0.33 Par Value (File No. 7-8981)
Cone Mills Corp.
Common Stock, $0.01 Par Value (File No. 7-8982)
Delta Air Lines, Inc.
Depository Shares (Rep. 1/1000 share of Ser. C Conv. Pfd. Stock, $1.00 Par Value (File No. 7-8983)
Dr. Pepper/Seven-Up Companies
Common Stock, $0.01 Par Value (File No. 7-8984)
Emerging Markets Telecommunications Fund, Inc.
Common Stock, $0.001 Par Value (File No. 7-8985)
Enron Liquids Pipeline, L.P.
Common Units, (Rep. L.P. Interests) (File No. 7-8986)
Enterprises Oil Plc
American Depository Shares, Ser. A (rep. 1 Cum. Dollar Pref. Share Ser. A) (File No. 7-8987)
Equitable Companies, Inc.
Common Stock, $0.01 Par Value (File No. 7-8988)
First Republic Bancorp, Inc.
Common Stock, $0.01 Par Value (File No. 7-8989)
Fleet Mortgage Group, Inc.
Common Stock, $0.01 Par Value (File No. 7-8990)
Freeport McMoran Copper & Gold, Inc.
Depository Shares (rep. 2.941 shares of 7% Conv. Exch. Spc. Pref. Stock, $0.10 Par Value (File No. 7-8991)
General Instrument Corp.
Common Stock, $0.01 Par Value (File No. 7-8992)
General Motors Corp.
Depository Shares (rep. 1/4 share of Ser. D 7.92% Pref. Stock, $0.10 Par Value (File No. 7-8993)
Georgia Power Co.
$1.9875 Class A Pfd. (File No. 7-8994)
Greater China Fund, Inc.
Common Stock, $0.001 Par Value (File No. 7-8995)
GTECH Holdings Corp.
Common Stock, $0.01 Par Value (File No. 7-8996)
Hafslund Nycomed AS
American Depository Shares (rep. 1 Class B share, Nominal Value NOK 5 each) (File No. 7-8997)
Hilb, Rogal & Hamilton Co.
Common Stock, No Par Value (File

No. 7-8998)
Hyperion 1999 Term Trust, Inc.
Common Stock, $0.01 Par Value (File No. 7-8999)
Indresco, Inc.
Common Stock, $0.25 Par Value (File No. 7-9000)
Jardine Fleming China Region Fund, Inc.
Common Stock, $0.01 Par Value (File No. 7-9001)
Latin American Dollar Fund, Inc.
Common Stock, $0.01 Par Value (File No. 7-9002)
Latin American Discovery Fund, Inc.
Common Stock, $0.01 Par Value (File No. 7-9003)
Long Island Lighting Co.
7.95% Ser. AA Cum. Pfd. $25.00 Par Value (File No. 7-9004)
Managed Municipals Portfolio Inc.
Common Stock, $0.001 Par Value (File No. 7-9005)
MuniYield New York Insured Fund II, Inc.
Common Stock, $0.10 Par Value (File No. 7-9006)
MuniYield Quality Fund, Inc.
Common Stock, $0.10 Par Value (File No. 7-9007)
Mitchell Energy & Development Corp.
Class A Common Stock, $0.10 Par Value (File No. 7-9008)
Mitchell Energy & Development Corp.
Class B Common Stock, $0.10 Par Value (File No. 7-9009)
North American Mortgage Co.
Common Stock, $0.01 Par Value (File No. 7-9010)
Nuveen Insured California Select Tax-Free Income Portfolio
Shares of Beneficial Interest, $0.01 Par Value (File No. 7-9011)
Nuveen Insured New York Select Tax-Free Income Portfolio
Shares of Beneficial Interest $0.01 Par Value (File No. 7-9012)
Nuveen Premium Income Municipal Fund, 2 Inc.
Shares of Beneficial Interest, $0.01 Par Value (File No. 7-9013)
Nuveen Select Tax-Free Income Portfolio 3
Shares of Beneficial Interest, $0.10 Par Value (File No. 7-9014)
Nymagic, Inc.
Common Stock, $1.00 Par Value (File No. 7-9015)
Offshore Pipelines, Inc.
Cum. Conv. Exch. Pfd. $0.01 Par Value (File No. 7-9016)
Omega Healthcare Investors, Inc.
Common Stock, $0.10 Par Value (File No. 7-9017)
Patriot Global Dividend Fund
Common Shares of Beneficial Interest, No Par Value (File No. 7-9018)
Prime Hospitality Corp.
Common Stock, $0.01 Par Value (File No. 7-9019)
Primercia Corp.
Depositary Shares (Rep. 1/01 share of 8.125% Cum. Pfd. Stock, Ser. A, $1.00 Par Value (File No. 7-9020)
Putnam Tax-Free Health Care Fund
Common Shares of Beneficial Interest, No Par Value (File No. 7-9021)
Real Estate Investment of California
Common Stock, No Par Value (File No. 7-9022)
Revco D.S., Inc.
Common Stock, $0.01 Par Value (File No. 7-9023)
Riverwood International Corp.
Common Stock, $0.01 Par Value (File No. 7-9024)
Royal Appliance Mfg. Co.
Common Stock, No Par Value (File No. 7-9025)
Saatchi & Saatchi Co. Plc
American Depositary Shares (rep. 3 Ord. shares of 10p each) (File No. 7-9026)
Sea Container Ltd.
Class A Common Stock, $0.01 Par Value (File No. 7-9027)
Sunrise Medical, Inc.
Common Stock, $1.00 Par Value (File No. 7-9028)
Tadiran Ltd.
Ordinary Shares (NIS 0.2 Par Value (File No. 7-9029)
Travelers Corp.
Depository Shares (Rep. 1/2 interest in a share of 9 1/4% Ser. B Pref. Stock) (File No. 7-9030)
Ultramar Corp.
Common Stock, $0.01 Par Value (File No. 7-9031)
Washington Energy Co.
Common Stock, $5.00 Par Value (File No. 7-9032)
Wellcome Plc
American Depository Shares (Rep. right to receive 1 Ord. Share of 25p each) (File No. 7-9033)
Westmoreland Coal Co.
Common Stock, $2.50 Par Value (File No. 7-9034)
Westmoreland Coal Co.
Depositary Shares (Rep. 1/4 share Ser. A Conv. Exch. Pfd., No Par Value (File No. 7-9035)
Duff & Phelps Utilities Income, Inc.
Common Stock, $.01 Par Value (File No. 7-9036)
Homeplex Mortgage Investments Corp.
Common Stock, $.01 Par Value (File No. 7-9037)
Jacobs Energy Group
Common Stock, $1.00 Par Value (File No. 7-9038)
Silicon Graphics Inc.
Common Stock, $.001 Par Value (File No. 7-9039)
T2 Medical, Inc.
Common Stock, $.01 Par Value (File No. 7-9040)
United States Surgical Corp.
Common Stock, $.10 Par Value (File No. 7-9041)
Davstar Industries, Ltd.
Class A Common Stock, No Par Value (File No. 7-9042)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 28, 1992, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 92-21856 Filed 9-10-92; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for hearing; Midwest Stock Exchange; Inc.

September 4, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Society Corporation
Common Stock, $1.00 Par Value (File No. 7-9053)
Citizens First Bancorp, Inc.
Common Stock Subscription Rights, No Par Value (File No. 7-9054)
Interco Incorporated
Common Stock, No Par Value (File No. 7-9055)
Prime Hospitality Corp.
Common Stock, $.01 Par Value (File No. 7-9056)
Westpace Banking Corporation
American Depositary Share Subscription Rights, No Par Value (File No. 7-9057)

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 28, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-21857 Filed 9-10-92; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for hearing; Pacific Stock Exchange, Inc.

September 4, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Discount Autoparts, Inc.
  Common Stock, $.01 Par Value (File No. 7-9058)
Fleet Mortgage Group, Inc.
  Common Stock, $.01 Par Value (File No. 7-9059)
Gitano Group, Inc.
  Common Stock, $.10 Par Value (File No. 7-9060)
Gtech Holdings Corp.
  Common Stock, $.01 Par Value (File No. 7-9061)
International Murex Technologies Corp.
  Common Stock, No Par Value (File No. 7-9062)
Japan Equity Fund, Inc.
  Common Stock, $.01 Par Value (File No. 7-9063)
LTC Properties, Inc.
  Common Stock, $0.01 Par Value (File No. 7-9064)
Medchem Products, Inc.
  Common Stock, $.01 Par Value (File No. 7-9065)
Sulcus Computer Corp.
  Common Stock, No Par Value (File No. 7-9066)
United Healthcare Corp.
  Common Stock, $.01 Par Value (File No. 7-9067)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 28, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-21860 Filed 9-10-92; 8:45 am]

BILLING CODE 8010-10-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

September 4, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Bank of Boston Corporation
  Depository Shares Cum. Pfd. Stock Series E (File No. 7-9049)
Cousins Properties, Inc.
  Common Stock, $1.00 Par Value (File No. 7-9050)
Society Corporation
  Common Stock, $1.00 Par Value (File No. 7-9051)
Paxar Corporation
  Common Stock, $0.01 Par Value (File No. 7-9052)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 28, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-21858 Filed 9-10-92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Bureau of Diplomatic Security

[Public Notice 1695]

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Bureau of Diplomatic Security, Department of State.

ACTION: The Department of State has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

SUMMARY: Operation of a motor vehicle in the United States by foreign diplomatic personnel is a benefit under the Foreign Missions Act. Administration of this benefit requires the Department of State to issue a driver's license to each member of the foreign missions community who enjoys diplomatic immunities, and to dependents of such members, who are eligible to operate a motor vehicle in the United States. The following summarizes the information collection proposal submitted to OMB:

Type of request—Reinstatement.
Originating office—Office of Foreign Missions.

Title of information collection—United States Department of State Driver License Application.
Frequency—On occasion.
Form number—DSP-103.
Respondents—Foreign government representatives and their dependents.
Estimated number of respondents—10,800.
Average hours per response—30 minutes.
Total estimated burden hours—5,400.

Section 3504(h) of P.L. 96-511 does not apply.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents may be obtained from Gail J. Cook, (202) 647-3538. Comments and questions should be directed to (OMB) Lin Liu, (202) 395-7340.

Dated: September 1, 1992.

Clark M. Dittmer,

Acting Assistant Secretary for Diplomatic Security.

[FR Doc. 92-21938 Filed 9-10-92; 8:45 am]

BILLING CODE 4710-43-M

[Public Notice 1696]

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Bureau of Diplomatic Security, Department of State.

ACTION: The Department of State has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

SUMMARY: To obtain a United States passport, a travel document attesting to one's identity and U.S. citizenship, a U.S. national must complete a passport application (22 U.S.C. 213). The application is retained in the files of the Department of State and is consulted when a passport has been lost, in citizenship claims, as evidence in the prosecution of individuals making false statements, and to support a derivative claim to citizenship made by an applicant's children. The following summarizes the information collection proposal submitted to OMB:

Type of request—Extension.
Originating office—Bureau of Consular Affairs.
Title of information collection—Application for Passport by Mail.
Frequency—On occasion.
Form number—DSP-82.
Respondents—Applicants for U.S. passports.
Estimated number of respondents—2,000,000.
Average hours per response—5 minutes.
Total estimated burden hours—166,666.

Section 3504(h) of Public Law 96-511 does not apply.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents may be obtained from Gail J. Cook, (202) 647-3538. Comments and questions should be directed to (OMB) Lin Liu, (202) 395-7340.

Dated: September 1, 1992.

Clark M. Dittmer,

Acting Assistant Secretary for Diplomatic Security.

[FR Doc. 92-21939 Filed 9-10-92; 8:45 am]

BILLING CODE 4710-43-M

[Public Notice 1691]

Director General of the Foreign Service and Director of Personnel

State Department Performance Review Board Members

In accordance with section 4314(c)(4) of the Civil Service Reform Act of 1978 (Pub. L. 95-454), the Executive Resources Board of the Department of State has appointed the following members to the State Department Performance Review Board register.

Martin Prochnik, Director for Science and Technology Affairs, Bureau of Oceans and International Environmental and Scientific Affairs
Bowman H. Miller, Office Director for Office of Analysis for Western Europe and Canada, Bureau of Intelligence and Research
T. Michael Peay, Assistant Legal Adviser for Inter-American Affairs, Office of the Legal Adviser
Arthur L. Freeman, Director for Interagency Affairs Staff, Bureau of Diplomatic Security
Marijane Eastman Peplow, Public Member.

Dated: August 6, 1992.

Larry C. Williamson,

Acting Director General of the Foreign Service and Director of Personnel.

[FR Doc. 92-21933 Filed 9-10-92; 8:45 am]

BILLING CODE 4710-15-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Conference on Civil Aviation's Transition to the Use of Satellite Based Navigation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of conference.

SUMMARY: The FAA is issuing this notice to advise the public of a conference on the RTCA Task Force Report on GNSS Transition and Implementation Strategy.

DATES: The conference will be held on Wednesday, October 14, 1992.

ADDRESSES: The conference will be held at the Ramada Renaissance Techworld Hotel, 999 9th Street, NW., Washington, DC.

FOR ADDITIONAL INFORMATION OR TO RECEIVE A REGISTRATION FORM: Call (301) 949-7477 or Fax inquiries to (301) 949-5154, to the attention of Bernadette Macias.

SUPPLEMENTARY INFORMATION: At the International Civil Aviation Organization 10th Air Navigation Conference last fall, the international aviation community agreed to adopt the Global Navigation System (GNSS) as a key element of the Future Air Navigation System. Implementation of GNSS will make possible significant enhancements in civil aviation capacity, efficiency and safety.

Following the ICAO meeting, the FAA Administrator noted strong aviation community support for rapid implementation of GNSS and asked RTCA to develop community consensus regarding GNSS implementation in the United States. RTCA formed the Task Force and has been at work addressing operational applications, system requirements, transition and institutional issues, and the future direction of satellite navigation technology developments. During the October 14 conference, RTCA will present the Task Force report for review and discussion, and FAA will offer initial comment on the recommendations. Copies of the Task Force report will be provided at the conference. A detailed agenda and registration form will be available in September.

Issued in Washington, DC, on August 21, 1992.

Martin T. Pozesky,

Associate Administrator for System Engineering and Development.

[FR Doc. 92-21968 Filed 9-10-92; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; SR 20, Deception Pass State Park to Gibraltar Road, Skagit County, Washington

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Cancellation of notice of intent, FR document 92-714.

SUMMARY: The FHWA is issuing this notice to rescind the previous Notice of Intent issued on January 13, 1992, to prepare an environmental impact statement (EIS) for the proposed highway project in Skagit County,Washington.

FOR FURTHER INFORMATION CONTACT: Barry F. Morehead, Federal Highway Administration, Evergreen Plaza Building, 711 South Capitol Way, Suite 501, Olympia, Washington, 98501, Telephone: (206) 753-2120; E.R. Burch, State Design Engineer, Washington State Department of Transportation, Tranportation Building, Olympia, Washington, 98504, Telephone: (206) 753-6141; or Ronald Q. Anderson, District Administrator, Washington State Department of Transportation, District 1, 15325 SE 30th Place, Bellevue, Washington, 98007-6538, Telephone (206) 764-4020.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Washington State Department of Transportation (WSDOT), issued a Notice of Intent on January 13, 1992 to prepare an EIS on a proposal to address safety issues within a four mile portion of SR 20. Due to lack of funding, the scope of the project has been reduced. The minor improvements now proposed will be on the existing alignment and will not require preparation of an EIS.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of federal programs and activities apply to this program)

Issued on: August 25, 1992.

Sharon R. Price

Area Engineer, Olympia, Washington.

[FR Doc. 92-21961 Filed 9-10-92; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement: SR 525, SR 99 to SR 526, Snohomish County, Washington

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Revised notice of intent.

SUMMARY: The FHWA is issuing this notice to revise the notice issued in May of 1992 to advise the public that an environmental impact statement (EIS) will be prepared for a proposed highway project in Snohomish County, Washington. This revised notice is being issued to more completely describe the project, and to include the City of Everett's Paine Field Boulevard project, which will be addressed in the same EIS.

FOR FURTHER INFORMATION CONTACT: Barry F. Morehead, Federal Highway Administration, Evergreen Plaza Building, 711 South Capitol Way, Suite 501, Olympia, Washington, 98501, Telephone: (206) 753-9413; E.R. Burch, State Design Engineer, Washington State Department of Transportation, Transportation Building, Olympia, Washington, 98504, Telephone: (206) 753-6141; or Ronald Q. Anderson, District Administrator, Washington State Department of Transportation, District 1, 15700 Dayton Avenue North, Seattle, Washington, 98133-9710, Telephone: (206) 440-4691.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Washington State Department of Transportation (WSDOT) and the City of Everett, will prepare an EIS on a proposal to improve 3.7 miles of SR 525 from SR 99 to SR 526, and to construct on new alignment the proposed 1.5 mile Paine Field Boulevard, which would carry through traffic from a point north of Harbour Pointe Boulevard North to SR 526. The proposed Paine Field Boulevard is being developed by the City of Everett. These improvements are needed to enhance safety and traffic circulation for general purpose and HOV traffic, and to add the capacity necessary to serve the increased traffic volume generated by development which has already occurred and development which is planned in the area. The improvements to SR 525 would include a new interchange at the junction of SR 525 and SR 99, improvements to several major intersections along the route, and construction of a new interchange or intersection at the junction of the proposed Paine Field Boulevard. The action alternatives for SR 525 south of the proposed Paine Field Boulevard will examine options for widening the existing two-lane roadway along its existing alignment to as many as three lanes in each direction. Provisions for adding HOV lanes, bikeways, planting strips, sidewalks, and widening shoulders will also be investigated. The proposed 1.5 mile Paine Field Boulevard will be constructed on new alignment between the SR 525 intersection with Harbour Pointe Boulevard North to SR 526 within a corridor bounded on the east by Paine Field and on the west by a residential area. The alternative of improving the existing alignment of SR 525 between Harbour Pointe Boulevard and SR 526 will also be investigated. Studies in this EIS will analyze options for constructing a roadway of up to three lanes in each direction, along with provisions for HOV lanes, bicycle and pedestrian facilities, and landscaping. The EIS would also analyze a no-action alternative. Letters describing the proposed action and soliciting comments will be sent to the appropriate Federal State, and local agencies, as well as citizens and organizations that have expressed an interest in this project. A series of meetings with the public, interested community groups, and governmental agencies will be held beginning in the summer of 1992. In addition, advertisements offering interested persons the opportunity to attend and offer comments at a public hearing will be published. Public notice of actions related to the proposal that identify the date, time, place of meeting, and note the length of review periods will be published when appropriate.

To ensure that the full range of issues related to this proposed project are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

Issued on August 28, 1992.

Sharon R. Price,

Area Engineer, Olympia, Washington.

[FR Doc. 92-21945 Filed 9-10-92; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

[FRA Emergency Order No. 17, Notice No. 1]

Owners of Railroad Tank Cars; Emergency Order Requiring Inspection and Repair of Stub Sill Tank Cars

The Federal Railroad Administration (FRA) of the United States Department of Transportation (DOT) has determined that public safety compels issuance of this Emergency Order requiring compliance with a program of priority-based inspections, and repairs as necessary, of the stub sill tank car fleet.

Authority

Authority to enforce Federal railroad safety laws, including laws pertaining to the transportation of hazardous materials by railroad, has been delegated by the Secretary of Transportation to the Federal Railroad Administrator. 49 CFR 1.49. Railroads, shippers and owners of tank cars are subject to FRA's safety jurisdiction under the Federal Railroad Safety Act of 1970, 45 U.S.C. 421, 438, and the Hazardous Materials Transportation Act, as amended, 49 App. U.S.C. 1804. FRA is authorized to issue emergency orders where an unsafe condition or practice creates "an emergency situation involving a hazard of death or injury to persons." 45 U.S.C. 432(a). These orders may immediately impose "such restrictions or prohibitions as may be necessary to bring about the abatement of such emergency situation." (*Ibid.*)

Background

Beginning early in 1990, FRA learned of at least 10 non-continuous center sill tank cars ("stub sill cars") that had pulled apart, i.e., experienced a complete failure, in the draft sill area. (Many freight cars are built so that a fabricated underframe structure transmits train pulling and braking forces under the full length of the car body: In contrast, a "stub sill" tank car uses the tank structure itself and has no underframe.) Four stub pull-aparts happened in Canada and six in the United States. The failures did not cause any deaths or injuries, and no hazardous materials were released. FRA and Transport Canada advised the Association of American Railroads' (AAR) Tank Car Committee of each incident and the Tank Car Committee opened a docket on the matter to investigate and track the situation.

On April 2, 1990, FRA wrote AAR and the Union Tank Car Company discussing a draft sill failure on a DOT105J400W Union-built tank car on the Kansas City Southern (KCS) at Shreveport, Louisiana. Union responded with information on four failures on the KCS, dating back to 1985, the most recent showing signs of overly high coupling speeds. The four cars were among a group of 157 similar cars built in two orders; the first, quick inspections of them did not show conclusive evidence of old, or long-standing, weld breaks. Union commenced a program of inspecting all welds in the head brace area and repairing cracks longer than 3 inches. In June 1990, Union reported a fifth car with a draft sill failure and the 48 cars also built under the same Certificate of Construction were added to the on-going program, for a total of 206 cars produced on three build orders.

While this was happening in the United States, on February 11, 1991, at the CSX yard in Sarnia, Ontario, tank car DCTX 33181—built to an AMF Beaird design by Hawker Siddeley Canada, Ltd.—incurred a draft sill separation during switching operations. Another sill separation on a similarly designed car in less than two months led AAR to issue an Early Warning Letter (EW-121) on May 2, 1991 advising carriers that 86 cars in the series DCTX or NCTX 33096–33189 might have the potential for sudden and complete stub sill failure at the weld attachment of the sill to the tank.

The Railway Association of Canada and Transport Canada agreed on an accelerated inspection plan on both a sample of stub sill tank cars with a history of accident involvement and a sample of stub sill tank cars more than 10 years old.

On June 13, 1991, FRA and Transport Canada signed a joint letter to AAR urging more speed in the investigation/solution of the stub sill failure problem; on July 17, members of the Tank Car Committee met with representatives of DOT and Transport Canada to discuss and resolve problems associated with stub sill failures. A pattern of frequent meetings ensued and the energies and talents of private industry and governmental agencies were focused on defining both the problem and the solution to it. All parties recognized the public economic consequences of taking cars out of service for inspection and repair and, given the priority for safe transportation, all parties sought to clarify, if not to minimize, such adverse impact as is unavoidable.

At the July 1991 Tank Car Committee meeting in Pueblo, Colorado, Union summarized its inspections to date and reported that one third of the cars it had inspected showed "indications of problems;" that the design for them was one in common use since 1966; and that Union suspects that damage due to previous derailment was a factor in 4 of the 5 incidents of sill failure. Before the end of July, FRA had formalized an agreement with Union regarding an inspection and repair program that had now grown to total 258 cars.

Also at the Tank Car Committee meeting in Pueblo, the U.S. and Canadian regulatory agencies made a formal request for an inspection program of a random sample of 1,100 stub sill tank cars, a theoretical engineering analysis of the stub sill design (to be completed by February 2, 1992), a report on the results of physical examinations conducted on cracks found in similar-design cars, and a 100 car sample of cars built to the AME Beaird design by NATX at Texarkana, Texas.

On August 9, 1991, AAR issued a circular letter (c-7697) formally establishing the 1,100 car sample examination; this letter also established a three-tier prioritization for tank cars: Priority I, for cars shopped due to accident or derailment damage—inspection and repair are required before the car is returned to service; Priority II, for cars with a history of defects critical to structural integrity—inspection and repair deadlines are established in the notice assigning the cars to this priority, but the usual period is three years; and Priority III, for cars in the 1,100 car random sample—completion to be achieved by December 31, 1991. Also on that same day, the Association issued Early Warning (EW) Letter 122, advising members and private car owners of the high incidence of cracks and serious manufacturing defects in cars built to the suspect AMF Beaird design. EW-122 required a total of 143 cars built by Hawker-Siddeley, of Nova Scotia, and Davie Shipbuilding, of Quebec, to be inspected. Four days later, on August 13, 1991, Transport Canada issued an order under its Railway Safety Act removing from service all tank cars built to the suspect design until they were inspected and all necessary repairs completed. After reviewing the results of an accelerated inspection and repair program, Transport Canada lifted its order on October 22, 1991.

At the request of FRA, the AAR issued a Maintenance Advisory Letter (MA-04) on August 19, 1991, requiring that cars built to the AMF Beaird design by U.S. builders undergo an accelerated inspection program effort to determine whether or not they also had a high

incidence of cracks and serious manufacturing defects.

By September, the fleet identified by Union Tank Car Company with potential stub sill problems had increased from 258 to 921 DOT105J300W cars built between 1977 and 1981 for vinyl chloride monomer service. During 1991, Union inspected 402 of the cars and found at least some indication of problems on one-fourth to one-third of them. The total count of Union tank cars with draft sill failures had climbed to seven when, at its October 1991 meeting, the AAR Tank Car Committee placed the identified cars into the Stub Sill Inspection Program as Priority II cars, to be inspected and repaired within 3 years.

In addition, the October Committee meeting included a review of the results of the inspections and tests performed in compliance with the AAR's Early Warning Letters and Maintenance Advisories; the Committee decided to notify the nearly 30 affected owners that approximately 7,000 cars were being placed in the AAR's Stub Sill Inspection Program as Priority II cars, with inspections and repairs to be completed in a three-year time frame.

At the January 1992, Tank Car Committee meeting, the committee received a report on the status of the "Priority III" 1,100 car random sample. Subsequent review of the data collected in that sample shows that a significant percentage of stub sill tank cars have defects that could lead to sudden and complete failure of the draft assembly—that is, that the coupler on the car, and the part of the car structure that holds the coupler, could break apart and fall off. The experience to date is that a coupler failure in a yard is dangerous but not catastrophic. Failure at main line track speeds is viewed as much more serious and nearly certain to lead to a derailment. While stub sill tank cars carry the entire spectrum of commodities, from extremely dangerous hazardous materials to clay slurry and tomato paste, it would be a false comfort to think that only those cars containing dangerous chemicals are serious threats to safety—any disruption to a train that might lead to a derailment has the potential for disaster.

The representatives of industry and the railroads who met with representatives of FRA and Transport Canada on March 17, 1992, presented a plan for inspecting tank car stub sills. Its major flaw, in FRA's judgment, was that it allowed too long for completion of the program. Promptness is all the more important in view of information developed during the inspections of dual diameter tank cars required by FRA's Emergency Order No. 16 (57 FR 11900). One of the fleets inspected during the early days after that order was issued showed stub sill cracks in about 45 percent of the cars. FRA cannot say that this is representative of the stub sill fleet at large, but neither can FRA rule out that possibility. The inspection program must begin now, and must continue as a matter of high priority until it is completed.

FRA recognizes that the ultimate success of this, or any other, safety program depends on a delicate tempering of the need for assured safety with the ability to produce it. There are upwards of 160,000 stub sill tank cars in the North American fleet and FRA cannot reasonably order all of them out of service until they are inspected and repaired. First, only certain designs now show sufficient problems to be included in the AAR priority program, and second, there is a practical limit on how quickly all stub sill cars could be inspected without totally disrupting railroad tank car service and not only causing unjustifiably severe effects on the Nation's economy but potentially hindering other inspection programs (such as Emergency Order No. 16, which addresses greater risks than those posed by tank car stub sills). Instead, FRA has worked with the tank car builders, owners, and the railroads to urge development of a plan and a procedure to inspect these cars at as rapid a pace as inspection capacity, safety priorities, and the demands of transportation allow.

Since the March 17 meeting, the time frames of the AAR plan have been shortened with the encouragement of FRA. The culmination of this effort is AAR Operations and Maintenance Circular No. 1 (attached to this order as Appendix A), made final on July 15, 1992, during a meeting of FRA, the Railway Progress Institute (representing tank car builders), and the AAR Tank Car Committee. AAR's O&M Circular No. 1 is a better focused approach than previous industry plans and will accord priority to those segments of the fleet presenting the greatest risk. Cars now in AAR's Priority II will be inspected in 18 months (rather than three years) or less, depending on their accumulated mileage; cars on the same Certificate of Construction as those in the Priority III sample that exhibited serious cracking will be on the same accelerated inspection schedule. Cars that have accumulated more than a half-million service miles will be placed on an even tighter inspection deadline.

More important to the purposes of this notice, AAR's O&M Circular No. 1 is a plan that FRA will enforce, both because this agency believes that the current history of tank car stub sill cracks and failures represents an emergency situation and because this agency cannot tolerate any further delay in the progress that must be made to inspect the stub sill tank car fleet and restore confidence in that fleet's ability to transport hazardous materials safely. Of course, should further developments indicate that this plan is not sufficient to address the emergency, FRA retains the authority to amend this order in any way it deems necessary.

Tank car "Owners"

This emergency order applies to "owners" of tank cars. The freight car safety standards require, at 49 CFR 215.301, that the railroad or private car owner reporting mark be displayed on the car.

Car reporting marks, an alpha/numeric identification such as ABC 1234 that is unique to each piece of railroad rolling stock, are assigned by the Secretary, Transportation Division of the Operations and Maintenance Department of AAR. Reporting marks, and other information about the car, including ownership, mechanical designation, size, and capacity, are part of the Universal Machine Language Equipment Register (UMLER) file, a computer file that serves as the primary source of data about the North American railroad equipment interchange fleet. UMLER is the master file for car hire and car mileage payments and for car movement reports under the TeleRail Automated Information Network (TRAIN II) system.

The specifications for the data contained in UMLER, including the identification of the owner, have been formalized in the Universal Machine Language Equipment Register (UMLER) Data Specification Manual printed, together with a listing of each car in the North American fleet, in *The Official Railway Equipment Register*, Tariff ICC RER 6400-Series, published by International Thomson Transport Press, New York, New York. It is to these data that FRA will look to identify the owner of a tank car.

However, FRA learned, during the inspections conducted under Emergency Order No. 16, that restricting the definition of owner to just "the owner of the reporting mark," was inadequate and could lead to inequities in enforcement.

Tank cars are commonly used under master lease agreements under which the lessee uses the car in exchange for a monthly rental payment. The holder of such an agreement, the lessee, has the

right to control the service of the car, i.e., to designate its next load and destination. A tank car master lease gives the lessee more control than the owner of the reporting mark over the day to day operation of the car; as long as the rental payment is made, neither the reporting mark owner nor the title holding owner (who may be an investment company) may be able to prevent the use of a tank car contrary to this Emergency Order.

FRA believes that the intent of Emergency Order No. 17 will be realized most clearly and most fairly, if all parties understand that, when FRA refers to a tank car "owner," that term is potentially as extensive as FRA's jurisdiction over "persons" and includes whatever interest controls or influences relevant activity involving the tank car. This means that the title holder, the reporting mark owner, and the lessee/shipper are all included as necessary to effect safety. Further, this means that FRA will look to the reporting mark owner to accomplish the inspections subject to this order but that FRA will not hesitate to seek a civil penalty from or take other enforcement action against a lessee/shipper, or any other "person," who impedes the performance of inspections subject to this order or who offers an improper car into transportation.

The AAR Inspection Program

AAR's O&M Circular No. 1, issued on July 17, 1992, establishes the "AAR Tank Car Stub Sill Inspection Program." The text of O&M Circular No. 1 is reproduced in Appendix A to this Emergency Order and incorporated herein by reference.

Finding and Order

FRA concludes that the continued use of stub sill tank cars, not subject to a rational and enforceable phased program of inspection and repair, poses an imminent and unacceptable threat to public safety. FRA further concludes that reliance solely on an industry program that is not self-enforcing, but depends on the cooperative response of multiple entities and persons, is inadequate to protect the public safety. I find that the unsafe conditions discussed above create an emergency situation involving a hazard of death or injury to persons. Accordingly, pursuant to the authority of section 203 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 432), delegated to me by the Secretary of Transportation (49 CFR 1.49), it is ordered:

1. That owners of stub sill tank cars shall comply with the AAR Tank Car Stub Sill Inspection Program, and the AAR Tank Car Stub Sill Inspection Procedure, placed in effect in the Association of American Railroads' O&M Circular No. 1, issued to members and private car owners on July 17, 1992.

2. That owners of stub sill tank cars shall not return cars to service following their inspection until all defects have been repaired and the car is in full compliance with the Federal railroad safety regulations, including the Hazardous Materials Regulations, and the AAR Tank Car Manual.

3. That each owner of stub sill tank cars shall inspect his or her jacketed cars, and his or her cars with non-jacketed thermal protection systems, such that not less than the following proportion of cars of jacketed design (including cars with non-jacketed thermal protection systems) within an owner's fleet then remaining in service shall have been inspected by the end of the corresponding period:

Months elapsed	Proportion of fleet inspected
12	One fifth (1/5).
24	Two fifths (2/5).
36	Three fifths (3/5).
48	Four fifths (4/5).
60	Five fifths (5/5).

4. That each owner of stub sill tank cars shall inspect his or her non-jacketed cars such that not less than the following proportion of cars of non-jacketed design within an owner's fleet then remaining in service shall have been inspected by the end of the corresponding period:

Months elapsed	Proportion of fleet inspected
12	One seventh (1/7).
24	Two sevenths (2/7).
36	Three sevenths (3/7).
48	Four sevenths (4/7).
60	Five sevenths (5/7).
72	Six sevenths (6/7).
84	Seven sevenths (7/7).

5. That cars are considered inspected only when AAR Form SS–2 is submitted to the RPI/AAR Tank Car Safety Project.

6. That, within thirty days of the end of each period set forth in paragraphs 3 and 4 above, each owner of stub sill tank cars shall report in writing to the FRA Office of Safety Enforcement, Hazardous Materials Division, 400 Seventh Street SW., Washington, DC 20590 the total number of jacketed cars (including cars with non-jacketed thermal protection systems) and non-jacketed cars then remaining in service in his or her fleet and the cumulative total of each type inspected in accordance with Emergency Order No. 17.

Relief

Tank car owners may obtain relief from this Emergency Order by inspecting the affected cars as required and repairing them as necessary.

Penalties

Any violation of this order shall subject the person committing the violation to a civil penalty of up to $20,000. 45 U.S.C. 432, 438. FRA may, through the Attorney General, also seek injunctive relief to enforce this order. 45 U.S.C. 439.

Interpretations and Statements of Enforcement Policy

Because this Emergency Order directs compliance with a Tank Car Stub Sill Inspection Program established by AAR, FRA believes that affected members of the public are entitled to know how FRA will discharge its enforcement functions. The following interpretations are offered to assist compliance with Emergency Order No. 17.

1: The Tank Car Stub Sill Inspection Program calls for jacketed cars, and cars with non-jacketed thermal protection systems, "to be shopped, stub sills inspected, and all defects/cracks repaired within 5 years;" and non-jacketed cars "to be inspected and all stub sill defects/cracks repaired within 7 years." Read literally, these statements could be taken to require performing repairs on cars that the owner decides to scrap following the stub sill inspection. FRA will not require cars destined for scrapping to be repaired (unless repairs are necessary to permit safe movement to the point where scrapping will occur), but will insist that repairs be completed before any car is returned to service.

2: Paragraph 6 of the Inspection Program permits AAR to "exempt owners from the 400,000 mile requirement" on a showing by the owner that rebuts the presumption that cars older than 20 years have moved more than 400,000 miles. FRA insists that all requests for mileage exemptions be in writing, that replies granting or denying the requests be in writing, that AAR maintain files on such requests, and that FRA have immediate access to those files during normal business hours.

3: Paragraph 7 of the Inspection Program gives the Tank Car Committee authority to determine the priority inspection program for groups of cars demonstrating a pattern of defects critical to stub sill integrity. FRA has no essential objection to that procedure as

long as the Committee's actions do not extend any of the time deadlines established in paragraphs 2 through 6 of the Inspection Program.

4: This Emergency Order requires each owner to inspect a proportionate number of its cars each year the Inspection Program is in effect. The decision to include this detail in the Emergency Order is based, first, on the need to gather inspection data quickly to continue the assessment of all segments of the stub sill tank car fleet, of the various designs used in different types of service, and of the danger these cars appear to represent to the public, and, second, on the need to spread the burden of this program throughout all owners of stub sill tank cars. The AAR Inspection Program could be read to permit all jacketed cars, for instance, to be inspected between the fourth and fifth anniversaries of O&M Circular No. 1, but FRA cannot continue to wait for the industry to gather stub sill inspection data; such delay would significantly increase the risk of additional service failures. Preliminary data available to FRA suggest that, aside from the cars assigned by Emergency Order No. 17 to inspection deadlines of 24 months or less, there are about 80,000 cars to be inspected within 5 years and about 40,000 cars to be inspected within 7 years. FRA therefore expects the industry to inspect about 16,000 jacketed cars and about 5,700 non-jacketed cars each year of the Inspection Program. Further, as the description of tank car "owners," above, makes clear, FRA insists that all persons who control the use or service of tank cars subject to this Emergency Order cooperate to abate the hazard posed by the continued use of uninspected stub sill tank cars.

Notice to Affected Persons

Notice of this Order will be provided by publishing it in the **Federal Register**. Copies of this Emergency Order were sent by mail or facsimile prior to publication to the AAR, the American Short Line Railroad Association, the Regional Railroads of America, the Railway Progress Institute, all members of the AAR Tank Car Committee, and to owners of tank cars (including owners of stub sill cars identified by AAR as potential candidate cars for inclusion in the Priority II category) as follows: ACF Industries, Inc.; Aeropres Corp.; Amoco Canada Petroleum Company, Ltd.; Amoco Chemical Company; Amoco Oil Company; Baden Investment Company; Bay Cities Gas; Canadian Enterprise Gas Products Ltd.; CGTX, Inc.; Chevron U.S.A. Products Company; Coastal Chem, Inc.; CONOCO Inc.; Continental Tank Car Corporation; Denco Petroleum, Inc.; General American Transportation Corporation; General Electric Railcar Services Corp.; GLNX Corporation; HBG Enterprises of Tampa, Inc.; Home Oil Company Limited; Mallard Transportation Company; Mapco Gas Products, Inc.; Mile-High Railcar Services, Inc.; Mobil Oil Corporation; OXY NGL Inc.; Petrosol International, Inc.; Phillips 66 Company; PLM Transportation Equipment Corp.; PTO, Inc.; Rapco Transportation Company; Rocky Mountain Transportation Services; SAZ Transportation Corporation; Suburban Propane/Petrolane; Sun Refining and Marketing Company; Temco Corporation; Texas Petrochemicals Corporation; Transportation Equipment, Inc.; Trident NGL, Inc.; Trinity Industries, Inc.; Union Tank Car Company; United States Rail Services, Inc.; Vista Chemical Company; Willard Grain & Feed Inc.; and ZIP Transportation Company, Inc.

Review

Opportunity for formal review of this Emergency Order will be provided in accordance with section 203(b) of the Federal Railroad Safety Act of 1970, 45 U.S.C. 432(b), and section 554 of title 5 of the United States Code. Administrative procedures governing such review are found 49 CFR part 211 (see 211.47, .71–.75).

Issued in Washington, DC on September 3, 1992.

Gilbert E. Carmichael,

Administrator.

Appendix A

Association of American Railroads' O&M Circular No. 1

The text of the Association of American Railroads' O&M Circular No. 1, as issued on July 17, 1992, over the signature of Harvey H. Bradley, Vice-President, Operations and Maintenance Department is as follows:

AAR O&M Circular No. 1—Tank Car Stub Sill Inspection Program

1. Stub sills on all cars, when shopped for any reason in owner-approved shops, are to be inspected and all defects/cracks repaired.

2. All jacketed cars and all cars with non-jacketed thermal protection systems are to be shopped, stub sills inspected, and all defects/cracks repaired within 5 years.

3. All non-jacketed cars are to be inspected and all stub sill defects/cracks repaired within 7 years.

4. All cars assigned to the AAR Priority Inspection Program by the Tank Car Committee as of the effective date of this Circular are to have stub sills inspected and all defects/cracks repaired within 18 months, except that cars that have accumulated more than 500,000 miles must be inspected in accord with the accelerated schedule described in paragraph 6, below.

5. Cars built to the same Certificate of Construction as those reported on the 1100-car survey with transverse weld cracks greater than 3 inches, or longitudinal weld cracks greater than 6 inches, are to be inspected and all defects/cracks repaired within 18 months, except that cars that have accumulated more than 500,000 miles must be inspected in accord with the accelerated schedule described in paragraph 6, below.

6. All stub sill cars having actual or estimated accumulated mileage in excess of 400,000 miles must be inspected and all defects/cracks repaired in accord with the following schedule:

- Greater than 800,000 miles: inspected within 4 months;
- Greater than 600,000 miles: inspected within 7 months;
- Greater than 500,000 miles: inspected within 13 months;
- Greater than 400,000 miles: inspected within 18 months, except that non-insulated cars must be inspected within 24 months.

In cases where total car mileage cannot be reasonably estimated from existing records, owners shall use a straight line projection from the average mileage over the past six years. If the average mileage over the past six years is unavailable, owners shall assume that any car older than 20 years has accumulated mileage in excess of 400,000 miles, unless the owner can show that the cars are more likely than not to have accumulated less than 400,000 miles. In such cases, the AAR may exempt owners from the 400,000 mile requirement.

7. If inspections reveal any patterns of defects/cracks critical to stub sill structure integrity, owners shall inspect cars according to an assigned priority inspection program as determined by the AAR Tank Car Committee.

8. Cars built or rebuilt, and cars whose draft sills have been upgraded through an AAR-approved alteration, and thoroughly inspected after January 1, 1984, and all cars having had stub sills thoroughly inspected within the last 2 years, are exempt from further inspection, except for compliance with AAR Field Manual Rule 88 B.

9. All inspection data is to be submitted to the RPI/AAR Tank Car Safety Project for analysis.

10. Cars inspected pursuant to this program may not be returned to service until all defects noted are repaired and the car is in full compliance with the Federal railroad safety regulations and the AAR *Specifications for Tank Cars*.

11. Cars inspected pursuant to this program shall be marked with a two inch green square on diagonally opposite sill webs.

12. Car owners are to maintain records and dates of all stub sill inspections, including hard copies of completed Forms SS–2.

Priority Inspection Program

The Priority Inspection Program, established by the AAR Tank Car Committee, is described by the Committee as follows:

The AAR Priority Inspection Program requires inspection and repair, if necessary, of all stub sills on tank cars with a history of defects and/or cracks, critical to the structural integrity, which could cause failure of the sill or its components. Any cars subsequently assigned to this program must be inspected and repaired as necessary within three years, or as established by AAR Early Warnings, Maintenance Advisories or other publications.

O&M Circular No. 1—Tank Car Stub Sill Inspection Procedure

Inspections must be conducted at facilities that have the capability and experienced personnel to administer the testing methods utilized. Liquid penetrant examinations must be conducted in accord with Section W11.03 of M-1002, *Specifications for Tank Cars*. Acoustic Emissions (AE) testing must be conducted in accord with Annex Z of the AAR's *Procedure for Acoustic Emission Evaluation of Tank Cars and IM-101 Tanks*. Insulated cars must have inspection ports fabricated in accord with the car builder's recommendations. Draft gear must be removed if attachment welds are obscured by design (reference Figure #5), except it is not necessary to remove draft gear if welds are inspected using fiber optics or if sill is tested by the acoustic emission (AE) method. Inspection ports are not required for AE testing. Area to be inspected must be cleaned as may be required by the inspection method to be utilized.

Inspection

Refer to Figure (1-6) which most closely reflects stub sill design on car being inspected. Weld attachments of draft sill-to-pad, draft sill-to-head brace (if used), head brace-to-pad, and pad-to-tank must be examined. All of these welds that are accessible must be examined by visual means, enhanced by magnification if necessary, by liquid penetrant method, or by other equivalent or superior testing method. Welds that are not accessible, such as welds that are covered by a head shield, may be examined visually using fiber optic or equivalent technology.

Reporting

Inspection results are to be recorded on Form SS-2 and submitted to the car owner, who is to arrange for transfer of the data to computer format. Car owner must submit all Form SS-2 data monthly in computer-readable format.

Defects other than those recorded on the SS-2 form should be separately reported to car owner.

(Note: Because the AAR's O&M Circular No. 1 has been sent to all AAR members and to private car owners, FRA is not reproducing the inspection program's internal reporting forms or diagrams in the **Federal Register**.)

[FR Doc. 92-21850 Filed 9-10-92; 8:45 am]

BILLING CODE 4910-06-M

National Highway Traffic Safety Administration

[Docket No. 92-45; Notice 1]

Mazda (North America), Inc.; Receipt of Petition for Determination of Inconsequential Noncompliance

Mazda (North America), Inc. (Mazda) representing Mazda Motor Corporation of Hiroshima, Japan, has determined that some of its vehicles fail to comply with 49 CFR 571.108, "Lamps, Reflective Devices, and Associated Equipment," Federal Motor Vehicle Safety Standard (FMVSS) No. 108, and has filed an appropriate report pursuant to 49 CFR part 573. Mazda has also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of a petition is published under Section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

During the period of July 1991 through June 1992, Mazda produced 29,622 model 929 passenger cars which were equipped with headlamps that failed to include the "O" mark required by FMVSS No. 108 for a point of reference when aiming the lamps. Further, these vehicles failed to include aiming instructions on a permanently affixed label or in the owner's manual. In addition, Mazda produced 7,000 model 626's which incorporated the "O" mark on the headlamp, but did not include aiming instructions on a permanently affixed label or in the owner's manual.

Paragraph S7.8.5.2(a)(2) *Horizontal aim* states that "[a]n 'O' mark shall be used to indicate alignment of the headlamps relative to the longitudinal axis of the vehicle." Paragraphs S7.8.5.2(a)(1) *Vertical aim* and (a)(2) reference the necessity to provide "an equal number of graduations from the 'O' position representing angular changes in the axis." The subject headlamps do not bear the "O" mark.

Paragraph S7.8.5.2(b)(1) *Aiming instructions* states that "[t]he aiming instructions for properly aiming the headlighting system using the VHAD [vehicle headlamp aiming device] shall be provided on a label permanently affixed to the vehicle adjacent to the VHAD, *or* in the vehicle operator's manual" (emphasis added).

Mazda supports its petition for inconsequential noncompliance in two ways. To support its omission of aiming instructions, Mazda offered its own rationale. To support its omission of the "O" mark, Mazda incorporated, by reference, the rationale used by Koito Manufacturing Company, Ltd. (Koito) in its July 7, 1992, petition to NHTSA on this same issue [57 FR 33543].

Mazda supports its omission of aiming instructions with the following:

> It is Mazda's belief that the designs of the VHADs incorporated in both the Mazda 929 and the Mazda 626 are so simple to use and the markings are so obvious, that even untrained individuals will have no difficulty correctly aiming the lamps using the VHAD without any instructions.
>
> To the extent that there are individuals who would be reluctant to attempt aiming adjustments without instructions, every Mazda dealer has such information readily [sic] available.
>
> [R]elying on outside assistance to properly aim the headlights * * * is identical to the situation that has successfully existed for so many years for vehicles that require external mechanical aiming.
>
> It is also our belief that the headlights on these vehicles will only rarely need adjustment. The vehicles are shipped with the headlights properly aimed, and unless they are involved in a crash, there will be little instance of the aim needing readjustment.

Unlike Mazda, Koito stated in its petition that the vehicles on which its noncompliant headlamps were installed included instructions in the owner's manuals as to how the headlamps could be aimed. This is not true in Mazda's case. In Koito's petition, its rationale for omission of the "O" mark was as follows:

> (1) The purpose of the "O" mark would be to provide the base point on the scale. In place of this mark, the Koito headlamps concerned make use of a pair of lines which are clearly distinguished by their color and/or their thickness (bold). Even in the absence of the "O" mark, the user and dealer can easily determine the reference lines and perform a correct aiming adjustment.
>
> * * * * *
>
> (3) Headlamps which are equipped with aiming pads allow aiming by an aimer which must satisfy Society of Automotive Engineers (SAE) J602 requirements, as stipulated by FMVSS. Of aimers meeting SAE J602 requirements and currently available on the market, the most popular is the one made by H-Company.
>
> This aimer does not make use of the "O" mark. It features indicator scale reference lines which are very similar to Koito's VHAD (Vehicle Headlamp Aiming Device) reference lines, and which function in the same way. We believe that the great majority of the users and dealers are well accustomed to this system.
>
> (4) Up to the present date, Koito has not received any claim or complaint representing a user's inability to determine the reference line positions.

(5) In order to demonstrate the efficacy of this aiming system, Koito has conducted a demonstration test. Ten unbiased subjects with no prior familiarity with the system were asked to readjust headlamps which had been deliberately misaligned. All ten were successful in making the required corrections in the manner intended by the designers of this system.

(6) All of the concerned headlamps were subject to the test and were certified [to be in] compliance [with] all the requirements, including [the] VHAD adjusting system, in FMVSS 108 by ETL Testing Laboratories Inc., an authoritative organization in the United States. This shows that there is no problem in headlamp aiming inspection and adjustment.

Interested persons are invited to submit written data, views, and arguments on Mazda's petition, described above. Comments should refer to the Docket Number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: October 13, 1992.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on September 8, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-21976 Filed 9-10-92; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 92-47; Notice 1]

Transportation Manufacturing Corporation; Receipt of Petition for Determination of Inconsequential Noncompliance

Transportation Manufacturing Corporation (TMC) of Roswell, New Mexico has determined that some of its vehicles are equipped with brake hoses that fail to comply with 49 CFR 571.106, Federal Motor Vehicle Safety Standard No. 106, "Brake Hoses," and has filed an appropriate report pursuant to 49 CFR part 573. TMC has also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Paragraph S7.3.7 of Standard No. 106 specifies that, "[e]xcept for hose reinforced by wire, an air brake hose shall withstand a tensile force of 8 pounds per inch of length before separation of adjacent layers (S8.6)."

TMC was notified by Dana Corporation (the manufacturer of this hose) of a potential cover adhesion noncompliance involving its H33806 hose which TMC used for air brake applications on buses manufactured at Roswell, New Mexico. Some of the subject hoses do not comply with the adhesion requirements of FMVSS No. 106, "Brake Hoses." TMC supports its petition for inconsequential noncompliance with the following.

TMC states that the subject hoses are used in two applications. In the first, the hose operates at 85 pounds per square inch (psi) air pressure and the only function is to keep the parking brake off. If the hose were to fail completely in this application, the parking brake would immediately engage. The service brake would remain functional, but air pressure would rapidly be lost in the system. In the second, the hose operates at 100 psi air pressure and it functions as part of the backup brake system. In this application a hose failure would not affect the operation of a properly functioning main service brake system.

Due to the length of time the subject hoses have been on the buses, differentiating the possibly noncompliant hoses from the compliant ones would be difficult, if not impossible, due to wear and tear from typical use. TMC estimates that less than eight percent of the installed hoses are of the potentially noncompliant type, but over 4,500 hoses would be required to be replaced if a recall were required. TMC believes that the potential safety problems would be greater if all 4,500 hoses were replaced, without factory quality control, than if the existing hoses continue to be used.

In summary, based on TMC's warranty history and the function of the hoses, TMC believes that the noncompliance will not affect the safety of their vehicles and, therefore, is inconsequential to motor vehicle safety.

Interested persons are invited to submit written data, views and arguments on the petition of TMC, described above. Comments should refer to the Docket Number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC, 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The petition and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice thereof will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: October 13, 1992.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on September 8, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-21977 Filed 9-10-92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: September 1, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980 Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: IRS Forms 9455 and 9456.
Type of Review: New collection.
Title: IRS Taxpayer Education Programs Annual Report (9455) IRS Taxpayer Education Programs Annual Report 2nd Notice (9456).
Description: The data collected will be used to estimate the number of individuals who teach IRS' Educational Programs, and the number of students who are exposed to the Understanding Taxes High

School, UT-8th Grade, UT-Post Secondary, and the Small Business Tax Education Programs during the course of a year. It will also be used to justify the continued use of these programs. This effort is in line with IRS initiatives on reducing taxpayer burden and Compliance 2000 initiatives to encourage voluntary compliance with tax laws.

Respondents: Individuals or households, Non-profit institutions, Small businesses or organizations.

Estimated Number of Respondents: 120,800.

Estimated Burden Hours Per Respondent:

Form	Response time
9455	10 minutes.
9456	10 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 20,137 hours.

OMB Number: New.

Form Number: None.

Type of Review: New collection.

Title: Focus Group Interviews to Assess Educational and Compliance Needs of Self-Employees Puerto Rican Taxpayers.

Description: The interviews are necessary to obtain public input to identify reasons Puerto Rican taxpayers do not file Form 1040PR. The results will be used to develop educational materials, identify appropriate media educational materials, identify appropriate media, and develop enforcement efforts as necessary.

Respondents: Individuals or households.

Estimated Number of Respondents: 800.

Estimated Burden Hours Per Respondent:

Administering Screening Questionnaire.....67 hours
Conducting Focus Group Sessions....162 hours

Frequency of Response: Other.

Estimated Total Reporting Burden: 229 hours.

OMB Number: 1545–0229.

Form Number: IRS Form 6406.

Type of Review: Revision.

Title: Short Form Application for Determination for Amendment of Employee Benefit Plan.

Description: This form is used by certain employee plans who want a determination letter or an amendment to the plan. The information gathered will be used to decide whether the plan is qualified under section 401(a).

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents/Recordkeepers: 16,000.

Estimated Burden Hours Per Respondent/Respondent:

Recordkeeping.....12 hours, 40 minutes
Learning about the law or the form...3 hours, 23 minutes
Preparing the form.....6 hours, 32 minutes
Copying, assembling, and sending the form to the IRS.....48 minutes

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 374,240 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92–21851 Filed 9–10–92; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

Date: September 3, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvnia Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–1274.

Form Number: IRS Form 8453–NR.

Type of Review: Extension.

Title: U.S. Nonresident Alien Income Tax Declaration for Magnetic Media Filing.

Description: This form will be used to secure taxpayer signatures and declarations in conjunction with the Magnetic Media Filing program. This form, together with the electronic transmission, will comprise the taxpayer's income tax return.

Respondents: Individuals or households.

Estimated Number of Respondents: 5,000.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 1,250 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92–21852 Filed 9–10–92; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

Date: September 1, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: New.

Form Number: CF 5106.

Type of Review: New collection.

Title: Importer ID Input Record.

Description: CF 5106 is filed with the first formal entry which is submitted or the first request for services that will result in the issuance of a bill on a refund check upon adjustment of a cash collection.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 240.

Estimated Burden Hours Per Respondent: 6 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 48 hours.

OMB Number: 1515–0109.

Form Number: None.

Type of Review: Reinstatement.

Title: Proof of Use for Rates of Duty Dependent on Actual Use.

Description: The declaration is needed to ensure Customs Control over merchandise which is duty free. The

declaration shows proof of use and must be submitted within 3 years of the date of entry or withdrawal for consumption.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 700.

Estimated Burden Hours Per Respondent/Recordkeeper: 20 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 4,025 hours.

Clearance Officer: Ralph Meyer (202) 927-1552, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92-21853 Filed 9-10-92; 8:45 am]

BILLING CODE 4820-02-M

Public Information Collection Requirements Submitted to OMB for Review

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0385.

Form Number: ATF REC 5900/1.

Type of Review: Extension.

Title: Proprietors of Claimants Exporting Liquors.

Description: Distilled spirits, wine and beer may be exported from bonded premises without payment of tax or these products may be exported in a taxpaid status with the tax claimed back (drawback). Record is needed to allow the amounts exported to be verified and to maintain accountability over products. Protects the revenue.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Recordkeepers: 120.

Estimated Burden Hours Per Respondent: 60 hours.

Frequency of Response: Other.

Estimated Total Recordkeeping Burden: 7,200 hours.

OMB Number: 1512-0387

Form Number: ATF REC 7570/2 and 7570/3.

Type of Review: Extension.

Title: Records of Acquisition and Disposition, Importers, Dealers, Collectors of Firearms, and Importers, Dealers, Collectors of Ammunition (Pistol/Interchangeable Calibers).

Description: These records are used by ATF in criminal investigations and compliance inspections in fulfilling the Bureau's mission to enforce the Gun Control law.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Recordkeepers: 172,250.

Estimated Burden Hours Per Recordkeeper: 3 hours.

Frequency of Response: Other.

Estimated Total Recordkeeping Burdern: 516,750 hours.

Clearance Officer: Robert N. Hogarth (202) 927-8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 92-21952 Filed 9-10-92; 8:45 am]

BILLING CODE 4810-31-M

UNITED STATES INFORMATION AGENCY

Advisory Board for Cuba Broadcasting; Meeting

The Advisory Board for Cuba Broadcasting will conduct a meeting on September 16, 1992, in the conference room of the office of Radio Marti, Donohoe Building, 400 6th Street SW., Washington, DC 20547. Below is the intended agenda.

Wednesday, September 16, 1992

Agenda

Part One—Closed to the Public

10 a.m.

1. Radio Marti Technical Adjustments
2. TV Marti General Update
3. Radio and TV Marti Broadcasting Procedures

Part Two—Open to Public

1 p.m.

4. Office of Cuba Broadcasting Budget Update
5. Modification of Editiorial Guidelines
6. Public Testimony

Items one, two and three which will be discussed from 10 a.m. to 1 p.m., will be closed to the public. Discussion of items one, two and three will include information the premature disclosure of which would be likely to frustrate the implementation of a proposed agency action (5 U.S.C. 522(c)(9)(B)).

Members of the public interested in attending the open portion of the meeting should contact James Skinner at (202) 401-7312 to make prior arrangements since access to the building is controlled.

Dated: September 4, 1992.

Henry E. Catto,

Director.

[FR Doc. 92-21863 Filed 9-10-92; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 177
Friday, September 11, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, September 15, 1992, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Discussion Agenda

Memorandum and resolution re: Final amendments to Parts 308 and 325 of the Corporation's rules and regulations, entitled "Rules of Practice and Procedure," and "Capital Maintenance," respectively, which implement the "prompt corrective action" provisions mandated by section 131 of the Federal Deposit Insurance Corporation Improvement Act, by (1) establishing procedures for "downgrading" an institution to a lower capital category, and for submitting and reviewing capital restoration plans and prompt corrective action directives including those directives requiring the dismissal of directors and senior executive officers, and (2) establishing and defining, for insured State-chartered nonmember banks, the capital measures and levels, and for insured branches of foreign banks, comparable asset-based measures and levels, that are to be used in determining the supervisory actions authorized to be taken under section 38 of the Federal Deposit Insurance Act.

Assessment-related regulations:

Memorandum and resolution re: Final amendments to Part 327 of the Corporation's rules and regulations, entitled "Assessments," which amendments increase the assessment to be paid by Savings Association Insurance Fund members.

Memorandum re: Bank Insurance Fund Recapitalization Schedule.

Memorandum and resolution re: Final amendments to Part 327 of the Corporation's rules and regulations, entitled "Assessments," which amendments increase the assessment to be paid by Bank Insurance Fund members.

Memorandum and resolution re: Final regulation establishing a transitional risk-based assessment.

Memorandum and resolution re: Proposed amendments to Part 330 of the Corporation's rules and regulations, entitled "Deposit Insurance Coverage."

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550-17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should contact Llauger Valentin, Equal Employment Opportunity Manager, at (202) 898-6745 (Voice); (202) 898-3509 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Deputy Executive Secretary of the Corporation, at (202) 898-3811.

Dated: September 8, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92-22058 Filed 9-9-92; 9:14 am]

BILLING CODE 6714-0-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:30 a.m. on Tuesday, September 15, 1992, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii) and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Reports of the Office of Inspector General.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured depository institutions or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of depository institutions authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note: Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Application for consent to purchase assets and assume liability to pay deposits and for consent to establish two branches:

Guaranty Bank, Mount Pleasant, Texas, an insured State nonmember bank, for consent to purchase certain assets of and assume the liability to pay deposits made in The First National Bank of Deport, Deport, Texas, and for consent to establish the two offices of The First National Bank of Deport as branches of Guaranty Bank.

Matters relating to the Corporation's supervisory activities.

Discussion Agenda

Matters relating to the possible closing of certain insured depository institutions:

Names and locations of depository institutions authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Deputy Executive Secretary of the Corporation, at (202) 898-3811.

Dated: September 8, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92-22059 Filed 9-9-92; 9:14 am]

BILLING CODE 6714-0-M

FEDERAL HOUSING FINANCE BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 57 FR, 37590, August 19, 1992.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:30 a.m., Wednesday, August 26, 1992.

CHANGES IN THE MEETING: The following topic was deleted from the agenda during the open portion of the meeting.

Leverage Ratio—Final Rule.

CHANGES IN THE MEETING: The following Report was deleted from the agenda during the closed portion of the meeting.

Office of Strategic Planning
Leverage Ratio: Transitional and Operational Issues

The above matter is exempt under Section 552b(c)(9)(A)(B) of title 5 of the United States Code.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Executive Secretary to the Board, (202) 408-2837.

Philip L. Conover,

Deputy Executive Director.

[FR Doc. 92-22126 Filed 9-9-92; 2:20 pm]

BILLING CODE 6725-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, September 16, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 8, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-22051 Filed 9-9-92; 9:13 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 57 F.R., Friday, August 21, 1992, Page No. 38094.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, September 16, 1992.

CHANGES IN THE AGENDA: The Federal Trade Commission has deleted the following item from its agenda and cancelled the open meeting previously scheduled for September 16, 1992:

Consideration of possible amendments to the Mail-Order Merchandise TRR.

Donald S. Clark,

Secretary.

[FR Doc. 92-22154 Filed 9-9-92; 3:02 pm]

BILLING CODE 6750-01-M

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1452]

TIME AND DATE: 10 a.m. (EDT), September 15, 1992.

PLACE: Sequoyah Nuclear Plant, Soddy Daisy, Tennessee.

STATUS: Open.

AGENDA: Approval of minutes of meeting held on August 19, 1992.

ACTION ITEMS:

New Business

A—Budget and Financing

A1. Short-Term Borrowing from the Treasury.

A2. Tax Equivalent Payments to States and Counties for the Fiscal Year Ending September 30, 1992.

B—Purchase Awards

B1. Contract with General Electric Company for Steam Turbine Strategic Spares for Bull Run, Paradise, and Widows Creek Fossil Plants.

B2. Contract with ASEA Brown Boveri for Steam Turbine Strategic Spares for Cumberland Fossil Plant.

B3. Requisition YH-83383E—Corporate Network Strategies Procurement—Information Services.

E—Real Property Transactions

E1. Sale of Permanent Easement Affecting Approximately 0.30 Acre of the Knoxville Power Service Center Property.

E2. Abandonment of Flowage Easement Rights Affecting Approximately 0.44 Acre of Land in Washington County, Virginia.

E3. Grant of Easements Affecting Approximately 10.28 Acres of Land in Washington County, Virginia.

E4. Lease of a 12.8 Acre Tract of TVA Property in Hamilton County, Tennessee.

E5. Sale of Noncommercial, Nonexclusive Permanent Easements Affecting Approximately 0.96 Acre of Land on Tellico Lake in Loudon and Monroe Counties, Tennessee.

E6. Grant of 30-Year Recreation Easement Affecting 5.45 Acres of Wheeler Reservoir Land in Madison County, Alabama.

E7. Grant of Permanent Easement Affecting 0.22 Acre of Chickamauga Lake Land in Bradley and McMinn Counties, Tennessee.

F—Unclassified

F1. Filing of Condemnation Cases.

F2. Recommendations Resulting from Negotiations with the Salary Policy Employee Panel.

F3. TVA Contribution to the TVA Retirement System for Fiscal Year 1993 and System Annual Report.

F4. Personal Services Contract with Gilbert/Commonwealth, Inc.

F5. Partners in Performance Contract with General Electric Company.

F6. Delegation of Authority to Vice President, Fossil Fuels, to Award a Contract to Norfolk Southern Corporation—Rail Coal Transportation to Kingston Fossil Plant.

INFORMATION ITEMS:

1. Letter of Intent with General Electric Company for Work to be Performed by GE for Fall 1992 Bull Run Fossil Plant, Paradise Fossil Plant Unit 1, and John Sevier Unit 4 Outages.
2. Implementation of Revised Salary Structure and Pay Rates for Salary Schedule SC—Public Safety Schedule.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Vice President, Governmental Relations, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 479-4412.

Dated: September 8, 1992.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 92-22066 Filed 9-9-92; 2:19 pm]

BILLING CODE 8120-08-M

Corrections

Federal Register
Vol. 57, No. 177
Friday, September 11, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 100

RIN 0905-AD64

National Vaccine Injury Compensation Program; Revision of the Vaccine Injury Table

Correction

In proposed rule document 92-18873 beginning on page 36877 in the issue of Friday, August 14, 1992, make the following corrections:

1. On page 36879, in the first column, in the last paragraph, in the eighth line, "Vaccine" should read "Vaccines".

2. On the same page, in the second column, under **FINDINGS**, in paragraph 3., in the 6th line, "Guilliam" should read "Guillain".

3. On the same page, in the 3d column:

a. In the 4th line of the note, "given a" should read "given as".

b. In the 14th line of the note, "TD and" should read "Td, and".

c. In the 2d line of heading *A.*, "*Arrow*" should read "*Narrow*".

4. On page 36880, in the 3d column, in the 1st complete paragraph, in the 12th line, "STP" should read "DPT".

5. On the same page, in the same column, in the third line from the bottom, "vaccines." should read "vaccinees.".

6. On page 36881, in the first column, in the seventh line of the note, "vaccines." should read "vaccinees.".

7. On the same page, in the second column, in the second complete parapgraph, in the fourth line, "rubella" was misspelled.

8. On the same page, in the third column:

a. In the seventh line, "*First*" should be capitalized.

b. In the ninth line, "*p. 100–1010*" should read "*p. 1009–1010*".

§ 100.3 [Corrected]

9. On page 36883, in § 100.3(a), the Vaccine Injury Table contained numerous errors. It also should have appeared on a separate page. The complete table is reprinted below:

VACCINE INJURY TABLE

Illness, disability, injury or condition covered	Time period for first symptom or manifestation of onset or of significant aggravation after vaccine administration
I. DTP; P; DT; Td; or Tetanus Toxoid; or in any combination with Polio; or any Other Vaccine Containing Whole Cell Pertussis Bacteria, Extracted or Partial Cell Pertussis Bacteria, or Specific Pertussis Antigen(s)	
A. Anaphylaxis or anapyhlactic shock	4 hours.
B. Encephalopathy (or encephalitis)	72 hours.
C. Any sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed.	Not applicable.
II(a). Measles, mumps, rubella, or any vaccine containing any of the foregoing as a component;	
A. Anaphylaxis or anaphylactic shock	4 hours.
B. Encephalopathy (or encephalitis)	5–15 days (not less than 5 days and not more than 15 days) (for measles, mumps, rubella, or any vaccine containing any of the foregoing as a component).
C. Residual seizure disorder in accordance with subsection (b)(3)	5–15 days (not less than 5 days and not more than 15 days) (for measles, mumps, rubella, or any vaccine containing any of the foregoing as a component).
D. Any sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed.	Not applicable.
II(b). In the case of measles, mumps, rubella (MMR), measles, rubella (MR) or rubella vaccines only *	
A. Chronic arthritis	42 days.
B. Any sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury or condition arose within the time period prescribed.	Not applicable.
III. Polio Vaccines (other than Inactivated Polio Vaccine)	
A. Paralytic Polio	
_____in a non-immunodeficient recipient	30 days.
_____in an immunodeficient recipient	6 months.
_____in a vaccine associated community case	Not applicable.
B. Any acute complication or sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed.	Not applicable.
IV. Inactivated Polio Vaccine	
A. Anaphylaxis or anaphylactic shock	4 hours.

VACCINE INJURY TABLE—Continued

Illness, disability, injury or condition covered	Time period for first symptom or manifestation of onset or of significant aggravation after vaccine administration
B. Any acute complication or sequila (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed.	Not applicable.

10. On the same page, in the second column, in § 100.3(b)(1), in the next to the last line, "[a]" should read "(a)".

11. On page 36884, in the first column, in § 100.3(b)(2)(i)(B), in the first line, "*or age*" should read "*of age*"; in the second line, insert a comma following "*older*".

12. On the same page, in the first column, in § 100.3(b)(2)(iii), in the second line, "Infantile" should be capitalized.

13. On the same page, in the 2d column, in § 100.3(b)(3)(ii), in the 11th line, "administrative" should read "administration".

14. On the same page, in the third column, in § 100.3(b)(6)(ii), in the 4th line, "disorder" should read "disorders"; in the 16th line, "disease," should read "diseases,".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[OPHC-025-N]

Health Maintenance Organizations; HMO Qualification Determinations and Compliance Actions

Correction

In notice document 92-17637 beginning on page 33202 in the issue of Monday, July 27, 1992, make the following corrections:

1. On page 33203, in the second column, in the first column of the table "**BRISTOL COUNTY**", "02" should appear preceding all of the three digit zip codes.

2. On the same page, in the same column, in the third line from the bottom, insert "Suite" after "Park,".

3. On page 33204, in the first column, under "a. Kaiser Foundation", in the first line, "November 27, 1992" should read "November 27, 1991".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-020-4212-13; CACA 26721]

Issuance of Land Exchange Conveyance Document and Order Providing for Opening of Public Lands in Modoc County, CA

Correction

In notice document 92-16936 appearing on page 32025 in the issue of Monday, July 20, 1992, make the following correction:

In the first column, under **FOR FURTHER INFORMATION CONTACT:**, in the third line, "516" should read "916".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Customs Service

Country of Origin Marking Trade Forums

Correction

In notice document 92-20391 appearing on page 38712 in the issue of Wednesday, August 26, 1992, make the following correction:

In the first column, in the fourth line from the bottom, "927-1669" should read "927-1969".

BILLING CODE 1505-01-D

federal register

Friday
September 11, 1992

Part II

Department of Transportation

Coast Guard

46 CFR Part 30, et al.
Stability Design and Operational Regulations; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 30, 32, 35, 70, 78, 90, 97, 107, 108, 109, 167, 169, 170, 171, 184, 185, 188, 196

[CGD 89-037]

RIN 2115-AD33

Stability Design and Operational Regulations

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the stability design and operational regulations for inspected vessels to incorporate requirements of recently adopted amendments to the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS). With certain exceptions, the requirements in this final rule will apply to all new and existing vessels. These regulations are intended to minimize the potential for vessel capsizing caused by inadequate damage stability and related operational considerations.

EFFECTIVE DATE: December 10, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. P.L. Carrigan, Marine Technical and Hazardous Materials Division, (202) 267-2988.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in the drafting of this final rule are Ms. Patricia L. Carrigan, Project Manager, Office of Marine Safety, Security and Environmental Protection and LT Ralph L. Hetzel, Project Counsel, Office of Chief Counsel.

Regulatory History

On February 13, 1990, the Coast Guard published a notice of proposed rulemaking entitled Stability Design and Operational Regulations in the **Federal Register** (55 FR 5120). The Coast Guard received twenty-eight letters commenting on the proposal. A public hearing was requested in one of the comment letters but the Coast Guard decided that a public hearing was not necessary because the concerns addressed in this letter were resolved in this final rule.

Background and Purpose

The United States is a member of the International Maritime Organization (IMO) and is signatory to SOLAS. As such, the U.S. has adopted the requirements of SOLAS and its amendments. In October 1988, the Maritime Safety Committee of the IMO, adopted a series of stability related amendments to SOLAS. These amendments relate to the stability of passenger ships after damage, the use of draft marks and indicators, optional use of stability computers, periodic determination of lightship characteristics, the use of stability information, and the closing of loading doors before going to sea. These amendments came into force on April 29, 1990 for vessels requiring a SOLAS safety certificate.

All of the amendments to SOLAS, except the amendment concerning the stability of passenger vessels after damage, were initiated by the United Kingdom following the tragic capsizing of the English Channel ferry, HERALD OF FREE ENTERPRISE, in the spring of 1987. Nearly 200 people lost their lives. Prior to the HERALD capsizing, the amendment on residual stability of passenger vessels after damage had been under consideration by the IMO Subcommittee on Stability and Load Lines and on Fishing Vessels Safety (SLF). However, international concern after the HERALD OF FREE ENTERPRISE disaster provided the impetus to promote rapid adoption of all these amendments at IMO.

Discussion of Comments and Changes

Of the twenty-eight letters received commenting on the proposed regulations, four were from mobile offshore drilling unit (MODU) owners/operators, one from a MODU operator association, one from a tankship owner/operator, one from a tank barge owner/operator, one from an offshore, supply vessel (OSV) owner/operator, seven from Great Lakes and/or oceangoing cargo ship owners/operators, two from cargo ship associations, one from a cargo ship captain, one from a shipyard, one from a naval architecture firm, one from a river passenger vessel owner/operator, one from a passenger vessel owners' association, one from the Military Sealift Command, one from the Naval Sea Systems Command, one from the State of Texas Transportation Department, and three from Coast Guard field offices. The comments have been grouped by subject and are discussed below. A summary statement of any change is included when appropriate.

General Comments

(1) Several of the comments questioned the overall application of these rules to other than passenger vessels, stating that the rules were developed specifically for passenger vessels.

All of the regulations, except the regulation concerning the stability of passenger vessels after damage, were developed by the IMO in response to the tragic capsizing of the English Channel roll-on/roll-off passenger/cargo ferry, *HERALD OF FREE ENTERPRISE.* These IMO amendments were developed to remove some of the hazards identified during the investigation of this casualty.

The particular hazards these amendments were designed to remove include the following:

(a) The casualty investigation uncovered that the vessel was significantly overweight. Some documented modifications were responsible for a portion of the added weight, but a significant amount of the change was the result of weight growth from undocumented sources such as paint, stores, and dunnage. As a result, the stability information provided in the vessel's stability book could not be used to evaluate the stability in this different lightweight condition.

(b) An accurate accounting of weight and distribution of cargo and passengers was not completed.

(c) The draft of the vessel was not checked prior to departure; instead, false entries were made in the log book.

(d) The stability of the vessel was not verified prior to departure.

(e) The vessel's loading doors were not closed before departure.

(f) The master used negative reporting to determine the vessel was seaworthy. As an example of negative reporting, the master assumed that the loading doors were closed because he was not told that the loading doors were open.

These hazards were contributing causes of this casualty, but these kinds of hazards are not unique to passenger vessels, cargo ferries, or any other specific vessel type. To reason that all safety standards, especially operational regulations, are applicable only to one vessel type merely because the standard was generated in response to a casualty involving that type of vessel is not acceptable. Any operational safety standard which may prove successful on one type of vessel is worth consideration for application to other vessel types.

(2) One comment noted that some of the proposed rules exceeded the requirements of some foreign governments. Two of the comments advocated the IMO's new Code of Safety for the Equipment and Construction of Mobile Offshore Drilling Units (MODU Code) as the only source for all MODU standards.

The Coast Guard has a long term goal to incorporate and apply the various minimum international standards set by the IMO to U.S. vessels thereby ensuring that foreign vessels do not have an unfair economic advantage. At the same time, the Coast Guard must continue to ensure that the needs of domestic marine safety are met. There are many difficulties in fully achieving the implementation of IMO standards. Some U.S. regulations, such as those covering vessel stability, predate international standards and are more comprehensive in many areas than the current IMO standards. Where safety is not reduced, the Coast Guard is implementing IMO standards as equivalent and as an acceptable alternative to existing U.S. standards. Where equivalency of standards is not possible or where a safety concern is demonstrated, U.S. regulations continue to exceed IMO standards. International standards are minimum standards that have been adopted on a global scale. If enforcement of these international standards is not sufficient to fulfill the Coast Guard's responsibilities, they must be supplemented, as has been done here, to ensure that an adequate level of safety is maintained.

Door Closing and Logging Requirements

(3) Two comments objected to this provision because not all of their vessels have this type of loading door.

The intention of this provision is to require the closing and logging of the loading doors only on those specific vessels that have the type of loading door described in the regulations. All other vessels are exempt from this provision. The wording in § 78.17–33, § 97.15–17, § 167.65–38, § 185.20–17, and § 196.15–18 has been clarified to reflect this intent.

Stability Verification and Logging Requirements

(4) One comment objected to the provision requiring verification of stability because the stability letter already outlines the master's duties with regard to stability. Two other comments stated that this provision is superfluous as the master of a vessel is already always responsible for the stability of the vessel. Another comment objected to the provision because "at all other times necessary for the safety of the vessel" was too broad in meaning and could be interpreted to make the master negligent for any mishap while underway.

The conflicting views presented in these comments as to the specific responsibilities of the master regarding the verification of the stability of the vessel exemplifies the need for this provision. The responsibility for the stability of a vessel rests at all times with the master of that vessel. In the past, this policy has been promulgated only by the placement of a generic statement in the vessel's stability documentation. Sections 35.20–7, 78.17–22, 97.15–7, 109.227, 167.65–42, 169.840, 185.20–5, 196.15–7 now clearly delineate this long-standing policy.

(5) One comment objected to the stability verification provision because at no time does the person in charge of their company's vessels ever operate without being in compliance with the operating manual, stability letter, and certification requirements. Two comments stated that this provision was superfluous because their vessels are always operated in compliance with the regulations. Three comments stated that too much detail needs to be verified for every occurrence requiring stability verification of a MODU. Furthermore, the master has more important things to do than verify something already confirmed.

The purpose of the provision is to state clearly the master's responsibilities with regard to the stability of the vessel, not to impose additional duties which would go beyond those expected of a prudent master or operator. If, as the comments state, their company's vessels are only operated in compliance with all stability requirements, then they are essentially stating that they already verify each vessel's stability. Therefore, this provision would not require anything more of the master. However, if the master thinks verifying the vessel's stability is unnecessary and merely assumes the vessel is in compliance with its stability limitations, then the Coast Guard does not agree that the requirement is superfluous. The master must actually verify the vessel complies with all applicable stability requirements in the vessel's trim and stability book, stability letter, Certificate of Inspection, and Load Line Certificate, as applicable, and then so attest in the vessel's logbook, as required. The Coast Guard agrees that the master has many other important things to do; however, ensuring the stability of the vessel is equally important as other duties with respect to the safety and seaworthiness of the vessel.

(6) Two comments objected to specific log entries for stability verification as it would establish a hierarchy and would reduce the importance of a master's job down to responsibility for a log entry. One comment objected to the logging of the stability verification because logging duties do not enhance the safety of a vessel. Another comment objected to the stability logging because the superfluous paperwork will distract the attention of operators and will denigrate safety. Four other comments stated that this logging requirement would become a check mark or rubber stamp entry, especially on small passenger vessels and ferries on short runs over dedicated routes.

A very important part of a master's job is making the log entries required by the regulations. Log entries required of a vessel master serve much like the checklist used by an airline pilot and function as a reminder of important duties that must be performed to ensure safety. The Coast Guard agrees that all log entries, from fire drills to stability verifications, may achieve a higher importance in the mind of a master than other duties not required to be logged. This is as it should be. A log entry, even if it is a rubber stamp or a check mark, requires that a master consider the action or condition being confirmed. It is the Coast Guard's position that the safety of a vessel is enhanced if the vessel's master considers and confirms significant actions by the use of log entries. The masters of ferries and small passenger vessels on short runs over dedicated routes are equally responsible as masters of larger vessels on longer and more varied routes. All masters must ensure the safety of their vessel on each and every voyage even if the voyage is of short duration and over a familiar route.

(7) One comment stated that all log book entries for MODUs should be together in § 109.433.

The requirement for a log book entry is already located in § 109.433. The detailed description of the requirement is in a separate section similar to all other log book entries required of MODUs and other vessel types. A reference to § 109.227 has been added to § 109.433.

(8) One comment stated that in his duty as master of a containership in the U.S.-South America trade, he could not always comply with the stability verification requirement. Containers are not weighed in many ports. The container weights are often estimated by shippers and since freight is paid by weight, shippers often underestimate the weight of their containers. In general, the comment stated that the inability of the master to accurately know the loading of the vessel is a dangerous reality without a mechanism to verify container weights. The comment concluded that this situation could lead to a stability related casualty.

The Coast Guard agrees that there is a problem with underestimated container weights at foreign ports. The problem of underestimated container weights is indeed a serious international problem and it has been broached in the IMO. This practice has not been a major problem in U.S. ports as most containers are weighed at the port or their weight is documented at weigh stations along a truck's route to a port. This problem is an international one and a viable solution to this problem must be pursued through an international venue such as the IMO. A solution to this problem is beyond the scope of this particular regulatory project. Current IMO work on development of an intact stability code for all ships might help raise the importance of this issue on the IMO agenda and ultimately lead to a solution to the problem. While awaiting a definitive solution to this problem, a prudent master who doubts the information provided on the loading of a vessel should ensure that a margin of safety is included in the evaluation of the stability of the vessel.

(9) Two comments stated that stability reports are required as a company policy from their MODUs on a more frequent basis than every 6 months. Also, one comment said stability records are kept on board until they are deemed no longer useful. One comment suggested that records for MODUs be retained only until a major change takes place (such as a new location). The comment noted that six month's worth of records is a major amount and this requirement will cause duplicative paperwork to be manufactured for a company's shore office.

Because MODUs do not make voyages similar to other marine vessels, the Coast Guard decided that a definite period of time for retaining records was more meaningful. Six months was arbitrarily chosen. There are two specific purposes for retaining these records:

(a) The records are useful in monitoring the changing stability condition during a voyage or on a location; and

(b) The records are useful during an investigation of a casualty. In response to these comments, the length of time for retaining the stability records on board MODUs has been reduced to one month or until the MODU changes location, if shorter.

(10) One comment noted that it is difficult to maintain any type of records for unmanned barges.

The Coast Guard agrees with the comment that there are some problems maintaining records on unmanned barges especially where a log book is not required. In consideration of this comment, unmanned barges not now required to have a log book, will be exempt from the logging requirement of § 35.20-7 and § 97.15-7. However, all unmanned barges are still required to comply with the stability verification and with the logging of the verification where the unmanned barge already carries a log book. Appropriate changes have been made.

(11) Two comments noted that responsibility for the logging of stability verification of unmanned barges must be placed with a specific individual-tankerman, operator of the towing vessel, or person in charge, because there is no "master" of a barge.

The Coast Guard agrees and has clarified § 35.20-7 and § 97.15-7 by placing responsibility for this provision with the person in charge.

(12) One comment stated that while the stability verification could be easily achieved by offshore tank vessels required to have load lines, in order for inland tank barges to comply, changes will be needed in the stability information listed on the Certificate Of Inspection (COI). For example, current Coast Guard policy requires that the COI for Liquified Flammable Gas barges itemize each separate cargo by draft restrictions. The limitations are usually dependent on cargo weight rather than meeting the Type II damage stability criteria and are, therefore, listed in fraction of inches. The comment suggested only one draft be put on the COI based solely on Type II damage stability approval.

The purpose of this regulatory project is not to change the manner in which a cargo is carried or to change the allowed amount of any type of cargo carried. The Coast Guard has determined that those tank barges which have draft restrictions on their COI for purposes other than stability will be exempt from the requirements of § 35.20-7.

Draft Marks

(13) Five comments stated that the terms "bow draft" and "stern draft" are useless for most mobile offshore drilling units (MODUs), since many MODUs do not have a "bow and stern" draft.

The Coast Guard agrees that for some MODUs bow and stern drafts are meaningless terms. An appropriate allowance for non-surface type MODUs has been made to § 108.661(e).

(14) One comment noted that a provision should be made to exempt vessels, such as ferries on short runs not loaded near their operating capacity, from the requirements for draft indicators.

The reasoning behind this comment is not well understood. No assurance be given that a ferry on short runs will always operate with a load below its allowed capacity. Also, even assuming some type of assurance is given that all operations will be kept below operating capacity, no assurance can be given that these vessels are not improperly loaded or not overloaded, or both, if no attempt is ever made to verify the true draft.

(15) Two comments questioned where the requirements for draft markings on small passenger vessels were published.

Proposed requirements for draft marks on small passenger vessels were published in a Notice of Proposed Rulemaking on January 30, 1989 entitled Small Passenger Vessel Inspection and Certification (54 FR 4412) in proposed § 165.602. This publication location was noted in the NPRM for this rulemaking.

(16) One comment noted that the wording requiring that each vessel "be marked with its draft" was unclear and suggested rather that each vessel "be marked with draft marks."

The Coast Guard agrees with this comment. The wording has been clarified in § 32.05-1, § 78.50-10, § 97.40-10, § 167.55-1, § 169.755, and § 196.40-10.

(17) One comment recommended a requirement that the trim and stability book be drafted in units (metric or English) consistent with draft marks.

The Coast Guard agrees with the comment that the trim and stability book and all other stability information provided must agree in units with the draft marks. Section 170.110(d) has been revised to reflect this.

(18) One comment asked for clarification of wording "where draft marks are obscured." The comment asked from where should the draft marks be able to be viewed, from on board or on the dock. One comment stated that draft sensors are not the optimum method for determining unsafe stability conditions on MODUs. The comment added that draft marks are usually visible from some point on every rig and that visual observation is better than remote indicators. Another comment stated that on every type of MODU design a situation may exist where the draft marks are obscured by operational constraints or by protrusions. Therefore, exactly when a draft indicating system is to be required must be clarified. Two other comments stated that while draft indicating systems are okay, reliance on remote systems should be avoided and that draft marks should be the primary indicator of a MODU's draft. The comment stated that MODU level indicators serve better as a warning of something amiss rather than as a reading of the draft.

The draft marks must be readable when viewed from a reasonably convenient position. If the draft marks cannot accurately be read from the dock or on board the vessel, then the draft marks are "obscured" and another method for determining the draft of the vessel must be provided. Draft indicators are to be required only on those vessels that cannot read their draft visually and therefore, the crew must guess the vessel's draft. If the master cannot calculate the stability of the vessel because the draft cannot be read, then it follows that compliance with the applicable regulations is indeterminable. The Coast Guard is holding the master responsible for showing compliance with the applicable regulations, which is integral to the safe operation of the vessel.

Stability Books

(19) Two comments requested confirmation that § 170.110 does not apply to MODUs.

The comments are correct. The format and requirements for MODU operating manuals, which include stability data, are covered by § 109.121.

(20) One comment noted that previously approved (pre-computer age) vessel stability booklets did not encompass the entire range of a vessel's operating trims. The comment requested clarification of the applicability of this provision to existing vessels.

Vessel stability booklets should agree with the current condition of the vessel. Existing vessels built after 1984, which is the effective date of this subchapter, should already have stability books that take into consideration the entire range of a vessel's operating conditions. Existing vessels built prior to 1984, whose stability information is revised due to the requirements of § 170.210, should at that time update the stability information, in accordance with § 170.110, to encompass the entire range of operating trims.

(21) One comment recommended that the word "intact" be added to the phrase "stability of any condition" since damage stability calculations are too numerous for the stability book and are better evaluated by computer.

The Coast Guard agrees with this comment and the clarification has been added to § 170.110.

Periodic Lightweight Verification

(22) Two comments objected to the lightweight verification, reasoning that the Coast Guard could not definitely specify that adherence to the requirement for lightweight verification would have avoided casualties. One comment objected to this provision as ineffective and costly. One comment stated that while the rest of the proposed regulations will be effective in promoting vessel safety, a 5-year deadweight survey was not warranted. One comment stated that owner certification at 5-year intervals showing that no changes have been made should be sufficient. The comment elaborated that a deadweight survey on a shallow draft vessel, like Great Lakes vessels, requires perfect weather and precise draft measurements, and is a costly and unnecessary procedure.

The Coast Guard does not concur with these comments. The cost and effectiveness of this rulemaking is examined in the economic analysis of the regulation, which includes data from recent stability related casualties. It is rare that a single identifiable hazard is the sole cause of a stability casualty; however weight growth has been identified as a contributing factor. The owner of a vessel can certify that no modifications have taken place, but cannot certify without a survey that no weight growth has occurred on the vessel due to other causes. Weight growth is due not only to minor modifications, which are not required to be reported by § 170.005, but also by the untracked addition, deletion, and relocation of weight aboard the vessel. Without the 5-year deadweight survey, the owner may not be aware of the extent of the weight growth aboard the vessel.

(23) Several comments questioned the applicability of a periodic deadweight survey to MODUs because—

(a) They do not know of any widespread problems, and

(b) MODUs are not like passenger vessels because few are self-propelled. Two comments stated that MODU operating manuals closely monitor weight changes. One comment suggested that the operating manual should serve as the triggering device for a deadweight survey as calculated lightweight additions are more accurate than a periodic deadweight survey. One comment stated that changes to a MODU's lightship are required to be documented. The comment further suggested that rather than arbitrary deadweight surveys, inspectors should pay more attention to the records kept (stability calculations and lightweight adjustments) and a deadweight or incline should then be required when deemed necessary. In this fashion, operators who maintain good records and strive for safety are rewarded by this provision. Another comment stated that jack-ups are stable during operations and when floating no significant amount of weight is put on or off the unit. One comment proposed dispensing with the deadweight survey when a single discrete item, which causes a greater than 2 percent change in lightweight, is added as long as its weight and centers of gravity are well-established. One comment stated that when the Coast Guard conducts on-site inspections, they allow a 3 percent change in lightship before requiring a re-incline.

The Coast Guard agrees that the hull form of some MODUs is very dissimilar to that of passenger vessels. However, hull form is unrelated to weight growth. As required by § 109.121(c)(5), a MODU operating manual must include the lightweight data along with a listing of inclusions and exclusions of semipermanent equipment. This section also requires that the operating manual contain guidance for the routine recording of lightweight alterations. However, no specific requirements on the actual recording of lightweight alterations are given. Therefore, the type and amount of records maintained on lightweight changes will vary among operating companies. While some operators will try to be diligent and track all known weight changes, other operators will track only those changes they think will effect their lightweight. Even for prudent operators, some weight growth will go unrecorded because of the nature of the problem itself. Weight growth does not result from recordable

modifications to a vessel. Weight growth is the unnoticed accumulation, deletion, or relocation of small amounts of weight, such as dunnage, waste, paint, redecoration, disused but not discarded equipment and spare parts, sludge, and similar materials. These changes can, over a period of time, effect the lightweight displacement and the centers of gravity of a vessel. Although good records will not exempt a vessel from doing a deadweight survey, they may prevent the necessity of an incline. Only where the survey shows that the change exceeds the documented modifications by more than the tolerance allowed in § 170.210, will an incline be required.

The MODU Code recognizes the importance of periodic lightweight verifications in section 3.15, which requires a 5-year periodic deadweight survey for all column stabilized units. The Coast Guard acknowledges that column stabilized units are much more vulnerable to unknown weight changes than self-elevating units. Therefore, the Coast Guard will only require owners of self-elevating units to re-incline after a major modification. Although, data from re-inclinings of jack-up rigs shows a large discrepancy in the vertical center of gravity (KG) from one incline to the next, no cause has been singled out for the variation in KG. Some operators believe inaccuracies during the incline test cause the different results. However, the Coast Guard's position is that the change in KG is in some part attributable to weight changes which have not been recorded. One of the major unrecorded weight changes made on a jack-up rig is leg-lengthening. The Coast Guard considers changes such as leg-lengthening to be a major modification, which must be reported as required by § 170.005. Since the Coast Guard has decided that self-elevating MODUs, such as jack-ups, will not at this time be required to comply with § 170.210, an appropriate exemption has been added to § 170.210(b).

(24) One comment stated that all inspected vessels have load lines and load lines prevent overloading. The comment concluded this rule serves no purpose.

Not all inspected vessels have a load line. Only specific vessel types as defined by 46 CFR subchapter E, part 42, subpart 42.03 are required to have a load line. Many inspected vessels are not required to have a load line due to their size, route, type of service, or other factors. In addition, load lines do not compensate for weight growth of lightship or a change in KG.

(25) One comment stated that use of the draft marks to determine weight growth should be examined. Another comment recommended the use of a formal weight tracking system in conjunction with observed drafts to determine the necessity for deadweight surveys. Another comment stated that the updating of weight and centers of gravity is reasonable to prove continued adequate stability and is more accurate than a periodic lightship check for Great Lakes vessels. One comment stated that a more reasonable approach is needed for reporting and certifying centers of gravity and weights due to minor modifications occurring over a 5-year period. Consistent with current regulations, significant weight changes due to modification should and must be identified by deadweight surveys and inclines. One comment stated that their company already adjusts trim and stability books for minor modifications and conducts stability tests for major modifications.

Monitoring the location of the draft is not a solution to tracking weight growth because the deadweight constantly changes. Draft marks and load lines are a good indicator of overall overloading of a vessel but a poor indicator of weight growth. While the addition, deletion, or relocation of unknown weights may or may not cause a noticeable change in the draft or the submergence of the load line, the stability of the vessel could be greatly reduced by the changes. As already stated, pursuant to § 170.005, significant alterations to a vessel are required to be reported and stability information updated in accordance with the regulations in 46 CFR subchapter S. Those operators and owners who track other known weight variations on their vessels and consistently update their stability information are in the minority and are to be commended. However, even the most diligent are likely to miss some of the weight growth occurring on their vessel.

(26) Two comments objected to the proposed regulations applying to Great Lakes vessels because:

(a) SOLAS does not apply to the Great Lakes;

(b) Great Lakes vessels have a substantial excess of metacentric height (GM);

(c) No initial stability test is required; and

(d) Great Lakes vessels do not have a stability book. Another comment also stated that Great Lakes dry bulk vessels are designed such that no inclining tests are required. Another comment stated that Great Lakes bulk carriers should be exempt from this provision because their operation requires GM in excess of Coast Guard requirements and significant alterations are completed only with Coast Guard approval. One comment stated that Great Lakes vessels are limited by shallow drafts (river transits) and narrow locks which result in vessels with excess GM. Because of this excess in stability, these vessels have always dispensed with stability tests as permitted by § 170.175(d). Another comment stated that all of the following vessels should be excluded from this requirement:

(a) Vessels that could use (not just those that did use) the estimated center of gravity;

(b) Vessels that are considered inherently stable (where no stability calculations were performed); or

(c) Vessels that have a large margin between the operating conditions and the stability criteria (some vessels may have undergone significant changes and still meet the criteria by a wide margin). One comment recommended that for a vessel that is "bare bones" (not lavishly outfitted, built for a specific function, such as a tank ship, tank barge, bulk cargo barge, or deck cargo barge), some latitude be included to allow the Officer in Charge, Marine Inspection (OCMI) or the Commanding Officer, Marine Safety Center to make a judgment when determining whether a vessel needs a periodic survey.

The Coast Guard does not intend that vessels which are not now required to do a stability test, do one periodically. Vessels exempt from stability tests by § 170.175(d) are either inherently stable or have a wide margin between their operating conditions and the stability criteria. Vessels exempt from stability tests by § 170.175(d), are also exempt from § 170.210. An appropriate change has been made to § 170.210(b) to make this clear. The Coast Guard also agrees that some "bare bones" vessels are constructed or operated such that a significant amount of weight growth cannot occur. However, the Coast Guard does not consider it appropriate for this regulation to allow latitude to the OCMI or Commanding Officer, Marine Safety Center in determining whether or not a vessel needs a periodic survey. However, those vessel types that can clearly be defined as "bare bones" vessels will be exempted from the lightweight verification provision. An appropriate change has been made to § 170.210 to permit this exemption.

(27) One comment stated that § 170.210(b)(1) is redundant since lightweight displacement and centers of gravity are not required to be determined for these vessels by § 170.174.

The Coast Guard concurs with this comment, however, for clarity, all exceptions will be listed in § 170.210, including small passenger vessels using the simplified stability test.

(28) One comment noted that § 170.210 would apply to new and existing vessels but § 170.001 limits application of 46 CFR subchapter S to vessels contracted for after January 3, 1984.

As stated in the NPRM, application of § 170.210 is for all existing inspected vessels. Sections 170.001 and 170.210(a) have been changed to clarify that application of § 170.210 is for all existing inspected vessels. The Coast Guard intends to phase-in the requirement for periodic lightweight verification over a five year period. For each affected vessel, the date by which its initial periodic lightweight verification must be carried out will be determined by a number of factors, including the date of the vessel's last lightweight verification, the date of the vessel's next credit drydocking, and the expiration date of the vessel's Loan Line Certificate. The Coast Guard intends that this verification be completed in conjunction with other required surveys to try to avoid a vessel being taken from service solely to perform the lightweight verification. The Coast Guard will publish a Navigation and Inspection Circular containing specific guidance on the phase-in process.

(29) Two comments disagreed with the presumption that vessels using the simplified stability test should be excluded from the periodic lightweight requirement as these vessels, especially the older ones, are subject to substantial weight growth.

The Coast Guard cannot currently disagree with these comments. Additional study of small vessels that use the simplified stability test is necessary to determine if their operations result in a significant amount of weight growth. At this time, this rulemaking does not apply the periodic lightweight verification to these vessels.

(30) Two comments noted that vessel owners do not have rights to the stability related plans of their vessels and if redrawn plans are used, differences in vessel characteristics could result from differences between the old and new plans and not from any changes in the vessel. One comment noted that the cost of redoing the plans is $4000–$6000 and is costly for the prevention of weight growth, as compared to a major modification, such as a conversion. Another comment stated that no costs were estimated for reconstructing the data for vessels where such data has been lost or destroyed or where the original data is in error. One comment stated that 30 percent of Coast Guard approved lightship data is wrong and trying to use this data for comparison is an unnecessary hardship. One comment asked for clarification of the criteria, original or present, applied in reevaluating a vessel's stability, when a vessel is found to have changed its characteristics. The comment also questioned what criteria would be applied if the original criteria cannot be determined.

Purchase of relevant vessel plans is negotiable with the naval architect at the time of build or purchase of the vessel. Every owner can expect a vessel to undergo some degree of modifications, improvements, or repairs sometime during the vessel's life that would require having a set of the vessel's plans. If the vessel owner does not choose to buy the plans for the vessel at the time of build, the owner can usually return to the same naval architect when further improvements, maintenance, or repairs are done on the vessel. Owners purchasing a vessel sometime after build must also figure into the purchase the costs of the plans for the vessel to carry out improvements, maintenance, or repairs. Therefore, costs for vessel plans are not included as a cost associated with this regulation.

The Coast Guard cannot confirm the comment's statement that 30 percent of Coast Guard approved lightship data is wrong without rechecking the data for all vessels. These periodic checks will ensure that future lightship data is correct which will allow the master to be more certain of the stability of the vessel. If during a survey or incline a vessel is found to have made unreported major modifications, the vessel will be required to follow the policy of major modifications and meet the rules in force at the time of modification. If changes in vessel lightweight are due only to weight growth or minor modifications, the vessel will only have to meet the criteria under which it was originally certificated. Instances where the original criteria cannot be determined are few and will be resolved on a case-by-case basis as is done now.

(31) Several comments objected to the periodic lightweight verification because regulations already preclude an owner from making any modifications without approval and, if needed, stability review. One comment suggested that the OCMI should have the authority to determine whether an inland ferry vessel needs a periodic stability test. Another comment stated that OCMI's already have the authority to require deadweight surveys, revised stability calculations and stability tests. The comment further stated that better guidance as to when new tests should be done is better than wholesale requirements for all vessels to do deadweight surveys.

Currently, there are only regulations concerning updating of stability information after major modifications. Coast Guard policy and procedures which require updated stability calculations and stability tests when minor modifications alter stability condition vary between districts. This requirement will ensure a more uniform application of lightweight verification policy and procedures.

(32) One comment stated that the horizontal centers of gravity (transverse and longitudinal centers of gravity) is more appropriate for some MODUs.

The deadweight survey is only a "litmus test" which indicates changes may have taken place with the vertical center of gravity. An incline would be required only if the lightweight or horizontal centers of gravity are incorrect.

(33) One comment questioned the need for a deadweight survey of cargo ships every 5 years. One comment recommended that all tankships be exempt from this requirement, except when modifications change the lightweight by more than 2 percent. Two comments stated that on passenger ships, lightweight could be as much as 80 percent of the fully loaded displacement, while on oceangoing cargo ships, lightweight was only as much as 35 percent of the fully loaded displacement. Because of this, changes in lightweight have a significantly smaller effect on large cargo ships. One comment objected to the application of this provision to barges because there is no evidence that periodic verification will result in fewer barge casualties. The comment added that lightweight is a minor part of cargo barge stability. Two comments stated that with the exception of pure car carriers, inspected cargo vessels have less superstructure and fewer upper decks than passenger vessels. The comment concluded that the location on most oceangoing cargo ships where spare parts, slops, or minor modifications will reside is generally closer to or below the vertical center of gravity and, therefore, this weight growth will not detrimentally impact overall stability.

After reviewing the arguments and data provided by these comments, the Coast Guard agrees that vessels such as deep draft cargo ships and tankers should not be subject to this provision. Vessels certificated under Subchapter I

and Subchapter D whose lightweight displacement comprises less than 35 percent of the total fully loaded displacement will be exempt from the provisions of § 170.210.

(34) One comment requested a public meeting with operators to discuss the necessity of lightweight verification if it is required for large cargo vessels. Of the twenty-eight comments, only one requested a public meeting.

The Coast Guard decided that a public hearing was not necessary because the concerns addressed in this letter were resolved in this rule. Cargo ships whose lightweight displacement comprises less than 35 percent of the total fully loaded displacement will be exempt from the provisions of § 170.210.

(35) One comment stated that the periodic lightweight verification provision provided no guidance on what stability study is necessary when deviation is greater than the allowable change in § 170.210(a)(3). The comment assumed that new stability information in line with § 170.110 would be established using the new lightship data.

The Coast Guard intends that the stability information used on board a vessel agree with the vessel's lightship data. Section 170.210(a)(3) has been clarified to ensure that when a new stability test is required, updated stability information will be provided on board the vessel for the master's use.

(36) Several comments stated that to perform the proposed surveys everything must be removed from the vessel (ballast, fuel and lube oils, mud and sediment, tools and spare parts, food and perishables, all outfitting such as utensils, linen, and similar items) and as a result, the items removed from the vessel will be subject to theft, contamination, and spillage at an estimated cost of $45,000 to $120,000 for an offshore supply vessel (OSV). Another comment stated that it would cost an oceangoing cargo ship approximately $50,000 dollars to comply with the periodic lightweight requirements. One comment stated that to comply with this provision their ships would have to be stripped of cargo and tankage, and taken out of service. One comment stated that a minimum of 24 hours is required to prepare their oceangoing cargo ships for a deadweight survey. One comment estimated that at least three days are required for an OSV to perform the lightweight verification.

It is not always necessary for all the items stated by the comment to be removed to complete a deadweight survey. It is necessary, however, to record the weight and location of each item not part of the lightweight. The time and dollar amounts quoted by two of the comments are inconsistent. The average of $85,000 and 3 days for an OSV as compared with $50,000 and at least 1 day for an oceangoing cargo ship is incongruous. However, where appropriate, cost analysis estimates in the regulatory evaluation associated with this rulemaking were increased in response to these comments.

(37) One comment stated that the 2 percent margin is:

(a) Inconsistent with other margins of error intrinsic to calculating stability and is therefore unreasonable;

(b) An insignificant number in terms of an OSV's stability because OSV's are so small;

(c) Not necessary because there are safety factors built into a vessel's stability letter; and

(d) Insignificant because over a vessel's life, the vessel is allowed a 20 to 30 percent change due to wastage, paint, coatings, damage repairs, equipment replacement, scale, and sediment.

Another comment stated that initial inclines are done with dry tanks and therefore, after tanks are used, initial conditions are hard to repeat. The comment concluded that stability rules take this into consideration by applying safety factors and margins for error, and therefore, 2 percent is a close tolerance to meet. One comment stated that the margin of safety is greater than 2 percent because of the application of safety factors during the calculation of an OSV's stability from an incline and in preparation of the stability letter. This comment further stated that the margin of error, calculated or empirical, in a lightship survey is greater than 2 percent and the tolerance between the 2 percent lightweight verification margin and the margin of error of the incline is too tight. One comment agreed that the requirement for periodic deadweight surveys was reasonable, but thought that the 2 percent margin was unreasonable. Another comment stated that the results of the survey would likely exceed the 2 percent tolerance due to inaccuracies in the survey. Another comment recommended that in lieu of the 2 percent lightweight displacement margin, that 1 percent of lightweight displacement plus the maximum tons per inch (TPI) immersion be used. The comment stated that maximum TPI should be the larger of the TPI at the original inclining draft or the later deadweight draft. This method would permit a 1 percent increase in weight plus a 1 inch error in determining the drafts. The comment asserts this is a fairer standard than the 2 percent margin.

Coast Guard regulations set minimum standards for safety. The criteria in the regulations are developed with safety in mind, but a determinable and set factor of safety is not used in the calculations. Conditions placed in a vessel's stability letter are usually those necessary for a vessel to comply with the minimum stability criteria. These conditions are not additional factors of safety. The Coast Guard's position is that the 2 percent tolerance is reasonable and achievable. A 30 percent weight change over a vessel's life without a stability review is unacceptable. The Coast Guard does not agree that the margin of error during an incline is greater than 2 percent and the Coast Guard uses procedures to ensure a credible incline. The comment's suggestion to apply TPI immersion in conjunction with displacement changes could be applied as an alternative on a case-by-case basis.

(38) One comment questioned whether a class of sister ships, certified as having identical modifications and operations, could use a single periodic lightweight verification for the entire class.

Although a class of sister ships can be identical when new, the weight growth experienced by each ship will in all probability be unique. The changes in the amount and location of paint, dunnage, abandoned tools or equipment, increased stores, furnishings, and similar items will vary from ship to ship and only by checking each ship can the true lightweight be verified.

Residual Stability for New Passenger Vessels

(39) Two comments stated that for government contracted ships, the contract award date is so far in advance of the keel laying date that for ships already contracted a new costly redesign will be needed. The comment asked whether the effective date of 29 April 1990 could be a contract date rather than keel laying date.

The effective date of the provisions of § 171.080 for domestic vessels will be keel laying dates after December 10, 1992. Over 2 years will have passed from the effective date of the SOLAS Convention amendments to the publication of this Final Rule. This has allowed more than enough design lead time, even for government vessels. The effective date for vessels requiring a SOLAS safety certificate is set by the IMO. Under SOLAS, all vessels subject to the SOLAS requirements whose keels were laid after 29 April 1990, must comply with the residual stability amendments.

(40) One comment said that the proposed residual stability standards

were too stringent for vessels engaged in river service. The comment specifically objected to the 15 degree range of stability and the assumption that all persons will move to the low side in the case of asymmetrical flooding.

The range of stability after damage is a minimum acceptable for all vessel services, including vessels engaged in river service. Coast Guard regulations set minimum standards for safety, and in determining compliance with these regulations, a worst case scenario is assumed. It is unreasonable to assume passengers will move in a manner beneficial to the stability of a vessel.

(41) One comment requested that this section specifically exempt Great Lakes dry cargo vessels since these vessels are already subject to the damage stability regulations in 46 CFR part 172, subpart H.

This section is applicable to new passenger vessels and other vessels required to comply with § 171.080. Since this section does not apply to Great Lakes dry cargo vessels, an exemption is not required.

(42) One comment questioned the origin and basis of the 7 degrees of heel in the final stage of flooding.

A limitation on heel for unsymmetrical flooding was first used in the International Convention for the Safety of Life at Sea, 1948. The 7 degree limitation on heel for one compartment flooding and twelve degrees for two-compartment flooding is contained in IMO Resolution A.265, Equivalent Regulations to part B of chapter II of SOLAS on Subdivision and Damage Stability of Passenger Ships (adopted by IMO in November 1973). The 7 degree limitation is located in Chapter II–1, Regulation 8.6.2 of SOLAS and in 46 CFR 171.080(d).

(43) One comment questioned why oceanographic research vessels (ORV) are required to meet passenger vessel regulations. The comment questioned whether ORVs should have separate damage stability regulations.

ORVs include a number of non-seaman on board during each voyage. These non-seamen are usually scientists and technical personnel and are more closely related to the definition of passengers than the definition of crew. While these non-seamen are necessary to accomplish the vessel's mission, they do not have the familiarity with the vessel or the training in emergency procedures that members of the crew have. Therefore, the Coast Guard requires in 46 CFR part 173, subpart D that all ORVs, except barges under 300 gross tons, comply with the passenger vessel damage stability regulations.

(44) In § 171.080(e)(2), the word "accessible" replaced the word "frequented" as a more definite term.

(45) The existing provision in § 171.080(d)(3) regarding the submergence of the margin line was inadvertently left out for new vessels. For equivalency with the current SOLAS passenger ship damage stability requirements, the margin line must not be submerged at any point in the final stage of flooding. An appropriate change has been made to § 171.080(e)(6).

Regulatory Evaluation

This rulemaking is not major under Executive Order 12291 on Federal Regulation and non-significant under the Department of Transportation Regulatory Policies and Procedures (DOT Order 2100.5 of May 22, 1980). A Regulatory Evaluation is available in the docket for inspection or copying where indicated under **ADDRESSES**.

The marine industry will incur an estimated first year cost of $5 million and a subsequent annual cost of $4.8 million as a result of this rulemaking. Although this cost may be sizable for some segments of the industry, the need for and potential benefits of the regulations are considered to outweigh the anticipated costs involved.

As discussed in "Discussion of Comments", in response to the few specific comments given on costs of the periodic lightweight verification, the costs have been adjusted. Also, in response to some comments, the costs has been lowered due to the decrease in the number of vessels affected by some of the provisions; for example, the periodic lightweight verification.

The primary benefits of the regulations relate to increasing the accuracy of the available stability information and vessel survivability after damage thereby producing a safer vessel and reducing the number of stability related casualties and resulting lives lost, associated injuries, and property damage. The minimum potential benefits of these regulations are estimated to be $8.4 million annually based on the generally accepted value of human life of $1.5 million. However, this estimate does not take into account the potential substantial additional benefits derived from averting a catastrophic casualty, such as occurred with the HERALD OF FREE ENTERPRISE. When taking into account major casualties such as the HERALD OF FREE ENTERPRISE, the potential benefits of these regulations, in terms of lives saved, far outweigh associated costs.

Small Entities

One comment objected to the conclusion that the rules would not have a significant impact on a number of small entities as a large part of the U.S small passenger fleet are owned by small and family businesses. The comment stated that small passenger vessels would reap little of the benefit as small passenger vessel losses are few and not multi-million dollar cases.

The small entities addressed in this rulemaking are primarily small passenger vessels. The small passenger vessel fleet, which is regulated under 46 CFR subchapter T, can be roughly subdivided into large vessels (generally greater than 65-feet in length and authorized to carry more than 150 passengers per voyage) and small vessels (generally less than 65-feet in length and authorized to carry fewer than 150 passengers per voyage). There are currently about 4000 small and 1200 large vessels in the small passenger vessel fleet. A large percentage of the small vessels in the small passenger vessel fleet are owned or managed by small entities. A lesser percentage of the large vessels in the small passenger vessel fleet are owned or managed by small entities.

This rulemaking can be subdivided into five major categories, each having a different impact upon small entities:

(a) Draft marks;

(b) Closing of loading doors;

(c) Verification of stability;

(d) Residual stability; and

(e) Periodic lightweight verification.

With regard to the draft requirement for small passenger vessels, § 185.30–3 (proposed § 185.602(b)) limits the requirement to those vessels described by § 185.30–3(a) (proposed § 178.310(b)(1) through (5)). This section limits the applicability of the draft marks requirement to vessels greater than 65-feet in length, sailing vessels, vessels authorized to carry more than 150 passengers, vessels authorized to carry more than 12 passengers on an international voyage, or a vessel with more than one deck above the bulkhead deck exclusive of a pilot house. The requirement in § 185.30–3(e) is limited to those vessels whose draft marks, required by § 185.30–3(a) (proposed as § 185.602(b)), are obscured from view. The various exemptions from the requirement for draft marks greatly reduces the number of vessels affected. Most large vessels and many small vessels in the small passenger fleet already have the draft marks required here. Of those vessels required to have draft marks, very few do not already

have them. The Coast Guard estimates that only about 75 small passenger vessels will need to add draft marks.

With regard to the closing and logging of loading doors, very few small passenger vessels are equipped with these types of loading doors. At most, the Coast Guard estimates that 150 small passenger vessels will have to comply with this provision. Additionally, the logging provision is dropped for those vessels not already required to carry a log book. It is estimated that at least half of the small vessels in the small passenger vessel fleet are not required to carry a log book.

With regard to the stability verification and logging, the majority of small passenger vessels carry a simple stability letter, which allows quick and easy verification of their vessel's loading and stability. Also, as mentioned previously, the logging provision is dropped for those vessels not already required to carry a log book and it is estimated that at least half of the small vessels in the small passenger vessel fleet are not required to carry a log book.

With regard to the new design requirements for residual stability, this provision affects new passenger vessels only and as such, only affects about 25 new small passenger vessels that are built each year.

With regard to the lightweight verification provisions, most small vessels in the small passenger vessel fleet will be exempt from this provision through their use of the simplified stability test. Many of the large vessels in the small passenger vessel fleet affected by this provision will be able to conduct their survey dockside during normal off-working hours.

The Coast Guard's position is that while the overall safety record of the U.S. small passenger fleet is laudable, considering the number of passengers carried each year, the true economic benefit of these regulations is in removing a hazard and thereby preventing the severe loss of life which could result from a single catastrophic casualty. Although property damage resulting from a small vessel casualty may not be substantial, the loss of passengers' lives can easily result in a multi-million dollar casualty. The two most expensive provisions of this rulemaking are the periodic lightweight verification and the stability verification and logging. For small passenger vessels, the periodic lightweight verification is estimated to cost $450 a year per affected vessel and the stability verification, $288 a year per affected vessel. These costs can be recovered by a very minimal increase in cost in passengers. The potential benefits of the provisions, in terms of lives saved and in preventing a major casualty, for outweigh the associated costs.

Because of the numerous exemptions, exceptions and limits of applicability to small passenger vessels in these regulations and the true economic benefit of preventing a catastrophic casualty, the Coast Guard has determined that this rulemaking does not have a significant economic impact on a substantial number of small entities. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) reviews each proposed rule which contains a collection of information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection of information requirements include reporting, recordkeeping, notification, and other similar requirements.

This rule contains collection of information requirements in the following sections: 35.20–7, 78.17–22, 78.17–33, 97.15–7, 97.15–17, 109.227, 167.65–38, 167.65–43, 169.840, 170.210, 185.20–5, 185.20–17, 196.15–7, 196.15–18.

The reporting and recordkeeping requirements associated with this rule have been approved by OMB in accordance with 44 U.S.C. chapter 35 under OMB Control Number 2115–0589.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the regulations do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

This rulemaking establishes stability design and operating standards for commercial vessels. The authority to regulate concerning these standards for commercial vessels in all navigable waters of the United States is committed to the Coast Guard by Federal statutes. Furthermore, since commercial vessels tend to move from port to port in the national and international marketplace, safety standards for commercial vessels should be of national scope to avoid unreasonably burdensome variances. Therefore, the Coast Guard intends this rule to preempt state action addressing the same subject matter.

Environment

This rulemaking has been reviewed by the Coast Guard and it has been determined that it will not have a significant impact on the environment. This rulemaking has no effect upon the manner in which potential pollutants or hazardous materials are carried on board vessels. Improved vessel stability should reduce the number of uncontrolled releases of pollutants or hazardous materials into the environment resulting from vessel casualties. However, based on a review of historical data, the Coast Guard considers the benefit to the aquatic environment to be insignificant. An environmental impact statement is not necessary. A finding of no significant impact has been placed in the public docket for this rulemaking.

List of Subjects

46 CFR Part 30

Cargo Vessels, Foreign relations, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 32

Cargo vessels, Fire prevention, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 35

Cargo vessels, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 70

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 78

Marine safety, Navigation (water), Passenger vessels, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 90

Cargo vessels, Marine safety.

46 CFR Part 97

Cargo vessels, Marine safety, Navigation (water), Reporting and recordkeeping requirements.

46 CFR Part 107

Marine safety, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels

46 CFR Part 108

Fire prevention, Marine safety, Occupational safety and health, Oil and gas exploration, Vessels.

46 CFR Part 109

Marine safety, Occupational safety and health, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 167

Fire prevention, Marine safety, Reporting and recordkeeping requirements, Schools, Seamen, Vessels

46 CFR Part 169

Fire prevention, Marine safety, Reporting and recordkeeping requirements, Schools, Vessels.

46 CFR Part 170

Marine safety, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 171

Marine safety, Passenger vessels.

46 CFR Part 184

Communications equipment, Marine safety, Navigation (water), Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 185

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 188

Marine safety, Oceanographic research vessels.

46 CFR Part 196

Marine safety, Oceanographic research vessels, Reporting and recordkeeping requirements.

For reasons set out in this preamble, the Coast Guard is amending title 46, chapter I, Code of Federal Regulations as follows:

SUBCHAPTER D—TANK VESSELS

PART 30—GENERAL PROVISIONS

1. The authority citation for part 30 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804; 49 CFR 1.45, 1.46; Section 30.01–2 also issued under the authority of 44 U.S.C. 3507.

2. Section 30.01–2 is amended by revising paragraph (b) to read as follows:

§ 30.01–2 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * * * *

(b) *Display.*

46 CFR part or section where identified or described	Current OMB control No.
§ 31.10–5(a)	2115–0131
§ 31.10–21	2115–0554
§ 31.10–22	2115–0554
§ 31.10–32	2115–0131
§ 31.10–33	2115–0131
§ 31.37–15	2115–0131
§ 31.40–35	2115–0131
§ 32.53–85	2115–0505
§ 35.20–7	2115–0589
§ 35.35–30	2115–0506
§ 39.10–13	2115–0505

PART 32—SPECIAL EQUIPMENT, MACHINERY, AND HULL REQUIREMENTS

3. The authority citation for part 32 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

4. Section 32.05–1 is amended by revising the section heading and paragraph (a); by redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively; and by adding new paragraphs (b), (e), (f), and (g) to read as follows:

§ 32.05–1 Draft marks and draft indicating systems—TB/ALL.

(a) All vessels must have draft marks plainly and legibly visible upon the stem and upon the sternpost or rudderpost or at any place at the stern of the vessel as may be necessary for easy observance. The bottom of each mark must indicate the draft.

(b) The draft must be taken from the bottom of the keel to the surface of the water at the location of the marks.

* * * * *

(e) Draft marks must be separated so that the projections of the marks onto a vertical plane are of uniform height equal to the vertical spacing between consecutive marks.

(f) Draft marks must be painted in contrasting color to the hull.

(g) In cases where draft marks are obscured due to operational constraints or by protrusions, the vessel must be fitted with a reliable draft indicating system from which the bow and stern drafts can be determined.

PART 35—OPERATIONS

5. The authority citation for part 35 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 6101; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

6. Section 35.07–10 is amended by redesignating paragraphs (b)(4) through (b)(9) as paragraphs (b)(5) through (b)(10), respectively, and by adding new paragraphs (b)(4) and (c)(4) to read as follows:

§ 35.07–10 Actions required to be logged—TB/ALL.

* * * * *

(b) * * *

(4) Verification of vessel compliance with applicable stability requirements. After loading and prior to departure and at all other times necessary to assure the safety of the vessel. See § 35.20–7.

* * * * *

(c) * * *

(4) Verification of vessel compliance with applicable stability requirements. After loading and prior to departure and at all other times necessary to assure the safety of the vessel. See § 35.20–7.

7. Section 35.20–7 is added to read as follows:

§ 35.20–7 Verification of vessel compliance with applicable stability requirements—TB/ALL.

(a) Except as provided in paragraph (d) of this section, after loading and prior to departure and at all other times necessary to assure the safety of the vessel, the master or person in charge shall determine that the vessel complies with all applicable stability requirements in the vessels's trim and stability book, stability letter, Certificate of Inspection, and Load Line Certificate, as the case may be. The vessel may not depart until it is in compliance with these requirements..

(b) When determining compliance with applicable stability requirements the vessel's draft, trim, and stability must be determined as necessary.

(c) If a log book is required by § 35.07–5, then the master or person in charge must enter an attestation statement verifying that the vessel complies with the applicable stability requirements at the times specified in paragraph (a) and any stability calculations made in support of the determination must be retained on board the vessel for the duration of the voyage.

(d) Stability verification is not required for tank barges whose Certificate of Inspection carries draft restrictions for purposes other than stability.

SUBCHAPTER H—PASSENGER VESSELS

PART 70—GENERAL PROVISIONS

8. The authority citation for part 70 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.45, 1.46; section 70.01–15 also issued under the authority of 44 U.S.C. 3507.

9. Section 70.01–15 is amended by revising paragraph (b) to read as follows:

§ 70.01–15 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

46 CFR part or section where identified or described	Current OMB control No.
§ 71.10	2115–0136
§ 71.50–5	2115–0554
§ 78.17–22	2115–0589
§ 78.17–33	2115–0589

PART 78—OPERATIONS

10. The authority citation for part 78 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 6101, 8105; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243; 3 CFR 1971–1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

11. Section 78.17–22 is added to read as follows:

§ 78.17–22 Verification of vessel compliance with applicable stability requirements.

(a) After loading and prior to departure and at all other times necessary to assure the safety of the vessel, the master shall determine that the vessel complies with all applicable stability requirements in the vessel's trim and stability book, stability letter, Certificate of Inspection, and Load Line Certificate, as the case may be, and then enter an attestation statement of the verification in the log book. The vessel may not depart until it is in compliance with these requirements.

(b) When determining compliance with applicable stability requirements the vessel's draft, trim, and stability must be determined as necessary and any stability calculations made in support of the determination must be retained on board the vessel for the duration of the voyage.

12. Section 78.17–33 is added to read as follows:

§ 78.17–33 Loading doors.

(a) The master of a vessel fitted with loading doors shall assure that all loading doors are closed watertight and secured during the entire voyage except that—

(1) If a door cannot be opened or closed while the vessel is at a dock, it may be open while the vessel approaches and draws away from the dock, but only as far as necessary to enable the door to be immediately operated.

(2) If needed to operate the vessel, or embark and disembark passengers when the vessel is at anchor in protected waters, loading doors may be open provided that the master determines that the safety of the vessel is not impaired.

(b) For the purposes of this section, "loading doors" include all weathertight ramps, bow visors, and openings used to load personnel, equipment, and stores, located in the collision bulkhead, the side shell, or the boundaries of enclosed superstructures that are continuous with the shell of the vessel.

(c) The master shall enter into the log book the time and door location of every closing of the loading doors.

(d) The master shall enter into the log book any opening of the doors in accordance with paragraph (a)(2) of this section setting forth the time of the opening of the doors and the circumstances warranting this action.

13. Section 78.37–5 is amended by redesignating paragraphs (a)(7) through (a)(13) as paragraphs (a)(9) through (a)(15), respectively, and by adding new paragraphs (a)(7) and (a)(8) to read as follows:

§ 78.37–5 Actions required to be logged.

(a) * * *

(7) Verification of vessel compliance with applicable stability requirements. After loading and prior to departure and at all other time necessary to assure the safety of the vessel. See § 78.17–22.

(8) Loading doors. Where applicable, every closing and any opening when not docked. See § 78.17–33.

* * * * *

14. Section 78.50–10 is amended by revising the section heading and paragraph (a); by redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively; and by adding new paragraphs (b), (e), (f), and (g) to read as follows:

§ 78.50–10 Draft marks and draft indicating systems.

(a) All vessels must have draft marks plainly and legibly visible upon the stem and upon the sternpost or rudderpost or any place at the stern of the vessel as may be necessary for easy observance. The bottom of each mark must indicate the draft.

(b) The draft must be taken from the bottom of the keel to the surface of the water at the location of the marks.

* * * * *

(e) Draft marks must be separated so that the projections of the marks onto a vertical plane are of uniform height equal to the vertical spacing between consecutive marks.

(f) Draft marks must be painted in contrasting color to the hull.

(g) In cases where draft marks are obscured due to operational constraints or by protrusions, the vessel must be fitted with a reliable draft indicating system from which the bow and stern drafts can be determined.

SUBCHAPTER I—CARGO AND MISCELLANEOUS VESSELS

PART 90—GENERAL PROVISIONS

15. The authority citation for part 90 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

16. Section 90.01–15 is amended by revising paragraph (b) to read as follows:

§ 90.01–15 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

46 CFR part or section where identified or described	Current OMB control No.
§ 91.27–13	2115–0517
§ 91.40–3	2115–0554
§ 91.40–5	2115–0554
§ 97.15–7	2115–0589
§ 97.15–17	2115–0589

PART 97—OPERATIONS

17. The authority citation for part 97 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 6101; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR 1971–1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

18. Section 97.15–7 is added to read as follows:

§ 97.15–7 Verification of vessel compliance with applicable stability requirements.

(a) Except as provided in paragraph (d) of this section, after loading and prior to departure and at all other times necessary to assure the safety of the vessel, the master or person in charge shall determine that the vessel complies with all applicable stability requirements in the vessel's trim and stability book, stability letter, Certificate of Inspection, and Load Line Certificate, as the case may be. The vessel may not

depart until it is in compliance with these requirements.

(b) When determining compliance with applicable stability requirements the vessel's draft, trim, and stability must be determined as necessary.

(c) If a log book is required by § 97.35, then the master or person in charge must enter an attestation statement verifying that the vessel complies with the applicable stability requirements at the times specified in paragraph (a) and any stability calculations made in support of the determination must be retained on board the vessel for the duration of the voyage.

(d) Stability verification is not required for tank barges whose Certificate of Inspection carries draft restrictions for purposes other than stability.

19. Section 97.15–17 is added to read as follows:

§ 97.15–17 Loading doors.

(a) The master of a vessel fitted with loading doors shall assure that all loading doors are closed watertight and secured during the entire voyage except that—

(1) If a door cannot be opened or closed while the vessel is at a dock, it may be open while the vessel approaches and draws away from the dock, but only as far as necessary to enable the door to be immediately operated;

(2) If needed to operate the vessel, or embark and disembark passengers when the vessel is at anchor in protected waters, loading doors may be open provided that the master determines that the safety of the vessel is not impaired.

(b) For the purposes of this section, "loading doors" include all weathertight ramps, bow visors, and openings used to load personnel, equipment, cargo, and stores, in the collision bulkhead, the side shell, and the boundaries of enclosed superstructures that are continuous with the shell of the vessel.

(c) The master shall enter into the log book the time and door location of every closing of the loading doors.

(d) The master shall enter into the log book any opening of the doors in accordance with paragraph (a)(2) of this section setting forth the time of the opening of the doors and the circumstances warranting this action.

20. Section 97.35–5 is amended by redesignating paragraphs (a)(4) through (a)(10) as paragraphs (a)(6) through (a)(12), respectively, and by adding new paragraphs (a)(4) and (a)(5) to read as follows:

§ 97.35–5 Actions required to be logged.

(a) * * *

(4) Verification of vessel compliance with applicable stability requirements. After loading and prior to departure and at all other times necessary to assure the safety of the vessel. See § 97.15–7.

(5) Loading doors. Where applicable, every closing and any opening when not docked. See § 97.15–17.

* * * * *

21. Section 97.40–10 is amended by revising the section heading and paragraph (a); by redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively; and by adding new paragraphs (b), (e), (f), and (g) to read as follows:

§ 97.40–10 Draft marks and draft indicating systems.

(a) All vessels must have draft marks plainly and legibly visible upon the stem and upon the sternpost or rudderpost or at any place at the stern of the vessel as may be necessary for easy observation. The bottom of each mark must indicate the draft.

(b) The draft must be taken from the bottom of the keel to the surface of the water at the location of the marks.

* * * * *

(e) Draft marks must be separated so that the projections of the marks onto a vertical plane are of uniform height equal to the vertical spacing between consecutive marks.

(f) Draft marks must be painted in contrasting color to the hull.

(g) In cases where draft marks are obscured due to operational constraints or by protrusions, the vessel must be fitted with a reliable draft indicating system from which the bow and stern drafts can be determined.

SUBCHAPTER I-A—MOBILE OFFSHORE DRILLING UNITS

PART 107—INSPECTION AND CERTIFICATION

22. The authority citation for part 107 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 5115; 49 CFR 1.45, 1.46; Section 107.05 also issued under the authority of 44 U.S.C. 3507.

23. Section 107.05 is amended by revising paragraph (b) to read as follows:

§ 107.05 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

46 CFR part or section where identified or described	Current OMB control No.
§ 107.305	2115–0505
§ 107.309	2115–0505
§ 109.227	2115–0589

PART 108—DESIGN AND EQUIPMENT

24. The authority citation for part 108 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3102, 3306, 5115; 49 CFR 1.46.

25. Section 108.661 is amended by adding new paragraph (e) to read as follows:

§ 108.661 Unit markings: Draft marks.

* * * * *

(e) In cases where draft marks are obscured due to operational constraints or by protrusions, the vessel must be fitted with a reliable draft indicating system from which the draft can be determined.

PART 109—OPERATIONS

26. The authority citation for part 109 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 5115, 6101, 10104; 49 CFR 1.46.

27. Section 109.227 is added to read as follows:

§ 109.227 Verification of vessel compliance with applicable stability requirements.

(a) The master or person-in-charge shall determine that the vessel complies with all applicable stability requirements in the vessel's trim and stability book, operating manual, stability letter, Certificate of Inspection, and Load Line Certificate, as the case may be, and then enter an attestation statement of the verification in the log book, at the following times:

(1) Prior to transitioning from the transit condition to the operating condition;

(2) Prior to transitioning from the operating condition to the transit condition;

(3) Prior to significant changes in deck load or ballast;

(4) At other times as required by the vessel's trim and stability book or operating manual; and

(5) At all other times necessary to assure the safety of the vessel.

(b) When determining compliance with applicable stability requirements the vessel's draft, trim, and stability must be determined as necessary and any stability calculations made in support of the determination must be

retained on board the vessel for a one month period or until a change of location, if shorter.

28. Section 109.433 is amended by redesignating paragraphs (k) through (m) as paragraphs (l) through (n), respectively, and by adding new paragraph (k) to read as follows:

§ 109.433 Log book entries.[1]

* * * * *

(k) After loading and prior to getting underway and at all other times necessary to assure the safety of the vessel, a statement verifying vessel compliance with applicable stability requirements as required by § 109.227.

* * * * *

SUBCHAPTER R—NAUTICAL SCHOOLS

PART 167—PUBLIC NAUTICAL SCHOOL SHIPS

29. The authority citation for part 167 continues to read as follows:

Authority: 46 U.S.C. 3306, 6101, 8105; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

30. Section 167.01-20 is amended by revising paragraph (b) to read as follows:

§ 167.01-20 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

46 CFR part or section where identified or described	Current OMB control No.
§ 167.15-35	2115-0554
§ 167.65-38	2115-0589
§ 167.65-43	2115-0589

31. Section 167.55-1 is revised to read as follows:

§ 167.55-1 Draft marks and draft indicating systems.

(a) All vessels must have draft marks plainly and legibly visible upon the stem and upon the sternpost or rudderpost or at any place at the stern of the vessel as may be necessary for easy observance. The bottom of each mark must indicate the draft.

(b) The draft must be taken from the bottom of the keel to the surface of the water at the location of the marks.

(c) In cases where the keel does not extend forward or aft to the location of the draft marks, due to a raked stem or cut away skeg, the draft must be measured from a line projected from the bottom of the keel forward or aft, as the case may be, to the location of the draft marks.

(d) In cases where a vessel may have a skeg or other appendage extending locally below the line of the keel, the draft at the end of the vessel adjacent to such appendage must be measured to a line tangent to the lowest part of such appendage and parallel to the line of the bottom of the keel.

(e) Draft marks must be separated so that the projections of the marks onto a vertical plane are of uniform height equal to the vertical spacing between consecutive marks.

(f) Draft marks must be painted in contrasting color to the hull.

(g) In cases where draft marks are obscured due to operational constraints or by protrusions, the vessel must be fitted with a reliable draft indicating system from which the bow and stern drafts can be determined.

32. Section 167.65-38 is added to read as follows:

§ 167.65-38 Loading doors.

(a) The master of a vessel fitted with loading doors shall assure that all loading doors are closed watertight and secured during the entire voyage except that—

(1) If a door cannot be opened or closed while the vessel is at a dock, it may be open while the vessel approaches and draws away from the dock, but only as far as necessary to enable the door to be immediately operated.

(2) If needed to operate the vessel, or embark and disembark passengers when the vessel is at anchor in protected waters, loading doors may be open provided that the master determines that the safety of the vessel is not impaired.

(b) For the purposes of this section, "loading doors" include all weathertight ramps, bow visors, and openings used to load personnel, equipment, and stores, in the collision bulkhead, the side shell, and the boundaries of enclosed superstructures that are continuous with the shell of the vessel.

(c) The master shall enter into the log book the time and door location of every closing of the loading doors.

(d) The master shall enter into the log book any opening of the doors in accordance with paragraph (a)(2) of this section setting forth the time of the opening of the doors and the circumstances warranting this action.

33. Section 167.65-42 is added to read as follows:

§ 167.65-42 Verification of vessel compliance with applicable stability requirements.

(a) After loading and prior to departure and at all other times necessary to assure the safety of the vessel, the master shall determine that the vessel complies with all applicable stability requirements in the vessel's trim and stability book, stability letter, Certificate of Inspection, and Load Line Certificate, as the case may be, and then enter an attestation statement of the verification in the log book. The vessel may not depart until it is in compliance with these requirements.

(b) When determining compliance with applicable stability requirements the vessel's draft, trim, and stability must be determined as necessary and any stability calculations made in support of the determination must be retained on board the vessel for the duration of the voyage.

PART 169—SAILING SCHOOL VESSELS

34. The authority citation for part 169 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 5115, 6101; E.O. 11735, 38 FR 21243, 3 CFR, 1971-1975 Comp., p. 793; 49 CFR 1.45, 1.46; Section 169.117 also issued under the authority of 44 U.S.C. 3507.

35. Section 169.117 is amended by revising paragraph (b) to read as follows:

§ 169.117 OMB control numbers.

* * * * *

(b) *Display.*

46 CFR part—	OMB control No.
§ 169.111	2115-0517
§ 169.201	2115-0517
§ 169.205	2115-0007, 2115-0517 2115-0546
§ 169.211	2115-0517
§ 169.213	2115-0517
§ 169.215	2115-0517
§ 169.217	2115-0517
§ 169.218	2115-0546
§ 169.219	2115-0546
§ 169.233	2115-0554
§ 169.235	2115-0517
§ 169.305	2115-0095
§ 169.509	2115-0132
§ 169.807	2115-0003
§ 169.813	2115-0546
§ 169.840	2115-0589
§ 169.841	2115-0546, 2115-0071
§ 169.857	2115-0546

36. Section 169.755 is added to read as follows:

§ 169.755 Draft marks and draft indicating systems.

(a) All vessels must have draft marks plainly and legibly visible upon the stem

[1] Note: 46 U.S.C. 11301 requires that certain entries be made in an official logbook, in addition to the entries required by this section; and 46 U.S.C. 11302 prescribes the manner of making these entries.

and upon the sternpost or rudderpost or at any place at the stern of the vessel as may be necessary for easy observance. The bottom of each mark must indicate the draft.

(b) The draft must be taken from the bottom of the keel to the surface of the water at the location of the marks.

(c) In cases where the keel does not extend forward or aft to the location of the draft marks, due to a raked stem or cut away skeg, the draft must be measured from a line projected from the bottom of the keel forward or aft, as the case may be, to the location of the draft marks.

(d) In cases where a vessel may have a skeg or other appendage extending locally below the line of the keel, the draft at the end of the vessel adjacent to such appendage must be measured to a line tangent to the lowest part of such appendage and parallel to the line of the bottom of the keel.

(e) Draft marks must be separated so that the projections of the marks onto a vertical plane are of uniform height equal to the vertical spacing between consecutive marks.

(f) Draft marks must be painted in contrasting color to the hull.

(g) In cases where draft marks are obscured due to operational constraints or by protrusions, the vessel must be fitted with a reliable draft indicating system from which the bow and stern drafts can be determined.

37. Section 169.840 is added to read as follows:

§ 169.840 Verification of vessel compliance with applicable stability requirements.

(a) After loading and prior to departure and at all other times necessary to assure the safety of the vessel, the master shall determine that the vessel complies with all applicable stability requirements in the vessel's trim and stability book, stability letter, Certificate of Inspection, and Load Line Certificate, as the case may be, and then enter an attestation statement of the verification in the log book. The vessel may not depart until it is in compliance with these requirements.

(b) When determining compliance with applicable stability requirements the vessel's draft, trim, and stability must be determined as necessary and any stability calculations made in support of the determination must be retained on board the vessel for the duration of the voyage.

SUBCHAPTER S—SUBDIVISION AND STABILITY

PART 170—STABILITY REQUIREMENTS FOR ALL INSPECTED VESSELS

38. The authority citation for part 170 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 5115; E.O. 12234, 45 FR 58801; 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

39. Section 170.001 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 170.001 Applicability.

(a) This subchapter, except where specifically stated otherwise, applies to each vessel contracted for on or after January 3, 1984, that is—

* * * * *

40. Section 170.020 is added to read as follows and all other OMB control number citations in part 170 are removed:

§ 170.020 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This section collects and displays the control numbers assigned to information collection and recordkeeping requirements in this subchapter by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). The Coast Guard intends that this section comply with the requirements of 44 U.S.C. 3507(f), which requires that agencies display a current control number assigned by the OMB for each approved agency information collection requirement.

(b) *Display.*

46 CFR part—	Current OMB control No.
§ 170.075	2115-0095, 2115-0114, 2115-0130, 2115-0131
§ 170.080	2115-0095, 2115-0114, 2115-0130, 2115-0131
§ 170.085	2115-0095, 2115-0114, 2115-0130, 2115-0131
§ 170.090	2115-0095, 2115-0114, 2115-0130, 2115-0131
§ 170.095	2115-0095, 2115-0114, 2115-0130, 2115-0131
§ 170.100	2115-0095, 2115-0114, 2115-0130, 2115-0131
§ 170.110	2115-0095, 2115-0114, 2115-0130, 2115-0131
§ 170.120	2115-0095, 2115-0114, 2115-0130, 2115-0131
§ 170.125	2115-0095, 2115-0114, 2115-0130, 2115-0131
§ 170.135	2115-0095, 2115-0114, 2115-0130, 2115-0131
§ 170.180	2115-0095, 2115-0114, 2115-0130, 2115-0131
§ 170.210	2115-0589

41. Section 170.055 is amended by redesignating paragraphs (f) through (u) as paragraphs (g) through (v), respectively, and by adding new paragraph (f) to read as follows:

§ 170.055 Definitions concerning a vessel.

* * * * *

(f) *Documented alterations* means changes to the vessel which are reflected in the approved stability information carried on board the vessel.

* * * * *

42. Section 170.110 is amended by revising paragraph (c) and the introductory text of paragraph (d), and adding a new paragraph (f) to read as follows:

§ 170.110 Stability booklet.

* * * * *

(c) Each stability book must contain sufficient information to enable the master to operate the vessel in compliance with applicable regulations in this subchapter. Information on loading restrictions used to determine compliance with applicable intact and damage stability criteria must encompass the entire range of operating drafts and the entire range of the operating trims. Information must include an effective procedure for supervision and reporting of the opening and closing of all loading doors, where applicable.

(d) The format of the stability booklet and the information included will vary dependent on the vessel type and operation. Units of measure used in the stability booklet must agree with the units of measure of the draft markings. In developing the stability booklet, consideration must be given to including the following information:

* * * * *

(f) On board electronic stability computers may be used as an adjunct to the required booklet, but the required booklet must contain all necessary information to allow for the evaluation of the stability of any intact condition that can be evaluated by use of the computer.

43. Section 170.210 is added to read as follows:

§ 170.210 Lightweight verification.

(a) Except as provided in paragraph (e) of this section, verification of a vessel's lightweight displacement and longitudinal center of gravity is required for all vessels, including vessels built prior to January 3, 1984, as follows:

(1) The owner must conduct a deadweight survey at intervals not exceeding 5 years to determine the lightweight displacement and longitudinal center of gravity, unless

otherwise authorized by the Commandant.

(2) For each vessel, the date by which its initial periodic lightweight verification must be carried out will be determined by the OCMI by consideration of a number of factors. These factors include the history and condition of the vessel, the date of the vessel's last lightweight verification, the date of the vessel's next credit drydocking, and the expiration date of the vessel's Load Line Certificate.

(3) An authorized Coast Guard representative must be present at each deadweight survey conducted under this section.

(4) If the deviation from the lightweight displacement and longitudinal center of gravity does not exceed the values in paragraph (b) of this section, the owner must certify to the Commanding Officer, Marine Safety Center that the lightweight characteristics have not changed. The Commanding Officer, Marine Safety Center may accept the certification or require the owner to provide supporting calculations for review and approval.

(b) The owner must conduct a stability test in accordance with subpart F of this part, if—

(1) The deviation of the lightweight displacement calculated from the last stability test exceeds 3 percent of the lightweight displacement;

(2) The deviation of the longitudinal center of gravity calculated from the last stability test exceeds 1 percent of LBP (length between perpendiculars);

(3) The deviation from the previously approved lightweight displacement, updated by documented alterations, exceeds 2 percent of the lightweight displacement; or

(4) The deviation from the previously approved longitudinal center of gravity, updated by documented alterations, exceeds 1 percent of LBP.

(c) If a stability test is required by paragraph (b) of this section, the stability booklet must be updated in accordance with § 170.110 to reflect the current stability condition of the vessel.

(d) The deadweight survey required in paragraph (a)(1) of this section must be repeated as part of the stability test required in paragraph (b) of this section, unless the entire stability test including the deadweight survey is completed at the same time.

(e) Periodic lightweight verification is not required for the following:

(1) Vessels to which the simplified stability test of § 171.030 of this chapter was applied;

(2) Vessels with an estimated lightweight center of gravity determined in accordance with § 170.200;

(3) Vessels to which § 170.175(d) applies;

(4) Self-elevating mobile offshore drilling units;

(5) Vessels regulated under subchapter D or subchapter I of this Chapter whose lightweight displacement comprises less than 35 percent of their total fully loaded displacement; or

(6) Vessels exempted by the Commandant.

PART 171—SPECIAL RULES PERTAINING TO VESSELS CARRYING PASSENGERS

44. The authority citation for part 171 continues to read as follows:

Authority: 43 U.S.C. 3306, 5115; E.O. 12234, 45 FR 58801; 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

45. Section 171.080 is amended by revising the introductory text of paragraph (d), by redesignating paragraph (e) as paragraph (f), and by adding new paragraph (e) to read as follows:

§ 171.080 Damage stability standards for vessels with Type I or Type II subdivision.

* * * * *

(d) *Damage survival for vessels constructed prior to December 10, 1992.* A vessel is presumed to survive assumed damage if it meets the following conditions in the final stage of flooding:

* * * * *

(e) *Damage survival for vessels constructed on or after December 10, 1992.* A vessel is presumed to survive assumed damage if it is shown by calculations to meet the conditions set forth in paragraphs (e)(1) through (e)(6) of this section in the final stage of flooding and the conditions set forth in paragraphs (e)(7) and (e)(8) of this section in each earlier stage of flooding as specified:

(1) Each vessel must have positive righting arms for at least 15 degrees beyond the final angle of equilibrium.

(2) Each vessel must not have any opening through which progressive flooding can occur within 15 degrees of the angle of equilibrium unless the vessel can meet all survival criteria prescribed in this section after progressive flooding. Openings fitted with effective weathertight closures must be considered as progressive flooding locations if the openings lead to spaces accessible to passengers or the crew.

(3) Each vessel must have an area under each righting arm curve of at least 2.82 foot-degrees (0.015 meter-radians), measured from the angle of equilibrium to the smaller of the following angles:

(i) The angle at which progressive flooding occurs; or

(ii) 22 degrees from the upright in the case of one compartment flooding or 27 degrees from the upright in the case of two compartment flooding.

(4) Each vessel must have a maximum righting arm within 15 degrees of the angle of equilibrium of at least 0.13 feet (0.04 meters) greater than each of the following heeling arms, but in no case less than 0.33 feet (0.10 meters):

(i) Passenger heeling moment divided by vessel displacement where the heeling moment is calculated assuming:

(A) Each passenger weighs 165 pounds (75 kilograms);

(B) Each passenger occupies 2.69 square feet (0.25 square meters) of deck area; and

(C) All passengers are distributed on available deck areas towards one side of the vessel on the decks where muster stations are located and in such a way that they produce the most adverse heeling moment.

(ii) Asymmetric passenger escape routes heeling moment divided by vessel displacement if the vessel has asymmetric passenger escape routes where the heeling moment is calculated assuming:

(A) Each passenger weighs 165 pounds (75 kilograms);

(B) Each passenger occupies 2.69 square feet (0.25 square meters) of deck area; and

(C) All passengers are distributed on available deck areas in a manner that accounts for the use of any asymmetric passenger escape routes to get to the decks where muster or embarkation stations are located and in such a way that they produce the most adverse heeling moment.

(iii) Launching of survival craft heeling moment divided by vessel displacement where the heeling moment is calculated assuming:

(A) All survival craft, including davit-launched liferafts and rescue boats, fitted on the side to which the vessel heels after sustained damage are swung out if necessary, fully loaded and ready for lowering;

(B) Persons not in the survival craft that are swung out and ready for lowering are centered about the center line so that they do not provide additional heeling or righting moments; and

(C) Survival craft on the side of the vessel opposite to which the vessel heels remain stowed.

(iv) Wind pressure heeling moment divided by vessel displacement where the heeling moment is calculated assuming:

(A) A wind pressure of 2.51 pounds per square foot (120 Newtons per square meter);

(B) The wind acts on an area equal to the projected lateral area of the vessel above the waterline corresponding to the intact condition; and

(C) The wind lever arm is the vertical distance from a point at one-half the mean draft, or the center of area below the waterline, to the center of the lateral area.

(5) Each vessel must have an angle of equilibrium that does not exceed the following:

(i) 7 degrees for one compartment flooding; or

(ii) 12 degrees for two compartment flooding.

(6) The margin line of the vessel must not be submerged in the equilibrium condition.

(7) Each vessel must have a maximum angle of equilibrium that does not exceed 15 degrees during each earlier stage of flooding.

(8) Each vessel must have a maximum righting arm of at least 0.16 feet (0.05 meters) and positive righting arms for a range of at least 7 degrees during each earlier stage of flooding. Only one breach in the hull and only one free surface need be assumed when meeting the requirements of this paragraph.

* * * * *

SUBCHAPTER T—SMALL PASSENGER VESSELS (UNDER 100 GROSS TONS)

PART 175—GENERAL PROVISIONS

46. The authority citation for part 175 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703, 5115, 6165; 49 U.S.C. App. 1804; 49 CFR 1.45, 1.46; Section 175.01–3 also issued under the authority of 44 U.S.C. 3507.

47. Section 175.01–3 is amended by revising paragraph (b) to read as follows:

§ 175.01–3 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

46 CFR part or section where identified or described	Current OMB control No.
§ 177.05	2115–0095
§ 179.01–30	2115–0136
§ 179.10–3	2115–0095
§ 179.20–1	2115–0095
§ 185.20–5	2115–0589
§ 185.20–17	2115–0589
§ 186.10	2115–0514

PART 185—OPERATIONS

48. The authority citation for part 185 continues to read as follows:

Authority: 46 U.S.C. 3306, 6101, 8105; 49 CFR 1.46.

49. Section 185.20–5 is added to read as follows:

§ 185.20–5 Verification of vessel compliance with applicable stability requirements.

(a) After loading and prior to departure and at all other times necessary to assure the safety of the vessel, the master shall determine that the vessel complies with all applicable stability requirements in the vessel's trim and stability book, stability letter, Certificate of Inspection, and Load Line Certificate, as the case may be. The vessel may not depart until it is in compliance with these requirements.

(b) When determining compliance with applicable stability requirements the vessel's draft, trim, and stability must be determined as necessary and any stability calculations made in support of the determination must be retained on board the vessel for the duration of the voyage.

(c) If a log book is required, then the master must enter an attestation statement verifying that the vessel complies with the applicable stability requirements at the times specified in paragraph (a) of this section.

50. Section 185.20–17 is added to read as follows:

§ 185.20–17 Loading doors.

(a) The master of a vessel fitted with loading doors shall assure that all loading doors are closed watertight and secured during the entire voyage except that—

(1) If a door cannot be opened or closed while the vessel is at a dock, it may be open while the vessel approaches and draws away from the dock, but only as far as necessary to enable the door to be immediately operated.

(2) If needed to operate the vessel, or embark and disembark passengers when the vessel is at anchor in protected waters, loading doors may be open provided that the master determines that the safety of the vessel is not impaired.

(b) For the purposes of this section, "loading doors" include all weathertight ramps, bow visors, and openings used to load personnel, equipment, and stores, in the collision bulkhead, the side shell, and the boundaries of enclosed superstructures that are continuous with the shell of the vessel.

(c) If a log book is required, then the master shall make the following entries:

(1) The time and door location of every closing of the loading doors; and

(2) Any opening of the doors in accordance with paragraph (a)(2) of this section setting forth the time of the opening of the doors and the circumstances warranting this action.

51. Section 185.30–3 is added to read as follows:

§ 185.30–3 Hull markings.

(a) This section applies to each vessel that fits into any one of the following categories:

(1) A vessel of more than 65 feet (19.8 meters) in length.

(2) A sailing vessel of more than 65 feet (19.8 meters) in length.

(3) A vessel authorized to carry more than 150 passengers.

(4) A vessel authorized to carry more than 12 passengers on an international voyage.

(5) A vessel with more than 1 deck above the bulkhead deck exclusive of a pilot house.

(b) All vessels must:

(1) Have permanent draft marks at each end of the vessel; or

(2) Have permanent loading marks placed on each side of the vessel forward, amidships, and aft to indicate the maximum allowable draft and trim.

(c) A loading mark required by paragraph (b)(2) of this section must be a horizontal line of at least 8 inches in length and 1 inch in height, with its upper edge passing through the point of maximum draft. The loading mark must be painted in contrasting color to the sideshell paint.

(d) In cases where draft marks are obscured due to operational constraints or by protrusions, the vessel must be fitted with a reliable draft indicating system from which the bow and stern drafts can be determined.

(e) On a vessel on which the number of passengers permitted on the upper decks is limited by stability criteria, as indicated by the vessel's stability letter, the maximum number of passengers allowed on the upper decks must be indicated by a durable marking of numbers and letters at least one inch in height at the entranceway to each such deck.

SUBCHAPTER U—OCEANOGRAPHIC RESEARCH VESSELS

PART 188—GENERAL PROVISIONS

52. The authority citation for part 188 continues to read as follows:

Authority: 46 U.S.C. 2113, 3306, 5115; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

53. Section 188.01–15 is amended by revising paragraph (b) to read as follows:

§ 188.01–15 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

46 CFR part or section where identified or described	Current OMB control No.
§ 189.40–3	2115—0554
§ 189.40–5	2115—0554
§ 196.15–7	2115—0589
§ 196.15–18	2115—0589

PART 196—OPERATIONS

54. The authority citation for part 196 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2113, 3306, 5115, 6101; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

55. Section 196.15–7 is added to read as follows:

§ 196.15–7 Verification of vessel compliance with applicable stability requirements.

(a) After loading and prior to departure and at all other times necessary to assure the safety of the vessel, the master shall determine that the vessel complies with all applicable stability requirements in the vessel's trim and stability book, stability letter, Certificate of Inspection, and Load Line Certificate, as the case may be, and then enter an attestation statement of the verification in the log book. The vessel may not depart until it is in compliance with these requirements.

(b) When determining compliance with applicable stability requirements the vessel's draft, trim, and stability must be determined as necessary and any stability calculations made in support of the determination must be retained on board the vessel for the duration of the voyage.

56. Section 196.15–18 is added to read as follows:

§ 196.15–18 Loading doors.

(a) The master of a vessel fitted with loading doors shall assure that all loading doors are closed watertight and secured during the entire voyage except that—

(1) If a door cannot be opened or closed while the vessel is at a dock, it may be open while the vessel approaches and draws away from the dock, but only as far as necessary to enable the door to be immediately operated.

(2) If needed to operate the vessel, or embark and disembark passengers when the vessel is at anchor in protected waters, loading doors may be open provided that the master determines that the safety of the vessel is not impaired.

(b) For the purposes of this section, "loading doors" include all weathertight ramps, bow visors, and openings used to load personnel, equipment, cargo, and stores, in the collision bulkhead, the side shell, and the boundaries of enclosed superstructures that are continuous with the shell of the vessel.

(c) The master shall enter into the log book the time and door location of every closing of the loading doors.

(d) The master shall enter into the log book any opening of the doors in accordance with paragraph (a)(2) of this section setting forth the time of the opening of the doors and the circumstances warranting this action.

57. Section 196.35–5 is amended by redesignating paragraphs (a)(4) through (a)(11) as paragraphs (a)(6) through (a)(13), respectively, and by adding new paragraphs (a)(4) and (a)(5) to read as follows:

§ 196.35–5 Actions required to be logged.

(a) * * *

(4) Verification of vessel compliance with applicable stability requirements. After loading and prior to departure and at all other times necessary to assure the safety of the vessel. See § 196.15–7.

(5) Loading doors. Where applicable, every closing and any opening when not docked. See § 196.15–18.

* * * * *

58. Section 196.40–10 is amended by revising the section heading and paragraph (a); by redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively; and by adding new paragraphs (b), (e), (f), and (g) to read as follows:

§ 196.40–10 Draft marks and draft indicating systems.

(a) All vessels must have draft marks plainly and legibly visible upon the stem and upon the sternpost or rudderpost or at any place at the stern of the vessel as may be necessary for easy observance. The bottom of each mark must indicate the draft.

(b) The draft must be taken from the bottom of the keel to the surface of the water at the location of the marks.

* * * * *

(e) Draft marks must be separated so that the projections of the marks onto a vertical plane are of uniform height equal to the vertical spacing between consecutive marks.

(f) Draft marks must be painted in contrasting color to the hull.

(g) In cases where draft marks are obscured due to operational constraints or by protrusions, the vessel must be fitted with a reliable draft indicating system from which the bow and stern drafts can be determined.

Dated: May 8, 1992.

A.E. Henn,

Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 92–21651 Filed 9–10–92; 8:45 am]

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Friday
September 11, 1992

Part III

Environmental Protection Agency

40 CFR Part 136

Guidelines Establishing Test Procedures for the Analysis of Pollutants; Microwave Digestion; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 136

[FRL 4125-6]

Guidelines Establishing Test Procedures for the Analysis of Pollutants; Microwave Digestion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendments.

SUMMARY: This amendment approves the use of an additional procedure, microwave heating, for digestion of samples prior to quantitative determination for 13 inorganic chemicals. The precision and recovery of analyses using this technique are not substantially different from those obtained using digestion techniques already approved. Use of approved analytical techniques is required whenever the waste constituent specified is required to be measured for: an NPDES permit application; discharge monitoring reports; state certification; and other requests from the permitting authority for quantitative or qualitative effluent data. Use of approved test procedures is also required for the expression of pollutant amounts, characteristics, or properties in effluent limitations guidelines and standards of performance and pretreatment standards, unless otherwise specifically noted or defined.

DATES: This rule shall be effective on October 13, 1992. In accordance with 40 CFR 23.2 (45 FR 26048), these amendments to the regulation shall be considered issued for purposes of judicial review at 1 p.m. eastern time, September 28, 1992.

Under section 509(b)(1) of the Clean Water Act, judicial review of these amendments can be obtained only by filing a petition for review in the United States Court of Appeals within 120 days after they are considered issued for purposes of judicial review. Under section 509(b)(2) of the Clean Water Act, these amendments may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

The incorporation by reference of certain publications listed in the regulation is approved by the Office of the Federal Register as of October 13, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. James J. Lichtenberg, Environmental Monitoring Systems Laboratory, Office of Research and Development, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268. Telephone number: (513) 569-7306.

SUPPLEMENTARY INFORMATION:

I. Authority

This regulation is promulgated under authority of sections 301, 304(h) and 501(a) of the Clean Water Act, 33 U.S.C. 1251 *et seq.* (the Federal Water Pollution Control Act Amendments of 1972 as amended) (the "Act"). Section 304(h) of the Act requires the Administrator of the EPA to "promulgate guidelines establishing test procedures for the analysis of pollutants that shall include the factors which must be provided in any certification pursuant to section 401 of this Act or permit application pursuant to section 402 of this Act". Section 501(a) of the Act authorizes the Administrator to "prescribe such regulations as are necessary to carry out his functions under this Act".

II. Regulatory Background

The CWA establishes two principal bases for effluent limitations. First, existing discharges are required to meet technology-based effluent limitations. New source discharges must meet new source performance standards based on the best demonstrated technology-based controls. Second, where necessary, additional requirements are imposed to assure attainment and maintenance of water quality standards established by the States under section 303 of the CWA. In establishing or reviewing NPDES permit limits, EPA must ensure that permitted discharges will not cause or contribute to a violation of water quality standards, including designated water uses.

For use in permit applications, discharge monitoring reports, and state certification and to ensure compliance with effluent limitations, standards of performance, and pretreatment standards, EPA has promulgated regulations providing nationally-approved testing procedures at 40 CFR part 136. Test procedures have previously been approved for 262 different parameters. Those procedures apply to the analysis of inorganic (metal, non-metal, mineral) and organic chemical, radiological, bacteriological, nutrient, demand, residue, and physical parameters.

Additionally, some particular industries may discharge pollutants for which test procedures have not been proposed and approved under 40 CFR part 136. Under 40 CFR 122.41 permit writers may impose monitoring requirements and establish test methods for pollutants for which no approved part 136 method exists 40 CFR 122.41(j)(4). EPA may also approve additional test procedures when establishing industry-wide technology-based effluent limitations guidelines and standards as described at 40 CFR 401.13.

The procedures for approval of alternate test procedures (ATPs) are described at 40 CFR 136.4 and 136.5. Under these procedures the Administrator may approve alternate test procedures for nationwide use which are developed and proposed by any person. 40 CFR 136.4(a). Persons wishing to use such alternate procedures, must apply to the State or Regional EPA permitting office (for limited approval under § 136.4(b) and to the Director of the Environmental Monitoring Systems Laboratory in Cincinnati (for nationwide approval under § 136.4(d)). As specified below, today's rule approves an optional nationwide alternate procedure for digestion of certain metals in the preparation of wastewater test samples.

III. The Microwave Digestion Procedure

The CEM Corporation, in accordance with the regulations published at 40 CFR 136.5, applied for nationwide approval of their "Closed Vessel Microwave Digestion of Wastewater Samples for Metals Determination". Digestion is a sample preparation step that is required prior to the measurement of total metals in wastewaters. Specifically, as described below, microwave digestion may be applicable for the preparation of wastewater samples when testing using one or more of the following determinative techniques: Flame atomic absorption spectroscopy (AAS), inductively-coupled plasma (ICP) atomic emission spectroscopy (AES), or direct current plasma (DCP) AES. This rule approves the microwave digestion procedure for the following metals: Aluminum, antimony, arsenic, barium, cadmium, chormium, copper, iron, lead, manganese, nickel, selenium, and zinc.

A. Scope of the Procedure

This procedure utilizes closed-vessel microwave heating of samples as an alternative to the conventional open-beaker hot plate digestion. This procedure is specifically limited to the preparation of domestic and industrial wastewater samples for elemental determinations, as follows:

i. Thirteen elements: Aluminum, antimony, arsenic, barium, cadmium, chromium, cooper, iron, lead, manganese, nickel, selenium, and zinc by ICP/AES.

ii. Eleven elements: Aluminum, antimony, barium, cadmium, chromium, copper, iron, lead,

manganese, nickel, and zinc for determination by direct aspiration AAS.

iii. Ten elements: Aluminum, barium, cadmium, chromium, cooper, iron, lead, manganese, nickel, and zinc by DCP/AES.

This procedure is also specifically limited to the preparation of domestic and industrial wastewater samples for the determination of the 13 specified elements when present at concentrations less than or equal to those listed below:

Element	Maximum applicable concentration * (mg/L)
Aluminum	50.0
Antimony	50.0
Arsenic	50.0
Barium	0.5
Cadmium	0.5
Chromium	10.0
Copper	6.0
Iron	50.0
Lead	0.4
Manganese	5.0
Nickel	40.0
Selenium	80.0
Zinc	10.0

* Samples may be diluted, before digestion, to bring the concentration below the maximum concentration.

B. Summary of the Method

A 50-mL aliquot of a wastewater sample is acid-digested in closed Teflon ™PFA (perfluoro alkoxy) vessel using microwave heating. The closed vessel configuration allows the samples to be digested at a temperature and pressure that are significantly higher than those used for open-beaker digestions. The filtrate or supernatant of each digestate can be analyzed by direct aspiration AAS, by ICP/AES, or by DCP/AES, as specified above.

C. Technical Justification for Approved Procedure

Approval of this procedure is based on a data package submitted by the applicant, CEM Corporation. EPA is approving the method based on the method description, comparative analyses using the proposed and approved procedures, and EPA's comparability review.

The CEM Corporation provided test data comparing this procedure (microwave digestion) to the approved procedure (open beaker hot plate digestion) for preparation of test samples analyzed with ICP. EPA statisticians and chemists conducted an independent review of the data. The recovery and precision of all the submitted data (for both methods) was also compared to the recovery and precision acceptance criteria derived from an interlaboratory study of the ICP method for these elements.

The Agency judged the open beaker hot plate digestion procedure, utilized as the approved preparation method to be applicable for comparison against the microwave procedure for the preparation of samples to be analyzed for the 13 specified metals as follows: 13 by ICP/AES, 11 by direct aspiration AAS, and 10 by DCP/AES.

EPA's Environmental Monitoring Systems Laboratory in Cincinnati, Ohio (EMSL-Cincinnati) thoroughly reviewed and evaluated the supporting data submitted by the CEM Corporation. The comparability reviews indicated that the analyses afforded comparable recovery and precision in the evaluated concentration ranges for aluminum, antimony, arsenic, chromium, copper, iron, manganese, nickel, selenium, and zinc. The reviews, however, revealed that this microwave procedure only afforded comparable recovery and precision observations in the lower levels of the evaluated concentration ranges for barium (Ba), cadmium (Ca), and lead (Pb). Approval of this procedure for these three elements is, therefore, limited to the following concentrations: ≤ 0.5 mg Ba/L, ≤ 0.5 mg Cd/L, and ≤ 0.4 mg Pb/L. Additionally, one of the metals, silver, for which CEM sought method approval, was deemed inapplicable by EPA based on the applicants comparability data. EPA proposed approval of the microwave digestion procedure and sought public comment on the suitability of this microwave digestion technique as an alternate procedure for use in the determination of the thirteen metals in 56 FR 55410 (October 25, 1991). The administrative record is on file at EMSL-Cincinnati, 26 West Martin Luther King Dr., Cincinnati, Ohio 45268. The record is available for public inspection. The approved procedure description is also available from CEM Corporation, P.O. Box 200, Matthews, North Carolina 28106.

Based on EMSL-Cincinnati's review, and pursuant to 40 CFR 136.5, EPA approved the CEM microwave digestion procedure as an acceptable procedure for nationwide use. Specifically, the procedure exhibits sufficient precision and recovery to establish (1) its acceptability under part 136 and (2) its comparability to other approved procedures for analysis of the 13 listed metals. As an approved alternate test procedure, this procedure is acceptable for use by any person required to test for the 13 listed metals when using ICP/MS, for the 11 listed metals when using direct aspiration AAS, and for 10 listed metals when using DCP/AES. The procedure, however, is limited to the applicable metals, determinative techniques and concentrations described above.

IV. Public Comments and Response to Most Significant Comments

The Agency requested comments on the proposal to approve the CEM microwave digestion procedure for applicability to 13 metals in wastewater samples. Comments were received from 10 individuals/organizations. All commenters favored the approval of microwave digestion as an acceptable alternate procedure (ATP). The most significant comments were as follows:

Comment: Approval of microwave digestion should not be specific to the CEM procedure.

Response: Under the conditions set forth in 40 CFR 136.4, any person may apply for approval of an alternate test procedure for nationwide use. Usually, as in the case of an instrument manufacturer such as CEM, the application is by its very nature proprietary. While this rule is specific to the CEM procedure, other microwave system manufacturers may apply for approval of their systems pursuant to 40 CFR 136.4. EPA will consider proposing a more generic microwave digestion procedure when validation data becomes available to support a broader scope procedure. EPA's Environmental Monitoring Management Council has a ongoing project to consolidate EPA's regulatory methods for metals. Included in the scope of this project is a microwave digestion procedure.

Comment: Three commenters expressed concern about the variability of microwave heating systems over their applicable ranges. Commenters were concerned that samples would not meet the required temperature for a long enough period of time. They recommended that multipoint power calibration be required consistent with that prescribed in Methods 3015 and 3051. Office of Solid Waste Method Manual, SW-846.

Response: EPA disagrees with the commenter's recommendation because this CEM microwave digestion procedure involves a slow heating rate and a single power setting. Further, this procedure is approved only for wastewaters and the temperature achieved for a minimum of 10 minutes is significantly higher than that achieved using the approved hot plate procedure. The acid concentration used with this CEM procedure is greater than that used with the approved hot plate procedure.

These conditions provide a more vigorous digestion than the approved hot plate procedure. The CEM procedure employed to generate the comparability data used a single point power calibration of the microwave system at 75% or 100% of power rating of the system depending on the number of samples to be digested. This procedure, for use with effluent samples involves a slow (30 or 50 minutes) heating rate at a fixed power setting. The comparability study demonstrated the adequacy of these conditions for digestion of 6 to 12 effluent samples containing the 13 applicable metals. The comparability study report, "Equivalency Study for Closed Vessel Microwave Digestion of National Pollutant Discharge Elimination System Waste Streams as an Alternate Test Procedure", was available in the rule making docket during the comment period. For this system, CEM has demonstrated that adequate digestion occurs because of a fixed rate of power increase and a long digestion period. The procedure demonstrates performance comparable to the approved procedure and any remaining variability does not affect test results. Therefore, EPA is not requiring a multipoint calibration when apply this CEM procedure. Multipoint power calibration may be important in the SW-846 methods to assure that a specific temperature is achieved in a short time and that the temperature is held for a predetermined time, because these methods employ a faster heating rate and variable power settings.

Comment: Evaluation of an alternate test procedure should not rely, exclusively, on a commercial vendor's data.

Response: EPA agrees. The internal ATP comparability review protocol requires that comparability data be generated by an independent, disinterested third party. The data submitted to EPA by CEM was, in fact, generated by Enseco Incorporated, Arvada, Colorado. Tables 1 and 2 of the procedure, listing recovery and precision data, were prepared by EPA during the course of its evaluation of the study results.

Comment: Several commenters objected to limiting the microwave digestion procedure to the 13 specified metals and limiting the applicable concentration ranges, especially those for barium, cadmium, and lead. This limitation will require the use of a second digestion procedure to cover all of the regulated metals and/or redigestion of samples after dilution, thus minimizing the advantage of microwave digestion.

Response: EPA agrees that, for greatest advantage, broad application of microwave digestion is preferred. However, ATP applicants have the option to limit their application. In this case, CEM chose to apply for approval for 14 metals. After evaluation of the data, EPA determined that comparability to the existing approved procedure was demonstrated only for the 13 specified metals and for the concentration ranges identified in the preamble and in the method. The method is not approved for the digestion of silver. EPA will consider extending the ranges, if acceptable comparability data become available. Microwave digestion is being approved as an option to the analyst. The analyst may choose to use it or not depending on the needs of the permittee.

Comment: One commenter recommended that EPA reconsider approving microwave digestion for samples to be analyzed for silver.

Response: The concentration levels of silver employed in the comparability study for the approved and the proposed procedures exceeded the EPA recommended levels. The observed recoveries in the applicable data were unacceptable for both the proposed and the approved procedures when compared to a previous interlaboratory study of the approved procedure. Therefore, EPA is not approving the use of microwave digestion for silver.

Comment: The proposal does not mention the use of microwave digestion for samples to be analyzed by either the graphite furnace atomic absorption (GFAA) or the inductively coupled plasma-mass spectrometry (ICP-MS).

Response: Microwave digestion is not approved for preparation of samples to be analyzed by GFAA or ICP-MS because no comparability data have been generated with either of these instruments, using the acid concentration specified in the CEM procedure. High acid concentration is known to cause interference when using conventional GFAA, as well as deterioration of the test instrument. Such deterioration tends to adversely affect precision and recovery and to require frequent maintenance. In addition, the ICP-MS method is not yet approved by EPA for use under 40 CFR part 136. However, EPA is now preparing a proposal to recommend approval of ICP-MS and, in the review process, is considering the applicability of microwave digestion.

Comment: Microwave digestion should be extended to sample matrices other than NPDES effluents.

Response: CEM submitted the ATP application for its microwave digestion procedure under the provisions of 40 CFR part 136 which applies only to testing pursuant to the Clean Water Act. As required, comparability data for this application were obtained from the analysis of appropriate effluent samples. The data are not applicable to other matrices and thus, this rule does not approve this CEM procedure for use with methods to determine compliance with other statutes such as the Resource Conservation and Recovery Act (RCRA). As indicated by foregoing reference to SW-846 Methods 3015 and 3051, the Office of Solid Waste is, independently, considering application of microwave digestion under RCRA.

Comment: One commenter expressed concern over whether the procedure has been adequately tested on samples containing suspended solids and whether there is a limit to the solids concentration that can be digested.

Response: The comparability study applied the currently approved hot plate digestion and the CEM microwave digestion procedures to 29 different industrial effluents that collectively represent the five most frequently monitored industrial categories for each of the 13 elements. The variety of samples studied more than adequately represents the range of physical characteristics, including suspended solids and chemical characteristics typically associated with industrial effluents. The question of a limit to the amount of solids that can be digested when using microwave or hot plate digestion has not been fully studied. However, the CEM comparability data does not indicate that settleable solid limitations are necessary for approval because the samples used in the comparability studies achieved comparable results. EPA, in preparing new methods for metals, is considering a limit of one percent undissolved solids in an aqueous sample. Currently, the approved hot plate procedure to which the microwave digestion is compared does not contain such limits.

Comment: One commenter expressed concern about safety in the use of microwave digestion equipment.

Response: When deciding to use the option of microwave digestion, the analyst must recognize potential safety hazards in using microwave equipment. CEM addressed safety issues in the procedure under Section 5. Apparatus and Equipment (5.3) and Section 7. Safety. Operator manuals supplied with the equipment also address safety issues.

V. Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, requires a regulatory impact analysis. EPA has determined that this regulation is not major as it will not result in an effect on the economy of $100 million or more, a significant increase in cost or prices, or any of the effects described in the Executive Order. This final rule simply specifies an analytical technique which may be used by laboratories in measuring concentrations of certain metals and, therefore, has no adverse economic impacts. This action was submitted to OMB for review under the Executive Order.

B. Regulatory Flexibility Act

This amendment is consistent with the objectives of the Regulatory Flexibility Act (5 U.S.C. 602 et seq.) because it will not have a significant economic impact on a substantial number of small entities. The procedure included in this rule gives all laboratories the flexibility to use this alternate method or not to use it.

C. Paperwork Reduction Act

This rule contains no requests for information activities and, therefore, no information collection request (ICR) was submitted to the Office of Management and Budget (OMB) for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 136

Incorporation by reference, Water pollution control.

Dated: September 2, 1992.

F. Henry Habicht II,

Acting Administrator.

In consideration of the preceding, EPA amends part 136 of title 40 of the Code of Federal Regulations as follows:

1. The authority citation for part 136 continues to read as follows:

Authority: Secs. 301, 304(h), 307, and 501(a) Public Law 95–217, Stat. 1566, *et seq.* (33 U.S.C. 1251 *et seq.* (the Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977).

2. Section 136.3 is amended by revising in Table IB of paragraph (a): the column headings, footnote 4, and footnote 34; by adding footnote 35; and by adding a new footnote number 36 for the following entries and by revising these entries: 3, Aluminum; 5, Antimony; 6, Arsenic; 7, Barium; 12, Cadmium; 19, Chromium; 22, Copper; 30, Iron; 32, Lead; 34, Manganese; 37, Nickel; 60, Selenium, and 75, Zinc; and paragraph (b) is amended by revising the reference (32) and by adding a new reference (33) to read as follows:

§ 136.3 Identification of test procedures.

* * * * *

TABLE 1B.—LIST OF APPROVED INORGANIC TEST PROCEDURES

Parameter, units and methods	Reference (Method No. or Page)				
	EPA [1, 36]	Std. methods 17th Ed.	ASTM	USGS [8]	Other
* * *	*	*	*	*	*
3. Aluminum—Total [4], mg/L; digestion [4] followed by:					
AA direct aspiration [36]	202.1	3111D		I-3051-85	
AA furnace	202.2	3113B			
Inductively coupled plasma (ICP) [36]	[5] 200.7	3120B			
Direct current plasma (DCP) [36], or			D4190-88		Note 34.
Colorimetric (Eriochrome cyanine R)		3500-Al D			
* * *	*	*	*	*	*
5. Antimony—Total [4], mg/L; digestion [4] followed by:					
AA direct aspiration [36]	204.1	3111 B			
AA furnace, or	204.2	3111 B			
ICP [36]	[5] 200.7	3120 B			
6. Arsenic-Total [4], mg/L; digestion [4] followed by	206.5				
AA gaseous hydride	206.3	3114 B 4.d	D2972-84(B)	I-3062-85	
AA furnace	206.2	3113 B			
ICP [36], or	[5] 200.7	3120 B			
Colorimetric (SDDC)	206.4	3500-As C	D2972-84(A)	I-3060-85	
7. Barium—Total [4], mg/L; digestion [4] followed by:					
AA direct aspiration [36]	208.1	3111 D		I-3084-85	
AA furnace	208.2	3113 B			
ICP [36], or	[5] 200.7	3120 B			
DCP [36]					Note 34.
* * *	*	*	*	*	*
12. Cadmium—Total [4], mg/L; digestion [4] followed by:					
AA direct aspiration [36]	213.1	3111 B or C	D3557-90 (A or B)	I-3135-85 or I-3136-85.	C [9] 974.27 D [9] p.37.
AA furnace	213.2	3113 B			
ICP [36]	[5] 200.7	3120 B		I-1472-85	
DCP [36]			D4190-88		Note 34.
Voltometry [11], or			D 3557-90 C		
Colorimetric (Dithizone)		3500-Cd D			
* * *	*	*	*	*	*
19. Chromium—Total [4], mg/L; digestion [4] followed by:					
AA direct aspiration [36]	218.1	3111 B	D1687-86(D)	I-3236-85	[9] 974.27
AA chelation-extraction	218.3	3111 C			
AA furnace	218.2	3113 B			
ICP [36]	[5] 200.7	3120 B			
DCP [36], or			D4190-88		Note 34.
Voltametry [11], or			D3557-90C		
Colorimetric (Diphenylcarbazide)		3500-Cr D	D1687-84(A)		
* * *	*	*	*	*	*
22. Copper—Total [4], mg/L; digestion [4] followed by:					
AA direct aspiration [36]	220.1	3111 B or C	D1688-90 (A or B)	I-3270-85 or I-3271-85.	[9] 974.27 [9] p. 37.
AA furnace	220.2	3113 B			
ICP [36]	[5] 200.7	3120 B			
DCP [36], or			D4190-88		Note 34.
Colorimetric (Neocupnoine), or		3500-Cu D	1688-84		
(Bicinchoninate)		or E	(88)(A)		Note 19.
* * *	*	*	*	*	*

TABLE 1B.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter, units and methods	Reference (Method No. or Page)				
	EPA [1, 35]	Std. methods 17th Ed.	ASTM	USGS [2]	Other
30. Iron—Total [4], mg/L; digestion [4] followed by:					
AA direct aspiration [36]	236.1	3111 B or C	D1068-90 (A or B)	I-3381-85	[3] 74.27.
AA furnace	236.2	3113 B			
ICP [36]	[5] 200.7	3120 B			
DCP [36], or					Note 34.
Colorimetric (Phenanthroline)		3500-Fe D	D1068-90(D)		Note 22.
* * *	*	*	*	*	*
32. Lead—Total [4], mg/L; digestion [4] followed by:					
AA direct aspiration [36]	239.1	3111B or C	D3559-90 (A or B)	I-3399-85	[3] 974.27.
AA furnace	239.2	3113 B			
ICP [36]	[5] 200.7	3120 B			
DCP [36]			D4190-88		Note 34.
Voltametry [11], or			D3559-90(C)		
Colorimetric (Dithizone)		3500-Pb D			
* * *	*	*	*	*	*
34. Manganese—Total [4], mg/L; digestion [4] followed by:					
AA direct aspiration [36]	243.1	3111 B or C	D858-90 (A or B)	I-3454-85	[3] 974.27.
AA furnace	243.2	3113 B			
ICP [36]	[5] 200.7	3120 B			
DCP [36], or			D4190-88		Note 34.
Colorimetric (Persulfate), or		3500-Mn D	D858-84(A) (1988)		[3] 920.203.
(Periodate)					Note 23.
* * *	*	*	*	*	*
37 Nickel—Total [4], mg/L; digestion [4] followed by:					
AA direct aspiration [36]	249.1	3111B or C	D1886-90 (A or B)	I-3499-85	
AA furnace	249.2	3111 B			
ICP [36]	[5] 200.7	3120 B			
DCP [36], or			D4190-88		Note 34.
Colorimetric (Heptoxime)		3500-Ni D			
* * *	*	*	*	*	*
60. Selenium—Total [4], mg/L; digestion [4] followed by:					
AA furnace	270.2	3113 B			
ICP [36], or	[5] 200.7	3120 B			
AA gaseous hydride	270.3	3114 B	D3859-88(A)	I-3667-85	
* * *	*	*	*	*	*
75. Zinc—Total [4], mg/L; digestion [4] followed by:					
AA direct aspiration [36]	289.1	3111 (B or C)	D1691-90 (A or B)	I-3900-85	[3] 974.27. [9] p. 37.
AA furnace	289.2				
ICP [36]	[5] 200.7	3120 b			
DCP [36], or			D4190-88		Note 34.
Colorimetric (Dithizone) or		3500-Zn E			
(Zincon)		3500-Zn F			Note 33.

[4] For the determination of total metals the sample is not filtered before processing. A digestion procedure is required to solubilize suspended material and to destroy possible organic-metal complexes. Two digestion procedures are given in "Methods for Chemical Analysis of Water and Wastes, 1979 and 1983." One (section 4.1.3), is a vigorous digestion using nitric acid. A less vigorous digestion using nitric and hydrochloric acids (section 4.1.4) is preferred; however, the analyst should be cautioned that this mild digestion may not suffice for all samples types. Particularly, if a colorimetric procedure is to be employed, it is necessary to ensure that all organo-metallic bonds be broken so that the metal is in a reactive state. In those situations, the vigorous digestion is to be preferred making certain that at no time does the sample go to dryness. Samples containing large amounts of organic materials would also benefit by this vigorous digestion. Use of the graphite furnace technique, inductively coupled plasma, as well as determinations for certain elements such as arsenic, the noble metals, mercury, selenium, and titanium require a modified digestion and in all cases the method write-up should be consulted for specific instruction and/or cautions. **Note:** If the digestion included in one of the other approved references is different than the above, the EPA procedure must be used.

Note: If the digestion included in one of the other approved references is different than the above, the EPA procedure must be used.

Dissolved metals are defined as those constituents which will pass through a 0.45 micron membrane filter. Following filtration of the sample, the referenced procedure for total metals must be followed. Sample digestion of the filtrate for dissolved metals, (or digestion of the original sample solution for total metals) may be omitted for AA (direct aspiration or graphite furnace) and ICP analyses provided the sample solution to be analyzed meets the following criteria:

a. has a low COD (<20)

b. is visibly transparent with a turbidity measurement of 1 NTU or less

c. is colorless with no perceptible odor, and

d. is of one liquid phase and free of particulate or suspended matter following acidification.

* * * * * * *

[34] "Direct Current Plasma (DCP) Optical Emission Spectrometric Method for Trace Elemental Analysis of Water and Wastes, Method AES0029," 1986-Revised 1991, Fison Instruments, Inc., 32 Commerce Center, Cherry Hill Drive, Danvers, MA 01923.

[35] Precision and recovery statements for the atomic absorption direct aspiration and graphite furnace methods, and for the spectrophotomertic SDDC method for arsenic are provided in appendix D of this part titled, "Precision and Recovery Statements for Methods for Measuring Metals".

[36] "Closed Vessel Microwave Digestion of Wastewater Samples for Determination of Metals", CEM Corporation, P.O. Box 200, Matthews, North Carolina 28106-0200, April 16, 1992. Available from the CEM Corporation.

* * * * * * *

(b)

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References, Sources, Costs, and Table citations:

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(32) "Direct Current Plasma (DCP) Optical Emission Spectrometric Method for Trace Elemental Analysis of Water and Wastes", Method AES 0029, 1986-Revised 1991, Fison Instruments, Inc., 32 Commerce Center, Cherry Hill Drive, Danvers, MA 01923. Table B, Note 34.

(33) "Closed Vessel Microwave Digestion of Wastewater Samples for Determination of Metals, CEM Corporation, P.O. Box 200, Matthews, North Carolina 28106-0200, April 16, 1992. Available from the CEM Corporation. Table IB, Note 36.

[FR Doc. 92-21785 Filed 9-10-92; 8:45 am]

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federal register

Friday
September 11, 1992

Part IV

Environmental Protection Agency

40 CFR Part 414

Organic Chemicals, Plastics and Synthetic Fibers Category Effluent Limitations Guideline Pretreatment Standards, and New Source Performance Standards; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 414

[FRL-4088-7]

RIN 2040-AB65

Organic Chemicals, Plastics and Synthetic Fibers Category Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating several amendments to agency regulations which limit effluent discharges to waters of the United States and the introduction of pollutants into publicly owned treatment works by existing and new sources in the Organic Chemicals, Plastics, and Synthetic Fibers (OCPSF) Point Source Category. These amendments are based on an October 18, 1990 proposal (55 FR 42332).

These amendments allow regulatory authorities to establish alternative cyanide limitations and standards based on best professional judgment for elevated levels of non-amenable cyanide that result from the unavoidable complexing of cyanide at the process source of cyanide-bearing waste streams; allow regulatory authorities to establish alternative metals limitations and standards to accommodate low background levels of metals in non-"metal-bearing waste streams" that result from corrosion of construction materials, intake water, contamination of raw materials or other incidental metal sources deemed appropriate by the regulatory authority; specify the method for determining five-day biochemical oxygen demand (BOD_5) and total suspended solids (TSS) effluent limitations for direct discharge plants that manufacture products in more than one subcategory; correct listing errors in appendices of the agency regulations; revise the applicability sections of the Other Fibers, Thermoplastic Resins, and Thermosetting Resins Subcategories to correspond to the rulemaking record technical data and analyses; delete one product and two product groups from coverage by this regulation; and move the coverage of two products and one product group from the Bulk Organic Chemicals Subcategory to the Specialty Organic Chemicals Subcategory.

DATES: These regulations shall become effective October 26, 1992.

The compliance date for PSES is September 11, 1995. The compliance dates for NSPS and PSNS is the date the new source begins operation. Deadlines for compliance with BPT and BAT are established in permits. In accordance with 40 CFR part 23 (50 FR 7268, February 21, 1985), this regulation shall be considered issued for purposes of judicial review at 1 p.m. Eastern time (14-days from the date of publication in the FR), 1992.

Under section 509(b)(1) of the Clean Water Act, judicial review of this regulation can be had only be filing a petition for review in the United States Court of Appeals within 120 days after the promulgation date of today's regulation. Under section 509(b)(2) of the Clean Water Act, the requirements in this regulation may not be challenged later in civil or criminal proceedings brought the EPA to enforce these requirements.

ADDRESSES: The supporting information and all comments and responses on this amendment to 40 CFR part 414 will be available for inspection and copying at the EPA Public Information Reference Unit, Waterside Mall, 401 M Street, SW., Washington, DC 20460, room 2404 (EPA Library Rear—Mail Code PM-213). The basis for this amendment is detailed in the supplement to the OCPSF record which is also in the PIRU. The PIRU is open between the hours of 9 a.m. to 4:30 p.m. For additional information contact George M. Jett, Project Officer, Chemicals Branch, Engineering and Analysis Division (WH-552), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: George M. Jett at (202) 260-7151.

SUPPLEMENTARY INFORMATION:

Organization of This Notice

I. Legal Authority
II. Background and Rationale for Amendments
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I. Legal Authority

The amendments to 40 CFR Part 414 described in this notice are promulgated under authority of sections 301, 304, 306, 307, 308, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, as amended (33 U.S.C. 1251 et seq.)), also referred to as "the Act" or "CWA."

II. Background and Rationale for Amendments

EPA's explanation of the background and rationale for today's amendments are contained in the October 18, 1990, proposal, 55 FR 42332, as supplemented by the responses to comments in the following section of this preamble.

Briefly, the cyanide amendment is pursuant to a settlement agreement with W.R. Grace & Company (Grace), Koppers Company, Inc. (Koppers), E.I. DuPont de Nemours & Company (DuPont), and the Chemical Manufacturers Association (CMA). The agreement (March 29, 1989, D. Kaplan to R. Taylor) partially settled a dispute between those petitioners and EPA that was the subject of a petition for judicial review of the final OCPSF regulation promulgated by EPA on November 5, 1987 (52 FR 42522).

The additional amendments arise out of an agreement that was reached among EPA, CMA and Dupont during litigation (June 22, 1988, D. Weitman to T. Garrett).

Lastly, based on EPA's review of Category Determination Requests related to the applicability of the OCPSF regulations submitted pursuant to 40 CFR 403.6(a), EPA is revising and correcting errors related to the applicability of part 414.

III. Public Participation and Responses to Comments

The Agency received comments from eight (8) separate sources: the Chemical Manufacturers Association (CMA) and seven companies (Beazer East, Inc., Dow Chemical Company, W.R. Grace & Company, Hoechst/Celanese Corporation, Monsanto Company, Sterling Chemicals, Inc., and Union Camp Corporation). Generally, the comments were favorable to the proposal, except that one commenter, Hoechst/Celanese, objected to EPA's promulgation of the production-proportioning formulas and several commenters provided conditional

support for several amendments as described below.

A. Non-Amenable Cyanide Limits

Today's amendment adds § 414.11(g), which allows the permit writer or control authority to establish alternative cyanide limitations and standards based on his or her best professional judgment (BPJ) by evaluation of existing process conditions for elevated levels of non-amenable cyanide that result from the unavoidable complexing of cyanide at the process source of cyanide-bearing wastestreams. Comments were received from CMA, W.R. Grace, Monsanto and Sterling on this amendment.

All four comments supported the proposed amendment. CMA and Sterling provided anecdotal information, and Grace and Monsanto provided information and performance data to substantiate their concurrence with the proposed non-amenable cyanide amendment.

B. Allowances for Non-Metal-Bearing Waste Streams

Today's amendment adds § 414.11(h), which allows for the establishment by the permit writer or control authority of limitations for chromium, copper, lead, nickel, and zinc and discharge standards for lead and zinc from incidental sources of metals. The amendment applies to wastestreams not listed in appendix A and not otherwise determined to be "metal-bearing waste streams" where the permit writer or control authority determines that wastewater metals contamination is due to background levels that are not reasonably avoidable from such sources as corrosion of construction materials or contamination of raw materials.

Comments were received from CMA, Dow Chemical, W.R. Grace, Hoechst/Celanese, Monsanto, and Sterling on this amendment. Grace and Sterling were completely supportive while CMA, Dow, Hoechst and Monsanto expressed conditional support for the amendments. The comments are discussed below.

1. Intake Water

As proposed, § 414.11(h) would not have provided a basis for an allowance for metals in intake water on the ground that such intake water contamination was covered under the provisions of 40 CFR 122.45(g) for direct dischargers and 40 CFR 403.15 for indirect dischargers, which provide authority for EPA to grant credits for pollutants in a discharger's intake water in certain circumstances.

CMA, Dow Chemical and Monsanto objected to the proposed exclusion of intake water as a source of incidental metals under § 414.11(h). The commenters pointed out that §§ 122.45(g) and 403.15 are intended to address situations where dischargers are seeking limitations that are higher than applicable guideline limits to account for intake sources of pollutants. These provisions do not provide a substitute for § 414.11(h), as applied to intake water contamination, because § 414.11(h) specifically provides that the incidental metal source allowance cannot exceed the applicable limitations contained in §§ 414.91 and 414.101. In addition, the commentors point out that §§ 122.45(g) and 403.15 generally apply to situations where water is being drawn from and discharged to the same water body and therefore would not normally provide a basis for EPA to factor intake water pollutants into end-of-pipe limitations for discharges into different water bodies.

The Agency agrees with the three commenters that intake water can be a source of incidental metals and that this possibility is not adequately accounted for by the provisions of 40 CFR 122.45(g) for direct discharge or 40 CFR 403.15 for indirect dischargers, because these provisions apply principally to situations where water is discharged into the same body from which it is drawn. Therefore, the Agency modifies the proposal to specify that metals in intake waters may be the basis for a metals allowance under § 414.11(h).

2. Requirements to Document Sources and Quantities of Incidental Metals

The Agency proposed that the determination that incidental metals are unavoidably present must be based upon a review of relevant plant operating conditions, process chemistry, engineering, and sampling and analysis information (55 FR 42338). CMA and Dow Chemical objected to what they considered to be "too rigorous an application of the demonstration requirement," and especially to the requirement that the actual quantities and sources of incidental metals be demonstrated through sampling.

CMA agreed "that allowances for incidental sources of metals should be based on more than mere estimates" but stated "it may be impossible precisely to identify the various metals sources * * * [and] * * * it may be impossible to quantify such metal sources." CMA specifically took issue with the statement in the preamble to the proposal that the presence of such metals must be demonstrated by actual sampling data. Dow Chemical suggested that EPA allow regulatory authorities more freedom to use best professional judgment rather than limiting the allowance to situations where actual sampling data demonstrates the presence of incidental metals. Dow also challenged the permit writers' technical ability to accurately assess the factors identified in the proposal, arguing that the proposal requires the permit writer to be a metallurgist, chemical engineer, and chemist. Both CMA and Dow suggest that the complexity of many OCPSF plants may make it impossible to identify the sources and quantities of incidental metals. Both commenters suggested that the Agency change the regulation language to read, "the determination *should* be based upon a review of relevant plant operating conditions, process chemistry, engineering *or* sampling and analysis information", (emphasis added).

The Agency disagrees with these comments. It is clear from the proposal that a permit writer or control authority cannot grant an incidental metals allowance unless a discharger can demonstrate that the presence of incidental metals is not reasonably avoidable and that in no case can the allowance exceed the amount of metals actually present in a wastestream. These requirements are appropriate and consistent with the June 22, 1988 agreement between EPA and CMA and DuPont pursuant to which the incidental metals allowance was proposed. If a wastestream is not "metal-bearing" as defined in the OCPSF regulation, see, e.g., 40 CFR 414.25(b), there should generally be no metals in the wastestream. The allowance provided by today's amendment should be available only for quantities of metals from incidental sources which are not reasonably avoidable in the wastestream, which clearly cannot be higher than the quantities of such metals actually present. If the presence of metals in a wastestream is reasonably avoidable, there is no reason why the discharger should be relieved from complying with the guideline requirement that no metals allowance be assigned to the wastestream. A permit writer cannot accurately and reliably make the determination that metals are not reasonably avoidable in certain quantities without actual sampling data.

A principal flaw in the commenters' objection that the sources of metals may not be ascertainable is that, independent of the inquiry into the *sources* of incidental metals, the permit writer must determine the *quantities* of incidental metals actually present in a non-"metal-bearing" waste-stream in order to determine the upper bound for the allowance. This determination would be

practically impossible to make without sampling and analysis.

Moreover, despite the conceded complexity of many chemical plants, EPA disagrees that the source(s) of metals cannot be identified. Today's amendment and the preamble to the proposal are clear that the metals allowance provided in § 414.11(h) is not an end-of-pipe allowance; it applies at the process source. When actual effluent sampling data reveals the presence of metals at a particular process source, additional sampling (e.g., of raw materials, intake water and effluent), combined with an analysis of plant operating conditions, process chemistry, and engineering should enable the discharger to identify, and the permit writer to confirm, the source(s) of such metals in the wastestream for the specific process in question.

Even if the source(s) cannot be identified with absolute certainty, only a full evaluation of the listed factors will enable the permit writer to arrive at the most informed, best professional judgment as to the source(s) of incidental metals, whether the presence of these metals is not reasonably avoidable and what quantities of these metals at or below the amounts actually present in the discharger's wastestream are achievable. For example, if sampling were to reveal that the source of incidental metals in a discharger's wastestream is raw materials contamination, this situation should lead the discharger and permit writer to inquire whether alternative sources are available, whether a different input could be substituted for the contaminated one, etc. In contrast, a determination that the source of metals is corrosion of piping would raise a different set of issues. Contrary to the commenters' assertions, the complexity of plants in the industry is not a reason to forego actual sampling; in fact, it is one of the principal reasons why such a complete evaluation is necessary to make the finding that certain levels of metals are not reasonably avoidable.

The Agency also disagrees with commenters' assertions that permit writers and control authorities are unqualified to assess the necessary scientific information and data to make sound BPJ decisions. The factors identified in today's amendment are the same types of factors which permit writers must evaluate on a regular basis in making BPJ determinations. Permit writers are instructed to consider, among other things, the process employed at a plant, the engineering aspects of various types of control technologies, and process changes. 40 CFR 125.3(d). Permit writers also evaluate effluent data and other technically complex data submissions, such as the results of biological toxicity tests, required to be submitted by permit applicants pursuant to 40 CFR 122.21(g)(7). The same holds true for control authorities, which collect and review information from indirect dischargers which is similar to that collected and reviewed by permit writers for direct dischargers. See 40 CFR 403.12(b) (indirect dischargers must submit to control authorities, among other things, descriptions of operations, including schematic process diagrams, flow measurements, and sampling and analysis data). Permit writers and control authorities are fully qualified to evaluate these factors. Moreover, Dow's comment rests on the false premise that a permit writer works in a vacuum. On the contrary, the permit writer, of course, has full access to the resources and expertise of the Agency, which routinely addresses the factors identified in the new § 414.11(h) during the development of effluent guidelines and in numerous other contexts.

3. Plant Operating Conditions

On a related point, CMA and Dow were concerned about the requirement in the proposal that permit writers consider "plant operating conditions" in determining whether to grant an incidental metals allowance. Both felt that the permit writer should address only how the plant is maintained and not consider confidential processing information. CMA encouraged the Agency to specify that plant operating conditions meant "how the plant is run (e.g., maintenance and repair considerations), not * * * confidential process information." Both commenters stated that, if the Agency insists on collecting confidential process information, it must provide safeguards for protection of such information.

EPA disagrees with these comments. EPA understands the "confidential process information" referred to by the commenters to be information relating to how a product or product group is manufactured. This includes such information as the raw materials used in manufacture, the reaction chemistry, and the engineering design including the materials of construction and equipment specifications. This will often be precisely the kind of information which a permit writer needs to determine whether incidental metals are not reasonably avoidable and at what levels. Information regarding raw materials will often be necessary to determine whether they are the source of metals in a discharger's effluent. Reaction chemistry and information on materials of construction will often be necessary to determine whether the source of incidental metals is the corrosion of piping or other metal equipment.

Maintenance and repair information, in contrast, would rarely if ever provide the basis for a metals allowance. To the extent the presence of metals in wastewater is due to a plant operator's maintenance or repair practices, the presence of such metals should generally be avoidable through good management practices, such as training programs, operator safety programs and proper scheduling of maintenance and repair. Maintenance and repair information alone would not provide sufficient information regarding plant operating conditions to provide the basis for an incidental metals allowance.

With respect to the protection of confidential business information (CBI), EPA regulations presently provide ample safeguards against unauthorized disclosure of CBI collected by EPA (40 CFR part 2 and 40 CFR 122.7), and no additional protection is needed. The treatment of CBI collected by control authorities and states that are implementing their own authorized NPDES programs is principally governed by state and local laws, see §§ 123.25(a)(3) and 403.14(b), (c). If the commenters have concerns about the adequacy of these laws, their recourse is with the states or localities; EPA's longstanding position is that it will not dictate to states and localities how to treat CBI, 45 FR 33381 (May 19, 1980); 46 FR 9436 (January 28, 1981).

In any event, while EPA appreciates the commenters' concerns regarding CBI, these concerns are not a basis to object to today's amendment. The comments submitted go to the adequacy of EPA's CBI regulations generally, not, as they purport, to today's amendment. Today's amendment does not, for the first time, require or authorize permit writers and control authorities to collect CBI. On the contrary, as described in the preceding section, permit writers and control authorities already collect and review confidential process information, see, e.g., 40 CFR 122.21(g)(7), 125.3(d), 403.12(b). In addition to this specific permit-related authority, both EPA and control authorities have general authority to collect a broad range of information, including CBI, CWA Section 308; 40 CFR 403.8(f)(1)(v), 403.10(e) (POTWs and states implementing their own pretreatment programs must have information collection authority at least as extensive

as the CWA 308 authority). Dow and CMA have not alleged or demonstrated that the information to be collected under today's amendment differs from other CBI which permit writers and control authorities collect routinely. Today's amendment is not the forum for a broader challenge against the Agency's ten-year-old CBI regulations.

4. *Agency's Consideration of Issuing Guidance or Standards*

In the preamble to the amendments (55 FR 42335) the Agency listed a table of long-term average background levels which was being considered as a basis for guidance or standards for accommodating background levels of metals. The Agency requested public comment and data on these values and on the desirability of issuing guidance or standards.

CMA objected to publishing guidance concentrations with the amendments. Furthermore, CMA indicated that if the Agency chose to require minimum or maximum values, a median concentration should also be published.

Because no data was submitted and the only comment received objected to the publishing of guidance concentrations, EPA has decided not to publish numerical guidance or standards. The Agency does not have adequate data at this time to publish guidance concentrations or standards for incidental metal sources and leaves the selection of numerical limits and standard up to the best professional judgment of the permitting or control authority on a case-by-case basis.

5. Establishment of Limitations at "Zero"

CMA and Dow objected to the provision in the proposed amendment that provided that "permit writers may establish limitations * * * between zero (0) and the concentration of metals in the non-metal-bearing streams" (55 FR 42338), and recommended the language be changed to read "between the practical quantitation level (PQL) for the relevant analytical method and the concentration of such metals present in wastestreams." The commenters argued that a level of zero (0) is not measurable and that zero is an undefined term.

Upon review, EPA agrees that it would be inappropriate to set a permit limitation at zero for the reasons stated by the commenters. However, EPA does not agree that the PQL is the appropriate lower bound. Rather, under today's rule, the individual permit writer or control authority will determine on a case-by-case basis what is the lowest level of an incidental metal which can be reliably measured in a wastestream. The permit writer or control authority will set a limit for the metal between this lowest level and the amount of the metal actually present in the wastestream. EPA recommends that permit writers and control authorities use the "minimum levels" (MLs) for metals, as set forth in draft EPA method 1620, as this lowest measurable level. The draft method contains the following MLs: 10 micrograms per liter (μg/L) for chromium, 25 μg/L for copper, 5 μg/L for lead, 40 μg/L for nickel, and 20 μg/L for zinc. Draft method 1620 is available for inspection and copying at the EPA Public Information Reference Unit. EPA recommends use of the ML for guidance purposes only; permit writers have discretion to use whatever method they deem most appropriate for determining the lowest measurable quantity.

EPA believes that the ML, rather than the PQL, is the appropriate guidance level to recommend to permit writers. The PQL is typically set as a multiple of the method detection limit (MDL). The MDL is defined as "the minimum concentration of a substance that can be measured and reported with 99% confidence that the analyte concentration is greater than zero * * * 40 CFR 136, App. B. The MDL is an appropriate lower bound where the question to be answered is whether an analyte is present, but is less suitable for determining at what quantity the analyte is present. Because exceeding the permit level may trigger an enforcement action, the level should be measurable with a reasonable degree of confidence.

The PQL is defined as "the lowest level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operation conditions." 52 FR 25699. It generally ranges from three to ten times the MDL. The ML is related to the PQL but is generally lower than the PQL for a given analyte. The ML is defined as "the level at which the entire analytical system shall give recognizable signal and acceptable calibration points." The ML is the level at which EPA has determined, based on actual reports and data from a number of laboratories, that the amount of a substance or compound can be measured reliably in industrial wastewater matrices, and is an appropriate guidance level for permit writers. As explained in the promulgation of the OCPSF guideline, the PQL has been used by the Office of Drinking Water and Office of Solid Waste for drinking water and ground water matrices. In contrast, the Office of Water has used the ML for measuring constituents in industrial wastewater matrices, 52 FR 42562–42563. Moreover, the Office of Water recommended the use of the ML concept as the basis for permit action levels in its May 21, 1990 memorandum titled "Strategy for the Regulation of Discharges of PHDDs and PHDFs from Pulp and Paper Mills to Waters of the United States" and stated its intention to continue to use the ML in establishing numerical limitations for the discharge of pollutants in wastewater, p. 19. Thus, EPA recommends that permit writers use the ML as the lower bound in determining the appropriate permit level for an incidental metal.

6. Appropriateness of Construction Materials

Hoechst/Celanese was concerned about the preamble statement that "inappropriate materials of construction * * * are not the basis for metals allowances. (55 FR 42335) The commenter states that its plant was constructed 50 years ago using copper and copper alloy pipe, which is generally more subject to corrosion than stainless steel pipe, which the commenter states would be used if the plant were being built today. The commenter requests that EPA clarify that the appropriateness of construction material should be determined as of the time the plant was built.

EPA declines to provide the "clarification" requested by the commenter. A permit writer must determine, based on BPJ, whether the presence of background levels of metals is not reasonably avoidable in a wastestream. The permit writer will consider all relevant factors in exercising this BPJ, including, where appropriate, the age of a plant (40 CFR 125.3(d)). It is within the permit writer's discretion to determine—on a case-by-case basis and in view of all relevant factors—whether construction materials are "appropriate." In some cases, the permit writer may conclude that it is appropriate to grant an allowance for incidental metals which result from corrosion from pipes made from a now-obsolete construction material which was state-of-the-art at the time the plant was built; in other cases, the permit writer may, for example, determine that it is reasonable for the plant to replace some piping and set limits accordingly. Thus, EPA clarifies that the preamble statement in question was not intended to circumscribe the permit writer's general BPJ authority to consider the age of a plant, but EPA cannot set forth a general rule that the appropriateness of construction materials is to be determined as of the date of construction.

In reviewing this comment and the other comments received on the proposed incidental metals allowance, EPA is concerned that the proposal may appear to have created an inflexible scheme in which permit writers would be deprived of their normal discretion in making BPJ determinations. That was not the intent of the proposal, and EPA has slightly modified the final rule from the proposed version by clarifying that, in order to qualify for the allowance, a facility must demonstrate that the presence of metals is "not reasonably avoidable." The proposed version provided that the presence of metals had to be "unavoidable" for the facility to qualify for the allowance. Strictly speaking, the incidental presence of metals will always be theoretically avoidable at some level of expense. EPA did not intend to require that the presence of the metals be literally unavoidable in order for a facility to qualify for the allowance, but rather that the permit writer or control authority will use BPJ in determining whether the presence of incidental metals is not reasonably avoidable. This means that the permit writer or control authority will consider, to the extent relevant, the age of equipment and facilities involved (as described in the preceding paragraph), the process employed (for example, whether the wastestream generated by a manufacturing process creates incidental metals in the effluent because it corrodes piping, and whether that problem could be alleviated through a process change), the engineering aspects of the application of various types of control techniques, process changes (for example, the substitution of a raw material contaminated with a metal for an unadulterated raw material), the cost of achieving effluent reduction (for example, an evaluation of whether the presence of metals can be avoided at a cost that is reasonable in light of the quantity of metals present in the wastestream and the quantity that would be removed through the contemplated control measures), and non-water quality environmental impacts. 40 CFR 125.3(d)(3).

7. Allowance for Increased Concentration

Monsanto suggested that the Agency expand the incidental metals amendment to include allowances for mass discharges for process operations that involve evaporation, which could result in greater metals concentrations. No supporting data was provided.

The Agency declines to expand the proposed amendment. The suggested expansion is completely distinct from EPA's proposal, pursuant to the settlement agreement with Grace, Koppers, DuPont and CMA, to amend the OCPSF guidelines to provide an allowance for incidental sources of metals. Moreover, the logic of Monsanto's suggestion to allow for increased concentration due to evaporation would appear in theory to apply to all pollutants, not just to metals. EPA lacks data to provide the technical basis for such a significant amendment to the OCPSF guidelines, and, in any event, could not promulgate such an amendment without providing notice and an opportunity for comment.

C. Revisions to Appendices A and B

Appendix A of part 414 contains a list of product/processes with cyanide-bearing wastestreams. These wastestreams are subject to the cyanide limitations established in part 414. Appendix B of part 414 is a list of product/processes with complexed metal-bearing wastestreams. These wastestreams are not subject to the part 414 metals limitations, but are regulated on a BPJ basis (40 CFR 414.11(f)). EPA proposed several changes to the lists of product/processes in these Appendices to more accurately reflect the nature of the metals associated with the product/process.

Two favorable comments were received on the proposed revisions to Appendices A & B. CMA provided anecdotal information to support its concurrence with the proposal. Dow Chemical supported the proposed language, which, it stated, would better represent the waste characteristics of the product/processes. EPA is promulgating these amendments as proposed.

D. Multi-Subcategory Calculations of BOD_5 and TSS Limitations

EPA today effects a technical amendment by adding § 414.11(i), which incorporates into the body of the regulations the formula for proportioning BOD_5 and TSS concentration limitations for different subcategories to a plant which manufactures products in more than one subcategory covered by part 414.

Favorable comments were received from CMA, Dow Chemical, and Monsanto. CMA stated, and Dow and Monsanto agreed, that "the volume of production within each subcategory is the correct basis for calculating end-of-pipe limits for multi-subcategory plants." As CMA correctly observed, "[b]ecause the derivation of the BPT guideline limits was based on the percentage of production within the various BPT categories, so too must the application of the limits be based on the production volumes within each subcategory."

One negative comment was received. Hoechst/Celanese took issue with what it characterized as the Agency's proposal to "mandate [ ] use of the production-proportioning formula" and argued that multi-subcategory limitations should be based on the proportion of a plant's wastewater flow in each subcategory, not the proportion of the plant's production in each subcategory.

EPA disagrees with Hoechst/Celanese. Contrary to the commenter's assertion, today's promulgation does not, for the first time, mandate the use of the production-proportioning formula, which was already the required method for calculating limits for multi-subcategory plants. Rather, today's amendment merely responds to concerns raised-by-CMA, DuPont, and other petitioners in the litigation that permit writers might fail to use the formula set forth in the preamble to the November 5, 1987 final OCPSF rule promulgation and the accompanying Development Document.

The Development Document sets out the formulas contained in today's amendment and explains that, "for plants with production activities classified by two or more subcategories, the permit writer would use a building-block approach *based on production proportioning* to use the promulgated subcategorical limitations as a basis for establishing plant-specific permit requirements." (OCPSF Development Document, EPA 440/1-87/009, October 1987 at IX-10 (emphasis added)). Similarly, the preamble to the final OCPSF rule states that, "[i]n applying the limitations set forth in the regulation, the permit writer will use what is essentially a building-block approach that takes into consideration applicable subcategory characteristics and *the proportion of production quantities within each subcategory* at the plant." (52 FR 42533 (emphasis added).) These statements reflect EPA's intention and understanding that the production-proportioning formula would be the basis for setting limits at multi-subcategory plants.

This method of deriving permit limits for multi-subcategory plants is a necessary corollary of EPA's methodology in developing the OCPSF BPT limitations. The regression equation used by EPA in establishing the BPT limitations "model[ed] long-term average effluent BOD as a function of *the proportion of the production of each subcategory* at each [multi-subcategory] facility." (52 FR 42533 (emphasis

added)). Similarly, the Development Document states that EPA established limitations for the various subcategories based on a "regulatory approach that proportions the various subcategory long-term averages for each plant based on the reported *proportion of production* by product group * * *." (OCPSF Development Document, page IV-6, October 1987) EPA specifically found that flow proportioning was "not appropriate" as a basis for establishing limitations and that "there was no technical basis in the record to conclude that achievable long-term mean effluent concentrations were significantly affected by water use practice in the industry." 52 FR 42533. Given the fact that EPA established the OCPSF BPT limitations—and determined that they were technically and economically achievable as required by the CWA—by proportioning the data from multi-subcategory plants on a production basis, rather than flow basis, the Agency could not implement the guideline by setting actual permit limits on a flow-proportioned basis.

Today's amendment simply clarifies an approach which was already inherent in the guideline itself. Hoechst/Celanese could have challenged the production-proportioning approach within 120 days of promulgation of the OCPSF guideline pursuant to section 509(b) of the Clean Water Act. EPA did not intend to re-open this fundamental, underlying aspect of the guideline by proposing to publish the production-proportioning formula in the body of the regulations.

Even if this were the appropriate forum to challenge the production-proportioning approach, EPA believes, for the reasons set forth above, that the approach is correct; Hoechst/Celanese has provided no data or information in its comments which undercut the validity of the findings which EPA made for the OCPSF industry during the rulemaking. To the extent the commenter believes that its facility presents factors which differ from those considered for the industry during the rulemaking, the proper remedy would have been a request for a fundamentally different factors variance from the guideline under section 301(n) of the Act.

E. Applicability of §§ 414.30, 414.40 and 414.50

The Agency proposed to amend the applicability of subpart C, Other Fibers (§ 414.30), subpart D, Thermoplastic Resins (§ 414.40), and Subpart E, Thermosetting Resins (§ 414.50), to include all products defined in terms of the four- and five-digit Standard Industrial Classification (SIC) codes which the Subparts were intended to cover. EPA intended that the regulation would cover all production within the SIC codes which define the OCPSF industry. For subparts F through H, covering commodity, bulk, and specialty organic chemicals respectively, the OCPSF regulation accomplishes this intent by capturing the production of all organic chemicals not specifically listed in subparts F and G under subpart H as specialty products. Subparts C, D, and E, however, incorrectly limit the coverage of the guidelines to production of the products and product groups specifically listed in §§ 414.30, 414.40, and 414.50 respectively, thus creating the potential for production of fibers and resins to escape coverage. EPA intended the products listed in these sections to be illustrative rather than exclusive, and today's amendment accomplishes that intention.

CMA, Dow Chemical, Monsanto and Union Camp submitted comments on this proposal. CMA and Dow stated the Agency must demonstrate that it actually intended the coverage of these Subparts to be comprehensive, and that the OCPSF record supports the proposed amendment. Both also were concerned that plants be given sufficient time to comply with the limitations for the added product/processes in the affected subparts.

The OCPSF record demonstrates that EPA intended the coverage of these Subparts to be comprehensive and fully supports today's amendment. EPA developed and promulgated the OCPSF guideline in part pursuant to a settlement agreement entered by the Agency in settlement of a 1976 law suit brought by several environmental groups to compel EPA to promulgate guidelines (Development Document at I-2). The agreement required EPA to promulgate the OCPSF guideline and defined the OCPSF industry to include all production within SIC codes 2865, 2869, 2821, 2823 and 2824 (id. at III-4). Accordingly, the original October 1983 OCPSF Clean Water Act section 308 Survey collected production and related technical and economic information based on SIC codes.

The introduction of the questionnaire, page 1, explains that, "[f]or the purpose of this survey, the OCPSF industry is defined as all establishments that manufacture: (1) Organic chemical products included within the U.S. Department of Commerce Bureau of the Census Standard Industrial Classification (SIC) major groups 2865 and 2869 and/or (2) plastics and synthetic fibers products included in SIC major groups 2821, 2823, and 2824." The questionnaire collected OCPSF production information from all production within these SIC codes. Indeed, much of the information was reported in aggregate form based on SIC codes; only respondents that were primary manufacturers of OCPSF products (generally, where at least one half of a manufacturer's production was of OCPSF products or where OCPSF process wastewaters are treated in a system with 25 percent or less dilution by non-OCPSF process wastewater) reported the specific products they produced, and only for products which constituted at least one percent of total production. The remaining production information was reported by SIC code only. The questionnaire was plainly intended to provide the basis for a comprehensive regulation of the industry covering all relevant SIC codes. This intent is further evidenced by the *Selected Summary of Information in Support of the OCPSF Point Source Category*, which was the support document for the July 17, 1985 Notice of Availability, 50 FR 29068. The document explains that "[t]he Agency has defined the Plastic/Synthetic Fibers industry (subparts C, D, and E) to include *all* facilities within SIC codes 2821, 2823 and 2824" (p. 2, emphasis added).

EPA used the data it collected to develop limitations and standards that could be applied across subcategories that covered all production within the relevant SIC codes. The aggregated SIC code data which EPA received, along with the product-specific data, were assigned to the appropriate subcategories, and formed part of the basis for the existing OCPSF limitations and standards. (Assignment of Part A and Part B Production to OCPSF Subcategories, A. Shattuck to the Record, July 8, 1992.) Thus, the regulation is based, in part, on generic SIC code data; EPA's data based contains no information on the specific products represented by this aggregated data. Today's correcting amendment merely conforms the regulations to EPA's intention in establishing the limitations, and, in any event, as explained below, is fully supported by the methodology employed in developing the limitations.

The OCPSF subcategorization scheme was challenged in the litigation over the guideline on the grounds that SIC codes did not provide a rational basis to subcategorize, and that the BPT limitations established were therefore arbitrary and capricious (as explained below, the BAT limitations are independent of the rule's product-based

subcategorization). The Fifth Circuit upheld the scheme, concluding, based on its review of the rulemaking record, that "SIC codes tend to be organized around the products produced by various segments of the industry, and that the type of product in turn influences the wastestream characteristics of those plants" (870 F.2d at 216).

Where EPA found that wastewater treatability varied within a SIC code to such an extent that all production within the SIC code could not be grouped within a single subcategory, the Agency further subcategorized to accommodate this variety. For example, production within SIC codes 2823 and 2824 is covered by subpart C, except for production of rayon fibers, a SIC code 2823 product, which EPA determined was sufficiently distinct to merit a separate subcategory (Dev. Doc. p. IV-20). EPA also divided production within SIC code 2821 between thermoplastic resins (SIC code 28213, subpart D) and thermosetting resins (SIC code 28214, subpart E). The Agency concluded that "process chemistry and engineering are broadly consistent within these groupings" (id.). Similarly, production within SIC codes 2865 and 2869 is divided among three subcategories—F (commodity organic chemicals), G (bulk organic chemicals), and H (specialty organic chemicals)—based on the quantity of a chemical produced nationally, because EPA concluded that the rate of biodegradation, and therefore the treatability, of organic pollutants varied with parameters related to the volume of national production (id. at IV-21). Overall, EPA concluded that, "[b]ased on the distribution of raw waste and effluent BOD5 concentrations, the relative consistency of percent removal data across the final seven subcategories, and BOD5 effluent within subcategories and within product groups within those subcategories, * * * the adopted BPT subcategorization accounts sufficiently for wastewater characteristics and treatability" (id. at IV-37).

Production that falls within the SIC codes which define subcategories C through E should be similar in nature and should therefore have similar wastewater and treatability characteristics regardless of whether EPA collected and assessed data with respect to the specific product in question. EPA concludes that the BPT limitations for these subparts are achievable for all such production. To the extent a specific plant has wastewater characteristics that differ fundamentally from the other plants within the subcategory, that plant may of course seek alternative limits through a fundamentally different factors (FDF) variance under CWA section 301(n). However, the fact that individual plants may present plant-specific concerns does not invalidate the subcategorization.

With respect to the BAT limitations, EPA concluded in the OCPSF rulemaking that "OCPSF plants can economically achieve compliance with the BAT limitations * * * through some combination of in-plant or end-of-pipe demonstrated technology irrespective of products produced," and therefore did not subcategorize based on production. (52 FR 42532). EPA concludes, therefore, that OCPSF production that falls within the SIC codes which define subparts C through E will, like production of the specifically listed products, have similar wastewater characteristics and will similarly be able to achieve compliance with the BAT limitations.[1] Again, plant-specific concerns, if any exist, can be addressed through the FDF mechanism.

Finally, EPA notes that it would have been virtually impossible to collect and analyze data for each individual product in the OCPSF industry. The industry manufactures over 25,000 products. EPA collected product or product group-specific data for about 1000 of these, and aggregated data for the remainder. Even with the data so aggregated, EPA required four years from the time it distributed the original questionnaire to promulgate the final OCPSF regulation. The Agency had no choice but to develop a methodology to group plants into categories based on similar characteristics and to make reasonable conclusions about the discharge levels that those plants can achieve. As explained above, the subcategorization scheme adopted by EPA accomplishes that result.

The compliance dates for today's amendment will follow the same statutory requirements as any new rule. In accordance with 40 CFR 23.2, this regulation shall be considered issued for purposes of judicial review at 1 p.m., Eastern time (14-days from the date of publication in the FR), 1992. These regulations shall become effective (45-days from the date of publication in the FR), 1992.

The compliance date for PSES is (three years from the date of publication in the FR), 1995. The compliance dates for NSPS and PSNS is the date the new source begins operation. Deadlines for compliance with BPT and BAT are established in permits.

F. Amendments to §§ 414.40 and 414.70

The Agency proposed to amend § 414.70 by removing Citric Acid and Fatty Acids from § 414.70(a) and removing Aspirin from § 414.70(c) and regulating them as specialty organics. Dow and Union Camp supported these proposed amendments.

The Agency proposed to amend part 414.40 by removing "cellulose sponge". The Agency also proposed to amend part 414.70(e) by removing "dithiophosphates, sodium salt" and "waxes, emulsions—dispersions". No comments were received on these three amendments.

G. Timing of Promulgation and Effective Dates of Amendments

Monsanto objected to the timing of the promulgation of these amendments, arguing that the Agency was not proceeding "as expeditiously as possible" as it agreed to do in the settlement agreement on which these amendments are based. Monsanto characterized the issues involved as "relatively straightforward."

EPA disagrees with Monsanto. Today's amendment raises a number of complex issues and have required thorough evaluation by EPA. In particular, EPA has devoted a substantial amount of time to considering and responding to the comments submitted by Monsanto and others. EPA believes it is in both the Agency's and the commenters' best interest that EPA carefully evaluate all comments and other issues raised by a regulatory change. The Agency has proceeded on this amendment as expeditiously as possible.

H. Summary

Having thoroughly reviewed all of the comments, the Agency has decided to amend part 414 as proposed in the October 10, 1990 FR notice except as changed to add intake water as a possible source of incidental metals, to provide that an incidental metals allowance may be granted where the presence of metals is "not reasonably avoidable," and to provide that incidental metals limitations must be established between the lowest level which the permit writer or control authority determines can be reliably measured and the concentration of such metals present in the wastestreams not to exceed the applicable limitations contained in §§ 414.91 and 414.101. The remainder of 40 CFR part 414 is unchanged.

[1] Note that NSPS, PSES and PSNS under the OCPSF guideline are based on BAT and BPT. The conclusions reached above for BAT and BPT therefore apply to all of the limitations and standards established in the guideline.

IV. Cost Impact Analysis

EPA does not anticipate additional incremental costs or impacts to the OCPSF industry as a result of these amendments. While these amendments expand the applicability of three subparts, this expansion simply conforms the regulation to the original rulemaking methodology, including the original costing methodology, which was done on a SIC-code basis. There has been no change to the costing procedure used in the 1987 promulgation.

V. Executive Order 12291

Executive Order 12291 requires EPA and other agencies to perform regulatory analyses of major regulations. Major rules are those which impose a cost on the economy of $100 million or more annually or have certain other economic impacts. This regulation is not a major rule because it merely clarifies the applicability of the regulation, corrects listing errors and establishes flexibility in implementing an existing regulation by allowing regulatory authorities to accommodate site specific factors relating to complexed-cyanide and background levels of metals in non-metal-bearing waste streams that are not reasonably avoidable. Today's amendments do not impose significant new requirements; thus, they meet none of the criteria of a major rule as set forth in section 1(b) of the Executive Order. This rule was submitted to the Office of Management and Budget for review.

VI. Regulatory Flexibility Analysis

The Regulatory Flexibility Act, 5 U.S.C. 601 et seq., requires EPA and other agencies to prepare an initial regulatory flexibility analysis for all regulations that have a significant impact on a substantial number of small entities. No regulatory flexibility analysis is required, however, where the head of the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Based on the reasons discussed in the preceding paragraph, I hereby certify, pursuant to 5 U.S.C. 605(b), that this regulation will not have a significant impact on a substantial number of small entities.

VII. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3500 et seq., EPA must submit a copy of any rule that contains a collection-of-information requirement to the Director of the Office of Management and Budget for review and approval. This notice contains no additional information-collection requirements beyond those already required by 40 CFR 403 and 40 CFR 122, and therefore the Paperwork Reduction Act is not applicable.

List of Subjects in 40 CFR Part 414

Chemicals, Plastics materials and synthetics, Water pollution control, Water treatment and disposal.

Dated: September 1, 1992.

F. Henry Habicht II,

Acting Administrator.

For the reasons set out in the preamble, 40 CFR part 414 is amended as set forth below.

PART 414—ORGANIC CHEMICALS, PLASTICS, AND SYNTHETIC FIBERS

1. The authority citation for part 414 continues to read as follows:

Authority: Secs. 301, 304, 306, 307, and 501, Pub. L. 92-500, 86 Stat. 816, Pub. L. 95-217, 91 Stat. 156, Pub. L. 100-4, 101 Stat. 7 (33 U.S.C. 1311, 1314, 1316, 1317, and 1361).

2. Section 414.11 is amended by adding paragraphs (g), (h), and (i) to read as follows:

§ 414.11 Applicability.

* * * * *

(g) *Non-amenable cyanide.* Discharges of cyanide in "cyanide-bearing waste streams" (listed in Appendix A to this part) are not subject to the cyanide limitations and standards of this part if the permit writer or control authority determines that the cyanide limitations and standards are not achievable due to elevated levels of non-amenable cyanide (i.e., cyanide that is not oxidized by chlorine treatment) that result from the unavoidable complexing of cyanide at the process source of the cyanide-bearing waste stream and establishes an alternative total cyanide or amenable cyanide limitation that reflects the best available technology economically achievable. The determination must be based upon a review of relevant engineering, production, and sampling and analysis information, including measurements of both total and amenable cyanide in the waste stream. An analysis of the extent of complexing in the waste stream, based on the foregoing information, and its impact on cyanide treatability shall be set forth in writing and, for direct dischargers, be contained in the fact sheet required by 40 CFR 124.8.

(h) *Allowances for non-metal-bearing waste streams.* Discharge limitations for chromium, copper, lead, nickel, and zinc or discharge standards for lead and zinc may be established for waste streams not listed in Appendix A of this part and not otherwise determined to be "metal-bearing waste streams" if the permit writer or control authority determines that the wastewater metals contamination is due to background levels that are not reasonably avoidable from sources such as intake water, corrosion of construction materials or contamination of raw materials. The determination must be based upon a review of relevant plant operating conditions, process chemistry, engineering, and sampling and analysis information. An analysis of the sources and levels of the metals, based on the foregoing information, shall be set forth in writing; for direct dischargers, the analysis shall be contained in the fact sheet required by 40 CFR 124.8. For direct dischargers, the permit writer may establish limitations for chromium, copper, lead, nickel, and zinc for non-"metal-bearing waste streams" between the lowest level which the permit writer determines based on best professional judgment can be reliably measured and the concentrations of such metals present in the wastestreams, but not to exceed the applicable limitations contained in §§ 414.91 and 414.101. (For zinc, the applicable limitations which may not be exceeded are those appearing in the tables in §§ 414.91 and 414.101, not the alternative limitations for rayon fiber manufacture by the viscose process and the acrylic fiber manufacture by the zinc chloride/solvent process set forth in footnote 2 to each of these tables.) For indirect dischargers, the control authority may establish standards for lead and zinc for non-"metal-bearing waste streams" between the lowest level which the control authority determines based on best professional judgment can be reliably measured and the concentration of such metals present in the wastestreams, but not to exceed the applicable standards contained in §§ 414.25, 414.35, 414.45, 414.55, 414.65, 414.75, and 414.85. (For zinc, the applicable standards which may not be exceeded are those appearing in the tables in the above referenced sections, not the alternative standards for rayon fiber manufacture by the viscose process set forth in footnote 2 to the table in § 414.25, or the alternative standards for acrylic fiber manufacture by the zinc chloride/solvent process set forth in footnote 2 to the table in § 414.35.) The limitations and standards for individual dischargers shall be set on a mass basis by multiplying the concentration allowance established by the permit writer or control authority by the process wastewater flow from the individual wastestreams for which incidental metals have been found to be present.

(i) BOD_5 and TSS limitations for plants with production in two or more subcategories. Any existing or new source direct discharge point source subject to two or more of subparts B through H must achieve BOD_5 and TSS discharges not exceeding the quantity (mass) determined by multiplying the total OCPSF process wastewater flow subject to subparts B through H times the following "OCPSF production-proportioned concentration": For a specific plant, let w_j be the proportion of the plant's total OCPSF production in subcategory j. Then the plant-specific production-proportioned concentration limitations are given by:

$$\text{Plant } BOD_5 \text{ Limit} = \sum_{j=B}^{H} (w_j)\,(BOD_5 \text{ Limit}_j) \text{ and}$$

$$\text{Plant TSS Limit} = \sum_{j=B}^{H} (w_j)\,(\text{TSS Limit}_j).$$

The "BOD_5 Limit$_j$" and "TSS Limit$_j$" are the respective subcategorical BOD_5 and TSS Maximum for Any One Day or Maximum for Monthly Average limitations.

§§ 414.21, 414.31, 414.41, 414.51, 414.61, 414.71 and 414.81 [Amended]

3. In each of §§ 414.21, 414.31, 414.41, 414.51, 414.61, 414.71 and 414.81, the first sentence which reads "Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve discharges not exceeding the quantity (mass) determined by multiplying the process wastewater flow subject to this subpart times the concentration listed in the following table." is revised to read "Except as provided in 40 CFR 125.30 through 125.32, and in 40 CFR 414.11(i) for point sources with production in two or more subcategories, any existing point source subject to this subpart must achieve discharges not exceeding the quantity (mass) determined by multiplying the process wastewater flow subject to this subpart times the concentration listed in the following table."

4. Section 414.30 is amended by revising the first sentence to read as follows:

§ 414.30 Applicability; description of the other fibers subcategory.

The provisions of this subpart are applicable to the process wastewater discharges resulting from the manufacture of products classified under SIC 2823 cellulosic man-made fibers, except Rayon, and SIC 2824 synthetic organic fibers including those fibers and fiber groups listed below.* * *

* * * * *

5. Section 414.40 is amended by revising the first sentence of the text and by removing from the list the entry, "Cellulose Sponge" to read as follows:

§ 414.40 Applicability; description of the thermoplastic resins subcategory.

The provisions of this subpart are applicable to the process wastewater discharges resulting from the manufacture of the products classified under SIC 28213 thermoplastic resins including those resins and resin groups listed below.* * *

* * * * *

6. Section 414.50 is amended by revising the first sentence of the text to read as follows:

§ 414.50 Applicability; description of the thermosetting resins subcategory.

The provisions of this subpart are applicable to the process wastewater discharges resulting from the manufacture of the products classified under SIC 28214 thermosetting resins including those resins and resin groups listed below.* * *

* * * * *

§ 414.70 [Amended]

7. Section 414.70 is amended by removing from the listing in paragraph (a) the entries, "Citric Acid" and "*Fatty Acids"; by removing from the listing in paragraph (c) the entry, "Aspirin"; and by removing from the listing in paragraph (e) the entries, "Dithiophosphates, Sodium Salt" and "*Waxes, Emulsions—Dispersions".

Appendix A [Amended]

8. Part 414, Appendix A is amended by removing from the Cyanide listing the entries, "Hexamethylene diisocyanate/Hexamethylene diamine (1,6-Diaminohexane) + phosgene", "Methylene Diphenylisocyanate (MDI)/Phosgenation of methylene dianiline from Aniline + Formaldehyde", "Polyurethane resins/Diisocyanate + Polyoxyalkylene glycol", "Polyurethane fibers (Spandex)/Polyoxyalkylene glycol + Tolylene diisocyanate + dialkylamine" and "Tolylene diisocyanate (isomeric mixture)/Tolylene diamines + Phosgene".

9. Appendix B to Part 414 is amended by adding two entries to the end of the listing for Lead to read as follows:

Appendix B to Part 414—Complexed Metal-Bearing Waste Streams

* * * * *

Lead

* * * * *

Tetraethyl lead/Alkyl halide + sodium-lead alloy

Tetramethyl lead/Alkyl halide + sodium-lead alloy

* * * * *

[FR Doc. 92-21780 Filed 9-10-92; 8:45 am]

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Part V

Department of the Interior

Bureau of Land Management

43 CFR Part 3710

Use and Occupancy Under the Mining Laws; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3710

[WO-680-4130-02-241A]

RIN 1004-AB88

Use and Occupancy Under the Mining Laws

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would set forth the restrictions on use and occupancy of unpatented mining claims and mill sites on Federal lands. It would limit the use of such lands by the claimant to those activities related to prospecting, mining, or processing operations, and uses reasonably incident to them. The rule would establish conditions for determining whether these criteria are met, procedures for initiation of occupancy, standards for the use or occupancy, prohibited acts, procedures for inspection and enforcement, and procedures for recognizing and managing existing occupancies. It would also provide for penalties and appeals procedures.

DATES: Comments should be submitted by November 10, 1992. Comments received or postmarked after the above date may not be considered in the decisionmaking process on the final rule.

ADDRESSES: Comments should be sent to: Director (140), Bureau of Land Management, room 5555, Main Interior Building, 1849 C Street, NW., Washington, DC 20240. Comments will be available for public review at the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Richard Deery, (202) 208-4147.

SUPPLEMENTARY INFORMATION: Public concern about unauthorized non-mining industrial uses and residential occupancy—often termed "squatting"—has necessitated that the BLM develop regulations to address the issue. These uses often interfere with legitimate uses of the public lands, and sometimes pose public dangers. On the other hand, it is improper to classify all miners as potential squatters. There is often a need for legitimate occupancy associated with mining activities, particularly in remote areas. The proposed rule has been carefully crafted to ensure that any administrative or regulatory actions would be carried out with due process.

The BLM is proposing new regulations in 43 CFR subpart 3715 to allow for and to set conditions and standards for use and occupancy that are reasonably incident to prospecting, mining, or production, and to provide field managers with the tools necessary to manage use and occupancy. The proposed rule is mainly substantive, setting forth conditions and standards that would apply to all activities on unpatented mining claims, regardless of the authorities under which they are carried out. The proposed rule would not change any of these authorities or the procedures employed to carry them out.

The proposed rule would define those activities that are related to prospecting, mining, or processing operations and uses reasonably incident thereto, in effect placing into the Secretary's regulations the "reasonably incident" standard established in Bruce Crawford, et ux, 1985, 92 ID 208, 86 IBLA 350. "The * * * 'reasonably incident' standard resolves questions as to the permissibility of a use by determining whether or not the use is reasonably incident to the activities actually occurring. The 'unnecessary or undue degradation' (of section 302(b) of the Federal Land Policy and Management Act) standard comes into play only on a determination that degradation is occurring. * * * (T)he inquiry then becomes one of determining whether the degradation occurring is unnecessary or undue assuming the validity of the use which is causing the impact. For, if the use is, itself, not allowable, * * * that use may be independently prohibited as not reasonably incident to mining."

The proposed rule would recognize two levels of activity on unpatented mining claims and the public lands under the mining laws: Occupancy, which involves full or part time residential activities, and use, which encompasses all activities including residency. The proposed rule would define and prohibit those non-mining uses that are clearly not allowed under the standard, even though they may have the look and feel of mining (e.g., precious metal recovery from electronic, photographic, or catalytic converter scrap as a part of toll smelting on independent mill sites).

The proposed rule in § 3715.1 would define the standards that all uses are required to meet. Section 3715.2 would define the conditions under which occupancy would be allowable.

Section 3715.3 would create a requirement for consultation with the authorized officer prior to the initiation of any aspect of occupancy. Consultation would run parallel with the provisions of the surface management regulations.

Consultation would be subject to a review by the authorized officer that would include the use of the National Environmental Policy Act (NEPA) in reviewing the proposed occupancy or fencing. Consultation would not be completed by the authorized officer until the NEPA process is completed. This process would adopt any existing NEPA-based review processes. For plan level operations, consultation would be coincident with plan review and approval found in the surface management regulations (3802 and 3809). Consultation for a section 3809 notice-level operation would begin at the same time that the notice review commences. However, it would not be subject to the 15-day notice review period found in the surface management regulations. Those portions of operations that do not involve occupancy and that are part of the notice would be allowed to proceed in the normal fashion after the 15-day review. Those portions of operations, such as section 3809 casual use or section 3802 activities, that do not require a plan and that involve occupancy or fencing would be required first to pass through the consultation process.

This consultation would provide the authorized officer with the opportunity to determine whether the occupancy or fencing complies with the regulations and to ensure public passage through or access to adjacent public lands and private inholdings consistent with the standards of the Unlawful Inclosures of Public Lands Act, Public Law 167, and *U.S.* v. *Curtis-Nevada Mines, Inc., et al.*, 611 F.2d 1277 (9th Cir. 1980). Further, the separate consultation decision would make specific statements that would form the basis for a FLPMA section 302(c) termination order if non-compliance by the operator occurs.

The proposed rule, in § 3715.4, would set standards of operation for permissible use or occupancy.

In § 3715.5 the proposed rule would specify the acts prohibited by the regulations.

The proposed rule, in § 3715.6, would create an inspection and enforcement mechanism, specify prohibited acts, and allow the authorized officer to choose among administrative, civil, and criminal remedies to address prohibited acts.

In § 3715.7, the proposed rule would require all operators to record the existence of their occupancy with the

authorized officer within 60 days of the effective date of the final rule. Failure to record the occupancy will bring the full force and effect of the regulation on the mining claimant and the operator. Recordation would allow an operator with an existing occupancy that is not yet the subject of an action by the Secretary 1 year to come into compliance with the regulations. Continued occupancy after that date would be required to meet the conditions and standards of the regulations.

In §§ 3715.6 and 3715.8, the proposed rule would set forth the potential remedies available to the authorized officer and the potential penalties that may result for failure to comply with the regulations, including provisions for orders and the use of additional land use authorizations where appropriate.

In § 3715.9, the proposed rule would lay out the appeals process. Mining claimants or operators would be permitted to appeal an adverse decision or determination to the State Director and then to the Interior Board of Land Appeals (IBLA). An appeal would not stay the authorized officer's decision, unless a stay is granted by the Secretary, acting through the IBLA. Parties other than the mining claimant or the operator would only be able to appeal a decision under 43 CFR part 4.

The principal author of this proposed rule is Richard Deery of the Division of Mining Law and Salable Minerals, Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management.

It is hereby determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The BLM has determined that this proposed rule is categorically excluded from further environmental review pursuant to 516 Departmental Manual (DM), chapter 2, appendix 1, Item 1.10, and that the proposal would not significantly affect the 10 criteria for exceptions listed in 516 DM 2, appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, the term "categorical exclusions" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule. A major rule is any regulation that is likely to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. No discernible economic impacts on operations involving occupancy are expected from this proposed rule. All operations involving occupancy are expected to occur under notices or plans. The BLM is unaware of any casual use occupancies. The cost of complying with the requirements of the proposed rule is indistinguishable from the requirements imposed by the existing surface management regulations. Further, for the same reasons, the Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that it will not have a significant economic impact on a substantial number of small entities. The BLM estimates approximately 6,000 mining operations by small entities exist on public lands in the Western States. The effect of the rule would be to curtail activities by those whose occupancy of the public lands is not reasonably incident to mining, milling, or prospecting. However, the only activities that would be curtailed are those that are unlawful.

The Department certifies that this proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. The rule will affect no lawful occupancies, except to the extent that it requires certain information to be included in plans and notices. Therefore, as required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property.

The information collection requirement contained in this rule has been submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until it has been approved by the Office of Management and Budget.

Public reporting burden for this information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer (783), Bureau of Land Management, Washington, DC 20240, and the Office of Management and Budget, Paperwork Reduction Project, 1004–xxxx, Washington, DC 20503.

The Department has certified to the Office of Management and Budget that these proposed regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

List of Subjects for 43 CFR Part 3710

Administrative practice and procedure, Mines, Public lands—mineral resources.

Under the authorities cited below, and for the reasons stated in the preamble, part 3710, Group 3700, subchapter C, chapter II, subtitle B, title 43 of the Code of Federal Regulations is proposed to be amended by adding subpart 3715 as follows:

PART 3710—PUBLIC LAW 167; ACT OF JULY 23, 1955

Subpart 3715—Use and Occupancy Under the Mining Laws

Sec.

3715.0–1 Purpose.
3715.0–2 Objectives.
3715.0–3 Authority.
3715.0–5 Definitions.
3715.0–6 Policy.
3715.0–7 Scope.
3715.1 Use.
3715.2 Conditions of occupancy.
3715.3 Consultation prior to occupancy.
3715.4 Standards of use or occupancy.
3715.5 Prohibited acts.
3715.6 Inspection and enforcement.
3715.7 Existing occupancy.
3715.8 Penalties.
3715.9 Appeals.

Subpart 3715—Use and Occupancy Under the Mining Laws

Authority: 30 U.S.C. 22; 30 U.S.C. 612; 43 U.S.C. 1732–1733; 43 U.S.C. 0061; 16 U.S.C. 3101 et seq.; 43 U.S.C. 1201; 18 U.S.C. 1001.

§ 3715.0–1 Purpose.

The purposes of the regulations in this subpart are to:

(a) State specifically the uses allowable and the uses prohibited under the requirement in section 4(a) of the Surface Resources Act, Public Law 84–

167 (30 U.S.C. 612), and other applicable law, that mining claims shall not be used, prior to issuance of patent therefor, for any purposes other than prospecting, mining, or processing operations, and uses reasonably incident thereto.

(b) Inform persons operating under the mining laws of their basic rights and responsibilities relative to use and occupancy.

(c) Identify laws and regulations applicable to use and occupancy of unpatented mining claims or public lands open to the mining laws.

(d) Enumerate instances where use and occupancy of unpatented mining claims or public lands open to the mining laws are authorized, and to set standards for such use or occupancy.

(e) Enumerate prohibited acts relating to use and occupancy and unpatented mining claims or public lands open to the mining laws.

(f) Provide for administrative remedies, and appropriate civil and criminal penalties, for cases of non-compliance with the regulations in this subpart.

§ 3715.0-2 Objectives.

The objective of this regulation is to prevent non-mining industrial uses and unauthorized residential occupancy.

§ 3715.0-3 Authority.

(a) Section 1 of the Mining Law of 1872, as amended, (30 U.S.C. 22), provides that, except as otherwise provided by law, all valuable mineral deposits in lands belonging to the United States shall be free and open to exploration and purchase, and the lands containing them shall be open to occupation and purchase under regulations prescribed by law and the local customs or mining district rules that are not inconsistent with the laws of the United States.

(b) Section 4 of the Surface Resources Act, Public Law 84-167 (30 U.S.C. 612) states that any mining claim located after July 23, 1955, under the mining laws of the United States shall not be used, prior to issuance of patent therefor, for any purposes other than prospecting, mining, or processing operations, and uses reasonably incident thereto. Any such mining claim shall also be subject, prior to issuance of patent therefor, to the right of the United States, its permittees, and licensees, to use so much of the surface thereof as may be necessary for management and disposition of vegetative surface resources and management of other surface resources, or for access to adjacent land.

(c) Section 302(b) of the Federal Land Policy and Management Act (FLPMA) (Pub. L. 94-579) directs the Secretary to take all necessary actions to prevent unnecessary or undue degradation of the public lands.

(d) Section 302(c) of FLPMA directs the Secretary to include in all land use instruments a provision authorizing revocation or suspension, after public notice and hearing, of such instrument upon a final administrative finding of a violation of any term or condition of the instrument. This section also provides that the Secretary may order an immediate temporary suspension of use, occupancy, or development prior to a hearing or final administrative finding if such a suspension is necessary to protect health, safety, or the environment.

(e) Section 303(a) of FLPMA states that the Secretary shall issue regulations necessary to implement the provisions of FLPMA with respect to the public lands, and establishes penalties for violation of such regulations.

(f) Section 303(g) states that the use, occupancy, or development of any portion of the public lands contrary to any regulation of the Secretary or other responsible authority, or contrary to any order issued pursuant to any such regulation, is unlawful and prohibited (43 U.S.C. 1733(g)).

(g) The Unlawful Occupancy and Inclosures of Public Lands Act prohibits inclosures and exclusive use and occupancy of the public lands, without claim or color of title as described in the Act (43 U.S.C. 1061 *et seq.*). The same Act states, in summary, that no person, by force, threats, intimidation, or by any fencing or any other unlawful means, shall prevent or obstruct peaceful entry, free passage or transit over or through the public lands by another person.

(h) Section 1110(b) of the Alaska National Interest Land Conservation Act provides, among other things, that a valid mining claim or other valid occupancy within or surrounded by conservation system units shall be given adequate and feasible access, subject to reasonable regulations issued by the Secretary to protect the natural and other values of such lands.

(i) 43 U.S.C. 1201 states that the Secretary of the Interior, or such officer as may be designated by the Secretary, is authorized to enforce and to execute, by appropriate regulations, every part of the provisions related to the public lands not otherwise specially provided for.

(j) 43 U.S.C. 1457 charges the Secretary with the supervision of public business relating to the public lands, including mines.

(k) 18 U.S.C. 1001 provides that whoever, in any matter within the jurisdiction of any department or agency of the United States, knowingly falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writings or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than 5 years, or both.

§ 3715.0-5 Definitions.

As used in this subpart the term:

(a) *Authorized officer* means any employee of the Bureau of Land Management to whom authority has been delegated to perform the duties described in this subpart.

(b) *Exploration or prospecting* means the search for mineral deposits by geological, geophysical, geochemical, or other techniques, including but not limited to sampling, drilling, or developing surface or underground workings to evaluate the type, extent, or quantity of mineral values present.

(c) *Mining operations* means all functions, work, facilities, and activities in connection with development, mining, or processing of mineral deposits and all uses reasonably incident thereto, including roads and other means of access on lands subject to the regulations in this subpart, regardless of whether the operations take place on or off unpatented mining claims.

(d) *Occupancy* means those activities that may result in full or part time residence on the public lands or the construction, presence, or maintenance of temporary or permanent structures that may be used for such purposes. Such activities or structures may include, but are not limited to, barriers to access, fences, tents, motor homes, trailers, homes, and the use of a watchman or caretaker for the purpose of monitoring activities on the public lands.

(e) *Permanent structure* means a structure fixed to the ground by any of the various types of foundations, slabs, piers, poles, or other means allowed by building codes. The term shall also include a structure placed on the ground that lacks foundations, slabs, piers, or poles, and that can only be moved through disassembly into its component parts or by techniques commonly used in house moving.

(f) *Reasonably incident* means, for the purposes of this subpart, the statutory standard "reasonably incident to prospecting, mining, or processing

operations," which refers to those actions or expenditures of labor and means taken by a person of ordinary prudence to prospect, explore, define, develop, mine, or beneficiate a valuable mineral deposit, using methods, structures, and equipment appropriate to the geological terrain, mineral deposit, and stage of development.

§ 3715.0-6 Policy.

It is the policy of the Department of the Interior to encourage the development of Federal mineral resources. The use of public lands for this purpose is limited to those activities related to prospecting, mining, or processing operations, and activities and occupancies reasonably incident thereto. The Secretary will aggressively pursue abuse of the mining law to ensure that valid uses are recognized and that appropriate action is taken to eliminate invalid uses.

§ 3715.0-7 Scope.

These regulations apply to Federal lands open to the operation of the Mining Law of 1872, as amended, and administered by the Bureau of Land Management. They do not apply to State or private lands in which the mineral estate has been reserved to the United States. They do not apply to Federal lands administered by other Federal agencies, even though they may be open to the operation of the mining laws.

§ 3715.1 Use.

(a) Use of a mining claim or public land for the exploration for and the development of mineral deposits under the mining laws is allowable if the activities are reasonably incident to prospecting, mining, or processing operations.

(b) All acceptable uses shall conform to the standards set out in § 3715.4 of this subpart.

(c) Activities that are not reasonably incident to prospecting, mining, or processing operations under the mining laws, but that are allowable under a land use authorization such as a permit or lease, may only be authorized under the regulations in part 2920 of this title.

(d) Activities that constitute uses that are not allowed under the public land laws, the mining laws, or the mineral leasing laws are not authorized.

(e) All uses that involve the placement, construction, or maintenance of enclosures, gates, fences, or signs shall occur only after consultation with the authorization officer as required under § 3715.3 of this subpart.

§ 3715.2 Conditions of occupancy.

(a) Use of mining claims or the public lands under the mining law for occupancy is allowable only if the activities justifying the occupancy are reasonably incident, constitute substantially regular and steady work, as weather permits, and are reasonably calculated to lead to the extraction and beneficiation of minerals.

(b) Activities warranting occupancy shall:

(1) Result in observable on-the-ground activity that may be verified by the authorized officer, pursuant to § 3715.6(a) of this subpart; and

(2) In the conduct of the observable on-the-ground activity specified, utilize appropriate equipment that is presently operable, subject to reasonable maintenance, repair, or fabrication time.

(c) In addition to the requirements specified in paragraph (b) of this section, activities warranting occupancy shall either:

(1) Expose, concentrate, or otherwise make available valuable minerals that require protection from theft or loss;

(2) Result in the presence of appropriate, operable equipment that requires protection from theft or loss or that if left unattended would constitute a hazard to public safety, or

(3) Result in surface uses, workings, or improvements that, if left unattended, would constitute a hazard to public safety; or

(4) Be located in an area so isolated or lacking in physical access as to require the mining claimant, operator, or workers to remain on site in order to work a full shift of a usual and customary length and not less than 6 hours, not including travel to the site from a community or area in which housing may be obtained.

(d) If the need for occupancy by a watchman or caretaker to protect valuable or hazardous property, equipment, or workings, is asserted, the need for such occupancy shall be on a continual basis, in addition to being reasonably incident. The need for a watchman or caretaker shall be such that either a watchman or caretaker is required to be present whenever the operation is not active or the mining claimant, operator, or workers are not present on the site.

§ 3715.3 Consultation prior to occupancy.

(a) Prior to initiation of any aspect or phase of occupancy within the meaning of § 3715.2 of this subpart, the mining claimant or operator shall consult with the authorized officer about the requirements of this subpart.

(b) Occupancy shall not be initiated until the mining claimant or operator has complied with either 43 CFR subpart 3802 or 43 CFR subpart 3809 and the authorized officer has completed any actions required under either subpart.

(c) Operators proposing to conduct activities under a plan of operations submitted pursuant to the provisions of 43 CFR subpart 3802 and 43 CFR subpart 3809 shall include in the proposed plan of operations the materials required by this subpart to describe any proposed occupancy.

(1) When submitted in this manner the authorized officer shall consider the proposed occupancy concurrently with the review of the plan of operation.

(2) The consultation provision of this subpart will be satisfied by the authorized officer making the determination required by this subpart concurrently with the approval of the plan of operations. All requirements in the determination statement provided for in paragraph (h) of this section will be included in the decision that approves, modifies, or disapproves the plan, as appropriate.

(d) Operators proposing to conduct activities that include any proposed occupancy pursuant to the notice provisions of 43 CFR subpart 3809 shall submit the materials required by this subpart in conjunction with the materials submitted pursuant to 43 CFR 3809.1–3.

(1) When submitted in this manner the authorized officer shall consider the proposed occupancy concurrently with the review of the proposed activity. However, the authorized officer will not make the determination until after he has completed the review of the materials required by this subpart.

(2) Activities in the notice which do not involve occupancy may proceed in accordance with 43 CFR 3809.1–3.

(e) Mining claimants or operators conducting operations which are casual use pursuant to 43 CFR subpart 3809 or which do not require a plan of operations under 43 CFR 3802.1–3 shall be subject to the consultation provisions of this subpart and shall submit the materials required by this subpart. Activities which constitute occupancy shall not occur until the authorized officer has completed the review of the materials required by this subpart and has made the required determination.

(f) The mining claimant or the operator shall provide the authorized officer with a map in sufficient detail to identify the site and the placement of the items specified in paragraphs (f) (3), (4), and (5) of this section and a written description of the proposed occupancy that describes in detail:

(1) How the proposed occupancy relates to activities reasonably incident to prospecting, mining, or processing operations;

(2) How the proposed occupancy meets the conditions specified in § 3715.2 of this subpart;

(3) Where temporary or permanent structures for occupancy will be placed;

(4) The location of fences and signs intended to exclude the general public;

(5) The location of reasonable public passage or access routes through or around the area to adjacent public lands; and

(6) The estimated period of use of the structures and fences as well as the schedule for removal and reclamation upon cessation of activities.

(g) All proposed occupancy, fences, or signs intended to exclude the general public shall be reviewed by the authorized officer to determine if the operator's assertion that the proposed occupancy or use will conform to the provisions of § 3715.1 or § 3715.2 of this subpart is correct.

(1) For proposed occupancy submitted in accordance with paragraph (d) or (e) of this section, the review will be completed within 30 business days of receipt of the materials unless the authorized officer concludes that the determination cannot be made until:

(i) 30 days after a final environmental impact statement has been prepared and filed with the Environmental Protection Agency or,

(ii) The authorized officer has complied with section 106 of the National Historic Preservation Act or section 7 of the Endangered Species Act.

(h) At the conclusion of the review, the authorized officer will prepare a written determination of concurrence or non-concurrence which will be provided to the mining claimant or operator. For operations conducted under a plan of operations, this written determination will be included in the decision that approves, modifies, or rejects the plan.

(1) Each concurring determination will contain a statement requiring the mining claimant or operator to comply with the standards set out in § 3715.4 of this subpart. After a concurring determination has been reached, failure of the mining claimant or the operator at any time to meet the standards in § 3715.4 (a) through (c) and (e) shall create a presumption that health, safety, or the environment may be at risk, and the authorized officer may, pursuant to section 302(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732(c)), order an immediate, temporary suspension of occupancy prior to and during the pendency of an appeal, pursuant to § 3715.9 of this subpart.

(2) Each non-concurring determination will specify how the proposed occupancy fails to meet the conditions of § 3715.1 or § 3715.2 of this subpart and will provide the mining claimant an opportunity for an appeal, pursuant to § 3715.9 of this subpart.

(i) Following a non-concurring determination, a mining claimant or operator may modify the proposed occupancy to conform with the conditions of § 3715.1 or § 3715.2 of this subpart and resubmit the materials to the authorized officer.

(j) Following a determination of non-concurrence, occupancy shall not be initiated by the mining claimant or operator.

(k) Occupancy authorized by this subpart shall not be subject to the time limitations of § 8365.1–2 of this title.

§ 3715.4 Standards of use or occupancy.

(a) In all circumstances, use or occupancy shall prevent or avoid unnecessary or undue degradation of the public lands and resources.

(b) No use or occupancy shall be initiated until the operator is in possession of all required State mining, reclamation, and waste disposal permits, approvals, or other authorizations.

(c) All uses and occupancies shall conform to all applicable Federal and State environmental standards, including the acquisition of any permits that may be required, prior to commencement of activities. This includes, but is not limited to, permits, authorizations, and standards granted by or as required by the Clean Water Act (33 U.S.C. 1251 *et seq.*), Clean Air Act (42 U.S.C. 7401 *et seq.*), and the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*).

(d) Prospecting or exploration, as defined in this subpart, that involves only surface activities, shall not involve the placement of permanent structures on public lands. Any temporary structures placed on public lands in conjunction with prospecting or exploration are allowable only for the duration of such activities, unless expressly allowed in writing by the authorized officer to remain on the public lands. Mining operations, as defined in this subpart, may involve the placement of permanent structures on public lands.

(e) All permanent structures or temporary structures placed on public lands shall conform with the appropriate State or local building, fire, and electrical codes, and occupational safety and health and mine safety standards. If required by local codes, use or occupancy involving permanent structures shall only be initiated after a certificate of occupancy or its equivalent has been issued. If required by State or local law, appropriate sewerage and sanitation permits shall be acquired by the operator prior to the occupancy or use of a permanent structure placed on the public lands.

(f) Unless expressly allowed in writing to remain on the public lands by the authorized officer, all permanent structures, temporary structures, material, equipment, or other personal property placed on public lands during the use or occupancy covered by this subpart shall be removed within 180 days after termination of operations, as was reported in the filing required under § 3715.3(f). This provision shall not apply to seasonal operations that are temporarily suspended and expected to continue during the next operating season, or operations that are temporarily suspended due to market or labor conditions.

(1) Thirty days before the close of the 180 day period following termination of operations, the authorized officer will order, in writing, the removal of any remaining property.

(2) Any such property left on the public lands beyond the 180-day period shall become the property of the United States, and shall be subject to removal and disposition by the authorized officer consistent with such laws and regulations applicable to such property. The owner of any such property removed and disposed of by the authorized officer shall be liable for the costs incurred by the Government in such removal and disposal.

§ 3715.5 Prohibited acts.

In addition to the restrictions on use and occupancy of unpatented mining claims imposed by § 3712.1 of this part, the following acts are prohibited:

(a) The placement, construction, maintenance, or use of cabins, buildings, trailers, motor homes, tents, or other structures and vehicles used for occupancy not meeting:

(1) The conditions of occupancy under § 3715.2 of this subpart; and

(2) One or more of the standards of occupancy under § 3715.4 of this subpart;

(b) Initiation of occupancy prior to the filing, review, and approval, modification, or rejection of a plan of operation as required under subpart 3802 or 3809 of this title;

(c) Initiation of occupancy prior to consultation with the authorized officer as required by § 3715.3 of this subpart for activities that do not require a plan of operations under subpart 3802 of this

title, or that are defined as casual use or notice activities under subpart 3809 of this title.

(d) Initiation of occupancy after a determination of non-concurrence has been made by the authorized officer that the proposed occupancy or fencing will not conform to the provisions of § 3715.1, § 3715.2 or § 3715.4 of this subpart;

(e) Failure to comply with any order pertaining to non-compliance with the provisions of this subpart within the time frames provided by the order;

(f) Preventing or obstructing free passage or transit over or through public lands by force, threats, or intimidation;

(g) The placement, construction, or maintenance of enclosures, gates, fences, or signs without the concurrence of the authorized officer;

(h) Causing a fire or safety hazard, or creating a public nuisance; and

(i) Conducting activities on public lands that are not incident to prospecting, discovery, development, extraction, and processing of mineral deposits or uses reasonably incident thereto, including but not limited to: Non-mining related habitation, cultivation, and development of small trade or manufacturing concerns; storage, treatment, processing, or disposal of materials or waste that are generated elsewhere and brought onto public lands; recycling or reprocessing of manufactured material such as scrap electronic parts, appliances, photographic film, and chemicals; hobby and curio shops; cafes; tourist stands; hunting and fishing camps.

§ 3715.6 Inspection and enforcement.

(a) The authorized officer will physically inspect all structures, equipment, workings, and uses located on public lands. Such inspection may include verification of reasonably incident use or occupancy, and the nature of such use or occupancy, including compliance with § 3715.4 of this subpart. Indoor inspections of authorized structures used solely for residential purposes will not be performed unless permitted by an occupant.

(b) If a use or occupancy is not reasonably incident, and fails to meet the standards for occupancy set forth in § 3715.4 (a) through (c) or (e) of this subpart, the authorized officer may order an immediate, temporary suspension of occupancy prior to and during the pendency of an appeal, pursuant to § 3715.9 of this subpart, if necessary to protect health, safety, or the environment. The order shall specify:

(1) How the operator is failing or has failed to comply with the requirements of this subpart; and

(2) The actions that the mining claimant or operator shall take to correct the noncompliance, the time by which occupancy shall be suspended, and the time, not to exceed 30 days, within which corrective action shall be completed.

(c) If a use or occupancy is not reasonably incident and there is an existing occupancy as specified in § 3715.7 of this subpart, the occupant shall apply within 60 days after the date of notice from the authorized officer for appropriate authorization under the regulations in Group 2900 of this title.

(d) If the use or occupancy is reasonably incident but the occupancy fails to meet the standards for occupancy set out in § 3715.4 of this subpart, the authorized officer shall issue an order that specifies:

(1) How the operator is failing or has failed to comply with the requirements of this subpart; and

(2) The actions that the mining claimant or operator shall take to correct the noncompliance and the time, not to exceed 30 days, within which corrective action shall be started. If corrective action is not initiated within the time allowed, the authorized officer may order an immediate, temporary suspension of occupancy pursuant to paragraph (b) of this section.

(e) If there is an additional activity being conducted on the site that may be authorized only under the regulations of Group 2900 of this title, the authorized officer may order the mining claimant or authorized occupant to apply within 30 days for appropriate authorization under the regulations in Group 2900 or suspend the occupancy.

(f) Upon failure of an occupant to comply with the orders of the authorized officer, the authorized officer may request the Attorney General to institute a civil action in an appropriate United States District Court for an injunction or other appropriate order to prevent any person from utilizing public lands in violation of the regulations of this subpart.

§ 3715.7 Existing occupancy.

(a) Operators or mining claimants occupying public lands under the mining laws on the effective date of this subpart may continue their occupancy for one year after that date, provided:

(1) They provide the authorized officer with written notification of the existence of the occupancy by [60 days after effective date of final rule]; and

(2) There is no pending formal action by the Secretary adverse to the operator or mining claimant concerning occupancy.

(b) The written notification shall consist of the same materials that would ordinarily be submitted under § 3715.3 of this subpart.

(c) Any mining claimant or operator who fails to provide such written notice may be subject to the administrative remedies, or the appropriate civil or criminal penalties of § 3715.6 and § 3715.8 of this subpart.

(d) One year after the effective date of this regulation all existing occupancy shall meet the requirements of § 3715.1, § 3715.2, § 3715.3, and § 3715.4 of this subpart. The authorized officer will order any existing occupancy failing to meet the requirements of these sections to cease, and the land to be reclaimed to the satisfaction of the authorized officer, unless otherwise expressly authorized.

(e) Occupancy continuing after one calendar year past the effective date of these regulations that has failed to meet the conditions or standards of § 3715.1, § 3715.2, and § 3715.4 of this subpart, and that has not been expressly permitted by the authorized officer, will be subject to administrative remedies, or the civil or criminal penalties set forth in § 3715.6, and § 3715.8 of this subpart.

§ 3715.8 Penalties.

(a) Any person who knowingly and willfully violates the standards under § 3715.4 or § 3715.5 of this subpart is subject to arrest and trial by the United States magistrate and, if convicted, shall be subject to a fine of no more than $1,000 or imprisonment not to exceed twelve months, or both, for each offense.

(b) Whoever in any matter under this subpart knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writings or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, is subject to arrest and trial by a United States magistrate and, if convicted, shall be fined not more than $10,000 or imprisoned not more than 5 years, or both.

§ 3715.9 Appeals.

(a) Any operator or mining claimant adversely affected by a decision or a determination of the authorized officer made pursuant to the provisions of this subpart shall have a right of appeal to the State Director, and thereafter to the Interior Board of Land Appeals, Office of Hearings and Appeals, pursuant to

part 4 of this title, if the State Director's decision is adverse to the appellant.

(b) No appeal to the State Director shall be considered unless it is filed, in writing, in the office of the authorized officer who made the decision from which an appeal is being taken, within 30 days after the date of receipt of the decision. A decision of the authorized officer from which an appeal is taken to the State Director shall be effective during the pendency of an appeal. Except for an order requiring an immediate, temporary suspension of occupancy, issued under § 3715.6(b) of this subpart, a request for a stay may accompany the appeal and be granted if appropriate.

(c) The appeal to the State Director shall contain:

(1) The name and mailing address of the appellant;

(2) When applicable, the name of the mining claim(s) and serial number(s) assigned to the mining claims recorded pursuant to subpart 3833 of this title which are subject to the appeal; and

(3) A statement of the reasons for the appeal and the reasons which would justify reversal or modification of the decision.

(d) The State Director will promptly render a decision on the appeal. The decision will be in writing and will set forth the reasons for the decision. The decision shall be sent to the appellant by certified mail, return receipt requested.

(e) The decision of the State Director, when adverse to the appellant, may be appealed to the Interior Board of Land Appeals, Office of Hearings and Appeals, pursuant to part 4 of this title.

(f) All decisions or approvals of the authorized officer under this part shall remain effective pending appeal unless the Interior Board of Land Appeals determines otherwise upon consideration of the standards stated in this paragraph. The provisions of 43 CFR 4.21(a) shall not apply to any decision of approval of the authorized officer under this subpart. A petition for a stay of a decision or approval of the authorized officer shall be filed with the Interior Board of Land Appeals, Office of Hearings and Appeals, Department of the Interior, and shall show sufficient justification based on the following standards: (1) The relative harm to the parties if the stay is granted or denied, (2) the likelihood of the appellant's success on the merits, (3) the likelihood of irreparable harm to the appellant or resources if the stay is not granted, and (4) whether public interest favors granting the stay.

(g) Neither the decision of the authorized officer nor that of the State Director shall be construed as final agency action for the purpose of judicial review of that decision.

Dated: June 4, 1992.

Richard Roldan,

Deputy Assistant Secretary of the Interior.

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H.R. 3033/P.L. 102-367

Job Training Reform Amendments of 1992. (Sept. 7, 1992; 106 Stat. 1021; 96 pages) Price: $2.75

Last List September 10, 1992

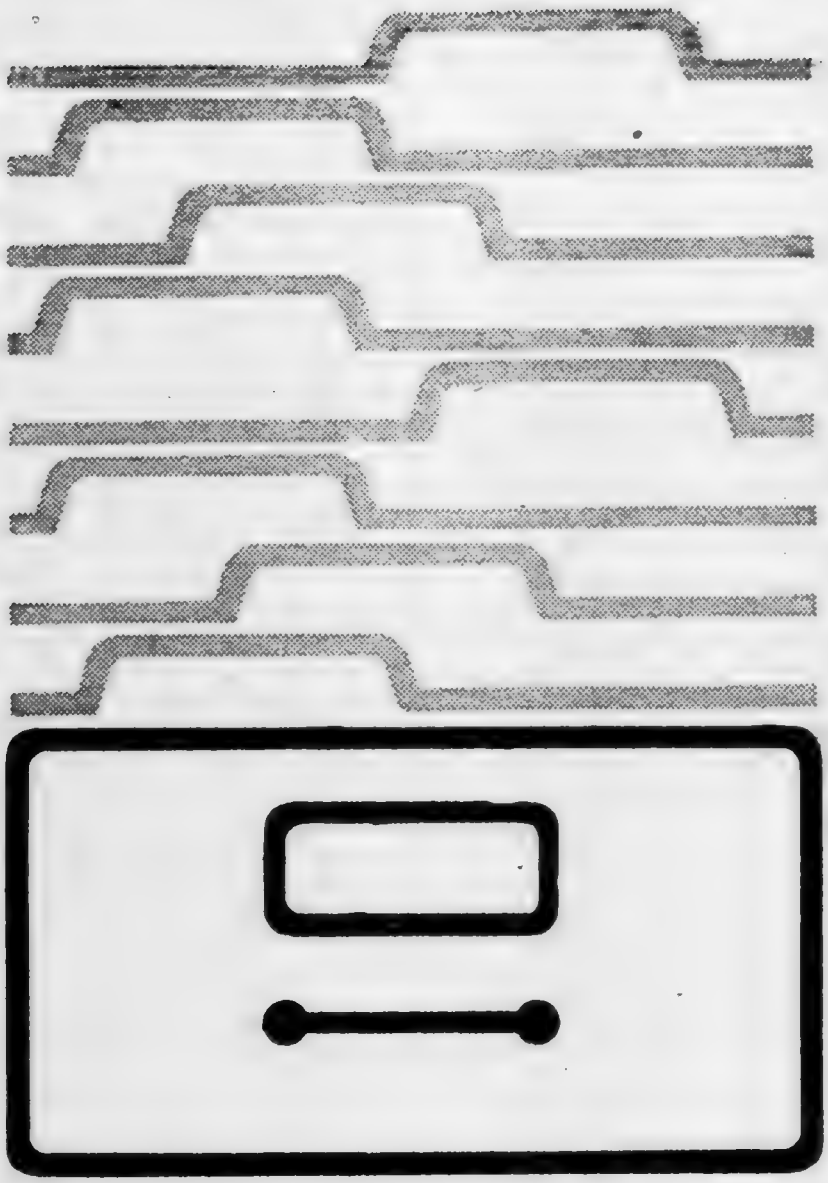

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in the Code of Federal Regulations (CFR)

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Monday
September 14, 1992

Briefing on How To Use the Federal Register
For information on a briefing in Atlanta, GA, see announcement on the inside cover of this issue.

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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

ATLANTA, GA

WHEN: September 17, at 9:00 a.m.
WHERE: Centers for Disease Control
1600 Clifton Rd., NE.
Auditorium A
Atlanta, GA (Parking available)
RESERVATIONS: [404-639-3528 (Atlanta area)]
1-800-347-1997 (outside Atlanta area)

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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Docket No. FV-92-060IFR]

Kiwifruit Grown in California; Relaxation of Quality Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule revises the quality requirements for California Kiwifruit. Such fruit is currently subject to a minimum requirement of a modified U.S. No. 1 grade (known as KAC No. 1 quality). The current KAC No. 1 quality requirements are the same as the requirements for the U.S. No. 1 grade except for those pertaining to cleanness and shape. This rule increases the tolerance for misshapen kiwifruit. This action is intended to allow more kiwifruit into fresh market channels, consistent with current market requirements.

DATES: This action is effective September 17, 1992. Comments which are received by October 14, 1992 will be considered before the issuance of any final rule.

ADDRESSES: Written comments concerning this rule should be submitted in triplicate to the Docket Clerk, F&V Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456. All comments submitted will be made available for public inspection in the above office during regular business hours. Comments should reference the docket number and the date and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone (202) 690-3670.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Marketing Order No. 920, both as amended (7 CFR part 920), regulating the handling of kiwifruit grown in California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This interim final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 handlers of California kiwifruit subject to regulation under the marketing order, and approximately 700 producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A minority of these handlers and a majority of the producers may be classified as small entities.

The production of California kiwifruit for the 1991 season totaled 7,780,000 tray equivalents, compared to the 1990 season of 8,900,000 tray equivalents. This represents a 15 percent decrease in California kiwifruit production from 1990 to 1991.

Minimum requirements for California kiwifruit are based on the U.S. Standards for Grades of Kiwifruit (7 CFR 51.2335 through 51.2340) (Standards). The Standards list a number of grade defects, which include bruises, growth cracks, misshapen fruit and discoloration. The listed defects are the same for the U.S. No. 1 and U.S. No. 2 grades; however, the allowable amount of damage for these defects varies. The U.S. No. 1 grade requires that kiwifruit be free from damage by these defects. The U.S. No. 2 grade requirements are less stringent, providing that the fruit must be free from serious damage by defects. "Damage" is defined as any defect or combination of defects which materially detracts from the appearance or the edible or marketing quality of the commodity. "Serious damage" is defined as any defect or combination of defects which seriously detracts from the appearance, or the edible or marketing quality of the commodity.

Currently, California kiwifruit are subject to a modified U.S. No. 1 grade (known as KAC No.1 quality). KAC No. 1 quality requirements are the same as the requirements for the U.S. No. 1 grade under the Standards, except that the U.S. No. 2 grade requirement is applied

with respect to cleanness and shape. U.S. No. 1 grade fruit must be "clean" and "fairly well formed", whereas U.S. No. 2 grade fruit need only be "fairly clean" and "not badly misshapen."

At a meeting held on April 7, 1992, the Kiwifruit Administrative Committee (KAC), the agency responsible for local administration of the marketing order, recommended relaxing the current shape requirement to permit an additional allowance for "badly misshapen" Kiwifruit. According to the Standards "badly misshapen" means the fruit is so decidedly deformed that its appearance is seriously affected. Such kiwifruit has previously been perceived as not being acceptable to or preferred by consumers. However, the KAC believes some amount of such fruit is acceptable to consumers.

Currently, the Standards allow an 8 percent tolerance for fruit which fails to meet the specified grade requirements. The KAC recommended relaxing the minimum quality requirement to permit an additional 7 percent tolerance specifically for "badly misshapen" kiwifruit. The KAC believes that permitting the shipment of some fruit which is wider than it is tall will allow more kiwifruit to be shipped into fresh market channels, consistent with current market requirements.

Section 8e of the Act provides that when certain domestically produced commodities, including kiwifruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality or maturity requirements. Since this rule relaxes the minimum quality requirements under the domestic handling regulation, a corresponding change in the kiwifruit import regulation will be considered. Such change would be addressed in a separate rulemaking action.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant information available, it is found that this action, as set forth below, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to implementing this action, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The KAC unanimously recommended this action at a public meeting and all interested persons had an opportunity to provide input; (2) this action relaxes handling requirements (3) California kiwifruit shippers are aware of this action and need no additional time to comply with the relaxed requirements; and (4) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements.

For the reasons set forth in the preamble, 7 CFR part 920 is amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 920 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 920.302 is amended by revising paragraph (b)(1) to read as follows:

Note: This section will appear in the annual code of Federal Regulations.

§ 920.302 Grade, size, pack and container regulations.

* * * * *

(b) *Definitions.* (1) The term "KAC No. 1 quality" means kiwifruit that meets the requirements of the U.S. No. 1 grade as defined in the United States Standards for Grades of Kiwifruit (7 CFR 51.2335 through 51.2340), except that the kiwifruit shall be "not badly misshapen." The terms "fairly uniform in size" and "diameter" mean the same as defined in the U.S. Standards for Grades of Kiwifruit.

* * * * *

Dated: September 4, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–22043 Filed 9–11–92; 8:45 am]

BILLING CODE 3410–02–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1214

Space Shuttle

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA is adopting 14 CFR part 1214 subpart 1214.1, "General Provisions Regarding Space Shuttle Flights of Cargo-bay Payloads for Non-U.S. Government Reimbursable Customers" as a final rule. This rule sets forth general provisions regarding flight of Space Shuttle cargo bay payloads for non-U.S. government, reimbursable customers. It does not apply to Small Self-Contained Payloads flown under the provision of subpart 1214.9 or payloads flown on a space-available basis on NASA-provided Hitchhiker carriers.

EFFECTIVE DATE: December 31, 1991.

FOR FURTHER INFORMATION CONTACT: Robert L. Tucker, Jr. (202) 453–2347.

SUPPLEMENTARY INFORMATION: NASA published this rule as an interim final rule in the **Federal Register** on February 6, 1992, 57 FR 4544. No comments were received from the public; therefore, the interim final rule amending 14 CFR part 1214 subpart 1214.1 is adopted as a final rule without change.

Dated: September 2, 1992.

Daniel S. Goldin,

Administrator.

[FR Doc. 92–22036 Filed 9–11–92; 8:45 am]

BILLING CODE 7510–01–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 770, 771, 773, 776, 779, 786, and 799

[Docket No. 920897–2197]

Revisions to the Export Administration Regulations; Clarifications

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration is amending the Export Administration Regulations (EAR) to make certain editorial clarifications and corrections and to make revisions that conform with the Commerce Control List (CCL) that was published in the **Federal Register** on August 29, 1991 (56 FR 42824) and the EAR revisions that were published in the **Federal Register** on February 6, 1992 (57 FR 4553).

EFFECTIVE DATE: This rule is effective on September 14, 1992.

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, U.S. Department of Commerce, Telephone: (202) 377–2440.

SUPPLEMENTARY INFORMATION: Section 771.2 is amended by adding a new paragraph (c)(12) to clarify that items controlled for crime control are not eligible for general licenses, except to

Australia, Japan, New Zealand, and members of NATO. In § 776.14, the descriptions of commodities controlled for crime control reasons are revised to accurately reflect those items on the CCL that are subject to these controls.

Section 771.5(a)(1) is amended to exclude Iran and Syria from General License GLV eligibility to conform with the reformulation of controls on Iran and Syria described in the August 29, 1991, publication of the CCL and reported to the Congress on August 26, 1991.

This rule also makes the following clarifications:

(1) The term NATO is added to the definitions listed in § 770.2;

(2) In Supplement No. 1 to part 773, paragraph (a)(2) is revised to accurately reflect the safeguard supercomputer security conditions;

(3) In Supplement No. 4 to part 773, ECCN 3A52 is amended to correct a typographical error.

(4) Section 779.4(a) is revised to change and clarify the restrictions that apply to certain countries under General License GTDR;

(5) Section 779.8(b) is revised to clarify the reexport provisions for the direct product of U.S. origin technical data;

(6) Section 786.6(g)(1)(i) is revised to clarify that an invoice prepared by an order party may also be used as an export invoice, provided that the exporter or the exporter's agent inserts the appropriate destination control statement on the invoice;

(7) Sections 786.8(b)(9) and 786.9(b) are revised to clarify that, in addition to the Office of Export Licensing and the U.S. Customs Service, the Office of Export Enforcement may order the return or unloading of a shipment(s); and

(8) CCL entries 4D01 and 4D02 are revised to correct typographical errors in the Requirements section.

Rulemaking Requirements

1. This rule complies with Executive Order 12291 and Executive Order 12661.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694-0005, 0694-0010, and 0694-0023.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a foreign and military affairs function of the United States. This rule does not impose a new control. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Accordingly, it is issued in final form. However, comments from the public are always welcome. Comments should be submitted to Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Part 770

Administrative practice and procedure, Exports.

15 CFR Parts 771, 773, 776, 786, and 799

Exports, Reporting and recordkeeping requirements.

15 CFR Part 779

Computer technology, Exports, Reporting and recordkeeping requirements, Science and technology.

Accordingly, parts 770, 771, 773, 776, 779, 786, and 799 of the Export Administration Regulations are amended as follows:

1. The authority citations for 15 CFR parts 770, 771, 786, and 799 continue to read as follows:

Authority: Pub. L. 90-351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Pub. L. 93-153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Pub. L. 94-163, 89 Stat. 877 (42 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Pub. L. 94-258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95-223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95-242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 206, Pub. L. 95-372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended; sec. 125, Pub. L. 99-64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 11912 of April 13, 1976 (41 FR 15625, April 15, 1976); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 26, 1991 (56 FR 49385, September 27, 1991); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 14, 1991 (56 FR 58171, November 15, 1991).

2. The authority citations for 15 CFR parts 773 and 779 continue to read as follows:

Authority: Pub. L. 90-351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; Pub. L. 95-223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95-242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended; E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 26, 1991 (56 FR 49385, September 27, 1991); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 14, 1991 (56 FR 58171, November 15, 1991).

3. The authority citations for 15 CFR part 776 continue to read as follows:

Authority: Pub. L. 90-351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; Pub. L. 95-223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95-242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended; sec. 125, Pub. L. 99-64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 26, 1991 (56 FR 49385, September 27, 1991); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 14, 1991 (56 FR 58171, November 15, 1991).

PART 770—[AMENDED]

4. Section 770.2 is amended by adding a definition for "NATO" immediately following the definition for "Middle East" to read as follows:

§ 770.2 Definition of terms.

* * * * *

Middle East. * * *

NATO (North Atlantic Treaty Organization). A strategic defensive organization that consists of the following member nations: Belgium, Canada, Denmark, France, Germany, Greece, Iceland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Turkey, the United Kingdom, and the United States.

* * * * *

PART 771—[AMENDED]

5. Section 771.2 is amended by revising paragraph (c)(12), formerly reserved, to read as follows:

§ 771.2 General provisions.

* * * * *

(c) * * *

(12) The commodity is subject to the crime control provisions of § 776.14 of this subchapter, and the destination is *not* Australia, Japan, New Zealand, and members of NATO. (This provision does not apply to § 771.6(c)).

6. Section 771.5(a)(1) is amended by revising the parenthetical phrase "(except the People's Republic of China)," to read "(except Iran, the People's Republic of China, or Syria),".

PART 773—[AMENDED]

7. In Supplement No. 1 to part 773, paragraph (a)(2) is revised to read as follows:

Supplement No. 1 to Part 773—Commodities Excluded From the Special License Procedures

* * * * *

(a) * * *

(1) * * *

(2) Australia, Belgium, Denmark, France, Germany, Italy, the Netherlands, Norway, Spain, and the United Kingdom, *provided that* the export comports with the safeguard supercomputer security conditions imposed by § 776.11(d)(3) of this subchapter;

* * * * *

8. In Supplement No. 4 to part 773, entry no. 3A52 is amended by revising the phrase "100 Mhz;" to read "1000 Mhz;".

PART 776—[AMENDED]

9. Section 776.14(a) is amended by revising the second sentence to read as follows:

§ 776.14 Crime control and detection commodities.

(a) * * * Commodities affected by this requirement are identified on the Commerce Control List under ECCNs 0A82, 0A84, 1A84, 3A80, 3A81, 4A03 (fingerprint computers only), 6A02 (police-model infrared viewers only), and 9A80. * * *

* * * * *

PART 779—[AMENDED]

10. Section 779.4 is amended by revising paragraph (a) to read as follows:

§ 779.4 General license GTDR: technical data under restriction.

* * * * *

(a) *Country restrictions.* General License GTDR *with written assurance* may not be used for exports to Country Groups QWYS and Z, the People's Republic of China, Iran, or Syria. General License GTDR *without written assurance* (GTDU) may not be used for exports to Country Groups S and Z, Iran or Syria of software available at retail outlets as described in the General Software Note (Supplement No. 2 to § 799.1 of this subchapter). General License GTDR *without written assurance* (GTDU) as described in any entry on the Commerce Control List (Supplement No. 1 to § 799.1 of this subchapter) may not be used for exports to Country Groups S and Z. This General License is subject to the prohibitions described in § 771.2(c) of this subchapter, including the prohibition on any export to the South African military or police.

* * * * *

11. Section 779.8 is amended by revising paragraphs (b)(2) and (b)(2)(i), by redesignating paragraph (b)(3) as (b)(4), and by adding a new paragraph (b)(3) to read as follows:

§ 779.8 Reexports of technical data and exports of the product manufactured abroad by use of United States technical data.

* * * * *

(b) * * *

(2) *COCOM authorization.* Separate specific authorization by the Office of Export Licensing to reexport any U.S. origin technical data is not required if all of the following conditions are met:

(i) The data being exported are identified by the suffix "A" on the CCL;

* * * * *

(3) *Direct product.* Separate specific authorization by the Office of Export Licensing to export or reexport the direct product of U.S. origin technical data is not required if the direct product, were it of U.S. origin, could be shipped under any of the permissive reexport provisions of § 774.2 of this subchapter.

* * * * *

PART 786—[AMENDED]

12. Section 786.6 is amended by revising paragraph (g)(1)(i) to read as follows:

§ 786.6 Destination control statements.

* * * * *

(g) * * *

(1) * * *

(i) *General.* The exporter has the primary responsibility for assuring entry of an appropriate destination control statement on the commercial invoice, regardless of whether the exporter actually prepares this document. An invoice that is prepared by an order party may be used as an export invoice, when appropriate. The responsibility for inserting the destination control statement on such invoices is that of the exporter or the exporter's designated agent. If a forwarder, a carrier acting as a forwarder, or any other party that prepares, presents, and/or executes the invoice, the forwarder, carrier, or other party is also responsible for assuring that an appropriate statement is entered on the invoice. The carrier, as the party that issues the bill of lading or air waybill, has the primary responsibility for assuring that the same destination control statement appearing on the corresponding invoice also appears on the bill of lading or air waybill. Any other party who prepares a bill of lading or air waybill is also responsible for assuring that the appropriate statement is placed on the bill of lading or air waybill.

* * * * *

§ 786.8 [Amended]

13. In § 786.8, paragraph (b)(9) is amended by revising the phrase "customs office or Office of Export Licensing" to read "customs office, Office of Export Enforcement, or Office of Export Licensing".

§ 786.9 [Amended]

14. Section 786.9 is amended by revising the phrase "Office of Export Licensing or any U.S. customs officer" to read "Office of Export Licensing, Office of Export Enforcement, or any U.S. customs officer" in the introductory text of paragraph (b).

PART 799—[AMENDED]

15. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 4, Computers, entries 4D01A and 4D02A are amended by revising the *Requirements* section to read as follows:

4D01A "Software" specially designed or modified for the "development", "production" or "use" of equipment, materials, or "software" controlled by 4A, 4B, 4C, or 4D for NS or MT.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NS, MT, FP (see Note)
GTDR: Yes, *except* MT, Iran and Syria
GTDU: No

Note: MT controls apply to "software" specially designed or modified for the "development", "production", or "use" of equipment controlled for MT by 4A01, 4A02, 4A03, and 4A21.

4D02A "Software" specially designed or modified to support "technology" controlled by 4E for NS or MT.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NS, MT, FP (see Note)
GTDR: Yes, *except* MT, Iran and Syria
GTDU: No

Note: MT controls apply to "software" specially designed or modified to support technology for the "development", "production", or "use" of equipment controlled for MT by 4A01, 4A02, 4A03, and 4A21.

* * * * *

16. Supplement No. 2 to § 799.1 is amended by revising the introductory text of the second note to read as follows:

Supplement No. 2 to § 799.1—General Technology and Software Notes

* * * * *

2. *General Software Note.* General License GTDR, without written assurance, is available to all destinations, except Country Groups S and Z, Iran, and Syria, for release of software that is generally available to the public by being:

* * * * *

Dated: September 4, 1992.

James M. LeMunyon,
Acting Assistant Secretary for Export Administration.

[FR Doc. 92-22037 Filed 9-11-92; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 76N-052E]

RIN 0905-AA06

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Expectorant Drug Products for Over-the-Counter Human Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule establishing that any over-the-counter (OTC) drug product containing ipecac and certain other active ingredients for use as an expectorant is not generally recognized as safe and effective or is misbranded. (An expectorant is a drug taken orally to promote or facilitate the removal of secretions from the respiratory airways.) This final rule evaluates data on ipecac that were pending review when an earlier final rule on OTC expectorant drug products was issued. Also, this final rule lists in a regulation all OTC expectorant ingredients that have been found to be not generally recognized as safe and effective or are misbranded. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: September 14, 1993.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 9, 1976 (41 FR 38312), FDA published an advance notice of proposed rulemaking to establish a monograph for OTC cold, cough, allergy, bronchodilator, and antiasthmatic drug products together with the recommendations of the Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products, which was the advisory review panel responsible for evaluating the data on the active ingredients in these drug classes. One segment of that report dealt with expectorants. The agency's tentative final monograph on OTC expectorant drug products was published in the **Federal Register** of July 9, 1982 (47 FR 30002). Ipecac was classified as Category III (available data are insufficient to classify as safe and effective, and further testing is required). Subsequently, while the administrative record was open, the agency approved a proposed protocol for studying ipecac (Refs. 1, 2, and 3). On January 6, 1987, after the administrative record had closed, a citizen petition was filed with the agency submitting two studies on the effectiveness of ipecac as an expectorant (Ref. 4). The data remained under review at the time of publication of the agency's final rule on OTC expectorant drug products in the **Federal Register** of February 28, 1989 (54 FR 8494 at 8504). The agency's evaluation of those data completes the rulemaking on OTC expectorant drug products.

In the proposed regulation for OTC expectorant drug products (47 FR 30002 at 30003), the agency advised that the conditions under which the drug products subject to this monograph would be generally recognized as safe and effective and not misbranded (monograph conditions) would be effective 12 months after the date of publication in the **Federal Register**. On February 28, 1990, the final monograph became effective. As of that date, no OTC drug product that is subject to the monograph and that contains a nonmonograph condition, i.e., a condition that would cause the drug to be not generally recognized as safe and effective or to be misbranded, could be initially introduced or initially delivered for introduction into interstate commerce unless it was the subject of an approved application. Any OTC expectorant drug product that is subject to the monograph, whether formulated as a single ingredient or a combination drug product, had to meet the requirements of this final rule as of February 28, 1990. Further, any OTC drug product subject to this monograph that was repackaged or relabeled after the effective date of the monograph had to be in compliance with the monograph regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce.

In its final conclusions on OTC expectorant drug products (54 FR 8494 at 8508), the agency listed a number of expectorant ingredients that it considered to be nonmonograph ingredients. At that time, none of these ingredients was listed in a regulation. Since then, the agency has established 21 CFR 310.545 in which it listed certain active ingredients that are not generally recognized as safe and effective for certain OTC drug uses. The agency is adding § 310.545(a)(6)(iii), covering the nonmonograph expectorant active ingredients discussed in the final rule of February 28, 1989. The agency is also including ipecac in this listing. The date of nonmonograph status for all of the ingredients in the list in § 310.545(a)(6)(iii), except ipecac, was February 28, 1990. The date of nonmonograph status of ipecac is September 14, 1993.

References

(1) Comments No. RPT003 and SUP001, Docket No. 76N-052C, Dockets Management Branch (HFA-305), Food and Drug Administration, rm 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

(2) Letters from W. E. Gilbertson, FDA, to H. Jenkins, Creomulsion Co., coded LET080

and LET082, Docket No. 76N-052C, Dockets Management Branch.

(3) Letter from H. Jenkins, Creomulsion Co., to W. E. Gilbertson, FDA, coded LET081, Docket No. 76N-052C, Dockets Management Branch.

(4) Comment No. CP, Docket No. 76N-052C, Dockets Management Branch.

II. The Agency's Final Conclusions on Ipecac for Expectorant Use

As noted above, two studies (Refs. 1 and 2) were submitted purporting to establish the effectiveness of ipecac as an expectorant. Study 1 was a double-blind, placebo-controlled, 2-week trial of parallel design. Its objectives were to evaluate the effectiveness of ipecac syrup (1) in modifying the viscosity and volume of the tracheobronchial secretions and (2) in providing relief of difficult expectoration and cough.

This study involved 40 subjects, 20 in each of 2 groups of hospitalized patients of either sex with chronic bronchitis not associated with asthma, but including annoying tracheobronchial secretions, coughing, and difficult expectoration. The treatment regimens were: (1) 15 milliliters (mL) of a flavored vehicle base as the placebo and (2) 0.041 mL of fluid extract of ipecac U.S.P. XVI in the same vehicle (which is equivalent to 0.82 milligram of total alkaloids). Each treatment was given 3 times a day. Subjects with allergies or known hypersensitivity to ipecac were excluded as well as any subject requiring continuous mucolytic, anticholinergic, antiasthmatic, or steroid therapy, or any other prescription drug which may have affected the study results. The following effectiveness parameters were measured: (1) Result of therapy, (2) sputum volume, (3) sputum characteristics (combination of viscosity and sputum appearance), (4) difficulty expectorating, and (5) severity of cough.

A 3-day wash-out period, during which all mucolytics and liquefacients were to be discontinued and baseline sputum measurements (both the volume and physical characteristics) were to be recorded, was followed by randomization to one of the treatment arms. At 8 a.m. on day 4, the sputum volume designated day 4 was collected, and the drug was first administered. The drug was given 3 times a day at 8 a.m., 12 m., and 4 p.m. thereafter for 14 days.

The sputum volume was collected from 8 a.m. to 6 a.m. the next morning, and it represented the total daily volume. In the petitioner's data analysis, the petitioner states that to determine the day on medication, 4 should be subtracted from the study day number because of the sputum volume collection that occurred on day 4. Thus, the sputum for day 10 of the study would be for the sixth day on medication.

Sputum was collected separately from 6 a.m. to 8 a.m. the same day and was the specimen utilized for the rheologic measurements, using the following numerical scores for the behavior of the specimen when applied to an inclined glass slide: 4 = pus-like with no movement, 3 = stringy and clumps with slow movement, 2 = stringy with slow flow, and 1 = clear with free flow.

The difficulty of expectoration and the severity of cough were subjectively assessed at 8 a.m. each day and employed the following 4-point scale: 0 = no difficulty, 1 = slight effort, 2 = moderate effort, and 3 = requiring great effort.

The recorded objective values for sputum volume indicated that there was an increase in volume for the subjects on active drug during the first week which achieved statistical significance on day 7 (day 3 of treatment) of the trial. The petitioner claims that the volume increased on the first few days, reaching a plateau around the third and fourth days and declining thereafter. The total volume expectorated was the same for both groups over the entire treatment period. The petitioner claims that the ipecac treatment produced a greater fraction of the total volume earlier in the study than did the placebo.

Although sputum volume differences between ipecac and placebo were seen, no statistically significant differences for sputum characteristics (i.e., viscosity) or difficulty of expectoration were noted. The petitioner used a subjective evaluation called "result of therapy" at the end of the study and concluded that the ipecac response was better than the placebo response. However, the agency considers this method of evaluation to be unacceptable in this study because no details about the method were stated except that it was performed once.

The investigators calculated the volume data by "normalizing," i.e., the volumes are expressed as percentages of the baseline mean volume for each subject for each day. When analyzed by three different statistical methods, the petitioner claimed these data show that the values for days 7, 8, and 9 (3, 4, and 5 of treatment) are significantly greater for ipecac than for the placebo.

Of the other three variables measured, i.e., sputum characteristics (measured objectively), ease of expectoration, and severity of the cough, no differences were noted either overall or on any given day.

The investigators concluded that the results indicate that the sputum volume from the subjects on ipecac is increased on days 3, 4, and 5 and that it reached statistical significance on day 3. They state that the response to treatment was better for the ipecac subjects than the placebo subjects. However, his statement was not documented other than by the clinician's subjective evaluation at the end of the study. The objective measurement of sputum volume (expressed as cumulative percent) correlated significantly with the subjective measurement response to treatment.

The agency has determined that a number of important details (as discussed below) were not provided in the data submitted. As a result of these deficiencies, this study as submitted cannot be considered as adequate and well controlled. Additionally, the case report forms that were submitted were handwritten and in Italian. Translation was provided for the more common terms but not for other terms.

No daily record of the use of concomitant medication was provided on the case report forms. On the initial case report form (containing a space for this entry), it appears that approximately one-third of the subjects were given antibiotics at some time during the study. These drugs were administered when superimposed infection complicated the picture of chronic bronchitis. However, their use would influence the volume and qualitative characteristics of the sputum along with other evaluation assessments.

Other concomitant medications (antiasthmatic and diuretic) appear to have been given also. However, the amounts and frequency of such usage were either not recorded on a daily basis, or if that were done, the information was not provided.

The investigators claim that the study results indicate that only one of four efficacy assessments was found to have a difference between the two treatments. This difference was reflected in the volume of sputum and only on day 7 (day 3 of treatment) did the difference reach statistical significance. The total sputum volume for the whole period did not differ between the two groups. Moreover, the increase in volume reported did not correlate with any other improvement, i.e., no reduction in viscosity, no easier expectoration, and no alteration in severity of cough. The investigators used raw data, i.e., the volume for each subject for each day expressed as a mean to support the difference on day 7. Using the same data, no other day showed any difference in volume. The normalized and cumulative volumes of

sputum were also used to compare the results; normalized meaning that the volume for each subject for each day has been calculated as a percentage of the mean sputum volume for that subject during the baseline period. Cumulative values were obtained by summing the sputum volumes for each subject for all medication days (days 5 through 18), dividing this into the sputum volume for that subject for each day, multiplying by 100, and cumulating the volumes beginning on day 5.

Upon examination of the 24-hour sputum volume for both groups, it can be seen that there are subgroups within each group. Subjects 2, 4, 5, 6, and 35 have a smaller daily volume both at baseline and elsewhere than do the others in that group; the same is true for subjects 1, 8, 16, and 32 in the placebo group.

The actual increase in sputum volume produced by ipecac is obscured because subjects who were given the ipecac produced less sputum during the baseline period and also during the period beyond 1 week of ipecac administration than subjects given the placebo. Therefore, sputum volume results for ipecac and placebo samples were "normalized."

The purpose of the baseline period is to establish measurements (values) uninfluenced by extraneous factors and to establish comparability of the treatment groups. Normalizing is acceptable if the intervention introduced into the trial must differ for some reason, i.e., one group receives a larger dose of a drug than the other.

"Normalization" of sputum volume in this study is inappropriate for the following reasons: (1) The results have been normalized only when it could benefit ipecac, (2) "normalization" is not a standard statistical technique. The study reports do not describe how normalization was accomplished; thus, its validity cannot be evaluated, and (3) most important of all, normalization was not considered or planned for in the protocol. Because normalization was not planned before the study results were available, and because normalization was used selectively when it would give a predictably more favorable result for ipecac, the agency considers use of normalization in this study to be invalid. Further, the agency also notes that in Study 2, where normalization would tend to discredit the ipecac results, the sputum volume was not normalized.

Although sputum volume differences between ipecac and placebo were seen, no statistically significant differences for sputum characteristics (i.e., viscosity) or difficulty of expectoration were noted. A subjective evaluation called "result of therapy," made a single time at the end of the study, is used as a basis for concluding that the ipecac response was better than the placebo response. The agency considers this method of evaluation unacceptable in this study.

No details were provided about this "result of therapy" method of evaluation other than the fact that it was performed once at the end of therapy. When a global evaluation is made at the end of a therapeutic period, the physician considers a number of factors that measure treatment effect. The global evaluation is usually made in conjunction with periodic evaluations (overall assessments) also conducted by the physician during the course of treatment. Such terminology is usually applied to multiple variables and is employed in long-term trials, as it is helpful in establishing a timeframe at which certain parameters respond in comparison with overall general improvement. For example, in chronic arthritis, reduction in joint size and pain may be achieved weeks before noticeable improvement in range of motion of a given joint may occur.

The agency concludes that these two studies do not provide sufficient statistical evidence to support the effectiveness of ipecac. Using its own standard of evaluation, the petitioner was unable to show statistically lower viscosity of sputum for subjects receiving ipecac compared to those receiving the placebo. For volume of sputum, only 1 of 14 days (day 7) provided a 1-tail p-value showing greater sputum production using ipecac. Ignoring the fact that 1-tail p-values are not appropriate and that the appropriate 2-tail p-value exceeded 0.05, only 1 of 14 statistical tests led to a statistically significant result.

Further, for the variables "difficulty expectorating" and "severity of cough," the investigators reported that no statistically significant differences were found (pp. 17 and 19 of study report) between ipecac and placebo. For the variable called "patient result of therapy," a statistically significant result was claimed. The agency has reanalyzed the raw data from the subject record forms and is unable to confirm the investigators' claimed statistical result favoring ipecac over placebo.

The agency finds no statistical evidence for Study 1 showing that ipecac is superior to placebo in terms of the secondary efficacy variables of "difficulty expectorating," "severity of cough," and "patient result of therapy."

The agency points out that in a similar study using guaifenesin as the expectorant drug (performed by the same investigators at the same hospital), the results showed an increase in sputum volume that correlated with a decrease in viscosity and in cough (not objectively measured) along with improvement in the ability to bring up sputum easier. The results with ipecac in this study do not show this correlation.

In conclusion, the agency considers Study 1 to be flawed and not an adequate and well-controlled study. Further, the results do not establish the effectiveness of ipecac as an expectorant.

Study 2 was similar to Study 1 with the following differences: (1) There were only 10 subjects in each treatment group. (2) Objective evaluation of the sputum was not done daily, but only on days 1, 3, 6, 9, and 15 (2 days baseline pretreatment and 3 days on therapy). The methodology in this study differed in that a thromboelastograph was employed to evaluate sputum characteristics. This is an instrument which reportedly measures the viscosity/elasticity/cohesiveness of the sputum sample. (3) The effectiveness parameters are not the same as those in Study 1. In this study, the parameters were "sputum volume," "physician's evaluation," "subject's evaluation," and "viscosity/adhesiveness/elasticity" using an "oscillating cup rheometer."

The results of this study were reported to show that sputum volume reached a level 40 percent above the baseline values for the ipecac subjects on days 7, 8, and 9 (days 3 to 5 of treatment). The mean viscosity was said to be less for the ipecac group on days 6, 9, and 15 when compared to baseline values. It is also reported as less than the mean viscosity of the placebo group on the same days. The mean cumulative percent of the total sputum volume is significantly greater for the ipecac group than for the placebo group beginning on day 7 and continuing through day 12. Increases in the sputum volume and decreases in the viscosity were said to correlate significantly with the subjects' and the physician's assessment of the clinical improvement.

The agency notes that the case report forms from this study are also in Italian but, in contrast to those in Study 1, the entries were typed, not handwritten. They contain more information than the case report forms from Study 1.

The agency finds the following problems with this study: (1) Although the subjects were also chronic bronchitics, they were chosen only if they were thought not to require antibiotics. (2) The case report forms do

not mention infection, but 5 subjects (25 percent) received 1 or more antibiotics (3 subjects in the placebo group—number 6, 9, and 19, and 2 subjects in the ipecac group—numbers 8 and 13) which may have influenced sputum changes, volume, and/or viscosity. (3) The number of subjects treated (only 10) is too small. Ten is an inadequate number of subjects, particularly in a parallel trial. (4) The interpretation of the viscosity data was made using a method for which no details were provided. The "viscosity" of sputum was measured with a modified thromboelastograph. The details of the methodology were not provided, nor was the agency able to find any published material relating to that device. While the figures for the treated subjects appear to differ from those of the placebo group, they contain no explanations and no legends. Therefore, the agency has no basis to determine if the results using the modification are adequate or acceptable. (5) Adequate statistical evidence of effectiveness might have been provided from sputum volume and viscosity results had there been no missing data. Missing data were filled in by inserting the average value of the day immediately preceding or immediately following the missing data entry. This is not acceptable procedure.

In conclusion, Study 2 contains insufficient data and an inadequate number of subjects. The agency concludes that the submitted data are inadequate to include ipecac as an active ingredient in the final monograph for OTC expectorant drug products.

The agency's detailed comments on the data are on file in the Dockets Management Branch (address above) (Refs. 3 and 4).

References

(1) Comment No. CP, Docket No. 76N–052E, Dockets Management Branch, Study 1.

(2) Comment No. CP, Docket No. 76N–052E, Dockets Management Branch, Study 2.

(3) Letter from W. E. Gilbertson, FDA, to H. Jenkins, Creomulsion Co., coded PDN1, Docket No. 76N–052E, Dockets Management Branch.

(4) Letter from W. E. Gilbertson, FDA, to H. Jenkins, Creomulsion Co., coded LET089 Docket No. 76N–052E, Dockets Management Branch.

Therefore, the agency is amending 21 CFR 310.545 by adding new paragraphs (a)(6)(iii), (d)(4), and (d)(5) and by revising paragraph (d)(1) to establish that ipecac and certain other active ingredients are not generally recognized as safe and effective or are misbranded for OTC use in expectorant drug products.

The agency has determined that ipecac as an OTC expectorant drug active ingredient is not generally recognized as safe and effective. Therefore, ipecac as an expectorant ingredient for OTC use is considered a nonmonograph ingredient and misbranded under section 502 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352) and is a new drug within the meaning of section 201(p) of the act (21 U.S.C. 321(p)) for which an approved application under section 505 of the act (21 U.S.C. 355) and part 314 of the regulations (21 CFR part 314) is required for marketing. In appropriate circumstances, a citizen petition to amend the monograph (21 CFR part 341) may be submitted in support of ipecac's use as an expectorant under 21 CFR 10.30 in lieu of an application. Any drug product containing ipecac as an expectorant active ingredient for OTC use initially introduced or initially delivered for introduction into interstate commerce or repackaged or relabeled after the effective date of this final rule is not in compliance with the regulation and is subject to regulatory action.

The agency has examined the economic consequences of this final rule in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this final rule for OTC expectorant drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96–354). That assessment included a discretionary regulatory flexibility analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC expectorant drug products is not expected to pose such an impact on small businesses. This final rule only affects the status of ipecac as an OTC expectorant. There are only a limited number of OTC expectorant drug products that contain this ingredient. All of these products can be reformulated to contain guaifenesin, a monograph expectorant ingredient. For all other active ingredients listed in this final rule, the effective date (February 28, 1990) has already occurred. Therefore, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 310 is amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 512–516, 520, 601(a), 701, 704, 705, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b–360f, 360j, 361(a), 371, 374, 375, 376); secs. 215, 301, 302(a), 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 242(a), 262, 263b–263n).

2. Section 310.545 is amended by adding new paragraph (a)(6)(iii), by revising paragraphs (d) introductory text and (d)(1), and by adding new paragraphs (d)(4) and (d)(5), to read as follows:

§ 310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.

(a) * * *

(6) * * *

(iii) *Expectorant drug products.*

Ammonium chloride
Antimony potassium tartrate
Beechwood creosote
Benzoin preparations (compound tincture of benzoin, tincture of benzoin)
Camphor
Chloroform
Eucalyptol/eucalyptus oil
Horehound
Iodides (calcium iodide anhydrous, hydriodic acid syrup, iodized lime, potassium iodide)
Ipecac
Ipecac fluidextract
Ipecac syrup
Menthol/peppermint oil
Pine tar preparations (extract white pine compound, pine tar, syrup of pine tar, compound white pine syrup, white pine)
Potassium guaiacolsulfonate
Sodium citrate
Squill preparations (squill, squill extract)
Terpin hydrate preparations (terpin hydrate, terpin hydrate elixir)
Tolu preparations (tolu, tolu balsam, tolu balsam tincture)

Turpentine oil (spirits of turpentine)

* * * * *

(d) Any OTC drug product that is not in compliance with this section is subject to regulatory action if initially introduced or initially delivered for introduction into interstate commerce after the dates specified in paragraphs (d)(1) through (d)(5) of this section.

(1) May 7, 1991, for products subject to paragraphs (a)(1) through (a)(6)(ii), and (a)(7) through (a)(19) of this section; and

* * * * *

(4) February 28, 1990, for products subject to paragraph (a)(6)(iii) of this section, except those that contain ipecac.

(5) September 14, 1993, for products subject to paragraph (a)(6)(iii) of this section that contain ipecac.

Dated: June 10, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-22005 Filed 9-11-92; 8:45 am]

BILLING CODE 4160-01-F

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21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Estradiol; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a technical amendment to the specifications and labeling of a new animal drug. The new animal drug application (NADA) for this new animal drug is sponsored by Elanco Animal Health, A Division of Eli Lilly & Co. The NADA provides for the veterinary use of estradiol (Compudose® 200 and 400) implants for steers and heifers.

EFFECTIVE DATE: September 14, 1992.

FOR FURTHER INFORMATION CONTACT: Russell G. Arnold, Center for Veterinary Medicine (HFV-142), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8674.

SUPPLEMENTARY INFORMATION: Elanco Animal Health, A Division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285, is the sponsor of NADA 118-123, which provides for the use of an estradiol subcutaneous ear implant in steers and heifers. The NADA was approved on March 12, 1982 (47 FR 10805). A recalculation of the batch formulas used in manufacturing the implant revealed that the amount of estradiol in the product was incorrectly stated in the application. The estradiol content is 25.7 or 43.9 milligrams (mg) of estradiol, not the currently declared 24 or 45 mg. The amendment is approved as of May 4, 1992. The regulations are amended by revising 21 CFR 522.840(a), (c)(1), and (c)(3), accordingly, effective September 14, 1992.

This amendment represents a technical correction to the regulations and more accurately reflects the product specifications. Accordingly, a freedom of information summary as provided by 21 CFR 514.11(e)(2) is not required.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 522.840 [Amended]

2. Section 522.840 Estradiol is amended in paragraphs (a), (c)(1), and (c)(3) by removing the numbers "24" and "45" and adding in their place "25.7" and "43.9", respectively.

Dated: September 3, 1992.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 92-22077 Filed 9-11-92; 8:45 am]

BILLING CODE 4160-01-F

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21 CFR Parts 522 and 556

Animal Drugs, Feeds, and Related Products; Ceftiofur

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two supplemental new animal drug applications (NADA's) filed by The Upjohn Co. The supplements provide for the use of ceftiofur sterile powder for injection in swine for treatment and control of certain forms of swine bacterial respiratory disease and in day-old chicks for control of colibacillosis associated with *E. coli* sensitive to ceftiofur. The regulations are also amended to state that a tolerance for residues of ceftiofur in edible swine and chicken tissue derived from treated animals is not required.

EFFECTIVE DATE: September 14, 1992.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV-133), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8644.

SUPPLEMENTARY INFORMATION: The Upjohn Co., Kalamazoo, MI 49001, is the sponsor of NADA 140-338 which provides for the use of Naxcel® Sterile Powder (ceftiofur sodium) as a 50 milligrams (mg) per milliliter reconstituted injectable. The original approval provided for intramuscular (IM) use to treat cattle (see 21 CFR 522.313). One supplement provides for IM use in swine at 3 to 5 mg per kilogram (1.36 to 2.27 mg per pound) of body weight for the treatment and control of bacterial respiratory disease. A second supplement provides for subcutaneous use in the neck of day-old chicks at 0.08 to 0.20 mg per chick for control of colibacillosis associated with *E. coli* sensitive to ceftiofur. The supplemental NADA's are approved as of August 4, 1992, and 21 CFR 522.313 is amended by adding new paragraphs (d)(2) and (d)(3) to reflect the approvals. The basis for approval is discussed in the freedom of information summary.

In addition, § 556.113 is amended to state that a tolerance for residues of ceftiofur in edible swine and chicken tissues derived from treated animals is not required.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of these supplements may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), these approvals qualify for 3 years of marketing exclusivity beginning August 4, 1992, because they contain reports of new clinical or field investigations and human food safety studies, other than bioequivalence or residue studies, essential to the approval and conducted or sponsored by the applicant.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that this action will not have a significant impact on the human environment, and that an

environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 522

Animal drugs.

21 CFR Part 556

Animal drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 522 and 556 are amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 522.313 is amended by adding new paragraphs (d)(2) and (d)(3) to read as follows:

§ 522.313 Ceftiofur sterile powder for injection.

* * * * *

(d) * * *

(2) *Swine*—(i) *Amount.* 3 to 5 milligrams per kilogram (1.36 to 2.27 milligrams per pound) of body weight.

(ii) *Indications for use.* For treatment and control of swine bacterial respiratory disease (swine bacterial pneumonia) associated with *Actinobacillus (Haemophilus) pleuropneumoniae, Pasteurella multocida, Salmonella choleraesuis,* and *Streptococcus suis Type 2.*

(iii) *Limitations.* For intramuscular use only. Treatment should be repeated at 24 hour intervals for a total of 3 consecutive days. Do not use in animals previously found to be hypersensitive to the drug. Use of dosages in excess of those indicated or route of administration other than that recommended may result in illegal residues in tissues. Safety of ceftiofur has not been determined in breeding swine. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(3) *Day-old chickens*—(i) *Amount.* 0.08 to 0.20 milligram per chick.

(ii) *Indications for use.* For control of colibacillosis associated with *E. coli* sensitive to ceftiofur.

(iii) *Limitations.* For subcutaneous use in the neck of day-old chicks only. As a single dose only. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

3. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: Secs. 402, 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342, 360b, 371).

4. Section 556.113 is revised to read as follows:

§ 556.113 Ceftiofur.

Cattle, swine, and poultry: A tolerance for residues of ceftiofur in edible tissue is not required.

Dated: September 4, 1992.

Richard H. Teske,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 92-22076 Filed 9-11-92; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 206, 207, 208, 210, 216, 218, 219, 220, and 228

RIN 1010-AB69

Disclosure of Estimated Public Reporting Burden for the Collection of Information

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

SUMMARY: The Royalty Management Program (RMP) of the Minerals Management Service (MMS) is amending its regulations to codify statements on the estimated public reporting burden associated with the collection of information. These statements are codified in accordance with the requirements of the Office of Management and Budget (OMB) in its regulations at § 1320.21 of title 5 of the Code of Federal Regulations (5 CFR 1320.21), "Agency disclosure of estimated burden."

The MMS is also amending its regulations to consolidate the required statements relative to OMB approved reporting forms under 30 CFR 210.10, "Forms and Reports." In addition, MMS is amending its regulations to reflect the current MMS mailing addresses to be used for mailing or delivering requests, forms, and/or payments to MMS and to clarify the time that a payment is considered received.

EFFECTIVE DATE: September 14, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis C. Whitcomb, Chief, Rules and Procedures Branch, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3910, Denver, CO 80225-0165, telephone (303) 231-3432 or (FTS) 326-3432.

SUPPLEMENTARY INFORMATION: The principal authors of this rule are Jeane Kalas and Marvin Shaver of the Rules and Procedures Branch, MMS, RMP.

I. Background

The Paperwork Reduction Reauthorization Act of 1986 amended the Paperwork Reduction Act of 1980. In amendments to 44 U.S.C. 3507, Congress sought to enable the public to participate more fully and meaningfully in the Federal paperwork review process. Consistent with the amendments, OMB published a final rule in the **Federal Register** on May 10, 1988 (53 FR 16618), which amended its regulations at 5 CFR part 1320 to add a new § 1320.21 entitled "Agency Disclosure of Estimated Burden."

This new OMB regulation (5 CFR 1320.21) requires Agencies to include in their **Federal Register** notices:

(1) Statements that indicate submission to OMB of an information collection clearance package with an estimate of the average burden hours per response and

(2) A statement to indicate on each collection of information the estimated average burden hours per response, together with a request that respondents direct to the Agency and OMB any comments on the accuracy of the estimate and suggestions for reducing the burden. In an amendment to 44 U.S.C. 3502(11), Congress also clarified the applicability of the Paperwork Reduction Act to collections of information contained in proposed and current regulations.

II. Discussion of Rule

The current RMP information collection and recordkeeping requirements are contained in MMS regulations at 30 CFR parts 206, 207, 208, 210, 216, 218, 220, and 228. The MMS is amending those regulations to codify the required OMB statements relative to public reporting burden. The amendments consolidate the required statements relative to OMB approved reporting forms under § 210.10, "Forms and Reports." The amended § 210.10 codifies the burden estimate statements

for each form, as required by OMB in accordance with 5 CFR 1320.21. For information collection requirements that do not require the submission of an OMB approved form, MMS is adding a new § 220.003 and amending § § 207.1, 228.10, and 229.10 to add the OMB required statements on estimated burden. The MMS will include the required statements in any subsequent proposed regulations that include new information collection requirements.

In addition, MMS is revising its regulations at 30 CFR 210.53(a), 210.204(a), 216.15(a), 216.16(a), 218.51(f)(1), 218.155(d)(3), and 219.102 to reflect the current MMS mailing address(es) to be used for mailing or delivering requests, forms, and/or payments to MMS. The MMS regulations at § § 218.51(f)(3), 218.102(b), 218.150(c), 218.155(d)(4), 218.202(b), and 218.302(b) state that payments received after 4 p.m. at the MMS addresses are considered next day receipts. However, these regulations are not consistent as to whether this is "mountain time," "mountain standard time," or "local time." The MMS considers "mountain time," as specified in § 218.51(f)(3), to be the best description and is, therefore, amending the other regulations, accordingly. The MMS is also amending paragraph § 206.262(a)(1) to correct an erroneous form number "MMS–24293" to read "MMS–4293."

Procedural Matters

Administrative Procedure Act

The changes included in this rulemaking are administrative only and not substantive changes. Accordingly, pursuant to 5 U.S.C. 553(b), it has been determined that it is unnecessary to issue proposed regulations before the issuance of this final regulation. For the same reason, it has been determined that in accordance with 5 U.S.C. 553(d), there is good cause to make this regulation effective upon publication in the **Federal Register.**

Executive Order 12291

The Department of the Interior has determined that this document is not a major rule and does not require a regulatory analysis under Executive Order 12291. This final rulemaking codifies statements on public reporting burden in accordance with an OMB regulation at 5 CFR 1320.21 and amends existing regulations to reflect current MMS addresses for mailing or delivering requests, forms, and/or payments to MMS.

Regulatory Flexibility Act

Because this rulemaking codifies OMB required statements relative to public reporting burden and corrects MMS addresses, there are no significant additional requirements or burdens placed upon small business entities as a result of implementation of this rule. Therefore, the Department has determined that this rulemaking will not have a significant economic effect on a substantial number of small entities and does not require a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Executive Order 12630

The Department certifies that the rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared pursuant to Executive Order 12630, "Government Action and Interference with Constitutionally Protected Property Rights."

Executive Order 12778

The Department has certified to the Office of Management and Budget that these final regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

Paperwork Reduction Act of 1980

The information collection requirements contained in this rule have been approved by OMB under 44 U.S.C. 3501 et seq. and assigned OMB Clearance Numbers 1010–0022, 0033, 0040, 0042, 0061, 0063, 0064, 0073, 0074, 0075, 0076, and 0087.

National Environmental Policy Act of 1969

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and a detailed statement pursuant to paragraph (2)(C) of section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C) is not required.

List of Subjects

30 CFR Parts 206, 207, and 210

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 208

Continental shelf, Government contracts, Mineral royalties, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements, small businesses, Surety bonds.

30 CFR Parts 216 and 228

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Penalties, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 218

Coal, Continental shelf, Electronic funds transfers, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Penalties, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 219

Coal, Continental shelf, Electronic funds transfers, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 220

Coal, Continental shelf, Geothermal energy, Government contracts, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

Dated: July 10, 1992.

Daniel Talbot,

Deputy Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR parts 206, 207, 208, 210, 216, 218, 219, 220, and 228 are amended as follows:

PART 206—PRODUCT VALUATION

1. The authority citation for part 206 continues to read as follows:

Authority: 5 U.S.C. 301 et seq.; 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 31 U.S.C. 9701; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

2. Section 206.10 under subpart A, General Provisions, is revised to read as follows:

§ 206.10 Information collection.

The information collection requirements contained in this part have been approved by the Office of Management and Budget (OMB) under

44 U.S.C. 3501 et seq. The forms, filing date, and approved OMB clearance numbers are identified in 30 CFR 210.10.

§ 206.262 [Amended]

3. The last sentence of paragraph (a)(1) of § 206.262, Determination of transportation allowances, under subpart F, Coal, is amended by revising the reference to Form "MMS-24293" to read "MMS-4293."

PART 207—SALES AGREEMENT OR CONTRACTS GOVERNING THE DISPOSAL OF LEASE PRODUCTS

1. The authority citation for part 207 is revised to read as follows:

Authority: 5 U.S.C. 301 et seq.; 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 31 U.S.C. 9701; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

2. Section 207.1 of subpart A, General Provisions, is revised to read as follows:

§ 207.1 Required recordkeeping.

(a) The information collection and recordkeeping requirements contained in this part have been approved by OMB under 44 U.S.C. 3501 *et seq.* and assigned OMB Clearance Number 1010-0061. The information collected will be used to determine a proper transportation allowance for the cost of transporting royalty oil from the lease to a delivery point remote from the lease. The information is required in order to obtain a benefit and is collected in accordance with the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. 1701 *et seq.*

(b) Public reporting burden is estimated to average 30 minutes per year for each record keeper to maintain copies of sales contracts, agreements, or other documents relevant to the valuation of production. Send any comments regarding this burden estimate or any other aspect of this requirement to the Information Collection Clearance Officer, Minerals Management Service, 381 Elden Street, MS 2300, Herndon, VA 22070, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project 1010-0061, Washington, DC 20503.

PART 208—SALE OF FEDERAL ROYALTY OIL

1. The authority citation for part 208 is revised to read as follows:

Authority: 5 U.S.C. 301 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1701 et seq.; 31 U.S.C. 9701; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

2. Section 208.3 under subpart A, General Provisions, is revised to read as follows:

§ 208.3 Information collection.

The information collection requirements contained in this part have been approved by OMB under 44 U.S.C. 3501 et seq. The forms, filing date, and approved OMB clearance numbers are identified in 30 CFR 210.10.

PART 210—FORMS AND REPORTS

1. The authority citation for part 210 is revised to read as follows:

Authority: 5 U.S.C. 301 et seq.; 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 31 U.S.C. 9701; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

2. Section 210.10 under subpart A, General Provisions, is revised to read as follows:

§ 210.10 Information collection.

(a) *Forms*—This section identifies required MMS Royalty Management Program forms for reporting sales and royalties, production information, claiming a processing or transportation allowance, or claiming a reward for providing original information. The information collection requirements associated with the forms identified in this section have been approved by OMB under 44 U.S.C. 3501 et seq. The forms, filing dates, and approved OMB clearance numbers are summarized below:

Form No., name, and filing date	OMB No.
MMS-2014—Report of Sales and Royalty Remittance—Oil and Gas—Due by the end of first month following production month for royalty payment and for rentals no later than anniversary date of the lease	1010-0022
MMS-3160—Monthly Report of Operations—Due by the 15th day of the second month following the production month	1010-0040
MMS-4025—Oil and Gas Payor Information Form—Due 30 days after issuance of a new lease or change to an existing lease	1010-0033
MMS-4030—Solid Minerals Payor Information Form—Due 30 days after issuance of a new lease or change to an existing account established by an earlier form	1010-0064
MMS-4051—Facility and Measurement Information Form and Supplement—Due at the request of MMS during the initial conversion of the facility and measurement device operators	1010-0040
MMS-4052—Well Information Form—Due at the request of MMS during the initial conversion of the lease and agreement operators	1010-0040
MMS-4053—First Purchaser Report—Due at the request of MMS	1010-0040
MMS-4054—Oil and Gas Operations Report—Due by the 15th day of the second month following the production month	1010-0040
MMS-4055—Gas Analysis Report—Due by the 15th day of the second month following the production month	1010-0040
MMS-4056—Gas Plant Operations Report—Due by the 15th day of the second month following the production month	1010-0040
MMS-4057—Fractionation Plant Operations Report—Due by the 15th day of the second month following the production month	1010-0040
MMS-4058—Production Allocation Schedule Report—Due by the 15th day of the second month following the production month	1010-0040
MMS-4059—Solid Minerals Operation Report—Due by the 15th day of the second month following the production month	1010-0063
MMS-4060—Solid Minerals Facility Report—Due by the 15th day of the second month following the production month	1010-0063
MMS-4061—API Well Number Change Report—Due 10 days prior to submission of Form MMS-4054	1010-0040
MMS-4070—Application of the Purchase of Royalty Oil—Due prior to the date of sale in accordance with the instructions in the Notice of Availability of Royalty Oil	1010-0042
MMS-4071—Semiannual Report of Royalty-in-Kind Oil Entitlements—Due from the lease operator by March 1 and September 1 each year for the prior 6-month period ending December 31 and June 30	1010-0042
MMS-4109—Gas Processing Allowance Summary Report—Initial report due within 3 months following the last day of the month for which an allowance is first claimed, unless a longer period is approved by MMS	1010-0075
MMS-4110—Oil Transportation Allowance Report—Initial report due within 3 months following the last day of the month for which an allowance is first claimed, unless a longer period is approved by MMS	1010-0061
MMS-4280—Application for Reward for Original Information—Due when a reward is claimed for information provided which may lead to the recovery of royalty or other payments owed to the United States	1010-0076
MMS-4292—Coal Washing Allowance Report—Due prior to or at the same time that the allowance is first reported on Form MMS-2014 and annually thereafter if the allowance does not change	1010-0074
MMS-4293—Coal Transportation Allowance Report—Due prior to or at the same time that the allowance is first reported on Form MMS-2014 and annually thereafter if the allowance does not change	1010-0074
MMS-4295—Gas Transportation Allowance Report—Initial report due within 3 months following the last day of month for which an allowance is first claimed unless a longer period is approved by MMS	1010-0075

The information required on the forms identified in the table above is being collected by the Department of the Interior to meet its congressionally mandated accounting and auditing responsibilities relating to Federal and Indian mineral royalty management. The purpose of the forms and the estimated public reporting burden associated with each form are described in paragraph (c) of this section. With the exception of Forms MMS–4109, MMS–4110, MMS–4280, MMS–4292, MMS–4293, and MMS–4295, the forms are mandatory. Information on Forms MMS–4109, MMS–4110, MMS–4292, MMS–4293, and MMS–4295 is required to receive a benefit. Information required on Form MMS–4280 must be provided voluntarily to claim a reward. Information collected relative to production, royalties, and other payments due the Government from activities on leased Federal or Indian land is authorized by the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. 1701 et seq. for oil and gas production, and by 30 U.S.C. 189, 30 U.S.C. 359, and 30 U.S.C. 396d for solid mineral production.

(b) *MMS mailing addresses*—This paragraph identifies the MMS address(es) to be used for requesting forms and/or for mailing completed forms to MMS.

(1) Requests for Forms MMS–2014, MMS–4070, or MMS–4071 should be addressed to the Minerals Management Service, Royalty Management Program, Fiscal Accounting Division, P.O. Box 5760, MS 3200, Denver, Colorado 80217–5760. Completed Forms MMS–4071 should be mailed to the same address. The completed Forms MMS–2014 should be mailed to the Minerals Management Service, Royalty Management Program, P.O. Box 5810, Denver, Colorado 80217–5810. The address to which a completed Form MMS–4070 should be mailed will be identified in a **Federal Register** Notice of Availability of Royalty Oil. (See 30 CFR 208.5.)

(2) Requests for Forms MMS–4025 or MMS–4030 should be addressed to the Minerals Management Service, Royalty Management Program, P.O. Box 5760, Denver, Colorado 80217–5760. The completed forms should be mailed to the same address.

(3) Requests for Forms MMS–3160, MMS–4051, MMS–4052, MMS–4053, MMS–4054, MMS–4055, MMS–4056, MMS–4057, MMS–4058, MMS–4059, MMS–4060, or MMS–4061 should be addressed to the Minerals Management Service, Royalty Management Program, Production Accounting Division, P.O. Box 17110, Denver, Colorado 80217–0110. The completed forms should be mailed to the same address.

(4) Requests for processing or transportation allowance forms (Forms MMS–4109, MMS–4110, MMS–4292, MMS–4293, or MMS–4295) should be addressed to the Minerals Management Service, Royalty Management Program, Royalty Valuation and Standards Division, P.O. Box 25165, MS 3500, Denver, Colorado 80225–0165. The completed allowance forms should be mailed to the Minerals Management Service, Royalty Management Program, P.O. Box 5200, Denver, Colorado 80217–5200.

(5) Requests for Form MMS–4280 should be addressed to the Minerals Management Service, Royalty Management Program, Royalty Compliance Division, P.O. Box 25165, MS 3600, Denver, Colorado 80225–0165. The completed form should be mailed to the same address. (See 30 CFR 218.57(b)).

(6) Reports delivered to MMS by special couriers or overnight mail shall be addressed as follows: Minerals Management Service, Royalty Management Program, Building 85, Denver Federal Center, room A–212, Revenue and Document Processing, Denver, Colorado 80225.

(c) *Purpose of forms and estimated public reporting burden*—This paragraph describes the purpose of the information being collected and the estimated public reporting burden associated with the OMB approved forms identified in paragraph (a) of this section.

(1) *MMS–2014*—Used monthly to report lease-related transactions essential for royalty management to determine the correct royalty amount due, reconcile or audit data, and distribute payments to appropriate accounts. Public reporting burden is estimated to average 9 minutes to complete each line item on the form, including the time necessary to assemble data, calculate value and royalty, and enter data on the form. Companies with equipment enabling them to report using tape media may average 3 minutes to complete each line item on the form. Comments submitted relative to this information collection should reference Paperwork Reduction Project 1010–0022.

(2) *MMS–3160*—Used by onshore oil and gas lease operators to report monthly oil and gas production to MMS. Public reporting burden is estimated to average 30 minutes per form including time spent reading instructions, completing, and mailing the form. Comments submitted relative to this information collection should reference Paperwork Reduction Project 1010–0040.

(3) *MMS–4025*—This form is used to establish a data base of payor accounts for oil and gas leases on Federal or Indian lands, reporting changes in payor accounts, and notifying MMS of the products on which royalties will be paid. Public reporting burden is estimated to average 30 minutes per form, including time spent reading instructions, completing, and mailing the form. Comments submitted relative to this information collection should reference Paperwork Reduction Project 1010–0033.

(4) *MMS–4030*—This form is used to establish a data base of payor accounts for solid mineral leases on Federal or Indian lands, reporting any changes to the accounts, and identifying the type of mine and product produced. Public reporting burden is estimated to average 30 minutes per form, including time spent reading instructions, completing, and mailing the form. Comments submitted relative to this information collection should reference Paperwork Reduction Project 1010–0064.

(5) *MMS–4051*—Used to establish a reference data base identifying the facilities where oil and gas production is stored or processed and the metering points where production is measured for sale or transfer. Public reporting burden is estimated to average 30 minutes per form for facility operators to review and update the data base. Comments submitted relative to this information collection should reference Paperwork Reduction Project 1010–0040.

(6) *MMS–4052*—The form is used to provide data from lease operators identifying all wells not permanently plugged or abandoned. It is used only once, during conversion to the Production Accounting and Auditing System. Public reporting burden is estimated to average 30 minutes per form, including time spent reading instructions, completing, and mailing the form. Comments submitted relative to this information collection should reference Paperwork Reduction Project 1010–0040.

(7) *MMS–4053*—Designed as an audit tool to be used to confirm sales data. Public reporting burden is estimated to average 30 minutes per form, including time spent reading instructions, completing, and mailing the form. Comments submitted relative to this information collection should reference Paperwork Reduction Project 1010–0040.

(8) *MMS–4054*—This three-part form identifies all oil and gas lease production from Federal and Indian lands. The MMS uses information from this form to track oil and gas from the point of production to the point of first sale or other disposition. Respondents

will generally not use all three parts of the form. Public reporting burden is estimated to average 1 hour per month, including time gathering data, completing, and mailing the form. Comments submitted relative to this information collection should reference Paperwork Reduction Project 1010–0040.

(9) *MMS–4055*—This report identifies the separate components of natural gas production. It is submitted quarterly or semiannually by lease operators when gas production is processed before royalty value has been determined. Public reporting burden is estimated to average 30 minutes per form including time required gathering data, completing, and mailing the form. Comments submitted relative to this information collection should reference Paperwork Reduction Project 1010–0040.

(10) *MMS–4056*—Submitted monthly by gas plant operators to identify components and disposition of natural gas from Federal and Indian leases. Public reporting burden is estimated to average 30 minutes per form, including time required gathering data, completing, and mailing the form. Comments submitted relative to this information collection should reference Paperwork Reduction Project 1010–0040.

(11) *MMS–4057*—This form is submitted monthly by fractionation plant operators to identify the volume of raw material transferred to the plant and the volume of natural gas liquids produced. Public reporting burden is estimated to average 30 minutes per report, including time required gathering data, completing, and mailing the form. Comments submitted relative to this information collection should reference Paperwork Reduction Project 1010–0040.

(12) *MMS–4058*—Submitted monthly by operators of the facilities and measurement points where production from a Federal or Indian lease is commingled with production from other sources before it is measured for royalty determination. The data reported is used to determine whether sales reported by lessees are reasonable. Public reporting burden is estimated to average 1 hour per form, including time required gathering data, completing, and mailing the form. Comments submitted relative to this information collection should reference Paperwork Reduction Project 1010–0040.

(13) *MMS–4059*—This form consists of parts A and B. It is submitted by all operators of Federal or Indian solid mineral leases on a schedule established on the lease. Public reporting burden is estimated to range from 30 minutes per form for the majority of operators who submit only part A to report production and disposition of raw materials, to 1½ hours for operators submitting both parts A and B to report sales of mine production from a facility beyond the mine site. Comments submitted relative to this information collection should reference Paperwork Reduction Project 1010–0063.

(14) *MMS–4060*—Submitted by operators of secondary processing or remote storage facilities that handle solid mineral production on which royalties have not been determined. The form is usually submitted monthly and requires 1 to 2 hours to complete depending on the processes, inventory, and production disposition to be reported. Comments submitted relative to this information collection should reference Paperwork Reduction Project 1010–0063.

(15) *MMS–4061*—This form is used to notify MMS whenever a well with a temporary identification number is assigned a permanent American Petroleum Institute (API) number. Public reporting burden is estimated to average 30 minutes per form, including time required gathering data, completing, and mailing the form. Comments submitted relative to this information collection should reference Paperwork Reduction Project 1010–0040.

(16) *MMS–4070*—After publication in the Federal Register of a Notice of Availability of Royalty Oil, refiners interested in the purchase of royalty oil should submit their applications using this form. The information collected is used by MMS to determine if the applicant meets eligibility requirements to contract to purchase the oil. Public reporting burden is estimated to average 1 hour per form, including time required gathering data, completing, and mailing the form. Comments submitted relative to this information collection should reference Paperwork Reduction Project 1010–0042.

(17) *MMS–4071*—This form is used semiannually by lease operators to document royalty oil entitlements under royalty oil contracts issued by MMS. The MMS completes the first 8 lines on the form before sending it out to the lessee or lease operator. Public reporting burden is estimated to average 15 minutes to complete the production and entitlements columns, sign, and return the form to MMS. Comments submitted relative to this information collection should reference Paperwork Reduction Project 1010–0042.

(18) *MMS–4109*—Used to claim an allowance for the reasonable, actual costs of removing hydrocarbon and nonhydrocarbon elements or compounds from the gas streams. Public reporting burden varies depending on the type of contract involved. Under an arm's-length contract, burden is estimated to average 1 hour for the submission of page 1 and schedule 1 of the form requiring the lessee's name and address, payor code, plant name, accounting identification number, product code, and selling arrangement. Nonarm's-length contract claims require completion of all pages of the form including calculations of allowable operating and maintenance costs, overhead, depreciation, and return on undepreciated capital investment. Public reporting burden is estimated to average 10 hours to complete the entire form. Comments submitted relative to this information collection should reference Paperwork Reduction Project 1010–0075.

(19) *MMS–4110*—Used to claim an allowance for expenses incurred by a lessee in transporting oil from the lease site to a point remote from the lease where value is determined. Public reporting burden varies depending on the type of contract involved. Under an arm's-length contract, burden is estimated to average 1 hour for the submission of page 1 and schedule 1 of the form requiring the lessee's name and address, payor code, accounting identification number, product code, and selling arrangement. Nonarm's-length contract claims require completion of all pages of the form including calculations of allowable operating and maintenance costs, overhead, depreciation, and return on undepreciated capital investment. Public reporting burden is estimated to average 3 hours to complete the entire form. Comments submitted relative to this information collection should reference Paperwork Reduction Project 1010–0061.

(20) *MMS–4280*—This form is used to claim a reward for information leading to the recovery of payments owed to the United States from oil and gas leases on Federal land or the Outer Continental Shelf. Claimants must provide name, address, Social Security number, and a brief description of the violation being reported. Public reporting burden is estimated to average 30 minutes to complete this form. Comments submitted relative to this information collection should reference Paperwork Reduction Project 1010–0076.

(21) *MMS–4292*—This form is used to claim an allowance for the reasonable, actual costs incurred to wash coal. Public reporting burden varies depending on the type of contract involved. Under an arm's-length contract, burden is estimated to average 1 hour for the submission of page 1 of the form requiring the lessee's name and address, payor code, accounting identification number, product code, and

selling arrangement. Nonarm's-length contract claims require completion of all pages of the form including calculations of allowable operating and maintenance costs, overhead, depreciation, and return on undepreciated capital investment. Public reporting burden is estimated to average 40 hours to complete the entire form. Comments submitted relative to this information collection should reference Paperwork Reduction Project 1010-0074.

(22) *MMS-4293*—Used to claim an allowance for the reasonable, actual costs of transporting coal to a sales point or a washing facility remote from the mine or lease. Public reporting burden varies depending on the type of contract involved. Under an arm's-length contract, burden is estimated to average 1 hour for the submission of page 1 of the form requiring the lessee's name and address, payor code, accounting identification number, product code, and selling arrangement. Nonarm's-length contract claims require completion of all pages of the form including calculations of allowable operating and maintenance costs, overhead, depreciation, and return on undepreciated capital investment. Public reporting burden is estimated to average 40 hours to complete the entire form. Comments submitted relative to this information collection should reference Paperwork Reduction Project 1010-0074.

(23) *MMS-4295*—This form is used to claim an allowance for the reasonable, actual costs of transporting gas from the lease to the point of first sale. Public reporting burden varies depending on the type of contract involved. Under an arm's-length contract, burden is estimated to average 1 hour for the submission of page 1 and schedule 1 of the form requiring the lessee's name and address, payor code, accounting identification number, product code, and selling arrangement. Nonarm's-length contract claims require completion of all pages of the form including calculations of allowable operating and maintenance costs, overhead, depreciation, and return on undepreciated capital investment. Public reporting burden is estimated to average 3 hours to complete the entire form. Comments submitted relative to this information collection should reference Paperwork Reduction Project 1010-0075.

(d) *Comments on burden estimates.* Send comments regarding the burden estimates or any other aspect of these information collections, including suggestions for reducing burden, to the Information Collection Clearance Officer, Minerals Management Service, 381 Elden Street, MS 2300, Herndon, VA 22070; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project 1010-XXXX, Washington, DC 20503.

3. Paragraph (a) of § 210.53, under subpart B, Oil, Gas, and OCS Sulfur—General, is revised to read as follows:

§ 210.53 Reporting instructions.

(a) Specific guidance on how to prepare and submit required information collection reports and forms to MMS is contained in an MMS "Oil and Gas Payor Handbook," a "Production Accounting and Auditing System Reporter Handbook," and a "PAAS Onshore Oil and Gas Reporter Handbook." The Payor Handbook is available from the Minerals Management Service, Royalty Management Program, Fiscal Accounting Division, P.O. Box 5760, MS 3200, Denver, Colorado 80217-5760. The Reporter Handbooks are available from the Minerals Management Service, Royalty Management Program, Production Accounting Division, P.O. Box 17110, Denver, Colorado 80217-0110.

* * * * *

4. Paragraph (a) of § 210.204, under subpart E, Solid Minerals, General, is revised to read as follows:

§ 210.204 Reporting instructions.

(a) Specific guidance on how to prepare and submit required information collection reports and forms to MMS is contained in an "MMS Payor Handbook—Solid Minerals" and a "Production Accounting and Auditing System Reporter Handbook." The Payor Handbook is available from the Minerals Management Service, Royalty Management Program, Fiscal Accounting Division, P.O. Box 5760, MS 3200, Denver, Colorado 80217-5760. The Reporter Handbook is available from the Minerals Management Service, Royalty Management Program, Production Accounting Division, P.O. Box 17110, Denver, Colorado 80217-0110.

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PART 216—PRODUCTION ACCOUNTING

1. The authority citation for part 216 is revised to read as follows:

Authority: 5 U.S.C. 301 et seq.; 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 31 U.S.C. 9701; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

2. Section 216.10 under subpart A, General Provisions, is revised to read as follows:

§ 216.10 Information collection.

The information collection requirements contained in this part have been approved by OMB under 44 U.S.C. 3501 et seq. The forms, filing date, and approved OMB clearance numbers are identified in 30 CFR 210.10.

3. Paragraph (a) of § 216.15, under subpart A, General Provisions, is revised to read as follows:

§ 216.15 Reporting instructions.

(a) Specific guidance on how to prepare and submit required information collection reports and forms to MMS is contained in a "PAAS Reporter Handbook" and a "Paas Onshore Oil and Gas Reporter Handbook." The Reporter Handbooks are available from the Minerals Management Service, Royalty Management Program, Production Accounting Division, P.O. Box 17110, Denver, Colorado 80217-0110.

* * * * *

4. Paragraph (a) of § 216.16, under subpart A, General Provisions, is revised to read as follows:

§ 216.16 Where to report.

(a) All reporting forms listed in this part that are mailed or sent by U.S. Postal Service express mail should be mailed to the Mineral Management Service, Royalty Management Program, Production Accounting Division, P.O. Box 17110, Denver, Colorado 80217-0110.

* * * * *

PART 218—COLLECTION OF ROYALTIES, RENTALS, BONUSES, AND OTHER MONIES DUE THE FEDERAL GOVERNMENT

1. The authority citation for part 218 continues to read as follows:

Authority: 5 U.S.C. 301 et seq.; 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 31 U.S.C. 9701; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

2. A new § 218.10 is added under Subpart A, General Provisions, to read as follows:

§ 218.10 Information collection.

The information collection requirements contained in this part have been approved by OMB under 44 U.S.C. 3501 et seq. The forms, filing date, and approved OMB clearance numbers are identified in 30 CFR 210.10.

3. Paragraph (f)(1) of § 218.51, under Subpart B, Oil and Gas—General, is revised to read as follows:

§ 218.51 Method of payment.

* * * * *

(f) *Where to pay.* (1) The Report of Sales and Royalty Remittance (Form MMS-2014) and the applicable payment (payable to the *Department of the Interior, MMS*) should be mailed to the Minerals Management Service, Royalty Management Program, P.O. Box 5810, Denver, Colorado 80217-5810. Rental or deferred bonus payments for Federal nonproducing leases that are not required to be reported on Form MMS-2014 should be mailed to the Minerals Management Service, Royalty Management Program, P.O. Box 5640, Denver, Colorado 80217-5640.

* * * * *

4. Paragraph (b) of § 218.102 under subpart C, Oil and Gas Onshore, is revised to read as follows:

§ 218.102 Late payment or underpayment charges.

* * * * *

(b) Late payment charges will be assessed on any late payment or underpayment from the date that the payment was due until the date that the payment was received at the MMS addresses specified in § 218.51(f)(1) and (f)(2). Payments received at the specified MMS addresses after 4 p.m. mountain time are considered received the following business day.

* * * * *

5. Paragraph (c) of § 218.150 under subpart D, Oil and Gas Sulfur Offshore, is revised to read as follows:

§ 218.150 Royalties, net profit shares, and rental payments.

* * * * *

(c) Late payment charges will be assessed on any late payment or underpayment from the date that the payment was due until the date that the payment was received at the MMS addresses specified in § 218.51(f)(1) and (f)(2). Payments received at the specified MMS addresses after 4 p.m. mountain time are considered received the following business day.

* * * * *

6. Paragraphs (d)(3) and (d)(4) of § 218.155 under subpart D, Oil, Gas, and Sulfur, Offshore are revised to read as follows:

§ 218.155 Method of payment.

* * * * *

(d) * * *

(3) The MMS mailing addresses for payments to MMS are specified in § 218.51(f)(1) and (f)(2).

(4) Payments received at the MMS addresses after 4 p.m. mountain time are considered received the following business day.

* * * * *

7. Paragraph (b) of § 218.202 under subpart E, Solid Minerals, General, is revised to read as follows:

§ 218.202 Late payment or underpayment charges.

* * * * *

(b) Late payment charges will be assessed on any late payment or underpayment from the date that the payment was due until the date that the payment was received at the MMS addresses specified in 218.51(f)(1) and (f)(2). Payments received at the specified MMS addresses after 4 p.m. mountain time are considered received the following business day.

* * * * *

8. Paragraph (b) of § 218.302 under subpart F, Geothermal Resources, is revised to read as follows:

§ 218.302 Late payment or underpayment charges.

* * * * *

(b) Late payment charges will be assessed on any late payment or underpayment from the date that the payment was due until the date that the payment was received at the MMS addresses specified in § 218.51(f)(1) and (f)(2). Payments received at the specified MMS addresses after 4 p.m. Mountain Time are considered received the following business day.

* * * * *

PART 219—DISTRIBUTION AND DISBURSEMENT OF ROYALTIES, RENTALS, AND BONUSES

1. The authority citation for part 219 is revised to read as follows:

Authority: Section 104, Pub. L. 97-451, 96 Stat. 2451 (30 U.S.C. 1714).

2. Section 219.102, under subpart C, Oil and Gas, Onshore, is revised to read as follows:

§ 219.102 Method of payment.

The MMS shall disburse monies to a State either by Treasury check or by Electronic Funds Transfer (EFT). Should a State prefer to receive its payment by EFT, it should request this payment method in writing to the Minerals Management Service, Royalty Management Program, Fiscal Accounting Division, P.O. Box 5760, MS 3200, Denver, Colorado 80217-5760.

PART 220—ACCOUNTING PROCEDURES FOR DETERMINING NET PROFIT SHARE PAYMENT FOR OUTER CONTINENTAL SHELF OIL AND GAS LEASES

1. The authority citation for part 220 continues to read as follows:

Authority: Sec. 205, Pub. L. 95-372, 92 Stat. 649 (43 U.S.C. 1337).

2. A new § 220.003 is added to read as follows:

§ 220.003 Information collection.

(a) The information collection requirements of this part have been approved by OMB under 44 U.S.C. 3501 et seq. and assigned OMB Clearance Number 1010-0073. The information will be used to determine all allowable direct and allocable joint costs incurred during the term of the lease, appropriate overhead allowances permitted on these costs pursuant to § 220.012, and allowances for capital recovery calculated pursuant to § 220.020. The information collection is mandatory in accordance with the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. 1701 et seq.

(b) Public reporting burden is estimated to average 16 hours for each annual and monthly lease report, including time spent reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing burden, to the Information Collection Clearance Officer, Minerals Management Service, 281 Elden Street, MS 2300, Herndon, Virginia 22070; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project 1010-0073, Washington, DC 20503.

PART 228—COOPERATIVE ACTIVITIES WITH STATES AND INDIAN TRIBES

1. The authority citation for part 228 is revised to read as follows:

Authority: Section 202, Pub. L. 97-451, 96 Stat. 2457 (30 U.S.C. 1732).

2. Section 228.10 under subpart A, General Provisions, is revised to read as follows:

§ 228.10 Information collection.

(a) The information collection requirements contained in this part have been approved by OMB under 44 U.S.C. 3501 et seq. and assigned OMB Clearance Number 1010-0087. The information collected will be used to prepare a cooperative agreement with a State or Indian tribe wishing to perform royalty audits. The information should be submitted voluntarily in order to enter into a cooperative agreement authorized by 30 U.S.C. 1732.

(b) Public reporting burden is estimated to average 136 hours for the preparation of the original request for consideration and application to enter into a cooperative agreement. Subsequent requests for renewal of the agreement may require about 40 hours for the preparation of an annual budget and work plan, and an estimated 8 hours per quarter for preparation of a reimbursement voucher and an audit progress report. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing burden, to the Information Collection Clearance Officer, Minerals Management Service, 381 Elden Street, MS 2300, Herndon, Virginia 22070; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project 1010-0087, Washington, DC 20503.

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BILLING CODE 4310-MR-M

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Permanent Regulatory Program; Revegetation—Prime Farmland

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; Approval of amendment.

SUMMARY: OSM is announcing the approval with certain exceptions of a proposed amendment to the Indiana permanent regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment (Program Amendment Number 91-5) consists of proposed changes to the Indiana Surface Mining Rule provisions concerning prime farmland special performance standards. The amendment is intended to revise the existing standards for revegetation and restoration of soil productivity on prime farmland.

EFFECTIVE DATE: September 14, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Acting Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, room 301, Indianapolis, IN 46204, Telephone (317) 226-6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program.
II. Submission of the Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982, **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.15 and 914.16.

II. Submission of the Amendment

By letter dated May 23, 1991, (Administrative Record No. IND-0873), the Indiana Department of Natural Resources (IDNR) submitted proposed Program Amendment Number 91-5 to the Indiana program at Indiana Administrative Code (IAC) 310 IAC 12-5-145 through 310 IAC 12-5-148. The proposed amendment would amend existing 310 IAC 12-5 sections 145, 146, and 148 by revising the performance standards for restoring soil productivity. The amendment would also repeal 310 IAC 12-5-147 and would add new 310 IAC 12-5-148.5 to create specific standards for revegetation and restoration of soil productivity on prime farmland.

OSM announced receipt of the proposed amendment in the June 27, 1991, **Federal Register** (56 FR 29449), and in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on July 29, 1991. The scheduled public hearing was not held as no one requested an opportunity to provide testimony.

By letter dated September 5, 1991 (Administrative Record No. IND-0947), OSM responded to Indiana's proposed rules by identifying specific concerns and requesting clarification from Indiana. Indiana responded by letter dated October 10, 1991 (Administrative Record No. IND-1000). By letter dated March 24, 1992 (Administrative Record No. IND-1049), OSM requested additional clarification concerning unresolved issues. Indiana responded by letter dated April 29, 1992 (Administrative Record No. IND-1076). The proposed rules were finally adopted and published in the Indiana Register on July 1, 1992 (IR, V15, No. 10, pp. 2167-2169).

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Indiana program. Any revisions not specifically discussed below are found to be no less stringent than SMCRA and no less effective than the Federal regulations. Revisions which are not discussed below contain language similar to the corresponding Federal rules, concern nonsubstantive wording changes, or revise cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

1. 310 IAC 12-5-145 Scope, Purpose, Applicability

310 IAC 12-5-145(a) is revised to provide that 310 IAC 12-5 subsections 145, 146, 148, and 148.5 set forth special performance standards for surface coal mining and reclamation operations on prime farmland.

310 IAC 12-5-145(b) is revised by deleting the existing language and adding a provision that 310 12-5 sections 145, 146, 148, and 148.5 do not apply to the following:

(1) Coal preparation plants, support facilities and roads associated with underground mines that are actively used over extended periods of time where such uses affect a minimal amount of land; (2) Disposal areas containing coal mine waste resulting from underground mines that is not technologically and economically feasible to store in underground mines or on nonprime farmland; and (3) Prime farmland that has been excluded under 310 IAC 12-3-98(a).

The Director finds that the proposed changes to 310 IAC 12-5-145 are substantively identical to the Federal regulations at 30 CFR 823.11 concerning prime farmland. The Director notes that 30 CFR 823.11(a) is suspended "insofar as it excludes from the requirements of 30 CFR 823 those coal preparation plants, support facilities, and roads that are surface mining activities" (50 FR 7274; February 21, 1985). Therefore, the Director is approving 310 IAC 12-5-145 to the extent that it is implemented in a manner consistent with the February 21, 1985, notice.

The Director also notes that the Federal regulations at 30 CFR 823.4 require the regulatory authority within each State to use the prime farmland soil-reconstruction specifications

established by the U.S. Soil Conservation Service to carry out its responsibilities concerning prime farmland. The Indiana rules contain no such requirement. Therefore, to be no less effective than 30 CFR 823.4(b) the Director is requiring that Indiana amend its program to clarify that Indiana will use the prime farmland soil removal, storage, replacement, and reconstruction specifications established by the U.S. Soil Conservation Service in Indiana.

2. 310 IAC 12-5-146 Soil Removal and Stockpiling

Subsection 310 IAC 12-5-146(a) is revised by deleting all existing language and adding in its place a requirement that prime farmland soils shall be removed from the areas to be disturbed before drilling, blasting, or mining.

Subsection 310 IAC 12-5-146(b) is revised by deleting most of the existing language and adding new language. Revised subsection (b) requires that the minimum depth of soil and substitute soil materials to be removed and stored for use in the reconstruction of prime farmland shall be sufficient to meet the requirements of section 148(b) of 310 IAC 12-5.

New subsection 310 IAC 12-5-146(c) establishes the soil removal and stockpiling requirements. Subsection 310 IAC 12-5-146(c)(1) requires the separate removal of the topsoil or other suitable soil materials where the other soil materials will create a final soil having a greater productive capacity than that which existed prior to mining. The provision also requires that if not used immediately, this material shall be placed in stockpiles separate from the spoil and all other excavated materials.

The Federal regulations at 30 CFR 701.5 defined "topsoil" to include both the "A" and "E" horizons. Indiana's definition of "topsoil" at 310 IAC 12-1-3 defines "topsoil" to mean the A soil horizon layer of the three major soil horizons (A, B, and C horizons). By letter dated April 29, 1992 (Administrative Record No. IND-1076), Indiana stated that it uses the "A2" nomenclature which appears in most of the published county soil surveys in the coal mining region of Indiana. The "E" horizon as used in the Federal regulations is the current nomenclature for the "A2" horizon in the Indiana soil surveys referenced above. The Director finds, therefore, that proposed 310 IAC 12-5-146(c)(1) is substantively identical to the Federal regulations at 30 CFR 823.12(c)(1).

New subsection 310 IAC 12-5-146(c)(2) requires the separate removal of the "B" and "C" horizons, or other suitable soil material to provide the thickness of suitable soil required by 310 IAC 12-5-148(b), except as approved by the director of IDNR where the "B" or "C" horizon would not otherwise be removed and where soil capabilities can be retained. The Director finds the proposed language is substantively identical to the Federal regulations at 30 CFR 823.12(c)(2).

New subsection 310 IAC 12-5-146(d) requires that stockpiles shall be placed consistent with sections 310 IAC 12-5-12.1(d)(1) through 12.1(d)(2) or sections 310 IAC 12-5-78.1(d)(1) through 78.1(d)(2). If left in place for more than 30 days, stockpiles shall satisfy sections 310 IAC 12-5-12.1 or 310 IAC 12-5-78.1.

The proposed language is substantively identical to the counterpart Federal language at 30 CFR 823.12(d) except that the Federal regulations require the stockpiles to be placed "within the permit area," whereas the proposed language, by referencing 310 IAC 12-5-12.1(d) and 12-5-78.1(d) would allow the stockpiling "within the permit area or within other bonded permit areas of the same permittee." The approved Indiana program currently authorizes the stockpiling of topsoil for nonprime farmland under sections 310 IAC 12-5-12.1(d) and 310 IAC 12-5-78.1(d). The proposed language would allow increased flexibility in stockpiling prime farmland topsoil as is currently provided with nonprime farmland topsoil without lessening the protective standards for the stockpiles. That is, the approved topsoil removal and replacement criteria will still be met, the approved bonding criteria will still be met, and the requirement to protect the stockpiled material from erosion and contamination will still be met. The Director finds, therefore, that the proposed language is not inconsistent with the Federal regulations at 30 CFR 823.12(d).

3. 310 IAC 12-5-148 Soil Replacement

Subsection 310 IAC 12-5-148(a) (formerly subsection 148(1)) has been revised to require that the reconstructed soil and soil material will have the capacity of achieving levels of yield equal to, or higher than, those of nonmined prime farmland in the surrounding area. The Director finds the proposed language to be no less effective than the Federal standard at 30 CFR 823.14(a) which provides an identical standard.

Indiana proposes to delete subsection 310 IAC 12-5-148(2) and to add new subsection 310 IAC 12-5-148(b). This new provision specifies the minimum depth of soil and substitute soil material to be reconstructed. The Director finds that the proposed language is substantively identical to the counterpart Federal requirement at 30 CFR 823.14(b).

Subsection 310 IAC 12-5-148(c) (formerly 148(3)) is amended to require that the soil horizons or other root zone material be replaced and regraded to a uniform depth and in a manner that avoids excessive compaction. The Director finds that the proposed language is substantively identical to the counterpart Federal regulation at 30 CFR 823.14(c).

Subsection 310 IAC 12-5-148(d) (formerly 148(4)) is amended to require that the operator shall replace the B horizon, C horizon, or other suitable material specified in 310 IAC 12-5-146(c)(2) to the thickness needed to meet the requirements of 310 IAC 12-5-148(b). In addition, new language is added which requires that in an area where the B horizon or C horizon is not removed, but may have been compacted or otherwise damaged during the mining operation, the operator shall engage in deep tilling or other appropriate means to restore premining capacities. The Director finds that with the proposed language, 310 IAC 12-5-148(d) is substantively identical to the counterpart Federal regulation at 30 CFR 823.14(d).

Subsection 310 IAC 12-5-148(e) is amended to require that the topsoil or other suitable soil material which is replaced shall equal or exceed the thickness of the original surface soil layer as determined by the soil survey. The Director finds that with the new language, 310 IAC 12-5-148(e) is substantively identical to the counterpart Federal regulations at 30 CFR 823.14(e).

4. 310 IAC 12-5-148.5 Revegetation and Restoration of Soil Productivity

New subsection 310 IAC 12-5-148.5(a) requires that following prime farmland soil replacement, the soil surface shall be stabilized with a vegetative cover or other means that effectively controls soil loss by wind and water erosion. The Director finds that the proposed language is identical to the counterpart Federal regulations at 30 CFR 823.15(a).

New subsection 310 IAC 12-5-148.5(b) adds ten standards under which prime farmland soil productivity shall be restored.

Proposed subsection (b)(1) provides that measurement of soil productivity shall be initiated within 10 years after completion of the soil replacement. This provision is identical to the counterpart Federal regulation at 30 CFR 823.15(b)(1).

Proposed subsection (b)(2) provides that soil productivity on the mined and reclaimed prime farmland area shall be measured using one of the following methods: (A) Growing crops on a representative sample of the area using the test plot standards of 310 IAC 12-5-64.2; (2) Growing crops on all of the area. This provision is substantively identical to 30 CFR 823.15(b)(2) which also provides that soil productivity may be measured on a representative sample or the entire mined and reclaimed land.

Proposed subsection (b)(3) provides that the sampling techniques contained in 310 IAC 12-5-64.2 and the statistical methodology contained in 310 IAC 12-5-64.3 shall be used to measure soil productivity. This provision is consistent with 30 CFR 823.15(b)(2) which provides that soil productivity shall be measured using a statistically valid sampling technique at a 90-percent or greater statistical confidence level approved by the regulatory authority in consultation with the U.S. Soil Conservation Service (SCS). Indiana provided administrative record information to show that its proposed use of the 90-percent confidence level was developed in consultation with the SCS (Administrative Record No. IND-1000).

Proposed subsection (b)(4) provides that the period for measuring crop production (yield) shall be at least three crop years before the release for the operator's performance bond. This provision is substantively identical to the counterpart Federal regulation at 30 CFR 823.15(b)(3).

Proposed subsection (b)(5) provides that the level of management applied during the measurement period shall be the same as the level of management used for nonmined prime farmland in the surrounding area. This provision is substantively identical to the counterpart Federal regulation at 30 CFR 823.15(b)(5).

Proposed subsection (b)(6) provides that restoration of soil productivity is achieved when the yield during the measurement period equals or exceeds 100 percent of the success standard found at 310 IAC 12-5-64.1(c) for any three years of the responsibility period. Proposed (b)(6) also provides that 100 percent of the success standard must be met with a 90 percent statistical confidence level, i.e., a one-sided test with one tenth (0.10) alpha error. The proposed language further provides that where reference crops are used for demonstrating productivity, the yield comparisons shall be established for the same period for nonmined soils of the same or similar texture or slope phase of the soil series in the surrounding area under equivalent management practices. The Director finds that the proposed provision at 310 IAC 12-5-148.5(b)(6) is substantively identical to and no less effective than the Federal regulations at 30 CFR 823.15(b)(5).

Proposed subsection (b)(7) provides that the reference crop on which restoration of soil productivity is proven shall be selected from the crops most commonly produced on the surrounding prime farmland. The Director finds that the proposed rule is substantively identical to and no less effective than the Federal regulations at 30 CFR 823.15(b)(6).

Proposed subsection (b)(8) provides that the reference crop yield may be adjusted for factors including disease, weather, tillage management, pests, and seed or plant selection specified in 310 IAC 12-5-64.1(c). The proposed provision, including the reference to 310 IAC 12-5-64.1(c), is substantively identical to the Federal regulations at 30 CFR 823.15(b)(8).

Proposed subsection (b)(9) provides that in determining the period of responsibility under 310 IAC 12-4-7 the Director of IDNR may approve selective husbandry practices (except for augmented seeding, fertilization, or irrigation) without extending the period of responsibility for revegetation success and bond liability if: The practices can be expected to continue as part of the postmining land use; or discontinuance of the practices after the liability period will not reduce the probability of permanent revegetation success. The proposed provisions are substantively identical to the Federal regulations at 30 CFR 816/817.116(c)(4) which also authorize regulatory approval of selective husbandry practices.

Proposed subsection (b)(10) identifies the selective husbandry practices which may be approved under 310 IAC 12-5-148.5(b)(9). The proposed provision provides that selective husbandry practices which may be approved must be normal conservation practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area. The following selective husbandry practices are proposed: (1) Disease, pest, and vermin control; (2) repair of rills and gullies; and (3) pruning, reseeding, or transplanting specifically necessitated by these practices. With the exception of repair of rills and gullies, the proposed language is substantively identical to the Federal regulations at 30 CFR 816/817.116(c)(4). Rill and gully repair as a normal husbandry practice is currently a part of the approved Indiana program at 310 IAC 12-5-64(b). In letters submitted by Indiana (Administrative Record No. IND-0999 and IND-1001) dated October 10, 1991, Indiana stated that routine repair of rills and gullies is a normal conservation practice engaged in by landowners in southwestern Indiana on cropland and pasture land, and encouraged by the Soil Conservation Service. In addition, Indiana stated that the Indiana rule does not provide a blanket approval for rill and gully repair, but allows approval on a case-by-case basis.

The proposed provision is no less effective than the Federal Regulations. The Director notes that 30 CFR 816/817.116(c)(4) also provides that prior approval of proposed selective husbandry practices must be obtained from OSM in accordance with 30 CFR 732.17. Therefore, any additional selective husbandry practices which Indiana may wish to add to the list of approved selective husbandry practices at 310 IAC 12-5-148.5(b)(10) must first be submitted to and approved by OSM as a state program amendment under 30 CFR 732.17.

In letters to Indiana dated September 5, 1991, and March 24, 1992 (Administrative Record No. IND-0947 and IND-1049, respectively), OSM stated that proposed 310 IAC 12-5-148.5(b) does not appear to have a counterpart to 30 CFR 823.15(b)(7) which provides that reference crop yields for a given crop season are to be determined from: (1) Current yield records of representative local farms in the surrounding area, with concurrence by the U.S. Soil Conservation Service; or (2) the average county yields recognized by the U.S. Department of Agriculture, which have been adjusted by the U.S. Soil Conservation Service for local yield variation within the county that is associated with differences between nonmined prime farmland soil and all other soils that produce the reference crop.

In response Indiana stated (Administrative Record No. IND-1000), that it is the IDNR's opinion that the counterpart to 30 CFR 823.15(b)(7) is contained at 310 IAC 12-5-64.1 (c)(3) and (c)(6). Indiana also stated (Administrative Record No. IND-1076) that the rules at 310 IAC 12-5-64.1(d) provide that a reference area used to establish success standards must: (a) Be representative of the geology, soils, slopes, and vegetation of the area to be represented; (b) be managed identical to the area to be represented; and (c) must be within 20 miles of the area to be represented. The Director finds that the requirements identified above are no less effective than the Federal requirement at 30 CFR 823.15(b)(7)

which provides that reference crop yields must be representative of local farms in the surrounding area.

However, the proposed Indiana rules for prime farmland do not require, by reference, the use of the Indiana rules at 310 IAC 12-5-64.1 (c)(3), (c)(6), and (d) which concern nonprime farmland. Nor do the proposed Indiana rules provide that the selection of a reference area be accomplished with concurrence by the SCS. Therefore, to be no less effective than 30 CFR 823.15(b)(7), the Director is requiring that Indiana amend its rules at 310 IAC 12-5-148.5(b) by adding that the selection of reference areas will be guided by the rules at 310 IAC 12-5-64.1 (c)(3), (c)(6) and (d) and that the selection of an approved reference area must be accomplished with concurrence by the SCS as is required by 30 CFR 823.15(b)(7)(i).

The Director finds, except as discussed above, that the proposed provision at 310 IAC 12-5-148.5 are no less effective than the Federal regulations at 30 CFR 823.15.

5. 310 IAC 12-5-147 Soil Stockpiling

Indiana proposes to delete 310 IAC 12-5-147 from the Indiana program and add the prime farmland soil stockpiling requirements to 310 IAC 12-5-146 (see Finding 2 above). The Director finds that deletion of 310 IAC 12-5-147 and the relocation of the stockpiling requirements to section 310 IAC 12-5-146 does not render the Indiana program less effective than the Federal regulations.

IV. Summary and Disposition of Comments

Agency Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), comments were solicited from various interested Federal agencies. The U.S. Fish and Wildlife Service, the U.S. Bureau of Mines, and the U.S. Department of Agriculture, Forest Service responded and had no comments. The U.S. Environmental Protection Agency responded that it has no comments and concurs with the proposed amendments. The Mine Safety and Health Administration (MSHA) responded and had found no conflict with 30 CFR under which MSHA operates.

The U.S. Soil Conservation Service (SCS) responded and stated its concern with 310 IAC 12-5-148(e), which states that soil "be replaced in a manner that protects the surface layer from wind and water erosion before it is seeded or planted." Specifically, the SCS stated that protection from wind and water erosion will not be accomplished by the method of soil replacement, but will be accomplished by vegetating the material. The Director agrees with the SCS in that revegetating the replaced soil is the key to protection from wind and water erosion. The Director notes that the Indiana program at 310 IAC 12-5-148(f) and 310 IAC 12-5-148.5(a) specifically require rapid revegetation. However, in those circumstances where rapid revegetation may be impossible (e.q. winter season), Indiana's provisions will provide an important measure of protection against wind and water erosion.

Public Comments

The public comment period and opportunity to request a public hearing was announced in the June 27, 1991, **Federal Register** (56 FR 29449). The comment period closed on July 29, 1991. No comments were received during the comment period, and no one requested an opportunity to testify at the scheduled public hearing so no hearing was held.

In a letter received by OSM on September 30, 1991 (Administrative Record No. IND-0978), a commenter opposed changes to 310 IAC 12-5-145(b) which would exempt coal preparation plants from the prime farmland requirements at 310 IAC 12-5-145 through 148.5. The commenter stated that the land should be returned to its premine state as prime farmland.

In response, the Director notes that Indiana's proposed language at 310 IAC 12-5-145(b) is substantively identical to the counterpart Federal regulations at 30 CFR 823.11(a). That is, the special performance standards for prime farmland at 30 CFR 823.11(a) do not apply to coal preparation plants of underground mines that are actively used over extended periods of time and where such uses affect a minimal amount of land. Therefore, Indiana's proposed amendment is no less effective than the counterpart Federal regulations which set the minimum standards for the Indiana regulatory program.

The Director notes, however, that the special performance standards for operations on prime farmland do pertain to surface coal mining operations (see 50 FR 7274; February 21, 1985). That is, prime farmland occupied by all coal preparation plants, support facilities, and roads that are part of surface mining activities must meet the applicable prime farmland performance standards. This conclusion is based on a court decision, In Re: Permanent Surface Mining Regulation Litigation (II), No. 79-1144 (D.D.C. 1984) (In Re: Permanent II). The proposed Indiana language which would exempt coal preparation plants, support facilities, and roads associated with underground mines from the special performance standards for prime farmland is consistent with the court's decision.

V. Director's Decision

Based on the above findings, the Director is approving, with certain exceptions, proposed Program Amendment Number 91-5 as submitted by Indiana on May 23, 1991. As discussed in Finding 1, the Director is approving 310 IAC 12-5-145 to the extent that it is implemented in a manner consistent with the February 21, 1985, suspension of 30 CFR 823.11(a) (50 FR 7274), and the Director is requiring that Indiana amend 310 IAC 12-5-145 to require that soil reconstruction be carried out in accordance with any "specifications" of the U.S. Soil Conservation Service.

As discussed in Finding 4, the Director is requiring that Indiana amend the Indiana program by adding: that the selection of reference areas will be guided by the rules at 310 IAC 12-5-64.1 (c)(3), (c)(6), and (d), and that the selection of an approved reference area must be accomplished with concurrence by the SCS as is required by 30 CFR 823.15(b)(7).

The Federal regulations at 30 CFR part 914 codifying decisions concerning the Indiana program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage the states to conform their programs with the Federal standards without delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In his oversight of the Indiana program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Indiana of only such provisions.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required. However, EPA responded to the Director's request for comments and stated that EPA had no comments and that it concurred on the proposed amendment (Administrative Record No. IND–0944).

VI. Procedural Determinations

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.13 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(c) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 12, 1992.

Jeffrey D. Jarrett,

Acting Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 914—INDIANA

1. The authority citation for part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 914.15 is amended by adding a new paragraph (oo) to read as follows:

§ 914.15 Approval of regulatory program amendments.

* * * * *

(oo) The following amendment (Program Amendment Number 91–5) to the Indiana program as submitted to OSM on May 23, 1991, is approved, except as noted herein effective September 14, 1992: 310 IAC 12–5–145 concerning the scope, purpose, applicability, and responsibility of the prime farmland rules to the extent it is implemented in a manner consistent with the suspension of 30 CFR 823.11(a) (50 FR 7274; February 21, 1985); 310 IAC 12–5–146 concerning soil removal and stockpiling; the deletion of 310 IAC 12–5–147; 310 IAC 12–5–148 concerning soil replacement; and 310 IAC 12–5–148.5 concerning revegetation and restoration of soil productivity.

3. In section 914.16, paragraphs (l) and (m) are added to read as follows:

§ 914.16 Required program amendments.

* * * * *

(l) By January 4, 1993, Indiana shall amend 310 IAC 12–5–145(c) to require that soil reconstruction be carried out in accordance with any "specifications" of the U.S. Soil Conservation Service.

(m) By January 4, 1993, Indiana shall amend 310 IAC 12–5–148.5(b) by adding that the selecting of reference areas will be guided by the rules at 310 IAC 12–5–64.1 (c)(3), (c)(6), and (d), and that the selection of an approved reference area must be accomplished with concurrence by the U.S. Soil Conservation Service as is required by 30 CFR 823.15(b)(7)(i).

[FR Doc. 92–21999 Filed 9–11–92; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7–92–14]

Drawbridge Operation Regulations; Gulf Intracoastal Waterway, Florida

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of Gasparilla Island residents and Gaspar Inc., the bridge owner, the Coast Guard is changing the operating regulations governing the Gasparilla Island Swingbridge, mile 34.3 at Placida, by permitting the number of openings to be limited during certain periods. This change is being made to relieve vehicular congestion due to back-to-back openings while still meeting the reasonable needs of navigation.

EFFECTIVE DATE: October 29, 1992.

FOR FURTHER INFORMATION CONTACT: Ian MacCartney, Project Manager, Bridge Section, at (305) 536–4103.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Ian

MacCartney, Project Manager, and LT. J. M. Losego, Project Counsel.

Regulatory History

On April 6, 1992, the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulations, Gulf Intracoastal Waterway, FL, in the **Federal Register** (57 FR 11591). A public hearing was not requested and one was not held.

Background and Purpose

This drawbridge presently opens on signal. Gasparilla Island residents and the bridge owner requested that bridge be allowed to open only on the hour and half-hour between 10 a.m. and 3 p.m. daily to reduce traffic delays. A Coast Guard evaluation of the data concluded that highway traffic levels and frequency of bridge openings did not justify the proposed opening schedule. However, in order to eliminate back-to-back openings which created traffic congestion, a 15 minute opening schedule was tested during the heavier tourist season and found to be satisfactory.

Discussion of Comments and Changes

The Coast Guard received 40 letters commenting on the proposal. Thirty seven letters were in support of the proposal including one letter from a fishing guide association representing 50 members. One letter expressed concern for safety of navigation while holding for a bridge opening due to the close proximity of a removed railroad bridge's approaches.

An on-site investigation by the Coast Guard determined that sufficient holding area is available on both sides of the railroad structure to allow safe holding by vessels for a 15 minute opening schedule. Two letters recommended a 30 minute schedule instead of 15 minute openings. Several letters expressed concern about the operation of the bridge. No additional information was provided that warrants a change to the proposed rule. The final rule is unchanged from the proposed rule except for the date ending the seasonal regulated period each year which has been changed from May 30 to read May 31.

Regulatory Evaluation

These regulations are not considered to be major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the rule exempts tugs with tows.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this change will have a significant economic impact on a substantial number of small entities.

"Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Since tugs with tows are exempt from this rule, the economic impact is expected to be minimal. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that this change will not have a significant impact on a substantial number of small entities.

Collection of Information

This final rule contains no collection of information requirements under the Paperwork Reduction Act. (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this change in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that, under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. In § 117.287, paragraph (a-1) is redesignated as paragraph (a-2) and a new paragraph (a-1) is added to read as follows:

§ 117.287 Gulf Intracoastal waterway.

* * * * *

(a-1) The draw of the Gasparilla Island Causeway drawbridge, mile 34.3, at Placida shall open on signal; except that from January 1 to May 31, from 10 a.m. to 5 p.m., the draw need open only on the hour, quarter hour, half hour and three quarter hour.

* * * * *

Dated: September 3, 1992.

William P. Leahy,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 92-22124 Filed 9-11-92; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 281

[FRL-4204-7]

The State of Oklahoma; Final Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination on the State of Oklahoma's application for final approval.

SUMMARY: The State of Oklahoma has applied for final approval of its underground storage tank program under subtitle I of the Solid Waste Disposal Act ("SWDA"). The Environmental Protection Agency ("EPA") has reviewed Oklahoma's application and has reached a final determination that Oklahoma's underground storage tank program satisfies all of the requirements necessary to qualify for final approval. Thus, EPA is granting final approval to Oklahoma to operate its program.

EFFECTIVE DATE: Final approval for Oklahoma shall be effective at 1 p.m. on October 14, 1992.

FOR FURTHER INFORMATION CONTACT: Oklahoma State Program Officer, Underground Storage Tank Program, Attention Lynn Dail, U.S. EPA Region 6, Mailcode: 6H-A, 1445 Ross Avenue, Dallas, Texas 75202, Phone: 214/655-6755.

SUPPLEMENTARY INFORMATION:

A. Background

Section 9004 of the Resource Conservation and Recovery Act (RCRA) enables the Environmental Protection Agency (EPA) to approve State underground storage tank programs to operate in the State in lieu of the Federal underground storage tank program. To qualify for final authorization, a State's program must: (1) Be "no less stringent" than the Federal program; and (2) provide for adequate enforcement (Sections 9004(a) and 9004(b) of RCRA, 42 U.S.C. 6991c(a) and 6991c(b)).

On June 25, 1989, Oklahoma submitted an official application to obtain final approval to administer the underground storage tank program. The application contained the following elements: State Statutes (Title 17, Oklahoma Statutes, Section 301 et. seq.), State Regulations (Oklahoma Administrative Codes, Title 165: Chapter 25, 26, and 27, 1992), Attorney General's Statement, Memorandum of Agreement, and Program Description. EPA's review and approval of these elements provides the basis for EPA's authorization of Louisiana's program.

On June 30, 1992, EPA published a tentative decision announcing its intent to grant Oklahoma final approval pending minor changes to Oklahoma's Underground Storage Tank Regulations to satisfy the requirement that the Oklahoma Regulations be no less stringent than the Federal Regulations. These changes were documented in a Memorandum of Agreement between the State of Oklahoma and EPA dated April 8, 1992. Further background on the tentative decision to grant approval appears at 57 FR 29035, Tuesday, June 30, 1992.

Along with the tentative determination EPA announced the availability of the application for public comment and the date of a public hearing on the application. No public comments were received at the hearing and no written public comments were received regarding EPA's approval of Oklahoma's underground storage tank program.

The regulation changes agreed upon by the State of Oklahoma and EPA were effective June 25, 1992, and satisfy the requirement that Oklahoma regulations are no less stringent than the Federal Regulations.

The Oklahoma program regulates underground storage tanks containing petroleum or hazardous substances defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980. This does not include RCRA hazardous waste.

The State of Oklahoma is not authorized to operate the UST program on Indian lands. This authority will remain with EPA.

B. Decision

After reviewing the changes the State has made to its regulations since the tentative decision, I conclude that the State of Oklahoma's application for final approval meets all of the statutory and regulatory requirements established by subtitle I of RCRA. Accordingly, Oklahoma is granted final approval to operate its underground storage tank program in lieu of the Federal program. Oklahoma now has the responsibility for managing underground storage tank facilities within its borders and carrying out all aspects of the UST program. Oklahoma also has primary enforcement responsibility, although EPA retains the right to conduct inspections under section 9005 of RCRA, 42 U.S.C. 6991d, and to take enforcement actions under section 9006 of RCRA, 42 U.S.C. 6991e.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. This approval effectively suspends the applicability of certain Federal regulations in favor of Oklahoma's program, thereby eliminating duplicative requirements for owners and operators of underground storage tanks in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 281

Administrative practice and procedure, Hazardous materials, State program approval, underground storage tanks.

Authority: This notice is issued under the authority of Section 2002(a), 7004(b), and 9004 of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6974(b), and 6991(c).

Dated: August 12, 1992.

Joe D. Winkle,

Acting Regional Administrator.

[FR Doc. 92-22114 Filed 9-11-92; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 60

RIN 0905-AD05

Health Education Assistance Loan Program

AGENCY: Public Health Service, HHS.

ACTION: Final rule, correction.

SUMMARY: This document provides an editorial correction in the words of issuance to the amendatory language in the final rule published Monday, June 29, 1992 (57 FR 28789-28800). The final rule amended the existing regulations governing the Health Education Assistance Loan (HEAL) program to conform those regulations with amendments made to sections 727-739A of the Public Health Service Act by the Health Professions Reauthorization Act of 1988.

EFFECTIVE DATE: June 29, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Stuart Weiss, 301-443-1540.

Accordingly, in the **Federal Register** issue of June 29, 1992, page 28794, first column, the amendatory language to amendment 5 is corrected to read as follows:

§ 60.8 [Amended]

5. Section 60.8 is amended by revising paragraphs (a)(1), (a)(2), (a)(4), (a)(5), (a)(9), (a)(11), (b)(2) and (b)(3) introductory text; by adding a new paragraph (a)(12); and by adding a parenthetical phrase at the end of the section to read as follows:

Dated: September 8, 1992.

Neil J. Stillman,

Deputy Assistant Secretary for Information and Resources Management.

[FR Doc. 92-22079 Filed 9-11-92; 8:45 am]

BILLING CODE 4160-15-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA-7549]

Suspension of Community Eligibility

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies a community where the sale of flood insurance has been authorized under the National Flood Insurance Program

(NFIP), that is suspended on the effective date listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the Federal Register.

EFFECTIVE DATE: The effective date of the community's suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, 500 C Street SW., room 417, Washington, DC 20472, (202) 646-2717.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*, unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The community listed in this document no longer meet the statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the community will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, the community may submit the required documentation of the remedial measures taken after this rule is published but prior to the actual suspension date. The community will not be suspended and will continue its eligibility for the sale of insurance. A notice withdrawing the suspension of the community will be published in the Federal Register.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in the community by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM, if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the FEMA's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the community listed on the date shown in the last column.

The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because the community listed in this final rule have been adequately notified.

This community received a 90-day and two 30-day notifications addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, Federal Regulation, February 17, 1981, 3 CFR, 1981 Comp., p. 127. No regulatory impact analysis has been prepared.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Regular Conversion—Region IV				
South Carolina:				
McClellanville, town of, Charleston County	450039	Dec. 16, 1975, Emerg.; Mar. 16, 1981, Reg.; Sept. 17, 1992 Susp..	Apr. 17, 1987	Sept. 17, 1992.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Issued: September 8, 1992.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 92-22091 Filed 9-11-92; 8:45 am]

BILLING CODE 6718-21-M

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44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, 500 C Street SW., Washington, DC 20472, (202) 646-2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Administrator has resolved any appeals resulting from this notification.

The modified base (100-year) flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements.

The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified base flood elevations shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama: Tuscaloosa (docket No. FEMA-7043).	City of Northport	Apr. 3, 1992, Apr. 10, 1992, *Tuscaloosa News.*	The Honorable Wayne Rose, mayor, city of Northport, P.O. Drawer 569, Northport, Alabama 35476.	Mar. 18, 1992	010202
Arizona: Santa Cruz	Unincorporated areas (docket No. 7044).	May 27, 1992, June 3, 1992, *Nogales International.*	The Honorable Ron Morriss, chairman, Santa Cruz County, Board of Supervisors, 2100 North Congress Drive, Nogales, Arizona 85621.	May 5, 1992	040090
California:					
Riverside	City of Corona (docket No. 7043).	May 20, 1992, May 27, 1992, *Corona Daily Independent.*	The Honorable William Franklin, mayor, city of Corona, P.O. Box 2805, Corona, California 91718.	Apr. 21, 1992	060250
Sacramento	Unincorporated areas (docket No. 7043).	Apr. 23, 1992, Apr. 30, 1992, *Sacramento Bee.*	Mr. Douglas M. Freleigh, director, Sacramento County, Department of Public Works, 827 Seventh Street, room 304, Sacramento, California 95814.	Apr. 9, 1992	060262

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Sacramento	Unincorporated areas (docket No. 7044).	May 21, 1992, May 28, 1992, *Sacramento Bee*.	Mr. Douglas M. Fraleigh, director, Sacramento County Department of Public Works, 827 Seventh Street, room 304, Sacramento, California 95814.	May 7, 1992	060262
Colorado:					
Boulder	City of Broomfield (docket No. 7044).	May 21, 1992, May 28, 1992, *Broomfield Enterprise*.	The Honorable Robert Schulze, mayor, city of Broomfield, Number Six Garden Office Center, P.O. Box 1415, Broomfield, Colorado 80038.	May 8, 1992	085073
Arapahoe	City of Greenwood Village (docket No. 7043).	June 4, 1992, June 11, 1992, *The Villager*.	The Honorable Rollin Barnard, mayor, city of Greenwood Village, 6060 South Quebec Street, Greenwood Village, Colorado 80111.	Apr. 20, 1992	080195
Hawaii:					
Hawaii	Unincorporated areas (docket No. 7043).	May 15, 1992, May 22, 1992, *Hawaii Tribune Herald*.	The Honorable Lorraine R. Inouye, mayor, Hawaii County, 25 Aupuni Street, Hilo, Hawaii 96720.	Apr. 22, 1992	155166
Maui	Unincorporated areas (docket No. 7043).	Apr. 23, 1992, Apr. 30, 1992, *Maui News*.	The Honorable Linda Crockett Lingle, mayor, Maui County, 250 South High Street, Wailuku, Maui, Hawaii 96793.	Apr. 3, 1992	150003
Illinois: DuPage (docket No. FEMA-7044).	Unincorporated areas	May 8, 1992, May 15, 1992, *The Daily Herald*.	The Honorable Aldo E. Botti, chairman, DuPage County Board of Commissioners, 421 North County Farm Road, Wheaton, Illinois 60187.	Apr. 28, 1992	170197
Louisiana:					
St. Mary Parish (FEMA docket No. 7043).	Town of Berwick	Mar. 23, 1992, Mar. 30, 1992, *The Daily Review*.	The Honorable Emmett Hardaway, mayor of the town of Berwick, St. Mary Parish, P.O. Box 486, Berwick, Louisiana 70342.	Mar. 16, 1992	220194 B
St. Mary Parish (FEMA docket No. 7043).	City of Patterson	Mar. 23, 1992, Mar. 30, 1992	The Honorable C.A. "Gus" Lipari, mayor of the city of Patterson, P.O. Box 89, 203 Park Street, Patterson, Louisiana 70392.	Mar. 16, 1992	220197 B
Nevada: Independent City	City of Carson City (docket No. 7044).	June 3, 1992, June 10, 1992, *Nevada Appeal*.	The Honorable Marv Teixeira, mayor, city of Carson City, 2621 Northgate Lane, Carson City, Nevada 89706.	May 11, 1992	320001
Pennsylvania: Berks (FEMA docket No. 7043).	Township of Oley	Apr. 21, 1992, Apr. 28, 1992, *Reading Eagle*.	Mr. Frederick Eyrich, chairman of the township of Oley Board of Commissioners, P.O. Box 19, Oley, Pennsylvania 19547.	Apr. 13, 1992	420965 B
Tennessee: Shelby (docket No. FEMA-7044).	Town of Collierville	May 7, 1992, May 14, 1992, *The Collierville Herald*.	The Honorable Herman W. Cox, Jr., mayor, town of Collierville, 101 Walnut Street, Collierville, Tennessee 38017.	Apr. 27, 1992	470263
Texas:					
Harris	Unincorporated areas (docket No. 7043).	Apr. 29, 1992, May 6, 1992, *Houston Chronicle*.	The Honorable John Lindsay, County Commissioner's Court, Harris County, Ninth Floor Court Room, 1001 Preston, Houston, Texas 77002.	Mar. 19, 1992	480287
Bexar	City of San Antonio (docket No. 7043).	Apr. 3, 1992, Apr. 10, 1992, *Express News*.	The Honorable Nelson Wolff, mayor, city of San Antonio, P.O. Box 839966, San Antonio, Texas 78283.	Mar. 25, 1992	480045
Smith (FEMA docket No. 7043).	City of Tyler	Apr. 3, 1992, Apr. 10, 1992, *Tyler Morning Telegraph*.	The Honorable Smith Reynolds, mayor of the city of Tyler, P.O. Box 2039, Tyler, Texas 75710.	Mar. 27, 1992	480571 B
Washington: Skagit	City of Mount Vernon (docket No. 7044).	May 5, 1992, May 12, 1992, *The Skagit Argus*.	The Honorable Ray Reep, mayor, city of Mount Vernon, P.O. Box 809, Mount Vernon, Washington 98273.	Apr. 15, 1992	530158

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Issued: September 8, 1992.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 92-22107 Filed 9-11-92; 8:45 am]

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44 CFR Part 65

[Docket No. FEMA-7051]

Changes in Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Administrator reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472, (202) 646-2754.

SUPPLEMENTARY INFORMATION:

The modified base (100-year) flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California: Sacramento	Unincorporated areas	Aug. 28, 1992, Sept. 4, 1992, *Sacramento Bee.*	Mr. Douglas M. Fraleigh, Director, Sacramento County Department of Public Works, 827 Seventh Street, Room 304, Sacramento, California 95814.	Aug. 7, 1992	060262
Connecticut: New Haven	Town of Oxford	Aug. 12, 1992, Aug. 19, 1992, *The Voices.*	Mr. Edward Oczkowski, First Selectman for the Town of Oxford, S.B. Church Memorial, Town Hall, 486 Oxford Road, Oxford, Connecticut 06478–1298.	July 31, 1992	090150B
Florida: Sarasota	City of Sarasota	Sept. 15, 1992, Sept. 22, 1992, *Sarasota Herald-Tribune.*	The Honorable Jack Gurney, Mayor of the City of Sarasota, Sarasota County, P.O. Box 1058, Sarasota, Florida 34230–1058.	Aug. 25, 1992	125150B
Massachusetts: Plymouth	Town of Wareham	July 30, 1992, Aug. 6, 1992, *Wareham Courier.*	Mr. Charles P. Balczun, Administrator of the Town of Wareham, Plymouth County, 54 Marion Road, Wareham, Massachusetts 02571.	July 22, 1992	255223D
Minnesota: Hennepin	City of Plymouth	Sept. 2, 1992, Sept. 9, 1992, *Plymouth Sailor.*	The Honorable Kim Bergman, Mayor of the City of Plymouth, Hennepin County, 3400 Plymouth Boulevard, Plymouth, Minnesota 55447.	Aug. 24, 1992	3[illegible]0388C
Texas: Dallas	City of Coppell	Aug. 21, 1992, Aug. 28, 1992, *The Citizen's Advocate.*	The Honorable Mark Wolfe, Mayor, City of Coppell, P.O. Box 478, 255 Parkway Boulevard, Coppell, Texas 75019.	Aug. 10, 1992	480170
Texas: Bexar	City of San Antonio	June 2, 1992, June 9, 1992, *San Antonio Light.*	The Honorable Nelson Wolff, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283.	May 8, 1992	480045

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: September 8, 1992.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

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44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: Base (100-year) flood elevations and modified base (100-year) flood elevations are made final for the communities listed below.

The base (100-year) flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472, (202) 646-2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) gives notice of the final determinations of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, February 17, 1981. No Regulatory impact analysis has been prepared.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements. Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
ILLINOIS	
Bensenville (village), Cook and DuPage Counties (FEMA Docket No. 7045)	
South Unnamed Creek:	
About 1,500 feet upstream of Chicago and North Western railroad	*680
About 800 feet upstream of Fairway Drive	*688
North Unnamed Creek:	
About 1,500 feet upstream of Chicago and North Western railroad	*662
About 0.9 mile upstream of Chicago and North Western railroad	*667
Bensenville Ditch:	
About 500 feet downstream of Orchard Avenue	*661
Just downstream of Chicago and North Western railroad	*662
Just upstream of Chicago and North Western railroad	*666
About 650 feet upstream of Church Road	*686
Addison Creek:	
Within community	*661
Addison Creek Tributary No. 3:	
About 0.7 mile upstream of York Road	*683
Just downstream of Church Road	*686
Maps available for inspection at the Village Hall, 700 West Irving Park Road, Bensenville, Illinois.	
MICHIGAN	
Ovid (village), Clinton and Shiawassee Counties (FEMA Docket No. 7045)	
Maple River:	
Just downstream of Front Street	*721
About 1,250 feet upstream of State Highway 21	*725
Overland Flow:	
About 700 feet downstream of State Highway 21	*722
About 1,000 feet upstream of Main Street	*725
Maps available for inspection at the Village Hall, 114 East Front Street, Ovid, Michigan.	
NEW YORK	
Wheatfield (town), Niagara County (FEMA Docket No. 7042)	
Bergholtz Creek:	
Downstream corporate limits	*572
Approximately 1,350 feet upstream of Niagara Road	*583
Maps available for inspection at the Wheatfield Town Hall, Building Inspector's Office, 2800 Church Road, North Tonawanda, New York.	
OHIO	
Montgomery (city), Hamilton County (FEMA Docket No. 7045)	
North Branch Sycamore Creek:	
About 3,500 feet downstream of State Route 3	*596
Just downstream of Deerfield Road	*742
Just upstream of Deerfield Road	*751
About 1,000 feet upstream of Pfeiffer Road	*777
Polk Run:	
About 4,500 feet downstream of East Kemper Road	*586
Just downstream of East Kemper Road	*688
Just upstream of East Kemper Road	*850
At confluence with Lake Chetac Creek	*851
Lake Chetac Creek:	
At confluence with Polk Run	*882
About 1,400 feet downstream of Pfeiffer Road	*725
Maps available for inspection at the City Hall, 10101 Montgomery Road, Montgomery, Ohio.	
Mount Healthy (city), Hamilton County (FEMA Docket No. 7045)	
West Fork Lake Tributary:	

Source of flooding and location	#Depth, in feet above ground. *Elevation in feet (NGVD)
Just downstream of Clovehook Avenue	*782
About 1,790 feet upstream of Bernard Avenue	*785
West Fork Mill Creek:	
About 2,000 feet upstream of Hamilton Avenue	*733
About 3,900 feet upstream of Hamilton Avenue	*736
Maps available for inspection at the Building and Engineering, City Hall, 7700 Perry Street, Mt. Healthy, Ohio.	
North Ridgeville (city), Lorain County (FEMA Docket No. 7042)	
French Creek:	
Just upstream of Mills Road	*695
About 580 feet upstream of Root Road	*728
Mills Creek:	
Just upstream of Mills Road	*704
At county boundary	*764
Robinson Ditch:	
At confluence with Mills Creek	*726
At confluence with French Creek	*728
Maps available for inspection at the City Hall, 7307 Avon Beldon Road, North Ridgeville, Ohio.	
PENNSYLVANIA	
Hampden (township), Cumberland County (FEMA Docket No. 7042)	
Trindle Spring Run:	
At the confluence with Conodoguinet Creek	*359
At Silver Springs Road	*390
Maps available for inspection at the Hampden Township Hall, 230 South Sporting Hill Road, Mechanicsburg, Pennsylvania.	
TEXAS	
Houston (city), Harris County (FEMA Docket No. 7042)	
Tributary 20.86 to Brays Bayou:	
At approximately .2 mile upstream of confluence with Brays Bayou	*70
Approximately 150 feet downstream of Harwin Drive	*74
Maps available for inspection at the City of Houston Public Works Department, 3500 City Hall Annex, Houston, Texas.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: September 8, 1992.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1301

RIN 0970-AB03

Head Start Program

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: The Administration on Children, Youth and Families is issuing this final rule to revise and clarify for Head Start grantees the requirements implementing the statutory provision that limits development and administrative costs to 15 percent of total costs. This final rule also clarifies that training and technical assistance funds awarded to grantees must be included in total approved program costs, and are, therefore, subject to the 20 percent non-Federal matching requirement.

EFFECTIVE DATE: This rule is effective October 14, 1992.

FOR FURTHER INFORMATION CONTACT: Wade F. Horn, Ph.D. Commissioner, Administration on Children, Youth and Families, P.O. Box 1182, Washington, DC 20013, (202) 205-8347.

SUPPLEMENTARY INFORMATION:

I. Program Purpose

Head Start is authorized under the Head Start Act (the Act), section 635 of Public Law 97-35, the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 9831 *et seq.*). It is a national program providing comprehensive developmental services primarily to low-income preschool children, age three to the age of compulsory school attendance, and their families. To help enrolled children achieve their full potential, Head Start programs provide comprehensive health, nutritional, educational, social and other services. Additionally, Head Start programs are required to provide for the direct participation of parents of enrolled children in the development, conduct, and direction of local programs. Parents also receive training and education to foster their understanding of, and involvement in, the development of their children. In fiscal year 1991, Head Start served 583,471 children through a network of 1,346 grantees and 575 delegate agencies, each of which has an approved written agreement with a grantee to operate a Head Start program.

While Head Start is intended to serve primarily children whose families have incomes at or below the poverty line, or are eligible for public assistance, Head Start policy permits up to 10 percent of the children in local programs to be from families who do not meet these low-income criteria. The Act also requires that a minimum of 10 percent of the enrollment opportunities in each State be made available to children with disabilities. Such children are expected to participate in the full range of Head Start services and activities with their non-disabled peers and to receive needed special education and related services.

II. Purpose of the Rule

The Head Start grant application and 45 CFR 1301.32 currently require that grantees provide a statement that the costs of development and administration of the grant will not exceed 15 percent of the total costs. Additionally, Standard Form 269, the semiannual financial status report, requires the reporting of the actual cost of development and administration for each budget period. (An interim grant application form, with instructions, was published as a Program Instruction and distributed to all Head Start grantees and delegate agencies on September 10, 1991. These instructions require grantees to indicate proposed development and administrative costs on the application.)

The regulation currently in effect does not offer sufficient guidance to enable grantees to accurately classify costs as either development and administrative costs or program costs. This final rule will help grantees to make this determination. The definitions of development and administrative costs, and program costs, have been rewritten. Certain costs, such as the salaries of Head Start directors, are defined as development and administrative costs in the regulation. A new category of dual benefit costs has been defined, and programs will have the opportunity to identify costs which benefit both program components and development and administrative functions, and to allocate these costs appropriately. Additionally, the rule distinguishes between development and administrative costs on the one hand, and indirect costs on the other, and explains their relationship.

The authority for this final rule is section 644(b) of the Head Start Act (42 U.S.C. 9839), which limits reimbursement of the costs of developing and administering a Head Start program to 15 percent of the total costs of the program, and requires the Secretary to establish, by regulation, criteria for determining the costs of developing and administering Head Start programs as well as the total costs of programs.

Also, section 640(b) of the Act (42 U.S.C. 9835) provides that Federal financial assistance extended under the Act for a Head Start program shall not exceed 80 percent of the approved costs of the program. The Act directs the Secretary to allot not less than 2 percent of the annual appropriation for Head

Start for training and technical assistance activities, and does not exclude training and technical assistance funds provided to local Head Start programs from the 80 percent requirement.

Thus, these new and revised criteria will: (1) Clarify and emphasize the differences between program costs and development and administrative costs; (2) assist grantees in determining these costs; and (3) make clear that training and technical assistance costs in Head Start programs must be included in total approved costs and therefore are subject to the 20 percent matching requirement. This final rule incorporates material from an Information Memorandum entitled "Limitations on Costs of Development and Administration," issued by the Administration for Children, Youth and Families and dated April 11, 1983.

III. Rulemaking History

On October 25, 1990, the Department published a Notice of Proposed Rulemaking in the **Federal Register** (55 FR 42999), proposing to amend 45 CFR 1301.2 and 1301.32. Interested persons were given 60 days in which to comment on the proposed rule. During the 60 day comment period, the Department received 51 letters containing 123 comments pertaining to one or more sections of the proposed regulation. These letters were from Head Start grantee agencies, State agencies, Head Start associations, and professional organizations. There were approximately 15 general comments, 30 comments on the definitions section, 35 comments on matching requirements, and 43 comments on limitations on costs of development and administration.

IV. Section by Section Discussion of the NPRM

In general most commenters welcomed and fully endorsed the definitions contained in the proposed rule for "dual benefit costs" and "program costs." They suggested that the new regulation provided needed clarity and was a significant improvement over the current regulation regarding the 15 percent limit on development and administrative costs. A number of commenters expressed specific concerns regarding particular sections and paragraphs of the proposed regulation. All written comments were reviewed and analyzed; they form the basis for the changes which the Department has made to the NPRM. Discussed below are the revisions, and the rationale for making them.

Section 1301.2 Definitions

Definitions of Development and Administrative Costs and Program Costs

One comment was received on the definitions of development and administrative costs and program costs. The commenter stated that the use of the Head Start Performance Standards to define development and administrative costs and program costs fails to adequately distinguish between these two types of costs, and that language contained in § 1301.32(b)(2) (which lists management functions which must be charged as development and administrative costs) would be better situated in the definition section. This same commenter stated that the definition for development and administrative costs does not take into account grantees which operate no program themselves, but maintain staffs to oversee the activities of delegate agencies.

We believe that the new regulation, which, like the current regulation, ties the definition of development and administrative costs and program costs to the Head Start Performance Standards, provides a satisfactory framework for defining these costs. Further detail and guidance is provided to grantees in § 1301.32 (a) through (e) of the final rule, "Limitation on Costs of Development and Administration". Likewise, we feel that the concepts of development and administrative costs, program costs, and dual benefit costs set forth in the NPRM are sufficiently clear and flexible, and can be applied to grantees which operate no programs. Therefore, we have made no changes to these sections.

Definition of Dual Benefit Costs

All comments received concerning the definition of dual benefit costs supported the definition, which recognizes that some costs relate to development and administrative functions as well as to programmatic functions. The commenters stated that the regulation would help programs accurately report development and administrative costs when such duties are shared. Therefore, no changes were made.

Definitions of Indirect Costs and Total Approved Costs

One commenter stated that the definition for indirect costs should include language to the effect that only indirect costs which are part of an approved rate established by the applicant's cognizant agency, the agency which has the authority to set the grantee's indirect cost rate, may be charged. We agree with this comment and have changed the definition of indirect costs accordingly. We also agree with another commenter to this section, who stated that the definition of indirect costs should be consistent with that which is currently used by the Department, and we have modified the definition in this manner.

We have revised the definition of total approved costs to make clear that non-Federal costs above the statutory minimum may be included in total approved costs. This change has been made because, in the period since the issuance of the NPRM, the question of how to respond to the issues raised by Head Start grantees receiving multiple sources of funding has become more important. In response to this need, ACYF issued an Information Memorandum (number ACF-IM-91-10, dated April 23, 1991) which addressed these issues by clarifying existing policies. Under this Information Memorandum grantees receiving multiple sources of funding have a choice of how to configure their programs. One of these choices is to voluntarily treat the entire program, including the services funded by the "overmatch" (i.e., non-Federal share above the statutory minimum), as subject to the Federal requirements applicable to Head Start programs. In this circumstance, the overmatch would be included in the total Federal Assistance Award, and would be part of the basis for computing the development and administrative costs of the project. Since some grantees will be availing themselves of this arrangement, it was necessary to modify the definition of "Total approved costs" to reflect this development. The definition of total approved costs in the final regulation is a revision of the definition of total costs in the current regulation. The new definition also subsumes the definition of approved costs in the current regulation, which is no longer necessary because the phrase "approved costs" does not appear in part 1301.

Section 1301.20 Matching Requirement

Several commenters expressed opposition to this section of the NPRM and stated that the proposed requirement was not a clarification of, but rather a significant change from, current practice. According to the commenters, in the past training and technical assistance funds awarded to local Head Start programs have been exempt from the 20 percent matching requirement. Some commenters questioned whether the regulation would create a separate matching

requirement for training and technical assistance funds. Other commenters recommended that the 20 percent match requirement be eliminated.

We recognize that it has not been the practice of all Head Start programs to include the required 20 percent non-Federal match for training and technical assistance as part of the total approved costs. The NPRM makes clear that training and technical assistance funds are not a separate grant, and applies the match requirement to all Head Start program funds. This is consistent with section 640(b) of the Act which, in specifying the non-Federal share requirement, does not distinguish between training and technical assistance and other funds. We are, therefore, not making any changes to this section.

Section 1301.32 Limitation on Costs of Development and Administration of a Head Start Program

One comment was received on paragraph (a)(1), questioning the use of the word "reimbursement" in the phrase "Reimbursement of costs of developing and administering a Head Start program may not exceed 15 percent * * *." This comment is based on the recognition that Head Start is a grant program, not a reimbursement program. We agree with this comment and have replaced the word "reimbursement" with the words "Allowable costs" in this sentence. With respect to paragraph (a)(2), which states that the 15 percent limitation on development and administrative costs is a maximum, and that development and administrative costs at or below 15 percent may be found nevertheless to be excessive, a significant number of commenters opposed the provision because they believe that the lack of objective criteria for defining "excessive" costs below 15 percent provides too much discretion to Departmental officials.

We appreciate the concerns raised by the commenters, but believe that there are objective criteria articulated in Office of Management and Budget Circulars A-87 and A-122 which require that all development and administrative costs, including those below 15 percent, be reasonable and necessary for the administration of the program, and provide specific criteria against which costs may be weighed to determine their reasonableness. We are, therefore, not making any changes to this section.

While there were no comments concerning paragraph (b)(1) or (b)(2), we received a significant number of comments regarding paragraphs (b)(3) and (b)(4). Paragraph (b)(3) states that the salaries for the positions listed are included in development and administrative costs, and paragraph (b)(4) states that other development and administrative costs include expenses related to administrative staff functions. Most commenters were opposed to the inclusion of the salaries, benefits and related costs of the Head Start director, center director, and secretary in the category of administrative costs. A number of commenters indicated that in some Head Start programs the center director and secretary also perform some programmatic functions.

We agree with the concerns expressed by these commenters, and have modified paragraph (b)(3) by removing the words "Head Start director", "center director" and "secretary". This makes it clear that the personnel costs associated with those positions are, in appropriate cases, allocable as dual benefit costs under section 1301.32(d).

With respect to paragraph (b)(5), which classifies bookkeeping and payroll services and certain other office supplies, services, and equipment as development and administrative costs, all commenters opposed the inclusion of liability insurance for centers, classrooms and transportation as an administrative cost and recommended that it should be eliminated from this subsection and considered as a program cost.

We concur with the commenters that the inclusion of liability insurance for centers, classrooms and transportation as an administrative cost is inappropriate, and we have eliminated this language. We have revised the rule to more accurately reflect the principles of cost allocability found in the dual benefits definition and related provisions. This paragraph now states that bookkeeping and payroll services, audits, and bonding are development and administrative costs. These expenses are purely administrative and cannot be considered program costs. However, the cost of insurance, supplies, copy machines, postage, utilities, and space may be either development and administrative or programmatic, depending on circumstances. Thus the regulation now states that these expenses are development and administrative costs "to the extent they support development and administrative functions." Similarly, insurance costs related to program functions are defined as program costs in paragraph (c)(4) of the same section.

No specific comments were received concerning paragraphs (c)(1) through (c)(3). Paragraph (c)(4) was clarified to state that insurance which relates to program staff functions is a program cost. This change is discussed in the preceding paragraph. In addition, one comment was received which stated that the listing of "training materials" as a program cost is inconsistent with paragraph (b)(4), which includes training as a development and administrative cost. A careful reading of both paragraphs, (c)(4) and (b)(4), reveals no conflict since in both instances the regulation refers to the allocable cost related to the specific staff function. However, we have decided that the phrase "training materials" in paragraph (c)(4) is too narrow and could be read to exclude other legitimate training expenses. Therefore, we have eliminated the word "materials" from this paragraph.

No comments were received concerning paragraphs (d)(1) and (d)(2) and, therefore, no changes have been made to them. One commenter suggested that inclusion of the phrase "and costs related to space, such as utilities," after the words "Space costs" in paragraph (d)(3) would provide additional guidance to grantees. We have adopted this suggestion.

There were no comments concerning paragraphs (e) (1) and (2), and, therefore, no changes have been made.

There were no comments concerning paragraphs (f)(1) and (f)(2), and, therefore, no changes have been made. A comment was received suggesting that a provision be added requiring that indirect costs which are categorized as program costs be explained in the application. We believe that this is a valid comment and have incorporated the suggestion as paragraph (f)(3) of § 1301.32. An explanation of the inclusion of indirect costs as program costs will provide Department officials with a basis for analyzing the categorization.

Paragraphs (g) (1) through (5) specify the conditions under which a waiver of the 15 percent limitation on development and administrative costs may be granted. A small number of commenters stated that they were pleased that the new regulation extended the allowable length of time for a waiver of the 15 percent limitation from six months to as much as twelve months. Therefore, no change was made.

Minor changes which do not affect the substance of the regulation have been made for clarification.

V. Impact Analysis

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules, which are defined in the

Order as any rule that has an annual effect on the national economy of $100 million or more, or certain other specified effects. The Department has determined that these rules are not major rules within the Executive Order because they will not have an annual effect on the economy of $100 million or more; nor result in a major increase in costs or prices for consumers, any industries any governmental agencies, or any geographic region; and, they will not have an adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or import markets.

The final rule clarifies the requirements implementing the statutory provision for Head Start grantees that limits development and administrative costs to 15 percent of total costs. In addition, this rule clarifies that training and technical assistance funds awarded to grantees must be included in total approved program costs, and are, therefore, subject to the 20 percent non-Federal matching requirement.

The benefits derived will far outweigh any incidental administrative costs incurred. Costs attributable to these provisions merely provide clarification of existing policy. This rule will be beneficial to grantees because current regulations do not offer sufficient guidance to enable grantees to accurately classify costs. (As indicated earlier in this preamble, an interim grant application form, with instructions, was published as a Program Instruction and distributed to all Head Start grantees and delegate agencies on September 10, 1991. These instructions require grantees to indicate proposed development and administrative costs on the application.) Thus the Department concluded that these regulations are not major rules within the meaning of the Executive Order because they do not meet the threshold criteria.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act (5 U.S.C. Ch. 6) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of small entities" an analysis must be prepared describing the rule's impact on small entities. Small entities are defined by the Act to include small businesses, small non-profit organizations and small governmental entities. While these regulations would affect small entities, the requirements are not substantial and in most instances the small entities already meet some of the requirements. For these reasons, the Secretary certifies that these rules will not have a significant impact on substantial numbers of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, Public Law 96-511, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or record-keeping requirement inherent in a proposed or final rule. The final rule contains new information collection requirements in § 1301.32 (f)(2) and (f)(3), which require that certain information must be provided as a part of a grantee's application. We estimate that this requirement will take each grantee approximately 2 hours annually to complete. As there are 1,921 grantees and delegate agencies, the total number of hours annually will be 3,842.

Organizations and individuals desiring to submit comments on the information collection requirement should direct them to the agency official designated for this purpose, whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (room 308), Washington, DC 20503, Attention: Desk Officer for the Administration for Children and Families.

List of Subjects in 45 CFR Part 1301

Head Start, Development and administrative costs, Program costs, Dual benefit costs, Indirect costs, Total approved costs.

(Catalog of Federal Domestic Assistance Program Number 93.600, Project Head Start)

Dated: May 20, 1992.

Jo Anne B. Barnhart,

Assistant Secretary for Children and Families.

Approved: July 6, 1992.

Louis W. Sullivan,

Secretary.

For the reasons set forth in the preamble, 45 CFR part 1301 is amended as follows:

PART 1301—HEAD START GRANTS ADMINISTRATION

1. The authority citation for part 1301 continues to read as follows:

Authority: 42 U.S.C. 9831 et seq.

2. Section 1301.2 is amended by revising the definition for *development and administrative costs;* by removing the definitions for *approved costs* and *total costs;* by adding, alphabetically, definitions for *dual benefit costs, indirect costs, program costs,* and *total approved costs;* and by republishing the introductory text to read as follows:

§ 1301.2 Definitions.

For the purposes of this part, unless the context requires otherwise:

* * * * *

Development and administrative costs mean costs incurred in accordance with an approved Head Start budget which do not directly relate to the provision of program component services, including services to children with disabilities, as set forth and described in the Head Start program performance standards (45 CFR Part 1304).

Dual benefit costs mean costs incurred in accordance with an approved Head Start budget which directly relate to both development and administrative functions and to the program component services, including services to children with disabilities, as set forth and described in the Head Start program performance standards (45 CFR Part 1304).

* * * * *

Indirect costs mean those costs of a Head Start agency, as approved by the cognizant agency, the agency which has authority to set the grantee's indirect cost rate, which are not readily identifiable with a particular project or program but nevertheless are necessary to the general operation of the agency and the conduct of its activities.

* * * * *

Program costs mean costs incurred in accordance with an approved Head Start budget which directly relate to the provision of program component services, including services to children with disabilities, as set forth and described in the Head Start Program Performance Standards (45 CFR Part 1304).

* * * * *

Total approved costs mean the sum of all costs of the Head Start program approved for a given budget period by the Administration on Children, Youth and Families, as indicated on the Financial Assistance Award. Total approved costs consist of the Federal share plus any approved non-Federal share, including non-Federal share above the statutory minimum.

3. Section 1301.20 is amended by adding a new paragraph (c) as follows:

§ 1301.20 Matching requirements.

* * * * *

(c) Federal financial assistance awarded to Head Start grantees for training and technical assistance

activities shall be included in the Federal share in determining the total approved costs of the program. Such financial assistance is, therefore, subject to the 20 percent non-Federal matching requirement of this subpart.

4. Section 1301.32 is revised to read as follows:

§ 1301.32 Limitations on costs of development and administration of a Head Start program.

(a) *General provisions.* (1) Allowable costs for developing and administering a Head Start program may not exceed 15 percent of the total approved costs of the program, unless the responsible HHS official grants a waiver approving a higher percentage for a specific period of time not to exceed twelve months.

(2) The limit of 15 percent for development and administrative costs is a maximum. In cases where the costs for development and administration are at or below 15 percent, but are judged by the responsible HHS official to be excessive, the grantee must eliminate excessive development and administrative costs.

(b) *Development and administrative costs.* (1) Costs classified as development and administrative costs are those costs related to the overall management of the program. These costs can be in both the personnel and non-personnel categories.

(2) Grantees must charge the costs of organization-wide management functions as development and administrative costs. These functions include planning, coordination and direction; budgeting, accounting, and auditing; and management of purchasing, property, payroll and personnel.

(3) Development and administrative costs include, but are not limited to, the salaries of the executive director, personnel officer, fiscal officer/bookkeeper, purchasing officer, payroll/insurance/property clerk, janitor for administrative office space, and costs associated with volunteers carrying out administrative functions.

(4) Other development and administrative costs include expenses related to administrative staff functions such as the costs allocated to fringe benefits, travel, per diem, transportation and training.

(5) Development and administrative costs include expenses related to bookkeeping and payroll services, audits, and bonding; and, to the extent they support development and administrative functions and activities, the costs of insurance, supplies, copy machines, postage, and utilities, and occupying, operating and maintaining space.

(c) *Program costs.* Program costs include, but are not limited to:

(1) Personnel and non-personnel costs directly related to the provision of program component services and component training and transportation for staff, parents and volunteers;

(2) Costs of functions directly associated with the delivery of program component services through the direction, coordination or implementation of a specific component;

(3) Costs of the salaries of program component coordinators and component staff, janitorial and transportation staff involved in program component efforts, and the costs associated with parent involvement and component volunteer services; and

(4) Expenses related to program staff functions, such as the allocable costs of fringe benefits, travel, per diem and transportation, training, food, center/classroom supplies and equipment, parent activities funds, insurance, and the occupation, operation and maintenance of program component space, including utilities.

(d) *Dual benefit costs.* (1) Some costs benefit both the program components as well as development and administrative functions within the Head Start program. In such cases, grantees must identify and allocate appropriately the portion of the costs that are for development and administration.

(2) Dual benefit costs include, but are not limited to, salaries, benefits and other costs (such as travel, per diem, and training costs) of staff who perform both program and development and administrative functions. Grantees must determine and allocate appropriately the part of these costs dedicated to development and administration.

(3) Space costs, and costs related to space, such as utilities, are frequently dual benefit costs. The grantee must determine and allocate appropriately the amount or percentage of space dedicated to development and administration.

(e) *Relationship between development and administrative costs and indirect costs.* (1) Grantees must categorize costs in a Head Start program as development and administrative or program costs. These categorizations are separate from the decision to charge such costs directly or indirectly.

(2) Grantees must charge all costs, whether program or development and administrative, either directly to the project or as part of an indirect cost pool.

(f) *Requirements for compliance.* (1) Head Start grantees must calculate the percentage of their total approved costs allocated to development and administration as a part of their budget submission for initial funding, refunding or for a request for supplemental assistance in connection with a Head Start program. These costs may be a part of the direct or the indirect cost pool.

(2) The Head Start grant applicant shall delineate all development and administrative costs in its application.

(3) Indirect costs which are categorized as program costs must be fully explained in the application.

(g) *Waiver.* (1) The responsible HHS official may grant a waiver of the 15 percent limitation on development and administrative costs and approve a higher percentage for a specific period of time not to exceed twelve months. The conditions under which a waiver will be considered are listed below and encompass those situations under which development and administrative costs are being incurred, but the provision of actual services has not begun or has been suspended. A waiver may be granted when:

(i) A new Head Start grantee or delegate agency is being established or services are being expanded by an existing Head Start grantee or delegate agency, and the delivery of component services to children and families is delayed until all program development and planning is well underway or completed; or

(ii) Component services are disrupted in an existing Head Start program due to circumstances not under the control of the grantee.

(2) A Head Start grantee that estimates that the cost of development and administration will exceed 15 percent of total approved costs must submit a request for a waiver that explains the reasons for exceeding the limitation. This must be done as soon as the grantee determines that it cannot comply with the 15 percent limit, regardless of where the grantee is within the grant funding cycle.

(3) The request for the waiver must include the period of time for which the waiver is requested. It must also describe the action the grantee will take to reduce its development and administrative costs so that the grantee will be able to assure that these costs will not exceed 15 percent of the total approved costs of the program after the completion of the waiver period.

(4) If granted, the waiver and the period of time for which it will be granted will be indicated on the Financial Assistance Award.

(5) If a waiver requested as a part of a grant application for funding or refunding is not approved, no Financial Assistance Award will be awarded to the Head Start program until the grantee resubmits a revised budget that complies with the 15 percent limitation.

[FR Doc. 92-22082 Filed 9-11-92; 8:45 am]
BILLING CODE 4130-01-M

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45 CFR Part 1302

RIN 0970-AA96

Head Start Program

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), Department of Health and Human Services (DHHS).

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services is issuing this final rule to revise current criteria and add new criteria governing the selection of organizations to operate a Head Start program with Federal financial assistance. The final rule specifies the criteria that will be used to evaluate applications and select grantees to operate a Head Start program.

EFFECTIVE DATE: This rule is effective October 14, 1992.

FOR FURTHER INFORMATION CONTACT: Wade F. Horn, Ph.D., Commissioner, Administration on Children, Youth and Families, P.O. Box 1182, Washington, DC 20013, (202) 205-8347.

SUPPLEMENTARY INFORMATION:

I. Program Purpose

Head Start, as authorized under the Head Start Act (the Act), 42 U.S.C. 9831 et seq., is a national program providing comprehensive developmental services primarily to low-income preschool children, age three to the age of compulsory school attendance, and their families. To help enrolled children to achieve their full potential, Head Start programs provided comprehensive health, nutritional, educational, social and other services. Additionally, Head Start programs are required to provide for the direct participation of parents of enrolled children in the development, conduct, and direction of local programs. In fiscal year 1991, Head Start served approximately 582,325 children through a network of 1,300 grantees and 620 delegate agencies, each of which has an approved written agreement with the grantee to operate a Head Start program.

While Head Start is targeted primarily on children whose families have incomes at or below the poverty line or are eligible for public assistance, Head Start regulations permit up to 10 percent of the Head Start children in local programs to be from families who do not meet these low-income criteria. Head Start also requires that a minimum of 10 percent of the enrollment opportunities in each State be made available to children with disabilities. Such children are expected to be enrolled in the full range of Head Start services and activities in a setting with their non-disabled peers and to receive necessary special education and related services.

II. Notice of Proposed Rulemaking

On September 22, 1989, the Department published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (54 FR 39018) that proposed a revision of 45 CFR 1302.10, the Head Start regulation governing criteria for selection among applicants for a Head Start program. Interested persons were given 60 days in which to comment on the proposed rule.

During the 60 day comment period, 72 letters containing 130 comments were received. All written comments were analyzed and formed the basis for the changes which the Department has made in this final rule.

This final rule expands the scope of several current criteria and adds new criteria to § 1302.10. These new and expanded criteria include the need for Head Start services in the community, the appropriateness of the proposed program design, and the applicant's understanding of and capability to implement the Head Start Performance Standards. The revised criteria will result in applications containing more precise and substantive information regarding proposed program design, program operation, community needs and plans for adherence to the Performance Standards. This will improve our ability to make sound and fair decisions among applicants proposing to operate Head Start programs.

III. Summary of Comments and the Department's Response

Except for minor technical revisions, we have made no significant changes in the final rule as proposed in the Notice. The following is a summary of the comments from respondents and the Department's response.

The majority of the respondents commented very positively concerning each of the five criteria. Out of 130 comments addressing the criteria, 55 noted that the new rule would clarify the regulation, and 13 suggested that no change was needed. The remaining 62 comments objected to the deletion of the wording in paragraph (f) of the current rule, which was not included in paragraph (b)(2) of the proposed criteria. The commenters stated that, by not including the language from paragraph (f) of the current rule "to administer all Head Start programs being carried out in the community" in paragraph (b)(2), the NPRM would allow for the potential fragmentation of Head Start programs and for more than one grantee to operate in a local community. The Department is sensitive to grantee concerns about fragmentation of services and in general, we would not endorse establishing multiple Head Start programs in a community. Nevertheless, there may be times when it is in the best interest of the community and its low-income families to have more than one grantee serving the community, such as when the current grantee declines to expand enrollment even when additional funds are made available. Consequently, we do not believe it is appropriate to revise the NPRM and will leave the language as originally published.

In paragraph (a) of the proposed criteria, we made a technical correction by deleting the words "application selected reasonably promises" and substituted the words "applicants demonstrate in their application." The use of the words "applicants demonstrate in their application" would require the applicant to explain in detail or make clear by use of examples how the proposed Head Start program would operate, which is the intent of the proposed rule.

In the interim between the appearance of the NPRM and the publication of the final regulation section 641(d) of the Head Start Act was amended by the Augustus F. Hawkins Human Services Reauthorization Act of 1990, title I, Public Law 101-501. Section 641(d) now provides that applications for unserved areas must be assessed using seven specified criteria. The provisions of § 1302.10, which govern the selection of grantees for unserved areas as well as other competitions, are consistent with the standards provided by section 641(d). The Department is not issuing additional regulations addressing the new criteria in section 641(d) because those standards do not require further interpretation in order to be implemented. Because of the amendment to section 641(d), we have made a technical revision to paragraph (b) of § 1302.10 by changing the sentence to read "In addition to the applicable criteria under the Head Start Act, the criteria will include: * * *."

IV. Impact Analysis

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules defined in the order as any rule that has an annual effect on the national economy of $100 million or more or certain other specified effects. The Department has determined that this rule is not a major rule within the Executive Order because it will not have an annual effect on the economy of $100 million or more; nor result in a major increase in costs or prices for consumers, any industries, any governmental agencies, or any geographic region; and, it will not have an adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or import markets.

The intent of this final rule is to better accommodate a wide variety of competitive situations such as selecting among applicants in different communities and among current and prospective grantees when funds are available to expand services or when there is a need to change service providers. It also adds new criteria and broadens existing criteria to specifically address the selection of new grantees. Applications from prospective grantees will contain more precise and substantive information regarding proposed program design, program operation, community needs and plans for adherence to the performance standards as mandated by Congress. This will improve our ability to make sound and fair decisions among applicants proposing to operate Head Start programs.

This final rule does not require applicants to incur any more costs than they would have under the current rule when submitting an application. It sets forth revised criteria upon which the application will be judged. Thus, the Department concluded that this rule is not a major rule within the meaning of the Executive Order because it does not meet the threshold criteria.

Regulatory Flexibility Act of 1980

Consistent with the Regulatory Flexibility Act of 1980 (5 U.S.C. ch 6), we try to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of small entities" we propose an analysis describing the rule's impact on small entities. Small entities are defined by the Act to include small businesses, small non-profit organizations, and small governmental entities.

While this final rule would affect small entities, it is not substantial and in many instances the small entities may already meet some of the requirements. For these reasons, the Secretary certifies that this rule will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, Public Law 96-511, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or recordkeeping requirements inherent in a proposed and final rule. This final rule does not contain information and collection requirements or increase Federal paperwork burden on the public or private sector. Thus no submission to OMB is required.

List of Subjects in 45 CFR Part 1302

Administrative practice and procedure, education of disadvantaged, grant programs/social programs.

(Catalog of Federal Domestic Assistance Program Number 93.600, Project Head Start)

Dated: May 9, 1992.

Jo Anne B. Barnhart,

Assistant Secretary for Children and Families.

Approved: June 18, 1992.

Louis W. Sullivan,

Secretary.

For the reasons set forth in the Preamble, 45 CFR Part 1302 is amended as follows:

PART 1302—POLICIES AND PROCEDURES FOR SELECTION, INITIAL FUNDING, AND REFUNDING OF HEAD START GRANTEES, AND FOR SELECTION OF REPLACEMENT GRANTEES

1. The authority citation for part 1302 is revised to read as follows:

Authority: 42 U.S.C. 9831 et seq.

2. Section 1302.10 is revised as follows:

§ 1302.10 Selection among applicants.

(a) The basis for selection of applicants proposing to operate a Head Start program will be the extent to which the applicants demonstrate in their application the most effective Head Start program.

(b) In addition to the applicable criteria at section 641(d) of the Head Start Act, the criteria for selection will include:

(1) The cost effectiveness of the proposed program;

(2) The qualifications and experience of the applicant and the applicant's staff in planning, organizing and providing comprehensive child development services at the community level, including the administrative and fiscal capability of the applicant to administer all Head Start programs carried out in the designated service area;

(3) The quality of the proposed program as indicated by adherence to or evidence of the intent and capability to adhere to Head Start Performance Standards (in 45 CFR part 1304) and program policies, including the opportunities provided for employment of target area residents and career development for paraprofessional and other staff and provisions made for the direct participation of parents in the planning, conduct and administration of the program;

(4) The proposed program design and option including the suitability of facilities and equipment proposed to be used in carrying out the program, as it relates to community needs and as the applicant proposes to implement the program in accordance with program policies and regulations; and

(5) The need for Head Start services in the community served by the applicant.

[FR Doc. 92-22083 Filed 9-11-92; 8:45 am]

BILLING CODE 4130-01-M

FEDERAL MARITIME COMMISSION

46 CFR Part 540

[Docket No. 92-19]

Revision of Financial Responsibility Requirements for Nonperformance of Transportation

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission amends its rules regarding financial responsibility for passenger vessel operators to institute a sliding scale formula for determining the amount of financial responsibility coverage required for operators meeting certain requirements; exclude, under certain conditions, revenue from "whole-ship" arrangements from being considered as unearned passenger revenue; and publish a suggested form escrow arrangement as a guideline for the industry.

EFFECTIVE DATE: October 14, 1992.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, 800 N

Capitol Street, Washington, DC 20002. (202) 523–5796.

SUPPLEMENTARY INFORMATION:

Background

The Federal Maritime Commission ("Commission") initiated this proceeding by publishing a Notice of Proposed Rulemaking ("NPR") in the **Federal Register** on May 4, 1992 (57 FR 19097). The NPR solicited comment on a proposed rule to revise the Commission's administration of section 3 of Public Law 89–777, 46 U.S.C. app. 817e ("Section 3"). Section 3 requires certain passenger vessel operators to have sufficient financial responsibility to indemnify passengers for nonperformance of transportation.[1]

The proposed rule would revise 46 CFR part 540, subpart A, to (1) institute a sliding-scale formula for operators meeting certain requirements; (2) provide that operators need meet only existing net worth standards to qualify as self-insurers; (3) require semi-annual rather than annual filing of certain financial statements by self-insurers; (4) exclude, under certain conditions, revenue from "whole-ship" arrangements from being considered as unearned passenger revenue ("UPR"); [2] and (5) publish a suggested form escrow arrangement as a guideline for the industry.

Comments

Comments to the NPR were received from Delta Queen Steamboat Company ("Delta Queen"), an intercoastal waterway U.S.-flag passenger vessel operator;[3] American Hawaii Cruises ("AHC"), a deep-water U.S.-flag passenger vessel operator; District 2 of the Marine Engineers Beneficial Association ("MEBA"), a maritime labor union representing the officers of AHC's vessels; the International Council of Cruise Lines ("ICCL"), an association of foreign-flag passenger vessel operators; Diamond Cruise Inc. ("Diamond"), a passenger vessel operator intending to specialize in "whole-ship" charters; and Mr. John W. McConnell, Jr., commenting on his own behalf.

The comments were generally supportive of the proposed rule. The Commission has considered all of the comments received in this proceeding. Other than for the NPR's proposed self-insurance revisions, the Commission has determined to adopt the rule published in the **Federal Register** on May 4, 1992, with certain changes discussed below. The Commission has determined to institute a separate proceeding to consider further revisions to its Section 3 self-insurance regulations. Any comments not expressly discussed either have been incorporated, have been found to be mooted by the changes incorporated into the final rule, or have been found to be irrelevant, without merit or beyond the scope of the proceeding.

Discussion

1. The Sliding Scale

Delta Queen commends the sliding scale as striking an appropriate balance by providing adequate protection to passengers while proportionately impacting various-sized operators. It asserts that the current regulations unfairly disadvantage small- and medium-sized operators, because larger operators are required to cover only a proportion of their UPR while small and medium size operators are required to cover their entire UPR up to the current $15 million ceiling. It suggests that the Commission also consider an operator's financial and operating history (including the number of years of uninterrupted service beyond the 5-year minimum proposed in the NPR) in determining an operator's coverage requirements under the sliding scale. Delta Queen states that a company with many years of incident-free service would be less likely to cancel trips than one with a shorter operating history.

AHC also supports the NPR's sliding scale. It asserts that the sliding scale would eliminate the current disparity in coverage requirements for larger and smaller operators, and would more accurately recognize the economic realities causing the cruise industry's fluctuating revenue levels. AHC believes that the proposed maximum $5 million coverage per vessel under the sliding scale is more than adequate to meet Section 3's purposes. With regard to the criteria based on a satisfactory record of performance, AHC asserts that history has demonstrated that all non-performance problems which have occurred involved inadequately capitalized, start-up companies which relied on advance deposits to cover operating losses as they filled their cash-flow "pipeline".

For operators with less than five years' experience and therefore ineligible to use the proposed rule's sliding scale, AHC urges the Commission to consider determining coverage on the basis of an operator's average UPR.[4] It states that it would be more realistic and far more accurate to use an operator's average collections over the previous two years to determine the base amount of an operator's UPR. AHC also suggests that if the operator has less than two years' experience, the Commission should use its highest UPR level to determine the amount of coverage necessary. AHC suggests that setting coverage amounts according to revenue averages for operators with less than five years' continuous service would help ease the regulatory and economic burdens associated with financial responsibility requirements, while at the same time preserve the purpose of the underlying statute. Moreover, AHC maintains that an averaging approach also would ease the regulatory burden upon the Commission, because it would simplify the reporting process and ease the burden accompanying the Commission's task of setting coverage requirements in every case.

MEBA supports the sliding scale formula as giving proper credit to operators such as AHC which have had a long history of reliable, stable cruise service and which have experienced no claims or otherwise demonstrated any unreliability of financial performance. MEBA states that the proposed regulations also would have the advantage of differentiating among the various size operators so as to more equitably spread the burden of performance coverage over those who have ships in the one to four vessel range.

ICCL believes the sliding scale is an option for providing flexibility in meeting the certification requirements within the $15 million ceiling. This approach is said to recognize the value of a cruise operator's clean performance record as a criterion for easing the burden of providing security. It commends the sliding scale's criteria as

[1] Section 3 provides, in pertinent part: No person in the United States shall arrange, offer, advertise, or provide passage on a vessel having berth or stateroom accommodations for fifty or more passengers and which is to embark passengers at United States ports without there first having been filed with the Federal Maritime Commission such information as the Commission may deem necessary to establish the financial responsibility of the person arranging, offering, advertising, or providing such transportation, or, in lieu thereof, a copy of a bond or other security, in such form as the Commission, by rule or regulation, may require and accept, for indemnification of passengers for nonperformance of the transportation.

[2] UPR is defined under 46 CFR 540.2(i) as: " " " that passenger revenue received for water transportation and all other accommodations, services, and facilities relating thereto not yet performed.

[3] Delta Queen filed two comments, a June 16, 1992 submission by David W. Kish, Vice President, Administration, and a June 17, 1992 submission by S. Cody Engle, Chairman of the Board.

[4] AHC notes that the coverage requirement under the present regulations is 110% of the highest UPR on any single day during the prior two years.

representing an adequate, fair and constructive approach.

Mr. McConnell proposes an additional sliding scale arrangement to address vessel operators' changes in Section 3 coverages. This proposal would cover the period after a vessel operator has changed its coverage, but before all UPR covered by the former source of coverage has been reconciled. He suggests that responsibility be apportioned between the old and new coverage in accordance with the current ratio of the vessel operator's old and new UPR.

The Commission has determined to adopt the proposed sliding scale concept. AHC's suggestion for basing coverage requirements on revenue averages and Mr. McConnell's suggestion for a sliding scale to cover changes in coverage are outside of the scope of this rulemaking and cannot be considered here.

2. Self-insurance

The NPR proposed to eliminate the requirement that passenger vessel operators wishing to qualify as self-insurers demonstrate both net worth and working capital equal to 110 percent of their UPR. The NPR proposed to allow operators to qualify on the basis of their net worth alone, subject to certain requirements including the requirement that the assets used to qualify as a self-insurer by physically located in the United States. In connection with the liberalization of the self-insurance requirement, the NPR proposed more frequent reports concerning the financial standing of self-insurers.

As noted above, the Commission has determined to institute a separate proceeding to consider further revisions to its Section 3 self-insurance requirements.

3. Whole-ship Contracts

ICCL states that the NPR's proposal to exempt whole-ship contracts from Section 3 coverage requirements, and the accompanying corporate certification, appears to be reasonable.

Diamond supports exempting whole-ship contracts, but suggests that instead of the approach set forth in the NPR, the Commission consider a straightforward class exemption allowing any operator conducting a whole-ship charter to exclude advance payments thereunder from its UPR calculations. If the Commission nonetheless believes that some informational reporting is needed, Diamond requests that cruise lines be required to do no more than (1) report the number of whole-ship charters processed and the amount of advance revenue attributable thereto; and (2) certify that all whole-ship charter contracts entered into contained certain standard terms (Diamond does not, however, suggest what these "standard terms" should be).

Diamond states that no reason has been offered for the proposed rule's filing and acknowledgement requirements, asserting that such a process is unnecessary and would impose an unjustified administrative and economic burden on the Commission and cruise lines. Diamond submits that only a total class exemption would enable operators that intend to operate substantial numbers of whole-ship charters to benefit from the regulatory relief contemplated by the proposed rule.

Diamond offers four specific objections to the NPR's treatment of whole-ship charters. First, it asserts that there is no evidence that Congress intended Section 3's financial responsibility provisions to extend beyond the individually ticketed portion of the travelling public to that portion which will utilize whole-ship contracts. In this connection, Diamond asserts that on its face, Section 3 only protects "passengers" and there is no basis upon which to conclude that corporate charterers, which themselves will not be receiving any passage on board the vessel, come within the meaning of that term. Second, Diamond anticipates handling a very large number of such charters, and believes that it would be administratively burdensome and intrusive for a carrier to be required to submit each contract to the Commission.[5] Third, given its contention that "these parties have no legitimate expectation of protection" under section 3 (Diamond comment, 3), Diamond characterizes as unnecessary and inappropriate the proposed requirement that cruise lines obtain a separate statement from their whole-ship charter counterparties acknowledging that Section 3's protections do not apply. Fourth, Diamond urges the Commission not to require whole-ship charterers to indemnify their passengers in the event of a cruise line's non-performance, asserting that these passengers "are not paying for their cruise and therefore, by definition, cannot be financially harmed by the cruise line's putative failure to perform" (*Ibid*).

[5] Diamond also observes that these contracts will inevitably contain confidential business terms and other proprietary information that the Commission does not need to discharge its Section 3 obligations and to which the cruise line will legitimately not want either the Commission or the public-at-large to have access.

Diamond's position appears to be supported by two underlying assumptions: (1) That section 3 is intended only to afford protection to the person to whom the transportation is provided, or, stated conversely, that, Congress did not intend to provide protection to those who purchase transportation and then assign, without consideration, that transportation contract to a third party beneficiary; and (2) that section 3 is not intended to afford protection to corporations. We disagree on both counts.

Congress enacted section 3 to ensure an available remedy to passengers left stranded on the pier. Nothing in that statute or its legislative history suggests that Congress intended to limit the statute's application where the ticket purchaser transfers its rights to another with or without consideration. If a corporation purchases all of the available berths for a particular voyage, that corporation or its designated beneficiaries/assignees are entitled to the benefits afforded by the ticket contract. These interests are likewise entitle to the benefits provided by Section 3. We find no reason to differentiate between passengers whose tickets were purchased and offered by a corporate employer, vis-a-vis persons whose tickets were purchased and conveyed by a friend or family member. No one has ever suggested, for example, not do we believe, that if a person purchases fares for himself and his family, section 3 covers only the purchaser's ticket in the event of nonperformance.

In addition, the Commission believes that the statute was designed to provide a methodology for establishing an operator's financial responsibility for its passengers, regardless of their identity. Although Public Law 89–777 nowhere defines the term "passenger", § 540.2(g) of the Commission's rules defines the term as "*any* person who is to embark on a vessel at any U.S. port and who has paid any amount for a ticket contract entitling him to water transportation" (emphasis supplied). Section 540.2(a), in turn, defines the term "person" as including "individuals, corporations, partnerships, associations, and other legal entities existing under or authorized by the laws of the United States or any State thereof * * *." The Commission adopted this definition of the term passenger in 1967 when it promulgated regulations to implement section 3. To date, the Commission has not received any complaints or concerns about this definition. Accordingly, the Commission finds that the existing definition of "passenger" appropriately

extends beyond individuals to include corporate charterers of passenger vessels subject to section 3, and that a broad interpretation of the term "passenger" is consistent with the legislative intent of ensuring that purchasers or passenger fares are protected against operator nonperformance.

With regard to Diamond's concerns about reporting burden, the Commission believes that Diamond misunderstands the rule. A single agreement could cover a series of voyages. In any event, no more than one charter arrangement would need to be filed per voyage. As to the treatment of confidential information, § 540.9(g) of the Commission's rules would appear to cover Diamond's concerns.[6] This, coupled with the existing exception to the availability of records afforded under 46 CFR 503.35(a)(4),[7] would permit the Commission to keep financial information confidential.

Diamond states that the proposed definition of the term "whole-ship charter" is ambiguous and should be clarified. It states that it does not understand what is intended by the phrase "the full reach of the passenger accommodation of the vessel" in the proposed definition. To avoid the ambiguity it perceives in this definition, and to effect the regulatory class exemption it has requested, Diamond suggests that the Commission adopt the following definition:

Whole-ship charter means any contract, agreement or other arrangement between a passenger vessel operator and a person (other than an individual) whereby all of the passenger accommodations on a vessel for a particular voyage or series of voyages (i) are purchased by that person, (ii) are not resold by that person to members of the public, and (iii) are provided by that person to the ultimate passengers free of charge.

The Commission has modified the definition of "whole-ship charter" in certain respects to accommodate Diamond's suggestion. However, the reporting requirements have been retained.

[6] 46 CFR 540.9(g) provides:

Financial data filed in connection with the rules of this subpart shall be confidential except in instances where information becomes relevant in connection with hearings which may be requested by applicant pursuant to § 540.8 (a) or (b).

[7] 46 CFR 503.35(a)(4) includes among the records not to be made available in response to a Freedom of Information Act request: Information given in confidence. This includes information obtained by or given to the Commission which constitutes trade secrets, *confidental commercial or financial information*, privileged information, or other information which was given to the Commission in confidence or would not customarily be released by the person from whom it was obtained.

(Emphasis supplied)

4. Escrow arrangements

The NPR published a draft "form" of the type of escrow arrangement the Commission has previously found acceptable for Section 3 purposes. It did so to provide a guideline concerning the type of instrument the Commission generally considers acceptable in its case-by-case evaluation of escrow account applications.

AHC states that while escrow arrangements may benefit and provide an attractive certification alternative to some operators, they do not offer any significant advantages to AHC, particularly given the prospect of the NPR's sliding scale. AHC does not believe that escrow arrangements will cure the difficulties associated with the seasonal fluctuations in its business. Therefore, AHC urges the Commission not to view the escrow alternative as obviating the need for other flexible alternatives such as the sliding scale.

AHC advises that an escrow arrangement would be impractical for several reasons. First, AHC advises its primary depository bank cannot handle individual disbursements to agents requesting refunds for cancellations; the bank only performs deposit/disbursement and funds management functions on a weekly basis and at a significant additional cost. Therefore, an escrow arrangement calculated on a weekly basis would be both more costly and inaccurate for AHC because refunds would have been made and not accounted for. Second, the requirement for a quarterly audit would allegedly result in a substantial additional expense since AHC uses independent auditors only once a year. Third, AHC claims it cannot—without enormous expense—reprogram its computer accounting system to sort out deposits received for air, hotel, car rental, and cancellation insurance from passenger fares to determine what amount should be deposited into an escrow account. Moreover, it allegedly cannot determine as a practical matter what portion of an individual deposit should be apportioned between each component of passenger fare, air, hotel, car rental, etc., which could result in it depositing an inaccurate amount into an escrow fund. Fourth, AHC believes that because the escrow certification alternative is not currently subject to the current $15 million ceiling on UPR coverage the use of such an arrangement in conjunction with another certification method could lead to confusion in setting the certification amount. Finally, AHC states that an escrow account would eliminate a segment of its working capital. AHC explains that, like other operators, it relies on customer deposits for a portion of its daily working capital; an escrow account would require it to secure additional financing to replace funds placed in escrow, at a significant interest expense exceeding income earned by escrow account investments.

ICCL states that it may be desirable to have escrow arrangements available as an option to be considered with other methods—but not the exclusive means—of meeting Section 3 requirements.

In response to the concerns expressed by AHC, the Commission did not intend escrow arrangements to remove the opportunity to take advantage of other flexible alternatives, such as the sliding scale. The arrangements upon which the form escrow arrangement published in the NPR are based have worked well in the past, and the Commission has determined to adopt the NPR's form escrow arrangement in the final rule.

Although the Commission as an independent regulatory agency, is not subject to Executive Order 12291, dated February 17, 1981, it has nonetheless reviewed the rule in terms of this order and has determined that this rule is not a "major rule" because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effect on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units, and small governmental organizations because the passenger vessel operators impacted by the rule are generally not small businesses.

OMB Control Number: The collection of information requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980, as amended, and have been assigned OMB control number 3072–0012. Public reporting burden for this amendment to: (1) Institute a sliding scale formula for operators meeting certain requirements; (2) provide for certain treatment for

"whole-ship" arrangements; and (3) follow Commission-suggested guidelines for escrow arrangements is estimated to average 15.15 hours per response. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. No comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, were sent to the Commission or to the Office of Information and Regulatory Affairs, Office of Management and Budget.

List of Subjects in 46 CFR Part 540

Insurance, Maritime carriers, Penalties, Reporting and recordkeeping requirements, Surety bonds, Transportation.

Therefore, pursuant to 5 U.S.C. 553; section 3 Public Law 89–777, 80 Stat. 1356–1358 (46 U.S.C. app. 817e); section 43 of the Shipping Act, 1916 (46 U.S.C. app. 841a); and section 17 of the Shipping Act of 1984 (46 U.S.C. app. 1716), the Federal Maritime Commission amends part 540 of title 46 of the Code of Federal Regulations as follows:

PART 540—[AMENDED]

1. The authority citation to part 540 continues to read:

Authority: 5 U.S.C. 552, 553; secs. 2 and 3, Public Law 89–777, 80 Stat. 1356–1358 (46 U.S.C. app. 817e, 817d); sec. 43 of the Shipping Act, 1916 (46 U.S.C. app. 841a); sec. 17 of the Shipping Act of 1984 (46 U.S.C. app. 1716).

2. A new § 540.2(l) is added to read as follows:

§ 540.2 Definitions.

* * * * *

(l) *Whole-ship charter* means an arrangement between a passenger vessel operator and a corporate or institutional entity:

(1) Which provides for the purchase of all the passenger accommodations on a vessel for a particular voyage or series of voyages; and

(2) Whereby the involved corporate or institutional entity provides such accommodations to the ultimate passengers free of charge and such accommodations are not resold to the public.

3. Section 540.5 is amended by revising its introductory text, paragraph (b), and by adding new paragraphs (e) and (f) reading as follows:

§ 540.5 Insurance, guaranties, escrow accounts, and self-insurance.

Except as provided in § 540.9(j), the amount of coverage required under this section and § 540.6(b) shall be in an amount determined by the Commission to be no less than 110 percent of the unearned passenger revenue of the applicant on the date within the 2 fiscal years immediately prior to the filing of the application which reflects the greatest amount of unearned passenger revenue, unless the applicant qualifies for consideration under § 540.5(e). The Commission, for good cause shown, may consider a time period other than the previous 2-fiscal-year requirement in this section or other methods acceptable to the Commission to determine the amount of coverage required. Evidence of adequate financial responsibility for the purposes of this subpart may be established by one or a combination (including § 540.6 Surety Bonds) of the following methods:

* * * * *

(b) Filing with the Commission evidence of an escrow account, acceptable to the Commission, for indemnification of passengers in the event of nonperformance of water transportation. Parties filing escrow agreements for Commission approval may execute such agreements in the form set forth in appendix A of subpart A of this part.

* * * * *

(e) The following schedule may be applied to determine the minimum coverage required for indemnification of passengers in the event of nonperformance of water transportation for those operators who can provide evidence (in the form of an affidavit by the operator's Chief Executive Officer or other responsible corporate officer) of a minimum of five years of operation in United States trades with a satisfactory explanation of any claims for nonperformance of transportation:

Unearned passenger revenue ("UPR")	Required coverage
$0–$5,000,000	100% of UPR up to $5,000,000.
$5,000,001–$15,000,000	$5,000,000 plus 50% of excess UPR over $5,000,000 subject to an overall maximum of $5,000,000 per vessel.
$15,000,001–$35,000,000	$10,000,000 plus 25% of excess of UPR over $15,000,000 subject to an overall maximum of $5,000,000 per vessel and a $15,000,000 overall maximum.
Over $35,000,000	$15,000,000 overall maximum.

(f) Revenues derived from whole-ship charters, as defined in § 540.2(l), may be exempted from consideration as unearned passenger revenues, on condition that, in the case of a new operator or within 30 days of the execution of the whole-ship charter if the operator has a Performance Certificate for the vessel in question: (1) A certified true copy of the contract or charter is furnished with the application; (2) The chartering party attests that it will redistribute the vessel's passenger accommodations without charge; and (3) A document executed by the chartering party's Chief Executive Officer or other responsible corporate officer is submitted by which the chartering party specifically acknowledges that its rights to indemnification under section 3 of Public Law 89–777 may be affected by the reduction in section 3, Public Law 89–777, financial responsibility coverage attributable to the exclusion of such funds from the operator's UPR.

4. An appendix A is added to part 540, subpart A, after the form reprints, reading as follows:

Appendix A—Example of Escrow Agreement for Use Under 46 CFR 540.5(b)

Escrow Agreement

1. Legal name(s), state(s) of incorporation, description of business(es), trade name(s) if any, and domicile(s) of each party.

2. Whereas, [name of the passenger vessel operator] ("Operator") and/or [name of the issuer of the passenger ticket] ("Ticket Issuer") wish(es) to establish an escrow account to provide for the indemnification of certain of its passengers utilizing [name vessel(s)] in the event of nonperformance of transportation to which such passengers would be entitled, and to establish the Operator's and/or Ticket Issuer's financial responsibility therefor; and

3. Whereas, [name of escrow agent] ("the Escrow Agent") wishes to act as the escrow agent of the escrow account established hereunder.

4. The Operator and/or Ticket Issuer will determine, as of the day prior to the opening date, the total amounts of U.S. unearned passenger revenues ("UPR") which it had in its possession. Unearned passenger revenues are defined as [incorporate the elements of 46 CFR 540.2(i)].

5. The Operator and/or Ticket Issuer shall on the opening date deposit an amount equal to UPR as determined above, plus a cash amount equal to [amount equal to no less than 10% of the Operator's and/or Ticket Issuer's UPR on the date within the 2 fiscal years immediately prior to the filing of the

escrow agreement which reflects the greatest amount of UPR, except that the Commission, for good cause shown, may consider a time period other than the previous 2-fiscal-year requirement or other methods acceptable to the Commission to determine the amount of coverage required] ("initial deposit").

6. The Operator and/or Ticket Issuer may at any time deposit additional funds into the account.

7. The Operator and/or Ticket Issuer shall, at the end of each business week, recompute UPR by first computing:

A. the amount by which UPR has decreased due to: (1) Refunds due to cancellations; (2) amount of cancellation fees assessed in connection with (1) above; and (3) the amount earned from completed cruises; and

B. the amount by which UPR has increased due to receipts from passengers for future water transportation and all other related accommodations and services not yet performed.

The difference between the above amounts is the amount by which UPR has increased or decreased ("new UPR"). If the new UPR plus the amount of the initial deposit exceeds the amount in the escrow account, the Operator and/or Ticket Issuer shall deposit the funds necessary to make the account balance equal to UPR plus the initial deposit. If the account balance exceeds new UPR plus the initial deposit, the balance shall be available to the Operator and/or Ticket Issuer. The information computed in paragraph 7 shall be furnished to the Commission and the Escrow Agent in the form of a recomputation certificate signed and certified by a competent officer of the Operator and/or Ticket Issuer. Copies sent to the Commission are to be addressed to the Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, Washington, D.C. 20573.

8. A monthly report shall be prepared by the Escrow Agent and provided to the Operator and/or Ticket Issuer and the Commission within 15 days of the end of each month and shall list the investment assets of the account, their original cost, their current market value, and the beginning and ending balance of the account.

9. The Operator's and/or Ticket Issuer's independent auditors shall prepare quarterly reports, such reports to be furnished to the Escrow Agent and the Commission, and any shortfall is to be covered within one business day.

10. The Escrow Agent shall invest the funds of the account in qualified investments as directed by the Operator and/or Ticket Issuer. Some examples of qualified investments are, to the extent permitted by law:

(a) Government obligations of the United States or its agencies;

(b) Certificates of deposit, time deposits or acceptances of any bank, savings institution or trust company whose debt obligations are in the two highest categories rated by Standard and Poor's or Moody's, or which is itself rated in the two highest categories by Keefe, Bryette and Woods;

(c) Commercial paper similarly rated;

(d) Certificates or time deposits issued by any bank, savings institution or trust company when fully insured by the FDIC or the FSLIC;

(e) Money market funds utilizing securities of the same quality as above; and/or

(f) Corporate bonds of the three highest categories, as rated by Standard and Poor's or Moody's.

11. Income derived from the investments shall be credited to the escrow account.

12. The purpose of the escrow agreement is to establish the financial responsibility of the Operator and/or Ticket Issuer pursuant to section 3 of Public Law 89-777, approved November 5, 1966, and the account is to be utilized to discharge the Operator's and/or Ticket Issuer's legal liability to indemnify passengers for nonperformance of transportation via the [name of vessel(s)]. The Escrow Agent is to make such payments on instructions from the Operator and/or Ticket Issuer, or, in the absence of such instructions, 21 says after final judgment against the Operator and/or Ticket Issuer in a U.S. Federal or State court having jurisdiction. The Operator and/or Ticket Issuer will pledge to each passenger holding a ticket for future passage on the Operator's/Ticket Issuer's vessel(s) an interest in the Escrow Account equal to the Fares amount shown on the face of such ticket. The Escrow Agent agrees to act as nominee for each passenger until transportation is performed or until passenger has been compensated.

13. Escrow Agent shall waive right to offset.

14. The Operator and/or Ticket Issuer will indemnify and hold Escrow Agent harmless.

15. Statement of the parties' agreement concerning warranty of *bona fides* by the Operator and/or Ticket Issuer and Escrow Agent.

16. Statement of the parties' agreement concerning fees to be paid by the Operator and/or Ticket Issuer to Escrow Agent, reimbursable expenses to be paid by the Operator and/or Ticket Issuer to Escrow Agent. A statement that fees for subsequent terms of agreement are to be negotiated.

17. Statement of the parties' agreement concerning the term of agreement and renewal/termination procedures.

18. Statement of the parties' agreement concerning procedures for appointment of successor Escrow Agent.

19. Statement that disposition of funds on termination shall be to the Operator and/or Ticket Issuer, if evidence of the Commission's acceptance of alternative evidence of financial responsibility is furnished; otherwise, all passage fares held for uncompleted voyages are to be returned to the passengers. The Operator and/or Ticket Issuer shall pay all fees previously earned to the Escrow Agent.

20. The agreement may be enforced by the passengers, the Escrow Agent, the Operator and/or Ticket Issuer or by the Federal Maritime Commission.

21. All assets maintained under the escrow agreement shall be physically located in the United Sates and may not be transferred, sold, assigned, encumbered, etc., except as provided in the agreement.

22. The Commission has the right to examine the books and records of the Operator and/or Ticket Issuer and the Escrow Agent, as related to the escrow account, and the agreement may not be modified unless agreed in writing by the Operator and/or Ticket Issuer and Escrow Agent and approved in writing by the Commission.

* * * * *

It is ordered, That Docket No. 92-19 Revision of Financial Responsibility Requirements for Nonperformance of Transportation, is hereby discontinued.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92-22081 Filed 9-11-92; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 641 and 646

[Docket No. 920811-2223]

Reef Fish Fishery of the Gulf of Mexico and Snapper-Grouper Fishery of the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule, technical amendment.

SUMMARY: NMFS issues this technical amendment to clarify and to standardize the requirements for identification tags on fish traps in the Reef Fish Fishery of the Gulf of Mexico and sea bass traps in the Snapper-Grouper Fishery of the South Atlantic. Specifically, this rule specifies that a trap tag, available from the Director, Southeast Region, NMFS, shows the month and year through which it is valid. The intended effects of this rule are to clarify the regulations and to conform them to current procedures for issuing permits and trap identification tags.

EFFECTIVE DATE: September 14, 1992.

FOR FURTHER INFORMATION CONTACT: W. Perry Allen, 813-893-3722.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico and the snapper-grouper fishery of the South Atlantic are managed under their fishery management plans (FMPs) prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils, respectively, and their implementing regulations at 50 CFR parts 641 and 646, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). This final rule, technical amendment, revises the language pertaining to the required

identification of fish and sea bass traps in the reef fish and snapper-grouper fisheries to conform with the current practice for issuing permits and trap tags.

Previously, vessel permits and trap tags in the reef fish and snapper-grouper fisheries were issued for a calendar year. Permits are now issued showing the expiration date as the end of the month of birth of the owner. Trap tags are now issued with the expiration month and year, as stated on the permit, printed thereon. This final rule, technical amendment, clarifies and standardizes the language of the regulations in this regard.

In addition, current language in the reef fish regulations regarding replacement of tags at first tending of the traps after expiration of the old tags is removed as unnecessary. Replacement tags are available sufficiently in advance of the expiration of old ones so that old tags may be replaced prior to their expiration. Replacement tags are valid as soon as they are received.

Classification

This technical amendment is issued as a final rule under 50 CFR parts 641 and 646 and complies with E.O. 12291.

Because this rule: (1) Makes non-substantive clarifications to the regulations and (2) does not change operating practices in the reef fish or snapper-grouper fisheries, the Assistant Administrator for Fisheries, NOAA, under section 553(b)(B) and (d) of the Administrative Procedure Act (5 U.S.C. 553) for good cause finds that it is unnecessary and contrary to the public interest to provide notice and public comment on this rule or to delay for 30 days its effective date.

This rule is minor and technical and, therefore, is not a "major rule" under E.O. 12291. There is no change in the regulatory impacts that were previously reviewed and analyzed.

Because this rule is being issued without prior public comment, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act and none has been prepared.

Because this rule makes no changes that were not analyzed in the environmental assessment documents previously prepared to comply with the National Environmental Policy Act, this rule is categorically excluded from the requirement to prepare an environmental assessment by NOAA Administrative Order 216-6.

This rule does not directly affect the coastal zone of any state with an approved coastal management program.

This rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Parts 641 and 646

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 4, 1992.

William W. Fox, Jr.,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR parts 641 and 646 are amended as follows:

1. The authority citation for parts 641 and 646 continues to read:

Authority: 16 U.S.C. 1801 *et seq.*

PART 641—REEF FISH FISHERY OF THE GULF OF MEXICO

2. In § 641.6, paragraph (d) is revised to read as follows:

§ 641.6 Vessel, structure, and gear identification.

* * * * *

(d) *Fish traps.* A valid identification tag, available from the Regional Director, must be affixed to each fish trap used or possessed in the EEZ. Such tag shows the specific tag number (normally 1 through 100, or less), the permit number, and the month and year through which the permit and tag are valid.

* * * * *

PART 646—SNAPPER-GROUPER FISHERY OF THE SOUTH ATLANTIC

3. In § 646.6, paragraph (d) is revised to read as follows:

§ 646.6 Vessel and gear identification.

* * * * *

(d) *Traps.* A valid identification tag, available from the Regional Director, must be affixed to each sea bass trap used or possessed in the EEZ. Such tag shows the specific tag number, the permit number, and the month and year through which the permit and tag are valid.

* * * * *

[FR Doc. 92-22002 Filed 9-11-92; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 178
Monday, September 14, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR-92-9]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before November 13, 1992.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Angela M. Washington, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-5571.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on September 8, 1992.

Denise D. Castaldo,

Manager, Program Management Staff.

Petitions for Rulemaking

Docket No.: 26850.

Petitioner: Michael Donnelly.

Regulations Affected: 14 CFR 1.1.

Description of Petition: The petitioner proposed to add a term to the list of definitions in § 1.1. Specifically, the petitioner would add the term "airworthy" to mean that the aircraft must conform to its type design (certificate) and must be in a condition safe for operation.

Petitioner's Reason for the Request: The petitioner feels that this definition is one that promotes a clear understanding of the term airworthy that can be used by everyone in aviation.

Docket No.: 26913.

Petitioner: Robert Monson.

Regulations Affected: 14 CFR 67.3.

Description of Petition: The petitioner proposes to repeal § 67.3 of the FAR in its entirety so as to preclude the Federal Aviation Administration from receiving National Driver Register information pertaining to the driving record of an applicant for airmen medical certification.

Petitioner's Reason for the Request: The petitioner believes that FAR § 67.3 calls for an airman medical certificate applicant to waive his privacy rights under 5 U.S.C. 552(a) by allowing the FAA access to the applicant's driving record. The petitioner claims that this section of the FAR is unconstitutional.

[FR Doc. 92-22092 Filed 9-11-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 799

[Docket No. 920818-2218]

Revisions to the Commerce Control List: Equipment Related to the Production of Biological Weapons

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Proposed rule.

SUMMARY: The Bureau of Export Administration maintains the Commerce Control List (CCL), which appears in the Export Administration Regulations (EAR). This rule proposes to amend the CCL by revising Export Control Classification Number (ECCN) 1B71E. This ECCN controls dual-use equipment that can be used in the production of biological weapons (BW). The changes proposed by this rule are intended to conform the list of U.S. controlled BW items to the list being considered for adoption by countries participating in the Australia Group.

DATES: Comments must be received by October 14, 1992.

ADDRESSES: Written comments (six copies) should be sent to Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: For questions on foreign policy controls, call Toni Jackson, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377-4531.

For questions of a technical nature on equipment that can be used to produce chemical and biological weapons agents, call James Seevaratnam, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377-4777.

SUPPLEMENTARY INFORMATION:

Background

On July 15, 1992, the Bureau of Export Administration (BXA) published in the **Federal Register** (57 FR 31309) an interim rule that refined the scope of the technical parameters describing chemical equipment that is controlled

for export. For example, ECCN 1B70E, which controls equipment that can be used in the production of chemical weapons precursors or chemical warfare agents, was revised to except from control certain chemical equipment that is specially designed for use in civil applications.

The rule also revised the list of microorganisms described in ECCN 1C61B by conforming the list with the Australia Group list. The rule revised ECCN 1C61B to provide a positive list of viruses, rickettsiae, bacteria, genetically modified organisms, and toxins.

At the June, 1992, meeting of the Australia Group, the United States sought the agreement of all Australia Group governments to adopt comparable controls on dual-use biological equipment. The twenty-two member Australia Group, in which the United States participates, seeks to prevent the proliferation of chemical and biological weapons. The delegates agreed, subject to approval by their governments, to establish a common control list for exports of dual-use biological equipment. This proposed rule describes changes to the U.S. list that would conform the U.S. controls on biological equipment to the list being considered for adoption by the Australia Group.

Concurrent with the consideration of the Australia Group's proposed equipment list by member governments, the U.S. is requesting comments on the changes that would conform the U.S. list to the proposed Australia Group list. Commerce is particularly interested in seeking specific comments related to:

(1) The threshold of 300 liters established as the control parameter for fermenters; and

(2) The scope of the control established for freeze-drying equipment in terms of its impact on civilian applications.

The U.S. expects the Australia Group to discuss the proposed dual-use biological equipment at the September 1992 meeting of the Australia Group.

The current U.S. list of equipment that can be used in the production of biological weapons includes:

a. Detection or assay systems that are capable of detecting concentrations of less than one part per million in air of biological agents or toxins controlled by 1C61.

b. Biohazard containment equipment as follows:

1. Complete P3 or P4 level laboratory facilities;

2. Equipment that incorporates or is contained in a P3 or P4 containment housing.

c. Equipment for the microencapsulation of live organisms.

The Australia Group proposed the list of biological equipment to read as follows:

a. Detection or assay systems that are capable of detecting concentrations of less than one part per million in air of biological agents or toxins controlled by 1C61.

b. Biohazard containment equipment as follows:

1. Complete containment facilities at P3 or P4 containment level; and

2. Equipment that incorporates or is contained in a P3 or P4 containment housing.

c. Fermenters capable of cultivation of pathogenic microorganisms, viruses or for toxin production, without the propagation of aerosols, and having all the following characteristics:

1. A capacity equal to or greater than 300 liters;

2. Double or multiple sealing joints within the stream containment area;

3. Capable of in-situ sterilization in a closed state.

Note: Sub-groups of fermenters include bioreactors, chemostats, and continuous-flow systems.

d. Centrifugal separators capable of the continuous separation of pathogenic micro-organisms, without the propagation of aerosols, and having *all* of the following characteristics:

1. A flow rate greater than 100 liters per hour;

2. Components of polished stainless steel or titanium;

3. Double or multiple sealing joints within the stream containment area;

4. Capable of in-situ stream sterilization in a closed state.

Note: Centrifugal separators include decanters.

e. Cross-flow filtration equipment designed for continuous separation of pathogenic microorganisms, viruses, toxins, and cell cultures without the propagation of aerosols, having all of the following characteristics:

1. Equal to or greater than 5 square meters;

2. Capable of in-situ sterilization.

f. Steam sterilizable freeze-drying equipment with condensor capacity greater than 50 kgs. but less than 1,000 kgs. of ice in 24 hours.

g. Equipment that incorporates or is contained in P3 or P4 containment housing, as follows:

1. Independently ventilated protective full or half suits; and

2. Class III biological safety cabinets or isolators with similar performance standards.

h. Chambers designed for aerosol challenge testing with pathogenic micro-organisms, viruses, or toxins and having a capacity of 1 cubic meter or greater.

Exports and reexports of equipment that can be used in the production of biological weapons controlled by ECCN 1B71E will continue to require an individual validated license to Country Groups S and Z and to the regions and countries listed in Supplement No. 5 to part 778 of the Export Administration Regulations (EAR).

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12861.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694-0005 and 0694-0010.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, (5 U.S.C. 553), requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a foreign and military affairs function of the United States. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

However, because of the importance of the issues raised by these regulations, this rule is issued in proposed form and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close October 14, 1992. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be

considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, room 4525, Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 377-5653.

List of Subjects in 15 CFR Part 799

Exports, Reporting and recordkeeping requirements.

Accordingly, part 799 of the Export Administration Regulations (15 CFR parts 730-799) is proposed to be amended as follows:

1. The authority citation for 15 CFR part 799 continues to read as follows:

Authority: Pub. L. 90-351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Pub. L. 93-153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Pub. L. 94-163, 89 Stat. 877 (42 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Pub. L. 94-258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95-223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95-242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 208, Pub. L. 95-372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended; sec. 125, Pub. L. 99-64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 26, 1991 (56 FR 49385, September 27, 1991); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 14, 1991 (56 FR 58171, November 15, 1991).

PART 799—[AMENDED]

Supplement No. 1 to § 799.1—[Amended]

2. In Supplement No. 1 to § 799.1, Category 1, ECCN 1B71E is amended by revising the **List of Items Controlled** to read as follows:

1B71E Equipment that can be used in the production of biological weapons.

* * * * * *

List of Items Controlled

a. Detection or assay systems that are capable of detecting concentrations of less than one part per million in air of biological agents or toxins controlled by 1C61.

b. Biohazard containment equipment as follows:

b.1. Complete containment facilities at P3 or P4 level containment level; and

b.2. Equipment that incorporates or is contained in a P3 or P4 containment housing.

c. Fermenters capable of cultivation of pathogenic micro-organisms, viruses or for toxin production, without the propagation of aerosols, and having all the following characteristics:

c.1. A capacity equal to or greater than 300 liters;

c.2. Double or multiple sealing joints within the stream containment area;

c.3. Capable of in-situ sterilization in a closed state.

Note: Sub-groups of fermenters include bioreactors, chemostats, and continuous-flow systems.

d. Centrifugal separators capable of the continuous separation of pathogenic micro-organisms, without the propagation of aerosols, and having all of the following characteristics:

d.1. A flow rate greater than 100 liters per hour;

d.2. Components of polished stainless steel or titanium;

d.3. Double or multiple sealing joints within the stream containment area;

d.4. Capable of in-situ stream sterilization in a closed state.

Note: Centrifugal separators include decanters.

e. Cross-flow filtration equipment designed for continuous separation of pathogenic microorganisms, viruses, toxins, and cell cultures without the propagation of aerosols, having *all* of the following characteristics:

e.1. Equal to or greater than 5 square meters;

e.2. Capable of in-situ sterilization.

f. Steam sterilizable freeze-drying equipment with condensor capacity greater than 50 kgs. but less than 1,000 kgs. of ice in 24 hours.

g. Equipment that incorporates or is contained in P3 or P4 containment housing, as follows:

g.1. Independently ventilated protective full or half suits; and

g.2. Class III biological safety cabinets or isolators with similar performance standards.

h. Chambers designed for aerosol challenge testing with pathogenic micro-organisms, viruses, or toxins and having a capacity of 1 cubic meter or greater.

Dated: September 4, 1992.

James M. LeMunyon,

Acting Assistant Secretary for Export Administration.

[FR Doc. 92-22036 Filed 9-11-92; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 146

Petroleum Refineries in Foreign Trade Subzones; Extension of Time for Comments

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Extension of time for comments.

SUMMARY: This document extends the period of time within which interested members of the public may submit comments concerning proposed amendments to the Customs Regulations, which would add special procedures and requirements governing the operation of crude petroleum refineries approved as foreign trade subzones, in implementation of section 9002 of the Technical and Miscellaneous Revenue Act of 1988, which amended the Foreign Trade Zones Act, to make specific provision for petroleum refinery subzones. A document inviting the public to comment on these proposed amendments was published in the **Federal Register** on August 10, 1992 (57 FR 35530), and comments were to have been received on or before October 9, 1992. Customs has received a request

from a trade association to extend the period of time for comments. Customs believes the request has merit. Accordingly, the period of time for the submission of comments is being extended until December 8, 1992.

DATES: Comments must be submitted on or before December 8, 1992.

ADDRESSES: Comments may be submitted to and inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, room 2119, 1301 Constitution Avenue, NW., Washington, DC 20229. All comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), between 9:00 a.m. and 4:30 p.m. on normal business days, at the above address.

FOR FURTHER INFORMATION CONTACT: Russell Berger, Regulations and Disclosure Law Branch, (202) 566-8237.

Dated: September 9, 1992.

Harvey B. Fox,

Director, Office of Regulations and Rulings.

[FR Doc. 92-22145 Filed 9-11-92; 8:45 am]

BILLING CODE 4820-02-M

Internal Revenue Service

26 CFR Part 1

[PS-264-82]

RIN 1545-AE85

Adjustments to Basis of Stock and Indebtedness to Shareholders of S Corporations and Treatment of Distributions By S Corporations to Shareholders; Cancellation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Cancellation of notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations relating to adjustments to the basis of a shareholder's stock in an S corporation to a shareholder as well as proposed regulations relating to the treatment of distributions by an S corporation to its shareholders.

DATES: The public hearing originally scheduled for Monday, September 14, 1992, beginning at 10 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-622-6803, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under sections 1367 and 1368 of the Internal Revenue Code. The proposed regulations appearing in the **Federal Register** for Tuesday, June 9, 1992 (57 FR 24426), announced the public hearing on the proposed regulations would be held on Monday, September 14, 1992, beginning at 10 a.m., in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC.

The public hearing scheduled for Monday, September 14, 1992 has been cancelled.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

FR Doc. 92-22229 Filed 9-10-92; 12:03 pm]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Kentucky State Abandoned Mine Land Reclamation Plan Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing the receipt of a proposed program amendment to the Kentucky State Abandoned Mine Land Reclamation (AMLR) Plan (hereinafter referred to as the Kentucky AMLR plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Kentucky has submitted the proposed amendment by letter dated June 24, 1992, (Administrative Record No. K-63). The purpose of the amendment is to modify the Kentucky AMLR plan so that coal-mined sites that are eligible under the language of Public Law 101-508 (November 5, 1990), which amended Public Law 95-87, may be reclaimed under the Kentucky AMLR program. The amendment consists of an appropriate modification of language contained within Chapter 3 "Goals and Obligations" and Chapter 15 "Maps of Eligible Lands and Waters" of the Kentucky plan.

This notice sets forth the times and locations that the Kentucky program and the proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding a public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on October 14, 1992. If requested, a public hearing on the proposed amendment will be held at 10 a.m. on October 9, 1992. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on September 29, 1992.

ADDRESSES: Written comments and requests for a hearing should be mailed or hand delivered to: William J. Kovacic, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, suite 28, Lexington, Kentucky 40504. Copies of the Kentucky plan, the proposed amendment, and all written comments received in response to this notice will be available for review at the addresses listed below, Monday through Friday, 9 a.m. to 4 p.m., excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment by contacting OSM's Lexington Field Office.

Office of Surface Mining Reclamation and Enforcement, Lexington Field Office, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504, Telephone: (606) 233-2896

Office of Surface Mining Reclamation and Enforcement, Eastern Support Center, Ten Parkway Center, Pittsburgh, Pennsylvania 15220, Telephone: (412) 937-2828

Department for Surface Mining Reclamation and Enforcement, No. 2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564-6940

If a public hearing is held, its location will be: The Harley Hotel, 2143 North Broadway, Lexington, Kentucky 40505.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington Field Office, Telephone (606) 233-2896.

SUPPLEMENTARY INFORMATION

I. Background

On May 18, 1982, the Secretary of the Interior approved the Kentucky AMLR plan. Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the approval can be found in the May 18, 1982, **Federal Register** (47 FR 21435-21439). The plan was first amended in a final rule published in the August 24,

1983, Federal Register (48 FR 38463–38464). This amendment modified the Chapter 8 "Right of Entry" provisions of the Kentucky AMLR plan.

Chapter 9 "Public Participation" was amended on December 17, 1984, without opportunity for public hearing since the proposed revision did not change the objectives, scope or major policies followed by the State. The third amendment of the plan was published as a final rule in the July 14, 1987, Federal Register (52 FR 26299–26300). The amendment revised provisions of Chapter 4 "Project Ranking and Selection Procedures."

II. Discussion of Amendment

By letter dated June 24, 1992, (Administrative Record No. K–63), Kentucky submitted a proposed amendment to the Kentucky AMLR plan. The purpose of the amendment is to modify the Kentucky AMLR plan so that coal-mined sites that are eligible under the language of Public Law 101–508 (November 5, 1990), which amended Public Law 95–87, may be reclaimed under the Kentucky AMLR program. The amendment consists of an appropriate modification of language contained within Chapter 3 "Goals and Obligations" and Chapter 15 "Maps of Eligible Lands and Waters" of the Kentucky plan as follows:

(1) Goals and Objectives (30 CFR 884(c)(1))

Kentucky is revising this part of the plan in order to incorporate a reference to Public Law 101–508 (The Reclamation Act of 1990), which amends title IV of Public Law 95–87 (SMCRA).

(2) Maps of Eligible Lands and Waters (30 CFR 884.13(f)(1))

Kentucky is revising this part of the plan to include those post-1977 abandoned mine lands and water made eligible for reclamation by the AML Reclamation Act of 1990 which amended SMCRA.

The full text of the proposed program amendment submitted by Kentucky is available for public inspection at the addresses listed above.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendment proposed by Kentucky satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Kentucky AMLR plan.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commentor's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Lexington Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4 p.m. on September 29, 1992. If no one requests an opportunity to comment at a public hearing, the hearing will not be held. Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the OSM, Lexington Field Office listed under "ADDRESSES" by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under "ADDRESSES." A written summary of each meeting will be made a part of the Administrative Record.

Executive Order No. 12291

On March 30, 1992, the Office of Management and Budget (OMB) grant OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to the approval or disapproval of State and Tribal abandoned mine land reclamation plans and revisions thereof. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and revisions thereof since each such plan is drafted and adopted by a specific State or Tribe, not by OSM. Decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof submitted by a State or Tribe are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and the Federal regulations at 30 CFR part 884.

National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29).

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State [or Tribal] submittal which is the subject of this rule is based upon Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements established by SMCRA or previously promulgated by OSM will be implemented by the State [or Tribe]. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the

analyses for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining, Abandoned mine land reclamation.

Dated: August 7, 1992.

Jeffrey D. Jarret,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 92-21905 Filed 9-11-92; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 162

[CGD 85-096]

RIN 2115-AC03

Navigation on Certain Waterways Tributary to the Gulf of Mexico

AGENCY: Coast Guard, DOT.

ACTION: Withdrawal of proposed rulemaking.

SUMMARY: On September 26, 1991, the Coast Guard published a notice of proposed rulemaking (NPRM) concerning navigation on certain waterways tributary to the Gulf of Mexico (56 FR 48773). On December 18, 1991, in response to letters to the docket, the Coast Guard extended the comment-period through March 26, 1992 (56 FR 65720). On March 13, 1992, the Coast Guard extended the comment-period through April 27, 1992 (57 FR 8852), to allow for public hearings in Corpus Christi, Galveston, and New Orleans. On April 22, 1992, the Coast Guard again extended the comment-period, through May 28, 1992 (57 FR 14682), to allow for a public hearing in Saint Louis. Letters to the docket and statements at the public hearings showed two diametrically opposed points of view.

Nine letters to the docket favored the proposed rulemaking. One of those letters enclosed a petition signed by 41 towboat pilots. Thirty-four letters to the docket opposed the rulemaking. One of those letters forwarded 31 other letters from operators of towing vessels. Sixty-six persons attended the public hearings. Testimony at the hearings was about equally divided, although few in Corpus Christi and Galveston were for the proposal while few in Saint Louis were against it.

Many objected to the requirements of paragraph (c) of the NPRM, "Anchoring and mooring in channels or waterways not designated for anchoring or mooring." Most of those objecting thought these were new requirements since they are seldom enforced except in cases of repeated or blatant violation. But these requirements are substantially the same in the NPRM as in the existing rule, paragraph (b)(3), "Anchoring or mooring." The Coast Guard still considers these requirements important for safety, and a deterrent to unauthorized barge-fleeting areas.

The major concern was the NPRM's allowing double-wide tows to operate without obtaining oversize-tow permits. The clear division of opinion was based on what kind of cargo was being carried. The operators and shippers that move dry bulk cargoes, such as salt and stone, were for the proposal. Those that move petroleum and hazardous substances were against it. The comments on each side, both written and spoken, were clear, persuasive, and eloquently stated. There were good arguments for either case. Many commented that it would be more economical to tow six barges double-wide than to tow five barges single-file, and that historically they have had no safety problems towing six barges double-wide. On the other hand, many found the prospect of double-wide tows colliding with hazardous-cargo barges in a narrow waterway—with the resultant environmental damage, spill penalties, and ruinous cleanup costs—alarming.

The Coast Guard has decided to withdraw the proposed rulemaking because of the overriding concern for safety. Although the current system of allowing large numbers of oversize permits has proved almost accident-free, the possibility exists that granting universal permission for double-wide tows could create an increased threat of collision, environmental damage, and economic loss. The risk is too great to accept. The procedures for reviewing and granting oversize-tow permits seem to work; therefore, they will not be revised at this time. The proposed rulemaking is hereby withdrawn, and 33 CFR 162.75 stands without change.

FOR FURTHER INFORMATION CONTACT: Mr. Harry C. Robertson, Short-Range Aids to Navigation Division, U.S. Coast Guard Headquarters, (202) 267-0405; or Mr. Monty Ledet, Aids to Navigation Branch, Eighth Coast Guard District, (504) 589-4686.

Dated: September 8, 1992.

W.J. Ecker,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 92-22129 Filed 9-11-92; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 920670-2170]

RIN 0651-AA57

Changes in Procedures for Revival of Patent Applications and Reinstatement of Patents

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Patent and Trademark Office (Office) is proposing to amend the rules of practice in patent cases to: Modify the petition requirements for reviving abandoned applications; extend the provisions for revival under the unintentional standards to applications abandoned; modify the requirements for a petition to accept late payment of a maintenance fee filed more than six months after expiration of a patent; modify the requirements for a petition to accept unavoidably delayed payment of a maintenance fee; and provide for reinstatement of a patent where the delay in timely payment of a maintenance fee was unintentional, in the event that proposed statutory changes are enacted.

DATES: Written comments must be received on or before November 13, 1992, to ensure consideration. An oral hearing will not be conducted.

ADDRESSES: Address written comments to the Office of the Assistant Commissioner for Patents, Box DAC, Washington, DC 20231, marked to the attention of Abraham Hershkovitz. Comments may be sent by fax to the attention of Abraham Hershkovitz at (703) 305-8825.

FOR FURTHER INFORMATION CONTACT: Abraham Hershkovitz by telephone at (703) 305-9282 or by mail marked to his attention and addressed to Office of the Assistant Commissioner for Patents, Box DAC, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: Current regulations provide for revival of patent applications which were abandoned for failure to timely prosecute or failure to timely pay an issue fee under the unavoidable standard. In certain situations, patent applications can also be revived under the unintentional standard. A petition to revive under the unavoidable standard is subject to a requirement that the petition be filed promptly after the applicant is notified of, or otherwise becomes aware of, the abandonment. Under the unavoidable

standard, any petition filed more than six months after the date of abandonment of the application must be accompanied by a terminal disclaimer disclaiming the period of abandonment. Promptness is not a requirement for petitions filed under the unintentional standard. The proposed change would encourage promptness in filing petitions to revive under the unintentional standard by requiring the filing of a terminal disclaimer when the period of abandonment exceeds six months. The Office calculates the period of abandonment as being the number of months from the date of abandonment until the date of filing of a grantable petition. The proposed change would require that, in a manner similar to the current practice under the unavoidable standard, a grantable petition under the unintentional standard would have to be filed within six months of the date of abandonment, or the requirement for a terminal disclaimer would have to be satisfied. As an example, a petition to revive, under the unavoidable or the unintentional standard, filed within two months from the date of abandonment, if grantable, would not require a terminal disclaimer. However, if the petition to revive is dismissed for a deficiency such as insufficient showing (for petitions under the unavoidable standard), or lack of a statement (for petitions under the unintentional standard), or lack of a sufficient petition fee, or lack of a proposed response, and a renewed petition to revive providing the lacking item is timely filed, but is filed more than six months after the date of abandonment, then a terminal disclaimer would be required.

Section 41 of title 35, United States Code, establishes fees that the Commissioner shall charge for patent-related matters. A bill to amend title 35 with respect to the late payment of maintenance fees has been introduced on June 4, 1992, in the House of Representatives as H.R. 5328 (hereafter, Bill). The Bill proposes to:

(1) Amend 35 U.S.C. 41(c)(1) to permit reinstatement of a patent which expired unintentionally for failure to timely pay the maintenance fee, provided that the payment is made within eighteen months after the six-month grace period specified in 35 U.S.C. 41(b); and

(2) Amend 35 U.S.C. 41(a)(7) to require a petition fee for an unintentionally delayed payment for maintaining a patent in force.

The unintentional standard is not currently available for applications abandoned under § 1.53(d) (specifically excluded in § 1.137(b)) and patents expired for failure to pay a maintenance fee. The proposed changes (some of which hinge on enactment of the Bill) would expand the applicability of the unintentional standard to applications abandoned under § 1.53(d) and patents expired for failure to pay a maintenance fee.

In order to expedite implementation of the proposed legislative changes, the proposed amendments to the rules of practice include proposals contingent upon enactment of the Bill. These changes are found in §§ 1.17(m), 1.378(a) and 1.378(c).

If the Bill is not enacted, the proposed changes to §§ 1.17(m), 1.378(a) and 1.378(c) will not include the changes proposed in the Bill regarding acceptance of late payment of maintenance fees, where the delay in payment was unintentional.

Discussion of Specific Sections To Be Changed or Added

(1) Patent Application Processing Fees (Section 1.17)

Paragraph 1.17(l) is proposed to be amended to provide for petition fees for reinstating a patent under the unavoidable standard in a manner similar to the fees charged for reviving an abandoned application or accepting delayed payment of an issue fee. In the event that the Bill is enacted, paragraph 1.17(m) is proposed to be amended to require a petition fee for reinstating a patent under the unintentional standard in a manner similar to the fee charged for reviving an abandoned application or for accepting delayed payment of an issue fee. These changes are proposed to ensure consistency with the proposed changes in § 1.378.

(2) Unavoidable or Unintentional Abandonment of an Application

Sections 1.137, 1.155, 1.316 and 1.317 each provide for petitions to the Commissioner for relief from failure to timely comply with a requirement of the Office. Section 1.137 provides for petitions to revive patent applications abandoned for failure to prosecute where the delay in prosecution was unavoidable (§ 1.137(a)) or the delay was unintentional (§ 1.137(b)). Section 1.155 provides or petitions for acceptance of late payment of issue fees in applications for design patents as though no abandonment had ever occurred where the delay in payment was unavoidable (§ 1.155(b)) or unintentional (§ 1.155(c)). Section 1.316 provides for petitions for acceptance of late payment of issue fees in applications for patent as though no abandonment had ever occurred where the delay in payment was unavoidable (§ 1.316(b)) or unintentional (§ 1.316(c)). Section 1.317 provides for acceptance of late payment of the balance of issue fees in patents as though no lapse had ever occurred where the delay in payment was unavoidable (§ 1.317(b)) or unintentional (§ 1.317(c)).

In order to obtain relief under the unavoidable standard in the above-noted sections, the regulations require the filing of a terminal disclaimer if the petition is filed more than six months after the date of abandonment. See §§ 1.137(c), 1.155(d), 1.316(d) and 1.317(d). The terminal period to be disclaimed is a period equivalent to the period of abandonment. The period of abandonment is considered to be the number of months lapsed from the date of abandonment until the date of filing of a grantable petition.

Petitions filed under the unintentional standard in the above-noted sections have no express promptness requirement, nor a terminal disclaimer requirement. This has led, in many cases, to a practice contrary to the intent of the unintentional provisions. Applicants have often delayed filing a petition under the unintentional standard until close to the expiration of the one-year period. In other instances, applicants delayed filing a petition under the unintentional standard because they miscalculated the one-year period and this resulted in the applicant being unable to show that the delay was unavoidable or that relief was available under the unintentional standard. *In re Application of S*, 8 USPQ2d 1630 (Comm'r Pat. 1988).

The proposed change to require terminal disclaimers for petitions under the unintentional standard filed more than six months after the date of abandonment will help to ensure that petitions are filed promptly after discovery of abandonment. The same degree of promptness is required regardless of whether the petitions are filed under the unavoidable or the unintentional standards. The requirement for a terminal disclaimer should not be viewed as a substitute for the requirement of prompt filing of a petition. See *In re Application of Takao*, 17 USPQ2d 1155 (Comm'r Pat. 1990); "Diligence in Filing Petitions to Revive and Petitions to Withdraw the Holding of Abandonment", 1124 Off. Gaz. Pat. Office 33 (March 19, 1991).

Sections 1.137(c), 1.155(d) and 1.316(d) are proposed to be amended to reflect the current practice that a terminal disclaimer filed for the purpose of reviving an application also applies to a patent granted on any continuing application entitled to the benefit of the

filing date of the subject application under 35 U.S.C. 120.

Applicants may petition under the provisions of § 1.183 for a waiver of the requirement that a period equivalent to the period of abandonment be disclaimed if it can be shown that an extraordinary situation exists in which justice requires waiver of this requirement.

In situations where petitions under the above-noted sections were not grantable because of insufficient evidence submitted or petitioner's failure to comply with certain requirements, the Office dismissed those petitions with an indication as to the missing items and warned petitioners that if reconsideration was desired a renewed petition supplying the omissions had to be filed promptly. While the promptness requirement was not precisely defined, § 1.181(f) requires the filing of petitions within two months from an action complained of in order to avoid possible dismissal of the petition on the grounds that it was not timely filed. It is proposed that the above-noted sections be amended to specify a two-month period or such time as may be set in the dismissal as being the appropriate deadline for requesting reconsideration. In those situations where petitioners require more time to gather additional evidence or items needed for reconsideration, an extension of time of up to four months may be obtained under the provisions of § 1.136(a). The filing of a renewed petition within the period specified in the decision or within the extended period permitted under § 1.136 will satisfy the promptness requirement of petitions under the unavoidable standard. Upon failure to timely file a renewed petition under the unavoidable standard, the Office will require a showing of unavoidable delay for the entire period of abandonment. Upon failure to timely file a renewed petition under the unintentional standard, petitioner may be subject to a loss of the right to proceed under the unintentional standard if more than one year lapsed between the date of abandonment and the date of the renewed petition is filed.

The unintentional provisions specified in § 1.137(b) will apply to applications abandoned under § 1.53(d). Effective November 5, 1990, the Commissioner waived, under § 1.183, the exception specified in § 1.137(b) as to applicability of petitions under the unintentional standards to applications abandoned under § 1.53(d). See "Petitions to Revive Patent Applications Waiver of Provisions of 37 CFR 1.137(b)", 1121 Off. Gaz. Pat. Office 6 (December 4, 1990). The proposed change in § 1.137(b) will incorporate this new practice into the regulations.

The Office adopted a policy wherein, under certain strictly limited conditions, the one-year period for requesting revival of an unintentionally abandoned application could be waived. Accordingly, the prohibition against requests for waiver found in §§ 1.137(b), 1.155(c), 1.316(c) and 1.317(c) is proposed to be deleted. See "Petitions Under 37 CFR 1.183 to Waive the One Year Time Period Requirement in 37 CFR 1.137(b), 1.155(c) and 1.316(c)" at 1059 Off. Gaz. Pat. Office 4 (October 1, 1985). However, applicants are cautioned that waiver of the one-year deadline under the unintentional standard will continue to be subject to strictly limited conditions.

(3) Issue and Term of Design Patents (Section 1.155)

Section 1.155 is proposed to be amended to be consistent with the proposed changes to § 1.137. Paragraph (b) of § 1.155 is further proposed to be modified to correct a typographical error. In the reference to fee section 1.17(l), the letter (l) should have appeared instead of the numeral (1).

(4) Application Abandoned for Failure to Pay Issue Fee (Section 1.316)

Section 1.316 is proposed to be amended to be consistent with the proposed changes to § 1.137. Paragraph (b) of § 1.316 is further proposed to be modified to correct a typographical error. In the reference to fee § 1.17(l), the letter (l) should have appeared instead of the numeral (1).

(5) Lapsed Patents; Delayed Payment of Balance of Issue Fee (Section 1.317)

Section 1.317 contains a provision regarding issue fees paid prior to October 1, 1982. Prior to that date, the Office charged an initial base issue fee and, depending on the size of the specification and drawings printed, billed applicants for a balance of issue fee due. Subsequent to October 1, 1982, applicants were required to pay the same issue fee regardless of the size of the specification and drawings. Reference to the date in § 1.317 may be deleted at this point in time since it is no longer relevant to pending applications. However, practice under this section continues to be relevant when a fee change becomes effective before payment is received.

In order to satisfy the requirement of 35 U.S.C. 151, the Office mails out a Notice of Allowance which specifies the sum of the issue fee due. When the issue fee amount is changed, the sum specified on the Notice of Allowance is at times different from that required at the time payment is actually received in the Office. If applicants submit issue fee payments in the amount specified on the Notice of Allowance after the effective date of a fee increase, then a balance of issue fee is due. The Office will accept payment of the amount specified on the Notice of Allowance and process the application into a patent. In accordance with 35 U.S.C. 151 and 37 CFR 1.317, a notice is sent to applicants requesting payment of the balance of the issue fee due (the difference between the fee due at time of receipt of payment in the Office and the fee specified on the Notice of Allowance) and setting a three-month period for payment. See In re Mills, 12 USPQ2d 1847 (Comm'r Pat. 1989). Failure to pay the balance of the issue fee within the specified three-month period will result in lapse of the patent. Therefore, the reference to October 1, 1982, in § 1.317 is proposed to be replaced by language specifying the consequences of failure to pay the issue fee due at the time payment is made.

Other amendments are proposed to make § 1.317 consistent with the proposed changes in § 1.137. Paragraph (b) of § 1.317 is further proposed to be modified to correct a typographical error. In the reference to fee § 1.17(l), the letter (l) should have appeared instead of the numeral (1).

(6) Delayed Payment of a Maintenance Fee (Section 1.378)

Petitions to accept delayed payment of a maintenance fee in an expired patent require a showing of unavoidable delay. In the case of petitions filed more than six months after expiration of a patent, § 1.378(c) further requires a showing that the failure to timely pay the maintenance fee was beyond the control of the patentee. The Office has determined that the "beyond the control" standard does not find adequate support in the relevant statute (35 U.S.C. 41(c)) or in the legislative history of Public Law 97-247. See "Acceptance of Delayed Payment of Maintenance Fees in Expired Patents", 1115 Off. Gaz. Pat. Office 18 (June 12, 1990).

Furthermore, the practice of accepting late payment of maintenance fees is proposed to be modified to be more analogous to the practice of reviving abandoned applications and accepting late payment of issue fees. Additionally, the public interest is best served by prompt reinstatement of a patent in which there was an unavoidable or unintentional delay in the timely payment of the maintenance fee.

The requirements for a petition to accept late payment of a maintenance fee, where the delay was unavoidable, are outlined in paragraph (b) of § 1.378. In addition to the maintenance fee and surcharge previously required, paragraph (b) is proposed to be amended to require a petition fee and prompt filing of a petition after the patentee is notified, or otherwise becomes aware, of the expiration of the patent.

The Bill, if enacted, would amend subsection 41(c)(1) of title 35, United States Code, to permit the Commissioner to accept late payment of any maintenance fee filed within eighteen months after the six-month grace period, or within such shorter time as fixed by the Commissioner, if the delay in payment is shown to the satisfaction of the Commissioner to have been unintentional. In order to implement the legislation proposed in the Bill, if enacted, paragraph (c) of § 1.378 is proposed to be modified to permit the filing of a petition to accept late payment of a maintenance fee, where the delay in payment was unintentional.

It is in the public's interest to know as soon as possible if an expired patent will be reinstated. Accordingly, paragraph (c) of § 1.378 is proposed to be amended to permit reinstatement of an unintentionally expired patent, provided that the petition is filed within six months of the end of the grace period specified at 35 U.S.C. 41(b), or within two months of the date patentee became aware of the expiration of the patent, but not later than eighteen months after the grace period.

In addition to the timeliness deadlines set forth in the preceding paragraph, it is proposed that a petition filed under the unintentional standard of § 1.378(c) would have to include the petition fee set forth in § 1.17(m)(3), the required maintenance fee set forth in § 1.20 (e) through (g), the surcharge for an expired patent as set forth in § 1.20(i) and a statement that the delay in timely payment of the maintenance fee was unintentional.

For a transitional period of two months from the date of enactment of the Bill, the requirement, specified in proposed § 1.378(c)(5), that any petition, be filed within six months of the end of the grace period, or within two months of the date patentee became aware of the expiration of the patent, will be waived, sua sponte, pursuant to § 1.183 to allow consideration of any petition filed within eighteen months of the end of the grace period.

If the Bill is not enacted, the proposed changes to §§ 1.17, 1.378(a) and 1.378(c) will not include the changes proposed in the Bill relative to acceptance of late payment of maintenance fees under the unintentional standard.

Other Considerations

The proposed rule change is in conformity with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), Executive Orders 12291 and 12612 and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that these proposed rule changes will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The principal impact of these proposed changes is to incorporate existing Office policy into the regulations and to provide a more efficient procedure to revive abandoned applications.

The Office has determined that this proposed rule change is not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increase in costs or prices for consumers; individuals; industries; Federal, state or local government agencies; or geographic regions because most of the proposed changes reduce procedural burdens. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Office has also determined that this notice has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

These proposed rule changes contain a collection of information requirements subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, which has previously been approved by the Office of Management and Budget under Control No. 0651–0011.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Freedom of information, Inventions and patents, Reporting and record keeping requirements.

For the reasons set out in the preamble, and pursuant to the authority contained in 35 U.S.C. 6, the Office proposes to amend 37 CFR part 1 as follows, wherein deletions are indicated by brackets ([]) and additions by arrows (><):

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR part 1 would continue to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. Section 1.17 is proposed to be amended by revising paragraphs (l) and (m) to read as follows:

§ 1.17 Patent application processing fees and surcharge.

* * * * *

(l) For filing a petition:

(1) For [the] revival of an unavoidably abandoned application under 35 U.S.C. sections 111, 133, 364, or 371, or

(2) For >the unavoidably< delayed payment of the issue fee under 35 U.S.C. 151 >, or

(3) For the unavoidably delayed payment of the maintenance fee under 35 U.S.C. 41(c)(1)<:

By a small entity (§ 1.9(f))	$55.00
By other than a small entity	110.00

(m) For filing a petition:

(1) For revival of an unintentionally abandoned application, or

(2) For the unintentionally delayed payment of the fee for issuing a patent >, or

(3) For the unintentionally delayed payment of the fee for maintaining a patent<:

By a small entity (§ 1.9(f))	$585.00
By other than a small entity	1,170.00

* * * * *

3. Section 1.137 is proposed to be amended by revising paragraphs (a)–(c) and adding paragraphs (d) and (e) to read as follows:

§ 1.137 Revival of abandoned application.

(a) An application abandoned for failure to prosecute may be revived as a pending application if it is shown to the satisfaction of the Commissioner that the delay was unavoidable. A petition to revive an abandoned application must be promptly filed after the applicant is notified of, or otherwise becomes aware of, the abandonment, and must be accompanied by >:

(1) A proposed response to continue prosecution of that application, or the filing of a continuing application, unless either has been previously filed;

(2) The petition fee as set forth in § 1.17(l); and

(3) A showing that the delay was unavoidable.< [a showing of the causes of the delay, by the proposed response unless it has been previously filed, and by the petition feet set forth in § 1.17(l). Such >The< showing must be a verified showing if made by a person not registered to practice before the Patent and Trademark Office.

(b) An application unintentionally abandoned for failure to prosecute [, except pursuant to § 1.53(d),] may be revised as a pending application if the delay was unintentional. [A petition to revive an unintentionally abandoned application must be filed within one year of the date on which the application became abandoned or be filed within three months of the date of the first decision on a petition to revive under paragraph (a) of this section which was filed within one year of the date of abandonment of the application.] A petition to revive an unintentionally abandoned application must be [accompanied by]:

(1) >Accompanied by a proposed response to continue prosecution of that application, or the filing of a continuing application, unless either has been previously filed;

(2) Accompanied by the petition fee as set forth in § 1.17(m);

(3) Accompanied by a statement that the abandonment was unintentional.< [A statement that the abandonment was unintentional; (2) A proposed response unless it has been previously filed, and (3) a petition fee as set forth in § 1.17(m). Such] >The< statement must be a verified statement if made by a person not registered to practice before the Patent and Trademark Office. The Commission may require additional information where there is a question whether the abandonment was unintentional >; and

(4) Filed:

(i) Within one year of the date on which the application became abandoned; or

(ii) Within three months of the date of the first decision on a petition to revive under paragraph (a) of this section which was filed within one year of the date on which the application became abandoned<.

[The three month period set forth in this paragraph may be extended under the provisions of § 1.136(a), but no further extensions under § 1.136(b) will be granted. Petitions to the Commissioner under § 1.183 to waive any time periods for requesting revival of an unintentionally abandoned application will not be considered, but will be returned to the applicant.]

(c) Any petition pursuant to [paragraph] >paragraphs< (a) >or (b)< of this section not filed within six months of the date of abandonment >of the application.< must be accompanied by a terminal disclaimer with fee under § 1.321 dedicating to the public a terminal part of the term of any patent granted thereon equivalent to the period of abandonment of the application. >The terminal disclaimer must also apply to any patent granted on any continuing application entitled under 35 U.S.C. § 120 to the benefit of the filing date of the application for which revival is sought.

(d) Any request for reconsideration or review of a decision refusing to revive an application upon petition filed pursuant to paragraphs (a) or (b) of this section, to be considered timely, must be filed within two months of the decision refusing to revive or within such time as set in the decision.

(e) The time periods set forth in this section cannot be extended, except that the three-month period set forth in paragraph (b)(4)(ii) and the time period set forth in paragraph (d) of this section may be extended under the provisions of § 1.136.>

4. Section 1.155 is proposed to be amended by revising paragraphs (b)–(d) and adding paragraphs (e) and (f) to read as follows:

§ 1.155 Issue and term of design patents.

* * * * *

(b) The Commissioner may accept the payment of the issue fee later than three months after the mailing of the notice of allowance as though no abandonment had ever occurred if upon petition the delay in payment is shown to have been unavoidable. The petition to accept the delayed payment must be promptly filed after the applicant is notified of, or otherwise becomes aware of, the abandonment, and must be accompanied by <:>

(1) The issue fee, unless it has been previously submitted [,] >;<

(2) The fee for delayed payment [(§ 1.17(1)),] >(§ 1.17(1));< and

(3) A showing that the delay was unavoidable. [Such] >The< showing must be a verified showing if made by a person not registered to practice before the Patent and Trademark Office.

(c) The Commissioner may, upon petition, accept the payment of the issue fee later than three months after the mailing of the notice of allowance as though no abandonment had ever occurred if the delay is payment was unintentional. [The petition to accept the delayed payment must be filed within one year of the date on which the application became abandoned or be filed within three months of the date of the first decision on a petition under paragraph (b) of this section which was filed within one year of the date of abandonment of the application.] The petition to accept the delayed payment must be [accompanied by] >:<

(1) >Accompanied by< the issue fee, unless it has been previously submitted >;< [,]

(2) >Accompanied by< the fee for unintentionally delayed payment (§ 1.17(m)) [, and] >;<

(3) >Accompanied by< a statement that the delay was unintentional. [Such] >The< statement must be a verified statement if made by a person not registered to practice before the Patent and Trademark Office. The Commissioner may require additional information where there is a question whether the abandonment was unintentional >; and

(4) Filed:

(i) Within one year of the date on which the application became abandoned; or

(ii) Within three months of the date of the first decision on a petition under paragraph (b) of this section which was filed within one year of the date on which the application became abandoned<.

[The three month period from the date of the first decision referred to in this paragraph may be extended under the provisions of § 1.136(a), but no further extensions under § 1.136(b) will be granted. Petitions to the Commissioner under § 1.183 to waive any time periods for requesting revival of an unintentionally abandoned application will not be considered, but will be returned to the applicant.]

(d) Any petition pursuant to [paragraph] >paragraphs< (b) >or (c)< of this section not filed within six months of the date of abandonment >of the application.< must be accompanied by a terminal disclaimer with fee under § 1.321 dedicating to the public a terminal part of the term of any patent granted thereon equivalent to the period of abandonment of the application. >The terminal disclaimer must also apply to any patent granted on any continuing application entitled under 35 U.S.C. § 120 to the benefit of the filing date of the application for which revival is sought.

(e) Any request for reconsideration or review of a decision refusing to accept the delayed payment upon petition filed pursuant to paragraphs (b) or (c) of this section, to be considered timely, must be filed within two months of the decision refusing to accept the delayed payment

or within such time as set in the decision.

(f) The time periods set forth in this section cannot be extended, except that the three-month period set forth in paragraph (c)(4)(ii) and the time period set forth in paragraph (e) of this section may be extended under the provisions of § 1.136.<

5. Section 1.316 is proposed to be amended by revising paragraphs (b)–(d) and adding paragraphs (e) and (f) to read as follows:

§ 1.316 Application abandoned for failure to pay issue fee.

* * * * *

(b) The Commissioner may accept the payment of the issue fee later than three months after the mailing of the notice of allowance as though no abandonment had ever occurred if upon petition the delay in payment is shown to have been unavoidable. The petition to accept the delayed payment must be promptly filed after the applicant is notified of, or otherwise becomes aware of, the abandonment, and must be accompanied by >:<

(1) The issue fee, unless it has been previously submitted [.] >;<

(2) The fee for delayed payment [(§ 1.17(1)).] >(§ 1.17(1));< and

(3) A showing that the delay was unavoidable. [Such] >The< showing must be a verified showing if made by a person not registered to practice before the Patent and Trademark Office.

(c) The Commissioner may, upon petition, accept the payment of the issue fee later than three months after the mailing of the notice of allowance as though no abandonment had ever occurred if the delay in payment was unintentional. [The petition to accept the delayed payment must be filed within one year of the date on which the application became abandoned or be filed within three months of the date of the first decision on a petition under paragraph (b) of this section which was filed within one year of the date of abandonment of the application.] The petition to accept the delayed payment must be [accompanied by] >:<

(1) >Accompanied by< the issue fee, unless it has been previously submitted [.] >;<

(2) >Accompanied by< the fee for unintentionally delayed payment (§ 1.17(m)) [, and] >;<

(3) >Accompanied by< a statement that the delay was unintentional. [Such] >The< statement must be a verified statement if made by a person not registered to practice before the Patent and Trademark Office. The Commissioner may require additional information where there is a question whether the abandonment was unintentional >; and

(4) Filed:

(i) Within one year of the date on which the application became abandoned; or

(ii) Within three months of the date of the first decision on a petition under paragraph (b) of this section which was filed within one year of the date on which the application became abandoned<.

[The three-month period from the date of the first decision referred to in this paragraph may be extended under the provisions of § 1.136(a), but no further extensions under § 1.136(b) will be granted. Petitions to the Commissioner under § 1.183 to waive any time periods for requesting revival of an unintentionally abandoned application will not be considered, but will be returned to the applicant.]

(d) Any petition pursuant to [paragraph] >paragraphs< (b) >or (c)< of this section not filed within six months of the date of abandonment >of the application, < must be accompanied by a terminal disclaimer with fee under § 1.321 dedicating to the public a terminal part of the term of any patent granted thereon equivalent to the period of abandonment of the application. >The terminal disclaimer must also< apply to any patent granted on any continuing application entitled under 35 U.S.C. 120 to the benefit of the filing date of the application for which revival is sought.

(e) Any request for reconsideration or review of a decision refusing to accept the delayed payment upon petition filed pursuant to paragraphs (b) or (c) of this section, to be considered timely, must be filed within two months of the decision refusing to accept the delayed payment or within such time as set in the decision.

(f) The time periods set forth in this section cannot be extended, except that the three-month period set forth in paragraph (c)(4)(ii) and the time period set forth in paragraph (e) of this section may be extended under the provisions of § 1.136.<

6. Section 1.317 is proposed to be amended by revising paragraphs (a)–(d) and adding new paragraphs (e) and (f) to read as follows:

§ 1.317 Lapsed patents; delayed payment of balance of issue fee.

(a) If the issue fee [was] paid [prior to October 1, 1982] >is the amount specified in the Notice of Allowance, but a higher amount is required at the time the issue fee is paid<, any remaining balance of the issue fee is to be paid within three months from the date of notice thereof and, if not paid, the patent will lapse at the termination of the three month period.

(b) The Commissioner may accept the payment of the remaining balance of the issue fee later than three months after the mailing of the notice thereof as though no lapse had ever occurred if upon petition the delay in payment is shown to have been unavoidable. The petition to accept the delayed payment must be promptly filed after the applicant is notified of, or otherwise becomes aware of, the lapse, and must be accompanied by >:<

(1) The remaining balance of the issue fee, unless it has been previously submitted [.] >;<

(2) The fee for delayed payment [§ 1.17(1)).] >(§ 1.17(1));< and

(3) A showing that the delay was unavoidable. [Such] >The< showing must be a verified showing if made by a person not registered to practice before the Patent and Trademark Office.

(c) The Commissioner may, upon petition, accept the payment of the remaining balance of the >issue< fee later than three months after the mailing of the notice thereof as though no lapse had ever occurred if the delay in payment was unintentional. [The petition to accept the delayed payment must be filed within one year of the date on which the patent lapsed or be filed within three months of the date of the first decision on a petition under paragraph (b) of this section which was filed within one year of the date of lapse of the patent.] The petition to accept the delayed payment must be [accompanied by] >:<

(1) >Accompanied by< the remaining balance of the issue fee, unless it has been previously submitted [.] >;<

(2) >Accompanied by< the fee for unintentionally delayed payment (§ 1.17(m)) [, and] >;<

(3) >Accompanied by< a statement that the delay was unintentional. [Such] >The< statement must be a verified statement if made by a person not registered to practice before the Patent and Trademark Office. The Commissioner may require additional information where there is a question whether the delay in payment was unintentional >; and

(4) Filed:

(i) Within one year of the date on which the patent lapsed; or

(ii) Within three months of the date of the first decision on a petition under paragraph (b) of this section which was filed within one year of the date on which the patent lapsed<. [The three-month period from the date of the first

decision referred to in this paragraph may be extended under the provisions of § 1.136(a), but no further extensions under § 1.136(b) will be granted. Petitions to the Commissioner under § 1.183 to waive any time periods for requesting acceptance of an unintentionally delayed payment will not be considered, but will be returned to the applicant.]

(d) Any petition pursuant to [paragraph] >paragraphs< (b) >or (c)< of this section not filed within six months of the date of lapse >of the patent,< must be accompanied by a terminal disclaimer with fee under § 1.321 dedicating to the public a terminal part of the term of the patent equivalent to the period of lapse of the patent.

>(e) Any request for reconsideration or review of a decision refusing to accept the delayed payment upon petition filed pursuant to paragraphs (b) or (c) of this section, to be considered timely, must be filed within two months of the decision refusing to accept the delayed payment or within such time as set in the decision.

(f) The time periods set forth in this section cannot be extended, except that the three-month period set forth in paragraph (c)(4)(ii) and the time period set forth in paragraph (e) of this section may be extended under the provisions of § 1.136.<

7. Section 1.378, paragraphs (a), (b), (c) and (e) are proposed to be revised to read as follows:

§ 1.378 Acceptance of delayed payment of maintenance fee in expired patent to reinstate patent.

(a) The Commissioner may accept the payment of any maintenance fee due on a patent after expiration of the patent if, upon petition, the delay in payment of the maintenance fee is shown to the satisfaction of the Commissioner to have been unavoidable [and if the surcharge required by § 1.20(i) is paid as a condition of accepting payment of the maintenance fee] >or unintentional<. If the Commissioner accepts payment of the maintenance fee upon petition, the patent shall be considered as not having expired, but will be subject to the conditions set forth in 35 U.S.C. 41(c)(2).

(b) Any petition to accept [the] >an unavoidably< delayed payment of a maintenance fee filed under paragraph (a) of this section [within six months of the expiration of the patent] must include:

(1) >The petition fee set forth in § 1.17(1)(3);

(2)< The required maintenance fee set forth in § 1.20(e)–(g);

[(2)] >(3)< The surcharge set forth in § 1.20(i); and

[(3)] >(4)< A showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely >and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent<. The showing must enumerate the steps taken to ensure timely payment of the maintenance fee >, the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly<.

(c) Any petition to accept [the] >an unintentionally< delayed payment of a maintenance fee filed under paragraph (a) of this section [more than six months after the expiration of the patent] must [include] >be<:

(1) >Accompanied by the petition fee set forth in § 1.17(m)(3);

(2) Accompanied by the < [The] required maintenance fee set forth in § 1.20(e)–(g) [,] >;<

[(2)] >(3) Accompanied by the< [The] surcharge set forth in § 1.20(i); [and

(3) A showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and the failure to timely pay the maintenance fee was due entirely to circumstances outside of the control of the patentee. The showing must enumerate the steps taken to ensure timely payment of the maintenance fee and the circumstances which were outside of the control of the patentee and those acting on behalf of the patentee in paying the maintenance fee. The showing must be sufficient in scope and content to meet the heavy burden on proof required to show that a delay in payment of the maintenance fee of more than six months after expiration of the patent was unavoidable.]

>(4) Accompanied by a statement that the delay was unintentional; and

(5) Filed:

(i) Within six months of the end of the grace period specified at 35 U.S.C. 41(b); or

(ii) Within two months of the date patentee became aware of the expiration of the patent and within eighteen months of the end of the grace period.<

(d) * * *

(e) Reconsideration of a decision refusing to accept a maintenance fee upon petition filed pursuant to paragraph (a) of this section may be obtained by filing a petition for reconsideration within two months of, or such other time as set in, the decision refusing to accept the delayed payment of the maintenance fee. Any such petition for reconsideration must be accompanied by the petition fee set forth in § 1.17(h). After decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Commissioner. If the delayed payment of the maintenance fee is not accepted, the maintenance fee and the surcharge set forth in § 1.20(i) will be refunded following the decision on the petition for reconsideration, or after the expiration of the time for filing such a petition for reconsideration, if none is filed. [The] >Any petition< fee [set forth in § 1.17(h) for filing the petition for reconsideration] >under this section< will not be refunded unless the refusal to accept and record the maintenance fee is determined to result from an error by the Patent and Trademark Office.

Dated: September 8, 1992.

Douglas B. Comer,

Acting Assistant Secretary and Acting Commissioner of Patents and Trademarks.

[FR Doc. 92-22142 Filed 9-11-92; 8:45 am]

BILLING CODE 3510-16-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-7050]

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (100-year) flood elevations and proposed base flood elevation modifications for the communities listed below. The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each

community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472, (202) 646-2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for each community listed, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements for 44 CFR part 10, Environmental consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. Section 67.4 is proposed to be amended as follows:

§ 67.4 [Amended]

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
MAINE	
Robbinston (Town), Washington County	
St. Croix River:	
At Bunker Point	*17
Shoreline at southern most corporate limits	*25
Boyden Lake: Entire shoreline within community	*79
Maps available for inspection at the Robbinston Town Hall, Ridge Road, Robbinston, Maine.	
Send comments to Mr. Philip Stanhope, First Selectman of the Town of Robbinston, Washington County, Box 308, Robbinston, Maine 04671.	
NEW HAMPSHIRE	
Jaffrey (Town), Cheshire County	
Contoocook Lake: Entire shoreline within community	*1,013
Mountain Brook Reservoir: Entire shoreline within community	*1,019
Contoocook River:	
At downstream corporate limits	*852
At Contoocook Lake Dam	*1,013
Mountain Brook:	
At Gilmore Pond Road	*1,022
Approximately 100 feet upstream of State Route 124	*1,063
Mead Brook:	
At confluence with Mountain Brook	*1,039
Approximately 100 feet upstream of State Route 124	*1,1090
Black Reservoir Outlet Stream:	
Approximately 50 feet downstream of Contoocook Road Bridge	*1,013
Approximately 35 feet upstream of Black Reservoir Dam	*1,067
Maps available for inspection at the Jaffrey Town Hall, 69 Main Street, Jaffrey, New Hampshire 03452.	
Send comments to Mr. William Elliot, Chairman of the Town of Jaffrey Board of Selectmen, Cheshire County, 69 Main Street, Jaffrey, New Hampshire.	
Weare (Town), Hillsborough County	
Piscataquog River:	
At downstream corporate limits	*302
Approximately 100 feet upstream of Reservoir Road	*523
Weare Reservoir:	
Entire shoreline within community	*416
Entire shoreline within community	*657
Daniels Lake: Entire shoreline within community	*377
Maps available for inspection at the Weare Town Office, 15 Flanders Memorial Drive, Weare, New Hampshire 03281.	
Send comments to Mr. William Herman, Chairman of the Town of Weare Board of Selectmen, Hillsborough County, P.O. Box 190, Weare, New Hampshire 03281-0190.	
Webster (Town), Merrimack County	
Blackwater River:	
At the downstream corporate limits	*361
Approximately 1.7 miles upstream of Clothespin Road	*472
Maps available for inspection at the Town Clerk's Office, R.F.D. #5, Box 325, Webster, New Hampshire.	
Send comments to Mr. George Cummings, Chairman of the Town of Webster Board of Selectmen, Merrimack County, R.F.D. #5, Box 325, Penacook, New Hampshire 03303.	
NEW YORK	
Champion (Town), Jefferson County	
Black River:	
Approximately 160 feet downstream of Deferiet Dam	*651
At corporate limits with Village of West Carthage	*686
Maps available for inspection at the Champion Town Clerk's Office, 7 North Main Street, West Carthage, New York 13619.	
Send comments to Mr. Mark Freeman, Champion Town Supervisor, Jefferson County, Rt. 1, Box 306 A, Black River, New York 13612.	
Milton (Town), Saratoga County	
Glowegee Creek:	
At the confluence with Kayaderosseras Creek (upper reach)	*389
Approximately 0.2 mile upstream of Private Dam	*436
Kayaderosseras Creek (lower reach):	
Approximately 0.2 mile downstream of Delaware and Hudson Railroad Bridge	*229
Approximately 0.3 mile upstream of Delaware and Hudson Railroad Bridge	*232
Kayaderosseras Creek (upper reach):	
At the downstream corporate limits	*269
Approximately 200 feet upstream of corporate limits	*523
Maps available for inspection at the Milton Town Hall, Building Department, 503 Guyser Road, Ballston Spa, New York.	
Send comments to Mr. Wilbur L. Tribble, Town Supervisor for the Town of Milton, Saratoga County, 503 Guyser Road, Ballston Spa, New York 12020.	
Schoharie (Town), Schoharie County	
Schoharie Creek:	
Approximately 600 feet downstream of the downstream corporate limits	*593
At the upstream corporate limits	*616
Fox Creek:	
At its confluence with Schoharie Creek	*605
Approximately 400 feet upstream of the corporate limits	*650
Cobleskill Creek:	
At its confluence with Schoharie Creek	*595
At the upstream corporate limits	*719
Maps available for inspection at the Town Hall, Schoharie, New York.	
Send comments to Mr. Peter Lopez, Supervisor of the Town of Schoharie, P.O. Box 544, Schoharie, New York 12157.	
Schoharie (Village), Schoharie County	
Schoharie Creek:	
Approximately 1.52 miles downstream of Bridge Street	*605
Approximately 0.74 mile upstream of Bridge Street	*612

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Fox Creek:	
Approximately 0.36 mile downstream of State Route 30 (North Main Street)	*605
Approximately 335 feet upstream of Covered Bridge (North Main Street)	*605
Maps available for inspection at the Village Hall, Schoharie, New York.	
Send comments to The Honorable Floyd Guernsey, Mayor of the Village of Schoharie, Schoharie County, P.O. Box 219, Schoharie, New York 12157.	

§ 67.4 [Amended]

3. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Arizona	Town of St. Johns, Apache County.	Little Colorado River	Approximately 5,800 feet downstream of U.S. Highway 666.	None	*5,655
			Approximately 100 feet downstream of U.S. highway 666.	None	*5,679
			At the upstream corporate limits located approximately 4,100 feet upstream of U.S. Highway 666.	None	*5,700
Maps are available for review at Apache County Development Community Services, 75 West Cleveland, St. Johns, Arizona.					
Send comments to The Honorable Russell Burdick, Mayor, City of St. Johns, P.O. Box 455, St. Johns, Arizona 85936.					
Arkansas	City of Walnut Ridge, Lawrence County.	Village Creek	Approximately 6,250 feet downstream of West Free Street.	None	*262
			Approximately 2,400 feet upstream of U.S. Highway 67.	None	*267
		Highland Creek North	Entire reach between Northwest Front Street and Village Creek.	None	*266
		Highland Creek South	Approximately 120 feet upstream of U.S. Highway 412.	None	*267
			Just downstream of Northeast Front Street	None	*268
Maps are available for review at City Hall, 105 Southeast Front Street, Walnut Ridge, Arkansas.					
Send comments to The Honorable Thomas Holland, Mayor, City of Walnut Ridge, 105 Southeast Front Street, Walnut Ridge, Arkansas 72476.					
Connecticut	Stamford, City, Fairfield County.	Mianus River	Approximately 400 feet downstream of West Glen Drive.	*74	*75
			Approximately .4 mile upstream of Farms Road	None	*198
		East Branch Mianus River	At confluence with Mianus River	*180	*181
			Approximately 75 feet upstream of Mill Road	None	*320
		Rippowam River	At 50 feet downstream of Main Street	*16	*15
			Approximately 60 feet upstream of Interlaken Road.	*183	*181
		Tollsome Brook	At confluence with Rippowam River	*27	*30
			Approximately 1,373 feet upstream of Daniel Drive.	None	*132
		Noroton River	Upstream side of U.S. Route 1	*11	*12
			Approximately 1.1 miles upstream of Woodway Road.	None	*110
		Springdale Book	At confluence with Noroton River	*75	*77
			At upstream corporate limits	None	*204
Maps available for inspection at the Environmental Protection Board, Stamford Government Center, 888 Washington Boulevard, Stamford, Connecticut.					
Send comments to The Honorable Stanley J. Esposito, Mayor of the City of Stamford, Fairfield County, Stamford Government Center, 888 Washington Boulevard, Stamford, Connecticut 06904–2152.					
Florida	Unincorporated areas of, Charlotte County.	Morningstar Waterway	At mouth	None	*9
			Just downstream of Bachmann Boulevard	None	*15
		Dorchester Waterway	At mouth	None	*10
			Just downstream of Bachmann Boulevard	None	*13
		Haverhill Waterway	At mouth	None	*10
			Just downstream of Bachmann Boulevard	None	*19
		Alligator Creek	Just upstream of CSX railroad	None	*6
			Just upstream of Alfred Boulevard	None	*22
		South Prong Alligator Creek	At mouth	None	*15
			Just downstream of Jones Loop Road	None	*21
		Myrtle Slough	At mouth	None	*6
			Just downstream of County Highway 74	None	*20
		Tributary 1 to Myrtle Slough	At mouth	None	*19
			Just downstream of County Highway 74	None	*25
		Shell Creek	Just upstream of CSX railroad	*6	*6
			About 1.0 mile upstream of confluence of Tributary 1 to Shell Creek.	None	*13

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
		Tributary 1 to Shell Creek	At mouth	None	*11
			Just downstream of Prairie Creek Boulevard	None	*25
		Prairie Creek	At mouth	None	*9
			About 2.1 miles upstream of Washington Loop Road.	None	*16
		Lee Branch	At mouth	*8	*8
			Just downstream of U.S. Highway 17	None	*14
Maps available for inspection at the Zoning Department, 18500 Murdock Circle, Port Charlotte, Florida.					
Send comments to The Honorable Thomas W. Frame, County Administrator, Charlotte County, 18500 Murdock Circle, Port Charlotte, Florida 33948–1094.					
Florida	Unincorporated areas of Lee County.	Popash Creek	At mouth	*8	*8
			At county boundary	None	*27
		Stroud Creek	At mouth	*8	*8
			Just upstream of St. Paul Road	None	*24
		Daughtrey Creek	At mouth	*8	*8
			Just upstream of Nalle Grade Road	None	*26
		Daughtrey East	At mouth	None	*8
			Just upstream of Rich Road	None	*22
		Tributary L–2	At U.S. Route 41	None	*8
			Just downstream of Bayshore Road	None	*13
		Tributary L–1	At U.S. Route 41	None	*8
			Just downstream of Bayshore Road	None	*15
		Powell Creek	At Brooke Road	*8	*8
			Just downstream of Tucker Lane NE	None	*16
		Powell Creek Tributary No. 1	At mouth	None	*12
			About 4.47 miles upstream of mouth	None	*19
		Powell Creek Tributary No. 2	At mouth	None	*15
			About 3.16 miles upstream of mouth	None	*20
		Marsh Point Creek	Just downstream of Bayshore Road	*8	*8
			Just upstream of Tucker Lane NE	None	*17
		Chapel Branch Creek	At mouth	*8	*8
			Just upstream of Rich Road	None	*21
		Bayshore Creek	At mouth	*8	*8
			About 500 feet upstream of Disconte Lane	None	*23
		Bayshore Tributary	At mouth	None	*14
			Just downstream of Leetana Drive	None	*18
		Thompson Cutoff	At mouth	*8	*8
			Just downstream of Ruben Road	None	*22
		Thompson Cutoff Tributary	At mouth	None	*13
			About 1.24 miles upstream of mouth	None	*21
Maps available for inspection at the Lee County Building Department, 1735 Hendry Street, Ft. Myers, Florida.					
Send comments to the Honorable Julio Avael, County Administrator, Lee County, P.O. Box 398, Ft. Myers, Florida 33902.					
Kansas	Unincorporated areas of Shawnee County.	Sixmile Creek	Just upstream of SW 97th Street	None	*967
			Just downstream of Urish Road	None	*1,018
			Just upstream of Urish Road	None	*1,024
			Just downstream of SW 69th Street	None	*1,041
			Just upstream of SW 69th Street	None	*1,049
			Just downstream of SW 61st Street	None	*1,061
Maps available for inspection at the County Engineer's Office, 3137 SE 29th Street, Topika, Kansas.					
Send comments to The Honorable Winnie Kingman, Chairman, Board of Commissioners, Shawnee County, 200 East 7th, Room B11, Topeka, Kansas 66603.					
Kentucky	City of Covington, Kenton County.	Banklick Creek	At mouth	*503	*499
			About 0.55 mile upstream of Bullock Pen Road	None	*525
		Licking River	Within community	*501	*499
Maps available for inspection at the Engineering Department, City Hall, 638 Madison Avenue, Covington, Kentucky.					
Send comment to The Honorable Denny Bowman, Mayor, City of Covington, City Hall, 638 Madison Avenue, Covington, Kentucky 41011–2298.					
Kentucky	City of Fort Wright, Kenton County.	Banklick Creek	About 2.16 miles downstream of Interstate 275	*503	*499
			About 0.82 mile upstream of State Route 17	None	*503
		Banklick Creek Tributary	At mouth	*503	$499
			About 600 feet downstream of State Route 17	*503	*503
		Horse Branch	At mouth	*503	*499
			About 600 feet downstream of Interstate 275	*503	*503
		Horse Branch Tributary	At mouth	*503	*499
			About 790 feet upstream of SPCA Shelter Road.	*506	*506

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at City Hall, 409 Kyle Lane, Ft. Wright, Kentucky.					
Send comments to The Honorable Donald Martin, Mayor, City of Ft. Wright, City Hall, 409 Kyles Lane, Ft. Wright, Kentucky 41011.					
Louisiana	East Baton Rouge Parish unincorporated areas.	Draughans Creek	Approximately 180 feet upstream of Magnolia Bridge Road.	*59	*56
			Approximately 150 feet upstream of Wax Road	*62	*58
Maps available for inspection at the Flood Office, Engineering Department, 4th Floor, Municipal Building, North Street, Baton Rouge, Louisiana.					
Send comments to The Honorable Tom Ed McHugh, Mayor-President of the City of Baton Rouge and East Baton Rouge Parish, P.O. Box 1471, Baton Rouge, Louisiana 70821.					
Michigan	Township of Baldwin, Ioaco County.	Lake Huron/Tawas Bay	Along Tawas Bay shoreline, around Tawas Point, and north along Lake Huron shoreline, to about 4,800 feet due East of intersection of Baldwin Resort Road and Tawas Beach Road.	None	*584
		Lake Huron	Along Lake Huron shoreline from about 550 feet north of intersection of Scott Road and Forest Street, down to about 1,900 feet south of intersection of Scott Road and Forest Street.	None	*589
		Shall flooding from Lake Huron.	About 1,500 feet east of intersection of Baldwin Resort Road and U.S. 23.	None	#1
			About 3,800 feet northeast of intersection of U.S. 23 and Birchcrest Drive, approximately 190 feet northwest of lake Huron shoreline.	None	#2
		Tawas Lake	Entire shoreline	None	*588
Maps available for inspection at Township Hall, 1119 Monument Road, Tawas City, Michigan.					
Send comments to The Honorable Floyd M. Peters, Township Supervisor, Township of Baldwin, Township Hall, 1119 Monument Road, Tawas City, Michigan 48763.					
Michigan	City of East Tawas, Ioaco County.	Tawas Bay	Along Tawas Bay shoreline, from about 400 feet west of Alice Street to about 2,600 feet east of Alice Street.	*584	*587
			Along Tawas Bay shoreline, from Newman Street to about 1,200 feet east of Newman Street.	*584	*584
Maps available for inspection at the City Manager's Office, City Hall, 120 West Westover Street, East Tawas, Michigan.					
Send comments to The Honorable Robert Bolen, Mayor, City of East Tawas, City Hall, 120 West Westover Street, East Tawas, Michigan 48730.					
Michigan	Township of Fraser, Bay County.	Saginaw Bay/Lake Huron	Along shoreline from northernmost township limit, to confluence of Tebo Drain.	*585	*586
			Along shoreline from about 1,500 feet northeast of the intersection of Scheurman Road and Bay Avenue to the southernmost township limit.	*585	*589
		Tebo Drain	At mouth	*585	*586
			About 3,000 feet upstream of mouth	*586	*586
		Rosebush Drain	At Linwood Road crossing at township limits	*585	*586
			Just upstream of Elevator Road	*586	*586
Maps available for inspection at the Building Zoning Administrative Office, 1474 North MacKinaw Road, Linwood, Michigan.					
Send comments to The Honorable Richard Gromaski, Township Supervisor, Township of Fraser, Township Hall, 1474 North MacKinaw Road, Linwood, Michigan 48634.					
Michigan	City of Tawas City, Ioaco County.	Tawas Bay (Lake Huron)	About 50 feet east of intersection of Hemlock Street and Lake Street along Tawas Bay shoreline.	*584	*587
			About 50 feet east of intersection of Whittemore Street and Lake Street along Tawas Bay shoreline.	*584	*584
		Shallow flooding from Tawas Bay (Lake Huron).	About 130 feet south of intersection of Fourth Avenue and Lake Street.	*584	#1
Maps available for inspection at the City Manager's Office, City Hall, 815 Lake Street, Tawas City, Michigan.					
Send comments to The Honorable James Lansky, Sr., Mayor, City of Tawas City, City Hall, 815 Lake Street, Box 568, Tawas City, Michigan 48764–0568.					
Minnesota	Township of Hassan, Hennepin County.	Crow River	About 1.35 miles upstream of mouth	*862	*859
			About 4.95 miles upstream of Berning Mill Dam	*891	*888
Maps available for inspection at the Township Hall, 25000 Hassan Parkway, Rogers, Minnesota.					
Send comments to The Honorable Richard Sherman, Township Supervisor, Township of Hassan, Township Hall, 25000 Hassan Parkway, Rogers, Minnesota 55374.					
Mississippi	Unincorporated areas of Rankin County.	Turtle Creek	About 700 feet upstream of mouth	None	*306
			About 0.98 mile upstream of mouth	None	*315

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
		Hog Creek	About 2,300 feet upstream of Illinois Central railroad.	None	*290
			About 3,800 feet upstream of Luckney Road	None	*341
		Hog Creek Tributary	At mouth	None	*312
			Just downstream of Luckney Road	None	*331
		Mill Creek	About 400 feet upstream of Spillway Road	None	*302
			Just downstream of State Highway 471	None	*352
		Mill Creek Tributary	At mouth	None	*316
			Just downstream of private road	None	*328
		Plummer Slough	Just upstream of State Highway 471	None	*303
			About 3,200 feet upstream of Oakdale Road	None	*324
		Pelahatchie Creek	Just upstream of State Highway 471	None	*303
			About 2.88 miles upstream of confluence of Clark Creek.	None	*315
		Clark Creek	At mouth	None	*309
			Just downstream of Stull Road	None	*339
		Clark Creek Tributary	At mouth	None	*314
			About 3,600 feet upstream of Mt. Helen Road	None	*332
		Spring Branch	About 3,300 feet upstream of mouth	None	*306
			About 3,100 feet upstream of Church Road	None	*331
		Pelahatchie Creek Tributary	Just downstream of State Highway 25	None	*306
			About 3,100 feet upstream of Hollybush Road	None	*325
		Pearl River (Ross Barnett Reservoir).	Downstream of State Highway 43	None	*300
			Upstream of State Highway 43	None	*301
		Pearl River	At county boundary	None	*251
			About 9.0 miles upstream of State Highway 25	*283	*288

Maps available for inspection at the Rankin County Tax Assessor's Office, 105 North Street, Brandon, Mississippi.

Send comments to The Honorable Lynn Weathersby, President, Rankin County Board of Supervisors, 110 Timber Street, Brandon, Mississippi 39042.

Missouri	City of Jennings, St. Louis County.	Maline Creek	About 1,650 feet downstream of Halls Ferry Road.	None	*449
			About 1,225 feet downstream of Lucas-Hunt Road.	*457	*454
			About 740 feet upstream of Lucas-Hunt Road	457	*456

Maps available for inspection at the City Hall, Building Department, 2120 Hord Avenue, Jennings, Missouri.

Send Comments to The Honorable William D. Tharp, Mayor, City of Jennings, City Hall, 2120 Hord Avenue, Jennings, Missouri 63136.

New York	Lyme, Town Jefferson County.	Chaumont River	At Village of Chaumont corporate limits	None	*250
			At upstream corporate limits	None	*251
		Lake Ontario	Entire shoreline within the community	None	*250
		Chaumont Bay	Entire shoreline within the community	None	*250

Maps available for inspection at the Lyme Town Office, Main Street, Chaumont, New York.

Send comments to Mr James Golden, Supervisor of the Town of Lyme, Jefferson County, North Shore Road, Three Mile Bay, New York 13693.

Tennessee	City of Nashville and Davidson County.	Collins Creek	At mouth	*514	*515
			About 750 feet upstream of Interstate 24	*525	*526
		Mill Creek Tributary A	At mouth	*492	*492
			Just downstream of Una-Anticoch Pike	None	*519
			Just upstream of Una-Anticoch Pike	None	*526
			About 4,860 feet upstream of Radar Ridge	None	*557
		Mill Creek Tributary B	At mouth	None	*496
			Just downstream of Private Dam	None	*506
			Just upstream of Private Dam	None	*511
			About 500 feet upstream of Una-Anticoch Pike	None	*527
		Sims Branch	At mouth	*418	*418
			Just downstream of Perimeter Place Drive	*433	*432
			Just upstream of Perimeter Place Drive	*434	*438
			Just downstream of Interstate Route 40	*449	*449
			About 0.5 mile upstream of Haywood Lane	*560	*560
		Sorghum Branch	At mouth	*476	*476
			Just upstream of Paragon Mills Road	482	*484
			About 0.5 mile upstream of Haywood Lane	*560	*560
		Flat Creek	At mouth	*559	*559
			Just upstream of Harding Pike	*607	*605
			About 1,100 feet upstream of Coronada Entrance Road.	*671	*671
		Stoners Creek	At mouth	*425	*425
			At county boundary	*460	*462
		Scotts Hollow	At mouth	None	*474
			Just downstream of Lebanon Pike	None	*475
			Just upstream of Lebanon Pike	None	*481
			At county boundary	None	*511
		Scotts Creek	At mouth	*444	*444
			At county boundary	None	*488

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
		Overall Creek	At mouth	*407	*407
			Just upstream of River Road Pike	*407	*410
			Just downstream of U.S. Highway 70	*452	*452
		Hurricane Creek	About 4700 feet downstream of U.S. Route 41	*510	*510
			Just upstream of CSX Railroad Spur	*576	*574
		West Branch Hurricane Creek	At mouth	*575	*575
			About 650 feet upstream of Hell Quaker Boulevard.	*589	*586
		West Fork	At mouth	*468	*469
		Browns Creek	Just downstream of Battery Lane	None	*580
			Just upstream of Battery Lane	None	*585
			Just upstream of Sewanee Road	None	*603
		Pages Branch	At mouth	*413	*413
			About 450 feet downstream of Interstate 65	*413	*413
			About 300 feet upstream of Interstate 65	*418	*429
			Just downstream of Jones Avenue	None	*504
			Just upstream of Jones Avenue	None	*511
			Just downstream of Oakwood Drive	None	*523
			Just upstream of Oakwood Drive	None	*531
			About 1150 feet upstream of Oakwood Drive	None	*555
		Pages Branch Tributary A	At mouth	None	*467
			Just downstream of Dellway Avenue	None	*492
			Just upstream of Dellway Avenue	None	*497
			About 475 feet upstream of Jones Avenue	None	*575
		Pages Branch Tributary B	About 650 feet downstream of Brooklyn Avenue.	None	*478
			About 600 feet upstream of Brooklyn Avenue	None	*512
Maps available for inspection at the Department of Public Works, 720 South 5th Street, Nashville, Tennessee.					
Send comments to The Honorable Philip Bredesen, Mayor, Metro Government of Nashville Davidson County, 107 Metropolitan Courthouse, Nashville, Tennessee 37201.					
Tennessee	Unincorporated areas of Sullivan County.	South Fork Holston River (Near South Holston Dam).	About 3,200 feet downstream of State Highway 358.	None	*1,413
			At Tailrace of South Holston Dam	None	*1,496
Maps available for inspection at the Planning and Zoning Department, Blountville, Tennessee.					
Send comments to The Honorable William H. McKamey, County Executive, Sullivan County, P.O. Box 509, Blountville, Tennessee 37617.					
Wisconsin	Unincorporated areas of Dane County.	Sugar River	At southern county boundary	*854	*855
			Just downstream of Riverside Road	*920	*920
Maps available for inspection at the Dane County Courthouse, 210 Martin Luther King Jr. Boulevard, Madison, Wisconsin.					
Send comments to The Honorable Richard J. Phelps, County Executive, Dane County, County Courthouse, 210 Martin Luther King Jr. Boulevard, Madison, Wisconsin 53709.					
Wisconsin	City of New Berlin, Waukesha County.	Poplar Creek	About 1,900 feet downstream of Arcadian Avenue.	*830	*831
			Just downstream of Cleveland Avenue	*851	*851
			Just upstream of Cleveland Avenue	*855	*872
			Just downstream of Coffee Road	*868	*872
Maps available for inspection at Planning Department, 3805 S. Casper Drive, New Berlin, Wisconsin.					
Send comments to The Honorable Tim Tully, Mayor, City of New Berlin, 3805 S. Casper Drive, New Berlin, Wisconsin 53151.					

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: September 8, 1992.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 92-22104 Filed 9-11-92; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92-203, RM-8057]

Radio Broadcasting Services; Indiantown and Okeechobee, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Okeechobee Broadcasters, Inc., licensee of Station WOKC(FM), Channel 276C2, Okeechobee, Florida, seeking the reallotment of Channel 276C2 from Okeechobee to Indiantown, Florida, and the modification of its license to specify Indiantown as its community of license, in accordance with § 1.420(i) of the Commission's rules. The coordinates are North Latitude 27-12-55 and West Longitude 80-31-50.

DATES: Comments must be filed on or before October 26, 1992, and reply comments on or before November 10, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John M. Spencer, Leibowitz & Spencer, One S.E. Third Avenue, suite 1450, Miami, Florida 33131. (Counsel for Okeechobee Broadcasters, Inc.).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92-203, adopted August 19, 1992, and released September 4, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The

complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-22010 Filed 9-11-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 92-204, RM-8058]

Radio Broadcasting Services; Lincoln, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by L & M Broadcasting Company, Inc., requesting the substitution of Channel 230B1 for Channel 230A at Lincoln, Illinois, and the modification of Station WESZ (FM)'s license to specify operation on Channel 230B1. The proposed coordinates for Channel 230B1 at Lincoln are North Latitude 40-01-11 and West Longitude 89-18-16.

DATES: Comments must be filed on or before October 26, 1992, and reply comments on or before November 10, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Mark N. Lipp, Mullin, Rhyne, Emmons and Topel, P.C., 1000 Connecticut Avenue, NW., suite 500, Washington, DC 20036 (Counsel for L & M Broadcasting Company, Inc.).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92-204, adopted August 19, 1992, and released September 4, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger.

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-22011 Filed 9-11-92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 92-48, Notice 01]

RIN 2127-AE55

Federal Motor Vehicle Safety Standards; New Pneumatic Tires

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to implement the petition by the European Tire and Rim Technical Organization (ETRTO) requesting that NHTSA amend Standard No. 109, *New Pneumatic Tires—Passenger Cars*, to permit the testing of 18 inch and 19 inch tires. Currently, Standard No. 109 does not permit tires of these sizes since the standard requires each tire to meet all of its requirements but provides no way to conduct certification tests of these sized tires to the bead unseating requirements.

DATES: Comment closing date: Comments on this notice must be received on or before October 29, 1992.

Proposed Effective Date: If adopted, the amendments proposed in this notice would become effective 30 days following publication of a final rule in the **Federal Register**.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. Docket Room hours are 9:30 a.m.-4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Cook, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-4803.

SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Safety Standard No. 109, *New Pneumatic Tires*, (49 CFR 571.109) contains several performance requirements and tests related to pneumatic tires. Section S4.2.2.3 specifies force levels that a pneumatic tire must withstand before the tire bead is unseated. For a tire that has a maximum inflation pressure other than 60 psi, the force levels are related to the tire's designated section width. (S4.2.2.3.1) For a tire that has a maximum inflation pressure of 60 psi (i.e., a T-Type temporary spare tire), the force levels required to unseat the bead are determined by the tire's maximum load rating (S4.2.2.3.2).

Section S5.2 sets forth test procedures related to the bead unseating resistance requirements. In preparation for the test, the tire to be tested must be washed, dried, and inflated to one of the inflation pressures specified in table II of the standard. Then after mounting the wheel and tire in a fixture described in figure 1 of the standard, a load is applied at not less than four places equally spaced around the tire's circumference through a testing block until the bead unseats or the specified value is reached.

Figure 1 specifies dimensions of the bead unseating fixture for the "wheel size" and "dimension A for tires with maximum inflation pressure." On the bead unseating fixture, dimension A is the distance from the center of the mounted wheel and tire combination to

the point at which the test anvil contacts the tire at the beginning of the bead unseating seat. The point of contact is the maximum section width of a properly inflated tire. Dimension A is currently specified for wheel sizes ranging from 10 inches to 17 inches for standard and T Type (temporary spare) tires and 18 inches for T Type tires only. Since dimension A is not specified for either the 18 inch wheel for standard tires or 19 inch wheels for either tire, tires for those wheels cannot be tested.

The European Tire and Rim Technical Organization (ETRTO) petitioned the agency to amend the dimensions in the bead unseating fixture in figure 1. For tires other than 60 lbs/in ^{2}, it requested that in figure 1, the standard include a 12.5 inch dimension A for 18 inch tires and a 13.0 inch dimension A for 19 inch tires. For 60 lbs/in ^{2} tires, it requested that in Figure 1, the standard include a 12.0 inch dimension A for 19 inch tires. The petition stated that the new dimension A's are required for 18 and 19 inch tires which have been standardized by ETRTO.

After reviewing the petition, the agency has decided to grant the petition and to issue this notice of proposed rulemaking to amend Standard No. 109. The agency tentatively concludes that it would be appropriate to adopt the requested amendments to Figure 1 in Standard No. 109 and make possible the testing of 18 and 19 inch standard tires and 19 inch T Type temporary tires. The standard currently does not specify the dimensions necessary to make it possible to test tires of these sizes. The agency believes that the proposal would facilitate the introduction of 18 and 19 inch tires.

Section 103(c) of the Vehicle Safety Act requires that each order shall take effect no sooner than 180 days from the date the order is issued unless "good cause" is shown that an earlier effective date is in the public interest. Since this amendment would facilitate the introduction of certain tires without imposing additional requirements on manufacturers and since the public interest would be served by not delaying the introduction of these alternative tire designs, the agency has determined that there is good cause to propose an effective date 30 days after publication of the final rule.

This proposed rule would not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has examined the impact of this rulemaking action and determined that it is neither major within the meaning of Executive Order 12291, nor significant within the meaning of the Department of Transportation's regulatory policies and procedures. NHTSA has found that its effect would be so minimal as not to warrant preparation of a full regulatory evaluation. NHTSA has evaluated this proposal and believes that it would impose no mandatory costs on manufacturers. This amendment would merely permit manufacturers to introduce tires of larger dimensions. For those manufacturers, the costs would be minimal. It would not have an impact on the economy in excess of $100 million. Similarly, it would not result in a major change in costs or prices for consumers, individuals, industries, government, or any geographic region. Nor would this action significantly affect competition.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that the proposed amendments would not have a significant economic impact on a substantial number of small entities. Accordingly, the agency has not prepared a preliminary regulatory flexibility analysis.

The agency believes that few, if any, tire manufacturers qualify as small businesses. Small businesses, small organizations and small governmental units would be affected by the proposed management amendment only to the extent that they purchase vehicles for which the tires in question are specifically designed.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

Executive Order 12612 (Federalism)

NHTSA has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612. The agency has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Request for Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTS will continue to file relevant information in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR Parts 571 would be amended as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.109 [Amended]

2. The table showing dimension "A" in figure 1 of § 571.109 would be revised to appear as follows:

Wheel size	Dimension "A" for tires with maximum inflation pressure	
	Other than 60 lbs/in²	60 lbs/in²
19	13.00	12.00
18	12.50	11.40
17	12.00	10.60
16	11.50	9.90
15	11.00	9.40
14	10.50	8.90
13	10.00	8.40
12	9.50	
11	9.00	
10	8.50	
320mm	8.50	
340mm	9.00	
345mm	9.25	
365mm	9.75	
370mm	10.00	
390mm	11.00	
415mm	11.50	
400mm(1)	10.25	
425mm(1)	10.75	
450mm(1)	11.25	
475mm(1)	11.75	
500mm(1)	12.25	

(1) for CT tires only

* * * * *

Issued on: September 9, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-22127 Filed 9-11-92; 8:45 am]

BILLING CODE 4510-59-M

Notices

Federal Register
Vol. 57, No. 178
Monday, September 14, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Human Nutrition Information Service

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Health

National Nutrition Monitoring Advisory Council: Meeting

SUMMARY: The National Nutrition Monitoring Advisory Council will hold its third meeting on September 24, 1992, 1 p.m. to 5 p.m. and September 25, 1992, 9 a.m. to 4 p.m. in the U.S. Department of Agriculture's Administration Building, room 107A, located at 14th Street and Independence Avenue, SW. Washington, DC 20250. The meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Alanna J. Moshfegh, Co-Executive Secretary to the Council from USDA, Human Nutrition Information Service, U.S. Department of Agriculture, 6505 Belcrest Road, room 366, Hyattsville, MD 20782, (301) 436–8457; or Linda Meyers, Ph.D., Co-Executive Secretary to the Council from HHS, Public Health Service, Office of Disease Prevention and Health Promotion, room 2132, Switzer Building, 330 C Street SW., Washington, DC 20201, (202) 205–9007.

SUPPLEMENTARY INFORMATION: The responsibilities of the National Nutrition Monitoring Advisory Council are to evaluate the scientific and technical quality of the ten-year comprehensive plan and the effectiveness of the coordinated National Nutrition Monitoring and Related Research Program and to provide guidance to the Secretaries of USDA and HHS. This Council is also required by Public Law 101–445 to prepare annual reports to the Secretaries of both USDA and HHS that include recommendations for improvement of the Program.

The Council meeting agenda will include nutrition monitoring presentations and in-depth discussion on two topics—monitoring high-risk population subgroups and food composition data. The Council will also discuss its annual report to the Secretaries. The public may file statements with the Council before or after the meeting by addressing them to either of the contact persons listed above.

Done at Washington, DC, this 3rd of September, 1992.

Sue Ann Ritchko,

Administrator, Human Nutrition Information Service, U.S. Department of Agriculture.

Dated: September 3, 1992.

James A. Harrell,

Deputy Director, Office of Disease Prevention and Health Promotion, Office of the Assistant Secretary for Health, U.S. Department of Health and Human Services.

[FR Doc. 92–22080 Filed 9–11–92; 8:45 am]

BILLING CODE 3410–KE–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 598]

Expansion of Foreign-Trade Zone 72 Indianapolis, IN

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u) (the Act), and the Foreign-Trade Zones Board Regulations (15 CFR part 400), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

Whereas, an application from the Indianapolis Airport Authority, Grantee of Foreign-Trade Zone No. 72, for authority to expand its general-purpose zone in Indianapolis, Indiana, within the Indianapolis Customs port of entry, was filed by the Board on August 7, 1991, and notice inviting public comment was given in the **Federal Register** on August 16, 1991 (Docket 45–91, 56 FR 40662);

Whereas, an examiners committee has investigated the application in accordance with the Board's regulations and recommends approval;

Whereas, the expansion is necessary to improve and expand zone services in the Indianapolis area; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied, and that approval subject to an activation limit is in the public interest;

Now, Therefore, the Board hereby orders:

That the Grantee is authorized to expand its zone in accordance with the application filed on August 7, 1991, subject to the Act and the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), including § 400.28, and subject to the further requirement that Board approval is required before the activated area may exceed 2,000 acres.

Signed at Washington, DC, this 2d day of September, 1992.

Rolf Th. Lundberg, Jr.,

Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92–22039 Filed 9–11–92; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[A–588–405]

Cellular Mobile Telephones and Subassemblies From Japan; Notice of Court of International Trade Decision

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of Court of International Trade Decision.

SUMMARY: On August 21, 1992, the United States Court of International Trade (CIT) ruled that Mitsubishi Electric Corporation (MELCO) RF power semiconductors are not within the scope of the antidumping duty order on cellular mobile telephones and subassemblies from Japan. If the CIT's opinion in this case is not appealed, or is affirmed on appeal, then the Department of commerce (the Department) will consider MELCO RF power semiconductors outside the scope of the order and instruct customs to liquidate the entries without regard to antidumping duties.

FOR FURTHER INFORMATION CONTACT: Cameron Cardozo or Maria MacKay, Office of Countervailing Compliance,

International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230, telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On November 26, 1990, the Department of initiated a scope inquiry to determine whether RF power semiconductors produced and imported by MELCO are covered under the scope of the antidumping duty order on cellular mobile telephones and subassemblies from Japan. The scope inquiry was conducted in the context of the fourth administrative review of the antidumping duty order covering the period December 1, 1988 through November 30, 1989.

On April 15, 1991, the Department determined that MELCO's RF power semiconductors were subassemblies within the scope of the antidumping duty order on cellular mobile telephones and subassemblies from Japan. See Notice of Scope Rulings, 56 FR 36,774 (August 1, 1991). As a result, in order to proceed with its antidumping duty administrative review, the Department required MELCO to answer a questionnaire regarding RF power semiconductors. On March 4, 1992, the Department published the final results of its administrative review (57 FR 7728) and determined that MELCO's dumping margin was *de minimis* for the review period.

On April 23, 1991, MELCO appealed the Department's scope ruling to the CIT. On August 21, 1992, the CIT overturned the Department's ruling and determined that MELCO's RF power semiconductors are not within the scope of the antidumping duty order on cellular mobile telephones and subassemblies from Japan. See *Mitsubishi Electric Corp. et. al.* v. *United States and Motorola, Inc.*, Court No. 91-04-00301, Slip Op. 92-138 (CIT August 21, 1992).

In its decision in *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990), the Court of Appeals for the Federal Circuit held that, pursuant to 19 U.S.C. section 1516a(e), the Department must publish a notice of a Court decision which is not "in harmony" with an International Trade Commission or Department determination and must suspend liquidation of entries pending a "conclusive" court decision. The Court of International Trade's decision of August 21, 1992 constitutes a decision not in harmony with a Department decision.

Absent an appeal, or, if appealed, upon a "conclusive" decision by the Court of Appeals for the Federal Circuit, affirming the CIT, the Department will consider MELCO RF power semiconductors outside the scope of the antidumping duty order on cellular mobile telephones and subassemblies from Japan and instruct Customs to liquidate the entries without regard to antidumping duties.

Dated: September 4, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-22040 Filed 9-11-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-559-802]

Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Singapore; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On May 29, 1991, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on industrial belts and components and parts thereof, whether cured or uncured, from Singapore (56 FR 24172). The review covers one manufacturer/exporter of the subject merchandise, Mitsuboshi Belting (Singapore) Pte., Ltd., and the period February 1, 1989 through May 31, 1990.

As a result of the review, the Department has determined to assess antidumping duties based on the best information available.

EFFECTIVE DATE: September 14, 1992.

FOR FURTHER INFORMATION CONTACT: Millie Mack or Jean C. Kemp, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-3793.

SUPPLEMENTARY INFORMATION:

Scope of the Review

The products covered by this review are shipments of industrial belts and components and parts thereof, whether cured or uncured, from Singapore. The covered merchandise consists of certain industrial V-belts used for power transmission. These include V-belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (*i.e.*, closed loops) belts, or in belting in lengths or links.

This review excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks.

During the review period, the merchandise was classifiable under Harmonized Tariff System (HTS) subheadings 3926.90.55, 4010.10.10, 4010.10.50, 5910.00.10, 5910.00.90, and 7326.20.00.

The HTS subheadings are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the shipments of one manufacturer/exporter of industrial belts from Singapore to the United States, Mitsuboshi Belting (Singapore) Pte., Ltd. (MBS), and the period February 1, 1989 through May 31, 1990.

Background

On July 26, 1990, in accordance with 19 CFR 353.22(c), the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order (54 FR 25315, June 14, 1989) on industrial belts and components and parts thereof from Singapore (55 FR 30490) for the period February 1, 1989 through May 31, 1990. On May 29, 1991, we published the preliminary results of this administrative review (56 FR 24172). We gave interested parties an opportunity to comment on our preliminary results, and we received comments and rebuttal comments from both petitioner and respondent. At the request of petitioner, Gates Rubber Company (Gates), we held a public hearing on July 25, 1991. The Department has now completed this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Gates' primary comment was that the home market was not viable. In the preliminary results, we found the Singapore home market to be viable, based on our determination that home market sales were greater than five percent, by value, of third-country sales other than U.S. sales. Gates pointed out that quantity is the appropriate basis for testing viability, not value, and that when viability was tested on a quantity basis, home market sales accounted for slightly less than five percent of total third-country sales.

The Department agreed with Gates, and determined that the home market was not viable. Therefore, on February

10, 1992, we requested third-country (Canadian) sales information.

Because MBS refused to provide the information requested, we used best information available (BIA). As BIA, we used the rate from the less-than-fair-value (LTFV) investigation, which was 31.73 percent.

Analysis of Comments Received

Due to the Department's determination that the home market was not viable, all comments filed in response to our preliminary results were rendered moot because they addressed either the completeness of the original response or aspects of our analysis based on use of home market sales. As a result of our decision to issue the third-country sales questionnaire, we received a comment from respondent and rebuttal comments from petitioner.

Comment: In its response to our request for Canadian sales information, MBS alleged that the Department's request for this information after the preliminary results were issued was not in accordance with the statute. Moreover, because MBS had informed the Department that it could not provide Canadian data when the Department previously requested it for certain models, MBS asserted that the Department's decision to request it at this stage of the review was devised to result in the use of BIA. Furthermore, MBS contended that the Department has only two "legal" courses of action—either use the home market information on the record or request constructed value (CV) information.

Department's Position: The purpose of issuing preliminary results is to allow parties to provide comments on our analysis. In this case, the necessity of the Canadian sales information was not evident until we received these comments. We requested this information in accordance with 19 CFR 353.31(b)(1), which provides that the Department may request any person to submit factual information at any time during a proceeding. We chose Canada as the basis of foreign market value (FMV) when the home market was found not to be viable. Contrary to respondent's allegation that our decision to request Canadian sales data was "devised" to result in our use of BIA, we were simply following section 773(a)(1)(B) of the Tariff Act and 19 CFR 353.48, which indicate a preference for the use of third-country sales over CV as the basis of FMV when the home market is not viable.

The Department could not use home market sales for the final results of review because the home market was not viable. The Department has discretion in the application of the five-percent viability guideline when the facts of a case warrant divergence from it. In this case, however, MBS did not provide any information that would compel the Department to deviate from the five-percent guideline.

Because MBS refused to provide the information requested, we used BIA, in accordance with section 776(c) of the Tariff Act, which requires the Department to use BIA "whenever a party or any other person refuses or is unable to produce information requested in a timely manner or in the form required, or otherwise significantly impedes an investigation."

Contrary to MBS's assertion, MBS's situation is not analogous to that disapproved in *Olympic Adhesives, Inc. v. United States*, 899 F.2d 1565 (Fed. Cir. 1990), in which the Federal Circuit Court held that the Department may not "characterize a party's failure to list and give details of sales as a 'refusal' or 'inability' to give an answer where, in fact, there are no sales." *Olympic Adhesives*, 899 F.2d at 1572.

In its response to our request for Canadian sales information, MBS stated that it could not provide the information due to changes in the computer and accounting systems at MBL–Canada, an affiliate of MBS, in January 1990. MBS stated that the data files containing the information are on the old computer system and cannot be accessed by the new system.

MBS first raised this issue in October 1990, when we requested Canadian sales information for certain belt models with no home market model matches. At that time, MBS explained that, in order to provide information on Canadian sales, it would have to retrieve and compile the data manually because the old and new computer systems were incompatible. Because this exercise would be very costly in time and resources, MBS suggested that the Department use CV for the unmatched sales. MBS found home market matches for all of the models sold in the United States, however, so the Canadian sales information was no longer needed by the Department.

MBS has never denied that the Canadian sales information exists, it states only that the data files are not accessible by MBL–Canada's new computer system. MBS indicated in October 1990 that it could compile the requested information manually. The respondent is not relieved of its obligation to furnish information the Department determines to be necessary merely because the respondent finds the Department's request burdensome. To allow such an exception would provide respondents with an incentive to deem it burdensome to compile unfavorable information, which would permit respondents to direct the results of reviews. If MBS needed more time to prepare its response, it could have requested an extension of time. However, in its response to our February 1992 request for Canadian sales information, MBS did not request an extension of time for the compilation of this data. Furthermore, MBS should reasonably have known that the data files would be necessary in administrative reviews, because in the LTFV investigation, the Singapore market was found not to be viable, and Canadian sales information was used to calculate FMV.

When a respondent refuses to cooperate with the Department, it is the Department's policy to use as BIA the higher of: (1) the highest of the rates found for any firm in the LTFV investigation or prior administrative reviews, or (2) the highest rate found in this review. Antifriction Bearings (other than Tapered Roller Bearings) and Parts thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom, Final Results of Antidumping Duty Administrative Reviews, 57 FR 28360, 28379, June 24, 1992. As BIA, we used the rate from the LTFV investigation, which was 31.73 percent.

Final Results of the Review

As BIA, we used the rate from the original investigation of sales at less-than-fair-value, which was 31.73 percent.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Because the final results for a period of review more recent than the review period covered by this notice have been issued, the dumping margin determined in this notice of final results of review will have no impact on the current cash deposit rate. The Customs Service shall continue to require a cash deposit for all merchandise produced or exported by MBS of estimated antidumping duties based on the final rate published for the company's most recent administrative review period. Normally, for any future entries of this merchandise from a new exporter not covered in this or in prior reviews, and who is unrelated to any previously reviewed firm, a cash deposit of estimated antidumping duties, equal to the highest non-BIA rate for any firm with shipments during the most recent

period for which a review has been completed, would be required. However, because the only firm in the only previous review received a BIA rate, and there is therefore no previous review in which a non-BIA rate was established, the "all other" rate will be the "all other" rate from the original investigation of sales at less-than-fair-value. This is the same "all other" rate as in the most recently completed review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

In addition, this notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.35(d). Failure to comply is a violation of the APO.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: September 4, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-22042 Filed 9-11-92; 8:45 am]

BILLING CODE 3510-DS-M

[C-307-702]

Certain Electrical Conductor Aluminum Redraw Rod From Venezuela; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On May 28, 1992, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on certain electrical conductor aluminum redraw rod from Venezuela (57 FR 22459; May 28, 1992). We have now completed that review and determine that there are no known entries during the period January 1, 1990 through December 31, 1990. However, because of a program-wide change, we are changing the rate of cash deposit of estimated countervailing duties to 0.50 percent *ad valorem*.

EFFECTIVE DATE: September 14, 1992.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Kelly Parkhill, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On May 28, 1992, the Department of Commerce (the Department) published in the **Federal Register** (57 FR 22459) the preliminary results of its administrative review of the countervailing duty order on certain electrical conductor aluminum redraw rod from Venezuela (53 FR 31904; August 22, 1988). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Review

Imports covered by this review are shipments of certain electrical conductor aluminum redraw rod (EC rod) from Venezuela, which is wrought rod of aluminum electrically conductive and containing not less than 99 percent of aluminum by weight. This merchandise is classifiable under item numbers 7604.10.3010, 7604.10.3050, 7604.29.3010, 7604.29.3050, 7605.11.0030, 7605.11.0090, 7605.19.0000, 7605.21.0030, 7605.21.0090 and 7605.29.0000 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1990 through December 31, 1990 and eight programs.

In its questionnaire response, the Government of Venezuela reported no shipments of the subject merchandise to the United States during the review period. We subsequently confirmed with the United States Customs Service that there were no known entries of this merchandise during the review period. Furthermore, at verification, we found no evidence of shipments of subject merchandise to the United States during the review period.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from SURAL, C.A., a respondent company, and the petitioner, Southwire Company.

Comment 1: Petitioner argues that the elimination of the Export Bond Program should not result in a reduction in the cash deposit rate because the subsidy provided by that program has been replaced by the partial duty drawback program. To support this claim, petitioner cites several publications which state that the partial duty drawback program was intended to compensate exporters for the loss of benefits provided by the Export Bond Program. Moreover, since the partial duty drawback owed is a fixed amount that can be calculated based on the FOB value of exports, the Department need not wait for payments to be made, in order to determine the existence and amount of benefits under the program. Petitioner claims that in Final Affirmative Countervailing Duty Determination and Countervailing Duty Order, Certain Steel Wire Nails From New Zealand, (Steel Wire Nails From New Zealand), (52 FR 37196; October 5, 1987) the Department determined that a duty can be assessed for a subsidy that has not yet been issued.

Respondent counters that there is no basis for petitioner's claim that the partial duty drawback program is a replacement for the export bond program. The press reports upon which this claim is based are not meaningful evidence to determine the rationale or nature of a government program. Furthermore, the partial duty drawback program cannot be found countervailable because no payments have yet been made under this program, and it is uncertain whether any payments will be made.

Department's Position: Although we found that redraw rod producers applied for benefits under the partial duty drawback program, the applications have yet to be processed. Furthermore, no payments to any exporter have been made to date under this program, which was established over one year ago. This is in contrast to the program cited by petitioner in Steel Wire Nails From New Zealand under which the companies investigated were actually claiming and receiving income tax credits. In this case, although applications have been made, no drawback certificates have been issued by the Venezuelan government through the Central Bank. Until this partial duty drawback program has been implemented by the Venezuelan government, it is inappropriate to make a determination on its countervailability. We will examine this program in future reviews and make a determination if and when

the government implements the program by issuing certificates.

Comment 2: Respondent claims that the Government of Venezuela does not provide preferential pricing of primary aluminum used to produce export goods. The pricing policy for primary aluminum is established by the Corporation Venezolana de Guayana (CVG) and is based on market prices. There is no difference in prices of primary aluminum used to produce domestic or export goods. Therefore, there can be no benefit from this program, and the Department should adjust the deposit rate accordingly.

Department's Position: We disagree. In the first administrative review of this countervailing duty order, the Department rejected identical arguments raised by respondent because, in Final Affirmative Countervailing Duty Determination; Certain Electrical Conductor Aluminum Redraw Rod from Venezuela (Final Determination) (53 FR 24763; June 30, 1988), the Department found that the pricing formula reported in the questionnaire response was not, in fact, used to determine the domestic price of primary aluminum. Moreover, the Department found that the price for primary aluminum incorporated in export products included certain discounts. (see, Certain Electrical Conductor Aluminum Redraw Rod From Venezuela; Final Results of Countervailing Duty Administrative Review, (56 FR 14232; April 8, 1991), Comment 2). Since there were no shipments of redraw rod to the United States during the current administrative review period as in the prior review period, we are unable to confirm on the basis of a revised pricing formula that preferential pricing of inputs has been eliminated. Furthermore, we have no basis for adjusting the cash deposit rate without having examined the application of the current pricing formula.

Comment 3: Respondent contends that the short-term FINEXPO financing program has undergone a significant program-wide change that the Department should recognize in this administrative review. As of November 22, 1990, the FINEXPO program provides bolivar-denominated loans tied to interest rates that are set at 90 percent of the average commercial lending rate charged by the six largest Venezuelan banks. Dollar-denominated loans are also provided on terms which tie the interest rate for one-half of the loan to the commercial bank's lending rate for international transactions and the other half of the loan to the six-month LIBOR rate plus one percent. Furthermore, the respondent argues that no Venezuelan producers or exporters of redraw rod used short-term FINEXPO financing during the review period.

Department's Position: We agree that there were program-wide changes in the short-term FINEXPO financing program during the 1990 review period. However, the new interest rates under the 1990 short-term FINEXPO financing are still preferential, and we have no basis to measure the change in the benefit from this program. Section 355.50 of the Department's proposed regulations (54 FR 23366; May 31, 1989) states that, in order to take into account a program-wide change in establishing the estimated countervailing duty cash deposit rate, a change needs to be measurable as well as program-wide. Furthermore, since there were no shipments of redraw rod to the United States during the current review period, the lack of use of this program during the review period does not provide a basis for assuming that it would not be used if shipments were resumed.

Comment 4: Respondent claims, as in prior reviews, that official changes in aluminum supplier policies require a penalty fee for any late payment. Furthermore, since the Department did not ask any further questions on this program during verification, the Department should acknowledge that this program has been completely terminated and adjust the cash deposit rate accordingly.

Department's Position: In Certain Electrical Conductor Aluminum Redraw Rod From Venezuela; Final Results of Countervailing Duty Administrative Review (56 FR 14232; April 8, 1991, Comment 3), we addressed a similar comment. Respondent has not provided any new arguments which convince us to change our position. Furthermore, since there was no shipments of redraw rod to the United States during the 1990 review period, we were unable to examine and determine at verification if late payment fees of redraw rod producers on shipments of the subject merchandise to the United States are consistent with commercial considerations or provide a benefit through preferential interest rates.

Final Results of Review

As a result of our review, we determine that there are no known entries of the subject merchandise exported to the United States from the period January 1, 1990 through December 31, 1990. After reviewing all of the comments received, we recommend changing the rate of cash deposit of estimated countervailing duties to 0.50 percent *ad valorem*.

Because of a program-wide change in the benefit from the Export Bond Program, the Department will instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 0.50 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results of administrative review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: September 2, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-22041 Filed 9-11-92; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Export Trade Certificate of Review, Application No. 92-00008.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to the International ExIm Corporation ("IEC"). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing title III are found at 15 CFR part 325 (1991) (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the grounds that the determination is erroneous.

Description of Certified Conduct

Export Trade

1. Products
All Products.
2. Services
All Services.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

1. With respect to the sale of Products and Services, IEC, subject to the terms and conditions listed below, may:

a. Export specific Products and/or Services in response to specific orders from Suppliers;

b. Enter into exclusive distributorship agreements with Suppliers for the export of Products and Services to the Export Markets; and

c. Enter into exclusive agreements to grant distributorships to foreign entities and oblige such entities not to deal in goods competing with those supplied by IEC.

2. IEC and individual Suppliers may regularly exchange information on a one-on-one basis regarding that Supplier's inventories and near-term production schedules in order that the availability of Products for export can be determined and effectively coordinated by IEC with its distributors in Export Markets.

Terms and Conditions of Certificate

1. In engaging in Export Trade Activities and Methods of Operation, IEC will not intentionally disclose, directly or indirectly, to any Supplier any information about any other Supplier's costs, production, capacity, inventories, domestic prices, domestic sales, or U.S. business plans, strategies, or methods that is not already generally available to the trade or public.

2. EIC will comply with requests made by the Secretary of Commerce on behalf of the Secretary of Commerce or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine whether the Export Trade, Export Trade Activities, and Methods of Operation of a person protected by this Certificate continue to comply with the standards of Section 303(a) of the Act.

Definition

"Supplier" means a person who produces, provides, or sells a Product or Service.

A copy of this certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: September 8, 1992.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 92-22137 Filed 9-11-92; 8:45 am]

BILLING CODE 3510-DR-M

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Amended Export Trade Certificate of Review, Application No. 92-A0001.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to the Aerospace Industries Association of America, Inc. ("AIA") on September 8, 1992. Notice of issuance of the Certificate was published in the **Federal Register** on April 17, 1992 (57 FR 13707).

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing title III are found at 15 CFR part 325 (1990) (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

AIA's Export Trade Certificate of Review has been amended to add the Sundstrand Corporation of Rockford, Illinois as a "Member" within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2(1)).

A copy of the amended Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: September 8, 1992.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 92-22138 Filed 9-11-92; 8:45 am]

BILLING CODE 3510-DR-M

Open Meeting

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of first meeting of the Latin America/Caribbean Business Promotion Council.

SUMMARY: The Caribbean Basin Business Promotion Council was re-established on May 3, 1991, and renamed the Latin America/Caribbean Business Promotion Council. The Council was re-established to advise the Secretary of Commerce and the Agency for International Development Administrator on matters pertinent to the implementation of the Caribbean Business Initiative (CBI), the Andean Trade Initiative (ATI), and the Enterprise for the Americas.

Time and Place: October 6, 1992 from 10 a.m. to 4:30 p.m. The meeting will take place at the Main Commerce Building, Room 6808, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Agenda:

1. Introductory presentations and administrative matters.
2. Briefings on CBI, ATI, Enterprise for the Americas and the North America Free Trade Agreement.
3. Discussion and formulation of Council work plan.
4. Other matters as appropriate.

Public Participation: The meeting will be open to public participation and the last thirty minutes will be set aside for oral comments and questions. Approximately fifteen seats will be available for the public. Seats will be available on a first come first-served basis. Please notify Margaret Almazan at 202/377-0841 of your intent to attend.

FOR FURTHER INFORMATION CONTACT: Margaret Almazan, Latin America/Caribbean Business Development Center, Main Commerce Building, Room 1235, Washington, DC 20230.

Dated: September 4, 1992.

Walter M. Bastian,

Director, Latin America/Caribbean Business Development Center.

[FR Doc. 92-22136 Filed 9-11-92; 8:45 am]

BILLING CODE 3510-DA-M

National Oceanic and Atmospheric Administration

Progress on Emergency Striped Bass Research Study

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public meeting.

SUMMARY: NMFS and the U.S. Fish and Wildlife Service will hold a joint meeting to discuss progress on the Emergency Striped Bass Research Study as authorized by the amended Anadromous Fish Conservation Act.

DATES: The meeting will convene on Thursday, November 5, 1992, at 10 a.m., and will adjourn at approximately 2 p.m. The meeting is open to the public.

ADDRESSES: Room 200, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: David G. Deuel, Office of Fisheries Conservation and Management, NMFS, 1335 East-West Highway, Silver Spring, MD 20910. Telephone: (301) 713-2347.

Authority: Pub. L. 96-118.

Dated: September 4, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-22063 Filed 9-11-92; 8:45 am]

BILLING CODE 3510-22-M

Mid-Atlantic Fishery Management Council Meeting; Correction

Correction Regarding Date for Public Meeting of the Demersal Species Committee (DSC) and the Summer Flounder Industry Advisors Subcommittee (SFIAS) and Public Meeting of the Surf Clam and Ocean Quahog Advisory Subcommittee

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The date for public meetings of the Mid-Atlantic Fishery Management Council's (Council's) DSC and the Council's SFIAS, originally published in the **Federal Register** at 57 FR 39670 on September 1, 1992, is corrected as noted below. The Council's Surf Clam and Ocean Quahog Industry Advisory Subcommittee will also convene a separate public meeting on September 14, 1992. All other information published on September 1, 1992, remains unchanged.

Public meeting date of the DSC and SFIAS as published at 57 FR 39670: September 16-17, 1992.

Corrected meeting date: September 15, 1992 (at 10 a.m.).

Public meeting of the Surf Clam and Ocean Quahog Industry Advisory Subcommittee: Convene September 14, 1992, at 10 a.m., at the Freer Federal Building, second floor conference room, 300 South New Street, Dover, DE, to review the proposed penalty schedule.

For more information, contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674-2331.

Dated: September 9, 1992.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-22186 Filed 9-10-92; 8:45 am]

BILLING CODE 3510-22-M

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of receipt of application for scientific research/enhancement permit (P211C).

Notice is hereby given that the Oregon Department of Fish & Wildlife, 2501 Southwest First Avenue, Portland, OR 97207, has applied in due form for a Permit to take an endangered species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) and the regulations governing endangered fish and wildlife permits (50 CFR part 217-222).

This application was received prior to the regulatory deadline of May 22, 1992 (50 CFR part 227), and has thus been subject to the regulatory exemption which allows for the continuation of scientific research/enhancement activities as requested in the applications until NMFS has had adequate time in which to review the applications and to determine their sufficiency, or until issuance or denial of a permit, or until December 31, 1992, whichever comes first. This application has now been determined to contain enough information for complete review, and thus a public comment period will be opened to determine whether this work, as requested in the application, should continue.

The applicant seeks authorization to conduct six research/enhancement projects on listed Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*), as follows:

(1) Sacrifice up to 600 juveniles for the purpose of gene resource monitoring (2) inadvertently harass up to 500 adults while conducting spawning ground surveys (redd counts) (3) capture, PIT tag and release up to 6000 juveniles for smolt migration studies (4) capture, examine for species identification and size class estimation, and release, up to 1000 juveniles for stream fish inventory and habitat surveys (5) trap and hold up to 5000 juveniles at irrigation streams and release them into the main body of water or transfer them downstream, in order to prevent them from entering irrigation ditches which eventually take these fish to their death in irrigated fields or pump impellers (6) potential harassment of up to 6000 adults during studies to monitor their movements with video equipment as they pass through electronic tunnels built into several dams along their migrational path.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7324, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Suite 7324, Silver Spring, MD 20910 (301/713-2289); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., Room 620, Portland, OR 97232 (503/230-5400).

Dated: September 8, 1992.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92-22068 Filed 9-11-92; 8:45 am]

BILLING CODE 3510-22-M

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of receipt of application for scientific research permit (P498).

Notice is hereby given that Dr. David Bennett, The Idaho Cooperative Fish & Wildlife Research Unit, University of Idaho, Moscow, Idaho, 83843, has applied in due form for a Permit to take endangered species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR part 217–222).

This application was received prior to the regulatory deadline of May 22, 1992 (50 CFR part 227), and has thus been subject to the regulatory exemption which allows for the continuation of scientific research/enhancement activities as requested in the applications until NMFS has had adequate time in which to review the applications and to determine their sufficiency, or until issuance or denial of a permit, or until December 31, 1992, whichever comes first. This application has now been determined to contain enough information for complete review, and thus a public comment period will be opened to determine whether this work, as requested in the application, should continue.

The applicant seeks authorization to conduct a study of abundance and habitat parameters of listed wild Snake River fall chinook salmon (*Oncorhynchus tshawytscha*). This work would entail the incidental capture of listed wild Snake River spring/summer chinook salmon (*O. tshawytscha*) and listed wild Snake River sockeye salmon (*O. nerka*), as follows:

The applicant proposes to capture each year over a five-year period, up to 750 fall and 125 spring/summer chinook salmon smolts and 50 sockeye salmon smolts in Lower Granite Reservoir, where they will be measured, PIT tagged and released near the collection site. Up to 15 adult listed spring/summer and 5 adult listed fall chinook salmon may also be taken incidental to the above captures. Additionally, up to 500 fall and 30 spring/summer chinook salmon smolts, and up to 15 sockeye salmon smolts would be captured, measured, PIT tagged and released in Little Goose, Lower Monumental and Ice Harbor reservoirs each year. Finally, the applicant proposes to obtain stomach samples by lavage from up to 150 of the above fall chinook salmon smolts each year.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Highway, room 7324, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, suite 7324, Silver Spring, MD 20910 (301/713–2289); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., room 620, Portland, OR 97232 (503/230–5400).

Dated: September 8, 1992.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92–22069 Filed 9–11–92; 8:45 am]

BILLING CODE 3510-22-M

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Receipt of Application for Permit (P45K).

Notice is hereby given that the NMFS Northwest Fisheries Science Center, 2725 Montlake Boulevard East, Seattle, WA 98112–2097, has applied in due form for a Permit to take endangered species for scientific research/enhancement purposes as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Part 217–222).

This application was received prior to the regulatory deadline of May 22, 1992 (50 CFR part 227), and has thus been subject to the regulatory exemption which allows for the continuation of scientific research/enhancement activities as requested in the applications until NMFS has had adequate time in which to review the applications and to determine their sufficiency, or until issuance or denial of a permit, or until December 31, 1992, whichever comes first. This application has now been determined to contain enough information for complete review, and thus a public comment period will be opened to determine whether this work, as requested in the application, should continue.

The applicant proposes to conduct the following activities on listed Snake River fall chinook salmon, as part of a spawning and rearing study: capture and release up to 64 juveniles, capture, PIT tag and release up to 540 fry, and capture, PIT tag and release up to 1365 juveniles. The applicant also requests authorization for the lethal taking of up to 66 juvenile listed Snake River spring/summer chinook salmon annually, over a five-year period, for smoltification and bacterial kidney disease (BKD) studies.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7324, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., suite 7324, Silver Spring, MD 20910 (301/713–2289); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., Room 620, Portland, OR 97232 (503/230–5400).

September 8, 1992.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92–22070 Filed 9–11–92; 8:45 am]

BILLING CODE 3510-22-M

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce

ACTION: Receipt of Application for Permit (P77#60).

Notice is hereby given that the NMFS Northwest Fisheries Science Center, 2725 Montlake Boulevard East, Seattle, WA 98112-2097, has applied in due form for a Permit to take endangered species for scientific research/enhancement purposes as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR parts 217-222).

This application was received prior to the regulatory deadline of May 22, 1992 (50 CFR part 227), and has thus been subject to the regulatory exemption which allows for the continuation of scientific research/enhancement activities as requested in the applications until NMFS has had adequate time in which to review the applications and to determine their sufficiency, or until issuance or denial of a permit, or until December 31, 1992, whichever comes first. This application has now been determined to contain enough information for complete review, and thus a public comment period will be opened to determine whether this work, as requested in the application, should continue.

The applicant currently holds half of the progeny of the listed wild Snake River sockeye salmon (*Onchorhynchus nerka*) that were bred by Idaho Department of Fish and Game (IDFG) personnel at Eagle Hatchery in 1991. It is requested that these progeny be maintained and tagged with coded-wire tags, PIT tags and/or freeze bands for identification of family for outcrossing purposes. In future years, up to 3,000 eggs per year, or one half the spawn, of returning Redfish Lake sockeye salmon (captured by IDFG under a separate Permit) may be transferred to NMFS and handled in the same manner. The applicant proposes to rear these fish to maturity and subsequently return spawn from this broodstock to Idaho to complement recovery efforts at Redfish Lake.

The applicant also requests to perform pathological examinations on any fish that die prior to spawning, in order to establish cause of death, and on up to 100 of the adults resulting from the captive broodstock, after spawning, in order to determine the disease status of their offspring.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 135 East-West Hwy., room 7324, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 135 East-West Hwy., suite 7324, Silver Spring, MD 20910 (301/713-2289); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., room 620, Portland, OR 97232 (503/230-5400).

Dated: September 8, 1992.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92-22072 Filed 9-11-92; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Receipt of Application for Permit (P420C).

SUMMARY: Notice is hereby given that Drs. J. Ward Testa and Michael A. Castellini, Institute of Marine Science, University of Alaska, Fairbanks, AK 99775-1080, have applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The research activities involve tag/release and take by harassment. The applicants request permission to: Tag with plastic cattle ear tags, TDRs and VHF transmitters, and satellite transmitters, implant a transponder tag subcutaneously just anterior to the tail; conduct physiological activities (i.e., collect blood samples, weigh animals, etc.); mark with bleach, and release up to 1200 Weddell seals (*Leptonychotes weddellii*); incidentally harass up to 2000 Weddell seals; and capture, tag with plastic cattle ear tags and release 30 each of crabeater seal (*Lobodon carcinophagus*), leopard seal (*Hydrurga leptonyx*), Ross seal (*Ommatophoca rossii*), southern elephant seal (*Mirounga leonina*), and Antarctic fur seal (*Arctocephalus gazella*). Blood samples and the salvage and import of any parts from natural fatalities of the six (6) species will be imported.

ADDRESS: Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7234, Silver Spring, Maryland 20910, within 30 days of the publication of this notice.

Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review, by appointment, in the:

Permits Division, Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., suite 7324, Silver Spring, Maryland 20910 (301/713-2289);

Director, Alaska Region, National Marine Fisheries Service, NOAA, Federal Annex, 9109 Mendenhall Mall Road, suite 6, Juneau, AK 99802 (907/586-7221); and

Director, National Marine Mammal Laboratory, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE BIN C15700, Seattle, WA 98115 (206/526-4020).

Dated: September 4, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-22071 Filed 9-11-92; 8:45 am]

BILLING CODE 3510-22-M

National Telecommunications and Information Administration

National Endowment for Children's Educational Television, Advisory Council on Children's Educational Television; Open Meeting

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice is hereby given of the first meeting of the Advisory Council on Children's Educational Television, created pursuant to the National Endowment for Children's Television Act of 1990.

SUMMARY: Congress established the National Endowment for Children's Educational Television under the direction of the Secretary of Commerce. Authority to administer this program is further delegated to the National Telecommunications and Information Administration. Congress mandated creation of the Advisory Council to advise on the making of contracts and grants to aid creation and production of television programming specifically directed toward the development of fundamental intellectual skills.

Authority: Public Law 101-437, 104 Stat. 997, approved October 18, 1990, codified at 47 U.S.C. 394.

DATES: The meeting will be held on Tuesday, September 29, 1992, from 9:30 a.m. to 4:30 p.m.

ADDRESSES: The meeting will take place in room 4830 of the Herbert C. Hoover Commerce Building, 14th Street and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Dr. Heather Birnie; Acting Director, National Endowment for Children's Educational Television (NECET); National Telecommunications and Information Administration (NTIA); U.S. Department of Commerce, room 4625; 14th Street and Constitution Avenue NW.; Washington, DC 20230. Telephone: 202/377-5802.

SUPPLEMENTARY INFORMATION: The Council was chartered on September 13, 1991 pursuant to 47 U.S.C. 394 to advise the Secretary of Commerce on matters related to the making of contracts and grants that would enhance the education of children through the creation and production of television programming specifically directed toward the development of fundamental intellectual skills.

Agenda

1. Opening Introductions and Remarks by participants from the National Telecommunications and Information Administration, and the National Endowment for Children's Educational Television
2. Review of the Role of the Advisory Council on Children's Educational Television to advise on the making of contracts and grants to aid the creation and production of children's educational programming
3. Discussion and Recommendations on Issues
   a. Role of the Endowment and the extent of its involvement in children's television research
   b. Types of projects, such as research, scripting and production of programs to consider for funding
   c. Number of possible projects that the Endowment could consider for funding
   d. Age groups that may be considered most underserved by children's television
   e. Subject matter areas related to children's television that could be considered as areas for possible funding
4. Future Meeting Dates and Agenda Items
5. Other Items for Discussion

Public Participation: The meeting will be open to the public, with limited seating available on a first-come, first-served basis.

Gregory F. Chapados,

Assistant Secretary for Communications and Information.

[FR Doc. 92-22135 Filed 9-11-92; 8:45 am]

BILLING CODE 3510-60-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

September 4, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: September 14, 1992.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 57 FR 21232, published on May 19, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Memorandum of Understanding dated May 14, 1992, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 4, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on May 14, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on September 14, 1992, you are directed to amend the directive dated May 14, 1992 to increase the limits for the following categories, as provided under the terms of the Memorandum of Understanding dated May 14, 1992 between the Governments of the United States and the Dominican Republic:

Category	Adjusted twelve-month limit [1]
338/638	576,497 dozen.
339/639	625,974 dozen.
340/640	585,560 dozen.
342/642	441,348 dozen.
347/348/647/648	1,559,831 dozen of which not more than 1,115,126 dozen shall be in Categories 347/348 and not more than 1,030,153 dozen shall be in Categories 647/648.
351/651	686,165 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1991.

The Committee for the Implementation of Textile Agreements has determined that

these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-22008 Filed 9-11-92; 8:45 am]

BILLING CODE 3510-DR-F

Establishment, Amendment and Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Malaysia

September 8, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing, amending and adjusting limits.

EFFECTIVE DATE: September 15, 1992.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6712. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a Memorandum of Understanding (MOU) dated August 26, 1992, the Governments of the United States and Malaysia agreed to extend their current bilateral agreement through December 31, 1994.

Also, the two governments agreed to establish a limit for Categories 350/650, a sublimit for Categories 347-W/348-W, and to increase the limit for Categories 647/648 and sublimits for Categories 647-K and 648-K for the period beginning on January 1, 1992 and extending through December 31, 1992. The current limits for certain other categories are being amended and adjusted, variously, for special carryforward, carryforward and swing.

All shipments of products in Categories 347-W/348-W shall continue to require a 347/348 visa until further notice.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 56 FR 58369, published on November 19, 1991; and 57 FR 28656, published on June 26, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 8, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 13, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Malaysia and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Also, this directive amends, but does not cancel, the directive dated June 22, 1992, concerning cotton and man-made fiber textile products, produced or manufactured in Malaysia and exported during the period June 26, 1992 and extending through December 31, 1992.

Effective on September 15, 1992, you are directed to amend the restraint period for Categories 350/650 to begin on January 1, 1992 and extend through December 31, 1992. Categories 350 and 650 shall be removed from Group II. Import charges already made to Categories 350 and 650 shall be applied at the Category 350 and Category 650 level to merged Categories 350/650 for the period January 1, 1992 through December 31, 1992. Categories 350/650 shall not be subject to a group limit.

You are directed to apply the import charges for woven cotton trousers within the current limit for Categories 347/348 to the newly established sublimit for Categories 347-W/348-W.

Further, you are directed to establish, amend and adjust the limits for the following categories, according to the terms of the Memorandum of Understanding (MOU) dated August 26, 1992 between the Governments of the United States and Malaysia:

Category	Adjusted twelve-month limit [1]
Sublevel within the fabric group	
613/614/615/617	25,543,204 square meters.
Other specific limits	
300/301	1,050,246 kilograms.
338/339	862,827 dozen.
347/348	453,367 dozen of which not more than 395,682 dozen shall be in Categories 347-W/348-W [2].
350/650	105,000 dozen.
351/651	200,533 dozen.
634/635	629,738 dozen of which not more than 274,804 dozen shall be in Category 635.
638/639	367,177 dozen.
647/648	1,266,328 dozen of which not more than 844,219 dozen shall be in Category 647-K [3] and not more than 844,219 shall be in Category 648-K [4].

[1] The limits have not been adjusted to account for any imports exported after December 31, 1991.

[2] Category 347-W: only HTS numbers 6203.19.1020, 6203.19.4020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.3020, 6210.40.2035, 6211.20.1520, 6211.20.3010 and 6211.32.0040; Category 348-W: only HTS numbers 6204.12.0030, 6204.19.3030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065, 6204.69.3010, 6204.69.9010, 6210.50.2035, 6211.20.1550, 6211.20.6010, 6211.42.0030 and 6217.90.0050.

[3] Category 647-K: only HTS numbers 6103.23.0040, 6103.23.0045, 6103.29.1020, 6103.29.1030, 6103.43.1520, 6103.43.1540, 6103.43.1550, 6103.43.1570, 6103.49.1020, 6103.49.1060, 6103.49.3014, 6112.12.0050, 6112.19.1050, 6112.20.1060 and 6113.00.0044.

[4] Category 648-K: only HTS numbers 6104.23.0032, 6104.23.0034, 6104.29.1030, 6104.29.1040, 6104.29.2038, 6104.63.2010, 6104.63.2025, 6104.63.2030, 6104.63.2060, 6104.69.2030, 6104.69.2060, 6104.69.3026, 6112.12.0060, 6112.19.1060, 6112.20.1070, 6113.00.0052 and 6117.90.0046.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-22109 Filed 9-11-92; 8:45 am]

BILLING CODE 3510-DR-F

Establishment of an Import Restraint Limit for Certain Cotton Textile Products Produced or Manufactured in Myanmar

September 4, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: September 14, 1992.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Under the terms of Section 204 of the Agricultural Act of 1956, as amended, the Government of the United States has decided to establish a restraint limit for cotton trousers, breeches and shorts in Categories 347/348, produced or manufactured in Myanmar and exported during the twelve-month period which began on September 1, 1992 and extends through August 31, 1993 at a level of 131,659 dozen.

A summary market statement concerning Categories 347/348 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 347/348 or to comment on domestic production or availability of products included in Categories 347/348, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991).

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—Myanmar

Category 347/348—Men's and Boys' Cotton Trousers, Slacks and Shorts

August 1992

Import Situation and Conclusion

U.S. imports of cotton trousers, slacks, and shorts, Category 347/348, from Myanmar surged to 135,714 dozen in the year ending in June 1992, almost double the 69,348 dozen imported during the year ending June 1991. During the first six months of 1992, imports of Category 347/348 from Myanmar reached 92,150 dozen, more than double the 41,844 dozen imported in January-June 1991, and 8 percent greater than Myanmar's total calendar year 1991 imports.

The sharp and substantial increase in Category 347/348 imports from Myanmar is causing disruption in the U.S. market for cotton trousers, slacks, and shorts.

U.S. Production, Import Penetration, and Market Share

U.S. production of cotton trousers, slacks, and shorts, Category 347/348, declined from 48,816,000 dozen in 1987 to 45,499,000 dozen in 1991, a decline of 7 percent. U.S. imports of cotton trousers, slacks, and shorts, Category 347/348, increased from 29,132,000 dozen in 1987 to 39,448,000 dozen in 1991, an increase of 35 percent. Category 347/348 imports continue to increase in 1992, up 47 percent in the first six months of 1992 over the January-June 1991 level. The ratio of imports to domestic production increased from 60 percent in 1987 to 87 percent in 1991. The domestic manufacturers' share of the U.S. cotton trousers market fell from 63 percent in 1987 to 54 percent in 1991, a decline of 9 percentage points.

Duty-Paid Value and U.S. Producers' Price

Approximately 89 percent of Category 347/348 imports from Myanmar during the year ending June 1992 entered under HTSUSA numbers 6203.42.4050—men's woven cotton shorts; 6204.62.4020—women's cotton trousers other than of corduroy and denim and 6204.62.4055—women's cotton woven shorts. These trousers and shorts entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable garments.

Committee for the Implementation of Textile Agreements

September 4, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on September 14, 1992, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Categories 347/348, produced or manufactured in Myanmar and exported during the period beginning on September 1, 1992 and extending through August 31, 1993, in excess of 131,659 dozen. [1]

Textile products in Categories 347/348 which have been exported to the United States prior to September 1, 1992 shall not be subject to the limit established in this directive.

Textile products in Categories 347/348 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92–22006 Filed 9–11–92; 8:45 am]

BILLING CODE 3510-DR-F

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in the Philippines

September 8, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 8, 1992.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6713. For information on

[1] The limit has not been adjusted to account for any imports exported after August 31, 1992.

embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing, special shift, carryover and carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 57 FR 2712, published on January 23, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 8, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 14, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on September 8, 1992., you are directed to amend further the directive dated January 14, 1992 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the Philippines:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
239	8,186,373 kilograms.
331/631	3,409,977 dozen pairs.
333/334	206,947 dozen.
335	134,702 dozen.
336	425,721 dozen.
338/339	1,619,253 dozen.
340/640	913,933 dozen of which not more than 502,663 dozen shall be in Categories 340–Y/640–Y [2].
341/641	665,283 dozen.
342/642	408,851 dozen.
345	126,262 dozen.
347/348	1,605,872 dozen.
350	59,705 dozen.
351/651	469,718 dozen.
352/652	1,718,281 dozen.
359–C/659–C [3]	564,000 kilograms.
361	1,411,920 numbers.
369–S [4]	180,144 kilograms.
431	176,744 dozen pairs.
433	3,699 dozen.
443	44,735 numbers.
445/446	28,742 dozen.
447	7,992 dozen.
611	4,237,285 square meters.
633	26,948 dozen.
636	1,199,745 dozen.
638/639	1,863,415 dozen.
643	549,899 numbers.
645/646	499,060 dozen.
647/648	754,398 dozen.
649	4,575,873 dozen.
650	77,094 dozen.
659–H [5]	1,110,095 kilograms.
847	579,346 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1991.

[2] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[3] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[4] Category 369–S: only HTS number 6307.10.2005.

[5] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92–22108 Filed 9–11–92; 8:45 am]

BILLING CODE 3510–DR–F

Request for Public Comments on Bilateral Textile Consultations with the Government of Bangladesh on Certain Cotton and Man-Made Fiber Textile Products

September 4, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on categories for which consultations have been requested, call (202) 377–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On August 31, 1992, under the terms of Article 3 of the Arrangement Regarding International Trade in Textiles, done at Geneva on December 20, 1973, as further extended on July 31, 1986, the Government of the United States requested consultations with the Government of Bangladesh with respect to cotton and man-made fiber robes and dressing gowns in Categories 350/650, produced or manufactured in Bangladesh.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of Bangladesh, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 350/650, produced or manufactured in Bangladesh and exported during the twelve-month period which began on August 31, 1992 and extends through August 30, 1993, at a level of not less than 87,280 dozen.

A summary market statement concerning Categories 350/650 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 350/650, or to comment on domestic production or availability of products included in Categories 350/650, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of Bangladesh.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the

Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Categories 350/650. Should such a solution be reached in consultations with the Government of Bangladesh, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991).

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—Bangladesh

Category 350/650—Cotton and Man-Made Fiber Robes and Dressing Gowns

August 1992

Import Situation and Conclusion

U.S. imports of cotton and man-made fiber robes and dressing gowns, Category 350/650, from Bangladesh reached 85,733 dozen in year ending June 1992, more than double the 38,199 dozen imported in the year ending June 1991. During the first six months of 1992, Category 350/650 imports from Bangladesh reached 58,536 dozen, almost two and one-half times the January-June 1991 level, and 15 percent greater than Bangladesh's total calendar year 1991 imports. Bangladesh became the sixth largest supplier of cotton and man-made fiber robes and dressing gowns, Category 350/650, to the U.S., accounting for 6.5 percent of total U.S. Category 350/650 imports in the first half of 1992. In 1991, Bangladesh ranked fourteenth among the major suppliers, accounting for 2.6 percent of total U.S. imports.

The sharp and substantial increase in Category 350/650 imports from Bangladesh is causing disruption in the U.S. market for cotton and man-made fiber robes and dressing gowns.

U.S. Production, Import Penetration, and Market Share

U.S. production of cotton and man-made fiber robes and dressing gowns, Category 350/650, declined from 3,335,000 dozen in 1987 to 1,599,000 dozen in 1991, a 53 percent decline. In contrast, U.S. imports of cotton and man-made fiber robes and dressing gowns Category 350/650, increased from 1,342,000 dozen in 1987 to 1,983,000 dozen in 1991, an increase of 48 percent. Category 350/650 imports continued to increase in 1992, up 6 percent in the first six months of 1992 over the January-June 1991 level. The ratio of imports to production tripled, increasing from 40 percent in 1987 to 124 percent in 1991. The domestic manufacturers' share of the U.S. market fell from 72 percent in 1987 to 45 percent in 1991, a decline of 27 percentage points.

Duty-Paid Value and U.S. Producers' Price

Approximately 85 percent of Category 350/650 imports from Bangladesh during the year ending June 1992 entered the U.S. under HTSUSA number 6208.91.1010—women's cotton bathrobes and dressing gowns. These bathrobes and dressing gowns entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable bathrobes and dressing gowns.

[FR Doc. 92-22007 Filed 9-11-92; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF EDUCATION

[CFDA No. 84.087]

Indian Fellowship Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1993

Purpose of Program: To provide fellowships to enable Indian students to pursue a course of study leading to a postbaccalaureate degree in medicine, psychology, law, education, clinical psychology, or a related field, or to pursue an undergraduate or postbaccalaureate degree in business administration, engineering, natural resources, or a related field.

Eligibility Requirements: An applicant must be an American Indian or an Alaska Native, U.S. citizen, and a full-time degree candidate at an accredited institution of higher education. In addition, an applicant must not have obtained a terminal postbaccalaureate degree.

Deadline for Submitting Applications: January 22, 1993.

Applications Available: November 17, 1992.

Available Funds: Approximately $690,000.

Estimated Range of Awards: $2,500–$39,300.

Estimated Average Size of Awards: $14,600

Estimated Number of New Awards: 47.

Project Period: The Secretary awards a fellowship for a period of time set by the school as standard for the allowable field of study, or for a period of time up to 2 academic years for a masters degree and up to 4 academic years for an undergraduate or doctorate degree.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 263.

Supplementary Information: The Secretary expects to set the maximum for stipends at $750 per month and the maximum allowance for dependent care at $110 per month for each dependent.

This program supports AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals. Specifically, National Education Goal 5 calls for adult Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

For Applications or Information Contact: Office of Indian Education, U.S. Department of Education, 400 Maryland Avenue SW., room 2177, FOB-6, Washington, DC 20202-6335. Telephone: (202) 401-1890. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 25 U.S.C. 2623.

Dated: September 4, 1992.

Daniel F. Bonner,

Acting Assistant Secretary, Elementary and Secondary Education.

[FR Doc. 92-22284 Filed 9-11-92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Determination of Noncompetitive Financial Assistance; Great Lakes Governors Council

AGENCY: Department of Energy (DOE).

ACTION: Notice.

SUMMARY: DOE announces that pursuant to 10 CFR 600.7(b)(2)(i) it intends to renew on a noncompetitive basis a grant to the Council of Great

Lakes Governors (CGLG) to organize and carry out a Regional Biomass Program in the Great Lakes Area of the Northern Tier States. The renewal award is to be in the amount of $760,000 to continue the project for a year. The primary purpose is to implement biomass research and development, technology utilization, and technology transfer on a regional basis in a manner which will maximize the participation of the public and private sectors of each state. CGLG has the unique capability to equally represent all of the states in the Great Lakes subregion and involve the appropriate private and public interest groups in the states. CGLG is an existing, regionally organized consortium with background experience in management of similar activities. Eligibility for this award is, therefore, restricted to CGLG.

FOR FURTHER INFORMATION CONTACT: Mary Harris, ER-11, Energy Programs Division, U.S. Department of Energy, Oak Ridge, Tennessee 37831-6269, (615) 576-4507.

Issued in Oak Ridge, Tennessee on September 3, 1992.

Peter D. Dayton,

Director, Procurement & Contracts Division, Field Office, Oak Ridge.

[FR Doc. 92-22132 Filed 9-11-92; 8:45 am]

BILLING CODE 6450-01-M

Determination of Noncompetitive Financial Assistance; Northeastern Governors Coalition

AGENCY: Department of Energy (DOE).

ACTION: Notice.

SUMMARY: DOE announces that pursuant to 10 CFR 600.7(b)(2)(i) it intends to renew on a noncompetitive basis a grant to the Coalition of Northeastern Governors (CONEG) to organize and carry out a Regional Biomass Program in the Northeast Area of the Northern Tier States. The renewal award is to be in the amount of $785,000 to continue the project for a year. The primary purpose is to implement biomass research and development, technology utilization, and technology transfer on a regional basis in a manner which will maximize the participation of the public and private sectors of each state. CONEG has the unique capability to equally represent all of the states in the Northeast subregion and involve the appropriate private and public interest groups in the states. CONEG is an existing, regionally organized consortium with background experience in management of similar activities. Eligibility for this award is, therefore, restricted to CONEG.

FOR FURTHER INFORMATION CONTACT: Mary Harris, ER-11, Energy Programs Division, U.S. Department of Energy, Oak Ridge, Tennessee 37831-6269, (615) 576-4507.

Issued in Oak Ridge, Tennessee on September 3, 1992.

Peter D. Dayton,

Director, Procurement & Contracts Division, Field Office, Oak Ridge.

[FR Doc. 92-22133 Filed 9-11-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER92-563-000 et al.]

Commonwealth Edison Company, et al.; Electric rate, Small power production, and Interlocking Directorate filings

Take notice that the following filings have been made with the Commission:

1. Commonwealth Edison Co.

[Docket No. ER92-563-000]

September 3, 1992.

Take notice that on August 18, 1992, Commonwealth Edison Company (Commonwealth Edison) tendered for filing a letter renewing its request for waiver to permit Amendment No. 17 to become effective June 3, 1992.

Comment date: September 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. The United Illuminating Co.

[Docket No. ER92-799-000]

September 3, 1992.

Take notice that on August 27, 1992, The United Illuminating Company (UI) tendered for filing a rate schedule for a short-term, coordination transaction involving the sale of capacity entitlements to Massachusetts Municipal Wholesale Electric Company (MMWEC). The rate schedule corresponds to a letter agreement, dated August 21, 1992, between UI an MMWEC. The commencement date for service under the agreement is November 1, 1992. UI proposes that the rate schedule commence on this date.

The service schedule provided under the agreement is the provision of capacity entitlements and associated energy from UI's New Haven Harbor Station.

Copies of the filing were mailed to MMWEC.

Comment date: September 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. The United Illuminating Company

[Docket No. ER92-798-000]

September 3, 1992.

Take notice that on August 27, 1992, The United Illuminating Company (UI) tendered for filing a rate schedule for a short-term, coordination transaction involving the sale of capacity entitlements to Bangor Hydro-Electric Company (BHE). The rate schedule corresponds to a letter agreement, dated August 20, 1992, between UI an BHE. The commencement date for service under the agreement is November 1, 1992. UI proposes that the rate schedule commence on this date.

The service schedule provided under the agreement is the provision of capacity entitlements and associated energy from UI's New Haven Harbor Station.

Copies of the filing were mailed to BHE.

Comment date: September 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Entergy Services, Inc.

[Docket No. ER91-569-002]

September 3, 1992.

Take notice that Entergy Services, Inc. (ESI), as agent for Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light, and New Orleans Public Service Inc. on August 24, 1992, tendered for filing revisions to its compliance filing in Docket No. ER91-569-000, which was filed on June 1, 1992. ESI's compliance filing includes a system-wide Transmission Service Tariff (Tariff). Pursuant to the order of the Commission in Docket No. ER91-4569-001 dated August 7, 1992, ESI has filed revisions to its Tariff to clarify (1) notice requirements concerning third party impacts and (2) procedures concerning recovery of stranded investment costs.

Comment date: September 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. Iowa-Illinois Gas and Electric

[Docket No. ER92-791-000]

September 3, 1992.

Take notice that on August 21, 1992, Iowa-Illinois Gas and Electric Company (Iowa-Illinois), Davenport, Iowa, filed a Notice of Termination of Facilities Schedule No. 1 to the Facilities Agreement dated October 29, 1973 between Iowa-Illinois and Corn Belt Power Cooperative (Corn Belt), Humboldt, Iowa. Facilities Schedule No. 1 is designated as Supplement No. 1 to Iowa-Illinois' Rate Schedule FPC No. 35. Iowa-Illinois states that the Facilities

Schedule No. 1 is being terminated by mutual agreement of Iowa-Illinois and Corn Belt pursuant to an amendment entered into on June 8, 1992 to Facilities Schedule No. 1.

Iowa-Illinois states that it has built and rearranged its transmission and distribution facilities for service to its customers heretofore served under Facilities Schedule No. 1 such that interconnection with Corn Belt under Facilities Schedule No. 1 is no longer needed. In addition, Iowa-Illinois states that an ice storm on October 31, 1991 caused substantial damage and physical disconnection of the interconnection provided by Facilities Schedule No. 1 as well as substantial damage to Iowa-Illinois' transmission line serving the interconnection.

It is further stated that the termination of Facilities Schedule No. 1 does not affect either the Facilities Agreement of October 29, 1973, nor does it affect other Facilities Schedules entered into by Iowa-Illinois and Corn Belt under the Facilities Agreement. Iowa-Illinois also states that no person other than Iowa-Illinois and Corn Belt will be affected by the termination.

Iowa-Illinois proposes to make the termination effective retroactively on October 31, 1991 and requests the Commission to waive the sixty (60) day notice requirement of 18 CFR 35.15 based on the circumstances stated for the termination.

Comment date: September 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. Commonwealth Edison Co.

[Docket No. ER92-409-000]

September 3, 1992.

On March 26, 1992, Commonwealth Edison Company (Edison) tendered for filing Amendment No. 2, dated October 21, 1991, to the Electric Coordination Agreement (ECA), dated December 31, 1988, between Edison and the Village of Winnetka, Illinois (Village). Take notice that on August 26, 1992, Edison filed addition information regarding Amendment No. 2 in response to an informal request from the Commission's Staff.

Copies of this filing were served upon the Village and the Illinois Commerce Commission.

Comment date: September 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Fitchburg Gas and Electric Light Co.

[Docket No. ER92-790-000]

September 3, 1992.

Take notice that on August 20, 1992, Fitchburg Gas and Electric Light Company (Fitchburg) tendered for filing with the Commission a Transmission Service Agreement (Agreement) between Fitchburg and KES FITCHBURG, L.P. (KES). Under the Agreement, Fitchburg will wheel certain amounts of capacity for KES over its transmission system. KES and Fitchburg have agreed to all of the terms and conditions of the Agreement, including the transmission service charge.

Fitchburg requests that the Agreement be made effective as of September 1, 1992, and accordingly, requests waiver of the Commission's notice requirements for good cause shown. Fitchburg further states that copies of the filing were served on KES and the appropriate state commission.

Comment date: September 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. Central Vermont Public Service Corp.

[Docket No. ER92-807-000]

September 4, 1992.

Take notice that Central Vermont Public Service Corporation (Central Vermont) on August 31, 1992 tendered for filing 54 Service Agreements which provide for service pursuant to Central Vermont's FERC Electric Tariff No. 5.

To the extent necessary to allow for the sale of power pursuant to the Service Agreements commencing October 31, 1992, Central Vermont requests that the Commission waive its notice requirements. In support of its requests Central Vermont states that the winter power period commences November 1, 1992. Allowing the Service Agreements to become effective as provided will enable the Company and its customers to achieve mutual benefits by allowing the sale and purchase for the upcoming winter power period.

Comment date: September 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. Pennsylvania Power & Light Co.

[Docket No. ER92-793-000]

September 4, 1992.

Take notice that Pennsylvania Power & Light Company (PP&L) on August 25, 1992, tendered for filing an executed Transmission Service Agreement dated as of January 28, 1992 (Agreement), between PP&L and Northampton Generating Company, L.P. (NGC). The Agreement sets forth the terms and conditions under which the Company will transmit electric output from NGC's proposed cogeneration facility to be located in the Borough of Northampton, Northampton County, Pennsylvania to the Metropolitan Edison Company (Met Ed).

The agreement provides for a charge of $.86 per KW per month, PP&L's standard wheeling rate for service at 138 kV. These charges were developed utilizing Period II 1991 data from PP&L's wholesale rate filing at *Pennsylvania Power & Light Co.*, Docket No. ER91-322-000. A Settlement Agreement filed September 4, 1991 in that docket was approved by the Commission by letter order dated December 3, 1991.

PP&L states that a copy of its filing was served on NGC and the Pennsylvania Public Utility Commission.

Comment date: September 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. Minnesota Power & Light Co.

[Docket No. ER92-805-000]

September 4, 1992.

Take notice that on August 28, 1992, Minnesota Power & Light Company (Minnesota Power) tendered for filing a Notice of Cancellation for replacement capacity and energy service to Wisconsin Public Power, Inc. SYSTEM (WPPI) under the Boswell 4 Operation, Ownership and Power Sales Agreement, Rate Schedule FERC No. 158, in accordance with Amendment No. 1 to that Agreement.

Minnesota Power requests an effective date of September 1, 1992, and requests waiver of the notice provisions of Section 35.15 of the Commission's regulations.

Copies of this filing have been served on WPPI, the Minnesota Public Utilities Commission and the Wisconsin Public Service Commission.

Comment date: September 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

11. The Montana Power Co.

[Docket No. ER92-808-000]

September 4, 1992.

Take notice that on August 31, 1992, The Montana Power Company (Montana) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 a Form of Service Agreement signed by Bonneville Power Administration under FERC Electric Tariff, 2nd Revised Volume No. 1 (M-1 Tariff), as well as a revised Index of Purchasers under said Tariff. Montana requests that the Commission (a) accept the Form of Service Agreement for filing, to be effective September 8, 1992; and (b) grant a waiver of notice pursuant to 18 CFR 35.11, so as to allow the filing of the Agreement less than 60 days prior to the date on which service under the Agreement is to commence.

A copy of the filing was served upon Bonneville Power Administration.

Comment date: September 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

12. Green Mountain Power Corp.

[Docket No. ER92-803-000]

September 4, 1992.

Take notice that on August 28, 1992, Green Mountain Power Corporation (GMP) tendered for filing a Sales Agreement between GMP and the Village of Ludlow, Vermont (Ludlow). In this Agreement, GMP will sell and Ludlow will purchase varying amounts of unit peaking capacity and associated energy from designated peaking units and firm capacity and energy from GMP's system.

Comment date: September 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

13. Portland General Electric Co.

[Docket No. ER92-800-000]

September 4, 1992.

Take notice that Portland General Electric Company (PGE), on August 27, 1992, tendered for filing its Average System Cost (ASC) as calculated by PGE and determined by the Bonneville Power Administration under the revised ASC Methodology. This filing includes the revised Appendix 1 to the Residential Purchase and Sale Agreement.

The Bonneville Power Administration determined the ASC rate for PGE to be 34.91 mills/kWh, effective January 1, 1992. PGE does not dispute the determination.

Copies of the filing have been served on the persons named in the transmittal letter as included in the filing.

Comment date: September 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

14. Allegheny Power Service Corp. on Behalf of West Penn Power Co. Monongahela Power Co. and Duquesne Light Co.

[Docket No. ER92-801-000]

September 4, 1992.

Take notice that on August 27, 1992, West Penn Power Company (West Penn), Monongahela Power Company (Monongahela), and Duquesne Light Company (Duquesne), filed a Rate Schedule Supplement to the Transmission Agreement dated March 15, 1967. The parties to the Agreement request that Schedule V be revised to allow actual rates to be incorporated to cover all Federal and state taxes incurred in the cost of facilities for the transmission of energy.

Copies of the filing were served upon the public utility's relevant state public regulatory commissions.

Comment date: September 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

15. The Cincinnati Gas & Electric Co.

[Docket No. ER92-804-000]

September 4, 1992.

Take notice that on August 28, 1992, The Cincinnati Gas & Electric Company (CG&E), on behalf of itself and Ohio Valley Electric Corporation (OVEC), tendered for filing a Facility Agreement, dated as of May 1, 1992, between CG&E and OVEC. The Facility Agreement establishes an additional interconnection between the two companies.

CG&E and OVEC request an effective date sixty days following the submission of this filing.

Copies of the filing were served on the Public Service Commission of Kentucky, the Ohio Public Utilities Commission and the Utility Regulatory Commission of Indiana.

Comment date: September 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

16. Ohio Valley Electric Corp.

[Docket No. ER92-258-000]

September 4, 1992.

Take notice that on August 28, 1992, Ohio Valley Electric Corporation (OVEC) tendered for filing a modification ("Mod. No. 2") to a Transmission Agreement between Louisville Gas and Electric Company ("Louisville") and OVEC, along with its wholly-owned subsidiary, Indiana-Kentucky Electric Corporation, (together "Transmitting Companies"). Such Transmission Agreement was filed and is under consideration in the pending proceeding referenced above.

Mod. No. 2 re-establishes the originally proposed rate at which Transmitting Companies would, under the Transmission Agreement, supply to Louisville transmission service over Transmitting Companies' facilities.

Copies of this amendment to OVEC's filings were served upon all parties on the official service list for this proceeding. Copies were also served upon Louisville, the Public Service Commission of Kentucky and Indiana Michigan Power Company.

Comment date: September 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

17. Interstate Power Co.

[Docket No. ER92-802-000]

September 4, 1992.

Take notice that on August 28, 1992, Interstate Power Company (IPW) tendered for filing Amendment No. 1 to Amendment Nos. 3 and 4 to the Electric Service Agreement between the Municipal Light and Water Department Board of Trustees of the City of Bellevue and Company. This amendment deletes the phrases, "retroactive to May 1st," and "retroactive to July 1st," from Amendment Nos. 3 and 4, respectively.

Comment date: September 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

18. PSI Energy, Inc.

[Docket No. ER92-653-000]

September 4, 1992.

Take notice that PSI Energy, Inc. (PSI) and Indianapolis Power & Light Company (IP&L) on August 28, 1992, tendered for filing amended Service Schedules to the FERC Filing in Docket No. ER92-653-000 per a FERC Staff request.

Service Schedules A—Emergency Service, B—Interchange Energy and C—Short Term Power and Energy have been revised.

PSI and IP&L have requested that the original effective date of July 1, 1992 remain unchanged.

Copies of the filing were served on Indianapolis Power and Light Company and the Indiana Utility Regulatory Commission.

Comment date: September 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22034 Filed 9-11-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

Special Research Grant Program Notice 92-16: Health Effects Research

AGENCY: Department of Energy (DOE).

ACTION: Notice inviting grant applications—Extension.

SUMMARY: On April 23, 1992, at 57 FR 14833, the Office of Health and Environmental Research (OHER) of the Office of Energy Research (ER), U.S. Department of Energy, published in the **Federal Register** a notice announcing its interest in receiving applications in the following three areas: (1) DNA repair; (2) cellular and molecular mechanisms of carcinogenesis (especially those using human cell systems); and (3) low dose studies, <10cGy, that will improve our understanding of the dose effect relationships at low doses. Today's notice extends the formal application submission date on Notice 92-16 to January 25, 1993, 4:30 p.m. EST, to be accepted for merit review in April 1993 and to permit timely consideration for award in Fiscal Year 1993.

DATES: Formal applications submitted in response to this Notice must be received by 4:30 p.m., E.S.T., January 25, 1993, to be accepted for merit review in May 1993 and to permit timely consideration for award in Fiscal Year 1993.

ADDRESSES: Formal applications referencing Program Notice 92-16 should be forwarded to: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER-64, Washington, DC 20585, Attn: Program Notice 92-16. The following address must be used when submitting applications by U.S. Postal Service Express, any commercial mail delivery service, or when handcarried by the applicant: U.S. Department of Energy, Acquisition and Assistance Management Division, ER-64, 19901 Germantown Road, Germantown, MD 20874.

FOR FURTHER INFORMATION CONTACT: Dr. Marvin E. Frazier, Office of Health and Environmental Research, ER-74 (GTN), Office of Energy Research, U.S. Department of Energy, Washington, DC 20585, (301) 903-5364.

Issued in Washington, DC on September 1, 1992.

D.D. Mayhew,

Deputy Director for Management Office of Energy Research.

[FR Doc. 92-22131 Filed 9-11-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP92-682-000, et al.]

ANR Pipeline Company, et al.;

Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. ANR Pipeline Co.

[Docket No. CP92-682-000]

September 2, 1992.

Take notice that on August 28, 1992, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP92-682-000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to operate facilities soon to be constructed pursuant to section 311 of the Natural Gas Policy Act of 1978 for delivery to Wisconsin Power & Light company (WPL), an existing customer, under its blanket certificate issued in Docket No. CP82-480-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR states that pursuant to a request from WPL for a new interconnection between ANR's natural gas transmission system and WPL's natural gas distribution system, ANR submitted its notification of construction of section 311 facilities to the Commission on August 27, 1992, pursuant to § 284.11(b) of the Commission's Regulations. It is stated that the new interconnection, referred to as the Central Fond du Lac Meter Station, located in Fond du Lac County, Wisconsin would cost an estimated $890,000. ANR states that WPL has requested the new delivery point to enhance the operational flexibility and reliability on its distribution system in order to serve peaking turbines used in power generation.

ANR states that it would provide delivery to WPL, within its existing authorized sales entitlements, pursuant to Rate Schedule CD-1 of ANR's tariff or pursuant to the restructured interim sales program as contained in ANR's acceptance filing of the Commission's order of August 5, 1992, in Docket No. RP89-161, *et al.* ANR also requests as part of this application, any necessary waivers of its currently effective or interim tariff provisions or service agreements in order to effectuate its request. ANR states that the certification of this interconnection would not change WPL's current peak day and annual entitlements, so that the service would not impact on the total quantities ANR is currently authorized to well WPL.

It is stated that certification of the proposed facility would have no adverse impact on the peak day and annual entitlements of any of ANR's existing customers. It is also stated that deliveries through the meter would be within WPL's existing authorized sales entitlements.

Comment date: October 19, 1992, in accordance with Standard Paragraph G at the end of this notice.

2. ANR Pipeline Co.

[Docket No. CP92-675-000]

September 3, 1992.

Take notice that on August 27, 1992, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP92-675-000 a request pursuant to § 157.205 and 157.211 of the Regulations under the Natural Gas Act for authorization to operate certain facilities soon to be constructed pursuant to section 311 of the Natural Gas Policy Act in Florence County, Wisconsin, all as more fully set forth in the request with the Commission and open to public inspection.

ANR states that it intends to construct a meter station, consisting of two 2-inch diameter meters, adjacent to its existing pipeline system in Florence County, Wisconsin, pursuant to section 311 of the Natural Gas Policy Act. ANR estimates the cost of these facilities will be $132,000. ANR proposes, herein, to operate these facilities.

Comment date: October 19, 1992, in accordance with Standard Paragraph G at the end of this notice.

ANR Pipeline Co.

[Docket No. CP92-666-000]

September 3, 1992.

Take notice that on August 21, 1992, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP92-666-000, a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization pursuant to the provisions of § 157.212

regarding prior notice requests for changes at an existing delivery point and construction and operation of any appurtenant facilities, to operate under the provisions of section 7 of the NGA, facilities which are soon to be constructed pursuant to section 311 of the Natural Gas Policy Act of 1978 for delivery of natural gas to an existing customer, Wisconsin Natural Gas Company (WN). ANR also requests authority to construct an interconnection within ANR's Rochester Meter site, between the section 311 facilities (after those facilities have been certificated as section 7 facilities pursuant to this request) and existing metering facilities, all as more fully set forth in the request on file with the Commission and open for public inspection.

ANR states that it is also requesting any necessary waivers of its currently effective or interim tariff provisions or service agreements in order to effectuate this request. ANR further states that the volumes proposed for delivery to WN at the Rochester Meter Station are within WN's current peak day and annual entitlements under that service pursuant to Rate Schedule CD-1 of ANR's FERC Gas Tariff, Original Volume No. 1. ANR also states that the authorization to operate these facilities under the provisions of section 7 of the Natural Gas Act, and the authorization to construct the interconnect will not impact ANR's gas supply situation and that deliveries of natural gas at these points can be made without detriment or disadvantage to any existing customer.

Comment date: October 19, 1992, in accordance with Standard Paragraph G at the end of this notice.

Kentucky West Virginia Gas Co.; Columbia Gas Transmission Corp.; The Inland Gas Co.

[Docket No. CP92-639-000]

September 4, 1992.

Take notice that on August 7, 1992, Kentucky West Virginia Gas Company (Kentucky West), 3500 Park Lane, Pittsburgh, Pennsylvania 15275, Columbia Gas Transmission Corporation (Columbia Gas), P.O. Box 1273, Charleston, West Virginia 25325-1273, and The Inland Gas Company (Inland), P.O. Box 1180, Ashland, Kentucky 41105-1180, jointly filed in Docket No. CP92-639-000 an application pursuant to section 7(b) of the Natural Gas Act for authorization to abandon three authorized exchange services, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is indicated that as part of a stipulation and agreement between Kentucky West and Columbia, filed in Docket No. TQ89-1-46-040, *et al*, Kentucky West, Columbia Gas and Inland have agreed to terminate these exchanges on file as Kentucky West's Rate Schedules X-1, X-2 and X-3, effective as of the earlier of February 28, 1993, or the date that Columbia Gas rejects the gas supply contracts underlying such exchange agreements. It is also indicated that the exchange agreements would only be effective in the interim period so as to permit the exchange of gas which is purchased at the wellhead by Columbia Gas and becomes part of Columbia Gas' system supply for the 1992-93 heating season.

Comment date: September 25, 1992, in accordance with Standard Paragraph F at the end of this notice.

5. Alabama-Tennessee Natural Gas Co.

[Docket No. CP92-678-000]

September 4, 1992.

Take notice that on August 28, 1992, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), Post Office Box 918, Florence, Alabama 35631, filed in Docket No. CP92-678-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate 2 delivery points for service to North Alabama Gas District (NAGD) and North Mississippi Gas Corporation (NMGC), under Alabama-Tennessee's blanket certificate issued in Docket No. CP85-359-000, all as more fully described in the request which is on file with the Commission and open to public inspection.

Alabama-Tennessee proposes to construct and operate the facilities for the delivery of natural gas to NAGD in Colbert County, Alabama, and to NMGC in Tishomingo County, Mississippi. It is stated that both NAGD and NMGC are existing local distribution company customers of Alabama-Tennessee. It is stated that Alabama-Tennessee would deliver gas to NAGD and to NMGC under existing sales and transportation agreements. It is asserted that deliveries through the proposed facilities would not exceed presently authorized levels. It is further asserted that deliveries can be accomplished without detriment or disadvantage to Alabama-Tennessee's other customers. It is explained that both customers have requested the additional delivery points to serve changing system needs.

Alabama-Tennessee requests a limited waiver of § 17.3 of the General Terms and Conditions of its FERC Gas Tariff, First Revised Volume No. 1, to permit the additional delivery point for NMGC without executing a new service agreement.

Comment date: October 19, 1992, in accordance with Standard Paragraph G at the end of this notice.

6. CNG Transmission Corp.

[Docket No. CP92-681-000]

September 4, 1992.

Take notice that on August 28, 1992, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP92-681-000, a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act, to construct a new sales tap and appurtenant facilities to serve as a new delivery point to Hope Gas, Inc. (Hope Gas), a local distribution company and affiliate of CNG, as more fully set forth in the request which is on file with the Commission and open to public inspection.

Hope Gas asserts that it will install small commercial meter and regulation (M&R) equipment to serve the new Ritchie County Middle/High School currently under construction and that the new sales tap will be off its 20-inch TL-345 pipeline near Ellenboro, Ritchie County, West Virginia. Also, CNG indicates that the new tap will serve the new school with CNG's system supply. Cost of the installation is estimated to be $5,000.

Hope Gas estimates that the maximum design capacity of the 2-inch tap and the M & R equipment will be 165 Mcf per hour or 384 Mcf per day.

Comment date: October 19, 1992, in accordance with Standard Paragraph G at the end of this notice.

7. Columbia Gas Transmission Corp. and the Inland Gas Co., Inc.

[Docket No. CP92-688-000]

September 4, 1992.

Take notice that on September 1, 1992, Columbia Gas Transmission Corporation (Columbia), P.O. Box 1273, Charleston, West Virginia 25325-1273, and The Inland Gas Company, Inc. (Inland), P.O. Box 1180, Ashland, Kentucky 41105-1180, filed in Docket No. CP92-688-000 an application pursuant to Section 7(b) of the Natural Gas Act for an order granting permission and approval to abandon a transportation and exchange service for up to 15,000 Mcf of natural gas per day (Mcfd) provided by Columbia under its Rate Schedule X-10 and by Inland under its Rate Schedule X-1, all as more fully set forth in the application which is on

file with the Commission and open to public inspection.

It is stated that the transportation and exchange service was previously authorized in Docket No. CP77-82, 57 FPC 1571 (1978). Columbia and Inland state that they used this service to transport Inland's Appalachian produced and purchased volumes from the southern portion of Inland's system to Inland's market area in Northern Kentucky. As a result of Inland's declining sales volumes and the planned abandonment of all of its jurisdictional facilities and services authorized in Docket No. CP92-356-000, 59 FERC ¶ 61,370 (1992), the parties state that the transportation and exchange service is no longer needed.

Columbia and Inland state that the transportation and exchange agreement underlying Columbia's Rate Schedule X-10 and Inland's Rate Schedule X-1 provides for quarterly balancing of the exchange. Therefore, the parties request that any abandonment authorization issued provide Columbia and Inland with 90 days within which to balance the exchange.

Comment date: September 25, 1992, in accordance with Standard Paragraph F at the end of this notice.

8. Williston Basin Interstate Pipeline Co.

[Docket No. CP92-685-000]

September 4, 1992.

Take notice that on September 1, 1992, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, suite 300, Bismarck, North Dakota 58501, filed in Docket No. CP92-685-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a new delivery point to accommodate deliveries of natural gas to Montana-Dakota Utilities Co. (Montana-Dakota), an existing local distribution company sales customer, under Williston Basin's blanket certificate issued in Docket No. CP82-487-000, *et al.*, pursuant to section 7 of the Natural Gas Act, all as more fully described in the request which is on file with the Commission and open to public inspection.

Williston Basin proposes to construct and operate the new delivery point, consisting of a tap and appurtenant facilities, to serve Montana-Dakota for resale to a compressed natural gas vehicular refueling station located in Baker, Montana. It is estimated that the facilities would be used for the delivery of 15 Mcf of natural gas on a peak day and 4,500 Mcf on an annual basis. It is asserted that these volumes would be within Montana-Dakota's currently authorized sales entitlements. Williston Basin states the cost of $512 would be reimbursed by Montana-Dakota.

Comment date: October 19, 1992, in accordance with Standard Paragraph F at the end of this notice.

9. Williams Natural Gas Co.

[Docket No. CP92-683-000]

September 4, 1992.

Take notice that on August 31, 1992, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed a request with the Commission in Docket No. CP92-683-000, pursuant to §§ 157.205 and 157.216(b) of the Regulations under the Natural Gas Act (NGA) for authorization to abandon the transportation of natural gas for direct sale to Sitton Motor Lines, Inc. (Sitton), in Newton County, Missouri, and reclaim the measuring, regulating and appurtenant facilities, under the authorization issued in Docket No. CP82-479-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

WNG states that the facilities were certificated at Docket No. CP81-203 and Sitton has notified WNG that gas service is no longer required from WNG since service is being provided from another source.

Comment date: October 19, 1992, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

g. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.204 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22035 Filed 9-11-92; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4204-8]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before October 14, 1992.

For further information or to obtain a copy of this ICR contact Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Reporting and Recordkeeping Requirements for the National Emission Standards for Hazardous Air Pollutants (NESHAP) Subpart BB, for Benzene Transfer Operations (ICR No. 1154.03; OMB No. 2060-0182).

Abstract: This ICR is for an extension of an existing information collection in support of the Clean Air Act, as described under the general NESHAP at 40 CFR part 61.07-6614, and the specific NESHAP for benzene emissions from transfer facilities at 40 CFR part 61.300-61.305. The information will be used by the EPA to direct monitoring, inspection, and enforcement efforts, thereby ensuring compliance with the NESHAP.

Under this ICR, owners or operators of affected facilities must provide EPA or the delegated authority with: (1) Notification of construction, reconstruction, or modification; (2) anticipated and actual dates of facility start-up; (3) notification of initial emissions tests and results; (4) notification of monitoring system performance evaluations and results; and (5) initial engineering reports. Existing facilities, as described at 40 CFR 61.302, must submit monitoring reports on a quarterly basis. Transfer operations handling small quantities or benzene, as described at 40 CFR 61.300(b) and 61.300(d), are exempt from reporting requirements following the submission of an initial report to EPA during the first year of operation.

All affected facilities must maintain records on the facility operation that document: (1) The occurrence and duration of any start-ups, shutdowns, and malfunctions; (2) initial emissions test and monitoring system performance evaluation results; and (3) data on vapor tightness, control device operating parameters, and other operating data relevant for compliance.

Presently, there are 87 facilities subject to this regulation, 6 of these area exempt from reporting requirements beyond the first year. There are no new sources anticipated over the next three years. Facility records documenting vapor tightness and control device parameters must be maintained indefinitely, all other records related to compliance must be maintained for two years.

Burden Statement: Public reporting burden for facilities subject to this collection of information is estimated to average 25.3 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining data, and completing and reviewing the collection of information. Public recordkeeping burden is estimated to average 74.4 hours annually.

Respondents: Owners or operators of subject bulk transfer operations.

Estimated Number of Respondents: 81.

Estimated Number of Responses Per Respondent: 4.

Estimated Total Annual Burden on Respondents: 14,685 hours.

Frequency of Collection: One-time notifications and reports for new facilities; quarterly reporting for subject existing facilities.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street, SW. Washington, DC 20460.

and

Chris Wolz, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503.

Dated: September 3, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92-22115 Filed 9-11-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4205-1]

Notice of Cancellation of Open Meeting of the Federal Facilities Environmental Restoration Dialogue Committee

AGENCY: Environmental Protection Agency.

ACTION: FACA Committee: Cancellation of Upcoming Meeting—Federal Facilities Environmental Restoration Dialogue Committee.

SUMMARY: Pursuant to inextricable scheduling conflicts, the previously noticed upcoming meeting of the Federal Facilities Environmental Restoration Dialogue Committee, due to be held on September 15 and 16, 1992, is being cancelled. A second meeting, which was also previously noticed, as required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), is still scheduled to occur on November 17 and 18, 1992. The November, 1992, meeting is open to the public without advance registration.

The purpose of the meeting is to discuss issues related to enhancing the Federal facilities environmental restoration process.

DATES: The meeting which was to be held on September 15, 1992, from 9 until 5 p.m. and on September 16, 1992, from 8:30 until 4 p.m., is cancelled. The next meeting of the Federal Facilities Environmental Restoration Dialogue Committee will be held on November 17, 1992, from 9 until 5 p.m. and on November 18, 1992, from 8:30 until 4 p.m.

ADDRESSES: The meeting which is being cancelled was to have been held at Sheraton Crystal City, 1800 Jefferson Davis Highway, Arlington, VA. The meeting which is being held in November, 1992, will be held at the Georgetown University Conference Center, 3800 Reservoir Road, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on any aspect of the Federal Facilities Environmental Restoration Dialogue Committee should contact Nicholas Morgan, Office of Federal Facilities Enforcement, U.S. EPA (OE-2261), 401 M Street, SW., 20460, (202) 260-1270.

Dated: September 9, 1992.

Nicholas Morgan,

Designated Federal Official.

[FR Doc. 92-22243 Filed 9-11-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[DA 92-1231]

Lottery For 220-222 MHz Private Radio Land Mobile "Local" Channels

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Commission has announced the date and time for a lottery to be conducted for the purpose of rank ordering the applications received for "local" channels in the 220-222 MHz band. In addition, a list of the applications that will be the subject of this rank ordering lottery will be made available for public inspection at various Commission locations around the country. Any applicant that believes there is an error in this listing will have an opportunity to contact the Commission's licensing facility in Gettysburg, Pennsylvania and provide corrected information.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Marty Liebman, Private Radio Bureau, (202) 634-2443.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission will conduct a lottery on October 19, 1992 at 10:30 a.m. in room 856, 1919 M St., NW., Washington, DC for the purpose of rank ordering the applications received for "local" channels in the 220-222 MHz band. Applications for these frequencies were filed in response to a Report and Order adopted March 14, 1991 (*Report and Order*, PR Docket No. 89-552, FCC 91-74 (April 17, 1991)) and subsequently summarized in the **Federal Register** (56 FR 19598 (1991)). Applications were accepted by the Commission for these channels starting on May 1, 1991. Over 58,000 applications were received by May 24, 1991, at which time the Commission ceased accepting any further applications. Applications for these frequencies were accepted on a "first come, first served" basis, with all applications received on the same day being considered filed at the same time. There are more applications for licenses than can be accommodated with available frequencies. Based on an initial analysis of the applications, it has been determined that there are no substantial, material differences between them that necessitate comparative hearings.[1] There are no financial qualifications required for applying for such licenses, and no preferences will be awarded to any applicant. Accordingly, use of lotteries to resolve situations where there are no substantial, material differences in applications and there are more applications than there are available frequencies will significantly benefit the public interest by expediting delivery of the proposed services to potential users. The lottery will be conducted pursuant to authority contained in § 1.972 of the Commission's Rules. The lottery to be held on October 19, 1992 will be for the purpose of rank ordering all of the applications for "local" 220-222 MHz channels that were received on the first day that they were accepted for filing, *i.e.*, May 1, 1991.

A listing of the applications that will be the subject of this rank ordering lottery is available for public inspection during regular business hours at the following locations: (1) The Mass Media/Adjudication Reference Room of the Federal Communications Commission, 1919 M Street, NW, room 239, Washington, DC 20554; (2) the Licensing Division Reference Room, Private Radio Bureau Licensing Division, 1270 Fairfield Road, Gettysburg, Pennsylvania 17325-7245; (3) all Field Locations of the Federal Communications Commission's Field Operations Bureau (see attachment for Field Location addresses); (4) the Authorization and Evaluation Division of the Office of Engineering and Technology, 7435 Oakland Mills Road, Columbia, Maryland 21046; (5) the Field Office of the Common Carrier Bureau, 90 Church Street, room 1309-X, New York, New York 10007; (6) The Public Services Division of the Associate Managing Director for Public Information and References Services, 1919 M Street, NW., room 254, Washington, DC 20554; and (7) The Federal Communications Commission Library, 1919 M Street, NW., room 639, Washington, DC 20554.

Copies or excerpts of the list of applications may also be purchased from the Commission's duplicating contractor: Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452-1422.

The applications are listed by service requested and then alphabetically by applicant name. The list also includes the geographic coordinates of the station applied for and the file number associated with the application. It is this file number that will be listed in the computer printout that provides the rank ordering for all of the applications. Any applicant that believes there is an error in this listing should contact our Gettysburg licensing facility and provide the correct information. Any proposed corrections will be verified against the information contained in the applicant's original application. Additionally, interested parties may provide information to the Commission that may reflect on the suitability of an applicant to be a licensee. Corrections to the listing and information about the suitability of an applicant to be a licensee must be received within thirty (30) days of the publication of this Public Notice in the **Federal Register** at the following address by 4:30 p.m. e.d.t.: Federal Communications Commission, Private Radio Bureau Licensing Division, Land Mobile Branch, 1270 Fairfield Rd., Gettysburg, PA 17325-7245, Attn: 220 MHz Local Applications. Modifications to applications will not be accepted at this time. Only errors that have arisen in the preparation of this list or matters that reflect on the suitability of an applicant to be a licensee should be brought to the attention of our Gettysburg office. These applications will then be processed by our Gettysburg licensing facility in the order in which they were ranked by the lottery in accordance with the criteria established in the March 14, 1992, Report and Order. Allegations pertaining to tentative selectees will be investigated and resolved prior to issuance of any license to that applicant; however, processing of lower ranked applications will continue during the pendency of such investigation under the assumption that the licensee will be granted. Applications that cannot be granted because of conflicts with higher ranked, earlier granted applications, will be dismissed. Allegations against applications that have been dismissed will not be investigated.

On July 30, 1992, certain aspects of the Commission's procedures for filing and acceptance of 220-222 MHz license applications were appealed to the United States Court of Appeals for the District of Columbia Circuit. *See Evans v. Federal Communications Commission*, No. 92-1317 (D.C. Cir. filed July 30, 1992). As a result, we will condition all grants of 220-222 MHz licenses upon the outcome of this appeal. During the pendency of the appeal, licensees may construct their facilities at their own risk. We will, however, grant each 220-222 MHz local licensee an automatic extended construction period of 120 days from the date of this appeal's final disposition by the courts, by which time the licensed facilities must be constructed and placed in operation.

As announced in our Public Notice of June 18, 1992 (DA 92-792), the rank ordering of these applications will be through the use of a computer-assisted random number selection process. The computer program to be employed requires the input of a "seed number" to initiate the generation of numbers. The seed number will be selected through the use of forced-air ping pong balls at the beginning of the random selection process and will be entered into the computer program. The computer will then generate a series of random numbers that will be associated with the file number of each application. During the rank ordering session, the computer will print out the results of the rank ordering exercise, which will be made available for public inspection. The entire random selection process will be held in the Commission Meeting Room and will be open for public viewing.

For a more complete discussion of lottery procedures, see FCC INST 1159.1, released August 13, 1992. Additional information regarding the applicants for this lottery session may be obtained

[1] 47 CFR 1.972.

from the Private Radio Bureau's Consumer Assistance Branch at (717) 337-1212. Procedural questions regarding the lottery may be directed to Donna Searcy at (202) 632-6410.

Ralph A. Haller,

Chief, Private Radio Bureau.

FCC Office Addresses

Alaska

Anchorage Office, Federal Communications Commission, 6721 West Raspberry Road, Anchorage, Alaska 99502, Phone: (907) 243-2153

**Arizona*[1]

Douglas Office, Federal Communications Commission, P.O. Box 6, Douglas, Arizona 85608, Phone: (602) 364-8414

California

San Diego Office, Federal Communications Commission, 4542 Ruffner Street, Room 370, San Diego, California 92111-2216, Phone: (619) 467-0549

*Livermore Office, Federal Communications Commission, P.O. Box 311, Livermore, California 94551-0311, Phone: (510) 447-3614

Los Angeles Office, Federal Communications Commission, Cerritos Corporate Tower, Room 660, 18000 Studebaker Road, Cerritos, California 90701, Phone: (310) 809-2096

San Francisco Office, Federal Communications Commission, 3777 Depot Road, Room 420, Hayward, California 94545-2756, Phone: (510) 732-9046

Colorado

Denver Office, Federal Communications Commission, 165 South Union Blvd., Suite 860, Lakewood, Colorado 80228-2210, Phone: (303) 969-6497

Florida

*Vero Beach Office, Federal Communications Commission, P.O. Box 1730, Vero Beach, Florida 32961-1730, Phone: (407) 778-3755

Miami Office, Federal Communications Commission, Rochester Building, Room 310, 8390 NW. 53rd Street, Miami, Florida 33166, Phone: (305) 526-7420

Tampa Office, Federal Communications Commission, 2203 N. Lois Avenue, Room 1215, Tampa, Florida 33607-2356, Phone: (813) 228-2872

Georgia

Atlanta Office, Federal Communications Commission, 3575 Koger Blvd, Koger Center-Gwinnett, Suite 320, Duluth, Georgia 30136, Phone: (404) 279-4621

*Powder Springs Office, Federal Communications Commission, P.O. Box 65, Powder Springs, Georgia 30073, Phone: (404) 943-5420

Hawaii

Honolulu Office, Federal Communications Commission, P.O. Box 1030, Waipahu, Hawaii 96797-1030, Phone: (808) 677-3318

Illinois

Chicago Office, Federal Communications Commission, Park Ridge Office Center, Room 306, 1550 Northwest Highway, Park Ridge, Illinois 60068, Phone: (312) 353-0195

Louisiana

New Orleans Office, Federal Communications Commission, 800 West Commerce Road, Room 505, New Orleans, Louisiana 70123, Phone: (504) 589-2095

Maine

*Belfast Office, Federal Communications Commission, P.O. Box 470, Belfast, Maine 04915, Phone: (207) 338-4088

Maryland

Baltimore Office, Federal Communications Commission, 1017 Federal Building, 31 Hopkins Plaza, Baltimore, Maryland 21201, Phone: (301) 962-2729

*Laurel Office, Federal Communications Commission, P.O. Box 250, Columbia, Maryland 21045, Phone: (301) 725-3474

Massachusetts

Boston Office, Federal Communications Commission, NFPA Building, 1 Batterymarch Park, Quincy, Massachusetts 02169, Phone: (617) 770-4023

Michigan

*Allegan Office, Federal Communications Commission, P.O. Box 89, Allegan, Michigan 49010, Phone: (616) 673-2063

Detroit Office, Federal Communications Commission, 24897 Hathaway Street, Farmington Hills, Michigan 48335-1552, Phone: (313) 226-6078

Minnesota

St. Paul Office, Federal Communications Commission, 693 Federal Bldg. & U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota 55101, Phone: (612) 290-3819

Missouri

Kansas City Office, Federal Communications Commission, Brywood Office Tower, Room 320, 8800 East 63rd Street, Kansas City, Missouri 64133, Phone: (816) 353-3773

Nebraska

*Grand Island Office, Federal Communications Commission, P.O. Box 1588, Grand Island, Nebraska 68802, Phone: (308) 382-4296

New York

Buffalo Office, Federal Communications Commission, 111 West Huron Street, Suite 1307, Buffalo, New York 14202, Phone: (716) 846-4511

New York Office, Federal Communications Commission, 201 Varick Street, New York, New York 10014-4870, Phone: (212) 620-3437

Oregon

Portland Office, Federal Communications Commission, 1782 Federal Office Building, 1220 SW. Third Avenue, Portland, Oregon 97204, Phone: (503) 326-4114

Pennsylvania

Philadelphia Office, Federal Communications Commission, One Oxford Valley Office Building, 2300 East Lincoln Highway, Room 404, Langhorne, Pennsylvania 19047, Phone: (215) 752-1324

Puerto Rico

San Juan Office, Federal Communications Commission, 747 Federal Building, Hato Rey, Puerto Rico 00918-2251, Phone: (809) 766-5567

Texas

Dallas Office, Federal Communications Commission, 9330 LBJ Expressway, Room 1170, Dallas, Texas 75243-3429, Phone: (214) 235-3389

Houston Office, Federal Communications Commission, 1225 North Loop West, Room 900, Houston, Texas 77008, Phone: (713) 861-6200

*Kingsville Office, Federal Communications Commission, P.O. Box 632, Kingsville, Texas 78364-0632, Phone: (512) 592-2531

Virginia

Norfolk Office, Federal Communications Commission, 1200 Communications Circle, Virginia Beach, Virginia 23455-3725, Phone: (804) 441-6472

Washington

*Ferndale Office, Federal Communications Commission, 1330 Loomis Trail Road, Custer, Washington 98240, Phone: (206) 354-4892

Seattle Office, Federal Communications Commission, 11410 NE. 122nd Way, Suite 312, Kirkland, Washington 98034, Phone: (206) 821-9037

[FR Doc. 92-22205 Filed 9-11-92; 8:45 am]

BILLING CODE 6712-01-M

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[1] Licenses and examinations are not available at * locations

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[DA 91-1195]

North American Datum Geographical Coordinate System Tutorial

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: By this action the Commission announces a tutorial on the North American Datum.

EFFECTIVE DATE: September 1, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Eugene Cea, OET, phone 1+ (202) 653-8151, or Jack Linthicum, OET, phone 1+ (202) 653-8160.

SUPPLEMENTARY INFORMATION: The Office of Engineering and Technology will present a tutorial on "The North American Datum" on September 15, 1992, at 1:30 p.m. in the Commission Meeting Room, room 856, at 1919 M Street, NW. The tutorial will be presented by David R. Doyle of the

National Geodetic Survey; Dr. Muneendra Kumar of the Defense Mapping Agency; Richard Pearsall of the U.S. Geological Survey; and Richard V. Powell of the Federal Aviation Administration.

The FCC has become involved with the NAD 83 geographical coordinate system through the coordination of antenna locations with the Federal Aviation Administration (FAA). The FAA is implementing an act of Congress that requires their use of NAD 83 location information after October 15, 1992.

Eventually all site coordinates in the FCC's data bases will be converted to NAD 83 format. This tutorial will inform those in the communications community what is required, what tools are available to implement the new coordinate datum system, and what the individual antenna owner/operator should do to meet these requirements.

Messrs. Doyle and Kumar will address the various facets of the North American Datum of 1983 (NAD 83) and the World Geodetic System of 1984 (WGS 84)—methods of accurately describing any point on the surface of the Earth. Messrs. Doyle and Kumar will also discuss datum transformation and distance/bearing software that their respective agencies have developed. Mr. Pearsall will discuss the history of NAD 83, software and graphic tools that USGS is developing to make the public transition to NAD 83 efficient. Mr. Powell will discuss why the FAA needs to make the change to NAD 83; how and when FAA's data bases will be converted to NAD 83; changes in FAA FORM 7460-1 for submitting coordinate (latitude/longitude) data; conversion of the various FAA/NOAA aeronautical products (*i.e.*, maps, charts and data bases) to NAD 83; and changes in the FAA processing procedures.

WGS 84 is a generalized model for the world while NAD 83 is tailored to better describe North America. NAD 83 is a more accurate description of the earth's surface than the system presently in use, the North American Datum of 1927 (NAD 27). Both the WGS 84 and NAD 83 models have been developed using the more accurate measuring systems available through satellites, lasers and computers.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-21601 Filed 9-11-92; 8:45 am]

BILLING CODE 6712-01-M

[DA 91-1188]

North American Datum of 1927; Continued Usage

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: By this action the Commission announces that Commission licensees are to continue to use geographic coordinates based on the North American Datum of 1927.

EFFECTIVE DATE: September 1, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Donald Draper Campbell, OET; telefax 1+(202) 653-8773, or phone 1+(202) 653-8113.

SUPPLEMENTARY INFORMATION: This public notice is intended to provide a background for eventual changes in Commission rules and procedures needed for a planned transition to specifying geographical coordinates (latitudes/longitudes) in terms of the North American Datum of 1983 (NAD 83). This change will in the future affect all Commission licensees and is a result of the Federal Aviation Administration's (FAA) impending conversion to NAD 83 on October 15, 1992.

Background

In the field of telecommunications it is essential that the latitude and longitude of antennas and towers be known to a high degree of accuracy. Those coordinates are used to determine spacings between stations, determine antenna height above average terrain, assess potential impact of structures on air safety, allow efficient frequency reuse, and evaluate environmental effects, among other things. The proper specification of latitude and longitude is an integral part of the Commission's regulations; errors and inconsistencies could have technical and legal consequences.

Until recently the determination of position in the continental United States was based on various geodetic reference systems that had been established over the past 70 years. The method for determining coordinates used in filing FCC station applications were based on these various geodetic reference systems as show on the attached Table, "Local Horizontal Datums of the United States of America". Improvements in technology, particularly in satellite surveying and photography, have resulted in a small but noticeable shift in the geodetic reference system which, in turn, will alter the coordinates (latitude and longitude) of towers and antennas.

The Earth is not a perfect sphere, but rather, being somewhat flattened in the polar regions, an ellipsoid. Unit the early 1980s, the latitudes and longitudes of places in North America were based on a model of the earth's shape formulated in 1866 and known as the Clarke ellipsoid. Surveys made to determine the coordinates of a given point were referenced to a triangulation station in the conterminuous United States known as MEADES RANCH. Eventually as more observations were added to the Network of the U.S. Coast and Geodetic Survey, they were incorporated into a system which became codified as the North American Datum of 1927 (NAD 27).

The 25,000 survey points in the 1920's expanded to 250,000 in the 1970's, many of which were 'forced' to fit the NAD 27 network. That led to a loss of accuracy. Accordingly, the National Academy of Sciences recommended that the North American Datum be re-adjusted. Using the latest technology, scientists updated their depiction of the shape of the earth and the location of physical features on it. That finally lead to a more accurate and consistent reference system for North America, known as the North American Datum of 1983 (NAD 83), based on the Geodetic Reference System of 1980 (GRS 80) ellipsoid. This new system was adopted as the official horizontal coordinate system of the United States by notice in the **Federal Register**, June 14, 1989.

Impact

One of the benefits of using more accurate position data is enhanced safety afforded the aviation industry. Consequently, Congress passed Public Law 101-508, section 9120, the *Aviation Safety and Capacity Expansion Act of 1990*, which mandated that the FAA convert all position data used in the National Airspace System to NAD 83. In compliance with this law, the FAA, on May 11, 1992, issued a Notice in the **Federal Register** advising that they will convert all latitude and longitude coordinates used in the National Airspace System to NAD 83 on October 15, 1992. This will directly affect coordination between the FAA and FCC on all matters related to tower and antenna and aviation facility locations.

The FCC will eventually be required to use NAD 83 coordinates in all of its activities, including licensing and the maintenance of data bases. However, before this can be implemented, studies must be carried out to determine how best to accomplish the conversion with

the resources available and at a minimum impact to the public, while also analyzing how best to resolve issues as:

- Changes to application forms.
- Issuance of adjusted licenses to existing licensees.
- Changes to rules and regulations.
- Minimizing the public burden and confusion.
- Changes to formulae such as those for computing distance between two points.
- International interchange of coordination data with Canada and Mexico, etc.

Interim Procedure

The FCC will assign the first priority to internally converting those software systems and data bases affected by the FAA changeover to NAD 83. However, in order to provide sufficient time to study the changes and issues discussed above and to assure continuity of operations, the Commission will require applicants to continue to provide position information in NAD 27 coordinates or, for certain specialized areas in accordance with the attached Table of local horizontal datums. We realize there could be some confusion to applicants, consulting engineers and frequency coordinators for filing applications. Applicants and those preparing applications must be aware of the necessity of providing coordinates in accordance with the attached Table of local horizontal datums until further notice. We will issue further guidance later as experience is gained with problem areas.

Tutorial

The Commission has arranged for a tutorial, open to the public, to be presented on September 15, 1992, at 1:30 pm in the Commission Meeting Room, on conversion to NAD 83. At that time, a group of experts will expand on the background information presented above, and answer queries. A public notice will be issued announcing the tutorial. If necessary, the Commission will issue additional public notices and other documents on the subject of NAD 83 to clarify areas of concern or new developments.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

LOCAL HORIZONTAL DATUMS OF THE UNITED STATES OF AMERICA

Geographic location	Horizontal datum
Conterminous United States.	North American Datum of 1927 (NAD 27) (1USGS, 1:24,000).
Alaska (except St. George Island, St. Paul Island and St. Lawrence Island).	North American Datum of 1927 (NAD 27) (USGS, 1:24,000, 1:25:000, 1:63,360 & 1:250,000).
Hawaii	Old Hawaiian (USGS, 1:24,000 & 1:62,500).
Puerto Rico (Commonwealth of).	Puerto Rico (USGS, 1:20,000).
United States Virgin Islands (unincorporated territory of).	Puerto Rico (UGSG, 1:24,000).
Navassa Island, Quita Sueno Bank, Roncador Bank, Serrana Bank and Serranilla Bank.	"Local astronomical datum" (*No USGS map coverage*) (NOAA No. 26194 *Navassa Is.*, 1:15,000).
St. George Island, AK	St. George (USGS, 1:250,000).
St. Paul Island, AK	St. Paul (USGS, 1:250,000).
St. Lawrence Island, AK	St. Lawrence (USGS, 1:250,000).
Midway Island	Midway Astro 1961 (*No USGS map coverage*) (NOAA No. 19481 *Midway Island*, 1:32,500).
Johnston Island	Johnston Island 1961 (*No USGS map coverage*) (NOAA No. 540 *Hawaiian Archipelago*, 1:3,121,170).
Northern Mariana Islands (Commonwealth of the):	
Saipan, Tinian and Rota.	Guam 1963 (USGS, 1:24,000).
Other islands	"Local astronomical datum" (Not individually mapped by USGS).
American Samoa (unincorporated territory of).	American Samoa 1962 (USGS, 1:24,000).
Guam (unincorporated territory of).	Guam 1963 (USGS, 1:24,000).
Baker Island	"Local astronomical datum" (*No USGS map coverage*) (NoAA No. 83116 *Islands in the Pacific Ocean—Jarvis, Baker and Howland Islands*, 1:15,000).
Howland Island	"Local astronomical datum" (*No USGS map coverage*) (NOAA No. 83116 *Islands in the Pacific Ocean—Jarvis, Baker and Howland Islands*, 1:15,000).

LOCAL HORIZONTAL DATUMS OF THE UNITED STATES OF AMERICA—Continued

Geographic location	Horizontal datum
Jarvis Island	"Local astronomical datum" (*No USGS map coverage*) (NOAA No. 83116 *Islands in the Pacific Ocean—Jarvis, Baker and Howland Islands*, 1:15,000).
Kingman Reef	"Local astronomical datum" (*No USGS map coverage*).
Palmyr Island	"Local astronomical datum" (*No USGS map coverage*) (NOAA No. 83157 *Palmyra Atoll and approaches to Palmyra Island*, 1:10,000).
Wake Island	Wake Island 1952 (*No USGS map coverage*) (NOAA No. 81664 *Wake Island*, 1:15,000).

[FR Doc. 92-21627 Filed 9-11-92; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-958-DR]

California; Major Disaster and Related Determinations

AGENCY: Fedral Emergency Management Agency (FEMA).

ACTION: Notice.

EFFECTIVE DATE: August 29, 1992.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of California (FEMA-958-DR), dated August 29, 1992, and related determinations.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 29, 1992, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of California, resulting from fires commencing on August 16, 1992, and August 20, 1992, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I.

therefore, declare that such a major disaster exists in the State of California.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. A. Roy Kite of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of California to have been affected adversely by this declared major disaster:

Calaveras and Shasta County for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Wallace E. Stickney,

Director.

[FR Doc. 92-22089 Filed 9-11-92; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-955-DR]

Florida; Amendment to Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

EFFECTIVE DATE: September 1, 1992.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida (FEMA-955-DR), dated August 24, 1992, and related determinations.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 1, 1992, the President amended the cost-sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Florida, resulting from Hurricane Andrew on August 23, 1992, is of sufficient severity and magnitude that special conditions are warranted regarding the cost-sharing arrangements concerning Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act") for the Public Assistance program.

Therefore, I amend my previous declaration, which limited the Federal reimbursement share for certain categories of expenditures, and I hereby authorize an increase in Federal reimbursement to 100 percent of eligible public assistance costs exceeding $10 per capita, as is allowed under the law for extreme disasters. This 100 percent reimbursement for costs above $10 per capita applies to all authorized public assistance costs, including debris removal to eliminate immediate threats to public health and safety, emergency work to save lives and protect public health and safety, and repair or reconstruction of uninsured public and private nonprofit facilities. Temporary housing assistance, mortgage/rental assistance, crises counseling assistance and disaster unemployment assistance will continue to be 100 percent federally funded, where allowed under the law. Funds for public assistance up to $10 per capita will be reimbursed pursuant to the conditions set forth in my previous declaration.

This waiver of State and local cost-sharing requirements above $10 per capita applies to all public assistance costs eligible for such a waiver under the law. The law specifically prohibits a similar waiver for funds provided to States for the Individual and Family Grant program. These funds will continue to be reimbursed at 75 percent of total eligible costs.

This amended declaration is consistent with the request made to you by the Governor of the State of Florida.

Please notify the Governor of the State of Florida and the Federal Coordinating Officer of this amendment to my major disaster declaration.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Wallace E. Stickney,

Director.

[FR Doc. 92-22087 Filed 9-11-92; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-956-DR]

Louisiana; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA-956-DR), dated August 26, 1992, and related determinations.

EFFECTIVE DATE: September 1, 1992.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Louisiana, dated August 26, 1992, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 26, 1992:

The parishes of Acadia, Avoyelles, Cameron, Jefferson Davis, Orleans, Plaquemines, St. James, St. Bernard, Vermilion, Allen, Calcasieu, Evangeline, Livingston, Rapides, St. Helena, St. Landry, Tangipahoa, and Washington for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 92-22088 Filed 9-11-92; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-956-DR]

Louisiana; Amendment to Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA-956-DR), dated August 26, 1992, and related determinations.

EFFECTIVE DATE: August 29, 1992.

EFFECTIVE DATES: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Louisiana, dated August 26, 1992, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 26, 1992:

The parishes of East Feliciana, Pointe Coupee, and Jefferson for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

[FR Doc. 92-22088 Filed 9-11-92; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-959-DR]

Wisconsin; Notice of Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

EFFECTIVE DATE: September 2, 1992.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Wisconsin (FEMA-959-DR), dated September 2, 1992, and related determinations.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 2, 1992, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Wisconsin, resulting from severe storms and tornadoes on August 29, 1992, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Wisconsin.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Phil Zaferopulos of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Wisconsin to have been affected adversely by this declared major disaster:

Waushara County for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Wallace E. Stickney,

Director.

[FR Doc. 92-22090 Filed 9-11-92; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL TRADE COMMISSION

[Dkt. C-3397]

NME Hospitals, Inc., d/b/a Continent Ostomy Center; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, the California-based hospital chain from misrepresenting the comparative efficacy, permanence, or likely complications of any reconstructive surgical procedure, and requires that the respondent base future claims abut the efficacy, permanence, or likely complications of any surgical procedure used in the treatment of bowel-related diseases on competent and reliable scientific evidence that substantiates any such representation.

DATES: Complaint and Order issued August 24, 1992.[1]

FOR FURTHER INFORMATION CONTACT: Michael Katz, FTC/H-200, Washington, DC 20580, (202) 326-3123.

SUPPLEMENTARY INFORMATION: On Tuesday, June 16, 1992, there was published in the **Federal Register**, 57 FR 26848, a proposed consent agreement with analysis In the Matter of NME Hospitals, Inc., d/b/a Continent Ostomy Center, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 92-22117 Filed 9-11-92; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. C-3398]

The Winning Combination, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a California corporation and its officer from misrepresenting the efficacy of Essential Factors with Oxy-Energizer, a food supplement, or any similar product; from making certain representations unless they possess competent and reliable scientific evidence to substantiate the representations; and from representing that any such product has been accepted by the U.S. Government as effective for relieving fatigue or providing extra energy.

DATES: Complaint and Order issued August 24, 1992.[1]

FOR FURTHER INFORMATION CONTACT: Michael Milgrom or Brinley Williams, Cleveland Regional Office, Federal Trade Commission, 668 Euclid Ave., suite 520-A, Cleveland, OH. 44114 (216) 522-4210.

SUPPLEMENTARY INFORMATION: On Tuesday, June 16, 1992, there was published in the **Federal Register**, 57 FR 26854, a proposed consent agreement with analysis In the Matter of The Winning Combination, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments,

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[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

suggestions or objections regarding the proposed form of the order

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, indisposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Donald S. Clark,

Secretary.

[FR Doc. 92-22118 Filed 9-11-92; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Meetings

In accordance with section 10(a) of the Federal Advisory Committee Act (title 5, U.S.C., appendix 2) announcement is made of the following advisory committees scheduled to meet during the end of September and the month of October 1992:

Name: Health Care Technology Study Section.

Date and Time: September 30–October 2, 1992, 8 a.m.

Place: Marriott Residence Inn, Montgomery II Room, 7335 Wisconsin Avenue, Bethesda, Maryland 20814.

Open Sept. 30, 8 a.m. to 9 a.m.

Closed for remainder of meeting.

Purpose: The Study Section is charged with conducting the initial review of health services research grant applications addressing the utilization and effects of health care technologies and procedures as well as applications in the area of information and decision sciences relating to health care delivery.

Agenda: The open session on September 30 from 8 a.m. to 9 a.m. will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Administrator, Agency for Health Care Policy and Research (AHCPR). The closed sessions of the meeting will be devoted to a review of health services research grant applications emphasizing medical care technologies and procedures, and relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, title 5, U.S.C., appendix 2 and title 5, U.S.C. 552b(c)(6), the Administrator, AHCPR, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members, minutes of the meeting, or other relevant information should contact Alan E. Mayers, Ph.D., Agency for Health Care Policy and Research, suite 602, Executive Office Center, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 227–8449.

Name: Health Services Developmental Grants Review Subcommittee.

Date and Time: October 14–16, 1992, 8 a.m.

Place: Hyatt Regency, 7400 Wisconsin Avenue, Conference Room TBA, Bethesda, Maryland 20814.

Open October 14, 8 a.m. to 9 a.m.

Closed for remainder of meeting.

Purpose: The Subcommittee is charged with the initial review of grant applications proposing experimental, analytical and theoretical research on costs, quality, access, effectiveness and efficiency of the delivery of health services for the research grant program administered by AHCPR.

Agenda: The open session of the meeting on October 14 from 8 a.m. to 9 a.m. will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Administrator, AHCPR. During the closed session, the Subcommittee will be reviewing research and demonstration grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, title 5, U.S.C. appendix 2 and title 5, U.S.C. 552b(c)(6), the Administrator, AHCPR, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of member, minutes of the meeting, or other relevant information should contact Gerald E. Calderone, Ph.D., Agency for Health Care Policy and Research, suite 602, Executive Office Center, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 227–8449.

Name: Health Services Research Training Advisory Committee.

Date and Time: October 14–16, 1992, 8 a.m.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Gallery Room, Bethesda, Maryland 20814.

Open October 14, 8 a.m. to 8:45 a.m.

Closed for remainder of meeting.

Purpose: The Committee is charged with conducting the initial review of grant applications addressing subjects related to health care delivery and medical treatment outcomes research.

Agenda: The open session of the meeting on October 14 from 8 a.m. to 8:45 a.m. will be devoted to a business meeting covering administrative matters. During the closed sessions, the committee will be reviewing applications in response to the request for applications encouraging innovative and timely health services research on the effectiveness of pharmaceutical therapy and care. In accordance with the Federal Advisory Committee Act, title 5, U.S.C., appendix 2 and title 5, U.S.C., 552b(c)(6), the Administrator, AHCPR, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the grant applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members, minutes of the meeting, or other relevant information should contact G.B. Warren, D.M.D., M.P.H., Agency for Health Care Policy and Research, suite 602, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 227–8449.

Name: Health Services Research Review Subcommittee.

Date and Time: October 15–16, 1992, 8:30 a.m.

Place: Embassy Suites Hotel, 5300 Military Road, NW, Tenley II Room, Washington, DC 20015.

Open October 15, 8:30 a.m. to 9:15 a.m.

Closed for remainder of meeting.

Purpose: The Subcommittee is charged with the initial review of grant applications proposing analytical and theoretical research on costs, quality, access, and efficiency of the delivery of health services for the research grant program administered by AHCPR.

Agenda: The open session of the meeting on October 15 from 8:30 a.m. to 9:15 a.m. will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Administrator, AHCPR. During the closed sessions, the Subcommittee will be reviewing analytical and theoretical research grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, title 5, U.S.C., appendix 2 and title 5, U.S.C., 552b(c)(6) the Administrator, AHCPR, has made a formal determination that these latter

sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members, minutes of the meeting, or other relevant information should contact Patricia G. Thompson, Ph.D., Agency for Health Care Policy and Research, Suite 602, Executive Office Center, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 227-8449.

Name: Health Services Research Dissemination Study Section

Date and Time: October 23, 1992, 8:30 a.m.

Place: Marriott Residence Inn, 7335 Wisconsin Avenue, Montgomery I, Bethesda, Maryland 20814.

Open October 23, 1 p.m. to 2 p.m.

Closed for remainder of meeting.

Purpose: The Study Section is charged with the review of and making recommendations on grant applications for Federal support of conferences, workshops, meetings, or projects related to dissemination and utilization of research findings, and AHCPR liaison with health care policy makers, providers, and consumers.

Agenda: The open session of the meeting on October 23 from 1 p.m. to 2 p.m. will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Administrator, AHCPR. During the closed portions of the meeting, the Study Section will be reviewing grant applications relating to the dissemination of research on the organization, costs, and efficiency of health care. In accordance with the Federal Advisory Committee Act, Title 5, U.S.C., appendix 2 and title 5, U.S.C., 552b(c)(6), the Administrator, AHCPR, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the grant applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members, minutes of the meeting, or other relevant information should contact Mrs. Linda Blankenbaker, Agency for Health Care Policy and Research, suite 602, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 227-8449.

Agenda items for all meetings are subject to change as priorities dictate.

Dated: September 4, 1992.

J. Jarrett Clinton,

Administrator.

[FR Doc. 92-22075 Filed 9-11-92; 8:45 am]

BILLING CODE 4160-90-M

Alcohol, Drug Abuse, and Mental Health Administration

National Institute of Mental Health; Meetings

Pursuant to Public Law 92-463, notice is hereby given of the meetings of the advisory committees of the National Institute of Mental Health for October 1992.

The initial review groups will be performing review of applications for Federal assistance; therefore, portions of these meetings will be closed to the public as determined by the Acting Administrator, ADAMHA, in accordance with 5 U.S.C. 552b(c)(6) and 5 U.S.C. app. 2 10(d).

Summaries of the meetings and rosters of committee members may be obtained from: Ms. Joanna L. Kieffer, NIMH Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration, Parklawn Building, room 9-105, 5600 Fishers Lane, Rockville, MD 20857 (Telephone: 301-443-4333).

Substantive program information may be obtained from the contacts whose names, room numbers, and telephone numbers are listed below.

Committee Name: Molecular, Cellular, and Developmental Neurobiology Review Committee.

Meeting Date: October 5-6, 1992.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Open: October 5, 8:30-9:30 a.m.

Closed: Otherwise.

Contact: Shirley H. Maltz, room 9C-18, Parklawn Building, Telephone (301) 443-3857.

Committee Name: Behavioral Neuroscience Review Committee.

Meeting Date: October 7-8, 1992.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Open: October 7, 8-9 a.m.

Closed: Otherwise.

Contact: William H. Radcliffe, room 9C-18, Parklawn Building, Telephone (301) 443-3857.

Committee Name: Psychology and Behavior Review Committee.

Meeting Date: October 8-9, 1992.

Place: Canterbury Hotel, 1733 N Street, NW., Washington, DC 20036.

Open: October 8, 9-10 a.m.

Closed: Otherwise.

Contact: Shirley H. Maltz, room 9C-18, Parklawn Building, Telephone (301) 443-3944.

Committee Name: Cognitive Functional Neuroscience Review Committee.

Meeting Date: October 12-14, 1992.

Place: Governor's House Holiday Inn, 17th Street & Rhode Island Avenue, NW., Washington, DC 20036.

Open: October 12, 8-9 a.m.

Closed: Otherwise.

Contact Rodney A. Berry, room 9C-18, Parklawn Building, Telephone (301) 443-3936.

Committee Name: Health Behavior and Prevention Review Committee.

Meeting Date: October 14-15, 1992.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Open: October 14, 9-10 a.m.

Closed: Otherwise.

Contact Monica F. Woodfork, room 9C-05, Parklawn Building, Telephone (301) 443-4843.

Committee Name: Violence and Traumatic Stress Review Committee.

Meeting Date: October 14-16, 1992.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Open: October 14, 9-10 a.m.

Closed: Otherwise.

Contact Phyllis D. Artis, room 9C-15, Parklawn Building, Telephone (301) 443-6470.

Committee Name: Biological Psychopathology Review Committee.

Meeting Date: October 15-16, 1992.

Place: Ramada Inn Bethesda, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Open: October 15, 9-10 a.m.

Closed: Otherwise.

Contact Helen D. Craig, room 9C-18, Parklawn Building, Telephone (301) 443-3857.

Committee Name: Neuropharmacology and Neurochemistry Review Committee.

Meeting Date: October 15-16, 1992.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Open: October 15., 8:30-9:30 a.m.

Closed: Otherwise.

Contact Shirley H. Maltz, room 9C-18, Parklawn Building, Telephone (301) 443-3936.

Committee Name: Child/Adolescent Risk and Prevention Review Committee.

Meeting Date: October 15-17, 1992.

Place: Embassy Suites Hotel, 4300 Military Road, NW., Washington, DC 20015.

Open: October 15, 9-10 a.m.

Closed: Otherwise.

Contact Michele D. Campbell, room 9C-23, Parklawn Building, Telephone (301) 443-1177.

Committee Name: Perception and Cognition Review Committee.

Meeting Date: October 15-17, 1992.

Place: Holiday Inn Governors House, 17th Street & Rhode Island Avenue, NW., Washington, DC 20036.

Open: October 15, 9-10 a.m.

Closed: Otherwise.

Contact: Debra D. Woods, room 9C-23, Parklawn Building, Telephone (301) 443-1177.

Committee Name: Mental Health Small Business Research Review Committee.

Meeting Date: October 19-20, 1992.

Place: Washington Marriott Hotel, 1221 22nd Street, NW., Washington, DC 20037.

Open: October 19, 9-10 a.m.

Closed: Otherwise.

Contact: Wm. Gregory Zimmerman, 9C-14, Parklawn Building, Telephone (301) 443-1367.

Committee Name: Clinical Neuroscience Review Committee.

Meeting Date: October 21-23, 1992.

Place: Canterbury Hotel, 1733 N Street, NW., Washington, DC 20036.
Open: October 21, 9–10 a.m.
Closed: Otherwise.
Contact: Maurine L. Eister, room 9C–18, Parklawn Building, Telephone (301) 443–3936.

Committee Name: Mental Disorders of Aging Review Committee.
Meeting Date: October 21–23, 1992.
Place: The Hampshire Hotel, 1310 New Hampshire Avenue, NW., Washington, DC 20036.
Open: October 21, 9–10 a.m.
Closed: Otherwise.
Contact: Phyllis L. Zusman, room 9C–02, Parklawn Building, Telephone (301) 443–1340.

Committee Name: Emotion and Personality Review Committee.
Meeting Date: October 22–23, 1992.
Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Open: October 22, 9–10 a.m.
Closed: Otherwise.
Contact: Sheri L. Schwartzback, room 9C–05, Parklawn Building, Telephone (301) 443–4843.

Committee Name: Child Psychopathology and Treatment Review Committee.
Meeting Date: October 26–28, 1992.
Place: Canterbury Hotel, 1733 N Street, NW., Washington, DC 20036.
Open: October 26, 9–10 a.m.
Closed: Otherwise.
Contact: Francis Smith, room 9C–02, Parklawn Building, Telephone (301) 443–4868.

Committee Name: Clinical Psychopathology Review Committee.
Meeting Date: October 28–30, 1992.
Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Open: October 28, 1–2 p.m.
Closed: Otherwise.
Contact: Tammye M. Cross, room 9C–08, Parklawn Building, Telephone (301) 443–1340.

Committee Name: Social and Group Processes Review Committee.
Meeting Date: October 29–30, 1992.
Place: Residence Inn, 7335 Wisconsin Avenue, Bethesda, MD 20814.
Open: October 29, 9–10 a.m.
Closed: Otherwise.
Contact: Bernice R. Cherry, room 9C–15, Parklawn Building, Telephone (301) 443–6470.

Dated: September 8, 1992.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 92–22003 Filed 9–11–92; 8:45 am]

BILLING CODE 4160–20–M

Food and Drug Administration

[Docket No. 92F–0313]

Betz Laboratories, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Betz Laboratories, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of diethanolamine as a boiler water additive in paper mill boilers.

FOR FURTHER INFORMATION CONTACT: Andrew J. Zajac, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9500.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2B4329) has been filed by Betz Laboratories, Inc., 4636 Somerton Rd., Trevose, PA 19053–6783. The petition proposes to amend the food additive regulations in § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) to provide for the safe use of diethanolamine as a boiler water additive in paper mill boilers.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: September 1, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92–22004 Filed 9–11–92; 8:45 a.m.]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Program Announcement and Proposed Funding Priorities and Special Consideration for Grants for Graduate Training in Family Medicine

The Health Resources and Services Administration (HRSA) announces that applications for fiscal year (FY) 1993 Grants for Graduate Training in Family Medicine are being accepted under the authority of section 786(a), title VII of the Public Health Service (PHS) Act, extended by the Health Professions Reauthorization Act of 1988, Public Law 100–607, title VI. Comments are invited on the proposed funding priorities and special consideration.

This program announcement is subject to reauthorization of this legislative authority and to the appropriation of funds. The Administration's budget request for FY 1993 does not include funding for this program. Applicants are advised that this program announcement is a contingency action being taken to assure that should authority and funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as provide for an even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

Previous Funding Experience

Previous funding experience is provided to assist potential applicants to make better informed decisions regarding submission of an application for this program. Fiscal Year 1992 grant cycle data are not yet available.

In the first cycle for FY 1991, HRSA reviewed 99 applications for Grants for Graduate Training in Family Medicine. Of those applications, 60 percent were approved and 40 percent were not recommended for further consideration. Fifty-nine projects, or 60 percent of the applications received, were funded.

In the second cycle for FY 1991, HRSA reviewed 73 applications. Of those applications, 60 percent were approved and 40 percent were not recommended for further consideration. Eight projects, or 11 percent of applications received, were funded.

In the first cycle of FY 1990, HRSA reviewed 107 applications for Grants for Graduate Training in Family Medicine. Of those applications, 63 percent were approved and 37 percent were not recommended for further consideration. Sixty-seven projects, or 63 percent of applications received, were funded.

In the second cycle of FY 1990, HRSA reviewed 53 applications. Of those applications, 43 percent were approved and 57 percent were not recommended for further consideration. Fourteen projects, or 26 percent of applications received, were funded.

Purpose

Section 786(a) of the Public Health Service Act authorizes the Secretary to award grants to assist in meeting the costs of planning, developing and operating or participating in approved graduate training programs in the field of family medicine. In addition, section 786(a) authorizes assistance in meeting the cost of supporting trainees in such programs who plan to specialize or work in the practice of family medicine.

To receive support, programs must meet the requirements of regulations as set forth in 42 CFR part 57, subpart Q. The period of Federal support should not exceed 5 years.

Eligible applicants are accredited schools of medicine or osteopathic medicine, public or nonprofit private hospitals, and other public or private nonprofit entities.

National Health Objectives for the Year 2000

The PHS is committed to achieving the health promotion and disease prevention objectives of Health People 2000, a PHS-led national activity for setting priority areas. The Graduate Training in Family Medicine Program is related to the priority areas of Educational and Community-Based Programs and Clinical Preventive Services.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report; Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone 202-783-3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between its U.S. Public Health Service education programs and programs which provide comprehensive primary care services to the underserved.

Review Criteria

The review of applications will take into consideration the following criteria:

1. The degree to which the proposed project provides for the project requirements;
2. The administrative and management ability of the applicant to carry out the proposed project in a cost-effective manner; and
3. The potential of the project to continue on a self-sustaining basis.

Other Considerations

In addition, the following funding factors may be applied in determining the funding of approved applications:

1. Funding priorities—favorable adjustment of aggregate review scores when applications meet specified objective criteria.
2. Special considerations—enhancement of priority scores by merit reviewers based on the extent to which applicants address special areas of concern.

It is not required that applicants request consideration for a funding factor. Applications which do not request consideration for funding factors will be reviewed and given full consideration for funding.

Established Funding Priority

The following priority was established in FY 1992 dated March 3, 1992, (57 FR 7594) after public comment and is being continued in FY 1993.

Community—Oriented Primary Care Educational Activities

A funding priority will be given to applications that demonstrate that curricular time and educational offerings will be devoted to demonstrating and achieving better preventive/primary care services for underserved communities, areas or populations.

Proposed Funding Priorities for FY 1993

In fiscal year 1993, the following funding priorities are proposed:

1. Educational Linkages to Medically Underserved Communities

A funding priority will be given to:

Applications that propose to provide educational experiences to demonstrate to residents the provision of primary care services to underserved populations. These experiences must include substantial training involving one or more of the following eligible entities:

(A) *Underserved Geographical Area:* Inpatient or outpatient health care facilities located in a Health Professional Shortage Area (HPSA), PHS Act, section 332, or in a Medically Underserved Area (MUA) designated under provisions of PHS Act, section 330(b)(3);

(B) *Facilities Whose Purpose is Care of Underserved:* Community Health Centers currently supported under PHS Act, section 330, Migrant Health Centers currently supported under PHS Act, section 329, Homeless Health Centers supported under PHS Act, section 340, facilities that have formal arrangements to provide primary health services to public housing communities, hospitals or other health care facilities of the Indian Health Service and/or facilities operated by State or local health departments;

(C) *Underserved Patient Populations:* Facilities which do not qualify under (A) and (B) above can qualify for up to a full priority score based on the percentage of their patient visits/hospital admissions that are uncompensated or are compensated under the State Medicaid Program or local programs designed to reimburse health providers for services to indigent populations. This priority is designed to continue HRSA'S overall strategy to direct services to those most in need.

2. Minorities/Low Income Populations

Programs which demonstrate either substantial progress over the last 3 years or a significant experience of 10 or more years in enrolling and graduating residents from those minority or low-income populations identified as at risk of poor health outcomes. Consideration will also be given to the extent to which enrolled and graduating residents are from underserved areas.

This priority is consistent with a HRSA strategy to increase the number of health professionals from minority and other at risk populations, to assure equal access to health professions education for all population groups, and ultimately, to provide greater volume of health care in underserved areas.

3. HIV/AIDS/Substance Abuse Activities

Applications that: (1) Document collaboration with a Regional HIV/AIDS Educational Training Center and have implemented, or plan to implement no later than academic year 1993-94, a comprehensive training experience for all residents which includes counseling in the prevention of HIV infection, direct patient care and clinical management of HIV-infected individuals; and (2) provide all residents with an organized clinical experience in the diagnosis, counseling, treatment and referral of substance abuser patients/families or present plans for the implementation of such a curriculum no later than academic year 1993-94.

Health professionals are required to provide a wide range of services for HIV related diseases. This priority is designed to emphasize community coordination and service integration.

4. Clinical Preventive Services

Applications that demonstrate sufficient curricular time and offerings devoted to teaching all residents about the screening, counseling and immunization services recommended by the U.S. Preventive Services Task Force.

This primary care training focus is important for physicians who will serve in underserved areas.

Statutory Special Consideration

Special consideration will be given to applications demonstrating a commitment to Family Medicine.

Proposed Special Consideration

Special consideration will be given to the extent to which applicants enroll and graduate trainees from underserved areas.

This special consideration is intended to recognize programs that enroll and

graduate trainees from underserved areas because health professionals who come from underserved areas are more likely to return there upon completion of training to provide needed health services.

Additional Information

Interested persons are invited to comment on the proposed funding priorities and special consideration. All comments received on or after October 14, 1992 will be considered before the final funding priorities and special consideration are established. No funds will be allocated or final selections made until a final notice is published stating whether the final priorities and special consideration will be applied.

Written comments should be addressed to: Marc L. Rivo, M.D., M.P.H., Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Parklawn Building, room 4C-25, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Medicine, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

Application Requests

Requests for application materials and questions regarding grants policy and business management issues should be directed to: Mrs. Mary Allen, Grants Management Specialist (D-15), Residency and Advanced Grants Section, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Parklawn Building, room 8C-26, Rockville, Maryland 20857, Telephone (301) 443-6002.

Completed applications should be returned to the Grants Management Office at the above address.

If additional programmatic information is needed, please contact: Chief, Primary Care Medical Education Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Parklawn Building, room 4C-04, Rockville, Maryland 20857, Telephone: (301) 443-6820.

The standard application form PHS 6025-1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915-0060.

Public Law 100-607, section 633(a), requires that for grants issued under sections 780, 784, 785 and 786 for FY 1990 or subsequent fiscal years, the Secretary of Health and Human Services shall, not less than twice each fiscal year, issue solicitations for applications for such grants if amounts appropriated for such grants and remaining unobligated at the end of the first solicitation period, are sufficient with respect to issuing a second solicitation.

The deadline date for receipt of applications is October 15, 1992. Applications shall be considered as meeting the deadline if they are either:

(1) Received on or before the deadline date, or

(2) Postmarked on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late applications not accepted for processing will be returned to the applicant.

This program is listed at 93.379 in the *Catalog of Federal Domestic Assistance*. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: August 11, 1992.

Robert G. Harmon,

Administrator.

[FR Doc. 92-22002 Filed 9-11-92; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases, National Kidney and Urologic Diseases Advisory Board; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Kidney and Urologic Diseases Advisory Board on October 9, 1992. The meeting will begin at 8 a.m. and adjourn at approximately 2 p.m. The Board will meet at the Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, Virginia. The meeting, which will be open to the public, is being held to discuss the future activities of the Board. Attendance by the public will be limited to space available.

Dr. Ralph Bain, Executive Director, National Kidney and Urologic Diseases Advisory Board, 1801 Rockville Pike, suite 500, Rockville, Maryland 20852, (301) 496-6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

(Catalog of Federal Domestic Assistance Program No. 93.847-849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health.)

Dated: September 8, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-22120 Filed 9-11-92; 8:45 am]

BILLING CODE 4140-01-M

National Biotechnology Policy Board; Meeting

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the National Biotechnology Policy Board on October 9, 1992. The meeting will be held at the National Institutes of Health (NIH), Building 31C, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland 20892, starting at approximately 9 a.m. to adjournment at approximately 5 p.m. The meeting will be open to the public.

The Board will discuss the revised report which covers: (1) Capital formation and financing options, and (2) regulatory barriers to commercialization.

Attendance by the public will be limited to space available. Members of the public wishing to speak at this meeting may be given such opportunity at the discretion of the Chair.

Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, National Institutes of Health Building 31, room 4B11, Bethesda, Maryland 20892, telephone (301) 496-9838, fax (301) 496-9839, will provide materials to be discussed at this meeting, roster of committee members, and substantive program information. A summary of the meeting will be available at a later date.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which biotechnology could be included, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about

whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: September 9, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-22121 Filed 9-11-92; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute: Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Scientific and Commercial Development of Novel Heparin-Binding Peptides

AGENCY: National Institutes of Health, PHS, HHS.

ACTION: Notice.

SUMMARY: The National Cancer Institute (NCI) of the National Institutes of Health (NIH) of the Public Service (PHS) of the Department of Health and Human Services (HHS) seeks a major pharmaceutical company which can effectively pursue the development of novel heparin-binding peptides for which a patent application has been filed. NCI will enter into CRADA negotiations with the selected sponsor. It is the intention of NCI that the selected sponsor will be awarded a CRADA for the co-development of these peptides.

ADDRESSES: Questions about this opportunity may be addressed to Kathleen Sybert, Executive Secretary, CRADA Selection Committee, Office of Technology Development, National Cancer Institute (NCI), Building 31 room 4A51, 9000 Rockville Pike, Bethesda, Maryland 20892, telephone number (301) 496-0477, facsimile number (301) 402-2117. Further information for proposal preparation may be obtained through a confidentiality agreement between the interested company and the NCI. This information will include forms necessary for examining, and applying for license to, existing relevant patent applications. Under the Collaborative Research and Development Agreement (CRADA), the industrial collaborator may obtain an option to negotiate a license to government patent rights to inventions arising under the CRADA.

DATES: Requests for further information must be received on or before October 29, 1992.

SUPPLEMENTARY INFORMATION: The Division of Cancer Biology, Diagnosis and Centers (DCBDC) of NCI is seeking to develop a collaborative relationship with a major pharmaceutical company with the following aims:

(1) Structure-function studies of peptide activity *in vitro* and *in vivo*;

(2) Preclinical development of the synthetic peptides; and

(3) Clinical studies as warranted.

A family of related peptides have been synthesized based on the Type I repeats of human thrombospondin that bind to heparin or related sulfated glycoconjugates with high affinity. The peptides differ from previously described heparin-binding peptides in that they do not require basic amino acid residues for binding to heparin. The peptides are potent inhibitors of interactions of heparin, heparin sulfate proteoglycans, or related sulfated glycoconjugates with adhesion molecules, growth factors, cells and some heparin-dependent enzymes. The lack of charge should be advantageous in formulating pharmaceutical agents based on these peptides for efficient delivery to their sites of action. The high potency of these peptides should allow much smaller amounts of peptide to be administered and thus may reduce risks of toxicity and generation of immune responses against the peptides.

The peptides have several defined activities: (a) Inhibition of binding of the adhesive proteins laminin and thrombospondin to heparin and heparin sulfate proteoglycans; (b) inhibition of adhesive protein binding to tumor and endothelial cells; (c) promotion of tumor and endothelial cell adhesion on peptide coated substrates; and (d) modulation of tumor and endothelial cell growth and chemotaxis.

Preclinical studies are in progress to characterize the activities of these peptides in modulating tumor growth, metastasis, and invasion, and in inhibiting angiogenesis. Studies will also investigate potential use of the peptides as inhibitors of pathogen interactions with sulfated glycoconjugates on host cells.

The role of the Division of Cancer Biology, Diagnosis and Centers (DCBDC) of the National Cancer Institute (NCI) under the CRADA will include the following:

1. The government will continue preclinical development of the peptides as inhibitors of tumor growth and metastasis *in vitro* and *in vivo*. Data from these studies will be provided to the pharmaceutical company.

2. The government will provide available data and expertise in structure-function relationships and conformational analysis of the active peptides.

3. As appropriate, the government will initiate clinical trials under its extramural clinical trials network, thus ensuring the clinical evaluation of the compound.

The role of the successful pharmaceutical company under the CRADA will include the following:

1. Prepare and characterize nonmetabolizable analogs of the active peptides and provide these to the DCBDC, NCI for characterization as angiogenesis and metastasis inhibitors.

2. Provide materials and analytical support to further investigate the specificity of the active peptides for interaction with glycosaminoglycans produced by tumor and endothelial cells.

3. Provide funds for preclinical development of the peptides *in vitro* and animal models.

4. Provide planning and support for clinical development leading to FDA approval and marketing.

Criteria for choosing the pharmaceutical company include the following:

1. Experience in preclinical and clinical drug development.

2. Experience and ability to produce, package, market, and distribute pharmaceutical products in the United States and to provide the product at a reasonable price.

3. A willingness to cooperate with the Public Health Service in the collection, evaluation, publication, and maintenance of data from clinical trials of investigational agents.

4. A willingness to cost share in the development of heparin binding peptides as outlined above. This includes acquisition of material and synthesis of heparin binding peptides in adequate amounts as needed for future clinical trials and marketing.

5. An agreement to be bound by the DHHS rules involving human and animal subjects.

6. The aggressiveness of the development plan, including the appropriateness of milestones and deadlines for preclinical and clinical development.

7. Provisions for equitable distribution of patent rights to any inventions arising under the CRADA. Generally the rights of ownership are retained by the organization which is the employer of the inventor, with (1) An irrevocable, nonexclusive, royalty-free license to the Government (when a company employee is the sole inventor) or (2) an option to negotiate an exclusive or nonexclusive license to the company on terms that are appropriate (when a Government employee is the sole inventor).

Dated: August 14, 1992.

Reid G. Adler,

Director, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 92-22001 Filed 9-11-92; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-92-3194; FR-2917-N-03]

Public Housing Drug Elimination, Technical Assistance Program; Announcement of Funding Awards

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of third quarter funding decisions made by the Department in a competition for funding under the Notice of Public Housing Drug Elimination, Technical Assistance Program; Fund Availability—FY 1991. The announcement contains the names and addresses of the award winners and the amounts of the awards.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Cooke, Drug-Free Neighborhoods Division, Office of Resident Initiatives, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-1197. The TDD number for the hearing impaired is (202) 708-0850. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The purpose of the competition was to provide short-term technical assistance to public housing agencies (PHAs), Indian housing authorities (IHAs), resident management corporations, and incorporated resident councils. The technical assistance was intended to better prepare and educate public housing and resident organization officials to confront the widespread abuse of controlled substances in public housing communities.

The third quarter 1991 awards announced in this Notice were selected for funding in a competition announced in a **Federal Register** Notice published on April 11, 1991 (56 FR 14826). Applications were scored and selected for funding on the basis of selection criteria contained in that Notice

A total of $183,496 was awarded to 32 PHAs, IHAs, and resident groups. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235, approved December 15, 1989), the Department is publishing the names, addresses, and amounts of those awards as follows:

PUBLIC HOUSING DRUG ELIMINATION, TECHNICAL ASSISTANCE PROGRAM; FUND AVAILABILITY—FY 1991

Region	Recipient	HA/RMC/RO	Amount
II	Karriem Shabazz, 3150 Borge St., Oakton, VA 22124	Florence HA, 620 W. Third St., Florence, NJ 08518	$2,118
	Stephen Wright, 8437 E. Saddlebrook, N. Charleston, SC 29403	Florence HA, 620 W. Third Str., Florence, NJ 08518	3,250
	Richard Keefe, 48 Goetze Street, Bay Head, NJ 08742	Red Bank HA, P.O. box 2158, Red Bank, NJ 07701	4,200
	Alexander Sutton, LST Group, 1133 Kensington Ave., Plainfield, NJ 07060.	New Brunswick HA, P.O. Box 220, New Brunswick, NJ 08903	7,600
	Gerard Lee, LST Group, 1133 Kensington Ave., Plainfield, NJ 07060.	East Orange HA, 160 Halsted St., East Orange, NJ 07018	9,200
	Richard Keefe, 48 Goetze Street, Bay Head, NJ 08742	North Bergen HA, 6121 Grand Ave., North Bergen, NJ 07047	4,400
	Richard Keefe, 48 Goetze Street, Bay Head, NJ 08742	Salem HA, 205 Seventh St., Salem, NJ 08079	5,000
III	Beverly McLendon, 879 Twhs. 1 Lucas Ck., Newport News, VA 23602.	Chesapeake Redevelopment and HA, P.O. Box 1304, Chesapeake, VA 23602.	7,700
	Karriem Shabazz, 3150 Borge St., Oakton, VA 22124	Bluefield HA, P.O. Box 1475, Bluefield, WV 24701	3,730
	Stephen Wright, 8437 E. Saddlebrook, N. Charleston, SC 29403	Bluefield HA, P.O. Box 1475, Bluefield, WV 24701	3,250
IV	Judith Dekle, 1412 W. Colonial Dr., Orlando, FL 32804	Winter Park HA, 718 Margaret Sq., Winter Park, FL 32789	3,600
	PERF, 2300 M St., NW., Washington, DC 20037	Lexington HA, 635 Ballard St., Lexington, KY 40508	9,500
	Charlena Bray, 2328 Second Ave., No., Birmingham, AL 35203	Jefferson County HA, 2100 Walker Chapel Rd., Fultondale, AL 35068.	7,600
	John T. Phillips, 302 N. Lee St., Ayden, NC 28513	Plymouth HA, 306 W. Water St., Plymouth, NC 27962	2,915
	Lillian Young, 1447 Peachtree St., 522, Atlanta, GA 30309	Juniper/10th RMC, 150 Tenth St., NE, Atlanta, GA 30309	7,830
V	Debra Williams House, 1809 Fairpointe Trace, Stone Mountain, GA 30088.	Detroit Housing Dept., 2211 Orleans, Detroit, MI 48207	9,900
VI	Rudy Buchanan, 745 East So. Mountain, Phoenix, AZ 85040	Beaumont HA, P.O. Box 1312, Beaumont, TX 77704	4,130
	Navajo Townsite, Development Corp., P.O. Box 1280, Navajo Nation, NM 87328.	Navajo IHA, P.O. Box 387, Window Rock, Navajo Nation, AZ 86515.	9,970
	Ricardo Jasso, P.O. Box 1615, Casa Grande, AZ 85222	Kiowa IHA, P.O. Box 847, Anadarko, OK 73005	3,930
	Barbara Warner Ross, 4900 N.W. 36th St., Oklahoma City, OK 73122.	Kiowa IHA, P.O. Box 847, Anadarko, OK 73005	3,920
	Ricardo Jasso, P.O. Box 1615, Casa Grande, AZ 85222	Absentee Shawnee IHA, P.O. Box 425, Shawnee, OK 74802	3,330
	Barbara Warner Ross, 4900 N.W. 36th St., Oklahoma City, OK 73122.	Absentee Shawnee IHA, P.O. Box 425, Shawnee, OK 74802	4,100
	Susan Guyette, 128 Rio Seco, Santa Fe, NM 87501	Blackfeet Resident Organization, P.O. Box 864, Browning, MT 59417.	9,775
	Ricardo Jasso, P.O. Box 1615, Casa Grande, AZ 85222	Choctaw IHA, P.O. Box G, Hugo, OK 74743	4,648
	Barbara Warner Ross, 4900 N.W. 36th St., Oklahoma City, OK 73122.	Choctaw IHA, P.O. Box G, Hugo, OK 74743	4,278
IX	Dilda McFadden, 2030 Hall Avenue, El Centro, CA 92234	Calexico HA, 1006 Ea. Fifth St., Calexico, CA 92231	8,750
	Leon Watkins, 220 E. 60th St., Los Angeles, CA 90011	Nickerson Gardens RMC, Resident Mgmt Corp., 1593 E. 114th St., 1108 Los Angeles, CA 90054.	9,500
	George Waters, EDTEC, 309 Market St., 302, Camden, NJ 08102	Nickerson Gardens RMC, Resident Mgmt Corp., 1593 E. 114th St., 1108 Los Angeles, CA 90054.	7,600
	Steve Mariotti, 64 Fulton St., 700, New York, NY 10038	Nickerson Gardens RMC, Resident Mgmt Corp., 1593 E. 114th St., 1108 Los Angeles, CA 90054.	2,330
X	PRIDE Training, 1240 Johnson Ferry Pl., Suite F10, Marietta, GA 30038.	Yamhill County HA, 414 No. Evans St., McMinnville, OR 97128-4607.	8,770
	WEST Consulting, 34956 Seavey Loop, 56, Eugene, OR 97405	Siletz Indian HA, P.O. Box 549, Siletz, OR 97380	1,980

PUBLIC HOUSING DRUG ELIMINATION, TECHNICAL ASSISTANCE PROGRAM; FUND AVAILABILITY—FY 1991—Continued

Region	Recipient	HA/RMC/RO	Amount
	Joseph White-Eyes, 6028 N. Pauline, Chicago, IL 60660	Colville IHA, P.O. Box 528, Nespelem, WA 99155	4,712

Dated: September 4, 1992.

Joseph G. Schiff,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 92-21965 Filed 9-11-92; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-920-02-4110-09]

Availability of the Draft Dark Canyon Environmental Impact Statement (EIS)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the Draft Dark Canyon EIS, 60-day comment period, and public hearing.

SUMMARY: The Bureau of Land Management (BLM), New Mexico State Office, announces the availability of the Draft Dark Canyon EIS for public review and comment. This document analyzes the impacts on the environment from reasonable foreseeable development of oil and gas resources within Dark Canyon, located in Eddy County, New Mexico. This includes the Proposed Action, Yates Energy Corporation's application for permit to drill (APD) the Diamondback Federal No. 1 well on federal lease NM-62161.

The Dark Canyon EIS study area encompasses approximately 8,320 acres and lies about 10 miles southwest of the City of Carlsbad. The study area is in the BLM's Carlsbad Resource Area and totally encompasses the Dark Canyon Special Management Area (SMA), noted for its rugged and scenic landscape and cave resources.

The intent of the IES is to provide a full discussion of all significant impacts and cumulative effects that may result from full field development. It will inform the decisionmaker (the BLM New Mexico State Director) and the public of reasonable alternatives that would avoid or minimize adverse impacts or enhance the quality of the human environment.

The BLM is the lead agency for the EIS, since the Bureau is responsible for permitting oil and gas exploration on federal mineral estate. The National Park Service (NPS) is a cooperating agency because the study area borders Carlsbad Caverns National Park to the south which includes Lechuguilla Cave.

DATES: The public comment period for this document runs from September 18, 1992, to November 20, 1992. Written comments on the Draft EIS must be submitted or postmarked no later than November 20, 1992. Oral and/or written comments may also be presented at a public hearing to be held October 22, 1992, at the Hotel Stevens in Carlsbad, New Mexico, beginning at 7 p.m. Oral comments will be limited to 10 minutes and should be accompanied with a written statement. An informal open house will be held just prior to the public hearing at the same location from 6 to 7. p.m. to answer questions.

ADDRESSES: Written comments on the document should be sent to: Bureau of Land Management, New Mexico State Office, ATTN: Joe Incardine (NM-911), P.O. Box 27115, Santa Fe, New Mexico, 87502-0115. A limited number of copies of the Draft EIS are available at this address as well as the BLM's Roswell District Office and Carlsbad Resource Area Office. Public reading copies are available at the federal depository libraries in New Mexico and public libraries within Eddy, Chaves, and Lea Counties.

FOR FURTHER INFORMATION CONTACT: Joe Incardine, EIS Team Leader, at (505) 438-7458 or at the above address.

SUPPLEMENTARY INFORMATION: The two major resources identified as potentially being impacted are BLM and NPS administered caves, especially Lechuguilla Cave on adjacent NPS lands, and the Capitan aquifer, which supplies drinking water to the City of Carlsbad. The Dark Canyon EIS analyzes five alternatives in order that management concerns and the issues raised during scoping may be addressed for drilling and producing oil and gas resources. The alternatives to the proposed action incorporate management prescriptions for the proposed Diamondback Federal #1 well and other foreseeable wells which specifically protect cave resources through avoidance and mitigation.

The five alternatives developed for the EIS are: (A) The proposed action and conventional drilling within the EIS study area; (B) no action alternative—Deny the APD and future drilling within the EIS study area; (C) The Preferred Alternative—Relocate the well pad, and use enhanced precautionary operations within the EIS study area; (D) Directionally drill from an existing well pad, and use enhanced precautionary operations within the EIS study area; (E) Directionally and vertically drill to multiple targets, and use enhanced precautionary operations within the EIS study area.

Under the preferred alternative (C), foreseeable wells would avoid all known lineaments, natural potential anomalies, and significant helium measurements in order to avoid the likelihood of impacting an undiscovered cave on BLM lands or fracture which may communicate with Lechuguilla Cave on NPS lands. It also allows Yates Energy Corporation the opportunity to drill in reasonable proximity to their intended target to test all potentially productive formations without using the more costly and problem-prone directional drilling. Mitigative measures would be used to diminish the impacts to unknown caves. Monitoring by a BLM drilling representative would ensure that approved mitigative measures are executed by operators within the study area.

Formal and informal public participation has occurred throughout the EIS process. The Notice of Intent (NOI) to prepare this EIS was published in the **Federal Register** on October 10, 1991, which also announced the public scoping meeting held in Carlsbad, New Mexico. Following publication of the NOI, a scoping package of information and a questionnaire was sent to over 200 agencies and interested publics soliciting comments on the proposed action, mitigative measures, and alternatives. Since then, two additional letters were sent to provide updates to the public on the issues and alternatives and solicit comments on proposed mitigative measures.

Important Note: Reviewers should retain the Draft EIS for future reference, since the Final EIS may not reproduce the draft text in full.

Dated: September 4, 1992.

Larry L. Woodard,

State Director.

[FR Doc. 92-21950 Filed 9-11-92; 8:45 am]

BILLING CODE 4310-FB-M

[ID-030-02-4212-13 [IDI-25636]

Realty Action Involving Private Exchange of Public Lands in Bannock County, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Private Exchange Involving Public Lands in Bannock County, Idaho.

SUMMARY: The following described public land in Bannock County, Idaho has been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Boise Meridian, Idaho

T. 7 S., R. 35 E.,
Sec. 29, W½SE¼;
Sec. 32, N½NW¼.

The area described contains 160 acres, more or less.

In exchange for these lands, the Federal Government will acquire a tract of non-federal land in Bannock County from Edward A. DeSano, Jr., described as follows:

Boise Meridian, Idaho

T. 7 S., R. 35 E.,
Sec. 33, N½SE¼;
Sec. 34, W½SW¼.

The area described contains 160 acres, more or less.

The purpose of the exchange is to acquire the non-federal lands for use in wildlife habitat and grazing and riparian management. The exchange is consistent with the Bureau's planning for the lands involved and has been discussed with county and state officials. The public interest will be served by making the exchange.

The value of the lands to be exchanged is approximately equal, and the acreage will be adjusted or money will be used to equalize the values upon completion of the final appraisal of the lands.

The terms and conditions applicable to the exchange are: The reservation to the United States of a right-of-way for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

The publication of the notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws.

As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed, and shall be returned to the applicant.

SUPPLEMENTARY INFORMATION: Detailed information concerning the exchange, including the environmental assessment is available for review at the Pocatello Resource Area Office, Federal Building, room 172, 250 South 4th Ave., Pocatello, Idaho 83201.

For a period of 45 days from the date of publication of this notice, interested parties may submit comments to the Idaho Falls District Office, Bureau of Land Management, 940 Lincoln Road, Idaho Falls, Idaho 83401.

Dated: September 2, 1992.

Lloyd H. Ferguson,
District Manager.

[FR Doc. 92-21941 Filed 9-11-92; 8:45 am]

BILLING CODE 4310-GG-M

Fish and Wildlife Service

Availability of a Technical/Agency Draft Recovery Plan for Schoepfia Arenaria for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The Fish and Wildlife Service (Service) announces the availability for public review of a Recovery Plan for the *Schoepfia arenaria*. A final Recovery Plan for this species was prepared. However, since a notice of availability of a Technical/Agency Draft was erroneously not submitted to the **Federal Register**, the Service may revise the Recovery Plan if any substantial comments are received.

DATES: Comments on the recovery plan must be received on or before October 8, 1992 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the recovery plan may obtain a copy by contacting the Southeast Regional Office, Richard B. Russell Federal Building, 75 Spring Street SW., Atlanta, Georgia 30303. Written comments and materials regarding the plan should be addressed to Field Supervisor, Caribbean Field Office, P.O. Box 491, Boquerón, PR 00622. Comments and materials are available on request for public inspection, by appointment, during normal business hours at the above-mentioned address.

FOR FURTHER INFORMATION CONTACT: Ms. Marelisa Rivera, Caribbean Field Office, P.O. Box 491, Boquerón, PR 00622 (809/851-7297).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for the downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comments be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised Recovery Plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

This Recovery Plan is for *Schoepfia arenaria*, a small evergreen tree endemic to Puerto Rico. The historical range of the species included the coastal forests of northern Puerto Rico. However, deforestation and limestone hills destruction for industrial, urban, and tourist expansion have restricted the species to 4 localities: Isabela, Piñones, Fajardo, and Río Abajo Commonwealth Forest. Approximately 150 individuals occur on privately owned land, a single individual is found in the Río Abajo Commonwealth Forest, and approximately 50 individuals are found in Fajardo. It is threatened by development projects in Isabela, and by illegal land acquisition in Piñones.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered for inclusion in the Recovery Plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 2, 1992.

James P. Oland,
Field Supervisor.

[FR Doc. 92-22049 Filed 9-11-92; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

El Malpais National Monument; Revision of Park Boundary

AGENCY: National Park Service, Interior.

NOTICE: El Malpais National Monument; Revision of Park Boundary.

Public Law 100–225 established El Malpais National Monument on December 31, 1987. The May 1987 map, referenced in the legislation as "El Malpais National Monument and National Conservation Area" and numbered NM–ELMA–80,001B identified the area of the monument as being 114,886.68 acres. Section 506(e) of Public Law 100–225 indicates if discrepancies exist between cited acreage and the lands depicted on referenced maps, the maps shall control.

Since establishment of the monument, the National Park Service has developed, in conjunction with the Bureau of Land Management, recommendations for a number of revisions to the original monument boundary. The purpose of these revisions is to improve the manageability of the monument by reducing the number of incompatible land uses within its boundaries.

A water tank and windmill that provide the only livestock water to a ranching operation on adjacent private land should be deleted from the monument. A total of 2.94 acres are involved in Section 21, Township 7 North, Range 12 West of the New Mexico Principal Meridian.

A total of 30.37 acres should be added to the monument in the NW¼ of Section 29, Township 9 North, Range 12 West of the New Mexico Principal Meridian. These 30.37 acres are adjacent to County Road 42, which will be the primary access route for visitors to the western portion of the monument.

The boundary of the interagency visitor center site, also known as Tract No. 101–01, should be revised. Along the north boundary, 24.78 acres should be added for increased accessibility to the site and to prevent incompatible development. In Sections 7 and 18 of Township 10 North, Range 9 West of the New Mexico Principal Meridian, 732.36 acres should be deleted to allow for continued grazing use. In Sections 6 and 7 of Township 10 North, Range 9 West of the New Mexico Principal Meridian, 19.23 acres of existing commercially developed land should be deleted.

A further addition of 98.44 acres and deletion of 16.49 acres are recommended because of the availability of more accurate highway and subdivision survey data at six locations within the monument.

In summary, seven changes will add 153.59 acres and four changes will delete 771.02 acres, creating a net decrease of 617.43 acres in this proposed minor boundary revision. Most of the acreage deleted from the monument will be added to the conservation area. The authority for implementing this action is the Land and Water Conservation Fund Act, as amended, 16 U.S.C. 460*l*–9(c).

Therefore, notice is hereby given that in accordance with the Land and Water Conservation Fund Act, as amended, the boundary of El Malpais National Monument should be revised as described above and as approved by both the Bureau of Land Management and the National Park Service on February 25, 1991. The revised boundary is depicted on a map entitled "Boundary Map, El Malpais National Monument & Conservation Area," Drawing No. 103/80,001D, and dated September 24, 1990. This map is on file and available for inspection in the Office of the National Park Service, Department of the Interior; the Office of the Southwest Region, National Park Service; and the Office of the Superintendent, El Malpais National Monument.

Dated: June 26, 1992.

John E. Cook,

Regional Director, Southwest Region.

[FR Doc. 92–22112 Filed 9–11–92; 8:45 am]

BILLING CODE 4310–70–M

Intent To Prepare a Draft Environmental Impact Statement (DEIS); Erosion Control for the North End of Assateague Island National Seashore, MD

AGENCY: Assateague Island National Seashore, National Park Service, U.S. Department of the Interior.

ACTION: Notice of Intent to prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY:

1. Description of the Proposed Action

Subsequent to a hurricane in 1933, stabilization and maintenance of the inlet formed at Ocean City, Maryland has resulted in sediment starvation at the north end of Assateague Island. Erosion and landward migration of the Island have accelerated.

National Park Service management policies generally preclude interference with natural shoreline processes in undeveloped areas. However, because of the potentially adverse impacts on natural resources, park facilities and private facilities landward, the National Park Service sponsored a workshop to identify appropriate management alternatives. The alternatives represent engineering responses of differing intensities designed to delay or prevent realization of the No Action scenario—future shoreline retreat toward the mainland and a new inlet to the south in 2020. Other alternatives include maintenance of the existing shoreline; restore to 1965 shoreline with no maintenance; restore to 1965 shoreline maintaining erosion rate; development of an artificial dune in the overwash zone; and maintaining an artificial dune in the overwash zone and maintain the shoreline position. The National Park Service is interested in identifying and analyzing the most recent information on the subject and the impact and cost of any other feasible options prior to deciding on a specific plan of action. The DEIS will provide this analysis and respond to major issues of concern which may be identified by the public.

2. Scoping Process

Public Involvement: Workshops/public meetings will be held with time and location to be announced. The public is encouraged to attend and submit verbal and/or written comments on the proposed EIS. Comments concerning erosion control at the north end of Assateague Island National Seashore should be received within 30 days of scoping meetings. The draft and final EIS will be distributed for comments to all known interested parties and appropriate agencies. Full public participation by interested Federal, state and local agencies as well as other concerned organizations and private citizens is invited.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Gift, Mid-Atlantic Region, National Park Service, Custom House, 2nd & Chestnut Streets, Philadelphia, PA. 19106, Telephone (215) 597–3503. Roger Rector, Superintendent, Route 611, 7206 National Seashore Lane, Berlin, Md. 21811, Telephone (301) 641–1443.

Joseph W. Gorrell,

Acting Regional Director.

[FR Doc. 92–22027 Filed 9–11–92; 8:45 am]

BILLING CODE 4310–70–M

General Management Plan/Environmental Impact Statement Chiricahua National Monument and Fort Bowie National Historic Site Arizona; Intent To Prepare a General Management Plan/Environmental Impact Statement for Chiricahua National Monument and Fort Bowie National Historic Site

SUMMARY: The National Park Service will prepare a General Management

Plan/Environmental Impact Statement (GMP/EIS) for Chiricahua National Monument and Fort Bowie National Historic Site, Arizona, and initiate the scoping process for this document. This notice is in accordance with 40 CFR 1501.7 and 40 CFR 1508.22, of the regulation of the President's Council on Environmental Quality for the National Environmental Policy Act of 1969, Public Law 91-150.

Issues at Chiricahua National Monument to be addressed in the GMP/EIS include, but are not limited to: Park boundary adjustments; administrative facilities; visitor facilities; VIP facilities; utility systems; circulation; treatment of the Faraway Ranch; potential external impacts; and cooperation with the US Forest Service. Issues at Fort Bowie National Historic Site to be addressed in the GMP/EIS include, but are not limited to: Park boundary adjustments; park entrance; ruins preservation; administrative facilities; visitor facilities; VIP facilities; utility systems; potential external impacts; and cooperation with the Bureau of Land Management. Alternatives to address these issues will be developed in cooperation with the public, including a no-action alternative.

Persons wishing to comment or provide input on formulating issues and alternatives, or identifying potential impacts to be considered in the GMP/EIS should provide such comments to the Superintendent, Chiricahua National Monument, Dos Cabezas Route, Box 6500, Willcox, AZ 85634 not later than November 15, 1992. A public open house will also be held; date, time and place to be announced in the future. For further information, contact the Superintendent at the above address or telephone number (602) 824-3560.

The responsible official is Stanley T. Albright, Regional Director, Western Region, National Park Service. The draft GMP/EIS is expected to be available for public review in late summer, 1993 and the final and Record of Decision completed approximately six months later.

Dated: August 28, 1992.

B.J. Griffins,

Acting Regional Director, Western Region.

[FR Doc. 92-22028 Filed 9-11-92; 8:45 am]

BILLING CODE 4310-70-M

Concession Services Plan, Yosemite National Park; Availability of Final Plan and Supplemental Environmental Impact Statement to the Final General Management Plan and Environmental Impact Statement

SUMMARY: In accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, Public Law 91-190, the National Park Service has prepared a Final Concession Services Plan/Supplemental Environmental Impact Statement (EIS) to the 1980 Final General Management Plan/Environmental Impact Statement (GMP/EIS) for Yosemite National Park, Tuolumne, Mariposa and Madera Counties, California. The final plan/supplemental EIS further defines and analyzes the management of concession services in Yosemite National Park and focuses on means to implement the goals outlined for concession services in the 1980 final GMP/EIS section entitled "Visitor Use/Park Operations/Development".

The draft plan/supplemental EIS was on public review between December 27, 1991 and February 28, 1992 (56 FR 67097). Two alternatives were identified and evaluated in the draft:

Alternative A in which concession services action items would be implemented as written in the 1980 GMP/EIS, and Alternative B, the proposal, in which the 1980 GMP action items would be implemented with certain revisions that would amend the 1980 GMP for concession services actions only.

In response to public and agency comments, the final proposal differs from the draft proposal in the following major actions. Parkwide lodging would be reduced by 15.2% rather than 13.1%. Replacement lodging at Yosemite Lodge would be economy cabins and cottages instead of motel units. At Curry Village, 150 tent cabins would be retained rather than 1,090. No new lodging would be constructed at Wawona. The number of parkwide food service seats would increase to 2,830 rather than 2,960. The Village Grill would remain at the general store rather than be relocated to Degnan's building. The sport mountaineering shop would be at Curry Village rather than the village general store. The Glacier Point gift shop and the White Wolf stables would be discontinued rather than relocated. The Art Activity Center would be relocated to the bank building and the ice rink would be retained. A Crane Flat winter use area would be developed.

The final supplement to the final environmental impact statement contains a statement of findings for the retention of certain structures within the base floodplain of the Merced River, in compliance with Executive Orders 11988 and 12372.

SUPPLEMENTARY INFORMATION: The 30 day no action period on the final supplemental EIS will expire on October 9, 1992. Requests for information on, or for copies of this document, should be addressed to: Superintendent, Yosemite National Park, P.O. Box 577, Yosemite National Park, CA 95389, telephone number (209) 372-0202. Copies of the final plan/supplemental EIS are available at the park headquarters and at libraries in communities near the park and libraries in Los Angeles and San Francisco. Copies are also available for inspection at the following address: Western Regional Office, National Park Service, Division of Planning, Grants and Environmental Quality, 600 Harrison St., suite 600, San Francisco, CA 94107-1372.

Dated: June 25, 1992.

Lewis S. Alberts,

Acting Regional Director, Western Region.

[FR Doc. 92-22029 Filed 9-11-92; 8:45 am]

BILLING CODE 4310-70-M

Gauley River National Recreation Area; Meeting

AGENCY: National Park Service; Gauley River National Recreation Area Advisory Committee.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Gauley River National Recreation Area Advisory Committee. Notice of this meeting is required under the Federal Advisory Committee Act.

DATES: November 4, 1992—10 a.m.

ADDRESSES: Comfort Inn, Summersville, WV (north of Summersville on US Rt. 19, just south of intersection with WV Rt. 41, adjacent to Shoney's Restaurant).

FOR FURTHER INFORMATION CONTACT: Joe L. Kennedy, Superintendent, New River Gorge National River, P.O. Box 246, Glen Jean, WV 25846; (304) 465-0508.

SUPPLEMENTARY INFORMATION: The Advisory Committee was established under section 206(a) of the "WV National Interest Act of 1987, "Public Law 100-534, to consult with the Secretary of the Interior, or his designee," * * * on matters relating to development of a management plan for the recreation area and on implementation of such plan."

The agenda for this meeting will focus on review of preliminary draft material for the General Management Plan.

The meeting will be open to the public. Any member of the public may file with the Committee a written statement concerning agenda items. The statement should be addressed to the Gauley River National Recreation Area Advisory Committee, P.O. Box 57, Glen Jean, WV 25846–0246. Minutes of the meeting will be available for inspection four weeks after the meeting, at the permanent headquarters of the New River Gorge National River, 104 Main Street, P.O. Box 246, Glen Jean, WV 25846–0246.

Joseph Gorrell,

Acting Regional Director, Mid-Atlantic Region.

[FR Doc. 92–22030 Filed 9–11–92; 8:45 am]

BILLING CODE 4310-70-M

Trail of Tears National Historic Trail Advisory Council; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act, Public Law 92–463, that a meeting of the Trail of Tears National Historic Trail Advisory Council will be held October 8–9, 1992, at 8:30 a.m., at the Holiday Inn, Interstate 55 & Williams Street, Cape Girardeau, Missouri.

The Trail of Tears National Historic Trail Advisory Council was established pursuant to Public Law 100–192 establishing the Trail of Tears National Historic Trail to advise the National Park Service on such issues as preservation of trail routes and features, public use, standards for posting and maintaining trail markers, as well as administrative matters.

The matters to be discussed include:

—Plan implementation
—Fundraising
—Trail Association Role
—Public Awareness

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with David Gaines, Trail Manager.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact David Gaines, Trail Manager, Trail of Tears National Historic Trail, National Park Service, Southwest Region, P.O. Box 728, Santa Fe, New Mexico 87504–0728, telephone 505/988–6888. Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of the Administrator, located in room 358, Pinon Building, 1220 South St. Francis Drive, Santa Fe, New Mexico.

Dated: September 2, 1992.

John E. Cook,

Regional Director, Southwest Region.

[FR Doc. 92–22031 Filed 9–11–92; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation 332-332]

Global Competitiveness of U.S. Advanced-Technology Manufacturing Industries: Large Civil Aircraft

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: September 2, 1992.

SUMMARY: Following receipt of a request on June 11, 1992, from the Senate Committee on Finance, the Commission instituted investigation No. 332–332, Global Competitiveness of U.S. Advanced-Technology Manufacturing Industries: Large Civil Aircraft, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

FOR FURTHER INFORMATION CONTACT: Industry-specific information may be obtained from Mr. Peder Andersen (202–205–3388) or Ms. Laura Stonitsch (202–205–3408), Machinery and Equipment Division, U.S. International Trade Commission, Washington, DC 20436. For information on the legal aspects of this investigation contact Mr. William Gearhart of the Office of the General Counsel (202–205–3091). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205–1107.

BACKGROUND: This is one of three competitiveness studies requested by the Committee on Finance in its letter of June 11, 1992. The other two studies concern the cellular communications and computer industries. These three studies are part of a series begun in 1990 at the request of the Committee. In a letter dated June 21, 1990, the Committee asked that the Commission, pursuant to sections 332(b), (d), and (g) of the Tariff Act of 1930, expand its collection of and ability to analyze information on the competitiveness of advanced-technology manufacturing industries in the United States. It also asked the Commission to undertake a two-part process under which it would (1) within three months of receipt of the letter, identify the U.S. advanced-technology industries to be monitored (using criteria set out by the Committee) and recommend three of those industries as subjects for comprehensive Commission studies; and (2) within 12 months of receipt of a subsequent Committee letter either agreeing with or modifying the Commission's recommendations, submit its reports on the three industries.

In response, the Commission instituted investigation No. 332–294 for the purpose of identifying industries to be monitored and recommending three for comprehensive study. In its report to the Committee in September 1990, the Commission identified ten advanced-technology industries and recommended the following three for comprehensive study: Communications technology and equipment, pharmaceuticals, and semiconductor manufacturing and testing equipment. The Committee, by letter of September 27, 1990, approved the Commission's recommendations, and the Commission furnished its reports on the three investigations (investigation Nos. 332–301, 332–302, and 332–303) in late September 1991. Notice of the institution of investigation No. 332–294 was published in the **Federal Register** of July 26, 1990, (55 FR 3053), and notice of the institution of the three comprehensive-study investigations was published in the **Federal Register** of November 15, 1990, (55 FR 47811).

In its report on the second of the three new studies, the Commission will, as requested by the Committee in its June 11, 1992, letter, seek to examine factors found by the Commission to be relevant to the global competitiveness of the large civil aircraft industry, including but not limited to government policies, regulatory and trade impediments, and research and development financing and expenditures. Also to be addressed are the issues of competition from the Airbus consortium, and the proposed acquisition of U.S. aerospace technologies and manufacturers by foreign interests. The Commission is scheduled to submit its report by September 10, 1993.

PUBLIC HEARING: A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC, beginning at 9:30 a.m. on April 15, 1993. All persons shall have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street, SW, Washington, DC 20436, no later than

5:15 p.m., April 1, 1993. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., April 1, 1993; the deadline for filing post-hearing briefs or statements is 5:15 p.m., April 29, 1993.

WRITTEN SUBMISSIONS: In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical data and should be received no later than the close of business on April 29, 1993. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205-2000.

By order of the Commission.

Issued: September 3, 1992.

Paul Bardos,

Acting Secretary.

[FR Doc. 92-22064 Filed 9-11-92; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 388 (Sub-No. 17)]

Intrastate Rail Rate Authority—Missouri

AGENCY: Interstate Commerce Commission.

ACTION: The Commission assumes jurisdiction over intrastate rail rates, classifications, rules, and practices in Missouri.

SUMMARY: By letter field may 14, 1992, as supplemented August 26, 1992, the State of Missouri, through the Missouri Division of transportation (formerly the Public Service Commission), notified this Commission that it no longer wishes to regulate rail rates pursuant to 49 U.S.C. 11501(b), and asked the Commission to assume jurisdiction over these interstate matters. The Commission grants the request and assumes jurisdiction over rail rates, classifications, rules, and practices in the State of Missouri.

EFFECTIVE DATE: Effective on September 14, 1992.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927-5610.

[TDD for hearing impaired: (202) 927-5721]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927-5721.]

Decided: September 3, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmentt.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-22123 Filed 9-11-92; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 418X)]

CSX Transportation, Inc.—Abandonment Exemption—in Randolph County, WV

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Commission exempts from the prior approval requirements of 49 U.S.C. 10903-10904 the abandonment by CSX Transportation, Inc., of 9.24-miles of rail line in Randolph County, WV, between milepost BUM-1.19 at Elkins and milepost BUM-10.34 at Dailey, subject to standard labor protective and historic preservation conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on October 14, 1992. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by September 24, 1992, petitions to stay must be filed by September 29, 1992, and petitions for reconsideration must be filed by October 9, 1992. Requests for public use conditions must be filed by October 5, 1992.

ADDRESSES: Send pleadings referring to Docket No. AB-55 (Sub-No. 418X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

and

(2) Petitioner's representative: Charles M. Rosenberger, 500 Water Street-J-150, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder (202) 927-5610.

[TDD for hearing impaired: (202) 927-5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927-5721.]

Decided: September 4, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-22122 Filed 9-11-92; 8:45 am]

BILLING CODE 7035-01-M

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a registration under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on May 12, 1992, Arenol Chemical Corporation, 189 Meister Avenue, Somerville, New Jersey 08876,

made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Methamphetamine (1105)	II
Phenylacetone (8501)	II

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than October 14, 1992.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Adminstration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: September 3, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92–22032 Filed 9–11–92; 8:45 am]

BILLING CODE 4410-09-M

Pamela L. Van Horn, D.O.; Revocation of Registration

On May 7, 1992, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Pamela L. Van Horn, D.O., of San Diego, California, proposing to revoke her DEA Certificate of Registration, AV9496236, as a practitioner. The statutory basis for the Order to Show Cause was that Dr. Van Horn's State license to practice medicine had been suspended on October 23, 1991, by the California Board of Osteopathic Examiners, and thus she is no longer authorized by State law to handle controlled substances. 21 U.S.C. 824(a)(3).

The Order to Show Cause was mailed by registered mail on May 7, 1992, and was returned unclaimed. Simultaneously, a copy was also served on the attorney for Dr. Van Horn's brother, Joseph Van Horn, Jr. Mr. Van Horn had been court appointed as a temporary conservator for his sister on April 19, 1991. Dr. Van Horn was served by remailing the Order to Show Cause by regular first class mail on June 8, 1992. More than thirty days have passed since the Order to Show Cause was served on Dr. Van Horn and the Drug Enforcement Administration has received no response from Dr. Van Horn or anyone purporting to represent her.

Pursuant to 21 CFR 1301.54(d), the Administrator finds that Dr. Van Horn has waived her opportunity for a hearing. Accordingly, under the provisions of 21 CFR 1301.57, the Administrator hereby enters his final order in this matter, based upon findings of fact and conclusions of law as hereinafter set forth.

On April 19, 1991, the Superior Court for the County of San Diego established that Dr. Van Horn was unable to provide for her physical needs, and that her condition impaired her ability to practice medicine safely. Her brother, Joseph Van Horn, Jr., was appointed her conservator. Based on the findings of that court, on September 23, 1991, the Board of Osteopathic Examiners for the State of California suspended Dr. Van Horn's license to practice medicine indefinitely. On January 21, 1992, Dr. Van Horn was provided an opportunity to surrender her DEA Certificate, but did not respond. Dr. Van Horn has not offered any evidence contrary to that stated in the Order to Show Cause.

The DEA has consistently held that it does not have statutory authority under the Controlled Substances Act to register a practitioner unless that practitioner is authorized by the State to dispense controlled substances. The agency has consistently held that termination of a registrant's State authority to handle controlled substances requires that DEA revoke the registrant's DEA Certificate of Registration. See *Bobby Watts, M.D.*, Docket No. 87–71, 53 FR 11919 (1987); *Wingfield Drugs, Inc.*, Docket No. 87–13, 52 FR 27070 (1987); and *Robert F. Witek, D.D.S.*, Docket No. 87–54, 52 FR 47770 (1987).

Based on all of the foregoing, the Administrator finds that the registration of Dr. Van Horn must be revoked. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that the DEA Certificate of Registration, AV9496236, issued to Pamela L. Van Horn, D.O., be and it hereby is, revoked, and that any pending applications for registration be, and they hereby are denied. This order is effective October 14, 1992.

Dated: September 4, 1992.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 92–22033 Filed 9–11–92; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget

BACKGROUND: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

LIST OF RECORDKEEPING/REPORTING REQUIREMENTS UNDER REVIEW: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and/or Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

COMMENTS AND QUESTIONS: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills ((202) 523–5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3001, Washington, DC 20503 ((202) 395–6880).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

Revision

Employment and Training Administration

1205–0317; ETA 207, 218, 227, 539, 2112, 5130, 5159

Form #	Affected Public	Respondents	Frequency	Average time per response
ETA 207	"	53	Quarterly	30 mins.
ETA 218	"	53	Quarterly	12 mins.
ETA 227	"	53	Quarterly	1 hr.
ETA 539	"	53	Weekly	15 mins.
ETA 2112	"	53	Monthly	12 mins.
ETA 5130	"	53	Monthly	1 hr.
ETA 5159	State/local Govt.	53	Monthly	1 hr.
2,448 total hours				

The Emergency Unemployment Compensation Program requires this information from State and local governments to determine workload, allocations for administration and evaluation of program operation.

Note: These reports are already OMB approved for use as part of ETA's regular program reporting burden; the hours cited above are estimated for Emergency Unemployment Compensation Program report activity only.

Bureau of Labor Statistics

Consumer Expenditure Diary and Interview Survey
1220–0050; CE–300, CE–301, CE–302, CE–302 Supp.,
CE–303 (L–1,2,5,6), CE–305(IB), CE–380, CE–383, CE–880, CE–801, CE–802, CE–803(L)
Recordkeeping (Daily Diary), Weekly, Quarterly
Individuals or households
46,434 responses; 88 minutes per response; 67,928 total hours; 12 forms

The Consumer Expenditure Surveys gather detailed information on expenditures, income and other related subjects to periodically update the Consumer Price Index. The published data provide a continuing measurement of changes in consumer expenditure patterns for economic analysis.

Bureau of Labor Statistics

Point of Purchase (CPP) Survey—Computer Assisted Telephone Interviewing (CATI)
1220–0140; CPP–CATI Instrument
Quarterly
Individuals or households
2040 respondents; .26 hours per response; 2122 total hours; no paper forms

The CPP CATI will be used to gather information on the type of outlets at which consumers shop for selected consumer items. CPP data are used to periodically update the nation's Consumer Price Index (CPI). This phase is a test to refine questionnaire design and survey procedures in preparation for a transition to CATI and the production CPP survey methodology.

Extension

Bureau of Labor Statistics

Occupational Employment Statistics Quarterly Progress Report
1220–0068; BLS–2877A
Quarterly
State Governments
53 respondents; .33 hours per response; 70 total hours; 1 form

The Quarterly Progress Report provides States and BLS regional and national office survey managers the means to monitor ongoing survey activities throughout each survey round of the Occupational Employment Statistics (OES) program. The Quarterly Progress Report acts as a status report which ensures the national office that States are following the survey's historical time line.

Employment and Training Administration

Attestation by Facilities Temporarily Employing Nonimmigrant Aliens as Registered Nurses
1205–0305; ETA 9029
On occasion
Individuals or households; States or local governments;
Businesses or other for-profit; Federal agencies or employees;
Non-profit institutions; Small businesses or organizations
1,024 respondents; 11 hours 8 minutes per response; 11,415 total hours; 1 form

The information provided on this form by Health Care Facilities will permit DOL to meet Federal responsibilities for program administration, management, and oversight.

Signed at Washington, DC this 4th day of September, 1992.

Thersa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 92–22125 Filed 9–11–92; 8:45 am]

BILLING CODE 4510–24–M
BILLING CODE 4510–30–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Earth Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: October 2, 1992; 8:30 a.m.–5 p.m.

Place: Conference Room #523, 1800 G St., NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Marvin E. Kauffman, Program Director, Education

and Human Resources Program, Division of Earth Sciences, room 602, National Science Foundation, 1800 G St., NW., Washington, DC 20550. Telephone: (202) 357-7356.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Graduate Research Traineeship proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 9, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-22143 Filed 9-11-92; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Physics; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Date and Time: Monday, September 28, 1992; 8:30 a.m. to 5 p.m.

Place: Room 523, National Science Foundation, 1800 G Street NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Rolf M. Sinclair, Program Director for Cross Directorate Programs, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357-7998.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Phase I SBIR proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 9, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-22144 Filed 9-11-92; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Social, Behavioral and Economic Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Dates and Times: October 1, 1992; 8:30 a.m.-5 p.m. October 2, 1992; 8:30 a.m.-12:30 p.m.

Place: Room 540, 1800 G Street NW., Washington, DC 20550.

Type of Meeting: Open.

Contact Person: John E. Jankowski, Jr., Division of Science Resources Studies, suite L-609, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 634-4682.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice, recommendations, and oversight concerning support for research, education, and human resources in the areas of the social, behavioral and economic sciences.

Agenda: Role and direction of the NSF Directorate for Social, Behavioral and Economic Sciences in the various government-wide FCCSET, and NSF-specific, initiatives. Special focus on Global Change; Advanced Manufacturing; Cognitive Science; the NSF international initiatives; and Science Resources Studies. Agenda also to cover the National Science Board's recently created Special Commission on the Future of the National Science Foundation.

Dated: September 8, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-22053 Filed 9-11-92; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Correction to Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Consideration

On August 19, 1992, the **Federal Register** published the Biweekly Notice of Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations. On page 37575, Column 2, the published section beginning "Previously Published Notices of Consideration of Issuance of Amendments to Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity For Hearing" and the first two paragraphs of text following the heading should be replaced with the following:

Notice of Issuance of Amendment to Facility Operating License

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Dated at Rockville, Maryland, this 4th day of September 1992.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Director, Project Directorate II-1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92-22067 Filed 9-11-92; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Request for Extension of OPM Form 1583 Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a proposed unchanged extension of OPM Form 1583, Applicant's Statement of Selective Service Registration Status, which Federal job applicants must complete for agencies prior to appointment. By law, 5 U.S.C. 3328, agencies may not appoint non-registrants. Since the law is permanent, executive agencies will have a continuing need to obtain and review the information applicants provide in the statements to determine whether they have registered. (The text of the statement is published in our regulations on the Selective Service registration requirement at 5 CFR part 300, subpart G.) For jobs at OPM, we estimate about 500 applicants complete the statement annually. At 0.02 hours per statement, the public reporting burden is 10 hours. Governmentwide, we estimate about 150,000 applicants complete the statement, for a total public reporting burden of 3,000 hours. For copies of this proposal, call C. Ronald Trueworthy on (703) 908-8550.

DATES: Comments on this proposal should be received on or before October 14, 1992.

ADDRESSES: Send or deliver comments to: C. Ronald Trueworthy, Agency Clearance Officer, U.S. Office of Personnel Management, Room CHP 500, 1900 E Street, NW., Washington, DC 20415, and Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Thomas O'Conner, (202) 606-0960.

U.S. Office of Personnel Management.

Douglas A. Brook,

Acting Director.

[FR Doc. 92-22057 Filed 9-11-92; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-25820]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

September 4, 1992.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 28, 1992 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

American Electric Power Company, Inc. et al. (70-7886)

American Electric Power Company, Inc. ("AEP"), a registered holding company, and its wholly owned nonutility subsidiary company AEP Investments, Inc. (AEP Investments"), both of 1 Riverside Plaza, Columbus, Ohio 43215, have filed a post-effective amendment to their application-declaration with this Commission filed under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rule 45 thereunder.

AEP Investments, whose primary purpose is investment and participation in the development of demand-side management ("DSM") projects, was previously authorized by the Commission (HCAR No. 25424, December 11, 1991) ("Order") to purchase up to $8.5 million of securities of Intersource Technologies, Inc. ("Intersource"), a company engaged in the development of electronic light bulb technology and new lighting products. Pursuant to the Order, AEP Investments acquired 800,000 shares of Intersource common stock, 9.9% of its issued and outstanding common stock, and as of November 1, 1992 will hold 45,000 shares of Intersource 8% cumulative convertible/redeemable preferred stock, $100 par value ("Preferred").

AEP Investments' DSM projects are intended to reduce the number and size of future electric power generating plants of the AEP system public-utility companies. AEP believes that electronic light bulb technology may produce significant reductions in electricity usage and will serve as a valuable tool in the DSM programs of AEP system electric public-utilities.

As of November 30, 1992 the entire $8.5 million investment in Intersource will have been expended. The post-effective amendment states that additional funding of approximately $5 million through June 30, 1994 is required to continue research and development efforts and to bring electronic lighting products to the commercialization stage. Therefore, AEP Investments proposes to acquire from time to time through June 20, 1994, up to 50,000 additional shares of Preferred for an aggregate consideration of $5 million. AEP proposes to provide capital contributions to AEP Investments from time to time through June 30, 1994 in an aggregate amount of up to $5 million to finance the purchase of the Preferred.

It is proposed that the 50,000 shares of Preferred to be acquired by AEP Investments be issued in two separate series of which one series, to be designated Series B, shall consist of 27,500 shares representing $2,750,000 required for all expenses of Intersource during its development phase ending April 30, 1993, and a second series, to be designated Series C, shall consist of 22,500 shares representing $2,250,000 for ongoing research and development expenses during the period May 1, 1993 through June 30, 1994. All terms and conditions of such Series B and Series C stock, including redemption and sinking fund terms, shall be identical to the original series of Preferred, to be designated Series A, which AEP Investments was authorized to acquire pursuant to the Order, except that the holder's conversion rights shall

commence on January 1, 1998 in the case of Series B and on January 1, 1999 in the case of Series C. Such additional shares of Preferred shall, like the original series, also be convertible into Intersource common stock at a conversion price of $3 per share. AEP Investments states that such conversion provisions will only be exercised if, as a result of the conversion, AEP Investments total ownership of Intersource's outstanding common stock will not exceed 9.9%. Consequently, AEP Investment will at all times hold less than 10% of the outstanding common stock of Intersource.

Intersource proposes to raise the necessary additional capital to fund the cost of manufacturing facilities and its general operations from May 1, 1993 onward from other sources.

AEP Investments will divest itself of all its interests in Intersource no later than January 1, 2002, by which time AEP anticipates that the development and commercialization of electronic light bulb technology will be complete and AEP's DSM goals largely achieved.

The Southern Company, et al. (70-7911)

The Southern Company ("Southern"), 64 Perimeter Center East, Atlanta, Georgia 31401, a registered holding company, and its direct and indirect subsidiary companies, Alabama Power Company and Southern Electric Generating Company, both located at 600 North 18th Street, Birmingham Alabama 35291, Georgia Power Company, 333 Piedmont Avenue, N.E., Atlanta, Georgia 30308, Gulf Power Company, 500 Bayfront Parkway, Pensacola, Florida 32501, Mississippi Power Company, 2992 West Beach, Gulfport, Mississippi 39501, and Savannah Electric and Power Company, 600 Bay Street East, Savannah, Georgia 31401 (individually, ("Operating Company" and collectively, "Operating Companies"), have filed an application-declaration under sections 9(a), 10 and 12(b) of the Act and Rule 45 thereunder.

Southern proposes to organize and acquire all of the outstanding capital stock of a new subsidiary company ("Railroad Subsidiary"). In connection with the acquisition of the capital stock of Railroad Subsidiary, Southern proposes to contribute to the equity capital of Railroad Subsidiary, through December 31, 1997, up to an aggregate principal amount of $1 million by: (1) Payment of the purchase price for its stock; and/or (2) capital contributions.

The Railroad Subsidiary will construct rail lines from the generating facilities of the Operating Companies to the track of an additional competing rail carrier or carriers ("Rail Line(s)"). Such Rail Lines will afford competition for transportation service to the related generating facility and make available potential new sources of coal supply, all with attendant cost savings for the benefit of the Operating Companies' ratepayers.

The Operating Companies currently own interests in a total of twenty-two coal-fired generating facilities. It is contemplated that Rail Lines may be constructed at approximately one-third of such facilities, although economic opportunities may be presented in the future at additional facilities.

It is contemplated that the construction costs of each of the proposed Rail Lines will range from approximately $5 million to approximately $25 million, although the cost may be greater in certain circumstances as the results of factors including the length of the line and environmental and topographical conditions of the land over which the line is constructed ("Construction Costs"). Construction of any Rail Line will not be undertaken unless the affected Operating Company has determined that cost savings between the cost of construction and operation of the Rail Line and the difference in the cost of coal, including transportation, for the generating facility, estimated on a present value basis over the remaining life of the related generating facility, can be achieved thereby.

The Operating Companies owning the related generating facilities propose to advance to Railroad Subsidiary, in the form of demand loans, from time to time, through December 31, 1997, all the funds necessary to complete construction of the Rail Lines, through December 31, 1997, at an interest rate not in excess of 2% over the prime rate, up to the aggregate principal amount of the Construction Cost. Upon completion of construction, Railroad Subsidiary will sell and convey to the Operating Companies the Rail Line, associated facilities and real estate and the loan to the Railroad Subsidiary will thereby be extinguished. Railroad Subsidiary will retain an easement and other rights by contract with the Operating Company necessary for railroad operations and will enter into agreements with the competing rail carrier or carriers providing for operations over the Rail Line and into the plant. All costs incurred by the Railroad Subsidiary in connection with operating and maintaining the Rail Lines will be borne by and, as necessary, advanced on a pass-through basis to the Railroad Subsidiary by such Operating Company. It is contemplated that costs in connection with the operating and maintaining of the Rail Lines will range from approximately $50,000 to $250,000 on an annual basis.

The organization of the Railroad Subsidiary as a new separate subsidiary of Southern is intended to: (1) Provide a consistent, economical and efficient mechanism for the procurement of transportation services; (2) reduce the level of management attention required at each Operating Company for addressing regulatory, administrative and accounting requirements; (3) minimize any potential costs to an Operating Company that may arise under the Railroad Retirement Act or the Federal Employers' Liability Act; and (4) avoid the necessity of creating multiple corporations.

It is contemplated that the Railroad Subsidiary will have no employees; the rail carrier or carriers will provide transportation service over the Rail Line and other administrative and contractual functions will be carried out by officers and personnel from the respective Operating Companies and Southern Company Services, Inc ("SCSI"). The board of directors and officers of the Railroad Subsidiary are expected to be comprised of officers and employees of the Operating Companies and SCSI.

Certain of the Rail Lines may be constructed and operated pursuant to arrangements involving a nonaffiliated third party shipper or shippers, pursuant to which a third party shipper may bear a pro-rata share of construction and related costs associated with, or may purchase an undivided ownership interest in, the Rail Line ("Acquisition Agreement"). The third party shipper in such an Acquisition Agreement would then use the Rail Line for transportation service in accordance with its own agreement with the rail carrier with respect to its ownership interest thus acquired. In the event that the Acquisition Agreement involves the acquisition by the Railroad Subsidiary or any Operating Company of an interest in a corporation, partnership or other separate legal entity, or any arrangement involving use by a nonaffiliated third party shipper of the Railroad Subsidiary's or any Operating Company's ownership interest in any such Rail Line, such acquisition and/or arrangement will require further Commission approval.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-22045 Filed 9-11-92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Office of Defense Trade Controls; Munitions Exports to Aero Maroc Industrie, also known as AMIN, and Related Entities

[Public Notice 1687]

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that all existing licenses and other approvals, granted pursuant to section 38 of the Arms Export Control Act, that authorize the export or transfer by, for or to, Aero Maroc Industrie, also known as AMIN, and any subsidiaries or associated companies, of defense articles or defense services are suspended. In addition, it shall be the policy of the Department of State to deny all export license applications and other requests for approval involving, directly or indirectly, the above cited entities. This action also precludes the use in connection with such entities of any exemptions from license or other approval included in the ITAR (22 CFR parts 120–130).

EFFECTIVE DATE: August 17, 1992.

FOR FURTHER INFORMATION CONTACT: Clyde G. Bryant, Jr., Chief, Compliance Analysis Division, Office of Defense Trade Controls, Center for Defense Trade, Bureau of Politico-Military Affairs, Department of State (703:875–6650).

SUPPLEMENTARY INFORMATION: The Department of State has reasonable cause to believe that Aero Maroc Industrie has caused a false statement of material fact to be made and/or omitted a material fact in an application to the Department of State for a license to export U.S. defense articles to Morocco.

This action has been taken pursuant to sections 38 and 42 of the AECA (22 U.S.C. 2778(g)(3)(B) & 2791) and sections 126.7(a)(1) and 126.7(a)(2) of the ITAR (22 CFR 126.7(a)(1) & (2)). It will remain in force until rescinded.

Dated: August 17, 1992.

Marc L. Grossman,

Acting Assistant Secretary, Bureau of Politico-Military Affairs, Department of State.

[FR Doc. 92-22046 Filed 9-11-92; 8:45 am]

BILLING CODE 4710-25-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Receipt of Noise Compatibility Program and Revised 5-year Noise Exposure Map and Request for Review Capital Airport, Springfield, IL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed Noise Compatibility Program (NCP) and revised 5-year Noise Exposure Map (NEM) that were submitted for Capital Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) (hereinafter referred to as "the Act") and 14 CFR part 150 by the Springfield Airport Authority. This program and revised NEM were submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR part 150 for Capital Airport were in compliance with applicable requirements effective April 12, 1991. The proposed Noise Compatibility Program will be approved or disapproved on or before March 2, 1993.

EFFECTIVE DATE: The effective date of the FAA's start of its review of the associated noise compatibility program is September 3, 1992. The public comment period ends November 2, 1992.

FOR FURTHER INFORMATION CONTACT: Jerry R. Mork, Federal Aviation Administration, Great Lakes Region, Chicago Airports District Office, CHI-ADO-630.5, 2300 East Devon Avenue, room 258, Des Plaines, Illinois 60018, (312) 694-7522. Comments on the proposed noise compatibility program and revised 5-year noise exposure maps should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program and revised 5-year noise exposure map for Capital Airport. The program will be approved or disapproved on or before March 2, 1993. This notice also announces the availability of this program and revised map for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the Noise Compatibility Program and revised 5-year Noise Exposure Map for the Capital Airport, effective September 3, 1992, after reviewing and accepting the errata and revised exhibits submitted on June 9, 1992, and July 27, 1992. These errata and revised exhibits were submitted in response to our April 13, 1992, review, based on the sponsor's original submittal of November 15, 1991. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but the further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before March 2, 1993.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., room 617, Washington, DC 20591

Federal Aviation Administration, Great Lakes Region, Airports Division, 2300 East Devon Avenue, room 269, Des Plaines, Illinois 60018

Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, room 258, Des Plaines, Illinois 60018

Springfield Airport Authority Capital Airport, Airport Authority Office,

Second Floor, Springfield, Illinois 62707

Division of Aeronautics, Illinois Department of Transportation, Capital Airport, One Langhorne Bond Drive, Springfield, Illinois 62706.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Des Plaines, Illinois, September 3, 1992.

Louis H. Yates,

Manager, Chicago Airports District Office, Great Lakes Region.

[FR Doc. 92-22100 Filed 9-11-92; 8:45 am]

BILLING CODE 4910-13-M

Approval of Revision to Approved Noise Compatibility Program for Phoenix Sky Harbor International Airport, Phoenix, AZ

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the Revision to the Approved Noise Compatibility Program submitted by the City of Phoenix under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96-193) and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96-52 (1980). On August 14, 1992, the Assistant Administrator for Airports approved the Revision to the Approved Noise Compatibility Program for Phoenix Sky Harbor International Airport. The one recommendation of the revision to be added to the approved program involving reimbursement for land previously acquired was approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the Phoenix Sky Harbor Airport noise compatibility program is August 14, 1992.

FOR FURTHER INFORMATION CONTACT: David B. Kessler, Airport Planner, Airports Division, AWP-611.2, Western-Pacific Region, Federal Aviation Administration, Mailing Address: P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009-2007, Telephone: 310/297-1534. Street Address: 15000 Aviation Boulevard, Hawthorne, California 90261. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the Revision to the Approved Noise Compatibility Program for Phoenix Sky Harbor International Airport, effective August 14, 1992.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a Noise Exposure Map may submit to the FAA a Noise Compatibility Program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the Noise Exposure Maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport Noise Compatibility Program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act and is limited to the following determinations:

a. The Noise Compatibility Program was developed in accordance with the provisions and procedures of FAR part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to the FAA's approval of an airport Noise Compatibility Program are delineated in FAR part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not, by itself, constitute an FAA implementation action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA Airports Division Office in Hawthorne, California.

The City of Phoenix submitted to the FAA on December 30, 1987, the Noise Exposure Maps, descriptions, and other documentation produced during the Noise Compatibility Planning study conducted from August 1986 through June 1989. The Noise Exposure Maps were determined by the FAA to be in compliance with applicable requirements on November 17, 1988. Notice of this determination was published in the Federal Register on November 29, 1988.

The study contained a proposed Noise Compatibility Program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to, or beyond, the year 1992. It was requested that the FAA evaluate and approve this material as a Noise Compatibility Program as described in section 104(b) of the Act. The FAA began its review of the program on October 4, 1989 and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). The Noise Compatibility Program was approved by the FAA on April 2, 1990. On February 19, 1992, the FAA began its review of the Revision to the approved program and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted revision to the approved program contained one (1) proposed action for reimbursement of land previously acquired by the City of Phoenix for noise mitigation purposes. The FAA completed its review and determined that the procedural and

substantive requirements of the Act and FAR part 150 have been satisfied. The revision to the program, therefore, was approved by the Assistant Administrator for Airports effective August 14, 1992.

Outright approval was granted for the one (1) new Land Use Measure for reimbursement of approximately $34,000,000 for land which the City of Phoenix Aviation Department previously for noise abatement purposes.

This determination is set forth in detail in a Record of Approval endorsed by the Assistant Administrator for Airports on August 14, 1992. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the City of Phoenix, Aviation Department.

Issued in Hawthorne, California on August 28, 1992.

Herman C. Bliss,

Manager, Airports Division, AWP-600, Western-Pacific Region.

[FR Doc. 92-22101 Filed 9-11-92; 8:45 am]

BILLING CODE 4910-13-M

Springfield Regional Airport Springfield, MO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the Noise Compatibility Program submitted by the city of Springfield under the provisions of Title I of the Aviation Safety and Noise Abatement Act (ASNA) of 1979 (Public Law 96-193) and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96-52 (1980). On January 30, 1992, the FAA determined that the Noise Exposure Maps submitted by the city of Springfield under Part 150 were in compliance with applicable requirements. On July 28, 1992, the Assistant Administrator approved the Springfield Regional Airport Noise Compatibility Program. All of the recommendations of the program were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the Springfield Regional Airport Noise Compatibility Program is July 28, 1992.

FOR FURTHER INFORMATION CONTACT: Dr. John Tatschl, ACE-615B, Federal Aviation Administration, Airports Division, 601 E. 12th St., Kansas City, Missouri 64106. Telephone No. (816) 426-6614. Documents reflecting this FAA action may be obtained from the same individual.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the Noise Compatibility Program for the Springfield Regional Airport, effective July 28, 1998.

Under section 104(a) the Aviation Safety and Noise Abatement Act (ASNA) of 1979, an airport operator who has previously submitted a Noise Exposure Map may submit to the FAA a Noise Compatibility Program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the Noise Exposure Maps. The Act requires such programs to be developed in consultation with interested and affect parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with FAR part 150 is a local program, not a Federal program. The FAA does not substitute its judgement for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Aviation Safety and Noise Abatement Act of 1979, and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government;

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable Airspace and Air Traffic Control Systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport Noise Compatibility Program are delineated in FAR part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Regional Office in Kansas City, Missouri.

The city of Springfield submitted to the FAA on December 18, 1991, the Noise Exposure Maps, descriptions, and other documentation produced during the Noise Compatibility Planning study. The Springfield Regional Airport Noise Exposure Maps were determined by FAA to be in compliance with applicable requirements on January 30, 1992. Notice of this determination was published in the **Federal Register** on February 19, 1992.

The Springfield Regional Airport study contains a proposed Noise Compatibility Program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to beyond the year 1995. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on January 30, 1991, and was required by a provision in the Act to approve or disapprove the program within 180 days. Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained three proposed actions for noise abatement on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program, therefore, was approved by the Assistant Administrator effective July 28, 1992.

These determinations are set forth in detail in a Record of Approval endorsed by the Assistant Administrator on July 28, 1992. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices for the Springfield Regional Airport.

Issued in Kansas City, Missouri, on August 31, 1992.

George A. Hendon,

Manager, Airports Division, Central Region.

[FR Doc. 92-22102 Filed 9-11-92; 8:45 am]

BILLING CODE 4910-13-M

Emergency Evacuation Subcommittee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Emergency Evacuation Subcommittee of the Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on September 24, 1992, at 9 a.m. Arrange for oral presentations by September 15, 1992.

ADDRESSES: The meeting will be held in Conference Room "A", Air Transport Association of America, suite 1100, 1301 Pennsylvania Avenue, NW., Washington, DC 20004-1707.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Ball, Aircraft Certification Service (AIR-1), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-8235.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. II), notice is hereby given of a meeting of the Emergency Evacuation Subcommittee to be held on September 24, 1992, in Conference Room "A", Air Transport Association of America, Suite 1100, 1301 Pennsylvania Avenue, NW., Washington, DC 20004-1707. The agenda for this meeting will include:

- A status report by the Performance Standards Working Group.
- A report on a special task group effort to define an approach to developing performance standards for emergency evacuation.
- A briefing on organizational realignments for cabin safety research within the FAA.
- Future activities.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by September 15, 1992, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading "FOR FURTHER INFORMATION CONTACT".

Issued in Washington, DC, on September 4, 1992.

William J. Sullivan,

Executive Director, Emergency Evacuation Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 92-22093 Filed 9-11-92; 8:45 am]

BILLING CODE 4910-13-M

RTCA, Inc., Board of Directors; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., appendix I), notice is hereby given for the RTCA Board of Directors meeting to be held September 18, 1992, in the RTCA conference room, 1140 Connecticut Avenue NW., suite 1020, Washington, DC 20036, commencing at 10:30 a.m.

The agenda for this meeting is as follows: (1) The RTCA Board of Directors will meet to review and approve the GNSS Transition and Implementation Strategy Task Force Final Report. No other business is planned.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue NW., suite 1020, Washington, DC 20036; (202) 833-9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 4, 1992.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 92-22096 Filed 9-11-92; 8:45 am]

BILLING CODE 4910-13-M

RTCA, Inc., Special Committee 173; Minimum Operational Performance Standards for Airborne Weather and Ground Pulsed Radar; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., appendix I), notice is hereby given for the fifth meeting of Special Committee 173 to be held September 22-25, 1992, in the RTCA conference room, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) Review and approval of meeting agenda; (3) Approval of the Summary of the Fourth Meeting held June 3-5, 1992 RTCA Paper No. 522-92/SC173-46, (previously distributed); (4) Review Comments on Proposed Final Draft of MOPS for Nose-Mounted Radomes, RTCA Paper No. 549-92/SC173-47, (previously distributed); (5) Review of FAA Systems Requirements Document; (6) Report on the August 25-26 ARINC Project 708A Meeting in Seattle, WA; (7) Review of material for incorporation into the Fourth Draft MOPS for Airborne Weather Radar with Forward-Looking Windshear Capability, RTCA Paper No. 569-92/SC173-48, (enclosed) and RTCA Paper Nos. 394-92/SC173-34 and 397-92/SC173-37 (previously distributed); (8) Other business; (9) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833-9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 4, 1992.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 92-22097 Filed 9-11-92; 8:45 am]

BILLING CODE 4910-13-M

RTCA, Inc., Special Committee 171; Airborne MLS Area Navigation Equipment; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., appendix I), notice is hereby given for the sixth meeting of Special Committee 171 to be held September 29-October 2, 1992, in the RTCA conference room, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's remarks; (2) Approval of the Summary of the Fifth

Meeting, RTCA Paper No. 526-92/SC-171-75; (3) Technical Presentations; (4) Working Group Reports; (a) Operations Working Group (WG-1); (b) Technical Working Group (WG-2); (c) Architecture/Certification (WG-3); (5) Review EUROCAE WG-43 Activity; (6) Review first draft material; (7) Working Group Sessions; (8) In Plenary; (a) Working Group Progress; (b) Task Assignments; (9) Other Business; (10) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833-9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 4, 1992.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 92-22098 Filed 9-11-92; 8:45 am]

BILLING CODE 4910-13-M

RTCA, Inc., Task Force 1; GNSS Transition and Implementation Strategy Task Force; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., appendix I), notice is hereby given for the fourth meeting of the GNSS Transition and Implementation Strategy Task Force to be held September 11, 1992, at the main auditorium, Software Productivity Consortium, 2214 Rock Hill Road, Herndon, VA, commencing at 9 a.m.

The agenda for this meeting is as follows: (1) The GNSS Transition and Implementation Strategy Task Force will meet to review and approve its proposed final report. No other business is planned.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833-9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 31, 1992.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 92-22094 Filed 9-11-92; 8:45 am]

BILLING CODE 4910-13-M

RTCA, Inc., Special Committee 168; Lithium Batteries; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., appendix I), notice is hereby given for the seventh meeting of Special Committee 168 to be held September 14-15, 1992, in the RTCA conference room, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036, commencing at 1 p.m. on the first day.

The agenda for this meeting is as follows: (1) Chairman's remarks; (2) Approval of the summary from the sixth meeting, RTCA Paper No. 465-92/SC168-56; (3) Technical Presentations; (4) Review EUROCAE WG-39 Activity; (5) Review of Material from Task Assignments; (6) Preparation of a First Draft; (7) Assignment of tasks; (8) Other business; (9) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833-9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 4, 1992.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 92-22095 Filed 9-11-92; 8:45 am]

BILLING CODE 4910-13-M

Arcata Airport, Eureka, CA; Intent to Rule

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent to rule on application to impose and use the revenue a Passenger Facility Charge (PFC) at Arcata Airport, Eureka, California; with a concurrent application to use the revenue at the Arcata Airport and Garberville Airport.

SUMMARY: The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Arcata Airport and the Garberville Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508) and 14 CFR part 158. On August 13, 1992, the FAA determined that the application to impose and use the revenue from a PFC submitted by the County of Humboldt was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 27, 1992.

DATES: Comments must be received on or before October 14, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Airports Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA. 90009 or San Francisco Airports District Office, 831 Mitten Road, room 210, Burlingame, CA. 94010-1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. John Murray, Public Works Director, County of Humboldt, at the following address: 1106 Second Street, Eureka, California 95501-0579. Comments from air carriers and foreign air carriers may be in the same form as provided to the County of Humboldt under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph R. Rodriguez, Supervisor, Planning and Programming Section, Airports District Office, 831 Mitten Road, room 210, Burlingame, CA. 94010-1303, Telephone: (415) 876-2805. The applications may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The following is a brief overview of the application.

Level of proposed PFC: $3.00

Proposed charge effective date: October 1, 1992

Proposed charge expiration date: December 31, 1993

Total estimated PFC revenue: $188,500.00

Brief description of proposed project:

Arcata Airport—Grooved Overlay Runway 14/32; ARFF Rehabilitation;

Garberville Airport—Seal Coat Runway Taxiway Ramp; Reconstruct Transit Apron;

Construct Tiedown Apron & Access; Demolish Hangar; Replace Wind Sock and Replace Perimeter Fence.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None

Availability of Application

Any person may inspect the application in person at the FAA office listed above. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the County of Humboldt.

Issued in Hawthorne, California, on August 13, 1992.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 92-22085 Filed 9-11-92; 8:45 am]

BILLING CODE 4910-13-M

Intent to Rule on Application to Impose and Use Revenue From a Passenger Facility Charge (PFC) at Colorado Springs Municipal Airport, Colorado Springs, CO

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Colorado Springs Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before October 14, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address:

Alan E. Wiechmann, Manager, Denver Airports District Office, DEN-ADO, Federal Aviation Administration, 5440 Roslyn Street, suite 300, Denver, CO 80216-6026.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Gary W. Green, AAE, Director of Aviation of the City of Colorado Springs at the following address:

5750 East Fountain Boulevard, Colorado Springs, CO 80916.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Colorado Springs under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Dakota L. Chamberlain, Wyoming State Engineer, Denver Airports District Office, 5440 Roslyn, suite 300, Denver, CO 80216-6026. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Colorado Springs Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On September 4, 1992 the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Colorado Springs, Colorado was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 23, 1992.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Proposed charge effective date: January 1, 1993

Proposed charge expiration date: December 31, 1998

Total estimated PFC revenue: $11,961,000.00

Brief description of proposed project(s): Construction of public areas in the new terminal building; Construction of aircraft parking apron and aircraft parking positions for new terminal building; Construction of the southerly portion of a parallel taxiway to Runway 17R/35L.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT**" and at the FAA regional airports office located at: Federal Aviation Administration, Airports Division, 1601 Lind Avenue, suite 540, Renton, WA 98055-4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Colorado Springs.

Issued in Renton, Washington on September 4, 1992.

Edward G. Tatum,

Manager, Airports Division, Northwest Mountain Region.

[FR Doc. 92-22103 Filed 9-11-92; 8:45 am]

BILLING CODE 4910-13-M

Notice of Intent To Rule on Application To Impose and Use Revenue From a Passenger Facility Charge (PFC) at Telluride Regional Airport, Telluride, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Telluride Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before October 14, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Alan E. Wiechmann, Manager, Denver Airports District Office, DEN-ADO, Federal Aviation Administration, 5440 Roslyn, Suite 300 Denver, CO 80216-6026.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Richard R. Arnold of the Telluride Regional Airport at the following address: P.O. Box 1807, Telluride, Colorado 81435.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Telluride Regional Airport under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Dakota L. Chamberlain, Wyoming State Engineer, Denver Airports District Office, 5440 Roslyn, Suite 300, Denver, CO 80216-6026. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Telluride Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On September 4, 1992, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Telluride Regional Airport Authority, Telluride, Colorado was substantially complete within the requirements of section 158.25 of part

158. The FAA will approve or disapprove the application, in whole or in part, no later than December 4, 1992.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.
Proposed charge effective date: January 1, 1993.
Proposed charge expiration date: December 31, 2002.
Total estimated PFC revenue: $373,555.00.

Brief description of proposed projects: Construction of a new terminal building; and realignment of the access road and associated signs and lighting.

Class of classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT**" and at the FAA regional Airports office located at: Federal Aviation Administration, Airports Division, 1601 Lind Avenue, Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Telluride Regional Airport, Telluride, Colorado.

Issued in Renton, Washington on September 4, 1992.

Edward G. Tatum,

Manager, Airports Division, Northwest Mountain Region.

[FR Doc. 92–22099 Filed 9–11–92; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: September 4, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0710.
Form Number: IRS Forms 5500 and 5500–C/R and Schedule B (Form 5500), Schedule E (Form 5500), Schedule F (Form 5500) and Schedule P (Form 5500).
Type of Review: Revision.
Title: Annual Return/Report of Employee Benefit Plan (5500), Return/Report of Employee Benefit Plan (5500–C/R) and Associated Schedules.
Description: Forms 5500 and 5500–C/R are annual information returns filed by employee benefit plans. The IRS uses this data to determine if the plan appears to be operating properly as required under the law or whether the plan should be audited.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents/Recordkeepers: 901,400.
Estimated Burden Hours Per Respondent/Recordkeeper:

Form/schedules	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling, and sending the form to the IRS
Annual Return/Report of Employee Benefit Plan (5500)				
5500 (Initial filers)	87 hours, 17 minutes	8 hours, 51 minutes	13 hours, 8 minutes	48 minutes.
5500 (all other filers)	81 hours, 33 minutes	8 hours, 51 minutes	13 hours, 22 minutes	48 minutes.
Schedule A (Form 5500)	17 hours, 28 minutes	28 minutes	1 hour, 42 minutes	16 minutes.
Schedule B (Form 5500)	34 hours, 12 minutes	2 hours, 35 minutes	3 hours, 16 minutes.	
Schedule C (Form 5500)	5 hours, 16 minutes	18 minutes	23 minutes.	
Schedule E (Form 5500) (nonleveraged ESOP)	1 hour, 40 minutes	12 minutes	14 minutes.	
Schedule E (Form 5500) (leveraged ESOP)	10 hours, 2 minutes	1 hour, 41 minutes	1 hour, 56 minutes.	
Schedule F (Form 5500)	1 hour, 27 minutes	46 minutes	19 minutes.	
Schedule G (Form 5500)	15 hours, 4 minutes	6 minutes	21 minutes.	
Schedule P (Form 5500)	1 hour, 55 minutes	55 minutes	33 minutes.	
Schedule SSA (Form 5500)	6 hours, 42 minutes	12 minutes	19 minutes.	
Return/Report of Employee Benefit Plan (5500–C/R)				
5500–C (Initial filers)	55 hours, 29 minutes	7 hours, 29 minutes	10 hours, 35 minutes	32 minutes.
5500–C (All other filers)	45 hours, 41 minutes	7 hours, 29 minutes	10 hours, 26 minutes	32 minutes.
5500–R (Initial filers)	22 hours	3 hours, 25 minutes	5 hours, 2 minutes	32 minutes.
5500–R (All other filers)	12 hours, 12 minutes	4 hours, 6 minutes	6 hours, 15 minutes	32 minutes.
Schedule A (Form 5500)	17 hours, 28 minutes	28 minutes	1 hour, 42 minutes	16 minutes.
Schedule B (Form 5500)	34 hours, 12 minutes	2 hours, 35 minutes	3 hours, 16 minutes.	
Schedule E (Form 5500) (nonleveraged ESOP)	1 hour, 40 minutes	12 minutes	14 minutes.	
Schedule E (Form 5500) (leveraged ESOP)	10 hours, 2 minutes	1 hour, 41 minutes	1 hour, 56 minutes.	
Schedule F (Form 5500)	1 hour, 27 minutes	46 minutes	19 minutes.	
Schedule P (Form 5500)	1 hour, 55 minutes	30 minutes	33 minutes.	
Schedule SSA (Form 5500)	6 hours, 42 minutes	12 minutes	19 minutes.	

Frequency of Response: Annually
Estimated Total Reporting/Recordkeeping Burden: 33,320,421 hours
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92–21854 Filed 9–11–92; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

Dated: September 8, 1992.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0232.
Form Number: IRS Form 6497.
Type of Review: Extension.
Title: Information Return of Nontaxable Energy Grants or Subsidized Energy Financing.
Description: Form 6497 is used by any governmental agency or its agents that make nontaxable grants or subsidized financing for energy conservation or production programs. We use the information from the form to ensure that recipients have not claimed tax credits or other benefits with respect to the grant or subsidized financing (no "double dipping").
Respondents: State or local governments, Businesses or other for-profit, Federal agencies or employees; Small businesses or organizations.
Estimated Number of Respondents/ Recordkeepers: 250.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—2 hours, 23 minutes.
Learning about the law or the form—18 minutes.
Preparing, copying, and sending the form to the IRS—21 minutes.
Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 760 hours.
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224..
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.

[FR Doc. 92–22111 Filed 9–11–92; 8:45 am]

BILLING CODE 4830–01–M

Fiscal Service

[Dept. Circ. 570, 1992 Rev., Supp. No. 1]

Surety Companies Acceptable on Federal Bonds; Security Insurance Co. of Hartford

A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under sections 9304 to 9308, title 31, of the United States Code, effective July 23, 1992. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1992 Revision, on page 29391 to reflect this addition:

Security Insurance Company of Hartford. Business Address: P.O. Box 420, Hartford, CT 06141. Underwriting Limitation [b]: $15,938,000. Surety Licenses [c]: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. Incorporated in: Connecticut.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 874–6696.

Dated: September 4, 1992.

Charles F. Schwan, III,
Director, Funds Management Division, Financial Management Service.

[FR Doc. 92–22044 Filed 9–11–92; 8:45 am]

BILLING CODE 4810–35–M

[Dept. Circ. 570, 1992 Rev., Supp. No. 2]

Surety Companies Acceptable on Federal Bonds; the Connecticut Indemnity Co.

A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under sections 9304 to 9308, title 31, of the United States Code, effective July 23, 1992. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1992 Revision, on page 29367 to reflect this addition:

The Connecticut Indemnity Company. Business Address: P.O. Box 420, Hartford, CT 06141. Underwriting Limitation [b]: $1,589,000. Surety Licenses [c]: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, AND WY. Incorporated in: Connecticut.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 874–6696.

Dated: September 4, 1992.

Charles F. Schwan, III,
Director, Funds Management Division, Financial Management Service.

[FR Doc. 92–22046 Filed 9–11–92; 8:45 am]

BILLING CODE 4810–35–M

Office of Thrift Supervision

Birmingham Federal Savings Bank Birmingham, AL; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Birmingham Federal Savings Bank, Birmingham, Alabama, on August 20, 1992.

Dated: September 8, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,
Corporate Secretary.

[FR Doc. 92–22012 Filed 9–11–92; 8:45 am]

BILLING CODE 6720–01–M

Citadel Federal Savings and Loan Association, Charleston, SC; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Citadel Federal Savings and Loan Association, Charleston, South Carolina, on August 7, 1992.

Dated: September 8, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-22013 Filed 9-11-92; 8:45 am]

BILLING CODE 6720-01-M

First Federal Savings and Loan Association of Russell County, FA; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for First Federal Savings and Loan Association of Russell County, FA, Phenix City, Alabama, on July 24, 1992.

Dated: September 8, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-22014 Filed 9-11-92; 8:45 am]

BILLING CODE 6720-01-M

Franklin Federal Savings Association; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(B) and (H) of the Home Owner's Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Franklin Federal Savings Association, Ottawa, Kansas, on July 17, 1992.

Dated: September 8, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-22015 Filed 9-11-92; 8:45 am]

BILLING CODE 6720-01-M

Liberty Federal Savings Bank; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Liberty Federal Savings Bank, Warrenton, Virginia, on July 17, 1992.

Dated: September 8, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-22016 Filed 9-11-92; 8:45 am]

BILLING CODE 6720-01-M

New England Federal Savings Association; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(B) and (H) of the Home Owner's Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for New England Federal Savings Association, Wellesley, Massachusetts, on July 17, 1992.

Dated: September 8, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-22017 Filed 9-11-92; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Potomac Federal Savings Bank; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owner's Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Potomac Federal Savings Bank, Silver Spring, Maryland, on August 27, 1992.

Dated: September 8, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-22018 Filed 9-11-92; 8:45 am]

BILLING CODE 6720-01-M

Birmingham Federal Savings and Loan Association, Birmingham, AL; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Birmingham Federal Savings and Loan Association, Birmingham, Alabama, OTS Number 0862, on August 20, 1992.

Dated: September 8, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-22019 Filed 9-11-92; 8:45 am]

BILLING CODE 6720-01-M

Citadel Federal Savings Bank Charleston, SC; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Citadel Federal Savings Bank, Charleston, South Carolina, OTS No. 8296, on August 7, 1992.

Dated: September 8, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-22020 Filed 9-11-92; 8:45 am]

BILLING CODE 6720-01-M

First Federal Savings and Loan Association of Russell County; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for First Federal Savings and Loan Association of Russell County, Phenix City, Alabama, OTS No. 3422, on July 24, 1992.

Dated: September 8, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-22021 Filed 9-11-92; 8:45 am]

BILLING CODE 6720-01-M

Franklin Savings Association, Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Franklin Savings Association, Ottawa, Kansas, OTS No. 5149, on July 17, 1992.

Dated: September 8, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-22022 Filed 9-11-92; 8:45 am]

BILLING CODE 6720-01-M

Liberty Savings Bank; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(C) of the Home Owner's Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Liberty Savings Bank, Warrenton, Virginia OTS No. 7615, on July 17, 1992.

Dated: September 8, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-22023 Filed 9-11-92; 8:45 am]

BILLING CODE 6720-01-M

New England Federal Savings Bank; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for New England Federal Savings Bank, Wellesley, Massachusetts, on July 17, 1992.

Dated: September 8, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-22024 Filed 9-11-92; 8:45 am]

BILLING CODE 6720-01-M

Potomac Savings Bank, F.S.B.; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Potomac Savings Bank, F.S.B., Silver Spring, Maryland, OTS No. 8212, on August 27, 1992.

Dated: September 8, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-22025 Filed 9-11-92; 8:45 am]

BILLING CODE 6720-01-M

[AC-53; OTS No. 3646]

First Family Federal Savings and Loan Association, Eustis, FL; Final Action; Approval of Conversion Application

Notice is hereby given that on August 27, 1992, the designee of the Chief Counsel, Office of Thrift Supervision, acting pursuant to the authority delegated to him, approved the application of First Family Federal Savings and Loan Association, Eustis, Florida, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20052, and the Office of Thrift Supervision, Southeast Regional Office, 1475 Peachtree Street, NW., Atlanta, Georgia 30309.

Dated: September 8, 1992.

By the Office of Thrift Supervision

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-22026 Filed 9-11-92; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF VETERANS AFFAIRS

Secretary's Educational Assistance Advisory Committee; Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub.L. 92-463) of October 6, 1972, that the Department of Veterans Affairs Secretary's Educational Assistance Advisory Committee has been renewed for the period beginning August 27, 1992, through December 31, 1993.

By direction of the Secretary.

Dated: September 1, 1992.

Diane H. Landis

Committee Management Officer.

[FR Doc. 92-22054 Filed 9-11-92; 8:45 am]

BILLING CODE 8320-01-M

Prosthetics and Special-Disabilities Programs Advisory Committee; Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92-463 that a meeting of the Advisory Committee on Prosthetics and Special-Disabilities Programs will be held Monday and Tuesday, September 28-29, 1992, in the fifth floor conference room of the VA offices at 103 South Gay Street, Baltimore, MD. The September 28 session will convene at 8:30 a.m. and adjourn at 4:30 p.m. and the September 29 session will convene at 8:30 a.m. and adjourn at 3 p.m.

The purpose of the Advisory Committee is to advise the Department on its prosthetics programs designed to provide state-of-the-art prosthetics and the associated rehabilitation research, development and evaluation of such technology. The Advisory Committee also advises the Department on Special-Disabilities programs which are defined as any program administered by the Secretary to serve veterans with spinal cord injury, blindness or vision impairment, loss of or loss of use of extremities, deafness or hearing impairment, or other serious incapacities in terms of daily life functions.

The meeting is open to the public to the capacity of the room. For those wishing to attend, contact Ms. Mary Allen, Veterans Health Administration (117), phone (202) 535-7537, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, prior to September 21, 1992.

Dated: September 2, 1992.

Diane H. Landis,

Committee Management Officer.

[FR Doc. 92-22056 Filed 9-11-92; 8:45 am]

BILLING CODE 8320-01-M

Voluntary Service National Advisory Committee; Meeting

The Department of Veterans Affairs gives notice under Public Law 92-463 that the annual meeting of the Department of Veterans Affairs Voluntary Service National Advisory Committee, comprised of 58 national voluntary organizations, will be held at The Marriott Hotel, 25 America's Cup Avenue, Newport, Rhode Island, October 28 through November 1, 1992.

Registration of the conferees and orientation of new committee members will be held beginning at 1 p.m. on October 29, 1992. The committee will officially convene with the Opening Session at 9 a.m., October 30, 1992, and

will conclude at 12 noon, November 1, 1992.

The purposes of the meeting are to instruct committee members and organization officials of the obligations they have accepted for volunteer recruitment, communications and program interpretation, and to seek the advice of the committee in further developing volunteer participation in the care and treatment of veteran patients throughout the Department's nationwide medical program.

For further information contact the Director, Voluntary Service (161A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, Telephone (202) 535-7405.

Dated: September 3, 1992.

Diane H. Landis,

Committee Management Officer

[FR Doc. 92-22055 Filed 9-11-92; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 178
Monday, September 14, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, September 22, 1992.

PLACE: 2033 K St., N.W., Washington, D.C., Lower Lobby Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

—Application of the Chicago Mercantile Exchange, Inc. for contract designation in Three-Month Euromark Time Deposit Futures and Options
—Application of the Commodity Exchange, Inc. for contract designation in U.S. Gulf Coast Jet Fuel Futures
—Application of the New York Cotton Exchange, Inc. for contract designation in Cotlook World Cotton Futures and Options

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 92-22223 Filed 9-10-92; 3:11 pm]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Tuesday, September 22, 1992.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 92-22224 Filed 9-10-92; 3:11 pm]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, September 29, 1992.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 92-22225 Filed 9-10-92; 3:11 pm]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Tuesday, September 29, 1992.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 92-22226 Filed 9-10-92; 3:11 pm]
BILLING CODE 6351-01-M

FEDERAL ENERGY REGULATORY COMMISSION

Notice of Closed Meeting

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552b:

DATE AND TIME: September 16, 1992, 9:00 a.m.

PLACE: 825 North Capitol Street, N.E., Room 9306, Washington, D.C. 20426.

STATUS: closed.

MATTERS TO BE CONSIDERED:

(1) Northwest Pipeline Corporation, Docket Nos. IN90-1-000, CP89-304-000 and CP89-305-000.

(2) Indicated Shippers v. El Paso Natural Gas Company, Docket Nos. CP91-732-000 and CP88-332-010.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208-0400.

Dated: September 9, 1992.

Lois D. Cashell,
Secretary.
[FR Doc. 92-22278 Filed 9-10-92; 3:12 pm]
BILLING CODE 6717-01-M

FEDERAL ENERGY REGULATORY COMMISSION

Notice

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552b:

DATE AND TIME: September 16, 1992, 10:00 a.m.

PLACE: 825 North Capitol Street, N.E., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note: Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208-0400. For a recording listing items stricken from or added to the meeting, call (202) 208-1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 964th Meeting—September 16, 1992, Regular Meeting (10:00 a.m.)

CAH-1.
Project No. 10900-001, Thomas Hodgson & Sons, Inc.
CAH-2.
Omitted
CAH-3.
Project No. 3188-007, Joseph M. Keating
CAH-4.
Project No. 3194-011, Joseph M. Keating
CAH-5.
Project No. 10047-002, Northern Hydro Consultants, Inc.
Project No. 10514-001, C&A Wallcovering, Inc.
CAH-6.
Project No. 8263-005, Summit Hydropower
CAH-7.
Project No. 9085-011, Richard Balagur
CAH-8.
Project No. 10813-000, Town of Summersville, West Virginia
Project No. 10634-000, City of Manassas, Virginia
CAH-9.
Project No. 7664-009, East Bench Irrigation District

Consent Electric Agenda

CAE-1.
Docket No. ER92-517-000, Southern Company Services, Inc.
CAE-2.
Docket Nos. ER92-747-000 and ER92-748-000, Ocean State Power II
CAE-3.
Docket No. ER92-284-000, Vermont Electric Power Company
CAE-4.
Docket No. ER92-516-002, Entergy Power, Inc.

CAE-5.
Docket No. ER92-693-000, Puget Sound Power & Light Company
CAE-6.
Omitted
CAE-7.
Docket No. ER85-477-011, Southwestern Public Service Company
CAE-8.
Omitted
CAE-9.
Docket Nos. ER92-331-002 and ER92-332-002, Consumers Power Company
CAE-10.
Docket No. ER92-316-001, Southern Company Services, Inc.
CAE-11.
Docket No. ER92-122-002, Mississippi Power Company
CAE-12.
Docket No. ER92-110-001, PacifiCorp Electric Operations
CAE-13.
Docket Nos. ER91-494-002 and ER91-471-002, PacifiCorp Electric Operations
CAE-14.
Docket No. ER92-67-001, Western Massachusetts Electric Company
CAE-15.
Docket No. ER86-562-004, Boston Edison Company
CAE-16.
Docket No. ER92-286-001, New England Power Company
CAE-17.
Omitted
CAE-18.
Docket No. EL81-5-001, Edison Electric Institute
CAE-19.
Omitted
CAE-20.
Docket No. EL-92-12-001, Wisconsin Public Service Corporation
CAE-21.
Omitted
CAE-22.
Docket No. ER90-539-002, Central Maine Power Company
CAE-23.
Docket No. ER92-113-000, New England Power Service Company
CAE-24.
Docket No. ER92-66-000, Western Massachusetts Electric Company
CAE-25.
Docket Nos. ER91-505-004 and EL92-18-002, Pacific Gas and Electric Company
CAE-26.
Docket No. EL91-44-000, Allegheny Electric Cooperative, Inc. v. Niagara Mohawk Power Corporation
Docket No. ER92-417-000, Niagara Mohawk Power Corporation
CAE-27.
Docket No. EL92-19-000, Public Works Commission of the City of Fayetteville, North Carolina v. Carolina Power & Light Company

Consent Oil and Gas Agenda

CAG-1.
Docket No. RP92-221-000, Distrigas Corporation
CAG-2.
Docket No. RP92-210-000, Northern Border Pipeline Company
CAG-3.
Docket Nos. RP92-208-000 and RP92-216-000, Florida Gas Transmission Company
CAG-4.
Docket Nos. RP91-26-000, *et al.*, RP91-162-000 and RP92-18-000, El Paso Natural Gas Company
CAG-5.
Docket No. RP92-205-000, Southern Natural Gas Company
CAG-6.
Omitted
CAG-7.
Docket No. TA92-2-31-005, Arkla Energy Resources, a Division of Arkla, Inc.
CAG-8.
Docket No. TA92-2-31-003, Arkla Energy Resources, a Division of Arkla, Inc.
CAG-9.
Docket Nos. RP86-41-011, RP87-14-011 and RP90-22-018, Algonquin Gas Transmission Company
CAG-10.
Docket No. RP92-190-001, Carnegie Natural Gas Company
CAG-11.
Docket Nos. RP88-197-007 and RP88-236-002, Williston Basin Interstate Pipeline Company
CAG-12.
Docket Nos. RP92-163-001 and RP92-170-001, Williston Basin Interstate Pipeline Company
CAG-13.
Docket No. RP92-74-003, South Georgia Natural Gas Company
CAG-14.
Docket No. RP91-229-006, Panhandle Eastern Pipe Line Company
CAG-15.
Omitted
CAG-16.
Docket No. RP88-282-020, Panhandle Eastern Pipe Line Company
CAG-17.
Omitted
CAG-18.
Docket No. TQ92-5-17-001, Texas Eastern Transmission Corporation
CAG-19.
Omitted
CAG-20.
Docket No. RP89-242-006, Tennessee Gas Pipeline Company
CAG-21.
Docket No. RP92-115-002, El Paso Natural Gas Company
CAG-22.
Docket No. RP88-44-023, El Paso Natural Gas Company
CAG-23.
Docket No. RP88-44-020, El Paso Natural Gas Company
CAG-24.
Docket No. RP92-179-002, Florida Gas Transmission Company
CAG-25.
Docket Nos. RP89-137-000, RP89-219-002, TM90-1-37-002, RP90-50-001 and TM90-4-37-002, Northwest Pipeline Corporation
CAG-26.
Docket No. RM89-16-004, Order Implementing the Natural Gas Wellhead Decontrol Act of 1989
CAG-27.
Omitted
CAG-28.
Docket No. RP92-132-000, Tennessee Gas Pipeline Company
CAG-29.
Docket No. RP92-18-000, El Paso Natural Gas Company
CAG-30.
Docket Nos. RP92-137-000, 001 and RP92-108-000, Transcontinental Gas Pipe Line Corporation
CAG-31.
Docket Nos. IS87-36-000 and OR92-4-000, Endicott Pipeline Company
CAG-32.
Docket No. PR92-15-000, Enogex Inc.
CAG-33.
Docket No. PR92-4-000, American Gathering, L.P.
CAG-34.
Docket No. GP92-13-000, Colorado Oil and Gas Conservation Commission, Recompletion Tight Formation Gas Determinations for Echeverria #1, Scheidt-State #1, Dier #1, Devore #1, Gumeson #1, and Boulder Bank #1 Wells
CAG-35.
Docket No. RS92-9-001, Questar Pipeline Company
CAG-36.
Docket Nos. CP91-2704-002 and RS92-93-000, Blue Lake Gas Storage Company
CAG-37.
Docket No. RS92-86-000, Transcontinental Gas Pipe Line Corporation
CAG-38.
Docket No. 89-1953-004, ANR Storage Company
CAG-39.
Docket No. RM92-13-000, Revisions to Regulations Governing NGPA Section 311 Construction and the Replacement of Facilities
CAG-40.
Docket No. CP92-522-001, Tarpon Transmission Company
CAG-41.
Docket No. CP91-2519-002, Columbia Gulf Transmission Company and Arkla Energy Resources, a Division of Arkla, Inc.
Docket No. CP91-2521-002, Tennessee Gas Pipeline Company, Columbia Gulf Transmission Company, Arkla Energy Resources, a Division of Arkla, Inc., and Mississippi River Transmission Corporation
CAG-42.
Docket Nos. CP90-316-002 and CP90-317-002, Empire State Pipeline Company
Docket Nos. CP90-854-001, 003, CP90-920-002, CP90-967-002 and CP90-968-002, National Fuel Gas Supply Company
Docket Nos. CP90-1989-001 and 003, CNG Transmission Company
Docket Nos. CP91-724-002 and CP91-2251-001, Tennessee Gas Pipeline Company
Docket No. CI92-63-001, Rochester Gas and Electric Corporation
CAG-43.
Docket No. CP91-1182-002, National Fuel Gas Supply Corporation
CAG-44.
Docket No. CP91-2206-002, Tennessee Gas Pipeline Company

Docket No. CP89-661-018, Algonquin Gas Transmission Company
Docket No. CP92-245-001, Iroquois Gas Transmission System, L.P.
CAG-45.
Docket No. CP90-959-001, Distrigas of Massachusetts Corporation
CAG-46.
Omitted
CAG-47.
Docket No. CP92-462-000, Panhandle Eastern Pipe Line Company
CAG-48.
Docket No. CP91-1616-000, ANR Pipeline Company
Docket Nos. CP91-1634-000 and 001, Great Lakes Gas Transmission Limited Partnership
CAG-49.
Docket No. CP2-444-000, Ozark Gas Transmission System
CAG-50.
Docket No. CP92-491-000, CNG Transmission Corporation
CAG-51.
Docket No. CP89-1024-002, Eastern Shore Natural Gas Company
CAG-52.
Docket Nos. CP89-7-010, 017, 020, CP89-710-002 and 007, Transcontinental Gas Pipe Line Corporation
CAG-53.
Docket Nos. CP88-2-012 and RP92-1-000, Northern Natural Gas Company
CAG-54.
Docket No. CP92-417-000, Houston Pipe Line Company
CAG-55.
Docket No. CP92-581-000, El Paso Natural Gas Company
CAG-56.
Docket No. RM90-7-001, Revisions to Regulations Governing Transportation Under Section 311 of the Natural Gas Policy Act of 1978 and Blanket Transportation Certificates
Docket No. GP88-11-004, Hadson Gas Systems, Inc.
Docket No. CP88-286-005, Cascade Natural Gas Corporation v. Northwest Pipeline Corporation, *et al.*
Docket Nos. RP88-81-015, RP88-67-046 and RP88-175-001, Texas Eastern Transmission Corporation
CAG-57.
Docket No. CP89-2057-001, TPC Transmission, Inc.
Docket No. CP92-354-000, TPC Transmission, Inc., TPC Services, Inc. and Tejas Power Corporation
CAG-58.
Docket No. CP92-216-000, Peoples Natural Gas Company, Division of UtiliCorp United Inc. v. Natural Gas Pipeline Company of America
CAG-59.
Docket Nos. CP92-397-000, CP91-894-004, CP91-969-003 and CP92-62-006, CNG Transmission Corporation
CAG-60.
Docket No. RS92-5-000, Columbia Gas Transmission Corporation
Docket No. RS92-6-000, Columbia Gulf Transmission Company
CAG-61.
Docket Nos. IS92-10-002, IS92-11-002, IS92-12-002, IS92-13-002, IS92-14-002, IS92-15-002 and IS92-16-002, Amerada Hess Pipeline Corporation, *et al.*
Docket Nos. IS92-29-001, IS92-30-001, IS92-31-001, IS92-32-001, IS92-33-001, IS92-34-001 and IS92-35-001, Amerada Hess Pipeline Corporation, *et al.*

Hydro Agenda

H-1.
Reserved

Electric Agenda

E-1.
Reserved

Miscellaneous Agenda

M-1.
Docket No. RM91-12-000, Administrative Dispute Resolution. Notice of Proposed Rulemaking
M-2.
Docket No. PL92-1-000, Incentive Ratemaking for Interstate Natural Gas Pipelines, Oil Pipelines and Electric Utilities. Statement of Policy

Oil and Gas Agenda

I. Pipeline Rate Matters

PR-1.
Docket Nos. OR87-1-000, OR87-2-000, OR87-3-000, OR87-4-000, OR87-5-000, OR87-6-000, OR87-8-000 and OR85-2-000, Oxy Pipeline, Inc., Cxy Offshore Systems Inc. and Samedan Pipe Line Corporation. Declaratory order
PR-2.
Docket No. OR92-7-000, Bonito Pipe Line Company. Declaratory order

II. Restructuring Matters

RS-1.
Reserved

III. Pipeline Certificate Matters

PC-1.
Docket No. CP90-1391-001, Arcadian Corporation v. Southern Natural Gas Company. Order on rehearing
PC-2.
Omitted

Dated: September 9, 1992.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22279 Filed 9-10-92; 3:12 pm]

BILLING CODE 6717-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 2:00 p.m. (Eastern Time) Monday, September 21, 1992.

PLACE: Conference Room on the Ninth Floor of the EEOC Office Building, 1801 "L" Street, N.W., Washington, D.C. 20507.

STATUS: The Meeting will be Open to the Public.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Announcement of Notation Vote(s).
2. A Report on Commission Operations—FY 1993 Budget.

Note: Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 663-7100 (voice) and (202) 663-4494 (TTD) at any time for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663-7100.

Dated: September 10, 1992.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 92-22310 Filed 9-10-92; 4:01 pm]

BILLING CODE 6750-06-M

Corrections

Federal Register
Vol. 57, No. 178
Monday, September 14, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

48 CFR Part 923

Acquisition Regulation

Correction

In rule document 92–17076 beginning on page 32673 in the issue of Wednesday, July 22, 1992, make the following correction:

923.570–1 [Corrected]

1. On page 32676, in the first column:

a. In section 923.570–1(a), in the fifth line, "site" should read "sites".

b. In section 923.570–1(a)(iii), in the first line, "Transportation" should be lowercased.

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER92–763–000, et al.]

Southern California Edison Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Correction

In notice document 92–20262 beginning on page 38495 in the issue of Tuesday, August 25, 1992, on page 38496, in the third column, under **11**, "[Docket No. ER92–5172–000]" should read "[Docket No. EF92–5172–000]".

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. FA88–62–000]

Wisconsin Electric Power Co.; Order Expanding the Scope of Hearing To Include Prudence Issue

In notice document 92–20337 beginning on page 38499 in the issue of Tuesday, August 25, 1992, the Docket No. should read as set forth above.

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 61

[Docket No. 26927; Notice No. 92–8]

RIN 2120–AE11

Amendment of the Annual and Biennial Flight Review Requirements

Correction

In proposed rule document 92–17272 beginning on page 32680 in the issue of Wednesday, July 22, 1992, on page 32680, in the first column, under **SUMMARY**, in the eighth line, "instrumentation" should read "instruction".

BILLING CODE 1505–01–D

federal register

Monday
September 14, 1992

Part II

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910, et al.

Occupational Exposure to Cadmium; Final Rules

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915 and 1926

[Docket No. H-057a]

RIN 1218-AB16

Occupational Exposure to Cadmium

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Final rules.

SUMMARY: The Occupational Safety and Health Administration (OSHA) hereby publishes a new standard for occupational exposure to cadmium, applicable to general industry and agriculture and maritime. A separate standard regulating exposure to cadmium in the construction industry was also developed, because the differences in job duration, exposure and worksite conditions warrant unique treatment. OSHA is publishing the construction standard at 29 CFR 1926.63.

The basis of this regulation is a determination by the Assistant Secretary that employees exposed to cadmium face a significant risk to their health from lung cancer and serious kidney damage at the current permissible exposure limits and that promulgating this standard will substantially reduce that risk. The information gathered during the rulemaking demonstrates that employees chronically exposed to levels of cadmium well below existing permissible exposure limits are at increased risk of developing kidney dysfunction and cancer.

The new standard establishes a single 8-hour time weighted average permissible exposure limit (TWA PEL) of 5 micrograms of cadmium per cubic meter ($\mu g/m^3$) of air for all cadmium compounds, including dust and fumes. Employers are required to comply with this limit primarily by means of engineering and work practice controls. For a small number of industries, OSHA has also established a separate engineering control air limit (SECAL) of 25 $\mu g/m^3$ as the lowest feasible level above the PEL that can be achieved by engineering and work practice controls. Like the PEL for other industries, the SECAL, where applicable, must be achieved by engineering and work practice controls except to the extent that the employer can demonstrate that such controls are not feasible.

EFFECTIVE DATE: The new standards published today take effect December 14, 1992.

ADDRESSES: For additional copies of these final standards, contact: OSHA Office of Publications, room S-4203, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Telephone 202-523-8151.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Director, Office of Information and Consumer Affairs, OSHA, U.S. Department of Labor, room N-3647, 200 Constitution Avenue NW., Washington, DC 20210. Telephone (202) 523-8151.

SUPPLEMENTARY INFORMATION:

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References to the rulemaking record are in this text, and the following abbreviations have been used: 1. Ex.: Exhibit, with accompanying number in Docket H-057a, which is located in room N-2625 at the Department of Labor. 2. Tr.: Transcript, with accompanying date and page number.

I. Introduction

A. General

The preamble to this standard on occupational exposure to cadmium discusses the events that led to the development of the proposal, cadmium's physical properties, manufacture and use, the health effects associated with exposure to cadmium, and the degree and the significance of the risk. In addition, an analysis of the regulatory impact and technological and economic feasibility of the proposed standard and the rationale behind the specific provisions set forth in the regulatory text are also presented.

OSHA is acting to regulate a hazard widely recognized by other Federal agencies, health experts, and the general public. These standards will be codified at 29 CFR 1910.1027 for general industry and at 29 CFR 1926.63 for the construction industry. Pursuant to sections 4(b)(2), 6(b), 8(c) and 8(g) of the Occupational Safety and Health Act of 1970 (the Act) (84 Stat. 1592, 1593, 1596, 1599; 29 U.S.C. 653, 655, 657), the Construction Safety Act (40 U.S.C. 333), the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941), the Secretary of Labor's Order No. 1-90 (55 FR 9033), and 29 CFR part 1911, these final standards hereby amend and revise the current cadmium standards.

This action follows publication of a proposed rule on February 6, 1990 (55 FR 4052) and holding of public hearings from June 5-13, 1990 in Washington, DC and July 17-19, 1990 in Denver, Colorado to provide the public with an opportunity to comment on OSHA's proposed rule on cadmium. Approximately 2000 pages of testimony and 100 comments were received into the record of this rulemaking and have been analyzed by the Agency in creating this final standard.

B. Construction

OSHA has decided to issue two separate standards regulating occupational exposure to cadmium; one that applies to workplaces in general industry and agricultural and maritime industries, and another covering construction worksites. By doing so, OSHA is acting in accordance with the recommendations of the Advisory Committee for Construction Safety and Health (ACCSH), which has reviewed and commented on the proposal and has submitted changes in that proposal to the record of the rulemaking.

Additional reasons that support a separate standard for construction can be summarized briefly as follows:

(1) The construction industry is characterized by nonfixed worksites that are temporary in nature and differ from those in general industry in regard to the need for a designated competent person as well as significant differences between workplaces in terms of site conditions, size and scope of tasks, methods of operation, and environmental conditions.

(2) Employees in the construction industry often do not remain in construction or in the employ of the same employer for a long period of time, in contrast to employees in fixed-site manufacturing facilities.

(3) The special characteristics of construction operations made it necessary to tailor some of the requirements traditionally included in OSHA health standards to the specific needs of the construction industry.

OSHA has tailored the requirements of the final construction standard to reflect differences in operations of various types within the construction industry itself. In recognition of this

wide diversity in construction projects, the Agency has specifically identified in the final rule those additional requirements that apply to such construction operations. The record demonstrates, with a few exceptions, the generally low exposures and well-controlled conditions prevailing in construction operations involving the use of cadmium.

II. Pertinent Legal Authority

A. Purpose

The primary purpose of the Occupational Safety and Health Act (the Act) (29 U.S.C. 655 et seq.) is to assure, so far as possible, safe and healthful working conditions for every American worker over the period of his or her working lifetime. One means prescribed by the Congress to achieve this goal is the mandate given to, and the concomitant authority vested in, the Secretary of Labor to set mandatory safety and health standards. The Congress specifically mandated that:

> The Secretary, in promulgating standards dealing with toxic materials or harmful physical agents under this subsection shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life. Development of standards under this subsection shall be based upon research, demonstrations, experiments, and such other information as may be appropriate * * *. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws. Whenever practicable, the standard promulgated shall be expressed in terms of objective criteria and of the performance desired [section 6(b)(5)].

B. Action Needed

The issuance of this final standard is authorized by sections 6(b), 8(c), and 8(g)(2) of the Occupational Safety and Health Act of 1970 (the Act), (84 Stat. 1593; 29 U.S.C. 655(b), 657(g)(2)). Section 6(b)(5) governs the issuance of occupational safety and health standards dealing with toxic materials or harmful physical agents. Section 3(8) defines an occupational safety and health standard as:

> * * * A standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

The Supreme Court has held that under the Act the Secretary, before issuing any new standard, must determine that it is reasonably necessary and appropriate to remedy a significant risk of material health impairment. *Industrial Union Department* v. *American Petroleum Institute*, 448 U.S. 607 (1980). The court stated that "before he can promulgate any permanent health or safety standard, the Secretary is required to make a threshold finding that a place of employment is unsafe in the sense that significant risks are present and can be eliminated or lessened by a change in practices" (488 U.S. at 642). The Court also stated "that the Act does limit the Secretary's power to requiring the elimination of significant risks" (448 U.S. at 644, n. 49).

The court indicated, however, that the significant risk determination is "not a mathematical straitjacket," and that "OSHA is not required to support its finding that a significant risk exists with anything approaching scientific certainty." The court ruled that "a reviewing court [is] to give OSHA some leeway where its findings must be made on the frontiers of scientific knowledge * * * [and that] the Agency is free to use conservative assumptions in interpreting the data with respect to carcinogens, risking error on the side of overprotection rather than underprotection" (448 U.S. at 655, 656). The court also stated that "while that Agency must support its finding that a certain level of risk exists with substantial evidence, we recognize that its determination that a particular level of risk is 'significant' will be based largely on policy considerations." (448 U.S. at 655, 656, n. 62).

After OSHA has determined that a significant risk exists and that such risk can be reduced by the proposed standard, it must set a standard "which most adequately assures, to the extent feasible on the basis of the best available evidence, that no employee will suffer material impairment of health" (section 6(b)(5) of the Act). The Supreme Court has interpreted this section to mean that OSHA must enact the most protective standard possible to eliminate a significant risk of material health impairment, subject to the constraints of technological and economic feasibility. *American Textile Manufacturers Institute, Inc.* v. *Donovan*, 452 U.S. 490 (1981). The court held that "cost-benefit analysis is not required by the statute because feasibility analysis is." (452 U.S. at 509). The Court stated that the Agency could use cost-effective analysis and choose the least costly of two equally effective standards. (452 U.S. 531, n. 32).

C. Regulation

Authority to issue this proposed standard is also found in section 8(C) and (g) of the Act. Section 8(c)(3) gives the Secretary authority to require employers to "maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured under section 6." Section 8(g)(2) gives the Secretary authority to "prescribe such rules and regulations as he may deem necessary to carry out * * * [his] responsibilities under this Act."

In addition, the Secretary's responsibilities under the Act are amplified by its enumerated purposes, which include:

> * * * Encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions; * * *
>
> Authorizing the Secretary of Labor to set mandatory occupational safety and health standards applicable to business affecting interstate commerce * * *.
>
> Building upon advances already made through employer and employee initiative for providing safe and healthful working conditions; * * *
>
> Providing for the development and promulgation of occupational safety and health standards; * * *
>
> Providing for appropriate reporting procedures with respect to occupational safety and health which procedures will help achieve the objectives of the Act and accurately describe the nature of the occupational safety and health problem; * * *
>
> Exploring ways to discover latent diseases; * * *
>
> Establishing causal connections between diseases and work in environmental conditions * * *;
>
> Encouraging joint labor—management efforts to reduce injuries and disease arising out of employment * * *
>
> And * * * developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems * * *.

Because the final cadmium standard is reasonably related to these statutory goals and because the Agency's judgment is that the evidence satisfies the statutory requirements and that the final standard is feasible and substantially reduces a significant risk of cancer and other adverse health effects, the Secretary finds that this standard is necessary and appropriate to carry out her responsibilities under the Act.

D. Information Collection Requirements:

5 CFR Part 1320 sets forth procedures for agencies to follow in obtaining OMB clearance for information collection requirements under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. The final cadmium standard requires the employer to allow OSHA access to various records including the employers' compliance and training plans; and the employees' exposure monitoring, medical and training records. In accordance with the provisions of the Paperwork Reduction Act and the regulations issued pursuant thereto, OSHA certifies that it has submitted the information collection requirements of this standard to OMB for review under section 3504(h) of that Act.

Public reporting burden for this collection of information is estimated to average 5 minutes to allow OSHA compliance officers access to the employer's records. Send comments regarding this burden estimate, or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Information Management, Department of Labor, room N-1301, 200 Constitution Avenue NW., Washington, DC, 20210; and to the Office of Management and Budget, Paperwork Reduction Project (Cadmium Standard), Washington, DC, 20503.

E. Federalism

This final standard has been reviewed in accordance with Executive Order 12612, 52 FR 41685 (October 30, 1987), regarding Federalism. This Order requires that agencies, to the extent possible, refrain from limiting State policy options, consult with States prior to taking any actions that would restrict State policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. The Order provides for preemption of State law only if there is a clear Congressional intent for the agency to do so. Any such preemption is to be limited to the extent possible.

Section 18 of the Occupational Safety and Health Act [OSH Act], expresses Congress' clear intent to preempt State laws with respect to which Federal OSHA has promulgated occupational safety or health standards. Under the OSH Act, a State can avoid preemption only if it submits and obtains Federal approval of a plan for the development of comparable State standards and their enforcement. Occupational safety and health standards developed by such Plan States must, among other things, be at least as effective as the Federal standards in providing safe and healthful employment and places of employment.

Those States which have elected to participate under Section 18 of the OSH Act would not be preempted by this regulation and would be able to deal with special, local conditions within the framework provided by this performance-oriented standard while ensuring that their standards are at least as effective as the Federal standard.

F. State Plans

The 25 states and territories with their own OSHA-approved occupational safety and health plans must revise their existing standards within six months of the publication date of this final standard. These states or territories are: Alaska, Arizona, California, Connecticut, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming. (In Connecticut and New York, the plan covers only State and local government employees.) Until such time as a state standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate.

III. Regulatory History

A. OSHA's Existing PELs

OSHA's existing permissible exposure limits for cadmium were originally developed by the American National Standards Institute. In 1941 the American Standards Association (now American National Standards Institute, or ANSI) set as guidelines an American Defense Emergency Standard of 1000 $\mu g/m^3$ for cadmium and its compounds. This was done to reduce discomfort from exposures to cadmium and to reduce the incidence of acute health effects. ANSI revised its standard to current levels (ANSI Z37.5, 1970) which OSHA adopted in 1971 as a national consensus standard under section 6(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655). These PELs, as specified in 29 CFR 1910.1000, Table Z-2 are an 8-hour time-weighted average (TWA PEL) of 100 $\mu g/m^3$ for cadmium fume with a ceiling concentration of 300 $\mu g/m^3$ and an 8-hour TWA of 200 $\mu g/m^3$ for cadmium dust with a ceiling concentration of 600 $\mu g/m^3$. OSHA's existing PEL in the construction industry is 100 $\mu g/m^3$ for cadmium oxide fumes and 200 $\mu g/m^3$ for metal dust and soluble salts (29 CFR 1926.55).

B. Other Agency Findings

In preparing this document, OSHA reviewed the existing regulations for occupational exposures in other countries worldwide. The range of existing PELs runs from the ban of all non-essential uses of cadmium in Sweden to OSHA's existing TWA PEL of 200 $\mu g/m^3$ for cadmium dust.

Sweden also established a PEL of 20 $\mu g/m^3$ for all existing uses of cadmium along with a PEL of 10 $\mu g/m^3$ for all new workplaces. Australia has a PEL of 50 $\mu g/m^3$ for both dust and fume but is presently proposing a level of 10 $\mu g/m^3$. China and the former USSR follow a PEL of 10 $\mu g/m^3$. Finland established a fume PEL of 10 $\mu g/m^3$ and dust PEL of 20 $\mu g/m^3$, while France allows cadmium oxide dust to be 50 $\mu g/m^3$. Japan's PEL is set at 50 $\mu g/m^3$. The regulations in the United Kingdom are under review, but the current allowable exposure level is 50 $\mu g/m^3$ except for the respirable cadmium sulfide level which is set at 40 $\mu g/m^3$ (Ex. L-140-50).

The German government bans the use of cadmium chloride and has also been intent on changing its cadmium exposure levels for all other cadmium compounds based on the MAK carcinogenic classification "A2" which defines cadmium as "unmistakably carcinogenic in experimental animals only" (ACGIH documentation of TLV, 1991).

Agencies and institutions other than OSHA have revised their air quality standards for cadmium. In 1976, the National Institute for Occupational Safety and Health (NIOSH) recommended that exposures to any form of cadmium should not exceed a concentration greater than 40 $\mu g/m^3$ as a 10-hour TWA or a concentration greater than 200 $\mu g/m^3$ for any 15-minute period. This recommended limit was intended to protect against renal damage and pulmonary disease. In 1984, NIOSH issued a Current Intelligence Bulletin (CIB), which recommended that cadmium and its compounds be regarded as potential occupational carcinogens based on evidence of lung cancer in workers exposed to cadmium in a smelter and that exposures should be reduced to the lowest possible level.

The Environmental Protection Agency (EPA) issued a Health Assessment Document (HAD) for cadmium in 1981 which presented the health effects and potential risk to human health associated with environmental exposure to cadmium. An update of the HAD in 1985 concluded that the epidemiologic evidence is suggestive of a significant risk of lung cancer from exposure to

cadmium. According to the EPA's 1984 Proposed Guidelines for Carcinogenic Risk Assessment, cadmium is classified as a Group B1 substance and is thus considered to be a "probable" human carcinogen (Ex. 4–04).

In 1987, the International Agency for Research on Cancer (IARC) of the World Health Organization (WHO) summarized the results from tests for genetic and related effects of a large number of compounds thought to be potentially carcinogenic. The IARC working group of experts evaluated these data as well as epidemiologic and animal studies and concluded that cadmium and cadmium compounds should be classified in Group 2A—"probably carcinogenic to humans" (Ex. 8–681). Since 1946, the American Conference of Governmental Industrial Hygienists (ACGIH) has recommended that exposures to cadmium be controlled. In 1946, ACGIH recommended a Maximum Allowable Concentration (MAC) of 100 $\mu g/m^3$ for cadmium. After 1948, the MAC was called the Threshold Limit Value (TLV). In 1956, a TLV of 100 $\mu g/m^3$ was assigned to cadmium oxide fume. In 1965, a value of 200 $\mu g/m^3$ for cadmium (metal dusts and soluble salts) was proposed; it was adopted as a recommended value in 1967. In 1970, the ACGIH TLV of 200 $\mu g/m^3$ for cadmium dust and salts remained unchanged, but the TLV for cadmium fume was changed to a ceiling. In 1973, the ACGIH announced its intent to change the TLV for cadmium fume to 50 $\mu g/m^3$ and in 1974 announced its intent to extend this TLV to cadmium dusts and salts. A note was added in 1975 indicating that cadmium oxide production involved carcinogenic or co-carcinogenic potential.

Recently, the ACGIH has recommended further changes in air quality standards for cadmium. They have classified cadmium as a potential human carcinogen and published a *Notice of Intent* to lower the TLV to 10 $\mu g/m^3$ for total dust and 2 $\mu g/m^3$ for respirable dust to protect workers from lung cancer and renal dysfunction. ACGIH justified this latest change in part by noting:

> In consideration of the strength of the white rat inhalation studies and with some additional support from the retrospective human mortality study by Thun *et al.*, an A_2 designation as an industrial substance of carcinogenic potential for man is given to cadmium and its compounds (Ex. 8–664).

The Mine Safety and Health Administration (MSHA) publishes air quality standards which include cadmium. MSHA frequently incorporates, by reference, the ACGIH TLVs as permissible exposure levels. Currently, MSHA is in the process of updating its PELs to take account of proposed ACGIH changes in the TLVs. MSHA published a notice of proposed rulemaking (*NPRM*, 8/29/89) proposing alternative TWA PELs of 10 $\mu g/m^3$ and 5 $\mu g/m^3$ for cadmium. The record for this notice closed on August 30, 1991 and internal review is now underway with an anticipated final standard publication date of February 1993.

Since 1987, the National Center for Health Statistics (NCHS), Department of Health and Human Services, Center for Disease Control, has included cadmium-in-urine measurements in its current third National Health and Nutrition Examination Survey (NHANES III). This survey, originally started in 1974, provides national estimates of diagnosed and undiagnosed medical conditions, as well as information on normal and abnormal conditions in the general population of the U.S. Such information is used by government agencies to obtain a more complete picture of national health and medical needs (Ex. 8–679). OSHA considers the inclusion of cadmium by NCHS to indicate a high level of concern regarding cadmium-related health effects among the general population of the United States. This emphasizes the importance of promulgating a final cadmium standard since general cadmium exposures among the U.S. population are much lower than cadmium exposures among most occupational groups.

C. Unified PEL

In keeping with the recommendations of other agencies like NIOSH, EPA and the ACGIH, this standard does not differentiate between exposure to cadmium fumes or dust. Since the early 1940's, acute inhalation of cadmium fumes from soldering or welding was known to cause severe health effects such as chemical pneumonitis and death (Ex. 8–678). These properties led researchers to readily accept the possibility of adverse health effects associated with exposure to fumes. It is now generally accepted that overexposures to cadmium in any form results in the same final chronic endpoints of cancer and kidney dysfunction (Exs. 4–27, 4–28, 4–68, and 4–19). By 1970, when ANSI republished their original guidelines, it acknowledged that exposures to cadmium fumes or dusts cause irreversible lung damage, proteinuria, and kidney damage. In the mid-1970's the ACGIH announced an intent to change the TLV for all forms of cadmium (fumes, dust, and salts) to 50 $\mu g/m^3$, and the differentiation between fumes and dusts was set aside.

D. Chronology of Cadmium rulemaking

OSHA's decision to reduce the PELs for cadmium exposures is, in part, in response to a petition, of June 18, 1986, from the Health Research Group (HRG) of Public Citizen, joined by the International Chemical Workers Union (ICWU), which requested OSHA to issue an Emergency Temporary Standard (ETS) for cadmium providing for a permissible exposure limit (PEL) of 1 $\mu g/m^3$ as an 8-hour TWA and 5 $\mu g/m^3$ as a ceiling limit. In support of their position the petitioners cited several studies which they believed provided evidence that workers were in grave danger from occupational exposure to cadmium at and below current PELs.

The major human study cited was that by Thun et al. (Ex. 4–68), which found significant increases in lung cancer in cadmium smelter workers. The petitioners also cited several animal studies which demonstrate the carcinogenic potential of cadmium. The most notable of these was an inhalation study cited in which rats exposed to cadmium chloride at levels below OSHA's PEL, developed lung cancer while the unexposed controls developed none (Ex. 4–67). Other human studies cited by the petitioners showed statistically significant increases in prostate cancer among battery factory, smelter, and alloy factory workers exposed to cadmium. Other human studies cited by the petitioners also showed evidence of renal damage and non-malignant respiratory disease among workers exposed to cadmium at levels below the PEL. The exposure limits requested by HRG and ICWU were aimed at ensuring that workers would not be at excess risk of cancer and kidney disease.

On July 1, 1987, OSHA denied the petition for an ETS on the grounds that the record did not support findings that cadmium posed a "grave danger" as defined by the courts. However, OSHA determined that the existing PELs at that time are not sufficiently protective and that the Agency should proceed with permanent rulemaking under section 6(b) of the Act to reduce cadmium exposure. In July of 1989, petitioners, alleging unnecessary delay on OSHA's part, filed a petition for a Writ of Mandamus in the U.S. Court of Appeals for the D.C. Circuit seeking to compel the Agency to issue the proposed and final standards by specified dates. On October 20, 1989, the court ordered the case held in abeyance and ordered

OSHA to file a report within three months on the status of the proposed rule and the date by which the Agency expected to issue a final rule. OSHA duly filed its status report, projecting publication of the proposal around the end of January 1990 and publication of the final cadmium rule within 24 months thereafter.

On February 6, 1990 OSHA published its proposed rule to regulate occupational exposure to cadmium (55 FR 4052). The main health effects targeted by the Agency were lung cancer and kidney damage. Based on the Agency's review of major epidemiological studies of lung cancer and renal dysfunction among workers exposed to cadmium, and based on the Agency's quantitative risk assessment, OSHA proposed establishing a PEL of 1 $\mu g/m^3$, or in the alternative, a PEL of 5 $\mu g/m^3$.

In proposing two alternative PELs, OSHA acknowledged that either PEL would be difficult to achieve in some sectors through engineering controls alone. In these particular industry and occupational sectors reliance upon respirators would be considerable.

Thereafter, on February 12, 1990, the Court of Appeals indicated that it was satisfied with OSHA's compliance to date but noted: (1) That OSHA's projection of 24 months for publishing a final standard exceeded by six months the 18-month period previously projected by the Agency, and (2) that all parties agree that exposure to cadmium poses a serious risk to workers and that OSHA should therefore proceed expeditiously. Consequently, the court ordered that the case continue to be held in abeyance, pending further review, and further ordered OSHA to file with the court, every six months until the final rule is issued, a report indicating the status of the rulemaking and the date by which the Agency expects to issue a final rule.

A public hearing on the proposal was held in Washington, DC on June 5–13, 1990, and in Denver on July 17–19, 1990. In response to significant public and expert comment on the proposed medical surveillance provisions, OSHA on July 2, 1990 sent a memo to all hearing participants, requesting further information, testimony, and comments on medical surveillance and smoking in the workplace (Ex. 46). OSHA made this request to hearing participants in order to maximize their participation in the development of the final requirements for medical surveillance and in light of substantial comment in expert and other testimony at the hearings in Washington, DC, and in pre-hearing written comments.

In the memorandum, OSHA summarized the submissions to the record as follows:

(a) Employer action generally should not be triggered on the basis of a single biological parameter;

(b) Prior to the onset of kidney disease, cadmium levels in urine provide the most practical indication of cadmium body burden;

(c) Concurrently high values in tests for both cadmium in urine and beta-2-microglobulin in urine provide the best early indicator of kidney dysfunction;

(d) A pre-placement (initial) medical examination is necessary for all employees previously, as well as currently exposed to cadmium above the action level to establish their health status;

(e) A termination of employment examination is also necessary to establish the health status of all employees previously exposed above the action level and to facilitate prognosis;

(f) Medical exams may not be necessary annually so long as periodic biological monitoring results are within normal ranges;

(g) Physician's discretion should be an important part of any medical surveillance program;

(h) A physician's decision that an employee must be medically removed from exposure to cadmium above the action level may mean that the employee cannot be returned to work in facilities with cadmium exposure;

(i) Multiple physician review may be an appropriate mechanism to assure the quality of medical determinations; and

(j) OSHA should directly address the issue of smoking among cadmium exposed workers.

In response to these submissions OSHA presented updated medical surveillance provisions and sought further testimony and comment.

In addition, in the memo, OSHA requested information and comments on several issues relating to smoking, including but not limited to: Whether smoking is likely to increase the smoker's body burden of cadmium; whether smoking is likely to contribute to cadmium-induced disease; whether OSHA should require the examining physician to inquire about the patient's smoking history and status, and; whether OSHA should require the examining physician to advise the patient that smoking is a source of cadmium exposure that is cumulative with whatever occupational exposure the patient absorbs and that the patient therefore should stop smoking. Comment and information was requested to be provided in testimony at the Denver hearing site and/or in post-hearing comment.

After the Denver hearing of July, 1990, a post-hearing comment period of 90 days was established by the hearing officer, Administrative Law Judge Julius A. Johnson. On September 18, 1990, SCM Chemicals, Inc., a cadmium pigment manufacturer, moved to extend the post-hearing comment period. SCM sought the extension to allow submission to the record of studies that were about to be initiated regarding the possible confounding effect of the photo-decomposition (solubilization) of cadmium sulfide on the results of an important long term inhalation study of rats exposed to cadmium sulfide and other cadmium compounds (Glaser, U., et al., "Carcinogenicity and Toxicity of Four Cadmium Compounds Inhaled by Rats," *Toxicological and Environmental Chemistry*, Vol. 27, pp. 153–62, 1990). That study by Glaser et al. showed cadmium sulfide to be a lung carcinogen of approximately equal potency with other cadmium compounds. The follow-up studies were to test whether the evidence of equal potency might be attributable, in whole or in part, to the existence of more toxic compounds in the inhaled cadmium sulfide aerosol. Industry representatives asserted that the toxic compounds were produced by the photo-decomposition of cadmium sulfide prior to inhalation by the test animals. The SCM motion was denied by Judge Johnson, but OSHA indicated that if significant new evidence soon became available, the Agency would consider reopening the record. The post hearing comment period ended on October 18, 1990.

On April 22, 1991, the Dry Color Manufacturers' Association (DCMA), representing cadmium pigment manufacturers and users, filed a motion with Judge Johnson to reopen the hearing to allow cross examination of OSHA witnesses regarding the carcinogenicity of cadmium sulfide in light of the results of the follow-up studies which had been completed, or alternatively to remove cadmium pigments from the current rulemaking. In its opposition to the motion, OSHA indicated that, in the interest of fairness and fully developing the record, the Agency would carry out a limited reopening of the record to allow submission of the results of the follow-up studies and written public comment on the studies and underlying issues. DCMA's motion was denied by the judge on May 13, 1991. On May 24, 1991, Judge Johnson certified the record for the public hearing as closed. Thereafter, on June 17, 1991, DCMA moved for

reconsideration of its previous motion. On July 5, 1991, OSHA denied the motion to reconsider. In its letter of denial, OSHA reiterated that the Agency would reopen the record for the limited purpose of receiving the final reports of the two recent studies and updated assessments of those reports and to seek public comment on the new evidence and the underlying issues concerning cadmium sulfide. OSHA then contracted with one of its experts at the hearing, Dr. G. Oberdörster, who is a co-author of one of the follow-up studies, and with one of the co-authors of the other study, Dr. U. Heinrich, to assess cadmium sulfide's solubility, bioavailability, toxicity, carcinogenicity and potency relative to other cadmium compounds in light of all the evidence, including their own studies.

The record was reopened for 45 days on September 16, 1991 and closed on November 4, 1991. OSHA submitted the reports of the additional studies of cadmium sulfide and the assessments by Drs. Oberdörster and Heinrich. New data had to be submitted by October 18, 1991, and other comments could be placed in the record until the record closed.

On February 12, 1992 OSHA filed its required status report to the court requesting a six-month extension due to unanticipated difficulties in developing specific portions of the final standard and the complexities of the issues that need to be addressed.

The International Chemical Worker's Union (ICWU) and Public Citizen's Health Research Group (HRG) moved to have the court impose a deadline of August 31, 1992, for OSHA to publish the final standard. Although OSHA expected to have completed the standard by this date, the Agency opposed a court imposed deadline. On March 20, 1992, the court ordered OSHA to issue the final rule by August 31, 1992 (*International Chemical Workers Union, et al.*, v. *Strunk and Martin*, No. 89-1357, March 20, 1992).

On June 5, 1992, DCMA filed another motion with the Agency to remove cadmium pigments from consideration in the final rule due to evidence adduced subsequent to the public hearings alleging that cadmium pigments are less toxic than other cadmium compounds (Ex. 171; and see Ex. 172). OSHA denied the motion for reasons stated in previous responses to DCMA and in this preamble (Ex. L-173).

In this rulemaking, OSHA has developed two final standards, one for general industry, maritime, and agriculture, and a separate one for the construction industry. In both standards, the Agency has concluded that excess exposure to cadmium in any form does pose a significant threat to the health of workers, whether it is from material impairment of kidney function, lung cancer or other cadmium-related illnesses. OSHA determined that the TWA PEL should not be set above 5 $\mu g/m^3$ based on the record of evidence and its own quantitative risk assessment. The Agency found that the animal and human data show strikingly similar evidence of cadmium toxicity. The decision to establish the PEL at 5 $\mu g/m^3$ was made on the basis of feasibility as well. OSHA's quantitative risk assessment does not take account of the reductions in risk attributable to the ancillary provisions. Although OSHA's risk assessment indicates that some risk may remain at a TWA PEL of 5 $\mu g/m^3$, the Agency has relied upon the ancillary provisions to eliminate significant risk at the new PEL.

IV. Chemical Identification, Production, and Use of Cadmium

Cadmium (Chemical Services Registry Number 7740-43-9) is a soft, blue-white, malleable, lustrous metal or a grayish-white powder. It is insoluble in water and reacts readily with dilute nitric acid. It reacts slowly with hot hydrochloric acid and does not react with alkalies. It is slowly oxidized by moist air to form cadmium oxide. Cadmium occurs in nature in ores, and is obtained as a by-product from the extraction, separation and recovery of those metals in refinery plants.

According to the Mine Safety and Health Administration (MSHA), cadmium ore does not exist since cadmium is a by-product of ores mined for other metals. In fact, cadmium is considered a "contaminant" in mining because it simply is not profitable for industries to mine for it solely. Cadmium is always found with other elements such as zinc, lead, copper or arsenic. An ore must contain at least a trace of a mineral or an aggregate of minerals; however to be considered valuable, it must contain a certain percentage of a desired mineral(s), which is cost-effective and profitable for the mine to process out of the ore. Generally, an ore is named after the minerals it contains which are being recovered. It usually follows that the ore is named in the order of the percentage of the elements present. For example, if an ore is mainly zinc then selenium and finally cadmium, it would be called zinc-selenium-cadmium-ore [personal communication 4/27/90, Mine Safety and Health (MSHA)]

Cadmium metal is produced by three basic processes: Fractional precipitation and distillation of roasted zinc ores; direct distillation of cadmium-bearing zinc; and, electrolytic zinc processing. Presently, there are four sites where cadmium is processed: ASARCO Incorporated in Denver, Colorado and Corpus Christi, Texas, where cadmium is recovered from lead smelter baghouse dust; Big River Zinc in Sauget, Illinois; Jersey Miniere Zinc Company in Clarksville, Tennessee; and Zinc Corporation of America in Bartlesville, Oklahoma where cadmium is recovered as byproduct of smelting zinc concentrates. ("Mineral Industry Surveys * * * Cadmium in 1991", Bureau of Mines, Department of Interior, 4/9/92).

A primary use for cadmium metal is as an anticorrosive, electroplated onto steel. Cadmium may serve as an electrode component in alkaline batteries and may be used in alloys, silver solders, and welding. Cadmium exposures in general occur in refining and smelting operations. Relative to the metals with which it is found, cadmium volatilizes readily during these processes because of its low boiling point (765 °C) and high vapor pressure. The cadmium then condenses to form fine airborne particles that react almost immediately with oxygen to form respirable cadmium oxide. Other general industry groups where exposure to cadmium may occur include electroplating, battery manufacturing, and pigment and plastics manufacturing. In addition, cadmium exposure is associated with welding, brazing, and painting operations in many other industries.

Cadmium exists in +2 valence state, and does not form stable alkyl compounds or other organometallic compounds of known toxicologic significance. Although all cadmium and cadmium-containing compounds are covered under this standard, OSHA is focusing in this section on those compounds most commonly associated with industrial processes in the United States of America which pose potentially serious health effects: cadmium oxide, cadmium sulfate, cadmium chloride, and cadmium sulfide (Ex. 8-671).

Cadmium oxide (CdO; Chemical Services Registry No. 1306-19-0) occurs as dark brown infusible powder or cubic crystals. It is practically insoluble in water but is soluble in dilute acids. It is also slowly soluble in ammonium salts. It is used as an electroplating chemical; as a component of silver alloys, phosphors, and semiconductors; and, in glass and ceramic glazes. It is also used as a vermicide and is a starting material for polyvinyl chloride (PVC) heat

stabilizers. Cadmium oxide is used as a second polarizer in silver-zinc storage batteries and in plastics such as Teflon to improve their high-temperature properties.

Cadmium oxide fumes are formed when cadmium compounds are heated and cadmium ions are driven off. As these ions cool, they condense out of the air as cadmium oxide. Cadmium oxide exposures can occur in a variety of industries where cadmium-containing compounds are heated, such as smelters, refiners, and copper-cadmium alloy manufacturing plants. Workers who perform welding on automobile parts in manufacturing plants, using cadmium containing solders, can be exposed to cadmium oxide fumes.

Cadmium chloride ($CdCl_2$; Chemical Services Registry No. 10108-64-2) is also widely used in industry. It is hygroscopic and occurs as rhombohedral crystals. It is freely soluble in water and acetone but slightly soluble in methanol and ethanol. It is used: In fungicides, in the manufacture of cadmium yellow pigments, in galvanoplasty, as an ice-nucleating agent, in laboratory analyses of sulfides to absorb H_2S, as a test for pyridine bases, and in electroplating. It is also used as an addition to tinning solutions, as a mordant in the dyeing and printing of textiles, as a component of metal finishing baths and aerosols, as an agent in photocopying, as an agent in the manufacture of coatings for electronic vacuum tubes, as an agent in the manufacture of special mirrors, as a solid film lubricant, as a catalyst, as a fog inhibitor in photographic film emulsions, as a chemical intermediary for cadmium sulfide, as a colorant for pyrotechnics, and in pesticides. Workers can be exposed to cadmium chloride dusts and aerosols in: battery manufacturing, electroplating, alloy and solder production, ceramics and vapor lamps production, and in welding.

Cadmium sulfate ($CdSO_4$; Chemical Services Registry No. 10124-36-4) also has many applications in industry. It occurs as odorless monoclinic hydrate. It is freely soluble in water but is almost insoluble in alcohol and ethyl acetate. It is used: In fungicides; as an intermediary in recovery of cadmium from zinc ore; in the electrodeposition of cadmium, copper, and nickel; in analytical tests as a catalyst for determining for arsenic, hydrogen sulfide and fumaric acids; in the manufacture of cadmium salts of longchain fatty acids; for stabilizing plastics, especially polyvinyl chloride; in the production of vacuum tubes, fluorescent screens, and phosphors; as an electrolyte in standard cells; in CdS, cadmium lithopone and cadmium sulfoselenide pigment production as a chemical intermediary; in cement formation, as a chemical accelerator; and in the manufacture of standard cadmium elements. In addition, cadmium sulfate has the ability to absorb hydrochloric acid from waste gases from chemical plants.

Cadmium sulfide (CdS; Chemical Services Registry No. 1306-23-6) also has many industrial uses. It occurs in nature as the mineral greenokite. It occurs as light-yellow or orange-colored cubic or hexagonal crystals. Its solubility in water is approximately 0.13 mg/100g at 18 °C. Some applications include: As a pure, inorganic photoconductor; as a pigment which is colorfast against light in glass; as a colorant for soaps, textiles, paper and rubber: in printing inks, ceramic glazes and fireworks; in x-ray fluorescent screens; in body temperature detectors; in rectifiers, transistors, photovoltaic cells, and in solar cells; in pigments which include phosphors; and, in lead-sealing glass-binders to provide smooth glass enamel surface that is durable and resistant to damage from development, cleaning and handling. Cadmium sulfide also provides stability against oxidation and UV radiation in specific industrial products.

A substantial amount of cadmium sulfide and cadmium sulfoselenide is used in pigments to yield colors ranging from yellow to deep red. These pigments have a high tolerance to heat and to light and are used primarily in coloring plastics, ceramics and paints. Cadmium stearate is used as a stabilizer in plastics because it inhibits the deterioration of the product. Cadmium compounds are also used in smaller amounts in electric batteries and electronic components. Of the many inorganic cadmium compounds, several are quite soluble in water.

V. Health Effects

A vast amount of literature exists which documents the adverse health effects from acute and chronic exposure to cadmium in both humans and animals. The primary adverse health effects which have been observed are lung cancer and kidney damage. This section on health effects will not attempt to describe every study ever conducted on cadmium toxicity. Instead, the most important studies will be reviewed and the testimony and comments submitted to the record of the rulemaking will be presented. For greater detail, the cited reviews and articles should be consulted.

A. Metabolism

Cadmium enters the human body by inhalation, by ingestion, and perhaps by absorption through the skin. Inhaled cadmium is more readily absorbed into the body than is ingested cadmium. Intake of cadmium by ingestion and skin absorption are considered to be of relatively less importance in occupational settings.

In occupational settings cadmium is inhaled in the form of either small particles of fume or larger particles of dust. The extent of deposition depends on the particle size. It is estimated that ten percent of the particles of approximately 5.0 micrometers mean mass diameter (MMD) are deposited in the lung, whereas 50 percent of the particles of 1.0 micrometer MMD are deposited in the lung. Of the proportion deposited, 20 to 25 percent is systemically absorbed. (Exs. 8-619; 8-086a, p. 107). Limited data on smokers indicate a high rate of absorption (10% to 50%) of inhaled cadmium (Exs. 8-86 and 29). Animal experiments have shown an absorption rate of between 10% to 60% of inhaled cadmium (Ex. 29). Thus, smoking habits and personal hygiene are of great importance as a source of indirect exposure in a cadmium-contaminated environment.

Many of the effects of cadmium are systemic. After initial exposure, inhalation, and absorption, cadmium is transported by the blood plasma, although the majority of the cadmium is bound to the blood cells. According to Clarkson et al.:

> Cadmium in blood is distributed between blood cells and plasma * * *. In persons with industrial exposure to cadmium and in cadmium-exposed experimental animals, cadmium in blood is found mainly in erythrocytes * * *. (Ex. 14-18, pp. 160-161)

Cross-sectional studies of workers who had varying durations of exposure at varying levels of exposure have yielded little definitive information about the kinetics of blood cadmium and the distribution of cadmium between the plasma and blood cells. Therefore, cadmium in blood is most accurately measured in whole blood.

After a sudden increase in exposure, cadmium in blood increases rapidly during the first three to four months and then reaches an apparent steady level which is likely to reflect the average exposure during those months. When high exposures cease, blood levels of cadmium decrease with two distinct half-time components. One component has a half-time of a few months and probably reflects the turnover rate of red blood cells. The other half-time

component is several years long and is likely to reflect body burden, presumably consisting of several components with half-lives varying from about one year in blood to about five years in other soft tissues (De Silva, Ex. 8–718; and Friberg, Ex. 8–068–B). Therefore, the transport of absorbed cadmium in blood is of crucial importance.

Cadmium transported to the liver induces the synthesis of metallothionein, a low molecular weight metal-binding protein. Cadmium becomes bound to this protein, forming a metal-protein complex which is then released back to the blood and transported to the kidney. In the kidney, the cadmium-metallothionein complex passes through the glomeruli and is reabsorbed by the proximal tubules. This complex can then be broken down by lysosomes, releasing unbound cadmium which can induce renal synthesis of metallothionein. In workers with only short-term exposures to low levels of cadmium, the cadmium will be bound again in the kidney to the locally produced metallothionein providing a protective effect from cadmium. However, after prolonged exposure, the binding process in the kidney becomes saturated leading to an increase in unbound cadmium which can result in toxic effects (Dr. Goyer, Tr. 6/6/90, pp. 129, 131).

Unlike other heavy metals such as mercury and lead, cadmium occurs in only one valence state, +2, and does not form stable alkyl compounds or other organometallic compounds of known toxicologic significance (Casarett, 1980, Referenced in Ex. 8–735, Casarett, 1986). Thus, it is elemental cadmium that is the toxic agent. In his testimony, Lars Friberg, M.D., Professor Emeritus at the Karolinska Institute in Stockholm where he was formerly Chairman of the Department of Environmental Health, an international expert and pioneer in the field of cadmium-induced kidney disease, past Chairman of the WHO task group on cadmium, and senior editor of a number of comprehensive monographs on cadmium, discussed the mechanisms by which cadmium is taken up by the human body and how cadmium ultimately affects the kidney. Dr. Friberg stated:

> One has firm epidemiological evidence, thanks to the data from Ellis and Roels * * * that there is an association between total cadmium in kidneys and effects * * *. (Tr. 6/6/90, p. 100)

The studies by Ellis and Roels are discussed below.

Regardless of the route of absorption or the type of cadmium compound, approximately one half to one third of the body burden of cadmium is found in the kidneys after chronic low-level exposure, with the highest concentrations found in the renal cortex (Ex. 8–086a, p. 166). After long-term exposure, one sixth and one fifth of the body burden are found in the liver and muscles, respectively. As exposure level increases, a greater proportion of the body burden of cadmium will be found in the liver relative to the kidney. Also, upon the onset of renal dysfunction, the level of cadmium in the kidney will decrease (Friberg, Tr. 6/6/90, p. 84). The half-life of cadmium in the liver, kidney and muscles is 5 to 15 years, 10 to 30 years, and more than 30 years, respectively. (Ex. 8–086a, p. 166).

B. Non-Carcinogenic Health Effects

1. Acute Effects

a. *Evidence in humans.* A variety of adverse health effects may result from acute exposure to cadmium compounds. The most widely recognized effects are seen in the respiratory system from the inhalation of cadmium fumes and dust. Acute pneumonitis occurs 10 to 24 hours after initial acute inhalation of high levels of cadmium fumes with symptoms such as fever and chest pain (Exs. 30, 8–086b, p. 4). In extreme exposure cases pulmonary edema may develop and cause death several days after exposure. Such symptoms have been reported among workers exposed to high concentrations of cadmium. For example, after a day's exposure to cadmium fumes, workers developed severe weakness, dyspnea, coughing and tightness of the chest. Chest radiographs showed signs of pulmonary edema (Ex. 8–41).

As in the case above, the exposure levels at which the adverse effects occurred were not recorded in many investigations of acute health effects from high cadmium exposures. Estimation of the exposure levels associated with acute respiratory effects has relied on measurements of the amount of cadmium found in the lung after death modified by assumptions about the proportion of cadmium fumes retained in the lungs. At one time, a lethal concentration of cadmium is considered to be not higher than (and probably lower than) 5 mg/m³ over a period of eight hours (Exs. 8–41 and 29). This number was estimated by assuming that 11% of the cadmium fumes were retained in the lungs. Given that the victims were exposed for 5 hours, the average concentration was estimated to be 6.6 mg/m³. This is equivalent to an 8-hour exposure of approximately 5 mg/m³. Because this estimate rests on a number of assumptions used to derive this exposure level, however, there is some uncertainty as to the accuracy of this estimate. Also, the amount of cadmium measured in the lung of the fatal cases may have been higher than the amount necessary to cause death. It should also be noted that this type of estimate is for lethal concentrations, and that lower concentrations may give rise to acute symptoms and significant lung damage without resulting in death.

Little actual exposure measurement data are available on the level of airborne cadmium exposure that causes such immediate adverse health effects. More recent studies have revealed that an eight hour exposure to 5 mg/m³ should not be regarded as the lowest concentration that can give rise to a fatal poisoning. It is reasonable to believe a cadmium concentration of approximately 1 mg/m³ over an eight hour period is "immediately dangerous" (Exs. 8–86B; 29). Such exposures can ultimately be life-threatening. In response to questions during the hearing, George Kazantzis, M.D., Emeritus Professor of Occupational Medicine at the University of London, Honorary Consultant Physician at the Middlesex Hospital in London, and a member of the WHO task group on environmental health, testified that he found a statistically significant excess of worker deaths due to chronic bronchitis in his 17 plant cohort study in the U.K. These deaths were, in his opinion, directly related to high cadmium exposures of 1 mg/m³ or more (Tr. 6/8/90, pp. 156–157).

Although there are little data on the lowest cadmium exposure level that may trigger an acute effect, it is known that a few days of cadmium exposure in excess of 200 μg/m³ will result in elevated levels of cadmium in the blood and urine. Based upon his experience, Dr. Friberg said that an eight-hour time-weighted-average (TWA) exposure of 75–100 μg/m³ should never be exceeded in order to prevent adverse health effects (Ex. 144–15).

Experimental animals exposed to various cadmium compounds through various routes of exposure have experienced acute pulmonary effects. In a number of studies reviewed by Friberg (Ex. 8–086b, p. 2), NIOSH (Ex. 4–02) and EPA (Ex. 8–619), cadmium exposures ranging from 5 to 10 mg/m³ over 15 to 120 minute periods were sufficient to induce significant increases in lung weights indicative of pulmonary edema. Also, rats exposed to cadmium aerosol at 60 mg/m³ for 30 minutes died within 3 days from pulmonary edema (Ex. 8–402). Multiple experimental studies confirm

these findings of acute pulmonary effects. In addition, animals injected with cadmium compounds have exhibited acute effects in the testes, ovaries, liver and blood (Exs. 8–420, 8–86B, 8–370, and 8–668).

2. Renal Effects

a. *Evidence in humans—introduction.* The human kidney is a filtration mechanism for the blood. It has three major functions that are vital to maintaining normal health: Removing wastes; preventing leakage of essential elements and chemical compounds from the body; and providing homeostasis. According to Robert A. Goyer, M.D., Professor and Chairman of the Department of Pathology at the University of Western Ontario, Chairperson of the World Health Organization (WHO) Task Force on Environmental Health Criteria for Cadmium in 1989 and coauthor of the WHO Environmental Health Criteria Document on Nephrotoxicity (1989), these:

> * * * are the ones by which we measure the health of the kidney and the health of the person * * *. (Tr. 6/6/90, p. 123.)

The kidney cortex including the nephrons is the anatomic division of the kidney of most concern when considering cadmium's toxicity. Each nephron is a functional filtration unit of the kidney and is composed of glomeruli and tubuli. Each glomerulus is a collecting system made up of capillaries that filter the blood and prevent leakage of all large particles with a molecular weight greater than 30,000. The molecular weight of a molecule is the weight that is equal to the sum of the atomic weights of its constituent atoms. Normally, as blood passes through the kidney, high molecular weight proteins such as albumin, immunoglobulin G, and a variety of glycoproteins do not cross an intact glomerular basement membrane into the kidney tubule. The function of the proximal tubule is to filter out small organic compounds. These include essential electrolytes, metals, and elements that are essential to life, such as calcium, potassium, sodium, and magnesium, among others. The size of low molecular weight proteins and small essential compounds allows them to cross an intact glomerular basement membrane into the kidney tubule where they are routinely reabsorbed by the proximal tubule of the nephron. Only very small quantities of these are excreted in the urine.

Further down the tubule, in the distal portion, water balance is adjusted and urine is either concentrated or diluted. There are very fine capillaries along the tubule for the exchange of essential substances between the blood and the urine. It is in the tubule that the cells are most active metabolically and where most of the electrolyte exchange occurs. For example, the biologically active metabolites of vitamin D are produced primarily in the tubules, and altered vitamin D metabolism may result from cadmium-associated renal tubular dysfunction (Ex. 8–086).

The earliest form of cadmium toxicity occurs in the proximal portion of the tubule. According to Dr. Friberg:

> The first sign of cadmium induced renal damage is tubular proteinuria with increased urinary excretion of low molecular weight serum proteins, such as beta-2 microglobulin * * *. At the same time there is a dramatic increase of cadmium in the urine * * *. (Tr. 6/6/90, p. 72)

Any of several small proteins in urine may be monitored as markers of kidney function: Retinol Binding Protein (RBP), Beta-2-Microglobulin (β_2-M), N-Acetyl-β_D-Glucosaminidase (NAG), and Metallothionein (MT). In the absence of elevated levels of these analytes, the kidney is considered to be functioning normally.

Retinol Binding Protein (RBP) is a low-molecular weight vitamin A transporting protein which is cleared from serum into glomerular filtrate and resorbed into renal tubular cells. β_2-M is a low molecular weight protein that is normally reabsorbed by the proximal tubule. Metallothionein (MT) is a metal-binding protein that correlates with cadmium and β_2-M levels. N-Acetyl-β_D-Glucosaminidase (NAG) is an analyte that may correlate well with cadmium levels under 10 micrograms per gram creatinine (μg/g Cr) (Ex. 30), but this finding is disputed (Ex. 148).

Only β_2-M is widely used as an early indicator of cadmium-induced kidney dysfunction. Carl-Gustav Elinder, M.D., Chairman of the Department of Nephrology at the Karolinska Institute, testified that measurements of β_2-M in urine constitute a very sensitive indicator of tubular damage. This is because a small decrease in tubular reabsorption from the normal 99.9% to 99% would result in a tenfold increase in the urinary excretion of this protein (Ex. 55).

Dr. Kazantzis, testifying for the Cadmium Council, stated that the earliest indicator of any effect of cadmium on the kidney is the increased excretion in the urine of a number of low molecular weight plasma proteins, and that this effect can be monitored by estimating the β_2-M or RBP concentrations in the urine (Ex. 19–43A).

As indicated by Drs. Friberg and Goyer, the finding of excess β_2-M proteins in urine in conjunction with findings of an elevated cadmium body burden, as indicated by elevated levels of cadmium in urine (CdU) and cadmium in blood (CdB), helps establish that kidney disease exists and that it is probably associated with cadmium toxicity. For example, Dr. Goyer testified that if both β_2-M is below 300 μg/g Cr and CdU is below 2 μg/g Cr, workers are likely to have no damage. Glomerular proteinuria, another form of cadmium-related kidney dysfunction, refers to the presence of high molecular weight proteins in the urine due to the increased permeability of the glomerulus (a "leaky" glomerulus) which allows the passage of the high molecular weight proteins into the proximal tubule. When high molecular weight proteins are not reabsorbed by the proximal tubule, the proteins are excreted in the urine. Glomerular proteinuria is considered to be a clinically significant form of kidney dysfunction that differs from tubular proteinuria (Exs. 8–086b, p. 63, 4–54). In some cases, glomerular and tubular damage can occur at the same time resulting in a mixed type of proteinuria.

The concept of a "critical concentration" of cadmium in the kidney has been used repeatedly throughout the medical literature on cadmium-induced kidney dysfunction. A critical concentration is a threshold which when crossed leads to adverse health effects. When the concentration of cadmium in the kidney exceeds the critical concentration, the effects of cadmium-induced kidney dysfunction start to occur in individuals (Ex. 144–3–C).

Dr. Goyer testified that according to his review of the literature, there is a:

> * * * commonly coded critical concentration of cadmium for people for the so-called [population critical-concentration], where 50 percent of the working population that has a kidney concentration of 200 micrograms per gram of tissue would have detectable renal disease. And this seems to be about the same level in rats * * * in people there's a much wider variation in what that level * * * because there are people with different states of ability to make metallothioneine and different essential iron intakes * * * the variations that are reported by Roels and by Ellis in their human studies by neutron activation are from one to 300 or more micrograms * * *."(Tr. 6/6/90, pp. 130–131)

Despite individual variability, the concept of an individual's critical concentration of cadmium in the kidney has been well established. There is general agreement that the critical concentration in the renal cortex is about 200 μg/g of kidney cortex wet

weight. On the basis of autopsy studies, the WHO task group concluded that the critical level in the renal cortex necessary for the appearance of proteinuria ranged from 100 to 300 μg cadmium (Cd) with the likely estimate being 200 μg Cd/g wet weight, or 200 mg/kg. (Exs. 4–12, 8–440). Similarly, a review of autopsies and *in vivo* measurements, made through neutron activation analysis of human kidney tissues, showed that adverse effects first occur in the range of 170 to 200 μg Cd/g wet weight (Ex. 8–086b, p. 99). Roels et al., concluded that the "critical concentration" for renal cadmium cortex is found in the range 160 to 285 μg Cd/g. Above 285 μg Cd/g renal cortex, the probability is very high that all persons will show signs of renal dysfunction (Ex. 57–K). In animals, the concentration of cadmium in the renal cortex at which dysfunction first appears ranges from 100 to 300 μg Cd/g wet weight, with most species showing proteinuria at 200 μg Cd/g (Ex. 8–086b, p. 97). According to Clarkson et al.,:

> * * * the critical concentration of cadmium in renal cortex for a substantial (but unspecified) proportion of an exposed group of individuals has been estimated to be around 200 (μK/g) mg/kg (1.78 mmol/kg) both in animals and in humans * * *. Calculations for humans based on *in vivo* neutron activation analyses * * * [indicate] that about 10 percent of a population develops renal effects at concentrations of Cd in kidney cortex lower than 200 mg/kg wet weight * * * (Ex. 14–18, p. 157).

In a study by Ellis (Ex. 4–27), the cadmium body burden for each worker was determined through the direct measurement of the level of cadmium in the kidneys of workers with and without kidney damage. As noted by C.H. Hine, M.D., Medical Director of ASARCO, this technique, however, is "not of practical use" for routine monitoring (Ex. 107). A simpler, more commonly used method to evaluate whether a worker has approached this individual "critical concentration" is to use cumulative exposure to cadmium as a proxy for concentration of cadmium in the kidney cortex. Cadmium exposure histories and personal sampling data can be used to calculate a cumulative exposure level, as was done for members of the Ellis cohort. Despite the uncertainty inherent in estimating cumulative exposures from work histories, Ellis found a significant correlation between exposure and cadmium body burden as measured in the liver and the kidney.

b. *Review of the literature.* The authors of at least seven studies including Ellis sought to examine the relationship between cumulative cadmium exposure and kidney dysfunction. Rather than relate the concentration of cadmium in the kidney cortex to incidence of tubular proteinuria, these authors related cumulative cadmium exposure to incidence of tubular proteinuria. Exposures and responses in all seven studies have been well characterized. The seven major studies reviewed in depth below are: Kjellstrom et al. (Ex. 4–47); Falck et al., (Ex. 4–28); Ellis et al., (Ex. 4–27); Jarup et al., (Ex. 8–661); Elinder et al., (Ex. L–140–45); Mason et al., (Ex. 8–669–A); and, Thun et al., (Ex. 8–670). The data from these studies provide strong evidence that occupational exposures to all forms of cadmium are associated with kidney damage at similar cumulative exposure levels.

The seven primary studies cover five populations of cadmium-exposed workers. Excesses of low molecular weight proteins in urine were observed in all of these occupationally exposed populations. In each of these studies, the authors defined kidney dysfunction on the basis of biological markers prior to collecting and analyzing the data, and response was a dichotomous variable with workers separated into two categories: those with abnormal kidney function (i.e. dysfunction) and those with normal kidney function.

The findings of each study are dependent on the manner in which each researcher defined renal dysfunction; the tests used to identify the presence or absence of dysfunction; and the reference methodology used by each laboratory. In general, few studies of kidney function among occupationally exposed cohorts have relied upon RBP, NAG, or MT. Of the seven major epidemiological studies reviewed here, only one (Mason et al, Ex. 8–669–A) relied upon RBP as a marker of kidney function. In Mason's study, β_2-M was also measured. In the other six studies, β_2-M was the analyte used to distinguish between normal and abnormal kidney function.

The results from the studies are strikingly similar. The authors found that the type of abnormality and the prevalence of abnormality was similar, at similar exposure levels, regardless of the type of cadmium compound to which workers were exposed. These results, from difference worker populations in different countries, demonstrate that the kidney is one of the major target organs of cadmium toxicity. The studies also imply that there is agreement on what constitutes abnormality.

i. *Kjellstrom et al. (Ex. 4–47).* Kjellstrom conducted a study of kidney dysfunction among 240 workers in a Swedish battery factory. The cohort was comprised of 197 men and 43 women. The factory had two separate plants: the material plant that manufactured raw material for the battery electrodes and the assembly plant that made the complete electrodes and batteries. The primary exposures at the factory were to cadmium oxide (CdO) dust and nickel hydroxide [$Ni(OH)_2$] dust. A group of 87 lumbermen and shipyard workers belonging to the same occupational health clinic served as controls.

A spot urine sample was collected from each study participant, and the pH and specific gravity were immediately determined. Twenty of 327 urine samples collected for the dose-response study had pH <5.6 and had to be buffered with a phosphate buffer with pH of 7.6 to increase the pH over this level. Then the samples were frozen. β_2-M in urine was measured using the Phadebas β_2-M microtest from Pharmacia.

Kidney dysfunction was determined by the level of β_2-M in urine because increased urinary excretion of β_2-M would be caused by cadmium, not nickel hydroxide dust exposures (Friberg, 1950, referenced in Kjellstrom). Kjellstrom classified a worker as having abnormal proteinuria if the level of β_2-M exceeded 290 μg/liter, the upper 95% tolerance limit for the control population. Among men in the assembly plant, 25% exceeded this limit, a significantly higher proportion than the 3.4% of controls who exceeded this limit ($p<0.001$). The proportion of men in the material plant who exceeded the limit was 50%, also statistically significantly greater than the proportion in the control group ($p<0.001$). Among women, only 2.3% of those in the assembly plant exceeded the limit.

Exposure estimates based on area samples were provided by the battery factory management for the years 1949 to 1972. Kjellstrom estimated that cadmium exposures in the assembly plant had been about 50 μg/m^3 since 1963. Area and personal air sampling data in the material plant were sparse. The first data available were from 1968 when two area samplers found cadmium exposures to be 7 and 31 μg Cd/m^3. Some personal sampling data were also available from 1972. Information on the continuity of exposure, time of first employment, and exposure duration was provided by the safety engineer of the factory.

Workers were classified into four categories according to exposure histories. The non-exposed group consisted of six workers who worked on the premises of the plant but were found to have virtually no exposure to

cadmium. The intermittently exposed group consisted of forty-nine workers. Finally, there were two groups of workers who had spent time in jobs where exposure to cadmium was continuous. These two groups were comprised of 15 workers from the material plant and 170 workers from the assembly plant.

The 185 people in the continuously exposed groups were the primary subjects of this study. Nine of these workers were from Yugoslavia. Their results were analyzed separately from the other exposed workers because in some parts of Yugoslavia, Bulgaria, and Rumania, tubular proteinuria is endemic (Balkan nephropathy). Forty-eight workers (26%) had started employment in 1974, three years before this study was conducted. Fifty-two workers (28%) had been employed since before 1952. The majority of these 52 had been moved to "cadmium-free" work before the study was conducted.

Workers exposed continuously to cadmium at levels of 50 $\mu g/m^3$ for 6 to 12 years showed a higher prevalence of proteinuria than controls (19% vs. 3.4%). For the continuously exposed groups, prevalence of proteinuria increased with length of time since first employment; the prevalence was 6.2%, 18%, and 57% among workers with less than 6 years, 6 to 22 years, and greater than 22 years of exposure, respectively.

Using data on 129 exposed workers who responded to a smoking questionnaire and for whom β_2-M levels and length of employment information was available, the effects of smoking on kidney function were evaluated. The prevalence of proteinuria among non-smokers was 13.3 percent, while among current smokers it was 32.4 percent. Thus, the prevalence of kidney dysfunction among current smokers was about two and one-half times higher than among non-smokers. The authors noted that the total dust concentrations in workroom air may have been high enough to cause substantial contamination of the workers' hands and bodies, and that tobacco products contaminated by a worker's hands could account for the higher prevalence of tubular proteinuria among smokers. The authors' conclusion that the increased incidence of dysfunction among smokers was not attributable to the cigarettes themselves is supported by findings from the Falck study, (Ex. 4–28), described below.

ii. *Falck et al. (Ex. 4–28).* Falck studied 33 male workers in a refrigeration compressor plant in the U.S. The plant produced refrigeration compressors with silver brazed copper fittings. These fittings were brazed either by hand or on an automated line. Falck reported that according to plant managers, neither process has changed since the automatic assembly line was installed in 1968. Air monitoring data for this plant had been collected by the Michigan Department of Industrial Health since 1961. All samples used for estimating exposures for individual workers were from the worker's breathing zone. The mean calculated exposure on the automatic line for an 11 year period was 39 $\mu g/m^3$ ±7.8 (SE). Mean exposures on the manual line, 110 $\mu g/^3$ ±25.5 (SE), were significantly higher.

Work histories were obtained for each subject participating in the study, and time on each of the production lines was calculated for each worker. Cumulative cadmium exposure was calculated for each worker by multiplying the mean cadmium exposure of a line with the number of years a worker spent on that line.

A spot urine sample was collected for each worker, and an aliquot of urine was analyzed for β_2-M. The pH was recorded and adjusted above 5.5 where necessary. All samples were then frozen. β_2-M in urine was measured using the Phadebas microtest by Pharmacia. Blood samples were collected, and blood and urine cadmium levels were measured using a flameless atomic absorption spectrophotometer (Varian). Three workers had histories of diabetes, kidney infection, or hypertension and were eliminated from the statistical analyses. Descriptive statistics on the workers are presented in Table V–1.

TABLE V–1.—DESCRIPTIVE STATISTICS FOR A COHORT OF 30 EMPLOYEES AT A REFRIGERATION COMPRESSOR PRODUCTION PLANT [a]

	Normal kidney function mean (95% CI) [b]	Abnormal kidney function mean (95% CI)	P Value [c]
N	23	7	
Age (years)	49 (47, 51)	53 (51, 55)	.13
TWE [d] ($\mu g/m^3$ years)	459 (332, 634)	1137 (741, 1737)	.02
Smoking Habits (pack-years)	14 (9, 19)	24 (14, 34)	.07
Urine Ratios			
Protein/Creatinine (mg/g)	34 (26, 43)	246 (132, 456)	<.001
β_2-Microglobulin/Creatinine (μ/g) [e]	53 (31, 90)	6375 (1115, 36463)	<.001
Cadmium/Creatinine (μg/g)	11 (10, 13)	16 (8, 36)	0.07
Serum Ratios			
Creatinine/Serum (mg/100ml)	1.1 (1, 1.2)	1.4 (1.2, 1.1.7)	0.003
β_2-Microglobulin/Serum (μg/ml)	2 (1.6, 2.4)	2.3 (1.8, 2.8)	0.32

[a] Data taken from Falck et al (Ex. 4–28).
[b] Mean and 95% confidence intervals are presented. Means for age and smoking habits are arithmetic means; all others are geometric means. Confidence intervals are constructed from arithmetic standard deviations for age and smoking; all others are from the geometric standard deviations.
[c] P-value is associated with a test of differences between group means.
[d] Time-weighted inhalation exposure estimate (i.e. dose).
[e] β_2-Microglobulin measured in urine, based on spot samples.

Forty-one males who were not known to be exposed to cadmium were selected to serve as controls. Reference values calculated from the spot urine and serum samples collected from the controls, were established at: glucose >130 mg/g Cr; total protein >173 mg/g Cr; or β_2-M >629 $\mu g/g$ Cr. Eight workers' results exceeded the reference values, and for these eight, a 24 hour urine sample was obtained. Reference values for 24 hour samples were established at glucose >250 mg/24 hour; total protein >188 mg/24 hour; or β_2-M >400 μg/liter urine from 24 hour samples from 7 controls.

Seven workers out of 33 were found to have abnormal kidney function (21%).

This was significantly higher than the 7% of controls who had abnormal spot urine results. The average cumulative time-weighted exposure for workers with abnormal renal function was 1,137 $\mu g/m^3$-yrs, significantly higher than the average cumulative time-weighted exposure of workers with normal renal function ($p=.02$). Furthermore, as cumulative exposures increased, the prevalence of kidney dysfunction increased.

According to the authors, the change in renal function observed in the workers was not age related since there was no statistically significant difference in age between workers with abnormal and normal renal function ($p=.13$). Information on smoking habits was collected from questionnaires and medical histories. The authors found that the difference in pack-years smoked between the workers with abnormal and normal renal function was also not statistically significant ($p=.07$). Despite this the authors stated that ingestion of cadmium was not likely to be significant given the manufacturing process and plant layout. If Kjellstrom's hypothesis that contamination of smoking products was a likely explanation of increased proteinuria among smokers in his study, it would explain why no differences were noted in renal function between smokers and non-smokers in this study by Falck.

iii. *Ellis et al. (Ex. 4–27).* Ellis conducted a study of 82 male workers at a U.S. cadmium smelter. The cohort was comprised of 51 active workers and 31 retired workers employed in production, non-production, office, and laboratory work. Each cohort member completed a health history questionnaire, took a physical exam, gave specimens for blood and urine tests, and provided 24-hour urine samples. Urine samples were pH adjusted and frozen. Kidney function was judged to be abnormal if urinary levels of β_2-M exceeded 200 $\mu g/g$ Cr or if total urinary protein levels exceeded 250 mg/g Cr. These limits were chosen to comply with those reported by Roels *et al.* (Ex. 57–K). In addition, the cadmium content of the left kidney and the liver was measured directly by the *in vivo* prompt-gamma neutron activation technique. Information on smoking habits was not available.

Eighteen active workers (35%) and twenty-three retired workers (74%) were classified as having abnormal kidney function. Descriptive statistics for the entire cohort are presented in Table V–2.

TABLE V–2.—DESCRIPTIVE STATISTICS FOR A COHORT OF 82 ACTIVE AND RETIRED CADMIUM SMELTER EMPLOYEES [a]

	Normal kidney function mean (SD) [b]	Abnormal kidney function mean (SD)
Active Workers		
N	33	18
Age (years)	42.6 (13.3)	53.6 (6.8)
Duration of Exposure (months)	141 (118)	264 (105)
TWE [c] ($\mu g/m^3$-years)	105 (9.0)	1690 (2.7)
Renal Cadmium [d] ($\mu g/g$)	125 (2.8)	230 (2.0)
Liver Cadmium (ppm)	11.3 (2.8)	63.9 (1.5)
Retired Workers		
N	8	23
Age (years)	69.0 (8.3)	67.9 (6.9)
Duration of Exposure (months)	342 (75)	329 (103)
TWE [c] ($\mu g/m^3$-years)	379 (3.3)	3143 (3.6)
Renal Cadmium [d] ($\mu g/g$)	148 (2.1)	169 (1.7)
Liver Cadmium (ppm)	14.0 (3.1)	33.6 (2.9)

[a] Data taken from Ellis et al (Ex. 4–27).
[b] Mean (Standard Deviation) presented. Means and SDs for age and duration of exposure are arithmetic means and SDs. All others are geometric means and SDs.
[c] Time-weighted inhalation exposure estimate (i.e. dose).
[d] Renal cortex cadmium concentration; assumes 145 g weight for the total kidney and a 1.5 ratio between cortex and total kidney concentration.

Cadmium exposure histories based on employment records, area monitoring techniques, and personal sampling data were obtained for all 82 exposed workers. The chronological record of each worker's job assignments was obtained from personnel files at the smelter. Cumulative exposure estimates were developed for each member of the cohort from industrial hygiene data provided by Smith (Ex. 4–64). That is, for each worker, the time-weighted inhalation exposure (TWE) was calculated by multiplying the duration of exposure in a given work area (t_i) by the estimated inhalation exposure for that area and year (E_i) and then summing these values to obtain cumulative exposure or

$$TWE = \Sigma (E_i T_i).$$

For the actively employed workers, a significant correlation ($r=0.70$, $p<0.001$) was observed between TWEs and liver cadmium burden. Furthermore, whenever a worker's liver burden exceeded 40 ppm and exposure exceeded 400–500 $\mu g/m^3$-yr, there was evidence of renal abnormalities. The highest correlation was obtained between the kidney cadmium burden data and TWEs for the active workers without evidence of kidney dysfunction ($r=0.83$, $p<0.001$). The percentage of workers with renal abnormalities was found to increase as exposure increased. (See Section VI—Quantitative Risk Assessment.)

iv. *Jarup et al (Ex. 8–661).* Jarup sought to model the relationship between cadmium exposure and tubular proteinuria. The Swedish battery factory where Jarup conducted his investigation was the same as where Kjellstrom conducted his study of cadmium exposure and kidney dysfunction. Jarup collected data from 326 male and 114 female cadmium battery workers with at least three months of employment between 1931 and 1982. The only other criterion for being included in the study was that at least one measurement of urinary β_2-M must had been made for each worker.

The response variable used in this study was β_2-M levels in urine. β_2-M in urine was measured using the

radioimmunoassay (RIA) method, Phadebas, developed by Pharmacia. Since β_2-M levels had been measured since 1972, the β_2-M level for any worker was taken as the average of all β_2-M levels measurements made for that worker. Workers with β_2-M levels exceeding 310 μg/g Cr were judged to have tubular proteinuria.

Jarup considered three distinct measures of exposure in his analysis. First, he considered cadmium in air which had been measured since 1947. Using information on length of employment obtained from company files for each worker, Jarup estimated cumulative cadmium dose by multiplying the length employment in a particular work area by the average air concentration of cadmium for that area and time period and then summing the product of these for each worker.

The second measure of exposure considered by Jarup was cumulative blood cadmium dose. Data on blood cadmium levels together with other laboratory data had been collected at regular intervals since 1967. Cumulative blood cadmium dose was estimated as the average blood cadmium concentration times the times the number of months employed.

The final measure of exposure considered by Jarup was an alternative method for calculating cumulative blood cadmium dose. The study authors hypothesized that because air cadmium concentrations were much higher in the 1940's and 1950's, workers hired before 1967, particularly those hired before 1950, would have had higher blood cadmium concentrations during those periods, and therefore simply multiplying average blood cadmium concentrations by number of months employed might underestimate the true cumulative blood cadmium concentrations. The alternative measure the study authors devised was to use linear regression to model the relationship between year and blood cadmium levels for each worker and then to extend the observed relationship to the years for which there was no data. Forty workers show evidence of tubular proteinuria. The results of Jarup's analyses indicated that a dose-response relationship exists between kidney dysfunction and exposure regardless of the measure of exposure used, but they also suggested that cumulative blood cadmium level may be a more sensitive indicator of cadmium-induced renal dysfunction than cumulative cadmium in air. Table V-3 shows the prevalence of tubular proteinuria among workers grouped according to cumulative airborne cadmium exposure and cumulative cadmium exposures in blood estimated using the alternative method.

TABLE V-3.—CUMULATIVE AIRBORNE CADMIUM EXPOSURES BY PERCENT PREVALENCE OF KIDNEY DYSFUNCTION

Cumulative exposure (CumExp)(μg/m^3-years)	Mean Cum Exp	Number people	Percent dysfunction[1]
<359	131	3	1.1
359–<1,710	691	7	9.2
1,710–<4,578	3,460	10	23.3
4,578–<9,458	6,581	10	32.3
9,458–<15,000	12,156	5	31.2
<15,000	21,431	5	50.0

[1] Percent dysfunction=number with dysfunction divided by number in that exposure category times 100.

In his paper, Jarup noted that on the basis of data from other studies of the relationship between cadmium in air and kidney dysfunction, it has been estimated that exposure to an average workroom concentration of 50 μg Cd/m^3 for 10 years would result in a prevalence of tubular proteinuria of 10%. The corresponding prevalence found in Jarup's study is only 4%, (95% CI=2%–8%), which is also somewhat less than the prevalence reported by Kjellstrom in an earlier study of the same factory (Ex. 4–47). Jarup suggests several possible explanations for why the prevalence of tubular proteinuria is lower in his study than in the others.

First, the earlier studies were all cross-sectional meaning that only workers employed at a certain point in time were included. This study by Jarup included all workers employed for more than three months at the factory. Computation of the cumulative airborne cadmium concentration took into account the varying exposure conditions over time, and the study included workers with low cumulative exposures. In addition, this study had more information about the prevalence of kidney dysfunction among the retired workers, although data on the retired workers were not evaluated separately.

Second, the other studies were relatively small while the Jarup study is one of the largest. This means that the confidence intervals computed for the prevalence observed in the other studies must be wide. According to Jarup, the consequence of this is that even if the variations may seem great between the various studies, there are probably no significant differences between the dose-response relationships reported in the various studies.

Third, the Jarup study was conducted in a battery factory whereas most other studies were carried out in other industrial environments, such as smelters, where the fraction of respirable dust is probably significantly larger. Jarup suggested that this might affect the results of his study. However, given that there are probably no significant differences between the dose-response relationships reported in the various studies, the effect of particle size distributions may be a relatively unimportant factor in the etiology of kidney dysfunction.

Another factor that may have affected the β_2-M levels among these workers is the method used to collect and handle urine samples. The authors did not report whether the samples were spot or 24 hour samples, or what the urine pH was per β_2-M sample. If urine samples were collected over a 24 hour period with pH less than 6.0, it is more likely that the β_2-M would have been degraded and erroneously low β_2-M levels would have resulted. If spot samples were used and pH was not adjusted, then β_2-M would also have been degraded.

Dr. Gunnar Spang, who works for a medical organization providing occupational health services to a large Swedish NiCd battery manufacturer and who was a co-author of this study, testified at the hearing. He submitted post-hearing comments on the number of cases, per cumulative exposure category, that, in his opinion, were cases associated with cadmium exposures (Exs. 58 and 80). His comments alter the findings somewhat. (See Table V-4.)

TABLE V-4.—CUMULATIVE AIRBORNE CADMIUM EXPOSURES OF PERCENT PREVALENCE OF KIDNEY DYSFUNCTION

Cumulative exposure (CumExp)(μg/m^3-yrs)	Mean cum exp	Number people	Percent dysfunction[1]
<359	131	0	0
0359–<1,710	691	2	2.6
1,710–<4,578	3,460	9	20.9
4,578–<9,458	6,581	9	29.0
9,458–<15,000	12,156	5	31.2
>15,000	21,431	5	50.0

[1] Percent dysfunction=number with dysfunction divided by number in that exposure category times 100.

He stated that in the lowest dose group with mean dose =131 μg/m^3-yrs, no cases were cadmium-related. Thus, the response rate in this group would be zero, as opposed to 1.1% reported by Jarup et al. For the remaining dose groups, the response rates would be as follows: 2.6% for the group with mean dose=691 μg/m^3-yrs; 20.9% for the group with mean dose=3460 μg/m^3-yrs; 29% for the group with mean dose=6581;

31.2% for the group with mean dose=12156; and 50% for the group with mean dose=21431. Thus, according to Dr. Spang, a dose-response still exists, but the dose-response curve is less steep than the curve described by Jarup. Also, according to Dr. Spang, for a 45 year exposure of about 77 $\mu g/m^3$, one-fifth of all workers would have tubular proteinuria. However, for workers with about 15 $\mu g/m^3$ exposures, over a 45 year working lifetime, the prevalence of kidney dysfunction would be about 2.6%, according to Dr. Spang, as opposed to 9.2%, indicated by Jarup. Dr. Spang testified that several workers in this plant had kidney stones, but he was unable to determine whether the prevalence was greater than that in the general population (Tr. 7/17/90, p. 217).

In summary, workers with tubular proteinuria had a proportionately higher serial CdB dose than their fellow workers without renal dysfunction but with the same cumulative air cadmium dose. Some workers will be more sensitive than others, i.e., their cadmium uptake will be greater than other workers, and, at lower exposures, will have tubular proteinuria. (See section VI—Quantitative Risk Assessment).

v. *Elinder et al., (Ex. L-140-45).* Elinder conducted a study of 58 male and 2 female cadmium-exposed workers employed at least five years before 1978 at a factory that produced coolers, radiators, and heat exchangers in Sweden. The plant began using cadmium containing solders in 1955, but the plant was demolished and a new plant was constructed in 1973. By 1978, the whole workplace had been seriously contaminated and had to be repainted and renovated to reduce the cadmium exposures at the workplace. Since 1978, no cadmium-containing products have been used in this plant. No exposure data from the plant were available before 1976.

β_2-M in urine was measured using a radioimmunoassay (RIA) method, Phadebas, developed by Pharmacia. The night before the health examination each person was asked to ingest about four grams of sodium bicarbonate (Samarin®). This was done in order to produce a pH exceeding 5.6 in the morning urine sample the next day because β_2-M is degraded in acidic urine.

No control group was included; according to Elinder the normal concentration of cadmium and β_2-M in urine and blood has been well documented. Based on the literature the authors selected 300 $\mu g/g$ Cr, the upper 95—97.5 percentile for the urinary excretion of β_2-M among persons without tubular dysfunction, as the upper limit of normal.

Each individual's exposure to cadmium was assessed by a group of four people (one representative from the company, one from the employees, and two from the local labor inspectorate) who had knowledge of the previous conditions in the plant and of the type of work carried out by each worker during the whole period when cadmium was in use.

Exposure was classified into four categories; high, medium, low, and no cadmium exposure. Before 1955 and after 1978 there was no exposure to cadmium at all. Based on the measurements in 1976, it was assumed that high, medium, and low exposure was about 0.5, 0.15, and 0.05 mg/m^3, respectively. The number of years each worker had been occupied in activities that gave high, medium, low, or no exposure were recorded. A cumulative dose was estimated for each worker expressed in milligrams of per cubic meter-years (mg/m^3-yr).

Elinder categorized renal dysfunction based upon β_2-M levels into "slight proteinuria" (β_2-M>300 $\mu g/g$ Cr) or "pronounced proteinuria" (β_2-M levels>1,000 $\mu g/g$ Cr). He then used these two categories of degree of kidney dysfunction to evaluate the relationship between years of exposure and prevalence of β_2-microglobulinuria. Results from this analysis, presented in Table V-5, indicate that as years of exposure increase, the prevalence of slight and more pronounced proteinuria increases.

TABLE V-5.—PREVALENCE OF β_2-MICROGLOBULIN IN RELATION TO YEARS OF CADMIUM EXPOSURE

Years of exposure	Slight proteinuria [1] No. (percent) [2]	Pronounced proteinuria [3] No. (percent) [4]
4 to 7	1 (6)	0 (0)
8 to 13	6 (46)	3 (23)
14 to 19	6 (46)	5 (38)
>20	11 (65)	6 (35)
All	24 (40)	14 (23)

[1] Number of people in that category; β_2> 300 $\mu g/g$ Cr<1000 $\mu g/g$ Cr.
[2] Percent is the number of cases of slight proteinuria divided by the total number of people with the corresponding number of years of exposure.
[3] Number of people in that category; β_2>1000 $\mu g/g$ Cr.
[4] Percent is the number of cases of more pronounced proteinuria divided by the total number of people with the corresponding number of years of exposure.
Source: Elinder et al., (Ex. L-140-45).

When cadmium in urine and proteinuria were evaluated, a close relationship was found. At a urinary cadmium excretion exceeding 10 $\mu g/g$ Cr the proportion of cases of β_2-m excretion exceeding 300 $\mu g/g$ Cr (slight proteinuria) was 88% and the proportion exceeding 1000 $\mu g/g$ Cr (pronounced proteinuria) was 75%.

Elinder evaluated the relationship between age and years of exposure. The prevalence of β_2-microglobulinuria (β_2-M) was increased in workers aged over 59, suggesting that age was a potential confounder in the assessment of the relationship between dose and response. To examine the role of age in this relationship Elinder fit a multiple regression model relating urinary β_2-M excretion to age and cumulative dose using the model:

$\log(\beta_2\text{-M})=[a \times \text{age}]+[b \times \text{cumulative dose}]+[c]$. Elinder concluded that dose was related to β_2-M-U, whereas age was not. In further analysis, when workers over age 59 were excluded, the prevalence of β_2-microglobulinuria still increased with the number of years of exposure, with the estimated cumulative dose, and urinary cadmium. Thus, Elinder concluded that age is not an important confounding factor in this study.

Degree of kidney dysfunction was also related to cumulative cadmium exposure and to CdU. Table V-6 shows that for cumulative cadmium exposure, the prevalence of slight and more pronounced proteinuria both increase as exposure increases. Indeed, Table V-6 suggests that there is a 19% risk of developing tubular proteinuria (urinary β_2> 300 M/g Cr) at a cumulative cadmium dose of less than approximately 22 $\mu g/m^3$ over a 45 year working lifetime (1 $mg/m^3$3/45 years=22.2 $\mu g/m^3$.) If exposures are between 22 and 44 $\mu g/m^3$ over a 45 year exposure period, this risk increases to 32%.

TABLE V-6.—PREVALENCE OF β_2-MICROGLOBULIN IN RELATION TO CUMULATIVE CADMIUM EXPOSURE

Cum exposure (mg/m^3-yrs)	Slight proteinuria [1] No. (percent) [2]	More pronounced proteinuria [3] No. (percent) [4]
<1	3 (19)	0 (0)
1 to <2	7 (32)	4 (18)
2 to <3	4 (44)	3 (33)
3 to <5	<5 (62)	4 (50)
≥	5 (100)	3 (60)
All	24 (40)	14 (23)

[1] Number of people in that category; β_2>300 $\mu g/g$ Cr <1000 $\mu g/g$ Cr.
[2] Percent is the number of cases of slight proteinuria divided by the total number of people with the corresponding level of cumulative exposure.
[3] Number of people in that category; β_2>1000 $\mu g/g$ Cr.
[4] Percent is the number of cases of more pronounced proteinuria divided by the total number of

people with the corresponding level of cumulative exposure.

Source: Elinder et al., (Ex. L-140-45).

Finally, Table V-7 shows that for CdU, like age and cumulative cadmium exposure, the prevalence of slight and more pronounced proteinuria both increase as CdU increases. Table V-7 indicates that CdU above 15 μg Cd/g Cr are associated with very high risks of kidney dysfunction (82% for β_2-M levels above 1,000). (For further discussion of this study see Section VI—Quantitative Risk Assessment).

TABLE V-7.—PREVALENCE OF β_2-MICROGLOBULIN IN RELATION TO CADMIUM LEVELS IN URINE

CdU (μg/g Cr)	Slight proteinuria [1] No. (percent) [2]	More pronounced proteinuria [3] No. (percent) [4]
≤2.1	1 (7)	0 (0)
2.1 to ≤5.1	3 (25)	0 (0)
5.1 to ≤10.1	6 (33)	2 (11)
10.1 to ≤15.1	4 (80)	3 (60)
>15.1	10 (91)	9 (82)
All	24 (40)	14 (23)

[1] Number of people in that category; β_2>300 μg/g Cr <1000 μg/g Cr.

[2] Percent is the number of cases of slight proteinuria divided by the total number of people with corresponding levels of CdU.

[3] Number of people in that category; β_2>1000 μg/g Cr.

[4] Percent is the number of cases of more pronounced proteinuria divided by the total number of people with corresponding levels of CdU.

Source: Elinder et al., (Ex. L-140-45).

vi. *Mason et al. (Ex. 8-669-A).* Mason conducted a detailed investigation of renal function among 75 male workers with at least one year of employment as cadmium brazers at a copper-cadmium alloy production facility in the U.K. Seventy-five unexposed workers, matched to the exposed workers on age, sex, and employment status, served as controls. Although not individually matched for smoking history, the proportion of current, former, and non-smokers was similar among the exposed and the controls as was the number of pack-years smoked. Only 11 exposed workers were employed in the production of alloy at the time of the study; for many of the exposed workers, occupational exposure had ceased some years before the study was undertaken.

The medical evaluation for both groups of workers included a questionnaire, a medical examination, blood and urine analyses, and *in vivo* measurements of kidney and liver cadmium levels by prompt-gamma neutron activation. Retinol binding protein (RBP) was measured using the enzyme linked immunosorbent assay (ELISA) and β_2-M was measured with a Phadebas β_2-M microtest kit by Pharmacia.

Measurements of cadmium in air of the factory had been taken between 1951 and 1983. Personal and area sampling data were available from 1964 to 1983. Pre-1964 exposures were estimated after discussion with occupational health physicians, occupational hygienists, representatives from management and the work force, and took into account changes in production and ventilation. Questionnaires and plant data were used to obtain each worker's exposure history. A cumulative exposure index was calculated by summing the products of length of time employed at a particular exposure level multiplied by exposure level.

Significant increases in the urinary excretion of albumin, RBP, β_2-M, N-acetyl-β_D-glucosaminidase (NAG), alkaline phosphatase, gamma-glutamyl transferase, and significant decreases in the renal reabsorption of calcium, urate, and phosphate were found in the exposed group compared with the referent group. Measures of glomerular filtration rate (GFR) creatinine clearance, serum creatinine, and β_2-M indicated a reduction in GFR in the exposed population. Many of these tubular and glomerular function indicators were significantly correlated with both cumulative exposure index and liver cadmium burden.

RBP was the biological marker chosen to measure renal function. RBP was not age-related in the unexposed population. The upper 95th percentile for urinary BP calculated for the unexposed population, 40 μg/mmol Cr or 356 μg/g Cr, was the level used to define workers with tubular proteinuria. The frequency of tubular proteinuria in exposed workers, grouped according to a cumulative exposure index, is presented in Table V-8.

TABLE V-8.—PREVALENCE OF KIDNEY DYSFUNCTION BY CUMULATIVE CADMIUM EXPOSURE

Cumulative exposure [1]	Number normal [2]	Number abnormal [3]	Percent abnormal
≤500	96	5	4.9
>500 to ≤1000	14	0	0.0

TABLE V-8.—PREVALENCE OF KIDNEY DYSFUNCTION BY CUMULATIVE CADMIUM EXPOSURE—Continued

Cumulative exposure [1]	Number normal [2]	Number abnormal [3]	Percent abnormal
>1000 to ≤1500	5	5	62.5
>1500	4	20	83.3

[1] Cumulative Exposure measured in μg/m³-year.

[2] Normal measured by Retinol Binding Protein (RBP)<40 μg RBP/mmol Cr.

[3] Abnormal measured by Retinol Binding Protein (RBP)>40 μg RBP/mmol Cr.

Mason used a two phase linear regression model to regress a variety of biochemical markers on cumulative cadmium exposure and on liver cadmium in order to identify an inflection point signifying a threshold level above which changes in renal function occur. (The appropriateness of this and other models is discussed further in Section VI—Quantitative Risk Assessment.) Urinary total protein, retinol binding protein, albumin, and β_2-M all suggested a threshold at about the same cumulative exposure level of 1100 μg/m³-yrs whereas changes in the tubular reabsorption of urate and phosphate suggested a higher cumulative exposure threshold.

In 1991, Hartley and Mason 1991 (Ex 150) extended the Mason study to include a follow-up analysis of the effects of cadmium exposure on changes in glomerular filtration rate (GFR). In this paper, recently submitted for publication, six indicators of glomerular function were evaluated. These included three glomerular filtration variables, (β_2-M in serum, creatinine in serum, and creatinine clearance), and three different estimates of creatinine clearance. The exposed population was split into five groups of approximately equal size on the basis of cumulative cadmium exposure: 0-250 μg/m³-yrs, 500-1000 μg/m³-yrs, 1000-3300 μg/m³-yrs and greater than 3300 μg/m³-yrs. The one-sided 95% interval in the referent population was used as the cut-off point for normal or abnormal results with respect to each glomerular filtration variable. For those variables correlated to age, the equation representing the 95% one-tailed prediction boundaries of regression with age was used to indicate normality or abnormality. Thus a 5% frequency of abnormality would be expected in the referent population. The results are presented in Table V-9.

TABLE V-9.—FREQUENCY OF ABNORMALITY FOR GLOMERULAR FILTRATION VARIABLES PERCENT ABNORMALITY BY TYPE OF GFR INDICATOR

Cum. Exp. μg/m³-yrs	β_2 S	Cr. S	Cr Cl	Gault	Hull	Mawer
Control	6	5	5	3	3	3
<250	6	6	6	.....	6	.....
250 to 500	.....	22	22	14	8	14
500 to 1000	24	24	28	16	12	18
1000 to 3300	60	54	32	46	40	46
>3300						

Dose-response and dose-effect relationships were observed over the range of exposures encountered, with a significant decrease in GFR at cadmium exposures greater than 1000 μg/m³-yrs. The results show a trend towards increasing abnormality in the six indicators of GFR used, with exposure to cadmium of greater than 500 μg/m³-yrs.

vii. *Thun et al.*, (Ex. 19-43-B). Thun conducted a study of kidney function among workers at a cadmium smelter in Denver, Colorado. The smelter recovers cadmium from "bag house" dust, a waste product of nonferrous smelters. The cadmium from the bag house dust is further refined into cadmium metal or highly purified cadmium oxide and cadmium sulfide. Forty-five male workers participated in the study. Seventeen of these were production workers and two were salaried workers employed at the smelter at the time of the study. Of the remaining 26, 18 were former long-term production workers and 8 were former short-term production workers. Thirty-two male hospital workers of similar age, ethnic and geographic background served as controls.

To estimate each worker's cumulative exposure to airborne cadmium, detailed work histories were linked with industrial hygiene data collected through 1976 and updated company measurements through 1985. The length of time spent working in a particular department was multiplied by the estimated cadmium exposure level in that department. The sum of these products represents the worker's cumulative exposure or dose, adjusted for respirator use as described by Smith (Ex. 4-64). Workers at this smelter were subjects in a number of studies of the health effects of cadmium, and a more detailed description of their exposures may be found in the discussion of the carcinogenicity of cadmium in the Health Effects section of this preamble.

Workers were required to fill out a questionnaire, provide spot urine and blood samples, and take a pulmonary function test. Fewer cadmium workers smoked than did controls (38% vs. 44%, p=0.6), and of those who smoked, the workers reported smoking fewer pack-years than the controls (14.6 vs. 22.1, p=0.29). Indices of renal tubular function included urinary excretion of β_2-M, retinol binding protein (RBP), calcium, and phosphate. Additional analyses for evidence of tubular injury and glomerular function rate (GFR) were performed. Urinary β_2-M was measured by the radioimmune assay (Pharmacia), and in order to standardize for urine volume, results were corrected to microgram of analyte per gram of creatinine. Level of lead in blood were also measured. Urine pH levels were not reported.

Workers were classified as having abnormal renal function if any of the following conditions were met: β_2-M >486 μg/gr cr; serum creatinine ≥1.4 mg/dl; RBP >321 μg/g Cr; tubular reabsorption of phosphate (TRP) <69.4%; or, tubular reabsorption of calcium (TRC) <97.56%. The limits for TRP and TRC are the lower 95% confidence level on the geometric mean of these markers estimated from the control population. The limits for β_2-M, RBP, and creatinine are the upper 95% confidence level on the geometric mean of these markers estimated from the control population. Thun found that 24 of the 45 study subjects (53%) suffered some form of renal abnormality. In addition, Thun reported that two of 32 controls (6%) were abnormal by this definition (personal communication, 11/91). The results from this study are in Table V-10.

TABLE V-10.—SEVENTY-SEVEN PARTICIPANTS, CADMIUM SMELTER STUDY [1]

	Cadmium Workers	Unexposed	P value
Number	45	32	.....
Age (mean±SD)	54.4±15.5	50.1±13.0	0.2
Percent Hispanic	58%	16%	0.0001
Percent Current Smokers	38%	44%	0.6
Pack-years (mean±SD)	14.6 (19.8)	22.1 (29.4)	0.29
Years Cadmium Work (GM, range)	19 (1-38)	0	.....
Cumulative Exposure (mg/m³/days) [2]	604 (0-5383)	0	.....
Blood Cadmium, μg/l (GM±SD)	7.9±2.0	1.2±2.0	<0.0001
Urine Cadmium, (μg/gr Cr) (mean±SD)	9.3±6.8	0.7±0.7	<0.0001
β-2 in Urine, (μg/gr Cr) (GM±SD)	470 (4.4)	190 (1.6)	0.0001
RBP in urine, (μg/gr Cr) (GM±SD)	266 (7.3)	88 (1.9)	0.0012
Systolic BP, (mm Hg) (GM±SD)	134 (1.14)	120 (1.14)	0.0004
Diastolic BP, (mm Hg) (GM±SD)	80 (1.13)	73 (1.13)	0.002
Blood Lead, (μg/dl) (GM±SD)	11.9±1.6	8.3±1.4	0.0013

[1] Exs. 8-670 and 19-42-B

[2] Converted to μg/m³-years, (Thun, Ex. 63), by multiplying mg/m³ by 1000 and dividing 365, or (604 times 1000 divided by 365=1655 divided by 45=36.8) 1,655 μg/m³-years; or 36.8 μg/m³ for 45 years.

Several medical conditions were reported more frequently by the cadmium workers than by the controls including kidney stones (18% vs. 3%, p=.07), prostatic disease (20% vs. 6%, p=.09), diabetes (18% vs. 3%, p=.07), and hypertension (38% vs. 16%, p=.03).

The relationship between cumulative exposure and the prevalence of various renal abnormalities was examined, and a dose-response relationship was observed. The prevalence of abnormalities increased with cumulative exposure to cadmium with multiple renal abnormalities becoming apparent in persons with cumulative exposure > 300 mg/m³-day (or 822 μg/m³-yrs which is equivalent to an exposure of 18 μg/m³ over a 45 year working lifetime). (See Section VI—Quantitative Risk Assessment).

viii. *Summary.* A summary of the major findings from these seven studies follows. For cumulative exposures up to 500 μg/m³-yrs, the prevalence of kidney dysfunction ranged from 4% to 32%; for cumulative exposures above 500 to 1,000 μg/m³-yrs, the prevalence of kidney dysfunction ranged from 9% to 66%; and for cumulative exposures above 1,000 μg/m³-yrs, the prevalence of kidney dysfunction ranged from 21% to 55%.

Taken together, the data from the seven studies would seem to refute the position of a number of commentors regarding what level of airborne cadmium represents a "safe" level. For example, Dr. Kazantzis has stated that exposure to 20 to 30 μg/m³ of cadmium for 8 hours per day for 45 years (900 to 1350 μg/m³-yrs) is the no-observed-effect level for kidney effects (Ex. 19-43A). On behalf of the Cadmium Council, Dr. Spang testified that workers will not have renal dysfunction if their cumulative cadmium exposures are up to 900 μg/m³-years (which is equivalent to 20 μg/m³ for 45 years). Dr. Spang cited Sweden's standard of 20 μg/m³ for respirable cadmium as adequate to prevent kidney dysfunction (Tr. 7/17/90, p. 217). Dr. Bond, who directs the medical surveillance program of two cadmium compound manufacturers in the United States, questioned the results from studies that show dysfunction at relatively low cadmium exposures. He did not agree with the definition of pathology used in these studies. Dr. Bond stated that a 20 μg/m³ PEL would be reasonable and would not result in significant renal disease (Ex. 119).

Despite the opinions of these eminently qualified physicians, other record evidence indicates that the exposure level which they propose as "safe", 20 μg/m³ for 45 years, (900 μg/m³-years) would result in a high prevalence of kidney dysfunction, in excess of 10% (Exs. L-140-50; 4-47; 4-27; L-140-45). OSHA also notes that the Swedish physician Dr. Elinder stated that the proposed OSHA regulations were better than the present regulations in Sweden (Ex. 55). Finally, while the Agency acknowledges Dr. Bond's objection to the definition of pathology used in these studies, OSHA is impressed by the consistency of the definition of pathology used by the various researchers in their studies which have been published in peer-reviewed journals.

Drs. Thun, Elinder, and Friberg reviewed these seven occupational studies together and concluded that the studies could be compared and pooled despite the fact that they varied in size, in criteria used to define kidney dysfunction, and in the amount of available exposure information. Pooling the data from the seven studies allowed the authors to obtain an estimate of the prevalence of dysfunction among workers with low cadmium exposures. In most of the studies, the number of workers with small exposures was too small to obtain a reliable estimate of prevalence, and therefore these workers had to be combined with workers with higher levels of exposure.

Results from the pooled analysis are presented in Table V-11.

TABLE V-11.—OCCUPATIONAL STUDIES RELATING KIDNEY DYSFUNCTION TO CUMULATIVE EXPOSURE TO CADMIUM [1]

Study	N	Prevalence [2] at exposures [3]			
		100 to 199	200 to 299	300 to 399	400 to 499
Ellis, 1985	82	0/3		0/3	2/3
Thun, 1989	45	0/2	0/4	0/2	0/1
Falck, 1983	33		1/3	1/2	0/7
Kjellstrom, 1977	[4] 240				
Jarup, 1988	440	1/110	1/35	1/25	0/20
Elinder, 1985	60			0/2	0/1
Mason, 1988	75	2/10	0/8	0/8	1/2
Pooled Data (%)	-	2.4%	4.2%	4.8%	8.8%

[1] Source: Thun, M.J., Elinder, C.G., Friberg, L., "Scientific Basis for an Occupational Standard for Cadmium," *Am. J. Ind. Med.*, 20: 629-642, 1991, (Ex L-140-50).
[2] Prevalence = number diagnosed as having kidney dysfunction in a specific exposure category compared the total number of workers in that exposure category.
[3] Exposures = in units of μgCd/m³-years.
[4] Included in Jarup.

The prevalence of kidney dysfunction among workers with cumulative exposures between 100-199 μg/m³-yrs was 2.4%. For workers with exposures between 200-299 μg/m³-yrs, the prevalence was 4.2%. For workers with cumulative exposures between 300-399 μg/m³-yrs, the prevalence was 4.8%. For workers with cumulative exposures between 400-499 μg/m³-yrs, the prevalence was 8.8%.

Thun et al. also plotted the observed prevalence from each of the seven studies by cumulative exposure. The data show a similar pattern between dose and response for each of these studies. The prevalence of kidney dysfunction increased sharply at cumulative exposures above 500 μg/m³-yrs. In all of the studies except Jarup, the prevalence of kidney dysfunction was about 10% when the cumulative exposures reached about 450 μg/m³-yrs.

c. *Other studies.* Not all of the epidemiological studies on the renal effects cadmium that were submitted to the record had large enough cohorts or adequate dose data to assess the relationship between exposure and dysfunction. Nonetheless, these studies are useful for assessing the relationship between a variety of biological markers and kidney dysfunction. Specifically, these studies can be used to assess the efficacy of a variety of biological markers as a determinant of the critical concentration of cadmium which induces kidney dysfunction.

i. *The NIOSH Health Hazard Evaluation of Gates Nickel-Cadmium Battery Plant (Ex. 128).* The National Institute of Occupational Safety and

Health (NIOSH) conducted two medical surveys of workers exposed to nickel and cadmium dusts in a nickel-cadmium battery plant in the U.S. The first survey was done in February 1989 and was completed by 39 male workers in the plate-making and pressed plate areas of the plant where there is potential for exposure to high levels of cadmium. A group of 36 males, selected by the company and thought to have no cadmium exposure, served as controls. The second survey was done in October 1989 and was complete by 91 workers in areas with either low or high exposure to cadmium but minimal exposure to nickel.

Both studies entailed administration of a questionnaire; measurement of height, weight, and blood pressure; and collection of first-voided morning urine samples and fasting serum samples. The questionnaire collected information about age, history of diabetes, hypertension, smoking, non-steroidal anti-inflammation drug use, and previous occupational exposures to cadmium, lead, and solvents. No information was provided on the pH of the urine samples or on how the urine samples were collected and handled.

In the first survey, the biologic makers selected to assess renal function included urinary phosphorous, β_2-M and RBP which were creatinine-standardized to adjust for variations in urine concentrations. Levels were considered abnormally high if they exceeded the arithmetic mean level plus two standard deviations in the unexposed population, standardized for creatinine.

The biologic markers used in the second survey were similar to those used in the first survey except that urinary excretion of β_2-M was not measured. Other indices of renal tubular function used in the second survey included urinary excretion of calcium and glucose. The laboratory reference values for normal limits of β_2-M and total protein were urinary β_2-M<300 μg/liter and total protein <135 mg/l. For RBP the reference values were less clear and covered a wide range of levels, e.g. urinary RBP<30–190 μg/l or 0–406 μg/l.

Exposure data which were provided by the company were noted by NIOSH to raise several questions. One of these was whether exposures, which were reported as 8-hour TWAs, truly represented 8-hour TWAs. The company reported to NIOSH that in order to compensate for their normal 12-hour workshifts, the company modified the OSHA PEL by reducing it by 33 percent. Another problem was that because of a lack of consistent workstation terminology, considerable manual compilation of the computerized data was necessary in order to reconstruct each worker's exposure history. Finally, NIOSH believed that actual work practices may have differed from those reported on the printouts.

No consistent differences in urinary proteins between the cadmium-exposed group and the non-exposed group were observed in either survey. Furthermore, cumulative airborne cadmium levels as calculated from the exposure data provided by the company did not show a significant relationship with any measure of renal function used in this investigation. In both surveys, however, the analysis of cadmium-exposed workers with CdU levels greater than 10 μg/g Cr (23% in the first survey and 28% in the second survey) compared to those with less than 10 μg/g Cr clearly suggested that the group with higher levels of CdU did have modest elevations of the urinary proteins.

In the first survey, 3 of the 39 cadmium-exposed workers (8%) demonstrated evidence of cadmium-induced renal dysfunction. Two of these workers had elevated levels of only albumin in their urine, while the third had elevated levels of β_2-M and RBP as well. In the second survey, 3 of 91 cadmium-exposed workers (3%) had elevated levels of urinary albumin, but none had elevated levels of urinary RBP. In comparison, of the 69 workers in both surveys with no or low exposure, none had evidence of abnormally high levels of urinary proteins.

The possibility of glomerular dysfunction was suggested in the first survey by a slightly higher mean serum creatinine in the exposed group than in the control group. NIOSH noted that when one considers that the non-exposed group was significantly older than the exposed group, the difference in serum creatinine may actually be larger than reported.

The NIOSH authors concluded that cadmium-induced renal dysfunction is evident in this study population. They also found that subclinical effects such as significant increases in mean levels of the urinary tubular enzymes, N-acetyl-β_D-glucosaminidase (NAG; p=.05) and urinary alanine aminopeptidase (AAP; p=.02), are apparent in cadmium-exposed workers with CdU levels above 10 μg/g Cr compared to those below this level.

ii. *Lauwerys et al, (Ex. 8–718).* Lauwerys conducted a study of 11 workers employed in a small factory in Belgium which used or produced cadmium oxide, cadmium metal, cadmium sulfide, and various cadmium salts. Workers were observed for 13 months. Although the factory employed only seven workers on the production side, Lauwerys was able to follow a total of eleven workers because four workers left the plant and four new employees were hired during the study period.

The total airborne concentration of cadmium at the various work locations was very high. The median values ranged from 110 to 2125 μg/m^3. Reliance on personal protective devices was minimal; the authors noted that only one worker wore a mask during work. In view of the hygiene practice of the workers, the authors considered that ingestion of cadmium may have played a role in the overall exposure.

During the observation period, 150 personal air samples were collected. Each sampling period lasted two to nine hours. The airborne cadmium levels sampled in this factory ranged from 88 to 14,232 μg/m^3 with overall median, mean, and standard error of 565, 1119, and 125 μg/m^3, respectively. Omitting the most extreme result (14,232 μg/m^3), the values ranged from 88 to 6276 μg/m^3 with overall median, mean, and standard error were 563, 1031, and 90 μg/m^3, respectively.

Cadmium concentrations in workers' blood and urine were measured. Because of the employee turnover and the high degree of collaboration requested from the workers (repeated blood and urine sampling) it was not possible to survey all the workers during the same length of time. On the other hand, Lauwerys considered the high employee turnover to be an advantage for this type of survey because it allowed the follow-up of newly employed workers.

An evaluation of renal function was performed once for each of the current workers (n=8). To do so, urine was collected over a known period of time (usually 4 to 5 hours). The volume of urine was measured, and 10 ml was immediately transferred into a tube containing 1 ml of 0.4 mole/liter phosphate buffer, with a pH of 7.6. These samples were stored at −20 °C and β_2-M was measured using the radioimmunoassay (RIA), Phadebas from Pharmacia. Aliquots of urine were taken for the determination of creatinine, total proteinuria, amino aciduria, and some enzymatic activities (B-galactosidase, lactate dehydrogenase alkaline phosphatase, total and tartrate resistant acid phosphatase, and catalase). The remaining volume was then stored at 4°C with 0.1 percent sodium azide as preservative until ultrafiltration for electrophoresis and quantitation of individual proteins (orosomucoid, albumin, transferrin, and IgG). A sample of blood was also taken

for determining the creatinine level and the same enzymatic activities and specific proteins in plasma as in urine. Despite the great scatter of the individual results, Lauwerys stated that for most workers exposed for more than 250 days, the average cadmium in urine levels were similar. The overall mean cadmium level was 161 μg/g Cr with a standard error of 9 μg/g Cr, regardless of type of exposure. All but one of these workers were exposed primarily to cadmium oxide. The one not exposed to cadmium oxide was exposed primarily to cadmium sulfide.

According to Lauwerys, the results of this study indicate that an integrated exposure of 1500 to 3000 μg/m³-yrs leads to kidney disturbances and/or renal lesions. Lauwerys also concluded that workers whose exposure is such that CdU never exceed 15 μg/g Cr would not develop kidney lesions.

To evaluate the mechanisms by which cadmium is taken up into the blood and urine in new workers, Lauwerys studied four new workers. One worker was followed for only 30 days. This worker, who wore a respirator, was exposed to cadmium oxide dust and salts (mean cadmium concentrations in air were 1829 μg/m³±528; the median exposure level was 1167 μg/m³). This worker exhibited a much lower increase of cadmium concentration in blood and urine than the other three new workers. Lauwerys indicated that this worker was more motivated to follow better hygiene practices (handwashing, no smoking at work) than the other workers and this limited his total exposure.

Results of biological monitoring for the other three workers are presented in Table V-12.

TABLE V-12.—CADMIUN IN BLOOD AND CADMIUM IN URINE LEVELS [1] IN NEW WORKERS EXPOSED IN A PLANT PRODUCING VARIOUS CADMIUM COMPOUNDS BY EXPOSURE LEVEL AND TYPE OF EXPOSURE AND SMOKING HABITS OF WORKER

Worker	Mean air [2]	Median air [2]	Smoker status [3]	Exp. type [4]	CdB-20 [5]	CdB-140 [6]	CdU-20 [7]	CdU-140 [8]
A_1	1329±438	613	S	A	30	120	10.0	17.2
A_2	2043±452	1926	S+	B	20	120	7.5 [9]	20 [10]
A_3	2031±263	1827	NS	B	50	105	25.0	25

[1] from visual review of figures (Ex. 8-718).
[2] μg Cd/m³.
[3] S=smoked<1 pack/day; S+=smoked>1 pack/day; NS=non-smoker.
[4] Main Type of exposure: A=Cadmium oxide dust and fume; cadmium carbonate powder; cadmium salts; B=cadmium oxide dust;
[5] cadmium in blood levels after approximately 20 days of exposure, in μgCd/liter whole blood.
[6] cadmium in blood levels after approximately 140 days of exposure, in μgCd/liter whole blood.
[7] cadmium in urine levels after approximately 20 days of exposure, in μCd/gram creatinine.
[8] cadmium in urine levels after approximately 140 days of exposure, in μgCd/gram creatinine; average of four samples taken on days 130, 140, 142, and 144;
[9] average of two samples taken on days 10 and 24;
[10] average of samples taken on day 138 and 146 of exposure.

Regarding cadmium in blood levels, Lauwerys concluded that after the start of exposure, the concentration of cadmium in blood increases linearly up to 120 days and then levels off. Kjellstrom (1977, referenced in Ex. 8-718) found a similar evolution of cadmium concentration in blood with time among workers newly exposed to a much lower level of cadmium dust, about 50 μg/m³. Kjellstrom reported, however, that the steady state level (about 3 μg/100 ml) was five times lower than that found in the workers examined in Lauwerys study.

Kjellstrom's findings are not surprising given the fact that the cadmium pollution in the Lauwerys plant was significantly higher than that in the cadmium-nickel battery factory investigated by Kjellstrom (1977). One can conclude that when equilibrium is reached, the cadmium level in blood is a good indicator of the average intake during recent months. This was also confirmed by Lauwerys by the finding that in three workers, the blood cadmium levels measured before and after a leave of absence of 4 weeks were not significantly different.

Dr. Lauwerys calculated the linear regressions between the duration of exposure and the cadmium levels in blood for the various phases identified (two for blood). Since cadmium levels in blood of workers exposed for more than 120 days are mainly a reflection of exposure, Dr. Lauwerys expected that no significant correlation between duration of exposure and cadmium levels in blood during phase 2 would be found. The observed relationship between cadmium in blood and exposure in phase 2 was not statistically significant. Thus, levels of cadmium in blood reflect recent exposures, but if exposures have been very high, will not decrease significantly, at least over four weeks.

Regarding cadmium in urine, Lauwerys (Ex. 8-718) concluded that the interpretation of the urine data is certainly less straightforward than that for blood. For one thing, the kidney function of the workers must be taken into consideration since it is known that kidney lesions may be associated with an increased urinary excretion of cadmium.

Dr. Lauwerys calculated the linear regressions between the duration of exposure and the cadmium levels in urine for the various phases identified (four for urine).

Dr. Lauwerys proposed the following hypothesis to explain the evolution of cadmium concentration in urine found during this survey. In workers newly exposed to high levels of cadmium, phases 1 and 2 are concomitant with a rapid and marked increase of cadmium body burden probably associated with an induction of metallothionein. As this binding process becomes progressively saturated, a sharper increase in cadmium concentration in urine occurs (phase 3) which eventually, if high exposure persists, will be mainly a reflection of recent cadmium intake (phase 4) rather than an indicator of body burden. Dr. Lauwerys noted that the beginning of the second phase, during which the cadmium binding sites become progressively saturated, corresponds to a urinary concentration of cadmium of approximately 15 μg/g Cr. This would suggest that as long as this level is not exceeded in male workers exposed to cadmium the saturation of all the body binding sites is not yet reached. If the binding occurring during phase 2 is a true detoxication process, which Dr. Lauwerys indicated remains to be confirmed, one would expect that workers whose exposure is such that cadmium in urine never exceeds 15 μg/g Cr would not develop kidney lesions. This hypothesis is in agreement with Lauwerys' previous clinical observations of signs of kidney damage

in some workers who excreted more than 15 μg Cd/g Cr (Lauwerys et al. 1974). Hence for adult males occupationally exposed to cadmium, Lauwerys proposed a tentative biological threshold of 10 μg Cd/g Cr in urine. The validity of this proposal is confirmed by the correlation between CdU and cadmium in kidney found in 309 Belgian workers whose cadmium in kidney was measured *in vivo* by neutron activation. It was found that a cadmium concentration in renal cortex between 200 and 250 ppm, considered as the critical level, corresponds to a CdU concentration of approximately 10 to 15 μg Cd/g Cr (Roels et al. 1979).

However, Dr. Lauwerys stated that it should be stressed that this biological threshold is proposed only for adult males occupationally exposed to cadmium and does not necessarily apply to other groups of the general population, e.g., women after menopause and children, whose sensitivity to cadmium could be different.

Lauwerys findings agree with those of De Silva (Ex. 6–716) who noted that the urinary cadmium concentrations rise and fall with exposure, probably with a delay of several months.

iii. *Roels et al. (57–K).* Roels studied the effects of cadmium on male workers employed in one of two Belgium zinc-cadmium plants. Two hundred and sixty-four workers (264) were included in the analyses. Of these, 236 were active employees (Group A) and 28 were either retired or had been removed from jobs where they were exposed to cadmium (Group R).

To assess the cadmium pollution at the plants, airborne cadmium concentrations were measured with static air samplers at each of the principal worksites. In one plant, cadmium concentrations ranged from 3 to 67 μg/m³, and in the other plant, they ranged from 5.6 to 168 μg/m³. When monitoring was conducted at the worker's breathing zone, these levels were much higher.

For each worker, cadmium concentrations in the liver and in the kidney were measured *in vivo* by neutron capture gamma-ray analysis using the transportable measurement system developed at the University of Birmingham, U.K. Cadmium in the blood and cadmium, β_2-M, albumin, total protein, and calcium in the urine were also measured. For each urine sample, an aliquot of 5 ml was immediately transferred into a tube containing a buffer with a pH of 7.6 and stored at −20 °C until β_2-M levels and albumin were measured. β_2-M was measured by radioimmunoassay using the Phadebas microglobulin test developed by Pharmacia.

Workers were considered to have abnormal kidney function if their total urinary proteins exceeded 250 mg/g Cr, if their β_2-M exceeded 200 μg/g Cr, or if their albumin exceeded 12 mg/g Cr. These criteria were derived from a group of 88 unexposed workers whose urinary cadmium levels were below 2 μg/g Cr.

One hundred and forty-nine (149) of the active workers were engaged in jobs not directly related to cadmium production and these workers were found to have normal renal function. The remaining 87 active workers were involved in cadmium production daily, and of these, 15 (17%) had signs of renal dysfunction.

Examination of the cumulative frequency distributions and the correlations between the various biological parameters in different subgroups led the authors to the following conclusions: (a) Calciuria is not much different among the subgroups; (b) CdB mainly reflects recent exposure to cadmium in the absence of cadmium-induced renal damage; (c) CdU follows the body burden of cadmium but increases proportionately much more in workers with renal dysfunction particularly when signs of tubular dysfunction are present; and (d) cadmium in the liver is proportional to duration and intensity of cadmium exposure in workers without as well as with renal dysfunction. The study authors also concluded that renal cortical cadmium does not differ between cadmium workers with and without renal dysfunction, but the observation on which this conclusion is based can be explained by a progressive decrease of cadmium in the kidney cortex after the onset of the renal damage.

The results of this investigation support the concept of a critical concentration of cadmium in the kidney cortex which must be achieved before dysfunction occurs. That concentration was found to range from 160 to 285 ppm in this study. When the critical concentration exceeds 285 ppm, the probability is very high that all persons will show signs of renal dysfunction. This study also demonstrated that in the absence of kidney dysfunction, CdU is correlated with the body burden of cadmium (r=0.59), but that CdB is not.

On the basis of the interrelationships among cadmium in the liver, cadmium in the kidney cortex, CdU, and the other biological indicators of renal function, Roels concluded that the probability of developing cadmium-induced renal dysfunction in male cadmium workers appears to be very low when the critical CdU level of 10 μg/g Cr is not regularly exceeded. This CdU level corresponded to an average cadmium body burden of 160 to 170 mg.

iv. *Roels et al. (Ex. 12–38A).* In order to assess the significance of the early renal changes induced by chronic exposure to cadmium, Roels conducted a study of 23 retired workers at two non-ferrous smelters in Belgium. These workers had been removed from jobs entailing exposure to cadmium oxide as dust and fume (Ex. 57–K). They had been removed from exposure either because the level of β_2-M in urine exceeded 300 μg/l (n=18) or because the level or RBP in urine exceeded 300 μg/l (n=17). In addition, 8 workers had levels of albumin in their urine in excess of 20 mg/l. At the time of removal from cadmium exposure, serum creatinine concentrations were normal in 18 workers (<13 mg/l), marginally elevated in 3 workers (between 13 and 14 mg/l), and significantly elevated in 2 workers (>20 mg/l).

The average length of occupational exposure to cadmium was 25 years for these 23 workers with a range from 6 to 41.7 years. Workers had been removed from exposure for 6 years on average before they had their first follow-up examination. The mean age at first follow-up examination was 58.6 years with a range from 45.5 to 68.1 years. During each of five follow-up surveys conducted annually, workers were questioned about their health status and drug consumption, and a sample of venous blood (20 ml) and urine (100 ml) was collected. The results of the five annual follow-up surveys are included in Table V–13.

TABLE V-13.—CHARACTERISTICS AND BIOLOGICAL PARAMETERS OF 23 MALE SUBJECTS WITH SIGNS OF CADMIUM INDUCED RENAL CHANGES, WHO WERE REMOVED FROM EXPOSURES FOR 6 YEARS: SUMMARY OF FIVE-YEAR FOLLOW UP SURVEYS

Characteristic	First	Second	Third	Fourth	Fifth
CdU[1]	22.2±2.9	16.0±2.2	15.5±1.6	15.6±2.0	18.0±2.9
CdB[2]	14.3	11.8	10.1	9.3	9.7
β_2U[3]	1292	1260	1684	1918	1743
RBPU[4]	1146	801	829	1396	1351
CrU[5]	1.37	1.23	1.52	1.34	1.48

[1] Cadmium in urine, mean ± SEM, μg/liter urine.
[2] Cadmium in blood, μg/liter whole blood.
[3] Beta 2 microglobulin in urine (μgβ_2/g Cr), standardized to grams creatinine given in row 5.
[4] Retinol binding protein in urine (μgRBP/g Cr), standardized to grams creatinine given in row 5.
[5] Creatinine in urine (μg/liter).

This study by Roels confirmed that cadmium-induced proteinuria is irreversible. For the 23 workers, the levels of urinary RBP, β_2-M, and albumin, which were significantly elevated at the time of the first survey following removal from exposure, had not returned to normal levels five years later. In addition, the study found that serum alkaline phosphatase activity significantly increased during the five year follow up period which may reflect an interference of cadmium with bone metabolism, possibly secondary to a reduction in the conversion of 25-hydroxcholecalciferol to 1,25-dihydroxycholecalciferol by the kidney. The most important finding, however, was a significant increase over time in creatinine and β_2-M levels in serum which would indicate a progressive reduction of the glomerular filtration rate (GFR) despite removal from exposure.

Roels estimated that the GFR decreased on average by 31 ml/min/1.73 m^2 in the workers he studied during the five years of follow-up. Based on the work of others, Roels stated that in the age range of 45 to 75, the expected decline over five years should normally not exceed 6.5 ml/min/1.73 m^2. For each of the workers in the study, the reduction in their estimated GFR was, on average, about five times greater than this expected level. Interestingly, it was not more pronounced in workers with impaired renal function at the start of the study than it was in those with subclinical signs of renal damage.

v. *Roels et al. (Ex. 149).* In this study, Roels sought to determine whether an internal dose of cadmium that has not yet induced microproteinuria could affect the filtration reserve capacity of the kidney. Internal dose of cadmium was reflected by cadmium concentration in urine. Microproteinuria was defined as a significantly increased urinary excretion of various plasma proteins: β_2-M>300 μg/g Cr or RBP>300 μg/g Cr, or albumin>15 mg/g Cr, or a combination of these. The subjects in this study were 108 workers at two zinc-cadmium smelters in Belgium with occupational exposed to cadmium. To be included in the study, the exposed workers must have been exposed to cadmium for one year without interruption and must have been excreting more than 2 μg CdU/g Cr. Also, they could not have been exposed to other known nephrotoxins.

One hundred and seven (107) workers with no occupational exposure to cadmium served as controls. To qualify as a control, a worker should never have been occupationally exposed to any nephrotoxins. The level of cadmium in the urine of a control was required to be below 2 μg/g Cr and there could be no sign of microproteinuria. The control workers were closely matched to the exposed workers on age, and care was taken to see that both groups had similar socioeconomic (education, salary) and environmental (place of residence) characteristics.

A detailed occupational and medical questionnaire was given to each study participant. In addition, data on each worker's dietary habits during the week before the study was also collected. In order to be included in the final statistical analyses, participants in the study must have complied scrupulously with the study protocol that required them to refrain from taking analgesics, and their medical history must not have shown any pathological condition that might have influenced renal function.

During the 30 minutes prior to the baseline test, a spot urine sample (100 ml) was collected. An aliquot of 4 ml was immediately transferred to a tube containing 0.4 ml phosphate buffer, pH 7.6, and kept at −20 °C until the analysis of β_2-M, RBP, and albumin were performed. These proteins were measured by automated assays relying on latex particle agglutination.

Because early changes in glomerular function cannot be detected by the measurement of basal GFR, Roels developed a test to assess the filtration reserve capacity of the kidney and to detect any early renal changes induced by cadmium. In order to do this, Roels defined the filtration reserve of the kidney as the difference between baseline GFR and the maximal GFR induced by an adequate stimulus such as an acute oral load of proteins or an infusion of amino acids. The maximal GFR obtained during such stimulation would thus represent the maximum filtration capacity. When Roel's test was applied to his study subjects, the results confirmed the observation in previous studies that the age-related decline of the baseline and maximal GFR is accelerated in male workers with cadmium induced microproteinuria.

Another analysis was performed for workers less than age 50 and over age 50. Microproteinuria was present in 20 cadmium workers, all older than 50. It was found, however, that a renal cadmium burden that has not yet caused microproteinuria does not impair the filtration reserve capacity of the kidney.

In conclusion, this study indicates that the age related decline of the baseline and maximal GFR is exacerbated in the presence of cadmium-induced microproteinuria. The investigation supports Roels' previous estimate of the threshold effect concentration of CdU (10 μg/g Cr), which is intended to prevent the occurrence of microproteinuria in cadmium exposed male workers. Roels noted that this conclusion, however, may not be extrapolated to the general population because there are indications that in an occupationally active male population, the influence of the healthy worker effect may lead to an underestimation of the risk of cadmium for other groups of the general population. Also, sensitive workers may not be adequately protected if CdU levels exceed 10 μg/g Cr.

vi. *Bernard and Lauwerys (Ex. 35).* Bernard and Lauwerys studied 25 male workers who had been removed from jobs with exposure to cadmium when they were found to have elevated levels of β_2-M, RBP, or albumin in their urine.

The serum levels of creatinine and β_2-M in these workers were found to increase significantly with time. Over a five year period, the average level of creatinine in serum increased from 12 mg/l (SE=1.1 mg/l) to 15.5 mg/l (SE=2.2 mg/l), and the average level of β_2-M in serum increased from 1.89 mg/l (SE=0.12 mg/l) to 3 mg/l (SE=0.42 mg/l). The average levels of serum creatinine in two groups of 23 age-matched controls after five years were found to be 11.3 mg/l and 11.2 mg/l, and the average levels of serum β_2-M for these two groups were found to be 1.9 mg/l for both groups. Thus, age could not account for the increase observed in the exposed workers.

The GFR was estimated according to Wibell et al., as referenced by Bernard. All workers showed a decrease in estimated GFR which ranged from 9 to 78 ml/min/1.73 m² over the five year observation period. The average decrease of GFR over that period amounted to 31 ml/min/1.73 m², a value which is about five times greater than that observed for the normal population. Investigations of cadmium-exposed workers in Belfium and the U.S. have demonstrated that a low or high molecular weight proteinuria is likely to develop in 10 percent of exposed subjects when the concentration of the metal in the renal cortex reaches about 200 ppm. The corresponding critical levels in urine and blood have been estimated at 10 μg/gr Cr and 10 μg/liter whole blood (lwb), respectively (Ex. 57-K). Once it has appeared, according to Drs. Bernard and Lauwerys, cadmium proteinuria is in most cases irreversible. Follow up studies indicate that the progression of renal dysfunction after cessation of exposure is very slow. Bernard and Lauwerys, in their recent five year prospective study, demonstrated that despite this slow evolution, cadmium nephropathy may progress to renal insufficiency.

vii. *Toffoletto et al. (Referenced in 19-43A).* Toffoletto presented a paper on the effects of renal function from occupational exposure to cadmium at a conference on heavy metals in Edinburgh in 1989. Toffoletto studied 91 workers exposed to cadmium between 1981 and 1988 in an Italian factory producing and processing cadmium alloys. Periodic measurements of environmental cadmium concentrations had been made for 13 years, and information was available from a biological monitoring program that had been in operation for 8 years. Only subjects with three or more years of exposure or with three measurements of CdU or CdB were included in the study.

The authors used biological monitoring results from a control population to establish the upper limit of normal for CdB and CdU levels: 2.3 μg/liter whole blood (lwb) and 3.0 μg/liter urine (l urine), respectively. At the time of this study, the biological limit values recommended for CdB and CdU were 10 μg/lwb and 10 μg/l urine, respectively. Elevated β_2-M levels above 260 μg/l were used as an indicator of early tubular damage. For β_2-M analyses, urine samples were adjusted for pH, and β_2-M levels were measured using the Phadebas microtest kit.

Among workers whose CdB and CdU levels were always below 10 μg/lwb or below 10 μg/l urine, 3% and 2.7% respectively, had β_2-M levels above 260 μg/l. Workers with at least one CdB level greater than 10 μg/lwb or one CdU level above 10 μg/l urine (33.3% and 16.7% of workers, respectively) had elevated β_2-M levels. Forty-eight workers had measurements of CdB, CdU, β_2-M, RBP, N-acetyl-β_D-glucosaminidase (NAG), and microalbumin. These workers were evaluated for kidney function. The results are in Table V-14.

TABLE V-14—ASSOCIATION BETWEEN TUBULAR AND GLOMERULAR FUNCTION INDICATORS AND THEIR DISTRIBUTION DIVIDED INTO THREE GROUPS OF LEVELS OF URINE (CDU)

CdU (μg/l)	Total number of people	Number abnormal (percent)
<3	7	4 (57)
3-10	14	8 (57)
>10	27	18 (67)

Four of seven workers with median CdU levels less than 3 μg/l had abnormal levels of NAG, microalbumin, or RBP. Eight of 14 workers with median CdU levels between 3-10 μg/l had abnormal levels of at least one of the four indicators of kidney function (β_2-M, NAG, RBP, or microalbumin). Eighteen out of 27 workers with median CdU levels greater than 10 μg/l had at least one elevated abnormal kidney function test result. In this latter group, four workers had abnormal levels of all four kidney function measurements.

Among ten workers with elevated β_2-M levels, half had CdB levels less than 10 μg/lwb. (See Table V-15.) Their mean CdU level was 11 μg/l (range 2.5-13.8). Their mean cumulative exposure was 460 μg/m³-yrs (range 260-721). The other five workers had a mean CdU level of 20.8 μg/l (range 12.6-26.2) and mean cumulative exposures of 5982 (1965-8382).

TABLE V-15.—MEAN CADMIUM IN URINE AND BLOOD LEVELS AMONG 10 WORKERS WITH ELEVATED BETA 2 MICROGLOBULIN LEVELS BY CUMULATIVE CADMIUM EXPOSURES

Number of workers	CdU (μg/l)	CdB (μg/l)	Cumulative exposure [1]
5	<10	11.0 (2.5-13.8)	450 (250-721)
5	<10	20.8 (12.6-26.2)	5892 (1965-8382)

[1] μg/m³-years.

Toffoletto et al. concluded that if CdB and CdU levels are kept constantly below 10 μg/lwb or 10 μg/l urine, the prevalence of kidney dysfunction measured by elevated levels of β_2-M would be below three percent. However, five workers in this study (5.9%) with a mean exposure of 460 μg/m³-yrs (or 10.2 μg over a 45-year working lifetime) had elevated β_2-M levels above 260 μg/l.

viii. *Buchet et al., (Ex. 8-201).* The renal function of workers occupationally exposed to cadmium (n=146) was compared with that of workers with no occupational exposure to heavy metals (n=88). The exposed and control populations were employed in two cadmium smelters in Belgium. In order to be a control subject, the worker had to fulfill several conditions: all levels of CdU had to be below 2 μg/g Cr; in the judgement of the plant physician, the worker had to have no occupational exposure to cadmium; and the controls belonged to the same socioeconomic class as the exposed workers.

Five-hour urine samples were collected from the workers while at work. Urine was pH adjusted and samples for β_2-M analyses were frozen

at −20 °C. The concentration of β_2-M was measured by radioimmunoassay using the Phadebas β_2-microtest kit developed by Pharmacia Diagnostics.

Descriptive characteristics of the exposed and control groups are included in Table V-16.

TABLE V-16.—DESCRIPTIVE CHARACTERISTICS OF CADMIUM EXPOSED WORKERS AND CONTROLS

Parameter	Controls	Exposed
Number	88	148
Age (years)	38.6	48.5
Duration of Employment (years).	8.4	15.4
Mean Level of Cadmium in Urine (μg/100 creatinine).	0.88	15.76
Mean β_2 in Urine (μg/gr creatinine).	71 (for N=87 workers).	799
Prevalence of Kidney Dysfunction Based on β_2>200 μg/gr Cr (percent).	6.8	[1] 18.2

[1] $p<0.025$

Renal dysfunction was defined by elevated levels of β_2-M above 200 μg/g Cr, among other definitions. The prevalence of renal dysfunction was significantly different between exposed workers and controls. The prevalence of abnormal results was not different between smokers and nonsmokers.

Buchet concluded that excessive exposure to cadmium increased the urinary excretion of both low and high molecular weight proteins and of tubular enzymes. These changes were mainly observed in workers excreting more than 10 μg Cd/g Cr or with CdB levels above 10 μg Cd/lwb. However, among workers whose CdU levels were consistently below 2 μg Cd/g Cr, controls, and among workers whose CdU levels were between 2–9.9 μg Cd/g Cr, the prevalence of kidney dysfunction was six percent. The prevalence of kidney dysfunction among workers whose CdU levels were between 10–19.9 μg Cd/g Cr and >20 μg Cd/g Cr was 15 and 40 percent, respectively.

ix. *Summary.* The eight studies reviewed above demonstrate a consistency in the levels of biological parameters associated with renal dysfunction. In all but one study by Laywerys, kidney dysfunction was found in workers whose cadmium in urine exceeded 10 μg Cd/g Cr.

The NIOSH Health Hazard Evaluation found modest elevations in low and high molecular weight proteins in the urine of workers whose CdU levels exceeded 10 μg/g Cr. It demonstrated that subclinical effects such as significant increases in mean levels of urinary tubular enzymes, NAG and alanine aminopeptidase (AAP), are apparent in cadmium-exposed workers with CdU levels above 10 μg/g Cr compared to those below this level.

Lauwerys (Ex. 8–718) concluded from his study that workers whose exposure is such that CdU levels never exceed 15 μg/g Cr would not develop kidney lesions. Roels (Ex. 57–K) concluded that on the basis of the interrelationships among levels of cadmium in liver, kidney cortex, and urine, it can be concluded that the probability of developing cadmium-induced renal dysfunction in male cadmium workers appears to be very low when the critical CdU level of 10 μg/g Cr is not regularly exceeded. This CdU level corresponded to an average cadmium body burden of 160–170 mg. In his 1989 paper, Roels (Ref. in Ex. 149; also Ex. 12–38–A) concluded that his study indicated that the age related decline of the baseline and maximal GFR is exacerbated in the presence of cadmium induced microproteinuria. The investigation supports Roels' previous estimate of the threshold effect concentration of CdU (10 μg/g Cr), which is intended to prevent the occurrence of microproteinuria in cadmium exposed male workers. Roels noted that this conclusion, however, may not be extrapolated to the general population because there are indications that in an occupationally active male population, the influence of the healthy worker effect may lead to an underestimation of the risk of cadmium for other groups of the general population.

Bernard and Lauwerys (Ex. 35) concluded that the results of their study demonstrated that a low or high molecular weight proteinuria is likely to develop in ten percent of exposed subjects when the concentration of the metal in renal cortex reaches about 200 ppm. The corresponding critical levels in urine and blood have been estimated at 10 μg/g Cr and 10 μg/lwb, respectively.

Toffoletto (Ex. 19–43–A) concluded that if CdB and CdU levels are kept constantly below 10 μg/lwb or 10 μg/l urine, the prevalence of kidney dysfunction measured by elevated levels of β_2-M would be below three percent. However, five workers in this study (5.9%) with a mean exposure of 460 μg/m³-yrs (or 10.2 μg over a 45 year working lifetime) had elevated β_2-M levels above 260 μg/l.

d. *The biological significance of cadmium-induced kidney dysfunction.* Prolonged exposure to cadmium may lead to glomerular proteinuria, glucosuria, aminoaciduria, phosphaturia, and hypercalciuria (Exs. 8–086b: 4–28; 14–18, p. 157). These conditions are indicated by excess urinary amino acids, glucose, phosphate, or calcium, respectively. Each of these elements are essential to life, and under normal conditions their excretion is regulated by the kidney. Once low molecular weight proteinuria has developed, however, these elements may dissipate from the body. Loss of glomerular function may also occur, indicated by a decrease in the glomerular filtration rate and an increase in serum creatinine. Severe cadmium-induced renal damage may develop into chronic renal failure and uremia at which point some form of dialysis or kidney operation will be needed (Ex. 55).

Kidney dysfunction persists for years even after cessation of exposure. Loss of calcium and phosphorus may contribute to the increased risk of kidney stones observed in workers. Even in his early study of cadmium workers, Dr. Friberg noted renal stones as a common finding among cadmium-exposed workers (Ex. 4–29). Dr. Friberg testified that, in his opinion, kidney stones are a serious sequelae to cadmium-induced renal dysfunction. He and others originally thought that the increased prevalence of kidney stones observed in his studies was confined to Sweden, But later, the increased prevalence of kidney stones was observed in England, and in the U.S. Kidney stones, according to Dr. Friberg, is a very serious disease and is also a sign of a more generalized disorder of the mineral metabolism in the kidney (Tr. 6/6/90, p. 106).

Others held a different opinion about the prevalence of kidney stones among cadmium-exposed workers. For example, Dr. Spang stated that kidney stones are common in the general population of Sweden (20% in men and about 5% in women), and although he observed cases of kidney stones among cadmium-exposed workers, he did not know if the prevalence was different from that of the general population (Exs. 80; 81).

Cadmium may also precipitate clinical osteopathy in persons with inadequate dietary calcium intake (Ex. L–140–50). Diets low in vitamin D and calcium may be a contributing factor to sequelae subsequent to cadmium-induced renal dysfunction.

There are at least two hypothesized scenarios by which cadmium-induced tubular proteinuria can cause other adverse health effects (Ex. 8–086). Under the first of these, cadmium-associated tubular dysfunction causes damage to the production of biologically active metabolites such as vitamin D which occurs primarily in the kidney. Under

the second scenario, cadmium may cause atrophy of the gastrointestinal tract thereby reducing its ability to absorb essential elements such as calcium and phosphates. If both scenarios are true, it would lead to loss of essential elements and poor absorption of other minerals to replace those lost.

The gravity of cadmium-induced renal damage is compounded by the fact that there is no medical treatment to prevent or reduce the accumulation of cadmium in the kidney. Dr. Friberg has testified that there is currently no form of chelating agent that could be used without substantial risk (Ex. 29). In contrast to other heavy metals, current chelation therapy does not reduce the body burden of cadmium without producing significant renal damage. When chelated cadmium arrives in the kidneys, the cadmium may still be toxic to renal cells. Thus, large amounts of cadmium may move from the liver or muscle storage sites, overwhelm the kidney's usual attempts to store cadmium in a less toxic form, and accelerate deterioration of renal function.

The kidney cortex contains about three million nephrons. Dr. Goyer testified that:

> * * * a young, healthy adult uses about half of these * * * as * * * their function is lost because of old age or * * * diseases * * * the number of these that are functioning through life continually decreases * * * (Tr. 6/6/90, p. 124).

OSHA believes that the loss of function of the proximal tubules as indicated by tubular proteinuria, elevated levels of β_2-M in the urine, constitutes material impairment of health.

OSHA acknowledges that the significance of the dysfunction as evidenced by elevated levels of β_2-M in the urine is controversial. Part of this controversy arises from the fact that a worker with elevated levels of β_2-M may not experience any symptoms, and although tubular dysfunction can be determined through medical testing, it usually does not manifest itself at first with overt symptoms.

Dr. Goyer testified that the confusion over the interpretation of pathological significance of elevated levels of β_2-M stems from the fact that injury to the tubuli ultimately affects the functioning of the glomerulus. According to Dr. Goyer, the confusion lies in part in the fact that cadmium's earliest effect is primarily in the tubule, while kidney function is usually measured in the glomerulus (Tr. 6/6/90, pp. 126–127).

While most physicians would agree that glomerular effects and loss of GFR must be taken more seriously than a slight elevation in β_2-M in urine, the finding of elevated levels of low molecular weight protein in the urine by itself indicates kidney dysfunction in the tubule. As Dr. Friberg stated in his testimony, each part of the nephron is dependent on every other part of the nephron. It is his expectation that if one part of the nephron suffers damage it is more likely that another part will suffer damage (Tr. 6/6/90, pp. 107–106). Ultimately then, cadmium-related tubular effects will be manifested as an effect on the function of the glomeruli, either subsequently to or in association with the onset of tubular proteinuria.

Because of the functional reserve of the kidney, the adaptive increase in a single nephron's glomerular filtration rate, after total or partial loss of other damaged nephrons, tends to obscure injury until a considerable amount of the functional elements of the kidney, the parenchyma, is irreversibly lost. This implies that under normal conditions, the basal GFR is submaximal. If as has been suggested, glomerular balance is very tightly maintained, reduction of tubular function may have repercussions on the glomerular level (Ex. 149). Early changes in glomerular function are not necessarily detectable by the measurement of basal GFR, but such changes may have a significant impact on health (Ex. 149). In a study by Roels (Ex. 149) it was found that a renal cadmium burden that had not yet caused microproteinuria did not impair the filtration reserve capacity of the kidney, but the age related decline of the baseline and maximal GFR is exacerbated in the presence of cadmium induced microproteinuria.

Not all participants in the rulemaking agreed that elevated levels of β_2-M signified material impairment of health. Mr. Ken Storm, Senior Industrial Hygiene Specialist with Monsanto, stated that elevated levels of β_2-M may reflect a temporary or permanent change in renal function and tubular proteinuria may result from a biochemical lesion of no clinical significance. According to Mr. Storm, tubular proteinuria would be more appropriately viewed as an early indicator of pre-clinical effects and not, in and of itself, as a material impairment of health. Mr. Storm stated that the intent of OSHA to avoid tubular proteinuria is inappropriate because, in his opinion, tubular proteinuria is not a material impairment of health (Ex. 19–14).

Mr. Storm stated furthermore that urinary β_2-M and other biological indicators of early tubular dysfunction, such as n-acetyl-d-glucosaminidase (NAG), are nonspecific indicators of tubular proteinuria. Their presence may indicate past excessive cadmium exposure, exposure to another renal toxin, or loss of renal function due to the normal process of aging or other natural causes (Ex. 19–14).

Studies indicate that age alone cannot account for the excess of β_2-M observed in cadmium-exposed workers. Kowal et al. (Ex. 8–642) evaluated the levels of β_2-M in nonoccupationally exposed populations in the United States and found that the average level in the oldest group studied (107 μg β_2-M/l urine) was only marginally higher than the average level in the groups between age 20 and 70 (69 to 84 μg β_2-M/l urine) (referenced in Ex. 8–068–B). In addition, also, several researchers such as Dr. Elinder evaluated the prevalence of β_2-microglobulinuria by age among occupationally exposed populations and concluded that age was not an important confounding factor (Ex. L–140–45).

The specificity of β_2-M in urine as a marker of cadmium-induced kidney dysfunction is well established. The only other renal toxins or medical conditions which lead to elevated levels of β_2-M are anti-cancer drugs, aminoglycosides (antibacterial antibiotics such as streptomycin), anti-inflammatory compounds, and upper respiratory infections (Dr. Friberg, Tr. 6/6/90, pp. 108–109; Ex. L–140–1). As Michael Thun, M.D., Assistant Vice President for Epidemiology and Statistics at the American Cancer Society testified:

> Low molecular weight proteinuria * * * does occur from other conditions but it's uncommon * * * part of the reason why the (kidney) data are so consistent is that the studies use a rather specific marker of cadmium renal effects * * *. (Tr. 6/7/90, p. 174)

Dr. Bond, medical consultant to SCM Chemicals, testified that:

> * * * no histological abnormalities [are] seen in the proximal tubules * * * when there has been modest increase in urinary B2MG and Cd * * * (people with) * * * mild to moderate increases in urinary B2MG and Cd do not progress to renal failure if there are no other causes present such as infection, diabetes, etc. (Ex. 77)

Dr. Friberg, however, stated:

> It should be emphasized that tubular proteinuria may be accompanied by specific histological changes. Sometimes such changes have been reported before the functional changes. There are abundant data from animal studies showing early histological changes (Ref. by Kjellstrom, 1986, pp. 38–43). Experiments from humans are more limited as only a small number of autopsies or biopsies are available. To the

extent available, histologic changes were seen first of all in the proximal tubules (Ref. by Kjellstrom, 1986, p. 50–53). (Ex. 29).

Morphological changes are those that pertain to the form or structure of the organ. Histological changes are those that pertain to the minute structure, composition, and structure of the tissue of the organ. Twenty-three workers were evaluated for whom autopsy or biopsy data on morphological changes in the kidney were available (referenced in Dr. Friberg's written testimony). Of these, 18 workers had proteinuria. Of the 18 workers with proteinuria, all but three had morphological changes in their kidneys. There were no cases of workers with morphological changes without proteinuria (Ex. 144–3, p. 53). In five of the autopsy reports, the morphological changes in the kidneys were mainly confined to the proximal tubules, whereas the glomeruli were less affected.

These results demonstrate that functional changes in the kidney can occur before the microscopic structure of the kidney is severely damaged. The human data on pathological changes are limited, however, and animal data show that in some studies, morphological changes in the tubules emerge before measurable proteinuria. In the absence of a better test, however, it appears that the use of proteinuria as a screening tool for morphological changes in the kidney will identify all cases of workers with histological or morphological changes in kidney tissue as well as identifying those with only functional changes. These results also show that elevated levels of β_2-M in urine indicate kidney lesions of clinical significance (Ex. 19–14). While a worker with elevated levels of β_2-M in the urine may not manifest any overt symptoms of illness, nonetheless, the tubuli and glomeruli have lesions that compromise the functioning of the kidney as a filtration mechanism. Any other minor kidney trauma may progress rapidly to serious kidney damage.

It is clear from the testimony of world experts that elevated levels of β_2-M should be considered to signify material impairment. Dr. Friberg testified that:

> * * * the beta-2 microglobulin proteinuria * * * should be regarded as an adverse effect * * * predictive of an exacerbation of the age related decline of the glomerular filtration rate * * * the proteinuria in cadmium poisoning is irreversible and is predictive of more severe effects even if the worker is removed from further cadmium exposure * * * It is true that an increased excretion of low molecular weight proteins can be a very early indicator of kidney dysfunction. That's not immediately of the same clinical importance as an overt renal disease. Nevertheless, it is irreversible and the beginning of a process which has a high probability to lead to a progressive disease, a decrease in the glomerular filtration rate which clearly is a serious effect that easily may lead to overt disease. When discussing the kidney damage from cadmium, it is important that we make it clear that we are talking about serious, but often insidious effects on vital organs. The kidney has a considerable reserve capacity but once this is consumed symptoms may appear in swift succession and the condition of the patient then deteriorates rapidly, and the infection or other, in itself trivial disorder, could be a triggering mechanism. It is our responsibility to prevent this situation even among a small proportion of workers. (Tr. 6/6/90, pp. 73, 82, 86).

According to the American Conference of Governmental Industrial Hygienists (ACGIH):

> Persons excreting 290 μg/L B_2-microglobulin are not disabled; indeed they will not experience any symptoms. However, the lesion (from tubular proteinuria) is irreversible and represents a permanent loss of functional reserve. An infection or other condition which compromises renal function, but which would not normally lead to serious illness, could overwhelm the remaining kidney capacity. (Ex. 8–644)

Dr. Kazantzis did not agree with these positions. He testified that in his opinion, tubular proteinuria alone is not accompanied by any specific histological change, that its pathological significance is unclear, and that renal stone formation has been rare in cadmium workers in recent years (Ex. 19–43A). Dr. Kazantzis stated, however, that in a:

> * * * small proportion of long-term heavily exposed cadmium workers, tubular proteinuria has been followed by renal glycosuria, abnormal aminoaciduria, phosphaturia, and hypercalcuria. (Exs. 80; 81)

Dr. Kazantzis continued that progressive decline in renal function is a slow process in workers with cadmium-induced nephropathy and that this decline is unlikely to progress to an increased mortality from chronic renal disease. In support of his opinion, he cited his study (Ex. 8–603) in which approximately 7000 cadmium-exposed workers with more than one year of cadmium exposure between 1942 and 1970 were followed up to 1979 (Ex. 8–684). He found an SMR of 65 for all deaths coded as nephritis and nephrosis; the five year update showed an SMR of 85. One worker classified as being in the "ever high" exposure subgroup died from nephritis and nephrosis.

Dr. Elinder indicated, however, that most workers in Dr. Kazantzis' study had such low cadmium exposures that cadmium-associated illnesses would not be induced (Ex. 4–25). By combining 199 workers with high exposures into a group with over 6000 workers with low exposures into one group, the power of the study to find an effect was reduced. Increased mortality from chronic nephritis and nephrosis has been observed in Swedish battery workers (Exs. 4–68 and 8–740). The difference between expected and observed deaths in the Kazantzis study may well be due to local differences in recording certain types of information on death certificates.

Three other epidemiological studies of cadmium exposed workers have shown increased mortality from kidney diseases, genito-urinary tract diseases, or kidney cancer. Thun observed an elevated SMR for genito-urinary cancer (SMR=135, Obs=6) in his total cohort (Ex. 4–67); Dr. Elinder (Ex. 4–25) reported an elevated SMR for genito-urinary diseases in his total cohort (SMR=300, Obs=3.0); and Holden et al. (Ex. 4–39) observed an elevated SMR for genito-urinary cancer in his total cohort (SMR=122, Obs=4.0). Because the number of excess cases in each study is too small to make these findings statistically meaningful, the relationship between cadmium exposure and risk of death from kidney dysfunction is not clear. These three mortality studies, however, provide consistent evidence of excesses of kidney illnesses among cadmium-exposed workers. This suggests the possibility that, at least in some cases, cadmium-induced kidney dysfunction may be associated with excess death.

Death from nephritis, nephrosis or end-stage renal disease is rare. Accurate death rates from kidney disease are difficult to ascertain, in part because such illnesses are uncommon and in part, because they are dramatically underreported by at least 50% [personal communication 4/30/92, National Institute of Diabetic, Digestive and Kidney Diseases]. Dr. Thun indicated that impaired renal function is frequently underreported on death certificates even when the disease is sufficiently severe to require chronic hemodialysis (Modan referenced in Thun; Ex. 4–68). Under-reporting results because deaths from these diseases are coded as deaths due to complications arising from the treatment of these diseases or from sequelae to these diseases such as heart attack, stroke or diabetes.

Treatments for severe kidney diseases such as dialysis or a kidney transplant are available for those who can afford them. As Dr. Friberg indicated, several of his own patients had cadmium-induced uremia and died. If they had

had the opportunity for dialysis or renal transplant, they could have been saved (Ex. 29). Such treatments, however, are grave, especially considering that early forms of kidney dysfunctions can be detected and more serious diseases can be prevented.

An additional part of the controversy over the significance of tubular proteinuria is the question of whether it is a reversible effect. In response to this question, Dr. Goyer, citing a study in Japan, stated that half of the people with β_2-M levels in the range of 500 to 1,000 μg/g, followed for five years, do not show signs that their disease is reversible. Dr. Goyer testified that indeed, "The disease progressively gets worse * * * (Tr. 6/6/90, p. 136)." Dr. Friberg testified that:

> The continuous release of cadmium from the liver, also after end of the exposure, means that the accumulation of cadmium will take place in the kidneys for a long time after end of exposure. This was shown in animal experiments as early as 1957 by Gunn and Gould * * *. Similarly, there is much data showing that the proteinuria in chronic cadmium intoxication is irreversible * * * two studies from Belgium * * * show beyond doubt that several years after removal of the worker there is either an increase of low molecular weight proteins in the urine or no change at all. There is also an indication that all the subjects with normal levels of beta-2 microglobulin in urine one year before removal can get pathological values * * * a few years later. (Tr. 6/6/90, pp. 74–75)

The main studies referred to by Dr. Friberg were five-year updates on workers who had been medically removed from occupational exposures due to cadmium nephrotoxicity (reviewed by Bernard and Lauwerys, Ex. 35, Roels, Ex. 12–57K). Among male workers who had been removed from cadmium exposure because of elevated urinary excretion of β_2-M, RBP, or albumin, the evidence was that kidney dysfunction increased significantly over the five year period. Once it has appeared, Drs. Bernard and Lauwerys concluded, cadmium-induced proteinuria is in most cases irreversible. Bernard and Lauwerys demonstrated that proteinuria slowly progresses. Despite their finding that this evolution was slow, the authors concluded that the onset of proteinuria should be considered to be an adverse health effect, since such cadmium nephropathy may progress to renal insufficiency.

Dr. Bond stated that the clinical significance of slight increases in urinary β_2-M (for example, 350 μg/l) is uncertain, but that a repeated finding of β_2-M levels twice that of normal would more likely reflect a permanent effect, based on his experience and the literature. (Tr. 7/18/90, p. 169) Dr. Bond also agreed that cadmium-induced proteinuria must be prevented or minimized in order to prevent material impairment of health (Tr. 7/18/90, pp. 150–258, 175–176). About 20% of the cadmium workers that Dr. Bond has medically evaluated have elevated β_2-M levels. Dr. Bond removed two of these workers from cadmium exposure in 1986 when their β_2-M levels in the urine were 3000 to 5000 μg/l. Annual testing after removal indicated that urinary β_2-M and cadmium levels did not decline appreciably. Dr. Bond stated that in his opinion, these two workers are not sick based on results from tests of their level of serum creatinine and alpha phosphatase which measure kidney function (Tr. 7/18/90, pp. 189–191). Dr. Bond did indicate, however, that he was "concerned" about the welfare of these two individuals because he did not know if they were likely to develop any further problems. (Tr. 7/18/90, p. 229)

According to Jarup et al (Ex. 8–661) during the ten-year period of follow-up in his study, none of the cases of elevated β_2-microglobulinuria (greater than 310 μg β_2- M/g Cr) discovered in the high dose groups were reversible. The authors concluded that it was unlikely that any of these cases of tubular proteinuria would disappear after such a long follow-up time and that it was quite possible that more cases of tubular proteinuria would develop with a longer follow-up.

It is clear from the record of the rulemaking that despite some controversy, there is general agreement that renal tubular and glomerular lesions represent permanent loss of kidney functional reserve and that the lesions are irreversible. A worker who does not experience overt symptoms of illness may succumb to other illnesses more rapidly. An infection or other condition which would not normally lead to serious illness but which compromises kidney function could overwhelm the remaining kidney capacity (Ex. 8–644). A worker who has only slightly elevated levels of β_2-M in urine may later develop proteinuria, even after cessation of exposures, or the worker may develop more severe forms of renal dysfunction. Such dysfunction is of great concern to OSHA. Renal compromise, described above, meets the definition of material impairment as intended in the OSH Act and as defined in this final standard (sec. 6(b)(5)).

e. *The renal effect of cadmium pigments and other less soluble forms of cadmium—A review of the literature and comments.* OSHA received substantial comment on the renal toxicity of insoluble cadmium compounds, particularly cadmium pigments (Exs. 19–42–A; 19–14). "Solubility" is the process by which one substance is dissolved in another and is separated into its components by chemical action. Some cadmium compounds like cadmium oxide and cadmium sulfide, are relatively less soluble than others such as cadmium chloride and cadmium sulfate. It has been hypothesized that less soluble compounds may be less bioavailable than more soluble compounds and therefore less toxic. "Bioavailability" of cadmium compounds refers to the degree to which cadmium becomes available to the target tissue after exposure.

Several commentors and hearing participants were of the opinion that insoluble cadmium compounds are less toxic to the kidney (Exs. 19–42–A; 19–41; 14–14). For example, according to the Society of Plastics Industries (SPI), a trade organization of more than 2000 members representing all segments of the plastics industry, the health effects associated with cadmium have been observed when exposure has been to compounds that are not typically used in the coloration of plastics (Ex. 19–41). SPI also stated that a variety of animal studies indicate that cadmium sulfide and other similar cadmium-based pigments are significantly less bioavailable than other cadmium compounds. They cited the Agency for Toxic Substances and Disease Registry's (ATSDR) Toxicological Profile for Cadmium (1989) to support their position:

> The toxicity of cadmium depends on the chemical and physical forms of the element. In general, soluble compounds * * * are better absorbed and hence more toxic than highly insoluble forms * * *. Studies described here are focused mainly on cadmium oxide or cadmium chloride, and the results cannot be applied equally to all other cadmium compounds (ATSDR, as quoted in SPI Ex. 19–41, p. 6).

In a written submission to the record, Richard Bidstrup, Counsel for SCM Chemicals, Inc., also supported such a position (19–42A). He argued that cadmium pigments are less soluble and less bioavailable, and thus less toxic to the kidney. He noted that toxicity to the kidney from cadmium pigments is one to three orders of magnitude less than for other forms of cadmium and that:

> * * * these results are consistent with the mechanistic and solubility data indicating that cadmium ions—the toxic agent of concern—are much less bioavailable from cadmium pigments than from other forms of cadmium. (19–42A)

Mr. Bidstrup, on behalf of SCM, and other commentors (Ex. 19–42–A), cited

separate studies performed by Miksche, Feitz, and Greenberg as sufficient evidence of lower renal toxicity of pigments. These studies are reviewed in more detail below.

i. *Miksche (Ex. 12-10-E).* In this study published in the Proceedings of the Third International Cadmium Conference, Miami, 1981, by the Cadmium Association, Cadmium Council, and Ilzro, Inc., the effect of cadmium exposure on health was evaluated in a group of 36 workers involved in cadmium pigment production and 21 workers involved in acrylonitrile-butadiene styrene (ABS) plastics production. The location of the facilities was not indicated.

Concentrations of CdB and CdU, and β_2-M levels in urine were available from periodic medical surveillance examinations conducted since 1980. The β_2-M in urine was measured using the Phadebas radioimmunological method developed by Pharmacia. Measurement was either completed on the day of urine sampling or the samples were frozen immediately and kept at—20° C until the analysis was performed; sample pH levels were not presented.

The 36 workers in the cadmium pigment production plant had an average of 11.75 years of employment (range of 1 to 32 years). The average air concentrations reported were for 1977, 1979, and 1980 as 50 $\mu g/m^3$, 30 $\mu g/m^3$, and 30 $\mu g/m^3$, respectively. Among the 21 plastics production workers engaged in the application of cadmium pigments, the average length of employment was 11.3 years (range of 4 to 15 years). No exposure levels were reported for this latter group of workers. Miksche indicated that an age-matched control group of workers without occupational exposure to cadmium was used for comparisons with the group of pigment applicators. The results from this study are in Table V-17.

TABLE V-17.—CADMIUM CONCENTRATIONS IN BLOOD AND URINE AND BETA 2 MICROGLOBULIN CONCENTRATIONS IN URINE OF WORKERS IN PIGMENT PRODUCTION OR APPLICATION

Group	Number	CdB [1]	CdU [2]	β_2-M U [3]
Pigment production	36	10.3±2.4 (2–36)	8.78±2.18 (0.5–38)	77.35±22.36 (17.6–304)
Pigment application	21	1.345±0.29 (0.4–3.0)	1.54±0.29 (0.4–3.1)	
Control for pigment applicators			1.26±0.26 (0.2–3.0)	

[1] Mean cadmium in blood level [(Mean±2SEM, or standard error of the mean) and range], µg/liter whole blood.
[2] Mean cadmium in urine level [(Mean±2SEM, or standard error of the mean) and range], µg/gram creatinine.
[3] Mean Beta 2 microglobulin in urine, µg/gram creatinine, [(Mean±2SEM, or standard error of the mean) and range].

Miksche reported no indications of elevated levels of β_2-M among the exposed workers. Mean levels of CdB and CdU among the pigment production workers were above 10 µg/lwb and 5 µg/g Cr respectively which are the levels judged normal by other researchers (e.g. Ex. 29). Miksche reported finding no correlation between β_2-M levels in urine and concentration of cadmium in air. Little exposure data were provided, however, to evaluate this conclusion. The only exposure data reported were the average air concentrations for three years while the study covered 32 years of time during which some of the production workers were potentially exposed. In addition, information on the intermittency of the exposures at these facilities or on the degree of respirator usage was not provided.

ii. *Fietz et al, (Ex. 12-10-F).* The study by Fietz, published in the Proceedings of the Fourth International Cadmium Conference, Munich, 1983, by the Cadmium Association, Cadmium Council and Ilzro, included 67 workers engaged in the production of cadmium pigments and 32 workers engaged in the further processing of those pigments. The location of the plants was not provided. Data for the study were provided by the company(ies) from occupational health screening reports and company exposure monitoring data. Among the information on biological parameters included in the medical evaluations were levels of CdB, CdU, urine creatinine and β_2-M in urine. β_2-M in urine was measured using a Phadebas test. Normal or "tolerable levels" for these biological markers were selected based upon principles laid down in BG Principle G 32 (referenced in Fietz). These levels were: CdU < 17 µg/g Cr, CdB < 15 µg/lwb (BAT); and β_2-M < 300 µg/l urine. According to the authors, smoking data were not analyzed since there were no differences observed between smokers and non-smokers.

Sampling for airborne exposures included both personal and area samples. Air measurements were maximum short-term exposures for a duration of 30 minutes to two hours. Critical workplaces were measured more frequently than noncritical workplaces.

Workers in the study were placed into five different categories based on the type of jobs performed within a specified area. Groups I through III were involved in pigment manufacturing (e.g. raw material mixing, combustion, washing, drying and finishing). Groups IV and V were involved in pigment use and/or processing (e.g. paint formulation and pigment mixing). The authors indicated that exposure to cadmium pigments comprised about half of the working time for each worker. Two subgroups of workers were also identified: Group A included those who, on average, had worked more than ten years, and Group B included workers who, on average, had worked four years.

The average exposures per year were provided, for the time period from 1978 to 1982. Exposures to cadmium for groups I-III ranged from 14 to 201 $\mu g/m^3$, with the levels decreasing over time. Some workers in groups I and III had higher exposures, ranging from 175–1336 $\mu g/m^3$, but the authors stated that respirators were required for these workers.

For group IV, the exposure level was estimated to be 20 $\mu g/m^3$ in 1981 and 39 $\mu g/m^3$ in 1982. For Group V, only the exposure levels for 1982 were given, ranging from 0.5 to 10 $\mu g/m^3$. These values were much lower than those found in pigment production/manufacturing.

The β_2-M excretion among workers in pigment production is indicated in Table V-18. The levels of CdB and CdU among workers in pigment production are indicated in Table V-19.

TABLE V-18.—β_2-MICROGLOBULIN EXCRETION OF WORKERS IN PIGMENT PRODUCTION AVERAGE LEVELS OF β_2-M IN URINE (μg/GRAM CREATININE)

Groups	1979	1980	1981	1982	Mean
I-A	99.3	48.9	29.5	78.3	64.0
I-B	28.0	43.9	30.9	51.1	39.4
II-A	103.1	146.6	116.24	220.8	128.3
II-B	51.2	31.0	23.4	50.3	37.8
III-A	727.0	457.0	67.15	47.8	279.8
III-B	53.6	79.5	38.2	33.6	50.6

TABLE V-19.—LEVELS OF CADMIUM IN BLOOD AND URINE AMONG WORKERS IN PIGMENT PRODUCTION AVERAGE LEVELS OF CADMIUM IN BLOOD (μg/LITER WHOLE BLOOD) and CADMIUM IN URINE (g/GRAM CREATININE)

Group	Cadmium in blood					Cadmium in urine				
Year	1978	1979	1980	1981	1982	1978	1979	1980	1981	1982
IA	20	15	11	7	7	5.0	9.2	10.9	9.1	8.4
IB	12	8	9	7	9	4.6	5.4	7.1	6.4	6.3
IIA	19	19	13	14	16	16.2	15.2	14.1	10.0	12.7
IIB	8	7	5	5	6	4.3	3.2	3.1	3.1	3.1
IIIA	16	13	10	9	8	7.6	10.0	12.2	6.9	8.5
IIIB	11	9	6	8	8	4.4	4.1	5.3	4.8	4.5

CdU and β_2-M levels were higher in the production workers, Groups I-III, than for pigment users with lower exposures (Groups IV-V). According to Fietz, workers in Groups IV and V had levels of CdB, CdU and β_2-M in urine that corresponded to the levels of unexposed normal groups, but these levels were not given.

Each worker in Group A received greater exposure which was evident from their higher CdB, CdU and β_2-M levels. The CdU levels of workers in Group B were considered to be tolerable levels, based on the criteria stated above. On the basis of these limits, seven production workers had to be removed to a cadmium free workplace as a precaution against further damage.

The authors concluded that the study showed that the use of technical measures such as exhaust ventilation, sealing of machines, enclosure of sources of dusts and consistent use of respirators can reduce the cadmium air levels and the harmful effects from cadmium. The results from the study, however, are limited for evaluating whether the low levels of cadmium and β_2-M in the urine observed in the pigment users were the result of the lower absorbability of cadmium pigments or lower cadmium air concentrations.

iii. *Greenberg et al. (Ex. 12-10-G).* The Greenberg study was a follow-up study of 38 workers exposed to both lead and cadmium during the manufacturing of pigments and vitreous enamels. The follow-up was performed in two phases, one in Pittsburgh and one in Cleveland. The results of this study were published in the Archives of Environmental Health, in 1986.

In the Pittsburgh phase of the study, all workers at the plant were contacted through their union representatives, and over a seven month period, a total of 44 workers (40%) volunteered for admission to the Clinical Research Unit of the University of Pittsburgh School of Medicine. During a three day in-patient stay, detailed work and exposure histories were obtained, a physical examination was performed, and detailed laboratory studies were undertaken. Subjects were considered smokers if they had ever regularly smoked.

The second phase of the study was performed at the Cleveland work site during a single session two to nine months after the Pittsburgh hospitalization. Workers who participated in the Pittsburt phase of the study were evaluated for tibia lead content by x-ray fluorescence and for liver and kidney cadmium content by neutron activation.

In order to evaluate renal function, urine was collected for determination of 24 hour creatinine, β_2-M, and cadmium excretion. The normal value for β_2-M was set at $\leq$370 μg/24 hour sample. CdU concentrations greater than 5 μg/l and CdB levels greater than 7 μg/lwb were considered to be abnormal (Tsuchiya, referenced in Greenberg). Total urinary protein levels were considered to be abnormal if the levels exceeded 150 mg/24 hour. Maximal urine concentrating ability after an 18 hour water deprivation was determined to establish abnormal urinary osmolality (>800 mOsm/kg).

As part of the renal function tests performed for these workers, minimum urine pH was determined. This test was performed using the oral administration of ammonium chloride (Wrong and Davies, referenced in the paper). Normal pH, as stated in the paper, was less than 5.4. Urine pH was not reported for the urine samples used in the determination of β_2-M levels, but the normal level achieved during renal function testing, pH<5.4 in 30 of 31 workers tested, is a level at which β_2-M in urine will degrade. It is unclear whether the ammonium chloride test interfered with the accuracy of urinary β_2-M determinations.

As part of the preliminary screening, environmental exposures to cadmium and lead were determined by measurement of airborne concentrations of the two metals in personal and area air samples. For the 38 workers who provided such data, the average length of employment reported was 20.7 years (11 to 37 years). Cadmium air levels were reported as "single measurements" with a range of 0 to 384 μg/m^3. The mean airborne level of cadmium in maintenance departments was reported as 5 μg/m^3. The mean airborne level of cadmium in "cadmium departments" was reported as 229 μg/m^3. The authors did not state whether these values were time weighted averages (TWA). The authors, however, did state that 31 percent of the values among all workers measured exceeded the NIOSH recommended level of 40 μg/m^3, which is a TWA.

Detailed work history information, reported by the workers during the

medical examinations in the hospital, was scored for exposure to cadmium or lead independently according to a protocol established by Greenberg. If a worker was never warned that his/her CdU or CdB levels were elevated as determined by plant safety officials or if a worker never worked in an exposure area, the worker was classified as having no exposure. Workers were classified as having light exposures if they had no elevated levels of CdU or CdB or they worked briefly or transiently in exposure areas. Workers were classified as having moderate exposures if their CdU or CdB levels were normal or moderately elevated, if more than half of their work time was spent in exposure areas, or if they were a smelter operator. Workers were classified as having heavy exposures if their levels of CdU or CdB were known to have been high, they had been removed from their job site because of elevated levels, and/or they were exposed to intense or prolonged exposure. For some workers, this information was unavailable and these workers were classified as having unknown exposure levels. Workers who were unable to recall warnings about levels of cadmium in blood or urine were classified as having been moderately exposed.

Owing to the long duration of employment and the plant policy of switching workers from one area to another, most workers had mixed exposure to both lead and cadmium processing areas. As a rule, subjects were unable to recall details of warnings about toxic blood urine lead or cadmium levels. Thus the bulk of subjects were classified as having moderate exposure to both metals.

The authors reported that normal kidney cadmium burdens were considered to be levels up to 8.6 mg for non-smokers and 12 mg for smokers. Normal liver concentrations of cadmium were up to 7.0 μg/g and 9.5 μg/g for these two groups, respectively. The authors considered that the critical value for renal cadmium content was 30 mg. Workers were classified according to smoking status since cigarette smoking constitutes a significant exposure to cadmium. The mean value of kidney burden for nonsmokers (7.4±4.4 mg) was significantly lower ($P<.02$) than the value of 12.3±7.2 mg for smokers. Four of 18 (22%) nonsmokers and 8 of 20 (40%) smokers had kidney burden values above normal. No subject had a kidney burden above the critical concentration of 30 mg.

The mean liver cadmium value in nonsmokers was 4.5±2.6 μg/g and was significantly lower than the 7.90±4.9 μg/g value of their co-workers who smoked ($p<.02$). Four of 18 nonsmokers (22%) and 5 of 20 smokers (25%) had liver cadmium levels above normal. No worker had a value for liver cadmium above 40 μg/g, the value at which it has previously been shown that renal cadmium levels are associated with renal damage.

Urinary cadmium concentrations averaged 3.4±3.7 μg/l and ranged from undetectable to 16 g/l. Three of 38 workers (8%) had elevated cadmium in urine concentrations. CdU excretions ranged from undetectable to 24.5 μg/24 hr (mean=6.43±7.7 μg/24 hr). CdB levels ranged from below the 1 μg/lwb detection limit to 9 μg/lwb. If the undetectable values were taken to be 1 μg/lwb, the mean value was 3±2 μg/lwb. Three of 37 subjects (8%) had values above the upper limit of normal for CdB (7 μg/lwb). Three workers had elevated levels of β_2-M. Three workers had abnormal levels of total protein in urine.

The results of the qualitative dose-response among smokers are presented in Table V-20. It was not possible to perform a similar analysis in the nonsmokers because virtually all these workers gave a history of moderate occupational exposure.

TABLE V-20.—CADMIUM IN URINE LEVELS AMONG SMOKING WORKERS WITH INDUSTRIAL EXPOSURE TO CADMIUM PIGMENTS (GREENBERG, 1986)

Cadmium levels	Exposure history		
	High N=5	Moderate N=9	Low N=4
Liver (μg/g)	11.0±6.1	7.1±4.7	6.0±4.2
Kidney (mg)	17.2±9.4	13.3±6.0	6.4±2.5
Urine (μg/24hr)	[1] 11.2±8.7	[1] 6.6±4.1	1.2±1.7

[1] Significantly different when compared to low exposure group.

Few significant renal abnormalities were observed in this cohort of exposed workers. The prevalence of increased β_2-M or protein excretion was low; only six workers had an increase of one or the other and only two of these workers had excessive cadmium body burdens. When measured body burdens of cadmium were accounted for, however, it was not surprising that the evidence of renal dysfunction attributable to cadmium was low. The highest kidney cadmium burden in any of the subjects in the study was approximately 20 mg, a value below the 31–42 mg value that has been shown in previous studies to be the critical level for renal toxicity. A dose-response model used by these authors previously, according to Greenberg et al., would have predicted that less than five percent of the population in the present study should have abnormal urinary β_2-M or protein excretion. The authors stated that the relatively low renal burdens seem, therefore, to reflect low exposure conditions.

iv. *De Silva, (Ex. 8-716).* De Silva and Donnan conducted a study of past and present workers at a small cadmium-pigment manufacturing plant in Australia. Cadmium-in-air tests were conducted in July 1977. Personal samplers were worn for at least three shifts by each of the men working on the three main processes: Furnace work, crushing, and general duties and cleaning. The results indicated that all TWA exposures were greater than 1 mg/m^3, with about 50 percent of the dust in the respirable range. There was little difference in the exposures experienced by men carrying out different duties. The furnace operated almost continuously whereas exposure during other processes, general duties, milling, crushing, and cleaning, were intermittent. The furnace operation was usually carried out by the same two men whose CdB concentrations confirmed their heavy exposure (54 μg Cd/lwb and 24 μg/lwb).

The three most heavily exposed workers, the two furnace operators and a raw blend operator, experienced respiratory damage and symptoms of kidney dysfunction after only seven years of employment. The estimated weekly average total cadmium dust exposure of these workers was approximately 1.5 mg/m^3 for the furnace operators and approximately 2 mg/m^3 for the raw blend operator. For workers engaged in other duties, dusty work occupied about half their time, and their estimated weekly average total cadmium dust exposure was approximately 0.7 mg/m^3.

The levels of cadmium in blood and urine (CdB and CdU) were measured in the workers. Excessive absorption of cadmium was found in five of nine current workers. All five had CdU levels at or above 10 μg/l, and two, with CdU levels in excess of 25 μg/l, had proteinuria. Three older men, two past employees and the factory manager who had not been engaged in production work for at least ten years, were found to have elevated levels of CdU although exposure had ceased many years earlier. In all three of these cases, proteinuria was present.

Three current workers and the three older men had been employed in production at the plant for at least 7

years. Each of these men experienced chronic cadmium poisoning and showed signs of renal tubular damage. Two of the current employees, one of whom had severe symptomatic emphysema, were excreting more than 40 μg/day of cadmium, had protein in their urine, and had impaired ability to acidify and concentrate urine. The other current employee was excreting 22 μg/day of cadmium in urine, and although he was not passing proteins, there was evidence of damage to his kidney tubules. His respiratory function tests showed moderately severe emphysema. The plant manager who had not been exposed for over ten years was passing cadmium at the rate of 14 μg/day. He had proteinuria and decreased ability to acidify and concentrate urine. Another of the older employees had been examined for cadmium poisoning, and the third older employee had a mild defect in concentration and acidification of urine and a moderate obstruction of his airways.

None of the men with exposures for less than seven years showed symptoms when the initial study was conducted, although one worker did have a mild airway obstruction. When renal function tests were conducted on these workers some two and one-half years later, however, symptoms began to appear. One worker had a decreased ability to concentrate urine, although no proteinuria was detected, while another worker showed normal renal function but intermittent proteinuria. Exposures roughly equivalent to 78 $\mu g/m^3$ over a 45 year working lifetime (at 700 $\mu g/m^3$ for three to five years, or 3,500 $\mu g/m^3$-yrs for a maximum cumulative exposure) resulted in signs of cadmium poisoning not associated with clinical symptoms.

The results of this study indicate that kidney damage may occur even when concentrations of cadmium in urine are low (i.e. 15 μg/l) in workers with current exposure to cadmium. The authors suggest that if CdU levels exceed 15 μg/day, (the approximate equivalent of 15 μg/l), they should be regarded as unacceptably high, and should be kept below 15 μg/day to avoid the possibility of renal damage. In the case of the three people with past exposure to cadmium, cadmium in urine remained below 15 μg/day, according to the authors, but this did not indicate freedom from kidney damage. The authors concluded the respirable fraction of insoluble cadmium dust should not be regarded as merely nuisance dust.

v. *Wibowo et al., (Ex. 8–729).* In 1982, Wibowo conducted a study of "second degree" users of cadmium compounds in the Netherlands. Thirty-four pairs of workers, one exposed and one control, were matched according to age, smoking habits, ethnic origin and factory. Study subjects were employed in one of five factories: A glass bottle production plant using cadmium pigments for label decoration; a plastic production plant using cadmium stabilizers; a cadmium plating department of an aero-engine factory; a wall-paper decoration plant using cadmium stabilizers and pigments; and a television tube production factory using cadmium sulfide for its flourescence property. Cadmium exposure in each of the factories was characterized as low, but no exposure data were presented.

Workers were evaluated for renal effects. Venous blood and spot urine samples were collected to measure CdB, hemoglobin, hematocrit, CdU, β_2-M in urine, and creatinine in urine. Measurements of β_2-M were performed according to the radioimmunoassay method with the Phadebas β_2-microtest kit (Pharmacia Diagnostics) and were standardized to the creatinine content of the urine. To prevent degradation of β_2-M, the pH was brought to above 5.5 by adding 0.5 M NaOH. For external control, the laboratory participated in an international comparison program for CdB.

Results of the analysis lead the authors to conclude that in "second degree" cadmium users, low cadmium exposures are reflected in CdU levels but not in CdB levels. This in turn would indicate an increased body burden due to long term, low level "second degree" occupational exposure to cadmium. An observation of statistically significantly elevated CdB and CdU levels among exposed workers in the aero-engine factory relative to controls supported this position. The authors concluded that even

> * * * At the very low levels of exposure the body burden increases with the duration of cadmium exposure and indirectly with smoking habits. (Ex. 8–729)

vi. *Verschoor et al., (Ex. 19–42–8).* In 1987 Verschoor conducted a study of renal function in 27 workers with second degree cadmium exposures. The workers were employed in one of two plants that were in the Netherlands; nineteen worked in a plant where cadmium is incorporated into the production of plastics (plant A), and eight worked in a plant where cadmium was used in the welding of radiators (plant B). Eight workers at a grain elevator located in the same geographic area as the plastics production plant who had no occupational exposure to cadmium served as controls. These eight were of similar age and smoking habits as the exposed workers.

One subject from plant B was known to have clinical renal dysfunction and was excluded from the analysis. (This dysfunction had existed for more than ten years and had not been caused by cadmium exposure.) The analyses, therefore, were carried out on 26 exposed workers and 8 referents.

Spot urine samples and venous blood samples were collected using standard procedures to protect against contamination. Cadmium-free disposable syringes and polythene tubes and boxes were used for the sample collection. CdB and CdU levels were measured for biological monitoring. β_2-M and creatinine in serum, blood urea nitrogen (BUN), and IgG and albumin in urine were measured to evaluate glomerular function. RBP and β_2-M in urine and the lysosomal enzyme NAG in urine were measured as indicators of change in tubular function, and total urinary protein was measured as an overall renal parameter. Only urine samples with pH greater than 5.5 were used for the determination of β_2-M levels. Urinary density was chosen by Verschoor to adjust for the differences in the urinary creatinine concentrations between the exposed groups. All the urinary parameters were adjusted for a urinary density of 1,020 because this was the mean value of the urinary density of the group with level of CdU below 5 μg/g Cr.

Cadmium concentrations were not measured in either plant. Instead, CdU levels were used to estimate relative cadmium exposures. Workers with higher levels of CdU were considered to have been exposed to higher levels of airborne cadmium than workers with lower levels of CdU. The cadmium-exposed workers were thus divided into groups according to their CdU levels: The no increased exposure group whose CdU levels were less than 3 μg/g creatinine (30 nmol/l); the low occupational exposure group whose CdU levels were between 3 and 5 μg/g creatinine (30 to 50 nmol/l); and the higher occupational exposure group whose CdU levels were greater than 5 μg/g creatinine (50 nmol/l).

Most of the urinary parameters were found to be within the normal range. No significant differences were observed between the exposed workers and the controls for creatinine in serum, BUN, total urinary protein, or albumin in urine.

The levels of CdU and CdB among all exposed workers were elevated over the levels CdU and CdB in the referent population. For workers in plant A, the

geometric mean of CdB levels was 1.26, 5.78, and 0.2 ug/lwb for workers in Plant A, Plant B, and the control group, respectively. The geometric mean of CdU levels was 2.3, 11.1, and 0.66 ug/gr Cr for workers in Plant A, Plant B, and the control group, respectively.

Only workers in the higher occupational exposure group (i.e. the group whose CdU levels exceeded 5 μg/g Cr) had excess levels of those biological markers which indicate change in tubular function. For this group of workers, all of whom were employed in plant B, the levels of urinary β_2-M, RBP, and NAG were statistically significantly elevated over the levels of these parameters in the control group ($p < .05$).

vii. *Kawada et al. (Exs. 8–732).* In 1986 Kawada studied 29 workers who were exposed to cadmium pigments either in pigment manufacturing (CdS pigments or cadmium selenide pigments) or in synthetic resin preparation. The purpose of the study was to evaluate the relationship between β_2-M in urine and NAG activity, in workers with low levels of CdU. Thirty-five non-exposed workers were also evaluated; these were new workers on a rotation system and non-exposed workers.

Area samples found that the highest exposures ranged from 3 to 350 μg/m³. The mean respirable dust concentrations for the most highly exposed workers ranged from 0.18 to 3.0 μg/m³. Urine samples were collected stored at 4–6°C; pH levels were not specified. Levels of β_2-M in urine were analyzed using the enzyme immunoassay kit (Fujirebio Inc., Tokyo).

Cadmium, NAG activity, β_2-M, and creatinine in levels in urine were measured twice in the exposed workers, once in April and again in September. The geometric mean of CdU was found to be 0.7 μg/g Cr in April (range of 0.2 to 9.5 μg/g Cr) and 1.2 μg/g Cr in September (range of 0.5 to 7.0 μg/g Cr). The correlation coefficient between CdU and NAG was 0.261 in April (n=61) and 0.389 in September (n=50). The correlation coefficient between CdU and β_2-M was 0.241 in April (n=63) and 0.115 in September (n=50). Kawada concluded that NAG is a more sensitive indicator of cadmium absorption than β_2-M even at CdU levels of less than 10 μg/g Cr.

viii. *Kazantzis et al. (Ex. 8–102).* In 1962, Kazantzis conducted a study of 12 of the 13 men who produced cadmium pigments for use in paint, plastics and glass in a small British factory. While both cadmium oxide and the cadmium pigments (cadmium sulphide, cadmium zinc sulphide and cadmium seleno-sulphide) were produced in this factory, it was during the production of pigments workers experienced the greatest cadmium exposure due to the repeated handling of the material. The authors observed that

> * * * For similar quantities handled, the ratio of exposure for pigments is something like two and a half times as great as for oxides. (Ex. 8–102)

No exposure data were available. Instead, workers were grouped based on length of employment at the plant, combined with the type of work the men performed. These data were gathered through in-depth interviews and surveys with the employees. The authors found that three men had been in the factory for 2 years or less, four had 12 to 14 years of exposure, and five men had 25 to 31 years of exposure.

Venous blood samples were taken and analyzed for urea, carbon dioxide capacity, chloride, sodium, potassium, inorganic phosphate, alkaline phosphatase, cholesterol, calcium and uric acid. Random 24-hour urine samples were also collected to measure urinary protein, cadmium, calcium, amino acids, inorganic phosphate and sugar. Freshly passed specimens showed that pH of the urine of all 12 workers was somewhat acidic, falling between 4.85 and 6.55. Chest X-rays taken and comprehensive respiratory function tests were performed.

All five of the workers who had been exposed to cadmium compounds for more than 25 years showed consistent clinical proteinuria. In addition, three workers with fewer years of exposure showed renal tubular disorders and greater than normal protein in the urine. CdU exceeded 30 μg/day in 10 of the 12 workers studied. Several of the workers with clinical proteinuria showed definite respiratory impairment.

In addition to the 12 men studied by Kazantzis, there was one more with over 25 years of exposure who died before the study began, presumably from chronic cadmium poisoning. A great deal of health information for this worker was abstracted posthumously from his medical records and autopsy report. Specimens of lung, liver and kidney were analyzed for cadmium content. The cadmium concentration in the kidney was 55 μg/g wet weight and in the liver was 88 μg/g wet weight. In the lung, the cadmium concentration, 500 μg/g wet weight, was extremely high.

This study is the oldest reviewed by OSHA, and the biological parameters monitored for kidney dysfunction are less specific than those currently accepted as the most reliable indices for cadmium-related health effects. Nonetheless, the evidence suggests appreciable abnormal clearance of amino acids, calcium, glucose, phosphate, urate, water, and faulty acidification of the urine. The study authors concluded that:

> The findings establish that chronic cadmium poisoning can arise in the pigment industry, and suggest that cadmium proteinuria is clinically significant and should be regarded as an early manifestation of renal tubular damage. (Ex. 8–102)

ix. *Summary.* Epidemiological studies of workers in pigment-production and pigment-using facilities show that cadmium is absorbed into the body and that cadmium pigments should not be regarded separately from other cadmium compounds. Results from the studies submitted by industry do not support the position that cadmium pigments pose less hazard to workers than other cadmium compounds.

SCM cited the study by Miksche (Ex. 12–10–E) as evidence that cadmium pigments are not as toxic to the kidney as other forms of cadmium (Ex. 19–42A). Data from the study, however, indicate that the cadmium production workers were absorbing cadmium from pigments, as evidenced by the fact that the mean CdB and CdU levels of these workers were 10.3 μg/1wb and 8.78 μg/g Cr, respectively. The β_2–M levels in these pigment production workers were normal. Among pigment applicators, no abnormal levels of CdU, CdB, or β_2–M were found, but no exposure data were provided. This makes it impossible to evaluate cadmium exposures among the production workers.

The Cadmium Council (Ex. 19–43) questioned OSHA's argument that the low body burdens reported by Miksche might be due to "low exposure" when, according to the Council, workers in the cohort were exposed for up to 32 years and when, according to the Council, airborne cadmium levels were found to be 50 μg/m³ in 1977 and higher than that before 1977. In response, OSHA notes that 32 years represents the maximum length of exposure for a worker in the Miksche cohort and that the mean lengths of exposure for the two separate plants were 11.75 years and 11.3 years. The Agency also notes that no exposure data are available at all for the application plant, and the exposure level of 50 μg/m³ represents the average exposure for only one year at the production plant. Exposure levels at the production plant for the other two other years for which exposure data are available were lower than 50 μg/m³.

The study by Fietz (Ex. 12–10–f) was also cited by industry as evidence that cadmium pigments are far less toxic to the kidney than other forms of the metal.

Again, the Cadmium Council rejected the argument made by OSHA that the low levels of urinary analytes observed in this study were due to low levels of exposure (Ex. 19–43). The Council stated that in 1978 these workers were being exposed to 147 to 201 μg/m³ of cadmium, and they still had "generally low" cadmium body levels. OSHA notes, however, that cadmium pigment production workers did show evidence of overexposure to cadmium even when levels of CdU as high as 17 μg/g Cr and CdB as high as 15 μg/lwb (BAT) were considered "safe". Furthermore, the exposure data are insufficient to evaluate the exposures for Groups IV and V, and it is clear from the data that exposures in the pigment-user facility were much lower than in the production facility.

The statements by the Cadmium Council regarding high exposures (147 to 201 μg/m³) in the Fietz cohort being associated with low body burdens in 1978 are misleading. The authors reported that in 1978, average cadmium exposures (μg/m³) in 1978 for Groups I, II, and II were 147, 194, and 201, respectively but that production of cadmium pigments comprised about half of the working time. This would result in exposures of 73.5, 97, and 100 μg/m³. In Group IA, IIA, and IIIA, that is among the workers who had worked for an average of ten or more years, the levels of CdU in 1978 were 6 μg/g Cr, 16 μg/g Cr, and 8 μg/g Cr, respectively. In Group IA, IIA, and IIIA, the levels of CdB in 1978 were 20 μg/lwb, 19 μg/lwb, and 16 μg/lwb, respectively. Levels of β_2–M in urine for these groups were not available for 1978, however, in 1979, for workers in Groups IA, IIA, and IIIA, the levels of β_2-M were 99 μg/g Cr, 103 μg/g Cr, and 727 μg/g Cr, respectively. Thus, if workers experience cadmium or cadmium-pigment exposures similar to those in Group III and if workers have more than ten years of employment in a plant with exposures similar to those in this study workplace, some (7/67=10.4% or more) will have renal dysfunction as indicated by β_2–M levels greater than 300 μg/g Cr.

According to comments submitted to OSHA during the rulemaking, levels of CdU above 15 μg/g Cr and levels of CdB above 10 μg/lwb are levels that indicate cadmium has been absorbed and systemically distributed throughout the body via the bloodstream; overexposure to cadmium has occurred; and excessive cadmium body burden is present. Based on this definition it is evident that cadmium exposures in pigment production plants can result in uptake of cadmium by the body. If exposure levels are kept close to those observed in this study for 1982 when exposures ranged from 0.5 to 10 μg/m³, few workers will be at risk of kidney dysfunction, regardless of the type of cadmium compound used.

The Cadmium Council and SCM cited Greenberg's study (Ex. 12–10G) as evidence that among cadmium pigment workers,

> * * * the prevalence of increased β_2–microglobulin or protein excretion was low. (Exs. 19–43 and 12–10–G)

SCM commented that this finding was significant given that the average length of employment for these workers was 20.7 years, and 31% of recent exposure measurements exceeded 40 μg/m³ (11 of 35 recent samples). The study authors themselves, however, concluded that the relatively low renal burdens reflected low exposures. Furthermore, according to the definition of "normal" test results established by the authors, three of 38 (8%) workers had elevated CdU concentrations; three of 37 (8%) subjects had values above the upper limit of normal for CdB; three workers had elevated levels of β_2–M; and, three workers had abnormal levels of total protein in urine. Finally, the finding of dose-response relationships between liver cadmium burdens and exposure, kidney cadmium burdens and exposure, and levels of cadmium in urine and exposure indicate that cadmium absorption occurs in pigment production facilities.

SCM referenced the study by Wibowo (Ex. 8–729) and the study by Verschoor (Ex. 19–42–8) to assert that:

> * * * There is no human evidence indicating that cadmium pigments have caused significant renal effects (Ex. 19–42–8).

Careful review of these studies, however, indicate that the downstream, or secondary users of cadmium pigments in these studies either had low exposures or the compounds used were insoluble. Nonetheless, low level exposures to insoluble cadmium pigments are absorbed into the bloodstream and result in levels of CdB and CdU that are elevated over background. The Verschoor study in particular suggests that even when second degree usage of cadmium pigments, such as in the plastics plant, are low, small amounts of cadmium are absorbed and systemically distributed to the kidneys. The low levels of CdB and CdU among the plastics workers in Plant A can not be attributed solely to lower absorption of insoluble compounds since no exposure data are available; the low levels of CdB and CdU may be due to lower exposure levels.

De Silva (Ex. 8–716) concluded from his study that the insoluble respirable cadmium compounds are less able to enter the blood stream than the soluble compounds. According to De Silva, this is supported by the case reported by Kazantzis et al, 1963, (referenced in De Silva) which resulted in necropsy and showed an unexpectedly high concentration of cadmium in the lung, compared with other published figures from cases of chronic cadmium poisoning due to soluble cadmium. While less cadmium enters the blood, however, De Silva concluded that more is retained in the lung. Respirable insoluble compounds probably contribute significantly to the lung damage, and, therefore, according to De Silva, there is no reason for differentiating between soluble and insoluble respirable cadmium, due to their effects on the lung.

The lower biological indices of absorption obtained after exposure to insoluble compounds of cadmium may be due to a reduced ability of the respirable fraction to enter the blood stream rather than to the reduced solubility of the non-respirable fraction in the gut. It could perhaps be concluded that non-respirable insoluble compounds may be slightly less hazardous than soluble compounds, but to regard them as merely nuisance dust is not only risky, according to De Silva, but also liable to misinterpretation and to encourage carelessness in their use.

Dr. Friberg was questioned about the relative toxicity of cadmium compounds, in particular cadmium pigments. In his testimony, Dr. Friberg discussed the findings of the study by De Silva as follows:

> * * * It's a small study but still I think it is, to some extent, impressive. (Workers) were exposed to insoluble cadmium at a pigment manufacturing plant * * * all * * * had signs of the tubular dysfunction * * * in the abstract * * * (the authors)
>
> * * * suggested that urinary cadmium concentration should be kept below * * * 15 micrograms per day, but this was in 1981, to avoid the possibility of renal damage and that the insoluble respirable fraction of cadmium dust should not be regarded as merely a nuisance dust. There was a lot of information of blood levels * * * after a couple of months exposure values of cadmium in blood per liter * * * (were) * * * something like * * * 18, 6, 9, 14, 24, 7, 17, 22, 10, 21, and 10 * * * very high levels. But as they mentioned somewhere, there could, of course, be some form of an exposure also to a soluble dust * * * (Tr. 6/6/90, pp. 90–91)

Thus, relatively insoluble cadmium pigments are taken up into the blood and may damage; there is medical evidence from studies of workers exposed to cadmium sulfide and cadmium pigments, although limited, that all cadmium compounds have been associated with renal effects at comparable exposure levels, regardless of the chemical compound.

f. *Evidence in animals.* Experimental animal studies, some of which are reviewed below, support the finding that cadmium induces proteinuria in humans. Studies also support the concept of a threshold or critical concentration of cadmium in a target organ and the finding that increased concentrations of β_2–M in the urine constitute biological markers of cadmium-induced tubular proteinuria (Exs. 30; 8–86).

Friberg induced proteinuria in rabbits by exposing them to 8 mg/m^3 of cadmium oxide dust by inhalation for 5 hours/day for 8 months (Ex. 4–29). In the same study, rabbits injected with 0.65 mg/kg cadmium sulfate developed proteinuria after two months of exposure. A number of other experimental studies in which animals were exposed either orally or through injection have also resulted in cadmium-induced proteinuria (Exs. 8–086b; 8–402).

Some studies have induced glomerular proteinuria in experimental animals while others have induced mixed-type proteinuria. For example, Bernard (Ex. 4–20) injected rats with 1 mg/m^3 of cadmium chloride for 5 days/week for 2 months. The induced proteinuria was characterized by increased excretion not only of low molecular weight proteins but also of high molecular weight proteins indicative of glomerular dysfunction. In a similar study (Ex. 4–49), rats injected with cadmium showed mixed-type proteinuria, and after prolonged oral exposure, rats developed glomerular proteinuria.

i. *The renal effects of cadmium pigments and other less soluble forms of cadmium in animals.* OSHA received comment from SCM, SPI, and the Dry Color Manufacturers Association (DCMA), a trade association representing small, medium, and large pigment manufacturers in the U.S. and Canada, that studies by Hazleton Laboratories, Glaser, and Rusch demonstrate that absorption of cadmium and the potential for renal effects from pigment is much lower than that from other cadmium compounds (Exs. 19–42–A; 19–41; 120). For example, Richard Bidstrup, Counsel for SCM Chemicals, Inc., stated that these studies "demonstrate that absorption of cadmium and potential for renal effects from pigment is from 10 to 1,000 times less than that from other cadmium compounds (Ex. 19–42–A)." In addition, he referred to other studies with longer exposure times that have reached the same conclusion (i.e., Heinrich et al., 1986; Princi and Geever, 1950; and Oberdorster, undated; all in Ex. 19–42A).

According to the DCMA, in-vitro data also support its position that the cadmium in pigments is less bio-available than the cadmium in other compounds because cadmium pigments are relatively insoluble in the dilute acids (i.e., a pH of about 4) often found in biological systems (Ex. 120). DCMA states that, in contrast to the sulfide, cadmium oxide is highly soluble in dilute acids, which explains, in DCMA's view, the equivalent lung toxicity of cadmium oxide and other water-soluble cadmium compounds. In contrast, the solubility of cadmium pigments at a pH of 4 was much lower. Therefore, the oxide is "thousands of times" more soluble in the dilute acid environment of the lung than cadmium sulfide, and the oxide is therefore much more bioavailable than the sulfide (Ex. 120). DCMA reported that work by Stopford shows a good correlation between weak-acid extraction and serum extraction. In addition, a positive relationship has been demonstrated between the amount of acid-extractable cadmium in pigments and the "resulting body burdens after ingestion" (Ex. 120, p. 10).

OSHA has reviewed the main animal studies submitted by industry representatives in support of their assumption that cadmium pigments are less toxic to the kidney. The Agency review is presented here.

Hazelton Laboratories conducted a short term rat feeding study to determine whether or not there was a positive correlation between cadmium solubility and cadmium absorption through the gastrointestinal tract (Ex. 12–10–B). In this study, extraction tests were conducted with distilled water and with acid to determine the solubility of 12 different cadmium pigments. These same pigments were then fed to rats for one week at levels of 10,000 ppm and 50,000 ppm in the diet to evaluate the level of absorption of cadmium from the pigment. For purposes of comparison, rats were also fed a highly soluble cadmium compound, $CdCl_2$, at a concentration of 10 and 50 ppm in the diet. The proportion of cadmium absorbed was determined by measuring the amount of cadmium found in the urine, kidneys and liver and dividing by the amount of cadmium found in the feces and GI tract contents. The degree of solubility of the pigments was much lower than the degree of solubility of $CdCl_2$. $CdCl_2$ was 61% soluble whereas the pigments were from 0.06% to 1.38% soluble. Correspondingly, the proportion of cadmium absorbed from the pigments was also much lower than for $CdCl_2$: 0.65% of the $CdCl_2$ was absorbed compared to .0004% to .0060% of the cadmium pigments.

From these data the authors concluded that there was a positive correlation between solubility and absorption; the greater the solubility the greater the amount absorbed by the body. OSHA notes, however, that this feeding study lasted only one week. While the percent of cadmium absorbed from the pigments after one week's exposure is relatively low compared to $CdCl_2$, the total percentage absorbed after chronic exposure to cadmium pigments (e.g. 18 months) is not known and may be more substantial.

In the study by Princi and Geever (Ex. 8–459), 30 dogs were divided into three groups: ten dogs served as controls; ten dogs were exposed to cadmium oxide; and ten dogs were exposed to cadmium sulfide. Exposure lasted six hours per day for five days per week. Concentrations of cadmium in air ranged from 3 to 7 mg/m^3. Ninety-eight percent of the particles were less than 3 microns in diameter. The average length of exposure for cadmium sulfide was 895 hours, or about 30 weeks (895 hours divided by 30 hours per week is approximately 30 weeks); the longest exposure was 1,417 hours (approximately 47 weeks). The average length of exposure for cadmium oxide was 1,102 hours (approximately 37 weeks); the longest cadmium oxide exposure was 1,319 (approximately 44 weeks). Four dogs exposed to cadmium oxide eventually died of bronchopneumonia. The authors noted that because of these deaths, exposure times varied. Several dogs had to be killed because of severe injuries received from fighting among themselves. Despite these limitations, the authors reported that a sufficient number of dogs survived the entire experiment to produce significant results. No information was provided on the survival times for any of the animals in this study.

The authors concluded that most of the cadmium dust inhaled was stored in the lungs, liver and kidneys. Lesser amounts were stored in bones and teeth. The authors further concluded that cadmium sulfide (CdS) and cadmium oxide (CdO) differ greatly in solubility and absorbability, and must therefore differ greatly in the amounts required to produce intoxication.

For the ten dogs exposed to CdO, the average level of cadmium in blood was 67 μg/lwb, and the average level of cadmium in urine was 130 μg/l. For the ten dogs exposed to CdS, the average level of cadmium in blood was 50 μg/lwb, and the average level of cadmium in urine was 50 μg/l. Clearly, a portion of the CdS dose was systemically absorbed into the body, however, a portion of the CdS may have decomposed into more soluble ionic forms, e.g., $CdSO_4$ (Exs. L-140-27-B, L-140-44), increasing the cadmium's solubility. OSHA notes, however, that at exposure levels as high as 3 to 7 mg/m³, the percent dissolution of CdS to more soluble forms is probably low (see, for example, L-140-27-B). The average level of cadmium in the lungs for the ten dogs exposed to CdO was 2.64 mg/100 gm (range from 1.16 to 4.7 mg/100 gm). For the ten dogs exposed to CdS this level was 3.63 mg/100 gm (range from 1.23 to 6.02 mg/100 gm). The authors concluded that more CdO was absorbed from the lungs, but OSHA notes that more CdS remained in the lung.

The study by Rusch (Ex. 12-10-D) was an acute inhalation study involving the exposure of male and female Sprague-Dawley rats to dusts of cadmium carbonate ($CdCO_3$), cadmium yellow pigment, cadmium red pigment and to cadmium fume at concentrations of 100 mg/m³ for two hours. The animals were then followed for 30 days in order to determine whether there were differences in uptake and distribution of compounds with different solubilities. The "cadmium red" was a finely divided red powder in hexagonal crystal form containing 69.9% cadmium, 16.4% selenium, and 13.2% sulfur (sulfide). Particle size analysis by sedimentation indicated that 99% of the particles were less than 5 micrometers in diameter. Cadmium yellow was a finely divided powder in a hexagonal crystal form produced by high temperature calcination. It contained 77.4% cadmium, 21.7% sulfur (sulfide), 0.28% zinc, and 0.27% selenium. Ninety-six percent of the particles were less than 5 micrometers in diameter. The cadmium carbonate was a reagent grade white amorphous powder which was finely divided by milling. The cadmium fume material was derived from a 10% aqueous solution of cadmium acetate dihydrate. The aerosol was produced by passing the solution through several heating processes and absorption containers prior to administration to the test animals.

No mortality was observed among rats exposed to either cadmium pigment after 30 days follow-up, but 3 out of 52 rats (6%) died from exposure to $CdCO_3$ and 25 out of 52 rats (48%) died from exposure to cadmium fume. In the pigment-exposed groups, greater amounts of cadmium were eliminated by the feces at faster rates than for the $CdCO_3$-exposed rats. The rats exposed to $CdCO_3$ also showed higher kidney cadmium levels. The authors stated that $CdCO_3$ followed predicted patterns of uptake, distribution and retention, whereas the pigments showed only minimal uptake and tissue deposition. Therefore, it appeared that inhalation exposures to soluble compounds resulted in more rapid uptake and higher body burdens than did exposure to less soluble cadmium compounds. OSHA notes that in this study, the exposure level was extremely high, lasted only 2 hours, and follow-up was for only 30 days. This makes it difficult to extrapolate the results to occupational settings where exposures may occur over long periods of time and at low doses or where exposures may occur repeatedly at high levels.

In the study by Glaser et al., (Ex. 12-10-C), male Wistar rats were exposed continuously for 30 days to aerosols of cadmium chloride and cadmium oxide at 0.1 mg/m³ and aerosols of cadmium sulfide (CdS) at 1 mg/m³. CdS was administered at a higher dose because of its lower solubility.

No clinical signs of intoxication were observed among any of the exposed groups. Mean CdU in the CdS group showed a slight but statistically significant increase ($p<0.05$) over the controls at the end of the exposure period. Mean CdU was also slightly statistically significantly elevated for the CdO group ($p<0.05$) at the end of the observation period.

Glaser found that cadmium was retained in the lung, liver and kidneys for all three compounds tested. Lesser amounts of CdCl2 were retained in the lungs of exposed rats compared to the amount of CdO and CdS retained. After one month's exposure approximately 25 μg of cadmium were retained in the whole lung of $CdCl_2$ exposed rats whereas approximately 50 μg and 140 μg of cadmium were retained in the lung for CdO and CdS exposed rats, respectively. The authors note that a 10 times greater exposure in the form of CdS did not result in a 10 times greater amount of cadmium in the whole lung. Therefore they suggested that there must be a difference in toxicokinetics (i.e. deposition, dissolution, clearance or toxicity) for CdS. OSHA notes, however, that photodecomposition of CdS may have occurred thereby altering the compounds administered to the lung to include more soluble forms of cadmium, (e.g., $CdSO_4$), and affecting the amount that would be retained in the lung.

Glaser also observed that for the $CdCl_2$ and CdO exposed rats, more of the cadmium was distributed to the cytosol fractions of the lung than for the CdS exposed rats, indicating that more of the CdS was retained in the extracellular fractions and was not absorbed into the cell. For a site-of-contact carcinogen, which some evidence suggests cadmium may be, it is entirely possible that the more insoluble the compound, the greater the carcinogenic potential. In fact, there was evidence of a cytotoxic effect to the alveolar macrophages from exposure to CdS equal to that observed from exposure to CdO.

Each of the cytotoxic effects observed in the rats exposed to CdS and CdO were greater than the effects observed in the rats exposed to $CdCl_2$. In addition, the lung metallothionein-cadmium content for rats exposed to CdS and CdO were similar to one another but greater than the metallothionein-cadmium content in $CdCl_2$ exposed rats. Metallothionein is produced in response to cadmium ions and, according to the authors, is an indication of cadmium's bioavailability. In the liver and kidney, cadmium burdens were significantly higher for the CdO exposed rats and for the CdS exposed rats than for the $CdCl_2$ exposed rats. After one month's exposure, approximately 15 μg of cadmium had accumulated in the liver and kidney of $CdCl_2$ exposed rats compared to 70 μg and 60 μg of cadmium which had accumulated in the livers of CdO and CdS exposed rats, respectively. The authors stated that it was unexpected that cadmium accumulation in the liver and kidney would be lower for $CdCl_2$ exposed rats than for CdO and CdS exposed rats because of $CdCl_2$'s higher solubility; they had thought that cadmium accumulation was correlated to the solubility of the compound. Some of the elevated liver burdens noted by Glaser for CdS exposed rats may be due to photodecomposition of the CdS (Exs. L-140-44; L-140-27-B), but this would not explain the high liver burdens for the CdO exposed rats.

The results of this study suggest that absorption and bioavailability may not be simply equated to the compound's solubility. For example, Glaser found that the body burdens of cadmium in the kidney and liver for CdO and CdS exposed rats were similar despite the fact that ten times more CdS was administered. This would imply that the lower solubility of CdS may be

responsible for the lower accumulation of cadmium. It has been suggested that such a result could be due to photodecomposition, but if photodecomposition did occur and a substantial amount of CdS degenerated into more soluble forms, it would be difficult to explain why 10 times more CdS resulted in a liver burden equivalent to that of the CdO exposed rats (Exs. L-140-44; Ex. L-140-27-B). The body burdens of cadmium in the kidney and liver are higher for CdO and CdS exposed rats than $CdCl_2$ exposed rats despite the fact the $CdCl_2$ is more soluble than CdO, CdS. $CdCl_2$ may be more soluble than cadmium compounds into which CdS may have photodecomposed. Thus factors other than solubility influence the systemic absorption and bioavailability of cadmium pigments. These factors could be further influenced by long term exposure (i.e. greater than one month).

According to DCMA, a later study by Glaser et al., 1990, (Ex. 8-604-B) shows that ionic cadmium released by photodecomposition accounts for the apparent increase in availability seen in this study. Gunter Oberdörster, Ph.D., Professor of Toxicology at the Environmental Health Sciences Center at the University of Rochester and formerly of the Fraunhofer Institute for Toxicology and Aerosol Research in West Germany, analyzed the data from this study, however, and concluded that they showed only a 2- to 3-fold reduction in the availability of cadmium from pigments (Ex. 120, p. 20).

OSHA concludes that the Hazleton Laboratory, Glaser, Princi, and Rusch studies do not provide adequate evidence to show that cadmium pigments are not as toxic as other forms of cadmium. (See for example Ex. 12-10.) These studies used short exposure periods that might not be relevant to long-term, low-level occupational exposures or obtained conflicting results that do not indicate a simple relationship between solubility and bioavailability. OSHA has also reviewed the studies by Heinrich and Oberdörster, and has addressed the main comments from these two experts in its discussion of the carcinogenicity of cadmium pigments.

DCMA submitted comments on the mechanisms by which cadmium pigments could be less toxic to the kidney and less bioavailable than other cadmium compounds (Ex. 120). DCMA stated that the chemistry of pigment compounds is substantially different from that of other compounds. Because the cadmium ion is "soft", based on its low charge-to-mass ratio, and the sulfide ion is also soft, sulfide ions stabilize the cadmium ions in pigment compounds. DCMA argued that any pigment-derived cadmium ions that were dissolved in biological fluids would already be complexed by water molecules or chlorides, both of which are hard ligands. According to DCMA, this concept of hard/soft ions would also suggest that the sulfide is less soluble than other chemical forms of the metal (Ex. 120, p. 11). However, soft-acid/soft-base theory refers to stronger bonding associated when large, easily polarized anions coordinate to large, easily polarized cations. This theory is used to explain the enhanced stability compared to ions that are mismatched in size, and does not pertain to chemistry of sulfide (Ex. 152). Since the human body can muster formidable chemistry in defense against foreign material, CdS may be solubilized in the body by a number of mechanisms (Ex. 152). For example, as Dr. Friberg stated, and as mentioned previously:

> * * * It seems to be quite clear that you cannot talk about insoluble dust * * * once this dust comes down to the lungs and is taken up by the macrophages then the solubility could be quite different from the solubility *in vitro* * * * (Tr. 6/6/90, pp. 102-103).

Other commentors agreed with Dr. Friberg. Once an insoluble cadmium pigment enters the lungs, some is absorbed into the body and some is retained in the lungs (Ex. L-140-50). The portion of cadmium that is systemically absorbed is retained for up to 30 years depending upon the part of the body in which the cadmium is stored. Even low atmospheric levels of cadmium accumulate in the body (Ex. L-140-50). Ellen Silbergeld, Ph.D., Adjunct Professor of Toxicology and Pharmacology and Experimental Therapeutics at the University of Maryland Medical School and Adjunct Professor of Health Policy at the Johns Hopkins School of Hygiene and Public Health, testified at the hearing regarding the bioavailability of different cadmium compounds. Dr. Silbergeld testified that solubility in aqueous media is only one aspect "of the physical, chemical, and potential biological behavior of a compound for purposes of estimating toxicity" (Tr. 6/7/90; pp. 228-235). Other factors that must be considered are particle size, portal of entry, chronicity of exposure, and other types of cellular response, which may be "much more important than this particular measure of aqueous solubility" (Tr. 6/7/90, pp. 228-235). Dr. Silbergeld testified further that many studies that have attempted to "exonerate" other metal-containing pigments such as lead pigments have shown that when exposure is chronic and the outcome is chronic (as opposed to acute), the molecular compound of the metal is "relatively unimportant." Dr. Silbergeld stated that "those differences in solubility would be unlikely to confer a difference in terms of tissue dose beyond the range of one or two" (Tr. 6/7/90, p. 229). Dr. Silbergeld continued that when the compound is encountered chronically from the external environment and remains within the body compartments for a long period of time, one factor such as solubility does not make much difference in overall toxicity" (Tr. 6/7/90, p. 229).

Dr. Silbergeld described the process of phagocytosis or endocytosis as a process where intracellular organelles come to the defense of the invaded cell which leads in turn to a "very great increase in the local concentrations of the compound at the site of inclusion, and which results in the cell's secretion of acids that change the chemical by encouraging dissociation of the metal from the salt or incorporation of the metal from the salt or incorporation of the metal onto a carrier protein, etc. Also, the cell may react in a way that produces oxidative stress" (Tr. 6/7/90, pp. 228-235).

Another argument made by DCMA was that metallothionein, a protein that contains 33 percent sulfur organized in seven clusters, "coordinates" metals such as cadmium in a very tight structure. Thus, metallothionein, once bound, may actually protect against cadmium's carcinogenic effects [DCMA cites Testimony at 3-56, 3-58] (Ex. 120, p. 11). DCMA then argued that, because the cadmium in pigments is also "tightly held between layers of sulfur atoms in a hexagonal * * * packing array, * * * the sulfur in pigments can be anticipated to protect organisms against the toxic effects of cadmium ions in the pigments" (Ex. 120, p. 12).

Based on its review of the *in-vivo* and *in-vitro* studies, DCMA concluded that cadmium pigments are not metabolized by similar mechanisms or at similar rates as other cadmium compounds. Thus, according to DCMA, "OSHA cannot assume that cadmium pigments have toxicity equal to [that of] other cadmium compounds" (Ex. 120, p. 12). This hypothesis was countered by analogies drawn between cadmium with other compounds such as lead, nickel, and asbestos (e.g. M. Costa, Tr. 6/7/90, pp. 56-58). Dr. Silbergeld suggests that endocytotic incorporation of insoluble materials may lead to higher concentrations within the cell which could, in turn, heighten the potential

toxicity of "soluble" [sic, insoluble] compounds (Ex. 120, p. 13). DCMA dismissed this idea because studies have shown that most cadmium sulfide was in the extracellular compartments of the lung (Glaser 1986, cited in Ex. 120) and that most of the cadmium from pigments is retained in the lavagable portion of the lung and is not bound to the cells (Oberdörster, cited in Ex. 120). Further, DCMA noted that Oberdörster's work shows that cadmium sulfide is cleared from the lung by the same mechanism used to clear nuisance dust. DCMA believes that these studies, which show that cadmium pigment is retained and cleared outside the lung cells obviate OSHA's position that "the endocytotic assimilation of cadmium pigments is a plausible mechanism for assuming an equal potency for adverse effects from these compounds" (Ex. 120, p. 14).

After reviewing these comments, the Agency believes there are insufficient data to conclude that one hypothesis is more acceptable than another. Furthermore, experimental data appear to show cytotoxic differences even between amorphous and crystalline cadmium sulfide compounds, for example, in the incidence of transformations in Syrian hamster embryo cells (Ex. 92). Crystalline CdS compounds, which perhaps are more similar to the hexagonal crystalline cadmium red pigments used in the Rusch *et al.* study (Ex. 12–10–D) than amorphous compounds, displayed greater cell-transforming activities at both cytotoxic and non-cytotoxic levels than did the amorphous compound. Qualitative assessment indicated considerably less uptake of amorphous CdS than of crystalline CdS although this phenomenon was difficult to observe quantitatively with light microscopy (Ex. 92). OSHA recognizes that in occupational settings, all CdS will not necessarily be in its hexagonal crystalline form. Furthermore, all pigments will be mixtures of more and less soluble forms of cadmium.

Among the studies which have examined cadmium pigments there is some evidence to suggest that cadmium pigments are less soluble than other cadmium compounds such as cadmium chloride. It is possible that due to their relative insolubility the pigments are also less available to the body tissues. The evidence is equivocal, however, with respect to the observable toxic effects. The short term animal tests seem to show fewer adverse effects (e.g. lower mortality and cadmium body burdens) among animals exposed to cadmium pigments. The animals, however, were exposed for only short periods of time. Yet, even in these short term exposure studies there is evidence of accumulation of cadmium in the lung, liver and kidney. There is also positive evidence of tumor formation in rats exposed to a cadmium pigment compound. In epidemiological studies of pigment users, low urinary cadmium and beta-2-microglobulin levels were observed among cadmium pigment workers but, in most cases, the level of exposure was poorly reported or not given, raising the possibility that the lack of effect seen among these pigment exposed workers was simply a result of low exposure (e.g. Ex. 8–729). Among workers employed in the manufacture of cadmium pigments, renal effects were noted, and in one study, it was concluded that "insoluble cadmium" pigments and dusts should not be regarded merely as nuisance dusts because such dusts can cause kidney damage (Ex. 8–716). Although there is some evidence to suggest that cadmium pigments are less soluble than other cadmium compounds, there is not sufficient data to show that this reduced solubility correlates with a reduced toxicity, especially after long term exposure. One study even suggests an increased bioavailibility with a less soluble cadmium compound. After long term exposure to cadmium pigments, cadmium may in fact be retained or may accumulate in body tissues and result in adverse health effects in a manner similar to the adverse effects which have been observed after long term exposure to other cadmium compounds.

OSHA concludes that there is insufficient evidence to quantify a difference in renal potency, and there is a lack of agreement between commentors on the presence of renal effects among pigment workers. Given the limitations of these data and the severity of the type of health effects that can result from rather small errors in estimates of risk, OSHA should not regulate cadmium pigments, or CdS pigments, differently from other cadmium compounds. OSHA acknowledges that several commentors hold the opinion that CdS is less bioavailable, but the opinions vary on the degree of difference in bioavailability, i.e., 2–3 fold reductions in some studies; reductions of 10 to 15 in other studies; a reduction of thousands times less in another study. The data are inadequate to develop public policy decisions that would allow some workers to be exposed to higher amounts of cadmium than other workers, based upon type of compound alone. Opinions differ on the type of cadmium compound in use in the workplace. In the absence of data that indicate only relatively insoluble forms of cadmium sulfide will be present, OSHA cannot separate one cadmium compound from others for regulatory purposes. OSHA must err on the side of worker-health and believes that mixtures of relatively more and less soluble forms will be present at one time or another in the workplace.

3. Pulmonary Effects

Reduced pulmonary function and chronic lung disease indicative of emphysema have been observed in workers with prolonged exposure to cadmium fume and dust. In a study by Friberg (Ex. 4–29), workers at an alkaline accumulator factory exposed to cadmium dust at estimated concentrations of 3 to 15 mg/m^3 for 9 to 34 years experienced impaired olfactory sensation, shortness of breath, and impaired lung function with associated poor physical working capacity. Rabbits exposed to cadmium dust from that factory exhibited chronic inflammatory changes in the nasal mucosa and signs of emphysema in the lung (Ex. 4–29).

Subsequent studies have confirmed the findings of these initial clinical and experimental studies. Bonnell (Ex. 4–22) and Kazantzis (Ex. 4–42) studied workers exposed to cadmium fume at copper-cadmium alloy factories for 5 to 15 years. The average concentration of cadmium over an 8-hour period was reported not to have exceeded 270 μg/m^3. The workers exhibited shortness of breath and impairment of pulmonary function, which were suggested to have been the result of emphysema. Similarly, a study of workers exposed to cadmium dust at concentrations below 200 μg/m^3 for greater than 20 years showed significantly lower pulmonary function compared to within plant non-exposed controls (Ex. 4–50). Smith (Ex. 4–63) examined workers who were exposed to airborne cadmium at 0.2 mg/m^3 or greater for 6 years or more at a cadmium producing plant. Workers were found to have decreased pulmonary function and mild to moderate interstitial fibrosis. Findings in this study suggested that the lung damage was due to prolonged exposure rather than repeated acute exposures. No worker's medical records showed evidence of acute illnesses which would have occurred if cadmium air levels were 5 mg/m^3. Furthermore, a dose-response relationship between reduced pulmonary function and months of cadmium exposure was observed (i.e. pulmonary function decreased as the months of exposure increased). It should be noted that in many of these studies

proteinuria was observed in a number of the workers who experienced adverse respiratory effects indicating that both chronic systemic effects and damage at site of contact result from inhalation of cadmium dusts and fumes.

4. Skeletal Effects

Workers with progressive forms of proteinuria have exhibited skeletal system effects associated with improper bone mineralization such as osteoporosis and osteomalacia. It is possible that cadmium-induced disturbances in the kidney are associated with these adverse effects (Ex. 8–086b, pp. 111–158). For example, the active metabolite of vitamin D, 1,25-dihydrocalciferol (1,25 DHCC) forms in the kidney and stimulates intestinal absorption of calcium which is required for normal bone mineralization. As cadmium accumulates in the renal cortex it may inhibit the metabolism of vitamin D to its active metabolite. Additionally, cadmium-induced renal damage may decrease the tubular reabsorption of calcium, and thus increase the urinary excretion of this essential element from the body. Recent studies of patients with cadmium-induced bone defects have also shown reduced concentrations of vitamin D metabolites in their blood (Ex. 8–189).

Bone mineralization may also be inhibited when there is interference with collagen metabolism. Cadmium may inhibit the formation of collagen fibers by interfering with the copper-dependent enzymes responsible for the cross linking of collagen molecules into fibrils. These fibrils form collagen fibers which in turn provide the fiber structure necessary for proper mineralization of bone. Improper bone mineralization results in a decreased density and softening of bone, conditions associated with osteoporosis and osteomalacia.

In humans, adverse bone effects have been observed after long-term exposure to cadmium. In a follow-up study of workers exposed to cadmium dust for 28 to 45 years, several workers showed hypercalciuria (an excess of calcium in the urine) with one case advancing to osteomalacia (Ex. 8–9). A case study by Friberg of a battery plate worker exposed to cadmium for 36 years documents the development of renal tubular dysfunction and severe osteomalacia (Ex. 8–170). Friberg notes, however, that relative to the number of workers with reported severe renal tubular damage the reported number of cases of adverse bone effects is low (Ex. 8–086b, p. 140).

One reason adverse bone effects occur infrequently may be that the bone has a reserve of calcium to maintain an adequate level in the body and thus it may take a long period of time for cadmium to induce bone disease. A second reason is that dietary deficiencies, in addition to cadmium exposure, may be necessary to induce bone effects. For example, in cadmium-polluted areas of Japan, cases of Itai-Itai disease, (a condition characterized by osteomalacia and renal tubular dysfunction), have been causally related to cadmium exposure from contaminated rice. However, among the cases there was also a dietary deficiency of calcium and vitamin-D, suggesting that the inadequate consumption of essential food elements and vitamins may have been a contributing factor to the disease (Ex. 8–086b, p. 151–153).

In animals exposed to cadmium either by injection or ingestion, disturbances in calcium metabolism with osteoporotic and osteomalacic conditions have been observed. For example, chicks exposed to cadmium in their feed for 3 weeks showed a decrease in calcium absorption from the intestine suggesting a possible effect on the formation of 1,25–DHCC (Ex. 8–3). Calcium absorption was observed to decrease as levels of cadmium in the feed increased.

Osteomalacia was induced in rats fed dietary concentrations of 10, 50 or 100 ppm cadmium for 19 months (Ex. 8–112). Osteoporotic changes increased as cadmium doses increased. The rats fed cadmium developed osteoporotic changes in bone before the onset of kidney damage indicating that cadmium may possibly have a direct effect on bone rather than an indirect effect through renal damage (Ex. 8–55). Friberg, however, presents a review of experimental studies in which the preponderance of data seem to suggest that chronic exposure to cadmium induces osteoporosis and osteomalacia subsequent to, and perhaps associated with, renal tubular damage (Ex. 8–086b, p. 115–139).

5. Reproductive and Developmental Effects

a. *Reproductive effects in male animals.* A number of studies have demonstrated testicular necrosis after systemic administration of cadmium salts in animals such as rats, rabbits, monkeys, guinea pigs, golden hamsters and calves. (Ref. in Exs. 8–420; 8–107; 8–337; 8–338; 8–86B). Parizek and Zahor have also reported regressive changes of the seminiferous epithelium in rats within 4 to 6 hours after subcutaneous injection of cadmium chloride or lactate. These changes progress to total necrosis within 24 to 48 hours (Ref. in Ex. 8–420). Morphological changes in the spermatozoa of the ductus deferens and proximal parts of the epididymis occur, but changes in the spermatozoa in distal parts of the epididymis are sometimes also observed. White observed that cadmium is extremely toxic for sperm cells *in vitro* (Ref. in Ex. 8–86). Schmid et al. have shown that the normal sperm motility is inhibited at cadmium concentrations exceeding 1.6 μM (=180 μg/l) (Ref. in Ex. 8–86B). It has been suggested by Chiquoine that cadmium-induced testicular necrosis is common in species possessing scrotal testes and absent from those possessing abdominal testes (Ref. in Ex. 8–86B).

The vascular bed and the blood flow of the testicles are affected very rapidly following injection of cadmium. Cadmium increases permeability of the testicular capillary blood system. Francavilla et al. showed that capillary damage leads to massive vascular escape of fluids and blood substances into the interstitium which subsequently results in edema and circulatory stasis (Ref. in Ex. 8–86B). Organ-specific carbonic anhydrase was suggested by Hodgen et al. to be the primary target of cadmium toxicity in the testicles (Ref. in Ex. 8–86B).

Piscator and Axelsson did not observe any pathological changes in the testicles of rabbits exposed to subcutaneous injections of cadmium (0.25 mg Cd/kg, 5 days/wk) for as many as 24 weeks and then followed for 30 weeks before sacrifice (Ref. in Ex. 8–95). It is suggested that the cadmium accumulated from long-term exposure is mainly bound to metallothionein and that this protein has a protective effect. Zenick et al. did not see any effect of cadmium exposure on testis weight, sperm count, number of abnormal sperm and testis morphology in male Long Evans hooded rats exposed to 0, 17.2, 34.4 and 68.8 mg Cd/l in drinking water over a period of 70 days (Ref. in Ex. 8–86B). Also, reproductive outcome was completely normal in these rats.

Krasovskii et al., however, showed that with chronic dosing, adverse effects on spermatogenesis occurred at lower doses than with acute dosing (Ref. in Ex. 8–86B). They found significant reductions in sperm number and motility and a significant increase in desquamation of spermatogenic epithelium in rats given 0.005 or 0.0005 mg Cd/kg orally for six months. There were no adverse effects at 0.00005 mg/kg. Dwivedi et al. demonstrated a depression of spermatogenesis, increased production of abnormal sperm and atrophy of the seminal vesicles with daily doses of 0.001 m mol/kg (0.2 mg/kg) given intraperitoneally for one

month which was similar to that produced by a intraperitoneal dose of 0.01 m mol/kg (2 mg/kg) (Ref. in Ex. 8–86B). They also noted marked inhibition of choline acetyl transferase activity in the spermatozoa, a change known to be associated with impaired sperm function and sterility. Senczuk and Zielinska-Psuja noted damage to the spermatogenic tubules and interstitial tissue hypertrophy following administration of 8 or 88 mg cadmium chloride/kg in the diet for 12–15 months (Ref. in Ex. 8–86B). These changes, however, were not seen at 3 or 6 months on the diet.

Battershy et al. demonstrated that administration of cadmium chloride (5 and 50 ppm) in drinking water for up to 40 weeks did not alter the ultrastructural appearance of the prostate gland in rats of varying ages (Ref. in Ex. 8–86B). The testosterone concentration also did not differ significantly from controls. Low levels of cadmium (< 5 ppm) were accumulated by the ventral lobe of the prostate, although the metal was not detectable subcellularly.

Changes in blood androgen and gonadotropin levels have been shown to parallel the extent of histological damage to the interstitial tissue of the testes by several investigators such as Favino et al., Saksena et al., Lau et al., and Dutt et al. (Ref. in Exs. 8–86B; 8–206). The human chorionic gonadotropin (HCG)-induced serum testosterone concentration was reduced to less than five percent of that in control rats even at comparably low doses (0.18, 0.34 and 0.83 mg Cd/kg) resulting in decrease in the weight of the testes, seminal vesicles and epididymis of rats. Changes in secondary sex organs following cadmium injection are thought to be due to these hormones, but Timms et al. have evidence from rat studies suggesting cadmium may itself have a direct effect on the prostate gland (Ref. in Ex. 8–86B).

b. *Reproductive effects in female animals.* Kar et al. demonstrated that the ovaries of prepubertal rats undergo morphological changes after injection (route unspecified) of 10 mg $CdCl_2$ (6 mg Cd/kg) (Ref. in Ex. 8–86B). One week after the administration, recovery was complete. Massive ovarian hemorrhage was induced by injection (route unspecified) of cadmium chloride or acetate (2.3–6 mg/kg) by Parizek et al. (Ref. in Ex. 8–246). Similar results were also reported by Watanabe et al. (Ref. in Ex. 8–370).

Parizek noted that, in contrast to the good survival of nongravid rats and those injected after giving birth, administration of cadmium salts (0.02 mmole/kg; during the last four days of pregnancy) to gravid rats resulted in high mortality (76% for first pregnancies, slightly less for second pregnancies) within one to four days after injection (Ref. in Ex. 8–86B). The first sign of illness in some of the injected gravid rats was the appearance, within six hours of injection, of blood in the urine. Occasionally, when rats were observed at the time of death, violent convulsions were seen. Generalized visceral venous congestion, intense pulmonary congestion, hemorrhagic edema and sometimes massive pleural effusion were seen at autopsy in rats dying within 24 hours after injection. At this stage the kidneys were swollen and hyperemic, with focal or diffuse hemorrhages predominantly situated in the renal medulla.

Copius Peereboom-Stegeman et al. reported that cadmium exposure seems to increase the thickness of the basal lamina in the blood vessels in a dose-related manner in the uterus of female rats subcutaneously injected with 0.36 and 0.18 $CdCl_2$/kg for 8 to 60 weeks. But these are also indications of an increased thickness of the basal lamina with age. Possibly, cadmium exposure was accelerating the age-related changes in these blood vessels (Ref. in Ex. 8–86B).

Exposure of female rats to cadmium sulfate (3 g/day for 4 months) prolonged the estrous cycle in a study by Tsvetkova (Ex. 156). In four months, average length of diestrous phase in the experimental females was 6.2 ± 0.02 days, and in the control 1.2 ± 0.02 days. Der et al. have also shown altered estrous cycles in rats given 250 μg/day of cadmium chloride by intramuscular injection for 54 days (Ref. in Ex. 8–86B). After 25 days, regular cycles ceased and the animals went into persistent diestrus. The dose of 250 μg/day caused other signs of toxicity *viz.* lower weight gain, coarse hair coat, sluggish movements and significant reductions in uterine, ovarian and pituitary weight, but no histological changes in the uterus or ovary. Injection of 50 μg/day produced few toxic signs and had no effect on estrus cycles or reproductive organ weights.

c. *Reproductive effects in humans.* There is only limited data on reproductive effects in humans, there is some evidence in animals. There is no evidence of cadmium-induced testicular necrosis in humans, most likely because extremely high doses would be required to induce such an effect. Friberg suggests that if the absorbed oral dose required to produce a testicular effect is proportional to the doses administered in the injection studies, a dose of 70 mg to a 70 kg man would be required to elicit the same response as the 1 mg/kg dose studied in animals (Ex. 8–086b, p. 185). The lack of data on testicular function following cadmium exposure in humans makes it difficult to draw any conclusions on possible acute testicular effects in man.

OSHA reviewed two reports which addressed the effect of cadmium on the male reproductive system in humans. Exposure data were insufficient in these reports to adequately evaluate dose-response effects.

Smith et al. (1960; Ex. 155) reported five cases of fatalities as a result of chronic cadmium poisoning. The workers were exposed repeatedly to brief, intermittent, but high concentrations of cadmium fume in the manufacture of a copper-cadmium alloy. In the process, a 50 percent cadmium master alloy was first prepared and small quantities added to crucibles of molten copper which were stirred manually. Large amounts of cadmium fume were released. Histopathological examination at necropsy revealed that all five cases had emphysema but little evidence of bronchitis and kidneys with little damage except for slight hyaline arteriosclerosis. In four cases the testes were also examined and all exhibited normal tubules with many mitoses. In all, however, there was very infrequent maturation to spermatids or spermatozoa. The authors stated that the plentiful mitotic activity in the spermatocytes suggests that the depression of maturation to spermatids and spermatozoa is an effect of terminal illness rather than of chronic cadmium toxcity.

The androgen function of men occupationally exposed to cadmium during the manufacture of alkaline storage batteries has been studied by Favino et al. (1968, as cited in Friberg et al., 1986/Ex. 8–86B). Ten cadmium-exposed workers and ten controls matched for age and body weight were examined. The cadmium-exposed subjects worked in one of two processes in the plant. In the first area some chemical and physical processes were carried out to prepare the material for the negative electrode of the storage battery: from a sulphonitric mixture cadmium was precipitated as $Cd(OH)^4$ by NaOH at 70° C, filtered under pressure and dried at about 140° C. Then a fine cadmium powder was prepared which was mixed with kerosene and water. In the second area the technical processes were carried out to supply the elements of the storage battery and to complete the manufacture of the battery by connecting the negative with the

positive electrode, which is a mixture where nickel is the active component. Some cadmium-exposed subjects were working at the time of the study and some had left the plant several years before. Of those currently employed at the plant, those in the first area had, at the time of the study, been continuously working in that area for about two to five years or more without interruption. Those in the second area had been continuously exposed to cadmium until some years before the study initiation and then were employed in other areas of the plant. The control workers had other jobs in the same plant. The majority worked in lead storage battery manufacture.

Androgenic function was assessed by the measurement of basal urinary excretion of 17 ketosteroids, androsterone, etiocholanolone, testosterone, and epitestosterone. There was no significant difference between the exposed and control groups in the mean level of these hormones. Epitestosterone was higher in the exposed versus control groups, but this difference was not significant. None of the workers had proteinuria. The presence or absence of symptoms such as impotence as well as the number of children was reported in cadmium-exposed but not control workers. One cadmium-exposed worker claimed impotence and inability to have children after starting to work with cadmium. This worker had low urinary levels of the 17 ketosteroids, androsterone, etiocholanolone, and testosterone. This worker also had urinary cadmium levels above the normal range. Another worker who also claimed impotence had normal urinary hormone levels. The authors concluded that more information was needed about the first affected worker before it could be determined whether cadmium was toxic to his genital function. OSHA is of the opinion that the above mentioned studies provide no evidence of any adverse effect of cadmium on human testicular function.

d. *Developmental effects.* There are few studies of the developmental effects of cadmium in humans. Tsvetkova (1970; Ex. 156) studied 106 female workers exposed to various cadmium compounds in alkaline storage battery, chemical reagent and zinc casting plants. The exposed workers were from 18 to 48 years of age. They had worked from 2 to 16 years. Workers in the alkaline battery factory were exposed to cadmium oxide in concentrations of 0.1 to 25 mg/m^3. Those in the chemical plant were exposed to a number of soluble cadmium salts in concentrations of 0.16 to 35 mg/m^3. Workers in the zinc casting factory were exposed to cadmium sulfate, cadmium sulfide and metallic cadmium in concentrations of 0.02 to 25 mg/m^3. A control group of workers not exposed to cadmium was also examined, but no further description of this group was provided.

The authors reported that they were unable to show changes in the menstrual cycle of women in contact with the indicated cadmium compounds. It was reported, however, that there were isolated changes in the menstrual cycle which were a function of endocrinal-gynecological illnesses said to develop from working with cadmium compounds. Further details of these illnesses were not provided.

The course and time of pregnancy of the cadmium exposed workers were reported to correlate with physiological norms. The average neonatal weight for either boys or girls born to cadmium-exposed workers employed in either the battery or zinc casting plants was significantly lower ($p < .01$ for each group) than that of the controls. For boys born to control, battery, and zinc casting plant workers, average weights were 3.719 kg$\pm$0.120 (11 newborns), 3.217 kg$\pm$0.036 (13 newborns), and 3.388 kg $\pm$0.028 (17 newborns), respectively. The average weight of girls born to control, battery, and zinc casting plant workers were 3.544 kg$\pm$0.82 (9 newborns), 2.918 kg$\pm$0.032 (14 newborns), and 3.106 kg$\pm$0.031 (10 newborns), respectively. Neonatal weights of children born to workers in the chemical plant were lower but not significantly than those of controls. Thirteen children (8 boys and 5 girls) were examined. Additionally, 4 out of 27 children of the zinc factory workers were reported to have clear signs of rickets, one had retarded eruption of teeth and two had dental disease. The children of controls were not similarly affected.

It is OSHA's opinion that the limited amount of information on methodology, including selection of controls, provided in this study does not allow one to interpret the findings.

Exposure of animals during pregnancy to cadmium, at doses in the order of mg/kg, gives rise to fetal death as well as severe malformations. Teratogenic effects of cadmium and death of the embryo occur as a consequence of cadmium given in early pregnancy, whereas fetal death is the dominating effect when cadmium is administered shortly before delivery.

Lauwerys et al. and Roels et al. have shown correlations of maternal, placental, and fetal blood levels of cadmium indicating that cadmium accumulates in the placenta (Ref. in Ex. 8–668). Parizek et al. have reported that cadmium salts, given in small amounts to pregnant rats, evoked rapidly progressive changes in the placenta, resulting in destruction of the pars fetalis (Ref. in Ex. 8–555). The cadmium administration appeared to cause hemorrhagic changes and necrosis in the placenta which could lead to embryonic death and uterine hemorrhage as shown by Parizek and Chiquoine (Ref. in Exs. 8–555; 8–86B). The studies by Ferm et al. and Dencker indicated that the transfer of cadmium across the placenta to the fetus varies during gestation. (Ref. in Ex. 8–668) During early organogenesis, in mice and hamster, cadmium reaches the embryo. Berlin and Ullberg observed that after closure of the vitelline duct, cadmium uptake (after parenteral administration) was diminished and remained low throughout the remainder of gestation in mice (Ref. in Ex. 8–668). Similar results were also seen in rats by several investigators such as Sonawane et al., Ahokas and Dilts, and Levin and Miller (Ref. in Ex. 8–86B; 8–88; 8–86B). After a single oral dose of cadmium to rats on day 17 of gestation, little cadmium was detected in the fetus in a study by Ahokas and Dilts (Ref. in Ex. 8–88).

Tsvetkova observed lower fetal weight when pregnant rats were exposed to cadmium sulfate (3 mg/m^3) by inhalation but there was no evidence of increased fetal mortality (Ex. 156). In a study by Prigge, exposure of pregnant rats to cadmium chloride aerosols at three dose levels (0.2, 0.4 and 0.6 mg Cd/m^3 continuously for 21 days) also resulted in reduction of weight gain in all three groups of exposed pregnant rats. Fetal weights were also significantly reduced in animals exposed to the highest levels. Fetal alkaline phosphatase activity was also elevated in the most highly exposed group. A marked dose dependent decrease in the activity of alkaline phosphatase was observed in exposed pregnant as compared to exposed nonpregnant animals. Hemoglobin levels and hematocrits were increased in both pregnant and non pregnant animals. However, no changes in fetal erythropoiesis were seen (Ex. 154).

Cadmium administered parenterally during organogenesis caused fetal malformation which varied with the time of administration and strain of animals as shown by Chang et al. and Ferm and Hanlon et al. (Ref. in Ex. 8–668). For example, in the hamster, intravenous administration of 2 mg/kg cadmium sulfate on day 8 of gestation induced a high percentage of fetal

deaths and facial deformities in survivors. Exencephaly and skeletal defects were also observed by Ferm and Carpenter (Ref. in Ex. 8–668).

A dose dependent increase in teratogenic effects was also seen by Ishizu et al. after subcutaneous administration of cadmium chloride (0.33, 0.63, 2.5 or 5.0 mg/kg) to pregnant mice on day 7 of gestation (Ex. 8–195). At the dose of 5.00 mg/kg, exencephaly, lack of tail, rachischisis and vaginal atresia were noted. When the fetuses were treated and stained with alizarin, skeletal malformations in the skull region, vertebral parts and ribs were observed. When external malformations were combined, the total malformation appearing rate exceeded 80 percent. When dosage of cadmium was reduced to 2.5 mg/kg, 0.63 mg/kg or 0.33 mg/kg, both external and skeletal malformations were reduced significantly, malformation appearing rate was less than one percent with 0.63 mg/kg and zero with 0.33 mg/kg. The concentrations of cadmium in the liver, kidney and placenta of mice exposed to cadmium were 800, 450 and 10 times higher than the control mice. There was no measurable amount of cadmium in the fetuses of cadmium chloride injected mice. In authors opinion, administered cadmium stayed mostly in the placenta at least in the late pregnancy and was not transferred to the fetuses (Ex. 8–195).

A dose-dependent rise in the fetal death rate, decrease in fetal weight, and increase in the rate of anomalies, which included micrognathia, cleft palate, clubfoot and small lungs were noticed in rats after daily subcutaneous injection of 4, 6, 8 or 12 mg cadmium chloride (2.6 to 7.7 mg Cd)/kg given for 4 consecutive days beginning on day 13 and extending to the 18th day of gestation were reported by Chernoff (Ex. 8–155).

A high incidence (as many as 80%) of the fetuses with hydrocephalus were seen by Samarawickrama and Webb when pregnant rats were given a single intravenous injection of 1.25 Cd/kg between days 9 and 15 of gestation. Other defects observed were anophthalmia, microphthalmia, gastroschisis and umbilical hernia. It is mentioned in the report that 1.1 mg Cd/kg produced no malformations, while 1.35 mg Cd/kg killed all embryos (Ex. 8–157).

In a study by Schroeder and Mitchener, oral administration of cadmium (10 ppm in doubly deionized water) to breeding mice resulted in a loss of strain in two generations (Ex. 153). Sharp angulation of the distal third of the tail, a congenital abnormality, was seen in 16 percent of the F_1 and F_2A generations. Of the offspring that lived beyond weaning 13 percent were runts and 30 percent died. Inability to breed in F_2B generation by some pairs was also noted.

In contrast, no growth, reproduction, or frequency of malformations were noted by Wills et al., after four descendant generations of rats were exposed to very low cadmium concentrations in the diet; 0.07, 0.10 and 0.125 Cd/kg (Ref. in Ex. 8–86B). However, exposure levels were so low, in fact close to the natural background levels, that toxic effects were hardly to be expected.

A lower placental and fetal weight was also seen by Tsvetkova after exposure of female rats to cadmium sulfate (3 g/day for 4 months by inhalation) (Ex. 156). The cadmium content in the liver of the experimental group embryos was 17.64 ± 40.02 μg/g, and the control group 7.99 ± 0.04 μg/g. The progeny of the experimental rats exposed to cadmium were less viable than the controls.

Ferm and Layton suggested that teratogenic effects of cadmium in the hamster or mouse could be prevented by pretreatment with small amounts of cadmium, indicating a protective mechanism involving induction of metallothionein (Ref. in Ex. 8–668). Several investigators such as Lucis et al., Arizono et al., and Hanlon et al. have shown that cadmium administered to pregnant animals binds to a metallothionein-like protein in the placenta (Ref. in Ex. 8–668).

Samarawickrama and Webb demonstrated a reduced zinc uptake in the rat fetus after cadmium treatment on day 9 to 15 of gestation, suggesting that the inhibition of DNA synthesis, by inhibiting zinc-dependent thymidine kinase activity, as the mechanisms of damage in the fetus. Dose was found to be critical; 1.1 mg/Cd/kg was not teratogenic in rats, while 1.25 mg Cd/kg caused high incidence of terata and 1.35 mg Cd/kg killed all fetuses (Ex. 8–157).

e. *Conclusions.* In conclusion, based on the studies presented above, OSHA believes that there is strong evidence that acute systemic administration of cadmium leads to testicular necrosis in various species. Regressive change in seminiferous epithelium, morphological changes in spermatozoa and inhibition of sperm motility after acute exposure are well substantiated. OSHA is of the opinion that acute administration of cadmium leads to morphological changes in ovaries and ovarian hemorrhage in female rats. However effects of cadmium on the reproductive organs after long-term exposure to low levels of cadmium are usually mild or absent. The lack of toxic effects seems to be associated with protective effects of metallotheionein that binds cadmium. Nevertheless, OSHA assumes that adverse effects on spermatogenesis occur after chronic dosing with cadmium at levels as low as 0.0005 mg/kg. Significant reduction in sperm number and motility and significant increase in desquamation of spermatogenic epithelium have been shown in rats given 0.0005 mg Cd/kg orally for six months. Chronic administration of cadmium leads to an increase in the thickness of the basal lamina in the blood vessels in a dose-related manner in the uterus of female rats. Based on Parizek study, OSHA believes that pregnant rats are more sensitive to the adverse effect of cadmium than the nonpregnant female rats. OSHA also concludes that there is sufficient evidence to indicate that chronic administration of cadmium can prolong the estrous cycle in rats. OSHA regards cadmium to be teratogenic and fetotoxic during early pregnancy as well as fetotoxic when administered shortly before delivery in rats.

6. Other Effects

Other adverse effects have been reported in experimental animals chronically exposed to cadmium. There are scattered reports of chronic effects on the gastrointestinal tract, peripheral nervous system and endocrine organs. More commonly documented effects in animals include anemia, changes in liver morphology, immunosuppression, and hypertension. For example, various experimental animals fed or injected with cadmium have commonly exhibited anemia, possibly due to cadmium's influence on the absorption and distribution of such metals as zinc and iron (Ex. 8–086–B, p. 167). Similarly, rats chronically exposed to cadmium oxide dust by inhalation developed anemia (Ex. 4–29). Animals exposed to cadmium by various routes of administration have shown morphological changes in the liver as well as disturbances in hepatic enzyme concentrations (Ex. 8–086–B, p. 161). Chronic oral exposure of mice to cadmium through drinking water decreased antibody synthesis (Ex. 8–24) and induced immunosuppression (Ex. 8–35).

There is conflicting evidence with respect to cadmium induced hypertension. Several studies have shown an increase in blood pressure after exposure to cadmium. Hypertension has been induced in rats orally exposed from 3 to 24 months to 0.1 to 10 mg cadmium/liter drinking water (Ex. 8–14). In this study, levels as low as 0.1 mg/l for 3 months increased

systolic blood pressure. The renal cortical level was 5 to 30 μg cadmium/g wet weight, which is below the critical concentration at which proteinuria is commonly detected. There are also studies, under similar experimental conditions, which have shown no hypertensive effects (Ex. 8–086b, pp. 170–173). It has been suggested that dietary differences may have caused the different responses, because rats on rye-based diets exhibited increased blood pressure whereas rats on other non-rye-based diets did not.

7. Conclusions about Non-Carcinogenic Effects

There is an abundance of data clearly indicating that exposures to cadmium in the industrial environment can cause serious toxic effects in human beings. Not only are there many experimental studies showing the acute and chronic effects of cadmium exposure, but there is also a great amount of human evidence among cadmium-exposed workers indicating adverse effects from chronic exposure to cadmium.

In humans, one of the earliest observable adverse effects from chronic exposure to cadmium is tubular proteinuria, the presence of an excess amount of low-molecular weight proteins in the urine (Exs. 12–07, 4–27, 4–28). This condition indicates impairment or loss of kidney function. Because of the body's ability to accumulate and store cadmium over long periods of time this condition may develop even after a reduction in or cessation of external cadmium exposure. Upon prolonged exposure tubular proteinuria may progress to more severe forms of renal dysfunction such as glycosuria, aminoaciduria, phosphaturia, and glomerular proteinuria or chronic nephrotoxicity. There is no specific treatment for chronic cadmium poisoning or for restoring kidney function. Persons with cadmium induced renal disease are at increased risk for developing kidney failure if additional renal insults occur such as exposure to other nephrotoxins including medications, infections of the renal-urinary system, obstruction of the urinary system, or reduced volume of blood flow to the kidneys due to reduced blood volume or vascular disease. In cases of cadmium-induced kidney damage, rigid control of diet, water intake and electrolyte balance in addition to medical treatment is required. Since other environmental sources of cadmium such as water, food, and ambient air may contribute to the total body burden, it is necessary to minimize all exposure to cadmium to prevent additional adverse health effects.

As noted in the lead standard (43 FR 52952), diseases resulting from exposures to heavy metals proceed in five stages: (1) Normal, (2) physiological change of uncertain significance, (3) pathophysiological change, (4) overt symptoms (morbidity), and (5) mortality. Within this process there are no sharp distinctions, but rather there is a continuum of effects. Categories overlap due to the variation in individual susceptibilities and exposures in the working population. Although step 2 is of uncertain significance, by step 3 (pathophysiologic changes) significant adverse health effects have occurred. Tubular proteinuria is considered by OSHA to represent pathophysiologic changes of consequence, and such changes represent material impairment, given OSHA's current understanding of the progressive stages of cadmium effects.

Other adverse health effects of concern to OSHA include reproductive effects, liver and spleen effects, and, noncarcinogenic lung effects, such as bronchitis. OSHA is of the opinion that the animal and human data are remarkably consistent. Human studies show high acute cadmium toxicity in the form of renal, liver, and pulmonary effects, and the animal studies show similar effects. There is renal damage and lung disease (bronchitis) in chronically exposed humans and in chronically exposed animals. There is also good correlation between ITAI-ITAI disease in humans and demineralization of the bone in animals, and liver damage is seen both in humans and animals.

C. Mutagenicity

A wide range of tests have been conducted to determine the mutagenic effects of cadmium. The mutagenicity of cadmium has been tested in bacteria, plants, insects, and mammalian cells, including human cells, *in vitro* and *in vivo*. Comprehensive reviews of these various investigations have been provided by Friberg (Ex. 8–086b, p. 223), Degraeve (Ex. 4–24), and EPA (Ex. 4–04). Both positive and negative results have been reported from these studies. This has lead to a somewhat confusing picture as to the mutagenicity of cadmium. The following section will give an overview of the more pertinent studies covered in the above reviews.

Cadmium has been shown to modify the metabolism of both RNA and DNA. Evidence has been obtained both *in vitro* and *in vivo* in microorganisms, plants, and mammalian cells showing enhancement and inhibition of RNA synthesis, degradation of DNA repair, inhibition of DNA synthesis, and inhibition of thymidine incorporation into DNA.

Gene mutation studies on microorganisms, yeasts, and mammalian cells have given mixed results on cadmium's mutagenic effects. For example, positive and negative mutagenic responses were observed in histidine reverse mutation assays using the bacteria *Salmonella typhimurium*. Some of these studies were considered inconclusive because several protocols were used in the assays. For example, different strains of *S. typhimurium* were tested using different dose regimens (e.g. single doses and doses with other chemicals). Conflicting and inconclusive results were also observed in gene mutation studies using yeast. For example, in a test for the induction of petite mutations, p-mutants were induced at the high and low doses but not at the middle dose. In a similar yeast assay, no p-mutants were induced at all, however; the dose was so toxic that only one percent of the yeast cells survived. Gene mutation assays using mammalian cell cultures of mouse lymphoma and chinese hamster cells have shown increased mutation frequencies with cadmium treatment.

Conflicting results were also reported in mutagenicity tests on fruit flies. Negative results were observed in sex-linked recessive lethal mutation tests, but positive results were observed in dominant lethal mutation tests. However, among the negative results it was noted that in one case too few chromosomes were tested while in another case the number of chromosomes tested was not reported. Thus, the scope of the tests may have been too small to detect a positive response.

In higher order plants, the mutagenicity tests have been mostly positive. Aberrations such as chromosomal lesions and breaks were induced in several different species of plants.

In mammalian cells, *in vitro* studies on human lymphocytes, have shown increased incidences of structural chromosomal aberrations after treatment with cadmium. Among the observed aberrations were chromatid breaks, symmetrical and asymmetrical translocations, and deletions. *In vitro* tests on other mammalian cells in culture, such as Chinese hamster cells, displayed no increase in structural chromosomal aberrations with cadmium treatment but did show an increase in numerical chromosomal aberrations (e.g. hyperploidy and diploidy).

Numerical aberrations were also observed *in vivo* in the oocytes of mice and hamsters treated with cadmium. In these studies no structural chromosomal aberrations were noted. Numerical aberrations were also observed in the blastocytes of cadmium treated mice, indicating that aberrations induced in the oocytes may be transferred to the embryo. Other *in vivo* tests on mice have shown negative responses. For example, in micronucleus assays, the frequency of micronuclei in experimental groups did not increase compared to control groups. Also, in dominant lethal assays no increase in mutants was observed in mice injected with cadmium chloride compared to controls. Heritable translocation assays revealed no observable translocations in the spermatocytes of the F_1 progeny of mice injected with cadmium chloride.

As in other test systems, *in vivo* studies on humans have produced conflicting results. For example, lymphocytes from the blood samples of some patients suffering from Itai-Itai disease showed a high rate of chromosomal aberrations such as chromatid breaks and translocations; however, a similar examination of other Itai-Itai patients showed no aberrations. Similarly, positive and negative results were observed *in vivo* among cadmium exposed workers in two different smelter plants. It was noted that for the positive effects these workers may also have been exposed to other metals such as lead and zinc which might have induced or contributed to the observed aberrations.

Thus, although a number of positive mutagenic responses have been observed, there are also a number of conflicting negative responses. It is difficult to make comparisons or to make conclusions about these conflicting results since the studies investigated different endpoints, and often used different protocols. Thus, until more conclusive mutagenicity studies are conducted and reported, cadmium may be considered to be a potential mutagenic agent.

D. Carcinogenic Health Effects

Cadmium has been shown to induce cancers in laboratory animals and is associated with lung and prostate cancer in man. Cancer is the second most common cause of death in the U.S. today. Lung cancer claims the largest share of cancer deaths among males and the second largest share of cancer deaths among females. The National Center for Health Statistics reports that in 1980, the lung cancer death rate was 68.8 per 100,000 for males and 24.4 per 100,000 for females.

Mortality and incidence are related by the case fatality rate, the proportion of incident cancer cases that terminate as cancer deaths. When a cancer is well defined and the mortality rate is similar to incidence, as with lung cancer, the case fatality rate is close to 100 percent. Few cases of lung cancer are curable, despite advances in medical and surgical oncology. Survival rates for lung cancer patients are poor with about 10% surviving five years or more after diagnosis (Ex. 8–62). OSHA considers lung cancer to represent the gravest material impairment of health because it is almost certainly fatal.

For prostate cancer, the case fatality rate is lower. Prostate cancer does not always lead to death. Males may have prostate cancer for some time without any clinical manifestation of the disease. Some of these tumors lack the capacity for rapid growth, while others invade surrounding tissue and metastasize to distant organs and cause death. In 1980, 22,881 men died of prostate cancer; the prostate cancer death rate was 20.8 per 100,000 men. Early diagnosis and treatment have reduced the mortality rates associated with prostate cancer. Nevertheless, because workers who work with cadmium are found to be at higher risk (Ex. 8–683) of prostate cancer, OSHA has evaluated the relevant epidemiological studies of prostate cancer among cadmium exposed workers. Prostate cancer also represents the gravest material impairment of health.

1. Evidence in Animals

Cadmium has been shown to be a carcinogen in animals when administered by inhalation. The strongest evidence of carcinogenicity comes from a rat bioassay by Takenaka et al (Ex. 4–67). In this well conducted study, cadmium was found to induce lung carcinomas in exposed Wistar rats. Incidence in the exposed groups was statistically significantly elevated over the incidence in controls, and a statistically significant dose-response was observed.

Takenaka exposed three groups of male rats continuously for 18 months to cadmium chloride aerosols with nominal cadmium concentrations of 12.5, 25, and 50 $\mu g/m^3$. An additional group of 41 rats served as controls. The animals received water ad libitum during the experiment but were fed only 8 hours per day to minimize food contamination. The rats were observed for 13 months after the last exposure, at which time all surviving rats were sacrificed. There was no statistically significant difference in mean survival times among the four groups of rats, although the mean survival time for the high dose group was slightly shorter than the mean survival time for the other groups.

A histopathological examination was given to all rats surviving the exposure phase of the study unless their bodies were too autolyzed to allow such an exam. Cadmium concentrations were measured in the lungs, liver, and kidneys of a subgroup of each exposure group. Concentrations in the lung were nearly as high as in the liver. In all organs concentrations were observed to increase with dose except that only the low dose rats were found to have a slightly higher concentration in the lung than was found in the middle dose rats.

The incidence of lung carcinomas was 0/38 (0%) in the controls, 6/39 (15.4%) in the low dose group, 20/38 (52.6%) in the middle dose group, and 25/35 (71.4%) in the high dose group. The majority of carcinomas were adenocarcinomas; however, epidermoid carcinomas, mucoepidermoid carcinomas, and combined epidermoid carcinomas and adenocarcinomas were observed. The incidence of each of these tumors is presented in Table V–21.

TABLE V–21.—INCIDENCE OF LUNG CARCINOMAS IN MALE WISTAR RATS EXPOSED TO CADMIUM CHLORIDE AEROSOLS [a]

Tumor type 50 $\mu g/m^3$	Controls (percent)	12.5 $\mu g/m^3$ (percent)	25 $\mu g/m^3$ (percent)
Adenocarcinoma 15/38 (39%)	14/35 (40)	0/38 (0)	4/39 (10)
Epidermoid 7/35 (20%) Carcinoma	0/38 (0)	2/39 (5)	4/38 (11)
Mucoepidermoid 0/38 (0%) Carcinoma	3/35 (9)	0/38 (0)	0/39 (0)
Combined 1/35 (3%) Epidermoid Carcinoma and Adenocarcinoma	0/38 (0)	0/39 (0)	1/38 (3)
Total 25/35 (71%) Carcinomas	0/38 (0)	6/39 (15)	20/38 (53)

[a] From Takenaka *et al.* (Ex. 4–67).

The Takenaka study appears to have been the first animal study to conclusively document a lung cancer response from inhaled cadmium. Takenaka noted that a number of prior experimental study results had only raised the possibility of lung cancer being induced by cadmium inhalation. Other studies, however, have shown the induction of lung cancer and other cancers as a result of either inhalation or subcutaneous injection of several different cadmium compounds. The Risk Assessment Guidelines published by the Office of Science and Technology (OSTP) call for taking account of negative as well as positive studies in assessing the weight of evidence.

Since 1980, OSHA has not published guidelines nor a standard concerning how it will assign weight of evidence in the qualitative evaluation of carcinogenicity in experimental animals. Other Agencies have published guidelines, however, including OSTP and EPA. In EPA's guidelines, five conditions are identified that, if present, may lead to a relatively high degree of confidence in the results of animal bioassays:

(1) Biologically independent tumors were found at a large number of sites;

(2) Independent experiments have demonstrated carcinogenic responses in both genders and in multiple species or strains of animals;

(3) There is a clear-cut and statistically significant dose-response relationship;

(4) There is a dose-related shortening of time-to-tumor occurrence; and

(5) There is a dose related increase in the proportion of tumors that are malignant.

Of these five conditions, four appear to exist for cadmium. OSHA requests comments concerning the degree of confidence that should be placed on the experimental study results related to cadmium in light of these five criteria.

The Takenaka study grew out of a pilot study by Heering et al (Ex. 4-04). In that study, 10 rats were exposed for 18 months to cadmium chloride aerosols with a nominal cadmium concentration of 20 $\mu g/m^3$. The animals were sacrificed when exposure ended and four adenomas and one adenocarcinoma were observed.

Results from a study of intratracheal instillations of cadmium oxide are more equivocal. In a study of male Fisher-44 rats, Sanders and Mahaffey found no evidence of cadmium-induced lung carcinomas, but they did observe an increased incidence of mammary fibroadenomas (Ex. 4-61). In that study, three groups of rats were given intratracheal instillations of 25 μg cadmium oxide. Forty-eight rats received one treatment at 70 days of age; 46 rats received two treatments at 70 and 100 days of age for a total dose of 50 μg cadmium oxide; and 50 rats received three treatments at 70, 100, and 130 days for a total dose of 75 μg cadmium oxide. Forty-six rats serving as controls received one intratracheal instillation of 0.9% sodium chloride solution.

The observed incidence of mammary fibroadenomas was 3/45 (7%) in the controls, 7/44 (16%) in the low dose group, 5/41 (12%) in the middle dose group, and 11/48 (23%) in the high dose group. Using the Fisher Exact Test, only the high dose group had a statistically significantly elevated incidence over incidence in the controls ($p=.027$). Two (5%) adenocarcinomas of the lung were observed in the middle dose group. The average number of tumors per tumor bearing rat were 1.4, 1.5, 1.6, and 1.8 for the control, low dose, middle dose, and high dose groups respectively. The authors reported that this difference was significant ($p=.044$) in a chi-square test for independence between number of tumors and treatment groups. Slightly more rats in the control group were found to have no tumors (16%) than treated rats (5 to 7%).

Additional evidence of the carcinogenicity of inhaled cadmium is provided by the results from a long term bioassay by Oldiges et al (Exs. 12-10i, 12-10h, and 12-35). In this study, groups of 20 male and female Wistar rats were exposed to cadmium chloride concentrations at 30 $\mu g/m^3$ or 90 $\mu g/m^3$, cadmium oxide dust at concentrations of 30 $\mu g/m^3$ or 90 $\mu g/m^3$, cadmium oxide fumes at concentrations of 10 $\mu g/m^3$ or 30 $\mu g/m^3$, cadmium sulfate at a concentration of 90 $\mu g/m^3$, cadmium sulfide at concentrations of 90 $\mu g/m^3$, 270 $\mu g/m^3$, 810 $\mu g/m^3$, or 2430 $\mu g/m^3$, or a combination of cadmium oxide and zinc oxide dust at concentrations of 30 and 300 $\mu g/m^3$ respectively or 90 and 900 $\mu g/m^3$ respectively. Twenty male rats and 20 female rats served as controls.

Most groups of animals were exposed for 22 hours per day for 7 days per week. For each of these groups, exposure continued for 18 months or until 25% of that group had died. Other groups of animals were exposed to their cadmium compound for 40 hours per week for 6 months. This shorter exposure protocol was chosen to determine whether a brief exposure period would induce primary lung tumors. Animal groups were followed through month 31 of the study or until 75% of a group had died. At many of the exposure concentrations, doses proved to be too toxic and many animals did not survive the 31 months of study.

Preliminary results from this study are presented in Table V-22. The primary tumors observed in these rats were bronchio-alveolar adenomas, adenocarcinomas, and squamous cell tumors.

TABLE V-22.—INCIDENCE OF PRIMARY LUNG TUMORS IN MALE AND FEMALE WISTAR RATS EXPOSED TO FOUR CADMIUM COMPOUNDS

Exposure [a]	Dose ($\mu g/m^3$)	Sex	Months of exposure [b]	Months of study [b]	Lung tumor incidence
Controls		M		31	0/20
		F		31	0/20
Cadmium	30	M	18	30	15/20
Chloride	30	F	18	31	13/18
Cadmium	90	M	6	30	11/20
Chloride	90	F	6	29	3/18
Cadmium	90	M	14	31	11/20
Sulfate	90	F	18	29	18/20
Cadmium	90	M	18	30	17/20
Sulfide	90	F	18	31	15/20
Cadmium	270	M	16	30	14/19

TABLE V-22.—INCIDENCE OF PRIMARY LUNG TUMORS IN MALE AND FEMALE WISTAR RATS EXPOSED TO FOUR CADMIUM COMPOUNDS—Continued

Exposure [c]	Dose (μg/m³)	Sex	Months of exposure [a]	Months of study [b]	Lung tumor incidence
Sulfide	270	F	16	30	16/19
Cadmium	810	M	7	30	11/20
Sulfide	810	F	10	29	13/20
Cadmium	2430	M	4	30	7/16
Sulfide	2430	F	3	31	6/19
Cadmium	[e] 270	M	6	27	3/20
Sulfide	[e] 270	F	6	29	3/20
Cadmium	90	M	16	31	15/20
Oxide Dust	90	F	18	31	15/20
Cadmium	90	M	7	31	9/17
Oxide Dust	90	F	11	31	11/16
Cadmium	[e] 90	M	6	31	4/20
Oxide Dust	[e] 90	F	6	31	3/20
Cadmium	[e] 30	M	18	29	13/18
Oxide Dust	[e] 30	F	18	29	12/20
Cadmium	10	M	18	31	0/19
Oxide Fume	10	F	18	31	0/19
Cadmium	30	M	18	31	3/19
Oxide Fume	30	F	18	31	4/17
Cadmium Oxide and Zinc Oxide Dust	[f] 30/300	M	18	31	0/20
		F	18	31	0/20
Cadmium Oxide and Zinc Oxide Dust	[f] 90/900	M	18	31	6/20
		F	18	31	7/20

[a] Study protocol called for 6 or 18 months of exposure, but exposure was terminated when 25% of an animal group died.
[b] Months of study includes months of exposure. All animals in a group were sacrificed when mortality in that group exceeded 75%.
[c] Incidence is number of animals with at least one primary tumor divided by the number of animals at risk. Primary lung tumors are bronchio-alveolar adenomas, adenocarcinomas, and squamous cell tumors.
[d] Exposure was for 40 hours per week.
[e] Rats were fed a zinc-reduced diet.
[f] Dose was 30 μg/m³ of cadmium and 300 μg/m³ of zinc or 90 μg/m³ of cadmium and 900 μg/m³ of zinc.

The extremely high mortality rates seem to make this study unsuitable for quantitatively assessing the risk associated with each of the cadmium compounds studied or for assessing their relative carcinogenic potency. The study results indicate, however, that while zinc oxide dust may mitigate the carcinogenic potential of lower doses of cadmium oxide, each of the cadmium compounds alone is carcinogenic in animals exposed to these levels through inhalation.

In an inhalation study by Heinrich (Ex. 12–42), male and female Syrian golden hamsters and female mice were exposed to cadmium chloride, cadmium sulphate, cadmium oxide, or cadmium sulfide using exposure concentrations between 10 and 270 μg/m³ for 19 hours per day, five days per week, for 50–70 weeks. An abstract of the study has reported that no cadmium-related significant increase in lung tumor rate was observed in either species. However, complete experimental data were not included.

There have been numerous studies involving the subcutaneous or intramuscular injection of cadmium into both rats and mice. The U.S. Environmental Protection Agency's "Updated Mutagenicity and Carcinogenicity Assessment of Cadmium" presents a summary of many of these studies (Ex. 4–4, p. 62–64).

A short summary of several of these studies is provided in the following section. Several studies have failed to demonstrate a carcinogenic effect from cadmium. In a series of studies, rats and mice were given 5 ppm cadmium acetate or oxalate in drinking water throughout their lives (Exs. 8–308; 8–121; 8–196). Compared to controls, there were no significant differences in the incidence of tumors in animals treated with cadmium, although mortality was increased in rats and male mice. In a study of prostatic changes due to cadmium, Levy et al. (Ex. 8–194) treated rats by subcutaneous injection of cadmium sulphate into the flank once weekly for two years in doses of 0.2, 0.1, and 0.05 mg. A low incidence of sarcomata at the injection site was seen in the treated groups. Levy stated that this finding was not unexpected, having been previously reported by Haddow et al. in 1964, Kazantzis, in 1963, and Health et al., in 1962 (Ex. 8–117). No neoplastic changes were seen in the prostate gland, and there was no treatment-related increase in the incidence of neoplasms at other sites.

In two further studies of the effect of cadmium on the prostate gland by Levy et al. (Ex. 8–034; 8–117), mice and rats were treated with cadmium sulphate by gastric instillation. Dosing regimens were 0.35, 0.18, and 0.087 mg/kg body weight once weekly for two years for rats, and 1.75, 0.88, and 0.44 mg/kg body weight once weekly for 18 months for mice. Concurrent dosing regimens of mice and rat controls were run using gastric instillation of equivalent amounts of distilled water. In both studies, no neoplastic lesions of the prostate or urinary tract were seen. Tumors seen in other organs could not be related to cadmium treatment.

Loser (Ex. 8–643) treated rats with cadmium chloride in the diet for two years at doses of 1, 3, 10, and 50 ppm. Fifty male and fifty female rats were used for each level; 100 rats of each sex served as concurrent controls. Cadmium treatment was not associated with an increased incidence of total numbers of tumors or any specific type of neoplasia.

Other studies (Exs. 4–55; 4–57; 8–253) show that the injection of cadmium metal or certain salts of cadmium produce sarcomas at the site of injection as well as interstitial and Leydig cell tumors of the testes in experimental animals. The simultaneous administration of zinc and cadmium has been found to reduce the incidence of cadmium-induced testicular tumors (Ex. 8–253). For a discussion of these studies, please see Elinder (Ex. 8–086B p. 206).

OSHA has not relied upon the injection and peroral studies for assessing carcinogenic risk, nor upon the preliminary data on inhalation. The

reasons for this are set forth below in the Significance of Risk section of the preamble.

OSHA relied, in part, upon the review by the International Agency for Research on Cancer [(IARC) Ex. 8–656] using IARC's criteria for categorizing animal data. IARC states that $CdCl_2$, CdO, $CdSO_4$, and CdS produced local sarcomas in rats following injection. $CdCl_2$ and $CdSO_4$ produced testicular tumors in mice and rats after subcutaneous administration. IARC concluded that the animal data are "sufficient", that is, a causal relationship has been established between exposures to cadmium and an increased incidence of malignant neoplasms or a combination of benign and malignant neoplasms in two or more species or in two or more independent studies in one species. IARC classifies cadmium as a probable human carcinogen because it is biologically plausible and prudent to regard agents for which there is "sufficient" animal evidence of carcinogenicity as if they presented a carcinogenic risk to humans. OSHA received several comments on the study by Takenaka et al., and on the study by Oldiges et al., which have been addressed in the section on quantitative risk assessment. However, OSHA received substantial comments on the issue of photodecomposition in the study by Oldiges et al., which was subsequently re-published by Glaser et al. with essentially the same data, based upon the same experiments. These comments are addressed below.

2. The Carcinogenicity of Cadmium Pigments

DCMA has submitted comments that there is no evidence that cadmium pigments, per se, are carcinogenic and that even if they were to be considered carcinogenic, they are less potent as carcinogens. These arguments are based upon the opinion that the carcinogenicity of cadmium sulfide (CdS) pigment as administered in the chronic rat inhalation study by Oldiges et al. was the result of CdS undergoing photodecomposition to cadmium sulfate ($CdSO_4$), the latter compound being responsible for the cancers observed in the experimental animals. Secondly, DCMA argued that even if cadmium pigments were determined to be carcinogenic, they are less potent as carcinogens than the more soluble forms of cadmium such as $CdCl_2$ and $CdSO_4$ because they are less soluble and hence less bioavailable in human tissue. DCMA points out that there are applications where cadmium pigments are the only source of exposure to cadmium and that in these situations cadmium pigments should be given a different permissible exposure limit from other cadmium compounds (Ex. 144–20).

DCMA requested that OSHA reopen the record in the cadmium rulemaking on the issue of the toxicity and carcinogenicity of cadmium pigments in order to give the DCMA the opportunity to cross examine OSHA's witnesses on this issue (Ex. 144–20). OSHA reopened the record to receive the results of new studies and comments on these studies and to allow interested parties to comment on opinions of Dr. Oberdörster and Dr. Heinrich, who were requested by OSHA to address the issue of cadmium pigment carcinogenicity.

[Dr. Oberdörster is currently Professor of Toxicology at the University of Rochester and formerly of the Fraunhofer Institute of Toxicology and Aerosol Research in Germany, where the carcinogenicity studies of cadmium compounds and some of the CdS photodecomposition studies were conducted. Dr. Heinrich is a toxicologist with the Fraunhofer Institute of Toxicology and Aerosol Research in Hannover, Germany.] OSHA denied a request to commence a new set of hearings on the issue of cadmium pigment carcinogenicity. OSHA has considered all comments received during the period the record was reopened. OSHA has also considered all comments that were received prior to the reopening of the record.

For background information, a substance is defined as a cadmium pigment, if (1) the contained cadmium is chemically bound to either sulfur (CdS) or selenium (CdSSe) (Sic), and (2) it is used as a colorant, and (3) it contains less than 0.1 percent acid extractable cadmium, as determined by the EN–71 extraction method (DCMA Ex. 120). "Solubility" is the process by which one substance is dissolved in another. Some cadmium compounds, like cadmium oxide (CdO) and cadmium sulfide (CdS), are almost insoluble in water, whereas cadmium chloride ($CdCl_2$) is highly soluble in water. CdO, on the other hand, while insoluble in water is highly soluble in the lung (Ex. 142). In addition to the medium in which a substance can be dissolved, solubility also depends upon the form of the material that is being dissolved. For example, finely divided particles because of their larger surface area/mass ratio are more soluble than larger particles (Ex. 152). More soluble compounds may be more bioavailable and thus more toxic than less soluble compounds, but bioactivity may also be related to mechanical and surface properties (e.g., fibers, SiO_2). "Bioavailability" of cadmium compounds refers to the degree to which cadmium becomes available to the target tissues after exposure.

As presented in OSHA's proposal, data from the Takenaka et al. and Oldiges et al. studies suggested that all of the cadmium compounds administered by inhalation demonstrated a similar qualitative and quantitative carcinogenic response. However, during the OSHA hearing, the issue was raised that the cancer response resulting from inhalation exposure of CdS to Wistar rats in the Oldiges et al. (1989) study may have been the result of photodecomposition of the CdS to cadmium sulfate, the latter compound causing the lung cancer (Ex. 8–694–D). [Note: Virtually the same study was published in 1989 by Oldiges et al. (Ex. 8–694) and in 1990 by Glaser et al. (Ex. 8–694–B). In this section of the preamble, the chronic rat inhalation study for carcinogenicity of four cadmium compounds will be referred to as the Oldiges et al. study (Ex. 8–694–D).]

Based upon preliminary results in his laboratory, Mr. Leonard Ulicny of SCM Chemicals suggested that the particles of CdS pigment in the aqueous suspension used in the Oldiges et al. study may have been solubilized under the influence of light (photodecomposition). Thus, OSHA reopened the docket to receive comments on the issue of the photodecomposition of CdS in the Oldiges et al. study and the role it may have played in the carcinogenic response observed in the study. If complete solubilization only of cadmium pigments and formation of ionic $Cd++$ is responsible for the carcinogenicity of these compounds, the results of the Oldiges et al. study for CdS need to be reconsidered in terms of the carcinogenic response observed in the animals. If, on the other hand, an intrinsic toxic particulate effect contributes also to the carcinogenic effect of cadmium pigments such as CdS, then *in vivo* solubility may not be a good indicator of the carcinogenic potency.

Data from several studies related to insolubility, stability and ionization of CdS were submitted into the record. The data indicate that under proper conditions of light and aqueous suspension of CdS, CdS decomposes and forms cadmium sulfate ($CdSO_4$), and the percent of CdS ionized under such conditions depends upon the concentration of CdS in the aqueous suspension and the intensity of light present.

Mr. Ulicny first raised the issue that CdS particles in suspension may be solubilized under the influence of light (photo-decomposition) based on preliminary results in his laboratory. He performed a solubility study of CdS in aqueous suspension under lighting conditions of 1000 lux for about a week. Gagliardi and Ulicny (1990) presented detailed results of their in vitro experiments (Ex. 144–1) and questioned the validity of the carcinogenic response observed in rats exposed to CdS in the study by Oldiges et al. since a significant fraction of CdS could have been solubilized to soluble $CdSO_4$. They referred to photodecomposition or photo-oxidation of CdS as having occurred under similar conditions in the Oldiges et al. study. However, no evidence was provided at the time of cadmium hearings that such photodecomposition could occur under the relatively low lighting conditions that were present during the Oldiges et al. inhalation study (approximately 50 Lux for 12 hours/day only).

Photodecomposition of CdS was further studied by Glaser et al. in 1991 (Ex. L–140–14). They replicated the aerosol generation procedure employed in the long-term rat inhalation study by Oldiges et al. (1989), the only exception being that the type of CdS used by Glaser et al. was slightly different from that used in the Oldiges et al. cancer study (Ex. 8–694–D). The rat inhalation study had been performed with CdS type E which consisted of 77.1% Cd, 22.0%, S, 0.024% and 0.64% $BaSO_4$, whereas in the solubility study CdS type E1 was used, consisting of 76.5% Cd, 22.2% S, 0.14% Zn, and 0.8% $BaSO_4$. Solubility according to DIN53770 was slightly different, being 0.07% for type E and 0.04% for type E1, and also the specific surface area was 11.8 m^2/g for type E and 8.7 m^2/g for type E1. Type E and E1 had been manufactured by the same process and the same producer, Bayer AG, F.R. Germany, yet they were taken from different batches. Dr. Oberdörster stated that the very small physicochemical differences between the two types should be irrelevant as far as biological effects are concerned (Ex. 141).

In the solubility study by Glaser et al., the CdS aerosol was generated from two different concentrations of the suspension, i.e., 0.38 mg/ml Cd and 1.25 mg/ml. These concentrations of CdS suspension were used to generate aerosol concentrations of 90 and 270 μg per m^3 in the long-term rat inhalation study. The aerosols were generated by nozzle atomizers with attached cyclones to eliminate larger sized particles. The volume that was used daily to generate the aerosol was added each day and amounted to about 300 ml per day. This was adjusted with respect to total cadmium to maintain constancy of the overall cadmium concentration. The light intensity inside the CdS suspension reservoir was measured to be about 50 Lux and the aerosol was generated into the inhalation chambers after being electrically discharged by an ^{85}Kr source before entering the chambers in order to simulate as closely as possible the conditions of the long-term cancer study. The solubility experiment lasted for 64 days; samples of the suspension were taken on days 2, 4, 8, 16, 32 and 64 for measurement of Cd^{++} ions by voltametry and SO_4^{--} by ion chromatography. Aerosol samples were collected on filters taken from the inhalation chambers on day 15 and 30 and were analyzed separately for Cd^{++} and total cadmium. CdS particles were separated from Cd^{++} ions by centrifugation (1400 g for 30 min) and subsequent three fold filtration of the supernatant.

The results showed that under these lighting conditions (50 Lux) a significant solubilization rate of CdS particles in the aqueous suspension occurred. During the 64-day study period, 0.24 mg Cd^{++} per ml was found in the lower concentration of the suspension (0.38 mg/ml), equivalent to 63% being solubilized. In contrast, CdS suspension in the higher concentration (1.25 mg Cd per ml) showed a solubilization of only 11% of total Cd. There was a steady increase of soluble Cd throughout this period which had not quite reached equilibrium at the end of the study period of 64 days. Concurrently with the increase of Cd^{++}, an increase in sulphate could be measured which appeared to reach an equilibrium for the lower concentration (0.38 mg/ml) after about 40 days in the study.

Examination of the filter samples from the collected aerosols showed similarly that the lower Cd concentration (generated from 0.38 mg Cd/ml suspension) had a higher percentage of soluble Cd content (50.6% of total cadmium) compared to the higher concentration (generated from 1.25 mg Cd/ml suspension) which showed only a soluble Cd fraction of about 15% (Ex. L–140–14). According to Dr. Oberdörster, the aerosols are more relevant to actual exposure than CdS concentrations in the suspension because it is the aerosol to which the test animals are actually exposed (Ex. 141). These results indicate that the low lighting conditions present during the chronic rat inhalation study could have resulted in about 50% of the lower concentration of 90 μg CdS/m^3 and about 15% of the higher concentration of 270 μg CdS/m^3 being converted into a soluble form of cadmium. (Ex. L–140–14).

Konig et al. also evaluated the potential for photodecomposition of pigment CdS using the same aerosol generating equipment and protocol as was employed in the long term carcinogenicity study by Oldiges et al. (Exs. L–140–3 and L–140–27–B). The CdS aerosol concentration was kept at approximately 90 μg/m^3. In about four weeks after starting the experiment, the concentration of cadmium ions in the suspension and in the aerosol reached a plateau at 43.5% and 35.8%, respectively.

These results indicate a slightly lower percentage of photodecomposition as compared to the Glaser photodecomposition study (L–140–14).

Konig et al. (Ex. (L–140–27–B) have also shown that CdS suspended in physiological saline (0.9%) solution at concentrations of 3.33 and 0.83 g Cd/l as applied in the intratracheal instillation studies with rats by Pott et al. (1987) led to solubilization of CdS (Ex. 8–757). The solubilized fraction of Cd within 24 hours was about 3% for the lower Cd concentration (0.83 mg Cd/ml) and about 1% for the higher Cd concentration (3.33 mg Cd/ml). The samples had been illuminated with 800 Lux from fluorescent lamps for 24 hours to approximate the conditions in the study by Pott et al. (1987). The lowest concentration of CdS suspension of 0.16 mg Cd/ml in these same experiments with saline gave the highest solubilization of about 13% within 24 hours.

As a result of the above findings, several questions related to the carcinogenicity of CdS are raised: Can the photodecomposition of CdS to $CdSO_4$ be solely responsible for the carcinogenic effect in rats observed in the Oldiges et al. study? Is inhaled CdS a pulmonary carcinogen? And, if so, how does its carcinogenic potency compare to that of other Cd compounds?

Ulicny and Gagliardi (Ex. 141–1) concluded that the Glaser et al. photodecomposition study demonstrated that inadvertent co-exposure to ionic cadmium ($CdSO_4$) was sufficient to explain the carcinogenic response in the Oldiges et al. study and that the latter study could not be used to define a carcinogenic potency for cadmium pigment.

On the basis of their study results, Konig et al. were of the opinion that the observed lung tumor response in the Oldiges et al. study:

cannot be attributed solely to the effect of CdS * * * The real contribution of the CdS particles to the observed lung tumor rate after inhalation of a mixture of $CdSO_4$ and CdS depends exclusively on the bioavailability or solubility of CdS particles retained in the lungs (Ex. L-140-27-B).

Konig et al. then cited studies by Klimisch et al., whereby they used a dry dispersion technique to exposed rats to CdS aerosols. This technique of preparation and administration of CdS make it unlikely that photodecomposition will occur because moisture and light are not present together. The study showed that Cd was retained in the lungs and was bioavailable since it was found in the kidneys.

Konig et al. also cited inhalation studies with rats and monkeys that measured pulmonary retention (Oberdörster and Cox, 1989) and concluded that the study "clearly showed" the bioavailability of CdS retained in the lungs. CdS in these latter experiments was suspended in ethanol and the exposure to the aerosol lasted for only 10 minutes. Since CdS in ethanol is much more stable than in water, Konig et al. assumed that almost no $CdSO_4$ was inhaled by the animals in the study and concluded:

* * * because of the high carcinogenic potency of Cd^{++} ions in the lungs also very small amounts of dissolved CdS could lead to a tumor response * * * and therefore inhalable CdS has to be regarded as a probable human carcinogen. (L-140-27-B)

* * * because of the low solubility of CdS in the lungs and the relatively long biological half-time of inhaled particles in the human lung compared to the rat lung the carcinogenic risk of CdS dust for humans could be higher than expected on the basis of the rat data. (Ex. L-140-27-B)

The study by Ulicny and Gagliardi shows low *in vitro* solubility of CdS pigment following 30 days of suspension in a solution with a ph of 4.0—a ph similar to that in alveolar macrophages of the lung (Ex. 144-1). The study by Klimisch and Gembardt evaluated the clearance and excretion of CdS and its bioavailability in terms of renal uptake in Wistar rats (Ex. 151). They did not measure liver uptake. A dry dispersion technique was used to expose the animals by inhalation to 0.3 mg/m³ $CdCl_2$, 0.2 mg/m³ CdS, 1 mg/m³ CdS and 8 mg/m³ CdS. Including controls, five groups of 60 animals were exposed for up to 10 days and followed post exposure for up to three months. For $CdCl_2$, renal accumulation was 35% of lung clearance. For CdS, renal accumulation was 1% of lung clearance. This study again shows the bioavailability of cadmium as a result of inhalation exposure to CdS, however, the amount of accumulation is low compared to the that of $CdCl_2$. Nevertheless, the solubilization and bioavailability of cadmium from inhalation of CdS has been demonstrated in several studies.

Although the results by Konig et al. show slightly less photodecomposition as compared to the results by Glaser et al. from an aqueous suspension and aerosol related to 90 μg/m³ of CdS, they nevertheless confirm the findings in the study by Glaser et al. (1991) who observed that CdS will be solubilized to a significant degree when kept in an aqueous suspension even under low light conditions over an extended period of time and that lower concentrations of CdS suspensions will lead to relatively higher solubilization rates.

Dr. Oberdörster considered the issue of CdS carcinogenicity partly from the standpoint of evaluating the lung cancer response in rats observed in the Oldiges et al. inhalation study (Ex. 141). Because of high mortality necessitating cessation of exposure in the groups of animals exposed to the three highest concentrations of CdS (270, 810 and 2430 μg/m³), Dr. Oberdörster evaluated lung cancer response in the lowest CdS exposure group (90 μg/m³). In order to maximize the estimate of CdS pigment that may have become solubilized in the carcinogenicity study by Oldiges et al. (Ex. 8-964-D), Oberdörster used the data from Glaser et al. (Ex. L-140-14) rather than data from Konig et al. (Ex. L-140-27-B) and therefore assumed that 50% (rather than 38%) of CdS would photodecompose to $CdSO_4$ at the 90 μg/m³ exposure level. Thus, the possibility exists that the lung cancer response rate in the Oldiges et al. study (75% in males and 85% in females) may have resulted from combined exposure to CdS and $CdSO_4$ of 45 μg/m³ each. When these results were compared to the dose response data for $CdCl_2$ and lung cancer in the Takenaka study, Dr. Oberdörster was of the opinion that this high tumor response rate in the CdS exposed animals could have resulted from the 45 μg/m³ of $CdSO_4$ that was produced by photodecomposition. On the other hand, he noted that animals exposed to 90 μg/m³ of $CdSO_4$ had a tumor response rate similar to those exposed to 90 μg/m³ CdS, i.e., 90 μg/m³ of either cadmium compound resulted in the same cancer response. For this reason, he was also of the opinion that the tumor response rate in the group of rats exposed to 90 μg/m³ of CdS could have also been the result of the remaining exposure of 45 μg/m³ of CdS in combination with $CdSO_4$ if the effects of both compounds were additive. In other words, Dr. Oberdörster was also of the opinion that both cadmium compounds may have been responsible for the high tumor rate observed in the Oldiges et al. study since the high tumor rate placed this value in the flat part of the exposure response curve. Thus, he felt that evidence for the carcinogenicity of CdS could not be determined conclusively from this study.

Dr. Oberdörster also considered the issue of CdS carcinogenicity by evaluating the tumor response observed in rats as a result of administration of various cadmium compounds through intratracheal instillation in the Pott et al. (1987) study. Three separate dose levels for each cadmium compound were used in this study (Ex. 8-757). Animals were exposed to a total of 20 μg, 60 μg or 135 μg of $CdCl_2$ or $CdSO_4$ and to a total of 630 μg, 2500 μg and 10,000 μg of CdS. These doses of CdS would result in approximately 60 μg, 70 μg and 100 μg of $CdSO_4$ being formed through photodecomposition (Ex. 141). In his analysis, Dr. Oberdörster estimated the amount of CdS that would have photodecomposed to $CdSO_4$ in the Pott study based upon the Konig et al. (1991) study.

Note: Dr. Oberdörster overestimated the actual amount of CdS that would photodecompose to soluble $CdSO_4$ in his analysis because he assumed that the CdS suspension was exposed to light for 24 hours when he had information that Dr. Pott had kept the suspension in a dark refrigerator over night.

Dr. Oberdörster compared cancer response in the low and middle dose groups because there was early mortality in the high dose groups—over 50% of the animals in the high dose groups had died before the first tumor was observed in the study.

The tumor response (5.1%) in the low dose group of CdS exposed animals was not significantly different from the tumor response of the pooled low dose groups exposed to $CdCl_2$ and CdO (2.7%) or to the tumor response (6.2%) observed in the pooled middle dose groups of $CdCl_2$ and CdO exposed animals. Dr. Oberdörster then calculated that the tumor response (22.2%) in the mid-dose group exposed to CdS (equivalent to about 70 μg of soluble $CdSO_4$) was: (1) Significantly greater than the tumor response (5.1%) in the low dose CdS group (equivalent to 60 μg of soluble $CdSO_4$) and (2) significantly greater that the tumor response (6.2%) with data combined for the mid-dose groups exposed to 60 μg of soluble $CdCl_2$ or CdO.

Thus, in the presence of CdS, an increase of slightly less than 10 μg of

exposure to $CdSO_4$ (60 to 70 μg) significantly increased the tumor response from 5.1% to 22.2%. In addition, exposure to slightly less than 70 μg of $CdSO_4$ in the presence of a high dose of CdS yielded a significantly higher tumor response (6.2% versus 22.5%) than observed with exposure to 60 μg of soluble $CdCl_2$ or $CdSO_4$. In Dr. Oberdörster's opinion, this significantly increased tumor response as a result of only a slight increase in exposure to $CdSO_4$ in the mid-dose CdS group as compared to the low dose CdS group, or in comparison to the mid-dose $CdCl_2$ or CdO group could not have been the result of exposure to only an additional 10 μg of $CdSO_4$. Therefore, in Dr. Oberdörster's opinion, exposure to CdS was the most likely cause of the increase in lung cancer in the mid-dose group exposed to CdS in this study. Thus, the Pott study provided evidence of a qualitative carcinogenic response as a result of exposure to CdS. Dr. Oberdörster stated:

> * * * no firm conclusion about the pulmonary carcinogenicity can be drawn from the results of the study by Glaser et al. (1990). However, when the inhalation study and the instillation study are viewed together the evidence for carcinogenicity of CdS becomes stronger. (Ex. 141).

The Pott study, however, in Dr. Oberdörster's opinion could not be used to provide quantitative evidence of cancer potency because the cadmium compounds were administered by intratracheal instillation. Dr Oberdörster was of the opinion that CdS is probably less potent as a carcinogen in rats than the other cadmium compounds tested. He stated "to determine how much less this carcinogenic potency is requires a far better knowledge of the underlying molecular and cellular mechanisms of cadmium carcinogenicity than we have at present.

On the basis of their experimental results as presented above, Glaser et al. stated that:

> CdS solubilization may have contributed to the high lung tumor incidences in the CdS exposed rats. However, CdS particles still have a carcinogenic potential to the lung of rats as indicated by the results of Pott et al. (1987), who found an increased lung tumor incidence in rats after repeated intratracheal instillation of CdS particles. (Ex. L-140-14)

Dr. Heinrich of the Fraunhofer Institute in Hannover also commented on the carcinogenic potential of CdS (Ex. 142). Based upon two lines of reasoning, he was of the opinion that CdS is carcinogenic. First, he noted that rats given two intraperitoneal injections of 0.125 mg of Cd as CdO developed a tumor rate of only 6.4% in the 1987 Pott et al. study (Ex. 8-757). He then stated that the high tumor rate (67%) resulting from 50 mg of cadmium as CdS in the study by Pott could only be explained by a high amount of CdS becoming solubilized in the peritoneal cavity over time. He reasoned that if the 50 mg suspension of cadmium as CdS had already contained appreciable quantities of cadmium ions at the time of administration, the animals would have shown toxic effects. Second, the findings of Konig et al. (Ex. L-140-27-B) of about 40% Cd^{++} ion formation in aerosol generated from the 90 μg/m³ CdS exposure in relation to the cancer incidence in rats exposed via inhalation to 90 μg/m³ of CdS in the Oldiges et al. study (8-694-D) indicated to Heinrich that about 60% or 56 μg/m³ of CdS was inhaled by rats in the Oldiges et al. study. As a result, he estimated that the amount of cadmium deposited in the rat lung per day as CdS would have been 2.1 μg. According to Heinrich, only 25% of this amount of cadmium has to be biologically available to reach the same lung burden with cadmium ions and possibly the same tumor rate (15.4%) as the rats exposed to 13.4 μg Cd/m³ as $CdCl_2$ in the Takenaka et al. study. As a result of the above observations, Heinrich concluded:

> Thus there is no doubt that CdS retained in the lung will dissolve to some extent depending on the residence time or biological halftime of the inhaled CdS particles in the lung. Therefore, inhalable CdS aerosol has to be regarded as a probable human carcinogen. The longer the residence time of the CdS particle in the lung the more CdS becomes dissolved and the higher will be the carcinogenic potency. As we know that the biological halftime of particles with low solubility in the human lung is about ten times longer compared to the rat lung, the carcinogenic potency of inhaled CdS aerosols is expected to be higher for humans than for rats. (Ex. 142)

In other words, the same dose of CdS to the human lung may cause a greater carcinogenic response than in the rat lung because of longer retention time in the human lung. However, this does not imply that CdS would be a more potent carcinogen than other more soluble cadmium compounds based on the ionic theory of carcinogenesis. Indeed, DCMA (Ex. 144-20) pointed out that all of the cadmium compounds had a similar retention time in the rat lung and that the study by Dr. Oberdörster and Cox (Ex. 31-A) indicated that all of the cadmium compounds are retained in the lungs of primates 10 times longer than in rodents.

Thus, it seems reasonable to assume that the steady state concentration and the resulting retained dose of CdS particles from a comparable exposure concentration will be higher in the human lung than in the rat lung. Moreover, the longer residence time of CdS particles to be released in the human lung means that there is more time than in the rat lung for cadmium ions to be released by dissolution from the CdS particles (Ex. 142). Both of these biological factors lead Dr. Heinrich to conclude that from a comparable exposure concentration, the resulting carcinogenic effect of CdS will be higher in the human lung than in the rat lung (Ex. 142) even though the overall carcinogenic effect of CdS may be less as compared to other more soluble cadmium compounds.

Based upon the ionic theory of carcinogenesis for cadmium compounds and data related to solubility and bioavailability of CdS in rats, Dr. Heinrich (Ex. 142), Dr. Oberdörster (Ex. 141) and Drs. Konig et al. (Ex. L-140-27-B) were all of the opinion that CdS-exposed rats are likely to develop a lower lung tumor rate than $CdCl_2$ or CdO-exposed rats. Neither Dr. Heinrich nor Dr. Oberdörster, however, could not give an estimate of the carcinogenic potency of CdS to humans because of lack of knowledge of the mechanisms involved. For example, Dr. Heinrich stated that we do not:

> * * * know how many cadmium ions are actually necessary to induce the observed carcinogenic effect. We also do not know whether metallothionein-bound cadmium ions in the lung can be remobilized and are thus also available for a carcinogenic effect. (Ex. 142)

With regard to carcinogenic potency of CdS, Dr. Oberdörster stated:

> To determine how much less this carcinogenic potency is requires a far better knowledge of the underlying molecular and cellular mechanisms of cadmium carcinogenicity than we have at present. I can think of several hypothetical mechanistic scenarios which would implicate CdS as being a direct or indirect pulmonary carcinogen. (Ex. 141)

Dr. Oberdörster went on to say that if ionic cadmium is the ultimate carcinogen, then long term in vivo solubilization rates in the lung may permit the estimate of a potency factor for bioavailability of Cd^{++}. If, on the other hand, an intrinsic toxic particulate effect contributes to the carcinogenic effect of CdS as it may do with respect to toxic effects in the lungs, then in vivo solubility is not a good indicator of carcinogenic potency. He also stated the possibility of a combined effect of solubilized cadmium on further in vivo CdS solubilization and retention due to effects on lung cell function as a possible mechanism.

In summary, DCMA requested a separate health standard for cadmium pigments (Ex. 144–20). The basis for this opinion is that the scientific studies of carcinogenicity by Oldiges et al. and by Pott et al. are flawed because the CdS administered to the animals was subjected to light and as a result the material photodecomposed to $CdSO_4$, which was responsible for the cancer response.

After reviewing the new photodecomposition studies and comments about them as mentioned above, OSHA is of the opinion that the photodecomposition of CdS to $CdSO_4$ may have played a role in the cancer response observed in the Oldiges et al. and Pott et al. studies. However, photodecomposition of CdS to $CdSO_4$ could not account for the tumor response observed in the mid-dose group of the Pott et al. study as pointed out by Oberdörster (Ex. 141) and discussed above. If CdS was responsible for the significant increase in the cancer response observed in the mid-dose group, it is reasonable to conclude that CdS has a carcinogenic potential and contributed to the cancer response observed in the inhalation cancer study by Oldiges et al.

After reviewing all of the studies and comments on the issue of CdS carcinogenicity, OSHA agrees with the commentors that the CdS preparations used in animal carcinogenicity studies photodecomposed to varying degrees which depended upon the concentration administered and the amount of light and moisture present. The exact role of this photodecomposition in the quantitative carcinogenic response observed in the various cancer studies, however, cannot be determined. Nevertheless, evidence was presented during the rulemaking that CdS is a probable human carcinogen. This opinion of OSHA is derived from a combination of the following observations:

(1) The analysis of Dr. Oberdörster showing that an increase of only 10 μg of $CdSO_4$ in the presence of CdS resulted in a statistically significant increase in lung tumor response in the Pott et al. study;

(2) The Oldiges et al. study demonstrating a significant increase in lung cancer in rats exposed to CdS by inhalation;

(3) The above mentioned analysis by Heinrich indicating that the lung tumor response among animals given 50 mg of cadmium as CdS in the Pott et al. study can only be explained by a high solubility of CdS in the peritoneal cavity over time;

(4) Study results indicating that administration of CdS leads to absorption into the body;

(5) Lung retention of CdS aerosol is estimated to be 10 times greater in the human lung than in the rat lung and increases the likelihood of systemic absorption in humans.

With the exception of Mr. Ulicny, all of the investigators involved in the actual research related to CdS photodecomposition or carcinogenicity who offered comments (Glaser et al.; Konig et al.; Heinrich; Oberdörster) were of the opinion that CdS was carcinogenic even though photodecomposition to $CdSO_4$ may have played a role in the carcinogenic response observed in the animal cancer studies (Exs. L–140–14; L–140–27–B; 142; 141). None of the latter group of investigators was of the opinion that CdS was not carcinogenic.

The animal inhalation studies with the various cadmium compounds by Oldiges et al. indicate a similar carcinogenic response even though the photodecomposition studies raise the possibility that part of the cancer response with CdS may have been due to the photodecomposition of CdS to soluble $CdSO_4$. The analysis of the Pott et al. data by Dr. Oberdörster indicates that a large part of the carcinogenic response in the animals had to be attributed to CdS since it could not be attributed solely to $CdSO_4$ (Ex. 141). Thus, it is also possible that a large portion of the carcinogenic response observed in the Oldiges et al. inhalation study of CdS could be attributed to CdS. Therefore, it is also reasonable to conclude that the cancer response of rats in the Oldiges et al. inhalation study could not be attributed entirely to the formation of ionic cadmium through photodecomposition. How much of the cancer response may have been due to the photodecomposition, however, cannot be determined with the data currently available because information on molecular and cellular mechanisms involved in the carcinogenicity of the various cadmium compounds is not known.

It was pointed out that an intrinsic toxic particulate effect could contribute to the carcinogenic effect of CdS and if this is so, in vivo solubility is not a good indicator of carcinogenic potency of cadmium pigments. It was also pointed out that CdS may have acted in an additive manner with the amount of $CdSO_4$ formed through photodecomposition to induce cancer.

Evidence also indicates that CdS will be retained in the human lung 10 times longer than in the rat lung making it likely that the potency from inhaled CdS will be greater for humans than for rats. If one accepts the ionic theory of cancer for cadmium compounds, CdS pigments may be less carcinogenic, but it is not possible to determine the magnitude of the difference in potency when the results are extrapolated to humans. An intrinsic particulate effect could play a role in the development of cancer with the cadmium pigments and there could also be a combined effect of solubilized cadmium on further in vivo CdS solubilization and retention in relation to lung function.

Thus, OSHA is of the opinion that CdS is an occupational carcinogen. With the data currently available, however, it is not possible to determine whether cadmium sulfide has a different carcinogenic potency from other cadmium compounds though it is possible that it may be less potent. Therefore, with regard to carcinogenicity, CdS will be treated similar to other cadmium compounds.

DCMA (Ex. 144–20) has argued that a conclusion that CdS should be regulated as an occupational carcinogen does not conform with OSHA's Cancer Policy. However, in addition to the evidence of carcinogenicity presented above, sec. 1990.111 (c) of the Cancer Policy (45 FR 5002–5296, Jan 22,1980) allows the Agency to regulate groups of substances, or combinations of substances, or mixtures of substances found in the workplace. Thus, OSHA may regulate a group of substances on the basis of the scientific evidence available on a single member of the group. In the arsenic standard, OSHA regulated all pentavalent arsenic compounds along with all trivalent arsenic compounds as carcinogens even though evidence of carcinogenicity for the former compounds was based on a single study of pentavalent arsenic exposure which was limited in study design and methodology. In the arsenic standard, OSHA relied upon expert opinion about the study results for the carcinogenicity of pentavalent arsenic, the evidence on the carcinogenicity of trivalent arsenic compounds, as well as on the Supreme Court's benzene decision (I.U.D. v. A.P.I. 448 U.S. 607) that OSHA was free to use conservative assumptions to err on the side of worker protection. Inclusion of pentavalent arsenic compounds in the arsenic standard was upheld by the Court of Appeals in ASARCO, Inc. v. OSHA (746 F. 2d 483 (1984)), which agreed that it was appropriate to utilize evidence of the carcinogenicity of trivalent arsenic compounds in determining the carcinogenicity of pentavalent arsenic compounds. Thus, OSHA believes that it

has a scientific basis as well as a judicial basis for including CdS in the current standard and for establishing the same PEL for cadmium pigments that will be set for all other inorganic cadmium compounds. In any event, OSHA notes that all of the inorganic salts of cadmium, including CdS, tested for carcinogenicity by inhalation in the rat produced a highly carcinogenic response.

As discussed in the section of this preamble dealing with CdS carcinogenicity, record evidence and expert opinion leads the Agency to conclude that CdS, in and of itself, is an occupational carcinogen. The final issue raised is whether or not CdS has the same carcinogenic potency as the other cadmium salts. Although the cancer test results showed a similar tumor response for CdS as for other cadmium compounds tested, because of the possibility of photodecomposition, several experts testified that it is not possible with scientific certainty to determine the relative carcinogenic response that could be attributed to CdS as distinguished from $CdSO_4$. Dr. Oberdörster, for example, stated that an additive effect between CdS and $CdSO_4$ in the carcinogenic response cannot be excluded and that until more and better data become available, it would not be advisable to establish a different standard for CdS (Ex. 141). Thus, record evidence and expert opinion lead the Agency to conclude that CdS should be considered an occupational carcinogen and have the same PEL as that established for other cadmium compounds.

3. Evidence in Humans—Introduction

Extensive study of five cohorts with occupational exposure to cadmium has found an excess of lung cancer among cadmium exposed workers (Ex. L-140-50). The mortality experience of these workers has been studied repeatedly. The five cohorts are comprised of workers at a cadmium smelter in the U.S. (Thun, Exs. 4-68; 8-658a; Lemen, Ex. 4-51 and Varner, Ex. 8-649); workers at two cadmium battery plants in the United Kingdom (Armstrong and Kazantzis Ex. 8-603; Kipling and Waterhouse, Ex. 4-45; Sorahan, Ex. 4-65; and Sorahan, Ex. 12-12-A); workers from 17 different plants using cadmium in the United Kingdom (Armstrong and Kazantzis, Ex. 8-603; Armstrong and Kazantzis, Ex. 8-565; and Kazantzis et al., Ex. 8-684); workers at a cadmium-alloy plant in the United Kingdom (Holden, Ex. 4-39; Armstrong and Kazantzis, Ex. 8-603); and workers at a nickel-cadmium battery plant in Sweden (Kjellstrom et al., Ex. 4-48; Elinder et al., Ex. 4-25; Jarup et al., referenced in L-140-50). Evaluation of these data is complicated by the fact that the same populations have been examined repeatedly, sometimes by different groups of investigators. For example, the cohort of workers from 17 plants included members of the the cohort at the two cadmium battery plants (Exs. 8-603 and 12-12-A).

Elinder et al. evaluated 13 studies of these cohorts and concluded that in several studies, workers with high exposures were combined with workers with low exposures into one exposure group. This would reduce the ability of these studies to detect an effect due to cadmium exposure (Ex. 4-25). In addition, Elinder concluded that in the largest study (Ex. 8-684), most workers had such low cadmium exposures that cadmium-associated cancer would not be induced. After evaluating the studies, Elinder combined the data from them and found an overall lung cancer SMR of 121 (Obs.=195; Exp.=161.4; p=0.008, two-tailed).

Elinder also found that 12 of the 13 studies reported excess cancers of the prostate, and in 4 of these, the excesses were statistically significant. Elinder noted that the median SMR for prostate cancer from all of the studies was 167, but when the number of observed and expected cases are combined for the most recent updates of the 6 independent studies (7 of the 13 studies were updates of earlier studies), the statistically significant SMR for prostate cancer for all cohorts is 162 (Obs=28, Exp=17.2, $p<.02$, two-tailed).

Elinder concluded, "Our interpretation is that the accumulating data on the mortality of cadmium workers with high exposure levels in the past (above 0.3 mg/m^3) support an association between lung cancer and cancer of the prostate and exposure to cadmium," (Ex. 4-25). Thun et al. subsequently evaluated studies of these same five cohorts including updates of studies of four of the five cohorts (Ex. L-140-50). The authors' analysis of the prostate cancer data lead them to conclude that while mortality from prostate cancer is slightly increased in several of these industrial cohorts, the number of excess cases is small and there is no clear dose-response relationship with exposure. Several other researchers have concluded that the evidence for an association between cadmium exposure and prostate cancer is limited or decreasing (Exs. 19-43-A and 19-29).

Analyzing the lung cancer data from these studies, Thun et al. found that these updates reported a statistically significant increase in mortality from lung cancer in cadmium smelter workers, with two or more years of employment (SMR=137, Obs=24, Exp=10.76, 95% CI= 143-332 (Thun, Ex. 33)); a statistically significant increase in mortality from lung cancer in nickel-cadmium battery workers in the U.K. (SMR=130, Obs.=110, Exp.= 84.5, 95% CI=107-157 (Sorahan, Ex. 12-12-A)); a statistically significant increase in mortality from lung cancer in workers at 17 plants combined in the U.K. (SMR=115, Obs.=277, Exp.=240.9, 95% CI=101-129 (Kazantzis, Ex. 8-684)); and a statistically significant increase in mortality from lung cancer in Swedish nickel-cadmium battery workers (SMR=241, Obs.=14, Exp.=5.8, 95% CI=132-405 (Jarup et al., referenced in Ex. L-140-50)). Thus, in each of these updates a statistically significant excess of lung cancers was observed.

These studies provide qualitative evidence of the carcinogenic effects of cadmium on the human lung. In several of these studies, there are indications of a dose-response relationship between cadmium exposure and risk (Ex. L-140-50). For example, in three cohorts (Exs. 33, 12-12-A, and 8-684), the SMR for lung cancer increases either with length of employment or cumulative exposure to cadmium (Ex. L-140-50).

4. Studies of the U.K. Nickel-Cadmium Battery Factory Cohort

One of the earliest cohort studies was by Kipling and Waterhouse who observed four cases of prostate cancer among a cohort of 248 men employed in a British nickel-cadmium battery factory (Ex. 4-45). Exposure was to cadmium oxide dust. The observed number of prostate cancers was more than seven times greater than the expected number of protate cancers (Exp=0.58, p=.003) calculated using incidence rates from a regional cancer registry.

In a subsequent study of these workers, Sorahan and Waterhouse observed a statistically significant excess of respiratory cancer (Obs=89; Exp=70.2; SMR=127; $p<.05$)(Ex. 4-65). An excess of prostate cancer was again observed, but this time was not statistically significant (Obs=8; Exp=6.6; SMR=121).

To assess the relationship between cadmium dose and mortality, the authors devised two measures of cadmium exposure. The first measure was "cumulative duration of employment in high exposure jobs," and the second measure was "cumulative duration of employment in high or moderate exposure jobs." Using the method of regression models in life tables, the authors found that

cumulative duration of employment in high exposure jobs was significantly related to prostate cancer mortality but only when the four original cases described by Kipling and Waterhouse were included in the analysis. The measure cumulative duration of employment in high exposure jobs was not statistically significantly associated with lung cancer mortality, but the measure cumulative duration of employment in high or moderate exposure jobs did show a statistically significant relationship to lung cancer mortality. The authors cautioned, however, that this observed effect could be confounded by oxyacetylene fume exposure.

Workers at this factory were studied once again by Armstrong and Kazantzis, who conducted a case-control study of workers who had died of prostate cancer, renal cancer, bronchitis or emphysema, or nephritis or nephrosis (Ex. 4–19). Cases were selected from three cohorts of British workers exposed to cadmium. All of the cohorts had been studied previously. Cohort C1 was comprised of workers from a lead-zinc-cadmium smelter previously studied by Armstrong and Kazantzis (Ex. 8–565). Cohort C2 was comprised of workers from the nickel-cadmium battery factory studied by Sorahan and Waterhouse (Ex. 4–65). Cohort C3 was comprised of workers from a copper-cadmium alloy plant previously studied by Holden who had found statistically significant excess of prostate cancers (Ex. 4–40). Cases consisted of workers who had died of prostate cancer, chronic respiratory disease or renal disease. Only men born before 1940 with at least one year employment before 1970 were included. For each case, 3 controls were selected matched by plant, age, and, as nearly as possible, date of birth.

The authors divided these cohorts into three groups: always low cadmium exposure; ever medium cadmium exposure; and ever high cadmium exposure. They found that the odds of prostate cancer for the ever medium or ever high exposure groups were elevated relative to the always low exposure groups (1.55 and 1.35 respectively), but neither of these odds ratios were statistically significant. The authors noted, however, that the small number of prostate cancer cases makes interpretation of this finding difficult.

In 1987, Sorahan updated his study of the nickel cadmium battery workers (Ex. 12–12A). Twenty-two additional deaths from lung cancer were reported. According to the author, there was some evidence of an association between risk of death from lung cancer and duration of employment in high or moderate (or slight) exposure jobs for "early workers" (i.e. first employed before 1946), but none for "late workers" (i.e. first employed after 1946). A significant increase in lung cancer was observed for the entire study cohort (110 Obs., 84.5 Exp., $p<.01$). Sorahan did not report a statistically significant increase in lung cancer for his cohort when workers were divided into "early workers" and "late workers," but OSHA's analysis shows that there was a significant excess of lung cancers for the "late workers" (45 Obs., 33 Exp., $p<.05$—one tail).

Among "late workers," the SMRs for lung cancer were observed to increase with years from first employment. Because this trend was not observed for "early workers," Sorahan suggested that the there might be selection bias for the "early workers" and that this sub-cohort may be incomplete. The study's inability to demonstrate a significant relationship between duration of employment and lung cancer risk, however, does not mean that there is no association between cadmium exposure and lung cancer risk. Duration of exposure may not be a surrogate for dose, particularly when the length of exposure periods are not adjusted for the particular years in which the exposure occurs. The observed excess of lung cancer deaths among the "late workers" supports an association between cadmium exposure and lung cancer.

5. Studies of the 17 U.K. Plant Cohort

Ades and Kazantzis conducted a study of lung cancer in non-ferrous smelter workers (Ex. 12–14C). This cohort of men employed in a lead-zinc-cadmium smelter was part of Cohort C1 in the Armstrong and Kazantzis study described above (Ex. 4–19). The authors found a significant excess of lung cancer deaths among the entire cohort (182 Obs., 146.2 Exp., $p<.005$). In subcohorts of workers, a significant excess of lung cancer deaths was observed for workers with 20 to 29 years of employment (44 Obs., 23.1 Exp., $p<.005$) and for workers with 40 or more years of employment (8 Obs., 2.74 Exp., $p<.02$).

SMRs for lung cancer death were observed to increase with duration of employment for the cohort. This linear trend was statistically significant. The risk of lung cancer for workers with more than five years of employment relative to the risk for workers with less than five years of employment was also observed to increase with duration of employment. Using a matched logistic regression analysis, the authors were able to associate this increasing risk with exposure to arsenic and lead but not cadmium. This finding, however, could be due in part to the study protocol for choosing controls. Cases and controls were matched by date of hire, but because controls were required to have ten years of follow-up and to survive the matched case, cases and controls may have been inadvertently matched on cadmium exposure as well.

The entire Armstrong and Kazantzis cohort was studied again by Kazantzis and associates (Ex. 8–684). In this update, the authors followed the workers for an additional five years. Seventy-five additional cases of lung cancer were observed, resulting in a significant excess of mortality due to lung cancer for both the additional five year period (SMR=134; 95% CI=103–164) and the entire study period (Obs=277; Exp=240.9; SMR=115; 95% CI=101–129).

The increased lung cancer risk occurred mainly among those first employed before 1940, and the risk increased with length of employment and length of follow-up. The majority of lung cancer deaths were among workers employed in the non-ferrous smelter studied by Ades and Kazantzis. This worksite provided over 60% of the total study population, but its workers' exposures were characterized only as low or medium. No exposures in the smelter were characterized as high.

Over the entire study period, there was a statistically significant excess of mortality due to stomach cancer (Obs=98; Exp=70.6; SMR=139; 95% CI=111–166). Of the 98 deaths observed, 22 occurred during the five years of added follow-up, giving a statistically significant excess of stomach cancer mortality for that five year period (SMR=179; 95% CI=112–271).

Dr. Kaztanzis testified that there were other major illnesses, in addition to cancer of the lung, considered a priori to be possibly related to cadmium exposure that needed to be evaluated in this large cohort study. These included chronic bronchitis (chronic obstructive airway disease) and emphysema, among others (Tr. 6/8/90).

According to Dr. Oberdörster, who testified at the hearing, OSHA did not discuss the important finding of the Armstrong and Kazantzis study, that there was a high risk of dying from bronchitis in the group of "ever high" Cd-exposed workers.

According to Dr. Oberdörster, this is an important health effect of Cd exposure, reconfirmed in an updated study by Kazantzis, and it deserves more attention (Tr. 6/6/90, pp. 153–246) because: "Increased cell proliferation rates which can be assumed to be

present in the workers with chronic bronchitis could indeed be an important risk factor in carcinogenesis (Ex. 31, Attachment D)." Furthermore, Dr. Oberdörster stated, "Dying from bronchitis is comparable to dying from lung cancer." (Ex. 31, p. 4)

The update included the diseases considered to be important by Dr. Kazantzis. The results of the study confirmed a significant excess risk from bronchitis related to intensity of exposure. The SMR for workers classified as having "ever high" exposures was 382 (Obs.=13; Exp.=3.4, 95% CI=203–654). The SMR for workers classified as having "ever medium" exposures was 146 (Obs.=25, Exp.=17.1, 95% CI=94–215. The SMR for workers classified as having always low exposures was 123 (Obs.=140, Exp.=114.3, 95% CI=102–143). The bronchitis SMR for the entire cohort was statistically significantly elevated (SMR=132, Obs.=178, Exp.=134.9, 95% CI=113–151).

In response to questions during the hearing about the marked excess of mortality from bronchitis which showed a strong relation to both intensity and duration of exposure that was observed in his follow-up study, Dr. Kazantzis agreed that the dose response is cadmium-exposure-related. Dr. Kazantzis stated that:

> I find it very difficult to account for that in any other way other than the cadmium exposure * * * our study has * * * a very high proportion of low exposed workers, nevertheless, we have found this very marked dose response relationship. (Tr. 6/8/90)

The Cadmium Council has argued that the studies by Kazantzis "failed to establish a clear association between cadmium exposure and lung cancer," in part because the studies failed to adequately control for exposure to other carcinogens such as arsenic and nickel (Ex. 19–43). The Council questioned the link between cadmium exposure and prostate cancer because no cases of prostate cancer were observed in the medium- or high-exposure groups. The Kazantzis 5-year update also found no prostate cancer in these exposure groups (Ex. 8–684, p. 18).

A new update of this cohort is currently underway (Ex. L–140–50, pp. 701–702). According to Dr. Kazantzis:

> The mortality experience of the cohort is currently being followed up for an additional 5-year period. Preliminary analysis of mortality from lung cancer for the first three of five years confirmed a significantly increased lung cancer risk for the total study period from 1942–1987, but a significant excess lung cancer risk was no longer seen in the high exposure group (Kazantzis, 1990).

At present, however, this study has not been published and the paper has not been submitted into the record for analysis of the methodology used in the study.

6. Studies of the Swedish Cadmium-Nickel Battery Factory Cohort

In an update of an earlier study by Kjellstrom et al (Ex. 4–48), Elinder et al examined the mortality experience of 545 male workers at a Swedish cadmium-nickel battery factory (Ex. 4–25). While no statistically significant excess of mortality due to any type of cancer was observed, the authors reported that the SMRs for cancers of the lung, prostate, and bladder increased with time since initial exposure (i.e. latency) among workers with at least 5 years of exposure. Thus, for lung cancer, the SMR, was 133 for the entire cohort, but for workers with at least five years of exposure, the SMR was 163 after 10 years latency and 175 after 20 years latency. For prostate cancer, the SMR was 108 for the entire cohort, but for workers with at least 5 years of exposure, the SMR was 125 after 10 years latency and 148 after 20 years latency. For bladder cancer, the SMR was 181 for the entire cohort, but for workers with at least 5 years of exposure, the SMR was 222 after 10 years latency and 250 after 20 years latency.

This study was updated in 1990 by Jarup et al., (referenced in Ex. L–140–50). A statistically significant increase in lung cancer mortality was reported among nickel-cadmium battery workers, using regional rates and 20 years latency (SMR = 232).

7. Studies of Two U.K. Copper-Cadmium Alloy Plant Cohorts

A mortality study of 330 men employed in two factories manufacturing copper alloys was conducted by Holden in 1980 (Ex. 4–39). Plant A was in operation from 1922 to 1966, and plant B was in operation since 1925. Holden reported that 104 men in his cohort had been medically evaluated over time, and in 1953, 22% were found to have chronic cadmium poisoning; eleven workers had both emphysema and proteinuria; eight had proteinuria alone; and, four had emphysema alone. Holden's mortality study indicated that in plant B, the respiratory cancer SMR [International Classification of Diseases, 8th Revision (ICD–8); ICD 160-163] was 222 (Obs.=8; Exp.=4.5) using the population of England and Wales as a comparison population. When death rates for the urban district in which the plant is located were used, the SMR was 167 (Obs.=10; Exp.=6).

The mortality experience of these workers was subsequently followed up by Armstrong and Kazantzis in 1982 in a report to the International Lead Zinc Research Organization (Ex. 8–603). In that report, the authors included those cases from the study performed by Holden which satisfied the selection criteria of the Armstrong and Kazantzis study. The lung cancer SMRs for this group of workers were 87 for the control group, 114 for the medium exposure group, and 72 for the high exposure categories. The mortality experience of these workers was combined with that of workers from 16 other plants. The results of the follow-up study are included in the discussion of the studies of the 17 U.K. plant cohort above.

8. Studies of the U.S. Cadmium Smelter Cohort (Globe)

One of the strongest studies supporting the evidence of the carcinogenicity of cadmium in humans comes from the mortality study of cadmium smelter workers at the Globe plant in Denver, Colorado. Previous studies of workers in this plant were conducted by Varner (Ex. 8–649) and by Lemen et al. (Ex. 4–61).

This population was first studied by Lemen et al. (Ex. 4–61) who found a statistically significant excess of deaths due to malignant neoplasms (i.e. cancer). Lemen's study population consisted of 292 white male workers with a minimum of two years employment between 1940 and 1969. Of these workers, 27 died of malignant neoplasms whereas only 17.57 deaths from this cause were expected (SMR=154; p=.05). Twelve of the 27 deaths were due to respiratory cancer whereas only 5.11 were expected (SMR=235), and this excess was also statistically significant ($p<.05$). Focusing of the lung cancer incidence, Lemen found that the rates increased with time since first exposure and that the highest rates were observed in workers with more than 30 years of follow-up. Lemen also found an excess of deaths due to prostate cancer, but this excess was statistically significant only when the analysis was restricted to workers with at least 20 years since first exposure (Obs=4; Exp=1.15; SMR=347; $p<.05$). Lemen's study was followed by a study by Varner (Ex. 8–649). The Varner cohort consisted of 644 workers with at least six months of employment at the Globe smelter between 1940 and 1969. The cohort was followed through 1981. Mortality data was analyzed using Standardized Cause Ratios (SCRs). Statistically significant excesses of mortality due to lung cancer, urinary tract cancer, specific bladder

cancers, and total cancers were observed. Mortality due to prostate cancer was elevated, but the excess was not statistically significant.

Cumulative cadmium exposures were estimated for each member of the cohort using personal monitoring measurements made from 1973 through 1976. Exposures measured during this period were assumed to be constant for the entire period of study. The cohort was divided into a low exposure group (0–4 mg/m³-years), a middle exposure group (5–15 mg/m³-years), and a high exposure group (16+ mg/m³-years). The observed SCRs for lung cancer deaths for each exposure group were: 95 for the low dose group, 159 for the middle dose group, and 332 for the high dose group. The observed SCRs for all cancer deaths for each exposure group were: 108 for the low dose group, 123 for the middle dose group, and 168 for the high dose group. A dose-response relationship was observed between cadmium exposure and lung cancer and between cadmium exposure and total cancers.

Varner attributed the observed excess of lung cancer deaths to arsenic exposure and cigarette smoking but did not present any data on smoking and arsenic exposures by dose group. There was, therefore, little reason to assume that these confounders did not affect all three exposure groups to at least some, if not the same, degree. There was no evidence that smoking was more common among cadmium workers than among the general population and therefore that the observed lung cancer excess was associated with increased smoking.

Varner's study was followed up by Thun et al., (Ex. 4–68). Originally, Thun followed 602 white males who had spent at least 6 months in a production area of the smelter between 1940 and 1969. Workers were followed through 1978. The mortality status of all but 12 workers (2%) was determined; 411 were still alive (69%) and 179 had died (29%). Deceased workers for whom no death certificate was located were assumed dead, as specified in the protocol, with the cause of death unknown. Persons lost to follow-up were assumed to be alive.

From 1886 to 1919, the Globe plant was a lead smelter, and from 1920 to 1926, it was an arsenic smelter. Twenty-six of the 602 workers had been hired prior to 1926. These workers were omitted from subsequent analyses. Most analyses were limited to the remaining 576 workers.

Worker exposures were estimated by Smith et al., who based his estimates on historical area monitoring data adjusted to reflect the actual exposures of workers wearing respirators (Ex. 4–64). Using Smith's exposure estimates and company personnel records, Thun calculated cumulative dose estimates for each worker in his cohort.

Thun analyzed his data using a modified life-table method developed by National Institute of Occupational Safety and Health (NIOSH). Expected rates were calculated from the U.S. population and were adjusted for age, sex, race, and calendar time. Both standardized mortality ratios (SMRs) and standardized risk ratios (SRRs) were examined. To analyze his data by cumulative exposure, Thun divided his cohort into three groups chosen prior to analysis of the data. These groups corresponded to the recommended exposure limits that were in existence at the time the study was conducted. The low dose group consisted of workers with cadmium exposure at 584 μ/m^3-days or less, the equivalent to forty years of exposure at less than or equal to 40 μ/m^3. This cumulative dose corresponded to the NIOSH recommended exposure level at that time. The upper limit of the middle dose group, i.e., 40 years of exposure between 41 and 200 μ/m^3, was chosen to correspond to the upper limit allowed by OSHA. The high dose group was chosen as 40 years of exposure at greater than 200 μ/m^3. Thun also identified for separate analysis a subset of the low exposure group of his cohort in which the 40-year TWA equivalent exposures ranged from 21–40 μ/m^3.

Thus, the update of this cohort by Thun et al., (Exs. 4–68 and 8–658a) included estimates of cadmium exposures and an evaluation of the mortality experience of the workers in the cohort by SMRs per dose group. An excess of lung cancer mortality was observed in relation to cadmium exposure.

Forty-three percent of the workers had less than 2 years of employment. Follow-up time was long; 82.5% had more than 20 years of follow-up and 66.3% had more than 30 years of follow-up. Among the entire cohort of 602 workers, a statistically significant excess of deaths due to respiratory cancer (Obs=20; Exp=12.15; SMR=165; CI=101–254) and deaths due to non-malignant gastrointestinal disease (Obs=9; Exp=2.35; SMR=383; CI=175–727) was observed. All deaths due to lung cancer occurred in workers with more than two years of employment. When the analysis was restricted to the 576 workers hired after 1926, the excess of lung cancer death was no longer statistically significant (Obs=16; Exp=10.88; SMR=147). When the analysis of these 576 workers was further restricted to those workers with two or more years of employment, the observed excess was statistically significant (Obs=16; Exp=7.00; SMR=229; CI=131–371).

Analysis of all the 576 workers hired after 1926 indicated that the incidence of lung cancer death increased with dose. A statistically significant dose-response relationship existed between cumulative exposures to cadmium and lung cancer mortality. Among the low dose group, there was a non-significant deficit, i.e. lower than expected, of lung cancer deaths (Obs=2; Exp=3.77; SMR=53; p=0.28; SRR=0.48; See Table VI–14). Among the subset of the low exposure group with exposures equivalent to 21–40 μ/m^3 over 40 years, the lung cancer SMR was 100 and the SRR was 96. For the middle dose group, a non-significant excess of lung cancer was observed (Obs=7; Exp=4.61; SMR=152; SRR=1.55). For the high dose group, the excess of lung cancer deaths was statistically significant (Obs=7; Exp=2.5; SMR=280; CI=113–577; SRR=3.45). Thun reported that this dose-response trend was also observed when the analysis was restricted to workers with more than 20 years since first exposure. The regression slope of the SRR for lung cancer was statistically significant indicating that an increase in cadmium exposure is producing a real increase in the risk of lung cancer.

Thun et al., also observed a significant increase in death from non-malignant gastrointestinal disease (NMGID), 9 observed versus 2.35 expected. The death certificates for six of these individuals suggested peptic ulcer disease. For those hired after 1926, there was a significant linear trend between increased cadmium exposure and the SRR from NMGID. The authors thought this observation was noteworthy in light of previously reported associations between cadmium exposure and severe gastrointestinal irritation in humans.

A non-statistically significant excess of genitourinary cancer was observed for the entire cohort first employed after 1926 (Obs=6; Exp=4.45; SMR=135; CI=49–293). Three of these deaths were from prostate cancer. The observed mortality from prostate cancer exceeded the expected, but the excess was not statistically significant (Obs=3; Exp=2.2; SMR=136). There were two other cases of prostate cancer, however, which Thun did not include in his analysis. One of these was a death from prostate cancer which occurred in a guard who had not spent 6 months in a production area of the smelter. The second case was not included because

prostate cancer was not the underlying cause of death.

Subsequent to the publication of his study in 1985, an analysis based on an updated cohort was presented by Dr. Thun at a workshop on cadmium and cancer in London, England (Ex. 8–658a). The updated study of the same Globe cadmium smelter included an evaluation of the mortality experience of the cadmium workers through 1984 (Ex. 8–658a). The extended follow-up study included 625 white male workers with six or more months in a production area between 1940 and 1969. The cohort was essentially the same as that previously described except for the addition of 23 new workers who met the eligibility criteria. These additional new workers included in the follow-up through 1984 were identified through further examination of the records of the Globe facility (Tr. 6/7/90, p. 108).

Forty-three percent of the workers had less than 2 years of employment. Follow-up time was long; 85% had more than 20 years of follow-up. By December, 1984, 234 workers were deceased; this represented fifty-five additional deaths since the previous NIOSH study. Thun et al., found that, among workers with two or more years of employment hired after 1926, a statistically significant excess of deaths due to respiratory cancer persisted (Obs=24; Exp=10.7; SMR=223; CI=143–332). No lung cancer deaths occurred among workers who were employed for less than two years. The excess of deaths from lung cancer was statistically significant for the new period of observation, 1979–84 (Obs=8; Exp=3.19; SMR=251; 90% CI=108–494) (Ex. 8–658a). The excess of deaths due to prostatic cancer was statistically non-significant (Obs=4; Exp=2.35; SMR=170; CI=46–436).

Vital status was known for all but fifteen members, or for 98%, of the updated population study (8–658a). Deceased workers with no death certificates were assumed dead, as specified in the protocol, with the cause of death unknown. Persons lost to follow-up were assumed to be alive. Vital status determination was, therefore, adequate for epidemiological analyses.

With the updated cohort, Thun again analyzed his data using a modified life-table method developed by NIOSH, with expected rates being calculated from the U.S. population, and adjusted for age, sex, race, and calendar time. To analyze his data by cumulative exposure, Thun again divided his cohort into the same three groups. The results, like the earlier study, indicated that the incidence of lung cancer death increased with cadmium exposure. The follow-up study had eight additional cases, more stable exposure estimates, and its findings were consistent with the earlier study. Among the low dose group, there was a nonsignificant deficit of lung cancer deaths (Obs=2; Exp=6.06; SMR=33; p=0.06). For the middle dose group, with cadmium exposures that ranged from 41 μ/m^3–200 μ/m^3 for a forty year TWA equivalent, there was a statistically significant excess of lung cancer (Obs=13; Exp=6.80; SMR=191, $p<.05$). For the high dose group, the excess of lung cancer deaths was also statistically significant (Obs=9; Exp=3.32; SMR=271; $p<.02$). The observation that frequency of lung cancer increased with the dose or level of exposure lends support to a causal interpretation between lung cancer and exposure to cadmium.

Thun included two additional analyses in the updated report. The first of these was a comparison of the three original dose groups with SMRs that were calculated using local Colorado lung cancer death rates as the referent population. Among the low dose group, there was a nonsignificant deficit of lung cancer deaths (Obs=2; Exp=4.37; SMR=46; p=0.19). For the middle dose and high dose groups, the SMRs are 35–40% higher than in the analysis using the U.S. rates. In the middle dose group, the SMR was 263 (Obs=13; Exp=4.95; $p<0.005$, one-sided), and in the high dose group the SMR was 373 (Obs=9; Exp=2.42; $p<0.005$ one-sided). This indicates that the lung cancer risks estimated using national death rates as the comparison population may be an underestimate of the true risk.

In its comparison of results from different epidemiological studies, OSHA relied upon the SMRs calulated using expected death rate derived using national death rates. Thun did the same in most of his analyses, primarily to facilitate comparability of results between the different epidemiological studies.

In the second analysis, Thun provided a more detailed breakdown of dose-response, including six exposure strata developed by dividing each of the three previous strata in half. SMRs for lung cancer were developed using a comparison with the U.S. mortality; the resultant slope was linear and was comparable to the results of original analyses.

Studies of the Globe workers are particularly useful for assessing the carcinogenicity of cadmium in humans for four reasons. First, the cohort was highly exposed to cadmium. Second, information was available for the prolonged follow-up of lung cancer (85% of the workers had 20+ years of follow-up). Third, extensive exposure information was available from good industrial hygiene records which could be linked to work histories. This allowed the computation of cumulative individual exposures to cadmium for each worker included in the cohort. Finally, additional information was available on tobacco smoking habits of workers and on arsenic exposures at the workplace. This allowed some control for the potential confounding effects of these known risk factors for lung cancer.

Dr. Thun noted that: * * * for a small study, the strength of the exposure, the intensity of the exposure is one of its major advantages. The second has been the opportunity for prolonged follow-up, and * * * 85 percent of the cohorts have had at least 20 years observation since first exposure to cadmium, and the entire cohort has had 15 years. (Tr. 6/7/90, p. 89)

Because Thun's analyses of the Globe workers showed the clearest association between cadmium exposure and lung cancer, it was his work which drew the most comments during the rulemaking.

a. *Power.* In commenting on the proposed cadmium rule, Environ noted that from the standpoint of the size and power, Thun's study does not compare favorably with some of the other epidemiologic studies that have been conducted (Ex. 12–41). The power of a study relates to its ability to detect an effect. In so far as Thun's cohort was relatively small, Environ's observation is correct. The power to detect a true excess relative risk of 2.0 or greater was 0.893 or 89% when the experience of the entire cohort was considered. When the analysis was limited to the experience of workers employed from 1926 on, the power to detect a doubling of risk was 0.86 or 86%. The probability of detecting a smaller increase in risk is even smaller. For example, the power to detect a true excess risk of only 1.5, the power was only 0.44.

In general, power calculations are used to evaluate possible reasons why a study failed to show an increased risk of a particular cause of death. When a study is conducted and the results show an increased risk of a particular cause of death, as did Thun's study, the hypothetical probability of the study to detect an excess is irrelevant and a power calculation is not necessary. Therefore, the power of the Thun study is not an issue.

b. *Case status.* Another issue raised by Environ was whether two deaths observed in the Thun update should have been considered lung cancer cases based upon a recording of information on the death certificate (Ex. 19–43; 12–

41). Lung cancer was listed on the part of the death certificate under "other significant conditions" for both of these cases, but the immediate cause of death was coded as metastatic brain disease for one case and pneumonia for the other case (Ex. 8–658a).

As Dr. Thun indicated, the death certificate information was somewhat ambiguous for these two cases in the update. The hospital records for both of these individuals indicated that lung cancer was the underlying disease. Two of three nosologists were of the opinion that the underlying cause of death on the death certificate should have been coded to lung cancer. Thus, there is some disagreement as to the correct coding of the cause of death for these two individuals for purposes of epidemiologic study. Thun considered the coding of these two deaths to be ambiguous because metastatic brain disease could theoretically originate in the lung or, theoretically, in the brain, even though metastases from a primary cancer in the lung are common while metastases from a primary brain tumor are exceedingly rare (Ex. 8–658a).

Regarding the appropriateness of the inclusion of these two cases in a study of lung cancer, another commentor stated that no one was,

"* * * questioning the fact that (these) two men * * * died as a consequence of lung cancer (SCM Chemicals; Ex. 12–33–D)." The question is one of comparability of lung cancer cases with the referent population.

Thun et al., concluded that, although some disagreement existed among nosologists about appropriate coding methodologies for cause of death, in the analyses of the data by exposure group it would be appropriate only to include these two cases of lung cancer in internal comparisons within the cohort unless similar cases were included in the compilation of vital statistics upon which expected rates of death were based (8–658a). However, as Thun also reported, if the two lung cancer cases were subtracted from the appropriate dose group, the dose-response relationship and the trend would remain basically the same (Tr. 6/7/90 p. 94). In comparisons with the external U.S. population (Ex. 33) as Thun indicated (Ex. 8–658a) even if these two cases are excluded, the excess of lung cancer is still statistically significant among workers in the update employed for two or more years (Obs=22; Exp=10.76; SMR=204; CI=128–310).

c. *Deficit of lung cancer in the low dose group.* Several commenters stated that the finding of a deficit of lung cancer deaths in the low dose group demonstrated that there was no carcinogenic risk from cadmium exposures below 40 μ/m^3, since:

> * * * the statistically significant excess occurred only for a cumulative exposure equivalent to 40 years of exposure above the current OSHA PEL of 200 μ/m^3 (SCM Chemicals; Ex. 19–42A).

Further:

> This (deficit) would indicate that there is a difference between workers exposed to high levels of cadmium and workers exposed to low levels of cadmium (Big River Zinc Corporation; Ex. 19–30).

Mr. George M. Obeldobel, Vice President and General Manager of Big River Zinc Corporation (BRZ), the third largest zinc producer in the U.S. and the largest cadmium producer in North America, took exception to the Thun study as evidence of the carcinogenicity of cadmium in humans:

> * * * the data showed a strong difference between workers exposed to low levels and high levels of cadmium, i.e., workers exposed to the equivalent of 40 years exposure at:
> (a) 21–40 $\mu g/m^3$ respirable cadmium, showed only two cases of lung cancer versus an expected 3.77 cases (again, *less than the general population*).
> (b) 41–200 $\mu g/m^3$ respirable cadmium, showed seven cases versus an expected 4.61 cases. (Ex.19–38).

Dr. Thun addressed this issue in his testimony:

> The deficit is an artifact because this population of workers * * * is being compared with the U.S. population. The deficit is * * * not from any protective effect of low levels of cadmium exposure (6/7/90, p. 187).

Furthermore, Dr. Thun continued:

> This finding * * * should not be interpreted as showing a "safe" level of cadmium exposure (Ex. 33 p. 13).

Thun indicated that there are at least three factors which could explain the finding of a deficit in the low dose group:

(1) The healthy worker effect;

(2) Race status of the referent population; and

(3) Smoking.

These factors are discussed in detail below as they pertain to both the finding of a deficit in the low dose group and the finding of excess lung cancer deaths among cadmium exposed workers in general. As discussed in section VI (QRA), OSHA notes that the deficit is not statistically significant and may, therefore, be attributed to random fluctuation.

i. *Healthy worker effect.* The "healthy worker effect" is evidenced by studies which show that active workers experience a mortality risk less than that of the general population which includes sick, disabled, and institutionalized persons. Workers tend to be healthier than the general population. Comparison of mortality among workers to that of the general population would bias the results toward an underestimation of risk.

OSHA received comment on the appropriateness of attributing a "healthy worker effect" (HWE) to cancer SMRs. The Cadmium Council (Ex. 119) stated that the healthy worker effect (HWE) could not sufficiently explain the deficit in the low dose group since this effect has little application to cancer. In the post hearing brief by the Cadmium Council, the studies on the HWE put forth by OSHA (Ex. 8–677; Ex. 50 a and b) were questioned as to their relevance to cancer mortality or were faulted for being studies of veterans, whose comparability with workers had not been established.

According to a study by McMichael (Ex. 8–677), the HWE may not apply equally to all causes of death. As McMichael stated, "* * * if one attempts to improve the meaningfulness of an SMR by adjusting for the HWE, allowance must be made for variation between different * * * causes of death (Ex. 8–677)."

McMichael conducted analyses of data generated by Milham (1974) in a study of carpenters and joiners. McMichael's conclusion was that the HWE does tend to create lower SMRs (60–90%) among cohorts of workers when the U.S. population is used as a referent population. In two other submissions to the docket on the HWE, the issue of the applicability of the HWE to cancer SMRs, in particular, was further examined. The first of these, a study by Dr. Monson (Ex. 50–A), suggests that a HWE lasts for about 15 to 25 years after first exposure, depending on the cause of death and the occupational group being followed.

Dr. Monson stated:

> * * * it has long been observed that groups of employed persons have mortality rates that are lower than the general population. This favorable mortality experience has been termed the healthy worker effect (HWE). Uncertainty about the strength and extent of the HWE has led to uncertainty in interpreting data from studies in which the mortality rate of an employed group is compared with the mortality rate of the general population. (Ex. 50–A.)

Monson studied ten groups of workers in order to evaluate the strength of the HWE on various causes of death. He noted that while the healthy worker effect was relatively weak in comparison to causal excesses, and that there was a difference between the

strength of the HWE for different causes of death, there was, nonetheless, no evidence of a lack of HWE on cancer SMRs.

A second study by Drs. Sterling and Weinkam (Ex. 50b) examined the extent, persistence, and constancy of the HWE by selected causes of death including cancer. Sterling and Weinkam chose to evaluate the data from the Dorn Study of Mortality Among U.S. Veterans because: (1) Veterans who were selected to serve in the armed forces qualified for such duty because they had health status comparable to that of workers seeking employment; and (2) subsequent to termination of service, not all veterans would enter the same occupation. Thus, the high risks of disease among veterans from occupational exposures in hazardous occupations in each cause-specific-death group would tend to be balanced by the inclusion, in the same group, of veterans with low risks of disease from non-hazardous occupations. As a result, the influence of confounding from job exposures on the evaluation of the HWE would be minimal. Sterling and Weinkam observed a persistent HWE for all causes that did not substantially weaken over time. For lung cancer specifically, the HWE persisted at least through age 74 years. For ages 70–74, the lung cancer mortality ratio was 0.72; it was less than this for younger aged veterans.

For the reasons stated by Sterling and Weinkam, OSHA considers the choice of the study group by Sterling and Weinkam to be an adequate and suitable reference group for assessing the influence of the HWE on specific causes of death, including cancer.

Overall, based on the above mentioned references, the HWE appears to be relevant to cancer SMRs, and thus is relevant to Dr. Thun's study of cadmium exposed workers though the strength of the effect may differ for different cancer diagnoses and depends upon other factors relevant to the cohort under study such as age at time of hire.

OSHA agrees with the Cadmium Council that, in and of itself, the HWE may not be sufficient to explain the finding of a deficit of lung cancer in the low dose group in the Thun study. However, the HWE in conjuntion with the lower rates of smoking and lower background lung cancer death rates of the exposed population, plus statistical variability may all combine to account for the deficit of lung cancer mortality.

ii. *Hispanic surname.* Reduced tobacco use among workers is another plausible explanation for the deficit of lung cancer SMR observed in the low dose exposure group. This does not mean that the low dose group smoked less than the other exposure groups. Rather, smoking in all of the exposure groups was less than the general population, and, as Dr. Thun concluded, the HWE was therefore much more extreme (Tr. 6/7/90; p. 102). Dr. Thun based this conclusion on the fact that slightly less than 40% of the workers at the Denver cadmium plant had Hispanic surnames. Hispanics, in general, are known to smoke less than other white males and thus to have lower rates of lung cancer than other U.S. white males. As Dr. Thun stated, "Several studies have shown low rates of lung cancer among Hispanic males in the Southwest, and particularly in Denver (Tr. 6/7/90, p. 98)."

Dr. Thun's conclusion is supported by a study by Dr. Savitz, (Ex. 57–N), who found that in Denver between 1969 and 1971, Hispanics had a lung cancer incidence that was less than that of other white males. Cancer incidence rates for persons of Spanish surname and other whites in the Denver area were derived for two time periods, 1969–71 and 1979–81. Lung cancer death rates among males with Spanish surnames increased from 23.1 per 100,000 person-years in 1969–71 to 45.6 in 1979–81, as compared to other white males whose rates increased from 57.0 to 68.9 in the same time period. While lung cancer was substantially less common among those with Spanish surnames compared to other white men, there was a convergence of the rates. The convergence of the rates could be attributed, according to the author, to, among other things, acculturation of persons with Spanish surnames, the imperfection of Spanish surname as an indicator of ethnicity, or systematic error due to miscounting of illegal immigrants. While acculturation could explain the change in trends, the authors concluded that Spanish surname was not likely to explain the convergence of rates. Spanish surname identifiers appeared to be consistent for both cases and the reference population across the two time periods. The systematic error in enumeration of immigrants, however, would tend to inflate the cancer rates, since the referent population would be less likely to be counted correctly than would the cancer cases.

By comparing the death rates among the Globe cadmium workers, a group that included a mix of workers with Hispanic and non-Hispanic surnames, to U.S. white male lung cancer death rates, the expected number of lung cancer deaths would be overestimated, and the occupational effect of cadmium on lung cancer would be underestimated. The percent of the workers with Hispanic surnames in the low dose group was 38.5%; the percent of the workers in the middle dose group with Hispanic surnames was 41.5%; and, the percent of the workers in the high dose group with Hispanic surnames was 32.2% (Ex. 33). The mixture of cadmium workers with Hispanic and non-Hispanic surnames was similar between the three dose groups. To the extent that Hispanic surname reflects ethnicity, and that Hispanics smoke less and have lower lung cancer death rates than U.S. white males, it is unlikely that differences in ethnic group would have caused a significant impact on the SMRs between dose groups, i.e., in the low dose group alone. Thus, it appears as though Dr. Thun's suggested use of Hispanic surname is a plausible method by which to estimate the effect of ethnicity on the lung cancer SMRs in his cohort.

An additional study of the impact of differences in lung cancer mortality between Hispanic and non-Hispanic workers at the Globe plant was carried out by the National Institute for Occupational Safety and Health (NIOSH) (Ex. 79). NIOSH presented a lung cancer mortality analysis based upon the most recent follow-up of the Thun et al., cadmium cohort through 1984. The life table analysis used in this assessment was stratified into four cumulative dose categories, i.e., ≤ 584, 585–1460, 1461–2920, and ≥ 2921 mg/m^3-days) and three "time-since-first-exposure" categories, i.e., <10, 10–19, and 20+ years. Separate life-table analyses were performed for members of the cohort with Hispanic and non-Hispanic surnames. For the lung cancer SMRs, U.S. rates for white males were used as the referent group.

The results from the life-table analysis indicated that lung cancer mortality was similar to Dr. Thun's findings, i.e., lung cancer SMRs were not significantly elevated for the entire cohort (SMR=149; Obs=24; Exp=16.07; 95% CI=95, 222; p=.076, 2 tailed test). However, among white males, lung cancer mortality was significantly elevated (SMR=211; Obs=21; Exp=9.95; 95% CI=131,323; p<.01). A deficit of lung cancer mortality was found among Hispanics (SMR=49; Obs=3; Exp=6.12) as would be expected if the referent rates for U.S. white males reflect people who smoked more than people with Hispanic surnames. Lung cancer mortality increased with cumulative exposure to cadmium, and was significantly elevated in the highest exposure group for the combined cohort (SMR=272; Obs=9; Exp=3.3; p<.05) and for the three highest exposure groups among

non-Hispanics. A significant excess of lung cancer mortality was also observed among workers in the longest "time-since-first-exposure" category for the combined cohort (SMR=161; Obs=21; Exp=12.97; $p<0.05$, two-tailed test) and for non-Hispanics (SMR=233; Obs=19; Exp=8.13; $p<.01$, two-tailed test). The finding of a statistically significant excess of lung cancer among non-Hispanics, and a deficit among Hispanics, further strengthens Dr. Thun's conclusions that the deficit of lung cancer in the low dose group could, in fact, result from an excess of workers with Hispanic surname in the cohort in comparison with the referent population.

The issue of the use of the percent of Hispanic workers in the exposed population to evaluate the confounding effects of smoking was questioned by the Cadmium Council during the reopening of the record (Ex. 144–16). According to the Cadmium Council, during an IARC Symposium in 1991, information was provided that Hispanics who smoke do so with the same frequency as non-Hispanics. The difference is only that workers with Hispanic surnames tend to underreport smoking habits (Ex. 144–16). This opinion by the Cadmium Council was apparently based upon a document prepared by Dr. Lamm, in which Dr. Lamm summarized the results of the IARC International Symposium (Ex. 144–7). No document which represented IARC's formal conclusions was submitted to the OSHA docket. However, if people with Hispanic surnames do in fact underreport their habits, it is not possible to determine whether the underreporting itself could account for the differences in smoking observed between white males and males with Hispanic surnames in the Thun cohort. If smoking habits between white males and males with Hispanic surnames are indeed similar, nonetheless, lung cancer rates in general are lower among males with Hispanic surnames than among white males (Ex. 57–N). The important factor in the analysis by Thun et al., is that the proportion of males with Hispanic surnames included in each dose category was approximately equal. Thus, any potential confounding effect of the inclusion of a large number of males with Hispanic surnames was equally distributed over dose categories, yet the potential confounding effects did not override the dose-response relationship observed between lung cancer excesses and cadmium exposures.

iii. *Smoking.* Thun provided direct and indirect evidence for his position that the workers in his study smoked less than the general U.S. population by noting the absence of elevated rates of death for other smoking-related diseases in his cohort. As Dr. Thun stated, "(Cardiovascular disease) * * * is often a good marker of smoking habits (Tr. 6/7/90, p. 101)." Dr. Thun found that death rates from cardiovascular disease were about two-thirds that of the general population (SMR=65; Obs=56, Exp=85.7).

Dr. Kazantzis, who testified as an expert witness for the Cadmium Council, agreed that indirect evidence such as the finding of a significant deficit of major diseases related to cigarette smoking, such as cerebral-vascular disease and other cardiovascular diseases, would be a factor that must be taken into consideration in evaluating the relationship between smoking and lung cancer excesses. In the absence of direct evidence on smoking habits of members of a study cohort, Dr. Kazantzis agreed that such indirect evidence might argue against cigarette smoking as the major factor associated with observed excess lung cancer (Tr. 6/8/90).

Furthermore, the HWE could have affected, and thus lowered, the SMRs for ischemic heart disease in this occupational cohort because heart disease is more likely to be selected against in the recruitment and retention of active workers (Ex. 8–677). Thus, it would appear that smoking was not so prevalent among cadmium workers in the Thun study that its effects would override the HWE on heart disease rates. Dr. Thun stated that:

> * * * one of the implications of the lower smoking habits of this population [the Denver cadmium workers] is that one should not interpret SMRs below 100 in the low dose group as * * * a safe or threshold level for cadmium * * * [W]hat those levels reflect is a lower background risk of lung cancer among these workers due to * * * less smoking than the U.S. general population * * * (Tr. 6/7/90, p. 102)

Dr. Thun also evaluated direct evidence on smoking habits obtained from a 1982 questionnaire. Responses were provided by surviving workers or their next of kin, and were supplemented by medical records. These responses showed that although the majority of Hispanic workers smoked, most were light smokers. These light smokers reported smoking fewer cigarettes per day than white males. As for other white male workers at the plant, if anything, they smoked slightly less than white males in the general U.S. population (Tr. 6/7/90, p. 100). As Dr. Thun indicated, use of the data from the questionnaire was somewhat limited because the questionnaire obtained smoking information on only 43% of the overall cohort, and the missing information pertained primarily to the low and medium dose groups (74% and 47%, respectively). Without comparable smoking information for each of the dose groups, controlling for smoking based on the direct evidence from the questionnaire might produce biased results, either towards over or underestimating the effects of smoking on the SMRs for each dose group.

There have been differences of opinion as to the value of smoking data and different estimates of the number of packs smoked (Tr. 6/7/90, p. 183; Ex. 8–658a). Lack of data on smoking in the low dose groups, however, made these data less valuable than data on Hispanic surnames because workers with Hispanic surnames were evenly distributed in the three exposure groups.

Dr. Thun stated that the use of an internal analysis would yield a valid estimate of the effect of occupational exposure (Tr. 6/7/90, p. 72). Such an analysis was conducted by NIOSH for risk assessment purposes (Ex. 79). In this study, NIOSH presented results from modelling of the dose-response relationship between cadmium exposures and lung cancer mortality and projected risks associated with varying levels of cadmium exposure. (See Poisson regression models fitted to the "5-year lagged analysis.") The parameter estimates for the categorical model represented the effect of each category relative to the low dose category (<584 mg/m^3-days). The issue of the use of internal controls by NIOSH will be dealt with further under the Quantitative Risk Assessment Section.

OSHA received several comments on NIOSH's analysis. During the 1992 IARC International Symposium, the NIOSH analysis was questioned as to whether it provides a biologically reasonable explanation of the data (Ex. 144–16). However, this comment was not from a formal document of the IARC International Symposium (Ex. 144–7).

A similar issue was raised by Dr. Starr during the hearing (Ex. 38). Dr. Thomas Starr commented that "OSHA should redo its analysis with the individual person-year information collected by Thun et al.," noting that the latter data were only very crudely characterized by the median cumulative exposure for each category (Ex. 38). He also recommended that "OSHA should reanalyze the Thun et al., (Ex. 4–68) data with the multistage dose-response approach model utilizing an approach similar to that described by Crump and Howe (1984)." The NIOSH risk

assessment and subsequent addendum (Exs. L-140-20, L-163) incorporated both of these recommendations. OSHA's use of additional models is further discussed in its section on quantitative risk assessment. (See section VI.)

iv. *Conclusions.* In summary, OSHA notes that the finding of a deficit in lung cancer in the low dose group may have resulted from other factors, such as the healthy worker effect, lower smoking rates, and Hispanic ethnicity as noted by Dr. Thun. The deficit should not be interpreted as an absence of lung cancer risk at doses of cadmium less than 40 μ/m^3.

d. *Smoking and Arsenic in the Thun Cohort.* The roles of smoking and arsenic as causes for the excess lung cancers observed in the Thun study were the focus of many of the comments received by OSHA. These concerns were primarily related to the findings of a study by Lamm et al., 1988, which purported to show that there was no link between cadmium exposure and cancer (Exs. 19-43E, 12-13a, 12-33d, and 12-33e). For example, the Cadmium Council reiterated its earlier argument that the Thun study failed to control for smoking, citing the case-control study by Dr. Lamm which, in the Council's view, demonstrated an association between smoking and cancer but not between cadmium and cancer. The Cadmium Council also stated that ENVIRON peer-reviewed the Lamm study and "endorsed its conclusions". Several other commenters made observations similar to those of the Cadmium Council (Ex. 19-43; 12-33e).

i. *Lamm's case-control analysis.* Dr. Lamm conducted a case-control study (Exs. 19-43e and 144-7b), in which he attempted to replicate the data used in the mortality study by Thun et al., (Ex. 144-7b). Dr. Lamm identified 599 of the 602 white males in the Thun et al., study (144-7b), which included all of the lung cancer cases previously identified in the Thun et al., study. Eligibility for both the Thun et al., and the Lamm case-control studies was the same. The workers had to have been employed over six months in the cadmium smelter production areas "* * * during 1940-1969" (144-7a). Dr. Lamm used a "nested" case-control design of 25 cases of lung cancer matched with 75 controls from the entire cohort of 602 workers included in the Thun et al., study.

The case-control study was used to evaluate lung cancer and the contribution of arsenic and smoking as well as cadmium to the lung cancer deaths (Ex. 19-43e). Dr. Lamm matched cases with controls on age, race, sex, and date-of-hire (Ex. 144-7b). Cadmium exposures for both cases and controls were estimated using NIOSH's original exposure estimates, which Thun calculated for each employee at his worksite. Smoking histories were obtained by company personnel from interviews and company records for about 43% of the cohort (Ex. 19-43e).

Based on data from 597 workers in this plant, Lamm identified three time periods of potential arsenic exposure (Ex. 12-33e), or period-of-hire risk factors (Ex. 144-7b). Based on 25 cases of lung cancer and 75 controls, and using the cadmium exposures developed by Thun et al., the arsenic feedstock data, and the previously identified period-of-hire risk factors, the relationships between lung cancer deaths and cadmium exposures, smoking, arsenic, and period-of-hire, respectively, were independently evaluated.

ii. *The smoking argument.* Based on the amount of tobacco consumed (pack-years per employee), Dr. Lamm found that the relative case-to-control smoking history, for workers with known smoking history, was 2.5, with a range from 1.6-8.3 (Ex.12-33-e). When Dr. Lamm categorized workers as ever/never smoked, the odds ratio for smoking as a lung cancer risk factor was 8.2 (Fisher's exact test two-tailed; $p=0.047$; 95% CI: 1.04 to 367.05). Based upon these analyses, Lamm concluded that cigarette smoking was responsible for the elevated lung cancer risk observed among the cohort (Ex. 12-33-e).

Dr. Thun stated that the missing data on smoking (available, for example, for only 57% of controls; see Section VI—QRA.) made it invalid to use these individual smoking histories in case control analyses (Tr. 6/7/90; p. 101). While smoking clearly affects lung cancer rates in general, it does not account, in and of itself, for the lung cancer excesses observed in Thun's study, based on Dr. Lamm's analysis. Dr. Thun indicated that the preferred evaluation of smoking status and its effects on lung cancer death rates would be to use Hispanic surname or an internal analysis to control for both the confounding due to the HWE and smoking.

OSHA is of the opinion that the smoking data from the questionnaire survey were limited and should not have been used alone in the case-control study to evaluate the effects of smoking. If smoking were a main cause of lung cancer, one would not expect a deficit of lung cancer in the low dose group. Smoking would elevate these rates, too.

iii. *The arsenic argument.* A second analysis by Dr. Lamm entailed examing lung cancer deaths (SMRs) for the entire Thun et al., cohort, including workers employed before January 1, 1926 (Ex. 19-43e; Ex. 12-33e; Ex. 144-7b). For this analysis, Dr. Lamm merged data from the Thun et al., study with data from the plant owners. Mean arsenic concentrations in the feedstock for various time periods were calculated based on a 10% sample of arsenic feedstock records (Ex. 19-43e). Dr. Lamm indicated that there were three critical calendar time periods of potential arsenic exposure based on the arsenic exposure concentration in the feedstock. These three periods were characterized as: prior to 1926, very high; 1926-39, high; and 1940-69, moderate to low. The reductions in exposures by calendar time period resulted from changes in plant processes. Arsenic exposures, it was assumed by Dr. Lamm, occurred uniformly throughout the plant.

Dr. Lamm then examined the SMRs for lung cancer by period of hire. He found that for workers hired prior to 1926, the SMR was 492 (Obs=3, Exp=0.61); for workers hired between 1926 and 1939, the SMR was 283 (Obs=6, Exp=2.12); and, for workers hired between 1940-69, the SMR was 88 (Obs=8, Exp=9.08). A full discussion of the lung cancer response among workers hired prior to 1940 is included in Section VI—QRA. Dr. Lamm concluded from these findings that the lung cancer risk appeared to reflect arsenic exposure confounded by cigarette smoking. Addressing Dr. Lamm's conclusions, Dr. Thun stated that:

> The conclusions (by Dr. Lamm) * * * go well beyond the data presented * * * the first conclusion implies that the average arsenic concentration in feedstock being processed by the Globe plant is 5%. This statement is incorrect * * * in actuality, the mean annual arsenic concentration (geometric mean) of the feedstock after 1927 averaged between 2-3% with the exception of the year 1930 (5.6%) and 1931 (4.9%). Lamm and co-workers also imply that arsenic exposure is generalized throughout the plant. In fact, arsenic exposure is limited to the early steps of the process, in the sampling, calcine, and roasting areas * * *. In our opinion, arsenic exposure may have contributed to the excess of lung cancer deaths at the Globe plant, but this contribution has been overstated by the spokesmen for the cadmium industry. (Ex.8-645.)

Furthermore, Dr. Thun commented that the feedstock data that Dr. Lamm used was:

> * * * based * * * upon visual impressions of records of arsenic in feedstock entering the plant. Dr. Lowell White, a former employee of the company, compiled the estimates of arsenic concentration, by year * * *. We (NIOSH) have obtained the records of arsenic

in feedstock from the company and have analyzed the data through 1958 * * *. The calculated geometric means do show slightly higher values during the years 1930–39 than thereafter, but the averages are lower than those estimated by the company scientists. (Ex. 8–658a.)

In other words, as Dr. Thun indicated during the hearings:

(Dr. White) sort of eyeballed the sample of records. But we obtained the actual records and analyzed them and determined the geometric mean and the percentage of arsenic in feedstock that was actually present is shown * * * under NIOSH calculations. (Tr. 6/7/90, p. 104).

Mr. George M. Obeldobel, Vice President and General Manager of Big River Zinc Corporation (BRZ), the third largest zinc producer in the U.S. and the largest cadmium producer in North America, took exception to the Thun study on the carcinogenicity of cadmium in humans:

Without including the * * * 26 workers [who had worked at the smelter prior to 1926 when the smelter functioned as an arsenic smelter] * * * the excess of lung cancer death was not statistically significant, suggesting that arsenic played a large confounding role in the data. (Ex. 19–38).

Although the lung cancer SMR was not statistically significant for the total cohort hired after 1926 (SMR=147; Obs=16; Exp=10.87; 95% CI=84,239), according to the Thun study, lung cancer mortality was significantly elevated among workers with two or more years of exposure.

The fact that the lung cancer SMR for the total cohort was not significant, however, does not indicate that the arsenic exposures had a more significant effect than anticipated by Dr. Thun. Dr. Thun excluded workers hired prior to 1926 to control the effects of arsenic exposure within the cohort. The true effect of excluding these workers hired prior to 1926, as Dr. Thun indicated, would be to reduce the potential confounding among the cadmium workers for arsenic, not to entirely eliminate its effect.

The continuing controversy about the exposure assessment used by Dr. Thun and the potential for arsenic confounding, centered, in part, around whether or not the arsenic exposures in the plant were similar for all cadmium exposed workers, (i.e. whether the amount of arsenic per worker was similar between dose groups in the dose-response analysis).

As Dr. Thun has stated:

* * * the arsenic exposure occurred only in departments that processed incoming feed material: sampling, mixing, roasting, and calcine furnace area. Other stages of the process are housed in separate buildings where workers were exposed to cadmium but not to arsenic. It's important to emphasize the localized areas of arsenic exposure at this plant which differ from the more generalized exposure in arsenic and copper smelters. Company representatives have drawn analogies between the Globe plant and the Tacoma copper smelter, but the difference is that arsenic exposure was generalized in * * * these other plants and is highly localized in [the Globe] plant (Tr. 6/7/90, p. 105).

Thun's evaluation of the entry level and long-term jobs, and their associated arsenic exposures, was indirectly confirmed by Mr. Robbins, of the Globe ASARCO plant. The areas of the plant where the highest exposures to cadmium occurred were in the retort furnace and pre-melt areas (Tr. 6/12/90, p. 55).

As Mr. Robbins indicated:

* * * the area of the retort * * * [primarily cadmium exposures] * * * is one of the areas that we're very concerned about product quality. So it's important to have experienced people * * * working in that job. And it's my sense that the turnover rate is fairly low * * * (Tr. 6/12/90, p. 47).

The highest arsenic exposures would have occurred in the solution charging area, which was in the "front-end" of the process. Workers in these areas, as well as the solution area, would historically, have been considered to be in entry level jobs according to Mr. Robbins (Tr. 6/12/90, p. 51). The area in which the "quality" of the cadmium compound was of most importance would not have been entry-level positions, with some arsenic exposures.

Furthermore, when the Globe plant had the Godfrey roasting and calcine operations, those were the highest areas for arsenic exposure and would have been entry level positions as well, although there would have been some cadmium exposures in these areas. Mr. Robbins stated:

Thun was looking at historical exposures at the Globe plant and there was a time when Globe had Godfrey roasters * * * that are no longer there * * * [T]here would have been job categories that aren't here that would have been here 20 years ago * * * (Tr. 6/12/90, p. 47).

In response to questions, Mr. Robbins indicated that in all areas that workers had exposures to high levels of arsenic, the workers would also have some exposure to cadmium. However, the high cadmium exposure operations, which require long-term, skilled professionals, generally do not have arsenic exposures. Thus, there clearly were work areas which were predominantly cadmium exposure areas where there was no arsenic exposure (the retort furnace and pre-melt sections). In addition, there were work areas with high arsenic exposure and some cadmium exposure (currently the solution charging areas and historically both the solution charging and high purity production areas.)

This would mean that while all the workers in the Thun et al., cohort could have had some exposure to arsenic in entry level job positions, the arsenic exposures would tend to be equal among the workers and across exposure categories as Dr. Thun indicated. In each of the cumulative cadmium exposure dose groups, the arsenic exposure per worker would not increase as cadmium exposures increased.

When questioned about whether arsenic and cadmium exposures were truly independent, Dr. Thun responded:

They're not completely independent. There is some independence because when workers would move to other departments like retort and foundry in which cadmium exposures were substantial, they would be exposed to cadmium but no arsenic. (Tr. 6/7/90, pp. 167–168).

If all the jobs with cadmium exposure were the same ones that had arsenic exposures, the finding of a dose-response relationship between lung cancer and cumulative doses of cadmium would be more likely to be confounded by arsenic. However, there does not appear to be a perfect correlation between cadmium and arsenic exposure. Thus, the finding of a dose-response relationship between lung cancer and cadmium exposure should not be attributed to arsenic exposure, either in part or in total. (Tr. 6/8/92, p. 147). Thun et al. conducted an analysis of the potential magnitude of the effect of arsenic and concluded that no more than 0.77 cancer cases could be attributed to arsenic (Ex. 4–68) (See Section VI–QRA).

OSHA received the comment that as late as 1979, this plant received an OSHA citation for levels of arsenic exceeding 100 μ/m^3 (Ex. 12–41). As Dr. Thun indicated:

Only six industrial hygiene measurements were made in these (arsenic) areas before 1975. In 1950, airborne arsenic concentrations ranged from 300 to 700 μ/m^3 near the roasting and calcine furnaces, the areas of highest exposure. Measurements * * * in 1979 * * * show that arsenic exposures in these areas had decreased to about 100 μ/m^3 (Ex. 4–68).

It was therefore argued that arsenic should be considered as the major factor affecting the observed elevated lung cancer deaths in the Thun study (L–19–59). The main issue was that Dr. Thun's assumptions for calculating cumulative exposure contained a number of errors that would tend to underestimate the

risk due to arsenic and overestimate cadmium's risk per unit of dose.

In Thun's analysis, the estimated number of cancer deaths that would result from the arsenic exposures in this cohort by was calculated by assuming:

(1) An average arsenic exposure of 500 μ/m^3 in the "high arsenic" areas;

(2) A respirator protection factor of 75%, similar for both cadmium and arsenic;

(3) An estimated 20% of person-years of exposure spent in high-arsenic jobs; and,

(4) An average employment duration of 576 post-1926 workers of 3 years for 1,728 person-years of exposure.

As described in section VI–QRA, Dr. Thun concluded that no more than 0.77 lung cancer cases could be attributed to arsenic exposures, based on estimated arsenic exposures and using the risk assessment model developed by OSHA.

Dr. Lamm (Ex. L–19–59) proposed the following alternative assumptions and arguments regarding exposures:

(1) The appropriate mid-range of arsenic exposure levels is 2,650 μ/m^3;

(2) The respirator protection factor should be 1.00, based on observations of respirator use at various smelters (Globe, Tacoma, and Anaconda);

(3) Employees spent 67% of their cadmium exposure time in high cadmium exposure areas and 47% of that time was spent concurrently in high arsenic exposure areas, meaning that an estimated 32% of person-years of exposure were spent in high-arsenic jobs; and,

(4) A total of 3,941 person-years of cadmium exposure.

When these factors are taken together, the estimate of arsenic-induced lung cancer is high. Dr. Lamm stated,

> * * * we conclude that the NIOSH [Thun] estimate of 0.77 cases * * * was based on a vast underestimate * * * (Ex. L–19–59)

Dr. Thun indicated that Dr. Lamm's analysis included several misconceptions and faulty statistical procedures which caused an overestimation of arsenic exposure at the Globe plant (Ex. L–140–23). First, the exposure data from the 1940's to which Dr. Lamm refers come from a survey by the University of Colorado, Division of Industrial Hygiene, dated 1945. According to Dr. Thun, Dr. Lamm incorrectly reported the mid-range of these exposure data as being 8,700 μ/m^3 rather than 500 μ/m^3 used by NIOSH. Dr. Lamm reduced this level as a "midrange" value of exposures by eliminating the highest level and then taking the midrange, resulting in his estimate of 2,650 μ/m^3. Dr. Thun, on the other hand, indicated that the median of these exposure measurements is 205 μ/m^3; the geometric mean is 213.6 μ/m^3; and, the arithmetic mean is 392.2 μ/m^3.

Dr. Thun recommended that perhaps the best measure of the midpoint of these samples would be the geometric mean, weighted for the number of workers in each operation. This value equals 156.9 μ/m^3 without taking respiratory protection into account.

An unspecified "midrange value", used in Dr. Lamm's report, is less useful than the mean and median values given by Dr. Thun, and mathematically is meaningless. It would appear that the usual level of exposure to arsenic in areas with potential exposure to arsenic was considerably less than Dr. Lamm estimated.

Furthermore, according to the same survey, cited above, by the University of Colorado, the departments where arsenic exposure potentially occurred were only operational for four months of the year. The intermittent nature of these exposures should have been taken into consideration by Dr. Lamm, according to Dr. Thun. If the intermittent nature of these exposures had been taken into consideration, it would have resulted in further lowering of cumulative arsenic exposures.

Dr. Lamm claimed that the respirator usage and exposure data on arsenic exposures in three plants (the Anaconda, ASARCO Tacoma, and the ASARCO Globe plants) should be used to represent the respirator use and the arsenic exposures at the Globe plant. In this way, according to Dr. Lamm, a resulting protection factor of 1.00 for respiratory protection should be used instead of 0.26 used by Thun. This, however, ignores the fact that Smith's study of respirator usage, cadmium exposures, and arsenic exposures, was conducted at the Globe plant. The respirator protection factor used by Thun is thus more appropriate for use in studies of workers from the Globe plant.

Dr. Thun indicated that Dr. Lamm's assertion that the controls in his case-control study spent 68% of their time in high cadmium areas does not contradict Thun's estimate that an estimated 20% of person-years of exposure were spent in high-arsenic jobs. Dr. Thun's estimate is an estimate of time spent in high arsenic areas, not high cadmium areas. The high arsenic areas were sampling, mixing, roasting, and calcine. Furthermore, Thun's estimate was based on the entire cohort, covering the entire post-1926 period, while Dr. Lamm's estimate was based on a small sample of workers in his case-control study (N=75, or 12% of the cohort) who did not die of lung cancer. Thus, the estimate of time spent in arsenic exposure areas in the Thun study is more likely to be an accurate estimate in that it was based on a larger sample, utilized more complete employment records than were available to Dr. Lamm, was confirmed by several sources, and did not exclude workers who died of lung cancer.

Dr. Thun indicated that the major problem encountered by Dr. Lamm in his analysis was that he lacked sufficient work history data to identify departments with potential arsenic exposure in adequate detail to analyze these data by duration of employment; Thun used person-years of employment in high arsenic areas instead.

For several reasons, Dr. Thun believed that the estimate of 0.77 cancers may have been an overestimate rather than an underestimate. These included: (1) The high arsenic exposure jobs were frequently staffed with short-term employees who were not in the study cohort, thereby excluding workers with less than six months employment; and, (2) urinary arsenic levels of workers in the high areas from 1960–80 averaged only 46 μ/L, which would equal an inhaled arsenic of 14 μ/m^3, far lower than the estimated average arsenic exposure of 125 μ/m^3, cited by Thun (Ex L 140–23).

As Dr. Thun indicated, it is clear that Dr. Lamm's model overestimates the number of deaths attributable to arsenic:

> On the basis of Dr. Lamm's risk assessment mode, 143 deaths from lung cancer were expected based on arsenic exposure. Since only 24 lung cancer deaths were observed, it is apparent that Dr. Lamm's model greatly overestimates the number of deaths. On the other hand, Dr. Thun's model predicted 0.77 deaths, which is more consistent with the observed deaths (Ex. L–140–23).

However, according to Dr. Thun:

> If we took our worst case scenario and the estimated exposure to arsenic was twice what we said it was (representing a two-fold improvement in respiratory efficiency over time), then in the cohort over their entire life time, one would expect twice 0.77 cases of lung cancer attributable to arsenic. A very small number, less than two, which would by no means explain the excess that's observed. So the two fold underestimation that may have occurred due to differences in respirator efficiency does not account for the excess of lung cancer.(Tr. 6/7/90, p. 172).

Furthermore, Dr. Thun stated that if arsenic was causing the excess of lung cancers in this cohort, one would have seen a higher SMR for lung cancer in the low dose exposure group (Tr. 6/7/90, p. 177).

OSHA has recalculated the estimated number of arsenic lung cancer deaths that may have resulted from arsenic

exposures, in the quantitative risk assessment section. (See Section VI–QRA.) OSHA is of the opinion that the original analysis by Dr. Thun was adequately justified. It is fair to state, as did Dr. Thun, that while arsenic may have contributed to the excess lung cancers observed in this plant, it would not totally account for the excess lung cancer.

iv. *Lamm's Period-of-Hire Argument.* One primary objective of Dr. Lamm's case-control study was to examine the role of cadmium exposure when controlling for period-of-hire (Ex. 144–7–b). Relative cadmium exposure was expressed as a ratio of the mean cadmium exposure of the cases to that of the controls. Based on the case-control study, Dr. Lamm observed that the relative case-to-control cadmium exposure (mg-yrs/m^3) was 1.0, with a range from 0.9–1.1 (Exs. 12–33–e; 19–43–e; 144–7). Dr. Lamm concluded that the lung cancer risk in this workplace was:

> * * * more related to the period of hire, not to the cumulative cadmium exposure. The period of hire appears to be a surrogate for arsenic exposure as related to feedstock. The measures used here seem to indicate that exposure to arsenic and cigarette particulates, rather than cadmium particulates, may have caused the lung cancer increase of these workers. (Ex. 144–7–b)

OSHA has reanalyzed Dr. Lamm's results in the quantitative risk assessment section. In summary, the results of Dr. Lamm's case-control analysis could be explained by methodological errors in the study design or by random statistical fluctuations. (See Section VI–QRA). One example of methodological errors, Dr. Thun pointed out, would be the use of the case-control design in Dr. Lamm's study which is at variance with the common use of this method. Typically, "nested" case-control studies are conducted when there is an opportunity to classify *exposure* more accurately than is possible in a cohort study in which all workers are considered exposed to some degree. However, in the case-control study, the original cadmium exposure data from the Thun study was used for a subset of workers, and no additional information was collected and/or used for the whole cohort. Thus, the choice of a case-control study design introduced a major disadvantage in that the controls were not representative of the study population. That is, only a portion of the total information was used as opposed to a cohort study where all information on all workers is used. At the same time, this case-control study design applied to these data offered few of the advantages of the case-control design, (i.e., the addition of new data on the total cohort) (Ex. 8–645).

Random statistical fluctuations, which were perhaps exacerbated by "overmatching", could explain the results. Overmatching occurs when controls are matched to cases on a variable that is related to exposure but is not a risk factor for disease independent of exposure. Such overmatching can actually reduce study precision. (See Section VI–QRA overmatching.)

In general, when rules are developed for selecting controls, factors known or strongly suspected of being related to disease occurrence should be taken into consideration. Once a factor is matched, it is eliminated as an independent study variable and the control group can only be used for the study of other factors. This suggests that caution is required regarding the amount of matching attempted in any study. If the effect of a factor is in doubt, the preferable strategy is not to match for that factor but to control for it in the statistical analysis. If in a case-control study, for example, one matches cases to controls on exposure, no information on the association between exposure and disease will be obtained.

In general, several criteria should be met if one is to consider designing a "matched" study: the purpose of the study design should not pertain to the factor matched; if the factor is not "matched", one should be reasonably certain that the factor will be confounding; such confounding should be expected to be more than just trivial; and, there is no possibility that the factor is part of the causal pathway linking the exposure and disease under study.

According to Dr. Thun, in the case-control study by Lamm controls were inappropriately matched, or "overmatched", to cases on the variable of "date of hire" (Ex. 8–645). While OSHA agrees that cadmium exposure is very likely to be correlated with year-of-hire, OSHA believes the correlation is not perfect. (See Section VI–QRA). However, in terms of the Lamm case control study, overmatching is a potential flow that would lead to the finding of no difference in cadmium exposures between cases and controls. According to Dr. Thun:

> Overmatching is most severe for the eight cases and 24 controls hired before 1940. Workers hired before 1940 were only enrolled in the study if they continued to work in cadmium production for at least six months after 1940. Thus, cases and their controls hired in 1930 typically remained in cadmium production for 10.5 years (until July 1, 1940) to be enrolled in the study (Ex. 8–645).

The approach used by Lamm, according to Dr. Thun, almost guarantees that there will be little difference between cadmium exposures among cases and controls. Dr. Thun continued:

> Still another problem is that the investigators overestimate the relevant cadmium exposure of the controls. In the Lamm analysis, controls are allowed to accumulate exposure after death of the case. Thus, the cases' potential exposure ends at death, but the controls' exposure is not similarly truncated. This approach inappropriately inflates the exposure of the controls and obscures the potential ill effects of exposure. A less biased method of analysis would exclude the experience of controls following the death of the case (Ex. 8–645).

Thus, the main difference between cases and controls, if overmatching on controls for arsenic and cadmium occurred, would be, as Dr. Lamm noted, that there could be differences in smoking, but no differences in exposures to either cadmium or to arsenic.

e. *Thun's exposure assessment.* In general, for epidemiological purposes, exposure data should contain information on other substances in the workplace to which workers may have been exposed. For a given work area, records should be kept on the substances used, the quantity used, and the period of their use. The work area should be some identifiable area that is small enough to have relatively uniform usage and exposure to industrial substances but large enough to have a reasonable number of workers. Further, a work area should be convertible to some personnel code, so that data on work areas can be linked to data on individual workers.

Dr. Thun's exposure assessment for the members of his cohort was the subject of comments in the cadmium rulemaking. Several commentators agreed with the Environ study in its comments on the Thun study:

> A further strength of this study for the purpose of risk assessment is that quantified ranges of cadmium exposure were estimated. From plant and personal hygiene measures, exposure assessments for individual workers have been made * * * for many of the other epidemiological studies exposure data are limited to the identification of an average exposure level for the plant. Dose-response relationships cannot be postulated for these other studies. (Environ, Ex. 12–41).

The exposure estimates provided to Thun were developed by Smith after extensive communication with plant personnel who were familiar with the operation of the plant. Thun computed

individual cumulative cadmium exposures for each worker included in the cohort. Smith (Ex. 4–64) described the plant and the work areas in great detail:

Cadmium production was performed in a complex of ten buildings, with each phase in a physically isolated building or section of a building * * * Cadmium enters the process principally as cadmium oxide dust, recovered as a by-product of air pollution control at nonferrous smelters, especially zinc smelter * * * Each shipment of raw material is assayed for cadmium when received. The cadmium-bearing materials are roasted, mixed with sulfuric acid, calcined, and dissolved in a sulfuric acid solution that is purified by precipitation and filtration. Highly purified cadmium metal is plated out of the solution in an electrolytic refinery (tankhouse) and melted and cast into shapes at the foundry. Some of the metal is reoxidized in gas-heated retorts to make high purity oxide, and some is redissolved in sulfuric acid and treated with hydrogen sulfide to make yellow cadmium sulfide pigment. Dry materials are transported between buildings and process and then pumped to the electrolytic refinery.

Substantial levels of airborne cadmium have been observed over a long period in several areas of the plant * * * Exposures to cadmium oxide (CdO) dust occurred during sampling, loading, transporting of dust between roasting, mixing, and calcine operations, and during the loading of the purified oxide. Exposures to CdO fume occurred during the roaster, calcine, retort, and foundry operations. Exposures to cadmium sulfate occurred during the solution and tankhouse operations (mist). Job designations are associated with the operating departments * * * with little overlap between them. The plant also has facilities to produce small amounts of lead, arsenic, thallium, and indium. These operations are performed sporadically by a few individuals in three isolated buildings. High purity arsenic, thallium, and indium are produced in facilities on a laboratory scale.

The cadmium production process has not changed during the past 40 years; however, over this period the company has added a number of emission control systems to reduce exposures in the work areas. Ventilation controls have been added to the roasting, mixing, calcine, foundry, and retort areas * * *.

Plant offices and laboratories are located in separate buildings outside the production area. However, they have some cadmium contamination from dust carried in on the footwear and clothes of supervisory personnel and from general air contamination from the plant's activities."(Ex.4–64)

From his description, Smith provided information on areas in the workplace where cadmium exposures existed, the relative cadmium exposure levels in these areas, the length of employment of workers in each area, and workers' exposures to other chemicals. When used with existing historical exposure measurements, individual worker's personnel records, and information provided by plant personnel, Dr. Smith was able to quantify exposures for individual workers in the cohort. The true advantage of this study over other epidemiological studies is the estimate of dose for each member of the cohort.

In using the exposure data to assess the risk of cancer from exposure to cadmium, a major assumption underlying Dr. Thun's analysis is that one year of exposure to cadmium at 10 μ/m^3 is equivalent to 10 years of exposure at 1 μ/m^3. This assumption was questioned during the rulemaking process (Ex. 19–13). Epidemiological data upon which to make such an evaluation are usually lacking. Analyses performed in the quantitative risk assessment section (section VI) of this preamble indicate virtually the same potency estimate for cancer in animals exposed to CdO dust regardless of whether exposure was continuous of intermittent. Thus, dose rate effects in relation to cadmium exposure and lung cancer were not observed. This observation supports the use of a cumulative dose concept for occupational exposure to cadmium and lung cancer.

In addition to the above issue, comments were submitted to OSHA on other assumptions in Thun's study (Ex. 12–41). Cumulative exposure was estimated using length of employment, jobs within the plant, and an estimate of each worker's time-weighted-average inhalation exposure to cadmium calculated from personal sampling data (1973–1976) and area sampling data (1943–1976). These estimates were originally made by Dr. White (Ex. 4–64).

Because many of the personnel records specified general work areas rather than single departments, Thun categorized each period of a worker's employment into one of seven broad job categories. The average exposure to airborne cadmium for each of these composite categories was calculated on the basis of the industrial hygiene data reported by Smith (Ex. 4–64), with each department contributing to a weighted average according to the proportion of workers usually employed there. Each worker's cumulative exposure over time was computed as the sum of the number of days worked in a given job category for the relevant time period. Cumulative exposure was expressed in milligrams per cubic meter-days (mg-days/m^3).

In the Environ report, the authors summarized the main questions about the method by which Drs. Thun and White estimated exposure. The Environ report called into question: (1) The ratio used between area and personal exposure geometric means for six of the eight general plant areas; (2) the weighting factor; and, (3) the factor used to calculate the effects of respirator usage. Regarding the ratio between area and personal exposure geometric means, area sampling data were available for the time period between 1943 and 1976. Personal exposure measurements were also available for the time period 1973–1976. Dr. Smith calculated a multiplier, or ratio of personal exposure data to area exposure data, based upon data collected in six of eight work areas in the Globe plant between 1973–76. This ratio was then used to adjust the remainder of the historical area exposure data to reflect personal exposures.

The Environ report indicated that there was the possibility that the ratios might not have been the same in the earlier years before the introduction of many of the industrial hygiene controls. If, as the Environ report pointed out, the personal measures in 1973–76 were in fact unrepresentative of the other time periods for which actual personal monitoring data were not available, the ratio between the air concentrations and the personal measures could be different from those calculated and used by Smith. The end result of this assumption could be that the Thun data underestimated dose and thus overestimated the risks associated with cadmium exposure.

Smith acknowledged that:

* * * the accuracy of the estimates may change with increasing time into the past because conditions have changed in some of the work areas * * * [and] as a result * * * the precision was probably not as good for the older exposures as for the more recent ones (Ex. 4–64).

Smith stated that:

* * * we could not construct personal exposure histories based on each individual's own sampling * * * [W]e are uncertain about the degree of error introduced by the use of group data. In spite of these difficulties, our estimates were reasonable attempts to consider all of the factors that affect inhalation exposures and have produced exposure-effect relationships that are consistent with the known toxicological behavior of cadmium (Ex. 4–64).

OSHA agrees with Dr. Smith that the true direction of the bias in the exposure assessments can only be guessed. Despite the concerns raised, even the Environ report concluded that of all the assumptions that could operate in the misclassification of exposures, the use of the ratio measure was the "exception" (Ex. 12–41).

Dr. Smith clearly indicated that he was basing his assessments of earlier

exposures on area data. The calculation of personal exposures from area measurements was based on the assumption that the ratio between them was approximately constant. He stated that this assumption was reasonable because:

(1) The same sampling locations had been used for area samples for the past 20 years;

(2) The ratios were calculated from the averages of several measurements for both area and personal data (individual samples can vary quite widely); and

(3) The jobs were routine, well-defined, limited by area, and had not changed significantly during the past 40 years, all of which would tend to make the ratios extremely stable (Ex. 4–64).

The ratio calculated by Dr. Smith between the 1973–76 personal and area sampling data is neither unexpected nor implausible, and would not necessarily change for historical area data regardless of ambient airborne levels, particularly for heavy metal exposures.

In general, in epidemiological studies, even though personal data are preferred for heavy metals and best reflects the worker's environment if sampling is conducted closer than 30 cm from nose (8–668), exposure data of any kind are often lacking. The exposure information is rarely of adequate quality or based upon individual workers personal sampling. Thus, it is plausible that area data could be used to approximate the personal exposures. Since area data were available to Drs. Thun and Smith, it is appropriate that they should have been used.

Regarding the use of area data, the Environ report raised one additional recommendation which was that Smith use the area sampling measures that existed for the time period 1943–54, with or without the ratio multiplier, to calculate the exposures for those periods. If cadmium levels at the smelter were in fact much higher during this period, as the report indicated, then assigning measures taken from 1955 to 1959 to earlier years would underestimate the actual exposure conditions, perhaps considerably, and thus overestimate risk.

In his original report, Smith addressed this issue, stating that he did not use these data for several reasons:

> Although sampling data were available for most of the work areas before 1955, these data were not used because (1) different sampling techniques were used-impingers and electrostatic precipitators instead of filters-and (2) a different sampling strategy was used-breathing zone sampling with hand-held collectors instead of fixed-location samplers * * * Therefore, 1955–59 conditions were used to estimate pre-1955 conditions * * * (Ex. 4–64).

However, during questioning at the cadmium hearings, Dr. Thun further clarified this issue. Dr. Smith had data for the five year period from 1945–50, and these data were used by NIOSH for estimating exposures per worker. Prior to 1945, exposure data were estimated based upon existing data and the knowledge that major engineering controls or changes in the process during those earlier years were absent (Tr. 6/7/90, p. 128).

A second objection raised in the Environ report was that each period of a worker's history was categorized into one of seven broad job categories whose weighted average exposure was based upon the departmental measures from the Smith estimates. The weight used for this average was the number of workers usually employed in the department.

As Dr. Thun indicated, in order to link the personnel records to the industrial hygiene data, it was assumed that the average exposure in the high exposure category, (category 1 which included sampling, roasting/baghouse, mixing, calcine, foundry, and retort areas) and in the low exposure areas (category 7 which included solution, tankhouse, and pigment areas) would be a weighted average of the various departments within these two categories. The average exposure in the high exposure category was assumed to be a weighted average based on the average number of worker-shifts per week in each department.

Environ stated that this was "peculiar" since the number of workers is not an inherent part of the estimate of exposure. Thus, use of the number of measures as a weight had the possibility that the exposure would be overestimated because more measures may have existed for an area where a problem existed. Further, the area of high exposure might not be one where many workers were employed (Ex. 12–41).

The weighting system, or number of eight-hour shifts completed in each department per week, used by Drs. Smith and Thun was based upon telephone conversations with Dr. Lowell White, an ASARCO hygienist, and with Mr. Ernie Lovato, the former president of the local union and a long time employee. The estimates were generally consistent with a listing of job titles in each department at the Globe plant in a 1980 doctoral thesis by Dr. Jeffrey Lee (Ref. in Ex. 33; Smith, 1976).

Thun divided his cohort into homogeneous exposure subgroups on the basis of each individual's occupation, place of work, and shift, and the basic sampling unit was the "worker-shift." The weighted effort was allocated to certain "worker-shifts" based on several factors: the standard deviation in exposure for that particular homogeneous group, the labor turnover of the group, and the number of men belonging to the group. An underlying assumption of this strategy was that exposure to an individual worker is supposed to be indistinguishable from the shift average of the whole group.

It is clear that the measure of the exposure that is applied to any individual in a group should be the mean exposure level. An individual's cumulative exposure should be derived as the mean exposure level times the duration of each individual's employment in that part of the plant.

OSHA agrees with the Environ assessment that Thun's use of average exposures would stabilize the estimates and make the assessments relevant even without a weighted scheme based on the number of measures. However, OSHA did further evaluate the magnitude of the effects of such assumptions relative to arsenic exposure and substantially verifed the Thun results for weighted averages (see Section VI–QRA). Thus OSHA concluded weighted averages are more appropriate than unweighted averages.

The last major issue raised by Environ about assumptions in Smith's study was the reduction of the calculated personal exposure by using a factor of 3.9 (approximately 75%). This factor was judged by Smith to be the degree of protection afforded by respirator use. In a series of papers (Exs. 4–64; 8–281), Smith evaluated the average reduction in inhalation exposures produced by the intermittent use of filter cartridge respirators by cadmium workers in the Globe plant.

Questions were raised about the actual degree of protection afforded by respirator use when applied to correcting for arsenic exposures (Exs. 12–41; L–19–59). The main problem was the application of Smith's factor of 3.9 to correct for respirator use as it pertained to arsenic exposures. It was noted that respirators were not routinely worn, which would, in turn, affect the cadmium exposure assessment, as well.

According to Environ and others (Exs. 12–41; 19–43) exposures were underestimated due to the use of the respirator protection factor. Respirator use before 1940, it was stated, was likely to have been minimal at best and the respirators available were not very protective (Ex. 19–43). In the case of arsenic, the dose was underestimated

thus understating the risk; more lung cancer risk should have been attributed to arsenic. In the case of cadmium, the exposure was underestimated, and the risk overstated.

According to Mr. Bidstrup, Counsel for SCM Chemicals, Inc., who cited Dr. Lowell White, formerly of ASARCO, it was not until barrier cream was developed that workers wore respirators in arsenic areas because workers who used respirators before that were afflicted with " * * * a 'horrible face rash' or dermatitis" (Ex. 19–42–b–3, pp. 10–11)." Workers often did not wear respirators for this reason. In addition, Dr. White noted that a different type of respirator (a Jesse James respirator) was worn until the 1940's—not the style of respirator used when the protection factor for cadmium was calculated. Furthermore, if respirators were worn at all, they were often improperly fitted. These considerations make it:

> * * * very difficult to accept Thun's assumption that the same respirator protection factor of 3.9 which was purportedly operative for cadmium exposures was similarly protecting against arsenic exposures. These and other reservations exist as to whether arsenic has been adequately controlled for as a potential confounder ((Ex.19–42–b–3, pp. 10–11).

Dr. Smith described respirator use in this plant as follows:

> The company has had a policy since the 1930's that requires the use of filter cartridge respirators in work areas with the potential for fume and dust exposures. This policy has been tightly enforced in recent times, but the level of enforcement in the past is unknown, although workers and management have been well aware of the hazard of acute cadmium exposures (Ex. 4–64).

Thus, both Dr. Smith and the commentors were aware of the same issues. However, as Dr. Thun indicated at the hearing:

> * * * I think that the impression that has been communicated that there was a major arsenic problem historically in the calcine and roaster area of this plant * * * has been constructed rather recently * * * when I have spoken about this with Professor Smith * * * he says that Globe was not recognized to have an arsenic problem, that the symptoms of arsenic skin irritation were not being brought forth to the environmental group, and that the speculation about what past exposures may have been is based to a large extent on speculation (Tr. 6/7/90, pp. 149–150).

However, Dr. Thun did agree that Dr. Smith's impression of the respirator usage among arsenic exposed workers at this plant did differ from that of Dr. White. And while Dr. Thun is of the opinion that Dr. Smith is probably more accurate, OSHA acknowledges that the true degree of respirator use may not be known. An error in estimates of respirator protection leads to uncertainty in exposure assessments which could result in either overestimates or underestimates of exposure. OSHA developed three sets of exposure data for arsenic exposures, one one of which was respirator adjusted. The original respirator-adjusted estimates were within the range of the two estimates thereby supporting the respirator adjustment further (see section VI–QRA).

The protection factor that Dr. Smith calculated was based on intermittent usage measurements that included times when the respirator was both worn and when the respirator was hanging around the neck of the worker during the workday shift. This would cover those situations in which workers were unable to wear respirators due to facial rashes. Dr. Smith estimated the inhalation exposures for nine workers by measuring the cadmium concentration inside the respirator while it was worn or hanging around the worker's neck. Air concentrations of cadmium were measured simultaneously inside the respirator and at the worker's lapel using a dual sampling system, and workers were sampled for three consecutive days over a full days' workshift. On the average the inhalation exposure was 26% of the lapel concentration, i.e., the average effective protection factor, or the ratio of personal exposure to inhalation exposure, was found to be a geometric mean factor of 3.9. This factor was then used to calculate the inhaled cadmium exposure per worker. Personal exposures were divided by 3.9 to estimate the median inhalation exposures of workers in those department where respirators were worn, and these values were used in the development of each workers' cumulative exposure assessment.

Thus, Smith made three corrections to the existing area exposure level data base. The first correction was to adjust the historical area sampling data by a correction factor to reflect personal sampling. The second correction was the weighting of high exposure areas by number of worker-shifts, and the third was the division of the estimated personal exposures, in those departments and calendar periods in which workers wore respirators, by 3.9—the geometric mean respirator protection factor measured in the Globe plant.

OSHA has substantially verified the latter two adjustments (see section VI–QRA), and believes that the ratio adjustment for area samples did not operate towards misclassification of exposure (Ex. 12–14). OSHA agrees with Dr. Smith's conclusions that he attempted to address all of the factors that could affect the exposures to which workers were exposures. It was obvious, for instance, that the effects of emission control systems and improved ventilation were taken into consideration in each of Smith's estimated exposures for each department as a function of time. (See pg. 323, Table I, Ex 4–64.) Through his study design, Dr. Smith tried to estimate the actual inhalation exposures for individual workers, i.e., the actual dose of cadmium that a worker received to the lung, rather than the ambient cadmium levels, taking into consideration variations in respirator use.

Further, according to Dr. Roth:

> * * * regarding the exposure estimates * * * we have no reason to believe that any of the measurements are biased in either one direction or the other and from a statistical standpoint, that's the key issue. (Tr. 6/6/90, pp. 55–56).

It is OSHA's opinion that despite the issues raised regarding the exposure assessment, the forethought by Smith and Thun in applying this exposure assessment to the individual's in the cohort, taking into consideration the use of available data and using advice from the representatives of the workplace, would tend to minimize the errors in the exposure assessments. The underlying strength of the Thun study was the availability of unusually good industrial hygiene records that allowed for the computation of cumulative individual exposures, and from that, some quantitative dose response data. OSHA agrees with the Environ report which stated that despite questions, the quantified exposure estimates were: "* * * a further strength of this study for the purpose of risk assessment * * * (Ex. 19–42b)." Furthermore, the validity of these assessments has been determined, to some extent, by comparison of Thun's results with those of other independent researchers and in other studies.

Regarding this last point, Dr. Thun stated that:

> The calculations of cumulative exposure have been validated, to some extent, by comparing them to *in-vivo* data collected by the Brookhaven National Laboratory in 1979 (Ex. 4–27). A strong correlation was found between the calculated cumulative exposure, using these data, and the Brookhaven measurements of liver cadmium * * *. The strength of this approach is that it considers both the intensity and duration of exposure * * * this gives you an actual estimate of cumulative exposure * * * our

analysis grouped individuals into categories * * * to correspond to the level of detail that was available in the personnel records. (Ex. 33).

Dr. Thun was referring to a study by Ellis et al (Ex. 4–64). For Dr. Ellis' analysis, cumulative exposures for individual workers were estimated in the same way as for Thun's analysis, on the basis of the same plant personnel records. A chronological record of each worker's job assignments was obtained. The time-weighted inhalation exposure (TWE) was calculated by multiplying the length of time (t_i) in a given work area by the estimated inhalation exposure for that area and year (E_i) and then summing these values for the total exposure history, or

$$TWE = \Sigma E_i t_i,$$

where E_i was obtained from the original estimates reported by Smith (Ex. 4–64).

Another partial validation of the exposure assessments of these workers was done by Smith who calculated the quantity of cadmium that would be retained in the kidneys of the workers in his study, based on his calculated time-weighted exposure measurement of cumulative cadmium exposure per individual worker, and compared this with the "critical concentration" of cadmium that would result in kidney dysfunction, indicated by a number of other researchers (Ref. in Ex. 4–68). Smith found that:

The quantity 41 mg per kidney is somewhat higher than the 15–30 mg per kidney reported as the critical value for cadmium by several investigators (WHO Task Group, 1975; Nomiyama *et al*, 1979: Ellis *et al*, 1980); however, it is quite close, considering the assumptions and the errors in the exposure estimates. These findings provide further support for the quality of the exposure estimates. (Ex. 4–64).

To the extent that levels of cadmium in urine reflect cumulative cadmium exposures in air, and are not influenced by the presence of kidney damage, these results by Dr. Smith appear to confirm Dr. Thun's exposure assessments.

Thus, the cumulative exposures in Thun's study were somewhat validated by two independent researchers who further evaluated the health status of a subset of the same workers included in Thun's study. Using *in-vivo* measurements of cadmium in liver and kidney tissues and kidney cadmium content, the two researchers, Smith (Ex. 4–64) and Ellis (Ex. 4–64), found associations between cumulative cadmium exposures and effects of cadmium that were both similar to those of other researchers and were plausible, given the available medical data on cadmium's effects. These "validity checks," of the exposure assessment provides another important advantage of the Thun study over other studies. The confidence that can be placed in the results obtained from the use of such exposure assessments, for both cadmium and arsenic exposures, is increased.

As Dr. Thun stated:

* * * all of the cohorts have potential exposure to other occupational lung carcinogens besides cadmium. For the metallurgical groups * * * there is potential exposure to arsenic and for the nickel-cadmium battery plants, there is potential exposure to nickel * * * but the exposure data on this study are really exemplary. There are few occupational cohorts for which historical exposures are as well documented. (Tr 6/7/90, p. 87).

f. *OSHA's conclusions regarding the Thun study.* The major issues regarding the Thun study include potential confounding from arsenic exposure and from cigarette smoking. (See also Exs. 19–43; 66.)

Regarding the multiplicative or synergistic effects of smoking together with occupational cadmium exposures suggested by some commenters (Ex. 66), OSHA is aware of no evidence that supports the hypothesis of such synergistic effects. Of far greater concern to the Agency is the contamination of cigarettes by cadmium in the workplace (Ex. 29). Both cadmium and smoking are associated with lung cancer. Arsenic does not appear to have played a major role in the excess risk of lung cancer observed in the study. With data indicating that confounding from arsenic and cigarette smoking did not play a major role in the lung cancer excess, it would be imprudent to overlook the epidemiological data showing that cadmium appears to have been responsible for the excess lung cancer risk.

The obvious strength of the Thun study comes from the finding of a dose-response relationship. Dr. Kazantzis acknowledged that the study "* * * has shown evidence of the carcinogenicity of cadmium with a dose-response relationship" (Tr. 6/11/90, p. 142), and Dr. Rodericks stated that he would still point to the dose-response information from the Thun study "as a most important set of data." (Tr. 7/18/90, p. 26).

It is OSHA's opinion that the findings of the Thun study demonstrate a significant dose-response between cadmium exposure and lung cancer that could not be explained by confounding from cigarette smoking and arsenic exposure.

9. Summary and Conclusions

Complete in-depth review of the rulemaking record and careful analyses of the available epidemiologic data have led OSHA to conclude that a significant association has been demonstrated between occupational cadmium exposure and lung cancer. Evidence for this association is further strengthened by studies demonstrating the induction of lung cancer in experimental animals exposed by inhalation to several different cadmium compounds. The data also have revealed a significant association between cadmium exposure and prostate cancer, though recent studies show less of an association than earlier study results. IARC (Ex. 8–656) concluded that cadmium is probably a human carcinogen. The data presented in this rulemaking record and the analyses conducted and presented in the quantitative risk assessment section of this standard rule out any major potential confounding in the Thun *et al.* study from cigarette smoking and arsenic exposure on the excess risk of lung cancer observed among the cohort members. Thus, the association between cadmium exposure and lung cancer as noted by IARC is further strengthened by these new data and analyses. The epidemiologic findings demonstrating the carcinogenicity of cadmium establish cadmium as an occupational carcinogen.

Some commenters questioned the consistency of the epidemiologic data (Ex. 19–42b–3; The Environ Corporation, March 17, 1989). For example, Environ stated that "the results of lung cancer mortality studies in industrial settings where cadmium is present are mixed: The majority of reports do not show an excess lung cancer incidence in association with cadmium exposure and several provide strong evidence of alternative causes of the cancer excess observed." According to Environ, its conclusions are consistent with those reached by IARC, "* * * although our evaluation includes more recent studies than those reviewed by this agency (IARC)" (Ex. 19–42b-3). Environ continued:

On the basis of the commonly-applied criteria for causation based on epidemiological evidence that: (1) a positive dose-response relationship be observed, (2) the association is not explicable by bias in recording, detection, confounding or chance; and (3) the association is observed repeatedly in different circumstances, it appears evident that the epidemiologic data on the potential lung carcinogenicity of cadmium are insufficient to establish causality for humans (Exs. 12–41 and Ex. 19–42b, p. 19).

SCM Chemicals, citing a review of epidemiologic studies relating to cadmium by a 12-member panel of expert epidemiologists, criticized the epidemiologic studies relating to cancer for failing to consider the effects of confounding factors in drawing their conclusions (Ex. 19–42A).

OSHA noted earlier that for all five major cohorts of cadmium-exposed workers, the lung cancer SMRs are elevated, and in updated studies of four of the cohorts, the SMRs for lung cancer are statistically significantly elevated (Ex. L–140–50). These four cohorts were U.S. cadmium recovery workers with two or more years of employment (Thun et al., Ex. 8–658a); nickel-cadmium battery workers in the U.K. (Sorahan, Ex. 12–12–A); nickel-cadmium battery workers in Sweden (Jarup et al., L–140–50); and workers in 17 British plants (Kazantzis et al., Ex. 8–684): Not only were the SMRs elevated for four of the five cohorts, but according to Drs. Thun, Elinder, and Friberg, in three of the five cohort studies, (Exs. 8–658a, 12–12–A and 8–684), a dose-response relationship was evident (Ex. L–140–50). Regarding the other commonly applied criterion cited by Environ, bias in recording, detection and chance confounding, analyses by Thun et al. and by Stayner show that arsenic contamination and confounding from cigarette smoking could not have accounted for the excess lung cancer risk in the Thun study. Furthermore, the study demonstrated a dose-response for lung cancer in relation to cadmium exposure.

Thus, contrary to the opinion stated by Environ, all three of the commonly applied criteria for causation are satisfied by the existing epidemiological data for occupational cadmium exposure and lung cancer:

(1) A positive dose-response relationship has been demonstrated;

(2) The association does not appear to be explicable by chance, bias in selection of subjects for study or by confounding from other exposures; (3) the association has been observed repeatedly in different occupational settings.

A large number of epidemiologic studies demonstrate an association between occupational exposure to cadmium and kidney dysfunction. Exposure data were of high quality from six epidemiologic studies that allowed estimates of a dose response between cadmium and kidney dysfunction. No participant in the rulemaking challenged the etiologic basis for cadmium and its role in kidney dysfunction.

Commenters have testified that in contrast to toxins such as Cr VI and lead, the correspondence between human and animal data for all adverse health effects of cadmium is "very good" (Tr. 6/7/90; pp. 3–71). Human studies indicate acute and chronic cadmium toxicity in the form of renal, liver, and pulmonary effects, and animal studies have demonstrated similar effects. Chronic animal studies by inhalation show cadmium-induced lung cancers in rats and some cases of prostatic cancers; the same effects have been observed in human studies. Both renal damage and lung disease (bronchitis) have been observed in chronically exposed humans and animals. There is also good correlation between ITAI-ITAI disease in humans and demineralization of the bone in animals. Liver damage is also seen both in humans and animals. However, it is noted that some effects have been seen only in animals (6/7/90; Tr. 3–3 to 3–71).

OSHA has received information indicating that additional epidemiologic studies are being conducted and some participants feel that the final standard should be delayed until these studies are completed. (Caza, Ex. 19–29; Kazantzis, L–140–50, pp. 701–701; DCMA, Ex. 19–40). OSHA believes, however, that delaying the final standard is not warranted and that the record supports this conclusion. OSHA agrees that the human-animal correlation for cadmium:

> * * * is probably one of the best sets of correlations that one sees between experimental animals and humans for a toxic agent. (M. Costa, Tr. 6/7/90, p. 8)

VI. Quantitative Risk Assessment

In February, 1990, OSHA proposed two alternative permissible exposure limits (PELs) of 1 $\mu g/m^3$ and 5 $\mu g/m^3$ as an 8-hour time-weighted average (TWA) and a 5 $\mu g/m^3$ and a 25 $\mu g/m^3$ ceiling limit for cadmium. These new exposure limits were based on an evaluation of carcinogenic and renal effects observed in workers or experimental animals following exposure to cadmium.

Summary of Quantitative Risk Assessment for Lung Cancer From Proposed Rule

To evaluate the potential carcinogenicity of cadmium, quantitative estimates of risk were made by OSHA based on the Takenaka et al. (Ex. 4–67) study in rats and the Thun et al. (Ex. 4–68) study in humans. These studies provide the strongest evidence of carcinogenicity of cadmium in animals and humans, as well as the most appropriate data for a quantitative assessment.

Experimental Data

Cadmium has been shown to be a carcinogen in animals following administration via inhalation. At the time of the proposed rule, the strongest evidence of carcinogenicity in animals came from a rat bioassay conducted by Takenaka et al. (Ex. 4–67). In this bioassay, Takenaka exposed three groups of 40 male rats 23 hours/day for 18 months to cadmium chloride aerosol at nominal cadmium concentrations of 12.5, 25, and 50 $\mu g/m^3$. An additional group of 41 male rats served as controls. The animals were observed for 13 months following exposure, at which time all surviving rats were sacrificed. A statistically significant increase in the incidence of malignant lung tumors was observed in treated animals and a statistically significant dose response relationship was observed. The incidence of lung carcinomas was 0/38 (0%) in the controls, 6/39 (15.4%) in the low-dose group, 20/38 (52.6%) in the mid-dose group, and 25/35 (71.4%) in the high-dose group. Table VI–1 contains a summary of the lung tumor data from this study.

OSHA concluded that the Takenaka study was particularly suitable for quantitative risk assessment for several reasons. First, the exposures were well documented. The study was run with concurrent controls, and a statistically significant excess of malignant neoplasms in the exposed rats and a statistically significant dose-response relationship were observed. Finally, the route of exposure used in this study (inhalation) is the primary exposure route in most occupational settings.

TABLE VI–1.—INCIDENCE OF LUNG CARCINOMAS IN MALE WISTAR RATS EXPOSED TO CADMIUM CHLORIDE AEROSOLS [a]

Tumor type	Controls (percent)	12.5 $\mu g/m^3$ (percent)	25 $\mu g/m^3$ (percent)	50 $\mu g/m^3$ (percent)
Adenocarcinoma	0/38 (0)	4/39 (10)	15/38 (39)	14/35 (40)
Epidermoid carcinoma	0/38 (0)	2/39 (5)	4/38 (11)	7/35 (20)
Mucoepidermoid carcinoma	0/38 (0)	0/39 (0)	0/38 (0)	3/35 (9)

TABLE VI-1.—INCIDENCE OF LUNG CARCINOMAS IN MALE WISTAR RATS EXPOSED TO CADMIUM CHLORIDE AEROSOLS [a]—Continued

Tumor type	Controls (percent)	12.5 μg/m³ (percent)	25 μg/m³ (percent)	50 μg/m³ (percent)
Combined epidermoid carcinoma and adenocarcinoma	0/38 (0)	0/39 (0)	1/38 (3)	1/35 (3)
Total carcinomas	0/38 (0)	6/39 (15)	20/38 (53)	25/35 (71)

Source: Ex. 18.
[a] Number of animals with lung carcinoma from Takenaka et al. (Ex. 4-67).

Quantitative Risk Assessment Using Animal Data

The extrapolation of carcinogenic risk across species rests on the assumption that when dose is measured in equivalent units for both species, then the risk associated with lifetime exposure to a substance, such as cadmium, is the same for each species at each dose. Exposure levels in rats were scaled to equivalent doses for rats and humans by expressing dose in units of micrograms per kilogram of body weight per day (μg/kg/day). No adjustments were made for particle size due to a lack of precise data available on the size of cadmium particles to which workers are exposed. Without specific human absorption data on various cadmium compounds, no adjustment was made for the solubility of cadmium chloride used in the experiment.

The probit, logit, Weibull, multistage, and one-hit models were all fit to the data. As indicated in the OSHA proposal, the preliminary Maximum Likelihood Estimates (MLEs) of excess cancer deaths following 45 years of occupational exposure to 5 μg Cd/m³ were estimated to be 11 (multistage), 15 (one-hit), 0 (probit), 0.7 (logit), and 4 (Weibull) per 1,000 workers (Table VI-2). MLEs of excess cancer deaths following 45 years of occupational exposure to 100 μg Cd/m³, the current time-weighted average PEL for cadmium fume, were estimated to be 221 (multistage), 266 (one-hit), 186 (probit), 190 (logit), and 210 (Weibull) per 1,000 workers. OSHA concluded that regardless of which model would be considered the "best," each model indicates that a reduction of the PEL to 5 μg/m³ will lead to a significant reduction in risk. However, OSHA relied primarily upon the multistage model of carcinogenesis. OSHA agreed with the position of the Office of Science and Technology Policy (OSTP) (Ex. 8-693) in that when data and information are limited, and when much uncertainty exists regarding the mechanisms of carcinogenic action, models or procedures which incorporate low-dose linearity are preferred when compatible with limited information. The multistage model and the one-hit model, a special case of the multistage model, are linear at low doses. The multistage model incorporates the biological assumption that there are a number of stages that cell lines go through to produce a tumor, and a carcinogen exerts its effect by increasing the rate at which cell lines pass through one or more of these stages. In the form in which it was used by OSHA, the multistage model assumes there is no threshold of exposure below which a carcinogen cannot induce cancer. Upper confidence limits on the excess risk from low exposures determined using the multistage model are proportional to the amount of exposure, i.e., the dose response relationship is linear at low doses.

TABLE VI-2.—OSHA PRELIMINARY ESTIMATES OF EXCESS CANCER DEATHS PER 1,000 WORKERS WITH 45 YEARS OCCUPATIONAL EXPOSURE TO CADMIUM [a,b]

Dose (μg/m³)	Multistage model	One-hit model	Probit model	Logit model	Weibull model [a]
200	485 (528)	461 (541)	468 (552)	469 (557)	445 (528)
100	221 (312)	266 (322)	186 (278)	190 (280)	210 (299)
50	109 (171)	143 (177)	44 (99)	58 (114)	90 (157)
40	87 (139)	116 (144)	25 (64)	39 (82)	68 (126)
20	43 (72)	60 (75)	2 (11)	11 (28)	28 (60)
10	21 (37)	30 (38)	0.2 (1)	3 (9)	11 (28)
5	11 (18)	15 (19)	0 (0)	0.7 (3)	4 (13)
1	2 (3.7)	3 (4)	0 (0)	0 (0.2)	0.5 (2)
X^2	3.00	3.63	1.52	1.59	2.58
Degrees of freedom	2	3	1	1	1
P-value	>0.25	<0.50	0.22	0.21	0.11

Source: Ex. 18.
[a] Estimates derived using data from the Takenaka rat bioassay.
[b] Numbers in parentheses are the 95% upper confidence limits.

Epidemiological Data

Human data for quantifying lung cancer risk associated with cadmium exposure was found in a mortality study conducted by Thun et al. (Ex. 4-68). This study is a historical prospective study of 602 white men employed in a production area of a cadmium smelter for at least six months between 1940 and 1969. Follow up was through 1978. Sufficient exposure data existed to determine exposure levels for workers and a dose-response relationship between cadmium exposure and lung cancer mortality was reported.

Prior to 1926, the cadmium smelter functioned as an arsenic smelter. Because arsenic is a known carcinogen resulting in lung cancer, the cohort was divided into two subcohorts for analysis: a sub-cohort of 26 men hired prior to 1926 and a sub-cohort or 576 workers hired after 1926. A statistically significantly elevated incidence of death due to lung cancer (4 observed versus 0.56 expected) was found in the sub-cohort of workers hired prior to 1926. Among the workers hired after 1926, 16 lung cancers were observed (versus 10.87 expected). Table VI-3 contains a summary of the lung cancer data from Thun et al. (Ex. 4-68).

TABLE VI-3.—DATA USED FOR ESTIMATING RISKS FROM A MORTALITY STUDY OF CADMIUM SMELTER WORKERS BY THUN ET AL.

Cumulative exposure (mg/m³-days)	Person years at risk	No. lung cancers observed	No. lung cancers expected [a]	SMR
<584	7005	2	3.77	53
585-2920	5825	7	4.61	152
>2921	2214	7	2.50	280

Cumulative exposure (mg/m³-days)	TWA equivalent (μg/m³)		Median dose [d] (mg/m³-days)	Continuous dose [e] (μg/m³-years)
	40-year [b]	45-year [c]		
<584	>40	>36	260	168
585-2920	40-200	36-178	1210	722
>2921	>200	>178	4200	2522

Source: Ex. 18.
[a] Expected incidence based on calendar time, age-specific death rates for U.S. white males.
[b] Calculated as (cumulative dose×1000)/(365×40).
[c] Calculated as (cumulative dose×1000)/(365×45).
[d] As provided by Thun to EPA.
[e] Calculated as median dose×1000×(8/24)×(1/365)×(240/365).

Airborne cadmium concentrations were measured by Smith et al. (Ex. 4-64) as 8-hour TWA for nine departments in the smelter and for office and laboratories combined (nonproduction work areas). Exposure for each of these areas was classified as high exposure or low exposure. Estimates of individual cumulative cadmium exposure were based on the period of time a worker was employed in a high or low exposure dose area.

Using this exposure information, Thun et al. divided the post-1926 cohort into three exposure groups: A low-dose group with a cumulative exposure of less than 584 mg/m³-days, a mid-dose group with cumulative exposures of 585-2920 mg/m³-days, and a high-dose group with cumulative exposures of greater than 2921 mg/m³-days. Based on this division, a dose-response relationship between cadmium and death from lung cancer was observed. For the low-dose group, two deaths due to lung cancer were observed while 3.77 were expected (RR=0.53). For the mid-dose group, seven deaths due to lung cancer were observed while 4.61 were expected (RR=1.52). For the high-dose group, seven deaths due to lung cancer were observed while 2.50 were expected (RR=2.80).

Quantitative Risk Assessment Based on Epidemiological Data

OSHA quantified risks from the Thun data using an absolute risk model and a relative risk model. Both are linear models; however, the two models are based on different assumptions which lead to different estimates of risk. The absolute risk model is based on the assumption that the increased lung cancer mortality rate from cadmium exposure depends only upon cadmium exposure and not upon age. The relative risk model rests on the assumption that the ratio of the lung cancer mortality risk in an individual exposed to cadmium to what his mortality risk would be if he had not been exposed to cadmium depends only upon cadmium exposure and not upon age. Thus, an absolute risk model would predict the same lung cancer mortality rate from cadmium exposure in 20-year olds as in 50-year olds, given equal cadmium exposures, whereas the relative risk model would predict a higher rate from cadmium exposure in 50-year olds because 50-year olds have a higher background rate of lung cancer than 20-year olds.

The estimates of excess lung cancer death from the relative risk model were approximately twice as large as those from the absolute risk model, but both models predicted significant risk at the current OSHA PEL of 100 μg/m³. As published in the proposal, at 100 μg/m³, these models predicted between 16 and 30 excess lung cancer deaths per 1000 exposed workers. At exposure levels as low as 5 μg/m³, the excess risk of lung cancer death estimated by these models was 0.8 per 1000 exposed workers for the absolute risk model and 1.6 per 1000 exposed workers for the relative risk model. At exposure levels of 1 μg/m³ the excess risk of lung cancer death estimated by these models was 0.2 per 1000 exposed workers for the absolute risk model and 0.3 per 1000 exposed workers for the relative risk model. (See Table VI-4.)

TABLE VI-4.—OSHA PRELIMINARY ESTIMATES OF EXCESS LUNG CANCER DEATHS PER 1,000 WORKERS WITH 45 YEARS OCCUPATIONAL EXPOSURE TO CADMIUM [a,b]

Dose (μg/m³)		Number of excess deaths	
TWA	Continuous [c]	Absolute risk model	Relative risk model
200	4.384	32.3 (4,60)	60.2 (8,109)
100	2.192	16.3 (2,30)	30.7 (4,57)
50	1.096	8.2 (1,15)	15.5 (2,29)
40	0.877	6.6 (0.7,12)	12.5 (2,23)
20	0.438	3.3 (0.4,6)	6.3 (0.8,12)
10	0.219	1.6 (0.2,3)	3.1 (0.4,6)
5	0.110	0.8 (0.1,2)	1.6 (0.2,3)
1	0.022	0.2 (0,0.3)	0.3 (0,0.6)

Source: Ex. 18.
[a] Estimates derived using data from the Thun mortality study of cadmium smelter workers.
[b] Numbers in parentheses are 5% lower and 95% upper confidence limits.
[c] Assumes exposure occurs for 8/24 hours and 240/365 days.

OSHA proposed a PEL of 1 $\mu g/m^3$ based on the risk assessment using the Takenaka rat bioassay. However, there is support for the use of the Thun et al. data for establishing an exposure level because no extrapolation across species is required. Estimates of risk based on the Thun data are lower than those from the Takenaka data, and support a PEL of 5 $\mu g/m^3$. OSHA therefore proposed alternated PELs of 1 $\mu g/m^3$ and 5 $\mu g/m^3$ based in part on the estimates of risk from Takenaka et al. (Ex. 4–67) and Thun et al. (Ex. 4–68) and in part upon the concerns for the technological feasibility of achieving a PEL of 1 $\mu g/m^3$.

Summary of Quantitative Risk Assessment for Kidney Dysfunction From Proposed Rule

In its proposal, OSHA quantified the risk of kidney dysfunction associated with cadmium exposure using two studies of cadmium workers that contained adequate data for such an assessment. One of the studies was a study of cadmium smelter workers conducted by Ellis et al. (Ex. 4–27). The other study was of workers at a refrigeration compressor production plant conducted by Falck et al. (Ex. 4–28). Kidney dysfunction was defined in both studies as an excess of urine protein, specifically β_2-microglobulin, a low molecular weight protein that, when found in the urine, indicates that damage has occurred to the proximal tubules and/or glomerulus. Because this damage may be irreversible and can lead to more serious health effects, OSHA considers this dysfunction to represent material impairment of health.

Ellis et al. studied 82 workers at the same smelter that was investigated by Thun et al. (Ex. 4–68; see discussion above in summary of cancer QRA). Air concentrations of cadmium in a given work area were estimated using industrial hygiene data provided by Smith (Ex. 4–64). A cumulative exposure was estimated for each worker based on these air concentrations and duration of work in a given work area. Twenty-four hour urine samples were obtained from each worker and used to determine whether a worker had abnormal kidney function. Kidney function was judged to be abnormal if urinary levels of β_2-microglobulin exceeded 200 $\mu g/g$ creatinine or if total urinary protein levels exceeded 250 mg/g creatinine. Eighteen out of 51 active workers and 23 out of 31 retired workers were classified as having abnormal kidney function. The mean time-weighted inhalation exposure estimate for active workers with abnormal kidney function was 1690 $\mu g/m^3$-years and for retired workers with abnormal kidney function was 3143 $\mu g/m^3$-years.

Falck et al. studied 33 male workers at a plant which produces refrigeration compressors with silver brazed copper fittings. The silver brazing consisted of 18–24% cadmium. Estimates of cumulative exposure were made for each worker based on data from air monitoring done by the Michigan Department of Industrial Health. The mean estimated cadmium exposures were 39 $\mu g/m^3$ for 11 years of operation for the automated brazing line and 110 $\mu g/m^3$ for 21 years of operation for the manual line. A time-weighted exposure was estimated for each worker based on the length of time in each brazing line. Twenty-four hour urine samples were obtained for eight of the 33 workers who were found to have elevated protein levels in spot urine samples. Seven of these eight workers were found to have urinary protein levels in excess of the 95% tolerance limit, based on urinary protein levels in 41 unexposed workers who served as controls. Based on this increase in urinary protein in exposed workers compared to unexposed controls, these seven workers were judged to have abnormal kidney function.

Using the logistic regression model and data provided by Ellis et al. and Falck et al., OSHA estimated the risk of kidney dysfunction from 45 years of exposure to a variety of occupational doses of cadmium. Estimates of kidney dysfunction per 1,000 workers with 45 years of occupational exposure to 5 $\mu g/m^3$ were 164.6 using the Ellis et al. data and 9.0 using the Falck et al. data. (See Table VI–5.)

TABLE VI–5.—OSHA PRELIMINARY ESTIMATES OF KIDNEY DYSFUNCTION PER 1,000 WORKERS WITH 45 YEARS OF OCCUPATIONAL EXPOSURE TO CADMIUM

8-Hour TWA dose ($\mu g/m^3$)	Cumulative dose ($\mu g/m^3$-yrs)	Incidence of kidney dysfunction	
		Ellis model	Falck model
1	4.5	26.1	0.1
5	22.5	164.6	9.0
10	45.0	317.7	58.9
20	90.0	523.7	300.5
40	180.0	722.0	746.7
50	225.0	774.0	845.7
100	450.0	890.0	974.1

Source: Ex. 18.

New Evidence and Issues Arising Since Publication to OSHA's Proposed Rule

Since the quantitative risk assessment was conducted for the proposed rule for cadmium, new information has become available which prompted a re-evaluation of the risk assessment conducted by OSHA. Additional animal studies have been conducted that demonstrate an increased risk of lung cancer in animals following exposure to cadmium (Exs. 8–694B, 8–694D, L–140–29F). The only animal study available for the risk assessment in the proposed rule which provided quantitative information concerning the carcinogenicity of cadmium was the study conducted by Takenaka et al. (Ex. 4–67). This study was conducted in male rats only and exposure was to cadmium chloride. Preliminary results from a study conducted by Oldiges et al. (Exs. 12–10i, 12–10h, and 12–35) were available and provided qualitative evidence that supported the carcinogenicity of cadmium. However, because these were preliminary results, they were not evaluated quantitatively. Since the proposed rule, the final results of the Oldiges et al. study (Ex. 8–694D) have been published, as well as a later report of this same study (Glaser et al. Ex. 8–694B). In Oldiges et al. and Glaser et al., groups of male and female Wistar rats were exposed to various cadmium compounds. These studies demonstrated that various cadmium compounds caused lung tumors in male and female rats.

The followup of the major epidemiological study available at the time of the proposed rule has been extended (Ex. 4–68). The Thun et al. cohort reported in the proposed rule was followed up through 1978. Since that time the cohort has been followed through 1984.

Since the proposed rule was issued, Stayner et al. (Ex. L–140–20) have completed a risk assessment based on the Thun cohort that differs in several respects from the one reported in the proposed rule. The Stayner et al. risk assessment is based on a followup of the Thun cohort through 1984, whereas the risk assessment reported in the proposed rule was based on followup only through 1978. Stayner et al. had access to the unprocessed data from the Thun cohort and consequently was able to conduct a wider range of analyses in its risk assessment than was possible based on just the data reported in the published Thun report (Ex. 4–68). In

addition, Lamm et al. (Ex. 144-7-b) have conducted a case control analysis of lung cancer cases from the same cohort as that studied by Thun et al.

Several studies concerning the kidney effects observed in workers following exposure to cadmium were not evaluated quantitatively in the proposed rule, and these studies provide quantitative information that would be useful in evaluating the risk of kidney effects following exposure to cadmium. In its proposed rule, OSHA quantified the risk of kidney dysfunction due to cadmium exposure using only the studies by Falck et al. (Ex. 4-28) and Ellis et al. (Ex. 4-27). OSHA has since identified four additional studies that may contain useful quantitative information. These include a study by Elinder et al. (Ex. L-140-45) of a cohort of 60 workers who had previously been exposed to cadmium through welder fume and dust associated with the use of cadmium soldiers, a study by Jarup et al. (Ex. 8-661) of 440 workers exposed to cadmium at a Swedish battery plant, a study by Mason et al. (Ex. 8-669A) of 75 workers exposed to copper-cadmium alloy in a factory in the United Kingdom, and a study by Thun et al., which is based on the same population of smelter workers studied earlier by Ellis et al. (Ex. 4-27).

Several issues concerning the quantitative risk assessment for cancer in the proposed rule have been raised that also prompted a reevaluation of OSHA's risk assessment. Concerns were raised over the appropriateness of the Takenaka et al. study for quantitative risk assessment by the Office of Management and Budget (OMB) (Ex. 17), Dr. Oberdörster (Ex. 31), Richard Bidstrup, Counsel for SCM Chemicals, Inc. (Ex. 19-42A), as well as others. The main issue was that in the Takenaka et al. study the rats were exposed continuously to cadmium chloride, while in the workplace exposure is not continuous and is mostly to cadmium oxide (Ex. 19-43). Therefore, the Takenaka et al. study was reevaluated to determine its relevance for the quantitative risk assessment of cadmium.

Mr. Leonard Ulicny (Ex. 144-17) and the Dry Color Manufacturers Association (Ex. 144-20) have requested that cadmium sulfide should have a separate PEL from other cadmium compounds. This request is based on the view that cadmium sulfide is less soluble in the human body, and therefore less toxic, than other cadmium compounds. Both commenters noted that the preparation of cadmium sulfide in the studies conducted by Glaser et al. (Ex. 8-694B) and Oldiges et al. (Ex. 8-694D) consisted of cadmium sulfide particles in suspension and subjected to light. The commenters concluded that this reaction could be responsible for the effects observed in animals following exposure to cadmium sulfide which they believe should be attributed to another cadmium compound, namely cadmium sulfate. Analyses have been conducted and reported by Dr. Oberdörster (Ex. 141) and Dr. Heinrich (Ex. 142) which need to be evaluated to determine if cadmium sulfide should have a separate PEL.

OMB (Ex. 17) questioned the impact of the Heinrich et al. (Ex. L-140-29F) study on the relevance of the quantitative risk assessment. The Heinrich et al. study was conducted in mice and hamsters. OMB thought that this study provided negative data and could possibly show that the carcinogenic effect of cadmium may be species-specific, because this study provided the only relevant data in species other than rat. This study was reevaluated to determine if the study could actually be considered negative and its impact on the quantitative risk assessment of cadmium.

In the quantitative risk assessment for cancer using animal bioassay data, OSHA performed its interspecies extrapolation assuming the risks were equal across species when dose across species was equal on a body weight basis. Dr. Oberdörster (Ex. 31) has recommended the use of lung dosimetry instead of equivalency based on body weight. The methodology recommended by Dr. Oberdörster will be considered in the reevaluation of OSHA's risk assessment.

The appropriateness of the Thun et al. cohort for quantitative risk assessment was questioned by many commenters (Exs. 38, 19-43, L-140(23), 144-8a, 144-8b, 144-8c, 144-170). The Globe plant from which the cohort was taken was formerly an arsenic smelter and many commenters, including George M. Obelodobel, Vice-President and General Manager of Big River Zinc Corporation (Ex. 19-30), Richard Bidstrup, Counsel for SCM Chemicals, Inc. (Ex. 19-42A), OMB (Ex. 17) and The Cadmium Council (Ex. 119), thought that arsenic, a known human carcinogen, may have been a contributing factor to the lung cancer observed in this cohort. Thun et al. had conducted an analysis of the contribution of arsenic to the risk of lung cancer observed in their study. However, this analysis was questioned (Ex. 17). Cigarette smoking was also mentioned by several of these reviewers as a possible confounding factor. These issues were considered in the reevaluation of the Thun et al. cohort.

The appropriateness of the mathematical dose-response models used in the quantitative risk assessments was raised as an issue by several commenters. In particular, the use of the linearized multistage model as the most appropriate model for the animal cancer quantitative risk assessment was raised by OMB (Ex. 17), as well as the use of the absolute and relative risk models for the quantitative risk assessment based on human epidemiological data (Exs. 17, 38). The risks from the animal and human quantitative risk assessments for cancer were also compared when these risk assessments were reevaluated. For the quantitative risk assessment of the kidney effects of cadmium, several commentors, including The Cadmium Council (Exs. 119, 19-43) recommended the use of the probit model for evaluating the kidney effects of cadmium rather than the logistic model used by OSHA.

In view of the new evidence that has become available since the proposed rule and the comments that have been received concerning the proposed rule, OSHA has decided to reevaluate the quantitative risk assessments for cadmium. The reevaluation of these quantitative risk assessments, as well as a discussion of the major issues are included below.

Risk Assessment for Lung Cancer

Assessment of Lung Cancer Risk Using Animal Data

The inhalation study conducted by Takenaka et al. (Ex. 4-67) exposed male rats to cadmium chloride, while Oldiges et al. (Ex. 8-694D) compared the results following exposure to cadmium chloride, cadmium oxide (dust or fume), cadmium sulfate, and cadmium sulfide in both male and female rats. In the Takenaka study, groups of 40 (41 in the control) male Wistar rats were exposed to a cadmium chloride aerosol continuously (23 hr/d, 7 d/wk) for 18 months at nominal concentrations of 0, 12.5, 25, or 50 $\mu g/m^3$ of cadmium. Rats were observed up to 31 months; necropsy was performed only on animals that had survived at least 18 months. In the Oldiges et al. study (Ex. 8-694D), groups of 20 male and female Wistar rats were exposed to cadmium chloride (30 or 90 $\mu g/m^3$), cadmium oxide dust (30 or 90 $\mu g/m^3$), cadmium oxide fumes (10 or 30 $\mu g/m^3$), cadmium sulfate (90 $\mu g/m^3$), or cadmium sulfide (90, 270, 810, or 2430 $\mu g/m^3$) for approximately 18 months and

followed for up to approximately 31 months.

In its reassessment of cancer risk based on animal data contained in the Takenaka et al. (Ex. 4–67) and Oldiges et al. (Ex. 4–694D) studies, OSHA has utilized three dose response models, all of which are different versions of the multistage model of cancer: The Armitage-Doll multistage model, the multistage model, and the multistage-Weibull model. The Armitage-Doll multistage model of cancer assumes that individual cell lines go through a series of stages in order to initiate a tumor, and different cell lines compete independently to be the first to produce a tumor. The rate at which cell lines go through a particular stage is assumed to be increased by exposure to the carcinogen by an amount that is proportional to the instantaneous dose of the carcinogen. This implementation of the Armitage-Doll theory was proposed for risk assessment by Crump and Howe (1984). This model is fit to time-to-tumor data. It does not require a TWA measure of dose as input, but instead utilizes the full time-varying pattern of dose in assessing risk.

The multistage model (Crump, 1984) is a generalization of the Armitage-Doll model that provides a dose-response that is flexible enough to model both linear and non-linear responses. However, upper statistical confidence limits on risk computed using this model will vary linearly with dose (hence, this model is sometimes called the linearized multistage model). This model is applied to quantal data on the number of animals with tumors; it does not use information on the time required for tumors to appear.

The multistage-Weibull model (Krewski et al., 1983) is an extension of the linearized multistage model that is applicable to time-to-tumor data. This model assumes that the probability of a tumor as a function of dose, for a fixed age, has the same form as the (linearized) multistage model, and the probability of tumor as a function of age, for a fixed dose, has a Weibull distribution.

Both the Armitage-Doll model and the multistage-Weibull model require information on the time at which tumors were discovered (time-to-tumor data), whereas the multistage model does not require this information. Since time-to-tumor data were not available from Takenaka et al., the Armitage-Doll and multistage-Weibull models were applied only to data from Oldiges et al. These time to tumor data were obtained by OSHA from an unpublished report from the Oldiges et al. study (Ex. 73). Both of the models that utilize time-to-tumor data require information on whether or not a tumor was fatal or incidental (i.e., observed incidentally at death from a different cause). OSHA did not have information regarding whether the lung tumors in the Takenaka et al. or Oldiges et al. studies were fatal or incidental, and consequently applied the models using both assumptions. These two approaches were found to give comparable results, and only results based on the assumption that all lung tumors were incidental are reported herein. These two approaches estimate different end points. When all tumors are assumed to be incidental, these models estimate the probability of having a tumor large enough to be observed in a histological examination by a given age; however, if all tumors are assumed to be fatal, the models estimate the probability of dying from a tumor by a given age.

Both the Armitage-Doll and multistage-Weibull require that an animal's age be specified to estimate risk. (These models estimate the probability of an animal acquiring a tumor by a particular age.) The age used to estimate risk from each study of a particular cadmium compound by Oldiges et al. is the duration of the study (days on test of the last animal to die).

The Oldiges et al. study involved groups in which animals were dosed for varying periods of time and the lifespans of the animals in some of the groups were reduced, apparently as a result of cadmium toxicity. Since the multistage model does not take into account reduced lifespans, this model was only fit to data from groups in which exposures lasted for at least 14 months (reduced survival appeared to be less of a problem in such groups.) With this method of fitting, the multistage model gave an acceptable fit (based on a chi-square goodness-of-fit test) to all of the data sets.

The Armitage-Doll and multistage-Weibull models were fit to all of the data on each cadmium compound. However, if these models did not adequately fit the data, data at the highest dose level was removed from the model fit. Data related to the highest dose level may be the least relevant to dose response modelling when there is a response at lower dose levels because of high or similar tumor responses at lower dose levels, reduced survival, or the possibility of altered metabolism including saturation of major or primary metabolic pathways at the highest dose levels. Removing data from the highest dose level resulted in reducing the number of dose groups for male rats exposed to CdO dust and for both male and female rats exposed to CdS when applying the multistage-Weibull model. However, the Armitage-Doll model gave an adequate fit to all of the data sets without any dose groups omitted.

The Armitage-Doll model makes use of the exact time-varying pattern of exposure. The dose of cadmium (in units of μg/kg/day) applied to this model during a period in which exposure was occurring was calculated as

$$DOSE = CC^{*}IR^{*}FD/W,$$

where

CC [μg/m³] = airborne cadmium concentration;
IR [m³/day] = volume of air inhaled per day (assumed to be 0.254 m³/day for male rats and 0.223 m³/day for female rats);
FD = fraction of day exposed;
W [kg] = average weight of rats at 18 months (assumed to be 0.43 kg for males and 0.35 kg for females).

A dose of zero was applied during a period in which the animals were not exposed.

The multistage and multistage-Weibull models require that a single summary dose be applied that represents the average daily dose, including periods in which animals were not exposed. This adjusted dose was calculated from the unadjusted dose as follows:

$$ADJDOSE = DOSE^{*}ME/MO,$$

where

ME = number of months rats were exposed;
MO = number of months rats were observed (estimated as the number of days on test of the last rat to die in an experiment).

To estimate human risk from these models, a human exposure is calculated in units of μg/kg/day and applied to the dose response model estimated from the animal data. Human exposures were assumed to be occupational and to last from age 20 to age 65. For the Armitage-Doll model, the corresponding exposure period, expressed in terms of the life of a rat, was from [20/74*MO] to [65/74*MO] days, where MO is defined above. The average daily dose (in units of μg/kg/day) during the exposure period was calculated as

$$ADD = HCC^{*}HIR/HW^{*}[DW/365],$$

where

HCC [μg/m³] = assumed human airborne cadmium concentration;
HIR = volume of air inhaled per 8 hour shift (assumed to be 10 m³/day);
HW [kg] = human body weight (assumed to be 70 kg);
DW = days worker per year (assumed to be 250).

To calculate the corresponding average daily human exposure, averaged over the entire lifespan, which is required to estimate human risk from the multistage

and multistage-Weibull models, ADD was adjusted as follows:

ADJADD=ADD*45/74,

where 45 is the number of years of work and 74 is the assumed human lifespan.

Table VI-6 contains the results of applying these three models to ten data sets from the Takenaka et al. and Oldiges et al. studies involving male or female rats exposed to five different types of cadmium. This table presents estimates of excess lung cancer deaths per 1000 workers having 45 years of occupational exposure to TWA cadmium exposures of 1, 5, 10, or 100 μg/m³. Upper and lower 95% confidence limits for the expected number of excess deaths are presented for the multistage model, but only upper 95% confidence limits are presented for the other two models because of the lack of a computer program to calculate lower limits for these models.

TABLE VI-6.—ESTIMATES DERIVED FROM ANIMAL DATA OF EXCESS CANCER DEATHS PER 1000 WORKERS WITH 45 YEARS OF OCCUPATIONAL EXPOSURE TO CADMIUM

Reference	Type exposure	Sex	Multistage model			Armitage-Doll model		Multistage-Weibull Model	
			MLE[a]	95% upper bound	95% lower bound	MLE	95% upper bound	MLE	95% upper bound
Exposure to TWA of 1 μg/m³									
Oldiges et al.	CdCl2	Male	5.7	8.9	3.4	7.3	10	0.046	16
Takenaka et al.	CdCl2	Male	3.0	5.1	0.78				
Oldiges et al.	CdO-Dust	Male	5.0	7.0	3.5	12	17	4.4	6.2
Oldiges et al.	CdO-Fume	Male	0.0025	0.66	0.00079	0.068	0.16	0.0037	1.2
Oldiges et al.	CdS	Male	1.4	1.5	0.74	4.0	5.8	1.1	1.5
Oldiges et al.	CdSO4	Male	1.5	2.6	0.83	0.50	0.90	5.3	11
Oldiges et al.	CdCl2	Female	3.7	6.2	2.0	4.7	7.4	5.7	10
Oldiges et al.	CdO-Dust	Female	4.9	7.7	2.9	13	18	4.9	7.3
Oldiges et al.	CdS	Female	1.4	1.9	0.95	4.9	6.5	1.5	2.2
Oldiges et al.	CdSO4	Female	2.0	3.1	1.2	11	19	7.2	20
Exposure to TWA of 5 μg/m³									
Oldiges et al.	CdCl2	Male	28	44	17	36	51	1.2	76
Takenaka et al.	CdCl2	Male	15	25	4.3				
Oldiges et al.	CdO-Dust	Male	25	35	17	61	81	22	31
Oldiges et al.	CdO-Fume	Male	0.061	3.3	0.020	0.34	0.78	0.095	6.0
Oldiges et al.	CdS	Male	5.5	7.6	3.7	20	26	5.5	7.6
Oldiges et al.	CdSO4	Male	7.6	13	4.2	2.5	4.5	26	54
Oldiges et al.	CdCl2	Female	18	31	10	23	36	28	49
Oldiges et al.	CdO-Dust	Female	24	38	14	63	87	24	36
Oldiges et al.	CdS	Female	6.8	9.5	4.7	24	32	7.4	11
Oldiges et al.	CdSO4	Female	10	16	6.1	55	90	35	94
Exposure to TWA of 10 μg/m³									
Oldiges et al.	CdCl2	Male	55	85	33	71	100	4.7	146
Takenaka et al.	CdCl2	Male	30	49	9.3				
Oldiges et al.	CdO-Dust	Male	49	68	34	117	155	43	61
Oldiges et al.	CdO-Fume	Male	0.25	6.6	0.079	0.68	1.6	0.38	12
Oldiges et al.	CdS	Male	11	15	7.4	40	52	11	15
Oldiges et al.	CdSO4	Male	15	25	8.3	5.0	9.0	51	105
Oldiges et al.	CdCl2	Female	36	60	20	46	71	56	95
Oldiges et al.	CdO-Dust	Female	48	75	28	121	166	46	71
Oldiges et al.	CdS	Female	14	19	9.5	48	63	15	22
Oldiges et al.	CdSO4	Female	20	31	12	108	171	69	179
Exposure to TWA of 100 μg/m³									
Oldiges et al.	CdCl2	Male	433	589	269	521	650	374	793
Takenaka et al.	CdCl2	Male	302	398	211				
Oldiges et al.	CdO-Dust	Male	396	507	293	713	813	357	465
Oldiges et al.	CdO-Fume	Male	24	54	7.9	6.6	15	37	113
Oldiges et al.	CdS	Male	104	142	72	333	412	104	141
Oldiges et al.	CdSO4	Male	142	226	80	49	87	409	669
Oldiges et al.	CdCl2	Female	310	483	182	376	523	436	634
Oldiges et al.	CdO-Dust	Female	388	541	251	726	838	386	521
Oldiges et al.	CdS	Female	128	173	91	386	478	138	197
Oldiges et al.	CdSO4	Female	183	269	116	681	847	512	862

[a] MLE = Maximum likelihood estimate.

The maximum likelihood estimates (MLEs) based on the Takenaka et al. (Ex. 4-67) from OSHA's reassessment are slightly different than the estimates reported in the proposed rule. The estimates of excess cancer risk based on the Takenaka et al. data were 10.6 per 1,000 workers following 45 years of occupational exposure to 5 μg/m³ in the proposed rule, but in the new assessment, this risk has changed slightly to 15 per 1,000 workers. This difference is due to a change in the method used to convert the animal dose in μg/m³ to μg/kg/day in the Takenaka et al. rat bioassay. In the proposed rule, it was assumed that the average survival for the animals in the study was two years; therefore, rats were exposed 23 hours/day for 75% of their lifespan (18 months). To adjust the experimental dose for less than lifetime exposure, the experimental dose was multiplied by 0.75 to produce an equivalent lifetime

dose. However, in the Takenaka et al. study, animals were observed for up to 31 months, with 50% of the animals in the control group surviving 30 months. Normally, to adjust for less than lifetime exposure, the average daily exposure is prorated over the lifetime of the animal (51 FR 33992; Sept. 24, 1986). This is done by taking a ratio of the number of months an animal is exposed to the number of months in the lifespan of the animal. For the Takenaka et al. study the lifespan is assumed to be 31 months. Therefore, in the reassessment based on this study a factor of 18 months/31 months (58%) rather than 18 months/24 months (75%) was used, resulting in slightly different estimates of dose and of risk.

The multistage model and Armitage-Doll models gave an acceptable fit to all of the data sets (e.g., $p > 0.05$, based on a chi-square goodness-of-fit test). (However, recall that the multistage model was only fit to data in which exposures lasted 14 months or longer, whereas the other two models were fit to all of the data.) The multistage-Weibull model also gave an acceptable fit to all of the data sets; however, to achieve an acceptable fit with this model, the data from the highest dose was deleted in the analyses involving exposure of males and females to CdS and exposure of males to CdO dust. (Also, in the multistage model to the data on exposure of male rats to CdO dust, the average exposures in the two experimental groups differed by only about 5%, and these two groups were therefore combined into a single exposure group for model fitting.)

The estimates of excess risk obtained from these models were consistently lower based on exposure to CdO fume than to other forms of cadmium. Dr. Oberdörster also noted the lower response of lung tumors in the Oldiges et al. study after exposure to CdO fume and concluded that this observation could most likely be explained by a lower lung burden of cadmium that resulted from a lower deposition fraction of the inhaled fume particles (Ex. 31). Estimates of risk resulting from other types of exposure agree much more closely. With the exception of CdO fume exposures, the ranges of estimates for the excess lung cancer risk from 45 years of occupational exposure to 5 $\mu g/m^3$ lifetime are as follows: multistage model, 5.5–28 excess deaths per 1000 workers; Armitage-Doll model, 2.5–63 excess deaths per 1000 workers; multistage-Weibull model, 1.2–35 excess deaths per 1000 workers. If exposure is to a TWA of 100 $\mu g/m^3$, the corresponding ranges are: Multistage model, 104–433 excess deaths per 1000 workers; Armitage-Doll model, 49–726 excess deaths per 1000 workers; multistage-Weibull model, 104–512 excess deaths per 1000 workers.

Discussion of Issues Related to the Risk Assessment for Lung Cancer Using Animal Data

Weight-of-Evidence Provided by the Takenaka Study

A weight-of-evidence evaluation is the first step in determining the likelihood that a chemical is a human carcinogen. According to EPA's methodology, the evidence is characterized separately for human studies and animal studies as sufficient, limited, inadequate, no data, or evidence of no effect. The characterizations of the animal and human data are combined, and based on the extent to which the chemical has been shown to be a carcinogen, the chemical is given a provisional weight-of-evidence classification. This classification can then be adjusted up or down based on other supporting evidence such as mutagenicity data (USEPA, 1989).

In EPA's Guidelines for Carcinogen Risk Assessment (51 FR 33992; Sept. 24, 1986), it is stated:

> The weight of evidence that an agent is potentially carcinogenic for humans increases (1) with the increase in number of tissue sites affected by the agent; (2) with the increase in number of animal species, strains, sexes, and number of experiments and doses showing a carcinogenic response; (3) with the occurrence of clear-cut dose-response relationships as well as a high level of statistical significance of the increased tumor incidence in treated compared to control groups; (4) when there is a dose-related shortening of the time-to-tumor occurrence or time to death from tumor; and (5) when there is a dose-related increase in the proportion of tumors that are malignant.

OSHA believes that these guidelines for a weight-of-evidence are not meant to be used in a pass-fail approach, since EPA refers to increases in the weight of evidence. Thus, all five conditions or a majority of conditions need not be satisfied for a chemical to be considered carcinogenic. Most especially all five do not have to be satisfied in any single study. Rather, these guidelines, and other sets of evaluation criteria, such as the EPA or IARC classification schemes, are meant to apply in a weight-of-evidence evaluation using the overall experimental and epidemiological data.

When the data base for cadmium is evaluated, the overall weight-of-evidence for the carcinogenicity in animals is strong, based on the above mentioned conditions. Statistically significant increases in the incidence of lung tumors were noted in male rats (Ex. 4–67, 8–694D) and female rats (Ex. 8–694D), exposed to cadmium compounds by the inhalation route, and when an adjustment for survival was made by life-table analysis a significant increase in lung tumors was also observed in female mice (Ex. L–140–29F) (see discussion below). Significant increases were noted in mammary fibroadenomas in rats given cadmium intratracheal instillation (Sanders and Mahaffey, Ex. 4–61) and in sarcomas (injection site) in rats injected with cadmium (Levy et al., Ex. 8–194; Kazantis, Ex. 8–576; Haddow et al., Ex. 4–34; Health et al., Ex. 8–117). In the Takenaka et al. and Oldiges et al. studies, statistically significant dose-response relationships were evident, and the proportion of malignant tumors increased and the latency time decreased with increased dose. (The controls did not have any lung tumors in either the Takenaka et al. or Oldiges et al. studies.)

The National Toxicology Program (NTP) (1984) in its Guidelines on Chemical Carcinogenesis Testing and Evaluation, has reported:

> Clear Evidence of Carcinogenicity is demonstrated in studies that are interpreted as showing a chemically related increased incidence of malignant neoplasms, studies that exhibit a substantially increased incidence of benign neoplasms, or studies that exhibit an increased incidence of a combination of malignant and benign neoplasms where each increases with dose.

Based on NTP's definition of clear evidence of carcinogenicity, the Takenaka et al. and Oldiges et al. studies provide clear evidence of the carcinogenicity of cadmium in animals.

Evidence of Carcinogenicity of Cadmium in Other Species

Cadmium, when administered by intratracheal instillation or injection, produced statistically significant increases in certain tumors but not lung tumors (Exs. 4–34, 8–576, and 8–117). Cadmium when given by the oral route, either in drinking water (Exs. 8–308, 8–121, 8–196), by gastric instillation (Levy et al., Exs. 8–034, 8–117), or in the diet (Loser, Ex. 8–643) did not produce an increase in either the total number of tumors or an increase in any specific type of tumor. The data show that cadmium, which is carcinogenic by the inhalation route in rats, has not been demonstrated to be carcinogenic by the oral route. This is consistent with the route-specific patterns for other heavy metals, such as chromium or nickel, that are established human carcinogens by the inhalation route but not by the oral route. However, lung tumors in workers

occupationally exposed by the inhalation route is the major concern. Therefore, for the proposed rule, the inhalation studies are the most relevant when assessing the risk due to cadmium exposure.

According to the Risk Assessment Guidelines published by the Office of Science and Technology Policy (OSTP, 1985), negative data as well as positive data should be considered in a weight of evidence determination of the carcinogenicity of a compound. As importantly, the selection of data for analysis should maximize any correlations between animals and humans with regard to pharmacokinetic considerations and mechanism of action. Inhalation studies have been conducted in male and female rats, mice, and hamsters. The studies in rats have convincingly demonstrated inhalation exposure to cadmium results in the production of lung tumors. The study in mice was less convincing, while that conducted in hamsters was labelled as negative by some. However, the mouse and hamster studies conducted by Heinrich et al. (Ex. L-140-29F) had several limitations.

In the mouse study, many of the animals were treated for a short duration of time with treatment duration ranging from 6 to 69 weeks. Survival problems were also reported in treated animals versus controls. Nine out of fourteen of the cadmium oxide exposed groups had significant shortening of mean survival time, based on life-table analysis. This shortening of lifespan was attributed to toxic effects in the respiratory tract. Of the remaining five treatment groups, three had significantly increased incidences of lung tumors. Due to the shortened survival of many of the treated mice, animals may not have survived long enough for some tumors to be observed. When a life-table analysis was conducted, which adjusts for survival, the probability of an animal dying with a lung tumor was statistically significantly greater in treated groups versus controls in most of the CdO treated groups and one of the CdS groups (90 $\mu g/m^3$). No information was reported concerning the time to first tumor or the type of lung tumors observed. Therefore, the latency period for tumor development in mice following exposure to cadmium cannot be determined.

As in the mouse study, exposure of hamsters to cadmium compounds were for short durations, ranging from 13 to 65 weeks. Shortened survival was also observed in some treated groups resulting from toxic effects to the respiratory tract. Survival problems may have precluded the development of lung tumors. However, dose-dependent statistically significant increases in the incidence of bronchiolaralveolar hyperplasia and proliferation of connective tissue, which are considered preneoplastic lesions and may indicate progression to cancer, were found with all cadmium compounds tested. Heinrich et al. reported that a few of the animals developed respiratory tract tumors; however, no tumor incidence data were reported. Although the results appear to indicate a progression to carcinogenicity, no definitive conclusions can be drawn as to the carcinogenicity of cadmium in hamsters.

These studies conducted by Heinrich et al. (Ex. L-140-29F) should not be considered as negative. Histopathological changes in the respiratory tract of hamsters, as well as the observation of some lung tumors, indicate the progression to possible carcinogenic effects. In mice, cadmium compounds appeared to be carcinogenic when adjustments were made for decreased survival. Despite the flaws in the Heinrich et al. study, this study provides some evidence of the carcinogenic potential of cadmium in species other than rats. Therefore, when all of the data are considered in a weight-of-evidence evaluation, the conclusions remain unchanged as to the relevance of the Takenaka data for use in risk assessment, and the potential carcinogenicity of cadmium in the occupational setting.

Continuous Exposure in Animal Studies Versus Intermittent in Occupational Settings

When actual exposure situations of concern differ from continuous, constant lifetime exposure, the EPA's Guidelines for Carcinogen Risk Assessment (51 FR 33992; Sept. 24, 1986) recommend that unless there is evidence to the contrary, the appropriate measure of exposure is the total or cumulative dose of the chemical of concern averaged or prorated over a lifetime, resulting in an average lifetime daily exposure. This assumes that a high dose of a carcinogen received over a short period of time is equivalent to a corresponding low dose averaged over a lifetime in terms of extra cancer risk. The supporting rationale for this relies on the underlying assumptions of the carcinogenic process: Risk is linearly related to dose, particularly in the low-dose region (51 FR 33992, Sept. 24, 1986; 50 FR 10372, Mar. 14, 1985; NAS, 1983). Currently when conducting a risk assessment, the total amount of chemical exposure (intake or dose) resulting from less-than-lifetime or intermittent exposure patterns is adjusted (prorated) over the expected lifetime of the individual. The result is an average lifetime daily exposure that corresponds to the same cumulative or total amount of chemical.

The Guidelines state that as the exposures in question become more intense but less frequent, this approach becomes problematic, especially when the agent has demonstrated dose-rate effects. Dose-rate effects are defined as a different degree or type of response that may occur with different dose patterns even when the total dose is the same for these dosing patterns.

Criticisms have arisen that the continuous exposures of animals to cadmium in Takenaka et al. (Ex. 4-67) (23 hours/day; 7 days/week) do not reflect occupational exposures of humans to cadmium (8 hours/day; 5 days/week). However, the available pharmacokinetic information for cadmium does not provide supporting evidence that dose-rate effects would be observed following intermittent versus continuous exposure to cadmium. Cadmium has a long retention time in the rat lung of 60-80 days and it is ten times longer in the human lung; therefore, although exposure in the workplace may be intermittent, cadmium remains in the lung during periods when exposure is discontinued, such as at the end of an 8-hour shift or over a two day weekend (Ex. 31).

Animal studies conducted by Glaser et al. (Ex. 8-694B) also provide evidence that dose-rate effects may not be an issue with cadmium. To evaluate this, the cancer potency estimated from results in rats exposed continuously was compared to that estimated from rats exposed using an intermittent pattern to simulate a work week. In this study, one group of male rats was exposed to 30 $\mu g/m^3$ CdO dust for 22 hours/day, 7 days/week for 18 months, followed by 13 months of observation; another group was exposed to 90 $\mu g/m^3$ CdO dust for 40 hours/week for 6 months, followed by 24 months of observation. The doses, expressed as an average daily intake, were approximately 9.9 $\mu g/kg/day$ for the male rats exposed to 30 $\mu g/m^3$ for 18 months and 2.7 $\mu g/kg/day$ for male rats exposed to 90 $\mu g/m^3$ for 6 months. The doses were prorated using the following equation:

$$\mu g/m^3 \times \frac{0.254\ m^3/day}{0.43\ kg\ body\ weight} \times \frac{number\ of\ hours\ per\ week\ exposed}{160\ hours/week} \times \frac{number\ of\ months\ exposed}{total\ months\ on\ study}$$

The incidence of lung tumors in these two groups was 28/39 for the 30 $\mu g/m^3$ group and 4/20 for the 90 $\mu g/m^3$ group. No lung tumors were reported in controls.

When these two data sets were evaluated using the multistage model, the potency factors obtained for these two data sets were similar, with 0.176 $(\mu g/kg/day)^{-1}$ obtained for the 30 $\mu g/m^3$ data set and 0.170 $(\mu g/kg/day)^{-1}$ obtained for the 90 $\mu g/m^3$ data set. If a dose-rate effect existed, i.e., if longer, continuous exposure resulted in higher estimates of risk, then the potency factors for these two data sets would be different rather than comparable. Therefore, the empirical data reported by Glaser et al. (Ex. 8–694B) do not show evidence of a dose rate effect for the lung carcinogenicity of cadmium.

Extrapolation From the Animals to Humans

Dr. Oberdorster has recommended that for the extrapolation of results of animal studies to humans, OSHA should use a lung dosimetric approach, rather than equivalency based on body weight. A lung dosimetric approach assumes that equal accumulated doses of cadmium per gram of lung tissues have the same carcinogenic potential in the peripheral lung of the rat and the human. Using a lung dosimetry methodology, the dose delivered to the lung can be expressed based on lung specific parameters, such as lung weight or lung airway surface area, rather than on body weight or body surface area.

Because the histopathology is not available to identify a specific cell line or area of the lung from which the tumors resulting from cadmium exposure arise in humans, if lung dosimetry is to be used, with surface area of the lung as a lung specific parameter, the total surface area of the lung must be used. If the histopathology were available to identify these areas, ideally the surface area of a specific region of the lung would be used.

Dr. Oberdorster compared the body weight equivalency approach used by OSHA and other regulatory agencies and the lung dosimetric approach and it appears that these two approaches give very similar risk estimates for cadmium. He concluded that the similarity in risk assessment in the case of cadmium is coincidental and does not mean that the choice of a dosimetric method is unimportant. However, it has recently been determined that total lung surface area, which would have to be used in this case, scales allometrically as body weight raised to the 0.96 power ($BW^{0.96}$) (USEPA, 1991). Therefore, the body weight equivalency method used by OSHA would be a close approximation of the lung dosimetric method, based on total surface area of the lung, and the similarity in the risk estimates derived by Dr. Oberdorster may not be a coincidence.

Regulation of Cadmium Sulfide

Several commenters (Exs. 31; 144–20; 19–42b) recommended that a higher occupational standard should be developed for cadmium sulfide (CdS) than OSHA's proposed standards of 1 or 5 $\mu g/m^3$ based primarily on the difference in solubility between CdS and $CdCl_2$ or CdO. To consider the validity of distinguishing CdS from other cadmium compounds several factors must be considered. There is sufficient evidence in animals for the carcinogenicity of cadmium. Studies conducted by Glaser et al. (Ex. 8–694B) and Oldiges et al. (Ex. 8–694D) appear to provide evidence that CdS is carcinogenic to animals exposed by the inhalation route. However, SCM Chemicals (Ex. 19–42b) suggested that the carcinogenic response observed in Glaser et al. (Ex. 8–694B) may be a result of exposure to $CdSO_4$ formed during the preparation of CdS. Two studies investigated the aerosol preparation technique of CdS used in the Glaser et al. (Ex. 694B) inhalation study (Glaser et al., 1991; Konig et al. 1991, refs. in Ex. 141). Both studies demonstrated that under the preparation technique used CdS may be solubilized under the influence of light and that, at low aerosol concentrations equivalent to 90 $\mu g/m^3$, 50% to 63% of the CdS solubilized. This indicates that the aerosol to which the rats were exposed contained both CdS and the more soluble $CdSO_4$. If it is assumed that only the more soluble $CdSO_4$ contributed to the carcinogenicity observed, then in the study by Glaser et al. (Ex. 8–694B), it would be expected that the tumor incidence of the CdS/$CdSO_4$ exposed rats to be approximately half that for the rats exposed to $CdSO_4$ since approximately 50% of the inhaled Cd was in the form of $CdSO_4$ (Ex. 142). However the tumor response in animals exposed to 90 $\mu g/m^3$ CdS was greater than 50% of that in animals exposed to 90 $\mu g/m^3$ $CdSO_4$, and in fact, the response was comparable in animals exposed to the two compounds. In males the lung tumor incidence among CdS exposed rats was 17/20 and only 11/20 among $CdSO_4$ exposed rats (although the CdS group was exposed for 18 months versus 14 months for the $CdSO_4$ group). In females the incidence was 15/20 in the CdS group and 18/20 in the $CdSO_4$ group. Thus, even if it is assumed that the 50% of the CdS had been converted to $CdSO_4$, these data suggest that the carcinogenic response was not due to the $CdSO_4$ alone and the data are, in fact, consistent with the CdS being just as potent a carcinogen as $CdSO_4$.

Intratracheal instillation studies provide further support that CdS is carcinogenic. Intratracheal instillation studies conducted by Pott et al. (Ex. 8–757) were aimed at investigating the pulmonary carcinogenicity of different cadmium compounds, including CdS. A statistically significant increase in the incidence of lung tumors was observed in rats exposed to 10 weekly instillations of 250 μg cadmium via CdS. Although it is possible that a small portion of the CdS could have dissociated, based on information from Konig et al. (Ex. L–140 27b), this could only have resulted in the formation of approximately 3% $CdSO_4$ from CdS in the group administered 250 μg cadmium. Therefore, the formation of $CdSO_4$ cannot account for the excess tumors observed following exposure to CdS. According to Oberdörster (Ex. 141) and Heinrich (Ex. 142) the results of the instillation study along with the inhalation study indicate that CdS is a pulmonary carcinogen; however, inhaled CdS may have a lower potency than other cadmium compounds.

If, as is generally assumed, only the solubilized Cd ion is responsible for the observed carcinogenicity, the potential carcinogenicity of any cadmium compound theoretically should be related to the cumulative amount of cadmium ion released in close proximity to target lung cells, averaged over a specific period of time. The release of cadmium is governed by the rate of

dissolution of the cadmium ion from the cadmium compound, the biological halftime in the lung, and the mechanism of clearance from the lung. These are interdependent and each contributes to the estimate of lung burden. Since lung dosimetry is extremely complex, the relative solubility of CdS compared to that of CdO or $CdCl_2$ is only one of the determining factors. While the dissolution rate of the Cd ion from CdS or other cadmium compound may be a function of that specific compound in a physiological environment, biological half-time and mechanism of clearance are dependent on a number of factors that include the nature of the inhaled material, i.e., gas, vapor, aerosol, particle; the characteristics of the respiratory tract; and breathing pattern. The mechanism of clearance is directly related to the deposition within the respiratory tract, which is a function of the particle size. In the upper respiratory tract, clearance by the mucociliary escalator is operative, while in the lower part of the respiratory tract or in the alveoli, clearance can occur by dissolution and direct uptake by macrophages, which are also cleared by the mucociliary escalator. Biological half-time is influenced by the competence and efficiency of these clearance processes. Removal of particles from the lung by mucociliary action, rather than by dissolution and diffusion, may allow for a longer retention time. However, any cytotoxicity that slows ciliary movement or creates an overburden on macrophage capability would increase that retention time, thus allowing for more dissolution and formation of the free cadmium ion, resulting in a higher carcinogenic potency than may be expected based on solubility alone. This would also be of concern because the biological halftime of particles with low solubility is about ten time longer in the human lung than in the rat lung (Ex. 142).

To differentiate risk associated with CdS from that for other cadmium compounds is not feasible at this time. In the workplace, exposure typically does not occur to CdS alone, but rather to a mixture of cadmium compounds. CdS appears to have carcinogen potential, and the contribution to risk from CdS would be additive to that of the other cadmium compounds (Ex. 142). Factors other than the solubility of CdS affect the retention in the lung, and hence the availability of cadmium ions. Factors in the work place that influence lung dosimetry, such as the size of cadmium particles or the total lung burden from all particulates, may also be important. A better understanding of the molecular and cellular mechanisms of cadmium carcinogenicity is required to determine if the carcinogenic potential of CdS is different from that of other cadmium compounds (Ex. 142).

Assessment of Lung Cancer Risk Using Human Data

The Risk Assessment by NIOSH (Stayner et al., Ex. L-140-20)

Since the publication of OSHA's proposed rule, Stayner et al. have completed a risk assessment based on the Thun cohort. There are several differences between this risk assessment and the one reported in the proposed rule (Ex. 18). The Stayner et al. risk assessment is based on recent additional followup of the Thun cohort through 1984, whereas the risk assessment reported in the proposed rule was based on followup only through 1978. Stayner et al. had access to the unprocessed data from the Thun cohort and, consequently, was able to conduct a wider range of analyses in their risk assessment than was possible based on just the data reported in the published Thun report (Ex. 4-68).

The cohort studied by Stayner et al. contained 606 white males and was defined the same way as in the earlier study of Thun et al. (Ex. 4-68). As in the earlier study, workers with employment prior to January 1, 1926 were excluded from the analysis in order to minimize the potential for confounding by arsenic exposure.

A life-table analysis was used to study the lung cancer mortality of the cohort. Person-years were accumulated beginning with the time an individual had been employed for six months at the facility or with January 1, 1940, whichever came later. Because Hispanics are reported to have lower lung cancer rates than non-Hispanics, the cohort was separated into Hispanic and non-Hispanic based on surname, and results were reported separately for these two groups; however, U.S. white males were still used as the comparison population for each group. Stayner et al. categorized the person-years in four ways: Cumulative exposure, latency (elapsed years since first exposure), year of observation, and age. Results from this analysis are reported in Table VI-7.

TABLE VI-7.—RESULTS OF LIFE-TABLE ANALYSIS OF DATA FROM NIOSH UPDATE THROUGH 1984 OF CADMIUM SMELTER COHORT

Category	Non-Hispanic			Hispanic [a]			Combined		
	OBS	EXP	SMR	OBS	EXP	SMR	OBS	EXP	SMR
Overall	21	8.95	**211	3	6.12	49	24	16.07	149
Exposure: [b]									
<584	1	3.35	29	1	2.38	42	2	5.73	34
585-1460	7	2.64	*265	0	1.64	0	7	4.28	163
1461-2920	6	1.55	*386	0	1.20	0	6	2.75	217
>2921	7	2.41	*290	2	0.90	223	9	3.30	*272
Latency [c] (Years):									
<10	0	0.41	0	1	0.28	363	1	0.69	145
10-19	2	1.41	142	0	1.00	0	2	2.41	83
>20	19	8.13	**233	2	4.84	41	21	12.97	*161
Year:									
1940-1959	2	0.88	226	0	0.38	0	2	1.26	159
1960-1969	5	2.24	223	1	1.27	78	6	3.51	171
1970-1979	10	4.43	*228	2	2.88	69	12	7.30	164
>1980	4	2.39	167	0	1.59	0	4	3.98	101
Age (Years):									
<50	0	0.78	0	1	0.50	201	1	1.28	78
50-54	2	1.01	198	0	0.67	0	2	1.68	118
55-59	1	1.61	62	2	1.00	200	3	2.60	115
60-64	5	2.20	227	0	1.20	0	5	3.40	146
65-69	4	2.12	188	0	1.13	0	4	3.25	123

TABLE VI-7.—RESULTS OF LIFE TABLE ANALYSIS OF DATA FROM NIOSH UPDATE THROUGH 1984 OF CADMIUM SMELTER COHORT

Category	Non-Hispanic			Hispanic [a]			Combined		
	OBS	EXP	SMR	OBS	EXP	SMR	OBS	EXP	SMR
70–74	5	1.37	*366	0	0.84	0	5	2.20	227
>75	4	0.87	*547	0	0.79	0	4	1.66	241

[a] U.S. rates for white males were used as the referent group for hispanic and non-hispanic males in this analysis.
[b] Milligrams cadmium per cubic meter of air-days.
[c] Time since first exposure.
* $p < 0.05$ (two-tails).
** $p < 0.01$ (two-tails).

Overall, there was an excess of lung cancer (OBS=24; EXP=16.07; SMR=149) that is statistically significant (p=0.035) by a one-tailed test for higher lung cancer rates in the cohort. Moreover, there is a clear dose-response trend of higher SMRs for lung cancer in groups with higher cumulative cadmium exposures. Lung cancer was significantly elevated among non-Hispanics [SMR=221, 95% Confidence Intervals (CI)=131, 323], but reduced among Hispanics (SMR=49, 95% CI=10, 143). This latter finding is consistent with the fact that Hispanics are reported to have lower lung cancer rates in general than non-Hispanics (Ex. 33) and that reference rates used were for U.S. white males.

There is a deficit in lung cancer deaths in the lowest exposure group (584 mg-days/m^3) relative to the control population, among both non-Hispanics (OBS=1, EXP=3.35) and Hispanics (OBS=1, EXP=2.38). However, neither of these deficits is statistically significant (p=0.15 among non-Hispanics and p=0.31 among Hispanics, one-tailed tests). Neither is the deficit statistically significant in the combined cohort (OBS=2, EXP=5.73, p=0.075) despite the fact that a deficit among Hispanics is expected because control rates were for white males. Thus, these deficits are not inconsistent with ordinary random fluctuation.

Excesses of lung cancer are observed in the remaining three exposure groups for both non-Hispanic and combined Hispanic and non-Hispanic. These excesses are statistically significant (using U.S. white males as the referent population) in all three groups for non-Hispanics and in the highest exposure group for combined Hispanics and non-Hispanics.

When person-years are categorized according to latency, significant responses occur only in the group with a latency of ±20 years, which is consistent with the latency of other agents that cause lung cancer. Table VI-7 also indicates that the excess of lung cancer was greatest among older members of the cohort (>70 years of age).

Stayner et al. used both Poisson regression and Cox regression to model the relationship between cumulative cadmium exposure and risk. Both Poisson regression and Cox regression involve a regression model that expresses the lung cancer rate per person-year (i.e., per person per year) in the cohort in terms of various potential explanatory variables for lung cancer such as age, calendar year, and cadmium exposure.

In Poisson regression, the person-years of observation are categorized according to values of the explanatory variables. The model is fit to the data using the assumption that the number of observed cases in each cell determined by the categorization has approximately a Poisson distribution with expected value equal to the number of cases predicted by the regression model. Poisson regression can either utilize background lung cancer rates from an external control population in defining the regression model, or else can estimate all of the parameters necessary to define the lung cancer rate directly from the cohort data without resort to an external control population. OSHA used Poisson regression of the former type in its risk assessment that was presented in the proposed rule (Ex. 18), whereas Stayner et al. utilized Poisson regression of the latter type. In addition to a measure of prior cadmium exposure, Stayner et al. included age, calendar year, and Hispanic ethnicity as covariates (explanatory variables) in the Poisson regression analyses.

Stayner et al. utilized the following functional forms for the lung cancer mortality rate per person-year in Poisson regression analyses:

Exponential (log-linear):

$$h=\exp(\alpha+E_j(\Theta_jW_j)+\Gamma\chi+\delta Y+\beta X)$$

Linear:

$$h=\alpha+E_j(\Theta_jW_j)+\Gamma\chi+\delta Y+\beta$$

Power:

$$h=\exp(\alpha+E_j(\Theta_jW_j)+\Gamma\chi+\delta Y)\cdot([X+1]^{\beta})$$

Additive relative rate:

$$h=\exp(\alpha+E_j(\Theta_jW_j)+\Gamma\chi+\delta Y)\cdot[1+\beta X)$$

where

h is the lung cancer mortality rate per person-year hazard rate,

α is the intercept,

W_j represents the calendar-year groups (W_j is a category variable that equals 1 if the observation is from the j-th calendar year group and equals 0 otherwise)

Θ_j is the regression coefficient for the j-th calendar-year group,

$E(\Theta_jW_j)$ represents the effect of the calendar-year group

$[E_j(\Theta_jW_j)=\Theta_j$, where j is the particular calendar year group associated with the observation]

χ represents Hispanic ethnicity ($1\chi=1$ if the observation is from a person of Hispanic ethnicity and zero otherwise)

Γ is the regression coefficient for Hispanic ethnicity,

Y is age,

δ is the regression coefficient for age,

X is a measure of prior cadmium exposure,

β is the regression coefficient for cadmium exposure.

Each of these functional forms, except the linear form, was also fit using Cox regression. Both cumulative exposure and cumulative exposure lagged 5 years were used as the measure of exposure in the Poisson regression analyses.

Stayner et al. utilized the following functional forms for the lung cancer mortality rate per person-year in Cox regression analyses:

Exponential (log-linear):

$$h=h_o(t)\cdot\exp(E_j(\Theta_jW_j)+\Gamma\chi+\beta X)$$

Power:

$$h=h_o(t)\cdot\exp(E_j(\Theta_jW_j)+\Gamma\chi)\cdot([X+1]^{\beta})$$

Additive relative rate:

$$h=h_o(t)\cdot\exp(E_j(\Theta_jW_j)+\Gamma\chi)\cdot[1+\beta X)$$

where

t is age,

$h_0(t)$ is a base-line mortality rate.

Otherwise, the variables have the same meanings as in the Poisson regression models.

In Cox regression the baseline mortality rate, $h_0(t)$, is not estimated, but is left unspecified. Consequently, the method can only estimate the mortality rate relative to this baseline rate. Since the linear model applied in Poisson regression cannot be represented as the product of a baseline mortality rate and a function of the explanatory variables (as is required in Cox regression) no counterpart to this model could be applied in Cox regression. Cox regression does not involve

categorization and grouping of data into cells, as is required in Poisson regression. Stayner et al. applied several measures of prior cadmium exposure in the Poisson regression analyses: cumulative cadmium exposure (i.e., the integral of cadmium exposure over time, expressed in units of mg-days/m^3) and measures formed by "lagging" cumulative exposures by 5, 10, 15, or 20 years. In the lagged analyses, the exposure variable was cumulative exposure achieved up to 5, 10, 15, or 20 years prior to the observation time. This technique was used to discount the most recent exposures that may be etiologically irrelevant to cancer risk because of an apparent minimum delay between exposure and the effect of that exposure upon cancer risk for many chemical carcinogens. Stayner et al. found that lagging exposures 5 years slightly increased the magnitude of the cadmium parameter exposure estimates in the Poisson regression analyses, which is to be expected since the lagged exposure variables are smaller than the unlagged variables. However, lagging the exposures for 10, 15, or 20 years reduced the magnitude of the exposure parameters. This means that the association between lung cancer and cadmium exposure was reduced if exposures were lagged more than 5 years. Stayner et al. consequently concluded that 5 years was the most appropriate lag period. Only results derived from analyses involving a 5-year lag will be discussed further.

The results of the Poisson regression analyses involving cumulative cadmium exposures lagged 5 years are summarized in Table VI-8. Table VI-8 indicates that the deviance associated with the linear model was much larger than that associated with the remaining three models fit by Poisson regression. This means that the linear model fit the data much more poorly than the other models that were applied to the data using Poisson regression. (The deviance differs by a constant from the negative of twice the log-likelihood, and thus, like the log-likelihood, can be used to assess the significance of parameters and assess improvements in fit (BEIR IV, 1988). The power model produced the smallest deviance; however, it predicted unrealistically low background lung cancer rates (e.g., about a factor of 100 lower than that observed for U.S. white males aged 70 during 1970-1979) and for this reason was considered to be inappropriate for assessing risk from cadmium exposure.[1] Of the remaining two models, the additive relative rate (Additive RR) model yielded a better fit (i.e., lower deviance) than the exponential model.

TABLE VI-8.—RESULTS FROM POISSON REGRESSION MODELS AND COX REGRESSION MODEL FITTED TO 5-YEAR LAGGED DATA BY STAYNER ET AL. (EX. L-140-20)

Model	Degrees of freedom	Deviance	Exposure parameter estimate (β) ([μg/years/m^3]$^{-1}$)
Poisson Regression:[a]			
Linear	213	97.71	0.00000008
Exponential	213	82.29	[c] 0.00012
Power function	213	79.26	[d] 0.58
Additive RR	213	80.70	[c] 0.00061
Cox Regression:[b]			
Additive RR			[c] 0.00026

[a] All models include categorical variables to control for calendar year and Hispanic ethnicity, and a continuous variable to control for age.
[b] Model included categorical variables to control for calendar year and Hispanic ethnicity. Age was controlled by matching on survival to the same age.
[c] $p<0.05$.
[d] $p<0.01$.

The same qualitative results were obtained by Stayner et al. using Cox regression. The additive relative rate model fit the data better than the exponential model, but not as well as the power model; however, the power model predicted unrealistically low background lung cancer rates.

Based on these results, Stayner et al. selected the additive relative rate model as the best model to represent the dose response for cadmium and lung cancer. Table VI-8 also contains the results of applying this model using Cox regression.

As indicated in Table VI-8, except for the linear model (which fit the data very poorly), all of the models fit using Poisson regression indicated a statistically significant effect of cadmium exposure upon lung cancer (i.e., the estimate of β, the cadmium exposure parameter, was statistically significantly greater than zero in each of the three analyses.) Similarly, the additive relative rate model fit using Cox regression also indicated a statistically significant effect of cadmium exposure upon lung cancer.

Stayner et al. used the results from the relative rate model to estimate the excess lifetime risk of lung cancer based on the method described by Gail (Ex. 8-561), which was also used by OSHA in the proposed rule (Ex. 18). The formula for the excess lung cancer risk is

$$\sum_{i=20}^{100} (RR_i - 1)\, q_1(i) \exp\left[- \sum_{j=20}^{i} \{ (RR_j - 1)\, q_1(j) + q_a(j) \} \right]$$

Where:

RR_i is the risk ratio for lung cancer predicted by the model based on the exposure scenario assumed,

q_1 is the background age-specific lung cancer mortality rate at age i,

$q_a(i)$ is the background age-specific mortality rate for all causes of death at age i,

and I is the oldest age through which excess risk is accumulated.

For this calculation it was assumed that persons were exposed occupationally to a constant cadmium concentration for 45 years beginning at age 20. The $q_1(i)$ and $q_a(i)$ were based on mortality rates for lung cancer and all causes, respectively, from 1984 for U.S. males (all races). The risk ratio used in the calculation is $RR_i = 1 + \beta X_i$, where β is the lung cancer potency derived from the additive relative rate model obtained either by Poisson regression or Cox regression, and X_i is the measure of exposure associated with age i. For each year, the cadmium exposure is calculated for the midpoint of the year. For example, if cadmium exposure is lagged 5 years and risk is estimated from exposure to an 8-hour time weighted exposure level, Z, beginning at age 20, then $X_i = 0$ for $i<25$, $X_{25} = 0.5 \cdot Z$, $X_{26} = 4.5 \cdot Z$, and for $i>70$ (i.e., after age 70) $X_i = 45 \cdot X$.

In their original work, Stayner et al. (Ex. L140-20) accumulated risk through age 74 (i.e., set I=74), which is the same as the approach used by OSHA in the proposed rule. However, in an

[1] If the power model had been used for risk assessment it would have predicted a much higher risk than the other models. Since this model predicts a very low background, it predicts a very large differential in lung cancer mortality between unexposed and exposed. However, when estimating lifetime risk the background lung cancer is estimated from general mortality rates and is hence the same no matter which model is applied. Consequently, the very large differential predicted by the power model would result in a very large risk if used to estimate lifetime risk.

addendum (Ex. L-163), Dr. Stayner noted that accumulating excess risk only through age 74 will result in an underestimate of the cadmium-induced risk of lung cancer because any increased risk that occurs after 75 years of age is not included. Dr. Stayner corrected this oversight in the addendum by accumulating the excess risk up through age 100 (i.e., set I=100), an age that exceeds the vast majority of human lifespans. OSHA believes that this approach provides a better estimate of the total risk from cadmium than truncating the risk calculation at age 74. This approach has been followed in all calculations of risk derived from human data presented herein.[3]

Dr. Stayner also noted that their original estimates (Ex. L-140-20) had been based on respiratory cancer rates rather than rates for lung cancer, and rates for lung cancer only were used in calculations reported in the addendum.

Dr. Stayner also reported in the addendum on the results of extending their analyses to include applying the multistage model of cancer to the data on the Thun et al. cohort with follow up through 1984. The multistage model was proposed for risk assessment by Crump and Howe (1984) and is based on a multistage theory of carcinogenesis that assumes that a single cell line has to go through a number of discrete stages in order to produce a tumor. Dr. Stayner assumed a five-stage model for lung cancer, explaining that "this is the number of stages that has generally been observed in other multistage analyses of lung cancer." He also assumed that cadmium affected one of the five stages. He fit the multistage model to the Thun et al. data varying the stage affected by cadmium and found that the model fit best when it was assumed that cadmium affected the third stage. Dr. Stayner fit the model to the data using a Cox regression approach. He then calculated estimates of excess using the same approach based on Gail's formula that he applied to the results from the additive relative rate model. These estimates were based on a multistage model with five stages with cadmium exposure affecting the third stage.

Table VI-9 presents estimates of the excess risk of lung cancer from 45 years of occupational exposure at various TWA exposures that were reported by Stayner in his addendum. The relative rate model obtained from Cox regression provides estimates of risk that are about twice as large as those obtained from the same model using Poisson regression. The estimates obtained from the multistage model fall in between the estimates derived from the other two approaches. The expected number of excess lung cancer deaths from 45 years of occupational exposure at a TWA of 5 $\mu g/m^3$ cadmium is estimated as being between 3.9 and 9.0 per 1000 workers. If the TWA is 100 $\mu g/m^3$ cadmium, the corresponding number of excess lung cancer deaths is estimated as being between 73 and 157 per 1000 workers.

TABLE VI-9.—ESTIMATES OF EXCESS LUNG CANCER DEATHS PER 1000 WORKERS FROM 45 YEARS OF OCCUPATIONAL EXPOSURE TO CADMIUM OBTAINED BY STAYNER ET AL. BASED ON THE ADDITIVE RELATIVE RATE MODEL APPLIED USING BOTH POISSON REGRESSION AND COX REGRESSION WITH A 5-YEAR LAG FOR CADMIUM EXPOSURE, AND ON THE MULTISTAGE MODEL

Exposure (μgm^3)	Excess deaths (per 1000 workers)		
	Relative Rate Model		
TWA	Poisson regression [a]	Cox regression [b]	Multistage model [c]
1	1.8	0.8	1.1
3	5.4	2.3	3.3
5	9.0	3.9	5.5
7	12.5	5.4	7.7
10	17.8	7.7	11.0
20	35.1	15.3	21.8
40	68.2	30.3	42.9
50	84.1	37.7	53.2
100	157.0	73.0	102.2
200	275.7	137.6	189.1

[a] =0.00061 (μg-years/m^3)^1.
[b] =0.00026 (μg-years/m^3)^1.
[c] The multistage model was fitted assuming five stages. Results presented assume the third stage affected by cadmium exposure, which maximized the likelihood.

Update of OSHA's Risk Assessment Based on the Thun Cohort

OSHA has also updated its risk estimates presented in the Proposed Rule (Ex. 18), based on the additional followup presented in the Stayner et al. risk assessment. OSHA's earlier risk assessment was based on the result of the life-table analysis conducted by Thun et al. (Ex. 4-68) on the followup of the cohort through 1978. The data set studied by Stayner et al. contained the results of additional followup through 1984.

The results of the life-table analysis conducted by Stayner et al. are contained in Table VI-7. The information from this table that will be used to update the risk assessment is contained in the section of the table labeled "EXPOSURE." This information consists of observed and expected numbers of lung cancer deaths in the cohort categorized by cumulative cadmium exposure and by Hispanic versus non-Hispanic. Expected numbers of deaths were calculated based on the mortality experience of U.S. white males.

In its earlier risk assessment OSHA applied both an absolute risk model and a relative risk model to the data from the Thun et al. study. However, the number of person-years in each category in Table VI-7, which is needed for the application of the absolute risk model, was not reported by Stayner et al. Consequently, only the relative risk model will be applied to the update. (It should also be noted that the linear model used by Stayner et al. (Ex. L-140-20), which is similar in functional form to the absolute risk model, provided a poor fit to the data.)

The relative risk model assumes that the lung cancer mortality (hazard) rate at age t is given by

$$h(t)=h_0(t) * (1 + \beta * X)=h_0(t)+[h_0(t) * \beta * X],$$

where $h_0(t)$ represents the hazard rate in the absence of cadmium exposure, X is a measure of cadmium exposure, and β is the slope of the dose response (i.e., β is the carcinogenic potency of cadmium). The measure of cadmium exposure available from the Stayner et al. paper was cumulative exposure, which was the same measure used by OSHA earlier. The specific measure used in the fitting was the median exposures in units of mg/m^3-days derived from the life-table analyses and converted into units of $\mu g/m^3$-years by Stayner et al. by multiplying by 1000 and dividing by 365; the resulting exposures as reported by Stayner et al. are 795, 2466, 5699 and 10,836 $\mu g/m^3$-days corresponding to the four cumulative exposure groups displayed in Table VI-7. (It was necessary for Stayner et al. to divide by 365 instead of 240, the number of work days in a year, because in calculating the exposures used to obtain the

[3] Each term in the sum used to calculate the excess risk is the product of the probability that a person lives to the given age, times the excess risk of dying of cadmium-induced cancer given that he lived to that age. Thus, the method adjusts for risk of death from non-cadmium causes and does not assume that a person will live to be 100 years old. However, truncating the sum at 100 is equivalent to assuming that a person will not live past 100 years of age. Although there is a small probability that a person will live past 100 years of age, there is a much larger probability (on the order of 0.5) that a person will live past age 74. Consequently, accumulating excess risk through 100 years of age provides a much better approximation to the total excess risk than accumulating risk only through age 74, which is equivalent to assuming that no one lives past age 75. A similar accounting for total excess risk was made in the risk assessments used by OSHA to support its standards for arsenic and for benzene.

categorization shown in Table VI-7 it was assumed that one-month exposure in a work category meant 30 days of exposure.)

The background rates used in the life-table analysis in Table VI-7 were for U.S. white males (which includes Hispanics). Since the cohort involves a sizable fraction of Hispanics (a larger fraction than in the U.S. in general), additional parameters were included in the model to control for the possibility that the background rates in the population differed between Hispanics and non-Hispanics and between either of these groups and U.S. white males in general. Since Thun et al. did not report their data separately for Hispanic and non-Hispanic, it was not possible for OSHA to conduct analyses similar to those in the risk assessment reported in the Proposed Rule.

The resulting model for the expected number of lung cancer deaths in a group with a cumulative cadmium dose of X is

$E_0 * \exp(a_i) * (1 + \beta * X)$,

where

E_0 is the expected number of cancers (obtained from Table VI-7) in the group based on rates for U.S. white males,

a_i is a category variable with i=H applying to Hispanics and i=NH applying to non-Hispanics.

The model was fit both with the restriction a_{NH} 0 (corresponding to applying the U.S. white male rates to the non-Hispanic cohort) and without this restriction. The observed deaths in a group were assumed to have a Poisson distribution whose expectation is given by the above expression. Thus, this analysis is a form of Poisson regression, with the principal difference between this analysis and the Poisson regression conducted by Stayner being that this analysis utilizes mortality rates from an external population to define background mortality rates, whereas Stayner et al. did not utilize an external population in their Poisson regression model. The parameters of the model were estimated by maximizing the likelihood (e.g., by Poisson regression), utilizing the computer program AMFIT (BEIR V, 1990).

A summary of the results of fitting this model to two different cases is presented in Table VI-10. In Case I, lung cancer mortality rates for U.S. white males are used as background rates for non-Hispanic white males in the cohort. In Case II, background rates for non-Hispanic white males in the cohort are assumed to differ from rates for U.S. white males by the multiplicative constant exp (a_{NH}), which is estimated from the data. In both analyses, background rates for non-Hispanic white males in the cohort are assumed to differ from rates for U.S. white males by the multiplicative constant exp (a_H).

TABLE VI-10.—RESULTS OF APPLYING OSHA'S MODIFIED RELATIVE RISK MODEL TO THE 1984 FOLLOWUP OF THE THUN COHORT

	Case I [a] ($a^{NH}=0$)	Case II [a] (a^{NH} estimated)
a_H (s.e.)	−1.4 (0.60)	−1.8 (0.91)
a_{NH}	0	−0.48 (0.77)
β_0	0.00027 (0.000098)	0.00054 (0.00057)
Deviance	10.29	9.88

[a] Case I assumes lung cancer mortality rates for U.S. white males are appropriate background rates for non-Hispanic white males in this cohort. Case II permits background rates for non-Hispanic white males to differ from rates for U.S. white males by the multiplicative constant, exp (a_{NH}).

[b] Units are (μg-years/m^3)$^{-1}$.

This analysis does not indicate that mortality rates for U.S. white males are inappropriate for the non-Hispanics in this cohort. The reduction in the deviance when a_{NH} is estimated is only 10.29–9.88=0.41, which is not significant (p=0.52) based on the chi-square distribution with one degree of freedom. On the other hand, a_H is significantly less than zero in both cases, implying that the Hispanics in this cohort had a lower background mortality rate from lung cancer than U.S. white males.

TABLE VI-11.—Observed and Predicted Lung Cancer Deaths from the Relative Risk Model Applied to the 1984 UPDATE TO THE THUN COHORT

Exposure (μg-years/m^3)	Number of lung cancers observed	Number of lung cancers predicted: Case I[a] ($a_{NH}=0$)	Number of lung cancers predicted: Case II[a] (a_{NH} estimated)
Non-Hispanics			
795	1	4.1	3.0
2466	7	4.4	3.8
5699	6	4.0	3.9
10836	7	9.5	10.3
Hispanics			
795	1	0.71	0.50
2466	0	0.67	0.63
5696	0	0.75	0.80
10836	2	0.87	1.0
		$X_6=8.5$ (NS) 6 df	$X_5=8.8$ (NS) 5 df

NS=nonsignificant lack of fit.
df=degrees of freedom.
[a] Case I assumes lung cancer mortality rates for U.S. white males are appropriate background rates for non-Hispanic white males in this cohort. Case II permits background rates for non-Hispanic white males to differ from rates for U.S. white males by the multiplicative constant, exp (a_{NH}).

Table VI-11 indicates that both of these cases provide an adequate fit to the data from the 1984 update of the Thun cohort. For Case I($a_{NH}=0$), the chi-square is 8.56 [6 degrees of freedom (d.f.),p=0.20], and for Case II (a_{NH} estimated) the chi-square is 8.82 (5 d.f., p=0.12). The lung cancer potency estimates obtained from these analyses

were $\beta=0.00027$ [μg-years/m^3]$^{-1}$ (Case I) and $\beta=0.00054$ [μg-years/m^3]$^{-1}$ (Case II). Both of these estimates are within the range of the corresponding estimates obtained by Stayner et al. when fitting the additive relative rate model, which was their preferred model, by Cox regression ($\beta=0.00026$ [μg-years/m^3]$^{-1}$) or Poisson regression ($\beta=0.00061$ [μg-years/m^3]$^{-1}$). (See Table VI-8.)

Thus, both Case I and Case II provide adequate descriptions of the data and both provide estimates of the carcinogenic potency of cadmium that are similar to estimates obtained by Stayner et al. using different modelling approaches. Case I is somewhat simpler than Case II since it requires one fewer parameters to be estimated.

Table VI-12 contains estimates, based upon Case I, of the number of excess lung deaths per 1000 workers exposed for 45 years to different TWA concentrations of cadmium. This table contains both MLEs and upper and lower statistical confidence limits. The MLEs were calculated in exactly the same way as the corresponding estimates in Table VI-9, which were made by Dr. Stayner, except that the potency estimate, $\beta=0.00027$ [μg-years/m^3]$^{-1}$, corresponding to Case I was used in the calculation. The 95% lower and upper confidence limits in Table VI-12 were calculated in this way also, except that the lower and upper confidence limits for β were used instead of the MLE. The 95% lower limit was $\beta=0.00013$ [μg-years/m^3]$^{-1}$ and the 95% upper limit was $\beta=0.00046$ [μg-years/m^3]$^{-1}$, both of which correspond to Case I. These confidence limits were calculated using the likelihood ratio approach.[3] MLEs based on Case II (with a_{NH} estimated) are about twice as large as those in Table VI-12 and the corresponding lower limits on risk calculated using the likelihood approach are zero.

TABLE VI-12.—OSHA FINAL ESTIMATES OF EXCESS LUNG CANCER DEATHS PER 1000 WORKERS WITH 45 YEARS OF OCCUPATIONAL EXPOSURE TO CADMIUM BASED ON THE RELATIVE RISK MODEL ASSUMING U.S. LUNG CANCER RATES ARE APPROPRIATE FOR NON-HISPANIC WHITE MALES IN COHORT [$a_{NH}=0$][a,b]

Exposure (μg/m^3) TWA	Risk per 1000
1	0.6 (0.3, 10)
3	1.8 (0.9, 3.0)
5	3.0 (1.5, 5.1)
7	4.2 (2.1, 7.1)
10	6.1 (2.9, 10.1)
20	12.1 (5.9, 20.1)
40	23.9 (11.7, 39.6)
50	29.8 (14.5, 49.1)
100	58.3 (28.8, 95.0)
200	112.1 (56.5, 177.9)

[a] Estimates derived using data from the 1984 update by Stayner *et al.* (Ex. L-140-20) of cadmium smelter workers.

[b] Numbers in parentheses are 95% upper and lower confidence limits.

As indicated by Tables VI-9 and VI-12, all of the estimates of excess risk of lung cancer obtained from the Thun cohort are similar despite the fact that the underlying analytic methods differed in several respects. Estimates of excess risk from 45 years of occupational exposure computed using the various approaches range from three excess deaths per 1000 workers to nine excess deaths per 1000 workers exposed to a TWA 5 μg/m^3 and from 58 to 157 excess deaths per 1000 workers exposed to a TWA of 100 μg/m^3. As Table VI-3 indicates, these estimates are somewhat higher than those obtained by OSHA in the proposed rule. OSHA believes that the differences between the new estimates and those in the proposed rule are most likely attributable to three factors: (1) The new estimates are based on additional followup of the Thun cohort; (2) the estimates appearing in the proposed rule were not adjusted for ethnicity (Hispanic versus non-Hispanic);[4] (3) the estimates were adjusted with the assumption that a person could live beyond age 74 years. Because the new estimates are based upon more complete data and more reliable quantitative methods, OSHA believes that the new estimates are more reliable than those that appeared in the proposed rule.

Discussion of Issues Related to Risk Assessment for Lung Cancer Based Upon Human Data

Potential for Confounding by Arsenic Exposure in Thun Cohort

Several commenters questioned whether there was an excess of lung cancers among workers hired in or after 1940, and whether an excess of lung cancer in persons hired prior to 1940 could have been due to arsenic rather than cadmium (Exs. 144-8B, 38). Dr. Schulte (Ex. 144-8c) addressed the lung cancer response among workers hired in 1940 or later as follows:

> We have never felt that an analysis of the subcohort hired between 1940 and 1969 was scientifically justified. The analysis was only done because ASARCO desired it on the basis of their arsenic assumptions. We do not feel this analysis is justified for several reasons: (1) We do not see an important change in the arsenic content of the feedstock in 1940, (2) the subgroup hired after 1940 is too small to provide sufficient statistical power for a scientifically definitive analysis, and (3) the latency period for workers hired after 1940 was not long enough to scientifically justify analyzing this subcohort. said, we can interpret the post-1940 data with the aforementioned caveats. Clearly, there was an excess of lung cancer in the medium and high exposure groups combined (OBS=13, EXP=5.71, SMR=228, 95% CI=121-389) and no excess in the low group; these data are supportive of a dose-response pattern. The fact that the risk estimate for the high exposure group was lower than that for the medium group can be explained by the low number of workers in this group, and thus, the low statistical power to describe the effect* * *.

Thus, an analysis by NIOSH of workers first employed after 1940 did demonstrate an excess of cancer in the medium and high exposure groups and was supportive of a dose-response pattern.

Stayner et al. also addressed the issue of whether there was a lung cancer effect in workers first hired in 1940 or later by adding a category variable to their analysis representing whether or not year of first hire was in 1940 or later (Ex. L-140-20). When this variable was added, it was not significant, which indicates that there was no statistically significant difference between the lung cancer mortality rates among persons first hired before 1940 and those hired later that was not already being explained by the model. Moreover, if arsenic exposure was higher prior to 1940 and if this exposure was wholly or partially responsible for the excess in lung cancers observed in this cohort, then inclusion of the category variable for year of hire should reduce the magnitude of the coefficient for

[3] With this approach, a 95% lower (upper) limit is calculated as the value of β smaller (larger) than the maximum likelihood estimate that satisfies the equation $[2*(L_{MAX}-L(\beta))]^{0.5}=1.645$ where L_{MAX} is the maximum value of the log-likelihood and $L(\beta)$ is the log-likelihood expressed as a function of β (Cox and Hinkley, 1974).

[4] The data necessary for such an adjustment were not published in Thun et al. (Ex. 4-68) and consequently were not available to OSHA when preparing the proposed rule.

cadmium exposure. However, when the category variable representing year of hire was added, the magnitude of the cadmium coefficient increased, which is not consistent with the hypothesis that arsenic exposure prior to 1940 was largely responsible for the increased lung mortality seen in this cohort.

This analysis by Stayner et al. was commented on by Mr. Leonard Ulicny of SCM Chemicals as follows:

> This analysis is significantly flawed, as the year of hire variable and the cumulative exposure variable are not truly independent * * * For nearly any composite of work departments, the estimates of cadmium inhalation in workers hired before 1940 will be higher than estimates for those hired after 1940. Since the "independent" variables are in fact related, regression analysis cannot distinguish between them (Ex. 144–17).

OSHA agrees that cadmium exposure is very likely to be correlated with the year of hire variable used by Stayner et al. However, OSHA also believes that there were significant cadmium exposures after 1940 and there were considerable differences in cadmium exposures, both among men first hired prior to 1940 and among those first hired subsequently. Consequently, OSHA believes that the correlation between the two variables is far from perfect. Indeed, if it were perfect or nearly so, inclusion of the year of hire variable would have resulted in a decrease in the magnitude of the cadmium exposure variable. However, when the year of hire variable was included, the cadmium exposure variable actually increased in magnitude.

If there was a perfect correlation between cadmium exposure and arsenic exposure (or a surrogate for arsenic exposure such as year of hire), which OSHA does not believe is the case, then an internal analysis of the Thun cohort would be incapable of separating the effects of arsenic and cadmium. However, it would still be possible to address the potential magnitude of an effect of arsenic using the carcinogenic potency of arsenic estimated from other studies. Such an analysis has been conducted by Thun et al. (Ex. 4–68) and will be reviewed below. Thun et al. (Ex. 4–68) addressed the question of whether arsenic exposure may have been largely responsible for the excess lung cancer incidence observed in this cohort. This was done by estimating the potential number of arsenic-related cancers in their cohort using the carcinogenic potency of arsenic estimated by OSHA in its final rule on its most recent arsenic standard (48 FR 1864; Jan. 14, 1983). Thun et al. estimated that the average exposure to arsenic was 500 $\mu g/m^3$ in the areas of highest arsenic exposure (near the roasting and calcine furnaces), based on exposure measurements taken in 1950. After reducing this exposure by 75% to account for respirator use, exposure in the high arsenic areas was estimated as 125 $\mu g/m^3$. They further took into account that an estimated 20% of person-years were spent in high arsenic work areas, resulting in an average arsenic exposure of 25 $\mu g/m^3$ during work hours for the 576 workers hired in or after 1926. Thun et al. estimated that these workers worked an average of 3 years and consequently accumulated 1728 person-years of arsenic exposure. Thun et al. estimated, based on the OSHA risk assessment model for arsenic (48 FR 1864; Jan. 14, 1983), these arsenic exposures would account for only 0.77 lung cancers and consequently would not account for the excess lung cancer mortality in this cohort.

Thun et al. apparently based this estimate on OSHA's preferred estimate of lifetime risk of 40/1000 from a 45-year working lifetime of exposure to 50 $\mu g/m^3$ arsenic (48 FR 1890; Jan. 14, 1983), as follows:

$$[(1728\ PY) * (500\ \mu g/m^3) * (0.25) * (0.2)] / [(45\ PY) * (50\ \mu g/m^3)] * [40/1000] = 0.77 \text{ lung cancers.}$$

OSHA has updated this calculation to reflect the additional followup of the cohort through 1984. OSHA has also adjusted the estimate of the average person-years work, and has made some additional analyses to account for the fact that the Thun et al. estimate of the number of lung cancers attributable to arsenic exposure represents the ultimate number after complete followup rather than after the partial followup currently available, and to incorporate additional information on arsenic exposures in the cohort.

Addressing first the estimate of the average person-years of work, Lamm (Ex. 144–8) calculated an average of 6.94 years of work at the plant per cohort member which is more than double the value of 3 years estimated by Thun et al. To resolve this discrepancy, OSHA asked Dr. Stayner to calculate the average duration of work for the cohort of men first exposed in or after 1926 based on followup through 1984. Dr. Stayner obtained an arithmetic mean of 7.15 years and a geometric mean of 3.04 years (Stayner, personal communication). Since the former figure is very close to the figure reported by Lamm and the latter figure is very close to the value reported by Thun et al., OSHA concludes that Thun et al. must have used the geometric average, whereas Lamm reported the arithmetic average. Since the average is used to calculate the total person-years of exposure reported, OSHA concludes that the arithmetic average is appropriate for this application and the geometric average is inappropriate. (The total person-years is equal to the product of the number of persons in the cohort times the arithmetic average of person-years of exposure, not the geometric average of person-years of exposure.) The arithmetic average of 7.15 years of exposure corresponds to a total person-years of exposure of 7.15 * 606=4333 person-years in the cohort reported on by Stayner et al. (Ex. L–140–20), where 606 is the number of persons in Stayner et al.'s cohort.

We now consider the adjustments to Thun et al.'s methodology needed to account for the fact that followup of the cohort currently is only through 1984 and consequently is incomplete. Since Thun et al. used OSHA's lifetime risk estimate for arsenic in their calculation, the 0.77 cancers represent the ultimate number of cancers in the cohort after complete followup, rather than the number of cancers through 1984. Stayner et al. (Ex. L–140–20) reported that only 27% of the cohort of workers hired in or after 1926 had died after followup through 1984 (162 out of 606). Consequently, the estimate of the ultimate number of lung cancers attributable to arsenic exposure should be multiplied by 0.27 to estimate the number of lung cancers attributable to arsenic exposure after followup through 1984.

Considering next the estimates of arsenic exposures, the average arsenic exposure of 500 $\mu g/m^3$ in high arsenic exposure areas that was used by Thun et al. in their calculation was based on arsenic measurements made in 1950. Two additional sources of data on arsenic exposures are also available: a 1945 report by the University of Colorado, Division of Industrial Hygiene on plant dust and fumes, including arsenic measurements (cited in Ex. L–140(23) and Ex. 144–8c), and urinary arsenic level measured in the high arsenic areas from 1960 to 1980 (Ex. 4–68). OSHA has reviewed the data from each of these sources and used these data to quantify arsenic exposures in the cohort.

In 1991 Dr. Schulte of NIOSH (Ex. 144–8c) used the 1945 exposure data to estimate average arsenic exposures in high arsenic exposure areas. Data tables contained in the 1945 report provide estimated 8-hour arsenic exposure values for 18 sample groups that were collected in the high arsenic exposure operations of sampling, mixing, roasting

and calcine. Estimates of work shift exposure were calculated by combining the arsenic concentrations obtained from short-term samples that were collected while various tasks were being performed, or in the general areas where the worker was during the work shift. Based on these data, Dr. Schulte presented several summary measures of arsenic exposure, including both arithmetic and geometric averages. Both types of averages were calculated both unweighted and weighted by the number of workers in each operation. OSHA has substantially verified the NIOSH results for the weighted averages, which were 936 $\mu g/m^3$ for the weighted arithmetic mean and 157 for the weighted geometric mean. OSHA also concludes that the weighted means are more appropriate than the unweighted means since estimates of overall exposure should take into account the number of workers exposed to each level (e.g., if 100 workers are exposed to 100 $\mu g/m^3$ and one worker to 1000 $\mu g/m^3$, it is not reasonable to assume an average exposure of $[100+1000]/2=550$ $\mu g/m^3$ for the entire cohort). OSHA also concludes that the arithmetic weighted average is a more appropriate summary measure for assessing risk than the geometric average because the arithmetic average is more likely to be closely correlated with lung cancer risk than the geometric average. (To cite an extreme example of the unreasonableness of the geometric average in this context, if a single sample value is zero, then regardless of the values of the remaining samples, the overall geometric average is zero.) In summary, based on Schulte's data, OSHA concludes that the weighted average of 936 $\mu g/m^3$ is the most reasonable summary measure of arsenic exposure in the high arsenic exposure areas from the 1945 data for purposes of risk assessment. Using the respirator adjustment factor of 0.25 introduced by Thun et al. results in a average exposure of $0.25 * 936$ $\mu g/m^3=234$ $\mu g/m^3$.

Turning now to the urinary arsenic data, Thun et al. (Ex. 4–68) noted that the average urinary arsenic level measured in the high arsenic areas from 1960–1980 were consistent with an average inhaled arsenic concentration of 14 $\mu g/m^3$. If one assumes that the reduction in airborne arsenic levels paralleled the reduction in airborne cadmium levels over time in these areas (this does not require assuming that individual exposures to cadmium and arsenic were proportional since workers generally moved among several areas), then the urinary arsenic data can be used in conjunction with the cadmium exposure estimates (Ex. 4–68, Table 1) to estimate the arsenic exposures prior to 1960. Since the (respirator-adjusted) cadmium exposures at the calcine furnace are estimated to be 0.15 $\mu g/m^3$ after 1965, 0.4 $\mu g/m^3$ between 1960 and 1964, and 1.5 $\mu g/m^3$ in earlier years, the estimate of arsenic exposure previous to 1960 at the calcine furnace is estimated to be between $14 * 1.5/0.4=52.5$ $\mu g/m^3$ and $14 * 1.5/0.15=140$ $\mu g/m^3$. Similarly, since the estimated cadmium exposures in the roaster area were 0.8 $\mu g/m^3$ after 1950 and 1.0 $\mu g/m^3$ before 1950, arsenic exposures in the roaster area are estimated as 14 $\mu g/m^3$ between 1950 and 1960, and $14 * 1.0/0.8=23.3$ $\mu g/m^3$ prior to 1950. Since these estimates are based on urinary levels, they reflect what was actually inhaled and require no additional adjustment for respirator use.

In summary, OSHA has developed three sets of estimates of arsenic exposure in high arsenic exposure areas for the period prior to 1960. After adjusting for respirator use, these estimates are: 125 $\mu g/m^3$ based on 1950 monitoring data, which was used by Thun et al. to quantify arsenic exposure; 234 $\mu g/m^3$ based on 1945 monitoring data; and between 14 $\mu g/m^3$ and 140 $\mu g/m^3$ based on changes over time in cadmium exposures and urinary arsenic levels measured between 1960 and 1980.

We note that the original respirator-adjusted estimate of arsenic exposure of 125 $\mu g/m^3$ made by Thun et al. is within the range of the other estimates summarized in the previous paragraph. If this estimate of arsenic exposure is retained and the person-years of arsenic exposure are adjusted as explained earlier and the factor of 0.27 is added to account for the fact that most of the cohort members were still alive at the end of the most recent followup, the resulting estimate of the number of cancer deaths in the cohort by 1984 attributable to arsenic exposure becomes

$$[(4333\ PY) * (125\ \mu g/m^3) * 0.2] / [(45\ PY) * (50\ \mu g/m^3)] * [40/1000] * 0.27=0.52 \text{ lung cancer deaths.}$$

Even if the highest OSHA estimate of average arsenic exposure (234 $\mu g/m^3$) is used, instead of 125 $\mu g/m^3$, the estimated number of lung cancer deaths attributable to arsenic exposure is 0.97. On the other hand, Stayner et al. observed 24 lung cancer deaths and an overall excess of eight (including an excess of 11 among non-Hispanics only). Therefore, even though OSHA's analysis differs from that of Thun et al. in several respects, the overall conclusion is the same: It is unlikely that arsenic accounts for the excess lung cancer deaths observed in this cohort, or even for a substantial proportion of that excess.

Any error in the estimate of respirator use will result in uncertainty in the estimate of arsenic exposure for those members of the cohort who were employed in high arsenic exposure areas. If the arsenic exposure is underestimated the contribution of arsenic to the excess lung cancer risk would be underestimated. If, on the other hand, the arsenic exposure was overestimated, the contribution of arsenic to the excess lung cancer risk would be overestimated. As discussed in Section V on health effects, OSHA is of the opinion that Drs. Thun and Smith made reasonable estimates of both arsenic and cadmium exposures, but realizes that the actual certainty of the estimates will never be known.

Dr. Schulte of NIOSH (Ex. 144–8C) pointed out three factors that indicate that the average concentrations derived from the 1945 monitoring data above may be substantial overestimates of actual arsenic exposure.

First, the 1945 report states that three of the departments with the highest arsenic concentrations (crusher, including unloading; Godfrey Roasters; and baghouse) "in recent years have operated about one month in every two or three." The TWA should be multiplied by 0.5 or 0.33 to estimate the actual average arsenic exposure to take this work pattern into account. Second, loading and unloading railroad cars are among the jobs with the highest exposure, but not only are these jobs done intermittently, they should not be equated with departmental averages throughout the departments where arsenic exposure potentially occurs. Third, particle size sampling was not done during the 1944 and 1945 surveys. Many of the samples taken were of dust, and thus a portion of the sample was of non-respirable size. This is especially true in the jobs involving loading and unloading, which included some of the highest arsenic values.

Dr. Thun (Ex. L–140–23) cites two additional reasons why the estimated average arsenic exposure of 500 $\mu g/m^3$ may be a substantial overestimate. One is that an estimate of the average exposure derived from the urinary arsenic data is so much lower. The other is the fact that high arsenic exposure jobs were frequently staffed with short-term employees who were not included in the study and whose arsenic exposures therefore did not affect its results.

Dr. Lamm (Ex. 144–8) disputed each of the factors used by Thun et al. to estimate arsenic exposures in this cohort. Lamm posits a mid-range value of 8,700 $\mu g/m^3$ (representing simply one-half of the highest recorded measurement), or 2,650 $\mu g/m^3$ (obtained

by "exclusion of the highest level and taking a mid-range of other high levels"). OSHA considers the weighted arithmetic average used in its analysis to estimate exposures from the 1945 data to be a more appropriate scientific approach than Lamm's use of a mid-range of certain selected "high levels." Since other data are available which indicate lower levels of arsenic and because of the potential for overestimation of arsenic exposure as described by Dr. Schulte and Dr. Thun, OSHA considers that, to the extent that its estimate of 936 $\mu g/m^3$ based on the 1945 data is in error, it is more likely to overestimate rather than underestimate arsenic exposures.

Dr. Lamm also questioned the estimate by Thun et al. that 20% of the person-years of exposure were spent in high arsenic exposure areas, citing that the controls in his case control study spent "more than two-thirds of their time (68%) in the high cadmium areas." However, Thun (Ex. L-140-23) explains that he and his co-investigators used several sources of information in making this estimate.

The primary source of information was biomonitoring data which gave department numbers, and thus could be used to estimate the percent of time spent in high arsenic areas. We also used information provided in the doctoral thesis of Jeffrey Lee which included information on shift assignments. The 20% estimate was discussed with Dr. Lowell White of ASARCO and with Mr. Ernie Lovato, president of United Steelworkers Local 557, who confirmed the 20% estimate. Finally, personnel records showing two-week shift assignments were reviewed to see if they confirmed the 20% estimate.

Dr. Thun also points out that Lamm's 68% figure does not contradict this estimate because, first, Lamm's figure is for high cadmium areas, not high arsenic areas and, second, Lamm's figure is derived from a small sample of workers from his case control study (comprising only 12% of the cohort).

The Dry Color Manufacturers' Association (DCMA) commented that Thun et al. underestimated the percentage of the workforce exposed to "high arsenic" work areas by assuming only 20% were so exposed when in reality everyone was exposed because entry-level positions were in these high-exposure areas (Ex. 120). This comment appears to be based on a misconception regarding what the 20% figure is supposed to represent. It represents the percent of person-years spent in high-arsenic exposure areas, not the percent of workers that ever worked in these areas. Even if DCMA were to be correct in its claim that 100% of workers were exposed in high arsenic areas, this would in no way contradict the 20% estimate made by Thun et al.

Dr. Lamm contends that the "arsenic content of the fines used as feedstock prior to 1940 were considerably higher than those used after 1940" (Ex. 144-7B). Lamm presents a graph of mean arsenic in the feedstock from 1926 through 1958 (Ex. 144-7, Figure 5) that indicates levels were two to three times as high between 1926 and 1940 as between 1940 and 1958. However, Thun (Ex. 33) presents a graph of total pounds of arsenic processed by year from 1924 through 1958 that indicates no particular trend after 1926. In fact, the highest amount of arsenic processed between 1927 and 1958 appears to have occurred in 1953. The lack of a difference in amount of arsenic processed during the two time periods is corroborated by Table 8 in Lamm et al. (Ex. 144-7) that indicates the average arsenic produced was 5,150 kg/yr between 1926 and 1940 and 4,356 kg/yr between 1941 and 1958. OSHA believes that it is questionable as to whether the amount of arsenic processed or the arsenic concentration of the ore is a better indicator of worker exposures. It seems reasonable that the amount of fugitive dust present would be likely to be related to the total amount of ore processed and not to the arsenic content. If so, then the total amount of arsenic processed is likely to be a better predictor of the total amount of arsenic released into the air. At the outside, these data do not suggest a large difference between the arsenic air concentrations between 1926-1940 and post-1940. Thus, OSHA finds Dr. Lamm's argument to be less than compelling and concurs with Dr. Thun's conclusion that "[t]hese data [on amount of arsenic processed by year] do not support the hypothesis that arsenic contamination was markedly higher from 1926-1940 than thereafter" (Ex. 33).

Dr. Lamm indicates that he calculated, based on computerized work histories supplied by NIOSH, an average employment of members of the Thun cohort of 6.94 years as opposed to the 3 years used by Thun et al. in their arsenic calculation. As explained earlier, based on the followup through 1984, Dr. Stayner of NIOSH recently calculated an arithmetic average employment duration of 7.15 years which agrees substantially with the value calculated by Dr. Lamm. This figure of 7.15 years was incorporated by OSHA into its calculations as described earlier.

Finally, Dr. Lamm contends that Thun et al. were in error in reducing exposures by 75% to account for respirator use. Lamm argues that respirator use was not considered in OSHA's risk assessment of arsenic and therefore not using a respirator reduction factor would be equivalent to assuming that respirator protection in this cohort was comparable with that in the cohorts upon which OSHA's risk assessment for arsenic was based.

But OSHA relied mainly on data from the Anaconda, Montana and the Tacoma, Washington copper smelters in its risk assessment for arsenic. Arsenic exposures at the Tacoma smelter were estimated from urinary arsenic measurements and based on correlations of air measurements and urinary arsenic levels collected from workers who did not wear respirators during the time the data were being collected (48 FR 1878, Jan. 14, 1983.) Air levels estimated from such measurements thus would reflect actual inhaled doses and further correction for respirator use would not be appropriate. As stated by OSHA in connection with the final arsenic rule, "they [estimates of exposure in the Tacoma smelter based on urinary arsenic data] take into account the protection afforded by the respirators that were sometimes worn." (48 FR 1887, Jan. 14, 1983).

Respirator use was also accounted for in some analyses of data from the Anaconda smelter: "Because respirators generally were worn in the heavy exposure areas, Lubin et al. reduced the assigned exposure level to 1.13 mg/m^3 in the heavy exposure category for some of their multivariate analyses" (48 FR 1870, Jan. 14, 1983). Moreover, some of the risk assessments of data from the Anaconda smelter upon which OSHA relied omitted data from the heavy exposure category (Ex. 206 ref. in 48 FR 1864, Jan. 14, 1983). This constitutes a *de facto* correction for respirator use, because the group most likely to have used respirators were not included in the analysis.

On the other hand, the exposure estimates in the epidemiological study of the Anaconda smelter by Higgins et al. did not include adjustments for respirator use because the authors did not believe such adjustments were appropriate. Thus, some of the risk assessments cited by OSHA included adjustments for respirator use and at least one did not. The estimates of lifetime risk from arsenic exposure preferred by OSHA were consistent with estimates made from studies cited above in which adjustments for respiratory use were either made or judged not to be appropriate.

It should also be noted that, like the estimates of arsenic exposure made in the Tacoma arsenic smelter based on urinary data, estimates of arsenic exposure at the Colorado cadmium

smelter based on the urinary arsenic data (discussed earlier in this section) did not require nor employ any adjustment for respirator use. Nevertheless, estimates of arsenic exposure derived from these data were generally lower than estimates made from other types of data for which adjustment for respirator use was deemed necessary and therefore employed.

After review and modification of the Thun et al. analysis of the potential effect of arsenic and consideration of the above points, OSHA concludes that Dr. Lamm's contention that Thun et al. seriously underestimated the potential impact of arsenic upon lung cancer in this cohort is not convincing. OSHA's preferred estimate of the expected number of deaths from lung cancer due to arsenic in the cohort studies by Stayner et al., which were first exposed in 1926 or later, is 0.52 out of a total of 24 that have been observed. Further, based on its analysis described above, OSHA believes that it is unlikely that the number could be substantially larger than this preferred value.

Potential for Confounding by Smoking in the Thun Cohort

In addition to arsenic exposure, tobacco smoking is also a risk factor for lung cancer in the Thun cohort. As explained by Dr. Thun in his testimony on the proposed rule (Ex. 33), smoking information was available for 43% of the workers in the study. This information was collected by the company in 1982 using a questionnaire mailed to surviving workers or next of kin of deceased workers and using medical records. The questionnaire inquired about the ages of starting and stopping smoking and the usual amount smoked. Dr. Thun compared the smoking habits of the cadmium workers as of July 1, 1965 to smoking habits for U.S. white males in 1965 as determined by a Health Interview Survey (HIS) of the National Center for Health Statistics. Table VI–13 was used by Dr. Thun to summarize these data. This table compares smoking habits of Hispanic and non-Hispanic workers separately to smoking habits of U.S. white males.

TABLE VI–13.—SMOKING HABITS AMONG HISPANIC AND NON-HISPANIC WORKERS AND AMONG WHITE MALES IN U.S. GENERAL POPULATION

[In percent]

Group	Non- and former smokers	Current smokers		
		<15	15–24	>25
U.S. Males	48.5	13.3	24.1	14.1
Cadmium Workers:				
Hispanic	43.7	31.0	20.7	4.6
Non-Hispanic	50.0	13.5	21.5	14.1

Source: Thun (Ex. 33).

Although Dr. Thun cautioned that smoking information was collected differently from the cadmium workers than in the 1965 HIS and therefore may not be comparable, the smoking pattern for non-Hispanics is very similar to the smoking habits for U.S. white males in general. These data do not suggest that differences in smoking habits could have accounted for the 11 excess lung cancers (SMR=211, $p<0.01$) observed by Stayner et al. (Ex. L–140–20) among non-Hispanics. If anything, they suggest that smoking rates may have been slightly lower among non-Hispanics than in the referent group of U.S. white males used by Stayner et al. which could cause the effect of cadmium to be underestimated in the life-table analysis.

The smoking data on Hispanics in Table VI–13 indicate that the Hispanic workers were more likely to be current smokers, but smoked fewer cigarettes per day. Dr. Thun pointed out that this pattern is typical of Mexican-American men. Dr. Thun also pointed out that "[s]everal studies have shown low rates of lung cancer among Hispanics in the Southwest", and "[i]n Denver between 1969–1971, Hispanic males had less than half (0.41) the incidence of lung cancer compared to other whites." Thus the lower mortality from lung cancer among Hispanics found in this study is consistent with generally lower rates among Mexican-American men. These findings support the use of U.S. white males as the referent population for non-Hispanics in this study, as was used by Stayner et al. in their life-table analysis, but suggests that this referent population has a higher background rate of lung cancer than the population of Hispanics in this study. This could have caused Stayner et al. to underestimate the effect of cadmium among Hispanics in their life-table analysis.

As noted by Stayner et al. (Ex. L–140–20), the modelling procedures they used based on Poisson regression and Cox regression greatly reduced the potential for confounding by cigarette smoking. This is because these modelling procedures rely on internal comparisons within the cohort rather than upon comparisons with an external control population. Consequently, "[i]n order for smoking to confound this analysis, one would have to propose that smoking habits varied between the exposure categories used in the analysis, which seems unlikely." Moreover, Dr. Thun showed (Ex. 33) that the percent of Hispanics, which may be acting as a partial surrogate for cigarette smoke, was evenly represented in the low, medium and high cadmium exposure groups.

In summary, the smoking data that are available indicate that smoking patterns among non-Hispanics in this cohort were comparable with those of U.S. white males in general and therefore cannot explain the significant excess of lung cancers among non-Hispanics in this cohort. The smoking pattern among Hispanics in the cohort indicated that the Hispanic smokers tended to smoke less than U.S. white males. This pattern is consistent with generally lower smoking rates among Mexican-American men and may explain at least partially the lower lung cancer rates observed among Hispanics in this study. In neither Hispanics nor non-Hispanics did the smoking data indicate a higher than normal prevalence of smoking that could account for the observed increased lung cancer mortality rate in this cohort. Moreover, even if the rate of smoking in this population had been different from that expected among any comparable mixture of Hispanics and non-Hispanics, such differences would be unlikely to affect the statistical analysis conducted by Stayner et al. that did not make use of an external control population.

Summary of OSHA's Review of Potential Confounders in the Thun Cohort

OSHA has carefully considered the evidence regarding whether the excess lung cancers in the Thun cohort can be attributed to arsenic exposure, and particularly to arsenic exposure prior to 1940. The analysis presented by Dr. Schulte of NIOSH demonstrates that the increased lung cancer mortality in this cohort is not confined to workers first employed prior to 1940. Similarly, results obtained by Stayner et al. were not consistent with the increased lung cancer in the cohort being a result of arsenic exposure that occurred prior to 1940. Finally, even though there are several reasons stated by Dr. Schulte and Dr. Thun as to why the analyses conducted by Thun et al. and modified by OSHA could overestimate the effect of arsenic exposure, these estimates indicate that arsenic exposure does not explain the increased lung cancer mortality observed in this cohort. OSHA also finds no evidence of excess smoking in the population that could explain the excess of lung cancers. Thus, OSHA concludes that the excess in lung cancer among workers in the Thun cohort who were first employed in or after 1926 is unlikely to be due to arsenic exposure or to cigarette smoking and is more likely to be attributable to cadmium exposure. This conclusion is strengthened by the knowledge that lung cancer has unequivocally been related to inhalation of cadmium in animals.

Review of Other Issues

The Low SMR in the Low Exposure Group in the Thun Cohort

Several commenters (Exs. 38, 19–30), noted the low SMR (SMR=53, based on two lung cancer deaths) in the low exposure group (584 mg-days/m^3) of the Thun et al. study (Ex. 4–68) and suggested that this was evidence of a threshold for the carcinogenic effect of cadmium. Dr. Thun addressed this issue in his testimony at the OSHA hearing (Ex. 33) by presenting results for followup through 1984 and by calculating the expected number of lung cancers using both U.S. and Colorado rates. His findings with respect to the low exposure group (<584 mg-days/m^3) are summarized in Table VI–14. In none of the four cases is the deficit in lung cancers statistically significant. Moreover, the life-table analysis of this cohort by Stayner et al. (Ex. L–14020) demonstrates that the deficit is also not statistically significant when considering only non-Hispanics (1 case observed and 3.35 expected, p=0.15, see Table VI–7). Further, the deficit in the lung cancer rate in the low exposure group is smaller when Colorado mortality rates are used (Table VI–14). Moreover, as noted by Dr. Thun (Ex. 33), several studies have shown low rates of lung cancer among Hispanics in the Southwest (possibly as a result of reduced smoking among Hispanics) and 40% of the cohort are Hispanics whereas in 1980 only 6.5% of Colorado males were Hispanic (USDOC, 1980). OSHA also suggested that this could be due to a healthy worker effect. The healthy worker effect is seen in worker cohorts because the health status of people who are accepted for employment is better than the health status of the general population used for comparison (Ex. 50). Thus, OSHA concludes that the deficit in lung cancers in the low exposure group may be attributed to: (1) Random fluctuation, (2) the healthy worker effect, (3) differences between U.S. and Colorado lung cancer rates, and (4) an excess of Hispanics in the cohort, and does not indicate a threshold for the carcinogenic effect of cadmium. Similarly, Dr. Thun (Ex. 33) expressed the opinion that the apparent deficit of lung cancers among workers exposed to less than 584 mg-days/m^3 (the low exposure group) "is an artifact of the lower smoking habits of the cadmium workers and should not be interpreted as showing a 'safe' level of cadmium."

TABLE VI–14.—EXPECTED AND OBSERVED NUMBERS OF LUNG CANCERS IN THE LOWEST EXPOSURE GROUP (≤584 MG-DAYS/M^3) OF THE THUN COHORT (EX. 33) HIRED IN OR AFTER 1926

Followup period	Based on rates of U.S. white males		Based on rates of Colorado white males	
	O/E[a]	SMR	O/E[a]	SMR
Through 1978	[b] 2/3.76 (p=0.28)	0.53	[b] 2/2.64 (p=0.51)	0.76
Through 1984	[b] 2/6.06 (p=0.06)	0.33	[b] 2/4.37 (p=0.19)	0.46

[a] Observed/expected.
[b] Probability of observing two or fewer lung cancers assuming lung cancers are Poisson distributed with mean given by the respective expected number.

Lamm et al.'s Case Control Analysis

Lamm et al. (Ex.144–7B) conducted a case control analysis of 25 lung cancer cases in the Thun cohort. Three controls per case were selected from this cohort. Controls were matched to cases by date of hire and age at hire. Explanatory variables were cumulative cadmium exposure, cigarette smoking history, and "plant arsenic exposure status at time of hire."

Lamm et al. stratified his cadmium exposures by period of hire (pre–1926, 1926–1939, and 1940–1969). Within each period mean cumulative cadmium exposure was nearly equal among cases and controls (ratio of exposure—cases/controls—was 0.99, 1.05, and 0.91, for the three periods of hire, respectively). Among those for whom smoking histories were available (72% of the cases and 57% of the controls), the odds ratio for smoking was 8.2 (p=0.046). Lamm et al. interpreted these findings as suggesting "that the cumulative cadmium exposure * * * is not a major determinant of lung cancer within the study group."

Lamm et al. matched for both age and date of first hire in their case control study. It seems likely that date of hire could be significantly correlated with cadmium exposure in this analysis because higher cadmium exposures would be expected to occur in persons with earlier periods of employment, both because estimated airborne cadmium levels were higher in earlier years and because persons employed earlier had longer to accumulate exposure. Such a correlation could mask any effect of cadmium exposure in Lamm et al.'s analysis because they only compared the exposures of cases and controls for those that had similar dates of hire. Lamm et al. raised the possibility that such "overmatching" may have been the reason there was no difference in cadmium exposures between cases and controls. They point out that a considerable range of exposures exist "in this study, ranging from about 1 to 30 mg/m^3 for those hired prior to 1940 and from about 0.3 to 17 mg/m^3 for those hired subsequently." However, since each of the ranges are determined by the exposures of only two members of the

cohort (the most highly exposed and the least exposed in each group), presentation of these ranges does not adequately address the issue of whether or not the cadmium exposure and age at first hire are highly correlated.

Because of the potential flaw due to "overmatching" in the methodology used by Lamm et al., OSHA does not accept the conclusion from this study that "exposure to arsenic and cigarette particulates, rather than cadmium exposure, may have caused the lung cancer increase of these workers." NIOSH demonstrated a significant excess of lung cancer in medium and high cadmium exposure groups among workers first hired in 1940 and later, when Lamm et al. contend arsenic exposures were lower (Ex. 144–8c). Similarly, in Stayner et al.'s analysis (Ex. L–140–20) the magnitude of the cadmium variable increased rather than decreased when they controlled for first employment prior or subsequent to 1940. Finally, the Thun et al. analysis of the potential impact of arsenic, as reviewed and modified by OSHA earlier in this section, indicates that arsenic exposures would account only for a very small fraction of the total lung cancers observed in this cohort.

Disaggregation of Data and Use of Multistage Model

Dr. Thomas Starr commented that "OSHA should redo its analysis with the individual person-year information collected by Thun et al.," noting that the latter data provided just three data points, and they are only very crudely characterized by the median cumulative exposure for each category" (Ex. 38). He also recommended that "OSHA should reanalyze the Thun et al. (Ex. 4–68) data with the multistage dose-response approach model utilizing an approach similar to that described by Crump and Howe (1984)." The risk assessment by Dr. Stayner and his associates at NIOSH (Exs. L–140–20, L–163) incorporates both of these recommendations. The Poisson regression conducted by Stayner et al. divided the person-years into about 200 cells, defined by categorizations on age, calendar year, ethnicity (Hispanic versus non-Hispanic), and cumulative cadmium dose. The Cox regression conducted by Stayner et al. did not involve any grouping of person-years. Finally, Dr. Stayner et al. did reanalyze the Thun et al. data, using the followup through 1984 rather than that through 1978 that was reported in Thun et al. (Ex. 4–68), based upon the multistage dose response approach described by Crump and Howe (1984). These methods all gave very similar estimates of excess risk (Table VI–9), and are very similar to OSHA's estimates (Table VI–12) in its final risk assessment that were derived from more aggregated forms of the data.

Summary of Cancer Risk Assessment Based on Both Animal and Human Data

In its proposed rule, OSHA assessed cancer risk from occupational exposure to cadmium by applying several different risk assessment models to the animal data of Takenaka (Ex. 4–67) (results shown in Tables VI–1 and VI–2) and by applying relative and absolute risk models to the data on followup through 1978 of the Thun cohort (results shown in Tables VI–3 and VI–4).

Since writing the proposed rule, significant new data have become available that prompted OSHA to conduct additional risk calculations. Oldiges et al. (Ex. 8–694–D) showed that inhalation exposure to several types of cadmium caused lung tumors in male and female rats. Stayner et al. (Ex. L–140–20) reported on additional followup of the Thun cohort through 1984 and developed new estimates of risk from this update.

OSHA maintains that the animal carcinogenicity data on cadmium is relatively extensive and of high quality. It shows unequivocally that several different forms of cadmium induce lung tumors when inhaled by male or female rats. These data are satisfactory for establishing estimates of human risk according to toxicological methods generally employed by federal regulatory agencies, including OSHA.

OSHA has carefully evaluated the human data from the Thun cohort and the likelihood that the excess lung tumors were caused by either smoking or arsenic. It concludes that these tumors are unlikely to be explained by either of these factors, but are more likely attributable to cadmium. OSHA also determines that the data from this study satisfy the necessary requirements for obtaining quantitative estimates of excess risk. OSHA further concludes that the human data on cadmium from the Thun cohort are substantially strengthened and corroborated by the animal data. First, the animal data show unequivocally that inhalation of cadmium can induce lung tumors, the same type of tumors that are seen in excess in the Thun cohort. Second, estimates of excess risk of lung cancer obtained from the animal data and from the Thun cohort are in essential agreement.

In its new risk estimates based on the recently developed animal data (Table VI–6), OSHA utilized three dose-response models, all of which are different versions of the multistage model of cancer: the multistage model, the Armitage-Doll multistage model and the multistage-Weibull model. The Armitage Doll model makes more detailed biological assumptions regarding the effect of exposure and will always predict a linear response. The multistage and multistage-Weibull models are flexible dose response models that can assume a variety of curve shapes, both linear and non-linear. However, upper confidence limits calculated from these models will be linear. Furthermore, when applied to data with only two dose groups (a treated group and a group of control animals), the multistage and multistage-Weibull models become linear by default, because there is not enough information from only two doses to estimate the shape of the dose response. The multistage model is applied to the quantal data specifying whether an animal had a lung tumor response, and the Armitage-Doll and multistage-Weibull model also utilized the time at which the response was observed.

Regarding the cancer risk assessment models applied to epidemiological data, OSHA has reviewed the new risk assessment by Stayner et al. based on the updated followup through 1984 of the Thun cohort, and has also updated its own risk assessment utilizing this new information. Stayner et al. employed three dose response models: the power model, the exponential model, and the additive relative rate model. Although all three of these models are linear at the very lowest cadmium exposures, they have different amounts of non-linearity at higher doses, with the power model being the most nonlinear and the additive relative rate model being essentially linear. Although the power model gave the best fit to the data, this model predicted unrealistically low rates of lung cancer in unexposed subjects and consequently was discounted by Stayner et al. [This model would also predict much higher lung cancer risks than the other two models at exposures in the range OSHA is considering regulating (1 $\mu g/m^3$–100 $\mu g/m^3$).] Between the two remaining models, the additive relative rate model fit the data slightly better than the exponential model and was selected by Stayner et al. as the best model of the three for risk assessment. OSHA believes that this is a reasonable scientific conclusion from the results of the Stayner et al. analysis.

Dr. Stayner (Ex. L–163) also reported on results from applying the multistage model to the updated Thun cohort. Application of this model to the Thun cohort had been recommended by Dr. Starr (Ex. 38). This model assumes that

lung carcinogenesis is a five-stage process. Dr. Stayner estimated that cadmium affects the third stage in this process.

Dr. Starr also criticized OSHA's use of "purely linear models of absolute and relative risk." He stated that "Today, it is nearly universally accepted that the process of carcinogenesis, and chemical carcinogenesis in particular, is multistage in character with numerous distinct events required for the conversion of normal cells to malignant ones. Thus, the use of the one-hit model (or linear models derivable from it) for low-dose purposes are wholly inadequate."

OSHA agrees that there is good scientific evidence that carcinogenesis is generally a multistage process. However, OSHA disagrees with Dr. Starr's conclusion that a multistage process is incompatible with a linear dose response. It is plausible that a carcinogen affects a multistage process by increasing the rates at which the different stages occur by an amount that is proportional to the amount of the ultimate carcinogen present. If this is the case, then the dose response shape is determined mainly by two factors: the number of stages affected by the carcinogen (not the total number of stages as implied by Dr. Starr), and the interaction of the carcinogen with background carcinogenesis. If the carcinogen acts on a single stage, then the dose response will be linear. Even if the carcinogen affects multiple stages, if its effect is to increase the background rate at which these stages occur, then the process can still generate essentially a linear dose response (Crump, 1985).

Dr. Stayner's application of the multistage model to the data from the Thun cohort provides direct evidence that the multistage model is compatible with a linear dose response. He applied a multistage model assuming five stages and one of the stages was affected by cadmium. The excess risks he estimated from this model were intermediate between those he obtained with two versions of the relative rate model, which is a linear model (Table VI-9).

In its updated risk assessment based on followup through 1984 of the Thun cohort, OSHA applied a linear version of the relative risk model. OSHA determined using a goodness-of-fit test (Table VI-11) that this linear model was completely compatible with the dose response data from this cohort.

Three of the ten animal data sets analyzed by OSHA using the multistage model (Table VI-6), and seven of the nine animal data sets analyzed using the multistage-Weibull model, involved three or more treatment groups and therefore provided information on the shape of the dose response curve. In none of these ten model fits did a non-linear version of the model fit significantly better than a linear model. (Most significant of the ten p-values for a test of departure from linearity was $p=0.17$.) In all but two of these ten cases, the best-fitting model was linear. [Even if the true dose response is linear, the probability is only one-half that the best fitting model to a data set will be linear (Crump et al., 1977).] Moreover, the Armitage-Doll model, which is a linear model, provided an adequate fit to all seven data sets in which there were three or more treatment groups, based on a standard chi-square goodness of fit test.

OSHA concludes that a linear dose response model is compatible with both the animal and human data on lung cancer in cadmium-exposed cohorts, and that it is also compatible with multistage mechanisms of carcinogenesis.

OSHA believes that the theoretical understanding of cancer is not sufficient to unequivocally establish a single dose response function for cadmium-induced lung cancer. In view of this uncertainty, the fact that linear models are compatible with both the current theoretical understanding of cancer and the animal and human data on cadmium, and the fact that inappropriate application of a non-linear model could seriously underestimate human risk, OSHA maintains that in order to be compatible with current scientific understanding of carcinogenesis and cadmium dose response data, and to satisfy its mandate to protect worker health, OSHA should give particular consideration to estimates of cancer risk obtained from linear models.

Among the various linear models applied to either the animal and human data, OSHA is unable to select a single one as being most appropriate. However, OSHA does not believe that this is a serious problem because the different linear models generally provided similar estimates of risk when applied to the same data.

All of the risk estimates derived from the Thun cohort (Tables VI-9 and VI-12) are based upon linear models. All of the risk estimates derived from animal data (Table VI-6) are based upon linear dose responses except the fits of the multistage-Weibull model to the Oldiges et al. data on male rats exposed to $CdCl_2$ or to CdO fume.

Comparing the estimates of excess risk of lung cancer made from animal data (Table VI-6) with those made from human data, OSHA finds that they are in essential agreement. Estimates based upon human data of the excess risk from lung cancer from 45 years of exposure at a TWA of 5 $\mu g/m^3$ range from three excess deaths per 1000 workers to nine excess deaths per 1000 workers (Tables VI-9 and VI-12). The corresponding ranges in excess risk made from the three models applied to animal data are as follows: multistage model, 0.061–28 excess deaths; Armitage-Doll model, 3.3–38 excess deaths; multistage-Weibull model, 0.095–35 excess deaths. The corresponding ranges for numbers of excess deaths estimated per 1000 workers from 45 years of exposure to a TWA of 100 $\mu g/m^3$ are as follows: Human data, Thun cohort, 58–157 excess deaths; animal data, multistage model, 24–433 excess deaths, animal data, Armitage-doll model, 6.8–726 excess deaths, animal data, multistage Weibull model, 37–512 excess deaths. Although estimates made from animal data tend to be somewhat higher than those made from human data, the ranges of risk obtained from each of the three models applied to animal data overlap the range obtained from the human data. The excess risks from exposure to CdO-fume estimated using animal data are somewhat smaller than the risks estimated from the other forms of cadmium; Dr. Oberdörster hypothesized that this could be attributed to a lower uptake by the lung of the inhaled fume (Ex. 141). The ranges of risks from the animal data are much narrower if the CdO data are omitted. However, the resulting ranges still overlap the estimates obtained from the human data.

It may be that the estimates obtained from human data are somewhat more reliable than those obtained from the animal data because the former do not involve the uncertainty of cross-species extrapolation. However, the similarity of results from animal and human studies serves to strengthen OSHA confidence in estimates obtained from both types of data.

Based on human data, OSHA's preferred estimates of the excess lung cancer risk from 45 years of occupational exposure to cadmium are 58 to 157 excess deaths per 1000 workers from exposure to a TWA of 100 $\mu g/m^3$ and three to nine excess deaths per 1000 workers from exposure to a TWA of 5 $\mu g/m^3$. OHSA notes that estimates of excess deaths exceed one death per thousand workers even at a TWA exposure of 5 $\mu g/m^3$.

Risk Assessment for Kidney Dysfunction

In its proposed rule, OSHA quantified the risk of kidney dysfunction due to cadmium exposure using the study by Falck et al. (Ex. 4–28) of workers at a refrigeration compressor production plant and the study by Ellis et al. (Ex. 4–27) of workers at the cadmium smelter in Colorado. OSHA has since identified four additional studies that contain useful quantitative information on kidney effects from cadmium exposure. These are: (1) the study by Elinder et al. (Ex. L–140–45) of a cohort of 60 workers who had previously been exposed to cadmium through welder fume and dust associated with the use of cadmium soldiers; (2) the study by Jarup et al. (Ex. 8–661) of 440 workers exposed to cadmium at a Swedish battery plant; (3) the study by Mason et al. (Ex. 8–669) of 75 workers exposed to copper-cadmium alloy in a factory in the United Kingdom; (4) the study by Thun et al. (Ex. 19–43B), which is based on the same population of smelter workers studied earlier by Ellis et al. However, the data reported by Thun et al. (Ex. 19–43B) are not in a form that is suitable for quantitative modelling and consequently data from this study were not modelled by OSHA.

Table VI–15 summarizes some essential features of these studies. Many differences are noted in these studies, including size of study; type of cadmium; type, extent and quality of exposure data; type of urine sample; control of samples for pH; and definition of kidney dysfunction. Each of these differences could result in differences in quantitative estimates obtained from these studies.

TABLE VI–15.—FEATURES OF CADMIUM STUDIES OF KIDNEY EFFECT

	Falck (Ex. 4–28)	Ellis (Ex. 4–27)	Elinder (Ex. L–140–45)	Mason (Ex. 8–669A)	Jarup (Ex. 8–661)	Thun et al. (Ex. 19–43B)
Exposure site	(Michigan) Silver hazing wire in refrigerator compressors.	Smelter in Colorado	Swedish factory	U.K. copper-cadmium alloy factory.	Swedish battery factory.	Smelter in Colorado.
Type of exposure	Fume	Dust, fume	Welder fume, some dust.	CdO fume	CdO dust	Dust, fume.
Number exposed	33	82	60	75	440	45.
Non-cadmium controls	41	None	None	75	None	32.
Matching	No			1:1 by age		No.
Sample type	Spot + 24 hr	24 hour	Spot	3-hr	No mention	Spot.
pH	Adjusted above 5.5	Adjusted	>5.6 (sodium bicarbonate).	Recorded	No control	No control.
Freezing of samples	Yes	Yes	No mention	Yes	No mention	No mention.
Effect definition	β_2>629 μg/creatinin	β_2>200 μg/g c. or total protein >250 mg/g creatinin.	β_2>300 μg/g creatinin.	RBP>89.9 μg/g creatinin.	β_2>310 μg/g creatinin.	β_2>486 μg/g creatinin.
Exposure	Earliest exposure data not stated (possibly 1961); automatic line opened in 1968; air sampled since 1961 by Michigan D.I.H.; 81 total samples, no time trends for either line; arithmetic average of all samples from each line used to calculate time-weighted exposures.	Occurred 1925–1983; 858 samples for years 1955–1976; 187 samples for years 1943–1954 not used (different measurement techniques); area sampling data adjusted to represent personal exposures using ratio (2:6) based on 1973–1976 data.	Occurred 1955–1978; 6 area and 27 personal measurements in 1976; 17 more in 1976–1977 after improvements; individual exposure assigned by a group of four.	Occurred 1926–1983; 482 samples (one-half area samples) for years 1964–1983; area samples adjusted upward by 20%; exposures estimated for years 1926–1963.	Measurements in air collected since 1947	Same as used by Ellis *et al.* except updated to cover 1979–1985.

In each of these studies, data were obtained on the cumulative cadmium exposure of each subject and on the concentration of a small molecular weight protein in urine [β2–microglobulin or retinol binding protein (RBP)], an excess of which is considered evidence of kidney dysfunction. Data on the protein levels in urine were available in two distinct forms. First, in each of the published reports of these studies, a cutoff level was specified that defined the boundary between normal individuals and those with proteinuria. The information available in these published reports was in terms of the "zero-one" variable that specified whether or not measured protein levels in a subject exceeded (coded as "one") or did not exceed (coded as "zero") the cutoff level. Such data are called quantal data. Second, the unpublished concentrations of marker proteins in urine from the Mason et al. study were made available to OSHA by Mr. Mason (Ex. 12–45). These type of data are called continuous data. Different types of statistical models are required for these two types of data.

The Office of Budget and Management (OMB) (Ex. 17–D) questioned OSHA's use of quantal data from the Falck et al. and Ellis et al. studies for risk modelling in the Proposed Rule. In both of these studies, data were only available in quantal form as presented in the published papers. Thus, OSHA had no choice over either whether to use quantal data in its modelling or the cutoff used to define kidney dysfunction in these studies. In the risk modelling to be presented below, OSHA reanalyzes the quantal data from the Falck et al. and Ellis et al. studies, and also analyzes data from the studies by Elinder et al., Jarup et al. and Mason et al. In all of these studies except Mason et al., data were available only in a quantal form derived from a cutoff selected by the original authors for defining kidney dysfunction. However,

since OSHA had access to the unpublished continuous data from the Mason et al. study, OSHA was able to explore the effect of different cutoffs for kidney dysfunction upon the analysis. (Such an analysis was suggested by OMB, Ex. 17-D). OSHA also applied models appropriate for continuous data to the continuous data of Mason et al.

Risk Assessment Based Upon Quantal Data

In the proposed rule, OSHA presented quantitative estimates based on the logistic model, which can be expressed as

$$Ln\{P(X)/[1-P(X)]\}=\alpha + \tau * Ln(X)$$

or, equivalently,

$$P(X)=e^{\alpha} * X^{\tau}/(1 + e^{\alpha} * X^{\tau})$$

where

Ln indicates the natural logarithm,

X is cumulative occupational exposure in μg-years/m^3,

P(X) is the probability of kidney dysfunction in a person with a cumulative cadmium exposure of X, and

α and τ are regression parameters estimated from the data.[5]

This logistic regression model is widely used to model quantal responses (in this case 0 = normal kidney function and 1 = abnormal kidney function) as a function of one or more explanatory variables (in this case cumulative exposure to cadmium). When used to define a dose response, as in the present situation, it provides a flexible model that is able to accommodate a wide range of dose response shapes ranging from threshold-like (when the parameter τ is large) to a shape that is linear (τ = 1) or even supralinear (τ < 1) at low doses.

The model as formulated above cannot accommodate any level of kidney dysfunction in persons without cadmium exposure [since the model definition implies the restriction P(0) = 0]. However, kidney dysfunction is not restricted to persons with prior cadmium exposure. (In several studies the cutoff used to define proteinuria was either an upper quantile, or a statistical upper confidence limit, on the level of the marker protein in unexposed subjects, which implies that a quantifiable number of unexposed subjects would have urinary levels above the cutoff; e.g., Mason et al. defined their cutoff as the 95% upper quantile on the level of retinol binding protein in unexposed subjects; consequently, by definition, a background approaching 5% would be expected.)

The need for incorporating background response in the model was noted by several commenters. Dr. Starr pointed out this problem in his oral testimony, noting that "some adjustment must be made in the analysis procedure to account for that background response rate, which is not attributable to cadmium exposure" (Tr. 6/8/90). ENVIRON Corp. (Ex. 19-43G) indicated that, because of this (unexposed workers identified as having kidney disease), OSHA should use an independent background parameter that properly accounts for this false positive response rate. Mr. Edwin Seeger, representing the Cadmium Council, pointed out that (Ex. 19-43) the Council believes that OSHA's renal dysfunction risk estimate is biased high at low dose levels because it does not take account of the "normal incidence of elevated β2-microglobulin levels in the worker population even in the absence of cadmium exposure."

OSHA has therefore modified the logistic model in this revised quantitative risk assessment to include a background term. The modified model is

$$P(X)=(\delta + e^{\alpha *} X^{\tau}/(1 + {}^{\alpha *} X^{\tau}).$$

where δ is the probability of kidney dysfunction among persons not exposed to cadmium (δ = P(0)). Thus, this revised model is able to accommodate kidney dysfunction in persons unexposed to cadmium by estimating a positive value for δ.

This model has been applied to quantal data from five of the six of the studies described above. The Thun et al. study was excluded because the data were not reported in a form that is amenable to this type of analysis. The model was fit to the data from Elinder et al. (Elinder et al. Table II) and Jarup et al. (Jarup et al. Table 1), in which the subjects in the study were grouped according to their cumulative cadmium exposure. These data sets are listed in Table VI-16. Data for the Ellis et al. study used in the analysis were read from Figure 3 of the Ellis et al. study (Ex. 4-27) by OSHA and also an OSHA contractor (Ex. 16-B). Both data sets were analyzed and similar results were obtained. Results obtained from the OSHA reading are reported on herein (Ex. 4-27-A).

TABLE VI-16.—KIDNEY DYSFUNCTION VERSUS CUMULATIVE CADMIUM EXPOSURE FROM JARUP ET AL. (1988) AND ELINDER ET AL. (1985)

Cumulative cadmium exposure (μg-years/m^3)		Number with kidney dysfunction/number examined
Range	Midvalue	
Jarup et al. (1988) [a]		
< 359	131	3/264
359-<1710	691	7/76
1710-<4578	3480	10/43
4578-<9458	6581	10/31
9458-<15,000	12,156	5/16
15,000+	21,431	5/10
Elinder et al. (1985) [b]		
<1000	500	3/16
1000-<2000	1500	7/22
2000-<3000	2500	4/9
3000-<5000	4000	5/8
5000+	7500	5/5

[a] Definition of kidney dysfunction: β_2-microglobulin > 310 μg/g creatinin.

[b] Definition of kidney dysfunction: β_2-microglobulin > 300 μg/g creatinin.

Data from the Falck et al. (Ex. 4-28) study came from Table III of that paper. Falck et al. omitted three subjects, all of whom had elevated β_2-microglobulin in their spot kidney sample, from their statistical analysis because one (#14) was a controlled diabetic, one (#30) had a history of kidney infection, and one (#32) was hypertensive. OSHA, however, considers that it may not be appropriate to eliminate these subjects when estimating the effect of cadmium exposure in the general population because of the following statistical/study design concerns and biological reasons: (1) it is not clear from Falck et al. (Ex. 4-28) that the same exclusion rules were applied to subjects exposed to cadmium who had negative spot samples; (2) it is not clear from the report that the exclusion rules were applied to the controls; (3) these conditions also may occur among persons with occupational exposure to cadmium and these persons need to be protected from the adverse kidney effects of cadmium as well. OSHA therefore applied the modified logistic model to the complete data set of Falck et al. (N=33) as well as to the reduced data set obtained by omitting subjects #14, #30, and #32. OSHA also made a third analysis of the complete data set in which subject #4 (who had an elevated spot urine sample that was not confirmed by the 24-hour sample) was considered to be affected. OSHA notes that there are large differences between the β_2-microglobulin levels measured in spot samples and in 24-hour samples; β_2-microglobulin levels in the 24-hour

[5] In the proposed rule, β was used in place of τ in thed logistic regression model. However, both the proposed rule and the present document also used β as a potency parameter in the cancr models (i.e., β multiplies cumulative cadmium dose, X, in the cancer models) whereas the parameter designated as β in the logistic regression model in the proposed rule is a shape parameter (i.e., cumulative dose, X, is raised to the power β). To avoid confusion, the symbol for this shape parameter has been chaned to τ.

samples are up to 200 times smaller than the levels in the spot samples. These differences are not explained by Falck et al. and no mention is made of controlling or testing for pH in the 24-hour samples. Thus, OSHA is of the opinion that the data from this study are less reliable for quantitative analysis as compared to the data from the remaining studies.

Mason et al. used elevated levels of RBP to define cadmium workers who were considered to have cadmium proteinuria. RBP was used instead of β_2-microglobulin because RBP appears to be less sensitive to urine pH than β_2-microglobulin, and because pH apparently was not adjusted or controlled in the Mason et al. study. However, since OSHA intends to base its regulations on urinary β_2-microglobulin levels, it was necessary for OSHA to relate the RBP levels in the Mason et al. study to corresponding levels of β_2-microglobulin, after adjusting for pH.

A regression of the logarithm of RBP level on the logarithm of urinary β_2-microglobulin concentration, restricted to the 114 samples for which the urine pH was 5.5 or greater, revealed a highly significant relationship ($p < 0.0001$) that explained a large proportion of the variation in the data ($R^2 = 0.84$). When the same analysis was performed on the 60 samples for which the pH was less than 5.5, although a highly significant relationship was also obtained ($p < 0.0001$), the R^2 was considerably smaller ($R^2 = 0.27$). OSHA concluded from this analysis that these data indicate that there is a relationship between RBP levels and β_2-microglobulin levels in urine samples in which the pH is 5.5 or greater that can be used to relate the level of 300 μg/g creatinine, or, equivalently, 33.8 μg/mmole creatinine, of β_2-microglobulin (used by OSHA to define proteinuria) to a corresponding level of RBP. The regression equation obtained, based on samples with pH of 5.5 or higher, was

$$Ln(R) = 0.032 + 0.88 * Ln(B2),$$

where R and B2 represent levels of RBP and β_2-microglobulin, respectively, in urine measured in units of μg/g creatinine. This equation indicates that an RBP level of 156 μg/g creatinine corresponds to a β_2-microglobulin level of 300 μg/g creatinine. Based on this cutoff, 15% of Mason et al.'s matched referents (11/72) would be defined as having proteinuria. On the other hand, Mason et al. indicate that they used the upper 95th percentile for urinary RBP calculated from their matched referent population to define cadmium workers who were considered to have proteinuria. Although Mason et al. do not specify this 95th percentile, based on the raw data from this study, OSHA has calculated this percentile as 338 μg of RBP per gram creatinine. OSHA has conducted analyses of the Mason et al. data using both of these cutoff levels, that is, considering subjects with urinary levels of RBP in excess of either 156 μg/g creatinine (Mason 1) or 338 μg/g creatinine (Mason 2) as having proteinuria.

Since there are questions regarding whether supralinear dose responses are reasonable for biological responses (see, e.g., Crump, 1985), whenever a $\tau < 1$ was estimated, the model was refit with τ fixed and equal to one. This occurred only with the data from the Jarup et al. study.

OSHA made a total of nine fits of the logistic model, modified to incorporate background response, to quantal data from five studies: the Elinder data; the Ellis data; three versions of the Falck data that involved minor changes in cohort definition and designation of subjects with proteinuria; two fits to the Jarup data, one with $\tau < 1$ (Jarup 1), and one with $\tau = 1$ (Jarup 2); and two versions of the Mason data using different cutoffs for defining subjects with proteinuria. The model was fit to data from the Elinder et al. and Jarup et al. studies that had been grouped by the authors into five and six exposure groups, respectively (Table VI-16). In the remaining studies the model was fit to the ungrouped data.

TABLE VI-17.—SUMMARY OF FIT OF MODIFIED LOGISTIC MODEL TO DATA ON KIDNEY DYSFUNCTION

Data set	Parameter estimate		
	δ	α	τ
Elinder	0.215	−23.74	2.92
Ellis	0.040	−11.1	1.50
Falck:			
1[a]	0.0663	−37.6	5.19
2[b]	0.139	−55.8	7.64
3[c]	0.0748	−56.4	7.93
Jarup:			
1[d]	0.0	−8.0	0.81
2[e]	0.0054	−9.6	1.0
Mason 1[f]	0.17	−26.1	3.7
Mason 2[g]	0.062	−18.6	2.51

[a] Includes all 33 subjects.
[b] Considers subject number 4 to have kidney dysfunction.
[c] Omits subjects 14, 30, 32.
[d] τ unrestricted.
[e] Restriction imposed of τ=1.
[f] Kidney dysfunction defined as RBP ≥ 18 μmoles/mg creatinine.
[g] Kidney dysfunction defined as RBP ≥ 38 μmoles/mg creatinine.

Table VI-17 records the estimates of the parameters δ, α, and τ of the logistic model for each of the nine fits to the five data sets, and Table VI-18 records the results of chi-square goodness-of-fit tests applied to each of the fits except those based on the Falck et al. data. (There were not enough affected subjects in this study to provide a valid goodness-of-fit test.) Although the logistic model was fit to the ungrouped data from Mason et al. and Ellis et al., the data were subsequently grouped into exposure groups as shown in Table VI-18 to obtain large enough expected numbers of affected subjects in each group to yield a valid goodness-of-fit test. As indicated by Table 18, the modified logistic model provided a good fit to each of the data sets. This indicates that there is no statistical evidence in these studies that the modified logistic regression model is not an appropriate model for modelling kidney dysfunction as a result of cadmium exposure.

TABLE VI-18.—FIT OF LOGISTIC MODEL TO DATA ON KIDNEY PROTEINUREA [a]

Cadmium exposure range (μg-year/m³)	Number of subjects	Number of cases		Chi-square (df) [b]	Lack of fit p-value
		Observed	Expected		
Elinder (Ex. L-140(45):					
0–1000	16	3	3.5		
1000–2000	22	7	6.2		
2000–3000	9	4	4.0		
3000–5000	8	5	5.6		
5000+	5	5	4.7		
				0.63 (2)	0.66 (NS)
Ellis (Ex. 4-27):					
5–800	39	8	6.7		
820–1567	11	4	6.3		

TABLE VI-18.—FIT OF LOGISTIC MODEL TO DATA ON KIDNEY PROTEINUREA [a]—Continued

Cadmium exposure range (μg-year/m³)	Number of subjects	Number of cases		Chi-square (df) [c]	Lack of fit p-value
		Observed	Expected		
1600–2500	10	8	7.5		
3000–4900	8	7	7.2		
5000–6100	7	7	6.6		
6500–20,830	7	7	6.6		
				1.2 (3)	0.76 (NS)
Jarup 1 [b] (Ex. 8-661):					
0–359	254	3	4.7		
359–1710	76	7	5.0		
1710–4578	43	10	5.9		
4578–9458	31	10	9.4		
9458–15,000	16	5	6.7		
>15,000	10	5	5.3		
				2.5 (3)	0.48 (NS)
Jarup 2 [c] (Ex. 8-661):					
0–359	254	3	3.9		
359–1710	76	7	4.0		
1710–4578	43	10	8.7		
4578–9458	31	10	10.0		
9458–15,000	16	5	7.5		
<15,000	10	5	6.1		
				4.9 (4)	0.30 (NS)
Mason 1 [d] (Ex. 8-669A):					
0	96	15	16.8		
30–752	37	9	7.1		
810–1424	15	7	7.7		
1501–3219	8	8	7.0		
3752–5263	8	8	7.9		
6849–13,277	7	7	7.0		
				0.86 (2)	0.65 (NS)
Mason 2 [e] (Ex. 8-669A):					
0–192	109	7	6.8		
209–1414	38	7	7.0		
1424–3752	10	6	6.6		
3793–5263	7	7	6.5		
6849–13,277	7	7	6.9		
				0.15 (2)	0.93 (NS)

[a] df = degrees of freedom.
[b] Fitting was based on ungrouped data for Mason 1, Mason 2, and Ellis.
[c] β unrestricted.
[d] Restriction imposed of $\beta = 1$.
[e] Kidney dysfunction defined as RBP ≥ 18 μmoles/mg creatinine.
[f] Kidney dysfunction defined as RBP ≥ 38 μmoles/mg creatinine.

Table VI-19 provides estimates of the numbers of cases of proteinuria per 1000 workers exposed for a 45-year working lifetime at various 8-hour TWA exposures. Estimates in this table are based on extra risk $\{P(X) - P(0)/[1 - P(0)]\}$, and confidence intervals were computed by the likelihood method. The results in Table VI-19 from the Ellis data and the Falck data differ from those contained in the proposed rule. The principle reason for this is that, unlike the model used to obtain the results in Table VI-18, the version of the logistic model used in the proposed rule did not allow for background response. OSHA considers the modified logistic model that incorporates background response to be more appropriate.

TABLE VI-19.—ESTIMATE OF KIDNEY PROTEINUREA PER 1000 WORKERS WITH 45 YEARS OF OCCUPATIONAL EXPOSURE TO CADMIUM DERIVED FROM MODIFIED LOGISTIC MODEL

8-Hour TWA exposure (μg/m³)	Elinder (Ex. L-140(45))	Ellis (Ex. 4-27)	Falck 1 [a] (Ex. 4-28)	Jarup 1 [b] (Ex. 8-661)	Jarup 2 [c] (Ex. 8-661)	Mason 1 [d] (Ex. 8-669A)	Mason 2 [e] (Ex. 8-669A)
1	3.3E-3 (0, 21) [f]	8.7 (0.27, 75)	1.8E-5 (0, 8.1).	7.6 (2.4, 16).	3.2 (1.3, 4.6).	5.2E-3 (0, 0.15).	0.12 (4.1E-4, 4.7).
5	0.37 (0, 99)	95 (14, 288)	7.5E-2 (0, 62).	27 (12, 45).	16 (8.3, 23).	1.9 (0, 12).	7.0 (0.29, 53).
10	2.8 (0, 180)	234 (69, 448)	2.7 (0, 145).	47 (25, 70).	31 (18, 44).	24 (0, 80).	39 (4.5, 142).
20	21 (0, 305)	472 (266, 636)	91 (4.4E-3, 362).	80 (49, 109).	60 (38, 85).	236 (0.17, 478).	186 (61, 354).
50	235 (3.4E-3, 555)	786 (652, 891)	921 (485, 1000).	155 (112, 197).	138 (96, 188).	899 (797, 1000).	696 (504, 860).
100	700 (266, 964)	915 (802, 975)	998 (709, 1000).	243 (187, 306).	242 (176, 316).	991 (969, 1000).	929 (784, 988).
200	946 (691, 1000)	969 (890, 995)	1000 (857, 1000).	380 (276, 452).	390 (299, 480).	999 (995, 1000).	987 (916, 999).

[a] Based on all 33 subjects.
[b] τ unrestricted (supralinear dose response).
[c] Restriction imposed of $\tau = 1$ (*linear dose response*).
[d] Kidney dysfunction defined as RBP ≥ 156 μg/g creatinine.
[e] Kidney dysfunction defined as RBP ≥ 338 μg/g creatinine.
[f] Numbers in parentheses are 95% lower and upper bounds.

Some of the confidence intervals in Table VI–19 are fairly wide, which reflects both the small size of some of the studies and the uncertainty in extrapolating results to low TWA exposures. Considering this and the differences among the underlying studies (see Table VI–15), these analyses yield reasonably consistent results. All of the analyses predict a high incidence (24%–99.8%) of proteinuria at exposures of 100 $\mu g/m^3$. Six of the seven analyses (all except the Mason 1 analysis), provide consistent estimates of the extra risk of proteinuria at TWA cadmium exposures of 1 $\mu g/m^3$ and 5 $\mu g/m^3$, in the sense that the 90% confidence intervals from all of the analyses contain a common range. That is, with the exception of the Mason 1 analysis, all of the 90% confidence intervals for the extra risk of proteinuria at a TWA exposure of 5 $\mu g/m^3$ contain the range between 14 cases per 1000 workers and 23 cases per 1000 workers.[6] Thus, within the limits of statistical variability, these six analyses are all consistent with an extra risk of proteinuria in this range, but are not all consistent with a risk of proteinuria outside this range. (The upper 95% confidence limit from the Mason 1 analysis is 12 cases per 1000 workers, which is just barely outside the range defined by the remaining six analyses.)

Some of the differences in the risk estimates from different studies is due to different definitions of kidney dysfunction used in the various studies. For example, considering the risk of kidney dysfunction from a TWA exposure of 5 $\mu g/m^3$ cadmium, the lowest risk was obtained from the Falck et al. study, which employed the most stringent definition of kidney dysfunction (β_2-microglobulin >629 $\mu g/g$ creatinine [Table VI–15]), whereas the highest risk was obtained from the Ellis et al. study, which employed a much more liberal definition of kidney dysfunction (β_2-microglobulin >200 $\mu g/g$ creatinine [Table VI–15]). Other reasons for the differences in the risk estimates include different methods for controlling pH and differences in the quality and quantity of extent of exposure data and the methods used for estimating exposures from these data (Table VI–15). Considering these differences, and also the statistical uncertainty in the five studies due to small sample sizes, OSHA believes that the analyses summarized in Table VI–19 present a consistent picture of risks of kidney dysfunction from cadmium exposure. The best estimates from these analyses of the risk of kidney dysfunction from 45 years of occupational exposure to a TWA concentration of 5 $\mu g/m^3$ cadmium are in the range of 14 to 23 cases per 1000 workers.

[6] The 95% upper and lower confidence bounds presented in Table 19, when considered in combination, define 90% confidence intervals.

Risk Assessment Based Upon Continuous Data from the Mason et al. Study

Since it had access to the raw data from the Mason et al. study (Ex. 8–669A), in addition to modelling, as discussed earlier, OSHA was able to model the continuous data from the Mason study on the actual level of RBP in the urine as a function of cumulative cadmium exposure. This approach does not require collapsing the urinary data into a yes-no response, and consequently may make more efficient use of the data.

OSHA applied two types of models to the continuous data from the Mason study: One that made use of the matching by Mason et al. of referents to exposed subjects, and one that did not make use of this matching. The matched analysis was applied to 72 matched pairs of exposed subjects and referents. (Although Mason et al. [Ex. 8–669A] reported 75 pairs in their analysis, in the data provided to OSHA, RBP values were missing for three of the matched referents.) The unmatched analysis was applied to all of the exposed subjects and referents recorded in the data furnished to OSHA by Mr. Mason for which there was both a cadmium exposure and a urinary value of RBP reported (the cadmium exposure was assumed to be zero for referents); this analysis included 75 exposed subjects and 96 referents.

In the model fitting that made use of the matching, the quantity $Log(R_e/R_r)$, where R_e is the urinary RBP of an exposed subject and R_r is the urinary RBP of the matched referent, was assumed to have a normal distribution with mean $\alpha * (X-X_0)^\tau$ and standard deviation, σ (independent of X), where

X is the cumulative cadmium exposure of the exposed subject in $\mu g\text{-}y\tau/m^3$,

X_0 is a posited potential threshold exposure to cadmium below which cadmium cannot adversely affect the kidney, and

α and τ are parameters estimated from the data. [Throughout this discussion, the expression $(X-X_0)^\tau$ is taken to be zero if $X \leq X_0$.]

In the model fitting that did not consider the matching, $Ln(R_e)$ is considered to have a normal distribution with mean $\delta+\alpha * (X-X_0)^\tau$ and standard deviation σ, where δ is a parameter representing the mean amount of urinary RBP in persons not exposed to cadmium. The remaining parameters have the same meaning as the model applied to the matched data.

Table VI–20 shows the results of fitting these models and various simpler submodels to the continuous data from the Mason et al. study. Considering the analyses applied to the unmatched data, in Case I the mean of the logarithm of urinary RBP $\{E[Ln(R_e)]\}$ is assumed to vary linearly with cumulative cadmium exposure; in Case II this mean is allowed to vary in a non-linear fashion with cumulative cadmium exposure (sub-linear if $\tau>1$, and supralinear if $\tau<1$). In Case III a threshold of X_0 μg-years/m^3 is assumed for the effect of cadmium; urinary RBP is assumed to be unaffected by cadmium exposure as long as the cumulative cadmium exposure is below X_0 μg-years/m^3 (the value of the threshold X_0 is estimated from the data). The mean of the logarithm of urinary RBP is assumed to increase linearly with increasing cumulative cadmium exposure for exposures higher than the threshold cadmium exposure of X_0. Case IV is a modification of Case III in which the mean of the logarithm of urinary RBP is allowed to increase non-linearly for exposures above the threshold cadmium concentration. Cases I–IV have similar meanings in the analyses applied to the matched data.

TABLE VI–20.—RESULTS OF FITTING MODELS TO CONTINUOUS DATA ON RETINAL BINDING PROTEIN (RBP)

	Log-likelihood
Analyses Based on Unmatched Data	
I. $E[Ln(R_e)]=\delta+\alpha X$	
$\delta=2.14$; $\alpha=0.000687$; $\sigma^2=1.33$	−24.18
II. $E[Ln(R_e)]=\delta+\alpha X^\tau$	
$\delta=2.04$; $\alpha=0.00406$; $\tau=0.803$; $\sigma^2=1.29$	−21.56
III. $E[Ln(R_e)]=\delta+\alpha (X-X^0)$	
$\delta=2.14$; $\alpha=0.000687$; $X_0=0$, $\sigma^2=1.33$	−24.18
IV. $E[Ln(R_e)]=\delta+\alpha [(X-X_0)]^\tau$	
$\delta=2.10$; $\alpha=0.0149$; $\tau=0.663$; $X_0=449$; $\sigma^2=1.24$	−18.58
Analyses Based on Matched Data	
I. $E[Ln(R_e/R_r)]=\alpha X$	
$\alpha=0.000690$; $\sigma^2=3.22$	−42.10
II. $E[Ln(R_e/R_r)]=\alpha X^\tau$	
$\alpha=0.00515$; $\tau=0.774$; $\sigma^2=3.05$	−40.22
III. $E[Ln(R_e/R_r)]=\alpha (X-X_0)$	
$\alpha=0.000690$; $X_0=0.0$; $\sigma^2=3.22$	−42.10
IV. $E[Ln(R_e/R_r])=\alpha [(X-X_0)]^\tau$	
$\alpha=0.147$; $\tau=0.408$; $X_0=1040$; $\sigma^2=2.75$	−36.37

R_e—Urinary RBP in subject exposed to X μg-year/m^3 cadmium.

R_r—Urinary RBP in matched.

Note: In these expression, $X-X_0$ is taken to be zero if $X<X_0$.

With no threshold in the model (Cases I and II), a non-linear model (Case II) provides a significantly better fit than a linear model (Case I) [based upon a likelihood ratio test (Cox and Hinkley, 1974)]. The better-fitting non-linear model is supralinear ($\tau=0.803<1$ for the unmatched analysis, and $\tau=0.774<1$ for the matched analysis). Based on linear models only (Cases I and III), the data do not provide any evidence of a threshold, because even if a threshold is permitted in the model (Case III), it is estimated as zero (i.e., no threshold). However, a non-linear model with a threshold (Case IV) provides a significantly better fit than either a non-linear model with no threshold (Case II) or a linear model with a threshold (Case III). Again, the better-fitting model is supralinear for doses above the threshold ($\tau=0.663<1$ for the unmatched analysis and $\tau=0.408<1$ for the matched analysis). These conclusions hold both for analyses based on matched data and those based on unmatched data.

The extra risk of proteinuria in a person exposed to X μg-yr/m^3 is defined as $[P(X)-P(0)]/[1-P(0)]$, where P(X) is the probability of proteinuria in a person with a cumulative cadmium exposure of X μg-years/m^3. Based on the model assumptions given above, it can be shown that for the unmatched analyses, P(X) is given by

$$P(X)=1-N\{[Ln(338)-\delta-\alpha * (X-X_0)^\tau]/\sigma\}$$

where N is the standard normal distribution function, and 338 μg/g creatinine is the cutoff value for RBP in urine used to define proteinuria in the Mason et al. study.

The model used for the matched analysis data provides an estimate of the ratio of the RBP level in an exposed individual relative to what his baseline RBP level would be if he had not been exposed to cadmium. (This baseline value was estimated by the RBP level in a matched control in the matched analysis.) In the calculations presented, OSHA used 111 μg/g creatinine for this baseline, which was the average value from the 96 referents in the Mason et al. study. Consequently, for the matched analyses,

$$P(X)=1-N\{[Ln(3.045)-\alpha * (X-X_0)^\tau]/\sigma\},$$

where $3.045=338/111$. Thus, the matched analysis is estimating the probability that the RBP level is about tripled ($3.045\approx3$).

TABLE VI-21.—ESTIMATE OF KIDNEY PROTEINUREA PER 1000 WORKERS WITH 45 YEARS OF OCCUPATIONAL EXPOSURE TO CADMIUM DERIVED FROM CONTINUOUS MASON DATA

8-hour TWA exposure (μg/m^3)	Models I, III	Model II	Model IV
Based on Unmatched Analyses			
1	5.2	13	0
5	28	54	0
10	60	107	23
20	139	224	204
50	465	606	681
100	906	947	970
200	1000	1000	1000
Based on Matched Analyses			
1	7.8	25	0
5	40	91	0
10	82	161	0
20	170	287	0
50	450	593	469
100	816	879	869
200	997	998	992

See Table 20 for definition of models.

Table VI-21 provides estimates of the numbers of cases of proteinuria per 1000 workers exposed for a 45-year working lifetime at various 8-hour TWA exposures derived from analyses of continuous data from the Mason et al. study. Models I, II, and III predict between 28 and 91 cases of proteinuria per 1000 workers exposed to a TWA of 5 μg/m^3. These estimates are considerably higher than those in Table VI-19 derived from the Mason data, and are also generally higher than those in Table VI-19 derived from other data sets. Turning to the estimates in Table VI-21 derived from Model IV (non-linear model incorporating a threshold), based on matched analyses the model predicts no risk for TWA exposures of 20 μg/m^3 or below. (This model predicted a threshold of 1040 μg-years/m^3 [Table VI-20], which is equivalent to a TWA exposure for 45 years of $1040/45=23$ μg/m^3.) However, the model predicts a very high risk of proteinuria for exposures slightly higher than the predicted threshold (e.g., it predicts that 469 out of 1000 workers exposed for 45 years to a TWA cadmium exposure of 50 μg/m^3 will develop proteinuria.)

Based on unmatched analyses, Model IV predicts no risk for TWA exposures of 5 μg/m^3 or below. (This model predicted a threshold of 449 μg-years/m^3 [Table VI-20], which is equivalent to a TWA exposure for 45 years of $449/45=9.98$ μg/m^3.) However, this model likewise predicts a sharply increasing risk of proteinuria for exposures higher than the predicted threshold (e.g., it predicts that 204 out of 1000 workers exposed for 45 years to a TWA cadmium exposure of 20 μg/m^3 will develop proteinuria.)

To further explore the relationship between cadmium exposure and urinary RBP in Mason et al. study, OSHA developed three plots showing the Mason et al. data and the fit of the various models to these data. Figure VI-1 is a log-log plot of the ratios of RBP level in cadmium-exposed subjects to the RBP level in matched referents versus cumulative exposure to cadmium. (For Figures VI-1–VI-4, see the end of this section VI—Quantitative Risk Assessment.) This figure shows there is a considerable amount of variability in the data points about the mean curve, no matter which model is used to describe the mean. Figure VI-2 is a similar plot for the unmatched analyses, and this plot likewise shows a considerable amount of variability in the data points about the mean curves. For visual reference, the referent RBP values are plotted along the left vertical axis in Figure VI-2 (although since a log scale is being used for dose, theoretically they should be plotted infinitely far to the left at an x-axis value of minus infinity). Visually, there appears to be little difference between the fits of the different models in Figure VI-2. Figure VI-3 is exactly the same plot as Figure VI-2, except than in Figure VI-3 a linear scale has been used for cumulative cadmium exposure (the x-axis) rather than a log scale. Use of a linear scale also allows both referents and cadmium-exposed subjects to be legitimately included in the same graph. The dose response suggested by Figure VI-3 appears less "threshold-like" than that suggested by Figure VI-2 and suggests that any indication of a threshold by Figure VI-2 may be an artifact stemming from the use of a log-scale for cadmium exposure.

The models applied to the continuous data only estimated a threshold in conjunction with a supralinear dose response ($\tau<1$). If the models were not allowed to be supralinear (i.e., constrained to be linear or sublinear, $\tau\geq1$), the model predicted no threshold. This superlinearity causes the models to predict a very rapid rise in risk at cadmium exposures slightly above the estimated threshold (Figures VI-1–VI-3). Consequently, if this supralinearity is in fact real, if the threshold is slightly overestimated, the risk at the estimated threshold could be significant. Moreover, there are questions regarding whether supralinear dose responses are biologically plausible (Crump, 1985).

In addition, there are plausible biological augments that indicate a threshold may not occur for kidney

effects of cadmium exposure. As pointed out by epidemiologist Richard Peto (1978), whenever a chemical exposure augments a health effect that occurs to some degree even among non-exposed persons by the same general mechanisms through which the background health effects occur, there is unlikely to be a threshold for that effect.[7] OSHA notes that proteinuria occurs among persons not exposed to cadmium and, further, there are sources of cadmium exposure other than the workplace. These facts, when applied to Peto's reasoning, argue that there may not be a threshold for kidney effects from cadmium exposure.

OSHA concludes that in order to insure adequate protection for exposed workers, it should give greater weight to the non-threshold models than to the models that predict a threshold. The reasons for this are threefold. First, there are plausible biological arguments that a threshold may not exist for cadmium effects upon the kidney. Second, a threshold is only estimated in conjunction with a supralinear dose response which is of questionable biological plausibility. Third, even if the estimated threshold is real, slight errors in estimation of the threshold could result in significant risk at the estimated threshold.

Thun et al. Study of Kidney Effects in Cadmium Workers

In their study of workers exposed to cadmium at the same cadmium recovery plant that was studied by Ellis et al. (Ex. 4–27), Thun et al. (Ex. 19–43B) found that increasing cadmium dose was associated with reduced absorption of β_2-microglobulin and retinol binding protein. Cadmium dose remained the most important predictor of serum creatinine levels after controlling for age, blood pressure, body size, and other factors. Although Thun et al. did not report the data in their paper in a form that could be used for quantitative dose response modelling, Thun et al. present a graph that represents the result of their own modelling (Ex. 19–43B, Figure VI–3). Based on values read from this graph, it appears that the probability of renal abnormality in unexposed subjects is about 0.12 and the corresponding probability among subjects with a cumulative cadmium exposure of 500 mg-days/m^3 (equivalent to a 45-year TWA occupational exposure to 30 μg/m^3) is about 0.2, which means that the extra risk of renal abnormality from cadmium exposure is about (0.2–0.12)/(1–0.12)=0.091, or 91 per 1000 workers. Similarly, the probability of renal abnormality among subjects with a cumulative cadmium exposure of 1000 mg-days/m^3 (equivalent to a 45-year TWA occupational exposure to 60 μg/m^3) is about 0.34, which translates to an extra risk of about 0.25, or 250 per 1000 workers. These values appear to be within the range of the quantitative estimates obtained by OSHA from other studies, and which appear in Tables VI–19 and VI–21. Thus, although OSHA was not able to conduct an independent analysis of the data from the Thun et al. study of kidney effects in cadmium-exposed smelter workers, it appears that the quantitative predictions from this study are consistent with the those developed by OSHA from other studies.

Thun et al. Review of Studies of Kidney Dysfunction in Cadmium Workers

Thun et al. (Ex. L–140–50) reviewed seven occupational studies that examined the relation of kidney dysfunction to cumulative exposure to airborne cadmium. The seven studies included the five used by OSHA for quantitative modelling [Falck et al. (Ex. 4–28), Ellis et al. (Ex. 4–27), Elinder et al. (Ex. L–140–45), Jarup et al. (Ex. 8–661), and Mason et al. (Ex. 8–669)], the study of Thun et al. (Ex. 19–43B), which was discussed above, and a study by Kjellstrom et al. (Ex. 8–233) of the same cohort of Swedish battery workers that was studied by Jarup et al. They considered both the dose-response relationship and the potential lowest cadmium exposure at which kidney effects are detectable. Figure VI–4 reproduces Figure 1 of Thun et al. (Ex. L–140–50), which presents the dose-response data for kidney dysfunction from these studies along with a risk assessment model developed by OSHA in the proposed rule and the prevalence estimated from a metabolic model by Kjellstrom (1986d, ref. in Ex. L–140–50). Thun et al. noted that, "the OSHA model generally follows the upper range of the empirical data and agrees well with the Kjellstrom and Nordberg metabolic model."

For comparison purposes, OSHA has superimposed on Thun et al.'s figure, a representation of a dose-response model estimated by fitting the modified logistic model to the data of Mason et al. (the Mason II analysis reported in Tables VI–16, VI–17, and VI–19). This particular dose-response model appeared to give results that were within the range of the results obtained by OSHA from the remaining models (see Table VI–19 and Figure VI–4). Table VI–19 indicates that this model appears to give results that are generally intermediate between those obtained using the OSHA model from the proposed rule and the metabolic model, and that, overall, the three models are in good agreement.

After reviewing the available data on the dose response of renal dysfunction, Thun et al. (Ex. L–140–50) concluded that it was impossible to identify a no-effect level for the renal effects of cadmium with certainty. Reasons for this included limited sample sizes of the studies, methodological differences between the studies, and imprecision of the exposure data. Thun et al. concluded that "The overall data suggest that the PEL for cadmium should not exceed 5 μg/m^3 to protect workers from kidney dysfunction and lung cancer over a working lifetime." This conclusion supports the independent analyses conducted by OSHA. Indeed, OSHA's analyses indicate that the risk of kidney dysfunction from 45 years of occupational exposure to a PEL of 5 μg/m^3 may be well in excess of one case per 1000 workers.

Discussion of Issues Related to Risk Assessment for Kidney Dysfunction

Two-phase Model Used by Mason et al.

Mason et al. (Ex. 8–669A) used a two-phase linear regression to model the relationship between the logarithm of the ratio of RBP levels in exposed subjects and unexposed matched referents [$Ln(R_e/R_r)$, where R_e is the RBP level in an exposed subject, R_r is the RBP level in the matched unexposed referent] and the logarithm, Ln(X), of the cumulative cadmium exposure of the exposed subject. This model indicated that a change of slope in the relationship between RBP and cumulative cadmium exposure occurred at a cumulative exposure of 1108 μg-yr/m^3. A larger slope was indicated for cumulative exposures larger than 1108 μg-yr/m^3, and a smaller, but still positive, slope was indicated for cumulative exposure values smaller than 1108 μg-yr/m^3 (Table 6 and Figure 3 in Mason et al.).

In its proposed rule (Ex. 18, p.4083), OSHA interpreted the Mason et al. analysis as indicating that "the excess risk threshold for cadmium was approximately 1000 μg/m^3-years." However, upon reevaluation, OSHA notes that, since the slope was still positive even at doses below 1108 μg-yr/m^3, Mason et al.'s model predicts an increasing response at all levels of cumulative cadmium exposure. Thus, it does not predict a threshold for the effect of cadmium at 1,100 μg-yr/m^3.

[7] Although Peto's argument was made specifically for cancer, it applied more generally to any health effect that is augmented by exposure to a chemical through the same general mechanism.

OSHA also notes that, whether a two-phase model is suggested by the data may depend heavily upon whether cadmium exposures are log-transformed before plotting. Figure VI-2 is a plot of the Mason data using log-transformed exposures and Figure VI-3 is a plot of the same data using untransformed exposures. Figure VI-2 appears perhaps to be suggestive of a two-phase relationship whereas Figure VI-3 does not. OSHA notes that, more generally, a wide variety of dose responses (including linear, no-threshold dose responses) can be made to appear two-phase or threshold-like by using log-transformed exposures when plotting. (This is because the log-transform has the effect of placing the exposure origin at minus infinity on the log scale and thereby exerts a "stretching" effect upon the dose response at low doses. This stretching effect can be seen by comparing Figures VI-2 and VI-3.)

OSHA also notes that the two-phase linear model as applied by Mason et al. is not meaningful at low exposures because it predicts that the RBP levels in cadmium-exposed subjects will be smaller than the RBP levels in unexposed subjects by arbitrary large factors at small exposures (e.g., the model predicts that the ratio R_e/R_r approaches zero at low exposures, whereas in actuality this ratio must approach one.) Consequently, OSHA does not consider that this model is reasonable for predicting the kidney response from low cadmium exposures. On the other hand, the models used by OSHA in fitting Mason et al. continuous data assume correctly that the ratio R_e/R_r approaches one at low exposures.

Other Recommended Models for Kidney Data

Several commenters (Tr. 6/8/90) (Ex. 19-43G) recommended modelling the dose response for kidney dysfunction using the probit distribution. These recommendations were based generally on the evidence that urinary cadmium or protein levels appear to follow a log-normal distribution. For example, ENVIRON Corp. (19-43G) cited evidence that the distribution of kidney cadmium concentrations among exposed individuals is often log-normal and concluded that the probit is a "log-normal tolerance distribution model" and consequently should be used for low-dose extrapolation of cadmium renal effects. Dr. Starr (Ex. 38) also considered the probit model to be a better choice for low-dose extrapolation purposes than the logistic model used by OSHA. In support of this position, Dr. Starr offered several pieces of evidence including the following: (1) A finding by Elinder et al. (1978, ref. in Ex. 38), based on measurements taken at Swedish autopsies, that the frequency distribution of kidney cadmium concentrations was log-normal; (2) the fact that Kjellstrom (1986b, ref. in Ex. L-140-50) used a log-normal distribution for individual critical kidney cortex cadmium concentrations; and (3) a finding by Kjellstrom et al. (Ex. 8-233) that

> The individual variation in effect at the same exposure duration is great, but in each dose group a log-normal distribution of β_2-microglobulin excretion was found.

OSHA notes that all of the evidence presented by Dr. Starr addresses the distribution of cadmium or low molecular weight proteins (e.g., β_2-microglobulin) in urine within various populations. For example, the quote by Kjellstrom et al. (Ex. 8-233) refers to a log-normal distribution for concentrations within dose groups, and consequently among individuals having similar cadmium exposures. None of this evidence addresses the issue of what is an appropriate dose-response model for relating cumulative airborne concentrations of cadmium to the probability of kidney dysfunction. Contrary to what Dr. Starr implies, a log-normal distribution for protein or cadmium in the kidney does not imply a probit model for the dose response. The model fit by OSHA to the continuous cadmium data of Mason et al. (Tables VI-20 and VI-21) assumes a log-normal distribution for the distribution of RBP among persons with the same cadmium exposures and consequently is consistent with the evidence cited by Dr. Starr. However, the corresponding dose response function is not a probit model.[8]

OSHA concludes that, even if cadmium and protein levels in urine follow log-normal distributions, this in no way implies that a probit model is appropriate to model the dose response of kidney dysfunction from cadmium exposure. Dr. Lemen from NIOSH (Tr. 8-194) supported this conclusion, commenting that it doesn't matter whether the underlying β_2-microglobulin data are or are not normally distributed because they are treated dichotomously by the model.

The Office of Budget and Management (OMB) (Ex. 17-D) suggested that, since the logistic regression analyses of kidney dysfunction involved "thresholds for classification purposes" (meaning that a cutoff was derived based on urinary concentrations of β_2-microglobulin or other low molecular weight proteins and persons with urine concentrations above the cutoff were assumed to have kidney dysfunction), this "implies that kidney dysfunction is in fact a threshold-related health effect." OMB then raises the question, "To what extent does this argue against the use of a non-threshold probability model to estimate risk?" In this comment OMB is using two unrelated notions of a threshold. On one hand, they are identifying the cutoff for the urinary concentration of low molecular weight protein used to define kidney dysfunction as a "threshold" for urinary protein. On the other hand, they are suggesting that this implies the existence of a threshold of exposure to cadmium (i.e., a cadmium threshold) below which the risk of kidney dysfunction would not be increased. Thus, in one case, they are referring to a "protein threshold" and in the other case a "cadmium threshold." These two concepts are, in fact, essentially unrelated. Use of a cutoff for urinary protein levels to define kidney dysfunction is unrelated to the use of a threshold or non-threshold model for evaluating the relationship between cadmium exposure and proximal tubular dysfunction. Since there is β_2 microglobulin excreted in the general population and cadmium augments that mechanism, there is more support for the use of a non-threshold model as compared to a threshold model.

Summary of Quantitative Estimates of Kidney Dysfunction from Cadmium Exposure

OSHA has made nine sets of estimates of the risk of kidney dysfunction (Tables VI-19 and VI-21),

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[8] The probit dose response is defined as $P(X)=c+(1-c)*N[a+b*Ln(X)]$, where X is cumulative dose, N indicates the normal distribution function, Ln indicates natural logarithm, and a, b, and c are parameters estimated from data. On the other hand, the dose response obtained by OSHA from its model applied to the unmatched Mason et al. data (and which assumed a log-normal distribution of RBP in subjects with the same cumulative cadmium exposure) was

$P(X)=1-N\{[Ln(338)-\delta-\alpha*(X-X_0)^\tau]/\sigma\}$, where 338 $\mu g/g$ creatinine is the RBP level used to define kidney disfunction, and α, δ, X_0, τ, and σ are parameters.

These two dose responses, while superficially somewhat similar in appearance, are not the same mathematically and may provide substantially different numerical values.

A log-normal distribution for kidney concentration after a fixed cadmium exposure does not place any restriction upon the form of the dose response, because it can be shown that any dose response model is consistent with a log-normal distribution for kidney concentrations (i.e., given, *a priori*, any dose response model for the likelihood of kidney disfunction, an expression can be found for the distribution of the kidney concentration as a function of cadmium exposure that predicts the *a priori* dose response model as well as a log-normal distribution for kidney cadmium concentrations at fixed cadmium exposures).

based on data from five different studies. In addition, OSHA has reviewed estimates based on a sixth study, that of Thun et al. (Ex. 19–43B). As indicated by Table VI–15, these six studies differ in many ways. The cohorts studied come from Sweden, the United Kingdom, Michigan, and Colorado. They were exposed to cadmium in smelters and several different types of manufacturing facilities. Exposures were to different forms of cadmium, including fume, dust, welder fume, and CdO dust. The number of cadmium-exposed subjects in the studies ranged from 33 to 440, representing a difference of more than an order of magnitude. Three of the studies included non-exposed controls, and one of these matched controls to exposed subjects by age. The cadmium exposure data were of variable type and quality and different procedures were used to quantify individual exposures.

There were also considerable differences in the procedures used in collecting the urine samples. Some of the studies involve spot urine samples. Mason et al. collected 3-hour samples, Elinder et al. collected morning samples, and Falck et al. collected spot samples, but confirmed findings in subjects with kidney dysfunction using 24-hour samples. Some of the studies were based on historical urine samples and others were collected specifically in conjunction with the associated study. Elinder et al. insured that urine pH would be acceptably high by administering sodium bicarbonate prior to the sampling. Some of the remaining studies adjusted pH after collection of the sample, and others make no mention of any adjustment for pH.

There were also differences in the type of protein and the level of protein in urine used to define kidney dysfunction. Mason et al. defined kidney dysfunction in terms of RBP in urine. Ellis et al. defined kidney dysfunction using a combination of β_2-microglobulin and total protein. The remaining four studies defined kidney dysfunction in terms of β_2-microglobulin. However, these four studies use different amounts of β_2-microglobulin in urine to define kidney dysfunction; these cutoffs range from 300 μg/g creatinine (Ex. L–140–45) to 629 μg/g creatinine (Ex. 4–28).

Despite these differences, each of these studies demonstrated a relationship between exposure to cadmium and kidney dysfunction. In addition to the differences among the underlying studies, two different modelling approaches were applied. The logistic model, modified to include the possibility of background response, was applied to data from six studies. A model for continuous data was applied to the continuous data from the Mason et al. study. Versions of this latter model were applied that incorporated the possibility of a threshold.

All of these differences could contribute to disparities in quantitative results obtained from dose-response modelling. Given these many differences, one would not expect necessarily to get close agreement among the studies in quantitative estimates. For example, since different studies used different definitions of kidney dysfunction, different studies are actually estimating somewhat different endpoints.

However, despite differences in study protocols and modelling approaches, quantitative results are reasonably consistent. All of the results in Tables VI–19 and VI–21 predict a high risk of kidney dysfunction at a 45-year TWA cadmium exposure of 100 μg/m^3 (at least 242 cases per 1000 workers and, except for estimates based on the Jarup et al. study, at least 700 cases per 1000 workers). It was noted earlier that, with the exception of the Mason 1 analysis, the results in Table VI–19 provide consistent estimates of the extra risk of proteinuria at TWA cadmium exposures of 5 μg/m^3, in the sense that, with the exception of the Mason 1 analysis, all of the 90% confidence intervals in Table VI–19 for the extra risk of proteinuria at a TWA exposure of 5 μg/m^3 contain the range between 14 cases per 1000 workers and 23 cases per 1000 workers. (The upper 95% confidence limit from the Mason 1 analysis is 12 cases per 1000 workers, which is just barely below this range.) However, estimates of risk from exposure to 5 μg/m^3 range as high as 95 per 1000 workers (based on data from the Ellis et al. study).

The models applied to the continuous data of Mason et al. (Table VI–21) that do not predict a threshold predict extra risks at a 45-year TWA exposure to 5 μg/m^3 of between 28 and 91 cases per 1000 workers. These values are within the range of the point estimates in Table VI–19. The models that predicted a threshold only did so in conjunction with a supralinear dose response, which is of questionable biological plausibility. These threshold models predicted a no-effect threshold at a cumulative exposure equivalent to a 45-year exposure to a TWA of between 20 and 50 μg/m^3 (matched analysis), or between 5 and 10 μg/m^3 (unmatched analysis). However, both of these threshold models predict that the risk of kidney dysfunction rises rapidly for exposures slightly above the threshold. For example, the matched model predicts that the extra risk of kidney dysfunction rises from 0 per 1000 workers to 469 per 1000 workers as 45-year TWA exposures increase from 20 to 50 μg/m^3, and the unmatched model predicts that the risk rises from 2.3 per 1000 workers to 204 per 1000 workers as 45-year TWA exposures increase from 10 to 20 μg/m^3.

OSHA concludes that it should give greater weight to the non-threshold models than to the models that predict a threshold, because (1) there are plausible biological arguments that a threshold may not exist for cadmium effects upon the kidney; (2) a threshold is only estimated in conjunction with a supralinear dose response which is of questionable biological plausibility; and (3) even if the estimated threshold is genuine, slight errors in estimation of the threshold could result in significant risk at the estimated threshold. OSHA further notes that, even if the threshold estimates are taken at face value, the PEL would need to be below 10 μg/m^3 in order to prevent kidney dysfunction from a 45 year occupation exposure at the PEL.

OSHA's preferred estimates of the extra risk of kidney dysfunction is in the range of between 14 to 23 cases per 1000 workers exposed to a TWA of 5 μg/m^3 for a 45 year working lifetime. This range is consistent with the majority of the analyses conducted by OSHA, although there are individual estimates both above and below this range. OSHA notes that this risk range is considerably in excess of one per thousand.

Overall Summary of Risk Assessment for Lung Cancer and Kidney Dysfunction

OSHA has developed estimates of the risk of lung cancer from occupational exposure to cadmium using several different types of analyses based on data from animal studies of Takenaka et al. (Ex. 4–67), Oldiges et al. (Ex. 8–694D) and Glaser et al. (Ex. 8–694B) and using human data from the cohort of workers exposed to cadmium at a cadmium smelter (Thun et al., Ex. 4–68; Stayner et al., Ex. L–140–20). These animal and human data indicate an increased risk of lung cancer from occupational exposure to cadmium.

OSHA has also developed estimates of the risk of kidney dysfunction from occupational exposure to cadmium using data from five different epidemiological studies of the effect of occupational exposure to cadmium upon kidney dysfunction (Falck et al., Ex. 4–28; Ellis et al., Ex. 4–27; Elinder et al., Ex. L–140(45); Mason et al., Ex. 8–669A; Jarup et al., Ex. 8–661). All of these studies, as

well as the study of Thun et al. (Ex. 19–43B), indicate an increase in proteinuria among workers exposed to cadmium.

OSHA's preferred estimate of the excess lung cancer risk from 45 years of occupational exposure to cadmium ranges from 58 to 157 excess deaths per 1000 workers from exposure to a TWA of 100 $\mu g/m^3$, and estimates of the risk of kidney dysfunction from this exposure range above 900 cases per 1000 workers. OSHA's preferred estimates of risk from exposure to a TWA of 5 $\mu g/m^3$ range between three and nine excess lung cancer deaths based on the epidemiologic data and 15 excess cancer deaths based on the animal data and between 14 and 23 excess cases of kidney dysfunction per 1000 workers. Thus, risks of both lung cancer and kidney dysfunction are predicted to be in excess of one case per 1000 workers from 45 years of exposure to a TWA of 5 $\mu g/m^3$.

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Fit of Three Models to Mason Matched Data

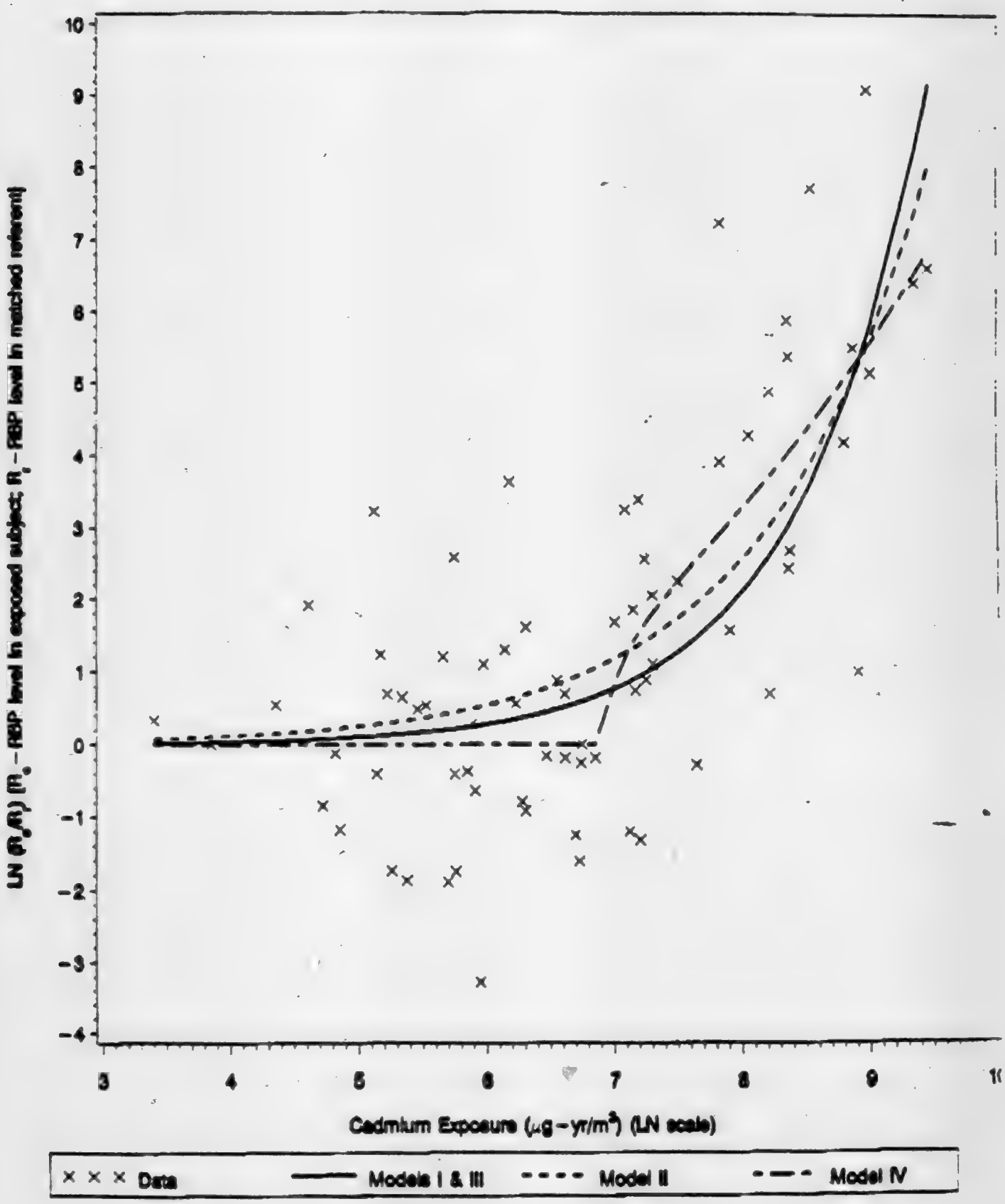

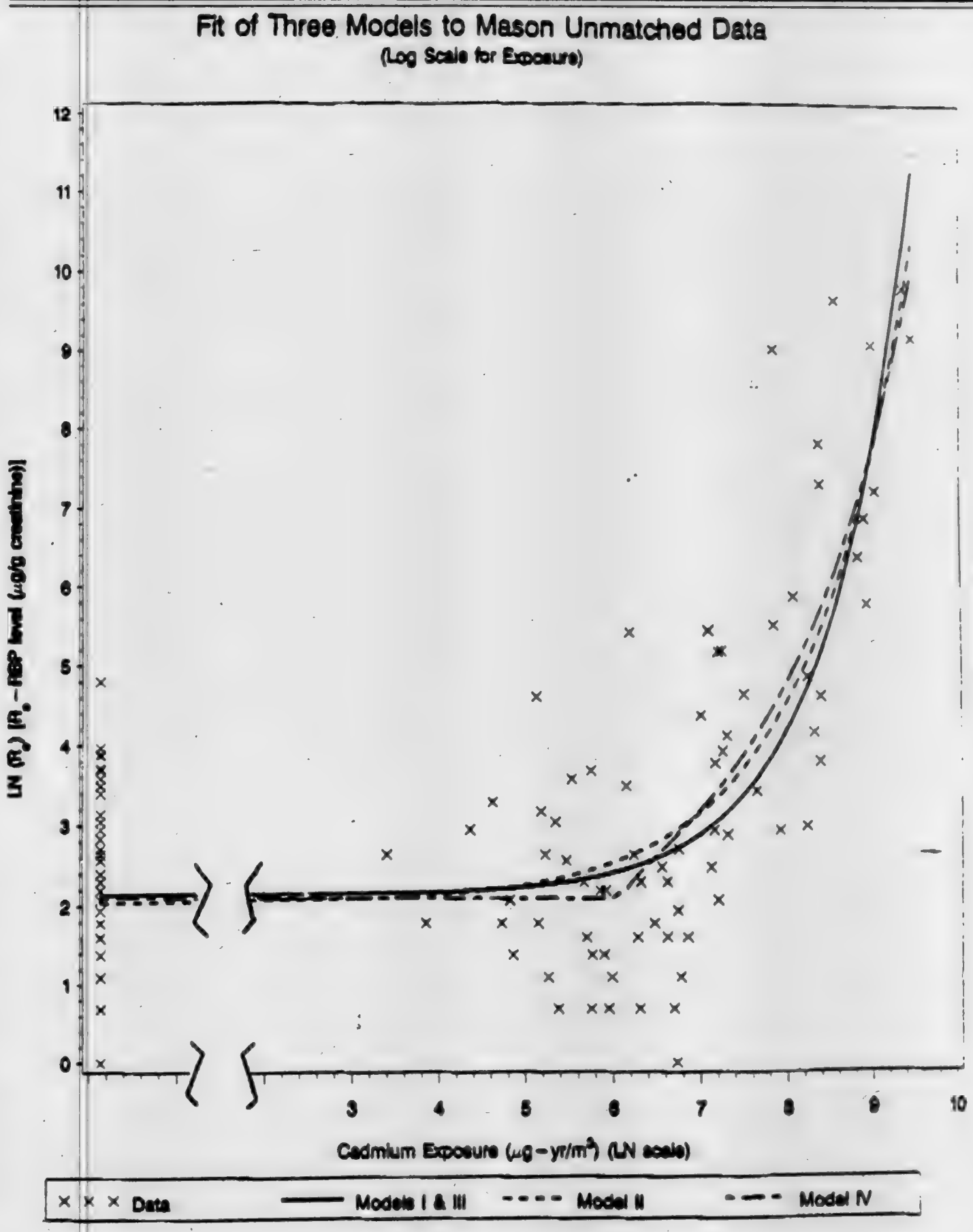
Fit of Three Models to Mason Unmatched Data
(Log Scale for Exposure)
LN (R_o) [R_o – RBP level (μg/g creatinine)]
Cadmium Exposure (μg – yr/m³) (LN scale)
Data
Models I & III
Model II
Model IV

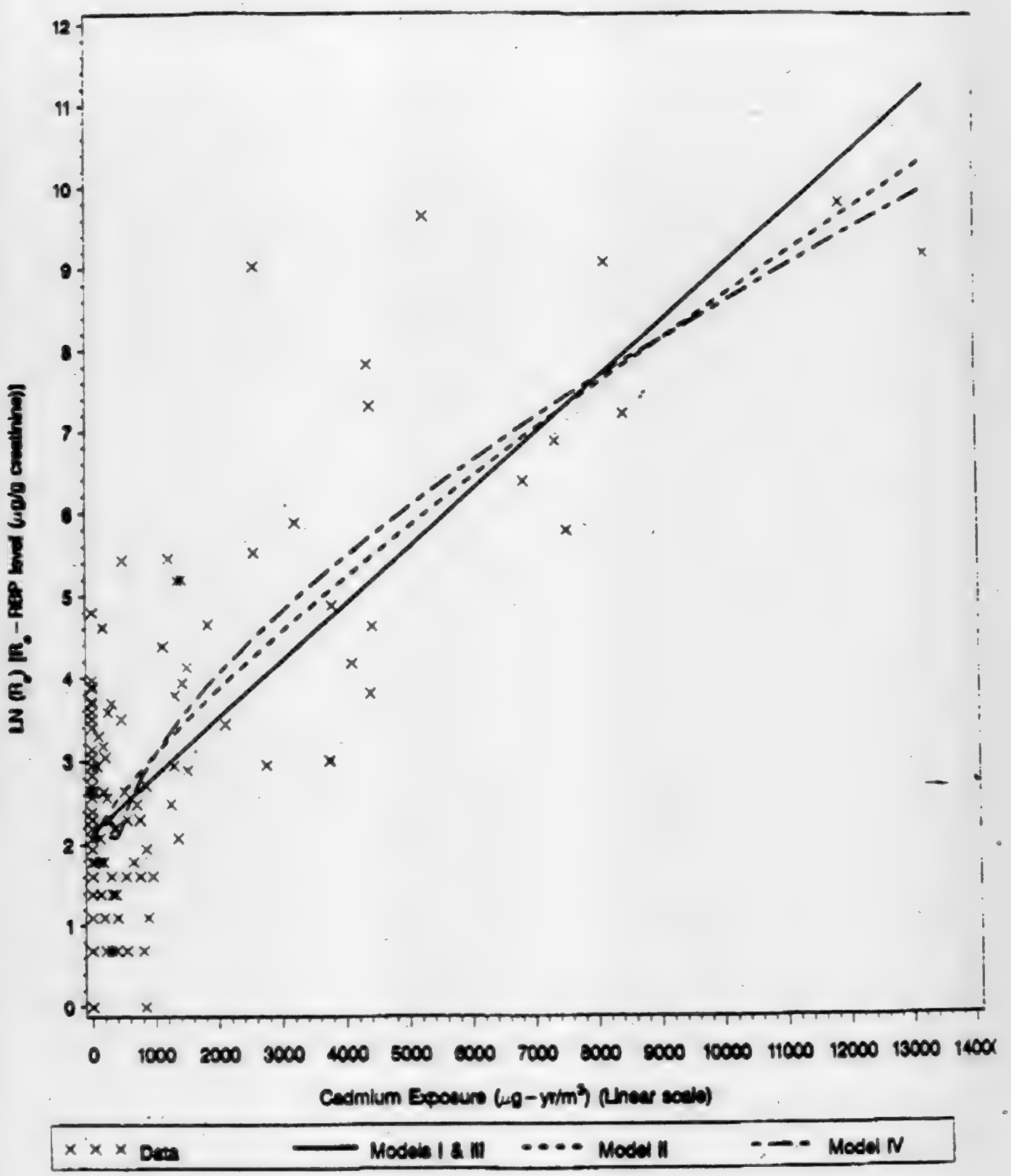
Fit of Three Models to Mason Unmatched Data
(Linear Scale for Exposure)
LN (R) [R$_o$ – REP level (µg/g creatinine)]
0
1
2
3
4
5
6
7
8
9
10
11
12
0
1000
2000
3000
4000
5000
6000
7000
8000
9000
10000
11000
12000
13000
1400(
Cadmium Exposure (µg–yr/m^3) (Linear scale)
Data
Models I & III
Model II
Model IV

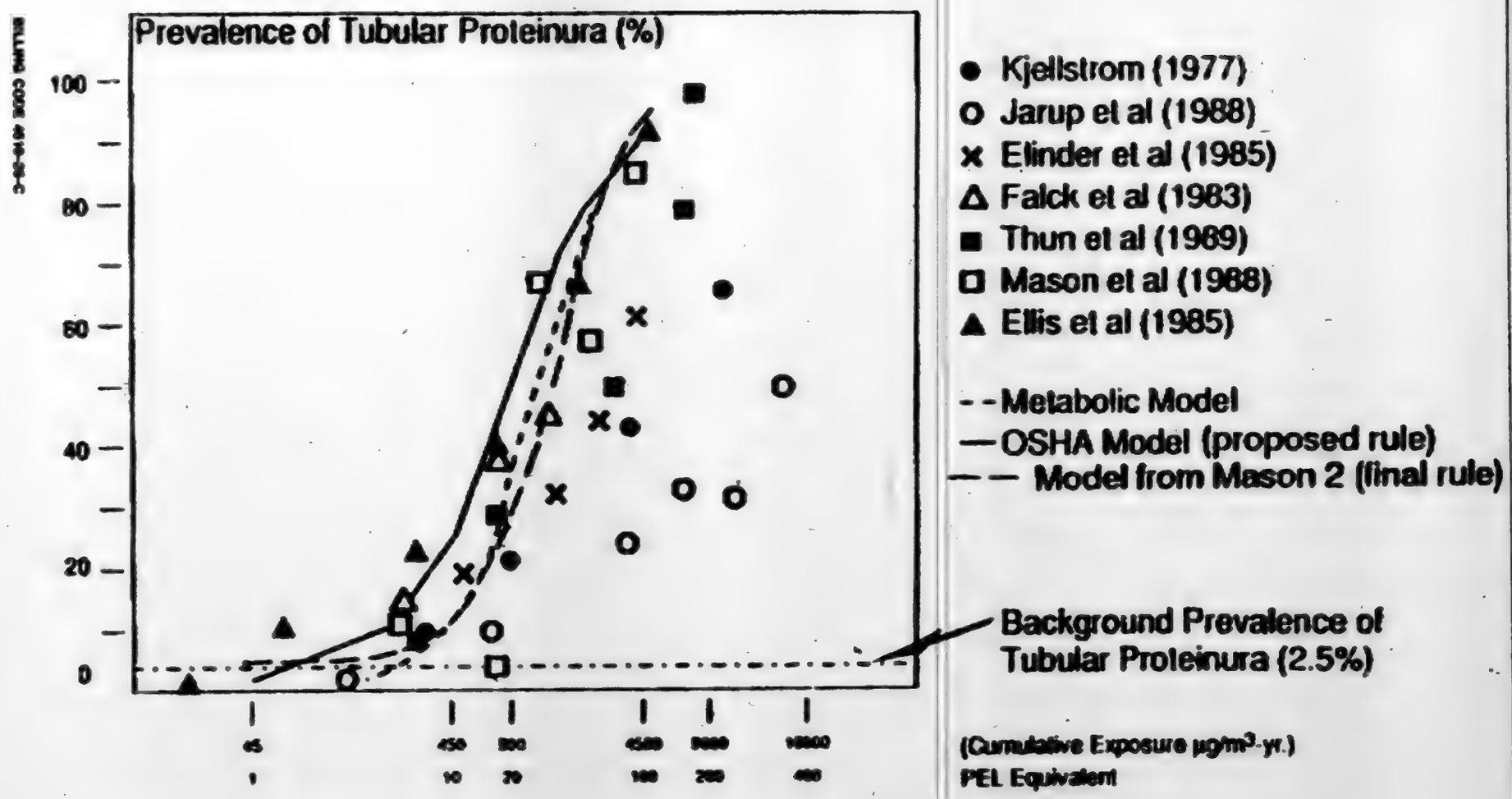

FIGURE ~~VI~~-4:

~~Figure 4~~. Prevalence of tubular proteinura by cumulative exposure to cadmium in seven cross-sectional studies compared to prediction by the OSHA risk assessment from the proposed rule, by the Kjellstrom metabolic model and by the modified logistic model applied to the Mason et al. data.

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VII. Significance of Risk

Introduction

In the 1980 benzene decision, the Supreme Court, in its discussion of the level of risk that Congress authorized OSHA to regulate, indicated when a reasonable person might consider a risk significant and take steps to decrease it. The court stated:

> It is the Agency's responsibility to determine in the first instance what it considers to be a "significant" risk. Some risks are plainly acceptable and others are plainly unacceptable. If, for example, the odds are one in a billion that a person will die from cancer by taking a drink of chlorinated water, the risk clearly could not be considered significant. On the other hand, if the odds are one in a thousand that regular inhalation of gasoline vapors that are 2% benzene will be fatal a reasonable person might well consider the risk significant and take the appropriate steps to decrease or eliminate it. (*I.U.D.* v. *A.P.I.*, 448 U.S. et 655).

The Court further stated that "while the Agency must support its findings that a certain level of risk exists with substantial evidence, we recognize that its determination that a particular level of risk is significant will be based largely on policy considerations." The Court added that the significant risk determination required by the OSH Act is "not a mathematical straitjacket," and that "OSHA is not required to support its findings with anything approaching scientific certainty." The Court ruled that "a reviewing court [is] to give OSHA some leeway where its findings must be made on the frontiers of scientific knowledge [and that] * * * the Agency is free to use conservative assumptions in interpreting the data with respect to carcinogens, risking error on the side of overprotection rather than underprotection" (448 U.S. at 655, 656).

As part of its overall significant risk determination, OSHA considers a number of factors. These include the type of risk presented, the quality of the underlying data, the reasonableness of the risk assessments, the statistical significance of the findings and the significance of risk (48 FR 1864; January 14, 1983).

Cadmium exposure causes a number of extremely serious adverse health effects. In 1971 OSHA adopted the ANSI standard with a TWA PEL of 100 $\mu g/m^3$ for cadmium fumes and a TWA PEL of 200 $\mu g/m^3$ for cadmium dust to prevent the acute effects caused by exposure to cadmium at levels higher than the PELs. Since 1971, however, a body of evidence has developed which shows that exposure to cadmium, dust or fumes, at levels well below these PELs can also lead to very serious health effects such as kidney dysfunction and cancer. Because current occupational cadmium exposure levels generally are below 100 $\mu g/m^3$, the discussion of the significance of risk not does emphasize acute health effects, but rather focuses exclusively on two of the most common chronic adverse health effects related to cadmium exposure.

As indicated in the health effects section of this preamble, exposure to cadmium causes cancer, kidney dysfunction, reduced pulmonary function, and chronic lung disease indicative of emphysema. Other health effects, such as improper bone mineralization also have been reported. In addition to these major effects in humans, studies of experimental animals suggest that exposure to cadmium may also cause anemia, change in liver morphology, decrease in immunosuppression, and hypertension.

As discussed in the health effects section, there are numerous epidemiologic studies that show an elevated risk of lung cancer among cadmium exposed workers. Because lung cancer is almost certainly fatal, OSHA considers this disease to represent the greatest material impairment to health. A number of studies of workers also suggest an association between occupational cadmium exposures and increased deaths from other types of cancer, most notably prostate cancer. However, the relationship between cadmium exposure and prostate cancer is difficult to establish on the basis of more recent mortality studies. Most epidemiological cohort studies of workers use mortality rates to estimate risk of disease, but prostate cancer does not always lead to death. Consequently, the mortality studies probably underestimate the true incidence of the disease. In any event, although prostate cancer is not always fatal, OSHA nonetheless considers it to be a very serious material impairment to health.

Chronic exposure to cadmium is also known to cause renal dysfunction. This impairment of kidney function typically is manifested as proteinuria, a condition characterized by an excess of proteins in the urine. Early stage, cadmium induced proteinuria typically is tubular proteinuria, which is characterized by an excess of low molecular weight proteins in the urine. Chronic exposure to cadmium may also cause glomular proteinuria, a still more serious dysfunction, characterized by an excess of total proteins in the urine. The damage to the proximal tubules or glomerulus in the kidney indicated by proteinuria is likely to be irreversible in a substantial proportion of workers, except in its very earliest stages.

Because of the body's ability to accumulate and store cadmium over long periods of time, the loss of kidney function may develop even after a reduction or cessation of external

cadmium exposure. Upon prolonged exposure, tubular proteinuria may progress to more severe forms of renal dysfunction such as glycosuria, aminoaciduria, phosphaturia and glomular proteinuria. Therefore, OSHA also considers tubular proteinuria to be a material impairment of health. As discussed in the health effects section of this preamble, this conclusion is consistent with OSHA's analyses and court decisions regarding the lead and air contaminants standards [FR 52952, 11/14/78, p. 52983; *USWA* v. *Marshal* 647 F. 2d 1189 (1980), p. 1251; 54 FR 2332–2983, 01/19/89; *AFL–CIO* v. *OSHA*, Nos. 89–7185 et al., 911th Cir. 7/7/92)].

Long term exposure to cadmium appears to cause other adverse effects on the respiratory system in addition to lung cancer. Workers with prolonged exposure to cadmium dust or fumes have exhibited shortness of breath, impaired pulmonary function, and chronic lung disease indicative of emphysema. These diseases also constitute material impairment of health or functional capacity, but it has not been possible to determine a dose response relationship between them and occupational exposure to cadmium. Therefore, these diseases were not quantified in the quantitative risk assessment section of the standard.

Workers with progressive forms of proteinuria also have exhibited adverse bone effects associated with improper bone mineralization, such as osteoporosis and osteomalacia. These latter diseases are also serious, though not usually fatal. These diseases also are not quantifiable with the data available, but they are likely to occur as a result of exposure levels above the old permissible limits. The discussion of significant risk concentrates on the quantifiable diseases, cancer and kidney dysfunction. OSHA concludes that the risk of contracting each of these diseases from occupational exposure to cadmium above the new PEL is significant. The other disease risks mentioned above, though not as readily quantifiable, add to the significance of the risk presented.

In the health effects section above, OSHA discusses at length its assessments of the various relevant animal and human studies, and in the quantitative risk assessment section above, OSHA discusses in great detail its own and other's risk assessments for cadmium, including the bases and criticisms of those assessments.

The underlying epidemiologic and experimental animal studies that provide the basis for this quantification of risk are of reasonable quality and demonstrate a relationship between cadmium exposure, on the one hand, and cancer and kidney dysfunction, on the other. There is a reasonable basis for determining the exposed population, estimating dose, and excluding other potentially causal agents of the observed diseases. The Environmental Protection Agency (EPA) has concluded that the available data are adequate to quantify the risk of cancer due to cadmium exposure. This is OSHA's conclusion as well.

Cancer

OSHA used two types of data for its quantitative assessment of the risk of death from cancer. One is animal data; the rat bioassay by Takenaka and others (Ex. 4–67) and the long term bioassay by Oldiges and others (Exs. 12–10–i; 12–10–h; 12–35; 8–694). The other is human data, the human mortality study by Thun and others (Ex. 4–68). In its proposal for its preliminary quantitative risk assessment, the Agency relied on the rat data for its best estimate of total risk of cancer death, because OSHA believed that the measures of exposure were more accurate in the rat study and because the rat study can be used to predict all cancer deaths attributable to occupational exposure to cadmium. By contrast, the Thun data can be used to predict only lung cancer deaths attributable to occupational exposure to cadmium. This use of animal data to predict total cancer deaths is consistent with risk assessments conducted for other standards and upheld in the Courts (e.g. ethylene oxide).

Nevertheless, in this final standard OSHA relies on both the animal data, especially the Takenaka study, and the Thun human mortality study for its estimate of excess cancer risk. Each of these studies could, in the Agency's expert opinion, be used independently to establish the significant cancer risk associated with excess exposure to cadmium. However, OSHA recognizes that at the current state of the art reliance on either animal or epidemiolgical studies to determine human risk entails its own set of associated problems/limitations, and it is therefore prudent, where possible, to evaluate risk using both animal and human data.

For example, to determine human risk from animal studies it is necessary to extrapolate across species, and humans may be more or less susceptible than the animals studied. Moreover, animal experiments are typically carried out using relatively few animals (typically about 50 for each dose and sex group), which are often exposed for short periods of time and sacrificed often before cancer may manifest itself. With only 50 animals, it may be difficult to identify a carcinogen so potent as one that would double the background mortality rate in humans for lung cancer (overall age adjusted rate of 64 per 100,000 in white males in the USA). With a doubling of this rate, the testing of 50 animals would result in less than one additional animal per dose group developing lung cancer. So, even in this extreme situation, it is unlikely that an increased risk would be observed. To be assured of observing such an increase in cancer risk, the number of test animals would need to be tremendously increased. However, managing large numbers of animals is impractical. The more managable alternative is to increase the dose of the material being tested, often to the maximum dose that can be tolerated without causing early mortality in the animals from diseases other than cancer. However, in order to use these data to estimate human risk requires another extrapolation, from high dose in animals to low dose in humans, which in turn creates additional uncertainty.

On the other hand, epidemiological studies cannot be controlled nearly as carefully as animal studies, and information about factors potentially relevant to these studies is typically less than complete. Thus, in epidemiological studies there are inevitably confounding factors, like cigarette smoking or exposures to toxic substances other than the test substance, that may raise some doubt about findings of association between the substance under study and disease. Furthermore, detailed, complete, and accurate exposure data needed to precisely determine dose often are unavailable in such studies and must be reconstructed by applying reasonable assumptions to imperfect available data.

Notwithstanding the respective sets of problems/limitations that seem to be endemic to animal bioassays and epidemiological studies, in particular cases animal and/or human studies will provide the best available evidence of the toxicity of a substance and either or both may prove to be quite reliable. In relying in this final cadmium standard on both animal and human studies to determine risk, OSHA seeks to answer the criticism that stereotypically arises from reliance on either one alone. Thus, when one relies on the Takenaka animal study, the need to extrapolate across species may be a problem, but there is no such need and therefore no such problem when one relies upon the Thun study of cadmium exposed workers. On the other hand, when one relies upon the

Thun study, co-exposure to arsenic or cigarette smoking may be potentially confounding factors, but there are no such co-exposures and therefore no such confounding when one relies on the Takenaka study.

As a result, to the extent that the two studies are in basic agreement about the nature and extent of the risk, the concerns generated by exclusive reliance upon one type of study should be substantially alleviated by reliance upon the other as well. Such agreement, OSHA believes, would also strongly suggest that the Agency's risk determinations for cancer are realistic. It is highly unlikely that such agreement could have been produced by mere coincidence.

With regard to its quantitative risk assessment for cancer based upon the animal data, OSHA has relied upon the Takenaka (Ex. 4–67) and the Glaser/Oldiges studies (Exs. 8–694–B; 8–694–D). The Takenaka study involved exposure of male rats to cadmium chloride, while the Oldiges study involved exposure of male and female rats to cadmium chloride, cadmium oxide, cadmium sulfate, and cadmium sulfide. OSHA applied the multistage model and two variants of it to the ten data sets from these two studies to estimate excess lung cancer risk from an occupational lifetime (45 years) exposure to each of the various exposure levels for each of the cadmium compounds.

OSHA has relied upon the Takenaka rat study to derive its best estimate of risk based upon data from experimental animals. This study is particularly suitable for quantitative risk assessment, because exposure levels were well documented, the study was run with concurrent controls, there was no opportunity for confounding exposures, and the route of exposure, inhalation, is the same as the primary route of exposure in occupational settings. Two possible drawbacks to this study raised in the proposal are that the animals were exposed continuously and to cadmium chloride. By contrast, workers are exposed mostly to cadmium compounds other than cadmium chloride and generally for eight hours a day.

With regard to the carcinogenicity of particular cadmium compounds, analyses of dose response data for several cadmium compounds show a similar carcinogenic potency. With regard to length of exposure, although rats in the Takenaka study were dosed continuously, and workers are not, cancer risk assessments show a similar dose response in relation to total cadmium dose, whether the animals were exposed continuously or in an exposure pattern simulating the workplace mode of exposure (Ex. 31; See also Table VI–6 of the Quantitative Risk Assessment section). Thus, there appears to be no dose rate effect.

To quantify risk from cadmium exposure using the Takenaka rat data, OSHA in its proposal examined five low-dose extrapolation models. The choice of model involves scientific judgment. There is no certain way to determine which model is correct. The statistics that allow us to measure goodness of fit cannot provide help in judging "best" fit among the models. Consequently, the best (correct) model must be chosen on the basis of some other criterion.

OSHA prefers the multistage model as its best model because the Agency believes the multistage model has the best empirical and theoretical justification of all the models for estimating carcinogenic dose-response. The multistage model is a nonthreshold model that is linear at low doses. The Agency believes that this model conforms most closely to what we know of the etiology of cancer. OSHA's preference is consistent with the position of the Office of Science and Technology Policy, which recommends that "when data and information are limited, and when much uncertainty exists regarding the mechanisms of carcinogenic action, models or procedures which incorporate low-dose linearity are preferred when compatible with limited information. In addition, there was good general support during the rulemaking for using the multistage model to estimate cancer risk with animal data.

OSHA applied three multistage models to the data. The results are shown in Table 6 of OSHA's risk assessment. With the exception of cadmium oxide (CdO) fume (the results which might be explained on the basis of lower lung deposition) at an occupational lifetime (45 years) exposure to cadmium of 100 $\mu g/m^3$, the current PEL for cadmium fume, most of the 28 maximum likelihood estimates (MLEs) for all of the cadmium compounds and for both male and female rats project excess cancer deaths well above 100 per 1000. Even for CdO fume, the excess risk of death from cancer associated with 100 $\mu g/m^3$ ranges from 6.8 to 37 per 1000.

By contrast, with an occupational lifetime exposure to the new PEL of 5 $\mu g/m^3$, the models project dramatically reduced risks in all categories. Thus, the new PEL significantly reduces the risk of cancer among cadmium exposed workers. Nevertheless, of the 28 MLEs associated with 5 $\mu g/m^3$ for the various cadmium compounds and models using data for both male and female rats, all but three project risks of greater than 5 excess cancer deaths per thousand workers, and nearly two-thirds project 15 or more excess cancer deaths per thousand.

If OSHA were to choose a best estimate of risk based upon the animal data, for the reasons presented in the preamble to its proposed cadmium standard and in the health effects section of this preamble, it would continue to choose the risks generated by applying the multistage model to the data for $CdCl_2$ from the Takenaka study. Because the strengths and weaknesses of that study have been vetted in this rulemaking, OSHA feels assured of its reliability and appropriateness. OSHA now calculates the best estimate of risk associated with a PEL of 5 $\mu g/m^3$ from this study to be 15 excess cancer deaths per thousand. (See Table 6 in the quantitative risk assessment section.) This risk is slightly higher than the 10.6 per 1,000 risk that OSHA projected as the best estimate in its preliminary risk assessment from the Takenaka data. The reason for the difference is that OSHA calculated the dose slightly differently for its final risk assessment. In any event, both the estimates of 10.6 and 15 excess deaths per thousand are an order of magnitude above risks that previously have been considered at least minimally significant by OSHA.

With regard to its quantitative risk assessment for cancer based upon the human data, OSHA continues to rely upon the Thun study presented in the proposed cadmium rule. The cohort has been updated to include six additional years of follow-up. As discussed at length in the health effects section of this preamble, OSHA believes that the Thun study with updated information is an excellent epidemiological study. While subject to the limitations inherent in such studies, it provides a reasonably reliable basis for quantitative risk analysis. Furthermore, it is the only epidemiologic study available that has reliable data on dose and it has undergone extensive peer review. In addition, as discussed in OSHA's quantitative risk assessment in this preamble, extensive additional analyses of its data have been performed and several additional models have been used to model the data. OSHA further believes that the various challenges to the Thun study (Exs. 19–43; 12–41) have forced its authors and others, like NIOSH and OSHA, who choose to rely upon it, to thoroughly consider and respond to the questions raised. These

responses, in OSHA's judgment, have been more than adequate.

OSHA requested public comment on the uncertainties involved in using the Thun et al., epidemiological data to perform its quantitative assessment of the cancer risk associated with occupational exposure to cadmium. OSHA further requested public comment on how the Agency might resolve the issue of basing its final quantitative risk assessment on either the Thun study or the Takenaka study. Based upon additional follow-up and new analyses of the Thun cohort, OSHA has concluded that confounding from cigarette smoking and arsenic exposure played little role in the excess of lung cancer observed among the cohort members. With such an extended and comprehensive assessment of the strengths and weaknesses of the Thun study as part of this rulemaking, OSHA feels comfortable with its reliance on that study.

The Thun study is an historical prospective study of 602 white men employed in production areas of a smelter for at least six months between 1940 and 1969 and followed through 1984. It provides the strongest evidence of the carcinogencity of cadmium in humans. For workers with two or more years of employment at the smelter, mortality from lung cancer was statistically significantly elevated (SMR=229). Dividing the cohort of workers into those with low, middle and high cumulative exposures to cadmium, a significant dose-response relationship between cadmium exposure and lung cancer was observed.

The methods used to quantify risk from the Thun data closely follow those used by EPA (Ex. 4–04). In its final risk assessment, OSHA applied a relative risk model, adjusted for Hispanic ethnicity, to the updated Thun data. Because the new estimates are based upon more complete data and more reliable quantitative methods, OSHA prefers them over those in the proposal.

As shown in Table 12 of OSHA's final risk assessment, with an occupational lifetime exposure to cadmium at the new PEL of 5 $\mu g/m^3$, OSHA projects from the Thun data a risk of three excess deaths from lung cancer per 1000 workers based on the MLE. This estimate of risk at the new PEL is based exclusively on the reduction in exposure to cadmium achieved by the new PEL and does not take into account the additional risk reduction arising from the ancillary provisions of this standard. Nonetheless, this estimate constitutes a 95% reduction from the comparable estimated risk of 58.3 deaths per thousand at an occupational lifetime exposure to cadmium of 100 $\mu g/m^3$. It also represents greater than an 85% reduction of risk from the risk at an occupational lifetime exposure to 40 $\mu g/m^3$ and a 75% reduction of risk from the risk at an occupational lifetime exposure to 20 $\mu g/m^3$, both of which levels are closer than 100 $\mu g/m^3$ to typical existing occupational exposure levels in many industries with current exposures above 5 $\mu g/m^3$.

Since OSHA published its proposed rule, Dr. Leslie Stayner and others of the National Institute for Occupational Safety and Health (NIOSH) have also developed an independent quantitative risk assessment based on the updated Thun cohort. That risk assessment differs in ways discussed in the risk assessment section of this preamble from OSHA's own preliminary and final risk assessments. NIOSH, in response to criticisms of OSHA's risk assessment in the cadmium proposal and to recommendations made by various scientists, made methodological adjustments and applied three separate models to the Thun data. The results of NIOSH's risk assessment are shown in Table 9 of OSHA's final risk assessment.

With an occupational lifetime exposure at the new PEL of 5 $\mu g/m^3$, NIOSH estimates an excess risk of death from cancer ranging from 3.9 to 5.5 to 9.0 per thousand workers for the Cox Regression Analysis, the multistage model, and Poisson Regression model, respectively. These estimates of risk are statistically all very close to one another and strikingly similar to OSHA's own, independently derived estimate of 3 excess lung cancer deaths per 1000 workers.

The NIOSH risk estimates for occupational lifetime exposure at the new PEL, like the OSHA risk estimates for that level, represent a very substantial reduction of risk from risks estimated for comparable exposures at the higher, currently allowable levels and at existing levels. For example, the estimated excess risk at an occupational lifetime exposure of 100 $\mu g/m^3$ ranges from 73 to 102.2 to 157 per thousand workers according to the Cox Regression, multistage, and Poisson Regression models, respectively. Thus, under all three models the risk at 5 $\mu g/m^3$ represents a nearly 95% reduction of risk from the risk at 100 $\mu g/m^3$, a nearly 87% reduction of risk from the risk at 40 $\mu g/m^3$, and a nearly 75% reduction of risk from the risk at 20 $\mu g/m^3$. Again, the NIOSH estimates of risk at the new PEL do not take into account the additional reductions in risk arising from the ancillary provisions of this standard. OSHA expects these additional reductions to eliminate significant risk of cadmium associated cancer at the PEL of 5 $\mu g/m^3$.

Summing up the results of these various risk assessments based on animal and human data, all indicate a very high excess risk of death from cancer arising from an occupational lifetime exposure to cadmium at the current PEL (for fume) of 100 $\mu g/m^3$. All also show very high excess risks at levels much lower than 100 $\mu g/m^3$. Further, the results based upon all of the models show a very high reduction of risk associated with the new PEL of 5 $\mu g/m^3$. And all show that the risk that OSHA is seeking to regulate, without regard to the ancillary provisions, remains significant at least down to the new PEL.

Indeed, at the PEL of 5 $\mu g/m^3$ the best estimate of excess risk from the animal data, 15 deaths per thousand, and all the estimates from the human data, 3 per thousand under the OSHA model, and 3.9 to 9 per thousand under the NIOSH models also all reflect continuing significant risk without regard to the ancillary provisions. If OSHA were relying exclusively upon the PEL to reduce risk and there were no ancillary requirements that effectively eliminated remaining significant risk at the new PEL, and if there were no other circumstances that further mitigated the risk, OSHA might well have to set the PEL still lower than 5 $\mu g/m^3$ if that were feasible.

These estimates of remaining risk at the new PEL are all very similar statistically. They are all within one order of magnitude. This similarity is even more striking when one realizes that estimates based on the animal data are for total cancers, whereas, the estimates derived from the human data are based on lung cancer only. (The possibility exists that lifetime studies of the occupational cohorts might identify additional cancer sites in humans related to cadmium exposure.) Thus, OSHA feels assured by these mutually confirming results that its risk estimates for cancer are realistic and reasonably accurate. As stated above, by implementing the new PEL along with the ancillary provisions of the standard, OSHA expects the significance of the risk to be eliminated.

Kidney

For its final quantitative assessment of the excess risk of kidney dysfunction associated with occupational exposure to cadmium, OSHA applied a logistic regression model to the five independent studies that have relevant quantifiable data. These studies, discussed at length

in the health effects section above and analyzed for quantitative estimates of kidney dysfunction in relation to dose in the quantitative risk assessment section, were conducted by Falck and others, Ellis and others, Elinder and others, Jarup and others, and Mason and others. In these studies, the authors investigated the association between levels of low molecular weight proteins in the urine of workers and cumulative occupational exposure to cadmium. The low moleculator weight proteins being measured are Beta 2 microglobulin (β_2-M) or retinol binding protein (RPB), excessive levels of either of which are taken as indicative of kidney dysfunction.

The logistic model that OSHA applied to the data from each study was modified from the model presented in the proposal to take account of background levels of kidney dysfunction unassociated with occupational cadmium exposure. This explains why the results projected from the model in the final risk assessment for the Falck and Ellis data sets are somewhat lower than those projected in the preliminary risk assessment, which relied exclusively upon those two data sets.

In its final risk assessment OSHA performed analyses on seven data sets from five studies using a modified logistic model. The five studies themselves were quite different from each other in many material ways. For example, authors chose different levels of β_2-M or RPB as indicative of kidney dysfunction; some used spot urine samples, others used 24-hour samples; and the number of subjects in each ranged from 33 to 440. In part because of the small size of some of the studies and in part because of the uncertainty in extrapolating results to low TWA exposures, some of the confidence intervals in Table 19 of the risk assessment section are fairly wide. Considering this and the differences among the underlying studies, which doubtless affect the results, the analyses produced reasonably consistent results. Thus, for example, as shown in Table 19, all of the seven analyses project high rates of proteinuria at an occupational lifetime exposure of 100 $\mu g/m^3$ (24–99.8%); all continue to project relatively high rates of proteinuria down to exposures as low as 20 $\mu g/m^3$ (2.1–47.2%); and all project a risk greater than one per thousand at an exposure of 10 $\mu g/m^3$ (2.7–234 per thousand). Moreover, at the new PEL of 5 $\mu g/m^3$, all but two of the analyses show an excess risk of proteinuria greater than 1 per thousand (1.9–95). With regard to those two, both show a risk greater than two per thousand (2.7–2.8) at an exposure of 10 $\mu g/m^3$. Thus, even with regard to the two lowest results, the analyses indicate a risk greater than one per thousand at exposure levels somewhere between 5–10 $\mu g/m^3$. Furthermore, for reasons described in OSHA's risk assessment, the Agency no longer considers one of the two studies that provide the source for these low estimates, the Falck study, as reliable a basis for OSHA's quantitative risk assessment as the other studies.

In the other six risk estimates, the results range at the extremes from .37 to 95 estimated excess cases of proteinuria per 1000 workers exposed to cadmium at 5 $\mu g/m^3$ for an occupational lifetime. The four results between the extremes range between 1.9–27 cases per thousand, a range only slightly greater than one order of magnitude.

From all the analysis reflected in Table 19, OSHA's best estimate of risk at 5 $\mu g/m^3$ is 14–23 excess cases of proteinuria per thousand. OSHA arrived at this best estimate by determining the upper and lower 95% confidence intervals for each of the risk estimates at 5 $\mu g/m^3$ reflected in Table 19. With the exception of the Mason 1 analysis, the estimate of 14–23 excess cases falls within the 90% confidence intervals (95% upper bound and 95% lower bound) of the six data sets analyzed. To put this in other words, 14 represents the highest of the 95% lower bounds and 23 represents the lowest of the 95% upper bounds. So 14–23 is within the 90% confidence intervals for each of the six analyses. For example, the 90% confidence interval for Jarup 1 is 8.3–23; 14–23 falls within that interval. Similarly, the range for Elinder is 0–99; 14–23 falls within that interval. This is true for Ellis, as well: The 14–23 range falls within the 90% confidence intervals of 14–288. OSHA therefore believes that its best estimate of 14–23 excess cases reflects the central tendency of the relevant data. This risk estimate, like comparable estimates for cancer, does not take into account the additional reduction in risk arising from the ancillary provisions of the standard. OSHA expects these additional reductions to eliminate significant risk of cadmium associated kidney dysfunction at the PEL of 5 $\mu g/m^3$.

In response to a comment in the rulemaking (Ex. 17–D), OSHA also applied several types of models to the continuous data from the Mason study. The results of that analysis are shown in Table 21. At an exposure of 5 $\mu g/m^3$, with the exception of the results for the threshold model (Model IV), the results are all greater than OSHA's best estimates of 14–23 cases per thousand workers. By contrast, the threshold model predicts 0 risk at 5 $\mu g/m^3$, and, using the matched analysis, 0 risk at 10 $\mu g/m^3$ and even at 20 $\mu g/m^3$. These analyses provide estimates that are both higher and lower than the results produced by the other models and from OSHA's best estimates. For reasons discussed in OSHA's risk assessment, OSHA gives greater weight to results shown in Table 19 of the quantitative risk assessment section that were derived from the logistic models modified to incorporate background response.

With regard to reduction in risk of kidney dysfunction, the best estimate of risk, 14–23 per 1000, for occupational lifetime exposure to cadmium at 5 $\mu g/m^3$ represents a 90–94% reduction in risk from the lowest estimated risk (242 per thousand) associated with 100 $\mu g/m^3$ based on the modified logistic model. For five of the seven data analyses for exposure at 100 $\mu g/m^3$, 14–23 represents greater than a 96–98% reduction in risk. For occupational lifetime exposures to 20 $\mu g/m^3$, with the exception of the estimates derived from the Elinder data, the 14–23 best estimate of occupational lifetime risk at the new PEL represents a 62–76% reduction from the lowest estimate of risk (60 per thousand). For the next lowest estimate of risk (80 per thousand) at 20 $\mu g/m^3$, 14–23 represents greater than a 70–82% reduction in risk, and for the other four risk estimates (91, 186, 236, and 472 per thousand) at 20 $\mu g/m^3$, the reduction in risk is still greater. Even at an exposure of 10 $\mu g/m^3$, with the exception of the analyses based upon the Elinder and Falck data sets, the best estimate of 14–23 represents a 4–40% reduction in risk from the lowest estimate (24 per thousand), a 22–55% reduction in risk from the next lowest estimate (31 per thousand), and greater than a 40–60% reduction from the other risk estimates.

The conclusions of OSHA's quantitative analysis of risk for lung cancer and kidney dysfunction are further supported by a very recent review of the scientific basis for regulating cadmium in the workplace. The article (ex. L–140–50), which was written by three of OSHA's expert witnesses in the cadmium rulemaking, applies a very different approach to the analysis. The article's analysis compares OSHA's preliminary quantitative risk estimates derived from mathematical modelling of data from several studies with the results derived from other models and with published, empirical data on kidney dysfunction and lung cancer. Although the authors

find that "modelling generally implies greater certainty than exists at low doses * * *" they also find that OSHA's risk estimates generally are in line with the empirical data and the results of other modelling.

With regard to kidney dysfunction, for example, the authors find that "the empirical data and models * * * all show a similar pattern. The prevalence of kidney dysfunction increases sharply at cumulative exposures above 500 μg/m³-year * * * .[However, they point out,] the studies are too small to estimate prevalence at low[er cumulative] exposures * * * ." It is therefore "impossible," the authors conclude, "to identify a no-effect level with certainty."

For cancer, the authors find that the epidemiological data provide more plausible estimates of risk than the animal data. The rat data, they find, overpredict risk.

Rather than relying upon mathematical modelling, the authors suggest using a safety margin. Based upon the analysis of both kidney dysfunction and lung cancer, the authors conclude that "occupational exposure to cadmium should be controlled as stringently as is technically feasible, with the PEL not to exceed 5 μg/m³." OSHA finds these conclusions broadly confirmatory of the results of its own analysis.

Consequently, based upon the best estimates of excess risk associated with each of various occupational lifetime exposures to cadmium, whether OSHA relies upon the cancer or the kidney data, and in connection with cancer whether OSHA relies upon the animal data or the human data, it consistently appears necessary for OSHA to set the PEL at least as low as 5 μg/m³.

Even at the new PEL of 5 μg/m³, most of the analyses and all of the best estimates of risk indicate a continuing risk of death from cancer and cases of kidney dysfunction somewhat greater than one per 1000 workers. Thus, the real problem for OSHA when it sets the PEL at 5 μg/m³ lies not in establishing that the Agency is regulating a significant risk. Rather, the problem lies in establishing that, to the extent feasible, the PEL should not be set still lower in order to eliminate what appears, without regard to the reductions in risk arising from the ancillary provisions of this standard and other factors, to be a continuing significant risk.

OSHA thinks the decision to set the PEL no lower than 5 μg/m³ involves complex policy determinations that draw upon OSHA's experience and expertise and also reflect a delicate balancing of counterveiling factors. The reasons for the decision are wide ranging.

First, OSHA fully expects the medical surveillance and other requirements in the standard ancillary to the PEL (e.g., MRP, action level, regulated areas, training, etc.) to substantially lower the risk of kidney dysfunction and the risk of cancer from the estimates in the risk assessment. Although OSHA cannot quantify the reductions in risk that may be expected from these and other similar provisions of the standard, OSHA believes that the effect of including the ancillary provisions in the final standard will eliminate the remaining significant risk estimated at the new PEL.

Second, industry has stated that the best way to assure that the new PEL will be met consistently is for industry to implement work practice and engineering controls to achieve a mean exposure considerably below 5 μg/m³ (Ex. 144–6). Some industries maintain that it would be best to establish a mean 40% below the PEL. When these levels are achieved, much, if not most of the time exposure levels will be controlled to below 5 μg/μ³. As a consequence, the risk estimated at an occupational lifetime exposure level of 5 μg/m³ will overstate the actual risk, which would decline linearly.

Third, well over half the exposed workforce already is exposed below the new PEL, so that the actual risk to these employees already is below the risk estimated for an occupational lifetime exposure at that PEL.

Fourth, the vast majority of exposed employees work in industries/occupations where cadmium and its compounds are not the primary product produced or processed. Of these employees, most are not exposed above 5 μg/m³. Of the remainder who are currently exposed above 5 μg/m³, most are exposed only intermittently and will continue to be exposed only intermittently. Their cumulative exposure will be lower than the cumulative exposure used to derive the estimated risks, which are based upon an assumption that the employee is exposed to a TWA exposure at 5 μg/m³ for eight hours every day. With a lower cumulative exposure, the actual risk for employees intermittently exposed at 5 μg/m³ will be lower than the estimated risk.

Fifth, OSHA has already made an important policy decision to sever the PEL from, and set it lower than the separate engineering control air limit(s) (SECAL(s)) for six of the cadmium producing/processing industries, which is set at 15 μg/m³ and/or 50 μg/m³ because of feasibility constraints. In setting the PEL that low, OSHA has inevitably required a substantial number of employees to wear respirators full time. OSHA did this with serious reservations about the advisability of requiring full time respirator use and in the face of a NIOSH recommendation against requiring such use (Ex. 57). OSHA understands that full time respirator usage poses certain safety and health risks but, on balance, has decided that the risks of not requiring some protection for employees from airborne cadmium levels above 5 μg/m³ are more serious than those attaching to full time respirator use.

However, the vast majority of employees exposed to cadmium do not work in industries to which a SECAL applies. For them, the PEL is set at or very close to the limits of feasibility. If OSHA were to set the PEL still lower than 5 μg/m³, large numbers of additional employees would have to wear respirators full time. OSHA is loathe to go further in this direction, especially since the actual risk to employees under the new PEL in practice is likely to be considerably less than the estimated risk. For all these reasons, OSHA has exercised its professional judgment and discretion in determining that the PEL for cadmium shall be established at 5 μg/m³. As a result, OSHA concludes that its cadmium standard will protect employees and that employers who comply with the provisions of the standard will be taking reasonable steps to protect their employees from the hazards of cadmium.

OSHA's conclusion that the risk of death from cancer and the risk of kidney dysfunction resulting from exposure to cadmium at 100 μg/m³ over a working lifetime are both significant is consistent with OSHA's determination of significance of risk at the previously existing TWA PELs for two carcinogens. The two carcinogens are inorganic arsenic (Jan 14, 1983; 48 FR 1864, 1986) and ethylene oxide (Apr. 21, 1983; 48 FR 17284). The risk estimates per 1000 employees for a working lifetime exposure at the prior PEL to these carcinogens ranged from 148 to 425 lung cancer deaths from inorganic arsenic and from 63 to 109 cancer deaths from ethlyene oxide.

In addition, for both carcinogens, OSHA concluded that, if it were feasible, OSHA would seek to further reduce the predicted remaining risk at the new PELs. That remaining excess risk of death for a working lifetime exposure per 1,000 workers was 8 for

inorganic arsenic and 1 to 2 for ethylene oxide.

Further guidance for the Agency in evaluating significant risk is provided by an examination of occupational risk rates, legislative intent, and language of the Supreme Court of the United States. For example, in the high risk occupations of mining and quarrying (Division B), the average risk of death from an occupational injury or an acute occupationally-related illness from a lifetime of employment (45 years) is 15.1 per 1,000 workers. Typical occuptional risks of deaths for all manufacturing (Division D) are 1.98 per 1,000. Typical lifetime occupational risk of death in an occupation of relatively low risk, like retail trade, is 0.82 per 1,000 (Division G). (These rates are averages derived from 1989–1990 Bureau of Labor Statistics data for employers with 11 or more employees, adjusted to 45 years of employment, for 50 weeks per year.)

There are relatively few data on risk rates for occupational cancer, as distinguished from occupational injury and acute illness. The estimated cancer fatality rate from the maximum permissible occupational exposure to ionizing radiation is 17 to 29 per 1,000 (47 years at 5 rems; Committee on Biological Effects of Ionizing Radiation (BEIR) III predictions). However, most radiation standards require that exposure limits be reduced to the lowest level reasonably achievable below the exposure limit (the ALARA principle). Consequently, approximately 95% of radiation workers have exposures less than one-tenth the maximum permitted level. The risk at one-tenth the permitted level is 1.7 to 2.9 per 1,000 exposed employees.

Congress passed the Occupational Safety and Health Act of 1970 because of a determination that occupational safety and health risks were too high. Congress therefore gave OSHA authority to reduce above-average or average risks when feasible. In discussing the level of risk that Congress authorized OSHA to reduce, the Supreme Court stated that "if the odds are one in a thousand that regular inhalation of gasoline vapors that are 2% benzene will be fatal a reasonable person might well consider the risk significant and take the appropriate steps to decrease or eliminate it." (*I.U.D.* v. *A.P.I.*, 448 U.S. et 655).

Within this context, OSHA's best estimates of risk from occupational exposure to cadmium at the current TWA PELs are substantially higher than other risks that OSHA has concluded are significant, are substantially higher than the risk of fatality in high-risk occupations, and are substantially higher than the example presented by the Supreme Court. Consequently, OSHA concludes that its best estimates of risk associated with the current TWA PEL of 100 $\mu g/m^3$ are significant. Based on this reasoning, OSHA's best estimates of risk remain significant down to levels as low as the new PEL of 5 $\mu g/m^3$. As previously stated, these estimates do not take into account the additional reductions in risk that are attributable to the ancillary provisions of the cadmium standard, which OSHA fully expects will eliminate any remaining significant risk at the new PEL.

VIII. Regulatory Impact Analysis

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A. Executive Summary

Introduction

Consistent with the requirements of Executive Order 12291, OSHA has conducted a regulatory impact analysis (RIA) for the final cadmium rule. The analysis is based on the evidence in the record compiled through the rulemaking process. A preliminary analysis accompanied the proposed cadmium rule [55 FR 4052], and OSHA solicited responses from the public regarding the proposed rulemaking, its estimated potential impacts, and other relevant information.

Many interested parties contributed comments and data to the record which provided substantial evidence for the development and analysis of the final rule. Public participation in the rulemaking process enabled possible effects to be identified and appropriate consideration to be given to the concerns and views of those potentially affected.

The RIA covers several issues involved in the promulgation of the final standard. The industries potentially affected are identified, and the nature of the affected firms, the market structure, the characteristics of supply and demand, and the financial aspects are evaluated. The numbers of employees potentially exposed, the level and duration of exposures, the nature of existing controls and work practices, and the extent of current compliance with the requirements of the standard are ascertained.

The analysis then establishes the changes that would be necessary to comply with the requirements of the standard, and the corresponding costs and benefits are presented. In addition, determinations of the technological and economic feasibility of the standard are made. Finally, the potential total costs and benefits of the rule are estimated by provision and by industry.

The following pages summarize the conclusions of the RIA. This summary includes sections on the industry profile, employee exposures and benefits, technological feasibility and costs of compliance, and economic impacts.

Industry Profile

Due to the ubiquitous nature of cadmium and its usefulness in a wide variety of applications, the revised cadmium standard potentially affects establishments in many different industries. In some industries cadmium is an integral part of the manufacturing process; in other industries cadmium-containing products may be used in the production of various goods; and additional industries may be potentially affected if trace amounts of cadmium naturally present in some materials become airborne.

Table VIII–A1 lists the industries potentially affected by this rulemaking and the estimated number of employees potentially exposed in each industry. In most industries the number of potentially exposed employees represents a small part of the total work force. For example, exposures may occur during chemical mixing or during welding, but these activities may comprise only one step in a complex manufacturing process.

TABLE VIII-A1.—INDUSTRIES AND NUMBERS OF EMPLOYEES POTENTIALLY AFFECTED BY THE REVISED CADMIUM STANDARD

	Industry	Potentially exposed employees
Specific sectors:		
	Nickel-cadmium batteries	1,500
	Zinc/cadmium refining	1,350
	Cadmium pigments	100
	Dry color formulators	7,000
	Cadmium stabilizers	200
	Lead smelting/refining	400
	Cadmium plating	1,200
	Electric utilities	37,500
	Iron and steel	40,000
General industry, except sectors above:		
2200	Textile mill products	411
2300	Apparel	201
2500	Furniture	1,232
2600	Paper products	195
2700	Printing and publishing	1,600
2810	Inorganic chemicals	195
2820	Plastics and synthetics	870
2830	Drugs	50
2851	Paints & allied products	4,724
2860	Organic chemicals	2,533
2870	Agricultural chemicals	2,507
2890	Miscellaneous chemicals	1,024
2900	Petroleum refining	807
3000	Rubber & plastic prod.	11,133
3100	Leather products	902
3211	Flat glass	666
3220	Glassware	2,929
3250	Structural clay products	2,423
3260	Pottery products	174
3270	Concrete products	624
3280	Stone products	200
3290	Mineral products	699
3313	Alloy products	468
3315	Steel wiredrawing	500
3316	Cold-rolled steel	37
3317	Steel pipe and tubes	400
3320	Iron and steel foundries	10,808
3330	Primary nonferrous metals	1,800
3340	Secondary nonferrous mtls.	750
3350	Nonferrous rolling, etc.	3,135
3360	Nonferrous foundries	10,022
3390	Misc. primary metal	285
3410	Metal shipping containers	140
3420	Hand tools & hardware	2,781
3430	Heating & plumbing equip.	1,186
3440	Fabricated struct. metal	17,065
3450	Screws, etc.	868
3460	Forgings & stampings	612
3470	Coating and engraving	200
3480	Ordnance	265
3490	Misc. fabr. metal prod.	9,071
3510	Engines and turbines	3,036
3520	Farm and garden machinery	199
3530	Construction machinery	10,453
3540	Metalworking machinery	16,127
3550	Special machinery	6,533
3560	General machinery	11,633
3570	Computer & office equip.	1,600
3580	Refrig. & service mach.	14,180
3590	Miscellaneous machinery	19,615
3610	Elec. transmission equip.	6,388
3620	Electrical apparatus	12,460
3630	Household appliances	7,586
3640	Lighting and wiring	12,266
3650	Audio & video equip.	3,021
3660	Communications equip.	17,886
3670	Electronic components	15,412
3690	Misc. elect. equip.	350
3710	Motor vehicles	18,092
3720	Aircraft	2,776
3730	Ship building	7,907
3743	Railroad equipment	1,458
3760	Missiles & space vehicles	359
3790	Misc. trans. equip.	119
3812	Detection equipment, etc.	87
3820	Meas. & contr. instr.	216
3840	Medical instruments	337
3860	Photographic equipment	669
3870	Watches & clockwork	173
3910	Jewelry & plated ware	79
3930	Musical instruments	16
3940	Toys and sporting goods	1,004
3950	Artists' materials	50
3960	Costume jewelry & notions	29
3990	Misc. manufacturing	2,749
4011	Railroads	23
4200	Motor freight & warehsing	586
4500	Air transportation	52,147
4810	Telephone communications	2,474
4830	Radio & TV broadcasting	149
4920	Gas prod. & dist.	1,213
4950	Sanitary services	5,204
5000	Wholesale trade, durables	690
5100	Wholesale nondurables	3,060
5500	Service stations	536
7530	Automotive repair shops	3,184
7600	Misc. repair services	3,494
8060	Hospitals	277
Construction		70,000
Total		524,816

Source: Office of Regulatory Analysis, OSHA, U.S. Department of Labor.

Potentially affected industries include the production of various kinds of chemicals; paints and coatings; rubber and plastic products; iron and steel; nonferrous metals; machinery and other metal products; electrical equipment; and miscellaneous manufacturing, repair, and service operations.

Reflecting the emphasis of the public comments submitted to the record and other considerations, particular attention was given to several specific industry sectors. These include nickel-cadmium batteries, zinc and cadmium refining, cadmium pigments, cadmium stabilizers, lead smelting and refining, mechanical and electroplating, color compounders and formulators, electric utilities, and iron and steel production. In addition, approximately 70,000 employees in the construction industry may be exposed to cadmium primarily during welding operations.

Employee Exposures and Benefits

Mean exposures among most employees potentially exposed are generally less than 5 $\mu g/m^3$. Over half of the potentially exposed employees are engaged in welding, metal machining, or repair and utility work. In these operations cadmium is usually only present in trace quantities and the work may be intermittent. As a result, exposures are typically less than 2.5 $\mu g/m^3$.

However, exposures for some employees may be significantly higher, depending on the nature and duration of the activity and the type of material involved. Elevated exposures can be expected when dusts or fumes are generated from alloys and other products containing significant concentrations of cadmium, from metals coated with cadmium, or from cadmium-bearing dusts on work surfaces. Such situations may occur when mixing or using cadmium-containing chemicals; operating furnaces or kilns with cadmium-containing materials; machining, welding, brazing, or soldering metals containing cadmium; using paints containing cadmium pigments; and maintaining or repairing equipment involving cadmium-bearing dusts, such as pollution control devices or boilers with fly ash.

In industry sectors where cadmium is a primary component of the production process, exposures may be consistently above 5 $\mu g/m^3$ for much of the work force. Job categories with mean exposures above 20 $\mu g/m^3$ can be found in the production of nickel-cadmium batteries, in zinc and cadmium refining, and in the production of cadmium pigments and stabilizers.

The number of cases of lung cancer and kidney dysfunction attributable to cadmium exposure among the exposed employees was calculated based on the quantitative risk assessments (QRAs) discussed in a separate section of the preamble. The QRAs produce dose-response relationships which provide estimates of the excess risk of each type of health effect corresponding to different levels of exposure.

The QRAs for lung cancer and kidney dysfunction were applied to the number of employees and the exposure level in each job category to determine the number of excess cases attributable to current exposures. The calculation was repeated using the projected exposure levels estimated to be achieved under compliance with the final cadmium standard; the difference determined the number of cases potentially preventable by the standard.

Based on four risk models developed by OSHA Health Standards, compliance with the reduced exposure limit is expected to prevent from 9 to 27 cancer fatalities each year out of 13 to 40 excess cancer fatalities currently taking place. Within this range, OSHA's Multistage Model predicts 17 to 18 cancers avoided annually out of 25 excess cancer fatalities. Based upon the risk models for kidney dysfunction, the

rule should prevent from 68 to 112 kidney dysfunction cases out of 97 to 160 excess kidney dysfuntion cases, annually. For a single estimate within this range, the Jarup 1 model estimates 78 kidney dysfunction cases avoided each year out of a total 111 excess cases. The reductions would apply to risks associated with cumulative exposures over a working lifetime, and thus the annual benefits would be phased in over 45 years.

Technological Feasibility and Costs of Compliance

Compliance with the revised cadmium standard is considered technologically feasible for each of the affected industries. The standard requires engineering controls to be implemented to the extent feasible and allows the supplemental use of respirators for achieving the PEL. Respirators are capable of providing the protection required by the revised standard for the exposures encountered in each of the affected industries.

In almost all industries the application of appropriate engineering controls and work practices can keep cadmium exposures below the PEL for most employees most of the time. In some industries respirators may be necessary in some operations, but the number of employees affected would typically represent a small part of the total work force. Overall, an estimated 40,000 of the 524,000 employees exposed may require respiratory protection after the implementation of feasible engineering controls.

In a few specific industry sectors a majority of the employees may be required to wear respirators to comply with the cadmium standard. About 25 establishments in the U.S. are involved in nickel-cadmium battery production, zinc, cadmium, or lead refining, or the production of cadmium pigments and stabilizers. About 4,000 employees are exposed to cadmium in these establishments, and many are currently provided with respiratory protection. Compliance with the cadmium standard may require up to 80 percent of the workers in these plants to wear respirators full time.

For six industry sectors (nickel-cadmium batteries, zinc/cadmium refining, pigments, stabilizers, lead smelting/refining, and cadmium plating) in which the evidence on current exposures and the effectiveness of additional controls indicated that the PEL of 5 $\mu g/m^3$ is not feasible with engineering controls, separate engineering control air limits (SECALs) were specified. In order to identify the appropriate SECAL levels for employees in these industries, a process by industry methodology was adopted. High and low exposure processes were analyzed separately to avoid producing an overall SECAL which may not be relevant to either group. Table VIII–A2 shows the SECAL levels identified for these industries, and Table VIII–A3 provides a distribution of employees by SECAL or PEL level in each sector.

Compliance costs for each of the provisions of the standard were estimated for each industry. These costs are summarized in Table VIII–A4. The cost of engineering controls was determined by evaluating the additional engineering controls which establishments would introduce in each affected industry. The unit costs of feasible controls, the number of additional controls necessary, and the expected effectiveness of the controls were estimated based on the evidence in the record. Costs for engineering controls comprise the largest part of the total compliance costs and represent an estimated $82.5 million on an annualized basis.

In addition, the estimated annual costs of compliance include costs for respiratory protection ($13.5 million), exposure monitoring ($8.6 million), medical surveillance ($19.8 million), hygiene facilities and practices ($56.5 million), and information, training, and record keeping ($6.8 million). The total estimated annualized cost of the standard is approximately $187.7 million.

Economic Impacts

Based on the evidence in the record, OSHA has determined that compliance with the final cadmium standard is economically feasible in each of the affected industries.

Table VIII–A5 summarizes the economic impacts for the industries affected by this rulemaking. For most industries, the standard affects a limited number of activities and the costs of compliance represent less than 0.1 percent of revenues.

TABLE VIII–A2.—SECALS FOR PROCESSES IN SELECTED INDUSTRIES

Industry sector	Plants	Number of workers	Processes	SECAL or PEL (ug/m³)
Nickel cadmium battery	6	375	Plate making, plate preparation	50
		1,125	All other processes	15
Zinc/cadmium refining	5	202	Cadmium refining, casting, melting, oxide production, sinter plant.	50
		1,148	All other processes	5
Pigment manufacture	4	60	Calcining, crushing, milling, blending operations	50
		40	All other processes	15
Stabilizers	5	50	Cadmium oxide charging, crushing, drying, blending operations.	50
		150	All other processes	5
Lead smelting	4	60	Sinter plant, blast furnace, baghouse, yard area	50
		340	All other processes	5
Plating	400	120	Mechanical plating	15
		1,080	All other processes	5

TABLE VIII–A3.—DISTRIBUTION OF EXPOSED EMPLOYEES IN HIGH EXPOSURE INDUSTRIES

PEL/SECAL (μg/m³)	Batteries		Zinc/Cadmium		Pigments		Stabilizers		Lead		Plating		Totals
	High	Low	High	Low	High	Low	High	Low	High	Low	High	Low	
PEL:													
5 μg/m³				1,148				150		340		1,080	2,718

TABLE VIII-A3.—DISTRIBUTION OF EXPOSED EMPLOYEES IN HIGH EXPOSURE INDUSTRIES—Continued

PEL/SECAL (μg/m³)	Batteries		Zinc/Cadmium		Pigments		Stabilizers		Lead		Plating		Totals
	High	Low	High	Low	High	Low	High	Low	High	Low	High	Low	
SECAL:													
50 μg/m³	375		202		60		50		60				747
15 μg/m³		1,125				40					120		1,285
													2,032
Total													4,750

TABLE VIII-A4.—SUMMARY OF COMPLIANCE COSTS BY PROVISION AND BY INDUSTRY

[Thousands of Dollars]

Industry	Number of affected establishments	Engineering controls	Respirators	Exposure monitoring	Medical surveillance	Hygiene/clothing	Information, training, recordkpg.	Total
Batteries	6	861	100	16	388	495	8	1,947
Zinc/cadmium	5	728	150	17	363	459	5	1,723
Pigments	4	312	12	10	35	104	1	473
Formulators	700	4,620	525	914	1,277	0	36	7,371
Stabilizers	5	825	12	11	36	50	1	935
Lead	4	112	60	3	106	0	2	283
Plating	400	169	6	166	102	294	50	787
Utilities	4,000	0	0	1,600	600	0	168	2,368
Iron/steel	120	0	300	286	1,000	0	50	1,636
Subtotal	5,244	7,647	1,245	3,025	3,907	1,402	319	17,545
Other general industry	50,000	74,820	11,855	2,754	13,512	50,937	5,737	159,615
Construction	10,000	0	350	2,870	2,380	4,203	700	10,503
Total	65,244	82,467	13,450	8,649	19,799	56,542	6,756	187,663

Note: Costs do not include current expenditures.
Source: Office of Regulatory Analysis, OSHA, U.S. Department of Labor.

TABLE VIII-A5.—SUMMARY OF ECONOMIC IMPACTS BY INDUSTRY

[Thousands of Dollars]

Industry	Number of affected establishments	Total annual costs of compliance	Average annual cost per affected establishment	Total annual revenues	Ratio of compliance costs to revenues	Total annual profits	Ratio of compliance costs to profits
Batteries	6	1,947	324.5	185,000	0.011	7,400	0.263
Zinc/cadmium	5	1,723	344.6	230,000	0.007	NA	NA
Pigments	4	473	118.4	30,000	0.016	1,500	0.316
Formulators	700	7,370	10.5	900,000	0.008	45,000	0.164
Stabilizers	5	935	187.1	92,000	0.010	8,300	0.113
Lead	4	283	70.7	176,000	0.002	NA	NA
Plating	400	787	2.0	200,000	0.004	8,800	0.089
Utilities	4,000	2,368	0.6	140,000,000	0.000	7,000,000	0.000
Iron/steel	120	1,636	13.7	64,000,000	0.000	NA	NA
Subtotal	5,244	17,545	3.3	205,813,000	0.000	7,071,000	0.002
Other general industry	50,000	159,615	3.2	290,820,000	0.001	14,731,000	0.011
Construction	10,000	10,503	1.1	490,000	0.021	NA	NA
Total	65,244	187,663	2.9	497,123,000	0.000	21,802,000	0.009

Note: (1) Costs do not include current expenditures.
(2) Where sales or profit data provided to the record for specific companies or industries were used, the information was verified through publicly available sources such as Dun & Bradstreet, DIALOGUE, Dow Jones News Retrieval, and Nexis.
Source: Office of Regulatory Analysis, OSHA, U.S. Department of Labor.

The compliance costs are generally expected to result in slight increases in prices for goods and services associated with occupational cadmium exposures.

In some industries price increases needed to recoup compliance costs may decrease sales volume. For these establishments the standard may result in some reduction in profits. OSHA does not expect the standard to significantly affect the viability of continuing operations in any industry or to result in any plant closures. However, to the extent that compliance costs contribute marginally to increased production costs, prospects for economic expansion and employment growth in industries with cadmium exposure may be diminished.

Basically, the regulation tends to trade some of the societal benefits of producing and using products containing cadmium for greater protection among exposed employees. Compliance with

the standard ultimately causes production resources to be shifted from the regulated industries and from other sectors of the economy to compliance-related activities. Although the overall effect on the economy will probably be undetectable, a very slight increase in prices may result from the improvement in the protection of the health of employees exposed to cadmium.

B. Discussion of Technological and Economic Feasibility Determinations

Introduction

The Occupational Safety and Health (OSH) Act of 1970 requires OSHA to promulgate standards protecting the health of employees and requires that in the development of standards, one of the "considerations shall be * * * the feasibility of the standards" [Pub. L. 91-596 sec. 6. (b) (5)]. The courts have required that OSHA must bear "the initial burden of proving the general feasibility of the standard for the industry as a whole at the rulemaking stage" [1, p. 1270].

Through the rulemaking process OSHA has compiled a comprehensive record of the feasibility of controlling employee exposures to cadmium. OSHA published a proposed rule with a preliminary analysis in February, 1990 and solicited data and comments from the public. The record remained open for over eight months, and many comments were submitted by interested parties. At the public hearings each witness was available for cross-examination. Before the record closed, participants were given the opportunity to respond to all new information submitted. The resultant record provides the best available evidence for determining the feasibility of the new cadmium standard.

Legal Consideration in Determining Technological Feasibility

OSHA is obligated by the OSH Act to promulgate standards that "to the extent feasible" best protect workers. OSHA does not believe that it can satisfy this obligation by using a lowest-common-denominator approach, i.e. by protecting all workers only to the extent that the most severe feasibility constraint on protecting any worker would allow. On the contrary, OSHA believes that if a minority of workers cannot be as effectively protected as the majority, that fact is not an adequate reason to forego protecting the majority to the extent feasible.

Court decisions have supported this understanding of technological feasibility. In a decision describing the preliminary test of general feasibility that an OSHA standard must pass in a pre-enforcement review, one court summed up OSHA's burden of proof as follows: "* * * within the limits of the best available evidence, and subject to the court's search for substantial evidence, OSHA must prove a reasonable possibility that the typical firm will be able to develop and install engineering and work practice controls that can meet the PEL in most of its operations. * * * Such a standard of review for feasibility, of course, in no way ensures that all companies at all times and in all jobs can meet OSHA's demands." [1, p. 1272].

In adopting this understanding of feasibility for purposes of analysis, a related question arises. Namely, how does random variability in exposure levels affect an assessment that a particular level is technologically feasible?

OSHA recognizes that some random fluctuation of exposure levels around the average does exist. As a result, employers will generally need to control exposure levels to an average somewhat below the limit to ensure that most of the fluctuations will not exceed the limit. Further, some of the variation may be the result of identifiable and controllable causes, such as inadequate or poorly maintained engineering controls, improper work practices, or lack of oversight by qualified personnel. Correcting deficiencies in controls should reduce existing exposure levels and substantially reduce variability.

For operations where the PEL cannot be achieved with engineering controls and work practices, the employer must nevertheless implement all feasible engineering controls to reduce exposures in addition to using respiratory protection. The requirement to implement all feasible engineering controls generally applies to the existing building, equipment, and manufacturing process (although OSHA has the authority to set standards that are "technology forcing" [1, p. 1264]). For purposes of complying with this requirement, it is usually sufficient to demonstrate that every reasonable effort has been made to reduce exposures given the limitations of the plant configuration and the nature of the process.

Public Comments Regarding Feasibility Determinations

Several comments responding to the proposed standard [55 FR 4052] criticized the methodology and conclusions of the preliminary analysis concerning technological feasibility and costs of compliance. The final analysis addresses these concerns, where appropriate, by modifying analytical approaches, revising estimates, and using additional information and data submitted to develop an accurate characterization of impacts. The conclusions in this final analysis reflect these changes and are based on the best available evidence as provided by the record.

For example, OSHA reviewed the record to ensure that the full range of job categories exposed to cadmium was identified for each industry. All potentially affected industries were studied and the number of exposed employees was determined. The full spectrum of cadmium exposure sources and the corresponding prospects for additional engineering controls were assessed for each job category. The expected effectiveness of controls and the anticipated reductions in exposures were re-examined in the light of the comments and testimony submitted. Potential biases associated with the exposure data were evaluated, concerns raised in regard to statistical applications were resolved, and additional exposure data submitted to the record were incorporated into the analysis.

Many of the apparent differences among the estimates and conclusions presented in the record can be explained by differences in the perceptions of the requirement to install controls to the extent feasible.

Some commenters assumed that a feasible PEL is one that would virtually never be exceeded even by atypical monitoring results. For these commenters, the corresponding estimates of the lowest feasible PEL were often 2.5 times mean exposures, and estimates of compliance costs reflected a reduction in mean exposures to less than 40 percent of the PEL. Comments made on the basis of these assumptions tended to highlight the feasibility problems and cost of any lower exposure limit.

Process by Industry Feasibility Determinations

In addressing the legal requirements for OSHA technological feasibility analysis and the concerns expressed by affected parties during public hearings on the proposed rule, OSHA has adopted an occupation/process by industry feasibility analysis in this RIA. The approach separately analyzes worker exposure levels by occupation/process within industry segments affected by the rule. The approach was designed to extract the maximum utility from the existing data and to minimize the influence of data source differences

and inconsistencies. The occupation/process analysis became the analytical tool for identifying appropriate SECAL levels within affected industries.

As a general rule, OSHA determines whether a permissible exposure limit is technologically and economically feasible for an industry by determining whether it can be achieved in most operations most of the time with engineering and work practice controls. This approach is sensible and useful for several reasons: it permits industrial commonalities to dominate over exceptions in a constructive way; it reflects the fact that air contaminants tend to drift throughout the plant and that workers often move from one part of the plant to another during or between work assignments; and it produces a regulatory standard that is specific and accurate on the one hand, and workable from an enforcement perspective, on the other.

Although the "most operations most of the time" test is the best general rule for determining the feasibility of an engineering and work practice control limit for an industry, an exception to that rule is appropriate for six industrial sectors engaged in cadmium production operations. In nickel-cadmium battery production, zinc/cadmium refining, pigments, stabilizers, lead smelting/refining, and cadmium plating, exposure data tended to fall into distinct high and low exposure clusters, especially from process to process within industries. A unitary "most operations most of the time test" would ignore this division and either impose on the low cluster a control limit that would be needlessly high or impose upon the high cluster a control limit that would be unrealistically low.

OSHA used statistical analysis of exposure data to distinguish high and low exposure processes and represented the high and low exposure groups as high and low exposure distributions. Then OSHA used the record evidence to estimate the amount of exposure reduction that would occur from implementing controls for each distribution. OSHA applied that reduction to its respective distribution and determined the separate engineering (and work practice) control air limit (SECAL) for the processes from these distributions. This methodology allows developing different control standards where exposures in the process are substantially different and produces the lowest feasible SECAL for distinct occupation/process clusters.

Moreover, the process approach adopted here does not preclude consideration of individual plant characteristics when such characteristics can be identified. For example, in the cadmium stabilizer subsector, one plant is known to have successfully reduced exposure levels following a technology improvement program. This empirical data reinforced confidence that engineering controls could reduce exposure levels in other plants. Conversely, in lead smelting, data submitted to the record indicated that one plant has exposure levels considerably above three other plants in this subsector. Only this plant would appear to benefit from additional engineering controls to reduce exposure levels. This consideration was explicitly factored into the engineering control reduction level projected for this industry group. Finally, when inter-plant technology controls and exposure levels can not be distinguished, a cross-plant process analysis is the most neutral approach to characterizing industry exposures and technology control problems and solutions.

In technological and economic feasibility analysis attention generally concentrates on the more problematic process exposures. From an engineering design control perspective, the presumption is that high exposure processes will be more difficult and costly to control. Most engineering control remedies for high exposure processes will simultaneously lower within plant exposures for all occupations. Attention justifiably focuses on the feasibility of existing technology to control high exposure processes. In evaluating control strategies in this approach, exposure reduction factors were applied to the high and low exposure groups based on the evidence in the record addressing the ability to control exposures in each type of plant.

In designing the occupation/process approach to SECAL selection, the effort was made to take into account the many concerns expressed by industry representatives and others, that any engineering control level selected, should be capable of being met most of the time. To achieve this, all occupation/process data from all available sources were entered into a computer for analysis. Usually these data were a mixture of exposure ranges, by occupation/process, often with a median or geometric mean identified. Based on these data, a distribution of exposures was projected through the use of statistical modelling.

Occupation/process data were then depicted using a "box and whisker" diagram. The two dimensional "box" reflects the range within which 50 percent of exposure readings are found. The vertical band within a box represents the median value for the entire distribution; the "whisker" element shows the extent of exposure above and below the 50 percent block which captures the median.

Using this presentation of exposure data facilitated the identification of high and low occupational exposure by process. The Agency segregated the occupation/process data into sets of high and low exposures for six industries for whom SECALs would be required. In the text below, the nickel-cadmium battery industry is used to illustrate the verification process used to prove that certain occupation/process groups were statistically different based on exposure data.

Six plants producing nickel-cadmium batteries constitute an industry. Each of the six plants produces more than one type of battery (sealed cell, vented, aerospace, commercial, etc.) involving different processes. Each plant can achieve different lowest feasible levels. To assess the lowest feasible level, high and low exposed occupation by process groups were identified and separately analyzed.

Ten sources of data on exposures in these six plants were available. All data sources are considered legitimate and no preference is expressed among them. Differences in levels may be explained by different levels of engineering controls, different points in time in the plant, different production levels, different work practices, different process modifications, or upset conditions.

In the nickel-cadmium battery industry, the following occupations/processes were identified as having high exposures: plate preparation operations and plate making operations. All other occupations and processes for which the Agency had information were identified as having low exposures. Figure VIII-B1 shows the segregated data.

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FIGURE VIII-B1

NICKEL-CADMIUM BATTERIES

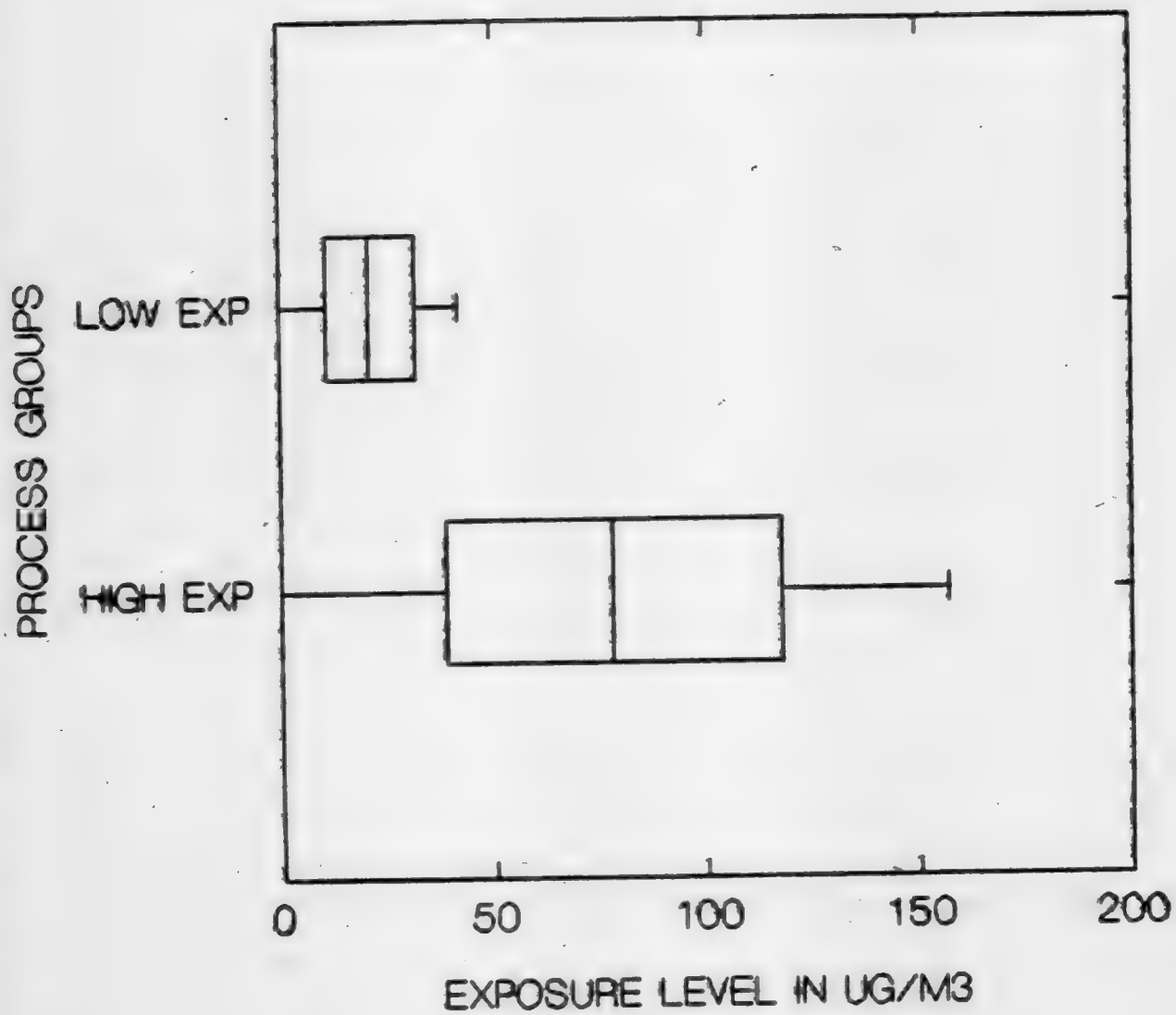

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In the nickel-cadmium battery sector the exposure data were as follows:

	High group	Low group
Number of observations	26 ($=N_H$)	48 ($=N_L$)
Mean value	72.9 ($=X_H$)	14.4 ($=X_L$)
Standard deviation	62.7 ($=S_H$)	23.5 ($=S_L$)

To verify that the two groups within this industry were distinct, the Agency tested whether the means of the two samples were the same.

Formally, the proposed null hypothesis was that the means were equal, or equivalently, that the difference in means was zero. In general terms, if the difference in means of the two samples is large compared to its distribution, which is centered around zero, then it is unlikely that the samples are drawn from the same population. Under the assumption that the difference in means was distributed normally (central limit theorem) the appropriate test statistic is:

(mean of high exposures − mean of low exposures) − true mean ÷ standard error of the difference in means

The standard deviation of the difference in means is closely approximated by the square root of the sum of the squared standard errors of the means and the standard error is given by:

$$S.E._{HL} = \text{Square root}(S_H^2/N_H + S_L^2/N_L)$$

Then, the test statistic is a standard normal random variable equal to:

$$z = [(X_H - X_L) - 0]/S.E._{H\text{-}L}$$

For the standard normal distribution, there is less than a 5 percent probability that the (absolute) value of a test statistic would exceed 2.0 if its true mean was zero. The probability of the test statistic being 4.6 or larger (4.6 was the actual value for z in the formula above) under the assumption that the means are equal is less than 0.001. Therefore the null hypothesis that the means of the exposure data are equal is rejected and the conclusion that they are drawn from distinct distributions is accepted.

As the exposure samples are not large, we also tested their difference with the more conservative t statistic with $(N_H + N_L - 2) = 72$ degrees of freedom.

The standard error is estimated as:

$$S.E._{H\text{-}L}{}^t = \text{Square root}\{[(N_H-1)S_H^2 + (N_L-1)S_L^2] \times (1/N_L + 1/N_H)/(N_H+N_L-2)\}$$

For the nickel-cadmium data the t statistic is 5.8. In this case, there is less than a five percent probability that the t statistic will be larger than 2.0 if the means are actually equal. Under the assumption that the means are equal, the probability that the t statistic should be as large as 5.8 is less than 0.001. We again reject the null hypothesis that the means are equal.

Once a statistical difference between high and low exposure groups was verified, the data were analyzed separately. In developing graphs of existing exposures for each occupation/process type, medians and means were used from each of the exposure sources.

The resulting distributions for nickel-cadmium battery producers are shown in Figures VIII–B2 and VIII–B3, with the high group represented by occupations directly involved in plate preparation and plate making operations and the low group by all other industry occupations, including impregnation, spiraling, cell assembly, nickel plating, sorting and stacking processes. (In these Figures and those that follow all data were "fitted" to a straight line using ordinary least squares methodology.)

The final step in identifying appropriate SECAL levels for the two groups was done through a modelling process. The current exposure pattern for each group was reduced based upon alternative engineering control efficiency levels of 80, 60, 40 and 20 percent. The higher the efficiency level, the lower the projected exposure level. Figures VIII–B4 and VIII–B5 show the reduction effect and shift in the distribution of exposures for the high and low groups in nickel-cadmium battery production.

Finally, a selection had to be made among the different efficiency reduction factors based upon evidence and testimony in the record and economic feasibility considerations. Where evidence in the record clearly indicated that an engineering control strategy would reduce exposure levels, the reduction factor range most closely approximating the new projected exposure levels was selected.

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FIGURE VIII-B2

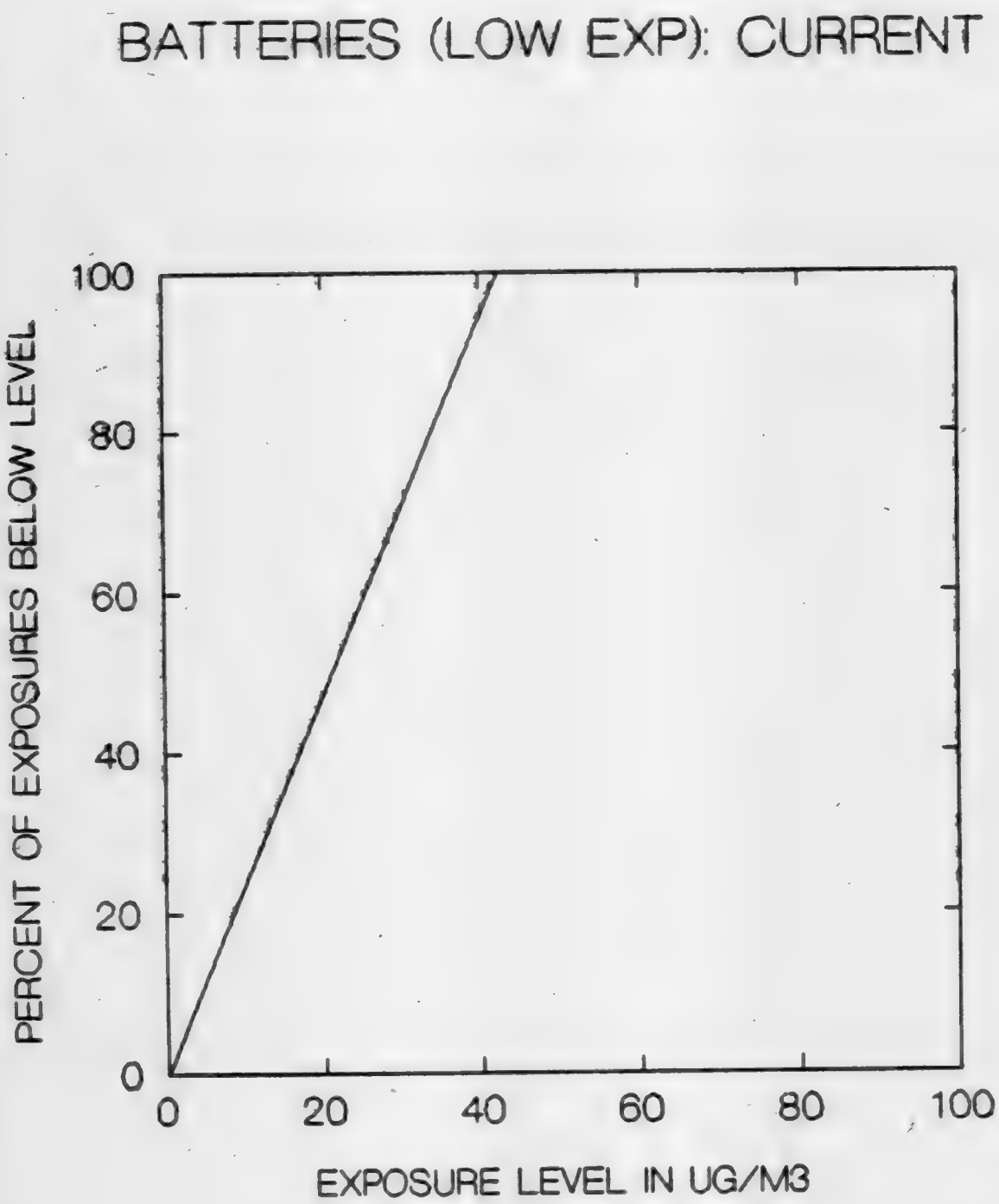

FIGURE VIII-B3

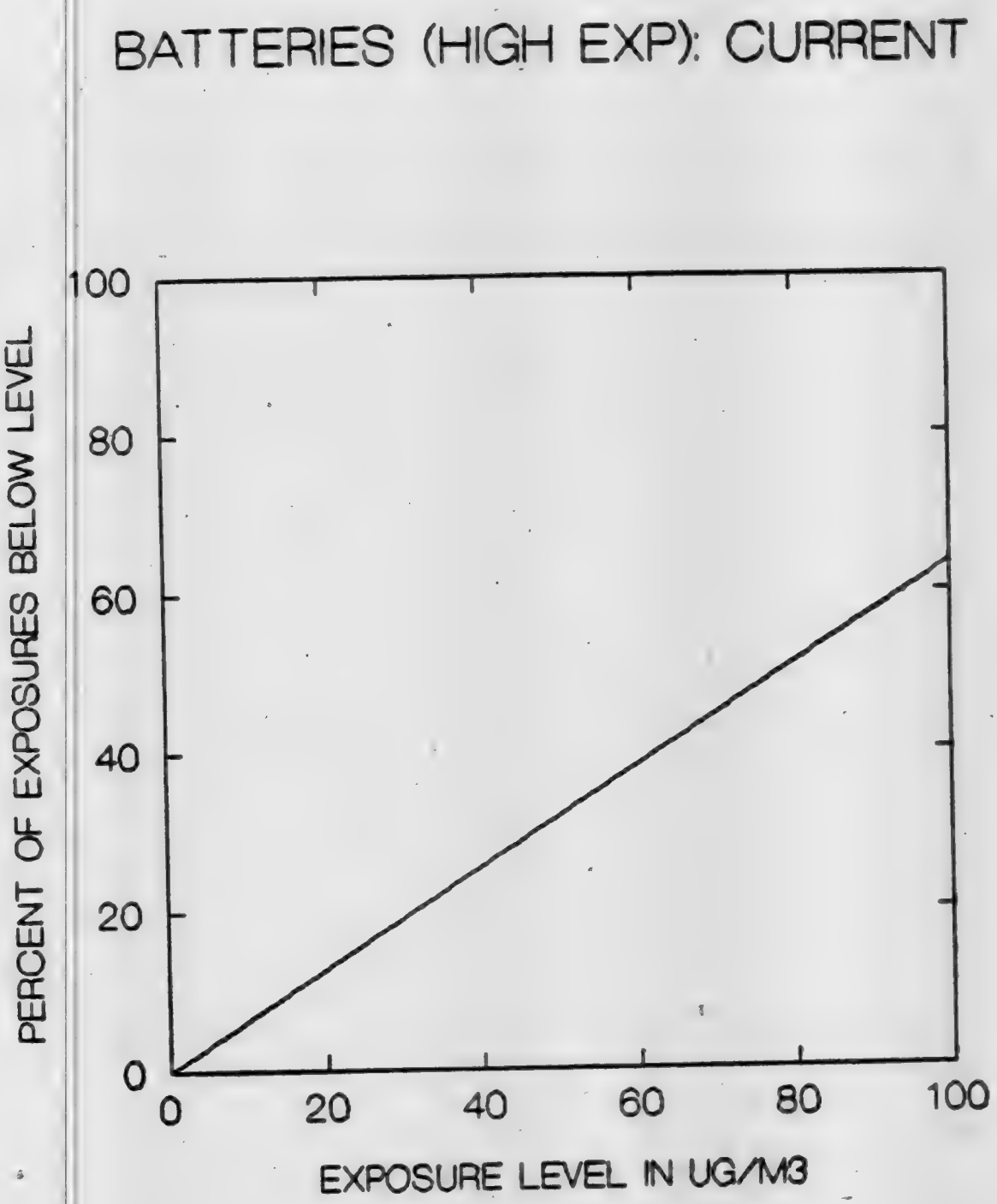

FIGURE VIII-B4

BATTERIES (HIGH EXP.): CONTROLLED 80%-20%

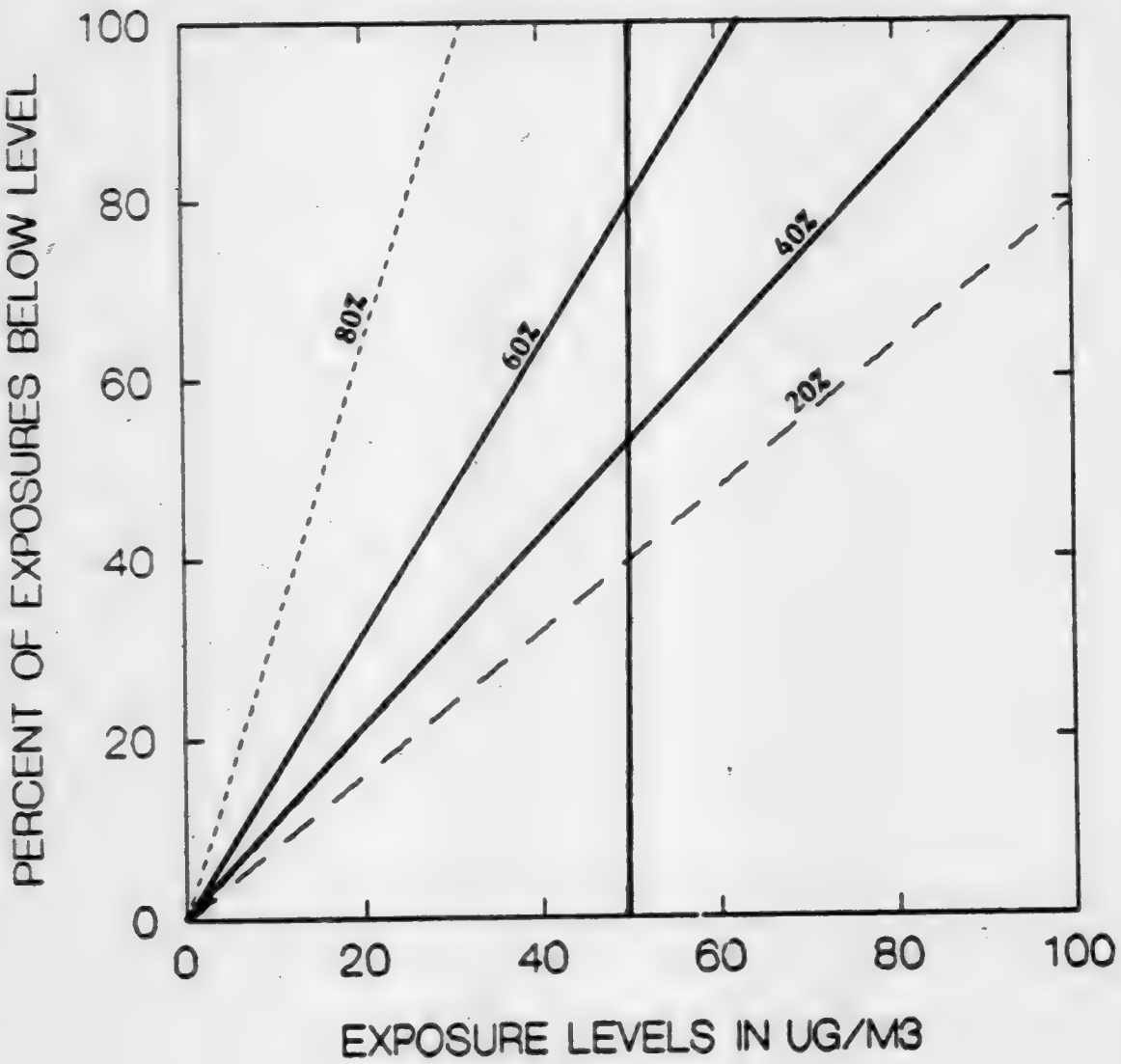

FIGURE VIII-B5

BATTERIES (LOW EXP.): CONTROLLED 80%-20%

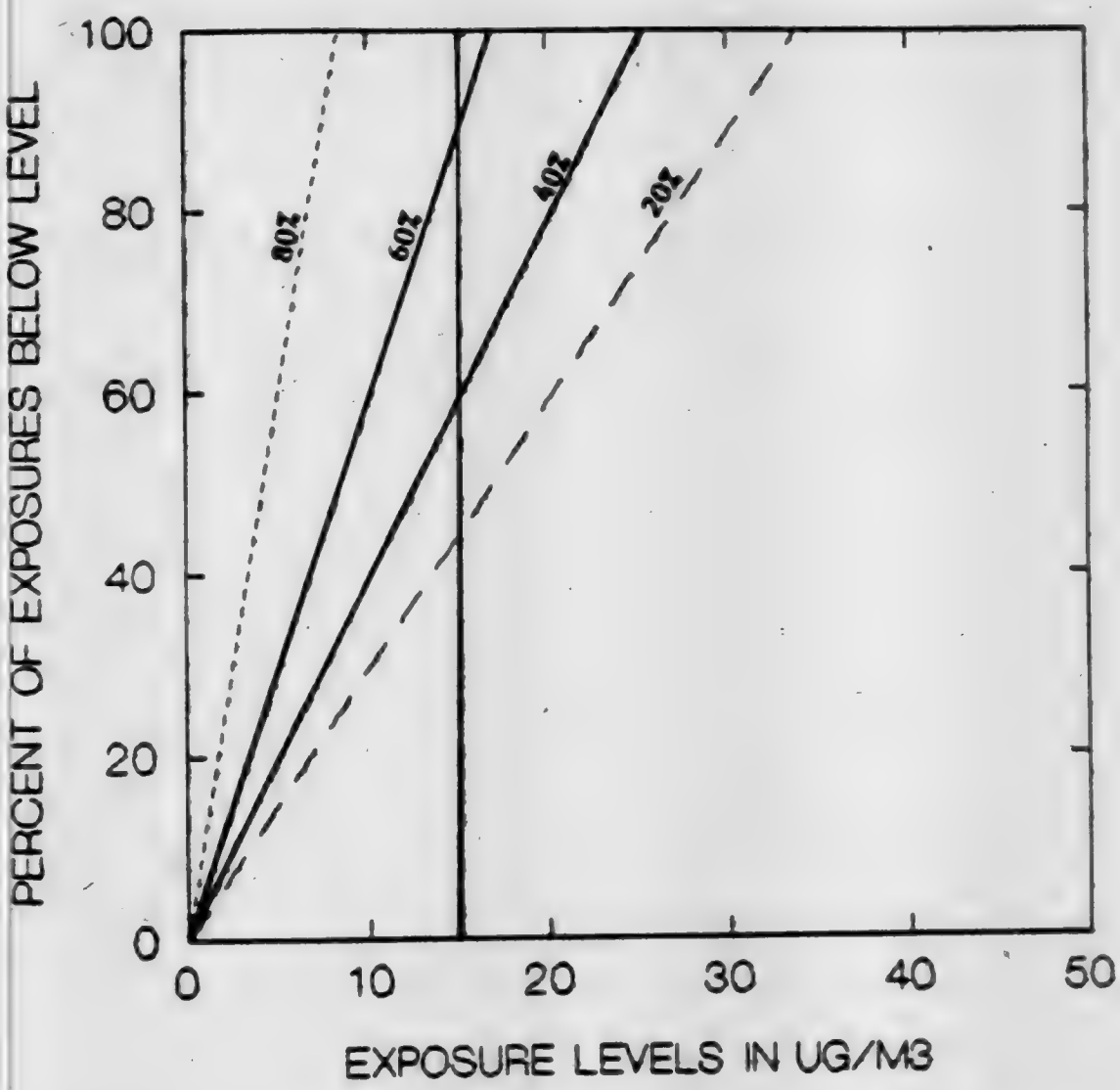

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The only basis for revising this choice was if the control strategy was so costly as to make the option economically infeasible for a given industry. Industry cost and profit ratios were relied on in making a determination of economic feasibility. The higher the ratio, the more important it became. If costs represented 20 percent or more of profits, the shift to a less costly engineering control strategy and lower reduction factor (60 percent instead of 80, for example) was considered. For battery producers this reduction was made. The regulatory cost to profit ratio exceeded 20 percent and the less costly 40 - 60 percent range of reduction level was used.

Following selection of the reduction factor range, the appropriate SECAL for an exposure group was made at the level achievable for most (60 - 80 percent) of the exposure observations. For workers exposed to cadmium in battery production a SECAL of 50 $\mu g/m^3$ for plate preparation and platemaking processes was identified; for all other occupations and processes a SECAL of 15 $\mu g/m3$ was identified.

The methodology outlined above was applied to each industry in which additional analysis for determining the feasibility of achieving the PEL of 5 $\mu g/m3$ with engineering controls appeared to be useful. The sector-by-sector analysis found bifurcated exposures by process type across all industries and verified the appropriateness of different SECALs for affected industries. Table VIII-B1 shows the SECAL levels in high exposure industries and Table VIII-B2 provides a distrib'ution of employees by SECAL or PEL level in each high exposure industry sector.

Unit Cost Estimates and Economic Feasibility

Unit costs. OSHA developed unit cost estimates based on the engineering controls that would be required for each operation to reduce ambient exposure levels of cadmium. Some cost estimates submitted to the record included controls or measures of questionable effectiveness and very high cost. As discussed in more detail for specific industries, the data and evidence in the record provided consistent estimates of the approximate cost of additional controls once differences in underlying assumptions were taken into account.

Local exhaust ventilation systems are the predominant method of engineering control to reduce occupational exposures to cadmium, and they can be adapted to exposure sources in many different industries. JACA [3] provided estimates of the cost of local exhaust ventilation systems that ranged from $51,000 to $110,000 (in current dollars). These estimates reflect the total costs, including costs for one or more hoods, duct work, a baghouse, a stack, and installation. Annual operating and maintenance costs were estimated to be 10 percent of the capital cost. Based on these estimates, OSHA concluded that the average unit cost for a local exhaust ventilation system would be $80,000 in capital costs and $8,000 in annual costs.

Other evidence submitted to the record regarding the unit costs of local exhaust ventilation systems was generally consistent with the JACA estimates.

TABLE VIII-B1.—SECALS FOR PROCESSES IN SELECTED INDUSTRIES

Industry sector	Plants	Number of workers	Processes	SECAL or PEL ($\mu g/m^3$)
Nickel cadmium battery	6	375	Plate making, plate preparation	50
		1,125	All other processes	15
Zinc/cadmium refining	5	202	Cadmium refining, casting, melting, oxide production, sinter plant.	50
		1,148	All other processes	5
Pigment manufacture	4	60	Calcining, crushing, milling, blending operations	50
		40	All other processes	15
Stabilizers	5	50	Cadmium oxide charging, crushing, drying, blending operations.	50
		150	All other processes	5
Lead smelting	4	60	Sinter plant, blast furnace, baghouse, yard area	50
		340	All other processes	5
Plating	400	120	Mechanical plating	15
		1,080	All other processes	5

TABLE VIII-B2.—DISTRIBUTION OF EXPOSED EMPLOYEES IN HIGH EXPOSURE INDUSTRIES

PEL/SECAL ($\mu g/m^3$)	Batteries		Zinc/Cadmium		Pigments		Stabilizers		Lead		Plating		Totals
	High	Low	High	Low	High	Low	High	Low	High	Low	High	Low	
PEL:													
5 $\mu g/m^3$				1,148				150		340		1,080	2,718
SECAL:													
50 $\mu g/m^3$	375		202		60		50		60				747
15 $\mu g/m^3$		1,125				40					120		1,285
													2,032
Total													4,750

Of the additional information submitted, PACE [4] provided the most comprehensive description of controls and unit costs. For example, the installation of a local exhaust ventilation system with a hood, ducts, and a Venturi scrubber was estimated to cost $57,000 in a cadmium refining operation. In another cadmium refining operation, a collection hood and exhaust system with sloped, flushed ducts was estimated to cost $24,000. PACE also identified additions or improvements in ventilation for at least five operations in the production of cadmium stabilizers

with a total cost of less than $150,000. In conclusion, OSHA is confident that a unit of cost $80,000 provides a fair representation of the cost of implementing a substantial local exhaust ventilation system.

In addition to local exhaust ventilation systems, PACE recommended the use of other engineering controls for operations in several industries. OSHA agrees that many of these controls may provide significant reductions in exposures and included costs for these controls in the final analysis. For example, in several industries PACE recommended the use of clean air islands and estimated the cost as $3 per cfm (cubic feet per minute). The recommended systems ranged from 2,000 to 9,000 cfm and cover areas from 4 feet by 5 feet to 6 feet by 15 feet. OSHA concluded that the average unit cost for this type of control would be about $18,000.

Other types of controls referred to by PACE and other commenters involved a variety of relatively inexpensive modifications but were often applicable to specific operations or circumstances. Where the evidence suggested that such control options could be implemented effectively, costs for such controls were included in the final analysis. Since OSHA cannot realistically determine every control possibility in every operation in every plant, a unit cost of $9,000 for such controls was estimated based on the cost data submitted. Total costs per plant for such controls were approximated by estimating the appropriate number of units of these controls applicable in each type of affected establishment.

For example, estimates submitted by PACE included: partition an area from rest of building, $9,000; panel ceiling, $10,000–$15,000; complex enclosure of briquette press, $5,000; glove box hood with mechanical assist, $5,000; power conveyor for pouring, $11,000; downflow grate at front of furnace, $3,000; pass-through airlock glove box, $5,000; enclose drum fill, $1,700; enclose feed table with 10′ by 3′ backdraft hood, $1,600; GEMCO valve, flex boot, and flange, $2,600; modify dump enclosure for 2 tanks, $3,000; blending enclosure, $4,000; and special protection of electrical equipment, $15,000.

Unit costs for housekeeping consisted of capital costs for industrial vacuum cleaning systems and labor costs for using the system regularly. JACA assumed that a HEPA-filtered industrial vacuum cleaner could be purchased for $1,500. PACE's estimated cost for a large portable HEPA-filtered vacuum was $10,000, and the estimated cost for a central vacuum system with piping for 20,000 square feet of floor/platform area was $31,200. OSHA believes that the cost of establishing an adequate housekeeping program can be approximated by using an average unit cost of $15,000 per system; furthermore, the analysis recognizes that more than one such system may be needed in some plants. In addition to costs for power and maintenance, OSHA estimated that sufficient utilization of such a system may require annual labor costs of $7,000 (representing about 500 hours per year).

Unit costs used to estimate compliance costs for other requirements of the cadmium standard were based on information provided to the record. The annual cost of protecting an employee with a HEPA-filtered respirator, including fit testing, was about $300, according to testimony from an industry representative based on experience with respirator programs [5]. The laboratory cost of analyzing the results of exposure monitoring is an estimated $40 per sample, and the cost of collecting the samples would average about $200 per sample, according to estimates provided by an industrial hygiene firm [3]. Costs for hygiene facilities, training, and recordkeeping were evaluated for each industry based on estimates of current compliance and the extent of additional efforts needed. The unit cost for providing a daily shower during the work shift for employees exposed above the PEL was estimated at $900 annually, based on fifteen minutes per day for 240 days per year at $15 an hour.

Costs of compliance with the medical surveillance provisions were calculated based on unit cost estimates for specific elements. The analysis of samples of urine and blood for cadmium was estimated to cost $60 per sample, based on estimates from industrial medical clinics [3]. According to a public health research group, the unit cost for the analysis of a urine sample for β_2-microglobulin was $80 per sample [6]. The cost of an annual physical, including the wages paid to the employee, was estimated to be $250. This figure is based on research conducted by JACA (adjusted to current dollars), and is consistent with unit costs for comparable medical exams used in other OSHA analyses, reflecting current prices for industrial clinical services. Cost estimates provided by industry reflected unit costs for exams between $300 and $400, but these estimates may include biological monitoring costs and may not reflect the minimum cost necessary for compliance with the standard.

The unit cost associated with the medical removal of an employee was calculated by assuming that on average the employer would incur hiring and training costs of $500 per removed employee. In addition, the wage for the job the removed employee would be transferred to was assumed to average $2 an hour (generally more than 10 percent) less than the wage for the former job, and removed employees would generally have full-time (2,000 hours per year) positions. As a result, medical removal of an employee for 18 months would cost about $6,000 for the wage differential plus $500 for hiring and training costs; removal of an employee for 9 months would cost a total of about $3,500 (costs for additional medical testing are evaluated separately). OSHA concludes that the average unit cost per medical removal would be about $5,000 (on the assumption that half medically removed workers will return to work after nine months and half will receive benefits for 18 months).

Economic feasibility. Once the unit costs were assigned to engineering controls, work practice changes, new administrative requirements, and personal protective equipment, industry costs to comply with the rule provisions were calculated. The total incremental cost to comply with the rule was separately calculated for each affected industry segment. Industry differences in cost impacts reflected current baseline practices and levels of worker exposure, and the number of establishments in a particular sector using cadmium.

Industry cost estimates (the amount of capital needed to comply with the rule) were compared with revenues and profit margins for recent years in order to determine the economic impact and feasibility of the regulation. No industry sector analyzed had a cost to profit ratio in excess of 0.5. For those sectors where costs represented between 20–50 percent of profit, this fact was considered when selecting engineering control strategies to reduce existing cadmium exposure levels.

Notes

1. USWA v. Marshall, 647 F.2d.

2. OSHA Instruction CPL 2.45B CH–1, Office of General Industry Compliance Assistance, December 31, 1990.

3. Exhibit 13, "Economic Impact Analysis of the Proposed Revision to the Cadmium Standard," Final Report, JACA Corporation, March 15, 1988.

4. Exhibit 19–43, Attachment L, "Feasibility and Cost Study of Engineering Controls for Cadmium Exposure Standard," PACE Incorporated, April 30, 1990.

5. Exhibit 19–30, "Comments on OSHA Proposed Cadmium Regulation," Big River Zinc Corporation, May 10, 1990.

6. Exhibit 123, "Comments of Public Citizen Health Research Group and the International Chemical Workers Union on OSHA's Proposed Standard Governing Occupational Exposure to Cadmium," Public Citizen, October 17, 1990.

C. Exposures, Costs, and Feasibility Analyses by Industry

Nickel-Cadmium Battery Production

Industry overview. The nickel-cadmium battery industry in the United States consists of six major manufacturers operating six facilities in different states across the country. The largest establishment is located in Florida and employs over 1,700 employees. The smallest facility has 16 employees and is located in Wisconsin. The remaining facilities have between 150 and 450 employees. [1, Slide 2]. Total employment for the industry is almost 3,000, of whom about half (1,500) are involved in production and maintenance and are potentially exposed to cadmium. [1, Slide 3].

There are many different types of nickel-cadmium batteries produced and designs are often customized for specific industrial, aerospace, military, household, commercial, or specialty applications. The National Electrical Manufacturers Association (NEMA) classified battery production in the United States into two categories: industrial-military-aerospace and household-commercial-specialty. NEMA estimated that approximately two thirds of the employees exposed to cadmium in the battery industry were involved in the production of household, commercial, and specialty batteries. [1, Slide 3].

Production processes. The production of nickel-cadmium batteries can be broken down into four basic steps. Each step may involve several operations that can vary depending on the type of battery and scale of production, but these steps encompass the manufacturing process utilized for battery production regardless of the type of battery or the particular facility. NEMA preferred to characterize the manufacturing process with a generic description of these four steps; detailed descriptions were withheld "because of their highly confidential and proprietary nature." [2, p. 3].

Step 1 is called plate making in the production of large industrial, aerospace, and military nickel-cadmium batteries; this step is also referred to as sintered plate manufacture in the production of small household and commercial nickel-cadmium batteries. In both cases the process begins with the same material, nickel-plated perforated steel, and produces a porous nickel plate. [2, p. 3].

A paste of finely divided nickel metal is pressed into the open grid of perforated and nickel-plated sheet steel. This is followed by sintering or drying in an oven. The dried plate can then be rolled up into a spiral or be cut, weighed, and coined for particular specifications prior to impregnation.

Step 2 involves impregnation. The porous nickel plates are immersed in a cadmium nitrate solution, rinsed, dried, and then immersed in sodium hydroxide. After rerinsing, the plates are dried and inspected. Continuous spiral wound plates are dipped as spools on large circular holding racks and then despiraled.

Sometimes an alternate process is used for this step. A paste of cadmium oxide with fillers and binders is prepared and then continuously pressed into a moving perforated sheet which is subsequently dried.

Step 3 is plate preparation and involves cutting, inspecting, and sorting the plates. This step ensures that the plates are of proper size and quality. In addition, the plates are stacked and readied for assembly.

Step 4 is the assembly of the battery or cell. For large industrial batteries, alternate plates containing cadmium hydroxide and nickel hydroxide are welded to terminals and placed in the battery casing. The casing is filled with an electrolyte solution and sealed.

The assembly of small household cells involves winding the electrodes into a tight cylinder together with an inert separation material. The roll is fitted into a nickel-plated metal can which is sealed after the electrolyte is added. Most of these steps are performed by automatic machines. [2, p. 4].

Employee exposures. The preliminary analysis produced by OSHA for the proposed rule relied on an exposure profile developed by JACA Corporation. [3, Table 3–8]. JACA relied on two primary sources for exposure monitoring data from nickel-cadmium battery producers. The first source was seven years of sampling results from OSHA's Integrated Management Information System (IMIS) database through August 1986. The second source was a Health Hazard Evaluation (HHE) performed by NIOSH at a battery plant in 1983. JACA also visited a nickel-cadmium battery manufacturing plant to assist in the interpretation and categorization of the data. JACA's exposure profile is presented in Table VIII–C1. Geometric mean exposures in six of the seven job categories, representing over 75 percent of the exposed employees, are estimated to be less than 17 $\mu g/m^3$.

PACE Incorporated developed an exposure profile for nickel-cadmium battery production at the request of the Cadmium Council. [4, Table A4–1]. This information is summarized in Table VIII–C2. The PACE estimates were calculated from data supplied from one plant. In nine of the eighteen job categories listed, the mean exposures are less than 22 $\mu g/m^3$; in four of the seven process areas listed, the mean exposures are generally less than 25 $\mu g/m^3$. PACE did not indicate what proportion of the workforce was represented by the job categories or process areas.

Another exposure profile was developed by Multinational Business Services, Inc. (MBS) as part of their report for NEMA. [5, Exhibit 1]. Their exposure profile, presented as a frequency distribution, was based on "representative industry data correlated by MBS" and is shown in Table VIII–C3. MBS concluded that 48 percent of all worker exposures were at or below 20 $\mu g/m^3$. Based on additional information provided by NEMA [2, Table II], for three process areas representing 80 percent of the exposed workforce exposures were at or below 20 $\mu g/m^3$ for 60 percent of employee exposures.

NEMA supplied occupational exposure data in its original submission by process step for different types of batteries. The results were compiled by NEMA from data supplied by six battery manufacturers [2, Table III] and are reprinted in Table VIII–C4.

TABLE VIII-C1.—PROFILE OF OCCUPATIONAL EXPOSURES TO CADMIUM IN THE NICKEL-CADMIUM BATTERY INDUSTRY BASED ON JACA CORPORATION

Job category	Concentration in μg/m³		
	Geometric mean	Median	Range
Materials handler	0.16	0.05	0.05–14.00
Impregnation operator	16.52	20.00	10.00–22.00
Coating operator	14.19	14.00	12.00–17.00
Plate preparation operator	90.07	83.00	26.00–254.00
Assembler	7.96	9.50	3.00–12.00
Supervisor	1.11	1.05	0.05–7.00
Maintenance	3.47	3.00	0.05–1,560.0

Source: JACA Corporation, Exhibit 13, Table 3–8.

TABLE VIII-C2.—PROFILE OF OCCUPATIONAL EXPOSURES TO CADMIUM IN THE NICKEL-CADMIUM BATTERY INDUSTRY BASED ON PACE INCORPORATED

Job category	Geometric mean exposures (μg/m³)
Impregnation area operator:	
1	4.3
2	1.8
3	10.0
4	14.0
5	130.0
6	28.0
Plate preparation	15.0
Cell assembly operator:	
1	72.0

TABLE VIII-C2.—PROFILE OF OCCUPATIONAL EXPOSURES TO CADMIUM IN THE NICKEL-CADMIUM BATTERY INDUSTRY BASED ON PACE INCORPORATED—Continued

Job category	Geometric mean exposures (μg/m³)
2	46.0
Cell Closing Operator:	
1	12.0
2	21.0
3	13.0
Electrical tester	3.0
Negative plate manufacturing	252.0

TABLE VIII-C2.—PROFILE OF OCCUPATIONAL EXPOSURES TO CADMIUM IN THE NICKEL-CADMIUM BATTERY INDUSTRY BASED ON PACE INCORPORATED—Continued

Job category	Geometric mean exposures (μg/m³)
Negative plate preparation operator:	
1	75.0
2	78.0
3	32.0
4	83.0

Source: PACE Incorporated, Exhibit 19–43, Attachment L, Table A4–1.

TABLE VIII-C3.—PROFILE OF OCCUPATIONAL EXPOSURES TO CADMIUM IN THE NICKEL-CADMIUM BATTERY INDUSTRY BASED ON MBS INCORPORATED

[In percent]

Process	Distribution of exposures (μg/m³)					
	0–5	6–20	21–50	51–100	101–150	Over 150
Platemaking	0.9	0.9	9.8	26.8	25.0	36.6
Impregnation	37.3	40.7	18.6	2.6	0.8	0.0
Plate preparation	2.9	60.9	30.4	5.8	0.0	0.0
Cell assembly	16.5	30.8	24.4	20.8	4.9	0.8

Source: Multinational Business Services, Inc., Exhibit 19–37 B, Exhibit 1.

Unfortunately, NEMA did not submit the individual monitoring results, did not provide mean exposure levels, and did not give any indication of the distribution of exposures. However, the data do indicate that the type of battery produced does not significantly affect the ranges of exposures in most of the process steps.

As part of its post-hearing comments NEMA supplied more detailed exposure data from five facilities. [6, appendices 1–5 and 7, p. 2]. The facilities were identified as companies A through E and the data are summarized in Tables VIII-C5 through VIII-C9, respectively. At company A, average exposure levels for non-manufacturing areas, for the lab, for ambient air in the production buildings, and for three of four production processes were below 15 μg/m³. Company B submitted only a series of ranges of exposures. Some ranges included exposures from 1 μg/m³ to over 1,000 μg/m³; at least one exposure range for most processes was between 1 μg/m³ and 20 μg/m³. Company C submitted exposure data for non-manufacturing areas (all less than 3 μg/m³) and for the platemaking process. Three of the four operations in the platemaking process had mean exposures of less than 25 μg/m³. Data submitted by company D show that eight of ten job categories in production had exposures of 13 μg/m³ or less. Company E submitted data for six production job categories, and four of these had exposures of 13 μg/m³ or less.

TABLE VIII-C4.—PROFILE OF OCCUPATIONAL EXPOSURES TO CADMIUM IN THE NICKEL-CADMIUM BATTERY INDUSTRY BY TYPE OF BATTERY PRODUCED BASED ON NEMA

Process step	Ranges of cadmium concentrations (μg/m³)	
	Industrial-aerospace-military batteries	Household-commercial batteries
Platemaking	4–180	5–190
Impregnation	5–180	5–180
Plate preparation	2–104	12–190
Cell assembly		8–40

Source: NEMA, Exhibit 19–37, Table III.

TABLE VIII-C5.—CADMIUM EXPOSURE DATA FOR NICKEL-CADMIUM BATTERY PRODUCTION AT COMPANY A

Process	Average exposure level (μg/m³)	
	(1)	(2)
Platemaking:		
Press	9.0	
Dry	2.0	
Impregnation	5.3	5.3
Plate preparation:		
Weld	51.6	
Shear	57.0	
Wet scrub	6.1	
Dry scrub		3.5
Assembly:		
Stacking	14.4	
Testing	2.0	
General area, April 16, 1990		31.8
General area, except April 16, 1990		9.3
Non-manufacturing:		
Managers	4.3	3.7
Lab	1.0	
Ambient air:		
Building 1	2.9	
Building 3	12.9	

[1] Source: NEMA, Exhibit 96.
[2] Source: NEMA, Exhibit 124.

TABLE VIII-C6.—CADMIUM EXPOSURE DATA FOR NICKEL-CADMIUM BATTERY PRODUCTION AT COMPANY B

Process	Range of exposure levels (μg/m³)
Platemaking—	
Paste application:	
June, 1990	10–395
April, 1990	1–57
March, 1990	12–282
February, 1990	23–109
January, 1990	15–187
1987–1989	1–1144

TABLE VIII-C6.—CADMIUM EXPOSURE DATA FOR NICKEL-CADMIUM BATTERY PRODUCTION AT COMPANY B—Continued

Process	Range of exposure levels (μg/m³)
Seven selected sampling days	1–19
Paste preparation:	
1987–1990	1–1189
Impregnation, 1989–1990:	
Plating	1–5
Plate cleaning	1–20
Spiraling	1–2
Despiraling	1–74
Plate preparation, 1990:	
Tabbing	7–95
Cutting	1–17
Inspection	1–16
Cell Assembly, 1990:	
Assembly, 9 of 10 sampling days	1–27
Winding, 9 of 11 sampling days	1–36
Components, Formation & Test	5–13
Waste Management, 1989–1990	1–2
Maintenance, 1989–1990	3–35

Source: NEMA, Exhibit 96.

TABLE VIII-C7.—CADMIUM EXPOSURE DATA FOR NICKLE-CADMIUM BATTERY PRODUCTION AT COMPANY C

Process	Exposure levels (μg/m³)	
	Range	Geometric mean
Non-manufacturing:		
Canteen	0.6–2.3	1.2
QC Lab		0.E
West Bay		0.5
Platemaking:		
Pellet making	20–671	97.5
Breakdown	8–83	23.1
Cd-Ni production	20–29	24.1
Powder packaging		10.0

Source: NEMA, Exhibit 96.

TABLE VIII-C8.—CADMIUM EXPOSURE DATA FOR NICKEL-CADMIUM BATTERY PRODUCTION AT COMPANY D

Process	Sample results (T1μg/m³)	
	1988	1989
Platemaking	0.0	0.0
Impregnation:		
I & S operator	5.0	13.0
Plaque brusher		124.0
Plaque roller	30.0	11.0
Basket cleaning		31.0
Plate preparation:		
Sheering	6.0	6.0
Tab welding	4.0	13.0
Sort & repair	9.0	6.0
Cell assembly stacker	10.0	6.0
Salvage operator		2.0
Warehouse/storage		
Material handlers		0.0
Non-manufacturing		0.0

Source: NEMA, Exhibit 96.

TABLE VIII-C9.—CADMIUM EXPOSURE DATA FOR NICKEL-CADMIUM BATTERY PRODUCTION AT COMPANY E

Job title	Sample result (T1μg/m³)
Slitter operator	74
PEP operator	52
Electrode recovery operator	8
Sub C line operator	10
AA line operator	1
Packet inspector	13

Source: NEMA, Exhibit 96.

TABLE VIII-C10.—CADMIUM EXPOSURE DATA FOR NICKEL-CADMIUM BATTERY PRODUCTION FROM NIOSH INVESTIGATION 88-199

Process	Cadmium concentrations (μg/m³)		
	Mean	Median	Range
Platemaking:			
Nickel plating	6	1	1–31
Nickel slurry	3	1	1–14
Sintering	6	3	1–41
Sizing	8	6	1–19
Spiraling	5	6	3–9
Impregnation	9	7	1–42
Despiraling	56	58	10–144
Cleaning	31	15	1–130
Maintenance	15	13	1–53
Pressed plate:			
Paste preparation	367	185	18–1914
Tab welding	35	35	31–44
Paste machine	113	86	18–716
Tab staking	74	72	19–180
Sifting	31	25	13–47
Setting up	111	114	93–124
Maintenance	61	39	2–373
Materials handling	46	41	8–113
Dipping paste	195	195	
Rovers	66	56	16–123
Leaders	67	53	14–196

TABLE VIII-C10.—CADMIUM EXPOSURE DATA FOR NICKEL-CADMIUM BATTERY PRODUCTION FROM NIOSH INVESTIGATION 88-199—Continued

Process	Cadmium concentrations (μg/m³)		
	Mean	Median	Range
Rework/reclaim	95	89	33-198
Plate preparation:			
Slitting and blanking	20	13	1-129
Sorting and stacking	21	12	6-88
Materials handling	14	9	7-27
Rework/reclaim	16	8	4-43
Cell assembly:			
Winding	21	12	4-70
Closing	5	2	1-21

Source: NIOSH, Exhibit 12B, Attachment 3.

Table VIII-C10 presents data submitted by NIOSH from an analysis of exposures at a nickel-cadmium battery plant evaluated in 1988. [8, Attachment 3, Tables 1-4]. These data were based on over 1,000 monitoring samples taken at the plant in that year. NIOSH expressed difficulties in compiling the company's sampling results "due to lack of consistent workstation terminology." In three of the four production processes, the mean exposures for almost all job categories were less than 25 μg/m³.

Existing and Feasible Additional Controls. Nickel-cadmium battery manufacturers have made an effort to control occupational exposure to cadmium. Local exhaust ventilation, automation, enclosure, and housekeeping practices are presently utilized to varying degrees. Respirator use for employees in high exposure areas is standard practice. Further reductions in exposure levels are possible through increased utilization of current control methods and through the implementation of additional controls.

JACA Corporation's description of baseline controls included local exhaust ventilation hoods for three of five production job categories (excluding supervisors and maintenance workers). Additional or improved ventilation systems were recommended for the materials handler, the impregnation operator, the coating operator, and the plate preparation operator. JACA estimated that the increased ventilation would reduce exposure levels by about 85 percent in each of these job categories. [3, Table 4-3].

JACA also recommended other controls to limit airborne concentrations of cadmium. These included increased housekeeping, such as vacuuming; additional hygiene practices, such as showering and using separate work clothing; and improved information and training programs to encourage work practices that minimize exposure levels.

PACE outlined recommendations for additional controls at each process step in its report. [4, section 4]. Additional controls during impregnation would include changes in material handling methods, improved and increased local exhaust ventilation, isolation of the process, and increased frequency of wash down of the equipment and the area. At plate preparation operations for sintered plates, feasible engineering controls would include "application of local exhaust ventilation at locations that are not significant sources under the current standard, improved ventilation at the currently significant sources, partial enclosure of some phases of the operation, * * * and significantly increased utilization of an expanded central vacuum cleaning system." [4, p. 4-9].

For operations involving paste mixing and plate preparation for pressed plates, PACE assumed that each would have to be relocated to a new building, specially constructed with a state-of-the-art inside-out design. Paste mixing involves large quantities of dry cadmium-bearing powder, and PACE conceded that even in the new building, "the exposures will be [close] to the current PEL." [4, p. 4-10]. PACE also listed modified material handling methods, isolation, and significantly increased frequency of clean-up procedures as additional feasible control methods for these operations.

During cell assembly, additional controls recommended by PACE included improved enclosures of process equipment, increased exhaust ventilation, local exhaust ventilation provided at material handling sites, and significantly increased general housekeeping by means of expanded central vacuum cleaning systems. During cell closing, "control measures would include local exhaust at specific generation points, isolation of the operation from the other cadmium generation operations, * * * and strict attention to general housekeeping." [4, p. 4-11]. The PACE report did not include estimates of the expected effectiveness of individual controls for this industry, but similar incremental controls recommended in other industries were estimated to achieve exposure reductions from 70 to over 90 percent [4]. PACE concluded that the implementation of all recommended controls for nickel-cadmium battery producers, including new buildings, would enable mean exposures in 14 of 18 job categories to be 5 μg/m³ or less and mean exposures in 17 of 18 job categories to be 13 μg/m³ or less [4, Table A4-1].

NEMA provided a general view of the exposure control technology in use at nickel-cadmium battery plants: "Companies have installed the best available feasible technology for controlling exposure to their employees * * * the most sophisticated manufacturing equipment * * * Ventilation has been engineered to the extent feasible * * * extensive respiratory protection programs are being used." [2, p. 5]. NEMA concluded that a major redesign of manufacturing plants would be required in an attempt to achieve compliance with a PEL of 5 μg/m³, which they considered technologically infeasible.

The MBS report presented the position that 5 μg/m³ is technologically infeasible with engineering controls and work practices. The MBS report assessed additional controls necessary for an attempt to achieve compliance with the standard, based on the assumption that new buildings would be required for electrode production and assembly. Methods of exposure reduction short of such extreme measures were not discussed.

In its post-hearing comments, NEMA listed controls that have been implemented at the Gates facility through 1990. [6, Table 1]. These included improved and additional

ventilation for over a dozen machines, process isolation, machine enclosures, automated paste handling, and improved environmental procedures for employees. Descriptions of controls at other companies indicated that ventilation, protective clothing, and respirators were generally employed in areas with significant cadmium exposure.

Company B submitted post-hearing comments describing the additional controls that they felt would be required to meet a separate engineering control air limit (SECAL) of 25 $\mu g/m^3$. [9, p. 1–8]. These would include new buildings for despiraling and negative platemaking operations, major process modifications throughout the plant, and new production equipment such as leak proof drying ovens. Many less drastic improvements were listed as well, including improved and additional local exhaust ventilation, improved enclosure, increased vacuuming, and periodic wash down.

Implementing changes and exercising extra care in work practices can result in significant reductions in exposure levels. OSHA inspections and NIOSH health hazard evaluations often reveal that the total amount of a contaminant released into the air can depend heavily on how employees handle products, containers, and equipment. This factor will be of vital importance in complying with the new standard: one gram of cadmium dust is sufficient to produce an airborne concentration of 25 $\mu g/m^3$ for 40 thousand cubic meters or about 1.4 million cubic feet of air.

Technologically feasible limits for a SECAL. Given the array of existing exposure data, OSHA separated exposures into high and low occupation/process exposure groups to facilitate the feasibility analysis. (For a more detailed discussion of the approach see the preceding section B—Discussion of Technological and Economic Feasibility Determinations).

Data were divided at a breakpoint which maximized the difference between the two data sets. This exercise resulted in the identification of "high" exposure occupations/processes which included plate preparation and platemaking operations. (It is recognized that job titles differ among plants; some operators performing the same activities have different job titles in different plants.) All other occupations/processes were categorized as having "low" exposures, including impregnation and cell assembly operations and activities. Figure VIII–C1 shows the segregated data.

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FIGURE VIII-C1

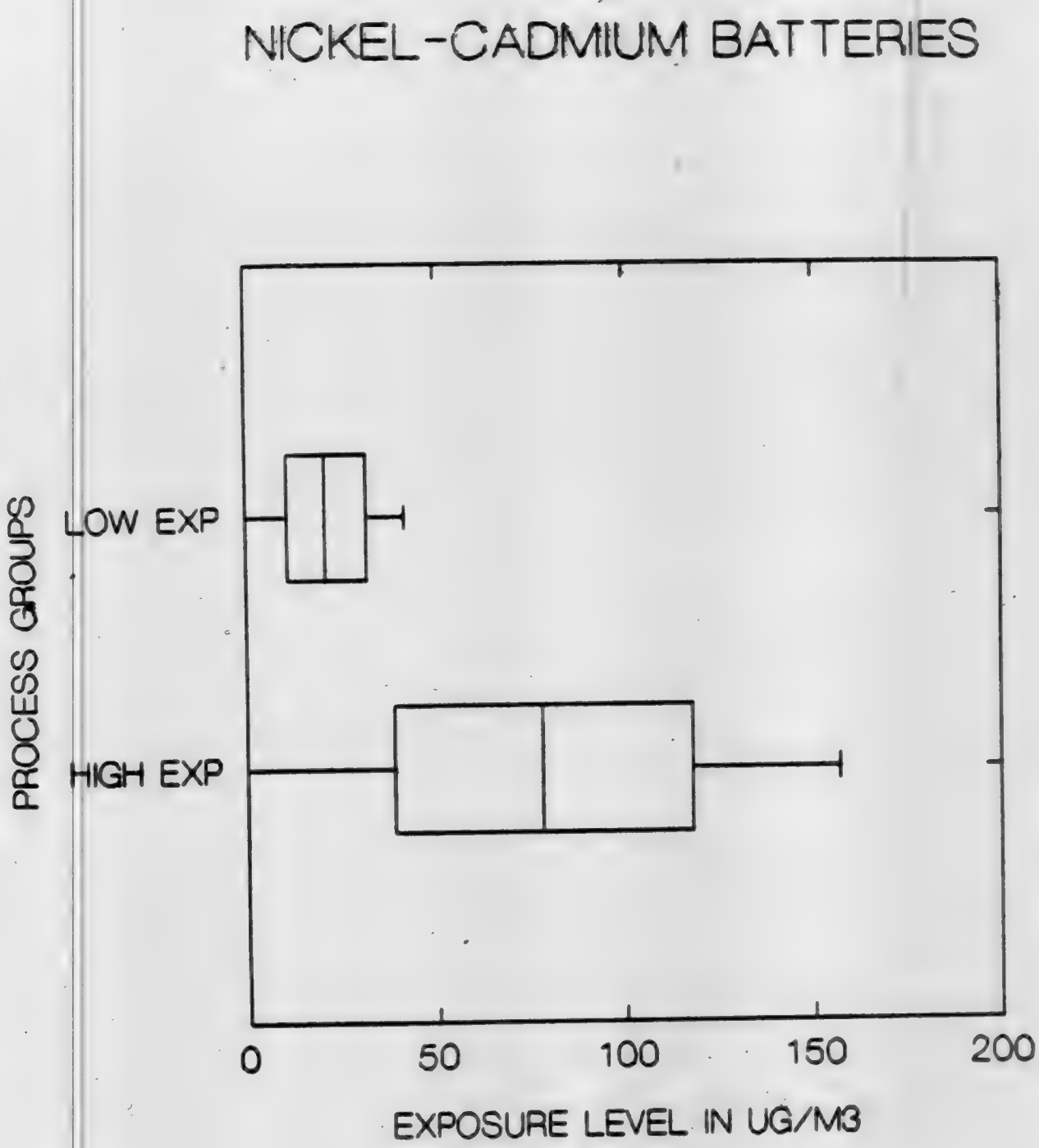

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Approximately 375 workers are included in the high exposure group and 1,125 employees are in the low exposure group.

Median exposure data for the two sets were as follows:

	High group	Low group
Number of observations	26	48
Mean	72.9	14.4
Standard deviation	62.7	23.5

To verify that the two groups within this industry were distinct, a *t* test was performed on the difference in the means. The null hypothesis that the means of the exposure data were equal was rejected, and the Agency concluded that the exposure groups were drawn from separate distributions.

After the statistical difference between high and low exposure groups was verified, the data were treated separately. In developing Figures VIII–C2 and VIII–C3, individual occupation/process median or mean exposure values were drawn from each of the different data sources.

A modelling process was employed in order to correctly identify appropriate SECAL levels for the two groups. The current exposure patterns were reduced based upon alternative engineering control efficiency levels of 80, 60, 40, and 20 percent. The higher the efficiency level, the lower the projected exposure level.

Figures VIII–C4 and VIII–C5 show the reduction and shift in the distribution of exposures for the high and low groups in nickel-cadmium battery production.

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FIGURE VIII-C2

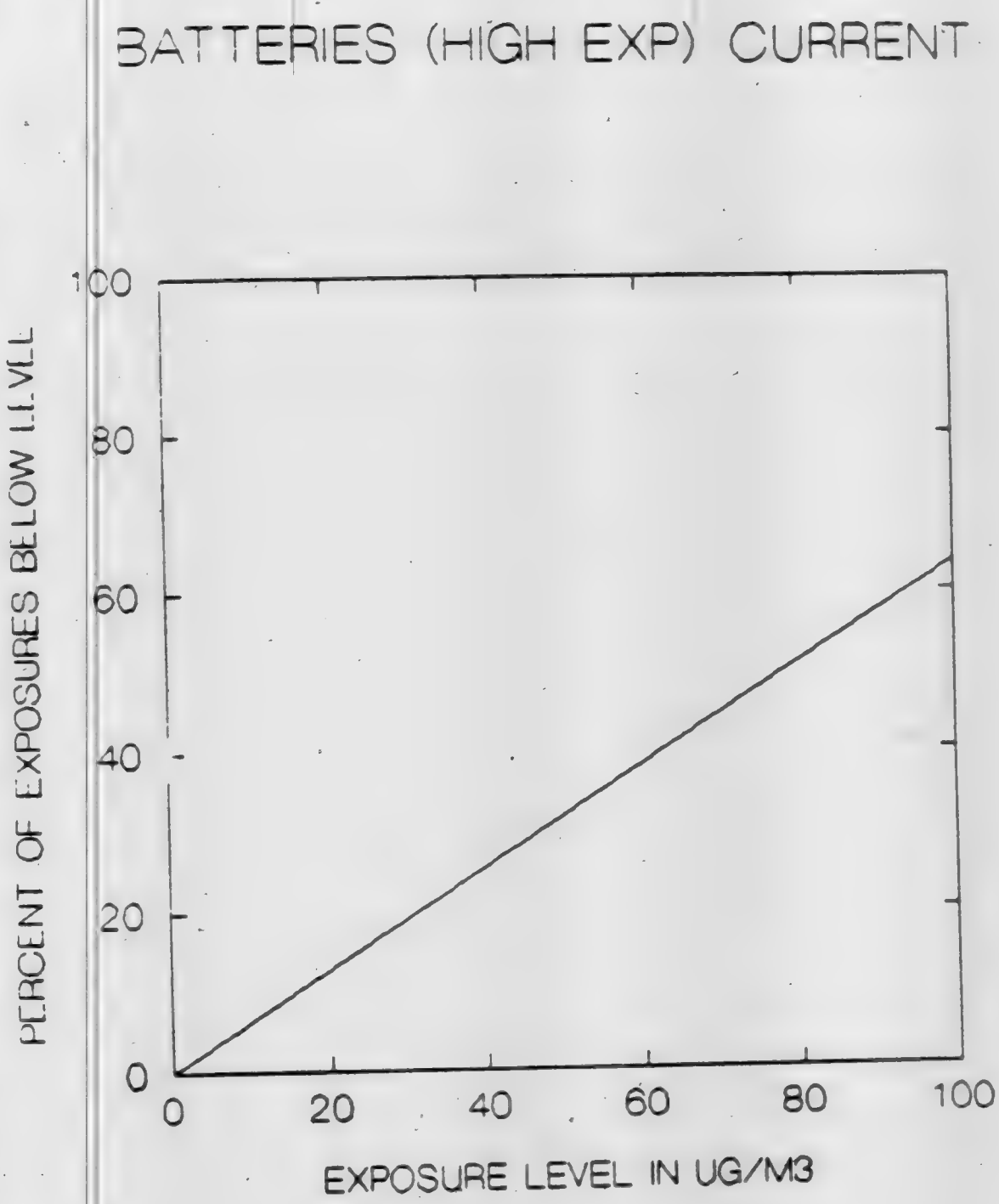

FIGURE VIII-C3

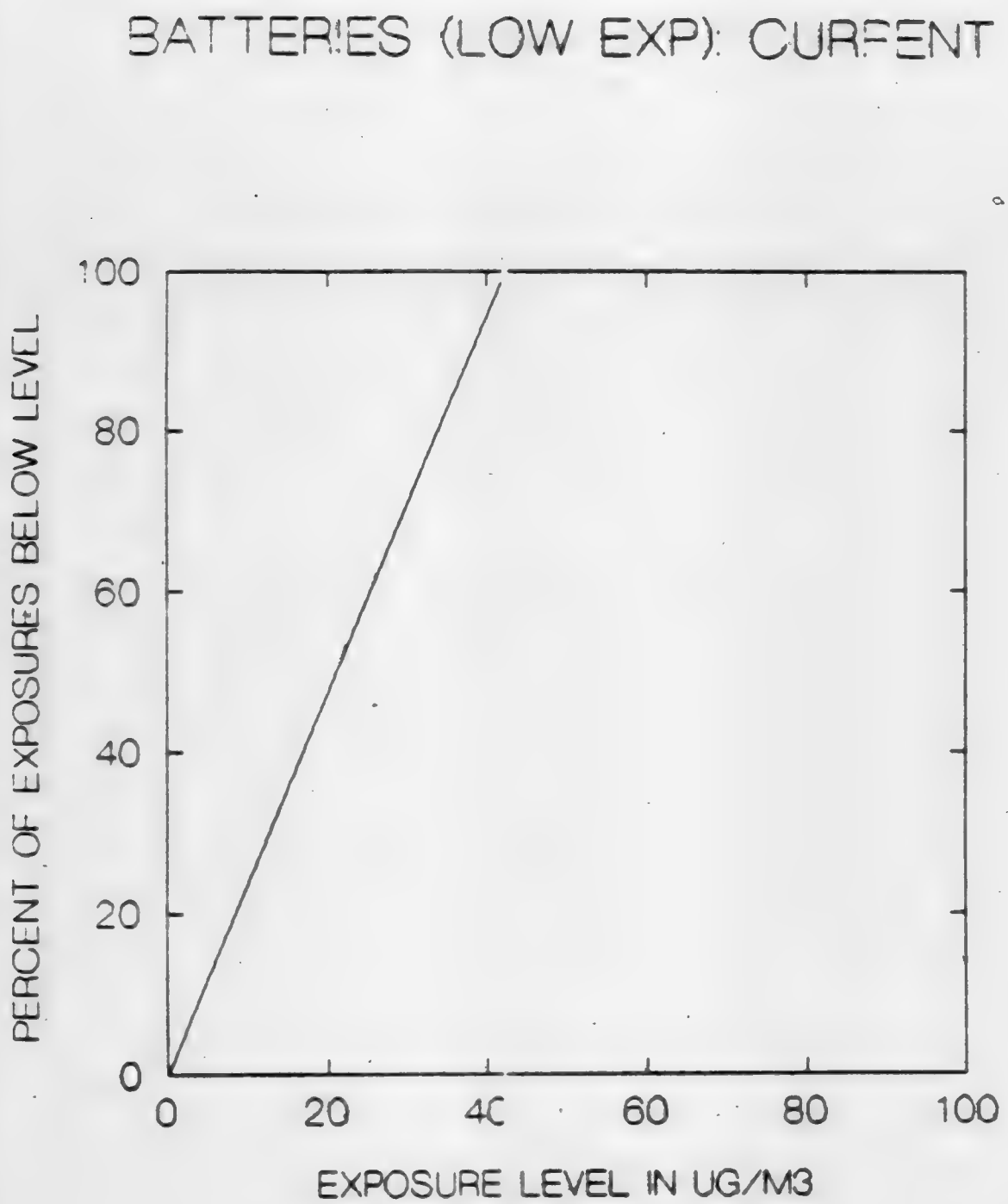

FIGURE VIII-C4

BATTERIES (HIGH EXP.): CONTROLLED 80%-2C

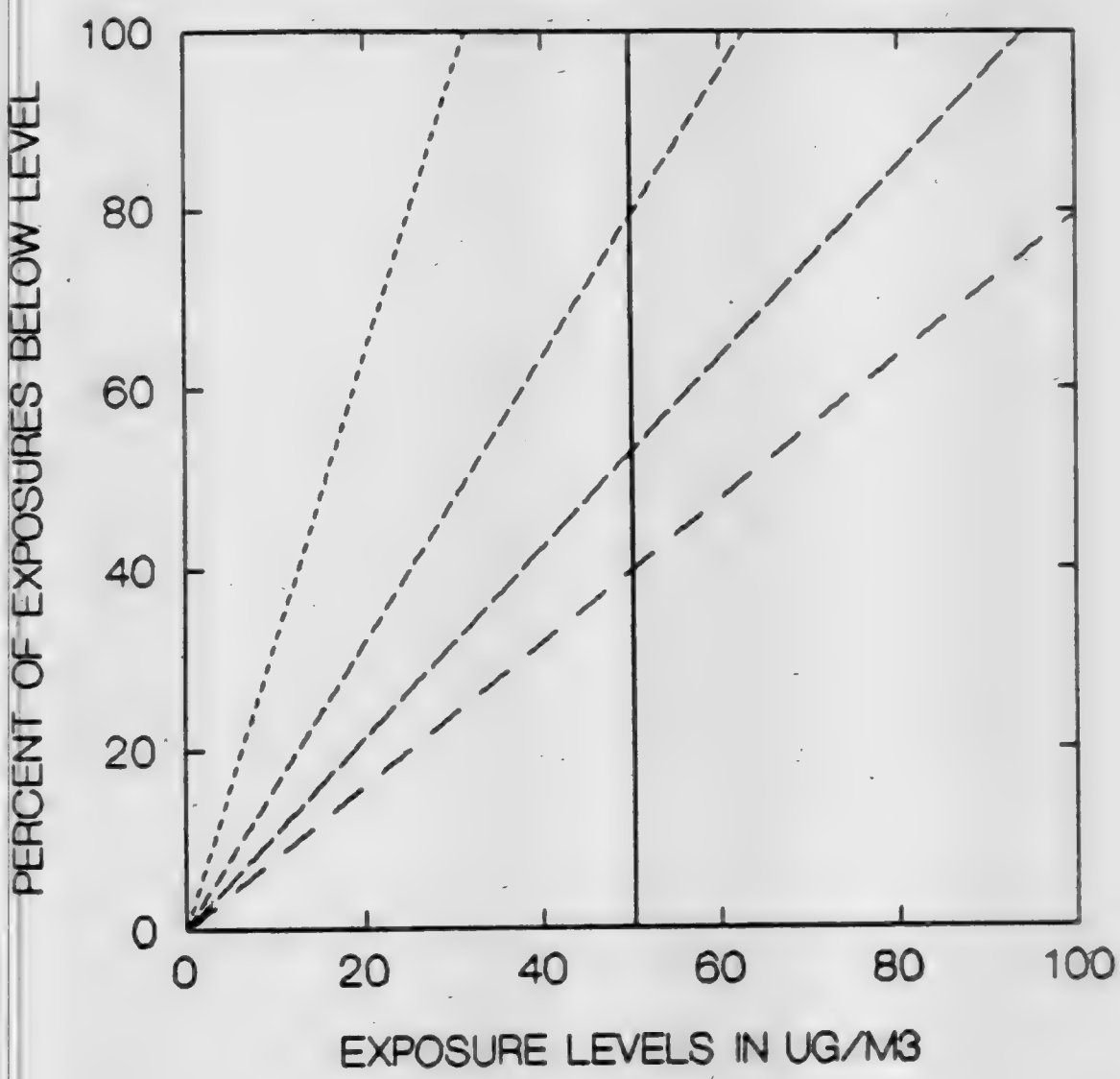

FIGURE VIII-C5

BATTERIES (LOW EXP.): CONTROLLED 80%-20%

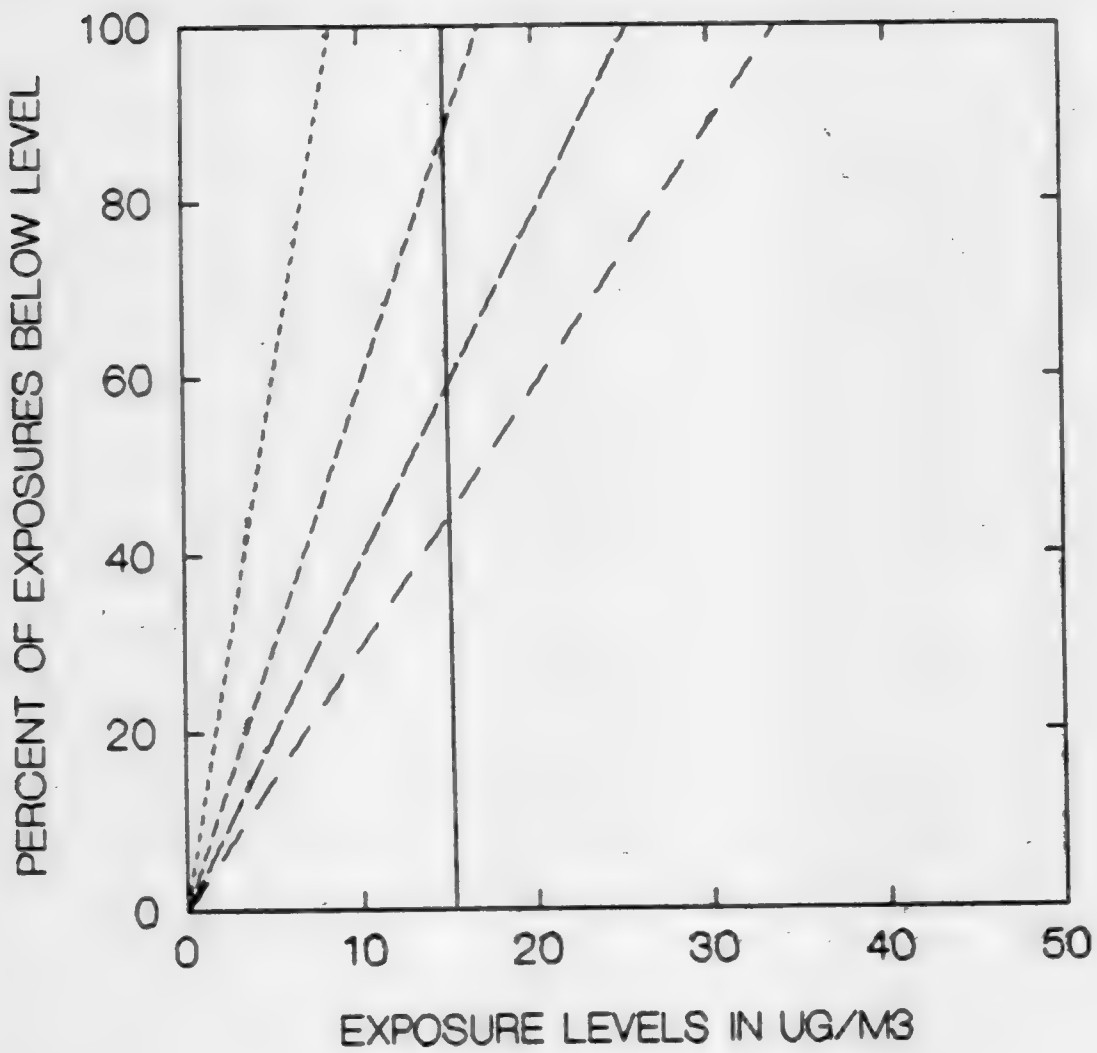

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(The higher the reduction factor the closer the projected exposure line moves to the vertical axis.)

The selection of an appropriate efficiency reduction factor was based on evidence and testimony in the record and economic feasibility considerations. The only basis for revising an engineering control efficiency factor down was economic infeasibility. The industry cost to profit ratio was used as a guide in this process.

A criticism of OSHA's preliminary feasibility analysis was that the estimates of control effectiveness were overly optimistic. For example, JACA estimated that the expected efficiency of new or improved local exhaust ventilation systems for exposures in the battery industry would be 85 percent in most cases and up to 96 percent in situations where high hood efficiency was possible. [3, p. 4–9 and 13, p. 9].

The strongest criticism of the JACA estimates was presented by PACE. For the nickel-cadmium battery industry the PACE analysis concluded that a net reduction of exposure levels of approximately 75 percent could be achieved in plate preparation operations primarily through improved exhaust ventilation, improved enclosure, and improved housekeeping. [13, p. 8]. PACE also concluded that "Engineering controls can bring one of these [impregnation process] operations into compliance with a 5 μg Cd/m^3 but not a 1 μg Cd/m^3 standard. Three of these operations are amenable to separation from the cadmium source, and, therefore, can comply with the proposed 5 μg Cd/m^3 standard." [13, Appendix 5, p. 2].

PACE referred to "the installation of more extensive engineering controls" for many other operations but did not offer estimates of the effectiveness of any individual controls. PACE estimated that overall reductions of 80 to over 90 percent in mean exposures could be achieved in most job categories in the nickel-cadmium battery industry. [4, Table A4–1]. For two processes these reductions included new buildings, but for the balance the controls consisted of conventional technology, such as improved local exhaust ventilation, changes in material handling methods, partial enclosure, increased vacuuming and washdown, and partitions. [4, p. 4–8 through 4–12].

The testimony of two independent industrial hygienists [10, 11] and of the experienced experts and industrial hygienists of NIOSH [12] supported the conclusion that conventional control technology can substantially reduce cadmium exposures across all industries.

OSHA notes that controls can be used individually or in combination. If one control is not sufficient, additional ones can be used. It is the interaction of various engineering controls and work practices as part of an integrated system of controls that will produce the best overall reduction in exposure levels.

This review and analysis of the record needed to be supplemented with economic feasibility considerations before a determination could be made regarding appropriate engineering controls and their effectiveness level. For battery producers, engineering solutions to achieve an 80 percent or higher reduction in cadmium levels would have required major capital expenditures (multi-million dollars per plant) to rebuild or replace existing facilities. Yet annual profits in this sector are reported to be less than $7.5 million (see Economic Impact Section). Capital expenditures needed to achieve an 80 percent reduction in cadmium levels do not appear to be economically feasible at this time. Instead, less expensive engineering controls with a lower efficiency expectation (40–60 percent) were identified. Based on this reasoning OSHA determined that a reduction of 40–60 percent in cadmium exposures in the nickel-cadmium battery industry was both technologically and economically feasible.

Following the selection of this efficiency factor range, the appropriate SECALs for each exposure group were identified at the level achievable for 60–80 percent of the exposure observations. For the high exposure occupations/processes group, including plate preparation and plate making activities, a SECAL of 50 μg/m^3 was identified. For all other occupations/processes in this industry, a SECAL of 15 μg/m^3 was identified.

Compliance with the PEL of 5 μg/m^3 with engineering controls and work practices would be infeasible in this industry. Compliance with this standard can only be achieved through the use of respirators. Respirators are readily available with a wide range of protection factors that can adequately protect workers from the potential exposures in this industry. It is likely that respiratory protection would be required for most of the production and maintenance employees full time. This fact was recognized by OSHA in the preliminary regulatory impact analysis (PRIA); the conclusion was repeated by virtually all commenters who addressed the issue and is consistently supported by the substantial evidence in the record.

NIOSH expressed significant reservations about implementing mandatory daily respirator use for entire production shifts, even if the PEL was infeasible. "Never as a routine practice would we recommend that respirators be worn full time by employees." [14, p. 8–202]. Such respirator use has negative effects that may affect an employee's comfort, ability to communicate, and productivity. OSHA believes that the increased health risks associated with exposures to low levels of cadmium warrant the requirement for respiratory protection despite these effects.

Costs of Compliance with a 50–15μg/m^3 SECAL and 5 μg/m^3 PEL. Estimates of total compliance costs for nickel-cadmium battery producers submitted to the record, varied greatly. The calculation of these costs can be broken down into several components, such as the types of controls that are assumed to be required, the number of controls that would be required, the unit cost of the required controls, and the costs of requirements identified in the rule. An evaluation of the evidence in the record regarding compliance costs reveals a general agreement on these cost estimates.

Disagreement on total compliance costs was invariably related to a misunderstanding of technological feasibility. One misunderstanding involved the criteria for judging technological feasibility. OSHA's approach to technological feasibility is based on concerns about employee health risks and fairness to employers. The approach incorporates a recognition that respirators may be necessary to reach a protective exposure level under certain circumstances and includes a corresponding flexibility in enforcement. A thorough discussion of this approach can be found in the lead remand analysis [54 FR 29142].

The assumption that a technologically feasible level is one which will be very rarely exceeded by any exposure sample will result in dramatically higher cost estimates for a given exposure limit. This erroneous assumption leads to the conclusion that all imaginable controls must be implemented at very high cost.

The cost estimates produced by PACE, NEMA, and MBS were based on the assumption that a level is feasible only if the probability of any sample exceeding the level is very small (less than 5 percent). PACE considered a level achievable only if the mean exposure was less than 40 percent of the level. NEMA remarked that "there are frequent excursions of 20 to 25 μg/m^3 due to process upsets so that an exposure level of 30 μg/m^3 cannot be achieved with 95% certainty even under

these rigorous controls." [6, p. 5]. OSHA's requirements for methods of compliance already take into account situations such as process upsets and maintenance by explicitly recognizing that engineering controls may not be feasible for these circumstances.

Another mistaken assumption which resulted in grossly inflated estimates of total costs involved the requirement to install engineering controls to the extent feasible. NEMA claimed that "Every U.S. manufacturer would be faced with virtual redesign of sizable segments of its production facilities in order to attempt to meet the proposed exposure standards." [2, p. 7]. PACE and MBS included the cost of new buildings in their total cost estimates; such costs comprised most of the total cost estimate. OSHA's approach to feasibility does not require employers to go to such extreme lengths.

In estimating the costs of compliance with this standard, OSHA first estimated the costs of installing feasible additional controls within existing building structures. The original estimate for this was provided by JACA in the preliminary analysis. In current dollars, the estimated cost of local exhaust ventilation systems (installed) ranged from $51,000 to $112,000. Annual operating and maintenance costs were estimated to be 10 percent of the capital cost. JACA also estimated that HEPA-filtered industrial vacuum cleaners would cost about $1,500 each and that the cost of additional vacuuming would be the current nonsupervisory wage rate. [3, p. 6–8 and 6–28].

In the PACE report, descriptions of recommended controls for the nickel-cadmium battery industry were linked to specific cost estimates. PACE identified additional controls for an operation already provided with exhaust ventilation that included "a new Venturi scrubber of 1500 cfm capacity to reduce air emissions * * * providing CAI [clean air island] air supply plenum of about 6 feet by 15 feet at the operator work station * * * The area would be steam-cleaned and painted * * * and it would then be partitioned off from the rest of the building." [4, p. 2–4]. For this operation, PACE expected mean exposure levels to be reduced from 54 $\mu g/m^3$ to 9 $\mu g/m^3$; the capital cost was estimated to be $128,000 and the estimated annual operating cost was $18,100.

For another job category, PACE expected mean exposures to be reduced from 34 $\mu g/m^3$ to 5 $\mu g/m^3$ through the installation of a new hood and exhaust system, the establishment of a clean air island over the work station, and by steam cleaning and painting the room. PACE estimated that the capital costs associated with these controls would be $43,000 and that the annual operating cost would be $16,900. [4, p. 2–5].

The PACE report included itemized costs in some tables. The cost of clean air islands was given as $3 per cfm (cubic foot per minute) with systems ranging from 2,000 cfm to 9,000 cfm that cover areas from 4 feet by 5 feet to 6 feet by 15 feet. The cost of an exhaust ventilation system with Venturi scrubbers, sloped and flushed corrosion resistant ducts, and a 4,500 cfm capacity was estimated to be $57,000. Partitioning an area from the rest of the plant with 900 square feet of material was estimated to cost $9,000. And the cost of a new vacuum cleaning system was estimated to be $15,000. [4, Table A2–4].

JACA estimated that additional engineering controls could be installed for four of five major job categories (materials handler, impregnation operator, coating operator, and plate preparation operator) identified in nickel-cadmium battery production. The battery manufacturing process description offered by PACE described additional controls that could be applied in six areas but did not give an indication of the number of such controls to be implemented. In its total cost estimate PACE included expensive modifications to the air conditioning system and the replacement of baghouses with banks of HEPA filters. While these changes may lower cadmium concentrations in air released from the building, OSHA believes that the effect on employee exposures would be negligible.

The total costs given in the PACE report also included new buildings, an expanded water treatment facility, and "a crew of janitorial personnel" that would "wet wipe any contaminated surfaces throughout the work shifts." OSHA believes that exposure levels can be sufficiently reduced without incurring such expenses. PACE also claimed that in addition to an annual expense of $1.8 million for increased maintenance, power and fuel, a single plant would incur $2.1 million annually for "increased operating labor." [4, p. 4–5 and Table A4–2].

OSHA explicitly and repeatedly asked industry sources to provide costs for individual controls recommended in each area. The costs supplied by PACE for the nickel-cadmium battery industry were aggregated and included items not needed for compliance with the standard. Similarly, the high cost estimates developed by MBS were associated with new buildings and also included over $5.9 million for "annual operating costs." MBS did not list costs for specific controls operation by operation. [5].

Company B submitted post-hearing comments describing the controls that could be implemented in nine manufacturing areas. The list of controls was based on a perceived need for "achieving 25 $\mu g/m^3$ 95% of the time" and included new buildings as well as other major rebuilding efforts. These controls go beyond what OSHA considers additional feasible controls. Costs for the engineering controls were not itemized; aggregated costs of millions of dollars were not explained, and it is unclear how over $4 million in annual expenses in addition to the capital costs were calculated. [9].

Since 72 percent of the nickel-cadmium batteries manufactured in the United States are produced by one plant [15, p. 3], it is difficult to develop a single profile of the number of controls required by a typical plant. Company A submitted exposure data for nine operations distributed among the four manufacturing process steps. Most of these currently have some degree of ventilation, and respiratory protection is used in five of the nine operations. Company B listed fourteen job titles for the four process steps in its exposure data and indicated current use of ventilation and respiratory protection to some degree. For Company C the primary location of cadmium use was in one small highly-protected room; exposure data were listed for four activities within the one process step. Potential control measures included enclosure, ventilation, and respirators. Company D listed exposures for nine production job categories. These were located in three of the four production process steps. Company E listed exposures for six job categories and indicated that ventilation controls were present at each one. [6, Appendices 1–5].

Based on a review of all comments submitted to the record, OSHA concludes that Table VIII–C11 provides a fair and accurate representation of the additional controls and costs needed to comply with the 50–15 $\mu g/m^3$ SECAL levels. Employers are able to choose among these and any other controls to reduce exposures in the most cost-effective manner for their particular circumstances. For example, an employer may already be providing ventilation in one operation and may choose to install a pneumatic conveying system, glove box technology, modifications to material handling methods, or another solution for the specific situation. The resulting costs would generally be comparable to those estimated in Table VIII–C11.

The largest plant, with approximately 50 percent of the exposed employees in the industry and "with as many as 16 to 19 discrete operations" [2, p. 5], was estimated to need new or improved local exhaust ventilation at eight locations, clean air islands at ten locations, two additional central vacuum cleaning systems, and improved enclosure or partitions for five operations. The numbers of these controls estimated to be implemented are greater than the number recommended in either the PACE or the MBS reports [4,5]. In contrast, these sources based their cost estimates on more extensive building modifications and new buildings construction.

TABLE VIII–C11.—ESTIMATED COSTS OF ENGINEERING CONTROLS FOR CADMIUM IN THE NICKEL-CADMIUM BATTERY INDUSTRY

Type of control	Controls per plant by size of plant			Total industry controls[1]	Cost per control ($thousands)			Industry costs ($thousands)				Total annualized industry cost ($thousands)
	Small	Medium	Large		Capital	Annual power and maintenance	Annual labor	Capital	Annualized capital	Annual power and maintenance	Annual labor	
Local Exhaust Ventilation	1	5	8	29	80	8	0	2,320	377	232	0	609
Clean Air Islands	1	5	10	31	18	2	0	558	91	62	0	153
Central Vacuum Systems	1	1	2	7	15	1	7	105	17	7	49	73
Enclosure	0	3	5	17	9	0	0	153	25	0	0	25
Total				84				3,136	511	301	49	861

[1] Based on one small plant, four medium plants, and one large plant.
Source: Office of Regulatory Analysis, OSHA, U.S. Department of Labor.

Additional controls at each of the four medium-sized plants were estimated to be five new or improved local exhaust ventilation systems, five clean air islands, one additional central vacuum cleaning system, and new or improved enclosures for three operations. At the smallest plant, where exposures are limited to one room and where the manufacturing exposure monitoring data were representative of two employees, feasible additional controls would include an improved local exhaust ventilation system and a clean air island.

Further reductions in exposures can be achieved at all plants through more attention to appropriate work practices and through improved housekeeping practices. Table VIII–C11 summarizes the costs associated with the additional controls. The capital costs, the annual power and maintenance costs, and the annual labor costs are presented for each control. Capital costs for the industry are estimated to be $3.1 million and annual costs are estimated to be $350,000. Total annualized costs were calculated by amortizing the capital costs over ten years with a ten percent interest rate and adding the resulting annualized cost to the other annual costs. The annualized costs of engineering controls in the nickel-cadmium battery industry are estimated to be $861,000.

Compliance with other provisions in the new cadmium standard would also require additional costs. These include costs for increased respirator use, more comprehensive exposure monitoring programs, medical surveillance requirements (including requirements for medical removal), hygiene provisions (shower and eating facilities and protective work clothing), and additional efforts associated with recordkeeping and other information-related requirements (including regulated areas, compliance programs, and training).

Nickel-cadmium battery plants generally have established respirator programs for employees in high exposure areas. In order to comply with the PEL of 5 $\mu g/m^3$ it is likely that 80 percent of the production and maintenance employees would be required to wear respirators full time after the implementation of additional feasible controls. JACA estimated that about half of the employees exposed above the new PEL already wear respirators full time, and this estimate was consistent with information supplied by industry. [3, p. 6–17]. Thus, the revised standard would require respirator costs for an additional 40 percent of the 1,500 production and maintenance employees, or about 600 workers.

Appropriate respiratory protection was estimated to cost $300 per employee per year. Most commenters did not provide estimates of the additional cost of respiratory protection except to indicate that the numbers of employees had been underestimated in the preliminary analysis. One industry commenter estimated that the annual cost of protecting an employee with a HEPA-filtered respirator, including a fit test, would be $295 [17, Attachment III]. The estimated incremental annual cost of respiratory protection for the nickel-cadmium battery industry is $180,000.

The revised standard requires semi-annual exposure monitoring of "each shift for each job classification in each work area" but also allows representative samples to be taken for workers with similar exposures. JACA's assessment that the typical battery plant already performs this sampling annually was supported by the monitoring data submitted by industry. OSHA expects that plants will need to monitor 2 to 20 job categories with an average of about 10 job categories per plant. The revised standard would require each shift to be monitored separately, and thus a total of about 180 jobs would need to be monitored (10 job categories per plant times 6 plants times 3 shifts).

The lab analysis of each exposure monitoring sample is estimated to cost $40. The services of an industrial hygienist or other qualified person necessary to perform the monitoring for the required set of samples on average would cost about $1,500 per plant. [3, p. 6–23]. Thus, the estimated annual cost to the industry attributable to increased exposure monitoring is $16,200 [6*$1,500+180*$40].

The medical surveillance requirements of the revised standard involve a complex combination of different categories of employees and a series of triggers and schedules of different types of exams. The base requirements are for annual biological monitoring, including tests for cadmium in urine, cadmium in blood, and B_2-microglobulin in urine, and for a full

medical examination every two years. More frequent biological monitoring and medical exams are required if the tests indicate elevated levels. NIOSH submitted data on the results of biological monitoring for the general population and for workers in the nickel-cadmium battery industry. [8, Attachment 3, Tables 5 and 7]. These data indicate that a number of employees would be required to receive more frequent testing and exams.

Nickel-cadmium battery producers generally indicated in the record that medical surveillance, including monitoring levels of cadmium in blood and urine, was already being provided for most employees exposed to cadmium. [16, p. 10–96]. NEMA, the trade association for the industry, stated that the "industry is currently employing medical surveillance, respirator use, protective clothing/equipment use, regulated areas designation, employee information and training, and labeling/identification." [2, Attachment 1, page 3]. This confirmed OSHA's preliminary assessment that annual medical exams were provided to employees in this industry.

The medical surveillance provisions of the final rule would require an expanded program for most establishments in the industry, resulting in both more workers covered and more extensive and more frequent medical tests. The cost of an annual physical, including the wages paid to the employee, is estimated on the basis of OSHA experience to be about $250. The cost of the lab analysis for a B_2-microglobulin sample was cited by a public health research group as $80. [18, p. 4]. Analyses of samples for cadmium in urine and cadmium in blood are estimated to be $60 each, as presented by JACA and unchallenged in the record. An additional $5 is added to the cost of each of the biological monitoring samples for costs associated with collecting the samples.

For purposes of calculating the incremental costs of compliance associated with the revised standard and consistent with the evidence submitted to the record, OSHA estimated the numbers of additional exams and tests that could be expected to be required annually. Approximately 300 additional medical exams are estimated to be needed for employees currently not covered or for whom exams would be required more frequently, including employees receiving medical removal protection. Tests for β_2-microglobulin generally are not currently provided. About 30 percent of the exposed workforce may be subject to more frequent biological monitoring, with 20 percent receiving semi-annual monitoring and 10 percent receiving quarterly monitoring. As a result, an estimated 2,000 additional tests for β_2-microglobulin, 750 additional tests for cadmium in urine and 750 tests for cadmium in blood would be necessary. The total estimated cost for additional medical exams and biological monitoring is thus estimated to be $342,500 annually.

Requirements for medical removal may involve compliance costs in addition to those for more frequent medical exams and monitoring estimated above. The criteria for mandatory removal would affect employees with high body levels of cadmium. The criteria for removal also allow for considerable physician's discretion. An estimated 3 percent of the exposed workforce may be removed initially on the basis of these criteria and the discretion of physicians.

Compliance with the new PEL for cadmium and other requirements of the final cadmium standard should prevent a continuing need to remove employees. The number of employees with relatively high past exposures who would be more likely to be removed should decline through attrition. However, as the criteria for removal become broader in future years (lower levels of cadmium in blood and urine will trigger mandatory removal), additional employees may be subject to removal. The costs associated with the medical removal provisions are approximated by assuming that on average, 3 percent of the exposed workforce may be removed every 5 years.

The number of employees removed should be small enough to enable establishments to provide removed employees with alternative positions. Costs to the employer would include paying possible wage differentials and hiring and training employees in new positions. OSHA estimates that the average cost per removed employee would be no greater than $5,000. An estimated 45 employees may be removed every five years on average, in the nickel-cadmium battery industry, and the average annual cost for the industry would be $45,000.

The total annual cost for the medical surveillance and medical removal provisions is estimated to be $387,500.

Other provisions of the revised standard that involve compliance costs include those related to hygiene facilities and to additional recordkeeping. As previously described, most plants already comply with requirements for work clothing, regulated areas, information, and training. Some of these requirements are currently covered by other standards.

Employers in the nickel-cadmium battery industry indicated that although lunch rooms and shower rooms were already provided, some costs would have to be incurred to increase their capacity and/or modify the facilities as required by the standard. Employers would also have to pay wages to the additional employees required to shower and change. Estimates of the costs of facility modifications range from zero to over $2 million. The high estimate was submitted by company B which did not itemize costs. OSHA believes that an average of $200,000 in capital costs and $5,000 in annual operating costs would be representative of most firms. These figures are supported by estimates from one firm [17, Attachment 3] and are generally consistent with other comments in the record. The estimated cost of showering on work time is $900 per employee annually (based on fifteen minutes per day for 240 days per year at $15 an hour) and would apply to an estimated 300 additional employees. This cost estimate was supported by one industry estimate [17, Attachment 3]. Thus, the costs associated with the hygiene requirements are estimated to be $1.2 million in capital costs and $300,000 in annual costs; the estimated annualized cost is $495,000.

Comments that addressed recordkeeping usually pointed out that the requirements were burdensome and unnecessary. Comments did not contradict the costs, which were estimated to be $5 per employee annually; this estimate was confirmed by one industry commenter [17, Attachment 3]. This cost estimate includes the need for additional equipment and staff time. For the nickel-cadmium battery industry, the total annual incremental cost would be $7,500.

A summary of the estimated costs of compliance for the nickel-cadmium battery industry is presented in Table VIII–C12. The total annualized cost is estimated to be $1.95 million. Over half of this cost is for exposure controls and respirators; most of the remainder is associated with medical surveillance and hygiene facilities.

Economic feasibility of 50–15μg/m³ SECALs and 5 μg/m³ PEL. The MBS study submitted by NEMA concluded that additional annual compliance costs of $2.25 million would be economically feasible for this industry. These costs were calculated for a PEL of 50 μg/m³.

NEMA subsequently urged OSHA to adopt a PEL of 40 $\mu g/m^3$, indicating that costs at this level would be economically feasible. The arguments on feasibility limitations submitted by industry generally focused on the technological infeasibility of achieving 5 $\mu g/m^3$; extremely high cost estimates were generated at this level.

OSHA has determined that the costs associated with the revised cadmium standard are economically feasible for the nickel-cadmium battery industry. Although the impact of these costs may not be negligible and can be expected to include reduced profits, the effects of the cadmium standard should not be substantial in comparison to the general market forces affecting this industry.

TABLE VIII-C12.—ESTIMATED COSTS OF COMPLIANCE WITH THE CADMIUM STANDARD FOR THE NICKEL-CADMIUM BATTERY INDUSTRY

Provision	Annualized cost ($thousands)
Exposure control	561.0
Respirator use	180.0
Exposure monitoring	16.2
Medical surveillance	367.5
Hygiene facilities/practices	495.0
Recordkeeping and information	7.5
Total	1,947.2

Note: Costs do not include current expenditures.
Source: Office of Regulatory Analysis, OSHA, U.S. Department of Labor.

The demand for nickel-cadmium batteries continues to be strong and growing in the United States and worldwide. Nickel-cadmium batteries offer the best overall performance for energy storage and retrieval; the advantages over other cells include a high ampere hour capacity, performance capability in a wide temperature range, long service life, safety, high energy density, efficient recharge capability, and low cost. Nickel-cadmium cells are used in most commercial and military aircraft, spacecraft, satellites, and ships. Rechargeable nickel-cadmium cells have a wide variety of uses. Equipment currently dependent on this technology includes phones, pagers, toys, tools, emergency naval and communication radios, police and fire transceivers, cameras, computers, heart monitors, portable surgical equipment, emergency lights, intrusion alarms, and back-up power.

Annual sales of nickel-cadmium batteries in the United States are approximately $350 million. Imports currently supply about 45 percent of domestic demand, up from about 18 percent in 1985. The domestic nickel-cadmium battery industry currently has revenues of about $185 million. Profits are estimated to be $7.4 million annually, resulting in a return on sales of 4 percent and a return on equity of 7 percent. [5, p. 3 and Exhibit 2].

The prospects for recouping compliance costs by raising prices are limited. Foreign competition is strong and there is reportedly sufficient production capacity outside the U.S. to meet the entire global demand. [16, p. 10–61]. A rise in prices is likely to be accompanied by an offsetting decline in sales. The elasticity of demand faced by individual establishments may be as high as 1, based on the experience of one domestic producer's attempt to raise prices in response to increases in the price of cadmium in 1988. This producer is currently operating at about 50 percent of capacity. [16, p. 10–167 and p. 10–171].

Assuming that all compliance costs would be absorbed from profits, the estimated costs may reduce the return on sales to about 3 percent and the return on equity to about 5 percent. The maximum reduction in profits would be approximately 26 percent. Alternatively, an increase in revenues of about 1 percent would completely offset the compliance costs without any reduction in profits. This would be possible if the level of demand increased. Although imports have increased their share in the U.S. market, the expansion in worldwide demand has enabled the U.S. domestic industry to maintain production levels.

The promulgation of this standard is not expected to result in plant closures and any effect on investment decisions or job creations, are uncertain. The incremental effects of this standard are not expected to produce any substantive overall production changes.

Sources

1. Exhibit 65, Testimony of Douglas Bannerman, on behalf of the National Electrical Manufacturers Association, July 19, 1990.
2. Exhibit 19–37, Comments of the National Electrical Manufacturers Association, May 11, 1990.
3. Exhibit 13, "Economic Impact Analysis of the Proposed Revision to the Cadmium Standard," Final Report, JACA Corporation, March 15, 1988.
4. Exhibit 19–43, Attachment L, "Feasibility and Cost Study of Engineering Controls for Cadmium Exposure Standard," PACE Incorporated, April 30, 1990.
5. Exhibit 19–37 B, "The Cadmium Rule—Destroying Workers' Jobs To Protect Them?" Multinational Business Services, Inc., September, 1989.
6. Exhibit 96, Comments of the National Electrical Manufacturers Association, September 14, 1990.
7. Exhibit 124, Comments of the National Electrical Manufacturers Association, October 9, 1990.
8. Exhibit 128, Attachment 3, "Health Hazard Evaluation 88–199," National Institute for Occupational Safety and Health, October, 1990.
9. Exhibit 121, Comments from 'Company B,' October 11, 1990.
10. Exhibit 26, Comments of Robert D. Soule, CIH, CSP, PE, May 9, 1990.
11. Exhibit 27, Testimony of Leslie Ungers, CIH, Ungers and Associates, Inc., May 18, 1990.
12. Exhibit 57, Testimony of NIOSH, July 17, 1990.
13. Exhibit 19–43, Attachment M, "Analysis of OSHA's Preliminary Conclusions Concerning the Technological Feasibility of Achieving a 5 or a 1 $\mu g/m^3$ Permissible Exposure Limit for Cadmium Fume and Dust," PACE, Inc., May 10, 1990.
14. Hearing Transcript, Tuesday, July 17, 1990.
15. Exhibit 130, Comments from NEMA, October 17, 1990.
16. Hearing Transcript, Thursday, July 19, 1990.
17. Exhibit 19–30, Comments from Big River Zinc, April 3, 1990.
18. Exhibit 123, Comments of the Public Citizen Health Research Group and the International Chemical Workers Union, October 17, 1990.
19. Exhibit 106, Comments of NIOSH, September 18, 1990.

Zinc Refining/Cadmium Production

Industry overview. Cadmium is primarily produced as a byproduct of zinc refining and is also recovered from cadmium-bearing scrap and waste products. Cadmium is not mined independently because sufficient deposits occur naturally in zinc ores. U.S. zinc concentrates have a relatively high cadmium content and may contain between 0.3 and 1.0 percent cadmium.

There are currently four primary zinc smelters in the U.S. with a combined annual capacity of 300,000 metric tons. [13, p. 2–2]. Three of these plants produce finished cadmium as well as zinc products; one zinc refiner ships out its cadmium concentrates for processing at another facility. While world output has been increasing, U.S. zinc mine and refinery production has decreased steadily in the past twenty years. The domestic production of zinc has fallen to about 30 percent of the peak level in 1969. The reduction in domestic production has resulted from excess world capacity, environmental control costs, and higher production costs.

Cadmium is currently produced at four facilities in the U.S. In addition to the three primary zinc smelters that operate cadmium refining circuits, one

plant produces cadmium from materials supplied by other refineries and secondary sources. The production of cadmium in the U.S. has declined steadily, and current levels are about 30 percent of the peak levels reached in the late 1960s. The decline in U.S. cadmium production is generally the result of the decline in domestic zinc production because of the naturally close link of these minerals. In 1979, eight facilities refined cadmium metal; half of these have shut down due to declining demand and poor market conditions. [1, pp. 2-2 through 2-5].

Total employment for the zinc refining and cadmium producing facilities is about 1,800 workers. Of these, approximately 75 percent (1,350) are production and maintenance employees. The four zinc plants have a total of 300 to 600 employees each and the cadmium plant has about 45 employees. The total number of workers directly involved in the production of cadmium at the four cadmium refining facilities is about 200. [11, p. VII-59 through VII-97, p. 10-194].

Production Processes. Zinc smelters convert zinc concentrate and zinc bearing secondary materials to metallic zinc. The two basic methods used to accomplish this are the electrolytic process and the electrothermic process. In both types of processes the feed streams contain several metals in addition to zinc. As the zinc is separated, the other metals are also separated and become raw materials for other smelters. Cadmium is one of the metals that is separated from the feed during the production of zinc. The cadmium concentrate then becomes an input for the cadmium refining process. Figure VIII-C6 presents a flow sheet for a typical zinc smelter.

In both the electrothermic and electrolytic processes, the zinc concentrate is converted from zinc sulfide to zinc oxide in fluid bed roasters. The hot oxide is separated from the roaster flue gas and is called calcine.

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FIGURE VIII-C6

TYPICAL FLOW CHART FOR ELECTROLYTIC ZINC SMELTERS

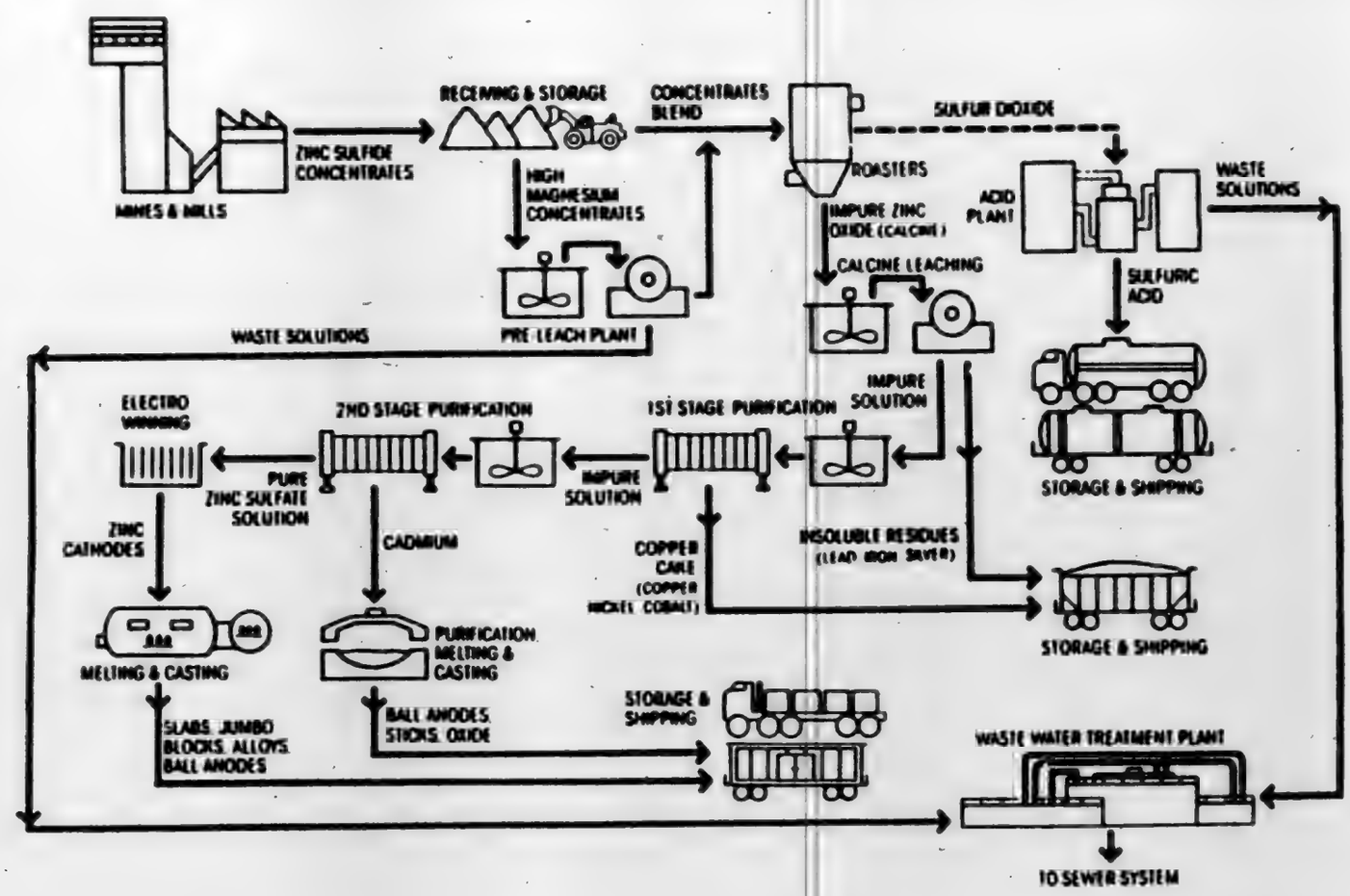

Source: Exhibit 19-43, Attachment K, Appendix A, Figure 1.

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In the electrolytic process the calcine is leached and the dissolved cadmium product is precipitated and filtered. In the electrothermic process the calcine is fed into the sinter machine with other materials, and the cadmium is concentrated in the dust contained in the sinter machine exhaust gas. The cadmium is leached from the baghouse catch, and then precipitated and filtered. The cadmium concentrate obtained in both zinc refining processes is further processed by melting and refining in an independent operation. The cadmium is recovered either as sponge by a final precipitation with zinc dust or by electrolyzing the solution and causing the cadmium to be deposited on the cathode. In either case, the cadmium is melted and cast or converted to cadmium powder or cadmium oxide.

Employee exposures. Data on employee exposures to cadmium in the zinc refining and cadmium production industries have been submitted to the record from several sources. The exposure profile used for the preliminary analysis was developed by JACA Corporation. [1, Table 3-3]. This profile was based on seven years of sampling results from OSHA's Integrated Management Information System (IMIS) database through August 1986 and on a Health Hazard Evaluation (HHE) performed by NIOSH at a refinery in 1977. JACA also visited a cadmium production plant to facilitate the interpretation and categorization of the data.

JACA's exposure profile represented employees involved in cadmium refining only; other operations in the zinc refining industry were analyzed separately as part of the generic cross-industry occupations. In response to concerns raised by several commenters, the following analysis covers the zinc refining and cadmium production industries as a whole. JACA's exposure data for cadmium production operations are presented in Table VIII-C13. Three of the six job categories have mean exposures above 100 $\mu g/m^3$.

At the request of the Cadmium Council, PACE Incorporated conducted a study on cadmium exposures in the primary zinc industry [2] and also analyzed cadmium exposures at a primary cadmium production plant as part of another report [3]. Table VIII-C14 shows the PACE exposure profile for employees involved in cadmium refining only (as in the JACA exposure profile). [3, Table A2-1]. Of the 14 job categories listed, six have mean exposures under 25 $\mu g/m^3$ and three have mean exposures above 100 $\mu g/m^3$.

The cadmium refinery plant submitted detailed exposure monitoring data to the record that are generally consistent with the JACA and PACE exposure profiles. [7, Attachment I]. A summary of these data is presented in Table VIII-C15. Approximately half of the job categories have mean exposures below 25 $\mu g/m^3$.

In its report on the zinc industry, PACE provided exposure profiles for both electrolytic and electrothermic zinc refining (including cadmium refining operations). [2, Appendix A, Table 1 and Appendix B, Table 1]. Table VIII-C16 presents the exposure data for electrolytic zinc refining, and Table VIII-C17 presents the exposure data for electrothermic zinc refining. Exposures in the two types of refining processes are generally similar.

TABLE VIII-C13.—CADMIUM EXPOSURE DATA FOR CADMIUM PRODUCTION BASED ON JACA

Job category	Concentration in $\mu g/m^3$		
	Geometric mean	Median	Range
Solution operator	123.6	155.0	10.0–580.0
Cement operator	105.7	185.0	10.0–780.0
Furnace operator	189.3	310.0	20.0–1,650.0
Materials handler	0.3	0.1	0.1–49.0
Process supervisor	1.4	1.1	0.7–7.0
Maintenance technician	145.8	110.0	30.0–1,560.0

Source: Exhibit 13, JACA, Table 3-3.

TABLE VIII-C14.—CADMIUM EXPOSURE DATA FOR CADMIUM PRODUCTION BASED ON PACE

Job category	Geometric mean exposures ($\mu g/m^3$)
Solution charger	225
Solution operator	54
Sponge operator	34
Sponge presser	65
Neutralization operator	17
Weigh and pack	41
Premelt operator	302
Retort operator	1,396
Maintenance	55
Laboratory	7
Mechanical equipment	23
Thalium operator	17
Litharge operator	13
Utility and extra	19

Source: Exhibit 19-43, Attachment L, Table A2-1.

TABLE VIII-C15.—CADMIUM EXPOSURE DATA FOR CADMIUM REFINING BASED ON COMPANY DATA

Process	Exposure levels ($\mu g/m^3$)	
	Range	Geometric mean
General (Lab, Utility, Laundry)	1–125	12
Transport/unloading	6–2,957	32
Mechanical/maintenance	1–379	16
Cadmium refining	5–230	34
Cadmium casting	4–1,007	117
Retort department	80–9,425	653
Thallium operator	12–21	16
Litharge operator	4–1,373	15

Source: Exhibit 19-32, Attachment I.

TABLE VIII-C16.—CADMIUM EXPOSURE DATA FOR ELECTROLYTIC ZINC REFINING BASED ON PACE

Process	Exposure levels ($\mu g/m^3$)	
	Range	Geometric mean
Yard department:		
Equipment operator	1–9	3
Concentrate charger	1–7	3
Laborer	2–45	13
Concentrate beltman	3–51	16
Sampler	6–12	9
Janitor	4–4	4
Warehouse trucker		
Pre-leach:		
Pre-leach operator	ND–2	2
Roaster department:		
Roaster operator	1–19	6
Roaster helper	1–18	7
Acid plant:		
Acid plant operator	2–2	2
Acid plant helper		1
Acid loader		1
Leach/purification plant:		
Head leacher	ND–3	2
1st stage operator	ND–2	2
2nd stage operator	2–5	3
Residue dryer	3–8	5
Laborer, 2nd stage	5–96	17
Other areas	4–14	8
Line reamer	5–8	6
Pressman (both stages)	5–19	12
ZSM/Cd operator	4–27	10
Cadmium leach helper	4–11	8
Cadmium department:		
Finish operator—Melter	17–198	56
Finish operator—Oxide	46–800	220
Lead casting	14–35	23
Lead sheering	12–12	12
Cell room department: (represents over 40% of total employees)	<1–2	1

ND: Not Detectable.
Source: Exhibit 19-43, Attachment K, Appendix A, Table I.

Table VIII-C17.—CADMIUM EXPOSURE DATA FOR ELECTROTHERMIC ZINC REFINING BASED ON PACE

Process	Exposure levels (μg/m³)	
	Range	Geometric mean
Acid Plant:		
Acid plant operator	1-1	1
Shift utility	1-1	1
Day utility	1-1	1
Roaster Plant:		
Foreman	1-1	1
Feed utility ore	1-16	6
Roaster plant operator	ND-2	1
Shift utility	1-36	10
Mechanical repairman	1-1	1
Sinter Plant:		
Foreman	ND-111	19
Utility men	4-116	24
Sinter machine operators	7-70	24
Sinter plant weighmen	10-216	95
Material handlers	3-373	57
Laborers	ND-319	64
Mechanical repairmen	1-118	20
Slag Plant:		
Slag plant operators	ND-24	5
Coke & Residue Plant:		
Coke & residue operator	3-31	11
Furnace Plant:		
Foremen		
Furnace group leader	1-7	2
Furnace operators	1-5	1
Utility men	2-29	4
Shift utility men	1-18	5
Top operators	1-29	13
Ass't top operators	3-47	14
Slag operators	1-10	2
Casting operators		
Compressor operators		
Laborers	1-8	3
Mechanical repairmen	ND-37	6
Zinc Sulfate Plant:		
Supervisor	17-21	19
Operator	10-42	23
Secondary Materials Plant:		
Materials handler	1-32	8
Heavy equipment operators	1-14	4
Zinc Dust Plants:		
All operators	ND-5	1
Refinery:		
All operators	ND-2	1
Maintenance:		
Mechanical utility (not in production area)	2-3	2
Electrical Repairmen	1-50	7
Bricklayers	1-5	2

Notes: Utility/Maintenance data excludes work on dust collectors.
ND: Not Detectable.
Source: Exhibit 19-43, Attachment K, Appendix B, Table I.

In electrolytic refining, 25 of the 27 job categories have mean exposures below 25 μg/m³, and 18 job categories have mean exposures less than 10 μg/m³. In electrothermic refining, 32 of the 35 job categories have mean exposures below 25 μg/m³, and 23 job categories have mean exposures less than 10 μg/m³.

Data on cadmium exposures during zinc and cadmium refining were also provided for the record by a zinc refining company [5, Attachment I, p. 5] and are summarized in Table VIII-C18. The company employs 385 people of whom 162 are considered exposed. Among the exposed production workers, only four employees have average exposures above 20 μg/m³; 21 of 27 production job categories had average exposures below 10 μg/m³. For this company over 85 percent of the monitoring samples were less than 20 μg/m³ in every area except the cadmium plant. [5, Attachment I, Table I].

Existing and feasible additional controls. The JACA report described hoods ducted to baghouses as part of existing controls for the solution operator, furnace operator, and materials handler in the cadmium refining plant which they visited. JACA recommended the installation of additional and improved local exhaust ventilation for the solution operator and the furnace operator. JACA also recommended enclosed screw conveyors as an alternative to manually transferring materials between tanks. Mechanized systems would be implemented for the transfer of moist cadmium cement from the cementation tank to the oxidation bins and for the transfer of dried cement to the leach tanks.

TABLE VIII-C18.—CADMIUM EXPOSURE DATA FOR ELECTROLYTIC ZINC REFINING BASED ON COMPANY DATA

Process	Exposure Levels (μg/m³)
	Arithmetic mean [1]
Yard workers	8.37
Roaster operators	6.30
Acid plant operators	1.50
Leach/purification operators	7.08
Cellroom attendant	0.50
Cadmium finishing (4 employees)	102.35
Casting	1.55
Lab analyst (when in Cd plant)	57.00
Test plant technician (for new Cd projects)	93.50

[1] Generally higher than geometric mean.
Source: Exhibit 19-30, Attachment I, page 5.

JACA also recommended improved housekeeping measures such as vacuuming, damp mopping, and improved cleanup prior to maintenance. [1, pp. 4-4 through 4-7].

PACE provided a more detailed analysis of the cadmium refining plant. PACE identified 14 separate job categories at the plant which had a total of 45 workers exposed over two shifts. Both existing and recommended additional controls were described. Additional controls were recommended for most job categories and included local exhaust ventilation systems, enclosed material handling systems, clean air islands, and vacuum cleaning systems. [3, pp. 2-3 through 2-13].

The cadmium refining plant provided descriptions of existing controls for each of eight departments. [7, Attachment III]. The company stated that all feasible controls and housekeeping methods were utilized for control of exposure to arsenic and lead and that these same controls also reduced cadmium exposure. [7, p. 4].

PACE provided the most detailed analysis of existing and additional controls for zinc refining plants [2]. In the yard department, the roadway could be relocated and the dry sweeper could be replaced with a wet sweeper. Equipment operators could be protected by providing enclosed, ventilated cabs. An enclosed work station, a clean air island, and a side draft ventilation system could be provided for the concentrate beltman. For the roaster department PACE described several specific controls, summarized by "improved housekeeping, ventilation at specific sources and changes in work practices will reduce exposures." [2, appendix A, page 17]. For the leach/purification plant PACE recommended isolation of the calcine hoppers by means of a sheet metal wall with additional ventilation inside the enclosure, the installation of two central vacuum cleaning systems, local exhaust ventilation at the cyclone feeder, improved ventilation at the roll filters, general ventilation for negative pressure in the residue tower area, enclosure and ventilation of the briquette press, and a clean air island for the briquette press operator. To lower exposures in the cadmium plant, the PACE analysis described significantly revised exhaust ventilation systems and tighter fitting furnace enclosures.

Technologically feasible limit for a SECAL. In order to determine the appropriate SECAL level for this industry sector, OSHA separated exposures into high and low occupation/process exposure groups to facilitate the analysis (see Section B for a more complete description of this approach). Data were divided at a breakpoint which maximized the difference between the mean values for the two separated data sets.

The data segregation resulted in the identification of a "high" occupation/

process exposure group which included cadmium refining, cadmium casting, cadmium oxide production, and sinter plant operations, involving about 202 workers. All other plant operations including zinc leaching operations, yard department, acid plant, cell room, etc., were included in the "low" exposure group involving about 1,148 employees. Figure VIII–C7 graphically presents the segregated data. The vertical line within each box depicts the median value for the distribution.

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FIGURE VIII-C7

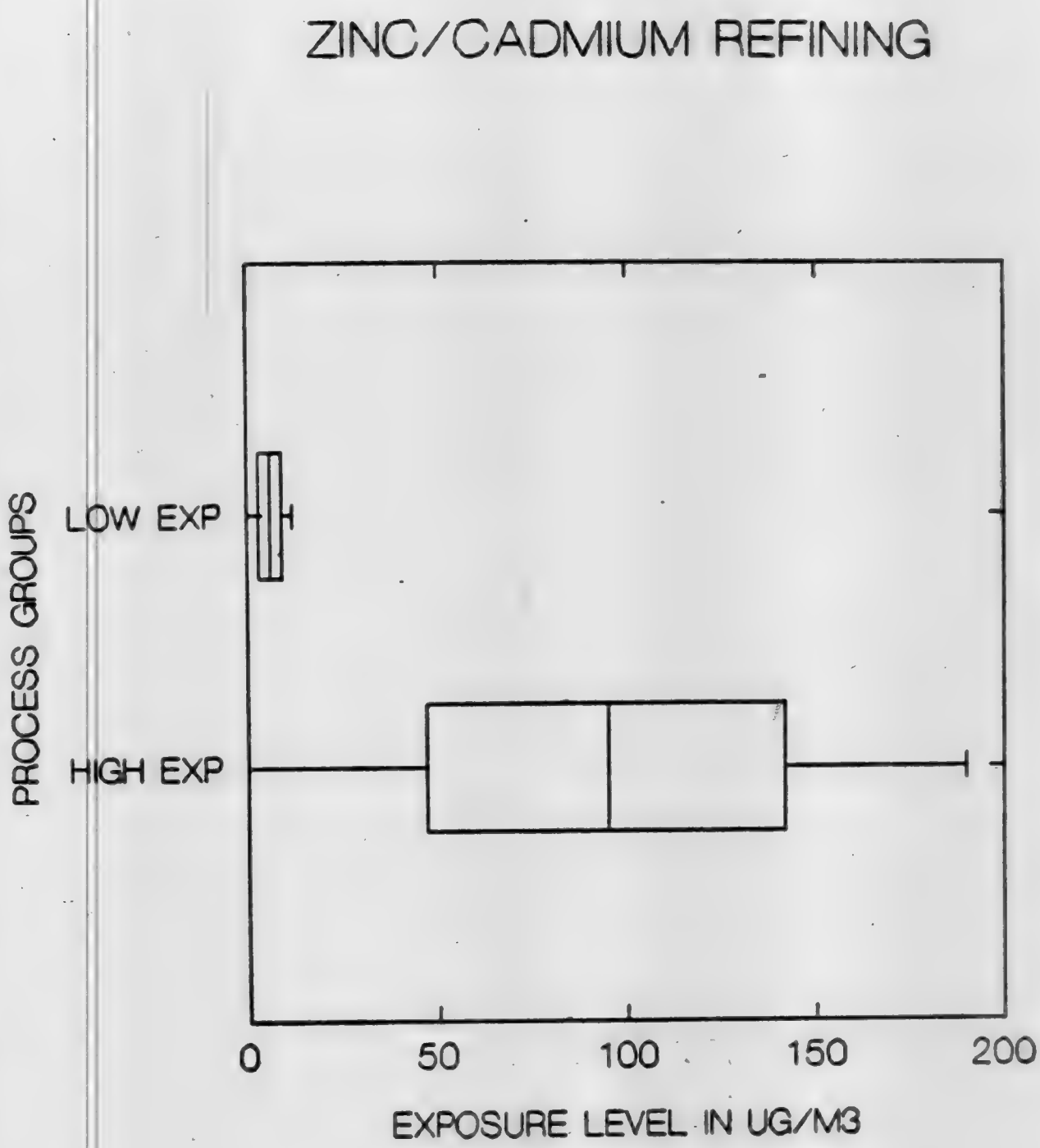

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Mean exposure data for the two sets were as follows:

	High group	Low group
Number of observations	39	51
Mean	91.4	5.8
Standard deviation	141.7	5.3

To verify that the two groups within this industry were distinct, a *t* test was performed on the difference in the means. The null hypothesis that the means of the exposure data were equal, was rejected and the conclusion that they were drawn from separate statistical distributions, was accepted.

After the statistical difference between high and low exposure groups was verified, the data were analyzed separately. In Figures VIII–C8 and VIII–C9, separate process mean exposure values were drawn from each available data source. All process data in each group were "fitted" to a straight line using ordinary least squares methodology. For the high exposed cadmium group over one half of the exposures were at or below 100 $\mu g/m^3$ (figure VIII–C8).

For each group a model was developed to graphically show the effect on the exposure distribution after current exposures are reduced using alternative engineering control efficiency factors of 80 percent down to 20 percent, in 20 percent increments. The higher the efficiency level, the lower the projected exposure level and the closer the projected exposure line moves to the vertical axis. Figures VIII–C10 and VIII–C11 show the reduction and shift in the distribution of exposures for the high and low groups in zinc refining/cadmium production operations.

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FIGURE VIII-C8

ZINC/CADMIUM (HIGH EXP): CURRENT

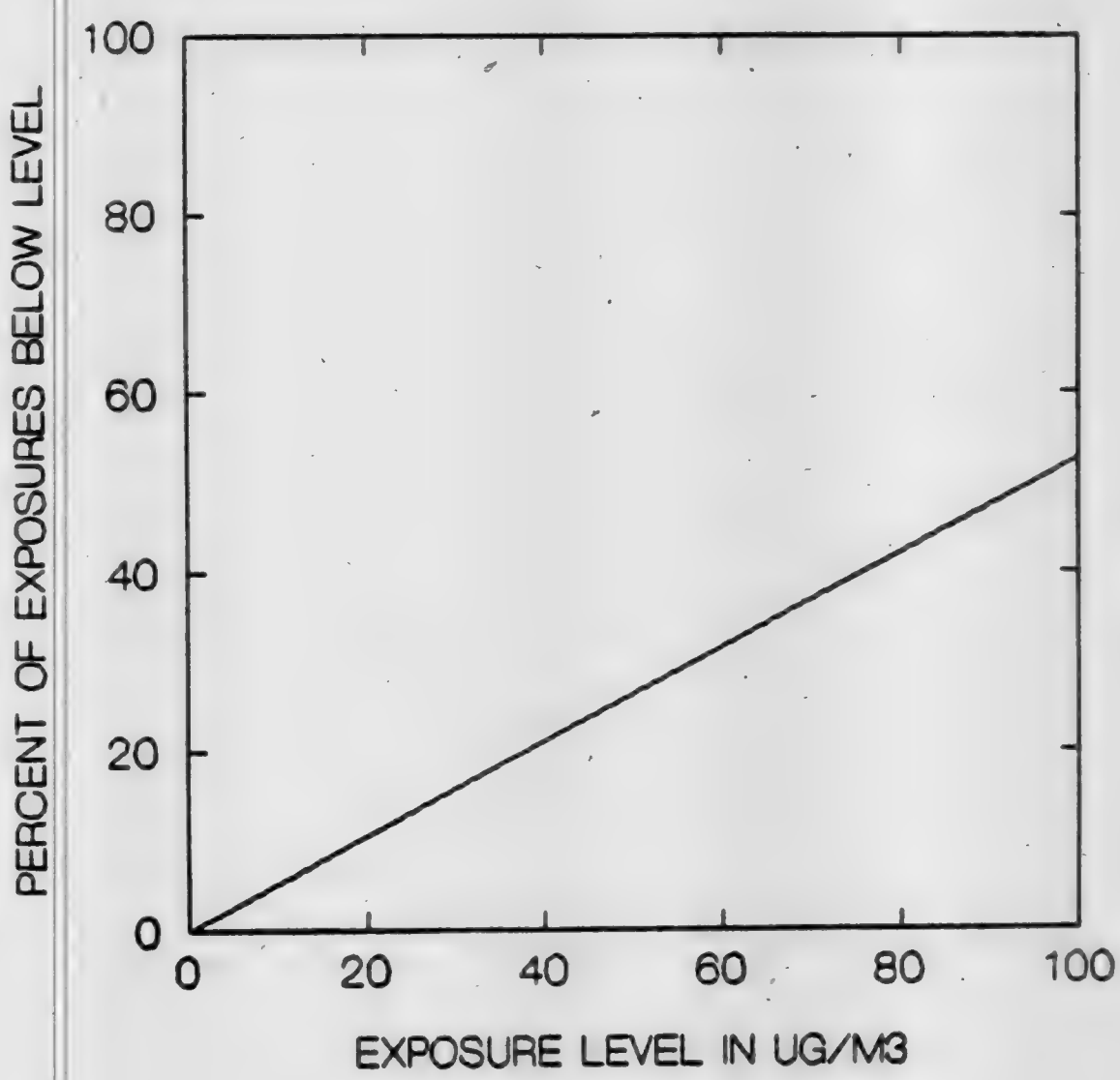

FIGURE VIII-C9

ZINC/CADMIUM (LOW EXP): CURRENT

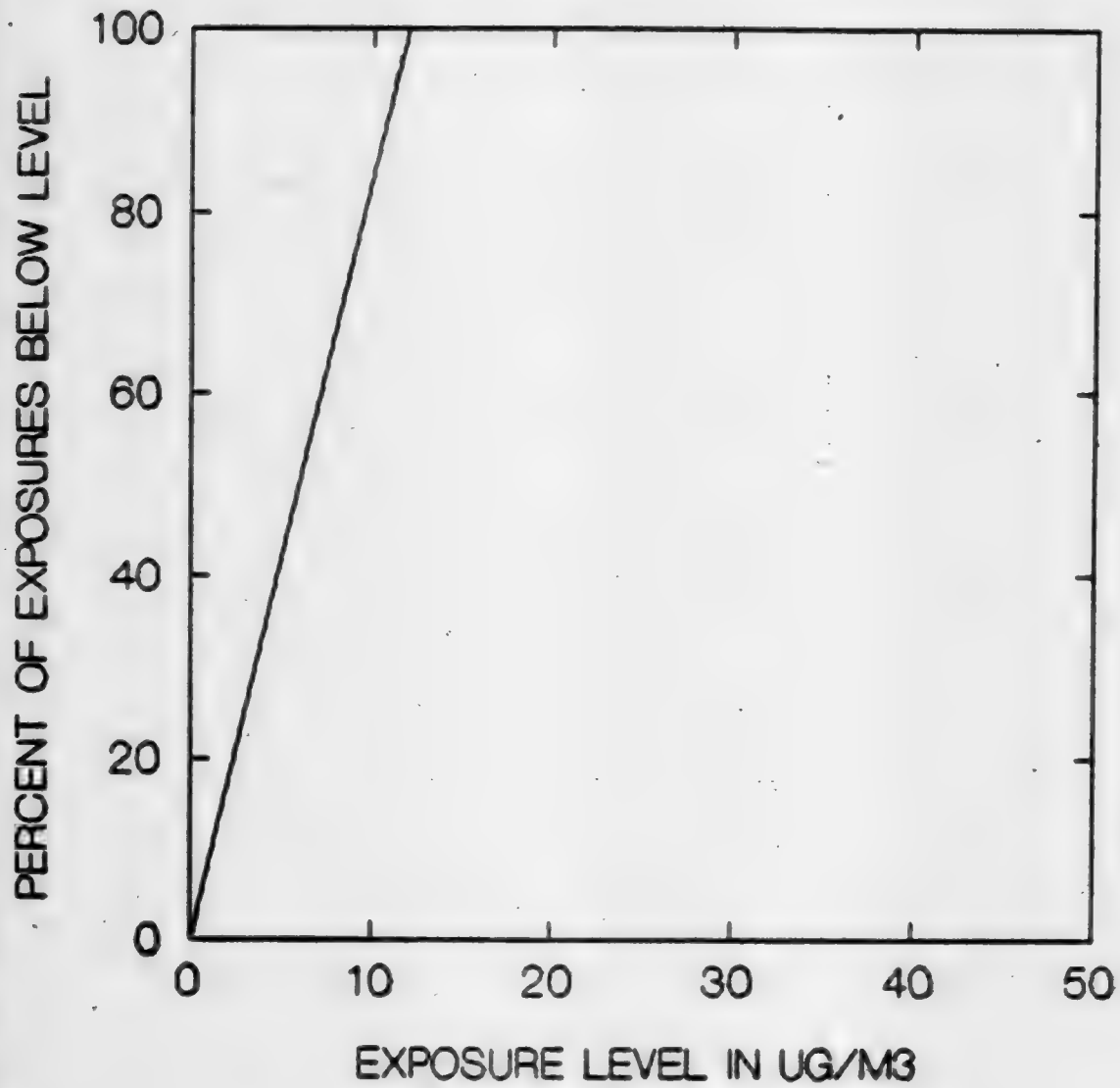

FIGURE VIII-C10

ZINC/CADMIUM (HIGH EXP.): CONTROLLED 80%-20%

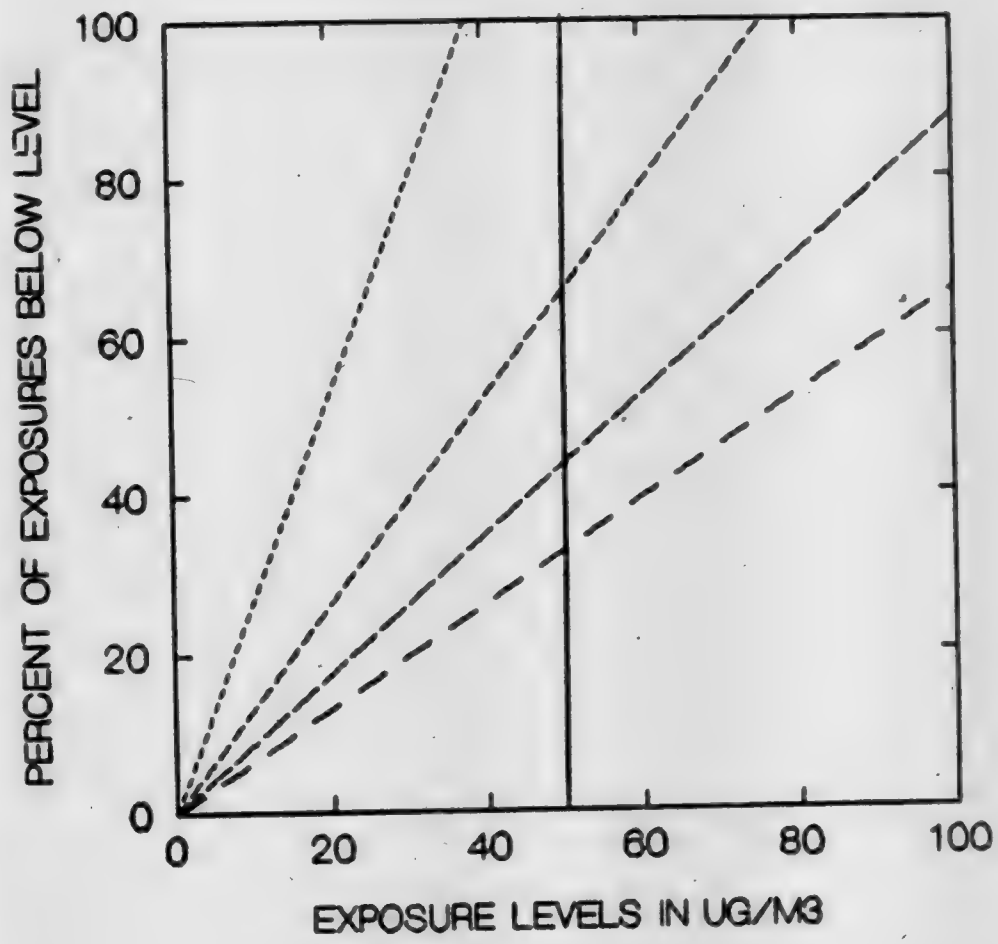

FIGURE VIII-C11

ZINC/CADMIUM (LOW EXP.): CONTROLLED 80%-20%

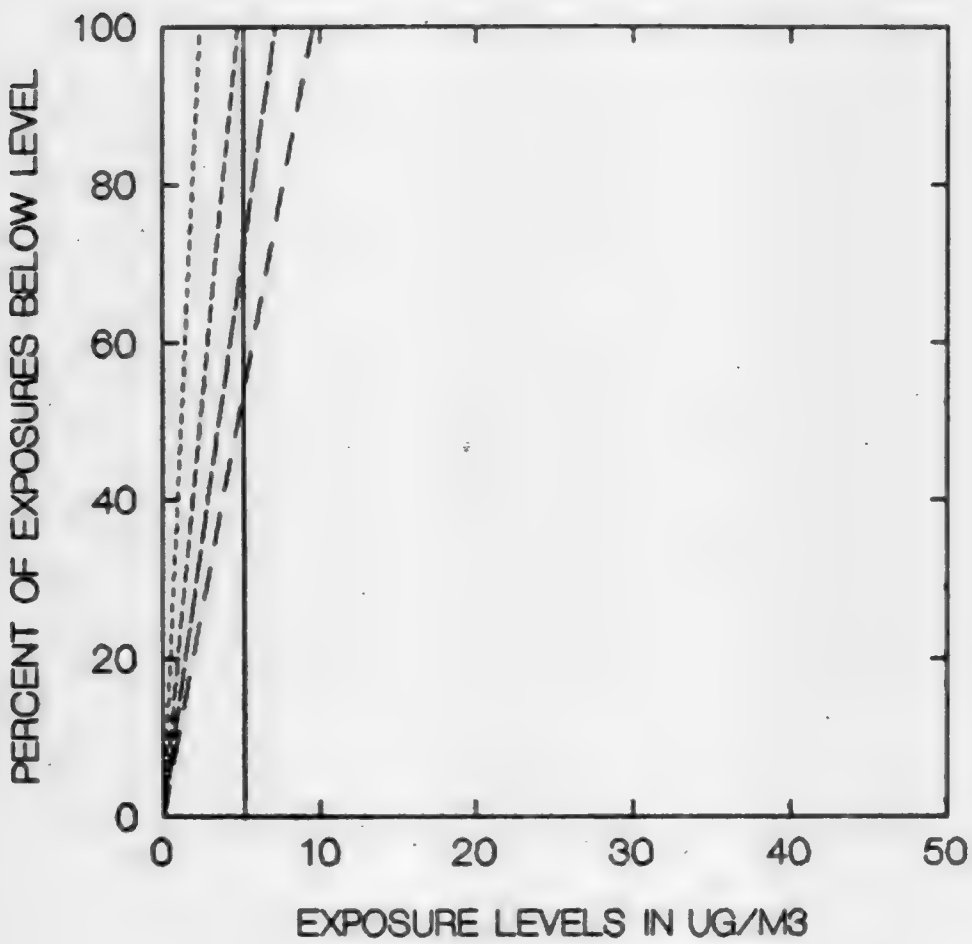

VIII-C72

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The selection of an appropriate engineering control reduction factor was based on evidence and testimony in the record and economic feasibility considerations. The only basis for selecting an engineering control solution with a lower efficiency than an alternative strategy with a higher factor, was economic infeasibility of the latter.

The evidence in the record substantiates the finding that additional feasible controls are available and can be implemented to further reduce exposure levels. The extent of current controls in place and the applicability of specific additional controls will vary depending on the individual plant, but the relevant comments in the record all basically agree that a multitude of control options exists to limit airborne cadmium concentrations. These are generally conventional technologies that are commonly known, readily available, and to some degree currently used in the industry, as described above.

The controls can be used individually or in combination. If one control is not sufficient, additional ones can be used. It is the interaction of various engineering controls and work practices as part of an integrated system of controls that can produce the needed overall reduction in exposure levels. OSHA does not specify which control must be implemented. Rather, OSHA allows the employer the choice best suited to the particular characteristics of the workplace.

JACA estimated that the expected efficiency of new or improved local exhaust ventilation systems for exposures in the cadmium refining industry would be over 90 percent in situations where high hood efficiency was possible. [1, Table 4–2]. PACE provided a detailed analysis of the expected effectiveness of engineering controls for both zinc refining and cadmium refining. [2, 3]. For each job category PACE determined the percent of the total exposure that was attributable to different exposure sources and then applied control effectiveness estimates to each source. Estimates of the effectiveness of specific controls were not given, but they can be derived by comparing descriptions of recommended controls in one section with the expected reductions in exposure levels presented in tables supplied by PACE.

In cadmium production operations, PACE's expected percent reduction due to controls at specific sources ranged from 75 to 95 percent. Overall exposure reductions for operators ranged from 75 to over 90 percent (60 percent for maintenance). In zinc refining operations, where cadmium exposures are much lower, controls at individual sources were expected to achieve reductions of up to 80 percent. Background and variability of exposure levels would be reduced significantly. Overall, mean employee exposures would consistently be less than 10 $\mu g/m^3$ except in cadmium refining areas.

This review and analysis of the record needed to be supplemented with economic feasibility considerations before a determination could be made regarding appropriate engineering controls and their effectiveness level. According to PACE, engineering solutions to achieve an 80 percent or higher reduction in cadmium production would require major capital expenditures and the rebuilding and replacement of existing facilities. Capital costs to achieve this reduction margin could reach over $3 million per affected plant according to PACE [3, p. 2–3]. Achieving an 80 percent reduction in cadmium levels does not appear to be economically feasible at this time. (Total annual revenues in this sector average less than $50 million per plant. If the profit margin on this amount was five percent, per plant profits would be $2.5 million. Since 1979, four cadmium refining facilities have closed, leaving four domestic producers nationwide.) Instead, less expensive engineering controls with a lower efficiency expectation (60 percent) were identified. Based on the evidence in the record, OSHA believes that an engineering control reduction level of 60 percent is reasonable for this industry segment and is both technologically and economically feasible.

Following the selection of this efficiency factor, the appropriate engineering control level for each exposure group was identified at the point achievable for 60–80 percent of the exposures. For the high exposure processes including cadmium refining, cadmium casting, cadmium oxide production and sinter plant operations, a SECAL of 50 $\mu g/m^3$ is identified. For all low exposed processes, OSHA believes that the PEL level of 5 $\mu g/m^3$ is achievable through engineering controls.

For the high exposure group, compliance with the PEL of 5 $\mu g/m^3$ with engineering controls and work practices is infeasible at this time and can only be achieved through the use of respirators. Respirators are readily available with a wide range of protection factors that can adequately protect workers from the potential exposures in this industry. Respiratory protection will be required for many of the production and maintenance employees full time. This result was anticipated in the preliminary analysis and was consistently supported by the substantial evidence in the record.

Costs of Compliance with the 50 $\mu g/m^3$ SECAL and 5 $\mu g/m^3$ PEL. The costs of compliance with the revised cadmium standard consist of costs for additional engineering controls, increased respirator use, more comprehensive exposure monitoring programs, medical surveillance requirements, hygiene provisions (shower rooms, work clothing, etc.), and training and recordkeeping requirements.

Estimates of the costs of installing new or improved local exhaust ventilation systems were provided by JACA. In current dollars, the costs of these systems range from $51,000 to $112,000. [1, Table 6–1]. Annual operating and maintenance costs were estimated to be 10 percent of the capital cost.

PACE provided cost estimates for several types of controls in its analysis of the cadmium production industry. [3, Table A2–4]. A pneumatic conveying system was estimated to cost $60,000 with $4,000 in annual operating and maintenance costs; exhaust ventilation systems with hoods and ducts were estimated to cost $24,000 to $254,000; costs for clean air islands ranged from $6,000 to $27,000; partitioning an area from the rest of the building was estimated to cost $9,000; a complex enclosure of a machine was estimated to cost $5,000; the cost of installing a central vacuum cleaning system was estimated to be $15,000; relocating an operation would cost about $25,000; and a decontamination booth for maintenance work, with exhaust system, monorail and hoist, and vacuum and steam cleaning facilities was estimated to cost $47,000. These estimates were consistent with the evidence in the record for costs of similar engineering controls.

JACA recommended additional engineering controls for three of the six job categories identified in cadmium production. PACE recommended significant additional control measures for ten of fifteen job categories. In its analysis of a zinc refining plant (including cadmium production operations), PACE recommended control measures in four of the seven departments, representing about twenty job categories. Both the PACE and JACA analyses were based on an attempt to achieve 5 $\mu g/m^3$.

For purposes of estimating the costs of additional engineering controls in this industry, OSHA developed estimates of the number of different types of controls that are expected to be installed. The additional feasible controls

recommended and described in the record for this industry are generally common methods of controlling airborne exposures. Each plant would choose the control methods that represent the best solution for their particular situation, depending on the configuration of the operation, the extent of current controls, and the applicability of additional controls.

For example, in some situations ventilation may already be present and exposures may be more effectively controlled by installing glove boxes or mechanized material transfer equipment, or by relocating the operation rather than improving ventilation. Costs for these alternatives would be comparable to the costs for the control methods identified. Thus, OSHA's estimates of the numbers of controls serve to identify work stations where exposures need to be reduced; additional controls provide the basis for estimating total costs. As noted, these control costs may serve as a proxy for the cost of alternative solutions at some operations, in some firms.

Based on a review of the relevant comments submitted to the record, Table VIII–C19 presents the additional controls and their potential costs, needed for compliance with the 50 $\mu g/m^3$ SECAL and the PEL. The three plants with both zinc refining and cadmium refining operations are estimated to need new or improved local exhaust ventilation at six operations, clean air islands at five locations, two additional central vacuum cleaning systems, and improved enclosure or partitions for seven operations. Additional controls for cadmium refining operations would include four local exhaust ventilation systems, three clean air islands, one central vacuum cleaning system, and enclosure of four operations. Zinc refining operations are estimated to need two local exhaust ventilation systems, two clean air islands, one central vacuum cleaning system, and enclosure of three areas.

TABLE VIII–C19.—ESTIMATED COSTS OF ENGINEERING CONTROLS FOR CADMIUM IN THE ZINC REFINING/CADMIUM PRODUCTION INDUSTRY

Type of control	Controls per plant by type of plant [1]			Total industry controls [2]	Cost per control ($thousands)			Industry costs ($thousands)				Total annualized industry cost ($thousands)
	A	B	C		Capital	Annual power and maintenance	Annual labor	Capital	Annualized capital	Annual power and maintenance	Annual labor	
Local exhaust ventilation	4	6	2	24	80	8	0	1,920	312	192	0	504
Clean air islands	3	5	2	20	18	2	0	360	59	40	0	99
Central vacuum systems	1	2	1	8	15	1	7	120	20	8	56	84
Enclosure	4	7	3	28	9	0	0	252	41	0	0	41
Total				80				2,652	432	240	56	728

[1] Type A plant: cadmium refining only; Type B plant: zinc refining and cadmium refining; Type C plant: zinc refining only.
[2] Based on one type A plant, three type B plants, and one type C plant.
Source: Office of Regulatory Analysis, OSHA, U.S. Department of Labor.

Table VIII–C19 shows the capital costs of additional controls, $2.65 million, and the annual costs, $296,000. Total annualized costs are calculated by amortizing the capital costs over ten years with a ten percent interest rate and adding the resulting annualized cost to the other annual costs. The total annualized costs of engineering controls in the zinc refining/cadmium production industry are estimated to be $728,000.

Three companies submitted lengthy comments and testimony about the extent of current programs for respirator use, exposure monitoring, medical surveillance, hygiene facilities, information and training, and recordkeeping [5, 6, 7, 8, 9, 10, 11]. The industry generally already provides extensive programs in these areas, but the revised standard may require some of these programs to be expanded.

The plants involved in zinc and cadmium refining currently have established respirator programs for employees in high exposure areas. In order to comply with the PEL of 5 $\mu g/m^3$ it is likely that about 80 percent of the production and maintenance employees in the industry would be required to wear respirators full time even after the implementation of additional feasible controls. Employees in cadmium refining areas are already provided with respirators, but many employees with exposures below 20 $\mu g/m^3$ do not wear respirators. One zinc refiner estimated that regular respirator use would have to be expanded from 20 employees currently to 289 employees working in the plant. [11, p. VII–30]. Another comment from a zinc refiner indicated that almost all of the 120 employees exposed at or above 1 $\mu g/m^3$ currently wear respirators. [5, Attachment I, pp. 5–7].

The incremental costs associated with respirator use as a result of the revised cadmium standard are based on providing respirators for an estimated 500 additional employees in the industry. The industry currently employs about 1,800 workers, of whom about 75 percent are production or maintenance employees [11, p. VII–59]. Given that all employees in the cadmium refining operations already wear respirators, the 500 employees represent about half of the remaining workers who would be required to wear respirators under the revised standard.

The annual cost per employee of providing a respirator, HEPA filter changes, and a fit test was estimated by one zinc industry employer to be about $300. [5, Attachment III, p. 1]. Thus, the annual cost for the industry for additional respirator use is estimated to be $150,000.

As evident from employers' submissions of monitoring results to the record, zinc and cadmium refining facilities already conduct exposure monitoring regularly. The revised standard requires semi-annual exposure monitoring of "each shift for each job classification in each work area." Plants refining zinc and cadmium have an average of 20 job categories, and plants refining only zinc or cadmium have an average of about 10 job categories affected by this requirement. Counting each shift separately, a total of 240 job categories would have to be monitored

semi-annually. Since about half of this monitoring is already conducted, approximately 240 additional samples would have to be taken each year in this industry.

The lab analysis of each sample is estimated to cost $40. The services of an industrial hygienist required to perform the monitoring for each plant would cost on average about $1,500. [1, p. 6–23]. Thus, the estimated annual cost attributable to increased exposure monitoring is $17,100.

The medical surveillance requirements of the revised standard involve a complex combination of different categories of employees and a series of triggers and different schedules of various exams and tests. The standard basically requires annual biological monitoring, including tests for cadmium in urine, cadmium in blood, and β_2-microglobulin in urine, and a full medical examination every two years.

Most employees at cadmium refiners are already provided with annual medical exams and biological monitoring including blood and urine cadmium analyses and urine protein analyses. [8]. About half of the exposed employees at zinc refiners are included in biological monitoring programs, and those with high cadmium exposure (less than 10 percent of all exposed workers) are given annual physicals. [11, pp. VII–49 through VII–51]. Expanding the medical surveillance programs in this industry to meet the basic requirements of the revised cadmium standard would involve approximately 600 additional physicals (1,200 employees every two years) and an additional 600 of each of the three biological monitoring tests.

More frequent medical exams and biological monitoring may be required for some employees, including employees who may be medically removed. An estimated 50 additional medical exams and 150 additional sets of biological monitoring may be necessary annually for this purpose.

The cost of a physical, including the wages paid during the exam, was estimated to be about $250. The cost of the lab analysis for a β_2-microglobulin sample was cited by a public health research group as $80. [4, p. 4]. Analyses of samples of cadmium in urine and in blood are estimated to be $60 each. An additional $5 is added to the cost of each of the biological monitoring samples for costs associated with collecting the samples. Thus, the total incremental annual costs of compliance with the medical surveillance requirements are estimated to be $323,750 [650*$250+750*[$65+$65+$85]].

Requirements for medical removal may involve compliance costs in addition to those for more frequent medical exams and monitoring (estimated above). The criteria for mandatory removal would affect employees with the most extreme biological monitoring levels. The criteria for removal also allow for considerable physician's discretion. An estimated 3 percent of the exposed workforce may be removed initially on the basis of these criteria and the discretion of physicians.

Compliance with the new PEL for cadmium and other requirements of the final cadmium standard should prevent a continuing need to remove employees. The number of employees with relatively high past exposures who would be more likely to be removed, should decline through attrition. However, as the criteria for removal become broader in future years (lower levels of cadmium in blood and urine will trigger mandatory removal), additional employees may be subject to removal. The costs associated with the medical removal provisions are approximated by assuming that on average, 3 percent of the exposed workforce may be removed every 5 years.

The number of employees removed should be small enough to enable establishments to provide removed employees with alternative positions. Costs to the employer would include paying wage subsidies to employees moved into lower wage jobs, and hiring and training new employees. The average cost per removed employee would be an estimated $5,000. An estimated 40 employees may be removed every five years, on average, in the zinc and cadmium refining industry, and the annual cost for the industry would be $40,000.

The total annual cost for the medical surveillance and medical removal provisions is estimated to be $363,750.

Cadmium refining plants generally have established hygiene programs, including clean/dirty side change rooms, work clothing, and separate lunch rooms. [11, p. 10–216]. One zinc refiner currently provides showers and change rooms but stated that the modifications necessary to meet the requirements of the cadmium standard would cost about $200,000. This commenter also stated that disposable work clothing would have to be provided for about 200 additional employees at an annual cost of $104 per employee. [5, Attachment III, p. 1].

Based on the record, OSHA has concluded that for the industry as a whole the costs of the hygiene provisions would include about $300,000 for shower room and/or lunch room modifications with $50,000 in annual expenses for work clothing and operating costs. In addition, the estimated annual cost of showering on work time is $900 per employee (based on fifteen minutes per day for 240 days per year at $15 an hour) and would apply to an estimated 400 employees. The total annualized costs of compliance with the hygiene provisions is thus estimated to be $459,000.

Incremental costs for recordkeeping and other information-related requirements are estimated to be about $5 per employee annually. Up to 1,000 additional employees may be affected by these requirements which would result in an annual compliance cost of about $5,000.

The total annualized costs of compliance with the cadmium standard for this industry are estimated to be $1.72 million. These costs are summarized by provision in Table VIII–C20.

Economic feasibility of a 50 μg/m³ SECAL and 5 μg/m³ PEL. Cadmium prices have generally ranged from $1 to $4 per pound over the past 25 years. [14, p. 6]. From 1963 through 1987 the average prices were below $2 per pound. In 1988, the average price per pound rose to over $7, and as of August 1989 the price had fallen back to about $4 per pound. [13, p. 6].

TABLE VIII–C20.—ESTIMATED COSTS OF COMPLIANCE WITH THE REVISED CADMIUM STANDARD FOR THE ZINC REFINING/CADMIUM PRODUCTION INDUSTRY

Provision	Annualized cost ($thousands)
Exposure Control	728.0
Respirator Use	150.0
Exposure Monitoring	17.1
Medical Surveillance	363.8
Hygiene Facilities/Practices	459.0
Recordkeeping and Information	5.0
Total	1,722.9

Note: Costs do not include current expenditures.
Source: Office of Regulatory Analysis, OSHA, U.S. Department of Labor.

From 1984 to 1987 U.S. production of cadmium remained relatively stable, ranging from 1,486 to 1,686 metric tons. Preliminary data for 1988 suggest that U.S. cadmium production increased to nearly 1,900 metric tons as a result of increased zinc production and in response to higher zinc and cadmium prices. [13, p. 2–2].

Since cadmium is a necessary by-product of zinc refining, decisions

regarding its production are not made independently of conditions in the zinc market. From 1984 to 1987 U.S. production of zinc was about 260,000 metric tons while the price of zinc was about 40 cents per pound [13, Table 2–3]. Thus, revenues from zinc production have been about $230 million.

At a price of $2 per pound, total revenues from cadmium production would amount to less than $7 million. Based on the average New York dealer price of $6.28 per pound in 1989, the value of domestic cadmium metal output in that year was $21.5 million. [14, p. 10].

Cadmium and other by-product revenues are usually considered credits (i.e., negative costs) by zinc refiners. [14, p. 9]. These revenues partially offset the production costs of the principal product (zinc). The magnitude of the credit fluctuates according to by-product prices, but tends to be a relatively small portion of total revenues.

Zinc refiners are unlikely to discontinue cadmium production unless the total costs of producing zinc and cadmium outweigh the total revenues. Zinc refiners and cadmium refiners did not discontinue operations when the price of cadmium remained below $2 per pound for several years in the 1980s. For cadmium and zinc producers, the estimated compliance costs associated with this standard would be completely offset by an increase in the price of cadmium of less than fifty cents per pound. Since the price of cadmium has recently risen by two to five dollars per pound over prices a few years ago, refiners should be earning sufficient revenues to cover compliance costs.

For zinc refiners the estimated compliance costs represent a fraction of 1 percent of revenues. Given the inherent fluctuations in the price of zinc, costs of this magnitude could not alone cause a zinc refiner to cease production. An independent study by the U.S. Department of Interior, Bureau of Mines, concluded that annualized costs for engineering controls for the industry of $983,000 represented "a reasonable cost." [14, Attachment I, p. 1]. Some commenters raised concerns that the impact of the standard could hinder the ability to recover cadmium from scrap and other forms of recycling. At current prices cadmium production is financially viable. Cadmium-containing residuals are classified as hazardous waste and their disposal is estimated to cost $0.50 per pound of cadmium. Thus, "the price of cadmium metal would have to drop about $0.50 below the operating costs before primary cadmium producers would actually shut down their cadmium circuits and dispose of residuals instead." [13, p. 4–2]. Due to the high costs associated with the disposal of cadmium-bearing waste, cadmium refiners should be able to obtain supplies at relatively low prices.

Cadmium refining operations are currently conducted with extensive use of respiratory protection and would have to continue to do so with or without the revised cadmium standard. The feasibility of cadmium recycling efforts would depend on the price of cadmium and other factors in the business environment. The incremental compliance costs associated with this standard would be a very minor factor in investment decisions on this scale.

Due to environmental regulation, labor costs, and other factors, the costs of domestic cadmium refining may be higher than in other countries. Prior to 1974, the United States was the world's leading refiner of cadmium with 11 plants producing cadmium. Cadmium production dropped 82 percent by 1982 even though demand remained strong. By 1989 the United States had gone from being nearly self-sufficient in cadmium to a net import reliance of 62 percent. [14, p. 9].

The impacts of the revised cadmium standard are completely overshadowed by more fundamental circumstances and developments in this industry. Cadmium refining operations can continue in this country under the revised cadmium standard. The survival of or investment in such plants depends on many factors. The revised standard would have a negligible influence in this area because (1) the incremental costs represent a small fraction of revenues and return on equity and (2) the basic nature of cadmium refining operations with the need for respiratory protection would not be changed.

OSHA concludes that the revised cadmium standard is economically feasible for the zinc refining/cadmium producing industry. This determination is based on the evidence submitted to the record, including the costs imposed by the standard and the industry's ability to absorb these costs.

Notes

1. Exhibit 13, "Economic Impact Analysis of the Proposed Revision to the Cadmium Standard," Final Report, JACA Corporation, March 15, 1988.
2. Exhibit 19–43, Attachment K, "Technical Feasibility of a Workplace Standard for Airborne Cadmium in the Primary Zinc Industry," PACE Incorporated, December 5, 1989.
3. Exhibit 19–43, Attachment L, "Feasibility and Cost Study of Engineering Controls for Cadmium Exposure Standard," PACE Incorporated, April 30, 1990.
4. Exhibit 123, "Comments of Public Citizen Health Research Group and the International Chemical Workers Union on OSHA's Proposed Standard Governing Occupational Exposure to Cadmium," Public Citizen, October 17, 1990.
5. Exhibit 19–30, "Comments on OSHA Proposed Cadmium Regulation," Big River Zinc Corporation, May 10, 1990.
6. Exhibit 19–31, "Statement of Zinc Corporation of America on the OSHA Proposed Rulemaking on Occupational Exposure to Cadmium," Zinc Corporation of America, Thomas E. Janeck, May 11, 1990.
7. Exhibit 19–32, Comments of ASARCO Incorporated, May 9, 1990.
8. Exhibit 107, Comments of ASARCO Incorporated, September 18, 1990.
9. Exhibit 111, Comments of ASARCO Incorporated, September 26, 1990.
10. Exhibit 125, Comments of Big River Zinc Corporation, October 16, 1990.
11. Hearing Transcript, pages VII–29 through VII–110 and pages 10–204 through 10–216.
12. Exhibit 106, Comments of NIOSH, September 18, 1990.
13. Exhibit 19–43, Attachment I, "Economic and Technological Feasibility of a 5 Microgram per Cubic Meter Workplace Standard for Airborne Cadmium," Putnam, Hayes & Bartlett, Inc., April 30, 1990.
14. Exhibit 105, Studies submitted by Bureau of Mines, U.S. Department of Interior, September 18, 1990.

Pigment Production

Industry overview. Cadmium pigments are manufactured at four plants in the United States. Approximately 600 tons of cadmium are used in the production of cadmium-based pigments annually. A total of about 100 employees are exposed to cadmium in these facilities. [1, p. 5].

Cadmium pigments are inorganic compounds that range in color from yellow to red. They are used to color plastics, paints, ceramics, and printing inks. The pigments are usually produced as powders but are also available in other forms such as pastes and liquids. For applications in the plastics industry, cadmium pigments are available in master batch pellets, which incorporate the pigment in pellets of compounded polymer resins.

Compared to other inorganic pigments, cadmium pigments are relatively expensive. Cadmium pigments are preferred and essential for many uses because other pigments lack the qualities that cadmium pigments provide. The advantages of using cadmium pigments include heat stability for manufacturing plastics at high temperatures or coating high-temperature surfaces; coloring power that is strong and bright; and resistance to fading due to aging or sunlight.

Production processes. The process for manufacturing cadmium pigments differs among companies, and

manufacturers may utilize different combinations of job classes depending on the process. In general the process entails the addition of cadmium metal to a tank which contains an acid solution. Depending on the color desired, sodium sulfide and selenium or zinc sulfide are added. The resulting precipitate is filtered, washed, and dried. The dried precipitate is then calcined, forming the desired cadmium pigment. The pigment is further milled or blended to meet customer specifications. Finally, it is packaged, usually in fiber drums.

The cadmium pigment manufacturing process generally involves the following job classes in addition to supervisors, maintenance mechanics, and laboratory technicians: Solution operators, wet solids operators, calcine operators, and dry solids operators. [1, p. 6].

The solution operator is in charge of adding cadmium metal flakes to the preparation tank and may also be involved in the striking operation which is a wet process. Depending on the manufacturer, this position may be two different jobs, an operator and a striker. The wet solids operator transfers the wet presscake either manually or automatically to the drying department. In some pigment plants the material is manually transferred from drying trays to the crushing operation where it is packed in drums and sent to the calcining department. In other facilities, the pigment is dried in a closed system using either a belt dryer or pan dryer. Depending on the facility, pigment is either added to the calcine manually by the calcine operator or it is transferred to the calcine by air from a portable container. Dry solids operators are responsible for further grinding, milling, or blending of the cadmium pigment. When product specifications are met, the pigment is packaged.

Employee exposures. The preliminary analysis accompanying the proposed rule relied on the exposure profile developed by JACA Corporation. [2, Table 3–6]. JACA's exposure profile was based on seven years of sampling results from OSHA's Integrated Management Information System (IMIS) data base through August 1986. JACA also visited a pigment manufacturing plant to better understand and interpret exposure data. Their exposure profile is presented in Table VIII–C21. Four of the six job categories identified have geometric mean exposures of less than 6 $\mu g/m^3$; the remaining two job categories have mean exposures between 40 $\mu g/m^3$ and 50 $\mu g/m^3$.

PACE Incorporated developed an exposure profile for the pigment manufacturing industry at the request of the Cadmium Council. [3, Table A10–1]. This information is summarized in Table VIII–C22. The PACE estimates were calculated from data supplied from one plant. Three of the eight job categories listed have mean exposures of less than 50 $\mu g/m^3$; four of the job categories have mean exposures of 100 $\mu g/m^3$ or more.

One pigment manufacturing plant submitted personal monitoring data to the record as part of its post-hearing comments, including samples taken during 1990. [4, Section D–1]. These data are summarized in Table VIII C–23. The average eight-hour time-weighted average exposures vary from less than 30 $\mu g/m^3$ in some job categories to over 100 $\mu g/m^3$ in others.

TABLE VIII–C21.—CADMIUM EXPOSURE DATA FOR CADMIUM PIGMENT PRODUCTION BASED ON JACA

Job category	Concentration in $\mu g/m^3$		
	Geometric mean	Median	Range
Solution operator	46.2	28.0	22.0–160.0
Wet solids operator	5.6	17.5	0.1–470.0
Calcine operator	40.3	243.0	0.1–1,020.0
Dry solids operator	3.9	2.0	0.1–1,200.0
Process supervisor	1.1	1.1	0.1–7.0
Maintenance technician	3.5	3.0	0.1–1,560.0

Source: Exhibit 13, JACA, Table 3–6.

TABLE VIII–C22.—PROFILE OF OCCUPATIONAL EXPOSURES TO CADMIUM IN THE CADMIUM PIGMENT INDUSTRY BASED ON PACE INCORPORATED

Job category	Geometric mean exposures [$\mu g/m^3$]
Attack operator	79
Strike operator	29
Pressman	43
Crusher operator	140
Calcine operator	100
Wet system operator	44
Millman	222
Blend operator	145

Source: PACE Incorporated, Exhibit 19–43, Attachment L, Table A10–1.

TABLE VIII–C23.—OCCUPATIONAL EXPOSURES TO CADMIUM DURING CADMIUM PIGMENT PRODUCTION BASED ON SCM PLANT DATA

Job category	Arithmetic mean[1] exposures [$\mu g/m^3$]
Attack operator	27
Strike operator	12
Pressman	56
Crusher operator	278
Calcine operator	50
Wet system operator	43
Millman	348
Blend operator	53
Mixer operator	163
Maintenance mechanic	24
Supervisor	9

[1] Generally higher than geometric mean.

Note: Based on 1990 eight-hour time-weighted average personal monitoring data for all job categories except attack operator and pressman, for which 1990 data were not available and 1988–1989 data were used.

Source: SCM Chemicals, Post-Hearing Documentary Evidence, Exhibit 112, Part D–1.

Existing and Feasible Additional Controls. Descriptions of existing controls and feasible additional controls were provided to the record from three primary sources.

JACA Corporation described the limited use of ventilation systems observed during a site visit to one plant; most operators were not protected by engineering controls [2, page 4–10]. JACA recommended an extensive expansion and improvement of the ventilation system, including additional high-efficiency local exhaust ventilation hoods at four work stations.

The plant visited by JACA subsequently implemented a major exposure reduction project, the details of which are described in exhibit 112. The project was completed by early 1989. The improvements and modifications listed as part of this effort

include a variety of controls and were based on a comprehensive approach to reducing exposures levels throughout the plant. According to evidence supplied by the plant,

The design of the exposure reduction project involved a number of components, including improvement of the existing ventilation system, installation of extensive new ventilation equipment, installation of central vacuuming equipment, installation of pneumatic transfer equipment, and other improvements to the processes and work practices. [4, Section D-2, p. 3].

PACE Incorporated evaluated existing controls and prospects for additional controls in the pigment manufacturing industry [3]. The plant visited by PACE and considered representative of the industry was the same plant that was visited by JACA. By the time of the PACE site visit, the plant had completed its exposure reduction project as outlined above. Additional controls recommended by PACE included the enclosure of the box opening and dumping operation at the attack tanks and adding back-draft exhaust ventilation. Together with improved work practices and reduced background concentrations of airborne cadmium, mean worker exposures at the attack tanks would be expected to be reduced by over 80 percent to 13 $\mu g/m^3$ [3, p. 10-4].

PACE suggested that exposures at the strike tanks would be significantly reduced by providing more effective exhaust ventilation for the tanks and by establishing frequent wash down of surfaces in this area to prevent contaminant accumulation.

PACE's recommendations for pigment transfer and calcining included improved ventilation and establishing dedicated equipment and enclosed chutes for multiple production lines which would also involve building modifications.

PACE identified improved ventilation and enclosure as feasible additional controls for the milling and blending operations. The use of parallel production lines may also reduce exposures in these operations, assuming that a sufficient number of production lines could be built and that the lines would remain dedicated to a particular color without the need for clean out.

According to PACE, exposures during pressing and washing operations could be reduced by replacing recessed plate filter presses with automatic pressure filters. Manual material handling would be eliminated as the discharge from the belt filters would be maintained in enclosures. However, implementing parallel production equipment to sufficiently accommodate manufacturing needs may not be feasible and would also create additional exposures during cleaning and maintenance of the chutes and enclosures.

PACE further proposed that controls for the drying operation include an extension of the semi-automatic processing from the pressure filters, eliminating manual handling of trays, tray drying racks, and the use of static drying ovens. Drying would be accomplished with continuous screw dryers from the pressure filter discharge in a closed system. Dedicated dryers would be required for each of the dedicated pressure filter lines.

Pigment manufacturers contend that establishing dedicated production lines would not be feasible given the need to make a variety of products. In order to compete effectively, the plants offer a wide range of products and need to maintain the flexibility to change specifications frequently by producing custom blends using a batch process. The batch nature of the production process requires frequent clean out of equipment.

The capability for batch production seems necessary and likely to continue in plants which compete globally in this industry; and the total number of clean outs are not likely to be reduced. OSHA concludes that feasible controls are available to minimize exposures to cadmium during pigment manufacturing. These would include ventilation systems, enclosures, and housekeeping measures. The industry appears to have implemented some controls already, although further improvements should be possible based upon the PACE report analysis.

Technologically feasible limits for a SECAL. In order to determine appropriate limits for this industry segment, occupation/process exposures were separated into high and low categories (see section B for a more complete discussion of this approach). In general, high exposure occupations/processes had average exposure readings above 100 $\mu g/m^3$; the low exposure group had average exposures at or below 50 $\mu g/m^3$.

Separated data indicate that the high exposure processes include calcining, crushing, milling, and blending operations (with a total of 60 exposed employees) while low exposure occupations/processes include wet system, attack, and strike activities, maintenance and supervision (about 40 employees exposed). Figure VIII-C12 graphically shows the separated data.

Mean exposure data for the two sets were as follows:

	High group	Low group
Number of observations	13	12
Mean	129.6	23.4
Standard deviation	100.3	23.1

To verify that the two groups within this industry were distinct, a t test was performed on the difference in the means. The null hypothesis that the means of the exposure data were equal, was rejected and the conclusion that they were drawn from separate statistical distribution, was accepted.

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FIGURE VIII-C12

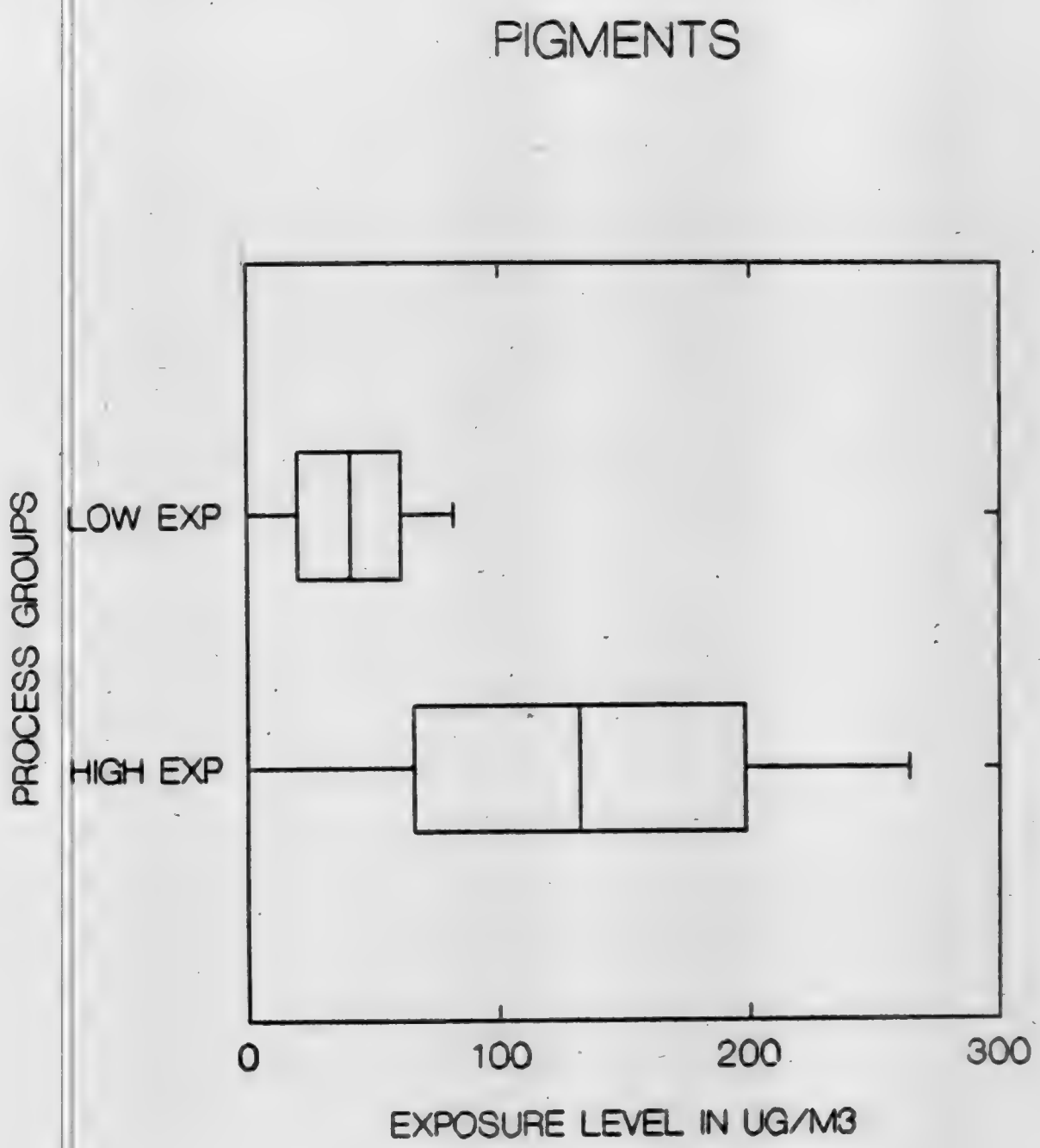

After the statistical difference between high and low exposure groups was verified, the data were analyzed separately. Separate process mean exposure values were drawn from each available data source. All exposure values in each set were "fitted" to a straight line using ordinary lease square formula. The result is shown in Figures VIII–C13 and VIII–C14.

A model was developed in order to identify the appropriate SECAL level for each exposure group. Current exposures for each group were reduced based upon alternative engineering control efficiency levels of 80, 60, 40, and 20 percent. The higher the efficiency level, the lower the projected exposure level and the closer it came to the vertical axis. Figures VIII–C15 and VIII–C16 show the reductions and shift in the distribution of exposures for the high and low groups in pigments manufacture.

The selection of an appropriate efficiency reduction factor was based on assessments of the anticipated ability to control cadmium exposures in this industry as provided by JACA, PACE, and industry sources. JACA projected that a reduction in exposure levels of 90–95 percent was achievable through additional ventilation and improvements in housekeeping and work practices [2, p. 4–12]. According to PACE, 80 percent reductions in exposure levels would be achievable but would require major capital expenditures and new production systems which were considered infeasible by industry sources. The economic feasibility of the control strategy was an important consideration in this sector since total sector profits were only $1.5 million.

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FIGURE VIII-C13

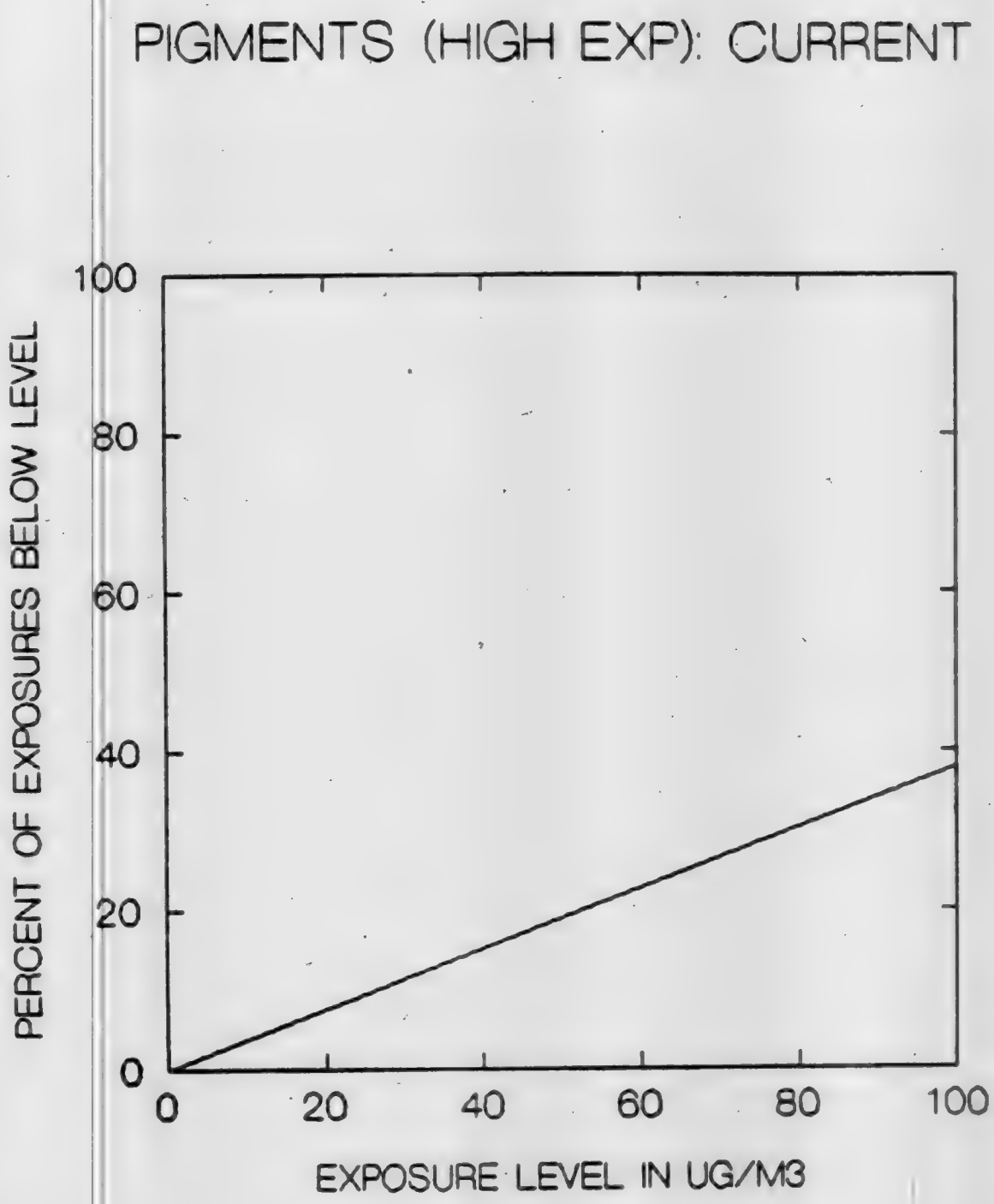

FIGURE VIII-C14

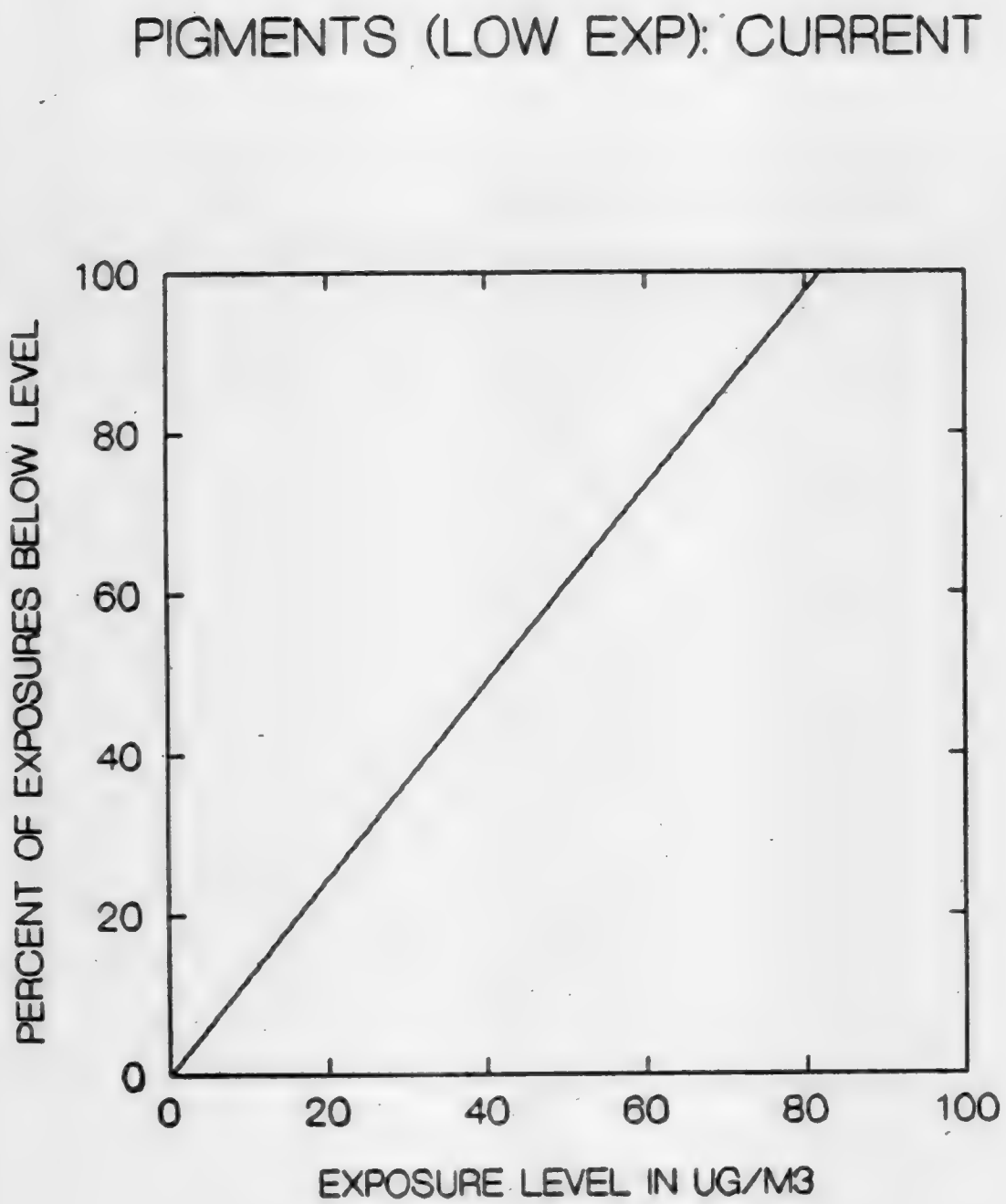

FIGURE VIII-C15

PIGMENTS (HIGH EXP.): CONTROLLED 80%-20%

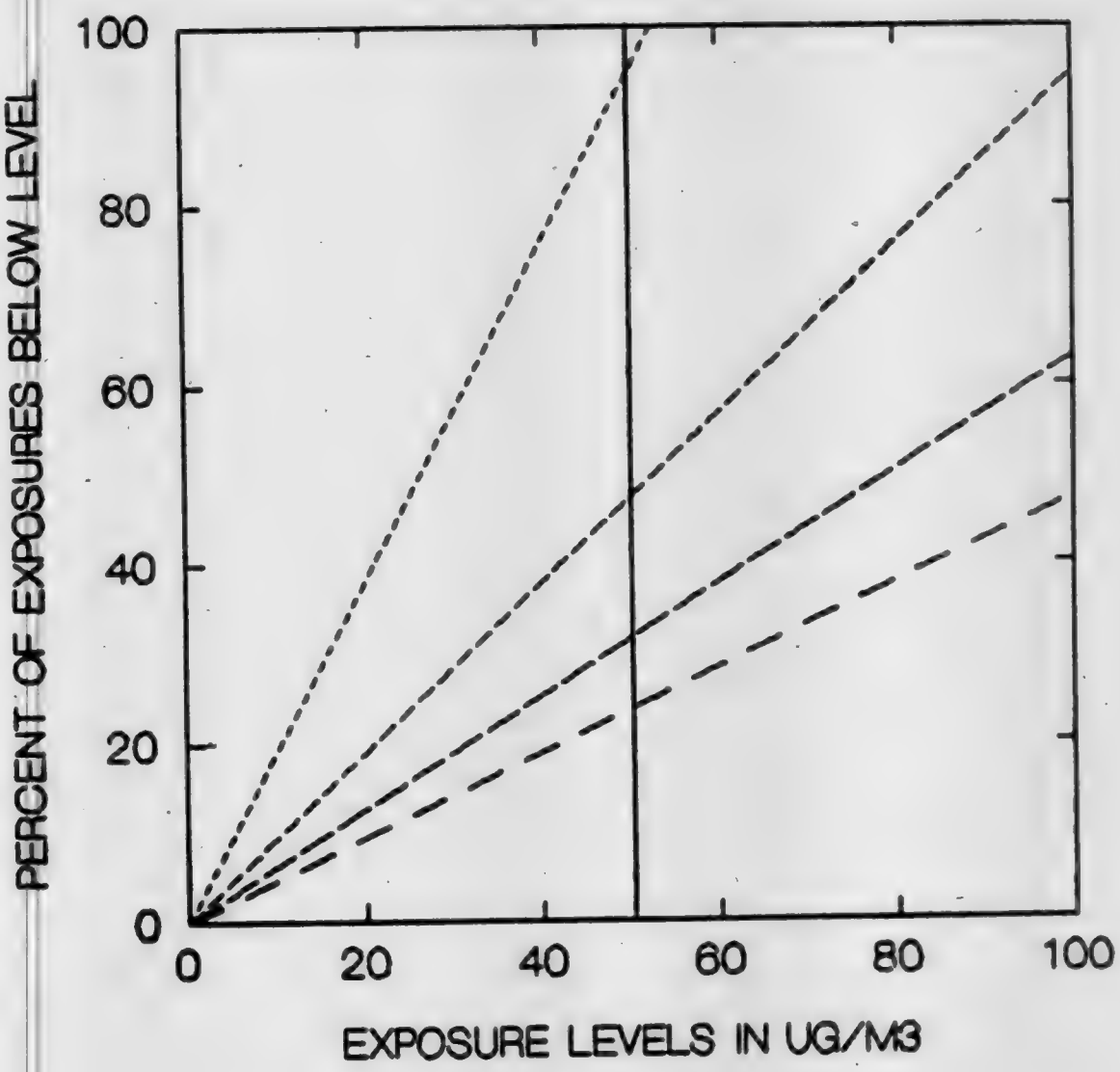

FIGURE VIII-C16

PIGMENTS (LOW EXP.) CONTROLLED 80%-20%

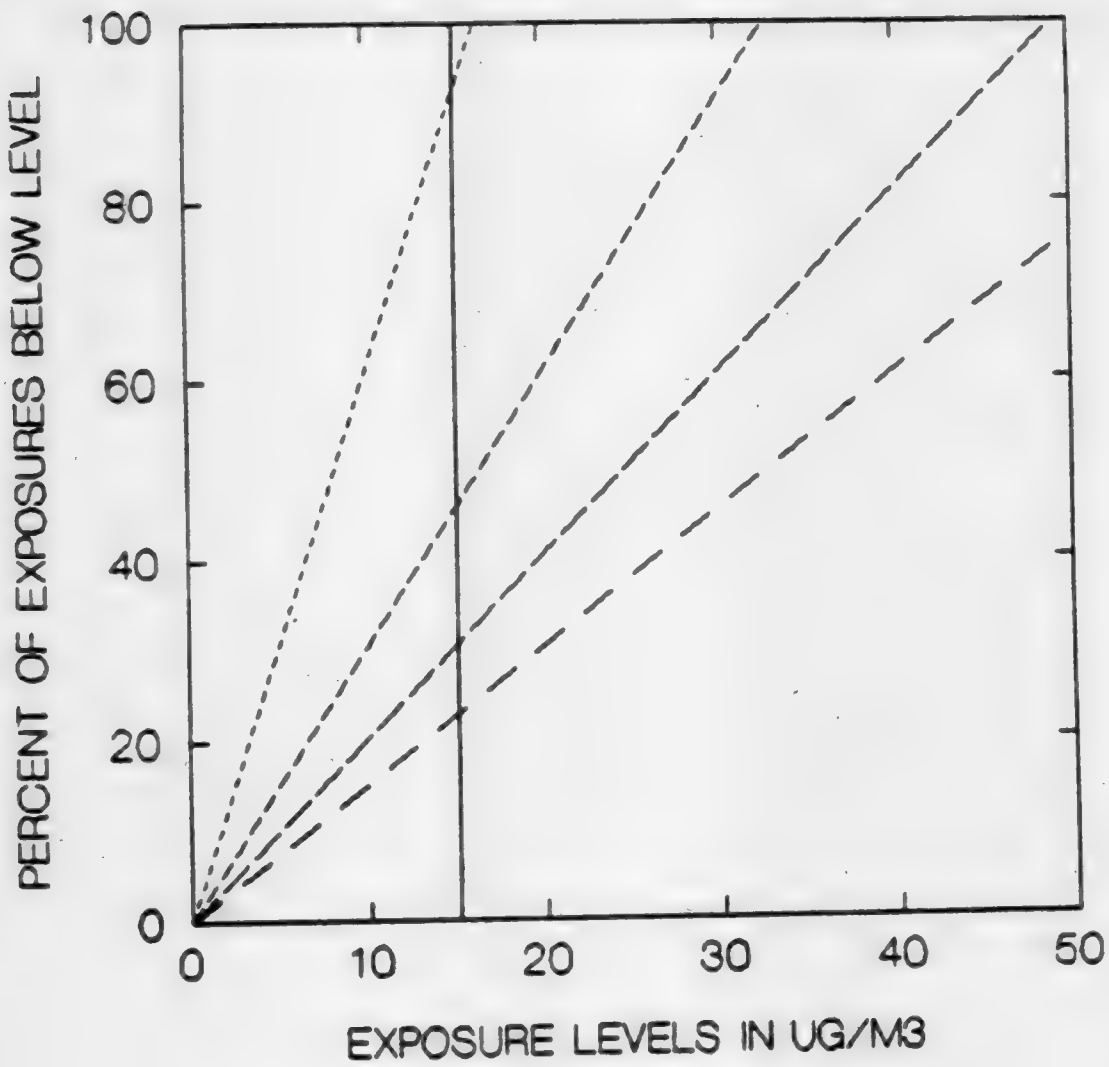

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In the final analysis it was determined that feasibility constraints may prevent establishments in this sector from achieving an exposure reduction level of over 80 percent. A reduction factor range of 60–80 percent was selected based on the expected effectiveness of the additional engineering controls that can be implemented in these establishments. OSHA believes this reduction range is both technologically and economically feasible for this industry.

Following selection of the efficiency factor range, the appropriate SECALs for each exposure group were identified at the level achievable for about 60–80 percent of the exposure observations. For the high exposure operations a SECAL of 50 $\mu g/m^3$ was identified, and for the low exposure operations a SECAL of 15 $\mu g/m^3$ was identified.

The cadmium standard authorizes supplemental reliance on respirators after all feasible engineering controls have been implemented. When exposure levels are not sufficiently reduced through engineering controls alone, compliance with the standard can be achieved in this industry through the use of respiratory protection.

Costs of compliance with 50–15 $\mu g/m^3$ SECALs and 5 $^m g/m^3$ PEL. The costs of compliance include costs for additional engineering controls, increased respirator use, more comprehensive exposure monitoring programs, medical surveillance requirements, hygiene provisions, and training and recordkeeping requirements. The estimated compliance costs represent the incremental costs necessary for achieving compliance with the final rule from a baseline of current practices; these costs do not include current or past expenditures.

JACA provided estimates of the costs of installing new or improved local exhaust ventilation systems. In current dollars, the costs of these systems range from $51,000 to $112,000. [2, Table 6–1]. Annual operating and maintenance costs were estimated to be 10 percent of the capital cost. JACA projected that new or improved ventilation systems could be installed at four work stations per plant.

PACE provided cost estimates for several types of controls in its analysis of the cadmium production industry [3]. Controls for the attack tanks included enclosure and back-draft exhaust ventilation, with a capital cost of about $30,000 and an annual cost of about $1,500. Controls at the strike tanks included improved ventilation and increased wash down of surfaces to prevent contaminant accumulation; the capital cost would be $25,000 and the annual cost would be $4,000. Controls suggested by PACE for other operations would require building modifications and the establishment of dedicated production lines. OSHA does not require major capital expenditure for plants in this industry based on economic feasibility considerations.

Details of an exposure reduction program recently completed was submitted to the record by one pigment manufacturing plant [4, section D–2]. The program included an improved ventilation system with additional local ventilation systems in three areas, two central vacuum systems, new pneumatic transfer systems, two steam-heated make-up air units, replacement of six mechanical scales with six digital scales, new larger blenders, portable wet vacuum units, and a complete upgrade of the electrical system.

The project involved $1.1 million in capital costs and about $140,000 in annual costs for maintenance and power. It appears, however, that these costs were not entirely dedicated to hazard reduction. Part of this cost involved the purchase of new and more efficient equipment which should not be attributed to compliance costs. Adjustment for this factor would result in cost estimates consistent with those from JACA and PACE. (JACA's total costs of compliance were lower because fewer controls were recommended; PACE's total costs were higher due to large costs for dedicated lines and building modifications.)

The other three plants in the industry appear not to have implemented extensive exposure control programs. These plants would be required to install additional engineering controls but would not be required to redesign production systems or invest in new buildings.

Pigment manufacturers emphasized that each plant was different and required different control solutions. OSHA recognizes that each plant would develop engineering controls based on individual circumstances and that the combination of controls appropriate at one plant may differ from that at another. OSHA assumes that the costs of the controls identified below would approximate the actual costs for the industry.

The combined work force at the four plants is about 100 workers. Most of these workers would probably need respiratory protection to meet the PEL of 5 $\mu g/m^3$ regardless of the number of controls installed.

Table VIII–C24 presents the estimated numbers of additional controls that plants may need to implement, the unit costs of the controls, and the total cost of engineering controls for the industry. OSHA estimates that on average each plant would install three new local exhaust ventilation systems, provide enclosures for three operations, and install one additional central vacuum cleaning system, or use a different combination of controls with an equivalent cost. The total annualized cost of additional engineering controls for the industry is estimated to be $312,000.

In addition to engineering controls, compliance with the revised standard would require respirator use, exposure monitoring, medical surveillance, hygiene facilities, information and training programs, and recordkeeping. The pigment manufacturing industry generally already provides extensive programs in these areas, but the revised standard may require some of these programs to be expanded. The estimated costs of compliance represent the incremental expenditure necessary to meet the requirements and do not include costs of current programs.

Testimony from the industry indicated that companies currently provide medical exams for every employee annually or every two years, conduct biological monitoring and exposure monitoring annually or more frequently and that some respirator use occurs among the entire workforce [5].

TABLE VIII–C24.—ESTIMATED COSTS OF ADDITIONAL CONTROLS IN THE PIGMENT MANUFACTURING INDUSTRY

Type of control	Controls per plant	Total industry controls	Cost per control [$thousands]			Industry costs [$thousands]				Total annualized industry cost [$thousands]
			Capital	Annual power and maintenance	Annual labor	Capital	Annualized capital	Annual power and maintenance	Annual labor	
Local Exhaust Ventilation	3	12	80	8	0	960	156	96	0	252
Central Vacuum Systems	1	4	15	1	7	60	10	4	28	42
Enclosure	3	12	9	0	0	108	18	0	0	18
Total		28				1,128	184	100	28	312

[1] Based on four plants needing additional controls.
Note: Totals may not add due to rounding.
Source: Office of Regulatory Analysis, OSHA, U.S. Department of Labor.

For purposes of calculating the costs of compliance for the industry, OSHA estimates that 80 percent of the 100 exposed employees would have to wear a respirator, and that about half of this respirator use is currently occurring. Thus, additional respiratory protection would be needed for about 40 employees. With an average annual cost per employee of $300 for providing a respirator, HEPA filter changes, and a fit test, the annual cost for the industry would be $12,000.

The revised standard requires exposure monitoring semi-annually for "each shift for each job classification in each work area." On average, six job categories over three shifts in four plants would require 144 samples to be taken annually in the industry. If one quarter of this sampling is already done, the laboratory cost of analyzing each sample is $40, and the average cost per plant to perform the sampling is $1,500 annually, then the additional annual cost to the industry for this provision would be about $10,300.

Compliance with the medical surveillance provisions of the revised standard appears to be partially met by pigment producers [5]. However, OSHA believes that some employees may not be provided with all of the required exams and tests. More frequent exams and tests are required for employees under certain conditions and for employees who may be medically removed.

Expanding the medical surveillance programs in this industry to meet the requirements of the revised standard may involve 30 additional physicals annually and an additional 100 of each of the three biological monitoring tests. Physicals are estimated to cost $250 each, lab analysis for a β_2-microglobulin sample is estimated to cost $80, lab analyses for cadmium in blood and urine are estimated to cost $60 each, and the cost of collecting biological monitoring samples is estimated to be $5 per sample. Incremental costs for medical exams and testing for the industry are thus estimated to be $29,000 annually (30 * $250 + 100 * $215).

Requirements for medical removal may involve compliance costs in addition to those for more frequent medical exams and monitoring estimated above. The criteria for mandatory removal would affect employees with the most extreme biological monitoring levels. The criteria for removal also allow for considerable physician's discretion. An estimated 6 percent of the exposed workforce may be removed initially on the basis of these criteria and the discretion of physicians.

Compliance with the new PEL for cadmium and other requirements of the final cadmium standard should prevent a continuing need to remove employees. The number of employees with relatively high past exposures who would be more likely to be removed should decline through attrition. However, as the criteria for removal become broader in future years (lower levels of cadmium in blood and urine triggering mandatory removal), additional employees may be subject to removal. The costs associated with the medical removal provisions are approximated by assuming that on average, 6 percent of the exposed workforce may be removed every 5 years.

The number of employees removed should be small enough to enable establishments to provide removed employees with alternative positions. Costs to the employer would include paying possible wage subsidies to removed workers, and hiring and training new employees. The average cost per removed employee would be an estimated $5,000. An estimated 6 employees may be removed every five years on average in the cadmium pigment industry, and the average annual cost for the industry would be $6,000.

The total annual cost for the medical surveillance and medical removal provisions is thus an estimated $35,000.

Achieving compliance with the hygiene provisions of the revised standard may involve additional costs at some establishments. PACE estimated that the necessary expansion of showering facilities would cost about $90,000 per establishment, which is an annualized cost of about $14,650. In addition, the estimated annual cost per employee associated with showering is $900 and would apply to an estimated 50 additional employees. The total annual industry cost associated with the hygiene provisions is thus estimated to be $103,600.

Incremental costs for recordkeeping are estimated to be about $5 per employee annually. Up to 100 employees may be affected by these requirements which would result in an annual compliance cost of about $500. The training requirements and other information-related requirements are not expected to involve additional compliance costs.

The total annualized costs of compliance with the cadmium standard for this industry are estimated to be $473,400. These costs are summarized by provision in Table VIII–C25.

Economic feasibility of 50–15 μg/m³ SECALs and 5 μg/m³ PEL. The economic feasibility of the revised cadmium standard for the cadmium pigments industry was analyzed on the basis of the technological feasibility analysis and the projected costs of compliance presented above. The batch production process used to manufacture cadmium pigments limits the applicability of some types of engineering controls. The use of respirators is authorized by the final rule where engineering controls have been implemented to the extent feasible and worker exposures remain above 5 μg/m³.

The determination of economic feasibility is based on an analysis of the financial and economic impacts of compliance with the revised cadmium standard. The main focus involves impacts on prices and profitability, including an assessment of the elasticity of demand for the industry's product. In addition, consideration is given to effects on competition, employment, capital requirements, industry output, and international trade.

The most important determinant of a regulated industry's pricing flexibility is demand elasticity. The extent to which regulated firms can pass through compliance costs to their customers by increasing prices depends largely on the elasticity of demand. Compliance costs that cannot be recovered through price increases would have to be absorbed from profits. A relatively inelastic demand increases the ability of producers to increase prices without losing sales.

TABLE VIII-C25.—ESTIMATED COSTS OF COMPLIANCE WITH THE REVISED CADMIUM STANDARD FOR THE PIGMENT PRODUCTION INDUSTRY

Provision	Annualized cost [$thousands]
Exposure control	312.0
Respirator use	12.0
Exposure monitoring	10.3
Medical surveillance	35.0
Hygiene facilities/practices	103.6
Recordkeeping and information	0.5
Total	473.4

Note: Costs do not include current expenditures.
Source: Office of Regulatory Analysis, OSHA, U.S. Department of Labor.

Factors that influence demand elasticity include the availability of substitutes for the product, the importance of the product in customers' budgets, the degree of technological or contractual dependence of customers, and the importance of price versus non-price attributes of the product.

The typical U.S. cadmium pigment producer earns about $7.5 million in revenues annually [8, p. 4–7]. Profits are estimated to be about 5 percent of revenues [2, p. 7–8], or $375,000 annually. According to industry sources, "U.S. producers utilize facilities with similar processes and scale economies so that compliance with the standard is not likely to result in differences in costs among U.S. producers." [8, p. 4–7].

In order to evaluate the potential impact of compliance with the revised cadmium standard, the maximum effect on prices and profits was determined. Under conditions of inelastic demand, compliance costs could be passed on to customers through higher prices. A price increase of less than 1.6 percent would be sufficient to fully offset the compliance costs. If none of the compliance costs could be recovered by raising prices, then the costs would result in a reduction of profits of 31 percent. The actual result would probably involve a combination of a small rise in prices and a reduction in profits.

The overall demand for cadmium pigments appears to be relatively inelastic due to their superior coloring features and chemical properties. Cadmium pigments inhibit aging, prevent embrittlement, resist migration and interaction with other chemicals, and withstand processing temperatures of up to 600 degrees Celsius. The sum of these properties allows cadmium pigments to be used for coloring all types of plastics and is unattainable by any other class of colorants.

Cadmium pigments are also more expensive than other types of pigments. In some applications, such as the production of low-density polyethylene, the properties of cadmium pigments are not required and less expensive substitutes can be used. Environmental regulations in the U.S. and abroad have also provided incentives to substitute away from cadmium pigments. Where their unique properties are not essential, the use of cadmium pigments has been declining.

The plastics industry is currently the main consumer of cadmium pigments, using about 80 to 90 percent of total consumption. Other applications can be found in the paints, ceramics, and enamel industries. On the whole, the limits of substitution appear to have been reached [4, Part D4, p. 1]. Growth in the overall demand for cadmium pigments should be limited to those applications requiring their use. The total demand is likely to remain relatively inelastic under current technological conditions.

Pigments account for only small percentage of the cost of final products. For example, only about 1.5 percent of plastic by weight is attributable to cadmium pigments. Since plastic resins are relatively expensive, the cost of cadmium pigments contained in the resins amounts to less than 1 percent of the cost of the final product.

Although the total demand for the industry is inelastic on a global scale, the demand for the product of individual firm or a subset of firms would be more elastic due to competitive forces of the market. Since the revised rule affects all firms in the U.S., the total demand for these firms should be evaluated in the context of the presence of foreign competition.

Currently each domestic producer has a market share of over 15 percent [8, p. 2–21]. (A major U.S. production facility producing 5.5 million pounds per year recently closed, allowing competitors to increase market shares and revenues [ibid.].) Industry sources indicate that imports account for 20 to 30 percent of the U.S. market. The imported pigments reportedly sell for 15 to 30 percent less than domestically produced pigments [8, p. 4–7], signifying that domestic producers are able to maintain sales volumes through some form of product differentiation possibly involving customer service or product quality control. It is not clear whether the higher prices are associated with less efficient production systems, higher production costs, or larger profit margins.

The costs of compliance with the cadmium standard would increase production costs for U.S. producers. However, the magnitude of these costs are not likely to cause a significant impact on the domestic industry because of the relatively small changes in prices and profits that would result. These changes would be overshadowed by more fundamental and substantial developments in the industry, including price changes of raw materials and labor, restrictive environmental regulations in the U.S. and other countries, and changes in demand.

Compliance with the revised cadmium standard is considered to be economically feasible for the pigment manufacturing industry. One U.S. plant recently completed an exposure reduction project which involved over $1 million in capital costs. (The annualized cost is estimated to be about $320,000 [4, section D–2].) This investment indicates an expectation of profitability and a willingness to remain in the industry despite increased production costs.

Notes

1. Exhibit 19–40, Dry Color Manufacturers' Association, Comments "Re: Occupational Exposure to Cadmium," May 11, 1990.

2. Exhibit 13, "Economic Impact Analysis of the Proposed Revision to the Cadmium Standard," Final Report, JACA Corporation, March 15, 1988.

3. Exhibit 19–43, Attachment L, "Feasibility and Cost Study of Engineering Controls for Cadmium Exposure Standard," PACE Incorporated, April 30, 1990.

4. Exhibit 112, "Post-Hearing Documentary Evidence Submission by SCM Chemicals, Inc.", Cleary, Gottlieb, Steen, & Hamilton, September 18, 1990.

5. Hearing Transcript, p. 5–55, p. 5–56, p. 5 158, p. 5–214, p. 5–221; June 11, 1990.

6. Exhibit 100, Attachments.
7. Exhibit 112, Attachment E.
8. Exhibit 19–43, Attachment I, "Economic and Technological Feasibility of a 5 Microgram per Cubic Meter Workplace Standard for Airborne Cadmium," Putnam, Hayes, & Bartlett, Inc., April 30, 1990.

Stabilizer Production

Industry overview. Cadmium stabilizers are used primarily in the production of polyvinyl chloride (PVC). The stabilizers are available in solid and liquid forms and are added to plastic resins to provide heat stability and protection from ultraviolet light. The cadmium content of the stabilizers can range from 1 to 15 percent by weight, and the stabilizers constitute from 0.5 to 2.5 percent of the final PVC compound [1, p. 2–18].

Cadmium stabilizers are currently supplied by four companies operating five plants in the United States [2, Attachment I, p. 3; and 1, p. 4–6], and employing 200 workers with cadmium exposure. The scale of production is similar in the five plants. Three of the four manufacturers are large and diverse chemical companies, and cadmium stabilizers represent a "very small percentage" of their total revenues. The consumption of cadmium in this industry has remained fairly constant since 1978, ranging from about 500 to 650 metric tons per year [1, p. 2–18 and 4–6].

Production processes. The production of cadmium stabilizers involves several steps. The first step is referred to as the reaction step. Cadmium oxide is added to a reaction vessel with one or more organic acids. Other compounds may be added depending on the specific product chemistry desired.

For powdered stabilizers, the reaction step is followed by drying, flaking, and regrinding. Liquid stabilizers are filtered and pumped to blending tanks. Both types of stabilizers may be blended with other substances before being packaged in bulk containers [3, p. 8–1].

Employee exposures. The exposure profile in the preliminary analysis was based on research conducted by JACA Corporation, using data from seven years of sampling results in OSHA's IMIS data base [4, Tables 3–4 and 3–5]. JACA developed separate exposure profiles for workers in the dry and wet processes and these are presented in Table VIII–C26. In the dry process, production workers have estimated mean exposures between 45 $\mu g/m^3$ and 65 $\mu g/m^3$; in the wet process, mean exposures for production workers are less than 50 $\mu g/m^3$. Supervisors and maintenance technicians during both processes are estimated to have mean exposures of less than 5 $\mu g/m^3$, but individual samples can vary widely.

The exposure profile developed by PACE [3, p. 8–2] is presented in Table VIII–C27. Seven job categories are listed for solids production, and six of these have estimated mean exposures over 40 $\mu g/m^3$. The job category listed for liquid production has an estimated mean exposure of 139 $\mu g/m^3$.

One stabilizer manufacturer submitted exposure monitoring data for dry and liquid processes [2, Attachment III]. The samples were collected in cadmium process areas with and without cadmium products running. In addition, the data are disaggregated into categories indicating exposure levels before and after the installation of additional engineering controls, such as improved ventilation and enclosure.

TABLE VIII–C26.—CADMIUM EXPOSURE DATA FOR CADMIUM STABILIZER PRODUCTION BASED ON JACA

Job category	Concentration in $\mu g/m^3$		
	Geometric mean	Median	Range
Dry Process:			
Solution operator	46.2	26.0	22.0–160.0
Dry solids operator	63.0	140.0	1.0–936.0
Process supervisor	1.1	1.1	0.1–7.0
Maintenance technician	3.5	3.0	0.1–1,560.0
Wet process:			
Solution operator	46.2	26.0	22.0–160.0
Maintenance technician	3.5	3.0	0.1–1,560.0

Source: Exhibit 13, JACA, Tables 3–4 and 3–5.

TABLE VIII–C27.—PROFILE OF OCCUPATIONAL EXPOSURES TO CADMIUM IN THE CADMIUM STABILIZER INDUSTRY BASED ON PACE INCORPORATED

Job Category	Geometric mean exposures ($\mu g/m^3$)
Solids Production:	
Cadmium oxide charging	126
Flaker discharge	10
Crusher	45
Grinder	85
Rotary dryer	224
Tote bin unloader	91
Blender and packager	214
Liquid Production:	
Cadmium oxide charging	139

Source: PACE Incorporated, Exhibit 19–43, Attachment L, Table A8–1.

TABLE VIII–C28.—CADMIUM EXPOSURE DATA FOR CADMIUM STABILIZER PRODUCTION BASED ON COMPANY DATA

Job category	Geometric mean concentrations in μg/m³		
	Before controls	After controls	Without cadmium in process
Dry process operator	174.8		2.9
Dry process blending		38.6	7.0
Liquid process	117.4	24.4	1.2

Source: Exhibit 19–46, Attachment III, Synthetic Products Company.

Table VIII–C28 summarizes the data submitted. Mean exposure levels during both types of processes involving cadmium stabilizers are less than 40 μg/m³ after upgrading controls. Mean exposure levels when cadmium products are not running are 7 μg/m³ or less for the dry process and under 2 μg/m³ for the liquid process.

Employee exposures during the production of cadmium stabilizers are generally associated with specific tasks which occur intermittently. The dry process involves batch production; on average exposures to cadmium occur one week per month. Potential exposures during the liquid process are more limited and occur about two hours per week per shift [2, Appendix I, p. 4].

Existing and feasible additional controls. OSHA's preliminary analysis, based on the JACA report [4], described existing controls at the blender and packaging areas of the dry process consisting of local exhaust ventilation hoods connected to a baghouse. Solution operators in the wet process had no controls.

For dry process stabilizer production, JACA recommended the installation of an additional local exhaust ventilation system with a baghouse for dissolver charging operations, and expanded and improved ventilation systems with a new baghouse for the blending and packaging areas. Enclosures and other measures to seal fugitive emissions were recommended for the charging, blending, and packaging areas. Improvements in housekeeping and work practices, including frequent vacuuming or damp mopping, were also recommended for each operation.

For wet process stabilizer production additional controls were recommended for the charging operation. These would include a close-fitting hood at the dissolving vessel connected to a baghouse, as well as improvements in housekeeping and work practices.

PACE Incorporated also provided descriptions of existing and feasible additional controls for both dry and wet process cadmium stabilizer production [3, p. 8–1 through 8–14]. For the dry process, PACE recommended that each reactor in the cadmium oxide charging operation be provided with an automated and enclosed drum-dumping station that would handle and charge the cadmium oxide and then automatically wash, rinse, and dry the empty drums. Existing local exhaust ventilation at this operation would be retained to ventilate the drum dump station and any waste water generated would be handled at existing treatment facilities. PACE noted possible difficulties in applying this technology in this industry and that the projected exposure reductions of over 85 percent "may not be achievable." [3, p. 8–4].

For the flaker operation, PACE recommended improved enclosure at the feed end and a ventilated drum enclosure to control the flaker discharge. Increased attention to housekeeping and work practices were also considered necessary to reduce exposure levels.

According to PACE, exposures could be reduced at the crusher operation by enclosing the feed table and providing backdraft ventilation, sealing fugitive emissions sources, and improving ventilation for the drum enclosure. The grinder operation was considered amenable to total enclosure in a negative pressure area using an additional exhaust ventilation system. Rotary dryer and tote bin unloading operations could be improved by sealing several fugitive emissions sources and by providing enclosures that would make ventilation systems more effective.

Exposure levels during blending and packaging operations could also be reduced. The drum filling station analyzed by PACE was described as "enclosed on three sides and provided with exhaust ventilation." [3, p. 8–9]. The average exposure at this station was estimated to be 214 μg/m³, including contributions from other sources.

PACE presented recommendations of additional controls for this operation that included an automated drum dumping station with wash, rinse, and drying facilities, and a "completely revised" drum filling operation. These technologies "have been used successfully in other industries" [3, p. 8–4], are available at reasonable cost, and their implementation appears to be feasible in this industry.

In addition to operation-specific controls, PACE recommended other measures for reducing exposures during solids production. All interior surfaces of the building would be steam cleaned and painted to reduce the presence of residual materials. High-efficiency secondary filtration would be added to the exhaust discharges of all new and existing fabric filters to reduce cadmium emissions to the environment (and possibly intake concentrations). A clean production facility with a good housekeeping program can contribute to keeping exposures low.

One manufacturer submitted comments indicating that existing controls in the wet process include a recently upgraded ventilation system, standardized work practices, and the use of a central vacuum system. The company does "not envision that levels could be reduced much below" current exposure levels (below 25 μg/m³) in the wet process. In the dry process the blending and packaging operations have recently been completely redesigned and include improved ventilation systems, screws for transfer of material, enclosed bag compactors, and the use of a central vacuum cleaner. [2, Appendix I, p. 7]. Testimony from a cadmium stabilizer producer indicated that lower exposures can be expected for the dry process operator as a result of further engineering controls [11].

Technological feasibility limit for a SECAL. Following the procedure outlined in section B above, OSHA separated exposures into high and low occupation/process exposure groups to facilitate analysis. Exposure data were divided such that the difference between the mean values for the two separated data sets, was maximized.

Data segregation resulted in the identification of a high occupation/process exposure group which included cadmium oxide charging, drying, crushing and blending operations (job categories in solids and liquids cadmium

stabilizer production). These operations involve about 25 percent of employee exposures, representing about 50 full-time equivalent (FTE) employees. All remaining occupations/processes in this sector, involving about 150 FTE workers, were in the low exposure category. Figure VIII–C17 presents the high and low exposure categories in a "box and whisker" graph.

Mean exposure data for the two sets were as follows:

	High group	Low group
Number of Observations	13	5
Mean	116.3	3.2
Standard Deviation	67.4	2.15

To verify that the two groups within this industry were distinct a *t* text was performed on the difference in the means. Even with the small sample and the large standard deviation for the high group the *t* statistic was 3.7. In this case, there was less than a six percent probability that the *t* statistic would be larger than 2.0 if the means were equal. Therefore, the null hypothesis that the means of the exposure data were equal was rejected, and the conclusion that they were drawn from separate statistical distribution was accepted.

After the statistical difference between high and low exposure groups was verified, the data were analyzed separately. In Figures VIII–C18 and VIII–C19 process mean exposure values were drawn from available data sources. The mean values for each group were "fitted" to a straight line using ordinary least squares methodology. For the high exposed cadmium group over one-half of the mean exposure values are above 100 $\mu g/m^3$ (Figure VIII–C18). All exposures in the low group are below 10 $\mu g/m^3$.

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FIGURE VIII-C17

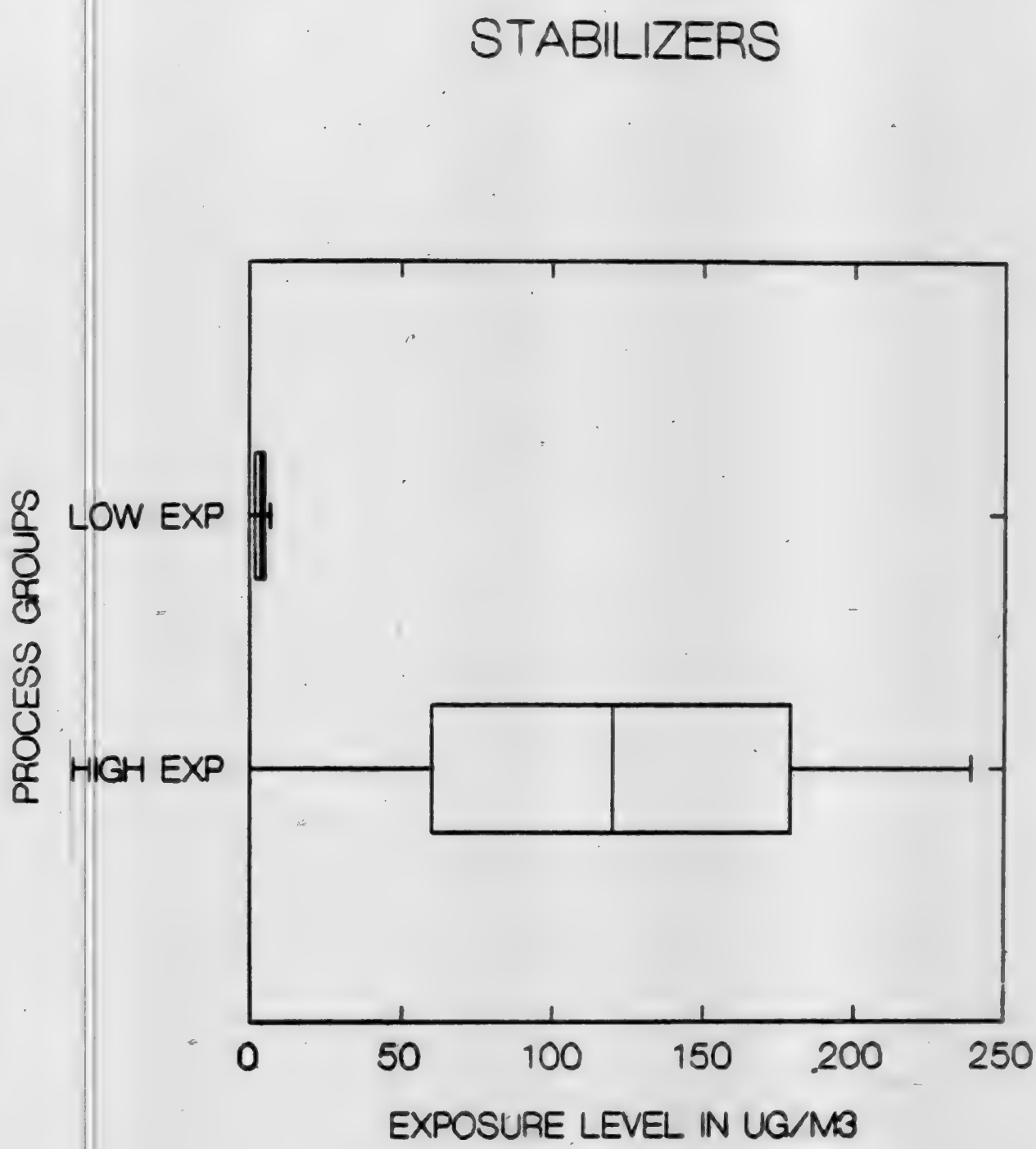

FIGURE VIII-C18

STABILIZERS (HIGH EXP): CURRENT

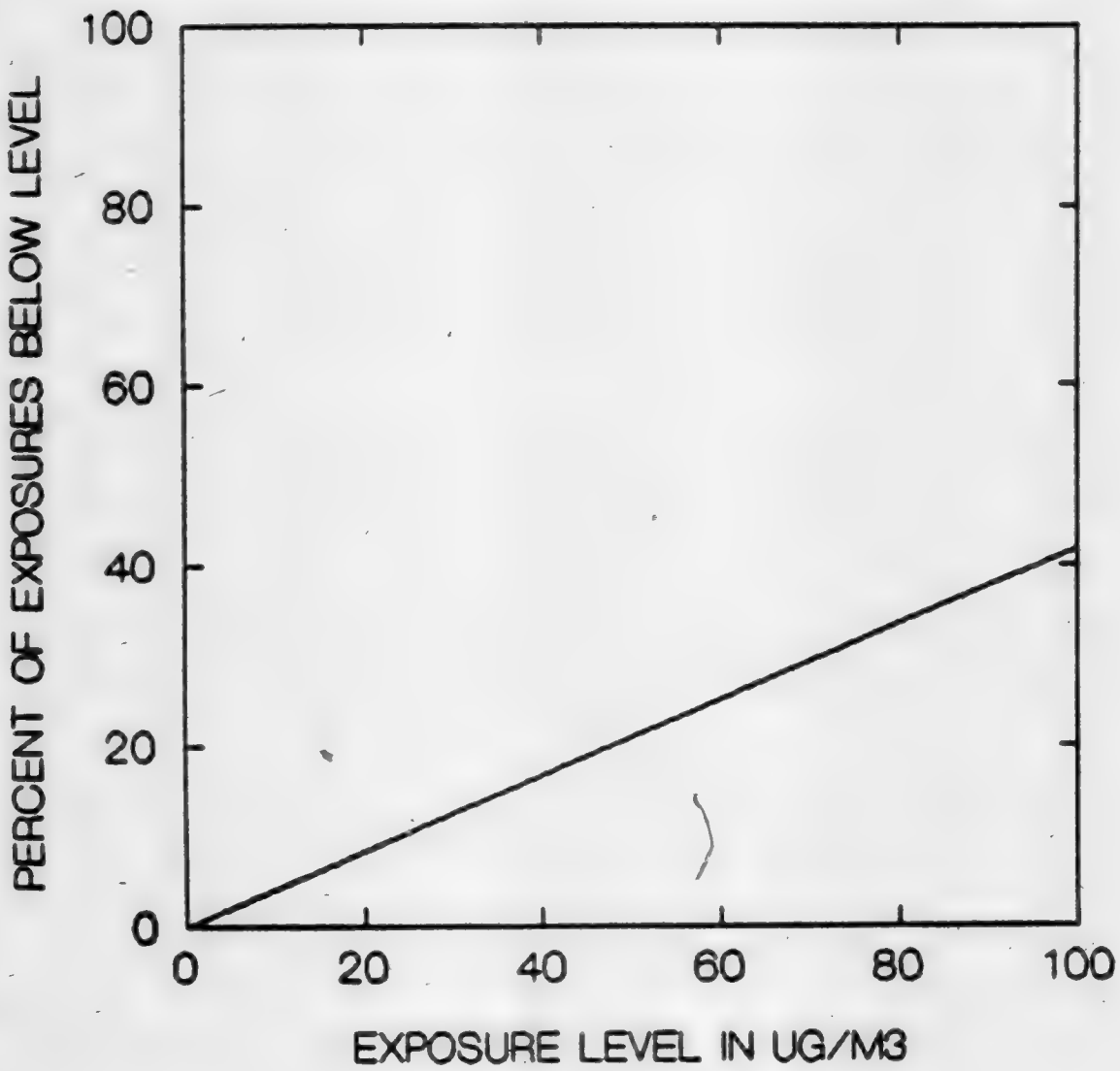

FIGURE VIII-C19

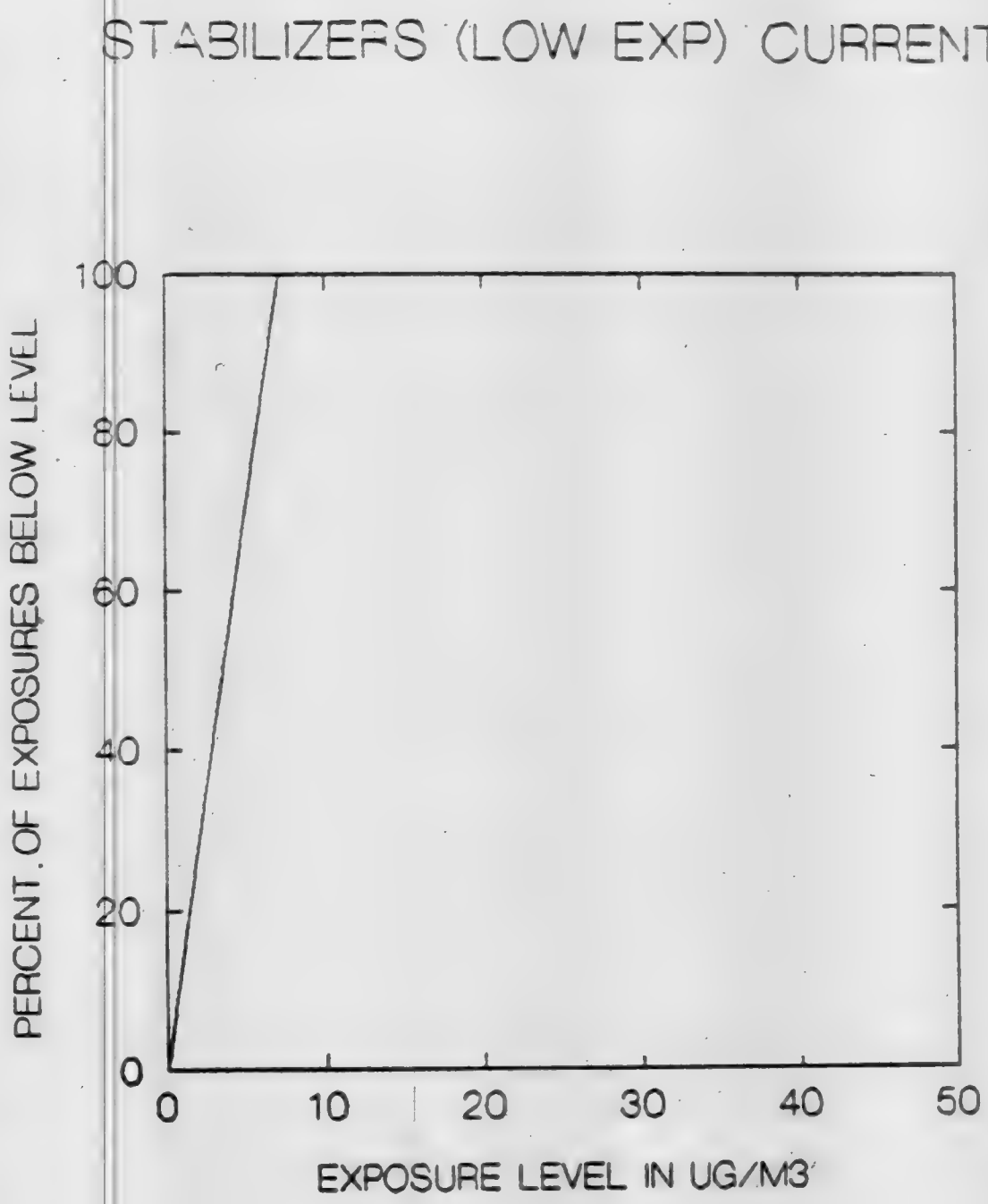

VIII-C135

BILLING CODE 4510-26-C

For each group a model was developed to graphically show the effect on the exposure distribution after current exposures were reduced using alternative engineering control efficiency factors of 80 percent down to 20 percent, in 20 percent increments. The higher the efficiency level, the lower the projected exposure level and the closer the projected exposure line moves to the vertical axis. Figures VIII–C20 and VIII–C21 show the reduction and shift in the distribution of exposures for the high and low groups in stabilizer operations.

The selection of an appropriate engineering control reduction factor was based on evidence and testimony in the record and economic feasibility considerations.

The evidence in the record substantiates the finding that additional feasible controls are available and can be implemented to further reduce exposure levels. The extent of current controls in place and the applicability of specific additional controls will vary depending on the individual plant, but the relevant comments in the record all basically agree that a multitude of control options exists to limit airborne cadmium concentrations. These are generally conventional technologies that are commonly known, readily available, and to some degree currently used in the industry, as described above.

Analysis developed by JACA projected exposures of less than 5 $\mu g/m^3$ after the implementation of engineering controls in most liquid and dry processes [4, pp. 3–13, 3–15, 4–12].

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FIGURE VIII-C20

STABILIZERS (HIGH EXP.): CONTROLLED 80%-20%

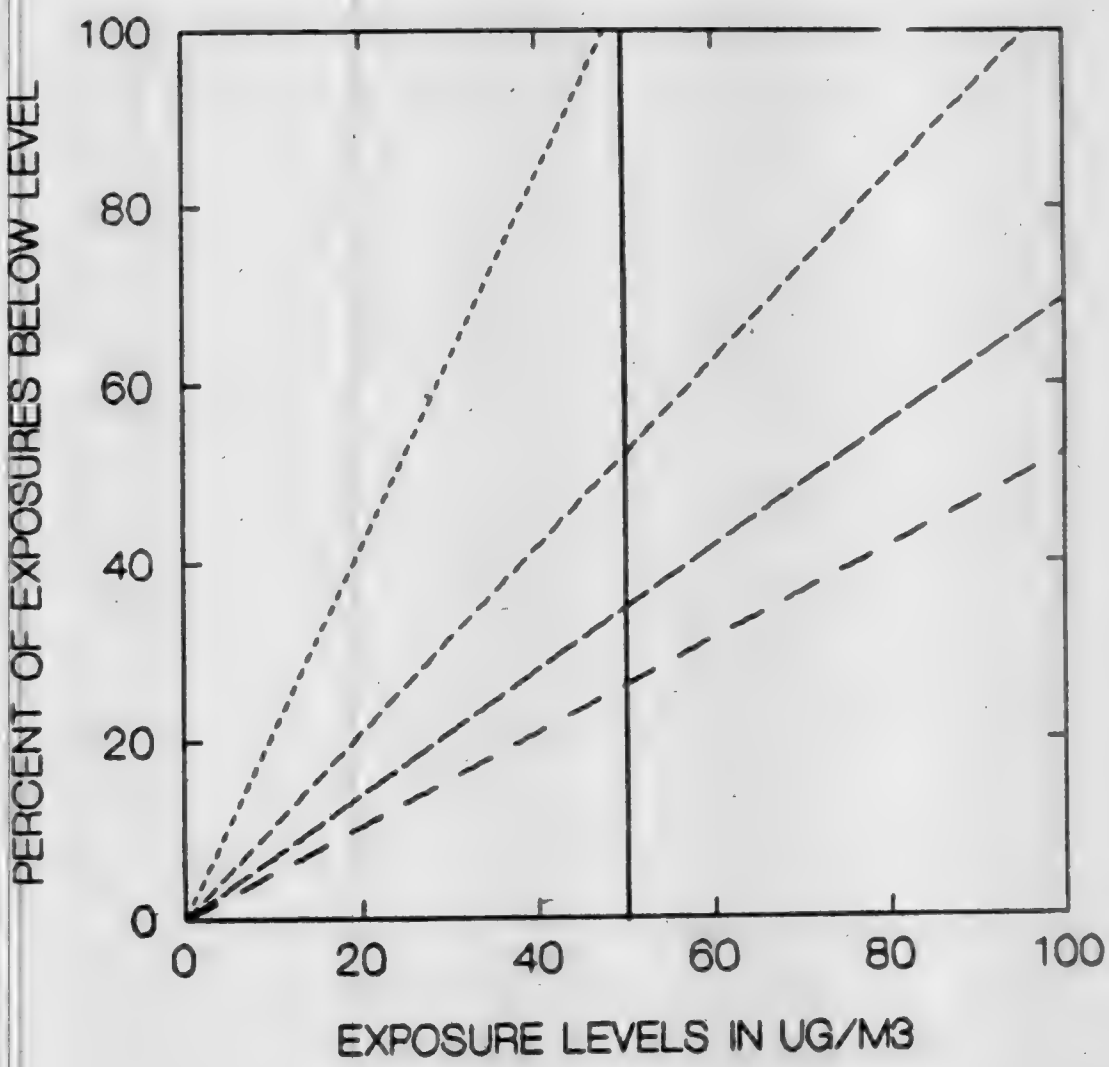

FIGURE VIII-C21

STABILIZERS (LOW EXP.): CONTROLLED 80%-20%

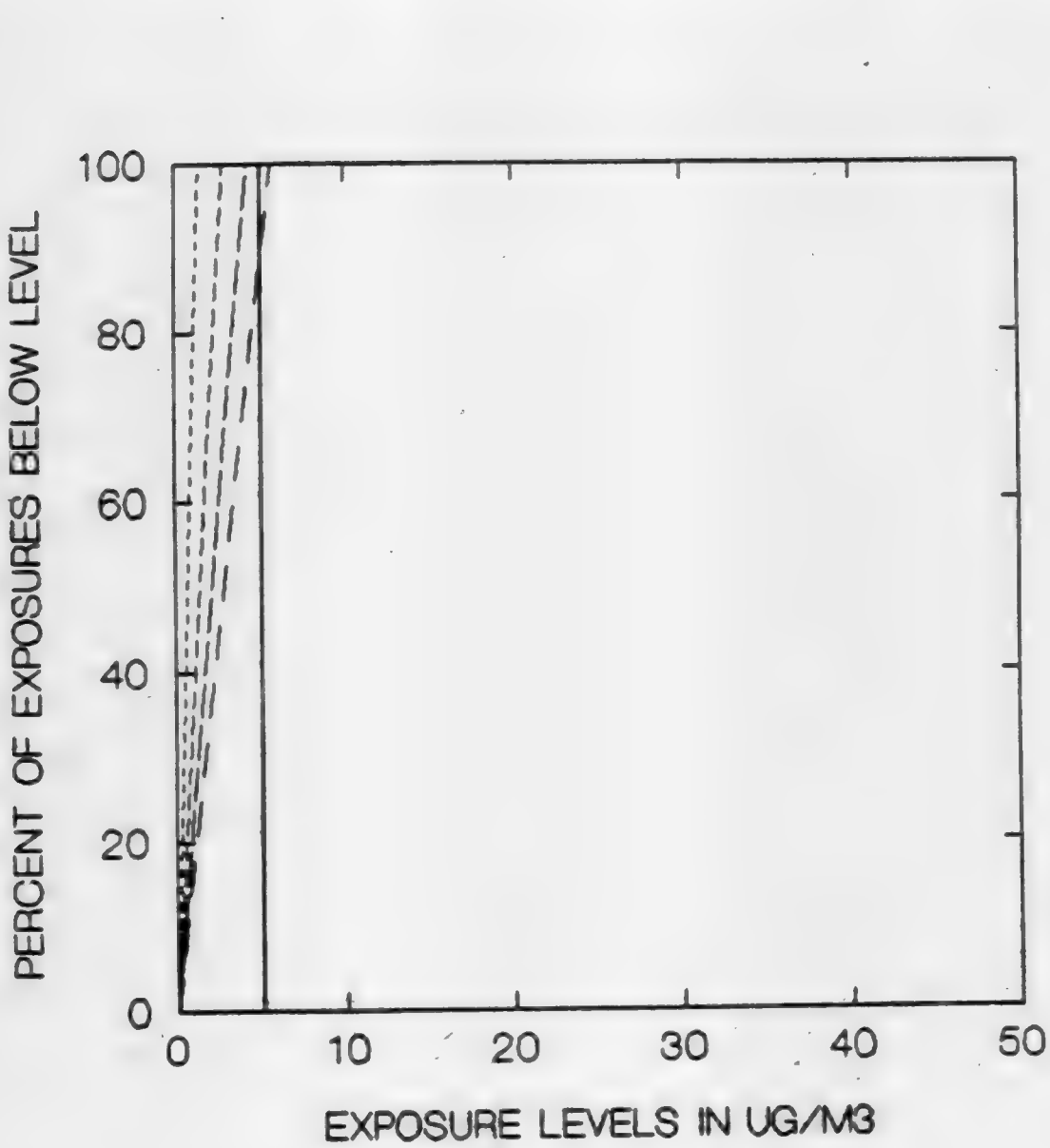

VIII-C138

BILLING CODE 4510-26-C

NIOSH stated in their testimony that the production of liquid and solid formulations should be controllable to 5 $\mu g/m^3$ through engineering containment and ventilation [5, p. 10]. NIOSH draws upon decades of industrial hygiene experience and hundreds of exposure control studies in making such evaluations [6], and characterizes stabilizer manufacture as "a typical batch chemical manufacturing process" [5, p. 27]. Mean exposures projected by PACE are 10 $\mu g/m^3$ or less for six out of eight job categories identified [3, p. 8–2].

Air monitoring data recently submitted to the record by a cadmium stabilizer manufacturer using the dry process, show that two of the four samples for blending and packing operations taken while running cadmium products were less than 15 $\mu g/m^3$. The geometric mean of all personal samples taken during blending and packing was less than 14 $\mu g/m^3$, and if two outliers above 99 $\mu g/m^3$ are excluded the mean is less than 9 $\mu g/m^3$ [7, Attachment 3]. Mean exposures when cadmium products are not running are reported to be less than 8 $\mu g/m^3$ in all job categories [2, Attachment III]; these conditions would apply to about 75 percent of the workdays [2, Appendix I, p. 3].

Significant exposures were reported for one operation in the wet process (charging CdO) [7, Attachment 4]. This operation occurs for about two hours per week per shift or for about 5 percent of the total hours for one job category [2, Attachment I, p. 4]. The mean exposure during this periodic operation is less than 25 $\mu g/m^3$; mean exposures at other times and in other operations are less than 2 $\mu g/m^3$ [2, Attachment III].

Based on exposure control information supplied by one stabilizer company, reduction levels of 60–80 percent appear to be technologically feasible. For example, company results for liquid process controls reported in Table VIII–C28 showed a 79.2 percent reduction in cadmium (mean concentrations fell from 117.4 $\mu g/m^3$ to 24.4 $\mu g/m^3$ after controls were introduced).

Based on the evidence in the record, OSHA believes that an engineering control reduction level of 60–80 percent is reasonable for this industry segment and is economically feasible. The cost of engineering controls for this industry (discussed below) do not appear to represent a significant financial burden. Therefore, the engineering control reduction target of 60–80 percent is judged to be economically feasible.

Following the selection of this efficiency factor, the appropriate engineering control level for each exposure group was identified at the point achievable for 60–80 percent of the exposure observations. For the high processes including cadmium oxide charging, drying, crushing and blending operations, a SECAL of 50 $\mu g/m^3$ is identified. For all low exposed processes, OSHA believes that the PEL level of 5 $\mu g/m^3$ is achievable through engineering controls.

For the high exposure group, compliance with the PEL of 5 $\mu g/m^3$ with engineering controls and work practices is infeasible at this time and can only be achieved through the use of respirators. Respirators are readily available with a wide range of protection factors that can adequately protect workers from the potential exposures in this industry. Respiratory protection will be required for some production and maintenance employees full-time.

Costs of compliance with a 50 $\mu g/m^3$ SECAL and 5 $\mu g/m^3$ PEL. Compliance with the revised cadmium rule includes costs for additional engineering controls, increased respirator use, more comprehensive exposure monitoring and medical surveillance programs, hygiene provisions, information and training, and recordkeeping requirements. Estimated compliance costs are measured from a baseline of current practices and do not include current or past expenditures.

JACA estimated that the cost of installing new or improved local exhaust ventilation systems in this industry would range from $51,000 to $112,000. Annual operating and maintenance costs were estimated to be 10 percent of the capital cost. [4, Table 6–1]. JACA also estimated that a typical dry process plant would need to install two such systems and that a typical wet process plant would need to install one such system.

New ventilation systems recommended by PACE for this industry are estimated to cost between $20,000 and $60,000 each, and three such systems are recommended per dry process plant. Improvements in ventilation systems, costing about $10,000 or less, would be needed, on average, at three additional stations. Annual costs associated with ventilation systems are generally about 5 percent of the capital costs. Drum dumping stations are estimated to cost $90,000 each, with annual expenses for power, heat, maintenance, and labor of less than 10 percent of the capital cost. Four such stations were recommended for dry process plants and one was recommended for wet process plants. Enclosures, hoods, valves, and other recommended emission controls generally cost less than $5,000, but range up to $16,000 for the total enclosure of the grinder platform.

Comments received from one manufacturer supported the cost data used in OSHA's preliminary analysis (although the effectiveness of the controls in achieving levels below 5 $\mu g/m^3$ was contested). This company also stated that the "costs developed in the PACE report to attain cadmium in air levels of between 10 and 25 $\mu g/m^3$ have been reviewed by us and are considered to be adequate 'ball park' numbers." [2, Appendix I, p. 10.] The company noted that the "technologies given in the PACE report * * * are more sophisticated" than those implemented by the company and "yield only slightly lower estimated levels than we have attained but at a significantly larger investment." Thus, with the controls recommended by PACE, "we are in the realm of diminishing returns." [2, Appendix I, p. 10.] OSHA agrees with this assessment and believes that some expensive controls recommended by PACE may not achieve exposure reductions sufficient to justify their implementation.

In practice, each plant will be able to choose the combination of controls deemed necessary for compliance which is most cost-effective and best suited for its particular circumstances. However, in order to estimate the cost to cadmium stabilizer producers of installing additional engineering controls, the number of such controls for a typical plant was estimated. Controls used to estimate costs are based on evidence in the record indicating their effectiveness and feasibility for this industry.

Table VIII–C29 summarizes the costs of engineering controls estimated to be incurred by cadmium stabilizer producers. Two new ventilation systems at $80,000 each would be installed in dry process plants, and one would be installed in wet process plants. Some plants may spend an equivalent sum for new or improved ventilation systems at several exposure sources, as described in the PACE report. PACE identified additions or improvements in ventilation for at least five operations with a total cost of less than $150,000 [3, Table A8–4]. In addition, existing ventilation systems in this industry may be amenable to design improvements that would be "relatively minor in scope but would provide a significant improvement in dust control" (costing less than $1,500 and reducing emissions by 70 percent) according to PACE [3, p. 8–8 and Table A8–3].

Comments received from one manufacturer indicated that central vacuum systems were recently installed

and in use at both the dry and wet process plants operated by the company [2, Appendix I, p. 7]. The plant visited by PACE apparently did not have such a system in place, and PACE recommended a system costing over $30,000. OSHA estimates that on average plants would install one central vacuum system (or incur equivalent expenditures for housekeeping or other additional controls) with a unit cost comparable to that estimated previously.

TABLE VIII-C29.—ESTIMATED COSTS OF ENGINEERING CONTROLS FOR CADMIUM IN THE CADMIUM STABILIZER INDUSTRY

Type of control	Controls per plant by type of plant [1]			Total industry controls [2]	Cost per control (dollars in thousands)			Industry costs (dollars in thousands)				Total annualized industry cost (dollars in thousands)
	A	B	C		Capital	Annual power and maintenance	Annual labor	Capital	Annualized capital	Annual power and maintenance	Annual labor	
Local exhaust ventilation	3	1	2	10	80	8	0	800	130	80	0	210
Central vacuum systems	1	1	1	5	15	1	7	75	12	5	35	52
Enclosure	3	5	3	15	9	0	0	135	22	0	0	22
Material handling technology:												
Equipment	5	1	4	16	90	9	0	1,440	234	144	0	378
New drums	1	1	1	5	200	0	0	1,000	163	0	0	163
Total								3,450	561	229	35	825

[1] Type A plant: wet and dry processes; Type B plant: wet process only; Type C plant: dry process only.
[2] Based on two type A plants, two type B plants, and one type C plant.
Source: Office of Regulatory Analysis, OSHA, U.S. Department of Labor.

Improvements in enclosure and containment have been shown to be effective and feasible methods for reducing exposures from several sources in this industry [3, p. 8–4 through 8–14]. Most improvements cost less than $2,000; total enclosure of the grinder platform may cost over $16,000 and also require the use of a closed circuit monitoring system [3, Table A8–4]. OSHA estimates that on average each plant would incur costs of $27,000 for enclosures, valves, flanges, and similar improvements to reduce exposures.

About half of the total compliance costs estimated by PACE for this industry involve improvements in material handling technology, primarily with automatic drum dumping stations. Based on the evidence in the record, OSHA concludes that the adoption of such technology would generally be feasible for this industry (although not necessarily in every establishment). As outlined by PACE [3, p. 8–4 et seq.], the stations would cost $90,000 each. At the plant level, four stations would be used for each dry process and one station for each wet process. In addition, new drums would need to be purchased at a cost of about $200,000.

Total estimated costs for engineering controls, including ventilation and vacuum systems, enclosures, and automated material handling technology, would involve $3.45 million in capital costs and $264,000 annually for power, maintenance, and labor. The corresponding total annualized cost would be $825,000.

Additional costs of compliance for this industry are associated with expanded exposure monitoring, medical surveillance, and respirator programs, and with hygiene facilities and record keeping. Current efforts involving information and training programs should be sufficient for compliance with the revised standard.

Evidence in the record from two cadmium stabilizer plants (one dry process and one wet process) shows that all employees exposed to cadmium are currently using respiratory protection to supplement engineering controls [7, Attachments 3 & 4]. OSHA also recognizes that not all employees in the industry are likely to be wearing respirators for all exposures of 5 $\mu g/m^3$ or greater. Most employees in the industry will probably need respirators to comply with a PEL of 5 $\mu g/m^3$, and OSHA estimates that an additional 20 percent of the work force would need to be supplied with respiratory protection.

In the preliminary analysis OSHA estimated that about 200 employees were potentially exposed in this industry. One commenter pointed out that the subsequent reduction in the number of cadmium stabilizer suppliers from six to four "has reduced the number of exposed employees" [2, Attachment I, p. 2]. During the hearings it was suggested by one manufacturer that a total of 200 employees for the industry "might be a little bit low." [8]. Considering that employees producing cadmium stabilizers also produce non-cadmium products, 200 employees seems to provide a reasonable estimate of the number of exposed workers. Using a cost of $300 per employee per year [9, Attachment III, p. 1], the total annual cost of additional respiratory protection is estimated to be $12,000.

Exposure monitoring is required by the revised standard for every job category and every shift semi-annually. Data submitted to the record suggests that some monitoring is currently being performed and that additional monitoring would likely be necessary [7, Attachments 3 & 4]. OSHA estimates that on average each plant would have to monitor four job categories (including maintenance workers and supervisors) across three shifts [10] and that current monitoring accounts for about 20 percent of that required.

The costs of monitoring are estimated to be $40 per sample taken and $1,500 annually per plant for the services of an industrial hygienist or other competent person. The total cost of the additional monitoring required by the standard is thus estimated to be $11,340 [$40*4*3*2*5*0.8+5*$1500].

Evidence submitted to the record by the cadmium stabilizer industry consistently shows that employees are currently receiving medical exams and biological testing [2, p. 2; 7, Attachments 1 & 2; 12]. This evidence also indicates that biological testing would have to be performed more frequently to comply with the provisions of the revised standard.

OSHA estimates that an additional 100 samples each for cadmium in blood, cadmium in urine, and β_2-microglobulin in urine would need to be taken annually to meet the basic requirements for biological monitoring. Another 40 sets of these samples may be necessary to meet requirements for more frequent

testing of some employees. The lab analyses would cost $60, $80, and $80 per sample, respectively, and the estimated cost of collection is $5 per sample. The total additional annual cost of biological monitoring for the industry is estimated to be $30,100.

Requirements for medical removal may involve compliance costs in addition to those for more frequent medical exams and monitoring estimated above. The criteria for mandatory removal would affect employees with the most extreme biological monitoring levels. The criteria for removal also allow for considerable physician's discretion. An estimated 3 percent of the exposed workforce of 200 employees may be removed initially on the basis of these criteria and the discretion of physicians.

Compliance with the new PEL for cadmium and other requirements of the final cadmium standard should prevent a continuing need to remove employees. The number of employees with relatively high past exposures who would be more likely to be removed should also decline through attrition. However, as the criteria for removal become broader in future years (lower levels of cadmium in blood and urine triggering mandatory removal), additional employees may be subject to removal. The costs associated with the medical removal provisions are estimated based on 3 percent of the exposed workforce being removed every 5 years.

The number of employees removed should be small enough to enable establishments to provide removed employees with alternative positions. Costs to the employer would include paying possible wage differentials and hiring and training employees in new positions. The average cost per removed employee would be an estimated $5,000. An estimated 6 employees may be removed every five years on average in the cadmium stabilizer industry, and the average annual cost for the industry would be $6,000.

The total annual cost for the medical surveillance and medical removal provisions is estimated at $36,100.

Achieving compliance with the hygiene provisions of this standard may involve some additional costs for this industry. OSHA's preliminary conclusions regarding compliance with the proposed hygiene provisions were generally not challenged by industry. OSHA estimated that work clothing and appropriate shower and lunch facilities were already provided and that half of the affected workers currently do not shower after each shift. Under these assumptions, the cost of providing showers would be about $225 per employee per year (assuming employees are typically exposed for one week per month), or $22,500 annually for the industry.

PACE assigned over $16,000 in annual compliance costs for providing workers with daily changes of clean work clothes [3, p. 8–14], but did not add any costs for showering or for lunch rooms. A commenter from another industry stated that disposable work clothing could be provided for an annual cost of $104 per employee [9, Attachment III, p. 1].

OSHA concludes that the hygiene provisions are generally complied with in this industry but may not be consistently applied in all plants. On average each plant may incur an incremental cost of $10,000 to achieve full compliance with the revised standard. The total estimated annual cost for the industry would be $50,000.

Incremental recordkeeping costs imposed by the revised standard are estimated to be about $5 per employee annually. The estimated annual cost for the industry is $1,000.

Compliance costs for the stabilizer industry are summarized in Table VIII–C30. The total annualized cost of compliance is estimated to be $935,000.

Economic feasibility of a 50 $\mu g/m^3$ SECAL and 5 $\mu g/m^3$ PEL. The compliance costs estimated above are considered economically feasible for the cadmium stabilizer industry. Most of the costs should be able to be passed on to customers through slight price increases. Cadmium stabilizers are essential or preferred over other types of stabilizers in several applications; the lack of adequate substitutes with the qualities of cadmium stabilizers should ensure a continued demand for this product.

Plants producing cadmium stabilizers generally produce other products as well, including potential substitutes, and cadmium stabilizers may represent a small fraction of a manufacturer's revenues. For three of the four U.S. manufacturers "cadmium-based stabilizers represent a very small percentage of total revenues." [1, p. 4–6]. The remaining company "derives 35 percent of its revenues from sales of cadmium-based stabilizer products." [1, p. 4–6]. Although increased production costs resulting from compliance with the revised cadmium standard are not expected to be subsidized by unrelated operations within a corporation, most firms do have the ability to absorb the compliance costs as part of operating costs for producing "revenues that amount to hundreds of millions of dollars annually." [1, p. 2–19].

TABLE VIII–C30.—ESTIMATED COSTS OF COMPLIANCE WITH THE REVISED CADMIUM STANDARD FOR THE CADMIUM STABILIZER INDUSTRY

Provision	Annualized cost ($thousands)
Exposure control	825.0
Respirator use	12.0
Exposure monitoring	11.3
Medical surveillance	36.1
Hygiene provisions	50.0
Recordkeeping and information	1.0
Total	935.4

Note: Costs do not include current expenditures.
Source: Office of Regulatory Analysis, OSHA, U.S. Department of Labor.

An increase in the cost of producing cadmium stabilizers can also be compared to total revenues and profits derived from product lines manufactured with or closely related to cadmium stabilizers. The ability to offer a complete array of products attracts customers who prefer to deal with one supplier for all their needs. Manufacturers tend to assess the viability of producing a group of products together and would treat the compliance cost as an increase in operating costs for the whole group, especially when multiple products are made at the same plant.

Revenues from cadmium stabilizers alone are about $23 million for one company [1, p. 2–19]. All four U.S. firms have a similar scale of production [1, p. 4–6], and total industry revenues from cadmium stabilizers are estimated to be $92 million. Cadmium stabilizers represent about 36 percent of the stabilizer market [4, p. 2–54], which is estimated to be worth about $256 million annually.

Profits before taxes are estimated to be about 9 percent, consistent with the estimate used for the preliminary analysis. No comments were received disputing this figure, and no other profitability data for this industry were submitted to the record. Before-tax profits for the production of stabilizers are an estimated $23 million, of which $8.3 million are attributable to the production of cadmium stabilizers.

The estimated compliance costs represent less than 0.4 percent of stabilizer revenues (or about 1 percent of cadmium stabilizer revenues). The costs also represent about 4 percent of before-tax stabilizer profits (or about 11 percent of before-tax cadmium stabilizer profits). Actual effects on profits should be less than this depending upon the elasticity of demand for the industry's product.

The "dominant, almost exclusive market" for cadmium stabilizers is for the production of flexible PVC [13], and the stabilizers constitute between 0.5 and 2.5 percent of the final PVC compound [1, p. 2–18]. Because cadmium stabilizers make up a small fraction of PVC compounds, a small increase in cadmium stabilizer prices would have a minimal effect on the cost of manufacturing PVC products. This would tend to make the demand for cadmium stabilizers less elastic, improving the ability of stabilizer producers to recover compliance costs by increasing prices.

Imports currently constitute an "insignificant fraction" of total domestic supply, and distribution channels are "quite important" because the shelf life of cadmium stabilizers is limited. [1, p. 2–19]. This factor also contributes to an inelastic demand for cadmium stabilizers.

"At present no good substitutes exist" for most cadmium stabilizer applications, and "cadmium usage is expected to remain at current levels." [1, p. 2–18]. The lack of adequate substitutes provides strong evidence for the inelasticity of demand for these products.

OSHA concludes that manufacturers of cadmium stabilizers will be able to raise prices sufficiently to recoup compliance costs without major reductions in profits or sales volumes. The regulation does not threaten the financial viability or the competitive stability of the industry. Cost impacts from this regulation are not expected to result in any plant closures or produce any significant dislocation.

A study was conducted by an industry trade association on the economic impacts for this industry of compliance costs representing as much as 2 percent of revenues from stabilizer operations [1, p. 9, 10]. The study found that with "the lack of close substitutes, the lack of cost differentials among existing producers, and the relatively small share of these stabilizers in the cost of PVC resins, stabilizer producers should be able to pass costs through to PVC plastic manufacturers." [1, p. 4–6]. A cadmium stabilizer producer reported that they had reviewed this study and concurred with the findings [2, Appendix I, p. 10].

The cost increase due to this regulation would have a negligible effect on major investment decisions (such as relocating manufacturing operations), which are influenced by more significant factors of production cost.

Sources

1. Exhibit 19–43, Attachment I, "Economic and Technological Feasibility of a 5 Microgram per Cubic Meter Workplace Standard for Airborne Cadmium," Putnam, Hayes, & Bartlett, Inc., April 30, 1990.
2. Exhibit 19–46, Comments "RE: Occupational Exposure to Cadmium 29 CFR 1910," Synthetic Products Company, May 2, 1990.
3. Exhibit 19–43, Attachment L, "Feasibility and Cost Study of Engineering Controls for Cadmium Exposure Standard," PACE Incorporated, April 30, 1990.
4. Exhibit 13, "Economic Impact Analysis of the Proposed Revision to the Cadmium Standard," Final Report, JACA Corporation, March 15, 1988.
5. Exhibit 57, Testimony of NIOSH, July 17, 1990.
6. Hearing Transcript, July 17, 1990, p. 8–112 and 8–113.
7. Exhibit 102, Comments "RE: Occupational Exposure to Cadmium 29 CFR 1910," Synthetic Products Company, September 17, 1990.
8. Hearing Transcript, June 12, 1990, p. VI–81.
9. Exhibit 19–30, Big River Zinc Corporation, "Comments on OSHA Proposed Cadmium Regulation," May 10, 1990.
10. Hearing Transcript, June 12, 1990, p. VI–94 and VI–118.
11. Hearing Transcript, June 12, 1990, p. VI–119.
12. Hearing Transcript, June 12, 1990, p. VI–99.
13. Hearing Transcript, June 12, 1990, p. VI–97.

Lead Smelting and Refining

Industry Overview. Lead ore is recovered from underground and open pit mines around the world. The United States is one of the largest producers and consumers of the soft, heavy metal which has many important industrial uses. Lead ores are crushed and milled into lead concentrates before being sent to smelting operations.

Four lead smelters and/or refiners are currently operating in the United States. Two plants are both smelters and refiners, one plant is a smelter only, and one plant is a refiner only [1, p. 2–26 and 2, p. 3]. Two additional lead smelters were formerly active but have suspended operations. About 400 employees working in this industry sector are exposed to cadmium.

Production processes. Lead concentrates and other materials are received and transported with rail cars and cranes to provide the inputs necessary for producing lead. Multiple conveyors and storage bins are also used for materials handling throughout the plant. A preliminary step in the production process involves mixing and crushing raw materials in preparation for sintering. The sintering operation converts lead sulfides to agglomerated lead oxides. As the mixture is processed by the sintering machine, gases are produced which are used to make acids in another operation.

The sintered material is transferred to the blast furnace which is charged with coke, fluxes, and other materials. The blast furnace reduces the lead oxides to form lead bullion, which is further processed in the dross furnace to remove copper and other elements. The lead bullion produced by the dross furnace becomes the raw material for the lead refining process.

Lead refining involves several steps in which the lead bullion is processed through refining kettles to separate out other metals and remove any remaining impurities. Copper, silver, and zinc are removed and may be refined further in separate operations. The end product of the lead refining process is virtually pure lead which can be fed into a strip rolling mill or a straight line casting machine, depending on the type of product desired. The lead may also be combined with alloy materials before casting.

Employee exposures. Exposures to cadmium arise in the lead smelting and refining process because the lead concentrates received by plants contain small amounts of cadmium which exist naturally in the environment. Loose materials are transferred in large quantities and intense heat and rapid gas flows are used in the production process; emissions of lead and cadmium result in exposures in the work environment.

Employees may be exposed to cadmium in several job categories and operations. Material handlers are exposed to dusts generated by unloading railroad cars, operating cranes and conveyor systems, or loading and retrieving materials in stockpiles. Employees in the sinter plant are exposed to dusts generated by mixing and transferring materials. Employees in the furnace areas are exposed to emissions from conveyors, charging operations, tuyere punching (enabling air to enter a blast furnace to facilitate combustion), and filling ten ton pots with molten lead bullion. Fumes generated during refining and casting operations may also contain cadmium. Maintenance employees are exposed to dust and fume that may contain cadmium while working on equipment throughout the plant and on dust control systems including baghouse operations.

The exposure profile developed by JACA Corporation to represent a typical lead smelting and refining plant is presented in Table VIII–C31 [1, page 3–27]. Mean cadmium exposures for six of the seven job categories are less than 7

$\mu g/m^3$; all job categories have mean exposures less than 14 $\mu g/m^3$.

Exposure monitoring data were submitted for three lead smelting and/or refining plants by one company [2, Attachment I]. Data for a lead smelter are summarized in Table VIII–C32; data for a lead smelter and refiner are summarized in Table VIII–C33; and data for a lead refiner are summarized in Table VIII–C34. At each of these plants mean exposures for most workers are less 5 $\mu g/m^3$, and almost all exposures are less than 20 $\mu g/m^3$.

A study conducted for the Cadmium Council included an exposure profile for workers at a large lead smelting and refining facility [3, Tables IV–1 through IV–6]. These data are shown in Table VIII–C35. Thirty of the 47 job categories have current mean exposures less than 20 $\mu g/m^3$, and 37 have exposures less than 30 $\mu g/m^3$.

TABLE VIII–C31.—CADMIUM EXPOSURE DATA FOR LEAD SMELTING AND REFINING BASED ON JACA

Job category	Concentration in $\mu g/m^3$		
	Geometric mean	Median	Range
Furnace operator	4.5	5.8	0.1–223.0
Material handler	3.4	3.5	0.1–360.0
Maintenance technician	5.6	4.2	0.1–92.0
Supervisor	9.1	2.4	0.1–39.0
Sinter machine operator	13.1	8.0	0.8–174.0
Mixing room operator	6.2	4.6	0.1–453.0
Refinery operator	0.6	0.7	0.1–5.0

Source: Exhibit 13, JACA, Table 3–9.

TABLE VIII–C32.—CADMIUM EXPOSURE DATA FOR LEAD SMELTER BASED ON COMPANY DATA

Job category	Concentration in $\mu g/m^3$					
	Geometric mean	Number of samples				
		<1	1–5	5–20	20–50	>50
General:						
Assayer	<1	13	3	0	0	0
Instrument Man	2	2	13	1	0	0
Change House Attd	<1	19	5	1	0	0
Transport/Unloading:						
Foreman	1	7	3	1	0	0
Crane operator	2	3	8	3	0	1
Moisture sampler	1	3	5	0	0	0
Sampler	2	1	10	0	1	0
Bucker	<1	13	3	0	0	0
Mill tender	2	1	7	2	0	0
Crusherman	2	2	5	2	0	0
Plateman	<1	5	2	0	0	0
Backhoe operator	2	7	6	2	0	1
Loco crane helper	8	0	8	2	3	2
Car dumper	3	0	10	1	0	0
Beltman	5	0	2	3	0	0
Screen floor man	2	2	7	1	1	0
Car puller	3	1	9	4	0	0
Mechanical/Maintenance:						
Foreman	2	15	15	2	0	0
Machinist	2	18	16	7	2	1
Mechanic	<1	18	4	0	0	0
Blacksmith	2	2	6	1	0	0
Pipefitter	2	7	14	7	0	1
Carpenter	2	11	16	3	1	0
Painter	<1	5	2	0	0	0
Mason	2	3	9	2	1	0
Electrician	5	10	17	3	3	1
Welder	3	12	23	13	1	2
Oiler	11	0	3	4	1	1
Tool room man	<1	3	0	0	0	1
Insulator	<1	9	3	1	0	1
Blast Furnace Department:						
Foreman	4	2	14	6	2	0
Furnaceman	17	0	3	11	3	7
Loco engineer	5	4	30	5	3	1
Feed floor hoistman	20	1	8	2	6	8
Front end loader	5	7	10	7	0	0
Slag dumper	1	1	2	0	0	0
Slag Hauler	<1	3	0	0	0	0
Sinter Plant:						
Foreman	1	10	12	2	0	0
Crane man	3	2	13	8	1	0
Operator	7	4	3	11	3	2
Helper	12	1	1	6	3	1
Machineman	19	0	3	9	8	5
Feederman	9	1	9	8	2	4
Baghouse Man	10	0	6	1	2	2
Dross Reverb Department:						
Furnaceman	3	5	11	7	2	0
Furnace helper	3	3	15	4	1	1

TABLE VIII-C32.—CADMIUM EXPOSURE DATA FOR LEAD SMELTER BASED ON COMPANY DATA—Continued

Job category	Concentration in µg/m³					
	Geometric mean	Number of samples				
		<1	1-5	5-20	20-50	>50
Crane man	<1	15	8	1	0	0
Bullion man	4	1	16	5	1	2
Zinc Fuming Department:						
Crane man	<1	9	0	0	0	0
Furnaceman	<1	1	0	0	0	0
Ladle chaser	<1	8	1	0	0	0
Yard Department:						
Foreman	2	0	5	0	0	0
Front end loader	2	9	14	5	0	1
Power sweeper operator	2	6	5	0	1	0
Adobeman	2	0	8	0	0	0
Laborer	6	0	2	0	1	0
Janitor	7	1	0	3	1	1
Breaking floor labor	4	1	4	4	0	0
Break floor crane man	2	2	5	1	0	0
Water truck operator	<1	7	2	0	0	0
Acid Plant:						
Foreman	<1	6	2	0	0	0
Operator	<1	20	3	0	0	1
Assistant operator	<1	14	7	2	0	0
Cottrellman	6	0	4	3	1	0
Acid loader	<1	8	0	0	0	0
Dust loader	6	1	2	5	1	0
Sample Man	1	5	7	0	0	0

Source: Exhibit 19-32, Attachment I.

TABLE VIII-C33.—CADMIUM EXPOSURE DATA FOR LEAD SMELTER AND REFINER BASED ON COMPANY DATA

Job category	Concentration in µg/m³					
	Geometric mean	Number of samples				
		<1	1-5	5-20	20-50	>50
General:						
Administrative	<1	1	0	0	0	0
Laboratory	<1	1	0	0	0	0
Utility	<1	7	0	0	0	0
Warehouse	<1	8	0	0	0	0
Lead Refinery:						
Supervisor	<1	18	2	0	0	0
Foreman	<1	1	0	0	0	0
Craneman	<1	21	1	2	0	0
Kettleman	<1	22	4	0	0	0
Transport/Unloading:						
Supervisor	<1	7	0	0	0	0
Diesel engine operator	1	6	1	0	0	0
Switchman	<1	7	1	0	0	0
Moisture sampler	<1	7	0	0	0	0
Sampler	<1	9	1	0	0	0
Mechanical/Maintenance:						
Mechanical/maintenance	2	3	1	1	0	0
Supervisor	<1	8	2	0	1	0
Foreman	<1	1	0	0	0	0
Painter	<1	3	2	0	0	0
Electrician	1	7	4	2	0	0
Laborer	<1	1	0	0	0	0
Blast Furnace Department:						
Supervisor	3	8	4	3	8	0
Foreman	<1	1	0	0	0	0
Crane Man	3	3	15	5	0	0
Furnaceman	5	1	11	10	2	0
Charge car operator	6	3	7	9	4	1
Dross skimmer	7	1	9	12	0	3
Sinter Plant:						
Supervisor	1	15	9	1	0	1
Foreman	<1	2	0	0	0	0
Crane man	<1	19	5	0	0	0
Operator	1	11	12	1	0	0
Prop weigher	3	5	9	7	1	1
Helper	3	6	13	2	2	1
Baghouse:						
Supervisor	<1	1	0	0	0	0
Baghouseman	3	1	2	4	0	0
Helper	3	0	1	0	0	0

TABLE VIII–C33.—CADMIUM EXPOSURE DATA FOR LEAD SMELTER AND REFINER BASED ON COMPANY DATA—Continued

Job category	Concentration in µg/m³					
	Geometric mean	Number of samples				
		<1	1–5	5–20	20–50	>50
Molding Crew:						
Supervisor	<1	10	1	0	0	0
Molding Crew	<1	16	0	0	0	0
Mechanical/Maintenance	10	0	0	2	0	0

Source: Exhibit 19–32, Attachment I.

TABLE VIII–C34.—CADMIUM EXPOSURE DATA FOR LEAD REFINER BASED ON COMPANY DATA

Job category	Concentration in µg/m³					
	Geometric mean	Number of samples				
		<1	1–5	5–20	20–50	>50
General:						
Laboratory	<1	3	0	0	0	0
Assayer	<1	3	0	0	0	0
Utility	<1	3	0	0	0	0
Watchman	<1	3	0	0	0	0
Lead Refinery:						
Supervisor	<1	9	0	0	0	0
Crane man	<1	9	0	0	0	0
Softenerman	<1	9	0	0	0	0
Kettleman, desilver	<1	9	0	0	0	0
Kettleman, dezinc	<1	6	2	0	0	0
Floorman	<1	9	0	0	0	0
Mechanic	<1	3	0	0	0	0
Dockman	<1	3	0	0	0	0
Molder	<1	3	0	0	0	0
Salvage	<1	3	0	0	0	0
Transport/Unloading:						
Supervisor	<1	3	0	0	0	0
Leadman	<1	3	0	0	0	0
Crane operator	<1	3	0	0	0	0
Sampler	<1	2	0	0	0	0
Truck driver	<1	3	0	0	0	0
Fork lift driver	<1	3	0	0	0	0
Mechanical/Maintenance:						
Supervisor	<1	3	0	0	0	0
Machinist	<1	3	0	0	0	0
Mechanic	<1	3	0	0	0	0
Blacksmith	<1	5	0	0	0	0
Pipefitter	<1	4	0	0	0	0
Carpenter	<1	3	0	0	0	0
Mason	<1	3	0	0	0	0
Construction man	<1	3	2	0	0	0
Kettle welder	<1	4	1	0	0	0
Laborer	2	1	0	1	0	0
Power House:						
Supervisor	<1	3	0	0	0	0
Station tender	<1	8	1	0	0	0
Electrician	<1	2	1	0	0	0
Oiler	<1	3	0	0	0	0
Laborer	<1	2	0	0	0	0
Residue Department:						
Supervisor	<1	7	1	0	0	0
Crane man	<1	9	0	0	0	0
Baghouse man	<1	3	0	0	0	0
Furnaceman	<1	5	4	0	0	0
Kettleman	<1	5	0	0	0	0
Bismuth Department:						
Supervisor	<1	9	0	0	0	0
Cupelman	<1	9	0	0	0	0
Retortman	<1	9	0	0	0	0
Kettleman	<1	9	0	0	0	0
Mechanic	<1	3	0	0	0	0
Laborer	<1	4	0	0	0	0
Antimony Department:						
Supervisor	<1	3	0	0	0	0
Oxide operator	<1	9	0	0	0	0
Oxide packer	<1	3	0	0	0	0

Source: Exhibit 19–32, Attachment I.

TABLE VIII-C35.—PROFILE OF OCCUPATIONAL EXPOSURES TO CADMIUM IN THE LEAD SMELTING/REFINING INDUSTRY BASED ON PHB STUDY

Job category	Geometric mean exposure (μg/m³)
Material Handling:	
Railroad engineer	2
Railroad conductor	5
Railroad switchman	27
Crane engineer	1
Crane laborer	1
Unloader 1	59
Unloader 2	52
Unloader helper	29
Service foreman	3
Yard pool trestle	19
Unloader 3	26
General foreman	1
Sinter Plant:	
Control room man	17
SP operator	180
SP helper	240
Mix room man	420
Mix room helper	116
South end man	135
Foreman	40
General foreman	1
Oiler	25
Feed floor operator	100
Blast Furnace:	
Trestle man	14
Feed floor man	12
Furnace helper	26
Head furnace operator	10
Furnace operator	14
Operator helper	19
Utility man	8
Crane operator	8
Foreman	5
General foreman	2
Dross Plant:	
Crane operator	4
DP operator	20
DP operator helper	17
Refinery:	
Fireman	1
Fireman helper	2
Refinery helper	1
Foreman	1
General foreman	1
Retort operator	0
Caster	1
Lead loader operator	1
Weigher	1
Foreman	1
Baghouse Area:	
Baghouse operator	41
Foreman	12

Source: Exhibit 19-43, Attachment J, Putnam, Hayes & Bartlett, Inc., Tables IV-1 through IV-6.

Exposures to cadmium in the lead smelting and refining industry were also evaluated by the Bureau of Mines of the United States Department of the Interior [4, p. 7]. These data indicate that for over 80 percent of the workforce mean exposure levels are less than 25 μg/m³.

Existing and feasible additional controls. JACA concluded in their study that due to the requirements of the OSHA lead standard, the lead smelting industry is already employing engineering controls to the extent feasible to control lead and cadmium exposures [1, p. 4–6]. A company operating two lead smelters confirmed that assessment. [2, Attachment G, p. 3]. The company also emphasized that the controls do not necessarily achieve the PEL for lead or the proposed PEL for cadmium and that the potential impacts of other provisions in the proposed cadmium standard should not be dismissed. In response to OSHA's request in the preamble for information on the extent of existing engineering controls, this company stated that with regard to lead plants, "all feasible engineering controls and housekeeping methods are utilized for control of exposure to arsenic and lead." [2, p. 4]. Exposures to cadmium in this industry occur concomitantly with exposures to lead and/or arsenic.

The study by Putnam, Hayes & Bartlett (PHB) described exposure sources and possibilities for additional controls for a large lead smelter and refiner [3, Chapter III]. However, some suggested controls are not adequately specified, hindering an evaluation of their feasibility, and PHB does not provide any cost estimates for the controls.

PHB found that improvements in the railroad yard could reduce exposures during unloading by over 80 percent. In the sinter plant improvements in enclosure and ventilation were projected to reduce exposures by 50 to 75 percent. According to PHB, new and improved ventilation, enclosure, and automation in the blast furnace area could reduce average exposures by about 50 percent. Improvements in the dross plant could achieve minor reductions in exposures, and exposures in refining operations generally cannot be reduced significantly. Exposures during baghouse operations were expected to remain near current levels.

It should be noted that the PHB submission was based on a site visit to one plant at which employee exposure readings were considerably higher than those reported at other plants. The high reduction factors noted in the PHB submission (50 to 80 percent) may be achievable for one plant but not for other plants in this sector.

Technological feasible limit for a SECAL. Following the procedure outlined in section B above, OSHA separated exposures into high and low occupation/process exposure groups to facilitate the technological feasibility analysis. Data were divided at a breakpoint which maximized the difference between the mean values for the two separated data sets.

The data segregation resulted in the identification of a "high" occupation/process exposure group which included sinter plant, blast furnace and yard area operations involving 60 workers. All other plant operations including zinc fuming, dross furnace, acid plant, lead refining, etc., were included in the "low" exposure group involving about 340 employees. Figure VIII–C22 graphically represents the segregated data. The vertical line within each box depicts the median value for the distribution.

Mean exposure data for the two sets were as follows:

	High group	Low group
Number of observation	21	21
Mean	43	3.6
Standard deviation	27	3.2

To verify that the two groups within this industry were distinct, a *t* test was performed on the difference in the means. The null hypothesis that the means of the exposure data were equal was rejected, and the conclusion that they were drawn from separate statistical distributions, was accepted.

After the statistical difference between high and low exposure groups was verified, the data were analyzed separately. In Figures VIII–C23 and VIII–C24 process mean exposure values drawn from each available data source are presented. All process data were "fitted" to a straight line using ordinary least squares methodology.

For each group a model was developed to graphically depict the effect on the exposure distribution after current exposures were reduced using alternative engineering control efficiency factors from 80 down to 20 percent, in 20 percent increments.

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FIGURE VIII-C22

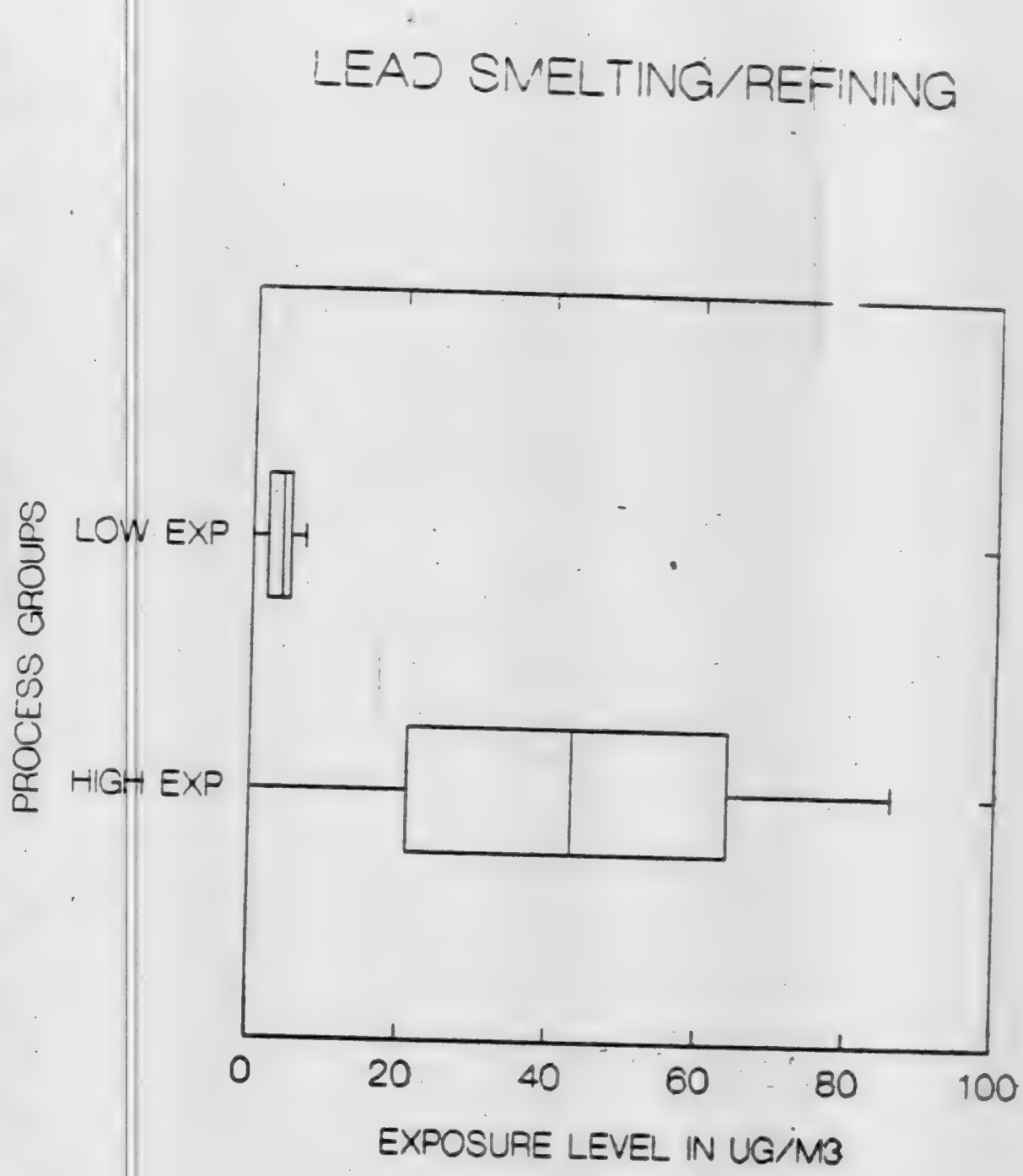

FIGURE VIII-C23

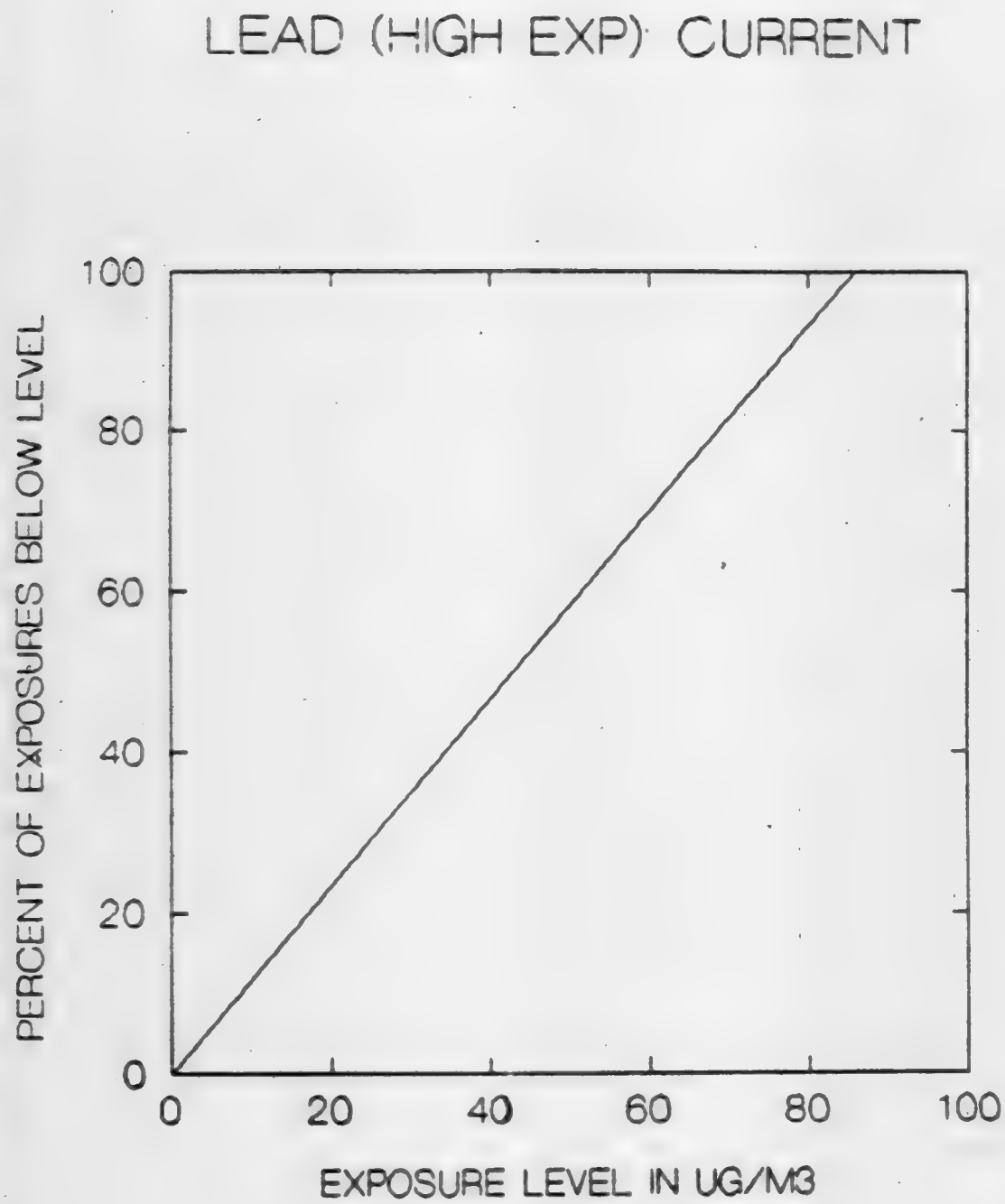

FIGURE VIII-C24

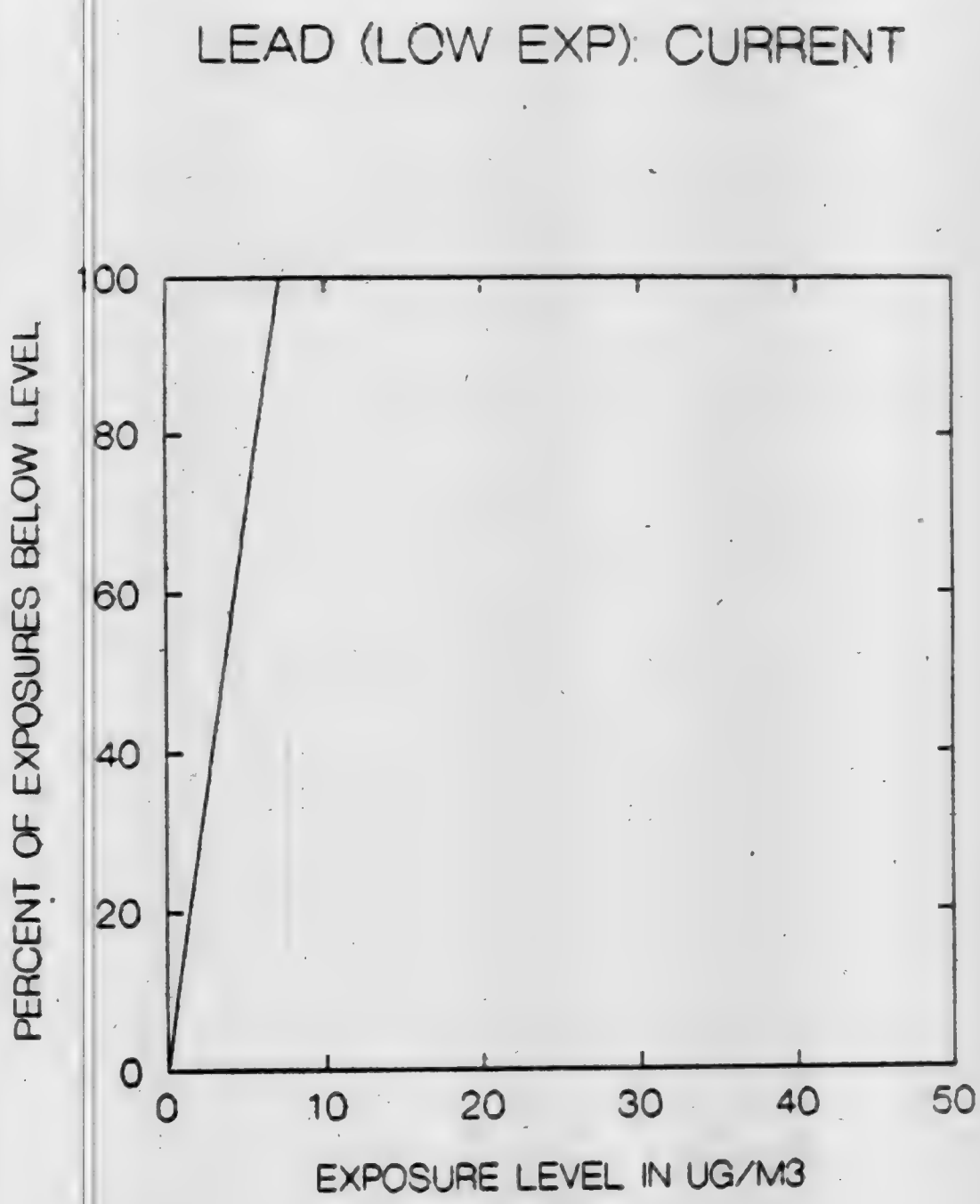

VIII-C174

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The lower the projected efficiency the smaller the exposure change from current levels. Figures VIII–C25 and VIII–C26 show the effect of such reductions and the shift in the distribution of exposures for the high and low groups in lead smelting operations.

It is very unlikely that requirements for additional engineering controls will have very much success in further reducing cadmium exposure levels, since most sites are already required to introduce engineering controls to the extent feasible in order to reduce lead and arsenic exposures. (OSHA enforcement experience suggests that some plants may not be in full compliance with existing standards.) Improved housekeeping and work practices could further reduce exposures at some of these plants.

Most exposure monitoring data indicated that exposures are generally at or below 5 $\mu g/m^3$ for employees in low exposure occupations. Data from PHB differ from the other sources and indicate higher exposures for some categories. The PHB data indicate that about 20 percent of all job categories have mean exposures above 30 $\mu g/m^3$. However, PHB acknowledged that exposures can be reduced for most workers.

In order to combine the different reduction expectations between the PHB submission and all other industry data, the 80 percent reduction level projected for the one PHB site was averaged with a zero reduction expectation for the remaining three plants making up this industry subsector. The resulting 20 percent reduction is acknowledged to be concentrated within only one plant in this subsector

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FIGURE VIII-C25

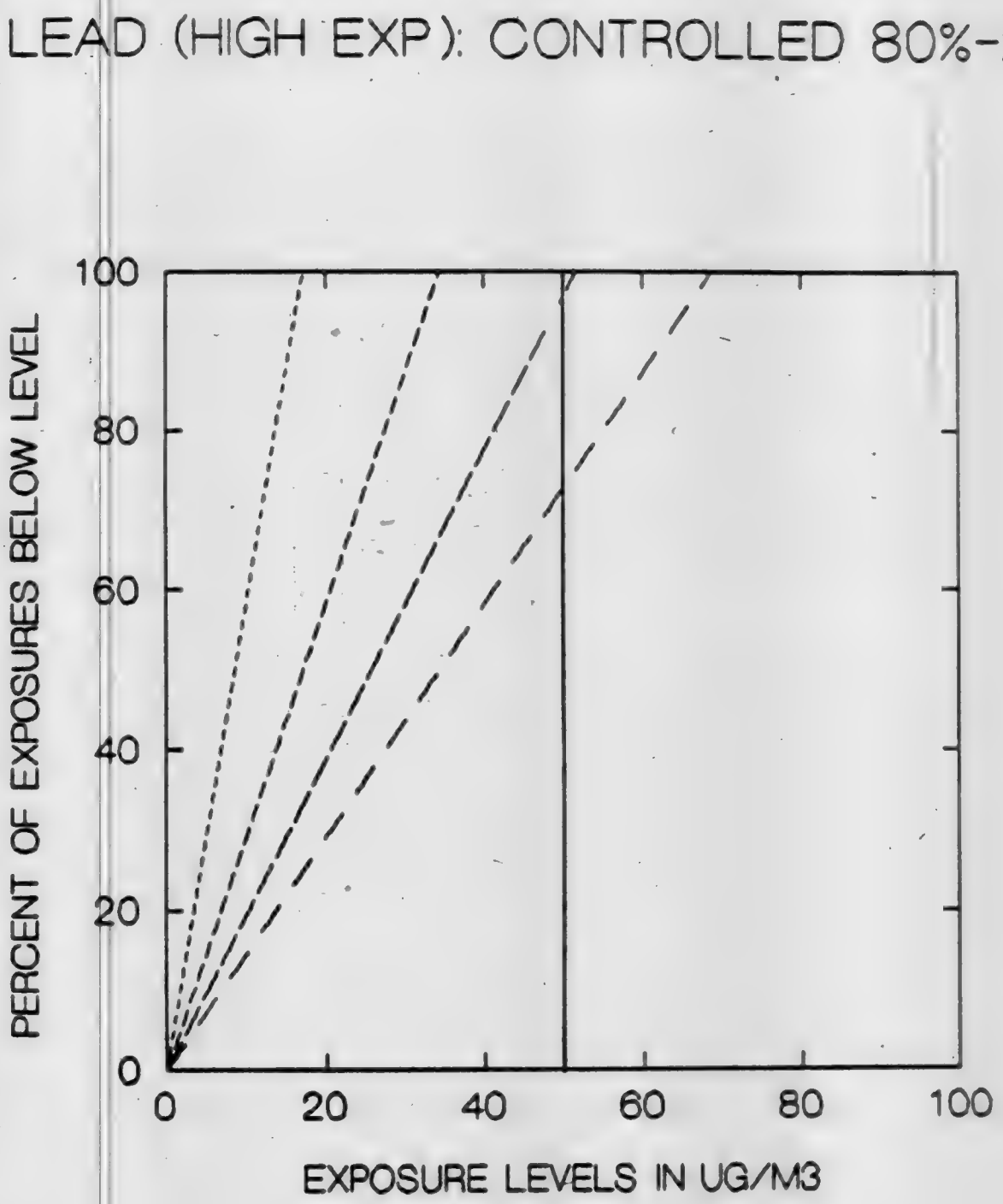

VIII-C1/6

FIGURE VIII-C26

LEAD (LOW EXP.): CONTROLLED 80%-20%

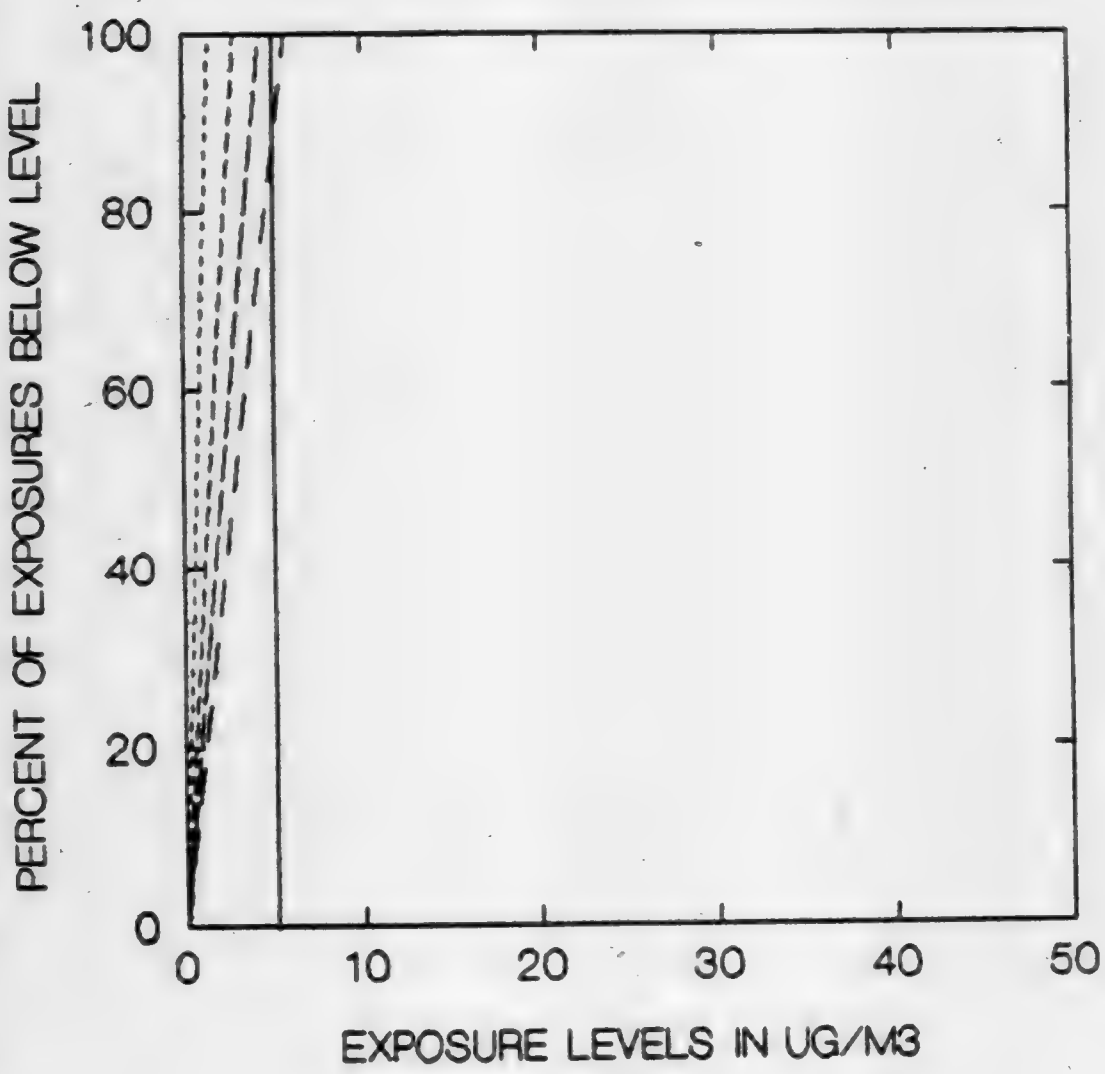

VIII-C177

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Based on the evidence in the record, OSHA concludes that a 50 $\mu g/m^3$ SECAL for 60 employees in high exposed occupations/processes is technologically feasible and the PEL of 5 $\mu g/m^3$ is feasible for all other employees (340) in this industry. Selection of these levels was based on a 20 percent expected exposure reduction resulting from improved conditions within one affected plant. There were no economic feasibility concerns at this efficiency level.

Costs of compliance with a 50 $\mu g/m^3$ SECAL and 5 $\mu g/m^3$ PEL. The evidence and comments in the record generally confirm OSHA's preliminary finding that lead smelters and refiners have already installed feasible controls to reduce cadmium exposures [1, 2, 3, 4]. Current exposure monitoring data demonstrate the feasibility of compliance with the revised standard for low exposure processes. On the basis of these data, OSHA believes that additional engineering controls will be installed in one plant in this industry to achieve compliance with the revised cadmium standard.

The engineering controls necessary to comply with a SECAL of 50 $\mu g/m^3$ would be less extensive than those listed in the PHB report, which was based on an attempt to meet a PEL of 5 $\mu g/m^3$ in all operations. Furthermore, some additional controls recommended by PHB may be required by existing OSHA standards, and thus the costs for these controls should not be attributable to this cadmium rulemaking.

According to the PHB data, current exposures in most of the job classifications in the high exposure areas are already below the SECAL, and current exposures in most low exposure job classifications are below the PEL. Engineering controls identified by PHB primarily involved enclosures and ventilation systems. Since PHB did not provide cost estimates, OSHA used standard unit cost figures for such systems from industries with similar operations (such as zinc refining and cadmium refining). A typical ventilation system would cost an estimated $80,000 in capital costs and $8,000 in annual costs, and enclosure of an operation would cost about $9,000 on average.

The costs of compliance with the final cadmium standard for engineering controls were approximated by calculating the cost of installing an additional enclosure and ventilation system (or other controls with equivalent cost) in each of the five production areas identified (material handling, sinter plant, blast furnace, dross plant, and refinery). The estimated capital cost would be $445,000, the annual cost would be $40,000, and the total annualized cost would be an estimated $112,000.

Employees in lead smelters and refiners use respiratory protection for lead and arsenic exposure, and cadmium exposure sources generally coincide with lead and arsenic exposure sources. Evidence from the industry confirmed that employees in lead plants are provided with respirators [2, p. 9], and the record does not demonstrate the existence of any sources of cadmium exposure independent of lead or arsenic exposure sources. Most employees exposed above the revised PEL for cadmium should already be using respiratory protection.

Based on a visit to a lead smelter and refiner and on other research in the industry, JACA concluded that all employees with significant exposure to cadmium in this industry were provided with respiratory protection [1, p. 6–17]. Comments from one company representing three lead smelters/refiners indicated that the revised PEL for cadmium would affect a total of 285 employees at these plants [2, p. 3]; however, the extent of current respirator usage among these employees was not specifically addressed.

OSHA recognizes that situations may arise for which compliance with the revised cadmium standard may involve costs that would not be required by standards for lead and arsenic. OSHA estimates that 200 employees in the industry would need to be provided with additional respiratory protection (assuming that about half of all affected employees are already protected). At a cost of $300 per employee per year the total estimated annual cost for the industry would be $60,000.

JACA concluded on the basis of site visit data and survey responses that exposure monitoring for cadmium was conducted in lead smelters every six months on average. Comments from the industry regarding three lead facilities indicated that exposure monitoring for cadmium was conducted quarterly for each job category and each shift affected by the lead and arsenic standards [2, p. 3]. Another section of these comments refers to "additional employees" affected by a revised cadmium PEL, but the table cited shows the number of employees potentially exposed to cadmium, including those exposed to arsenic and lead [2, p. 9].

Monitoring data submitted by the industry suggest that the exposure monitoring for cadmium already being done in some plants covers all job categories with potential cadmium exposure [2, attachment I]. However, it seems likely that some additional monitoring may be necessary for the industry to achieve full compliance with the revised cadmium standard.

The extent of monitoring required by the standard depends in part on the number of job categories that are identified. JACA grouped workers into seven job categories; PHB distributed workers into over 45 classifications. OSHA believes the PHB data could be collapsed to conform with the JACA classifications. Assuming that current monitoring represents from 60 to 90 percent of that required under the new rule, OSHA estimates that, on average, additional monitoring will be required for three job categories per plant.

Monitoring would be conducted every six months for each of three shifts. A typical plant would have 18 additional samples analyzed for cadmium annually. These samples are already collected and analyzed for lead and/or arsenic, and thus no additional collection costs would be imposed by the cadmium standard. At a cost of $40 per sample for the lab analysis, the annual cost to the industry would be about $2,900.

Employees in this industry generally receive medical surveillance and quarterly biological monitoring [1, p. 6–26 and 2, p. 9]. Additional analyses would be needed for an estimated 400 exposed employees for cadmium in blood ($60 per sample), cadmium in urine ($60 per sample), and β_2-microglobulin in urine ($80 per sample). About 500 of each of these analyses are estimated to be needed annually for full compliance (including more frequent testing of some employees), resulting in a total annual industry cost of $100,000.

Requirements for medical removal may involve compliance costs in addition to those for more frequent monitoring estimated above. The criteria for mandatory removal would affect employees with the most extreme biological monitoring levels. The criteria for removal also allow for considerable physician's discretion. An estimated 1.5 percent of the exposed workforce may be removed initially on the basis of these criteria and the discretion of physicians.

Compliance with the new PEL for cadmium and other requirements of the final cadmium standard should prevent a continuing need to remove employees. The number of employees with relatively high past exposures who would be more likely to be removed should also decline through attrition. However, as the criteria for removal become broader in future years (lower levels of cadmium in blood and urine triggering mandatory removal),

additional employees may be subject to removal. The costs associated with the medical removal provisions are approximated by assuming that on average, 1.5 percent of the exposed workforce may be removed every 5 years.

The number of employees removed should be small enough to enable establishments to provide removed employees with alternative positions. Costs to the employer would include paying wage differentials over eighteen months and hiring and training new employees. The average cost per removed employee is estimated to be $5,000. An estimated 6 employees may be removed every five years, on average, in the lead refining industry, and the average annual cost for the industry would be $6,000.

The total annual cost for medical surveillance and medical removal provisions is estimated to be $106,000.

Employees at lead smelters and refiners are currently provided with "the full gambit of hygiene facilities, protective clothing," etc. for lead and/or arsenic exposure [2, p. 9]. This statement from industry generally confirms JACA's conclusion that additional costs would not be imposed by related provisions in the cadmium standard.

The revised cadmium standard may impose additional costs for recordkeeping. These costs are estimated to be $5 per employee per year or about $2,000 annually for the industry.

The estimated costs of compliance for the lead smelting and refining industry are presented in Table VIII–C36. The estimated total annual cost is $282,900, representing about $42,725 per plant for three plants and $154,725 for one plant in which additional engineering controls appear to be feasible.

TABLE VIII–C36.—ESTIMATED COSTS OF COMPLIANCE WITH THE REVISED CADMIUM STANDARD FOR THE LEAD SMELTING/REFINING INDUSTRY

Provision	Annualized cost ($thousands)
Exposure control	112.0
Respirator use	60.0
Exposure monitoring	2.9
Medical surveillance	106.0
Hygiene provisions	0.0
Recordkeeping and information	2.0
Total	282.9

Note: Costs do not include current expenditures.
Source: Office of Regulatory Analysis, OSHA, U.S. Department of Labor.

Economic feasibility of a 50 μg/m³ SECAL and 5 μg/m³ PEL. Compliance with the revised cadmium standard is considered economically feasible for the lead smelting and refining industry. The compliance cost imposed by the standard represents an incremental increase in exposure control costs and a marginal expansion of employee protection programs already instituted and widely applied in this industry. Many of the requirements of the revised cadmium standard overlap existing requirements and do not create new burdens.

JACA estimated that the average revenues of lead smelters and refiners were about $44 million, ranging from $30 million for a small facility to over $70 million for a large facility [1, p. 7–7]. Additional information was not provided to the record. The lead smelting and refining plants would typically have estimated compliance costs of less than 0.1 percent of revenues. For one plant in which additional controls may be feasible, the compliance costs would represent less than 0.4 percent of revenues. Costs impacts of this magnitude are consistent with the general conclusion of economic feasibility for this industry sector.

Lead prices are dictated by worldwide market factors. When prices are low, smelters and refiners will be unable to pass compliance costs on to customers. When price levels are high, large increases in profits are possible. JACA estimated that an increase in the price of lead of 6 cents per pound (as occurred recently within one year) should increase industry profits by $46.7 million annually. The estimated compliance cost would represent less than 0.6 percent of these profits.

Lead smelters and refiners should be able to absorb the estimated compliance costs into operating costs. The typical cost increase per plant approximates the labor costs for one additional employee, and the typical facility has over 100 employees. Costs of this magnitude should not have a significant effect on the viability of the operation or influence major production or investment decisions.

Finally, it may be the case that some engineering control costs identified in this rule should already have been put in place in order to comply with existing rules for lead and arsenic.

Notes

1. Exhibit 13, "Economic Impact Analysis of the Proposed Revision to the Cadmium Standard," Final Report, JACA Corporation, March 15, 1988.
2. Exhibit 19–32, "Comments of ASARCO Incorporated," ASARCO Inc., May 9, 1990.
3. Exhibit 19–43, Attachment J, "Technological Feasibility of a Workplace Standard for Airborne Cadmium at the Herculaneum Lead Smelter," Putnam, Hayes & Bartlett, Inc., November 2, 1989.
4. Exhibit 105, "The Cost of Engineering Controls for Reducing Workplace Exposure to Cadmium at Primary Producers," Bureau of Mines, U.S. Department of the Interior, September 18, 1990.

Plating

Industry overview. Plating involves coating one material with another in order to impart the characteristics of the plating material. Surfaces commonly plated include parts made of steel, brass, aluminum, and iron; common plating materials include zinc, chromium, copper, nickel, and cadmium.

Plating is most often used to protect surfaces from corrosion, but can also increase electrical conductivity and improve appearance. Plated parts are used in many manufacturing industries; the heaviest use is in the automotive, electronics, industrial hardware, and aerospace industries. The military frequently specifies cadmium-plated parts because of their superior performance under extreme conditions.

The electronics industry uses cadmium to plate chassis hardware, connectors, and fasteners. Cadmium-plated parts possess high conductivity, excellent solderability, and are easily bonded.

The aerospace industry specifies cadmium for plating to reduce corrosion between high tensile steel fasteners and aluminum alloys. Plated parts include bolts, major structural members, and landing gear parts. Cadmium provides excellent lubricity and performs well under extreme temperatures and in salty environments.

Automotive applications include plating nuts and bolts for suspension bars, brass and steel springs, and brake line connectors. Cadmium properties of importance to auto makers include lubricity and adhesion. Cadmium can be applied in thin coats which makes it an excellent plating material for small parts.

Cadmium plating is done with one of two basic plating methods. Electroplating is the most common and involves coating materials through electrodeposition by submerging them in a liquid mixture with the plating compound. Mechanical plating is a dry operation in which parts are coated with a powder in a tumbling process.

Cadmium plating is performed at approximately 350 to 400 facilities in the United States [4, p. 1]. Electroplating is the most common method of plating with cadmium, and only about 20 facilities currently use mechanical plating [8, p. 5–122]. At mechanical plating facilities, less than 10 percent of

the work involves cadmium [8, p. VI-134]. An estimated 1,200 employees are exposed to cadmium in plating establishments.

Cadmium plating can be done by independent plating companies and also by other companies as part of multi-faceted manufacturing operations. The analysis of the plating industry includes only those establishments engaged in plating as a primary business. Potential cadmium exposures and regulatory impacts at other establishments are analyzed in the sections for their respective industries.

Production processes. Electroplating with cadmium is usually conducted in a cyanide bath. The solution is prepared from cadmium oxide and sodium cyanide. Cadmium or cadmium oxide powder is weighed out and then dissolved in a salt solution which is added to the electroplating tank. As a current is passed through the solution, the positively charged cadmium metal ions are attracted to the part to be plated, thereby creating a cadmium coating.

Mechanical plating involves tumbling the parts to be plated in a barrel with a mixture of cadmium powder, glass beads, acid, and other chemicals. The cadmium powder is initially weighed out into paper bags, which are placed in the barrel intact and disintegrated by the acid. After the tumbling process is complete the parts are discharged onto a table provided with water sprays, where they are washed and separated.

Employee exposures. JACA identified two job categories with potential exposure to cadmium during electroplating operations, the operator and the maintenance technician. Based on exposure data representing over seven years of OSHA monitoring, JACA concluded that the geometric mean exposure for the workers was less than 0.2 $\mu g/m^3$ [1, p. 3-21].

An in-depth health hazard survey report of an electroplating facility was provided by NIOSH [2, Attachment 14]. Exposure monitoring results reported for cadmium did not include any quantifiable concentrations. A second in-depth health hazard survey report of another electroplating facility also failed to reveal any quantifiable concentrations of cadmium [2, Attachment 15]. NIOSH concluded in their testimony that sampling results in electroplating operations were generally at or below 2 $\mu g/m^3$ (the limit of analytical detection in the study) [3, p. 15].

The National Association of Metal Finishers (NAMF) cited a NIOSH technical report which evaluated cadmium exposures during electroplating "using an absolute worst case method." Samples were taken inches above the plating solution on hand operated tanks. The highest potential concentrations of cadmium ranged from 2 $\mu g/m^3$ to 15 $\mu g/m^3$. Monitoring conducted by the New York State Department of Labor indicated concentrations of less than 2 $\mu g/m^3$ above the operating tanks. [4, p. 2]. These results refer to area samples and do not represent personal eight-hour time-weighted average exposure levels.

Exposures during mechanical plating are higher than electroplating. One plant conducting mechanical plating with cadmium reported that during the past three years exposure levels ranged from 8 $\mu g/m^3$ to 36 $\mu g/m^3$ [5, p. 9]. The result of a single eight-hour sample taken during mechanical plating with cadmium was submitted by another plant as 33 $\mu g/m^3$ [6, Exhibit A, p. 10]. However, this sample "does not represent the normal range of exposures" because the monitoring was done during a "worst possible case scenario" created specifically to evaluate the highest potential exposure to cadmium [6, Exhibit B, p. 1].

A study conducted by the Cadmium Council estimated exposures separately for different work stations during mechanical plating [7, Table A6-1]. Exposures during weighing were estimated to be 92 $\mu g/m^3$, exposures while operating the barrel were estimated to be 60 $\mu g/m^3$, and exposures during other operations were estimated to be 16 $\mu g/m^3$. The study conceded that "the entire cadmium plating process is frequently done by one person" [7, p. 6-1] but did not provide information on the number of samples taken, the duration of the sample(s), or what actual exposures might be based on personal monitoring over a full shift. Weighing and barrel operations involving cadmium represent short duration, infrequent activities at mechanical plating plants [5, p. 4].

Existing and feasible additional controls. JACA described existing controls at electroplating facilities that included local exhaust ventilation and hoods over the material handling areas. JACA suggested that if further controls were needed, respirators should be used [1, p. 3-18 and 4-10]. Testimony from an electroplating facility confirmed that ventilation systems and glove boxes were already being used, and that other chemicals contribute to exposure problems during electroplating [8, p. VI-135 and p. VI-146].

NIOSH provided descriptions of two electroplating facilities. Ventilation systems were generally implemented as necessary, and NIOSH recommended some possible minor improvements [2, Attachments 14 and 15]. NIOSH concluded in their testimony that exposures for cadmium electroplating are "generally at or below 2 $\mu g/m^3$" [3, p. 15] and are "controllable to 1 $\mu g/m^3$ using available engineering controls" [3, p. 26].

A consultation report developed by the Michigan Department of Public Health described controls at a mechanical plating facility [6, exhibit A]. Ventilation systems were used for the weighing operation and for the mechanical plating area. The systems were considered adequate, but some changes in hood designs were recommended to improve their effectiveness.

Comments regarding existing controls were also provided by another mechanical plating facility [5, p. 9]. The company stated that local exhaust ventilation was provided at the plater barrel.

Technologically feasible limit for a SECAL. Data for mechanical plating operations were analyzed separately from electroplating since all available data indicated that mechanical operators were exposed to significantly higher levels of cadmium. Figure VIII-C27 graphically shows the different exposure profile for the 120 employees in the high exposure mechanical plating process versus the 1,080 employees in the low exposure electroplating category. Consistent with the methodology used for other industries, a *t* test was performed on the data and verified that the means of the two exposed populations were drawn from separate statistical distributions.

In Figures VIII-C28 and VIII-C29, all available exposure data for each data set were "fitted" to a straight line (OLS methodology). Currently, all exposures in the low exposure electroplating operations fall below 5 $\mu g/m^3$.

For each group, graphs were developed to model the effect of exposure reductions, based on engineering control solutions with efficiency ratings from a high of 80 down to 20 percent. Figures VIII-C30 and VIII-C31 show the projected reductions for both groups (the high efficiency 80 percent factor is closest to the "y" axis).

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FIGURE VIII-C27

PLATING

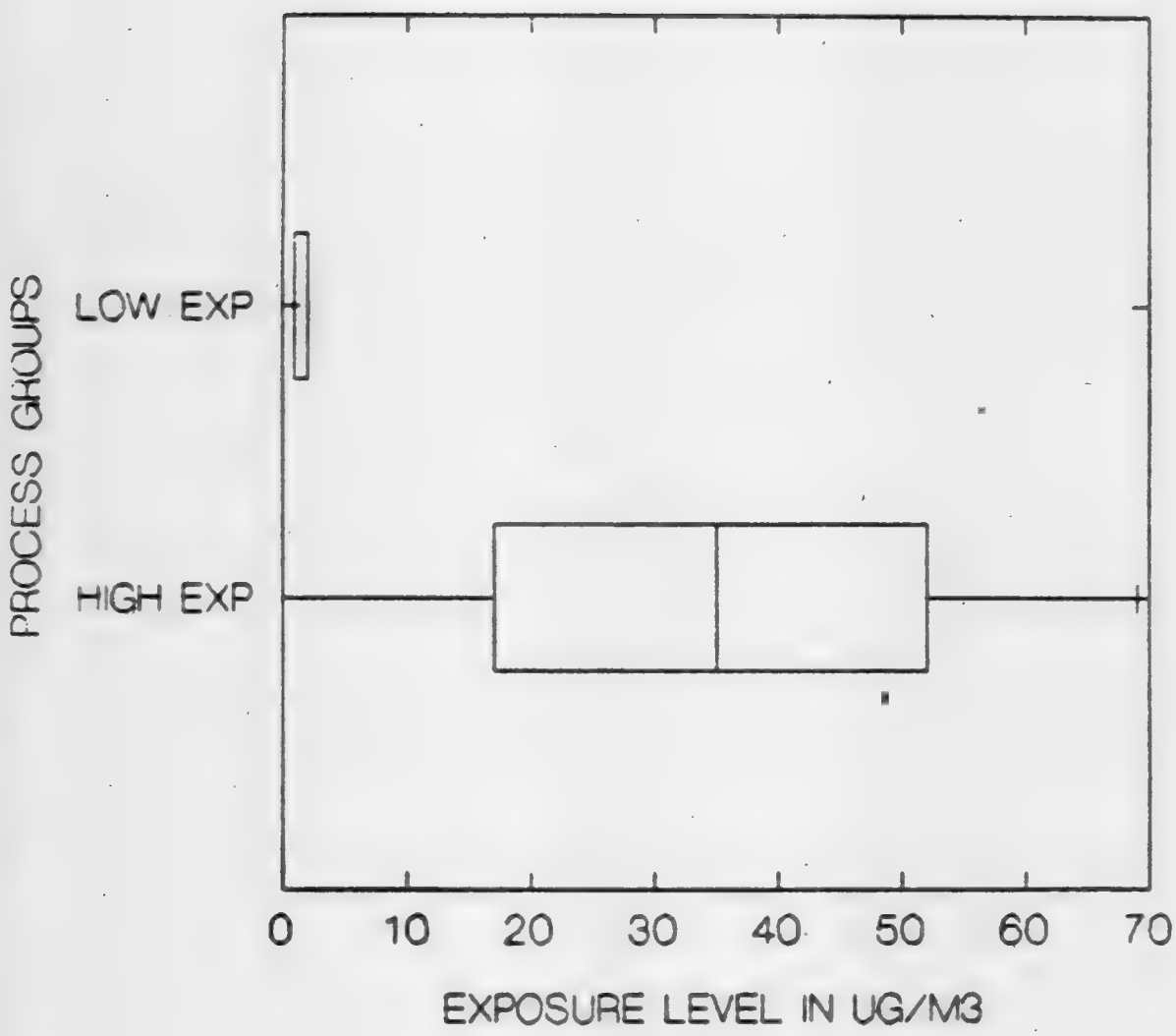

FIGURE VIII-C28

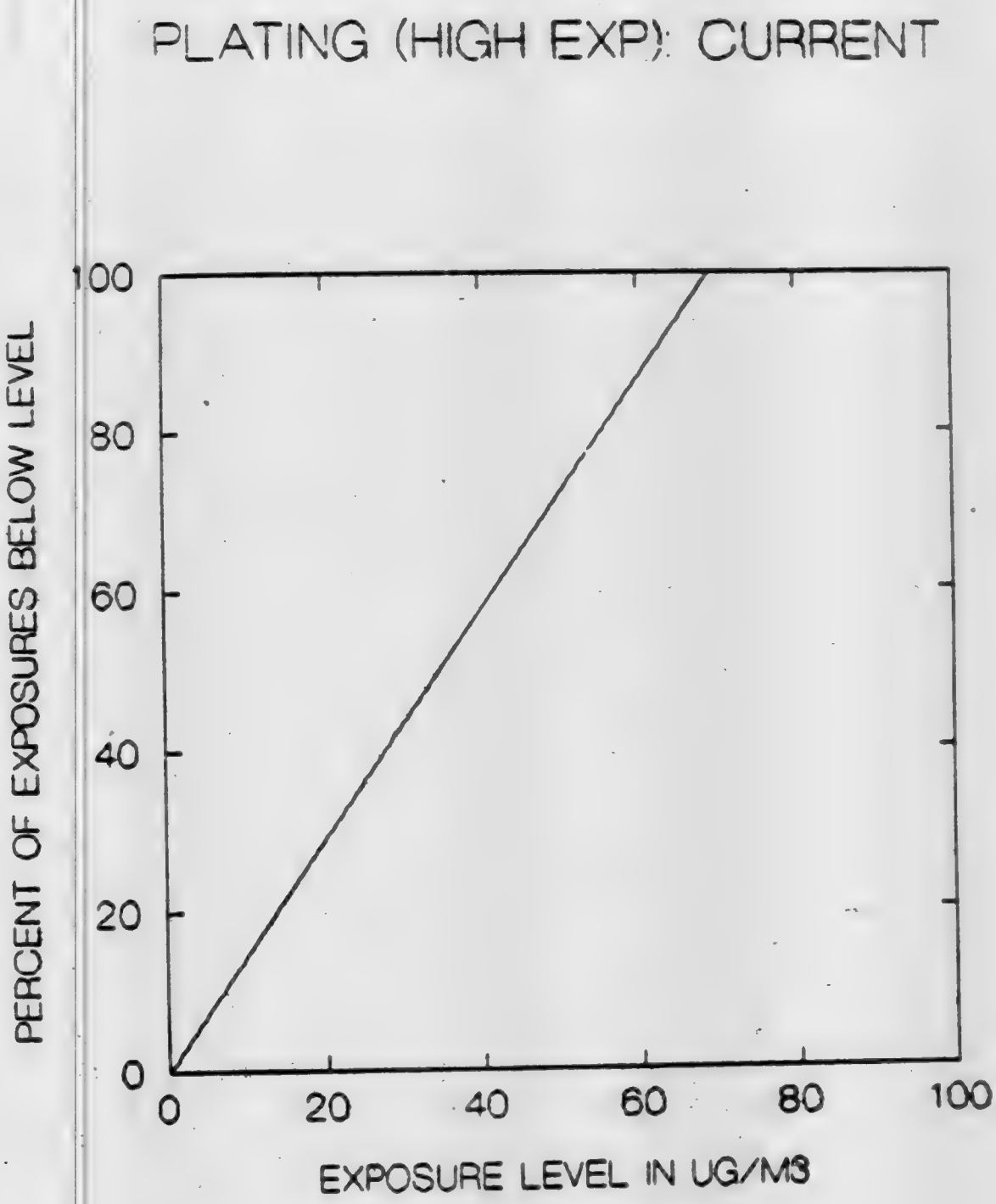

FIGURE VIII-C29

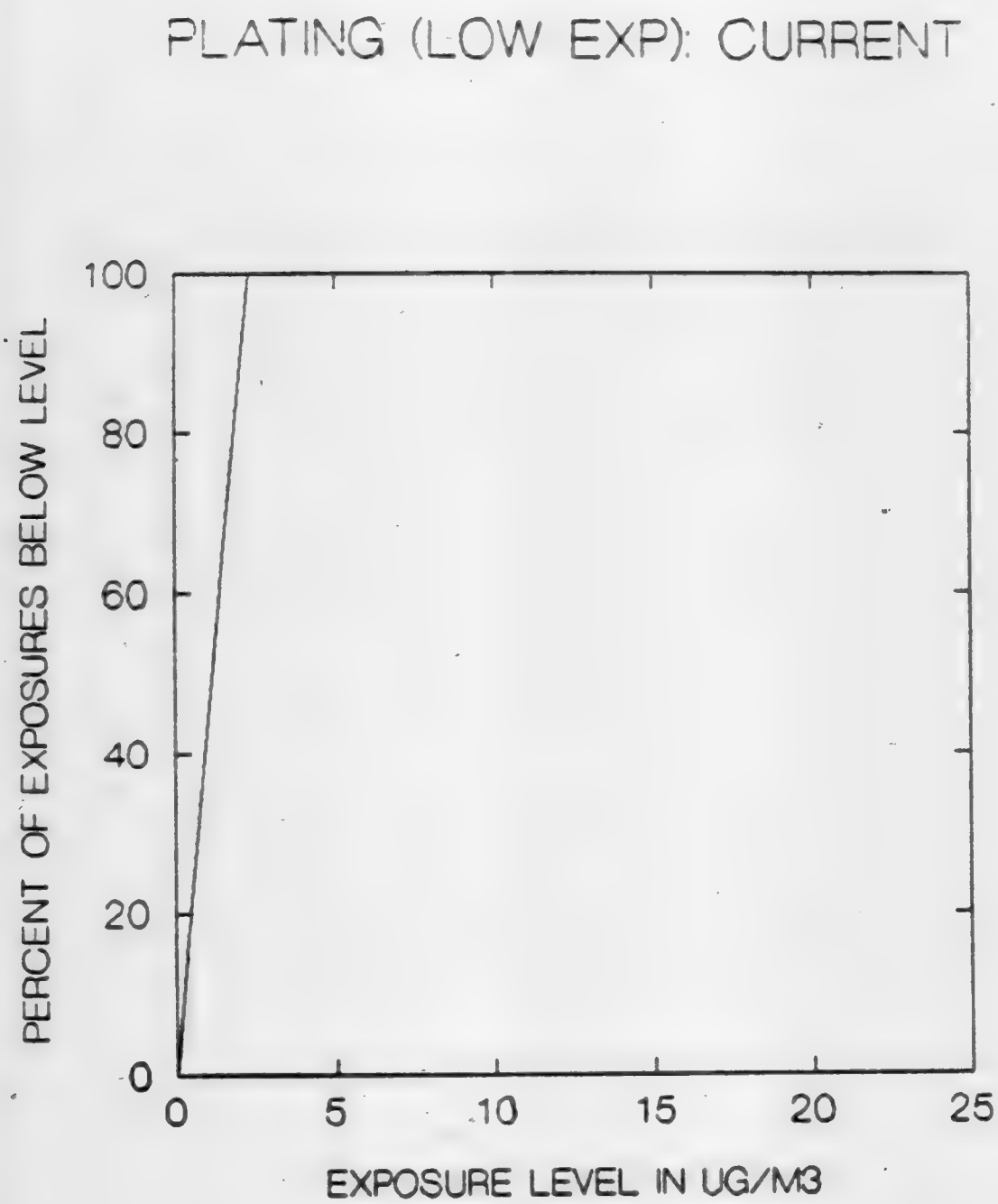

FIGURE VIII-C30

PLATING (HIGH EXP.): CONTROLLED 80%-2C

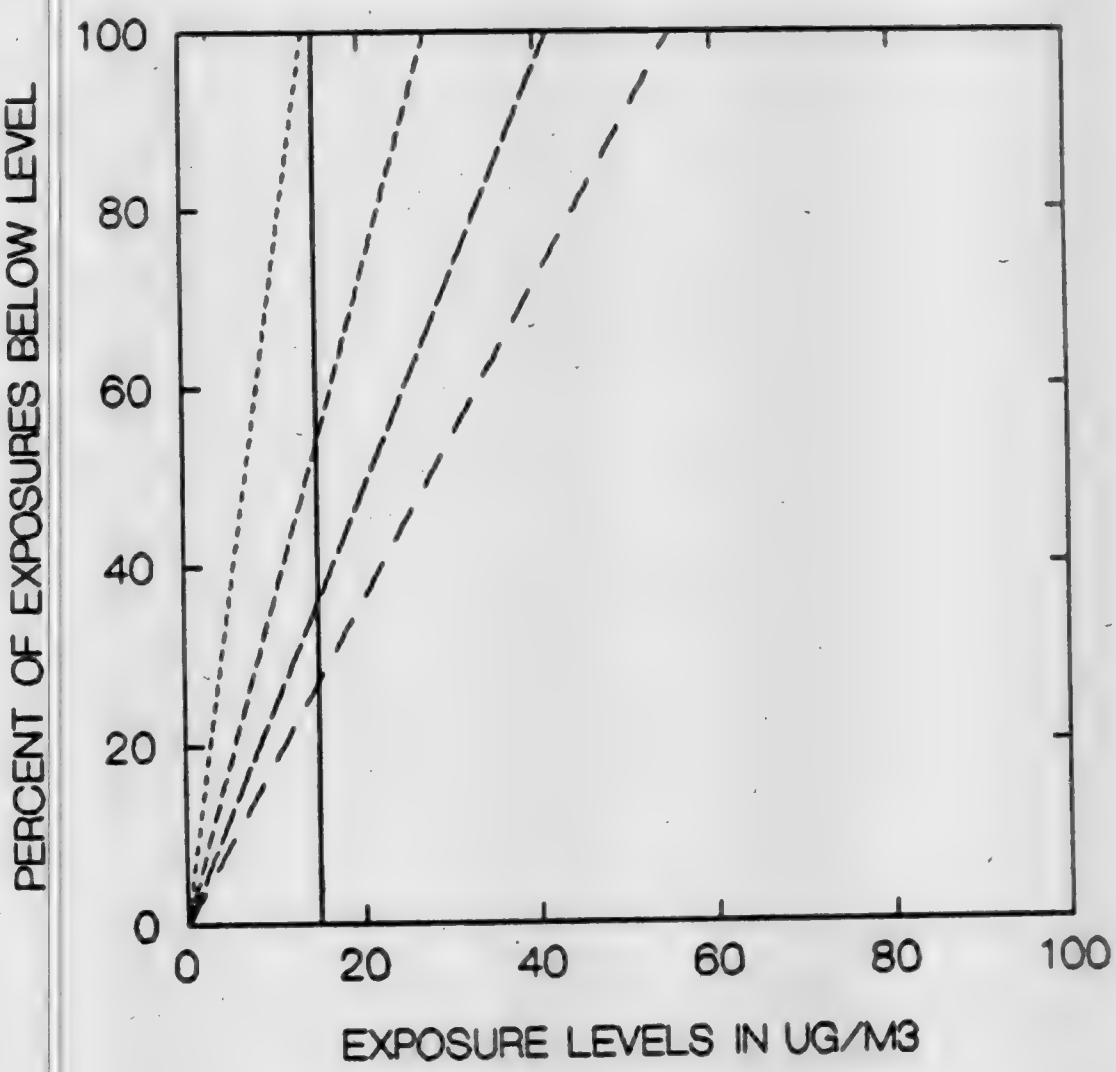

FIGURE VIII-C31

PLATING (LOW EXP.): CONTROLLED 80%-20%

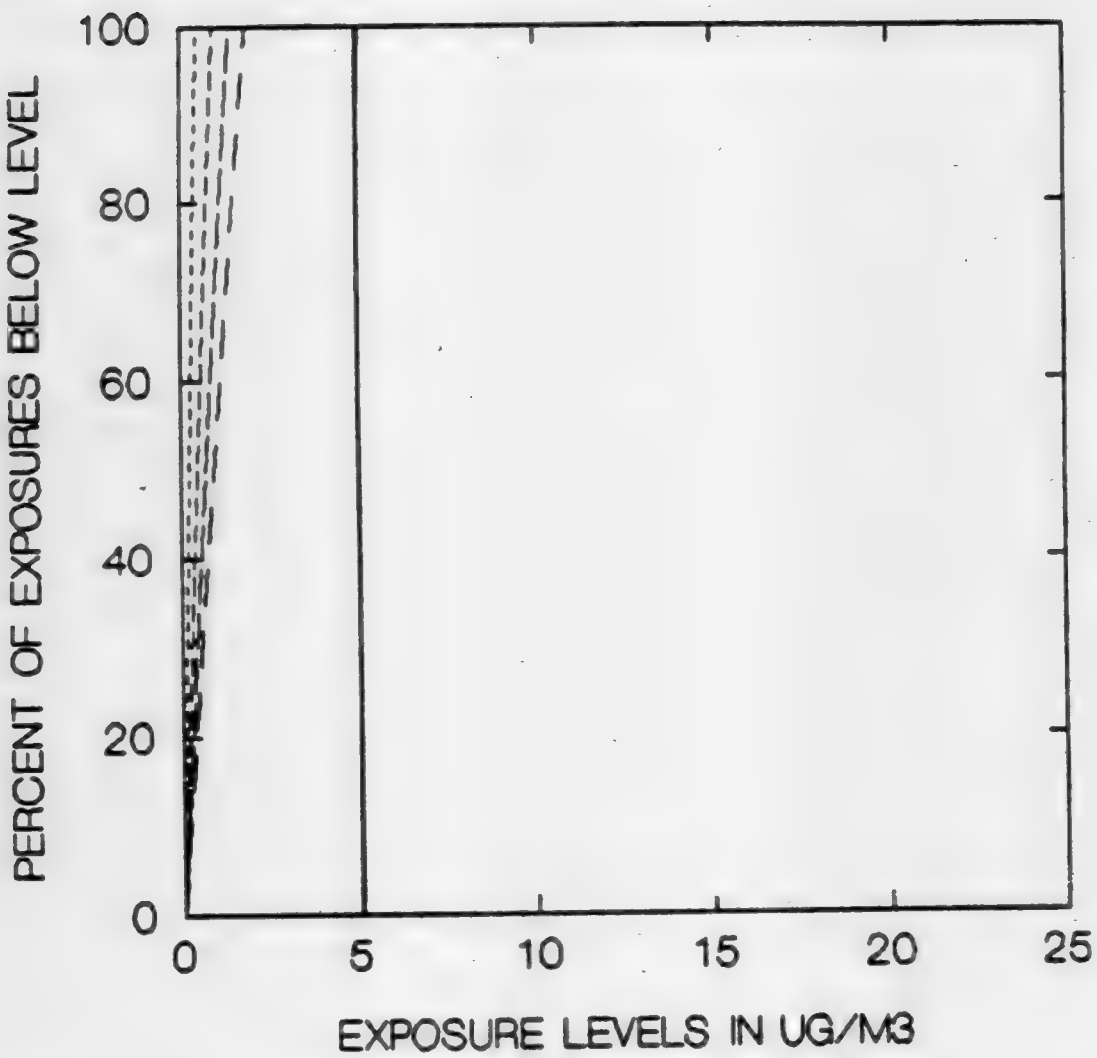

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The selection of an appropriate engineering control factor was based on evidence and testimony in the record and economic feasibility considerations.

PACE evaluated a typical mechanical plating facility and reported that a ventilated sandblast booth ("a simplified type of glove box") was used for weighing operations [7, p. 6–1]. PACE recommended that a "much higher quality glove box" should be used in conjunction with better work practices and housekeeping procedures. These improvements could reduce exposures by over 90 percent during this operation. PACE also recommended the installation of a ventilation system and partial enclosure to control sources of cadmium-bearing mist during the barrel operation. Exposures were projected to be reduced by 85 percent as a result. PACE concluded that exposures could be reduced by up to 75 percent in other operations. Exposures from handling finished mechanically plated parts are considered insignificant because a process change recently introduced removes potential sources of dust before the parts are washed and dried.

The use of pre-bagged cadmium was suggested as a possible control option [3, p. 17], but this approach does not appear to be feasible in this industry [5, p. 4 and 6, p. 5].

Based on this review, a 60–80 percent reduction in exposure levels should be achievable for mechanical plating facilities. This reduction factor translates into a SECAL of 15 $\mu g/m^3$ for the mechanical plating operations. The PEL of 5 $\mu g/m^3$ is technologically feasible for electroplating operations, and most exposure levels for this group are already below this level.

For mechanical plating operations there are no apparent economic feasible constraints preventing them from achieving the 15 $\mu g/m^3$ SECAL.

OSHA concludes that a PEL of 5 $\mu g/m^3$ is technologically feasible for electroplating operations. Respiratory protection will be necessary during some mechanical cadmium plating operations.

Costs of compliance with a 15 $\mu g/m^3$ SECAL and 5 $\mu g/m^3$ PEL. Based on the evidence in the record, OSHA believes that electroplating facilities consistently maintain employee exposures below 5 $\mu g/m^3$ and would generally not need to install additional engineering controls.

Establishments performing mechanical plating with cadmium would be required to install engineering controls to the extent feasible. Testimony from a mechanical plating facility indicated that all feasible controls have already been implemented [8, p. 5–134]. As described above, mechanical plating facilities already use glove boxes, local exhaust ventilation, and other controls to reduce cadmium exposures. Nevertheless, some establishments will find it necessary to improve engineering controls to achieve compliance with the revised standard.

A pass-through airlock glove box, providing "a much higher quality" than conventional glove boxes [7, p. 6–4], would cost about $5,000 [7, Table A6–4]. The installation and use of a vacuum system is estimated to cost $15,000 initially and $8,000 annually for operating costs. A complete ventilation system with two hoods, make-up air, and clean air islands could be provided at a barrel operation without existing controls for about $60,000 plus $6,000 in annual costs.

Some mechanical plating facilities may not require any additional controls, some may only require minor improvements, and a few may need new controls. OSHA estimates that about two thirds of the facilities would incur costs for engineering controls, and that on average these facilities would need half of the engineering controls listed above or the equivalent. About 14 of 20 mechanical plating establishments would have an average annualized cost for engineering controls of approximately $13,500, and the annualized cost for the industry would be $189,000.

Shower facilities with a double-sided locker room could be provided for employees in mechanical plating operations for $35,000 in capital costs and $9,000 in annual costs [7, Table A6–4]. All facilities performing mechanical plating with cadmium need shower and locker facilities for their employees to comply with the revised standard. The annualized cost would be $14,700 per plant or $294,000 for the industry.

The National Association of Metal Finishers stated that the "use of protective clothing and respirators where required is standard practice within the industry." [4, p. 4]. However, it is likely that additional respirator use would be required by the revised standard during some mechanical plating operations. Plating facilities are estimated to have an average of three employees per plant [1, p. D–4], and employees in mechanical plating spend less than 10 percent of the time working with cadmium [8, p. VI–134]. The cost of providing respiratory protection for an average of one full-time employee per plant would be $300 per plant annually, and the total annual cost for the industry would be $6,000.

Exposure monitoring and medical surveillance programs are generally not implemented at plating facilities. However, most electroplating facilities should be able to keep exposures below the action level and avoid most of these requirements.

OSHA estimates that the plating industry consists of 400 establishments with 1,200 employees and two job categories per plant [4, p. 1 and 1, p. D–4]. Regular exposure monitoring may be required at 100 plants. At a cost of $40 per sample and $1,500 annually for collection, each of the affected plants would have an annual cost of $1,660. The annual cost for the industry would be $166,000, of which about $33,000 would apply to mechanical platers.

Medical surveillance is estimated to cost $250 for a medical examination and $215 for the collection and analysis of the required biological monitoring samples. Compliance with the revised standard is expected to involve 150 medical examinations and 300 biological monitoring samples annually. Employees in this industry are not expected to be affected by the medical removal requirements since occupational exposures are relatively low and intermittent. The total annual cost for the industry for medical surveillance requirements would be $102,000, of which about $22,000 would apply to mechanical platers.

Information, training, and recordkeeping requirements may involve incremental costs for plating establishments. These requirements would include provisions for establishing regulated areas, using warning labels, developing a compliance program, and providing information to employees and physicians. Some of these costs would already be required by existing standards or be included in current practices; requirements may not apply to establishments with exposures consistently below the action level. Additional costs are estimated to average $100 per employee per year for about 25 percent of plating establishments. The total annual cost for the industry would be $30,000, of which about $6,000 may be borne by mechanical platers.

Compliance costs for the plating industry are summarized in Table VIII–C37. The total estimated cost is $787,000 annually, of which $237,000 is for electroplating and $550,000 is for mechanical plating.

Economic feasibility of a 15 $\mu g/m^3$ SECAL and 5 $\mu g/m^3$ PEL. The revised cadmium standard with a SECAL of 15 $\mu g/m^3$ is considered economically feasible for the cadmium plating industry.

Average annual revenues from cadmium plating are estimated to be

$500,000 per facility, and the average pre-tax profit margin is 4.4 percent, resulting in average estimated annual profits of $22,000 [9, p. VI–16]. Almost all facilities that plate with cadmium also plate with other materials [1, p. 7–10], and thus total revenues and profits per plant would be higher.

TABLE VIII–C37.—ESTIMATED COSTS OF COMPLIANCE WITH THE REVISED CADMIUM STANDARD FOR THE CADMIUM PLATING INDUSTRY

Provision	Annualized cost ($thousands)		
	Electro-plating	Me-chanical plating	Total
Exposure control	0	189.0	189.0
Respirator use	0	6.0	6.0
Exposure monitoring	133.0	33.0	166.0
Medical surveillance	80.0	22.0	102.0
Hygiene provisions	0	294.0	294.0
Recordkeeping/ information	24.0	6.0	30.0
Total	237.0	550.0	787.0

Note: Costs do not include current expenditures.
Source: Office of Regulatory Analysis, OSHA, U.S. Department of Labor.

Over 90 percent of the establishments in this industry are electroplaters. These establishments generally have sufficiently low exposures so that compliance with the standard can be achieved at minimal or no additional expense. If exposures at an electroplating facility are such that medical surveillance and exposure monitoring of employees would be required, the additional cost would typically be less than $3,000 per year. Electroplating facilities providing cadmium plating should be able to offset compliance costs with an average price increase of less than 0.5 percent.

Mechanical platers will face higher compliance costs than electroplaters. The total annual compliance cost may reach $30,000 at facilities that have not implemented adequate controls but would be less for establishments with existing controls. Mechanical platers would not be competitively disadvantaged in comparison to electroplaters. Mechanical plating costs more than electroplating, and customers do not use it unless they have to; the two methods of plating are not interchangeable [6, p. 4 and 8, p. VI–143].

A representative mechanical plater has "revenues of about $1 million * * * Revenues from mechanical plating account for about 35 percent of the total, or about $350,000." [10, p. 4–4]. An increase in the price of mechanical cadmium plating of less than 10 percent would offset the estimated compliance costs for these establishments.

The cost of plating components generally comprises a small fraction of the cost of final products such as automobiles, and the estimated increase in plating costs would translate into negligible increases in prices for products with cadmium plated components. Where properties of cadmium plating are essential, such as in some military applications, the cost increase could be passed through to customers. The automobile industry and the military together account for over 80 percent of the demand for mechanically plated components [10, p. 4–4].

The costs associated with cadmium plating may be less than those estimated above to the extent that market forces lead to a more efficient solution for the industry. Some facilities may discontinue cadmium plating operations or make production schedule changes to take advantage of the 30 day exclusion provision in the rule. Other facilities may increase cadmium plating and be able to spread compliance costs over a greater percentage of production.

Such shifts in production would not constitute a major structural change in the industry. The percent of revenues derived from cadmium plating varies among plating establishments and for many firms only small adjustments would be necessary to eliminate or concentrate on cadmium related business. Recent environmental regulations, including water pollution standards, are already causing such a trend towards specialization throughout the industry [8, p. VI–147]. Also, "most platers appear sufficiently flexible to respond relatively easily to new specifications for plating different metals." [10, p. 4–5].

The average increase in prices associated with the estimated compliance costs would not threaten the viability of the industry or cause any significant contraction. Compliance costs for over 90 percent of the establishments would be minimal. Costs are primarily concentrated in mechanical plating; demand for this more expensive and specialized service is relatively inelastic and should not be significantly impacted.

The trade association for the plating industry emphasized that most of the affected establishments were small businesses for whom the implementation of the standard would cause "major problems." [4, p. 5]. The association recommended that the standard be coupled with a technical assistance program funded by the government for small businesses.

OSHA recognizes that some establishments may need assistance in complying with safety or health regulations. The Office of Compliance Assistance and representatives of regional and area offices are available for answering questions and offering advice to small businesses. In addition, small businesses may take advantage of OSHA's consultation program which conducts a comprehensive assessment of facilities, provides guidance, and makes recommendations.

Notes

1. Exhibit 13, "Economic Impact Analysis of the Proposed Revision to the Cadmium Standard," Final Report, JACA Corporation, March 15, 1988.
2. Exhibit 19–26, "Comments of the National Institute for Occupational Safety and Health on the Occupational Safety and Health Administration's Proposed Rule on Occupational Exposure to Cadmium," U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, National Institute for Occupational Safety and Health, May 7, 1990.
3. Submitted Testimony of NIOSH on OSHA's Proposed Cadmium Rule, Draft 2, July 6, 1990.
4. Exhibit 5, "NAMF Comments Occupational Exposure to Cadmium," National Association of Metal Finishers, May 1, 1990.
5. Exhibit 99, "Additional Comments Filed on Behalf of the Cadmium Council," Prather, Seeger, Doolittle & Farmer, September 18, 1990.
6. Exhibit 100, "NAMF Amended Comments Regarding Occupational Exposure to Cadmium," Reilly Plating Company, September 14, 1990.
7. Exhibit 19–43, Attachment L, "Feasibility and Cost Study of Engineering Controls for Cadmium Exposure Standard," PACE Incorporated, April 30, 1990.
8. Hearing Transcript, June 11 and 12, 1990.
9. Exhibit 15A, "Preliminary Regulatory Impact and Regulatory Flexibility Analysis for the Proposed 5 $\mu g/m^3$ Cadmium Standard," Office of Regulatory Analysis, OSHA, U.S. Department of Labor, January 22, 1990.
10. Exhibit 19–43, Attachment I, "Economic and Technological Feasibility of a 5 Microgram per Cubic Meter Workplace Standard for Airborne Cadmium," Putnam, Hayes & Bartlett, Inc., April 30, 1990.

Dry Color Formulators

Industry Overview. Cadmium pigments are purchased by companies in several industries for applications in the manufacture of plastics, ceramics, specialty coatings, and other products. Some companies purchase cadmium pigments directly from the manufacturers; many companies rely on intermediate compounders to formulate custom color concentrates and resin concentrates. The compounders are referred to by the industry as dry color formulators.

The Dry Color Manufacturers' Association (DCMA) estimates that the market of pigment users consists of "hundreds of companies and thousands of employees" [1, p.5], and that formulators of plastic resins constitute "a very large market" for cadmium pigments [3, p. 44]. The Society of the Plastics Industry stated in its comments that over 100 member companies are involved in the compounding business (including concentrate producers and resin producers) [4, p. 7]. A representative of the Cadmium Pigments Committee of DCMA testified during the hearings that 1,000 direct customers of manufacturing members were identified (including formulators and firms in other industries), and that the firms involved in compounding "are by and large very, very small companies" [5]. OSHA estimates that there are approximately 700 separate dry color formulators using cadmium pigments and that these plants employ on average, 10 workers each. These estimates are consistent with the numbers used in the preliminary analysis (which were not directly challenged or refuted by interested parties), with other evidence in the record, including data from JACA [2, p. C-4] and trade associations [4, p. 1 and p. 7; 1, p. 5], and with information presented at the public hearings [5].

Production processes. Dry color formulators compound cadmium pigment material into colored concentrates. The products are considered to be "very customized" [5], virtually made to order in a batch production process. The formulators purchase pigments in dry bulk form. The raw pigment is measured and mixed into a matrix with other materials. The matrix may contain as much as 50 percent cadmium pigment.

The pigment mixture is blended and then compounded, extruded, or dispersed into a shape suitable for further processing. Often the colored resin concentrates must be ground to a powder for further blending or made into pellets. Plastic resin pellets are packaged and sold as the final product.

The pellets in turn are used by molders in making plastic products and by other firms using cadmium pigment concentrates. Subsequent employee exposures to cadmium during the production of plastics and during other manufacturing processes using products made by formulators are likely to be minimal or nonexistent because the cadmium pigment has in effect been encapsulated or made part of a solution [6].

Employee exposures. Formulators create specific color formulations that span the full spectrum of colors. As many as 4,000 different variations of colors may be produced from the relatively limited color palette provided by the pigment manufacturers. The quantity of each blend produced can range from five pounds to five thousand pounds, depending on the customer order [7].

Cadmium pigments are not used to produce all color combinations and may not be used at all on some days [7]. Operators "in the pigment using sector may only be exposed to cadmium pigments in one batch operation for a short period of time. * * * these short term exposures may only last a few minutes a week" [3, p. 75]. Occupational exposure to cadmium in the dry color formulator sector of the pigments industry is thus considered to be intermittent.

The airborne concentrations of cadmium created during the production of a batch of concentrate involving cadmium pigments are characterized by several sources in the record. JACA Corporation developed a preliminary occupational exposure profile for cadmium which categorized employees into cross-industry occupations [2]. This approach reflected the belief that exposures were more likely to be similar for certain types of work across industries. The JACA report included a full breakdown by industry of the employees in each occupational category; employees of formulators were included in the occupational category of chemical mixing and milling.

The exposure data presented by JACA for formulators are based on over 200 samples. The data have a range of 0.05 $\mu g/m^3$ to 710 $\mu g/m^3$, a geometric mean of 3 $\mu g/m^3$, and a median of 5 $\mu g/m^3$.

Well-documented exposure data on pigment users was submitted to the record by NIOSH in two health hazard evaluations [8]. At one facility, all exposures were less than 10 $\mu g/m^3$ on an eight-hour time-weighted average (TWA8) basis. Exposures occurred during short term material handling operations. NIOSH noted that better industrial hygiene practices could be implemented at the plant, such as vacuuming or damp mopping instead of dry sweeping. The second study found exposures ranging from 5 $\mu g/m^3$ to 25 $\mu g/m^3$ while adding pigments and during color changes.

Exposure data were also submitted to the record by a company with two plants using cadmium pigments to formulate custom colored plastics [9]. At one plant the weighted mean exposure level for the job categories with cadmium exposure was 4.4 $\mu g/m^3$. Of the 101 employees exposed, the highest mean exposure level occurred among sixteen blending operators at 7.5 $\mu g/m^3$. Data from the second plant indicate that there were approximately 80 employees exposed at an average of 10 $\mu g/m^3$ TWA8.

The higher exposures occurred during cleaning and other periodic tasks, which occur whenever a color blend has been completed and the next blend must be prepared. These activities cause intermittent exposure, and the duration and frequency of the exposure are not predictable [9]. "The variability of exposure is very large, with individual handling styles affecting exposure levels greatly." [12].

Current employee exposures in this industry appear to be generally below 20 $\mu g/m^3$.

Existing and feasible additional controls. The operations involving employee exposures to cadmium in pigment-using establishments can be controlled in a variety of ways. Standard technologies for controlling exposures in such operations have been developed and implemented in this and other industries. Feasible controls include local exhaust ventilation, general ventilation, and good housekeeping practices such as vacuuming and damp mopping. Appropriate work practices can also help reduce exposures by minimizing airborne dust.

The batch operations involved in the process cause intermittent, variable exposures and require frequent clean-outs. With a PEL of 5 $\mu g/m^3$, respiratory protection would probably be necessary during these activities even after the implementation of feasible engineering controls. Comments provided by one pigment user indicate that exposures above 5 $\mu g/m^3$ occur with local exhaust ventilation present at all points of exposure [9]. Some commenters claimed that achieving levels below 5 $\mu g/m^3$ with engineering controls and work practices was infeasible [1,3,4,10,11].

Comments regarding operations at two formulating facilities included details on the feasibility of additional controls. At one facility exposures could be reduced by installing ventilated work stations with downdraft airflow, adding a dust collection system for the pigment blender, making improvements in the blender to prevent dust from escaping, and modifying material handling systems to reduce the amount of handling. Exposure reduction at the other facility would involve the installation of dust collectors and ventilation systems in two major areas, the replacement of pigment blenders, the installation of a masterbatch feeder, and the use of portable HEPA vacuums [12].

A PEL of 5 $\mu g/m^3$ was asserted to be technologically feasible at these facilities [9, p. 3], but would "threaten the viability" of the custom-colored plastics business [9, p. 1]. Exposures above 5 $\mu g/m^3$ tend to occur during cleaning and maintenance activities and other intermittent activities such as weighing out pigments, even when conducted under a dust collecting hood. Respirators would provide an appropriate form of protection during such activities after engineering controls have been implemented to the extent feasible.

Technologically feasible limit for a SECAL or PEL. OSHA could not distinguish high and low exposure groups for this industry segment. All available data indicated that current exposure levels were below 20 $\mu g/m^3$ with means near 10 $\mu g/m^3$. Figures VIII–C32 and VIII–C33 graphically present the available exposure data and Figure VIII–C34 shows projected exposures with 80, 60, 40, and 20 percent efficiency factors.

Evidence on the availability and effectiveness of engineering controls to lower exposure levels in this industry was referenced above.

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FIGURE VIII-C32

DRY COLOR FORMULATORS

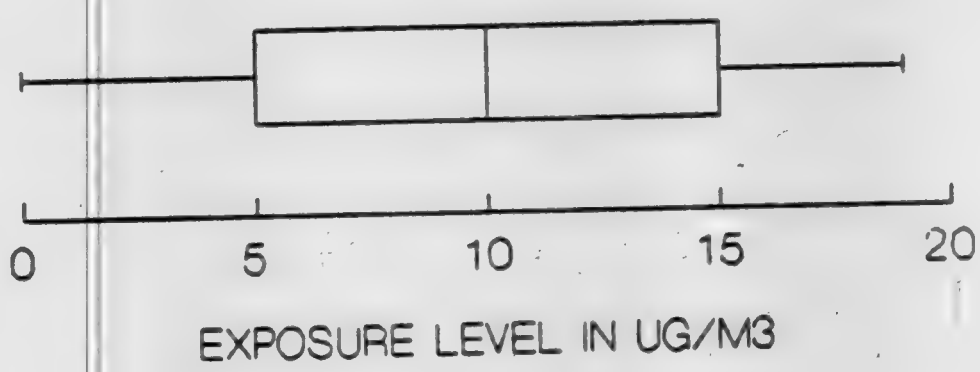

FIGURE VIII-C33

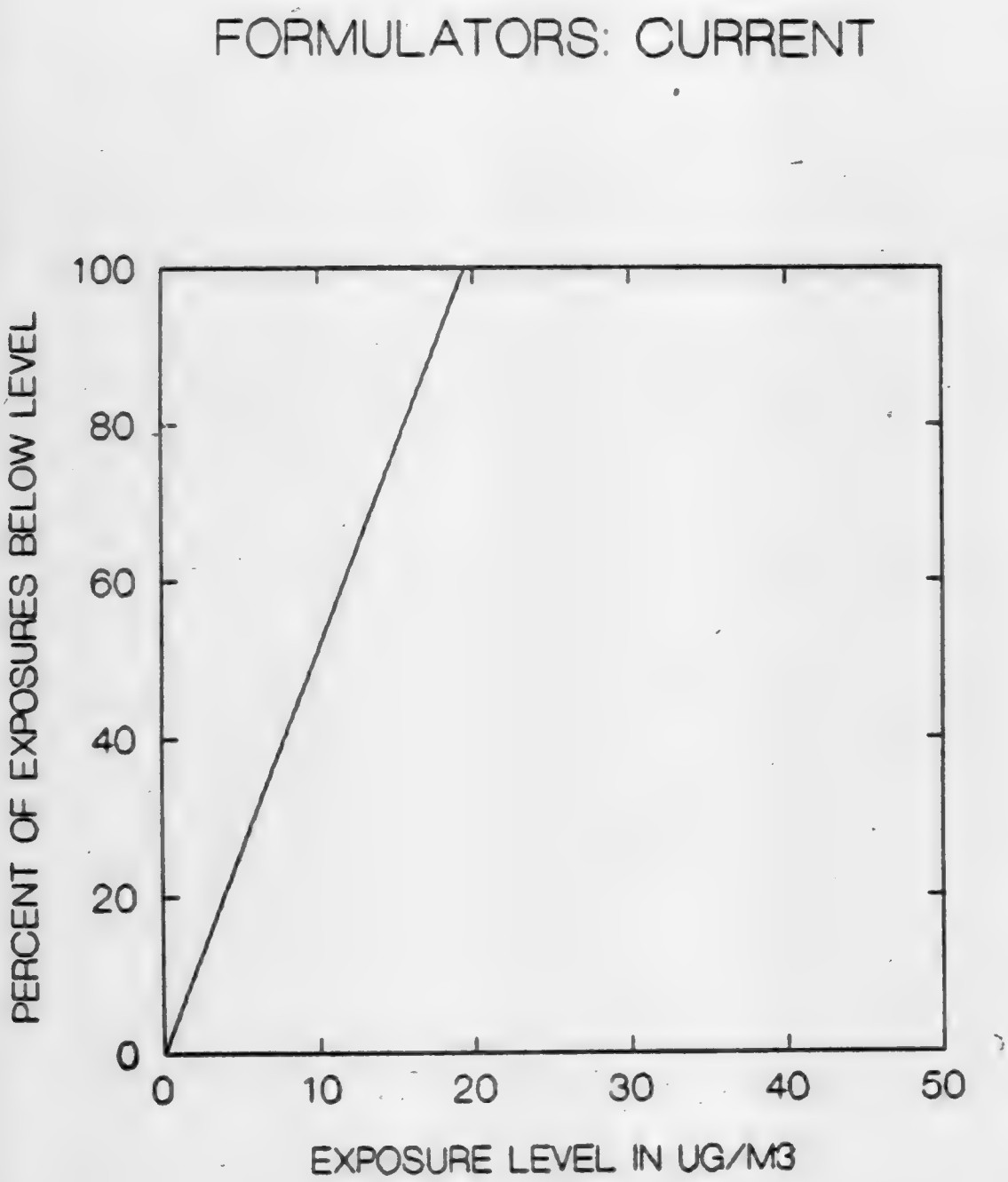

FIGURE VIII-C34

FORMULATORS: CONTROLLED 80%-20%

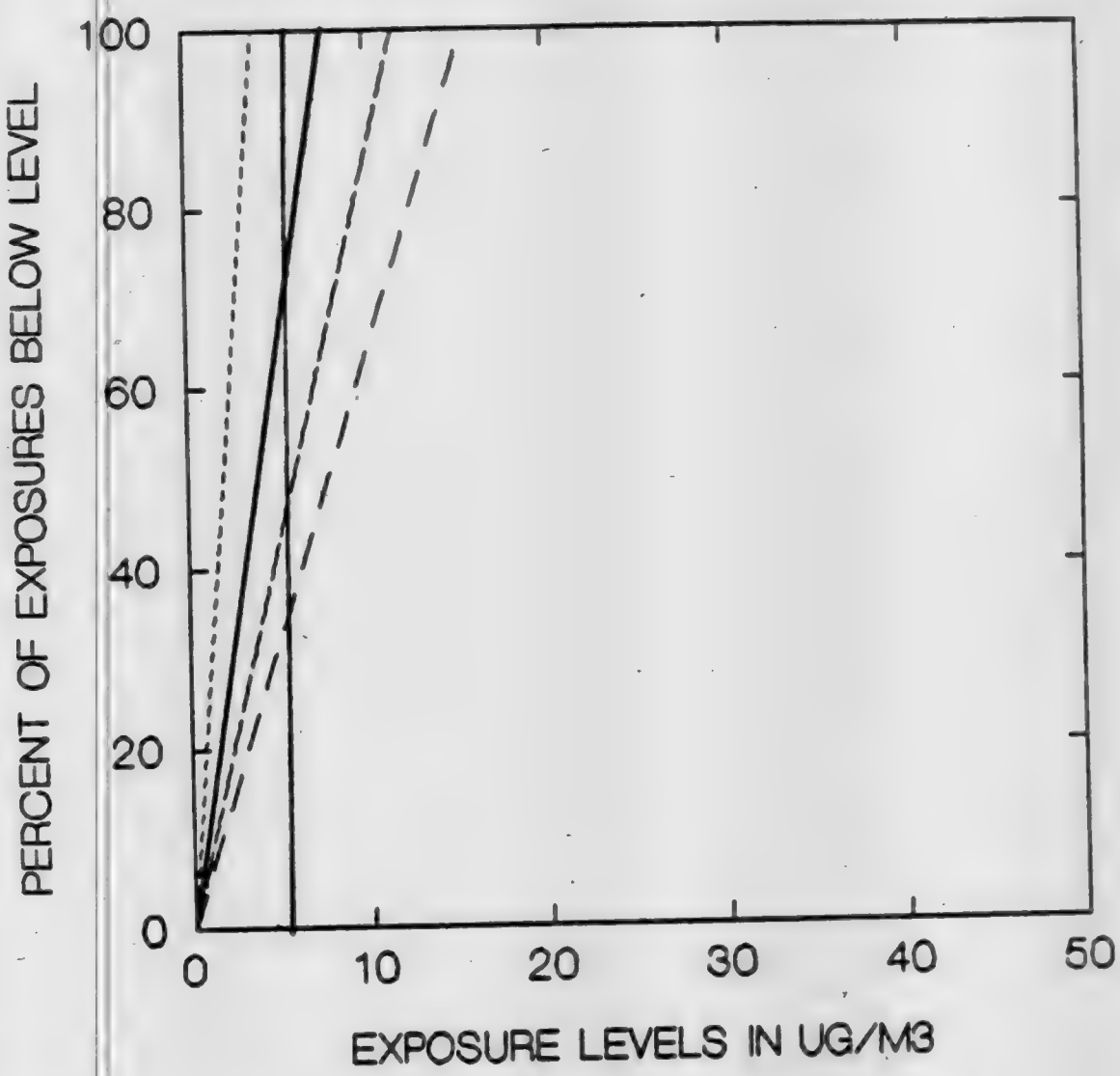

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Technology found to be successful includes standard control solutions such as local exhaust ventilation, general ventilation, and dust collection systems.

Based on the record evidence, it appears that more can be done within many plants to further reduce cadmium exposure levels, but that the targeted level of 5 $\mu g/m^3$ will be difficult to achieve for many plants in this sector. Other data in the record confirm that some firms are already below the PEL level.

On balance, OSHA believes that the PEL of 5 $\mu g/m^3$ is technologically feasible for this industry.

This determination reflects several considerations:

- A minority of plants in this sector have already achieved the PEL level for 8 hour TWA exposures.
- The thirty day exclusion provides the option for many formulators to regulate their intermittent use of cadmium, such that workers are exposed no more than 30 days per year. If successful, such firms will have no obligation to introduce additional engineering controls.
- The record supports the finding that additional engineering control technology and improved work practices can further reduce exposure levels in this subsector.

These controls are moderate in price and can reduce exposures by 60–80 percent. OSHA estimates that 20 percent of all firms in this industry could lower existing exposure levels through the introduction of additional engineering controls; in addition, improved housekeeping in all affected firms are expected to further reduce exposure levels.

Figure VIII–C34 illustrates that at the 60 percent efficiency level about 80 percent of employees in this sector would be at or below the PEL level of 5 $\mu g/m^3$.

Compliance with the PEL of 5 $\mu g/m^3$ may require the use of respirators during operations where cadmium pigments are used. Such respirator use would be intermittent following the introduction of feasible engineering controls and improved work practices.

Costs of compliance with a 5 $\mu g/m^3$ PEL. The costs of compliance include costs for additional engineering controls, increased respirator use, more comprehensive exposure monitoring programs, medical surveillance requirements, hygiene provisions, information and training, and recordkeeping requirements. The estimated compliance costs represent the incremental costs necessary for achieving compliance with the final rule from a baseline of current practices; these costs do not include current or past expenditures.

JACA provided estimates of the costs of installing new or improved local exhaust ventilation systems. In current dollars, the costs of these systems range from $51,000 to $112,000. Annual operating and maintenance costs were estimated to be 10 percent of the capital cost. [2, table 6–1]. JACA projected that new or improved ventilation systems could be installed for most employees in the occupational category of chemical mixer.

PACE provided cost estimates for several types of controls in its analysis of other industries that would be applicable to reducing exposures for formulators [10]. Controls included enclosure and back-draft exhaust ventilation, with a capital cost of about $30,000 and an annual cost of about $1,500. Controls at another operation included improved ventilation and increased wash down of surfaces to prevent contaminant accumulation; the capital cost would be $25,000 and the annual cost would be $4,000.

Details of an exposure reduction program recently completed by a formulator were submitted to the record by a trade association representing the industry [4, p. 8]. The program included improved ventilation systems with dust pick-up booths or dust pick-up systems at six locations, ranging in cost from $1,200 to $7,000, and a central vacuum system costing $18,000. The cost of the program also included new batch mixing vessels costing $500,000. While no evidence was provided indicating the effectiveness of such vessels in reducing exposures, it was noted that "virtually all the plant workers would have to be placed in respirators" after new batch mixing vessels were installed in order to achieve compliance with a PEL of 5 $\mu g/m^3$ [4, p. 8]. Since new mixing vessels only provide a marginal reduction in exposures and may produce significant economic impacts for many firms, this measure was judged to be impractical and not vital to controlling the problem.

Estimated costs of controls for two other formulator establishments were provided to the record in public comments. At one establishment, the installation of ventilated work stations incorporating downdraft airflow was estimated to cost $50,000; the cost of a pigment blender dust collection system was estimated to be $11,000; improvements to prevent dust escaping while blending would cost an estimated $2,000; a new pigment storage/retrieval system would cost $100,000; and the installation of a feeder on an extruder would cost $18,000. At the second establishment, the installation of dust collector and ventilation systems in two major areas would cost an estimated $1 million; the replacement of pigment blenders would cost $1.2 million; a masterbatch feeder would cost $125,000; pressurization of the control rooms would cost $50,000; and ventilation of the color lab would cost $50,000 [12].

OSHA believes that compliance with the 5 $\mu g/m^3$ PEL can be achieved without the significant capital expenditures for engineering controls, noted above by the second establishment.

Descriptive information on existing controls for formulators using cadmium pigments was available for three facilities. Each of the facilities relied on local exhaust ventilation to reduce exposure levels [4, p. 9 and 9, p. 5]. Personal protective equipment and other elements of a comprehensive industrial hygiene program were also utilized. On the basis of these comments it is apparent that dry color formulators can implement engineering controls. No other comments to the record indicated the extent to which formulators have implemented engineering controls.

OSHA believes that opportunities for implementing additional feasible controls exist at many establishments. The preliminary analysis included an assessment of existing and feasible additional controls for workers in this industry. Commenters expressed concern about the impact of the rule in this industry. They did not challenge the cost estimates presented in the preliminary analysis, but emphasized that the costs should be isolated and carefully evaluated for this industry [3, 4, 13].

The total potential cost of additional engineering controls for the industry is based on an estimate that 20 percent of the firms lack appropriate controls. These plants will need new or improved ventilation systems, more sophisticated enclosures, or better dust control programs including vacuums. The prices for these controls would be comparable to those estimated for other industries [4, 12].

On average, a complete local exhaust ventilation system will cost an estimated $80,000 plus $8,000 in annual costs; a central vacuum system will cost an estimated $15,000 plus $8,000 in annual operating costs; and process enclosures or material handling modifications are estimated to cost $9,000. The actual controls implemented would vary depending on the particular circumstances in each plant; these estimates are intended to provide a general gauge of the costs involved.

Since plants in this sector are typically small, one of each type of control referenced above, will be

needed. The annualized cost for the combination would be approximately $33,000. Assuming 80 percent of existing plants currently have this combination in place, controls are costed only for the balance. The annualized cost of additional controls for the industry is estimated to be $4.62 million. For all plants in this sector, work practice changes involving more care when handling cadmium can be made at no cost.

According to comments provided by one company for two formulating facilities, employees are currently provided with respiratory protection when working in areas with cadmium exposure [9, p. 5]. As discussed above, some of the workers in this industry would probably need to wear respirators to comply with the 5 $\mu g/m^3$ PEL. In order to estimate the cost of compliance with the revised standard, OSHA assumes that 25 percent of the employees do not wear respirators and would need to be provided with one. Using a cost of $300 per employee per year [14, Attachment III, p. 1], the total annual cost for the industry would be $525,000.

Establishments in this industry would be required to conduct exposure monitoring for every job category semi-annually. A large facility with over 100 employees identified three job categories affected [9, p. 5]; smaller plants also have three job categories. Comments about exposure levels in this industry indicate that some monitoring is currently being done [9, p. 5 and 4, p. 9], but not to the extent required by the revised standard. OSHA estimates that about 25 percent of the required monitoring is currently being conducted.

The costs of exposure monitoring are estimated to be $40 per sample taken and $1,500 annually per plant for the services of an industrial hygienist or other competent person. The total cost of the additional monitoring required by the standard is estimated to be $913,500 [($1500+$40*3*2) *700*0.75].

Compliance with the medical surveillance requirements would require additional costs. In the preliminary analysis, it was estimated that workers in this industry are being provided with annual medical exams, and the evidence in the record does not dispute this conclusion. Since medical exams would only be required every two years by the revised standard, this requirement should not involve added costs.

Employers would also have to provide biological monitoring at least annually for exposed employees. The lab analyses for cadmium in blood and urine samples are estimated to cost $60 per sample; lab analyses would cost about $80 per sample for β_2-microglobulin tests; and the estimated costs of collection are $5 per sample. Such monitoring may be necessary for an estimated 75 percent of the employees. The cost of providing the basic biological monitoring was increased by 10 percent to include additional medical surveillance that may be required for some employees. The total annual cost of biological monitoring would thus be about $1.242 million [($65+$65+$65)*7000*0.75*1.1].

Provisions for medical removal are not expected to have significant compliance costs in this industry. Occupational exposures in this industry are relatively low and intermittent, and no employees are expected to meet the criteria for mandatory removal. To allow for the possibility that some employees may be removed on the basis of a physician's determination, OSHA assumed that on average 0.1 percent of the exposed employees would be removed annually. With an average cost per removal of $5,000 associated with removal benefits and hiring and training costs, the total annual cost to the industry would be about $35,000.

The total annual cost of compliance with the medical surveillance provisions for this industry is estimated at $1.277 million.

The revised provisions for hygiene facilities, work clothing, and information and training appear to be complied with in this industry [9, p. 5]. Additional recordkeeping requirements are estimated to cost about $5 per employee or $35,000 for the industry.

Table VIII–C38 summarizes the costs of compliance for the dry color formulator industry. The total annualized cost is an estimated $7.371 million.

Economic feasibility of a 5 $\mu g/m^3$ PEL. Compliance with the revised cadmium standard is economically feasible for this industry. The analyses of technological feasibility and costs presented above show that the changes required by the revised rule would not involve significant adverse impacts for most establishments.

The total estimated cost of compliance represents a small percent of industry revenues. One company estimated that revenues associated with the color business at two formulating facilities with a combined workforce of over 180 employees were $25 million [9, p. 13]. In order to compare revenues with costs on an industry-wide basis, the revenues per employee at this company were applied to the total estimated number of workers in the industry.

TABLE VIII–C38.—ESTIMATED COSTS OF COMPLIANCE WITH THE REVISED CADMIUM STANDARD FOR THE DRY COLOR FORMULATOR INDUSTRY

Provision	Annualized cost ($thousands)
Exposure Control	4,620.0
Respirator Use	525.0
Exposure Monitoring	913.5
Medical Surveillance	1,277.0
Recordkeeping and Information	35.0
Total	7,370.5

Note: Costs do not include current expenditures
Source: Office of Regulatory Analysis, OSHA, U.S Department of Labor

Total revenues are thus estimated to be over $900 million, and the estimated compliance costs would represent less than 0.82 percent of revenues.

Cadmium pigments are essential in many applications. Where substitution is possible, a reduction in quality is likely to result. Purchasers of custom formulated colors are likely to value the proximity of suppliers. The cost of pigment products generally constitutes a minor fraction of the cost of final products. Under these circumstances, the formulator industry should be able to recoup compliance costs through very small increases in prices.

The slight increase in prices required to offset compliance costs should not threaten the viability of the formulator industry or produce any significant adverse impacts in other industries. Costs of compliance will vary among establishments; effects on individual firms will depend on the type of technology used and the extent of existing exposure controls.

As in most industries, competition may limit the ability of some producers to raise prices to fully offset increases in production costs. As a result, some firms may experience a reduction in profits. Since the compliance costs are relatively modest on average, the standard is not expected to result in plant closures.

Establishments for which information is available in the record [4, 8, 9, 12] appear to need only minimal changes to achieve compliance with the revised standard. Some additional ventilation can be provided at emission sources, dust containment and collection equipment can be introduced or upgraded, and workers can be provided with personal protective equipment including respirators with HEPA filters, rubber gloves, and laundered uniforms. OSHA concludes that workers in this industry can feasibly be protected from exposure to 5 $\mu g/m^3$ levels of cadmium

with an appropriate industrial hygiene program that includes the intermittent use of respirators.

Sources

1. Exhibit 19-40, Dry Color Manufacturers' Association, Comments "Re: Occupational Exposure to Cadmium," May 11, 1990.

2. Exhibit 13, "Economic Impact Analysis of the Proposed Revision to the Cadmium Standard," Final Report, JACA Corporation, March 15, 1988.

3. Exhibit 120, Dry Color Manufacturers' Association, "Post-Hearing Comments," October 18, 1990.

4. Exhibit 19-41, Society of the Plastics Industry, Inc., "Comments of the Society of the Plastics Industry, Inc.," May 11, 1990.

5. Hearing transcript, p. 5-45, 5-46, and 5-47, June 11, 1990.

6. Hearing transcript, p. 5-41 and 5-46, June 11, 1990.

7. Hearing transcript, p. 5-42 to 5-44, June 11, 1990.

8. Exhibit 19-26, Attachments to NIOSH Comments, HETA 84-230-1528 (1984), and HETA 82-223-1340 (1983).

9. Exhibit 19-24, Comments from Hoechst Celanese Corporation, May 7, 1990.

10. Exhibit 19-43, Attachment I, "Feasibility and Cost Study of Engineering Controls for Cadmium Exposure Standard," PACE Incorporated, April 30, 1990.

11. Exhibit 19-43, Attachment I, "Economic and Technological Feasibility of a 5 Microgram per Cubic Meter Workplace Standard for Airborne Cadmium," Putnam, Hayes, & Bartlett, Inc., April 30, 1990.

12. Exhibit 118, Comments from Hoechst Celanese Corporation, October 5, 1990.

13. Exhibit 19-50, Comments of the United States Department of Commerce, May 22, 1990.

14. Exhibit 19-30, Big River Zinc Corporation, "Comments on OSHA Proposed Cadmium Regulation," May 10, 1990.

Electric Utilities

Industry overview. Electric utilities generate and distribute electricity throughout the United States. About 4,000 establishments produce over 2.5 trillion kilowatt-hours of electricity annually. Over half of the energy is produced from coal; most of the remainder is produced from nuclear power, hydropower, gas, and oil.

Production processes. Electric utilities convert energy sources into electricity by creating mechanical energy which then drives electric generators. Mechanical energy is produced by an engine, turbine, water wheel or similar machine, depending on the fuel or energy source used. Conventional steam systems produce over half of the nations electricity; nuclear steam, gas turbines, hydropower, and internal combustion engines are also used.

Employee exposures. Potential worker exposure to cadmium at an electric utility has two principal sources. First, repair and maintenance activities often involve welding, soldering, grinding, and cutting metals. Small quantities of cadmium may be released during these activities from cadmium-bearing base metals, cadmium-bearing surface deposits, welding rods, or solders. The second source is fly ash, a residue of burned coal, which may be present in and around negative pressure boilers. [1, p. 3].

Employee exposures do not normally occur during ordinary operating conditions in a utility plant. Exposures generally occur during intermittent inspection or maintenance activities associated with electrostatic precipitators, fly ash conveyance, and boiler outages. [1, p. 3].

According to the Edison Electric Institute (EEI), the "most comprehensive available exposure data pertaining to workers at electric utilities appear to be those compiled by the Tennessee Valley Authority representing cadmium fume exposures recorded between 1976 and 1985" [1, p. 4]. These data show that 45 percent of the workers sampled had exposures of 1 $\mu g/m^3$ or less as an eight-hour time-weighted average (TWA8) and that 92 percent had exposures of 5 $\mu g/m^3$ TWA8 or less. [1, p. 13]. There are approximately 25,000 to 50,000 workers potentially exposed to cadmium in this industry sector.

Occupational titles among employees with potential cadmium exposure include welder, boilermaker, steamfitter, and electrician [3, p. 2], but "it is correct to say that all jobs involved welding of some sort." [2, p. 4]. Comments from an electric utility confirmed that employees exposed to cadmium were "primarily welders and solderers" [3, p. 1].

A health hazard evaluation report conducted by NIOSH at a power plant in Columbus, Ohio also showed that exposures to cadmium are generally low and intermittent. Of the 37 samples analyzed, 32 did not have any detectable quantities of cadmium. Only one sample indicated an exposure above 7 $\mu g/m^3$, and it represented work on electrostatic precipitators. [4, table VI].

Existing and feasible additional controls. The final cadmium standard requires the use of feasible engineering and work practice controls as primary methods of compliance with the PEL. In addition, OSHA recognizes that respirators may be a necessary means of control in maintenance and repair activities and during brief or intermittent operations.

Activities with potential cadmium exposure in the electric utility industry may be amenable to engineering and work practice controls in some situations. For example, fly ash can be washed down prior to boiler maintenance activities, and fans or other ventilation systems can be used during maintenance operations. [1, p. 5].

Employees with potential exposure to cadmium would also have potential exposure to lead and arsenic [1, p. 9]. Existing occupational exposure standards for lead and arsenic already require feasible engineering controls to be used. Due to the nature of the activities with potential exposure and the unpredictability of exposure levels, the use of respiratory protection may be a necessary and appropriate means of controlling exposures in addition to feasible controls.

Employees performing welding, soldering, cutting, and maintenance and repair operations in this industry currently wear respirators to comply with the arsenic standards [5, p. 10-54]. In such circumstances, the use of respirators would also be an acceptable method of protection from cadmium exposure.

Technological feasibility of a 5 $\mu g/m^3$ PEL. The revised cadmium standard is technologically feasible in the electric utility industry. Exposure monitoring data demonstrate that current exposures are below the PEL for almost all employees. A representative of the industry trade association testified that the technological feasibility of the standard was not contested [5, p. 10-30].

Costs of compliance with a 5 $\mu g/m^3$ PEL. Compliance with the revised cadmium standard would not require additional costs for engineering controls or respiratory protection in this industry. Employees are protected from exposures to arsenic and lead in activities with potential cadmium exposure; no activities were identified for which protection from cadmium exposure would require protection in addition to that necessary for exposure to lead or arsenic. Because of the unpredictability of the work, "in most instances 100 percent of those workers * * * would be required to wear respiratory protection" at some point in time [5, p. 10-54].

Electric utilities currently conduct exposure monitoring for lead and arsenic as required by the existing standards. Employees with potential exposure to cadmium would be covered by this monitoring, but the samples may not be routinely analyzed for cadmium. Each plant may have five job categories or general types of work for which representative monitoring would be required on average. At a cost of $40 per sample, the required monitoring would cost $400 per plant and $1.6 million annually for the industry.

Medical surveillance is required by existing standards for employees with

exposure to lead and arsenic. Unlike the proposed cadmium rule, these standards require medical surveillance if an employee is exposed above the action level more than 30 days in a year. The revised cadmium rule includes a similar provision, requiring medical surveillance for employees exposed above the action level on 30 or more days per year. This change to the proposed cadmium rule should make the medical surveillance requirements more consistent with those in the lead and arsenic standards.

Employees receiving medical surveillance under the lead or arsenic standards are given annual physical exams [5, p. 10–55]. These exams could also satisfy the corresponding requirements of the revised cadmium standard. The cadmium standard also requires some additional tests that may not be currently provided. Biological monitoring for cadmium in blood, cadmium in urine, and β_2-microglobulin in urine would be required at least annually for employees qualifying for medical surveillance. The estimated cost for one set of these tests is $200.

Of the 500,000 employees comprising the entire work force in the electric utility industry, approximately 25,000 to 50,000 have potential cadmium exposure at some time during the year [5, p. 10–23]. Under an exclusion from medical surveillance of employees with less than 30 days of exposure above the action level, about 90 to 95 percent of those employees would be exempt from the biological monitoring requirements [5, p. 10–32].

OSHA estimates that the equivalent of about 3,000 employees would be given biological monitoring annually as required by the revised cadmium standard (this figure includes more frequent tests for some employees). The total annual cost to the industry would be $600,000. Provisions for medical removal are not expected to affect employees in this industry since exposures are relatively low and intermittent.

Existing requirements for arsenic and lead exposure include provisions for adequate hygiene facilities, regulated areas, protective clothing, information, and training. The requirements of the revised cadmium standard should not add any significant burden in these areas. Incremental costs and additional recordkeeping costs would be an estimated $5 per exposed employee annually. The estimated annual cost for the industry would be $188,000.

The estimated compliance costs for the electric utility industry are summarized in Table VIII–C39. Total annual costs of compliance are an estimated $2.388 million.

Economic feasibility of a 5 μg/m³ PEL. The revised cadmium standard with a PEL of 5 μg/m³ is economically feasible for the electric utility industry. Testimony from the industry confirmed that the economic feasibility of the standard was not contested [5, p. 10–30].

TABLE VIII–C39.—ESTIMATED COSTS OF COMPLIANCE WITH THE REVISED CADMIUM STANDARD FOR THE ELECTRIC UTILITY INDUSTRY

Provision	Annualized cost ($thousands)
Exposure control	0.0
Exposure monitoring	1,600.0
Medical surveillance	600.0
Hygiene provisions	0.0
Recordkeeping and information	188.0
Total	2,388.0

Note: Costs do not include current expenditures.
Source: Office of Regulatory Analysis, OSHA, U.S. Department of Labor.

Operating revenues for electric utilities total over $140 billion; total operating income exceeds $20 billion. The estimated compliance cost represents less than one five-hundredth of one percent of the revenues and about one hundredth of one percent of operating income. Compliance with the cadmium standard is not expected to have any significant impact on the demand for electricity, on prices, on production, or on installed generating capacity.

The implementation of the cadmium standard would not involve new programs or large changes in procedures. The employees affected by the cadmium standard are already covered by the standards for lead and arsenic. An electric utility company commented that the standard "is quite similar to many recent standards (arsenic, asbestos, etc.) in the requirements imposed on the employer if certain exposure limits are exceeded." [3, p. 1]. Compliance with the revised cadmium standard would generally involve a minor expansion of established programs for exposure monitoring and medical surveillance.

Notes

1. Exhibit 9, Attachment A, "Testimony of James B. Lancour for the Edison Electric Institute," Jones, Day, Reavis & Pogue, July 10, 1990.
2. Exhibit 101, "Edison Electric Institute Post-Hearing Comments Occupational Exposure to Cadmium Proposed Rule," Edison Electric Institute, September 18, 1990.
3. Exhibit 19–5, "Tennessee Valley Authority Comments Applicable to Proposed Rule on Safety Standard 29 CFR 1910 Occupational Exposure to Cadmium," Tennessee Valley Authority, March 30, 1990.
4. Exhibit 19–26, Attachment 17, "Health Hazard Evaluation Report, City of Columbus Refuse Derived Fuel Power Plant, Columbus, Ohio," National Institute for Occupational Safety and Health, HETA 85–041–1709, July 1986.
5. Hearing Transcript, Thursday, July 19, 1990.

Iron and Steel

Industry overview. The U.S. iron and steel industry consists of about 80 companies operating over 120 facilities throughout the country [1, Attachment 2a, p. 1]. These plants produce about 100 million net tons of raw steel annually [1, Attachment 4, p. 1] and employ over 190,000 workers [1, Attachment 1, p. 1]. Steel is produced from molten iron, of which a small amount is also cast into solid forms to produce pig iron [1, Attachment 3, p. 13].

Over 90 percent of steel mill products are carbon steel; about 5 percent are alloys and the remainder are primarily stainless steel products. Over half of the products by weight are sheets and strip steel; bars, shapes, plates, piling, and tool steel make up about a third of steel shipments; and other products include pipe and tubing, tin mill products, and wire products. [1, Attachment 4, p. 1].

Production processes. The production of iron and steel begins with three basic raw materials: iron ore, limestone, and coal. Each of these materials is processed separately before being combined in a blast furnace.

Iron ore is crushed and further improved in one of several different process combinations that may involve mills, spiral concentrators, magnetic separators, sintering machines, or filters. Iron ore can also be prepared for steelmaking directly in some cases (bypassing the need for a blast furnace) through direct reduction.

Limestone is crushed and converted into lime by driving off carbon dioxide in either vertical or rotary lime kilns. Lime is primarily used as a flux in blast furnaces and steelmaking furnaces; it also has applications in drawing steel wire, in water treatment, and in acid neutralization.

Coal is crushed, sorted, and cleaned through the use of crushing machines, cyclones, washer jigs, and dryers. The cleaned coal is fed into coke ovens where high temperatures drive off gases, oils, and tar, which are made into various byproducts. The coke ovens convert coal into coke which is porous, burns uniformly, and retains its strength under other materials in a blast furnace.

Iron ore, lime, and coke are charged into the top of a blast furnace. Super-

heated air is blown upward from the bottom of the furnace, burning the coke. The interaction of the heat and gases removes oxygen from the iron ore; the lime acts as a cleansing agent. Molten iron collects in the bottom of the furnace and is drawn off as a white-hot stream of liquid iron. Most of the liquid iron is transferred to steelmaking furnaces, but it can also be cast into solid forms and sold.

Steel can be produced in different types of furnaces. In the United States approximately 60 percent of the steel is produced by basic oxygen furnaces; over 35 percent is produced in electric arc furnaces, and about 5 percent is produced in open hearth furnaces. In an oxygen furnace, high purity oxygen is blown into the top of the furnace at supersonic speed (in some modified oxygen furnaces, oxygen and other gases are blown in from the bottom). Electric arc furnaces use electrodes and open hearth furnaces use traditional open hearths to heat and burn the raw materials.

Steelmaking furnaces are charged with liquid iron from blast furnaces, iron ore from direct reduction, scrap material, lime and other fluxes. Impurities rise into a floating layer of slag which can be poured off. Alloys can be added to the furnace or combined with the steel as it is poured from the furnace into a ladle. The molten steel is then poured into molds to produce ingots or cast into slabs. Ingots and slabs are made into finished products through a variety of operations that shape the steel into strips, bars, plates, rods, beams, or rails. [1, Attachments 3 and 4].

Employee exposures. Cadmium is present only as a trace contaminant in the raw materials used for steelmaking and is not used in the manufacture of steel products. Cadmium has a boiling point one thousand degrees below the temperature needed to make iron and steel, and is volatized from the raw materials as they are melted. Potential exposures to cadmium may occur during furnace operations, welding operations, and other activities involving dust or fume such as maintenance work on pollution control equipment.

The American Iron and Steel Institute (AISI) submitted exposure monitoring data for steelmaking operations [1, p. 4–9]. These data include eight-hour time-weighted average (TWA8) personal samples and area samples and are summarized in Table VIII–C40. The ranges of exposures "are representative of the steel industry data and reflect current worker exposures." [1, p. 10].

TABLE VIII–C40.—CADMIUM EXPOSURE DATA FOR STEELMAKING OPERATIONS BASED ON AISI

Operation and occupation/area	Exposure range (μg/m³)
Blast furnaces:	
Keeper	0.01–0.04
Keeper helper	0.02–0.03
Trough repairman	0.03
General laborer	0.01
Mech. shop	0.00
Welder	0.30
Operator	0.50
Maintenance	3.00
Open hearth furnaces:	
Equipment operator	0.03
Third helper	0.01–0.44
Team leader	0.01
Third steel pourer	0.01
Basic oxygen furnaces:	
Craneman	0.23
First steel pourer	0.00–0.51
Material handler	0.05
Floor above vessel	0.90–1.00
Behind furnace	2.80
Lance change platform	1.30–2.90
Furnace charging aisle	1.30–6.90
Nozzle setter	0.20
Ladle liner and helper	0.20–0.30
Vesselman	0.20
Vessel operator	0.20
Binstocker	0.00–6.00
Millwright	0.09–1.73
Motor inspector	0.00–19.00
Desulfurizer	0.20
Laborer	0.20–5.70
Crane operator	0.00–0.20
Hot metal attendant	0.20
Melter	0.20
Lance changer	2.25
Elect. millwright	0.60
Equipment operator	0.14–0.40
Welder	0.04–0.40
Pipefitter	0.20–0.40
Metalographist	3.00
Pourman	0.00–0.01
Fabricator	0.12–0.50
Insulator	0.13–0.20
Scrap burner	0.00–0.07
Casting:	
Repairman	1.00
Runout operator	0.00–2.00
Helpers	2.00
Material handler	2.00
Caster operator	1.90
Tundish mason	0.08
Mech. and maintenance	0.76
Mold operator	2.00
Tundish repair	2.00
Ladleman and helper	0.90
Billet stocker	2.00
Runout helper	0.60–2.00
Millwright	2.00
Caster helper	2.00
Electric arc furnaces:	
Brickmason and attendants	0.02–2.00
Melt shop—mechanical	1.13–4.00
Motor inspector	1.06
Furnaceman and attendants	0.20–2.00
Helpers	0.40–1.04
Pourer	0.20–2.00
Melter	0.20–2.00
Laborer	0.20–22.00
Furnace pulpit operator	1.00–2.00
Caster operator and helper	1.00–2.00
Crane operator and chaser	0.20–42.00
Utility man	0.30–2.08
Electrician	0.20–0.90
Pitman and helper	0.20
Mobile equipment operator	0.20–1.10
Welder	0.90

TABLE VIII–C40.—CADMIUM EXPOSURE DATA FOR STEELMAKING OPERATIONS BASED ON AISI—Continued

Operation and occupation/area	Exposure range (μg/m³)
Ingot stripper and shopper	0.20
Boilermaker	2.40
Salvageman	0.60–0.90
Air pollution control operations:	
Electric furnace	86.00
BOF—Millwright	1.00
BOF—Laborer	370.00–510.00
Truck loader	9.24
Motor inspector	10.08
Millwright	12.25
Leaded steelmaking:	
Charging helper	11.34
3rd steel pourer	1.56
1st steel pourer	5.50
Welder	2.07
Scrap burner	8.70–11.60
Burner	2.60
Merchant mill operator	0.00
Looper	0.60
Galvanizing:	
Welder	1.19
Layout welder	1.19–1.60
Zinc pot tender	0.02
Miscellaneous	0.00–0.02
Utility man	0.20
Line inspector	0.20
Exit U-man	0.20
Line operator	0.05–0.20
Laborer	0.20
Assistant operator	0.20
Coil feeder	0.05
Elect. wireman	0.52
Millwright	0.02–0.03
Iron worker	0.21
Galvalume	0.50
Electroplating line	0.20
Potman	0.50
Craneman	0.50
Hot nail galvanizing operator	2.00
Sinter plants:	
Operator	0.50
Mechanic	1.30
Ore loader	0.30
Laborer	0.72–1.10
Baghouse attendant	0.60
Feederman	0.58
Mild steel cutting:	
Welder	1.60
Computer panel	1.60
Chalk tray	1.60
Terne operations:	
U-Man	0.00
Tract. operator	0.01
Line operator	0.06
Assistant operator	0.00
Line coiler	0.04
Equipment tender	0.00
Plate mill burner	1.94
Bar mill	0.00–0.15

Source: Exhibit 126, AISI, p. 4–9.

Exposure levels during open hearth furnace and blast furnace operations were less than 0.6 μg/m³ for all workers except for maintenance workers who had a level of 3.0 μg/m³. In basic oxygen furnace and casting operations, only four of the 43 job categories or areas listed had any TWA8 exposure levels above 3 μg/m³; two of these peaks involved area samples taken near the furnace. In electric arc furnace

operations the highest reported exposures for 17 of the 19 job categories are 4 $\mu g/m^3$ or less. During galvanizing operations, mild steel cutting, terne operations, and in sinter plants and mill operations, peak exposure levels did not exceed 2 $\mu g/m^3$ TWA8 in any of the 36 job categories and areas. Exposures above 5 $\mu g/m^3$ were reported for a few workers during leaded steelmaking and work on air pollution control systems.

Employee exposures in the steel industry were evaluated by JACA based on exposure monitoring data from NIOSH and OSHA. JACA characterized exposures for several occupations in the steel industry, including furnace operators; molding, casting, and forging operators; electroplaters; mechanics and maintenance employees; and millwrights. Employees in these occupations in the steel industry were considered to have exposures consistently below 5 $\mu g/m^3$. [2, p. 3–28 through 3–31, Table 3–10, and Appendix C].

AISI claimed that the NIOSH and JACA data were "not representative" of current exposures and expressed concern that OSHA's preliminary conclusions were not based on the best available information [1, p. 3]. The exposure data submitted by AISI appear to be consistent with the data used for the preliminary analysis and provide greater detail for specific types of operations in the steel industry. These data provide the basis for OSHA's revised analysis.

Existing and feasible additional controls. Steelmaking operations involve potential exposures to many hazardous substances and generate many emissions regulated by the Environmental Protection Agency (EPA). Steelmaking facilities have implemented and improved engineering controls constantly over the years to protect workers, comply with environmental regulations, and improve efficiency. The "best adequately demonstrated technological systems of continuous emission reduction controls are currently in place in steel making operations" [1, p. 2].

The OSHA lead standard requires all feasible engineering controls to be implemented to reduce lead exposures, and "[d]ue to the association of cadmium with lead" [1, p. 8] any engineering controls required by the revised cadmium standard should already be implemented. Requirements for engineering controls also apply to exposures to many other regulated substances found in the atmosphere of steelmaking plants. Since respirator use is common in the steelmaking industry, OSHA assumed that engineering controls have been implemented to the extent feasible.

AISI confirmed this conclusion and stated that "any further controls must be considered technically and/or economically infeasible." [1, p. 10]. Recent EPA regulations for both primary and secondary emissions for steelmaking operations "required the installation and use of the best demonstrated technological system of continuous emission reduction in new, modified, or reconstructed facilities. Virtually all steelmaking facilities are subject to these requirements." [1, p. 10]. AISI cited and included as part of its comments several studies of major steel operations conducted by EPA which describe feasible engineering controls extensively and document the above conclusion [1, p. 11 and Attachments 5 & 6].

Technological feasibility of a 5 $\mu g/m^3$ PEL. The revised cadmium standard with a PEL of 5 $\mu g/m^3$ is technologically feasible for the iron and steel industry. Current data submitted by industry demonstrate that employee exposures are consistently less than 5 $\mu g/m^3$ in almost all job categories.

Exposures may exceed the PEL in some operations, such as during leaded steelmaking or work on pollution control equipment. Five of 43 domestic member companies of AISI produce leaded steel [1, p. 12], and exposed employees wear respirators to comply with the current lead standard [1, p. 8]. To the extent that the requirements of the lead standard are being met, these employees are currently protected as required by the relevant provisions of the final cadmium standard. Respiratory protection may also be appropriate during other intermittent activities in which engineering controls are insufficient or infeasible, such as maintenance activities or work on dust collection systems.

Costs of compliance with a 5 $\mu g/m^3$ PEL. As discussed above, the implementation of additional engineering controls would generally be infeasible in steelmaking operations. Respiratory protection is used to reduce employee exposures to many other hazardous substances, including arsenic, lead, chromium, mercury, chlorine, and dozens of other elements or compounds [1, Attachment 5a, p. 3–40 and Attachment 6, p. 3–35]. Since cadmium is only present as a trace contaminant, exposures to cadmium would occur concomitantly with exposures to other regulated substances.

Based on the exposure monitoring data in the record, existing engineering controls should be able to keep cadmium exposures below 5 $\mu g/m^3$ for almost all employees. In addition, many or all of the remaining employees, such as those involved in leaded steel production and maintenance activities, are already provided with respiratory protection in accordance with the requirements of the revised cadmium standard [1, p. 3 and p. 8].

The record does not identify any situations for which it is demonstrated that protection from cadmium exposure would require measures beyond those already provided. Nevertheless, OSHA recognizes the possibility that the cadmium standard may require the use of respiratory protection for some employees for whom respirators would otherwise not be necessary.

The preliminary analysis accompanying the proposed cadmium standard, based on estimates provided by JACA, identified about 40,000 employees in the iron and steel industry potentially exposed to cadmium. This estimate included furnace operators, molders, casters, electroplaters, welders, maintenance and repair workers, and millwrights [2, p. 3–29 through 3–31 and Appendix C].

AISI emphasized that the data relied upon by OSHA were relevant to steel operations in the early 1980s and were "not representative of current operations" because since then "[t]he number of employees and job classifications have been reduced by more than 57 percent." [1, p. 3]. AISI also submitted data from the U.S. Department of Commerce indicating that the total number of production workers in 1990 was 194,000 [1, Attachment 1, p. 1] and testified that "[v]irtually all employees in the steelmaking operations are potentially exposed." [3, p. 9–284].

For purposes of estimating compliance costs, OSHA concluded that 190,000 employees may be potentially exposed to cadmium and that for all but 40,000 of these employees the exposure would be negligible. The exposure profile for the preliminary analysis indicated that about 10,000 employees in the iron and steel industry would potentially have exposures above 5 $\mu g/m^3$ [4, p. 4092–4093]. The exposure data from AISI indicate that less than 5 percent of the workforce would be potentially exposed above 5 $\mu g/m^3$. An estimated 90 percent of these workers would already be provided with respiratory protection due to the nature of the work and requirements of other standards [1, p. 3]. Thus, an additional 1,000 workers may need to wear respirators to comply with the cadmium rule. The estimated annual incremental cost to the industry would be $300,000.

Employees exposed to cadmium in the iron and steel industry are also exposed "to other substances that are currently regulated by OSHA substance-specific standards, such as arsenic and lead [and] a number of others." [3, p. 9–287]. As a result, "companies have in place medical surveillance programs for workers that are covered by these substances" [3, p. 9–287], and would also be conducting exposure monitoring for these substances. The incremental costs of compliance with the revised cadmium standard would involve costs for analyses of cadmium-specific biological and exposure monitoring samples.

The monitoring data submitted by AISI suggests that employees exposed below the PEL would generally have exposures below the action level as well. In addition, many employees would only be intermittently exposed above the action level and may fall outside of the coverage of the medical surveillance provisions [3, p. 9–288]. The number of employees for whom annual monitoring may be required is estimated to be less than 5,000; however, more frequent monitoring may be required for a few of these employees. An estimated 5,000 sets of biological monitoring tests would be necessary each year for full compliance.

The analysis of one set of samples for cadmium in urine, cadmium in blood, and β_2-microglobulin in urine would cost an estimated $200. The total annual cost for the industry would be $1 million. Employees in this industry are not expected to be affected by the requirements for medical removal since occupational exposures are relatively low and intermittent.

Analyses for cadmium of exposure monitoring samples may be necessary on a regular basis for an average of ten job categories per facility. Samples would be analyzed for each of three shifts every six months at about 120 facilities, and each analysis would cost about $40. The total annual cost for the industry would be $288,000. This estimate may include some current expenditures for cadmium monitoring; the potential overestimate may be offset by potential costs for collecting additional samples.

Hygiene facilities and related practices required by the cadmium standard (including work clothing) and provisions concerning information and training in the cadmium standard are similar to corresponding requirements in existing standards for lead and arsenic. Employees exposed to cadmium are also potentially exposed to lead or arsenic [3, p. 9–288]. According to AISI, appropriate hygiene facilities "are provided in all leaded steel production areas." [1, p. 12]. Exposures above the PELs for lead or arsenic may also occur during some activities in any steel plant (e.g., maintenance, cleaning, or repair of baghouses, electrostatic precipitators, waste gas systems, etc.); hygiene facilities and practices are already required for these employees.

Estimated additional costs for recordkeeping are $5 per employee annually. The total estimated industry cost for the 10,000 affected employees would be $50,000 annually.

Estimated compliance costs for the iron and steel industry are summarized in Table VIII–C41. The total estimated cost is $1.64 million annually.

Economic feasibility of a 5 $\mu g/m^3$ PEL. The revised cadmium standard with a PEL of 5 $\mu g/m^3$ is economically feasible for the iron and steel industry.

TABLE VIII–C41.—ESTIMATED COSTS OF COMPLIANCE WITH THE REVISED CADMIUM STANDARD FOR THE IRON AND STEEL INDUSTRY

Provision	Annualized cost ($thousands)
Exposure control	0.0
Respirator use	300.0
Exposure monitoring	288.0
Medical surveillance	1,000.0
Hygiene provisions	0.0
Recordkeeping and information	50.0
Total	1,638.0

Note: Costs do not include current expenditures.
Source: Office of Regulatory Analysis, OSHA, U.S. Department of Labor.

Compliance with the rule does not threaten the dislocation of firms or the competitive structure of the industry.

The U.S. Department of Commerce reported that in 1989 the value of blast furnace and basic steel industry shipments exceeded $64 billion [5, p. 1–20]. The ratio of the estimated compliance cost to the value of shipments is less than 0.00003. Compliance with the revised cadmium standard should not have any significant effect on total revenues, shipments, or employment.

New capital expenditures for the blast furnace and basic steel industry were over $3 billion in 1989, an increase of about 33 percent over 1988 [5, p. 1–51]. Strong prospects for continuing future profitability are expected for this industry. Expectations of profits would hardly be affected by the cadmium standard: labor costs are about $12.4 billion annually [5, p. 1–33], and the estimated compliance cost represents an increase in labor costs of less than 0.014 percent.

The iron and steel industry is subject to environmental and other regulations that impose costs far greater than the cadmium standard. EPA estimated that annualized costs of compliance for the steel industry for a new emissions standard were over $34 million (1981 dollars) [1, p. 11 and 1, Attachment 5a, p. 8–17]. Additional expenses are incurred for compliance with other regulations, including occupational exposure to lead and arsenic. The cadmium standard represents a minimal increase in total regulatory burden and involves provisions consistent with requirements imposed by existing regulations.

The costs of compliance have not and will not threaten the existence of the industry, reduce its competitiveness, or cause its contraction. From 1984 through 1989 (the latest year for which data are available), the percentage of imports of steel mill products purchased in the United States decreased steadily from 26.4 percent to 17.9 percent. In the same period, exports of steel mill products from the United States increased by 470 percent from less than one million tons to 4.6 million tons. Revenues from exports were over $2.7 billion in 1989. [1, Attachment 4, p. 1]. The cadmium standard is not expected to affect the competitive position of the industry.

Notes

1. Exhibit 128, "RE: Cadmium in Steelmaking—OSHA Docket No. H–057a," American Iron and Steel Institute, Washington, D.C., October 17, 1990.
2. Exhibit 13, "Economic Impact Analysis of the Proposed Revision to the Cadmium Standard," Final Report, JACA Corporation, March 15, 1988.
3. Hearing Transcript, Wednesday, July 18, 1990.
4. Occupational Exposure to Cadmium, Proposed Rule, Occupational Safety and Health Administration, **Federal Register** Volume 55, Number 25, February 6, 1990.
5. U.S. Department of Commerce, Bureau of the Census, 1989 Annual Survey of Manufacturers, Economics and Statistics Administration, June, 1991.

General Industry, Except Establishments Included Above

Industry overview. Potential exposures to cadmium may occur in many different industries which use cadmium or products containing cadmium as part of their operations. Activities which produce concentrations of dust or fume may cause employee exposures if cadmium is a component of the materials involved.

JACA Corporation reviewed occupations in each industry and compiled a list of industries and occupations which involve relevant activities and potential exposure to

cadmium [1, p. C–4 through C–10]. JACA identified occupations in industries with specific uses for cadmium or cadmium compounds in production processes, and occupations in industries that are not directly associated with cadmium but may involve incidental exposure in the use of products containing cadmium.

The chemical properties of cadmium lead to its usefulness in several diverse areas. JACA described a variety of industrial applications for cadmium, including the use of cadmium in alloys [1, p. 2–57]. The principal alloys which use cadmium are zinc, lead, and copper alloys; cadmium may also be used for silver and tin alloys.

Copper-cadmium alloys typically contain 0.8 to 1.2 percent cadmium. This small amount of cadmium doubles the strength of the alloy and reduces its electrical conductivity by only 10 percent, making the alloy ideal for overhead conductors for trains and for use in multi-strand conductors. The mechanical properties of rolled, drawn, and extruded zinc can be improved with 0.05 to 0.10 percent cadmium in the alloy. Lead alloys and solders may contain cadmium for its strengthening properties and low melting temperature. Cadmium may also be added to silver and gold alloys for the production of jewelry.

New materials used in the production of photovoltaic cells include copper indium diselenide, gallium arsenide, and cadmium telluride. Electrical contacts made with cadmium compounds have high tensile strength and are corrosion resistant; they are used in heavy duty applications such as relays, switches, and thermostats. Cadmium also has applications in the production phosphors in television picture tubes, photographic equipment, and lighting, and in catalysts for the production of esters. Cadmium-based control elements are used in some nuclear reactors. Cadmium compounds may be used in the production of phosphatic fertilizers, fungicides, and other chemicals. JACA identified many other industries, ranging from semiconductors to refuse systems, where materials containing cadmium may be present. [1, p. 2–11, 2–58, 3–28, and C–4 through C–10].

The U.S. Department of Commerce provided a consumption analysis of cadmium that showed how much cadmium was used for the output of each industry [2, Attachment A]. An accompanying input-output matrix showed how much cadmium each industry supplied to other industries as inputs for the production of final goods [2, Attachment B]. The industries identified in these tables generally parallel the JACA exposure profile, except that JACA identified a wider range of potentially affected industries. The Department of Commerce consumption analysis may not accurately portray employee exposures because products can be assembled with cadmium-containing parts without resulting in cadmium exposure. Alternatively, as recognized by JACA and discussed above, cadmium exposures are possible in industries not listed on the input-output tables. In order to ensure a complete and full analysis of the impact of the revised cadmium standard, OSHA considered all industries identified by JACA and the Department of Commerce as potentially affected by the new requirements and included each in the revised analysis.

NIOSH provided data to the record from the National Occupational Exposure Survey (NOES) [3, Attachment 1]. The NOES data was collected during the period 1981 to 1983 from a sample of 4,490 businesses and was designed to characterize employee exposures to chemicals by occupation and industry. The list of industries with potential cadmium exposures identified by NIOSH is generally consistent with that compiled by JACA and also includes some additional sectors. OSHA added the industries identified by NIOSH to those identified by JACA and the Department of Commerce to create a combined and complete list of potentially affected industries.

Several commenters criticized JACA and the preliminary analysis for not including all affected industries. However, OSHA found that often the industries listed to support such claims had been previously identified by JACA and were covered by the preliminary analysis. For example, one commenter stated that the "analysis of the proposed regulation is incomplete. Not included in your analysis are industries such as specialty alloy foundries, cadmium use in brazing, babbitt metal production, cadmium vapor lighting, photoelectric cell production, and the production of cadmium-based chemicals." [4, p. 1]. Many employees in these industries were included in the exposure profile developed by JACA and used for the preliminary analysis [1, p. 2–57 through 2–59, p. 3–28 through 3–32, and p. C–4 through C–10]. The revised analysis includes all industries identified in the record as potentially affected.

Table VIII–C42 presents a complete list of the industries potentially affected by the revised standard. The table also shows which industries were identified by JACA, the Department of Commerce, and NIOSH.

Production processes. JACA evaluated the specific activities involving cadmium in each industry and determined which processes and occupations would be potentially affected. JACA also assessed the nature of exposures in each case and categorized occupations by the type of work performed and by the degree of exposure. [1].

Comments and evidence submitted to the record in response to the proposed rule confirmed the potential for cadmium exposures in many processes identified preliminarily. As discussed above, information was also provided by some commenters which enabled a more detailed and comprehensive analysis to be developed for the final rule.

TABLE VIII–C42.—INDUSTRIES POTENTIALLY AFFECTED BY THE REVISED CADMIUM STANDARD

SIC Code	Industry title	Identified by		
		JACA (1)	DOC (2)	NIOSH (3)
16	Heavy construction	x		x
17	Construction trades	x		x
22	Textile mill products	x		x
23	Apparel			x
25	Furniture	x		x
26	Paper & allied products	x		x
27	Printing & publishing			x
28	Chemicals	x	x	x
29	Petroleum refining			x
30	Rubber & plastics	x		x
31	Leather products			x

TABLE VIII-C42.—INDUSTRIES POTENTIALLY AFFECTED BY THE REVISED CADMIUM STANDARD—Continued

SIC Code	Industry title	Identified by		
		JACA (1)	DOC (2)	NIOSH (3)
32	Stone, clay, glass	x		x
33	Primary metals	x	x	x
34	Fabricated metal prod.	x	x	x
35	Machinery & equipment	x	x	x
36	Electrical equipment	x	x	x
37	Transportation equip.	x	x	x
38	Measuring instruments	x	x	x
39	Miscellaneous manufac.	x		x
40	Railroad transportation	x		
42	Motor Trans. & warehsing.			x
45	Air transportation	x		x
48	Communications			x
49	Utilities	x		x
50	Wholesale durables	x		
51	Wholesale nondurables			x
55	Automotive dealers			x
73	Business services			x
75	Automotive services	x		
76	Misc. repair services	x		
80	Health services	x		x

[1] Exhibit 13, JACA Corporation, p. C-4 through C-10.
[2] Exhibit 19-50, U.S. Department of Commerce, Attachment B.
[3] Exhibit 106, NIOSH, Attachment 1.

Employees in each industry were classified into different occupational categories depending on their job and on their exposure profile. A sufficient number of occupational categories was defined to ensure that occupations in each industry were provided with a representative exposure profile. The classification of occupations was consistent with the standard concepts and descriptions presented in the Dictionary of Occupational Titles (DOT) [5].

In addition to the occupations included in the industry sectors analyzed in the preceding sections, employees in general industry were classified into the ten occupational categories described below.

Chemical mixers may be exposed to dust generated when adding compounds to a chemical or mechanical mixing operation, tending mixing equipment, or operating machines to crush, grind, polish, and blend a variety of materials. Employees may be exposed to cadmium-based plastic stabilizers, cadmium-based pigments, compounds used for metallic coatings, compounds used in the production of fungicides, and other cadmium compounds. [1, p. 3-28]. Applicable titles listed in the DOT include chemical mixer, chemical operator, chemical compounder, chemical milling processor, and chemical preparer.

Electroplaters are employed in several industries that perform electroplating as part of their manufacturing operations. These employees include plating and coating machine setters, operators, and tenders who provide protective or decorative surfaces for metals and other materials. Because electroplating is a wet process, employees are generally only exposed for short periods while measuring and adding dry cadmium-bearing powder to the plating tank. [1, p. 3-28].

Furnace operators and molders may be exposed to cadmium fumes released by molten metal during smelting, refining, molding, casting, and forging operations. Employees engaged in these activities include forging machine operators; metal molding, coremaking, and casting machine operators; operators of melting and refining furnaces; and metal pourers and casters. [1, p. 3-29]. Specific job titles listed in the DOT include furnace operator, charger, helper, loader, tender, and worker; molder, molder machine tender, molder operator; and mold checker, clamper, closer, dresser, maker, setter, stamper, worker, filler, and finisher.

Kiln or kettle operators may be exposed to cadmium compounds in chemical conversions, or while heating materials with glazes, paints, or other coatings which may contain cadmium. Employees in this category operate kilns, kettles, ovens, or furnaces for annealing, roasting, or converting processes. Employees may have occupational titles such as kiln operator, burner, feeder, firer, loader, helper, or worker; oven tender; and kettle operator, tender, or worker.

Heat treaters may be exposed to cadmium fumes when heating metals coated with or containing cadmium. These employees set up, operate, and tend flame-hardening machines, electronic induction machines, furnaces, and baths to harden, anneal, and heat treat metal products or metal parts.

Equipment cleaners may be exposed to cadmium when cleaning equipment contaminated with dusts containing cadmium or cadmium compounds. Industrial cleaners and cleaner operators would also be included in this category. Exposures may occur while cleaning baghouses, electrostatic precipitators, process equipment, and process areas.

Metal machine operators may be exposed to cadmium generated while grinding or forming metals bearing cadmium as a component or as part of a coating. Employees engaged in these activities include machinists; grinders; filers; sharpeners; lapping and buffing machine tool operators; operators of machines that roll steel or plastic material to form bends, beads, knurls, or plate, or to flatten, temper, or reduce the gauge of material; workers who set up and operate magnetic or other controlled machine tools that automatically mill, drill, broach, or ream metal parts; and general metal machining or metal working occupations.

Painters may be exposed to cadmium contained in paints or metal sprays during spray painting or nonelectrolytic metal coating. Activities included in this category are coating machine operation; painting and spraying machine operation; operation of nonelectrolytic plating and coating machines such as hot dip lines and metal spraying machines to coat metal, plastic, and other materials with metal; and painting, coating, and decorating a wide variety

of manufactured items using hand tools or hand held power tools.

Repair and utility workers may be exposed to cadmium during repair or maintenance activities and work on industrial equipment. These employees would include millwrights who dismantle, move, and install machinery and heavy equipment; general utility repairers performing a variety of maintenance tasks; automotive and motorcycle mechanics; automotive body repairers; aircraft mechanics and engine specialists; farm equipment mechanics; mechanics who repair mobile heavy equipment such as cranes, bulldozers, graders, and conveyors; rail car repairers; electricians; plumbers; pipefitters; steamfitters; and boilermakers who construct, assemble, maintain, and repair steam boilers and boilerhouse auxiliaries.

Welders, brazers, and solderers may be exposed to cadmium fumes released from cadmium-bearing base metals, brazing rods, or solders. This category includes employees operating welding, brazing, or soldering machines and employees performing such work with hand tools. Workers engaged in this type of work include structural steel workers who raise, place, and unite girders, columns, and other components; metal pattern makers who lay out, machine, assemble, and fit pattern parts; metal fabricators who make and assemble sheet metal products and equipment or other metal products such as frameworks or shells for machinery, ovens, tanks, stacks, buildings, and bridges; precision assemblers of products such as machinery, aircraft, electrical, or electronic equipment; other machine, electrical, or electronic assemblers; employees who use welding and flamecutting equipment such as arc welders, gas welders, and gas torches to join, cut, trim, and scarf metal components; and solderers and brazers who join metal parts or fill holes, indentations, and seams of fabricated metal products.

Table VIII–C43 shows the estimated number of employees in each occupational category for each industry. This table summarizes the best available information regarding production processes, occupations, and numbers of employees potentially affected, as provided by the record.

The compilation of the data in Table VIII–C43 from evidence in the record did not involve significant conflicts of information. Industries, occupations, or processes identified by any source were included. Those included in the preliminary analysis and receiving no comments were also included in the final analysis. None of the comments in response to the proposed rule or other comments argued that a previously identified industry, process, or occupation should be excluded.

Employee exposures. Estimated employee exposures in the occupational categories described above were presented in the preliminary analysis [6, p. II–37; and 7, p. 4092]. These data, compiled by JACA Corporation [1], were based on NIOSH and OSHA exposure monitoring results from over 2,400 samples analyzed for cadmium. Table VIII-C44 summarizes these data, showing the geometric mean, the median, and the range of exposures for each occupational category.

TABLE VIII-C43.— EMPLOYEES POTENTIALLY EXPOSED TO CADMIUM IN GENERAL INDUSTRY BY OCCUPATION

[Excluding Sectors Covered Elsewhere]

	Industry	Chemical Mixers	Electro-platers	Furnace operators	Kiln/kettle operators	Heat treaters	Equipment cleaners	Metal machining	Painters	Repair/utility	Welders, brazers, solderers	Industry total
2200	Textile mill products	47								364		411
2300	Apparel	201										201
2500	Furniture								772		460	1232
2600	Paper products	195										195
2700	Printing and publishing	1400					100			100		1600
2810	Inorganic chemicals								52		143	195
2820	Plastics and synthetics	870										870
2830	Drugs	50										50
2851	Paints & allied products	4724										4724
2860	Organic chemicals	1861			85						587	2533
2870	Agricultural chemicals	1533								974		2507
2890	Miscellaneous chemicals	1024										1024
2900	Petroleum refining									807		807
3000	Rubber & plastic prod.	8715							785		1633	11133
3100	Leather products	902										902
3211	Flat glass	321			345							666
3220	Glassware	298							278	2353		2929
3250	Structural clay products	400			1500					523		2423
3260	Pottery products							79	95			174
3270	Concrete products										624	624
3280	Stone products										200	200
3290	Mineral products				594						305	899
3313	Alloy products			244						244		488
3315	Steel wiredrawing			250							250	500
3316	Cold-rolled steel		37									37
3317	Steel pipe and tubes									100	300	400
3320	Iron and steel foundries			5157						5469	182	10808
3330	Primary nonferrous metals			1400						400		1800
3340	Secondary nonferrous mtls			600						150		750
3350	Nonferrous rolling, etc.	150		733				2239			13	3135
3360	Nonferrous foundries	139		8754		51		1078				10022
3390	Misc. primary metal	103				175					7	285
3410	Metal shipping containers							70			70	140
3420	Hand tools & hardware							2676			105	2781
3430	Heating & plumbing equip.							241	127	703	115	1186
3440	Fabricated struct. metal							6965	902		9208	17065
3450	Screws, etc.		868									868
3460	Forgings & stampings							612				612
3470	Coating and engraving							200				200
3480	Ordnance										285	285
3490	Misc. fabr. metal prod.		1454					3258			4359	9071
3510	Engines and turbines							1533			1503	3036
3520	Farm and garden machinery								199			199
3530	Construction machinery								267		10186	10453
3540	Metalworking machinery							15318			809	16127
3550	Special machinery							1200	79	340	4914	6533
3560	General machinery			54				1800		204	9565	11633
3570	Computer & office equip		400								1200	1600
3580	Refrig. & service mach.							2480	338	2221	9141	14180
3590	Miscellaneous machinery							14325			5290	19615
3610	Elec. transmission equip.		267								6121	6388
3620	Electrical apparatus		800						65		11595	12460
3630	Household appliances		500								7086	7586
3640	Lighting and wiring		200								13066	13266
3650	Audio & video equip.										3021	3021
3660	Communications equip.		1188						2262		14416	17866
3670	Electronic components	373	63				133	2700	1198		10945	15412

3690	Misc. elect. equip.		50								300	350
3710	Motor vehicles									11460	8572	18032
3720	Aircraft		791								1985	2776
3730	Ship building					293		4587		1227	1800	7907
3743	Railroad equipment							1047			411	1458
3760	Missiles & space vehicles		30								329	359
3790	Misc. trans. equip.										119	119
3812	Detection equipment, etc.										67	67
3820	Meas. & contr. instr.										216	216
3840	Medical instruments										337	337
3860	Photographic equipment								669			669
3870	Watches & clockwork										173	173
3910	Jewelry & plated ware										79	79
3930	Musical instruments										16	16
3940	Toys and sporting goods										1004	1004
3950	Artists' materials	50										50
3960	Costume jewelry & notions										29	29
3990	Misc. manufacturing								2749			2749
4011	Railroads									21	2	23
4200	Motor freight & warehsing										586	586
4500	Air transportation								89	52058		52147
4810	Telephone communications									2474		2474
4830	Radio & TV broadcasting										149	149
4920	Gas prod. & dist.										1213	1213
4950	Sanitary services									5204		5204
5000	Wholesale trade, durables							77			613	690
5100	Wholesale nondurables	3080										3080
5500	Service stations										538	538
7530	Automotive repair shops								357		2837	3194
7600	Misc. repair services							1592		1702	200	3494
8060	Hospitals							277				277
	Totals	26436	5648	17202	2524	519	233	64344	11323	89098	147239	365566

Source: Office of Regulatory Analysis, OSHA, U.S. Department of Labor.

TABLE VIII–C44.—CADMIUM EXPOSURE DATA FOR GENERAL INDUSTRY OCCUPATIONS BASED ON JACA

Job category	Concentration in μg/m³		
	Geometric mean	Median	Range
Chemical mixer	2.7	5.0	0.1–710.0
Electroplater	0.6	1.0	0.1–29.0
Furnace operator	0.1	0.1	0.1–530.0
Kiln/Kettle operator	0.5	0.3	0.1–10.0

TABLE VIII–C44.—CADMIUM EXPOSURE DATA FOR GENERAL INDUSTRY OCCUPATIONS BASED ON JACA—Continued

Job category	Concentration in μg/m³		
	Geometric mean	Median	Range
Heat treater	2.6	6.5	0.1–100.0
Equipment cleaner	2.0	3.0	0.1–34.5
Metal machining	1.3	2.0	0.1–470.0
Painter	0.4	0.1	0.1–1,700.0
Repair/Utility	2.0	3.0	0.1–271.0

TABLE VIII–C44.—CADMIUM EXPOSURE DATA FOR GENERAL INDUSTRY OCCUPATIONS BASED ON JACA—Continued

Job category	Concentration in μg/m³		
	Geometric mean	Median	Range
Welder, brazer, solderer	0.3	0.1	0.1–3,400.0

Source: Exhibit 13, JACA, Table 3–10.

TABLE VIII–C45.—FREQUENCY DISTRIBUTION OF OCCUPATIONAL EXPOSURE OBSERVATIONS

[In percent]

Occupation	Range of exposure observations [μg/m³]						
	0–5	6–9	10–19	20–29	30–49	50–99	100+
Chemical mixers	51	11	5	5	7	7	9
Electroplaters	86	0	4	11	0	0	0
Furnace operators	91	2	1	1	1	2	1
Kiln/kettle operators	87	7	7	0	0	0	0
Heat treaters	50	0	17	0	17	0	17
Equipment cleaners	83	0	13	0	4	0	0
Metal machine operators	63	4	8	7	7	5	6
Painters	77	2	3	1	3	4	10
Repair/utility workers	57	10	5	10	6	3	9
Welders, brazers, solderers	88	3	2	1	1	3	2

Source: Office of Regulatory Analysis, OSHA; based on JACA [1]

Table VIII–C45 presents the estimated frequency distribution of exposures for each of the occupational categories.

Comments and evidence submitted to the record in response to the proposed rule were generally consistent with the characterization of exposures presented for the occupational categories. Some industry representatives argued that due to unique circumstances specific to their industry it was inappropriate to include employees from their industry in the occupational categories. In response to these concerns, employee exposures in the dry color formulator industry, the electric utility industry, the iron and steel industry, and the construction industry are excluded from the occupational categories in the revised analysis and are analyzed separately.

Evidence specific to the remaining industries was generally consistent with and confirmed the representativeness of the preliminary exposure profiles for the relevant occupational categories. Employee exposures are generally similar within occupations across all industry groups.

Several commenters emphasized that employees in certain occupational categories have potential exposures to cadmium in specific circumstances that should not be overlooked. For example, the brass mill industry, the copper refining industry, copper and brass fabricators, silver alloying facilities, and aluminum casting operations may involve metal machining and furnace activities with cadmium exposures [8, 9, 10, 11, 12].

Exposure levels can be expected to vary among establishments as well as across shifts for individual operations. Variation in exposures and the possibility of higher exposures in certain activities were included in the frequency distribution of cadmium exposure observations for the occupational categories. The preliminary analysis showed that of the 83,000 metal machine operators and furnace operators potentially exposed to cadmium, over 16,000 may be exposed to levels above 20 μg/m³ [7, Table VIII–B].

OSHA believes that the exposure profiles in the revised analysis adequately reflect the extent of cadmium exposures in the occupations and include circumstances identified by commenters across industry.

Existing and feasible additional controls. Occupational exposures to cadmium can be controlled with a number of conventional technologies that are commonly known, readily available, and currently used in many industries. OSHA does not specify which controls must be implemented. Rather, OSHA allows the employer to choose a combination of control methods that is best suited to the particular characteristics of the work place. Industry may also devise additional ways to successfully control exposure levels.

JACA described several controls applicable for reducing cadmium exposures [1, p. 4–3 et seq.]. Local exhaust ventilation systems can be applied at a wide variety of emissions sources by designing hoods for the close capture of dusts or fumes. Such systems can be highly effective in reducing employee exposures because potential contaminants may be captured at the point of generation.

Another basic type of engineering control is process enclosure. Enclosure may consist of sealed paneling or covers for equipment, or may involve more sophisticated strategies. For example, an enclosed screw conveyor may be an effective alternative to manually transferring material in some operations. In addition to enclosure, or in operations for which enclosure is not an amenable strategy, separation and isolation of the process may provide an effective solution for reducing cadmium exposures among employees.

Improvements in work practices may aid in significantly reducing the generation of airborne cadmium and in ensuring that employees are not

unnecessarily exposed to elevated concentrations. Cadmium exposures for maintenance workers may be reduced through additional cleanup of equipment and surrounding areas prior to maintenance and repair operations.

Principles of controlling occupational exposure to cadmium were described by NIOSH [13, p. 11 et seq.]. The system of control measures outlined by NIOSH provides a flexible and reliable approach applicable to establishments in all industries. NIOSH recommends the selection of a control strategy as a critically important first step. A careful application of a system of controls is usually required to adequately control cadmium exposures. This would include measures applied to the hazard source, to the general work environment, at or near the employees potentially exposed, and other measures for hazard control.

Specific measures listed by NIOSH that should be considered include substitution of materials, process modification or substitution, equipment selection and modification for containment, wet processing, isolation of the source and automation of operations, local exhaust ventilation, work practices to maintain containment and control effectiveness, dilution ventilation, room air cleaning devices, housekeeping and other work practices, personal hygiene, isolation of workers in booths or cabs, personal protective equipment, management commitment to controlling exposures, work place and process monitoring systems with feedback, training for workers and supervisors, and preventive maintenance of equipment and controls.

Descriptions of controls were also provided for the record by other commenters [9, 10, 12, 16, and others]. Different controls are available for many diverse operations and generally provide examples of achieving exposure reductions according to the basic principles outlined by NIOSH. Controls with applications in a wide variety of industries include clean air islands, glove boxes, and equipment for handling, dumping, and packaging materials.

Technological feasibility of a 5 μg/m³ PEL. Compliance with the final cadmium standard is considered technologically feasible in each of the affected industries. This determination is based on and is consistent with the evidence in the record, the criteria established by the courts in applicable case law, and the understanding of technological feasibility developed through OSHA policy (see, for example, OSHA's statement of reasons made in response to the U.S. Court of Appeals regarding the final rule on occupational exposure to lead [14]).

OSHA recognizes that in some operations employee exposures may not be consistently controllable to below 5 μg/m³ with engineering and work practice controls alone. Respirators are permitted to supplement feasible engineering and work practice controls and are capable of providing sufficient protection for all employees as required by the revised standard.

The typical firm in each of the industries considered in this section should be able to achieve levels below 5 μg/m³ for most employees most of the time. As shown in Table VIII–C44, geometric mean exposures in all of the occupations are less than 3 μg/m³. Furthermore, as shown in Table VIII–C46, the total number of potentially affected employees in each industry is less than 13% of the work force in each industry. In all but four industries the proportion of affected workers was less than 8%. The record did not contain evidence demonstrating that any establishment would not be able to achieve the PEL for most of its employees.

Compliance with the revised cadmium standard is technologically feasible. The standard requires engineering and work practice controls to be implemented to the extent feasible. Respirators can be used to provide necessary protection as required by the standard.

TABLE VIII–C46.—RATIO OF POTENTIALLY AFFECTED EMPLOYEES TO TOTAL EMPLOYMENT BY INDUSTRY

	Industry	Potentially exposed employees (A)	Total industry employees (B)	Ratio of A/B
2200	Textile mill products	411	675,000	0.001
2300	Apparel	301	1,039,800	0.000
2500	Furniture	1,232	483,600	0.003
2600	Paper products	195	693,000	0.000
2700	Printing and publishing	1,600	1,523,600	0.001
2810	Inorganic chemicals	195	137,800	0.001
2820	Plastics and synthetics	870	178,100	0.005
2830	Drugs	50	247,900	0.000
2851	Paints and allied products	4,724	59,100	0.080
2860	Organic chemicals	2,533	153,500	0.017
2870	Agricultural chemicals	2,507	55,800	0.045
2890	Miscellaneous chemicals	1,024	98,000	0.010
2900	Petroleum refining	807	161,200	0.005
3000	Rubber and plastic products	11,133	866,000	0.013
3100	Leather products	902	122,500	0.007
3211	Flat glass	666	15,700	0.042
3220	Glassware	2,929	81,800	0.036
3250	Structural clay products	2,423	32,500	0.075
3260	Pottery products	174	36,500	0.005
3270	Concrete products	624	196,200	0.003
3280	Stone products	200	34,000	0.006
3290	Mineral products	899	76,300	0.012
3313	Alloy products	486	14,100	0.035
3315	Steel wiredrawing	500	11,300	0.044
3316	Cold-rolled steel	37	14,900	0.002
3317	Steel pipe and tubes	400	24,200	0.017
3320	Iron and steel foundries	10,804	125,200	0.086
3330	Primary nonferrous metals	1,800	44,800	0.040
3340	Secondary nonferrous metals	750	17,000	0.044
3350	Nonferrous rolling, etc	3,135	167,600	0.019
3360	Nonferrous foundries	10,022	81,000	0.124
3390	Miscellaneous primary metals	285	25,000	0.011
3410	Metal shipping containers	140	48,700	0.003

TABLE VIII-C46.—RATIO OF POTENTIALLY AFFECTED EMPLOYEES TO TOTAL EMPLOYMENT BY INDUSTRY—Continued

	Industry	Potentially exposed employees (A)	Total industry employees (B)	Ratio of A/B
3420	Hand tools and hardware	2,781	122,600	0.023
3430	Heating and plumbing equipment	1,186	58,300	0.020
3440	Fabricated structures—metal	17,065	412,000	0.041
3450	Screws, etc	868	90,500	0.010
3460	Forgings and stampings	612	218,600	0.003
3470	Coating and engraving	200	116,600	0.002
3480	Ordnance	265	69,700	0.004
3490	Miscellaneous fabricated metal products	9,071	229,200	0.040
3510	Engines and turbines	3,036	88,900	0.034
3520	Farm and garden machinery	199	97,600	0.002
3530	Construction machinery	10,453	212,400	0.049
3540	Metalworking machinery	16,127	306,600	0.052
3550	Special machinery	6,533	146,800	0.045
3560	General machinery	11,633	238,700	0.049
3570	Computer and office equipment	1,600	414,500	0.004
3580	Refrigeration and service machinery	14,180	166,700	0.085
3590	Miscellaneous machinery	19,615	297,900	0.066
3610	Electrical transmission equipment	6,388	91,300	0.070
3620	Electrical apparatus	12,460	159,500	0.078
3630	Household appliances	7,586	121,800	0.062
3640	Lighting and wiring	13,266	177,100	0.075
3650	Audio and video equipment	3,021	80,100	0.038
3660	Communications equipment	17,886	246,200	0.073
3670	Electronic components	15,412	542,900	0.028
3690	Miscellaneous electrical equipment	350	164,400	0.002
3710	Motor vehicles	18,032	807,400	0.022
3720	Aircraft	2,776	641,500	0.004
3730	Ship building	7,907	174,600	0.045
3743	Railroad equipment	1,458	30,600	0.048
3760	Missiles and space vehicles	359	165,200	0.002
3790	Miscellaneous transmission equipment	119	40,900	0.003
3812	Detection equipment, etc	67	257,100	0.000
3820	Measurement and construction instrument	216	305,500	0.001
3840	Medical instruments	337	254,200	0.001
3860	Photographic equipment	669	100,000	0.007
3870	Watches and clockwork	173	9,900	0.017
3910	Jewelry and plated ware	79	52,900	0.001
3930	Musical instruments	16	12,100	0.001
3940	Toys and sporting goods	1,004	105,500	0.010
3950	Artists' materials	50	32,100	0.002
3960	Costume jewelry and notions	29	31,600	0.001
3990	Miscellaneous manufacturing	2,749	136,800	0.020
4011	Railroads	23	230,500	0.000
4200	Motor freight and warehousing	586	1,867,000	0.000
4500	Air transportation	52,147	750,900	0.069
4810	Telephone communications	2,474	887,800	0.003
4830	Radio and TV broadcasting	149	231,200	0.001
4920	Gas production and distribution	1,213	165,300	0.007
4950	Sanitary services	5,204	130,300	0.040
5000	Wholesale trade, durables	690	3,493,000	0.000
5100	Wholesale nondurables	3,080	2,572,000	0.001
5500	Service stations	538	2,054,000	0.000
7530	Automotive repair shops	3,194	526,400	0.006
7600	Miscellaneous repair services	3,494	382,800	0.009
8060	Hospitals	277	3,676,100	0.000
	Totals	365,566	32,342,400	0.011

Source: Table VIII-C43 and "Employment and Earnings," Bureau of Labor Statistics, November 1991.

Several comments submitted to the record expressed concern about the technological feasibility of the standard. Often the concern was based on the misconception that OSHA had assumed the PEL could be achieved with engineering controls for all employees in all circumstances. The revised standard requires controls to be implemented to the extent feasible but is not based on the assumption that the PEL will be achieved through engineering controls in all operations.

Based on evidence and comments in the record, OSHA concluded that respirator use would probably be necessary in some situations. These may occur in the production of cadmium alloys, in processes using powdered cadmium-bearing materials, and in activities producing fumes from substances containing cadmium.

Costs of compliance with a 5 $\mu g/m^3$ PEL. Costs of compliance for establishments affected by the revised cadmium standard include costs for engineering controls, respiratory protection, protective clothing, exposure monitoring, medical surveillance, hygiene facilities, information and training, and recordkeeping. Costs for each of these elements are estimated by industry.

In evaluating compliance costs for each industry, OSHA considered the number of employees potentially exposed in each industry, the respective occupations represented, and the nature of exposures in the industry. The extent and degree of exposure among the affected employees was determined

based on information in the record for specific industries.

In response to concerns of several commenters, the revised analysis presents estimated compliance costs for each industry affected. Variations in compliance costs between industries were primarily due to the numbers of affected employees and the mix of occupations represented.

Engineering controls are available for reducing most of the exposures in the affected occupations. In some applications, employers may be able to eliminate cadmium exposure through substitution of products. Such alternatives may be feasible for some uses of cadmium pigments, cadmium stabilizers, cadmium plating, and cadmium alloys [1, 17, 18]. Improved work practices can significantly reduce exposures by preventing the unnecessary generation or inhalation of airborne cadmium and by increasing employees' awareness of potential hazards. General dilution ventilation and local exhaust ventilation are effective means of reducing exposures and are adaptable to a wide variety of circumstances.

The installation of a new ventilation system would have an estimated capital cost of $80,000 and an annual operating cost of $8,000. Controls such as enclosures and glove boxes may have estimated capital costs of about $9,000. Some establishments may also install other feasible controls instead of those specified depending on the circumstances involved. The estimated costs of compliance would be expected to be similar. [1, 16].

Exposures for most chemical mixers may be controlled with local exhaust ventilation systems. Such systems would be applicable in about 75 percent of the situations in which exposures need to be reduced [19]. New controls would be necessary for reducing exposures for an estimated 40 percent of the total number of chemical mixers, and on average one control would be sufficient for every 10 employees [6, p. V-13]. Additional engineering controls would not be required for employees with exposures below the action level, in operations for which engineering controls are infeasible, or in operations for which feasible controls have already been implemented. After the implementation of feasible additional controls, exposures for an estimated 30 percent of the chemical mixers may exceed the action level, and 20 percent would exceed the PEL. For these latter employees respirators would be required.

The number of engineering controls required for chemical mixers in each industry was thus calculated as N*0.40/10, where N is the number of chemical mixers potentially exposed in the industry. The annualized cost of engineering controls for the chemical mixers in each industry would be (N*0.40/10)*$21,020.

Electroplater exposures may be reduced with ventilation systems and use of a glove box. Electroplating facilities are generally provided with adequate ventilation systems, but some may require new or improved glove boxes to better control exposures. A new glove box would have an estimated capital cost of $9,000, an annualized cost of about $1,465, and would be sufficient for about 10 affected employees on average. The exposure data indicate that the additional protection would be necessary for about 20 percent of the electroplaters. The annualized cost of engineering controls for electroplaters in each industry would thus be (N*0.20/10)*$1,465, where N represents the number of electroplaters in each industry. After the implementation of feasible controls, an estimated 10 percent of the electroplaters may have exposures above the action level. Five percent may have exposures above the PEL and would be required to wear respirators.

Feasible engineering controls for furnace operators include local exhaust ventilation systems and furnace enclosures. It is expected that furnace operations already utilize feasible ventilation systems. Use of additional enclosures or furnace covers may be feasible to reduce exposures for about 30 percent of the furnace operators. (The percent of employees and establishments requiring additional controls is greater than that indicated by the full-time equivalent percentage of employees exposed above the PEL because controls may be required regardless of intermittency of exposure.) Each control would reduce exposures for about ten employees on average. The annualized cost of engineering controls for furnace operators in each industry would be (N*0.30/10)*$1,465.

Exposures for furnace operators should generally be below the action level after the implementation of feasible controls. However, some furnace operations may involve melts that contain a significant percentage of cadmium. As a result, employees may be exposed to concentrations in excess of the PEL [10]. OSHA estimates that after the implementation of additional controls up to 15 percent of the affected furnace operators would have exposures above the action level. About 10 percent of the employees may also have exposures above the PEL and would be required to wear respirators.

Kiln and kettle operators affected by the revised standard would need to be protected with feasible controls that may include local exhaust ventilation systems and enclosures. This set of additional controls would need to be provided for about 30 percent of these employees, with one set of controls sufficient for 10 employees on average. (The percent of employees and establishments requiring additional controls is greater than that indicated by the full-time equivalent percentage of employees exposed above the PEL because controls may be required regardless of intermittency of exposure.) The capital cost for the combination of controls would be $89,000, and the annual costs would be $8,000. The annualized cost for each industry would be (N*0.30/10)*$22,485. Resulting exposures should be below the action level for almost all employees. About 5 percent of the kiln and kettle operators may face unique circumstances or work with relatively high concentrations of cadmium; exposures for these employees may exceed both the action level and the PEL.

Exposures for heat treaters may not be reducible with additional feasible controls. OSHA estimates that about 70 percent of the affected employees would be exposed above the action level, and that about 50 percent of the affected employees would be required to wear respirators.

Equipment cleaners may have exposures for which engineering controls are often not feasible. It is estimated that about 50 percent of the affected employees would be exposed above the action level; approximately 20 percent of the employees may also be required to use respiratory protection.

Feasible additional engineering controls consisting of new or improved local exhaust ventilation systems may reduce exposures associated with metal machining. Such controls would be applicable in about 60 percent of the situations in which exposures need to be reduced [19]. Additional controls would be necessary for about 30 percent of the total number of metal machinists potentially exposed. The controls should be sufficient for an average of ten employees each. The annualized cost would be (N*0.30/10)*21,020. Resulting exposures should be below the action level for 85 percent of the affected employees. Approximately 15 percent of the employees may be engaged in metal machining activities that involve elevated concentrations of cadmium and

produce exposures which require the use of respiratory protection.

Painters affected by the revised standard are expected to be protected by feasible engineering controls already due to the presence of other potentially hazardous substances. Most painters with significant exposure would also already be provided with respiratory protection. OSHA estimates that about 30 percent of the affected painters would be exposed above the action level. Compliance with the cadmium standard may require additional respirator use for about 10 percent of the affected employees.

Exposures for repair and utility workers may not be amenable to additional feasible controls in most situations. However, some activities conducted routinely and continually in one location may be controlled with local exhaust ventilation systems. New or improved ventilation systems may be necessary for an estimated 5 percent of the affected employees, and on average each system would be sufficient for ten employees. Additional controls would not be required for employees with exposures below the action level, in operations for which engineering controls are infeasible, or in operations for which feasible controls have already been implemented. The engineering controls would have an estimated capital cost of $80,000 and an annual cost of $8,000. The annualized cost of engineering controls for these employees would be (N*0.05/10)*$21,020.

Employees engaged in repair and utility operations would be exposed to cadmium for an average of one fifth of the work days [7, p. 4096, Table VIII–D], and exposures for most of these employees would be below the action level. In addition, the intermittency and relatively low levels of exposure may exempt many employees from medical surveillance and other provisions. After the implementation of feasible controls, and with the necessary adjustment to reflect the nature of the exposures, an estimated 20 percent of the affected employees would be considered exposed above the action level, and additional respirator use may be required for about 7 percent of the affected employees.

For welders, brazers, and solderers exposures are generally below the action level, but exposures above the PEL may occur if the materials involved contain significant concentrations of cadmium. Some employers may choose to substitute materials that do not contain cadmium, and some employees may already be adequately protected. The implementation of additional engineering controls, beyond those already used, is not expected to be feasible. An estimated 10 percent of the affected employees may have exposures above the action level. These employees may also be required to wear respiratory protection to avoid potential exposures above the PEL.

The estimated cost of additional respiratory protection in each industry was based on the estimated number and percent of employees in each occupation for which respirators would be required. Providing respiratory protection was estimated to cost about $300 per employee per year [20, Attachment III].

The revised standard would also require protective clothing to be provided for employees exposed above the PEL. The cost of such clothing would be an estimated $104 per employee annually [20, Attachment III]. The estimated total annual cost for each industry was calculated by multiplying the annual unit cost by the total number of employees exposed above the PEL in each industry.

Exposure monitoring would be required at least twice each year for each shift of each job category. On average, each exposure monitoring sample would be representative of an estimated ten employees [1, p. 6–23]. It is assumed that representative monitoring would be conducted semi-annually for all employees exposed above the action level.

The costs of exposure monitoring involve the collection and the analysis of the samples. The estimated cost of analyzing the samples is $40 per sample, and the cost of collection would be approximately $200 per sample [1, p. 6–23].

Compliance with the medical surveillance provisions of the revised standard would require medical exams to be provided every two years and biological monitoring to be provided annually for qualifying employees. More frequent exams and testing may be required for some employees.

JACA found that employees in the occupations were generally already provided with annual medical exams [1, p. 6–26], and the evidence in the record does not contradict this conclusion. Additional medical exams may be necessary for employees in some nonmanufacturing industries.

For establishments in industries with an SIC code of 50 or higher, the estimated compliance costs include the cost of biennial medical exams for employees exposed above the action level. The estimated cost of the exams is $250 each, and the estimated number of biennial exams required is increased by 5 percent. This overall increase reflects a combination of factors such as more frequent exams for some employees as necessary, medical surveillance for some previously exposed employees, and exclusions from medical surveillance for intermittently exposed employees. The total annual cost of medical exams for these industries is thus calculated as M*$250*0.5*1.05, where M is the number of employees exposed above the action level.

Biological monitoring is generally not provided for the affected employees. The costs of the required tests for cadmium in urine and cadmium in blood would be about $60 each [1, p. 6–27], and the cost of a test for β_2–microglobulin in urine would be about $80 [21, p. 4]. In addition, the estimated average cost of collection would be about $5 for each sample. Thus, one set of biological monitoring tests would cost an estimated $215.

The total number of each of these tests that would be required annually in each industry is estimated at 1.05 times the number of employees exposed above the action level. This figure would include more frequent testing for some employees as required by the revised standard, tests for previously exposed employees as necessary, and exclusions from medical surveillance for intermittently exposed employees.

Provisions for medical removal are not expected to affect many employees. However, it may be possible for some employees to meet the criteria for mandatory removal or to be removed on the basis of a physician's determination. On average, an estimated 0.1 percent of the employees exposed above the action level may be removed each year. The number of employees removed should be small enough to enable establishments to provide removed employees with alternative positions. Costs to the employer would include paying wage subsidies for removed employees and hiring and training new employees. The average cost per removed employee would be an estimated $5,000.

The revised standard requires employers to provide change rooms and showers for employees exposed above the PEL. Based on an estimate from industry the capital cost of installing the required facilities would be an estimated $35,000 per affected establishment [16, Table A6–4]. This amount would be annualized at $5,700 per year, and the facilities should be sufficient for 20 employees. Estimated annual costs associated with providing showers would be approximately $900 per employee [20, Attachment III]. Thus, the annualized cost of providing hygiene

facilities for twenty employees would be an estimated $23,700.

Requirements regarding information, training, and recordkeeping would involve additional compliance costs for affected employers. These may include costs for establishing regulated areas, notifying employees of monitoring results, and preparing and updating written compliance programs. The incremental costs imposed by the revised standard should be relatively small as compliance may be achieved by expanding existing programs and efforts in some or all of these areas. An estimated average of $100 annually per employee exposed above the action level should provide sufficient resources to achieve compliance with the relevant elements of the standard.

Table VIII–C47 summarizes the breakdown of employee exposures in each industry after the implementation of feasible engineering controls. Of the 365,566 employees potentially exposed in these industries, an estimated 57,374 employees would be exposed above the action level, and an estimated 39,517 employees would be exposed above the PEL and require respiratory protection.

Table VIII–C48 presents the estimated costs of compliance for each industry and each provision. The total estimated annualized cost of compliance for the industries is about $160 million. Almost half of the compliance costs are attributable to engineering controls ($75 million); most of the remaining costs are associated with hygiene facilities/protective clothing ($51 million), medical surveillance ($14 million), and respiratory protection ($12 million). The compliance costs are spread over a large number of industries. Four industries would have annualized costs over $10 million, rubber and plastic products, metalworking machinery, miscellaneous machinery manufacturing, and air transportation.

Economic feasibility of a 5 μg/m³ PEL. Based on the evidence in the record, OSHA has determined that compliance with the final cadmium standard is economically feasible in each of the affected industries. For the industries considered in this section, the standard generally affects a small part of the workforce and a limited number of activities. As shown in Table VIII–C49, the costs of compliance represent less than 1 percent of the revenues of the affected establishments for each of the affected industries, and less than 0.06 percent of revenues of affected establishments across all affected industries.

TABLE VIII–C47.—EMPLOYEE EXPOSURES AFTER THE IMPLEMENTATION OF FEASIBLE ENGINEERING CONTROLS

	Industry	Potentially exposed employees	Employees exposed above action level	Employees requiring respirators
2200	Textile mill products	411	87	35
2300	Apparel	201	60	40
2500	Furniture	1,232	278	123
2600	Paper products	195	59	39
2700	Printing and publishing	1,600	490	307
2810	Inorganic chemicals	195	30	20
2820	Plastics and synthetics	870	261	174
2830	Drugs	50	15	10
2851	Paints and allied products	4,724	1,417	945
2860	Organic chemicals	2,533	621	435
2870	Agricultural chemicals	2,507	655	375
2890	Miscellaneous chemicals	1,024	307	205
2900	Petroleum refining	807	161	56
3000	Rubber and plastic products	11,133	3,013	1,985
3100	Leather products	902	271	180
3211	Flat glass	566	114	81
3220	Glassware	2,929	543	252
3250	Structural clay products	2,423	300	182
3260	Pottery products	174	40	21
3270	Concrete products	624	62	62
3280	Stone products	200	20	20
3290	Mineral products	599	60	60
3313	Alloy products	466	55	41
3315	Steel wiredrawing	500	50	50
3316	Cold-rolled steel	37	4	2
3317	Steel pipe and tubes	400	50	37
3320	Iron and steel foundries	10,806	1,886	917
3330	Primary nonferrous metals	1,800	290	166
3340	Secondary nonferrous metals	750	120	71
3350	Nonferrous rolling, etc	3,135	492	440
3360	Nonferrous foundries	10,022	1,552	1,090
3390	Miscellaneous primary metal	285	154	109
3410	Metal shipping containers	140	18	18
3420	Hand tools and hardware	2,761	412	412
3430	Heating and plumbing equipment	1,186	226	110
3440	Fabricated structural metal	17,065	2,235	2,054
3450	Screws, etc	868	87	43
3460	Forgings and stampings	612	92	92
3470	Coating and engraving	200	30	30
3480	Ordnance	255	27	27
3490	Miscellaneous fabricated metal products	9,071	1,070	997
3510	Engines and turbines	3,036	380	380
3520	Farm and garden machinery	196	60	20
3530	Construction machinery	10,453	1,103	1,045
3540	Metalworking machinery	16,127	2,379	2,379
3550	Special machinery	5,533	763	703
3560	General machinery	11,633	1,277	1,247
3570	Computer and office equipment	1,600	160	140

TABLE VIII-C47.—EMPLOYEE EXPOSURES AFTER THE IMPLEMENTATION OF FEASIBLE ENGINEERING CONTROLS—Continued

Industry	Potentially exposed employees	Employees exposed above action level	Employees requiring respirators
3580 Refrigeration and service machinery	14,180	1,832	1,475
3590 Miscellaneous machinery	19,615	2,678	2,678
3610 Electrical transmission equipment	6,388	639	625
3620 Electrical apparatus	12,460	1,259	1,206
3630 Household appliances	7,586	759	734
3640 Lighting and wiring	13,266	1,327	1,317
3650 Audio and video equipment	3,021	302	302
3660 Communications equipment	17,886	2,245	1,729
3670 Electronic components	15,412	2,044	1,724
3690 Miscellaneous electrical equipment	350	35	33
3710 Motor vehicles	18,032	2,949	1,459
3720 Aircraft	2,776	278	238
3730 Ship building	7,907	1,319	1,100
3743 Railroad equipment	1,458	198	198
3760 Missiles and space vehicles	359	36	34
3790 Miscellaneous transportation equipment	119	12	12
3812 Detection equipment, etc	67	7	7
3820 Measurement and contractor instruments	216	22	22
3840 Medical instruments	337	34	34
3860 Photographic equipment	669	201	67
3870 Watches and clockwork	173	17	17
3910 Jewelry and plated ware	79	8	8
3930 Musical instruments	16	2	2
3940 Toys and sporting goods	1,004	100	100
3950 Artists' materials	50	15	10
3960 Costume jewelry and notions	29	3	3
3990 Miscellaneous manufacturing	2,749	825	275
4011 Railroads	23	4	2
4200 Motor freight and warehousing	586	59	59
4500 Air transportation	52,147	10,438	3,653
4810 Telephone communications	2,474	495	173
4830 Radio and TV broadcasting	149	15	15
4920 Gas production and distribution	1,213	121	121
4950 Sanitary services	5,204	1,041	364
5000 Wholesale trade, durables	690	73	73
5100 Wholesale nondurables	3,080	924	616
5500 Service stations	538	54	54
7530 Automotive repair shops	3,194	391	319
7600 Miscellaneous repair services	3,494	599	378
8060 Hospitals	277	42	42
Totals	365,566	57,374	39,517

Source: Office of Regulatory Analysis, OSHA, U.S. Department of Labor.

TABLE VIII-C48.—ESTIMATED ANNUAL COSTS OF COMPLIANCE BY INDUSTRY AND BY PROVISION

[In thousands of dollars]

Industry	Engineering controls	Respiratory protection	Protective clothing	Exposure monitoring	Medical surveillance	Hygiene facilities	Information, training, and recordkeeping	Total
2200 Textile mill products	78	10	4	4	20	41	9	166
2300 Apparel	169	12	4	3	14	48	6	256
2500 Furniture	0	37	13	13	64	146	28	301
2600 Paper products	164	12	4	3	13	46	6	248
2700 Printing and publishing	1,188	92	32	24	113	364	49	1,861
2810 Inorganic chemicals	0	6	2	1	7	23	3	42
2820 Plastics and synthetics	731	52	18	13	60	206	26	1,107
2830 Drugs	42	3	1	1	3	12	2	64
2851 Paints and allied products	3,972	283	98	88	327	1,120	142	6,010
2860 Organic chemicals	1,622	131	45	30	143	516	62	2,549
2870 Agricultural chemicals	1,391	112	39	31	151	444	65	2,235
2890 Miscellaneous chemicals	861	61	21	15	71	243	31	1,303
2900 Petroleum refining	85	17	6	8	37	67	15	236
3000 Rubber and plastic products	7,328	595	206	145	695	2,352	301	11,623
3100 Leather products	758	54	19	13	62	214	27	1,148
3211 Flat glass	503	24	8	5	26	97	11	675

TABLE VIII-C48.—ESTIMATED ANNUAL COSTS OF COMPLIANCE BY INDUSTRY AND BY PROVISION—Continued

[In thousands of dollars]

Industry	Engineering controls	Respiratory protection	Protective clothing	Exposure monitoring	Medical surveillance	Hygiene facilities	Information, training, and recordkeeping	Total
3220 Glassware	496	76	26	31	148	299	64	1,142
3250 Structural clay products	1,403	57	20	14	69	227	30	1,821
3260 Pottery products	50	6	2	2	9	25	4	99
3270 Concrete products	0	19	6	3	14	74	8	123
3280 Stone products	0	6	2	1	5	24	2	39
3290 Mineral products	401	18	6	3	14	71	6	519
3313 Alloy products	36	12	4	4	20	49	9	135
3315 Steel wiredrawing	11	15	5	3	14	59	6	114
3316 Coldrolled steel	1	1	0	0	1	2	0	5
3317 Steel pipe and tubes	11	11	4	2	12	44	5	88
3320 Iron and steel foundries	801	275	95	91	435	1,086	189	2,972
3330 Primary nonferrous metals	104	50	17	14	67	199	29	480
3340 Secondary nonferrous metals	42	21	7	6	20	84	12	200
3350 Nonferrous rolling, etc	1,570	132	46	24	114	522	49	2,457
3360 Nonferrous foundries	1,181	327	113	75	358	1,292	155	3,502
3390 Miscellaneous primary metal	87	33	11	7	36	129	15	318
3410 Metal shipping containers	44	5	2	1	4	21	2	79
3420 Hand tools and hardware	1,687	124	43	20	95	486	41	2,496
3430 Heating and plumbing equipment	226	33	11	11	52	130	23	486
3440 Fabricated structure metal	4,386	616	214	107	516	2,434	223	8,496
3450 Screws, etc	25	13	5	4	20	51	9	127
3460 Forgings and stampings	386	28	10	4	21	109	9	567
3470 Coating and engraving	126	9	3	1	7	36	3	185
3480 Ordnance	0	8	3	1	6	31	3	52
3490 Miscellaneous fabricated metal products	2,097	299	104	51	247	1,182	107	4,087
3510 Engines and turbines	967	114	40	18	88	451	38	1,715
3520 Farm and garden machinery	0	6	2	3	14	24	6	54
3530 Construction machinery	0	314	109	53	254	1,239	110	2,079
3540 Metalworking machinery	9,660	714	247	114	549	2,819	238	14,340
3550 Special machinery	792	211	73	37	176	839	76	2,199
3560 General machinery	1,159	374	130	61	295	1,478	128	3,625
3570 Computer and office equipment	12	42	15	8	37	186	16	295
3580 Refrigeration and service machinery	1,797	443	153	66	423	1,748	183	4,835
3590 Miscellaneous machinery	9,033	803	278	129	616	3,173	268	14,302
3610 Electrical transmission equipment	8	188	65	31	147	741	64	1,244
3620 Electrical apparatus	23	362	125	60	291	1,429	126	2,417
3630 Household appliances	15	220	76	36	175	869	76	1,468
3640 Lighting and wiring	6	395	137	64	306	1,560	133	2,600
3650 Audio and video equipment	0	91	31	15	70	358	30	594
3660 Communications equipment	35	519	180	108	518	2,049	225	3,633
3670 Electronic components	2,018	517	179	96	472	2,043	204	5,531
3690 Miscellaneous electrical equipment	1	10	3	2	8	39	4	68
3710 Motor vehicles	1,204	438	152	142	681	1,729	295	4,640
3720 Aircraft	23	71	25	13	64	282	28	507
3730 Shipbuilding	3,022	330	114	63	304	1,304	132	5,270

TABLE VIII-C48.—ESTIMATED ANNUAL COSTS OF COMPLIANCE BY INDUSTRY AND BY PROVISION—Continued

[In thousands of dollars]

Industry	Engineering controls	Respiratory protection	Protective clothing	Exposure monitoring	Medical surveillance	Hygiene facilities	Information, training, and recordkeeping	Total
3743 Railroad equipment	660	59	21	10	46	235	20	1,050
3760 Missiles and space vehicles	1	10	4	2	8	41	4	69
3790 Miscellaneous transmission equipment	0	4	1	1	3	14	1	23
3812 Detection equipment, etc	0	2	1	0	2	8	1	13
3820 Measurement and construction instruments	0	6	2	1	5	26	2	43
3840 Medical instruments	0	10	4	2	6	40	3	66
3860 Photographic equipment	0	20	7	10	46	79	20	182
3870 Watches and clockwork	0	5	2	1	4	21	2	34
3910 Jewelry and plated ware	0	2	1	0	2	8	1	16
3930 Musical instruments	0	0	0	0	0	2	0	3
3940 Toys and sporting goods	0	30	10	5	20	119	10	198
3950 Artists' materials	42	3	1	1	3	12	2	64
3960 Costume jewelry and notions	0	1	0	0	1	3	0	6
3990 Miscellaneous manufacturing	0	82	29	40	190	326	82	749
4011 Railroads	2	1	0	0	1	2	0	7
4200 Motor freight and warehousing	0	18	6	3	14	69	5	115
4500 Air transportation	5,471	1,096	360	501	2,409	4,329	1,044	15,229
4810 Telephone communications	260	52	18	24	114	205	49	723
4830 Radio and TV broadcasting	0	4	2	1	3	18	1	29
4920 Gas product and distribution	0	36	13	6	26	144	12	239
4950 Sanitary services	547	109	38	50	240	432	104	1,520
5000 Wholesale trade, durables	46	22	8	3	26	86	7	201
5100 Wholesale nondurables	2,590	185	64	44	334	730	92	4,040
5500 Service stations	0	16	6	3	19	64	5	113
7530 Automotive repair shops	0	96	33	19	141	378	39	707
7600 Miscellaneous repair services	1,183	113	38	29	217	448	60	2,089
8060 Hospitals	175	12	4	2	15	49	4	252
Totals	74,820	11,855	4,110	2,754	13,512	46,827	5,737	159,616

Note: This table does not include costs for industry sectors covered separately elsewhere in this analysis.
Source: Office of Regulatory Analysis, OSHA, U.S. Department of Labor.

TABLE VIII-C49.—COMPLIANCE COSTS PER EMPLOYEE AND AS A PERCENTAGE OF REVENUES AND PROFITS BY INDUSTRY

Industry	Annual compliance cost ($thousands)	Number of affected employees	Average annual cost of compliance per employee ($)	Annual revenues ($millions)	Compliance cost as a percent of revenues	Annual pre-tax profits ($millions)	Compliance cost as a percent of profits
2200 Textile mill products	166	411	404	246	0.0675	12	1.3507
2300 Apparel	258	201	1,272	74	0.3477	4	6.4700
2500 Furniture	301	1,232	244	629	0.0478	31	0.9567
2600 Paper products	248	195	1,272	222	0.1118	11	2.1825
2700 Printing and publishing	1,861	1,600	1,163	945	0.1970	58	3.2167
2810 Inorganic chemicals	42	195	217	205	0.0206	15	0.2750
2820 Plastics and synthetics	1,107	870	1,272	1,481	0.0747	70	1.5733
2830 Drugs	64	50	1,272	59	0.1070	2	2.8540
2851 Paints & allied products	6,010	4,724	1,272	6,549	0.0917	287	2.0974
2860 Organic chemicals	2,549	2,533	1,006	6,534	0.0390	384	0.6639
2870 Agricultural chemicals	2,235	2,507	891	4,640	0.0481	197	1.1332
2890 Miscellaneous chemicals	1,303	1,024	1,272	1,156	0.1126	64	2.0489
2900 Petroleum refining	236	807	292	4,316	0.0054	183	0.1284

TABLE VIII-C49.—COMPLIANCE COSTS PER EMPLOYEE AND AS A PERCENTAGE OF REVENUES AND PROFITS BY INDUSTRY—Continued

	Industry	Annual compliance cost ($thousands)	Number of affected employees	Average annual cost of compliance per employee ($)	Annual revenues ($millions)	Compliance cost as a percent of revenues	Annual pre-tax profits ($millions)	Compliance cost as a percent of profits
3000	Rubber & plastic prod.	11,623	11,133	1,044	7,591	0.1531	427	2.7218
3100	Leather products	1,146	902	1,272	435	0.2636	24	4.8870
3211	Flat glass	875	866	1,014	630	0.1070	39	1.7131
3220	Glassware	1,142	2,929	390	1,897	0.0602	114	1.0035
3250	Structural clay products	1,821	2,423	752	1,362	0.1337	75	2.4317
3260	Pottery products	99	174	569	75	0.1328	5	1.8973
3270	Concrete products	123	624	197	471	0.0260	21	0.5797
3280	Stone products	39	200	197	33	0.1192	2	2.0301
3290	Mineral products	519	899	577	751	0.0691	53	0.9873
3313	Alloy products	135	488	276	264	0.0510	10	1.3179
3315	Steel wiredrawing	114	500	226	1,095	0.0104	42	0.2690
3316	Cold-rolled steel	5	37	147	84	0.0057	4	0.1398
3317	Steel pipe and tubes	88	400	221	473	0.0186	11	0.8298
3320	Iron and steel foundries	2,972	10,808	275	6,360	0.0467	286	1.0384
3330	Primary nonferrous metals	480	1,800	267	3,953	0.0121	218	0.2203
3340	Secondary nonferrous mtls.	200	750	266	1,759	0.0113	77	0.2593
3350	Nonferrous rolling, etc.	2,457	3,135	784	4,720	0.0520	207	1.1895
3360	Nonferrous foundries	3,502	10,022	349	5,855	0.0619	240	1.4570
3390	Misc. primary metal	318	285	1,115	246	0.1289	12	2.5799
3410	Metal shipping containers	79	140	561	218	0.0360	14	0.5445
3420	Hand tools & hardware	2,498	2,781	898	2,024	0.1233	154	1.6183
3430	Heating & plumbing equip.	486	1,186	410	722	0.0672	32	1.5382
3440	Fabricated struct. metal	8,496	17,065	498	11,061	0.0768	567	1.4998
3450	Screws, etc.	127	868	147	502	0.0253	24	0.5333
3460	Forgings & stampings	567	612	926	518	0.1094	28	2.0354
3470	Coating and engraving	185	200	926	95	0.1953	7	2.7419
3480	Ordnance	52	265	197	167	0.0311	18	0.2830
3490	Misc. fabr. metal prod.	4,067	9,071	451	6,685	0.0611	368	1.1116
3510	Engines and turbines	1,715	3,036	565	3,469	0.0494	117	1.4646
3520	Farm and garden machinery	54	199	273	183	0.0295	9	0.5912
3530	Construction machinery	2,079	10,453	199	8,725	0.0238	425	0.4886
3540	Metalworking machinery	14,340	16,127	889	8,367	0.1713	554	2.5870
3550	Special machinery	2,199	6,533	337	5,595	0.0392	343	0.6415
3560	General machinery	3,625	11,633	312	8,427	0.0430	474	0.7646
3570	Computer & office equip.	295	1,600	184	1,515	0.0194	66	0.4446
3580	Refrig. & service mach.	4,835	14,180	341	13,809	0.0350	656	0.7372
3590	Miscellaneous machinery	14,302	19,615	729	9,177	0.1558	574	2.4936
3610	Elec. transmission equip.	1,244	6,368	195	3,946	0.0315	202	0.6148
3620	Electrical apparatus	2,417	12,460	194	8,416	0.0287	442	0.5469
3630	Household appliances	1,468	7,586	193	6,852	0.0214	240	0.6120
3640	Lighting and wiring	2,600	13,266	196	8,763	0.0296	570	0.4565
3650	Audio & video equip.	594	3,021	197	2,132	0.0278	173	0.3431
3660	Communications equip.	3,633	17,886	203	15,307	0.0237	497	0.7302
3670	Electronic components	5,531	15,412	359	10,205	0.0541	486	1.1410
3690	Misc. elect. equip.	66	350	190	294	0.0226	15	0.4306
3710	Motor vehicles	4,640	18,032	257	30,234	0.0153	1,323	0.3508
3720	Aircraft	507	2,776	182	2,180	0.0232	139	0.3644
3730	Ship building	5,270	7,907	666	4,179	0.1260	136	3.8799
3743	Railroad equipment	1,050	1,458	720	1,266	0.0829	70	1.5081
3760	Missiles & space vehicles	69	359	193	385	0.0179	19	0.3595
3790	Misc. trans. equip.	23	119	197	100	0.0235	4	0.5704
3812	Detection equipment, etc.	13	67	197	55	0.0238	3	0.4154
3820	Meas. & contr. instr.	43	218	197	126	0.0338	7	0.6291
3840	Medical instruments	68	337	197	216	0.0306	15	0.4543
3860	Photographic equipment	182	669	273	913	0.0199	59	0.3073
3870	Watches & clockwork	34	173	197	152	0.0224	9	0.3956
3910	Jewelry & plated ware	16	79	197	53	0.0293	3	0.4691
3930	Musical instruments	3	16	197	6	0.0487	1	0.5904
3940	Toys and sporting goods	198	1,004	197	607	0.0325	36	0.5537
3950	Artists' materials	64	50	1,272	30	0.2135	1	4.4963
3960	Costume jewelry & notions	6	29	197	11	0.0517	1	0.5835
3990	Misc. manufacturing	749	2,749	273	1,603	0.0467	74	1.0107
4011	Railroads	7	25	284	17	0.0389	2	0.2888
4200	Motor freight & warehsing.	115	588	197	217	0.0530	10	1.1169
4500	Air transportation	15,229	52,147	292	22,530	0.0675	1,070	1.4230
4810	Telephone communications	723	2,474	292	1,961	0.0368	135	0.5359
4830	Radio & TV broadcasting	29	149	197	135	0.0215	1	4.3004
4920	Gas prod. & dist.	239	1,213	197	3,096	0.0077	228	0.1044
4950	Sanitary services	1,520	5,204	292	5,674	0.0267	596	0.2551
5000	Wholesale trade, durables	201	690	292	1,516	0.0132	70	0.2873
5100	Wholesale nondurables	4,040	3,080	1,312	8,953	0.0451	302	1.3389
5500	Service stations	113	536	210	165	0.0685	4	2.6127
7530	Automotive repair shops	707	3,194	221	1,044	0.0677	70	1.0034
7600	Misc repair services	2,089	3,494	598	1,141	0.1830	94	2.2187

TABLE VIII-C49.—COMPLIANCE COSTS PER EMPLOYEE AND AS A PERCENTAGE OF REVENUES AND PROFITS BY INDUSTRY—Continued

Industry	Annual compliance cost ($thousands)	Number of affected employees	Average annual cost of compliance per employee ($)	Annual revenues ($millions)	Compliance cost as a percent of revenues	Annual pre-tax profits ($millions)	Compliance cost as a percent of profits
8060 Hospitals	262	277	945	149	0.1762	7	4.0284
Totals	159,616	365,566	437	290,820	0.0548	14,731	1.0835

Sources: *1989 Annual Survey of Manufacturers*, U.S. Department of Commerce, June 1991; *1987 Census of Industries*, U.S. Department of Commerce, 1990; *Statistical Abstract of the United States, 1991*, U.S. Department of Commerce; *Duns Insight*, Dun & Bradstreet, 1989.

Establishments in each of the affected industries would either need to raise prices or reduce profits (or a combination of these) to compensate for compliance costs. A significant increase in prices can usually be expected to result in a loss of sales; the relationship between these variables is determined by the price elasticity of demand (the ratio of the percent change in quantity demanded associated with a percent change in price). A reduction in profits may enable an individual firm to maintain sales volume, but would be likely to result in lower production or slower growth if applied to an industry as a whole; lower profits reduce the value of the industry's capital and firms operating on the margin may exit the market.

The impact of the revised cadmium standard would probably be a combination of increased prices and reduced profits in the affected industries. To the extent that profits are reduced to mitigate the effects of price increases, smaller potential changes in output and employment can be expected. However, reductions in profits may also affect employment and output indirectly. Lower profits tend to depress the value of capital which reduces the incentive for additional investment in the affected industries.

Although a significant reduction in profits for an industry may cause some contraction as marginal firms exit the market, compliance with the cadmium standard is not expected to be a determining factor for such occurrences. Even under the extreme assumption that compliance costs would be wholly absorbed from profits (preventing any effects from price increases), the maximum effect in any industry would be an average reduction in profits among the affected establishments of less than 7 percent, and the overall reduction among affected establishments would be about 1 percent. Changes of this magnitude would not substantially affect the viability of continuing operations.

Ultimately, compliance with the cadmium standard causes production resources to be shifted from the affected industries and from other sectors of the economy to compliance-related activities. The proportion of resources diverted from the affected industries is determined by the extent to which reductions in profits are taken and the extent to which reductions in output are caused by price increases. The proportion of resources diverted from other sectors of the economy is represented by increases in prices paid for the output of the affected industries. The small relative size of compliance costs in relation to revenues, profits, and other influences in the business environment makes the overall potential impact of the cadmium standard virtually undetectable.

Notes

1. Exhibit 13, "Economic Impact Analysis of the Proposed Revision to the Cadmium Standard," Final Report, JACA Corporation, March 15, 1988.
2. Exhibit 19–50, "Comments of the United States Department of Commerce," U.S. Department of Commerce, May 21, 1990.
3. Exhibit 106, "Post-Hearing Comments of the National Institute for Occupational Safety and Health on the Occupational Safety and Health Administration's Proposed Rule on Occupational Exposure to Cadmium," U.S. Department of Health and Human Services, NIOSH, September 18, 1990.
4. Exhibit 19–9, "Duriron Comments on Proposed Cadmium Exposure Rule," Duriron Company, Inc., April 19, 1990.
5. U.S. Department of Labor, Employment and Training Administration, *Dictionary of Occupational Titles*, Fourth Edition, Revised 1991.
6. Exhibit 15A, "Preliminary Regulatory Impact and Regulatory Flexibility Analysis for the Proposed 5 $\mu g/m^3$ Cadmium Standard," U.S. Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis, January 22, 1990.
7. **Federal Register**, Volume 55, Number 25, "Occupational Exposure to Cadmium; Proposed Rule," U.S. Department of Labor, Occupational Safety and Health Administration, February 6, 1990.
8. Exhibit 19–34, Comments of the Copper & Brass Fabricators Council, Inc., May 11, 1990.
9. Exhibit 19–32, "Comments of ASARCO Incorporated," ASARCO, May 9, 1990.
10. Exhibit 19–44, Comments of Texas Instruments Incorporated, May 11, 1990.
11. Exhibit 105, "Economic Impacts of the Proposed Permissible Exposure Limits for Cadmium," U.S. Department of the Interior, Bureau of Mines, September 18, 1990.
12. Exhibit 42, Testimony of Michael A. Coffman, June 11, 1990.
13. Exhibit 57, "Testimony of the National Institute for Occupational Safety and Health on the Occupational Safety and Health Administration's Proposed Rule on Occupational Exposure to Cadmium, Draft 2," U.S. Department of Health and Human Services, NIOSH, July 6, 1990.
14. "Occupational Exposure to Lead; Final Rule; Statement of Reasons," **Federal Register**, Volume 54, Number 131, pp. 29142 et seq., July 11, 1989.
15. *United Steel Workers of America* v. *Marshall*, 647 F.2d. (D.C. Cir. 1980).
16. Exhibit 19–43, Attachment L, "Feasibility and Cost Study of Engineering Controls for Cadmium Exposure Standard," PACE Incorporated, April 30, 1990.
17. Exhibit 19–43, Attachment I, "Economic and Technological Feasibility of a 5 Microgram per Cubic Meter Workplace Standard for Airborne Cadmium," Putnam, Hayes & Bartlett, Inc., April 30, 1990.
18. Exhibit 144–2, Comments from AIM Products, Incorporated, October 7, 1991.
19. Exhibit 15B, "Preliminary Regulatory Impact and Regulatory Flexibility Analysis for the Proposed 1 $\mu g/m^3$ Cadmium Standard," U.S. Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis, January 22, 1990.
20. Exhibit 19–30, "Comments on OSHA Proposed Cadmium Regulation," Big River Zinc Corporation, May 10, 1990.
21. Exhibit 123, "Comments of Public Citizen Health Research Group and the International Chemical Workers Union on OSHA's Proposed Standard Governing Occupational Exposure to Cadmium," Public Citizen, October 17, 1990.

Construction

Industry overview. The construction industry includes establishments engaged in building construction (residential, commercial, industrial, etc.) and heavy construction (streets, bridges, pipelines, power plants, etc.). The term construction may include new work,

additions, alterations, reconstruction, installations, and repairs. General contractors usually assume responsibility for an entire construction project and often subcontract substantial amounts of work to special trade contractors. Over half of the five million employees in the construction industry work for special trade contractors specializing in plumbing, painting, electrical, carpentry, roofing, or other construction activities.

Production processes. Construction employees are potentially exposed to cadmium when welding, soldering, brazing, cutting, or burning steel and other metals in which cadmium may be present. Most metals, such as steel, only contain trace amounts of cadmium; some specialty alloys may include greater concentrations of cadmium; some objects may be coated with cadmium; and cadmium may be present in furnace dust accumulated on the surface of some equipment.

Activities potentially generating airborne concentrations of cadmium fume or dust occur during several types of construction work. These may include boiler installation and repair, steam fitting, furnace repair, installation of machinery and other equipment, electrical work, structural steel and iron work, dismantling of machinery, and general welding operations. Establishments involved in these activities include plumbing, heating and air conditioning contractors; electrical work contractors; sheet metal contractors; structural steel erection contractors; wrecking and demolition contractors; miscellaneous contractors engaged in the installation or erection of building equipment; and welding contractors.

Employee exposures. Cadmium exposures experienced by construction workers were researched by JACA Corporation. Estimated exposure levels were determined separately for different types of work. Exposures for electricians, plumbers, pipefitters, steamfitters, boilermakers, workers who install or dismantle machinery and heavy equipment, and other repair or maintenance workers employed in the construction industry were represented by the exposure profile for the occupational group of repair and utility workers. [1, p. 3–30 and Table 3–10]. Exposures for construction workers welding, brazing, or soldering during structural steel erection, heavy construction, demolition, and other jobs done by special trade contractors were represented by the exposure profile for the occupational group of welders, brazers, and solderers. [1, p. 3–31 and Table 3–10]. The exposure profiles developed by JACA are presented in Table VIII–C50. These data were derived from OSHA inspection data and from relevant NIOSH Health Hazard Evaluations [1, p. 3–32]. Estimated mean and median exposures for each type of construction work are 3 $\mu g/m^3$ or less.

TABLE VIII–C50.—CADMIUM EXPOSURE DATA FOR CONSTRUCTION WORKERS BASED ON JACA

Job category	Concentration in $\mu g/m^3$		
	Geometric mean	Median	Range
Repair and utility workers [1]	2.0	3.0	0.1–271.0
Welders, brazers, and solderers [2]	0.2	0.1	0.1–163.0

[1] Includes pipefitters, steamfitters, boilermakers, electricians, plumbers, and maintenance and repair employees in the construction industry.
[2] Includes all construction workers welding, cutting, soldering, or brazing, except those included above.
Note: Exposure data reflect 8-hour time-weighted average exposures.
Source: Exhibit 13, JACA, Table 3–10.

The data also indicate that significantly higher exposures may be possible under relatively infrequent circumstances.

An estimated 70,000 employees in the construction industry are potentially exposed to cadmium throughout the year. For most of these workers, exposure to cadmium would occur on one out of ten working days on average.

The proposed rule and preliminary analysis did not elicit many comments from construction employers or employees or their representatives. OSHA believes that the proposed rule was regarded as having little impact in the construction industry. The Advisory Committee on Construction Safety and Health (ACCSH) reviewed the proposed regulation with the accompanying analysis and did not question the characterization of exposures for the construction industry.

Existing and feasible additional controls. Construction workers with potential exposure to cadmium would also have potential exposure to other hazardous substances. Depending on the material worked with, activities with potential cadmium exposure may involve exposure to aluminum, antimony, arsenic, copper, iron oxide, lead, magnesium oxide, manganese, molybdenum, silver, tin oxide, and zinc oxide. Many construction employees may be generally protected from exposure to these substances, and this protection would also be effective for reducing cadmium exposures.

OSHA requested information regarding the need for additional controls for cadmium exposure. Construction employers did not identify any conditions in which controls beyond those currently provided for concomitant exposures would be necessary for cadmium exposure.

In some applications, cadmium exposure may be eliminated through substitution of products without cadmium. At least one firm offers a range of cadmium-free products designed to replace alloys made with cadmium in several applications. [3].

Feasible engineering controls and work practices for reducing cadmium exposure should be implemented when possible. In construction these may include portable hoods, exhaust ventilation, fans, enclosures, and tools and work practices designed for minimizing employee exposures.

Although some construction activities affected by the revised regulation would be amenable to engineering controls, respirators would be an acceptable method of protection in situations where engineering controls are infeasible. Construction activities are often intermittent and of short duration with unpredictable exposures. The activities may not involve a fixed work place and frequently occur in circumstances where engineering controls are not feasible. Respirators capable of providing the necessary protection are currently available and widely used in the construction industry.

Technological feasibility of a 5 $\mu g/m^3$ PEL. The revised cadmium standard with a PEL of 5 $\mu g/m^3$ is technologically feasible for the construction industry. The potential impact would affect a small fraction of the work force; the

cadmium exposures experienced by these workers are intermittent and generally below the PEL. Feasible engineering controls and/or appropriate use of respirators are capable of providing the required protection and currently do so for many of the affected workers in this industry.

The ACCSH reviewed the proposed cadmium regulation and suggested several relatively minor changes to provisions involving exposure monitoring, medical surveillance, and recordkeeping, but did not oppose the proposed PEL or question its feasibility. No comments from the industry in response to the proposed rule raised any concerns about the feasibility of achieving the PEL.

Costs of compliance with a 5 μg/m³ PEL. Potential employee exposures to cadmium in the construction industry generally occur with exposures to other hazardous substances, and employers should already be using feasible engineering controls for these exposures. Employees are often provided with respirators in such situations as an appropriate form of protection when engineering controls need to be supplemented or are infeasible. The revised cadmium standard would not require the implementation of additional engineering controls for these employees. In addition, engineering controls would not be required by the cadmium standard for employees exposed less than thirty days per year.

Respiratory protection should already be provided to many employees with potential cadmium exposure under requirements of existing standards. However, achieving full compliance with the revised cadmium standard with a PEL of 5 μg/m³ may require some additional respirator use.

OSHA estimates that 70,000 employees in the construction industry are potentially exposed to cadmium for an average of one out of ten working days. Most of these employees would be exposed below the PEL or would be adequately protected from cadmium exposure. Additional respirator use may be necessary on an intermittent basis for about 5 percent of the employees with potential exposure. An estimated 3,500 workers would need to be provided with respirators to achieve compliance with the revised standard. At a cost of $100 per employee per year for the intermittent use of respirators, the total annual cost for the construction industry would be $0.35 million.

In addition to adequately controlling cadmium exposures, compliance with the revised cadmium standard would require construction establishments with employees potentially exposed to cadmium to establish exposure monitoring and medical surveillance programs and to provide appropriate hygiene facilities.

Exposure monitoring would probably not be necessary for most construction employees for whom exposures are consistently below the action level. Exposure monitoring would be necessary when higher cadmium exposures can be anticipated, and an estimated 10 percent of the employees potentially exposed (7,000 employees) may work in such circumstances at least once per year. On average, representative exposure monitoring may be conducted semi-annually with each sample representing three employees. At an estimated average cost of $240 per sample for collection and analysis, the total annual cost would be about $1.12 million.

In addition, employers would be required to conduct and maintain a written record of a determination of potential cadmium exposures for each employee. The cost of such a determination may average $25 annually for each employee potentially exposed. The total annual cost would be an estimated $1.75 million.

Requirements to provide medical surveillance depend on the nature of exposures experienced by employees. Exposures in construction are generally intermittent, and medical surveillance may need to be provided for some employees. As provided in the final standard, medical surveillance includes initial, periodic, and termination exams; employees with intermittent exposures may be excluded from medical surveillance, and some previously exposed employees may be included. Medical exams and biological monitoring would be necessary for all employees required to wear respirators. An estimated 7,000 employees (including employees performing tasks, operations, or jobs as specified by the standard) encountering exposures above the action level at some time each year may require medical surveillance. The estimated annual cost per employee would be $340 ($215 per year for annual biological monitoring and $125 per year for biennial medical exams), and the total annual cost for the construction industry would be $2.38 million. Provisions for medical removal are not expected to involve additional compliance costs since exposures for construction employees are relatively low and intermittent.

Additional hygiene facilities may be necessary at some operations with cadmium exposures above the PEL. A mobile trailer with the necessary facilities including a water supply, showers and lockers could be rented for about $100 per day. On average, an estimated 700 employees may need to be provided with such facilities daily. Assuming one trailer would be rented for every five employees exposed above the PEL, then on average 140 such trailers would each be rented for 250 days each year. The total annual cost for the trailers would be $3.5 million. The estimated cost of showering on work time is $900 per full-time equivalent employee annually (based on fifteen minutes per day for 240 days per year at $15 an hour). This cost would apply to an estimated 700 employees daily, and the total annual cost would be $630,000. The total annual cost associated with requirements for hygiene facilities would be $4.13 million.

In addition, employees exposed above the PEL would be required to be provided with protective clothing. The estimated cost per employee would be $104 per year, and the total cost for the industry would be about $73,000 annually. The total annual cost for hygiene facilities and protective clothing for the construction industry would be an estimated $4.203 million.

Provisions in the final cadmium standard for information (including warning signs, labels, and other information-related provisions), training, and recordkeeping may impose additional costs of compliance on construction employers with employees exposed to cadmium. For operations where exposures may exceed the PEL, regulated areas would need to be established. Employers would be required to train employees and to develop written compliance programs. These requirements would apply infrequently and only for work that involves potential cadmium exposure.

These requirements should not involve substantial burdens for construction employers. Regulated areas can be established at construction sites with inexpensive barricade tape; training is required by existing standards, and incremental training required by this standard can be incorporated into current training programs; a written compliance program would describe the use of respirators or other measures used to limit employee exposures. The compliance costs for these provisions may average about $100 for each employee exposed above the PEL at some time during the year; the total annual cost for the industry would be an estimated $700,000.

The annual costs of compliance for the construction industry are

summarized Table VIII-C51. The total estimated annual cost is $10.503 million.

Economic feasibility of a 5 μg/m³ PEL. The final cadmium standard for the construction industry is economically feasible. The total annual costs of compliance would be about $10.5 million and would not threaten the competitive stability or the existence of the construction industry. The value of construction work done by these employees is estimated to be $490 million, or an average of about $70,000 for the 7,000 full-time equivalent employees potentially exposed annually.

TABLE VIII-C51.—ESTIMATED COSTS OF COMPLIANCE WITH THE REVISED CADMIUM STANDARD FOR THE CONSTRUCTION INDUSTRY

Provision	Annualized cost ($thousands)
Exposure Control	0.0
Respirator Use	350.0
Exposure Monitoring	2,870.0
Medical Surveillance	2,380.0
Hygiene Provisions	4,203.0
Recordkeeping and Information	700.0
Total	10,503.0

Note: Costs do not include current expenditures.
Source: Office of Regulatory Analysis, OSHA, U.S. Department of Labor.

The compliance costs represent less than 2.2 percent of the revenues associated with the activities affected by the requirements of the cadmium standard.

Costs incurred by construction employers would probably be passed through to customers, and prices would generally increase for work involving employee exposures to cadmium. Employers should be able to anticipate cost increases and include compliance costs in their price estimates. Compliance with the cadmium standard would not require large capital expenditures. The costs would primarily be incurred on a per-project basis and would vary according to the size of the project.

In response to OSHA's requests for information and comments from the public, no construction employers questioned the economic feasibility of the proposed cadmium standard or OSHA's estimated costs of compliance for the construction industry. The ACCSH recommended modifications to the proposed rule that generally would increase its stringency and cost [4 and 5]. A representative of the Committee testified that the cost of these requirements would be bearable and that the resulting standard would be "one that [construction employers] can implement and comply with" [6, p. VII-15].

Notes

1. Exhibit 13, "Economic Impact Analysis of the Proposed Revision to the Cadmium Standard," Final Report, JACA Corporation, March 15, 1988.

2. Occupational Exposure to Cadmium, Proposed Rule, OSHA, F.R. Vol. 55, No. 25, Tuesday, February 6, 1990.

3. Exhibit 144-2, "Comments of Aim Products, Inc.," Aim Products, Inc., October 7, 1991.

4. Exhibit 14-5, "Modifications to Regulatory Text of Cadmium Proposal Submitted by the Construction Advisory Committee for Development of Separate Cadmium Standard for the Construction Industry," Advisory Committee on Construction Safety and Health, November 20, 1989.

5. Exhibit 14-5, "Testimony in Support of a Construction Specific Standard," Ronald R. Amerson, Advisory Committee on Construction Safety and Health, June 13, 1990.

6. Hearing Transcript, June 13, 1990.

D. Economic Feasibility and Regulatory Flexibility Analysis

Economic Impacts

Based on the evidence in the record, OSHA has determined that compliance with the final cadmium standard is economically feasible in each of the affected industries.

Table VIII-D1 summarizes the economic impacts for the industries affected by this rulemaking. For most industries, the standard affects a limited number of activities and the costs of compliance represent less than 0.1 percent of revenues. The compliance costs are generally expected to result in slight increases in prices for goods and services associated with occupational cadmium exposures.

In some industries price increases needed to recoup compliance costs may decrease sales volume. For these establishments the standard may result in some reduction in profits. OSHA does not expect the standard to significantly affect the viability of continuing operations in any industry or to result in any plant closures. However, to the extent that compliance costs contribute marginally to increased production costs, prospects for economic expansion and employment growth in industries with cadmium exposure may be diminished. Additional details of the economic analysis for each industry can be found in the preceding sections in which the specific industries are analyzed.

Basically, the regulation tends to trade some of the societal benefits of producing and using products containing cadmium for greater protection among exposed employees.

TABLE VIII-D1.—SUMMARY OF ECONOMIC IMPACTS BY INDUSTRY

[Thousands of dollars]

Industry	Number of affected establishments	Total annual costs of compliance	Average annual cost per affected establishment	Total annual revenues	Ratio of compliance costs to revenues	Total annual profits	Ratio of compliance costs to profits
Batteries	6	1,947	324.5	185,000	0.011	7,400	0.263
Zinc/cadmium	5	1,723	344.6	230,000	0.007	NA	NA
Pigments	4	473	118.4	30,000	0.016	1,500	0.316
Formulators	700	7,370	10.5	900,000	0.008	45,000	0.164
Stabilizers	5	935	187.1	92,000	0.010	8,300	0.113
Lead	4	283	70.7	176,000	0.002	NA	NA
Plating	400	797	2.0	200,000	0.004	8,800	0.069
Utilities	4,000	2,388	0.6	140,000,000	0.000	7,000,000	0.000
Iron/steel	120	1,638	13.7	64,000,000	0.000	NA	NA
Subtotal	5,244	17,545	3.3	205,813,000	0.000	7,071,000	0.002
Other general industry	50,000	159,615	3.2	290,820,000	0.001	14,731,000	0.011
Construction	10,000	10,503	1.1	490,000	0.021	NA	NA
Total	65,244	187,663	2.9	497,123,000	0.000	21,802,000	0.009

Note: (1) Costs do not include current expenditures. (2) Where sales or profit data provided to the record for specific companies or industries were used, the information was verified through publicly available sources such as Dun & Bradstreet, DIALOGUE, Dow Jones News Retrieval, and Nexis.
Source: Office of Regulatory Analysis, OSHA, U.S. Department of Labor.

Compliance with the standard ultimately causes production resources to be shifted from the regulated industries and from other sectors of the economy to compliance-related activities. Although the overall effect on the economy will probably be undetectable, a very slight increase in prices may result from the improvement in the protection of the health of employees exposed to cadmium.

Regulatory Flexibility Analysis

In accordance with the Regulatory Flexibility Act of 1980 (Pub. L. 96–353, 94 Stat. 1164 [5 U.S.C. 601]), OSHA has evaluated the potential impact of the revised standard on small establishments. As a result of this review, OSHA has determined that the revised standard would not have a significant adverse impact on a substantial number of small establishments.

Establishments with employees exposed to cadmium may incur compliance costs to protect the health of their employees. The cost of providing adequate protection would depend on the existing exposure levels, the extent of current protective measures, and on the nature of the operation. As demonstrated, above, the estimated compliance costs would be feasible for establishments in each affected industry.

The affected establishments in each industry may include some small establishments. Smaller establishments would have fewer employees and correspondingly lower compliance costs. Since the impacts would generally be proportionally lower for smaller establishments, the revised standard would not create any significant competitive disadvantage based on firm size. Table VIII–D2 shows the estimated average annual costs of compliance for small and large establishments.

The Small Business Administration (SBA) objected to the proposed standard because the proposed PEL "is not warranted by health risks nor is it technically feasible" [1]. The health risks are discussed extensively in other sections of the preamble, and OSHA believes that the potential benefits of the final standard are real and substantial, as supported by the record. The regulatory impact analysis has also shown that the final standard is both technologically and economically feasible.

OSHA has included provisions in the final standard to minimize the burden for small establishments. In response to one of the primary concerns of the SBA, OSHA relaxed requirements for firms with employees with intermittent exposures by changing the trigger mechanism for medical surveillance. OSHA also reviewed other non-engineering requirements to ensure that only those necessary to protect the health of employees would be included in the final standard.

The final standard may impose compliance costs on some small establishments, but the ability of small establishments to compete effectively, remain in business, and retain market share would not be inhibited. Small establishments may find themselves at an advantage in some cases with the flexibility to adapt or specialize in markets involving cadmium products. Whether an industry is dominated by small businesses or by large companies, the final cadmium standard would not impose a greater relative burden on small establishments.

TABLE VIII–D2.—COMPARISON OF IMPACTS ON SMALL AND LARGE ESTABLISHMENTS

	Small	Large	Total
Number of affected establishments	45,580	19,664	65,244
Number of affected employees	73,000	452,000	525,000
Annual compliance cost (in thousands)	$27,410	$160,323	$187,733
Average annual cost per affected establishment	$601	$8,153	$2,877
Average annual cost per affected employee	$375	$355	$358

Note: Small establishments are defined as having fewer than 20 employees.
Source: Office of Regulatory Analysis, OSHA, U.S. Department of Labor.

OSHA recognizes that some establishments may need assistance in complying with safety or health regulations. The OSHA Office of Compliance Assistance and representatives of regional and area OSHA offices are available for answering questions and offering advice to small businesses. In addition, small businesses may take advantage of OSHA's consultation program which conducts a comprehensive assessment of facilities, provides guidance, and makes recommendations. The final cadmium rule also incorporates extended compliance dates for small businesses.

OSHA recognizes the importance of avoiding unnecessary burdens on small (and also larger) establishments and has taken steps to ensure that the revised cadmium standard would not involve such consequences. Small establishments should be able to continue to profitably provide goods and services demanded in the economy without endangering the health of their employees.

Notes

1. United States Small Business Administration, "Comments of the Chief Counsel for Advocacy of the United States Small Business Administration," Mark S. Hayward, Acting Chief Counsel, October 18, 1990.

E. Environmental Impact Assessment

This final rule has been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.), the Guidelines of the Council on Environmental Quality (40 CFR parts 1500–1517), and OSHA's DOL NEPA procedures (29 CFR part 11). As a result of this review, OSHA has determined that the promulgation of this rule would have no significant environmental impact. Any changes that would result from compliance with this rule would tend to reduce emissions of cadmium from the work place.

F. Benefits

Introduction

The health risks associated with exposure to cadmium are discussed at length in other sections of the preamble. Potential health effects include increased risks of lung cancer and of

kidney dysfunction. The excess risks attributable to cumulative exposures were estimated and quantified. The estimated incremental increase in risk corresponding to various levels of exposure was expressed as a dose-response relationship.

In this section the dose-response formula is applied to the existing exposure levels of the exposed employees to determine the excess risk faced by the employees and the total number of fatalities and illnesses that may result from the exposures. In addition, the dose-response formula is applied to the projected exposure levels that would result from full compliance with the final cadmium standard, and the expected reduction in the incidence rates and in the total number of fatalities and illnesses is calculated.

The resulting numbers representing expected benefits from this regulation should be viewed in context. First, the numbers are derived through the complex process of quantitative risk assessment which involves a series of assumptions in evaluating epidemiological evidence and animal studies. Second, additional benefits may not be included in these numbers, such as reduced exposure resulting from restricted access to exposure areas, increased awareness of hazards, improved hygiene practices, and early detection of potential problems. Third, the estimates of lifetime excess risk are based on full-time exposure over 45 years; to the extent that employees are not so exposed, the total excess risk may be spread over a larger population and the actual risk may vary.

Cancer Risk

Table VIII–F1 shows the estimated number of exposed employees in the affected industries and the current average exposure level among the exposed employees. For purposes of estimating benefits, the current average exposure level reflects the estimated mean concentration of cadmium in the air inhaled by the employees. For employees currently wearing respirators exposure levels were adjusted down to one tenth of the ambient concentration.

Quantitative risk assessments (QRAs) for lung cancer were applied to the number of employees and the exposure level in each job category to determine the number of excess cases attributable to current exposures. The calculation was repeated using the projected exposure levels estimated to be achieved under compliance with the final standard; the difference determined the number of cases potentially preventable by the standard.

Based on four risk models developed by OSHA Health Standards, compliance with the reduced exposure limit is expected to prevent from 9 to 27 cancer fatalities each year out of 13 to 40 excess cancer fatalities currently taking place. Within this range, OSHA's Multistage Model predicts 17 to 18 cancers avoided annually out of 25 excess cancer fatalities (see Table VIII–F1).

TABLE VIII–F1.—EXPECTED REDUCTION IN EXCESS CANCER CASES USING THE MULTISTAGE MODEL

Industry	Number of exposed employees	Current average exposure [1] µg/m³	Total excess cases after 45 years	Average annual excess number of cancer cases	Projected average exposure [1] µg/m³	Average annual excess cancer cases prevented
Nickel-cadmium batteries	1,500	20	33	0.74	3.0	0.66
Zinc/cadmium production	1,350	14	21	0.46	3.0	0.38
Cadmium pigments	100	28	3	0.07	3.0	0.06
Dry color formulators	7,000	5	36	0.85	2.0	0.54
Cadmium stabilizers	200	24	5	0.12	3.0	0.11
Lead smelting/refining	400	5	2	0.05	2.0	0.03
Cadmium plating	1,200	2	3	0.06	1.0	0.03
Electric utilities	37,500	1	41	0.91	1.0	0.00
Iron and steel	40,000	2	88	1.95	1.0	1.02
General industry, nec:						
Chemical mixers	26,436	6.0	174	3.87	1.0	3.37
Electroplaters	5,646	3.0	22	0.49	1.0	0.34
Furnace oper.	17,202	1.0	19	0.42	0.6	0.09
Kiln/kettle oper.	2,524	1.0	3	0.06	0.6	0.03
Heat treaters	519	1.0	3	0.06	1.0	0.07
Equip. cleaners	233	2.0	1	0.01	1.0	0.01
Metal machining	64,344	5.0	353	7.85	1.5	5.74
Painters	11,323	0.4	5	0.11	0.3	0.03
Repair/utility	89,098	1.0	98	2.17	0.3	1.58
Welder/solderer	147,239	1.0	161	3.58	0.2	2.99
Construction	70,000	0.5	38	0.85	0.3	0.36
Total	524,816		1,112	24.70		17.40

[1] Estimates of exposures include reductions for respirator use as applicable.
Source: Office of Regulatory Analysis, OSHA, U.S. Department of Labor.

The reductions would apply to risks associated with cumulative exposures over working lifetime, and thus the annual benefits would be phased in over 45 years. Employee turnover in occupations with exposure would result in a greater number of individuals at risk with a lower excess risk for each individual. The total excess risk is assumed to remain unchanged.

Based on the Multistage Model quantitative risk assessment, about 1,112 cases of lung cancer would be attributable to cadmium exposure among the equivalent of 525,000 employees with a working lifetime of exposure at current levels. Compliance with the revised cadmium standard should prevent 783 of these cases.

The estimated annual number of excess and prevented cancer cases associated with each of the QRAs for lung cancer are shown in Table VIII–F2.

Kidney Dysfunction Risk

As discussed in the health effects section of the preamble, exposure to cadmium may result in damage to the kidneys. Levels of urinary proteins can be used as indicators of kidney damage. These levels may vary depending on a variety of temporary and permanent conditions, and will usually increase with age as the capacity of the kidneys naturally deteriorates. In addition to

other causes of kidney damage, most people absorb small amounts of cadmium as part of their diet. Cadmium is collected in the kidneys, and its low excretion rate causes the effects to be largely cumulative.

For purposes of estimating the benefits associated with compliance with this standard, an elevated level of urinary proteins was considered an illness (kidney dysfunction).

TABLE VIII–F2.— ESTIMATED BENEFITS BASED ON VARIOUS RISK MODELS

Model	Annual cancer cases with a PEL of 5 μg/m³ (prevented/total excess)	Annual kidney cases with a PEL of 5 μg/³ (prevented/total excess)
Poisson	27.3/40.4	
Cox	13.1/17.5	
Multistage	17.4/24.7	
Relative Risk	9.0/13.4	
Ellinder		1.1/1.6
Ellis		273.0/391.6
Jarup 1		77.8/111.2
Jarup 2		46.1/65.9
Mason 1		69.1/98.9

TABLE VIII–F2.— ESTIMATED BENEFITS BASED ON VARIOUS RISK MODELS—Continued

Model	Annual cancer cases with a PEL of 5 μg/m³ (prevented/total excess)	Annual kidney cases with a PEL of 5 μg/³ (prevented/total excess)
Mason 2		112.0/160.8

Source: Office of Regulatory Analysis, OSHA, U.S. Department of Labor.

Persons with kidney dysfunction would be at an increased risk of developing more serious kidney-related problems. The quantitative risk assessment developed by OSHA (explained in detail in the preamble) indicates the average excess risk of kidney dysfunction faced by individuals with a given cumulative level of occupational exposure.

The total excess risk addressed by this standard was calculated by assuming that cumulative exposure levels of employees would be represented by 45 years of exposure at current levels. To the extent that the total amount of exposure may involve a larger number of employees with lower cumulative exposures, individual risks may vary but the aggregate risk should not change significantly.

Table VIII–F3 shows the estimated number of exposed employees in the affected industries and the current average exposure level among the exposed employees. For purposes of estimating benefits, the current average exposure level reflects the estimated mean concentration of cadmium in the air inhaled by the employees. For employees currently wearing respirators exposure levels were adjusted down to one tenth of the ambient concentration.

Quantitative risk assessments (QRAs) for kidney dysfunction were applied to the number of employees and the exposure level in each job category to determine the number of excess cases attributable to current exposures. The calculation was repeated using the projected exposure levels estimated to be achieved under compliance with the final standard; the difference determined the number of cases potentially preventable by the standard.

TABLE VIII–F3.— EXPECTED REDUCTION IN EXCESS KIDNEY DYSFUNCTION CASES USING THE JARUP–1 MODEL

Industry	Number of exposed employees	Current average exposure [1] (μg/m³)	Total excess cases after 45 years	Average annual excess number of cases	Projected average exposure [1] (μg/m³)	Average annual excess cases prevented
Nickel-cadmium batteries	1,500	20	192	4.27	3.0	3.79
Zinc/cadmium production	1,350	14	116	2.57	3.0	2.13
Cadmium pigments	100	28	18	0.40	3.0	0.36
Dry color formulators	7,000	5	189	4.20	2.0	2.75
Cadmium stabilizers	200	24	31	0.69	3.0	0.62
Lead smelting/refining	400	5	11	0.24	2.0	0.16
Cadmium plating	1,200	2	11	0.25	1.0	0.14
Electric utilities	37,500	1	153	3.39	1.0	0.00
Iron and steel	40,000	2	374	8.32	1.0	4.72
General Industry, NEC:						
Chemical mixers	26,436	5.0	875	19.45	1.0	16.26
Electroplaters	6,648	3.0	100	2.22	1.0	1.49
Furnace oper.	17,202	1.0	70	1.56	0.8	0.31
Kiln/kettle oper.	2,524	1.0	10	0.23	0.6	0.09
Heat treaters	519	6.0	17	0.38	1.0	0.32
Equip. cleaners	233	2.0	2	0.05	1.0	0.03
Metal machining	64,344	5.0	1,736	38.59	1.5	27.11
Painters	11,323	0.4	15	0.33	0.3	0.08
Repair/utility	69,096	1.0	363	8.06	0.3	5.66
Welder/solderer	147,239	1.0	599	13.31	0.2	10.69
Construction	70,000	0.5	122	2.71	0.3	1.09
Total	524,816		5,005	111.22		77.79

[1] Estimates of exposures include reductions for respirator use as applicable.
Source: Office of Regulatory Analysis, OSHA, U.S. Department of Labor.

Based on OSHA's best estimate of kidney dysfunction risks (as described in the quantitative risk assessment section), from 68 to 112 cases are expected to be prevented out of a total of 97 to 160 cases. Within this range, OSHA's Jarup-1 Model predicts 78 kidney dysfunctions avoided annually out of 111 kidney dysfunction cases (see Table VIII–F3). The reductions would apply to risks associated with cumulative exposures over working lifetime, and thus the annual benefits would be phased in over 45 years. Employee turnover in occupations with exposure would result in a greater number of individuals at risk with a lower excess risk for each individual. The estimated total excess risk is assumed to remain unchanged.

Based on the Jarup-1 Model quantitative risk assessment, about 5,005 cases of kidney dysfunction would be attributable to cadmium exposure among the equivalent of 525,000 employees with a working lifetime of exposure at current levels. Compliance with the revised cadmium standard should prevent 3,510 of these cases.

The estimated annual number of excess and prevented kidney dysfunction cases associated with each of the QRAs for kidney dysfunction are shown in Table VIII-F2.

IX. Summary and Explanation of the Final Standard (General Industries, Agriculture, and Maritime)

OSHA believes that, based on currently available information in the cadmium rulemaking record, the requirements set forth in this final rule are necessary and appropriate to provide adequate protection to employees exposed to cadmium.

The language of the standard and the order of the various provisions are consistent with other recent OSHA health standards, such as the formaldehyde and benzene standards. OSHA believes that a similar style should be followed from standard to standard to facilitate uniformity of interpretation of similar provisions. Some modifications have been made to this standard in response to the particular nature of cadmium as an occupational health hazard and to experience previously gained with other health standards. Section 6(b)(5) of the Act states that health standards shall also be based on "experience gained under this and other health and safety laws."

Scope and Application: Paragraph (a)

This final cadmium standard applies to all occupational exposure to cadmium and all cadmium compounds, in all forms, including fume and dust. The addition to the final standard of the words "all cadmium compounds" and "all forms" only clarifies and makes explicit the broad scope that was intended and implicit in the proposal. The standard applies to all industries covered by the OSH Act, including shipyards, marine terminals, longshoring, and agriculture, except the construction industry. OSHA is amending Parts 1915, 1917, 1918 and 1928 to apply this standard to these industries. Exposure to cadmium in the construction industry is covered by a separate cadmium standard for that industry, 29 CFR 1926.63. All occupational exposures to cadmium are covered, because the risk from exposure to cadmium is dependent on the extent of exposure and not on the segment of industry where the employee may be employed.

The categorization of workers who are covered by this standard is slightly different from the categorization used in the proposal (55 FR 4052). The explanation of the need for this change is discussed under the section on the Regulatory Impact Analysis.

OSHA estimates that about 524,816 workers are potentially exposed to cadmium. Of these, approximately 70,000 workers are potentially exposed in the construction industry. Of the remaining 455,000 workers, approximately 89,250 are exposed in nine industries where cadmium exposure is more prevalent. These nine are: nickel-cadmium (Ni-Cd) battery manufacturing, zinc/cadmium production, cadmium pigments production, lead smelting/refining, cadmium plating, plastic stabilizer production, dry color formulation, electric utilities, and iron and steel. (Table VIII-A1, Office of Regulatory Analysis, Regulatory Impact Assessment Section).

The remaining 366,000 employees covered by the standard, who constitute about 70% of all employees potentially exposed to cadmium, are in 10 separate occupations common to approximately 98 industries. These occupations involve exposure to cadmium during the handling, heating, or other processing of cadmium or its compounds. The occupations are: Chemical mixers, electroplaters, furnace operators, kiln/kettle operators, heat treaters, equipment cleaners, metal machinists, painters, repair/utility workers, and welders/solderers. The industries in which one or more of these occupations are found include foundries, machinery production, electronic components production, automotive repair, photographic equipment production, aircraft and ship building, paper production, glass and pottery production, and air transportation, among others. (Table VIII-A1, Office of Regulatory Analysis, Regulatory Impact Assessment Section).

The only important issue raised in the rulemaking concerning the scope of the proposed cadmium standard was whether a separate standard should apply to the construction industry. Several commenters favored covering the construction industry in the general industry standard (Exs. 19-8; 19-21; 57). However, a representative of OSHA's Advisory Committee on Construction Safety and Health testified in opposition to extending the general industry standard to construction and in favor of a construction-specific standard that would address the unique conditions in that industry (Tr. 6/13/90, pp. 4-16).

OSHA agrees with the Advisory Committee that such a standard is needed. OSHA is therefore promulgating a separate standard for the construction industry that is adapted to the particular conditions of that industry and assures protection to construction workers that, to the extent feasible, is comparable to the protection afforded workers in general industry by this standard. OSHA does not understand the comments favoring inclusion of the construction industry within the scope of the general industry standard as opposed to this result. The primary concern reflected in those comments is that construction workers be assured prompt and adequate protection from excess exposure to cadmium. OSHA believes that this can be accomplished more effectively by promulgation of a comparably protective, construction-specific standard in conjunction with the promulgation of a general industry standard that excludes the construction industry. Based upon the record evidence in this rulemaking, including pre-hearing comments submitted by the Advisory Committee concerning special working conditions in the construction industry, testimony at the public hearing by a representative of the Committee, and the draft of recommended modifications to the proposed rule submitted by the Committee (Exs. 8-665; 14-5; 53), OSHA has developed a separate and somewhat modified cadmium standard for the construction industry, 29 CFR 1926.63. A full disucssion of the development of that standard can be found in the preamble to the construction standard.

Other issues were raised in the rulemaking that have some relevance to the scope of the standard, but these issues are best addressed elsewhere in this preamble. For example, a dispute about the regulation of cadmium fume and dust is not a dispute about whether both should be regulated in this standard. Rather, the dispute only concerns whether dust and fume should be regulated differently as they were in the pre-existing OSHA PELs. (For a complete discussion of this issue, see Section IX—Summary and Explanation under (g), below, and Section V—Health Effects.) Similarly, a discussion of the carcinogenicity and toxicity of cadmium pigments is provided under Section V—Health Effects and Section VI—Quantitative Risk Assessment.

Definitions: Paragraph (b)

Action level. The final standard retains the same definition of "action level" (AL) incorporated in the proposal for the permissible exposure limit (PEL) of 5 $\mu g/m^3$. The action level is defined as an airborne concentration of cadmium of 2.5 $\mu g/m^3$, calculated as an 8-hour, time-weighted average (TWA).

The action level provides the airborne exposure of cadmium at or above which medical surveillance, air monitoring, and the provision of a respirator to any employee who requests one are required. Other requirements of the standard are not triggered until exposures exceed the PEL. Where exposures are determined to be below the action level, no compliance activities are required of the employer, except those required by paragraphs (d)(4), (m)(3), and (m)(4) of this standard.

In this and other standards the action level has been set at one-half of the PEL (e.g., Arsenic Final Standard, 29 CFR 1910.1018; Benzene Final Standard, 29 CFR 1910.1028). The action level provides a mechanism to tailor certain requirements of the standard to a minimum level of employee exposure to cadmium by triggering preventive action by the employer for employees who face exposure at or above that level. The use of the action level to trigger various provisions of the cadmium standard is consistent with other final OSHA health standards (e.g., Asbestos, 51 FR 22612, June 20, 1986; Benzene, 52 FR 34460, September 11, 1987; Formaldehyde, 52 FR 4668, December 4, 1987; Ethylene Oxide decision (796 F.2d 1479 (D.C. Cir., 1986) and, *Public Citizen Health Research Group* v. *Tyson*, 796 F.2d 1479 (D.C. Cir., 1986), and Acrylonitrile, 43 FR 45809, October 3, 1978).

This substantive consistency provides administrative consistency and continuity to employers in developing and implementing compliance strategies for this and other applicable OSHA health standards at individual worksites. In addition, use of an action level has been found to encourage employers, where feasible, to lower exposure levels to below the action level to avoid the added costs of required compliance with provisions triggered by the action level.

As exposures are lowered, the risk of illness among workers also decreases. Cadmium accumulates in the body over time. Obviously, cadmium accumulates more slowly at lower exposure levels. (See section VI, Quantitative Risk Assessment.) When exposure measurements are below the action level, the employer can be reasonably confident that an employee will not be overexposed. Because of the somewhat variable nature of employee exposures to airborne concentrations of cadmium, maintaining exposures below the action level provides considerable assurance to the employer that employees will not be overly exposed to cadmium; i.e. over the permissible exposure limit (PEL). (For a more detailed discussion of the concept of an action level, see, for example, the Acrylonitrile preamble (43 FR 45809, October 3, 1978), and the Ethylene Oxide preamble (48 FR 17284, April 21, 1983 (Ex. No. 159–49A)).)

The action level serves other functions, for example, it defines the coverage of medical surveillance. For employees exposed to cadmium at or above the action level on 30 or more days per year (twelve consecutive months), employers are required to provide a medical surveillance program. In addition, the employer is also required to provide medical surveillance to all employees who prior to the effective date of this section might previously have been exposed to cadmium at or above the action level by the same employer for an aggregated total of more than 60 months.

As discussed under (l) in this Summary and Explanation, the medical surveillance program triggered by the action level is targeted to the organ system most sensitive to non-carcinogenic cadmium toxicity, the kidney. The medical surveillance program will facilitate the identification and reduction of kidney dysfunction and is expected to result in an overall reduction of cadmium exposure and of all cadmium-related illnesses.

According to OSHA's risk assessment, which does not take into account further reductions in risk attributable to the ancilliary provisions of this standard, there appears to be continuing significant cancer risk at the PEL. Under the recent asbestos decision (*Building and Construction Trades Department, AFL–CIO* vs. *Brock*, 838 F.2d 1258, D.C. Cir. 1988), where such continuing significant risk appears to exists, OSHA should use its legal authority to impose additional requirements on employers to further reduce risk when those requirements will result in a greater-than-*de-minimis* incremental benefit to workers' health. OSHA concludes that the action level will result in a very real and necessary further reduction in risk over that provided by the PEL alone. The action level provides added employee protection while increasing the cost-effectiveness and performance-orientation of the standard.

The main issue raised in the rulemaking regarding the action level was whether OSHA should set it at the conventional level of one-half the PEL. OSHA had considered setting the action level still lower in the proposal (55 FR 4104–05) to expand coverage of workers for whom medical surveillance would be required. The Agency decided to set the PEL at 5 $\mu g/m^3$, the higher of the two proposed alternatives and to set the action level at half the PEL, being 2.5 $\mu g/m^3$.

One commenter, representing Duke Power Company, opposed setting the action level at less than half the PEL because it would require medical surveillance for a significant number of workers who do not need it (Ex. 19–18). OSHA agrees that setting the action level at less than half the PEL primarily to identify more workers who had been excessively exposed in the past would be an overly broad mechanism for accomplishing a relatively narrow, if important, purpose. Instead, as discussed below, OSHA relies in this final standard on a specific provision requiring the employer to also provide medical surveillance to certain employees who prior to this standard were exposed to cadmium. This provision triggers medical surveillance independently of the current action level. Thus, in addition to having to provide medical surveillance to certain employees who are currently exposed, employers also are required to provide medical surveillance to employees who were or might have been previously exposed at or above the action level by the current employer for a specified period of time, regardless of whether they are currently exposed at or above the action level.

OSHA received numerous comments on the need to protect veteran employees. While some commenters were of the opinion that veteran employees would not need coverage because good medical evaluations will identify older workers at risk (e.g., Ex. 19–31), others were of the opinion that specific coverage was necessary (Exs. 19–23; 123). OSHA decided to set the action level at half the PEL, as proposed, and to establish a separate provision to address the issue of veteran employees.

Employee exposure is defined as the exposure to airborne cadmium that would occur if the employee were not using respiratory protective equipment. This definition is intended to apply to all variations of the term "employee exposure" that have essentially the same meaning, such as "exposed employee" and "exposure." The definition is consistent with OSHA's previous use of the term in other standards (Asbestos, 29 CFR 1910.1001; Benzene, 29 CFR 1910.1028, Ethylene Oxide, 29 CFR 1910.1047). Employee exposure or "exposed" means the level of cadmium that an employee is subjected to in the course of employment.

Final medical determination is the physician's written medical opinion of the employee's health status. Under

paragraphs (1)(3)–(1)(12), the written medical opinion of the examining physician is the "final medical determination." Where either multiple physician review or the alternative physician determination mechanism has been invoked under paragraphs (1)(13) or (1)(14), respectively, the final medical determination is the final, written medical finding, determination or recommendation that emerges from that process.

The terms *"Assistant Secretary"*, *"authorized person"*, *"Director"*, *"high-efficiency particulate absolute [HEPA] air filter"*, and *"regulated area"* are defined in this final standard essentially as proposed. These definitions are based on OSHA's previous experience and are consistent with OSHA's use of these terms in other health standards. These definitions generally have not been commented upon.

Permissible Exposure Limit (PEL): Paragraph (c)

Employers are required to assure that no employee is exposed to an airborne concentration of cadmium in excess of the permissible exposure limit (PEL) of 5 micrograms of cadmium per cubic meter of air ($\mu g/m^3$).

In its proposed rule, OSHA proposed two kinds of PELs, an 8-hour, time-weighted-average permissible exposure limit (TWA PEL) and an excursion limit (EL), a limitation on short-term exposures averaged over a 15-minute period (55 FR 4105–05). For the TWA PEL, OSHA proposed two limits: 1 and 5 $\mu g/m^3$. On the one hand, OSHA proposed a PEL of 1 $\mu g/m^3$ to substantially lower risk of death from cancer (55 FR 4076, Table VI–C and 4080, Table VI–G). On the other hand, OSHA proposed a PEL of 5 $\mu g/m^3$ due to serious concerns about the technological feasibility of the lower PEL (55 FR 4053). OSHA proposed an EL on the basis of good industrial hygiene practices (55 FR 4105) (Ex. 8–664).

OSHA's risk assessment indicates that significant risks of cancer and kidney damage exist at the prior PELs (100 $\mu g/m^3$ for fume and 200 $\mu g/m^3$ for dust) for cadmium. There is a consensus among participants in the rulemaking that these PELs are much too high to protect the health of exposed employees. The Cadmium Council, a trade association whose members are producers and commercial consumers of cadmium or of other metals from ores containing cadmium, indicated that there is some broad agreement among its constituents that, leaving feasibility considerations aside, the PEL should be set no higher than 20 $\mu g/m^3$ (Ex. 19–43). The disagreement arises over whether the health science data requires that the PEL be set below 20 $\mu g/m^3$ and, if so, how far below. Most of the public health officials, unions, scientists and physicians who participated in the rulemaking conclude that the PEL should be set between 1 $\mu g/m^3$ and 5 $\mu g/m^3$ (Ex. 19–8, 123; Tr. 6/7/90, pp. 72–200; Ex. 57; Trs. 7/17/90, pp. 51–217; 6/6/90, pp. 69–119; 7/17/90, pp. 258–277; Ex. L–140–50). Some industry representatives and experts who testified and commented for industry generally believe the health evidence requires that the PEL be set at 20 $\mu g/m^3$ (Exs. 19–43, 77, 119), though other industry sources support a PEL of 10 $\mu g/m^3$ or lower (Exs. 19–13, 19–24, 19–36, 19–31). Thus, disagreement in the rulemaking about the level at which the PEL should be set to adequately protect workers is focused primarily on the range between 1 $\mu g/m^3$ and 20 $\mu g/m^3$, although some commenters recommended establishing a higher PEL (Ex. 105), especially for pigment workers (Ex. 19–17, 19–40). Setting aside the issue of pigment workers who are covered by this standard, (See Health Effects Section), OSHA, therefore, focused primarily on levels between 1 $\mu g/m^3$ and 20 $\mu g/m^3$ in establishing the PEL (Ex. 19–43).

Establishing a PEL anywhere within that range would greatly reduce the excess risks of cancer and kidney damage from the current PELs. The lower the level selected, the greater the reduction in risk. However, even at the low end of this range of PELs, some risks above one in one thousand would remain if OSHA did nothing other than impose a new PEL. As a result, under the asbestos decision (*Building and Construction Trades Department, AFL–CIO* v. *Brock*, 838 F.2d 1258 (D.C.Cir, 1988)) and the Ethylene Oxide decision (*Public Citizen Health Research Group* v. *Tyson*, 796 F.2d 1479 (D.C.Cir, 1986), OSHA is under a legal obligation to take additional actions to the extent feasible to require employers to further reduce risk. Consequently, OSHA does not rely exclusively on the PEL to eliminate significant risk. The Agency relies, as well, upon other provisions of the final standard, such as the action level (AL), the very strict, multi-layered medical surveillance program, and the medical removal protection provisions, among others, to eliminate significant risk. In fulfilling this obligation, the Agency has discretion to determine which particular, additional actions should be required of employers.

The Agency, however, decided not to include an excursion limit (EL) in the cadmium standard for two reasons. First, unlike OSHA's benzene rulemaking (52 FR 34460, 34532, Sept. 11, 1987), no evidence was submitted to the record to persuade the Agency that an EL was needed to protect employees from short term excursions as low as the proposed EL. Moreover, although in theory imposing an EL might further lower the daily dose of cadmium to which the employee is exposed, there is little or no record evidence supporting this supposition. Under the standard, employers already are likely to seek to control exposures to levels below the PEL which also will minimize the occurrence of high exposure excursions.

Second, in some plants, employees appear to be exposed to cadmium only intermittently and for short periods but not infrequently at levels exceeding the proposed EL. For these users, compliance with an EL might be infeasible (Ex. 19–24) or might require the expenditure of considerable resources without providing much additional protection to workers (Tr. 6/12/90, pp. 21–22; Ex. 19–5). These resources could more effectively be allocated to other forms of worker protection.

Without better justification for an EL in general, OSHA does not feel free to impose an EL. OSHA understands that, notwithstanding the absence of evidence that cadmium-induced diseases are dose-rate dependent and notwithstanding the likelihood that, even without an EL, employers will seek to control excursions, the opinion of the Court of Appeals for the D.C. Circuit in Ethylene Oxide (EtO) might still be read as requiring OSHA to impose an EL, when feasible, to reduce remaining significant risk (EtO decision (*Public Citizen Health Research Group* v. *Tyson*, 796 F.2d 1479 (D.C.Cir, 1986). However, OSHA does not believe the court in the EtO case intended to legally compel the Agency to select a particular method among the number of ancillary provisions available to reduce remaining significant risk. On the contrary, OSHA understands that decision as leaving the Agency the choice of which methods to adopt to achieve its legal obligation to reduce remaining significant risk. Thus, while the court did say that "[i]f in fact a STEL [or an EL] would further reduce a significant health risk and is feasible to implement, then the OSH Act *compels* the agency to adopt it * * *." (emphasis in the original), it then parenthetically added, "barring alternative avenues to the same result." 796 F.2d at 1505. In the cadmium standard, OSHA has chosen to follow "alternative avenues to the same result."

Regarding the disagreement in the rulemaking about the level at which the PEL should be set to adequately protect

workers, OSHA has decided to set the PEL at 5 $\mu g/m^3$. Excluding partial bans on cadmium in Sweden and Germany, this is the lowest PEL in the industrialized world. There are two main reasons for this decision. First, the health science data in the record considered as a whole indicate that to eliminate significant risk the PEL should be set no higher than 5 $\mu g/m^3$ (Ex. L-140-50) (See sections on Health Effects and the QRA). At a PEL of 5 $\mu g/m^3$, OSHA is assured that the Agency is not regulating an insignificant excess risk of cancer or kidney damage. Estimates of risks for both kidney damage and lung cancer at a PEL of 5 $\mu g/m^3$ generally are similar and complementary. On the other hand, along with the ancillary provisions of the standard, a PEL of 5 $\mu g/m^3$ appears to reasonably protect cadmium exposed workers from a significant risk of material impairment of health.

Second, a PEL of 5 $\mu g/m^3$ appears to be at or very near the limits of technological feasibility for many workers in industries where there is no separate engineering control air limit (SECAL). Setting the PEL lower would require many more of these workers to wear respirators full time. For example, based on estimates in the proposal, if the PEL were set at the lower of the two proposed alternatives, 1 $\mu g/m^3$, approximately 37% of these exposed employees would be expected to have to wear respirators (55 FR 4097-98, Tables VIII-C and VIII-D). As OSHA indicated in the proposal, such heavy reliance upon respirators would raise extremely serious questions about the technological feasibility of achieving the PEL by engineering and work practice controls. By contrast, at a PEL of 5 $\mu g/m^3$, only approximately 1% of these employees would have to wear respirators (55 FR 4097-98, Tables VIII-E and VIII-F). Although estimates of respirator usage required at a PEL of 5 $\mu g/m^3$ are higher in the final standard (RIA, Table VIII-C46) than in the proposal, OSHA continues to expect that the number of employees required to wear respirators at a PEL of 1 $\mu g/m^3$ would be much higher than at 5 $\mu g/m^3$.

Regarding the feasibility issue, OSHA considered the main arguments made by rulemaking participants in opposition to the proposed PEL of 5. The Cadmium Council and some of its members opposed a PEL of 5 $\mu g/m^3$ (and 1 $\mu g/m^3$) primarily on grounds of infeasibility (Big River Zinc, Ex. 19-30; Cadmium Council, Ex. 19-43; Synpro, Ex. 19-46/Appendix I). The Council argued that a PEL of 5 $\mu g/m^3$ could not be achieved by engineering and work practice controls in each of the primary cadmium producing industry segments represented by the Council.

Consequently, several commenters argued that OSHA should adopt a two-tiered approach to controlling worker exposure to airborne cadmium (Ex. L-140-28). The first tier would be a PEL, set at the level required by the health science data to protect workers' health. The PEL, in the case of industries where compliance by means of engineering and work practice controls was infeasible, could be achieved by any allowable (e.g., not worker rotation) combination of work practice and engineering controls and respirators. The second tier would be set above the PEL at the lowest feasible level that could be achieved by engineering and work practice controls.

OSHA, with some qualifications, agrees with industry's arguments in this regard and has responded by establishing separate engineering control air limits (SECALs) at the lowest feasible levels above the PEL for specified processes in particular industries. Employers in a particular industry covered by the SECAL will be obligated to achieve the SECAL by engineering and work practice controls to the extent feasible and to protect employees from exposures above the PEL by any mix of compliance methods, including engineering and work practice controls and respirators.

The establishment of a SECAL in this cadmium standard is similar to provisions in the asbestos standard [29 CFR 1910.1001 (f)(1)(ii); 1926.58 (g)(1)(ii)], requiring the employer to use engineering and work practice controls to attain the lowest achievable levels in specified processes and to supplement those controls with respirator use. In the asbestos standard, OSHA identified certain processes as ones in which it is not presumptively possible to attain the PEL through engineering and work practice controls (*Building and Construction Trades Department, AFL-CIO* v. *Brock;* 647 F.2d 1272 (D.C. Cir, 04/24/87). For these processes, OSHA set a higher PEL until such time as the lower PEL could be attained [29 CFR 1910.1001 (f)(1)(iii)] (See discussion under Section VIII—Regulatory Impact Analysis.)

The Cadmium Council and its experts and witnesses also opposed a PEL of 5 $\mu g/m3$ (and 1 $\mu g/m3$) on health grounds. They claimed that a PEL so low was not necessary to adequately protect workers. As discussed above in this preamble, OSHA rejects this argument.

A small number of health experts and others opposed a PEL of 5 as being too high to adequately protect workers from excess cadmium exposure (Public Citizen, Ex. 19-33; Massachusetts Organization of State Engineers and Scientists, Ex. 19-21). However, the Agency after careful analysis of the evidence in the record concluded that a PEL of 5 $\mu g/m^3$ is at or very near the limits of feasibility. Furthermore, the Agency concluded that a PEL of 5 $\mu g/m^3$, in conjunction with all the ancillary provisions of the standard, is sufficiently protective and that setting the PEL any lower would create additional health and safety problems. A more complete analysis of the feasibility issue can be found in the final Regulatory Impact Analysis section in this preamble.

Finally, in comments to the record (Duke Power, Ex. 19-18), OSHA was asked to clarify the allowable exposure where an employee is exposed to cadmium for more than 8 hours in any work day. The 8-hour time weighted average (TWA) for that day has to be reduced accordingly so that the employee is not exposed to greater amounts of cadmium by working more hours than he/she would have been by working eight hours. The reduction is made according to the following formula:

Maximum permissible limit (in $\mu g/m^3$) = 40 ÷ hours worked in the day.

Consequently, if the employee were to work 10 hours, the adjusted allowable exposure for this employee under the formula, 40 ÷ 10, would be reduced to 4 $\mu g/m^3$. Though the employee may be exposed during part of the day to exposures above 5 $\mu g/m^3$, the PEL cannot be raised. No other formula is required for that adjustment. OSHA provides this explanation partly in response to a request from Duke Power Company (Ex. 19-18).

Exposure Monitoring: Paragraph (d)

This final standard imposes monitoring requirements pursuant to section 6(b)(7) of the OSH Act (29 U.S.C. 655), which mandates that any standard promulgated under section 6(b) shall, where appropriate, "provide for monitoring or measuring of employee exposure at such locations and intervals, and in such manner as may be necessary for the protection of employees." To this end, as discussed below, OSHA has made several significant changes to the monitoring requirements included in the proposed cadmium rule.

The purposes served by requiring air sampling for employee exposures to cadmium include: Determination of the extent of exposure at the worksite;

prevention of employee overexposure; identification of the sources of exposure to cadmium; collection of exposure data so that the employer can select the proper control methods to be used; and evaluation of the effectiveness of selected controls. Monitoring further enables employers to notify employees of their exposure levels, as required by section 8(c)(3) of the Act.

Periodic monitoring provides the employer with assurance that employees are not experiencing higher exposures that may require the use of additional controls. In addition, periodic monitoring reminds employees and employers of the continued need to protect against the hazards associated with exposure to cadmium.

The collection of exposure monitoring data also enables an examining physician to be informed of the existence and extent of potential sources of occupational diseases.

The results of initial and periodic monitoring determine whether subsequent monitoring is necessary. Exposure monitoring is important not only to determine the level of cadmium to which employees are exposed and the frequency at which employees should be monitored, but also to determine whether other protective provisions of the standard need to be implemented. The employer's obligation to provide medical surveillance, for example, is triggered by monitoring results showing that an employee is exposed at or above the action level on 30 or more days per year (or 12 consecutive months). Other provisions of the standard typically are triggered by employee exposure levels above the PEL.

The exposure monitoring provisions in paragraph (d)(1) of this standard require the employer to determine the exposure of each employee exposed to cadmium. Samples must be taken within the employee's breathing zone (i.e., personal samples) and must reflect the employee's exposure, without regard to the use of respirators, to airborne concentrations of cadmium over an eight-hour period. A full description of "Breathing zone" is provided in the OSHA Instruction CPL 2-2.20B, CH-1, Nov. 13, 1990, Directory of Technical Support. Basically, it encompasses a sampling area as close as practical to the nose and mouth of the employee.

In certain circumstances, sampling each employee's exposure to cadmium may be required for initial monitoring. However, in many cases, the employer under paragraph (d)(1)(iii) may monitor selected employees to determine "representative employee exposures." Representative exposure sampling is permitted when there are a number of employees performing essentially the same job, with cadmium exposure of similar duration and level, under essentially the same conditions. In authorizing representative personal sampling for employees engaged in similar work, the standard requires that the member(s) of the exposed group reasonably expected to have the highest exposure shall be the one(s) monitored. This result is then attributed to the remaining employees of the group. At the very least in representative sampling, full-shift sampling must be conducted for each job function in each job classification, in each work area, and for each shift. At least one sample of the entire shift or consecutive representative samples over the length of the shift must be taken.

Although one commenter expressed opposition to the proposed requirement that sampling be conducted on each work shift (Tr. 7/18/90; 9-279), other commenters stated that the variation in exposure levels for the same job across shifts can be great (e.g., Tr. 7/17/90, pp. 41-217). Based upon its experience, OSHA agrees that such variation requires that sampling be conducted on each shift.

Initial monitoring of workplace exposures is required under paragraph (d)(2) of this standard for all employers who have a place of employment covered by this standard. The initial monitoring must be conducted as soon as possible and in any event no later than 60 days after the effective date of this standard. However, to eliminate unneeded monitoring, under conditions specified in paragraph (d)(2)(ii) of this standard, historic monitoring may be relied upon by the employer to satisfy the obligation to conduct initial monitoring. Thus, if an employer previously monitored an employee under exposure conditions closely resembling those currently prevailing and that monitoring satisfies all other requirements of this standard and was conducted within 12 months prior to the publication date of this standard, then the results of that monitoring can be used to satisfy the requirements for initial monitoring.

This constitutes a change from the cadmium proposal, where historic monitoring had to be conducted within 180 days of the publication date of this final standard to be useable in place of initial monitoring (55 FR 4121). Several industry commenters criticized the proposed limit of 180 days on the usability of historic monitoring data (Exs. 19-9 and 19-18). OSHA, in seeking to eliminate all unnecessary requirements and attendant costs from the final standard, felt that, so long as the strict conditions of paragraph (d)(2)(ii) were met, employee monitoring results obtained as long as 12 months prior to publication of this standard would be sufficiently reliable to make the requirement for initial monitoring of those employees unnecessary. However, OSHA does not feel comfortable accepting historic monitoring data from any era for these purposes, as some industry representatives have sought (Exs. 19-9 and 19-18). Indeed, the Agency believes that accepting historical data from periods greater than six months prior to the publication date of the standard is already somewhat incongruous since the minimum acceptable frequency for periodic monitoring required by the final standard is semi-annual. Furthermore, NIOSH and others have argued that even semi-annual monitoring is insufficient and have maintained that monitoring cadmium on a quarterly basis is good industrial hygiene practice (Tr. 7/17/90, p. 78; Exs. 8-62, 9-8, 57, 106).

OSHA recognizes these countervailing interests and concerns and seeks through a combination of requirements to achieve a balance that is both protective and efficient. In determining how to most efficiently protect employees, OSHA chooses to accept historic data from up to 12 months before promulgation of the standard, while requiring a minimum of semi-annual monitoring, supplemented by the two additional requirements for more frequent monitoring in paragraphs (d)(3)(i) and (d)(4).

The provision for use of "objective data" in paragraph (d)(2)(iii) of this standard is, except for the deletion of the reference to an EL (excursion limit), the same as in the proposal. The provision is discussed below in this summary and explanation in connection with paragraph (n)(2), where "objective data" is defined and the obligation to keep a record of it specified.

As suggested above, the requirements for monitoring frequency in paragraph (d)(3) of this standard also have been somewhat changed from those proposed. What remains the same are the following two basic rules. First, if the initial or periodic monitoring results (confirmed by another monitoring taken at least seven days later) show that employee exposures are below the action level, then under paragraph (d)(3)(ii) no further monitoring is required. OSHA estimates that most of the workers potentially exposed to cadmium are currently exposed to a geometric mean level below the AL of 2.5 $\mu g/m^3$ (see final RIA, e.g., Tables

VIII–C43 and VIII–C44) and that these workers generally will be exposed below the AL. For these workers, OSHA expects that the employer will be required to comply only with the training provisions under paragraph (m) of the standard. Second, if initial or periodic monitoring results show employee exposures at or above the action level, then under paragraph (d)(3)(i) the employer must repeat monitoring for these individuals at least every six months.

What is different is that, unlike paragraph (d)(3)(i) of the proposal (55 FR 4121), there is no requirement in the final standard that the employer must monitor every three months (quarterly) employees whose monitoring results are above the PEL. The deletion of this specific requirement is partly in response to comments that the proposed monitoring requirements were too inflexible (American Iron and Steel Institute Tr. 7/18/90, p. 279). While opinions vary on the proper periodicity for monitoring, OSHA acknowledges the merit of more flexible monitoring for cadmium-related exposures (Ex. 106). Instead of the requirement for quarterly monitoring, OSHA in paragraph (d)(3)(i) of this final standard imposes a performance requirement on employers, requiring them to monitor with the frequency and pattern needed to assure that the following purposes of exposure monitoring be achieved: the monitoring results should reflect with reasonable accuracy the levels of exposure of employees and should assure the adequacy of respiratory selection and the effectiveness of engineering and work practice controls.

Depending upon exposure conditions, this performance criterion might require monitoring that is more or less frequent than the proposed quarterly monitoring. If, for example, exposure levels and patterns are well known and stable over time, monitoring as often as each quarter could well be redundant, in which case semi-annual monitoring probably would suffice. On the other hand, where exposure conditions change dramatically and more frequently than quarterly, more frequent monitoring probably would be required under paragraphs (d)(3)(i) as well as (d)(4).

Thus, the Agency has increased the flexibility of its monitoring requirements to give employers greater latitude to monitor according to the concrete conditions and industrial hygiene needs of their particular facilities. However, this flexibility is not without bounds. OSHA has supplemented it with the minimum requirement of semi-annual monitoring. Employers must monitor employees whose exposures are, or may be, at or above the action level at least semi-annually (55 FR 4121), assuring that these employees will be monitored at a reasonable interval (AISI, Tr. 7/18/90, p. 252). Requiring periodic monitoring at a stated frequency also facilitates enforcement by providing a clear compliance minimum.

The requirement for semi-annual monitoring at or above the action level was incorporated in the proposed cadmium standard (55 FR 4121) and has been incorporated into some OSHA health standards (Arsenic, 29 CFR 1910.1018; Lead, 26 CFR 1910.1025). The requirement for semi-annual monitoring above the PEL has been incorporated into other health standards (Benzene, 29 CFR 1910.1028). The requirement to monitor semi-annually employees exposed at or above the action level and/or the PEL is similar to the requirement in OSHA's standard for Formaldehyde (29 CFR 1910.1048). OSHA believes the monitoring schedule set forth in this final standard is necessary and sufficient.

In addition, whenever changes occur that may expose additional employees to cadmium at or above the action level or may expose employees already exposed at or above the action level to levels of cadmium above the PEL, additional monitoring is required under paragraph (d)(4). Such changes may occur in the production process, raw materials, equipment, personnel, work practices, or finished products. Whenever the employer has any reason to suspect that any other change might lead to such further exposure, then under paragraph (d)(4) the employer must resume monitoring. There is considerable support in the record for this requirement for additional monitoring (AISI Tr. 7/18/90, p. 280; Exs. 19–8; 19–21). OSHA considers this requirement necessary to protect employees from excessive exposures from changed circumstances.

OSHA recognizes that monitoring can be a time-consuming, expensive endeavor and therefore in paragraph (d)(3)(ii) of this standard allows employers to discontinue monitoring for employees whose sampling results indicate exposures are below the action level. It is hoped that this will provide incentive to employers to control their employees' exposures to cadmium to below the action level, thus maximizing the protection of employees' health.

Since OSHA has eliminated the proposed requirement that employers comply with an EL from this final standard, all of the proposed requirements for monitoring and notification of employees relating to an EL have likewise been eliminated.

The standard in paragraph (d)(5) further requires that employers notify each of their employees individually of the results of monitoring that reflects their exposure. Notification is to be given in writing. In addition, employers must post monitoring results in an appropriate location accessible to all affected employees.

Several employers opposed parts or all of these notification requirements in the cadmium proposal. Duke Power, for example, opposes posting results as a violation of employee privacy and as potentially alarming and instead favors providing notice at crew meetings when questions can be answered (Ex. 19–18). OSHA does not believe an employee has a privacy interest in the air cadmium levels to which he/she is exposed. In addition, OSHA sees no reason or evidence in the record that posting sampling results is likely to alarm employees any more than individual written notification or notice given at crew meetings.

By contrast, McDonnell Douglas generally supports the proposed written notification provision but favors posting over individual written notification because it is more efficient (Ex. 19–22). AISI feels the requirements for individual notification and posting are "duplicative and unnecessarily burdensome" (Tr. 7/18/90, p. 280). The requirement for individual written notification, AISI says, will "dramatically increase cost without a commensurate advantage to the employee" (Tr. 7/18/90, p. 281). AISI suggests that OSHA allow the employer to choose between these two methods of notification (Tr. 7/18/90, p. 280).

In other health standards, OSHA typically has required written notification of employees either individually or by posting (Ethylene Oxide 29 CFR 1910.107; Formaldehyde 29 CFR 1910.1048; or Lead, 29 CFR 1910.1025). The additional requirement to do both was incorporated into the proposal (55 FR 4122). No evidence was submitted to the record that posting of results is costly or inefficient. The issue is whether the notification is redundant (Tr. 7/18/90; p. 252). OSHA added this requirement in the proposal because the Agency believes that the two forms of notification enhance and complement each other to the benefit of the employee. Posting enhances the collective knowledge in the workplace of employee exposures, which in turn enhances each employee's understanding of his/her own exposure. Thus, each notification requirement

performs a different function. Individual, written notice assures that each employee is notified. Posting the results facilitates other employees, their designated representatives, supervisors, and employers as well in becoming aware of exposure levels within the workplace.

The employer is obligated to provide written notice and post results within 15 working days after receipt of the results. Whenever the PEL is exceeded, the written notification must contain a statement that the PEL has been exceeded and a description of the corrective action(s) being taken by the employer to reduce the employee's exposure to or below the PEL. This requirement to inform employees is in accordance with section 8(c)(3) of the Act and is necessary to assure that employees are informed whenever the PEL is being exceeded and to assure employees that the employer is making efforts to furnish them with a safe and healthful work environment.

In order to obtain accurate exposure monitoring results, the employer under paragraph (d)(6) is required to use monitoring and analytical methods that have an accuracy, at a confidence level of 95%, of not less than plus or minus 25% for airborne concentrations of cadmium at all the relevant levels (i.e., levels between the action level (AL), the PEL, and, where relevant, the SECAL). The main reason OSHA is requiring this degree of accuracy for air monitoring results is to ensure that air monitoring results are sufficiently accurate across the relevant range of exposure levels. Accuracy of measurements is critical since monitoring results serve a number of important functions in the cadmium standard. For example, certain central requirements of the standard, like medical surveillance, engineering controls, and respirator use, are triggered by employee exposures exceeding particular levels like the AL or the PEL. In addition, the medical removal provision requires that a removed employee not be placed in a job where exposure levels are at or above the AL.

Although not a requirement of the standard under paragraph (d), OSHA expects that all laboratory analyses of air sampling data will be performed in laboratories with demonstrated proficiency for measuring cadmium in air at these levels.

The accuracy requirements in paragraph (d)(6) are basically the same as the proposal (55 FR 4121) and are similar to the precision and accuracy requirements in other OSHA health standards (e.g., Lead, 29 CFR 1910.1025; Benzene, 29 CFR 1910.1028). By defining the precision and accuracy requirements for samples used to determine the TWA airborne concentration of cadmium in the workplace, OSHA ensures that the method of monitoring and analysis is adequate whether single or multiple samples are taken. While some may argue that such a stringent requirement for accuracy is unwarranted or unobtainable, (Exs. 19–14; 19–18) OSHA is of the opinion that, given the current state-of-knowledge among laboratories in which analyses for heavy metals are routinely performed, it is not unreasonable to require such accuracy. Recent NIOSH Proficiency Analytical Testing (PAT) rounds have included samples containing cadmium as low as 6 μg with a performance limit of ± 0.8 μg. The analytical range for cadmium in the PAT samples is 2 to 20 μg. Inclusion of this requirement will provide incentive for other laboratories to improve their accuracy over time. In addition, with the TWA PEL set at 5 $\mu g/m^3$, the higher of the two PELs included in the proposal (55 FR 4052), and with the deletion of the excursion limit, the comments suggesting that current methods and laboratories are unable to achieve such accuracy are no longer relevant. The OSHA method ID–189, listed in Appendix E, provides analytical precision and accuracy capability for a standard that is five times lower than the final standard. By using this method, and currently available instrumentation, analytical laboratories can perform a sample analysis that meets the required level of both precision and accuracy of paragraph (d)(6).

The employer is also required under paragraph (o) of this standard to allow employees or their designated representatives an opportunity to observe employee exposure monitoring. This provision is required by Section 8(c)(3) of the Act (29 U.S.C. 657(c)(3)).

Several commenters indicated that OSHA had erred in its proposal regarding appropriate sampling devices for cadmium. Mr. G. F. Stone, Manager of Occupational Health and Safety for the Tennessee Valley Authority, submitted that in section VIII (E) of the proposal, the Agency referred to passive dosimeters and charcoal tubes as monitoring devices for cadmium. Mr. Stone correctly indicated that this reference should be deleted because such sampling devices can only be used for vapors (Ex.19–5). It has been deleted.

Regulated Areas: Paragraph (e)

This final standard contains requirements that regulated areas be established whenever and wherever an employee's exposure to airborne concentrations of cadmium is, or can reasonably be expected to be, above the PEL. Access to these areas is to be controlled and limited to authorized persons. In accordance with performance criteria, regulated areas are to be demarcated in any manner that adequately alerts employees of the boundaries of these areas. No detailed specifications are required for demarcating regulated areas.

The requirement to establish regulated areas extends to temporary and to intermittent exposures above the PEL, as well as to more constant ones. Thus, for example, whenever it is reasonably expected that the PEL may be exceeded for an employee performing a maintenance operation, a regulated area shall be established for the area and for the length of time required to perform that operation and for any additional time that air cadmium levels may be expected to continue to exceed the PEL. For this cadmium standard, the existence of a hazard, and not the particular type of operation or work being performed, is the basis for determining the need for protective measures.

Access to the regulated area is restricted to "authorized persons". For purposes of this standard, these are persons who are authorized by the employer to be present in the area, generally because of their job duties, and persons authorized by the OSH Act or OSHA regulations to be in that area.

Areas where employee exposures are over the PEL need to be demarcated to warn employees who are not essential to the performance of tasks within the area to keep out. Demarcation is also necessary to warn employees required to be in the regulated area that respirators must be worn to avoid excessive exposures via inhalation and that good personal hygiene must be practiced to avoid exposures to cadmium via ingestion. Good personal hygiene practices include refraining from smoking, eating, drinking, chewing tobacco or gum, refraining from applying cosmetics in regulated areas, and refraining from carrying the products associated with these activities into regulated areas or storing such products there.

OSHA received specific comments from medical experts that employees should not carry food, tobacco products, gum, or such other products into cadmium contaminated areas since these products rapidly become contaminated themselves (Ex. 29). Consumption of heavily contaminated products contributes to cadmium accumulation in the human body. (ref. in Kjellstrom, Ex. 29). Other hygienic

practices associated with working in regulated areas also are required under paragraph (j) of this standard, which is discussed below.

The purpose of a regulated area is to assure that employers make employees aware of the presence and location of cadmium at levels above the PEL in the workplace. This minimizes the number of employees excessively exposed. The employer makes employees aware of this potential hazard by demarcating the area and posting warning signs. Since under paragraph (m)(1) of this standard the signs must state that only authorized personnel are allowed in the area and that respirators must be worn in the area, the signs and the demarcation of such areas should effectively warn employees not to enter these areas unless they are authorized to do so and only if they are wearing a respirator.

In this way, employees who work in other areas of the workplace will not be unnecessarily exposed to cadmium if they are required by their job to work in a regulated area for part of the workday. Due to the serious nature of the adverse health effects associated with excess exposure to cadmium, no one should be in a regulated area without proper personal protection.

This provision will reduce the overall cadmium exposure of many employees, thereby reducing their risks of contracting cadmium-induced illness. OSHA considers this to be necessary to further reduce the any remaining risk of disease at the PEL where risk is estimated without regard to the additional reductions in risk attributable to this requirement for regulated areas and to the other ancillary requirements.

The establishment of regulated areas is an effective means of limiting excess cadmium exposure to as few employees as possible. This is consistent with good industrial hygiene practice whenever exposure to a toxic substance can cause serious health effects. The requirement provides additional benefits to employers in that, by limiting access to regulated areas to authorized persons, the employer's obligation to implement other provisions of this standard for employees who are exposed above the PEL is limited to as few employees as possible.

Readily observable temporary sign(s) posted at the boundary of the area, which are consistent with the Hazard Communication Standard, will be sufficient to remind employees that respirators and good personal hygiene practices are needed and that unprotected people should not enter the area.

With two exceptions, these requirements for regulated areas are essentially the same as those proposed. One exception relates to the proposed EL. With the deletion of the proposed EL from this final standard, discussed above in the section explaining the PEL, all references to an EL also have been eliminated from the requirements for, and discussion of regulated areas.

The other exception relates to how to measure the exposure level that determines whether a regulated area should be established. The language of the proposal, that a regulated area shall be established "wherever airborne concentrations of cadmium are, or can reasonably be expected to be in excess of the permissible exposure limit * * *", might be considered ambiguous. It might be interpreted to mean that, regardless of employee exposure levels, a regulated area shall be set up wherever area sampling shows concentrations of cadmium to exceed the PEL. That was not OSHA's intention. In fact, OSHA does not prescribe or rely upon area sampling in determining compliance with the PEL. The language of this final standard clarifies OSHA's intention to require the employer to establish a regulated area only where an employee is or can reasonably be expected to be exposed to airborne concentrations of cadmium in excess of the PEL based on breathing zone samples.

Methods of Compliance: Paragraph (f)

With regard to methods of compliance, the final standard follows the proposal in its fundamentals except in three major ways. First, where the employer demonstrates that exposures are only intermittent, a 30-day exclusion is applied to the requirement to implement engineering controls to achieve the PEL. Second, for a small number of industries where it is not feasible to achieve the PEL by engineering and work practice controls, separate engineering (and work practice) control air limits (SECALs) of 15 $\mu g/m^3$ and/or 50 $\mu g/m^3$ are established at the lowest levels feasible above the PEL. (See Table F–I.) And third, OSHA in this final standard has set out in general terms the necessary elements of a compliance program.

Beginning with the fundamentals, paragraph (f)(1)(i) of this standard, like the proposal, requires employers to institute engineering and work practice controls as the primary means to reduce and maintain employee exposures to cadmium to levels at or below the PEL. Engineering controls include the installation of equipment, such as forced air ventilation, or the modification of a process, such as enclosing it, to control employee exposure levels. Work practice controls involve the manner in which a task is performed, such as how the worker positions himself/herself relative to the source of exposure and/or to the engineering controls, to control employee exposure levels.

Under paragraphs (f)(1) (i), (ii), and (iv) the employer is required to implement engineering and work practice controls even if feasible engineering and work practice controls are inadequate to lower exposures to or below the PEL or, where applicable, the SECAL. In such circumstances, the employer must implement engineering and work practice controls to reduce employee exposures to the extent possible and must provide supplemental respiratory protection in accordance with paragraph (g) to comply with the PEL.

Primary reliance on engineering controls and work practices is consistent with good industrial hygiene practice (NIOSH, Tr. 7/17/90, pp. 51–56; Exs. 57; 77; 19–8; 19–21). The Agency also relies on traditional adherence to a hierarchy of controls that prefers engineering and work practice controls over dependence upon respirators. Such reliance also is supported by some employers and company doctors (Exs. 19–31; L–19–57; 118; 19–2).

Engineering controls are preferred by OSHA for a number of reasons. Engineering controls are reliable, provide consistent levels of protection to large numbers of workers, can be monitored continually and inexpensively, allow for predictable performance levels, and can remove toxic substances from the workplace. Once removed, the toxic substances no longer pose a threat to the employee. Moreover, the effectiveness of engineering controls does not depend to any marked degree on human behavior, and the operation of equipment is not as vulnerable to human error as is the use of personal protective equipment.

Engineering controls can be grouped into 3 main categories: (1) Substitution, (2) containment and isolation, and (3) ventilation, both general and localized. Quite often a combination of these controls can be applied to an industrial hygiene problem to achieve satisfactory air quality. However, it may not be necessary or appropriate to apply all these measures to any specific potential hazard.

Substitution can be the appropriate solution to an industrial hygiene problem. One of the best ways to prevent workers from being exposed to a toxic substance is to stop using it entirely. Although substitution is not always possible, one should always consider whether a non-toxic or less

toxic material could be substituted for a more toxic one. OSHA received comments on the availability of cadmium substitutes for several industry segments (Ex. 8–706). Another kind of substitution that may provide effective control of an air contaminant is exchanging one type of process equipment for another, or in some cases, exchanging one process for another. For example, a process change in chemical production from powder to pellets or granules will usually reduce exposures. Similarly, automation of a process can further reduce the potential hazard to an employee.

In addition to substitution, there are two basic ways to effectively control employee exposure levels by separating workers from the source of the hazard. In one, containment (enclosure), the hazard is enclosed by a physical barrier, which contains it at its source, thereby separating the hazard from most workers. In the other, isolation, the hazard is not contained but the workers are isolated from the source of the hazard. Isolation can be accomplished, for example, by placing the employees in a clean room, in a properly ventilated cab, or at some distance from the source of the exposure.

Frequently containment maximizes the effectiveness of other engineering controls such as local exhaust ventilation. For example, where a chemical mixing operation is enclosed in a room, confining the airborne contaminants generated by the operation to a small area, the application of local ventilation to control the contaminant at the source is more effective.

Ventilation, general or local, is the most important engineering control available to the industrial hygienist. (See discussion below on mechanical ventilation.) Its principal application is to maintain airborne concentrations of contaminants at acceptable levels in the workplace. A local exhaust system is used to capture an air contaminant at or near its source and to carry it off before it spreads throughout the workplace. General ventilation, on the other hand, allows the contaminant to spread throughout the workroom but dilutes its concentration by circulating large quantities of air into and out from the workroom. A local exhaust system is generally preferred to ventilation-by-dilution (general ventilation) because it provides a cleaner and healthier work environment. Also, a local exhaust system requires a relatively small volume of air and uses a smaller fan and dust collector.

Work practices, as distinguished from engineering controls, involve the way a task is performed. The Agency has found that good work practices can be a vital aid in achieving compliance with the PEL. Some fundamental and easily implemented work practices are: (1) Following the proper procedures to minimize exposures in operating production and control equipment; (2) not eating, drinking, smoking, chewing tobacco or gum, or applying cosmetics in regulated areas or carrying products associated with these activities into regulated areas; and (3) good housekeeping.

Good housekeeping plays a key role in the control of occupational health hazards. Accumulations of cadmium dust increase the risk that workers' exposures will rise above the PEL or the AL. Dust in the workplace on overhead ledges, equipment, floors, etc., should be removed before some disruption, like traffic or random air currents, re-entrains the dust and makes it airborne again. A regular cleanup schedule using HEPA filtered vacuum cleaners is an effective method of removing cadmium dust from the work area. Similarly, immediate cleanup of any toxic spills is a very important work practice control measure.

Periodic inspection and maintenance of process equipment and control equipment, such as ventilation systems, is another important work practice control. In plants where total containment is used as an engineering control, the failure of the ventilation system for the containment area can result in hazardous exposures in the enclosure. Frequently, equipment which is near failure or in disrepair will not perform normally. Regular inspections can detect abnormal conditions so that timely maintenance can then be performed. If equipment is routinely inspected, maintained, and repaired, or replaced before failure is likely, there is less chance that hazardous exposures will occur.

In addition to the above work practice controls, workers must know the proper way to perform their job tasks to maximize the effectiveness of engineering controls. For example, if a worker inappropriately performs a task away from an exhaust hood, the control measure will be of no use. Failure to properly operate engineering controls may also contaminate the work area. Workers can be alerted to safe operating procedures through fact sheets, discussions at safety meetings, and other educational means.

Good supervision is another important work practice. It provides needed support for assuring that proper work practices are followed by workers. By directing a worker to position the exhaust hood properly or to improve work practices, such as weighing toxic materials or handling contaminated scoops or shovels, a supervisor can do much to minimize unnecessary exposure to air contaminants.

Employees' exposures also can be controlled by scheduling production and/or workers' tasks in ways that minimize employee exposure levels. For example, the employer can schedule operations with the highest exposures at a time when the fewest employees are present. Thus, clean-up operations in which toxic substances are involved might be performed at night or other times when the production staff is not present. Such methods of controlling worker exposures to contaminants are known as administrative controls. OSHA generally approves of the use of administrative controls. However, the Agency prohibits using one form of administrative control, worker rotation, as a method of compliance with this standard. Worker rotation circulates employees into and out of contaminated areas, thereby reducing the exposure to individual employees by increasing the number of employees exposed. Since even low cadmium exposure levels are associated with cancer and kidney damage, OSHA prohibits worker rotation, because it places more employees at risk of material impairment to their health (Ex. 19–57; Tr. 7/18/90 p. 252). For these reasons, OSHA finds comments to the contrary unpersuasive (Ex. L–19–57; Tr. 7/18/90, pp. 252–322).

Respirators are another, important method of compliance. However, to be used effectively, respirators must be individually selected; fitted and periodically refitted; conscientiously and properly worn; regularly maintained; and replaced as necessary. In many workplaces, these preconditions for effective respirator use are difficult to achieve with sufficient consistency to provide adequate protection. The absence of any of these preconditions can reduce or eliminate the protection the respirator provides to the employee.

Because there are so many ways that respirators can be rendered ineffective and so many potential problems associated with their use, OSHA has traditionally relied less on respirators than on engineering and work practice controls in the hierarchy of controls. For example, where work is strenuous, the increased breathing resistance of certain types of respirators may contribute to an employee's health problems and may reduce the acceptability of wearing a respirator to employees. Although

experience in industry shows that most healthy workers do not have physiological problems wearing properly chosen and fitted respirators, common health problems can cause difficulty in breathing while an employee is wearing a respirator.

Employees with respiratory system and cardiac diseases may have difficulties in wearing respirators. Cardiac or cardiorespiratory diseases that may affect respirator use include coronary thrombosis, any type of congestive heart disease, other ischemic heart diseases, and hypertension.

The amount of difficulty associated with respirator use will clearly depend both on the degree of cardiorespiratory inadequacy and on the amount of physical effort required by the work. Some people who may have difficulty wearing a negative pressure respirator, which increases the resistance to inspiration, should be able to manage well with a positive pressure type respirator.

The decision about the fitness of the individual to wear a respirator is a judgment that can best be made by a licensed physician, who must take into account the state of the individual's health as well as the physical requirements of the job (Bond; Tr. 7/18/90, pp. 199–200). Consequently, OSHA requires medical examinations under paragraph (l)(6) of this standard that target the main potential health problems for workers required by paragraph (g) to wear respirators. For any employee required by his/her job to wear a respirator who has not had a medical examination within the preceding 12 months to evaluate the employee's physical fitness to wear a respirator, such a medical examination is required prior to assignment to that job.

Safety problems created by respirators that limit vision and communication must always be considered. In some difficult and dangerous jobs, effective vision or communication is vital. Voice transmission through a respirator can be difficult, annoying, and fatiguing. In addition, movement of the jaw in speaking can cause leakage, thereby reducing the efficiency of the respirator and decreasing the protection afforded the employee. Also skin irritation can result from wearing a respirator in hot, humid conditions. Such irritation can cause considerable distress to workers and can cause workers to refrain from wearing the respirator, thereby rendering it ineffective. For all these reasons, OSHA has concluded once again that reliance upon respirators as the primary method to reduce a workers exposures should be minimized. This decision is consistent with the cadmium proposal and is based upon OSHA's experience and generally accepted principles of industrial hygiene. There is no evidence or data in the record that would justify OSHA changing its long-established position on this matter.

Respirator efficiency ultimately relies on the individual employee's good work practices, and respirator programs place the burden of protection on the employee. By contrast, engineering controls entail relatively high, front-end costs, but have the advantage that they can control toxic substances before employees are exposed to them. In any event engineering controls do not rely for their effectiveness so routinely on the individual employee's good habits. To date, therefore, OSHA is satisfied that respirators do not offer equal or better protection than engineering controls.

Because respirators are less reliable than engineering and work practice controls and may create additional problems, they are not the preferred method of compliance with the PEL. Accordingly, their use as a primary control is restricted to certain circumstances by paragraph (g)(1) of this standard. In those circumstances, where engineering and work practice controls cannot be used to achieve the PEL (e.g., certain maintenance and repair operations, emergencies, wherever an employee is exposed above the PEL in an industry to which a SECAL is applicable, or during periods when equipment is being installed), OSHA recognizes that respirators may be essential to reduce worker exposure, and provision is made in paragraph (g) for their use as primary controls. In other circumstances, where work practices and engineering controls alone cannot reduce exposure levels to the PEL, respirators also may be used for supplemental protection. In these situations, the burden of proof of infeasibility is appropriately placed on the employer.

Respirators also may be used when an employee exposed at or above the action level requests a respirator. In such cases, it is OSHA's intention that the employer comply with all provisions of the standard applicable to required respirator use; e.g. medical examinations under paragraph (l)(6) and other provisions in paragraph (g).

In all these ways, this final standard basically tracks the proposal in its approach to, and requirements for, methods of compliance. However, three significant changes have been made to the proposed standard in this regard.

(1) For a small number of processes in selected industries where it is not feasible to achieve the PEL by engineering and work practice controls alone, separate engineering (and work practice) control air limits (SECALs) of 15 and/or 50 $\mu g/m^3$ have been established as the lowest feasible levels above the PEL by paragraph (f)(1)(ii) of this standard (See paragraph (f)(1)(ii) and Table 1 in the standard and also see Section VIII—Regulatory Impact Assessment, in this preamble for those industries to which a SECAL is applicable). The result is that employers in these industries are not required to achieve the PEL exclusively by engineering and work practice controls but are instead only required to comply with the PEL by any combination of methods of compliance, including respirators, and to comply with the higher SECAL exclusively by means of engineering and work practice controls. Like the PEL for all other industries and occupations, the SECAL, where applicable, must be achieved by engineering and work practice controls, except to the extent that the employer can demonstrate that such controls are not feasible.

(2) A 30 day exclusion for intermittent exposure has been added to the general requirement in paragraphs (f)(1)(i) and (i) of this standard that the PEL and the SECAL must be achieved by engineering and work practice controls. Under the exclusion, the employer's obligation to implement engineering and work practice controls to comply with the PEL or the SECAL is not triggered if an employee is exposed only intermittently so long as the employee is not exposed above the PEL (SECAL) on 30 or more days during a year (12 consecutive months). Thus, if an employee is exposed to cadmium on only 29 days during a year, even if the exposure is above the PEL (SECAL) on all of these days, the employer is not required by this standard to implement engineering and work practice controls to control exposures to the PEL (SECAL). The burden is on the employer to prove the required elements of the exclusion from the obligation to achieve the PEL or, where relevant, the SECAL by engineering and work practice controls.

(3) In paragraph (f)(2)(ii), OSHA has set out in general terms the necessary elements of a compliance program. Similar elements were included in OSHA's health standards for arsenic (29 CFR 1910.1018).

OSHA discusses these changes in order. First, OSHA has decided to adopt a separate engineering (and work practice) control air limit (SECAL)

above and in addition to the PEL for a number of reasons, some quite general and others specific to conditions in the cadmium industries and occupations. The main reason OSHA has adopted this two-tier structure, which was repeatedly urged upon OSHA by the Cadmium Council (Ex. L-140-28), is that it is simultaneously more protective of workers' health and feasible.

Based upon the evidence in the record (Health Effects; QRA), the PEL for cadmium must be set at least as low as 5 $\mu g/m^3$. By implementing the new PEL in conjunction with the ancillary provisions of the standard, OSHA expects that cadmium exposed workers will be protected from significant risks of kidney damage and lung cancer (Ex. L-140-50; See Section VI—Quantitative Risk Assessment). In addition, (See Section VIII—Regulatory Impact Analysis), a PEL of 5 $\mu g/m^3$ is at or very near the limit that can be achieved by engineering and work practice controls for thousands of cadmium exposed employees. Consequently, the health science data requires OSHA to set the PEL at 5 $\mu g/m^3$, and the economic and technological data indicate that level is generally within the limits of feasibility.

However, for a relatively small minority of cadmium exposed workers, concentrated almost exclusively in easily identifiable and distinct industry segments, like the primary cadmium producing industries of cadmium refining and zinc smelting, Ni-Cd battery manufacturing, lead smelting, plastic stabilizer production, plating and cadmium pigment production, a PEL of 5 $\mu g/m^3$ does not appear to be achievable by engineering and work practice controls in a number of processes. (See Table 1 and discussion under Section VIII—Regulatory Impact Assessment.)

Under these circumstances, and focusing exclusively for the moment on policy issues, OSHA is faced with a choice. OSHA can set the PEL high enough that it can be achieved by engineering and work practice controls in most of the operations most of the time (*United Steelworkers of America* v. *Marshall*, 647 F.2d 1139, at 1272 [D.C. Dir. 1980], cert. denied, 453 U.S. 913 [1981]) in all or nearly all of the industries and in all of the occupations. But in that case, the relatively severe feasibility constraints in the primary cadmium producing industries might act as the limiting factor for protecting all cadmium exposed employees, and the vast majority of cadmium exposed workers outside these industries would be less protected than they can and need to be. For most cadmium exposed workers, a PEL of 5 $\mu g/m^3$ is feasible by engineering and work practice controls alone and would provide greater protection. Moreover, even for employees in industries that cannot control air cadmium levels to 5 $\mu g/m^3$, setting the PEL at a level no lower than the lowest level that can be achieved by engineering and work practice controls also would be less protective.

In general, setting the PEL at the lowest level achievable by engineering and work practice controls in cases where the health science data shows significant remaining risk at that level means that workers may not be adequately protected. Employers in those cases would not be required, as they would be if the PEL were set at the lower level indicated by the health science data, to provide additional, needed protection to workers through respirators and compliance with other provisions.

Although, as was stated above, the Agency does not believe that respirators are as effective or as safe as engineering controls in protecting workers, OSHA has no doubt that respirators are eminently better than no protection at all. Furthermore, although OSHA is reluctant to require workers to wear respirators routinely for extended periods of time, where the health science data indicate that additional worker protection is required below the level attainable by engineering and work practice controls, OSHA believes, on balance, that it is important to assure that additional protection be provided, even if this necessitates reliance upon routine use of respirators.

To the extent that OSHA in this standard is divorcing the PEL from the SECAL and is setting the PEL at the lower level indicated by the health science data, OSHA is establishing a protective policy. Some precedent for this may be found in the way OSHA responded to the recent non-ferrous foundry industry lead remand (55 FR 3146, Jan. 30, 1990).

However, the issues in the lead remand case were presented in such a different context that OSHA did not have the opportunity or the need to broadly reconsider the relationship between the health data and the PEL, on the one hand, and the feasibility data and the engineering control limit, on the other. In the lead remand, the PEL had been established more than a decade before. In that context, the only question for OSHA on remand was whether that PEL was feasible in particular remand industries and, if not, what was the lowest feasible PEL industry by industry.

By contrast, in this standard, OSHA is consciously deciding to set the PEL lower than the level achievable by engineering and work practice controls in a number of processes in the primary cadmium producing industries. OSHA is aware that there are arguments for and against this decision, and indeed this is the first time the Agency has decided so clearly to separate the PEL from the SECAL. After extensive consideration of the pros and cons, OSHA has decided that the added protection to cadmium exposed workers resulting from this decision outweighs the attendant disadvantages deriving from the need in certain industries with a relatively small number of exposed employees for greater reliance on respirators to supplement engineering and work practice controls.

OSHA believes this to be good policy, which is supported, and may under certain circumstances even be required, by law. Under section 6(b)(5) of the OSH Act the Agency is legally required to set standards that "to the extent feasible" best protect workers from significant risks of material impairment of health. As stated in the cadmium proposal (55 FR 4094), OSHA does not believe that this obligation can be satisfied by using a lowest-common denominator approach to protecting workers, i.e., by protecting all workers only to the extent that the most severe feasibility constraint on protecting any worker would allow. On the contrary, OSHA believes that if a minority of workers cannot be as effectively protected as the majority, that fact is not an adequate reason to forego protecting the majority to the extent feasible. The courts seem to agree.

In the recent decision involving OSHA's asbestos standard, the U.S. Court of Appeals for the District of Columbia Circuit appears to have held that, where there is continuing significant risk at a PEL of 0.2 fibers per cubic centimeter and a PEL of 0.1 fibers per cubic centimeter is achievable in an industry sector employing 93% of the exposed workers, then, absent some persuasive justification to the contrary, OSHA cannot legally impose the higher PEL on that sector even if the lower PEL could not be achieved in operations in other industry sectors. The court, therefore, remanded the case to OSHA "to address the issue of disaggregating the general industry standard to afford workers the benefits of more stringent standards in areas where they are feasible." *Building and Construction Trades Dept., AFL-CIO* vs. *Brock*, 838 F.2d 1258, 1272-73. OSHA considers its decision in this rulemaking to require

compliance with a SECAL and a PEL in certain industries to be in accordance with the asbestos opinion.

With regard to the second significant change in the proposed cadmium standard, OSHA in paragraph (f)(1)(iii) of this final standard has added an exclusion to the general requirement of paragraphs (f)(1)(i) and (ii) that the PEL and the SECAL must be achieved by engineering and work practice controls. The exclusion is for employees who are only intermittently exposed to cadmium and are exposed above the PEL on fewer than 30 days per year (12 consecutive months). OSHA received comments on the need for such an exclusion (e.g., EEI, Tr. 7/19/90, pp. 5–68).

OSHA is aware that this introduces an added element of complexity to the standard. However, the Agency believes the exclusion is one method of providing needed flexibility, in a standard that applies to multifarious industries and occupations, while protecting workers.

Under the exclusion, the employer's obligation to implement engineering and work practice controls to comply with the PEL or the SECAL is not triggered until an employee is exposed above the PEL on 30 or more working days during a year. Where the exposure is for fewer than 30 working days, the employer may use any mix of controls to achieve the PEL, including respirators. However, OSHA has qualified the exclusion by requiring the employer to demonstrate that the employee is only intermittently exposed. OSHA considered several options when reviewing the request for an exclusion to engineering controls. (See also Ex. L–144–28)

OSHA decided to add an exclusion to the final standard for several reasons. First, under current exposure conditions, the main threat from exposure to cadmium is cumulative. Thus, assuming stable exposure levels, the fewer the days the worker is exposed, the less cadmium will accumulate in the worker's body. At some point, the risk of adverse health effects from so few days of exposure per year is reduced to insignificance. Consequently, some exclusion is justified.

Second, in a number of the cadmium using industries (e.g., plastics manufacturers who use cadmium stabilizers), as distinguished from the cadmium producing industries, exposure to cadmium is typically intermittent and brief (e.g., Exs. 120; 8–716). Under such conditions of exposure, it may not be economically feasible, cost effective, or very beneficial to workers' health for employers to invest the monies needed to install engineering controls to control cadmium to the PEL.

Third, with regard to industries and occupations that are neither primary producers of cadmium nor routine users of cadmium, the 30-day exclusion broadly means that engineering and work practice controls need not be implemented and consequently that in this respect the standard is feasible.

The alternative to incorporating an exclusion in the requirement to implement engineering controls would require employers to implement engineering controls wherever employees are exposed to cadmium above the PEL, even if they are only exposed on one or several days a year. OSHA does not think that the expense for implementing engineering controls in such circumstances, which can be quite high, would be justified. Consequently, incorporating some sort of exclusion seems to make sense in controlling occupational exposure to cadmium.

The question, then, is what number of days should be selected as the maximum, above which engineering and work practice controls must be implemented. There is no simple, scientifically definitive answer to that question. OSHA chose fewer than 30 working days per year in part because the lead standard incorporated a similar exclusion and in part to make this exclusion congruent with the exclusion provided in paragraph (l)(1)(i) regarding medical surveillance. Since lead and cadmium are both heavy metals that accumulate in the body, it seemed appropriate to incorporate similar maxima as triggers. Furthermore, industry representatives indicated that 30 working days per year appeared to reasonably reflect the frequency patterns for intermittent exposures in their industries (Tr. 7/19/92, pp. 10–15). In any event, OSHA is assured that no number of days other than 30 per year would be more reasonable.

In providing this exclusion, OSHA wants to make clear its intention to provide relief exclusively to employers whose employees are exposed to cadmium only intermittently and otherwise are effectively not exposed to cadmium at all. If employees are only exposed to cadmium on fewer than 30 working days, with respirator use required to reduce exposures that are above the PEL, the cumulative exposure allowed under the exclusion is expected to be minimal. On the other hand, if employees are exposed to cadmium above the PEL on fewer than 30 working days, but also are exposed at or below the PEL on many, most, or all other days, then such an exclusion might allow employees to experience much higher cumulative exposures over a 12-month period, well above what would otherwise be considered acceptable exposure levels. That is not OSHA's intention. Consequently, the 30-day exclusion does not apply to employees who have more than nominal exposure to cadmium in addition to the exposure during the fewer than 30 days. Where the employee has such other exposure, regardless of whether the employee is exposed above the PEL on fewer than 30 days a year, the employer is obligated, to the extent feasible, to achieve the PEL or the SECAL, whichever is relevant, by means of engineering and work practice controls. The Agency hopes this 30-working-day exclusion will make the standard more flexible in the great variety of intermittent exposure conditions to which the standard will apply.

Under paragraph (f)(1)(iii), it is the employer's responsibility to demonstrate the existence of all the elements required for the employer to be able to take advantage of the exclusion. Thus, the employer must prove that: (a) the employee is exposed above the PEL on fewer than 30 days per year; and (b) the employee is effectively not otherwise exposed to cadmium. OSHA placed the burden of proof on the employer for several reasons. First, the employer is in the best position to demonstrate the existence of all the elements, because the employer has the best access to needed information about employee exposure levels and, where existing information is inadequate, the employer also is in the best position to develop the necessary information. The employer is best able to gather, develop, correlate and maintain the exposure data needed to assess an employee's exposure to cadmium. The employer, for example, can best determine how often to monitor a particular employee to satisfy the burden of proof for the exclusion. Second, by contrast, since OSHA generally only inspects individual workplaces periodically and relatively briefly, it would be extremely difficult for OSHA to develop or gather the information concerning the intermittency and intensity of employee exposures needed to determine whether the exclusion applies. Third, the employer has an interest in demonstrating the applicability of the exclusion to his/her employee(s). Employers generally believe that engineering controls are more expensive than other methods of compliance and therefore have a perceived economic incentive to assure that engineering controls are not implemented for any employee for whom this standard does not require them.

(3) The third significant change to the proposal is the requirement for specific elements in the written compliance program. As modified, paragraph (f)(2) requires an employer who has employees exposed over the PEL to establish and implement a written compliance plan which describes the methods to be used to reduce employee exposure within his/her workplace to or below the PEL. The 30-day exclusion in paragraphs (f)(1) (i) and (ii) does not apply to the requirement to develop a written compliance plan, because, regardless of the manner in which exposure must be controlled, a plan must be developed to show how it will be achieved. The plan must provide for compliance through engineering and work practice controls, where required by the standard, to the extent feasible. These written plans must be furnished upon request for examination and copying to representatives of the Assistant Secretary, representatives of the Director of NIOSH, and affected employees or their representatives; and must be reviewed and updated, as discussed elsewhere in this preamble.

The purpose of requiring an employer to establish a written compliance program and to annually review and update it is to effectively promote required compliance with the PEL and/or SECAL or, in the alternative, where reducing airborne cadmium levels to the PEL or SECAL is not feasible, to effectively aid the employer in reducing employee air cadmium levels to the lowest feasible levels. OSHA recommends that records of routine maintenance of equipment, required to achieve stability in the control of exposures, be maintained and be accessible for review by OSHA. If circumstances change significantly (e.g. process changes or advancements in engineering controls where it previously was infeasible to achieve the PEL or SECAL by engineering and work practice controls), the employer is required to review and update the compliance program as needed.

OSHA has set out in very general terms the required elements of a compliance plan. The elements are similar to those required under the lead and arsenic standards (29 CFR 1910.1025 (e)(3)(ii); 29 CFR 1910.1018 (g)(2)(ii)). OSHA believes that by requiring certain elements in compliance plans the Agency will direct the employer's attention to these elements and communicate a sense of what a compliance plan entails. OSHA further believes that requiring a detailed implementation schedule will facilitate timely compliance. The more effective the compliance plan, the more likely it is that the employer will achieve compliance within the standard's deadlines.

The required elements of the plan include a description of the relevant aspects of each operation in which cadmium is emitted; a report of the technology considered in meeting the air cadmium limit; a description of the specific methods that will be used to achieve compliance, including the underlying documents justifying the choice of methods; air monitoring data characterizing cadmium emission sources; a detailed implementation schedule, with progress documented by appropriate underlying documents; a work practice program; and a written plan for emergency situations.

OSHA has made another minor change to the proposal by adding paragraph (f)(3), which pertains to mechanical ventilation. The paragraph is basically the same as paragraph (e)(5) in the lead standard (29 CFR 1910.1025) and similar in part to paragraph (e)(4) in the cotton dust standard (29 CFR 1910.1043). Mechanical ventilation is generally the most important engineering control for controlling cadmium exposure. Consequently, the Agency has made it explicit under paragraph (f)(3)(i) that when ventilation is used to control exposure, measurements that demonstrate the effectiveness of the system in controlling exposure, such as capture velocity, duct velocity, or static pressure, should be made to ascertain and maintain the effectiveness of the ventilation equipment. This provision was included to facilitate understanding of good general maintenance practices. It is not expected that this provision will add additional costs to an employer's routine maintenance procedures.

The Agency further specifies under paragraph (f)(3)(ii) that measurements of the system's effectiveness in controlling exposure should be made within a reasonable time period, i.e., within five days, after any changes in change in production, process, or control that might result in a significant increase in employee exposure to cadmium. Under (f)(3)(iii), it is specified that if air from an exhaust ventilation system is to be recirculated into the workplace, the system shall have a high efficiency filter and be monitored to assure effectiveness. In addition, under (f)(3)(iv), OSHA requires that employers develop and implement procedures to minimize employee exposure to cadmium when maintenance of ventilation systems and changing of filters is being conducted.

OSHA believes that paragraph (f) of this standard, which requires the employer to give preference to engineering controls and work practices over the use of respirators, is protective and encourages employers to pursue a cost-effective approach to controlling cadmium exposure.

Respiratory Protection: Paragraph (g)

With regard to respiratory protection, this final standard adopts the proposed provisions with little or no substantive modification. The provisions of this standard are in keeping with requirements for respiratory protection in other OSHA health standards (Lead 29 CFR 1910.1025; Benzene 29 CFR 1910.1028), and with recent developments in the field.

Respirators are necessary as supplementary protection to reduce employee exposure when engineering and work practice controls cannot achieve the necessary reduction to or below the PEL. Respirators may also be necessary at other times: while such controls are being implemented, during emergency situations, during intermittent exposures under the 30-working day exclusion when engineering and work practice controls are not required, wherever an employee is exposed to cadmium above the PEL in an industry to which a SECAL is applicable, and for brief or intermittent exposures that cannot be controlled through engineering and work practice controls. A respirator also must be provided by the employer for all authorized employees in regulated areas.

Finally, OSHA in paragraph (g)(1)(vi), also requires employers to provide a respirator to any employee who is exposed to cadmium at or above the action level who requests one. This provision is the same in the final standard as in the proposal (55 FR 4052, at 4123). It also is similar to a provision in the lead standard (29 CFR 1910.1025 (f)(1)(iii)). The employer under paragraph (g)(2)(ii) is also required to provide a powered air purifying respirator (PAPR) to any employee entitled to be provided a respirator whenever that employee requests a PAPR and the PAPR will provide adequate protection to the employee. This provision clarifies the language in paragraph (g)(2)(ii) of the proposal to make it consonant with paragraph (g)(1)(vi) in the proposal and final standard.

Because of the risk of serious adverse health effects from cadmium exposures, OSHA accepts the need for requiring respirators in the above mentioned

circumstances in order to reduce an employee's cumulative dose of cadmium.

The final standard requires that whenever respirators are required to reduce employee exposures, the employer must provide the type of respirator appropriate to the exposure level at no cost to the employee. Employers must also assure that respirators are used properly when required. The standard contains specific requirements for the use, selection, maintenance, and fitting of respirators, which are derived from OSHA's experience and are consistent with widely accepted principles of industrial hygiene and with other OSHA health standards (Asbestos, 29 CFR 1910.1001; Lead, 29 CFR 1910.1025; Benzene, 29 CFR 1910.1028; Formaldehyde, 29 CFR 1910.1048).

Table 2 lists the type of respirator to be used at each airborne concentration of cadmium in the workplace. While the employer must select the appropriate respirator from the table on the basis of the airborne concentration of cadmium, the employer may always select a respirator providing greater protection, (i.e., a respirator prescribed for higher concentrations of cadmium than the concentration to which the employee is exposed). The standard further requires that the respiratory protection program implemented by the employer conform to that set forth in 29 CFR 1910.134, which contains the basic requirements for proper selection, use, cleaning and maintenance of respirators. Since OSHA's risk assessment indicates that cadmium is highly toxic, OSHA has required all air purifying respirators to be equipped with a HEPA filter, regardless of the exposure level. OSHA believes that HEPA filters provide an extra margin of safety at all levels of exposure. While other non-HEPA filters may perform efficiently at very high concentrations of cadmium in air, the HEPA is the most efficient, e.g., 99.97% removal at higher concentrations. Moreover, only the HEPA filter is efficient at lower PELs, e.g., PEL < 50 $\mu g/m^3$ (Asbestos, 51 FR 22695, June 20, 1986).

OSHA is especially concerned about efficiently filtering small size particles, i.e., the particles for which the HEPA filter is the most effective. Thus, OSHA, in requiring the use of HEPA filters is concerned especially to protect workers exposed to low levels of cadmium in the form of small particles. OSHA believes that the requirement for HEPA filters will provide a needed degree of safety for these workers, that cannot be provided as effectively by other filters. The requirement for HEPA filters is consistent with other OSHA health standards (Lead, 29 CFR 1910.1025; Asbestos, 29 CFR 1910.1001).

The standard also requires employers to permit employees to leave regulated areas to readjust the respirator facepiece for proper fit, to change the filters, or to replace the respirator. It also requires employers to permit employees to leave the regulated area to wash their faces or their respirators to avoid potential skin irritation associated with respirator use. These requirements encourage and facilitate the proper use of respirators by employees through authorizing employees to take specific actions to assure the effective functioning of the respirators and to reduce the probability of certain adverse side effects from wearing respirators. These requirements are consistent with provisions in other health standards (e.g., Inorganic Lead, 29 CFR 1910.1025) and with the proposed cadmium standard (55 FR 4123).

The standard requires fit testing of all respirators to assure at least a minimally acceptable fit. Quantitative fit testing requires the use of moderately sophisticated testing equipment and is more expensive to perform than qualitative fit testing. This may reduce its availability in some worksites. Also, testing services may not be available in all parts of the country to provide quantitative fit testing services for small employers. To tailor the respirator fit testing to the circumstances of the employer's establishment, OSHA permits the employer to choose either quantitative or qualitative fit testing if cadmium exposures are less than 10 times the PEL. Mandatory protocols for whichever type of testing the employer chooses are set forth in Appendix C to this standard.

OSHA is requiring quantitative fit testing of all tight-fitting air-purifying respirators (either positive or negative-pressure) when used at exposures exceeding 10 times the PEL, 50 $\mu g/m^3$, because proper fit is essential to the performance of these respirators. Quantitative fit testing is a procedure whereby the level of penetration of a test agent of known concentration is measured inside the facepiece of the respirator. Quantitative fit testing is generally recognized as the better method for determining how well a respirator fits a particular individual. It provides a quantitative assessment of the extent of the fit (i.e., the fit factor). It allows the employer to test various respirators on the employee until the optimum or best fitting respirator is identified and selected for the employee. Whenever quantitative fit testing is used to assess the fit of a negative pressure respirator, a fit factor of at least 10 times the protection factor for that class of respirators shall be achieved for an acceptable fit. This is a minimum requirement. Whenever quantitative fit testing is used to assess the fit of a positive pressure respirator, the employer shall test a negative pressure respirator made by the same manufacturer, which is the same model and size, to determine whether the facepiece-to-face seal is adequate. The seal is acceptable if the fit factor is at least 10 times the protection factor for the relevant class of negative pressure respirators.

The regulatory language in the proposal, which required that both negative and positive pressure air purifying respirators be fit tested, was not clear on this point. A commenter stated that the proposed requirement for quantitative fit testing for negative pressure air purifying respirators and powered-air-purifying respirators (PAPRs) should be extended to all tight-fitting respirators, including self contained breathing apparatus (SCBAs) and supplied air respirators (L19–53). Language has been added to paragraph (g)(4) to clarify the requirement to fit test tight-fitting supplied-air respirators and SCBAs.

Obtaining a proper respirator fit may require fit testing a variety of different mask sizes from several manufacturers to select the facepiece with the best fit (i.e., least leakage around the faceseal) for each employee. A properly fitted facepiece helps to reduce inhalation leakage to a minimum. If the fit factor is not at least minimally acceptable, the respirator shall not be worn. With ill-fitting respirators, cadmium contaminated workplace air may enter the facepiece through gaps and leaks in the facepiece seal.

Qualitative fit testing does not provide a numeric measure of the tightness of the fit but simply determines whether a respirator "fits" or not. Qualitative fit testing is a technique whereby a person wearing a respirator is tested to see whether a test agent with a detectable odor or taste threshold can be detected inside the respirator. If the odor or taste cannot be detected, the respirator is said to "fit". Qualitative fit testing is more subjective than quantitative testing because it depends on the individual's ability to detect the test agent.

OSHA recognizes that quantitative fit testing may have some advantages over qualitative fit testing. However, for employees exposed to lower levels of cadmium, (10 times the PEL or less)

qualitative testing conducted in accordance with the protocols described in Appendix C can adequately assess the fit of the respirator to assure that each employee is assigned and wears the respirator that provides a proper fit with the least possible leakage. It is important that all employees who wear respirators be medically screened to determine employee fitness for respirator usage. Respirator use may constitute a burden on the employee's cardiopulmonary system. This burden may result in symptoms such as shortness of breath, chest pain, dizziness or fatigue. These symptoms may be exacerbated by pre-existing lung disease such as chronic bronchitis, emphysema, asthma or pneumoconiosis.

Paragraph (l)(6)(i) of this standard requires that limited medical examinations be made available to workers with a job that requires the use of a respirator. This differs from the proposal which required a full medical examination (55 FR 4125). The limited medical examination must be made available prior to the employee's assignment to a job requiring a respirator unless the employee has received a medical examination within the preceding 12 months that satisfies all the requirements of paragraph (l)(6)(i)(A)–(D). The medical examination is to assure that individuals who are incapable of wearing a respirator or who might suffer some adverse health effect from wearing a respirator are not required to wear one. The medical examination is made available to determine whether any health conditions exist that would affect the employee's ability to wear a respirator. If an examining physician determines that an employee will be unable to continue to function normally while wearing a respirator in a job where exposures exceed the PEL, then the employee shall be afforded the opportunity for transfer as set forth in paragraph (l)(11). This is consistent with OSHA's previous health standards (e.g., Asbestos, 29 CFR 1910.1001; paragraph (g)(3)(iv)).

This does not mean that medical removal protection (MRP) under paragraph (l)(11) applies to a new employee who is determined in a pre-employment medical examination for respirator use to be unable to wear a respirator. Nor does it mean that MRP applies to a worker determined to be medically unable to wear a respirator who seeks to transfer to a job for which a respirator is required. The MRP provisions relating to an employee's inability to wear a respirator apply only to a worker who already is functioning in a job where a respirator is required who is then determined to be medically unable to wear a respirator.

OSHA has not exempted occasional users of respirators from the medical evaluation requirement. OSHA believes such users need to be evaluated for their fitness to wear respirators as well. In addition, applying such an exemption might create administrative problems (Docket Number H–049, Respiratory Protection Revision).

The standard requires employers to provide a proper respirator at no cost to any employee with cadmium exposures at or above the action level who requests one. Due to the serious nature of the adverse health effects of cadmium exposure, workers exposed at or above the action level may choose to use respirators. OSHA generally agrees with the commenter who argued that OSHA should have a consistent medical surveillance policy for all respirator users, including voluntary users (Ex. 19–9). As stated, medical surveillance under paragraph (l) is triggered at exposure levels at or above the action level. Similarly, an employee exposed at or above the action level has the right to request a respirator. Therefore, workers who voluntarily request a respirator are likely to already be covered by medical surveillance.

In addition, unless otherwise indicated, all other relevant requirements apply equally to voluntary respirator users. Thus, under paragraph (l)(6), the employer must provide the voluntary user with a limited medical examination to determine the employee's fitness to wear a respirator prior to wearing one. Similarly, the employer must maintain the voluntary users' respirators in good repair and provide an adequate supply of filter elements. If employees entitled to be provided a respirator by the employer were treated differently, their entitlement might be compromised. For all workers covered by this standard who wear a respirator and for workers who are participating in medical surveillance under this standard, an examination for fitness to wear a respirator is effectively part of routine medical surveillance.

For a respirator program to be effective, the employee must be properly trained to wear the respirator, to know why the respirator is needed, and to understand the limitations of the respirator. An understanding of the hazards involved also is necessary to enable employees to take steps for their own protection.

Commenters and witnesses in the rulemaking raised several main points about OSHA's proposed requirements for respiratory protection. On the one hand, a number of commenters criticized these requirements for not being strict enough. NIOSH, for example, presented a very stringent approach to respirator usage (Exs. 57; 106). NIOSH had several recommendations regarding respirator protection for cadmium exposed workers. NIOSH opposed routine, full-time use of respirators and allowing the use of negative pressure respirators and instead recommended that only the most protective positive pressure supplied-air and SCBA respirators be used, since cadmium is an occupational carcinogen (Ex. 57; NIOSH, Tr. 7/17/90, p. 51). OSHA has never followed such a stringent policy on respirator use. If respirators other than the positive pressure respirators NIOSH recommended are permitted, NIOSH recommended that the assigned protection factors given in the NIOSH Respirator Decision Logic be used, in particular that tight fitting PAPRs be given a protection factor of 50 (OSHA proposed 250), and that loose fitting PAPRs be given a protection factor of 25, as OSHA proposed. (Tr. 7/17/90, pp. 57–58, 77, 83, 164–65, 212–14). In view of the disagreement regarding protection factors (see below), OSHA decided not to change its proposed protection factors and to allow further comments on this issue to be placed in the record of the proposed Respiratory Protection Revision standard (Docket Number H–049).

On the other hand, several commenters criticized OSHA's proposal for being too strict regarding respirators. Thus, one commenter argued that PAPRs and supplied air respirators should be assigned a protection factor of 1000 in the final standard (Ex. 19–20). Another commenter criticized OSHA for assigning a protection factor (PF) as low as 25 to loose fitting PAPRs, instead of the current PF of 1,000 or at least 100 (Ex. 19–39). Still another criticized the Agency for not assigning a PF higher than 10 to half-mask, negative pressure respirators, which it claimed might in some situations be more effective and safer than full facepiece, negative pressure respirators or PAPRs (Tr. 6/12/90, p. 7). Another commenter asked, in light of NIOSH's disapproval of disposable "high-efficiency" respirators for use against asbestos because of its carcinogenicity, whether such respirators were useable for cadmium exposures (Ex. 19–18). One questioned the need to provide PAPRs on request when exposures did not exceed the PEL (Ex. 19–22).

OSHA has extensively reviewed the respirator performance studies supporting the protection factor of 10 given to half mask respirators as part of the Respirator Standard Revision (Docket No. H-049). The concept of giving an increased protection factor to a respirator based on higher fit factors measured during quantitative fit testing has been discredited. Workplace protection factor studies (Docket H-049 Exs. 27-1; 27-2; 27-9; 38-2; 38-7) and laboratory fit testing studies (Docket H-049 Exs. 2; 38-3) that have been reviewed as part of the 29 CFR 1910.134 respirator standard revision show that the fit factors achieved during quantitative fit testing are not achieved in the workplace. While half masks can achieve fit factors greater than 10 during QNFT, they have not been able to demonstrate consistent workplace protection levels greater than 10. Consequently, the protection factors OSHA had listed for cadmium respirators in the proposal (55 FR 4123) are not being changed. The few comments on protection factors that were received do not justify changing the protection factors listed.

A question about the use of disposable high-efficiency respirators such as the 3M Model 9970 for protection against cadmium was raised by Bruce Crowell of the Duke Power Company (Ex. 19-18). OSHA is concerned that the effectiveness of such respirators against carcinogenic dusts and fumes (NIOSH, Tr. 7/17/90, p. 51; Ex. 57) is limited by problems in achieving an adequate fit. This concern has been addressed in several OSHA standards. The cotton dust standard allowed a protection factor of 5 for disposable dust/mist respirators due to problems with respirator fit. The asbestos standard prohibited the use of disposable respirators, with or without HEPA filters. However, there are HEPA disposable respirators on the market with elastomeric facepieces that do not have these problems with fit. For the time being, OSHA will accept the use of HEPA disposable respirators with cadmium. Nonetheless, caution is urged in using HEPA disposable respirators, particularly single use HEPA respirators without elastomeric facepieces.

Michael Dwyer of the McDonnell Douglas Corporation (Ex. 19-22) commented that employers should be required to provide PAPRs on request only if exposures exceed the PEL. Mr. Masaitis, testifying for the American Iron and Steel Institute, stated that it "is unreasonable to require that an employer provide a PAPR to an employee simply because one is requested" when other adequate protection is available (Tr. 7/18/90, pp. 282-283). The cadmium standard requires that respirators, including PAPRs, be provided by employers to employees exposed at or above the action level on request. PAPRs can minimize the physiological burden on lung function imposed by air purifying respirators. Dr. Tyner of Gates Energy Systems commented that lung function should not interfere with a worker's ability to wear a respirator as long as positive pressure respirators are available (Ex. 19-2). PAPRs can also provide added protection. OSHA, therefore, will continue to require that employers provide a PAPR to an employee exposed at or above the action level when requested.

Several other commenters criticized aspects of the protocols for fit testing in appendix C (Exs. 19-5; 19-7; 19-9; 19-20).

Mr. G.F. Stone of the Tennessee Valley Authority commented on the requirement in appendix C that the employer assign specific individuals to assume full responsibility for the qualitative/quantitative fit testing program (Ex. 19-5). He recommended that the employer be required to assign a single individual to be responsible for the entire respirator program, and that individual could then delegate the fit testing responsibilities to appropriate individuals. This cadmium standard permits an employer to designate one individual to be responsible for the entire respirator program. Such a requirement for a single respirator program administrator is being considered for inclusion as part of the respirator standard revision (29 CFR 1910.134). However, that proposed revision and this cadmium standard in their fit testing procedures require that individuals be assigned to be responsible for the qualitative and quantitative fit testing programs who are trained and experienced in selecting proper fitting respirators, performing fit testing, calibrating fit test equipment and interpreting fit testing results. This specialized knowledge and ability to perform fit testing goes beyond that normally expected of an overall program administrator. The purpose of this requirement is to be sure that the fit testing program is performed only by appropriately trained personnel.

In appendix C, the quantitative fit testing methods state that corn oil or sodium chloride are the only accepted challenge aerosols. Mr. G.F. Stone of the Tennessee Valley Authority (Ex. 19-5) urged OSHA to revise this to permit the use of Portacount fit testing instruments, which use ambient air particles as the challenge aerosol. The quantitative fit test methods in appendix C have been shown to be accurate through extensive validation testing. In addition, the use of the Portacount is currently permitted under other OSHA standards by a compliance interpretation that treats their use as a *de minimis* violation of the fit testing requirements (Ex. L-166). The cadmium standard will continue this interpretation of the Portacount. As part of the respirator standard revision (29 CFR 1910.134), the manufacturer of the Portacount has the opportunity to submit validation testing of its fit testing method and instrumentation to show that it is capable of determining fit factors as accurately as the corn oil and sodium chloride systems currently recognized, in order to become a validated fit test method. If the Portacount becomes a validated fit test method, the appendix C fit test methods will be revised to reflect this.

The Maryland Occupational Safety and Health program (MOSH) recommended that the grimace be deleted from the fit test exercises so that "workers will not fail otherwise acceptable fit tests" (Ex. 19-7). The purpose of the grimace exercise is to determine whether the respirator being fit tested will reseat itself on the face after the respirator seal is broken during the grimace exercise. In quantitative fit testing, the test instrumentation should show a rise in challenge agent concentration inside the mask during the grimace exercise and a drop once the respirator reseats itself. If the respirator fails to reseat, the subsequent test exercises will show excessive leakage and result in failing the test. Since even a properly fitting respirator may show increased penetration during the grimace exercise, the penetration measured during the grimace exercise is not to be used in calculating the fit factor. The language in appendix C has been modified to reflect this.

MOSH also recommended that the saccharin solution qualitative fit test protocol be deleted from appendix C (Ex. 19-7). MOSH pointed out that while the saccharin method is the only protocol used with disposable dust respirators, such respirators are not allowed by the proposed cadmium standard. The proposed and final cadmium standards require the use of HEPA filters, which means that the irritant smoke and isoamyl acetate protocols can be used for qualitative fit testing. The saccharin protocol, which uses a large particle size test aerosol, is not necessarily appropriate for cadmium exposure with that type of respirator.

OSHA agrees with MOSH that the saccharin solution protocol is not now needed for the respirators permitted under the cadmium standard, so it has been deleted from appendix C.

Frank Wilcher (Ex. 19–20) of the Industrial Safety Equipment Association (ISEA) questioned the requirement in Appendix C that employees be offered a range of respirator facepieces to choose from, in at least five different sizes, and from two manufacturers. These requirements were called "excessive and unnecessarily inflexible" since an adequate fit can be obtained without offering respirators from two different manufacturers. The number of sizes and models offered, the commenter declared, should be a function of the size of the workforce.

OSHA understands that in a particular workplace a limited selection of respirator sizes and models could possibly be made to fit all those who need one. However, such occurrences cannot reasonably be relied upon as a pretext for limiting respirator selection options. The increased numbers of individuals in the workforce, such as women and minorities, with facial types and sizes that are different from, say, those of white and black males means that a wide range of facepiece sizes is needed to assure adequate fits. The purpose of fit testing is to achieve the best possible fitting respirator and this is only possible when an adequate selection of models and sizes is available. There is no standardization on sizes among respirator manufacturers. Each manufacturer develops their own facepiece molds and none correspond identically. This means that one manufacturer's medium size facepiece may fit an individual, while another manufacturer's medium size facepiece may not. Respirators come in different sizes, some in three different sizes (small, medium, large) while others only come in two sizes (large, medium). Therefore, the cadmium fit testing protocols continues to require that a selection of at least five facepiece sizes from two different manufacturers be available to provide a wide range of possible facepiece fits. This requirement is the same as the one in Appendix C, paragraph I.B.1. in the asbestos standard (29 CFR 1910.1001).

Mr. Stephen Wilson of the Duriron Company (Ex. 19–9) commented that the requirements in section (g) and Appendix C are too detailed, and should be part of the respiratory protection standard (29 CFR 1910.134) and included in the cadmium standard only by reference. OSHA agrees that the ideal place for these detailed respiratory protection provisions is in the respirator standard. However, the respiratory protection standard revision will not be finalized until well after this cadmium standard is published. To achieve the level of respiratory protection appropriate for cadmium exposures it is necessary to include these provisions in the cadmium standard now. Subsequently it may be possible, once the respiratory protection standard revision is finalized, to remove these detailed provisions from the cadmium standard and incorporate by reference the respiratory protection standard provisions.

Emergency Situations: Paragraph (h).

The language in this final standard concerning emergency situations is basically the same as the language in the proposal. It requires the employer to develop and implement a written plan for dealing with emergencies involving substantial releases of airborne cadmium. The plan must include provisions for the use of appropriate respirators and personal protective equipment. In addition, employees not essential to correcting the emergency must be restricted from the area, and normal operations in the area must be halted until the emergency is abated. Examples of such emergencies may include ruptures of containers filled with cadmium in dispersible form and failures of control or operating equipment. Emergency plans are necessary to direct employees to act in ways that maximize their personal protection and minimize the hazards in the event of an emergency. To that end, employees not engaged in correcting the emergency must be prohibited from the area and normal operations in the area halted until the emergency is abated.

Protective Work Clothing and Equipment: Paragraph (i).

Protective clothing and foot coverings are required to prevent contamination of the employee's body and the employee's street clothing and shoes. Protective clothing, if provided and used properly, helps to prevent cadmium exposure beyond the workplace. By contrast, wearing contaminated street clothing outside the worksite would lengthen the duration of the employee's exposure and could cause cadmium to accumulate in employees' cars and homes, exposing other individuals to the hazard.

This final standard, with substantial modifications, adopts the requirements of the proposed cadmium standard regarding protective clothing and equipment. These requirements are typical of other OSHA health standards and are based upon widely accepted principles and conventional practices of industrial hygiene.

The final standard requires that the employer provide protective clothing and equipment to employees who are exposed to cadmium at levels above the PEL and to employees exposed at any level where skin or eye irritation associated with cadmium exposure occurs. This is a minor change from the proposal, which required protective clothing to be provided if "the possibility of skin or eye irritation exists from cadmium exposure * * *." (55 FR 4124). As the discussion in the preamble to the proposed cadmium standard (55 FR 4112) makes clear, OSHA did not intend that the mere "possibility" of associated skin or eye irritation should trigger the obligation for the employer to provide protective clothing and equipment to employees, because that possibility might exist in nearly all workplaces with exposure to cadmium dust. According to the preamble in the proposal it was the occurrence of such irritation that triggered the employer's obligation to provide protective clothing. This final standard follows that intention.

In addition, the language in paragraph (i)(1) of the final standard clarifies OSHA's ongoing understanding that appropriate protective work clothing and equipment must prevent contamination of the employee and the employee's garments. If they did not, they would not be "protective".

Personal protective clothing and equipment includes, but is not limited to, coveralls, shoe covers, head coverings, and goggles. Clean protective clothing and equipment are to be provided by the employer at least weekly, but OSHA recommends that they be provided daily to assure their effectiveness. Protective clothing and equipment is to be provided to each affected employee at no cost to the employee. This is consistent with similar requirements in the lead and arsenic standards, 29 CFR, 1910.1025 (g)(2), and 1910.1018(j)(2), respectively. Removal of cadmium from protective clothing by blowing, shaking, or any other means that disperse cadmium into the air is prohibited.

The standard also requires that the employer be responsible for cleaning, laundering and disposing of the required protective clothing and equipment, to eliminate any potential exposure that might result if the clothing and equipment were laundered or cleaned by the employee at home. Like the proposal (55 FR 4124), the final standard requires that protective clothing and equipment be cleaned, maintained, and

replaced as needed in order to assure its effectiveness.

The standard provides that the employer shall assure that all protective clothing is removed at the end of each work shift and only in change rooms. The contaminated clothing and equipment that is to be laundered, cleaned, or disposed of is required to be stored in a closed container prior to laundering or disposal so that contamination of the change room is minimized and exposure of employees who later handle the clothing also is minimized. These employees are further protected by the requirement that they be informed of the potentially harmful effects of cadmium exposure and that warning labels be placed on the bags or containers. Since these containers are to be located in the change room, it is appropriate to limit workers' removal of their contaminated clothing to that area.

The standard obligates the employer to provide personal protective clothing at no cost to the employee. Since the employer is responsible for reducing exposures below the permissible exposure limit, the obligation to provide personal protective equipment properly rests on the employer. The employer also is in the best position to provide the correct type of clothing and keep it in the condition necessary to perform its protective functions.

Hygiene Facilities and Practices: Paragraph (j)

This final standard, like the proposal, requires employers to provide hygiene and lunchroom facilities for employees exposed to cadmium at levels above the PEL and to assure employee compliance with basic hygiene practices to minimize additional sources of exposure to cadmium that may accumulate on a worker's clothes or body. The final standard makes it clearer that all of these facilities must comply with the requirements of 29 CFR 1910.141. For all employees who are exposed above the PEL, the employer must provide adequate shower and washing facilities, clean rooms for changing clothes, and lunchroom facilities. In addition, employers must assure that employees use the facilities as required by the standard. Employers also must assure that employees exposed above the PEL must observe prohibitions on the availability and use of cosmetics, tobacco and chewing products, and food and beverages in regulated areas under paragraph (e). OSHA expects that strict compliance with these provisions will virtually eliminate several sources of cadmium exposure that substantially contribute to overall exposure levels.

Several of these facilities and practices are presently required under current OSHA standards for General Environmental Controls in subpart J of 29 CFR part 1910. For example, § 1910.141(e) states that if a standard requires employees to wear protective clothing, then the employer must provide change rooms with separate storage facilities for street and work clothing. In addition, § 1910.141(g) requires the employer to prohibit the consumption of food and beverages in areas where there is exposure to toxic substances. The hygiene provisions of paragraph (j) of this standard augment the requirements of 29 CFR 1910.141 with additional requirements that are specifically applicable to cadmium exposure and consolidate all related provisions.

OSHA believes it is essential for employees to have separate locker and storage facilities for street and work clothing to prevent cross-contamination of their street clothes. This provision will minimize employee exposure to cadmium after the work shift ends, because it reduces the period during which employees may be exposed to cadmium-contaminated work clothes.

Showering also reduces the worker's period of exposure to cadmium by removing cadmium which may accumulate on the skin and hair. Requiring employees to change out of work clothes, which are then segregated from their street clothes, to shower before leaving the plant, and to leave work clothing at the workplace significantly reduces the movement of cadmium from the workplace. These steps assure that the duration of cadmium exposure does not extend beyond the workshift and provide added protection to employees and their families.

The final standard also requires employers to provide employees whose airborne exposure to cadmium is above the PEL with readily accessible lunchroom facilities in which tables maintained for eating are free of cadmium and no employee is exposed at any time to a concentration of cadmium at or above 2.5 $\mu g/m^3$. This is the main change from the proposed provisions regarding hygiene facilities, which required employers to provide lunchrooms with a positive pressure and a tempered and filtered air supply. By contrast, the final standard is written in performance language. It is OSHA's intention, of course, that employees are not to be exposed to uncomfortable temperatures.

OSHA makes this change to provide more flexibility to employers while still assuring adequate protection to employees. Although the employer may, in any event, often have to provide the type of lunchroom specified in the proposal in order to comply with the performance requirement of the final cadmium standard, OSHA recognizes that there may be many instances where employers can comply without having to do so. OSHA agrees with the industry commenter who said that "where the lunchroom is not adjacent to cadmium-contaminated areas" and there is no cross contamination of the lunchroom, a positive pressure, filtered air supply is unnecessary (Ex. 19–22). OSHA therefore sees no reason to require the provision of such lunch rooms where they are not needed.

OSHA believes that the requirements for lunchroom facilities in this final standard are at least as protective as the proposed requirements. For example, the final standard, unlike the cadmium proposal, requires that tables in the lunchroom facility must be maintained free of cadmium and that no employee there may be exposed to a concentration of cadmium at any time at or above 2.5 $\mu g/m^3$. The 2.5 $\mu g/m^3$ limit is not an 8 hour TWA PEL but is an absolute prohibition of levels that high or higher at any time.

OSHA feels it is imperative that employees have a clean place to eat to minimize the possibility of cadmium contaminated food and to reduce the likelihood of additional exposure to loose cadmium dust through inhalation or ingestion. Since OSHA believes that employers have several equally protective options to achieve these goals, the standard has not set specific requirements.

Employers must also assure that employees who work in regulated areas wash their hands and face prior to eating or smoking and that employees not enter the lunchroom wearing protective clothing unless it is properly cleaned beforehand. Employers are given discretion to choose any method for removing surface cadmium from the clothing that does not disperse the dust into the air. These requirements are basically the same as those in other OSHA standards (e.g., paragraph (i)(4) of the lead standard, 29 CFR 1910.1025).

Housekeeping: Paragraph (k)

Like other OSHA health standards dealing with toxic dusts (Asbestos, 29 CFR 1910.1001), the cadmium standard imposes the general housekeeping requirement to maintain all surfaces as free as is practicable of accumulations of cadmium. In the final standard the strong preference for vacuuming (or equally effective and protective methods

of cleaning) that is incorporated in the proposal is made more explicit. The standard requires that, where possible, surfaces contaminated with cadmium be cleaned by vacuuming or other methods that minimize the likelihood of cadmium becoming airborne. The standard allows shoveling, dry or wet sweeping, and brushing only if the employer shows that vacuuming or other methods that are usually as efficient as vacuuming are not effective under the particular circumstances. It also requires that vacuuming be done with cleaners equipped with HEPA filters to prevent the dispersal of cadmium into the workplace. The standard differs from the proposal (55 FR 4124) in that it allows the use of compressed air for cleaning when the compressed air is used in conjunction with a ventilation system designed to capture the dust cloud created by the compressed air. In addition, items contaminated with cadmium and consigned for disposal are to be collected and disposed of in sealed impermeable bags or other closed impermeable containers.

These housekeeping provisions are exceptionally important because they minimize additional sources of exposure that engineering controls generally are not designed to control. Good housekeeping is a cost effective way to control employee exposure levels by removing from the worksite cadmium dust that can become entrained by physical disturbances or air currents and carried into employee breathing zones.

Medical Surveillance: Paragraph (l)

(1) *General.* The medical surveillance provisions of this final standard were developed from the proposal in light of the entire record. More specifically these provisions are derived in no small part from the proposal and the responses to it, as further articulated in a July 2, 1990, memorandum sent by OSHA to all the hearing participants (Ex. 46). That memorandum summarized the comments and testimony in the rulemaking to date, indicated OSHA's then current thinking, and requested further information, comment, and testimony at the upcoming hearing in Denver. The response to that memorandum, which was substantial (e.g., cites), has also shaped the medical surveillance program in the final standard.

The medical surveillance provisions of paragraph (l) generally are aimed at accomplishing three main interrelated purposes: First, identifying employees at higher risk of adverse health effects from excess, chronic exposure to cadmium; second, preventing cadmium-induced disease; and third, detecting and minimizing existing cadmium-induced disease. The core of medical surveillance in this standard is the early and periodic monitoring of the employee's biological indicators of: (a) Recent exposure to cadmium; (b) cadmium body burden; and (c) potential and actual kidney damage associated with exposure to cadmium.

It is not yet known how to biologically monitor human beings to specifically prevent cadmium-induced lung cancer or certain other cadmium-induced lung diseases. By contrast, the kidney can be monitored to provide prevention and early detection of cadmium-induced kidney damage. Since, for non-carcinogenic effects, the kidney is considered the primary target organ of chronic exposure to cadmium, the medical surveillance provisions of this standard effectively focus on cadmium-induced kidney disease. Within that focus, the aim, where possible, is to prevent the onset of such disease and, where necessary, to minimize such disease as may already exist. The by-products of successful prevention of kidney disease are anticipated to be the reduction and prevention of other cadmium-induced diseases.

More specifically, for veteran workers, the aim of these medical surveillance provisions is to promptly identify employees with excessive, cumulative exposure to cadmium, especially those who were excessively exposed to cadmium before this standard takes effect. Once these employees are identified, the aim is to monitor them, ideally to prevent cadmium-induced kidney disease, or at least to minimize it. For cadmium exposed workers who have not yet been excessively exposed to cadmium, the aim is to identify those at higher risk and to prevent excess exposure and resulting disease.

In order to assure that biological monitoring results are accurate and reliable, an issue raised during the rulemaking (Ex. 19–29), OSHA in paragraph (l)(1)(iv) of this standard requires that the employer make sure that collecting and handling of biological samples is done in a manner that assures reliability and that analyses are performed in laboratories proficient in the particular analyte. OSHA has developed a non-mandatory protocol to guide employees and laboratories in these regards (See appendix F). An employer who follows this protocol will be in compliance with the performance requirements in paragraph (l)(1)(iv) of the standard. However, the employer is free to follow other procedures so long as they provide at least the same degree of accuracy and reliability.

As discussed below in connection with the medical surveillance program, the lowest biological triggers incorporated in this standard are above existing levels of detection and are distinguishable from lower levels that for purposes of this standard are treated as "normal" levels of these biological parameters in the general population.

In addition, the degree of accuracy and reliability described in appendix F for biological monitoring required by this standard is achievable with currently available equipment. As a result, OSHA feels comfortable with triggering enhanced medical surveillance and other actions from such biological monitoring results. To assure the necessary quality of results, OSHA recommends that laboratories that analyze levels of cadmium in urine (CdU), cadmium in blood (CdB), and Beta-2 microglobulin in urine (β_2–M) should demonstrate their proficiency in certain, specified ways.

The scope of medical surveillance in this standard is designed to accomplish the purposes set out above. OSHA in its proposed cadmium rule originally sought to include in medical surveillance all workers who are, or may in the future be exposed to airborne levels of cadmium at or above the action level or the excursion limit (55 FR 4124). The excursion limit has since been deleted, as discussed above. However, in the proposal, the use of the action level of 2.5 $\mu g/m^3$ alone was both too broad and too narrow. On the one hand, including all workers who are or will be occupationally exposed to airborne levels of cadmium at or above the action level would allocate scarce resources to monitoring many workers who may not be at significant risk of disease, because by the nature of their work their cadmium exposures are only intermittent and at very low levels (Exs. 8–732; 12–10–G; 148; 120). On the other hand, limiting coverage only to workers who may be currently exposed to cadmium mistakenly ignores the possibility of excess risk of cadmium-related illness among workers who were previously exposed but no longer are (Ex. 19–2). In the case of workers whose previous exposure occurred before the effective date of this standard, the levels of cadmium to which many workers were exposed probably were considerably higher than the new PEL. As a result, these previously exposed workers may have higher body burdens of cadmium and may be in particular need of medical surveillance. Kidney dysfunction arising from chronic, excess

exposure to cadmium, for example, occurs among workers with a certain minimum accumulation of cadmium in their kidneys (Ex. 144–3–C; Section VI—Quantitative Risk Assessment: Summary of Kidney Dysfunction).

Consequently, in response to comments (Exs. 19–18; 101) the scope of medical coverage in paragraph (l)(1)(i) of the final cadmium standard is defined both more narrowly and more broadly than in the proposal. Not every worker who is or will be exposed to cadmium at or above the action level at work is covered. Instead, a certain threshold of exposure to cadmium is required to trigger medical surveillance. An employee will be covered by medical surveillance if the employee is or may be exposed at or above the action level of 2.5 $\mu g/m^3$ on 30 or more days per year. This is in line with testimony in the record (Tr. 7/19/92, pp. 14–17) and with previous OSHA health standards. In those standards medical surveillance for currently exposed employees frequently is triggered by exposure at or above the action level, which typically is set at half the PEL, on 30 or more days per year (Benzene, 29 CFR 1910.1018 (n)(1)(A); Lead, 29 CFR 1910.1025(j)(1)).

In addition, certain workers who no longer are exposed to cadmium but who were previously exposed by the current employer also will be included in medical surveillance under this standard. They will be included if prior to the effective date of this standard they might previously have been occupationally exposed at or above the action level to cadmium by the current employer unless they did not in those years work in those jobs for an aggregated total of more than 60 months. Although OSHA is not requiring employers to provide medical surveillance to workers previously exposed for less than 60 months, OSHA recommends that employers provide the same medical surveillance to all workers who worked for the current employer in cadmium exposed jobs for a total of 12 months or more prior to the effective date of this standard (See Benzene; 29 CFR 1910.1028 (i)(1)).

With regard to these veteran workers, because cadmium is retained for so many years in the body and because it is a cumulative toxin that can cause chronic disease, workers who were excessively exposed to cadmium before this new standard took effect must also be medically monitored, at least for a time, even if they no longer are currently exposed or cease to be exposed. Employees who were not exposed before the effective date of this standard and new employees who begin cadmium exposed work under the new PEL are not likely to be exposed to such high cumulative levels. Under the new PEL, workers are not likely to be exposed above the critical air concentration for susceptible populations of 225 $\mu g/m^3$-years because the PEL is sufficiently low (Friberg *et al.*, ref. in Ex. 4–27).

Veteran workers, however, may have exceeded this dose. In the past, many highly exposed workers were exposed to cadmium concentrations ranging between 40–50 $\mu g/m^3$. Five years of exposure to these levels would result in a cumulative cadmium dose ranging from 200–250 $\mu g/m^3$-years. Thus, in order to protect susceptible populations from kidney dysfunction, OSHA chose 60 months (5 years) as the past total months of exposure to trigger medical surveillance for veteran workers. This provision of the standard is consistent with OSHA's approach in the benzene and arsenic standards. (See the benzene standard 29 CFR 1910.1028 under paragraph (i)(1)(i).) In the benzene standard, veteran workers were covered by the medical surveillance provisions if they had past exposure to 10 ppm for one month. One month of exposure to 10 ppm is equivalent to a cumulative dose of 0.83 ppm-years of benzene prior to the promulgation of the new benzene standard (i.e., 10 ppm $\times 1/12 = 0.83$ ppm-years). Since the new benzene standard allows workers to be exposed annually to 1 ppm-years of benzene, 0.83 ppm-years represents about 80% of the annual allowed cumulative dose.

In the final cadmium standard, veteran workers would not be eligible for medical surveillance unless they have been exposed in the past to cadmium for five years. If veterans were exposed, for example for five years at or above the action level, they would have been exposed to more than 12.5 $\mu g/m^3$-years (action level of 2.5 $\mu g/m^3 \times 5$ years). This cumulative dose would constitute approximately 250% of the annual cumulative cadmium dose under the new PEL and proportionately is only about three times more than allowed in the benzene standard in order for veteran workers to qualify for medical surveillance.

In the arsenic standard, veteran workers were also included in medical surveillance. Under paragraph (n)(1)(i)(B) of the arsenic standard (29 CFR 1910.1018) all employees exposed above the action level for 30 or more days per year for a total of 10 years or more were covered by medical surveillance. Thus, OSHA considers the inclusion of medical surveillance for veteran workers, who have been exposed to cadmium for five years prior to the promulgation the new cadmium standard a reasonable basis to qualify them for medical surveillance.

Dr. Friberg stated in his written testimony (Ex. 29) that there are several reports of a high prevalence of kidney dysfunction observed after an exposure that would correspond to 45 years of exposure to 10 to 20 $\mu g/m^3$:

> * * * we should make clear that to equate such exposure with a safe threshold is to me a serious and irresponsible mistake * * * a considerable prevalence of kidney dysfunction can be expected when below such concentrations * * * (Tr. 6/6/90, p. 76)

The burden is on the employer to demonstrate that an employee previously or currently exposed to cadmium does not exceed any of the triggers in paragraph (l)(1)(i) of this standard and therefore need not be provided medical surveillance. OSHA believes the employer is in the best position to carry this burden. The employer has strong economic incentives to assure that medical surveillance is not provided to any employee who does not qualify for it. The employer also is best able to gather, develop, correlate and maintain the exposure data needed to assess an employee's current exposure and exposure history.

However, OSHA recognizes that it may be difficult at times for employers to sustain the burden of proof concering employees who were exposed before the effective date of this standard. Nonetheless, where the extent of the employee's cumulative exposure is unclear, the Agency chooses to err on the side of protecting workers. Thus, if the employer is uncertain whether a particular employee has in fact been previously exposed at or above the action level for more than 60 months, and especially where the employer may have some reason to believe the employee may have been so exposed, it is OSHA's intention that the employer resolve doubts in favor of worker protection and to provide at least some medical surveillance for that employee. As a result, for example, OSHA intends that workers who were exposed for indeterminate, substantial periods prior to the effective date of this standard, and who were not regularly monitored, or for whom exposure records were not kept, be initially screened to detect potential or actual kidney disease or other cadmium-related illness. Thereafter, if medical surveillance carried out over approximately one year shows no indications of cadmium related disease or of increased risk of such disease, periodic medical

surveillance for these veteran workers can be expeditiously terminated.

Paragraph (l)(1)(ii) of this standard requires that the employer provide the examination specified in paragraph (l)(6) to workers who are required to wear a respirator because their job exposes them to cadmium levels above the PEL. The purpose of the examination is to determine the employee's capacity to wear a respirator. This requirement, which is typical of other OSHA health standards, (e.g., Lead, 29 CFR 1910.1025; Benzene, 29 CFR 1910.1028; Formaldehyde, 29 CFR 1910.1048; and Asbestos Final Standards, 29 CFR 1910.1001) is to assure the identification of employees with medical conditions that make wearing a respirator a health risk.

Paragraph (l)(1)(iii) provides that all medical examinations and procedures required by this standard be performed by or under the supervision of a licensed physician and without cost to the employee. The licensed physician is required to read and be familiar with the health effects section of appendix A, the regulatory text of this section, the protocol in appendix F, and the questionnaire of appendix D. Although, a licensed physician is the appropriate person to supervise and evaluate a medical examination, certain required elements of the exam need not be performed directly by a physician and may be performed by another, appropriately qualified person under supervision of the physician.

OSHA received comments saying that medical examinations should be performed under physician supervision (Tr. 7/18/90, p. 160). The choice of the physician, and the physician's training, are extremely important factors in the medical evaluation of workers' health (Friberg, Tr. 6/6/90). For physicians who do not have a thorough knowledge of cadmium toxicology, preventing and treating cadmium induced disease can be very difficult (Ex. 29). Therefore, OSHA has provided documentation in the appendices to familiarize physicians and other medical personnel with the toxic effects of cadmium.

The standard also requires that all examinations and procedures be performed at a reasonable time and place. It is necessary that examinations and procedures be performed at a place convenient to the employee, during the workday, and without loss of pay, in order to maximize the likelihood that employees will participate. This provision is consistent with other OSHA health standards (e.g., Asbestos, 29 CFR 1910.1001; Arsenic, 29 CFR 1910.1018).

As mentioned above, paragraph (l)(1)(iv) requires that specimens for biological monitoring be collected and handled appropriately, and that laboratories be proficient, as specified in appendix F.

Paragraph (l)(2)(i) requires the employer to provide an initial or preplacement medical examination to all employees covered by medical surveillance within 30 days after initial assignment to a job with exposure to cadmium or no later than 90 days after this standard goes into effect, whichever comes last. The purpose of the initial medical examination is to:

(1) Establish the current health status of the employee and to determine whether it is appropriate to assign the employee to jobs with cadmium exposure;

(2) Initially determine what level of medical surveillance the employer must provide to the particular employee; and

(3) Establish essential baseline data for each employee as a criterion for assessing subsequent changes in health status attributable to cadmium exposure.

The initial medical examination includes biological monitoring and a detailed medical and work history, with emphasis on past exposure to cadmium, history of organ system dysfunction relevant to cadmium exposure, and smoking history and status. OSHA has decided to rely on biological monitoring as the primary screening device for identifying employees at elevated risk of cadmium related illness. OSHA believes that biological monitoring results showing levels of cadmium in urine (CdU), Beta-2 microglobulin in urine (β_2-M), and cadmium in blood (CdB), when used together, are the best indicators of cadmium exposure and of the risk of cadmium related illness (Dr. Friberg, Tr. 6/6/90, pp. 108–109).

OSHA has chosen to rely on these three biological parameters as the main medical screening device because they are the best indicators of present exposure, past exposure, and cadmium related kidney dysfunction. Generally, monitoring CdU levels is useful and needed to determine past exposure to cadmium and body burden of cadmium among workers without kidney disease. However, monitoring CdU levels is no longer reliable after the onset of disease because the kidney spills a large amount of cadmium. Then for a time no cadmium appears in the urine even though the kidney is damaged and the cadmium burden in the kidney cortex is continuing to increase (Friberg, Ex. 144–3–C).

Monitoring levels of CdB is generally useful as an indicator of recent exposure to cadmium. Elevated levels of β_2-M are indicative of the presence or absence of an early stage kidney disease.

In choosing to rely primarily on biological monitoring for medical screening, OSHA has dropped the proposed requirement that a full medical examination be included as part of the initial medical examination, as provided in paragraph (l)(2) of the proposal (55 FR 4124). The Agency believes requiring biological monitoring of the indicators for cadmium exposure, cadmium body burden and cadmium induced kidney disease eliminates the need for a full medical examination as a screening tool. The biological indicators will be sufficient to establish the employee's baseline health status for all employees covered by medical surveillance. Given the adequacy of biological monitoring and the limited resources and the high cost of full medical examinations, the Agency believes that in the initial phase of medical surveillance, full medical examinations should only be required for employees whose biological monitoring results are abnormal as specified in paragraphs (l)(3)(i)–(iv).

Paragraph (l)(2)(iii) provides that an initial examination is not required if adequate records show that an employee has been examined in accordance with the requirements of paragraph (l)(2)(ii) within the past 12 months. This reflects a change from the proposal (55 FR 4124) in which no recent examination could be used instead of an initial examination. This provision was included because OSHA believes that requiring an initial examination so soon after an adequate prior examination is medically unnecessary and would waste scarce resources.

Paragraph (l)(3) specifies the main elements of the medical surveillance program the employer must provide to eligible employees. This program is basically incorporated in paragraph (l)(4), concerning periodic medical surveillance. The program, at first sight, may appear to be quite complex, but it is based upon a few simple, fundamental principles.

At least a minimum of medical surveillance must be provided to all workers covered under paragraph (l)(1)(i) of this standard. In addition, enhanced medical surveillance is required for workers whose initial biological monitoring results are abnormally high. At the outset, the frequency and scope of medical surveillance depends directly upon the level of initial biological monitoring results. Thereafter, it depends upon the results of any subsequent biological monitoring and medical examinations. These results, if abnormal, may increase

the required frequency and scope of medical surveillance or, if within the "normal" range, may set the frequency and scope at minimum levels.

In the medical surveillance program required by paragraph (l) of this standard, an initial distinction is drawn between workers who are, or may be currently exposed by the employer on 30 or more days per year and workers who have been exposed by the employer prior to this standard for 60 months. For workers who have, or may have been excessively exposed prior to the effective date of this standard, the purpose of medical surveillance is twofold: First, to promptly identify those among them who have abnormal monitoring results, for whom further medical surveillance is required; and second to identify those among them who have biological monitoring results that are consistently within the "normal" range. Generally, employees in the latter group are not considered to be at excess risk of cadmium induced disease and, therefore, do not need further periodic medical surveillance. Thus, for workers in medical surveillance exclusively because of past exposure to cadmium, the results of initial and follow-up biological monitoring determine not only the frequency and scope of the ensuing medical surveillance but also whether the worker will continue to be provided with periodic medical surveillance at all.

Concerning currently exposed employees covered by medical surveillance under paragraph (l)(1)(i)(A), if an employee's initial biological monitoring results are confirmed to be within the range that for purposes of this standard is considered "normal", the employer must provide the employee with the minimum level of medical surveillance, as set forth in paragraph (l)(4)(i)–(iii) of this standard. However, if the employee's initial biological monitoring results are confirmed to exceed the normal range, then the employer must provide the enhanced level of medical surveillance that is appropriate to the level of the initial results, as set forth in paragraph (l)(3)(ii)–(iii). Basically, the higher the employee's monitoring results, the more frequent and comprehensive the medical surveillance required. A summary chart and Tables that outline these provisions have been provided in appendix A.

Concerning employees whose exposure to cadmium has been, or may have been prior to the effective date of this standard, who are covered by medical surveillance exclusively under paragraph (l)(1)(i)(B), their biological monitoring results will determine whether or not they will be provided periodic medical surveillance. If the initial biological monitoring results are confirmed to be within the normal range, and if follow-up biological monitoring results required within 12 months under paragraph (l)(3)(i)(B) also are within the normal range, then under paragraph (l)(4)(v) periodic medical surveillance may be discontinued.

However: (1) If the initial biological monitoring results for such previously exposed employees are within the normal range, but their follow-up biological monitoring results, taken within 12 months, exceed the normal range, then the employer must provide annual medical examinations as specified under paragraph (l)(4)(v)(C) until all the results of biological monitoring are consistently within the normal range specified by paragraph (l)(3)(i)) or the examining physician determines in a written medical opinion that further medical surveillance is not needed to protect the employee's health. Or (2) if the initial biological monitoring results for such previously exposed employees exceeds the normal range, then these employees shall be provided medical surveillance under the same regimen as currently exposed employees ((l)(3)(ii)–(iv)) unless and until the employee's levels of CdU, CdB, and β_2-M are all within the normal range on two consecutive tests over a period of no less than 12 months. At that point, as specified by paragraph (l)(4)(v)(B), the employer may terminate periodic medical surveillance for the employee.

In establishing this medical surveillance program, OSHA had to make a number of fundamental determinations. First, the Agency had to decide which biological parameters would be used to detect excess cadmium exposure and potential excess risk of cadmium induced disease. Second, OSHA had to assess the range that for the purposes of this standard will be considered to be the "normal" range for each of these parameters. Third, the Agency had to decide how to trigger enhanced medical surveillance. Fourth, OSHA had to decide when and how often to require biological monitoring, full medical examinations, and other related actions to be provided by the employer. Fifth, OSHA had to decide how the medical surveillance program should be applied to employees previously exposed to cadmium who no longer are exposed. Sixth, the Agency had to decide at what levels of the biological parameters, if any, workers need to be removed from exposure to cadmium at or above the action level and at what levels, if any, these workers could be returned to their normal cadmium exposed jobs. All of these decisions are based upon the health effects data in the record, including epidemiological and animal studies of cadmium induced disease and histopathological data, which are thoroughly summarized and analyzed in the Health Effects section of this preamble (Section V).

Concerning the choice of biological parameters, it is universally recognized that the best measures of cadmium exposure are measurements of cadmium in biological fluids, especially urine and blood. Of the two, CdU is conventionally used to determine body burden of cadmium in workers without kidney disease. CdB is conventionally used to monitor for recent exposure to cadmium. In addition, levels of CdU and CdB historically have been used by industry as triggers that require medical action (Ex. 14–6) and to evaluate the likelihood that workers will develop kidney disease (Thun et al., Ex. L–140–50; WHO, Ex. 8–674; ACGIH, Exs. 8–667; L–140–51).

The third biological parameter upon which OSHA relies for medical surveillance is Beta 2 microglobulin in urine (β_2-M), a low molecular weight protein. Excess β_2-M has been widely accepted by physicians, scientists, and industry experts, as a reliable indicator of functional damage to the proximal tubule of the kidney (Exs. 8–447; 144–3–C; 4–47; L–140–45; 19–43–A). Excess β_2-M is found when proximal tubules can no longer reabsorb this protein and essential elements in a normal manner. Given the fact that the employees monitored for β_2-M levels under this standard are in fact exposed to not inconsiderable amounts of cadmium, abnormal β_2-M levels in these employees are more likely to be related to excessive cadmium exposure than to other causes. (See Section V, Health Effects). Age alone cannot account for the excess of β_2-M observed in cadmium-exposed workers (Exs. 8–642; 8–068–B; L–140–45). Used in conjunction with biological test results that indicate the presence of abnormally high levels of CdU and CdB, the finding of excess β_2-M can establish for an examining physician that any existing tubular proteinuria is probably cadmium-related (Tr. 6/6/90, pp. 108–109, 135).

OSHA chose to rely on β_2-M as an early indicator of kidney disease because the Agency concluded that β_2-M is the most thoroughly studied of the various indicators that might be used. Although there may be some problems associated with handling β_2-M (e.g., the pH of the urine must be kept at or above

6.0; Exs. 8–086; 8–447; L–140–1); and with accurately measuring and characterizing the protein in the sample (Phadebas, Ex. L–140–1), most occupational, epidemiological studies of kidney disease among cadmium exposed workers have relied upon β_2-M measurements as the early marker of nephrotoxicity (Exs. 8–086; L–140–1; 4–47; 4–28; 4–27; L–140–45; L–140–50). Moreover, with few exceptions, the medical experts who testified at the OSHA hearings and provided comments in the cadmium rulemaking agreed that, all things considered, β_2-M currently is the best single, non-invasive test for screening for cadmium induced nephrotoxicity (Exs. 19–14; 55; 4–47; 4–28; 4–27; L–140–50; 8–670).

OSHA specifically considered alternative markers, such as retinol binding protein (RBP), metallothionein, and N-acetyl d glucosaminidase (NAG) in urine, and decided that experience with these alternatives was too limited and their biological significance and predictive value was less certain than β_2-M (Ex. 30). For example, "normal" levels for retinol binding protein were not clearly established in the record and do not appear to have been clearly established in the general medical literature. (See NIOSH, HHE Ex. 128; Mason, Ex. 8–669–A; Health Effects, Section V—kidney.)

Having chosen the biological parameters to be measured, OSHA then had to evaluate the record evidence to determine background levels of each parameter so that the Agency could determine what levels should be considered excessive. With regard to CdU, very low levels of cadmium are found in body fluids of non-occupationally exposed general populations, even though cadmium occurs in the general environment and can be taken into the body through the consumption of cadmium-containing food or by smoking cigarettes. It has been shown that urinary concentrations of cadmium minimally increase with age (Exs. 8–642; 8–86A).

In 1983, Kowal and Zirkes reported the concentration of CdU samples collected from almost 1,000 persons (males and females, CdU standardized to specific gravity) from nine states in the U.S. (Ex. 8–642). Ninety-five percent of the population had CdU levels less than 2.8 μg/g Cr, which is lower than the cadmium in urine trigger in this standard for enhanced medical surveillance. The overall geometric mean level of CdU for males was 0.55 μg/g Cr and for females was 0.78 μg/g Cr (Ex. 8–642). In other studies, median levels of CdU are about 0.5 to 1 μg/liter at the age of 70 (Exs. 8–068–B, L–140–31).

It was observed that the urinary excretion of cadmium was also influenced by smoking habits. Smokers have higher average levels of CdU compared to non-smokers of the same age, (Ex. 8–86–B) but CdU levels are not influenced by smoking to the same extent as cadmium blood levels. In a limited study of CdU levels among the U.S. population, among current and former smokers, arithmetic mean CdU levels ranged from 1.0 to 1.5 μg/1 urine for females and males, respectively (Ex. 8–86–B). While this study indicated some smokers could have CdU levels of 3.4 μg/liter urine, this is an upper range that has not been standardized to control for diuresis, i.e., standardized to grams of creatinine.

These levels are generally lower than the lowest CdU trigger levels included in the proposed cadmium standard (55 FR 4125, Feb. 6, 1990).

Several industry spokespersons held the opinion that a trigger level of 10 μg/g Cr urine (or 10 μg/l urine) would protect workers from unnecessary risk of cadmium-associated renal dysfunction (Exs. 19–30; 19–43; 8–201; 19–43; 120). However, as discussed below and in detail elsewhere in the preamble, OSHA's understanding of the relevant literature and risk assessments indicates that this is incorrect (Exs. 8–447; 19–14).

Dr. Tyner, Medical Director of Gates Energy Products, a major nickel-cadmium battery production facility, indicated that 10 μg/g Cr in the urine would be a practical and safe trigger for medical action (Ex. 19–2). Dr. Kazantzis who testified for the Cadmium Council stated that levels must be kept much lower than 10 μg Cd/g Cr (Tr. 6/8/90, pp. 150–200; Ex. 19–43–A).

The Cadmium Council submitted comments in support of medical action whenever CdU levels reach 10 μg/g Cr (Ex. 19–43) based on a study by Buchet *et al.* in 1980 (Ex. 8–201). However, OSHA notes that in the study by Buchet, the prevalence of kidney dysfunction among exposed workers whose CdU levels were above 10 μg Cd/g Cr was 15% (Ex. 8–201). In the total group, the prevalence of kidney dysfunction among exposed workers (18.2%) was statistically significantly elevated ($p < 0.025$) above the prevalence of kidney dysfunction among controls (6.8%).

Richard Bidstrup, Counsel for SCM Chemicals, Inc., submitted comments on SCM's behalf (Ex. 19–42A) to the effect that measuring the level of CdU is helpful and that if urinary cadmium is greater than 10 μg/l (with specific gravity adjusted to 1.020) or low molecular weight protein is greater than 300 μg/1, urine analysis should be conducted more often until levels are below these thresholds.

Leading world experts in the field of cadmium-induced kidney dysfunction, such as Drs. Thun, Friberg, and Elinder, were of the opinion that CdU levels had to be kept as far below 10 μg Cd/g Cr as possible in order to protect most workers from kidney dysfunction. Their opinions were based upon their own studies and their review of the medical literature (Ex. L–140–50).

In 1991, the American Conference of Governmental Industrial Hygienists (ACGIH) recommended lowering its biological exposures index (BEI) for CdU to 5 μg Cd/g Cr (L–140–51).

After testifying at the hearings and in response to a written request by OSHA for further information and comments on medical surveillance, David Volkman, of Big River Zinc, stated (Ex. 84) that medical surveillance monitoring should focus on micrograms of cadmium per gram creatinine (μg Cd/g Cr) and B_2-M. He stated that if a trigger level was set for medical action, 5 μg Cd/g Cr would be adequate (Ex. 46).

Dr. Bosken, a physician who provided comments for the Public Citizen Health Research Group and the International Chemical Worker's Union (HRG/ICWU), stated that HRG/ICWU supports a lower level of urinary cadmium (3 μg/g Cr) than that proposed by OSHA as the level to initiate a review of the employee's work practices, respirator use, and engineering controls (Ex. 123). The HRG/ICWU support 5 μg/g Cr as a trigger level for medical removal, noting that, at this level, "* * * a substantial amount of renal disease [is] to be expected in workers * * * (Ex. 123)" Thus, in summary, despite some differences in opinions, there is broad agreement that CdU levels must be well below 10 μg/g Cr. In addition, broad-based population studies show that CdU concentrations for the general population not occupationally exposed to cadmium average less than 1 μg/L and that 95 percent of individuals not occupationally exposed, including both smokers and non-smokers, exhibit levels of CdU less than 3 μg/g Cr. (See Appendix F).

OSHA, therefore, chose the level of CdU >3 μg Cd/g Cr as its lowest CdU trigger for enhancing medical surveillance. That level represents a clear cutoff point above which it may be assumed that workplace exposure to cadmium is affecting the biological monitoring test result. Dr. Elinder testified that while the medical

surveillance protocol for cadmium workers suggested by OSHA is more strict in comparison to the current Swedish protocol, it is better (Ex. 55). As Dr. Elinder stated in his testimony, dose-response analyses in the medical literature makes it clear that if CdU is allowed to increase above 5 μg/l about five percent of workers are likely to get cadmium induced tubular dysfunction.

In contrast to CdU levels, levels of cadmium in blood (CdB) reflect recent exposure to cadmium and do not appear to be significantly affected by the onset of kidney damage. Cadmium levels in blood are affected to some small degree by age, diet, and sex and to a larger degree by smoking habits (Jarup et al., Ex. 8–661). In studies of occupationally exposed workers it was found that age is not an important confounder (Ex. 8–661).

In 1988, Drs. Friberg and Elinder evaluated median CdB levels in males and females in different smoking categories. Ninety percent of female and male non-smokers had CdB levels less than 0.5 and 0.3 μg/liter whole blood (lwb), respectively. Ninety percent of female and male former-smokers had CdB levels below 0.8 and 0.9, respectively. Current smokers were divided into categories based upon the number of cigarettes smoked daily. Ninety percent of females and males who smoked less than a pack a day had CdB levels less than 2.0 and 2.5, respectively, while 90 percent of females and males who smoked more than half but less than a pack a day had CdB levels less than 3.0 and 3.7, respectively. Among female and male smokers who smoked more than a pack a day, 90 percent had CdB levels less than 3.5 and 4.5, respectively (Ex. 8–740).

A number of other studies provide data on the CdB concentration of non-occupationally exposed persons and indicate that non-smokers in countries where dietary cadmium intake is 10 to 20 μg/day have a median concentration in whole blood in the order of 0.4 to 1.0 μg/l, whereas smokers have a median concentration of 1.4 to 4.5 μg/l (Ex. 8–086–B). In the U.S.A. mean levels of CdB of non-smokers ranged from 0.4 μg Cd/lwb to 0.8 μg Cd/lwb. Mean levels of CdB among U.S. smokers were 0.9 in former smokers and ranged from 1.0 μg Cd/lwb to 3.4 μg Cd/lwb in current smokers (Ex. 8–086–B).

In 1980, for example, the World Health Organization, United Nations Environment Program (WHO/UNEP) launched a global biological monitoring program for the assessment of human exposure to heavy metals. Ten cities were included in the program. The program was initiated to enable valid comparisons of CdB levels for different countries. Until then, there were no accurate studies available and the normal concentration of CdB was not yet known (Ex. 8–86–B). In the WHO program, blood samples were obtained from similar groups of teacher-volunteers in cities from each participating country, including Baltimore, the only U.S. city for which such data were available. Different analytical techniques were used in different countries. Volunteers were divided into smokers and non-smokers.

In Baltimore, according to the WHO/UNEP study, the upper 90th percentile of CdB levels for non-smokers was about 1.0 μg Cd/lwb while the upper 90th percentile of CdB levels of smokers was about 2.6 μg Cd/lwb. A very high level of CdB was observed among smokers in Mexico City, i.e., the upper 90th percentile of CdB levels of smokers was 8 μg/l. However, the tobacco products, smoking habits of individuals, and environmental pollution problems in Mexico City are not readily comparable with those in Baltimore (Ex. 8–86–B).

In the final cadmium standard, OSHA has established a "normal" level of cadmium in blood as levels below 5 μg/lwb. This is based on OSHA's review of studies in which 95 percent of non-occupationally exposed worker populations which included both smokers and non-smokers exhibited CdB levels below 5 μg/lwb. (See appendix F.) By contrast, in studies that provided sufficient data on CdB levels among occupationally exposed workers who had greater than nominal levels of cadmium exposure, 95 percent of workers had CdB levels greater than 5 μg/lwb. (See Health Effects Section; appendix F.)

Several industry spokespersons held the opinion that a trigger level of 10 μg/lwb would protect workers from unnecessary risk of cadmium-associated renal dysfunction (Exs. 19–30; 19–43; 8–201; 19–43; 120). However, other participants in the rulemaking held the belief that 10 μg Cd/lwb is too high.

In 1991, the ACGIH recommended lowering its biological exposures indices (BEI) from 10 μg/lwb to 5 μg Cd/lwb (L–140–51). ACGIH justified this lowering of the BEI for CdB in its Notice of Intended Changes (Ex. L–140–51). ACGIH stated that recent studies indicate a higher incidence of renal dysfunction than previously estimated among workers with cumulative CdB concentration below 10 μg/lwb. The new BEI is intended to prevent the potential for increased urinary excretion of markers of renal dysfunction in almost all workers.

Dr. Elinder stated that from the dose-response analysis presented by Jarup, 1988, it is clear that if cadmium exposure continues, producing a cadmium concentration in workers' blood exceeding five micrograms per liter, a small percentage of the exposed workers will develop β_2-microglobulinuria (Ex. 55).

In summary, OSHA chose greater than 5 μg/lwb as the lowest CdB trigger for enhancing medical surveillance, because that level represents a clear cutoff point between exposed and non-exposed population. (See appendix F.)

OSHA received many comments regarding the use of β_2-M as a marker of kidney function. Dr. Lauwerys, the author of several studies on cadmium-induced renal effects and the guide for physicians, Health Maintenance of Workers Exposed to Cadmium published by the Cadmium Council (Ex. 8–447), stated that β_2-microglobulinuria occurs if levels of β_2-M exceed 200–300 μg/gram creatinine (g Cr) (Ex. 8–447). Other world experts who testified during the hearings agreed with the normal levels given by Dr. Lauwerys, standardized to grams of creatinine (g Cr) to correct for diuresis. Dr. Goyer testified that in the general population normal levels of β_2-M are less than 300 μ/g Cr (Tr. 6/6/90, p. 135). Dr. Friberg testified that levels of β_2-M above 200 μg/g Cr are rare in a population with "normal" kidney function (Ex. 144–3–C).

Although individual variations are great, most people's levels, are very low. Kowal et al. (Ex. 8–642) evaluated the levels of β_2-M in 1,000 non-occupationally exposed populations in the United States. The average level in the oldest group studied, aged over 70 years was 107 μg β_2-M/l urine. This was only marginally higher than in the age group 20–70, in which the average levels were 69 to 84 μg β_2-M/l urine (Referenced in Ex. 8–068–B).

Dr. Elinder, chairman of the Department of Nephrology at the Karolinska Institute, testified that the normal concentration of β_2-M has been well documented (Evrin and Wibell, 1972; Kjellstrom et al, 1977a; Elinder et al, 1978, 1983; Buchet et al, 1980; Jawaid et al, 1983; Kowal and Zirkes, 1983 referenced in Elinder, Ex. L–140–45). Elinder stated that the upper 95 or 97.5 percentile for the urinary excretion of β_2-M among persons without tubular dysfunction is below 300 μg/g Cr (Kjellstrom et al, 1977a; Buchet et al, 1980; Kowal and Zirkes, 1983). Elinder defined levels of β_2-M above 300 μg/g Cr as "slight" proteinuria (Ex. L–140–45).

According to Kjellstrom (Ex. 4–47), the upper 95 percent tolerance limit reported

in his paper (290 μg/l urine) was considered to be representative for large groups of subjects. According to Falck, the values obtained from the controls in his study were close to the levels that would be expected from unexposed people (Falck, Ex. 4–28). In the Falck study, normal kidney function was thus established at β_2-M less than 400 μg/l urine for 24 hour samples.

In six of the seven major epidemiological studies reviewed by OSHA in Section V—Health Effects, β_2-M was the marker of kidney dysfunction chosen by the authors. The "normal" levels of β_2-M was established based on samples taken from non-exposed controls and was about 300 μg/g Cr or less in all but two of the seven studies (Thun, Ex. 8–670; Falck, Ex. 4–28). (See Section VI—Quantitative Risk Assessment). In the two studies cited by the Cadmium Council, Buchet regarded β_2-M levels greater than 200 μg/g Cr as abnormal and Toffoletto regarded β_2-M levels greater than 260 μg/l urine as abnormal (Exs. 19–43–A, 8–201).

Furthermore, in studies of exposed workers, the geometric mean levels of β_2-M among workers without renal dysfunction, including both smokers and non-smokers, were lower than 295 μg/g Cr (Kjellstrom, Ex. 4–47; Roels et al., 1991, Ex. 149; Miksche et al., 1981, Ex. 12–10–E; and Thun, Ex. 8–670; see also appendix F). The fact that there is no clear statistical cutoff point between occupationally exposed and non-exposed individuals should not be surprising. Significantly elevated β_2-M levels are expected to correspond to the onset of kidney dysfunction. Only a certain number of cadmium exposed workers in the medical literature are likely to have developed kidney dysfunction, and this is likely to occur primarily among workers with high past exposures to cadmium. Consequently, the range of levels of β_2-M observed in most of occupationally exposed individuals are likely to be similar to the "normal" range observed among the unexposed. Despite the absence of a clear cutoff point between cadmium-exposed workers and non-exposed populations, such as with CdU and CdB, the range of levels of β_2-M that is considered abnormal is rather well established and generally agreed upon (Exs. 144–3–C, L–140–45).

The Agency recognizes that, although biological values lie on a single continuum with an infinite number of points between health and illness (Exs. 19–2; 19–14; 19–33; 19–34; 19–40; 19–42; 19–43; 77; 82; 84; 101; 106; 107; 120; and 123), OSHA had to select particular levels to indicate greater and lesser risk of cadmium-induced renal disease and to trigger appropriate medical responses. OSHA believes that its choice of triggers for enhanced medical surveillance based upon β_2-M levels represent cutpoints that are well established in the medical literature and widely used in practice.

Three issues were raised during the rulemaking regarding the use of β_2-M as a marker of kidney dysfunction and material impairment. First, there are other causes of elevated levels of β_2-M, not related to cadmium exposures (Ex. 19–14), and there are factors that can cause β_2-M to degrade so that low levels might be found even in workers with tubular dysfunction. For example, regarding the degradation of β_2-M, workers with acidic urine with pH<6 (Exs. L–140–1, 8–447) might have β_2-M levels that are within the "normal" range, when in fact, kidney dysfunction has occurred (Ex. 8–86–B; Friberg, Tr. 6/6/90, pp. 108–109). Second, there is debate over the pathological significance of proteinuria. Finally, detection of β_2-M at low levels is considered by some to be difficult. The issue of the levels of detection of β_2-M and proper handling of urine samples to prevent degradation of β_2-M has been addressed under "Specimen collection and preparation" procedures developed by Phadebas (Ex. L–140–1) and has also been addressed by OSHA in the section on specimen handling and lab standardization (See appendix F).

Regarding the first issue, the specificity of β_2-M as a marker of cadmium-induced kidney dysfunction is well established. The only other renal toxins or medical conditions which lead to elevated levels of β_2-M are anti-cancer drugs, aminoglycosides (antibacterial antibiotics such as streptomycin), anti-inflammatory compounds, myeloma, flu, and upper respiratory infections (Dr. Friberg, Tr. 6/6/90, pp. 108–109; Ex. L–140–1). As Dr. Thun stated:

> Low molecular weight proteinuria * * * does occur from other conditions but it's uncommon * * * part of the reason why the (kidney) data are so consistent is that the studies use a rather specific marker of cadmium renal effects * * *. (Tr. 6/7/90, p. 174)

Given the specificity of β_2-M, it is unlikely that other renal toxins would result in elevated levels of β_2-M (Exs. 4–47; 4–28; 4–27; L–140–50; and 8–670).

While a limited number of other non-cadmium related illnesses or factors may result in elevated β_2-M levels (Ex. 29), OSHA allows physician discretion as to the type of actions that must be taken when levels of β_2-M are only slightly elevated. For example, under paragraphs (l)(3)(ii)–(iv), physicians must provide a medical examination within 90 days if biological test results are "abnormal". This allows the physician time to evaluate and to rule out other etiologies. Moreover, medical removal for elevated levels of β_2-M is mandatory only when β_2-M is significantly elevated and either CdU or CdB also is elevated, specifically indicating excess cadmium exposure. β_2-M can also be degraded by bacterial infections, and in urine with pH less than 6, levels of β_2-M decrease. Bacterial infections and low pH levels occur normally in a proportion of the population. β_2-M can be degraded by low pH and bacterial infections while the β_2-M is stored in the bladder or urinary tract, and while urine is stored in sample collection bottles, leading to measured concentrations which are erroneously low (Ex. 8–086–B).

However, the bacterial infections are often accompanied by symptoms which can be diagnosed and treated. The acidity of the urine can be corrected *in vivo* by consumption of sodium bicarbonate and can be raised in the urine collection bottle by addition of an alkaline buffer. (See Ex. L–140–1, and appendix F.)

Regarding the remaining issue, pathological significance, it is clear from the testimony of world experts that elevated levels of β_2-M should be considered to be material impairment. Dr. Friberg testified that:

> * * * the beta-2 microglobulin proteinuria * * * should be regarded as an adverse effect * * * predictive of an exacerbation of the age related decline of the glomerular filtration rate * * * the proteinuria in cadmium poisoning is irreversible and is predictive of more severe effects even if the worker is removed from further cadmium exposure * * *. It is true that an increased excretion of low molecular weight proteins can be a very early indicator of kidney dysfunction. That's not immediately of the same clinical importance as an overt renal disease. Nevertheless, it is irreversible and the beginning of a process which has a high probability to lead to a progressive disease, a decrease in the glomerular filtration rate which clearly is a serious effect that easily may lead to overt disease. When discussing the kidney damage from cadmium, it is important that we make it clear that we are talking about serious, but often insidious effects on vital organs. The kidney has a considerable reserve capacity but once this is consumed symptoms may appear in swift succession and the condition of the patient then deteriorates rapidly, and the infection or other, in itself trivial disorder, could be a triggering mechanism. It is our responsibility to prevent this situation even among a small proportion of workers. (Tr. 6/6/90, pp. 73, 82, 86)

According to Dr. Lauwerys:

When increased excretion of proteins found (* * * β_2-microglobulinuria exceeding 200–300 μg/g Cr) and confirmed by a subsequent examination a few weeks later, it is recommended to perform a more extensive investigation of kidney function for evaluating the intensity of the biological disturbance * * *. Although the discovery of significantly increased excretion of proteins does not necessarily mean that renal insufficiency will occur, it is wise to remove definitively from cadmium exposure workers presenting any persistent signs of renal dysfunction" (Ex. 8–447).

Prolonged exposure to cadmium may lead to glomerular proteinuria, glucosuria, aminoaciduria, phosphaturia, and hypercalciuria (Exs; 8–86–B; 4–28; 14–18, p. 157) and kidney stones (Tr. 6/6/90, p. 106). These conditions are indicated by excess urinary amino acids, glucose, phosphate, or calcium, respectively. Each of these elements are essential to life, and under normal conditions their excretion is regulated by the kidney. Once low molecular weight proteinuria has developed, however, these elements may dissipate from the body. Loss of glomerular function may also occur, indicated by a decrease in the glomerular filtration rate and an increase in serum creatinine. Severe cadmium-induced renal damage may develop into chronic renal failure and uremia at which point some form of dialysis or kidney operation will be needed (Ex. 55).

Kidney dysfunction persists for years even after cessation of exposure. Loss of calcium and phosphorus may contribute to the increased risk of kidney stones observed in cadmium exposed workers (Ex. 4–29). Dr. Friberg testified that, in his opinion, kidney stones are a serious sequelae to cadmium-induced renal dysfunction. He and others originally thought that the increased prevalence of kidney stones observed in his studies of cadmium-exposed workers was confined to Sweden (Ex. 29). But later, the increased prevalence of kidney stones was observed in England, and in the U.S. the presence of kidney stones is a sign of a more generalized disorder of the mineral metabolism in the kidney (Tr. 6/6/90, p. 106).

Others held a different opinion about the prevalence of kidney stones among cadmium-exposed workers. For example, Dr. Spang stated that kidney stones are common in the general population of Sweden (20% in men and about 5% in women), and although he observed cases of kidney stones among cadmium-exposed workers, he did not know if the prevalence was different from that of the general population (Exs. 80 and 81).

Cadmium may also precipitate clinical osteopathy in persons with inadequate dietary calcium intake (Ex. L–140–50). Diets low in vitamin D and calcium may be a contributing factor to sequelae subsequent to cadmium-induced renal dysfunction.

There are at least two hypothesized scenarios by which cadmium-induced tubular proteinuria can cause other adverse health effects (Ex. 8–086). Under the first of these, cadmium-associated tubular dysfunction causes damage to the production of biologically active metabolites such as vitamin D which occurs primarily in the kidney. Under the second scenario, cadmium may cause atrophy of the gastrointestinal tract thereby reducing its ability to absorb essential elements such as calcium and phosphates. Both would lead to loss of essential elements and poor absorption of other minerals to replace those lost.

The gravity of cadmium-induced renal damage is compounded by the fact that there is no simple medical treatment such as chelation to prevent or reduce the accumulation of cadmium in the kidney without substantial risk (Tr. 6/6/90; p. 105). In contrast to other heavy metals, current chelation therapy does not reduce the body burden of cadmium without producing significant renal damage. When chelated cadmium arrives in the kidneys where the cadmium may still be toxic to renal cells. Thus, large amounts of cadmium may move from the liver or muscle storage sites, overwhelm the kidney's usual attempts to store cadmium in a less toxic form, and accelerate deterioration of renal function.

Regarding the pathological significance of proteinuria, OSHA believes that the loss of function of the proximal tubules with tubular proteinuria, as indicated by elevated levels of β_2-M, itself signifies damage that constitutes material impairment of health. OSHA acknowledges that the significance of the dysfunction as evidenced by elevated levels of β_2-M is controversial. Part of this controversy arises from the fact that a worker with elevated levels of β_2-M may not experience any symptoms.

Dr. Goyer testified that the confusion over the interpretation of pathological significance of elevated levels of β_2-M stems from the fact that injury to the tubuli ultimately affects the functioning of the glomerulus. According to Dr. Goyer, the confusion lies in part in the fact that cadmium's earliest effect is primarily in the tubule, while kidney function is usually measured in the glomerulus (Tr. 6/6/90, pp. 126–127).

OSHA believes that this confusion results from two misunderstandings. First, tubular proteinuria measured in micrograms per gram creatinine (μg/g Cr). Total proteins are measured in milligrams per gram creatinine in urine. Measuring total proteins is not useful for measuring the presence of tubular proteinuria. As Dr. Lauwerys stated in his guide to physicians:

When increased excretion of protein is found (total protein exceeding 250–350 mg/g creatinine, or beta 2 microglobulinuria exceeding 200–300 μg/g creatinine) * * * it is recommended to perform a more extensive investigation of kidney function for evaluating the intensity of the biological disturbances * * * (Ex. 8–447)."

Cadmium-related tubular damage usually precedes other kidney damage, but cadmium can cause other types of kidney damage, e.g., glomerular damage, at the same time as tubular damage (Ex. 4–50; Ex. 55). Once tubular proteinuria has developed, there is a greater likelihood that further damage to the kidney will result.

Second, leading world experts on cadmium-associated kidney dysfunction have stated that workers with tubular proteinuria will have a portion of the kidney's functional capacity compromised. This may not at first be manifested as "symptoms," because the kidney has a certain amount of functional reserve. However, the remaining functional portion of the kidney is needed at various times throughout one's life to deal with conditions or other illnesses that are likely to occur. If this reserve is redused the remaining functional capacity of the kidney may rapidly succumb to a number of otherwise benign conditions. According to Dr. Elinder, Chairman of the Department of Nephrology at the Karolinska Institute in Stockholm, Sweden, workers with tubular proteinuria frequently deteriorate, with a significant decrease in renal function. Occasionally, severe cadmium-induced renal damage has progressed to become chronic renal failure and uremia (Ex. 55). At very low levels of β_2-M, however, a physician can determine that damage is occurring before it is "overt" illness that results in severe symptoms.

According to Dr. Goyer, Chairperson of the World Health Organization's Task Force on Cadmium, in his testimony at OSHA's hearing, fifty percent of workers with elevated levels of beta-2 microglobulin between 500–1,000 μg/g Cr will never revert to normal kidney function (Ex. 30). According to Dr. Friberg, Professor Emeritus, Karolinska Institute, this is because the tubules

contain lesions that can be observed in histopathology examinations (Ex. 29).

While most physicians would agree that glomerular effects and loss of GFR must be taken more seriously than a slight elevation in β_2-M, the finding of elevated levels of low molecular weight protein in the urine by itself indicates kidney dysfunction in the tubule (Ex. 8–447).

As Dr. Friberg stated in his testimony, each part of the nephron is dependent on every other part of the nephron. It is his expectation that if one part of the nephron suffers damage it is more likely that another part will suffer damage (Tr. 6/6/90, pp. 107–108). Ultimately then, cadmium-related tubular effects will be manifested as an effect on the function of the glomeruli, either subsequently to or in association with the onset of tubular proteinuria.

Because of the functional reserve of the kidney, the adaptive increase in a single nephron's glomerular filtration rate, after total or partial loss of other damaged nephrons, tends to obscure injury until a considerable amount of the functional elements of the kidney, the parenchyma, is irreversibly lost. This implies that under normal conditions, the basal GFR is submaximal. If as has been suggested, glomerular balance is very tightly maintained, reduction of tubular function may have repercussions on the glomerular level (Ex. 149). Early changes in glomerular function are not necessarily detectable by the measurement of basal GFR, but such changes may have a significant impact on health (Ex. 149). In a study by Roels (Ex. 149) it was found that a renal cadmium burden that had not yet caused microproteinuria did not impair the filtration reserve capacity of the kidney, but the age related decline of the baseline and maximal GFR is exacerbated in the presence of cadmium induced microproteinuria.

Not all participants in the rulemaking agreed that elevated levels of β_2-M signified damage that constitutes material impairment of health. Mr. Ken Storm, Senior Industrial Hygiene Specialist with Monsanto, stated that tubular proteinuria may result from a biochemical lesion of no clinical significance (Ex. 19–14).

Dr. Bond, medical consultant to SCM, testified that:

> * * * no histological abnormalities [are] seen in the proximal tubules * * * when there has been modest increase in urinary B2MG and Cd * * * [people with] * * * mild to moderate increases in urinary B2MG and Cd do not progress to renal failure if there are no other causes present such as infection, diabetes, etc. (Ex. 77)"

Dr. Kazantzis testified that in his opinion, tubular proteinuria alone is not accompanied by any specific histological change and that its pathological significance is unclear. Dr. Friberg, however, stated:

> It should be emphasized that tubular proteinuria may be accompanied by specific histological changes. Sometimes such changes have been reported before the functional changes. There are abundant data from animal studies showing early histological changes (Ref. by Kjellstrom, 1986, p. 38–43). Experiments from humans are more limited as only a small number of autopsies or biopsies are available. To the extent available, histologic changes were seen first of all in the proximal tubules (Ref. by Kjellstrom, 1986, p. 50–53). (Ex. 29).

Morphological changes are those that pertain to the form or structure of the organ. Histological changes are those that pertain to the minute structure and composition of the organ tissue. Twenty-three workers were evaluated for whom autopsy or biopsy data on morphological changes in the kidney were available (referenced in Dr. Friberg's written testimony). Of these, 18 workers had proteinuria. Of the 18 workers with proteinuria, all but three had morphological changes in their kidneys. There were no cases of workers with morphological changes without proteinuria (Ex. 144–3, p. 53). In five of the autopsy reports, the morphological changes in the kidneys were mainly confined to the proximal tubules, whereas the glomeruli were less affected.

These results demonstrate that functional changes in the kidney can occur before the microscopic structure of the kidney is severely damaged. The human data on pathological changes are limited, however, and animal data show that in some studies, morphological changes in the tubules emerge before measurable proteinuria (Ex. 8–086). In the absence of a better test, however, it appears that the use of proteinuria as a screening tool for morphological changes in the kidney will identify all cases of workers with histological or morphological changes in kidney tissue as well as identifying those with only functional changes that affect the kidney's ability to filter (Ex. 8–086 B).

These results show that elevated levels of β_2–M may indicate that kidney lesions of clinical significance have already occurred (Ex. 19–14). While a worker with elevated levels of β_2–M may not manifest any overt symptoms of illness, nonetheless, the tubuli and glomeruli have lesions that compromise the functioning of the kidney as a filtration mechanism. Any other minor kidney trauma may progress rapidly to serious kidney damage.

According to the American Conference of Governmental Industrial Hygienists (ACGIH):

> Persons excreting 290 $\mu g/L$ β_2-microglobulin are not disabled: indeed they will not experience any symptoms. However, the lesion (from tubular proteinuria) is irreversible and represents a permanent loss of functional reserve. An infection or other condition which compromises renal function, but which would not normally lead to serious illness, could overwhelm the remaining kidney capacity. (Ex. 8–644)

While Dr. Kazantzis testified that renal stone formation has been rare in cadmium workers in recent years (Ex. 19–43A), and he went on to say that in a:

> * * * small proportion of long-term heavily exposed cadmium workers, tubular proteinuria has been followed by renal glycosuria, abnormal aminoaciduria, phosphaturia, and hypercalcuria. (Exs. 80 and 81)

Dr. Kazantzis continued that progressive decline in renal function is a slow process in workers with cadmium-induced nephropathy and that this decline is unlikely to progress to an increased mortality from chronic renal disease. In support of his opinion, he cited his study (Kazantzis and Armstrong 1982; Ex. 8–603) in which approximately 7000 cadmium-exposed workers with more than one year of cadmium exposure between 1942 and 1970 were followed up to 1979 (Ex. 8–684). He found an SMR of 65 for all deaths coded as nephritis and nephrosis; the five year update showed an SMR of 85. One worker classified as being in the "ever high" exposure subgroup died from nephritis and nephrosis.

Dr. Elinder indicated, however, that most workers in Dr. Kazantzis' study had such low cadmium exposures that cadmium-associated illnesses would not be induced (Ex. 4–25). By combining 199 workers with high exposures into a group with over 6000 workers with low exposures into one group, the power of the study to find an effect was reduced. Increased mortality from chronic nephritis and nephrosis has been observed in Swedish battery workers (Exs. 4–68 and 8–740). The difference between expected and observed deaths in the Kazantzis study may well be due to local differences in recording certain types of information on death certificates.

Three other epidemiological studies of cadmium exposed workers have shown increased mortality from kidney diseases, genito-urinary tract diseases, or kidney cancer. Thun observed an elevated SMR for genito-urinary cancer

(SMR=135, Obs=6) in his total cohort (Ex. 4–67); Dr. Elinder (Ex. 4–25) reported an elevated SMR for genito-urinary diseases in his total cohort (SMR=300, Obs=3.0); and Holden *et al.* (Ex.4–39) observed an elevated SMR for genito-urinary cancer in his total cohort (SMR=122, Obs=4.0). Because the number of excess cases in each study is too small to make these findings statistically meaningful, the relationship between cadmium exposure and risk of death from kidney dysfunction is not clear. These three mortality studies, however, provide consistent evidence of excesses of kidney illnesses among cadmium-exposed workers. This suggests the possibility that, at least in some cases, cadmium-induced kidney dysfunction may be associated with excess death.

Death from nephritis, nephrosis or end-stage renal disease is rare. Accurate death rates from kidney disease are difficult to ascertain, in part because such illnesses are uncommon and in part, because they are dramatically underreported by at least 50% (personal communication 4/30/92, National Institute of Diabetic, Digestive and Kidney Diseases). Dr. Thun indicated that impaired renal function is frequently underreported on death certificates even when the disease is sufficiently severe to require chronic hemodialysis (Modan referenced in Thun; Ex. 4–68). Under-reporting results because deaths from these diseases are coded as deaths due to complications arising from the treatment of these diseases or from sequelae to these diseases such as heart attack, stroke or diabetes.

Treatments for severe kidney diseases such as dialysis or a kidney transplant are available for those who can afford them. As Dr. Friberg indicated, several of his own patients had cadmium-induced uremia and died. If they had had the opportunity for dialysis or renal transplant, they could have been saved (Ex. 29). Such treatments, however, are grave, especially considering that early forms of kidney dysfunctions can be detected and more serious diseases can be prevented.

An additional part of the controversy over the significance of tubular proteinuria is the question of whether it is a reversible effect. Dr. Friberg testified that:

> The continuous release of cadmium from the liver, also after end of the exposure, means that the accumulation of cadmium will take place in the kidneys for a long time after end of exposure * * * there is much data showing that the proteinuria in chronic cadmium intoxication is irreversible * * * studies * * * show beyond doubt that several years after (medical) removal of the worker (due to proteinuria) there is either an increase of low molecular weight proteins in the urine or no change at all. (Tr. 6/6/90, pp. 74–75).

Drs. Bernard and Lauwerys conducted a follow-up study of workers who had been medically removed from occupational exposures due to cadmium nephrotoxicity (Ex. 35). Among male workers who had been removed from cadmium exposure because of elevated urinary excretion of β_2–M, retinol binding protein (RBP), or albumin, the evidence was that kidney dysfunction increased significantly over the five year period. Once it has appeared, Drs. Bernard and Lauwerys concluded, cadmium-induced proteinuria is in most cases irreversible. Bernard and Lauwerys demonstrated that proteinuria slowly progresses. Despite their finding that this evolution was slow, the authors concluded that the onset of proteinuria should be considered to be an adverse health effect, since such cadmium nephropathy may progress to renal insufficiency.

Dr. Bond stated that the clinical significance of slight increases in urinary β_2–M (for example, 350 μg/1) is uncertain, but that a repeated finding of β_2–M levels twice that of normal would more likely reflect a permanent effect, based on his experience and the literature. (Tr. 7/18/90, p. 169) Dr. Bond also agreed that cadmium-induced proteinuria must be prevented or minimized in order to prevent material impairment of health. (Tr. 7/18/90, pp. 150–258, 175–176). About 20% of the cadmium workers that Dr. Bond has medically evaluated have elevated β_2–M levels. Dr. Bond removed two of these workers from cadmium exposure in 1986 when their β_2–M levels in the urine were 3000 to 5000 μg/1. Annual testing after removal indicated that urinary β_2–M and cadmium levels did not decline appreciably. Dr. Bond stated that in his opinion, these two workers are not sick based on results from tests of their level of serum creatinine and alpha phosphatase which measure kidney function (Tr. 7/18/90, pp. 189–191). Dr. Bond did indicate, however, that he was "concerned" about the welfare of these two individuals because he did not know if they were likely to develop any further problems. (Tr. 7/18/90, p. 229).

According to Jarup *et al* (Ex. 8–661) during the ten-year period of follow-up in his study, none of the cases of elevated β_2–microglobulinuria (greater than 310 μg β_2–M/g Cr) discovered in the high dose groups were reversible. The authors concluded that it was unlikely that any of these cases of tubular proteinuria would disappear after such a long follow-up time and that it was quite possible that more cases of tubular proteinuria would develop with a longer follow-up.

It is clear from the record of the rulemaking that despite some controversy, there is general agreement that renal tubular and glomerular lesions represent permanent loss of kidney functional reserve and that the lesions are irreversible. A worker with elevated levels of β_2–M who does not experience overt symptoms of illness may succumb to other illnesses more rapidly. An infection or other condition which would not normally lead to serious illness but which compromises kidney function could overwhelm the remaining kidney capacity (Ex. 8–644). A worker who has only slightly elevated levels of β_2–M may later develop proteinuria, even after cessation of exposures, or the worker may develop more severe forms of renal dysfunction. Such dysfunction is of great concern to OSHA. Loss of kidney function and renal compromise, described above, meet the definition of material impairment as intended in the OSH Act and as defined in this final standard (Sec. 6(b)(5)).

In summary, various world experts and others take *200* μg β_2-M/g Cr either as the normal limit or as the lower limit of normal (Lauwerys, Ex. 8–447; Friberg, Ex. 29). The most widely used standard test for measuring concentrations of β_2-M, Phadebas, established levels above 300 μg/L urine as being abnormal (Ex. L–140–1). All of these data and expert opinion lead OSHA to believe that the Agency could reasonably set the lowest β_2-M trigger for enhancing medical surveillance from 200 μg to as high as 300 μg/g Cr. Both 200 and 300 μg/g Cr are considered to be very low levels.

On balance, OSHA has decided to set 300 μg/g Cr as the lowest β_2-M trigger for the following reasons. OSHA believes that the medical surveillance requirements in this cadmium standard are, of necessity, very strict. As Dr. Friberg testified:

> OSHA's document * * * when implemented, will have a major impact to protect the workers' health. The proposed changes in PELs and the strict control measures required by OSHA may seem drastic. They are not drastic from the point of view of the protection of the worker, however. They seem drastic only because so little has been done in the past (Tr. 6/6/90; pg. 86–87).

OSHA is aware that these requirements impose a substantial economic burden on employers. OSHA does not want to impose costs on employers for medical surveillance when it is uncertain

whether the lower trigger level of 200 μg β_2-M/g Cr will provide additional protection.

OSHA received comments on other medical surveillance protocols (Exs. 14–14–C; 77; 19–43–A; 107). The Agency believes that the essential elements for a sound medical surveillance protocol that were submitted by other hearing participants have been included in this program. However, OSHA chose to limit initial examinations as specified under (l)(2)(ii) to three biological tests (CdU, CdB, β_2-M) instead of routinely requiring the battery of tests some commenters requested (e.g., ASARCO, Ex. 107). OSHA also relies upon three biological monitoring results used in conjunction with each other, instead of only one parameter, as is the current practice in some industries (Ex. 14–6). The Agency has determined, based on record evidence, that one parameter, either CdU, CdB, or β_2-M, is less reliable by itself to evaluate an employee's health status. Thus, OSHA requires three tests, initially and periodically thereafter.

As indicated above, the final medical surveillance program included in this standard is based upon the proposal (55 FR 4124), the memorandum further articulating that proposal (Ex. 46, July 2, 1990), and the other record evidence. In that memorandum, OSHA: (1) Indicated that the proposed medical surveillance section, paragraph (l), had elicited substantial comment and testimony at the hearings in June, 1990, in Washington, DC; (2) summarized the submissions; (3) presented medical surveillance provisions that had been modified in response to the comments and testimony; and (4) requested participants to submit further testimony and comments on these provisions and related issues. The main change to the provisions incorporated in the memorandum is that in this final standard employers are required to monitor an employee's CdB as well as CdU and β_2-M. The change is based upon testimony and comments OSHA received on the proposal and memorandum (e.g. Exs. 19–2; 19–14; 19–33; 19–34; 19–40; 19–42; 19–43; 77; 82; 84; 101; 106; 107; 120; 123).

With the comments and relevant medical literature in mind, OSHA had to select particular biological levels to indicate greater and lesser risk of contracting cadmium induced disease and to trigger appropriate medical responses. Dr. Tyner, medical director of the Gates Nickel-Cadmium battery plant, stated, "The most important part of this proposed standard is the medical surveillance portion with the removal provisions * * *. Medical surveillance must be mandated." (Ex. 19–2)

Dr. Tyner stated that the proposed medical surveillance provisions are about right. "[Five] 5 μg/g Cr is a little low for removal * * *. Tubular proteinuria is definitely a good reason to remove someone from cadmium exposure" (Ex. 19–2). His company removes workers at 300 μg/Liter. Dr. Bond of SCM stated that an option to requiring each workplace to have a physician who knows about cadmium's toxicity is for OSHA to establish a medical surveillance protocol that would require proper medical examinations (Tr. 7/18/90, pp. 199–200, 244–248). Michael Coffman, manager of industrial hygiene for Federal-Mogul urges OSHA to "set objective, non-mandatory guidelines to assist physicians in determining under what circumstances medical removal is necessary" (Tr. 6/11/90; p. 126).

In response to such comments OSHA incorporated a significant degree of physician discretion into the final medical surveillance provisions, while specifying clear triggers for non-mandatory and mandatory medical actions, where needed.

OSHA believes that each of its choices of triggers for enhanced medical surveillance represents a cutpoint that is generally well established in the medical literature and is widely used in practice for assessing risk of cadmium induced disease and for initiating appropriate preventive or protective action. Of course, OSHA understands that one or more individual triggers might have been set somewhat above or below the particular level OSHA selected. However, the Agency is assured that the overall configuration of trigger levels makes sense as a program for protecting workers to the extent feasible from cadmium induced disease and also is internally consistent.

Take CdU as an example; if CdU biological monitoring results are within the so called "normal" range, at or below 3 μg/g Cr, the employer must provide currently exposed employees who are covered by medical surveillance with the minimum level of surveillance delineated in paragraphs (l)(2), (l)(3), and (l)(4). This minimum includes an initial medical exam (biological monitoring and work history), followed within 12 months by a periodic (biennial) full medical examination which includes biological monitoring, and then within the following 12 months by biological monitoring also on a biennial schedule. Thus, the minimum level of surveillance involves annual biological monitoring, either independent from, or as part of full medical examinations and biennial, full medical examinations.

However, if the employee's CdU are >3 but <15 μg/g Cr, the employer under paragraphs (l)(3)(ii) and (l)(4)(iv) of this standard must take a number of additional, limited steps to locate the source of the exposure problem, control the potential sources of overexposure in the workplace, and more closely monitor for potential changes in any of the employee's biological indicators. Furthermore, the employer is also required to provide the employee with a full medical examination within 90 days after receipt of the biological monitoring results.

To be more specific, for example, if the employee's biological monitoring results show CdU to be in excess of 3 μg/g Cr but at or below 15 μg/g Cr, then the employer is required to:

(a) Provide semi-annual biological monitoring;

(b) Provide annual full medical examinations;

(c) Reassess the employee's work practices, personal hygiene, respirator use, if any, and smoking history and status;

(d) Reassess the respirator program, hygiene facilities, maintenance and effectiveness of relevant engineering controls; and

(e) Take reasonable steps to correct deficiencies found in the reassessments that may be responsible for the employee's excess exposure to cadmium.

In addition, due to the potential for disease associated with CdU levels above 3 μg/g Cr and especially above 5 μg/g Cr. (See Health Effects Section V). OSHA also is requiring the examining physician to consider and determine in a written medical opinion whether or not the employee, in light of all the medical evidence, should be medically removed from exposure to cadmium at or above the action level. If the physician determines that the employee need not be medically removed, the employer must:

(1) Continue to provide semi-annual biological monitoring of potential changes in the employee's biological indicators;

(2) Provide annual medical examinations; and

(3) Make periodic efforts to locate and control the workplace sources of the employee's problem until the CdU levels return to within the "normal" range.

Moreover, if the level of CdU exceeds 15 μg/g Cr, then under paragraphs (l)(3)(iii) and (l)(4)(iv) of this standard the employer must provide a full

medical examination within 90 days after receipt of the results. The physician continues to be required to determine in a written medical opinion whether the employee should be medically removed from exposure to cadmium at or above the action level. If the physician determines that the employee need not be medically removed, the employer must continue to provide the same level of enhanced medical surveillance as is required at the next lower trigger level, except that biological monitoring must be conducted quarterly and periodic medical examinations must be provided semi-annually. The employer also must periodically continue his/her efforts to locate and control the workplace sources of the employee's problem.

More than that, if the biological monitoring results obtained during the medical examination confirm the initial (or periodic) monitoring results, that the employee's level of CdU exceeds 15 μg/g Cr, or CdB exceeds 15 μg/lwb, or β_2-M exceeds 1500 μg/g Cr and in addition to the elevated β_2-M level, CdU levels exceed 3 μg/g Cr or CdB levels exceed 5 μg/lwb, then the physician is required to medically remove the employee from exposure to cadmium at or above the action level.

With this provision for mandatory removal, OSHA is effectively eliminating the examining physician's discretion as to whether to remove the employee from cadmium exposure at or above the action level. OSHA believes that the risk of the employee having or developing kidney disfunction and perhaps other diseases is so high at these biological levels that the employee must be removed as soon as it is established by retesting that the earlier monitoring results are confirmed (Bernard and Lauwerys, Ex. 35; NIOSH, Ex. 128; Lauwerys, Ex. 8–718; Roels, Ex. 57–K; Buchet, Ex. 8–201).

However, to avoid the possibility that a cadmium exposed worker's confirmed, very high β_2-M levels might be attributable to something other than cadmium exposure, OSHA is requiring that, for mandatory medical removal based on high β_2-M levels, the β_2-M levels must be supplemented by abnormal levels in one of the two cadmium-specific biological parameters, CdB or CdU, as well. Thus, OSHA seeks to assure that removal for elevated levels of β_2-M be carefully restricted to employees with high risks of adverse material impairment of health associated with exposure to cadmium.

Medical evidence in general would support mandatory removal at lower levels than established in paragraph (l)(3)(iii) (Exs. 8–644; L–140–51; 35). However, OSHA is mindful of other important considerations that tend to weigh against currently requiring medical removal at lower biological levels. First, medical removal is a dramatic intervention that may have potentially dire, unintended life consequences for the employee and could be very costly to the employer as well. Even as medical removal provides one reasonable way to deal with an employee's medical problem, it may contribute to, or create other problems. For example, if a veteran worker is removed because of high biological monitoring results and his/her subsequent results do not fall to or below the "normal" level, which would allow return of the employee to his/her former job status, the employee thereafter might be terminated and become, practically speaking, unemployable in today's cadmium exposed jobs. Second, individuals' vulnerabilities and susceptibilities to cadmium toxicity vary somewhat, especially at lower levels of exposure such as those under the new TWA PEL of 5 μg/m³. The numerical mandatory removal limits have been selected using Agency judgement as to the need to protect the sensitive portion of the worker population without removing too many workers who will not develop kidney impairment. And third, veteran cadmium-exposed workers, who were occupationally exposed to much higher levels of cadmium in the past, still are employed in the workplace. For veteran workers near retirement, a complex decision that is at once medical, social and economic has to be made concerning medical removal. This decision is best made by the examining physician and the individual worker in consultation. Fourth, with large numbers of veteran workers still in the workforce, mandatory removal at relatively low levels may create feasibility problems for many employers.

Considering the pros and cons for setting lower mandatory removal triggers, OSHA recognized compelling arguments on both sides. In light of this reality, OSHA tried to take reasonable account of legitimate, conflicting concerns by steering a middle course. To protect worker health, the Agency set lower removal triggers at the discretion of the physician. OSHA believes that while the final standard allows for discretionary medical removal at low levels (e.g., using CdU as an example, as low as just above 3 μg Cd/g Cr), physicians generally will not remove workers at these levels. OSHA does not expect physicians to remove workers when they first exceed "normal" levels or at low levels. Before 1999, workers need not be medically removed at or near these levels, unless in the physician's opinion and after full review of all the pertinent medical information the physician deems it necessary to do so in the interests of the health of a particular worker.

Nonetheless, by providing the option of discretionary removal at these low levels, OSHA believes that the physician and the employee will become aware that increased risk of kidney dysfunction exists at these levels, and they will consider other actions short of medical removal to minimize or avoid permanent damage, e.g., diet, use of certain broad-spectrum antibiotics and other prescription medications, use of other non-prescription medications. The physician and the employee should be aware of the risks in order to mitigate the influence of other factors that might rapidly overwhelm the worker's remaining functional capacity in cases where some dysfunction has already occurred even though the worker's test results are below the mandatory removal levels.

In further recognition of the countervailing factors listed above, the Agency phases in lower levels for mandatory requirements over nearly six years. Thus, in paragraphs (l)(3)(iv) and (l)(4)(iv) mandatory medical removal is required after January 1, 1999 whenever biological testing during a physical exam confirms earlier results that CdU is >7 μg/g creatine, CdB is >10 μg/lwb, or β_2-M> 750 μg/g Cr and in addition to elevated β_2-M levels CdU levels exceed 3 μg/g Cr or CdB levels exceed 5 μg/lwb. Support for the particular levels chosen for removal can be found in the health effects section earlier in this preamble and in the record of the rulemaking. For example, Dr. Bond, who testified on behalf of SCM, stated that the clinical significance of slight increases in β_2-M (for example, 350 μg/L) is uncertain, but that a repeated finding of β_2-M levels twice that of normal would more likely reflect a permanent effect, based on his experience and the literature (Tr. 7/18/90, p. 169). Dr. Bond also agreed that cadmium-induced proteinuria must be prevented or minimized in order to prevent material impairment of health. (Tr. 7/18/90, pp. 150–158, 175–176).

By phasing in mandatory removal requirements at lower levels, OSHA expects that most of the problems associated with immediately imposing such lower levels will be avoided. For example, employers' efforts over the intervening years to comply with this standard, especially in the face of

prospects of still lower mandatory removal triggers, are likely to control cadmium exposures in the workplace to the extent feasible. Moreover, the normal infusion of new workers not previously occupationally exposed to cadmium in conjunction with normal levels of turnover and the retirement of veteran workers will produce a workforce most of whose members have considerably lower body burdens of cadmium. Taken together, these developments should make mandatory removal at lower levels generally feasible for employers and less potentially burdensome for employees.

OSHA's tiered structure for progressively enhanced medical surveillance incorporates a parallel structure for progressively reduced surveillance, which is triggered at each tier by sufficiently lowered biological test results. At each level of enhanced medical surveillance there is a mechanism for reducing medical surveillance when levels of all three biological parameters fall below specified trigger levels. Thus, for example, the enhanced medical surveillance triggered by paragraph (l)(3)(ii), where levels of CdU>3 μg/g Cr, β_2-M > 300 μg/g Cr, CdB > 5 μg/lwb, is no longer required once the employee's levels of CdU fall to or below these levels. Thereafter, as long as the employee's biological monitoring results all remain within the "normal" range, the employer is required to provide only the minimum level of medical surveillance.

These medical surveillance provisions were developed with a primary focus on currently exposed employees. However, under paragraphs (l)(1)(i)(B), (l)(2)(i), (l)(3)(i)(B), (l)(3)(ii)–(vi), (l)(4)(v), and (l)(8), they apply as well to employees who may no longer be exposed to cadmium. Thus, the employer must provide medical surveillance to any employee who was exposed to cadmium prior to the effective date of this standard, unless the employer can demonstrate that the employee did not work for the employer in jobs with cadmium exposure for an aggregated total of more than 60 months in the years prior to the effective date of this standard.

OSHA understands that it may be difficult at times for the employer to demonstrate that the employee did not work for the employer in cadmium exposed jobs prior to the effective date of this standard for a total of 60 months or less. Consequently, the Agency does not require the employer to provide a certain proof to satisfy the employer's burden of proof. Rather, OSHA expects the employer to provide sufficient evidence to make it unlikely that the employee was exposed for a total of 60 months. The evidence must be reasonably persuasive in light of the protective purposes of medical surveillance. The evidence may be probablistic or circumstantial where direct evidence is neither available nor easy to develop.

Thus, on the one hand, for the reasons presented above, OSHA has placed the burden of proof on the employer to show that a currently or previously cadmium-exposed employee need not be provided medical surveillance under the criteria supplied in paragraph (l)(1) of this standard. And OSHA intends that these criteria should be interpreted in a manner that best assures medical protection to employees who appear potentially in need of it. On the other hand, OSHA does not intend to impose an unsustainable burden on the employer. On the contrary, the kind of proof that a reasonably conscientious employer could present generally should be viewed as satisfying the employer's burden of proof.

For employees to whom the employer must provide medical surveillance because of exposure to cadmium prior to the effective date of this standard, the main aim of initial medical surveillance, as previously indicated, is to identify as quickly as possible those with abnormally high biological test results. Once identified, these employees are then tracked through paragraphs (l)(3)(ii)–(iv) and (l)(4)(iv) into the same level of enhanced medical surveillance as currently exposed workers with similar test results. By contrast, for past exposed employees whose initial biological monitoring results are all within the normal ranges, the aim is to phase out periodic medical surveillance as expeditiously as prudence will allow. Consequently, under paragraph (l)(3)(i)(B) the employer is required to retest the employee within one year (12 months) of the initial exam. If the results of that retest confirm that all the levels remain normal, then under paragraph (l)(4)(v) the employer need not provide further medical surveillance to the employee.

The tiered structure of triggers for progressively enhanced and progressively reduced medical surveillance, outlined with regard to CdU, is utilized in paragraphs (l)(3) and (4) of this standard for CdB and β_2-M> levels, as well. Paragraph (l)(3) provides the required, tiered actions the employer must take in response to the initial biological monitoring results. Paragraph (l)(4) provides the requirements for periodic medical surveillance, which generally replicate the tiered requirements for biological monitoring in paragraph (l)(3). These parameters are required to be monitored on the same schedule as CdU.

In order to assist the employer, employee and the physician in understanding and implementing the medical surveillance provisions in this standard, OSHA has provided a Summary Chart of the provisions in the regulatory text and an example of a form for employee-notification-of-results in appendix A.

In addition to biological monitoring, periodic medical examinations also are required. Paragraph (l)(4)(ii) sets out the required contents of those examinations. The examination must include a detailed medical and work history and a conventional physical examination, with specific emphases on potential cadmium induced diseases and their biological indicators. Thus, particular attention is given to the respiratory and urinary systems, the same biological monitoring that is part of the initial examination, and additional blood and urine analyses.

Based upon numerous comments in the record indicating that OSHA should focus the content of the medical exam on potential lung and kidney disease as the critical effects, the Agency in this final standard has eliminated certain requirements from the proposed standard and added others (NIOSH, Ex. 19–26; Bond, Ex. 77; ASARCO, Ex. 107). For example, OSHA eliminated the proposed requirements for liver enzyme testing. While cadmium is regarded as a late-stage toxin to the liver, at least one commenter stated that there are no reports of cadmium-induced hepatocellular damage, therefore, medical tests for liver function are unjustified (Exs. 8–86, Ken Storm; 19–14, Monsanto). Dr. Friberg stated that there was no reason to include liver enzyme tests unless they are normally performed (Ex. 29).

A complete blood count is required as part of the full medical examination under paragraph (l)(4)(ii)(F). This test is expected to identify cases of anemia. According to Dr. Stopford, a physician with the Duke University Medical Center, a platelet count, which is already part of most commercially-available complete blood count panels, would help detect the toxic effects of cadmium on the spleen and liver, with associated anemia (Exs. 14–14B, 14–14–D). Dr. Stopford submitted comments to the record which included a case report on a worker with severe liver dysfunction (Ex. 14–14). Dr. Stopford

considered this case history to be cadmium related.

The proposed microscopic examination of urinary sediment was eliminated in the final standard, because comments were submitted that this test would provide little useful information (Ex. 29). Evaluation of the musculoskeletal system was eliminated from the physical exam but not from the medical history because commenters stated that musculoskeletal damage is seen only as a result of cadmium-induced kidney failure and probably will not be seen in the U.S. occupational environment (Exs. 19–14, 29; Tr. 6/6/90 pp. 112).

On the other hand, OSHA added other requirements to the final standard, for measuring urinary pH and creatinine in urine, as specified under paragraph (l)(2)(ii)(B)(2), because the Agency learned that they are needed to standardize and control the accuracy of measurements of cadmium and β_2–M (Friberg, Ex. 8–86, Vol. I, pp. 83; Phadebas, Exs. L–140–1, 4–47, L–140–45). Several commenters supported the requirement to measure creatinine in urine to control for diuresis if they do not do so at present (Exs. 84, 19–40).

Specifically, OSHA requires the following elements in the periodic medical examination for the following reasons. First, under paragraph (l)(4)(ii)(A) the Agency requires a detailed medical and work history to provide the physician with information, including employee reported symptoms, to be used in conjunction with a complete physical examination and biological monitoring. This information can assist the physician in determining the employee's health status, possible past exposures to cadmium or other toxic substances that may have damaged organs or systems susceptible to cadmium toxicity, and suitability for work in a job where cadmium exposure may occur. Questions 3–11 and 25–32 in appendix D are a required part of the medical history because they relate to the increased risk of kidney disease, lung cancer, bronchitis, fibrotic lung changes, and emphysema-like changes in the lung that can occur as a result of cadmium exposure (Ex. 19–26). The information about the respiratory system is also important for evaluating an employee's fitness for respirator use.

Second, a complete physical examination is required to enable the physician to directly and more broadly assess the health status of the employee and to pursue any other indications of potential medical problems that may be relevant to cadmium exposure. In the physical examination, the physician can assess other potentially serious adverse effects associated with cadmium exposure, like dermatoses, eye irritation and elevated blood pressure, which are beyond OSHA's primary focus on kidney and lung disease. A complete physical examination is particularly useful to the physician when exercising his or her discretion to determine whether the employee must be medically removed from exposure to cadmium under paragraphs (l)(3)(ii)–(iv).

Third, under paragraph (l)(4)(ii)(C) a chest X-ray is required at the first periodic medical examination, at the termination of employment examination (paragraph (l)(8)), and periodically as determined by the examining physician. An initial chest X-ray, although not useful for preventing lung cancer, can be useful for diagnosing lung cancer and other non-malignant lung diseases which are caused by cadmium exposure (e.g., Kazantzis Tr. 6/8/90, pp. 156–157), such as bronchitis, fibrosis and emphysema-like changes in the lung. It also provides baseline data upon which to assess any subsequent lung function changes (Ex. 19–26–F). OSHA is leaving the determination of frequency of chest X-rays to the discretion of the physician and is not requiring periodic chest X-rays because of the potential risk of adverse effects to the employee from too frequent X-rays (Ex. 19–14).

Fourth, pulmonary function tests are required to provide specific information about the employee's lung capacity and respiratory flow rate. This information is useful to diagnose bronchitis and emphysema, to provide baseline data on lung function, to evaluate any loss of lung function, and to provide baseline information of lung function status upon which to assess any subsequent lung function changes. This information may also be useful in assessing the health of employees who wear respirators. It is recommended that pulmonary function testing be conducted in accordance with the American Thoracic Society's criteria (Ex. 8–663).

Fifth, since a central purpose of the medical examination is to provide further information on the critical organs and critical effects associated with cadmium exposure, OSHA has included in the examination additional analyses of blood and urine and, for males over 40 years of age, prostate palpation or other at-least-as-effective diagnostic test(s). Specifically, OSHA has included a determination of the blood urea nitrogen (BUN) and serum creatinine levels and a complete blood count. Elevations in BUN and serum creatinine levels are indicative of kidney disease. For example, BUN and serum creatinine levels increase with the loss of glomerular filtration. Although BUN and serum creatinine tests are not cadmium specific, they do provide additional information about kidney function and kidney disease that is important for physicians to know in determining an employee's suitability for work in a cadmium-exposed job (Ex. 107). Regardless of whether the kidney disease is caused primarily by cadmium from occupational sources, and indeed regardless of whether the kidney disease is cadmium induced at all, the very existence of kidney disease in a cadmium exposed worker is serious cause for concern. OSHA in the final standard also has required a complete blood count, which most industry representatives stated was a very useful test for cadmium exposed workers (Dr. Bond, Ex. 77; Dr. Hine, ASARCO, Ex. 107; but see Ex. 19–14).

With regard to additional urine analysis, OSHA is also requiring a determination of the albumin, glucose and total and low molecular weight protein levels. While albumin and glucose tests are not cadmium specific, they can provide additional information about kidney function and kidney disease, which also is important for physicians to know in determining an employee's suitability for work in a cadmium-exposed job (Ex. 8–669–A). Elevated levels of albumin and glucose in urine may be indicative of a loss of glomerular function. In addition, the increased urinary excretion of low molecular weight proteins and total proteins (i.e., low and high molecular weight proteins combined) is associated with early renal damage.

Prostate palpation or other equally effective diagnostic tests are required to diagnose prostate cancer. Cancer of the prostate has been observed among cadmium exposed workers and was the first indication that cadmium exposure is associated with cancer. Although recent studies do not confirm the association between cadmium exposure and death from prostatic cancer, OSHA believes it would be premature and imprudent at this time to act as if exposure to cadmium did not increase the risk of prostatic cancer. Indeed, many scientists and physicians attribute the reduction in cadmium induced prostate cancer death rates not to a lack of association between cadmium exposure and prostatic cancer but to two other factors: The improved early diagnosis and treatment of prostate cancer, which has reduced the death rates from this disease, and the reduced levels of cadmium exposure (Ex. 19–42b; Environ Report, Ex. 12–39, ATSDR, Ex. 8–689). OSHA therefore, as prudent public health policy, requires inclusion

of prostate palpation or other equally effective diagnostic tests for prostate cancer in men over 40, the primary target group for prostatic cancer.

Finally, OSHA has authorized the physician to require any additional tests deemed medically necessary. OSHA believes that it is important that the examining physician have such discretion because, notwithstanding statistical probabilities, individual susceptibilities to, and tolerance levels and thresholds for, cadmium toxicity differ. The physician is in the best position to specifically determine which additional tests, if any, would be useful in evaluating the health status of the individual employee.

Paragraph (l)(5) provides for additional actions triggered by any unspecified but generally accepted abnormal findings consistent with cadmium toxicity that are identified through medical examinations. For example, in his guide for physicians who medically evaluate workers exposed to cadmium, Dr. Lauwerys indicates that levels of total protein in urine above 250–350 mg/g Cr may require additional medical attention and referral to a nephrologist (Ex. 8–447).

In devising paragraph this medical surveillance program, OSHA sought to provide objective markers for action while recognizing that single monitoring results generally should not be used in isolation from other results or other biological parameters or a holistic evaluation of the worker's health to determine a worker's fitness for cadmium exposed work. OSHA tried to provide a significant role for physician discretion in this evaluation, without leaving the physician devoid of boundaries on his/her discretion and guidelines to action.

Paragraph (l)(6)(i) requires the employer to provide a limited medical examination prior to the employee using a respirator to determine the employee's fitness for wearing a respirator. This is a change from the proposal, where a full medical examination, including elements designed to test the employee's fitness to wear a respirator, was required within 30 days after the employee was assigned to a job requiring the use of a respirator. Based on record evidence (Exs. 57, 19–22, 106), OSHA believes that a full medical examination is not necessary to determine the employee's fitness to wear a respirator and therefore in this final standard has only retained those elements of the full medical examination that are useful to such a determination. Based on comments to the record (e.g., ASARCO, Ex. 107), OSHA also believes that the examination to determine an employee's fitness to wear a respirator should be performed prior to the employee using a respirator. The examination must include a detailed medical and work history, with emphasis on questions 3–11 and 25–32 in appendix D, a blood pressure test, and any other tests or procedures, such as pulmonary function tests or a physical examination, that the examining physician deems appropriate. OSHA is requiring a detailed medical and work history with specific questions about past respiratory and cardiovascular problems, smoking history, and other medical problems that might either interfere with, or be exacerbated by the employee wearing a respirator, because this information should be gathered and medically assessed prior to the employee using a respirator.

In addition, the examining physician under (l)(6)(ii) should review the results of any biological monitoring of the employee's CdU, CdB and β_2-M. OSHA believes that the examining physician should assess these biological data indicating whether the employee has been overexposed to cadmium, has an abnormally high body burden of cadmium, or has kidney disease before the physician certifies the employee as fit to wear a respirator in a job in which the airborne cadmium levels are above the PEL.

Where the employee has actually exhibited difficulty in breathing during a respirator fit test or while using a respirator, then, under paragraph (l)(6)(iii), the employer is required to provide a full medical examination in accordance with paragraph (l)(4)(ii). The examination is required to determine the employee's fitness to continue wearing a respirator and his or her health status relative to further exposure to cadmium.

If the results of the medical examination under paragraph (l)(6)(i) or (iii) are abnormal, medical limitation of respirator use, including prohibition of such use or requiring that the employee be provided with a more appropriate respirator (e.g., a PAPR), shall be considered. If the employee is allowed to continue to wear a respirator the physician is required to periodically evaluate the employee's continuing fitness to wear a respirator as often as medically necessary. If the employee is found unable to wear a respirator, he or she shall be medically removed under paragraph (l)(11) of this standard from any current job where the employee is exposed to cadmium above the PEL.

In addition to the medical surveillance required in paragraphs (l)(2)–(6), paragraphs (l)(7) and (8) provide for further medical examinations in the event of acute exposure to cadmium because of an emergency or upon termination of employment, respectively. Emergency examinations are required because it would be imprudent to delay evaluating the effect of acute exposure to cadmium on the employee until the next periodic medical examination. Indeed, in an emergency, immediate medical attention may be necessary.

The employer, with one exception, is required under paragraph (l)(8) to provide a medical examination at the termination of employment to all workers to whom the employer at any time was required under paragraph (l)(1)(i) or (l)(7) to provide medical surveillance. Thus, for example, all workers who in any 12 month period after the effective date of this standard were exposed to cadmium at or above the action level on 30 or more days by the employer and all workers who had emergency medical examinations would be entitled to the examination required by paragraph (l)(8). In addition all workers exposed prior to the effective date of this standard who were covered by medical surveillance also would be entitled to a medical examination at termination of their employment, unless under paragraph (l)(8)(ii) the employer discontinued periodic medical surveillance as authorized under paragraph (l)(4)(v).

This requirement is somewhat different from the proposal. Under the proposal the employer would have had to provide a termination of employment examination to all employees who at any time had been eligible for a full medical exam under proposed paragraph (l)(3). However, under the proposal employers were not obligated to provide a full medical exam, or indeed any medical surveillance at all, to employees who had been exposed by them to cadmium exclusively prior to the effective date of this standard. The effect of the proposal, then, would have been to require employers to provide examinations at termination of employment only to employees who were exposed by them to cadmium at or above the action level after the effective date of this standard.

Unlike the proposal, the final standard does cover employees who may have been excessively exposed to cadmium prior to the effective date of this standard. However, the employer would not have to provide these employees with a termination of employment examination if their biological monitoring results had previously returned to "normal" levels and periodic medical surveillance of them had been

discontinued in accordance with paragraph (l)(4)(v).

The requirement for a medical examination at the termination of employment is in keeping with other OSHA standards (e.g., Asbestos, Coke Oven Emissions, Arsenic, Acrylonitrile, and Ethylene Oxide). The need for this requirement in the cadmium standard is due, in part, to the way cadmium is transported, distributed, and stored in the body. After absorption, cadmium is transported via the blood stream to other body parts, where it is bound to proteins and stored. Low excretion rates lead to a very efficient retention of cadmium in the body. The biological half-life of cadmium in various compartments of the body ranges from 20–37 years or more (Ex. 8–86–B). It is not surprising, then, that even after cessation of exposure to cadmium in the workplace, growing evidence indicates that cadmium stored in one body compartment can be transported to the kidney. In this way, cadmium proteinuria may develop years after exposure in the workplace has ceased. There is, therefore, little tendency for proteinuria (e.g., β_2-M>1000 μg/g Cr; Ex. 30), to decrease after removal from external cadmium exposure if past cadmium exposures were high (Ex. 35). Instead there can be an increase, which is substantial for some workers, and kidney damage can progress to a more severe stage of disease (Ex. 8–668). Consequently, it is important that the employee's health status regarding cadmium accumulation in the body be once again assessed at the employee's termination of employment.

Failure to find evidence of cadmium toxicity in the examination at termination of employment should not be viewed as a "clean bill of health." Physicians should use the opportunity of the examination to once again advise the employee of his/her cadmium body burden and prognosis, and to make recommendations for medical management and follow up. For the worker, this information allows him/her to determine the courses of action necessary to sustain health.

As part of the medical surveillance program established in this standard, the employer is required by paragraph (l)(9) to provide the examining physician with the following information: A copy of the standard and its appendices; a description of the affected employee's former, current, and anticipated duties as they relate to the employee's occupational exposure to cadmium; the employee's former, current, and anticipated future levels of occupational exposure to cadmium; a description of any personal protective equipment and respirators used, or to be used by the employee, including when and for how long the employee has used that equipment; and results from previous biological monitoring and medical examinations that were provided by the employer to the employee. Making this information available to the physician will aid in the evaluation of the employee's health and fitness for particular cadmium-exposed job assignments. This provision is essentially the same as in the proposal (55 FR 4126).

Under paragraph (l)(10), the employer is required to obtain a written opinion from the examining physician promptly after a medical examination of an employee. The written medical opinion must contain the results of the medical examination as they relate to occupational exposure to cadmium, any detected medical conditions relevant to further cadmium-exposure, any recommended restrictions upon the employee's exposure to cadmium or upon the use of protective clothing or equipment, and other elements of (l)(10)(i)(A–E). This written opinion by the physician, which is given to the employer, must include a statement indicating that the physician has provided the results of the tests, the medical examination, any diagnoses, and an evaluation of the employee's prognosis to the subject employee in a manner that appropriately informs the employee of the results of the tests. A suggested format for such a statement is included appendix A. The physician is not to reveal to the employer orally or in his/her written medical opinion specific findings or diagnoses unrelated to occupational exposure to cadmium. Under paragraph (l)(15)(i), the employer must give a copy of the written medical opinion to the affected employee within two weeks after receipt thereof.

The purpose of requiring the examining physician to supply the employer with a written opinion is to advise the employer of the medical basis for determining placement of employees in cadmium-exposed jobs. The requirement that a physician's opinion be in written form will assure that employers have had the benefit of this information which can be referred to as needed. The requirement that the written medical opinion from the examining physician include the physician's diagnosis and prognosis for the employee and other elements stated in paragraph (l)(10)(i)(A–E) is to assure that the employer and the employee are apprised of all medical information that is meaningful and relevant to the employee's initial or continued exposure to cadmium in the workplace. The requirements that the written medical opinion be promptly provided after the examination to the employer and that the employer, in turn, provide a copy of the physician's written opinion to the employee within two weeks of its receipt (paragraph (l)(15)(i) is to assure that notice of potential adverse health effects is promptly communicated to the employer and employee so as to minimize potential risk to the employee's health.

A requirement has been included in paragraph (l)(10)(i)(E) that the employer obtain a statement from the examining physician that the employee has been informed of the results and medical implications of the medical examination. It is the employer's responsibility to assure that the employee has been so informed. A suggested format for such a statement is provided in appendix A. In conjunction with the requirement that the employee must be provided with a copy of the physician's written opinion, OSHA is assured that the employee will be informed of the results of the medical examination. The requirement that the physician sign the opinion is to assure that the information that is given to the employer has been seen and read by the physician and that the physician has personally determined whether the employee may continue to work in cadmium-exposed jobs.

The purpose in requiring that specific findings or diagnoses unrelated to occupational exposure to cadmium not be included in any oral or written opinion provided by the physician to the employer under paragraph (l)(10)(iii) is to encourage employees to take the medical examination by removing any concern that the employer will obtain adverse information about their health status that has no relation to occupational exposures. This provision has been included in prior standards (e.g., final arsenic standard, 43 FR 19621).

Medical Removal Protection (MRP)

Paragraphs (l)(11) and (l)(12) provide for medical removal protection and medical removal protection benefits, respectively. These paragraphs apply only to workers who are exposed to cadmium at or above the action level. Paragraph (l)(11) generally requires the employer to remove workers from exposure to cadmium on each occasion that the risk of material impairment to the employee's health or functional capacity from continued exposure to cadmium is considered too high. More specifically, the employer must remove

the employee from excess exposure to cadmium in three cases. First, the employee must be removed from exposure at or above the action level on each occasion that a physician determines in a written medical opinion that medical removal is required under paragraphs (l)(3) and (l)(4). In accordance with these paragraphs, this determination may be based upon elevated levels of the employee's CdU, CdB or β_2-M. Alternatively, the determination may be based on evidence of illness, other signs of cadmium-related dysfunction or disease, or any other reason deemed medically sufficient by the physician. Second, the employee must be removed from exposure at or above the action level where medical removal is mandatory under paragraphs (l)(3)(iii) and(iv)(C) and(l)(4)(iv)) if the employee's levels of CdU, or β_2-M or CdB are confirmed to be in excess of the trigger levels specified in those paragraphs. Third, the employer must remove an employee from cadmium exposure above the PEL whenever a physician determines in a written medical opinion that the employee cannot wear a respirator. The MRP provisions apply only to such an employee when he/she already is functioning in a job where a respirator is required and it is then determined that the employee is unable to wear a respirator and therefore must be removed. MRP does not apply to a new employee who is determined in a pre-assignment medical examination for respirator use to be unable to wear a respirator. Nor does it apply to a worker found to be medically unable to wear a respirator that is required in a job to which the worker seeks to transfer or to a worker who has volunteered to wear a respirator.

Each time the employee is medically removed under paragraph (l)(11), paragraph (l)(12) requires the employer to provide medical removal protection benefits for up to a maximum of 18 months, thereby maintaining the employee's total earnings and other employment rights for that period as if the employee were not removed.

Medical removal protection (MRP), in paragraph (l)(11) of the cadmium standard, is a protective, preventive health mechanism that is integrated with the medical surveillance provisions of this standard. MRP requires employers to temporarily remove from jobs with significant exposure to cadmium those employees who are discovered through medical surveillance to be at the highest risk of sustaining material impairment to health from continued exposure to cadmium. The medical removal protection benefits (MRPB) provisions in paragraph (l)(12) of the standard require employers, on each occasion that an employee is medically removed under paragraph (l)(11), to provide temporary economic protection to the removed employee.

MRP and MRPB have previously been included in OSHA's Lead and Benzene standards, 29 CFR 1910.1025 and 1910.1028, respectively. The MRP and MRPB provisions of this standard are modeled upon similar provisions incorporated in the lead standard. The lengthy discussion and justification for MRP and MRPB provided in attachment C to that standard (43 FR 54440–73, Nov. 21, 1978) are, to the extent relevant, hereby adopted in this preamble to the cadmium standard.

MRP, contributes directly to achieving one of the aims of the OSH Act, assuring to the extent feasible "that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by the standard for the period of his working life" (Sec. 6(b)(5)). The term "material impairment" is not defined in the cadmium standard since it encompasses multifarious conditions. However for purposes of this standard, "material impairment" is intended to be interpreted as broadly as is necessary to achieve the preventive purposes of the Act. "Material impairment," thus, is intended to include early stage diseases and medical dysfunctions and is not intended to necessarily imply the existence of overt illness, irreversible damage, or clinical symptoms. In practice, the term will be defined in a manner consistent with sound medical practice through the physician determination mechanisms in the cadmium standard.

MRP and MRPB, separately and in combination, serve three main interrelated purposes. First, together, they increase employee participation and confidence in the standard's medical surveillance program. Second, by requiring the employer to remove employees with the highest risk of suffering cadmium induced disease from significant exposure to cadmium and to provide removed employees with enhanced medical surveillance, MRP serves both to prevent the onset of disease and to detect and minimize the extent of existing disease. Third, MRPB allocates the costs of medical removal protection to employers. The medical surveillance program in the cadmium standard represents a major element in OSHA's integrated approach to preventive health under the OSH Act. The success of the preventive approach crucially depends on voluntary and meaningful worker participation in medical surveillance.

Medical surveillance can only be effective in preventing (and minimizing) disease where workers: (1) Voluntarily seek medical attention when they feel ill; (2) refrain from efforts to conceal their true health status; and (3) fully cooperate with examining physicians to facilitate accurate medical diagnoses and effective treatment. This sort of employee participation and cooperation cannot be evoked by coercion. It will occur only where no major disincentives to meaningful worker participation exist. Without such participation, it would be much more difficult, if not impossible, to adequately monitor workers' health and to identify workers who need temporary medical removal. And without effective medical surveillance, the overall protection afforded by the cadmium standard would be substantially diminished.

MRP is a logical and natural culmination of medical surveillance. In order to protect the health of workers identified by the medical surveillance program as most in need of protection, MRP mandates temporary removal from significant cadmium exposure and enhanced medical surveillance. Without MRP, employers would be free to maintain high-risk workers in their current, high-exposure jobs, which would not be sufficiently protective of their health. Alternatively, employers could choose to terminate, temporarily lay off, or transfer those workers from higher-paying, cadmium-exposed jobs to lower-paying, less-exposed jobs. This might be protective enough but it could seriously damage workers' livelihood.

Under such conditions, workers would be faced with a painful dilemma: They could decline to participate in medical surveillance at substantial risk to their health, or they could agree to participate in medical surveillance at substantial risk to their livelihood. In either case, the effectiveness and integrity of the medical surveillance program would be compromised. In such circumstances, countless workers doubtless would be very hesitant to participate in medical surveillance. Consequently, in part to safeguard the medical surveillance program, both MRP and MRPB have been included in the standard.

With MRP, workers are assured of being removed to low exposure jobs when necessary to protect their health. And with MRPB, workers are assured that, if they fully participate in medical surveillance and if the results of medical surveillance require removal from their high-cadmium-exposure jobs, their

wages and job status will be protected for an extended period. During that period, the examining physician can determine whether the removed workers' health has sufficiently improved so they may be returned to their previous jobs, or they must be permanently removed from further exposure.

Viewed as a means to achieve the health goals of the standard, temporary medical removal is a method of control, not so different in this respect from engineering controls, which control airborne cadmium emissions. Implementing MRP, like other controls, necessarily entails certain costs. The employer, for example, might incur certain costs due to the temporary loss of a trained and experienced employee. Without MRPB, a removed worker might lose substantial earnings or other rights or benefits by virtue of the removal. These costs are a direct result of reliance on MRP to protect worker health.

OSHA considers the costs of protecting worker health to be an appropriate cost of doing business since employers are obligated by the OSH Act to provide safe and healthful places of employment. Consequently, the costs of MRP, like the costs of providing respirators and engineering controls, are placed on employers rather than on the shoulders of individual workers unfortunate enough to be at risk of sustaining material impairment to health due to occupational exposure to cadmium. Nevertheless, MRP should not be understood as an alternative to primary control of workers' exposure to cadmium. Rather, MRP is intended by OSHA to be used exclusively as fall-back protection, where other, primary methods of controls have proven to be insufficiently protective.

Precisely because MRP will impose additional costs on employers, MRP can increase the protection afforded workers by the cadmium standard not only directly by improving medical surveillance but also indirectly by providing employers with economic incentives to comply with other provisions of the standard. The costs of MRP are likely to decrease as employer compliance with other provisions of the standard increases. Employers who comply with other provisions of the standard should have to remove relatively few employees. With only a small number of employees requiring removal, complying employers are more likely to be able to find positions available to which removed employees can be transferred. By contrast, employers who make only cursory attempts to comply with the central provisions of the cadmium standard are likely to find that the greater their degree of noncompliance, the greater the number of employees requiring medical removal and the greater the associated MRP costs. Thus, MRP serves as a strong stimulus for employers to protect worker health and rewards employers who through innovation and creativity derive new ways of protecting worker health not contemplated by the cadmium standard.

One limiting factor on the potential of MRP to prevent disease is that, once an employee has developed proteinuria (e.g., β_2-microglobulinuria), in many cases medical removal can only slow and minimize the progression of the disease or dysfunction but cannot necessarily prevent the development of more serious disease. Medical removal, by severely restricting the intake of cadmium on the job while providing time for natural excretion to eliminate from the body previously absorbed cadmium that has accumulated in various body compartments, will effect a net decrease in the body's cadmium burden. However, the very process that reduces the overall body burden of cadmium leads to an increase in the kidney burden of cadmium (though generally to a smaller increase than if the employee had not been removed at all from significant exposure to cadmium). This is because the decrease in overall body burden of cadmium is achieved through the excretion of CdU, which passes through the kidney, thereby increasing the amount of cadmium in the kidney, where it continues to cause damage.

Thus, temporary medical removal can protect a removed employee from additional cadmium exposure but may not in some cases be a mechanism for restoring normal kidney function where cadmium-related proteinuria, or more severe cadmium-related kidney disease is already present. For workers who have already developed cadmium induced kidney disease, the primary purpose of temporary medical removal is to provide intense medical surveillance while minimizing both further exposure to cadmium and further progression of the dysfunction/disease during the period in which diagnosis and prognosis of the individual's particular cadmium-related dysfunction/disease can be fully evaluated. Consequently, early detection of excess exposure to cadmium through medical surveillance and early action to prevent excess exposure is critical. The medical surveillance program and the MRP provisions in the cadmium standard were devised with early detection and early action in mind.

Cadmium is naturally excreted very slowly from the body. It is excreted slowly because rapid elimination of cadmium would risk overburdening and damaging the kidney. This fact has two implications. First, because of the risk of kidney damage arising from the rapid elimination of cadmium from the body, current methods of chelation are unsafe for reducing cadmium in the body. Second, since there is no safe way to accelerate the excretion of cadmium, natural elimination is the only means that can be relied upon to reduce body burden and even this may not be "safe" (Friberg, Ex. 29).

Temporary medical removal is an indispensable part of the cadmium standard for two major reasons. First, workers who have not already developed irreversible kidney damage can be protected by temporary medical removal. Second, more specifically in operations and industries where engineering controls cannot reduce airborne cadmium levels to the PEL and during the period when industries are in the process of implementing engineering controls, workers with higher exposures to cadmium will have to place increased reliance on respirators for protection. The protection afforded by respirators often will be less than would have been afforded by engineering controls and MRP may become necessary. Thus, MRP can provide additional protection when it is especially needed.

As indicated above, temporary medical removal is mandated in three sorts of cases. First, under paragraphs (l)(3)(ii)–(iv) and (l)(4)(iv), the employer must remove the employee whenever a physician, in his or her medical discretion, determines in a written medical opinion that the employee shall be removed. The requirement that the physician make such a determination is driven by biological monitoring results, but the determination itself may be based upon biological monitoring results, other evidence of illness, or any other reason deemed medically sufficient by the physician. However, as stated previously, it is not OSHA's intention that workers should be removed under the physician's discretionary removal authority simply because their biological monitoring results exceed the minimum trigger provided in paragraph (l)(3)(ii). Second, under paragraphs (l)(3)(iii)–(iv) and (l)(4)(iv), the employer also must remove the employee whenever:

(i) The employee's CdU exceeds 15 μg/g Cr; or CdB exceeds 15 μg/lwb; or the level of β_2-M exceeds 1500 μg/g Cr

and, in addition, the employee's CdU exceeds 3 μg/g Cr or CdB exceeds 5 μg/lwb, and these levels are confirmed as specified in paragraph (l)(3)(iii); or

(ii) Beginning on January 1, 1999, the employee's CdU exceeds 7 μg/g Cr, or CdB exceeds 10 μg/lwb, or the level of β_2-M exceeds 750 μg/g Cr and, in addition, the employee's CdU exceeds 3 μg/g Cr or CdB exceeds 5 μg/lwb, and these levels are confirmed as specified in paragraph (1)(3)(iv).

Thus, under paragraphs (l)(3)(ii)–(iv) and (l)(4)(iv) removal may be effected by a written medical determination in which the physician exercises medical discretion to decide whether to remove an employee. However, where the employee's biological monitoring results are confirmed to exceed the trigger levels set out in paragraphs (l)(3)(iii)–(iv) and (l)(4)(iv), that alone triggers mandatory medical removal, and there is no latitude within which the physician may exercise discretion.

The third case in which temporary medical removal is mandated is where the employee is exposed to cadmium above the PEL and a physician determines in a written medical opinion that the employee cannot wear a respirator (paragraphs (l)(6)(iii)-(iv) and (l)(11)(ii)). For any employee who is removed because of the employee's inability to wear a respirator, the employer under paragraph (l)(11)(i)(D) is required to provide follow-up medical examinations at least every six months until the examining physician in a written medical opinion determines that the employee either may be returned to his or her normal job or must be permanently removed from exposure to cadmium above the PEL. The follow-up examinations are to monitor the health status of the employee insofar as it may be relevant to the employee's ability to wear a respirator and to reassess that ability so that the decision to return the employee to his or her normal job or to permanently remove the employee from work with exposure to cadmium above the PEL can be made as expeditiously as is medically prudent.

For employees who are removed because they experience difficulty breathing during use of, or fit testing for, respirators, additional tests are required to medically evaluate the reasons for the employee's inability to wear a respirator, such as changes in cardiopulmonary function. For these workers, who were exposed to cadmium above the PEL prior to being found to be unable to wear a respirator, it is also prudent to monitor their possible overexposure to cadmium.

The specific requirements of MRP, set out in paragraph (l)(11) of this standard, are written to achieve all the purposes discussed above. Under paragraph (l)(11)(i), the employer must remove any employee from work where exposure to cadmium is at or above the action level on each occasion that the employee's relevant biological monitoring test results exceed any of the mandatory medical removal triggers specified in paragraphs (l)(3) or (l)(4) of the standard and on each occasion that a physician determines in a written medical opinion that the employee should be removed from such exposure. As stated above, the physician's determination may be based on biological monitoring results; evidence of illness, other signs or symptoms of cadmium-related dysfunction or disease; or any other reason, except inability to wear a respirator, deemed medically sufficient by the physician to indicate that the employee has a medical condition that places the employee at increased risk of material impairment to health from further exposure to cadmium at or above the action level.

The biological monitoring test results that provide the central criteria for removal are established in paragraphs (l)(3)(ii)–(iv) based on medical evidence that workers with results above these levels are at substantially increased risk of cadmium-induced illness and dysfunction. The levels that were selected as triggers for each of the progressively enhanced tiers of medical surveillance, and ultimately for medical removal, generally must be avoided to prevent an increasing risk of cadmium related dysfunction and disease. The decision to remove an employee with CdU, CdB or β_2-M at or below the mandatory removal levels is left to the discretion of the examining physician because he/she is best able to make that judgment based upon all the available medical evidence concerning the particular employee. However, when the employee's biological monitoring results are confirmed to exceed these trigger levels, the accompanying risk of significant adverse effects to the employee's health is enhanced, and the decision to medically remove becomes mandatory.

In most cases in which a worker is removed for medical reasons, the standard provides for removal from work having an exposure to cadmium at or above the 2.5 μg/m³ action level on any day. This limitation on the level of cadmium to which a removed worker can be exposed was selected for three reasons: First, to assure that the removed worker would not be exposed to cadmium at a level high enough to further increase the risk to his or her health; second, to assure that the level of cadmium to which the removed worker might be exposed would be low enough to facilitate a net decrease in the employee's body burden of cadmium, with the aim of restoring normal levels of cadmium in the measured compartments of the body, so that the employee could be returned to his or her former job status; and third, where cadmium-induced disease or dysfunction has already occurred, to minimize further progression of the existing condition. Nevertheless, OSHA recognizes that situations may arise in which removal of workers to jobs with airborne cadmium exposure just below the action level would be inadequate to protect the worker's health. These situations can and should be dealt with by the examining physician on an individual basis in the course of a thorough medical examination conducted pursuant to the standard. Although the standard embodies the judgment that, at a minimum, all removed workers must be removed from work having an exposure to cadmium at or above the action level, it does not restrict a physician from recommending actions more protective than the standard's requirements where necessary to protect the health of individual workers.

As stated above, under paragraph (l)(11)(i)(D), employees who are medically removed must be given follow-up medical examinations every six months until in a written medical opinion the examining physician determines that the employee either may be returned to his/her former job status or must be permanently removed from cadmium exposure at or above the action level. It is important that employees on medical removal receive semiannual medical examinations. Because cadmium is excreted in the urine, which must pass through the kidney, the burden of cadmium in the employee's kidney is likely to increase for a time while the employee is on medical removal. Therefore, it is imperative that the employee's health, and in particular the employee's kidney function, diet, smoking habits, use of medication, and water intake, be strictly monitored throughout the natural process of reducing the amount of cadmium accumulated in the employee's body.

In general, the medical basis for returning the employee effectively is a finding by the physician that the employee no longer has a medical condition that places him or her at increased risk of material impairment to health from exposure to cadmium at or above the action level. However, for

employees who were removed because of abnormally high biological monitoring results, with the single exception set out in paragraph (l)(11)(v) which is discussed immediately below, no employee may be returned to a job where he/she will be exposed to cadmium at or above the action level until his/her biological monitoring results fall to or below the return trigger levels specified in paragraph (l)(11)(iv), that is, until CdU falls to or below 3 μg/g Cr, CdB falls to or below 5 μg/lwb, and β_2-M falls to or below 300 μg/g Cr. These levels are below levels at which the standard requires the examining physician to consider discretionary removal. Return of a removed employee is generally not permitted until the employee's biological monitoring results have fallen to low levels in order to assure that workers who have been removed because of overexposure to cadmium are not returned to significant exposure to cadmium until their body burden of cadmium is sufficiently low.

However, in paragraph (l)(11)(v), the standard does provide one narrow exception to this requirement. In rare cases, where in the physician's professional opinion continued exposure will not pose an increased risk to the employee's health (e.g., the potential decrements to the employee's kidney function are not projected to be any greater if the employee were permitted to continue on the job than they would be if the employee were removed) and there are special circumstances making continued medical removal particularly problematic for the employee, the examining physician in a written determination may return a worker to his or her former job status despite what would otherwise be unacceptably high biological monitoring results. OSHA recommends that the physician consider the use of this narrow exception for particular employees only after two quarterly biological monitoring results have been obtained after medical removal (i.e., no sooner than six months after the worker has been medically removed due to elevated biological monitoring results). Six months will provide a minimum period of time during which a physician must try to determine if existing damage is cadmium related, and if so whether such damage is permanent. In cases where the employee is permitted to return to work under this exception, the employee should continue to be medically monitored as if he/she were still on medical removal until such time as the employee's biological monitoring results have decreased to or below levels of CdU of 3 μg/g Cr, CdB of 5 μg/lwb, and β_2-M of 300 μg g Cr.

The purpose of this exception, which OSHA intends to be used with extreme care, is to provide some flexibility where it is reasonably clear that returning the worker to his/her normal job is unlikely to adversely affect the employee's health and the alternative to return is, for all practical purposes, much more drastic for the employee; e.g., termination of the employee from his job with loss of pension benefits. Depending upon the particular circumstances, a decision to return a worker with high biological monitoring results might be justified, for example, when an employee has been on medical removal for 18 months, is about to retire, and the time that the employee will continue to be occupationally exposed at or above the AL is very limited; e.g., a few months. When the physician does authorize return of the employee in such cases, the physician may require the employer to provide the employee with additional protection, such as a supplied air respirator operated in a positive pressure mode. In any event, the decision to return the employee should be made only after the physician has fully explained the relevant facts and prognoses to, and fully consulted with the employee.

As discussed above, under paragraphs (l)(6)(ii) and (l)(11)(ii), medical removal also is required whenever an examining physician determines in a written medical opinion that an employee cannot wear a respirator and must be removed from a job with exposures to cadmium above the PEL.

Under paragraph (l)(11)(i)(B), an employer who is required to medically remove an employee must do so regardless of whether at the time of removal a job is available into which the removed employee may be transferred. If no such job is available, the employer must, nonetheless, pay full MRP benefits to the employee even though the employee is effectively medically laid off. Initially, this might be costly to employers. However, after the initial adjustment period during which workers who were excessively exposed to cadmium prior to promulgation of this standard will have to be medically monitored and, where necessary, removed in accordance with the medical surveillance and MRP provisions of this standard, MRP costs should be quite low. The provisions of this standard requiring employers to control workplace airborne cadmium levels to the PEL, in conjunction with the tiered structure of enhanced medical surveillance and other ancillary provisions should prevent the vast majority of workers from being excessively exposed to cadmium. Consequently, on the one hand, employers who promptly come into compliance with the provisions of the standard should encounter very few workers who require temporary medical removal at any one time, and on the other, exposure levels in most jobs should be controlled to levels low enough so that removed workers may be transferred into those jobs. OSHA, therefore, expects employers to experience only a minimal economic impact from MRP after the initial adjustment period.

Paragraph (l)(11)(vi) deals with "voluntary" medical removals and limitations by employers. Where an employer, although not required by the standard to do so, removes an employee from exposure to cadmium or otherwise places limitations on the employee's exposure to cadmium because of the effects of cadmium exposure on the employee's medical condition, the employer must provide the employee with the same MRP benefits (MRPB) as if the removal had been required under paragraph (l)(11). The purpose of this paragraph is to prevent employers from avoiding the requirements of paragraphs (l)(11) and (12) by voluntarily removing employees for medical reasons before those paragraphs would otherwise require removal and payment of MRP benefits. Without this provision regarding voluntary removal, MRP, MRPB and medical surveillance might be subverted by the actions of unscrupulous employers.

Paragraph (l)(12) of this standard deals with MRP benefits. Under that paragraph, the employer is required to provide up to 18 months of MRP benefits to a worker on each occasion that he or she is medically removed from exposure to cadmium in accordance with paragraph (l)(11). As stated above, OSHA is requiring that MRP benefits be provided in response to workers' understandable fears that participating in the medical surveillance program required by the cadmium standard otherwise might lead to a loss of their jobs and job benefits. Although MRPB cannot entirely eliminate that possibility (e.g., where a worker has suffered irreversible damage to his or her health that requires permanent removal from exposure to cadmium), workers will be protected for a considerable time from loss of income, job, seniority and all other employee rights and benefits due to temporary medical conditions that may require their removal from exposure to cadmium at or above the

action level. Moreover, even for workers who must be permanently removed, MRPB protects the workers' wages and rights and benefits during the period needed to determine that permanent removal is required. Thus, MRPB largely removes an important disincentive to voluntary participation by employees in medical surveillance.

OSHA selected 18 months as the maximum period during which MRPB might have to be paid for several reasons. First, OSHA wanted to provide benefits for a period that was long enough so that the vast majority of removed employees who could be returned to their former job status would be able to be returned before their MRPB ran out. Second, the 18-month period for MRP benefits appears to have worked well in the lead standard (see 29 CFR 1910.1025 (k)(2)). Cadmium, like lead, is a heavy metal with a long half-life in the body.

OSHA believes that, with medical removal, elevated levels of CdU, CdB and β_2-M can be reduced over time to safe levels in many employees who have not been so overexposed to cadmium that they have suffered resulting permanent damage to their health. However, how long it will take for employees with elevated levels to return to safe levels is not precisely known. The amount of time needed will depend upon three interrelated factors: the employee's current burden of cadmium or level of β_2-M; the employee's rate of excretion of cadmium; and the extent of any continuing exposure to cadmium. The exact rate of natural excretion of accumulated cadmium from an employee's body, in turn, depends upon several factors, e.g., past and recent exposures, and body burden (Ex. 29). Since the half-life of cadmium in some compartments of the body is very long, and in most compartments is even longer than the half-life of lead in bone, i.e., 20 years (Ex. 8–668), OSHA has concluded that nothing less than the 18-month-MRPB period provided in the lead standard should be applied to cadmium exposed workers. This is a change from the cadmium proposal, which authorized a maximum of six months for MRP.

Based on its experience with MRP in practice in the lead standard, the toxicological similarities between lead and cadmium, and the best available evidence on cadmium, OSHA believes that most workers removed from significant exposure to cadmium who can be returned to their former job status because of "normal" biological monitoring results will be returnable within considerably less time than 18 months. According to De Silva, when exposures end, CdU and CdB levels fall during the first year (Ex. 8–716). Dr. Friberg stated that after cessation of exposure, cadmium concentrations in blood rapidly decrease with a half-time of two to three months (Ex. 29). This decrease is related to body burden. After the rapid decrease, CdB levels decrease more slowly depending upon recent and past exposures. Furthermore, in some cases a high urinary cadmium excretion may be seen after short-term exposures that have been very high, even without renal dysfunction (Ex. 29).

If examining physicians seek to prevent the onset of kidney disease by prudent early responses to protect workers, e.g., by temporarily removing a worker whose CdU level is well below, say, 10 μg/g Cr from exposure to cadmium at or above the action level, nearly all such workers should be returnable well within 18 months. For those workers whose levels have not fallen into the "normal" or safe range within 18 months, OSHA expects that continued temporary removal typically will serve no useful medical purpose since the damage done to their health is likely to be beyond restoration.

More generally, the medical determination as to whether a removed employee may be returned to his or her former job status can only be made after a medical examination, which the employer is required to provide. The employer must continue to provide MRP benefits until a final medical determination is made that either the worker can be returned to his or her former job status and the worker is returned or the worker is incapable of ever safely returning to his or her former job status and the worker is permanently removed by a written medical determination from exposure to cadmium at or above the action level.

Former job status refers to the position the worker would likely be occupying if he or she had never been removed. For example, if, but for a temporary medical removal, a worker would now be working at the same position held just before removal, then the employer must return the worker to that job. Otherwise, the employer may return the worker to a job that is consistent with whatever job assignment discretion the employer would have had if no removal had occurred.

The standard also provides in paragraph (l)(12)(iv) that the employer may condition the provision of MRP benefits upon the employee's participation in medical surveillance. Thus, the standard does not directly mandate worker participation in medical surveillance, but rather permits the employer to deny economic protection to employees who are unwilling to participate in medical surveillance.

This may constitute a modification of a similar provision in paragraph (k)(2)(iii) of the lead standard. In that standard, the employer is expressly authorized to condition provision of MRP benefits upon an employee's participation in follow-up medical surveillance while the employee is medically removed. The express authorization in the cadmium standard authorizes the employer to condition provision of MRP benefits on an employee's participation in medical surveillance provided pursuant to this standard, whether that surveillance is prior to or during medical removal.

OSHA provides this authorization for several reasons. First, as indicated, one of OSHA's primary purposes in requiring the employer to establish a medical surveillance program pursuant to this standard is to prevent occupational disease associated with exposure to cadmium. This can be most effectively accomplished when all employees participate in medical surveillance, which can provide early warning signals and thereby minimize the risk of disease. If an employer conditions the availability of MRP benefits upon an employee's participation in medical surveillance generally, the employee will have strong incentive to participate. Within the bounds of reason and what is lawful under the OSH Act, OSHA supports efforts to encourage and facilitate employee participation in medical surveillance.

Second, since the employer must bear the financial burden of medical removal, the employer has a legitimate interest in minimizing the need for medical removal. But, unless employees participate in medical surveillance, the employer may not be able to identify who among them may require additional protective measures to reduce their exposure to cadmium before medical removal is indicated. Thus, if an employee does not participate in medical surveillance, an employer may not learn that the employee's absorption of cadmium is approaching dangerous levels until, for example, the employee becomes symptomatic or learns from some other source that certain of his biological parameters are elevated. At that point, the employer may be left with no alternative but to medically remove the employee.

In authorizing the employer to condition provision of MPR benefits upon an employee's participation in the medical surveillance required by this standard, OSHA does not intend to authorize the employer to deny MRP benefits for insignificant or irrelevant lapses in such participation. The employee's actions should be assessed reasonably, in light of the goal of prevention of disease and the employer's interest in minimizing the need for medical removal. So long as the employee's lapses in participation do not frustrate the goal of disease prevention and the employer's interest in gaining early warning that an employee may need to be medically removed if steps are not taken to reduce the employee's absorption of cadmium, the lapses do not constitute grounds for denial of medical removal protection benefits. Thus, for example, if an employee did not show up once or twice for scheduled medical surveillance or even if the employee did not participate for a substantial period of time in medical surveillance, so long as the employee's participation was timely enough for the employee and employer to be on notice that the employee's biological monitoring results and/or other signs and symptoms are indicative of an increased risk of cadmium associated disease, the employer is not authorized to deny MRP benefits. The point is that the authorization provided by this paragraph is not intended to be used as an excuse to wrongfully deny employees MRP benefits.

In paragraph (l)(12)(ii) of the standard, the MRP benefits that the employer is required to provide are the "total normal earnings, seniority, and all other employee rights and benefits" of a removed or medically limited worker as if the worker had not been removed or otherwise limited. The purpose of this requirement is to assure that a removed worker suffers neither economic loss nor loss of employment opportunities due to the removal. Thus, for example, if a removed employee typically earned overtime pay on the job from which he or she was removed and would have continued to do so during the removal period, then MRPB must include the amount of that overtime as part of the employee's "total earnings."

Under paragraph (l)(13), a multiple physician review (MPR) mechanism is included in the medical surveillance provisions of the final cadmium standard, which gives workers the opportunity to obtain a second and possibly a third opinion regarding medical findings, recommendations or determinations made pursuant to the standard. Although MPR was not included in the proposed cadmium standard, OSHA in that proposal expressly stated that it believed MPR "might be necessary and appropriate" and requested comments on the matter (55 FR 4115). Written comments and testimony were received on this issue (Ex. 29, Tr. 6/6/90, pp. 110–111; Exs. 19–43; 123). Most of the testimony and comments supported the need for including MPR in the final cadmium standard.

According to Dr. Friberg:

> * * * it would be very difficult for the industrial physician to come up with wise decisions * * * in all circumstances * * * a multi-medical evaluation could be of value as soon as there is any * * * decision that is of consequence for the worker (Tr. 6/6/90).

Opposition to MPR was based primarily on the assumption that the physician doing the examinations would be trained and experienced in occupational medicine and thus would be able to perform adequately (Ex. 77). However, if the first physician were not so trained and experienced, this commenter stated that MPR should be used as described by OSHA (Ex. 77, p. 6). OSHA agrees that MPR is needed in the final standard.

Under paragraph (l)(13), an employee may designate a second physician to review any findings, determinations or recommendations of an initial physician chosen by the employer and to conduct such examinations, consultations, and laboratory tests as the second physician may deem necessary. If a disagreement arises between the two physicians, the employer and employee are to assure that efforts are made to get the physicians to resolve their disagreement. However, should they be unable to agree, a third physician selected by the disagreeing physicians is authorized to review the evidence and conduct such tests, consultations and discussions as are necessary to resolve the disagreement. The employer is then required to act consistently with the decisions of the third physician, unless the employer and employee agree that the employer should act consistently with the decisions of one of the other two physicians.

OSHA recognizes the importance attached to medical surveillance by the OSH Act (Sec. 6(b)(5)) and views multiple physician review in the cadmium standard as an important element in the standard's medical surveillance program. That program, in turn, plays a crucial role in the operation of the standard's medical removal protection program. OSHA has three main reasons for providing MPR: First, to strengthen and broaden the bases for medical decisions made under the standard in situations where a worker questions the findings, recommendations, or determinations of an initial, employer-retained physician. Second, to increase employee confidence in the soundness of medical findings, recommendations and determinations made pursuant to this standard. And third, thereby, to increase employee acceptance of, and participation in the standard's medical surveillance program.

OSHA expects the provision of MPR, in interaction with other provisions of the cadmium standard, to strengthen and broaden the bases for medical decisions made under the standard. The requirement in paragraph (m) of the cadmium standard that the employer provide employees with appropriate information and training gives workers a basic opportunity to become knowledgeable about the nature and symptoms of the main cadmium-related diseases and about their rights under the cadmium standard. The availability of MPR, in turn, provides workers with an opportunity to put that knowledge to use through the informed exercise of their rights under MPR. MPR thus provides incentives to workers to take advantage of available health education and training to protect their own health. Consequently, when a worker questions the conclusions of the initial physician, a reasonable basis is likely to exist for seeking a second medical opinion.

Moreover, with the severe shortage of trained and experienced occupational physicians in this country and since cadmium-related diseases are not often encountered among persons not occupationally exposed to cadmium, it cannot be assumed that physicians performing examinations or consultations under the cadmium standard will provide error-free diagnoses. Under the medical surveillance program, physicians are often expected to exercise professional judgment and discretion, for example, in determining whether to remove a particular employee from exposure to cadmium at or above the action level. Although physicians are required by the standard to review its preamble and to be familiar with cadmium-related signs and symptoms of illness, these two provisions cannot guarantee that examining physicians will, in fact, be adequately trained or provide error-free diagnoses of cadmium-related diseases.

For many reasons, accurate medical determinations under this standard are vital for the proper functioning of the preventive medical removal protection

program and more generally for the success of the medical surveillance program as a whole. The standard's PEL by itself may not be low enough to assure that all employees will be free of a risk to their health from occupational exposure to cadmium. In addition, many cadmium exposed workers will have had years of exposure to high levels of cadmium by the time the standard is promulgated. Furthermore, some cadmium related diseases may be reversible if detected at an early stage.

In the interest of accuracy, it would not be inappropriate to provide multiple physician review in all cases of medical surveillance under the standard where there might be any question about the validity of the initial physician's findings, recommendations or determinations. However, rather than requiring additional medical opinions in all such cases, which would be very expensive and potentially wasteful, OSHA is providing an opportunity for the person primarily affected by the initial physician's medical opinion, the employee/patient, to seek the opinion of another physician if the employee seriously questions the findings, determinations or recommendations of the initial, employer-selected physician.

OSHA's choice of the multiple physician review mechanism, as distinct from other mechanisms, is based in part on the common and increasing use of multiple physician review in the formation of medical determinations in the society at large. For example, MPR is frequently relied upon in the determination of a worker's eligibility for a disability pension and as a precondition for coverage in insurance policies to confirm certain diagnoses. Multiple physician review also has been incorporated into other standards promulgated by OSHA, such as the lead and benzene standards (29 CFR 1910.1025 and 1028, respectively).

The multiple physician review mechanism incorporated in the cadmium standard shares characteristics in common with many of these other examples of MPR. The worker has an opportunity to select a second physician if dissatisfied with the opinions of the first employer-selected physician, and if the two physicians disagree, the employee and the employer, through their respective physicians, may select a third physician to resolve the difference of opinion.

OSHA's second reason for providing employees with the opportunity for multiple physician review is to enhance employee confidence generally in the medical surveillance program and specifically in the soundness of medical determinations made pursuant to this standard. The cadmium standard's ability to prevent material impairment to worker health and functional capacity, particularly with respect to kidney damage in long term cadmium workers, will depend substantially on workers' trust and confidence in examining physicians. OSHA adopted the multiple physician review mechanism as a means of providing workers with an opportunity to obtain independent review of the findings, recommendations, and determinations of physicians whose opinions they do not trust.

Over time, this independent review, where implemented, is likely to show either that distrust of the employer-retained physician is unwarranted or that the employer should improve the quality of the employer-provided medical surveillance. Unless the employer fails to adequately respond, in either case confidence in medical surveillance and in the examining physician is likely to be increased. For example, if workers distrust a company doctor and therefore repeatedly seek other physicians' opinions, but the diagnoses of the other physicians repeatedly confirm the opinions of the company doctor, then workers will be much more likely to trust the employer-retained doctor in the future. On the other hand, if the choice of second and third physicians repeatedly results in medical determinations greatly at variance with the opinions of the employer-retained physician, then the employer is put on notice that the employer-provided medical personnel may need to be changed. In both cases, the multiple physician review mechanism will have served a beneficial purpose, either by dispelling an unfounded distrust of the company doctor or by correcting inadequate medical determinations while exposing major deficiencies in the employer's medical surveillance program and generating pressure on the employer to make needed changes. With employee involvement in MPR, resulting improvements in the medical surveillance program, and increased employee confidence in that program, OSHA expects increased employee participation in medical surveillance.

The inclusion of multiple physician review in the cadmium standard is not intended as criticism of the general medical community. Based on the rulemaking record, OSHA has no cause to conclude that most employer-retained physicians are not sincerely devoted to the good health of their workers. However, there is evidence in the record indicating that more than a few doctors retained by companies may not be sufficiently protective in light of recent developments concerning the potential carcinogenicity of cadmium and the levels of CdB, CdU and β_2–M that are considered toxic or indicative of the existence, or high risk, of cadmium associated disease (Exs. 29; 77).

Multiple physician review is directed at problems presented by a minority of physicians, whose relevant medical knowledge may not be up to date, who may not be sufficiently sensitive to the health risks posed by excess exposure to cadmium, or who, in a limited number of cases, may not put the health of the workers first. In such cases, the opportunity for a second medical opinion is appropriate to protect the employee's health. On the other hand, where employer-retained physicians have a close doctor-patient relationship with employees and employees have confidence in the physicians' abilities and devotion multiple physician review will be seldom used (Swick, Tr. 7/18/90, p. 333).

The multiple physician review mechanism operates in a simple and straightforward fashion. It is applicable to all forms of medical surveillance provided under the standard after any initial examination or consultation provided by a physician chosen by the employer. If an employee's past, present, or future cadmium exposure is a relevant consideration in the examination or consultation being provided by the employer, then the opportunity for an additional medical opinion must be provided.

OSHA recognizes the value to employers and employees alike of the MPR mechanism operating in an expeditious fashion, and has established explicit requirements to that end. After an initial physician conducts an examination or consultation pursuant to the standard, the employer must promptly notify the employee of his or her right to seek a second medical opinion. This notification need be no more than an oral reminder of the existence and content of the right. After this notification has been given, an employer may condition its participation in, and payment for, MPR upon the employee, within 15 days after receipt of the employer's notification or receipt of the initial physician's written opinion, whichever is later, both informing the employer (orally or otherwise) that the employee intends to seek a second medical opinion and initiating steps to make an appointment with a second physician. These steps would include actually arranging an appointment or contacting a physician with the request

that a referral to a specialist be arranged.

The standard contains no limitation on an employee's choice of a second physician, except the implicit requirement that the second physician, like the initial physician, must be licensed to practice medicine. Since cadmium can adversely affect numerous systems of the body, it would be inappropriate to limit the choice of doctors to any one specialty. Because it is in the employee's interest to choose an informed and competent physician, OSHA relies on employee self-interest to assure the value of the second opinion. Where, for example, an employee's disagreement with the initial physician's opinion revolves around a particular organ, e.g., the kidney, the employee would be likely to choose a specialist in that area. Where, however, the dispute revolves around several health effects or the employee cannot identify one specific problem, the employee would be likely to choose the general practitioner or internist most familiar with the employee's medical history and current health status. The employer must provide all relevant materials to the second physician.

The standard provides that the second physician shall review any findings, determinations or recommendations of the initial physician, and may conduct such examinations, consultations and laboratory tests as the second physician deems necessary to facilitate this review. While the standard does not expressly require the employer to supply the second physician with the same information that must be supplied to the initial physician, as well as the first physician's findings, determinations or recommendations, that is the intention. Indeed, the employer's obligation under paragraph (l)(9) of this standard to provide information to the examining physician is intended to extend beyond the first examining physician to all physicians who may be involved in multiple physician review or alternate physician determination under paragraphs (l)(12) and (13), respectively. All of these physicians, thus, would be provided with the same background information supplied to the initial physician and, as a result, would have as good an opportunity to assess the employee's health status.

If the second physician's findings, determinations, and recommendations are the same as those of the initial physician, then the multiple physician review process comes to an end. If, however, the opinions of the two physicians are in conflict, then the employer and the employee shall assure that efforts are made for the two physicians to resolve any disagreement. OSHA expects that the two physicians, as professionals, will communicate with each other to resolve their differences, but the standard requires the employer and employee to encourage such a resolution. In most cases, this professional interaction among peers should resolve any differences between the two physicians.

In cases where differences of opinion remain, these differences are likely to be genuine and substantial. Where the first two physicians have been unable to expeditiously resolve any differences of opinion with respect to an employee, then it is necessary for a third qualified physician to resolve the dispute. It is important that this third physician have the confidence of those concerned and be competent to resolve the dispute. Consequently, the standard provides that the third physician shall be designated by the employer and the employee jointly through their respective physicians. It is the responsibility of the employer and the employee to assure that a third physician is selected, but the selection is to be made by the two physicians. Since the third physician is chosen by the joint endorsement of the two physicians, confidence in the professional competence of the third physician should be assured.

The standard provides the third physician a full opportunity to review the findings, determinations, and recommendations of the two prior physicians by conducting such examinations, consultations and laboratory tests as the third physician deems necessary. The standard incorporates the expectation that the third physician will consult with the other two physicians. The third physician should provide a written medical opinion to the employer, which will normally operate as a final medical determination to resolve the disagreement between the other two physicians. The employer, then, is required to act in a manner consistent with the findings, determinations, and recommendations of the third physician, unless the employer and the employee reach an agreement that is otherwise consistent with the recommendations of at least one of the other two physicians.

Medical surveillance pursuant to section 6(b)(7) of the Act must be provided by employers without cost to employees. Since multiple physician review will be one means by which medical surveillance is provided to an employee, employers must bear the expense of this mechanism when it is used. In practice, and based partly on experience with MPR in other OSHA standards, OSHA does not expect the costs of MPR to be burdensome to employers. Employers will have substantial control over the frequency of its use. Where employers establish and administer medical surveillance programs that merit, engender, and maintain worker confidence, workers will see little or no need to seek second medical opinions.

As with many of the provisions of the final cadmium standard, the success of the multiple physician review mechanism will largely depend upon employers and employees acting in a reasonable manner and with good faith.

The requirement for MPR, however, is not intended to preclude an employer from establishing and implementing medical protocols for its employees that are expeditious and at least as protective. In paragraph (l)(14) a provision for alternate physician determination is expressly included in the standard. Under that paragraph, the employer and employee or designated employee representative may agree upon the use of any expeditious alternate physician determination mechanism instead of the multiple physician review mechanism provided. The only condition is that the alternate mechanism be no less protective of the employee's health than MPR. For example, the parties might decide in cases of dispute for an employee to go directly from an initial physician chosen by the employer to an agreed upon final physician, thus dispensing with the need for a second physician. Alternately, a jointly-agreed-upon physician might be used in the first instance without recourse to other physicians. Or, an employee might be given the opportunity to choose the final physician. OSHA encourages employers and employees to adopt medical determination procedures in which all parties have trust and confidence. Paragraph (l)(14) of the standard embodies this intention.

Under paragraph (l)(15) of this standard, the employer is required to provide the employee with certain information. The employer, within specified time periods, must provide the employee with a copy of the physician's written medical opinion, a copy of the employee's biological monitoring results, and, upon request, a copy of the information the employer is required to provide to the examining physician under paragraph (l)(9) of this standard. In addition, as discussed below in connection with the summary and explanation of paragraph (n)(5), the employer is required to make the

employee's medical records available upon request to other specified individuals.

OSHA believes that, for the good of the employee, facts, findings and decisions regarding the employee's occupational exposure to cadmium and medical status generally should be provided to the employee in written form. This is to assure that the employee is aware, and has a record of the results of exposure assessments and medical examinations that reflect his or her workplace experience. Making this information available to the employee will enable the employee to better understand the central facts concerning his occupational exposure to cadmium, including the extent of his cumulative exposure, the effect of that exposure on his health status, and the employee's rights under the cadmium standard. Being better informed, in turn, will enable the employee to more effectively participate in decisions about his/her health. It will also enable the employee to better inform physicians who, years after the employment has terminated, may need to know such facts to correctly interpret, and make proper decisions to protect or improve the employee's health status.

Under paragraph (l)(16), the employer is required to report on the OSHA Form No. 200, The OSHA Injury and Illness Log, any abnormal condition or disorder caused by occupational exposure to cadmium. This reporting requirement is consistent with the reporting requirements of the Bureau of Labor Statistics in the Department of Labor, as specified in Chapter (V)(E) of the Reporting Guidelines for Occupational Injuries and Illnesses. Although not included in OSHA's proposed regulation, OSHA indicated in that document that a provision for such reporting might be useful and appropriate (55 FR 4115).

Requiring employers to report occupational illnesses on the OSHA Form No. 200 and to post on that form for one month a year the annual summary of occupational illnesses is authorized under sections (8)(c) (1) and (2), (8)(g)(2), and (24) (a) and (e) of the OSH Act and is mandated by 29 CFR part 1904. The required reporting on the OSHA Form No. 200 and posting of the annual summary of the year's total from that form provides employers and employees with an additional opportunity to review the relevant record of illnesses among cadmium-exposed workers.

For the employer, for example, it is an opportunity to review all the cadmium-related removals during the year as a group, in order to ascertain whether there are patterns to the removals. For example, employers might use such information to determine the number of removals in various areas of the plant to see if the particular removals are correlated with higher exposures. In this way, employers may be able to identify and focus attention on certain areas of the plant where medical removals due to cadmium over-exposures are especially frequent. For the employer, it also is a reminder of those workers who require medical follow-up. For employees who have been removed for cadmium-related illness, this is an opportunity to confirm that the information provided to them individually is correct and has been reported to OSHA.

In addition, reporting on the log abnormal conditions and disorders that are occupationally caused and cadmium related will facilitate the development of occupational health statistics that are useful to the employer, the employee, and to OSHA, and in turn may facilitate the development of improved medical care. It will also provide OSHA with information and data helpful in assessing the effectiveness of the cadmium standard and in considering what, if any, modification should be made to the standard in the future. For all of these reasons OSHA believes that this requirement is pursuant to the OSH Act.

OSHA also believes that compliance with this requirement will be simple for employers. OSHA further believes that requiring the reporting of such removals may contribute to the prevention of more serious kidney damage.

Communication of Cadmium Hazards to Employees: Paragraph (m)

In this final cadmium standard, OSHA includes provisions entitled: "Communication of Cadmium Hazards to Employees". These provisions incorporate many requirements from OSHA's Hazard Communication Standard (HCS) and address the issue of transmitting information to employees about the hazards of cadmium through the use of: (1) Signs, (2) labels, (3) material safety data sheets, and (4) information and training. Previous OSHA health standards generally included separate paragraphs on employee information and training and on signs and labels. The hazard communication provisions of this standard, consistent with the HCS, incorporate both of those areas, along with provisions on material safety data sheets (MSDS), into paragraph (m). The hazard communication provisions in this standard are very similar to those now being included in other OSHA health standards (e.g., paragraph (j), Benzene Final Standard, 29 CFR 1910.1028) and are basically the same as those in the proposed cadmium standard.

OSHA's HCS (29 CFR 1910.1200) for general industry requires all chemical manufacturers and importers to assess the hazards of the chemicals they produce or import and to develop appropriate information about those hazards, which they are required to communicate in various ways to their own exposed employees and to relevant downstream employers, as specified under paragraphs (d)–(h) of the Hazard Communication Standard (29 CFR 1910.1200). Downstream employers, in turn, are required to communicate the information concerning the hazards of such chemicals in various ways to their own employees. The transmittal of hazard information to employees is to be accomplished by means of comprehensive hazard communication programs, which must include container labeling and other forms of warning, material safety data sheets and employee training.

Since the HCS is intended to comprehensively assess the potential hazards of chemicals and to communicate the needed information concerning hazards and appropriate protective measures to employees (52 FR 31877, August 24, 1987), OSHA includes paragraph (m) entitled "Communication of Cadmium Hazards to Employees" in this standard while referencing and requiring compliance with 29 CFR 1910.1200. In paragraph (m), OSHA also proposes additional particular requirements that are needed to protect employees specifically exposed to cadmium.

Paragraph (m) of this standard has been designed to be substantively as consistent as possible with the HCS requirements for employers. While avoiding a duplicative administrative burden on employers attempting to comply with the requirements of several different applicable OSHA health standards, the requirements nevertheless provide the necessary protection for employees through provisions for signs and labels, material safety data sheets, and employee information and training.

The standard requires that regulated areas be posted with signs stating: "Danger, Cadmium, Cancer Hazard, Can Cause Lung and Kidney Disease, Authorized Personnel Only, Respirators and Protective Clothing Required in this Area". The posting of these signs will serve as a warning to employees who may otherwise not know they are entering a regulated area. Such warning signs are required to be posted at all

regulated areas, that is, whenever an employee is exposed above the permissible exposure limit. The signs are intended to supplement the training that employees are to receive under other provisions of paragraph (m), since even trained employees need to be reminded of the locations of regulated areas and of the precautions necessary to be taken before entering these dangerous areas.

For some work sites, regulated areas are permanent, because air cadmium exposures there cannot be reduced below the PEL by means of engineering controls. In those situations, the signs are needed to warn employees not to enter the area unless they are authorized, wearing respirators, and there is a need to enter. Regulated areas may also exist on a temporary basis, such as during maintenance and/or emergency situations. The use of warning signs in these types of situations is also important since a maintenance or emergency situation is by nature a new or unexpected exposure to employees who are regularly scheduled to work at or near these sites.

The standard requires that the signs comply with paragraph (f) of the HCS and specifies the wording of the warning signs for regulated areas in order to assure that the proper warning is given to employees. OSHA believes that the use of the word "Danger" is appropriate, based on the evidence of the toxicity and carcinogenicity of cadmium. "Danger" is used to attract the attention of workers in order to alert them to the fact that they are in an area where the permissible exposure limit is exceeded and to emphasize the importance of the message that follows. The use of the word "Danger" is also consistent with other recent OSHA health standards dealing with carcinogens. The standard also requires that the legend, "Respirators and Protective Clothing Required in this Area", be included on the warning sign. Although OSHA recognizes that some employees entering the regulated areas may not be exposed above the PEL, as an eight-hour time weighted average, many employees who are assigned to work in these areas may remain in these locations for long enough periods of time so that they would be needlessly overexposed to cadmium if they did not wear respirators and protective clothing.

In addition, it would be quite confusing and administratively complex to allow certain workers in the regulated areas to work without having to wear respirators while others were required to do so. Moreover, to the extent that some workers in regulated areas who may not be exposed on a particular day above the PEL are nonetheless required to wear respirators, this should further reduce any risk that may appear to remain at the PEL of 5 before the effects of the ancillary provisions are considered. To assure that all employees who work in regulated areas are adequately protected, it is necessary that the sign alert them to the need to wear respirators and protective clothing.

The standard also requires that warning labels be affixed to all shipping and storage containers (including bags) containing cadmium, cadmium compounds, or cadmium-contaminated items such as clothing and equipment. The labels must be in compliance with paragraph (f) of the HCS and must state: "Danger, Contains Cadmium, Cancer Hazard, Avoid Creating Dust, Can Cause Lung and Kidney Disease". Containers leaving the workplace must carry such labels. The purpose of this requirement is to assure that all affected employees, not only those of the primary employer, are apprised of the potentially hazardous nature of cadmium exposure where exposure could exceed the action level.

In addition to being consistent with the requirements of the HCS, these requirements carry out the mandate of section 6(b)(7) of the Act which requires OSHA health standards to prescribe the use of labels or other appropriate forms of warning to apprise employees of the hazards to which they are exposed.

In this final standard in accordance with the requirements of 20 CFR 1910.1200(g), OSHA also requires the manufacturer or importer of cadmium or cadmium compounds to develop and distribute MSDSs and requires downstream employers with employees potentially exposed to cadmium to maintain and provide access to a material safety data sheet (MSDS) for cadmium. OSHA feels that a properly completed MSDS, if readily available to employees, can serve as an excellent, concise source of information regarding the hazards associated with cadmium.

OSHA's main purpose in this section of the final standard, as stated in the Agency's recently promulgated HCS, is to assure that employees will receive as much information as they need concerning the hazards posed by chemicals in their workplaces. The MSDS assures that this information will be available to them in a usable, readily accessible and concise form. The MSDS also serves as the central source of information for downstream employers who must be provided with an MSDS if cadmium or a product containing cadmium in a toxic or potentially toxic form is produced and shipped to them. Lastly, the MSDS serves as the basic source of information on the hazards of cadmium essential to the training provisions of this standard.

Producers and importers of toxic substances have primary responsibility under the HCS to develop or prepare the MSDS. The manufacturer or importer is most likely to have the best access to information about the product and is therefore responsible for disseminating this information to downstream users of the material. For employers whose employees' exposure to cadmium is from products received from outside sources, the information necessary for a complete MSDS or the MSDS itself is to be obtained from the manufacturer and made available to affected employees. The requirements for the information that is to be contained on the MSDS are explained in detail at 29 CFR 1910.1200(g).

Paragraph (m)(4) of this cadmium standard requires employers to provide all employees who are exposed to cadmium with information and training on cadmium prior to or at the time of initial assignment to a cadmium exposed job and at least annually thereafter. A record shall be maintained of the contents of such programs (paragraph (n)(4)). The training program is to be in accordance with the requirements of the HCS paragraphs (h) (1) and (2), and to include the specific information required to be provided by that standard, as well as those items stipulated in paragraph (m)(4)(iii) of this standard. In particular, as several hearing participants have pointed out (Exs. 82, 84, and 107), training should explain how smoking cigarettes can increase an employee's total exposure to cadmium, either directly through inhalation of the cadmium in cigarettes or indirectly through ingestion of cadmium dust from the workplace that may accumulate on cigarette tips. Employers should also seriously consider whether to include information about smoking cessation programs in their training.

In addition, employees are to be provided with an explanation of the contents of appendices A (Substance Safety Data Sheet, Cadmium) and B (Substance Technical Guidelines, Cadmium) to this standard. Employees also are to be informed where a copy of the final cadmium standard is accessible to them and to receive an explanation of the purpose and a description of the medical surveillance program required under paragraph (l) of this standard.

OSHA has determined during other rulemakings that an information and training program, as incorporated in the

inclusive "Communication of Cadmium Hazards to Employees" paragraph of this standard, is essential to inform employees of the hazards to which they are exposed and to provide employees with the necessary understanding of the degree to which they themselves can minimize the health hazard potential. As part of an overall communication program for employees, training serves to explain and reinforce the information presented to employees on signs, labels, and material safety data sheets. These written forms of information and warning will be successful and relevant only when employees understand the information presented and are aware of the actions to be taken to avoid or minimize exposures.

Training is essential to an effective overall hazard communication program. Active employee participation in training sessions can result in the effective communication of hazard information to employees, which can stimulate workers to take conscientious protective actions on their jobs, which, in turn, can reduce the risk off occupationally-related illnesses and injuries.

The training provisions of this standard are in performance-oriented, rather than specific, detailed language. The standard requires training to be in accordance with the requirements of 29 CFR 1910.1200 and lists the categories of information to be transmitted to employees. However, it does not specify the ways that this is to be accomplished. The use of such performance-oriented requirements will encourage employers to tailor their training programs to the needs to their specific workplaces, thereby resulting in the most effective training program suitable for each specific workplace.

OSHA believes that the employer is in the best position to determine how the training he or she is providing is being received and absorbed by the employees. OSHA has therefore laid out the objectives to be met and the intent of training, to assure that employees are made aware of the hazards in their workplace and how they can help to protect themselves. The specifics of how this is to be accomplished are left up to the employer.

Comments by participants in the rulemaking on the hazard communication provisions of the proposed standard focused on three aspects of the proposed training requirements. The first is the need to train cadmium exposed workers about the dangers of smoking cigarettes. The second is the requirement that the employer provide training to all employees who are potentially exposed to cadmium, however low the level to which they might be exposed, instead of only to employees exposed above an action level. The third concerns the relationship between the training requirements in this standard and the MSDS provisions of the hazard communication standard.

The first concern is that all employees potentially exposed to cadmium be trained about the special hazards of smoking (Ex. 29). OSHA shares this concern and is requiring that employers train cadmium exposed employees about the additional exposure to cadmium from cigarette smoking. OSHA also suggests that employers seriously consider taking other steps, as well.

The second concern is that there should be an action level to trigger the employer's training requirement (Exs. 19–9; 19–36; Tr. 7/19/90, p. 284). OSHA disagrees with this position for several reasons. As demonstrated above, at very low levels of exposure cadmium is a probable human carcinogen and appears to cause kidney damage. If there is a threshold level below which exposure to cadmium does not cause kidney damage and below which it is not associated with lung cancer, that threshold must be extremely low, its exact level is unknown, and it undoubtedly varies from individual employee to individual employee. Moreover, OSHA's Hazard Communication (Haz Com) standard (29 CFR 1910.1200) already requires employers to provide employees with information and training on hazardous chemicals in the workplace without regard to any action level.

Nonetheless, for reasons set out above in the relevant sections of this preamble, OSHA has placed threshold exposure levels on the employer's obligation to implement engineering and work practice controls to achieve the PEL and to provide medical surveillance. However, since exposure to cadmium is not associated with any positive health effects and even at low levels has the potential for adverse health effects in some workers, OSHA believes that all potentially exposed employees should be informed about the nature of the hazard and about ways to minimize their exposure to it in order to facilitate their voluntarily taking preventive steps to protect themselves. In addition, training is needed at exposure levels below the action level since even at those low levels the possibility of skin or eye irritation caused by such cadmium exposure may exist.

Consequently, OSHA believes that it is good public health to require employers to train all employees potentially exposed to any level of cadmium. In imposing this obligation on employers OSHA is mindful of the fact that in most of the relevant workplaces the required training typically will involve adding elements to existing training programs and will not be very burdensome.

The third concern is that products containing less than .1% of cadmium, which are below the level that in the hazard communication standard would trigger the requirement that the producer or importer of a product containing a chemical identified as a carcinogen must develop and distribute companion MSDSs (29 CFR 1910.1200 (g)(2)(i)(C)(1)), might nonetheless produce downstream exposure levels above 1 $\mu g/m^3$ without the downstream employer being notified or even aware that his/her workers are exposed to cadmium (EEI, Tr. 7/19/92, pp. 19–20). This concern was articulated in response to OSHA's cadmium proposal, which proposed alternative PELs of 1 $\mu g/m^3$ or 5 $\mu g/m^3$ and alternative ALs of .5 $\mu g/m^3$ or 2.5 $\mu g/m^3$, respectively. However, this final standard adopts the higher of the proposed alternatives, 5 $\mu g/m^3$ as the PEL and 2.5 $\mu g/m^3$ as the action level. No commenter has claimed that products with a cadmium content of less than .1% can produce exposure levels at or above this action level or above this PEL.

Consequently the concern that employers who are not notified of the presence of cadmium by upstream producers or importers and are not aware of its presence in their workplace might still be subject to obligations triggered by cadmium exposures does not appear to be relevant to obligations triggered by the AL and PEL of this standard. The concern, thus, would be limited to the training requirement, which is the only obligation in this final standard that can be triggered by exposure to cadmium below the action level.

OSHA recognizes that there may appear to be some grounds for concern on this point. Under particular circumstances it might indeed be possible for an employer, while exercising due care, to be unaware of potential employee exposure to cadmium in the workplace and nonetheless vulnerable to citation for failure to train exposed workers under the cadmium standard. However, OSHA believes such situations will be very rare. The Agency is assured that in the vast majority of situations where workers are potentially exposed to cadmium, the employer will be aware or at least on notice of the existence of the hazard. The Agency is further assured

that in most of the remaining situations, when inspections do occur, OSHA inspectors will weigh all the circumstances and generally refrain from citing unknowing employers who in good faith and in the exercise of reasonable care failed to provide required training. In any event, OSHA concludes that the small risk that an unknowing and blameless employer might be cited for failure to provide required training is outweighed by the need for the Agency to be conservative in protecting workers' health in the face of potential exposure to a highly toxic substance like cadmium.

Recordkeeping: Paragraph (n)

The recordkeeping provisions of this final standard are essentially the same as those in the cadmium proposal, which received little or no public comment (55 FR 4117). These provisions generally are similar to recordkeeping provisions in other OSHA health standards.

The standard requires employers to maintain exposure monitoring records and medical surveillance records. This requirement is in accordance with section 8(c) of the Act, which authorizes OSHA to require employers to keep and make available such records as the Secretary may prescribe "as necessary or appropriate for the enforcement of this Act or for developing information regarding the causes and prevention of occupational accidents and illnesses." The recordkeeping provisions of this standard are also in keeping with the regulation governing access to employee exposure and medical records (29 CFR 1910.20).

Medical and monitoring records are also maintained for employee disclosure and are designed to provide valuable information to both the employee and the employer. The medical and monitoring records required by this standard will aid the employee and his/her physician in determining whether or not treatment is needed for occupational exposure to cadmium and what level of treatment is necessary. Also, the employer benefits by keeping these records, since the information will enable the employer to better ensure that employees are not being over-exposed to cadmium; such information may alert the employer that steps must be initiated in order to reduce exposures.

The standard requires that records be kept of the results of environmental monitoring and the contextual information required by paragraph (d) of this standard to determine the airborne concentration of cadmium to which an employee has been exposed. Specifically, records must include the following information:

(a) The date, duration, and results in terms of an 8-hour TWA of each sample taken;

(b) The name, social security number, and job classification of the employee monitored and of all other employees whose exposures the monitoring is intended to represent;

(c) A description of the sampling and analytical methods used and evidence of their accuracy;

(d) The type of respiratory protective device, if any, worn by the monitored employee and by any other employees whose exposures the monitoring is intended to represent; and

(e) A notation of any other conditions that might have affected the monitoring results.

The standard requires that exposure monitoring records be maintained for each measurement taken. The monitoring and record may represent the exposure of more than one employee if representative sampling, as described in paragraph (d), is conducted. In that case, the record should clearly provide the same information about the employees whose exposures the monitoring is intended to represent as is required by paragraph (n) of this standard for the monitored employee.

A provision for the use of objective data in place of initial monitoring is included in this standard in paragraph (d)(2)(iii). Objective data are defined in paragraph (n)(2)(i) as information demonstrating that a particular product or material containing cadmium cannot release dust or fumes in concentrations at or above the action level even under conditions of worst-case release. Employers might use data from an industry-wide survey to estimate maximum cadmium exposure levels that could occur if that survey pertains to workplace conditions that, to the extent relevant and significant, are all very similar to those in the employer's worksite. Employers may also use laboratory product test results to demonstrate that airborne concentrations must be below the action level.

In addition to being required to keep records on monitoring of employee environmental exposure levels, the employer is required by paragraph (n)(3) to establish and maintain an accurate medical surveillance record for each employee to whom the employer must provide medical surveillance under paragraph (l) of this standard. As indicated above in this preamble, medical records are necessary for the proper evaluation of the employee's health. Furthermore, medical records, like exposure monitoring records, are necessary and appropriate both to the enforcement of the standard and to the development of information regarding the causes and prevention of occupational illnesses.

The records of the employee's prior medical and work history are useful to the examining physician in the examination at termination of employment as an aid in determining the status of an employee's health and in identifying adverse health effects associated with cadmium exposure. Good medical records, including the record of the examination at termination of employment itself, also can be useful to the Agency and others in enumerating illnesses and deaths attributable to cadmium, in evaluating compliance programs, and in assessing the accuracy of the Agency's risk estimates. Such records are useful, as well, to assess the adequacy of the standard in preventing disease. Provisions for collection of such information, including medical examinations at the end of employment, have been included in other OSHA standards (e.g., Arsenic, Benzene, and Lead Final Standards).

The standard requires that exposure records be kept for at least 30 years ((n)(1)(iii)) and that medical records be kept for duration of employment plus thirty years ((n)(3)(iii)). It is necessary to keep these records for extended periods because of the long latency period commonly associated with carcinogenesis. Cancer often cannot be detected until 20 or more years after first exposure. The extended record retention period is therefore needed because diagnosis of disease in employees is assisted by, and in some cases can only be made by, having present and past exposure data as well as the results of present and past medical examinations.

The employer is also required to maintain records of an employee's cadmium-related training for one year beyond the last date of employment of that employee. Employers are required to certify that employees did participate in such training. Certification of training must contain the name of the employee, date training completed, and signature of employer or provider of the training.

The standard provides for access to exposure and medical records that basically is in accordance with 29 CFR 1910.20, OSHA's standard for "Access to Employee Exposure and Medical Records" under paragraph (n)(5)(i). That standard applies to records required by specific standards, such as this cadmium standard. In addition, it is OSHA's intention that the employee should have

similar access to exposure and medical records that are voluntarily created by an employer. Employees, their designated representatives, and former employees are, in general, allowed unrestricted access to all relevant exposure monitoring records. More limited access is provided for medical records. Access to all the employee's medical records required to be kept under paragraph (n)(3) of this standard is provided to the subject employee, to anyone having the subject employee's specific written consent, and, after the employee's death or incapacitation, to the employee's family members. In addition, OSHA and NIOSH retain access to both kinds of records, but the agencies' access to personally identifiable medical records is subject to agency rules of practice and procedure that have been published at 29 CFR 1913.10 (see 45 FR 35384) and to the limitations to protect confidentiality incorporated in 29 CFR 1910.20.

Upon written request, the employer is required to provide the records within 15 days to those entitled to them. The transfer of employee exposure monitoring and medical records is to be in accordance with the provisions of paragraph (h) of 29 CFR 1910.20. If an employer ceases to do business and there is no successor employer, the employer is to notify NIOSH and transmit the records to the Director of NIOSH for retention, if requested.

The purpose of requiring that certain medical information be made available only to someone with the employee's specific written consent is to assure that confidential medical information not be disseminated without a conscious and specific decision by the employee authorizing it. It is also to assure that persons or organizations appropriately authorized by the employee shall have access to such information. This might include, for example, a union, which, thereby, might be put on notice of potential health hazards in the workplace that might adversely affect the employee and other similarly situated workers.

Observation of Monitoring: Paragraph (o)

This standard contains provisions for employee observation of exposure monitoring. This is in accordance with section 8(c) of the OSH Act, which requires that employers provide employees and their representatives with the opportunity to observe monitoring of employee exposures to toxic substances or harmful physical agents. Observation procedures are set forth that require the observer, whether employee or designated representative, to be provided with the personal protective clothing and equipment that is required to be worn by employees working in the area. The employer is required to assure the use of such clothing, equipment, and respirators, and is responsible for assuring that the observer complies with all other applicable safety and health procedures.

Dates: Paragraph (p)

The standard will become effective on December 14, 1992. All obligations imposed by the standard commence on the effective date unless otherwise noted. All obligations that do not commence on the effective date shall be complied with as soon thereafter as possible and in any event no later than the start-up date, which is a compliance deadline.

Because small businesses frequently have fewer resources for interpreting and implementing complex requirements to protect their workers, and in order to implement an outreach program and to provide technical assistance to employers with small businesses [nineteen (19) or fewer employees], start-up dates for certain provisions are later for these establishments.

The requirements for initial exposure monitoring (paragraph (d)(2)) and for handwashing facilities (paragraph (j)(1)(ii)) must be completed no later than 60 days after the effective date of the standard (120 days for small businesses). The requirements for regulated areas (paragraph (e)) and respiratory protection (paragraph (g)), must be completed no later than 90 days after the effective date of this standard (150 days for small businesses). The requirements for initial medical examinations (paragraph (l)(2)), and employee information and training (paragraph (m)(4)), must be completed no later than 90 days after the effective date of this standard (180 days for small businesses).

In addition, written compliance programs (paragraph (f)(2)) shall be completed and available for inspection and copying no later than one (1) year after the effective date of the standard. Engineering and work practice controls (paragraph (f)(1)) generally are required to be fully implemented no later than two (2) years after the effective date.

Hygiene and lunchroom facilities must be completed as soon as possible and in any event no later than 1 year after the effective date. As stated above, handwashing facilities, permanent or temporary, must be provided in accordance with 29 CFR 1910.141 (d)(1)–(2) as soon as possible and in any event no later than 60 days after the effective date of this section (120 days for small businesses).

With the exception previously stated for small businesses, nearly all of the start-up dates established in this standard are conventional. They have been developed out of OSHA's experience with similar standards and closely parallel start-up dates in other health standards (e.g., Lead Final Standard). The start-up dates in this final standard also closely parallel those in the proposed cadmium standard (55 FR 4128).

Some minor modifications have been made to the proposal. For example, the effective date is 90 days after publication, rather than the proposed 60 days. OSHA decided to give employers slightly more time to comply with the standard. In addition, if employers do not now provide adequate handwashing facilities, they are required to provide adequate temporary or permanent facilities within 60 days after the effective date (120 days for small businesses). The proposal did not include any requirement for prompt provision of handwashing facilities. This omission was pointed out by a commenter, who correctly noted that portable sinks and other hygiene facilities can be readily provided (Ex. 19–7). OSHA agrees. It is important that workers be able to wash off any cadmium from their hands and faces before they eat, smoke and leave work. This will reduce their overall exposure to cadmium and limit the carrying of cadmium dust into their cars and homes. OSHA believes that most employers already provide handwashing facilities and that the cost of providing such facilities, where they are not already provided, is relatively modest.

There is, however, one more substantial change to the proposed start-up dates in this final standard. A provision that would have allowed employers in certain circumstances to delay constructing all hygiene facilities for nearly three years is deleted. During that period, employees would have been deprived of these facilities. The deletion is made for the same reason that the Agency in the final standard is requiring the prompt provision of handwashing facilities. OSHA is convinced that these facilities are needed to protect the health of workers' exposed to cadmium above the PEL.

Several commenters representing management requested, without providing adequate supporting evidence or data, that OSHA defer the start-up dates (compliance deadlines) for various provisions. One, for example, asked that the start-up date for initial monitoring

be 180, not 60, days after the effective date. The only reason provided for this request was the possible shortage of industrial hygienists (Ex. 19–9). OSHA declines to defer this start-up date for several reasons. First, there is no evidence of, or reason to believe there will be a shortage of industrial hygienists. Sécond, since the standard now sets the effective date at 90, instead of 60, days after promulgation, all employers will have more time to prepare for compliance. In addition, small businesses will have 120 days after the effective date for initial monitoring. This should allow an employer concerned about a possible shortage of industrial hygienists to contact one well in advance of the compliance deadline and arrange for timely initial monitoring.

Another commenter argues that an extended period of time is needed to design, construct and learn how to operate engineering controls, that start-up dates for all other provisions of the standard should be set after the deadline for compliance with the engineering and work practice controls requirement, and that time be provided for phasing in biological and air monitoring sampling and MRP (Ex. 19–40). As stated above, OSHA believes that the compliance times provided in the staggered start-up dates are reasonable and that no additional time is needed to come into compliance with the various requirements. Employers generally will have two years from the effective date of the standard to implement engineering controls to achieve the PEL and to achieve the SECAL. Deferring all other start-up dates until after the deadline for achieving the PEL or SECAL would allow employees who are currently exposed to excessive levels of cadmium and not otherwise adequately protected, for example, by an effective medical surveillance program, to continue to be unnecessarily exposed and unprotected.

The Dry Color Manufacturers Association (DCMA) argues that time also is needed to standardize biological and environmental monitoring methods and to set up a laboratory accreditation program to assure the quality of analysis of monitoring results (Exs. 120, 19–40). OSHA agrees that some time is needed for employers to familiarize themselves with the requirements of medical surveillance, to develop appropriate methods to comply with the requirements, especially with regard to biological monitoring, and to locate laboratories with demonstrated proficiency in the relevant analyses. As a guide to employers and others, OSHA has devoted considerable effort to developing a non-mandatory program concerning standardization of specimen collection and handling and laboratory proficiency which is incorporated in appendix F. The Agency believes employers who follow this protocol, or other comparable criteria that are at least as comprehensive and strict, will be assured that employee monitoring results are accurate and reliable and will generally be in compliance with paragraph (l)(1)(iv) of the standard.

OSHA is aware that a number of laboratories already have demonstrated their proficiency in analyzing CdU and CdB and that the Phaedabas kit is widely accepted as assuring reasonably accurate and reliable measurements of β_2-M. (See Health Effects Section V.) Consequently, OSHA sees no reason why employers will be unable to comply with the provisions relating to biological monitoring by the relevant start-up date, which is 90 days after the effective date of the standard (180 days for small businesses). The Agency is considering establishing mandatory provisions for laboratory proficiency and accreditation.

Appendices: Paragraph (q)

The final cadmium standard contains six appendices that are designed to assist employers and employees in implementing the provisions of this standard. Appendix C is incorporated as part of this standard and imposes additional mandatory obligations on employers covered by this standard. Appendices A, B, D, E and F are non-mandatory, except that appendices A, D, and F must be reviewed by physicians in order for them to be able to medically evaluate employees covered by this standard regarding any cadmium-related illnesses. Also, questions 3–11 and 25–32 of appendix D are required as part of the limited medical examination that is required prior to the use of a respirator. Otherwise, these appendices are not intended to add to, or detract from any obligation that the cadmium standard otherwise imposes.

The Appendices that are included in the standard are:

Appendix A—Substance Safety Data Sheet, Cadmium
Appendix B—Substance Technical Guidelines, Cadmium
Appendix C—Qualitative and Quantitative Fit Testing Procedures
Appendix D—Medical and Occupational History with Reference to Cadmium Exposure (suggested format)
Appendix E—Sampling and Analysis
Appendix F—Protocol for Laboratory Standardization for Biological Monitoring for Cadmium

IX. Summary and Explanation of the Final Standard (Construction Industries)

OSHA believes that, based on currently available information in the cadmium rulemaking record, the requirements set forth in this final rule are necessary and appropriate to provide adequate protection to employees exposed to cadmium.

Based upon the record evidence in this rulemaking (Exs. 6–665; 14–5; 53), OSHA has developed a cadmium standard for the construction industry that is somewhat modified from the standard for general, agriculture, and maritime industries, which is being published separately (29 CFR 1910.1027). However, most of the provisions in this standard are the same as those in the general industry standard, and most of the reasons and supporting evidence for the provisions are also the same. Consequently, this preamble generally relies upon and hereby incorporates by reference the preamble to the general industry standard, where and to the extent relevant. Thus, explanations for particular provisions in this standard generally are not repeated in this preamble for provisions that are the same or essentially the same as those in the general industry standard. The complete discussion of these provisions can be found in the summary and explanation of parallel requirements in the general industry standard in the preamble to that standard.

The language of the standard and the order of the various provisions are consistent with drafting in other recent OSHA health standards, e.g., the Asbestos Construction Standard (29 CFR 1926.58). OSHA believes that a similar style should be followed from standard to standard to facilitate uniformity of interpretation of similar provisions. Modifications made to the cadmium general industry standard were in response to the particular conditions in the construction industry.

(a) Scope

This final cadmium standard for the construction industry applies to all occupational exposure to cadmium and all cadmium compounds, in all forms, including fume and dust, and in all construction work where an employee may potentially be exposed to cadmium. Such work is defined as work involving construction, alteration and/or repair. Such work includes but is not limited to: Wrecking, demolition or salvage of structures where cadmium or materials containing cadmium are present; use of cadmium containing-paints and cutting, brazing, burning, grinding or welding on

surfaces that were painted with cadmium-containing paints; construction, alteration, repair, maintenance, or renovation of structures, substrates, or portions thereof, that contain cadmium, or materials containing cadmium; cadmium welding; cutting and welding cadmium-plated or cadmium alloy steel; brazing or welding with cadmium alloys; installation of products containing cadmium; electrical grounding with cad-welding, or electrical work using cadmium-coated conduit; maintaining or retrofitting cadmium-coated equipment; cadmium contamination/emergency cleanup; and transportation, disposal, storage, or containment of cadmium or materials containing cadmium on the site or location at which construction activities are performed. The standard, as modified herein for the construction industry, covers all occupational exposures to cadmium, because there may be serious health consequences to any person who is occupationally exposed to cadmium. The risk from exposure to cadmium is dependent on the extent of exposure and not on the segment of industry where the employee may be employed. OSHA estimates that approximately 70,000 employees are potentially exposed to cadmium in the construction industry (Table VIII–A1, Office of Regulatory Analysis, Regulatory Impact Assessment Section). This is slightly more than 1% of the 5,000,000 construction workers and about 13% of all 525,000 workers potentially exposed to cadmium in all industry segments.

Under the Construction Safety Act (40 U.S.C. 333), 29 CFR 1911.10 and 29 CFR 1912.3, OSHA consults with the Advisory Committee on Construction Safety and Health (ACCSH) regarding the formulation of regulatory proposals that have significant or unique application to employment in construction. In accordance with that Act, OSHA in mid-1989 consulted with ACCSH. At the time, and with the Advisory Committee's approval, the Agency planned to protect construction workers within the standard for general industry. At its meeting on September 13, 1989, ACCSH recommended that OSHA publish a separate cadmium standard for the construction industry in 29 CFR part 1926, with certain provisions of the general industry standard tailored, as necessary, to the particular conditions in construction. The Advisory Committee established a working group to develop comments on the cadmium proposal and to consider what, if any, modifications to the general industry standard were reasonably necessary and appropriate to protect construction workers from cadmium exposure.

OSHA discussed these matters with the Construction Advisory Committee and agreed to place whatever final cadmium standard was applicable to the construction industry in 29 CFR part 1926. On February 6, 1990 in its notice of proposed rulemaking (55 FR 4052), OSHA proposed to include the construction industry in the cadmium standard for general industry. However, the Agency also gave express notice in that document that the final standard for construction would be published in part 1926. OSHA also gave notice that the Advisory Committee's comments and other record evidence might lead the Agency in the cadmium rulemaking to promulgate a standard for the construction industry that might be different in some respects from the standard to be promulgated for general industry (29 CFR 1910.1027). OSHA expressly requested the public and interested parties to provide information and comments on how, if at all, the proposed cadmium standard should be modified if a distinctive standard for the construction industry were to be developed out of the unitary proposal (55 FR 4053).

Based upon the record evidence in this rulemaking, including pre-hearing comments submitted by the Advisory Committee concerning special working conditions in the construction industry, testimony at the public hearing by a representative of the Committee, and the draft of recommended modifications to the proposed rule submitted by the Committee (Exs. 8–665; 14–5; 53), OSHA has developed a separate and somewhat modified cadmium standard for the construction industry, 29 CFR 1926.63.

The only important issue raised in the rulemaking concerning the scope of the proposed cadmium standard was whether the standard should apply to the construction industry, as well as general industry. Several commenters favored covering the construction industry in the general industry standard (Exs. 19–8; 19–21; 57; Tr. 7/17/90, pp. 51–217). However, a representative of OSHA's Advisory Committee on Construction Safety and Health testified in opposition to extending the general industry standard to construction and in favor of a construction-specific standard that would address the unique conditions in that industry (Tr. 6/13/90; pp. 4–16).

OSHA agrees with the Advisory Committee that such a standard is needed. Thus, OSHA is publishing this separate standard for the construction industry that is comparable to the general industry standard but adapted to the particular conditions of the construction industry. The primary concern reflected in the comments favoring inclusion of the construction industry within the scope of the general industry standard is that construction workers be assured prompt and adequate protection from excess exposure to cadmium. OSHA believes that this can be accomplished more effectively by promulgation of a comparably protective, construction-specific standard, in conjunction with the promulgation of a general industry standard that excludes the construction industry.

A full discussion of the scope provision is provided in the summary and explanation of the general industry standard.

Definitions

Paragraph (b).

Action level. The final standard retains the same definition of "action level" (AL) incorporated in the proposal for the permissible exposure limit (PEL) of 5 $\mu g/m^3$. The action level is defined as an airborne concentration of cadmium of 2.5 $\mu g/m^3$, calculated as an 8-hour, time-weighted average.

The action level provides the airborne concentration of cadmium at or above which medical surveillance, air monitoring, and the provision of a respirator to any employee who requests one are required. Other requirements of the standard are not triggered until exposures exceed the PEL. Where exposures are determined to be below the action level, no compliance activities are required of the employer, except those required by paragraphs (d)(4), (m)(3) and (m)(4) of this standard for hazard communication. A full discussion of the issues related to the action level is included in the summary and explanation of the general industry standard.

Competent person, in accordance with 29 CFR 1926.32(f), means a person designated by the employer to act on the employer's behalf who is capable of identifying existing and potential cadmium hazards in the workplace and the proper methods to control them in order to protect workers, and who has the authority necessary to take prompt corrective measures to eliminate or control such hazards. The duties of a competent person under this standard shall include at least the following: Determining prior to the performance of work whether cadmium is present in the workplace; establishing, where necessary, regulated areas and assuring

that access to and from those areas is limited to authorized employees; assuring the adequacy of any employee exposure monitoring required by this standard; assuring that all employees exposed to air cadmium levels above the PEL wear the appropriate personal protective equipment and are trained in the use of appropriate methods of exposure control; assuring that proper hygiene facilities are provided and that workers are trained to use those facilities; and assuring that the engineering controls required by this standard are implemented, maintained in proper operating condition, and functioning properly.

In comments made to OSHA (Ex. 57), the Advisory Committee on Construction Occupational Safety and Health (ACCSH) and its Task Force on cadmium requested that OSHA include the definition of a competent person, as defined in 29 CFR 1926.32(f), and that OSHA outline the duties and responsibilities of that competent person in the cadmium standard for the construction industry. OSHA recognizes the need for a competent person in construction. Safety and health problems on a construction site are sufficiently complex and unique to justify requiring the employer to appoint an identifiable "competent person" who is on site to act on the employer's behalf in this regard. For example, multiple employers may be working on different projects at a particular worksite or in adjacent worksites, as part of the same overall construction job. As a result, actions by one employer on the worksite may subject employees of other employers to occupational hazards.

Moreover, hazards on construction jobs may vary according to environmental conditions (e.g., open air exposure, confined spaces), workforce turnover, the processes involved and the frequency and duration of exposures. The ACCSH Task Force identified specific jobs, (e.g., welder, painter, electrical worker) and specific tasks (e.g., brazing/burning/welding surfaces that were painted with cadmium prior to 1970) in which cadmium exposures were expected to be high and therefore needed to be carefully monitored. The Task Force indicated that cadmium exposures in the construction industry typically are short-term and intermittent, although some jobs periodically may involve long-term chronic exposures. However, the Task Force also indicated that no accurate exposure data were available regarding the average length of exposure per week, exposure levels, and worker turnover in various job categories. Consequently, there is an obvious need for site characterization and analysis by a competent person who is able to identify the hazards present and the types of control measures that are effective.

Site characterization is a continuous process because of changing environmental and work conditions as a construction job is being completed. At each phase of site characterization, information must be obtained and evaluated to define the potential hazards on the site. That information must be collected and evaluated by a person designated to represent the employer and who is capable of identifying and controlling hazards. For these reasons, OSHA agrees with the ACCSH Task Force and is including this definition of a competent person (Exs. 14–5; 57).

Employee exposure is defined as the exposure to airborne cadmium that would occur if the employee were not using respiratory equipment. This definition is intended to apply to all variations of the term "employee exposure" that have essentially the same meaning, such as "exposed employee" and "exposure". The definition is consistent with OSHA's previous use of the term in other standards.

Final medical determination is the physicians written medical opinion of the employee's health status. Under paragraphs (l)(3)-(l)(12), the written medical opinion of the examining physician is the "final medical determination." Where either multiple physician review or the alternative physician determination mechanism has been invoked under paragraph (l)(13) or (l)(14), respectively, the final medical determination is the final, written medical finding, determination or recommendation that emerges from that process.

The terms "*Assistant Secretary*", "*authorized person*", "*Director*", "*high-efficiency particulate absolute [HEPA] air filter*", and "*regulated area*" are defined in this final standard essentially as proposed. These definitions are based on OSHA's previous experience and are consistent with OSHA's use of these terms in other health standards. These definitions generally have not been commented upon. The employers' obligations with respect to HEPA filters and regulated areas are discussed later in this preamble. In the discussion of regulated areas a clarification in the final standard is explained.

Permissible Exposure Limit (PEL)

Paragraph (c).

Employers are required to assure that no employee is exposed to an airborne concentration of cadmium in excess of the permissible exposure limit (PEL) of 5 micrograms of cadmium per cubic meter of air ($\mu g/m^3$). A full discussion of this is included in the summary and explanation of the general industry standard.

Exposure Monitoring

Paragraph (d).

This final standard imposes monitoring requirements pursuant to section 6(b)(7) of the OSH Act (29 U.S.C. 655), which mandates that any standard promulgated under section 6(b) shall, where appropriate, "provide for monitoring or measuring of employee exposure at such locations and intervals, and in such manner as may be necessary for the protection of employees." To this end, as discussed below, OSHA has made four significant changes to the monitoring requirements included in the cadmium standard for general industry.

First, prior to the performance of any construction work where employees may be potentially exposed to cadmium, the employer is required by paragraph (d)(1)(i) to establish the applicability of this standard by determining whether cadmium is present in the workplace and whether there is a possibility that an employee may be exposed to cadmium at or above the AL. The employer must designate a competent person to make this determination. Investigation and material testing techniques are to be used, as appropriate, in the determination. Investigation should include a review of relevant plans, past reports, material safety data sheets, and other available records, and consultations with the property owner and discussions with appropriate individuals and agencies. Material testing techniques may include a "spot test analysis" designed for geochemical applications, i.e., for rigorous and sensitive analyses of cadmium content in complex matrices, which was reviewed by ACCSH and may be used for on-site identification of the presence of cadmium (Ex. 14–5).

In comments to OSHA, the Task Force specifically indicated that in the construction of new buildings or structures, any cadmium that is to be used will be specified on the blueprints and contracts used in developing the plans of that construction activity. In these cases, the presence of cadmium at a particular worksite will be known prior to the initiation of any work (Ex. 14–5). However, in the case of wrecking and demolition, or retrofitting and repair

of existing equipment, such information may not be available. In the latter case, prior to the initiation of any work, it must be determined whether cadmium is present at the worksite. For that purpose, the investigation and material testing techniques, discussed above, may provide information about the presence, location, and extent of cadmium (Ex. 14–5).

Under paragraph (d)(1)(i), where cadmium has been determined to be present in the workplace, and the possibility that some employee will be exposed at or above the AL has been established, the competent person is to identify employees potentially exposed to cadmium at or above the action level. This identification may be based upon any information, observations, or calculations that would indicate employee exposure to cadmium, including any previous measurements of airborne cadmium. As indicated in the definition section of this standard, employee exposure is the exposure to airborne cadmium that would occur if the employee were not using a respirator.

Under paragraph (d)(2)(1) (i) and (ii), and except as provided for in paragraph (d)(2)(iii), where an employee has been identified as potentially exposed to cadmium at or above the action level, the employer must conduct initial exposure monitoring as soon as practicable that is representative of the exposure for each employee in the workplace who is or may be exposed to cadmium at or above the action level. In certain circumstances, sampling each employee's exposure to cadmium may be required for initial monitoring. However in many cases, the employer under paragraph (d)(1)(iv) may monitor selected employees to determine "representative employee exposures."

Second, under paragraph (d)(2)(ii), if the employee periodically performs tasks that may expose the employee to a higher concentration of airborne cadmium, the employee must be monitored while performing those tasks. This provision was added to this standard because employees in the construction industry are more likely than in general industry to perform such tasks. The provision only makes express an obligation to monitor that is implicit in the general industry standard. The competent person should assure that any exposure monitoring required by this standard is performed adequately.

Under paragraph (d)(3)(i), if the initial monitoring or periodic monitoring reveals employee exposures to be at or above the action level, the employer shall monitor at a frequency and pattern needed to assure that the monitoring results reflect with reasonable accuracy the employee's typical exposure levels, given the variability in the tasks performed, work practices, and environmental conditions on the job site, and to assure the adequacy of respiratory selection and the effectiveness of engineering and work practice controls.

Third, unlike the general industry standard for cadmium, no minimum frequency for monitoring is required by this standard. That is because the nature of much construction work and the changing nature of the job and work conditions would often limit the value of periodic monitoring on a fixed schedule, e.g., semi-annual monitoring. For example, for the many jobs that run less than six months, it would make no sense to require the employer to monitor at least every six months. Moreover, for tasks that are performed episodically in the course of a job, semi-annual monitoring also would be of questionable value.

Fourth, under paragraph (d)(5)(i), no later than five working days after the receipt of the results of any monitoring performed under this section, the employer shall notify each affected employee individually in writing of the results and shall post the results in an appropriate location that is accessible to affected employees. This is a change from the general industry standard, which allows the employer 15 days to notify the affected employee of his/her monitoring results. OSHA concluded that a shorter notice period would be appropriate for the construction industry in light of the short term nature of many construction jobs.

The changes in the language of the general industry standard basically follows the recommendations of the ACCSH Task Force on cadmium (Ex. 57). A full discussion of the monitoring requirements in this standard can be found in the summary and explanation of the general industry standard.

Regulated Areas

Paragraph (e).

Under paragraph (e)(1) and (e)(2), whenever an employee exposed to cadmium is or can reasonably be expected to be in excess of the permissible exposure limit (PEL), the employer is required to establish a regulated area that is adequately demarcated and alerts employees of its boundaries and that protects employees from airborne exposures in excess of the PEL, OSHA recommends that the employer consider establishing regulated areas wherever the following construction activities are conducted: Electrical grounding with cad-welding; cutting, brazing, burning, grinding or welding on surfaces that were painted with cadmium-containing paints; electrical work using cadmium-coated conduit; use of cadmium containing paints; cutting and welding cadmium-plated steel; brazing or welding with cadmium alloys; fusing of reinforcing steel by cadmium welding; maintaining or retrofitting cadmium-coated equipment; and wrecking and demolition where cadmium is present. A full discussion of regulated areas is provided in the summary and explanation of the general industry standard.

Methods of Compliance

Paragraph (f).

Under paragraph (f)(1)(i), the employer is required to implement engineering and work practice controls to reduce and maintain employee exposure to cadmium at or below the PEL, except to the extent that the employer can demonstrate such controls are not feasible. Under paragraph (f)(1)(ii), the requirement to implement engineering controls to achieve the PEL does not apply where the employer demonstrates that no employee is exposed above the PEL on 30 or more days per year by the employer and that any employee who is exposed above the PEL on 29 or fewer days is only exposed intermittently, by which OSHA means that the employee is effectively not exposed to cadmium on any more than 29 days.

The provisions in paragraph (f)(1) are basically the same as those in the cadmium standard for general industry. However, unlike the general industry standard, there is no provision in this standard for a separate engineering control air limit (SECAL), because there appears to be no need in the construction industry for such a higher engineering-and-work-practice-control limit. No comment was received on the need for a SECAL in any construction sector during the rulemaking. Consequently, employers in the construction industry, like the vast majority of employers covered by the general industry standard (Ex. 13), will have to implement engineering and work practice controls, to the extent feasible, to control air cadmium levels to the PEL. The other provisions in paragraph (f)(2)–(3) also are in general agreement with the general industry standard.

However, under paragraphs (f)(2)–(3), several construction-specific modifications were added to the general industry standard. First under (f)(2)(i), abrasive blasting on cadmium or cadmium-containing materials is to be

conducted in a manner that will provide adequate protection. Second under paragraph (f)(2)(ii), heating cadmium and cadmium-containing materials and welding, cutting, and other forms of heating of cadmium or cadmium-containing materials shall be conducted in accordance with the requirements of 29 CFR 1926.353 and 29 CFR 1926.354, where applicable.

Third, under paragraph (f)(3)(i), in cases where cadmium exposures will be above the TWA PEL, high speed abrasive disc saws or similar abrasive power equipment, such as power grinders, rotary peening machines, needle guns, power brushes, and power sanders, must be equipped with appropriate engineering controls to minimize emissions. In cases in which the exposure level is uncertain, the employer or the designated competent person should determine the exposure level.

Fourth, under paragraph (f)(3)(ii), materials containing cadmium should not be applied by spray methods if the resultant exposures are above the TWA PEL, unless employees are protected with appropriate respirators, i.e., supplied-air respirators with full facepiece, hood, helmet, suit, operated in positive pressure mode, and unless specific measures are instituted to limit overspray and prevent contamination of adjacent areas. In those cases in which exposure levels are uncertain, the employer or designated competent person should determine whether exposures from such operations will be at or below the TWA PEL.

According to comments submitted to OSHA (Ex. 14–5, 10/13/89), cadmium is now considered to be a contaminant in coatings in the construction industry. That is, cadmium is only found in "microscopic" quantities, and for all practical purposes is not applicable in construction activities that involve new coatings. However, cadmium is a component of coatings applied prior to 1970, and OSHA is particularly concerned about the health hazards to workers who handle such coatings. According to industry comments, about twenty years ago, cadmium was used, at times, as a substitute and supplemental filler-pigment, in conjunction with lead in primers and other heavy metal pigmented coatings. However, as a result of the lead regulations and the cost of the use of multi-metal pigments, their use was discontinued.

Therefore, the ACCSH Task Force focused its comments on the relevance of the cadmium standard to activities that involve remodeling or renovation projects. In cases where old coatings are removed, primary concern would be where at least two-three coats of primer on steel had been applied, prior to 1970, to a thickness of 15/1,000th of an inch. If "old" primer is to be burned off, complete burning should be carried out in such a manner so as to control cadmium exposures to levels that are at or below the TWA PEL (Ex. 14–5, 10/13/89).

The employer's obligation in paragraph (f)(5) of this standard concerning a compliance program is similar to the obligation in the general industry standard. It requires the employer, where employee exposure is above the PEL, to establish and implement a written compliance program to reduce employee exposure to or below the PEL. However, there are three ways in which the obligation under this standard differs somewhat from the obligation in the general industry standard. First, since specific elements of the written plan required in the general industry standard might prove burdensome and inappropriate in construction jobs and industries, no specific elements of the plan are required by this standard. Nonetheless, OSHA recommends that such plans include as many of the elements required in the general industry standard as are appropriate. Second, the compliance plan must be established and implemented, to the extent appropriate, prior to beginning the job. Because countless construction jobs will be undertaken after promulgation of this standard, OSHA has made explicit the obligation to establish and implement a compliance plan prior to commencing work. In fact, the same obligation is implicit in the general industry standard for plants that are opened subsequent to the promulgation of that standard.

Under paragraph (f)(5)(ii), written compliance programs must be reviewed and updated as often and as promptly as necessary to reflect significant changes in the employer's compliance status or where it was infeasible to achieve the PEL exclusively by engineering and work practice controls, to reflect significant changes in the lowest air cadmium level that is technologically feasible. However, under paragraph (f)(5)(iii), a competent person is to review the comprehensive compliance program initially and after each change. OSHA believes it is important that the compliance program, which is the overall plan for protecting workers from occupational hazards, be carefully reviewed by a competent person. Under paragraph (f)(5)(iv), written compliance programs are to be submitted upon request for examination and copying to the Assistant Secretary, the Director, affected employees, and designated employee representatives.

To control the hazards associated with cadmium exposure, primary reliance in this standard is still placed upon engineering controls and work practices, which is consistent with good industrial hygiene practice (Tr. 7/17/90; pp. 56, 77; Exs. 19–8; 19–21) and with the Agency's traditional adherence to a hierarchy of controls that prefers engineering and work practice controls over reliance upon respirators. The primary reliance upon engineering and work practice controls is also supported by some employers and company doctors (Exs. 19–31; L–19–57; 118; 19–2). However, OSHA is aware that in the construction industry there are likely to be a considerable number of situations in which engineering controls are not feasible. A complete discussion of methods of compliance can be found in the summary and explanation of the preamble to the cadmium standard for general industry.

Respiratory Protection

Paragraph (g).

This final standard adopts the proposed respiratory protection provisions with little or no substantial modification and is basically the same as the cadmium standard for general industry. The provisions of this standard are in keeping with requirements for respiratory protection in other OSHA health standards (Lead 29 CFR 1910.1025; Benzene 29 CFR 1910.1028), recent developments in the field, and OSHA's revision of the generic standard on respiratory protection (29 CFR 1910.134).

Respirators are necessary as supplementary protection to reduce employee exposure when engineering and work practice controls cannot achieve the necessary reduction to or below the PEL. Respirators may also be necessary at other times, for example: While engineering and work practice controls are being implemented, during emergency situations, during intermittent exposures under the 30-working day exclusion when engineering and work practice controls are not required, and for brief or intermittent exposures that cannot be controlled through engineering and work practice controls. A respirator also must be provided by the employer for all authorized employees in regulated areas.

Because of the risk of serious adverse health effects from cadmium exposures, OSHA accepts the need for requiring respirators in the above mentioned circumstances in order to reduce an

employee's cumulative dose of cadmium.

Table 2 lists the type of respirator to be used at each airborne concentration of cadmium in the workplace. The standard requires fit testing of all respirators to assure at least a minimally acceptable fit. It is also important that all employees who wear respirators be medically screened to determine employee fitness for respirator usage.

Paragraph (l)(6)(ii) of this standard, therefore, generally requires that medical examinations be made available to workers with a job that requires the use of a respirator prior to assignment to that job. A complete discussion of this respirator provision can be found in the summary and explanation of the preamble to the cadmium standard for general industry. That discussion is fully applicable to the requirements in paragraph (g) of this standard because they are the same as the parallel requirements in the general industry standard.

Emergency Situations

Paragraph (h).

To deal with emergency situations, the employer must develop and implement a written plan for emergency situations involving substantial releases of airborne cadmium. This provision basically tracks the proposed cadmium standard and is the same as the cadmium standard for general industry. A fuller discussion of this provision can be found in the summary and explanation of the parallel provision in the preamble to the general industry standard.

Protective Work Clothing and Equipment

Paragraph (i).

This final standard, with few substantial modifications, adopts the requirements of the proposed cadmium standard and is basically the same as the general industry standard regarding protective clothing and equipment. These requirements are typical of other OSHA health standards and are based upon widely accepted principles and conventional practices of industrial hygiene.

Clean protective clothing and equipment shall be provided by the employer at least weekly, and more often as necessary to assure its effectiveness, to each affected employee and at no cost to the employee. OSHA recommends that clean protective clothing be provided at least daily for employees with exposure to cadmium at levels approaching or exceeding 100 $\mu g/m^3$. Removal of cadmium from protective clothing by blowing, shaking, or any other means that disperse cadmium into the air is prohibited.

A complete discussion of this paragraph regarding protective clothing and equipment can be found in the summary and explanation of the preamble to the cadmium standard for general industry. That discussion is fully applicable to the requirements in this standard because they are essentially the same as the parallel requirements in the general industry standard.

Hygiene Areas and Practices

Paragraph (j).

This final standard, like the proposal, requires employers to provide employees exposed to cadmium above the PEL with hygiene and lunchroom facilities and to assure employee compliance with basic hygiene practices to minimize additional potential sources of exposure to cadmium. With the exception of the start-up date, in paragraph (p), below, the requirements in this standard are essentially the same as those in the parallel provision in the cadmium standard for general industry.

OSHA believes it is essential for employees to have separate locker and storage facilities for street and work clothing to prevent cross-contamination of their street clothes. This provision will minimize employee exposure to cadmium after the work shift ends, because it reduces the period during which they may be exposed to cadmium-contaminated work clothes.

A complete discussion of this paragraph regarding hygiene facilities and practices can be found in the summary and explanation of the preamble to the cadmium standard for general industry. That discussion is fully applicable to the requirements in this standard.

Housekeeping

Paragraph (k).

Like other OSHA health standards dealing with toxic dusts or fibers (Asbestos, 29 CFR 1910.1001), this cadmium standard imposes the general housekeeping requirement to maintain all surfaces as free as is practicable of accumulations of cadmium.

These housekeeping provisions are exceptionally important because they minimize additional sources of exposure that engineering controls generally are not designed to control. Good housekeeping is a cost effective way to control employee exposure levels by removing from the worksite cadmium dust that can become reentrained by air currents and carried into employee breathing zones.

A complete discussion of this housekeeping provision can be found in the summary and explanation of the preamble to the cadmium standard for general industry. That discussion is fully applicable to the requirements in paragraph (k) of this standard because they are the same as the parallel requirements in the general industry standard.

Medical Surveillance

Paragraph (l).

(l) *General.* The medical surveillance provisions of paragraph (l) in this standard generally are similar to the general industry standard with the following exceptions:

(1) Under paragraph (l)(1)(i)(A), as requested by the ACCSH Task Force (Ex. 57), all employees who perform the following tasks, operations or jobs are automatically covered by the medical surveillance provisions of this standard, unless the employees are exposed to cadmium on less than 30 days per year: Electrical grounding with cad-welding; cutting, brazing, burning, grinding or welding on surfaces that were painted with cadmium-containing paints; electrical work using cadmium-coated conduit; use of cadmium containing paints; cutting and welding cadmium-plated steel; brazing or welding with cadmium alloys; fusing of reinforcing steel by cadmium welding; maintaining or retrofitting cadmium-coated equipment; and wrecking and demolition where cadmium is present. The ACCSH Task Force recommended that workers performing these tasks or jobs be included in medical surveillance because those workers generally will be exposed to significant levels of airborne cadmium and because ACCSH thought that they therefore should not have to await the results of exposure monitoring to be included in medical surveillance. In addition, all workers exposed at or above the action level are covered unless the employer demonstrates that the employees are exposed above the action level on fewer than 30 days per year (12 consecutive months).

(2) Under paragraph (l)(1)(i)(B), employers must also provide medical surveillance to all employees who might have been exposed to cadmium by the employer prior to the effective date of this standard in tasks specified under paragraph (l)(1)(i)(A), unless the current employer demonstrates that the employee did not in the years prior to the effective date of this standard work in those tasks for the employer for an aggregated total of more than 12 months prior to the effective date of this standard.

This provision, to extend medical surveillance to veteran employees who previously were potentially exposed to relatively high levels of cadmium but no longer are exposed to cadmium in sufficient amounts to make them otherwise eligible for medical surveillance, is similar to the parallel provision in the cadmium standard for general industry.

The only difference is that the minimum aggregate total of previous exposure in this standard is lower than in the general industry standard. The total is lower for two reasons. First, it is believed that many employees who performed in the specified tasks typically were exposed to cadmium at levels considerably above the AL, which is all that is required by the general industry standard. With a higher expected average daily dose, the duration of exposure should be shortened to assure adequate surveillance. Second, in light of employment conditions in the construction industry, such as high turnover and mobility of employees, OSHA believes that requiring that the employee have worked for the employer in the named tasks for much longer than 12 months to be eligible for medical surveillance would make it likely that many veteran construction workers with considerable past exposure to cadmium would not be covered by medical surveillance.

This 12 month minimum requirement in the performance of specific tasks is similar to a parallel provision for inclusion of workers exposed prior to the effective date of the benzene standard (29 CFR 1910.1028, paragraph (i)(1)). In the Benzene standard, the only other OSHA health standard to cover veteran employees who were exposed prior to the effective date of the standard, "veteran" workers who performed a specific task, e.g., tire building, or were exposed above a specific exposure level during one year were included under medical surveillance. The determination of an employee's prior exposure to cadmium must be, where relevant, reasonable, and practical, based on the employee's previous exposure records, first measurements taken of that employee after the effective date of this section, and on comparisons with employee exposure records in the same or similar operations, where the engineering controls, cadmium containing materials, and other relevant working conditions are the same or similar.

(3) In part because of the transient nature of much construction work and employment, deadlines for employer action or earlier deadlines than in the general industry standard are established in this standard. For example, under paragraph (l)(5) of this standard, the employer must reassess employee exposures within 30 days; by contrast, in the general industry standard no deadline is specified. The time period is specified in the construction standard to address the need for prompt action addressed in the testimony of the Construction Advisory Work Committee on Cadmium (Exs. 14–5; 53).

With regard to medical removal protection (MRP) and medical removal protection benefits (MRPB), paragraphs (l) (11) and (12), the provisions in this standard are the same as the parallel provisions in the cadmium standard for general industry. However, because of the different employment conditions in the construction industry, the provisions may impact quite differently in this industry.

In both standards, MRP and MRPB generally assure that an employee who is medically removed from his/her job for cadmium related reasons will be no worse off in terms of wages and employment benefits and rights than if the employee had not been removed. However, under neither standard would MRP and MRPB put the removed employee in a better position than he/she would have been in had the employee not been removed. Thus, if a removed employee's job comes to an end while he/she is on medical removal, the medical removal benefits also come to an end, even if the period for which the employee has been removed is less than the 18-month maximum authorized under this standard. In theory, this is as true under the standard for general industry as under the construction standard. But in practice, this fact is likely to have greater impact in the construction industry, where many jobs and much employment is short-term and the turnover rate among many construction workers is relatively high.

Other provisions in the medical surveillance program remain unchanged from the cadmium standard for general industry. A complete discussion of the medical surveillance provision can be found in the summary and explanation of the preamble to the cadmium standard for general industry. That discussion is fully applicable to the many requirements in paragraph (l) of this standard that are the same or essentially the same as the parallel requirements in the general industry standard.

Communication of Cadmium Hazards to Employees

Paragraph (m).

In this final cadmium standard paragraph (m) incorporates the employer's requirements to communicate to employees about the hazards of occupational exposure to cadmium. These hazard communication provisions are generally the same as those in other OSHA health standards (e.g., paragraph (j), Benzene Final Standard, 29 CFR 1910.1028) and for general industry. However, in a multi-employer workplace, an employer who produces, uses, or stores cadmium in a manner that may expose employees of other employers to cadmium is required by paragraph (m) to notify the other employers of the potential hazard in accordance with paragraph (e) of the hazard communication standard for construction, 29 CFR 1926.59.

This is consistent with OSHA's Hazard Communication Standard (29 CFR 1926.59) for the construction industry which requires all chemical manufacturers and importers to assess the hazards of the chemicals they produce or import and to develop appropriate information about those hazards, which they are required to communicate in various ways to their own exposed employees and to relevant downstream employers, as specified under paragraphs (d)–(h) of the Hazard Communication Standard ((HCS); (29 CFR 1926.59)). Downstream employers, in turn, are required to communicate the information concerning the hazards of such chemicals in various ways to their own employees. The transmittal of hazard information to employees is to be accomplished by means of comprehensive hazard communication programs, which must include container labeling and other forms of warning, material safety data sheets and employee training.

The Cadmium Standard, for example, requires that regulated areas be posted with appropriate warning signs. For some work areas regulated areas are permanent, because air cadmium exposures persist there and cannot be reduced below the PEL by means of engineering controls. Perhaps more important for construction work, the nature of which (and the hazards associated with it) may change dramatically in the course of completing a project, regulated areas may also need to be established on a temporary basis. This might be so during intermittent operations, maintenance and/or emergency situations. The use of warning signs in these types of

situations is especially important since employees who are regularly scheduled to work in or near these areas need to be warned about new or unexpected exposure to cadmium at levels above the PEL.

A complete discussion of the hazard communication provision in this standard can be found in the summary and explanation of the preamble to the cadmium standard for general industry. That discussion is fully applicable to the many requirements in paragraph (m) of this standard that are the same or essentially the same as the parallel requirements in the general industry standard.

Recordkeeping

Paragraph (n).

The recordkeeping provisions of this final standard are essentially the same, except where indicated, as those in the final cadmium standard for general industry and the cadmium proposal, which received little or no public comment. These provisions generally are similar to recordkeeping provisions in other OSHA health standards.

Two provisions in paragraph (n) are different from those in the general industry standard. First, under (n)(iv), the employer must provide a copy of the results of an employee's air monitoring prescribed in paragraph (d) of this standard to an industry trade association and to the employee's union, if any, or, if either of such associations or unions do not exist, to another comparable organization that is competent to maintain such records and is reasonably accessible to employers and employees in the industry. This is to assure that, in an industry with much short-term employment, relatively high rates of worker turnover, and mobile job sites and employees, employers and employees have ready access to a relatively stable back-up source of air monitoring records, if needed.

Second, under paragraph (n)(3)(iv), the employer is required upon request by an employee to provide a copy of the employee's medical record or update, as appropriate, to a medical doctor or union specified by the employee. This requirement also is to assure that, in an industry with much short-term employment, relatively high rates of worker turnover, and mobile job sites and employees, employees have a relatively stable, designated backup source for obtaining their medical records, if needed.

OSHA recognizes that over the years employees may change construction jobs many times, work for many employers, and be exposed to cadmium at various levels and for different durations. OSHA further recognizes that some diseases that may be associated with excess exposure to cadmium, like lung cancer, may take many years to manifest themselves. Over such long periods, employees may misplace or lose records in their possession from earlier times. OSHA is therefore attempting in paragraphs (n)(1)(iv) and (n)(3)(iv) to establish at minimum cost to all concerned some alternative, more stable source of this records.

A complete discussion of the record keeping provision in this standard can be found in the summary and explanation of the preamble to the cadmium standard for general industry. That discussion is fully applicable to the many requirements in paragraph (n) of this standard that are the same or essentially the same as the parallel requirements in the general industry standard.

Observation of Monitoring

Paragraph (o).

This standard contains provisions for employee observation of exposure monitoring. This is in accordance with section 8(c) of the OSH Act, which requires that employers provide employees and their representatives with the opportunity to observe monitoring of employee exposures to toxic substances or harmful physical agents. Observation procedures are set forth that require the observer, whether employee or designated representative, to be provided with the personal protective clothing and equipment that is required to be worn by employees working in the area. The employer is required to assure the use of such clothing, equipment, and respirators, and is responsible for assuring that the observer complies with all other applicable safety and health procedures.

This provision is the same as the parallel provision in the cadmium standard for general industry. A complete discussion of the requirements of paragraph (o) in this standard can be found in the summary and explanation of the preamble to the general industry standard.

Dates

Paragraph (p).

The standard will become effective on December 14, 1992. All obligations imposed by the standard commence on the effective date unless otherwise noted. All obligations that do not commence on the effective date shall be complied with as soon thereafter as possible and in any event no later than the start-up date, which is a compliance deadline.

Because small construction businesses frequently have fewer resources for interpreting and implementing complex requirements to protect their workers, and in order to implement an outreach program and to provide technical assistance to employers with small businesses (nineteen (19) or fewer employees), start-up dates for certain provisions of the standard are later for these establishments.

The requirements for initial exposure monitoring (paragraph (d)(2)) and for hygiene facilities (paragraph (j)) must be completed no later than 60 days after the effective date of the standard (120 days for small construction businesses). The requirements for the permissible exposure limit (paragraph (c)), regulated areas (paragraph (e)) and respiratory protection (paragraph (g)), must be completed no later than 90 days after the effective date of this standard (150 days for small businesses). The requirements for initial medical examinations (paragraph (l)(2)), written compliance programs (paragraph (f)(5)(ii), and employee information and training (paragraph (m)(4)) must be completed no later than 90 days after the effective date of this standard (160 days for small businesses). The start-up dates for hygiene facilities other than handwashing facilities and for lunchroom facilities is considerably shorter in this standard than in the cadmium standard for general industry. This is because OSHA believes that most such facilities in the construction industry will be rented or purchased and will be mobile and will require no substantial amount of time for the employer to design, construct or install them.

In addition, the start-up date for compliance programs also is considerably shorter in this standard than in the cadmium standard for general industry. This is because OSHA believes that compliance with the PEL in the construction industry generally will be achieved by respirators, in conjunction with off-the-shelf, portable engineering controls, which require little or no time for the employer to design, manufacture or install. It also is because so many construction jobs are short term jobs.

Engineering and work practice controls generally are required to be fully implemented no later than 120 days after the effective date (240 days for small businesses). Work practice controls are to implemented as soon as possible. OSHA assumes that most engineering controls in the construction industry are of the off-the-shelf, portable

variety and need not be specially designed, manufactured or elaborately installed.

With the exception previously stated for small construction businesses, nearly all of the start-up dates established in this standard are conventional. They have been developed out of OSHA's experience with similar standards and closely parallel, start-up dates in other health standards (e.g., Lead Final Standard). The start-up dates in this final standard generally also closely parallel those in the proposed cadmium standard. The primary exceptions are discussed in the preamble to the general industry standard. In addition, the effective date of this standard is 90 days after publication of this final standard, rather than the proposed 60 days. OSHA is providing 90 days in order to give employers slightly more time to prepare to comply with all the obligations that take effect on and after that date.

Appendices

Paragraph (q).

The final cadmium standard contains six appendices that are designed to assist employers and employees in implementing the provisions of this standard. Appendix C is incorporated as part of this standard and imposes additional mandatory obligations on employers covered by this standard. Appendices A, B, D, E, and F are non-mandatory, except that appendices A, D, and F must be reviewed by physicians in order for physicians to be licensed to medically evaluate any cadmium-related illnesses. Also, questions 3–11 and 25–32 of appendix D are required as part of the limited medical examination that is required prior to the use of a respirator. Otherwise, these appendices are not intended to add to, or detract from any obligation that the cadmium standard otherwise imposes.

The Appendices that are included in the standard are:

Appendix A—Substance Safety Data Sheet, Cadmium
Appendix B—Substance Technical Guidelines, Cadmium
Appendix C—Qualitative and Quantitative Fit Testing Procedures
Appendix D—Medical and Occupational History with Reference to Cadmium Exposure (suggested format)
Appendix E—Sampling and Analysis
Appendix F—Non-mandatory Protocol for Laboratory Standardization for Biological Monitoring for Cadmium

X. Authority and Signature

This document was prepared under the direction of Dorothy L. Strunk, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210.

Accordingly, pursuant to sections 4(b), 6(b), 8(c), and 8(g) of the Occupational Safety and Health Act of 1970 (U.S.C. 655, 657), 29 CFR part 1911 and Secretary of Labor's Order No. 1–90 (55 FR 9033); Construction Work Hours and Safety Standard Act (Construction Safety Act), 40 U.S.C. 333; the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 941; and 29 CFR part 1911, 29 CFR parts 1910, 1915, 1926 and 1928 are amended as set forth below.

Signed at Washington, DC, this 31st day of August, 1992.

Dorothy L. Strunk,

Acting Assistant Secretary for Occupational Safety and Health.

XI. Final Standard (General, Maritime, and Agriculture Industries)

PART 1910—[AMENDED]

PART 1915—[AMENDED]

Part 1910 and 1915 of title 29 of the Code of Federal Regulation is hereby amended as follows:

1. The authority citation for subpart B of 29 CFR part 1910 is revised to read as follows:

Authority: Secs. 4, 6 and 8 of the Occupational Safety and Health Act, 29 U.S.C. 653, 655, 657; Walsh-Healey Act, 41 U.S.C. 35 et seq.; Service Contract Act of 1965, 41 U.S.C. 352 et seq.; sec. 107, Contract Work Hours and Safety Standards Acts (Construction Safety Act), 40 U.S.C. 333; sec. 42, Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. 942; National Foundation of Arts and Humanities Act, 20 U.S.C. 951 et seq.; Secretary of Labor's Order No. 12–71 (36 FR 8754); 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033), as applicable; and 29 CFR part 1911.

Sections 1910.16 and 1910.19 also issued under 29 CFR part 1911.

2. The authority citation for subpart Z of part 1910 continues to read as follows:

Authority: Secs. 6, 8 Occupational Safety and Health Act, 29 U.S.C. 655, 657: Secretary of Labor's Orders 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033), as applicable; and 29 CFR part 1911.

All of subpart Z issued under section 6(b) of the Occupational Safety and Health Act, 29 U.S.C. 655(b) except those substances listed in the Final Rule Limits columns of Table Z–1–A, which have identical limits listed in the Transitional Limits columns of Table Z–1–A, Table Z–2 or Table Z–3. The latter were issued under section 6(a) (29 U.S.C. 655(a)).

Section 1910.1000, the Transitional Limits columns of Table Z–1–A, Table Z–2 and Table Z–3 also issued under 5 U.S.C. 553. § 1910.1000, the Transitional limits columns of Table Z–1–A, Table Z–2 and Table Z–3 not issued under 29 CFR part 1911 except for the arsenic, benzene, cotton dust, and formaldehyde listings.

Section 1910.1001 also issued under Sec. 107 of Contract Work Hours and Safety Standards Act, 40 U.S.C. 333.

Section 1910.1002 not issued under 29 U.S.C. 655 or 29 CFR part 1911; also issued under 5 U.S.C. 553.

Sections 1910.1003 through 1910.1018 also issued under 29 U.S.C. 653.

Section 1910.1025 also issued under 29 U.S.C. 653 and 5 U.S.C. 553.

Section 1910.1028 also issued under 29 U.S.C. 653.

Section 1910.1043 also issued under 5 U.S.C. 551 et seq.

Sections 1910.1045 and 1910.1047 also issued under 29 U.S.C. 653.

Section 1910.1048 also issued under 29 U.S.C. 653.

Sections 1910.1200, 1910.1499 and 1910.1500 also issued under 5 U.S.C. 553.

3. The authority citation for part 1915 is revised to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers Compensation Act (33 U.S.C. 941); secs. 4, 6, 8 Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033), as applicable; 29 CFR part 1911.

Section 1915.99 also issued under 5 U.S.C. 553.

Part 1910 Subpart B—[Amended]

§ 1910.19 [Amended]

4. A new paragraph (k) is added to § 1910.19 to read as follows:

§ 1910.19 Special provisions for air contaminants.

* * * * *

(k) *Cadmium.* Section 1910.1027 shall apply to the exposure of every employee to cadmium in every employment and place of employment covered by § 1910.16 in lieu of any different standard on exposures to cadmium that would otherwise be applicable by virtue of those sections.

Part 1910 Subpart Z—[Amended]

§ 1910.1000 [Amended]

5. In 1910.1000, Table Z–1–A, the entries "Cadmium fume * * * 0.1 mg/m^3 * * * 0.3 mg/m^3" and "Cadmium dust * * * 0.2 mg/m^2 * * * 0.6 mg/m^3" are removed and replaced with the following entry added in the substance column: "Cadmium; see 1910.1027. See Table Z–2 for the exposure limits for any operations or sectors where the exposure limits in § 1910.1027 are stayed or otherwise not in effect."

6. In § 1910.1000, Table Z–2, a footnote superscript "4" is added after the entries "Cadmium fume (237.5–1970)" and "Cadmium dust (237.5–1970)" and footnote 4 is added after footnote 2 to

read: "4. This standard applies to any operations or sectors for which § 1910.1027 is stayed or otherwise not in effect."

7. In part 1910 a new § 1910.1027 with appendices A, B, C, D, E, and F are added to subpart Z and in part 1915, a new subpart Z is added consisting of § 1915.1027 with appendices A, B, C, D, E, and F to read as set forth below. The text is identical for both parts 1910 and 1915.

§ _____.1027 Cadmium.

(a) *Scope.* This standard applies to all occupational exposures to cadmium and cadmium compounds, in all forms, and in all industries covered by the Occupational Safety and Health Act, except the construction-related industries, which are covered under 29 CFR 1926.63.

(b) *Definitions.*

Action level (AL) is defined as an airborne concentration of cadmium of 2.5 micrograms per cubic meter of air (2.5 $\mu g/m^3$), calculated as an 8-hour time-weighted average (TWA).

Assistant Secretary means the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, or designee.

Authorized person means any person authorized by the employer and required by work duties to be present in regulated areas or any person authorized by the OSH Act or regulations issued under it to be in regulated areas.

Director means the Director of the National Institute for Occupational Safety and Health (NIOSH), U.S. Department of Health and Human Services, or designee.

Employee exposure and similar language referring to the air cadmium level to which an employee is exposed means the exposure to airborne cadmium that would occur if the employee were not using respiratory protective equipment.

Final medical determination is the written medical opinion of the employee's health status by the examining physician under paragraphs (l)(3)-(12) of this section or, if multiple physician review under paragraph (l)(13) of this section or the alternative physician determination under paragraph (l)(14) of this section is invoked, it is the final, written medical finding, recommendation or determination that emerges from that process.

High-efficiency particulate absolute (HEPA) air filter means a filter capable of trapping and retaining at least 99.97 percent of mono-dispersed particles of 0.3 micrometers in diameter.

Regulated area means an area demarcated by the employer where an employee's exposure to airborne concentrations of cadmium exceeds, or can reasonably be expected to exceed the permissible exposure limit (PEL).

This section means this cadmium standard.

(c) *Permissible Exposure Limit (PEL).* The employer shall assure that no employee is exposed to an airborne concentration of cadmium in excess of five micrograms per cubic meter of air (5 $\mu g/m^3$), calculated as an eight-hour time-weighted average exposure (TWA).

(d) *Exposure monitoring*—(1) *General.* (i) Each employer who has a workplace or work operation covered by this section shall determine if any employee may be exposed to cadmium at or above the action level.

(ii) Determinations of employee exposure shall be made from breathing zone air samples that reflect the monitored employee's regular, daily 8-hour TWA exposure to cadmium.

(iii) Eight-hour TWA exposures shall be determined for each employee on the basis of one or more personal breathing zone air samples reflecting full shift exposure on each shift, for each job classification, in each work area. Where several employees perform the same job tasks, in the same job classification, on the same shift, in the same work area, and the length, duration, and level of cadmium exposures are similar, an employer may sample a representative fraction of the employees instead of all employees in order to meet this requirement. In representative sampling, the employer shall sample the employee(s) expected to have the highest cadmium exposures.

(2) *Specific.* (i) Initial monitoring. Except as provided for in paragraphs (d)(2)(ii) and (d)(2)(iii) of this section, the employer shall monitor employee exposures and shall base initial determinations on the monitoring results.

(ii) Where the employer has monitored after September 14, 1991, under conditions that in all important aspects closely resemble those currently prevailing and where that monitoring satisfies all other requirements of this section, including the accuracy and confidence levels of paragraph (d)(6) of this section, the employer may rely on such earlier monitoring results to satisfy the requirements of paragraph (d)(2)(i) of this section.

(iii) Where the employer has objective data, as defined in paragraph (n)(2) of this section, demonstrating that employee exposure to cadmium will not exceed the action level under the expected conditions of processing, use, or handling, the employer may rely upon such data instead of implementing initial monitoring.

(3) *Monitoring Frequency (periodic monitoring).* (i) If the initial monitoring or periodic monitoring reveals employee exposures to be at or above the action level, the employer shall monitor at a frequency and pattern needed to represent the levels of exposure of employees and where exposures are above the PEL to assure the adequacy of respiratory selection and the effectiveness of engineering and work practice controls. However, such exposure monitoring shall be performed at least every six months. The employer, at a minimum, shall continue these semi-annual measurements unless and until the conditions set out in paragraph (d)(3)(ii) of this section are met.

(ii) If the initial monitoring or the periodic monitoring indicates that employee exposures are below the action level and that result is confirmed by the results of another monitoring taken at least seven days later, the employer may discontinue the monitoring for those employees whose exposures are represented by such monitoring.

(4) *Additional Monitoring.* The employer also shall institute the exposure monitoring required under paragraphs (d)(2)(i) and (d)(3) of this section whenever there has been a change in the raw materials, equipment, personnel, work practices, or finished products that may result in additional employees being exposed to cadmium at or above the action level or in employees already exposed to cadmium at or above the action level being exposed above the PEL, or whenever the employer has any reason to suspect that any other change might result in such further exposure.

(5) *Employee Notification of Monitoring Results.* (i) Within 15 working days after the receipt of the results of any monitoring performed under this section, the employer shall notify each affected employee individually in writing of the results. In addition, within the same time period the employer shall post the results of the exposure monitoring in an appropriate location that is accessible to all affected employees.

(ii) Wherever monitoring results indicate that employee exposure exceeds the PEL, the employer shall include in the written notice a statement that the PEL has been exceeded and a description of the corrective action being taken by the employer to reduce employee exposure to or below the PEL.

(6) *Accuracy of measurement.* The employer shall use a method of monitoring and analysis that has an accuracy of not less than plus or minus 25 percent (± 25%), with a confidence level of 95 percent, for airborne concentrations of cadmium at or above the action level, the permissible exposure limit (PEL), and the separate engineering control air limit (SECAL).

(e) *Regulated areas.*—(1) *Establishment.* The employer shall establish a regulated area wherever an employee's exposure to airborne concentrations of cadmium is, or can reasonably be expected to be in excess of the permissible exposure limit (PEL).

(2) *Demarcation.* Regulated areas shall be demarcated from the rest of the workplace in any manner that adequately establishes and alerts employees of the boundaries of the regulated area.

(3) *Access.* Access to regulated areas shall be limited to authorized persons.

(4) *Provision of respirators.* Each person entering a regulated area shall be supplied with and required to use a respirator, selected in accordance with paragraph (g)(2) of this section.

(5) *Prohibited activities.* The employer shall assure that employees do not eat, drink, smoke, chew tobacco or gum, or apply cosmetics in regulated areas, carry the products associated with these activities into regulated areas, or store such products in those areas.

(f) *Methods of compliance.*—(1) *Compliance hierarchy.* (i) Except as specified in paragraphs (f)(1) (ii), (iii) and (iv) of this section the employer shall implement engineering and work practice controls to reduce and maintain employee exposure to cadmium at or below the PEL, except to the extent that the employer can demonstrate that such controls are not feasible.

(ii) Except as specified in paragraphs (f)(1) (iii) and (iv) of this section, in industries where a separate engineering control air limit (SECAL) has been specified for particular processes (See Table 1 in this paragraph (f)(1)(ii)), the employer shall implement engineering and work practice controls to reduce and maintain employee exposure at or below the SECAL, except to the extent that the employer can demonstrate that such controls are not feasible.

TABLE I.—SEPARATE ENGINEERING CONTROL AIRBORNE LIMITS (SECALS) FOR PROCESSES IN SELECTED INDUSTRIES

Industry	Process	SECAL ($\mu g/m^3$)
Nickel cadmium battery	Plate making, plate preparation	50
	All other processes	15
Zinc/Cadmium refining*	Cadmium refining, casting, melting, oxide production, sinter plant	50
Pigment manufacture	Calcine, crushing, milling, blending	50
	All other processes	15
Stabilizers*	Cadmium oxide charging, crushing, drying, blending	50
Lead smelting*	Sinter plant, blast furnace, baghouse, yard area	50
Plating*	Mechanical plating	15

*Processes in these industries that are not specified in this table must achieve the PEL using engineering controls and work practices as required in f(1)(i).

(iii) The requirement to implement engineering and work practice controls to achieve the PEL or, where applicable, the SECAL does not apply where the employer demonstrates the following:

(A) The employee is only intermittently exposed; and

(B) The employee is not exposed above the PEL on 30 or more days per year (12 consecutive months).

(iv) Wherever engineering and work practice controls are required and are not sufficient to reduce employee exposure to or below the PEL or, where applicable, the SECAL, the employer nonetheless shall implement such controls to reduce exposures to the lowest levels achievable. The employer shall supplement such controls with respiratory protection that complies with the requirements of paragraph (g) of this section and the PEL.

(v) The employer shall not use employee rotation as a method of compliance.

(2) *Compliance program.* (i) Where the PEL is exceeded, the employer shall establish and implement a written compliance program to reduce employee exposure to or below the PEL by means of engineering and work practice controls, as required by paragraph (f)(1) of this section. To the extent that engineering and work practice controls cannot reduce exposures to or below the PEL, the employer shall include in the written compliance program the use of appropriate respiratory protection to achieve compliance with the PEL.

(ii) Written compliance programs shall include at least the following:

(A) A description of each operation in which cadmium is emitted; e.g., machinery used, material processed, controls in place, crew size, employee job responsibilities, operating procedures, and maintenance practices;

(B) A description of the specific means that will be employed to achieve compliance, including engineering plans and studies used to determine methods selected for controlling exposure to cadmium, as well as, where necessary, the use of appropriate respiratory protection to achieve the PEL;

(C) A report of the technology considered in meeting the PEL;

(D) Air monitoring data that document the sources of cadmium emissions;

(E) A detailed schedule for implementation of the program, including documentation such as copies of purchase orders for equipment, construction contracts, etc.;

(F) A work practice program that includes items required under paragraphs (h), (i), and (j) of this section;

(G) A written plan for emergency situations, as specified in paragraph (h) of this section; and

(H) Other relevant information.

(iii) The written compliance programs shall be reviewed and updated at least annually, or more often if necessary, to reflect significant changes in the employer's compliance status.

(iv) Written compliance programs shall be provided upon request for examination and copying to affected employees, designated employee representatives as well as to the Assistant Secretary, and the Director.

(3) *Mechanical ventilation.* (i) When ventilation is used to control exposure, measurements that demonstrate the effectiveness of the system in controlling exposure, such as capture velocity, duct velocity, or static pressure shall be made as necessary to maintain its effectiveness.

(ii) Measurements of the system's effectiveness in controlling exposure shall be made as necessary within five working days of any change in production, process, or control that

might result in a significant increase in employee exposure to cadmium.

(iii) Recirculation of air. If air from exhaust ventilation is recirculated into the workplace, the system shall have a high efficiency filter and be monitored to assure effectiveness.

(iv) Procedures shall be developed and implemented to minimize employee exposure to cadmium when maintenance of ventilation systems and changing of filters is being conducted.

(4) *Compliance program.* Where employee exposure to cadmium exceeds the PEL and the employer is required under paragraph (f)(1) of this section to implement controls to comply with the PEL, prior to the commencement of the job, the employer shall establish and implement a written compliance program to reduce employee exposure to or below the PEL.

(g) *Respirator protection.*—(1) *General.* Where respirators are required by this section, the employer shall provide them at no cost to the employee and shall assure that they are used in compliance with the requirements of this section. Respirators shall be used in the following circumstances:

(i) Where exposure levels exceed the PEL, during the time period necessary to install or implement feasible engineering and work practice controls;

(ii) In those maintenance and repair activities and during those brief or intermittent operations where exposures exceed the PEL and engineering and work practice controls are not feasible or are not required;

(iii) In regulated areas, as prescribed in paragraph (e) of this section;

(iv) Where the employer has implemented all feasible engineering and work practice controls and such controls are not sufficient to reduce exposures to or below the PEL;

(v) In emergencies;

(vi) Wherever an employee who is exposed to cadmium at or above the action level requests a respirator;

(vii) Wherever an employee is exposed above the PEL in an industry to which a SECAL is applicable; and

(viii) Wherever an employee is exposed to cadmium above the PEL and engineering controls are not required under paragraph (f)(1)(iii) of this section.

(2) *Respirator selection.* (i) Where respirators are required under this section, the employer shall select and provide the appropriate respirator as specified in Table 2 in this paragraph (g)(2)(i). The employer shall select respirators from among those jointly approved as acceptable protection against cadmium dust, fume, and mist by the Mine Safety and Health Administration (MSHA) and by the National Institute for Occupational Safety and Health (NIOSH) under the provisions of 30 CFR part 11.

TABLE 2.—RESPIRATORY PROTECTION FOR CADMIUM

Airborne concentration or condition of use [a]	Required respirator type [b]
10 × or less	A half mask, air-purifying respirator equipped with a HEPA[c] filter.[d]
25 × or less	A powered air-purifying respirator ("PAPR") with a loose-fitting hood or helmet equipped with a HEPA filter, or a supplied-air respirator with a loose-fitting hood or helmet facepiece operated in the continuous flow mode.
50 × or less	A full facepiece air-purifying respirator equipped with a HEPA filter, or a powered air-purifying respirator with a tight-fitting half mask equipped with a HEPA filter, or a supplied air respirator with a tight-fitting half mask operated in the continuous flow mode.
250 × or less	A powered air-purifying respirator with a tight-fitting full facepiece equipped with a HEPA filter, or a supplied-air respirator with a tight-fitting full facepiece operated in the continuous flow mode.
1000 × or less	A supplied-air respirator with half mask or full facepiece operated in the pressure demand or other positive pressure mode.
>1000 × or unknown concentrations	A self-contained breathing apparatus with unknown concentrations a full facepiece operated in the pressure demand or other positive pressure mode, or a supplied-air respirator with a full facepiece operated in the pressure demand or other positive pressure mode and equipped with an auxiliary escape type self-contained breathing apparatus operated in the pressure demand mode.
Fire fighting	A self-contained breathing apparatus with full facepiece operated in the pressure demand or other positive pressure mode.

[a] Concentrations expressed as multiple of the PEL.

[b] Respirators assigned for higher environmental concentrations may be used at lower exposure levels. Quantitative fit testing is required for all tight-fitting air purifying respirators where airborne concentration of cadmium exceeds 10 times the TWA PEL ($10 \times 5\ \mu g/m^3 = 50\ \mu g/m^3$). A full facepiece respirator is required when eye irritation is experienced.

[c] HEPA means High Efficiency Particulate Absolute.

[d] Fit testing, qualitative or quantitative, is required.

SOURCE: *Respiratory Decision Logic*, NIOSH, 1987.

(ii) The employer shall provide a powered, air-purifying respirator (PAPR) in lieu of a negative pressure respirator wherever:

(A) An employee entitled to a respirator chooses to use this type of respirator; and

(B) This respirator will provide adequate protection to the employee.

(3) *Respirator program.* (i) Where respiratory protection is required, the employer shall institute a respirator protection program in accordance with 29 CFR 1910.134.

(ii) The employer shall permit each employee who is required to use an air purifying respirator to leave the regulated area to change the filter elements or replace the respirator whenever an increase in breathing resistance is detected and shall maintain an adequate supply of filter elements for this purpose.

(iii) The employer shall also permit each employee who is required to wear a respirator to leave the regulated area to wash his or her face and the respirator facepiece whenever necessary to prevent skin irritation associated with respirator use.

(iv) If an employee exhibits difficulty in breathing while wearing a respirator during a fit test or during use, the employer shall make available to the employee a medical examination in accordance with paragraph (l)(6)(ii) of this section to determine if the employee can wear a respirator while performing the required duties.

(v) No employee shall be assigned a task requiring the use of a respirator if, based upon his or her most recent examination, an examining physician determines that the employee will be unable to continue to function normally while wearing a respirator. If the physician determines the employee must be limited in, or removed from his or her current job because of the employee's inability to wear a respirator, the limitation or removal shall be in accordance with paragraphs (l) (11) and (12) of this section.

(4) *Respirator fit testing.* (i) The employer shall assure that the respirator issued to the employee is fitted properly and exhibits the least possible facepiece leakage.

(ii) For each employee wearing a tight-fitting, air purifying respirator (either negative or positive pressure) who is exposed to airborne concentrations of cadmium that do not exceed 10 times the PEL ($10 \times 5\ \mu g/m^3 = 50\ \mu g/m^3$), the employer shall perform either quantitative or qualitative fit testing at the time of initial fitting and at least annually thereafter. If quantitative fit testing is used for a negative pressure respirator, a fit factor that is at least 10 times the protection factor for that class of respirators (Table 2 in paragraph (g)(2)(i) of this section) shall be achieved at testing.

(iii) For each employee wearing a tight-fitting air purifying respirator (either negative or positive pressure) who is exposed to airborne concentrations of cadmium that exceed 10 times the PEL ($10 \times 5\ \mu g/m^3 = 50\ \mu g/m^3$), the employer shall perform quantitative fit testing at the time of initial fitting and at least annually thereafter. For negative-pressure respirators, a fit factor that is at least 10 times the protection factor for that class of respirators (Table 2 in paragraph (g)(2)(i) of this section) shall be achieved during quantitative fit testing.

(iv) For each employee wearing a tight-fitting, supplied-air respirator or self-contained breathing apparatus, the employer shall perform quantitative fit testing at the time of initial fitting and at least annually thereafter. This shall be accomplished by fit testing an air purifying respirator of identical type facepiece, make, model, and size as the supplied air respirator or self-contained breathing apparatus that is equipped with HEPA filters and tested as a surrogate (substitute) in the negative pressure mode. A fit factor that is at least 10 times the protection factor for that class of respirators (Table 2 in paragraph (g)(2)(i) of this section) shall be achieved during quantitative fit testing. A supplied-air respirator or self-contained breathing apparatus with the same type facepiece, make, model, and size as the air purifying respirator with which the employee passed the quantitative fit test may then be used by that employee up to the protection factor listed in Table 2 for that class of respirators.

(v) Fit testing shall be conducted in accordance with appendix C of this section.

(h) *Emergency situations.* The employer shall develop and implement a written plan for dealing with emergency situations involving substantial releases of airborne cadmium. The plan shall include provisions for the use of appropriate respirators and personal protective equipment. In addition, employees not essential to correcting the emergency situation shall be restricted from the area and normal operations halted in that area until the emergency is abated.

(i) *Protective work clothing and equipment*—(1) *Provision and use.* If an employee is exposed to airborne cadmium above the PEL or where skin or eye irritation is associated with cadmium exposure at any level, the employer shall provide at no cost to the employee, and assure that the employee uses, appropriate protective work clothing and equipment that prevents contamination of the employee and the employee's garments. Protective work clothing and equipment includes, but is not limited to:

(i) Coveralls or similar full-body work clothing;

(ii) Gloves, head coverings, and boots or foot coverings; and

(iii) Face shields, vented goggles, or other appropriate protective equipment that complies with 29 CFR 1910.133.

(2) *Removal and storage.* (i) The employer shall assure that employees remove all protective clothing and equipment contaminated with cadmium at the completion of the work shift and do so only in change rooms provided in accordance with paragraph (j)(1) of this section.

(ii) The employer shall assure that no employee takes cadmium-contaminated protective clothing or equipment from the workplace, except for employees authorized to do so for purposes of laundering, cleaning, maintaining, or disposing of cadmium contaminated protective clothing and equipment at an appropriate location or facility away from the workplace.

(iii) The employer shall assure that contaminated protective clothing and equipment, when removed for laundering, cleaning, maintenance, or disposal, is placed and stored in sealed, impermeable bags or other closed, impermeable containers that are designed to prevent dispersion of cadmium dust.

(iv) The employer shall assure that bags or containers of contaminated protective clothing and equipment that are to be taken out of the change rooms or the workplace for laundering, cleaning, maintenance or disposal shall bear labels in accordance with paragraph (m)(2) of this section.

(3) *Cleaning, replacement, and disposal.* (i) The employer shall provide the protective clothing and equipment required by paragraph (i)(1) of this section in a clean and dry condition as often as necessary to maintain its effectiveness, but in any event at least weekly. The employer is responsible for cleaning and laundering the protective clothing and equipment required by this paragraph to maintain its effectiveness and is also responsible for disposing of such clothing and equipment.

(ii) The employer also is responsible for repairing or replacing required protective clothing and equipment as needed to maintain its effectiveness. When rips or tears are detected while an employee is working they shall be immediately mended, or the worksuit shall be immediately replaced.

(iii) The employer shall prohibit the removal of cadmium from protective clothing and equipment by blowing, shaking, or any other means that disperses cadmium into the air.

(iv) The employer shall assure that any laundering of contaminated clothing or cleaning of contaminated equipment in the workplace is done in a manner that prevents the release of airborne cadmium in excess of the permissible exposure limit prescribed in paragraph (c) of this section.

(v) The employer shall inform any person who launders or cleans protective clothing or equipment contaminated with cadmium of the potentially harmful effects of exposure to cadmium and that the clothing and equipment should be laundered or cleaned in a manner to effectively prevent the release of airborne cadmium in excess of the PEL.

(j) *Hygiene areas and practices*—(1) *General.* For employees whose airborne exposure to cadmium is above the PEL, the employer shall provide clean change rooms, handwashing facilities, showers, and lunchroom facilities that comply with 29 CFR 1910.141.

(2) *Change rooms.* The employer shall assure that change rooms are equipped with separate storage facilities for street clothes and for protective clothing and equipment, which are designed to prevent dispersion of cadmium and contamination of the employee's street clothes.

(3) *Showers and handwashing facilities.* (i) The employer shall assure that employees who are exposed to cadmium above the PEL shower during the end of the work shift.

(ii) The employer shall assure that employees whose airborne exposure to cadmium is above the PEL wash their hands and faces prior to eating, drinking, smoking, chewing tobacco or gum, or applying cosmetics.

(4) *Lunchroom facilities.* (i) The employer shall assure that the lunchroom facilities are readily accessible to employees, that tables for eating are maintained free of cadmium, and that no employee in a lunchroom facility is exposed at any time to cadmium at or above a concentration of 2.5 $\mu g/m^3$.

(ii) The employer shall assure that employees do not enter lunchroom facilities with protective work clothing or equipment unless surface cadmium has been removed from the clothing and equipment by HEPA vacuuming or some other method that removes cadmium dust without dispersing it.

(k) *Housekeeping.* (1) All surfaces shall be maintained as free as practicable of accumulations of cadmium.

(2) All spills and sudden releases of material containing cadmium shall be cleaned up as soon as possible.

(3) Surfaces contaminated with cadmium shall, wherever possible, be cleaned by vacuuming or other methods that minimize the likelihood of cadmium becoming airborne.

(4) HEPA-filtered vacuuming equipment or equally effective filtration methods shall be used for vacuuming. The equipment shall be used and emptied in a manner that minimizes the reentry of cadmium into the workplace.

(5) Shoveling, dry or wet sweeping, and brushing may be used only where vacuuming or other methods that minimize the likelihood of cadmium becoming airborne have been tried and found not to be effective.

(6) Compressed air shall not be used to remove cadmium from any surface unless the compressed air is used in conjunction with a ventilation system designed to capture the dust cloud created by the compressed air.

(7) Waste, scrap, debris, bags, containers, personal protective equipment, and clothing contaminated with cadmium and consigned for disposal shall be collected and disposed of in sealed impermeable bags or other closed, impermeable containers. These bags and containers shall be labeled in accordance with paragraph (m)(2) of this section.

(l) *Medical surveillance*—(1) *General*—(i) *Scope.* (A) Currently exposed—The employer shall institute a medical surveillance program for all employees who are or may be exposed to cadmium at or above the action level unless the employer demonstrates that the employee is not, and will not be, exposed at or above the action level on 30 or more days per year (twelve consecutive months); and,

(B) Previously exposed—The employer shall also institute a medical surveillance program for all employees who prior to the effective date of this section might previously have been exposed to cadmium at or above the action level by the employer, unless the employer demonstrates that the employee did not prior to the effective date of this section work for the employer in jobs with exposure to cadmium for an aggregated total of more than 60 months.

(ii) To determine an employee's fitness for using a respirator, the employer shall provide the limited medical examination specified in paragraph (l)(6) of this section.

(iii) The employer shall assure that all medical examinations and procedures required by this standard are performed by or under the supervision of a licensed physician, who has read and is familiar with the health effects section of appendix A to this section, the regulatory text of this section, the protocol for sample handling and laboratory selection in appendix F to this section, and the questionnaire of appendix D to this section. These examinations and procedures shall be provided without cost to the employee and at a time and place that is reasonable and convenient to employees.

(iv) The employer shall assure that the collecting and handling of biological samples of cadmium in urine (CdU), cadmium in blood (CdB), and beta-2 microglobulin in urine (β_2-M) taken from employees under this section is done in a manner that assures their reliability and that analysis of biological samples of cadmium in urine (CdU), cadmium in blood (CdB), and beta-2 microglobulin in urine (β_2-M) taken from employees under this section is performed in laboratories with demonstrated proficiency for that particular analyte. (See appendix F to this section.)

(2) *Initial examination.* (i) The employer shall provide an initial (preplacement) examination to all employees covered by the medical surveillance program required in paragraph (l)(1)(i) of this section. The examination shall be provided to those employees within 30 days after initial assignment to a job with exposure to cadmium or no later than 90 days after the effective date of this section, whichever date is later.

(ii) The initial (preplacement) medical examination shall include:

(A) A detailed medical and work history, with emphasis on: Past, present, and anticipated future exposure to cadmium; any history of renal, cardiovascular, respiratory, hematopoietic, reproductive, and/or musculo-skeletal system dysfunction; current usage of medication with potential nephrotoxic side-effects; and smoking history and current status; and

(B) Biological monitoring that includes the following tests:

(1) Cadmium in urine (CdU), standardized to grams of creatinine (g/Cr);

(2) Beta-2 microglobulin in urine (β_2-M), standardized to grams of creatinine (g/Cr), with pH specified, as described in appendix F to this section; and

(3) Cadmium in blood (CdB), standardized to liters of whole blood (lwb).

(iii) Recent Examination: An initial examination is not required to be provided if adequate records show that the employee has been examined in accordance with the requirements of paragraph (l)(2)(ii) of this section within the past 12 months. In that case, such records shall be maintained as part of the employee's medical record and the prior exam shall be treated as if it were an initial examination for the purposes of paragraphs (l)(3) and (4) of this section.

(3) *Actions triggered by initial biological monitoring:* (i) If the results of the initial biological monitoring tests show the employee's CdU level to be at or below 3 $\mu g/g$ Cr, β_2-M level to be at or below 300 $\mu g/g$ Cr and CdB level to be at or below 5 $\mu g/lwb$, then:

(A) For currently exposed employees, who are subject to medical surveillance under paragraph (l)(1)(i)(A) of this section, the employer shall provide the minimum level of periodic medical surveillance in accordance with the requirements in paragraph (l)(4)(i) of this section; and

(B) For previously exposed employees, who are subject to medical surveillance under paragraph (l)(1)(i)(B) of this section, the employer shall provide biological monitoring for CdU, β_2-M, and CdB within one year after the initial biological monitoring and then the employer shall comply with the requirements of paragraph (l)(4)(v) of this section.

(ii) For all employees who are subject to medical surveillance under paragraph (l)(1)(i) of this section, if the results of the initial biological monitoring tests show the level of CdU to exceed 3 $\mu g/g$ Cr, the level of β_2-M to exceed 300 $\mu g/g$ Cr, or the level of CdB to exceed 5 $\mu g/lwb$, the employer shall:

(A) Within two weeks after receipt of biological monitoring results, reassess the employee's occupational exposure to cadmium as follows:

(1) Reassess the employee's work practices and personal hygiene;

(2) Reevaluate the employee's respirator use, if any, and the respirator program;

(3) Review the hygiene facilities;

(4) Reevaluate the maintenance and effectiveness of the relevant engineering controls;

(5) Assess the employee's smoking history and status;

(B) Within 30 days after the exposure reassessment, specified in paragraph (l)(3)(ii)(A) of this section, take reasonable steps to correct any deficiencies found in the reassessment that may be responsible for the employee's excess exposure to cadmium; and,

(C) Within 90 days after receipt of biological monitoring results, provide a full medical examination to the employee in accordance with the requirements of paragraph (l)(4)(ii) of this section. After completing the medical examination, the examining physician shall determine in a written medical opinion whether to medically remove the employee. If the physician determines that medical removal is not necessary, then until the employee's CdU level falls to or below 3 μg/g Cr, β_2-M level falls to or below 300 μg/g Cr and CdB level falls to or below 5 μg/lwb, the employer shall:

(1) Provide biological monitoring in accordance with paragraph (l)(2)(ii)(B) of this section on a semiannual basis; and

(2) Provide annual medical examinations in accordance with paragraph (l)(4)(ii) of this section.

(iii) For all employees who are subject to medical surveillance under paragraph (l)(1)(i) of this section, if the results of the initial biological monitoring tests show the level of CdU to be in excess of 15 μg/g Cr, or the level of CdB to be in excess of 15 μg/lwb, or the level of β_2-M to be in excess of 1,500 μg/g Cr, the employer shall comply with the requirements of paragraphs (l)(3)(ii)(A)–(B) of this section. Within 90 days after receipt of biological monitoring results, the employer shall provide a full medical examination to the employee in accordance with the requirements of paragraph (l)(4)(ii) of this section. After completing the medical examination, the examining physician shall determine in a written medical opinion whether to medically remove the employee. However, if the initial biological monitoring results and the biological monitoring results obtained during the medical examination both show that: CdU exceeds 15 μg/g Cr; or CdB exceeds 15 μg/lwb; or β_2-M exceeds 1500 μg/g Cr, and in addition CdU exceeds 3 μg/g Cr or CdB exceeds 5 μg/liter of whole blood, then the physician shall medically remove the employee from exposure to cadmium at or above the action level. If the second set of biological monitoring results obtained during the medical examination does not show that a mandatory removal trigger level has been exceeded, then the employee is not required to be removed by the mandatory provisions of this paragraph. If the employee is not required to be removed by the mandatory provisions of this paragraph or by the physician's determination, then until the employee's CdU level falls to or below 3 μg/g Cr, β_2-M level falls to or below 300 μg/g Cr and CdB level falls to or below 5 μg/lwb, the employer shall:

(A) Periodically reassess the employee's occupational exposure to cadmium;

(B) Provide biological monitoring in accordance with paragraph (l)(2)(ii)(B) of this section on a quarterly basis; and

(C) Provide semiannual medical examinations in accordance with paragraph (l)(4)(ii) of this section.

(iv) For all employees to whom medical surveillance is provided, beginning on January 1, 1999, and in lieu of paragraphs (l)(3)(i)–(iii) of this section:

(A) If the results of the initial biological monitoring tests show the employee's CdU level to be at or below 3 μg/g Cr, β_2-M level to be at or below 300 μg/g Cr and CdB level to be at or below 5 μg/lwb, then for currently exposed employees, the employer shall comply with the requirements of paragraph (l)(3)(i)(A) of this section, and for previously exposed employees, the employer shall comply with the requirements of paragraph (l)(3)(i)(B) of this section;

(B) If the results of the initial biological monitoring tests show the level of CdU to exceed 3 μg/g Cr, the level of β_2-M to exceed 300 μg/g Cr, or the level of CdB to exceed 5 μg/lwb, the employer shall comply with the requirements of paragraphs (l)(3)(ii)(A)–(C) of this section; and,

(C) If the results of the initial biological monitoring tests show the level of CdU to be in excess of 7 μg/g Cr, or the level of CdB to be in excess of 10 μg/lwb, or the level of β_2-M to be in excess of 750 μg/g Cr, the employer shall: Comply with the requirements of paragraphs (l)(3)(ii)(A)–(B) of this section; and, within 90 days after receipt of biological monitoring results, provide a full medical examination to the employee in accordance with the requirements of paragraph (l)(4)(ii) of this section. After completing the medical examination, the examining physician shall determine in a written medical opinion whether to medically remove the employee. However, if the initial biological monitoring results and the biological monitoring results obtained during the medical examination both show that: CdU exceeds 7 μg/g Cr; or CdB exceeds 10 μg/lwb; or β_2-M exceeds 750 μg/g Cr, and in addition CdU exceeds 3 μg/g Cr or CdB exceeds 5 μg/liter of whole blood, then the physician shall medically remove the employee from exposure to cadmium at or above the action level. If the second set of biological monitoring results obtained during the medical examination does not show that a mandatory removal trigger level has been exceeded, then the employee is not required to be removed by the mandatory provisions of this paragraph. If the employee is not required to be removed by the mandatory provisions of this paragraph or by the physician's determination, then until the employee's CdU level falls to or below 3 μg/g Cr, β_2-M level falls to or below 300 μg/g Cr and CdB level falls to or below 5 μg/lwb, the employer shall: periodically reassess the employee's occupational exposure to cadmium; provide biological monitoring in accordance with paragraph (l)(2)(ii)(B) of this section on a quarterly basis; and provide semiannual medical examinations in accordance with paragraph (l)(4)(ii) of this section.

(4) *Periodic medical surveillance.* (i) For each employee who is covered under paragraph (l)(1)(i)(A) of this section, the employer shall provide at least the minimum level of periodic medical surveillance, which consists of periodic medical examinations and periodic biological monitoring. A periodic medical examination shall be provided within one year after the initial examination required by paragraph (l)(2) of this section and thereafter at least biennially. Biological sampling shall be provided at least annually, either as part of a periodic medical examination or separately as periodic biological monitoring.

(ii) The periodic medical examination shall include:

(A) A detailed medical and work history, or update thereof, with emphasis on: Past, present and anticipated future exposure to cadmium, smoking history and current status; reproductive history; current use of medications with potential nephrotoxic side-effects; any history of renal, cardiovascular, respiratory, hematopoietic, and/or musculo-skeletal system dysfunction; and as part of the

medical and work history, for employees who wear respirators, questions 3–11 and 25–32 in Appendix D to this section;

(B) A complete physical examination with emphasis on: Blood pressure, the respiratory system, and the urinary system;

(C) A 14 inch by 17 inch, or a reasonably standard sized posterior-anterior chest X-ray (after the initial X-ray, the frequency of chest X-rays is to be determined by the examining physician);

(D) Pulmonary function tests, including forced vital capacity (FVC) and forced expiratory volume at 1 second (FEV1);

(E) Biological monitoring, as required in paragraph (l)(2)(ii)(B) of this section;

(F) Blood analysis, in addition to the analysis required under paragraph (l)(2)(ii)(B) of this section, including blood urea nitrogen, complete blood count, and serum creatinine;

(G) Urinalysis, in addition to the analysis required under paragraph (l)(2)(ii)(B) of this section, including the determination of albumin, glucose, and total and low molecular weight proteins;

(H) For males over 40 years old, prostate palpation, or other at least as effective diagnostic test(s); and

(I) Any additional tests deemed appropriate by the examining physician.

(iii) Periodic biological monitoring shall be provided in accordance with paragraph (l)(2)(ii)(B) of this section.

(iv) If the results of periodic biological monitoring or the results of biological monitoring performed as part of the periodic medical examination show the level of the employee's CdU, β_2-M, or CdB to be in excess of the levels specified in paragraphs (l)(3)(ii)–(iii) of this section; or, beginning on January 1, 1999, in excess of the levels specified in paragraphs (l)(3)(iv) of this section, the employer shall take the appropriate actions specified in paragraphs (l)(3)(ii)–(iv) of this section.

(v) For previously exposed employees under paragraph (l)(1)(i)(B) of this section:

(A) If the employee's levels of CdU did not exceed 3 μg/g Cr, CdB did not exceed 5 μg/lwb, and β_2-M did not exceed 300 μg/g Cr in the initial biological monitoring tests, and if the results of the followup biological monitoring required by paragraph (l)(3)(i)(B) of this section within one year after the initial examination confirm the previous results, the employer may discontinue all periodic medical surveillance for that employee.

(B) If the initial biological monitoring results for CdU, CdB, or β_2-M were in excess of the levels specified in paragraph (l)(3)(i) of this section, but subsequent biological monitoring results required by paragraph (l)(3)(ii)–(iv) of this section show that the employee's CdU levels no longer exceed 3 μg/g Cr, CdB levels no longer exceed 5 μg/lwb, and β_2-M levels no longer exceed 300 μg/g Cr, the employer shall provide biological monitoring for CdU, CdB, and β_2-M within one year after these most recent biological monitoring results. If the results of the followup biological monitoring within one year, specified in this paragraph, confirm the previous results, the employer may discontinue all periodic medical surveillance for that employee.

(C) However, if the results of the follow-up tests specified in paragraph (l)(4)(v)(A) or (B) of this section indicate that the level of the employee's CdU, β_2-M, or CdB exceeds these same levels, the employer is required to provide annual medical examinations in accordance with the provisions of paragraph (l)(4)(ii) of this section until the results of biological monitoring are consistently below these levels or the examining physician determines in a written medical opinion that further medical surveillance is not required to protect the employee's health.

(vi) A routine, biennial medical examination is not required to be provided in accordance with paragraphs (l)(3)(i) and (l)(4) of this section if adequate medical records show that the employee has been examined in accordance with the requirements of paragraph (l)(4)(ii) of this section within the past 12 months. In that case, such records shall be maintained by the employer as part of the employee's medical record, and the next routine, periodic medical examination shall be made available to the employee within two years of the previous examination.

(5) *Actions triggered by medical examinations.* (i) If the results of a medical examination carried out in accordance with this section indicate any laboratory or clinical finding consistent with cadmium toxicity that does not require employer action under paragraph (l)(2), (3) or (4) of this section, the employer, within 30 days, shall reassess the employee's occupational exposure to cadmium and take the following corrective action until the physician determines they are no longer necessary:

(A) Periodically reassess: The employee's work practices and personal hygiene; the employee's respirator use, if any; the employee's smoking history and status; the respiratory protection program; the hygiene facilities; and the maintenance and effectiveness of the relevant engineering controls;

(B) Within 30 days after the reassessment, take all reasonable steps to correct the deficiencies found in the reassessment that may be responsible for the employee's excess exposure to cadmium;

(C) Provide semiannual medical reexaminations to evaluate the abnormal clinical sign(s) of cadmium toxicity until the results are normal or the employee is medically removed; and

(D) Where the results of tests for total proteins in urine are abnormal, provide a more detailed medical evaluation of the toxic effects of cadmium on the employee's renal system.

(6) *Examination for respirator use.* (i) To determine an employee's fitness for respirator use, the employer shall provide a medical examination that includes the elements specified in paragraph (l)(6)(i)(A)–(D) of this section. This examination shall be provided prior to the employee's being assigned to a job that requires the use of a respirator or no later than 90 days after this section goes into effect, whichever date is later, to any employee without a medical examination within the preceding 12 months that satisfies the requirements of this paragraph.

(A) A detailed medical and work history, or update thereof, with emphasis on; Past exposure to cadmium; smoking history and current status; any history of renal, cardiovascular, respiratory, hematopoietic, and/or musculoskeletal system dysfunction; a description of the job for which the respirator is required; and questions 3–11 and 25–32 in appendix D to this section;

(B) A blood pressure test;

(C) Biological monitoring of the employee's levels of CdU, CdB and β_2-M in accordance with the requirements of paragraph (l)(2)(ii)(B) of this section, unless such results already have been obtained within the previous 12 months; and

(D) Any other test or procedure that the examining physician deems appropriate.

(ii) After reviewing all the information obtained from the medical examination required in paragraph (l)(6)(i) of this section, the physician shall determine whether the employee is fit to wear a respirator.

(iii) Whenever an employee has exhibited difficulty in breathing during a respirator fit test or during use of a respirator, the employer, as soon as possible, shall provide the employee with a periodic medical examination in accordance with paragraph (l)(4)(ii) of this section to determine the employee's fitness to wear a respirator.

(iv) Where the results of the examination required under paragraph (l)(6)(i) or (ii) of this section are abnormal, medical limitation or prohibition of respirator use shall be considered. If the employee is allowed to wear a respirator, the employee's ability to continue to do so shall be periodically evaluated by a physician.

(7) *Emergency examinations.* (i) In addition to the medical surveillance required in paragraphs (l)(2)–(6) of this section, the employer shall provide a medical examination as soon as possible to any employee who may have been acutely exposed to cadmium because of an emergency.

(ii) The examination shall include the requirements of paragraph (l)(4)(ii) of this section, with emphasis on the respiratory system, other organ systems considered appropriate by the examining physician, and symptoms of acute overexposure, as identified in paragraphs II (B)(1)–(2) and IV of appendix A to this section.

(8) *Termination of employment examination.* (i) At termination of employment, the employer shall provide a medical examination in accordance with paragraph (l)(4)(ii) of this section, including a chest X-ray, to any employee to whom at any prior time the employer was required to provide medical surveillance under paragraphs (l)(1)(i) or (l)(7) of this section. However, if the last examination satisfied the requirements of paragraph (l)(4)(ii) of this section and was less than six months prior to the date of termination, no further examination is required unless otherwise specified in paragraphs (l)(3) or (l)(5) of this section;

(ii) However, for employees covered by paragraph (l)(1)(i)(B) of this section, if the employer has discontinued all periodic medical surveillance under paragraph (l)(4)(v) of this section, no termination of employment medical examination is required.

(9) *Information provided to the physician.* The employer shall provide the following information to the examining physician:

(i) A copy of this standard and appendices;

(ii) A description of the affected employee's former, current, and anticipated duties as they relate to the employee's occupational exposure to cadmium;

(iii) The employee's former, current, and anticipated future levels of occupational exposure to cadmium;

(iv) A description of any personal protective equipment, including respirators, used or to be used by the employee, including when and for how long the employee has used that equipment; and

(v) relevant results of previous biological monitoring and medical examinations.

(10) *Physician's written medical opinion.* (i) The employer shall promptly obtain a written, signed medical opinion from the examining physician for each medical examination performed on each employee. This written opinion shall contain:

(A) The physician's diagnosis for the employee;

(B) The physician's opinion as to whether the employee has any detected medical condition(s) that would place the employee at increased risk of material impairment to health from further exposure to cadmium, including any indications of potential cadmium toxicity;

(C) The results of any biological or other testing or related evaluations that directly assess the employee's absorption of cadmium;

(D) Any recommended removal from, or limitation on the activities or duties of the employee or on the employee's use of personal protective equipment, such as respirators;

(E) A statement that the physician has clearly and carefully explained to the employee the results of the medical examination, including all biological monitoring results and any medical conditions related to cadmium exposure that require further evaluation or treatment, and any limitation on the employee's diet or use of medications.

(ii) The employer promptly shall obtain a copy of the results of any biological monitoring provided by an employer to an employee independently of a medical examination under paragraphs (l)(2) and (l)(4) of this section, and, in lieu of a written medical opinion, an explanation sheet explaining those results.

(iii) The employer shall instruct the physician not to reveal orally or in the written medical opinion given to the employer specific findings or diagnoses unrelated to occupational exposure to cadmium.

(11) *Medical Removal Protection (MRP)*—(i) *General.* (A) The employer shall temporarily remove an employee from work where there is excess exposure to cadmium on each occasion that medical removal is required under paragraph (l)(3), (l)(4), or (l)(6) of this section and on each occasion that a physician determines in a written medical opinion that the employee should be removed from such exposure. The physician's determination may be based on biological monitoring results, inability to wear a respirator, evidence of illness, other signs or symptoms of cadmium-related dysfunction or disease, or any other reason deemed medically sufficient by the physician.

(B) The employer shall medically remove an employee in accordance with paragraph (l)(11) of this section regardless of whether at the time of removal a job is available into which the removed employee may be transferred.

(C) Whenever an employee is medically removed under paragraph (l)(11) of this section, the employer shall transfer the removed employee to a job where the exposure to cadmium is within the permissible levels specified in that paragraph as soon as one becomes available.

(D) For any employee who is medically removed under the provisions of paragraph (l)(11)(i) of this section, the employer shall provide follow-up biological monitoring in accordance with (l)(2)(ii)(B) of this section at least every three months and follow-up medical examinations semi-annually at least every six months until in a written medical opinion the examining physician determines that either the employee may be returned to his/her former job status as specified under paragraph (l)(11)(iv)–(v) of this section or the employee must be permanently removed from excess cadmium exposure.

(E) The employer may not return an employee who has been medically removed for any reason to his/her former job status until a physician determines in a written medical opinion that continued medical removal is no longer necessary to protect the employee's health.

(ii) Where an employee is found unfit to wear a respirator under paragraph (l)(6)(ii) of this section, the employer shall remove the employee from work where exposure to cadmium is above the PEL.

(iii) Where removal is based on any reason other than the employee's inability to wear a respirator, the employer shall remove the employee from work where exposure to cadmium is at or above the action level.

(iv) Except as specified in paragraph (l)(11)(v) of this section, no employee who was removed because his/her level of CdU, CdB and/or β_2-M exceeded the mandatory medical removal trigger levels in paragraph (l)(3) or (l)(4) of this section may be returned to work with exposure to cadmium at or above the action level until the employee's levels of CdU fall to or below 3 μg/g Cr, CdB falls to or below 5 μg/lwb, and β_2-M falls to or below 300 μg/g Cr.

(v) However, when in the examining physician's opinion continued exposure to cadmium will not pose an increased risk to the employee's health and there are special circumstances that make continued medical removal an inappropriate remedy, the physician shall fully discuss these matters with the employee, and then in a written determination may return a worker to his/her former job status despite what would otherwise be unacceptably high biological monitoring results. Thereafter, the returned employee shall continue to be provided with medical surveillance as if he/she were still on medical removal until the employee's levels of CdU fall to or below 3 μg/g Cr, CdB falls to or below 5 μg/lwb, and β_2-M falls to or below 300 μg/g Cr.

(vi) Where an employer, although not required by paragraph (l)(11)(i)–(iii) of this section to do so, removes an employee from exposure to cadmium or otherwise places limitations on an employee due to the effects of cadmium exposure on the employee's medical condition, the employer shall provide the same medical removal protection benefits to that employee under paragraph (l)(12) of this section as would have been provided had the removal been required under paragraph (l)(11)(i)–(iii) of this section.

(12) *Medical Removal Protection Benefits (MRPB).* (i) The employer shall provide MRPB for up to a maximum of 18 months to an employee each time and while the employee is temporarily medically removed under paragraph (l)(11) of this section.

(ii) For purposes of this section, the requirement that the employer provide MRPB means that the employer shall maintain the total normal earnings, seniority, and all other employee rights and benefits of the removed employee, including the employee's right to his/her former job status, as if the employee had not been removed from the employee's job or otherwise medically limited.

(iii) Where, after 18 months on medical removal because of elevated biological monitoring results, the employee's monitoring results have not declined to a low enough level to permit the employee to be returned to his/her former job status:

(A) The employer shall make available to the employee a medical examination pursuant to this section in order to obtain a final medical determination as to whether the employee may be returned to his/her former job status or must be permanently removed from excess cadmium exposure; and

(B) The employer shall assure that the final medical determination indicates whether the employee may be returned to his/her former job status and what steps, if any, should be taken to protect the employee's health.

(iv) The employer may condition the provision of MRPB upon the employee's participation in medical surveillance provided in accordance with this section.

(13) *Multiple physician review.* (i) If the employer selects the initial physician to conduct any medical examination or consultation provided to an employee under this section, the employee may designate a second physician to:

(A) Review any findings, determinations, or recommendations of the initial physician; and

(B) Conduct such examinations, consultations, and laboratory tests as the second physician deems necessary to facilitate this review.

(ii) The employer shall promptly notify an employee of the right to seek a second medical opinion after each occasion that an initial physician provided by the employer conducts a medical examination or consultation pursuant to this section. The employer may condition its participation in, and payment for, multiple physician review upon the employee doing the following within fifteen (15) days after receipt of this notice, or receipt of the initial physician's written opinion, whichever is later:

(A) Informing the employer that he or she intends to seek a medical opinion; and

(B) Initiating steps to make an appointment with a second physician.

(iii) If the findings, determinations, or recommendations of the second physician differ from those of the initial physician, then the employer and the employee shall assure that efforts are made for the two physicians to resolve any disagreement.

(iv) If the two physicians have been unable to quickly resolve their disagreement, then the employer and the employee, through their respective physicians, shall designate a third physician to:

(A) Review any findings, determinations, or recommendations of the other two physicians; and

(B) Conduct such examinations, consultations, laboratory tests, and discussions with the other two physicians as the third physician deems necessary to resolve the disagreement among them.

(v) The employer shall act consistently with the findings, determinations, and recommendations of the third physician, unless the employer and the employee reach an agreement that is consistent with the recommendations of at least one of the other two physicians.

(14) *Alternate physician determination.* The employer and an employee or designated employee representative may agree upon the use of any alternate form of physician determination in lieu of the multiple physician review provided by paragraph (l)(13) of this section, so long as the alternative is expeditious and at least as protective of the employee.

(15) *Information the employer must provide the employee.* (i) The employer shall provide a copy of the physician's written medical opinion to the examined employee within two weeks after receipt thereof.

(ii) The employer shall provide the employee with a copy of the employee's biological monitoring results and an explanation sheet explaining the results within two weeks after receipt thereof.

(iii) Within 30 days after a request by an employee, the employer shall provide the employee with the information the employer is required to provide the examining physician under paragraph (l)(9) of this section.

(16) *Reporting.* In addition to other medical events that are required to be reported on the OSHA Form No. 200, the employer shall report any abnormal condition or disorder caused by exposure to occupational factors associated with employment as specified in Chapter (V)(E) of the Reporting Guidelines for Occupational Injuries and Illnesses.

(m) *Communication of cadmium hazards to employees*—(1) *General.* In communications concerning cadmium hazards, employers shall comply with the requirements of OSHA's Hazard Communication Standard, 29 CFR 1910.1200, including but not limited to the requirements concerning warning signs and labels, material safety data sheets (MSDS), and employee information and training. In addition, employers shall comply with the following requirements:

(2) *Warning signs.* (i) Warning signs shall be provided and displayed in regulated areas. In addition, warning signs shall be posted at all approaches to regulated areas so that an employee may read the signs and take necessary protective steps before entering the area.

(ii) Warning signs required by paragraph (m)(2)(i) of this section shall bear the following information:

DANGER
CADMIUM
CANCER HAZARD
CAN CAUSE LUNG AND KIDNEY DISEASE

AUTHORIZED PERSONNEL ONLY
RESPIRATORS REQUIRED IN THIS AREA

(iii) The employer shall assure that signs required by this paragraph are illuminated, cleaned, and maintained as necessary so that the legend is readily visible.

(3) *Warning labels.* (i) Shipping and storage containers containing cadmium, cadmium compounds, or cadmium contaminated clothing, equipment, waste, scrap, or debris shall bear appropriate warning labels, as specified in paragraph (m)(3)(ii) of this section.

(ii) The warning labels shall include at least the following information:

DANGER
CONTAINS CADMIUM
CANCER HAZARD
AVOID CREATING DUST
CAN CAUSE LUNG AND KIDNEY DISEASE

(iii) Where feasible, installed cadmium products shall have a visible label or other indication that cadmium is present.

(4) *Employee information and training.* (i) The employer shall institute a training program for all employees who are potentially exposed to cadmium, assure employee participation in the program, and maintain a record of the contents of such program.

(ii) Training shall be provided prior to or at the time of initial assignment to a job involving potential exposure to cadmium and at least annually thereafter.

(iii) The employer shall make the training program understandable to the employee and shall assure that each employee is informed of the following:

(A) The health hazards associated with cadmium exposure, with special attention to the information incorporated in appendix A to the section;

(B) The quantity, location, manner of use, release, and storage of cadmium in the workplace and the specific nature of operations that could result in exposure to cadmium, especially exposures above the PEL;

(C) The engineering controls and work practices associated with the employee's job assignment;

(D) The measures employees can take to protect themselves from exposure to cadmium, including modification of such habits as smoking and personal hygiene, and specific procedures the employer has implemented to protect employees from exposure to cadmium such as appropriate work practices, emergency procedures, and the provision of personal protective equipment;

(E) The purpose, proper selection, fitting, proper use, and limitations of respirators and protective clothing;

(F) The purpose and a description of the medical surveillance program required by paragraph (l) of this section;

(G) The contents of this section and its appendices; and

(H) The employee's rights of access to records under § 1910.20(g)(1) and (2).

(iv) Additional access to information and training program and materials.

(A) The employer shall make a copy of this section and its appendices readily available without cost to all affected employees and shall provide a copy if requested.

(B) The employer shall provide to the Assistant Secretary or the Director, upon request, all materials relating to the employee information and the training program.

(n) *Recordkeeping*—(1) *Exposure monitoring.* (i) The employer shall establish and keep an accurate record of all air monitoring for cadmium in the workplace.

(ii) This record shall include at least the following information:

(A) The monitoring date, duration, and results in terms of an 8-hour TWA of each sample taken;

(B) The name, social security number, and job classification of the employees monitored and of all other employees whose exposures the monitoring is intended to represent;

(C) A description of the sampling and analytical methods used and evidence of their accuracy;

(D) The type of respiratory protective device, if any, worn by the monitored employee;

(E) A notation of any other conditions that might have affected the monitoring results.

(iii) The employer shall maintain this record for at least thirty (30) years, in accordance with 29 CFR 1910.20.

(2) *Objective data for exemption from requirement for initial monitoring.* (i) For purposes of this section, objective data are information demonstrating that a particular product or material containing cadmium or a specific process, operation, or activity involving cadmium cannot release dust or fumes in concentrations at or above the action level even under the worst-case release conditions. Objective data can be obtained from an industry-wide study or from laboratory product test results from manufacturers of cadmium-containing products or materials. The data the employer uses from an industry-wide survey must be obtained under workplace conditions closely resembling the processes, types of material, control methods, work practices and environmental conditions in the employer's current operations.

(ii) The employer shall establish and maintain a record of the objective data for at least 30 years.

(3) *Medical surveillance.* (i) The employer shall establish and maintain an accurate record for each employee covered by medical surveillance under paragraph (l)(1)(i) of this section.

(ii) The record shall include at least the following information about the employee:

(A) Name, social security number, and description of the duties;

(B) A copy of the physician's written opinions and an explanation sheet for biological monitoring results;

(C) A copy of the medical history, and the results of any physical examination and all test results that are required to be provided by this section, including biological tests, X-rays, pulmonary function tests, etc., or that have been obtained to further evaluate any condition that might be related to cadmium exposure;

(D) The employee's medical symptoms that might be related to exposure to cadmium; and

(E) A copy of the information provided to the physician as required by paragraph (l)(9)(ii)–(v) of this section.

(iii) The employer shall assure that this record is maintained for the duration of employment plus thirty (30) years, in accordance with 29 CFR 1910.20.

(4) *Training.* The employer shall certify that employees have been trained by preparing a certification record which includes the identity of the person trained, the signature of the employer or the person who conducted the training, and the date the training was completed. The certification records shall be prepared at the completion of training and shall be maintained on file for one (1) year beyond the date of training of that employee.

(5) *Availability.* (i) Except as otherwise provided for in this section, access to all records required to be maintained by paragraphs (n)(1)–(4) of this section shall be in accordance with the provisions of 29 CFR 1910.20.

(ii) Within 15 days after a request, the employer shall make an employee's medical records required to be kept by paragraph (n)(3) of this section available for examination and copying to the subject employee, to designated representatives, to anyone having the specific written consent of the subject employee, and after the employee's death or incapacitation, to the employee's family members.

(6) *Transfer of records.* Whenever an employer ceases to do business and there is no successor employer to

receive and retain records for the prescribed period or the employer intends to dispose of any records required to be preserved for at least 30 years, the employer shall comply with the requirements concerning transfer of records set forth in 29 CFR 1910.20 (h).

(o) *Observation of monitoring*—(1) *Employee observation.* The employer shall provide affected employees or their designated representatives an opportunity to observe any monitoring of employee exposure to cadmium.

(2) *Observation procedures.* When observation of monitoring requires entry into an area where the use of protective clothing or equipment is required, the employer shall provide the observer with that clothing and equipment and shall assure that the observer uses such clothing and equipment and complies with all other applicable safety and health procedures.

(p) *Dates*—(1) *Effective date.* This section shall become effective December 14, 1992.

(2) *Start-up dates.* All obligations of this section commence on the effective date except as follows:

(i) *Exposure monitoring.* Except for small businesses (nineteen (19) or fewer employees), initial monitoring required by paragraph (d)(2) of this section shall be completed as soon as possible and in any event no later than 60 days after the effective date of this standard. For small businesses, initial monitoring required by paragraph (d)(2) of this section shall be completed as soon as possible and in any event no later than 120 days after the effective date of this standard.

(ii) *Regulated areas.* Except for small business, defined under paragraph (p)(2)(i) of this section, regulated areas required to be established by paragraph (e) of this section shall be set up as soon as possible after the results of exposure monitoring are known and in any event no later than 90 days after the effective date of this section. For small businesses, regulated areas required to be established by paragraph (e) of this section shall be set up as soon as possible after the results of exposure monitoring are known and in any event no later than 150 days after the effective date of this section.

(iii) *Respiratory protection.* Except for small businesses, defined under paragraph (p)(2)(i) of this section, respiratory protection required by paragraph (g) of this section shall be provided as soon as possible and in any event no later than 90 days after the effective date of this section. For small businesses, respiratory protection required by paragraph (g) of this section shall be provided as soon as possible and in any event no later than 150 days after the effective date of this section.

(iv) *Compliance program.* Written compliance programs required by paragraph (f)(2) of this section shall be completed and available for inspection and copying as soon as possible and in any event no later than 1 year after the effective date of this section.

(v) *Methods of compliance.* The engineering controls required by paragraph (f)(1) of this section shall be implemented as soon as possible and in any event no later than two (2) years after the effective date of this section. Work practice controls shall be implemented as soon as possible. Work practice controls that are directly related to engineering controls to be implemented in accordance with the compliance plan shall be implemented as soon as possible after such engineering controls are implemented.

(vi) *Hygiene and lunchroom facilities.* (A) Handwashing facilities, permanent or temporary, shall be provided in accordance with 29 CFR 1910.141 (d)(1) and (2) as soon as possible and in any event no later than 60 days after the effective date of this section.

(B) Change rooms, showers, and lunchroom facilities shall be completed as soon as possible and in any event no later than 1 year after the effective date of this section.

(vii) *Employee information and training.* Except for small businesses, defined under paragraph (p)(2)(i) of this section, employee information and training required by paragraph (m)(4) of this section shall be provided as soon as possible and in any event no later than 90 days after the effective date of this standard. For small businesses, employee information and training required by paragraph (m)(4) of this standard shall be provided as soon as possible and in any event no later than 180 days after the effective date of this standard.

(viii) *Medical surveillance.* Except for small businesses, defined under paragraph (p)(2)(i) of this section, initial medical examinations required by paragraph (l) of this section shall be provided as soon as possible and in any event no later than 90 days after the effective date of this standard. For small businesses, initial medical examinations required by paragraph (l) of this section shall be provided as soon as possible and in any event no later than 180 days after the effective date of this standard.

(q) *Appendices.* (1) Appendix C to this section is incorporated as part of this section, and compliance with its contents is mandatory.

(2) Except where portions of appendices A, B, D, E, and F to this section are expressly incorporated in requirements of this section, these appendices are purely informational and are not intended to create any additional obligations not otherwise imposed or to detract from any existing obligations.

Appendix A to § _____—Substance Safety Data Sheet

Cadmium

I. Substance Identification

A. Substance: Cadmium.

B. 8-Hour, Time-weighted-average, Permissible Exposure Limit (TWA PEL):

1. TWA PEL: Five micrograms of cadmium per cubic meter of air 5 $\mu g/m^3$, time-weighted average (TWA) for an 8-hour workday.

C. Appearance: Cadmium metal—soft, blue-white, malleable, lustrous metal or grayish-white powder. Some cadmium compounds may also appear as a brown, yellow, or red powdery substance.

II. Health Hazard Data

A. Routes of Exposure. Cadmium can cause local skin or eye irritation. Cadmium can affect your health if you inhale it or if you swallow it.

B. Effects of Overexposure.

1. Short-term (acute) exposure: Cadmium is much more dangerous by inhalation than by ingestion. High exposures to cadmium that may be immediately dangerous to life or health occur in jobs where workers handle large quantities of cadmium dust or fume; heat cadmium-containing compounds or cadmium-coated surfaces; weld with cadmium solders or cut cadmium-containing materials such as bolts.

2. Severe exposure may occur before symptoms appear. Early symptoms may include mild irritation of the upper respiratory tract, a sensation of constriction of the throat, a metallic taste and/or a cough. A period of 1–10 hours may precede the onset of rapidly progressing shortness of breath, chest pain, and flu-like symptoms with weakness, fever, headache, chills, sweating and muscular pain. Acute pulmonary edema usually develops within 24 hours and reaches a maximum by three days. If death from asphyxia does not occur, symptoms may resolve within a week.

3. Long-term (chronic) exposure. Repeated or long-term exposure to cadmium, even at relatively low concentrations, may result in kidney damage and an increased risk of cancer of the lung and of the prostate.

C. Emergency First Aid Procedures.

1. Eye exposure: Direct contact may cause redness or pain. Wash eyes immediately with large amounts of water, lifting the upper and lower eyelids. Get medical attention immediately.

2. Skin exposure: Direct contact may result in irritation. Remove contaminated clothing and shoes immediately. Wash affected area with soap or mild detergent and large amounts of water. Get medical attention immediately.

3. Ingestion: Ingestion may result in vomiting, abdominal pain, nausea, diarrhea, headache and sore throat. Treatment for

symptoms must be administered by medical personnel. Under no circumstances should the employer allow any person whom he retains, employs, supervises or controls to engage in therapeutic chelation. Such treatment is likely to translocate cadmium from pulmonary or other tissue to renal tissue. Get medical attention immediately.

4. Inhalation: If large amounts of cadmium are inhaled, the exposed person must be moved to fresh air at once. If breathing has stopped, perform cardiopulmonary resuscitation. Administer oxygen if available. Keep the affected person warm and at rest. Get medical attention immediately.

5. Rescue: Move the affected person from the hazardous exposure. If the exposed person has been overcome, attempt rescue only after notifying at least one other person of the emergency and putting into effect established emergency procedures. Do not become a casualty yourself. Understand your emergency rescue procedures and know the location of the emergency equipment before the need arises.

III. Employee Information

A. Protective Clothing and Equipment.

1. Respirators: You may be required to wear a respirator for non-routine activities; in emergencies; while your employer is in the process of reducing cadmium exposures through engineering controls; and where engineering controls are not feasible. If respirators are worn in the future, they must have a joint Mine Safety and Health Administration (MSHA) and National Institute for Occupational Safety and Health (NIOSH) label of approval. Cadmium does not have a detectable odor except at levels well above the permissible exposure limits. If you can smell cadmium while wearing a respirator, proceed immediately to fresh air. If you experience difficulty breathing while wearing a respirator, tell your employer.

2. Protective Clothing: You may be required to wear impermeable clothing, gloves, foot gear, a face shield, or other appropriate protective clothing to prevent skin contact with cadmium. Where protective clothing is required, your employer must provide clean garments to you as necessary to assure that the clothing protects you adequately. The employer must replace or repair protective clothing that has become torn or otherwise damaged.

3. Eye Protection: You may be required to wear splash-proof or dust resistant goggles to prevent eye contact with cadmium.

B. Employer Requirements.

1. Medical: If you are exposed to cadmium at or above the action level, your employer is required to provide a medical examination, laboratory tests and a medical history according to the medical surveillance provisions under paragraph (1) of this standard. (See summary chart and tables in this appendix A.) These tests shall be provided without cost to you. In addition, if you are accidentally exposed to cadmium under conditions known or suspected to constitute toxic exposure to cadmium, your employer is required to make special tests available to you.

2. Access to Records: All medical records are kept strictly confidential. You or your representative are entitled to see the records of measurements of your exposure to cadmium. Your medical examination records can be furnished to your personal physician or designated representative upon request by you to your employer.

3. Observation of Monitoring: Your employer is required to perform measurements that are representative of your exposure to cadmium and you or your designated representative are entitled to observe the monitoring procedure. You are entitled to observe the steps taken in the measurement procedure, and to record the results obtained. When the monitoring procedure is taking place in an area where respirators or personal protective clothing and equipment are required to be worn, you or your representative must also be provided with, and must wear the protective clothing and equipment.

C. Employee Requirements.—You will not be able to smoke, eat, drink, chew gum or tobacco, or apply cosmetics while working with cadmium in regulated areas. You will also not be able to carry or store tobacco products, gum, food, drinks or cosmetics in regulated areas because these products easily become contaminated with cadmium from the workplace and can therefore create another source unnecessary of cadmium exposure.

Some workers will have to change out of work clothes and shower at the end of the day, as part of their workday, in order to wash cadmium from skin and hair. Handwashing and cadmium-free eating facilities shall be provided by the employer and proper hygiene should always be performed before eating. It is also recommended that you do not smoke or use tobacco products, because among other things, they naturally contain cadmium. For further information, read the labeling on such products.

IV. Physician Information

A. Introduction.—The medical surveillance provisions of paragraph (1) generally are aimed at accomplishing three main interrelated purposes: First, identifying employees at higher risk of adverse health effects from excess, chronic exposure to cadmium; second, preventing cadmium-induced disease; and third, detecting and minimizing existing cadmium-induced disease. The core of medical surveillance in this standard is the early and periodic monitoring of the employee's biological indicators of: (a) Recent exposure to cadmium; (b) cadmium body burden; and (c) potential and actual kidney damage associated with exposure to cadmium.

The main adverse health effects associated with cadmium overexposure are lung cancer and kidney dysfunction. It is not yet known how to adequately biologically monitor human beings to specifically prevent cadmium-induced lung cancer. By contrast, the kidney can be monitored to provide prevention and early detection of cadmium-induced kidney damage. Since, for non-carcinogenic effects, the kidney is considered the primary target organ of chronic exposure to cadmium, the medical surveillance provisions of this standard effectively focus on cadmium-induced kidney disease. Within that focus, the aim, where possible, is to prevent the onset of such disease and, where necessary, to minimize such disease as may already exist. The by-products of successful prevention of kidney disease are anticipated to be the reduction and prevention of other cadmium-induced diseases.

B. Health Effects.—The major health effects associated with cadmium overexposure are described below.

1. Kidney: The most prevalent non-malignant disease observed among workers chronically exposed to cadmium is kidney dysfunction. Initially, such dysfunction is manifested as proteinuria. The proteinuria associated with cadmium exposure is most commonly characterized by excretion of low-molecular weight proteins (15,000 to 40,000 MW) accompanied by loss of electrolytes, uric acid, calcium, amino acids, and phosphate. The compounds commonly excreted include: beta-2-microglobulin (β_2-M), retinol binding protein (RBP), immunoglobulin light chains, and lysozyme. Excretion of low molecular weight proteins are characteristic of damage to the proximal tubules of the kidney (Iwao *et al.*, 1980).

It has also been observed that exposure to cadmium may lead to urinary excretion of high-molecular weight proteins such as albumin, immunoglobulin G, and glycoproteins (Ex. 29). Excretion of high-molecular weight proteins is typically indicative of damage to the glomeruli of the kidney. Bernard *et al.*, (1979) suggest that damage to the glomeruli and damage to the proximal tubules of the kidney may both be linked to cadmium exposure but they may occur independently of each other.

Several studies indicate that the onset of low-molecular weight proteinuria is a sign of irreversible kidney damage (Friberg *et al.*, 1974; Roels *et al.*, 1982; Piscator 1984; Elinder *et al.*, 1985; Smith *et al.*, 1986). Above specific levels of β_2-M associated with cadmium exposure it is unlikely that β_2-M levels return to normal even when cadmium exposure is eliminated by removal of the individual from the cadmium work environment (Friberg, Ex. 29, 1990).

Some studies indicate that such proteinuria may be progressive; levels of β_2-M observed in the urine increase with time even after cadmium exposure has ceased. See, for example, Elinder *et al.*, 1985. Such observations, however, are not universal, and it has been suggested that studies in which proteinuria has not been observed to progress may not have tracked patients for a sufficiently long time interval (Jarup, Ex. 8–661).

When cadmium exposure continues after the onset of proteinuria, chronic nephrotoxicity may occur (Friberg, Ex. 29). Uremia results from the inability of the glomerulus to adequately filter blood. This leads to severe disturbance of electrolyte concentrations and may lead to various clinical complications including kidney stones (L–140–50).

After prolonged exposure to cadmium, glomerular proteinuria, glucosuria, aminoaciduria, phosphaturia, and hypercalciuria may develop (Exs. 8–86, 4–28, 14–18). Phosphate, calcium, glucose, and amino acids are essential to life, and under normal conditions, their excretion should be

regulated by the kidney. Once low molecular weight proteinuria has developed, these elements dissipate from the human body. Loss of glomerular function may also occur, manifested by decreased glomerular filtration rate and increased serum creatinine. Severe cadmium-induced renal damage may eventually develop into chronic renal failure and uremia (Ex. 55).

Studies in which animals are chronically exposed to cadmium confirm the renal effects observed in humans (Friberg *et al.*, 1986). Animal studies also confirm problems with calcium metabolism and related skeletal effects which have been observed among humans exposed to cadmium in addition to the renal effects. Other effects commonly reported in chronic animal studies include anemia, changes in liver morphology, immunosuppression and hypertension. Some of these effects may be associated with co-factors. Hypertension, for example, appears to be associated with diet as well as cadmium exposure. Animals injected with cadmium have also shown testicular necrosis (Ex. 8–66B).

2. Biological Markers

It is universally recognized that the best measures of cadmium exposures and its effects are measurements of cadmium in biological fluids, especially urine and blood. Of the two, CdU is conventionally used to determine body burden of cadmium in workers without kidney disease. CdB is conventionally used to monitor for recent exposure to cadmium. In addition, levels of CdU and CdB historically have been used to predict the percent of the population likely to develop kidney disease (Thun *et al.*, Ex. L–140–50; WHO, Ex. 8–674; ACGIH, Exs. 8–667, 140–50).

The third biological parameter upon which OSHA relies for medical surveillance is Beta-2-microglobulin in urine (β_2-M), a low molecular weight protein. Excess β_2-M has been widely accepted by physicians and scientists as a reliable indicator of functional damage to the proximal tubule of the kidney (Exs. 8–447, 144–3–C, 4–47, L–140–45, 19–43–A).

Excess β_2-M is found when the proximal tubules can no longer reabsorb this protein in a normal manner. This failure of the proximal tubules is an early stage of a kind of kidney disease that commonly occurs among workers with excessive cadmium exposure. Used in conjunction with biological test results indicating abnormal levels of CdU and CdB, the finding of excess β_2-M can establish for an examining physician that any existing kidney disease is probably cadmium-related (Trs. 6/6/90, pp. 82–86, 122, 134). The upper limits of normal levels for cadmium in urine and cadmium in blood are 3 μg Cd/gram creatinine in urine and 5 μgCd/liter whole blood, respectively. These levels were derived from broad-based population studies.

Three issues confront the physicians in the use of β_2-M as a marker of kidney dysfunction and material impairment. First, there are a few other causes of elevated levels of β_2-M not related to cadmium exposures, some of which may be rather common diseases and some of which are serious diseases (e.g., myeloma or transient flu, Exs. 29 and 8–086). These can be medically evaluated as alternative causes (Friberg, Ex. 29). Also, there are other factors that can cause β_2-M to degrade so that low levels would result in workers with tubular dysfunction. For example, regarding the degradation of β_2-M, workers with acidic urine (pH<6) might have β_2-M levels that are within the "normal" range when in fact kidney dysfunction has occurred (Ex. L–140–1) and the low molecular weight proteins are degraded in acid urine. Thus, it is very important that the pH of urine be measured, that urine samples be buffered as necessary (See appendix F.), and that urine samples be handled correctly, i.e., measure the pH of freshly voided urine samples, then if necessary, buffer to pH>6 (or above for shipping purposes), measure pH again and then, perhaps, freeze the sample for storage and shipping. (See also appendix F.) Second, there is debate over the pathological significance of proteinuria, however, most world experts believe that β_2-M levels greater than 300 μg/g Cr are abnormal (Elinder, Ex. 55, Friberg, Ex. 29). Such levels signify kidney dysfunction that constitutes material impairment of health. Finally, detection of β_2-M at low levels has often been considered difficult, however, many laboratories have the capability of detecting excess β_2-M using simple kits, such as the Phadebas Delphia test, that are accurate to levels of 100 μg β_2-M/g Cr U (Ex. L–140–1).

Specific recommendations for ways to measure β_2-M and proper handling of urine samples to prevent degradation of β_2-M have been addressed by OSHA in appendix F, in the section on laboratory standardization. All biological samples must be analyzed in a laboratory that is proficient in the analysis of that particular analyte, under paragraph (l)(1)(iv). (See appendix F). Specifically, under paragraph (l)(1)(iv), the employer is to assure that the collecting and handling of biological samples of cadmium in urine (CdU), cadmium in blood (CdB), and beta-2 microglobulin in urine (β_2-M) taken from employees is collected in a manner that assures reliability. The employer must also assure that analysis of biological samples of cadmium in urine (CdU), cadmium in blood (CdB), and beta-2 microglobulin in urine (β_2-M) taken from employees is performed in laboratories with demonstrated proficiency for that particular analyte. (See appendix F.)

3. Lung and Prostate Cancer

The primary sites for cadmium-associated cancer appear to be the lung and the prostate (L–140–50). Evidence for an association between cancer and cadmium exposure derives from both epidemiological studies and animal experiments. Mortality from prostate cancer associated with cadmium is slightly elevated in several industrial cohorts, but the number of cases is small and there is not clear dose-response relationship. More substantive evidence exists for lung cancer.

The major epidemiological study of lung cancer was conducted by Thun *et al.*, (Ex. 4–68). Adequate data on cadmium exposures were available to allow evaluation of dose-response relationships between cadmium exposure and lung cancer. A statistically significant excess of lung cancer attributed to cadmium exposure was observed in this study even when confounding variables such as co-exposure to arsenic and smoking habits were taken into consideration (Ex. L–140–50).

The primary evidence for quantifying a link between lung cancer and cadmium exposure from animal studies derives from two rat bioassay studies; one by Takenaka *et al.*, (1983), which is a study of cadmium chloride and a second study by Oldiges and Glaser (1990) of four cadmium compounds.

Based on the above cited studies, the U.S. Environmental Protection Agency (EPA) classified cadmium as "B1", a probable human carcinogen, in 1985 (Ex. 4–4). The International Agency for Research on Cancer (IARC) in 1987 also recommended that cadmium be listed as "2A", a probable human carcinogen (Ex. 4–15). The American Conference of Governmental Industrial Hygienists (ACGIH) has recently recommended that cadmium be labeled as a carcinogen. Since 1984, NIOSH has concluded that cadmium is possibly a human carcinogen and has recommended that exposures be controlled to the lowest level feasible.

4. Non-carcinogenic Effects

Acute pneumonitis occurs 10 to 24 hours after initial acute inhalation of high levels of cadmium fumes with symptoms such as fever and chest pain (Exs. 30, 8–86B). In extreme exposure cases pulmonary edema may develop and cause death several days after exposure. Little actual exposure measurement data is available on the level of airborne cadmium exposure that causes such immediate adverse lung effects, nonetheless, it is reasonable to believe a cadmium concentration of approximately 1 mg/m^3 over an eight hour period is "immediately dangerous" (55 FR 4052, ANSI; Ex. 8–86B).

In addition to acute lung effects and chronic renal effects, long term exposure to cadmium may cause other severe effects on the respiratory system. Reduced pulmonary function and chronic lung disease indicative of emphysema have been observed in workers who have had prolonged exposure to cadmium dust or fumes (Exs. 4–29, 4–22, 4–42, 4–50, 4–63). In a study of workers conducted by Kazantzis *et al.*, a statistically significant excess of worker deaths due to chronic bronchitis was found, which in his opinion was directly related to high cadmium exposures of 1 mg/m^3 or more (Tr. 6/8/90, pp. 156–157).

Cadmium need not be respirable to constitute a hazard. Inspirable cadmium particles that are too large to be respirable but small enough to enter the tracheobronchial region of the lung can lead to bronchoconstriction, chronic pulmonary disease, and cancer of that portion of the lung. All of these diseases have been associated with occupational exposure to cadmium (Ex. 8–86B). Particles that are constrained by their size to the extra-thoracic regions of the respiratory system such as the nose and maxillary sinuses can be swallowed through mucocillary clearance and be absorbed into the body (ACGIH, Ex. 8–692). The impaction of these particles in the upper airways can lead to anosmia, or loss of sense of smell, which is an early indication of overexposure among workers exposed to heavy metals. This condition is commonly

reported among cadmium-exposed workers (Ex. 8–86–B).

C. Medical Surveillance

In general, the main provisions of the medical surveillance section of the standard, under paragraphs (l)(1)–(17) of the regulatory text, are as follows:

1. Workers exposed above the action level are covered;

2. Workers with intermittent exposures are not covered;

3. Past workers who are covered receive biological monitoring for at least one year;

4. Initial examinations include a medical questionnaire and biological monitoring of cadmium in blood (CdB), cadmium in urine (CdU), and Beta-2-microglobulin in urine (β_2-M);

5. Biological monitoring of these three analytes is performed at least annually; full medical examinations are performed biennially;

6. Until five years from the effective date of the standard, medical removal is required when CdU is greater than 15 μg/gram creatinine (g Cr), or CdB is greater than 15 μg/liter whole blood (lwb), or β_2-M is greater than 1500 μg/g Cr, and CdB is greater than 5 μg/lwb or CdU is greater than 3 μg/g Cr;

7. Beginning five years after the standard is in effect, medical removal triggers will be reduced;

8. Medical removal protection benefits are to be provided for up to 18 months;

9. Limited initial medical examinations are required for respirator usage;

10. Major provisions are fully described under section (l) of the regulatory text; they are outlined here as follows:

A. Eligibility
B. Biological monitoring
C. Actions triggered by levels of CdU, CdB, and β_2-M (See Summary Charts and Tables in Attachment-1.)
D. Periodic medical surveillance
E. Actions triggered by periodic medical surveillance (See appendix A Summary Chart and Tables in Attachment-1.)
F. Respirator usage
G. Emergency medical examinations
H. Termination examination
I. Information to physician
J. Physician's medical opinion
K. Medical removal protection
L. Medical removal protection benefits
M. Multiple physician review
N. Alternate physician review
O. Information employer gives to employee
P. Recordkeeping
Q. Reporting on OSHA form 200

11. The above mentioned summary of the medical surveillance provisions, the summary chart, and tables for the actions triggered at different levels of CdU, CdB and β_2-M (in appendix A Attachment-1) are included only for the purpose of facilitating understanding of the provisions of paragraphs (l)(3) of the final cadmium standard. The summary of the provisions, the summary chart, and the tables do not add to or reduce the requirements in paragraph (l)(3).

D. Recommendations to Physicians

1. It is strongly recommended that patients with tubular proteinuria are counseled on: The hazards of smoking; avoidance of nephrotoxins and certain prescriptions and over-the-counter medications that may exacerbate kidney symptoms; how to control diabetes and/or blood pressure; proper hydration, diet, and exercise (Ex. 19–2). A list of prominent or common nephrotoxins is attached. (See appendix A Attachment-2.)

2. DO NOT CHELATE; KNOW WHICH DRUGS ARE NEPHROTOXINS OR ARE ASSOCIATED WITH NEPHRITIS.

3. The gravity of cadmium-induced renal damage is compounded by the fact there is no medical treatment to prevent or reduce the accumulation of cadmium in the kidney (Ex. 8–619). Dr. Friberg, a leading world expert on cadmium toxicity, indicated in 1992, that there is no form of chelating agent that could be used without substantial risk. He stated that tubular proteinuria has to be treated in the same way as other kidney disorders (Ex. 29).

4. After the results of a workers' biological monitoring or medical examination are received the employer is required to provide an information sheet to the patient, briefly explaining the significance of the results. (See Attachment 3 of this appendix A.)

5. For additional information the physician is referred to the following additional resources:

a. The physician can always obtain a copy of the preamble, with its full discussion of the health effects, from OSHA's Computerized Information System (OCIS).

b. The Docket Officer maintains a record of the rulemaking. The Cadmium Docket (H–057A), is located at 200 Constitution Ave. NW., room N–2625, Washington, DC 20210; telephone: 202–523–7894.

c. The following articles and exhibits in particular from that docket (H–057A):

Exhibit number	Author and paper title
8–447	Lauwerys *et. al.*, Guide for physicians, "Health Maintenance of Workers Exposed to Cadmium," published by the Cadmium Council.
4–67	Takenaka, S., H. Oldiges, H. Konig, D. Hochrainer, G. Oberdorster. "Carcinogenicity of Cadmium Chloride Aerosols in Wistar Rats". *JNCI* 70:367–373, 1983. (32)
4–68	Thun, M.J., T.M. Schnoor, A.B. Smith, W.E. Halperin, R.A. Lemen. "Mortality Among a Cohort of U.S. Cadmium Production Workers—An Update." *JNCI* 74(2):325–33, 1985. (8)
4–25	Elinder, C.G., Kjellstrom, T., Hogstedt, C., *et al.*, "Cancer Mortality of Cadmium Workers." *Brit. J. Ind. Med.* 42:651–655, 1985. (14)
4–26	Ellis, K.J. *et al.*, "Critical Concentrations of Cadmium in Human Renal Cortex: Dose Effect Studies to Cadmium Smelter Workers." *J. Toxicol. Environ. Health* 7:691–703, 1981. (76)
4–27	Ellis, K.J., S.H. Cohn and T.J. Smith. "Cadmium Inhalation Exposure Estimates: Their Significance with Respect to Kidney and Liver Cadmium Burden." *J. Toxicol. Environ. Health* 15:173–187, 1985.
4–28	Falck, F.Y., Jr., Fine, L.J., Smith, R.G., McClatchey, K.D., Annesley, T., England, B., and Schork, A.M. "Occupational Cadmium Exposure and Renal Status." *Am. J. Ind. Med.* 4:541, 1983. (64)
8–86A	Friberg, L., C.G. Elinder, *et al.*, "Cadmium and Health a Toxicological and Epidemiological Appraisal, Volume I, Exposure, Dose, and Metabolism." CRC Press, Inc., Boca Raton, FL, 1986. (Available from the OSHA Technical Data Center)
8–86B	Friberg, L., C.G. Elinder, *et al.*, "Cadmium and Health: A Toxicological and Epidemiological Appraisal, Volume II, Effects and Response." CRC Press, Inc., Boca Raton, FL, 1986. (Available from the OSHA Technical Data Center)
L–140–45	Elinder, C.G., "Cancer Mortality of Cadmium Workers", *Brit. J. Ind. Med.*, 42, 651–655, 1985.
L–140–50	Thun, M., Elinder, C.G., Friberg, L, "Scientific Basis for an Occupational Standard for Cadmium, *Am. J. Ind. Med.*, 20; 629–642, 1991.

V. Information Sheet

The information sheet (appendix A Attachment-3.) or an equally explanatory one should be provided to you after any biological monitoring results are reviewed by the physician, or where applicable, after any medical examination.

APPENDIX A

Attachment 1—Appendix A Summary Chart and Tables A and B of Actions Triggered by Biological Monitoring

Appendix A Summary Chart: Section (1)(3) Medical Surveillance

Categorizing Biological Monitoring Results

(A) Biological monitoring results categories are set forth in Appendix A Table A for the periods ending December 31, 1998 and for the period beginning January 1, 1999.

(B) The results of the biological monitoring for the initial medical exam and the subsequent exams shall determine an employee's biological monitoring result category.

Actions Triggered by Biological Monitoring

(A)

(i) The actions triggered by biological monitoring for an employee are set forth in Appendix A Table B.

(ii) The biological monitoring results for each employee under section (1)(3) shall

determine the actions required for that employee. That is, for any employee in biological monitoring category C, the employer will perform all of the actions for which there is an X in column C of Appendix A Table B.

(iii) An employee is assigned the alphabetical category ("A" being the lowest) depending upon the test results of the three biological markers.

(iv) An employee is assigned category A if monitoring results for all three biological markers fall at or below the levels indicated in the table listed for category A.

(v) An employee is assigned category B if any monitoring result for any of the three biological markers fall within the range of levels indicated in the table listed for category B, providing no result exceeds the levels listed for category B.

(vi) An employee is assigned category C if any monitoring result for any of the three biological markers are above the levels listed for category C.

(B) The user of Appendix A Tables A and B should know that these tables are provided only to facilitate understanding of the relevant provisions of paragraph (l)(3) of this section. Appendix A Tables A and B are not meant to add to or subtract from the requirements of those provisions.

Appendix A Table A

Categorization of Biological Monitoring Results

APPLICABLE THROUGH 1998 ONLY

Biological marker	Monitoring result categories		
	A	B	C
Cadmium in urine (CdU) (μg/g creatinine)	≤3	>3 and ≤15	>15
β_2-microglobulin (β_2-M) (μg/g creatinine)	≤300	>300 and ≤1500	>1500*
Cadmium in blood (CdB) (μg/liter whole blood)	≤5	>5 and ≤15	>15

* If an employee's β_2-M levels are above 1,500 μg/g creatinine, in order for mandatory medical removal to be required (See Appendix A Table B.), either the employee's CdU level must also be >3 μg/g creatinine or CdB level must also be >5 μg/liter whole blood.

APPLICABLE BEGINNING JANUARY 1, 1999

Biological marker	Monitoring result categories		
	A	B	C
Cadmium in urine (CdU) (μg/g creatinine)	≤3	>3 and ≤7	>7
β_2-microglobulin (β_2-M) (μg/g creatinine)	≤300	>300 and ≤750	>750*
Cadmium in blood (CdB) (μg/liter whole blood)	≤5	>5 and ≤10	>10

* If an employee's β_2-M levels are above 750 μg/g creatinine, in order for mandatory medical removal to be required (See Appendix A Table B.), either the employee's CdU level must also be >3 μg/g creatinine or CdB level must also be >5 μg/liter whole blood.

Appendix A Table B—Actions Determined by Biological Monitoring

This table presents the actions required based on the monitoring result in Appendix A Table A. Each item is a separate requirement in citing non-compliance. For example, a medical examination within 90 days for an employee in category B is separate from the requirement to administer a periodic medical examination for category B employees on an annual basis.

Required actions	Monitoring result category		
	A [1]	B [1]	C [1]
(1) Biological monitoring:			
(a) Annual	X		
(b) Semiannual		X	
(c) Quarterly			X
(2) Medical examination:			
(a) Biennial	X		
(b) Annual		X	
(c) Semiannual			X
(d) Within 90 days		X	X
(3) Assess within two weeks:			
(a) Excess cadmium exposure		X	X
(b) Work practices		X	X
(c) Personal hygiene		X	X
(d) Respirator usage		X	X
(e) Smoking history		X	X
(f) Hygiene facilities		X	X
(g) Engineering controls		X	X
(h) Correct within 30 days			X
(i) Periodically assess exposures		X	X
(4) Discretionary medical removal			X [2]
(5) Mandatory medical removal			

[1] For all employees covered by medical surveillance exclusively because of exposures prior to the effective date of this standard, if they are in Category A, the employer shall follow the requirements of paragraphs (l)(3)(i)(B) and (l)(4)(v)(A). If they are in Category B or C, the employer shall follow the requirements of paragraphs (l)(4)(v)(B)–(C).

[2] See footnote Appendix A Table A.

Appendix A—Attachment-2: List of Medications

A list of the more common medications that a physician, and the employee, may wish to review is likely to include some of the following: (1) Anticonvulsants: Paramethadione, phenytoin, trimethadone; (2) antihypertensive drugs: Captopril, methyldopa; (3) antimicrobials: Aminoglycosides, amphotericin B, cephalosporins, ethambutol; (4) antineoplastic agents: Cisplatin, methotrexate, mitomycin-C, nitrosoureas, radiation; (4) sulfonamide diuretics: Acetazolamide, chlorthalidone, furosemide, thiazides; (5) halogenated alkanes, hydrocarbons, and solvents that may occur in some settings: Carbon tetrachloride, ethylene glycol, toluene; iodinated radiographic contrast media; nonsteroidal anti-inflammatory drugs; and, (7) other miscellaneous compounds: Acetominophen, allopurinol, amphetamines, azathioprine, cimetidine, cyclosporine, lithium, methoxyflurane, methysergide, D-penicillamine, phenacetin, phenendione. A list of drugs associated with acute interstitial nephritis includes: (1) Antimicrobial drugs: Cephalosporins, chloramphenicol, colistin, erythromycin, ethambutol, isoniazid, para-aminosalicylic acid, penicillins, polymyxin B, rifampin, sulfonamides, tetracyclines, and vancomycin; (2) other miscellaneous drugs: Allopurinol, antipyrene, azathioprine, captopril, cimetidine, clofibrate, methyldopa, phenindione, phenylpropanolamine, phenytoin, probenecid, sulfinpyrazone, sulfonamid diuretics, triamterene; and, (3) metals: Bismuth, gold.

This list have been derived from commonly available medical textbooks (e.g., Ex. 14–18). The list has been included merely to facilitate the physician's, employer's, and employee's understanding. The list does not represent an official OSHA opinion or policy regarding the use of these medications for particular employees. The use of such medications should be under physician discretion.

Attachment 3—Biological Monitoring and Medical Examination Results

Employee _____
Testing Date _____

Cadmium in Urine _____ μg/g Cr—Normal Levels: ≤3 μg/g Cr.

Cadmium in Blood _____ μg/lwb—Normal Levels: ≤5 μg/lwb.

Beta-2-microglobulin in Urine _____ μg/g Cr—Normal Levels: ≤300 μg/g Cr.

Physical Examination Results: N/A _____ Satisfactory _____ Unsatisfactory _____ (see physician again).

Physician's Review of Pulmonary Function Test: N/A _____ Normal _____ Abnormal _____

Next biological monitoring or medical examination scheduled for _____

The biological monitoring program has been designed for three main purposes: 1) to identify employees at risk of adverse health effects from excess, chronic exposure to cadmium; 2) to prevent cadmium-induced disease(s); and 3) to detect and minimize existing cadmium-induced disease(s).

The levels of cadmium in the urine and blood provide an estimate of the total amount of cadmium in the body. The amount of a specific protein in the urine (beta-2-microglobulin) indicates changes in kidney function. All three tests must be evaluated together. A single mildly elevated result may not be important if testing at a later time indicates that the results are normal and the workplace has been evaluated to decrease possible sources of cadmium exposure. The levels of cadmium or beta-2-microglobulin may change over a period of days to months and the time needed for those changes to occur is different for each worker.

If the results for biological monitoring are above specific "high levels" [cadmium urine greater than 10 micrograms per gram of creatinine (μg/g Cr), cadmium blood greater than 10 micrograms per liter of whole blood (μg/lwb), or beta-2-microglobulin greater than 1000 micrograms per gram of creatinine (μg/g Cr)], the worker has a much greater chance of developing other kidney diseases.

One way to measure for kidney function is by measuring beta-2-microglobulin in the urine. Beta-2-microglobulin is a protein which is normally found in the blood as it is being filtered in the kidney, and the kidney reabsorbs or returns almost all of the beta-2-microglobulin to the blood. A very small amount (less than 300 μg/g Cr in the urine) of beta-2-microglobulin is not reabsorbed into the blood, but is released in the urine. If cadmium damages the kidney, the amount of beta-2-microglobulin in the urine increases because the kidney cells are unable to reabsorb the beta-2-microglobulin normally. An increase in the amount of beta-2-microglobulin in the urine is a very early sign of kidney dysfunction. A small increase in beta-2-microglobulin in the urine will serve as an early warning sign that the worker may be absorbing cadmium from the air, cigarettes contaminated in the workplace, or eating in areas that are cadmium contaminated.

Even if cadmium causes permanent changes in the kidney's ability to reabsorb beta-2-microglobulin, and the beta-2-microglobulin is above the "high levels", the loss of kidney function may not lead to any serious health problems. Also, renal function naturally declines as people age. The risk for changes in kidney function for workers who have biological monitoring results between the "normal values" and the "high levels" is not well known. Some people are more cadmium-tolerant, while others are more cadmium-susceptible.

For anyone with even a slight increase of beta-2-microglobulin, cadmium in the urine, or cadmium in the blood, it is very important to protect the kidney from further damage. Kidney damage can come from other sources than excess cadmium-exposure so it is also recommended that if a worker's levels are "high" he/she should receive counseling about drinking more water; avoiding cadmium-tainted tobacco and certain medications (nephrotoxins, acetaminophen); controlling diet, vitamin intake, blood pressure and diabetes; etc.

Appendix B to § _____—Substance Technical Guidelines for Cadmium

I. Cadmium Metal

A. *Physical and Chemical Data.*

1. *Substance Identification.*

Chemical name: Cadmium.

Formula: Cd.

Molecular Weight: 112.4.

Chemical Abstracts Service (CAS) Registry No.: 7740–43–9.

Other Identifiers: RETCS EU9800000; EPA D006; DOT 2570 53.

Synonyms: Colloidal Cadmium: Kadmium (German): CI 77180.

2. *Physical data.*

Boiling point: (760 mm Hg): 765 degrees C.

Melting point: 321 degrees C.

Specific Gravity: (H_2O=@ 20 °C): 8.64.

Solubility: Insoluble in water; soluble in dilute nitric acid and in sulfuric acid.

Appearance: Soft, blue-white, malleable, lustrous metal or grayish-white powder.

B. *Fire, Explosion and Reactivity Data.*

1. *Fire.*

Fire and Explosion Hazards: The finely divided metal is pyrophoric, that is the dust is a severe fire hazard and moderate explosion hazard when exposed to heat or flame. Burning material reacts violently with extinguishing agents such as water, foam, carbon dioxide, and halons.

Flash point: Flammable (dust).

Extinguishing media: Dry sand, dry dolomite, dry graphite, or sodimum chloride.

2. *Reactivity.*

Conditions contributing to instability: Stable when kept in sealed containers under normal temperatures and pressure, but dust may ignite upon contact with air. Metal tarnishes in moist air.

Incompatibilities: Ammonium nitrate, fused: Reacts violently or explosively with cadmium dust below 20 °C. Hydrozoic acid: Violent explosion occurs after 30 minutes. Acids: Reacts violently, forms hydrogen gas. Oxidizing agents or metals: Strong reaction with cadmium dust. Nitryl fluoride at slightly elevated temperature: Glowing or white incandescence occurs. Selenium: Reacts exothermically. Ammonia: Corrosive reaction. Sulfur dioxide: Corrosive reaction. Fire extinguishing agents (water, foam, carbon dioxide, and halons): Reacts violently. Tellurium: Incandescent reaction in hydrogen atmosphere.

Hazardous decomposition products: The heated metal rapidly forms highly toxic, brownish fumes of oxides of cadmium.

C. *Spill, Leak and Disposal Procedures.*

1. *Steps to be taken if the materials is released or spilled.* Do not touch spilled material. Stop leak if you can do it without risk. Do not get water inside container. For large spills, dike spill for later disposal. Keep unnecessary people away. Isolate hazard area and deny entry. The Superfund Amendments and Reauthorization Act of 1986 Section 304 requires that a release equal to or greater than the reportable quantity for this substance (1 pound) must be immediately reported to the local emergency planning committee, the state emergency response commission, and the National Response Center (800) 424–8802; in Washington, DC metropolitan area (202) 426–2675.

II. Cadmium Oxide

A. *Physical and Chemical Date.*

1. *Substance identification.*

Chemical name: Cadmium Oxide.

Formula: CdO.

Molecular Weight: 128.4.
CAS No.: 1306–19–0.
Other Identifiers: RTECS EV1929500.
Synonyms: Kadmu tlenek (Polish).
2. *Physical data.*
Boiling point (760 mm Hg): 950 degrees C decomposes.
Melting point: 1500 °C.
Specific Gravity: (H_2O=1@20 °C): 7.0.
Solubility: Insoluble in water; soluble in acids and alkalines.
Appearance: Red or brown crystals.
B. *Fire, Explosion and Reactivity Data.*
1. *Fire.*
Fire and Explosion Hazards: Negligible fire hazard when exposed to heat or flame.
Flash point: Nonflammable.
Extinguishing media: Dry chemical, carbon dioxide, water spray or foam.
2. *Reactivity.*
Conditions contributing to instability: Stable under normal temperatures and pressures.
Incompatibilities: Magnesium may reduce CdO_2 explosively on heating.
Hazardous decomposition products: Toxic fumes of cadmium.
C. *Spill Leak and Disposal Procedures.*
1. *Steps to be taken if the material is released or spilled.* Do not touch spilled material. Stop leak if you can do it without risk. For small spills, take up with sand or other absorbent material and place into containers for later disposal. For small dry spills, use a clean shovel to place material into clean, dry container and then cover. Move containers from spill area. For larger spills, dike far ahead of spill for later disposal. Keep unnecessary people away. Isolate hazard area and deny entry. The Superfund Amendments and Reauthorization Act of 1986 Section 304 requires that a release equal to or greater than the reportable quantity for this substance (1 pound) must be immediately reported to the local emergency planning committee, the state emergency response commission, and the National Response Center (800) 424–8802; in Washington, DC metropolitan area (202) 426–2675.

III. Cadmium Sulfide.
A. *Physical and Chemical Data.*
1. *Substance Identification.*
Chemical name: Cadmium sulfide.
Formula: CdS.
Molecular weight: 144.5.
CAS No. 1306–23–6.
Other Identifiers: RTECS EV3150000.
Synonyms: Aurora yellow; Cadmium Golden 366; Cadmium Lemon Yellow 527; Cadmium Orange; Cadmium Primrose 819; Cadmium Sulphide; Cadmium Yellow; Cadmium Yellow 000; Cadmium Yellow Conc. Deep; Cadmium Yellow Conc. Golden; Cadmium Yellow Conc. Lemon; Cadmium Yellow Conc. Primrose; Cadmium Yellow Oz. Dark; Cadmium Yellow Primrose 47–1400; Cadmium Yellow 10G Conc.; Cadmium Yellow 892; Cadmopur Golden Yellow N; Cadmopur Yellow; Capsebon; C.I. 77199; C.I. Pigment Orange 20; CI Pigment Yellow 37; Ferro Lemon Yellow; Ferro Orange Yellow; Ferro Yellow; Greenockite; NCI–C02711.
2. *Physical data.*
Boiling point (760 mm. Hg): sublines in N_2 at 980 °C.
Melting point: 1750 degrees C (100 atm).
Specific Gravity: (H_2O=1@ 20 °C): 4.82.
Solubility: Slightly soluble in water; soluble in acid.
Appearance: Light yellow or yellow-orange crystals.
B. *Fire, Explosion and Reactivity Data.*
1. *Fire.*
Fire and Explosion Hazards: Neglible fire hazard when exposed to heat or flame.
Flash point: Nonflammable.
Extinguishing media: Dry chemical, carbon dioxide, water spray or foam.
2. *Reactivity.*
Conditions contributing to instability: Generally non-reactive under normal conditions. Reacts with acids to form toxic hydrogen sulfide gas.
Incompatibilities: Reacts vigorously with iodinemonochloride.
Hazardous decomposition products: Toxic fumes of cadmium and sulfur oxides.
C. *Spill Leak and Disposal Procedures.*
1. *Steps to be taken if the material is released or spilled.* Do not touch spilled material. Stop leak if you can do it without risk. For small, dry spills, with a clean shovel place material into clean, dry container and cover. Move containers from spill area. For larger spills, dike far ahead of spill for later disposal. Keep unnecessary people away. Isolate hazard and deny entry.

IV. Cadmium Chloride
A. *Physical and Chemical Data.*
1. *Substance Identification.*
Chemcail name: Cadmium chloride.
Formula: $CdC1_2$.
Molecular weight: 183.3.
CAS No. 10108–64–2.
Other Identifiers: RTECS EY0175000.
Synonyms: Caddy; Cadmium dichloride; NA 2570 (DOT); UI-CAD; dichlorocadmium.
2. *Physical data.*
Boiling point (760 mm Hg): 960 degrees C.
Melting point: 568 degrees C.
Specific Gravity: (H_2O=1 @ 20 °C): 4.05.
Solubility: Soluble in water (140 g/100 cc); soluble in acetone.
Appearance: Small, white crystals.
B. *Fire, Explosion and Reactivity Data.*
1. *Fire.*
Fire and Explosion Hazards: Negligible fire and negligible explosion hazard in dust form when exposed to heat or flame.
Flash point: Nonflamable.
Extinguishing media: Dry chemical, carbon dioxide, water spray or foam.
2. *Reactivity.*
Conditions contributing to instability: Generally stable under normal temperatures and pressures.
Incompatibilities: Bromine triflouride rapidly attacks cadmium chloride. A mixture of potassium and cadmium chloride may produce a strong explosion on impact.
Hazardous decomposition products: Thermal ecompostion may release toxic fumes of hydrogen chloride, chloride, chlorine or oxides of cadmium.
C. *Spill Leak and Disposal Procedures.*
1. *Steps to be taken if the materials is released or spilled.* Do not touch spilled material. Stop leak if you can do it without risk. For small, dry spills, with a clean shovel place material into clean, dry container and cover. Move containers from spill area. For larger spills, dike far ahead of spill for later disposal. Keep unnecessary people away. Isolate hazard and deny entry. The Superfund Amendments and Reauthorization Act of 1986 Section 304 requires that a release equal to or greater than the reportable quantity for this substance (100 pounds) must be immediately reported to the local emergency planning committee, the state emergency response commission, and the National Response Center (800) 424–8802; in Washington, DC Metropolitan area (202) 426–2675.

Appendix C to § _____—Qualitative and Quantitative Fit Testing Procedures

I. Fit Test Protocols

A. General: The employer shall include the following provisions in the fit test procedures. These provisions apply to both qualitative fit testing (QLFT) and quantitative fit testing (QNFT). All testing is to be conducted annually.

1. The test subject shall be allowed to pick the most comfortable respirator from a selection including respirators of various sizes from different manufacturers. The selection shall include at least three sizes of elastomeric facepieces of the type of respirator that is to be tested, i.e., three sizes of half mask; or three sizes of full facepiece. Respirators of each size must be provided from at least two manufacturers.

2. Prior to the selection process, the test subject shall be shown how to put on a respirator, how it should be positioned on the face, how to set strap tension and how to determine a comfortable fit. A mirror shall be available to assist the subject in evaluating the fit and positioning the respirator. This instruction may not constitute the subject's formal training on respirator use; it is only a review.

3. The test subject shall be informed that he/she is being asked to select the respirator which provides the most comfortable fit. Each respirator represents a different size and shape, and if fitted, maintained and used properly, will provide substantial protection.

4. The test subject shall be instructed to hold each facepiece up to the face and eliminate those which obviously do not give a comfortable fit.

5. The more comfortable facepieces are noted; the most comfortable mask is donned and worn at least five minutes to assess comfort. Assistance in assessing comfort can be given by discussing the points in item 6 below. If the test subject is not familiar with using a particular respirator, the test subject shall be directed to don the mask several times and to adjust the straps each time to become adept at setting proper tension on the straps.

6. Assessment of comfort shall include reviewing the following points with the test subject and allowing the test subject adequate time to determine the comfort of the respirator:

(a) Position of the mask on the nose;
(b) Room for eye protection;
(c) Room to talk; and
(d) Position of mask on face and cheeks.

7. The following criteria shall be used to help determine the adequacy of the respirator fit:

(a) Chin properly placed;

(b) Adequate strap tension, not overly tightened;

(c) Fit across nose bridge;

(d) Respirator of proper size to span distance from nose to chin;

(e) Tendency of respirator to slip; and

(f) Self-observation in mirror to evaluate fit and respirator position.

8. The test subject shall conduct the negative and positive pressure fit checks as described below or in ANSI Z88.2–1980. Before conducting the negative or positive pressure test, the subject shall be told to seat the mask on the face by moving the head from side-to-side and up and down slowly while taking in a few slow deep breaths. Another facepiece shall be selected and retested if the test subject fails the fit check tests.

(a). *Positive pressure test:* Close off the exhalation valve and exhale gently onto the facepiece. The face fit is considered satisfactory if a slight positive pressure can be built up inside the facepiece without any evidence of outward leakage of air at the seal. For most respirators this method of leak testing requires the wearer to first remove the exhalation valve cover before closing off the exhalation valve and then carefully replacing it after the test.

(b). *Negative pressure test.* Close off the inlet opening of the canister or cartridge(s) by covering with the palm of the hand(s) or by replacing the filter seal(s). Inhale gently so that the facepiece collapses slightly, and hold the breath for ten seconds. If the facepiece remains in its slightly collapsed condition and no inward leakage of air is detected, the tightness of the respirator is considered satisfactory.

9. The test shall not be conducted if there is any hair growth between the skin and the facepiece sealing surface, such as stubble beard growth, beard, or long sideburns which cross the respirator sealing surface. Any type of apparel which interferes with a satisfactory fit shall be altered or removed.

10. If a test subject exhibits difficulty in breathing during the tests, she or he shall be referred to a physician trained in respiratory disease or pulmonary medicine to determine, in accordance with paragraph (l)(2) and (3) of this standard, whether the test subject can wear a respirator while performing her or his duties.

11. The test subject shall be given the opportunity to wear the successfully fitted respirator for a period of two weeks. If at any time during this period the respirator becomes uncomfortable, the test subject shall be given the opportunity to select a different facepiece and to be retested.

12. The employer shall maintain a record of the fit test administered to an employee. The record shall contain at least the following information:

(a) Name of employee;

(b) Type of respirator;

(c) Brand, size of respirator;

(d) Date of test; and

(e) Where QNFT is used, the fit factor and strip chart recording or other recording of the results of the test. The record shall be maintained until the next fit test is administered.

13. Exercise regimen. Prior to the commencement of the fit test, the test subject shall be given a description of the fit test and the test subject's responsibilities during the test procedure. The description of the process shall include a description of the test exercises that the subject will be performing. The respirator to be tested shall be worn for at least 5 minutes before the start of the fit test.

14. Test Exercises. The test subject shall perform exercises, in the test environment, in the manner described below:

(a) Normal breathing. In a normal standing position, without talking, the subject shall breathe normally.

(b) Deep breathing. In a normal standing position, without talking, the subject shall breathe slowly and deeply, taking care so as to not hyperventilate.

(c) Turning head side to side. Standing in place, the subject shall slowly turn his/her head from side to side between the extreme positions on each side. The head shall be held at each extreme momentarily so the subject can inhale at each side.

(d) Moving head up and down. Standing in place, the subject shall slowly move his/her head up and down. The subject shall be instructed to inhale in the up position (i.e., when looking toward the ceiling).

(e) Talking. The subject shall talk out loud slowly and loud enough so as to be heard clearly by the test conductor. The subject can read from a prepared text such as the Rainbow Passage, count backward from 100, or recite a memorized poem or song.

(f) Grimace. The test subject shall grimace by smiling or frowning.

(g) Bending over. The test subject shall bend at the waist as if he/she were to touch his/her toes. Jogging in place shall be substituted for this exercise in those test environments such as shroud type QNFT units which prohibit bending at the waist.

(h) Normal breathing. Same as exercise 1. Each test exercise shall be performed for one minute except for the grimace exercise which shall be performed for 15 seconds. The test subject shall be questioned by the test conductor regarding the comfort of the respirator upon completion of the protocol. If it has become uncomfortable, another model of respirator shall be tried.

B. Qualitative Fit Test (QLFT) Protocols

1. General

(a) The employer shall assign specific individuals who shall assume full responsibility for implementing the respirator qualitative fit test program.

(b) The employer shall assure that persons administering QLFTs are able to prepare test solutions, calibrate equipment and perform tests properly, recognize invalid tests, and assure that test equipment is in proper working order.

(c) The employer shall assure that QLFT equipment is kept clean and well maintained so as to operate within the parameters for which it was designed.

2. Isoamyl Acetate Protocol

(a) Odor threshold screening. The odor threshold screening test, performed without wearing a respirator, is intended to determine if the individual tested can detect the odor of isoamyl acetate.

(1) Three 1-liter glass jars with metal lids are required.

(2) Odor free water (e.g. distilled or spring water) at approximately 25 degrees C shall be used for the solutions.

(3) The isoamyl acetate (IAA) (also known as isopentyl acetate) stock solution is prepared by adding 1 cc of pure IAA to 800 cc of odor free water in a 1 liter jar and shaking for 30 seconds. A new solution shall be prepared at least weekly.

(4) The screening test shall be conducted in a room separate from the room used for actual fit testing. The two rooms shall be well ventilated and shall not be connected to the same recirculating ventilation system.

(5) The odor test solution is prepared in a second jar by placing 0.4 cc of the stock solution into 500 cc of odor free water using a clean dropper or pipette. The solution shall be shaken for 30 seconds and allowed to stand for two to three minutes so that the IAA concentration above the liquid may reach equilibrium. This solution shall be used for only one day.

(6) A test blank shall be prepared in a third jar by adding 500 cc of odor free water.

(7) The odor test and test blank jars shall be labeled 1 and 2 for jar identification. Labels shall be placed on the lids so they can be periodically peeled, dried off and switched to maintain the integrity of the test.

(8) The following instruction shall be typed on a card and placed on the table in front of the two test jars (i.e., 1 and 2): "The purpose of this test is to determine if you can smell banana oil at a low concentration. The two bottles in front of you contain water. One of these bottles also contains a small amount of banana oil. Be sure the covers are on tight, then shake each bottle for two seconds. Unscrew the lid of each bottle, one at a time, and sniff at the mouth of the bottle. Indicate to the test conductor which bottle contains banana oil."

(9) The mixtures used in the IAA odor detection test shall be prepared in an area separate from where the test is performed, in order to prevent olfactory fatigue in the subject.

(10) If the test subject is unable to correctly identify the jar containing the odor test solution, the IAA qualitative fit test shall not be performed.

(11) If the test subject correctly identifies the jar containing the odor test solution, the test subject may proceed to respirator selection and fit testing.

(b) Isoamyl acetate fit test—

(1) The fit test chamber shall be similar to a clear 55-gallon drum liner suspended inverted over a 2-foot diameter frame so that the top of the chamber is about 6 inches above the test subject's head. The inside top center of the chamber shall have a small hook attached.

(2) Each respirator used for the fitting and fit testing shall be equipped with organic vapor cartridges or offer protection against

organic vapors. The cartridges or masks shall be changed at least weekly.

(3) After selecting, donning, and properly adjusting a respirator, the test subject shall wear it to the fit testing room. This room shall be separate from the room used for odor threshold screening and respirator selection, and shall be well ventilated, as by an exhaust fan or lab hood, to prevent general room contamination.

(4) A copy of the test exercises and any prepared text from which the subject is to read shall be taped to the inside of the test chamber.

(5) Upon entering the test chamber, the test subject shall be given a 6-inch by 5-inch piece of paper towel, or other porous, absorbent, single-ply material, folded in half and wetted with 0.75 cc of pure IAA. The test subject shall hang the wet towel on the hook at the top of the chamber.

(6) Allow two minutes for the IAA test concentration to stabilize before starting the fit test exercises. This would be an appropriate time to talk with the test subject; to explain the fit test, the importance of his/her cooperation, and the purpose for the head exercises; and to demonstrate some of the exercises.

(7) If at any time during the test, the subject detects the banana like odor of IAA, the respirator fit is inadequate. The subject shall quickly exit from the test chamber and leave the test area to avoid olfactory fatigue.

(8) If the respirator fit was inadequate, the subject shall return to the selection room and remove the respirator, repeat the odor sensitivity test, select and put on another respirator, return to the test chamber and again begin the procedure described in paragraph (I)(B)(2)(b) (1) through (7) of this appendix. The process continues until a respirator that fits well has been found. Should the odor sensitivity test be failed, the subject shall wait about 5 minutes before retesting. Odor sensitivity will usually have returned by this time.

(9) When a respirator is found that passes the test, its efficiency shall be demonstrated for the subject by having the subject break the face seal and take a breath before exiting the chamber.

(10) When the test subject leaves the chamber, the subject shall remove the saturated towel and return it to the person conducting the test. To keep the test area from becoming contaminated, the used towels shall be kept in a self sealing bag so there is no significant IAA concentration build-up in the test chamber during subsequent tests.

3. Irritant Fume Protocol

(a) The respirator to be tested shall be equipped with high-efficiency particulate air (HEPA) filters.

(b) The test subject shall be allowed to smell a weak concentration of the irritant smoke before the respirator is donned to become familiar with its characteristic odor.

(c) Break both ends of a ventilation smoke tube containing stannic oxychloride, such as the MSA part No. 5645, or equivalent. Attach one end of the smoke tube to a low flow air pump set to deliver 200 milliliters per minute.

(d) Advise the test subject that the smoke can be irritating to the eyes and instruct the subject to keep his/her eyes closed while the test is performed.

(e) The test conductor shall direct the stream of irritant smoke from the smoke tube towards the face seal area of the test subject. He/she shall begin at least 12 inches from the facepiece and gradually move to within one inch, moving around the whole perimeter of the mask.

(f) The exercises identified in section I. A. 14 above shall be performed by the test subject while the respirator seal is being challenged by the smoke.

(g) Each test subject passing the smoke test without evidence of a response shall be given a sensitivity check of the smoke from the same tube once the respirator has been removed to determine whether he/she reacts to the smoke. Failure to evoke a response shall void the fit test.

(h) The fit test shall be performed in a location with exhaust ventilation sufficient to prevent general contamination of the testing area by the test agent.

C. Quantitative Fit Test (QNFT) Protocol

1. General

(a) The employer shall assign specific individuals who shall assume full responsibility for implementing the respirator quantitative fit test program.

(b) The employer shall ensure that persons administering QNFT are able to calibrate equipment and perform tests properly, recognize invalid tests, calculate fit factors properly and assure that test equipment is in proper working order.

(c) The employer shall assure that QNFT equipment is kept clean and well maintained so as to operate at the parameters for which it was designed.

2. Definitions

(a) Quantitative fit test. The test is performed in a test chamber. The normal air-purifying element of the respirator is replaced by a high-efficiency particulate air (HEPA) filter in the case of particulate QNFT aerosols or a sorbent offering contaminant penetration protection equivalent to high-efficiency filters where the QNFT test agent is a gas or vapor.

(b) Challenge agent means the aerosol, gas or vapor introduced into a test chamber so that its concentration inside and outside the respirator may be measured.

(c) Test subject means the person wearing the respirator for quantitative fit testing.

(d) Normal standing position means standing erect and straight with arms down along the sides and looking straight ahead.

(e) Maximum peak penetration method means the method of determining test agent penetration in the respirator as determined by strip chart recordings of the test. The highest peak penetration for a given exercise is taken to be representative of average penetration into the respirator for that exercise.

(f) Average peak penetration method means the method of determining test agent penetration into the respirator utilizing a strip chart recorder, integrator, or computer. The agent penetration is determined by an average of the peak heights on the graph or by computer integration, for each exercise except the grimace exercise. Integrators or computers which calculate the actual test agent penetration into the respirator for each exercise will also be considered to meet the requirements of the average peak penetration method.

(g) "Fit Factor" means the ration of challenge agent concentration outside with respect to the inside of a respirator inlet covering (facepiece or enclosure).

3. Apparatus

(a) Instrumentation. Aerosol generation, dilution, and measurement systems using corn oil or sodium chloride as test aerosols shall be used for quantitative fit testing.

(b) Test chamber. The test chamber shall be large enough to permit all test subjects to perform freely all required exercises without disturbing the challenge agent concentration or the measurement apparatus. The test chamber shall be equipped and constructed so that the challenge agent is effectively isolated from the ambient air, yet uniform in concentration throughout the chamber.

(c) When testing air-purifying respirators, the normal filter or cartridge element shall be replaced with a high-efficiency particulate filter supplied by the same manufacturer.

(d) The sampling instrument shall be selected so that a strip chart record may be made of the test showing the rise and fall of the challenge agent concentration with each inspiration and expiration at fit factors of at least 2,000. Integrators or computers which integrate the amount of test agent penetration leakage into the respirator for each exercise may be used provided a record of the readings is made.

(e) The combination of substitute air-purifying elements, challenge agent and challenge agent concentration in the test chamber shall be such that the test subject is not exposed in excess of an established exposure limit for the challenge agent at any time during the testing process.

(f) The sampling port on the test specimen respirator shall be placed and constructed so that no leakage occurs around the port (e.g. where the respirator is probed), a free air flow is allowed into the sampling line at all times and so that there is no interference with the fit or performance of the respirator.

(g) The test chamber and test set up shall permit the person administering the test to observe the test subject inside the chamber during the test.

(h) The equipment generating the challenge atmosphere shall maintain the concentration of challenge agent inside the test chamber constant to within a 10-percent variation for the duration of the test.

(i) The time lag (interval between an event and the recording of the event on the strip chart or computer or integrator) shall be kept to a minimum. There shall be a clear association between the occurrence of an event inside the test chamber and its being recorded.

(j) The sampling line tubing for the test chamber atmosphere and for the respirator sampling port shall be of equal diameter and of the same material. The length of the two lines shall be equal.

(k) The exhaust flow from the test chamber shall pass through a high-efficiency filter before release.

(l) When sodium chloride aerosol is used, the relative humidity inside the test chamber shall not exceed 50 percent.

(m) The limitations of instrument detection shall be taken into account when determining the fit factor.

(n) Test respirators shall be maintained in proper working order and inspected for deficiencies such as cracks, missing valves and gaskets, etc.

4. Procedural Requirements

(a) When performing the initial positive or negative pressure test the sampling line shall be crimped closed in order to avoid air pressure leakage during either of these tests.

(b) An abbreviated screening isoamyl acetate test or irritant fume test may be utilized in order to quickly identify poor fitting respirators which passed the positive and/or negative pressure test and thus reduce the amount of QNFT time. When performing a screening isoamyl acetate test, combination high-efficiency organic vapor cartridges/canisters shall be used.

(c) A reasonably stable challenge agent concentration shall be measured in the test chamber prior to testing. For canopy or shower curtain type of test units the determination of the challenge agent stability may be established after the test subject has entered the test environment.

(d) Immediately after the subject enters the test chamber, the challenge agent concentration inside the respirator shall be measured to ensure that the peak penetration does not exceed 5 percent for a half mask or 1 percent for a full facepiece respirator.

(e) A stable challenge concentration shall be obtained prior to the actual start of testing.

(f) Respirator restraining straps shall not be overtightened for testing. The straps shall be adjusted by the wearer without assistance from other persons to give a reasonable comfortable fit typical of normal use.

(g) The test shall be terminated whenever any single peak penetration exceeds 5 percent for half masks and 1 percent for full facepiece respirators. The test subject shall be refitted and retested. If two of the three required tests are terminated, the fit shall be deemed inadequate.

(h) In order to successfully complete a QNFT, three successful fit tests are required. The results of each of the three independent fit tests must exceed the minimum fit factor needed for the class of respirator (e.g. half mask respirator, full facepiece respirator).

(i) Calculation of fit factors.

(1) The fit factor shall be determined for the quantitative fit test by taking the ratio of the average chamber concentration to the concentration inside the respirator.

(2) The average test chamber concentration is the arithmetic average of the test chamber concentration at the beginning and at the end of the test.

(3) The concentration of the challenge agent inside the respirator shall be determined by one of the following methods:

(i) Average peak concentration;

(ii) Maximum peak concentration;

(iii) Integration by calculation of the area under the individual peak for each exercise. This includes computerized integration.

(j) Interpretation of test results. The fit factor established by the quantitative fit testing shall be the lowest of the three fit factor values calculated from the three required fit tests.

(k) The test subject shall not be permitted to wear a half mask, or full facepiece respirator unless a minimum fit factor equivalent to at least 10 times the hazardous exposure level is obtained.

(l) Filters used for quantitative fit testing shall be replaced at least weekly, or whenever increased breathing resistance is encountered, or when the test agent has altered the integrity of the filter media. Organic vapor cartridges/canisters shall be replaced daily (when used) or sooner if there is any indication of breakthrough by a test agent.

Appendix D to § _____—Occupational Health History Interview With Reference to Cadmium Exposure

Directions

(To be read by employee and signed prior to the interview)

Please answer the questions you will be asked as completely and carefully as you can. These questions are asked of everyone who works with cadmium. You will also be asked to give blood and urine samples. The doctor will give your employer a written opinion on whether you are physically capable of working with cadmium. Legally, the doctor cannot share personal information you may tell him/her with your employer. The following information is considered strictly confidential. The results of the tests will go to you, your doctor and your employer. You will also receive an information sheet explaining the results of any biological monitoring or physical examinations performed.

If you are just being hired, the results of this interview and examination will be used to:

(1) Establish your health status and see if working with cadmium might be expected to cause unusual problems,

(2) Determine your health status today and see if there are changes over time,

(3) See if you can wear a respirator safely.

If you are not a new hire:

OSHA says that everyone who works with cadmium can have periodic medical examinations performed by a doctor. The reasons for this are:

(a) If there are changes in your health, either because of cadmium or some other reason, to find them early,

(b) to prevent kidney damage.

Please sign below.

I have read these directions and understand them:

_____

Employee signature

_____

Date

Thank you for answering these questions.

(Suggested Format)

Name _____

Age _____

Social Security # _____

Company _____

Job _____

Type of Preplacement Exam:

[ ] Periodic

[ ] Termination

[ ] Initial

[ ] Other

Blood Pressure _____

Pulse Rate _____

1. How long have you worked at the job listed above?

[ ] Not yet hired

[ ] Number of months

[ ] Number of years

2. Job Duties etc.

_____

_____

_____

3. Have you *ever* been told by a doctor that you had bronchitis?

[ ] Yes

[ ] No

If yes, how long ago?

[ ] Number of months

[ ] Number of years

4. Have you *ever* been told by a doctor that you had emphysema?

[ ] Yes

[ ] No

If yes, how long ago?

[ ] Number of years

[ ] Number of months

5. Have you ever been told by a doctor that you had other lung problems?

[ ] Yes

[ ] No

If yes, please describe type of lung problems and when you had these problems

_____

_____

_____

6. In the past year, have you had a cough?

[ ] Yes

[ ] No

If yes, did you cough up sputum?

[ ] Yes

[ ] No

If yes, how long did the cough with sputum production last?

[ ] Less than 3 months

[ ] 3 months or longer

If yes, for how many years have you had episodes of cough with sputum production lasting this long?

[ ] Less than one

[ ] 1

[ ] 2

[ ] Longer than 2

7. Have you ever smoked cigarettes?

[ ] Yes

[ ] No

8. Do you now smoke cigarettes?

[ ] Yes

[ ] No

9. If you smoke or have smoked cigarettes, for how many years have you smoked, or did you smoke?
[ ] Less than 1 year
[ ] Number of years
What is or was the greatest number of packs per day that you have smoked?
[ ] Number of packs
If you quit smoking cigarettes, how many years ago did you quit?
[ ] Less than 1 year
[ ] Number of years
How many packs a day do you now smoke?
[ ] Number of packs per day

10. Have you ever been told by a doctor that you had a kidney or urinary tract disease or disorder?
[ ] Yes
[ ] No

11. Have you ever had any of these disorders?

Kidney stones	[ ] Yes	[ ] No
Protein in urine	[ ] Yes	[ ] No
Blood in urine	[ ] Yes	[ ] No
Difficulty urinating	[ ] Yes	[ ] No
Other kidney/Urinary disorders.	[ ] Yes	[ ] No

Please describe problems, age, treatment, and follow up for any kidney or urinary problems you have had:

_____

_____

_____

12. Have you ever been told by a doctor or other health care provider who took your blood pressure that your blood pressure was high?
[ ] Yes
[ ] No

13. Have you ever been advised to take any blood pressure medication?
[ ] Yes
[ ] No

14. Are you presently taking any blood pressure medication?
[ ] Yes
[ ] No

15. Are you presently taking any other medication?
[ ] Yes
[ ] No

16. Please list any blood pressure or other medications and describe how long you have been taking each one:

Medicine:

_____

_____

_____

How Long Taken

_____

_____

_____

17. Have you ever been told by a doctor that you have diabetes? (sugar in your blood or urine)
[ ] Yes
[ ] No
If yes, do you presently see a doctor about your diabetes?
[ ] Yes
[ ] No
If yes, how do you control your blood sugar?
[ ] Diet alone
[ ] Diet plus oral medicine
[ ] Diet plus insulin (injection)

18. Have you ever been told by a doctor that you had:

Anemia	[ ] Yes	[ ] No
A low blood count?	[ ] Yes	[ ] No

19. Do you presently feel that you tire or run out of energy sooner than normal or sooner than other people your age?
[ ] Yes
[ ] No
If yes, for how long have you felt that you tire easily?
[ ] Less than 1 year
[ ] Number of years

20. Have you given blood within the last year?
[ ] Yes
[ ] No
If yes, how many times?
[ ] Number of times
How long ago was the last time you gave blood?
[ ] Less than 1 month
[ ] Number of months

21. Within the last year have you had any injuries with heavy bleeding?
[ ] Yes
[ ] No
If yes, how long ago?
[ ] Less than 1 month
[ ] Number of months
Describe: _____

_____

_____

_____

22. Have you recently had any surgery?
[ ] Yes
[ ] No
If yes, please describe: _____

_____

_____

_____

23. Have you seen any blood lately in your stool or after a bowel movement?
[ ] Yes
[ ] No

24. Have you ever had a test for blood in your stool?
[ ] Yes
[ ] No
If yes, did the test show any blood in the stool?
[ ] Yes
[ ] No
What further evaluation and treatment were done? _____

_____

_____

The following questions pertain to the ability to wear a respirator. Additional information for the physician can be found in The Respiratory Protective Devices Manual.

25. Have you ever been told by a doctor that you have asthma?
[ ] Yes
[ ] No
If yes, are you presently taking any medication for asthma? Mark all that apply.
[ ] Shots
[ ] Pills
[ ] Inhaler

26. Have you ever had a heart attack?
[ ] Yes
[ ] No
If yes, how long ago?
[ ] Number of years
[ ] Number of months

27. Have you ever had pains in your chest?
[ ] Yes
[ ] No
If yes, when did it usually happen?
[ ] While resting
[ ] While working
[ ] While exercising
[ ] Activity didn't matter

28. Have you ever had a thyroid problem?
[ ] Yes
[ ] No

29. Have you ever had a seizure or fits?
[ ] Yes
[ ] No

30. Have you ever had a stroke (cerebrovascular accident)?
[ ] Yes
[ ] No

31. Have you ever had a ruptured eardrum or a serious hearing problem?
[ ] Yes
[ ] No

32. Do you now have a claustrophobia, meaning fear of crowded or closed in spaces or any psychological problems that would make it hard for you to wear a respirator?
[ ] Yes
[ ] No

The following questions pertain to reproductive history.

33. Have you or your partner had a problem conceiving a child?
[ ] Yes
[ ] No
If yes, specify:
[ ] Self
[ ] Present mate
[ ] Previous mate

34. Have you or your partner consulted a physician for a fertility or other reproductive problem?
[ ] Yes
[ ] No
If yes, specify who consulted the physician:
[ ] Self
[ ] Spouse/partner
[ ] Self and partner
If yes, specify diagnosis made: _____

35. Have you or your partner ever conceived a child resulting in a miscarriage, still birth or deformed offspring?
[ ] Yes
[ ] No
If yes, specify:
[ ] Miscarriage
[ ] Still birth
[ ] Deformed offspring
If outcome was a deformed offspring, please specify type: _____

36. Was this outcome a result of a pregnancy of:
[ ] Yours with present partner
[ ] Yours with a previous partner
37. Did the timing of any abnormal pregnancy outcome coincide with present employment?
[ ] Yes
[ ] No
List dates of occurrences: _____

38. What is the occupation of your spouse or partner?

For Women Only

39. Do you have menstrual periods?
[ ] Yes
[ ] No
Have you had menstrual irregularities?
[ ] Yes
[ ] No
If yes, specify type: _____

If yes, what was the approximated date this problem began? _____

Approximate date problem stopped? _____

For Men Only

40. Have you ever been diagnosed by a physician as having prostate gland problem(s)?
[ ] Yes
[ ] No
If yes, please describe type of problem(s) and what was done to evaluate and treat the problem(s): _____

Appendix E to § _____—Cadmium in Workplace Atmospheres

Method Number: ID-189
Matrix: Air
OSHA Permissible Exposure Limits: 5 μg/m³ (TWA), 2.5 μg/m³ (Action Level TWA)
Collection Procedure: A known volume of air is drawn through a 37-mm diameter filter cassette containing a 0.8-μm mixed cellulose ester membrane filter (MCEF).
Recommended Air Volume: 960 L
Recommended Sampling Rate: 2.0 L/min
Analytical Procedure: Air filter samples are digested with nitric acid. After digestion, a small amount of hydrochloric acid is added. The samples are then diluted to volume with deionized water and analyzed by either flame atomic absorption spectroscopy (AAS) or flameless atomic absorption spectroscopy using a heated graphite furnace atomizer (AAS-HGA).
Detection Limits:
Qualitative: 0.2 μg/m³ for a 200 L sample by Flame AAS, 0.007 μg/m³ for a 60 L sample by AAS–HGA
Quantitative: 0.70 μg/m³ for a 200 L sample by Flame AAS, 0.025 μg/m³ for a 60 L sample by AAS–HGA
Precision and Accuracy: (Flame AAS Analysis and AAS–HGA Analysis):
Validation Level: 2.5 to 10 μg/m³ for a 400 L air vol, 1.25 to 5.0 μg/m³ for a 60 L air vol
CV_1 (pooled): 0.010, 0.043
Analytical Bias: +4.0%, −5.8%
Overall Analytical Error: ±6.0%, ±14.2%
Method Classification: Validated
Date: June, 1992

Inorganic Service Branch II, OSHA Salt Lake Technical Center, Salt Lake City, Utah

Commercial manufacturers and products mentioned in this method are for descriptive use only and do not constitute endorsements by USDOL-OSHA. Similar products from other sources can be substituted.

1. Introduction

1.1. Scope

This method describes the collection of airborne elemental cadmium and cadmium compounds on 0.8-μm mixed cellulose ester membrane filters and their subsequent analysis by either flame atomic absorption spectroscopy (AAS) or flameless atomic absorption spectroscopy using a heated graphite furnace atomizer (AAS-HGA). It is applicable for both TWA and Action Level TWA Permissible Exposure Level (PEL) measurements. The two atomic absorption analytical techniques included in the method do not differentiate between cadmium fume and cadmium dust samples. They also do not differentiate between elemental cadmium and its compounds.

1.2. Principle

Airborne elemental cadmium and cadmium compounds are collected on a 0.8-μm mixed cellulose ester membrane filter (MCEF). The air filter samples are digested with concentrated nitric acid to destroy the organic matrix and dissolve the cadmium analytes. After digestion, a small amount of concentrated hydrochloric acid is added to help dissolve other metals which may be present. The samples are diluted to volume with deionized water and then aspirated into the oxidizing air/acetylene flame of an atomic absorption spectrophotometer for analysis of elemental cadmium.

If the concentration of cadmium in a sample solution is too low for quantitation by this flame AAS analytical technique, and the sample is to be averaged with other samples for TWA calculations, aliquots of the sample and a matrix modifier are later injected onto a L'vov platform in a pyrolytically-coated graphite tube of a Zeeman atomic absorption spectrophotometer/graphite furnace assembly for analysis of elemental cadmium. The matrix modifier is added to stabilize the cadmium metal and minimize sodium chloride as an interference during the high temperature charring step of the analysis (5.1., 5.2.).

1.3. History

Previously, two OSHA sampling and analytical methods for cadmium were used concurrently (5.3., 5.4.). Both of these methods also required 0.8-μm mixed cellulose ester membrane filters for the collection of air samples. These cadmium air filter samples were analyzed by either flame atomic absorption spectroscopy (5.3.) or inductively coupled plasma/atomic emission spectroscopy (ICP-AES) (5.4.). Neither of these two analytical methods have adequate sensitivity for measuring workplace exposure to airborne cadmium at the new lower TWA and Action Level TWA PEL levels when consecutive samples are taken on one employee and the sample results need to be averaged with other samples to determine a single TWA.

The inclusion of two atomic absorption analytical techniques in the new sampling and analysis method for airborne cadmium permits quantitation of sample results over a broad range of exposure levels and sampling periods. The flame AAS analytical technique included in this method is similar to the previous procedure given in the General Metals Method ID–121 (5.3.) with some modifications. The sensitivity of the AAS-HGA analytical technique included in this method is adequate to measure exposure levels at 1/10 the Action Level TWA, or lower, when less than full-shift samples need to be averaged together.

1.4. Properties (5.5.)

Elemental cadmium is a silver-white, blue-tinged, lustrous metal which is easily cut with a knife. It is slowly oxidized by moist air to form cadmium oxide. It is insoluble in water, but reacts readily with dilute nitric acid. Some of the physical properties and other descriptive information of elemental cadmium are given below:

CAS No.	7440–43–9
Atomic Number	48
Atomic Symbol	Cd
Atomic Weight	112.41
Melting Point	321 °C
Boiling Point	765 °C
Density	8.65 g/mL (25 °C)

The properties of specific cadmium compounds are described in reference 5.5.

1.5. Method Performance

A synopsis of method performance is presented below. Further information can be found in Section 4.

1.5.1. The qualitative and quantitative detection limits for the flame AAS analytical technique are 0.04 μg (0.004 μg/mL) and 0.14 μg (0.014 μg/mL) cadmium, respectively, for a 10 mL solution volume. These correspond, respectively, to 0.2 μg/m³ and 0.70 μg/m³ for a 200 L air volume.

1.5.2. The qualitative and quantitative detection limits for the AAS-HGA analytical technique are 0.44 ng (0.044 ng/mL) and 1.5 ng (0.15 ng/mL) cadmium, respectively, for a 10 mL solution volume. These correspond, respectively, to 0.007 μg/m³ and 0.025 μg/m³ for a 60 L air volume.

1.5.3. The average recovery by the flame AAS analytical technique of 17 spiked MCEF samples containing cadmium in the range of 0.5 to 2.0 times the TWA target concentration of 5 μg/m³ (assuming a 400 L air volume) was 104.0% with a pooled coefficient of variation (CV_1) of 0.010. The flame analytical technique exhibited a positive bias of +4.0% for the validated concentration range. The overall analytical error (OAE) for the flame AAS analytical technique was ±6.0%.

1.5.4. The average recovery by the AAS-HGA analytical technique of 18 spiked MCEF samples containing cadmium in the range of 0.5 to 2.0 times the Action Level TWA target concentration of 2.5 μg/m³ (assuming a 60 L air volume) was 94.2% with a pooled coefficient of variation (CV_1) of 0.043. The AAS-HGA analytical technique exhibited a negative bias of −5.8% for the validated concentration range. The overall analytical error (OAE) for the AAS-HGA analytical technique was ±14.2%.

1.5.5. Sensitivity in flame atomic absorption is defined as the characteristic concentration of an element required to produce a signal of 1% absorbance (0.0044 absorbance units). Sensitivity values are listed for each element by the atomic absorption spectrophotometer manufacturer and have proved to be a very valuable diagnostic tool to determine if instrumental parameters are optimized and if the instrument is performing up to specification. The sensitivity of the spectrophotometer used in the validation of the flame AAS analytical technique agreed with the manufacturer specifications (5.6.); the 2 μg/mL cadmium standard gave an absorbance reading of 0.350 abs. units.

1.5.6. Sensitivity in graphite furnace atomic absorption is defined in terms of the characteristic mass, the number of picograms required to give an integrated absorbance value of 0.0044 absorbance-second (5.7.). Data suggests that under Stabilized Temperature Platform Furnace (STPF) conditions (see Section 1.6.2.), characteristic mass values are transferable between properly functioning instruments to an accuracy of about 20% (5.2.). The characteristic mass for STPF analysis of cadmium with Zeeman background correction listed by the manufacturer of the instrument used in the validation of the AAS-HGA analytical technique was 0.35 pg. The experimental characteristic mass value observed during the determination of the working range and detection limits of the AAS-HGA analytical technique was 0.41 pg.

1.6. Interferences

1.6.1. High concentrations of silicate interfere in determining cadmium by flame AAS (5.6.). However, silicates are not significantly soluble in the acid matrix used to prepare the samples.

1.6.2. Interferences, such as background absorption, are reduced to a minimum in the AAS-HGA analytical technique by taking full advantage of the Stabilized Temperature Platform Furnace (STPF) concept. STPF includes all of the following parameters (5.2.):

a. Integrated Absorbance,
b. Fast Instrument Electronics and Sampling Frequency,
c. Background Correction,
d. Maximum Power Heating,
e. Atomization off the L'vov platform in a pyrolytically coated graphite tube,
f. Gas Stop during Atomization,
g. Use of Matrix Modifiers.

1.7. Toxicology (5.14.)

Information listed within this section is synopsis of current knowledge of the physiological effects of cadmium and is not intended to be used as the basis for OSHA policy. IARC classifies cadmium and certain of its compounds as Group 2A carcinogens (probably carcinogenic to humans). Cadmium fume is intensely irritating to the respiratory tract. Workplace exposure to cadmium can cause both chronic and acute effects. Acute effects include tracheobronchitis, pneumonitis, and pulmonary edema. Chronic effects include anemia, rhinitis/anosmia, pulmonary emphysema, proteinuria and lung cancer. The primary target organs for chronic disease are the kidneys (non-carcinogenic) and the lungs (carcinogenic).

2. Sampling

2.1. Apparatus

2.1.1. Filter cassette unit for air sampling: A 37-mm diameter mixed cellulose ester membrane filter with a pore size of 0.8-μm contained in a 37-mm polystyrene two- or three-piece cassette filter holder (part no. MAWP 037 A0, Millipore Corp., Bedford, MA). The filter is supported with a cellulose backup pad. The cassette is sealed prior to use with a shrinkable gel band.

2.1.2. A calibrated personal sampling pump whose flow is determined to an accuracy of ±5% at the recommended flow rate with the filter cassette unit in line.

2.2. Procedure

2.2.1. Attach the prepared cassette to the calibrated sampling pump (the backup pad should face the pump) using flexible tubing. Place the sampling device on the employee such that air is sampled from the breathing zone.

2.2.2. Collect air samples at a flow rate of 2.0 L/min. If the filter does not become overloaded, a full-shift (at least seven hours) sample is strongly recommended for TWA and Action Level TWA measurements with a maximum air volume of 960 L. If overloading occurs, collect consecutive air samples for shorter sampling periods to cover the full workshift.

2.2.3. Replace the end plugs into the filter cassettes immediately after sampling. Record the sampling conditions.

2.2.4. Securely wrap each sample filter cassette end-to-end with an OSHA Form 21 sample seal.

2.2.5. Submit at least one blank sample with each set of air samples. The blank sample should be handled the same as the other samples except that no air is drawn through it.

2.2.6. Ship the samples to the laboratory for analysis as soon as possible in a suitable container designed to prevent damage in transit.

3. Analysis

3.1. Safety Precautions

3.1.1. Wear safety glasses, protective clothing and gloves at all times.

3.1.2. Handle acid solutions with care. Handle all cadmium samples and solutions with extra care (see Sect. 1.7.). Avoid their direct contact with work area surfaces, eyes, skin and clothes. Flush acid solutions which contact the skin or eyes with copious amounts of water.

3.1.3. Perform all acid digestions and acid dilutions in an exhaust hood while wearing a face shield. To avoid exposure to acid vapors, do not remove beakers containing concentrated acid solutions from the exhaust hood until they have returned to room temperature and have been diluted or emptied.

3.1.4. Exercise care when using laboratory glassware. Do not use chipped pipets, volumetric flasks, beakers or any glassware with sharp edges exposed in order to avoid the possibility of cuts or abrasions.

3.1.5. Never pipet by mouth.

3.1.6. Refer to the instrument instruction manuals and SOPs (5.8., 5.9.) for proper and safe operation of the atomic absorption spectrophotometer, graphite furnace atomizer and associated equipment.

3.1.7. Because metallic elements and other toxic substances are vaporized during AAS flame or graphite furnace atomizer operation, it is imperative that an exhaust vent be used. Always ensure that the exhaust system is operating properly during instrument use.

3.2. Apparatus for Sample and Standard Preparation

3.2.1. Hot plate, capable of reaching 150 °C, installed in an exhaust hood.

3.2.2. Phillips beakers, 125 mL.

3.2.3. Bottles, narrow-mouth, polyethylene or glass with leakproof caps: used for storage of standards and matrix modifier.

3.2.4. Volumetric flasks, volumetric pipets, beakers and other associated general laboratory glassware.

3.2.5. Forceps and other associated general laboratory equipment.

3.3. Apparatus for Flame AAS Analysis

3.3.1. Atomic absorption spectrophotometer consisting of a(an):

Nebulizer and burner head
Pressure regulating devices capable of maintaining constant oxidant and fuel pressures
Optical system capable of isolating the desired wavelength of radiation (228.8 nm)
Adjustable slit
Light measuring and amplifying device
Display, strip chart, or computer interface for indicating the amount of absorbed radiation

Cadmium hollow cathode lamp or electrodeless discharge lamp (EDL) and power supply

3.3.2. Oxidant: compressed air, filtered to remove water, oil and other foreign substances.

3.3.3. Fuel: standard commercially available tanks of acetylene dissolved in acetone; tanks should be equipped with flash arresters.

Caution: Do not use grades of acetylene containing solvents other than acetone because they may damage the PVC tubing used in some instruments.

3.3.4. Pressure-reducing valves: two gauge, two-stage pressure regulators to maintain fuel and oxidant pressures somewhat higher than the controlled operating pressures of the instrument.

3.3.5. Exhaust vent installed directly above the spectrophotometer burner head.

3.4. Apparatus for AAS–HGA Analysis

3.4.1. Atomic absorption spectrophotometer consisting of a(an):

Heated graphite furnace atomizer (HGA) with argon purge system
Pressure-regulating devices capable of maintaining constant argon purge pressure
Optical system capable of isolating the desired wavelength of radiation (228.8 nm)
Adjustable slit
Light measuring and amplifying device
Display, strip chart, or computer interface for indicating the amount of absorbed radiation (as integrated absorbance, peak area)
Background corrector: Zeeman or deuterium arc. The Zeeman background corrector is recommended
Cadmium hollow cathode lamp or electrodeless discharge lamp (EDL) and power supply
Autosampler capable of accurately injecting 5 to 20 µL sample aliquots onto the L'vov Platform in a graphite tube

3.4.2. Pyrolytically coated graphite tubes containing solid, pyrolytic L'vov platforms.

3.4.3. Polyethylene sample cups, 2.0 to 2.5 mL, for use with the autosampler.

3.4.4. Inert purge gas for graphite furnace atomizer: compressed gas cylinder of purified argon.

3.4.5. Two gauge, two-stage pressure regulator for the argon gas cylinder.

3.4.6. Cooling water supply for graphite furnace atomizer.

3.4.7. Exhaust vent installed directly above the graphite furnace atomizer.

3.5. Reagents

All reagents should be ACS analytical reagent grade or better.

3.5.1. Deionized water with a specific conductance of less than 10 µS

3.5.2. Concentrated nitric acid, HNO_3.

3.5.3. Concentrated hydrochloric acid, HCl.

3.5.4. Ammonium phosphate, monobasic, $NH_4H_2PO_4$.

3.5.5. Magnesium nitrate, $Mg(NO_3)_2$.

3.5.6. Diluting solution (4% HNO_3, 0.4% HCl): Add 40 mL HNO_3 and 4 mL HCl carefully to approximately 500 mL deionized water and dilute to 1 L with deionized water.

3.5.7. Cadmium standard stock solution, 1,000 µg/mL: Use a commercially available certified 1,000 µg/mL cadmium standard or, alternatively, dissolve 1.0000 g of cadmium metal in a minimum volume of 1:1 HCl and dilute to 1 L with 4% HNO_3. Observe expiration dates of commercial standards. Properly dispose of commercial standards with no expiration dates or prepared standards one year after their receipt or preparation date.

3.5.8. Matrix modifier for AAS–HGA analysis: Dissolve 1.0 g $NH_4H_2PO_4$ and 0.15 g $Mg(NO_3)_2$ in approximately 200 mL deionized water. Add 1 mL HNO_3 and dilute to 500 mL with deionized water.

3.5.9 Nitric Acid, 1:1 HNO_3/DI H_2O mixture: Carefully add a measured volume of concentrated HNO_3 to an equal volume of DI H_2O.

3.5.10. Nitric acid, 10% v/v: Carefully add 100 mL of concentrated HNO_3 to 500 mL of DI H_2O and dilute to 1 L.

3.6. Glassware Preparation

3.6.1. Clean Phillips beakers by refluxing with 1:1 nitric acid on a hot plate in a fume hood. Thoroughly rinse with deionized water and invert the beakers to allow them to drain dry.

3.6.2. Rinse volumetric flasks and all other glassware with 10% nitric acid and deionized water prior to use.

3.7. Standard Preparation for Flame AAS Analysis

3.7.1. Dilute stock solutions: Prepare 1, 5, 10 and 100 µg/mL cadmium standard stock solutions by making appropriate serial dilutions of 1,000 µg/mL cadmium standard stock solution with the diluting solution described in Section 3.5.6.

3.7.2. Working standards: Prepare cadmium working standards in the range of 0.02 to 2.0 µg/mL by making appropriate serial dilutions of the dilute stock solutions with the same diluting solution. A suggested method of preparation of the working standards is given below.

Working standard (µg/mL)	Std solution (µg/mL)	Aliquot (mL)	Final vol. (mL)
0.02	1	10	500
0.05	5	5	500
0.1	10	5	500
0.2	10	10	500
0.5	10	25	500
1	100	5	500
2	100	10	500

Store the working standards in 500-mL, narrow-mouth polyethylene or glass bottles with leak proof caps. Prepare every twelve months.

3.8. Standard Preparation for AAS–HGA Analysis

3.8.1. Dilute stock solutions: Prepare 10, 100 and 1,000 ng/mL cadmium standard stock solutions by making appropriate ten-fold serial dilutions of the 1,000 µg/mL cadmium standard stock solution with the diluting solution described in Section 3.5.6.

3.8.2. Working standards: Prepare cadmium working standards in the range of 0.2 to 20 ng/mL by making appropriate serial dilutions of the dilute stock solutions with the same diluting solution. A suggested method of preparation of the working standards is given below.

Working standard (ng/mL)	Std solution (ng/mL)	Aliquot (mL)	Final vol. (mL)
0.2	10	2	100
0.5	10	5	100
1	10	10	100
2	100	2	100
5	100	2	100
10	100	10	100
20	1,000	2	100

Store the working standards in narrow-mouth polyethylene or glass bottles with leakproof caps. Prepare monthly.

3.9. Sample Preparation

3.9.1. Carefully transfer each sample filter with forceps from its filter cassette unit to a clean, separate 125-mL Phillips beaker along with any loose dust found in the cassette. Label each Phillips beaker with the appropriate sample number.

3.9.2. Digest the sample by adding 5 mL of concentrated nitric acid (HNO_3) to each Phillips beaker containing an air filter sample. Place the Phillips beakers on a hot plate in an exhaust hood and heat the samples until approximately 0.5 mL remains. The sample solution in each Phillips beaker should become clear. If it is not clear, digest the sample with another portion of concentrated nitric acid.

3.9.3. After completing the HNO_3 digestion and cooling the samples, add 40 µL (2 drops) of concentrated HCl to each air sample solution and then swirl the contents. Carefully add about 5 mL of deionized water by pouring it down the inside of each beaker.

3.9.4. Quantitatively transfer each cooled air sample solution from each Phillips beaker to a clean 10-mL volumetric flask. Dilute each flask to volume with deionized water and mix well.

3.10. Flame AAS Analysis

Analyze all of the air samples for their cadmium content by flame atomic absorption spectroscopy (AAS) according to the instructions given below.

3.10.1. Set up the atomic absorption spectrophotometer for the air/acetylene flame analysis of cadmium according to the SOP (5.8.) or the manufacturer's operational instructions. For the source lamp, use the cadmium hollow cathode or electrodeless discharge lamp operated at the manufacturer's recommended rating for continuous operation. Allow the lamp to warm up 10 to 20 min or until the energy output stabilizes. Optimize conditions such as lamp position, burner head alignment, fuel and oxidant flow rates, etc. See the SOP or specific instrument manuals for details. Instrumental parameters for the Perkin-Elmer Model 603 used in the validation of this method are given in Appendix A.

3.10.2. Aspirate and measure the absorbance of a standard solution of cadmium. The standard concentration should be within the linear range. For the

instrumentation used in the validation of this method a 2 μg/mL cadmium standard gives a net absorbance reading of about 0.350 abs. units (see Section 1.5.5.) when the instrument and the source lamp are performing to manufacturer specifications.

3.10.3. To increase instrument response, scale expand the absorbance reading of the aspirated 2 μg/mL working standard approximately four times. Increase the integration time to at least 3 seconds to reduce signal noise.

3.10.4. Autozero the instrument while aspirating a deionized water blank. Monitor the variation in the baseline absorbance reading (baseline noise) for a few minutes to insure that the instrument, source lamp and associated equipment are in good operating condition.

3.10.5. Aspirate the working standards and samples directly into the flame and record their absorbance readings. Aspirate the deionized water blank immediately after every standard or sample to correct for and monitor any baseline drift and noise. Record the baseline absorbance reading of each deionized water blank. Label each standard and sample reading and its accompanying baseline reading.

3.10.6. It is recommended that the entire series of working standards be analyzed at the beginning and end of the analysis of a set of samples to establish a concentration-response curve, ensure that the standard readings agree with each other and are reproducible. Also, analyze a working standard after every five or six samples to monitor the performance of the spectrophotometer. Standard readings should agree within ±10 to 15% of the readings obtained at the beginning of the analysis.

3.10.7. Bracket the sample readings with standards during the analysis. If the absorbance reading of a sample is above the absorbance reading of the highest working standard, dilute the sample with diluting solution and reanalyze. Use the appropriate dilution factor in the calculations.

3.10.8. Repeat the analysis of approximately 10% of the samples for a check of precision.

3.10.9. If possible, analyze quality control samples from an independent source as a check on analytical recovery and precision.

3.10.10. Record the final instrument settings at the end of the analysis. Date and label the output.

3.11. AAS–HGA Analysis

Initially analyze all of the air samples for their cadmium content by flame atomic absorption spectroscopy (AAS) according to the instructions given in Section 3.10. If the concentration of cadmium in a sample solution is less than three times the quantitative detection limit [0.04 μg/mL (40 ng/mL) for the instrumentation used in the validation] and the sample results are to be averaged with other samples for TWA calculations, proceed with the AAS–HGA analysis of the sample as described below.

3.11.1. Set up the atomic absorption spectrophotometer and HGA for flameless atomic absorption analysis of cadmium according to the SOP (5.9.) or the manufacturer's operational instructions and allow the instrument to stabilize. The graphite furnace atomizer is equipped with a pyrolytically coated graphite tube containing a pyrolytic platform. For the source lamp, use a cadmium hollow cathode or electrodeless discharge lamp operated at the manufacturer's recommended setting for graphite furnace operation. The Zeeman background corrector and EDL are recommended for use with the L'vov platform. Instrumental parameters for the Perkin-Elmer Model 5100 spectrophotometer and Zeeman HGA–600 graphite furnace used in the validation of this method are given in Appendix B.

3.11.2. Optimize the energy reading of the spectrophotometer at 228.8 nm by adjusting the lamp position and the wavelength according to the manufacturer's instructions.

3.11.3. Set up the autosampler to inject a 5-μL aliquot of the working standard, sample or reagent blank solution onto the L'vov platform along with a 10-μL overlay of the matrix modifier.

3.11.4. Analyze the reagent blank (diluting solution, Section 3.5.6.) and then autozero the instrument before starting the analysis of a set of samples. It is recommended that the reagent blank be analyzed several times during the analysis to assure the integrated absorbance (peak area) reading remains at or near zero.

3.11.5. Analyze a working standard approximately midway in the linear portion of the working standard range two or three times to check for reproducibility and sensitivity (see sections 1.5.5. and 1.5.6.) before starting the analysis of samples. Calculate the experimental characteristic mass value from the average integrated absorbance reading and injection volume of the analyzed working standard. Compare this value to the manufacturer's suggested value as a check of proper instrument operation.

3.11.6. Analyze the reagent blank, working standard, and sample solutions. Record and label the peak area (abs-sec) readings and the peak and background peak profiles on the printer/plotter.

3.11.7. It is recommended the entire series of working standards be analyzed at the beginning and end of the analysis of a set of samples. Establish a concentration-response curve and ensure standard readings agree with each other and are reproducible. Also, analyze a working standard after every five or six samples to monitor the performance of the system. Standard readings should agree within ±15% of the readings obtained at the beginning of the analysis.

3.11.8. Bracket the sample readings with standards during the analysis. If the peak area reading of a sample is above the peak area reading of the highest working standard, dilute the sample with the diluting solution and reanalyze. Use the appropriate dilution factor in the calculations.

3.11.9. Repeat the analysis of approximately 10% of the samples for a check of precision.

3.11.10. If possible, analyze quality control samples from an independent source as a check of analytical recovery and precision.

3.11.11. Record the final instrument settings at the end of the analysis. Date and label the output.

3.12. Calculations

Note: Standards used for HGA analysis are in ng/mL. Total amounts of cadmium from calculations will be in ng (not μg) unless a prior conversion is made.

3.12.1. Correct for baseline drift and noise in flame AAS analysis by subtracting each baseline absorbance reading from its corresponding working standard or sample absorbance reading to obtain the net absorbance reading for each standard and sample.

3.12.2. Use a least squares regression program to plot a concentration-response curve of net absorbance reading (or peak area for HGA analysis) versus concentration (μg/mL or ng/mL) of cadmium in each working standard.

3.12.3. Determine the concentration (μg/mL or ng/mL) of cadmium in each sample from the resulting concentration-response curve. If the concentration of cadmium in a sample solution is less than three times the quantitative detection limit [0.04 μg/mL (40 ng/mL) for the instrumentation used in the validation of the method] and if consecutive samples were taken on one employee and the sample results are to be averaged with other samples to determine a single TWA, reanalyze the sample by AAS–HGA as described in Section 3.11. and report the AAS–HGA analytical results.

3.12.4. Calculate the total amount (μg or ng) of cadmium in each sample from the sample solution volume (mL):

W = (C)(sample vol, mL)(DF)

Where:

W = Total cadmium in sample
C = Calculated concentration of cadmium
DF = Dilution Factor (if applicable)

3.12.5. Make a blank correction for each air sample by subtracting the total amount of cadmium in the corresponding blank sample from the total amount of cadmium in the sample.

3.12.6. Calculate the concentration of cadmium in an air sample (mg/m³ or μg/m³) by using one of the following equations:

$mg/m^3 = W_{bc}/(\text{Air vol sampled, L})$

or

$\mu g/m^3 = (W_{bc})(1{,}000\ ng/\mu g)/(\text{Air vol sampled, L})$

Where:

W_{bc} = blank corrected total μg cadmium in the sample. (1μg = 1,000 ng)

4. Backup Data

4.1. Introduction

4.1.1. The purpose of this evaluation is to determine the analytical method recovery, working standard range, and qualitative and quantitative detection limits of the two atomic absorption analytical techniques included in this method. The evaluation consisted of the following experiments:

1. An analysis of 24 samples (six samples each at 0.1, 0.5, 1 and 2 times the TWA–PEL) for the analytical method recovery study of the flame AAS analytical technique.

2. An analysis of 18 samples (six samples each at 0.5, 1 and 2 times the Action Level TWA–PEL) for the analytical method

recovery study of the AAS–HGA analytical technique.

3. Multiple analyses of the reagent blank and a series of standard solutions to determine the working standard range and the qualitative and quantitative detection limits for both atomic absorption analytical techniques.

4.1.2. The analytical method recovery results at all test levels were calculated from concentration-response curves and statistically examined for outliers at the 99% confidence level. Possible outliers were determined using the Treatment of Outliers test (5.10.). In addition, the sample results of the two analytical techniques, at 0.5, 1.0 and 2.0 times their target concentrations, were tested for homogeneity of variances also at the 99% confidence level. Homogeneity of the coefficients of variation was determined using the Bartlett's test (5.11.). The overall analytical error (OAE) at the 95% confidence level was calculated using the equation (5.12.):

$$OAE = \pm[|Bias| + (1.96)(CV_1(pooled))(100\%)]$$

4.1.3. A derivation of the International Union of Pure and Applied Chemistry (IUPAC) detection limit equation (5.13.) was used to determine the qualitative and quantitative detection limits for both atomic absorption analytical techniques:

$$C_{td} = k(sd)/m \qquad \text{(Equation 1)}$$

Where:

C_{td} = the smallest reliable detectable concentration an analytical instrument can determine at a given confidence level.

k = 3 for the Qualitative Detection Limit at the 99.86% Confidence Level

= 10 for the Quantitative Detection Limit at the 99.99% Confidence Level.

sd = standard deviation of the reagent blank (Rbl) readings.

m = analytical sensitivity or slope as calculated by linear regression.

4.1.4. Collection efficiencies of metallic fume and dust atmospheres on 0.8-μm mixed cellulose ester membrane filters are well documented and have been shown to be excellent (5.11.). Since elemental cadmium and the cadmium component of cadmium compounds are nonvolatile, stability studies of cadmium spiked MCEF samples were not performed.

4.2. Equipment

4.2.1. A Perkin-Elmer (PE) Model 603 spectrophotometer equipped with a manual gas control system, a stainless steel nebulizer, a burner mixing chamber, a flow spoiler and a 10 cm. (one-slot) burner head was used in the experimental validation of the flame AAS analytical technique. A PE cadmium hollow cathode lamp, operated at the manufacturer's recommended current setting for continuous operation (4 mA), was used as the source lamp. Instrument parameters are listed in Appendix A.

4.2.2. A PE Model 5100 spectrophotometer, Zeeman HGA–600 graphite furnace atomizer and AS–60 HGA autosampler were used in the experimental validation of the AAS–HGA analytical technique. The spectrophotometer was equipped with a PE Series 7700 professional computer and Model PR–310 printer. A PE System 2 cadmium electrodeless discharge lamp, operated at the manufacturer's recommended current setting for modulated operation (170 mA), was used as the source lamp. Instrument parameters are listed in Appendix B.

4.3. Reagents

4.3.1. J.T. Baker Chem. Co. (Analyzed grade) concentrated nitric acid, 69.0–71.0%, and concentrated hydrochloric acid, 36.5–38.0%, were used to prepare the samples and standards.

4.3.2. Ammonium phosphate, monobasic, $NH_4H_2PO_4$ and magnesium nitrate, $Mg(NO_3)_2$, both manufactured by the Mallinckrodt Chem. Co., were used to prepare the matrix modifier for AAS–HGA analysis.

4.4. Standard Preparation for Flame AAS Analysis

4.4.1. Dilute stock solutions: Prepared 0.01, 0.1, 1, 10 and 100 μg/mL cadmium standard stock solutions by making appropriate serial dilutions of a commercially available 1,000 μg/mL cadmium standard stock solution (RICCA Chemical Co., Lot# A102) with the diluting solution (4% HNO_3, 0.4% HCl).

4.4.2. Analyzed Standards: Prepared cadmium standards in the range of 0.001 to 2.0 μg/mL by pipetting 2 to 10 mL of the appropriate dilute cadmium stock solution into a 100-mL volumetric flask and diluting to volume with the diluting solution. (See Section 3.7.2.)

4.5. Standard Preparation for AAS–HGA Analysis

4.5.1. Dilute stock solutions: Prepared 1, 10, 100 and 1,000 ng/mL cadmium standard stock solutions by making appropriate serial dilutions of a commercially available 1,000 μg/mL cadmium standard stock solution (J.T. Baker Chemical Co., Instra-analyzed, Lot# D22642) with the diluting solution (4% HNO_3, 0.4% HCl).

4.5.2. Analyzed Standards: Prepared cadmium standards in the range of 0.1 to 40 ng/mL by pipetting 2 to 10 mL of the appropriate dilute cadmium stock solution into a 100-mL volumetric flask and diluting to volume with the diluting solution. (See Section 3.8.2.)

4.6. Detection Limits and Standard Working Range for Flame AAS Analysis

4.6.1. Analyzed the reagent blank solution and the entire series of cadmium standards in the range of 0.001 to 2.0 μg/mL three to six times according to the instructions given in Section 3.10. The diluting solution (4% HNO_3, 0.4% HCl) was used as the reagent blank. The integration time on the PE 603 spectrophotometer was set to 3.0 seconds and a four-fold expansion of the absorbance reading of the 2.0 μg/mL cadmium standard was made prior to analysis. The 2.0 μg/mL standard gave a net absorbance reading of 0.350 abs. units prior to expansion in agreement with the manufacturer's specifications (5.6.).

4.6.2. The net absorbance readings of the reagent blank and the low concentration Cd standards from 0.001 to 0.1 μg/mL and the statistical analysis of the results are shown in Table I. The standard deviation, sd, of the six net absorbance readings of the reagent blank is 1.05 abs. units. The slope, m, as calculated by a linear regression plot of the net absorbance readings (shown in Table II) of the 0.02 to 1.0 μg/mL cadmium standards versus their concentration is 772.7 abs. units/(μg/mL).

4.6.3. If these values for sd and the slope, m, are used in Eqn. 1 (Sect. 4.1.3.), the qualitative and quantitative detection limits as determined by the IUPAC Method are:

C_{td} = (3)(1.05 abs. units)/(772.7 abs. units/(μg/mL))

= 0.0041 μg/mL for the qualitative detection limit.

C_{td} = (10)(1.05 abs. units)/(772.7 abs. units/μg/mL))

= 0.014 μg/mL for the quantitative detection limit.

The qualitative and quantitative detection limits for the flame AAS analytical technique are 0.041 μg and 0.14 μg cadmium, respectively, for a 10 mL solution volume. These correspond, respectively, to 0.2 μg/m³ and 0.70 μg/m³ for a 200 L air volume.

4.6.4. The recommended Cd standard working range for flame AAS analysis is 0.02 to 2.0 μg/mL. The net absorbance readings of the reagent blank and the recommended working range standards and the statistical analysis of the results are shown in Table II. The standard of lowest concentration in the working range, 0.02 μg/mL, is slightly greater than the calculated quantitative detection limit, 0.014 μg/mL. The standard of highest concentration in the working range, 2.0 μg/mL, is at the upper end of the linear working range suggested by the manufacturer (5.6.). Although the standard net absorbance readings are not strictly linear at concentrations above 0.5 μg/mL, the deviation from linearity is only about 10% at the upper end of the recommended standard working range. The deviation from linearity is probably caused by the four-fold expansion of the signal suggested in the method. As shown in Table II, the precision of the standard net absorbance readings are excellent throughout the recommended working range; the relative standard deviations of the readings range from 0.009 to 0.064.

4.7. Detection Limits and Standard Working Range for AAS–HGA Analysis

4.7.1. Analyzed the reagent blank solution and the entire series of cadmium standards in the range of 0.1 to 40 ng/mL according to the instructions given in Section 3.11. The diluting solution (4% HNO_3, 0.4% HCl) was used as the reagent blank. A fresh aliquot of the reagent blank and of each standard was used for every analysis. The experimental characteristic mass value was 0.41 pg, calculated from the average peak area (abs-sec) reading of the 5 ng/mL standard which is approximately midway in the linear portion of the working standard range. This agreed within 20% with the characteristic mass value, 0.35 pg, listed by the manufacturer of the instrument (5.2.).

4.7.2. The peak area (abs-sec) readings of the reagent blank and the low concentration Cd standards from 0.1 to 2.0 ng/mL and statistical analysis of the results are shown in Table III. Five of the reagent blank peak area readings were zero and the sixth reading was

1 and was an outlier. The near lack of a blank signal does not satisfy a strict interpretation of the IUPAC method for determining the detection limits. Therefore, the standard deviation of the six peak area readings of the 0.2 ng/mL cadmium standard, 0.75 abs-sec, was used to calculate the detection limits by the IUPAC method. The slope, m, as calculated by a linear regression plot of the peak area (abs-sec) readings (shown in Table IV) of the 0.2 to 10 ng/mL cadmium standards versus their concentration is 51.5 abs-sec/(ng/mL).

4.7.3. If 0.75 abs-sec (sd) and 51.5 abs-sec/(ng/mL) (m) are used in Eqn. 1 (Sect. 4.1.3.), the qualitative and quantitative detection limits as determined by the IUPAC method are:

C_{id} = (3)(0.75 abs-sec)/(51.5 abs-sec/(ng/mL) = 0.044 ng/mL for the qualitative detection limit.

C_{id} = (10)(0.75 abs-sec)/(51.5 abs-sec/(ng/mL) = 0.15 ng/mL for the quantitative detection limit.

The qualitative and quantitative detection limits for the AAS-HGA analytical technique are 0.44 ng and 1.5 ng cadmium, respectively, for a 10 mL solution volume. These correspond, respectively, to 0.007 $\mu g/m^3$ and 0.025 $\mu g/m^3$ for a 60 L air volume.

4.7.4. The peak area (abs-sec) readings of the Cd standards from 0.2 to 40 ng/mL and the statistical analysis of the results are given in Table IV. The recommended standard working range for AAS-HGA analysis is 0.2 to 20 ng/mL. The standard of lowest concentration in the recommended working range is slightly greater than the calculated quantitative detection limit, 0.15 ng/mL. The deviation from linearity of the peak area readings of the 20 ng/mL standard, the highest concentration standard in the recommended working range, is approximately 10%. The deviations from linearity of the peak area readings of the 30 and 40 ng/mL standards are significantly greater than 10%. As shown in Table IV, the precision of the peak area readings are satisfactory throughout the recommended working range; the relative standard deviations of the readings range from 0.025 to 0.083.

4.8. Analytical Method Recovery for Flame AAS Analysis

4.8.1. Four sets of spiked MCEF samples were prepared by injecting 20 μL of 10, 50, 100 and 200 $\mu g/mL$ dilute cadmium stock solutions on 37 mm diameter filters (part no. AAWP 037 00, Millipore Corp., Bedford, MA) with a calibrated micropipet. The dilute stock solutions were prepared by making appropriate serial dilutions of a commercially available 1,000 $\mu g/mL$ cadmium standard stock solution (RICCA Chemical Co., Lot# A102) with the diluting solution (4% HNO_3, 0.4% HCl). Each set contained six samples and a sample blank. The amount of cadmium in the prepared sets were equivalent to 0.1, 0.5, 1.0 and 2.0 times the TWA PEL target concentration of 5 $\mu g/m^3$ for a 400 L air volume.

4.8.2. The air-dried spiked filters were digested and analyzed for their cadmium content by flame atomic absorption spectroscopy (AAS) following the procedure described in Section 3. The 0.02 to 2.0μ g/mL cadmium standards (the suggested working range) were used in the analysis of the spiked filters.

4.8.3. The results of the analysis are given in Table V. One result at 0.5 times the TWA PEL target concentration was an outlier and was excluded from statistical analysis. Experimental justification for rejecting it is that the outlier value was probably due to a spiking error. The coefficients of variation for the three test levels at 0.5 to 2.0 times the TWA PEL target concentration passed the Bartlett's test and were pooled.

4.8.4. The average recovery of the six spiked filter samples at 0.1 times the TWA PEL target concentration was 118.2% with a coefficient of variation (CV_1) of 0.128. The average recovery of the spiked filter samples in the range of 0.5 to 2.0 times the TWA target concentration was 104.0% with a pooled coefficient of variation (CV_1) of 0.010. Consequently, the analytical bias found in these spiked sample results over the tested concentration range was +4.0% and the OAE was ±6.0%.

4.9. Analytical Method Recovery for AAS-HGA Analysis

4.9.1. Three sets of spiked MCEF samples were prepared by injecting 15μ L of 5, 10 and 20 $\mu g/mL$ dilute cadmium stock solutions on 37 mm diameter filters (part no. AAWP 037 00, Millipore Corp., Bedford, MA) with a calibrated micropipet. The dilute stock solutions were prepared by making appropriate serial dilutions of a commercially available certified 1,000 $\mu g/mL$ cadmium standard stock solution (Fisher Chemical Co., Lot# 913438-24) with the diluting solution (4% HNO_3, 0.4% HCl). Each set contained six samples and a sample blank. The amount of cadmium in the prepared sets were equivalent to 0.5, 1 and 2 times the Action Level TWA target concentration of 2.5 $\mu g/m^3$ for a 60 L air volume.

4.9.2. The air-dried spiked filters were digested and analyzed for their cadmium content by flameless atomic absorption spectroscopy using a heated graphite furnace atomizer following the procedure described in Section 3. A five-fold dilution of the spiked filter samples at 2 times the Action Level TWA was made prior to their analysis. The 0.05 to 20 ng/mL cadmium standards were used in the analysis of the spiked filters.

4.9.3. The results of the analysis are given in Table VI. There were no outliers. The coefficients of variation for the three test levels at 0.5 to 2.0 times the Action Level TWA PEL passed the Bartlett's test and were pooled. The average recovery of the spiked filter samples was 94.2% with a pooled coefficient of variation (CV_1) of 0.043. Consequently, the analytical bias was −5.8% and the OAE was ±14.2%.

4.10. Conclusions

The experiments performed in this evaluation show the two atomic absorption analytical techniques included in this method to be precise and accurate and have sufficient sensitivity to measure airborne cadmium over a broad range of exposure levels and sampling periods.

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TABLE I.—CD DETECTION LIMIT STUDY

[Flame AAS Analysis]

STD (µg/mL)	Absorbance reading at 228.8 nm		Statistical analysis
Reagent blank	5	2	n=6.
	4	3	mean=3.50.
	4	3	std dev=1.05.
			CV=0.30.
0.001	5	6	n=6.
	2	4	mean=5.00.
	5	6	std dev=1.67.
			CV=0.335.
0.002	5	7	n=6.
	7	3	mean=5.50.
	7	4	std dev=1.76.
			CV=0.320.
0.005	7	7	n=6.
	8	8	mean=7.33.
	8	6	std dev=0.817.
			CV=0.111.
0.010	10	9	n=6.
	10	13	mean=10.3.
	10	10	std dev=1.37.
			CV=0.133.
0.020	20	23	n=6.
	20	22	mean=20.8.
	20	20	std dev=1.33.
			CV=0.064.
0.050	42	42	n=6.
	42	42	mean=42.5.
	42	45	std dev=1.22.
			CV=0.029.
0.10		84	n=3.
		80	mean=82.3.
		83	std dev=2.08.
			CV=0.025.

TABLE II.—CD STANDARD WORKING RANGE STUDY

[Flame AAS Analysis]

STD (µg/mL)	Absorbance reading at 228.8 nm		Statistical analysis
Reagent blank	5	2	n=6.
	4	3	mean=3.50.
	4	3	std dev=1.05.
			CV=0.30.
0.020	20	23	n=6.
	20	22	mean=20.8.
	20	20	std dev=1.33.
			CV=0.064.
0.050	42	42	n=6.
	42	42	mean=42.5.
	42	45	std dev=1.22.
			CV=0.029.
0.10		84	n=3.
		80	mean=82.3.
		83	std dev=2.08.
			CV=0.025.
0.20		161	n=3.
		161	mean=160.0.
		158	std dev=1.73.
			CV=0.011.
0.50		391	n=3.
		389	mean=391.0.
		393	std dev=2.00.
			CV=0.005.
1.00		760	n=3.
		748	mean=753.3.
		752	std dev=6.11.
			CV=0.008.
2.00		1416	n=3.
		1426	mean=1414.3.
		1401	std dev=12.6.
			CV=0.009.

TABLE III.—CD DETECTION LIMIT STUDY

[AAS-HGA Analysis]

STD (ng/mL)	Peak area readings × 10^{-3} at 228.8 nm		Statistical analysis
Reagent blank	0	0	n=6.
	0	1	mean=0.167.
	0	0	std dev=0.41.
			CV=2.45.
0.1	8	6	n=6.
	5	7	mean=7.7.
	13	7	std dev=2.8
			CV=0.366.
0.2	11	13	n=6.
	11	12	mean=11.8.
	12	12	std dev=0.75.
			CV=0.064.
0.5	28	33	n=6.
	26	28	mean=28.8.
	28	30	std dev=2.4.
			CV=0.083.
1.0	52	55	n=6.
	56	58	mean=54.8.
	54	54	std dev=2.0.
			CV=0.037.
2.0	101	112	n=6.
	110	110	mean=108.8.
	110	110	std dev=3.9.
			CV=0.036.

TABLE IV.—CD STANDARD WORKING RANGE STUDY

[AAS-HGA Analysis]

STD (ng/mL)	Peak area readings × 10^{-3} at 228.8 nm		Statistical analysis
0.2	11	13	n=6.
	11	12	mean=11.8.
	12	12	std dev=0.75.
			CV=0.064.
0.5	26	33	n=6.
	26	28	mean=28.8.
	28	30	std dev=2.4.
			CV=0.083.
1.0	52	55	n=6.
	56	58	mean=54.8.
	54	54	std dev=2.0.
			CV=0.037.
2.0	101	112	n=6.
	110	110	mean=108.8.
	110	110	std dev=3.9.
			CV=0.036.
5.0	247	265	n=6.
	268	275	mean=265.5.
	259	279	std dev=11.5.
			CV=0.044.

TABLE IV.—CD STANDARD WORKING RANGE STUDY—Continued

[AAS-HGA Analysis]

STD (ng/mL)	Peak area readings × 10^{-3} at 228.8 nm		Statistical analysis
10.0	495	520	n=6.
	523	513	mean=516.7.
	516	533	std dev=12.7.
			CV=0.025.
20.0	950	953	n=6.
	951	958	mean=941.8.
	949	890	std dev=25.6.
			CV=0.027.
30.0	1269	1291	n=6.
	1303	1307	mean=1293.
	1295	1290	std dev=13.3.
			CV=0.010.
40.0	1505	1567	n=6.
	1535	1567	mean=1552.
	1586	1572	std dev=26.6.
			CV=0.017.

TABLE V.—ANALYTICAL METHOD RECOVERY

[Flame AAS Analysis]

Test level	0.5×	Percent rec.	µg taken	1.0×	Percent rec.	µg taken	2.0×	Percent rec.
µg taken	µg found			µg found			µg found	
1.00	1.0715	107.2	2.00	2.0688	103.4	4.00	4.1504	103.8
1.00	1.0842	108.4	2.00	2.0174	100.9	4.00	4.1108	102.8
1.00	1.0842	108.4	2.00	2.0431	102.2	4.00	4.0581	101.5
1.00	*1.0081	*100.8	2.00	2.0431	102.2	4.00	4.0844	102.1
1.00	1.0715	107.2	2.00	2.0174	100.9	4.00	4.1504	103.8
1.00	1.0842	108.4	2.00	2.0045	100.2	4.00	4.1899	104.7
n=		5			5			5
mean=		107.9			101.6			103.1
std dev=		0.657			1.174			1.199
CV_1=		0.006			0.011			0.012

CV_1 (pooled)=0.010

* Rejected as an outlier—this value did not pass the outlier T-test at the 99% confidence level.

Test level	0.1×	Percent rec.
µg taken	µg found	
0.200	0.2509	125.5
0.200	0.2509	125.5
0.200	0.2761	138.1
0.200	0.2258	112.9
0.200	0.2258	112.9
0.200	0.1881	94.1
n=		6
mean=		118.2
std dev=		15.1
CV_1=		0.128

TABLE VI.—ANALYTICAL METHOD RECOVERY

[AAS–HGA analysis]

Test level	0.5×	Percent rec.	ng taken	1.0×	Percent rec.	ng taken	2.0×	Percent rec.
ng taken	ng found			ng found			ng found	
75	71.23	95.0	150	138.00	92.0	300	258.43	86.1
75	71.47	95.3	150	138.29	92.2	300	258.46	86.2
75	70.02	93.4	150	136.30	90.9	300	280.55	93.5
75	77.34	103.1	150	146.62	97.7	300	288.34	96.1
75	78.32	104.4	150	145.17	96.8	300	261.74	87.2
75	71.96	95.9	150	144.88	96.6	300	277.22	92.4
n=		6			6			6
mean=		97.0			94.4			90.2
std dev=		4.66			2.98			4.30
CV_i=		0.048			0.032			0.048
				CV_i(pooled)=0.043				

Attachment 1

Instrumental Parameters for Flame AAS Analysis

Atomic Absorption Spectrophotometer (Perkin-Elmer Model 603)

Flame: Air/Acetylene—lean, blue
Oxidant Flow: 55
Fuel Flow: 32
Wavelength: 228.8 nm
Slit: 4 (0.7 nm)
Range: UV
Signal: Concentration (4 exp)
Integration Time: 3 sec

Attachment 2

Instrumental Parameters for HGA Analysis

Atomic Absorption Spectrophotometer (Perkin-Elmer Model 5100)

Signal Type: Zeeman AA
Slitwidth: 0.7 nm
Wavelength: 228.8 nm
Measurement: Peak Area
Integration Time: 6.0 sec
BOC Time: 5 sec
BOC=Background Offset Correction.

ZEEMAN GRAPHITE FURNACE (PERKIN-ELMER MODEL HGA-600)

Step	Ramp time (sec)	Hold time (sec)	Temp. (°C)	Argon flow (mL/min)	Read (sec)
1) Predry	5	10	90	300	
2) Dry	30	10	140	300	
3) Char	10	20	900	300	
4) Cool Down	1	8	30	300	
5) Atomize	0	5	1500	0	−1
6) Burnout	1	8	2500	300	

Appendix F to § ____: Nonmandatory Protocol for Biological Monitoring

1.00 Introduction

Under the final OSHA cadmium rule (29 CFR part 1910), monitoring of biological specimens and several periodic medical examinations are required for eligible employees. These medical examinations are to be conducted regularly, and medical monitoring is to include the periodic analysis of cadmium in blood (CDB), cadmium in urine (CDU) and beta-2-microglobulin in urine (B2MU). As CDU and B2MU are to be normalized to the concentration of creatinine in urine (CRTU), then CRTU must be analyzed in conjunction with CDU and B2MU analyses.

The purpose of this protocol is to provide procedures for establishing and maintaining the quality of the results obtained from the analyses of CDB, CDU and B2MU by commercial laboratories. Laboratories conforming to the provisions of this nonmandatory protocol shall be known as "participating laboratories." The biological monitoring data from these laboratories will be evaluated by physicians responsible for biological monitoring to determine the conditions under which employees may continue to work in locations exhibiting airborne-cadmium concentrations at or above defined actions levels (see paragraphs (l)(3) and (l)(4) of the final rule). These results also may be used to support a decision to remove workers from such locations.

Under the medical monitoring program for cadmium, blood and urine samples must be collected at defined intervals from workers by physicians responsible for medical monitoring; these samples are sent to commerical laboratories that perform the required analyses and report results of these analyses to the responsible physicians. To ensure the accuracy and reliability of these laboratory analyses, the laboratories to which samples are submitted should participate in an ongoing and efficacious proficiency testing program. Availability of proficiency testing programs may vary with the analyses performed.

To test proficiency in the analysis of CDB, CDU and B2MU, a laboratory should participate either in the interlaboratory comparison program operated by the Centre de Toxicologie du Quebec (CTQ) or an equivalent program. (Currently, no laboratory in the U.S. performs proficiency testing on CDB, CDU or B2MU.) Under this program, CTQ sends participating laboratories 18 samples of each analyte (CDB, CDU and/or B2MU) annually for analysis. Participating laboratories must return the results of these analyses to CTQ within four to five weeks after receiving the samples.

The CTQ program pools analytical results from many participating laboratories to derive consensus mean values for each of the samples distributed. Results reported by each laboratory then are compared against these consensus means for the analyzed samples to determine the relative performance of each laboratory. The proficiency of a participating laboratory is a function of the extent of agreement between results submitted by the participating laboratory and the consensus values for the set of samples analyzed.

Proficiency testing for CRTU analysis (which should be performed with CDU and B2MU analyses to evaluate the results properly) also is recommended. In the U.S., only the College of American Pathologists (CAP) currently conducts CRTU proficiency testing; participating laboratories should be accredited for CRTU analysis by the CAP.

Results of the proficiency evaluations will be forwarded to the participating laboratory

by the proficiency-testing laboratory, as well as to physicians designated by the participating laboratory to receive this information. In addition, the participating laboratory should, on request, submit the results of their internal Quality Assurance/Quality Control (QA/QC) program for each analytic procedure (i.e., CDB, CDU and/or B2MU) to physicians designated to receive the proficiency results. For participating laboratories offering CDU and/or B2MU analyses, QA/QC documentation also should be provided for CRTU analysis. (Laboratories should provide QA/QC information regarding CRTU analysis directly to the requesting physician if they perform the analysis in-house; if CRTU analysis is performed by another laboratory under contract, this information should be provided to the physician by the contract laboratory.)

QA/QC information, along with the actual biological specimen measurements, should be provided to the responsible physician using standard formats. These physicians then may collate the QA/QC information with proficiency test results to compare the relative performance of laboratories, as well as to facilitate evaluation of the worker monitoring data. This information supports discretionary decisions made by the physician with regard to the biological monitoring program, and for mandating medical removal.

This protocol describes procedures that may be used by the responsible physicians to identify laboratories most likely to be proficient in the analysis of samples used in the biological monitoring of cadmium; also provided are procedures for record keeping and reporting by laboratories participating in proficiency testing programs, and recommendations to assist these physicians in interpreting analytical results determined by participating laboratories. As the collection and handling of samples affects the quality of the data, recommendations are made for these tasks. Specifications for analytical methods to be used in the medical monitoring program are included in this protocol as well.

In conclusion, this document is intended as a supplement to characterize and maintain the quality of medical monitoring data collected under the final cadmium rule promulgated by OSHA (29 CFR part 1910). OSHA has been granted authority under the Occupational Safety and Health Act of 1970 to protect workers from the effects of exposure to hazardous substances in the work place and to mandate adequate monitoring of workers to determine when adverse health effects may be occurring. This nonmandatory protocol is intended to provide guidelines and recommendations to improve the accuracy and reliability of the procedures used to analyze the biological samples collected as part of the medical monitoring program for cadmium.

2.0 Definitions

When the terms below appear in this protocol, use the following definitions.

Accuracy: A measure of the bias of a data set. Bias is a systematic error that is either inherent in a method or caused by some artifact or idiosyncracy of the measurement system. Bias is characterized by a consistent deviation (positive or negative) in the results from an accepted reference value.

Arithmetic Mean: The sum of measurements in a set divided by the number of measurements in a set.

Blind Samples: A quality control procedure in which the concentration of analyte in the samples should be unknown to the analyst at the time that the analysis is performed.

Coefficient of Variation: The ratio of the standard deviation of a set of measurements to the mean (arithmetic or geometric) of the measurements.

Compliance Samples: Samples from exposed workers sent to a participating laboratory for analysis.

Control Charts: Graphic representations of the results for quality control samples being analyzed by a participating laboratory.

Control Limits: Statistical limits which define when an analytic procedure exceeds acceptable parameters; control limits provide a method of assessing the accuracy of analysts, laboratories, and discrete analytic runs.

Control Samples: Quality control samples.

F/T: The measured amount of an analyte divided by the theoretical value (defined below) for that analyte in the sample analyzed; this ratio is a measure of the recovery for a quality control sample.

Geometric Mean: The natural antilog of the mean of a set of natural log-transformed data.

Geometric Standard Deviation: The antilog of the standard deviation of a set of natural log-transformed data.

Limit of Detection: Using a predefined level of confidence, this is the lowest measured value at which some of the measured material is likely to have come from the sample.

Mean: A central tendency of a set of data; in this protocol, this mean is defined as the *arithmetic mean* (see definition of *arithmetic mean* above) unless stated otherwise.

Performance: A measure of the overall quality of data reported by a laboratory.

Pools: Groups of quality-control samples to be established for each target value (defined below) of an analyte. For the protocol provided in attachment 3, for example, the theoretical value of the quality control samples of the pool must be within a range defined as plus or minus (±) 50% of the target value. Within each analyte pool, there must be quality control samples of at least 4 theoretical values.

Precision: The extent of agreement between repeated, independent measurements of the same quantity of an analyte.

Proficiency: The ability to satisfy a specified level of analyte performance.

Proficiency Samples: Specimens, the values of which are unknown to anyone at a participating laboratory, and which are submitted by a participating laboratory for proficiency testing.

Quality or Data Quality: A measure of the confidence in the measurement value.

Quality Control (QC) Samples: Specimens, the value of which is unknown to the analyst, but is known to the appropriate QA/QC personnel of a participating laboratory; when used as part of a laboratory QA/QC program, the theoretical values of these samples should not be known to the analyst until the analyses are complete. QC samples are to be run in sets consisting of one QC sample from each pool (see definition of "pools" above).

Sensitivity: For the purposes of this protocol, the limit of detection.

Standard Deviation: A measure of the distribution or spread of a data set about the mean; the standard deviation is equal to the positive square root of the variance, and is expressed in the same units as the original measurements in the data set.

Standards: Samples with values known by the analyst and used to calibrate equipment and to check calibration throughout an analytic run. In a laboratory QA/QC program, the values of the standards must exceed the values obtained for compliance samples such that the lowest standard value is near the limit of detection and the highest standard is higher than the highest compliance sample or QC sample. Standards of at least three different values are to be used for calibration, and should be constructed from at least 2 different sources.

Target Value: Those values of CDB, CDU or B2MU which trigger some action as prescribed in the medical surveillance section of the regulatory text of the final cadmium rule. For CDB, the target values are 5, 7, 10 and 15 μg/l. For CDU, the target values are 3, 5, 10 and 15 μg/g CRTU. For B2MU, the target values are 300, 500, 1000 and 1500 μg/g CRTU. (Note that target values may vary as a function of time.)

Theoretical Value (or Theoretical Amount): The reported concentration of a quality-control sample (or calibration standard) derived from prior characterizations of the sample.

Value or Measurement Value: The numerical result of a measurement.

Variance: A measure of the distribution or spread of a data set about the mean; the variance is the sum of the squares of the differences between the mean and each discrete measurement divided by one less than the number of measurements in the data set.

3.0 Protocol

This protocol provides procedures for characterizing and maintaining the quality of analytic results derived for the medical monitoring program mandated for workers under the final cadmium rule.

3.1 Overview

The goal of this protocol is to assure that medical monitoring data are of sufficient quality to facilitate proper interpretation. The data quality objectives (DQOs) defined for the medical monitoring program are summarized in Table 1. Based on available information, the DQOs presented in Table 1 should be achievable by the majority of laboratories offering the required analyses commercially; OSHA recommends that only laboratories meeting these DQOs be used for the analysis of biological samples collected for monitoring cadmium exposure.

TABLE 1.—RECOMMENDED DATA QUALITY OBJECTIVES (DQOS) FOR THE CADMIUM MEDICAL MONITORING PROGRAM

Analyte/concentration pool	Limit of detection	Precision (CV) (%)	Accuracy
Cadmium in blood	0.5 μg/l		±1 μg/l or 15% of the mean.
≤2 μg/l		40	
>2 μg/l		20	
Cadmium in urine	0.5 μg/g creatinine		±1 μg/l or 15% of the mean.
≤2 μg/l creatinine		40	
>2 μg/l creatinine		20	
β-2-microglobulin in urine: 100 μg/g creatine	100 μg/g creatinine	5	±15% of the mean.

To satisfy the DQOs presented in Table 1, OSHA provides the following guidelines:

1. Procedures for the collection and handling of blood and urine are specified (Section 3.4.1 of this protocol);

2. Preferred analytic methods for the analysis of CDB, CDU and B2MU are defined (and a method for the determination of CRTU also is specified since CDU and B2MU results are to be normalized to the level of CRTU).

3. Procedures are described for identifying laboratories likely to provide the required analyses in an accurate and reliable manner;

4. These guidelines (Sections 3.2.1 to 3.2.3, and Section 3.3) include recommendations regarding internal QA/QC programs for participating laboratories, as well as levels of proficiency through participation in an interlaboratory proficiency program;

5. Procedures for QA/QC record keeping (Section 3.3.2), and for reporting QC/QA results are described (Section 3.3.3); and,

6. Procedures for interpreting medical monitoring results are specified (Section 3.4.3).

Methods recommended for the biological monitoring of eligible workers are:

1. The method of Stoeppler and Brandt (1980) for CDB determinations (limit of detection: 0.5 μg/l);

2. The method of Pruszkowska et al. (1983) for CDU determinations (limit of detection: 0.5 μg/l of urine); and,

3. The Pharmacia Delphia test kit (Pharmacia 1990) for the determination of B2MU (limit of detection: 100 μg/l urine).

Because both CDU and B2MU should be reported in μg/g CRTU, an independent determination of CRTU is recommended. Thus, both the OSHA Salt Lake City Technical Center (OSLTC) method (OSHA, no date) and the Jaffe method (Du Pont, no date) for the determination of CRTU are specified under this protocol (i.e., either of these 2 methods may be used). Note that although detection limits are not reported for either of these CRTU methods, the range of measurements expected for CRTU (0.9-1.7 μg/l) are well above the likely limit of detection for either of these methods (Harrison, 1987).

Laboratories using alternate methods should submit sufficient data to the responsible physicians demonstrating that the alternate method is capable of satisfying the defined data quality objectives of the program. Such laboratories also should submit a QA/QC plan that documents the performance of the alternate method in a manner entirely equivalent to the QA/QC plans proposed in Section 3.3.1.

3.2 Duties of the Responsible Physician

The responsible physician will evaluate biological monitoring results provided by participating laboratories to determine whether such laboratories are proficient and have satisfied the QA/QC recommendations. A requirement of the medical monitoring program mandated under the cadmium rule is that responsible physicians have the duty to employ laboratories to perform the required CDB, CDU and B2MU analyses of biological samples collected from eligible workers (paragraph (l)(1)(iv) of the final rule). In determining which laboratories to employ for this purpose, these physicians should review proficiency and QA/QC data submitted to them by the participating laboratories.

Participating laboratories should demonstrate proficiency for each analyte (CDU, CDB and B2MU) sampled under the biological monitoring program. Participating laboratories involved in analyzing CDU and B2MU also should demonstrate proficiency for CRTU analysis, or provide evidence of a contract with a laboratory proficient in CRTU analysis.

3.2.1 Recommendations for Selecting Among Existing Laboratories

OSHA recommends that existing laboratories providing commercial analyses for CDB, CDU and/or B2MU for the medical monitoring program satisfy the following criteria:

1. Should have performed commercial analyses for the appropriate analyte (CDB, CDU and/or B2MU) on a regular basis over the last 2 years;

2. Should provide the responsible physician with an internal QA/QC plan;

3. If performing CDU or B2MU analyses, the participating laboratory should be accredited by the CAP for CRTU analysis, and should be enrolled in the corresponding CAP survey (note that alternate credentials may be acceptable, but acceptability is to be determined by the responsible physician); and,

4. Should have enrolled in the CTQ interlaboratory comparison program for the appropriate analyte (CDB, CDU and/or B2MU).

Participating laboratories should submit appropriate documentation demonstrating compliance with the above criteria to the responsible physician. To demonstrate compliance with the first of the above criteria, participating laboratories should submit the following documentation for each analyte they plan to analyze (note that each document should cover a period of at least 8 consecutive quarters, and that the period designated by the term "regular analyses" is at least once a quarter):

1. Copies of laboratory reports providing results from regular analyses of the appropriate analyte (CDB, CDU and/or B2MU);

2. Copies of 1 or more signed and executed contracts for the provision of regular analyses of the appropriate analyte (CDB, CDU and/or B2MU); or,

3. Copies of invoices sent to 1 or more clients requesting payment for the provision of regular analyses of the appropriate analyte (CDB, CDU and/or B2MU). Whatever the form of documentation submitted, the specific analytic procedures conducted should be identified directly. The forms that are copied for submission to the responsible physician also should identify the laboratory which provided these analyses.

To demonstrate compliance with the second of the above criteria, a laboratory should submit to the responsible physician an internal QA/QC plan detailing the standard operating procedures to be adopted for satisfying the recommended QA/QC procedures for the analysis of each specific analyte (CDB, CDU and/or B2MU). Procedures for internal QA/QC programs are detailed in Section 3.3.1 below.

To satisfy the third of the above criteria, laboratories analyzing for CDU or B2MU also should submit a QA/QC plan for creatinine analysis (CRTU); the QA/QC plan and characterization analyses for CRTU must come from the laboratory performing the CRTU analysis, even if the CRTU analysis is being performed by a contract laboratory.

Laboratories enrolling in the CTQ program (to satisfy the last of the above criteria) must remit, with the enrollment application, an initial fee of approximately $100 per analyte. (Note that this fee is only an estimate, and is subject to revision without notice.) Laboratories should indicate on the application that they agree to have proficiency test results sent by the CTQ directly to the physicians designated by participating laboratories.

Once a laboratory's application is processed by the CTQ, the laboratory will be assigned a code number which will be provided to the laboratory on the initial confirmation form, along with identification of the specific analytes for which the laboratory is participating. Confirmation of participation will be sent by the CTQ to physicians designated by the applicant laboratory.

3.2.2 Recommended Review of Laboratories Selected to Perform Analyses

Six months after being selected initially to perform analyte determinations, the status of participating laboratories should be reviewed by the responsible physicians. Such reviews should then be repeated every 6 months or whenever additional proficiency or QA/QC documentation is received (whichever occurs first).

As soon as the responsible physician has received the CTQ results from the first 3 rounds of proficiency testing (i.e., 3 sets of 3 samples each for CDB, CDU and/or B2MU) for a participating laboratory, the status of the laboratory's continued participation should be reviewed. Over the same initial 6-month period, participating laboratories also should provide responsible physicians the results of their internal QA/QC monitoring program used to assess performance for each analyte (CDB, CDU and/or B2MU) for which the laboratory performs determinations. This information should be submitted using appropriate forms and documentation.

The status of each participating laboratory should be determined for each analyte (i.e., whether the laboratory satisfies minimum proficiency guidelines based on the proficiency samples sent by the CTQ and the results of the laboratory's internal QA/QC program). To maintain competency for analysis of CDB, CDU and/or B2MU during the first review, the laboratory should satisfy performance requirements for at least 2 of the 3 proficiency samples provided in each of the 3 rounds completed over the 6-month period. Proficiency should be maintained for the analyte(s) for which the laboratory conducts determinations.

To continue participation for CDU and/or B2MU analyse, laboratories also should either maintain accreditation for CRTU analysis in the CAP program and participate in the CAP surveys, or they should contract the CDU and B2MU analyses to a laboratory which satisfies these requirements (or which can provide documentation of accreditation/participation in an equivalent program).

The performance requirement for CDB analysis is defined as an analytical result within ±1 μg/l blood or 15% of the consensus mean (whichever is greater). For samples exhibiting a consensus mean less than 1 μg/l, the performance requirement is defined as a concentration between the detection limit of the analysis and a maximum of 2 μg/l. The purpose for redefining the acceptable interval for low CDB values is to encourage proper reporting of the actual values obtained during measurement; laboratories, therefore, will not be penalized (in terms of a narrow range of acceptability) for reporting measured concentrations smaller than 1 μg/l.

The performance requirement for CDU analysis is defined as an analytical result within ±1 μg/l urine or 15% of the consensus mean (whichever is greater). For samples exhibiting a consensus mean less than 1 μg/l urine, the performance requirement is defined as a concentration between the detection limit of the analysis and a maximum of 2 μg/l urine. Laboratories also should demonstrate proficiency in creatinine analysis as defined by the CAP. Note that reporting CDU results, other than for the CTQ proficiency samples (i.e., compliance samples), should be accompanied with results of analyses for CRTU, and these 2 sets of results should be combined to provide a measure of CDU in units of μg/g CRTU.

The performance requirement for B2MU is defined as analytical results within ± 15% of the consensus mean. Note that reporting B2MU results, other than for CTQ proficiency samples (i.e., compliance samples), should be accompanied with results of analyses for CRTU, and these 2 sets of results should be combined to provide a measure of B2MU in units of μg/g CRTU.

There are no recommended performance checks for CRTU analyses. As stated previously, laboratories performing CRTU analysis in support of CDU or B2MU analyses should be accredited by the CAP, and participating in the CAP's survey for CRTU.

Following the first review, the status of each participating laboratory should be reevaluated at regular intervals (i.e., corresponding to receipt of results from each succeeding round of proficiency testing and submission of reports from a participating laboratory's internal QA/QC program).

After a year of collecting proficiency test results, the following proficiency criterion should be added to the set of criteria used to determine the participating laboratory's status (for analyzing CDB, CDU and/or B2MU): A participating laboratory should not fail performance requirements for more than 4 samples from the 6 most recent consecutive rounds used to assess proficiency for CDB, CDU and/or B2MU separately (i.e., a total of 18 discrete proficiency samples for each analyte). Note that this requirement does not replace, but supplements, the recommendation that a laboratory should satisfy the performance criteria for at least 2 of the 3 samples tested for each round of the program.

3.2.3 Recommendations for Selecting Among Newly-Formed Laboratories (or Laboratories that Previously Failed to Meet the Protocol Guidelines)

OSHA recommends that laboratories that have not previously provided commercial analyses of CDB, CDU and/or B2MU (or have done so for a period less than 2 years), or which have provided these analyses for 2 or more years but have not conformed previously with these protocol guidelines, should satisfy the following provisions for each analyte for which determinations are to be made prior to being selected to analyze biological samples under the medical monitoring program:

1. Submit to the responsible physician an internal QA/QC plan detailing the standard operating procedures to be adopted for satisfying the QA/QC guidelines (guidelines for internal QA/QC programs are detailed in Section 3.3.1);

2. Submit to the responsible physician the results of the initial characterization analyses for each analyte for which determinations are to be made;

3. Submit to the responsible physician the results, for the initial 6-month period, of the internal QA/QC program for each analyte for which determinations are to be made (if no commercial analyses have been conducted previously, a minimum of 2 mock standardization trials for each analyte should be completed per month for a 6-month period);

4. Enroll in the CTQ program for the appropriate analyte for which determinations are to be made, and arrange to have the CTQ program submit the initial confirmation of participation and proficiency test results directly to the designated physicians. Note that the designated physician should receive results from 3 completed rounds from the CTQ program before approving a laboratory for participation in the biological monitoring program;

5. Laboratories seeking participation for CDU and/or B2MU analyses should submit to the responsible physician documentation of accreditation by the CAP for CRTU analyses performed in conjunction with CDU and/or B2MU determinations (if CRTU analyses are conducted by a contract laboratory, this laboratory should submit proof of CAP accreditation to the responsible physician); and,

6. Documentation should be submitted on an appropriate form.

To participate in CDB, CDU and/or B2MU analyses, the laboratory should satisfy the above criteria for a minimum of 2 of the 3 proficiency samples provided in each of the 3 rounds of the CTQ program over a 6-month period; this procedure should be completed for each appropriate analyte. Proficiency should be maintained for each analyte to continue participation. Note that laboratories seeking participation for CDU or B2MU also should address the performance requirements for CRTU, which involves providing evidence of accreditation by the CAP and participation in the CAP surveys (or an equivalent program).

The performance requirement for CDB analysis is defined as an analytical result within ±1 μg/l or 15% of the consensus mean (whichever is greater). For samples exhibiting a consensus mean less than 1 μg/l, the performance requirement is defined as a concentration between the detection limit of the analysis and a maximum of 2 μg/l. The purpose of redefining the acceptable interval for low CDB values is to encourage proper reporting of the actual values obtained during measurement; laboratories, therefore, will not be penalized (in terms of a narrow range of acceptability) for reporting measured concentrations less than 1 μg/l.

The performance requirement for CDU analysis is defined as an analytical result within ±1 μg/l urine or 15% of the consensus mean (whichever is greater). For samples exhibiting a consensus mean less than 1 μg/l urine, the performance requirement is defined as a concentration that falls between the detection limit of the analysis and a maximum of 2 μg/l urine. Performance requirements for the companion CRTU analysis (defined by the CAP) also should be met. Note that reporting CDU results, other than for CTQ proficiency testing (i.e., compliance samples), should be accompanied with results of CRTU analyses, and these 2 sets of results should be combined to provide a measure of CDU in units of μg/g CRTU.

The performance requirement for B2MU is defined as an analytical result within ±15%

of the consensus mean. Note that reporting B2MU results, other than for CTQ proficiency testing (i.e., compliance samples), should be accompanied with results of CRTU analysis, these 2 sets of results should be combined to provide a measure of B2MU in units of μg/g CRTU.

Once a new laboratory has been approved by the responsible physician for conducting analyte determinations, the status of this approval should be reviewed periodically by the responsible physician as per the criteria presented under Section 3.2.2.

Laboratories which have failed previously to gain approval of the responsible physician for conducting determinations of 1 or more analytes due to lack of compliance with the criteria defined above for existing laboratories (Section 3.2.1), may obtain approval by satisfying the criteria for newly-formed laboratories defined under this section; for these laboratories, the second of the above criteria may be satisfied by submitting a new set of characterization analyses for each analyte for which determinations are to be made.

Reevaluation of these laboratories is discretionary on the part of the responsible physician. Reevaluation, which normally takes about 6 months, may be expedited if the laboratory can achieve 100% compliance with the proficiency test criteria using the 6 samples of each analyte submitted to the CTQ program during the first 2 rounds of proficiency testing.

For laboratories seeking reevaluation for CDU or B2MU analysis, the guidelines for CRTU analyses also should be satisfied, including accreditation for CRTU analysis by the CAP, and participation in the CAP survey program (or accreditation/participation in an equivalent program).

3.2.4 Future Modifications to the Protocol Guidelines

As participating laboratories gain experience with analyses for CDB, CDU and B2MU, it is anticipated that the performance achievable by the majority of laboratories should improve until it approaches that reported by the research groups which developed each method. OSHA, therefore, may choose to recommend stricter performance guidelines in the future as the overall performance of participating laboratories improves.

3.3 Guidelines for Record Keeping and Reporting

To comply with these guidelines, participating laboratories should satisfy the above-stated performance and proficiency recommendations, as well as the following internal QA/QC, record keeping, and reporting provisions.

If a participating laboratory fails to meet the provisions of these guidelines, it is recommended that the responsible physician disapprove further analyses of biological samples by that laboratory until it demonstrates compliance with these guidelines. On disapproval, biological samples should be sent to a laboratory that can demonstrate compliance with these guidelines, at least until the former laboratory is reevaluated by the responsible physician and found to be in compliance.

The following record keeping and reporting procedures should be practiced by participating laboratories.

3.3.1 Internal Quality Assurance/Quality Control Procedures

Laboratories participating in the cadmium monitoring program should develop and maintain an internal quality assurance/quality control (QA/QC) program that incorporates procedures for establishing and maintaining control for each of the analytic procedures (determinations of CDB, CDU and/or B2MU) for which the laboratory is seeking participation. For laboratories analyzing CDU and/or B2MU, a QA/QC program for CRTU also should be established.

Written documentation of QA/QC procedures should be described in a formal QA/QC plan; this plan should contain the following information: Sample acceptance and handling procedures (i.e., chain-of-custody); sample preparation procedures; instrument parameters; calibration procedures; and, calculations. Documentation of QA/QC procedures should be sufficient to identify analytical problems, define criteria under which analysis of compliance samples will be suspended, and describe procedures for corrective actions.

3.3.1.1 *QA/QC procedures for establishing control of CDB and CDU analyses*

The QA/QC program for CDB and CDU should address, at a minimum, procedures involved in calibration, establishment of control limits, internal QC analyses and maintaining control, and corrective-action protocols. Participating laboratory should develop and maintain procedures to assure that analyses of compliance samples are within control limits, and that these procedures are documented thoroughly in a QA/QC plan.

A nonmandatory QA/QC protocol is presented in Attachment 1. This attachment is illustrative of the procedures that should be addressed in a proper QA/QC program.

Calibration. Before any analytic runs are conducted, the analytic instrument should be calibrated. Calibration should be performed at the beginning of each day on which QC and/or compliance samples are run. Once calibration is established, QC or compliance samples may be run. Regardless of the type of samples run, about every fifth sample should serve as a standard to assure that calibration is being maintained.

Calibration is being maintained if the standard is within ±15% of its theoretical value. If a standard is more than + ±15% of its theoretical value, the run has exceeded control limits due to calibration error; the entire set of samples then should be reanalyzed after recalibrating or the results should be recalculated based on a statistical curve derived from that set of standards.

It is essential that the value of the highest standard analyzed be higher than the highest sample analyzed; it may be necessary, therefore, to run a high standard at the end of the run, which has been selected based on results obtained over the course of the run (i.e., higher than any standard analyzed to that point).

Standards should be kept fresh; as samples age, they should be compared with new standards and replaced if necessary.

Internal Quality Control Analyses. Internal QC samples should be determined interspersed with analyses of compliance samples. At a minimum, these samples should be run at a rate of 5% of the compliance samples or 2 samples per analytic run, whichever is greater. If only 2 samples are run, they should contain different levels of cadmium.

Internal QC samples may be obtained as commercially-available reference materials and/or they may be internally prepared. Internally-prepared samples should be well characterized and traced, or compared to a reference material for which a consensus value is available.

Levels of cadmium contained in QC samples should not be known to the analyst prior to reporting the results of the analysis.

Internal QC results should be plotted or charted in a manner which describes sample recovery and laboratory control limits.

Internal Control Limits. The laboratory protocol for evaluating internal QC analyses per control limits should be clearly defined. Limits may be based on statistical methods (e.g., as 2σ from the laboratory mean recovery), or on proficiency testing limits (e.g., ±2 μg or 15% of the mean, whichever is greater). Statistical limits that exceed ±40% should be reevaluated to determine the source error in the analysis.

When laboratory limits are exceeded, analytic work should terminate until the source of error is determined and corrected; compliance samples affected by the error should be reanalyzed. In addition, the laboratory protocol should address any unusual trends that develop which may be biasing the results. Numerous, consecutive results above or below laboratory mean recoveries, or outside laboratory statistical limits, indicate that problems may have developed.

Corrective Actions. The QA/QC plan should document in detail specific actions taken if control limits are exceeded or unusual trends develop. Corrective actions should be noted on an appropriate form, accompanied by supporting documentation.

In addition to these actions, laboratories should include whatever additional actions are necessary to assure that accurate data are reported to the responsible physicians.

Reference Materials. The following reference materials may be available:

Cadmium in Blood (CDB)

1. Centre de Toxicologie du Quebec, Le Centre Hospitalier de l'Universite Laval, 2705 boul. Laurier, Quebec, Que., Canada G1V 4G2. (Prepared 6 times per year at 1–15 μg Cd/l.)

2. H. Marchandise, Community Bureau of Reference-BCR, Directorate General XII, Commission of the European Communities, 200, rue de la Loi, B–1049, Brussels, Belgium. (Prepared as Bl CBM–1 at 5.37 μg Cd/l, and Bl CBM–2 at 12.38 μg Cd/l.)

3. Kaulson Laboratories Inc., 691 Bloomfield Ave., Caldwell, NJ 07006; tel: (201) 226–9494, FAX (201) 226–3244. (Prepared as #0141 [As, Cd, Hg, Pb] at 2 levels.)

Cadmium in Urine (CDU)

1. Centre de Toxicologie du Quebec, Le Centre Hospitalier de l'Universite Laval, 2705 boul. Laurier, Quebec, Que., Canada G1V 4G2. (Prepared 6 times per year.)

2. National Institute of Standards and Technology (NIST), Dept. of Commerce, Gaithersburg, MD; tel: (301) 975-6776. (Prepared as SRM 2670 freeze-dried urine [metals]; set includes normal and elevated levels of metals; cadmium is certified for elevated level of 88.0 μg/l in reconstituted urine.)

3. Kaulson Laboratories Inc., 691 Bloomfield Ave., Caldwell, NJ 07006; tel: (201) 226-9494, FAX (201) 226-3244. (Prepared as #0140 [As, Cd, Hg, Pb] at 2 levels.)

3.3.1.2 *QA/QC procedures for establishing control of B2MU*

A written, detailed QA/QC plan for B2MU analysis should be developed. The QA/QC plan should contain a protocol similar to those protocols developed for the CDB/CDU analyses. Differences in analyses may warrant some differences in the QA/QC protocol, but procedures to ensure analytical integrity should be developed and followed.

Examples of performance summaries that can be provided include measurements of accuracy (i.e., the means of measured values versus target values for the control samples) and precision (i.e., based on duplicate analyses). It is recommended that the accuracy and precision measurements be compared to those reported as achievable by the Pharmacia Delphia kit (Pharmacia 1990) to determine if and when unsatisfactory analyses have arisen. If the measurement error of 1 or more of the control samples is more than 15%, the run exceeds control limits. Similarly, this decision is warranted when the average CV for duplicate samples is greater than 5%.

3.3.2 Procedures for Record Keeping

To satisfy reporting requirements for commercial analyses of CDB, CDU and/or B2MU performed for the medical monitoring program mandated under the cadmium rule, participating laboratories should maintain the following documentation for each analyte:

1. For each analytic instrument on which analyte determinations are made, records relating to the most recent calibration and QC sample analyses;

2. For these instruments, a tabulated record for each analyte of those determinations found to be within and outside of control limits over the past 2 years;

3. Results for the previous 2 years of the QC sample analyses conducted under the internal QA/QC program (this information should be: Provided for each analyte for which determinations are made and for each analytic instrument used for this purpose, sufficient to demonstrate that internal QA/QC programs are being executed properly, and consistent with data sent to responsible physicians.

4. Duplicate copies of monitoring results for each analyte sent to clients during the previous 5 years, as well as associated information; supporting material such as chain-of-custody forms also should be retained; and,

5. Proficiency test results and related materials received while participating in the CTQ interlaboratory program over the past 2 years; results also should be tabulated to provide a serial record of relative error (derived per Section 3.3.3 below).

3.3.3 Reporting Procedures

Participating laboratories should maintain these documents: QA/QC program plans; QA/QC status reports; CTQ proficiency program reports; and, analytical data reports. The information that should be included in these reports is summarized in Table 2; a copy of each report should be sent to the responsible physician.

TABLE 2.—REPORTING PROCEDURES FOR LABORATORIES PARTICIPATING IN THE CADMIUM MEDICAL MONITORING PROGRAM

Report	Frequency (time frame)	Contents
1 QA/QC Program Plan	Once (initially)	A detailed description of the QA/QC protocol to be established by the laboratory to maintain control of analyte determinations.
2 QA/QC Status Report	Every 2 months	Results of the QC samples incorporated into regular runs for each instrument (over the period since the last report).
3 Proficiency Report	Attached to every data report	Results from the last full year of proficiency samples submitted to the CTQ program and Results of the 100 most recent QC samples incorporated into regular runs for each instrument.
4 Analytical Data Report	For all reports of data results	Date the sample was received; Date the sample was analyzed; Appropriate chain-of-custody information; Types of analyses performed; Results of the requested analyses and Copy of the most current proficiency report.

As noted in Section 3.3.1, a QA/QC program plan should be developed that documents internal QA/QC procedures (defined under Section 3.3.1) to be implemented by the participating laboratory for each analyte; this plan should provide a list identifying each instrument used in making analyte determinations.

A QA/QC status report should be written bimonthly for each analyte. In this report, the results of the QC program during the reporting period should be reported for each analyte in the following manner: The number (N) of QC samples analyzed during the period; a table of the target levels defined for each sample and the corresponding measured values; the mean of F/T value (as defined below) for the set of QC samples run during the period; and, use of $X \pm 2\sigma$ (as defined below) for the set of QC samples run during the period as a measure of precision.

As noted in Section 2, an F/T value for a QC sample is the ratio of the measured concentration of analyte to the established (i.e., reference) concentration of analyte for that QC sample. The equation below describes the derivation of the mean for F/T values, $\overline{X}$:

$$\overline{X} = \frac{\Sigma(F/T)}{N}$$

The standard deviation, σ, for these measurements is derived using the following equation (note that 2σ is twice this value):

$$\sigma = \left[\frac{\Sigma(F/T - \overline{X})^2}{n-1}\right]^{\frac{1}{2}}$$

The nonmandatory QA/QC protocol (see Attachment 3) indicates that QC samples should be divided into several discrete pools, and a separate estimate of precision for each pools then should be derived. Several precision estimates should be provided for concentrations which differ in average value. These precision measures may be used to document improvements in performance with regard to the combined pool.

Participating laboratories should use the CTQ proficiency program for each analyte. Results of the this program will be sent by CTQ directly to physicians designated by the participating laboratories. Proficiency results from the CTQ program are used to establish the accuracy of results from each participating laboratory, and should be provided to responsible physicians for use in trend analysis. A proficiency report consisting of these proficiency results should accompany data reports as an attachment.

For each analyte, the proficiency report should include the results from the 6 previous proficiency rounds in the following format:

1. Number (N) of samples analyzed;

2. Mean of the target levels, $(1/N)\Sigma T_i$, with T_i being a consensus mean for the sample;

3. Mean of the measurements, $(1/N)\Sigma M_i$, with M_i being a sample measurement;

4. A measure of error defined by:

$(1/N)\Sigma(T_i - M_i)^2$

Analytical data reports should be submitted to responsible physicians directly. For each sample, report the following information: The date the sample was received; the date the sample was analyzed; appropriate chain-of-custody information; the type(s) of analyses performed; and, the results of the analyses. This information should be reported on a form similar to the form provided an appropriate form. The most

recent proficiency program report should accompany the analytical data reports (as an attachment).

Confidence intervals for the analytical results should be reported as $X \pm 2\sigma$, with X being the measured value and 2σ the standard deviation calculated as described above.

For CDU or B2MU results, which are combined with CRTU measurements for proper reporting, the 95% confidence limits are derived from the limits for CDU or B2MU, (p), and the limits for CRTU, (q), as follows:

$$\frac{X}{Y} \pm \left(\frac{1}{Y^2}\right)(Y^2 \times p^2 + X^2 \times q^2)^{\frac{1}{2}}$$

For these calculations, $X \pm p$ is the measurement and confidence limits for CDU or B2MU, and $Y \pm q$ is the measurement and confidence limit for CRTU.

Participating laboratories should notify responsible physicians as soon as they receive information indicating a change in their accreditation status with the CTQ or the CAP. These physicians should not be expected to wait until formal notice of a status change has been received from the CTQ or the CAP.

3.4 Instructions to Physicians

Physicians responsible for the medical monitoring of cadmium-exposed workers must collect the biological samples from workers; they then should select laboratories to perform the required analyses, and should interpret the analytic results.

3.4.1 Sample Collection and Holding Procedures

Blood Samples. The following procedures are recommended for the collection, shipment and storage of blood samples for CDB analysis to reduce analytical variability; these recommendations were obtained primarily through personal communications with J.P. Weber of the CTQ (1991), and from reports by the Centers for Disease Control (CDC, 1986) and Stoeppler and Brandt (1980).

To the extent possible, blood samples should be collected from workers at the same time of day. Workers should shower or thoroughly wash their hands and arms before blood samples are drawn. The following materials are needed for blood sample collection: Alcohol wipes; sterile gauze sponges; band-aids; 20-gauge, 1.5-in. stainless steel needles (sterile); preprinted labels; tourniquets; vacutainer holders; 3-ml "metal free" vacutainer tubes (i.e., dark-blue caps), with EDTA as an anti-coagulant; and, styrofoam vacutainer shipping containers.

Whole blood samples are taken by venipuncture. Each blue-capped tube should be labeled or coded for the worker and company before the sample is drawn. (Blue-capped tubes are recommended instead of red-capped tubes because the latter may consist of red coloring pigment containing cadmium, which could contaminate the samples.) Immediately after sampling, the vacutainer tubes must be thoroughly mixed by inverting the tubes at least 10 times manually or mechanically using a Vortex device (for 15 sec). Samples should be refrigerated immediately or stored on ice until they can be packed for shipment to the participating laboratory for analysis.

The CDC recommends that blood samples be shipped with a "cool pak" to keep the samples cold during shipment. However, the CTQ routinely ships and receives blood samples for cadmium analysis that have not been kept cool during shipment. The CTQ has found no deterioration of cadmium in biological fluids that were shipped via parcel post without a cooling agent, even though these deliveries often take 2 weeks to reach their destination.

Urine Samples. The following are recommended procedures for the collection, shipment and storage of urine for CDU and B2MU analyses, and were obtained primarily through personal communications with J.P. Weber of the CTQ (1991), and from reports by the CDC (1986) and Stoeppler and Brandt (1980).

Single "spot" samples are recommended. As B2M can degrade in the bladder, workers should first empty their bladder and then drink a large glass of water at the start of the visit. Urine samples then should be collected within 1 hour. Separate samples should be collected for CDU and B2MU using the following materials: Sterile urine collection cups (250 ml); small sealable plastic bags; preprinted labels; 15-ml polypropylene or polyethylene screw-cap tubes; lab gloves ("metal free"); and, preservatives (as indicated).

The sealed collection cup should be kept in the plastic bag until collection time. The workers should wash their hands with soap and water before receiving the collection cup. The collection cup should not be opened until just before voiding and the cup should be sealed immediately after filling. It is important that the inside of the container and cap are not touched by, or come into contact with, the body, clothing or other surfaces.

For CDU analyzes, the cup is swirled gently to resuspend any solids, and the 15-ml tube is filled with 10-12 ml urine. The CDC recommends the addition of 100 µl concentrated HNO_3 as a preservative before sealing the tube and then freezing the sample. The CTQ recommends minimal handling and does not acidify their interlaboratory urine reference materials prior to shipment, nor do they freeze the sample for shipment. At the CTQ, if the urine sample has much sediment, the sample is acidified in the lab to free any cadmium in the precipitate.

For B2M, the urine sample should be collected directly into a polyethylene bottle previously washed with dilute nitric acid. The pH of the urine should be measured and adjusted to 8.0 with 0.1 N NaOH immediately following collection. Samples should be frozen and stored at –20°C until testing is performed. The B2M in the samples should be stable for 2 days when stored at 2–8°C, and for at least 2 months at –20°C. Repeated freezing and thawing should be avoided to prevent denaturing the B2M (Pharmacia 1990).

3.4.2 Recommendations for Evaluating Laboratories

Using standard error data and the results of proficiency testing obtained from CTQ, responsible physicians can make an informed choice of which laboratory to select to analyze biological samples. In general, laboratories with small standard errors and little disparity between target and measured values tend to make precise and accurate sample determinations. Estimates of precision provided to the physicians with each set of monitoring results can be compared to previously-reported proficiency and precision estimates. The latest precision estimates should be at least as small as the standard error reported previously by the laboratory. Moreover, there should be no indication that precision is deteriorating (i.e., increasing values for the precision estimates). If precision is deteriorating, physicians may decide to use another laboratory for these analyses. QA/QC information provided by the participating laboratories to physicians can, therefore, assist physicians in evaluating laboratory performance.

3.4.3 Use and Interpretation of Results

When the responsible physician has received the CDB, CDU and/or B2MU results, these results must be compared to the action levels discussed in the final rule for cadmium. The comparison of the sample results to action levels is straightforward. The measured value reported from the laboratory can be compared directly to the action levels; if the reported value exceeds an action level, the required actions must be initiated.

4.0 Background

Cadmium is a naturally-occurring environmental contaminant to which humans are continually exposed in food, water, and air. The average daily intake of cadmium by the U.S. population is estimated to be 10–20 µg/day. Most of this intake is via ingestion, for which absorption is estimated at 4–7% (Kowal et al. 1979). An additional nonoccupational source of cadmium is smoking tobacco; smoking a pack of cigarettes a day adds an additional 2–4 µg cadmium to the daily intake, assuming absorption via inhalation of 25–35% (Nordberg and Nordberg 1988; Friberg and Elinder 1988; Travis and Haddock 1980).

Exposure to cadmium fumes and dusts in an occupational setting where air concentrations are 20–50 $\mu g/m^3$ results in an additional daily intake of several hundred micrograms (Friberg and Elinder 1988, p. 563). In such a setting, occupational exposure to cadmium occurs primarily via inhalation, although additional exposure may occur through the ingestion of material via contaminated hands if workers eat or smoke without first washing. Some of the particles that are inhaled initially may be ingested when the material is deposited in the upper respiratory tract, where it may be cleared by mucociliary transport and subsequently swallowed.

Cadmium introduced into the body through inhalation or ingestion is transported by the albumin fraction of the blood plasma to the liver, where it accumulates and is stored principally as a bound form complexed with the protein metallothionein. Metallothionein-bound cadmium is the main form of cadmium subsequently transported to the kidney; it is these 2 organs, the liver and kidney, in which the majority of the cadmium body burden accumulates. As much as one half of the total

body burden of cadmium may be found in the kidneys (Nordberg and Nordberg 1988).

Once cadmium has entered the body, elimination is slow; about 0.02% of the body burden is excreted per day via urinary/fecal elimination. The whole-body half-life of cadmium is 10–35 years, decreasing slightly with increasing age (Travis and Haddock 1980).

The continual accumulation of cadmium is the basis for its chronic noncarcinogenic toxicity. This accumulation makes the kidney the target organ in which cadmium toxicity usually is first observed (Piscator 1984). Renal damage may occur when cadmium levels in the kidney cortex approach 200 μg/g wet tissue-weight (Travis and Haddock 1980).

The kinetics and internal distribution of cadmium in the body are complex, and depend on whether occupational exposure to cadmium is ongoing or has terminated. In general, cadmium in blood is related principally to recent cadmium exposure, while cadmium in urine reflects cumulative exposure (i.e., total body burden) (Lauwerys et al. 1976; Friberg and Elinder 1988).

4.1 Health Effects

Studies of workers in a variety of industries indicate that chronic exposure to cadmium may be linked to several adverse health effects including kidney dysfunction, reduced pulmonary function, chronic lung disease and cancer (Federal Register 1990). The primary sites for cadmium-associated cancer appear to be the lung and the prostate.

Cancer. Evidence for an association between cancer and cadmium exposure comes from both epidemiological studies and animal experiments. Pott (1965) found a statistically significant elevation in the incidence of prostate cancer among a cohort of cadmium workers. Other epidemiology studies also report an elevated incidence of prostate cancer; however, the increases observed in these other studies were not statistically significant (Meridian Research, Inc. 1989).

One study (Thun et al. 1985) contains sufficiently quantitative estimates of cadmium exposure to allow evaluation of dose-response relationships between cadmium exposure and lung cancer. A statistically significant excess of lung cancer attributed to cadmium exposure was found in this study, even after accounting for confounding variables such as coexposure to arsenic and smoking habits (Meridian Research, Inc. 1989).

Evidence for quantifying a link between lung cancer and cadmium exposure comes from a single study (Takenaka et al. 1983). In this study, dose-response relationships developed from animal data were extrapolated to humans using a variety of models. OSHA chose the multistage risk model for estimating the risk of cancer for humans using these animal data. Animal injection studies also suggest an association between cadmium exposure and cancer, particularly observations of an increased incidence of tumors at sites remote from the point of injection. The International Agency for Research on Cancer (IARC) (Supplement 7, 1987) indicates that this, and related, evidence is sufficient to classify cadmium as an animal carcinogen. However, the results of these injection studies cannot be used to quantify risks attendant to human occupational exposures due to differences in routes of exposure (Meridian Research, Inc. 1989).

Based on the above-cited studies, the U.S. Environmental Protection Agency (EPA) classifies cadmium as "B1," a probable human carcinogen (USEPA 1985). IARC in 1987 recommended that cadmium be listed as a probable human carcinogen.

Kidney Dysfunction. The most prevalent nonmalignant effect observed among workers chronically exposed to cadmium is kidney dysfunction. Initially, such dysfunction is manifested by proteinuria (Meridian Research, Inc. 1989; Roth Associates, Inc. 1989). Proteinuria associated with cadmium exposure is most commonly characterized by excretion of low-molecular weight proteins (15,000–40,000 MW), accompanied by loss of electrolytes, uric acid, calcium, amino acids, and phosphate. Proteins commonly excreted include β-2-microglobulin (B2M), retinol-binding protein (RBP), immunoglobulin light chains, and lysozyme. Excretion of low molecular weight proteins is characteristic of damage to the proximal tubules of the kidney (Iwao et al. 1980).

Exposure to cadmium also may lead to urinary excretion of high-molecular weight proteins such as albumin, immunoglobulin G, and glycoproteins (Meridian Research, Inc. 1989; Roth Associates, Inc. 1989). Excretion of high-molecular weight proteins is indicative of damage to the glomeruli of the kidney. Bernard et al. (1979) suggest that cadmium-associated damage to the glomeruli and damage to the proximal tubules of the kidney develop independently of each other, but may occur in the same individual.

Several studies indicate that the onset of low-molecular weight proteinuria is a sign of irreversible kidney damage (Friberg et al. 1974; Roels et al. 1982; Piscator 1984; Elinder et al. 1985; Smith et al. 1986). For many workers, once sufficiently elevated levels of B2M are observed in association with cadmium exposure, such levels do not appear to return to normal even when cadmium exposure is eliminated by removal of the worker from the cadmium-contaminated work environment (Friberg, exhibit 29, 1990).

Some studies indicate that cadmium-induced proteinuria may be progressive; levels of B2MU increase even after cadmium exposure has ceased (Elinder et al. 1985). Other researchers have reached similar conclusions (Frieburg testimony, OSHA docket exhibit 29, Elinder testimony, OSHA docket exhibit 55, and OSHA docket exhibits 8–86B). Such observations are not universal, however (Smith et al. 1986; Tsuchiya 1976). Studies in which proteinuria has not been observed, however, may have initiated the reassessment too early (Meridian Research, Inc.1989; Roth Associates, Inc. 1989; Roels 1989).

A quantitative assessment of the risks of developing kidney dysfunction as a result of cadmium exposure was performed using the data from Ellis et al. (1984) and Falck et al. (1983). Meridian Research, Inc. (1989) and Roth Associates, Inc. (1989) employed several mathematical models to evaluate the data from the 2 studies, and the results indicate that cumulative cadmium exposure levels between 5 and 100 μg-years/m³ correspond with a one-in-a-thousand probability of developing kidney dysfunction.

When cadmium exposure continues past the onset of early kidney damage (manifested as proteinuria), chronic nephrotoxicity may occur (Meridian Research, Inc. 1989; Roth Associates, Inc. 1989). Uremia, which is the loss of the glomerulus' ability to adequately filter blood, may result. This condition leads to severe disturbance of electrolyte concentrations, which may result in various clinical complications including atherosclerosis, hypertension, pericarditis, anemia, hemorrhagic tendencies, deficient cellular immunity, bone changes, and other problems. Progression of the disease may require dialysis or a kidney transplant.

Studies in which animals are chronically exposed to cadmium confirm the renal effects observed in humans (Friberg et al. 1986). Animal studies also confirm cadmium-related problems with calcium metabolism and associated skeletal effects, which also have been observed among humans. Other effects commonly reported in chronic animal studies include anemia, changes in liver morphology, immunosuppression and hypertension. Some of these effects may be associated with cofactors; hypertension, for example, appears to be associated with diet, as well as with cadmium exposure. Animals injected with cadmium also have shown testicular necrosis.

4.2 Objectives for Medical Monitoring

In keeping with the observation that renal disease tends to be the earliest clinical manifestation of cadmium toxicity, the final cadmium standard mandates that eligible workers must be medically monitored to prevent this condition (as well as cadmimum-induced cancer). The objectives of medical-monitoring, therefore, are to: Identify workers at significant risk of adverse health effects from excess, chronic exposure to cadmium; prevent future cases of cadmium-induced disease; detect and minimize existing cadmium-induced disease; and, identify workers most in need of medical intervention.

The overall goal of the medical monitoring program is to protect workers who may be exposed continuously to cadmium over a 45-year occupational lifespan. Consistent with this goal, the medical monitoring program should assure that:

1. Current exposure levels remain sufficiently low to prevent the accumulation of cadmium body burdens sufficient to cause disease in the future by monitoring CDB as an indicator of recent cadmium exposure;

2. Cumulative body burdens, especially among workers with undefined historical exposures, remain below levels potentially capable of leading to damage and disease by assessing CDU as an indicator of cumulative exposure to cadmium; and,

3. Health effects are not occurring among exposed workers by determining B2MU as an early indicator of the onset of cadmium-induced kidney disease.

4.3 Indicators of Cadmium Exposure and Disease

Cadmium is present in whole blood bound to albumin, in erythrocytes, and as a metallothionein-cadmium complex. The metallothionein-cadmium complex that represents the primary transport mechanism for cadmium delivery to the kidney. CDB concentrations in the general, nonexposed population average 1 μg Cd/l whole blood, with smokers exhibiting higher levels (see Section 5.1.6). Data presented in Section 5.1.6 shows that 95% of the general population not occupationally exposed to cadmium have CDB levels less than 5 μg Cd/l.

If total body burdens of cadmium remain low, CDB concentrations indicate recent exposure (i.e., daily intake). This conclusion is based on data showing that cigarette smokers exhibit CDB concentrations of 2–7 μg/l depending on the number of cigarettes smoked per day (Nordberg and Nordberg 1988), while CDB levels for those who quit smoking return to general population values (approximately 1 μg/l) within several weeks (Lauwerys et al. 1978). Based on these observations, Lauwerys et al. (1978) concluded that CDB has a biological half-life of a few weeks to less than 3 months. As indicated in Section 3.1.6, the upper 95th percentile for CDB levels observed among those who are not occupationally exposed to cadmium is 5 μg/l, which suggests that the absolute upper limit to the range reported for smokers by Nordberg and Nordberg may have been affected by an extreme value (i.e., beyond 2σ above the mean).

Among occupationally-exposed workers, the occupational history of exposure to cadmium must be evaluated to interpret CDB levels. New workers, or workers with low exposures to cadmium, exhibit CDB levels that are representative of recent exposures, similar to the general population. However, for workers with a history of chronic exposure to cadmium, who have accumulated significant stores of cadmium in the kidneys/liver, part of the CDB concentrations appear to indicate body burden. If such workers are removed from cadmium exposure, their CDB levels remain elevated, possibly for years, reflecting prior long-term accumulation of cadmium in body tissues. This condition tends to occur, however, only beyond some threshold exposure value, and possibly indicates the capacity of body tissues to accumulate cadmium which cannot be excreted readily (Friberg and Elinder 1988; Nordberg and Nordberg 1988).

CDU is widely used as an indicator of cadmium body burdens (Nordberg and Nordberg 1988). CDU is the major route of elimination and, when CDU is measured, it is commonly expressed either as μg Cd/l urine (unadjusted), μg Cd/l urine (adjusted for specific gravity), or μg Cd/g CRTU (see Section 5.2.1). The metabolic model for CDU is less complicated than CDB, since CDU is dependentin large part on the body (i.e., kidney) burden of cadmium. However, a small proportion of CDU still be attributed to recent cadmium exposure, particularly if exposure to high airborne concentrations of cadmium occurred. Note that CDU is subject to larger inperindividual and day-to-day variations than CDB, so repeated measurements are recommended for CDU evaluations.

CDU is bound principally to metallothionein, regardless of whether the cadmium originates from metallothionein in plasma or from the cadmium pool accumulated in the renal tubules. Therefore, measurement of metallothionein in urine may provide information similar to CDU, while avoiding the contamination problems that may occur during collection and handling urine for cadmium analysis (Nordberg and Nordberg 1988). However, a commercial method for the determination of metallothionein at the sensitivity levels required under the final cadmium rule is not currently available; therefore, analysis of CDU is recommended.

Among the general population not occupationally exposed to cadmium, CDU levels average less than 1 μg/l (see Section 5.2.7). Normalized for creatinine (CRTU), the average CDU concentration of the general population is less than 1 μg/g CRTU. As cadmium accumulates over the lifespan, CDU increases with age. Also, cigarette smokers may eventually accumulate twice the cadmium body burden of nonsmokers, CDU is slightly higher in smokers than in nonsmokers, even several years after smoking cessation (Nordberg and Nordberg 1988). Despite variations due to age and smoking habits, 95% of those not occupationally exposed to cadmium exhibit levels of CDU less than 3 μg/g CRTU (based on the data presented in Section 5.2.7).

About 0.02% of the cadmium body burden is excreted daily in urine. When the critical cadmium concentration (about 200 ppm) in the kidney is reached, or if there is sufficient cadmium-induced kidney dysfunction, dramatic increases in CDU are observed (Nordberg and Nordberg 1988). Above 200 ppm, therefore, CDU concentrations cease to be an indicator of cadmium body burden, and are instead an index of kidney failure.

Proteinuria is an index of kidney dysfunction, and is defined by OSHA to be a material impairment. Several small proteins may be monitored as markers for proteinuria. Below levels indicative of proteinuria, these small proteins may be early indicators of increased risk of cadmium-induced renal tubular disease. Analytes useful for monitoring cadmium-induced renal tubular damage include:

1. β-2-Microglobulin (B2M), currently the most widely used assay for detecting kidney dysfunction, is the best characterized analyte available (Iwao et al. 1980; Chia et al. 1989);

2. Retinol Binding Protein (RBP) is more stable than B2M in acidic urine (i.e., B2M breakdown occurs if urinary pH is less than 5.5; such breakdown may result in false [i.e., low] B2M values [Bernard and Lauwerys, 1990]);

3. N-Acetyl-B-Glucosaminidase (NAG) is the analyte of an assay that is simple, inexpensive, reliable, and correlates with cadmium levels under 10 μg/g CRTU, but the assay is less sensitive than RBP or B2M (Kawada et al. 1989);

4. Metallothionein (MT) correlates with cadmium and B2M levels, and may be a better predictor of cadmium exposure than CDU and B2M (Kawada et al. 1989);

5. Tamm-Horsfall Glycoprotein (THG) increases slightly with elevated cadmium levels, but this elevation is small compared to increases in urinary albumin, RBP, or B2M (Bernard and Lauwerys 1990);

6. Albumin (ALB), determined by the biuret method, is not sufficiently sensitive to serve as an early indicator of the onset of renal disease (Piscator 1962);

7. Albumin (ALB), determined by the Amido Black method, is sensitive and reproducible, but involves a time-consuming procedure (Piscator 1962);

8. Glycosaminoglycan (GAG) increases among cadmium workers, but the significance of this effect is unknown because no relationship has been found between elevated GAG and other indices of tubular damage (Bernard and Lauwerys 1990);

9. Trehalase seems to increase earlier than B2M during cadmium exposure, but the procedure for analysis is complicated and unreliable (Iwata et al. 1988); and,

10. Kallikrein is observed at lower concentrations among cadmium-exposed workers than among normal controls (Roels et al. 1990).

Of the above analytes, B2M appears to be the most widely used and best characterized analyte to evaluate the presence/absence, as well as the extent of, cadmium-induced renal tubular damage (Kawada, Koyama, and Suzuki 1989; Shaikh and Smith 1984; Nogawa 1984). However, it is important that samples be collected and handled so as to minimize B2M degradation under acidic urine conditions.

The threshold value of B2MU commonly used to indicate the presence of kidney damage 300 μg/g CRTU (Kjellstrom et al. 1977a; Buchet et al. 1980; and Kowal and Zirkes 1983). This value represents the upper 95th or 97.5th percentile level of urinary excretion observed among those without tubular dysfunction (Elinder, exbt L-140-45, OSHA docket H057A). In agreement with these conclusions, the data presented in Section 5.3.7 of this protocol generally indicate that the level of 300 μg/g CRTU appears to define the boundary for kidney dysfunction. It is not clear, however, that this level represents the upper 95th percentile of values observed among those who fail to demonstrate proteinuria effects.

Although elevated B2MU levels appear to be a fairly specific indicator of disease associated with cadmium exposure, other conditions that may lead to elevated B2MU levels include high fevers from influenza, extensive physical exercise, renal disease unrelated to cadmium exposure, lymphomas, and AIDS (Iwao et al. 1980; Schardun and van Epps 1987). Elevated B2M levels observed in association with high fevers from influenza or from extensive physical exercise are transient, and will return to normal levels once the fever has abated or metabolic rates return to baseline values following exercise. The other conditions linked to elevated B2M levels can be diagnosed as part of a properly-designed medical examination. Consequently, monitoring B2M, when accompanied by regular medical examinations and CDB and CDU determinations (as indicators of present and past cadmium exposure), may serve as a

specific, early indicator of cadmium-induced kidney damage.

4.4 Criteria for Medical Monitoring of Cadmium Workers

Medical monitoring mandated by the final cadmium rule includes a combination of regular medical examinations and periodic monitoring of 3 analytes: CDB, CDU and B2MU. As indicated above, CDB is monitored as an indicator of current cadmium exposure, while CDU serves as an indicator of the cadmium body burden; B2MU is assessed as an early marker of irreversible kidney damage and disease.

The final cadmium rule defines a series of action levels that have been developed for each of the 3 analytes to be monitored. These action levels serve to guide the responsible physician through a decision-making process. For each action level that is exceeded, a specific response is mandated. The sequence of action levels, and the attendant actions, are described in detail in the final cadmium rule.

Other criteria used in the medical decision-making process relate to tests performed during the medical examination (including a determination of the ability of a worker to wear a respirator). These criteria, however, are not affected by the results of the analyte determinations addressed in the above paragraphs and, consequently, will not be considered further in these guidelines.

4.5 Defining to Quality and Proficiency of the Analyte Determinations

As noted above in Sections 2 and 3, the quality of a measurement should be defined along with its value to properly interpret the results. Generally, it is necessary to know the accuracy and the precision of a measurement before it can be properly evaluated. The precision of the data from a specific laboratory indicates the extent to which the repeated measurements of the same sample vary within that laboratory. The accuracy of the data provides an indication of the extent to which these results deviate from average results determined from many laboratories performing the same measurement (i.e., in the absence of an independent determination of the true value of a measurement). Note that terms are defined operationally relative to the manner in which they will be used in this protocol. Formal definitions for the terms in italics used in this section can be found in the list of definitions (Section 2).

Another data quality criterion required to properly evaluate measurement results is the limit of detection of that measurement. For measurements to be useful, the range of the measurement which is of interest for biological monitoring purposes must lie entirely above the limit of detection defined for that measurement.

The overall quality of a laboratory's results is termed the performance of that laboratory. The degree to which a laboratory satisfies a minimum performance level is referred to as the proficiency of the laboratory. A successful medical monitoring program, therefore, should include procedures developed for monitoring and recording laboratory performance; these procedures can be used to identify the most proficient laboratories.

5.0 Overview of Medical Monitoring Tests for CDB, CDU, B2MU and CRTU

To evaluate whether available methods for assessing CDB, CDU, B2MU and CRTU are adequate for determining the parameters defined by the proposed action levels, it is necessary to review procedures available for sample collection, preparation and analysis. A variety of techniques for these purposes have been used historically for the determination of cadmium in biological matrices (including CDB and CDU), and for the determination of specific proteins in biological matrices (including B2MU). However, only the most recent techniques are capable of satisfying the required accuracy, precision and sensitivity (i.e., limit of detection) for monitoring at the levels mandated in the final cadmium rule, while still facilitating automated analysis and rapid processing.

5.1 Measuring Cadmium in Blood (CDB)

Analysis of biological samples for cadmium requires strict analytical discipline regarding collection and handling of samples. In addition to occupational settings, where cadmium contamination would be apparent, cadmium is a ubiquitous environmental contaminant, and much care should be exercised to ensure that samples are not contaminated during collection, preparation or analysis. Many common chemical reagents are contaminated with cadmium at concentrations that will interfere with cadmium analysis; because of the widespread use of cadmium compounds as colored pigments in plastics and coatings, the analyst should continually monitor each manufacturer's chemical reagents and collection containers to prevent contamination of samples.

Guarding against cadmium contamination of biological samples is particularly important when analyzing blood samples because cadmium concentrations in blood samples from nonexposed populations are generally less than 2 μg/l (2 ng/ml), while occupationally-exposed workers can be at medical risk to cadmium toxicity if blood concentrations exceed 5 μg/l (ACGIH 1991 and 1992). This narrow margin between exposed and unexposed samples requires that exceptional care be used in performing analytic determinations for biological monitoring for occupational cadmium exposure.

Methods for quantifying cadmium in blood have improved over the last 40 years primarily because of improvements in analytical instrumentation. Also, due to improvements in analytical techniques, there is less need to perform extensive multi-step sample preparations prior to analysis. Complex sample preparation was previously required to enhance method sensitivity (for cadmium), and to reduce interference by other metals or components of the sample.

5.1.1 Analytical Techniques Used to Monitor Cadmium in Biological Matrices

TABLE 3.—COMPARISON OF ANALYTICAL PROCEDURES/INSTRUMENTATION FOR DETERMINATION OF CADMIUM IN BIOLOGICAL SAMPLES

Analytical procedure	Limit of detection [ng/(g or ml)]	Specified biological matrix	Reference	Comments
Flame Atomic Absorption Spectroscopy (FAAS).	≥1.0	Any matrix	Perkin-Elmer (1982)	Not sensitive enough for biomonitoring without extensive sample digestion, metal chelation and organic solvent extraction.
Graphite Furnace Atomic Absorption Spectroscopy (GFAAS).	0.04	Urine	Pruszkowska et al. (1983)	Methods of choice for routine cadmium analysis.
	≥0.20	Blood	Stoeppler and Brandt (1980).	
Inductively-Coupled Argon-Plasma Atomic Emission Spectroscopy (ICAP AES).	2.0	Any matrix	NIOSH (1984A)	Requires extensive sample preparation and concentration of metal with chelating resin. Advantage is simultaneous analyses for as many as 10 metals from 1 sample.
Neutron Activation Gamma Spectroscopy (NA)	1.5	In vivo (liver)	Ellis et al. (1983)	Only available *in vivo* method for direct determination of cadmium body tissue burdens; expensive; absolute determination of cadmium in reference materials.
Isotope Dilution Mass Spectroscopy (IDMS)	<1.0	Any matrix	Michiels and DeBievre (1986).	Suitable for absolute determination of cadmium in reference materials; expensive.
Differential Pulse Anodic Stripping Voltammetry (DPASV).	<1.0	Any matrix	Stoeppler and Brandt (1980).	Suitable for absolute determination of cadmium in reference materials; efficient method to check accuracy of analytical method.

A number of analytical techniques have been used for determining cadmium concentrations in biological materials. A summary of the characteristics of the most widely employed techniques is presented in Table 3. The technique most suitable for medical monitoring for cadmium is atomic absorption spectroscopy (AAS).

To obtain a measurement using AAS, a light source (i.e., hollow cathode or lectrode-free discharge lamp) containing the element of interest as the cathode, is energized and the lamp emits a spectrum that is unique for that element. This light source is focused through a sample cell, and a selected wavelength is monitored by a monochrometer and photodetector cell. Any ground state atoms in the sample that match those of the lamp element and are in the path of the emitted light may absorb some of the light and decrease the amount of light that reaches the photodetector cell. The amount of light absorbed at each characteristic wavelength is proportional to the number of ground state atoms of the corresponding element that are in the pathway of the light between the source and detector.

To determine the amount of a specific metallic element in a sample using AAS, the sample is dissolved in a solvent and aspirated into a high-temperature flame as an aerosol. At high temperatures, the solvent is rapidly evaporated or decomposed and the solute is initially solidified; the majority of the sample elements then are transformed into an atomic vapor. Next, a light beam is focused above the flame and the amount of metal in the sample can be determined by measuring the degree of absorbance of the atoms of the target element released by the flame at a characteristic wavelength.

A more refined atomic absorption technique, flameless AAS, substitutes an electrothermal, graphite furnace for the flame. An aliquot (10–100 μl) of the sample is pipetted into the cold furnace, which is then heated rapidly to generate an atomic vapor of the element.

AAS is a sensitive and specific method for the elemental analysis of metals; its main drawback is nonspecific background absorbtion and scattering of the light beam by particles of the sample as it decomposes at high temperatures; nonspecific absorbance reduces the sensitivity of the analytical method. The problem of nonspecific absorbance and scattering can be reduced by extensive sample pretreatment, such as ashing and/or acid digestion of the sample to reduce its organic content.

Current AAS instruments employ background correction devices to adjust electronically for background absorbtion and scattering. A common method to correct for background effects is to use a deuterium arc lamp as a second light source. A continuum light source, such as the deuterium lamp, emits a broad spectrum of wavelengths instead of specific wavelengths characteristic of a particular element, as with the hollow cathode tube. With this system, light from the primary source and the continuum source are passed alternately through the sample cell. The target element effectively absorbs light only from the primary source (which is much brighter than the continuum source at the characteristic wavelengths), while the background matrix absorbs and scatters light from both sources equally. Therefore, when the ratio of the two beams is measured electronically, the effect of nonspecific background absorption and scattering is eliminated. A less common, but more sophisticated, backgrond correction system is based on the Zeeman effect, which uses a magnetically-activated light polarizer to compensate electronically for nonspecific absorbtion and scattering.

Atomic emission spectroscopy with inductively-coupled argon plasma (AES–ICAP) is widely used to analyze for metals. With this instrument, the sample is aspirated into an extremely hot argon plasma flame, which excites the metal atoms; emission spectra specific for the sample element then are generated. The quanta of emitted light passing through a monochrometer are amplified by photomultiplier tubes and measured by a photodetector to determine the amount of metal in the sample. An advantage of AES–ICAP over AAS is that multi-elemental analyses of a sample can be performed by simultaneously measuring specific elemental emission energies. However, AES–ICAP lacks the sensitivity of AAS, exhibiting a limit of detection which is higher than the limit of detection for graphite-furnace AAS (Table 3).

Neutron activation (NA) analysis and isotope dilution mass spectrometry (IDMS) are 2 additional, but highly specialized, methods that have been used for cadmium determinations. These methods are expensive because they require elaborate and sophisticated instrumentation.

NA analysis has the distinct advantage over other analytical methods of being able to determine cadmium body burdens in specific organs (e.g., liver, kidney) in vivo (Ellis et al. 1983). Neutron bombardment of the target transforms cadmium-13 to cadmium-114, which promptly decays ($<10^{-14}$ sec) to its ground state, emitting gamma rays that are measured using large gamma detectors; appropriate shielding and instrumentation are required when using this method.

IDMS analysis, a definitive but laborious method, is based on the change in the ratio of 2 isotopes of cadmium (cadmium 111 and 112) that occurs when a known amount of the element (with an artificially altered ratio of the same isotopes [i.e., a cadmium 111 "spike"] is added to a weighed aliquot of the sample (Michiels and De Bievre 1986).

5.1.2 Methods Developed for CDB Determinations

A variety of methods have been used for preparing and analyzing CDB samples; most of these methods rely on one of the analytical techniques described above. Among the earliest reports, Princi (1947) and Smith et al. (1955) employed a colorimetric procedure to analyze for CDB and CDU. Samples were dried and digested through several cycles with concentrated mineral acids (HNO_3 and H_2SO_4) and hydrogen peroxide (H_2O_2). The digest was neutralized, and the cadmium was complexed with diphenylthiocarbazone and extracted with chloroform. The dithizone-cadmium complex then was quantified using a spectrometer.

Colorimetric procedures for cadmium analyses were replaced by methods based on atomic absorption spectroscopy (AAS) in the early 1960s, but many of the complex sample preparation procedures were retained. Kjellstrom (1979) reports that in Japanese, American and Swedish laboratories during the early 1970s, blood samples were wet ashed with mineral acids or ashed at high temperature and wetted with nitric acid. The cadmium in the digest was complexed with metal chelators including diethyl dithiocarbamate (DDTC), ammonium pyrrolidine dithiocarbamate (APDC) or diphenylthiocarbazone (dithizone) in ammonia-citrate buffer and extracted with methyl isobutyl ketone (MIBK). The resulting solution then was analyzed by flame AAS or graphite-furnace AAS forcadmium determinations using deuterium-lamp background correction.

In the late 1970s, researchers began developing simpler preparation procedures. Roels et al. (1978) and Roberts and Clark (1986) developed simplified digestion procedures. Using the Roberts and Clark method, a 0.5 ml aliquot of blood is collected and transferred to a digestion tube containing 1 ml concentrated HNO_3. The blood is then digested at 110 °C for 4 hours. The sample is reduced in volume by continued heating, and 0.5 ml 30% H_2O_2 is added as the sample dries. The residue is dissolved in 5 ml dilute (1%) HNO_3, and 20 µl of sample is then analyzed by graphite-furnace AAS with deuterium-background correction.

The current trend in the preparation of blood samples is to dilute the sample and add matrix modifiers to reduce background interference, rather than digesting the sample to reduce organic content. The method of Stoeppler and Brandt (1980), and the abbreviated procedure published in the American Public Health Association's (APHA) *Methods for Biological Monitoring* (1988), are straightforward and are nearly identical. For the APHA method, a small aliquot (50–300 µl) of whole blood that has been stabilized with ethylenediaminetetraacetate (EDTA) is added to 1.0 ml 1MHNO_3, vigorously shaken and centrifuged. Aliquots (10–25 µl) of the supernatant then are then analyzed by graphite-furnace AAS with appropriate background correction.

Using the method of Stoeppler and Brandt (1980), aliquots (50–200 µl) of whole blood that have been stabilized with EDTA are pipetted into clean polystyrene tubes and mixed with 150-600 µl of 1 M HNO_3. After vigorous shaking, the solution is centrifuged and a 10–25 µl aliquot of the supernatant then is analyzed by graphite-furnace AAS with appropriate background correction.

Claeys-Thoreau (1982) and DeBenzo et al. (1990) diluted blood samples at a ratio of 1:10 with a matrix modifier (0.2% Triton X–100, a wetting agent) for direct determinations of CDB. DeBenzo et al. also demonstrated that aqueous standards of cadmium, instead of spiked, whole-blood samples, could be used to establish calibration curves if standards and samples are treated with additional small volumes of matrix modifiers (i.e., 1% HNO_3, 0.2% ammonium hydrogenphosphate and 1 mg/ml magnesium salts).

These direct dilution procedures for CDB analysis are simple and rapid. Laboratories can process more than 100 samples a day using a dedicated graphite-furnace AAS, an auto-sampler, and either a Zeeman- or a deuterium-background correction system. Several authors emphasize using optimum settings for graphite-furnace temperatures during the drying, charring, and atomization processes associated with the flameless AAS method, and the need to run frequent QC samples when performing automated analysis.

5.1.3 Sample Collection and Handling

Sample collection procedures are addressed primarily to identify ways to minimize the degree of variability that may be introduced by sample collection during medical monitoring. It is unclear at this point the extent to which collection procedures contribute to variability among CDB samples. Sources of variation that may result from sampling procedures include time-of-day effects and introduction of external contamination during the collection process. To minimize these sources, strict adherence to a sample collection protocol is recommended. Such a protocol must include provisions for thorough cleaning of the site from which blood will be extracted; also, every effort should be made to collect samples near the same time of day. It is also important to recognize that under the recent OSHA blood-borne pathogens standard (29 CFR 1910.1030), blood samples and certain body fluids must be handled and treated as if they are infectious.

5.1.4 Best Achievable Performance

The best achievable performance using a particular method for CDB determinations is assumed to be equivalent to the performance reported by research laboratories in which the method was developed.

For their method, Roberts and Clark (1986) demonstrated a limit of detection of 0.4 µg Cd/l in whole blood, with a linear response curve from 0.4 to 16.0 µg Cd/l. They report a coefficient of variation (CV) of 6.7% at 8.0 µg/l.

The APHA (1988) reports a range of 1.0–25 µg/l, with a CV of 7.3% (concentration not stated). Insufficient documentation was available to critique this method.

Stoeppler and Brandt (1980) achieved a detection limit of 0.2 µg Cd/l whole blood, with a linear range of 0.4–12.0 µg Cd/l, and a CV of 15–30%, for samples at <1.0 µg/l. Improved precision (CV of 3.8%) was reported for CDB concentrations at 9.3 µg/l.

5.1.5 General Method Performance

For any particular method, the performance expected from commercial laboratories may be somewhat lower than that reported by the research laboratory in which the method was developed. With participation in appropriate proficiency programs and use of a proper in-house QA/QC program incorporating provisions for regular corrective actions, the performance of commercial laboratories is expected to approach that reported by research laboratories. Also, the results reported for existing proficiency programs serve as a gauge of the likely level of performance that currently can be expected from commercial laboratories offering these analyses.

Weber (1988) reports on the results of the proficiency program run by the Centre de Toxicologie du Quebec (CTQ). As indicated previously, participants in that program receive 18 blood samples per year having cadmium concentrations ranging from 0.2–20 µg/l. Currently, 76 laboratories are participating in this program. The program is established for several analytes in addition to cadmium, and not all of these laboratories participate in the cadmium proficiency-testing program.

Under the CTQ program, cadmium results from individual laboratories are compared against the consensus mean derived for each sample. Results indicate that after receiving 60 samples (i.e., after participation for approximately three years), 60% of the laboratories in the program are able to report results that fall within ±1 µg/l or 15% of the mean, whichever is greater. (For this procedure, the 15% criterion was applied to concentrations exceeding 7 µg/l.) On any single sample of the last 20 samples, the percentage of laboratories falling within the specified range is between 55 and 80%.

The CTQ also evaluates the performance of participating laboratories against a less severe standard: ±2 µg/l or 15% of the mean, whichever is greater (Weber 1988); 90% of participating laboratories are able to satisfy this standard after approximately 3 years in the program. (The 15% criterion is used for concentrations in excess of 13 µg/l.) On any single sample of the last 15 samples, the

percentage of laboratories falling within the specified range is between 80 and 95% (except for a single test for which only 60% of the laboratories achieved the desired performance).

Based on the data presented in Weber (1988), the CV for analysis of CDB is nearly constant at 20% for cadmium concentrations exceeding 5 μg/l, and increases for cadmium concentrations below 5 μg/l. At 2 μg/l, the reported CV rises to approximately 40%. At 1 μg/l, the reported CV is approximately 60%.

Participating laboratories also tend to overestimate concentrations for samples exhibiting concentrations less than 2 μg/l (see Figure 11 of Weber 1988). This problem is due in part to the proficiency evaluation criterion that allows reporting a minimum ±2.0 μg/l for evaluated CDB samples. There is currently little economic or regulatory incentive for laboratories participating in the CTQ program to achieve greater accuracy for CDB samples containing cadmium at concentrations less than 2.0 μg/l, even if the laboratory has the experience and competency to distinguish among lower concentrations in the samples obtained from the CTQ.

The collective experience of international agencies and investigators demonstrate the need for a vigorous QC program to ensure that CDB values reported by participating laboratories are indeed reasonably accurate. As Friberg (1988) stated:

"Information about the quality of published data has often been lacking. This is of concern as assessment of metals in trace concentrations in biological media are fraught with difficulties from the collection, handling, and storage of samples to the chemical analyses. This has been proven over and over again from the results of interlaboratory testing and quality control exercises. Large variations in results were reported even from 'experienced' laboratories."

The UNEP/WHO global study of cadmium biological monitoring set a limit for CDB accuracy using the maximum allowable deviation method at $Y=X\pm(0.1X+1)$ for a targeted concentration of 10 μg Cd/l (Friberg and Vahter 1983). The performance of participating laboratories over a concentration range of 1.5–12 μg/l was reported by Lind et al. (1987). Of the 3 QC runs conducted during 1982 and 1983, 1 or 2 of the 6 laboratories failed each run. For the years 1983 and 1985, between zero and 2 laboratories failed each of the consecutive QC runs.

In another study (Vahter and Friberg 1988), QC samples consisting of both external (unknown) and internal (stated) concentrations were distributed to laboratories participating in the epidemiology research. In this study, the maximum acceptable deviation between the regression analysis of reported results and reference values was set at $Y=X\pm(0.05X+0.2)$ for a concentration range of 0.3–5.0 μg Cd/l. It is reported that only 2 of 5 laboratories had acceptable data after the first QC set, and only 1 of 5 laboratories had acceptable data after the second QC set. By the fourth QC set, however, all 5 laboratories were judged proficient.

The need for high quality CDB monitoring is apparent when the toxicological and biological characteristics of this metal are considered; an increase in CDB from 2 to 4 μg/l could cause a doubling of the cadmium accumulation in the kidney, a critical target tissue for selective cadmium accumulation (Nordberg and Nordberg 1988).

Historically, the CDC's internal QC program for CDB cadmium monitoring program has found achievable accuracy to be ±z10% of the true value at CDB concentrations ≥5.0 μg/l (Paschal 1990). Data on the performance of laboratories participating in this program currently are not available.

5.1.6 Observed CDB Concentrations

As stated in Section 4.3, CDB concentrations are representative of ongoing levels of exposure to cadmium. Among those who have been exposed chronically to cadmium for extended periods, however, CDB may contain a component attributable to the general cadmium body burden.

5.1.6.1 *CDB Concentrations Among Unexposed Samples*

Numerous studies have been conducted examining CDB concentrations in the general population, and in control groups used for comparison with cadmium-exposed workers. A number of reports have been published that present erroneously high values of CDB (Nordberg and Nordberg 1988). This problem was due to contamination of samples during sampling and analysis, and to errors in analysis. Early AAS methods were not sufficiently sensitive to accurately estimate CDB concentrations.

Table 4 presents results of recent studies reporting CDB levels for the general U.S. population not exposed occupationally to cadmium. Other surveys of tissue cadmium using U.S. samples and conducted as part of a cooperative effort among Japan, Sweden and the U.S., did not collect CDB data because standard analytical methodologies were unavailable, and because of analytic problems (Kjellstrom 1979; SWRI 1978).

TABLE 4.—BLOOD CADMIUM CONCENTRATIONS OF U.S. POPULATION NOT OCCUPATIONALLY EXPOSED TO CADMIUM [a]

Study No.	No. in study (n)	Sex	Age	Smoking habits [b]	Arithmetic mean (±S.D.) [c]	Absolute range or (95% CI) [d]	Geometric mean (±GSD) [e]	Lower 95th percentile of distribution [f]	Upper 95th percentile of distribution [f]	Reference
1	80	M	4 to 69	NS,S	1.13	0.35–3.3	0.98±1.71	0.4	2.4	Kowal et al. (1979).
	58	F	4 to 69	NS,S	1.03	0.21–3.3	0.91±1.63	0.4	2.0	
	115	M/F	4 to 69	NS	0.95	0.21–3.3	0.85±1.59	0.4	1.8	
	31	M/F	4 to 69	S	1.54	0.4–3.3	1.37±1.65	0.6	3.2	
2	10	M	Adults	(?)	2.0±2.1	(0.5–5.0)		[g] (0)	[g] (5.8)	Ellis et al. (1983).
3	24	M	Adults	NS			0.6±1/87	0.2	1.8	Frieberg and Vahter (1983).
	20	M	Adults	S			1.2±2.13	0.3	4.4	
	64	F	Adults	NS			0.5±1.85	0.2	1.4	
	39	F	Adults	S			0.8±2.22	0.2	3.1	
4	32	M	Adults	S,NS			1.2±2.0	0.4	3.9	Thun et al. (1989).
5	35	M	Adults	(?)	2.1±2.1	(0.5–7.3)		[g] (0)	[g] (5.6)	Mueller et al. (1989).

Arithmetic and/or geometric means and standard deviations are provided in Table 4 for measurements among the populations defined in each study listed. The range of reported measurements and/or the 95% upper and lower confidence intervals for the means are presented when this information was reported in a study. For studies reporting either an arithmetic or geometric standard deviation along with a mean, the lower and upper 95th percentile for the distribution also were derived and reported in the table.

The data provided in Table 4 from Kowal et al. (1979) are from studies conducted between 1974 and 1976 evaluating CDB levels for the general population in Chicago, and are considered to be representative of the U.S. population. These studies indicate that the average CDB concentration among those not occupationally exposed to cadmium is approximately 1 μg/l.

In several other studies presented in Table 4, measurements are reported separately for males and females, and for smokers and nonsmokers. The data in this table indicate that similar CDB levels are observed among males and females in the general population, but that smokers tend to exhibit higher CDB levels than nonsmokers. Based on the Kowal et al. (1979) study, smokers not occupationally exposed to cadmium exhibit an average CDB level of 1.4 μg/l.

In general, nonsmokers tend to exhibit levels ranging to 2 μg/l, while levels observed among smokers range to 5 μg/l. Based on the data presented in Table 4, 95% of those not occupationally exposed to cadmium exhibit CDB levels less than 5 μg/l.

5.1.6.2 CDB *Concentrations Among Exposed Workers*

Table 5 is a summary of results from studies reporting CDB levels among workers exposed to cadmium in the work place. As in Table 4, arithmetic and/or geometric means and standard deviations are provided if reported in the listed studies. The absolute range, or the 95% confidence interval around the mean, of the data in each study are provided when reported. In addition, the lower and upper 95th percentile of the distribution are presented for each study in which a mean and corresponding standard deviation were reported. Table 5 also provides estimates of the duration, and level, of exposure to cadmium in the work place if these data were reported in the listed studies. The data presented in Table 5 suggest that CDB levels are dose related. Sukuri et al. (1983) show that higher CDB levels are observed among workers experiencing higher work place exposure. This trend appears to be true of every one of the studies listed in the table.

CDB levels reported in Table 5 are higher among those showing signs of cadmium-related kidney damage than those showing no such damage. Lauwerys et al. (1976) report CDB levels among workers with kidney lesions that generally are above the levels reported for workers without kidney lesions. Ellis et al. (1983) report a similar observation comparing workers with and without renal dysfunction, although they found more overlap between the 2 groups than Lauwerys et al.

TABLE 5.—BLOOD CADMIUM IN WORKERS EXPOSED TO CADMIUM IN THE WORKPLACE

Study number	Work environment (worker population monitored)	Number in study	Employment in years (mean)	Mean concentration of cadmium in air (μg/m³)	Concentrations of Cadmium in blood [a]					Reference
					Arithmetic mean (±S.D.) [b]	Absolute range or (95% C.I.) [c]	Geometric mean (±GSD) [d]	Lower 95th percentile of range [e] ( ) [f]	Upper 95th percentile of range [e] ( ) [f]	
1	Ni-Cd battery plant and Cd production plant:		3–40	<90						Lauwerys et al. 1976.
	(Workers without kidney lesions).	96			21.4±1.9			(18)	(25)	
	(Workers with kidney lesions).	25			38.8±3.8			(32)	(45)	
2	Ni-Cd battery plant:									Adamsson et al. (1979).
	(Smokers)	7	(5)	10.1	22.7	7.3–67.2				
	(Nonsmokers).	8	(9)	7.0	7.0	4.9–10.5				
3	Cadmium alloy plant:									Sukuri et al. 1982.
	(High exposure group).	7	(10.6)	[1,000–5 yrs;	20.8±7.1			(7.3)	(34)	
	(Low exposure group).	9	(7.3)	40–5 yrs]	7.1±1.1			(5.1)	(9.1)	
4	Retrospective study of workers with renal problems:	19	15–41							Roels et al. 1982.
	(Before removal).		(27.2)		39.9±3.7	11–179		(34)	(46)	
	(After removal).		[g](4.2)		14.1±5.6	5.7–27.4		(4.4)	(24)	
5	Cadmium production plant:									Ellis et al. 1983.
	(Workers without renal dysfunction).	33	1–34		15±5.7	7–31		(5.4)	(25)	
	(Workers with renal dysfunction).	18	10–34		24±8.5	10–34		(9.3)	(39)	
6	Cd-Cu alloy plant.	75	Up to 39				8.8±1.1	7.5	10	Mason et al. 1988.

TABLE 5.—BLOOD CADMIUM IN WORKERS EXPOSED TO CADMIUM IN THE WORKPLACE—Continued

Study number	Work environment (worker population monitored)	Number in study	Employment in years (mean)	Mean concentration of cadmium in air (μg/m³)	Concentrations of Cadmium in blood[a]					Reference
					Arithmetic mean (±S.D.)[b]	Absolute range or (95% C.I.)[c]	Geometric mean (±GSD)[d]	Lower 95th percentile of range[e] ( )[f]	Upper 95th percentile of range[e] ( )[f]	
7	Cadmium recovery operation—Current (19) and former (26) workers.	45	(19.0)				7.9±2.0	2.5	25	Thun et al. 1989.
8	Cadmium recovery operation	40			10.2±5.3	2.2–18.8		(1.3)	(19)	Mueller et al. 1989.

The data in Table 5 also indicate that CDB levels are higher among those experiencing current occupational exposure than those who have been removed from such exposure. Roels et al. (1982) indicate that CDB levels observed among workers experiencing ongoing exposure in the work place are almost entirely above levels observed among workers removed from such exposure. This finding suggests that CDB levels decrease once cadmium exposure has ceased.

A comparison of the data presented in Tables 4 and 5 indicates that CDB levels observed among cadmium-exposed workers is significantly higher than levels observed among the unexposed groups. With the exception of 2 studies presented in Table 5 (1 of which includes former workers in the sample group tested), the lower 95th percentile for CDB levels among exposed workers are greater than 5 μg/l, which is the value of the upper 95th percentile for CDB levels observed among those who are not occupationally exposed. Therefore, a CDB level of 5 μg/l represents a threshold above which significant work place exposure to cadmium may be occurring.

5.1.7 Conclusions and Recommendations for CDB

Based on the above evaluation, the following recommendations are made for a CDB proficiency program.

5.1.7.1 *Recommended Method*

The method of Stoeppler and Brandt (1980) should be adopted for analyzing CDB. This method was selected over other methods for its straightforward sample-preparation procedures, and because limitations of the method were described adequately. It also is the method used by a plurality of laboratories currently participating in the CTQ proficiency program. In a recent CTQ interlaboratory comparison report (CTQ 1991), analysis of the methods used by laboratories to measure CDB indicates that 46% (11 of 24) of the participating laboratories used the Stoeppler and Brandt methodology (HNO_3 deproteinization of blood followed by analysis of the supernatant by GF–AAS). Other CDB methods employed by participating laboratories identified in the CTQ report include dilution of blood (29%), acid digestion (12%) and miscellaneous methods (12%).

Laboratories may adopt alternate methods, but it is the responsibility of the laboratory to demonstrate that the alternate methods meet the data quality objectives defined for the Stoeppler and Brandt method (see section 5.1.7.2 below).

5.1.7.2 *Data Quality Objectives*

Based on the above evaluation, the following data quality objectives (DQOs) should facilitate interpretation of analytical results.

Limit of Detection. 0.5 μg/l should be achievable using the Stoeppler and Brandt method. Stoeppler and Brandt (1980) report a limit of detection equivalent to ≤0.2 μg/l in whole blood using 25 μl aliquots of deproteinized, diluted blood samples.

Accuracy. Initially, some of the laboratories performing CDB measurements may be expected to satisfy criteria similar to the less severe criteria specified by the CTQ program, i.e., measurements within 2 μg/l or 15% (whichever is greater) of the target value. About 60% of the laboratories enrolled in the CTQ program could meet this criterion on the first proficiencey test (Weber 1988).

Currently, approximately 12 laboratories in the CTQ program are achieving an accuracy for CDB analysis within the more severe constraints of ±1 μg/l or 15% (whichever is greater). Later, as laboratories gain experience, they should achieve the level of accuracy exhibited by these 12 laboratories. The experience in the CTQ program has shown that, even without incentives, laboratories benefit from the feedback of the program; after they have analyzed 40–50 control samples from the program, performance improves to the point where about 60% of the laboratories can meet the stricter criterion of ±1 μg/l or 15% (Weber 1988). Thus, this stricter target accuracy is a reasonable DQO.

Precision. Although Stoeppler and Brandt (1980) suggest that a coefficient of variation (CV) near 1.3% (for a 10 μg/l concentration) is achievable for within-run reproducibility, it is recognized that other factors affecting within- and between-run comparability will increase the achievable CV. Stoeppler and Brandt (1980) observed CVs that were as high as 30% for low concentrations (0.4 μg/l), and CVs of less than 5% for higher concentrations.

For internal QC samples (see section 3.3.1), laboratories should to attain an overall precision near 25%. For CDB samples with concentrations less than 2 μg/l, a target precision of 40% is reasonable, while precisions of 20% should be achievable for concentrations greater than 2 μg/l. Although these values are more strict than values observed in the CTQ interlaboratory program reported by Webber (1988), they are within the achievable limits reported by Stoeppler and Brandt (1980).

5.1.7.3 *Quality Assurance/Quality Control*

Commercial laboratories providing measurement of CDB should adopt an internal QA/QC program that incorporates the following components: Strict adherence to the selected method, including all calibration requirements; regular incorporation of QC samples during actual runs; a protocol for corrective actions, and documentation of these actions; and, participation in an interlaboratory proficiency program. Note that the nonmandatory QA/QC program presented in Attachment 3 is based on the Stoeppler and Brandt method for CDB analysis. Should an alternate method be adopted, the laboratory should develop a QA/QC program satisfying the provisions of Section 3.3.1.

5.2 Measuring Cadmium in Urine (CDU)

As in the case of CDB measurement, proper determination of CDU requires strict analytical discipline regarding collection and handling of samples. Because cadmium is both ubiquitous in the environment and employed widely in coloring agents for industrial products that may be used during sample collection, preparation and analysis, care should be exercised to ensure that samples are not contaminated during the sampling procedure.

Methods for CDU determination share many of the same features as those employed for the determination of CDB. Thus, changes and improvements to methods for measuring CDU over the past 40 years parallel those used to monitor CDB. The direction of development has largely been toward the simplification of sample preparation

techniques made possible because of improvements in analytic techniques.

5.2.1 Units of CDU Measurement

Procedures adopted for reporting CDU concentrations are not uniform. In fact, the situation for reporting CDU is more complicated than for CDB, where concentrations are normalized against a unit volume of whole blood.

Concentrations of solutes in urine vary with several biological factors (including the time since last voiding and the volume of liquid consumed over the last few hours); as a result, solute concentrations should be normalized against another characteristic of urine that represents changes in solute concentrations. The 2 most common techniques are either to standardize solute concentrations against the concentration of creatinine, or to standardize solute concentrations against the specific gravity of the urine. Thus, CDU concentrations have been reported in the literature as "uncorrected" concentrations of cadmium per volume of urine (i.e., μg Cd/l urine), "corrected" concentrations of cadmium per volume of urine at a standard specific gravity (i.e., μg Cd/l urine at a specific gravity of 1.020), or "corrected" mass concentration per unit mass of creatinine (i.e., μg Cd/g creatinine). (CDU concentrations [whether uncorrected or corrected for specific gravity, or normalized to creatinine] occasionally are reported in nanomoles [i.e., nmoles] of cadmium per unit mass or volume. In this protocol, these values are converted to μg of cadmium per unit mass or volume using 89 nmoles of cadmium=10 μg.)

While it is agreed generally that urine values of analytes should be normalized for reporting purposes, some debate exists over what correction method should be used. The medical community has long favored normalization based on creatinine concentration, a common urinary constituent. Creatinine is a normal product of tissue catabolism, is excreted at a uniform rate, and the total amount excreted per day is constant on a day-to-day basis (NIOSH 1984b). While this correction method is accepted widely in Europe, and within some occupational health circles, Kowals (1983) argues that the use of specific gravity (i.e., total solids per unit volume) is more straightforward and practical (than creatinine) in adjusting CDU values for populations that vary by age or gender.

Kowals (1983) found that urinary creatinine (CRTU) is lower in females than males, and also varies with age. Creatinine excretion is highest in younger males (20–30 years old), decreases at middle age (50–60 years), and may rise slightly in later years. Thus, cadmium concentrations may be underestimated for some workers with high CRTU levels.

Within a single void urine collection, urine concentration of any analyte will be affected by recent consumption of large volumes of liquids, and by heavy physical labor in hot environments. The absolute amount of analyte excreted may be identical, but concentrations will vary widely so that urine must be corrected for specific gravity (i.e., to normalize concentrations to the quantity of total solute) using a fixed value (e.g., 1.020 or 1.024). However, since heavy-metal exposure may increase urinary protein excretion, there is a tendency to underestimate cadmium concentrations in samples with high specific gravities when specific-gravity corrections are applied.

Despite some shortcomings, reporting solute concentrations as a function of creatinine concentration is accepted generally; OSHA therefore recommends that CDU levels be reported as the mass of cadmium per unit mass of creatinine (μg/g CTRU).

Reporting CDU as μg/g CRTU requires an additional analytical process beyond the analysis of cadmium: Samples must be analyzed independently for creatinine so that results may be reported as the ratio of cadmium to creatinine concentrations found in the urine sample. Consequently, the overall quality of the analysis depends on the combined performance by a laboratory on these 2 determinations. The analysis used for CDU determinations is addressed below in terms of μg Cd/l, with analysis of creatinine addressed separately. Techniques for assessing creatinine are discussed in Section 5.4.

Techniques for deriving cadmium as a ratio of CRTU, and the confidence limits for independent measurements of cadmium and CRTU, are provided in Section 3.3.3.

5.2.2 Analytical Techniques Used to Monitor CDU

Analytical techniques used for CDU determinations are similar to those employed for CDB determinations; these techniques are summarized in Table 3. As with CDB monitoring, the technique most suitable for CDU determinations is atomic absorption spectroscopy (AAS). AAS methods used for CDU determinations typically employ a graphite furnace, with background correction made using either the deuterium-lamp or Zeeman techniques; Section 5.1.1 provides a detailed description of AAS methods.

5.2.3 Methods Developed for CDU Determinations

Princi (1947), Smith et al. (1955), Smith and Kench (1957), and Tsuchiya (1967) used colorimetric procedures similar to those described in the CDB section above to estimate CDU concentrations. In these methods, urine (50 ml) is reduced to dryness by heating in a sand bath and digested (wet ashed) with mineral acids. Cadmium then is complexed with dithiazone, extracted with chloroform and quantified by spectrophotometry. These early studies typically report reagent blank values equivalent to 0.3 μg Cd/l, and CDU concentrations among nonexposed control groups at maximum levels of 10 μg Cd/l—erroneously high values when compared to more recent surveys of cadmium concentrations in the general population.

By the mid-1970s, most analytical procedures for CDU analysis used either wet ashing (mineral acid) or high temperatures (>400 °C) to digest the organic matrix of urine, followed by cadmium chelation with APDC or DDTC solutions and extraction with MIBK. The resulting aliquots were analyzed by flame or graphite-furnace AAS (Kjellstrom 1979).

Improvements in control over temperature parameters with electrothermal heating devices used in conjunction with flameless AAS techniques, and optimization of temperature programs for controlling the drying, charring, and atomization processes in sample analyses, led to improved analytical detection of diluted urine samples without the need for sample digestion or ashing. Roels et al. (1978) successfully used a simple sample preparation, dilution of 1.0 ml aliquots of urine with 0.1 N HNO_3, to achieve accurate low-level determinations of CDU.

In the method described by Pruszkowska et al. (1983), which has become the preferred method for CDU analysis, urine samples were diluted at a ratio of 1:5 with water; diammonium hydrogenphosphate in dilute HNO_3 was used as a matrix modifier. The matrix modifier allows for a higher charring temperature without loss of cadmium through volatilization during pre-atomization. This procedure also employs a stabilized temperature platform in a graphite furnace, while nonspecific background absorbtion is corrected using the Zeeman technique. This method allows for an absolute detection limit of approximately 0.04 μg Cd/l urine.

5.2.4 Sample Collection and Handling

Sample collection procedures for CDU may contribute to variability observed among CDU measurements. Sources of variation attendant to sampling include time-of-day, the interval since ingestion of liquids, and the introduction of external contamination during the collection process. Therefore, to minimize contributions from these variables, strict adherence to a sample-collection protocol is recommended. This a protocol should include provisions for normalizing the conditions under which urine is collected. Every effort also should be made to collect samples during the same time of day.

Collection of urine samples from an industrial work force for biological monitoring purposes usually is performed using "spot" (i.e., single-void) urine with the pH of the sample determined immediately. Logistic and sample-integrity problems arise when efforts are made to collect urine over long periods (e.g., 24 hrs). Unless single-void urines are used, there are numerous opportunities for measurement error because of poor control over sample collection, storage and environmental contamination.

To minimize the interval during which sample urine resides in the bladder, the following adaption to the "spot" collection procedure is recommended: The bladder should first be emptied, and then a large glass of water should be consumed; the sample may be collected within an hour after the water is consumed.

5.2.5 Best Achievable Performance

Performance using a particular method for CDU determinations is assumed to be equivalent to the performance reported by the research laboratories in which the method was developed. Pruszkowska et al. (1983) report a detection limit of 0.04 μg/l CDU, with a CV of <4% between 0–5 μg/l. The CDC reports a minimum CDU detection limit of 0.07 μg/l using a modified method based on Pruszkowska et al. (1983). No CV is

stated in this protocol; the protocol contains only rejection criteria for internal QC parameters used during accuracy determinations with known standards (Attachment 8 of exhibit 106 of OSHA docket H057A). Stoeppler and Brandt (1980) report a CDU detection limit of 0.2 μg/l for their methodology.

5.2.6 General Method Performance

For any particular method, the expected initial performance from commercial laboratories may be somewhat lower than that reported by the research laboratory in which the method was developed. With participation in appropriate proficiency programs, and use of a proper in-house QA/QC program incorporating provisions for regular corrective actions, the performance of commercial laboratories may be expected to improve and approach that reported by a research laboratories. The results reported for existing proficiency programs serve to specify the initial level of performance that likely can be expected from commercial laboratories offering analysis using a particular method.

Weber (1988) reports on the results of the CTQ proficiency program, which includes CDU results for laboratories participating in the program. Results indicate that after receiving 60 samples (i.e., after participating in the program for approximately 3 years), approximately 80% of the participating laboratories report CDU results ranging between ±2 μg/l or 15% of the consensus mean, whichever is greater. On any single sample of the last 15 samples, the proportion of laboratories falling within the specified range is between 75 and 95%, except for a single test for which only 60% of the laboratories reported acceptable results. For each of the last 15 samples, approximately 60% of the laboratories reported results within ±1 μg or 15% of the mean, whichever is greater. The range of concentrations included in this set of samples was not reported.

Another report from the CTQ (1991) summarizes preliminary CDU results from their 1991 interlaboratory program. According to the report, for 3 CDU samples with values of 9.0, 16.8, 31.5 μg/l, acceptable results (target ±2 μg/l) were achieved by only 44–52% of the 34 laboratories participating in the CDU program. The overall CVs for these 3 CDU samples among the 34 participating laboratories were 31%, 25%, and 49%, respectively. The reason for this poor performance has not been determined.

A more recent report from the CTQ (Weber, private communication) indicates that 36% of the laboratories in the program have been able to achieve the target of ±1 μg/l or 15% for more than 75% of the samples analyzed over the last 5 years, while 45% of participating laboratories achieved a target of ±2 μg/l or 15% for more than 75% of the samples analyzed over the same period.

Note that results reported in the interlaboratory programs are in terms of μg Cd/l of urine, unadjusted for creatinine. The performance indicated, therefore, is a measure of the performance of the cadmium portion of the analyses, and does not include variation that may be introduced during the analysis of CRTU.

5.2.7 Observed CDU Concentrations

Prior to the onset of renal dysfunction, CDU concentrations provide a general indication of the exposure history (i.e., body burden)(see Section 4.3). Once renal dysfunction occurs, CDU levels appear to increase and are no longer indicative solely of cadmium body burden (Friberg and Elinder 1988).

5.2.7.1 *Range of CDU Concentrations Observed Among Unexposed Samples*

Surveys of CDU concentrations in the general population were first reported from cooperative studies among industrial countries (i.e., Japan, U.S. and Sweden) conducted in the mid-1970s. In summarizing these data, Kjellstrom (1979) reported that CDU concentrations among Dallas, Texas men (age range: <9–59 years; smokers and nonsmokers) varied from 0.11–1.12 μg/l (uncorrected for creatinine or specific gravity). These CDU concentrations are intermediate between population values found in Sweden (range: 0.11–0.80 μg/l) and Japan (range: 0.14–2.32 μg/l).

Kowal and Zirkes (1983) reported CDU concentrations for almost 1,000 samples collected during 1978–79 from the general U.S. adult population (i.e., nine states; both genders; ages 20–74 years). They report that CDU concentrations are lognormally distributed; low levels predominated, but a small proportion of the population exhibited high levels. These investigators transformed the CDU concentrations values, and reported the same data 3 different ways: μg/l urine (unadjusted), μg/l (specific gravity adjusted to 1.020), and μg/g CRTU. These data are summarized in Tables 6 and 7.

Based on further statistical examination of these data, including the lifestyle characteristics of this group, Kowal (1988) suggested increased cadmium absorption (i.e., body burden) was correlated with low dietary intakes of calcium and iron, as well as cigarette smoking.

CDU levels presented in Table 6 are adjusted for age and gender. Results suggest that CDU levels may be slightly different among men and women (i.e., higher among men when values are unadjusted, but lower among men when the values are adjusted, for specific gravity or CRTU). Mean differences among men and women are small compared to the standard deviations, and therefore may not be significant. Levels of CDU also appear to increase with age. The data in Table 6 suggest as well that reporting CDU levels adjusted for specific gravity or as a function of CRTU results in reduced variability.

TABLE 6.—URINE CADMIUM CONCENTRATIONS IN THE U.S. ADULT POPULATION: NORMAL AND CONCENTRATION-ADJUSTED VALUES BY AGE AND SEX [1]

	Geometric means (and geometric standard deviations)		
	Unadjusted (μg/l)	SG-adjusted [2] (μg/l at 1.020)	Creatine-adjusted (μg/g)
Sex:			
Male (n=484)	0.55 (2.9)	0.73 (2.6)	0.55 (2.7)
Female (n=498)	0.49 (3.0)	0.86 (2.7)	0.78 (2.7)
Age:			
20–29 (n=222)	0.32 (3.0)	0.43 (2.7)	0.32 (2.7)
30–39 (n=141)	0.46 (3.2)	0.70 (2.8)	0.54 (2.7)
40–49 (n=142)	0.50 (3.0)	0.81 (2.6)	0.70 (2.7)
50–59 (n=117)	0.61 (2.9)	0.99 (2.4)	0.90 (2.3)
60–69 (n=272)	0.76 (2.6)	1.16 (2.3)	1.03 (2.3)

[1] From Kowal and Zirkes 1983.
[2] SC-adjusted is adjusted for specific gravity.

TABLE 7.—URINE CADMIUM CONCENTRATIONS IN THE U.S. ADULT POPULATION: CUMULATIVE FREQUENCY DISTRIBUTION OF URINARY CADMIUM (N=982) [1]

[In percentage]

Range of concentrations	Unadjusted (µg/l)	SG-adjusted (µg/l at 1.020)	Creatine-adjusted (µg/gl)
<0.5	42.5	26.0	35.8
0.6–1.0	71.7	56.4	65.0
1.1–1.5	84.4	74.8	81.4
1.6–2.0	91.3	84.7	88.9
2.1–3.0	97.3	94.4	95.6
3.1–4.0	98.8	97.4	97.2
4.1–5.0	99.4	98.2	97.9
5.1–10.0	99.6	99.4	99.3
10.0–20.0	99.8	99.6	99.6

[1] Source: Kowal and Zirkes (1983).

The data in the Table 6 indicate the geometric mean of CDU levels observed among the general population is 0.52 µg Cd/l urine (unadjusted), with a geometric standard deviation of 3.0. Normalized for creatinine, the geometric mean for the population is 0.66 µg/g CRTU, with a geometric standard deviation of 2.7. Table 7 provides the distributions of CDU concentrations for the general population studied by Kowal and Zirkes. The data in this table indicate that 95% of the CDU levels observed among those not occupationally exposed to cadmium are below 3 µg/g CRTU.

5.2.7.2 *Range of CDU Concentrations Observed Among Exposed Workers*

Table 8 is a summary of results from available studies of CDU concentrations observed among cadmium-exposed workers. In this table, arithmetic and/or geometric means and standard deviations are provided if reported in these studies. The absolute range for the data in each study, or the 95% confidence interval around the mean of each study, also are provided when reported. The lower and upper 95th percentile of the distribution are presented for each study in which a mean and corresponding standard deviation were reported. Table 8 also provides estimates of the years of exposure, and the levels of exposure, to cadmium in the work place if reported in these studies. Concentrations reported in this table are in µg/g CRTU, unless otherwise stated.

TABLE 8.—URINE CADMIUM CONCENTRATION'S IN WORKERS EXPOSED TO CADMIUM IN THE WORKPLACE

Study number	Work environment (worker population monitored)	Number in Study (n)	Employment in years (mean)	Mean Concentration of cadmium in air (µg/m³)	Concentration of cadmium in Urine [a]					Reference
					Arithmetic mean (± S.D.) [b]	Absolute range or ((95% C.I.) [c]	Geometric mean (±GSD) [d]	Lower 95th percentile of range [e] ( ) [f]	Upper 95th percentile of range [e] ( ) [f]	
1	Ni-Cd battery plant and Cd production plant.		3–40	≤ 90						Lauwerys et al. 1976.
	(Workers without kidney lesions).	96			16.3±16.7			(0)	(44)	
	(Workers with kidney lesions).	25			48.2±42.6			(0)	(120)	
2	Ni-Cd battery plant.									Adamsson et al. (1979).
	(Smokers)	7	(5)	10.1	5.5	1.0–14.7				
	(Nonsmokers).	8	(9)	7.0	3.6	0.5–9.3				
3	Cadmium salts production facility.	148	(15.4)		15.8	2–150				Butchet et al. 1980.
4	Retrospective study of workers with renal problems.	19	15–41							Roels et al. 1982.
	(Before removal).		(27.2)		39.4±28.1	10.8–117		(6)	(86)	
	(After removal).		(4.2) [e]		16.4±9.0	60–42.3		(1.0)	(32)	
5	Cadmium production plant.									Ellis et al. 1983.

TABLE 8.—URINE CADMIUM CONCENTRATION'S IN WORKERS EXPOSED TO CADMIUM IN THE WORKPLACE—Continued

Study number	Work environment (worker population monitored)	Number in Study (n)	Employment in years (mean)	Mean Concentration of cadmium in air (μg/m³)	Concentration of cadmium in Urine [a]					Reference
					Arithmetic mean (± S.D.) [b]	Absolute range or (95% C.I.) [c]	Geometric mean (±GSD) [d]	Lower 95th percentile of range [e] ( ) [f]	Upper 95th percentile of range [e] ( ) [f]	
	(Workers without renal dysfunction).	33	1–34		9.4±6.9	2-27		(0)	(21)	
	(Workers with renal dysfunction).	18	10–34		22.8±12.7	5-55		(1)	(45)	
6	Cd-Cu alloy plant.	75	Up to 39	Note h	6.9±9.4			(0)	(23)	Mason et al. 1988.
7	Cadmium recovery operation.	45	(19)	87	9.3±6.9			(0)	(21)	Thun et al. 1989.
8	Pigment manufacturing plant.	29	(12.8)	0.18–3.0		0.2–9.5	1.1			Mueller et al. 1989.
9	Pigment manufacturing plant.	26	(12.1)	≤3.0			1.25±2.45	0.3	6	Kawada et al. 1990.

Data in Table 8 from Lauwerys et al. (1978) and Ellis et al. (1983) indicate that CDU concentrations are higher among those exhibiting kidney lesions or dysfunction than among those lacking these symptoms. Data from the study by Roels et al. (1982) indicate that CDU levels decrease among workers removed from occupational exposure to cadmium in comparison to workers experiencing ongoing exposure. In both cases, however, the distinction between the 2 groups is not as clear as with CDB; there is more overlap in CDU levels observed among each of the paired populations than is true for corresponding CDB levels. As with CDB levels, the data in Table 8 suggest increased CDU concentrations among workers who experienced increased overall exposure.

Although a few occupationally-exposed workers in the studies presented in Table 8 exhibit CDU levels below 3 μg/g CRTU, most of those workers exposed to cadmium levels in excess of the PEL defined in the final cadmium rule exhibit CDU levels above 3 μg/g CRTU; this level represents the upper 95th percentile of the CDU distribution observed among those who are not occupationally exposed to cadmium (Table 7).

The mean CDU levels reported in Table 8 among occupationally-exposed groups studied (except 2) exceed 3 μg/g CRTU. Correspondingly, the level of exposure reported in these studies (with 1 exception) are significantly higher than what workers will experience under the final cadmium rule. The 2 exceptions are from the studies by Mueller et al. (1989) and Kawada et al. (1990); these studies indicate that workers exposed to cadmium during pigment manufacture do not exhibit CDU levels as high as those levels observed among workers exposed to cadmium in other occupations. Exposure levels, however, were lower in the pigment manufacturing plants studied. Significantly, workers removed from occupational cadmium exposure for an average of 4 years still exhibited CDU levels in excess of 3 μg/g CRTU (Roels et al. 1982). In the single-exception study with a reported level of cadmium exposure lower than levels proposed in the final rule (i.e., the study of a pigment manufacturing plant by Kawada et al. 1990), most of the workers exhibited CDU levels less than 3 μg/g CRTU (i.e., the mean value was only 1.3 μg/g CRTU). CDU levels among workers with such limited cadmium exposure are expected to be significantly lower than levels reported on Table 8.

Based on the above data, a CDU level of 3 μg/g CRTU appear to represent a threshold above which significant work place exposure to cadmium occurs over the work span of those being monitored. Note that this threshold is not as distinct as the corresponding threshold described for CDB. In general, the variability associated with CDU measurements among exposed workers appears to be higher than the variability associated with CDB measurements among similar workers.

5.2.8 Conclusions and Recommendations for CDU

The above evaluation supports the following recommendations for a CDU proficiency program. These recommendations address only sampling and analysis procedures for CDU determinations specifically, which are to be reported as an unadjusted μg Cd/l urine. Normalizing this result to creatinine requires a second analysis for CRTU so that the ratio of the 2 measurements can be obtained. Creatinine analysis is addressed in Section 5.4. Formal procedures for combining the 2 measurements to derive a value and a confidence limit for CDU in μg/g CRTU are provided in Section 3.3.3.

5.2.8.1 *Recommended Method*

The method of Pruszkowska et al. (1983) should be adopted for CDU analysis. This method is recommended because it is simple, straightforward and reliable (i.e., small variations in experimental conditions do not affect the analytical results).

A synopsis of the methods used by laboratories to determine CDU under the interlaboratory program administered by the CTQ (1991) indicates that more than 78% (24 of 31) of the participating laboratories use a dilution method to prepare urine samples for CDU analysis. Laboratories may adopt alternate methods, but it is the responsibility of the laboratory to demonstrate that the alternate methods provide results of comparable quality to the Pruszkowska method.

5.2.8.2 *Data Quality Objectives*

The following data quality objectives should facilitate interpretation of analytical results, and are achievable based on the above evaluation.

Limit of Detection. A level of 0.5 μg/l (i.e., corresponding to a detection limit of 0.5 μg/g CRTU, assuming 1 g CRT/l urine) should be achievable. Pruszkowska et al. (1983) achieved a limit of detection of 0.04 μg/l for CDU based on the slope the the curve for their working standards (0.35 pg Cd/0.0044, A signal=1% absorbance using GF-AAS).

The CDC reports a minimum detection limit for CDU of 0.07 μg/l using a modified Pruszkowska method. This limit of detection was defined as 3 times the standard deviation calculated from 10 repeated measurements of a "low level" CDU test sample (Attachment 8 of exhibit 106 of OSHA docket H057A).

Stoeppler and Brandt (1980) report a limit of detection for CDU of 0.2 μg/l using an aqueous dilution (1:2) of the urine samples.

Accuracy. A recent report from the CTQ (Weber, private communication) indicates that 36% of the laboratories in the program achieve the target of ±1 μg/l or 15% for more

than 75% of the samples analyzed over the last 5 years, while 45% of participating laboratories achieve a target of ±2 μg/l or 15% for more than 75% of the samples analyzed over the same period. With time and a strong incentive for improvement, it is expected that the proportion of laboratories successfully achieving the stricter level of accuracy should increase. It should be noted, however, these indices of performance do not include variations resulting from the ancillary measurement of CRTU (which is recommended for the proper recording of results). The low cadmium levels expected to be measured indicate that the analysis of creatinine will contribute relatively little to the overall variability observed among creatinine-normalized CDU levels (see Section 5.4). The initial target value for reporting CDU under this program, therefore, is set at ±1 μg/g CRTU or 15% (whichever is greater).

Precision. For internal QC samples (which are recommended as part of an internal QA/QC program, Section 3.3.1), laboratories should attain an overall precision of 25%. For CDB samples with concentrations less than 2 μg/l, a target precision of 40% is, while precisions of 20% should be achievable for CDU concentrations greater than 2 μg/l. Although these values are more stringent than those observed in the CTQ interlaboratory program reported by Webber (1988), they are well within limits expected to be achievable for the method as reported by Stoeppler and Brandt (1980).

5.2.8.3 *Quality Assurance/Quality Control*

Commercial laboratories providing CDU determinations should adopt an internal QA/QC program that incorporates the following components: Strict adherence to the selected method, including calibration requirements; regular incorporation of QC samples during actual runs; a protocol for corrective actions, and documentation of such actions; and, participation in an interlaboratory proficiency program. Note that the nonmandatory program presented in Attachment 1 as an example of an acceptable QA/QC program, is based on using the Pruszkowska method for CDU analysis. Should an alternate method be adopted by a laboratory, the laboratory should develop a QA/QC program equivalent to the nonmandatory program, and which satisfies the provisions of Section 3.3.1.

5.3 Monitoring β-2-Microglobulin in Urine (B2MU).

As indicated in Section 4.3, B2MU appears to be the best of several small proteins that may be monitored as early indicators of cadmium-induced renal damage. Several analytic techniques are available for measuring B2M.

5.3.1 Units of B2MU Measurement

Procedures adopted for reporting B2MU levels are not uniform. In these guidelines, OSHA recommends that B2MU levels be reported as μg/g CRTU, similar to reporting CDU concentrations. Reporting B2MU normalized to the concentration of CRTU requires an additional analytical process beyond the analysis of B2M: Independent analysis for creatinine so that results may be reported as a ratio of the B2M and creatinine concentrations found in the urine sample. Consequently, the overall quality of the analysis depends on the combined performance on these 2 analyses. The analysis used for B2MU determinations is described in terms of μg B2M/l urine, with analysis of creatinine addressed separately. Techniques used to measure creatinine are provided in Section 5.4. Note that Section 3.3.3 provides techniques for deriving the value of B2M as function of CRTU, and the confidence limits for independent measurements of B2M and CRTU.

5.3.2 Analytical Techniques Used to Monitor B2MU

One of the earliest tests used to measure B2MU was the radial immunodiffusion technique. This technique is a simple and specific method for identification and quantitation of a number of proteins found in human serum and other body fluids when the protein is not readily differentiated by standard electrophoretic procedures. A quantitative relationship exists between the concentration of a protein deposited in a well that is cut into a thin agarose layer containing the corresponding monospecific antiserum, and the distance that the resultant complex diffuses. The wells are filled with an unknown serum and the standard (or control), and incubated in a moist environment at room temperature. After the optimal point of diffusion has been reached, the diameters of the resulting precipition rings are measured. The diameter of a ring is related to the concentration of the constituent substance. For B2MU determinations required in the medical monitoring program, this method requires a process that may be insufficient to concentrate the protein to levels that are required for detection.

Radioimmunoassay (RIA) techniques are used widely in immunologic assays to measure the concentration of antigen or antibody in body-fluid samples. RIA procedures are based on competitive-binding techniques. If antigen concentration is being measured, the principle underlying the procedure is that radioactive-labeled antigen competes with the sample's unlabeled antigen for binding sites on a known amount of immobile antibody. When these 3 components are present in the system, an equilibrium exists. This equilibrium is followed by a separation of the free and bound forms of the antigen. Either free or bound radioactive-labeled antigen can be assessed to determine the amount of antigen in the sample. The analysis is performed by measuring the level of radiation emitted either by the bound complex following removal of the solution containing the free antigen, or by the isolated solution containing the residual-free antigen. The main advantage of the RIA method is the extreme sensitivity of detection for emitted radiation and the corresponding ability to detect trace amounts of antigen. Additionally, large numbers of tests can be performed rapidly.

The enzyme-linked immunosorbent assay (ELISA) techniques are similar to RIA techniques except that nonradioactive labels are employed. This technique is safe, specific and rapid, and is nearly as sensitive as RIA techniques. An enzyme-labeled antigen is used in the immunologic assay; the labeled antigen detects the presence and quantity of unlabeled antigen in the sample. In a representative ELISA test, a plastic plate is coated with antibody (e.g., antibody to B2M). The antibody reacts with antigen (B2M) in the urine and forms an antigen-antibody complex on the plate. A second anti-B2M antibody (i.e., labeled with an enzyme) is added to the mixture and forms an antibody-antigen-antibody complex. Enzyme activity is measured spectrophotometrically after the addition of a specific chromogenic substrate which is activated by the bound enzyme. The results of a typical test are calculated by comparing the spectrophotometric reading of a serum sample to that of a control or reference serum. In general, these procedures are faster and require less laboratory work than other methods.

In a fluorescent ELISA technique (such as the one employed in the Pharmacia Delphia test for B2M), the labeled enzyme is bound to a strong fluorescent dye. In the Pharmacia Delphia test, an antigen bound to a fluorescent dye competes with unlabeled antigen in the sample for a predetermined amount of specific, immobile antibody. Once equilibrium is reached, the immobile phase is removed from the labeled antigen in the sample solution and washed; an enhancement solution then is added that liberates the fluorescent dye from the bound antigen-antibody complex. The enhancement solution also contains a chelate that complexes with the fluorescent dye in solution; this complex increases the fluorescent properties of the dye so that it is easier to detect.

To determine the quantity of B2M in a sample using the Pharmacia Delphia test, the intensity of the fluorescence of the enhancement solution is measured. This intensity is proportional to the concentration of labeled antigen that bound to the immobile antibody phase during the initial competition with unlabeled antigen from the sample. Consequently, the intensity of the fluorescence is an inverse function of the concentration of antigen (B2M) in the original sample. The relationship between the fluorescence level and the B2M concentration in the sample is determined using a series of graded standards, and extrapolating these standards to find the concentration of the unknown sample.

5.3.3 Methods Developed for B2MU Determinations

B2MU usually is measured by radioimmunoassay (RIA) or enzyme-linked immunosorbent assay (ELISA); however, other methods (including gel electrophoresis, radial immunodiffusion, and nephelometric assays) also have been described (Schardun and van Epps 1987). RIA and ELISA methods are preferred because they are sensitive at concentrations as low as micrograms per liter, require no concentration processes, are highly reliable and use only a small sample volume.

Based on a survey of the literature, the ELISA technique is recommended for monitoring B2MU. While RIAs provide greater sensitivity (typically about 1 μg/l, Evrin et al. 1971), they depend on the use of

radioisotopes; use of radioisotopes requires adherence to rules and regulations established by the Atomic Energy Commission, and necessitates an expensive radioactivity counter for testing. Radioisotopes also have a relatively short half-life, which corresponds to a reduced shelf life, thereby increasing the cost and complexity of testing. In contrast, ELISA testing can be performed on routine laboratory spectrophotometers, do not necessitate adherence to additional rules and regulations governing the handling of radioactive substances, and the test kits have long shelf lives. Further, the range of sensitivity commonly achieved by the recommended ELISA test (i.e., the Pharmacia Delphia test) is approximately 100 μg/l (Pharmacia 1990), which is sufficient for monitoring B2MU levels resulting from cadmium exposure. Based on the studies listed in Table 7 (Section 5.3.7), the average range of B2M concentrations among the general, nonexposed population falls between 60 and 300 μg/g CRTU. The upper 95th percentile of distributions, derived from studies in Table 9 which reported standard deviations, range between 180 and 1,140 μg/g CRTU. Also, the Pharmacia Delphia test currently is the most widely used test for assessing B2MU.

5.3.4 Sample Collection and Handling

As with CDB or CDU, sample collection procedures are addressed primarily to identify ways to minimize the degree of variability introduced by sample collection during medical monitoring. It is unclear the extent to which sample collection contributes to B2MU variability. Sources of variation include time-of-day effects, the interval since consuming liquids and the quantity of liquids consumed, and the introduction of external contamination during the collection process. A special problem unique to B2M sampling is the sensitivity of this protein to degradation under acid conditions commonly found in the bladder. To minimize this problem, strict adherence to a sampling protocol is recommended. The protocol should include provisions for normalizing the conditions under which the urine is collected. Clearly, it is important to minimize the interval urine spends in the bladder. It also is recommended that every effort be made to collect samples during the same time of day.

Collection of urine samples for biological monitoring usually is performed using "spot" (i.e., single-void) urine. Logistics and sample integrity become problems when efforts are made to collect urine over extended periods (e.g., 24 hrs). Unless single-void urines are used, numerous opportunities exist for measurement error because of poor control over sample collection, storage and environmental contamination.

To minimize the interval that sample urine resides in the bladder, the following adaption to the "spot" collection procedure is recommended: The bladder should be emptied and then a large glass of water should be consumed; the sample then should be collected within an hour after the water is consumed.

5.3.5 Best Achievable Performance

The best achievable performance is assumed to be equivalent to the performance reported by the manufacturers of the Pharmacia Delphia test kits (Pharmacia 1990). According to the insert that comes with these kits, QC results should be within ±2 SDs of the mean for each control sample tested; a CV of less than or equal to 5.2% should be maintained. The total CV reported for test kits is less than or equal to 7.2%.

5.3.6 General Method Performance

Unlike analyses for CDB and CDU, the Pharmacia Delphia test is standardized in a commercial kit that controls for many sources of variation. In the absence of data to the contrary, it is assumed that the achievable performance reported by the manufacturer of this test kit will serve as an achievable performance objective. The CTQ proficiency testing program for B2MU analysis is expected to use the performance parameters defined by the test kit manufacturer as the basis of the B2MU proficiency testing program.

Note that results reported for the test kit are expressed in terms of μg B2M/l of urine, and have not been adjusted for creatinine. The indicated performance, therefore, is a measure of the performance of the B2M portion of the analyses only, and does not include variation that may have been introduced during the analysis of creatinine.

5.3.7 Observed B2MU Concentrations

As indicated in Section 4.3, the concentration of B2MU may serve as an early indicator of the onset of kidney damage associated with cadmium exposure.

5.3.7.1 *Range of B2MU Concentrations Among Unexposed Samples*

Most of the studies listed in Table 9 report B2MU levels for those who were not occupationally exposed to cadmium. Studies noted in the second column of this table (which contain the footnote "d") reported B2MU concentrations among cadmium-exposed workers who, nonetheless, showed no signs of proteinuria. These latter studies are included in this table because, as indicated in Section 4.3, monitoring B2MU is intended to provide advanced warning of the onset of kidney dysfunction associated with cadmium exposure, rather than to distinguish relative exposure. This table, therefore, indicates the range of B2MU levels observed among those who had no symptoms of renal dysfunction (including workers with none of these symptoms).

TABLE 9.—B-2-MICROGLOBULIN CONCENTRATIONS OBSERVED IN URINE AMONG THOSE NOT OCCUPATIONALLY EXPOSED TO CADMIUM

Study No.	No. in study	Geometric mean	Geometric standard deviation	Lower 95th percentile of distribution [a]	Upper 95th percentile of distribution [a]	Reference
1	133 m [b]	115 μg/g [c]	4.03	12	1,140 μg/g [c]	Ishizaki et al. 1989.
2	161 f [b]	146 μg/g [c]	3.11	23	940 μg/g [c]	Ishizaki et al. 1989.
3	10	84 μg/g				Ellis et al. 1983.
4	203	76 μg/l				Stewart and Hughes 1981.
5	9	103 μg/g				Chia et al. 1989.
6	47 [d]	86 μg/L	1.9	30 μg/l	250 μg/L	Kjellstrom et al. 1977.
7	1,000 [e]	68.1 μg/gr Cr [f]	3.1 m & f	<10 μg/gr Cr [h]	320 μg/gr Cr [h]	Kowal 1983.
8	87	71 μg/g [i]		7 [h]	200 [h]	Buchet et al. 1980.
9	10	0.073 mg/24h				Evrin et al. 1971.
10	59	156 μg/g	1.1 [j]	130	180	Mason et al. 1988.
11	8	118 μg/g				Iwao et al. 1980.
12	34	79 μg/g				Wibowo et al. 1982.
13	41 m				400 μg/gr Cr [h]	Falck et al. 1983.
14	35 [n]	67				Roels et al. 1991.
15	31 [d]	63				Roels et al. 1991.
16	36 [d]	77 [i]				Miksche et al. 1981.
17	18 [n]	130				Kawada et al. 1989.
18	32 [p]	122				Kawada et al. 1989.
19	18 [d]	295	1.4	170	510	Thun et al. 1989.

To the extent possible, the studies listed in Table 9 provide geometric means and geometric standard deviations for measurements among the groups defined in each study. For studies reporting a geometric standard deviation along with a mean, the

lower and upper 95th percentile for these distributions were derived and reported in the table.

The data provided from 15 of the 19 studies listed in Table 9 indicate that the geometric mean concentration of B2M observed among those who were not occupationally exposed to cadmium is 70–170 μg/g CRTU. Data from the 4 remaining studies indicate that exposed workers who exhibit no signs of proteinuria show mean B2MU levels of 60–300 μg/g CRTU. B2MU values in the study by Thun et al. (1989), however, appear high in comparison to the other 3 studies. If this study is removed, B2MU levels for those who are not occupationally exposed to cadmium are similar to B2MU levels found among cadmium-exposed workers who exhibit no signs of kidney dysfunction. Although the mean is high in the study by Thun et al., the range of measurements reported in this study is within the ranges reported for the other studies.

Determining a reasonable upper limit from the range of B2M concentrations observed among those who do not exhibit signs of proteinuria is problematic. Elevated B2MU levels are among the signs used to define the onset of kidney dysfunction. Without access to the raw data from the studies listed in Table 9, it is necessary to rely on reported standard deviations to estimate an upper limit for normal B2MU concentrations (i.e., the upper 95th percentile for the distributions measured). For the 8 studies reporting a geometric standard deviation, the upper 95th percentiles for the distributions are 180–1140 μg/g CRTU. These values are in general agreement with the upper 95th percentile for the distribution (i.e., 631 μg/g CRTU) reported by Buchet et al. (1980). These upper limits also appear to be in general agreement with B2MU values (i.e., 100–600 μg/g CRTU) reported as the normal upper limit by Iwao et al. (1980), Kawada et al. (1989), Wibowo et al. (1982), and Schardun and van Epps (1987). These values must be compared to levels reported among those exhibiting kidney dysfunction to define a threshold level for kidney dysfunction related to cadmium exposure.

5.3.7.2 *Range of B2MU Concentrations Among Exposed Workers*

Table 10 presents results from studies reporting B2MU determinations among those occupationally exposed to cadmium in the work place; in some of these studies, kidney dysfunction was observed among exposed workers, while other studies did not make an effort to distinguish among exposed workers based on kidney dysfunction. As with Table 9, this table provides geometric means and geometric standard deviations for the groups defined in each study if available. For studies reporting a geometric standard deviation along with a mean, the lower and upper 95th percentiles for the distributions are derived and reported in the table.

TABLE 10.—β_2-MICROGLOBULIN CONCENTRATIONS OBSERVED IN URINE AMONG OCCUPATIONALLY-EXPOSED WORKERS

Study number	N	Concentration of β_2-microglobulin in urine				Reference
		Geometric mean (μg/g) [a]	Geom. Std. Dev.	L 95% of range [b]	U 95% of range [b]	
1	1,424	160	5.19	8.1	3,300	Ishizaki et al. 1989.
2	1,754	260	5.50	12	5,600	Ishizaki et al. 1989.
3	33	210				Ellis et al. 1983.
4	65	210				Chia et al. 1989.
5	[c] 44	5,700	5.49	[d] 300	[d] 98,000	Kjellstrom et al. 1977.
6	148	[e] 180		[f] 110	[f] 280	Buchet et al. 1980.
7	37	160	3.90	17	1,500	Kenzaburo et al. 1979.
8	[c] 45	3,300	6.70	[d] 310	[d] 69,000	Mason et al. 1988.
9	[c] 10	6,100	5.99	[f] 650	[f] 57,000	Falck et al. 1983.
10	[c] 11	3,900	2.96	[d] 710	[d] 15,000	Elinder et al. 1985.
11	[c] 12	300				Roels et al. 1991.
12	[g] 8	7,400				Roels et al. 1991.
13	[c] 23	[h] 1,800				Roels et al. 1989.
14	10	890				Iwao et al. 1980.
15	34	71				Wibowo et al. 1982.
16	[c] 15	4,700	5.49	[d] 590	[d] 93,000	Thun et al. 1989.

[a] Unless otherwise stated.
[b] Based on an assumed lognormal distribution.
[c] Among workers diagnosed as having renal dysfunction; for Elinder this means β_2 levels greater than 300 micrograms per gram creatinine (μg/gr Cr); for Roels, 1991, range=31–35, 170 μgβ_2/gr Cr and geometric mean=63 among healthy workers; for Mason β_2>300 μg/gr Cr.
[d] Based on a detailed review of the data by OSHA.
[e] Arithmetic mean.
[f] Reported in the study.
[g] Retired workers.
[h] 1,800 μgβ_2/gr Cr for first survey; second survey=1,600; third survey=2,600; fourth survey=2,600; fifth survey=2,600.

The data provided in Table 10 indicate that the mean B2MU concentration observed among workers experiencing occupational exposure to cadmium (but with undefined levels of proteinuria) is 160–7400 μg/g CRTU. One of these studies reports geometric means lower than this range (i.e., as low as 71 μg/g CRTU); an explanation for this wide spread in average concentrations is not available.

Seven of the studies listed in Table 10 report a range of B2MU levels among those diagnosed as having renal dysfunction. As indicated in this table, renal dysfunction (proteinuria) is defined in several of these studies by B2MU levels in excess of 300 μg/g CRTU (see footnote "c" of Table 10); therefore, the range of B2MU levels observed in these studies is a function of the operational definition used to identify those with renal dysfunction. Nevertheless, a B2MU level of 300 μg/g CRTU appears to be a meaningful threshold for identifying those having early signs of kidney damage. While levels much higher than 300 μg/g CRTU have been observed among those with renal dysfunction, the vast majority of those not occupationally exposed to cadmium exhibit much lower B2MU concentrations (see Table 9). Similarly, the vast majority of workers not exhibiting renal dysfunction are found to have levels below 300 μg/g CRTU (Table 9).

The 300 μg/g CRTU level for B2MU proposed in the above paragraph has support among researchers as the threshold level that distinguishes between cadmium-exposed workers with and without kidney dysfunction. For example, in the guide for physicians who must evaluate cadmium-exposed workers written for the Cadmium Council by Dr. Lauwerys, levels of B2M greater than 200–300 μg/g CRTU are considered to require additional medical evaluation for kidney dysfunction (exhibit 8–447, OSHA docket H057A). The most widely used test for measuring B2M (i.e., the Pharmacia Delphia test) defines B2MU levels above 300 μg/l as abnormal (exhibit L–140–1, OSHA docket H057A).

Dr. Elinder, chairman of the Department of Nephrology at the Karolinska Institute, testified at the hearings on the proposed cadmium rule. According to Dr. Elinder (exhibit L–140–45, OSHA docket H057A), the normal concentration of B2MU has been well documented (Evrin and Wibell 1972; Kjellstrom et al. 1977a; Elinder et al. 1978, 1983; Buchet et al. 1980; Jawaid et al. 1983; Kowal and Zirkes, 1983). Elinder stated that the upper 95 or 97.5 percentiles for B2MU among those without tubular dysfunction is below 300 μg/g CRTU (Kjellstrom et al. 1977a; Buchet et al. 1980; Kowal and Zirkes,

1983). Elinder defined levels of B2M above 300 μg/g CRTU as "slight" proteinuria.

5.3.8 *Conclusions and Recommendations for B2MU*

Based on the above evaluation, the following recommendations are made for a B2MU proficiency testing program. Note that the following discussion addresses only sampling and analysis for B2MU determinations (i.e., to be reported as an unadjusted μg B2M/l urine). Normalizing this result to creatinine requires a second analysis for CRTU (see section 5.4) so that the ratio of the 2 measurements can be obtained.

5.3.8.1 *Recommended Method*

The Pharmacia Delphia method (Pharmacia 1990) should be adopted as the standard method for B2MU determinations. Laboratories may adopt alternate methods, but it is the responsibility of the laboratory to demonstrate that alternate methods provide results of comparable quality to the Pharmacia Delphia method.

5.3.8.2 *Data Quality Objectives*

The following data quality objectives should facilitate interpretation of analytical results, and should be achievable based on the above evaluation.

Limit of Detection. A limit of 100 μg/l urine should be achievable, although the insert to the test kit (Pharmacia 1990) cites a detection limit of 150 μg/l; private conversations with representatives of Pharmacia, however, indicate that the lower limit of 100 μg/l should be achievable provided an additional standard of 100 μg/l B2M is run with the other standards to derive the calibration curve (section 3.3.1.1). The lower detection limit is desirable due to the proximity of this detection limit to B2MU values defined for the cadmium medical monitoring program.

Accuracy. Because results from an interlaboratory proficiency testing program are not available currently, it is difficult to define an achievable level of accuracy. Given the general performance parameters defined by the insert to the test kits, however, an accuracy of ±15% of the target value appears achievable.

Due to the low levels of B2MU to be measured generally, it is anticipated that the analysis of creatinine will contribute relatively little to the overall variability observed among creatinine-normalized B2MU levels (see section 5.4). The initial level of accuracy for reporting B2MU levels under this program should be set at ±15%.

Precision. Based on precision data reported by Pharmacia (1990), a precision value (i.e., CV) of 5% should be achievable over the defined range of the analyte. For internal QC samples (i.e., recommended as part of an internal QA/QC program, section 3.3.1), laboratories should attain precision near 5% over the range of concentrations measured.

5.3.8.3 *Quality Assurance/Quality Control*

Commercial laboratories providing measurement of B2MU should adopt an internal QA/QC program that incorporates the following components: Strict adherence to the Pharmacia Delphiad method, including calibration requirements; regular use of QC samples during routine runs; a protocol for corrective actions, and documentation of these actions; and, participation in an interlaboratory proficiency program. Procedures that may be used to address internal QC requirements are presented in Attachment 1. Due to differences between analyses for B2MU and CDB/CDU, specific values presented in Attachment 1 may have to be modified. Other components of the program (including characterization runs), however, can be adapted to a program for B2MU.

5.4 *Monitoring Creatinine in Urine (CRTU)*

Because CDU and B2MU should be reported relative to concentrations of CRTU, these concentrations should be determined in addition CDU and B2MU determinations.

5.4.1 *Units of CRTU Measurement*

CDU should be reported as μg Cd/g CRTU, while B2MU should be reported as μg B2M/g CRTU. To derive the ratio of cadmium or B2M to creatinine, CRTU should be reported in units of g crtn/l of urine. Depending on the analytical method, it may be necessary to convert results of creatinine determinations accordingly.

5.4.2 *Analytical Techniques Used To Monitor CRTU*

Of the techniques available for CRTU determinations, an absorbance spectrophotometric technique and a high-performance liquid chromatography (HPLC) technique are identified as acceptable in this protocol.

5.4.3 *Methods Developed for CRTU Determinations*

CRTU analysis performed in support of either CDU or B2MU determinations should be performed using either of the following 2 methods:

1. The Du Pont method (i.e., Jaffe method), in which creatinine in a sample reacts with picrate under alkaline conditions, and the resulting red chromofore is monitored (at 510 nm) for a fixed interval to determine the rate of the reaction; this reaction rate is proportional to the concentration of creatinine present in the sample (a copy of this method is provided in Attachment 2 of this protocol); or

2. The OSHA SLC Technical Center (OSLTC) method, in which creatinine in an aliquot of sample is separated using an HPLC column equipped with a UV detector; the resulting peak is quantified using an electrical integrator (a copy of this method is provided in Attachment 3 of this protocol).

5.4.4 *Sample Collection and Handling*

CRTU samples should be segregated from samples collected for CDU or B2MU analysis. Sample-collection techniques have been described under section 5.2.4. Samples should be preserved either to stabilize CDU (with HNO_3) or B2MU (with NaOH). Neither of these procedures should adversely affect CRTU analysis (see Attachment 3).

5.4.5 *General Method Performance*

Data from the OSLTC indicate that a CV of 5% should be achievable using the OSLTC method (Septon, L private communication). The achievable accuracy of this method has not been determined.

Results reported in surveys conducted by the CAP (CAP 1991a, 1991b and 1992) indicate that a CV of 5% is achievable. The accuracy achievable for CRTU determinations has not been reported.

Laboratories performing creatinine analysis under this protocol should be CAP accredited and should be active participants in the CAP surveys.

5.4.6 *Observed CRTU Concentrations*

Published data suggest the range of CRTU concentrations is 1.0–1.6 g in 24-hour urine samples (Harrison 1987). These values are equivalent to about 1 g/l urine.

5.4.7 *Conclusions and Recommendations for CRTU*

5.4.7.1 *Recommended Method*

Use either the Jaffe method (Attachment 2) or the OSLTC method (Attachment 3). Alternate methods may be acceptable provided adequate performance is demonstrated in the CAP program.

5.4.7.2 *Data Quality Objectives*

Limit of Detection. This value has not been formally defined; however, a value of 0.1 g/l urine should be readily achievable.

Accuracy. This value has not been defined formally; accuracy should be sufficient to retain accreditation from the CAP.

Precision. A CV of 5% should be achievable using the recommended methods.

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Attachment 1—Nonmandatory Protocol for an Internal Quality Assurance/Quality Control Program

The following is an example of the type of internal quality assurance/quality control program that assures adequate control to satisfy mandatory OSHA requirements under this protocol. However, other approaches may also be acceptable.

As indicated in Section 3.3.1 of the protocol, the mandatory QA/QC program for CDB and CDU should address, at a minimum, the following:

- Calibration;
- Establishment of control limits;
- Internal QC analyses and maintaining control; and
- Corrective action protocols.

This illustrative program includes both initial characterization runs to establish the performance of the method and ongoing analysis of quality control samples intermixed with compliance samples to maintain control.

Calibration

Before any analytical runs are conducted, the analytic instrument must be calibrated. This is to be done at the beginning of each day on which quality control samples and/or compliance samples are run. Once calibration is established, quality control samples or compliance samples may be run. Regardless of the type of samples run, every fifth sample must be a standard to assure that the calibration is holding.

Calibration is defined as holding if every standard is within plus or minus (±) 15% of its theoretical value. If a standard is more than plus or minus 15% of its theoretical value, then the run is out of control due to calibration error and the entire set of samples must either be reanalyzed after recalibrating or results should be recalculated based on a statistical curve derived from the measurement of all standards.

It is essential that the highest standard run is higher than the highest sample run. To assure that this is the case, it may be necessary to run a high standard at the end of

the run, which is selected based on the results obtained over the course of the run.

All standards should be kept fresh, and as they get old, they should be compared with new standards and replaced.

Initial Characterization Runs and Establishing Control

A participating laboratory should establish four pools of quality control samples for each of the analytes for which it wishes to be accredited. The concentrations of quality control samples within each pool are to be centered around each of the four target levels for the particular analyte identified in Section 4.4 of the protocol.

Within each pool, at least 4 quality control samples need to be established with varying concentrations ranging between plus or minus 50% of the target value of that pool. Thus for the medium-high cadmium in blood pool, the theoretical values of the quality control samples may range from 5 to 15 μg/l, (the target value is 10 μg/l). At least 4 unique theoretical values must be represented in this pool.

The range of theoretical values of plus or minus 50% of the target value of a pool means that there will be overlap of the pools. For example, the range of values for the medium-low pool for cadmium in blood is 3.5 to 10.5 μg/l while the range of values for the medium-high pool is 5 to 15 μg/l. Therefore, it is possible for a quality control sample from the medium-low pool to have a higher concentration of cadmium than a quality control sample from the medium-high pool.

Quality control samples may be obtained as commercially available reference materials, internally prepared, or both. Internally prepared samples should be well characterized and traced or compared to a reference material for which a consensus value for concentration is available. Levels of analyte in the quality control samples must be concealed from the analyst prior to the reporting of analytical results. Potential sources of materials that may be used to construct quality control samples are listed in Section 3.3.1 of the protocol.

Before any compliance samples are analyzed, control limits must be established. Control limits should be calculated for every pool of each analyte for which a laboratory seeks accreditation, and control charts should be kept for each pool of each analyte. A separate set of control charts and control limits should be established for each analytical instrument in a laboratory that will be used for analysis of compliance samples.

At the beginning of this QA/QC program, control limits should be based on the results of the analysis of 20 quality control samples from each pool of each analyte. For any given pool, the 20 quality control samples should be run on 20 different days. Although no more than one sample should be run from any single pool on a particular day, a laboratory may run quality control samples from different pools on the same day. This constitutes a set of initial characterization runs.

For each quality control sample analyzed, the value F/T (defined in the glossary) should be calculated. To calculate the control limits for a pool of an analyte, it is first necessary to calculate the mean, $\bar{X}$, of the F/T values for each quality control sample in a pool and then to calculate its standard deviation, $\hat{\sigma}$. Thus, for the control limit for a pool, $\bar{X}$ is calculated as:

$$\frac{\left(\Sigma \frac{F}{T}\right)}{N}$$

and $\hat{\sigma}$ is calculated as

$$\left[\frac{\Sigma\left(\frac{F}{T}-\bar{X}\right)^2}{(N-1)}\right]^{\frac{1}{2}}$$

where N is the number of quality control samples run for a pool.

The control limit for a particular pool is then given by the mean plus or minus 3 standard deviations ($\bar{X} \pm 3\hat{\sigma}$). The control limits may be no greater than 40% of the mean F/T value. If three standard deviations are greater than 40% of the mean F/T value, then analysis of compliance samples may not begin.[1] Instead, an investigation into the causes of the large standard deviation should begin, and the inadequacies must be remedied. Then, control limits must be reestablished which will mean repeating the running 20 quality control samples from each pool over 20 days.

Internal Quality Control Analyses and Maintaining Control

Once control limits have been established for each pool of an analyte, analysis of compliance samples may begin. During any run of compliance samples, quality control samples are to be interspersed at a rate of no less than 5% of the compliance sample workload. When quality control samples are run, however, they should be run in sets consisting of one quality control sample from each pool. Therefore, it may be necessary, at times, to intersperse quality control samples at a rate greater than 5%.

There should be at least one set of quality control samples run with any analysis of compliance samples. At a minimum, for example, 4 quality control samples should be run even if only 1 compliance sample is run. Generally, the number of quality control samples that should be run are a multiple of four with the minimum equal to the smallest multiple of four that is greater than 5% of the total number of samples to be run. For example, if 300 compliance samples of an analyte are run, then at least 16 quality control samples should be run (16 is the smallest multiple of four that is greater than 15, which is 5% of 300).

Control charts for each pool of an analyte (and for each instrument in the laboratory to be used for analysis of compliance samples) should be established by plotting F/T versus date as the quality control sample results are reported. On the graph there should be lines representing the control limits for the pool, the mean F/T limits for the pool, and the theoretical F/T of 1.000. Lines representing plus or minus (±) 2σ should also be represented on the charts. A theoretical example of a control chart is presented in Figure 1.

FIGURE 1.—THEORETICAL EXAMPLE OF A CONTROL CHART FOR A POOL OF AN ANALYTE

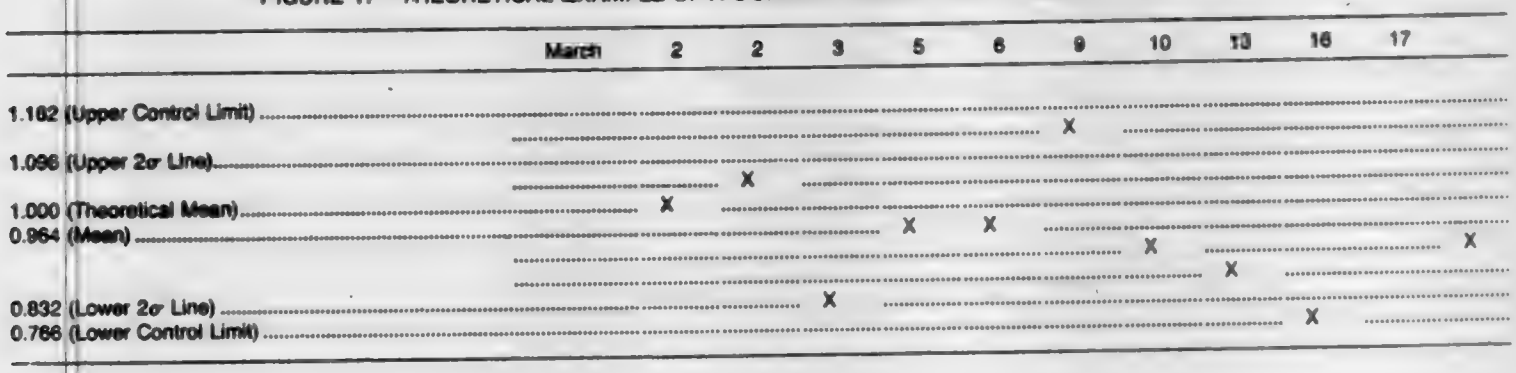

[1] Note that the value, "40%" may change over time as experience is gained with the program.

All quality control samples should be plotted on the chart, and the charts should be checked for visual trends. If a quality control sample falls above or below the control limits for its pool, then corrective steps must be taken (see the section on corrective actions below). Once a laboratory's program has been established, control limits should be updated every 2 months, prior to sending OSHA the updated data required to maintain accreditation.

The updated control limits should be calculated from the results of the last 100 quality control samples run for each pool. If 100 quality control samples from a pool have not been run at the time of the update, then the limits should be based on as many as have been run provided at least 20 quality control samples from each pool have been run over 20 different days.

The trends that should be looked for on the control charts are:

1. 10 consecutive quality control samples falling above or below the mean;
2. 3 consecutive quality control samples falling more than 2δ from the mean (above or below the 2δ lines of the chart); or
3. the mean calculated to update the control limits falls more than 10% above or below the theoretical mean of 1.000.

If any of these trends is observed, then all analysis must be stopped, and an investigation into the causes of the errors must begin. Before the analysis of compliance samples may resume, the inadequacies must be remedied and the control limits must be reestablished for that pool of an analyte. Reestablishment of control limits will entail running 20 sets of quality control samples over 20 days.

Note that alternative procedures for defining internal quality control limits may also be acceptable. Limits may be based, for example, on proficiency testing, such as ± 1 μg or 15% of the mean (whichever is greater). These should be clearly defined.

Corrective Actions.

Corrective action is the term used to describe the identification and remediation of errors occurring within an analysis. Corrective action is necessary whenever the result of the analysis of any quality control sample falls outside of the established control limits. The steps involved may include simple things like checking calculations of basic instrument maintenance, or it may involve more complicated actions like major instrument repair. Whatever the source of error, it must be identified and corrected (and a Corrective Action Report (CAR) must be completed and sent to OSHA with the next reaccreditation).

To maintain accreditation, laboratories must report corrective actions to the OSHA Salt Lake Technical Center. A form to be used for reporting corrective actions is provided in Attachment 5 of the protocol.

Attachment 2

Creatinine in Urine (JAFFE PROCEDURE).

Intended Use: The CREA pack is used in the Du Pont ACA® discrete clinical analyzer to quantitatively measure creatinine in serum and urine.

Summary The CREA method employs a modification of the kinetic Jaffe reaction reported by Larsen. This method has been reported to be less susceptible than conventional methods to interference from non-creatinine, Jaffe-positive compounds.[1]

A split sample comparison between the CREA method and a conventional Jaffe procedure on Autoanalyzer® showed a good correlation. (See Specific Performance Characteristics).

Autoanalyzer,® is a registered trademark of Technicon Corp., Tarrytown, NY.

Principles of Procedure: In the presence of a strong base such as NaOH, picrate reacts with creatinine to form a red chromophore. The rate of increasing absorbance at 510 nm due to the formation of this chromophore during a 17.07-second measurement period is directly proportional to the creatinine concentration in the sample.

$$\text{Creatinine} + \text{Picrate} \xrightarrow{\text{NaOH}} \text{Red chromophore (absorbs at 510 nm)}$$

Reagents:

Compartment [a]	Form	Ingredient	Quantity [b]
No. 2, 3, & 4	Liquid	Picrate	0.11 mmol
No. 6	Liquid	NaOH (for pH adjustment) [c].	

[a] Compartments are numbered 1–7, with compartment No. 7 located closest to pack fill position No. 2.
[b] Nominal value at manufacture.
[c] See Precautions.

Precautions: Compartment No. 6 contains 75μL of 10 N NaOH; avoid contact; skin irritant; rinse contacted area with water.

Used packs contain human body fluids; handle with appropriate care.

For In Vitro Diagnostic Use.

Mixing and Diluting: Mixing and diluting are automatically performed by the ACA® discrete clinical analyzer. The sample cup must contain sufficient quantity to accommodate the sample volume plus the "dead volume"; precise cup filling is not required.

SAMPLE CUP VOLUMES (μL)

Analyzer	Standard		Microsystem	
	Dead	Total	Dead	Total
II, III	120	3000	10	500
IV, SX	120	3000	30	500
V	90	3000	10	500

Storage of Unprocessed Packs: Store at 2–8 °C. Do not freeze. Do not expose to temperatures above 35 °C or to direct sunlight.

Expiration: Refer to expiration date on the tray label.

Specimen Collection: Serum or urine can be collected and stored by normal procedures.[2]

Known Interfering Substances: [3] Serum Protein Influence. Serum protein levels exert a direct influence on the CREA assay. The following should be taken into account when this method is used for urine samples and when it is calibrated:

Aqueous creatinine standards or urine specimens will give CREA results depressed by approximately 0.7 mg/dL [62 μmol/L] [4] and will be less precise than samples containing more than 3 g/dL [30 g/L] protein.

All urine specimens should be diluted with an albumin solution to give a final protein concentration of at least 3 g/dL [30 g/L]. Du Pont Enzyme Diluent (Cat. #790035–901) may be used for this purpose.

- High concentration of endrogenous bilirubin (>20 mg/dL [>342 μmol/L]) will give depressed CREA results (average depression 0.8 mg/dL [71 μmol/L]).[4]
- Grossly hemolyzed (hemoglobin >100 mg/dL [>62 μmol/L]) or visibly lipemic specimens may cause falsely elevated CREA results.[4,6]
- The following cephalosporin antibiotics do not interfere with the CREA method when present at the concentrations indicated. Systematic inaccuracies (bias) due to these substances are less than or equal to 0.1 mg/dL [8.84 μmol/L] at CREA concentrations of approximately 1 mg/dL [88 μmol/L].

[4] Systeme International d'unites (S.I. Units) are in brackets.

Antibiotic	Peak serum level [3,4,9]		Drug concentration	
	mg/dL	[mmol/L]	mg/dL	[mmol/L]
Cephaloridine	1.4	0.3	25	5.0
Cephalexin	0.6–2.0	0.2–0.6	25	7.2
Cephamandole	1.3–2.5	0.3–0.5	25	4.9
Cephapirin	2.0	0.4	25	5.6
Cephradine	1.5–2.0	0.4–0.6	25	7.1
Cefazolin	2.5–5.0	0.55–1.1	50	11.0

• The following cephalosporin antibiotics have been shown to affect CREA results when present at the indicated concentrations. System inaccuracies (bias) due to these substances are greater that 0.1 mg/dL [8.84 μmol/L] at CREA concentrations of:

Antibiotic	Peak serum level [4,10]		Drug concentration		Effect
	mg/dL [mmol/L]	mg/dL [mmol/L]	mg/dL	[mmol/L]	
Cephalothin	1–6	0.2–1.5	100	25.2	↓ 20–25%
Cephoxitin	2.0	0.5	5.0	1.2	↑ 35–40%

• The single wavelength measurement used in this method eliminates interference from chromophores whose 510 nm absorbance is constant throughout the measurement period.

• Each laboratory should determine the acceptability of its own blood collection tubes and serum separation products. Variations in these products may exist between manufacturers and, at times, from lot to lot.

Procedure

TEST MATERIALS

Item	II, III, Du Pont cat. No.	IV, SX, Du Pont cat. No.	V, Du Pont cat. No.
ACA® CREA analytical test pack	701976901	701976901	701976901
Sample system kit, or	710642901	710642901	713697901
Micro sample system kit, and	702694901	710356901	NA
Micro sample system holders	702785000	NA	NA
DYLUX® photosensitive printer paper	700096000	NA	NA
Thermal printer paper	NA	710639901	713645901
Du Pont purified water	704209901	710615901	710615901

TEST MATERIALS—Continued

Item	II, III, Du Pont cat. No.	IV, SX, Du Pont cat. No.	V, Du Pont cat. No.
Cell wash solution	701864901	710664901	710864901

Test Steps

The operator need only load the sample kit and appropriate test pack(s) into a properly prepared ACA® discrete clinical analyzer. It automatically advances the pack(s) through the test steps and prints a result(s). See the Instrument Manual of the ACA® analyzer for details of mechanical travel of the test pack(s).

Preset Creatinine (CREA) Test Conditions

- Sample volume: 200 μL.
- Diluent: purified water.
- Temperature: 37.0±0.1 °C.
- Reaction period: 29 seconds.
- Type of measurement: rate.
- Measurement period: 17.07 seconds.
- Wavelength: 510 nm.
- Units: mg/dL [μmol/L].

Calibration

The general calibration procedure is described in the Calibration/Verification chapter of the Manuals.

The following information should be considered when calibrating the CREA method.

- Assay range: 0–20 mg/mL [0–1768 μmol/L][e].
- Reference material: Protein containing primary standards[f] or secondary calibrators such as Du Pont Elevated Chemistry Control (Cat. #790035903) and Normal Chemistry Control (Cat. #790035905)[g].
- Suggested calibration levels: 1,5,20, mg/mL, [88, 442, 1768 μmol/L].
- Calibration scheme: 3 levels, 3 packs per level.
- Frequency: Each new pack lot. Every 3 months for any one pack lot.

e. For the results in S.I. units [μmol/L] the conversion factory is 88.4.

f. Refer to the Creatinine Standard Preparation and Calibration Procedure available on request from a Du Pont Representative.

g. If the Du Pont Chemistry Controls are being used, prepare them according to the instructions on the product insert sheets.

PRESET CREATININE (CREA) TEST CONDITIONS

Item	ACA®, II, analyzer	ACA®, III, IV, SX, V, analyzer
Count by	One (1) [Five (5)]	NA.
Decimal point location.	0.0 mg/dL [000. μmol/L]	000.0 mg/dL [000 μmol/L]
Assigned starting point or offset C_0.	999.8 [9823.]	−1.000 E1 [−8.840 E2].
Scale factor or assigned.	0.2000 mg/dL/count[h]	2.004 E−1[h].
Linear term C_1[h]	[0.3536 μmol/L/count].	[1.772E1].

h. The preset scale factor (linear term) was derived from the molar absorptivity of the indicator and is based on an absorbance to activity relationship (sensitivity) of 0.596 (mA/min)/(U/L). Due to small differences in filters and electronic components between instruments, the actual scale factor (linear term) may differ slightly from that given above.

Quality Control

Two types of quality control procedures are recommended:

- **General instrument check.** Refer to the Filter Balance Procedure and the Absorbance Test Method described in the Instrument

Manual. Refer also to the ABS Test Methodology literature.

• **Creatinine method check.** At least once daily run a CREA test on a solution of known creatinine activity such as an assayed control or calibration standard other than that used to calibrate the CREA method. For further details review the Quality Assurance Section of the Chemistry Manual. The result obtained should fall within acceptable limits defined by the day-to-day variability of the system as measured in the user's laboratory. (See SPECIFIC PERFORMANCE CHARACTERISTICS for guidance.) If the result falls outside the laboratory's acceptable limits, follow the procedure outlined in the Chemistry Troubleshooting Section of the Chemistry Manual.

A possible system malfunction is indicated when analysis of a sample with five consecutive test packs gives the following results:

Level	SD
1 mg/dL	>0.15 mg/dL
[88 μmol/L]	[>13 μmol/L].
20 mg/dL	>0.68 mg/dL
[1768 μmol/L]	[>60 μmol/L].

Refer to the procedure outlined in the Trouble Shooting Section of the Manual.

Results

The ACA® analyzer automatically calculates and prints the CREA result in mg/dL [μmol/L].

Limitation of Procedure

Results >20 mg/dL [1768 μmol/L]:

• Dilute with suitable protein base diluent. Reassay. Correct for diluting before reporting.

The reporting system contains error messages to warn the operator of specific malfunctions. Any report slip containing a letter code or word immediately following the numerical value should not be reported. Refer to the Manual for the definition of error codes.

Reference Interval

Serum: [11,1] Males—0.8–1.3 md/dL [71–115 μmol/L].
Females: 0.6–1.0 md/dL [53–88 μmol/L]
Urine: [12] Males—0.6–2.5 g/24 hr [53–221 mmol/24 hr]
Females: 0.6–1.5 g/24 hr [53–133 mmol/24 hr]

Each laboratory should establish its own reference intervals for CREA as performed on the analyzer.

i. Reference interval data obtained from 200 apparently healthy individuals (71 males, 129 females) between the ages of 19 and 72.

Specific Performance Characteristics

REPRODUCIBILITY [k]

Material	Mean	Standard deviation (% CV)	
		Within-run	Between-day
Lyophilized Control	1.3 [115]	0.05 (3.7) [4.4]	0.05 (3.7) [4.4]

REPRODUCIBILITY [k]—Continued

Material	Mean	Standard deviation (% CV)	
		Within-run	Between-day
Lyophilized Control	20.5 [1821]	0.12 (0.6) [10.6]	0.37 (1.8) [32.7]

CORRELATION—REGRESSION STATISTICS [l]

Comparative method	Slope	Intercept	Correlation coefficient	n
Autoanalyzer®	1.03	0.03[2.7]	0.997	260

j. ALL SPECIFIC PERFORMANCE CHARACTERISTICS tests were run after normal recommended equipment quality control checks were performed (see Instrument Manual).

k. Specimens at each level were analyzed in duplicate for twenty days. The within-run and between-day standard deviations were calculated by the analysis of variance method.

l. Model equation for regression statistics is:

Result of ACA® Analyzer = Slope (Comparative method result) + intercept

Assay Range [m]

0.0–20.0 mg/dl [0–1768 μmol]

m. See REPRODUCIBILITY for method performance within the assay range.

Analytical Specificity

See KNOWN INTERFERING SUBSTANCES section for details.

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[12] Dicht, JJ, Reference Intervals for Serum Amylase and Urinary Creatinine on the Du Pont ACA® Discrete Clinical Analyzer, Du Pont Company, Wilmington, DE (November 1984).

n. Reprints available from Du Pont Company, Diagonostic Systems.

Attachment 3

Analysis of Creatinine for the Normalization of Cadmium and Beta–2–Microglobulin Concentrations in Urine

Matrix: Urine

Target Concentration: 1.1 g/L (this amount is representative of creatinine concentrations found in urine).

Procedure: A 1.0 mL aliquot of urine is passed through a C18 SEP-PAK® (Waters Associates). Approximately 30 mL of HPLC (high performance liquid chromatography) grade water is then run through the SEP-PAK. The resulting solution is diluted to volume in a 100–mL volumetric flask and analyzed by HPLC using an ultraviolet (UV) detector.

Special Requirements: After collection, samples should be appropriately stabilized for cadmium (Cd) analysis by using 10% high purity (with low Cd background levels) nitric acid (exactly 1.0 mL of 10% nitric acid per 10 mL of urine) or stabilized for *Beta–2–*Microglobulin (B2M) by taking to pH 7 with dilute NaOH (exactly 1.0 mL of 0.11 N NaOH per 10 mL of urine). If not immediately analyzed, the samples should be frozen and shipped by overnight mail in an insulated container.

Date: January 1992.

Chemists: David B. Armitage,

Duane Lee,

Organic Service Branch II, OSHA Technical Center, Salt Lake City, Utah.

1. General Discussion

1.1. Background

1.1.1. History of procedure

Creatinine has been analyzed by several methods in the past. The earliest methods were of the wet chemical type. As an example, creatinine reacts with sodium picrate in basic solution to form a red complex, which is then analyzed colorimetrically (Refs. 5.1. and 5.2.).

Since industrial hygiene laboratories will be analyzing for Cd and B2M in urine, they will be normalizing those concentrations to the concentration of creatinine in urine. A literature search revealed several HPLC methods (Refs. 5.3., 5.4., 5.5. and 5.6.) for creatinine in urine and because many industrial hygiene laboratories have HPLC equipment, it was desirable to develop an industrial hygiene HPLC method for creatinine in urine. The method of

Hausen, Fuchs, and Wachter was chosen as the starting point for method development. SEP-PAKs were used for sample clarification and cleanup in this method to protect the analytical column. The urine aliquot which has been passed through the SEP-PAK is then analyzed by reverse-phase HPLC using ion-pair techniques.

This method is very similar to that of Ogata and Taguchi (Ref. 5.6.), except they used centrifugation for sample clean-up. It is also of note that they did a comparison of their HPLC results to those of the Jaffe method (a picric acid method commonly used in the health care industry) and found a linear relationship of close to 1:1. This indicates that either HPLC or colorimetric methods may be used to measure creatinine concentrations in urine.

1.1.2. Physical properties (Ref. 5.7.)

Molecular weight: 113.12

Molecular formula: C_4–H_7–N_3–O

Chemical name: 2–amino–1,5–dihydro–1–methyl–4H–imidazol–4–one

CAS#: 60–27–5

Melting point: 300 °C (decomposes)

Appearance: white powder

Solubility: soluble in water; slightly soluble in alcohol; practically insoluble in acetone, ether, and chloroform

Synonyms: 1–methylglycocyamidine, 1–methylhydation–2–imide

Structure: see Figure #1

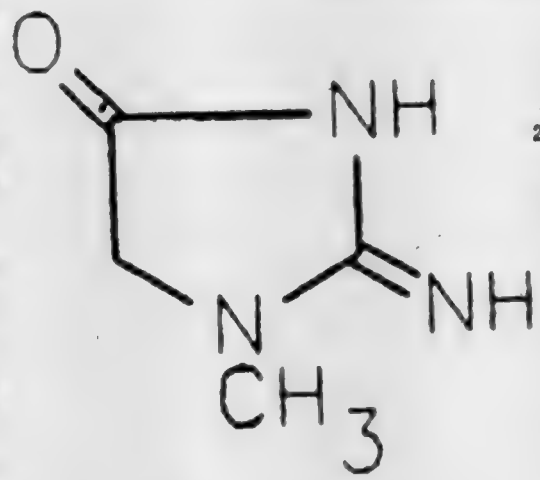

Figure #1

1.2 Advantages

1.2.1. This method offers a simple, straightforward, and specific alternative method to the Jaffe method.

1.2.2. HPLC instrumentation is commonly found in many industrial hygiene laboratories.

2. Sample Stabilization Procedure

2.1. Apparatus

Metal-free plastic container for urine sample.

2.2. Reagents

2.2.1. Stabilizing Solution—1) Nitric acid (10%, high purity with low Cd background levels) for stabilizing urine for Cd analysis or 2) NaOH, 0.11 N, for stabilizing urine for B2M analysis.

2.2.2. HPLC grade water

2.3. Technique

2.3.1. Stabilizing solution is added to the urine sample (see section 2.2.1.). The stabilizing solution should be such that for each 10 mL of urine, add exactly 1.0 mL of stabilizer solution. (Never add water or urine to acid or base. Always add acid or base to water or urine.) Exactly 1.0 mL of 0.11 N NaOH added to 10 mL of urine should result in a pH of 7. Or add 1.0 mL of 10% nitric acid to 10 mL of urine.

2.3.2. After sample collection seal the plastic bottle securely and wrap it with an appropriate seal. Urine samples should be frozen and then shipped by overnight mail (if shipping is necessary) in an insulated container. (Do not fill plastic bottle too full. This will allow for expansion of contents during the freezing process.)

2.4. The Effect of Preparation and Stabilization Techniques on Creatinine Concentrations

Three urine samples were prepared by making one sample acidic, not treating a second sample, and adjusting a third sample to pH 7. The samples were analyzed in duplicate by two different procedures. For the first procedure a 1.0 mL aliquot of urine was put in a 100-mL volumetric flask, diluted to volume with HPLC grade water, and then analyzed directly on an HPLC. The other procedure used SEP–PAKs. The SEP–PAK was rinsed with approximately 5 mL of methanol followed by approximately 10 mL of HPLC grade water and both rinses were discarded. Then, 1.0 mL of the urine sample was put through the SEP–PAK, followed by 30 mL of HPLC grade water. The urine and water were transferred to a 100-mL volumetric flask, diluted to volume with HPLC grade water, and analyzed by HPLC. These three urine samples were analyzed on the day they were obtained and then frozen. The results show that whether the urine is acidic, untreated or adjusted to pH 7, the resulting answer for creatinine is essentially unchanged. The purpose of stabilizing the urine by making it acidic or neutral is for the analysis of Cd or B2M respectively.

COMPARISON OF PREPARATION AND STABILIZATION TECHNIQUES

Sample	w/o SEP-PAK (g/L creatinine)	with SEP-PAK (g/L creatinine)
Acid	1.10	1.10
Acid	1.11	1.10
Untreated	1.12	1.11
Untreated	1.11	1.12
pH7	1.08	1.02
pH7	1.11	1.08

2.5. Storage

After 4 days and 54 days of storage in a freezer, the samples were thawed, brought to room temperature and analyzed using the same procedures as in section 2.4. The results of several days of storage show that the resulting answer for creatinine is essentially unchanged.

STORAGE DATA

Sample	4 days		54 days	
	w/o SEP-PAK (g/L creatinine)	with SEP-PAK (g/L creatinine)	w/o SEP-PAK (g/L creatinine)	with SEP-PAK (g/L creatinine)
Acid	1.09	1.09	1.08	1.09
Acid	1.10	1.10	1.09	1.10
Acid			1.09	1.09
Untreated	1.13	1.14	1.09	1.11
Untreated	1.15	1.14	1.10	1.10
Untreated			1.09	1.10

STORAGE DATA—Continued

Sample	4 days		54 days	
	w/o SEP-PAK (g/L creatinine)	with SEP-PAK (g/L creatinine)	w/o SEP-PAK (g/L creatinine)	with SEP-PAK (g/L creatinine)
pH 7	1.14	1.13	1.12	1.12
pH 7	1.14	1.13	1.12	1.12
pH 7			1.12	1.12

2.8. Interferences

None.

2.7. Safety precautions

2.7.1. Make sure samples are properly sealed and frozen before shipment to avoid leakage.

2.7.2. Follow the appropriate shipping procedures.

The following modified special safety precautions are based on those recommended by the Centers for Disease Control (CDC)(Ref. 5.8.).

2.7.3. Wear gloves, lab coat, and safety glasses while handling all human urine products. Disposable plastic, glass, and paper (pipet tips, gloves, etc.) that contact urine should be placed in a biohazard autoclave bag. These bags should be kept in appropriate containers until sealed and autoclaved. Wipe down all work surfaces with 10% sodium hypochlorite solution when work is finished.

2.7.4. Dispose of all biological samples and diluted specimens in a biohazard autoclave bag at the end of the analytical run.

2.7.5. Special care should be taken when handling and dispensing nitric acid. Always remember to add acid to water (or urine). Nitric acid is a corrosive chemical capable of severe eye and skin damage. Wear metal-free gloves, a lab coat, and safety glasses. If the nitric acid comes in contact with any part of the body, quickly wash with copious quantities of water for at least 15 minutes.

2.7.6. Special care should be taken when handling and dispensing NaOH. Always remember to add base to water (or urine). NaOH can cause severe eye and skin damage. Always wear the appropriate gloves, a lab coat, and safety glasses. If the NaOH comes in contact with any part of the body, quickly wash with copious quantities of water for at least 15 minutes.

3. Analytical Procedure

3.1. Apparatus

3.1.1. A high performance liquid chromatograph equipped with pump, sample injector and UV detector.

3.1.2. A C18 HPLC column; 25 cm × 4.6 mm I.D.

3.1.3. An electronic integrator, or some other suitable means of determining analyte response.

3.1.4. Stripchart recorder.

3.1.5. C18 SEP-PAKs (Waters Associates) or equivalent.

3.1.6. Luer-lock syringe for sample preparation (5 mL or 10 mL).

3.1.7. Volumetric pipettes and flasks for standard and sample preparation.

3.1.8. Vacuum system to aid sample preparation (optional).

3.2. Reagents

3.2.1. Water, HPLC grade.

3.2.2. Methanol, HPLC grade.

3.2.3. PIC B-7® (Waters Associates) in small vials.

3.2.4. Creatinine, anhydrous, Sigma Chemical Corp., purity not listed.

3.2.5. 1-Heptanesulfonic acid, sodium salt monohydrate.

3.2.6. Phosphoric acid.

3.2.7. Mobile phase. It can be prepared by mixing one vial of PIC B-7 into a 1 L solution of 50% methanol and 50% water. The mobile phase can also be made by preparing a solution that is 50% methanol and 50% water with 0.005M heptanesulfonic acid and adjusting the pH of the solution to 3.5 with phosphoric acid.

3.3. Standard preparation

3.3.1. Stock standards were prepared by weighing 10 to 15 mg of creatinine. This is transferred to a 25-mL volumetric flask and diluted to volume with HPLC grade water.

3.3.2. Dilutions to a working range of 3 to 35 µg/mL are made in either HPLC grade water or HPLC mobile phase (standards give the same detector response in either solution).

3.4. Sample preparation

3.4.1. The C18 SEP-PAK is connected to a Luer-lock syringe. It is rinsed with 5 mL HPLC grade methanol and then 10 mL of HPLC grade water. These rinses are discarded.

3.4.2. Exactly 1.0 mL of urine is pipetted into the syringe. The urine is put through the SEP-PAK into a suitable container using a vacuum system.

3.4.3. The walls of the syringe are rinsed in several stages with a total of approximately 30 mL of HPLC grade water. These rinses are put through the SEP-PAK into the same container. The resulting solution is transferred to a 100-mL volumetric flask and then brought to volume with HPLC grade water.

3.5. Analysis (conditions and hardware are those used in this evaluation.)

3.5.1. Instrument conditions

Column	Zorbax® ODS, 5–6 µm particle size; 25 cm × 4.6 mm I.D.
Mobile phase	See Section 3.2.7.
Detector	Dual wavelength UV; 229 nm (primary) 254 nm (secondary).
Flow rate	0.7 mL/minute.
Retention time	7.2 minutes.
Sensitivity	0.05 AUFS.
Injection volume.	20 µL.

3.5.2. Chromatogram (See Figure #2).

3.6. Interferences

3.6.1. Any compound that has the same retention time as creatinine and absorbs at 229 nm is an interference.

3.6.2. HPLC conditions may be varied to circumvent interferences. In addition, analysis at another UV wavelength (i.e. 254 nm) would allow a comparison of the ratio of response of a standard to that of a sample. Any deviations would indicate an interference.

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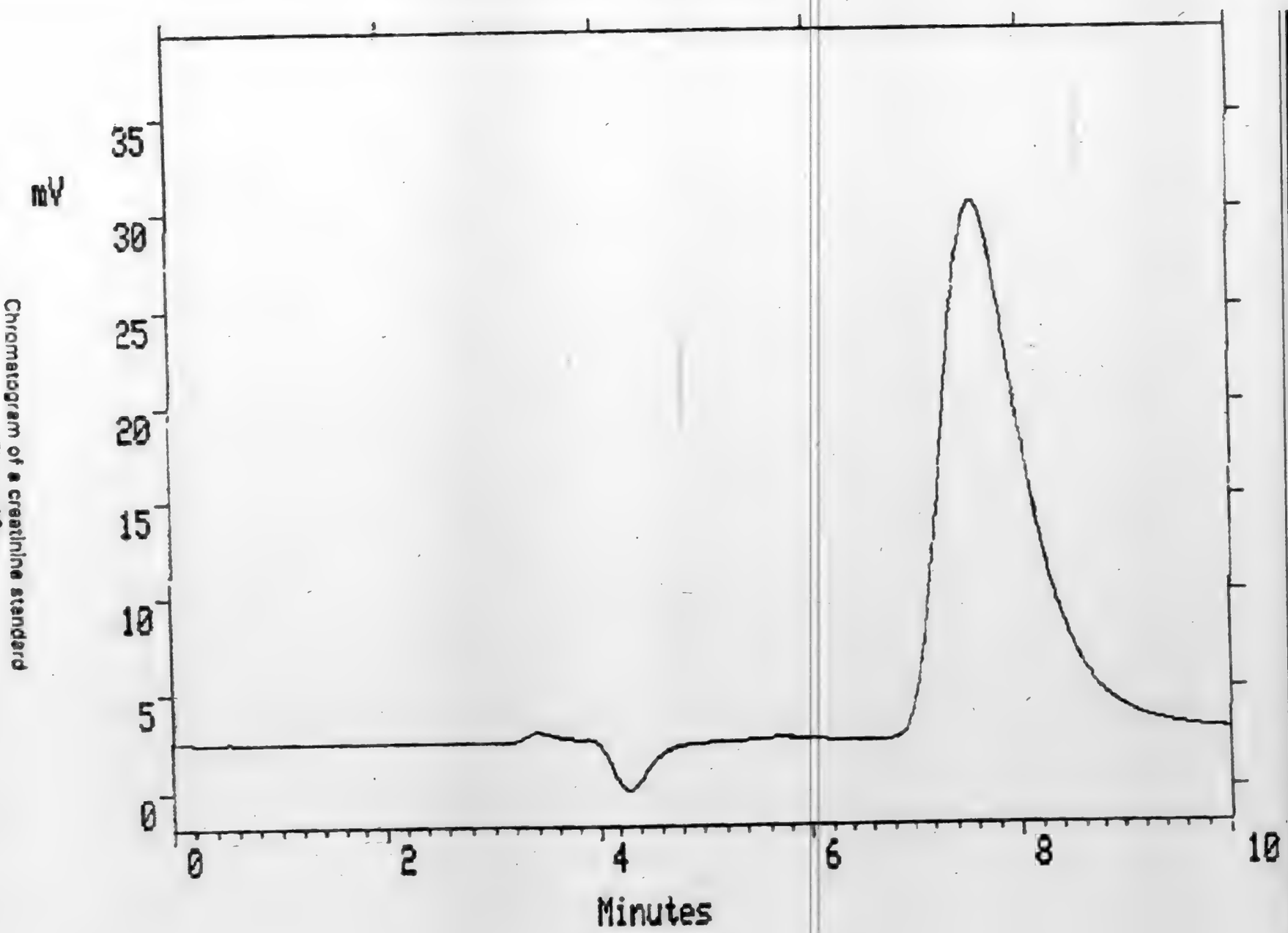

Chromatogram of a creatinine standard
Figure #2

BILLING CODE 4510-29-C

3.7. Calculations

3.7.1. A calibration curve is constructed by plotting detector response versus standard concentration (See Figure #3).

3.7.2. The concentration of creatinine in a sample is determined by finding the concentration corresponding to its detector response. (See Figure #3).

3.7.3. The μg/mL creatinine from section 3.7.2. is then multiplied by 100 (the dilution factor). This value is equivalent to the micrograms of creatinine in the 1.0 mL stabilized urine aliquot or the milligrams of creatinine per liter of urine. The desired unit, g/L, is determined by the following relationship:

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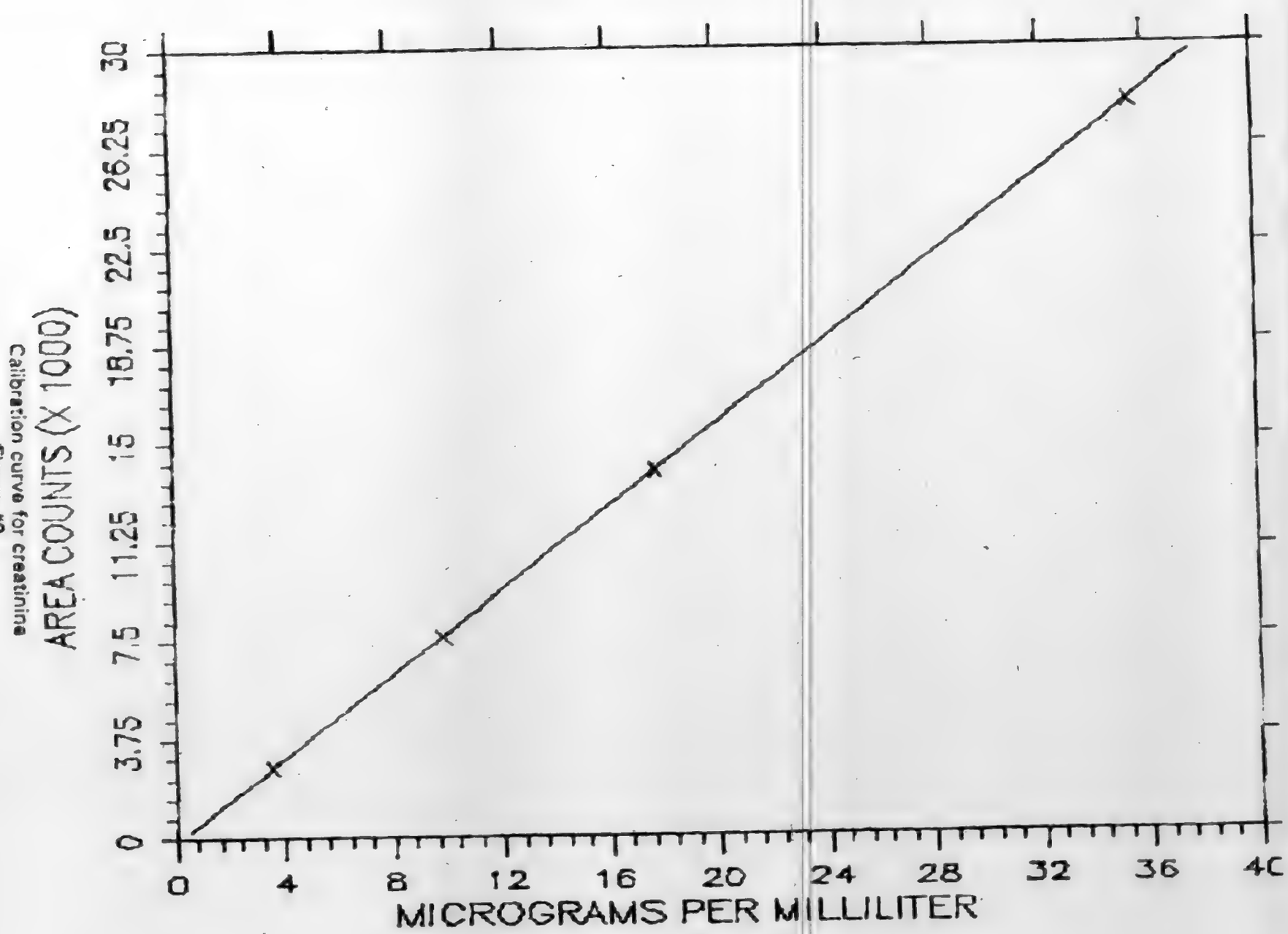

Calibration curve for creatinine
Figure #3

BILLING CODE 4510-38-C

$$g/L = \frac{\mu g/mL}{1000} = \frac{mg/L}{1000}$$

3.7.4. The resulting value for creatinine is used to normalize the urinary concentration of the desired analyte (A) (Cd or B2M) by using the following formula.

$$\mu g\ A/g\ \text{creatinine} = \frac{\mu g\ A/L\ \text{(experimental)}}{g/L\ \text{creatinine}}$$

Where A is the desired analyte. The protocol of reporting such normalized results is μg A/g creatinine.

3.8. Safety precautions. See section 2.7.

4. Conclusions

The determination of creatinine in urine by HPLC is a good alternative to the Jaffe method for industrial hygiene laboratories. Sample clarification with SEP-PAKs did not change the amount of creatinine found in urine samples. However, it does protect the analytical column. The results of this creatinine in urine procedure are unaffected by the pH of the urine sample under the conditions tested by this procedure. Therefore, no special measures are required for creatinine analysis whether the urine sample has been stabilized with 10% nitric acid for the Cd analysis or brought to a pH of 7 with 0.11 NaOH for the B2M analysis.

5. References

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5.7. "Merck Index", 11th ed.; Windholz, Martha Ed.; Merck: Rahway, N.J., 1989; p. 403.

5.8. Kimberly, M.; "*Determination of Cadmium in Urine by Graphite Furnace Atomic Absorption Spectrometry with Zeeman Background Correction.*" Centers for Disease Control, Atlanta, Georgia, unpublished, update 1990.

XI. Final Standard (Construction)

PART 1926—[AMENDED]

9. The authority citation for 29 CFR part 1926, Subpart D is revised as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); sec. 4, 6, 8 Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033) as applicable.

Sections 1926.58, 1926.59, and 1926.60 also issued under 5 U.S.C. 553 and 29 CFR part 1911.

10. A new § 1926.63 with appendices A, B, C, D, E, and F are added to subpart D to read as set forth below. The text of appendices A, B, C, D, E, and F is identical to the text of appendices A, B, C, D, E, and F of § 1910.1027 of subpart 2 of part 1910.

§ 1926.63 Cadmium.

(a) *Scope.* This standard applies to all occupational exposures to cadmium and cadmium compounds, in all forms, in all construction work where an employee may potentially be exposed to cadmium. Construction work is defined as work involving construction, alteration and/or repair, including but not limited to the following:

(1) Wrecking, demolition or salvage of structures where cadmium or materials containing cadmium are present;

(2) Use of cadmium containing-paints and cutting, brazing, burning, grinding or welding on surfaces that were painted with cadmium-containing paints;

(3) Construction, alteration, repair, maintenance, or renovation of structures, substrates, or portions thereof, that contain cadmium, or materials containing cadmium;

(4) Cadmium welding; cutting and welding cadmium-plated steel; brazing or welding with cadmium alloys;

(5) Installation of products containing cadmium;

(6) Electrical grounding with cadwelding, or electrical work using cadmium-coated conduit;

(7) Maintaining or retrofitting cadmium-coated equipment;

(8) Cadmium contamination/emergency cleanup; and

(9) Transportation, disposal, storage, or containment of cadmium or materials containing cadmium on the site or location at which construction activities are performed.

(b) *Definitions.*

Action level (AL) is defined as an airborne concentration of cadmium of 2.5 micrograms per cubic meter of air (2.5 $\mu g/m^3$), calculated as an 8-hour time-weighted average (TWA).

Assistant Secretary means the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, or designee.

Authorized person means any person authorized by the employer and required by work duties to be present in regulated areas or any person authorized by the OSH Act or regulations issued under it to be in regulated areas.

Competent person, in accordance with 29 CFR 1926.32(f), means a person designated by the employer to act on the employer's behalf who is capable of identifying existing and potential cadmium hazards in the workplace and the proper methods to control them in order to protect workers, and has the authority necessary to take prompt corrective measures to eliminate or control such hazards. The duties of a competent person include at least the following: Determining prior to the performance of work whether cadmium is present in the workplace; establishing, where necessary, regulated areas and assuring that access to and from those areas is limited to authorized employees; assuring the adequacy of any employee exposure monitoring required by this standard; assuring that all employees exposed to air cadmium levels above the PEL wear appropriate personal protective equipment and are trained in the use of appropriate methods of exposure control; assuring that proper hygiene facilities are provided and that workers are trained to use those facilities; and assuring that the engineering controls required by this standard are implemented, maintained in proper operating condition, and functioning properly.

Director means the Director of the National Institute for Occupational Safety and Health (NIOSH), U.S. Department of Health and Human Services, or designee.

Employee exposure and similar language referring to the air cadmium level to which an employee is exposed

means the exposure to airborne cadmium that would occur if the employee were not using respiratory protective equipment.

Final medical determination is the written medical opinion of the employee's health status by the examining physician under paragraphs (l)(3)-(12) of this section or, if multiple physician review under paragraph (l)(13) of this section or the alternative physician determination under paragraph (l)(14) of this section is invoked, it is the final, written medical finding, recommendation or determination that emerges from that process.

High-efficiency particulate absolute [HEPA] air filter means a filter capable of trapping and retaining at least 99.97 percent of mono-dispersed particles of 0.3 micrometers in diameter.

Regulated area means an area demarcated by the employer where an employee's exposure to airborne concentrations of cadmium exceeds, or can reasonably be expected to exceed the permissible exposure limit (PEL).

This section means this cadmium standard.

(c) *Permissible Exposure Limit (PEL).* The employer shall assure that no employee is exposed to an airborne concentration of cadmium in excess of five micrograms per cubic meter of air (5 $\mu g/m^3$), calculated as an eight-hour time-weighted average exposure (TWA).

(d) *Exposure Monitoring—(1) General.* (i) Prior to the performance of any construction work where employees may be potentially exposed to cadmium, the employer shall establish the applicability of this standard by determining whether cadmium is present in the workplace and whether there is the possibility that employee exposures will be at or above the action level. The employer shall designate a competent person who shall make this determination. Investigation and material testing techniques shall be used, as appropriate, in the determination. Investigation shall include a review of relevant plans, past reports, material safety data sheets, and other available records, and consultations with the property owner and discussions with appropriate individuals and agencies.

(ii) Where cadmium has been determined to be present in the workplace, and it has been determined that there is a possibility the employee's exposure will be at or above the action level, the competent person shall identify employees potentially exposed to cadmium at or above the action level.

(iii) Determinations of employee exposure shall be made from breathing-zone air samples that reflect the monitored employee's regular, daily 8-hour TWA exposure to cadmium.

(iv) Eight-hour TWA exposures shall be determined for each employee on the basis of one or more personal breathing-zone air samples reflecting full shift exposure on each shift, for each job classification, in each work area. Where several employees perform the same job tasks, in the same job classification, on the same shift, in the same work area, and the length, duration, and level of cadmium exposures are similar, an employer may sample a representative fraction of the employees instead of all employees in order to meet this requirement. In representative sampling, the employer shall sample the employee(s) expected to have the highest cadmium exposures.

(2) *Specific.* (i) Initial monitoring. Except as provided for in paragraph (d)(2)(iii) of this section, where a determination conducted under paragraph (d)(1)(i) of this section shows the possibility of employee exposure to cadmium at or above the action level, the employer shall conduct exposure monitoring as soon as practicable that is representative of the exposure for each employee in the workplace who is or may be exposed to cadmium at or above the action level.

(ii) In addition, if the employee periodically performs tasks that may expose the employee to a higher concentration of airborne cadmium, the employee shall be monitored while performing those tasks.

(iii) Where the employer has objective data, as defined in paragraph (n)(2) of this section, demonstrating that employee exposure to cadmium will not exceed airborne concentrations at or above the action level under the expected conditions of processing, use, or handling, the employer may rely upon such data instead of implementing initial monitoring.

(iv) Where a determination conducted under paragraphs (d)(1) or (d)(2) of this section is made that a potentially exposed employee is not exposed to airborne concentrations of cadmium at or above the action level, the employer shall make a written record of such determination. The record shall include at least the monitoring data developed under paragraphs (d)(2)(i)–(iii) of this section, where applicable, and shall also include the date of determination, and the name and social security number of each employee.

(3) *Monitoring frequency (periodic monitoring).* (i) If the initial monitoring or periodic monitoring reveals employee exposures to be at or above the action level, the employer shall monitor at a frequency and pattern needed to assure that the monitoring results reflect with reasonable accuracy the employee's typical exposure levels, given the variability in the tasks performed, work practices, and environmental conditions on the job site, and to assure the adequacy of respiratory selection and the effectiveness of engineering and work practice controls.

(ii) If the initial monitoring or the periodic monitoring indicates that employee exposures are below the action level and that result is confirmed by the results of another monitoring taken at least seven days later, the employer may discontinue the monitoring for those employees whose exposures are represented by such monitoring.

(4) *Additional monitoring.* The employer also shall institute the exposure monitoring required under paragraphs (d)(2)(i) and (d)(3) of this section whenever there has been a change in the raw materials, equipment, personnel, work practices, or finished products that may result in additional employees being exposed to cadmium at or above the action level or in employees already exposed to cadmium at or above the action level being exposed above the PEL, or whenever the employer or competent person has any reason to suspect that any other change might result in such further exposure.

(5) *Employee notification of monitoring results.* (i) No later than five working days after the receipt of the results of any monitoring performed under this section, the employer shall notify each affected employee individually in writing of the results. In addition, within the same time period, the employer shall post the results of the exposure monitoring in an appropriate location that is accessible to all affected employees.

(ii) Wherever monitoring results indicate that employee exposure exceeds the PEL, the employer shall include in the written notice a statement that the PEL has been exceeded and a description of the corrective action being taken by the employer to reduce employee exposure to or below the PEL.

(6) *Accuracy of measurement.* The employer shall use a method of monitoring and analysis that has an accuracy of not less than plus or minus 25 percent (± 25%), with a confidence level of 95 percent, for airborne concentrations of cadmium at or above the action level and the permissible exposure limit.

(e) *Regulated areas—(1) Establishment.* The employer shall establish a regulated area wherever an

employee's exposure to airborne concentrations of cadmium is, or can reasonably be expected to be in excess of the permissible exposure limit (PEL).

(2) *Demarcation.* Regulated areas shall be demarcated from the rest of the workplace in any manner that adequately establishes and alerts employees of the boundaries of the regulated area, including employees who are or may be incidentally in the regulated areas, and that protects persons outside the area from exposure to airborne concentrations of cadmium in excess of the PEL.

(3) *Access.* Access to regulated areas shall be limited to authorized persons.

(4) *Provision of respirators.* Each person entering a regulated area shall be supplied with and required to use a respirator, selected in accordance with paragraph (g)(2) of this section.

(5) *Prohibited activities.* The employer shall assure that employees do not eat, drink, smoke, chew tobacco or gum, or apply cosmetics in regulated areas, or carry the products associated with any of these activities into regulated areas or store such products in those areas.

(f) *Methods of compliance*—(1) *Compliance hierarchy.* (i) Except as specified in paragraph (f)(1)(ii) of this section, the employer shall implement engineering and work practice controls to reduce and maintain employee exposure to cadmium at or below the PEL, except to the extent that the employer can demonstrate that such controls are not feasible.

(ii) The requirement to implement engineering controls to achieve the PEL does not apply where the employer demonstrates the following:

(A) The employee is only intermittently exposed; and

(B) The employee is not exposed above the PEL on 30 or more days per year (12 consecutive months).

(iii) Wherever engineering and work practice controls are not sufficient to reduce employee exposure to or below the PEL, the employer nonetheless shall implement such controls to reduce exposures to the lowest levels achievable. The employer shall supplement such controls with respiratory protection that complies with the requirements of paragraph (g) of this section and the PEL.

(iv) The employer shall not use employee rotation as a method of compliance.

(2) *Specific operations*—(i) *Abrasive blasting.* Abrasive blasting on cadmium or cadmium-containing materials shall be conducted in a manner that will provide adequate protection.

(ii) *Heating cadmium and cadmium-containing materials.* Welding, cutting, and other forms of heating of cadmium or cadmium-containing materials shall be conducted in accordance with the requirements of 29 CFR 1926.353 and 29 CFR 1926.354, where applicable.

(3) *Prohibitions.* (i) High speed abrasive disc saws and similar abrasive power equipment shall not be used for work on cadmium or cadmium-containing materials unless they are equipped with appropriate engineering controls to minimize emissions, if the exposure levels are above the PEL.

(ii) Materials containing cadmium shall not be applied by spray methods, if exposures are above the PEL, unless employees are protected with supplied-air respirators with full facepiece, hood, helmet, suit, operated in positive pressure mode and measures are instituted to limit overspray and prevent contamination of adjacent areas.

(4) *Mechanical ventilation.* (i) When ventilation is used to control exposure, measurements that demonstrate the effectiveness of the system in controlling exposure, such as capture velocity, duct velocity, or static pressure shall be made as necessary to maintain its effectiveness.

(ii) Measurements of the system's effectiveness in controlling exposure shall be made as necessary within five working days of any change in production, process, or control that might result in a significant increase in employee exposure to cadmium.

(iii) Recirculation of air. If air from exhaust ventilation is recirculated into the workplace, the system shall have a high efficiency filter and be monitored to assure effectiveness.

(iv) Procedures shall be developed and implemented to minimize employee exposure to cadmium when maintenance of ventilation systems and changing of filters is being conducted.

(5) *Compliance program.* (i) Where the PEL is exceeded, the employer shall establish and implement a written compliance program to reduce employee exposure to or below the PEL by means of engineering and work practice controls, as required by paragraph (f)(1) of this section. To the extent that engineering and work practice controls cannot reduce exposures to or below the PEL, the employer shall include in the written compliance program the use of appropriate respiratory protection to achieve compliance with the PEL.

(ii) Written compliance programs shall be reviewed and updated as often and as promptly as necessary to reflect significant changes in the employer's compliance status or significant changes in the lowest air cadmium level that is technologically feasible.

(iii) A competent person shall review the comprehensive compliance program initially and after each change.

(iv) Written compliance programs shall be provided upon request for examination and copying to the Assistant Secretary, the Director, affected employees, and designated employee representatives.

(g) *Respirator protection*—(1) *General.* Where respirators are required by this section, the employer shall provide them at no cost to the employee and shall assure that they are used in compliance with the requirements of this section. Respirators shall be used in the following circumstances:

(i) Where exposure levels exceed the PEL, during the time period necessary to install or implement feasible engineering and work practice controls;

(ii) In those maintenance and repair activities and during those brief or intermittent operations where exposures exceed the PEL and engineering and work practice controls are not feasible, or are not required;

(iii) In regulated areas, as prescribed in paragraph (e) of this section;

(iv) Where the employer has implemented all feasible engineering and work practice controls and such controls are not sufficient to reduce exposures to or below the PEL;

(v) In emergencies;

(vi) Wherever an employee who is exposed to cadmium at or above the action level requests a respirator; and

(vii) Wherever an employee is exposed to cadmium above the PEL and engineering controls are not required under paragraph (f)(1)(ii) of this section.

(2) *Respirator selection.* (i) Where respirators are required under this section, the employer shall select and provide the appropriate respirator as specified in Table 1. The employer shall select respirators from among those jointly approved as acceptable protection against cadmium dust, fume, and mist by the Mine Safety and Health Administration (MSHA) and by the National Institute for Occupational Safety and Health (NIOSH) under the provisions of 30 CFR part 11.

TABLE 1.—RESPIRATORY PROTECTION FOR CADMIUM

Airborne concentration or condition of use [a]	Required respirator type [b]
10 × or less	A half mask, air-purifying respirator equipped with a HEPA [c] filter.[d]
25 × or less	A powered air-purifying respirator ("PAPR" with a loose-fitting hood or helmet equipped with a HEPA filter, or a supplied-air respirator with a loose-fitting hood or helmet facepiece operated in the continuous flow mode.
50 × or less	A full facepiece air-purifying respirator equipped with a HEPA filter, or a powered air-purifying respirator with a tight-fitting half mask equipped with a HEPA filter, or a supplied air respirator with a tight-fitting half mask operated in the continuous flow mode.
250 × or less	A powered air-purifying respirator with a tight-fitting full facepiece equipped with a HEPA filter, or a supplied-air respirator with a tight-fitting full facepiece operated in the continuous flow mode.
1000 × or less	A supplied-air respirator with half mask or full facepiece operated in the pressure demand or other positive pressure mode.
>1000 × or unknown concentrations	A self-contained breathing apparatus with unknown concentrations a full facepiece operated in the pressure demand or other positive pressure mode, or a supplied-air respirator with a full facepiece operated in the pressure demand or other positive pressure mode and equipped with an auxiliary escape type self contained breathing apparatus operated in the pressure demand mode.
Fire fighting	A self-contained breathing apparatus with full facepiece operated in the pressure demand or other positive pressure mode.

[a] Concentrations expressed as multiple of the PEL.
[b] Respirators assigned for higher environmental concentrations may be used at lower exposure levels. Quantitative fit testing is required for all tight-fitting air purifying respirators where airborne concentration of cadmium exceeds 10 times the TWA PEL ($10 \times 5\ \mu g/m^3 = 50\ \mu g/m^3$). A full facepiece respirator is required when eye irritation is experienced.
[c] HEPA means High Efficiency Particulate Absolute.
[d] Fit testing, qualitative or quantitative, is required.
Source: *Respiratory Decision Logic*, NIOSH, 1987.

(ii) The employer shall provide a powered, air-purifying respirator (PAPR) in lieu of a negative pressure respirator wherever:

(A) An employee entitled to a respirator chooses to use this type of respirator; and

(B) This respirator will provide adequate protection to the employee.

(3) *Respirator program.* (i) Where respiratory protection is required, the employer shall institute a respirator protection program in accordance with 29 CFR 1910.134.

(ii) The employer shall permit each employee who is required to use an air purifying respirator to leave the regulated area to change the filter elements or replace the respirator whenever an increase in breathing resistance is detected and shall maintain an adequate supply of filter elements for this purpose.

(iii) The employer shall also permit each employee who is required to wear a respirator to leave the regulated area to wash his or her face and the respirator facepiece whenever necessary to prevent skin irritation associated with respirator use.

(iv) If an employee exhibits difficulty in breathing while wearing a respirator during a fit test or during use, the employer shall make available to the employee a medical examination in accordance with paragraph (l)(6)(ii) of this section to determine if the employee can wear a respirator while performing the required duties.

(v) No employee shall be assigned a task requiring the use of a respirator if, based upon his or her most recent examination, an examining physician determines that the employee will be unable to continue to function normally while wearing a respirator. If the physician determines the employee must be limited in, or removed from his or her current job because of the employee's inability to wear a respirator, the limitation or removal shall be in accordance with paragraphs (l) (11) and (12) of this section.

(4) *Respirator fit testing.* (i) The employer shall assure that the respirator issued to the employee is fitted properly and exhibits the least possible facepiece leakage.

(ii) For each employee wearing a tight-fitting, air purifying respirator (either negative or positive pressure) who is exposed to airborne concentrations of cadmium that do not exceed 10 times the PEL ($10 \times 5\ \mu g/m^3 = 50\ \mu g/m^3$), the employer shall perform either quantitative or qualitative fit testing at the time of initial fitting and at least annually thereafter. If quantitative fit testing is used for a negative pressure respirator, a fit factor that is at least 10 times the protection factor for that class of respirators (Table 1 in paragraph (g)(2)(i) of this section) shall be achieved at testing.

(iii) For each employee wearing a tight-fitting air purifying respirator (either negative or positive pressure) who is exposed to airborne concentrations of cadmium that exceed 10 times the PEL ($10 \times 5\ \mu g/m^3 = 50\ \mu g/m^3$), the employer shall perform quantitative fit testing at the time of initial fitting and at least annually thereafter. For negative-pressure respirators, a fit factor that is at least ten times the protection factor for that class of respirators (Table 1 in paragraph (g)(2)(i) of this section) shall be achieved during quantitative fit testing.

(iv) For each employee wearing a tight-fitting, supplied-air respirator or self-contained breathing apparatus, the employer shall perform quantitative fit testing at the time of initial fitting and at least annually thereafter. This shall be accomplished by fit testing an air purifying respirator of identical type facepiece, make, model, and size as the supplied air respirator or self-contained breathing apparatus that is equipped with HEPA filters and tested as a surrogate (substitute) in the negative pressure mode. A fit factor that is at least 10 times the protection factor for that class of respirators (Table 1 in paragraph (g)(2)(i) of this section) shall be achieved during quantitative fit testing. A supplied-air respirator or self-contained breathing apparatus with the same type facepiece, make, model, and size as the air purifying respirator with which the employee passed the quantitative fit test may then be used by that employee up to the protection factor listed in Table 1 in paragraph (g)(2)(i) of this section for that class of respirators.

(v) Fit testing shall be conducted in accordance with Appendix C of this section.

(h) *Emergency situations.* The employer shall develop and implement a written plan for dealing with emergency situations involving substantial releases of airborne cadmium. The plan shall include provisions for the use of appropriate respirators and personal protective equipment. In addition, employees not essential to correcting the emergency situation shall be restricted from the area and normal

operations halted in that area until the emergency is abated.

(i) *Protective work clothing and equipment*—(1) *Provision and use.* If an employee is exposed to airborne cadmium above the PEL or where skin or eye irritation is associated with cadmium exposure at any level, the employer shall provide at no cost to the employee, and assure that the employee uses, appropriate protective work clothing and equipment that prevents contamination of the employee and the employee's garments. Protective work clothing and equipment includes, but is not limited to:

(i) Coveralls or similar full-body work clothing;

(ii) Gloves, head coverings, and boots or foot coverings; and

(iii) Face shields, vented goggles, or other appropriate protective equipment that complies with 29 CFR 1910.133.

(2) *Removal and storage.* (i) The employer shall assure that employees remove all protective clothing and equipment contaminated with cadmium at the completion of the work shift and do so only in change rooms provided in accordance with paragraph (j)(1) of this section.

(ii) The employer shall assure that no employee takes cadmium-contaminated protective clothing or equipment from the workplace, except for employees authorized to do so for purposes of laundering, cleaning, maintaining, or disposing of cadmium-contaminated protective clothing and equipment at an appropriate location or facility away from the workplace.

(iii) The employer shall assure that contaminated protective clothing and equipment, when removed for laundering, cleaning, maintenance, or disposal, is placed and stored in sealed, impermeable bags or other closed, impermeable containers that are designed to prevent dispersion of cadmium dust.

(iv) The employer shall assure that containers of contaminated protective clothing and equipment that are to be taken out of the change rooms or the workplace for laundering, cleaning, maintenance or disposal shall bear labels in accordance with paragraph (m)(2) of this section.

(3) *Cleaning, replacement, and disposal.* (i) The employer shall provide the protective clothing and equipment required by paragraph (i)(1) of this section in a clean and dry condition as often as necessary to maintain its effectiveness, but in any event at least weekly. The employer is responsible for cleaning and laundering the protective clothing and equipment required by this paragraph to maintain its effectiveness and is also responsible for disposing of such clothing and equipment.

(ii) The employer also is responsible for repairing or replacing required protective clothing and equipment as needed to maintain its effectiveness. When rips or tears are detected while an employee is working they shall be immediately mended, or the worksuit shall be immediately replaced.

(iii) The employer shall prohibit the removal of cadmium from protective clothing and equipment by blowing, shaking, or any other means that disperses cadmium into the air.

(iv) The employer shall assure that any laundering of contaminated clothing or cleaning of contaminated equipment in the workplace is done in a manner that prevents the release of airborne cadmium in excess of the permissible exposure limit prescribed in paragraph (c) of this section.

(v) The employer shall inform any person who launders or cleans protective clothing or equipment contaminated with cadmium of the potentially harmful effects of exposure to cadmium, and that the clothing and equipment should be laundered or cleaned in a manner to effectively prevent the release of airborne cadmium in excess of the PEL.

(j) *Hygiene areas and practices.*—(1) *General.* For employees whose airborne exposure to cadmium is above the PEL, the employer shall provide clean change rooms, handwashing facilities, showers, and lunchroom facilities that comply with 29 CFR 1926.51.

(2) *Change rooms.* The employer shall assure that change rooms are equipped with separate storage facilities for street clothes and for protective clothing and equipment, which are designed to prevent dispersion of cadmium and contamination of the employee's street clothes.

(3) *Showers and handwashing facilities.* (i) The employer shall assure that employees whose airborne exposure to cadmium is above the PEL shower during the end of the work shift.

(ii) The employer shall assure that employees who are exposed to cadmium above the PEL wash their hands and faces prior to eating, drinking, smoking, chewing tobacco or gum, or applying cosmetics.

(4) *Lunchroom facilities.* (i) The employer shall assure that the lunchroom facilities are readily accessible to employees, that tables for eating are maintained free of cadmium, and that no employee in a lunchroom facility is exposed at any time to cadmium at or above a concentration of 2.5 $\mu g/m^3$.

(ii) The employer shall assure that employees do not enter lunchroom facilities with protective work clothing or equipment unless surface cadmium has been removed from the clothing and equipment by HEPA vacuuming or some other method that removes cadmium dust without dispersing it.

(k) *Housekeeping.* (1) All surfaces shall be maintained as free as practicable of accumulations of cadmium.

(2) All spills and sudden releases of material containing cadmium shall be cleaned up as soon as possible.

(3) Surfaces contaminated with cadmium shall, wherever possible, be cleaned by vacuuming or other methods that minimize the likelihood of cadmium becoming airborne.

(4) HEPA-filtered vacuuming equipment or equally effective filtration methods shall be used for vacuuming. The equipment shall be used and emptied in a manner that minimizes the reentry of cadmium into the workplace.

(5) Shoveling, dry or wet sweeping, and brushing may be used only where vacuuming or other methods that minimize the likelihood of cadmium becoming airborne have been tried and found not to be effective.

(6) Compressed air shall not be used to remove cadmium from any surface unless the compressed air is used in conjunction with a ventilation system designed to capture the dust cloud created by the compressed air.

(7) Waste, scrap, debris, bags, containers, personal protective equipment, and clothing contaminated with cadmium and consigned for disposal shall be collected and disposed of in sealed impermeable bags or other closed, impermeable containers. These bags and containers shall be labeled in accordance with paragraph (m)(2) of this section.

(l) *Medical Surveillance.*—(1) *General.*—(i) *Scope.* (A) Currently exposed—The employer shall institute a medical surveillance program for all employees who are or may be exposed at or above the action level and all employees who perform the following tasks, operations or jobs: Electrical grounding with cadwelding; cutting, brazing, burning, grinding or welding on surfaces that were painted with cadmium-containing paints; electrical work using cadmium-coated conduit; use of cadmium containing paints; cutting and welding cadmium-plated steel; brazing or welding with cadmium alloys; fusing of reinforcing steel by cadmium welding; maintaining or retrofitting cadmium-coated equipment; and, wrecking and demolition where

cadmium is present. A medical surveillance program will not be required if the employer demonstrates that the employee:

(1) Is not currently exposed by the employer to airborne concentrations of cadmium at or above the action level on 30 or more days per year (twelve consecutive months); and,

(2) Is not currently exposed by the employer in those tasks on 30 or more days per year (twelve consecutive months).

(B) Previously exposed—The employer shall also institute a medical surveillance program for all employees who might previously have been exposed to cadmium by the employer prior to the effective date of this standard in tasks specified under paragraph (l)(1)(i)(A) of this section, unless the employer demonstrates that the employee did not in the years prior to the effective date of this section work in those tasks for the employer with exposure to cadmium for an aggregated total of more than 12 months.

(ii) To determine an employee's fitness for using a respirator, the employer shall provide the limited medical examination specified in paragraph (l)(6) of this section.

(iii) The employer shall assure that all medical examinations and procedures required by this section are performed by or under the supervision of a licensed physician, who has read and is familiar with the health effects section of appendix A to this section, the regulatory text of this section, the protocol for sample handling and lab selection in appendix F to this section, and the questionnaire of appendix D to this section.

(iv) The employer shall provide the medical surveillance required by this section, including multiple physician review under paragraph (l)(13) of this section without cost to employees, and at a time and place that is reasonable and convenient to employees.

(v) The employer shall assure that the collecting and handling of biological samples of cadmium in urine (CdU), cadmium in blood (CdB), and beta-2 microglobulin in urine (β_2-M) taken from employees under this section is done in a manner that assures their reliability and that analysis of biological samples of cadmium in urine (CdU), cadmium in blood (CdB), and beta-2 microglobulin in urine (β_2-M) taken from employees under this section is performed in laboratories with demonstrated proficiency to perform the particular analysis. (See appendix F to this section.)

(2) *Initial Examination.* (i) For employees covered by medical surveillance under paragraph (l)(1)(i) of this section, the employer shall provide an initial medical examination. The examination shall be provided to those employees within 30 days after initial assignment to a job with exposure to cadmium or no later than 90 days after the effective date of this section, whichever date is later.

(ii) The initial medical examination shall include:

(A) A detailed medical and work history, with emphasis on: Past, present, and anticipated future exposure to cadmium; any history of renal, cardiovascular, respiratory, hematopoietic, reproductive, and/or musculo-skeletal system dysfunction; current usage of medication with potential nephrotoxic side-effects; and smoking history and current status; and

(B) Biological monitoring that includes the following tests:

(1) Cadmium in urine (CdU), standardized to grams of creatinine (g/Cr);

(2) Beta-2 microglobulin in urine (β_2-M), standardized to grams of creatinine (g/Cr), with pH specified, as described in Appendix F to this section; and

(3) Cadmium in blood (CdB), standardized to liters of whole blood (lwb).

(iii) Recent Examination: An initial examination is not required to be provided if adequate records show that the employee has been examined in accordance with the requirements of paragraph (l)(2)(ii) of this section within the past 12 months. In that case, such records shall be maintained as part of the employee's medical record and the prior exam shall be treated as if it were an initial examination for the purposes of paragraphs (l)(3) and (4) of this section.

(3) *Actions triggered by initial biological monitoring.* (i) If the results of the biological monitoring tests in the initial examination show the employee's CdU level to be at or below 3μg/g Cr, β_2-M level to be at or below 300μg/g Cr and CdB level to be at or below 5μg/lwb, then:

(A) For employees who are subject to medical surveillance under paragraphs (l)(1)(i)(A) of this section because of current or anticipated exposure to cadmium, the employer shall provide the minimum level of periodic medical surveillance in accordance with the requirements in paragraph (l)(4)(i) of this section; and

(B) For employees who are subject to medical surveillance under paragraph (l)(1)(i)(B) of this section because of prior but not current exposure, the employer shall provide biological monitoring for CdU, B_2-M, and CdB within one year after the initial biological monitoring and then the employer shall comply with the requirements of paragraph (l)(4)(vi) of this section.

(ii) For all employees who are subject to medical surveillance under paragraph (l)(1)(i) of this section, if the results of the initial biological monitoring tests show the level of CdU to exceed 3 μg/g Cr, the level of β_2-M to be in excess of 300 μg/g Cr, or the level of CdB to be in excess of 5 μg/lwb, the employer shall:

(A) Within two weeks after receipt of biological monitoring results, reassess the employee's occupational exposure to cadmium as follows:

(1) Reassess the employee's work practices and personal hygiene;

(2) Reevaluate the employee's respirator use, if any, and the respirator program;

(3) Review the hygiene facilities;

(4) Reevaluate the maintenance and effectiveness of the relevant engineering controls;

(5) Assess the employee's smoking history and status;

(B) Within 30 days after the exposure reassessment, specified in paragraph (l)(3)(ii)(A) of this section, take reasonable steps to correct any deficiencies found in the reassessment that may be responsible for the employee's excess exposure to cadmium; and,

(C) Within 90 days after receipt of biological monitoring results, provide a full medical examination to the employee in accordance with the requirements of paragraph (l)(4)(ii) of this section. After completing the medical examination, the examining physician shall determine in a written medical opinion whether to medically remove the employee. If the physician determines that medical removal is not necessary, then until the employee's CdU level falls to or below 3 μg/g Cr, β_2-M level falls to or below 300 μg/g Cr and CdB level falls to or below 5 μg/lwb, the employer shall:

(*1*) Provide biological monitoring in accordance with paragraph (l)(2)(ii)(B) of this section on a semiannual basis; and

(*2*) Provide annual medical examinations in accordance with paragraph (l)(4)(ii) of this section.

(iii) For all employees who are subject to medical surveillance under paragraph (l)(1)(i) of this section, if the results of the initial biological monitoring tests show the level of CdU to be in excess of 15 μg/g Cr, or the level of CdB to be in excess of 15 μg/lwb, or the level of β_2-M to be in excess of 1,500 μg/g Cr, the employer shall comply with the

requirements of paragraphs (l)(3)(ii)(A)–(B) of this section. Within 90 days after receipt of biological monitoring results, the employer shall provide a full medical examination to the employee in accordance with the requirements of paragraph (l)(4)(ii) of this section. After completing the medical examination, the examining physician shall determine in a written medical opinion whether to medically remove the employee. However, if the initial biological monitoring results and the biological monitoring results obtained during the medical examination both show that: CdU exceeds 15 μg/g Cr; or CdB exceeds 15 μg/lwb; or β_2-M exceeds 1500 μg/g Cr, and in addition CdU exceeds 3 μg/g Cr or CdB exceeds 5 μg/liter of whole blood, then the physician shall medically remove the employee from exposure to cadmium at or above the action level. If the second set of biological monitoring results obtained during the medical examination does not show that a mandatory removal trigger level has been exceeded, then the employee is not required to be removed by the mandatory provisions of this paragraph. If the employee is not required to be removed by the mandatory provisions of this paragraph or by the physician's determination, then until the employee's CdU level falls to or below 3 μg/g Cr, β_2-M level falls to or below 300 μg/g Cr and CdB level falls to or below 5 μg/lwb, the employer shall:

(A) Periodically reassess the employee's occupational exposure to cadmium;

(B) Provide biological monitoring in accordance with paragraph (l)(2)(ii)(B) of this section on a quarterly basis; and

(C) Provide semiannual medical examinations in accordance with paragraph (l)(4)(ii) of this section.

(iv) For all employees to whom medical surveillance is provided, beginning on January 1, 1999, and in lieu of paragraph (l)(3)(iii) of this section, whenever the results of initial biological monitoring tests show the employee's CdU level to be in excess of 7 μg/g Cr, or β_2-M level to be in excess of 750 μg/g Cr, or CdB level to be in excess of 10 μg/lwb, the employer shall comply with the requirements of paragraphs (l)(3)(ii)(A)–(B) of this section. Within 90 days after receipt of biological monitoring results, the employer shall provide a full medical examination to the employee in accordance with the requirements of paragraph (l)(4)(ii) of this section. After completing the medical examination, the examining physician shall determine in a written medical opinion whether to medically remove the employee. However, if the initial biological monitoring results and the biological monitoring results obtained during the medical examination both show that: CdU exceeds 7 μg/g Cr; or CdB exceeds 10 μg/lwb; or β_2-M exceeds 750 μg/g Cr, and in addition CdU exceeds 3 μg/g Cr or CdB exceeds 5 μg/liter of whole blood, then the physician shall medically remove the employee from exposure to cadmium at or above the action level. If the second set of biological monitoring results obtained during the medical examination does not show that a mandatory removal trigger level has been exceeded, then the employee is not required to be removed by the mandatory provisions of this paragraph. If the employee is not required to be removed by the mandatory provisions of this paragraph or by the physician's determination, then until the employee's CdU level falls to or below 3 μg/g Cr, β_2-M level falls to or below 300 μg/g Cr and CdB level falls to or below 5 μg/lwb, the employer shall:

(A) Periodically reassess the employee's occupational exposure to cadmium;

(B) Provide biological monitoring in accordance with paragraph (l)(2)(ii)(B) of this section on a quarterly basis; and

(C) Provide semiannual medical examinations in accordance with paragraph (l)(4)(ii) of this section.

(4) *Periodic medical surveillance.* (i) For each employee who is covered by medical surveillance under paragraph (l)(1)(i)(A) of this section because of current or anticipated exposure to cadmium, the employer shall provide at least the minimum level of periodic medical surveillance, which consists of periodic medical examinations and periodic biological monitoring. A periodic medical examination shall be provided within one year after the initial examination required by paragraph (l)(2) of this section and thereafter at least biennially. Biological sampling shall be provided at least annually either as part of a periodic medical examination or separately as periodic biological monitoring.

(ii) The periodic medical examination shall include:

(A) A detailed medical and work history, or update thereof, with emphasis on: Past, present and anticipated future exposure to cadmium; smoking history and current status; reproductive history; current use of medications with potential nephrotoxic side-effects; any history of renal, cardiovascular, respiratory, hematopoietic, and/or musculo-skeletal system dysfunction; and as part of the medical and work history, for employees who wear respirators, questions 3–11 and 25–32 in appendix D to this section;

(B) A complete physical examination with emphasis on: blood pressure, the respiratory system, and the urinary system;

(C) A 14 inch by 17 inch, or a reasonably standard sized posterior-anterior chest X-ray (after the initial X-ray, the frequency of chest X-rays is to be determined by the examining physician);

(D) Pulmonary function tests, including forced vital capacity (FVC) and forced expiratory volume at 1 second (FEV1);

(E) Biological monitoring, as required in paragraph (l)(2)(ii)(B) of this section;

(F) Blood analysis, in addition to the analysis required under paragraph (l)(2)(ii)(B) of this section, including blood urea nitrogen, complete blood count, and serum creatinine;

(G) Urinalysis, in addition to the analysis required under paragraph (l)(2)(ii)(B) of this section, including the determination of albumin, glucose, and total and low molecular weight proteins;

(H) For males over 40 years old, prostate palpation, or other at least as effective diagnostic test(s), and;

(I) Any additional tests or procedures deemed appropriate by the examining physician.

(iii) Periodic biological monitoring shall be provided in accordance with paragraph (l)(2)(ii)(B) of this section.

(iv) If the results of periodic biological monitoring or the results of biological monitoring performed as part of the periodic medical examination show the level of the employee's CdU, β_2–M, or CdB to be in excess of the levels specified in paragraphs (l)(3)(iii) of this section; or, beginning on January 1, 1999, in excess of the levels specified in paragraph (l)(3)(iv), the employer shall take the appropriate actions specified in paragraphs (l)(3)(iii)–(iv) of this section, respectively.

(v) For previously exposed employees under paragraph (l)(1)(i)(B) of this section:

(A) If the employee's levels of CdU did not exceed 3 μg/g Cr, CdB did not exceed 5 μg/lwb, and β_2–M did not exceed 300 μg/g Cr in the initial biological monitoring tests, and if the results of the followup biological monitoring required by paragraph (l)(3)(i)(B) of this section within one year after the initial examination confirm the previous results, the employer may discontinue all periodic medical surveillance for that employee.

(B) If the initial biological monitoring results for CdU, CdB, or β_2–M were in excess of the levels specified in

paragraph (l)(3)(i) of this section, but subsequent biological monitoring results required by paragraph (l)(3)(ii)–(iv) of this section show that the employee's CdU levels no longer exceed 3 μg/g Cr, CdB levels no longer exceed 5 μg/lwb, and β_2–M levels no longer exceed 300 μg/g Cr, the employer shall provide biological monitoring for CdU, CdB, and β_2–M within one year after these most recent biological monitoring results. If the results of the followup biological monitoring within one year, specified in this paragraph, confirm the previous results, the employer may discontinue all periodic medical surveillance for that employee.

(C) However, if the results of the follow-up tests specified in paragraph (l)(4)(v)(A) or (B) of this section indicate that the level of the employee's CdU, β_2–M, or CdB exceeds these same levels, the employer is required to provide annual medical examinations in accordance with the provisions of paragraph (l)(4)(ii) of this section until the results of biological monitoring are consistently below these levels or the examining physician determines in a written medical opinion that further medical surveillance is not required to protect the employee's health.

(vi) A routine, biennial medical examination is not required to be provided in accordance with paragraphs (l)(3)(i) and (l)(4) of this section if adequate medical records show that the employee has been examined in accordance with the requirements of paragraph (l)(4)(ii) of this section within the past 12 months. In that case, such records shall be maintained by the employer as part of the employee's medical record, and the next routine, periodic medical examination shall be made available to the employee within two years of the previous examination.

(5) *Actions triggered by medical examinations.* (i) If the results of a medical examination carried out in accordance with this section indicate any laboratory or clinical finding consistent with cadmium toxicity that does not require employer action under paragraphs (l)(2), (3) or (4) of this section, the employer shall take the following steps and continue to take them until the physician determines that they are no longer necessary.

(A) Periodically reassess: The employee's work practices and personal hygiene; the employee's respirator use, if any; the employee's smoking history and status; the respiratory protection program; the hygiene facilities; the maintenance and effectiveness of the relevant engineering controls; and take all reasonable steps to correct the deficiencies found in the reassessment that may be responsible for the employee's excess exposure to cadmium.

(B) Provide semi-annual medical reexaminations to evaluate the abnormal clinical sign(s) of cadmium toxicity until the results are normal or the employee is medically removed; and

(C) Where the results of tests for total proteins in urine are abnormal, provide a more detailed medical evaluation of the toxic effects of cadmium on the employee's renal system.

(6) *Examination for respirator use.* (i) To determine an employee's fitness for respirator use, the employer shall provide a medical examination that includes the elements specified in paragraph (l)(6)(i)(A)–(D) of this section. This examination shall be provided prior to the employee's being assigned to a job that requires the use of a respirator or no later than 90 days after this section goes into effect, whichever date is later, to any employee without a medical examination within the preceding 12 months that satisfies the requirements of this paragraph.

(A) A detailed medical and work history, or update thereof, with emphasis on: past exposure to cadmium; smoking history and current status; any history of renal, cardiovascular, respiratory, hematopoietic, and/or musculo-skeletal system dysfunction; a description of the job for which the respirator is required; and questions 3–11 and 25–32 in appendix D;

(B) A blood pressure test;

(C) Biological monitoring of the employee's levels of CdU, CdB and β_2–M in accordance with the requirements of paragraph (l)(2)(ii)(B) of this section, unless such results already have been obtained within the twelve months; and

(D) Any other test or precedure that the examining physician deems appropriate.

(ii) After reviewing all the information obtained from the medical examination required in paragraph (l)(6)(i) of this section, the physician shall determine whether the employee is fit to wear a respirator.

(iii) Whenever an employee has exhibited difficulty in breathing during a respirator fit test or during use of a respirator, the employer, as soon as possible, shall provide the employee with a periodic medical examination in accordance with paragraph (l)(4)(ii) of this section to determine the employee's fitness to wear a respirator.

(iv) Where the results of the examination required under paragraph (l)(6)(i) or (ii) of this section are abnormal, medical limitation or prohibition of respirator use shall be considered. If the employee is allowed to wear a respirator, the employee's ability to continue to do so shall be periodically evaluated by a physician.

(7) *Emergency Examinations.* (i) In addition to the medical surveillance required in paragraphs (l)(2)–(6) of this section, the employer shall provide a medical examination as soon as possible to any employee who may have been acutely exposed to cadmium because of an emergency.

(ii) The examination shall include the requirements of paragraph (l)(4)(ii), of this section, with emphasis on the respiratory system, other organ systems considered appropriate by the examining physician, and symptoms of acute overexposure, as identified in paragraphs II(B)(1)–(2) and IV of appendix A of this section.

(8) *Termination of employment examination.* (i) At termination of employment, the employer shall provide a medical examination in accordance with paragraph (l)(4)(ii) of this section, including a chest X-ray where necessary, to any employee to whom at any prior time the employer was required to provide medical surveillance under paragraph (l)(1)(i) or (l)(7) of this section. However, if the last examination satisfied the requirements of paragraph (l)(4)(ii) of this section and was less than six months prior to the date of termination, no further examination is required unless otherwise specified in paragraph (l)(3) or (l)(5) of this section;

(ii) In addition, if the employer has discontinued all periodic medical surveillance under paragraph (l)(4)(vi) of this section, no termination of employment medical examination is required.

(9) *Information provided to the physician.* The employer shall provide the following information to the examining physician:

(i) A copy of this standard and appendices;

(ii) A description of the affected employee's former, current, and anticipated duties as they relate to the employee's occupational exposure to cadmium;

(iii) The employee's former, current, and anticipated future levels of occupational exposure to cadmium;

(iv) A description of any personal protective equipment, including respirators, used or to be used by the employee, including when and for how long the employee has used that equipment; and

(v) relevant results of previous biological monitoring and medical examinations.

(10) *Physician's written medical opinion.* (i) The employer shall promptly obtain a written, signed medical opinion from the examining physician for each medical examination performed on each employee. This written opinion shall contain:

(A) The physician's diagnosis for the employee;

(B) The physician's opinion as to whether the employee has any detected medical condition(s) that would place the employee at increased risk of material impairment to health from further exposure to cadmium, including any indications of potential cadmium toxicity;

(C) The results of any biological or other testing or related evaluations that directly assess the employee's absorption of cadmium;

(D) Any recommended removal from, or limitation on the activities or duties of the employee or on the employee's use of personal protective equipment, such as respirators;

(E) A statement that the physician has clearly and carefully explained to the employee the results of the medical examination, including all biological monitoring results and any medical conditions related to cadmium exposure that require further evaluation or treatment, and any limitation on the employee's diet or use of medications.

(ii) The employer shall promptly obtain a copy of the results of any biological monitoring provided by an employer to an employee independently of a medical examination under paragraphs (l)(2) and (l)(4) of this section, and, in lieu of a written medical opinion, an explanation sheet explaining those results.

(iii) The employer shall instruct the physician not to reveal orally or in the written medical opinion given to the employer specific findings or diagnoses unrelated to occupational exposure to cadmium.

(11) *Medical Removal Protection (MRP).* (i) General.

(A) The employer shall temporarily remove an employee from work where there is excess exposure to cadmium on each occasion that medical removal is required under paragraphs (l)(3), (l)(4), or (l)(6) of this section and on each occasion that a physician determines in a written medical opinion that the employee should be removed from such exposure. The physician's determination may be based on biological monitoring results, inability to wear a respirator, evidence of illness, other signs or symptoms of cadmium-related dysfunction or disease, or any other reason deemed medically sufficient by the physician.

(B) The employer shall medically remove an employee in accordance with paragraph (l)(11) of this section regardless of whether at the time of removal a job is available into which the removed employee may be transferred.

(C) Whenever an employee is medically removed under paragraph (l)(11) of this section, the employer shall transfer the removed employee to a job where the exposure to cadmium is within the permissible levels specified in that paragraph as soon as one becomes available.

(D) For any employee who is medically removed under the provisions of paragraph (l)(11)(i) of this section, the employer shall provide follow-up medical examinations semi-annually until, in a written medical opinion, the examining physician determines that either the employee may be returned to his/her former job status or the employee must be permanently removed from excess cadmium exposure.

(E) The employer may not return an employee who has been medically removed for any reason to his/her former job status until a physician determines in a written medical opinion that continued medical removal is no longer necessary to protect the employee's health.

(ii) Where an employee is found unfit to wear a respirator under paragraph (l)(6)(ii) of this section, the employer shall remove the employee from work where exposure to cadmium is above the PEL.

(iii) Where removal is based upon any reason other than the employee's inability to wear a respirator, the employer shall remove the employee from work where exposure to cadmium is at or above the action level.

(iv) Except as specified in paragraph (l)(11)(v) of this section, no employee who was removed because his/her level of CdU, CdB and/or β_2–M exceeded the trigger levels in paragraph (l)(3) or (l)(4) of this section may be returned to work with exposure to cadmium at or above the action level until the employee's levels of CdU fall to or below 3 μg/g Cr, CdB fall to or below 5 μg/lwb, and β_2–M fall to or below 300 μg/g Cr.

(v) However, when in the examining physician's opinion continued exposure to cadmium will not pose an increased risk to the employee's health and there are special circumstances that make continued medical removal an inappropriate remedy, the physician shall fully discuss these matters with the employee, and then in a written determination may return a worker to his/her former job status despite what would otherwise be unacceptably high biological monitoring results. Thereafter and until such time as the employee's biological monitoring results have decreased to levels where he/she could have been returned to his/her former job status, the returned employee shall continue medical surveillance as if he/she were still on medical removal. Until such time, the employee is no longer subject to mandatory medical removal. Subsequent questions regarding the employee's medical removal shall be decided solely by a final medical determination.

(vi) Where an employer, although not required by this section to do so, removes an employee from exposure to cadmium or otherwise places limitations on an employee due to the effects of cadmium exposure on the employee's medical condition, the employer shall provide the same medical removal protection benefits to that employee under paragraph (l)(12) of this section as would have been provided had the removal been required under paragraph (l)(11) of this section.

(12) *Medical removal protection benefits.* (i) The employer shall provide medical removal protection benefits to an employee for up to a maximum of 18 months each time, and while the employee is temporarily medically removed under paragraph (l)(11) of this section.

(ii) For purposes of this section, the requirement that the employer provide medical removal protection benefits means that the employer shall maintain the total normal earnings, seniority, and all other employee rights and benefits of the removed employee, including the employee's right to his/her former job status, as if the employee had not been removed from the employee's job or otherwise medically limited.

(iii) Where, after 18 months on medical removal because of elevated biological monitoring results, the employee's monitoring results have not declined to a low enough level to permit the employee to be returned to his/her former job status:

(A) The employer shall make available to the employee a medical examination pursuant to this section in order to obtain a final medical determination as to whether the employee may be returned to his/her former job status or must be permanently removed from excess cadmium exposure; and

(B) The employer shall assure that the final medical determination indicates whether the employee may be returned to his/her former job status and what steps, if any, should be taken to protect the employee's health;

(iv) The employer may condition the provision of medical removal protection benefits upon the employee's participation in medical surveillance provided in accordance with this section.

(13) *Multiple physician review.* (i) If the employer selects the initial physician to conduct any medical examination or consultation provided to an employee under this section, the employee may designate a second physician to:

(A) Review any findings, determinations, or recommendations of the initial physician; and

(B) Conduct such examinations, consultations, and laboratory tests as the second physician deems necessary to facilitate this review.

(ii) The employer shall promptly notify an employee of the right to seek a second medical opinion after each occasion that an initial physician provided by the employer conducts a medical examination or consultation pursuant to this section. The employer may condition its participation in, and payment for, multiple physician review upon the employee doing the following within fifteen (15) days after receipt of this notice, or receipt of the initial physician's written opinion, whichever is later:

(A) Informing the employer that he or she intends to seek a medical opinion; and

(B) Initiating steps to make an appointment with a second physician.

(iii) If the findings, determinations, or recommendations of the second physician differ from those of the initial physician, then the employer and the employee shall assure that efforts are made for the two physicians to resolve any disagreement.

(iv) If the two physicians have been unable to quickly resolve their disagreement, then the employer and the employee, through their respective physicians, shall designate a third physician to:

(A) Review any findings, determinations, or recommendations of the other two physicians; and

(B) Conduct such examinations, consultations, laboratory tests, and discussions with the other two physicians as the third physician deems necessary to resolve the disagreement among them.

(v) The employer shall act consistently with the findings, determinations, and recommendations of the third physician, unless the employer and the employee reach an agreement that is consistent with the recommendations of at least one of the other two physicians.

(14) *Alternate physician determination.* The employer and an employee or designated employee representative may agree upon the use of any alternate form of physician determination in lieu of the multiple physician review provided by paragraph (l)(13) of this section, so long as the alternative is expeditious and at least as protective of the employee.

(15) *Information the employer must provide the employee.* (i) The employer shall provide a copy of the physician's written medical opinion to the examined employee within five working days after receipt thereof.

(ii) The employer shall provide the employee with a copy of the employee's biological monitoring results and an explanation sheet explaining the results within five working days after receipt thereof.

(iii) Within 30 days after a request by an employee, the employer shall provide the employee with the information the employer is required to provide the examining physician under paragraph (l)(9) of this section.

(16) *Reporting.* In addition to other medical events that are required to be reported on the OSHA Form No. 200, the employer shall report any abnormal condition or disorder caused by occupational exposure to cadmium associated with employment as specified in Chapter (V)(E) of the *Reporting Guidelines for Occupational Injuries and Illnesses.*

(m) *Communication of cadmium hazards to employees*—(1) *General.* In communications concerning cadmium hazards, employers shall comply with the requirements of OSHA's Hazard Communication Standard for the construction industry, 29 CFR 1926.59, including but not limited to the requirements concerning warning signs and labels, material safety data sheets (MSDS), and employee information and training. In addition, employers shall comply with the following requirements:

(2) *Warning signs.* (i) Warning signs shall be provided and displayed in regulated areas. In addition, warning signs shall be posted at all approaches to regulated areas so that an employee may read the signs and take necessary protective steps before entering the area.

(ii) Warning signs required by paragraph (m)(2)(i) of this section shall bear the following information:

Danger, Cadmium, Cancer Hazard, Can Cause Lung and Kidney Disease, Authorized Personnel Only, Respirators Required in This Area

(iii) The employer shall assure that signs required by this paragraph are illuminated, cleaned, and maintained as necessary so that the legend is readily visible.

(3) *Warning labels.* (i) Shipping and storage containers containing cadmium, cadmium compounds, or cadmium contaminated clothing, equipment, waste, scrap, or debris shall bear appropriate warning labels, as specified in paragraph (m)(3)(ii) of this section.

(ii) The warning labels shall shall include at least the following information:

Danger, Contains Cadmium, Cancer Hazard, Avoid Creating Dust, Can Cause Lung and Kidney Disease

(iii) Where feasible, installed cadmium products shall have a visible label or other indication that cadmium is present.

(4) *Employee information and training.* (i) The employer shall institute a training program for all employees who are potentially exposed to cadmium, assure employee participation in the program, and maintain a record of the contents of such program.

(ii) Training shall be provided prior to or at the time of initial assignment to a job involving potential exposure to cadmium and at least annually thereafter.

(iii) The employer shall make the training program understandable to the employee and shall assure that each employee is informed of the following:

(A) The health hazards associated with cadmium exposure, with special attention to the information incorporated in appendix A to this section;

(B) The quantity, location, manner of use, release, and storage of cadmium in the workplace and the specific nature of operations that could result in exposure to cadmium, especially exposures above the PEL;

(C) The engineering controls and work practices associated with the employee's job assignment;

(D) The measures employees can take to protect themselves from exposure to cadmium, including modification of such habits as smoking and personal hygiene, and specific procedures the employer has implemented to protect employees from exposure to cadmium such as appropriate work practices, emergency procedures, and the provision of personal protective equipment;

(E) The purpose, proper selection, fitting, proper use, and limitations of respirators and protective clothing;

(F) The purpose and a description of the medical surveillance program required by paragraph (l) of this section;

(G) The contents of this section and its appendices, and,

(H) The employee's rights of access to records under § 1910.20(g)(1) and (2).

(iv) Additional access to information and training program and materials.

(A) The employer shall make a copy of this section and its appendices readily available to all affected employees and shall provide a copy without cost if requested.

(B) Upon request, the employer shall provide to the Assistant Secretary or the Director all materials relating to the employee information and the training program.

(5) *Multi-employer workplace.* In a multi-employer workplace, an employer who produces, uses, or stores cadmium in a manner that may expose employees of other employers to cadmium shall notify those employers of the potential hazard in accordance with paragraph (e) of the hazard communication standard for construction, 29 CFR 1926.59.

(n) *Recordkeeping*—(1) *Exposure monitoring.* (i) The employer shall establish and keep an accurate record of all air monitoring for cadmium in the workplace.

(ii) This record shall include at least the following information:

(A) The monitoring date, shift, duration, air volume, and results in terms of an 8-hour TWA of each sample taken, and if cadmium is not detected, the detection level;

(B) The name, social security number, and job classification of all employees monitored and of all other employees whose exposures the monitoring result is intended to represent, including, where applicable, a description of how it was determined that the employee's monitoring result could be taken to represent other employee's exposures;

(C) A description of the sampling and analytical methods used and evidence of their accuracy;

(D) The type of respiratory protective device, if any, worn by the monitored employee and by any other employee whose exposure the monitoring result is intended to represent;

(E) A notation of any other conditions that might have affected the monitoring results.

(F) Any exposure monitoring or objective data that were used and the levels.

(iii) The employer shall maintain this record for at least thirty (30) years, in accordance with 29 CFR 1910.20.

(iv) The employer shall also provide a copy of the results of an employee's air monitoring prescribed in paragraph (d) of this section to an industry trade association and to the employee's union, if any, or, if either of such associations or unions do not exist, to another comparable organization that is competent to maintain such records and is reasonably accessible to employers and employees in the industry.

(2) *Objective data for exemption from requirement for initial monitoring.* (i) For purposes of this section, objective data are information demonstrating that a particular product or material containing cadmium or a specific process, operation, or activity involving cadmium cannot release dust or fumes in concentrations at or above the action level even under the worst-case release conditions. Objective data can be obtained from an industry-wide study or from laboratory product test results from manufacturers of cadmium-containing products or materials. The data the employer uses from an industry-wide survey must be obtained under workplace conditions closely resembling the processes, types of material, control methods, work practices and environmental conditions in the employer's current operations.

(ii) The employer shall maintain the record for at least 30 years of the objective data relied upon.

(3) *Medical surveillance.* (i) The employer shall establish and maintain an accurate record for each employee covered by medical surveillance under paragraph (l)(1)(i) of this section.

(ii) The record shall include at least the following information about the employee:

(A) Name, social security number, and description of duties;

(B) A copy of the physician's written opinions and of the explanation sheets for biological monitoring results;

(C) A copy of the medical history, and the results of any physical examination and all test results that are required to be provided by this section, including biological tests, X-rays, pulmonary function tests, etc., or that have been obtained to further evaluate any condition that might be related to cadmium exposure;

(D) The employee's medical symptoms that might be related to exposure to cadmium; and

(E) A copy of the information provided to the physician as required by paragraph (l)(9) of this section.

(iii) The employer shall assure that this record is maintained for the duration of employment plus thirty (30) years, in accordance with 29 CFR 1910.20.

(iv) At the employee's request, the employer shall promptly provide a copy of the employee's medical record, or update as appropriate, to a medical doctor or a union specified by the employee.

(4) *Training.* The employer shall certify that employees have been trained by preparing a certification record which includes the identity of the person trained, the signature of the employer or the person who conducted the training, and the date the training was completed. The certification records shall be prepared at the completion of training and shall be maintained on file for one (1) year beyond the date of training of that employee.

(5) *Availability.* (i) Except as otherwise provided for in this section, access to all records required to be maintained by paragraphs (n)(1)–(4) of this section shall be in accordance with the provisions of 29 CFR 1910.20.

(ii) Within 15 days after a request, the employer shall make an employee's medical records required to be kept by paragraph (n)(3) of this section available for examination and copying to the subject employee, to designated representatives, to anyone having the specific written consent of the subject employee, and after the employee's death or incapacitation, to the employee's family members.

(6) *Transfer of records.* Whenever an employer ceases to do business and there is no successor employer or designated organization to receive and retain records for the prescribed period, the employer shall comply with the requirements concerning transfer of records set forth in 29 CFR 1910.20 (h).

(o) *Observation of monitoring.*—(1) *Employee observation.* The employer shall provide affected employees or their designated representatives an opportunity to observe any monitoring of employee exposure to cadmium.

(2) *Observation procedures.* When observation of monitoring requires entry into an area where the use of protective clothing or equipment is required, the employer shall provide the observer with that clothing and equipment and shall assure that the observer uses such clothing and equipment and complies with all other applicable safety and health procedures.

(p) *Dates.*—(1) *Effective date.* This section shall become effective on December 14, 1992.

(2) *Start-up dates.* All obligations of this section commence on the effective date except as follows:

(i) *Exposure monitoring.* Except for small businesses (nineteen (19) or fewer employees), initial monitoring required by paragraph (d)(2) of this section shall be completed as soon as possible and in any event no later than 60 days after the effective date of this standard. For small businesses, initial monitoring required by paragraph (d)(2) of this section shall

be completed as soon as possible and in any event no later than 120 days after the effective date of this standard.

(ii) *The permissible exposure limit (PEL).* Except for small businesses, as defined under paragraph (p)(2)(i) of this section, the employer shall comply with the PEL established by paragraph (c) of this section as soon as possible and in any event no later than 90 days after the effective date of this section. For small businesses, the employer shall comply with the PEL established by paragraph (c) of this section as soon as possible and in any event no later than 150 days after the effective date of this section.

(iii) *Regulated areas.* Except for small businesses, as defined under paragraph (p)(2)(i) of this section, regulated areas required to be established by paragraph (e) of this section shall be set up as soon as possible after the results of exposure monitoring are known and in any event no later than 90 days after the effective date of this section. For small businesses, regulated areas required to be established by paragraph (e) of this section shall be set up as soon as possible after the results of exposure monitoring are known and in any event no later than 150 days after the effective date of this section.

(iv) *Respiratory protection.* Except for small businesses, as defined under paragraph (p)(2)(i) of this section, respiratory protection required by paragraph (g) of this section shall be provided as soon as possible and in any event no later than 90 days after the effective date of this section. For small businesses, respiratory protection required by paragraph (g) of this section shall be provided as soon as possible and in any event no later than 150 days after the effective date of this section.

(v) *Compliance program.* Except for small businesses, as defined under paragraph (p)(2)(i) of this section, written compliance programs required by paragraph (f)(2) of this section shall be completed and available as soon as possible and in any event no later than 90 days after the effective date of this section. For small businesses, written compliance programs required by paragraph (f)(2) of this section shall be completed and available as soon as possible and in any event no later than 180 days after the effective date of this section.

(vi) *Methods of compliance.* Except for small businesses, as defined under paragraph (p)(2)(i) of this section, the engineering controls required by paragraph (f)(1) of this section shall be implemented as soon as possible and in any event no later than 120 days after the effective date of this section. For small businesses, the engineering controls required by paragraph (f)(1) of this section shall be implemented as soon as possible and in any event no later than 240 days after the effective date of this section. Work practice controls shall be implemented as soon as possible. Work practice controls that are directly related to engineering controls to be implemented shall be implemented as soon as possible after such engineering controls are implemented.

(vii) *Hygiene and lunchroom facilities.* Except for small businesses, as defined under paragraph (p)(2)(i) of this section, handwashing facilities, showers, change rooms and eating facilities required by paragraph (j) of this section, whether permanent or temporary, shall be provided as soon as possible and in any event no later than 60 days after the effective date of this section. For small businesses, handwashing facilities, showers, change rooms and eating facilities required by paragraph (j) of this section, whether permanent or temporary, shall be provided as soon as possible and in any event no later than 120 days after the effective date of this section.

(viii) *Employee information and training.* Except for small businesses, as defined under paragraph (p)(2)(i) of this section, employee information and training required by paragraph (m)(4) of this section shall be provided as soon as possible and in any event no later than 90 days after the effective date of this standard. For small businesses, employee information and training required by paragraph (m)(4) of this section shall be provided as soon as possible and in any event no later than 180 days after the effective date of this standard.

(ix) *Medical surveillance.* Except for small businesses, as defined under paragraph (p)(2)(i) of this section, initial medical examinations required by paragraph (l) of this section shall be provided as soon as possible and in any event no later than 90 days after the effective date of this standard. For small businesses, initial medical examinations required by paragraph (l) of this section shall be provided as soon as possible and in any event no later than 180 days after the effective date of this standard.

(q) *Appendices.* (1) Appendix C to this section is incorporated as part of this section, and compliance with its contents is mandatory.

(2) Except where portions of appendices A, B, D, E, and F to this section are expressly incorporated in requirements of this section, these appendices are purely informational and are not intended to create any additional obligations not otherwise imposed or to detract from any existing obligations.

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September 14, 1992

Part III

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 174 and 177

Tank Cars and Cargo Tank Motor Vehicles: Attendance Requirements; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 174 and 177

[Docket No. HM-212; Notice No. 92-9]

RIN 2137-AC24

Tank Cars and Cargo Tank Motor Vehicles: Attendance Requirements

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: RSPA is proposing to amend the Hazardous Materials Regulations to allow the use of signalling systems (sensors, alarms, electronic surveillance equipment, e.g., television monitors and video cameras) to satisfy the attendance requirements for unloading tank cars and for loading cargo tank motor vehicles. In addition, RSPA is proposing to completely revise the tank car unloading requirements in its regulations to remove obsolete and unnecessary provisions and to allow tank cars containing hazardous materials to remain standing with unloading connections attached when no product is being transferred. The intended effect of this action is to improve the regulations for clarity and to recognize recent technological innovations and to improve safety during the loading/unloading of bulk quantities of hazardous materials.

DATES: Comments must be received by December 14, 1992.

ADDRESSES: Address comments to the Dockets Unit (DHM-30), Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590-0001. Comments should identify the docket and notice number and be submitted in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped post card. The Dockets Unit is located in room 8421 of the Nassif Building, 400 Seventh Street SW., Washington, DC. Public dockets may be reviewed between the hours of 8:30 a.m. and 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Diane LaValle or Jennifer Karim, (202) 366-4488, Office of Hazardous Materials Standards, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION: On January 28, 1992, President Bush announced a 90-day moratorium and review of regulations to identify unnecessary and burdensome government regulations. In response to the President's announcement, DOT published, on February 7, 1992, Docket RR-1, Notice 92-1 (57 FR 4744), soliciting public comments on the DOT's regulatory programs. Comments addressing the HMR were requested to be submitted to RSPA's Dockets Unit. In response to that notice, RSPA received over 40 comments. Many comments addressed notices of proposed rulemaking that have not been finalized and issues raised in petitions for reconsideration. Those comments will be given full consideration along with all other comments prior to taking final action under those dockets. Comments addressing certain other issues are under review for consideration in future rulemaking actions.

In response to RR-1, The Fertilizer Institute and two other commenters requested that RSPA revise §§ 174.67(i) and 177.834(i) of the HMR to allow the use of signalling systems (sensors, alarms, electronic surveillance equipment, e.g., television monitors and video cameras) to satisfy the attendance requirements during the unloading of tank cars and the loading of cargo tank motor vehicles. Section 174.67 requires that rail tank car unloading operations must be performed by a reliable person who has been properly instructed in unloading hazardous materials and attended by the unloader until unloading is completed. Section 177.834 requires that a cargo tank motor vehicle be attended by a qualified person (usually the driver) at all times while it is being loaded or unloaded. The purpose of the attendance requirements in §§ 174.67 and 177.834 is to ensure the safe loading or unloading of hazardous materials and that, in the event of an emergency, such processes can be quickly halted. The person designated to perform the attendance function must be familiar with the nature and properties of the material being loaded or unloaded, be instructed in the procedures to be followed during the loading or unloading operation, and in the event of an emergency, have the ability to immediately take emergency action.

RSPA agrees with the commenters that provisions should be included in the HMR on the use of signalling systems, where safety conditions are met. RSPA previously has responded to requests for clarification on the use of signalling systems to satisfy the attendance requirements. In addition, on February 26, 1990, RSPA published in the **Federal Register** (55 FR 6758) a notice making available to the public several formal interpretations of the HMR issued by RSPA's Chief Counsel, one of which (Int. No. 87-4-RSPA) pertained to the attendance requirements in §§ 174.67(i) and 177.834(i). These interpretations generally allow:

Railroad Tank Cars

The use of a signalling system if: (1) The equipment provides on-site or at a remote location, surveillance capability of that equal to a human observer; (2) in the event of an emergency, the system is capable of immediately halting the flow of product or alerting the unloader; (3) in the event of known equipment malfunction, human observation of the unloading is instituted immediately; and (4) the person responsible for unloading has the capability to halt the flow of product immediately.

Cargo Tank Motor Vehicles

The use of television monitors could satisfy the attendance requirements with regard to loading if: (1) The monitors are operable and continuously manned; (2) the operator is within 25 feet of the loading operation with an unobstructed view; and (3) the operator is able to immediately stop the loading operation from the monitoring location.

In some rail operations, the hazardous material is unloaded from the tank car directly into the process system. In these situations, the unloading process may take several days of intermittent or continuous flow to unload the tank car. Section 174.67(i) requires that throughout the entire period of the unloading, and while a tank car is connected to the unloading device, the car must be attended by the unloader. Under § 174.67(j), a tank car may not be left standing with the unloading connections attached after unloading is completed. RSPA has issued about 30 exemptions from the requirements in § 174.67 to authorize tank cars to stand with unloading connections attached during intermittent unloading when a signalling system is used. RSPA also has issued several exemptions to authorize the use of signalling systems to satisfy the attendance requirements in § 177.834 when loading cargo tank motor vehicles.

In this notice, we propose to amend the requirements in § 174.67 pertaining to unloading of tank cars and § 177.834(i) pertaining to the loading of cargo tanks to allow the use of signalling systems to meet the attendance requirements. In addition, § 174.67 would be revised to allow a tank car containing hazardous materials to remain standing with the unloading connections attached when no product is being transferred, provided the attendance and other safety conditions are met. A detailed discussion of the

changes proposed to this section is contained in the section-by-section review. In § 177.834, the requirement that the attendant must be within 25 feet of the cargo tank motor vehicle would be removed if the signalling system is equipped with television monitors and video cameras that are operable, the operator maintains surveillance of the monitors and is able to immediately stop the loading operation from the area where the monitors are located.

Under these proposed changes, a single individual, using signalling systems with features such as electronic surveillance, sensors, alarms, and remote control or automatic shut-down systems, could attend the loading of multiple cargo tanks or the unloading of multiple tank cars. By reducing the number of persons involved in the loading or unloading operation, these changes could result in significant savings to industry by reducing injuries and allowing the more efficient use of human resources. RSPA solicits specific information concerning the expected benefits and cost savings that would be derived from finalizing this proposed rule.

Section by Section Review

Section 174.67

Few changes have been made to the current requirements contained in this section since their adoption during the early 1920's. These requirements contain numerous obsolete and unnecessary provisions; therefore, this section would be completely revised.

The current requirement in paragraph (a) prescribes that a tank car must be unloaded by a "reliable" person. This requirement is unnecessary because all hazardous material employers are required to properly train their hazardous materials employees in accordance with 49 CFR part 172, subpart H (57 FR 20944, May 15, 1992) and, therefore, it would be removed. The requirements that the tank car brakes must be set, the wheels blocked, and a caution sign placed to give necessary warning would be moved to proposed § 174.67(c). The requirement to relieve the tank internal pressure before opening the manhole or outlet valves would be moved to proposed § 174.67(e). A new paragraph (a) would contain requirements that must be met by a rail facility operator. A facility operator would be defined as any person who engages in the unloading of tank cars containing hazardous material, on private tracks or carrier-owned tracks.

Current paragraphs (a)(4) and (b) contain detailed requirements on the removal of manhole covers. These requirements for opening manhole covers would be more appropriately addressed in written safety procedures by each facility operator and, therefore, would be removed. New proposed paragraph (b) would contain certain requirements that must be met by facility operators. These requirements would require facility operators to designate an employee who will be responsible for the unloading-function, restrict access to tank cars intended for unloading, and maintain written safety procedures.

Current paragraph (c) prescribes requirements for adjusting a manhole cover when a tank car is unloaded through the bottom outlet. The requirements specify that when unloading hazardous materials through the bottom outlet of a tank car, the manhole must be blocked open with a non-metallic block. These requirements are obsolete and inconsistent with the Environmental Protection Agency's regulations implemented under the Clean Air Act on the release of hazardous materials into the environment and, therefore, would be removed. New proposed paragraph (c) would contain conditions that must be met prior to connecting unloading equipment to a tank car, including safety procedures that must be followed by a designated employee.

Current paragraph (d) contains requirements for top unloading of tank cars. Historically, these requirements were intended to prevent explosions and fires caused by cinders and sparks coming from steam locomotives during the unloading of flammable liquids from tank cars. These requirements are obsolete because steam locomotives are no longer used and because of restrictions on the release of hazardous materials into the environment. Therefore, they would be removed. Proposed paragraph (d) would contain safety requirements for certain tank car closures.

Current paragraph (e) requires that the contents may not be spilled over the tank car and that seals and other matter must not be thrown into the tank car. Current industry standards more appropriately address this issue and, therefore, these provisions would be removed. Proposed paragraph (e) would contain a safety requirement on the opening of closures on tank cars.

The requirement in current paragraph (f) that the valve outlet in the bottom of a tank car must be properly seated before opening the valve cap would be revised for clarity and moved to proposed § 174.67(d). New proposed paragraph (f) would contain requirements on shut-off valves.

Several provisions in current paragraph (g) on the removal of the valve cap or the reducer are obsolete and would be removed. The remaining provisions on bottom outlets would be revised for clarity and certain safety requirements for unloading tank cars through bottom outlets would be added.

Current requirements in paragraph (h) addressing the securing of tank car unloading connections would be revised for clarity and moved to proposed paragraph (e). New proposed paragraph (h) would contain attendance requirements that are now addressed in paragraph (i). The current provisions would be broadened to address the use of signalling systems to satisfy the attendance requirements for unloading tank cars and to allow tank cars to remain attached to unloading equipment when no product is being transferred. These requirements are consistent with exemptions authorizing the use of video cameras, process control gauges, flow gauges, and monitors to observe the unloading of tank cars, and authorizing tank cars to remain standing with unloading connections attached when no product is being transferred. Requirements for tank car loading, prescribed in § 173.31, do not address the attachment of loading connections when no product is being transferred and, therefore, are not addressed in this proposed rule. The procedures in current paragraph (k) for tightening and securing all valves and closures on tank cars after unloading has been completed would be moved to proposed paragraph (i).

Paragraph (j) requires all unloading connections to be disconnected if unloading is discontinued. This provision is unnecessarily burdensome without a commensurate safety benefit and, therefore, would be removed. Proposed paragraph (j) would require the protective measures contained in proposed § 174.67(b) to remain in place until the unloading equipment has been removed and all closures have been tightened.

Finally, requirements pertaining to the removal of railroad defective cards in paragraph (l), the covering of oil and gasoline dripped on the ground with dry sand or dirt in paragraph (m), and keeping tools used in connection with unloading free of oil and dirt in paragraph (n), are more appropriately addressed in current industry standards and, therefore, would be removed.

Section 177.834

Paragraphs (i)(1) and (i)(2) prescribes that a cargo tank must be attended by a qualified "person" at all times during

loading and unloading, respectively. Paragraph (a)(4) prescribes that a person is "qualified" if he has been made aware of the nature of the hazardous material, which is to be loaded or unloaded, and he has been instructed on the procedures to be followed in emergencies. As stated in the preamble discussion to § 174.67, these provisions are redundant with the training requirements contained in 49 CFR part 172, subpart H (57 FR 20944, May 15, 1992). Therefore, the word "qualified" appearing immediately before the word "person" in paragraphs (i)(1) and (i)(2) and that portion of the requirements referring to a "qualified" person in paragraph (i)(4) would be removed. The remaining requirement in paragraph (i)(4) that the person in attendance must be authorized to move the cargo tank and that he has the means to do so would be moved to paragraph (i)(3). The provisions for loading cargo tank motor vehicles, in paragraph (i)(3), would be expanded to permit the use of signalling systems to satisfy the attendance requirements. These requirements are consistent with exemptions authorizing the use of video cameras and monitors to observe the loading of cargo tank motor vehicles. The unloading of a cargo tank motor vehicle would still require human attendance within 25 feet of the cargo tank to provide immediate action if a problem develops with regard to any aspect of the cargo tank motor vehicle or during the unloading process. RSPA and FHWA have no information to indicate that signalling systems are being used to attend the unloading of cargo tanks that are still in transportation. That is, we are not aware of cases when the power unit is attached to the cargo tank. Therefore, the unloading process is not included in this proposed rule. RSPA solicits information on whether there is a need to provide for the use of signalling systems to satisfy the attendance requirements during the unloading of cargo tanks in transportation, and, if needed, the means employed for terminating the unloading process in emergencies.

Regulatory Analyses and Notices

A. Executive Order 12291 and DOT Regulatory Policies and Procedures

RSPA has determined that this proposed rule is not major under Executive Order 12291 and is not significant under DOT's regulatory policies and procedures (44 FR 11034; February 26, 1979). A regulatory evaluation is available for review in the docket. RSPA estimates the total cargo tank motor vehicle fleet to be over 100,000 vehicles. There are an estimated 100,000 rail tank cars in hazardous materials service and about 1.2 million tank car shipments of hazardous materials annually.

B. Regulatory Flexibility Act

I certify that this proposal will not, if promulgated, have a significant economic impact on a substantial number of small entities. There are no direct or indirect economic impacts for small units of government, businesses, or other organizations.

C. Executive Order 12612

This proposed action has been analyzed in accordance with the principles and criteria in Executive Order 12612, and based on the information available at this time, RSPA does not believe that the proposed rule would have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

The Hazardous Materials Transportation Act contains an expressed preemption provision (49 app. U.S.C. 1804(a)(4)) that preempts State and local requirements on certain covered subjects (including the handling of hazardous materials) unless the State or local requirement is "substantively the same" (56 FR 20424, May 13, 1992) as the Federal requirement on that subject. Thus, RSPA lacks discretion in this area.

D. Paperwork Reduction Act

The required written procedures in the proposed rule would not impose any additional recordkeeping requirements on the affected rail facility operators handling bulk quantities of hazardous materials because these facilities are already required to develop and maintain written safety procedures by the Department of Labor's Occupational Safety and Health Administration (OSHA), 29 CFR parts 1910.119 and 1910.120. Emergency response information as required under subpart G of part 172 is approved under OMB Approval Number 2137–0580.

E. National Environmental Policy Act

RSPA has concluded that this proposed rule would have no significant impact on the environment and does not require the preparation of an environmental impact statement under the National Environmental Policy Act.

List of Subjects

49 CFR Part 174

Hazardous materials transportation, Radioactive materials, Railroad safety.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

In consideration of the foregoing, parts 174 and 177 of title 49, Code of Federal Regulations, would be amended to read as follows:

PART 174—CARRIAGE BY RAIL

1. The authority citation for part 174 would continue to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1808; 49 CFR Part 1.

2. Section 174.67 would be revised to read as follows:

§ 174.67 Tank car unloading.

(a) *General requirements.* For purposes of this section, a facility operator is any person who engages in the unloading of tank cars containing hazardous material, on private tracks or carrier-owned tracks. Each facility operator shall comply with the requirements contained in this section.

(b) *Facility operators' requirements.* Each facility operator shall:

(1) Designate one or more employees who will be responsible for the unloading functions and ensure that each designated employee is familiar with emergency procedures and, in the event of an emergency, has the ability to take necessary corrective actions;

(2) Install a derail device in an effective location (at least 50 feet when possible) from the end of the equipment to be protected by the caution sign. The derail device must be capable of restricting access to the portion of the track within the area on which tank cars intended for unloading are located; and

(3) Maintain written safety procedures and make them immediately available to the designated employees (such as the Department of Labor's Occupational Safety and Health Administration requirements in 29 CFR 1910.119 and 1910.120). These written procedures must, at a minimum, address the following safety issues:

(i) Continual monitoring of the tank car unloading process;

(ii) Use and securing of protective equipment including caution sign, derail, switch locks, tank car brakes and wheel blocks;

(iii) Operational procedures for the safe unloading of the tank car;

(iv) Emergency response procedures including employee safety and emergency notification;

(v) Movement of rail equipment in the vicinity of the tank car unloading area; and

(vi) Preparation of the tank car after unloading and prior to offering for transportation.

(c) *Pre-unload conditions.* Prior to connecting unloading equipment to a tank car or opening any closure of a tank car, except heating coil cap plugs, the designated employee shall:

(1) Set the brakes and block one wheel on the tank car to be unloaded to prevent movement in any direction;

(2) Align any manually-operated switch providing access to the track on which the tank car is located against movement and lock the switch with an effective locking device operable only by the facility operator;

(3) Lock the derail device, specified in paragraph (b)(2) of this section, in the derailing position with an effective locking device operable only by the facility operator; and

(4) Place caution signs on the track or tank cars to give necessary warning to persons approaching the cars from the open end of the track. The signs must be of metal or other durable material, rectangular, at least 30.48 cm. (12 inches) high by 38.10 cm. (15 inches) wide in size, and bear the words, "STOP TANK CAR CONNECTED" or "STOP MEN AT WORK." The word "STOP" must appear in letters at least 10.16 cm. (4 inches) high and the other words in letters at least 5.08 cm. (2 inches) high. The letters must be white on a blue background.

(d) *Tank car closures.* Prior to the removal of a secondary closure on the tank car, e.g., a valve cap plug, the designated employee must ensure that the primary closure is secured properly.

(e) *Opening of closures.* Before any discharge valves are opened on tank cars, the unloading equipment must be securely attached to the tank car. When unloading hazardous material from a non-pressure tank car, the designated employee shall ensure that any internal pressure is adequately relieved prior to opening the dome cover.

(f) *Shut-off valves.* The shut-off valve must be located as close as practicable to the point of connection between the hose of the facility and the tank car, in a manner that will minimize the release of product in the event of hose rupture or separation. The facility operator must take appropriate steps to prevent rupture of transfer hoses due to product expansion (e.g., the use of liquid expansion chambers or hoses with an increased minimum burst pressure rating).

(g) *Bottom unloading requirements.* When a tank car is unloaded through the bottom outlet:

(1) The designated employee must take appropriate precautions to prevent excessive internal vacuum which may cause the tank car to collapse. The tank car's vacuum relief device may not be relied upon to satisfy this requirement; and

(2) A containment device shall be placed under the bottom outlet valve to collect any product which may be in the outlet chamber.

(h) *Attendance requirements.* Throughout the entire period of unloading and while a tank car has unloading equipment attached, a designated employee must attend the tank car and unloading process to ensure safety. The attendance requirement may be met by:

(1) Physical on-site attendance of the tank car by a designated employee who is awake and has an unobstructed view of the unloading operation;

(2) A signalling system that includes surveillance equipment (e.g., television monitors and video cameras) and remote shut-off equipment. The surveillance equipment must be monitored either in the immediate area of the tank car or from a remote location within the facility, such as a control room.

(i) The surveillance equipment must provide an unobstructed view of all loading valves, hoses, domes, and safety relief devices;

(ii) The signalling system must provide immediate notification of a system malfunction or other emergency so that if warranted the product flow may be immediately halted.

(iii) In the event of any malfunction of the signalling system, physical attendance is required as specified in paragraph (h)(1) of this section; or

(3) A signalling system that includes sensors which upon detection of any system malfunction (e.g., pressure reduction, leakage, breakage of a hose or line, and detection of minute levels of fumes or vapors) will immediately shut down the unloading process or sound an alarm to provide immediate notification to the designated employee, or both. In the event of any malfunction of the signalling system, physical attendance is required as specified in paragraph (h)(1) of this section.

(i) *Post-unloading requirements.* After completion of the unloading, the designated employee must secure all primary closures on the tank car, remove the unloading equipment, and secure all other closures on the tank car.

(j) *Removal of protective measures.* The safety and caution measures required by paragraph (c) of this section must remain in place until all unloading equipment has been removed from the tank car and all closures have been made tight.

PART 177—CARRIAGE BY PUBLIC HIGHWAY

3. The authority citation for part 177 would continue to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 49 CFR Part 1.

4. In § 177.834, paragraphs (i)(1) and (i)(2) would be amended by removing the word "qualified" each place it appears, paragraph (i)(4) would be removed and reserved, and paragraph (i)(3) would be revised to read as follows:

§ 177.834 General requirements.

* * * * *

(i) * * *

(3) A person "attends" the loading or unloading of a cargo tank if, throughout the process, the person is awake and has an unobstructed view of the cargo tank, the person is authorized to move the cargo tank and has the means to do so. The attendance requirements may be met by:

(i) Physical attendance by a designated employee who is within 7.62 meters (25 feet) of the cargo tank; or

(ii) For loading a cargo tank, a signalling system that includes surveillance equipment (e.g., television monitors and video cameras) and remote shut-off equipment. The surveillance equipment must be monitored either in the immediate area of the cargo tank or from a remote location within the facility, such as a control room.

(A) The surveillance equipment must provide an unobstructed view of all loading valves, hoses, manholes, and pressure relief devices.

(B) The signalling system must have the capability to provide immediate notification to the designated employee of any system malfunction or other emergency so that, if warranted, the product flow may be immediately halted.

(C) In the event of any malfunction of the signalling system, physical attendance is required as specified in subparagraph (i)(3)(i) of this section.

(4) (Reserved)

* * * * *

Issued in Washington, DC on September 8, 1992, under authority delegated in 49 CFR part 106, appendix A.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 92-22052 Filed 9-11-92; 8:45 am]

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federal register

Monday
September 14, 1992

Part IV

Environmental Protection Agency

40 CFR Parts 156 and 170

Receipt of and Notification of United States Department of Agriculture Comments on Agricultural Worker Protection Standards; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 156 and 170

[OPP-300164A; FRL-4161-9]

RIN 2070-AA49

Final Rule; Receipt of and Notification of United States Department of Agriculture Comments on Agricultural Worker Protection Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; receipt and notification of USDA comments.

SUMMARY: The United States Department of Agriculture has requested that EPA publish its March 27, 1992 comments on EPA's June 1991 final regulations for the Worker Protection Standard for Agricultural Pesticides. Those final rules and associated notices for public comment were published in the **Federal Register** of August 21, 1992.

ADDRESSES: The docket has been given the document control number OPP-300164A and is available for public inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, at the Office of Pesticide Program's Document Control Office, Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. The docket contains the final regulations published in the **Federal Register** of August 21, 1992, and a copy of the draft final rules to which USDA responded and to which references are made in this document. A detailed EPA response document to USDA's comments is also contained in the docket.

FOR FURTHER INFORMATION CONTACT: By mail: James J. Boland, Acting Chief, Occupational Safety Branch (H7500C), Field Operations Division, Office of Prevention, Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1114, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-7666.

SUPPLEMENTARY INFORMATION:

Electronic Availability: This document is available as an electronic file on *The Federal Bulletin Board* the day of publication in the **Federal Register**. EPA's Agricultural Worker Protection Standards, published as a Separate Part III in the **Federal Register** of August 21, 1992 (57 FR 38102), are currently available on *The Federal Bulletin Board*. By modem dial 202-512-1387 or call 202-512-1530 for disks or paper copies. These files are available in Postscript, Workperfect 5.1, and ASCII.

EPA issued final regulations on the Worker Protection Standard for Agricultural Pesticides (40 CFR part 170 and subpart K of 40 CFR part 156) in the **Federal Register** of August 21, 1992 (57 FR 38102). A summary of USDA's comments on the June 1991 draft version and EPA's responses to them was presented in the August 21, 1992 final regulations (see especially the section entitled "Statutory Review—U.S. Department of Agriculture"). The USDA has requested that EPA publish USDA's comments in their entirety. Therefore, EPA is issuing the substantive text of a letter from Daniel D. Haley, Administrator, Agricultural Marketing Service, USDA, dated March 27, 1992, in reply to EPA's June 1991 draft regulations on agricultural worker protection standards as follows:

The United States Department of Agriculture (USDA) has reviewed the draft final rule on the Worker Protection Standards, 40 CFR parts 156 and 170, of the Environmental Protection Agency (EPA) and offers the following comments and suggestions.

We commend EPA for its efforts to establish standards for the protection of agricultural workers and pesticide handlers from unreasonable risk of pesticide exposure. USDA supports EPA's Congressional mandate "to protect the public health and the environment from unreasonable pesticide risks while permitting the use of necessary pest control technologies." However, we believe there are important issues in the draft final rule and its supporting documents which need to be addressed. These include:

—Desirable alternatives are available for certain provisions which would protect workers, but reduce the compliance burden of agricultural employers.

—There is insufficient information provided for adequate analysis of the costs and benefits of some provisions.

—There is no indication that EPA has considered the costs of this rule to agricultural workers.

—From a purely economic perspective based on the Regulatory Impact Analysis (RIA), dated March 31, 1991, the estimated pecuniary costs and anticipated pecuniary benefits of this rule do not appear to be supportable. This analysis relates only to the economic costs and benefits and does not take into account social and environmental costs and benefits.

The comments are arranged in the following manner:

I. Issues–
A. Training—General
B. Training—Cost Analysis
C. Training—USDA's Cooperative Extension Service (CES)
D. Agricultural Employer Responsibilities
E. Thirty-Day Listing of Pestcides
F. Emergency Assistance
G. Decontamination
H. Decontamination—Cost Aanalysis
I. Reentry Restrictions
J. Regional Climate-Based Reentry Intervals
K. Personal Protective Equipment
L. Cost/Benefit Analysis
M. Cost/Benefit Analysis—Acute Poisoning
N. Cost/Benefit Analysis—Chronic Illnesses
O. Conclusion
II. Appendix
III. Conclusion

USDA urges the EPA to address the concerns detailed below. If EPA is unable to modify these deficiencies, USDA requests that these comments, including the appendix, be included in the publication of the final rule in the **Federal Register**.

I. Issues

A. Training—General

USDA supports the concept of providing training to workers who may be exposed to potentially dangerous pesticides. However, the manner in which the draft final rule requires such training is unreasonably burdensome. The draft final rule requires training by a qualified trainer, using specified training materials, for each worker who enters a treated area on an agricultural establishment for which a restricted entry interval is in effect or has expired within the past 30 days. EPA expects that such training will often be redundant. Most farms do not have any person who meets the trainer qualifications within their work complement and may find it necessary to hire outside trainers.

In effect, the training provision will require that an employer provide training at the beginning of the season, and then each time an additional worker or replacement worker is hired. Generally, outside trainers must be hired each time the training program is provided. Given the extremely high variability and turnover within labor intensive agricultural work groups (1,000 percent is not uncommon), this procedure is unreasonably burdensome and would frequently result in virtually continuous training of small groups of new hires by each employer.

USDA also questions whether a general requirement for training for a period of 30 days after the expiration of the restricted entry interval is reasonable. Herbert Nigg and his colleagues have noted, "[d]elayed fieldworker reentry illnesses have clustered in the central valley of

California. In particular, the longer (3 to 60 days) acute reentry incidents have been limited to California."[1] EPA acknowledges that "[t]he risks from pesticide residues should become negligible by the expiration of the restricted-entry interval."[2] Thus, a reasonable alternative would be a requirement for training during a 30-day period in arid areas only, and then only where the restricted-entry interval is established by the generic reentry interval rather than by longer permanent, interim, or State-established reentry intervals where any risk has become "negligible."

Another more reasonable alternative would be to require employers to provide training to previously untrained workers during periods of high employment levels, but not more than twice per growing season. This would substantially reduce costs by training workers in larger groups and thereby reducing the required number of training sessions. Some replacement workers would miss the initial round of training, but the redundancy of training would result in virtually universal training in a short period. This delay for a relatively small number of workers is acceptable because these workers would be exposed to pesticide residues only, and then only after the expiration of restricted-entry intervals. EPA acknowledges that "[t]he risks from pesticide residues should become negligible by the expiration of the restricted-entry interval."[3] Unemployed workers, concerned that they might not be included in the employer-provided training and who desire training prior to employment, would not be denied the opportunity to be trained because they could take advantage of the ancillary training being developed by EPA.

Further, the training program should include a mechanism to verify employee training. As part of this process, a card could be issued by an EPA approved organization(s) upon completion of the training. The card could be presented by the potential employee upon application for employment.

USDA welcomes the opportunity to work with EPA to develop such a verification program.

B. Training—Cost Analysis

EPA estimates the cost of training to be zero, based upon an assumption that the Occupational Safety and Health Administration (OSHA) Hazard Communiction Standard (HCS) already imposes this requirmement.[4] This assumption is not warranted because HCS does not impose training requirements related to pesticides. The U.S. Court of Appeals for the District of Columbia Circuit ruled that the promulgation of regulations by EPA precluded the Secretary of Labor from issuing regulations under the Occupational Safety and Health Act relating to farm workers' exposure to pesticides.[5] Moreover, the draft final rule requires different trainer qualifications and training materials than those in the HCS. Thus, agricultural employers would experience significant additional incremental costs to meet EPA's training requirement.

USDA believes EPA should recalculate its estimated incremental cost to take into account that the requirement for training does not duplicate OSHA requirements and to include the costs associated with EPA's trainer qualifications and training materials requirements.

C. Training—USDA's Cooperative Extension Service

If EPA anticipates that USDA, through its Cooperative Extension System (CES), will be able to meet some of the training requirements of the draft final rule, additional funding will be required.

D. Agricultural Employer Responsibilities

USDA agrees that the agricultural employer does have a responsibility to train workers on the proper use, maintenance, cleaning and storage of personal protective equipment (PPE). However, workers should be held responsible for their actions or lack of action after having received training and instructions from the employer. Sections 170.112(c)(6), 170.240(e)(1) and (2), and 170.240(f) give the responsibility solely to the agricultural employer.

It has been argued that in industry, under OSHA regulations, the employer is ultimately responsible for workers. This is not an acceptable argument for farmers as they deal with a variety of workers, many of whom are never on their payrolls, but work for contractors. Agriculture in most cases is not confined within a controlled or monitored area like many other industries. Making agricultural employers responsible for employees' own safety actions is unrealistic.

E. Thirty-Day Listing of Pesticides

USDA does not support the requirement to display for 30 days after the restricted-entry interval has expired, in a central location, a listing of all pesticides which have been applied. The display period is inappropriate as many crops will be harvested before the display period has expired. The previously treated area may be in production of another crop.

We believe that the display and maintenance of the display provides very little actual benefit to the worker or handler when compared with the cost to the agricultural employer.

Approximately 89 percent of the agricultural producers have less than 10 employees. The case where small agricultural producers would be required to maintain such a display for one or two employees must be questioned. Although USDA recognizes EPA's concern that workers and handlers have information on possible exposure to pesticides, we believe a better method would be to make the information available upon request by a worker or handler.

F. Emergency Assistance

Section 170.160 of the draft final rule requires the agricultural employer to make available to the worker prompt transportation to an appropriate emergency facility. This provision needs clarification to indicate the extent of the agricultural employer's responsibility. USDA interprets this provision to be applicable only while the worker is at the workplace.

G. Decontamination

The decontamination provisions contained in § 170.150 of the draft final rule are unreasonably burdensome to agricultural employers because they require potable water for decontamination purposes, including handwashing. The requirement that potable water be available for washing purposes is unnecessary.[6] Clean water should be sufficient, and is readily available from farm and irrigation wells, whereas potable water may not be. Changing the decontamination provisions from the use of potable water to permit the use of clean water would greatly reduce the burden and expense to agricultural employers without significantly reducing worker protection. An appropriate standard might be the

[1] Nigg, H.N., Henry, J.A., and Stamper, J.H., Regional Behavior of Pesticide Residues in the United States. 85 Residue Review, page 257 (1983).

[2] Draft final rule, page 118.

[3] Draft final rule, page 118.

[4] Revised Regulatory Impact Analysis, page 46-47.

[5] *Organized Migrants in Community Action, Inc., et al, v. Brennan, et al.*, 520 F.2d 1161 (D.C. Cir. 1975).

[6] "Potable water" means water that meets the standards for drinking established by State or local authority having jurisdiction or water that meets the National Interim Primary Drinking Water Standards in part 141 of this chapter. [Draft, page 216].

regional or local standard for recreational water, i.e., water suitable for close bodily contact with a possibility for ingestion.

EPA explained its requirement of potable water for decontamination as "[EPA] believes that since OSHA uses the potable water standard for its Field Sanitation Standard, it would be easier for employers to comply with one water standard than with two."[7] This explanation ignores the fact that the employers who commented and opposed the "potable" water standard are in a better position to evaluate what may be easier for them than EPA. EPA also ignores the fact that, by its own estimate, 89 percent of agricutural employers have fewer than 10 workers and are thus exempt from the OSHA standard upon which EPA relies.[8] EPA's explanation is clearly not responsive to this group of employers. EPA should provide a well reasoned explanation for the need for potable water, rather than clean water, if this requirement is implemented.

USDA also questions the reasonableness of the general requirement for decontamination facilities for a period of 30 days after the expiration of the restricted-entry interval. USDA previously noted the studies of Herbert Nigg and his colleagues: "delayed fieldworker reentry illnesses have clustered in the central valley of California. In particular, the longer (3 to 60 day) acute reentry incidents have been limited to California."[9] EPA acknowledges that "[t]he risks from pesticide residues should become negligible by the expiration of the restricted-entry interval."[10] Thus, a reasonable alternative would be a requirement for decontamination facilities during the 30-day period following expiration of the restricted-entry interval in arid areas only, and then only where the restricted-entry interval is established by the generic reentry interval rather than by the longer permanent or interim reentry intervals which take pesticide degradation into account.

USDA also believes that the term "decontamination facilities" does not describe appropriately the type of facilities that are to be made available after the expiration of the restricted-entry interval when the risk of pesticide exposure is negligible. A more appropriate term would be "personal hygiene facilities" or simply "washing facilities."

H. Decontamination—Cost Analysis

EPA estimates the aggregate first year cost of its decontamination provision to be $79.5 million, but then discounts this cost by 50 percent[11] on the grounds that "[t]he OSHA field sanitation requirements cover an estimated 50.0 percent of all hired farmworkers." This adjustment conflicts with the fact that the OSHA standards do not require eye-flush dispensers as does the draft final rule. Thus, the cost estimate should be increased to account for 100 percent of the cost of eye-flush dispensers for the 450,000[12] farms with hired workers.

The draft final rule requires decontamination facilities with eye-flush dispensers for all hired farm workers. It is unclear whether EPA has attributed any cost to the provision of eye-flush dispensers to farm workers other than pesticide handlers. Table 21 of the Revised Regulatory Impact Analysis attributes the entire decontamination cost to change of clothing, soap, water, and towels.

EPA's cost estimate details no accounting for the cost of the testing of potable water as required by the National Interim Primary Drinking Water Standards.

EPA correctly notes that decontamination costs should be calculated, in part, on a per establishment basis[13] and that 89 percent of farms have less than 10 workers.[14] Since 89 percent of farms are exempt from the OSHA field sanitation requirement, the aggregate cost of water containers, their maintenance, and the cost of testing should be discounted by 11 percent, rather than 50 percent. EPA calculated costs on the basis of the number of workers covered by the OSHA field sanitation standards and not on a per establishment basis.

EPA should recalculate the decontamination provision cost, for other than soap and towels, on an establishment basis. The cost of eye-flush dispensers should be accounted for, and an appropriate estimate for the provision and testing of potable water should be attributed to the cost of this rule.

I. Reentry Restrictions

The prohibition of reentry for tasks requiring manual labor during the generic, permanent, and interim restricted-entry intervals is unreasonable for many crops. EPA contracted with Development Planning and Research Associates (DPRA) for an "Analysis of Proposed Reentry Interval Regulations Under FIFRA," which determined that a number of crops would be adversely affected by an up to 48-hour restricted-entry interval. The problems identified in the DPRA study would be greatly exacerbated under the longer intervals and the total proscription of activities contained in the draft final rule.

Provision, similar to the reentry provisions of the proposed rule, should be made to permit necessary agricultural activities if PPE is utilized. Appropriate PPE would be that required for the treatment which caused the reentry restriction. Such a reentry provision is particularly necessary where restricted-entry intervals exceed the up to 72-hour generic reentry interval. It would also be reasonable to apply a reduced standard for necessary activities which entail minimal contact with treated surfaces. USDA is unable to evaluate precisely the effect of the reentry prohibition, because EPA was unable to provide a complete list of the products for which permanent and interim restricted-entry intervals have been established. A partial list was provided by EPA at a recent meeting with USDA, but it was given to USDA with the admonition that publication deadlines precluded adequate time for its evaluation.

USDA notes that a limited exception to the reentry restriction is provided for cut flowers and ferns, but we observe that there are a number of other crops which would also be significantly affected by the reentry restrictions. At a minimum, a provision similar to that for cut flowers and ferns should be made for the other crops which would be significantly affected. A number of these crops were identified in the EPA-commissioned "Analysis of Proposed Reentry Interval Regulations under FIFRA" prepared by DPRA. However, this study underestimated the impact of this rule because it excluded certain crops, excluded certain areas for some crops, and contemplated less restrictive restricted-entry intervals.

1. *Reentry cost estimates.* The generic reentry intervals required in the draft final rule represent a substantial increase over that proposed. Although EPA states that reentry costs are based

[7] Draft, page 107.

[8] OSHA has exempted agricultural establishments where 10 or fewer workers are employed in hand labor activities on a given day from its Field Sanitation Standard. 29 CFR 1928.110(a).

[9] Nigg, N.H., Henry, J.A., and Stamper, H.H., Regional Behavior of Pesticide Residues in the United States, 86 Residue Review, page 257 (1983).

[10] Draft final rule, page 118.

[11] Revised Regulatory Impact Analysis, page 40.

[12] EPA estimate of number of covered farms. 1987 Regulatory Impact Analysis, page 55.

[13] Draft final rule, page 165.

[14] 1988 Regulatory Impact Analysis, page 54.

on the level of disruption to agriculture,[15] the costs were not revised to reflect the new reentry restrictions. USDA does not understand why EPA cost estimates for three quite dissimilar options are identical (after adjustment for EPA's reduction of their greenhouse cost estimate). *See* Table 1 below.

EPA estimated its reentry costs in the proposed rule based upon "allowing routine entry for unlimited time to areas under a restricted-entry interval"[16] if PPE, decontamination and training were provided. The draft final rule states: "[EPA] intends to prohibit all routine hand-labor tasks in areas treated with pesticides until the restricted-entry interval has expired."[17] Despite this substantially greater restriction, the reentry cost estimates were unchanged.

Table 1—Reentry Options and Costs Considered in the Farm Worker Protection Standard Development[1]

Proposed Low Option	Proposed Rule	Final Rule	Proposed High Option
Tox I = 24 h	Tox I = 48 h for organophosphates and carbamates	Tox I = 72 h for organophosphates in arid areas	Tox I = 72 h
Tox I = 24 h	Tox I = 24 h for others	Tox I = 48 h for others	Tox I = 72 h
Tox II = spray dry and dust settled	Tox II = 24 h for organophosphates and carbamates	Tox II = 24 h	Tox II = 48 h
Tox II = spray dry and dust settled	Tox II = spray dry and dust settled	Tox II = 24 h	Tox II = 48 h
Tox III = spray dry and dust settled	Tox III = spray dry and dust settled	Tox III = 12 h	Tox III = 24 h
Tox IV = spray dry and dust settled	Tox IV = spray dry and dust settled	Tox IV = 12 h	Tox IV = 24 h
(Early reentry with PPE allowed)	(Early entry with PPE allowed)	(No early reentry, with narrow exemptions for limited time)	(No early entry, except for limited activities)
	Total = $33.7 million Less greenhouse cost[2] — 27.5 million		Total = $222.2 million Less greenhouse cost[2] — 55.0 million
Cost = $6.2 million	Adjusted cost = $6.2 million	Cost = $6.2 million	Adjusted cost = $167.0 million

[1] Sources: Final rule, p. 196; 1988 Regulatory impact analysis, pp. 24,27; Revised regulatory impact analysis, p.46.
[2] Greenhouse reentry restriction reduced in final rule.

Part 156 retains all previously established "permanent" and "interim" restricted-entry intervals that are longer than the generic reentry intervals to be established by this rule.[18] This, in and of itself, represents no change from previous regulation. But the effect of this change, due to the prohibition of "all routine hand-labor tasks" during a restricted-entry interval, is substantial. Rather than EPA's explanation: "the disruption to agriculture, and thus the cost, should be minimal; pesticides could be applied in the evening, and worker entry would be allowed the following morning"[19], the prohibition and disruption could last many times longer. EPA provided a partial list of interim restricted-entry intervals from which USDA has identified interim reentry intervals as long as 30 days. In our judgment, the disruption to agriculture by prohibiting all routine hand labor tasks for as long as 30 days may be substantial.

USDA is concerned that the access prohibition contained in this draft final rule will cause States to also prohibit access during restricted-entry intervals because FIFRA disallows State standards less stringent than those established by EPA. If States applied such prohibition to their present State-established restricted-entry intervals, access to fields would be prohibited by as much as 90 days. The draft final rule does not indicate how such standards should be applied. USDA believes it is imperative that EPA clarify in its explanation of the rule precisely the circumstances under which access should be prohibited and that it would be inadvisable to extend generally the access prohibition to longer State-established restricted-entry intervals because it could be tantamount to banning the use of such materials.

EPA expects "that most agricultural management practices can be carried out after the restricted-entry interval expires * * *."[20] USDA believes the pertinent issue is not whether most practices could be delayed in this manner but rather whether certain essential practices could be. The effect of the reentry restrictions will vary depending upon the commodity and the growing conditions. The DPRA study noted a number of manual labor tasks which must be performed at shorter intervals than some of the restricted-entry intervals which would be established by the draft final rule. DPRA determined that, for crops with multiple harvests, "[t]he interval between harvests ranged from one-half day (asparagus) to six weeks (avocadoes). Most crops fell into the *three- to ten-day range*, however." [Emphasis added]. USDA agrees with the DPRA study that there are many critical practices required in a number of crops which conflict with the up-to-30-day prohibitions to be established by this draft final rule. USDA can provide additional examples upon request.

Few employers could maintain an idle labor force for 30-day periods. The prohibition of access could be expected to cause layoffs and a significant level of lost wages, agricultural production losses, and reduced employment due to the potential for the reduced competitiveness of U.S. agricultural producers. USDA believes these costs to farmers and farm workers should be taken into account by EPA.

There is insufficient information furnished in the RIA to replicate EPA's reentry cost estimate. However, EPA estimated the difference between a 48/24/12 (Toxicity categories I/II/III) hours reentry provision and a 72/48/24 hours provision to be over $160 million [Table 1]. Since reentry cost is a function of the disruption to agriculture, the cost of prohibiting access by farm workers for as much as 30 days must be considerably more than that associated with the proposed rule, and this

[15] Draft final rule, page 44.
[16] Draft final rule, page 53.
[17] Ibid.
[18] Draft final rule, pages 41 and 42.
[19] Draft final rule, page 44.
[20] Draft final rule, page 52.

additional cost should be reflected in the draft final rule.

EPA's RIA estimates the cost of prohibiting worker access to nurseries and greenhouses to be zero. Clearly there are costs associated with such prohibition. EPA previously estimated, in the RIA for the proposed rule, that the cost of an absolute prohibition of access to treated greenhouses under the proposed rule to be more than four times that of all farms combined. Under the draft final rule, the reentry restrictions would be reduced from that contained in the proposed rule, but access would still be prohibited to treated areas in greenhouses. While the new provision for greenhouses is less burdensome, it is not reasonable to assume the entire cost associated with this prohibition has been eliminated.

The cost estimate for the proposed rule was based upon 1.8 million hired workers on 550,000 farms with hired workers, and apparently excluded family farms. The RIA prepared in conjunction with the proposed rule stated "[p]esticide usage situations involving only a family farm setting without hired labor are not covered by the proposed regulation." It is unclear how the cost of the reentry requirements of the draft final rule was calculated. However, since the cost estimated for the draft final rule is identical (after adjustment for the change in greenhouse restrictions) to that of the proposed rule, USDA concludes the cost estimate for the draft final rule also excludes family members. Since the reentry restrictions apply also to family members on family farms, USDA believes this additional cost should be taken into account.

USDA estimates there are 2.9 million operators and unpaid workers (primarily family members) who perform farm work on plant crops,[21] so the number of workers affected by the reentry provision would be 4.7 million rather than 1.8 million. The inclusion of farms with no hired farm workers also doubles the number of establishments affected by the reentry provision[22] and substantially increases the affected acreage compared to farms with hired workers only. It is unclear whether EPA estimated the cost of its reentry provision on a per worker, per establishment, or per acre basis. However, it is clear that whatever the basis, there should be an accounting for the cost of including family members in the reentry provision.

USDA believes that hand labor disruptions may be longer under the reentry levels imposed by the States. This area of regulation needs additional clarification by EPA to assess the effect of longer intervals beyond the EPA standard.

As part of this effort, EPA does consider protective clothing for handlers, but fails to consider the benefits of PPE relative to agricultural workers.

EPA should revise its reentry cost estimates in order to reflect the increased cost of prohibiting access to treated areas, the longer generic restricted-entry intervals, the permanent and interim reentry intervals that are longer than the generic reentry intervals, the inclusion of establishments with no hired workers, the cost of workers due to layoffs during the restricted-entry intervals, and the costs expected to be incurred by nurseries and greenhouses.

J. Regional Climate-Based Reentry Intervals

USDA believes that reentry intervals, and the need for decontamination provisions and training, should be based on the pesticide persistence expected in a particular region. EPA's explanation indicates the provisions of the draft final rule are based upon the experience in California. EPA analysts have noted that:

> Due to climatic conditions and an intensive pesticide use pattern, California has unique problems in farm worker safety.[23]

World Resources Institute said:

> [S]cientific evidence suggests that pesticide degradation rates are dramatically affected by ambient moisture, humidity, temperature, and rainfall. In hot, dry areas like California, where crops may be grown only with extensive irrigation, residues remain on foilage for longer periods, unwashed by dew or rains. In other places, such as Florida and much of Texas, frequent precipitation reduces the danger to human beings.[24]

As previously noted, Herbert Nigg and his colleagues found:

> Delayed fieldworker reentry illnesses have clustered in the central valley of California. In particular, the longer (3 to 60 day) acute reentry incidents have been limited to California.[25]

And, in the proposed rule, EPA itself said:

> The [reentry] problem exists throughout the country, although it appears to be greatest in California: * * *

Researchers have clearly determined there are wide differences in the rate of pesticide degradation or disappearance which cannot be explained by time alone and that climatic factors should also be taken into account. Because of this, it is inappropriate to establish national reentry intervals based upon only time and experience in California.

USDA believes EPA's mandate "to protect the public health and the environment from unreasonable pesticide risks while permitting the use of necessary pest control technologies"[26] could be better fulfilled by scaling reentry intervals to regional weather characteristics. California officials have recognized this need and established different districts within the State and provided exceptions or restrictions when certain amounts of rainfall have occurred or overhead irrigation has been used. This procedure does not appear to be overly burdensome to the California agency and it accommodates the requirements of agricultural production.

In 1972, the Federal Working Group on Pest Management appointed a Task Group on Occupational Exposure to Pesticides which recommended:

> 1. The Federal Government should require pesticide registrants to develop and submit data sufficient to enable Federal officials to promulgate safe reentry intervals for each crop for which any new organophosphorus pesticide is to be registered.
>
> 2. Responsible Federal Agencies should pay due regard to significant geographical differences in the prevalence of the worker reentry problem and consider implementation of pesticide reentry intervals in those regions.[27]

USDA believes that reentry intervals, as well as the need for decontamination provisions and training, should be based on the pesticide persistence expected in a particular region. National standards based upon experience in California which EPA analysts describe as "unique" are an unreasonable burden upon farmers and farm workers in most other States.

USDA is also concerned that such regulation beyond the harvest interval could be misinterpreted in a manner

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[21] Oliveira, Victor J. and Cox, E. Jane, *The Agricultural Work Force of 1987: A Statistical Profile*, pages 11 and 13 (May 1989).

[22] Farms where only family labor is used are not to be covered by most provisions of the worker protection proposals. This exemption eliminates from the effects of this regulation about 550,000 out of about 1,000,000 farms which grow crops. [1987 Regulatory Impact Analysis, page 54].

[23] Zweig, Gunter, Adams, James, D., and Blondell, Jerome, U.S. Environmental Protection Agency, Residue Reviews, Vol. 75 (1980).

[24] Field Duty: U.S. Farmworkers and Pesticide Safety, World Resources Institute, page 8 (1985).

[25] Nigg, N.H., Henry, J.A., and Stamper, J.H., Regional Behavior of Pesticide Residues in the United States, 85 Residue Review, page 257 (1983).

[26] Senate Appropriations Committee Report No. 102-107, July 11, 1991.

[27] Milby, T.H. (Chairman), Occupational Exposure to Pesticides. Report to the Federal Working Group on Pest Mangement from the Task Group on Occupational Exposure to Pesticides, page 51 (January 1974).

which would generate unwarranted food safety concerns.

Considering that EPA has been gathering pesticide disappearance data for over 15 years in its registration process, and a body of research exists on the effects of climatic differences on pesticide persistence, it appears that regional climate-based reentry intervals are both feasible and appropriate.

K. Personal Protective Equipment

The cost estimate for PPE is based upon "[t]otal handlers estimated at 527,300, including 170,000 commercial handlers."[29] This estimate does not include EPA's estimated 980,000 family-member handlers for whom PPE must also be provided.[29] The 1991 Revised RIA (page 7) states that "[p]esticide usage situations involving a family farm setting without hired labor are exempt from the proposed (sic) regulation." Thus, the draft final rule and its RIA are contradictory, and there is no accounting for the number of unpaid workers for whom PPE is required.

If the estimated cost for PPE were adjusted in proportion to the additional 980,000 family-member handlers, the total first year cost would be $315.5 million instead of $110.7 million; the first year incremental cost would be increased from $222.14 million to $63.09 million.

L. Cost/Benefit Analysis

The draft final rule states that "the benefits in decreasing the number and severity of pesticide-related illnesses and injuries to agricultural employees far exceed the modest costs of the rule to agricultural employers, pesticide handler employers and registrants."[30] The draft final rule also states that "substantial" benefits will accrue to employers as the result of this rule by reduction in lost time from the work force, reduced medical expenses, reduced insurance costs, and overall increased productivity from having a work force less affected by pesticide exposure.[31]

The Cost Evaluation of EPA's RIA does not quantify any benefits to be realized, but merely states that the benefits from reduction of lost time, reduced medical costs, reduced insurance expenses, and increased productivity from having a workforce less affected by pesticide poisoning "will substantially outweigh the costs of this proposed (sic) regulation."[32] However, the Cost Effectiveness Evaluation of the RIA prepared in conjunction with the proposed rule estimated the average cost per poisoning case, consisting of hospitalization and lost time, to be $580.

If EPA's $580 estimate were correct, the number of illnesses which must be avoided to break even on a cost basis could be calculated by dividing $580 into the incremental cost estimate of $139,000,000. Thus, using EPA's estimates, over 239,000 cases of hospitalization must be avoided for the economic benefits of the draft final rule to outweigh its costs. Since 239,000 is twelve times EPA's highest estimate of medically diagnosed cases,[33] it is not clear to USDA that substantial benefits will accrue to employers as a result of this rule. Furthermore, EPA should consider that only a fraction of medically diagnosed cases result in time lost from work, and only a small fraction of these require hospitalization. EPA should provide information supporting its assertion that the economic benefits of this rule will outweigh its costs, and include a description of the assumptions used in making its calculation. Otherwise, the public will be left with the conclusion that the assertion is not supportable.

Farm workers may also realize additional costs associated with this rule due to layoffs and reduced employment which may result from any diminishment of the competitiveness of the U.S. agricultural industry. USDA believes EPA should take these costs into account in its cost effectiveness evaluation.

M. Cost/Benefit Analysis—Acute Poisoning

EPA measures the cost-effectiveness of the rule in terms of cost per poisoning case avoided: "[a]ssuming that 80% of the current acute illness and injury incidents in agricutural employees caused by occupational exposures to pesticides are prevented through compliance with this new rule, each worker incident avoided in the first year will cost between $820 and $12,330, depending on the actual number of acute incidents."[34] The Revised RIA states: "[e]stimates of annual acute poisoning cases from pesticides range from 20,000 to 300,000."[35] This range of "cases" is used by EPA to calculate the cost per incident avoided.

If, as discussed below, the cost of the rule is understated or the number of cases is overstated, the range of $820—$12,330 cost per pesticide case avoided must also be understated.

The RIA dated December 8, 1987, for the proposed rule estimated the number of medically treated agricultural pesticide poisonings "ranges from 5,000 to 20,000 per year with 12,500 being the best estimate." The draft final rule states "EPA estimates that 20,000 to 300,000 acute illnesses and injuries * * * occur annually to agricultural employees * * *." Although the RIA for both the proposed rule and the draft final rule cite the same source, no explanation is given for EPA's new estimates.

The estimate of 300,000 "acute poisoning cases" appears to be an assumption that undiagnosed *symptoms* such as "headaches, muscle aches, fatigue and others which may be mistaken for the common flu" are equivalent to acute poisoning *cases* if the worker has been where pesticide residues may exist. To arrive at this estimate, data reported in California for 1979 are expanded to reflect a national labor force estimate of 4 million (including about 1.6 million livestock workers and others not covered by the draft final rule). This inflated national estimate is then multiplied by 100 to compensate for misdiagnosis, underreporting, and the possibility of minor symptoms for which no medical treatment was sought. USDA questions whether this estimation procedure is valid because other published data do not approximate this estimate. A detailed discussion of the extrapolation used by EPA is included in the Appendix.

N. Cost/Benefit Analysis—Chronic Illnesses

In the draft final rule EPA states:

> [T]he Agency is convinced that a substantial, but undetermined, number of additional incidents caused by delayed-onset illnesses will be prevented through compliance with this new rule. Any costs of this rule attributed to expected avoidance of delayed-onset illnesses in workers and handlers would reduce the costs per incident projected above for acute incidents. EPA regards these likely costs as modest.[36]

USDA does not consider EPA's estimated cost per chronic case avoided to be modest. In its cost evaluation EPA said:

> For chronic health cases, with costs apportioned (50 percent), the incremental cost

[29] Table 3, Cost Effectiveness Summary, 1991 Revised Regulatory Impact Analysis.

[30] Draft final rule, page 248.

[31] Draft final rule, page 24.

[32] Draft final rule, page 124.

[33] Revised Regulatory Impact Analysis, page 8.

[34] Revised Regulatory Impact Analysis, page 24.

[35] Draft final rule, page 23; Revised Regulatory Impact Analysis, Appendix, Cost Effectiveness Summary, Table 7.

[36] Revised Regulatory Impact Analysis, page 80.

[36] Draft final rule, page 24.

per case avoided could range from about $150 thousand to $150 million in the first year and about $100 thousand to $100 million in an out year, depending upon level of risk.[37]

If the cost per acute incident avoided is to be reduced by attributing a portion of the total cost of the rule to the avoidance of chronic illness, USDA believes the estimated cost to avoid chronic illnesses should be disclosed in the rule.

O. Conclusion

The above comments and suggestions are based upon the interim draft of the final rule transmitted on June 14, 1991, which bears the date of March 13, 1991. USDA understands that EPA intends to revise this draft prior to its publication in the **Federal Register**. We offer our assistance in revising the RIA for this rule as well as our assistance in clarifying the rule, where appropriate. Included in this assistance would be a review of the final draft of the final rule.

II. Appendix

Poisoning Incidence

Based on information provided by the Environmental Protection Agency (EPA) and gathered by USDA, we do not believe that the EPA estimate of 300,000 pesticide poisoning incidents per year on farms is supportable.

In the Regulatory Impact Analysis (RIA) for its draft final rule for Worker Protection Standards, EPA increased its estimate of pesticide poisoning incidents from a range of 5,000 to 20,000 per year with a "best estimate" of 12,500 to a range of 20,000 to 300,000. EPA makes no reasoned explanation for the change in their estimates and no new studies are cited. This revision is best illustrated by examination of the editing changes made in the text of the RIA:

EPA's review of the available data conservatively estimates that the number of medically *diagnosed* ["treated" deleted] agricultural pesticide poisonings ranges *up* ["from 5,000" deleted] to 20,000 per year. ["with 12,500 being the best estimate." deleted]

In addition to the number of poisonings for which medical treatment was sought, there are ["believed to be" deleted] numerous instances where exposure to pesticides cause (sic) symptoms that are not brought to the attention of a physician for treatment. Symptoms of pesticide poisoning may include headaches, muscle aches, fatigue and others which may be mistaken for the common flu or other illnesses that are debilitating to some degree. ["One private research organization" deleted] World Resources Institute (1985) *estimates* ["estimated" deleted] that as many as 300,000 persons annually suffer some symptoms of pesticide exposure. This estimate, however, is not well documented.

For evaluation purposes, therefore, this analysis will assume a range of 20,000 to 300,000 potential acute pesticide poisoning cases per year * * *.[38]

If new data exist indicating that an estimate of 20,000 medically diagnosed pesticide poisonings per year is appropriate, the source should be cited.

EPA's estimate of 300,000 unreported instances of pesticide-related symptoms is not adequately supported. World Resources Institute (WRI), an environmentalist *policy* research organization, did not estimate that 300,000 persons suffered symptoms of pesticide exposure each year. Instead, WRI stated:

[S]pecialists still disagree about the risks posed by pesticide use. Reviewing information from California, for example, epidemiologist Molly Coye has recently estimated that perhaps as many as 313,000 farmworkers in the U.S. may suffer the effects of pesticide-related illness each year, including such symptoms as dizziness, vomiting, 'pin-point pupils,' and severe skin rashes. As Tables 2 and 3 suggest, however, regional differences in crop production and pesticide application rates *almost certainly give rise to different patterns* of pesticide exposure.[39] [Emphasis added.]

Although WRI acknowledged that their description of the extreme estimate of pesticide poisoning was "almost certainly" inaccurate, EPA notes only that the estimate is "not well documented." Furthermore, a review of the cited treatise indicates that Ms. Coye did not estimate 313,000 poisoning cases either. She merely described an inapposite 1976 study in California and made a hypothetical extrapolation; her own estimate of farmworker illnesses was lower by a factor of 24.

In Ms. Coye's words:

[T]he director of pesticide programs for the Department of Health Services estimated that as little as 1 percent of all pesticide-related illness in farmworkers [is] reported in California—despite the fact that state regulation requires physicians to report such cases to their county Health Officer within 24 hours of diagnosis (Kahn, 1976). In 1982, 235 cases of pesticide-related illness among farmworkers were reported; *if* this represents one percent of actual illness, the "true" prevalence would be 23,500 cases among the estimated 300,000 farmworkers in the state. If this rate is applied to a conservative estimate of the national farmworker labor force, or 4 million workers, the prevalence may be 313,300 cases; if we apply the rate only to hired seasonal farmworkers who are at greatest risk for field residue exposure, the prevalence would be 156,000.[40] [Emphasis added.]

Dr. Ephraim Kahn's 1976 study, cited by Ms. Coye, is obsolete and inapposite. The present California Health and Safety Code was enacted by the State Assembly in 1977 and amended in 1979 for the purpose of strengthening their system of reporting suspected pesticide injuries and illnesses. Under current law (and that which existed in 1982, the year of Ms. Coye's data), reports by physicians are cross checked against workers' compensation claims and a $250 fine may be imposed on physicians who fail to report pesticide incidents. Under this procedure, the California reporting system today functions much better than it did in 1976. Thus, the circumstances described by Dr. Kahn in 1976 are not comparable to either the circumstances at the time of Ms. Coye's hypothesis or of the present.

In constructing her hypothesis, Ms. Coye may have drawn more from Dr. Kahn's article than he intended. He had said:

In California we think the number of officially reported cases of residue-related illness is probably only a small fraction of the actual number, *possibly no more than 1 or 2%. This, of course, is only a guess,* but there is epidemiological evidence to back it up. [Emphasis added.]

Dr. Kahn summarized that there was "considerable indirect evidence" of undetected and unreported symptoms, most of which were classified as "possibly pesticide related," that farm workers are adversely affected by pesticide residues and that the true magnitude of the problem is uncertain. Thus, the basis for Ms. Coye's hypothesis is very weak at best. Indeed, had she elected to use the high rate (2%) of Dr. Kahn's guess rather than 1 percent, her extrapolation would have been reduced by half.

In a personal communication with Dr Kahn in September 1991, he stated that his article had been misconstrued and was inapplicable to pesticide handlers. Kahn's article referred to field workers only, and noted that a much higher proportion of handlers was reported. In its cost evaluation, EPA uses the same extrapolation for pesticide handlers as is used, based upon Dr. Kahn's 1976 guess, for farm workers.

California's current pesticide-related illness reporting system is considered to be significantly better than the county

[37] Revised Regulatory Impact Analysis, Appendix, Cost Evaluation, page 3.

[38] 1987 RIA, page 22; Revised RIA, page 24. (Rule form; Additions underlined, deletions struck through).

[39] Wasserstrom, Robert F. and Wiles, Richard, Field Duty: U.S. Farmworkers and Pesticide Safety, World Resources Institute, page 3 (July 1983).

[40] Coye, Molly Joel, Health Effects of Agricultural Production, presented at a symposium of the National Academy of Sciences, page 180 (1986).

Health Officer reporting system which was discussed by Dr. Kahn in 1976. As Robert I. Krieger, Chief/Supervising Toxicologist of the Worker Health and Safety Branch of the Department of Pesticide Regulation of the California Environmental Protection Agency, stated to USDA Economic Analysis Staff in a personal communication, "[i]f you believe there is underreporting by doctors of workers' compensation claims, then you must also believe they don't care about being paid for their services." Dr. Krieger also stated that the extrapolation of Dr. Kahn's guess to estimate a national incidence rate of pesticide-related illnesses was "wholly inappropriate."

Although EPA believes pesticide-related farm worker illnesses are underreported, there is evidence to the contrary. One study found that field workers claimed pesticide symptoms 15 times more than a control group,[41] yet, field workers represent only 17 percent of the verified pesticide-related illnesses found under California's reporting system.[42] This may reflect a higher sensitivity to pesticide concerns by California farm workers as a result of the multi-million dollar campaign mounted by the United Farm Workers Union to persuade consumers that boycott-targeted fruits and vegetables are contaminated by dangerous pesticides.

The most reliable reporting system in the nation, according to EPA, is that of California. The most recent "Summary of Illnesses and Injuries Reported by California Physicians as Potentially Related to Pesticides—1988," disclosed that only two thirds (2,118 of 3,144) of the potential pesticide illnesses reported by physicians could be considered definite, probable, or even possible pesticide-related illnesses. The numbers of reported and confirmed farm worker cases is not given; however, a measure of the sensitivity to pesticide danger to farm workers may be found by comparing the number of "possible" illnesses to the number confirmed or deemed "probable" across the various categories of workers. Of 19 categories, only agricultural field workers were reported to have a greater number of "possible" pesticide illnesses than "definite or probable." Among field workers, only 36 percent of the reported potential pesticide illnesses were confirmed to be definite or probable; among all other workers 71 percent were definite or probable. These data suggest the level of reporting of pesticide-related illnesses of farm workers is higher than any other category, including categories such as pesticide applicators and handlers who are at far greater risk. Thus, the reasonable inference is that farm worker pesticide incidents are overreported.

There may be a bias toward overreporting by physicians of pesticide illnesses for patients with symptoms similar to pesticide exposure, because after the first visit, pesticide illnesses are eligible for physicians' payments by workers compensation whereas similar symptoms (headaches, muscle aches, fatigue, flu, etc.) for nonoccupational illnesses are not.

Ms. Coye's own hypothesis reveals that the 313,300 projection is not suited for estimating the pesticide-related illnesses among hired farm workers. She projected the number of hired farm worker illnesses to be 156,600. However, even 156,600 is not appropriate for EPA's analysis because the draft final rule concerns a subset of all hired farm workers which excludes livestock workers. Livestock workers represent about 48 percent of the U.S. hired labor force. Thus, if the Coye extrapolation is applied to the workers covered by this rule, her hired farm worker projection should be reduced by 48 percent to 81,432.

Although WRI included Ms. Coye's hypothesis of 300,000, they did not consider it to be an estimate of farm worker illnesses. Instead, they said:

> Since 1973, when improved surveillance methods were put into effect, the number of poisoning incidents among fieldhands has risen each year by 13.9 percent. According to Molly Coye of the National Institute of Occupational Safety and Health in San Francisco, these fieldhands *currently* suffer the highest rates of occupationally related illnesses in the state: 7 cases per 1,000 for full-time workers (more than twice the overall average). Over 40 percent *of these incidents* involve only five compounds: parathion, diazinon, Phosdrin/Mevinphos, methomyl, and Omite Propagite.[43] [Emphasis added]

The 7 per 1,000 rate in California, if applied to EPA's estimated 1.8 million hired workers, computes to be 12,600. This number is remarkably similar to EPA's original "best estimate" of 12,500.

The above quotation suggests that World Resources Institute (WRI), (and derivatively, EPA) confused all-occupational illness rates and pesticide-related illnesses. An examination of the underlying document by Ms. Coye indicates she referred to "occupational illnesses," rather than pesticide-related illnesses.[44] The underlying document also shows her data are not current but represent a 1979 survey. Although here they said "occupationally related illnesses," WRI had earlier discussed the 40 percent incidence rate of five particular compounds in a clearly pesticide-related context, not of all occupational illnesses.[45]

If the draft final rule is to be based upon the WRI's report and Ms. Coye's treatise, it would be more appropriate to use her actual estimate of farm worker illnesses of 7 per 1,000 full-time workers.[46]

If the Coye/World Research Institute 7 per 1,000 full-time workers estimate is used, it should be recognized that most hired farm workers do not work on a full-time basis. In 1987, hired farm workers worked an average of 112 days or 45 percent of full-time.[47] Since Ms. Coye's ratio applies to full-time workers, the computation for the number of pesticide-related illnesses among all hired farm workers would be:

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[41] Wasserstrom, Robert F. and Wiles, Richard. Field Duty: U.S. Farmworkers and Pesticide Safety. World Resources Institute, page 17 (July 1983).

[42] "Summary of Illnesses and Injuries Reported by California Physicians as Potentially Related to Pesticides—1988;" California Department of Food and Agriculture, Division of Pest Management, Environmental Protection and Worker Safety, Worker Health and Safety Branch, page 15 (April 30, 1990).

[43] Field Duty: U.S. Farmworkers and Pesticide Safety. World Resources Institute, page 41 (1985).

[44] Coye, Molly Joel. Health Effects of Agricultural Production. Presented at a Symposium of the National Academy of Sciences, page 176 (1986).

[45] Field Duty: U.S. Farmworkers and Pesticide Safety. World Resources Institute, page 38 (1985).

[46] Coye, Molly Joel. Health Effects of Agricultural Production. Presented at a Symposium of the National Academy of Sciences, page 176 (1986).

[47] Oliveira, Victor J. and Cox, E. Jane. *The Agricultural Work Force of 1987: A Statistical Profile*, page 5 (May 1989).

$$0.45 \times 1.8 \text{ million} \times 0.007 = 5{,}670$$

A similar calculation would be needed for the estimated 527,000 pesticide handlers. EPA's RIA provides no data on the number of pesticide-related illnesses among handlers; however, EPA estimates that 58 percent of all pesticide poisoning cases are handlers.[48] If so, (ignoring Dr. Kahn's admonition of inapplicability), the number of handler cases may be calculated from the number of farm worker incidents:

$$\text{Handler incidents} = \frac{5{,}670 \times 0.58}{0.42} = 7{,}830$$

The total number of annual pesticide illnesses of workers and handlers would therefore be 5,670 plus 7,830 or 13,500. This number is reasonably consistent with EPA's original "best estimate" of 12,500.

When extrapolating California data to the rest of the nation, adjustment should be made for the fact that pesticides generally degrade much more slowly in arid regions and this persistence causes a greater incidence of pesticide-related illness in California than would be expected in most of the nation. According to WRI:

> [S]cientific evidence suggests that pesticide degradation rates are dramatically affected by ambient moisture, humidity, temperature, and rainfall. In hot, dry areas like California, where crops may be grown only with extensive irrigation, residues remain on foilage for long periods, unwashed by dew or rains. In other places, such as Florida and much of Texas, frequent precipitation reduces the danger to human beings.[49]

EPA acknowledged this in its proposed rule, saying "the reentry problem exists throughout the country, although it appears to be greatest in California; * * *." Indeed, not only are estimates of pesticide-related illnesses skewed by the reliance upon California data, the generic and specific reentry intervals and the restricted-entry interval may be biased as well. As Herbert Nigg and his colleagues have noted, "Delayed fieldworker reentry illnesses have clustered in the central valley of California. In particular, the longer (3 to 60 day) acute reentry incidents have been limited to California."[50]

Data collected by Poison Control Centers indicate 14,749 of 68,810 reported pesticide exposures (excluding rodenticides) were treated in 1990.[51] The outcome of 64 percent of reported exposures was classified as "none" or "minor." Of these reported exposures, 47 percent involved children less than 6 years of age, and many of the products identified were household or veterinary products, which suggests that many pesticide-related poisoning incidents are not associated with occupational exposure. Although this report may underestimate pesticide-related poisoning incidence because of missing data, it also suggests that the range of occupational poisoning estimated by EPA and the expected benefits of this draft final rule are overstated.

Data published by the American Association of Poison Control Centers suggests that the incidence of pesticide poisonings is far less than 300,000. This is consistent with recent conversations of USDA staff with the National Pesticide Telecommunications Network whose statistics support the low end of EPA's range.

In view of the foregoing, it appears that EPA's original "best estimate" of 12,500 pesticide-related illnesses continues to be the best available estimate.

[48] Field Duty: U.S. Farmworkers and Pesticide Safety, World Resources Institute, page 8 (1985).

[50] Nigg, H.N., Henry, J.A., and Stamper, J.H., Regional Behavior of Pesticide Residues in the United States, 85 Residue Review, page 257 (1983).

[51] 1990 Annual Report of the American Association of Poison Control Centers National Data Collection System.

III. Conclusion

The foregoing information regarding EPA's Worker Protection Standard for Agricultural Pesticides, 40 CFR part 170 and subpart K of part 156, published in the **Federal Register** of August 21, 1992 (57 FR 38102), has been published at the request of the USDA and is a detailed publication of USDA's comments on the draft final regulations. For a summary of USDA's comments and EPA's responses, see the preamble to the August 21, 1992 final rules, especially the section entitled "Statutory Review—U.S. Department of Agriculture." A more detailed EPA response is available in the docket for the rule and is available for public inspection as noted in the "ADDRESSES" section at the beginning of this document.

List of Subjects in 40 CFR Parts 156 and 170

Environmental protection, Labeling, Pesticides and pests, Intergovermental relations, Occupational safety and health, Reporting and recordkeeping requirements.

Dated: September 3, 1992.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

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Part V

The President

Executive Order 12814—Additions to Level IV of the Executive Schedule for Members of the Chemical Safety and Hazard Investigation Board

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Vol. 57, No. 178
Monday, September 14, 1992

Presidential Documents

Title 3—

The President

Executive Order 12814 of September 10, 1992

Additions to Level IV of the Executive Schedule for Members of the Chemical Safety and Hazard Investigation Board

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 5317 of title 5 of the United States Code, and in order to place additional positions in Level IV of the Executive Schedule, section 1-101 of Executive Order No. 12154, as amended, is hereby further amended by adding the following new subsection:

(k) Members, Chemical Safety and Hazard Investigation Board (5).

George Bush

THE WHITE HOUSE,
September 10, 1992.

[FR Doc. 92-22353
Filed 9-11-92; 12:05 pm]
Billing code 3195-01-M

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CFR CHECKLIST

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1991. The CFR volume issued January 1, 1987, should be retained.

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Tuesday
September 15, 1992

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Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 91-155-2]

Mediterranean Fruit Fly; Addition to the Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mediterranean fruit fly regulations by designating a portion of Santa Clara County, California, as a quarantined area. This action is necessary on an emergency basis to prevent the spread of the Mediterranean fruit fly into noninfested areas of the United States.

DATES: Interim rule effective September 10, 1992. Consideration will be given only to comments received on or before November 16, 1992.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 91-155-2. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, room 640, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8247.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly, *Ceratatis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables, especially citrus fruits. The Mediterranean fruit fly can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

A document effective on November 5, 1991, and published in the **Federal Register** on November 13, 1991 (56 FR 57573-57579, Docket Number 91-155), established the Mediterranean fruit fly regulations (7 CFR 301.78 *et seq.*, referred to below as the regulations). The regulations impose restrictions on the interstate movement of regulated articles from quarantined areas in order to prevent the spread of the Mediterranean fruit fly to noninfested areas.

The regulations, among other things, designated a portion of Los Angeles County, California, as a quarantined area. This area remains infested with Mediterranean fruit fly.

Recent trapping surveys by inspectors of the State of California and county agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS) reveal that an additional infestation of Mediterranean fruit fly has been discovered in Santa Clara County, CA. Specifically, on July 28, six Mediterranean fruit flies were discovered in the San Jose area.

The regulations in § 301.78-3 provide that the Administrator of APHIS shall list as a quarantined area each State, or each portion of a State, in which the Mediterranean fruit fly has been found by an inspector, in which the Administrator has reason to believe that the Mediterranean fruit fly is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which the Mediterranean fruit fly has been found.

In accordance with these criteria, we are amending § 301.78-3 by designating as a quarantined area the following area in Santa Clara County, CA:

Santa Clara County

That portion of the county in the San Jose area beginning at the intersection of Interstate Highways 101 and 280; then southwest on Interstate Highway 280 to Meridian Avenue; then south and southeast on Meridian Avenue to Redmond Avenue; then east on Redmond Avenue to the Almaden Expressway; then southeast on the Almaden Expressway to its intersection with Harry Road; then north on Harry Road to the end; then northeast along an imaginary line from the end of Harry Road to the intersection of Heaton Moor Drive and Bernal Avenue; then northeast on Bernal Avenue to its intersection with Interstate Highway 101; then northeast along an imaginary line from the intersection of Bernal Avenue and Interstate Highway 101 to the intersection of San Felipe Road and Silver Creek Road; then northwest on San Felipe Road to White Road; then northwest on White Road to Story Road; then southwest on Story Road to Interstate Highway 101; then northwest on Interstate Highway 101 to the point of the beginning.

There does not appear to be any reason to designate additional quarantined areas in California other than the area specified above. The Administrator has determined that California has adopted and is enforcing regulations imposing restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed on the interstate movement of regulated articles under this subpart. The Administrator has also determined that the designation of less than the entire State of California as a quarantined area will prevent the interstate spread of the Mediterranean fruit fly.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency situation exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the Mediterranean fruit fly from spreading to noninfested areas of the United States.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these

conditions, there is good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments received within 60 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

The interim rule restricts the interstate movement of regulated articles from the San Jose area of Santa Clara County, CA. Approximately 42 entities will be affected by this rule. All would be considered small entities. They include 5 fruit stands, 7 vendors, 21 nurseries, 1 flea market, and 8 growers with approximately 1 acre of nectarines, 80 acres of prunes, 20 acres of bell peppers, 1½ acres of tomatoes, 10 acres of grapes, 47 acres of walnuts, and ½ acre of persimmons. These small entities comprise less than 1 percent of the total of similar enterprises operating in the State of California. In addition, most of these small entities sell regulated articles primarily for local intrastate, not interstate, movement, and the sale of these articles would not be affected by this regulation.

The effect on those few entities that do move regulated articles interstate will be minimized by the availability of various treatments, that, in most cases, will allow these small entities to move regulated articles interstate with very little additional cost. Also, many of these entities sell other items in addition to the regulated articles so that the effect, if any, of this regulation on these entities would be minimal. Further, the number of affected entities is small compared with the thousand of small entities that move these articles interstate from nonquarantined areas in California and other States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR 3015, subpart V.)

Executive Order 12778

This interim rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under this interim rule: (1) All State and local laws and regulations that are inconsistent with this interim rule will be preempted; (2) no retroactive effect will be given to this interim rule; and (3) it will not require administrative proceedings before parties may file suit in court challenging its provisions.

Paperwork Reduction Act

This document contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended to read as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for 7 CFR part 301 continues to read as follows:

Authority 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 301.78–3, paragraph (c), the designation of the quarantined area is amended by adding the following immediately after Los Angeles County:

§ 301.78–3 Quarantined areas.

* * * * *

(c) * * *

California

* * * * *

Santa Clara County. That portion of the county in the San Jose area beginning at the intersection of Interstate Highways 101 and 280; then southwest on Interstate Highway 280 to Meridian Avenue; then south and southeast on Meridian Avenue to Redmond Avenue; then east on Redmond Avenue to the Almaden Expressway; then southeast on the Almaden Expressway to its intersection with Harry Road; then north on Harry Road to the end; then northeast along an imaginary line from the end of Harry Road to the intersection of Heaton Moor Drive and Bernal Avenue; then northeast on Bernal Avenue to its intersection with Interstate Highway 101; then northeast along an imaginary line from the intersection of Bernal Avenue and Interstate Highway 101 to the intersection of San Felipe Road and Silver Creek Road; then northwest on San Felipe Road to White Road; then northwest on White Road to Story Road; then southwest on Story Road to Interstate Highway 101; then northwest on Interstate Highway 101 to the point of the beginning.

Done in Washington, DC, this 10th day of September 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–22244 Filed 9–14–92; 8:45 am]

BILLING CODE 3410–34–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operation of Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board is amending its business loan regulation to permit the regional directors to waive the loan-to-value (LTV) requirements for certain loan programs in existence prior to the effective date of the regulation. This rule gives regional directors the discretion to "grandfather" higher LTV limits for previously existing loan programs with a proven record of success.

EFFECTIVE DATE: September 15, 1992.

ADDRESSES: National Credit Union Administration, 1776 G Street NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Michael McKenna, Staff Attorney, Office of General Counsel, telephone (202) 682–9630, or Kent Buckham,

Director, Department of Supervision, Office of Examination and Insurance, telephone (202) 682-9640, at the above address.

SUPPLEMENTARY INFORMATION: NCUA published a new business loan rule on September 25, 1991 (see 56 FR 48421) which became effective on January 1, 1992. The new rule, among other things, established loan-to-value (LTV) ratios for business loans. This requirement is found in subparagraph 701.21(h)(2)(ii)(A) of NCUA's Regulations. The rule permits an LTV ratio of up to 70 percent for second liens and 80 percent for first liens. For loans secured by first liens, an LTV of up to 95 percent is permitted if the value in excess of 80 percent is covered either by acquisition of private mortgage or equivalent type insurance provided by an insurer acceptable to the credit union, or by insurance or guarantees by or subject to advance commitment to purchase by an agency of the federal government or of a state or any of its political subdivisions.

On May 15, 1992, the NCUA published a proposed amendment (see 57 FR 20798) to the business loan rule to allow the regional directors to waive the LTV requirements for credit unions operating business lending programs in existence prior to January 1, 1992. The proposal would, in effect, provide the regional directors the discretion to grandfather higher LTV limits for previously existing loan programs with a proven record of success. Programs established after January 1, 1992, would be unaffected by the proposal and would be permitted subject to the LTV requirements and other provisions of NCUA's rule.

Nine comment letters were received. Three comments were received from federal credit unions, two comments from state-chartered credit unions, and two comments from state regulatory agencies. Comments were also received from a national trade organization and a state credit union league.

In general, the commenters approved of the amendment but requested that NCUA expand the loan-to-value waiver to programs established after January 1, 1992. These commenters believe such an expansion would permit credit unions to adapt to the changing needs of their membership. The NCUA Board does not believe such an expansion is desirable at this time. As indicated in the preamble to the final regulation issued by the NCUA Board in 1991, business lending in credit unions has proven to be an extremely high-risk venture. The provisions of the current rule, establishing requirements for loan security and loan-to-value ratios, are appropriate safeguards protecting the credit union, its members, and the National Credit Union Share Insurance Fund from undue risk.

One commenter stated that the latitude of the exemption is ambiguous. The commenter questioned whether the waiver might permit LTV ratios of up to 100% or unsecured loans up to reasonable limitations. The waiver may permit LTV ratios up to 100% if circumstances warrant but unsecured business loans would not be permitted. This same commenter was also unclear on whether all business loans over $25,000 must be secured. Section 701.21(h)(2)(ii)(A) specifically states that all business loans must be secured. Loans under $25,000 are not defined as business loans and thus are not subject to this regulatory requirement. This commenter also questioned whether the present rule limits business lending to only real estate-secured lending. There is no such limitation in the business lending regulation and there is no plan to establish such a restriction.

One commenter recommended eliminating all restrictions on LTV ratios. Another commenter recommended permitting a 90 percent LTV ratio for non-real estate loans (equipment and vehicles) and eliminating any requirements for monitoring reports in connection with the waiver. The NCUA Board believes the need for firm LTV requirements relates to the high-risk nature of business lending rather than the type of collateral. High default and loss ratios related to business lending require high underwriting standards. Furthermore, the established LTV ratios are consistent with generally accepted industry standards. Therefore, the NCUA Board is not expanding the LTV exemption. However, the NCUA Board does agree that the imposition of special monitoring reports if the waiver is granted may prove burdensome and unnecessary. Reports required currently under the business loan regulation are deemed to be sufficient for NCUA to monitor this activity. There is no additional reporting requirement in the final rule.

One commenter recommended that the conditions set forth in the preamble to the proposed rule be eliminated. Another commenter objected to a requirement limiting the aggregate exposure in one type of business lending. These conditions are not mandatory requirements but merely guidance based on past experience. Although it is conceivable that there may be other circumstances justifying a waiver, NCUA believes an exemption to the LTV requirements is warranted when the following conditions are met. First, the credit union should have a proven, successful track record in a specific field of business lending. A credit union can meet this condition by demonstrating the following: (a) A written business loan policy that is well thought out and complete; (b) thorough creditworthiness documentation; (c) minimal delinquency and loan losses as compared to the overall industry average and its specific peer group; and (d) appropriate underwriting criteria. Second, the credit union or its members should depend upon this type of business lending. Third, the credit union should limit its aggregate exposure for this type of lending. The regional director may also consider other factors, including: market conditions and influences; situations that can alter market conditions; reliance on collateral versus ability to repay; capital strength of the credit union; and industry stability.

The final amendment adds a sentence to § 701.21(h)(2)(iii)(B) clarifying that a regional director's decision may be appealed to the NCUA Board. The NCUA Board is adopting the amendment with revisions as discussed above. Since this rule change does not have an adverse or restrictive effect on credit unions, it is effective immediately.

NCUA also is making a purely technical amendment to paragraph 701.21(h)(3), as proposed. Under subparagraph 701.21(h)(2)(iii)(B), credit unions can seek an exemption from the limits on construction and development lending. However, paragraph 701.21(h)(3), which sets the limit on such lending, does not reference the availability of an exemption from the limits. This amendment simply makes clear within paragraph 701.21(h)(3) that a credit union may seek an exemption from the construction and lending limits.

Paperwork Reduction Act

It is the Board's belief that less than ten exemption requests will be submitted per year. The Paperwork Reduction Act is not triggered under such conditions.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact a proposed regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). The amendment is less restrictive than the current regulation. Overall, the NCUA Board expects the change to benefit a limited number of credit unions by

permitting them to continue to grant loans on terms that otherwise would be prohibited. In addition, it is the Board's belief that small credit unions are not involved in these types of business loan programs. Accordingly, the Board determines and certifies that this final amendment does not have a significant economic impact on a substantial number of small credit unions and that a Regulatory Flexibility Analysis is not required.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The business loan rule (§ 701.21(h)) already applies to all federally insured credit unions (both federal and state-chartered). The final amendment will allow certain of these credit unions, including state-chartered credit unions, to grant loans that they would otherwise be prohibited from making. State authorities, however, remain free to adopt more restrictive regulations affecting state-chartered credit unions if they so choose. Therefore, the NCUA Board has determined that the final amendment will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 12 CFR Part 701

Civil rights, Conflicts of interests, Credit, Credit unions, Fair housing, Insurance, Mortgages, Reporting and recordkeeping requirements, Signs and symbols, Surety bonds.

By the National Credit Union Administrator Board on September 9, 1992.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA amends part 701 to read as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 is revised to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787 and 1789. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 et seq., 42 U.S.C. 1861 and 42 U.S.C. 3601–3610.

2. In § 701.21, paragraph (h)(2)(ii)(A), (h)(2)(iii)(B), and (h)(3) introductory text are revised to read as follows:

§ 701.21 Loans to members and lines of credit to members.

* * * * *

(h) * * *

(2) * * *

(ii) * * *

(A) Unless a credit union loan program was in existence prior to January 1, 1992, and is granted an exemption by the regional director, loans shall be granted on a fully secured basis by collateral as follows:

(*1*) Second lien for LTV ratios of up to 70 percent;

(*2*) First lien for LTV ratios of up to 80 percent;

(*3*) First lien with an LTV ratio in excess of 80 percent shall be granted only where the value in excess of 80 percent is covered through acquisition of private mortgage, or equivalent type, insurance provided by an insurer acceptable to the credit union, or insurance or guarantees by or subject to advance commitment to purchase by an agency of the federal government or of a state or any of its political subdivisions, and in no event shall the LTV ratio exceed 95 percent;

* * * * *

(iii) * * *

(B) *Exemptions.* Credit unions seeking an exemption from the LTV ratios of § 701.21(h)(2)(ii)(A), or the limits of § 701.21(h)(2)(iii)(A) or § 701.21(h)(3) must present the regional director with, at a minimum: The higher limit sought; an explanation of the need by the members to raise the limit and ability of the credit union to manage this activity; an analysis of the credit union's prior experience making member business loans; and a copy of its business lending policy. The analysis of credit union experience in making member business loans shall document the history of loan losses, loan delinquency, volume and cyclical or seasonal patterns, diversification, concentrations of credit to one borrower or group of associated borrowers in excess of 15 percent of reserves (less the Allowance for Loan Losses account), underwriting standards and practices, types of loans grouped by purpose and collateral, and qualifications of personnel responsible for underwriting and administering member business loans. Regional directors shall consider, in addition to the information submitted by the credit union, the historical CAMEL ratings. If the credit union does not receive notification of the action taken within 30 calendar days of the date the request was received by the regional office, the credit union may assume approval of the request to exceed the limit. The regional director's decision may be appealed to the NCUA Board.

* * * * *

(3) *Construction and development lending.* Unless an exemption is approved by the regional director, loans granted under this section to finance the construction or development of commercial or residential property shall be subject to the following additional provisions:

* * * * *

[FR Doc. 92–22242 Filed 9–14–92; 8:45 am]

BILLING CODE 7535-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92–ANM–7]

Establish Control Zone; Jackson, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a control zone at Jackson, Wyoming, to provide additional controlled airspace for aircraft executing instrument approach procedures to the Jackson Hole Airport. The intent of this action is to segregate aircraft operating in visual flight rules (VFR) conditions from those operating under instrument flight rules (IFR). The area will be depicted on aeronautical charts to provide reference for pilots.

EFFECTIVE DATE: 0901 UTC, October 15, 1992.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM–535, Federal Aviation Administration, Docket No. 92–ANM–7, 1601 Lind Avenue SW., Renton, WA 98055–4056, Telephone: (206) 227–2535.

SUPPLEMENTARY INFORMATION:

History

On July 13, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a control zone for the Jackson Hole Airport at Jackson, Wyoming (57 FR 30932).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Two comments objecting to the proposal were received. One objection stated that establishing a control zone at the airport would cause a burden to pilots of aircraft that are not equipped with a two-way radio. The other objection stated that IFR and VFR aircraft operations were conducted on the

CTAF/UNICOM frequency and therefore, a control zone is not needed. The airspace study for this action indicated the establishment of a control zone would not require aircraft to have two-way radio capability because this airport does not have an operating control tower.

The airport is served by an ILS to runway 18, with a minimum Decision Height of 300 feet AGL and a minimum visibility of 1 mile. The last 400 feet authorized on this approach lie in uncontrolled airspace, in which ATC cannot guarantee separation from all other aircraft. Additionally, there are two VOR approaches. However their Minimum Descent Altitudes are above the floor of the Transition area.

At present, the airport CTAF/UNICOM frequency is 122.8 Mhz., on which it is not mandatory for either aircraft to communicate or monitor, although highly prudent.

The Wyoming State Aeronautics Division petitioned the FAA to establish a control zone for this airport, and the principle air carrier user of the airport endorsed the proposal.

Based on all the information available, the FAA has decided to adopt the rule as proposed, with a clarification that the miles referenced in the rule are nautical miles.

Control zones are published in § 71.171 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The control zone listed in this document will be published subsequently in the Handbook.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes a control zone for the Jackson Hole Airport, Wyoming, to provide additional controlled airspace for aircraft executing instrument approach procedures to the Jackson Hole Airport. This action will segregate aircraft operating in VFR from those aircraft operating in IFR. The airspace will be depicted on aeronautical charts for pilot reference. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034: February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Incorporation by reference

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.171 Designation

* * * * *

ANM WY CZ Jackson, WY [New]
Jackson Hole Airport, WY
(lat. 43°36'24" N, long. 110°44'15" W.)

Within a 4.3 nautical mile radius of Jackson Hole Airport, Wyoming.

* * * * *

Issued in Seattle, Washington on September 4, 1992.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division.

[FR Doc. 92–22196 Filed 9–14–92; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 529

Certain Other Dosage Form New Animal Drugs; Formalin Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Western Chemical, Inc. The NADA provides for the use of formalin solution (aqueous solution of 37 percent formaldehyde) to control certain external protozoa and monogenetic trematodes on salmon, trout, catfish, largemouth bass, and bluegill and to control certain fungi on salmon, trout, and esocid eggs.

EFFECTIVE DATE: September 15, 1992.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV–133), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8644.

SUPPLEMENTARY INFORMATION: Western Chemical, Inc., 1269 Lattimore Rd., Ferndale, WA 98248, has filed NADA 140–989. The NADA provides for the use of formalin solution (aqueous solution of 37 percent formaldehyde) in tanks, raceways, and ponds to control: (1) the external protozoa: *Ichthyophthirius* spp., *Chilodonella* spp., *Costia* spp., *Epistylis* spp., *Scyphidia* spp., and *Trichodina* spp.; (2) the monogenetic trematodes: *Cleidodiscus* spp., *Gyrodactylus* spp., and *Dactylogyrus* spp. on salmon, trout, catfish, largemouth bass, and bluegill; and (3) in incubation tanks to control fungi of the family Saprolegniaceae on salmon, trout, and esocid eggs. The NADA is approved as of July 31, 1992, and the regulations are amended in 21 CFR 529.1030(b) to reflect this approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval does not qualify for marketing exclusivity because no new clinical or field investigations (other than bioequivalence or residue studies) and no new human food safety studies (other than bioequivalence or residue studies) were essential to the approval and conducted or sponsored by the applicant.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an

environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 529

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 529 is amended as follows:

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 529 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 529.1030 [Amended]

2. Section 529.1030 *Formalin solution* is amended in paragraph (b) by revising the phrase "See Nos. 049968 and 051212" to read "See Nos. 049968, 050378, and 051212".

Dated: September 9, 1992.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 92-22237 Filed 9-14-92; 8:45 a.m.]

BILLING CODE 4160-01-F

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21 CFR Part 520

Animal Drugs, Feeds, and Related Products; Oxytetracycline Hydrochloride Soluble Powder

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to codify an approved new animal drug application (NADA) held by Fermenta Animal Health Co. The NADA provides for the use of an oxytetracycline hydrochloride soluble powder as an antibacterial in the drinking water of growing turkeys.

EFFECTIVE DATE: September 15, 1992.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV-102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8623.

SUPPLEMENTARY INFORMATION: Fermenta Animal Health Co., 10150 North Executive Hills Blvd., Kansas City, MO 64153, is the sponsor of NADA 38-200, which provides for the use of oxytetracycline hydrochloride soluble powder as an antibacterial in the drinking water of growing turkeys for control of hexamitiasis caused by *Hexamita meleagridis*. The NADA was originally approved as published in the **Federal Register** of October 13, 1970 (35 FR 16041). That approval should have been but was not codified in part 520 (21 CFR part 520). Accordingly, the regulations at § 520.1660d(b) (21 CFR 520.1660d(b)) are now amended to provide for that approval.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 520.1660d is amended by revising paragraph (b) to read as follows:

§ 520.1660d Oxytetracycline hydrochloride soluble powder.

* * * * *

(b) *Sponsors.* See No. 017144 in § 510.600(c) of this chapter for use as in paragraph (e)(1) of this section. See No. 054273 for use as in paragraph (e)(1)(ii) of this section.

* * * * *

Dated: September 9, 1992.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 92-22239 Filed 9-14-92; 8:45 a.m.]

BILLING CODE 4160-01-F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8423]

RIN 1545-AP93

Taxation of Tax-Exempt Organizations' Income From Ordinary and Routine Investments; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to Treasury Decision 8423, which was published in the **Federal Register** Wednesday, July 29, 1992 (57 FR 33442), relating to the taxation of tax-exempt organizations' unrelated business taxable income.

EFFECTIVE DATE: July 29, 1992.

FOR FURTHER INFORMATION CONTACT: Regina L. Oldak, (202) 622-6080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction amend the regulations under section 512(b)(1) to conform to and incorporate the 1978 statutory amendment regarding securities loans.

Need for Correction

As published, T.D. 8423 contains an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulation (T.D. 8423), which was the subject of FR Doc. 92-17677, is corrected as follows:

1. On page 33443, column 3, § 1.512(b)-1(a)(3), line 4, the language "prior to this Treasury decision remain" is corrected to read "prior to August 30, 1991, remain".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92-22230 Filed 9-14-92; 8:45 am]

BILLING CODE 4830-01-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2676

Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal—Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the

PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of October 1992.

EFFECTIVE DATE: October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006; 202-778-8820 (202-778-1958) for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (See 5 U.S.C. 553 (b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans and pensions.

In consideration of the foregoing, part 2676 of subchapter H of chapter XXVI of title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following new entry:

§ 2676.15 Interest.

* * * * *

(c) *Interest Rates.*

For valuation dates occurring in the month:	The values for i_k are:															
	i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i_u
*		*			*		*		*			*			*	
October 1992...	.06375	.0625	.06125	.06	.05875	.0575	.0575	.0575	.0575	.0575	.05625	.05625	.05625	.05625	.05625	.055

Issued at Washington, DC, on this 8th day of September 1992.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 92-22258 Filed 9-14-92; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 413, 414, and 415

[BPD-712-CN]

RIN 0938-AE91

Medicare Program; Fee Schedule for Physicians' Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction of final rule.

SUMMARY: In the November 25, 1991 final rule (56 FR 59624) on the Medicare fee schedule for physician services, we inadvertently set forth regulations on the fee schedule at 42 CFR, part 415. However, our plan for the recodification of HCFA regulations calls for general regulations on payment for Part B medical and other health services to be codified in part 414, with part 415 reserved for regulations on payment to teaching physicians, teaching hospitals, and provider-based physicians. Therefore, in this correction notice, we are redesignating in their entirety the physician fee schedule regulations contained in part 415, subpart A to part 414, subpart A, and reserving part 415 for future use.

Also, this document corrects technical errors that appeared in the final rule published in the **Federal Register** on November 25, 1991 (56 FR 59502) entitled "Medicare Program; Fee Schedule for Physicians' Services".

EFFECTIVE DATE: January 1, 1992.

FOR FURTHER INFORMATION CONTACT: Nancy Miller, (410) 966-4494.

SUPPLEMENTARY INFORMATION: In **Federal Register** Document 91-27785, beginning on page 59502, published November 25, 1991, make the following corrections:

Preamble

A. Page 59507

In column 1, paragraph g., the parenthetical reference "(§ 415.60)" is removed from the first sentence. Immediately following the parenthetical statement at the end of the first sentence, two new sentences are added to read: "We will address in a future FR document the coverage of psychological testing services furnished by CPs and CSWs. Until that document is published, we will continue our present policy of covering psychological testing if the service is furnished by a physician (including incident-to services) or by a qualified psychologist (whether or not a clinical psychologist)."

B. Page 59508

In column 2, section C.1., in the second paragraph the first sentence is corrected to read: "The work RVUs, along with the RVUs for practice expense, malpractice, and technical components, are considered to be 'initial' RVUs."

C. Page 59515

In column 2, paragraph (2), the third through fifth sentences are corrected to read: "We have added 0.01804 work RVUs, 0.00531 practice expense RVUs, and 0.00032 malpractice RVUs or approximately $0.73 per service to the office visits, office consultations, and emergency visit codes to reflect the work in EKG interpretations. We added 0.02706 work RVUs, 0.00807 practice

expense RVUs and 0.00053 malpractice RVUs or approximately $1.11 per service to the hospital visits, hospital consultations, and critical care service codes. For NF, nursing home, and home visits, we added 0.00255 work RVUs, 0.00074 practice expense RVUs, and 0.00005 malpractice RVUs or approximately $0.10 per service."

D. Page 59516, Column 2

1. The title of the table is corrected to read: "Post-Operative Percent of Total RVUs by Procedure Family for Major Surgeries".

2. The following post-operative percentages in the table are corrected to read "(Integumentary) 19"; "(Respiratory) 14"; "(Cardiovascular) 7"; "(Digestive) 10"; "(Urinary) 9"; "(Male Genital) 10"; "(Female Genital) 14"; "(Maternity) 23"; "(Nervous) 13"; and "(Auditory) 14".

3. Immediately following the table, a new sentence is added to read "All minor surgeries with a global surgical period including 10 post-operative days (that is, minor surgeries identified in ADDENDUM B with a global fee period of 010) have a post-operative RVU percentage of 10."

E. Page 59517

In column 2, paragraph 4, is corrected to read:

4. New Physician/Practitioner Adjustment

We will phase-in increases to the fee schedule payment (or prevailing charge, if applicable) for physicians, independently practicing PTs and OTs, and all other health care practitioners, who are in their first through fourth years of practice if certain conditions are met (§ 414.42).

a. *Exceptions.* As specified in the statute, we will not apply the new physician/practitioner adjustment to primary care services or to services furnished in a rural area (as defined in section 1886(d)(2)(D) of the Act) that is designated, under section 332(a)(1)(A) of the Public Health Service Act, as a Health Professional Shortage Area (HPSA).

b. *Years of practice.* The "first year of practice" will be the first full CY during the first 6 months of which the physician, independently practicing PT or OT, or other health care practitioner furnishes professional services for which payment may be made under Part B plus any portion of the prior CY if that prior year does not meet the first 6 months test (§ 414.42(c)). The second, third and fourth years of practice will be the first, second and third CYs, respectively, following the first year of practice. These reductions will apply to each physician/practitioner based on his or her status as a "new physician/practitioner", regardless of whether the new physician/practitioner is a member of a uniform charge structure group practice.

c. *Amounts of adjustments.* The payment for the service of a new physician, PT, OT, or other health care practitioner will be 80 percent of the fee schedule amount or prevailing charge in the first year of practice, 85 percent in the second year, 90 percent in the third year, and 95 percent in the fourth year (§ 414.42(d)). These percentages are specified in the statute.

F. Page 59525

In column 2, in the third paragraph, "90784" is corrected to read "90788".

G. Page 59580

In column 2, the sixth paragraph is corrected to read "Taking all these factors into account and using these assumptions, we set forth a conversion factor of $26.873 in the proposed rule."

H. Page 59581

In column 2, in the first and second sentences "nursing assessments" is corrected to read "nursing facility assessments."

I. Page 59587

In column 2, the first "*Comment:*" is corrected to read "A commenter stated 'the PPS experience argues against the need for a prospective behavioral offset to physician payments. The PPS experience suggests that Congress is likely to correct misestimates that lead to overpayment of physicians under the RBRVS, * * *.'."

J. Page 59588

In column 2, line 29, "one-third" is corrected to read "30 percent".

K. Page 59603, Column 2

1. The table is corrected to read:

(Note: Corrected Post-operative percentage figures are followed by an asterisk; under Family, Cardiovascular (with accompanying code and percentage) is added to correct an omission in the original publication.)

POST-OPERATIVE PERCENT OF TOTAL RVUS BY PROCEDURE FAMILY FOR MAJOR SURGERIES

Family	Procedure codes	Post-operative percentage
Integumentary	10000–19499	19*
Musculoskeletal	20000–29909	21
Respiratory	30000–32999	14*
Cardiovascular	33010–37799	7
Hemic and lymphatic	38100–38999	7*
Mediastinum	39000–39599	7
Digestive	40490–49999	10*
Urinary	50010–53899	9*
Male genital	54000–55980	10*
Female genital	56000–58999	14*
Maternity	59000–59899	23*
Endocrine	60000–60699	9
Nervous	61000–64999	13*
Eye	65091–68899	20
Auditory	69000–69979	14*

2. Following the table, a new sentence is added to read "All minor surgeries with a global surgical period including 10 post-operative days (that is, minor surgeries identified in ADDENDUM B with a global fee period of 010) have a post-operative RVU percentage of 10."

Regulations

A. Page 59624

1. In column 3, amendatory instruction C. is corrected to read as follows: "C. part 414 is amended by adding a new subpart A to read as follows:"

2. Beginning in column 3, subpart A of part 415, consisting of §§ 415.1 through 415.60, is correctly designated as subpart A of part 414, consisting of §§ 414.1 through 414.60, and the internal references in the regulations that follow are corrected in the following places:

Redesignated section	Old	New
414.2(2)	415.36	414.36
414.24(c)(2)	415.2	414.2
414.26(a)(1)	415.22(a)	414.22(a)
414.26(a)(2)	415.22(b)	414.22(b)
414.26(a)(3)	415.22(c)	414.22(c)
414.28(a)	415.30	414.30
414.28(b)	415.30	414.30
414.38(c)	415.36	414.36
414.38(d)	415.36	414.36
414.46(b)(1)	415.20	414.20
414.46(f)(1)	415.20	414.20
414.58(a)	415.1	414.1
	415.48	414.48
414.60	415.44(d)	414.44(d)

PART 415—[AMENDED]

B. Page 59625

1. In column 1, the heading "Subpart B-[Reserved]" is removed.

PART 414—[AMENDED]

2. In column 1, the authority that appears above subpart A is revised to read as follows:

"Authority: Secs. 1102, 1832, 1833, 1834, 1842, 1848, 1861(b) and (s), 1862, 1866, 1871, and 1881 of the Social Security Act as amended (42 U.S.C. 1302, 1395k, 1395l, 1395m, 1395u, 1395w-4, 1395x (b) and (s), 1395y, 1395cc, 1395hh, and 1395rr)."

3. In column 2, in newly redesignated § 414.22(a)(2), the reverence to newly redesignated "§ 414.44" is corrected to read "§ 414.46."

C. Page 59627

1. In column 1, newly redesignated § 414.38(b), "intrathecal, intravenous," is corrected to read "all intrathecal injections and in intravenous".

2. In column 2, newly redesignated § 414.42 is corrected to read as follows:

(a) *General rule.* Except as specified in paragraph (b) of this section, the fee schedule payment amount or prevailing charge must be phased in as specified in paragraph (d) of this section for physicians, physical therapists (PTs), occupational therapists (OTs), and all other health care practitioners who are in their first through fourth years of practice.

(b) Exception. The reduction required in paragraph (d) of this section does not apply to primary care services or to services furnished in a rural area as defined in section 1886(d)(2)(D) of the Act that is designated under section 332(a)(1)(A) of the Public Health Service Act as a Health Professional Shortage Area.

(c) *Definition of years of practice.* (1) The "first year of practice" is the first full CY during the first 6 months of which the physician, PT, OT, or other health care practitioner furnishes professional services for which payment may be made under Medicare Part B, plus any portion of the prior CY if that prior year does not meet the first 6 months test.

(2) The "second, third, and fourth years of practice" are the first, second, and third CYs following the first year of practice, respectively.

(d) *Amounts of adjustment.* The fee schedule payment for the service of a new physician, PT, OT, or other health care practitioner is limited to the following percentages for each of the indicated years:

(1) First year—80 percent
(2) Second year—85 percent
(3) Third year—90 percent
(4) Fourth year—95 percent

D. Page 59629

In column 2, newly redesignated § 414.56(b), "exceed the" is corrected to read "exceed 85 percent of the".

Addendum B

A. Page 59633

In item 10, "of days" is corrected to read "of post-operative days".

B. Page 59634

At the beginning of the page, add the following: "MMM=The code describes a service furnished in uncomplicated maternity cases including antepartum care, delivery, and postpartum care. The usual global surgical concept does not apply. See page 309 of the 1992 *Physicians' Current Procedural Terminology* for specific definitions."

C. Pages 59635 Through 59784

Global Fee indicators, status indicators, and relative value units for services are corrected to read as follows:

Note: Corrected values are followed by an asterisk.

ADDENDUM B CORRECTIONS

[Relative Value Units (RVUs) and Related Information]

HCPCS [1]	MOD	Status	Work RVUs	Practice expense RVUs	Malpractice RVUs	Total RVUs	Global fee period
11043		A	2.12	1.90	0.35	4.37	010*
11044		A	2.61	2.97	0.52	6.10	010*
11400		A	0.91	0.57	0.05	1.53	010*
11922		N	0.00	0.00	0.00	0.00	XXX*
15999		C	0.00	0.00	0.00	0.00	YYY*
17304		A	5.84	4.23	0.32	10.39	010*
17999		C	0.00	0.00	0.00	0.00	YYY*
19030		A	1.62	0.52	0.04	2.18	000*
19340		A	6.67	11.48	2.17	20.32	000*
19499		C	0.00	0.00	0.00	0.00	YYY*
20500		A	1.24	0.37	0.04	1.65	010*
20501		A	0.80	0.31	0.02	1.13	000*
20650		A	2.18	1.13	0.14	3.45	010*
21116		A	0.85	0.77	0.06	1.68	000*
22840		A	13.22	23.92	3.83	40.97	000*
22842		A	15.19	26.18	4.23	45.60	000*
22845		A	13.16	20.10	3.45	36.71	000*
23350		A	1.05	0.58	0.05	1.68	000*
24220		A	1.36	0.55	0.05	1.96	000*
25246		A	1.53	0.54	0.05	2.12	000*
27093		A	1.37	0.86	0.11	2.34	000*
27095		A	1.58	0.98	0.13	2.69	000*
27370		A	1.01	0.64	0.05	1.70	000*
30800		D	0.00	0.00	0.00	0.00	XXX*
30801		A	1.07	0.50	0.05	1.62	010*
30805		D	0.00	0.00	0.00	0.00	XXX*
30820		D	0.00	0.00	0.00	0.00	XXX*
31071		A	5.04	4.20	0.22	9.46	000*
31708		A	1.49	0.81	0.09	2.39	000*
31715		A	1.16	0.90	0.08	2.14	000*
33960		C	0.00	0.00	0.00	0.00	YYY*
33972		A	2.14	0.67	0.07	2.88	XXX*
35450		A	10.61	14.15	1.46	26.22	000*
35452		A	7.28	4.59	0.65	12.52	000*
35454		A	6.37	9.79	1.62	17.78	000*
35456		A	7.75	10.96	1.78	20.49	000*
35458		A	10.01	10.67	1.92	22.60	000*
36000		A	0.19	0.50	0.04	0.73	XXX*

ADDENDUM B CORRECTIONS—Continued

[Relative Value Units (RVUs) and Related Information]

HCPCS [1]	MOD	Status	Work RVUs	Practice expense RVUs	Malpractice RVUs	Total RVUs	Global fee period
36010		A	2.56	2.22	0.32	5.10	XXX*
36011		A	2.65	2.01	0.23	4.89	XXX*
36012		A	3.71	2.82	0.33	6.86	XXX*
36013		A	2.65	2.01	0.23	4.89	XXX*
36014		A	3.18	2.41	0.28	5.87	XXX*
36015		A	3.71	2.82	0.33	6.86	XXX*
36100		A	3.18	2.73	0.33	6.24	XXX*
36120		A	2.12	2.45	0.31	4.88	XXX*
36140		A	2.12	1.49	0.25	3.86	XXX*
36145		A	2.12	3.46	0.52	6.10	XXX*
36160		A	2.65	2.45	0.36	5.46	XXX*
36200		A	3.18	2.88	0.29	6.35	XXX*
36215		A	4.71	1.88	0.19	6.78	XXX*
36216		A	5.57	3.48	0.28	9.33	XXX*
36217		A	6.63	4.14	0.33	11.10	XXX*
36218		A	1.06	0.66	0.05	1.77	XXX*
36230		A	5.01	3.28	0.27	8.56	XXX*
36245		A	5.35	1.73	0.16	7.24	XXX*
36246		A	5.57	3.48	0.28	9.33	XXX*
36247		A	6.63	4.14	0.33	11.10	XXX*
36248		A	1.06	0.66	0.05	1.77	YYY*
36299		C	0.00	0.00	0.00	0.00	XXX*
36400		A	0.19	0.09	0.01	0.29	XXX*
36405		A	0.19	0.47	0.03	0.69	XXX*
36406		A	0.19	0.16	0.01	0.36	XXX*
36410		A	0.19	0.23	0.02	0.44	XXX*
36420		A	1.06	0.55	0.05	1.66	XXX*
36425		A	0.80	0.08	0.01	0.89	XXX*
36440		A	1.08	0.99	0.07	2.14	XXX*
36450		A	2.35	1.97	0.19	4.51	XXX*
36455		A	2.56	2.40	0.23	5.19	XXX*
36460		C	0.00	0.00	0.00	0.00	XXX*
36488		A	1.42	1.02	0.14	2.58	000*
36489		A	1.29	1.17	0.18	2.64	000*
36490		A	1.76	1.46	0.21	3.43	000*
36491		A	1.51	1.80	0.33	3.64	000*
36493		A	1.28	0.67	0.16	2.11	000*
36500		A	3.71	0.08	0.01	3.80	000*
36510		A	1.14	0.35	0.02	1.51	000*
36520		A	1.76	1.94	0.12	3.82	000*
36600		A	0.33	0.29	0.02	0.64	XXX*
36620		A	1.21	0.70	0.14	2.05	000*
36625		A	2.22	0.91	0.19	3.32	000*
36640		A	2.21	2.45	0.42	5.08	000*
36660		A	1.48	1.29	0.11	2.88	000*
36680		A	1.27	1.07	0.10	2.44	000*
36800		A	2.56	2.34	0.29	5.19	000*
36810		A	4.18	5.10	0.78	10.06	000*
36815		A	2.76	3.82	0.74	7.32	000*
36820		A	4.78	7.07	1.45	13.30	000*
37200		A	4.80	1.68	0.13	6.61	000*
37201		A	7.64	5.79	0.68	14.11	000*
37202		A	5.99	4.54	0.53	11.06	000*
37203		A	5.31	4.02	0.47	9.80	000*
37204		A	19.11	14.49	1.69	35.29	000*
38200		A	2.79	1.8	0.15	4.74	000*
38230		A	3.33	2.93	0.22	6.48	010*
38240		A	2.36	2.19	0.14	4.69	XXX*
38241		A	2.36	2.15	0.13	4.64	XXX*
38790		A	1.36	2.48	0.20	4.04	000*
40806		A	0.32	0.37	0.03	0.72	000*
42550		A	1.32	0.46	0.04	1.82	000*
47500		A	2.07	1.59	0.14	3.80	000*
47510		A	6.37	3.02	0.26	9.65	090*
47511		A	7.43	4.63	0.37	12.43	090*
50390		A	3.42	1.78	0.15	5.35	000*
50392		A	4.25	2.49	0.21	6.95	000*
50393		A	4.79	3.17	0.27	8.23	000*
50394		A	2.17	0.59	0.05	2.81	000*
50395		A	5.43	3.51	0.30	9.24	000*
50396		A	2.20	1.53	0.14	3.87	000*
50398		A	1.54	0.57	0.05	2.16	000*
50684		A	0.8	0.52	0.05	1.37	000*
50686		A	1.59	0.38	0.04	2.01	000*
50690		A	1.22	0.33	0.03	1.58	000*
51600		A	0.93	0.29	0.03	1.25	000*

ADDENDUM B CORRECTIONS—Continued

[Relative Value Units (RVUs) and Related Information]

HCPCS [1]	MOD	Status	Work RVUs	Practice expense RVUs	Malpractice RVUs	Total RVUs	Global fee period
51605		A	1.18	0.31	0.03	1.52	000 *
51610		A	1.68	0.26	0.02	1.96	000 *
51700		A	0.93	0.23	0.02	1.18	000 *
51705		A	1.04	0.39	0.04	1.47	010 *
51710		A	1.54	0.61	0.06	2.21	010 *
51720		A	2.07	0.48	0.05	2.60	000 *
51725		A	1.59	1.06	0.11	2.76	000 *
51725	26	A	1.59	0.67	0.07	2.33	000 *
51725	TC	A	0.00	0.39	0.04	0.43	000 *
51726		A	1.80	1.36 *	0.13 *	3.29 *	000 *
51726	26	A	1.80	0.85	0.08	2.73	000 *
51726	TC	A	0.00	0.51 *	0.05 *	0.56 *	000 *
51736		A	0.86	0.42 *	0.04 *	1.34 *	000 *
51736	26	A	0.86	0.27	0.03	1.16	000 *
51736	TC	A	0.00	0.15 *	0.01 *	0.16 *	000 *
51739		A	0.97	0.84 *	0.08 *	1.89 *	000 *
51739	26	A	0.97	0.69	0.07	1.73	000 *
51739	TC	A	0.00	0.15 *	0.01 *	0.16 *	000 *
51741		A	1.66	0.58 *	0.06 *	2.30 *	000 *
51741	26	A	1.66	0.36	0.04	2.06	000 *
51741	TC	A	0.00	0.22 *	0.02 *	0.24 *	000 *
51772		A	1.70	1.00 *	0.11 *	2.81 *	000 *
51772	26	A	1.70	0.56	0.06	2.32	000 *
51772	TC	A	0.00	0.44 *	0.05 *	0.49 *	000 *
51785		A	1.62	1.1	0.11	2.83	000 *
51785	26	A	1.62	0.69	0.07	2.38	000 *
51785	TC	A	0.00	0.41	0.04	0.45	000 *
51792		A	1.15	2.04 *	0.20 *	3.39 *	000 *
51792	26	A	1.15	0.63	0.06	1.84	000 *
51792	TC	A	0.00	1.41 *	0.14 *	1.55 *	000 *
51795		A	1.61	1.53 *	0.16 *	3.30 *	000 *
51795	26	A	1.61	0.61	0.06	2.28	000 *
51795	TC	A	0.00	0.92 *	0.10 *	1.02 *	000 *
51797		A	1.69	1.02 *	0.10 *	2.81 *	000 *
51797	26	A	1.69	0.55	0.05	2.29	000 *
51797	TC	A	0.00	0.47 *	0.05 *	0.52 *	000 *
53670		A	0.53	0.23	0.02	0.78	000 *
53675		A	1.55	0.50	0.05	2.10	000 *
53800		X *	0.00	0.00	0.00	0.00	000 *
54220		A	3.35	1.67	0.17	5.19	010 *
54230		A	1.41	1.41	0.13	2.95	000 *
54240		A	2.30	1.06 *	0.12	3.48 *	000
54240	26	A	2.30	0.55	0.06	2.91	000
54240	TC	A	0.00	0.51 *	0.06	0.57 *	000
54250		A	2.34	0.85 *	0.08	3.27 *	000
54250	26	A	2.34	0.54	0.05	2.93	000
54250	TC	A	0.00	0.31 *	0.03	0.34 *	000
56720		A	0.72	0.51	0.11	1.34	000 *
57150		A	0.99	0.20	0.04	1.23	000 *
57160		A	0.94	0.26	0.05	1.25	000 *
58340		A	0.84	0.61	0.08	1.53	000 *
59020		A	0.70	1.52 *	0.30 *	2.52 *	000
59020	26	A	0.70	0.98	0.20	1.88	000
59020	TC	A	0.00	0.54 *	0.10 *	0.64 *	000
59025		A	0.57	0.64	0.12 *	1.33 *	000
59025	26	A	0.57	0.41	0.08	1.06	000
59025	TC	A	0.00	0.23	0.04 *	0.27 *	000
59050		A	1.63	0.85	0.15	2.63	XXX *
59412		A	1.80	1.29	0.30	3.39	MMM *
59525		A	6.90	4.01	0.93	11.84	MMM *
61624		A	21.23	16.1	1.88	39.21	000 *
61626		A	17.51	13.28	1.55	32.34	000 *
61795		A	4.25	3.09	0.6	7.94	000 *
62274		A	1.81	0.78	0.18	2.57	000 *
62275		A	1.88	0.63	0.2	2.71	000 *
62276		A	2.15	1.3	0.24	3.69	000 *
62277		A	2.07	0.88	0.24	3.19	000 *
62278		A	1.59	1.03	0.27	2.89	000 *
62279		A	1.67	0.86	0.25	2.78	000 *
62284		A	1.63	2.36	0.35	4.34	000 *
62290		A	3.77	1.95	0.25	5.97	000 *
62291		A	3.07	1.87	0.41	5.35	000 *
64550		A	0.19	0.46	0.04	0.69	000 *
64872		C	0.00	0.00	0.00	0.00	YYY *
64874		C	0.00	0.00	0.00	0.00	YYY *
64876		C	0.00	0.00	0.00	0.00	YYY *

ADDENDUM B CORRECTIONS—Continued

[Relative Value Units (RVUs) and Related Information]

HCPCS [1]	MOD	Status	Work RVUs	Practice expense RVUs	Malpractice RVUs	Total RVUs	Global fee period
64885		A	17.63	13.37	1.56	32.56	090 *
64886		A	21.03	15.94	1.66	38.63	090 *
67345		A	2.32	1.94	0.10	4.36	010 *
67820		A	0.94	0.39	0.02	1.35	000 *
68040		A	0.89	0.47	0.02	1.38	000 *
68550		A	13.34	11.95	0.78	26.07	090 *
69200		A	0.81	0.44	0.04	1.29	000 *
69220		A	0.87	0.53	0.05	1.45	000 *
69400		A	0.87	0.47	0.05	1.39	000 *
69401		A	0.67	0.26	0.03	0.96	000 *
69610		A	4.62	0.98	0.10	5.70	010 *
76350		C	0.00	0.00	0.00	0.00	XXX
76350	26 *	C	0.00	0.00	0.00	0.00	XXX
76350	TC *	C	0.00	0.00	0.00	0.00	XXX
76499		C	0.00	0.00	0.00	0.00	XXX
76499	26 *	C	0.00	0.00	0.00	0.00	XXX
76499	TC *	C	0.00	0.00	0.00	0.00	XXX
76999		C	0.00	0.00	0.00	0.00	XXX
76999	26 *	C	0.00	0.00	0.00	0.00	XXX
76999	TC *	C	0.00	0.00	0.00	0.00	XXX
77299		C	0.00	0.00	0.00	0.00	XXX
77299	26 *	C	0.00	0.00	0.00	0.00	XXX
77299	TC *	C	0.00	0.00	0.00	0.00	XXX
77399		C	0.00	0.00	0.00	0.00	XXX
77399	26 *	C	0.00	0.00	0.00	0.00	XXX
77399	TC *	C	0.00	0.00	0.00	0.00	XXX
77499		C	0.00	0.00	0.00	0.00	XXX
77499	26 *	C	0.00	0.00	0.00	0.00	XXX
77499	TC *	C	0.00	0.00	0.00	0.00	XXX
77778		A	11.03 *	10.06	1.03	22.14 *	XXX
77778	26	A	11.03 *	4.94	0.71	16.68 *	XXX
77778	TC	A	0.00	5.14	0.32	5.46	XXX
77799		C	0.00	0.00	0.00	0.00	XXX
77799	26 *	C	0.00	0.00	0.00	0.00	XXX
77799	TC *	C	0.00	0.00	0.00	0.00	XXX
78099		C	0.00	0.00	0.00	0.00	XXX
78099	26 *	C	0.00	0.00	0.00	0.00	XXX
78099	TC *	C	0.00	0.00	0.00	0.00	XXX
78199		C	0.00	0.00	0.00	0.00	XXX
78199	26 *	C	0.00	0.00	0.00	0.00	XXX
78199	TC *	C	0.00	0.00	0.00	0.00	XXX
78299		C	0.00	0.00	0.00	0.00	XXX
78299	26 *	C	0.00	0.00	0.00	0.00	XXX
78299	TC *	C	0.00	0.00	0.00	0.00	XXX
78399		C	0.00	0.00	0.00	0.00	XXX
78399	26 *	C	0.00	0.00	0.00	0.00	XXX
78399	TC *	C	0.00	0.00	0.00	0.00	XXX
78499		C	0.00	0.00	0.00	0.00	XXX
78499	26 *	C	0.00	0.00	0.00	0.00	XXX
78499	TC *	C	0.00	0.00	0.00	0.00	XXX
78599		C	0.00	0.00	0.00	0.00	XXX
78599	26 *	C	0.00	0.00	0.00	0.00	XXX
78599	TC *	C	0.00	0.00	0.00	0.00	XXX
78699		C	0.00	0.00	0.00	0.00	XXX
78699	26 *	C	0.00	0.00	0.00	0.00	XXX
78699	TC *	C	0.00	0.00	0.00	0.00	XXX
78799		C	0.00	0.00	0.00	0.00	XXX
78799	26 *	C	0.00	0.00	0.00	0.00	XXX
78799	TC *	C	0.00	0.00	0.00	0.00	XXX
78999		C	0.00	0.00	0.00	0.00	XXX
78999	26 *	C	0.00	0.00	0.00	0.00	XXX
78999	TC *	C	0.00	0.00	0.00	0.00	XXX
79999		C	0.00	0.00	0.00	0.00	XXX
79999	26 *	C	0.00	0.00	0.00	0.00	XXX
79999	TC *	C	0.00	0.00	0.00	0.00	XXX
85060		A *	0.48	0.23	0.02	0.73	XXX
88199		C	0.00	0.00	0.00	0.00	XXX
88199	26 *	C	0.00	0.00	0.00	0.00	XXX
88199	TC *	C	0.00	0.00	0.00	0.00	XXX
88399		C	0.00	0.00	0.00	0.00	XXX
88399	26 *	C	0.00	0.00	0.00	0.00	XXX
88399	TC *	C	0.00	0.00	0.00	0.00	XXX
89399		C	0.00	0.00	0.00	0.00	XXX
89399	26 *	C	0.00	0.00	0.00	0.00	XXX
89399	TC *	C	0.00	0.00	0.00	0.00	XXX
90841		B *	0.00	0.00	0.00	0.00	XXX

ADDENDUM B CORRECTIONS—Continued

[Relative Value Units (RVUs) and Related Information]

HCPCS [1]	MOD	Status	Work RVUs	Practice expense RVUs	Malpractice RVUs	Total RVUs	Global fee period
90870		A	1.91	0.57	0.06	2.56	000 *
90871		A	2.87	0.87	0.13	3.87	000 *
90899		C *	0.00	0.00	0.00	0.00	XXX
90900		A	0.94	0.95	0.08	1.97	000 *
90902		A	0.94	0.67	0.05	1.66	000 *
90904		A	0.94	0.60	0.08	1.62	000 *
90906		A	0.94	1.69	0.11	2.74	000 *
90908		A	0.94	0.91	0.06	1.91	000 *
90910		A	0.94	0.71	0.10	1.75	000 *
90915		A	0.94	0.80	0.06	1.80	000 *
90935		A	0.94	1.52	0.10	2.56	000 *
90937		A	2.18	3.01	0.19	5.38	000 *
90945		A	0.92	1.29	0.08	2.29	000 *
90947		A	2.00	2.14	0.14	4.28	000 *
90997		A	1.93	2.59	0.16	4.68	000 *
91010		A	1.74	2.40 *	0.17	4.31 *	000
91010	26	A	1.74	1.58	0.11	3.43	000
91010	TC	A	0.00	0.82 *	0.06	0.88 *	000
91011		A	2.09	2.80 *	0.18 *	5.07 *	000
91011	26	A	2.09	1.77	0.11	3.97	000
91011	TC	A	0.00	1.03 *	0.07 *	1.10 *	000
91012		A	2.03	3.28	0.23 *	5.54 *	000
91012	26	A	2.03	2.13	0.15	4.31	000
91012	TC	A	0.00	1.15	0.08 *	1.23 *	000
91020		A	2.00	2.63 *	0.18 *	4.81 *	000
91020	26	A	2.00	1.86	0.12	3.98	000
91020	TC	A	0.00	0.77 *	0.06 *	0.83 *	000
91030		A	1.27	0.58 *	0.05	1.90 *	000
91030	26	A	1.27	0.36	0.03	1.66	000
91030	TC	A	0.00	0.22 *	0.02	0.24 *	000
91032		A	1.68	2.07 *	0.16 *	3.91 *	000
91032	26	A	1.68	1.32	0.10	3.10	000
91032	TC	A	0.00	0.75 *	0.06 *	0.81 *	000
91033		A	1.80	3.13 *	0.25 *	5.18 *	000
91033	26	A	1.80	1.78	0.14	3.72	000
91033	TC	A	0.00	1.35 *	0.11 *	1.46 *	000
91052		A	1.80	0.87 *	0.07 *	2.74 *	000
91052	26	A	1.80	0.54	0.04	2.38	000
91052	TC	A	0.00	0.33 *	0.03 *	0.36 *	000
91055		A	1.35	0.85 *	0.06 *	2.26 *	000
91055	26	A	1.35	0.55	0.04	1.94	000
91055	TC	A	0.00	0.30 *	0.02 *	0.32 *	000
91065		A	0.47	0.87 *	0.05	1.39 *	000
91065	26	A	0.47	0.52	0.03	1.02	000
91065	TC	A	0.00	0.35 *	0.02	0.37 *	000
91122		A	1.86	1.82 *	0.22	3.90 *	000
91122	26	A	1.86	1.11	0.13	3.10	000
91122	TC	A	0.00	0.71 *	0.09	0.80 *	000
91299		C	0.00	0.00	0.00	0.00	XXX
91299	26 *	C	0.00	0.00	0.00	0.00	XXX
91299	TC *	C	0.00	0.00	0.00	0.00	XXX
92499		C	0.00	0.00	0.00	0.00	XXX
92499	26 *	C	0.00	0.00	0.00	0.00	XXX
92499	TC *	C	0.00	0.00	0.00	0.00	XXX
92541		A	0.42	0.71 *	0.07 *	1.20 *	XXX
92541	26	A	0.42	0.48	0.05	0.95	XXX
92541	TC	A	0.00	0.23 *	0.02 *	0.25 *	XXX
92542		A	0.34	0.63 *	0.07 *	1.04 *	XXX
92542	26	A	0.34	0.37	0.04	0.75	XXX
92542	TC	A	0.00	0.26 *	0.03 *	0.29 *	XXX
92543		A	0.39	0.86 *	0.09 *	1.34 *	XXX
92543	26	A	0.39	0.44	0.05	0.88	XXX
92543	TC	A	0.00	0.42 *	0.04 *	0.46 *	XXX
92544		A	0.27	0.49 *	0.05 *	0.81 *	XXX
92544	26	A	0.27	0.28	0.03	0.58	XXX
92544	TC	A	0.00	0.21 *	0.02 *	0.23 *	XXX
92545		A	0.24	0.42 *	0.04 *	0.70 *	XXX
92545	26	A	0.24	0.21	0.02	0.47	XXX
92545	TC	A	0.00	0.21 *	0.02 *	0.23 *	XXX
92546		A	0.30	0.55 *	0.05 *	0.90 *	XXX
92546	26	A	0.30	0.31	0.03	0.64	XXX
92546	TC	A	0.00	0.24 *	0.02 *	0.26 *	XXX
92599		C	0.00	0.00	0.00	0.00	XXX
92599	26 *	C	0.00	0.00	0.00	0.00	XXX
92599	TC*	C	0.00	0.00	0.00	0.00	XXX
92986		A	21.44	12.68	0.95	35.07	090*

ADDENDUM B CORRECTIONS—Continued

[Relative Value Units (RVUs) and Related Information]

HCPCS [a]	MOD	Status	Work RVUs	Practice expense RVUs	Malpractice RVUs	Total RVUs	Global fee period
92990		A	17.1	10.11	0.75	27.96	090*
93012		A	0.00	0.26*	0.02	0.29	XXX
93015		A	0.47	2.50*	0.18	3.15*	XXX
93017		A	0.00	1.69*	0.12	1.81*	XXX
93018		A	0.47	0.81	0.06	1.34	XXX
93024		A	1.23	2.90*	0.23*	4.36*	XXX
93024	26	A	1.23	1.78	0.14	3.15	XXX
93024	TC	A	0.00	1.12*	0.09*	1.21*	XXX
93201		A	0.44	1.08*	0.09*	1.61*	XXX
93202		A	0.00	0.79*	0.07*	0.86*	XXX
93204		A	0.44	0.29	0.02	0.75	XXX
93205		A	0.49	0.93	0.07	1.49*	XXX
93206		A	0.00	0.34*	0.03	0.37*	XXX
93209		A	0.49	0.59	0.04	1.12	XXX
93210		A	0.97	1.82*	0.13*	2.92*	XXX
93210	26	A	0.97	0.66	0.06	1.89	XXX
93210	TC	A	0.00	0.96*	0.07*	1.03*	XXX
93220		A	0.27	1.09*	0.07*	1.43*	XXX
93221		A	0.00	0.62*	0.04*	0.66*	XXX
93222		A	0.27	0.47	0.03	0.77	XXX
93224		A	0.56	4.35*	0.31*	5.22*	XXX
93225		A	0.00	1.24*	0.09	1.33*	XXX
93226		A	0.00	2.19*	0.16*	2.35*	XXX
93227		A	0.56	0.92	0.06	1.54	XXX
93230		A	0.56	4.84*	0.34*	5.74*	XXX
93231		A	0.00	1.53*	0.11*	1.64*	XXX
93232		A	0.00	2.18*	0.15*	2.33*	XXX
93233		A	0.56	1.13	0.08	1.77	XXX
93235		A	0.47	3.59*	0.24*	4.30*	XXX
93236		A	0.00	2.63*	0.18*	2.81*	XXX
93237		A	0.47	0.95	0.06	1.49	XXX
93268		A	0.36	0.84*	0.07*	1.27*	XXX
93268	26	A	0.36	0.38	0.03	0.77	XXX
93268	TC	A	0.00	0.46*	0.04*	0.50*	XXX
93278		A	0.36	1.94*	0.18*	2.48*	XXX
93278	26	A	0.36	0.79	0.06	1.21	XXX
93278	TC	A	0.00	1.15*	0.12*	1.27*	XXX
93280		A	0.45	0.91*	0.07	1.43*	XXX
93280	26	A	0.45	0.51	0.04	1.00	XXX
93280	TC	A	0.00	0.40*	0.03	0.43*	XXX
93307		A	0.41	5.13*	0.37	5.91*	XXX
93307	26	A	0.41	1.25	0.09	1.75	XXX
93307	TC	A	0.00	3.88*	0.28	4.16*	XXX
93308		A	0.15	2.66*	0.19*	3.00*	XXX
93308	26	A	0.15	0.72	0.05	0.92	XXX
93308	TC	A	0.00	1.94*	0.14*	2.08*	XXX
93312		A	0.53	5.23*	0.46*	6.22*	XXX
93312	26	A	0.53	1.43	0.12	2.08	XXX
93312	TC	A	0.00	3.80*	0.34*	4.14*	XXX
93320		A	0.39	2.45*	0.18	3.02*	XXX
93320	26	A	0.39	0.73	0.05	1.17	XXX
93320	TC	A	0.00	1.72*	0.13	1.85*	XXX
93321		A	0.15	1.40*	0.11*	1.66*	XXX
93321	26	A	0.15	0.29	0.02	0.46	XXX
93321	TC	A	0.00	1.11*	0.09*	1.20*	XXX
93350		A	1.20	4.30*	0.33*	5.83*	XXX
93350	26	A	1.20	0.64	0.06	2.10	XXX
93350	TC	A	0.00	3.46*	0.27*	3.73*	XXX
93501		A	3.18	20.78*	1.62*	25.58*	000
93501	26	A	3.18	3.81	0.35	7.34	000
93501	TC	A	0.00	16.97*	1.27*	18.24*	000
93505		A	4.80	5.19*	0.48*	10.47*	000
93505	26	A	4.80	3.19	0.29	8.26	000
93505	TC	A	0.00	2.00*	0.19*	2.19*	000
93510		A	4.51	40.40*	3.01*	47.92*	000
93510	26	A	4.51	4.26	0.31	9.08	000
93510	TC	A	0.00	36.14*	2.70*	38.84*	000
93511		A	5.31	38.90*	2.91*	47.12*	000
93511	26	A	5.31	2.76	0.21	8.28	000
93511	TC	A	0.00	36.14*	2.70*	38.84*	000
93514		A	7.43	40.93*	3.09*	51.45*	000
93514	26	A	7.43	4.79	0.39	12.61	000
93514	TC	A	0.00	36.14*	2.70*	38.84*	000
93524		A	7.32	52.11*	3.88*	63.31*	000
93524	26	A	7.32	4.90	0.35	12.57	000
93524	TC	A	0.00	47.21*	3.53*	50.74*	000

ADDENDUM B CORRECTIONS—Continued

[Relative Value Units (RVUs) and Related Information]

HCPCS [1]	MOD	Status	Work RVUs	Practice expense RVUs	Malpractice RVUs	Total RVUs	Global fee period
93526		A	6.23	54.31*	4.03*	64.57*	000
93526	26	A	6.23	7.10	0.50	13.83	000
93526	TC	A	0.00	47.21*	3.53*	50.74*	000
93527		A	7.67	54.74*	4.06*	66.47*	000
93527	26	A	7.67	7.53	0.53	15.73	000
93527	TC	A	0.00	47.21*	3.53*	50.74*	000
93528		A	9.48	51.88*	3.87*	65.23*	000
93528	26	A	9.48	4.67	0.34	14.49	000
93528	TC	A	0.00	47.21*	3.53*	50.74*	000
93529		A*	5.05	50.30*	3.76*	59.11*	000
93529	26	A	5.05	3.09	0.23	8.37	000
93529	TC	A	0.00	47.21*	3.53*	50.74*	000
93546		A	4.72	46.69*	3.47*	54.88*	000
93546	26	A	4.72	6.83	0.49	12.04	000
93546	TC	A	0.00	39.86*	2.98*	42.84*	000
93547		A	4.94	48.31*	3.59*	56.84*	000
93547	26	A	4.94	8.45	0.61	14.00	000
93547	TC	A	0.00	39.86*	2.98*	42.84*	000
93548		A	5.15	49.13*	3.65*	57.93*	000
93548	26	A	5.15	9.27	0.67	15.09	000
93548	TC	A	0.00	39.86*	2.98*	42.84*	000
93549		A	6.65	50.66*	3.76*	61.07*	000
93549	26	A	6.65	10.80	0.78	18.23	000
93549	TC	A	0.00	39.86*	2.98*	42.84*	000
93550		A	6.87	52.24*	3.88*	62.99*	000
93550	26	A	6.87	12.38	0.90	20.15	000
93550	TC	A	0.00	39.86*	2.98*	42.84*	000
93552		A	5.15	55.02*	4.08*	64.25*	000
93552	26	A	5.15	10.91	0.78	16.84	000
93552	TC	A	0.00	44.11*	3.30*	47.41*	000
93553		A	5.36	57.34*	4.28*	66.98*	000
93553	26	A	5.36	13.23	0.98	19.57	000
93553	TC	A	0.00	44.11*	3.30*	47.41*	000
93561		A	1.21	1.32*	0.16*	2.69*	000
93561	26	A	1.21	0.79	0.09	2.09	000
93561	TC	A	0.00	0.53*	0.07*	0.60*	000
93562		A	0.38	0.83*	0.10	1.31*	000
93562	26	A	0.38	0.52	0.06	0.96	000
93562	TC	A	0.00	0.31*	0.04	0.35*	000
93600		A	2.23	5.38*	0.39*	8.00*	000
93600	26	A	2.23	3.43	0.25	5.91	000
93600	TC	A	0.00	1.95*	0.14*	2.09*	000
93602		A	2.23	2.97*	0.22	5.42*	000
93602	26	A	2.23	1.86	0.14	4.23	000
93602	TC	A	0.00	1.11*	0.08	1.19*	000
93603		A	2.23	3.99*	0.28	6.50*	000
93603	26	A	2.23	2.30	0.16	4.69	000
93603	TC	A	0.00	1.69*	0.12	1.81*	000
93607		A	3.44	3.82*	0.28*	7.54*	000
93607	26	A	3.44	2.32	0.17	5.93	000
93607	TC	A	0.00	1.50*	0.11*	1.61*	000
93609		A	10.61	6.77*	0.49*	17.87*	000
93609	26	A	10.61	4.04	0.29	14.94	000
93609	TC	A	0.00	2.73*	0.20*	2.93*	000
93610		A	3.18	3.80*	0.28*	7.26*	000
93610	26	A	3.18	2.44	0.18	5.80	000
93610	TC	A	0.00	1.36*	0.10*	1.46*	000
93612		A	3.18	4.10*	0.30	7.58*	000
93612	26	A	3.18	2.47	0.18	5.83	000
93612	TC	A	0.00	1.63*	0.12	1.75*	000
93618		A	3.18	10.39*	0.75*	14.32*	000
93618	26	A	3.18	6.41	0.46	10.05	000
93618	TC	A	0.00	3.98*	0.29*	4.27*	000
93620		A	12.21	23.25*	1.64*	37.10*	000
93620	26	A	12.21	14.26	1.00	27.47	000
93620	TC	A	0.00	8.99*	0.64*	9.63*	000
93624		A	4.28	5.15*	0.36*	9.79	000
93624	26	A	4.28	3.15	0.22	7.65	000
93624	TC	A	0.00	2.00*	0.14*	2.14	000
93631		A	6.10	18.80*	1.96*	26.66*	000
93631	26	A	6.10	12.62	1.22	19.94	000
93631	TC	A	0.00	6.18*	0.74*	6.92*	000
93640		A	3.71	9.41*	0.67*	13.79*	000
93640	26	A	3.71	2.20	0.16	6.07	000
93640	TC	A	0.00	7.21*	0.51*	7.72*	000
93720		A	0.18	1.04*	0.10*	1.32*	XXX

ADDENDUM B CORRECTIONS—Continued

[Relative Value Units (RVUs) and Related Information]

HCPCS [1]	MOD	Status	Work RVUs	Practice expense RVUs	Malpractice RVUs	Total RVUs	Global fee period
93721		A	0.00	0.71*	0.07*	0.78*	XXX
93722		A	0.18	0.33	0.03	0.54	XXX
93731		A	0.48	0.83*	0.07*	1.38*	XXX
93731	26	A	0.48	0.33	0.03	0.84	XXX
93731	TC	A	0.00	0.50*	0.04*	0.54*	XXX
93732		A	0.69	0.96*	0.08	1.73*	XXX
93732	26	A	0.69	0.44	0.04	1.17	XXX
93732	TC	A	0.00	0.52*	0.04	0.56*	XXX
93733		A	0.48	1.01*	0.08*	1.57*	XXX
93733	26	A	0.48	0.28	0.02	0.78	XXX
93733	TC	A	0.00	0.73*	0.06*	0.79*	XXX
93734		A	0.39	0.66*	0.06	1.11*	XXX
93734	26	A	0.39	0.32	0.03	0.74	XXX
93734	TC	A	0.00	0.34*	0.03	0.37*	XXX
93735		A	0.53	0.89*	0.08	1.50*	XXX
93735	26	A	0.53	0.45	0.04	1.02	XXX
93735	TC	A	0.00	0.44*	0.04	0.48*	XXX
93736		A	0.39	0.93*	0.09*	1.41*	XXX
93736	26	A	0.39	0.29	0.03	0.71	XXX
93736	TC	A	0.00	0.64*	0.06*	0.70*	XXX
93737		A	0.47	0.78*	0.06*	1.31*	XXX
93737	26	A	0.47	0.28	0.02	0.77	XXX
93737	TC	A	0.00	0.50*	0.04*	0.54*	XXX
93738		A	0.69	0.93*	0.07	1.69*	XXX
93738	26	A	0.69	0.41	0.03	1.13	XXX
93738	TC	A	0.00	0.52*	0.04	0.56*	XXX
93740		A	0.16	0.48*	0.04	0.66*	XXX
93740	26	A	0.16	0.31	0.03	0.50	XXX
93740	TC	A	0.00	0.15*	0.01	0.16*	XXX
93760		A	0.16	1.70*	0.16*	2.02*	XXX
93760	26	A	0.16	0.56	0.05	0.77	XXX
93760	TC	A	0.00	1.14*	0.11*	1.25*	XXX
93762		A	0.16	2.05*	0.21*	2.42*	XXX
93762	26	A	0.16	0.58	0.05	0.80	XXX
93762	TC	A	0.00	1.46*	0.16*	1.62*	XXX
93770		A	0.16	0.20*	0.02	0.38*	XXX
93770	26	A	0.16	0.17	0.02	0.35	XXX
93770	TC	A	0.00	0.03*	0.00	0.03*	XXX
93799		C	0.00	0.00	0.00	0.00	XXX
93799	26*	C	0.00	0.00	0.00	0.00	XXX
93799	TC*	C	0.00	0.00	0.00	0.00	XXX
93875		A	0.23	1.68*	0.18*	2.09*	XXX
93875	26	A	0.23	0.58	0.06	0.87	XXX
93875	TC	A	0.00	1.10*	0.12*	1.22*	XXX
93880		A	0.64	3.99*	0.44*	5.07*	XXX
93880	26	A	0.64	0.48	0.05	1.17	XXX
93880	TC	A	0.00	3.51*	0.39*	3.90*	XXX
93882		A	0.31	3.75*	0.42*	4.48*	XXX
93882	26	A	0.31	0.24	0.03	0.58	XXX
93882	TC	A	0.00	3.51*	0.39*	3.90*	XXX
93886		A	0.96	4.23*	0.47*	5.66*	XXX
93886	26	A	0.96	0.72	0.08	1.76	XXX
93886	TC	A	0.00	3.51*	0.39*	3.90*	XXX
93888		A	0.47	3.87*	0.43*	4.77*	XXX
93888	26	A	0.47	0.36	0.04	0.87	XXX
93888	TC	A	0.00	3.51*	0.39*	3.90*	XXX
93920		A	0.32	3.31*	0.36*	3.99*	XXX
93920	26	A	0.32	0.68	0.07	1.07	XXX
93920	TC	A	0.00	2.63*	0.29*	2.92*	XXX
93921		A	0.42	2.62*	0.34*	3.38*	XXX
93921	26	A	0.42	0.68	0.09	1.19	XXX
93921	TC	A	0.00	1.94*	0.25*	2.19*	XXX
93925		A	0.64	3.99*	0.44*	5.07*	XXX
93925	26	A	0.64	0.48	0.05	1.17	XXX
93925	TC	A	0.00	3.51*	0.39*	3.90*	XXX
93926		A	0.31	3.75*	0.42*	4.48*	XXX
93926	26	A	0.31	0.24	0.03	0.58	XXX
93926	TC	A	0.00	3.51*	0.39*	3.90*	XXX
93930		A	0.54	3.91*	0.43*	4.88*	XXX
93930	26	A	0.54	0.40	0.04	0.98	XXX
93930	TC	A	0.00	3.51*	0.39*	3.90	XXX
93931		A	0.26	3.71*	0.41*	4.38*	XXX
93931	26	A	0.26	0.20	0.02	0.48	XXX
93931	TC	A	0.00	3.51*	0.39*	3.90*	XXX
93965		A	0.36	1.59*	0.19*	2.14*	XXX
93965	26	A	0.36	0.50	0.06	0.92	XXX

ADDENDUM B CORRECTIONS—Continued

[Relative Value Units (RVUs) and Related Information]

HCPCS [1]	MOD	Status	Work RVUs	Practice expense RVUs	Malpractice RVUs	Total RVUs	Global fee period
93965	TC	A	0.00	1.09*	0.13*	1.22*	XXX
93970		A	0.74	4.08*	0.46*	5.28*	XXX
93970	26	A	0.74	0.57	0.07	1.38	XXX
93970	TC	A	0.00	3.51*	0.39*	3.90*	XXX
93971		A	0.37	3.79*	0.42*	4.58*	XXX
93971	26	A	0.37	0.28	0.03	0.68	XXX
93971	TC	A	0.00	3.51*	0.39*	3.90*	XXX
93975		A	1.06	4.32*	0.48*	5.86*	XXX
93975	26	A	1.06	0.81	0.09	1.96	XXX
93975	TC	A	0.00	3.51*	0.39*	3.90*	XXX
93976		A	0.54	3.91*	0.43*	4.88*	XXX
93976	26	A	0.54	0.40	0.04	0.98	XXX
93976	TC	A	0.00	3.51*	0.39*	3.90*	XXX
93978		A	0.71	4.05*	0.45*	5.21*	XXX
93978	26	A	0.71	0.54	0.06	1.31	XXX
93978	TC	A	0.00	3.51*	0.39*	3.90*	XXX
93979		A	0.36	3.78*	0.42*	4.56*	XXX
93979	26	A	0.36	0.27	0.03	0.66	XXX
93979	TC	A	0.00	3.51*	0.39*	3.90*	XXX
94060		A	0.32	1.33*	0.09	1.74*	XXX
94060	26	A	0.32	0.39	0.03	0.74	XXX
94060	TC	A	0.00	0.94*	0.06	1.00*	XXX
94070		A	0.64	1.86*	0.13*	2.63*	XXX
94070	26	A	0.64	0.39	0.03	1.06	XXX
94070	TC	A	0.00	1.47*	0.10*	1.57*	XXX
94160		A	0.19	0.39*	0.02	0.60*	XXX
94160	26	A	0.19	0.20	0.01	0.40	XXX
94160	TC	A	0.00	0.19*	0.01	0.20*	XXX
94200		A	0.11	0.44*	0.03	0.58*	XXX
94200	26	A	0.11	0.19	0.01	0.31	XXX
94200	TC	A	0.00	0.25*	0.02	0.27*	XXX
94240		A	0.27	0.93*	0.07*	1.27*	XXX
94240	26	A	0.27	0.24	0.02	0.53	XXX
94240	TC	A	0.00	0.69*	0.05*	0.74*	XXX
94250		A	0.11	0.28*	0.02	0.41*	XXX
94250	26	A	0.11	0.15	0.01	0.27	XXX
94250	TC	A	0.00	0.13*	0.01	0.14*	XXX
94260		A	0.13	0.83*	0.06*	1.02*	XXX
94260	26	A	0.13	0.27	0.02	0.42	XXX
94260	TC	A	0.00	0.56*	0.04*	0.60*	XXX
94350		A	0.27	0.78*	0.05*	1.10*	XXX
94350	26	A	0.27	0.22	0.01	0.50	XXX
94350	TC	A	0.00	0.56*	0.04*	0.60*	XXX
94360		A	0.27	1.17*	0.07*	1.51*	XXX
94360	26	A	0.27	0.20	0.01	0.48	XXX
94360	TC	A	0.00	0.97*	0.06*	1.03*	XXX
94370		A	0.27	0.41*	0.03*	0.71*	XXX
94370	26	A	0.27	0.14	0.01	0.42	XXX
94370	TC	A	0.00	0.27*	0.02*	0.29*	XXX
94375		A	0.32	0.71*	0.04	1.07*	XXX
94375	26	A	0.32	0.22	0.01	0.55	XXX
94375	TC	A	0.00	0.49*	0.03	0.52*	XXX
94400		A	0.42	0.81*	0.19*	1.42*	XXX
94400	26	A	0.42	0.50	0.13	1.05	XXX
94400	TC	A	0.00	0.31*	0.06*	0.37*	XXX
94450		A	0.42	0.63*	0.05*	1.10*	XXX
94450	26	A	0.42	0.25	0.02	0.69	XXX
94450	TC	A	0.00	0.38*	0.03*	0.41*	XXX
94620		A	0.93	2.17*	0.15*	3.25*	XXX
94620	26	A	0.93	0.74	0.05	1.72	XXX
94620	TC	A	0.00	1.43*	0.10*	1.53*	XXX
94680		A	0.27	0.86*	0.10*	1.23*	XXX
94680	26	A	0.27	0.34	0.03	0.64	XXX
94680	TC	A	0.00	0.52*	0.07*	0.59*	XXX
94681		A	0.21	1.87*	0.17*	2.25*	XXX
94681	26	A	0.21	0.48	0.04	0.73	XXX
94681	TC	A	0.00	1.39*	0.13*	1.52*	XXX
94690		A	0.07	0.60*	0.04*	0.71*	XXX
94690	26	A	0.07	0.05	0.00	0.12	XXX
94690	TC	A	0.00	0.55*	0.04*	0.59*	XXX
94715		A	0.21	0.40*	0.07*	0.68*	XXX
94715	26	A	0.21	0.23	0.04	0.48	XXX
94715	TC	A	0.00	0.17*	0.03*	0.20*	XXX
94720		A	0.27	1.08*	0.08*	1.43*	XXX
94720	26	A	0.27	0.24	0.02	0.53	XXX
94720	TC	A	0.00	0.84*	0.06*	0.90*	XXX

ADDENDUM B CORRECTIONS—Continued

[Relative Value Units (RVUs) and Related Information]

HCPCS [1]	MOD	Status	Work RVUs	Practice expense RVUs	Malpractice RVUs	Total RVUs	Global fee period
94725		A	0.27	1.94*	0.14*	2.35*	XXX
94725	26	A	0.27	0.19	0.01	0.47	XXX
94725	TC	A	0.00	1.75*	0.13*	1.88*	XXX
94750		A	0.24	0.88*	0.06*	1.18*	XXX
94750	26	A	0.24	0.29	0.02	0.55	XXX
94750	TC	A	0.00	0.59*	0.04*	0.63*	XXX
94770		A	0.21	0.41*	0.11*	0.73*	XXX
94770	26	A	0.21	0.11	0.03	0.35	XXX
94770	TC	A	0.00	0.30*	0.08*	0.38*	XXX
94799		A	0.00	0.00	0.00	0.00	XXX
94799	26*	A	0.00	0.00	0.00	0.00	XXX
94799	TC*	A	0.00	0.00	0.00	0.00	XXX
95805		A	0.80	5.82*	0.46*	7.08*	XXX
95805	26	A	0.80	0.60	0.07	1.47	XXX
95805	TC	A	0.00	5.22*	0.39*	5.61*	XXX
95816		A	0.39	1.62*	0.13	2.14*	XXX
95816	26	A	0.39	0.29	0.03	0.71	XXX
95816	TC	A	0.00	1.33*	0.10	1.43*	XXX
95817		A	0.39	2.24*	0.18*	2.81*	XXX
95817	26	A	0.39	0.29	0.03	0.71	XXX
95817	TC	A	0.00	1.95*	0.15*	2.10*	XXX
95819		A	0.39	1.86*	0.14	2.39*	XXX
95819	26	A	0.39	0.53	0.04	0.96	XXX
95819	TC	A	0.00	1.33*	0.10	1.43*	XXX
95821		A	0.39	2.56*	0.19*	3.14*	XXX
95821	26	A	0.39	0.61	0.04	1.04	XXX
95821	TC	A	0.00	1.95*	0.15*	2.10*	XXX
95822		A	0.45	2.41*	0.18*	3.04*	XXX
95822	26	A	0.45	0.60	0.04	1.09	XXX
95822	TC	A	0.00	1.81*	0.14*	1.95*	XXX
95823		A	0.45	2.38*	0.18	3.01*	XXX
95823	26	A	0.45	0.67	0.05	1.17	XXX
95823	TC	A	0.00	1.71*	0.13	1.84*	XXX
95824		A	0.27	1.04*	0.07*	1.38*	XXX
95824	26	A	0.27	0.62	0.04	0.93	XXX
95824	TC	A	0.00	0.42*	0.03*	0.45*	XXX
95826		A	0.44	1.44*	0.10*	1.98*	XXX
95826	26	A	0.44	0.71	0.05	1.20	XXX
95826	TC	A	0.00	0.73*	0.05*	0.78*	XXX
95827		A	0.67	3.22*	0.24*	4.13*	XXX
95827	26	A	0.67	0.93	0.07	1.67	XXX
95827	TC	A	0.00	2.29*	0.17*	2.46*	XXX
95828		A	1.35	7.13*	0.53*	9.01*	XXX
95828	26	A	1.35	1.91	0.14	3.40	XXX
95828	TC	A	0.00	5.22*	0.39*	5.61*	XXX
95829		A	1.00	0.61*	0.05*	1.66*	XXX
95829	26	A	1.00	0.47	0.03	1.50	XXX
95829	TC	A	0.00	0.14*	0.02*	0.16*	XXX
95842		A	0.58	0.64*	0.06	1.28*	XXX
95842	26	A	0.58	0.44	0.04	1.06	XXX
95842	TC	A	0.00	0.20*	0.02	0.22*	XXX
95858		A	1.65	1.08*	0.09*	2.82*	XXX
95858	26	A	1.65	0.68	0.05	2.38	XXX
95858	TC	A	0.00	0.40*	0.04*	0.44*	XXX
95860		A	1.01	1.14*	0.09*	2.24*	XXX
95860	26	A	1.01	0.77	0.06	1.84	XXX
95860	TC	A	0.00	0.37*	0.03*	0.04*	XXX
95861		A	1.63	2.08*	0.16*	3.87*	XXX
95861	26	A	1.63	1.34	0.10	3.07	XXX
95861	TC	A	0.00	0.74*	0.06*	0.80*	XXX
95863		A	1.96	2.43*	0.18*	4.57*	XXX
95863	26	A	1.96	1.49	0.11	3.56	XXX
95863	TC	A	0.00	0.94*	0.07*	1.01*	XXX
95864		A	2.10	3.63*	0.27*	6.00*	XXX
95864	26	A	2.10	1.84	0.14	4.08	XXX
95864	TC	A	0.00	1.79*	0.13*	1.92*	XXX
95867		A	0.66	1.21*	0.09*	1.96*	XXX
95867	26	A	0.66	0.62	0.05	1.33	XXX
95867	TC	A	0.00	0.59*	0.04*	0.63*	XXX
95868		A	1.58	2.03*	0.15	3.76*	XXX
95868	26	A	1.58	1.33	0.10	3.01	XXX
95868	TC	A	0.00	0.70*	0.05	0.75*	XXX
95869		A	0.38	0.55*	0.05	0.98*	XXX
95869	26	A	0.38	0.34	0.03	0.75	XXX
95869	TC	A	0.00	0.21*	0.02	0.23*	XXX
95872		A	1.58	1.33*	0.11	3.02*	XXX

ADDENDUM B CORRECTIONS—Continued

[Relative Value Units (RVUs) and Related Information]

HCPCS [1]	MOD	Status	Work RVUs	Practice expense RVUs	Malpractice RVUs	Total RVUs	Global fee period
95872	26	A	1.58	0.72	0.06	2.36	XXX
95872	TC	A	0.00	0.61*	0.05	0.66*	XXX
95875		A	1.41	0.63*	0.10*	2.14*	XXX
95875	26	A	1.41	0.23	0.04	1.68	XXX
95875	TC	A	0.00	0.40*	0.06*	0.46*	XXX
95900		A	0.44	0.64*	0.05	1.13*	XXX
95900	26	A	0.44	0.36	0.03	0.83	XXX
95900	TC	A	0.00	0.28*	0.02	0.30*	XXX
95904		A	0.35	0.57*	0.05	0.97*	XXX
95904	26	A	0.35	0.35	0.03	0.73	XXX
95904	TC	A	0.00	0.22*	0.02	0.24*	XXX
95925		A	0.53	2.40*	0.19*	3.12*	XXX
95925	26	A	0.53	1.01	0.08	1.62	XXX
95925	TC	A	0.00	1.39*	0.11*	1.50*	XXX
95933		A	0.63	1.32*	0.10*	2.05*	XXX
95933	26	A	0.63	0.53	0.04	1.20	XXX
95933	TC	A	0.00	0.79*	0.06*	0.85*	XXX
95935		A	0.63	0.56*	0.05	1.24*	XXX
95935	26	A	0.63	0.35	0.03	1.01	XXX
95935	TC	A	0.00	0.21*	0.02	0.23*	XXX
95937		A	0.64	0.80*	0.07	1.51*	XXX
95937	26	A	0.64	0.47	0.04	1.15	XXX
95937	TC	A	0.00	0.33*	0.03	0.36*	XXX
95950		A	1.59	7.65*	0.63*	9.87*	XXX
95950	26	A	1.59	1.26	0.10	2.97	XXX
95950	TC	A	0.00	6.37*	0.53*	6.90*	XXX
95951		A	1.91	9.30*	0.68*	11.89*	XXX
95951	26	A	1.91	1.58	0.11	3.60	XXX
95v51	TC	A	0.00	7.72*	0.57*	8.29*	XXX
95952		A	1.59	3.57*	0.26*	5.44*	XXX
95952	26	A	1.59	2.26	0.18	4.03	XXX
95952	TC	A	0.00	1.31*	0.10*	1.41*	XXX
95954		A	0.96	1.07*	0.13*	2.16*	XXX
95954	26	A	0.96	0.59	0.07	1.62	XXX
95954	TC	A	0.00	0.48*	0.06*	0.54*	XXX
95955		A	1.06	3.04*	0.31*	4.41*	XXX
95955	26	A	1.06	1.08	0.11	2.25	XXX
95955	TC	A	0.00	1.96*	0.20*	2.16*	XXX
95958		A	2.12	4.73*	0.41*	7.26*	XXX
95958	26	A	2.12	2.98	0.27	5.37	XXX
95958	TC	A	0.00	1.75*	0.14*	1.89*	XXX
97752		A	0.48	0.62*	0.07*	1.17*	XXX
97752	26	A	0.48	0.37	0.04	0.89	XXX
97752	TC	A	0.00	0.25*	0.03*	0.28*	XXX
99171		V*	0.00	0.00	0.00	0.00	XXX
99172		V*	0.00	0.00	0.00	0.00	XXX
99173		V*	0.00	0.00	0.00	0.00	XXX
99174		V*	0.00	0.00	0.00	0.00	XXX

[1] All CPT HCPCS copyright 1991 American Medical Association.

ADDENDUM B CORRECTIONS

[Relative value units (RVUs) and related information]

HCPCS	MOD	Status	Work RVUs	Practice expense RVUs	Malpractice RVUs	Total RVUs	Global fee period
A4250		B*	0.00	0.00	0.00	0.00	XXX
A4565		X*	0.00	0.00	0.00	0.00	XXX
A4570		X*	0.00	0.00	0.00	0.00	XXX
A4572		X*	0.00	0.00	0.00	0.00	XXX
A4580		X*	0.00	0.00	0.00	0.00	XXX
A4581		X*	0.00	0.00	0.00	0.00	XXX
A4590		X*	0.00	0.00	0.00	0.00	XXX
D0110		C	0.00	0.00	0.00	0.00	YYY*
D0120		C	0.00	0.00	0.00	0.00	YYY*
D0130		C	0.00	0.00	0.00	0.00	YYY*
D0210		C	0.00	0.00	0.00	0.00	YYY*
D0220		C	0.00	0.00	0.00	0.00	YYY*
D0230		C	0.00	0.00	0.00	0.00	YYY*
D0240		C	0.00	0.00	0.00	0.00	YYY*
D0250		C	0.00	0.00	0.00	0.00	YYY*
D0260		C	0.00	0.00	0.00	0.00	YYY*
D0270		C	0.00	0.00	0.00	0.00	YYY*

ADDENDUM B CORRECTIONS—Continued

[Relative value units (RVUs) and related information]

HCPCS	MOD	Status	Work RVUs	Practice expense RVUs	Malpractice RVUs	Total RVUs	Global fee period
D0272		C	0.00	0.00	0.00	0.00	YYY*
D0274		C	0.00	0.00	0.00	0.00	YYY*
D0275		D	0.00	0.00	0.00	0.00	YYY*
D0290		C	0.00	0.00	0.00	0.00	YYY*
D0310		C	0.00	0.00	0.00	0.00	YYY*
D0320		C	0.00	0.00	0.00	0.00	YYY*
D0321		C	0.00	0.00	0.00	0.00	YYY*
D0322		C	0.00	0.00	0.00	0.00	YYY*
D0330		C	0.00	0.00	0.00	0.00	YYY*
D0340		C	0.00	0.00	0.00	0.00	YYY*
D0410		D	0.00	0.00	0.00	0.00	YYY*
D0415		C	0.00	0.00	0.00	0.00	YYY*
D0420		D	0.00	0.00	0.00	0.00	YYY*
D0425		C	0.00	0.00	0.00	0.00	YYY*
D0460		C	0.00	0.00	0.00	0.00	YYY*
D0470		C	0.00	0.00	0.00	0.00	YYY*
D0471		C	0.00	0.00	0.00	0.00	YYY*
D0501		C	0.00	0.00	0.00	0.00	YYY*
D0502		C	0.00	0.00	0.00	0.00	YYY*
D0999		C	0.00	0.00	0.00	0.00	YYY*
D1110		C	0.00	0.00	0.00	0.00	YYY*
D0120		C	0.00	0.00	0.00	0.00	YYY*
D1201		C	0.00	0.00	0.00	0.00	YYY*
D0202		D	0.00	0.00	0.00	0.00	YYY*
D1203		C	0.00	0.00	0.00	0.00	YYY*
D1204		C	0.00	0.00	0.00	0.00	YYY*
D1205		C	0.00	0.00	0.00	0.00	YYY*
D1310		C	0.00	0.00	0.00	0.00	YYY*
D1330		C	0.00	0.00	0.00	0.00	YYY*
D1351		C	0.00	0.00	0.00	0.00	YYY*
D1510		C	0.00	0.00	0.00	0.00	YYY*
D1515		C	0.00	0.00	0.00	0.00	YYY*
D1520		C	0.00	0.00	0.00	0.00	YYY*
D1525		C	0.00	0.00	0.00	0.00	YYY*
D1550		C	0.00	0.00	0.00	0.00	YYY*
D2110		C	0.00	0.00	0.00	0.00	YYY*
D2120		C	0.00	0.00	0.00	0.00	YYY*
D2130		C	0.00	0.00	0.00	0.00	YYY*
D2131		C	0.00	0.00	0.00	0.00	YYY*
D2140		C	0.00	0.00	0.00	0.00	YYY*
D2150		C	0.00	0.00	0.00	0.00	YYY*
D2160		C	0.00	0.00	0.00	0.00	YYY*
D2161		C	0.00	0.00	0.00	0.00	YYY*
D2210		C	0.00	0.00	0.00	0.00	YYY*
D2330		C	0.00	0.00	0.00	0.00	YYY*
D2331		C	0.00	0.00	0.00	0.00	YYY*
D2332		C	0.00	0.00	0.00	0.00	YYY*
D2335		C	0.00	0.00	0.00	0.00	YYY*
D2336		C	0.00	0.00	0.00	0.00	YYY*
D2380		C	0.00	0.00	0.00	0.00	YYY*
D2381		C	0.00	0.00	0.00	0.00	YYY*
D2382		C	0.00	0.00	0.00	0.00	YYY*
D2385		C	0.00	0.00	0.00	0.00	YYY*
D2386		C	0.00	0.00	0.00	0.00	YYY*
D2387		C	0.00	0.00	0.00	0.00	YYY*
D2410		C	0.00	0.00	0.00	0.00	YYY*
D2420		C	0.00	0.00	0.00	0.00	YYY*
D2430		C	0.00	0.00	0.00	0.00	YYY*
D2510		C	0.00	0.00	0.00	0.00	YYY*
D2520		C	0.00	0.00	0.00	0.00	YYY*
D2530		C	0.00	0.00	0.00	0.00	YYY*
D2540		C	0.00	0.00	0.00	0.00	YYY*
D2610		C	0.00	0.00	0.00	0.00	YYY*
D2620		C	0.00	0.00	0.00	0.00	YYY*
D2630		C	0.00	0.00	0.00	0.00	YYY*
D2640		C	0.00	0.00	0.00	0.00	YYY*
D2650		C	0.00	0.00	0.00	0.00	YYY*
D2651		C	0.00	0.00	0.00	0.00	YYY*
D2652		C	0.00	0.00	0.00	0.00	YYY*
D2660		C	0.00	0.00	0.00	0.00	YYY*
D2710		C	0.00	0.00	0.00	0.00	YYY*
D2720		C	0.00	0.00	0.00	0.00	YYY*
D2721		C	0.00	0.00	0.00	0.00	YYY*
D2722		C	0.00	0.00	0.00	0.00	YYY*
D2740		C	0.00	0.00	0.00	0.00	YYY*
D2750		C	0.00	0.00	0.00	0.00	YYY*

ADDENDUM B CORRECTIONS—Continued

[Relative value units (RVUs) and related information]

HCPCS	MOD	Status	Work RVUs	Practice expense RVUs	Malpractice RVUs	Total RVUs	Global fee period
D2751		C	0.00	0.00	0.00	0.00	YYY*
D2752		C	0.00	0.00	0.00	0.00	YYY*
D2790		C	0.00	0.00	0.00	0.00	YYY*
D2791		C	0.00	0.00	0.00	0.00	YYY*
D2792		C	0.00	0.00	0.00	0.00	YYY*
D2810		C	0.00	0.00	0.00	0.00	YYY*
D2910		C	0.00	0.00	0.00	0.00	YYY*
D2920		C	0.00	0.00	0.00	0.00	YYY*
D2930		C	0.00	0.00	0.00	0.00	YYY*
D2931		C	0.00	0.00	0.00	0.00	YYY*
D2932		C	0.00	0.00	0.00	0.00	YYY*
D2933		C	0.00	0.00	0.00	0.00	YYY*
D2940		C	0.00	0.00	0.00	0.00	YYY*
D2950		C	0.00	0.00	0.00	0.00	YYY*
D2951		C	0.00	0.00	0.00	0.00	YYY*
D2952		C	0.00	0.00	0.00	0.00	YYY*
D2953		D	0.00	0.00	0.00	0.00	YYY*
D2954		C	0.00	0.00	0.00	0.00	YYY*
D2960		C	0.00	0.00	0.00	0.00	YYY*
D2970		C	0.00	0.00	0.00	0.00	YYY*
D2980		C	0.00	0.00	0.00	0.00	YYY*
D2999		C	0.00	0.00	0.00	0.00	YYY*
D3110		C	0.00	0.00	0.00	0.00	YYY*
D3120		C	0.00	0.00	0.00	0.00	YYY*
D3220		C	0.00	0.00	0.00	0.00	YYY*
D3310		C	0.00	0.00	0.00	0.00	YYY*
D3320		C	0.00	0.00	0.00	0.00	YYY*
D3330		C	0.00	0.00	0.00	0.00	YYY*
D3340		D	0.00	0.00	0.00	0.00	YYY*
D3346		C	0.00	0.00	0.00	0.00	YYY*
D3347		C	0.00	0.00	0.00	0.00	YYY*
D3348		C	0.00	0.00	0.00	0.00	YYY*
D3350		D	0.00	0.00	0.00	0.00	YYY*
D3351		C	0.00	0.00	0.00	0.00	YYY*
D3352		C	0.00	0.00	0.00	0.00	YYY*
D3353		C	0.00	0.00	0.00	0.00	YYY*
D3410		C	0.00	0.00	0.00	0.00	YYY*
D3411		D	0.00	0.00	0.00	0.00	YYY*
D3421		C	0.00	0.00	0.00	0.00	YYY*
D3425		C	0.00	0.00	0.00	0.00	YYY*
D3426		C	0.00	0.00	0.00	0.00	YYY*
D3430		C	0.00	0.00	0.00	0.00	YYY*
D3440		D	0.00	0.00	0.00	0.00	YYY*
D3450		C	0.00	0.00	0.00	0.00	YYY*
D3460		C	0.00	0.00	0.00	0.00	YYY*
D3470		C	0.00	0.00	0.00	0.00	YYY*
D3910		C	0.00	0.00	0.00	0.00	YYY*
D3920		C	0.00	0.00	0.00	0.00	YYY*
D3940		D	0.00	0.00	0.00	0.00	YYY*
D3950		C	0.00	0.00	0.00	0.00	YYY*
D3960		C	0.00	0.00	0.00	0.00	YYY*
D3999		C	0.00	0.00	0.00	0.00	YYY*
D4210		C	0.00	0.00	0.00	0.00	YYY*
D4211		C	0.00	0.00	0.00	0.00	YYY*
D4220		C	0.00	0.00	0.00	0.00	YYY*
D4240		C	0.00	0.00	0.00	0.00	YYY*
D4249		C	0.00	0.00	0.00	0.00	YYY*
D4250		C	0.00	0.00	0.00	0.00	YYY*
D4260		C	0.00	0.00	0.00	0.00	YYY*
D4261		C	0.00	0.00	0.00	0.00	YYY*
D4262		C	0.00	0.00	0.00	0.00	YYY*
D4268		C	0.00	0.00	0.00	0.00	YYY*
D4270		C	0.00	0.00	0.00	0.00	YYY*
D4271		C	0.00	0.00	0.00	0.00	YYY*
D4272		D	0.00	0.00	0.00	0.00	YYY*
D4320		C	0.00	0.00	0.00	0.00	YYY*
D4321		C	0.00	0.00	0.00	0.00	YYY*
D4340		D	0.00	0.00	0.00	0.00	YYY*
D4341		C	0.00	0.00	0.00	0.00	YYY*
D4910		C	0.00	0.00	0.00	0.00	YYY*
D4920		C	0.00	0.00	0.00	0.00	YYY*
D4999		C	0.00	0.00	0.00	0.00	YYY*
D5110		C	0.00	0.00	0.00	0.00	YYY*
D5120		C	0.00	0.00	0.00	0.00	YYY*
D5130		C	0.00	0.00	0.00	0.00	YYY*
D5140		C	0.00	0.00	0.00	0.00	YYY*

ADDENDUM B CORRECTIONS—Continued

[Relative value units (RVUs) and related information]

HCPCS	MOD	Status	Work RVUs	Practice expense RVUs	Malpractice RVUs	Total RVUs	Global fee period
D5211		C	0.00	0.00	0.00	0.00	YYY*
D5212		C	0.00	0.00	0.00	0.00	YYY*
D5213		C	0.00	0.00	0.00	0.00	YYY*
D5214		C	0.00	0.00	0.00	0.00	YYY*
D5215		D	0.00	0.00	0.00	0.00	YYY*
D5216		D	0.00	0.00	0.00	0.00	YYY*
D5280		D	0.00	0.00	0.00	0.00	YYY*
D5281		C	0.00	0.00	0.00	0.00	YYY*
D5410		C	0.00	0.00	0.00	0.00	YYY*
D5411		C	0.00	0.00	0.00	0.00	YYY*
D5421		C	0.00	0.00	0.00	0.00	YYY*
D5422		C	0.00	0.00	0.00	0.00	YYY*
D5510		C	0.00	0.00	0.00	0.00	YYY*
D5520		C	0.00	0.00	0.00	0.00	YYY*
D5610		C	0.00	0.00	0.00	0.00	YYY*
D5620		C	0.00	0.00	0.00	0.00	YYY*
D5630		C	0.00	0.00	0.00	0.00	YYY*
D5640		C	0.00	0.00	0.00	0.00	YYY*
D5650		C	0.00	0.00	0.00	0.00	YYY*
D5660		C	0.00	0.00	0.00	0.00	YYY*
D5710		C	0.00	0.00	0.00	0.00	YYY*
D5711		C	0.00	0.00	0.00	0.00	YYY*
D5720		C	0.00	0.00	0.00	0.00	YYY*
D5721		C	0.00	0.00	0.00	0.00	YYY*
D5730		C	0.00	0.00	0.00	0.00	YYY*
D5731		C	0.00	0.00	0.00	0.00	YYY*
D5740		C	0.00	0.00	0.00	0.00	YYY*
D5741		C	0.00	0.00	0.00	0.00	YYY*
D5750		C	0.00	0.00	0.00	0.00	YYY*
D5751		C	0.00	0.00	0.00	0.00	YYY*
D5760		C	0.00	0.00	0.00	0.00	YYY*
D5761		C	0.00	0.00	0.00	0.00	YYY*
D5810		C	0.00	0.00	0.00	0.00	YYY*
D5811		C	0.00	0.00	0.00	0.00	YYY*
D5820		C	0.00	0.00	0.00	0.00	YYY*
D5821		C	0.00	0.00	0.00	0.00	YYY*
D5850		C	0.00	0.00	0.00	0.00	YYY*
D5851		C	0.00	0.00	0.00	0.00	YYY*
D5860		C	0.00	0.00	0.00	0.00	YYY*
D5861		C	0.00	0.00	0.00	0.00	YYY*
D5862		C	0.00	0.00	0.00	0.00	YYY*
D5899		C	0.00	0.00	0.00	0.00	YYY*
D5911		C	0.00	0.00	0.00	0.00	YYY*
D5912		C	0.00	0.00	0.00	0.00	YYY*
D5913		C	0.00	0.00	0.00	0.00	YYY*
D5914		C	0.00	0.00	0.00	0.00	YYY*
D5915		C	0.00	0.00	0.00	0.00	YYY*
D5916		C	0.00	0.00	0.00	0.00	YYY*
D5917		D	0.00	0.00	0.00	0.00	YYY*
D5918		D	0.00	0.00	0.00	0.00	YYY*
D5919		C	0.00	0.00	0.00	0.00	YYY*
D5920		D	0.00	0.00	0.00	0.00	YYY*
D5921		D	0.00	0.00	0.00	0.00	YYY*
D5922		C	0.00	0.00	0.00	0.00	YYY*
D5923		C	0.00	0.00	0.00	0.00	YYY*
D5924		C	0.00	0.00	0.00	0.00	YYY*
D5925		C	0.00	0.00	0.00	0.00	YYY*
D5926		C	0.00	0.00	0.00	0.00	YYY*
D5927		C	0.00	0.00	0.00	0.00	YYY*
D5928		C	0.00	0.00	0.00	0.00	YYY*
D5929		C	0.00	0.00	0.00	0.00	YYY*
D5931		C	0.00	0.00	0.00	0.00	YYY*
D5932		C	0.00	0.00	0.00	0.00	YYY*
D5933		C	0.00	0.00	0.00	0.00	YYY*
D5934		C	0.00	0.00	0.00	0.00	YYY*
D5935		C	0.00	0.00	0.00	0.00	YYY*
D5936		C	0.00	0.00	0.00	0.00	YYY*
D5937		C	0.00	0.00	0.00	0.00	YYY*
D5951		C	0.00	0.00	0.00	0.00	YYY*
D5952		C	0.00	0.00	0.00	0.00	YYY*
D5953		C	0.00	0.00	0.00	0.00	YYY*
D5954		C	0.00	0.00	0.00	0.00	YYY*
D5955		C	0.00	0.00	0.00	0.00	YYY*
D5956		D	0.00	0.00	0.00	0.00	YYY*
D5957		D	0.00	0.00	0.00	0.00	YYY*
D5958		C	0.00	0.00	0.00	0.00	YYY*

ADDENDUM B CORRECTIONS—Continued

[Relative value units (RVUs) and related information]

HCPCS	MOD	Status	Work RVUs	Practice expense RVUs	Malpractice RVUs	Total RVUs	Global fee period
D5959		C	0.00	0.00	0.00	0.00	YYY*
D5960		C	0.00	0.00	0.00	0.00	YYY*
D5971		D	0.00	0.00	0.00	0.00	YYY*
D5972		D	0.00	0.00	0.00	0.00	YYY*
D5973		D	0.00	0.00	0.00	0.00	YYY*
D5974		D	0.00	0.00	0.00	0.00	YYY*
D5976		D	0.00	0.00	0.00	0.00	YYY*
D5982		C	0.00	0.00	0.00	0.00	YYY*
D5983		C	0.00	0.00	0.00	0.00	YYY*
D5984		C	0.00	0.00	0.00	0.00	YYY*
D5985		C	0.00	0.00	0.00	0.00	YYY*
D5986		C	0.00	0.00	0.00	0.00	YYY*
D5988		C	0.00	0.00	0.00	0.00	YYY*
D5999		C	0.00	0.00	0.00	0.00	YYY*
D6030		C	0.00	0.00	0.00	0.00	YYY*
D6040		C	0.00	0.00	0.00	0.00	YYY*
D6050		C	0.00	0.00	0.00	0.00	YYY*
D6055		C	0.00	0.00	0.00	0.00	YYY*
D6080		C	0.00	0.00	0.00	0.00	YYY*
D6090		C	0.00	0.00	0.00	0.00	YYY*
D6100		C	0.00	0.00	0.00	0.00	YYY*
D6199		C	0.00	0.00	0.00	0.00	YYY*
D6210		C	0.00	0.00	0.00	0.00	YYY*
D6211		C	0.00	0.00	0.00	0.00	YYY*
D6212		C	0.00	0.00	0.00	0.00	YYY*
D6240		C	0.00	0.00	0.00	0.00	YYY*
D6241		C	0.00	0.00	0.00	0.00	YYY*
D6242		C	0.00	0.00	0.00	0.00	YYY*
D6250		C	0.00	0.00	0.00	0.00	YYY*
D6251		C	0.00	0.00	0.00	0.00	YYY*
D6252		C	0.00	0.00	0.00	0.00	YYY*
D6520		C	0.00	0.00	0.00	0.00	YYY*
D6530		C	0.00	0.00	0.00	0.00	YYY*
D6540		C	0.00	0.00	0.00	0.00	YYY*
D6545		C	0.00	0.00	0.00	0.00	YYY*
D6720		C	0.00	0.00	0.00	0.00	YYY*
D6721		C	0.00	0.00	0.00	0.00	YYY*
D6722		C	0.00	0.00	0.00	0.00	YYY*
D6750		C	0.00	0.00	0.00	0.00	YYY*
D6751		C	0.00	0.00	0.00	0.00	YYY*
D6752		C	0.00	0.00	0.00	0.00	YYY*
D6780		C	0.00	0.00	0.00	0.00	YYY*
D6790		C	0.00	0.00	0.00	0.00	YYY*
D6791		C	0.00	0.00	0.00	0.00	YYY*
D6792		C	0.00	0.00	0.00	0.00	YYY*
D6930		C	0.00	0.00	0.00	0.00	YYY*
D6940		C	0.00	0.00	0.00	0.00	YYY*
D6950		C	0.00	0.00	0.00	0.00	YYY*
D6970		C	0.00	0.00	0.00	0.00	YYY*
D6971		C	0.00	0.00	0.00	0.00	YYY*
D6972		C	0.00	0.00	0.00	0.00	YYY*
D6973		C	0.00	0.00	0.00	0.00	YYY*
D6975		C	0.00	0.00	0.00	0.00	YYY*
D6980		C	0.00	0.00	0.00	0.00	YYY*
D6999		C	0.00	0.00	0.00	0.00	YYY*
D7110		C	0.00	0.00	0.00	0.00	YYY*
D7120		C	0.00	0.00	0.00	0.00	YYY*
D7130		C	0.00	0.00	0.00	0.00	YYY*
D7210		C	0.00	0.00	0.00	0.00	YYY*
D7220		C	0.00	0.00	0.00	0.00	YYY*
D7230		C	0.00	0.00	0.00	0.00	YYY*
D7240		C	0.00	0.00	0.00	0.00	YYY*
D7241		C	0.00	0.00	0.00	0.00	YYY*
D7250		C	0.00	0.00	0.00	0.00	YYY*
D7260		C	0.00	0.00	0.00	0.00	YYY*
D7270		C	0.00	0.00	0.00	0.00	YYY*
D7271		C	0.00	0.00	0.00	0.00	YYY*
D7272		C	0.00	0.00	0.00	0.00	YYY*
D7280		C	0.00	0.00	0.00	0.00	YYY*
D7281		C	0.00	0.00	0.00	0.00	YYY*
D7285		C	0.00	0.00	0.00	0.00	YYY*
D7286		C	0.00	0.00	0.00	0.00	YYY*
D7290		C	0.00	0.00	0.00	0.00	YYY*
D7291		C	0.00	0.00	0.00	0.00	YYY*
D7310		C	0.00	0.00	0.00	0.00	YYY*
D7320		C	0.00	0.00	0.00	0.00	YYY*

ADDENDUM B CORRECTIONS—Continued

[Relative value units (RVUs) and related information]

HCPCS	MOD	Status	Work RVUs	Practice expense RVUs	Malpractice RVUs	Total RVUs	Global fee period
D7340		C	0.00	0.00	0.00	0.00	YYY*
D7350		C	0.00	0.00	0.00	0.00	YYY*
D7410		C	0.00	0.00	0.00	0.00	YYY*
D7420		C	0.00	0.00	0.00	0.00	YYY*
D7430		C	0.00	0.00	0.00	0.00	YYY*
D7431		C	0.00	0.00	0.00	0.00	YYY*
D7440		C	0.00	0.00	0.00	0.00	YYY*
D7441		C	0.00	0.00	0.00	0.00	YYY*
D7450		C	0.00	0.00	0.00	0.00	YYY*
D7451		C	0.00	0.00	0.00	0.00	YYY*
D7460		C	0.00	0.00	0.00	0.00	YYY*
D7461		C	0.00	0.00	0.00	0.00	YYY*
D7465		C	0.00	0.00	0.00	0.00	YYY*
D7470		C	0.00	0.00	0.00	0.00	YYY*
D7480		C	0.00	0.00	0.00	0.00	YYY*
D7490		C	0.00	0.00	0.00	0.00	YYY*
D7510		C	0.00	0.00	0.00	0.00	YYY*
D7520		C	0.00	0.00	0.00	0.00	YYY*
D7530		C	0.00	0.00	0.00	0.00	YYY*
D7540		C	0.00	0.00	0.00	0.00	YYY*
D7550		C	0.00	0.00	0.00	0.00	YYY*
D7560		C	0.00	0.00	0.00	0.00	YYY*
D7610		C	0.00	0.00	0.00	0.00	YYY*
D7620		C	0.00	0.00	0.00	0.00	YYY*
D7630		C	0.00	0.00	0.00	0.00	YYY*
D7640		C	0.00	0.00	0.00	0.00	YYY*
D7650		C	0.00	0.00	0.00	0.00	YYY*
D7660		C	0.00	0.00	0.00	0.00	YYY*
D7670		C	0.00	0.00	0.00	0.00	YYY*
D7680		C	0.00	0.00	0.00	0.00	YYY*
D7710		C	0.00	0.00	0.00	0.00	YYY*
D7720		C	0.00	0.00	0.00	0.00	YYY*
D7730		C	0.00	0.00	0.00	0.00	YYY*
D7740		C	0.00	0.00	0.00	0.00	YYY*
D7750		C	0.00	0.00	0.00	0.00	YYY*
D7760		C	0.00	0.00	0.00	0.00	YYY*
D7770		C	0.00	0.00	0.00	0.00	YYY*
D7780		C	0.00	0.00	0.00	0.00	YYY*
D7810		C	0.00	0.00	0.00	0.00	YYY*
D7820		C	0.00	0.00	0.00	0.00	YYY*
D7830		C	0.00	0.00	0.00	0.00	YYY*
D7840		C	0.00	0.00	0.00	0.00	YYY*
D7850		C	0.00	0.00	0.00	0.00	YYY*
D7852		C	0.00	0.00	0.00	0.00	YYY*
D7854		C	0.00	0.00	0.00	0.00	YYY*
D7856		C	0.00	0.00	0.00	0.00	YYY*
D7858		C	0.00	0.00	0.00	0.00	YYY*
D7860		C	0.00	0.00	0.00	0.00	YYY*
D7865		C	0.00	0.00	0.00	0.00	YYY*
D7870		C	0.00	0.00	0.00	0.00	YYY*
D7872		C	0.00	0.00	0.00	0.00	YYY*
D7873		C	0.00	0.00	0.00	0.00	YYY*
D7874		C	0.00	0.00	0.00	0.00	YYY*
D7875		C	0.00	0.00	0.00	0.00	YYY*
D7876		C	0.00	0.00	0.00	0.00	YYY*
D7877		C	0.00	0.00	0.00	0.00	YYY*
D7880		C	0.00	0.00	0.00	0.00	YYY*
D7899		C	0.00	0.00	0.00	0.00	YYY*
D7910		C	0.00	0.00	0.00	0.00	YYY*
D7911		C	0.00	0.00	0.00	0.00	YYY*
D7912		C	0.00	0.00	0.00	0.00	YYY*
D7920		C	0.00	0.00	0.00	0.00	YYY*
D7940		C	0.00	0.00	0.00	0.00	YYY*
D7941		C	0.00	0.00	0.00	0.00	YYY*
D7942		C	0.00	0.00	0.00	0.00	YYY*
D7943		C	0.00	0.00	0.00	0.00	YYY*
D7944		C	0.00	0.00	0.00	0.00	YYY*
D7945		C	0.00	0.00	0.00	0.00	YYY*
D7946		C	0.00	0.00	0.00	0.00	YYY*
D7947		C	0.00	0.00	0.00	0.00	YYY*
D7948		C	0.00	0.00	0.00	0.00	YYY*
D7949		C	0.00	0.00	0.00	0.00	YYY*
D7950		C	0.00	0.00	0.00	0.00	YYY*
D7955		C	0.00	0.00	0.00	0.00	YYY*
D7960		C	0.00	0.00	0.00	0.00	YYY*
D7970		C	0.00	0.00	0.00	0.00	YYY*

ADDENDUM B CORRECTIONS—Continued

[Relative value units (RVUs) and related information]

HCPCS	MOD	Status	Work RVUs	Practice expense RVUs	Malpractice RVUs	Total RVUs	Global fee period
D7971		C	0.00	0.00	0.00	0.00	YYY*
D7980		C	0.00	0.00	0.00	0.00	YYY*
D7981		C	0.00	0.00	0.00	0.00	YYY*
D7982		C	0.00	0.00	0.00	0.00	YYY*
D7983		C	0.00	0.00	0.00	0.00	YYY*
D7990		C	0.00	0.00	0.00	0.00	YYY*
D7991		C	0.00	0.00	0.00	0.00	YYY*
D7992		D	0.00	0.00	0.00	0.00	YYY*
D7993		C	0.00	0.00	0.00	0.00	YYY*
D7994		C	0.00	0.00	0.00	0.00	YYY*
D7999		C	0.00	0.00	0.00	0.00	YYY*
D8110		C	0.00	0.00	0.00	0.00	YYY*
D8120		C	0.00	0.00	0.00	0.00	YYY*
D8210		C	0.00	0.00	0.00	0.00	YYY*
D8220		C	0.00	0.00	0.00	0.00	YYY*
D8360		C	0.00	0.00	0.00	0.00	YYY*
D8370		C	0.00	0.00	0.00	0.00	YYY*
D8460		C	0.00	0.00	0.00	0.00	YYY*
D8470		C	0.00	0.00	0.00	0.00	YYY*
D8480		C	0.00	0.00	0.00	0.00	YYY*
D8560		C	0.00	0.00	0.00	0.00	YYY*
D8570		C	0.00	0.00	0.00	0.00	YYY*
D8580		C	0.00	0.00	0.00	0.00	YYY*
D8650		C	0.00	0.00	0.00	0.00	YYY*
D8750		C	0.00	0.00	0.00	0.00	YYY*
D8999		C	0.00	0.00	0.00	0.00	YYY*
D9110		C	0.00	0.00	0.00	0.00	YYY*
D9210		C	0.00	0.00	0.00	0.00	YYY*
D9211		C	0.00	0.00	0.00	0.00	YYY*
D9212		C	0.00	0.00	0.00	0.00	YYY*
D9215		C	0.00	0.00	0.00	0.00	YYY*
D9220		C	0.00	0.00	0.00	0.00	YYY*
D9230		C	0.00	0.00	0.00	0.00	YYY*
D9240		C	0.00	0.00	0.00	0.00	YYY*
D9310		C	0.00	0.00	0.00	0.00	YYY*
D9410		C	0.00	0.00	0.00	0.00	YYY*
D9420		C	0.00	0.00	0.00	0.00	YYY*
D9430		C	0.00	0.00	0.00	0.00	YYY*
D9440		C	0.00	0.00	0.00	0.00	YYY*
D9610		C	0.00	0.00	0.00	0.00	YYY*
D9630		C	0.00	0.00	0.00	0.00	YYY*
D9910		C	0.00	0.00	0.00	0.00	YYY*
D9920		C	0.00	0.00	0.00	0.00	YYY*
D9930		C	0.00	0.00	0.00	0.00	YYY*
D9940		C	0.00	0.00	0.00	0.00	YYY*
D9941		C	0.00	0.00	0.00	0.00	YYY*
D9950		C	0.00	0.00	0.00	0.00	YYY*
D9951		C	0.00	0.00	0.00	0.00	YYY*
D9952		C	0.00	0.00	0.00	0.00	YYY*
D9960		D	0.00	0.00	0.00	0.00	YYY*
J3520		E*	0.00	0.00	0.00	0.00	XXX
J9218		E*	0.00	0.00	0.00	0.00	XXX
M0300		C*	0.00	0.00	0.00	0.00	XXX
M0702		A	0.47	0.25	0.02	0.74	000*
M0704		A	0.66	0.41	0.03	1.10	000*
M0706		A	0.92	0.40	0.03	1.35	000*
M0708		A	1.08	0.45	0.04	1.57	000*
M0710		A	1.25	0.40	0.03	1.68	000*
M0722		A	0.47	0.62	0.05	1.14	000*
M0724		A	0.69	0.85	0.07	1.61	000*
M0726		A	0.92	0.82	0.06	1.80	000*
M0728		A	1.07	0.36	0.03	1.46	000*
M0730		A	1.25	0.55	0.04	1.84	000*
Q0035		A	0.18	0.50*	0.04*	0.72*	XXX
Q0035	26	A	0.18	0.12	0.01	0.31	XXX
Q0035	TC	A	0.00	0.38*	0.03*	0.41*	XXX

Addendum F

A. Pages 59802 through 59810

Remove the following HCPCS codes and descriptions from the list of procedure codes subject to the outpatient limit.

HCPCS	Description
10141	Drainage of Hematoma.
11042	Cleansing of skin/tissue.
11404	Removal of skin lesion.
11424	Removal of skin lesion.

HCPCS	Description
11444	Removal of skin lesion.
11446	Removal of skin lesion.
11604	Removal of skin lesion.
11624	Removal of skin lesion.
11644	Removal of skin lesion.
13100	Repair of wound or lesion.
13101	Repair of wound or lesion.
13131	Repair of wound or lesion.
13132	Repair of wound or lesion.
13150	Repair of wound or lesion.
14000	Skin tissue rearrangement.
14020	Skin tissue rearrangement.
14040	Skin tissue rearrangement.
19100	Biopsy of breast.
20670	Removal of support implant.
21040	Removal of jaw bone lesion.
23066	Biopsy shoulder tissues.
26605	Treatment metacarpal fracture.
27520	Treat kneecap fracture.
27780	Treatment of fibula fracture.
27786	Treatment of ankle fracture.
28090	Removal of foot lesion.
28285	Revision of hammertoe.
28298	Correction of bunion.
28308	Incision of metatarsal.
28400	Treatment of heel fracture.
31525	Diagnostic laryngoscopy.
38505	Needle biopsy, lymph node(s).
41112	Excision of tongue lesion.
45305	Proctosigmoidoscopy; biopsy.
45310	Proctosigmoidoscopy.
45355	Surgical colonoscopy.
46050	Incision of anal abscess.
50690	Injection for ureter x-ray.
52000	Cytoscopy.
52281	Cytoscopy and treatment.
55700	Biopsy of prostate.
61070	Brain canal shunt procedure.
64415	Injection for nerve block.
64420	Injection for nerve block.
66762	Revision of iris.
67031	Laser surgery, eye strands.
67105	Repair, detached retina.
67141	Treatment of retina.
67208	Treatment of retinal lesion.
67921	Repair eyelid defect.
68700	Repair tear ducts.

B. Page 59809

The descriptions for procedure codes 99212 through 99215 are corrected to read as follows:

HCPCS	Description
99212	Office and other outpatient, established patient, level 2.
99213	Office and other outpatient, established patient, level 3.
99214	Office and other outpatient, established patient, level 4.
99215	Office and other outpatient, established patient, level 5.

Addendum G

Page 59811

The following HCPCS codes and descriptions are added in numerical order to the list of facility-based procedures for which an additional amount for supplies may be payable if performed in a physician's office, to read as follows:

HCPCS	Description
49081	Removal of abdominal fluid.
85100	Bone marrow examination.
85101	Aspirate, stain bone marrow.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 9, 1992.

Joanne Amato,

Acting Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 92-22151 Filed 9-14-92; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92-118; RM-7667]

Radio Broadcasting Services; Wrightsville, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 299C2 for Channel 299A at Wrightsville, Arkansas, and modifies the permit for Station KYTN (FM) to specify operation on the higher powered channel, as requested by Wrightsville Communications Company, Inc. See 57 FR 24577, June 10, 1992. Coordinates for Channel 299C2 at Wrightsville are 34-36-24 and 92-14-17. With this action, the proceeding is terminated.

EFFECTIVE DATE: October 26, 1992.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92-118, adopted August 12, 1992, and released September 9, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1990 M Street NW., suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by removing Channel 299A and adding Channel 299C2 at Wrightsville.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-22157 Filed 9-14-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-593; RM-6490, RM-6713]

Radio Broadcasting Services; Wetumpka, Brantley, and Luverne, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 250A to Wetumpka, Alabama. This document also substitutes Channel 282C1 for Channel 282A at Brantley, Alabama, reallots the channel to Luverne, Alabama, and modifies the construction permit of Station WDHT to specify operation on Channel 282C1 at Luverne, Alabama. *See* 54 FR 3822, published January 26, 1989. The reference coordinates for the Channel 250A allotment at Wetumpka, Alabama, are 32-28-23 and 86-09-22, with a site restriction 7.2 kilometers (4.8 miles) east of the community. The reference coordinates for the Channel 282C1 allotment at Luverne, Alabama, are 32-04-05 and 85-59-35, with a site restriction 46.9 kilometers (29.2 miles) northeast of the community. With this action, the proceeding is terminated.

DATES: Effective October 23, 1992. The window period for filing applications will open on October 26, 1992, and close on November 25, 1992.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-593, adopted August 14, 1992, and released September 8, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422,

1990 M Street NW., suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by adding Wetumpka, Channel 250A, by removing Channel 282A at Brantley, and by adding Luverne, Channel 282C1.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-22213 Filed 9-14-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 92-86; RM-7961]

Radio Broadcasting Services; Paradise and Fort Bragg, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 244B1 for Channel 244A at Paradise, California, and modifies the license of Station KZZP(FM) to specify operation on the higher powered channel, as requested by Paradise Broadcasting, Inc. Additionally, in order to accommodate the modification at Paradise, Channel 228B is substituted for Channel 244B at Fort Bragg, California, and the license issued to The Henry Radio Company for Station KLLK—FM is modified accordingly. See 57 FR 14687, April 22, 1992. Coordinates for Channel 244B1 at Paradise are 39-57-29 and 121-42-50. Coordinates for Channel 228B at Fort Bragg are 39-27-53 and 123-45-27. With this action, the proceeding is terminated.

EFFECTIVE DATE: October 26, 1992.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92-86, adopted August 13, 1992, and released September 9, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1990 M Street NW., suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 244A and adding Channel 244B1 at Paradise; and by removing Channel 244B and adding Channel 228B at Fort Bragg.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-22219 Filed 9-14-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-534; RM-7519, RM-7632]

Radio Broadcasting Services; Mount Olive and Breese, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 287A to Mount Olive, Illinois, and Channel 248A to Breese, Illinois, at the request of Radio Latino and Breese Broadcasting, respectively. See 55 FR 47896, November 16, 1990. Channel 287A can be allotted to Mount Olive, Illinois, in compliance with the Commission's minimum distance separation requirements at coordinates North Latitude 39-04-20 and West Longitude 89-43-38. Channel 248A can be allotted to Breese, Illinois, in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.5 kilometers (3.4 miles) east of the community, in order to avoid a short-spacing to Station KYKY-FM, Channel 251C1, St. Louis, Missouri, at coordinates North Latitude 38-36-30 and West Longitude 89-27-50. With this action, this proceeding is terminated.

DATES: Effective October 23, 1992. The window period for filing applications will open on October 26, 1992, and close on November 25, 1992.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-534, adopted August 13, 1992, and released September 8, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1990 M Street NW., suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Illinois, is amended by adding Breese, Channel 248A, and by adding Mount Olive, Channel 287A.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-22214 Filed 9-14-92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 920412-2112]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS announces that the two commercial fisheries scheduled to open in September in the exclusive economic zone from Cape Alava to Destruction Island, Washington, and from Leadbetter Point, Washington, to Cape Falcon, Oregon, will not open. The Director, Northwest Region, NMFS (Regional Director), determined that the overall commercial quota of 19,000 coho salmon has been reached and the

commercial fishery north of Cape Falcon, Oregon, should be closed for the remainder of the scheduled season. This action is necessary to conform to the preseason announcement of the 1992 management measures and is intended to ensure conservation of coho salmon.

DATES: Effective at 0001 hours local time, September 8, 1992. Comments will be accepted through September 30, 1992.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE., BIN C15700–Bldg. 1, Seattle, WA 98115–0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at (206) 526–6140.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR 661.21(a)(1) state that "When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by notice issued under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

In its emergency interim rule and notice of 1992 management measures (57 FR 19388, May 6, 1992), NMFS announced that the commercial fisheries: (1) Between Cape Alava and Destruction Island, Washington, would open September 15 through the earliest of October 31 or the attainment of subarea quotas for coho or chinook salmon, and (2) between Leadbetter Point, Washington, and Cape Falcon, Oregon, would open September 8 through the earliest of September 30 or the attainment of overall quotas for coho or chinook salmon.

Based on the best available information on August 27, 1992, the commercial fishery impacts north of Cape Falcon reached the overall commercial coho salmon quota of 19,000 fish during the previous opening of the commercial season from the U.S.–Canada border to Cape Falcon on August 20–22, and subsequent fisheries should not be allowed to open.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Washington Department of Fisheries, and the Oregon Department of Fish and Wildlife regarding this closure. This notice does not apply to treaty Indian fisheries or to other fisheries that may be operating in other areas.

Actual notice to affected fishermen was given prior to September 8, 1992, through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.23. Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment.

Classification

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated September 8, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–22140 Filed 9–14–92; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 57, No. 179
Tuesday, September 15, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206-AE99

Prevailing Rate Systems

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing proposed regulations to establish procedures for exercising a provision of law that authorizes OPM to make exceptions to the statutory pay cap applicable to Federal Wage System (FWS) pay rates as necessary to ensure the recruitment and retention of qualified FWS employees. In addition, OPM proposes to revise the FWS special rate regulations to allow OPM to (1) target and approve special rates for specific locations within a wage area, and (2) approve a special rate at the market rate or a percentage of the market rate (as long as the special rate is not less than the unrestricted (uncapped) rate). The proposed pay cap exception and special rate regulations would provide greater flexibility in addressing recruitment and retention problems caused by FWS pay caps and normal employment competition within the marketplace.

DATES: Comments must be received on or before October 15, 1992.

ADDRESSES: Send or deliver written comments to Barbara L. Fiss, Assistant Director for Compensation Policy, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, room 6H31, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Alan K. Summers, (202) 606-2848.

SUPPLEMENTARY INFORMATION: Public Law 102-141, October 28, 1991, gives OPM the authority to make exceptions to the fiscal year 1992 pay limitation as necessary to ensure the recruitment or retention of qualified FWS employees. This special authority is directed at staffing problems created by pay caps. The proposed regulations provide agencies with instructions on how to request a pay cap exception under this authority. A pay cap exception would lift the pay cap in its entirety within all or part of a wage area for a designated occupation or occupational specialization and grade and allow the wage rates to return to the uncapped rates.

OPM also proposes to restructure its FWS special rate regulations to make those regulations more flexible. The proposed regulations would allow OPM to target locations within a wage area. This flexibility is similar to that of General Schedule special rates and for the FWS higher minimum rate authority. The ability to target locations would have the effect of removing objections to special rates that are often voiced by Federal employers in a wage area that do not have the same staffing problems encountered elsewhere in the wage area. The proposed regulations would allow OPM to authorize not only the market rate for an occupation and grade (the current practice), but also a percentage of the market rate (as long as the special rate is not less than the unrestricted (uncapped) rate). This change has the double effect of allowing OPM to set special rates at the level it determines is necessary to resolve the staffing problem and also removing possible agency concerns regarding the need or ability to pay a full market rate for a job. After OPM has initially approved the special rate, the lead agency would be responsible for making future adjustments, as it deems necessary, to ensure the continued recruitment or retention of well-qualified FWS employees. The lead agency could adjust the special rate up to the percentage increase by which the market rate has changed since the last adjustment, but could not exceed the percentage of market rate previously approved by OPM. To exceed the initial percentage of market rate approved by OPM, a new request for special rates would have to be submitted to OPM. The proposed regulations also would allow OPM to consider *potential* staffing problems, as well as existing ones. This proposal is modeled after the expanded authority for General Schedule special rates.

OPM is not proposing any change in the authority delegated to lead agencies in § 532.249 of title 5, Code of Federal Regulations, to approve higher minimum rates for hard-to-fill positions. Agencies may continue to use this authority as a tool to address lesser recruitment problems, agencies could request a pay authority would be optional. Depending on the extent of the recruitment or retention problems and the cause of the problems, agencies could request a pay cap exception or a special rate without first using higher minimum rates.

Rates that are uncapped under OPM's pay cap exception authority and special rates, which could not be less than the unrestricted (uncapped) rate otherwise payable for the job under the applicable schedule, might be limited again by future statutory pay caps. if this should occur, agencies could request new pay cap exception or special rate.

The related issues of authorizing exceptions to the statutory pay cap and revising the special rate regulations were considered by the Federal Prevailing Rate Advisory Committee. The members, by consensus, supported the proposed regulations.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM proposes to amend 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for 5 CFR part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552, Freedom of Information Act, Pub. L. 92-502.

2. Section 532.251 is revised to read as follows:

§ 532.251 Special rates.

(a) A lead agency, with the approval of OPM, may establish special rates for use within all or part of a wage area for a designated occupation or occupational specialization and grade, in lieu of rates on the regular schedule. OPM may authorize special rates to the extent it considers necessary to overcome existing or likely significant handicaps in the recruitment or retention of well-qualified personnel when these handicaps are due to any of the following circumstances:

(1) Rates of pay offered by private sector employers for an occupation or occupational specialization and grade are significantly higher than those paid by the Federal Government within the competitive labor market;

(2) The remoteness of the area or location involved; or

(3) Any other circumstances that OPM considers appropriate.

(b) In authorizing special rates, OPM shall consider—

(1) The number of existing or likely vacant positions and the length of time they have been vacant, including evidence to support the likelihood that a recruitment problem will develop if one does not already exist;

(2) The number of employees who have or are likely to quit, including the number quitting for higher pay positions and evidence to support the likelihood that employees will quit;

(3) The number of vacancies employing agencies tried to fill and the number of hires and offers made;

(4) The nature of the existing labor market;

(5) The degree to which employing agencies have considered or used increased minimum rates for hard-to-fill positions;

(6) The degree to which employing agencies have considered relevant non-pay solutions to the staffing problem, such as conducting an aggressive recruiting program, using appropriate appointment authorities, redesigning jobs, establishing training programs, and improving working conditions;

(7) The impact of the staffing problem on employers' missions;

(8) The level of private sector rates paid for comparable positions; and

(9) As appropriate, the extent to which the use of unrestricted rates authorized under § 532.801 of this part was considered.

(c) In determining at what level to set special rates, OPM shall consider—

(1) The level of rates it believes necessary to recruit or retain an adequate number of well-qualified persons;

(2) The offsetting costs that will be incurred if special rates are not authorized; and

(3) The level of private sector rates paid for comparable positions.

(d) No one factor or combination of factors specified in paragraphs (b) or (c) of this section requires special rates to be established or to be adjusted to any given level. Each request to establish special rates shall be judged on its own merits, based on the extent to which it meets these factors. Increased minimum rates are not a prerequisite to the establishment of special rates under this section.

(e) Special rates shall be based on private sector wage data, or a percentage thereof, as specified by OPM at the time the special rates are authorized. The private sector data shall be calculated as a weighted average or payline, as appropriate. A single rate shall be used when this represents private sector practice, and five rates shall be used when rate ranges are used by the private sector. When a five-step rate range is used, the differentials between steps shall be set in accordance with § 532.203(f) of this subpart.

(f) Once approved by OPM, special rates may be adjusted by the lead agency on the same cycle as the applicable regular schedule to the extent deemed necessary to ensure the continued recruitment or retention of well-qualified personnel. The amount of the special rate adjustment may be up to the percentage (rounded to the nearest one-tenth of 1 percent) by which the market rate has changed since the last adjustment. Special rates may not exceed the percentage of market rates initially approved by OPM unless a request for higher special rates is made and approved under paragraphs (a) through (e) of this section.

(g) Any special rates established under paragraph (a) of this section shall be shown on the regular schedule or published as an amendment to the regular schedule and shall indicate the wage area (or part thereof) and each occupation or occupational specialization and grade for which the rates are authorized. These rates shall be paid by all agencies having such positions in the wage area (or part thereof) specified.

(h) The scheduled special rate payable under this section may not, at any time, be less than the unrestricted (uncapped) rate otherwise payable for such positions under the applicable regular wage schedule.

(i) If a special rate is terminated under paragraph (f) of this section, the lead agency shall provide written notice of such termination to OPM.

(j) Employers using special rates shall maintain current recruitment and retention data for all authorized special rates. Such data shall be made available to the lead agency prior to the wage area regular schedule adjustment date for the purpose of determining whether there is continuing need for special rates and the amount of special rate adjustment necessary to recruit and retain well-qualified employees.

3. Section 532.254 is added to read as follows:

§ 532.254 Special schedules.

(a) A lead agency, with the approval of OPM, may establish special schedules for use within an area for specific occupations that are critical to the mission of a Federal activity based on findings that—

(1) Unusual prevailing pay practices exist in the private sector that are incompatible with regular schedule practices, and serious recruitment or retention problems exist or will likely develop if employees are paid from the authorized regular schedule; or

(2) Administrative considerations require the establishment of special schedules to address unique agency missions or other unusual circumstances that OPM considers appropriate.

(b) An OPM authorization for a special schedule shall include instructions for its construction, application, and administration.

(c) Unless otherwise specified, positions covered by special schedules shall be subject to the general provisions of this part and to the other applicable rules and regulations of OPM.

4. A new subpart H, consisting of § 532.801, is added to read as follows:

Subpart H—Payment of Unrestricted Rates for Recruitment or Retention Purposes

§ 532.801 Payment of unrestricted rates for recruitment or retention purposes.

(a) When authorized by specific statutory authority providing for exceptions to pay limitations imposed by statute, the Office of Personnel Management (OPM) may approve exceptions to the pay limitations if OPM determines that such exceptions are necessary to ensure the recruitment or retention of qualified employees.

(b) Requests for payment of unrestricted rates under this subpart shall be submitted by employing agencies' headquarters to the

appropriate lead agency. The lead agency shall coordinate each request with other agencies, as necessary, and submit a consolidated request to OPM. The consolidated request shall include any available supporting wage survey date and a formal recommendation by the lead agency to approve or disapprove the request.

(c) Rates authorized under paragraph (a) of this section shall be equal to the regular or special schedule unrestricted (uncapped) rates and may be authorized for use within all or part of a wage area for a designated occupation or occupational specialization and grade.

(d) In approving rates under this subpart, OPM shall consider the factors specified in § 532.251(b) of this part.

(e) The unrestricted rates authorized under this subpart shall be shown on the appropriate regular or special schedule or as an amendment to the schedule and shall indicate the wage area (or part thereof) and each occupation or occupational specialization and grade for which the rates are authorized. These rates shall be paid by all agencies having such positions in the wage area (or part thereof) specified.

[FR Doc. 92-22165 Filed 9-14-92; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Docket No. FV-92-076]

Lemons Grown in California and Arizona; Proposed Weekly Volume Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; correction.

SUMMARY: This action corrects an incorrect meeting date and location specified in the Committee Meetings and Dates section of a proposed rule which invites comments on the quantities of fresh California-Arizona lemons that may be shipped weekly to domestic markets.

SUPPLEMENTARY INFORMATION: This action makes a correction in a proposed rule which appeared in the **Federal Register** (57 FR 39368, August 31, 1992).

This proposed rule was issued under Marketing Order No. 910 (7 CFR part 910) (order), as amended, regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, [7 U.S.C. 601-674].

The meeting date, time, and location on page 39370, item 3, is corrected to read as follows:

"3. Committee Meeting Date: September 23, 1992, Time: 11:00 a.m., Location: Shilo Inn, 11550 South Castle Dome Road, Yuma, Arizona 85365."

Dated: September 9, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92-22128 Filed 9-14-92; 8:45 am]

BILLING CODE 3410-02-M

Packers and Stockyards Administration

9 CFR 201 and 203

Review of Existing Regulations and Statements of General Policy

AGENCY: Packers and Stockyards Administration, USDA.

ACTION: Request for comments.

SUMMARY: The Agency is currently reviewing all regulations and policy statements issued under the provisions of the Packers and Stockyards (P&S) Act. This notice requests public comments concerning the relevance and importance of each regulation and statement of general policy to today's livestock, meat, and poultry industries. In particular, the Agency would appreciate comments concerning which sections should be retained in their present form and which sections should be modified or removed.

DATES: Comments must be submitted on or before November 16, 1992.

ADDRESSES: Comments may be mailed to the Administrator, Packers and Stockyards Administration, room 3039, South Building, U.S. Department of Agriculture, Washington, DC 20250. Comments received may be inspected during normal business hours in the Office of the Administrator.

FOR FURTHER INFORMATION CONTACT: Harold W. Davis, Director, Livestock Marketing Division, (202) 720-6951, or Kenneth Stricklin, Director, Packer and Poultry Division, (202) 720-7363.

SUPPLEMENTARY INFORMATION: A review of 16 regulations and statements of general policy issued under the provisions of the P&S Act was completed under the President's program to review priority regulations. All remaining regulations and statements of general policy are currently being reviewed. This notice solicits comments on these remaining rules to determine whether some may no longer be necessary for effective enforcement of the P&S Act and to the orderly conduct of the marketing system. The Agency also solicits comments concerning modifications that may make a particular rule more efficient or effective.

Comments are requested concerning each of the following regulations and statements of general policy:

Regulations (9 CFR, Part 201)

Sec.

201.1 Meaning of words.
201.2 Terms defined.
201.3 Authority.
201.4 Bylaws, rules and regulations, and requirements of exchanges, associations, or other organizations; applicability, establishment.
201.5 Investigation, notice and posting of stockyards.
201.6 Deposting or stockyards; notice.
201.17 Requirements for filing tariffs.
201.27 Underwriter: equivalent in lieu of bonds; standard forms.
201.28 Duplicates of bonds or equivalents to be filed with Regional Supervisors.
201.31 Conditions in market agency, dealer and packer bonds.
201.32 Trustee in marketing agency, dealer and packer bonds.
201.33 Persons damaged may maintain suit; filing and notification of claims; time limitations; legal expenses.
201.34 Termination of market agency, dealer and packer bonds.
201.39 Payment to be made to consignor or shipper by market agencies; exceptions.
201.44 Market agencies to render prompt accounting for purchases on order.
201.45 Market agencies to make records available for inspection by owners, consignors, and purchasers.
201.49 Requirements regarding scale tickets evidencing weighing of livestock and live poultry.
201.53 Persons subject to the Act not to circulate misleading reports about market conditions or prices.
201.55 Purchases and sales to be made on actual weights.
201.61 Market agencies selling or purchasing livestock on commission; relationships with dealers.
201.69 Furnishing information to competitor buyers.
201.70 Restriction or limitation of competition between packers and dealers prohibited.
201.71 Scales; accurate weights, repairs, adjustments or replacements after inspection.
201.73 Scale operators to be qualified.
201.73-1 Instructions for weighing livestock.
201.76 Reweighing.
201.81 Suspended registrants.
201.82 Care and promptness in weighing and handling livestock and live poultry.
201.86 Brand inspection: application for authorization, registration and filing of schedules, reciprocal arrangements, and maintenance of identity of consignments.

Sec.
201.94 Information as to business; furnishing of by packers, live poultry dealers, stockyard owners, market agencies, and dealers.
201.95 Inspection of business records and facilities.
201.96 Unauthorized disclosure of business information prohibited.
201.98 Packers and dealers not to charge, demand, or collect commission, yardage, or other service charges.
201.100 Records to be furnished poultry growers and sellers.
201.108-1 Instructions for weighing live poultry.
201.200 Sale of livestock to a packer on credit.

Statements of General Policy (9 CFR, Part 203)

Sec.
203.2 Statement of general policy with respect to the giving by meat packers of meat and other gifts to Government employees.
203.4 Statement with respect to the disposition of records by packers, live poultry dealers, stockyard owners, market agencies and dealers.
203.5 Statement with respect to market agencies paying the expenses of livestock buyers.
203.7 Statement with respect to meat packer sales and purchase contracts.
203.12 Statement with respect to providing services and facilities at stockyards on a reasonable and nondiscriminatory basis.
203.15 Trust benefits under sections 206 and 207 of the Act.
203.16 Mailing of checks in payment for livestock purchased for slaughter, for cash and not on credit.
203.17 Statement of general policy with respect to rates and charges at posted stockyards.
203.18 Statement with respect to packers engaging in the business of custom feeding livestock.
203.19 Statement with respect to packers engaging in the business of livestock dealers or buying agencies.

The Agency is continuing to review three regulations included in the Catalog of Priority Regulations under the President's program. These regulations are:

Sec.
201.10 [Registration] Requirements and procedures.
201.29 Market agencies, packers and dealers required to file and maintain bonds.
201.30 Amount of market agency, dealer and packer bonds.

The Agency also requests comments on each of these regulations and specifically requests that the comments address concerns or recommendations relating to bonding levels.

While there is no regulation which specifically prohibits market agencies selling on commission from providing free or below cost trucking to consignors, this practice has generally been considered unfair and discriminatory under the provisions of the P&S Act. In the past, cases have held it is discriminatory to consignors who do not receive the free trucking and unfair to competing markets. Free trucking may also be considered a form of commission rebate.

Structural changes in the livestock marketing industry have altered the competitive forces and free or below cost trucking has become a pervasive factor in soliciting consignments in many areas. The Agency believes this is only partially caused by competition between markets because most selling agencies not only compete with each other, but with other market alternatives in their geographic regions, such as dealer and packer buyer organizations who are free to purchase livestock at the farm and haul it away without cost to the seller. Therefore, the Agency requests comments concerning: the effects of the practice of market agencies providing free or below cost trucking to consignors on competition between selling agencies; the ability of selling agencies to compete with other marketing alternatives; whether the practice has become a custom of the industry; and whether the practice should be re-evaluated with respect to the provisions of the P&S Act.

Done at Washington, DC this 9th day of September 1992.

Virgil M. Rosendale,

Administrator, Packers and Stockyards Administration.

[FR Doc. 92-22247 Filed 9-14-92; 8:45 am]

BILLING CODE 3410-KD-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 363

RIN 3064-AA83

Annual Independent Audits and Reporting Requirements

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 112 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) added a new section 36 to the Federal Deposit Insurance Act (FDI Act), the purpose of which is to facilitate early identification of problems in financial management through annual independent audits, more stringent reporting requirements, and the establishment and maintenance of internal control structures and procedures.

Proposed part 363 implements section 36 and requires that each insured depository institution with $150 million or more in total assets have an annual audit by an independent public accountant, and an independent audit committee made up of outside directors; that management report on the institution's responsibility for preparing financial statements and establishing and maintaining an internal control structure and procedures for financial reporting and compliance with laws and regulations concerning safety and soundness; and that independent auditors attest to and report separately on assertions in management's reports by using audit procedures agreed upon by the FDIC for determining the extent of compliance with laws and regulations concerning safety and soundness.

DATES: Comments must be received by October 30, 1992.

ADDRESSES: Send comments to Hoyle L. Robinson, Executive Secretary, FDIC, 550 17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to room 400, 1776 F Street, NW., Washington, DC 20429 on business days between 8:30 a.m. and 5 p.m. (FAX number: (202) 898-3838.)

FOR FURTHER INFORMATION CONTACT: Doris L. Marsh, Examination Specialist, Division of Supervision (202) 898-8905, FDIC, 550 17th Street, NW., Washington, DC 20429; Kathleen M. James, Examination Specialist, Division of Supervision (202) 898-6809, FDIC, 559 17th Street, NW., Washington, DC 20429; or Sandra Comenetz, Senior Attorney, Legal Division, (202) 898-3582, FDIC, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this rule has been filed with the Office of Management and Budget for review pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. et seq.). Comments on the collection of information should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the FDIC, with copies of such comments to be sent to Steven F. Hanft, Assistant Executive Secretary (Administration), room F-453, FDIC, 550 17th Street, NW., Washington, DC 20429. This information is mandated by section 36 of the FDI Act (12 U.S.C. 1831m) which was added by

section 112 of FDICIA (Pub. L. 102–242, 105 Stat. 2242).

It is usual and customary for large financial institutions to have annual audits of their financial statements performed by independent public accountants and approximately 96 percent of institutions covered by this proposed regulation report that they already have annual audits of their financial statements. In addition, reflecting the FDIC's 1988 policy statement encouraging all institutions to establish and maintain audit committees consisting of outside directors and requirements of other agencies and stock exchanges, it is usual and customary for institutions to have audit committees. It is estimated that approximately 80 percent of institutions covered by this regulation have audit committees already performing the functions required by this regulation. Therefore, the estimated annual reporting burden for the collection of information in the regulation is summarized as follows:

Number of Preparers: 3,000
Number of Policies and Record Systems Prepared: 1.22
Total Annual Preparations: 3,650
Hours Per Policy and Record System: 25.44
Total Annual Burden Hours: 76,330

Regulatory Flexibility Act

The proposed rule expressly exempts insured depository institutions having assets of less than $150 million, and, for that reason is inapplicable to small entities. Therefore, pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 et seq.), it is certified that the proposed rule would not have a significant impact on a substantial number of small entities.

Summary of Section 36 of FDICIA

Section 112 of FDICIA added a new section 36 to the FDI Act, the purpose of which is to facilitate early identification of problems in financial management through annual independent audits, more stringent reporting requirements, and the establishment and maintenance of internal control structures and procedures. The requirements of section 36 apply to fiscal years of insured depository institutions beginning after December 31, 1992. Section 36 does not apply to institutions with assets under $150 million (or a greater amount as determined by the FDIC).

Section 36 requires that management of insured depository institutions provide an annual report to the FDIC, the appropriate federal banking agency, and any appropriate state bank supervisor. This report must contain annual financial statements and a statement of management's responsibility for preparing financial statements, establishing and maintaining an adequate internal control structure and procedures for financial reporting and for complying with laws and regulations relating to safety and soundness designated by the FDIC. The annual report must include management's assessment of the effectiveness of the internal controls over financial reporting and compliance. The institution's independent auditors must attest to and report separately on the institution's assertions contained in the management report. The auditor's attestation must also be provided to the bank regulators. The annual report must be made available for public inspection.

Section 36 requires that each insured financial institution have an annual independent audit performed on its financial statements by an independent public accountant in accordance with generally accepted auditing standards. In the case of large institutions (as defined by the FDIC), the FDIC may require that the independent public accountant review the institution's quarterly financial reports.

Section 36 requires that independent public accountants who perform audit services pursuant to the statute must make available working papers, policies, and procedures to the bank regulatory agencies, and must have received a peer review that meets guidelines acceptable to the FDIC. Peer review reports must be filed with the FDIC and made available for public inspection. Any independent public accountant who ceases to provide audit services to an institution must promptly notify the FDIC. Section 36 provides the federal banking agencies with additional authority to remove, suspend, or bar an independent public accountant for cause from providing audit services required by the statute.

Section 36 requires that the insured depository institution provide its independent auditor with the most recent report of condition and report of examination, and any supervisory memoranda or other written agreement between the institution and a bank regulatory agency. In addition to the annual report and the auditor's attestation, the institution must provide to the FDIC, any appropriate federal banking agency, and any appropriate state bank supervisor, audit reports, management letters, and any other auditor reports within 15 days of receipt. The institution must also provide written notification of any change in auditors within 15 days of the event.

Section 36 requires that insured depository institutions have an independent audit committee made up entirely of outside directors. In the case of large institutions (as defined by the FDIC), the committee must include members with banking or financial management expertise, have access to outside counsel, and not include any large customers (as defined by the FDIC) of the institution. The audit committee's duties include reviewing with management and the independent auditor the basis for the annual audit, management reports, and other annual information required by the bank regulatory agencies.

Insured depository institutions that are subsidiaries of holding companies may satisfy the annual audit requirement by filing audited financial statements of the holding company. Other section 36 requirements may be satisfied for subsidiaries of holding companies by the holding company and its auditor if the holding company is providing services and functions comparable to those required by the statute, the subsidiary's total assets are less than $5 billion, or between $5 billion and $9 billion, and the institution at its last examination had a CAMEL rating of 1 or 2 under the Uniform Financial Institutions Rating System.

Summary of Proposal

The FDIC is proposing Part 363 to implement section 36. Part 363 would be applicable to any insured depository institution having assets of $150 million or more, and would require management to prepare annual and agency reports on the financial condition of the institution that would be filed with the FDIC, the appropriate federal banking agency, and any appropriate state bank supervisor. The annual report would contain financial statements prepared in accordance with generally accepted accounting principles that are audited by the institution's independent public accountant.

The report would also contain management's assertions concerning the effectiveness of the institution's internal control structure and procedures, and its compliance with designated laws and regulations. The proposed rule would require that the independent public accountant examine the institution's internal control structure and apply procedures agreed upon by the FDIC to determine the extent of the institution's compliance with laws and regulations designated by the FDIC concerning safety and soundness.

The proposed rule would require that an insured depository institution have an independent audit committee comprised of outside directors, which, in

the case of large institutions, would include members with banking or financial management expertise, have access to outside counsel, and not include any large customers. The rule would define "large institution" and "large customer". The committee would review with management and the independent public accountant the information included in the institution's annual report. The law requires that audit services be performed only by an independent public accountant who would receive a peer review acceptable to the FDIC, and that the accountant provide working papers to the bank regulatory agencies upon request.

Insured depository institutions are required by FDICIA to notify the bank regulatory agencies of any change in their independent accountant. The rule would require accountants who cease to perform audit services for a particular insured depository institution to notify the FDIC. FDICIA requires insured depository institutions to provide examination reports and certain other information to their accountants, and a copy of the annual audit report to the bank regulatory agencies.

With respect to subsidiaries of a holding company, the independent audit requirement may be satisfied by an audit of the holding company. The other requirements of section 112 of FDICIA may be satisfied for subsidiaries of holding companies by the holding company and its auditor if services and functions comparable to those required by the law are provided at the holding company level, the subsidiary has total assets of less than $5 billion, or total assets between $5 billion and $9 billion, and a CAMEL rating of one or two.

Section-by-Section Analysis

For clarity, the regulation repeats the statutory requirements of FDICIA, implements those requirements, and clarifies terms and procedures. The law exempts from section 36 coverage insured institutions which, at the beginning of any fiscal year, have total assets of less than $150 million, but left to the FDIC's discretion whether also to exempt institutions having assets of some amount in excess off $150 million from some or all of the provisions. In § 363.101 the FDIC proposes to limit the scope of this regulation to those institutions having assets of $150 million or more for two reasons. First, this threshold is identical to that in reports required by Regulation Y of the Board of Governors of the Federal Reserve System. These reports require that all bank holding companies with assets of $150 million or more file annual reports which must include financial statements that have been audited by an independent public accountant. Using the same threshold means that there will be some consistency in reporting requirements. Second, approximately 95 percent of all institutions with assets of $150 million or more already engage an independent public accountant to perform an annual audit of the financial statements of the institution or, as the case may be, of the consolidated statements of the holding company. All of the other institutions engage an independent public accountant to provide some audit services. All that should be unfamiliar to institutions is FDICIA's requirement that an independent public accountant examine an institution's system of internal controls over financial reporting and perform agreed-upon procedures to test compliance with laws and regulations concerning safety and soundness.

Inasmuch as the FDIC has discretion to exempt institutions having total assets of some amount in excess of $150 million from some or all of the requirements of section 36, the FDIC could apply the requirements in gradations to institutions over $150 million. For example, the FDIC could require that only certain provisions of section 36 apply to institutions between $150 million and some larger size, but that all requirements apply to institutions over that larger size. The FDIC requests comment on whether it should do so. If so, comments are requested on the size to choose as the threshold and the reasons for such choice. The FDIC also requests detailed information concerning the additional costs that institutions will incur as a result of the requirement for an examination of the institution's system of internal controls over financial reporting and performance of agreed upon procedures to test compliance with laws and regulations concerning safety and soundness.

Section 363.201 of the proposed rule requires each institution within 90 days after the end of each fiscal year to prepare an annual report required by law containing financial statements, an audit report on those statements, management's report on internal controls over financial reporting and compliance with laws and regulations relating to safety and soundness, and an independent public accountant's attestation concerning management's assertions. Section 363.202 requires that the annual report and certain other documents be filed with the banking regulators

Section 363.203 details the information that should be provided in an institution's financial statements. Section 36 of the FDI Act requires that financial statements included in an institution's annual report be prepared in accordance with generally accepted accounting principles (GAAP) and such other disclosure requirements as the FDIC may prescribe, and that they must be audited by an independent public accountant in accordance with generally accepted auditing standards (GAAS). Because the preparation of Reports of Condition and Income (Call Reports) is based on GAAP with some regulatory differences in reporting treatment, the FDIC explored the alternative of requiring audits of certain Call Report schedules supplemented by a GAAP statement of cash flows and footnote disclosure.

While this alternative has the advantage of improving accuracy in Call Report information so much relied upon by the banking agencies, the cost burden attendant upon this alternative could outweigh perceived advantages. For example, many institutions and holding companies are publicly held and are required under the Securities Exchange Act of 1934 (15 U.S.C. 78a) to have GAAP audited financial statements. The financial burden to have one type of audit for the FDIC and another for the Securities Exchange Commission (SEC) seemed unjustified.

Accordingly, in § 363.203 of the rule, the FDIC is proposing that institutions file financial statements under this part similar to those required by GAAP, although institutions may elect instead to file audits of specified Call Report schedules and supplemental information. Institutions would file similar financial statements with the FDIC as they submit under the Securities Exchange Act of 1934. Bank holding companies would be able to use their SEC financial statements or audited financial statements prepared for their Y-6 Report required under the Bank Holding Company Act of 1956 (12 U.S.C. 1841). Whatever financial statement an institution files, the proposal would require that footnote disclosure include a reconciliation of the difference between GAAP and the institution's appropriate regulatory accounting for leverage, tangible, where applicable, and risk-based capital. In addition, holding company financial statements must include the consolidating schedules of the balance sheets and income statements used to combine each institution over $150 million, or balance sheets and income statements for each institution over $150 million in total assets on an individual entity basis. The proposed filing date,

within 90 days after an institution's fiscal year end, is the same for SEC and Y-6 annual reports to ensure that bank and thrift regulators receive the reports no later than the public.

The proposed rule would require that, pursuant to section 36(e)(1) of the FDI Act, certain Call Report and TFR items be covered in the agreed upon procedures for compliance with designated laws and regulations on which the independent public accountant will be expected to report. However, because the federal banking agencies rely on the financial information in the Call Reports and Thrift Financial Reports (TFRs), comment is requested on whether selected Call Report and TFR information would be better added to the scope of the audit under section 36(d)(2)(B) of the FDI Act, or whether such information should even be previewed at all.

Section 36 of the FDI Act requires that each institution prepare an annual report containing a statement of management's responsibility for establishing and maintaining an adequate internal control structure and an assessment of the effectiveness of the internal control structure. Each statement should reference the evaluation of the components of the internal control structure. While not part of the regulation, the FDIC recommends that internal control reporting reference an institution's control environment, risk assessment, control policies and procedures, communication and information systems, and monitoring systems. Section 36 further requires that each institution's independent public accountant attest to and report separately on management's assertions in its report on internal controls in accordance with generally accepted standards for attestation engagements. The FDIC considered proposing specific internal control criteria in the regulation, but elected to leave development of specific criteria to institutions. An example of acceptable internal control standards for institutions is found in "Internal Control-Integrated Framework", the report of the Committee of Sponsoring Organizations of the Treadway Commission, which provides guidance not only for large entities, but also provides suggestions for small and mid-size entities. For additional guidance on internal control systems, the FDIC suggests that management reference the FDIC's "Statement of Policy Providing Guidance on External Auditing Procedures for State Non Member Banks", and standards published by professional accounting organizations, such as the American Institute of Certified Public Accountant's (AICPA) Statement on Auditing Standards No. 30, "Reporting on Internal Accounting Control;" and, any other internal control standards published by the AICPA, other accounting or auditing professional associations, or other financial institution trade associations. The FDIC requests comment on its decision to leave the development of criteria to institutions.

Section 36 of the FDI Act requires that each institution prepare an annual report containing a statement of management's responsibilities for complying with designated laws and regulations relating to safety and soundness, and an assessment of the institution's compliance with the designated laws and regulations. Section 36 further requires that the institution's independent public accountant apply procedures agreed upon by the FDIC to determine the extent of compliance of any institution with the designated laws and regulations, and to attest to the findings in accordance with generally accepted standards for attestation engagements.

Section 363.204 of the proposal would require management to assess its own compliance with designated laws and regulations, and to evaluate the effectiveness of the operation of its internal control structure and procedures. Reporting on the internal control structure and procedures concerning compliance is especially important because without effective internal controls, management would have no rational basis on which to evaluate compliance. In short, management's reporting on compliance would be meaningless without effective internal controls over the compliance function. In contrast to the subject of internal controls over financial reporting, there is insufficient criteria for evaluating internal controls over compliance with laws and regulations to enable an independent public accountant to attest to management's assertions concerning such controls. Such criteria are needed, and the accounting profession is urged to develop them.

Authority for requiring management to evaluate the operation of its internal control structure and procedures over compliance comes from section 36 of the FDI Act and section 39 of the FDI Act. Section 39 concerns operational and managerial standards and authorizes the FDIC and other federal banking agencies to set standards for "internal controls, internal systems, and internal audit systems, in accordance with section 36." To implement section 39, the federal banking agencies are soliciting comments through September 14, 1992, on Standards for Safety and Soundness under a Joint Advance Notice of Proposed Rulemaking. (57 FR 31336, July 15, 1992).

In § 363.204 of the proposal the FDIC designates the laws and regulations relating to safety and soundness to be covered by this regulation: affiliate transactions, legal lending limits, loans to insiders, dividend restrictions, and financial reporting in Call Reports and Thrift Financial Reports. Each state chartered institution is expected to identify and report on compliance with comparable state laws and regulations. It has been the experience of the banking agencies that when institutions fail to comply with laws and regulations in these five areas they often become troubled. Procedures, developed in consultation with the AICPA, to enable independent public accountants to attest to an institution's compliance with designated laws and regulations are set forth in the appendix to the proposal.

Capital regulations were not included among the designated regulations in this proposal because capital adequacy is so thoroughly reviewed by examiners. The FDIC requests comment on whether it should designate additional laws and regulations relating to safety and soundness, such as the capital regulations, or omit any of the designated laws and regulations.

Section 36 of the FDI Act requires that management's assessment of the effectiveness of the institution's internal controls and its compliance with designated laws and regulations occur "as of the end of the institution's most recent fiscal year." In § 363.204(b)(3) the FDIC has interpreted this to mean that management's assessment must be prepared as of the end of the fiscal year and cover the entire audit period. Requiring management to assess the effectiveness of internal controls and the institution's compliance with laws and regulations over a period of time is more likely to foster safe and sound practices than so-called "point-in-time reporting," where assessments are made essentially on one occasion. The latter approach makes it harder to find material inadequacies that may be hidden by certain transactions occurring at a particular time.

Section 363.205 of the proposal establishes filing requirements for documents required by the rule. It requires each institution to make its annual report available for public inspection or supply one copy of it free

of charge to whomever requests it. If the proposed rule is adopted, it is anticipated that the FDIC will amend 12 CFR part 350 to permit institutions to use the annual report in lieu of part 350 disclosure documents.

Section 363.206 sets forth the exceptions to section 36 of the FDI Act for insured subsidiaries of holding companies. Section 363.206(a) provides that the requirements for an independent audit may be satisfied for subsidiaries of holding companies by an independent audit of the holding company. Section 363.206(b) states that the other requirements of section 36 may be satisfied for subsidiaries if services and functions comparable to those required by section 36 are provided at the holding company level, and either the institution has total assets, as of the beginning of each fiscal year, of less than $5 billion; or it has total assets as of the beginning of the fiscal year of more than $5 billion but less than $9 billion, and it received a CAMEL rating of 1 or 2 under the Uniform Financial Institutions Rating System at its most recent examination.

If the requirements of this exception are met, an independent public accountant may examine and attest to management's assertions on the consolidated entity's internal control system, assuming that system applies to the entire holding company and its subsidiaries, and would not be required to examine and attest to the systems of each subsidiary.

Section 36 requires that each covered institution have an independent audit committee. The membership criteria, duties, and recordkeeping responsibilities of the audit committee are set out in §§ 363.301 and 363.302. The proposal outlines certain duties for which an audit committee may be responsible, depending upon the institution's size and the complexity of its operations. This list is by way of example only. Each of the duties listed need not be performed by each audit committee, and there may be duties not included on the list that the committee should perform. It is the FDIC's opinion that members of the audit committee of a holding company may serve on the audit committee of any subsidiary provided that they meet the requirements of § 36(g)(1) of the FDI Act.

Section 36 establishes special criteria for audit committees of "large institutions". The FDIC defines "large institution" in § 363.102 of the proposed rule as an institution with $500 million or more in total assets as of the beginning of its fiscal year. The rationale for this figure is to bring within the rule's reach those institutions whose failure could pose a significant threat to the insurance fund. Three thousand institutions have total assets of $150 million or more and thus fall within the scope of section 36; approximately 1,000 of these have over $500 million in total assets and are "large institutions" within the meaning of § 363.102. Those institutions with $500 million or more in assets hold approximately 86 percent of the banking assets in the United States and include a significant number of savings associations. Had the FDIC chosen a higher figure to define "large institution," far fewer savings associations would be subject to the independent audit committee requirement. This figure also brings within the rule's purview the largest institutions in many of the smaller cities, rather than merely a few money center banks. The FDIC proposes to use this figure since the only additional requirements for "large institutions" under this proposal concern audit committee membership and committee access to outside counsel. The dollar cost of an institution's compliance with these requirements will be negligible. The additional protection afforded the public and the insurance funds by independent directors with greater knowledge of banking and finance warrants the insignificant cost to the institutions. The FDIC requests comment on its proposed definition of "large institution," whether different thresholds should be established for banks and thrifts, and whether there are other burdens which should be considered.

Section 36 of the FDI Act prohibits the presence of "large customers of the institution" on the institution's audit committee. In § 363.102 the FDIC proposes that "large customer" means any person, who together with his or her affiliates and associates, currently has, or had during the prior fiscal year, either aggregate extensions of credit or deposits at one time, or other significant relationships, with the institution and its affiliates exceeding the lesser of 15 percent of the institution's total risk-based capital or $50 million. In defining this term, the FDIC sought to find a threshold high enough to preclude customers who could significantly influence the institution because of the amount of business they do with the institution, but not so high as to eliminate good candidates for the audit committee.

The FDIC considered comparing the size of a customer's relationship to the institution's legal lending limit in order to define "large customer," but concluded that using capital was more appropriate since it provides a similar measure for all institutions. The size of the legal lending limit varies according to an institution's charter and the amount of the lending limit usually differs for collateralized and noncollateralized loans. Thus, determining the threshold for a "large customer" using the legal lending limit would unnecessarily increase the complexity of monitoring this threshold for both the institutions and the agencies. The FDIC requests comment on whether the definition of "large customer" should be based on the legal lending limit or any other standard rather than total regulatory capital. Comment is also requested on the appropriate percentage to use for any standard.

Section 36 of the FDI Act also provides that the audit committees of large institutions have access to their own outside counsel. In § 363.301, the FDIC proposes that the audit committee (not the members individually) have the authority to retain outside counsel without prior permission of the institution's board of directors or management. The FDIC is proposing that each audit committee have access to its own counsel who would be independent of the institution and the institution's outside counsel. The proposal would prohibit the audit committee outside counsel from discussing possible future employment with the institution during the pendency of its employment with the audit committee. It would require that if outside counsel is approached by the institution concerning possible future employment, it must disclose that fact in writing to the audit committee. The proposal would prohibit audit committee outside counsel from commencing employment with the institution during the 12 month period following termination of its representation. At present, the FDIC is not proposing that audit committees have counsel on retainer.

It is anticipated that some institutions will need time to restructure their audit committees to comply with this rule. Other institutions not presently "large" may become so through growth or merger. In recognition of these situations, no regulatory action will be taken if such institutions restructure their audit committees at their first annual meeting after which section 36 (12 U.S.C. 1831m) becomes effective.

Section 36 of the FDI Act authorizes the FDIC to require independent public accountants for "large institutions" to review such institutions' quarterly financial reports. At this time, the FDIC has decided not to exercise its authority in this area, preferring to request such

reviews on a case-by-case basis. Reviews of quarterly financial reports would be costly and most likely delay the receipt of quarterly financial information. Moreover, troubled institutions are likely to have an examiner on the premises often, making the need for external quarterly financial reviews less important. In short, the cost and burden involved in providing such reviews are believed to outweigh the benefit to the FDIC and the other federal banking agencies.

Sections 363.401 through 363.405 set forth the requirements for the annual audit, the engagement letter, the reports, and other items which must be provided to the independent auditors, and for the internal control and compliance attestations. The procedures have been prepared in consultation with the AICPA. The FDIC recommends immediate field testing by accounting firms and institutions of these procedures, and invites interested parties to comment on them.

Section 36 of the FDI Act requires each institution to have an annual independent audit of its financial statements in accordance with GAAS and any other standards established by the banking agencies. In conducting the audit, the independent public accountant is not precluded from using the internal audit staff of the institution as long as GAAS is followed, and the accountant supervises the internal staff in accordance with GAAS.

Certain clarifications are necessary regarding the independent public accountant's duty to examine and attest to management's compliance with laws and regulations. The independent public accountant may determine the extent of compliance with laws and regulations concerning affiliate transactions on a holding company basis because the laws and regulations in this area do apply to holding companies and their subsidiaries. On the other hand, the laws and regulations concerning legal lending limits, loans to insiders, dividend restrictions, and Call Reports and Thrift Financial Reports generally refer to individual institutions and compliance with them must be determined on subsidiary-by-subsidiary basis. Section 36(i) of the FDI Act exempts subsidiaries of holding companies from certain requirements of this section. The FDIC considered several methods for independent public accountants engaged by holding companies to determine the extent of subsidiary compliance with FDIC-designated laws and regulations. One approach was to have the external auditors review and attest that the internal auditors had performed the procedures set forth in the appendix on each subsidiary with over $150 million in total assets. However, it became apparent that uncertainty over the quality of a holding company's internal audit function would preclude an independent public accountant from attesting to the work performed by internal auditors without doing its own substantial, and costly, review of the internal audit function. Accordingly, the FDIC proposes that the procedures in the appendix be performed separately on each applicable subsidiary institution. The FDIC invites comments on this approach and suggestions (or alternative methods) to determine compliance through holding companies.

Independent public accountants providing audit services under section 36 must meet certain requirements and have received a peer review acceptable to the FDIC. Qualifications are set forth in § 363.501. Details of peer reviews are set forth in § 363.502. The FDIC is proposing that a peer review performed pursuant to the AICPA's "Statements on Quality Control Standards" and "Standards for Performing and Reporting on Quality Reviews," contained in Volume 2 of the AICPA Professional Standards, as long as it includes a representative sample of financial institution audits, will be acceptable. In addition, any other accounting organizations that establish standards for peer review may submit details concerning their programs to the FDIC for consideration and possible approval under this part.

Section 363.503 establishes notice requirements for institutions and accountants whenever there is a change in accountants. The information provided in response to § 363.503(a) concerning a change of accountant should be similar to that required by the SEC's Regulation S-K and the FDIC's § 335.321, Item 10. Section 363.504 reiterates the authority of the FDIC and the appropriate federal banking agency to take enforcement action against an independent public accountant upon a showing of "good cause" under existing section 8 of the FDI Act and also under section 36 of the FDI Act. A proposal to set forth procedures in 12 CFR part 308, subpart Q, will be issued separately.

Request for Public Comment

In addition to the specific requests made above, the FDIC hereby requests comment on all aspects of the proposed rule, including both legal and policy considerations.

List of Subjects in 12 CFR Part 363

Accounting, Banks, Banking, Reporting and recordkeeping.

For the reasons set forth in the preamble, the FDIC proposes to add part 363 to chapter III of title 12 of the Code of Federal Regulations to read as follows:

PART 363—ANNUAL INDEPENDENT AUDITS AND REPORTING REQUIREMENTS

Subpart A—General Provisions

Sec.
363.101 Scope.
363.102 Definitions.

Subpart B—Reporting Requirements

363.201 Annual reports.
363.202 Reports to agencies.
363.203 Financial statements.
363.204 Management report.
363.205 Filing requirements.
363.206 Exceptions for subsidiaries of holding companies.

Subpart C—Audit Committees

363.301 Members.
363.302 Duties.

Subpart D—Auditing Requirements

363.401 Annual independent audits.
363.402 Other items to be provided by the independent public accountant.
363.403 Reports to independent public accountants.
363.404 Internal control attestation.
363.405 Compliance with laws and regulations attestation.

Subpart E—Requirements of Independent Public Accountants

363.501 Qualifications of independent public accountants.
363.502 Peer review.
363.503 Selection or change of independent public accountant.
363.504 Enforcement actions.

Appendix A to Part 363—Agreed Upon Procedures for Compliance with Laws and Regulations

Authority: 12 U.S.C. 1831m.

Subpart A—General Provisions

§ 363.101 Scope.

The requirements of this part apply with respect to fiscal years of insured depository institutions which begin after December 31, 1992. This part shall not apply to any insured depository institution having assets of less than $150,000,000 as reported on its Call Report, or, in the case of savings associations, on its Thrift Financial Report, at the beginning of its fiscal year. An insured depository institution which may be exempt from the requirements of this part because of

size, or whose responsibilities under this part may be met pursuant to 12 CFR 363.206 because it is a subsidiary of a holding company, shall not thereby be exempt from any other statutory or regulatory provision or policy of the FDIC or an appropriate federal banking agency that requires the institution to file audited financial statements or other reports with the FDIC or an appropriate federal banking agency.

§ 363.102 Definitions.

For purposes of this part the following definitions apply:

(a) *Appropriate federal banking agency* means the Comptroller of the Currency in the case of any national banking association, any District bank or any federally chartered insured branch of a foreign bank; the Board of Governors of the Federal Reserve System in the case of any state member bank (except a District bank) or any bank holding company; the FDIC in the case of any state nonmember insured bank (except a District bank), or any state chartered insured branch of a foreign bank; and the Director of the Office of Thrift Supervision in the case of any savings association or any savings association holding company.

(b) *Audit date* means the last day of the annual audit period. It is the date of the balance sheet and end of income statement period audited and reported on without regard to the actual date of the commencement of the audit. Except in extraordinary circumstances, the audit date will remain the same from year to year.

(c) *Audit period* means the period of time between the audit dates of two consecutive audits, usually twelve calendar months.

(d) *Audit report* means the document addressed to an institution's board of directors, its stockholders, or its audit committee that sets forth the scope of responsibility assumed by the auditor and the auditor's opinion on the fairness of the presentation of the information in the institution's audited financial statements.

(e) *Audit services* means any work required to be performed by an independent public accountant under section 36 of the FDI Act (12 U.S.C. 1831m) and this part 363.

(f) *Auditor* means an independent public accountant who performs or participates in providing audit services.

(g) *Banking or related financial expertise* means employment for three or more years that is finance, accounting, or banking related, at an executive or professional level in a business, an institution of higher learning, or a federal or state financial institution regulatory agency; or service for five or more years on the board of directors of a company in the financial services industry, the board of an insured depository institution, or the audit committee of a corporation.

(h) *Call report* means the Consolidated Reports of Condition and Income for insured banks (FFIEC forms 031, 032, 033, and 034).

(i) *Engagement letter* means the proposal, contract, letter and other documents reflecting the understandings between an institution's audit committee or board of directors and its independent public accountant regarding the scope, terms, and nature of the audit services to be performed.

(j) *Financial reporting* by an institution means recording, processing, summarizing, and presenting financial data in annual financial statements, interim financial statements, and regulatory reports.

(k) *Financial statements* means statements and accompanying footnotes that are intended to show the financial position of an institution at a point in time, the results of operations, and the cash flows of an institution over a period of time.

(l) *Holding company* means any United States corporation that owns or controls an insured depository institution. It includes, but is not limited to, bank holding companies registered with the Board of Governors of the Federal Reserve System, unitary thrift holding companies, multiple thrift holding companies, and mutual thrift holding companies.

(m) *Independent person* means a person who is not and has not been an officer, employee, affiliate, or associate (as those terms are defined in 17 CFR 240.12b–2) of a given insured depository institution, or an officer, employee, or associate of an affiliate of such institution, within the preceding three years; is not a member of the immediate family of an officer or employee of the institution or its affiliates; does not and has not held five percent or more direct or indirect financial interest in the institution within the preceding three years; is not and has not been within the preceding three years a promoter (as defined in 17 CFR 240.12b–2), or an underwriter (as defined in 15 U.S.C. 77b(11)), of the institution or its affiliates; is not and has not been within the preceding three years a trustee for any pension or profit-sharing trust for the officers or employees of the institution or its affiliates.

(n) *Independent public accountant* means any individual, including an auditor, who performs or participates in providing audit services; and an accounting firm, including a corporation, proprietorship, partnership, or other business comprised of independent public accountants providing audit services.

(o) *Institution* means insured depository institution, i.e., any bank, savings association, or branch of a foreign bank (12 U.S.C. 1813(c)), the deposits of which are insured by the FDIC.

(p) *Internal control structure* means the policies and procedures established by an institution's board of directors and management to provide reasonable assurance that an institution's objectives in three general areas—operations, financial reporting, and compliance with laws and regulations—will be achieved, and will be achieved in a safe and sound manner.

(1) The objectives of the internal control structure and procedures over operations are to provide reasonable assurance that assets are safeguarded against loss, that prescribed managerial policies are followed, and that operational efficiencies are achieved.

(2) The objectives of the internal control structure and procedures for financial reporting are to provide reasonable assurance that transactions are executed in accordance with management's authorizations, and transactions are recorded as necessary to permit the preparation of accurate financial reports and to maintain accountability for the related assets and liabilities. The internal control structure and procedures for financial reporting govern the recording, processing, summarizing, and reporting of financial data by the institution.

(3) The objectives of the internal control structure and procedures for compliance with laws and regulations are to provide reasonable assurance as to the institution's compliance with laws and regulations so that transactions are executed and assets are maintained in accordance with applicable laws and regulations, and management's policies and practices reasonably limit noncompliance and detect and report noncompliance to management.

(q) *Large customer* means any person, who, alone or in conjunction with immediate family or associates (as defined in 17 CFR 240.12b–2), has, or has had at any time during the prior fiscal year, either aggregate extensions of credit from an institution and its affiliates, or deposits, or other significant relationships, with said institution and its affiliates that exceed the lesser of 15 percent of the institution's total capital for risk-based capital purposes or $50 million.

(r) *Large institution* means an institution with $500 million or more in total assets as of the beginning of its fiscal year.

(s) *Management letter* means a written summary addressed to the institution's board of directors (or its audit committee) of the auditor's recommendations including both reportable and nonreportable conditions resulting from audit services performed under this part. A management letter recommends possible action that the institution may take to correct any deficiencies in the internal control structure and contains any other recommendations that the auditor deems appropriate.

(t) *Management report* means the written description by management of its responsibilities for preparing financial statements, and establishing and maintaining an adequate internal control structure and policies and procedures for financial reporting and compliance with laws and regulations. It includes management's assessment of the effectiveness of the internal control structure *and* the institution's compliance with laws and regulations relating to safety and soundness identified in § 363.204(c).

(u) *Material inadequacy* in the internal control structure means a reportable condition in which the design or operation of one or more of the specific internal control structure elements does not reduce to a relatively low level the risk that financial reporting and compliance control objectives would not be accomplished.

(v) *Reportable condition* means a significant deficiency in the design or operation of an internal control structure that, in an auditor's judgment, could adversely affect an institution's ability to record, process, summarize, and report financial data consistent with the assertions of management in the institution's financial statements, or could adversely affect the institution's ability to comply with laws and regulations. All material inadequacies are reportable conditions.

(w) *Thrift financial report* or *TFR* means the financial statements and related schedules filed quarterly by savings associations with the Office of Thrift Supervision.

Subpart B—Reporting Requirements

§ 363.201 Annual reports.

(a) Within 90 days after the end of each fiscal year following December 31, 1992, each institution shall prepare an annual report which shall contain:

(1) The institution's financial statements prepared pursuant to § 363.203;

(2) The independent public accountant's audit report on such financial statements prepared pursuant to § 363.401;

(3) The institution's management report prepared pursuant to § 363.204; and

(4) The internal control attestation prepared by the independent public accountant pursuant to § 363.404.

(b) An FDIC-supervised institution may use the annual report required by this part in lieu of the annual disclosure statement required by 12 CFR 350.3, as long as the institution satisfies all of the other requirements of 12 CFR part 350.

§ 363.202 Reports to agencies.

(a) Pursuant to § 363.205, each institution shall file the following with the FDIC and the appropriate Federal banking agency:

(1) The annual report prepared pursuant to § 363.201;

(2) The management letter prepared by an independent public accountant pursuant to § 363.401(d);

(3) The auditor's report on agreed upon procedures determining the extent of management's compliance with laws and regulations designated in § 363.204(c) and prepared pursuant to § 363.405;

(4) A statement by an independent public accountant providing negative assurance that the institution complied with FDIC assessment requirements during the audit period, *or* a statement by the accountant explaining why a negative assurance cannot be given;

(5) A description by management of its handling of material inadequacies or other reportable conditions in the internal control structure and procedures identified by its internal auditor (or an individual performing an equivalent function) or its independent public accountant;

(6) A list of the names and occupations of all members of the audit committee during the audit period; and

(7) A copy of the engagement letter between the institution and its independent public accountant.

(b) The institution shall maintain, at least until its next federal safety and soundness examination, workpapers and information sufficient to document and support management's assessment of its internal control structure and procedures pursuant to § 363.204(b) and its compliance with designated laws and regulations pursuant to § 363.204(c).

§ 363.203 Financial statements.

(a) As part of the annual report required by this part, each institution shall prepare annual financial statements in accordance with generally accepted accounting principles and practices applicable to depository institutions in accordance with section 37 of the FDI Act, and such other disclosure requirements as the FDIC and the appropriate Federal banking agency may prescribe.

(b) Financial statements required by this part shall be audited by an independent public accountant and shall include the institution's balance sheets as of the close of each of its most recent two fiscal years; and statements of income, statements of changes in equity capital, and statements of cash flows with accompanying footnote disclosures for each of the two most recent fiscal years or such shorter period as the institution may have been in operation.

(c) Financial statements shall include an audited footnote reconciliation for each of the years presented in the annual report of the institution's capital reported under generally accepted accounting principles, and the institution's leverage, tangible (where applicable), and risk-based capital as calculated under regulatory capital requirements for the appropriate federal banking agency.

(d) Institutions are encouraged to use the same categories of items on their financial statements as are required on their Call Reports, or, in the case of savings associations, in their Thrift Financial Reports.

(e) For financial statements required by this part, an institution may use audited schedules RC, RI, and RI-A of their Call Reports, or, in the case of a savings association, schedules CSC and CSO and statements of changes in equity capital, for each of the two preceding fiscal years supplemented by audited statements of cash flows and footnote disclosures required by generally accepted accounting principles and practices applicable to depository institutions and any other standards that may be established by the FDIC and the appropriate federal banking agency.

(f) The financial statements filed under this part shall include, on a consolidated basis, the financial statements of branches, international banking facilities, subsidiaries, and other entities owned by the institution.

(g) Financial statements and consolidating schedules shall take into account all assets and liabilities, including contingent assets and liabilities, of the insured depository

institution in accordance with the requirements of section 37(a)(3)(c) of the FDI Act (12 U.S.C. 1831m).

§ 363.204 Management report.

As part of the annual report required by this part, each institution shall prepare a management report manually signed and dated by the chief executive officer and the chief accounting or financial officer which shall contain the following statements and assessments:

(a) *Financial statements.* A statement of management's responsibilities for preparing the institution's annual financial statements in accordance with generally accepted accounting principles and practices applicable to depository institutions and any other standards established by the FDIC and the appropriate federal banking agency, and management's responsibilities for determining the estimates and judgments used in the financial statements.

(b) *Internal controls over financial reporting.*

(1) A statement of management's responsibilities for establishing and maintaining an internal control structure and procedures designed to satisfy management's objectives for financial reporting; and

(2) An assessment, that encompasses all material matters, as of the end of the institution's most recent fiscal year of the effectiveness of the institution's system of internal control during the audit period, which identifies the specific criteria upon which the effectiveness was evaluated and provides sufficient other information to enable the independent public accountant to examine and report on management's assertions concerning the effectiveness of the institution's internal control structure and procedures.

(c) *Compliance with laws and regulations.* A statement of management's compliance with laws and regulations, including laws and regulations applicable to state chartered institutions and any other relevant statutes and regulations hereinafter enacted or promulgated, concerning safety and soundness in the following areas: Affiliate transactions, legal lending limits, loans to insiders, dividend restrictions, accuracy of Call Reports and Thrift Financial Reports. This shall include:

(1) A statement of management's responsibilities for establishing and maintaining a system of internal controls designed to satisfy management's objectives for compliance with laws and regulations, including at a minimum, the objectives required by § 363.102(p)(3); and

(2) An assessment, that encompasses all material matters, as of the end of the institution's most recent fiscal year, of the effectiveness of the institution's system of internal controls over compliance with laws and regulations during the audit period, which contains an evaluation of the institution's compliance with the aforementioned laws and regulations, and includes sufficient information to enable the independent public accountant to perform and report on the agreed upon procedures for determining the institution's compliance with same.

§ 363.205 Filing requirements.

(a) Each insured depository institution shall file the reports required by this subpart within 90 days after the end of each of the institution's fiscal years following December 31, 1992, as follows:

(1) Two copies of the reports, manually signed and dated by the chief executive officer of the institution, with the regional director (supervision) of the FDIC region in which the institution is headquartered.

(2) One copy with the appropriate state banking agency (including any state bank supervisory agency of a host state).

(3) In addition, if an institution's primary federal regulator is the Board of Governors of the Federal Reserve System (FRB) or the Comptroller of the Currency (OCC), the institution shall also file one copy with the primary federal regulator's appropriate Federal Reserve Bank or OCC district office. If an institution's primary federal regulator is the Office of Thrift Supervision (OTS), the institution shall file two copies with the appropriate OTS regional office.

(b) Each institution shall make the annual report, prepared pursuant to § 363.201, available for public inspection at its main and branch offices upon request. Alternatively, each institution may elect to mail one copy of its annual report, free of charge, to whomever may request it.

(1) The annual report shall be made available to the public no later than the date on which it is filed with the FDIC.

(2) Each annual report shall remain available to the public until the annual report for the succeeding year becomes available.

§ 363.206 Exceptions for subsidiaries of holding companies.

(a) *Audit Exception.*

(1) Unless prohibited by the FDIC, an appropriate federal banking agency, or another provision in this part, the annual audit, other items to be provided, the assessment statement, and notification of change in accountant requirements in §§ 363.401, 363.402, 363.202(a)(4), and 363.503 may be satisfied for institutions that are subsidiaries of a holding company by an independent audit of the financial statements of the holding company or notification of change of accountant from the holding company, if:

(i) The institution's financial statements are consolidated into the holding company's audited consolidated financial statements; and

(ii) (A) The holding company's financial statements include the consolidating schedules of the balance sheets and income statements used to combine each institution over $150 million in total assets into the audited financial statements of the holding company, and the reconciliation required by § 363.203(c) for each institution; or

(B) The holding company's consolidated financial statements include the balance sheets, income statements, and reconciliation required by § 363.203(c) for each institution over $150 million in total assets on an individual entity basis.

(2) If an institution relies on the audit exemption in paragraph (a)(1) of this section:

(i) Each institution having more than $150 million in total assets in the holding company shall file the holding company's audited consolidated financial statements with the FDIC regional director (supervision) in each region that a subsidiary of the holding company covered by this part is headquartered, with the holding company's appropriate Federal Reserve Bank, and with the appropriate federal banking agency; and

(ii) A cover letter shall be included with the reports filed with the FDIC and the appropriate federal banking agency under this part identifying the institutions to which the reports pertain.

(b) *Reporting Exception.*

(1) The requirements of this part, exclusive of the annual audit and notice of change of accountant requirements referenced in paragraph (a) of this section may be satisfied for institutions that are subsidiaries of holding companies by submitting the management report of the holding company if:

(i) Services and functions comparable to those required by this part are provided at the holding company level and include an internal control structure, policies, and procedures that are applicable to the entire holding company and its subsidiaries, and there is a holding company audit committee

that meets the requirements in subpart C of this part;

(ii) The institution files copies of the holding company's annual report, other items to be provided by the independent public accountant, and assessment statement in satisfaction of §§ 363.205, 363.402, and 363.202(a)(4); and

(iii) (A) The institution has less than $5 billion in total assets at the beginning of each fiscal year; or

(B) The institution has total assets at the beginning of each fiscal year of $5 billion, but less than $9 billion, and it has a CAMEL composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (or an equivalent rating under a comparable system) at its most recent examination by the FDIC or the appropriate federal banking agency.

(2) If the institution is a subsidiary of a holding company and satisfies the requirements of this part by filing one report on the holding company, the independent public accountant likewise may elect to file one report, but must perform the procedures in section II of the appendix to this part on each subsidiary institution with $150 million or more in total assets, and the report must identify the institution to which any exception applies.

(3) Institutions that do not meet the conditions of paragraph (b)(1) of this section shall satisfy the provisions of this part, exclusive of the annual audit and notice of change of accountant requirements in §§ 363.401, 363.402, and 363.503, on an individual entity (i.e., depository institution) basis.

Subpart C—Audit Committees

§ 363.301 Members.

(a) Each institution to which this part applies shall have an independent audit committee comprised entirely of outside directors who are independent persons within the meaning of this part.

(b) The audit committee of each large institution shall:

(1) Include at least two members who have banking or financial management expertise within the meaning of this part;

(2) Not include any members who are large customers, or who are directors for, or employees or agents of, or who otherwise represent, large customers of the institution; and

(3) Have access to its own outside counsel whom it may retain without prior permission of the institution's board of directors or of its management. Neither outside counsel nor any law firm at which counsel may be employed may concurrently represent the institution, its management, or its board of directors.

(i) Neither outside counsel to the audit committee nor any law firm at which counsel may be employed may discuss possible future employment with the institution during the pendency of counsel's employment by the audit committee.

(ii) If outside counsel or any law firm at which counsel may be employed is approached by the institution concerning possible future employment, counsel to the audit committee or the law firm must disclose that fact in writing to the audit committee.

(iii) Outside counsel to the audit committee or any law firm at which counsel may be employed may discuss possible future employment with the institution upon termination of counsel's services to the audit committee, but may not commence employment with the institution during the 12 month period following termination of its representation.

§ 363.302 Duties.

(a) The independent audit committee shall review with management and the independent public accountant all reports filed under this part. The audit committee's duties may include, but not necessarily be limited to:

(1) Approving the selection and termination of independent public accountants; approving the scope of external audit services; reviewing adjustments recommended by the independent public accountant and addressing disagreements between the independent public accountant and management; reviewing documents required by this part, and meeting with independent public accountants (without management present) prior to the filing of reports upon completion of the audit services;

(2) Reviewing Call Reports, or, in the case of savings associations, Thrift Financial Reports for accuracy and timeliness;

(3) Reviewing the adequacy of internal controls and management's handling of identified material inadequacies and reportable conditions in the internal controls over financial reporting and compliance with laws and regulations; and

(4) Supervising the internal audit function, approving the selection, compensation, and termination of internal auditors; approving the scope of internal audits to assure regular testing of the systems and controls associated with preparing financial reports, complying with laws and regulations, and preventing management from overriding the internal control system or compromising the control environment.

(b) Independent audit committees shall maintain minutes and other relevant records of their meetings and activities. Such minutes shall be made available for review by the FDIC and the appropriate federal banking agency.

Subpart D—Auditing Requirements

§ 363.401 Annual independent audits.

(a) Each institution shall have an annual independent audit made of its financial statements by an independent public accountant in accordance with generally accepted auditing standards and any other standards established by the FDIC and the appropriate federal banking agency. The audit must be conducted at least once every 12 months, with the audit period running from the previous audit date to the current audit date. The annual audit report must be prepared as of the date on which a Call Report or Thrift Financial Report is prepared.

(b) The audit shall be of sufficient scope to enable the independent public accountant to express an opinion whether the institution's financial statements are presented fairly in accordance with generally accepted accounting principles and any other requirements established by the FDIC and the appropriate federal banking agency.

(c) The audit report must express the opinion of the independent public accountant with respect to the financial statements covered by the report and describe the accounting principles and practices employed. Exceptions or qualifications expressed by the accountant and their effect on the financial statements must be explained.

(d) The independent public accountant shall prepare, and submit to the audit committee, a management letter as defined in § 363.102(s) at the conclusion of the audit.

§ 363.402 Other items to be provided by the independent public accountant.

(a) An institution shall obtain a signed and dated engagement letter from the independent public accountant prior to the commencement of each annual audit or the performance of other audit services for the institution required by this part. The engagement letter shall describe the scope of the audit and/or other attestation services and the independent public accountant's agreement to provide or make available the reports called for in this part.

(b) The independent public accountant shall provide the institution with a management letter and the

reports required by subpart D of this part.

(c) The independent public accountant shall provide, upon request, to the FDIC, the appropriate federal banking agency, and any state banking supervisor having responsibility for the supervision and regulation of an institution, the accountant's accounting and audit policies, procedures, and manuals, as well as working papers (including audit programs and administrative files) concerning any audit services performed under this part.

(d) The independent public accountant shall file a report of its most recent peer review with the FDIC and the appropriate federal banking agency within 15 days after signing the engagement letter, or identify in that letter the date on which the report was previously submitted.

(e) The independent public accountant shall meet with the institution's audit committee after delivery of the audit report to the committee, but before such report is due to be filed with the FDIC and the appropriate Federal banking agency.

(f) The independent public accountant, upon discovering an apparent defalcation or other criminal violation, or being informed of such a matter, shall determine whether the institution has notified the appropriate federal banking agency in writing of the apparent criminal violation pursuant to 12 CFR part 353 (FDIC-supervised institutions), 12 CFR 21.11 (OCC-supervised institutions), 12 CFR 563.180 (OTS-supervised institutions), or SR 86-7 dated January 24, 1986 (FRB-supervised institutions). SR 86-7 is available from the Freedom of Information Office of the FRB, 20th and Constitution Avenue, NW., Washington, DC 20551. If the institution does not make such notification before the conclusion of the audit, the accountant shall immediately make such notification.

§ 363.403 Reports to independent public accountants.

Each institution that engages the audit services of an independent public accountant shall transmit to the accountant copies of the following prior to the commencement of any services:

(a) The most recent Call Report, and, in the case of a savings association, the Thrift Financial Report;

(b) The most recent report of examination received by the institution;

(c) Any supervisory memorandum of understanding, written agreement, or request for corrective action applicable to the institution by the FDIC, the appropriate federal banking agency or any state banking agency which is in effect during the period covered by the audit; and

(d) A report of any formal action initiated or taken by the FDIC or any appropriate federal banking agency pursuant to sections 8 (a), (b), (c), (e), (g), (i), (s), (t), or 38 of the FDI Act; or section 908 of the International Lending Supervision Act of 1983 (12 U.S.C. 3907); or any comparable action taken by any appropriate state banking agency under state law during such period; or any assessment of a civil money penalty under any other provisions of law with respect to the institution or any institution-affiliated party.

§ 363.404 Internal control attestation.

(a) With respect to the internal control assessment included in management's report required of any institution by § 363.204(b), the institution's independent public accountant shall attest to, and report separately on, the assertions of the institution's management contained in the report.

(b) Any attestation shall be the result of the independent public accountant's examination of the institution's internal control structure over financial reporting for the period covered by management's assertions in accordance with generally accepted standards for attestation engagements on an entity's internal control structure.

(c) Where a subsidiary of a holding company has relied on the holding company's management report to meet the requirements of this section pursuant to § 363.206, the independent public accountant may likewise attest to and report on the assertions of the holding company in one report without specific attestation concerning the subsidiary.

§ 363.405 Compliance with laws and regulations attestation.

(a) The independent public accountant shall review management's assessment under § 363.204(c), and test compliance with the laws and regulations in § 363.204(c), by applying procedures set forth in appendix A to this part.

(b) The independent public accountant shall report on the application of the procedures referenced in paragraph (a) of this section to test management's assertions regarding the institution's compliance with the laws and regulations designated by the FDIC in accordance with generally accepted standards for compliance attestation engagements.

Subpart E—Requirements of Independent Public Accountants

§ 363.501 Qualifications of independent public accountants.

To provide audit services to institutions under this part, independent public accountants shall satisfy the following criteria:

(a) The accountant shall be registered or licensed to practice as a public accountant by a regulatory authority of a state or other political subdivision of the United States and shall be in good standing under the laws of the state or other political subdivision of the United States in which the home office of the institution that is contracting audit services is located. If the accountant is a firm, both the firm and the signing partner must meet these criteria.

(b) The accountant shall be in compliance with the American Institute of Certified Public Accountant's Code of Professional Ethics and interpretations and the accountant's independence requirements pursuant to 17 CFR 210.2-01(b) of the Securities and Exchange Commission. In addition, neither the accountant nor the firm shall be an employee of the institution, perform bookkeeping services, or maintain accounting records for the institution.

(c) An accountant retained by an institution to prepare the management report required under § 363.204, or who has helped prepare the report, is not "independent" for purposes of attestations under §§ 363.404 and 363.405.

(d) The accountant, or the accountant's firm, shall be enrolled in a peer review program under § 363.502, and must have received an unqualified report at its most recent review.

(e) The independent public accountant, or, if the accountant is a firm, the partner in charge of the audit, shall resign from the engagement if the accountant commences private employment discussions with the institution.

§ 363.502 Peer review.

(a) Peer reviews and reports that meet the requirements of the American Institute of Certified Public Accountant's "Statements on Quality Control Standards" and "Standards for Performing and Reporting on Quality Reviews," contained in Volume 2 of the AICPA Professional Standards, as long as they include a representative sample of financial institution audits, will be acceptable to the FDIC.

(b) Independent public accountants retained to audit institutions pursuant to this part shall have an external peer

review acceptable to the FDIC by an organization not affiliated with the accountant or accounting firm being reviewed, as frequently as is consistent with industry practice.

(c) The accountant or firm conducting the peer review and the accountant or firm being reviewed must provide the peer review working papers to the FDIC upon request.

(d) The peer review must include a sufficiently representative sample of depository institution audits, including audits of large institutions, performed by the independent public accountant.

(e) If the accountant is a firm, the FDIC or the appropriate banking agency may request that a quality control review be performed on an individual practice office of the firm in addition to the review of the entire firm.

(f) The independent public accountant who has been engaged to perform auditing work under this part shall file one manually signed and dated copy of the peer review report accompanied by any letter of comments received and one conformed copy with the Washington office of the FDIC and each appropriate federal banking agency within 15 days of receiving the report. The independent public accountant shall file, along with the quality control review, a list of all institutions the accountant has audited during the preceding calendar year, and those the accountant has been engaged to audit in the future, grouped by individual accountant or office of the firm responsible for the audits.

(g) Quality control review reports shall be mailed to, and shall be available for public inspection at, the FDIC, Registration and Disclosure Section, 550 17th Street, NW., Washington, DC 20429.

§ 363.503 Selection or change of independent public accountant.

(a) *Selection of independent public accountant.*

(1) An institution which retains an independent public accountant to perform audit services, shall notify the regional director (supervision) of the FDIC region in which the institution is headquartered, the appropriate federal banking agency, and any state banking supervisor having responsibility for the supervision and regulation of the institution within 15 days of retaining the accountant.

(2) The notice shall:

(i) Identify the independent public accountant;

(ii) Specify the date of the engagement;

(iii) Include a signed and dated statement of the independent public accountant that the accountant meets the qualifications specified in § 363.501;

(iv) Describe any issue arising during the prior two years concerning which the institution or its representative sought the advice of the recently engaged accountant prior to such engagement; and

(v) State whether the institution's former accountant, if any, also was consulted by the institution regarding such issue(s); provide a summary of the former accountant's views regarding such issue(s).

(3) Prior to the commencement of any audit work, the independent public accountant shall submit a copy of the accountant's most recent peer review report to the FDIC and the appropriate federal banking agency, if not previously submitted.

(4) Prior to the commencement of an audit, the FDIC or the appropriate federal banking agency may request that an institution file a copy of the engagement letter or any other contract for audit services, including a description of the qualifications of the independent public accountant, and may reject any independent public accountant not meeting the qualifications specified in § 363.501.

(b) *Change of independent public accountant.*

(1) Each institution shall provide written notice to the regional director (supervision) in the FDIC region of which the institution is headquartered, the appropriate federal banking agency, and any appropriate state bank supervisor of the resignation or dismissal of the institution's independent public accountant or the engagement of a new independent public accountant by the institution.

(2) The notice shall contain a statement of the reasons for the change of the independent public accountant. It shall discuss any disagreements that have occurred at the management level concerning matters of accounting principle or practice, financial statement disclosure, or audit procedure or scope during the two most recent fiscal years and during any subsequent interim period.

(3) The written notice shall be signed and dated by the chair of the institution's audit committee, and shall be filed with the appropriate agencies and sent to the independent public accountant within 15 days of the change of the independent public accountant.

(c) *Termination of services report.* An independent public accountant who ceases to be the accountant for an institution shall file a signed and dated notice to the regional director (supervision) of the FDIC region in which the institution is headquartered, the appropriate federal banking agency, and any state banking supervisor having responsibility for the supervision and regulation of the institution within five days of receiving a notice of termination of independent public accountant services from the institution pursuant to paragraph (b) of this section. The accountant's notice shall state the reason for the termination, whether the accountant agrees with the assertions in the institution's notice, and whether the institution's notice discusses all disagreements, if any.

§ 363.504 Enforcement actions.

In addition to any authority contained in section 8 of the FDI Act (12 U.S.C. 1818), the FDIC or an appropriate federal banking agency may take enforcement action against an independent public accountant upon a showing of good cause in accordance with subpart Q of 12 CFR part 308 or relevant regulations of other federal banking agencies.

Appendix to Part 363—Agreed Upon Procedures for Compliance with Laws and Regulations

Section I—General Provisions

A. Regulatory Requirements

1. In accordance with 12 CFR 363.204(c), the management of each insured depository institution must include in its annual report to the FDIC and its appropriate federal banking agency an assessment as of the end of its most recent fiscal year of the institution's compliance during that fiscal year with laws and regulations relating to safety and soundness designated by the FDIC or the appropriate federal banking agency.

2. The designated laws and regulations are the federal, and if applicable, state laws and regulations, and any other relevant statutes and regulations hereinafter enacted or promulgated, concerning (1) affiliate transactions, (2) legal lending limits, (3) loans to insiders, (4) dividend restrictions, and (5) financial reporting in Reports of Condition and Income (Call Reports) and Thrift Financial Reports (TFRs).

3. The independent public accountant shall apply procedures agreed upon by the FDIC to determine the extent of compliance of the institution with the designated laws and regulations.

4. The independent public accountant shall use any information gained during the course of auditing the financial statements when applying the following procedures. For example, if the existence of loans or other transactions with affiliates comes to the attention of the accountant, the accountant shall ensure that management review them and include them on its list of transactions with affiliates.

B. Reporting

1. The terms used throughout the procedures have the meanings employed in professional auditing literature. For example, in the phrase "trace and agree," "trace" means the process of following a transaction from one accounting record to another and "agree" involves observing the similarity or agreement between two numbers or attributes in related documents.

2. The report shall identify all exceptions noted in the performance of the procedures. If the accountant finds that no policies exist or that the procedures cannot be performed for any reason, the report should note the lack of policies and/or the reason that procedures were not performed.

Section II—Procedures for Institutions

The following procedures shall be performed by independent public accountants in accordance with generally accepted standards for attestation engagements pursuant to sect ion 363.405 of this part.

A. Affiliate Transactions

1. Read the following:

(a) Laws:

(i) 12 U.S.C. 371c and 371c–l;

(ii) 12 U.S.C. 1468; and

(iii) 12 U.S.C. 1828(j).

(b) Regulations:

(i) 12 CFR 563.43;

(ii) 12 CFR 7.7360;

(iii) 12 CFR 7.7365; and

(iv) 12 CFR 7.7370.

(c) Comparable laws and regulations of states or other jurisdictions that management indicates are applicable to the institution.

2. Obtain and read management's assessment, as of the end of the institution's most recent fiscal year, of the institution's compliance with the designated laws and regulations listed in paragraph A.1 of this section.

3. Obtain management's written representations concerning the following:

(a) The completeness of:

(i) The listing of affiliates provided pursuant to paragraph A.4 of this section, and

(ii) The listing of nonexempt covered affiliate transactions provided pursuant to paragraph A.8 of this section;

(b) Whether the minutes, reports of examination, and public filings provided pursuant to paragraph A.5(a) of this section are a complete set of such minutes, reports, and filings;

(c) Whether fees paid by the institution to related organizations, insider-related organizations, and stockholders represent reasonable reimbursement for goods and services;

(d) Whether any of the assets or securities contained in the listing provided pursuant to paragraph A.8 below are low-quality assets; and

(e) Whether the institution has published any advertisement or entered into any agreement indicating that it will be responsible for the obligations of its affiliates.

4. Obtain a listing of affiliates of the institution.

5. (a) Obtain the following:

(i) Approved minutes of the meetings of the board of directors and its committees during the most recent complete fiscal year;

(ii) All reports of examination issued during the year by the institution's primary federal regulator and its state regulator, if applicable;

(iii) All public filings issued during the year, and through the date of the attestation report, with the FDIC, Securities and Exchange Commission (SEC), the Federal Reserve Board (FRB), the Office of the Comptroller of the Currency (OCC), or the Office of Thrift Supervision (OTS).

(b) Read the documents obtained pursuant to paragraph A.5(a) of this section and:

(i) Trace and agree affiliates identified in those documents to the listing obtained from the institution pursuant to paragraph A.4 of this section; and

(ii) Trace and agree affiliate transactions in those documents to the listing obtained from the institution pursuant to paragraph A.8 of this section.

6. Obtain a copy of the institution's written policies and procedures concerning its compliance with affiliate transaction laws and regulations. If the institution has no written policies and procedures concerning affiliate transactions, obtain from the institution a narrative that describes the institution's methods for complying with such laws and regulations, including information similar to that required by paragraph A.7 of this section.

7. Read the written policies and procedures (or the narrative) obtained pursuant to paragraph A.6 of this section to ascertain that they include, or incorporate by reference, provisions for:

(a) Defining terms;

(b) Identification of nonexempt covered transactions;

(c) Limitations on affiliate transactions;

(d) Collateral requirements;

(e) Exemptions of certain transactions;

(f) Revising policies for subsequent legal changes;

(g) Training for employees concerning the requirements of the designated laws and regulations and management's related policies and procedures;

(h) Reporting of nonexempt covered affiliate transactions and any events of noncompliance to the board of directors or its committees;

(i) Obtaining prior approval of affiliate transactions from the board of directors or its designees;

(j) Ensuring that covered transactions be made on terms and under circumstances at least as favorable as those which would be offered to nonaffiliates;

(k) Prohibiting purchases, as fiduciary, of securities, or other assets from affiliates unless permitted under the instrument creating the fiduciary relationship, by court order, or under a trust governing the fiduciary relationship;

(l) Prohibiting purchases, as principal or fiduciary, of securities during the existence of an underwriting or selling syndicate if the principal underwriter is an affiliate of the institution unless prior approval is obtained from a majority of directors of the institution who are not officers or employees of the institution or any affiliate; and

(m) Ensuring that any published advertisement or agreement entered into does not state or imply that the institution is in any way responsible for the obligation of the affiliate.

8. Obtain a listing of nonexempt covered affiliate transactions that occurred during the year. In addition:

(a) Obtain management's calculation of the amount equal to 20 percent of the institution's capital stock and surplus as of the last available Call Report or Thrift Financial Report (TFR), as appropriate, and one other date during the year, and recalculate management's computations (for mathematical accuracy); and

(b) Obtain management's calculation of the aggregate amount of nonexempt covered loans, and advances to, and investments in, all affiliates as of the dates used in paragraph A.8(a) of this section; recalculate management's computations (for mathematical accuracy); and compare management's calculated amount to the limit obtained pursuant to paragraph A.8(a) of this section to ascertain that the aggregate amount does not exceed that limit.

9. Obtain management's calculation of the amount equal to 5 percent of Tier I capital as of the date of the last Call Report (or TFR, as appropriate), and recalculate management's computations (for mathematical accuracy).

10. Select all affiliate transactions listed pursuant to paragraph A.8 of this section that, either individually or in the aggregate, equal or exceed the amount calculated by management pursuant to paragraph A.9 of this section, and select a sample of the remaining population items.

11. For each affiliate transaction selected pursuant to paragraph A.10 of this section:

(a) (i) Obtain management's calculation of the amount equal to 10 percent of the institution's capital stock and surplus with respect to the transaction and recalculate management's computations (for mathematical accuracy);

(ii) Obtain management's calculation of the aggregate amount of loans, investments and advances with respect to the affiliate; recalculate management's computations (for mathematical accuracy); and compare management's calculated amount to the limit obtained pursuant to paragraph A.11(a)(i) of this section to ascertain that the aggregate amount does not exceed the limit.

(b) Obtain a representation from management concerning whether the transaction is secured by collateral and examine documentation supporting the existence of such collateral.

(c) Obtain documentation for the transaction and agree amounts to their recording and summarization in the general ledger.

(d) Obtain a representation from management whether the terms of the transaction are comparable to terms a nonaffiliate would receive in a similar transaction.

(e) For any transaction where the amount, either individually or in the aggregate, equals or exceeds the amount calculated by management pursuant to paragraph A.9 of this section, examine documentation

maintained by management to substantiate the fair value of goods or services received, their benefit to the institution, and any cost efficiencies achieved.

(f) Determine whether the transactions sampled followed the institution's written policies and procedures (or narrative) obtained pursuant to paragraph A.6 of this section.

12. For any asset or securities purchases from or sales to the affiliate by the institution that are included in the sample selected pursuant to paragraph A.10 of this section:

(a) Obtain documentation for any purchase represented by management to be a purchase of a low-quality asset, whether or not an independent credit evaluation was made before the asset was acquired;

(b) Obtain a representation from management whether the purchase or sale was permitted:

(i) Under the instrument creating the fiduciary relationship,

(ii) By court order, or

(iii) By the law of the jurisdiction governing the fiduciary relationship; and

(c) Obtain a representation from management whether the institution is acting as a broker for the asset or security purchased or sold.

13. For any transactions included in the sample selected pursuant to paragraph A.10 of this section, where an affiliate is a principal underwriter of a security purchased or acquired by the institution or its affiliate:

(a) Read the minutes of the meetings of the board of directors to ascertain that the transaction was approved by a majority of the board who are not officers or employees of the institution or any of its affiliates;

(b) Obtain a representation from management indicating the date the securities were initially offered for sale to the public; and

(c) Determine whether the date of the board's approval preceded the date management represented the securities were initially offered for sale to the public.

B. Lending Limits

1. For all institutions, EXCEPT STATE MEMBER AND NONMEMBER BANKS, read the following:

(a) Laws:

(i) 12 U.S.C. 84; and

(ii) 12 U.S.C. 1464(u).

(b) Regulations:

(i) 12 CFR 32; and

(ii) 12 CFR 563.93.

2. For State Member and Nonmember Banks Only:

(a) Obtain from management and read the state laws and regulations concerning lending limits, and trace and agree the percentages presented by management in paragraph B.2(b) of this section to the applicable statute or regulation.

(b) Obtain a representation from management of the percentage lending limits under the laws and regulations of states or other jurisdiction(s) to which the institution is subject, including relevant percentages to be applied pursuant to paragraph B.9 of this section.

3. Obtain and read management's assessment, as of the end of the institution's most recent fiscal year, concerning the institution's compliance with the designated laws and regulations listed in paragraphs B.1 or B.2 of this section.

4. Obtain management's written representations concerning the following:

(a) The completeness of the listing of loans to related borrowers provided pursuant to paragraph B.7 of this section, and whether loans to related borrowers have been combined; and

(b) Whether any loans to related borrowers during the year exceeded the applicable limitation percentage.

5. Obtain a copy of the institution's written policies and procedures concerning its compliance with regulatory lending limits. If the institution has no written policies or procedures concerning regulatory lending limits, obtain from the institution a narrative that describes the institution's methods for complying with such laws and regulations, including information similar to that required by paragraph B.6 of this section.

6. Read the policies and procedures (or the narrative) obtained pursuant to paragraph B.5 of this section to ascertain that they include, or incorporate by reference, provisions for:

(a) Defining terms;

(b) General limitations for unsecured and secured loans;

(c) Combining all loans to one borrower or all loans to the same foreign government;

(d) Reporting loans to related borrowers and any events of noncompliance to the board of directors or its committees;

(e) Reporting loans to related borrowers and any events of noncompliance to regulatory agencies;

(f) Procedures for revising policies for subsequent legal changes; and

(g) Training for employees concerning the requirements of the regulations and on management's related policies and procedures.

7. Determine whether management's liability ledger combines all loans to one borrower and, if applicable, confirm that the ledger notes names of related or affiliated persons and business interests. If no such centralized liability ledger exists, determine what records or system management uses to monitor loans to one borrower and related interests. Using the latter or management's liability ledger, obtain a listing of loans to related borrowers outstanding at the most recent Call Report or TFR date and one other selected day during the audit period, and select a sample of these loans. Select a sample of all loans over five percent of unimpaired capital and surplus.

8. For each sampled loan selected pursuant to paragraph B.7 of this section, obtain management's representation concerning the applicable limitation percentage, and compare the actual percentage to the limitation percentage represented by management.

9. Obtain from management either a calculation of 15 percent and 25 percent of the institution's unimpaired capital and surplus as of the same dates used pursuant to paragraph B.7 of this section, or the comparable ratios set by state law or regulation. For the sample selected pursuant to paragraph B.7 of this section:

(a) Recalculate management's computation (for mathematical accuracy);

(b) Trace and agree balances of individual extensions of credit to supporting loan trial balances;

(c) For unsecured loans, compare the balance to 15 percent for national banks or the appropriate state limit of the institution's unimpaired capital and surplus calculated by management;

(d) For secured loans, compare the balance to 15 percent for national banks or the appropriate state limit of the institution's unimpaired capital and surplus calculated by management. For national banks, compare the balance to 25 percent of unimpaired capital and surplus if the incremental 10 percent is fully secured by readily marketable collateral having a market value at least equal to the amount of the loans or extensions of credit. If a limitation based on market value is used by management, determine whether the collateral is "marketable" as defined in FAS 12 and that its value is at least equal to the amount of the loans or extensions of credit as of the dates used pursuant to paragraph B.7 of this section.

(e) Obtain representation from management whether lines of credit qualify as exceptions from the regulatory limitations; and

(f) Examine documentation maintained by management supporting the existence of collateral, and determine whether the collateral is on hand or whether the institution's interest has been perfected.

C. Loans to Insiders

1. Read the following:

(a) Laws:

(i) 12 U.S.C. 375;

(ii) 12 U.S.C. 375a;

(iii) 12 U.S.C. 375b;

(iv) 12 U.S.C. 376;

(v) 12 U.S.C. 1817(k); and

(vi) 12 U.S.C. 1972.

(b) Regulations:

(i) 12 CFR 31;

(ii) 12 CFR 215;

(iii) 12 CFR 337.3;

(iv) 12 CFR 349; and

(v) 12 CFR 563.43.

(c) Comparable laws and regulations of states or other jurisdictions that management indicates are applicable to the institution.

2. Obtain and read management's assessment, as of the end of the institution's most recent fiscal year, concerning the institution's compliance with designated laws and regulations in paragraph C.1 of this section.

3. Obtain management's written representations concerning its assertions regarding the following:

(a) The completeness of the listing of credits (*i.e.*, loans and other extensions of credit) to insiders (*i.e.*, directors, executive officers, principal shareholders, or their related interests) provided pursuant to paragraph C.8 of this section;

(b) Whether creditworthiness of insiders and the terms of insider transactions are comparable to those for outside borrowers; and

(c) The completeness of the listing, provided pursuant to paragraph C.7 of this section, of written reports made by insiders detailing their transactions, including those with correspondent banks.

4. (a) Obtain the following:

(i) Approved minutes of the meetings of the board of directors and its committees during the most recent fiscal year;

(ii) Reports of examination issued during the year and through the date of the attestation report by the institution's primary federal regulator and state regulator, if applicable; and

(iii) Public filings during the most recent fiscal year with the SEC, FDIC, FRB, OCC, or OTS and through the date of the attestation report.

(b) Read the foregoing documents and trace and agree loans and other credits to insiders to the listing obtained from the institution pursuant to paragraph C.8 of this section.

5. Obtain a copy of the institution's written policies and procedures concerning its compliance with insider transaction laws and regulations, including any written "Code of Ethics" or "Conflict of Interest" policy statements. If the institution has no written policies and procedures, obtain from the institution a narrative that describes the institution's methods for complying with laws and regulations, and includes provisions similar to those listed in paragraph C.6 of this section.

6. Read the policies and procedures (or the narrative) obtained pursuant to paragraph C.5 of this section to ascertain that they include, or incorporate by reference, provisions for:

(a) Defining terms;

(b) Prohibiting and restricting loans to insiders;

(c) Maintaining records of loans to insiders;

(d) Requiring reports and disclosures:

(i) By the institution; and

(ii) By executive officers, directors, and principal shareholders;

(e) Disseminating policy information;

(f) Revising policies for subsequent legal changes;

(g) Educating employees about the regulations and management's related policies and procedures;

(h) Reporting insider loans and any events of noncompliance to the board of directors or its committees;

(i) Reporting insider loans to regulatory agencies.

7. Obtain a listing of all written reports made by insiders concerning debt with other insured institutions. Select a sample of written reports. For reports selected, note any reported aggregate extensions of credit in excess of the institution's lending limits, and note whether the report was made within 10 days of the date represented pursuant to paragraph C.7(b)(i) of this section.

8. Obtain a listing of credits to insiders and select a sample of insiders.

9. Obtain management's calculation of an amount equal to the higher of 5 percent of the institution's year-end capital and unimpaired surplus or $25,000, recalculate amounts (for mathematical accuracy), and trace amounts used in management's calculations to Call Reports or TFRs.

10. For each extension of credit to an insider in the sample selected pursuant to paragraph C.8 of this section:

(a) Trace and agree amounts to annual reports by insiders to the board of directors and Call reports or TFRs filed with regulators;

(b) Obtain minutes of the meetings of the board of directors or other documentation that indicates whether the specific extensions of credit, at the option of the institution, will become due and payable at any time that insiders are indebted to any other financial institution in an aggregate amount greater than the amount specified for a category of credit in 12 CFR 215.5(c);

(c) Obtain copies of the institution's written notification to insiders to ascertain whether they have been informed of the reporting requirements relative to insider transactions and they have acknowledged such requirements;

(d) If the credit exceeds the amount obtained pursuant to paragraph C.9 of this section, read the minutes of the meetings of the board of directors and determine whether the minutes indicate that:

(i) The credit was approved by the board of directors; and

(ii) The insiders abstained from participating directly or indirectly in voting on their credits.

(e) For any amount included on the listing of credits obtained pursuant to paragraph C.8 of this section that exceeds $500,000, obtain management's calculated legal lending limit for the credit and ascertain whether the amount of the credit exceeds management's calculated legal lending limit.

(f) If the credit is a real estate loan, obtain documentation for the credit and note whether such documentation contains representations that:

(i) The purpose of the credit is for purchase, construction, maintenance, or improvement of the insider's residence;

(ii) The credit is secured by a first lien on the residence; and

(iii) The insider owns or expects to own the residence after the extension of credit.

11. For the sample of insiders selected pursuant to paragraph C.8 of this section, obtain a history of the insider's overdrafts for the year and obtain management's representation whether that history is complete. In addition:

(a) Inquire whether cash items for the individual are being held by the institution to prevent an overdraft;

(b) Trace to records of the account at the institution; and

(c) Agree subsequent payment by the insider of the insider's overdrafts to records of the account at the institution.

12. For insider's overdrafts selected pursuant to paragraph C.8 that are being paid for the insider on an account at the institution:

(a) Agree to a written, preauthorized, interest-bearing extension of credit plan that specifies a method of repayment; or,

(b) Agree to a written, preauthorized transfer of funds from another account of the insider at the institution; or,

(c) For aggregate amounts of $1,000 or less, obtain a representation from management that (i) the overdraft was inadvertent, (ii) the account was overdrawn in each case for less than 5 business days, and (iii) the institution charged the insider the same fee that it would charge any other customer in similar circumstances.

13. For the sample of insiders selected pursuant to paragraph C.8 of this section:

(a) Obtain management's calculation of:

(i) The aggregate amount of loans and other extensions or lines of credit to the insider; and

(ii) 2.5 percent of the institution's capital and unimpaired surplus.

(b) Recalculate management's computations in paragraph C.11(a) of this section (for mathematical accuracy), trace amounts used in management's computations to Call Reports or TFRs.

(c) Ascertain whether the aggregate amount of the credits for the insider exceeds the greater of 2.5 percent of the institution's capital and unimpaired surplus or $25,000, but in no event more than $100,000 unless such credits are used to finance the education of the insider's children or for the insider's residence.

D. Dividend Restrictions

1. Read the following:

(a) Laws:

(i) 12 U.S.C. 56;

(ii) 12 U.S.C. 60;

(iii) 12 U.S.C. 1467(a)(f); and

(iv) 12 U.S.C. 1831o.

(b) Regulations:

(i) 12 CFR 5.61;

(ii) 12 CFR 208.19; and

(iii) 12 CFR 563.134.

(c) Comparable laws and regulations of states or other jurisdictions that management indicates are applicable to the institution.

2. Obtain and read management's assessment, as of the end of the institution's most recent fiscal year, of the institution's compliance with the designated laws and regulations in paragraph D.1 of this section.

3. Obtain management's written representation whether dividends paid exceed or do not exceed the limitation requirements.

4. Obtain a copy of the institution's written policies and procedures concerning its compliance with the dividend restriction provisions. If the institution has no written policies and procedures, obtain from the institution a narrative that describes the institution's methods for complying with the laws and regulations, including provisions similar to those listed in paragraph D.5 of this section.

5. Read the written policies and procedures (or the narrative) obtained in paragraph D.4 of this section to ascertain whether they include, or incorporate by reference, the following provisions:

(a) For banks and savings institutions:

(i) Capital limitation tests, including section 38 of FDIA;

(ii) Earnings limitation tests;

(iii) Undivided surplus transfers;

(iv) Restrictions imposed under any supervisory agreements or resolution of any agency orders.

(b) For savings institutions: prior notification to the OTS.

6. Read the minutes of the meetings of the board of directors for the most recent fiscal year to ascertain whether dividends have been declared. If dividends declared have been paid, trace and agree total amounts to:

(a) Recording in the general ledger; and

(b) Call reports or TFRs filed with regulators.

7. Limitations for national and state member banks.

(a) Obtain management's computation concerning its compliance with the following tests after payment of the dividends referenced in paragraph D.6 of this section:

(i) Section 56, "Capital Limitation Test;"

(ii) Section 60, "The Earnings Limitation Test;" and

(iii) Undivided surplus transfers.

(b) Recalculate management's computations (for mathematical accuracy).

(c) Compare management's calculations to the ranges permissible under the tests in paragraph D.7(a) of this section to ascertain whether the dividends paid fell within these ranges.

8. Limitations for savings institutions.

(a) Obtain management's documentation of the OTS determination whether the institution is a Tier 1, Tier 2, or Tier 3 savings institution.

(b) Obtain management's computation of its capital ratio after payment of dividends under the Tier determined in paragraph D.8(a) of this section.

(c) Recalculate management's computation (for mathematical accuracy) and trace amounts used by management in its calculation to its TFRs.

(d) For dividends paid, obtain a copy of the savings institution's notification to the OTS to ascertain whether notification was made at least thirty days before payment of any dividends.

9. For all institutions, obtain management's computation of the amount at which payment of a dividend would cause the institution to be undercapitalized; recalculate management's computations (for mathematical accuracy); and compare management's calculations to the amount of the dividend to determine whether it equaled or exceeded the amount.

E. Call Reports and TFRs

1. Read the following:

(a) OCC statutes:

(i) 12 U.S.C. 161a;

(ii) 12 U.S.C. 161b; and

(iii) 12 U.S.C. 1817(a)(3).

(b) OCC regulations:

(i) 12 CFR 4.11(b)1;

(ii) 12 CFR 4.11(b)3; and

(iii) 12 CFR 7.7540.

(c) FRB statute: 12 U.S.C. 324.

(d) FRB regulations:

(i) 12 CFR 208.10; and

(ii) 12 CFR 208.17.

(e) FDIC statute: 12 U.S.C. 1817(a).

(f) FDIC regulation: 12 C.F.R. 303.4.

(g) OTS statute: 12 U.S.C. 1464 5(v)1

2. Read the instructions for the line items below for the appropriate form of the institution's Call Report; or, for thrifts, of its TFR, for the most recent year ended December 31.

3. Obtain representations from management whether:

(a) The Call Report (or TFR) schedules are true and correct; and

(b) The amounts reported in the Call Report (or TFR) schedules were recorded and classified in conformity with the FFIEC (or OTS) instructions.

4. Trace and reconcile the amount presented for each designated line item to the corresponding amount in one of the source documents (of the same reporting entity) listed in the following hierarchy:

(a) Audited financial statements for the corresponding period that have been prepared in conformity with generally accepted accounting principles; or,

(b) The general ledger; or,

(c) A subsidiary ledger or trial balance that has been reconciled to the general ledger; or,

(d) A detailed supporting schedule that was prepared by the institution and has been reconciled to subsidiary ledgers or trial balances and the related general ledger.

5. For any amounts not found to be in agreement, obtain a representation from management concerning the nature of the difference, its effect on other amounts reported in the Call Report or TFR, and whether such treatment is consistent with the Call Report or TFR instructions.

6. Include in the report the amounts not in agreement, the nature of the difference if not a required difference, and its effect on other amounts in the Call Report or TFR.

7. Designated line items.

(a) For insured banks with domestic and foreign offices or domestic offices only and total assets of $300 million or more (Reporting Forms FFIEC 031 and 032):

(i) Schedule RI Income Statement:
- 1.g. Total interest income
- 2.f. Total interest expense
- 4.a. Provisions for loan and lease losses
- 5.e. Gains (losses) and fees from assets held in trading accounts
- 5.g. Total noninterest income
- 6. Gains (losses) on securities not held in trading accounts
- 7.d. Total noninterest expense
- 9. Applicable income taxes

(ii) Schedule RI–B Charge-offs and Recoveries and Changes in Allowance for Loan and Lease Losses
- 8. Total (Column A, Charge-offs)
- 8. Total (Column B, Recoveries)

(iii) Schedule RC Balance Sheet
- 4.b Allowance for loan and lease losses
- 4.d. Loans and leases, net of unearned income, allowance, and reserve
- 7. Other real estate owned
- 12. Total assets
- 19. Subordinated Notes and Debentures
- 21. Total liabilities
- 23. Perpetual preferred stock and related surplus
- 28. Total equity capital

(iv) Schedule RC–N Past Due and Nonaccrual Loans, Leases, and Other Assets (for all three columns)
- 10. Total (sum of items 1 through 9)
- Memoranda 1. Restructured loans and leases included in Schedule RC–N, items 1 through 8, above

(b) For insured banks with domestic offices only and total assets of $150 million or more but less than $300 million (Reporting Form FFIEC 033):

(i) Schedule RI Income Statement:
- 1.g. Total interest income
- 2.f. Total interest-expense
- 4.a. Provisions for loan and lease losses
- 4.b. Provision for allocated transfer risk
- 5.e. Gains (losses) and fees from assets hold in trading account's
- 5.g. Total noninterest income
- 6. Gains (losses) on securities not hold in trading accounts
- 7.d. Total noninterest expense
- 9. Applicable income taxes

(ii) Schedule RI–B Charge-offs and Recoveries and Changes in Allowance for Loan and Lease Losses
- 6. Total (Column A, Charge-offs)
- 6. Total (Column B, Recoveries)

(iii) Schedule RC Balance Sheet
- 4.b Allowance for loan and lease losses
- 4.d. Loans and leases, net of unearned income, allowance, and reserve
- 7. Other real estate owned
- 12. Total assets
- 19. Subordinated Notes and Debentures
- 21. Total liabilities
- 23. Perpetual preferred stock and related surplus
- 28. Total equity capital

(iv) Schedule RC–N Past Due and Nonaccrual Loans, Leases, and Other Assets (for all three columns)
- 6. Total
- Memoranda 1. Restructured loans and leases included in Schedule RC–N, items 1 through 5, above

(c) For All Thrifts:

(i) Schedule CSO Consolidated Statement of Operations
- 10. Interest income
- 20. Interest expense
- 320. Net Provision for Losses on Interest-Bearing Assets
- 60. Gain on Sale of Assets
- 65. Loss on Sale of Assets
- 40. Noninterest income
- 50. Non interest expense
- 70. Income taxes

(ii) Schedule VA Valuation Allowances
- 40. Mortgage Loans (charge-offs)
- 50. Nonmortgage Loans (charge-offs)

(iii) Schedule SC Statement of Condition
- 23. Mortgage Loans
- 40. Repossessed Assets
- 60. Total assets
- 70. Total Liabilities
- 80. Total Equity Capital

Contra-Assets to Mortgage Loans:
- 280. Loans in Process
- 281. Unamortized Adjustments Yield
- 282. Valuation Allowances

(iv) Schedule PD Past Due and Nonaccrual
- 10. Total Past Due 30–89 Days and Still Accruing
- 20. Total Past Due 90 Days or More and Still Accruing
- 30. Total Nonaccrual

By order of the Board of Directors.

Dated at Washington, DC this 1st day of September, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 791

Rules of Board Procedure; Promulgation of NCUA Rules and Regulations; Public Observation of NCUA Board Meetings

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: The NCUA Board is proposing to amend its Regulations to modify the procedure for determining whether items heard at a closed Board meeting should continue to be withheld after the meeting. The proposed amendments are intended to better achieve the goals of the Sunshine Act and to provide for a simpler, more effective, and more consistent method of decisionmaking.

DATES: Comments must be postmarked on or before November 16, 1992.

ADDRESSES: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Hattie M. Ulan, Associate General Counsel, Office of General Counsel, at the above address, or telephone (202) 682-9630.

SUPPLEMENTARY INFORMATION: Section 791.18(c) of the NCUA Rules and Regulations implements Section 552b(f)(2) of the Government in the Sunshine Act ("Sunshine Act"), 5 U.S.C. 552b(f)(2). Section 552b(f)(2) provides, in part that the agency shall make promptly available to the public, the transcript, electronic recording, or minutes (as required by paragraph (1)) of the discussión of any item on the agenda, or of any item of the testimony of any witness received at the meeting, except for such item or items of such discussion or testimony as the agency determines to contain information which may be withheld under subsection (c).

Section 552b(f)(2) requires an agency to determine whether matters heard at a closed meeting should be withheld after the meeting rather than made available to the public. However, it does not require the specific procedure currently in use by the NCUA Board. Under the Board's current practice pursuant to § 791.18(c), at the end of the meeting, the Board decides whether items discussed at the meeting should be withheld from public disclosure under § 791.12(a) of NCUA's Regulations (which contains the same exemptions as section 552b(c) of the Sunshine Act, 12 U.S.C. 552b(c)). In some instances, the Board solicits the advice of the General Counsel in making its decision. Having the Board make such determinations at the end of the meeting has proven time consuming, and at times confusing, particularly in those cases where a determination could better be made after review of the record. Section 791.18(c) provides that if the Board does not make the necessary determination with regard to any item or items, the Board Secretary must make the determination after consultation with the General Counsel and the Board members. This approach as well has proven time consuming and impracticable.

The Sunshine Act does not require that any specific procedures be followed in making the determination under section 552b(f)(2). The Board is, therefore, free to prescribe its own procedures. The determination to withhold portions of the record from the public does not require a recorded vote of the Board members, and need not be made by the Board members at all. Most agencies have delegated the determination responsibility to either the general counsel, the secretary, or the director of public information. An agency's review and determination need not occur at the meeting, and, in most cases, are carried out after the meeting.

The proposed amendment would make two changes in the current § 791.18(c). First, the proposal would eliminate the Board's current practice of making some disclosure decisions at the meeting. Second, the proposal would require the General Counsel, or his designee, to make the necessary determination after consultation with the Board Secretary. This alters the current rule, which authorizes the Board Secretary to make the determination after consultation with both the General Counsel and the Board. Since the determination whether to withhold is essentially a legal one, the General Counsel, rather than the Board Secretary, should have the primary responsibility for making that determination. The Board believes that the practice described in the proposal will better achieve the goals of the Sunshine Act than does the method now in use. The proposed arrangement would, in the Board's view, be simpler and more effective, as well as provide for a consistent method of decisionmaking.

The proposed rule also contains one technical amendment. The current version of the regulation incorrectly cites the Privacy Act as 5 U.S.C. 522a. The correct citation for the Privacy Act is 5 U.S.C. 552a. The proposed rule would correct this error.

Paperwork Reduction Act

The proposed amendment imposes no paperwork requirements on the public. It relates solely to internal Board procedure.

Regulatory Flexibility Act

The NCUA Board certifies that this proposed amendment will not have a significant impact on a substantial number of small credit unions (those under $1 million in assets) because the amendment relates solely to internal Board procedures. Accordingly, the NCUA Board has determined that a Regulatory Flexibility Analysis is not required.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The proposed amendment relates solely to internal Board procedures, and will have no effect on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government.

List of Subjects in 12 CFR Part 791

Administrative practice and procedures, NCUA Board, Promulgation of rules and regulations, Public observation of meetings, Sunshine Act.

By the National Credit Union Administration Board on September 9, 1992.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA proposes to amend 12 CFR part 791 as follows:

PART 791—RULES OF NCUA BOARD PROCEDURES; PROMULGATION OF NCUA RULES AND REGULATIONS; PUBLIC OBSERVATION OF NCUA BOARD MEETINGS

1. The authority citation for part 791 continues to read as follows:

Authority: 12 U.S.C. 1766; 12 U.S.C. 1789; and 5 U.S.C. 552b.

2. Section 791.18(c) is revised as follows:

§ 791.18 Public availability of meeting records and other documents.

* * * * *

(c) Following each meeting or any portion of a meeting closed pursuant to

§ 791.12(a), the General Counsel or his designee, after consultation with the Secretary of the Board, shall determine which, if any, portions of the meeting transcript, electronic recording or minutes not otherwise available under 5 U.S.C. 552a (the Privacy Act), contain information which should be withheld pursuant to § 791.12(a). If, at a later time, the Board determines that there is no further justification for withholding any meeting record or other item of information from the public which has previously been withheld, then such information shall be made available to the public.

* * * * *

[FR Doc. 92-22241 Filed 9-14-92; 8:45 am]

BILLING CODE 7535-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. I

[FRL-4505-9]

Intent to Form an Advisory Committee to Negotiate the Drinking Water Disinfection Byproducts Rule and Announcement of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent.

SUMMARY: EPA is considering establishing an Advisory Committee under the Federal Advisory Committee Act (FACA), and the Negotiated Rulemaking Act of 1990. The Committee's purpose would be to negotiate National Primary Drinking Water Regulations for disinfectants and disinfection byproducts under Section 1412 of the Safe Drinking Water Act (SDWA). The Committee would consist of representatives of parties that are substantially affected by the outcome of the proposed rule.

EPA requests public comment on whether:

- It should establish a Federal Advisory Committee;
- It has properly identified interests it believes are affected by the key issues listed below;
- Regulatory negotiation is appropriate for this rulemaking and, the extent to which the issues and procedures are adequate and appropriate.

EPA also announces that it will conduct a public meeting on the proposed use of negotiation to develop this rule. The meeting will explore the feasibility of negotiating the proposed rule and issues the committee should address. Any person interested in the negotiation is encouraged to attend.

DATES: The public meeting will be held in Washington, DC on September 29–30. The meeting will start at 9 a.m and be complete no later than 5 p.m. On September 30 the meeting will begin with a summary of the previous day's discussion so that people unable to attend the meeting on September 29 will have the opportunity to comment on those subjects. Comments on the issues raised by this notice and any applications for membership must be received October 15, 1992.

ADDRESSES: The public meeting will be held in the Federal Ballroom at the Quality Inn Capitol Hill, 415 New Jersey Avenue, NW., Washington, DC, phone (202) 638-1616. Comments should be submitted in triplicate, if possible, to the U.S. Environmental Protection Agency (EPA), Drinking Water Docket for Disinfectant Byproducts, [WH-550D], 401 M Street, SW., Washington, DC 20460. For access to the disinfection byproducts rule docket, call 202-260-3027 between 9 a.m. and 3:30 p.m. on weekdays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information pertaining to the substantive and technical issues to be addressed in the negotiation, contact: Stig Regli, Regulation Management Branch, Drinking Water Standards Division, Office of Ground Water and Drinking Water (WH-550D), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, 202-260-7379. General information may also be obtained from the EPA Safe Drinking Water Hotline. Callers within the United States may reach the Safe Drinking Water Hotline at 800-426-4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding Federal holidays, from 8:30 a.m. to 4 p.m.

For information pertaining to the establishment of the negotiation committee and associated administrative matters contact: Chris Kirtz, Director, Consensus and Dispute Resolution Program, PM-223Y, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, phone 202-260-7565.

SUPPLEMENTARY INFORMATION:

Outline of Notice

I. Negotiated Rulemaking Act
II. Subject and Scope of the Disinfection Byproducts Rule
  A. Need for the Rule
  B. Subject and Scope of the Rule
  C. Questions and Issues to be Resolved
  D. Affected Interests and Potential Participants
  E. Schedule
  F. Selection as a Potential Negotiation Candidate
III. Formation of the Negotiating Committee
  A. Procedure for Establishing and Advisory Committee
  B. Participants
  C. Requests for Representation
  D. Final Notice
IV. Negotiation Procedures
  A. Facilitator
  B. Good Faith Negotiation
  C. Administrative Support and Meetings
  D. Meetings
  E. Committee Procedures
  F. Defining Consensus
  G. Failure of Committee to Reach Consensus
  H. Record of Meetings

I. Negotiated Rulemaking Act

The Negotiated Rulemaking Act of 1990 (NRA), establishes a framework for the conduct of negotiated rulemaking and encourages agencies to use the process to enhance the informal rulemaking process. Under the Act the head of an Agency shall consider whether—

(1) There is a need for a rule;

(2) There are a limited number of identifiable interests that will be significantly affected by the rule;

(3) There is a reasonable likelihood that a committee can be convened with a balanced representation of persons who—

(A) Can adequately represent the interests identified under paragraph (2); and

(B) Are willing to negotiate in good faith to reach a consensus on the proposed rule;

(4) There is a reasonable likelihood that a committee will reach a consensus on the proposed rule within a fixed period of time;

(5) The negotiated rulemaking procedure will not unreasonably delay the notice of proposed rulemaking and the issuance of a final rule:

(6) The Agency has adequate resources and is willing to commit such resources, including technical assistance, to the committee; and

(7) The Agency, to the maximum extent possible consistent with the legal obligations of the Agency, will use the consensus of the committee with respect to the proposed rule as the basis for the rule proposed by the Agency for notice and comment.

Negotiations are conducted through Advisory Committees chartered under the Federal Advisory Committee Act (FACA). The goal of the Committee is to reach consensus on the language or issues involved in a rule. If consensus is reached, it is used as the basis of the Agency's proposal. All procedural requirements of the Federal Advisory

Committee Act, the Administrative Procedure Act and other applicable statutes continue to apply.

The NRA provides that if an Agency elects to proceed with a negotiation effort, that it publish a notice in the **Federal Register** describing the subject and scope of the proposed rule, the interests and issues involved, and the persons or entities it proposes to include on the negotiated rulemaking Advisory Committee.

The purpose of the notice is to give the public 30 days to comment on the use of negotiated rulemaking for the proposed rule and to apply or nominate someone for Committee membership. This notice fulfills that purpose and begins the 30-day comment period.

II. Subject and Scope of the Disinfection Byproducts Rule

A. Need for the Rule

Section 1412 of the Safe Drinking Water Act requires EPA to promulgate standards for 25 additional drinking water contaminants every three years. EPA is considering the category of contaminants known as disinfection byproducts as part of this next set of regulations. Greater than 220 million people in the U.S. receive disinfected water (typically chlorine) from public drinking water supplies. All disinfected water has disinfectant byproducts which are formed by naturally occurring organics reacting with disinfectants. About one-half of the U.S. population could be exposed to significant lifetime cancer risk from disinfection byproducts. EPA is under a court-ordered deadline to propose rules for the next 25 contaminants by June 1993.

B. Subject and Scope of the Rule

This rule is intended to limit the concentrations of disinfectants and their byproducts in United States drinking water systems. These limits conflict with other regulations, such as the Surface Water Treatment Rule, which establish minimum levels of disinfection needed to ensure that human exposure to microbiological contaminants is also limited. Therefore, in developing regulations for disinfection byproducts, EPA needs to ensure that drinking water utilities can effectively provide treatment that controls concentrations of both disinfection byproducts and microbiological organisms.

If disinfection is decreased to reduce byproduct formation, pathogen risk could increase, but the relationship between the two, particularly with various treatment technologies, is not well understood. The Agency is developing a major research initiative to develop the information needed to make an effective regulatory balance between pathogenic and disinfectant byproduct risk. The risk-risk relationship needs to be better understood and appropriate regulatory constraints set to prevent increases in microbial risk, possibly decreasing such risk, and to avoid a net effect of increasing overall human health risk by substituting one type of risk for another. A principal goal will be to determine whether disinfection byproduct risk can be reduced while protection against microbial risk is maintained or reduced.

Few people outside the Agency have a substantive understanding of these risk-risk comparison issues. A negotiated rule process would help people understand the complexities of the risk-risk tradeoff issue and, hopefully, reach a consensus on what regulation makes sense in the short term before the results of the research program are available.

C. Questions and Issues to be Resolved

EPA anticipates addressing and resolving the following key issues or questions during the negotiations:

1. What disinfectants and disinfection byproducts present the greatest risks, and how should they be grouped for regulation?
2. Which categories of public water suppliers should be regulated?
3. Should the regulation establish Maximum Contaminant Levels or be technology driven?
4. How effective are advanced technologies and alternative disinfectants in the removal of disinfectants, disinfection byproducts, and microbial risks?
5. How should disinfectants, disinfection byproducts, and microbial risks be compared, given differences in the type and certainty of their effects?
6. What levels of disinfectant, disinfection byproduct, and microbial risk are acceptable, and at what cost?
7. How should the achievement of acceptable levels of risk be defined?
8. How might risk-risk models be used, if at all, in the development of Maximum Contaminant Levels within the current regulatory schedule?
9. How should the needs of sensitive populations be taken into account in the rule?
10. How should Best Available Technology be defined for the removal of disinfectants and disinfectant byproducts?
11. Should a comprehensive disinfectant/disinfection byproduct regulation be issued in 1995, or should the control of certain disinfectants/disinfection byproducts be deferred until research confirms the safety of alternative treatment methods?
12. How should affordability be factored into judgments regarding feasibility of treatment techniques?
13. How should monitoring requirements be defined?
14. How can the rule be drafted to be most easily understandable by both state regulators and small system operators?

D. Affected Interests and Potential Participants

EPA has tentatively identified the following list of possible interests and/or parties, who unless otherwise noted, have indicated their willingness to participate:

Regulators

U.S. Environmental Protection Agency
  Jim Elder
Association of State Drinking Water Administrators
  Barker G. Hamill, New Jersey Department of Environmental Protection

Regulated industry

American Water Works Association
  George Haskew, Hackensack Water Company
Association of Metropolitan Water Agencies
  Donald Jackson, South Central Connecticut Regional Water Authority
National Association of Water Companies
  Ronald Twillman, St. Louis County Water
National Rural Water Association
  John Montgomery
National Water Resources Association
  Edward G. Means, Metropolitan Water District of Southern California

Consumer groups

National Association of State and Utility Consumer Advocates
  Scott J. Rubin, Pennsylvania Office of the Consumer Advocate
One Additional group to be decided

Other State and Local government officials

National League of Cities
  to be decided
National Association of Regulatory Utility Commissioners
  Paul Foran, Illinois

Environmental groups

Natural Resources Defense Council
  Erik Olson
Environmental Defense Fund

Robert Harris
Two other groups to be decided

Health professionals

Association of State and Territorial Health Officials
to be decided
National Environmental Health Association
Chris J. Wiant

E. Schedule

EPA has set a deadline of February 28, 1993 for the committee to complete work on the rule. The Agency intends to terminate the activities of the Committee if it does not appear likely to reach consensus on a schedule that is consistent with Agency rulemaking needs.

As mentioned earlier, EPA will hold a public meeting on September 29–30, 1992 to discuss details of how negotiations will would proceed and how the Committee, if formed, will function.

Assuming this meeting is successful, and no adverse public comments or other considerations that would have EPA elect not to go forward, EPA intends to hold its first formal Advisory Committee meeting on November 12–13, 1992 at Resolve, Inc., 1250 24th St., NW., 5th floor, Washington, DC 20037 (202–778–9634). At this meeting, participants will complete action on any procedural matters outstanding from the organizational meeting, determine how best to address the principal issues, and begin to address them. Subsequent meetings of the Committee will be held monthly in Washington, DC or on such other schedule and at such other locations as determined by the Committee.

F. Selection as a Potential Negotiation Candidate

The NRS authorizes the use of independent convenors to assist the Agency in identifying interests affected, and the feasibility and appropriateness of using the negotiated rulemaking approach. Based on the work of EPA's independent contractor convening team, and its own assessment, EPA believes the DBP rule is appropriate for development through negotiation.

III. Formation of The Negotiating Committee

A. Procedure for Establishing an Advisory Committee

As a general rule, an Agency of the federal government is required to comply with the requirements of FACA when it establishes or uses a group which includes non-federal members as a source of advice. Under FACA, an Advisory Committee is established only after both consultation with GSA and receipt of a charter. EPA has prepared a charter and initiated the requisite consultation process.

B. Participants

The number of participants in the group is estimated to be about 18 and should not exceed 25 participants. A number larger than this could make it difficult to conduct effective negotiations. One purpose of this notice is to help determine whether the regulation that EPA is developing would substantially affect interests not adequately represented by the proposed participants. We do not believe that each potentially affected organization or individual must necessarily have its own representative. However, we firmly believe that each interest must be adequately represented. Moreover, we must be satisfied that the group as a whole reflects a proper balance and mix of interests.

C. Requests for Representation

If, in response to this Notice, an additional individual or representative of an interest requests membership or representative in the negotiating group, the Agency, in consultation with the facilitator, will determine whether that individual or representative should be added to the group. EPA will make that decision based on whether the individual or interest:

- Would be substantially affected by the rule;
- Is already adequately represented in the negotiating group.

D. Final Notice

After evaluating the results of the public meeting, and reviewing any comments and requests for representation, EPA will issue a final notice. That notice will announce the establishment of a Federal Advisory Committee and the date of the first meeting, unless EPA decides, based on comments received or other relevant considerations, that such action is inappropriate. The negotiation process will begin once the Committee is chartered and notice is published in the **Federal Register**.

IV. Negotiation Procedures

The following procedures and guidelines will apply to the Committee, if formed, unless they are modified as a result of comments received on this Notice or during the negotiating process.

A. Facilitator

EPA will use a neutral facilitator. The facilitator will not be involved with the substantive development or enforcement of the regulation. The facilitator's role is to:

- Chair negotiating sessions;
- Help the negotiation process run smoothly; and
- Help participants define and reach consensus.

B. Good Faith Negotiation

Since participants must be willing to negotiate in good faith and be authorized to do so, each organization must designate a senior official to represent its interests. This applies to EPA as well, and to its principal negotiator, James R. Elder, Director, Office of Ground Water and Drinking Water.

C. Administrative Support and Meetings

EPA's Office of Ground Water and Drinking Water will supply logistical, administrative and management support. If it is deemed necessary and appropriate, the Agency will provide technical support to the committee in gathering and analyzing additional data or information.

D. Meetings

Meetings will be held at the convenience of the Committee. EPA will announce Committee meetings in the **Federal Register**. Such meetings will be open to the public.

E. Committee Procedures

Under the general guidance and direction of the facilitator, and subject to any applicable legal requirements, the members will establish the detailed procedures for Committee meeting which they consider most appropriate.

F. Defining Consensus

The goal of the negotiating process is consensus. In the negotiations completed to date, consensus has meant that each interest concurs in the result. We expect the participants to fashion their own working definition of this term.

G. Failure of Advisory Committee to Reach Consensus

In the event the Committee is unable to reach consensus, EPA will proceed to develop its own rule. Parties to the negotiation may withdraw at any time. If this happens, the remaining Committee members and the Agency will evaluate whether the Committee should continue.

H. Record of Meetings

In accordance with FACA's requirements, EPA will keep a summaries of all Advisory Committee

meetings. These summaries will be available upon request and placed in the public docket for this rulemaking.

Dated: September 10, 1992.

James R. Elder,

Acting Assistant Administrator for Water.

[FR Doc. 92-22354 Filed 9-14-92; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR PART 52

[IL 12-21-5611; FRL 4205-3]

Approval and Promulgation of Implementation Plans; Illinois: Extension of Comment Period

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule; Extension of the comment period.

SUMMARY: USEPA is extending the comment period for a proposed rule published July 17, 1992 (57 FR 31678). On July 17, 1992 USEPA proposed rulemaking in response to a Petition of Reconsideration filed with the Administrator on behalf of a General Motors Corporation Electro-Motive Division (GM) facility located in LaGrange (Cook County) Illinois. The Petition for Reconsideration was in response to USEPA's June 29, 1990 (55 FR 26814) promulgation of a federal ozone Implementation Plan as it pertains to GM's facility.

At the request of GM, USEPA is extending the comment period for 30 days.

DATES: Comments on the July 17, 1992 (57 FR 31678), proposed rule are due September 16, 1992.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano (AR-18J), Regulation Development Branch, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, IL 60604, (312) 886-6036.

Dated September 4, 1992.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 92-22249 Filed 9-14-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92-199, RM-8050]

Radio Broadcasting Services; Smith, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Smiths Communications, seeking the allotment of FM Channel 267A to Smiths, Alabama, as that community's first local aural transmission service. Coordinates for this proposal are 32-28-42 and 85-08-06.

DATES: Comments must be filed on or before October 30, 1992, and reply comments on or before November 16, 1992.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: David M. Silverman, Esq., Cole, Raywid & Braverman, 1919 Pennsylvania Ave., NW., suite 200, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92-199 adopted August 18, 1992, and released September 8, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1990 M St., NW., suite 640, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-22212 Filed 9-14-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 92-194, RM-8052]

Radio Broadcasting Services; Essex, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Dunes Broadcasting, seeking the allotment of Channel 280B to Essex, California, as that community's second local FM service. Coordinates for this proposal are 34-44-12 and 115-14-48. Mexican concurrence will be requested for this allotment.

DATES: Comments must be filed on or before October 30, 1992, and reply comments on or before November 16, 1992.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Peter Gutmann, Esq., Pepper & Corazzini, 1776 K Street, NW., suite 200, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92-194, adopted August 3, 1992, and released September 8, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1990 M St., NW., suite 640, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-22215 Filed 9-14-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 92-195, RM-7146]

Radio Broadcasting Services; Beverly Hills, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed by Heart of Citrus, Inc., permittee of Station WPDS, Channel 246A, Beverly Hills, Florida, proposing the substitution of Channel 246C3 for Channel 246A at Beverly Hills, and modification of its Station WPDS construction permit to specify operation on Channel 246C3. The reference coordinates for the proposed Channel 246C3 allotment at Beverly Hills, Florida, are 28-47-46 and 82-28-31.

DATES: Comments must be filed on or before October 30, 1992, and reply comments on or before November 16, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Gammon and Grange, Counsel for Heart of Citrus, Inc., suite 300, 1925 K Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92-195, adopted August 3, 1992, and released September 8, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1990 M St., NW., suite 640, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-22217 Filed 9-14-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 92-200, RM-8018]

Radio Broadcasting Services, Bronson and Cross City, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Women in Florida Broadcasting, Inc., licensee of Station WDFL (FM), Channel 295C1, Cross City, Florida, seeking the reallotment of Channel 295C1 from Cross City to Bronson, Florida, and the modification of its license to specify Bronson as its community of license, in accordance with § 1.420(i) of the Commission's rules. The coordinates are North Latitude 20-24-07 and West Longitude 83-08-10.

DATES: Comments must be filed on or before November 2, 1992, and reply comments on or before November 17, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John M. Spencer, Leibowitz and Spencer, One SE. Third Avenue, suite 1450, Miami, Florida 33131 (Counsel for Women in Florida Broadcasting, Inc.).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92-200, adopted August 14, 1992, and released September 9, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex part* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-22218 Filed 9-14-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 92-178, RM-8045]

Radio Broadcasting Services; Lawton, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Communicorp, Inc., seeking the substitution of Channel 231C2 for Channel 232A at Lawton, Oklahoma, and the modification of Station KQLI's license to specify operation on the higher class channel. Channel 231C2 can be allotted to Lawton in compliance with the Commission's minimum distance separation requirements at Station KQLI's licensed transmitter site, at coordinates North Latitude 34-34-24 and West Longitude 98-28-40. In accordance with Section 1.420(g) of the Commission's Rules, we will not accept

competing expressions of interest in use of the channel at Lawton or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before October 30, 1992, and reply comments on or before November 16, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Colby M. May, Esq., May & Dunne, Chartered, 1000 Thomas Jefferson Street, NW., suite 520, Washington, DC 20007 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92-178, adopted July 28, 1992, and released September 8, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-22216 Filed 9-14-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-51; RM-7625]

Radio Broadcasting Services; Steeleville, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document denies the request of Steeleville Communications seeking the allotment of Channel 248A to Steeleville, Illinois, as that community's first local FM service. See 56 FR 11149, March 15, 1991. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91-51, adopted August 13, 1992, and released September 9, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-22155 Filed 9-14-92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 228

[Docket No. 920802-2202]

Taking of Ringed Seals Incidental to On-Ice Seismic Activity

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS proposes to issue regulations governing the taking of ringed seals incidental to oil and gas exploratory activities (specifically, seismic operations on the ice) in the Beaufort Sea from 1993 through 1997 The incidental taking of small numbers of marine mammals is allowed under section 101(a)(5) of the Marine Mammal Protection Act (MMPA) if certain findings are made and regulations are issued that include requirements for monitoring and reporting.

DATES: Comments should be received by October 15, 1992.

ADDRESSES: Send comments on this proposed rule to Dr. Nancy Foster, Director, Office of Protected Resources, 1335 East-West Highway, Silver Spring, MD 20910. Send comments on the collection of information burden estimate to the Office of Information and Regulatory Affairs, Project (0648-0151), Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Margaret C. Lorenz, Office of Protected Resources, NMFS, (301) 713-2322 or Ron Morris, Western Alaska Field Office, (907) 271-5006.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5) of the MMPA directs the Secretary of Commerce (Secretary) to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted for periods of 5 years or less if the Secretary finds that the taking will have a negligible impact on the species or stock and will not have an unmitigable adverse impact on the availability of the species or stock for subsistence uses. NMFS has issued general regulations implementing the 1981 and 1986 amendments to the MMPA that allow this incidental take (47 FR 21254, May 18, 1982, and 54 FR 40349, Sept. 29, 1989). However, specific regulations governing a taking of ringed seals incidental to on-ice seismic activity (47 FR 21254, May 18, 1982, and 52 FR 1199, Jan. 12, 1987) expired December 31, 1991.

Summary of Request

On April 8, 1992, NMFS received a petition from BP Exploration (Alaska), Chevron U.S.A., Inc., Halliburton Geophysical Services, Inc. and Western Geophysical Company to renew the incidental take regulations in 50 CFR part 228, subpart B, that governed the taking of ringed seals incidental to seismic activities on the ice offshore Alaska for a period of 5 years. The petitioners state that while they do not anticipate any incidental takings of ringed seals as the result of on-ice

seismic activities, if takings do occur, they are not likely to be lethal.

The scope of the petition is limited to pre-lease and post-lease seismic exploration activities in state waters and the Outer Continental Shelf in the Beaufort Sea offshore Alaska during the ice covered season. Operations are usually confined from January through May. Seismic surveys will be conducted using two types of energy sources: (1) Vibroseis, which uses large trucks with vibrators mounted on them, which systematically put variable frequency energy into the earth, and (2) waterguns or airguns carried by a sleigh or other vehicle. Over the next 5-year period, the petitioners expect that on-ice seismic activity will cover from 1,000 to 3,000 line miles (200 to 600 miles) (322 to 965 kilometers) in any given year).

NMFS published a notice of the request for rulemaking on May 14, 1992 (57 FR 20667), and received a response from the Marine Mammal Commission.

Summary of Proposed Rule

The proposed rule would renew the regulations that expired December 31, 1991, allowing a small incidental take or ringed seals as provided for by the MMPA. The regulations would apply only to the incidental taking of ringed seals (*Phoca hispida*) by U.S. citizens engaged in seismic activities on the ice and associated activities in the Beaufort Sea from the shore outward to 45 miles (72 km) and from Point Barrow east to Demarcation Point and only from January 1 through May 31 of any calendar year.

The incidental, but not intentional, taking of ringed seals by U.S. citizens holding a Letter of Authorization would be permitted during the following activities:

(1) On-ice geophysical seismic activities using two types of energy sources (i.e., vibroseis or waterguns or airguns) and

(2) Operation of transportation and camp facilities associated with seismic activities.

All activities would have to be conducted in a manner that minimizes adverse effects on ringed seals and their habitat. The activities would have to be conducted as far as practicable from any observed ringed seals or ringed seal lair. No energy source could be placed over an observed ringed seal lair.

The requirements for monitoring and reporting include designating a qualified individual to observe and record the presence of ringed seals and ringed seal lairs along shot lines and around camps. An annual report would have to be submitted to NMFS within 90 days of completing the year's activities.

Description of Seismic Activities

"Hardwater" marine geophysical surveys are conducted before and after oil and gas leases are issued to gather information about subsurface geology and are divided into two classes of surveys; deep seismic and shallow hazard. Deep seismic surveys generally map deep strata beneath the earth's surface (1,000 to 20,000 feet) (364 to 7,290 meters) in search of typical gas and oil-bearing geologic formations. Shallow hazard surveys, also known as "site clearance" or "high resolution" surveys, are conducted to gather information on potential near-surface hazards (0 to 1,000 feet) (0 to 364 meters) which could be encountered in exploratory drilling.

After leases are issued and drilling begins, seismic operations shift from broad reconnaissance surveys to a combination of shallow hazard surveys and more detailed exploratory work. Post-lease surveys are limited to specific geographic areas or tracts. Because each tract is surveyed in greater detail, the line density may increase although the geographic boundaries would be smaller.

Deep seismic and shallow hazard surveys use the "reflection" method of acquiring data. Information about the earth's subsurface is gathered by measuring acoustic (sound or seismic) waves that are generated on or near the surface. The process involves using a controlled energy source to generate acoustic waves that travel through the earth (in this case, sea ice and water as well as geologic formations beneath the sea) and ground sensors to record the reflected energy transmitted back to the surface.

Several vehicles are normally involved in the vibroseis method of collecting data. One or two vehicles with survey crews move ahead of the operation to mark the energy input points. Bulldozers may move ahead of the crew to prepare pathways for the vehicles. Typically, an on-ice data recording operation includes four to five vibrators, four to five cable and sensor carriers, one recording vehicle and one vibrator tender. A winter-run seismic exploration crew may include 40 to 60 people or up to 110 people if a 3-dimensional survey is involved.

Acquiring seismic data by using airguns or waterguns is similar to the vibroseis technique, but the sound source is compressed air or water rather than vibrations.

Ringed Seals in Alaska

Ringed seals are widely distributed throughout the Arctic, North Pacific and North Atlantic Oceans with a worldwide population estimated to be between 6 and 7 million; the Arctic Alaska population is estimated to be between 1 and 1.5 million. The ringed seal is the most abundant and widely distributed marine mammal in the Beaufort Sea where its estimated population ranges from about 80,000 animals during summer months to 40,000 in the winter.

The species is associated with seasonal and permanent ice-covered regions, and the greatest concentrations are found on stable shore ice. During winter months, the ringed seal occupies the land-fast or shore ice of the Bering, Chukchi and Beaufort Seas. The remainder of the year, the seals migrate with the annual advance and retreat of the pack ice. In winter, ringed seals live in and under the ice by using the strong claws of their foreflippers to construct and maintain breathing holes. They also excavate lairs in accumulated snow.

Female ringed seals give birth in their lairs staring in early April and nurse their pups for 4 to 6 weeks. The fast ice appears to be the best habitat for breeding ringed seals, and the highest densities of this species occur in these areas. Mating occurs during late April and May.

Four primary types of structures are made by ringed seals; (1) simple breathing holes through the ice, (2) holes and associated simple resting lairs that are excavated in snow drifts above the hole, (3) complex lairs with several large chambers which may be used by more than one seal as places to rest, and (4) pupping lairs which often resemble complex lairs with the addition of small tunnels excavated by a pup during the course of its growth and development. There is usually a progression from breathing holes to lairs of one type or another.

The density of ringed seals in the landfast ice is a function of both physical and biological characteristics in any particular area, and some vary greatly from year to year. The primary physical characteristics are water depth, presence or absence of large grounded ice floes and barrier islands, intensity, direction and duration of winds, snow conditions and water currents. The primary biological component is availability of food (prey).

Weather and ocean currents directly cause drifting pack ice to encroach on landfast ice. The effects of encroachment are modified by the presence or absence of protective barriers, mainly large, ground and ice floes and barrier islands. Impingement by the pack ice creates pressure ridges and stress cracks in the landfast ice; the

pressure ridges (and to some extent the stress cracks) accumulate snow and the seals excavate lairs in the snow drifts. In flat ice with little accumulated snow, seals are restricted to making breathing holes.

In waters more shallow than 3.5 to 4 feet (about 1 to 1.2 meters), depending on air temperature regimes in any given winter, the sea ice freezes to the sea floor, precluding use by ringed seals. In waters between 4 and 12 feet deep (about 1.2 to 3 meters) current flow is greatly restricted, and prey availability is presumed to be too low to support winter resident seals.

In regions of the Beaufort Sea north of Alaska were fast ice is present, the most favorable habitat for ringed seals is seaward of the numerous barrier islands and in water greater than 18 feet deep (6.5 meters).

Based on studies conducted in Barrow Strait (Northwest Territories, Canada), scientists found that pups were not born before April 4, but occurred with increasing frequency as the spring season progressed; lair formation can occur within 24 hours after a snowdrift forms over a breathing hold; birthlairs were constructed in the largest snowdrifts (as compared to simple or complex resting lairs); and lairs were associated with pressure ridges consisting of ice pieces 15–25 cm thick that projected upwards to a height of 80–150 cm.

Based on studies in Kotzebue Sound (Chukchi Sea) and near Reindeer Island (Beaufort Sea near Prudhoe Bay), scientists reported that abandonment of breathing holes and establishment of new ones is an ongoing natural occurrence with or without human presence. After completion of on-ice seismic operations in 1981–82, there was no consistent difference in the density of basking seals noted in aerial survey transects centered over the seismic lines and in intervening transects; 13 radio-tagged seals were faithful to their lairs from March to June; each of the radio-tagged seals used as many as four difference lairs, with distances between lairs as great as 3,438 m; mean distances between lairs used by individual males and females were 1,997 and 634 m, respectively; in all cases where radio-tagged seals departed lairs in response to human-made noises, they subsequently returned to the lair and hauled out; in one instance a radio-tagged male seal eventually abandoned a lair after having initially returned to it following seismic operations; the behavior of this male may or may not have been related to the previous disturbance; the proportion of time that radio-tagged seals spent hauled out was 12.1 percent in March, 18.6 percent in April and 21.9 percent in May; in March to early May, when seismic exploration was being conducted, short-term abandonment of breathing holes and lairs was higher than natural abandonment within 150 m of seismic lines.

On the basis of aerial surveys made in the period from late May to mid-June, in suitable ringed seal habitat in both the Chukchi and Beaufort Seas, scientists found that there was a significant difference in density of seals in relation to distance from shore or the barrier islands. Seals were less abundant in the stratum that was 0 to 2 nautical miles (nm) than they were in the strata 2 to 4 nm from shore. In most sectors, the density within 2 nm of shore was the lowest on any part of the fast ice.

It has been reported that for the area of fast ice in the Beaufort Sea that extends from Point Barrow to Barter Island, the average density of ringed seals per square nautical mile was 2.92 in 1985, 3.81 in 1986 and 5.53 in 1987. These data, together with earlier estimates of seal density in the Beaufort Sea, show that the distribution and density of ringed seals in land fast ice of the region is quite dynamic. Seal density was relatively high in 1970 and 1975, dropped to low levels in 1976 and 1977, and increased again in 1985 to 1987.

Potential Impact of Seismic Activities on Ringed Seals

Aerial survey data collected from 1970 through 1987 indicate that ringed seal densities in the fast ice of the Beaufort Sea are highly variable among years and among different sections from Point Barrow to Barter Island. During the past 10 years, the seismic industry estimated that the maximum area covered by on-ice seismic operations during any given year did not exceed 1,800 square miles (4,662 square km). Using an estimated density of 2.83 seals per square nautical mile, it is unlikely that there would have been more than 3,800 seals in the area that would have been potentially affected. Based on an estimated displacement due to seismic activity of 0.6 seals per square nautical mile, the maximum number of seals temporarily displaced annually within a seismic survey area of 1,357 square nautical miles would likely have been less than 1,000.

The area likely to be affected by on-ice seismic operations over the next 5 years is less than in the past. The seismic companies anticipate that in any single year the area affected will not exceed more than 600 square miles (1,554 square km). Further, in some types of exploration, especially the shallow hazard and delineation efforts, the lines are closely spaced. Though the line miles might be considerable, the area affected would be small.

The impact of seismic activities would likely be confined to the immediate vicinity of operations. Scientists conducted a ground examination of ringed seal structures to determine their fate along seismic and control lines and found no significant overall difference. However, they reported a significant difference in the fates of structures in relation to distance from seismic lines (within 150 meters of the shot line in comparison to greater distances). These investigators concluded that displacement of seals in close proximity (within 150 meters) to seismic lines does occur. But based on data from aerial surveys, there has been no major displacement of seals away from on-ice seismic operations as currently conducted in the Beaufort Sea.

These studies, as well as subsequent observations, indicate that some individual ringed seals in the immediate area of operations could be temporarily displaced by on-ice seismic activities. However, given the wide distribution of ringed seals and the relatively low density of breeding seals in the Beaufort Sea, small numbers of animals are expected to be encountered. Impacts that might be significant for individual animals (an abandoned pup, for example) are expected to be negligible for the overall ringed seal population.

Additional factors reduce the probability of incidental take. Portions of many of the seismic lines are likely to be on ice over shallow water where ringed seals are either absent or present in low numbers. Other parts of lines are likely to be within 2 miles (3.2 km) of shore within favorable seal habitat, but where density of seals is lowest. Within optimum seal habitat farther from shore, the seismic operators avoid moderate and large pressure ridges because of concerns for safety and normal operational constraints. Also, a significant portion of the on-ice seismic lines and connecting ice roads is expected to be laid out and explored during January and February when many ringed seals are still transient.

On-ice seismic operations in the Beaufort Sea are not expected to have an impact on the availability of ringed seals for subsistence uses. The size of the annual harvest has dropped from about 7,000 to 15,000 animals statewide from 1962–72 to about 2,000 to 3,000 in 1979. This decrease has been attributed mainly to changes in the Eskimo lifestyle and the adoption of the MMPA which permits hunting only by natives

for subsistence purposes. NMFS is not aware of any new information since 1979 to indicate that this trend has reversed. Also, most of the native subsistence hunting for ringed seals is conducted in regions north of Kuskokwim Bay in the Bering and Chukchi Seas, not the Beaufort Sea area. Hunting seals with rifles in leads or open water has largely replaced the more difficult winter hunting at breathing holes and lairs. In addition, the areas where on-ice seismic operations are conducted are extremely small in comparison to the vast Beaufort Sea subsistence hunting areas. During the past 10 years, seismic crews have come in contact with few native hunters.

The ringed seal habitat may be potentially affected by construction of ice roads and camps and removal of ice and snow along survey lines, camps and roadways. Because the potential area affected represents only a small part of the Beaufort Sea ringed seal habitat and the habitat is restored annually, any impact would be localized and temporary. Habitat restoration is often immediate, occurring during the first episode of snow and wind that follows passage of the equipment. Periodic storms are common in the Beaufort Sea region. Also, seismic survey crews do not place energy sources over observed ringed seal lairs, and they do not typically operate along pressure ridges where lairs are often located.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. The regulations are not likely to result in (1) an annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions or (3) a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The General Counsel of the Department of Commerce has certified that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as described in the Regulatory Flexibility Act because members of the industry requesting the authorization are major energy exploration companies. Therefore, a regulatory flexibility analysis is not required.

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act. These requirements have been approved by the Office of Management and Budget (OMB) under section 3504(b) of the Paperwork Reduction Act issued under OMB Control Number 0648-0151. Public reporting burden for this collection of information is estimated to average 27.5 hours per response including the time to review instructions, search existing data sources, gather and maintain the data needed and complete and review the collection of information. Send comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing the burden, to NMFS and OMB (see "**ADDRESSES**").

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

The Assistant Administrator has determined that the proposed designation is consistent to the maximum extent practicable with the approved Coastal Zone Management Program of the State of Alaska. This determination has been submitted for review by the responsible State agency under § 3.7 of the Coastal Zone Management Act.

NMFS prepared an environmental assessment (EA) for this rulemaking and concluded that there would be no significant impact on the human environment as a result of the proposed rule. Copies of the EA are available on request (see "**FOR FURTHER INFORMATION CONTACT**").

List of Subjects in 50 CFR Part 228

Marine mammals, Reporting and recordkeeping requirements.

Dated: September 8, 1992.

Michael F. Tillman,

Deputy Assistant Administrator for Fisheries.

For the reasons set forth in the preamble, 50 CFR part 228 is proposed to be amended as follows:

PART 228—[AMENDED]

1. The authority citation for part 228 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. Section 228.11 is revised to read as follows:

§ 228.11 Specified activity and specified geographical region.

Regulations in this subpart apply only to the incidental taking of ringed seals (*Phoca hispida*) by U.S. citizens engaged in on-ice seismic exploratory and associated activities over the Outer Continental Shelf of the Beaufort Sea of Alaska, from the shore outward to 45 miles (72 kilometers) and from Point Barrow east to Demarcation Point, from January 1 through May 31 of any calendar year.

3. Section 228.12 is revised to read as follows:

§ 228.12 Effective dates.

Regulations in this subpart are effective from January 1, 1993 through December 31, 1997.

4. In § 228.13, paragraphs (b) and (c) are revised to read as follows:

§ 228.13 Permissible methods.

* * * * *

(b) All activities identified in § 228.13(a) must be conducted in a manner that minimizes to the greatest extent practicable adverse effects on ringed seals and their habitat.

(c) All activities identified in § 228.13(a) must be conducted as far as practicable from any observed ringed seal or ringed seal lair. No energy source must be placed over an observed ringed seal lair, whether or not any seal is present.

5. In § 228.14, paragraphs (b) and (c) introductory text are revised to read as follows:

§ 228.14 Requirements for monitoring and reporting.

* * * * *

(b) Holders of Letters of Authorization must designate a qualified individual or individuals to observe and record the presence of ringed seals and ringed seal lairs along short lines and around camps, and the information required in § 228.14(c).

(c) An annual report must be submitted to the Assistant Administrator for Fisheries within 90 days after completing each year's activities and must include the following information:

* * * * *

[FR Doc. 92-22147 Filed 9-14-92; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 57, No. 179
Tuesday, September 15, 1992

This section of the FEDERAL REGISTE contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 92-020N]

National Advisory Committee on Microbiological Criteria for Foods; Meetings

Notice is hereby given that meetings of the National Advisory Committee on Microbiological Criteria for Foods will be held Monday through Wednesday, September 28–30, 1992. The meetings will be held at the Holiday Inn, 775–12th Street, NW., Washington, DC. The Committee provides advice and recommendations to the Secretaries of Agriculture and Health and Human Services concerning the development of microbiological criteria by which the safety and wholesomeness of food can be assessed, including criteria for microorganisms that indicate whether food has been processed using good manufacturing practices.

Scheduled sessions are as follows:

(1) Monday, September 28, 1 p.m. to 5 p.m.—Full Committee session covering various topics, such as Microbiological Baseline Data Collection for cattle and other species, Hazard Analysis Critical Control Points (HACCP), Risk Analysis;

(2) Tuesday, September 29, 8:30 a.m. to 12 noon—Concurrent sessions of the Campylobacter Working Group and Seafood Working Group;

(3) Tuesday, September 29, 1 p.m. to 5 p.m.—Concurrent sessions of the Meat and Poultry Working Group, and HACCP Working Group; and

(4) Wednesday, September 30, 8:30 a.m. to 12 noon—Continue Full Committee session.

Notice is hereby given on the appointment of members to the Committee. The members are: Dr. Gary R. Acuff, Texas A&M University College Station, TX; Dr Douglas Archer, Food and Drug Administration, Washington, DC; Dr. William L. Brown, ABC Research Corporation, FL; Dr. Robert L. Buchanan, Agricultural Research Service, Philadelphia, PA; Mr. Paul Clayton, Con-Agra, Inc., Greeley, CO; Dr. Mitchell Cohen, Centers for Disease Control, Atlanta, GA; Dr. David W. Dreesen, University of Georgia, Athens, GA; Mr. Spencer Garrett, National Marine Fisheries, Pascagoula, MS; Dr. Robert B. Gravani, Cornell University, Ithaca, NY; Dr. Marilyn B. Kilgen, Nicholls State University, Thibodaux, LA; Dr. John Kvenberg, Food and Drug Administration, Washington, DC; Dr. Jong Sun Lee, University of Alaska, Kodiak, AK; Dr. Kenneth N. May, Consultant, Wilkesboro, NC; Dr. Ann McNamara, Food Safety and Inspection Service, Washington, DC; Dr. John G. Morris, Jr., University of Maryland School of Medicine, Baltimore, MD; Colonel Colin Meyer, United States Army Research and Development Center, Natick, MA; Dr. Ranzell Nickelson, II, Applied Microbiological Service, Inc., San Antonio, TX; Dr. Merle D. Pierson, VA Polytechnic Institute and State University, Blacksburg, VA; Dr. Martha R. Roberts, Florida Department of Agriculture and Consumer Services, Tallahassee, FL; Dr. William H. Sperber, The Pillsbury Company, Minneapolis, MN; Dr. William H. Sveum, Oscar Mayer Foods Corporation, Madison, WI; Dr. Mark L. Tamplin, University of Florida, Gainesville, FL; Dr. David M. Theno, Jr., Theno and Associates, Modesto, CA; Dr. Sterling S. Thompson, Hershey Foods Corporation, Hershey, PA; Dr. Bruce Tompkin, Swift-Eckrich, Inc., Downers Grove, IL; Dr. Donn R. Ward, North Carolina State University, Raleigh, NC.

The meetings are open to the public on a space available basis. Comments of interested persons may be filed prior to or following the meetings and should be addressed to Mr. Bill Dennis, Assistant to the Administrator, U.S. Department of Agriculture, Food Safety and Inspection Service, room 3175, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250. Background materials are available for inspection by contacting Mr. Dennis on (202) 720–9150.

Done at Washington, DC, on September 9, 1992.

H. Russell Cross,
Administrator, Food Safety and Inspection Service.

[FR Doc. 92–22246 Filed 9–14–92; 8:45 am]

BILLING CODE 3410-DM-M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Oregon Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Oregon Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 4 p.m. on September 29, 1992, at the Red Lion-Lloyd Center, 1000 NE. Multnomah, Portland, Oregon 97232. The purpose of the meeting is to plan activities and programming for the coming year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson, Jeannette Y. Pai or Philip Montez, Director of the Western Regional Office (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the regional office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 9, 1992.

Carol-Lee Hurley,
Chief, Regional Coordination Unit.

[FR Doc. 92–22195 Filed 9–14–92; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1992 Census of Agriculture–Nonresponse Survey.
Form Number(s): 92–A0414.
Agency Approval Number: None.
Type of Request: New collection.
Burden: 4,019 hours.
Number of Respondents: 20,000.
Avg Hours Per Response: 12 minutes.
Needs and Uses: The Census of Agriculture provides a complete enumeration of farms in the nation. Great effort will be made to obtain responses from all 3.8 million addresses on the census mail list. However, we estimate that we will not receive responses from approximately 14 percent of those addresses. To represent all farms, including those not responding to the census, in published census data, we will conduct a sample survey of nonrespondents to the 1992 Census of Agriculture to determine how many of the approximately ½ million nonrespondents to the census actually operate farms. The survey data will be used to adjust the census respondent data to represent all farms.
Affected Public: Individuals or households and farms.
Frequency: Every five years.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: September 9, 1992.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 92–22172 Filed 9–14–92; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).
Agency: Bureau of the Census.
Title: Administrative Records Follow-up Survey.
Form Number(s): BC–1679.
Agency Approval Number: None.
Type of Request: New collection.
Burden: 333 hours.
Number of Respondents: 2,000.
Avg Hours Per Response: 10 minutes.
Needs and Uses: The Census Bureau will conduct the Administrative Records Follow-up Survey to test the feasibility of using administrative records such as IRS files, driver's license files, food stamp files, and so forth to supplement or replace data normally collected in the census. We will use the special census program as a platform for this test by matching a variety of administrative records to address list data gathered in a recently conducted special census. In cases where our list doesn't agree with the administrative data, we will conduct a follow-up interview with the household to verify the data. The test will tell us which sets of administrative records will be most useful for our purposes and will also give us an indication of deficiencies in our address list.
Affected Public: Individuals or households.
Frequency: Semi-annually.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: September 9, 1992.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 92–22173 Filed 9–14–92; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).
Agency: Bureau of the Census.
Title: Quarterly Financial Report.
Form Number(s): QFR–103(NB), 101(MG Long), 102(TR Long), 101A(MG Short).
Agency Approval Number: 0607–0432.
Type of Request: Revision of a currently approved collection.
Burden: 189,040 hours.
Number of Respondents: 14,535.
Avg Hours Per Response: Four and one-half hours.
Needs and Uses: The QFR program is a principal economic indicator that also provides financial data essential to calculation of key Government measures of national economic performance. The QFR program provides timely, accurate data on business financial conditions for gauging quarterly performance of the nonregulated, domestic corporate sector for use by Government and private-sector organizations and individuals.
Affected Public: Businesses or other for-profit organizations.
Frequency: Quarterly, Annually and Biennially (NB–1 only).
Respondent's Obligation: Mandatory.
OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: September 9, 1992.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 92–22174 Filed 9–14–92; 8:45 am]

BILLING CODE 3510–07–F

Foreign-Trade Zones Board

[Order No. 594]

Resolution and Order Approving the Application of Northern Express Transportation, Inc., for a Foreign-Trade Zone in Toole County, Montana; Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of Northern Express Transportation, Inc., a Montana non-profit corporation, filed with

the Foreign-Trade Zones Board (the Board) on June 26, 1991, and amended on January 22, 1992, requesting a grant of authority to establish a general-purpose foreign-trade zone in Toole County, Montana, within the Sweetgrass Customs port of entry, the Board finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The approval is subject to the FTZ Act and the FTZ Board's regulations (as revised, 56 FR 50790–50808, 10/8/91), including § 400.28. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority Establishment of a Foreign-Trade Zone Toole County, Montana

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, Northern Express Transportation, Inc. (the Grantee), a Montana non-profit corporation also known as Northern Express Transportation Authority, has made application (filed 6–26–91, FTZ Docket 37–91, 56 FR 31377, 7–10–91, and amended on 1–22–92) to the Board, requesting the establishment of a foreign-trade zone at sites in Toole County, Montana, within the Sweetgrass Customs port of entry;

Whereas, notice of said application has been given in the **Federal Register** and public comment has been invited; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 187, at the sites described in the application, as amended, subject to the Act and the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), including § 400.28.

Signed at Washington, DC, this 1st day of September 1992.

Foreign-Trade Zones Board.

Barbara H. Franklin,

Secretary of Commerce, Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.

Executive Secretary.

[FR Doc. 92–22271 Filed 9–14–92; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 599]

Resolution and Order Approving the Application of the Foreign Trade Zone of Wisconsin, Ltd., for Special-Purpose Subzone Status for Reexport Activity; Stauffer Cheese, Inc., (Cheese Products); Blue Mounds, WI; Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Foreign Trade Zone of Wisconsin, Ltd., grantee of Foreign-Trade Zone 41, filed with the Foreign-Trade Zones Board (the Board) on August 8, 1991, requesting special-purpose subzone status for export activity at the cheese processing plant of Stauffer Cheese, Inc., in Blue Mounds, Wisconsin, adjacent to the Milwaukee Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application, subject to a restriction requiring that all foreign-origin dairy products admitted to the subzone shall be reexported, as indicated in the application.

The approval is subject to the FTZ Act and the FTZ Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), including § 400.28. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority for Subzone Status, Stauffer Cheese, Inc. Blue Mounds, WI

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment* * *of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Foreign Trade Zone of Wisconsin, Ltd., Grantee of Foreign-Trade Zone No. 41, for authority to establish a special-purpose subzone for export activity at the cheese processing plant of Stauffer Cheese, Inc., in Blue Mounds, Wisconsin, was filed by the Board on August 8, 1991, and notice inviting public comment was given in the **Federal Register** on August 16, 1991 (FTZ Docket 46–91, 56 FR 40863, 08–16–91); and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied and that approval of the application for export processing is in the public interest;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 41G) at the Stauffer Cheese, Inc., plant in Blue Mounds, Wisconsin, at the location described in the application, subject to the Act and the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), including § 400.28, and subject to the further requirement that all foreign-origin dairy products admitted to the subzone shall be reexported.

Signed at Washington, DC this 3rd day of September 1992, pursuant to Order of the Board.

Alan M. Dunn,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92–22270 Filed 9–14–92; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-580-812]

Postponement of Preliminary Antidumping Duty Determination: Dynamic Random Access Memory Semiconductors of One Megabit and Above From Korea

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: September 15, 1992.

FOR FURTHER INFORMATION CONTACT: John Beck, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW.,

Washington, DC 20230, at (202) 377-3464.

POSTPONEMENT: On September 3, 1992, Micron Technology, Inc., petitioner in this investigation, requested that the Department postpone the preliminary determination in accordance with section 733(c)(1) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b(c)(1)). We find no compelling reasons to deny the request and are, accordingly, postponing the date of the preliminary determination until October 6, 1992.

This notice is published pursuant to section 733(c)(2) of the Act and 19 CFR 353.15(d).

Dated: September 8, 1992.

Rolf Th. Lundberg, Jr.,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-22267 Filed 9-14-92; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-405, C-357-404, C-549-401]

Certain Textile Mill Products From Mexico, Certain Apparel From Argentina, and Certain Apparel From Thailand

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Certain Textile Mill Products from Mexico, Certain Apparel from Argentina, and Certain Apparel from Thailand: Notice of Proposed Amendment to the Existing Conversion of the Scopes of these Orders from the Tariff Schedules of the United States Annotated to the Harmonized Tariff Schedule.

SUMMARY: On January 1, 1989, the United States fully converted to the international harmonized system of tariff classification. On January 11, 1989, the Department of Commerce (the Department) published the Conversion to Use of the Harmonized Tariff Schedule of Classifications for Antidumping and Countervailing Duty Proceedings (54 FR 993; January 11, 1989) (1989 Conversion) for all antidumping and countervailing duty orders in effect or investigations in progress as of January 1, 1989. The Department now proposes to amend the 1989 Conversion governing the countervailing duty orders on textile mill products from Mexico and on apparel from Argentina and Thailand. Interested parties are invited to comment on this proposed amended conversion.

EFFECTIVE DATE: September 15, 1992.

FOR FURTHER INFORMATION CONTACT: Christopher Beach, Dana Mermelstein, or Maria MacKay, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 377-2786.

Background

In 1985, the Department issued the following countervailing duty orders:

Certain Textile Mill Products from Mexico (C-201-405) (50 FR 10824; March 18, 1985),

Certain Apparel from Argentina (C-357-404) (50 FR 9846; March 12, 1985), and

Certain Apparel from Thailand (C-549-401) (50 FR 9818; March 12, 1985).

The scopes of these orders were originally defined solely in terms of the Tariff Schedules of the United States Annotated (TSUSA) item numbers; no narrative product description was provided. On January 1, 1989, the United States fully converted from the TSUSA to the Harmonized Tariff Schedule (HTS). Section 1211 of the Omnibus Trade and Competitiveness Act of 1988 directed the Department to "take whatever actions are necessary to conform, to the fullest extent practicable, with the tariff classification system of the Harmonized Tariff Schedule [for] all * * * orders * * *" in effect at the time of the implementation of the HTS.

Accordingly, on January 11, 1989, after reviewing comments received from the public, the Department published the 1989 Conversion for all antidumping and countervailing duty orders in effect or investigations in progress as of January 1, 1989. The notice also included the conversion of the scopes of the referenced textile and apparel orders from TSUSA to HTS item numbers. The 1989 Conversion was based on a one-to-one correspondence of the TSUSA and HTS item numbers. In the notice, the Department stated that the conversion could be amended, as warranted, at any time during the applicable proceeding as a result of the submission of comments or new factual information.

As a result of comments submitted to the Department by the importing public and advice received from the U.S. Customs Service, the Department determined that the 1989 Conversion did not accurately reflect the scopes of the referenced orders and, thus, should be amended. The Department, with the assistance of the U.S. Customs Service and the U.S. International Trade Commission (USITC), has compared the TSUSA and the HTS classification systems. Specifically, for each of the orders mentioned above, we compared the TSUSA-defined scopes and the HTS-defined scopes provided by the 1989 Conversion, and identified those HTS numbers that more reasonably correspond with the scopes of the referenced orders. The proposed changes are reflected in the attached appendix.

Request for Public Comments

We invite interested parties to submit comments on the proposed amended conversion within 30 days of the publication of this notice. All comments must be in writing (10 copies), addressed to the attention of the Director, Office of Countervailing Compliance, International Trade Administration, IA Central Record Unit—room B-099, 14th Street and Constitution Avenue NW., Washington, DC 20203.

Dated: August 27, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

BILLING CODE 3510-DS-M

APPENDIX

CERTAIN APPAREL
ARGENTINA
C-357-404

6104.41.00, 6104.43.10, 6104.44.10, 6104.51.00, 6104.53.10, 6104.61.00, 6104.63.15, 6105.10.00, 6105.20.20, 6106.10.00, 6106.20.10, 6106.90.10, 6109.90.20, 6110.10.20, 6110.20.20, 6111.10.00, 6112.41.00, 6112.49.00, 6115.20.00, 6115.91.00, 6115.93.10, 6115.99.14, 6116.91.00, 6116.93.15, 6201.12.20, 6202.11.00, 6202.13.30, 6202.91.10, 6202.91.20, 6202.92.20, 6202.93.40, 6203.22.30, 6203.42.40, 6204.11.00, 6204.13.10, 6204.19.10, 6204.21.00, 6204.31.20, 6204.33.40, 6204.39.20, 6204.41.20, 6204.42.30, 6204.43.30, 6204.44.30, 6204.51.00, 6204.53.20, 6204.59.20, 6204.61.00, 6204.63.25, 6204.69.20, 6205.10.20, 6206.20.30, 6206.40.25, 6209.10.00, 6209.20.10, 6209.20.50, 6209.90.30, 6211.12.30, 6211.41.00, 6214.30.00, 6214.40.00.

CERTAIN TEXTILE MILL PRODUCTS
MEXICO
C-201-405

4010.10.10, 5109.10.60, 5109.90.60, 5111.11.70, 5111.19.60, 5111.20.90, 5111.30.90, 5112.20.30, 5112.30.30, 5204.11.00, 5204.19.00, 5204.20.00, 5205.11.10, 5205.12.10, 5205.12.20, 5205.13.10, 5205.13.20, 5205.14.10, 5205.23.00, 5205.24.00, 5205.25.00, 5205.31.00, 5205.32.00, 5205.33.00, 5205.34.00, 5205.42.00, 5205.43.00, 5205.44.00, 5206.11.00, 5206.12.00, 5206.13.00, 5206.14.00, 5206.15.00, 5206.31.00, 5206.32.00, 5206.33.00, 5206.34.00, 5206.35.00, 5206.41.00, 5206.42.00, 5206.43.00, 5206.44.00, 5206.45.00, 5207.10.00, 5207.90.00, 5208.11.20, 5208.12.40, 5208.13.00, 5208.19.40, 5208.21.20, 5208.21.40, 5208.22.40, 5208.22.60, 5208.23.00, 5208.29.40, 5208.29.60, 5208.31.40, 5208.31.60, 5208.31.80, 5208.32.30, 5208.32.40, 5208.32.50, 5208.33.00, 5208.39.20, 5208.39.80, 5208.41.40, 5208.41.60, 5208.41.80, 5208.42.30, 5208.42.40, 5208.42.50, 5208.43.00, 5208.49.40, 5208.51.40, 5208.51.60, 5208.51.80, 5208.52.30, 5208.52.40, 5208.52.50, 5208.53.00, 5208.59.20, 5208.59.80, 5209.11.00, 5209.19.00, 5209.31.60, 5209.32.00, 5209.41.60, 5209.43.00, 5209.51.60, 5209.52.00, 5210.21.40, 5210.21.60, 5210.22.00, 5210.29.40, 5210.29.60, 5210.32.00, 5210.39.40, 5210.39.60, 5210.52.00, 5210.59.40, 5210.59.60, 5211.31.00, 5211.51.00, 5401.10.00, 5401.20.00, 5402.10.30, 5402.20.30, 5402.31.30, 5402.31.60, 5402.32.30, 5402.32.60, 5402.33.30, 5402.41.00, 5402.43.00, 5402.49.00, 5402.51.00, 5402.52.00, 5402.59.00, 5403.20.30, 5403.20.60, 5406.10.00, 5406.20.00, 5407.41.00, 5407.42.00, 5407.43.20, 5407.44.00, 5407.52.20, 5407.53.10, 5407.53.20, 5407.54.00, 5407.60.05, 5407.60.10, 5407.60.20, 5407.91.05, 5407.92.05, 5407.93.05, 5407.94.05, 5408.21.00, 5408.22.00, 5408.23.20, 5408.24.00, 5408.31.05, 5408.32.05, 5408.33.05, 5408.34.05, 5508.10.00, 5508.20.00, 5509.12.00, 5509.21.00, 5509.22.00,

5509.31.00, 5509.32.00, 5509.41.00, 5509.51.30, 5509.51.60, 5509.53.00, 5509.69.20, 5509.69.40, 5509.99.20, 5509.99.40, 5511.10.00, 5511.20.00, 5511.30.00, 5513.11.00, 5513.13.00, 5513.19.00, 5513.21.00, 5513.23.00, 5513.29.00, 5513.33.00, 5513.39.00, 5513.41.00, 5513.43.00, 5513.49.00, 5514.11.00, 5514.19.00, 5514.21.00, 5514.29.00, 5514.41.00, 5514.49.00, 5515.13.05, 5516.11.00, 5516.12.00, 5516.13.00, 5516.14.00, 5516.41.00, 5516.42.00, 5516.43.00, 5516.44.00, 5516.91.00, 5516.92.00, 5516.93.00, 5516.94.00, 5601.10.20, 5601.22.00, 5602.10.90, 5602.21.00, 5602.90.60, 5603.00.90, 5607.41.30, 5607.49.15, 5607.49.25, 5607.50.20, 5608.11.00, 5701.10.16, 5701.10.20, 5701.90.20, 5702.10.90, 5702.31.10, 5702.31.20, 5702.32.10, 5702.32.20, 5702.41.10, 5702.41.20, 5702.42.10, 5702.42.20, 5702.51.20, 5702.51.40, 5702.52.00, 5702.91.30, 5702.91.40, 5702.92.00, 5703.10.00, 5703.20.10, 5703.20.20, 5703.30.00, 5704.10.00, 5704.90.00, 5705.00.20, 5801.31.00, 5801.33.00, 5801.34.00, 5801.35.00, 5801.36.00, 5803.10.00, 5803.90.30, 5804.10.00, 5804.21.00, 5804.29.00, 5804.30.00, 5805.00.25, 5806.32.10, 5810.10.00, 5810.91.00, 5810.92.00, 5902.10.00, 5902.20.00, 5902.90.00, 5911.10.20, 5911.20.10, 5911.31.00, 5911.32.00, 6001.10.20, 6001.22.00, 6001.92.00, 6002.10.80, 6002.20.10, 6002.20.60, 6002.30.20, 6002.43.00, 6002.93.00, 6301.10.00, 6301.20.00, 6301.30.00, 6301.40.00, 6301.90.00, 6302.22.10, 6302.22.20, 6302.32.10, 6302.32.20, 6302.40.10, 6302.40.20, 6302.51.10, 6302.51.20, 6302.51.30, 6302.51.40, 6302.52.10, 6302.52.20, 6302.53.00, 6302.59.00, 6302.91.00, 6302.92.00, 6302.93.20, 6302.99.20, 6303.12.00, 6303.19.00, 6303.92.00, 6303.99.00, 6304.11.20, 6304.19.05, 6304.19.15, 6304.19.20, 6304.91.00, 6304.92.00, 6304.93.00, 6304.99.15, 6304.99.60, 7019.20.10, 9404.90.90;

5209.32.00 Coverage limited to fabrics, not napped, of numbers 17 to 33.

5209.52.00 Coverage limited to fabrics, not napped, of numbers 17 to 33.

5402.10.30 Coverage limited to yarns provided for in subheading 5402.10.3040.

5402.20.30 Coverage limited to yarns provided for in subheading 5402.20.3040.

5402.33.30 Coverage limited to yarns, valued not over $2.20 per kilogram.

5402.41.00 Coverage limited to yarns provided for in subheading 5402.41.0040.

5402.43.00 Coverage limited to yarns provided for in subheading 5402.43.0040.

5402.49.00 Coverage limited to yarns provided for in subheading 5402.49.0070 and 5402.49.0080.

-3-

CERTAIN APPAREL
THAILAND
C-549-401

6101.20.00	6112.49.00	6203.32.20	6204.49.50
6102.20.00	6114.20.00	6203.42.40	6204.51.00
6104.22.00	6115.19.00	6204.11.00	6204.53.20
6104.32.00	6117.10.10	6204.12.00	6204.59.20
6104.42.00	6117.10.20	6204.13.10	6204.59.40
6104.43.20	6117.20.00	6204.13.20	6204.61.00
6104.44.20	6117.90.00	6204.19.10	6204.62.20
6104.52.00	6201.12.20	6204.19.20	6204.62.40
6104.62.10	6201.92.20	6204.19.30	6204.63.25
6104.62.20	6202.11.00	6204.21.00	6204.69.20
6105.10.00	6202.13.30	6204.22.30	6204.69.90
6106.10.00	6202.19.00	6204.23.00	6205.20.20
6106.20.20	6202.91.10	6204.31.20	6206.30.20
6110.10.10	6202.91.20	6204.33.40	6206.30.30
6110.10.20	6202.92.20	6204.39.20	6206.40.30
6110.20.20	6202.93.40	6204.39.80	6206.90.00
6110.30.15	6202.93.50	6204.41.20	6211.12.30
6110.30.30	6202.99.00	6204.42.30	6211.20.50
6112.11.00	6203.11.20	6204.43.30	6214.20.00
6112.20.20	6203.12.10	6204.43.40	6214.90.00
6112.31.00	6203.19.10	6204.44.30	6215.20.00
6112.39.00	6203.22.30	6204.44.40	6215.90.00
6112.41.00			

[FR Doc. 92-22272 Filed 9-14-92; 8:45 am]
BILLING CODE 3510-DS-C

Indiana University/Purdue, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 92–073. *Applicant:* Indiana University/Purdue, Indianapolis, IN 46202. *Instrument:* Mass Spectrometer, Model MAT 252. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* See notice at 57 FR 27214, June 18, 1992. *Reasons:* The foreign instrument provides an internal precision of 0.005 for 3 bar µl samples of CO_2. *Advice Submitted By:* National Institutes of Health, July 9, 1992.

Docket Number: 92–074. *Applicant:* U.S. Department of Commerce, National Oceanic and Atmospheric Administration, Galveston, TX 77551–5997. *Instrument:* (2) Electronic Digital Fish Measuring Systems, Model FMB IV. *Manufacturer:* Limnoterra Atlantic Inc., Canada. *Intended Use:* See notice at 57 FR 30471, July 9, 1992. *Reasons:* The foreign instrument provides in situ, digitized logging of fish dimensions with simultaneous entry of ancillary data which can be down-loaded to a PC on return from the field. *Advice Submitted By:* National Institutes of Health, July 9, 1992.

Docket Number: 92–076. *Applicant:* University of Illinois at Urbana-Champaign, Urbana, IL 61801. *Instrument:* Electronic Scaler, Model C243. *Manufacturer:* CAEN, Italy. *Intended Use:* See notice at 57 FR 27215, June 18, 1992. *Reasons:* The foreign instrument provides 8 scaler channels in a 4-wide CAMAC package with front-panel LED or CAMAC dataway readout. *Advice Received From:* Argonne National Laboratory, July 29, 1992.

Docket Number: 92–077. *Applicant:* Department of Commerce, National Oceanic and Atmospheric Administration, Stennis Space Center, MS 39529–6000. *Instrument:* Digital Fish Measuring Boards, Model FMB IV. *Manufacturer:* Limnoterra Atlantic Inc., Canada. *Intended Use:* See notice at 57 FR 27215, June 18, 1992. *Reasons:* The foreign instrument provides in situ, digitized logging of fish dimensions with simultaneous entry of ancillary data which can be downloaded to a PC on return from the field. *Advice Received By:* National Institutes of Health, July 9, 1992.

Docket Number: 92–085. *Applicant:* University of California, Davis, Davis, CA 95616. *Instrument:* Spectrometer Field Portable, Model PIMA II. *Manufacturer:* Integrated Spectronics Pty., Ltd., Australia. *Intended Use:* See notice at 57 FR 30471, July 9, 1992. *Reasons:* The foreign instrument provides in situ measurements in the 1.3 to 2.5 µm region with acquisition time less than 30s, 200 channels and a built-in light source to avoid atmospheric absorption features. *Advice Received From:* National Aeronautics and Space Administration, June 29, 1992.

The National Institutes of Health, Argonne National Laboratory and National Aeronautics and Space Administration advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 92–22269 Filed 9–14–92; 8:45 am]

BILLING CODE 3510–DS–M

Memphis State University, et al.; Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651), 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 92–053. *Applicant:* Memphis State University, Memphis, TN 38152. *Instrument:* Electron Microscope, Model JEM–1200EX/SEG/DP/DP. *Manufacturer:* JEOL, Japan. *Intended Use:* See notice at 57 FR 21394, May 20, 1992. *Order Date:* January 30, 1992.

Docket Number: 92–054. *Applicant:* University of Alabama at Birmingham, Birmingham, AL 35294–1924. *Instrument:* Electron Microscope, Model CM 12. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* See notice at 57 FR 21394, May 20, 1992. *Order Date:* January 29, 1992.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered.

Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 92–22268 Filed 9–14–92; 8:45 am]

BILLING CODE 3510–DS–M

National Institute of Standards and Technology

Government Owned Inventions Available for Licensing

AGENCY: National Institute of Standards and Technology Commerce.

ACTION: Notice of government-owned inventions available for licensing.

SUMMARY: The inventions listed below are owned by the U.S. Government, as represented by the Department of Commerce, and are available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to: Bruce E. Mattson, National Institute of Standards and Technology, Office of Technology Commercialization, Division 222, Building 221, room B256, Gaithersburg, Maryland 20899; Fax: 301–869–2751. Any request for information should include the NIST Docket No. for the relevant invention(s) as indicated below.

SUPPLEMENTARY INFORMATION: The inventions available for licensing are:

NIST Docket No. 87-025

Title: "A Diffraction Device Which Detects the Bragg Condition"

Description: A periodic scattering array is used to diffract electromagnetic radiation or massive particles of specific wavelength and energy. A detector suitable to the radiation or particles is integrated into the surface or bulk of the array. The detector is configured so as to not perturb the diffraction resolution of the array.

NIST Docket No. 88-023

Title: "Apparatus for Identifying and Comparing Lattice Structures and Determining Lattice Structure Symmetries"

Description: An apparatus and method for identifying lattice structures, specifically, intralattice and interlattice relationships. The method is more effective than prior approaches; for example, it maintains its selectivity in matching lattice structures despite the rather large experimental errors that are routinely associated with electron diffraction data. The determination of lattice symmetry does not require that the lattice and its symmetry be expressed with respect to a standard cell or a standard orientation.

NIST Docket No. 88-043

Title: "Coprecipitation Synthesis of Precursors to Bismuth-Containing Superconductors"

Description: A co-precipitation synthesis of precursors to bismuth-containing ceramic superconducting materials. The homogeneous precursor may be converted to the BiCuSrCuOx ceramic by calcining the mixed hydroxycarbonate to a powder, compressing the powder into a green compact, wintering the green compact at a temperature of at least 750 degrees C., and cooling the ceramic material so produced at a controlled rate, preferably about 50 degrees C./minute.

NIST Docket No. 89-001

Title: "Microtip-Controlled Nanostructure Fabrication and Multi-tipped Field-emission Tool for Parallel-Process Nanostructure Fabrication"

Description: A device and method for the fabrication of molecular or crystalline nanostructures on the substrate surface. The device provides a semiconductor-production process that replaces the entire lithographic method with direct construction, dropping the interconnecting of three-dimensional nanostructures. The device allows the production of nanostructures of less that 200 A, with the single atom dimensional and chemical control necessary to be useful.

NIST Docket No. 89-015

Title: "Optical Sensor for the Measurement of Molecular Orientation and Viscosity of Polymeric Materials Based On Fluorescence Radiation"

Description: A method of measuring fluid properties of a polymer melt, undergoing shear and/or extensional flow which utilizes a polymeric chromophore which includes a bifunctional anthracene that is covalently bonded to polybutadiene. The invention also involves an optical probe which is to be inserted into existing temperature and/or pressure probe ports in processing equipment. The probe includes a rotatable polarizer and emission collection fibers.

NIST Docket No. 89-016

Title: "Colloidal Processing Method for Coating Ceramic Reinforcing Agents"

Description: This invention provides an improved method for coating reinforcing agents that are used in fiber reinforced ceramic composites and other composite materials. In the first step of this method the reinforcing agent is surface cleaned. The cleaned reinforcing agent is then dipped into a solution of a surfactant and uniformly coated therewith, whereby a positive charge is imparted to the agent. The charged agent is then dipped into a suspension of the coating material, such as alumina powder. After dipping the reinforcing agent into the suspension, the reinforcing agent is dried. The steps of the method, except for the cleaning step, are repeated until a coating having a desired thickness is formed.

NIST Docket No. 89-028

Title: "Process for Separating Azeotropic or Close-Boiling Mixtures by use of a Composite Membrane, the Membrane, and its Process of Manufacture"

Description: A substituted membrane with an affinity for polar compounds or mixtures of polar and non-polar compounds such that azeotropic mixtures of organic compounds as well as close-boiling liquid mixtures can be easily separated at good permeation rates using the technique of pervaporation. The membrane gives considerably higher fluxes while maintaining good separation factors. The method of the preparation of the membrane is simple and the resulting membrane is mechanically strong.

NIST Docket No. 89-033

Title: "Bi-Flow Expansion Device"

Description: A bi-flow expansion device for a heat pump or other apparatus where fluid travel is reversed with different required flow rates in each direction. The device comprises a tubular member mounted in a refrigerant line and having non-symmetrical entrance-exits at the ends of the tubular member for changing the mass flow rate of refrigerant through the expansion device when the direction of refrigerant flow is changed.

NIST Docket No. 89-039

Title: "Synthetic Dental Compositions and Bonding Methods"

Description: Improved synthetic dental compositions which exhibit good strength, durability and adhesion. The resins exhibit low shrinkage and are produced with high conversion rates. Some of the compositions are also useful for bonding a variety of substrates to teeth.

NIST Docket No. 90-006

Title: "Aqueous Two-Phase Protein Extraction"

Description: An aqueous two-phase protein partitioning system which employs polyvinylpyrolidone as the upper phase and maltodextrin as the lower phase and provides a low-cost system for protein partitioning. The system can also be employed with the anion derivatives of chlorotriazine dyes, which bind in a noncovalent manner with the PVP and serve as a ligand for the proteins to be separated.

NIST Docket No. 91-015

Title: "Linewidth Micro-Bridge Test Structure"

Description: A test structure pattern and a method of processing the electrical data extracted from it enabling the measurement of the width of a short line with precision of the order of 10 nanometers. The test structure uses "dummy" taps to measure the effect of a tap, and it has the ability to use an arbitrarily short line to measure the width, rather than using an extremely long line.

NIST Docket No. 91-016

Title: "MMIC Package and Interconnect Test Fixture"

Description: A test fixture for determining electrical characteristics such as the S-parameters of a MMIC package or interconnect. The fixture enables the measurement, in effect, or multiple standards using only the

single test fixture and also accommodates variable port-to-port spacings. The test fixture comprises a U-shaped conductive ground plane having parallel arms defining a space there-between. A center conductor is located in the space and is desposed in the spaced relationship to the arms of the ground plane at the other. An external variable DC voltage source is used to vary the bias state of the diode so that when the fixture is inserted into a package or interconnect, reflection coefficient measurements for the different bias states can be obtained by an automatic network analyzer for use in calculations for determining the characteristics in question.

NIST Docket No. 91-017

Title: "Sensors For Sampling The Sizes, Geometrical Distribution, And Small Particles Accumulating On A Solid Surface"

Description: A system which samples and records in real time the locations of opaque particles accumulating on a surface. The system represents graphically the geometrical distributions of the particles through an integral electronic hardware/software subsystem. One potential application of the device is monitoring the prevalence of particles of dimensions of the order of one quarter micron in integrated circuit manufacturing facilities.

NIST Docket No. 91-020

Title: "Method and Structure for Eliminating the Effects Caused by Imperfections in Electrical Test Structures Utilized in Submicrometer Feature Metrology"

Description: A process for eliminating a substrate-dependent systematic error in an electrical test structure utilized in measuring parallel feature separation.

NIST Docket No. 92-024

Title: "Microtip-Controlled Nanostructure Fabrication and Multi-Tipped Field-Emission Tool For Parallel-Process Nanostructure Fabrication"

Description: Fabrication of crystalline or molecular nanostructure with dimensions less than or equal to 1000A on a substrate surface is achieved by the indirect and/or direct action of a highly-localized field-emission current, which causes atoms of molecular gases introduced into a vacuum chamber to deposit or etch at surface atomic sites that are fixed by the emission-tip location. The tip is shaped to maintain control of the emitting region and is typically about 10A above the structure. The tip position is stepped in a programmed sequence, with each step taken on detecting the current increase induced by an atomic deposition below the tip. Gas sequences or mixtures can also be programmed, and microstructures of typically 100—100,000,000 atoms are thereby formed with exact control of the positions and types of atomic constituents.

Dated: September 8, 1992.

John W. Lyons,

Director.

[FR Doc. 92-22156 Filed 9-14-92; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Pelagic Fisheries of the Western Pacific Region; Correction

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of control date for entry into the handline fishery off Hawaii; correction.

SUMMARY: This document corrects an error in a notice of a control date for the Hawaii handline fishery for pelagic species, which was published August 14, 1992 (57 FR 36637).

EFFECTIVE DATE: August 14, 1992.

FOR FURTHER INFORMATION CONTACT: Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, (808-523-1368); Svein Fougner, Southwest Region, NMFS (310-980-4034); or Alvin Katekaru, Pacific Area Office, Southwest Region, NMFS, Pacific Area Office (808-955-8831).

SUPPLEMENTARY INFORMATION: In the cited document, NMFS indicated that persons who, after July 2, 1992, enter the Hawaii handline fishery will not necessarily be assured of eligibility for continuing participation if the Western Pacific Fishery Management Council (Council) prepares, and the Secretary of Commerce (Secretary) approves, a program limiting entry or effort in the fishery in the future. The document erroneously defined the fishery as occurring off the Island of Hawaii rather than in the exclusive economic zone (EEZ) around Hawaii. In FR Doc. 92-19434, in the issue of Friday, August 14, 1992, make the following corrections:

Under **ACTION**, in the third column on page 36637, in the second line, remove the words "off the Island of Hawaii" and replace them with "off Hawaii".

Under **SUMMARY**, in the third column on page 36637, in the fifth line of the paragraph, remove the words "off the Island of" and replace them with "in waters around".

Under **SUPPLEMENTARY INFORMATION** in the first column on page 36638, in the eighth line of the second paragraph, remove the words "off the Island of Hawaii" and replace them with the words, "in the EEZ around Hawaii".

Dated: September 8, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 92-22141 Filed 9-14-92; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Receipt of application for permit (P420C).

SUMMARY: Notice is hereby given that Drs. J. Ward Testa and Michael A. Castellini, Institute of Marine Science, University of Alaska, Fairbanks, AK 99775-1080, have applied in due form for a Permit to take mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The research activities involve tag/release and take by harassment. The applicants request permission to: tag with plastic cattle ear tags, TDRs and VHF transmitters, and satellite transmitters, implant a transponder tag subcutaneously just anterior to the tail; conduct physiological activities (i.e., collect blood samples, weigh animals, etc.); mark with bleach, and release up to 1200 Weddell seals (*Leptonychotes weddellii*); incidentally harass up to 2000 Weddell seals; and capture, tag with plastic cattle ear tags and release 30 each of crabeater seal (*Lobodon carcinophagus*), leopard seal (*Hydrurga leptonyx*), Ross seal (*Ommatophoca rossii*), southern elephant seal (*Mirounga leonina*), and Antarctic fur seal (*Arctocephalus gazella*). Blood samples and the salvage and import of any parts from natural fatalities of the six (6) species will be imported.

ADDRESSES: Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7234, Silver Spring, Maryland 20910, within 30 days of the publication of this notice.

Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review, by appointment, in the:

Permits Division, Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., suite 7324, Silver Spring, Maryland 20910 (301/713–2289);

Director, Alaska Region, National Marine Fisheries Service, NOAA, Federal Annex, 9109 Mendenhall Mall Road, suite 6, Juneau, AK 99802 (907/586–7221); and

Director, National Marine Mammal Laboratory, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE BIN C15700, Seattle, WA 98115 (206/526–4020).

Dated: September 4, 1992.

David S. Cresfin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–22153 Filed 9–14–92; 8:45 am]

BILLING CODE 3510-22-M

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Receipt of application for permit (P770#63).

Notice is hereby given that the NMFS Northwest Fisheries Science Center, 2725 Montlake Boulevard East, Seattle, WA 98112–2097, has applied in due form for a Permit to take endangered species for scientific research/enhancement purposes as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR parts 217–222).

This application was received prior to the regulatory deadline of May 22, 1992 (50 CFR part 227), and has thus been subject to the regulatory exemption which allows for the continuation of scientific research/enhancement activities as requested in the applications until NMFS has had adequate time in which to review the applications and to determine their sufficiency, or until issuance or denial of a permit, or until December 31, 1992, whichever comes first. This application has now been determined to contain enough information for complete review, and thus a public comment period will be opened to determine whether this work, as requested in the application, should continue.

The applicant proposes to capture, PIT tag and release up to 30,000 listed Snake River spring/summer chinook salmon smolts annually, over a five-year period, in order to monitor their migration. The applicant also requests authorization for the lethal taking of up to 800 juvenile listed Snake River spring/summer chinook salmon annually, over a five-year period, for genetic monitoring and bacterial kidney disease (BKD) studies.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7324, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., suite 7324, Silver Spring, MD 20910 (301/713–2289); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., room 620, Portland, OR 97232 (503/230–5400).

Dated: September 8, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–22130 Filed 9–14–92; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Guatemala

September 9, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: September 16, 1992.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 377–3715. For information on categories on which consultations have been requested, call (202) 377-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Inasmuch as no agreement was reached in recent consultations on a mutually satisfactory solution on Categories 340/640, the United States Government has decided to control imports in these categories for the twelve-month period beginning on June 22, 1992 and extending through June 21, 1993 at a level of 798,980 dozen.

The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in further consultations with the Government of Guatemala, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also

see 57 FR 31356, published on July 15, 1992.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 9, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1991; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on September 16, 1992, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 340/640, produced or manufactured in Guatemala and exported during the twelve-month period beginning on June 22, 1992 and extending through June 21, 1993, in excess of 798,980 dozen [1].

Textile products in Categories 340/640 which have been exported to the United States prior to June 22, 1992 shall not be subject to the limit established in this directive.

Textile products in Categories 340/640 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-22193 Filed 9-14-92; 8:45 am]

BILLING CODE 3510-DR-F

[1] The limit has not been adjusted to account for any imports exported after June 21, 1992.

Amendment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Mexico

September 9, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: September 16, 1992.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6711. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The United States Government agreed to increase the current designated consultation level for Categories 347/348/647/648 (Normal Regime).

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 56 FR 65243, published on December 16, 1991.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 9, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 10, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Mexico and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on September 16, 1992, you are directed to amend further the December 10, 1991 directive to increase the Normal Regime limit for Categories 347/348/647/648 to 1,150,000 dozen [1]. The Special Regime limit for Categories 347/348/647/648 remains unchanged.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-22192 Filed 9-14-92; 8:45 am]

BILLING CODE 3510-DR-F

[1] The limit has not been adjusted to account for any imports exported after December 31, 1991.

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Macau

September 9, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: September 16, 1992.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6709. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being increased by application of swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 56 FR 56506, published on November 5, 1991.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist

only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 9, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 29, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Macau and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on September 16, 1992, you are directed to amend the directive dated October 29, 1991 to increase the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Macau:

Category	Adjusted twelve-month limit [1]
Sublevels in Group I	
338	251,732 dozen.
339	1,076,136 dozen.
340	235,476 dozen.
341	157,133 dozen.
347/348/847	608,248 dozen.
647/648	443,294 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1991.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-22171 Filed 9-14-92; 8:45 am]

BILLING CODE 3510-DR-F

Request for Public Comments on Bilateral Textile Consultations With the Government of Thailand on Certain Wool Textile Products

September 9, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On August 31, 1992, under the terms of the Bilateral Textile Agreement of September 3, 1991 between the Governments of the United States and Thailand, the United States Government requested consultations with the Government of Thailand with respect to men's and boys' wool suit-type coats in Category 433.

The purpose of this notice is to advise the public that, if no solution is agreed upon between the two governments during the ninety-day consultation period, CITA, pursuant to the agreement, may later establish a specific limit for the entry and withdrawal from warehouse for consumption of textile products in Category 433, produced or manufactured in Thailand and exported during the prorated period beginning on August 31, 1992 and extending through December 31, 1992 at a level of not less than 2,593 dozen.

A summary market statement concerning Category 433 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 433, under the agreement with the Government of Thailand, or to comment on domestic production or availability of products included in Category 433, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of Thailand.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Category 433. Should such a solution be reached in consultations with the Government of Thailand, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—Thailand

Category 433—Men's and Boys' Wool Suit-Type Coats

August 1992

Import Situation and Conclusion

U.S. imports of men's and boys' wool suit-type coats, Category 433, from Thailand surged to 7,284 dozen during the year ending in June 1992. Thailand is a new supplier of Category 433 imports to the U.S. market with shipments beginning in January 1991. Thailand became the tenth largest supplier of wool suit-type coats to the U.S., accounting for 4 percent of total Category 433 imports in the year ending June 1992. Category 433 imports from Thailand during the first six months of 1992 reached 1,501 dozen, 150 times the January-June 1991 level.

The sharp and substantial increase of Category 433 imports from Thailand is causing a real risk of disruption in the U.S. market for men's and boys' wool suit-type coats.

Import Penetration and Market Share

U.S. production of men's and boys' wool suit-type coats, Category 433, declined 21 percent from 354,000 dozen in 1989 to 281,000 dozen in 1991. U.S. imports of men's and boys' wool suit-type coats, Category 433, declined in 1990 then surged to 172,000 dozen in 1991, 38 percent above the 1990 level and 26 percent above the 1989 level. U.S. imports continue to surge in 1992, up 21 percent in the first six months of 1992 over the January-June 1991 level. The ratio of imports to domestic production in Category 433 rose from 39 percent in 1989 to 61 percent in 1991. The domestic manufacturers' share of the men's and

boys' wool suit-type coat market fell from 72 percent in 1989 to 62 percent in 1991, a decline of 10 percentage points.

Duty-Paid Value and U.S. Producers' Price

Virtually all of Category 433 imports from Thailand during the year ending in June 1992 entered the U.S. under HTSUSA number 6203.31.0000—men's and boys' wool suit-type jackets or blazers. These wool coats entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable wool suit-type coats.

[FR Doc. 92-22194 Filed 9-14-92; 8:45 am]

BILLING CODE 3510-DR-F

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade Proposed Option Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures option contracts.

SUMMARY: The Chicago Board of Trade (CBT or Exchange) has applied for designation as a contract market in options on zero coupon Treasury bond futures and options on zero coupon Treasury note futures. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before October 15, 1992.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the CBT zero coupon Treasury bond futures option or the zero coupon Treasury note futures option contract.

FOR FURTHER INFORMATION CONTACT: Please contact Stephen Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone 202-254-7303.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the CBT in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the terms and conditions of the proposed contracts, or with respect to other materials submitted by the CBT in support of the applications, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on September 9, 1992.

Gerald D. Gay,

Director.

[FR Doc. 92-22162 Filed 9-14-92; 8:45 am]

BILLING CODE 6351-01-M

MidAmerica Commodity Exchange, Inc. Proposed Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract and options on those futures.

SUMMARY: The MidAmerica Commodity Exchange, Inc. (MCE or Exchange) has applied for designation as a contract market in medium-term U.S. Treasury note futures and options on those futures. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before October 15, 1992.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the MCE medium-term U.S. Treasury note futures and option contracts.

FOR FURTHER INFORMATION CONTACT: Please contact Stephen Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone 202-254-7303.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the terms and condition can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the Exchange in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the terms and conditions, or with respect to other materials submitted by the Exchange in support of the applications, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on September 9, 1992.

Gerald D. Gay,

Director.

[FR Doc. 92-22163 Filed 9-14-92; 8:45 am]

BILLING CODE 6351-01-M

MidAmerica Commodity Exchange, Inc., Proposed Option Contracts

AGENCY: Commodity Futures Trading Commission

ACTION: Notice of availability of the terms and conditions of proposed commodity futures option contracts.

SUMMARY: The MidAmerica Commodity Exchange, Inc. (MCE or Exchange) has applied for designation as a contract market in options on three-month Eurodollar time deposit futures and options on MCE U.S. dollar composite index futures. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before October 15, 1992.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the option on three-month Eurodollar time deposit futures or the option on MCE U.S. dollar composite index futures.

FOR FURTHER INFORMATION CONTACT: Please contact Stephen Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone 202-254-7303.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the MCE in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the terms and conditions of the proposed contracts, or with respect to other materials submitted by the MCE in support of the applications, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on September 9, 1992.

Gerald D. Gay,

Director.

[FR Doc. 92-22164 Filed 9-14-92; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

Senior Executive Service Performance Review Board Membership

Pursuant to 5 U.S.C. 4314 (c)(4), the Department of the Navy (DON) anndunces the appointment of members to the DON's numerous Senior Executive Service (SES) Performance Review Boards (PRBs). The purpose of the PRBs is to provide fair and impartial review of the annual SES performance appraisal prepared by the senior executive's immediate and second level supervisor; to make recommendations to appointing officials regarding acceptance or modification of the performance rating; and to make recommendations for monetary performance awards. Composition of the specific PRBs will be determined on an ad hoc basis from among individuals listed below:

Akin, M.G. Mr.
Allard, D.C. Dr.
Altwegg, D.M. Dr.
Anselmo, P.S. RADM
Ashe, O.R. Mr.
Atkins, J.A. Mr.
Bailey, D.C. Mr.
Baker, A.D. Mr.
Batjer M. Ms.
Bisson, A.E. Dr.
Bizup, J.A. Mr.
Blatstein, I.M. Mr.
Blickstein, I.N. Mr.
Boecker, D. RADM
Bowles, W.L. Mr.
Brooke, R.K. Mr.
Buckley, T. Mr.
Buonacoursi, P. Mr.
Burnett, R.A. Capt
Cameron, A.W. Dr.
Cammack, E.G. Mr.
Camp, J.R. Mr.
Cann, G. The Honorable
Cataldo, P.R. Mr.
Cate, J.P. Mr.
Clark, C.C. Ms.
Coffey, T. Dr.
Coffman, W.R. Mr.
Commons, G.L. Ms.
Comstock, E.T. Mr.
Conran, T.C. Mr.
Cooper, M.T. MajGen
Czeluaniak, D.P. Mr.
Davis, J.R. Dr.
Decorpo, J.J. Dr.
Deprete, A. Mr.
Desalme, J.W. Mr.
Dillon, B.L. Mr.
Ditrapani, A.R. Mr.
Dixson, H.L. Mr.
Doherty, L.M. Ms.
Donalson, E.L. Mr.
Douglass, T.E. Mr.
Drew, M.B. Ms.
Eerner, W.A. RADM
Elliott, R.D. Mr.
Estes, G.B. RADM
Everett, D. Mr.
Faurot, P.R. Mr.
Firebaugh, M. RADM
Fisher, P.D. Mr.
Fitzgerald, R. Mr.
Ford, F.B. Mr.
Gaffney, P.G. Capt
Garant, R. Mr.
Gay, B.H. Ms.
Geiger, C.G. Mr.
Goodman, R.O. Mr.
Goldschmidt, J.X. Mr.
Goodson, R. Mr.
Gordon, R.E. Dr.
Grossman, J.C. Mr.
Guenther, J.J. Mr.
Guertin, J.R. Dr.
Guilbault, R.G. RADM
Haas, R.L. Mr.
Hallex, R.A. Mr.
Hamilton, F.X. MajGen
Hammes, M.C. Mr.
Hathaway, D.L. Mr.
Hauenstein, W. Mr.
Hearney, R.D. MajGen
Herd, J.H. Mr.
Hicks, S.N. Mr.
Hildebrandt, A.M. Mr.
Hipp, V. Mr.
Hood, J.T. RADM
Hunt, W. Mr.
Jenkins, H.W. MajGen
Johnson, R.V. Mr.
Jones, R.G. RADM
Kallmeyer, T. Mr.
Keightley, G. Mr.
Kill Kelley, J.L. Mr.
King, C.S. The honorable
Kiss, R.K. Mr.
Knudsen, R. Dr.
Kobitz, N. Mr.
Kolb, R.C. Dr.
Kotzen, P. Ms.
Kreitzer, L.P. Mr.
Kuesters, J.J. Mr.
Leach, R.A. Mr.
Leboeuf, G.G. Mr.
Lindahl, W.J. Mr.
Lopata. F.A. Mr.
Lundberg, L. Mr.
Lynch, J.G. Mr.

Manthorpe, W.J. Mr.
Marsh, J.W. Mr.
Masciarelli, J.R. Mr.
McBurnett, G. Ms.
McCormack, R.C. The Honorable
McGadney, R.L. Mr.
Meletzke, D.M. Ms.
Merritt, D.L. Mr.
Meserole, M. Mr.
Messere, E.L. Mr.
Miller, G.O. Mr.
Miller, W.R. RADM
Milligan, R.D. RADM
Mitchell, J.T. RADM
Montgomery J.E. Mr.
Morency, D.C. Mr.
Morris, W.R. RADM
Munsell, E. Ms.
Murphy, P.M. Mr.
Nathan, H.J. Mr.
Nemfakos, C.P. Mr.
Olsen, M.A. Ms.
Panek, R.L. Mr.
Paulk, R. Ms.
Pennisi, R.A. Mr.
Peters, R.K. Ms.
Phelps, F.A. Mr.
Pope, B.S. The Honorable
Porter, D.E. Mr.
Porter, W.B. Mr.
Price, R.W. Mr.
Quade, W.A. Mr.
Rath, B.B. Dr.
Rathjen, R.A. Mr.
Reese, H.E. Mr.
Riggs, R.K. Mr.
Roark, J.E. Mr.
Robenhymer, F. Mr.
Robinson, B.B. Dr.
Rojas, R.R. Mr.
Rose, W.B. Mr.
Rossi, D. Mr.
Roth, A.J. Mr.
Ruble, D. RADM
Saalfeld, F.E. Dr.
Sansone, W. Mr.
Schaefer, W.J Mr.
Schafer, J. The Honorable
Schneider, P.A. Mr.
Schultz, R.E. Mr.
Selwyn, P.A. Dr.
Shaffer, R.L. Mr.
Shearer, R.T. Mr.
Sheridan, F.L. Mr.
Silva, E.A. Dr.
Sinsky, J.A. Dr.
Somoroff, A. Dr.
Spalding, G.R. Mr.
Steele, R.H. Mr.
Sterns, F.S. Mr.
Stone, T.E. RADM
Storey, R.C. Mr.
Strohsahl, G. RADM
Taussig, J.K. Mr.
Thomas, R.O. Mr.
Thompson, R.H. Mr.
Thornett, R.W. Mr.
Tiebout, R.M. MajGen.
Tisone, A.A. Mr.
Traister, R. RADM
Turnquist, C.J. Mr.
Verkoski, J.E. Mr.
Whitman, E.C. Dr.
Wilcox, H.J. Mr.
Willoughby, W.J. Mr.
Winglass, R.J. MajGen
Witter, R.C. RADM
Winokur, R.S. Mr.
Wyant, F.C. Mr.
Young, S.D. Ms.
Zangagna, P.E. Mr.
Zimmerman, D.G. Mr.

Dated: September 3, 1992.

G.P. Lyon,

Lt.Col.United States Marine Corps, Federal Register Liaison Officer.

[FR Doc. 92-22227 Filed 9-14-92; 8:45 am]

BILLING CODE 3810-AE-M

DELAWARE RIVER BASIN COMMISSION

Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, September 23, 1992. The hearing will be part of the Commission's regular business meeting which is open to the public and scheduled to begin at 1 p.m. in the Grand Ballroom of the Grand Hotel, Oceanfront and Philadelphia Avenue, Cape May, New Jersey.

An informal conference session among the Commissioners and staff will be open for public observation at 10:30 a.m. in the Grand Hotel's Blue Room and will include status reports on the enlargement of the F.E. Walter Reservoir located in northeastern Pennsylvania; the acquisition of land easements and right-of-ways for the upper Delaware ice jam project, a flood control project located in the Port Jervis, NY area. There also will be discussion of proposed rules changes to address large amounts of water that are lost in the basin through depletive uses (evaporation, etc.).

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact

1. Holdover Project: City of Wilmington, D-92-29 CP. An application for approval of the transfer of up to 10 mgd of treated water via an interconnection proposed near the City of Wilmington's Porter Filter Plant. The interconnection will enable the City of Wilmington to transfer the treated water to the Wilmington Suburban Water Corporation which serves portions of New Castle County. The interconnection will be located near the Augustine Cut-Off and Route 202 just north of the City of Wilmington in New Castle County, Delaware. This hearing continues that of August 12, 1992.

2. *Connaught Labs, Inc. D-90-92.* A project to modify and expand an existing 0.09 million gallons per day (mgd) industrial wastewater treatment plant that will provide 0.15 mgd of tertiary level treatment to the applicant's combined process and sanitary wastewaters. The applicant produces various vaccines and the process wastewater consists of sterilized biological waste from both its own production facilities and those of the Salk Institute, located adjacent to the applicant. The Salk Institute also produces various biological wastes of a similar nature and currently comprises approximately 25 percent of the treatment plant effluent flow. Treated effluent will continue to discharge to Swiftwater Creek, a tributary of Paradise Creek. The project is located just east of State Route 611 in Pocono Township, Monroe County, Pennsylvania.

3. *Glen Mills Schools D-91-64.* An application for approval of a sewage treatment plant (STP) expansion project that will increase the treatment capacity of the existing 0.075 mgd secondary level STP to 0.15 mgd. The proposed STP will provide secondary treatment and continue to serve the applicant's educational facilities located just northwest of Glen Mills and west of Chester Creek in Thornbury Township, Delaware County, Pennsylvania. The STP will continue to discharge to Chester Creek via its existing outfall.

4. *New Hanover Township Authority D-92-18 CP.* A sewage treatment plant (STP) expansion project that will enable the applicant to expand its existing 0.275 mgd STP to 0.413 mgd. The existing secondary treatment STP discharges to 63 acres of spray irrigation fields. The expanded STP will discharge up to 0.363 mgd to the spray irrigation fields in the summer while discharging up to 0.05 mgd to Swamp Creek, a tributary of the Perkiomen Creek. In the winter the expanded STP will discharge up to 0.138 mgd to Swamp Creek with 0.275 mgd discharged to the spray irrigation fields. The STP expansion project will be located just north of Swamp Creek where Fagleysville Road Bridges the Creek in New Hanover Township, Montgomery County, Pennsylvania. The existing spray fields are located in the vicinity in both New Hanover and Upper Frederick Townships.

5. *Womelsdorf-Robesonia Joint Authority, D-92-35 CP.* An application for approval of a ground water withdrawal project to supply up to 10.8 million gallons (mg)/30 days of water to the applicant's distribution system from new Well Nos. 7 and 8, and to retain the existing withdrawal limit from all wells of 23 mg/30 days. The project is located in Heidelberg Township, Berks County, Pennsylvania.

6. *Homestead Utility Inc., D-92-46.* A project to modify the applicant's existing 0.25 mgd secondary sewage treatment plant (STP) by the addition of a breakpoint chlorination system to reduce effluent ammonia. The STP will continue to serve the Homestead at Mansfield development and discharge to the Assiscunk Creek. The STP is located approximately 2000 feet easterly of Jacksonville-Hedding Road in Mansfield Township, Burlington County, New Jersey.

7. *Vineland Cogeneration Limited Partnership, D-92-58.* A cogeneration project that entails a new 46.5 megawatt combined cycle gas-fired electrical generating facility that will supply electrical power to the City of Vineland Electric Utility Company and steam energy to Progresso Quality Foods. Water will be obtained from the City of Vineland at an average rate of approximately 0.5 mgd, of which up to 86 percent will be consumptively used, and the project wastewater will go to the Landis Sewerage Authority's existing sewage treatment plant. The project is located on the Progresso plant site at West Elmer Road, just west of Route 615 in the City of Vineland, Cumberland County, New Jersey.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Dated: September 8, 1992.

Susan M. Weisman,

Secretary.

[FR Doc. 92-22231 Filed 9-14-92; 8:45 am]

BILLING CODE 6350-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before October 15, 1992.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Cary Green, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Cary Green (202) 708-5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Cary Green at the address specified above.

Dated: September 8, 1992.

Cary Green,

Director, Information Resources Management Service.

Office of Educational Research and Improvement

Type of Review: New.

Title: Survey of Correctional Institutions' Education Programs (Field Test).

Frequency: One time.

Affected Public: State or local government.

Reporting Burden:

Responses: 45.

Burden Hours: 105.

Recordkeeping: Burden:

Recordkeeping:

Burden Hours:

Abstract: The U.S. Department of Education, the Office of Correctional Education, is required to collect data from correctional institutions and provide an annual report to Congress on correctional education. The survey will determine the feasibility of collecting national data on correctional education.

Office of Educational Research and Improvement

Type of Review: Revision.

Title: National Household Education Survey (NHES).

Frequency: One time.

Affected Public: Individuals or households.

Reporting Burden:

Responses: 98,550.

Burden Hours: 13,912.

Recordkeeping Burden:

Recordkeepers: 0.

Burden Hours: 0.

Abstract: This is a telephone survey of households covering school readiness and school safety and discipline. The collection will provide information related to Goals 1 and 6 of the National Education Goals. The respondents consist of parents and their youths. The data will be used to monitor trends in experiences and activities overtime.

Office of Vocational and Adult Education

Type of Review: New.

Title: Community, Tribal Institution and District Finding Effects Case Studies for the National Assessment of Vocational Education (NAVE).

Frequency: One time.

Affected Public: Individuals or households; State or local governments; Businesses or other for-profit.

Reporting Burden:

Responses: 2,327.

Burden Hours: 1,547.

Recordkeeping:

Recordkeeping: 0.

Burden Hours: 0.

Abstract: Case studies will investigate a wide variety of characteristics of the structures, participants, programs, processes and outcomes of vocational educational. The Department uses the information to report to Congress.

Office of Elementary and Secondary Education

Type of Review: Revision.
Title: Application and Continuation Application for Grants under the Indian Education Act.
Frequency: Annually.
Affected Public: State or local governments.
Reporting Burden:
Responses: 1,700.
Burden Hours: 51,000.
Recordkeeping Burden:
Recordkeepers: 1,300.
Burden Hours: 13,000.
Abstract: This form will be used by State educational agencies to apply for funding under the Indian Education Act. The Department will use the information to make grant awards.

[FR Doc. 92-22210 Filed 9-14-92; 8:45 am]
BILLING CODE 4000-01-M

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before October 6, 1992.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Cary Green, Department of Education, 400 Maryland Avenue SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Cary Green (202) 708-5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Service publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Cary Green at the address specified above.

Dated: September 8, 1992.

Cary Green,

Director, Information Resources Management Service.

Office of Educational Research and Improvement

Type of Review: Reinstatement.
Title: National Assessment of Educational Progress (NAEP)—1993 Field Test of the 1994 Assessment.
Frequency: One time.
Affected Public: Individuals or households, State or local governments.
Reporting Burden:
Responses: 53,080.
Burden Hours: 68,068.
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: Congress has mandated the collection of National Assessment survey data, the development of background questions and exercises, as well as field testing of items for the 1993-94 assessments in reading, mathematics, history, geography, and science for the 1992-93 school year. The results will be use to select exercises for the 1993-94 assessment. The respondents will be students at grade 4, grade 8, grade 12, teachers and principals.

Office of Educational Research and Improvement

Type of Review: Extension.
Title: 1993 National Study of Postsecondary Faculty—List Collection Procedures for the Full-Scale Study.
Frequency: Quadrennial.
Affected Public: Individuals or households, State or local governments, Non-profit institutions.
Reporting Burden:
Responses: 1260.
Burden Hours: 1575.
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: NSOPF is a comprehensive study of postsecondary faculty. The 1993 NOPF will gather information regarding the background, responsibilities, compensation, and attitudes of higher education faculty.

[FR Doc. 92-22209 Filed 9-14-92; 8:45 am]
BILLING CODE 4000-01-M

[CFDA No. 84.042]

Student Support Services Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1993

Purpose of Program: Provides grants to institutions of higher education for projects offering support services to low-income, first-generation, or disabled college students to enhance their academic skills, increase their retention and graduation rates, and as appropriate, facilitate their entrance into four-year colleges or graduate and professional programs. The Student Support Services Program supports AMERICA 2000, the President's strategy to move the Nation toward achieving the National Education Goals and educational excellence for all Americans. More specifically, the Student Support Services Program increases the number of disadvantaged students in the United States who successfully complete a program of study at the postsecondary level of education.

Eligible Applicants: Institutions of higher education and combinations of institutions of higher education.

Supplementary Information: Applicants must address the changes in the Student Support Services program included in the Higher Education Amendments of the 1992, Public Law 102-325, dated July 23, 1992. These changes are summarized below. For more detailed information please refer to Public Law 102-325. A copy of this legislation is contained in the application package made available by the Department.

1. Applicants must provide an assurance that not less than one-third of the individuals with disabilities participating in the project be low-income individuals.

2. Applicants may now include as an allowable service mentoring programs involving faculty or upper class students or a combination thereof.

3. Applicants must provide an assurance that each student enrolled in the project will be offered sufficient financial assistance to meet that student's full financial need.

Deadline for Transmittal of Applications: November 10, 1992.

Deadline for Intergovernmental Review: January 11, 1993.

Applications Available: September 23, 1992.

Available Funds: $130,000,000.

Estimated Range of Awards: $170,000–$300,000.

Estimated Average Size of Awards: $183,000.

Estimated Number of Awards: 690–710.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 646.

Technical Assistance Workshops: The Department of Education will conduct ten technical assistance workshops to assist prospective applicants in developing proposals for the Student Support Services Program. The technical assistance workshops will be held as follows:

Omni Shoreham, 2500 Calvert Street, NW., Washington, DC 20001, Julia Tower, (202) 347–7430	September 16, 1992, 1 p.m.–4:30 p.m.
Morris Brown College, Robert W. Woodruff Library, Exhibition Hall—Upper Level, 111 James P. Brawley Drive, SW., Atlanta, GA 30314, Marvin King, (404) 220–0270.	September 21, 1992, 9:30 a.m.–4 p.m.
University of California-Irvine, Science Lecture Hall, Irvine, CA 92717, Joe Adam Maestas, (714) 856–7162.	September 21, 1992, 9:30 a.m.–4 p.m.
Penn Valley Community College, Science and Technology Bldg., rm. 101, 3201 Southwest Trafficway, Kansas City, MO 64111–2764, Melanie Bailey, (816) 561–4888.	September 22, 1992, 9:30 a.m.–4: p.m.
Portland State University, School of Business, rm. 194, Portland, OR 92707, Clevonne Jackson, (503) 725–3000.	September 22, 1992, 9:30 a.m.–4: p.m.
Southern Methodist University, Hughes-Trigg Student Center, 3140 Dyer Street, Dallas, TX 75275, Thomas A. Edwards, (214) 692–2000.	September 24, 1992, 9:30 a.m.–4: p.m.
John Jay College of Criminal Justice, 899 10th Avenue, (btw. 58th and 59th Sts.), New York, NY 10019, Lillian Masters, (217) 237–8254.	September 24, 1992, 9:30 a.m.–12 noon.
Delgado Community College, Building No. 1—Delgado Auditorium, 615 City Park Avenue, New Orleans, LA 70119, Otis Johnson, (504) 483–4502.	September 25, 1992, 9:30 a.m.–4 p.m.
University of Utah, Engineering and Mines Classroom, Building (EMCB), room 101, Salt Lake City, UT 84112, Kathryn Felker, (801) 581–7188.	September 25, 1992, 9:30 a.m.–4 p.m.
Cleveland State University, University Center Auditorium, 2121 Euclid Avenue, Cleveland, OH 44115, Louis Brownlowe, (216) 687–2010.	September 28, 1992, 9:30 a.m.–4 p.m.

For Applications or Further Information Contact: May J. Weaver, U.S. Department of Education, 400 Maryland Avenue, SW., room 3060, ROB #3, Washington, DC 20202–5249, telephone: (202) 708–4804. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Services at 1–800–877–8339 (in the Washington, DC 202 area code, telephone number 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 1070d, 1070d–1b.

Dated: September 9, 1992.

Carolynn Reid-Wallace,

Assistant Secretary for Postsecondary Education.

[FR Doc. 92–22211 Filed 9–14–92; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No. 84.023]

Research in Education of Individuals With Disabilities Program; Inviting Applications for New Awards for Fiscal Year (FY) 1993

Purpose of Program: To advance and improve the knowledge base and improve the practice of professionals, parents, and others providing early intervention, special education, and related services, including professionals in regular education environments, to provide children with disabilities effective instruction and enable them to successfully learn.

These priorities support AMERICA 2000, the President's strategy for achieving the National Education Goals, by improving our understanding of how to enable children and youth with disabilities to reach the high levels of academic achievement called for by the goals.

Eligible Applicants: Eligible applicants are State and local educational agencies, institutions of higher education, and other public agencies and nonprofit private organizations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 324, as amended on October 22, 1991 (56 FR 54697–54698) and June 29, 1992 (57 FR 28964).

Applications Available: September 29, 1992 (84.023B and C), December 4, 1992 (84.023A).

Priorities;

Under 34 CFR 75.105(c)(3) and 34 CFR 324.10, the Secretary gives an absolute preference to applications that meet the following priorities. The Secretary funds under these competitions only applications that meet one of these absolute priorities:

Absolute Priority 1—Advancing and Improving the Research Knowledge Base (CFDA 84.023A)

This priority supports a wide range of research and related activities that support innovation, development, exchange, and use of advancements in knowledge and practice designed to contribute to the improvement of instruction and learning of infants, toddlers, children, and youth with disabilities.

Invitational Priority

Within the absolute priority specified in this notice, the Secretary is particularly interested in applications that meet the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

The Secretary is particularly interested in pilot studies, projects that employ new methodologies, descriptive studies, projects to advance assessment, projects that synthesize state-of-the-art

research and practice, projects for research dissemination and utilization, and projects that analyze extant data bases. The Secretary further encourages studies that use these approaches to address the needs of infants, toddlers, children and youth with disabilities from racial or ethnic minority groups.

For Applications or Information on Absolute Priority 1 Contact

Dr. Thomas Hanley, U.S. Department of Education, 400 Maryland Avenue, SW., room 3526, Switzer Building, Washington, DC 20202-2640. Telephone: (202) 205-8110. Deaf and hard of hearing individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

Absolute Priority 2—Field-Initiated Research Projects (CFDA 84.023C)

This priority provides support for field-initiated research projects, consistent with the purposes of the program, as described in 34 CFR 324.1.

For Applications or Information on Absolute Priority 2 Contact

Judith Fein, U.S. Department of Education, 400 Maryland Avenue, SW., room 3524, Switzer Building, Washington, DC 20202-2640. Telephone: (202) 205-8116. Deaf and hard of hearing individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

Absolute Priority 3—Student-Initiated Research Projects (CFDA 84.023B)

This priority provides support for student-initiated research projects, consistent with the purposes of the program, as described in 34 CFR 324.1.

Invitational Priority

Within the absolute priority specified in this notice, the Secretary is particularly interested in applications that meet the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

Short-term projects (up to 18 months) that would develop research skills in postsecondary students. The Secretary further encourages projects that, while carried out by the student, would include a principal investigator who serves as a mentor to the student/researcher.

For Applications or Information on Absolute Priority 3 Contact

Dr. Melville J. Appell, U.S. Department of Education, 400 Maryland Avenue SW., room 3529, Switzer Building, Washington, DC 20202-2640. Telephone: (202) 205-8113. Deaf and hard of hearing individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

RESEARCH IN EDUCATION OF INDIVIDUALS WITH DISABILITIES PROGRAM

(Application Notices for Fiscal Year 1993)

Title and CFDA No.	Deadline for transmittal of applications	Available funds	Estimated range or size of awards	Estimate number of awards	Project period in months
Advancing and Improving the Research Knowledge Base (CFDA No. 84.023A).	2/12/93	$1,050,000	$75,000 for entire [1] project period	14	Up to 18.
Student-Initiated Research Projects (CFDA No. 84.023B).	11/13/92	$150,000	$5,000-15,000 for [2] entire project period	15	Up to 18.
Field-Initiated Research Projects (CFDA No. 84.023C).	11/13/92	$2,575,000	$100,000-170,000 [3]	19	Up to 60.

[1] Projects will not be funded in excess of $75,000 for the entire project period. Any project approved by reviewers that exceeds the estimated size of award will be required to be performed, as proposed, within the announced amount.

[2] Projects will not be funded in excess of $15,000 for the entire project period. Any project approved by reviewers that exceeds the estimated size of award will be required to be performed, as proposed, within the announced amount.

[3] Projects will not be funded in excess of $170,000. Any project approved by reviewers that exceeds the estimated size of award will be required to be performed, as proposed, within the announced amount. Multi-year projects are likely to be level funded unless there are increases in costs attributable to significant changes in activity level.

NOTE: The Department of Education is not bound by any estimates in this notice.

For Applications or Information Contact: Please contact the individuals listed after each priority.

Program Authority: 20 U.S.C. 1441-1443.

Dated: September 9, 1992.

Philip S. Link,

Acting Assistant Secretary Office of Special Education and Rehabilitative Services.

[FR Doc. 92-22206 Filed 9-14-92; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No.: 84.023]

Research in Education of Individuals With Disabilities Program Notice Inviting Applications for New Awards for Fiscal Year (FY) 1993

Purpose of Program: To advance and improve the knowledge base and improve the practice of professionals, parents, and others providing early intervention, special education, and related services, including professionals in regular education environments, to provide children with disabilities effective instruction and enable them to successfully learn.

These priorities support AMERICA 2000, the President's strategy for achieving the National Education Goals, by improving our understanding of how to enable children and youth with disabilities to reach the high levels of academic achievement called for by the goals.

Eligible Applicants: Eligible applicants are State and local educational agencies, institutions of higher education, and other public agencies and nonprofit private organizations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 324, as amended

on October 22, 1991 (56 FR 54697–54698) and June 29, 1992 (57 FR 28964).

Applications Available: November 6, 1992 (84.023N); October 2, 1992 (84.023R)

Priorities: The notice of final priorities for Initial Career Awards and Including Children with Disabilities as a Part of Systemic Efforts to Restructure Schools, was published in the **Federal Register** on July 16, 1992 at 57 FR 31616 and 31618.

RESEARCH IN EDUCATION OF INDIVIDUALS WITH DISABILITIES PROGRAM

(application Notices for Fiscal Year 1993)

Title and CFDA No.	Deadline for transmittal of applications	Available funds	Estimated size of awards	Estimated number of awards	Project period in months
Initial Career Awards (CFDA No. 84.023N)	1/8/93	$300,000	$75,000 per year [1]	4	Up to 36.
Including Children With Disabilities as a Part of Systemic Efforts to Restructure Schools (CFDA No. 84.023R).	12/11/92	1,050,000	150,000 per year [1]	7	Up to 48.

[1] Amounts listed are the estimated funding levels for the first 12 months of the projects. Multiyear projects are likely to be level funded unless there are increases in costs attributable to significant changes in activity level.

NOTE: The Department of Education is not bound by any estimates in this notice.

For Applications or Information Contact: For information on the Initial Career Awards competition please contact Dr. Melville J. Appell, U.S. Department of Education, 400 Maryland Avenue, SW., room 3529, Switzer Building, Washington, DC 20202–2640. Telephone: (202) 205–8113. For information on Including Children with Disabilities as a Part of Systemic Efforts to Restructure Schools competition please contact Dr. Helen Thornton, U.S. Department of Education, 400 Maryland Avenue, SW., room 3520, Switzer Building, Washington, DC 20202–2640. Telephone: (202) 205–5910. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 1441–1443.

Dated: September 9, 1992.

Philip S. Link,

Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 92–22207 Filed 9–14–92; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No.: 84.159]

Special Studies Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1993

Purpose of Program: To support studies to evaluate the impact of the Individuals with Disabilities Education Act (IDEA), including efforts to provide a free appropriate public education to children and youth with disabilities and early intervention services to infants and toddlers with disabilities.

This program supports AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals, by seeking to improve services for infants, toddlers, children, and youth with disabilities and by so doing helping them to reach the high levels of achievement called for by the National Education Goals.

Eligible Applicants: State educational agencies are eligible for awards under these competitions. Other State agencies designated by the Governor in each State for the purpose of administering an early intervention program under Part H of the Individuals with Disabilities Education Act (IDEA) are also eligible for awards under these competitions.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 80, 81, 82, 85, and 86; and (b). The regulations for this program in 34 CFR part 327, as amended on October 22, 1991 (56 FR 54699–54701).

Priorities: Under 34 CFR 75.105(c)(3) and 34 CFR 327.10(c) and 327.40(a) the Secretary gives an absolute preference to applications that meet the following priorities. The Secretary funds under these competitions only applications that meet one or more of these absolute priorities:

Absolute Priority 1—State Agency—Federal Evaluation Studies Projects (CFDA 84.159A)

This priority supports cooperative agreements that assess the impact and effectiveness of programs, policies, and procedures assisted under the Individuals with Disabilities Education Act (IDEA) in accordance with sections 618(d)(1) and (2) of the Act. An award under this competition provides not more than 60 percent of the total cost of the project, and the State agency receiving the award provides an amount not less than 40 percent of the total cost of the project.

Invitational Priority: Within the absolute priority specified in this notice, the Secretary is particularly interested in applications that meet the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

The Secretary particularly invites projects that evaluate the impact and effectiveness of—

(1) Management and regulatory flexibility that encourages innovative management of schools to expand opportunities for the inclusion of children with disabilities;

(2) Student outcomes and performance of comprehensive, community-based, family-oriented systems of education and support;

(3) Community-supported schools focusing on family participation in activities and services;

(4) Reconfigured relationships and responsibilities of regular and special education staff, and redesigned programs that train personnel for work in schools, for the continued development of all regular and special education personnel; or

(5) Expanded multi-agency solutions to the collaborative delivery of services for individual children and their families.

Absolute Priority 2—State Agency—Federal Evaluation Studies Projects (CFDA 84.159F)

This priority supports cooperative agreements that assess the impact and effectiveness of programs, policies, and procedures assisted under the Individuals with Disabilities Education Act (IDEA) in accordance with sections 618(d)(1) and (2) of the Act. An award

under this competition provides not more than 60 percent of the total cost of the project, and the State agency receiving the award provides an amount not less than 40 percent of the total cost of the project.

Invitational Priority: Within the absolute priority specified in this notice, the Secretary is particularly interested in applications that meet the following invitational priority. However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over other applications:

The Secretary particularly invites projects that perform feasibility studies that develop the conceptual framework for an evaluation study about a specific issue or question concerning the impact and effectiveness of special education and related services, and to determine if the conceptual framework is workable. Feasibility studies identify topics that have significant potential, but that require preliminary study to determine feasibility related to identification of the issue, study designs, measurement, and analysis. While collection and reporting of generalizable impact and effectiveness data are not expected for feasibility studies, the Secretary particularly encourages pilot tests of data collection instruments and procedures to determine the implications of these results for the study design, measurement and analysis. The Secretary particularly encourages projects that address the feasibility of designs to evaluate the impact and effectiveness of: (1) Management and regulatory flexibility that encourages innovative management of schools to expand opportunities for the inclusion of children with disabilities; (2) student outcomes and performance of comprehensive, community-based, family-oriented systems of education and support; (3) community-supported schools focusing on family participation in activities and services; (4) reconfigured relationships and responsibilities or regular and special education staff, and redesigned programs that train personnel for work in schools, for the continued development of all regular and special education personnel; or (5) expanded multi-agency solutions to the collaborative delivery of services for individual children and their families.

SPECIAL STUDIES PROGRAM

[Application Notices for Fiscal Year 1993]

Title and CFDA No.	Applications available	Deadline for transmittal of applications	Available funds	Estimated size of awards	Estimated number of awards	Project period in months
State Agency/Federal Evaluation Studies Projects (84.159A)	10/23/92	1/15/93	$936,000	[1] $156,000	6	Up to 24.
State Agency/Federal Evaluation Studies Projects (84.159F)	10/23/92	1/15/93	$250,000	[2] $50,000	5	Up to 18.

[1] $156,000 is the estimated average size of award for the *entire* project period (up to 24 months).
[2] $50,000 is the estimated average size of award for the *entire* project period (up to 18 months).
Note: The Department is not bound by any estimates in this notice.

For Applications or Information Contact: Susan Sanchez, U.S. Department of Education, 400 Maryland Avenue, SW., room 3519, Switzer Building, Washington, DC 20202-2640. Telephone: (202) 205-8998. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 1418.

Dated: September 9, 1992.

Philip S. Link,

Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 92-22208 Filed 9-14-92; 8:45 am]

BILLING CODE 4000-01-M

Fund for the Improvement and Reform of Schools and Teaching; Board Meeting

AGENCY: Fund for the Improvement and Reform of Schools and Teaching Board, Education.

ACTION: Notice of an open meeting.

SUMMARY: This notice sets forth the schedule and agenda of an open meeting of the Fund for the Improvement and Reform of Schools and Teaching Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES AND TIMES: September 24, 1992, 9 a.m.-5 p.m.; September 25, 1992, 9 a.m.-12 p.m.

ADDRESSES: American Federation of Teachers, 9th Floor Conference Room, 555 New Jersey Avenue NW., Washington, DC 20208.

FOR FURTHER INFORMATION CONTACT: Diane Hill, Fund for the Improvement and Reform of Schools and Teaching, U.S. Department of Education, 555 New Jersey Avenue NW., room 522, Washington, DC 20208-5524, (202) 219-1496.

SUPPLEMENTARY INFORMATION: The Fund for the Improvement and Reform of Schools and Teaching (FIRST) Board was established under Section 3231 of the Hawkins-Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100-297).

The Board was established to advise the Secretary concerning developments in education that merit his attention; identify promising initiatives to be supported under the authorizing legislation; and advise the Secretary and the Director of FIRST of the selection of projects under consideration for support, and on planning documents, guidelines and procedures for grant competitions carried out by FIRST.

The meeting of the FIRST Board will be open to the public. On September 24, 1992, the Board will introduce its members and approve the minutes from the May meeting. The agenda includes an update by the National Board for Professional Teaching Standards with time allotted for Q&A's.

On September 24, 1992, the Board will discuss absolute and invitational priorities for 1994 competitions. The discussion will continue on September 25, 1992. The meeting will conclude with a discussion of the upcoming agenda for and date of the next Board meeting.

Records are kept of all Board proceedings, and are available for public inspection at the office of the Fund for the Improvement and Reform of Schools and Teaching, U.S. Department of Education, 555 New Jersey Avenue NW., room 522, Washington, DC 20208-5524, from the hours of 8:30 a.m. to 5 p.m.

Dated: September 8, 1992.

Diane Ravitch,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 92-22170 Filed 9-14-92; 8:45 am]

BILLING CODE 4000-01-M

Advisory Committee on Testing in Chapter 1

AGENCY: Department of Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for a meeting of the Advisory Committee on Testing in Chapter 1. The notice also describes the functions of the Committee. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This notice is intended to notify the general public of the opportunity to attend.

DATES: September 28, 1992—9 a.m.–5 p.m.; September 29, 1992—9 a.m.–5 p.m.

ADDRESSES: Washington Court Hotel, 525 New Jersey Avenue, NW., Washington, DC 20001; (202) 628-2100.

FOR FURTHER INFORMATION CONTACT: Mary Jean LeTendre, Director, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW (Room 2043, FOB-6), Washington, DC 20202-6132. Telephone: (202) 401-1682. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC area code 202, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Testing in Chapter 1 was established under section 442 of the General Education Provisions Act, as amended (20 U.S.C. 1233a). The Advisory Committee was established to advise the Secretary of Education on possible improvements or alternatives to the current testing procedures for measuring the academic achievement of Chapter 1 students.

The meeting of the Committee is open to the public. The proposed agenda includes presentations on alternatives for a system of national accountability for Chapter 1, updates on the National Goals Panel and the National Council on Educational Standards and Testing, presentations from leading scholars on compensatory education and its assessment and reaction from State and local practitioners. The Committee will deliberate on these topics and plan for its next steps.

Records of the Committee proceedings will be available in the office of the Advisory Committee on Testing in Chapter 1, 400 Maryland Avenue, SW (room 2043, FOB-6), Washington, DC 20202-7559, between 9 a.m. and 5 p.m., Eastern time.

John T. MacDonald,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 92-22190 Filed 9-14-92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Floodplain/Wetlands Involvement Notification for Proposed Environmental Restoration Action at the Department of Energy's Weldon Spring Site Remedial Action Project, Weldon Spring, MO

AGENCY: Department of Energy.

ACTION: Notice of floodplains/wetlands involvement and opportunity for comment.

SUMMARY: Regulations at 10 CFR part 1022 require the Department of Energy (DOE) to evaluate actions it may take in a floodplain or wetlands, in order to ensure consideration of protection of the floodplain and wetlands in decision making. As soon as practicable after a determination that a floodplain or wetlands may be involved, the regulations require that public notice be published in the **Federal Register**, including a description of the proposed action and its location. DOE is responsible for conducting response actions at the Weldon Spring Site under its Environmental Restoration Program. The site is located in St. Charles County, Missouri, approximately 30 miles west of St. Louis. The site became contaminated as a result of processing and disposal activities that took place from the 1940's to the 1960's and is listed on the National Priorities List of the U.S. Environmental Protection Agency.

Cleanup of the Weldon Spring Site consists of several actions, one of which involves the treatment and discharge of approximately 57 million gallons of radioactively and chemically contaminated water currently impounded at the site. After the water is treated in the on-site treatment plant, it would be discharged to a pipeline constructed from the site to the Missouri River. A small segment of the pipeline and the outfall structure would be constructed in the 100-year floodplain, as determined by the St. Charles Planning and Zoning Department, and a very small wetlands area. A National Pollutant Discharge Elimination System (NPDES) permit has been issued by the Missouri Department of Natural Resources for the release of the treated water. The installation of the pipeline is proposed to prevent discharge through a contaminated drainage, thereby minimizing the potential for associated impacts to human health and the environment.

In accordance with DOE regulations for compliance with requirements for environmental review of floodplains/wetlands (10 CFR 1022), DOE will prepare a floodplain and wetlands assessment. Alternatives considered will, to the extent possible, avoid or mitigate impacts to the floodplain and the wetlands. The Floodplain Statement of Findings will be published in the **Federal Register** when the floodplain assessment is completed.

Further information is available from DOE at the address as given below. Public comments regarding the proposed construction of a segment of the pipeline and the outfall structure in the Missouri River floodplain and a wetlands area are invited.

DATES: Comments are due by September 30, 1992. Late comments will be considered to the extent practicable.

ADDRESSES: Send comments to Stephen H. McCracken, Project Manager, Weldon Spring Site Remedial Action Project, U.S. Department of Energy, 7295 Highway 94 South, St. Charles, Missouri 63303, (314) 441-8978. Fax comments to (314) 447-0739.

For further information on DOE's floodplain environmental review requirements, contact Carol M. Borgstrom, Director, Office of NEPA Oversight, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4600 or (800) 472-2756.

Paul D. Grimm,

Principal Deputy Assistant Secretary for Environmental Restoration and Waste Management.

[FR Doc. 92-22277 Filed 9-14-92; 8:45 am]

BILLING CODE 6450-01-M

Chicago Field Office; Intent To Make an Award

AGENCY: Department of Energy.

ACTION: Notice of intent to make an award based on an unsolicited application.

SUMMARY: The Department of Energy (DOE), Chicago Field Office, announces, pursuant to that DOE Financial Assistance Rules 10 CFR 600.14(f), that DOE intends to award a grant to Abiff Manufacturing Corporation for the

purpose of improving their unique method for spraying insulation materials into wall cavities and above ceiling panels in residential and commercial structures.

SUPPLEMENTARY INFORMATION: The Department of Energy announces further that pursuant to 10 CFR 600.6(a)(2), this discretionary financial assistance award to Abiff Manufacturing Corporation, would be based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1). The patented system will further develop and test an improved binder material for use within their new, energy-efficient system for installing loose insulation material.

The proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current, or planned solicitation. The project period for the grant award is 24 months, expected to begin in September 1992. DOE plans to provide funding in the amount of $99,950.

FOR FURTHER INFORMATION CONTACT: Margaret M. Learmouth, U.S. Department of Energy, Denver Support Office, 1075 South Yukon Street, P.O. Box 26247, Lakewood, CO 80228.

Issued in Chicago, Illinois on August 31, 1992.

Johnnie D. Greenwood,

Director Contracts Division.

[FR Doc. 92-22276 Filed 9-14-92; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award; Intent To Award Grant to Colorado School of Mines—Energy & Minerals Field Institute

AGENCY: U.S. Department of Energy.

ACTION: Notice of Noncompetitive Financial Assistance Award.

SUMMARY: The Department of Energy (DOE) announces that pursuant to 10 CFR 600.7(b)(2)(i)(B), it is making a financial assistance award under Grant Number DE-FG01-92FE62672 to the Energy and Minerals Field Institute (EMFI), Colorado School of Mines (CSM) to assist in the support of the costs of conducting the Field Institute Program on "Energy and Mineral Opportunities, Problems and Policy Issues".

SCOPE: The grant will provide funding in the amount of $1,099,760 to contribute to the Annual Field Institute Program on Energy and Mineral Opportunities, Problems and Policy Issues conducted by EMFI through enhancing DOE's knowledge of energy and minerals issues. The DOE and the CSM are cost-sharing this grant. The DOE will provide funding in the amount of $375,000 and the CSM will provide $742,760. The DOE funding will be equally divided among the Office of Fossil Energy, Office of Planning, Policy and Analysis and the Office of Planning, Policy and Analysis and the Office of Conservation and Renewable Energy.

The purpose of this project is to provide assistance to the CSM to conduct the Field Institute Program on Energy and Mineral Opportunities, Problems and Policy Issues, to be held annually through 1996, as well as regional meetings throughout the year. The objective of the Annual Field Institute Program is to introduce legislative and executive aids to the economic, environmental, social, policy-related and technological aspects of energy and mineral development. Two six-day summer field programs as well as regional conferences are held throughout the year; publications provide information and reviews of EMFI activities; and EMFI provides educational and research opportunities for both undergraduate and graduate students.

This project intends to provide first hand experience and provide the opportunity for participants to visit operating plants and mines, to learn of operational successes and problems, to interact with industrial personnel, and to discuss topics of concern with local residents and community leaders.

DOE support of the through 1996 Field Institute Program enhances the public benefit by increasing the cooperative information exchange among members of the executive and legislative branches, DOE, academia and the private sector. Through canvassing both government and industry technical personnel knowledgeable in the field, the institute is deemed to be the only known source for this type of presentation.

ELIGIBILITY: Eligibility for this award is being limited to the CSM in order to provide for satisfactory completion of the project pursuant to 10 CFR 600.7(b)(2)(i)(B). The DOE knows of no other entity which is conducting or planning such a program. The EMFI's previous presentations have reached acclaim from the members of the executive and legislative branches.

The grant is unique in that it is aimed directly at addressing the current energy and minerals issue and problem areas. It has been determined that this project has high technical merit representing an innovative and novel idea that has strong possibilities of allowing for future reductions and additions to the national energy resources.

The terms of the grant is for sixty (60) months from the effective date of the award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration. Attn: Lisa Tillman, PR-322.1, 1000 Independence Avenue, SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Division "B", Office of Placement and Administration.

[FR Doc. 92-22273 Filed 9-14-92; 8:45 am]

BILLING CODE 6450-01-M

Morgantown Energy Technology Center; Financial Assistance Award (Cooperative Agreement)

AGENCY: U.S. Department of Energy (DOE), Morgantown Energy Technology Center.

ACTION: Notice of Noncompetitive Financial Assistance Application for a Cooperative Agreement.

SUMMARY: Based upon a determination pursuant to 10 CFR 600.14(e)(2)(ii), the DOE Morgantown Energy Technology Center gives notice of its plans to award a four and one half year Cooperative Agreement to South Carolina Energy Research and Development Center, Clemson University, in Clemson South Carolina, in the approximate amount of $9,800,000. This will be a cost shared award with the Participant providing approximately $100,000 of the cost of performance.

FOR FURTHER INFORMATION CONTACT: Thomas L. Martin, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, WV, 26507-0880, Telephone: (304) 291-4087. Cooperative Agreement No.: DE-FC21-92MC29467.

SUPPLEMENTARY INFORMATION: The DOE will fund the allowable costs of the Cooperative Agreement. The pending award is based on an unsolicited application for a research project entitled, "Center For Advanced Gas Turbine Systems Research" which was submitted by Clemson University's South Carolina Energy Research and Development Center. The objective of the research project is to conduct a research program to address key barrier issues related to an advanced gas turbine power systems in the development is a commercial operating plant. Barrier issues to be addressed include materials evaluations, materials development, coating development, manufacturing process development,

heat transfer model testing, component testing, computer code development, combustion testing, and field testing data reduction. Issued in Washington, DC.

Dated: September 9, 1992.

Louie L. Calaway,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 92-22275 Filed 9-14-92; 8:45 am]

BILLING CODE 6450-01-M

Chicago Field Office; Noncompetitive Award of Financial Assistance, State of Wisconsin

AGENCY: Department of Energy.

ACTION: Notice of Noncompetitive Financial Assistance Award.

SUMMARY: The Department of Energy (DOE), Chicago Field Office, through the Chicago Support Office, announces that, pursuant to DOE Financial Assistance Rules 10 CFR 600.7(b)(2), it intends to award a grant to the State of Wisconsin. The award represents the continuation of a four year project involving the development of an alternative fuel vehicle cold climate database. The proposed project meets the criterion for noncompetitive financial assistance specified in 10 CFR 600.7(b)(2)(i)(B) in that this project will be conducted by the State of Wisconsin using its own resources and those provided by private industry, but support provided by DOE will enhance the public benefits to be derived by this activity.

The project period for this grant is October 1, 1991 through September 30, 1995. An award of $25,000 will be made for the budget period October 1, 1992 through September 30, 1993. DOE anticipates making two more awards of $25,000 each for the two subsequent budget periods.

FOR FURTHER INFORMATION CONTACT: Juli A. Pollitt, U.S. Department of Energy, Chicago Support Office, 9800 South Cass Avenue, Argonne, Illinois 60439, (708) 252-2313.

Issued in Chicago, Illinois on August 26, 1992.

Johnnie D. Greenwood,

Director Contracts Division.

[FR Doc. 92-22274 Filed 9-14-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER92-811-000, et al.]

Florida Power & Light Company et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

September 8, 1992.

Take notice that the following filings have been made with the Commission:

1. Florida Power & Light Company

[Docket No. ER92-811-000]

Take notice that on August 31, 1992, Florida Power & Light Company (FPL) tendered for filing Amendment Number Four to Short Term Agreement to Provide Power and Energy by Florida Power & Light Company to Utility Board of the City of Key West, Florida (Amendment No. 4) and Amendment Number Five to Short Term Agreement to Provide Power and Energy by Florida Power & Light Company to Utility Board of the City of Key West, Florida (Amendment No. 5).

Comment date: September 22, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Brady Power Partners

[Docket No. QF92-175-001]

On August 27, 1992, Brady Power Partners, of 6200 South Syracuse Way, Suite 125, Englewood, Colorado 80111, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility is located in Brady Hot Springs, Churchill County, Nevada. The facility consists of three turbine generators. The estimated net power production capacity is 21.1 MW. The primary energy source for the facility is natural geothermal water, steam, or brine obtained from geothermal wells. Installation of the facility began July 18, 1991.

Comment date: October 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. New England Power Company

[Docket No. ER92-814-000]

Take notice that on September 1, 1992, New England Power Company (NEP) submitted for filing a Unit Power Contract with the Bangor Hydro-Electric Company (BHE) for a 25 megawatt sale of capacity and energy from NEP's ownership entitlement in the Millstone Unit No. 3 facility from November 1, 1992 to October 31, 1994 subject to a BHE option which would terminate the Unit Power Contract October 31, 1993. NEP requests that the Commission allow this Unit Power Contract to become effective on November 1, 1992.

Comment date: September 22, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. New England Power Company

[Docket No. ER92-813-000]

Take notice that on September 1, 1992, New England Power Company (NEP) submitted for filing a Power Sales Contract with the Commonwealth Electric Company for a 30 megawatt sale of capacity and energy from NEP's Bear Swamp pumped storage facility from November 2, 1992 to November 1, 1993. NEP requests that the Commission allow this Contract to become effective on November 2, 1992.

Comment date: September 22, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. Arkansas Power & Light Company

[Docket No. ER92-821-000]

Notice is hereby given that effective the 1st day of September, 1992, Rate Schedule FERC No. 96, effective date July 1, 1982 and filed with the Federal Energy Regulatory Commission by Arkansas Power & Light Company is to be canceled.

A copy of the filing has been sent to the Honorable Mayor, City of Ruston, Louisiana and the Arkansas and Louisiana Public Service Commissions.

Comment date: September 22, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. New England Power Company

[Docket No. ER92-815-000]

Take notice that on September 1, 1992, New England Power Company (NEP) submitted for filing a Power Sales Contract with the UNITIL Power Corp. for up to a 100 megawatt sale of capacity and energy from NEP's Salem Harbor Unit No. 4 facility beginning November 1, 1992 to April 30, 1993. NEP requests that the Commission allow this Contract to become effective on November 1, 1992.

Comment date: September 22, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Maine Public Service Company

[Docket No. ER92-725-000]

Take notice that on September 2, 1992, Maine Public Service Company (Maine Public) tendered an amended filing of a proposed initial rate schedule pertaining to the short term, non-firm sale of

capacity and energy. The rate will be negotiated between Maine Public and the purchaser at the time of the transaction, but not to exceed Maine Public's cost of service for the units available for sale. A Service Agreement will be executed prior to the time of a purchase by a particular utility and submitted to the Commission. Maine Public has requested that the rate schedule become effective on July 15, 1992, the original proposed effective date.

An amended filing is being made to include the modifications suggested by the Commission Staff and accepting the Staff recommended rate.

MPS requests an effective date of July 15, 1992, and therefore requests a waiver of the Commission's regulations regarding filing.

Comment date: September 22, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. Public Service Company of New Hampshire

[Docket No. ER92-590-000]

Take notice that Public Service Company of New Hampshire (PSNH) tendered for filing on September 2, 1992, supplemental information regarding the Agreement For Sale of Capacity and Energy Between PSNH and The Connecticut light and Power Company (CL&P) and Western Massachusetts Electric Company (WMECO).

Comment date: September 22, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. Public Service Company of New Hampshire

[Docket No. ER92-481-000]

Take notice that Public Service Company of New Hampshire (PSNH) tendered for filing on September 2, 1992, supplemental information regarding the Agreement For Sale of Capacity and Energy Between PSNH and The Connecticut Light and Power Company (CL&P) and Western Massachusetts Electric Company (WMECO).

Comment date: September 22, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. Fitchburg Gas and Electric Light Company

[Docket No. ER92-88-000]

Take notice that on September 1, 1992, Fitchburg Gas and Electric Light Company (Fitchburg) tendered for filing certain revisions to its October 7, 1991 initial rate filing, namely: (1) A revised Fitchburg Unit No. 7 cost of service study; and (2) an amended tariff sheet restating the maximum rates for capacity for sales from Fitchburg Unit No. 7. The implementation of the revisions to the Unit No. 7 rates will produce a total refund amount of $72,848.91 ($58,971.25 principal and $13,877.66 in estimated interest through August 31, 1992) for Unit No. 7 sales. Fitchburg states that it renews its original request for waiver of the Commission's notice requirements, 18 CFR 35.3, to permit the revised tariff to become effective May 1, 1989, and to permit each service agreement to become effective pursuant to its terms.

Comment date: September 22, 1992, in accordance with Standard Paragraph E at the end of this notice.

11. Northern States Power Company (Minnesota Company)

[Docket No. ER92-76-000]

Take notice that on September 2, 1992, Northern States Power Company (Minnesota) [NSP-MN or NSP] tendered for filing the Agreement for Transmission Losses dated July 1, 1990, between NSP-MN and the City of Windom, Minnesota [Windom].

The Agreement for Transmission Losses provides that Windom agrees to purchase power and energy from NSP for losses in lieu of scheduling additional power and energy deliveries to compensate NSP for its FERC accepted system average losses in effect as of August 15, 1988. This agreement is subject to all the terms and conditions of the Transmission Capacity and Planning Agreement between NSP and Windom dated August 15, 1988, on file as Rate Schedule FERC No. 455. The filing amendment provides additional cost support for the initial rates proposed in the initial filing and revises the rate schedule to establish certain maximum charges.

NSP again requests that the Agreement for Transmission Losses be accepted for filing effective August 15, 1988, and requests waiver of Commission's notice requirements in order for the Agreement to be accepted for filing on that date. NSP requests that the Agreement be accepted as a supplement to Rate Schedule FERC No. 455.

Comment date: September 22, 1992, in accordance with Standard Paragraph E at the end of this notice.

12. Florida Power Corporation

[Docket No. ER92-622-000]

Take notice that on September 2, 1992, Florida Power Corporation (Florida Power) filed a service agreement pursuant to which it will provide transmission service to Duke Power Company (Duke Power) under Florida Power's T-1 Transmission Tariff. Transmission services will be provided when mutually agreed by the parties. Florida Power requests that the agreement become effective on November 2, 1992, 60 days after the filing.

Comment date: September 22, 1992, in accordance with Standard Paragraph E at the end of this notice.

13. Northern States Power Company (Minnesota Company)

[Docket No. ER92-75-000]

Take notice that on September 2, 1992, Northern States Power Company (Minnesota) [NSP-MN or NSP] tendered for filing the Agreement for Transmission Losses dated July 1, 1990, between NSP-MN and the City of Springfield, Minnesota [Springfield].

The Agreement for Transmission Losses provides that Springfield agrees to purchase power and energy from NSP for losses in lieu of scheduling additional power and energy deliveries to compensate NSP for its FERC accepted system average losses in effect as of August 15, 1988. This agreement is subject to all the terms and conditions of the Transmission Capacity and Planning Agreement between NSP and Springfield dated August 15, 1988, on file as Rate Schedule FERC No. 455. The filing amendment provides additional cost support for the initial rates proposed in the initial filing and revises the rate schedule to establish certain maximum charges.

NSP again requests that the Agreement for Transmission Losses be accepted for filing effective August 15, 1988, and requests waiver of Commission's notice requirements in order for the Agreement to be accepted for filing on that date. NSP requests that the Agreement be accepted as a supplement to Rate Schedule FERC No. 454.

Comment date: September 22, 1992, in accordance with Standard Paragraph E at the end of this notice.

14. Wisconsin Electric Power Company

[Docket No. ER92-722-000]

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on August 31, 1992, tendered for filing revised Service Schedule pages A4, B4, C4, and D4 to the Interchange Agreement between itself and Otter Tail Power Company (OTP). The revision caps the Order No. 84 compensation at one dollar per megawatthour for difficult to quantify costs.

Wisconsin Electric and OTP respectfully requests an effective date of September 1, 1992.

Copies of the filing have been served on OTP and the Public Service Commission of Wisconsin.

Comment date: September 22, 1992, in accordance with Standard Paragraph E at the end of this notice.

15. Northern States Power Company (Minnesota Company)

[Docket No. ER92-77-000]

Take notice that on September 2, 1992, Northern States Power Company (Minnesota) [NSP-MN or NSP] tendered for filing an amendment to its initial filing of the Interconnection and Interchange Agreement dated November 29, 1990, between NSP-MN and the City of Mountain Lake, Minnesota [Mountain Lake].

The Interconnection and Interchange Agreement essentially provided that NSP would sell power and/or energy to Mountain Lake. The amendment provides additional cost support for the rates contained in the Agreement.

NSP again requests that the Interconnection and Interchange Agreement be accepted for filing effective November 29, 1990, and requests waiver of Commission's notice requirements in order for the Agreement to be accepted for filing on that date. NSP requests that the Agreement be accepted as a supplement to Rate Schedule FERC No. 453, the original rate schedule for service to Mountain Lake.

Comment date: September 22, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (19 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22280 Filed 9-14-92; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 9215]

Birch Creek Power Co.; Intention To Prepare an Environmental Impact Statement and Conduct Public Scoping Meetings

September 9, 1992.

The Federal Energy Regulatory Commission (FERC) has received an application for license for the construction of the Bear River Narrows hydropower project, FERC No. 9215. The hydropower project is located on the Bear River in Idaho.

The FERC staff has determined that licensing this project would constitute a major federal action significantly affecting the quality of the human environment. Therefore, the staff intends to prepare an environmental impact statement (EIS) on the hydroelectric project in accordance with the National Environmental Policy Act. The Bureau of Land Management will be a cooperating agency in the preparation of the EIS.

The staff's EIS will objectively consider both site specific and cumulative environmental impacts of the project and reasonable alternatives, and will include an economic, financial and engineering analysis.

A draft EIS will be issued and circulated for review by all the interested parties. All comments filed on the draft EIS will be analyzed by the staff and considered in a final EIS. The staff's conclusions and recommendations will then be presented for the consideration of the Commission in reaching its final licensing decision.

Scoping Meetings

The FERC staff will conduct two scoping meetings. The evening scoping meeting is primarily for public input while the morning meeting will focus on resource agency concerns. All interested individuals, organizations, and agencies are invited to attend and assist the staff in identifying the scope of environmental issues that should be analyzed in the EIS.

To help focus discussions, a preliminary EIS scoping document outlining subject areas to be addressed at the meeting will be distributed by mail to parties on the FERC service list. Copies of the preliminary scoping document will also be available at the scoping meetings.

Two scoping meetings will be conducted by staff and will be held on Wednesday, September 30, 1992. The first will focus on resource agency concerns and will be held from 10 a.m. to 12 p.m., in Suite 172 of the Federal Courthouse, at 250 South 4th, Pocatello, Idaho. The second meeting will be from 7 p.m. to 10 p.m., at the Robinson Building, Franklin County Fairgrounds, Preston, Idaho. This meeting is primarily designed for public input.

Objectives

At the scoping meetings the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the planned EIS; (2) solicit from the meeting participants all available information, especially quantified data, on the resources at issue, and (3) encourage statements from experts and the public on issues that should be analyzed in the EIS, including points of view in opposition to, or in support of, the staff's preliminary views.

Procedures

The meetings will be recorded by a stenographer and all statements (oral and written) thereby become a part of the formal record of the Commission proceedings on the Bear River Narrows Project. Individuals presenting statements at the meetings will be asked to clearly identify themselves for the record.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist the staff in defining and clarifying the issues to be addressed in the EIS.

Participants at the public meetings are asked to keep oral comments to five minutes.

Persons choosing not to speak at the meetings, but who have views on the issues or information relevant to the issues, may submit written statements for inclusion in the public record. In addition, written scoping comments may be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, until October 31, 1992.

All correspondence should clearly show the following caption on the first page: Bear River Narrows Project, Idaho, Project No. 9215.

All those that are formally recognized by the Commission as intervenors in the Bear River Narrows Project proceeding are asked to refrain from engaging the staff or its contractor in discussions of the merits of the projects outside of any announced meetings.

Further, interested persons are reminded of the Commission's Rules of Practice and Procedure, requiring parties or interceders (as defined in 18 CFR 385.2010) filing documents with the Commission, to serve a copy of the document on each person whose name

is on the official service list for this proceeding. See 18 CFR 4.34(b).

For further information please contact Thomas Camp at (202) 210-2832.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22283 Filed 9-14-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-08754T Kansas-3]

State of Kansas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

September 8, 1992.

The notice that on August 28, 1992, the State Corporation Commission of the State of Kansas (Kansas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Mississippian Chat Formation underlying a portion of Kiowa County, Kansas qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area consists of following:

Township 28 South, Range 17 West

Sections 5-9: All
Sectons 16-18: All
Section 19: N/2
Section 20: N/2
Section 21: All

Towhship 28 South, Range 18 West

Section 1: E/2
Sections 12-13: All

The notice of determination also contains Kansas' findings that the referenced portion of the Mississippian Chat Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22180 Filed 9-14-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP92-585-000, et al.]

Transwestern Pipeline Company, et al.; Natural Gas Certificate Filings

September 8, 1992.

Take notice that the following filings have been made with the Commission:

1. Transwestern Pipeline Company

[Docket No. CP92-686-000]

Take notice that on September 1, 1992, Transwestern Pipeline Company (Transwestern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP92-686-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon an exchange of natural gas with Williams Natural Gas Company (WNG), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transwestern proposes to abandon the exchange of up to 75,000 Dt equivalent of gas per day with WNG, which was authorized by the Commission in Docket No. CP79-326 and carried out pursuant to the provisions of an exchange agreement between WNG and Transwestern dated May 15, 1979. Transwestern states that in a letter dated May 15, 1990, WNG informed Transwestern of its intention to terminate the exchange. It is asserted that the proposal involves no abandonment of facilities. It is stated that the abandonment would not cause any adverse impact on Transwestern's customers. It is explained that no gas has flowed under the agreement since 1984 and that no imbalance exists.

Comment date: September 29, 1992, in accordance with Standard Paragraph F at the end of this notice.

2. Panhandle Eastern Pipe Line Company

[Docket No. CP92-677-000]

Take notice that on August 28, 1992, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP92-677-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon the sale of natural gas to the City of Pittsfield, Illinois (Pittsfield), and the Town of Pittsboro, Indiana (Pittsboro), existing jurisdictional sales customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle proposes to abandon the firm sales service to Pittsfield under Rate Schedule SSS-2 and to Pittsboro under Rate Schedule SSS-1. It is stated that the customers have elected to terminate the sales services and to replace them with firm transportation services under Panhandle's Rate Schedule SCT. It is asserted that Pittsfield has requested an effective date for the termination and replacement of August 1, 1992, and that Pittsboro has requested an effective date for the termination and replacement of September 1, 1992. Panhandle requests that the abandonment authority be conditioned so that the residual take-or-pay costs and other costs attributable to the services for Pittsfield and Pittsboro are recovered. It is stated that no abandonment of facilities is associated with the proposal.

Comment date: September 29, 1992, in accordance with Standard Paragraph F at the end of this notice.

3. Northern Natural Gas Company

[Docket No. CP92-690-000]

Take notice that on September 3, 1992, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124-1000, filed in Docket No. CP92-690-000 a request pursuant to § 157.205 of the Commission's Regulations under Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a new delivery point to accommodate deliveries of natural gas to Northern States Power Company of Wisconsin (NSPW), under Northern's blanket certificate issued in Docket No. CP82-401-000 pursuant to section 7 of the Natural Gas Act, all as more fully described in the request which is on file with the Commission and open to public inspection.

Northern proposes to install and operate the new delivery point and appurtenant facilities for the redelivery of natural gas by NSPW to the community of Shelby, Wisconsin, in response to a request from NSPW. It is stated that NSPW has requested the additional delivery point as a result of expansion of its distribution system into new areas. It is stated that the gas would be used for residential, commercial and industrial end uses. Northern proposes to install the delivery point to accommodate deliveries to NSPW under its FT-1 and IT-1 rate schedules. It is asserted that the volumes delivered at the proposed delivery point would total 270 Mcf on a peak day, 68 Mcf on a average day, and 24,703 Mcf on an annual basis. It is estimated that the cost of installing the facilities would be $40,000, for which Northern would be reimbursed by NSPW.

Comment date: October 23, 1992, in accordance with Standard Paragraph G at the end of this notice.

4. Long Island Lighting Company

[Docket No. CP92-680-000]

Take notice that on August 31, 1992, Long Island Lighting Company (LILCO) of 175 East Old Country Road,

Hicksville, New York 11801, filed an application under section 7 of the Natural Gas Act and §§ 157.23 and 284.224 of the Commission's Regulations (Regulations) for a blanket certificate of public convenience and necessity.

LILCO requests authority: (1) To make sales in interstate commerce for resale of natural gas subject to the Commission's NGA jurisdiction without rate and source restrictions and (2) to sell, transport, and assign gas pursuant to § 284.224 of the Regulations upon the same terms and conditions as apply to intrastate pipelines. LILCO requests pregranted authority to abandon sales made pursuant to the first authorization, waiver of parts 154 and 271 of the Regulations and assurance that the requested authorizations will not impair LILCO's NGA section 1(c) exemption from the Commission's jurisdiction with respect to activities other than those conducted pursuant to the requested authorizations, all as more fully set forth in the application.

Comment date: September 24, 1992, in accordance with Standard Paragraph J at the end of this notice.

5. Williams Natural Gas Company

[Docket No. CP92-692-000]

Take notice that on September 3, 1992, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP92-692-000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon the transportation of natural gas for direct sale to OXY USA, Inc. (OXY), at three locations and to reclaim measuring, regulating and appurtenant facilities necessary to make the sales, under WNG's blanket certificate issued in Docket No. CP82-479-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

WNG has included in its application a letter dated March 20, 1992, whereby OXY advised that it no longer uses any gas served from WNG's gas sales meters located on the subject leases. WNG explains that OXY has switched from gas service to electrical power. WNG states that the subject gas sales meters are located on the Enyart lease, the Shumway lease, and the Augusta treater lease, all in Butler County, Kansas. WNG further states that the facilities were originally installed under authorization issued in Docket No. G-298 (4 FPC 471) and Docket No. CP73-94 (50 FPC 3). WNG estimates that the reclaim cost would be approximately $3,150 and there would be no salvage value.

Comment date: October 23, 1992, in accordance with Standard Paragraph G at the end of this notice.

6. Northern Natural Gas Company

[Docket No. CP92-689-000]

Take notice that on September 3, 1992, Northern Natural Gas Company (Northern), 1111 South 103d Street, Omaha, Nebraska 68124-1000, filed in Docket No. CP92-689-000, a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authority to install and operate a new delivery point to accommodate natural gas deliveries to Northern States Power Company of Wisconsin (NSP) for the redelivery of natural gas to the community of Saxton, Wisconsin, under Northern's blanket certificate issued in Docket No. CP82-401-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern states that NSP has requested installation of this new delivery point due to the expansion of their distribution system into new areas. It is asserted that the proposed volumes to be delivered to the proposed delivery point would be 81 Mcf of natural gas on a peak day and 8,300 Mcf of natural gas on an annual basis. It is stated that NSP will reimburse Northern for $25,500 of the costs to install the proposed delivery point.

Comment date: October 23, 1992, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Standard Paragraph

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22282 Filed 9-14-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-08951T Wyoming-36]

State of Wyoming; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

September 8, 1992.

Take notice that on August 31, 1992, the Wyoming Oil and Gas Conservation Commission (Wyoming) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Baxter Formation underlying a portion of Lincoln and Sublette Counties, Wyoming, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The notice covers approximately 16,600 acres of Federal, Fee and State lands more particularly described on the attached appendix.

The notice of determination also contains Wyoming's findings that the referenced portion of the Baxter Formation meets the requirements of the Commission's regulations set forth in 18 CFR Part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

Appendix

State of Wyoming, Wyoming-36, JD92-08951

The area of application covers approximately 16,600 acres in Lincoln and Sublette Counties, Wyoming of which 63% are Federal, 28% are Fee and 9% are State lands.

Sublette County

Township 27 North, Range 112 West

Section 29: All
Section 32: All

Lincoln County

Township 26 North, Range 112 West

Section 5: All
Section 6: All
Sections 17-18: All

Township 26 North, Range 113 West

Sections 13-15: All
Sections 21-22: All
Sections 27-29: All
Sections 32-34: All

Township 25 North, Range 113 West

Sections 3-5: All
Sections 8-10: All
Sections 15-17: All

[FR Doc. 92-22181 Filed 9-14-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-15-000]

Equitrans, Inc.; Notice of Conference

September 8, 1992.

Take notice that on September 18, 1992, a conference will be convened in the above-captioned docket to discuss Equitrans, Inc.'s summary of its proposed plan for implementation of Order No. 636.

The conference will be held in a hearing or conference room of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. The conference will begin at 10 a.m. All interested persons are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested persons can call Betsy Carr at (202) 208-1240 or Leonard Burton at (202) 208-2085.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22183 Filed 9-14-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-177-000]

Northern Border Pipeline Co.; Notice of Informal Settlement Conference

September 8, 1992.

Take notice that an informal settlement conference will be convened in this proceeding on September 24, 1992, at 2 p.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the issues in this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Donald Williams at (202) 208-0743.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22182 Filed 9-14-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP92-47-000, CP90-1874-000 and RP92-95-000]

U-T Offshore System Informal Settlement Conference

September 8, 1992.

Take notice that an informal settlement conference will be convened in this proceeding on September 16, 1992, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214) (1992).

For additional information, please contact Irene E. Szopo at (202) 208-1602, or Anja M. Clark at (202) 208-2034.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22184 Filed 9-14-92; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4205-4]

Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended by the Superfund Amendments and Reauthorization Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice and request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), notice is hereby given that a proposed administrative cost recovery settlement concerning the Bluff Electric Works, Inc. (BEW) Superfund site (the Site) in Poplar Bluff, Missouri was issued by the EPA on June 1, 1992. The settlement resolves an EPA claim under Section 107 of CERCLA against members of the BEW PRP Group signing the agreement (The Settling Parties). The settlement requires the Settling Parties to pay response costs in the amount of

approximately $125,000.00 to the Hazardous Substances Superfund.

For thirty (30) days following the date of the publication of this Notice, the Agency will accept written comments relating to the settlement. The Agency's response to any comments received will be available for public inspection at the EPA Region VII Office, located at 726 Minnesota Avenue in Kansas City, Kansas 66101, 913 551-7000, and at the local repository for site information located in the Poplar Bluff Public Library, 318 Main Street, Poplar Bluff, Missouri 63901, 314 686-8639.

DATES: Comments must be submitted on or before October 15, 1992.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection during weekday business hours at the EPA Region VII office at 726 Minnesota Avenue in Kansas City Kansas 66101. A copy of the proposed settlement may be obtained from Vanessa Cobbs, Regional Docket Clerk, EPA Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, telephone number 913 551-7477.

Comments on the proposed settlement should reference the Bluff Electric Works Superfund Site, Poplar Bluff, Missouri and EPA Docket No. VII-92-F-0015, and should be addressed to Ms. Cobbs at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Anne Rowland, Assistant Regional Counsel, EPA Region VII, Office of Regional Counsel, 726 Minnesota Avenue, Kansas City, Kansas 66101, telephone: 913 551-7279.

Dated: August 3, 1992.

David A. Wagoner,

Director, Waste Management Division, U.S. EPA Region VII.

[FR Doc. 92-22250 Filed 9-14-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4205-5]

Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended by the Superfund Amendments and Reauthorization Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice and request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), notice is hereby given that a proposed administrative cost recovery settlement concerning the Resource Services, Inc. Superfund site (the Site) in Springfield, Missouri was issued by the EPA on July 7, 1992. The settlement resolves an EPA claim under Section 107 of CERCLA against Colonial Commercial, Inc. of Pompano Beach, Florida for the liability of its wholly owned subsidiary, Big Smith, Inc., of Springfield, Missouri, (The Settling Party). The settlement requires the Settling Party to pay response costs in the amount of approximately $150.00 to the Hazardous Substances Superfund.

For thirty (30) days following the date of the publication of this Notice, the Agency will accept written comments relating to the settlement. The Agency's response to any comments received will be available for public inspection at the EPA Region VII Office, located at 726 Minnesota Avenue in Kansas City, Kansas 66101, and at the local repository for site information, The City Clerk, City of Springfield, 830 Booneville, Springfield, Missouri, 65802.

DATES: Comments must be submitted on or before October 15.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection during weekday business hours at the EPA Region VII office at 726 Minnesota Avenue in Kansas City, Kansas 66101. A copy of the proposed settlement may be obtained from Venessa Cobbs, Regional Docket Clerk, EPA Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, telephone number 913-551-7630.

Comments on the proposed settlement should reference the Resource Services Superfund Site, Springfield Missouri and EPA Docket No. VII-92-F-0018, and should be addressed to Ms. Cobbs at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Anne Rowland, Assistant Regional Counsel, EPA Region VII, Office of Regional Counsel, 726 Minnesota Avenue, Kansas City, Kansas 66101, telephone: 913-551-7279.

Dated: August 3, 1992.

David A. Wagoner,

Director, Waste Management Division, U.S. EPA Region VII.

[FR Doc. 92-22251 Filed 9-14-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4204-6]

National Pollutant Discharge Elimination System (NPDES); Draft General Permits for Non-Contact Cooling Water in the States of Maine, Massachusetts, and New Hampshire

AGENCY: Environmental Protection Agency.

ACTION: Notice of draft general NPDES permits.

SUMMARY: The Regional Administrator of Region I is providing Notice of a Draft General NPDES Permit for non-contact cooling water in certain waters of the States of Maine, Massachusetts, and New Hampshire. These draft general NPDES Permits propose effluent limitations, standards, prohibitions and management practices for these types of discharges (appendix A contains the Draft General NPDES Permits and appendix B is the Draft General Conditions applicable to all three general permits). The permit is to be effective 30 days after the date of publication in the **Federal Register** of the final general permit or upon notification by EPA that the operator is covered by this permit, whichever is later, and will expire in 5 years from the date of signature. Owners and/or operators of facilities discharging non-contact cooling water will be required to submit to EPA, Region I, a notice of intent to be covered by the appropriate general permit and will receive a written notification from EPA of permit coverage and authorization to discharge under one of the general permits.

DATES: Interested persons may submit comments on the draft general permits until no later than November 16, 1992.

ADDRESSES: Comments may be submitted to: Sharon M. Leitch, U.S. EPA, Region 1, Wastewater Management Branch, Water Management Branch, WMN, John F. Kennedy Federal Building, Boston, Massachusetts 02202. The draft permits are based on an administrative record available for public review which are available at this location between the hours of 9 a.m. and 4 p.m., Monday through Friday excluding holidays. Copies of the NPDES draft permits and additional information concerning the draft permits may also be obtained at this location.

FOR FURTHER INFORMATION CONTACT: Sharon M. Leitch at (617) 565-3588.

SUPPLEMENTARY INFORMATION:

FACT SHEET AND SUPPLEMENTARY INFORMATION

I. Background Information

A. General Permits

Section 301(a) of the Clean Water Act (the Act) provides that the discharge of pollutants is unlawful except in accordance with a National Pollutant Discharge Elimination System (NPDES) permit. Although such permits to date have generally been issued to individual discharges, EPA's regulations authorize the issuance of "general permits" to categories of discharges. See 40 CFR 122.28 (48 FR 14146, April 1, 1983). EPA may issue a single, general permit to a category of point sources located within the same geographic area whose permits warrant similar pollutant control measures.

The Director of an NPDES permit program is authorized to issue a general permit if there are a number of point sources operating in a geographic area that:

1. Involve the same or substantially similar types of operations;
2. Discharge the same types of wastes;
3. Require the same effluent limitations or operating conditions;
4. Require the same or similar monitoring requirements; and
5. In the opinion of the Regional Administrator, are more appropriately controlled under a general permit than under individual permits.

Violations of a condition of a general permit constitutes a violation of the Clean Water Act and subjects the discharger to the penalties in section 309 of the Act.

Any owner or operator authorized by a general permit may be excluded from coverage of a general permit by applying for an individual permit. This request may be made by submitting a NPDES permit application together with reasons supporting the request no later than 90 days after publication by EPA of the final general permit in the **Federal Register**. The Director may require any person authorized by a general permit to apply for and obtain an individual permit. Any interested person may petition the Director to take this action. However, individual permits will not be issued for sources discharging non-contact cooling water covered by these general permits unless it can be clearly demonstrated that inclusion under the general permit is inappropriate. The Director may consider the issuance of individual permits when:

1. The discharge(s) is a significant contributor of pollution;
2. The discharge(s) is not in compliance with the terms and conditions of the general permit;
3. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;
4. Effluent limitations guidelines are subsequently promulgated for the point sources covered by the general permit;
5. A Water Quality Management plan containing requirements applicable to such point sources is approved; or
6. The requirements listed in the previous paragraphs are not met.

B. Non-Contact Cooling Water

Description of Discharges

The proposed general permits are for:

1. Massachusetts operators of any facilities with cooling water discharges.
2. Maine operators of industrial facilities with cooling water discharges.
3. New Hampshire operators of any industrial facilities with cooling water discharges.

Non-contact cooling water is water used to reduce temperature which does not come into direct contact with any raw material, intermediate product, waste product (other than heat) or finished product. Non-contact cooling water discharges are similar in composition event though they are not generated by a single industrial category or point source.

The similarity of the discharges has prompted EPA to prepare this draft general permit for public review and comment. When issued, this permit will enable facilities to maintain compliance with the Act and will extend environmental and regulatory controls to a large number of discharges and reduce some permit backlog. The issuance of this general permit for the geographic areas described below is warranted by the similarity of (a) environmental conditions, (b) State regulatory requirements applicable to the discharges and receiving waters, and (c) technology employed.

Maine

In the State of Maine, there are 271 industrial applicants or permittees. It is estimated that 12 of the industries that have direct discharges to the waters of the State are strictly non-contact cooling water.

New Hampshire

In the State of New Hampshire, there are 178 industrial applications or permittees. It is estimated that 23 of the industries that have the direct discharges to the waters of the State are strictly non-contact cooling water.

Massachusetts

In the Commonwealth of Massachusetts, there are 651 industrial applicants or permittees. It is estimated that 129 of the industries that have direct discharges to the waters of the State are strictly non-contact cooling water.

II. Conditions of the Draft General NPDES Permit

A. Geographic Areas

Maine (permit No. MEG250000). All of the discharges to be authorized by the general NPDES permit for the State of Maine from dischargers are into all waters of the State, except lakes.

Massachusetts (Permit No. MAG250000). All of the discharges to be authorized by the general NPDES permit for the Commonwealth of Massachusetts dischargers are into all waters in Water Quality Classifications B and C as designated in Massachusetts Water Quality Standards, 314 CMR 4.00 *et seq.*

New Hampshire (Permit No. NHG250000). All of the discharges to be authorized by the general NPDES permit for the State of New Hampshire dischargers are into all waters of the State of New Hampshire unless otherwise restricted by the State Water Quality Standards, New Hampshire RSA 484–A:8.

B. Notification by Permittees

Operators of facilities whose discharge, or discharges, are non-contact cooling water and whose facilities are located in the geographic areas described in Part II A above may submit to the Regional Administrator, Region I, a notice of intent to be covered by the appropriate general permit. This written notification must include the owner's or operator's legal name and address, the number and type of facilities to be covered, the facility locations, the names of the receiving waters into which discharge will occur and in the State of Maine, only, a special list of chemicals must be included. The facilities authorized to discharge under a final general permit will receive written notification from EPA, Region I, within 30 days of permit coverage. Failure to submit to EPA, Region I, a notice of intent to be covered or failure to receive from EPA written notification of permit coverage means that the facility is not authorized to discharge.

C. Effluent Limitations

1. Statutory Requirements

The Clean Water Act requires all dischargers to meet effluent limitations

based on the technological capability of dischargers to control the discharge of the pollutants. Section 301(b)(1)(A) requires the application of "Best Practicable Control Technology Currently Available" (BPT). Section 301(b)(2)(A), (C), (D), and (F) requires the application of "Best Available Technology Economically Available" (BAT) by July 1, 1984, for all toxic pollutants referred to in Table 1 of Committee Print Numbered 95–30 of the Committee on Public Works and Transportation of the House of Representatives and not later than three years after the date any limitations are established for toxic pollutants listed under paragraph (1) of subsection (a) of section 307 of the Act which are not referred to in subparagraph (C) of section 301(b)(2). Section 301(b)(2)(A) and (F) requires "Best Available Treatment Technology Economically Achievable" (BAT) for nonconventional pollution by July 1, 1984, and section 301(b)(2)(E) requires the application of the Best Conventional Pollutant Control Technology (BCT) for conventional pollutants by July 1, 1984. The effluent limitations in the general permit are consistent with these statutory requirements.

2. Technology-based Effluent Limitations

EPA has not promulgated National Effluent Guidelines for non-contact cooling water discharges. For a category where Guidelines have been promulgated, such as steam electric generating stations, the issuance of an individual permit for the discharges would be more appropriate. Therefore, as provided in section 402(a)(1) of the Act, EPA has determined to issue this general permit utilizing best professional judgement to meet the above stated criteria for BAT described in section 304(b) of the Act.

The pH has been defined as a conventional pollutant. A review of the BCT regulations reveals the test cost is inappropriate because: (1) The pH is not adjusted as nothing but heat is added to the discharge and no chemical addition or treatment is provided, and (2) pH, even though it is a conventional pollutant, is not measured in pounds as the other conventional pollutants. The permits do not allow the addition of any toxics or oil and grease. Since these are not permitted, there are no BAT limits that must be provided.

3. Water Quality Standards

Non-contact cooling water discharges do not contain or come in contact with raw materials, intermediate products, finished products, or process wastes. They do not contain toxic or hazardous pollutants or oil and grease. Therefore, water quality criteria established for toxic or hazardous pollutants do not apply to these discharges. Water Quality Standards applicable to these discharges are limited to pH and temperature. EPA has reviewed the Water Quality Standards for pH and temperature of each of the affected states and incorporated the appropriate effluent limitations into each permit.

4. Monitoring and Reporting Requirements

Effluent limitations and monitoring requirements are included in the general permit describing requirements to be imposed on facilities to be covered.

Facilities covered by the final general permits will be required to submit to EPA, Region I, and the appropriate State a Discharge Monitoring Report containing effluent data on a semi-annual basis.

The monitoring requirements have been established to yield data representative of the discharge under authority of section 308(a) of the Act and 40 CFR 122.41(j), 122.44(i) and 122.48, and as certified by the State. The monitoring frequency is dependent upon the flow rates.

III. Other Requirements

The remaining conditions of the permit are based on the NPDES regulations 40 CFR parts 122 through 125 and consist primarily of management requirements common to all permits.

IV. State Certification

Section 301(b)(1)(C) of the Act requires that NPDES permits contain conditions which ensure compliance with applicable State water quality standards or limitations. Section 401 requires that States certify that Federally issued permits are in compliance with State law.

These permits are for operations within waters of the States. EPA is requesting the States to review and provide appropriate certification to these general permits pursuant to 40 CFR 124.53.

V. Administrative Aspects

A. Request to be Covered

A facility is not covered by any of these general permits until it meets two requirements. First, it must send a letter of intent to EPA indicating it meets the requirements of the permit and wants to covered. And second, it must be notified by EPA that it is covered by a general permit. If it has an existing individual NPDES permit, it will be terminated as outlined in 40 CFR § 122.28(b)(2)(iv).

B. Mechanisms

All persons, including dischargers who believe any condition of the draft permit is inappropriate must raise all issues and submit all available arguments and supporting material for their arguments in full by the close of the public comment period, to the U.S. EPA, Wastewater Management Branch, WMN, JFK Federal Building, Boston, Massachusetts, 02203. Any person, prior to such date, may submit a request in writing for a public hearing to consider the draft permit to EPA and the State Agency. Such requests shall state the nature of the issues proposed to be raised in the hearing. A public hearing may be held after at least a 30-day public notice whenever the Regional Administrator finds that response to this notice indicates significant interest. In reaching a final decision on the draft permits, the Regional Administrator will respond to all significant comments and make these responses available to the public at EPA's Boston office.

Following the close of the comment period, and after the public hearing, if such hearing is held, the Regional Administrator will issue a final permit in the **Federal Register**.

C. The Coastal Zone Management Act

The Coastal Zone Management Act (CZMA), 16 U.S.C. 1451 *et seq.*, and its implementing regulations (15 CFR part 930) require that any federally licensed activity affecting the coastal zone with an approved Coastal Zone Management Program (CZMP) be determined to be consistent with the CZMP. EPA, Region I, has determined that these general NPDES permits are consistent with the CZMP. EPA has requested the Massachusetts, Maine, and New Hampshire coastal zone agencies for a determination that these three permits are consistent with their respective State policies.

D. The Endangered Species Act

EPA Region I has concluded that the discharges to be covered by the general NPDES permits will not affect or jeopardize the continued existence of any endangered or threatened species or adversely affect its critical habitat. EPA has requested consultations with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service to confirm this conclusion.

E. Environmental Impact Statement Requirements

The general permits do not authorize the construction of any water resources project or the impoundment of any water body or have any effect on historical property, and are not major Federal activities needing preparation of any Environmental Impact Statement. Therefore, the Wild and Scenic Rivers Act, 16 U.S.C. 1273 *et seq.*, the National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*, the Fish and Wildlife Coordination Act, 16 U.S.C. 611 *et seq.*, and the National Environmental Policy Act, 33 U.S.C. 321 *et seq.*, do not apply to the issuance of these general NPDES permits.

VI. Other Legal Requirements

A. Economic Impact (Executive Order 12291)

EPA has reviewed the effect of Executive Order 12291 on this draft general permit and has determined that it is not a major rule under that order. This regulation was submitted previously to the Office of Management and Budget for review as required by Executive Order 12291. The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12291 pursuant to section 8(b) of that Order.

B. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities by these draft general NPDES permits under the Paperwork Reduction Act of 1980, 44 U.S.C. §§ 3501 *et. seq.* The information collection requirements of these draft permits have already been approved by the Office of Management and Budget under submissions made for the NPDES permit program under the provisions of the Clean Water Act. No comments from the Office of Management and Budget or the Public were received on the information collection requirements in these permits.

C. The Regulatory Flexibility Act

After review of the facts presented in the notice printed above, I hereby certify, pursuant to the provisions of 5 U.S.C. 605(b), that these permits do not have a significant impact on a substantial number of small entities. Moreover, the draft permits will reduce a significant administrative burden on regulated sources.

Dated: August 31, 1992.

Julie Belaga,

Regional Administrator.

Appendix A—Draft General Permits

Proposed Draft General Permits Under the National Pollutant Discharge Elimination System (NPDES)

Note: The following three draft general NPDES permits have been combined for purposes of this **Federal Register** notice in order to eliminate duplication of material common to all permits for the individual states.

1. Massachusetts Draft General Permit

In compliance with the provisions of the Federal Clean Water Act, as amended, (33 U.S.C. 1251 *et seq.*; the "CWA"), operators of facilities located in Massachusetts, which discharge solely non-contact cooling water, as defined in Part II, at a rate of one million gallons per day or less to Class B and C waters as designated in the Massachusetts Water Quality Standards, 314 CMR 4.00 et seq.; are authorized to discharge to all Class B and C waters in accordance with effluent limitations, monitoring requirements and other conditions set forth herein.

This permit shall become effective on the date of the signature below.

This permit and the authorization to discharge expire at midnight, five years from date of issuance.

This permit consists of 6 pages in Part I including effluent limitations, monitoring requirements, etc. and 18 pages in Part II including General Conditions and Definitions.

Operators of facilities within the general permit area who fail to notify the Director of their intent to be covered by this general permit and receive written notification of permit coverage, or those who are denied by the Director are not authorized under this general permit to discharge from those facilities to the receiving waters or areas named.

Signed this ____ day of ____

David A. Fierra,

Director, Water Management Division, Environmental Protection Agency, Region I, Boston, Massachusetts 02203.

Part I

A. Effluent Limitations and Monitoring Requirements

1. During the period beginning effective date and lasting through expiration, the permittee is authorized to discharge from each outfall of non-contact cooling water to a drainage basin classified as a warm or cold water fishery as designated below.

a. Such discharges shall be limited and monitored by the permittee as specified below:

Effluent characteristic	Discharge limitations; Other Units (Specify)		Monitoring requirements	
	Avg. monthly	Max. daily	Measurement frequency	Sample type
Flow		1.0 MGD	quarterly	daily average.
Temperature (warm water fishery) [1]		83°F (28.3°C)	quarterly	4 grabs, reporting max. and avg.
(cold water fishery) [1]		68°F (20°C)		
pH		(see Part I.A.1.g)	quarterly	4 grabs reporting maximum and minimum values.
LC_{50} & C-NOEC, & (see Part I.A.1.h)		Report Only	(Part I.A.1.h)	1 grab

[1] The designation of cold or warm water fisheries shall be that provided in the Massachusetts Water Quality Standards, 314 CMR 4.05(4) and 4.05(5), Tables 1-27.

b. The discharge shall not cause or contribute to a rise in temperature of the receiving waters resulting from artificial origin of greater than 4°F (2.2°C).

c. This permit does not allow for the addition of any biocide or chemical for any purpose to the effluent.

d. There shall be no discharge of floating solids or visible foam in other than trace amounts.

e. The effluent limitations are based on the state water quality standards and are certified by the State.

f. Samples taken in compliance with the monitoring requirements specified above shall be taken at the point of discharge.

g. The pH of the effluent shall not be less than nor greater than the range given for the receiving water classifications, unless these values are exceeded due to natural causes.

Classification	Range
B	6.5–8.0
C	6.5–9.0

h. One chronic Toxicity Screening Test shall be performed by the permittee within 90 days after the issuance date of his general NPDES permit on the cooling water discharge. One grab sample will be taken during normal facility operation. The *Ceriodaphnia dubia* shall be used as the test organism in the test procedure and protocol detailed in Attachment A (Attachment A is standard EPA toxicity protocol. A copy will be provided upon request from EPA, Region I). A portion of the grab sample will be analyzed for: total copper, total lead, total zinc and total residual chlorine. The results of the chronic biological test (C–NOEC and LC_{50}) and chemical analysis tests will be forwarded to State and EPA within 30 days after the completion of all the tests.

The test method shall follow those recommended by EPA: Weber, C.I. et al, 1989, *Short Term Methods for Estimating the Chronic and Acute Toxicity of Effluents and Receiving Water to Freshwater Organisms.* 2nd Edition. Office of Research and Development, Cincinnati, OH, EPA–600/4–89–001.

8. Maine Draft General Permit

In compliance with the provisions of the Federal Clean Water Act, as amended, (33 U.S.C. 1251 et seq.; the "CWA"), operators of industrial facilities discharging solely non-contact cooling water, as defined in Part II, located in Maine are authorized to discharge to all waters in accordance with effluent limitations, monitoring requirements and other conditions set forth herein. No discharge into lakes is authorized by this permit.

This permit shall become effective on the date of the signature below.

This permit and the authorization to discharge expire at midnight, five years from date of issuance.

This permit consists of 7 pages in Part I including effluent limitations, monitoring requirements, etc. and 18 pages in Part II including General Conditions and Definitions.

Operators of facilities within the general permit area who fail to notify the Director of their intent to be covered by this general permit and receive written notification of permit coverage, or those who are denied coverage by the Director are not authorized under this general permit to discharge from those facilities to the receiving waters or areas named.

Signed this ____ day of ____

David A. Fierra,

Director, Water Management Division, Environmental Protection Agency, Region I, Boston, Massachusetts 02203.

Part I

A. Effluent Limitations and Monitoring Requirements

1. During the period beginning on the effective date and lasting expiration, the permittee is authorized to discharge from each outfall of non-contact cooling water (as defined in Paragraph I.A.1.f. below) into fresh and marine water.

a. Such discharges shall be limited and monitored by the permittee as specified below:

Effluent characteristic	Discharge limitations; other units (specify)		Monitoring requirements	
	Avg. monthly	Max. daily	Measurement frequency	Sample type
Flow (see I.A.1.g.) [1]		See Figure 1	Monthly	Daily Average.
Temperature (see I.A.1.g.) [1]		See Figure 1	Monthly	4 grabs, reporting max., and avg.
Total Residual Chlorine (see I.A.1.j.)		Report	Quarterly	Grab.

[1] Non-contact cooling water may be discharged only into Class B, C, SB, and SC waters that have a drainage area larger than ten (10) square miles in accordance with Maine State Law. See Paragraph I.A.1.g. for details for determining if the specific discharge(s) have acceptable dilution and can be covered by the General Permit Program.

b. The pH shall not be less than 6.0 standard units nor greater than 8.5 standard units and shall be monitored monthly with 4 grabs, reporting maximum and minimum values (see I.A.1.i. below).

c. There shall be no discharge of floating solids or visible foam in other than trace amounts.

d. The effluent limitations are based on the state water quality standards and certified by the State.

e. Samples taken in compliance with the monitoring requirements specified above shall be taken at the point of discharge.

f. Definitions:

Non-contact cooling water is water used to reduce temperature which does not come into direct contact with any raw material, intermediate product, waste product or finished product.

Non-toxic water treatment additives are chemicals used in cooling water system primarily to control corrosion or prevent deposition of scale forming materials which do not exhibit any residual toxic effect on the receiving waters.

g. Discharge Temperature and Volume.

The temperature and volume of the discharge shall not exceed 120 °F and 3.0 millions gallons per day (MGD). The acceptability of the total or combined non-contact cooling waters from each facility must be determined using the graph on Figure 1. The intersection of the maximum effluent temperature and the dilution ratio shall be in the "acceptable" range shown on Figure 1, titled "Effluent Temperature/Dilution Graph" for coverage by the General Permit Program. If the intersection falls within the "non-acceptable" area, the facility must be covered by the individual NPDES Permit, not the General Permit Program.

The effluent temperature is the maximum daily temperature. The dilution factor is the sum of the 7Q10 low stream flow at the facility site and the daily maximum effluent flow divided by the daily maximum effluent flow. For facilities with multiple outfalls, the daily maximum effluent flow shall be the sum of the flow from all outfalls.

h. Water Treatment Additives

Non-toxic water treatment additives are allowed in non-contact cooling water systems. The State of Maine will review each identified chemical to determine its acceptability. Additives used to control biological growth in such cooling systems are prohibited due to their inherent toxicity to aquatic life.

Residual chlorine discharges resulting from the use of potable water supplies will be exempt from this provision.

The following water treatment additive biological and chemical data must be supplied in the letter of intent to be covered by this general permit.

(1) Name and manufacture of each additive used,

(2) Maximum and average daily quantity of each additive used on a monthly basis, and

(3) The vendor's reported aquatic toxicity of additive (NOAEL and/or LC_{50} in % for typically acceptable aquatic test organisms)

All substitutions to the accepted water treatment chemicals must be approved by the State prior to their usage.

i. pH control

The pH of the effluent shall be between 6.0 to 8.5 standard units (s.u.) unless the sole cause of excursion below 6.0 s.u. is due to precipitation or the low pH of the influent water.

j. Total Residual Chlorine

Potable water supply sources used for cooling water supply shall not contain Total Residual Chlorine (TRC) at concentration levels that induce a toxic impact upon aquatic life within the receiving waters. The instream waste concentration of TRC based on the ratio of the effluent flow stream flow to the 7Q10 low flow of the stream shall be less than the appropriate water quality criteria for the receiving waterway.

BILLING CODE 6560-01-M

FIGURE I

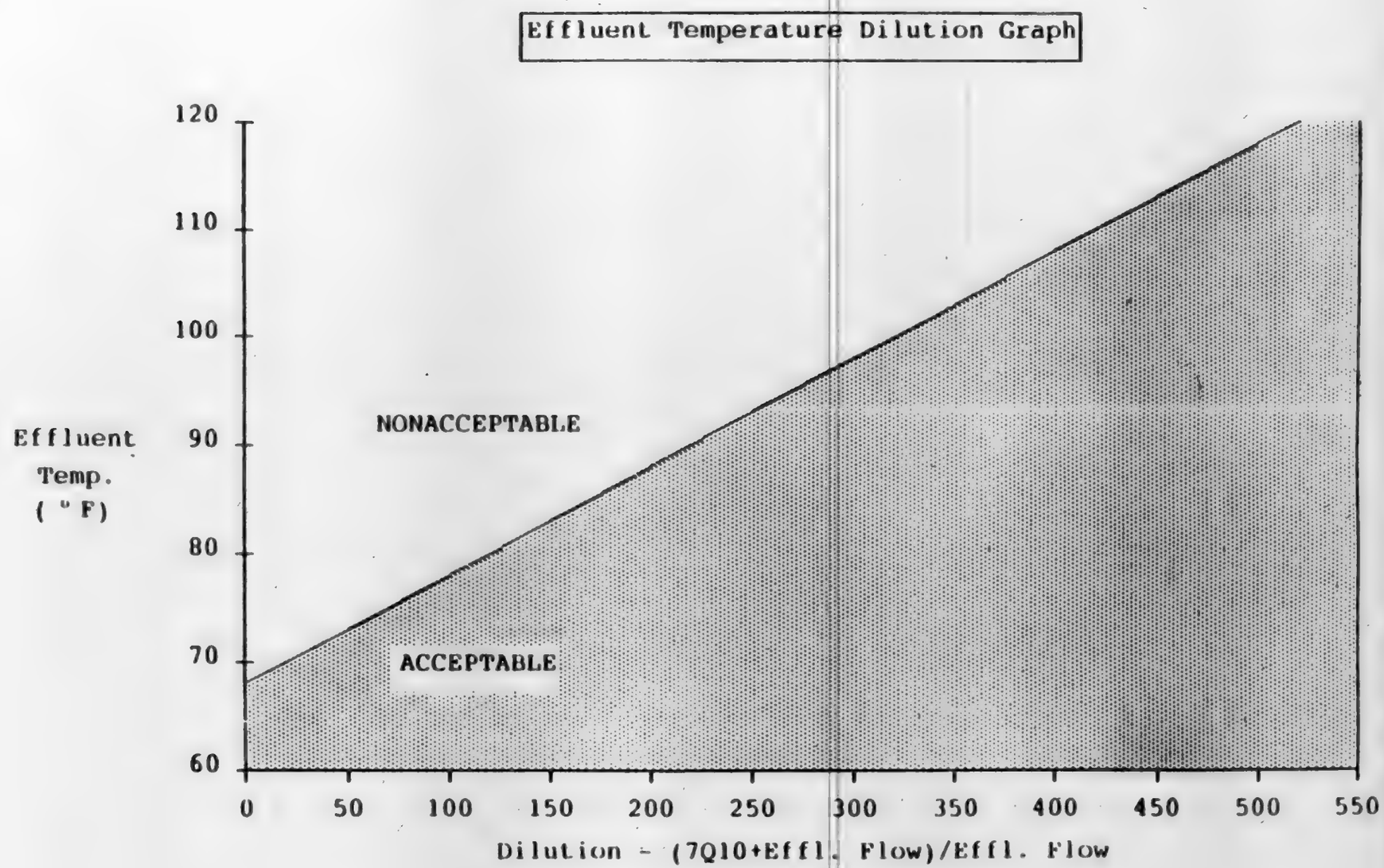
Effluent Temperature Dilution Graph
Effluent Temp. (°F)
120
110
100
90
80
70
60
NONACCEPTABLE
ACCEPTABLE
0
50
100
150
200
250
300
350
400
450
500
550
Dilution = (7Q10+Effl. Flow)/Effl. Flow

c. New Hampshire Draft General Permit

In compliance with the provisions of the Federal Clean Water Act, as amended, (33 U.S.C. 1251 et seq.; the "CWA"), operators of industrial facilities discharging solely non-contact cooling water, as defined in Part II, located in New Hampshire are authorized to discharge to all waters, unless otherwise restricted by State Water Quality Standards, New Hampshire RSA 485–A:8, in accordance with effluent limitations, monitoring requirements and other conditions set forth herein.

This permit shall become effective on the date of the signature below.

This permit and the authorization to discharge expire at midnight, five years from date of issuance.

This permit consists of 5 pages in Part I including effluent limitations, monitoring requirements, etc. and 18 pages in Part II including General Conditions and Definitions.

Operators of facilities within the general permit area who fail to notify the Director of their intent to be covered by this general permit and receive written notification of permit coverage, or those who are denied by the Director are not authorized under this general permit to discharge from those facilities to the receiving waters or areas named.

Signed this _____ day of _____

David A. Fierra,

Director, Water Management Division, Environmental Protection Agency, Region I, Boston, Massachusetts.

Part I

A. Effluent Limitations and Monitoring Requirements

1. During the period beginning on the effective date and lasting through expiration, the permittee is authorized to discharge from each outfall of non-contact cooling water into all rivers of the State, unless restricted by the New Hampshire Fish and Game Department and New Hampshire Water Supply and Pollution Control Division.

a. The discharge shall be limited and monitored as specified below:

Effluent characteristic	Discharge limitations		Monitoring requirements	
	Other units (specify)		Measurement frequency	Sample type
	Average monthly	Maximum daily		
Flow			Monthly	Daily average.
Temperature		68 °F (20 °C)	Monthly	4 grabs, reporting max., and avg.
pH	(see Part I.A.1.f)		Monthly	4 grabs, reporting.
LC_{50} & C-NOEC, percent	(see Part I.A.1.g)	Report only	(Part I.A.1.g)	1 grab max. and min. values.

b. This permit does not allow for the addition of any biocide or chemical for any purpose to the water.

c. There shall be no discharge of floating solids or visible foam in other than trace amounts.

d. The effluent limitations are based on the state water quality standards and are certified by the State.

e. Samples taken in compliance with the monitoring requirements specified above shall be taken at the point of discharge.

f. The pH of the effluent shall not be less than nor greater than the range given for the receiving water classifications, unless these values are exceeded due to natural causes.

Classification	Range
A	No discharges allowed.
B	6.5–8.0.
C	6.0–8.5.

g. One chronic toxicity Screening Test shall be performed by the permittee within 90 days after the issuance date of his general NPDES permit on the cooling water discharge. One grab sample will be taken during normal facility operation. The *Ceriodaphnia dubia* shall be used as the test organism in the test procedure and protocol detailed in Attachment A (Attachment A is standard EPA toxicity protocol. A copy will be provided upon request from EPA, Region I). A portion of the grab sample will be analyzed for: total copper, total lead, total zinc, and total residual chlorine. The results of the chronic biological test (NOEC & LC_{50}) and chemical analysis tests will be forwarded to State and EPA within 30 days after the completion of all the tests.

The test method shall follow those recommended by EPA: Weber, C. I., et al, 1989. Short Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Water to Freshwater Organisms. 2nd Edition. Office of Research and Development, Cincinnati, OH, EPA–600/4–89–001.

[Common Elements for all Permits]

B. Monitoring and Reporting

1. Reporting.

Maine and Massachusetts

Monitoring results obtained during the previous 6 months shall be summarized for each quarter and reported on separate Discharge Monitoring Report Form(s) postmarked no later than the 15th day of the month following the completed reporting period. The reports are due on the 15th days of January and July. The first report may include less than 6 months information.

New Hampshire

Monitoring results obtained during the previous month shall be summarized for each month and reported on separate Discharge Monitoring Report Forms(s) postmarked no later than the 15th day of the month following the completed reporting period. The reports are due on the 15th days of the month following the reporting period.

Signed copies of these, and all other reports required herein, shall be submitted to the Director and the State at the following addresses as follows:

a. EPA shall receive copy of all reports required herein: NPDES Program Operations Section, Water Compliance Branch Water Management Division, Environmental Protection Agency, Post Office Box 8127, Boston, MA 02114.

b. Massachusetts Division of Water Pollution Control.

(1) The Regional offices wherein the discharge occurs, shall receive a copy of all reports required herein:

Massachusetts Department of Environmental Protection, Massachusetts Division of Water Pollution Control, Western Regional Office, Post Office Box 2410, Springfield, MA 01101

Massachusetts Department of Environmental Protection, Massachusetts Division of Water Pollution Control, Southeastern Regional Office, Lakeville Hospital, Lakeville, MA 02346

Massachusetts Department of Environmental Protection, Massachusetts Division of Water Pollution Control, Northeastern Regional Office, 5 Commonwealth Avenue, Woburn, MA 01801

Massachusetts Department of Environmental Protection, Massachusetts Division of Water Pollution Control, Central Regional Office, 75 Grove Street, Worcester, Massachusetts 01605.

(2) The Central Boston Office shall receive all notifications reports other than the DMRs required by this permit shall be submitted to the States at: Massachusetts Department of Environmental Protection, Massachusetts Division of Water Pollution Control, Permits Section—7th Floor, 1 Winter Street, Boston, MA 02108.

c. Maine Department of Environmental Protection.

Signed copies of all reports required by this permit shall be sent to the State at: Maine Department of Environmental Protection, Operation and Maintenance Division, State House, Station 17, Augusta, ME 04333.

d. New Hampshire Department of Environmental Services.

Signed copies of all reports required by this permit shall be sent to the State at: New Hampshire Department of Environmental Services, Permits and Compliance Section, P.O. Box 95, Concord, New Hampshire 03302–0095.

C. Additional General Permit Conditions.

1. Notification Requirements

a. Written notification of commencement of operations, including the legal name and address of the owners and operator and the locations, number and type of facilities and/or operations covered shall be submitted.

(1) For existing discharges as soon as possible after the effective date of this permit, by operators whose facilities and/or operations are discharging into the general permit area on the effective date of the permit; or

(2) For new discharges 30 days prior to commencement of the discharge by operators whose facilities and/or operations commence discharge subsequent to the effective date of this permit.

b. Operators of facilities and/or operations within the general permit area who fail to notify the Director of their intent to be covered by this general permit and obtain written authorization of coverage are not authorized under this general permit to discharge from those facilities into the named receiving waters.

2. Termination of Operations

Operators of facilities and/or operations authorized under this permit shall notify the Director upon the termination of discharges.

3. Renotification

Upon reissuance of a new general permit, the permittee is required to notify the Director of his intent to be covered by the new general permit.

4. When the Director May Require Application for an Individual NPDES Permit

a. The Director may require any person authorized by this permit to apply for and obtain an individual NPDES permit. Any interested person may petition the Director to take such action. Instances where an individual permit may be required include the following:

(1) The discharge(s) is a significant contributor of pollution;

(2) The discharger is not in compliance with the conditions of this permit;

(3) A change has occurred in the availability of the demonstrated technology of practices for the control or abatement of pollutants applicable to the point source;

(4) Effluent limitation guidelines are promulgated for point sources covered by this permit;

(5) A Water Quality Management Plan containing requirements applicable to such point source is approved; or

(6) The point source(s) covered by this permit no longer:

(a) Involves the name or substantially similar types of operations;

(b) Discharges the same types of wastes;

(c) Requires the same effluent limitations or operating conditions;

(d) Requires the same or similar monitoring; and

(e) In the opinion of the Director, is more appropriately controlled under a general permit than under an individual NPDES permit.

b. The Director may require an individual permit only if the permittee authorized by the general permit has been notified in writing that an individual permit is required, and has been given a brief explanation of the reasons for this decision.

5. When an Individual NPDES Permit May Be Requested

a. Any operator may request to be excluded from the coverage of this general permit by applying for an individual permit.

b. When an individual NPDES permit is issued to an operator otherwise subject to this general permit, the applicability of this permit to that owner or operator is automatically terminated on the effective date of the individual permit.

Appendix B

Part II—General Requirements for all EPA, Region I, NPDES Permits (Individual and General)

Section A. General Requirements

1. *Duty to Comply* see 40 CFR 122.41(a).

2. *Permit Actions* see 40 CFR 122.41(f).

3. *Duty to Provide Information* see 40 CFR 122.41(h).

4. *Reopener Clause.*

The Regional Administrator reserves the right to make appropriate revisions to this permit in order to establish any appropriate effluent limitations, schedules of compliance, or other provisions which may be authorized under the CWA in order to bring all discharges into compliance with the CWA.

5. *Oil and Hazardous Substance Liability.*

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under section 311 of the CWA.

6. *Property Rights* see 40 CFR 122.41(g).

7. *Severability.*

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

8. *Confidentiality of Information.*

a. In accordance with 40 CFR part 2, any information submitted to EPA pursuant to these regulations may be claimed as confidential by the submitter.

Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, EPA may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in 40 CFR part 2 (Public Information).

b. Claims of confidentiality for the following information will be denied:

(i) The name and address of any permit applicant or permittee;

(ii) Permit applications and permits; and

(iii) NPDES effluent data.

c. Information required by NPDES application forms provided by the Director under 40 CFR 122.21 may not be claimed confidential. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

9. *Duty to Reapply* see 40 CFR 122.41(b).

10. *Right of Appeal.*

Within thirty (30) days of receipt of notice of a final permit decision, the permittee may submit a request to the Regional Administrator for an evidentiary hearing under subpart E, or a formal hearing under Subpart F, of 40 CFR part 124, to reconsider or contest that decision. The request for a hearing must conform to the requirements of 40 CFR 124.74.

11. *State Laws.*

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority preserved by section 510 of the CWA.

12. *Other Laws.*

The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, nor does it relieve the permittee of its obligation to comply with any other applicable Federal, State, and local laws and regulations.

Section B. Operation and Maintenance of Pollution Controls

1. *Proper Operation and Maintenance* see 40 CFR 122.41(e).

2. *Need to Halt or Reduce Not a Defense* see 40 CFR 122.41(c).

3. *Duty to Mitigate* see 40 CFR 122.41(d).

4. *Bypass* see 40 CFR 122.41(m).

5. *Upset* see 40 CFR 122.41(n).

6. *Removed Substances.*

Solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in a manner consistent with applicable Federal and State laws and regulations including, but not limited to the CWA and the Federal Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq.*, and regulations promulgated thereunder.

7. *Power Failures.*

In order to maintain compliance with the effluent limitations and prohibitions of this permit, the permittee shall either: "In accordance with the Schedule of Compliance contained in Part I, provide an alternative power source sufficient to operate the wastewater control facilities"; or, if such alternative power source is not in existence, and no date for its implementation appears in Part I: "Halt, reduce or otherwise control production and/or all discharges upon the reduction, loss, or failure of the primary source of power to the wastewater control facilities".

Section C. Monitoring and Records

1. *Monitoring and Records* see 40 CFR 122.41(j).

2. *Inspection and Entry* see 40 CFR 122.41(i).

Section D. Reporting Requirements

1. *Reporting Requirements* see 40 CFR 122.41(l).

2. *Change in Discharge.*

All discharges authorized herein shall be consistent with the terms and conditions of this permit. The discharge of any pollutant identified in this permit more frequently than or at a level in excess of that authorized shall constitute a violation of the permit. Any anticipated facility expansions, production increases, or process modifications which will result in new, different, or increased discharges of pollutants must be reported by submission with 180 days prior to commencement of such discharges: (1) for individual NPDES Permits—a new NPDES application for the new discharge conditions or (2) for General Permit—a new "Letter of Intent to be Covered" with the altered discharge conditions. If such changes will not violate the effluent limitations specified in the permit, the permittee shall by written notice identify such changes to the Director. Following such notice, the permit may be modified or revoked/reissued to specify and limit any pollutants not previously limited in the Individual or General Permits.

Until such modification is effective, any new or increased discharge in excess of permit limits or not specifically authorized by the permit constitutes a violation.

3. *Signatory Requirement* see 40 CFR 122.41(k).

4. *Availability of Reports.*

Except for data determined to be confidential under Paragraph II.A.8. above, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the State water pollution control agency and the Regional Administrator. As required by the CWA, effluent data shall not be considered confidential. Knowingly making any false statement on any such report may result in the imposition of criminal penalties as provided for in section 309 of the CWA.

Section E. Other Conditions

1. *Definitions* for purposes of this permit are as follows: *Administrator* means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

Applicable standards and limitations means all State, interstate, and Federal standards and limitations to which a "discharge" or a related activity is subject to, including water quality standards, standards of performance, toxic effluent standards or prohibitions, "best management practices," and pretreatment standards under sections 301, 302, 303, 304, 306, 307, 308, 403, and 405 of CWA.

Application means the EPA standard national forms for applying for a permit, including any additions, revisions or modifications to the forms; or forms approved by EPA for use in "approved States," including any approved modifications or revisions.

Average The arithmetic mean of values taken at the frequency required for each parameter over the specified period. For total and/or fecal coliforms, the average shall be the geometric mean.

Average monthly discharge limitation means the highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

Average weekly discharge limitation means the highest allowable average of "daily discharges" over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

Best Management Practices (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management

practices to prevent or reduce the pollution of "waters of the United States." BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Best Professional Judgement (BPJ) means a case-by-case determination of Best Practicable Treatment (BPT), Best Available Treatment (BAT) or other appropriate standard based on an evaluation of the available technology to achieve a particular pollutant reduction.

Composite Sample—A sample consisting of a minimum of eight grab samples collected at equal intervals during a 24-hour period (or lesser period as specified in the section on Monitoring and Reporting) and combined proportional to flow, or a sample continuously collected proportionally to flow over that same time period.

CWA or "The Act" means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Pub. L. 92–500, as amended by Pub. L. 95–217, Pub. L. 95–576, Pub. L. 96–483 and Pub. L. 97–117; 33 U.S.C. §§ 1251 *et seq.*

Daily Discharge means the discharge of a pollutant measured during a calendar day or any 24–hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurements, the daily discharge is calculated as the average measurement of the pollutant over the day.

Director means the person authorized to sign NPDES permits by EPA and/or the State.

Discharge Monitoring Report Form (DMR) means the EPA standard national form, including any subsequent additions, revisions, or modifications, for the reporting of self-monitoring results by permittees. DMRs must be used by "approved States" as well as by EPA. EPA will supply DMRs to any approved State upon request. The EPA national forms may be modified to substitute the State Agency name, address, logo, and other similar information, as appropriate, in place of EPA's.

Discharge of a pollutant means:

(a) Any addition of any "pollutant" or combination of pollutants to "waters of the United States" from any "point source," or

(b) Any addition of any pollutant or combination of pollutants to the waters of the "contiguous zone" or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channelled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances leading into privately owned treatment works.

This term does not include an addition of pollutants by any "indirect discharger."

Effluent limitation means any restriction imposed by the Director on quantities, discharge rates, and concentrations of "pollutants" which are "discharged" from "point sources" into "waters of the United States," the waters of the "contiguous zone," or the ocean.

Effluent limitations guidelines means a regulation published by the Administrator under section 304(b) of CWA to adopt or revise "effluent limitations."

EPA means the United States "Environmental Protection Agency."

Grab Sample—An individual sample collected in a period of less than 15 minutes.

Hazardous Substance means any substance designated under 40 CFR part 116 pursuant to section 311 of CWA.

Indirect Discharger means a non-domestic discharger introducing pollutants to a publicly owned treatment works.

Industrial User means a non-domestic discharger introducing pollutants to a publicly owned treatment works.

Interference means an addition or disruption of the POTW, its treatment processes or operations, or its sludge processes, use or disposal which is cause of or significantly contributes to either a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation) or to the prevention of sewage sludge use or disposal by the POTW in accordance with the following statutory provisions and regulations or permits issued thereunder (or more stringent State or local regulations): Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including Title II more commonly referred to as the Resource Conservation and Recovery Act (RCRA) and including State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the SWDA), the Clean Air Act, and the Toxic Substance Control Act. An Industrial User significantly contributes to such a permit violation or prevention of sludge use or disposal in accordance with above-cited authorities whenever such User:

(a) Discharges a daily pollutant loading in excess of that allowed by contract with the POTW or by Federal, State, or local law;

(b) Discharges wastewater which substantially differs in nature or constituents from the User's average discharge; or

(c) Knows or has reason to know that its discharge, alone or in conjunction with discharges from other sources, would result in a POTW permit violation or prevent sewage sludge use or disposal in accordance with the above-cited authorities as they apply to the POTW's selected method of sludge management.

Maximum daily discharge limitation means the highest allowable "daily discharge."

Municipality means a city, town, borough, county, parish, district, association, or other public body created by of under State law and having jurisdiction over disposal or sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribe organization, or a designated and approved management agency under section 208 of CWA.

National Pollutant Discharge Elimination System means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of CWA. The term includes an "approved program."

New discharger means any building, structure, facility, or installation:

(a) From which there is or may be a "discharge of pollutants";

(b) That did not commence the "discharge of pollutants" at a particular "slide" prior to August 13, 1979;

(c) Which is not a "new source"; and

(d) Which has never received a finally effective NPDES permit for discharges at that "site".

This definition includes an "indirect discharger" which commences discharging into "waters of the United States" after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or

aggregate plant, that beings discharging at a "site" for which it does not have a permit; and any offshore or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas developmental drilling rig that commences the discharge of pollutants after August 13, 1979, at a "site" under EPA's permitting jurisdiction for which it is not covered by an individual or general permit and which is located in an area determined by the Regional Administrator in the issuance of a final permit to be an area of biological concern. In determining whether an area is an area of biological concern, the Regional Administrator shall consider the factors specified in 40 CFR 125.122.(a)(1) through (10).

An offshore or coastal mobile exploratory drilling rig or coastal mobile developmental drilling rig will be considered a "new discharger" only for the duration of its discharge in an area of biological concern.

New source means any building, structure, facility, or installation from which there is or may be a "discharge of pollutants," the construction of which commenced:

(a) After promulgation of standards of performance under section 306 of CWA which are applicable to such.

(b) After proposal of standards of performance in accordance with section 306 of CWA which are applicable to such source, but only if the standards are promulgated in accordance with section 306 within 120 days of their proposal.

NPDES means "National Pollutant Discharge Elimination System."

Non-Contract Cooling Water is water used to reduce temperature which does not come in direct contact with any raw material, intermediate product, a waste product or finished product.

Owner or operator means the owner or operator of any "facility or activity" subject to regulation under the NPDES programs.

Permit means an authorization, license, or equivalent control document issued by EPA or an "approved State."

Person means an individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof.

Point source means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel, or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

Pollutant means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. §§ 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

(a) Sewage from vessels; or

(b) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if the State determines that the injection or disposal will not result in the degradation of ground or surface water resources.

Primary industry category means any industry category listed in the NRDC settlement agreement (*Natural Resources Defense Council et al.* v. *Train*, 8 E.R.C. 2120 (D.D.C. 1976), modified 12 E.R.C. 1833 (D.D.C. 1979)); also listed in Appendix A of 40 CFR Part 122.

Process wastewater means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

Publicly Owned Treatment Works (POTW) means any facility or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a "State" or "municipality."

This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

Regional Administrator means the Regional Administrator, EPA, Region I, Boston, Massachusetts.

State means any of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands.

Secondary Industry Category means any industry category which is not a "primary industry category."

Sewage sludge means the solids, residues, and precipitate separated from or created in sewage by the unit processes of a "publicly owned treatment works." "Sewage" as used in this definition means any wastes, including wastes from humans, households, commercial establishments, industries, and storm water runoff, that are discharged to or otherwise enter a publicly owned treatment works.

Toxic pollutant means any pollutant listed as toxic in Appendix D of 40 CFR Part 122, under Section 307(a)(1) of CWA.

Uncontaminated storm water is precipitation to which no pollutants have been added and has not come into direct contact with any raw material, intermediate product, waste product or finished product.

Waters of the United States means:

(a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(b) All interstate waters, including interstate "wetlands."

(c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(1) Which are or could be used by interstate or foreign travelers for recreational or other purposes;

(2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

(3) Which are used or could be used for industrial purposes by industries in interstate commerce;

(d) All impoundments of waters otherwise defined as waters of the United States under this definition;

(e) Tributaries of waters identified in paragraphs (a)(d) of this definition;

(f) The territorial sea; and

(g) "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a)–(f) of this definition.

Wetlands means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

2. Abbreviations when used in this permit are defined below:

cu. M/day or M3/day.	cubic meters per day.
mg/1	milligrams per liter.

ug/1	micrograms per liter.
lbs/day	pounds per day.
kg/day	kilograms per day.
Temp. °C	temperature in degrees—Centigrade.
Temp. °F	temperature in degrees—Fahrenheit.
Turb.	turbidity measured by the Nephelometric Method (NTU).
pH	a measure of the hydrogen ion concentration.
CFS	cubic feet per second.
MGD	million gallons per day.
Oil & Grease	Freon extractable material.
ml/l	milliliter(s) per liter.
Cl_2	total residual chlorine.

[FR Doc. 92-22116 Filed 9-14-92; 8:45 am]

BILLING CODE 6560-01-M

FEDERAL COMMUNICATIONS COMMISSION

Network Reliability Council Meeting

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, this notice advises interested persons of the fourth meeting of the Network Reliability Council ("Council"), which will be held at the Federal Communications Commission in Washington, DC.

DATES: September 30, 1992 at 2 p.m.

ADDRESSES: Federal Communications Commission, room 856, 1919 M Street NW., Washington, DC 20554.

SUPPLEMENTARY INFORMATION: The Council was established by the Federal Communications Commission to bring together leaders of the telecommunications industry and telecommunications experts from academic and consumer organizations to explore and recommend measures that would enhance network reliability.

The agenda for the fourth meeting is as follows: The meeting will begin with introductory comments by Chairman Henson. The Threshold Reporting Group will discuss further refinements in the method for reporting outages, followed by Council discussion. There will be a report on the working groups formed by the Steering Team, with emphasis on the Fire Protection/Prevention Focus Team and the Digital Cross Connect Focus Team. There will be an update on the Mutual Aid and Restoration Compendium and a presentation on the proposed NRC industry forum, followed by Council discussion. The Council may then address other issues. After determining the next meeting date, the Council will adjourn.

Members of the general public may attend the meeting. The Federal Communications Commission will attempt to accommodate as many people as possible. However, admittance will be limited to the seating available. There will be no public oral participation, but the public may submit written comments to James Keegan, the Council's designated Federal Officer, before the meeting.

For additional information, contact James Keegan, designated Federal Officer of the Network Reliability Council and Chief, Domestic Facilities Division, Federal Communications Commission at (202) 634-1860.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 92-22221 Filed 9-14-92; 8:45 am]

BILLING CODE 6712-01-M

[DA 92-1223]

Commission Announces Oral Presentation Schedule for En Banc Hearing on Toll Fraud

September 8, 1992.

In a Public Notice dated August 7, 1992, the Commission indicated its intention to hold an *En Banc* hearing to hear oral presentations on Toll Fraud issues. The hearing will be held on Friday, October 9, 1992, at the Commission's offices at 1919 M Street, NW., Washington, DC, in Room 856. The schedule is as follows:

Morning Session

9-9:15: Introductory Remarks by the Chairman and Commissioners

9:15-10: *Panel No. 1: PBX and Other CPE-based Fraud*

—PBX/CPE Owners, Leucadia National Corporation, Agway, Inc. (International Communications, Association)—Lawrence J. Gessini.

—Law Enforcement Expert, Communications Fraud Control Association.

—Equipment/Software Manufacturer on Vulnerabilities and Solutions, Northern Telecom.

—New Anti-Fraud Services, LDDS Communications, Inc.—Don Chessher.

10-10:30: Commissioners' Questions and Comments

10:30-10:45: Break

10:45-11:30: *Panel No. 2: Network-based Toll Fraud, Responsibility, and Liability Questions*

—Hacker Expert, William J. Cook, Esq.

—Fraud Migration in the Network and Solutions, Toll Fraud Prevention Committee of the Exchange, Carriers Standards Association—Mary Chacanias, (Bell Atlantic) and Bill Sushon (AT&T).

—Payphone Manufacturer on Equipment-based Solutions, Intellicall, Inc.—B. Reid Presson.

—LIDB and Blocking/Screening Services Bellcore—Jim Frankowski.

11:30-Noon: Commissioners' Questions and Comments

Afternoon Session

1:30-1:35: Introductory Remarks by the Chairman

1:35-2:30: *Panel No. 3: Emerging Technical, Law Enforcement and Business Solutions to Domestic and International Toll Fraud*

—New Anti-Fraud Products, VOTAN—Dr. Steven Gill.

—Law Enforcement Expert on Detection and Prevention of Fraud, Federal Bureau of Investigation—James Kallstrom.

—International Representative, Stentor Telecom Policy Inc.

—Negotiation of International Fraud Disputes, Stuart N. Brotman.

Contractual and Insurance Protection; Sprint—Robert F. Fox; MCI—Edward J. O'Malley; AT&T—Peter Coulter; Travelers Insurance Co.

2:30-2:55: Commissioners' Questions and Final Comments

2:55-3: Chairman's Final Remarks

Panelists are requested to submit a short biography, a description of whom they represent, and a written copy of their presentation by September 18, 1992. Other interested parties may also submit written statements by September 18, 1992. Mail materials to: Linda Dubroof, Domestic Facilities Division, Common Carrier Bureau, Federal Communications Commission, 2025 M Street, NW., room 6008, Stop Code 1600B2, Washington, DC 20554; or fax to: (202) 634-6625.

The hearing will be open to the public. Common Carrier Bureau contacts: Linda Dubroof at (202) 634-1808/Fax: (202) 634-6625, or Kurt Schroeder at (202) 632-4887. New Media Division contact: Stephen Svab at (202) 632-5050.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 92-22236 Filed 9-14-92; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Coastal Barrier Improvement Act, Property Availability: Weakfish Island, Panama City, FL

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as "Weakfish

Island" located in Panama City, Florida is affected by section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written Notices of Serious Interest to purchase or effect other transfer of the property may be mailed or faxed to the Federal Deposit Insurance Corporation under December 14, 1992.

ADDRESSES: Copies of detailed descriptions of the property can be obtained by contacting the following person: Jon Benn, Federal Deposit Insurance Corporation, 5778 South Semoran Boulevard, Orlando, Florida 32822-4821, telephone (407) 249-3425, fax (407) 273-6825.

SUPPLEMENTARY INFORMATION: The subject island contains approximately 3.76 acres of total land area, and constitutes a small island located roughly 300 feet southwest of the end of Weakfish Way Road in the Bay Point Resort, Panama City, Florida. It is an elongated island which is located in the small basin extending off Grand Lagoon. It is only accessible by boat, and there is no bridge, navigable channel or pier for dockage.

It is believed that approximately 50% of the island is jurisdictional wetlands.

The elevation is approximately 3 to 4 feet above sea level. It is located in Flood Zone A. It has no utilities, and is vacant and unimproved.

Written notice of serious interest in the purchase or other transfer of the property must be received on or before December 14, 1992 by Jon Benn at the above address.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the federal government;
2. Agencies or entities of state or local government; and
3. "Qualified organizations" pursuant to section 170(h) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(s)).

Form of Notice

Notices of serious interest should not be in the following form: Notice of Serious Interest re: Weakfish Island, Panama City, Florida.

1. Name of eligibility entity.
2. Declaration of eligibility to submit notice under criteria set forth in Public Law 101-591, section 19(b)(2).
3. Brief description of proposed terms of purchase or other offer (e.g. price and method of financing).
4. Declaration by entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural or natural resource conservation purposes.

Dated: September 9, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92-22185 Filed 9-14-92; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM

Allied Irish Banks, plc., et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 8, 1992.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Allied Irish Banks, plc, Dublin, Ireland, and First Maryland Bancorp, Baltimore, Maryland; to expand to a nationwide basis the previously approved insurance activites of their subsidiary, First Maryland Life Insurance Company, Phoenix, Arizona. First Maryland Life Insurance Company engages in reinsurance of credit life and credit disability insurance directly related to extensions of credit by the holding company and its subsidiaries pursuant to § 225.25(b)(8) of the Board's Regulation Y.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. First of McAlester Corporation, McAlester, Oklahoma; to engage *de novo* in leasing real and personal property pursuant to § 225.25(b)(5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 9, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-22201 Filed 9-14-92; 8:45 am]

BILLING CODE 6210-01-F

AmSouth Bancorporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound

banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 8, 1992.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. AmSouth Bancorporation, Birmingham, Alabama; to acquire First Chattanooga Financial Corporation, Chattanooga, Tennessee, and thereby indirectly acquire its subsidiary, First Federal Bank, FSB, Chattanooga, Tennessee, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 9, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-22202 Filed 9-14-92; 8:45 am]

BILLING CODE 6210-01-F

Marvin Kent Foote; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than October 5, 1992.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Marvin Kent Foote, Sandy, Utah; to acquire up to 14.70 percent of the voting shares of Guardian Bancorp, Salt Lake City, Utah, and thereby indirectly acquire Guardian State Bank, Salt Lake City, Utah.

Board of Governors of the Federal Reserve System, September 9, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-22203 Filed 9-14-92; 8:45 am]

BILLING CODE 6210-01-F

Security Capital Bancorp, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 8, 1992.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Security Capital Bancorp, formerly First Security Financial Corporation, Salisbury, North Carolina; to acquire 100 percent of the voting shares of Citizens Savings, Inc., SSB, successor to Citizens Savings, FSB, Concord, North Carolina; Home Savings Bank, Inc., SSB, successor to Home Federal Savings Bank, Kings Mountain, North Carolina; and OMNIBANK, Inc., A State Savings Bank, SSB, successor to OMNIBANK, A Federal Savings Bank, Salisbury, North Carolina.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. ABC Bancorp, Moultrie, Georgia; to acquire 100 percent of the voting shares of Cairo Banking Company, Cairo, Georgia.

2. AmSouth Bancorporation, Birmingham, Alabama; to acquire 100 percent of the voting shares of AmSouth Bank of Georgia, Summerville, Georgia, a *de novo* bank.

3. The Employee Stock Ownership Plan & Trust of Southwest Georgia Financial Corporation, Moultrie, Georgia; to become a bank holding company by acquiring at least 25 percent of the voting shares of Southwest Georgia Financial Corporation, Moultrie, Georgia, and thereby indirectly acquire Moultrie National Bank, Moultrie, Georgia.

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. PSB Corporation, Wellsburg, Iowa; to acquire 88.20 percent of the voting shares of First National Bank of Sumner, Sumner, Iowa.

2. United Bancorp, Inc., Tecumseh, Michigan; to acquire two branch offices of Standard Federal Savings Bank, Troy, Michigan, located in Morenci and Clinton, Michigan.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Old National Bancorp, Evansville, Indiana; to acquire 100 percent of the voting shares of City Financial Bancorp, Inc., Danville, Illinois, and thereby indirectly acquire The City National Bank of Danville, Danville, Illinois; The City National Bank of Hoopeston, Hoopeston, Illinois; and City Potomac Bank, Potomac, Illinois.

2. Union Planters Corporation, Memphis, Tennessee; to acquire an additional 82.07 percent of the voting shares of Bank of East Tennessee, Knoxville, Tennessee, for a total of 100 percent.

E. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. First Bancorp of Kansas, Wichita, Kansas; to merge with WRB Bancshares, Inc., Oklahoma City, Oklahoma, and thereby indirectly acquire The Will Rogers Bank and Trust Company, Oklahoma City, Oklahoma.

2. MNB Bancshares, Inc., Manhattan, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Manhattan National Bank, Manhattan, Kansas, a *de novo* bank.

Board of Governors of the Federal Reserve System, September 9, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-22204 Filed 9-14-92; 8:45 am]

BILLING CODE 6210-01F

GOVERNMENT PRINTING OFFICE

Depository Library Council to the Public Printer; Meeting

The Depository Library Council to the Public Printer (DLC) will hold its meeting on October 19-20, 1992, at the Library of Congress, Madison Building, LM 407, 101 Independence Avenue SE., Washington, DC 20540. The purpose of this meeting is to discuss the Federal Depository Library Program, and is open to the public.

The Council Meeting will take place from 1 p.m. to 5 p.m. on Monday, October 19, and from 9 a.m. to 11:30 a.m. on Tuesday, October 20. The Council members will have an informal session Monday morning to prepare for the Council Meeting, and an informal Post-Council discussion on Tuesday afternoon.

Anyone who wishes to attend the meeting must notify Josephine Williams, U.S. Government Printing Office (SL), Washington, DC 20401. Telephone: (202) 512-1114. A limited number of hotel rooms have been reserved at the Capitol Hill Hotel, 200 C Street SE., Washington, DC 20003, for anyone needing hotel accommodations. Telephone: (202) 543-6000. Room cost per night is $97 single and $110 double.

Robert W. Houk,

Public Printer.

[FR Doc. 92-22189 Filed 9-14-92; 8:45 am]

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Technical Instructions for Medical Examination of Aliens

AGENCY: Centers for Disease Control (CDC), Public Health Service, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In June 1991, CDC distributed new Technical Instructions for Medical Examination of Aliens to examining physicians abroad and in the United States. CDC revised the Technical Instructions based on comments received from examining physicians, and the revised document is now available.

ADDRESSES: Copies of the revised Technical Instructions are available upon written request to the Director, Division of Quarantine, Mailstop E-04, CDC, Atlanta, Georgia 30333.

SUPPLEMENTARY INFORMATION: On May 31, 1991, the Department of Health and Human Services published an interim rule revising regulations for the medical examination of aliens to determine their admissibility into the United States under the Immigration and Nationality Act (56 FR 25000). These medical examinations are carried out in accordance with technical instructions issued by the Director, CDC (42 CFR 34.3(f)).

In June 1991, CDC distributed the new Technical instructions for Medical Examination of Aliens to examining physicians abroad and in the United States. Based on comments from many of the examining physicians, CDC revised the Technical Instructions. Changes are related to (1) the diagnosis and classification of tuberculosis; (2) the 5-year requirement to demonstrate remission from addiction or abuse of drugs listed in section 202 of the Controlled Substances Act; and (3) an added definition of "experimentation."

Dated: September 9, 1992.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control.

[FR Doc. 92-22191 Filed 9-14-92; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 92D-0114]

Compliance Policy Guide: Confectionery—Use of Nonnutritive Substances as Ingredients; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of revised Compliance Policy Guide (CPG) 7105.01, "Confectionery—Use of Nonnutritive Substances as Ingredients." This revised CPG provides guidance to FDA district offices regarding the interpretation of section 402(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342(d)) (the act) as it applies to the use of nonnutritive sweeteners and other nonnutritive substances in a confectionery.

ADDRESSES: Submit written requests for single copies of CPG 7105.01 to the Industry Activities Section (HFF-326), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204. Requests should be identified with the docket number found in brackets in the heading of this document. Send two self-addressed adhesive labels to assist that office in processing your requests. CPG 7105.01 is available for public examination in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Elizabeth Campbell, Division of Regulatory Guidance (HFF-312), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-5229.

SUPPLEMENTARY INFORMATION: FDA has revised CPG 7105.01 "Confectionery—Use of Nonnutritive Substances as Ingredients." Under section 402(d)(3) of the act, a food is adulterated if it bears or contains a nonnutritive substance, except that this clause does not apply to a nonnutritive substance that is in or on a confectionery by reason of its use for some practical purpose in the manufacture, packaging, or storage of the confectionery, and if the use of the substance meets certain other conditions. This CPG formerly stated that "The use of nonnutritive artificial sweeteners in a confectionery for the purpose of caloric reduction is not considered to be a practical functional purpose." Thus, in FDA's view, the presence of a nonnutritive artificial sweetener in a confectionery rendered the confectionery adulterated under section 402(d)(3) of the act.

In 1988, however, FDA received a letter from a law firm on behalf of a company that had submitted a food additive petition for the use of an artificial sweetener in confectioneries The law firm argued that the position stated in the CPG is not that required by law, and that the agency has adopted a restriction without notice and comment rulemaking as required by statute.

FDA conducted its own review of section 402(d)(3) of the act, its legislative history, and the agency's interpretation of that provision. Based on its review, the agency has concluded that its view that the use of a nonnutritive artificial sweetener in a confectionery is not for a practical functional purpose is not supportable. Therefore, FDA has deleted this statement from the CPG and made certain other conforming changes. FDA is now announcing the availability of revised CPG 7105.01.

The agency is in the process of revising § 10.85 *Advisory opinions* (21 CFR 10.85) to conform this regulation to current law. This notice and the final CPG are not being issued under the authority of § 10.85.

The agency advises that the revised CPG represents its current position regarding the interpretation of section 402(d) of the act as it applies to the use of nonnutritive sweeteners and other nonnutritive substances in confectionery. The revised CPG may be useful to FDA district offices when interpreting the agency's policy on the use of nonnutritive sweeteners in a confectionery. This revised CPG does not bind the agency, and it does not create or confer any rights, privileges, or benefits for or on any person.

Dated: September 2, 1992.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 92-22238 Filed 9-14-92; 8:45 a.m.]

BILLING CODE 4160-01-F

[Docket No. 92N-0139]

Statement of Policy: Foods Derived from New Plant Varieties; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening the comment period on a policy statement on foods derived from new plant varieties, including plants developed by recombinant deoxyribonucleic acid (DNA) techniques, which published in the **Federal Register** of May 29, 1992 (57 FR 22984). FDA is taking this action in response to a request to allow additional time for public comment.

DATES: Written comments by October 15, 1992.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Regarding Human Food Issues: James H. Maryanski, Center for Food Safety and Applied Nutrition (HFF-300), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-4359. Regarding Animal Feed Issues: William D. Price, Center for Veterinary Medicine (HFV-221), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8724.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 29, 1992 (57 FR 22984), FDA issued a policy statement on foods derived from new plant varieties that clarifies FDA's interpretation of the Federal Food, Drug, and Cosmetic Act in regard to new technologies to produce foods. Interested persons were given until August 27, 1992, to comment on this policy statement.

A request has been received to allow an additional 32 days for public comment. After careful consideration, the agency has concluded that it is in the public interest to allow additional time for interested persons to submit comments. Accordingly, the comment period is reopened until October 15, 1992.

Interested persons may, on or before October 15, 1992, submit to the Dockets Management Branch (address above) written comments regarding this policy statement. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 9, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-22240 Filed 9-14-92; 8:45 a.m.]

BILLING CODE 4160-01-F

Indian Health Service

Core Data Set Requirements

AGENCY: Indian Health Service, PHS, HHS.

ACTION: Changes to Indian Health Service Core Data Set Requirements (CDSR)—Correction.

SUMMARY: This notice modifies the data set associated with the Community Health Representative Information System (CHRIS) of the Indian Health Service (IHS) CDSR.

FOR FURTHER INFORMATION CONTACT: Jack Markowitz, Indian Health Service, Room 5A-09, 5600 Fishers Lane, Rockville, MD 20857, telephone (301) 443-0750 or Nicky Solomon, Indian Health Service, Room 6A-44, 5600 Fishers Lane, Rockville, MD 20857, telephone (301) 443-2500. (These are not toll free numbers.) Copies of the forms referenced as being contained in appendix A may be obtained by contacting Nicky Solomon.

SUPPLEMENTARY INFORMATION: The Indian Health Service (IHS) published the Core Data Set requirements in the **Federal Register** on January 22, 1992, 56 FR 2642 and established a set of core program data elements that all IHS programs are required to submit for the IHS National data base. These core data requirements are necessary for good management purposes and to fulfill Congressional and other mandatory reporting requirements including the requirements for meeting the management information needs of IHS and tribal contractors.

The core data set requirements associated with the Community Health Representative Information System (CHRIS) published in the **Federal Register** on January 22, 1992, 56 FR 2661, inadvertently represented an earlier version of CHRIS. A formal evaluation of CHRIS was conducted to improve the system's usefulness. The CHRIS was revised using input from the data collectors and users of the system. The following modifications should have been included in the earlier publication: (1) Changes to the process of consolidating the CHR activity forms and automated records; (2) updated record length and format; (3) a resized reporting form for Appendix A; (4) updated specification for the transmission media; (5) clarification of the RPMS CHR Data Entry System.

As required by the Paperwork Reduction Act, CHRIS reporting requirements were submitted to OMB for clearance. They have received approval under OMB No. 0917-0010.

Information collected in accordance with the CHRIS requirements, which identifies individual patients provided health care, is included in the IHS system of records titles: 09-17-0001, Health and Medical Records Systems, HHS/IHS/OHP (**Federal Register**, November 22, 1988, pages 47348-47353). These records are to be afforded safeguard protection as required by the Privacy Act of 1974 (5 U.S.C. 552a). These safeguards are described in general terms in the system of records notice for system 09-17-0001.

For now, Indian tribes and tribal organizations with contracts or grants under authority of the Indian Self-Determination Act, Public Law 93-638, as amended, will continue to be governed by the data collection and reporting requirements of the contract or grant as well as any applicable laws, regulations, and policies. The extent of any future applicability of the core data set requirements, which includes CHRIS data elements, to Public Law 93-638 contracts, grants and cooperative

agreements will be determined in the final regulations implementing the 1988 amendments to Public Law 93–638. For the convenience of those reviewing the notice of proposed rulemaking (NPRM) for Public Law 93–638, the CDSR, including CHRIS, will be reprinted in the same **Federal Register** issue in which the Public Law 93–638 NPRM appears.

As long as their own data collection and reporting system provides for the timely submission of accurate and complete data meeting the CHRIS requirements, the IHS contractors and grantees will not be required to use the collection and reporting system used by IHS. The contractor/grantee data system must meet the requirements of the Security Act of 1987, Public Law 100–275, which are also applicable to the IHS directly operated programs.

The report form was changed from a legal size sheet with the codes on a tear away tab to a letter size sheet with the codes printed separately on a laminated 5½'×8½' card. Contractors and grantees may use IHS forms or collect the required CHRIS data in any manner consistent with their operations. The submission of CHRIS data must meet the format and data requirements of the IHS information systems. The IHS will provide technical assistance to tribal contractors and grantees to convert their data to the CHRIS formats and transmission media.

Each IHS Area may establish its own procedures for reporting of CHRIS data and will monitor compliance with reporting requirements consistent with applicable laws, regulation, policies, and grant and contract instruments. Contractors and grantees are responsible for correcting problems regarding incomplete and accurate data.

Core Data Set Requirements for the Community Health Representative Information System

K. Community Health Representative Information System (CHRIS)

1. Reporting Requirement

a. A one line entry is required to be completed on a Community Health Representative (CHR) Activities Report form for each CHR service that was provided on the day to which the form applies. If more services are performed on one day than can be reported on one CHR Activities form, an additional form(s) should be used and appropriately numbered. CHR Activities forms are completed during one sample week (a 7 day week) per month in accordance with the CHR sample reporting week schedule specified by the IHS Headquarters Director of the CHR Program.

b. The CHR Activities Report User Manual provides complete definitions and procedures for reporting into the Community Health Representative Information System (CHRIS).

c. Each CHR Program, in cooperation with their respective IHS Area Office CHR Coordinator, determines procedures for collecting CHR Activities data and creating automated records in the format described in the next section. Key-entry of forms options include:

(1) At the CHR Program/Tribal level
(2) At the Area level
(3) At the service unit
(4) By a contractor

d. CHR Activity forms or automated records are batched by the Area CHR staff and forwarded to the national CHR Program's data processing contractor no later than two weeks after the last day of each sample reporting week. The data processing contractor key enters hard copy data and consolidates the data with automated records submitted through the Area Offices. At a future date, automated records will be consolidated at the Area level and forwarded to the Division of Data Processing Services (DDPS) at Albuquerque no later than two weeks after the last day of each sample reporting week.

2. Record Formats

a. The CHR Activities record contains individual patient encounter and/or group encounter information. Each record is 61 characters in length.

b. The proposed format of the CHR Activities record is shown in Figures K–1 through K–3.

c. A CHR Activities Report form is included in Appendix A.

3. Transmission Media

a. CHR Automated Activities records for each Area are maintained by the national CHR Program's data processing contractor. In the future, these data will be generated at the local CHR office, on RPMS Generic Activity Reporting System (GARS), and will be electronically transmitted to the Area which will electronically transmit the data to DDPS.

4. RPMS CHR Data Entry System

a. RPMS ANSI MUMPS CHR data entry program, known as the Generic Activity Reporting System (GARS) is under development to allow records to be keyed locally, transmitted to the Area, and forwarded from the Area to DDPS by telecommunications.

CHR ACTIVITIES RECORD

[Note: All fields are required reporting fields. The record format for local automated data entry is:]

Position and field	Required all
A. Header Information	
1–4 CHR Provider (Last 4 digits of each CHR's Social Security Number unless otherwise instructed by the CHR's supervisor. If more than one CHR in the same CHR program have the same last four Social Security Number digits, a different 4-digit number may be given by the CHR supervisor to use.)	
5 Blank	
6–13 Program	
6–7 Area Code	
8–9 Service Unit Code	
10–12 Tribe/Community Code	
13 Blank	
14–22 Date	
14–15 Month (01–12)	
16 Blank	
17–18 Day (01–31)	
19 Blank	
20–21 Year (last 2 digits of year)	
22 Blank	
23–25 Page	
23 Specific Report Page	

CHR ACTIVITIES RECORD—Continued

[Note: All fields are required reporting fields. The record format for local automated data entry is:]

Position and field	Required all
24 Total Reporting Pages for that day ("Page of " is used to distinguish between forms when one CHR provides more services than can be reported on one reporting form.)	
25 Blank	
B. Service Data	
Note: One line is used for each service provided on the day to which the form applies. If more services are performed on one day than can be reported on one CHR Activities form, an additional form(s) should be used and numbered as described above. All spaces should be filled in with information. If an item does not apply to a particular service, enter a dash "-", not a zero. For additional reporting instructions consult the CHR Activities Report User Manual.	
26–28 LINE NUMBER (01–20 corresponding to the line on the reporting form)	
28 Blank	
29–31 Service Code	
29–30 Code	
31 Blank	
01 Health Education	
02 Case Find/Screen	
03 Case Management—Coordinate	
04 Monitor Patient	
05 Emergency Care	
06 Patient Care	
07 Homemaker Services	
08 Transport	
09 Interpret/Translate	
10 Other Patient Services	
11 Environmental Services	
12 Administration/Management	
13 Obtain Training	
99 Leave Time	
32–34 Health Area	
32–33 Code	
34 Blank	
01 Diabetes	
02 Cancer	
03 Hypertension/Cardio	
04 HIV/ARC/AIDS	
05 Communicable Disease	
06 Alcohol/Substance Abuse	
07 Community Injury Control	
08 Health Promotion/Disease Prevention	
91 Other General Medical	
92 Dental	
93 Gerontological	
94 Maternal/Child Health	
95 Mental Health	
96 Non-Specific	
35–36 Setting	
01 Home	
02 CHR Office	
03 Community	
04 Hospital/Clinic	
05 Radio/Telephone	
37–40 Number Served (leading zero fill) When a group service is provided, the number of participants receiving direct service is to be recorded here. If there is only one main client, enter a "1". A breast feeding class is an example of services provided for more than one person. Enter a dash "-" in the box for a service in which people are not provided for directly, e.g. Adm/Mgmt service.	
41–44 Minutes Used—Service (Leading zero fill)	
45–48 Minutes Used—Travel (Leading zero fill)	
49 Blank	
50–52 Age: Two digits for age. If the recipient is less than 1 year of age use a zero, "0". If no personal service is given or a group is served, enter a dash, "-".	
53 Blank	
54–56 Sex	
54 Blank	
55 1 Male 2 Female	
56 Blank	
Where service for both males and females is provided or no direct client service is involved, enter a dash, "-".	
57–59 Referral From	
57–58 Code	
59 Blank	
60–61 Referral Codes	
— None	
01 Medical	
02 Nursing	
03 Dental	
04 Eye	
05 Social Worker	
06 Substance Abuse Professional	
07 Other Professional	

CHR ACTIVITIES RECORD—Continued

[Note: All fields are required reporting fields. The record format for local automated data entry is:]

	Position and field	Required all
08	Technician	
09	Agency/Program	
10	Family/Self/Community	
11	CHR	

Dated: September 8, 1992.

Everett R. Rhoades

Assistant Surgeon General Director.

[FR Doc. 92-22146 Filed 9-14-92; 8:45 am]

BILLING CODE 4160-16-M

Social Security Administration

Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) covers the Social Security Administration (SSA). Notice is being given that Chapter 3, the Office of the Deputy Commissioner for Programs, is being amended to abolish the Office of Management (OM) (S3GQ) and establish the Office of Management, Systems and Policy (OMSP) (S3GX), Office of Hearings and Appeals (OHA) (S3G). Furthermore, OHA's Office of Policy, Planning and Evaluation (S3GP) is also being abolished and its functions absorbed into a new division in OMSP. In addition, notice is being given of the establishment of the Division of Management Analysis and Employee Development (S3GX7), OMSP, OHA. These changes are being proposed to establish the new OMSP and to establish SSA's Office of the Deputy Commissioner for Human Resources as the focal point within SSA with responsibility for the human resource-related functions for OHA. These changes are also proposed to establish a division within OMSP, OHA whose primary focus will be the performance of management analysis functions and the direction of an employee development program. The changes are as follows:

Section S3G.10 *The Office of Hearings and Appeals*—(Organization):

Delete

H. The Office of Management (S3GQ).

I. The Office of Policy, Planning and Evaluation (S3GP).

Add

H. The Office of Management, Systems and Policy (S3GX).

1. Equal Employment Opportunity Staff (S3GX1).
2. Division of Planning, Policy and Evaluation (S3GX2).
3. Division of Congressional and Public Inquiries (S3GX3).
4. Division of Budget and Financial Management (S3GX4).
5. Division of Materiel Resources (S3GX5).
6. Division of Systems Resources (S3GX6).
7. Division of Management Analysis and Employee Development (S3GX7).

Section S3G.20 *The Office of Hearings and Appeals—(Functions):*

Delete

H. The Office of Management (S3GQ) in its entirety.

I. The Office of Policy, Planning and Evaluation (S3GP) in its entirety.

Add

H. The Office of Management, Systems and Policy (S3GX) provides administrative support to the Associate Commissioner for all management-, systems- and policy-related activities for OHA. Coordinates with the Chief Administrative Law Judge (ALJ) with respect to management, systems and policy support functions which affect field operations. Plans, analyzes, develops and evaluates SSA-wide policy for the hearings, appeals and civil action processes. Manages the overall OHA policy communications system. Has direct line authority for all management and administrative support functions for Headquarters' components of OHA and in coordination with the Chief Judge, for all field components of OHA including 10 regional offices (ROs) and 132 hearing offices nationwide. Is directly responsible for the formulation and interpretation of goals, objectives and policies governing the development and implementation of OHA's resource support programs. Provides management services to OHA headquarters and field employees. Develops and administers an OHA-wide program to identify training needs; develops mechanisms to meet identified training needs and assesses the effectiveness of the OHA training program in meeting the training needs of managers, supervisors and employees. Directs the policy development and implementation of a comprehensive budget formulation and financial management program to include formulation and execution of budget requirements and controls in the areas of resource management, work measurement and workload forecasting; administrative cost allocation; cost benefit analysis; pay and travel; contract services; and employment ceiling control for budgetary purposes. Provides administrative support services to enable OHA to carry out its nationwide programmatic and operational functions. Executes the full range of policies and activities relating to the resource operations of OHA. Responsible for space and property management and planning, including maintenance of space and equipment and procurement of supplies and other materiel which supports the hearings and appeals process. Plans, develops and administers a program of systems support and data base management for the design and programming of OHA's Automated Data Processing (ADP) systems and OHA's management information and statistical reporting activities. Develops and maintains operational planning systems, including analysis of management reports, and formulates management plans, objectives and priorities for OHA. Coordinates and integrates the management programs and administrative planning initiatives of OHA into the long-range goals and objectives of SSA and HHS. Monitors OHA's progress toward meeting established Agency goals and makes recommendations for needed adjustments to enable OHA

to meet these goals. Plans, directs and implements an Equal Employment Opportunity (EEO) program within OHA. Plans, directs, administers and evaluates the congressional and public inquiries activities for OHA. Plans, directs and administers a comprehensive nationwide management analysis program to identify areas requiring improvement to enhance the quality and effectiveness of management practices and to assess trends in management.

1. The Equal Employment Opportunity Staff (S3GX1) is responsible for OHA's Equal Opportunity program. Plans, develops, implements and monitors OHA's affirmative action program, and administers the EEO complaint process for OHA headquarters. Provides guidance for, and monitoring of, OHA regional EEO programs. Attempts to resolve informal complaints of discrimination made by OHA employees, and evaluates issues in complaints after Departmental investigation. Provides recommendations to SSA's Office of Civil Rights and Equal Opportunity with respect to the development of equal opportunity policies and procedures, and ensures that OHA's EEO policies, procedures, standards and guidelines are consistent with SSA's standards.
2. The Division of Policy, Planning and Evaluation (S3GX2) plans, analyzes and develops OHA-wide policy for the hearings, appeals and civil actions processes. Manages the overall OHA policy communications system. Responsible for OHA activity with respect to Social Security regulations, including developing the regulations governing OHA processes and developing an OHA position with respect to program regulations proposed by SSA components. Monitors OHA's implementation of program regulations governing the hearings and appeals process. Plans and conducts a comprehensive OHA-wide evaluation program designed to support OHA policy and regulatory initiatives and measure the overall effectiveness of the nationwide hearings and appeals process. Provides advice and guidance throughout OHA on matters involving program policies, planning and evaluation. Coordinates policy, planning and evaluation matters within OHA, with other SSA components and with Health Care Financing Administration (HCFA), Office of General Counsel (OGC) and other HHS components, other Federal agencies and private organizations. Responsible for SSA policy with respect to claimant representation and the fees charged for these services. Develops and coordinates program training in conjunction with appropriate OHA, SSA, HCFA, HHS and OGC components.
3. The Division of Congressional and Public Inquiries (S3GX3) formulates policies, procedures and guidelines for use in responding to high priority correspondence from the public and congressional offices. Coordinates with other OHA components to obtain information needed to respond to congressional and public inquiries, and prepares and reviews OHA responses to congressional and public inquiries. Evaluates correspondence for conformance with OHA and SSA standards, policies and procedures and for determining necessary action. Serves as the correspondence liaison staff with the Commissioner's Office, the Office of Public Inquiries and other SSA and HHS components.
4. The Division of Budget and Financial Management (S3GX4) plans, develops and coordinates OHA's budget and financial management programs, advising the Director of OMSP and/or the Associate Commissioner of the financial impact of all decisions which affect OHA. Advises OHA officials on all budget decisions which may affect the program and administrative operations of the Agency. Formulates, justifies and presents OHA's annual and multi-year budget submissions. Controls the collection, recording and reporting of all financial data in connection with the budget formulation and execution functions. Provides technical and policy guidance to OHA officials in headquarters and the field on the formulation and presentation phases of the budget process. Reviews, and analyzes budget requests submitted by OHA components and formulates OHA's financial operating plans and budget projections. Responsible for presenting OHA's budget submissions and the justification for these submissions to SSA officials and for the assessment of, and response to, SSA's reviews of these submissions. Administers cost allocation functions of the budget process. Works with SSA budget officials to obtain the resources necessary to meet OHA goals and objectives. Develops all necessary applications for generating budget data and financial management reports. Responsible for the execution of OHA's budget. Executes and administers a financial management system, integrating resource management controls in the following areas: workload forecasting, work measurement and productivity, employment ceiling control, cost benefit analysis, administrative cost allocation, payroll and travel; and fiscal operations. Provides technical and policy guidance to ROs and headquarters components on the execution of OHA's budget. Monitors workload projections for budget execution and control purposes, and monitors and controls employment and fiscal resources based on analyses of work measurement, productivity, cost benefit and resource utilization. Ensures that employment ceilings and obligations and expenditures of funds are in conformance with authorized allotments and allowances. Performs periodic reviews of budget execution and financial management practices in OHA offices. Maintains liaison with SSA to integrate OHA's financial management system with the financial management system at SSA. Administers the travel and payroll function for all OHA headquarters components and ALJs nationwide.
5. The Division of Materiel Resources (S3GX5) plans, directs and provides administrative support services in the areas of space planning and management; forms and records management; property management; equipment control and maintenance; graphic arts; safety and self-protection, including emergency planning; security; procurement and supply; laboring services; mail and messenger services; motor vehicle operations; communications systems management. Organizes, controls and coordinates procurement and property management activities, including development of specifications and requisitions for procurement of property, inspections of property owned or leased by the United States Government, and property accountability. Maintains liaison

with other Government officials and private concerns to obtain the latest available information and advice on current trends and developments in facilities planning and management. Coordinates administrative support services provided to OHA by SSA, HHS, the Office of Personnel Management, the General Services Administration and other agencies, including such services as building maintenance, alterations and inventory management. Develops and administers a comprehensive space management program for the assignment and utilization of offices in OHA. Plans, directs and coordinates the acquisition and installation of a communications network system for OHA. Provides advice and assistance to OHA officials regarding alterations, renovations, repairs, etc. Assures contractual completion of all work requested for headquarters components. Identifies and maintains property and equipment management requirements, including storing and securing supplies and equipment; identifying the need for maintenance, repair or replacement of equipment; and maintaining catalogs, brochures and sources of technical data to ensure that OHA's current and future supply requirements are met. Revises procurement procedures, as necessary, to ensure that the supply needs of OHA field and headquarters components are met. Administers an occupational health and safety program in compliance with established health and safety concepts, regulations, standards and procedures. Administers security programs and inspections, and coordinates with local law enforcement officials to ensure protection of OHA property and personnel.

6. The Division of Systems Resources (S3GX6) is the focal point for all OHA systems-related activities. Provides office automation and data processing support to all OHA components. Develops OHA's long-range systems goals and objectives. Provides computer programming and systems support for the planning, design, development and implementation of all OHA ADP systems. Serves as liaison with the Office of Systems, SSA, on all matters pertaining to systems, and ensures that OHA systems efforts are undertaken, that projects underway are carried out successfully and that OHA participates fully in the SSA systems strategy. Ensures that OHA systems-related projects are integrated within SSA's Systems Modernization Plan, and analyzes the impact of SSA's Claims Modernization Plan upon OHA programs and processes. Maintains an indepth knowledge of SSA system development activities and advises the Director of OMSP of changing plans and strategies with respect to systems. Prepares data for the OHA ADP/telecommunications budget submission, and evaluates OHA user requests for ADP services. Ensures that OHA systems meet user needs and management information requirements, and resources automation problems of systems users. Responsible for the OHA Case Control System, including the integrity of the management information resulting from that system. Maintains management plans for all automation projects. Develops plans, strategies and user data requirements to respond to OHA's automation needs. Develops proposed automation initiatives in response to user needs and new legislative requirements. Develops and maintains the systems configuration management plan and strategy. Monitors OHA's Information Technology Services procurements through the SSA procurement cycle and ensures that they progress through critical processing points. Provides policy and operational guidance in the development of long- and short-range systems planning. Identifies OHA training needs with respect to systems activities, and coordinates with responsible OHA/SSA components to ensure that these needs are met. Responsible for the logical and physical structure of all OHA data bases, including the establishment and maintenance of the OHA Data Dictionary, coordination with SSA Data Base Administrators and mapping OHA data base designs against the OHA strategic plan. In compliance with the Privacy Act, ensures that necessary documentation is published for OHA ADP systems changes. Responsible for the security, maintenance and integrity of the ADP equipment inventory. Identifies the functions, policies and related personnel needs to support and manage word/data processing and telecommunications systems. Provides technical support for the nationwide OHA telecommunications network, and ensures efficient and effective implementation and operation of the various telecommunications networks used by OHA and of the telecommunications host. Develops, implements and maintains applications systems for OHA.

7. The Division of Management Analysis and Employee Development (S3GX7) advises the Director of OMSP and the Associate Commissioner in all management areas involving management practices, management analysis, operational analysis and the resolution of management/employee concerns and problems. Plans, designs and administers evaluation programs and tracking systems to assess the efficiency and effectiveness of OHA operations in the field and headquarters. Serves as the focal point of contact for coordinating the General Accounting Office, the Office of the Inspector General, SSA and other studies of OHA operations, in addition to identifying and communicating opportunities for improvements to OHA operations through management innovations. Coordinates administrative delegations of authority, and develops and publishes necessary implementation throughout OHA headquarters and field offices. Administers OHA's Employee Development Program. Develops and administers an OHA-wide program to identify training needs; develops mechanisms to meet identified training needs and assesses the effectiveness of the OHA training program in meeting the training needs of managers, supervisors and employees.

Dated: September 4, 1992.

Ruth A. Pierce,

Deputy Commissioner for Human Resources.

[FR Doc. 92-22158 Filed 9-14-92; 8:45 am]

BILLING CODE 4190-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT-060-02-4212-09]

Notice of Availability of Draft Ouray to Interstate 70 Environmental Impact Statement and Proposed Plan Amendments

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: This is a Notice of Availability of Draft Ouray to Interstate 70 Environmental Impact Statement and Proposed Plan Amendments. In accordance with section 202 of the National Environmental Policy Act of 1969, a Draft Environmental Impact Statement has been prepared for the Ouray to Interstate 70 Highway Project.

The Uintah County Special Service District and the Grand County Roads Special Service District No. 1 propose to construct an 83-mile-long highway connecting Utah State Highway 88 (U-88) south of Ouray, Utah, with Interstate 70 (I-70) near Cisco, Utah. The proposed highway would provide an all-weather transportation route between the oil and gas fields of northeastern and southeastern Utah, and serve as a north-south tourist route. The highway would be constructed to Utah Department of Transportation (UDOT) and Federal highway standards, and upon completion, UDOT would accept the roadway on the Utah Federal Aid Highway System with a proposed route designation of U.S. 191. This Draft Environmental Impact Statement addresses the environmental effects of the Proposed Route; four alternative highway alignments referred to as the Red Wash Alternative, the Brusher/East Canyon Alternative, the Whetrock Canyon Alternative, and the East Cisco Interchange Alternative; a Pave Existing Alignments Alternative; and the No Action Alternative.

Because the proposed highway would cross public lands administered by the Bureau of Land Management (BLM), the Special Service Districts applied to the BLM for a 200-foot-wide permanent right-of-way (ROW) to construct the proposed highway. The application triggered the preparation of the environmental impact statement (EIS).

In addition, construction of the proposed highway would not be in conformance with the BLM's Book Cliffs Resource Area and Grand Resource Area Resource Management Plans (RMPs)(i.e., neither RMP designated a "utility" or ROW corridor along the entire proposed highway). Federal regulations (43 CFR 1610.5-5) provide that an amendment to an RMP be initiated for a proposed action that would result in change to the decisions of the approved plan. The purpose of the plan amendments would be to identify a "utility" or ROW corridor for the proposed highway. This EIS constitutes the analysis for the plan amendments under NEPA. A decision to approve a highway construction alternative, by the State Director, would constitute an amendment to the Book Cliffs and Grand RMP's.

Copies of the Draft EIS will be available from the Moab District Office, 82 East Dogwood, Moab, Utah 84532; Vernal District Office, 170 South 500 East, Vernal, Utah 84078; and Utah State Office, 324 South State, Salt Lake City, Utah 84145-0155.

DATES: Written comments on the draft EIS must be submitted no later than Thursday, December 10, 1992. Oral and/or written comments may also be presented at public meetings to be held:

Salt Lake City

Utah Department of Natural Resources, 1636 West North Temple, November 4, 1992: 7 p.m.

Vernal

Western Park, 302 East 200 South, November 5, 1992: 7 p.m.

Moab

BLM District Office, 82 East Dogwood, November 17, 1992: 7 p.m.

ADDRESSES: Written comments on the document should be addressed to: Roger Zortman, District Manager, Bureau of Land Management, Moab District Office, P.O. Box 970, Moab, Utah 84532.

FOR FURTHER INFORMATION CONTACT: Daryl Trotter, Planning and Environmental Coordinator, Moab District Office, Moab, Utah 84532, phone (801) 259-6111.

SUPPLEMENTARY INFORMATION: The purpose of this EIS is to provide decision makers and the public with information pertaining to Roads Special Service Districts proposal, and to disclose environmental impacts and identify mitigation measures to reduce impacts.

The Draft Environmental Impact Statement addresses the environmental effects of the Proposed Route: four alternative highway alignments referred to as the Red Wash Alternative, the Brusher/East Canyon Alternative; a Pave Existing Alignments Alternative; and the No Action Alternative.

The BLM preferred alternative is the East Canyon Variation of Pave Existing Alignments Alternative.

Public participation has occurred throughout the EIS process. A Notice of Intent was filed in the **Federal Register** January 17, 1990. Public scoping meetings were held in February 1990, at four locations; Price, Utah; Salt Lake City, Utah; Vernal, Utah; and Moab, Utah. All comments presented throughout the process have been considered.

James M. Parker,
State Director.

[FR Doc. 92-22160 Filed 9-14-92; 8:45 am]

BILLING CODE 4310-DQ-M

[NV-040-4121-14; N-54506]

Shell Management Framework Plan Land Classification Amendment and Environmental Assessment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an amendment to the Schell Management Framework Plan (MFP) and Notice of Realty Action (NORA) to classify public lands in Lincoln County, Nevada, for disposal. This is also a Notice of a 30 day scoping period for the identification of issues, review of preliminary planning criteria and formulation of alternatives for the plan amendment.

SUMMARY: The Bureau of Land Management (BLM) Ely District is proposing to amend the Schell MFP to add an additional decision to help meet Lands Resource Objective L-1. The proposed decision would classify for disposal approximately 8,000 acres of public lands in Lake Valley, Lincoln County, Nevada. The purpose of this land tenure change is to provide for expanded agricultural development within Lincoln County.

DATESES: Written comments concerning this proposed planning change, including the alternatives, preliminary planning criteria or comments concerning this pending realty action must be submitted and postmarked no later than October 30, 1992. No public hearings concerning the planning amendment are scheduled at this time.

ADDRESSES: Written comments should be addressed to: Gerald M. Smith, Area Manager, Schell Resource Area, Bureau of Land Management, Ely District, HC 33, Box 33500, Ely, Nevada 89301-9408.

FOR FURTHER INFORMATION CONTACT: Darrell Winter, Team Leader, at the above address or telephone (702) 289-4865.

SUPPLEMENTAL INFORMATION: The BLM Ely District is proposing to classify for disposal approximately 8,000 acres in Lake Valley, Lincoln County, Nevada, to

provide for agricultural development. The area of concern is located within:

Mount Diablo Meridian, Nevada

T. 5 N., R. 66 E.,
Sec. 1 through 4, inclusive,
Secs. 9 through 12, inclusive,
Secs. 14, 15, 23 and 33.
T. 6 N., R. 66 E.,
Sec. 16,
Secs. 21, 22 and 23,
Secs. 26 through 29, inclusive,
Secs. 32, 33 and 35.

It has been proposed to BLM to purchase approximately 8,000 acres of the above described land under section 203(f) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1713 and 43 CFR 2710.0-6(c).

Upon publication of this Notice in the **Federal Register**, the above described lands will be segregated from all forms of appropriation under the public land laws and the general mining laws, but not section 203 of FLPMA or the mineral leasing laws. Any lands that may be transferred from the United States will be sold for not less than fair market value and will be subject to valid existing rights. In the event of sale, conveyance of the remaining, available mineral interests, of nominal value, will occur simultaneously with the sale of the land. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 non-returnable filing fee for conveyance of the available mineral interests.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States under the Act of August 30, 1890, 43 U.S.C. 945.

2. Oil, gas, potassium and sodium.

The patent, when issued, will be subject to the following third party interests:

a. Those rights for telephone line purposes which have been granted to Lincoln County Telephone System by right-of-way grant N-4158 under the Act of March 4, 1911, 43 U.S.C. 961.

b. Those rights for power line purposes which have been granted to Lincoln County Power Number 1 by right-of-way grants N-4434 and NEV-60394 under the Act of December 21, 1928, 43 U.S.C. 617D.

c. Those rights for power line purposes which have been granted to Lincoln County Power Number 1 by right-of-way grant NEV-65760 under the Act of October 21, 1976, 43 U.S.C. 1762.

d. Those rights for telephone line purposes which have been granted to Lincoln County Telephone System by right-of-way grant N-33375 under the Act of October 21, 1976, 43 U.S.C. 1761.

e. Those rights for material site purposes which have been granted to Nevada Department of Transportation by permits NEV-010919, NEV-013832, NEV-014404 and CC-021044 under the Act of November 9, 1921, 42 Stat. 216.

f. Those rights for road purposes reserved to Lincoln County under RS 2477 for the Mt. Wilson Byway.

Grazing will continue as a condition of the sale in accordance with the terms and conditions of the permit, until the expiration date specified in the grazing permit. The purchaser will compensate the grazing permittee for interest in authorized range improvements.

The public is invited to participate in the identification of planning issues, alternatives and planning criteria for the proposed MFP amendment. The anticipated issue is the classification of the subject lands for retention or for disposal.

Preliminary planning criteria consist of the following:

1. Decisions proposed through this amendment will be in conformance with the Schell MFP.

2. BLM Manual 1623, "Supplemental Program Guidance for Land Resources" will be used to identify determinations to be made, factors of analysis and information requirements for the amendment.

3. An interdisciplinary approach will be used for the analysis which will integrate consideration of physical, biological and social sciences.

4. Consideration will be given to current and potential uses of the public lands.

5. A consistency determination will be made with respect to the management programs of other Federal agencies and state and local governments.

6. This action will be in compliance with all public land laws, policies and direction.

7. Consideration will be given to the management prescriptions on adjoining public lands to minimize the creation of management conflicts.

8. Existing studies, the most current inventories, current publications and professional judgement will be used to analyze potential impacts for this proposal.

9. Lands covered by this MFP Amendment will be those lands legally described as the potential disposal and all immediately adjacent affected lands.

Alternatives proposed for consideration at a minimum include:

1. No action—defined as a continuation of current management.

2. Preferred alternative—to be defined by BLM management following consultations with staff and input from the public.

Public comment is requested on this proposal, its anticipated issues and the preliminary planning criteria. Persons interested in participating in the amendment process should submit their name, address and comments to the above address. Planning documents and other pertinent materials pertaining to this proposal may be examined at the Ely District Office between 7:30 a.m. and 4:30 p.m., Monday through Friday.

Dated: September 4, 1992.

Billy R. Templeton,

State Director, Nevada.

[FR Doc. 92-22159 Filed 9-14-92; 8:45 am]

BILLING CODE 4310-HC-M

[UT080-92-4320-02]

Vernal District Grazing Advisory Board; Business Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Vernal District Grazing Advisory Board Business Meeting.

SUMMARY: Notice is hereby given in accordance with Public Law 94-579, Section 403, as outlined in CFR part 1784.4-2, that there will be a meeting of the Vernal District Grazing Advisory Board on Tuesday, October 20, 1992, commencing at 8:00 a.m. The meeting will be held at the Vernal BLM District Office conference room, 170 South 500 East, Vernal, Utah.

The agenda items will include:

—Organization of Board
—Review minutes of previous meeting
—Resource improvement work FY92 and 93
—Current forage conditions/use supervision
—Vernal District Grazing Advisory Board Policy concerning use of budgeted and contributed funds for construction and maintenance of range improvements
—Predator and pest control
—Items from the public

The meeting is open to the public. Interested parties wishing to participate or present a statement should notify the District Manager at the Vernal District BLM Office, 170 South 500 East, Vernal, Utah, or telephone (801) 789-1362 no later than October 19, 1992.

David E. Little,

District Manager.

[FR Doc. 92-22150 Filed 9-14-92; 8:45 am]

BILLING CODE 4310-DQ-M

[NV-930-92-4212-14; N-56327]

Realty Action; Non-Competitive Sale of Public Lands in Clark County, NV

The following described public land in Henderson, Clark County, Nevada has been determined to be suitable for sale utilizing non-competitive procedures, at not less than the fair market value. Authority for the sale is Section 203 of P.L. 94-579, the Federal Land Policy and Management Act of 1976 (FLPMA). The lands will not be offered for sale until at least 60 days after the date of publication of this notice in **Federal Register.**

Mount Diablo Meridian, Nevada

T. 21 S., R. 62. E.,
Sec. 35: NE¼SW¼
Agregating 40.00 acres (gross).

This parcel of land, situated in Henderson is being offered as a direct sale to the City of Henderson. Proposed development includes landscaping beautification as part of the Boulder Highway Corridor Improvement Program to develop the "Gateway to Henderson".

This land is not required for any federal purposes. The sale is consistent with the Bureau's planning system. The sale of this parcel would be in the public interest.

In the event of a sale, conveyance of the available mineral interests will occur simultaneously with the sale of the land. The mineral interests being offered for conveyance have no known mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 nonreturnable filing fee for conveyance of the available mineral interests.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.
2. Oil, gas, sodium, potassium and saleable minerals.

and will be subject to:

1. Those rights for Airport marker purposes which have been granted to Federal Aviation Administration by Permit No. N-4245 under the Authority of 44 LD513.
2. Those rights for natural gas pipeline purposes which have been granted to Southwest Gas Corporation by Permit No. NEV-015814 under section 28 of the Mineral Leasing Act of 1920.
3. Those rights for water pipeline purposes which have been granted to Las Vegas Valley Water District by Permit No. NEV-043457 under the Act of October 21, 1976.

Upon publication of this notice in the **Federal Register,** the above described land will be segregated from all forms of appropriations under the public land laws, including the general mining laws. This segregation will terminate upon issuance of a patent or 270 days from the date of this publication, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the **Federal Register,** interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with Public Law 94-579, or other applicable laws.

Dated: September 1, 1992.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 92-22050 Filed 9-14-92; 8:45 am]

BILLING CODE 4310-HC-M

[NV-050-4410-06]

Draft Stateline Resource Management Plan and Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of second extension of the public comment period for the Draft Stateline Resource Management Plan (RMP) and Environmental Impact Statement (EIS).

SUMMARY: Due to requests by various agencies and the general public, the public comment period is extended for the Draft Stateline RMP and EIS.

DATES: The public comment period has been extended from September 30, 1992 to December 31, 1992. All written comments for this Draft document must be postmarked no later than this extended date.

ADDRESSES: Written comments should be addressed to: Stateline Area Manager, attn: RMP Team Leader, Bureau of Land Management, 4765 Las Vegas Drive, P.O. Box 26569, Las Vegas, Nevada 89126.

FOR FURTHER INFORMATION CONTACT: Jerry Wickstrom, RMP Team Leader, at the above Bureau of Land Management (BLM) address or telephone (702) 647-5000.

Dated: September 4, 1992.

Billy R. Templeton,

State Director, Nevada.

[FR Doc. 92-22281 Filed 9-14-92; 8:45 am]

BILLING CODE 4310-HC-M

National Park Service

Chesapeake and Ohio Canal National Historical Park Commission; Meeting

Notice is hereby given in accordance with Federal Advisory Committee Act that a meeting will be held at 2 p.m. on Saturday, September 19, 1992, at the Hancock Maintenance Office, 326 East Main Street, Hancock, Maryland. Prior to the meeting, there will be a dedication of the rewatered section of the canal at the Little Tonoloway picnic area.

The Commission was established by Public Law 91-664 to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and development of the Chesapeake and Ohio Canal National Historical Park.

The members of the Commission are as follows:

Mrs. Sheila Rabb Weidenfeld, Chairman, Washington, DC.
Mrs. Dorothy Tappe Grotos, Delaplane, Virginia.
Mr. Samuel S.D. Marsh, Bethesda, Maryland.
Mr. James F. Scarpelli, Sr., Cumberland, Maryland.
Ms. Elise B. Heinz, Arlington, Virginia.
Captain Thomas F. Hahn, Shepherdstown, West Virginia.
Mr. Rockwood H. Foster, Washington, DC.
Mr. Barry A. Passett, Washington, DC.
Mrs. Jo Reynolds, Potomac, Maryland.
Ms. Nancy C. Long, Glen Echo, Maryland.
Mrs. Minny Pohlmann, Dickerson, Maryland.
Dr. James H. Gilford, Frederick, Maryland.
Mr. Edward K. Miller, Hagerstown, Maryland.
Mrs. Sue Ann Sullivan, Williamsport, Maryland.
Mr. Terry W. Hepburn, Hancock, Maryland.
Mr. Robert L. Ebert, Cumberland, Maryland.

Matters to be discussed at this meeting include:

1. Superintendent's Report.
2. Old & New business.
3. Public comments.

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Thomas O. Hobbs, Superintendent, C&O Canal National Historical Park, P.O. Box 4, Sharpsburg, Maryland 21782.

Minutes of the meeting will be available for public inspection six (6) weeks after the meeting at Park Headquarters, Sharpsburg, Maryland.

Dated: September 4, 1992.

Chrysandra L. Walter,

Acting Regional Director, National Capital Region.

[FR Doc. 92-22235 Filed 9-14-92; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 5, 1992. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by September 30, 1992.

Carol D. Shull,

Chief of Registration, National Register.

ARKANSAS

Monroe County

St. John the Baptist Catholic Church, Jct. of New Orleans and W. Ash St., SW corner, Brinkley, 92001283

Van Buren County

Collums—Baker House, US 65 E side, approximately ½ mi. S of town limits, Bee Branch vicinity, 92001282

CALIFORNIA

Alameda County

University High School, 5714 Martin Luther King Jr. Way, Oakland, 92001300

Humboldt County

Ricks, Thomas F., House, 730 H St., Eureka, 92001302

Tehama County

Maywood Woman's Club 902, Marin St., Corning, 92001301

FLORIDA

Dade County

Bay Shore Historic District, Roughly bounded by NE. 55th St., Biscayne Blvd., NE. 60th St. and Biscayne Bay, Miami, 92001323

KANSAS

Jackson County

Booth Site, Address Restricted, Mayetta vicinity, 92001322

MAINE

Cumberland County

Gorham Historic District, Roughly bounded by College, Church, Cross, State and Maple Sts., including School St. from State to N of Church, Gorham, 92001298

Stimson Memorial Hall, ME 26 E side, .5 mi. N of jct. with US 202, Gray, 92001296

Hancock County

Robertson Quarry Galamander, ME 182 E side, NE of jct. with Old Rd., West Franklin, 92001292

Oxford County

Fryeburg Town House, Former, ME 5 E side, .1 mi. N of jct. with Woodlawn Ave., Fryeburg Center, 92001295

Somerset County

Concord Haven, ME 16 E side, 1.7 mi. N of jct. with Berry Rd., Embden vicinity, 92001297

Washington County

Machias Railroad Station, 27 E. Main St., Machias, 92001293

MARYLAND

Baltimore County

Lake Roland Historic District, Robert E. Lee Memorial Park, Baltimore (Independent City) vicinity, 92001285

MONTANA

Big Horn County

OW Ranch, Roughly 15 mi. S of Birney on Hanging Woman Cr., Birney vicinity, 92001321

Missoula County

University of Montana Historic District, Roughly bounded by Arthur, Connell and Beckwith Aves. and the ridge lines of Mt. Sentinel, Missoula, 92001284

NEW YORK

Westchester County

Mamaroneck Methodist Church, 514 Boston Post Rd., Mamaroneck, 92001304

OREGON

Coos County

Breuer Building, 460 W. First Ave., Bandon, 92001306

Cape Arago Lighthouse (Lighthouse Stations of Oregon MPS), Gregory Point, N of Cape Arago and about 2 mi. SW of Coos Bay entrance, Charleston vicinity, 92001313

Cary, Leo J., House (Coquille MPS), 572 E. First St., Coquille, 92001317

Coquille City Hall (Coquille MPS), 99 E. Second St., Coquille, 92001318

Harlocker, Judge Lintner, House (Coquille MPS), 18 S. Collier St., Coquille, 92001315

Hub Department Store Building, 125 Central Ave., Coos Bay, 92001307

Sherwood, A. J., House (Coquille MPS), 257 E. Main St., Coquille, 92001314

St. James Episcopal Church (Coquille MPS), 210 E. Third St., Coquille, 92001316

Curry County

Cape Blanco Lighthouse (Lighthouse Stations of Oregon MPS), Westernmost part of Cape Blanco, W of Sixes, Sixes vicinity, 92001312

Lane County

Women's Memorial Quadrangle Ensemble (Architecture of Ellis F. Lawrence MPS), Bounded by University St., Johnson Ln. and Pioneer Cemetery, University of Oregon campus, Eugene, 92001320

Lincoln County

Yaquina Head Lighthouse (Lighthouse Stations of Oregon MPS), Yaquina Head, about 4 mi. N of Yaquina R. entrance, Newport vicinity, 92001311

Tillamook County

Cape Meares Lighthouse (Lighthouse Stations of Oregon MPS), Cape Meares, 5 mi. S of Tillamook Bay entrance, Tillamook vicinity, 92001310

Wasco County

French, Edward, House, 515 Liberty St., The Dalles, 92001319

SOUTH CAROLINA

Greenville County

Simpsonville Baptist Church, 106 Church St., Simpsonville, 92001309

Hampton County

Peeples, Hattie J., House, 109 Carolina Ave. W., Varnville, 92001299

TEXAS

Coryell County

Mother Neff State Park and F. A. S. 21-B(1) Historic District, Jct. of TX 236 and the Leon R., Moody vicinity, 92001303

Lubbock County

Kress Building, 1109 Broadway, Lubbock, 92001305

Potter County

Bivins, Miles and Myde, House, 2311 W 16th Ave., Amarillo, 92001306

WASHINGTON

Grays Harbor County

Mickelson, Ole, Cabin, Lot 46, S shore Lake Quinault, between Willaby Cr. and Falls Cr., Quinault vicinity, 92001291

Klickitat County

Appleton Log Hall, 835 Appleton Rd., Appleton, 92001294

Lincoln County

Harrington Bank Block and Opera House, Jct. of Third and Willis Sts., NW corner, Harrington, 92001288

Snohomish County

Commerce Building, 1801 Hewitt Ave., Everett, 92001290

Spokane County

Grace Baptist Church, 1527 W Mallon St., Spokane, 92001289

Washington State Normal School at Cheney Historic District, Jct. of Fifth and C Sts., Cheney, 92001287

Yakima County

Goodman, Daniel, House, 701 S 3rd Ave., Yakima, 92001286

A proposed move is being considered for the following property:

FLORIDA

Duval County

Catherine Street Fire Station, 14 Catherine St., Jacksonville, 72000309

[FR Doc. 92-22110 Filed 9-14-92; 8:45 am]

BILLING CODE 4310-70-M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Housing Guaranty Program; Investment Opportunity

The Agency for International Development (A.I.D.) has authorized the guaranty of a loan to Government of Pakistan ("Borrower") as part of A.I.D.'s development assistance program. The proceeds of these loans will be used to finance shelter projects for low-income families in Pakistan. At this time, the Government of Pakistan has authorized A.I.D. to request proposals from eligible lenders for a loan under this program of $25 Million Dollars ($25,000,000). The name and address of the Borrower's representatives to be contacted by interested U.S. lenders or investment bankers, the amount of the loan and project number are indicated below:

Government of Pakistan

Project: 391-HG-001-$25,000,000

Loan Guaranty Authorization No: 391-HG-001 A01

1. Attention: Javed Noel, Joint Secretary, External Finance Wing, Ministry of Finance & Economic Affairs, Government of Pakistan, Islamabad, Pakistan, Telex No.: 542-02 MIFIN PK, Telefax No.: 92-51-821941, Telephone No.: 92-51-821847, and
2. Attention: Mr. Arshad Farooq, Economic Minister, Embassy of Pakistan, 2315 Massachusetts Avenue, NW., Washington, DC 20008, Telefax No.: 202/387-0484, Telephone No.: 202/939-6200.

Interested lenders should contact the Borrower as soon as possible and indicate their interest in providing financing for the Housing Guaranty Program. Interested lenders should deliver their bids to all of the Borrower's representatives by Monday, September 28, 1992, 12 noon Eastern Standard Time. Bids should be open for a period of 48 hours from the bid closing date. Copies of all bids should be simultaneously sent to the following:

Mr. John Wegge, Mission Housing Advisor, USAID/Islamabad, Pakistan, Washington, DC 20521-8100. (Street address: Pakistan Shelter Resource Mobilization Program, 30 West Blue Area (next to OPF Bldg.), 4th Floor, Islamabad, Pakistan, Telefax No.: 92-51-822-052 (preferred communication), Telephone No.: 92-51-818-463.

David Grossman/Peter Pirnie, Agency for International Development, PRE/H, Room 401, SA-2, Washington, DC 20523-0214, Telex No.: 892703 AID WSA, Telefax No.: 202/663-2552 (preferred communication), Telephone No.: 202/663-2557 or 2530.

For your information the Borrower is currently considering the following terms:

(1) *Amount:* U.S. $25 million.

(2) *Term:* Up to 30 years.

(3) *Grace Period:* Ten years grace on repayment of principal. If variable interest rate, repayment of principal to amortize in equal, semi-annual installments over the remaining life of the loan. If fixed interest rate, semi-annual level payments of principal and interest.

(4) *Interest Rate:* Alternatives of fixed and variable rates are requested.

(a) *Fixed Interest Rate:* If rates are to be quoted based on a spread over an index, the lender should use as its index the 7¼% U.S. Treasury Bond due August 15, 2022. Such rate is to be set at the time of acceptance.

(b) *Variable Interest Rate:* To be based on the six-month British Bankers Association LIBOR, preferably with terms relating to Borrower's right to convert to fixed. Variable rate offers which include a maximum (cap) rate ranging from 10% to 12% per annum are requested. While quarterly adjustment of the rate is preferred, offers with weekly adjustment will be considered.

(5) *Prepayment:* Offers should include options for prepayment by the Borrower and mention prepayment premiums, if any.

(6) *Fees:* Offers should specify the placement fees and expenses. Lenders are requested to include all legal fees in their placement fee. A.I.D. fees, and Paying and Transfer Agent fees should also be specified. Such fees and expenses shall be payable at closing from the proceeds of the loan.

(7) *Closing Date:* Estimated 60 days from date of selection of lender.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower and thereafter subject to approval by A.I.D. Disbursements under the loan will be subject to certain conditions required of the Borrower by A.I.D. as set forth in agreements between A.I.D. and the Borrower.

The full repayment of the loans will be guaranteed by A.I.D. The A.I.D. guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to received an A.I.D. guaranty are those specified in section 238(c) of the Act. They are: (a) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for an A.I.D. guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rates may be no higher than the maximum rate established from time to time by A.I.D.

Information as to the eligibility of investors and other aspects of the A.I.D. housing guaranty program can be obtained from:

Mr. Peter M. Kimm, Director, Office of Housing and Urban Programs, Agency for International Development, Room 401, SA-2, Washington, DC 20523-0214, Telephone: 202/663-2530.

Dated: September 10, 1992.

Michael G. Kitay,

Assistant General Counsel, Bureau for Private Enterprise, Agency for International Development.

[FR Doc. 92-22286 Filed 9-14-92; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

[Docket No. MC-247354 (C) and (P)]

Trailer Bridge, Inc., Common and Contract Carrier Application

AGENCY: Interstate Commerce Commission.

ACTION: Request for comments.

SUMMARY: An application for a motor common and contract carrier license has been filed by Trailer Bridge, Inc. Trailer Bridge seeks to use its domestic motor carrier authority, in combination with its own ocean vessels, to provide motor/water service to and from Puerto Rico. Comments of the public are sought because the application raises novel questions involving the division of regulatory authority between the Interstate Commerce Commission and the Federal Maritime Commission. The application also mixes substantial questions about the types of rate arrangements into motor common and contract carriers may enter.

DATES: Comments must be filed by November 16, 1992. Replies are due on December 14, 1992. Comments and replies are due on December 14, 1992. Comments and replies must be served on the Federal Maritime Commission. Comments of the Federal Maritime Commission are due on February 12, 1993.

ADDRESSES: Send an original and 10 copies referring to Docket No. MC-247354 (C) and (P) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder (202) 927-5610 or Craig M. Keats (202) 927-6046.

[TDD for hearing impaired: (202) 927-5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to, call or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or telephone (202) 289-4357/4359, (assistance for the hearing impaired is available through TDD services (202) 927-5721).

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

There is no reason to believe that this action will impose additional regulatory requirements on a substantial number of small entities. However, comments are expressly solicited on this point.

Decided: September 3, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-22264 Filed 9-14-92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31971]

South Orient Railroad Co., Ltd.; Acquisition and Operation Exemption; Line of the Atchison, Topeka and Santa Fe Railway Co.

On December 20, 1991, South Orient Railroad Company Ltd. (SORC), a non-carrier, filed a notice of exemption to acquire certain limited ownership interests in and to operate as a common carrier approximately 381.9 miles of active rail line owned by The Atchison, Topeka, and Santa Fe Railroad Company (ATSF).[1] ATSF had previously conveyed an interest in the line's fixed assets to the South Orient Rural Rail Transportation District, an instrumentality of the State of Texas. By decision served January 23, 1992, the Commission ordered a delay in publishing the notice [2] and reopened the exemption for the receipt of additional evidence and argument relating to the effect of ATSF's prior conveyance of the line's fixed assets on SORC's ability to fulfill the common carrier obligation that would be obtained by the exemption. By decision served September 2, 1992, the Commission affirmed the exemption and directed that this notice be published in the **Federal Register**.

Any comments must be filed with the Commission and served on: Jack L. Coke, Jr., Law Offices of Jack L. Coke, Jr., P.C., 800 Preston Commons West, Dallas, Texas 75225.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time, but the exemption will remain in effect pending revocation.

Decided: September 8, 1992.

By the Commission, David M. Konschnik Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-22265 Filed 9-14-92; 8:45 am]

BILLING CODE 7035-01-M

[1] According to the notice, the line begins at a point commonly known as San Angelo Junction, Coleman County, Texas (San Angelo Subdivision Milepost No. 0 plus 330 feet near San Angelo Junction, Texas, on the east, and Lampasas Subdivision Milepost No. 373 plus 4362 feet near San Angelo Junction, Texas, on the west). The line proceeds southwest to the international border between the United States and Mexico at a point south of Presidio, Texas and north of Ojinaga, Chihuahua in Mexico (milepost No. 1029 plus 660 feet on the International Bridge at'or near Presidio, Texas). The line proceeds through the following 11 counties in Texas: Coleman, Runnels, Tom Green, Irion, Reagan, Upton, Crockett, Crane, Pecos, Brewster and Presidio.

[2] Under 49 CFR 1150.32(b), the exemption is effective 7 days after the notice is filed and is to be published in the **Federal Register** within 30 days of its filing with the Commission.

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Superfund (CERCLA)

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on August 31, 1992, a proposed Consent Decree in *United States* v. *Ciba-Geigy Corporation* was lodged with the United States District Court for the Southern District of Alabama. This Consent Decree concerns the Ciba-Geigy Corporation manufacturing plant site ("the Site") adjacent to the Tombigbee River near McIntosh, Alabama. Pursuant to sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499, 42 U.S.C. 9606 and 9607(a), the Complaint in this action seeks recovery of past response costs incurred by the United States at the entire Site, future response costs in connection with the proposed Decree, and injunctive relief for Operable Unit No. 2 ("OU2"). OU2 consists of over 127,000 cubic yards of contaminated soils at ten of eleven former waste management units at the Site. Ciba-Geigy has agreed in the proposed Consent Decree to: (1) Perform the selected remedy for OU2, which includes excavation and remediation of the contaminated soils, at a total estimated cost of $120 million, and (2) reimburse the United States for all of its past response costs incurred at the Site ($322,313.52 plus interest), and for all of its future response and oversight costs incurred in connection with this Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC, 20044, and should refer to *United States* v. *Ciba-Geigy*

Corporation (Ciba-Geigy McIntosh, Alabama Site), D.J. Ref. 90-11-2-781.

The proposed Consent Decree may be examined at any of the following offices: (1) The Office of the United States Attorney for the Southern District of Alabama, U.S. Courthouse, 113 St. Joseph Street, Mobile, Alabama; (2) the U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE., Atlanta, Georgia; and (3) the Consent Decree Library, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (telephone (202) 347-2072). Copies of the proposed Decree may be obtained by mail from the Consent Decree Library, 601 Pennsylvania Avenue, NW., P.O. Box 1097, Washington, DC 20004. For a copy of the Consent Decree with attachments (Record of Decision, Statement of Work and Site map) please enclose a check for $49.25 ($.25 per page reproduction charge) payable to "Consent Decree Library."

For a copy of the Consent Decree without those attachments please enclose a check for $20.50 ($.25 per page reproduction charge) payable to "Consent Decree Library."

Vicki A. O'Meara,

Acting Assistant Attorney General, Environment & Natural Resources Division.

[FR Doc. 92-22233 Filed 9-14-92; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 C.F.R. § 50.7, notice is hereby given that a proposed consent decree in *United States* v. *North Brothers Company, A Division of National Services Industries, Inc.*, Civil Action No. 91-2253-H, was lodged on August 19, 1992 with the United States District Court for the Western District of Tennessee. Defendant performed certain asbestos removal operations at facility of the Tennessee Valley Authority (TVA), known as the TVA Allen Fossil Plant in Memphis, Tennessee, in January and February 1989. The Complaint alleged that defendant violated the Clean Air Act, 42 U.S.C. 7401, et seq. (the Act), and the National Emission Standards for hazardous Air Pollutants for Asbestos (Asbestos NESHAP), promulgated pursuant to Section 112 of the Act, 42 U.S.C. 7412, and codified at 40 CFR part 61, subpart M, in the course of its asbestos removal operations at the TVA Allen Fossil Plant. The proposed consent decree requires the defendant to pay the United States a civil penalty of $55,000.00 within 30 days of the date of entry of the consent decree and to comply with 40 CFR 61.147(e)(1) and 61.156.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *North Brother Company, A Division of National Services Industries, Inc.*, DOJ Ref. # 90-5-2-1-1549.

The proposed consent decree may be examined at the Office of the United States Attorney, 1026 Federal Office Building, 167 North Main Street, Memphis, Tennessee; the Region IV Office of the Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia; and at the Consent Decree Library, 601 Pennsylvania Avenue, NW., Washington, DC 20044, 202-347-2072. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $3.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 92-22232 Filed 9-14-92; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act: Announcement of Proposed Noncompetitive Grant Awards

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of intent to award a noncompetitive grant.

SUMMARY: The Employment and Training Administration (ETA) announces its intent to award a noncompetitive grant to the American Association of Community and Junior College (AACJC), of Washington, DC, for the provision of specialized services under the authority of the Job Training Partnership Act (JTPA).

DATES: It is anticipated that this grant award will be executed by September 30, 1992, and will be funded for twelve months. Submit comments by 4:45 p.m. (Eastern Time), on September 24, 1992.

ADDRESSES: Submit comments regarding this proposed assistance award to: U.S. Department of Labor, Employment and Training Administration, room C-4305, 200 Constitution Avenue NW., Washington, DC 20210, Attention: Charlotte Adams: Reference FR-DAA-005.

SUPPLEMENTARY INFORMATION: The Employment and Training Administration (ETA) announces its intent to award a noncompetitive grant to the AACJC of Washington, DC. AACJC will develop a curriculum for use by community colleges in providing training & technical assistance to small & mid-sized firms and to train community college faculty in techniques for establishing outreach programs to small businesses. Funds for this activity are authorized by the Job Training Partnership Act, as amended, Title IV—Federally administered Programs. The proposed funding is approximately $250,000 for twelve months.

Signed at Washington, DC, on September 9, 1992.

James C. DeLuca,

ETA Grant Officer.

[FR Doc. 92-22187 Filed 9-14-92; 8:45 am]

BILLING CODE 4510-30-M

Job Training Partnership Act: Technical Assistance for Job Training Model Replication

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of technical assistance.

SUMMARY: The Department of Labor (DOL) is announcing the availability of technical assistance to Job Training Partnership Act (JTPA) service providers. The Center for Employment Training (CET) is being funded to provide such technical assistance to replicate the CET Job Training Model. Up to 10 service providers will receive assistance in developing and implementing the CET Job Training Model for use within the JTPA system. All interested parties must participate in an introductory seminar prior to selection.

DATES: Information seminars will be held at CET's headquarters in San Jose, California on October 14 through October 16, and again on October 28 through 30, 1992. All interested service providers MUST: (1) Contact CET to arrange to attend an information seminar if the organization has not

previously attended one; (2) by September 30, 1992 if the organization has previously attended an information seminar or within 15 days of their attendance at a seminar, the organization must submit in writing to the Department of Labor at the address below, the organization's intent to apply for this technical assistance award, and (3) by October 15, 1992 for those who have previously attended a CET information seminar or within 30 days from attendance of an information seminar, submit an original and four copies of a brief but thorough application to the Department of Labor at the address below, discussing the criteria as required below. Packages shall be postmarked by the dates established above.

ADDRESSES: Notices of intent to attend an information seminar and to apply for this technical assistance award shall be mailed by certified mail, return receipt requested, to Lisa Stuart, room N4703, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Lisa Stuart, Employment and Training Administration, Department of Labor, room N4703, 200 Constitution Avenue NW., Washington, DC 20210. The telephone number is (202) 535-0525. This is not a toll-free number.

Eugene Hernandez, CET Replication Project Director, Center for Employment Training, 701 Vine Street, San Jose, CA 95110. The telephone number is (408) 287-7924. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Center for Employment Training (CET) offers a unique training program which challenges standard notices of training the disadvantaged. It is a holistic approach to train the hardest-to-serve through a concurrent, integrated program of contextual learning. CET focuses on job training, but combines basic education and related services in context with this core training. This method of learning was recently endorsed by the Secretary's Commission on Achieving Necessary Skills. Further, CET's program is unique in that it is accessible to all, with no entry tests or creaming. This represents the direction of the JTPA amendments, which stress targeting to those most in need and intensifying and improving the quality of services offered. The CET design, as implemented through this replication, will reflect the key provisions of the new program design such as assessment and individual service strategy. In addition, CET is widely recognized as one of the most effective job training programs in the country. CET's program serving single minority mothers was credited with the most positive outcomes in a comprehensive study funded by the Rockefeller Foundation.

Technical assistance will be provided to up to 10 sites to replicate the CET job training model. This technical assistance award will provide for the training and technical assistance for local entities which are selected to operate the CET model program. Technical assistance is being provided to develop a CET-model base within the JTPA system that could provide for: a technical assistance capacity within the JTPA system; opportunity to uncover obstacles in implementing CET-model programs under JTPA; and the opportunity to delineate aspects of the model which provide the greatest benefit to JTPA participants.

Selected organizations would enter into agreements with the Center for Employment Training to receive the technical assistance required for the development and start-up of the local CET model program. This a non-monetary award. The technical assistance award includes the local and CET on-site training to enable an organization to start its own CET model program. The award covers the cost of CET's services and most traveling that will be required of CET and of the service providers. However, start-up costs, including site development and preliminary staffing, will be the responsibility of the selected service providers. Operation costs of the model program are also not included and are expected to come from the organizations' regular JTPA and other funding. Additional resources may be necessary and may be obtainable from local foundations. CET will assist selected sites in finding additional funding sources, if necessary.

This award is to provide services to the JTPA community. Eligible applicants are limited to service delivery area (SDA) administrative entities who run their own training programs, consortiums of service providers, not-for-profit organizations, community based organizations as defined under Section 4 of JTPA and local education organizations. Two types of applications will be accepted: (1) Applications from SDA administrative entities, and (2) joint applications with one party being the SDA administrative entity and the other being an organization listed above. Applications that do not include the local SDA administrative entity will not be accepted.

Information Seminars

JTPA service providers that are interested in receiving such technical assistance to develop and start operations on their own CET model job training program must, as stated above, contact CET at the number listed above, to arrange attendance at an information seminar. Attendance at the information seminars is restricted to those individuals who have the capacity to make decisions of participation for that organization. Although for the 10 selected organizations, most funds required for future travel to CET's headquarters in San Jose are provided for in the CET and DOL agreement, the initial costs to attend the information seminars are *not* covered. CET will assist in making these travel arrangements, however, all costs are the responsibility of the individual service providers.

Application Process

Selection of service providers will be based upon criteria in three categories: eligibility, competitiveness, and additional factors. In order to be considered, an applicant must meet each of the criteria under the eligibility section. The information received under the competitive issues section will be used to rank applications. After all applications are ranked, the additional factors will be used to select a diverse group of sites.

I. Eligibility

(1) All entities must be or become JTPA service providers. All providers that are not JTPA administrative entities must jointly submit their applications with the SDA administrative entity. This joint application with the service delivery area administrative entity should show that the service provider is or will be receiving JTPA funds during Program Year 1992, (July 1, 1992 through June 30, 1993).

The application should elaborate on the relationship between the service provider and the administrative entity. This should include descriptions of previous services, previous and current JTPA funding levels, and discuss the level of cooperation between the provider and the administrative entity. Further, any local procurement procedures that will be required to be met for starting and completing this project should be detailed in the application. (2) All entities must state that they are willing to participate in evaluation studies and to implement the core CET job training model.

II. Competitiveness

Applications will be judged equally based upon (1) the organization's level of commitment to the replication project, and (2) the apparent capacity of the

organization to succeed with the replication. Measures of this commitment include but are not limited to cooperative relationships with the JTPA administrative entity (in those instances where the service provider is not the administrative entity), coordination with the State JTPA organization, coordination with other programs or activities for the JTPA eligible population including Job Opportunities and Basic Skills Training (JOBS), funds available for this project, evidence of research into additional funding sources, ability of the service provider to operate the program in the future and private sector involvement in project. Measures of organizational capacity include but are not limited to the number of clients the service provider intends to serve, the number of occupations for which the service provider intends to train, previous experience, present facilities, and ability to meet JTPA performance standards.

III. Additional Factors

Other factors may be considered in the selection process to attempt to diversify the group to allow for studying the appropriateness of the model in various settings and providers of various sizes. These factors include: geographic area, service delivery area (SDA) size, urban or rural SDA, intended target population, and service provider's organization size. If the applicant feels that other factors are significant or unique, please discuss these additional areas as appropriate.

Two competitions will be held. For those organizations that previously attended an information seminar at CET, three slots will be available to award before the new information seminars take place. This will help expedite the process and better distribute the projects over the period of the agreement. All other organizations who have not previously attended an information seminar will be eligible to apply after attending an information seminar, along with those organizations not selected in the first round of competition. Service providers for these remaining seven slots will be chosen after the last seminar.

Questions about this Notice may be directed to Lisa Stuart at the DOL address or number above. Additional information about the CET job training model may be obtained from Eugene Hernandez at the CET address or number above.

Signed at Washington, DC, this 9th day of September, 1992.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 92-22188 Filed 9-14-92; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL COMMISSION ON JUDICIAL DISCIPLINE AND REMOVAL

Meeting

AGENCY: National Commission on Judicial Discipline and Removal.

ACTION: Public meeting.

SUMMARY: Notice is hereby given in the public interest and pursuant to the Federal Advisory Committee Act that a public meeting of the National Commission on Judicial Discipline and Removal will be held on September 21, 1992, in Washington, DC. The precise location of the meeting is the Parlor Room of the Dolley Madison House, 1520 H Street, NW., 20005. Since the Dolley Madison House is the headquarters of the Federal Judicial Center members of the public will be directed to the meeting room. The meeting will convene at 9:30 a.m. and will adjourn at approximately 5 p.m.

AUTHORITY: The meeting will be the fourth one for the National Commission, a body composed of thirteen members appointed by the Speaker of the House, the President *pro tem* of the Senate, the President, the Chief Justice of the United States and the Conference of State Chief Justices.

The National Commission, established by Public Law 101-650 (title IV), is assigned three statutory duties. The first is to investigate and study the problems and issues involved in the tenure (including discipline and removal) of Article III (appointed to serve for life) Federal judges. The second is to evaluate the advisability of proposing alternatives to current arrangements with respect to such problems and issues, including alternatives for the discipline or removal of Federal judges that would require constitutional amendments. Finally, the Commission is required to prepare and submit a report to the Congress, the Chief Justice and the President setting forth a detailed statement of its findings and conclusions together with any recommendations for legislative and administrative actions as are considered appropriate. The Commission is not authorized to consider the factual underpinnings of specific complaints against Federal judges.

In pursuant of its statutory mandate, the Commission has held two days of public hearings.

Ordinarily the provisions of the Federal Advisory Committee Act are not applicable to legislative or judicial agencies. Nonetheless, since the Commission is composed of representatives of all three branches of the Federal government, good faith attempts will be made to follow the spirit of the law. This good faith commitment to open meetings is incorporated in the Commission's By-laws.

STATUS: The meeting will be open to the public. A portion of the meeting may be held in executive session to consider personnel matters involving privacy interests

MATTERS TO BE CONSIDERED: The Commission will be discussing the status of its research program, the prospect of holding a third day of public hearings, and other organizational and administrative matters related to the Commission's future activities.

CONTACT PERSONS FOR FURTHER INFORMATION: Contact Michael J. Remington or William J. Weller at the National Commission On Judicial Discipline and Removal, suite 690, 2100 Pennsylvania Ave., NW., Washington, DC, 20037-3202; or call (202) 254-8169.

SUPPLEMENTARY INFORMATION: Minutes of the meeting will be available for public inspection during regular working hours as the Commission offices approximately thirty working days following the meeting.

Michael J. Remington,

Director.

[FR Doc. 92-22161 Filed 9-14-92; 8:45 am]

BILLING CODE 8820-DS-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

President's Committee On Arts and Humanities; Meeting

Thursday, October 1, 1992 at 9 o'clock in the morning has been designated by the President's Committee on the Arts and the Humanities for Meeting XXVIII. This meeting will take place at 1100 Pennsylvania Avenue, NW, suite 527, Washington, DC.

The Committee, charged with exploring ways to increase private support for the arts and the humanities, will be addressed by the Chairman of the National Endowment for the Humanities and the Acting Chairman of the National Endowment for the Arts.

Please call 202-682-5409 or 212-512-5957 if you expect to attend, as space is limited.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92-22234 Filed 9-14-92; 8:45 am]

BILLING CODE 7537-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-31160; File No. 265-18]

Market Transactions Advisory Committee; Meeting

September 4, 1992.

ACTION: Notice of meeting of the Securities and Exchange Commission Market Transactions Advisory Committee.

SUMMARY: This is to give notice that the Securities and Exchange Commission Market Transactions Advisory Committee will meet on October 2, 1992, in room 1C30 at the Commission's main offices, 450 5th Street NW., Washington, DC, beginning at 11 a.m. The meeting will be open to the public.

FOR FURTHER INFORMATION CONTACT: Jerry Carpenter, Division of Market Regulation, (202) 272-2978 or Richard Strasser, Division of Market Regulation, (202) 272-2415.

SUPPLEMENTARY INFORMATION: In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. app. 10a, the Securities and Exchange Commission Market Transactions Advisory Committee ("Committee") hereby gives notice that it will meet on October 2, 1992, in room 1C30 at the Commission's main offices, 450 Fifth Street NW., Washington, DC, beginning at 11 a.m. The meeting will be open to the public.

The Committee was formed under section 17A(f) of the Securities Exchange Act of 1934. The Committee's responsibilities include assisting the Commission in identifying state and federal laws that may impede the safe and efficient clearance and settlement of securities transactions and in advising the Commission on the use of the Commission's authority under the Market Reform Act of 1990 to adopt uniform federal rules regarding the transfer and pledge of securities.

The purpose of the meeting will be to discuss the progress of the Committee's subgroups and to plan the continued progression of the Committee's work. In addition, the Committee will discuss the status of the project to revise Article 8 of the Uniform Commercial Code undertaken by the National Conference of Commissioners on Uniform State Laws.

Jonathan G. Katz,

Advisory Committee Management Officer.

[FR Doc. 92-22176 Filed 9-14-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31159; File No. SR-NASD-91-66]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving a Proposed Rule Change Relating to Contracts for Securities "When, As and If Issued" or "When, As and If Distributed"

September 4, 1992.

On December 10, 1991, the National Association of Securities Dealers, Inc. ("NASD") filed a proposed rule change (File No. SR-NSCC-91-66) with the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("ACT").[1] Notice of the proposal was published in the **Federal Register** on February 4, 1992.[2] No comments were received. This order approves the proposal.

I. Description of the Proposal

The proposal will amend section 4 of the NASD Uniform Practice Code ("UPC" or "Code")[3] to codify the Memorandum of the Committee[4] ("Memorandum") relating to "When, As and If Issued" and "When, As and If Distributed" (collectively referred to hereinafter as "when issued") contracts or transactions.[5] Currently, the Memorandum is published in the NASD Manual immediately following section 4(d).[6] The proposed rule change, in addition to codifying the terms of the Memorandum into provisions of the Code, will delete the Memorandum in its entirety from the Code.

The proposed amendments to section 4 cover confirmations, accrued interest, marks-to-the-market, margin requirements, deposit requests, segregation of funds, contract settlement, and contract cancellation. Except for confirmations, all of these subjects are currently covered in the Memorandum and will be incorporated into section 4. Further, with the exception of the cancellation provision in proposed subsection 4(h), there will be no substantive changes from the current provisions of section 4 or the provisions of the Memorandum. Some of the language in the codification proposed in this rule filing, however, is mandatory rather than suggestive as in the Memorandum, and most of the Memorandum's explanatory language will not be included in the codification.

Proposed new subsection 4(a), dealing with confirmations and comparisons, will replace current subsections 4(a) and 4(b).[7] New subsection 4(a) will require that each party to a "when issued" transaction send a written confirmation or comparison to the NASD that contains certain minimum information consisting of: (1) A description of the security and the plan under which it will be distributed, (2) designation of the NASD as the authority for ruling on contract performance, and (3) a provision for marking the contract to the market.[8] Proposed new subsection 4(a)(3) states that upon written request the Committee will provide a description of the security and the plan of issuance or distribution for inclusion in contracts or confirmations covering "when issued" transactions in that security.[9]

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 30295 (January 27, 1992), 57 FR 4227.

[3] NASD Manual (CCH), UPC, section 4, ¶ 3504, at 3513-3514 (January 31, 1992).

[4] The term "Committee," in this context, refers to the committee that has been delegated the authority to administer the Code by the NASD Board of Governors. The Board of Governors has so designated the NASD Operations Committee. NASD Manual (CCH), UPC, sections 2 and 3(c), ¶¶ 3502 and 3503, at 3512 and 3513.

[5] The term "when-issued" refers to a conditional transaction in a new issue of securities that has been authorized for sale and may be trading but that has not yet been issued. Likewise, the term "when-distributed" refers to a security that has been issued and is being traded but that has not yet been distributed. Transactions in when-issued and when-distributed securities are made in the pending security issues on the presumption that they will be issued or distributed in the near future. N. Moore, Dictionary of Business Finance and Investment, 534-535 (1976); M. Thompsett, Investment & Securities Dictionary, 310 (1986); D. Scott, Wall Street Words, 385 (1988).

[6] NASD Manual (CCH), UPC, at 3516-3519.

[7] Subsections 4(a) and 4(b) of the Code previously were located in Section 11 of the Code but were moved to section 4 in an NASD rule filing approved by the Commission in September 1991. Securities Exchange Act Release No. 29667 (September 13, 1991), 56 FR 47819 [File No. SR-NASD-91-13].

[8] Proposed Subsection 4(a) requires that the confirmation or comparison be in the same form as the NASD's standard "when issued" confirmation form, set forth as Exhibit A to section 4, and be sent pursuant to the requirements of subsection 9(a) ("Comparisons or Confirmations and 'Don't Know Notices' "), section 10 ("Descriptions of Securities"), and section 64 ("Acceptance and Settlement of COD Orders") of the Code. The information required to be included in the confirmation is drawn from current subsections 4(a) and 4(b) and from section .10 of the Memorandum.

[9] The proposed language for section 4(a)(3) is based on Section 11 of the Memorandum.

Proposed new subsection 4(b) specifies the treatment of accrued interest in "when issued" contracts. It is based on section .12 of the Memorandum.

Proposed new subsection 4(c) provides that because the issuance date or distribution of "when issued" securities may be indefinite or significantly delayed, such contracts "should be marked to the market pursuant to the provisions of section 58 of the Code." [10] The NASD, in promulgating this proposal, has determined that a separate set of mark-to-the-market procedures for "when-issued" contracts, as set forth in the Memorandum's section .13, is not necessary and that members can rely on section 58 requirements.

Proposed Subsection 4(d) requires "when issued" contracts to comply with §§ 220.4 and 220.5 of Regulation T of the Board of Governors of the Federal Reserve System.[11] Subsection 4(d) differs from existing section .20 of the Memorandum in that section .20 is only suggestive in nature.

Proposed Subsection 4(e) allows members to require customers to deposit cash or collateral for "when issued" contracts even if not required by § 220.8(b)(1) of Regulation T.[12] This provision is based on and is similar to the last paragraph of section .13 of the Memorandum.

Proposed subsection 4(f) recommends that deposits made in connection with "when issued" contracts be segregated on the books of a member firm and suggests that physical segregation of such deposits may be appropriate. This provision is drawn from and is similar to section .30 of the Memorandum.

Proposed subsection 4(g) states that the date for settlement of "when issued" contracts will be determined by the Committee after a sufficient percentage of the issue is outstanding. This provision incorporates current subsections 4(c) and 4(d).

Finally, proposed subsection 4(h) codifies the Committee's authority to cancel "when issued" contracts. In the past, the Committee has exercised its discretion to cancel "when issued" contracts under its general authority specified in section 2 of the Code to rule on issues related to "when issued" contracts and pursuant to section .10 of the Memorandum which states that if the securities which eventually are issued or distributed differ substantially from those contemplated in the contract, the contract cannot be settled and must be cancelled.

In addition to codifying the general authority of the Committee to cancel "when issued" contracts, proposed subsection 4(h) provides more specific guidance about the Committee's intentions in exercising its cancellation authority. The structure of new subsection 4(h) is intended to differentiate between situations where the contract: (1) Always will be cancelled, (2) generally will be cancelled, and (3) generally will not be cancelled.

Proposed subsection 4(h)(1) grants the Committee broad discretionary power to cancel "when issued" contracts as necessary to resolve settlement conflicts. This general authority to cancel contracts is to provide for situations which are not anticipated by the more specific provisions of proposed new subsections 4(h)(3) and (4). Thus, notwithstanding the fact that the circumstances surrounding the performance of a contract may fit within subsections 4(h) (3) or (4), the Committee retains the discretion to act inconsistently with those subparagraphs if, in its judgement, such action is necessary to effectuate the purposes of section 2 of the Code.

Proposed subsection 4(h)(2) states that the Committee will cancel contracts if the securities will not be issued or distributed. Because the securities called for under the "when issued" contract cannot be delivered in such a situation, the NASD has determined to always cancel such contracts.

Proposed subsection 4(h)(3) provides that "when issued" contracts will generally be cancelled if the securities to be issued or distributed are not substantially the same as those contemplated in the "when-issued" contract. A nonexclusive list of the types of material changes that will generally result in cancellation is included in the subsection. The list includes changes to the redemption schedule, dividend payments, interest rates, maturity, yield, and exercise price. The NASD regards these items as changes to the terms of the securities and, therefore, material to the contract to purchase the securities.

Proposed subsection 4(h)(4) provides a nonexclusive list of changes that do not constitute material changes to the terms of the securities to be issued and therefore, generally will not result in cancellation of the "when-issued" contracts. The listed events are those which change the terms underlying the plan of distribution but not the terms of the securities. The list includes: (1) a change in the size of the offering, (2) restructuring of the financing arrangements, and (3) settlement of a legal action or occurrence of other events which affect the financial condition of the issuer.

The NASD's preference, as expressed in proposed new subsections 4(h)(3) and (4), is to cancel "when issued" contracts only if the securities to be issued are substantially different from those contemplated in the "when-issued" contract and not if the plan under which the securities will be issued or distributed is different. The NASD also states, however, that the effect of changes to particular securities and plans of distribution are not predictable and, therefore, may not be appropriately resolved by rigidly adhering to the formula in the proposed new subsections 4(h)(3) and (4). It is for this reason that the NASD wishes to retain its general authority to cancel "when issued" contacts as necessary.

II. Discussion

The Commission believes that the proposal is consistent with the Act and particularly with the provisions of section 15A(b)(6) of the Act.[13] That section requires that the rules of a registered securities association are designed to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Commission supports the NASD's adoption of formal rules that will replace the Memorandum and will codify existing NASD practices and procedures concerning transactions in "when-issued" securities.[14] Furthermore, as explained above, while most procedures that were suggestive or permissive in the Committee's Memorandum will remain so,[15] the Commission favors those cases where the proposal will replace language that is merely suggestive or permissive with language that is mandatory.[16] By

[10] Section 58 of the Code governs marks-to-the-market.

[11] Sections 220.4 and 220.5 govern transactions in margin accounts. 12 CFR 220.4 and 220.5 (1991).

[12] Section 220.8(b)(1) governs the time in which a broker-dealer must obtain full cash payment from customers for transactions in cash accounts. 12 CFR 220.8(b)(1) (1991).

[13] 15 U.S.C. 78o-3(b)(6) (1988).

[14] *E.g.*, proposed subsections 4(h) (1), (2), and (3) set forth the Committee's authority to cancel "when-issued" contracts and when such authority will be exercised.

[15] *E.g.*, proposed subsection 4(c), which will codify Section .13, recommends that "when-issued" trades be marked-to-the-market.

[16] *E.g.*, proposed subsection 4(d), which will codify Section .20, will expressly require that contracts for "when-issued" securities comply with the standards of Sections 4 and 5 of Regulation T of the Board of Governors of the Federal Reserve System.

codifying the practices and procedures into formal NASD written rules and by making some suggestive or permissive procedures mandatory, the Commission believes the proposed rules change will add clarity and certainty to transactions in "when-issued" securities and will help perfect the mechanism of a national market system.

III. Conclusion

For the reasons set forth above, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular the requirements of Section 15A of the Act.[17]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[18] that the above-mentioned proposed rule change (File No. SR-NASD-91-66) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-22179 Filed 9-14-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31161; File No. SR-NASD-92-30]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Simplified Arbitration Procedures Under the NASD Code of Arbitration Procedure

September 8, 1992.

I. Introduction

The National Association of Securities Dealers, Inc. ("NASD") submitted on July 2, 1992, a proposed rule change pursuant to section 19(b)(1) [1] of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 [2] thereunder to amend part III, section 13 of the Code of Arbitration Procedure [3] ("the Code") to codify the NASD's existing policy of appointing a public arbitrator as the single arbitrator in small claims cases involving public customers. The instant proposal reflects current industry practices of other self-regulatory organizations (SRO's) that administer arbitration systems and is substantially similar to the provisions of other SRO rule filings approved by the Commission.[4]

The proposed rule change was published for comment in Securities Exchange Act Release No. 30960 (July 27, 1992), and by publication in the **Federal Register**, 57 FR 34160 (August 3, 1992). No comments were received regarding the proposal.

II. Discussion

Section 13 of the Code outlines the procedural requirements for simplified arbitration cases. Accordingly, it governs disputes, claims and controversies arising between public customers and associated persons or members, where the amount in controversy does not exceed $10,000. The current language of section 13(f) provides for a dispute, claim or controversy to be submitted to a "single arbitrator knowledgeable in the securities industry." This language, however, leaves open the possibility that an individual with close industry ties might be selected as the sole arbitrator.

Thus, the proposed rule change would amend Section 13(f) to require that the single arbitrator appointed in small claims cases involving public customers be deemed a public arbitrator.[5] The proposed amendment conforms Section 13(f) with Section 19(a) of the Code, which requires the appointment of a single public arbitrator where the amount in controversy does not exceed $30,000.[6]

III. Conclusion

Having considered the NASD proposal, the Commission believes the proposed rule change will enhance the integrity of the NASD's arbitration process inasmuch as it addresses the potential for real or apparent bias on the part of an arbitrator possessing a professional or personal association with the securities industry. While the proposal precludes individuals who are from the securities industry from serving as the single arbitrator, the rule change continues to require that an arbitrator appointed pursuant to section 13(f) be knowledgeable in the securities industry. The Commission therefore believes the proposed rule change will promote impartial and informed decisions in the arbitration of disputes between investors and broker/dealers and thereby facilitate the arbitration process in the public interest. Finally, the Commission believes the proposed rule change will increase customer confidence with regard to the fairness of the administration process for cases involving small claims.

For the above stated reason, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association, and, in particular, with the requirements of section 15A(b)(6).[7] Section 15A(b)(6) of the Act requires that the Association's rules be "designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade * * * and, in general, to protect investors and the public interest * * *"

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-22250 Filed 9-14-92; 8:45 am]

BILLING CODE 8010-01-M

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[17] 15 U.S.C. 78o-3 (1988).

[18] 15 U.S.C. 78s(b) (1988).

[19] 17 CFR 200.30-3(a)(12) (1991).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1992).

[3] NASD Securities Dealers Manual, CCH ¶ 3713.

[4] See e.g., the Commission's order approving, among other things, in File No. BSE-91-03 an amendment to the Boston Stock Exchange's simplified arbitration rules to provide for claims requiring only one arbitrator to be heard by a public arbitrator rather than a securities industry arbitrator, unless otherwise requested by a public customer. Securities Exchange Act Release No. 30702 (May 14, 1992), 57 FR 21680 (May 21, 1992). See also, Securities Exchange Act Release No. 27341 (October 5, 1989), 54 42124 (October 13, 1989), approving File No. SR-MSRB-88-5 which amended, *inter alia*, the Municipal Securities Rule Making Board's (MSRB) rules for administering arbitration proceedings to codify the MSRB's policy of appointing a public arbitrator as the single arbitrator in simplified arbitration procedures.

[5] Section 19(d) of the Code stipulates that a public arbitrator is an arbitrator who is not from the securities industry. Section 19(c) of the Code deems an individual to be from the securities industry if he or she: (1) is a person associated with a member or other broker/dealer, municipal securities dealer, government securities broker, or government securities dealer; or (2) has been associated with any of the above within the past three years; or (3) is retired (that is, continues to receive compensation other than social security or self-funded benefits) from any of the above; or (4) has a spouse or other member of the household who is a person associated with any of the above; or (5) is an attorney, accountant, or other professional who has devoted twenty percent or more of his or her professional work effort to securities industry clients within the last two years.

The NASD recently filed with the Commission a proposed rule change (SR-NASD-92-31) to amend section 19(c) of the Code to deem individuals associated with the futures industry as being from the securities industry for the purpose of serving on an arbitration panel. See Securities Exchange Act Release No. 31056 (August 19, 1992), 57 FR 38902 (August 27, 1992).

[6] NASD Securities Dealers Manual, CCH ¶ 3719.

[7] 15 U.S.C. 78o-3(b)(6) (1988).

[Release No. 34-31157; File No. SR-NSCC-90-21]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Temporarily Approving Proposed Rule Change Concerning Authority to Permit Book-Entry Money Settlements with Members

September 4, 1992.

On October 5, 1990, the National Securities Clearing Corporation ("NSCC") filed a proposed rule change (File No. SR-NSCC-90-21) with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the Federal Register on January 8, 1991, to solicit comments from interested persons.[2] The proposal was amended by letters filed with the Commission on August 16, 1991, March 24, 1992, and July 22, 1992.[3] No comments were received. This order approves the proposal as amended on a temporary basis through August 31, 1993.

I. Description of the Proposal

The proposed rule change would modify Section 1 of NSCC's Rule 12 (Settlement) and Subsection C (Checks) of Section VIII (Money Settlement Service) of NSCC's Procedures by expressly authorizing NSCC to use and to permit its members to use intra-bank funds transfers to make money settlement payments.[4] Currently, NSCC's Rules and Procedures provide only for the use of checks by NSCC and its members in meeting money settlement obligations.[5] Except in certain limited circumstances, NSCC's existing Rules and Procedures do not expressly provide for any alternate payment mechanisms.[6]

The proposal will permit NSCC and its members, as authorized by NSCC, to satisfy settlement obligations through intra-bank debits and credits at a bank where both NSCC and members have accounts. Under the proposal, two types of intra-bank funds transfers will be available: (1) Electronic transfers whereby on settlement day NSCC pays members by check for next-day value and members pay NSCC by NSCC's directing the bank to make irrevocable transfers from members' accounts to NSCC's account for next-day availability or whereby on settlement day members pay NSCC by check and NSCC pays members by electronic transfers ("one-way electronic transfers"); and (2) electronic transfers whereby on settlement day both NSCC and members pay each other by NSCC's directing the bank to make irrevocable transfers for next-day value without any netting ("two-way electronic transfers").

As a prerequisite to either NSCC or one of its members making a settlement payment by an electronic funds transfer, the proposed rule change imposes three requirements. First, any such payment shall be effected on a next-day funds availability basis.[7] Second, any such payment shall be in conformity with an agreement, to be executed by NSCC and any bank that acts as a payment intermediary, that stipulates that any such funds transfer must be effected on an irrevocable and final basis.[8] Third, any bank that acts as as intermediary for such funds transfers shall meet NSCC's standards for letter of credit issuers.[9]

II. Discussion

The Commission preliminarily believes that the proposal is consistent with the Act and particularly with Section 17A of the Act.[10] Section 17A(a)(1) of the Act[11] encourages the use of efficient, effective, and safe procedures for securities clearance and settlement. Moreover, section 17A(b)(3)(F) of the Act[12] requires that the rules of clearing agencies be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of funds in the custody or control of clearing agencies or for which they are responsible.

The Commission agrees with NSCC that substantial marketplace efficiencies can be achieved by authorizing NSCC to effect electronic intra-bank funds transfers to satisfy settlement obligations between itself and its members. The Commission recognizes that the exchange of checks is labor-intensive and that physical movement of checks can involve loss or delay. Intra-bank funds transfers should, therefore, enhance the transfer and safeguarding of funds. Moreover, earlier finality of settlement provides certainty to the marketplace and serves to increase investor confidence in the markets.

The Commission is temporarily approving this proposed rule change through August 31, 1993, in order that the Commission, NSCC, and other interested parties will be able to assess prior to permanent Commission approval the effects intra-bank funds transfers have on money settlement payments at NSCC. Furthermore, the Commission notes that this order relates only to intra-bank funds transfers for next-day availability of funds. If and when NSCC desires to implement an inter-bank funds transfer program, NSCC will be required to submit for Commission approval a separate and comprehensive Rule 19b-4 filing.

III. Conclusion

For the reasons discussed above, the Commission believes that the proposal is consistent with the requirements of

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 28715 (December 12, 1990), 55 FR 715.

[3] Letters from: (1) Jeffrey F. Ingber, Associate General Counsel, NSCC, to Jonathan Kallman, Assistant Director, Division of Market Regulation ("Division"), Commission (August 14, 1991), (2) Peter J. Axilrod, Associate General Counsel, NSCC, to Jerry Carpenter, Branch Chief, Division, Commission (March 23, 1992), and (3) Peter J. Axilrod, Associate General Counsel, NSCC, to Thomas C. Etter, Attorney, Division, Commission (July 22, 1992).

[4] The term "intra-bank funds transfer" means an in-house transfer within a single bank where both NSCC and the NSCC member will have accounts. By contrast, the term "interbank funds transfer" means a transfer between one bank where NSCC has an account and another bank where the NSCC member has an account. Although NSCC contemplates offering this alternative in the future, the portion of the filing that would have permitted inter-bank funds transfers was withdrawn by letters filed by NSCC with the Commission (*supra* note 3). Inter-bank transfers are not authorized by this order.

[5] Such checks due to NSCC ordinarily must be certified if in amounts of $5,000 or more. NSCC Rule 12, Section 1, paragraph 4.

[6] NSCC, under certain circumstances, as where payment due to NSCC is late, may require settlement in Federal Funds (*i.e.*, by Fedwire). NSCC Rule 12, Section 1, paragraphs 7 and 9. Fedwire is the wire transfer facility operated by the Federal Reserve System for transferring funds and U.S. Government securities between Federal Reserve Banks and depository institutions.

[7] The term "next-day funds" refers to funds paid today that will be available tomorrow. By contrast, "same-day funds" refers to funds that are immediately available.

[8] On March 24, 1992, NSCC filed with the Commission a letter that represents that NSCC will: (1) submit for Division approval the current form of any agreement pursuant to which intra-bank funds transfers are to be made and (2) notify the Division of the identity of each bank that enters into any such contract. Along with the representation letter, NSCC submitted the current form of Book-Entry Funds Settlement Agreement. Letter from Peter J. Axilrod, Associate General Counsel, NSCC, to Jerry Carpenter, branch Chief, Division, Commission (March 23, 1992).

[9] For a bank or trust company to be approved by NSCC to issue letters of credit on behalf of members for clearing fund requirement purposes, the bank or trust company must meet specific standards in terms of: (1) Minimum levels of stockholders' equity and (2) certain credit ratings for its short term obligations as determined by Standard and Poor's Corporation or Moody's Investor Service, Inc. NSCC Rule 4, Section 1. See also Securities Exchange Act Release No. 29444 (July 16, 1991), 56 FR 34061 (order approving NSCC's revised standards for approved issuers of letters of credit for clearing fund purposes.

[10] 15 U.S.C. 78q-1 (1988).

[11] 15 U.S.C. 78q-1(a)(1) (1988).

[12] 15 U.S.C. 78q-1(b)(3)(F) (1988).

the Act, particularly section 17A of the Act, and the rules and regulations thereunder.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[13] that the above-mentioned proposed rule change (File No. SR-NSCC-90-21) be, and hereby is, approved on a temporary basis through August 31, 1993.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-22175 Filed 9-14-92; 8:45am]

BILLING CODE 8010-01-M

Issuer Delisting; Application To Withdraw From Listing and Registration; (Abiomed, Inc., Common Stock, $.01 Par Value); File No. 1-9585

September 9, 1992.

Abiomed, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Exchange, the Board of Directors of the Company (the "Board") approved resolutions to withdraw the Company's Common Stock from listing on the American Stock Exchange ("Amex") and, instead, list such Common Stock on the National Association of Securities Dealers Automated Quotations/National Market Systems ("NASDAQ/NMS"). The decision of the Board followed a lengthy study of the matter, and was based upon the belief that listing of the Common Stock on NASDAQ/NMS will be more beneficial to its stockholders than the present listing on the Amex because:

(1) It is believed that the NASDAQ/NMS system of competing market-makers will result in increased visibility and sponsorship for the Common Stock than is presently the case with the single specialist assigned to the stock on the Amex;

(2) It is believed that the NASDAQ/NMS systems will offer the Company's stockholders more liquidity than that presently available on the Amex and less volatility in quoted prices per share when trading volume is slight. On NASDAQ/NMS the Company will have an opportunity to secure its own group of market-makers and, in doing so, expand the capital base available for trading in its Common Stock; and

(3) It is believed that firms making a market in the Company's Common Stock will be inclined to issue research reports concerning the Company, thereby increasing the number of firms providing institutional research and advisory reports.

Any interested person may, on or before September 30, 1992 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-22280 Filed 9-14-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-18933; 811-4340]

Citius-Alpha Fund, Inc.; Application

September 8, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Citius-Alpha Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on July 14, 1992, and an amendment was filed on August 27, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 5, 1992, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, c/o BV Capital Management, Inc., 575 Fifth Avenue, 17th Floor, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 272-3023, or Barry D. Miller, Senior Special Counsel, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a Maryland corporation, is an open-end non-diversified management investment company. Applicant filed a notification of registration pursuant to section 8(a) of the Act on June 28, 1985 and a registration statement pursuant to the Securities Act of 1933 on September 30, 1985. The registration statement was never declared effective. Applicant never commenced a public offering of its shares, but had two institutional shareholders with whom shares were privately placed.[1]

2. On December 14, 1990, one of the applicant's two shareholders redeemed its shares and received a final distribution of $2,209,271.42 which was comprised of net asset value, just prior to liquidation, plus a dividend of $127,190.60.

3. On December 19, 1991 applicant's second shareholder received an extraordinary dividend in the amount of $590,750 and subsequently on January 30, 1992 redeemed all of its shares which resulted in a final distribution of $11,028,876.

4. Expenses of liquidation in the amount of $1,500 were paid by the Fund for legal fees.

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[13] 15 U.S.C. 78s(b) (1988).

[14] 17 CFR 200.30-3(a)(12) (1991).

[1] Applicant was organized to provide institutional investors of the Federal Republic of Germany with favorable income tax treatment subject to a tax treaty between the United States and the Federal Republic of Germany. Pursuant to a new income tax treaty between these two countries, the tax advantage of these investments was eliminated as of December 31, 1990.

5. Applicant has filed Articles of Dissolution in Maryland. Applicant has no other assets or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant has no remaining shareholders and does not propose to engage in any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-22261 Filed 9-14-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18931; 812-7947]

Co-operative Bank Investment Fund; Notice of Application

September 4, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: Co-operative Bank Investment Fund.

RELEVANT 1940 ACT SECTIONS: Sections 6(c), 13(a), 15(a), 16(a) and (b), 18(i), 22(d), and 32(a) (2) and (3).

SUMMARY OF APPLICATION: Applicant seeks an order under section 6(c) of the Act exempting applicant from the provisions of sections 13(a), 15(a), 16(a) and (b), 18(i), 22(d), and 32(a) (2) and (3) of the Act. The order would amend applicant's existing orders by expanding the types of investors to whom applicant's securities may be offered.

FILING DATES: The application was filed on January 7, 1992 and amended on April 30, 1992. By supplemental dated September 3, 1992, counsel, on behalf of applicant, agreed to file a further amendment during the notice period to make certain changes. This notice reflects the changes to be made to the application by such further amendment.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 29, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 75 Park Plaza, Boston, Massachusetts 02116-3934.

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, Staff Attorney, at (202) 272-7648, or Elizabeth G. Osterman, Branch Chief, at (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management company registered under the Act. Applicant was organized pursuant to a special act of the Commonwealth of Massachusetts (the "Enabling Legislation") primarily to provide a mutual fund investment medium to Massachusetts co-operative banks (state-chartered thrift banking institutions).[1] Applicant's business is conducted by a board of directors elected by Applicant's incorporators. Applicant's incorporators are the directors of The Co-operative Central Bank (the "Central Bank"), which is the statutory reserve bank and excess deposit insurer (on deposit amounts in excess of those amounts federally insured) for Massachusetts co-operative banks. Applicant is internally managed and investment decisions are made by authorized officers of applicant, subject to authority delegated by applicant's board of directors.

2. Applicant falls within the definition of a "bank" under Massachusetts law and is subject to the substantial supervision of the Commissioner of Banks of the Commonwealth of Massachusetts (the "Commissioner of Banks"). Such supervisory authority extends, among other things, to supervision of applicant's investment portfolio. In addition, the Commissioner of Banks is required to make periodic examinations of the books, securities, cash, assets, and liabilities, and to ascertain the condition, of all banks under this supervision.

3. Applicant has no capital stock; instead shares of beneficial ownership are issued from time to time by applicant. Such shares do not provide holders with any voting rights. Each share is equal in every respect to every other share, except that if applicant's board of directors establishes distinct investment funds, as it is authorized to do, it may authorize shares to be issued in distinct classes and each share within each such class will be equal in every respect to every other share of that class.

4. Applicant offers and sells its securities in reliance on an exemption from registration under the Securities Act of 1933 (the "Securities Act") pursuant to section 4(2) of the Securities Act and regulation D thereunder. After issuance, applicant's securities may not be transferred by eligible purchasers of such securities to any person other than another eligible investor.

5. The Enabling Legislation permitted Massachusetts co-operative banks, the Co-operative Banks Employee Retirement Association (a retirement association organized under Massachusetts law), and Massachusetts savings banks to invest in applicant. In 1986, the Enabling Legislation was amended, permitting applicant, among other things, to offer its securities to the Central Bank Reserve Fund, the Massachusetts League of Community Banks, and the National Consumer Co-operative Bank.

6. The Commission granted applicant relief from certain provisions of the Act in 1985 [2] and again in 1986 [3] to permit applicant's securities to be sold to the entities referred to in the Enabling Legislation and the 1986 amendment thereto.[4]

7. In 1990 and 1991, the Enabling Legislation was further amended ("1990 and 1991 Amendments") to permit any trust company incorporated in Massachusetts ("Massachusetts Trust Company"), any credit union incorporated in Massachusetts, any federally chartered credit union, savings bank or savings and loan association with its principal place of business in Massachusetts, and any parent, subsidiary or other affiliated companies of any eligible investor in applicant to invest in applicant.[5]

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[1] 1984 Mass. Acts ch. 482.

[2] Investment Company Act Release Nos. 14732 (Sept. 20, 1985) (notice) and 14760 (Oct. 17, 1985) (order) (the "1985 Order").

[3] Investment Company Act Release Nos. 15128 (June 3, 1986) (notice) and 15205 (July 16, 1986) (order) (the "1986 Order").

[4] The provisions from which applicant was previously exempted include those provisions from which applicant currently requests relief. Applicant also was exempted from the provisions of sections 22(e) and 24(d) of the Act under the 1985 and 1986 Orders. Applicant no longer requests such relief.

[5] 1990 Mass. Acts ch. 277; 1991 Mass. Acts ch. 285.

8. Consistent with the 1990 and 1991 Amendments, and in addition to the eligible investors specified in the 1985 and 1986 Orders, applicant proposes to offer its securities to Massachusetts Trust Companies,[6] federally chartered savings banks and savings and loan associations with their principal place of business in Massachusetts (collectively, "Massachusetts Federal Savings Banks"), and directly or indirectly wholly-owned subsidiaries of entities that have received Commission authorization to invest in applicant ("Wholly-Owned Subsidiaries"). Applicant will not offer its shares to credit unions or to affiliates of eligible investors (other than wholly-owned affiliates) without further order from the Commission, notwithstanding the fact that they were included in the 1990 and 1991 Amendments as eligible investors.

9. Massachusetts Trust Companies are primarily commercial banks and are chartered and regulated by the Commissioner of Banks. They are also regulated by one or more of the federal bank regulatory agencies because their deposits are federally insured. In addition, they may be members of the Federal Reserve System. Massachusetts Federal Savings Banks are regulated by the Office of Thrift Supervision and the Federal Deposit Insurance Corporation, which insures deposits in these institutions. Wholly-Owned Subsidiaries are regulated by the same regulatory agency which regulates their parents.

Applicant's Legal Analysis

1. Applicant seeks relief from the provisions of sections 13(a), 15(a), 16 (a) and (b), 18(i), 22(d), and 32(a) (2) and (3) of the Act so that it may expand the group of entities to whom it may sell its securities without regulation under those provisions of the Act.

2. Applicant asserts that none of the policy bases underlying the granting of the 1985 and 1986 Orders are substantially affected by the 1990 or 1991 Amendments. Applicant is restricting its offering to Massachusetts Trust Companies, Massachusetts Federal Savings Banks, and Wholly-Owned Subsidiaries (collectively, "New Offerees"), as well as to investors eligible to purchase shares under the 1985 and 1986 Orders.

3. Section 18(i) of the Act requires that every share of stock issued by a management company be a "voting stock." Section 2(a)(42) defines "voting security" to mean a security entitling the owner or holder thereof to vote for the election of directors of the company. Sections 13(a), 15(a), 16 (a) and (b), and 32(a) (2) and (3) also provide various voting rights to shareholders of registered investment companies. The Enabling Legislation, as amended, does not provide voting rights to the holders of the shares of beneficial interests issued by applicant. Instead, all such right are exercised by the incorporators of applicant, who are the directors of the Central Bank. Applicant argues that this arrangement alleviates the danger that a few large banks might obtain complete control of applicant through large investments and consequently dominate its board of directors. Applicant asserts that, in view of the extent of the Commissioner of Banks' supervisory powers, the form of applicant's organization, the nature of the prospective investors and the limits of their investments in applicant, the identity of the incorporators, and the provisions in applicant's charter, and exemption from sections 13(a), 15(a), 16 (a) and (b), 18(i), and 32 (a) (2) and (3) is justified.

4. Section 22(d) of the Act requires that securities sold by a registered investment company must be sold through a principal underwriter or at a current public offering price described in a written prospectus. Applicant asserts that a requirement to comply with section 22(d) would be impractical and unnecessarily expensive. Applicant is not registered under the Securities Act of 1933 and does not now or in the future propose to make a public offering of its shares. Its shares are offered pursuant to an exemption from registration under the Securities Act only to a limited number of sophisticated institutional purchasers. These investors, except for the National Cooperative Bank, are all located in Massachusetts. Applicant does not currently sell its securities through an underwriter. Applicant offers a copy of its registration statement filed with the Commission on Form N-1A to each of its eligible investors and also furnishes them with a copy of an offering circular that contains substantially the same information that applicant would be required to furnish in a propsectus.

5. Applicant also submits that permitting additional investors in applicant should result in further economies of scale with fixed expenses spread over a larger fund, benefitting existing investors as well as the New Offerees.

6. Applicant asserts that the changes made in the Enabling Legislation, permitting the sale of applicant's shares to the New Offerees, are in the best interests of applicant's current investors and the New Offerees and are consistent with the protection of investors and the purposes fairly intended by the policies and the provisions of the Act.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-22178 Filed 9-14-92; 8:45 am]

BILLING CODE 8010-01-M

[6] Prior to filing the application on December 27, 1991, applicant had offered and sold its shares to a Massachusetts Trust Company. This entity participates in applicant's dividend reinvestment program. The staff notes that any order granted by the Commission as a result of the application will apply only to shares issued after the effective date of such order.

[Release No. IC-18932; 812-7727]

Putnam Arizona Tax Exempt Income Fund, et al.; Application

September 8, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: Putnam Arizona Tax Exempt Income Fund, Putnam Adjustable Rate U.S. Government Fund, Putnam Asia Pacific Growth Fund, Putnam California Tax Putnam Exempt Income Fund, Putnam California Tax Exempt Money Market Fund, Putnam Capital Manager Trust, Putnam Convertible Income-Growth Trust, Putnam Corporate Asset Trust, Putnam Daily Dividend Trust, Putnam Diversified Income Trust, Putnam Dividend Growth Fund, Putnam Dividend Income Fund, Putnam Energy-Resources Trust, Putnam Europe Growth Fund, Putnam Federal Income Trust, Putnam Florida Tax Exempt Income Fund, Putnam Fund for Growth and Income, The George Putnam Fund of Boston, Putnam Global Governmental Income Trust, Putnam Global Growth Fund, Putnam Health Sciences Trust, Putnam High Income Convertible and Bond Fund, Putnam High Income Government Trust, Putnam High Yield Advantage Fund, Putnam High Yield Trust, Putnam Income Fund, Putnam Intermediate Government Income Trust, Putnam Investment Grade Municipal Trust, Putnam Investors Fund, Putnam Managed Income Trust, Putnam Managed Municipal Income Trust, Putnam Massachusetts Tax Exempt Income Fund, Putnam Master Income Trust, Putnam Master Intermediate Income Trust, Putnam Michigan Tax Exempt Income Fund, Putnam Minnesota Tax Exempt Income Fund,

Putnam Municipal Income Fund, Putnam New Jersey Tax Exempt Income Fund, Putnam New Opportunities Fund, Putnam New York Tax Exempt Income Fund, Putnam New York Exempt Money Market Fund, Putnam New York Tax Exempt Opportunities Fund, Putnam Ohio Tax Exempt Income Fund, Putnam OTC Emerging Growth Fund, Putnam Overseas Growth Fund, Putnam Pennsylvania Tax Exempt Income Fund, Putnam Premier Income Trust, Putnam Strategic Income Trust, Putnam Tax Exempt Income Fund, Putnam Tax Exempt Money Market Fund, Putnam Tax-Free Health Care Fund, Putnam Tax-Free Income Trust, Putnam Texas Tax Exempt Income Fund, Putnam Total Return Fund, Putnam U.S. Government Income Trust, Putnam Utilities Growth and Income Fund, Putnam Vista Fund, Putnam Voyager Fund, and such other registered investment companies that in the future are sponsored by The Putnam Companies, Inc. and advised by the Putnam Management Company, Inc. (collectively, the "Funds"); Putnam Management Company, Inc.; Putnam Financial Services, Inc.; and Putnam Fiduciary Trust Company.

RELEVANT ACT SECTIONS: Section 17(d) and rule 17d–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order that would permit the Funds, and the principal underwriter and dividend disbursing agent of certain of the Funds, to deposit their uninvested cash balances into a joint trading account. The account will invest the cash in repurchase agreements and various short-term money market instruments with overnight, over-the-weekend, or over-the-holiday maturities.

FILING DATE: The application was filed on May 10, 1991; amended and restated applications were filed on September 26, 1991, November 27, 1991, and August 27, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 2, 1992, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o John R. Verani, The Putnam Companies, One Post Office Square, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: Barry A. Mendelson, Senior Attorney, at (202) 504–2284, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. The Funds are registered management investment companies, some open-end, some closed-end. Some of the Funds consist of one series, while others consist of multiple series, each of which has separate investment objectives and segregated assets. The single-series Funds and the various series of multiple-series Funds are hereinafter collectively referred to as "Portfolios." All of the Portfolios are authorized to invest at least a portion of their uninvested cash assets in short-term liquid assets, including repurchase agreements.

2. The Putnam Management Company, Inc. ("Adviser") currently serves as investment manager of each Portfolio. Putnam Financial Services, Inc. ("Distributor") is the principal underwriter of certain Portfolios. Putnam Fiduciary Trust Company serves as custodian for the assets of each Portfolio and as the shareholder servicing and dividend disbursing agent of certain Portfolios. (Putnam Fiduciary Trust Company hereafter will be referred to as the "Custodian" when acting in that capacity, and "PFTC" in all other circumstances.) Both the Distributor and PFTC are affiliated persons of the Adviser.

3. On each trading day, most Portfolios have cash balances in their accounts maintained by the Custodian that are not invested in portfolio securities. Currently, each Portfolio's cash balance is separately invested in short-term liquid assets, such as repurchase agreements and short-term money market instruments of varying maturities (collectively, "Investments"), in order to earn additional income for the Portfolio. Repurchase agreements are entered into with banks, non-bank government securities dealers, and major brokerage houses. Short-term money market instruments may be purchased from dealers, in the open market, or directly from issuers. Each morning the cash management department operated by the Adviser begins negotiating on behalf of the Portfolios the interest rate for repurchase agreements to be entered into later that day and assembling the United States Government obligations required as collateral. The Adviser's cash management department also determines which short-term money market instruments will be purchased later that day. Typically, the assets of some Portfolios are too small, or are received too late, to be invested effectively.

4. In some cases, cash is invested in short-term money market instruments because a Portfolio is prohibited by percentage investment restrictions from investing any additional amount in repurchase agreements. The Adviser currently invests, and if relief is granted will continue to invest, Portfolio assets only in short-term money market instruments that constitute "first tier securities" within the meaning of rule 2a–7.

5. In connection with its investments in repurchase agreements, each of the Portfolios has established the same systems and standards. These systems and standards, adopted in compliance with Investment Company Act Release No. 13005 (Feb. 2, 1983) and the SEC Division of Investment Management's interpretations set forth in letters to the Investment Company Institute dated January 25, 1985 (pub. avail. same day), April 17, 1985 (pub. avail. May 7, 1985), and June 19, 1985 (pub. avail. same day), include quality standards for issuers of the repurchase agreement and require that the repurchase agreements be at least 100% collateralized at all times. Applicants acknowledge that they have a continuing obligation to monitor published statements of the SEC on repurchase agreements, and in the event the SEC sets forth different or additional requirements, each Portfolio intends to modify its systems and standards accordingly.

6. The Distributor maintains cash accounts at State Street Bank and Trust Company with respect to unsettled trades in shares of certain of the Portfolios (the "Deposit Accounts"). The monies in the Deposit Accounts represent cash from prospective shareholders whose purchases of Portfolio shares have not yet settled. PFTC maintains cash accounts at the Northern Trust Company as agent for certain Portfolios for the purpose of paying dividends, distributions, and the proceeds of redemptions to shareholders of those Portfolios (the "Disbursement Accounts"). The uninvested cash

balances in both the Deposit Accounts and the Disbursement Accounts are invested in repurchase agreements and in the future might be invested in short-term money market instruments, in a manner similar to the investment of uninvested cash balances in the Portfolios' accounts. The return on such investments accrues to the Portfolios in the form of credits against fees otherwise payable by the Portfolios to PFTC.

7. Applicants propose to deposit into a single joint account at the end of each trading day (i) the uninvested cash balance in each Portfolio's custodial account, and (ii) the amounts in the Deposit and Disbursement Accounts maintained by the Distributor and PFTC, respectively. The daily balance in the joint account will be used to purchase one or more Investments with overnight, over-the-holiday, or over-the-weekend maturities. To the Adviser's knowledge, the only short-term money market instruments currently available with such limited maturities are overnight commercial paper, certain U.S. government agency certificates, and term bank deposits. However, applicants may invest through the joint account in such other short-term money market instruments with overnight, over-the-weekend, or over-the-holiday maturities as may become available.

8. Except insofar as it is an "affiliated person" (within the meaning of the Act) of entities participating in the joint account, the Adviser will have no monetary participation in the joint account, but will be responsible for investing assets in the account and establishing accounting and control procedures, as described below.

9. The Custodian will prepare cash availability figures for each Portfolio on each business day and deliver the figures to the Adviser's cash managers. The Adviser's cash managers will determine how much cash should be transferred from each Portfolio, and from the Deposit and Disbursement Accounts, to the joint account, and the allocation of each Participant's cash to the various Investments to be purchased through the joint account.

10. All assets of participating Portfolios transferred to the joint account will continue to be held under proper bank custodial procedures. The joint account will not be distinguishable from any other account maintained by the Custodian for a Portfolio except that monies from multiple Portfolios, as well as from the Deposit and Disbursement Accounts, will be deposited into it on a commingled basis. The sole function of the joint account will be to provide a convenient way of aggregating what otherwise would be the one or more individual daily transactions for each Portfolio necessary to manage its daily uninvested cash balance.

11. Where the joint account invests in more than one Investment on a given day, each participant in the joint account ("Participant") would not necessarily have its cash invested in every Investment purchased through the joint account. This may occur for a variety of reasons. The Adviser believes that it is prudent to limit investment risk by entering into repurchase agreements with a number of different counter-parties and purchasing short-term money market instruments of a number of different issuers. In some cases, certain Portfolios may be precluded by their investment restrictions from participating in a repurchase agreement with a particular counterparty or from purchasing certain short-term money market instruments. In addition, on a given day, cash of a Portfolio may become available too late to be included in repurchase agreements that have already been negotiated, or may be too small to invest individually. In many such cases, however, it will still be advantageous for this cash to be invested jointly along with that of other Portfolios in a similar position on that day. A Participant's interest in a particular Investment held in the joint account will be proportionate to its cash contribution to the purchase price of such Investment.

12. The Adviser believes that no conflict of interest or potential for favoring one Portfolio over another arises merely as a result of the fact that the participating Portfolios may not always be allocated a *pro rata* portion of all of the Investments made through the joint account. In determining which Investments to allocate to which Portfolios participating in the joint account, the Adviser will take into account each Portfolio's investment restrictions, its obligation to fairly allocate investment opportunities among the Portfolios, the need for diversification, and the time when cash becomes available for investment on a given day—the same considerations the Adviser must take into account when making separate investments on behalf of each of the Portfolios.

13. A Portfolio will never be in a less favorable position than if the joint account were not in place. In many cases, a particular Portfolio will be in a better position, since it may not have enough cash to invest profitably in an individual Investment. Any alternative structure, where the Adviser would have to limit investments to those which could include every participating Portfolio, would be less beneficial than the proposed structure. For example, precluding all Portfolios from participating in repurchase agreements with certain counter-parties due to the investment restrictions of a particular Portfolio might prevent the majority of Portfolios from obtaining the best available return.

14. Applicants estimate that the joint account will save the Portfolios transaction fees totaling approximately $255,000 per year. In addition, the joint account will allow the Portfolios to negotiate higher rates of return on their overnight cash balances, invest funds which otherwise might not be invested, and reduce the possibility of errors by reducing the number of trade tickets.

15. Each Participant's decision to invest in the joint account will be solely at its option. A Participant will not be required either to invest a minimum amount or to maintain a minimum balance in the joint account. Each Participant will retain the sole ownership rights to any of its assets invested in the joint account, including interest payable on the assets invested in the joint account.

16. Applicants will use a recordkeeping system that is designed to reflect accurately each Participant's interest in the joint account. After agreeing on the trade details with a third party, the Adviser's cash management desk will enter the joint trade information into its cash trading system, assign a control reference number to the trade, and produce a joint trade ticket and individual trade tickets for each Participant in the Investment. The trade tickets will be sent to the Adviser's fund accounting department to be entered into the Adviser's accounting system, and to the Custodian, to be used as authorization to transfer money from the individual Participants' accounts to the joint account. The Adviser's cash management desk will reconcile all joint transactions during the course of the day as transactions are processed. The Adviser's fund accounting department will reconcile all Portfolio trades to cash transactions daily. The Custodian will reconcile all joint transactions, including money movement transactions, during the course of the day as transactions are processed and at the end of the day. In addition, an independent accounting firm engaged by the Portfolios will include a review of the joint investment recordkeeping in the scope of its annual internal control review of the Custodian's custody operations.

Applicants' Legal Analysis

1. The Portfolios participating in the proposed joint account, the Adviser, the Distributor, and PFTC could be deemed to be "joint participants" in a "transaction" within the meaning of section 17(d)(1). In addition, the proposed account could be deemed to be a "joint enterprise or other joint arrangement" within the meaning of rule 17d–1.

2. The trustees of each Fund have considered the proposed joint account and have determined that the use of such account will be beneficial to each Fund for the reasons set forth above and will not result in any conflicts of interest among the various Participants. The trustees believe that the operation of the joint account will be free of any inherent bias favoring one Portfolio over another. The trustees considered the fact that, although the Adviser can gain some benefit through administrative convenience and some possible reduction in its clerical costs, the primary beneficiaries will be the participating Portfolios and their shareholders.

3. There are two principal differences between this application and previous applications seeking exemptive relief to establish a joint account. First, applicants propose to permit two entities that are not investment companies, the Distributor and PFTC, to participate in the joint account. Both the Distributor and PFTC are affiliated persons of the Adviser. Second, not every Participant in the joint account will have an interest in every Investment held in the joint account on a given day.

4. The Trustees recognize that participation in the joint trading account by the Distributor and PFTC, through the inclusion of certain monies in the Deposit Accounts and Disbursement Accounts, will provide each with benefits similar to those received by the Portfolios. Those benefits, however, will be used to offset Fund expenses and thus will accrue to the benefit of the Funds. In any event, participation in the joint account by the Distributor and PFTC will in no way dilute or lessen the benefits accruing to the Portfolios and their shareholders.

5. Although not every Participant will participate in each and every Investment held in the joint account on any given day, each Participant will own a proportionate share of each Investment in which it participates, and the income earned or accrued thereon.

6. Rule 17d–1(b) provides that in passing upon applications under section 17(d) and rule 17d–1, the Commission will consider whether each party's participation in the proposed joint arrangement "is consistent with the provisions, policies and purposes of the Act," as well as the "extent to which such participation is on a basis different or less advantageous than that of other participants." For the reasons described above, applicants submit that the criteria of rule 17d–1 for issuance of an order are met by the joint trading account as proposed.

Applicants' Conditions

The joint account will operate subject to the following conditions:.

1. A separate cash account will be established with a single designated subcustodian bank into which each Portfolio will daily be permitted to deposit its uninvested net cash balances, and the Distributor and PFTC will be permitted to deposit the amounts in the Deposit Accounts and Disbursement Accounts.

2. Cash in the joint account will be invested by the Adviser in one or more repurchase agreements and/or short-term money market instruments. Each participant's funds in the joint account will be invested consistent with that participant's investment objectives, policies and restrictions. Not every participant in the joint account will necessarily have its cash invested in every repurchase agreement entered into and/or short-term money market instrument purchased through the joint account. However, to the extent a participant's funds are applied to a particular investment made through the joint account, the participant will participate in and own a proportionate share of such investment and the income earned or accrued thereon, based upon the percentage of such investment purchased with such participant's funds.

3. The Adviser and the Custodian will maintain records (in conformity with section 31 and the rules and regulations thereunder) documenting, for any given day, each participant's aggregate investment in the joint account and its *pro rata* share of each investment made through the joint account.

4. The joint account will invest only in repurchase agreements and short-term money market instruments with overnight, over-the-holiday, or over-the-weekend maturities. Investments in repurchase agreements will be collateralized by obligations issued or guaranteed as to principal and interest by the government of the United States or by any of its agencies or instrumentalities. The joint account will invest only in short-term money market instruments which constitute "first tier securities" within the meaning of rule 2a–7 under the Act.

5. All investments held by the joint account will be valued on an amortized cost basis.

6. Each participating Portfolio valuing its net assets in reliance upon rule 2a–7 under the Act will use the average maturity of the instrument(s) in the joint account in which such Portfolio has an interest for purpose of computing the Portfolio's average portfolio maturity with respect to the portion of its assets held in the joint account on that day.

7. To ensure that there will be no opportunity for one participant to use any part of the balance of the joint account credited to another participant, no participant will be allowed to create a negative balance in the joint account for any reason, although a participant will be permitted to draw down its entire balance at any time.

8. The Adviser will manage the joint account as part of its duties under its existing or any future investment advisory contracts with the Portfolios. The Adviser will not collect an additional fee from any participant for managing the joint account.

9. The administration of the joint account will be within the fidelity bond coverage required by section 17(g) of the Act and rule 17g–1 thereunder.

10. The trustees of each of the Funds will evaluate annually the joint account arrangements, and will continue a Portfolio's participation in the joint account only if they determine that there is a reasonable likelihood that the Portfolio and its shareholders will benefit from continued participation.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–22262 Filed 9–14–92; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 18937; 811–4868]

SunAmerica Fund Group II; Application

September 9, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: SunAmerica Fund Group II.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on May 21, 1992 and amended on July 27, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 5, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 733 Third Avenue, New York, NY 10017.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Law Clerk, at (202) 272-7027, or C. David Messman, Branch Chief, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a diversified open-end management investment company organized as a Massachusetts business trust. On October 14, 1986, applicant filed a notification of registration pursuant to section 8(a) of the Act and a registration statement pursuant to the Securities Act of 1933. The registration statement became effective on February 27, 1987, and applicant commenced its initial public offering immediately thereafter.

2. Operating under the name Equitec Siebel Fund Group II, applicant issued shares in five series: California Tax-Free Income Fund (the "California Tax-Free Series"), Equity Income Fund (the "Equity Series"), Government Income Fund (the "Government Series"), National Tax-Free Income Fund (the "National Tax-Free Series"), and Money Market Fund (the "Money Market Series").

3. On January 7, 1991, SunAmerica Asset Management Corp. ("SAMCO") and SunAmerica Capital Services, Inc. entered into an asset purchase agreement (the "Agreement") with Equitec Financial Group, Inc., Equitec Securities Company ("ESC"), and Siebel Capital Management, Incorporated for the purchase of, among other things, the assets of applicant. On March 27, 1991, the Agreement was amended. As amended, the Agreement provided that: (a) the assets of the California Tax-Free Series would be exchanged for shares of the California Municipal Bond Portfolio series of SunAmerica Tax Free Portfolios; (b) the assets of the Equity Series would be exchanged for shares of the Total Return Fund series of SunAmerica Multi-Asset Portfolios, Inc.; and (c) the assets of the Government Series would be exchanged for shares of the Government Income Portfolio series of SunAmerica Income Portfolios. The Agreement also contemplated that the National Tax-Free Series and the Money Market Series be liquidated prior to the closing date of the transaction.

4. On January 23, 1991, applicant's board of trustees approved the reorganization. Definitive proxy materials soliciting shareholder approval of the reorganization were filed with the SEC on April 16, 1991, and were mailed to shareholders on April 24, 1991. The reorganization was approved, in accordance with Massachusetts law, by applicant's shareholders at a meeting held on June 14, 1991.

5. As of March 15, 1991, the net asset values of the Money Market Series and the National Tax-Free Series were $95,079.12 and $496.38, respectively. Between March 27, 1991 and June 18, 1991, all outstanding shares of the Money Market Series and the National Tax-Free Series were voluntarily redeemed, and the portfolio securities of these two series were sold in open market transactions at market price.

6. On June 18, 1991, the reorganization was consummated, and applicant changed its name to SunAmerica Fund Group II. Applicant transferred all assets and liabilities of the California Tax-Free Series, the Equity Series, and the Government Series to the corresponding SunAmerica series. The exchanges were made at net asset value. The shares received in exchange for applicant's assets were distributed to applicant's shareholders *pro rata* in accordance with their respective interests in applicant.

7. All expenses incurred in connection with applicant's liquidation and reorganization were borne by SAMCO. Such expenses included preparation of proxy materials, printing expenses, and legal and accounting fees.

8. As of the date of the amended application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-22263 Filed 9-14-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18930; 812-7825]

Unison Investment Trusts Ltd., et al.; Notice of Application

September 4, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: Unison Investment Trusts Ltd. (the "Sponsor") and 21st Century Trust, Series 1, on behalf of themselves and any series of 21st Century Trust (individually "Trust," and collectively, "Trusts").

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act for an exemption from sections 14(a) and 19(b) of the Act and rule 19b-1.

SUMMARY OF APPLICATION: Applicants seek an order (a) exempting the Sponsor from having to take for its own account or place with other $100,000 worth of Units and (b) permitting the Trusts to distribute capital gains dividends within a reasonable time after receipt.

FILING DATE: The application was filed on November 20, 1991 and amended on April 2, 1992, and August 4, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 29, 1992, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, Unison Investment Trusts, Ltd. and 21st Century Trust, Series 1, 201

Progress Parkway, Maryland Heights, Missouri 63043.

FOR FURTHER INFORMATION CONTACT: John V. O'Hanlon, Staff Attorney, at (202) 272-3922, or Elizabeth G. Osterman, Branch Chief, at (202) 272-3106 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. 21st Century Trust will consist of a series of unit investment trusts, each of which will be similar but separate and designated by a different series number. 21st Century Trust will be registered as an investment company under the Act. Each series will be registered under the Securities Act of 1922 (the "1933 Act") by means of a Registration Statement on Form S-6 under the 1933 Act. Sponsor will file registration statements on Form N-8B-2 in accordance with the Act. Sponsor will act as sponsor of 21st Century Trust, Series 1, and subsequent series.

2. The Trusts will be created pursuant to a Standard Terms and Conditions of Trust and a related Trust Agreement (collectively, the "Trust Agreement") between the Sponsor and a corporate fiduciary (the "Trustee"). Pursuant to the Trust Agreement, the Sponsor will acquire a portfolio of certain zero coupon obligations (securities which accrue but do not pay income currently, are sold at a discount from stated principal amount, and represent an obligation to pay the stated principal amount thereof at a future date) issued by the United States government and certain publicly traded common stocks or American Depositary Receipts ("ADRs") evidencing ownership of equity securities issued by companies formed in countries other than the United States (such common stocks and ADRs collectively are referred to herein as "Equity Securities") (the zero coupon obligations and the Equity Securities collectively are referred to herein as the "Securities"). When the portfolio for a particular series is completed, the Sponsor will deposit with the Trustee more than $100,000 aggregate market value of Securities (the "Date of Deposit"). Simultaneously with such deposit, the Trustee will deliver to the Sponsor or to the order of the Sponsor the units of beneficial ownership ("Units") representing the entire ownership of the Securities held in the applicable Trust (owners of such Units are hereinafter referred to as "Unitholders").

3. Each Trust will consist of (a) the Securities, or contracts to purchase such Securities, (b) replacement Securities, if any, deposited into or acquired by the Trust subsequent to the initial Date of Deposit, (c) such Securities as may continue to be held from time to time in exchange or substitution for any of the Securities, and (d) undistributed cash. Certain of the Securities may from time to time be sold under the limited circumstances set forth in the Trust Agreement. The proceeds from such dispositions will be distributed to Unitholders. Each Trust will be organized so that Unitholders purchasing Units on the Date of Deposit will receive, upon termination of the respective Trust at the mandatory termination date of such Trust specified in the related prospectus (the "Prospectus"), an amount which is equal to the public offering price of the Units on the Date of Deposit (which amount is equal to the per Unit value upon maturity of the zero coupon obligations).

4. Following the deposit by the Sponsor of the Securities for each Trust with the Trustee, and following the effectiveness of the registration statement relating to that Trust under the 1933 Act and clearance by the securities authorities of the various states, the Sponsor will offer the Units of that Trust to the public at the public offering price described in the Prospectus, which price is based on the market value of the underlying Securities, plus a sales charge.

5. Units of a Trust will remain outstanding until redeemed or until the termination of that Trust. Upon direction of the Sponsor, with the written consent of the Unitholders representing 51% of the Units then outstanding, the Trustee may liquidate a Trust. Each Trust will terminate upon the sale or other disposition of the last Security held thereunder, but in no event will a Trust continue beyond the mandatory termination date stated in the Prospectus.

6. Each Unit of a particular Trust will represent a fractional undivided interest in and ownership of the Securities and any undistributed cash held in the Trust. The numerator of the fractional interest represented will be one; the denominator will be the number of Units then outstanding. Unitholders may tender their Units to the Trustee for redemption of their proportionate share of the current net assets of the Trust at a specified price determined by the Trustee (the "Redemption Price"), representing each Unit's fractional undivided interest in the Trust. In the event that any Units shall be redeemed, the denominator of the fraction will be reduced and the fractional undivided interest represented by such units increased.

7. While not obligated to do so, Edward D. Jones & Co. (the "Managing Underwriter") intends to maintain, at its expense, a secondary market for Units of each Trust and to offer to repurchase Units from Unitholders at the Redemption Price. Any Units repurchased by the Managing Underwriter at the Redemption Price may be offered to the public by the Managing Underwriter at the then current public offering price, plus accrued distribution amounts and a sales charge. If the supply of Units exceeds the demand (or for any other business reason), the Managing Underwriter at any time may, temporarily or permanently, discontinue the repurchase of Units at the Redemption Price. In any case, unitholders may redeem their units through the Trustee, although the Sponsor shall have the right to repurchase such tendered Units at a price not less than the price the Unitholder would receive from the Trustee upon such tender.

8. The Sponsor agrees to direct the Trustee to distribute to each investor his or her *pro rata* share of the net worth of the applicable Trust and to refund on demand and without deduction the sales load to purchasers of Units, if, within 90 days after the registration of a Trust under the 1933 Act becomes effective, the net worth of such Trust is reduced to less than $100,000 or the Trust is terminated. In addition, the Sponsor agrees to instruct the Trustee that if, as a result of redemption by the Sponsor of unsold Units, a Trust has a net worth of less than 40% of the market value of Securities originally deposited in such Trust, the Trustee shall terminate the Trust in the manner provided in the Trust Agreement. Following such termination, the Sponsor will direct the Trustee to distribute any Securities or other assets deposited with the Trustee to the Unitholders on a *pro rata* basis pursuant to the Trust Agreement, and will refund any sales load on demand and without any deduction to any purchaser of Units.

Applicants' Legal Analysis

1. Section 14(a) of the Act provides, in pertinent part, that no registered investment company shall make a public offering of its securities unless such company (a) has a net worth of at least $100,000 or (b) ensures to the

satisfaction of the Commission and as a condition of registration of its securities under the 1933 Act that: (i) after the effective date of such registration statement such company will not issue any security or receive any proceeds of any subscription for any security until not more than 25 responsible persons have made firm agreements to purchase securities in an aggregate net amount which will give the company a net worth of at least $100,000; (ii) such amount will be paid into such company before subscriptions will be accepted from any persons in excess of 25; and (iii) arrangements will be made whereby any amount paid in, as well as any sales load, will be refunded to any subscribers on demand without any deduction in the event that the net proceeds received by the company do not result in the company having a net worth of at least $100,000 within 90 days after such registration statement becomes effective.

2. Applicants contend that, because each Trust will have an initial net worth in excess of $100,000 invested in Securities prior to any unit of the Trust being offered to the public, applicants will be in compliance with section 14(a) of the Act. Applicants recognize, however, that the transfer of Units to the Managing Underwriter on the Date of Deposit may be deemed to reduce the Trust's net worth below the requirements of section 14(a) of the Act. Applicants request an exemption to the extent that section 14(a) would require the Sponsor to take $100,000 worth of Units either for its own account or under an investment letter.

3. Applicants will comply in all respects with the requirements of rule 14a-3, which provides an exemption from section 14(a), except that the Trusts will not restrict their portfolio investments to 'eligible trust securities." Applicants contend that depositing equity securities in the Trusts will not jeopardize investors to any greater extent than would an investment in eligible trust securities, because the same safeguards that are contained in rule 14a-3 are present, and the structure of the Trusts does not differ in substance from trusts that invest in eligible trust securities which are afforded relief under rule 14a-3.

4. Section 19(b) of the Act and rule 19b-1 thereunder provide that no registered investment company may distribute long-term capital gains more than once every twelve months. Applicants state that the provisions of section 19(b) and rule 19b-1 thereunder were designed to remove the temptation to realize capital gains on a frequent and regular basis and to eliminate attempts by investment advisers to time distributions to be advantageous to shareholders. Applicants further assert that there was a concern that investors would be confused by a failure to distinguish between regular distributions of capital gains and distributions of investment income.

5. Rule 19b-1(b) permits a unit investment trust to distribute capital gain dividends received from a "regulated investment company" within a reasonable time after receipt. Rule 19b-1(c), under certain circumstances, excepts a unit investment trust investing in "eligible trust securities," as defined in rule 14a-3(b) of the Act, from the requirements of rule 19b-1. The conduct permitted under rule 19b-(b) and the exception provided by rule 19b-1(c) do not apply to the Trusts because the Trusts may receive capital gains from other than a "regulated investment company" and because they do not intend to invest in "eligible trust securities." Applicants request an exemption from rule 19b-1 to the extent necessary to permit capital gains to be distributed to Unitholders more frequently than once every twelve months.

6. Applicants submit that the dangers which section 19(b) and rule 19b-1 are designed to prevent do not exist in the Trusts. Because the Sponsor has substantially no control over events, other than the selection of the portfolio, which might trigger capital gains (*i.e.*, the tendering of Units for redemption or credit factors affecting the Securities), there is no danger of manipulation by the Sponsor to increase capital gains distribution. And, because capital distributions are clearly indicated in accompanying reports to Unitholders as a return of capital, and are relatively small in comparison to normal dividend distributions, there is little danger of confusion from failure to differentiate among distributions. Moreover, any retention of capital gains until year-end would be to the detriment of shareholders.

7. Applicants contend that the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-22177 Filed 9-14-92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended September 4, 1992

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 48333.
Date filed: August 31, 1992.
Parties: Members of the International Air Transport Association.
Subject: MV/CSC/026 dated June 9, 1992, Reflect Carriage Of Cargo By Road, T-1-600a R-2-600b(II) R-3-RP1601.
Proposed Effective Date: September 1, 1992.

Docket Number: 48334.
Date filed: August 31, 1992.
Parties: Members of the International Air Transport Association.
Subject: Comp Mail Vote 583, General Cargo Increase from India, except to/from USA/US Territories.
Proposed Effective Date: October 1, 1992.

Docket Number: 48335.
Date filed: August 31, 1992.
Parties: Members of the International Air Transport Association.
Subject: TC1 Mail Vote 594, Intermediate Class fares within South America.
Proposed Effective Date: September 23, 1992.

Docket Number: 48339.
Date filed: September 2, 1992.
Parties: Members of the International Air Transport Association.
Subject: TC3 Mail Vote 595—Japan-China Cargo Rates.
Proposed Effective Date: October 1, 1992.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 92-22199 Filed 9-14-92; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended September 4, 1992

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth

below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 48338.

Date filed: September 1, 1992.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 29, 1992.

Description: Application of Federal Express Corporation pursuant to section 401(d)(1) of the Act and Subpart Q of the Regulations, for renewal of its existing authority to provide foreign air transportation of property and mail between a point or points in the United States, on the one hand, and a point or points in Japan, on the other hand, as contained in Segment 3 of Federal Express' certificate of public convenience and necessity for Route 205–F.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 92–22198 Filed 9–14–92; 8:45 am]

BILLING CODE 4910–62–M

Office of the Secretary

[Notice 92–13]

Commercial Space Transportation Advisory Committee; Open Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463, 5 U.S.C., App. 1), notice is hereby given of a meeting of the Commercial Space Transportation Advisory Committee (COMSTAC). The meeting will take place on Wednesday, September 30, 1992, from 8:30 a.m. to 5 p.m. in room 2230 of the Department of Transportation's headquarters building at 400 Seventh Street, SW. in Washington, DC. This will be the sixteenth meeting of the COMSTAC. The meeting will cover such issues as international competitiveness with a report on the latest rounds of trade talks, and technology and innovation including a discussion on the National Launch System. The COMSTAC will receive an update on congressional activities followed by reports from the COMSTAC working groups and the Office of Commercial Space Transportation. The new COMSTAC Chairman, Steve Dorfman, Corporate Vice President and Group President of Hughes Aircraft Company, will assume the leadership of the COMSTAC at the meeting.

The meeting is open to the interested public, but may be limited to the space available. Additional information may be obtained by contacting Ms. Linda H. Strine at (202) 366–5770.

Dated: September 9, 1992.

Donald R. Trilling,

Acting Director, Office of Commercial Space Transportation.

[FR Doc. 92–22166 Filed 9–14–92; 8:45 am]

BILLING CODE 4910–62–M

Federal Railroad Administration

Petition for a Waiver of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with certain requirements of federal railroad safety regulations. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket No. RSEQ–92–1) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before October 23, 1992 will be considered by FRA before final action is taken. Comments received after that date will be considered as fare as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

The individual waiver petitions are as follows:

The Nimishillen & Tuscarawas Railway Company (NTRY)

[Waiver Petition Docket No. RSEQ–92–1]

The Nimishillen and Tuscarawas Railway Company (NTRY) seeks a permanent waiver of compliance from the provisions of Qualification Standards for Locomotive Engineers (49 CFR 240). The railroad operates on trackage within the confines of the Republic Engineered Steels facilities at Canton and Massillon, Ohio.

Canadian Pacific Limited (CP)

[Waiver Petition Docket No. RSEQ–92–2]

The Canadian Pacific Limited (CP) seeks a permanent waiver of compliance from certain provisions of Qualifications Standards For Locomotive Engineers (49 CFR part 240). The railroad is a foreign railroad operated principally in Canada with a limited operation in the United States. The petitioner seeks relief from those portions of part 240 relating to the data required on the locomotive engineer's certificate.

Burlington Northern Railroad (BN)

[Waiver Petition Docket No. RSEQ–92–4]

The Burlington Northern Railroad (BN) seeks a waiver from certain provisions of Qualification Standards for Locomotive Engineers (49 CFR part 240). The railroad is a Class I railroad with operations throughout the central and western portions of the United States. The petitioner seeks relief from § 240.201(e) for the specific purpose of issuing certification to four employees involved in the Havelock Car Shop operations who have not been tested and qualified in accordance with subpart C of part 240.

Rockford Park District

[Waiver Petition Docket No. RSEQ–92–5, RSAD–92–1, SI–92–1]

The Rockford Park District seeks a permanent waiver from the provisions of Qualification Standards for Locomotive Engineers (49 CFR part 240): Control of Alcohol and Drug Use (49 CFR part 219); and Signal System Reporting Requirements (49 CFR part 233). The Petitioner is a municipal corporation and subdivision of the State of Illinois that owns and operates a reproduction model trolley car over a small portion of the Chicago Northwestern Transportation (CNW) KD line in the county of Winnebago, Illinois.

Burlington Northern Railroad (BN)

[Waiver Petition Docket No. RSEQ–92–6]

The Burlington Northern Railroad (BN) seeks a permanent waiver from certain provisions of Qualification Standards for Locomotive Engineers (49 CFR part 240). The railroad is a Class I railroad with operations throughout the central and western portions of the United States. The petitioner seeks relief from § 240.7 specifically for the purposes of movement of up to a total of five (5) company service cars with a locomotive

or locomotives within the confines of a locomotive servicing track areas as defined in section 218.5(f).

Issued in Washington, DC on September 8, 1992.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 92-22167 Filed 9-14-92; 8:45 am]

BILLING CODE 4910-06-M

Research and Special Programs Administration

Office of Hazardous Materials Safety; Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before October 15, 1992.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

New Exemptions

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10854-N	Matheson Gas Products, Secaucus, NJ	49 CFR 172.101 Special Provision N-41	To authorize transportation of silicon tetrachloride, classed as corrosive material in DOT specification 5A steel/stainless steel drums. (mode 1)
10865-N	Robert Gas Cylinder Company, Inc., Carolina, PR.	49 CFR 173.34(1), 175.30, Part 107, App. B, Subparagraphs 1,2,3.	To authorize the rebuilding, repair, by method other than as prescribed, and sale of DOT specification 4 series cylinder for transporting compressed gases, flammable liquids, corrosive material and other hazardous materials authorized to be shipped in 4 series cylinders. (modes 1, 2, 3, 4, 5)
10866-N	American Medical Waste Systems, Inc., Hicksville, NY.	49 CFR 173.197	To authorize shipment of certain regulated medical waste contained in plastic bags overpacked in steel bulk roll-off type containers, fiberglass containers or plastic containers secured to specially designed trucks. (mode 1)
10867-N	Pacific Scientific, HTL/Kin-Tech Division, Duarte, CA.	49 CFR 173.02, 175.3, 178.44	To authorize the manufacture, mark and sell of non-DOT specification welded titanium cylinder having 35 cubic inches maximum water capacity and 3,200 psig maximum service pressure for use in transporting nitrogen, with 5% trace of helium gas, classed as non-flammable gas. (modes 1, 2, 4, 5)
10868-N	University of Utah/Radiological Health Dept., Salt Lake City, UT.	49 CFR 173.416	To authorize the one-time shipment Type B packaging consisting of a self-shielded irradiator containing Cobalt-60, classed as radioactive material, in sealed welded stainless steel capsules, inserted into tubes for transportation in privately owned vehicles. (mode 1)
10869-N	Norris Cylinder Company, Longview, TX	49 CFR 173.301(h), 173.302, 173.304, 173.34(a)(1), 175.3, 178.37.	To authorize the manufacture, mark and sell of non-DOT specificabon seamless steel cylinders with an allowable design stress not to exceed 104000 psig constructed of 3AA cylinders for use in transporting various hazardous materials. (modes 1, 2, 3, 4)
10871-N	Callery Chemical Company, Callery, PA	49 CFR 173.244	To authorize the one-way, one-time transportation of stainless steel pressure vessels containing varying amounts of fused sodium metal, dangerous when wet. (mode 1)
10872-N	WASAG USA, Inc., Wilmington, DE		To authorize the transportation of limited quantities of black powder, class A explosive contained in one pound capacity polyethylene bottles overpack, not to exceed 25 bottles per fiberboard box to be reclassified and shipped as flammable solid.
10874-N	MedX Inc., Miami, FL	49 CFR 173.197	To authorize shipment of certain regulated medical waste contained in plastic bags overpacked in 200 gallon capacity aluminum exchange carts secured within a truck. (mode 1)
10875-N	Morton International, Inc., Ogden, UT	49 CFR 173.300(a), 178.65-3	To authorize an exemption from the third party inspection requirement for DOT Specification 39 cylinders used as a component part of airbags. (modes 1, 4, 5)
10876-N	Dorton Packaging Ltd., North Yorkshire, EN.	49 CFR 173.213	To manufacture, mark, and sell collapsible, nonreusable polyethylene lined woven bulk bags.capacity for use in transporting ammonium nitrate, classed as oxidizer. (mode 1)
10877-N	Westinghouse Electric Corporation, Pittsburgh, PA.	49 CFR 173.206, 178.245	To authorize the transportation of sodium metal, classed as flammable solid in non-DOT specification containers described as stainless steel storage vessels. (mode 1)

NEW EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10878-N	Tankcon FRP Inc., Boisbriand, Que, CN	49 CFR 178.345, 178.348	To manufacture, mark and sell non-DOT specification cargo tanks construct of fiberglass reinforced plastic for use in transporting various commodities classed as corrosive material. (mode 1)
10879-N	PLM Transportation Equipment Corp., Chicago, IL	49 CFR 179.100-18	To authorize the transportation of rail cars equipped with alternative braking system for use in transporting various flammable and non-flammable gases. (mode 2)
10880-N	IRECO Incorporated, Carthage, MO	49 CFR 173.114	To authorize multiple uses of a flexible bulk bag with a capacity of 1,000 kg for shipment of ammonium nitrate, fuel oil mixture. (mode 1)
10882-N	J. Eberspacher, Esslingen, Germany	49 CFR 177.834(1),(2)(i)	To authorize the manufacture, mark and sell of temperature controlled equipment (Espar Heater System) as equipment in motor vehicles for shipment of certain flammable liquids or flammable gases. (mode 1)
10883-N	Cart Service Systems, Clifton, NJ	49 CFR 173.197	To authorize the manufacture, mark and sell of high density polyethylene containers of 175 gallons capacity for the shipment of certain regulated medical waste. (mode 1)

Note: Notice of application No. 10803-N, which appeared in the June 17, 1992 **Federal Register**, should have identified the applicant as Westinghouse Electric Corporation rather than Western Electric Corporation.

This notice of receipt of applications for new exemptions is published in accordance with part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on September 9, 1992.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 92-22168 Filed 9-14-92; 8:45 am]

BILLING CODE 4910-60-M

Office of Hazardous Materials Safety; Applications for Modification of Exemptions or Applications to Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions or applications to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "X" denote a modification request. Application numbers with the suffix "P" denote a party to request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before September 30, 1992.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Unit, room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

Application No.	Applicant	Renewal of exemption
8215-X	Olin Corporation—Winchester Division, East Alton, IL (See Footnote 1)	8215
8725-X	CNG Cylinder Corporation, Long Beach, CA (See Footnote 2)	8725
9347-X	Precision General, Inc., Houston, TX (See Footnote 3)	9347
10659-X	Consani Engineering (PTY) Limited, Republic of South Africa (See Footnote 4)	10659

[1] To authorize small arms ammunition Class C explosive as additional commodity for shipment in wooden boxes, plastic containers, metal tote boxes or multi-compartment carrying trays in addition to the packaging authorized.

[2] To modify exemption to reduce the design qualification cycling requirements for non-DOT specification cylinders for shipment of nonflammable gases.

[3] To authorize relief from hydrostatic testing of each non-DOT specification stainless steel cylinder used for the shipment of certain flammable or nonflammable gases and flammable liquids.

[4] To authorize shipment of certain class 3, 6 and 8 materials as additional hazardous commodities for shipment in non-DOT specification portable tanks comparable to DOT specification 407 and 412.

Application No.	Applicant	Parties to Exemption
3095-P	Foster Testing Co., Inc., Perryton, TX.	3095
4453-P	Paige-IRECO, Inc., Duffield, VA.	4453
4453-P	Gibson-IRECO, Inc., Duffield, VA.	4453
6691-P	Post Welding Supply Company, Birmingham, AL.	6691
7052-P	Celtic Trading of Florida, Inc., Seminole, FL.	7052
7052-P	Celtic Trading of Florida, Inc., Seminole, FL.	7052
7835-P	ABCO Welding & Industrial Supply, Inc., Waterford, CT.	7835
7909-P	ECOFLO, Inc., Greensboro, NC.	7909
8009-P	FleetStar of Texas, L.C., Dallas, TX.	8009
8009-P	Enfuels Corporation, Houston, Tx.	8009
8214-P	Diamond-Star Motors, Normal, IL.	8214
8214-P	Diamond-Star Motors, Normal, IL.	8214
8445-P	Franklin Environmental Services, Inc., Wrentham, MA.	8445
8445-P	Republic Environmental Systems, Hatfield, PA.	8445
8451-P	Gencorp Aerojet Ordnance, Chino Hills, CA.	8451
8451-P	KDI Precision Products, Inc., Cincinnati, OH.	8451
8748-P	U.S. Department of Defense, Falls Church, Va.	8748
9607-P	Liz Claiborne Cosmetics, Dayton, NJ.	9607
9723-P	Drug and Laboratory Disposal, Inc., Plainwell, MI.	9723
9723-P	Frank's Vacuum Truck Service, Inc., Niagara Falls, NY.	9723
9723-P	Republic Environmental Systems, Hatfield, PA.	9723
10738-P	Rotonics Molding Industries, Gardena, CA (See Footnote 1).	10738
10882-P	Espar Products Incorporated, Mississauga, Ontario, CN.	10882
10882-P	Espar Incorporated, Trumansburg, NY.	10882

[1] To modify exemption to provide for ocean vessel as an additional mode of transportation.

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on September 9, 1992.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 92-22169 Filed 9-14-92; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: September 8, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-1112.

Regulation ID Number: IA-96-88 Final.

Type of Review: Extension.

Title: Certain Elections Under the Technical and Miscellaneous Revenue Act of 1988.

Description: These regulations establish various elections with respect to which immediate interim guidance on the time and manner of making the elections is necessary. These regulations enable taxpayers to take advantage of the benefits of various Code provisions.

Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.

Estimated Number of Respondents: 24,305.

Estimated Burden Hours Per Respondent: 17 minutes.

Frequency of Response: On occasions.

Estimated Total Reporting Burden: 6,712 hours.

Clearance Officer: Garrick Shear (202) 622-3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 92-22222 Filed 9-14-92; 8:45 am]

BILLING CODE 4830-01-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Visions of the People: A Pictorial History of Plains Indian Life," (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Minneapolis Institute of Art, Minneapolis, Minnesota, from on or about October 11, 1992, to on or about January 3, 1993, The St. Louis Art Museum, St. Louis, Missouri, from on or about February 6, 1993, to on or about April 18, 1993, and the Joslyn Liberal Arts Society, Omaha, Nebraska, from on or about May 22, 1993, to August 1, 1993, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

Date: September 9, 1992.

Alberto J. Mora,

General Counsel.

[FR Doc. 92-22149 Filed 9-14-92; 8:45 am]

BILLING CODE 8230-01-M

VOA Advisory Committee Meeting

AGENCY: United States Information Agency.

ACTION: Notice of Meeting.

SUMMARY: The United States Information Agency announces an open meeting of the VOA Advisory Committee on Tuesday September 29, 1992, 1:30 p.m.—4 p.m. in the VOA Director's Conference Room, room 3300, 330 C Street, SW., Washington, DC. The Agenda will include discussions regarding affiliate relations and audience analysis.

DATES: September 29, 1992.

[1] A copy of this list may be obtained by contacting Mr. Paul W. Manning of the Office of the General Counsel of USIA. The telephone number is 202/619-6827, and the address is room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

ADDRESSES: 330 C Street SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Louise G. Wheeler or Nancy Starr at 619-6069.

SUPPLEMENTARY INFORMATION: Copies of minutes can be obtained by calling 619-6069.

Dated: September 29, 1992.

Douglas Wertman,

Committee Management Officer.

[FR Doc. 92-22148 Filed 9-14-92; 8:45 am]

BILLING CODE 6236-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 179
Tuesday, September 15, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold Open Commission Meeting Thursday, September 17, 1992

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, September 17, 1992, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, DC.

Item No., Bureau, and Subject

1—Office of Engineering and Technology—Title: Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies (ET Docket No. 92-9). Summary: The Commission will consider adoption of a *First Report and Order and Third Notice of Proposed Rulemaking*.

2—Mass Media Office of Engineering and Technology—Title: Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service (MM Docket No. 87-268). Summary: The Commission will consider adoption of a *Memorandum Opinion and Order, Third Report and Order and Third Further Notice of Proposed Rulemaking* which resolves petitions for reconsideration, establishes further rules and policies concerning the implementation of advanced television service, and seeks comment on additional implementation issues.

3—Field Operations—Title: Amendment of Part 73, Subpart G of the Commission's Rules and Regulation Regarding the Emergency Broadcast System (PO Docket Nos. 91-301 and 91-171. Summary: The Commission will consider adoption of a *Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking* regarding technical and operational changes to the Emergency Broadcast System.

4—Common Carrier—Title: Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, and Amendment of the Part 69 Allocation of General Support Facility Costs. Summary: The Commission will consider adoption of a *Report and Order and Notice of Proposed Rulemaking* concerning expanded interconnection for the provision of special access services and related issues.

5—Common Carrier—Title: Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, and Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board (CC Docket No. 80-286). Summary: The Commission will consider adoption of a *Second Notice of Proposed Rulemaking* concerning expanded interconnection for the provision of switched transport services and related issues.

6—Common Carrier—Title: Transport Rate Structure and Pricing (CC Docket No. 91-213). Summary: The Commission will consider adoption of a *Report and Order and Further Notice of Proposed Rulemaking* concerning local transport rate structure and pricing issues and GTE's petition for waiver of Part 69 rules.

7—Common Carrier—Title: Report and Order Implementing the Telephone Consumer Protection Act of 1991 (CC Docket No. 92-90). Summary: The Commission will consider adoption of a *Report and Order* concerning the establishment of rules restricting unwanted telephone solicitations to residences, and regulating the use of automatic dialing systems, prerecorded or artificial voice messages, and telephone facsimile machines.

8—Private Radio—Title: Amendment of Part 90 of the Commission's Rules Pertaining to End User and Mobile Licensing Information (PR Docket No. 92-78, RM-7407 and RM-7749). Summary: The Commission will consider adoption of a *Report and Order* concerning whether to modify certain rules relating to mobile services and end user information.

9—General Counsel—Title: Enforcement of Prohibitions Against Broadcast Indecency. Summary: The Commission will consider adoption of a *Notice of Proposed Rulemaking* implementing regulations regarding broadcasting of indecent programming.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Steve Svab, Office of Public Affairs, telephone number (202) 632-5050.

Issued: September 11, 1992.

Federal Communications Commission.

Dated: September 10, 1992.

William F. Caton,

Acting Secretary.

[FR Doc. 92-22340 Filed 9-11-92; 2:36 pm]

BILLING CODE 6712-01-M

FOREIGN CLAIMS SETTLEMENT COMMISSION

F.C.S.C. Meeting Notice No. 12-92

Notice of Meetings

Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date, Time, and Subject Matter

Thursday, September 24, 1992 at 10:30 a.m.—Consideration of Proposed Decisions on claims against Iran.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 601 D Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 601 D Street, NW., room 10000, Washington, DC 20579. Telephone: (202) 208-7727.

Dated at Washington, DC on September 11, 1992.

Judith H. Lock,

Administrative Officer.

[FR Doc. 92-22392 Filed 9-11-92; 2:41 pm]

BILLING CODE 4410-01-M

INTERSTATE COMMERCE COMMISSION

Commission Conference

TIME AND DATE: 10:00 a.m., Tuesday, September 22, 1992.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th and Constitution Avenue, NW., Washington, DC 20423.

STATUS: The Commission will meet to discuss among themselves the following agenda items. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED:

Ex Parte No. 334 (Sub-No. 8), *Joint Petition for Rulemaking on Railroad Car Hire Compensation and* Ex Parte No. 334 (Sub-No. 8A), *Joint Petition for Rulemaking of Arbitration Rule from Application of 49 U.S.C. 10706 and Motion to Dismiss.*

Docket No. 40679, *Charges for "Order Of" Bills of Lading, Burlington Northern Railroad Company.*

CONTACT PERSONS FOR MORE INFORMATION: Alvin H. Brown or A.

Dennis Watson, Office of External Affairs, Telephone: (202) 927-5350, TDD: (202) 927-5721.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-22363 Filed 9-11-92; 2:39 pm]

BILLING CODE 7025-01-M

LEGAL SERVICES CORPORATION

Board of Directors

Operations and Regulations Committee Meeting

TIME AND DATE: A meeting of the Board of Directors Operations and Regulations Committee will be held on September 24, 1992. The meeting will commence at 12:00 p.m.

PLACE: The Hyatt Regency Minneapolis Hotel, 1300 Nicollet Mall, The Greenway Ballrooms "B", "C" and "D", Minneapolis, Minnesota 55403, (612) 370-1234.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.
2. Approval of Minutes of August 9, 1992 Meeting.
3. Consideration of Public Comment on Proposed Changes to Parts 1607, 1609, 1610, 1611, 1612 and 1626 of the Corporation's Code of Federal Regulations.
   a. Presentations by Alan Houseman, Executive Director, and Linda Perle, Senior Staff Attorney, Center for Law and Social Policy, on Behalf of the Project Advisory Group and the National Legal Aid and Defender Association.
4. Consideration of Proposed Changes to Parts 1607, 1609, 1610, 1611, 1612 and 1626 of the Corporation's Code of Federal Regulations.
5. Lottery Selection of Competition Demonstration Project Participants.

CONTACT PERSON FOR INFORMATION: Patricia Batie, Executive Office, (202) 336-8896.

Date Issued: September 11, 1992.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 92-22400 Filed 9-11-92; 3:05 pm]

BILLING CODE 7050-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of September 14, 21, 28, and October 5, 1992.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of September 14

Monday, September 14

2:00 p.m.
Briefing on Electricity Forecast from Energy Information Administration (EIA) Annual Energy Outlook (Public Meeting)

Thursday, September 17

2:00 p.m.
Status Briefing on Shutdown and Low Power Risk Issues (Public Meeting) (Contact: Mark Caruso 301/504-3235)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of September 21—Tentative

Thursday, September 24

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of September 28—Tentative

Tuesday, September 29

2:00 p.m.
Briefing on AEOD Annual Report (NUREG-1272, Vol. 6, Nos. 1 and 2) (Public Meeting)

Wednesday, September 30

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of October 5—Tentative

Wednesday, October 7

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meeting Call (Recording)—(301) 504-1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504-1661.

Dated: September 10, 1992.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 92-22338 Filed 9-11-92; 2:37 pm]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of September 14, 1992.

Closed meetings will be held on Tuesday, September 15, 1992, at 9:30 a.m. and on Wednesday, September 16, 1992, at 10:30 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at closed meetings.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meetings in closed session.

The subject matter of the closed meeting scheduled for Tuesday, September 15, 1992, at 9:30 a.m., will be:

Institution of injunctive actions.
Settlement of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Opinion.

The subject matter of the closed meeting scheduled for Wednesday, September 16, 1992, at 10:30 a.m., will be:

Settlement of injunctive actions.
Settlement of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: George Kramer at (202) 272-2000.

Dated: September 10, 1992.

Jonathan G. Katz,

Secretary

[FR Doc. 92-22364 Filed 9-11-92; 2:40 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 57, No. 179
Tuesday, September 15, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520, 522, and 526

[Docket No. 89N-0312]

New Animal Drugs; Removal of Obsolete Regulations and Recodification

Correction

In rule document 92-19442 beginning on page 37318 in the issue of Tuesday, August 18, 1992, make the following corrections:

§ 520.88b [Corrected]

1. On page 37319, in the 2d column, in § 520.88b(b)(1)(ii)(B), in the 10th line, "spp; gastorintestinal" should read "spp.; gastrointestinal".

§ 520.88d [Corrected]

2. On the same page, in the third column, in § 520.88d(c), in the first line, remove the quotation marks from "See".

§ 520.154a [Corrected]

3. On page 37322, in the third column, in § 520.154a(d)(3)(iii), in the fifth line, "that" should read "than".

§ 520.390c [Corrected],

4. On page 37323, in the third column, in § 520.390c(c)(1), in the fourth line, "4 days" should read "5 days".

§ 520.445b [Corrected]

5. On page 37324, in the first column, in § 520.445b(b), in the fifth line, "uses" should read "use".

6. On the same page, in the second column, in § 520.445b(d)(1)(iv), in the second line, "milligram" should read "milligrams".

7. On the same page, in the same column, in § 520.445b, the 14th paragraph designated (d)(2)(i)(B)" should read "(d)(2)(i)(C)".

8. On the same page, in the same column, in § 520.445b(d)(2)(i)(D)(*1*), in the fifth line, "supp." should read "spp.".

§ 520.1696c [Corrected]

9. On page 37326, in the third column, in § 520.1696c(c), in the seventh line, "many" should read "may".

§ 520.2158b [Corrected]

10. On page 37327, in the second column, in § 520.2158b(b), in the second line, "§ 510.600(C)" should read "§ 510.600(c)".

§ 520.2345d [Corrected]

11. On page 37328, in the second column, in § 520.2345d(e)(1)(i)(A), in the fourth line, and in paragraph (e)(1)(ii)(A), in the third line, "hemorrhagic" was misspelled.

12. On page 37329, in the first column, in § 520.2345d(e)(4)(iii)(A)(*1*), in the sixth line, "*M*" should read "*M.*".

§ 522.90b [Corrected]

13. On page 37331, in the second column, in § 522.90b(d)(3)(ii), in the fifth line, "pneumonia" was misspelled.

§ 522.650 [Corrected]

14. On page 37331, in the third column, in § 522.650(b), in the second line, "9f" should read "of".

§ 522.1696a [Corrected]

15. On page 37332, in the second column, in § 522.1696a(d)(2), in the sixth line, remove the parenthesis in front of "pyogenes".

§ 522.1696b [Corrected]

16. On page 37332, in the second column, in the section heading "aqueous" was misspelled.

17. On the same page, in the third column, in § 522.1696b(d)(3)(ii), in the last line and in paragraph (e)(1)(ii), in the last line, "equi" was misspelled.

§ 526.464a [Corrected]

18. On page 37334, in the third column, in § 526.464a(c)(2), in the second line, remove "is".

§ 526.464b [Corrected]

19. On page 37334, in the third column, in § 526.464b(c)(2), in the second line, remove "is", in the third line, after "dairy" remove the period, and in paragraph (c)(3), in the second line, after "only" insert a period.

§ 526.1696c [Corrected]

20. On pge 37336, in the second column, in § 526.1696c(a), in the 5th line, "sulfate" was misspelled.

§ 526.1696d [Corrected]

21. On page 37336, in the second column in § 526.1696d(c)(1)(iii), in the eighth line, after "must" insert "not".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 20

[T.D. ATF-332, Re:Notice No. 743]

Specially Denatured Spirits; Miscellaneous Amendments

Correction

In rule document 92-21361 beginning on page 40487 in the issue of Tuesday, September 8, 1992, make the following corrections:

1. On page 40848, in the second column, under **Public Participation—Written Comments**, in the eighth line from the bottom, "process" should read "possess".

2. On page 40849, in the first column, in amendatory instruction 4., in the first line, "cited" should read "cite".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 92-13]

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064-AA15

Risk-Based Capital Standards

Correction

In proposed rule document 92-18540 beginning on page 35507 in the issue of

Monday, August 10, 1992, make the following corrections:

1. On page 35508, in the second column:

a. In the second complete paragraph, in the eighth line, delete "sensitivity of their assets does not match the".

b. In the third complete paragraph, in the next to the last line, delete "decline in net interest income if interest rates".

2. On page 35510, in the second column, footnote 4 was misnumbered.

3. On page 35511, in the first column:

a. In the eighth line, "with" should read "wish".

b. In the second paragraph, in the fourth line, "date-" should read "data-".

4. On the same page, in the second column, delete "ι".

5. On page 35513, in the first column, "characteristic:" should read "characteristics:"

6. On the same page, in the 2d column, in the first complete paragraph, in the 21st line, "branches" should read "tranches".

7. On page 35516, in the second column, in the third line of footnote 11, "coup" should read "coupon".

8. On page 35517, in the second column, in the seventh line, "as" should read "has".

9. On page 35524, in the first table, in the heading of the fourth column, "<=3 years" should read "<=1 year".

10. On the same page, in the first column, delete the ● preceeding the second paragraph.

11. On the same page, in the second table, in the last entry in the third column, "(10,000)" should read "($10,000)".

12. On the same page, in the same table, in the last entry in the sixth column, "(10,000)" should read "$10,000".

13. On the same page, in the third table, in the last entry in the second column, "(56,000)" should read "$56,000".

BILLING CODE 1505-01-D

federal register

Tuesday
September 15, 1992

Part II

Department of Defense

48 CFR Parts 202, 204, et al.
Acquisition Regulations; Miscellaneous Amendments; Interim Rules

DEPARTMENT OF DEFENSE

48 CFR Parts 202, 204, 208, 210, 214, 215, 216, 219, 223, 225, 226, 227, 228, 231, 232, 236, 237, 239, 242, 245, 252, 253

[Defense Acquisition Circular (DAC) 91-3]

Acquisition Regulations; Miscellaneous Amendments

AGENCY: Department of Defense (DoD).

ACTION: Interim rules with request for comments; and final rules.

SUMMARY: Defense Acquisition Circular (DAC) 91-3 amends the Defense FAR Supplement (DFARS) to revise or add language on contracting with universities and other institutions of higher learning, Government personnel work product, contractor establishment code, mistakes in bids, cost or pricing data threshold, subcontracting credit for blind and other severely handicapped, end user certificates, public interest exception for qualifying countries, Balance of Payments Program, Trade Agreements Act threshold, carbonyl iron powders, environmental surety bonds, performance bonds for construction contracts, noncommercial cost principles, payment reductions for fraud, Federal information processing (FIP) resources, major automated information systems, duties of plant clearance officers, coordinated acquisition assignments, component breakout, and contracting activity addresses.

DATES: *Effective Date:* August 31, 1992, except for section 219.703 which was effective November 26, 1991.

Comment Date: Comments on the interim rule, section 228.102-1 (Item XIV, Environmental Surety Bonds), should be submitted in writing to the address shown below on or before (30 days from publication).

ADDRESSES: Interested parties should submit comments to Defense Acquisition Regulations System, ATTN: Ms. Valorie Lee, 3062 Defense Pentagon, Washington, DC 20301-3062 to be considered in formulating this final rule. Please cite DAR Case 91-325 in all correspondence related to this rule.

FOR FURTHER INFORMATION CONTACT: Ms. Lucile Martin, Defense Acquisition Regulations System, OUSD(A), 3062 Defense Pentagon, Washington, DC 20301-3062, telephone (703) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Determine to Issue Interim Rule

A determination has been made under authority of the Secretary of Defense to issue the rule in Item XIV of DAC 91-3 as an interim rule. Compelling reasons exist to promulgate the rule without prior opportunity for public comment. However, pursuant to Public Law 98-577 and FAR 1.501, public comments received in response to this interim rule will be considered in formulating the final rule.

B. Background

Of the three interim rules (Items VII, XII, and XIV) included in DAC 91-3, two (Item VII, Drug-Free Work Force; and XII, Secondary Arab Boycott of Israel) have been previously published in the **Federal Register** and codified. Item VII was published July 23, 1992 (57 FR 32736). Item XII was published June 30, 1992 (57 FR 29041). Neither of these two rules is included in this rulemaking notice but both are being incorporated in the looseleaf edition of DFARS by DAC 91-3. The third interim rule in DAC 91-3 (Item XIV, Environmental Surety Bonds) is included in this rulemaking notice and comments are invited.

C. Regulatory Flexibility Act

DAC 91-3, Items I, III, IV, V, VIII, IX, X, XI, XV, XVI, XVIII, XX, XXI, XXII, XXIII, XXIV

The Regulatory Flexibility Act does not apply because these rules are not significant revisions within the meaning of Public Law 98-577. However, comments from small entities will be considered in accordance with section 610 of the Act. Such comments must be submitted separately. Please cite DFARS Case 92-610 in correspondence.

DAC 91-3, Items II, VI, XIII, XVII, XIX

DoD certifies that these rules will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act because:

Item II imposes no new procedures or requirements on contractors;

Item VI does not apply to small entities;

Item XIII imposes restrictions on acquisition of foreign products;

Item XVII only affects firms that submit requests for advance, partial, or progress payments supported by fraudulent information; and

Item XIX applies only to contracts for major automated information systems, of which only few, if any, are awarded to small entities.

DAC 91-3, Item XIV

The Regulatory Flexibility Act applies. A final regulatory flexibility analysis has been performed and is available by writing the Defense Acquisition Regulations System, ATTN: Ms. Valorie Lee, OUSD(A), 3062 Defense Pentagon, Washington, DC 20301-3062.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the revisions in this rulemaking notice do not contain and/or affect information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et. seq.

List of Subjects in 48 CFR Parts 202, 204, 208, 210, 214, 215, 216, 219, 223, 225, 226, 227, 228, 231, 232, 236, 237, 239, 242, 245, 252 and 253

Government procurement.

Claudia L. Naugle,

Executive Editor, Defense Acquisition Regulations System.

Defense Acquisition Circular (DAC) 91-3 amends the Defense FAR Supplement (DFARS) 1991 edition, prescribes procedures to be followed, and provides informational interest items. The amendments, procedures, and information are summarized as follows:

Item I—Contracting With Universities and Other Institutions of Higher Learning

Title VIII, Section 8106, of the Fiscal Year 1992 National Defense Appropriations Act (Pub. L. 102-172) states that "None of the funds appropriated in this Act may be obligated or expended for any contract or grant with a university or other institution of higher learning unless such contract or grant is audited in accordance with the Federal Acquisition Regulation and the Department of Defense Federal Acquisition Regulation Supplement or any other applicable auditing standards and requirements and the institution receiving the contract or grant fully responds to all formal requests for financial information made by responsible Department of Defense officials: Provided, that if any institution does not provide an adequate financial response with 12 months, the Secretary of Defense shall terminate that and all other Department of Defense contracts or grants with the institution."

If a university or other institution of higher learning persists in refusing to provide an adequate response to a request for financial information, in addition to taking appropriate contractual actions within the terms of the contract, the matter should be referred through channels to the Under Secretary of Defense (Acquisition) to determine whether that contract and all other Department of Defense contracts and grants with that institution should be terminated.

Item II—Government Personnel Work Product

The interim rule published as Item III of DAC 91-2 is converted to a final rule without further change. The rule revised DFARS 204.402 and added a clause at 252.204-7003 as a result of section 808 of the Fiscal 1992 National Defense Authorization Act. The rule precludes contractors from requiring that DoD employees or military personnel release their work products to contractors.

Item III—Contractor Establishment Code

DFARS 204.7202-2 and 253.204-70 are revised to update the guidance on use of contractor establishment codes.

Item IV—Mistakes in Bids

DFARS 214.406-3 is revised to remove the Army, Navy, and Air Force lists of officials that may be delegated authority to make the mistake in bid determinations described by FAR 14.406-3(a), (b), and (d). This change is being made to facilitate exercise of the Service Secretaries' authority to make and revise the delegations within their respective departments.

Item V—Cost or Pricing Data Threshold

DFARS 215.804-3 is amended to remove language on partial or limited cost or pricing data because similar language has been added in FAR 15.804-6(a)(2) by FAC 90-10. The clause at DFARS 252.243-7000, Engineering Change Proposals, is amended by changing the threshold in paragraph (c) from $100,000 to $500,000 for consistency with the FAR increase in the cost or pricing data threshold.

Item VI—Subcontracting Credit for Blind and Other Severely Handicapped

DFARS 219.703(a) and (b) are revised to reflect Department of Defense implementation of section 8082 of the Fiscal 1992 National Defense Appropriations Act. Section 8082 authorizes credit through September 30, 1992, towards a prime contractor's small business subcontracting goal for subcontract awards to qualified nonprofit agencies for the blind and other severely handicapped. Section 8082 was implemented by departmental letter 92-003, issued February 20, 1992.

Item VII—Drug-Free Work Force

DFARS Subpart 223.5 and the clause at 252.223-7004 were amended on an interim basis by Departmental Letter 92-006, issued July 16, 1992. The Departmental replaced the final rule on Drug-Free Work Force with the interim rule which existed prior to Defense Acquisition Circular 88-19.

Item VIII—End Use Certificates

Some foreign countries require provision of an end user certificate as a prerequisite to the sale of defense items to the United States. DFARS 225.802-71 is added to reference the guidance on handling requests for end user certificates, which is in DoD Directive 2040.3, End User Certificates.

Item IX—Public Interest Exception for Qualifying Countries

DFARS 225.872-4 is amended to clarify the approval levels for public interest waivers of the Buy American Act and Balance of Payments Program in instances where the low evaluated offer is for an end product from one of the qualifying country sources listed in DFARS 225.872-1(b). A related editorial revision is made in DFARS 225.102(a)(3)(A).

Item X—Balance of Payments Program

DFARS 225.302(b)(ii) is amended to permit delegation of the authority to determine before solicitation that acquisition of domestic end products or services would be unreasonable in cost. Delegation was permitted by the 1988 edition of DFARS but was inadvertently withdrawn by the 1991 edition.

Item XI—Trade Agreements Act Threshold

The Office of the United States Trade Representative advised that, effective January 1, 1992, the threshold for determining whether purchases are subject to the Trade Agreements Act is $176,000. The application of this threshold is covered in FAR Subpart 25.4 and DFARS Subpart 225.4. Notice of this threshold increase was provided by Departmental Letter 91-025, dated December 20, 1991.

Item XII—Secondary Arab Boycott of Israel

DFARS 225.770 and the clause at 252.225-7031 are added as implementation of section 8072A of the Fiscal 1992 National Defense Appropriations Act. Section 8072A prohibits awarding a contract to a foreign person, company, or entity unless it certifies that it does not comply with the secondary Arab boycott of Israel. These revisions were effective June 24, 1992, upon issuance of Departmental Letter 92-005.

Item XIII—Carbonyl Iron Powders

This finalizes, without change, the interim rule published as Item IX of DAC 91-2. The interim rule revised the restrictions in DFARS 225.7014 and the clause at 252.225-7023 on acquisition of carbonyl iron powders.

Item XIV—Environmental Surety Bonds

DFARS 228.102-1 is amended to describe the limits of a surety's liability under construction contracts awarded under the Defense Environmental Restoration Program. The revisions are the result of Section 336 of the Fiscal 1992 National Defense Authorization Act. Section 336 applies to all Miller Act surety bonds required for Defense Environmental Restoration Program contracts executed between December 5, 1991, and December 31, 1992.

Item XV—Performance Bonds for Construction Contracts

Recently the Internal Revenue Service reported that some contracting activities had accepted performance bonds which did not contain certain language required by the Miller Act, thus jeopardizing the collection of taxes. Contracting Officers are reminded that the acceptable bond forms are specified in Federal Acquisition Regulation (FAR) 28.106-1, and that authority for any alternative must be obtained in accordance with FAR 53.103.

Item XVI—Noncommercial Cost Principles

The Office of Management and Budget (OMB) on October 1, 1991, revised its Circular No. A-21, Cost Principles for Educational Institutions, to incorporate the list of statutory cost prohibitions at 10 U.S.C. 2324(e). As a result, the inclusion of those prohibitions in subpart 231.3, Contracts with Educational Institutions, is no longer necessary. However, since the prohibitions also apply to and were referenced in subpart 231.6, Contracts with State, Local, and Federally Recognized Indian Tribes, the list of prohibitions is moved from subpart 231.3 to 231.6, pending similar revision of OMB Circular No. A-87. DFARS 231.703 also is revised to provide a cross-reference to 231.603 for contracts with nonprofit organizations, pending revision of OMB Circular No. A-122.

Item XVII—Fraud Payment Reductions

This Item converts the interim rule published as Item XII of DAC 91-2 to a final rule with minor revisions. The rule implements Section 836 of the Fiscal 1991 National Defense Authorization Act by permitting agencies to reduce or suspend further payments to a contractor when the agency head determines that the contractor's request for payment is based on fraud. This Item finalizes 232.111-70 without change and 232.173 and the clause at 252.232-7006 with minor revisions.

Item XVIII—Federal Information Processing (FIP) Acquisitions

DFARS 239.001 is revised to clarify the fact that DoD may acquire FIP resources through non-mandatory GSA schedule contracts even when the Warner Amendment exempts the FIP resources from application of the Brooks Act.

Item XIX—Major Automated Information Systems

The interim rule published as Item XVII of DAC 91-2 is converted to a final rule without further change. The rule added DFARS subpart 239.75, which prohibits use of Fiscal Year 1992 funds for acquisition of major automated information systems, unless the systems have successfully completed oversight reviews.

Item XX—Duties of Plant Clearance Officers

DFARS 245.7002 is revised to clarify the duties of plant clearance officers.

Item XXI—Coordinated Acquisition Assignments

DFARS Appendix B is amended to reflect the transfer of contracting responsibility from the Army to the General Services Administration for commercial, non-tactical, passenger carrying vehicles, buses, and trucks, over 10,000 pounds gross vehicle weight.

Item XXII—Component Breakout

DFARS appendix D, Component Breakout, is amended to add a requirement in paragraph D-105 for the records for components reviewed for breakout to contain the assessments, calculations, and analyses discussed in paragraph D-104, including the trade-off analysis between savings and increased risk to the Government because of responsibility for Government-furnished equipment.

Item XXIII—Appendix G Update

DFARS appendix G is amended to update activity address codes.

Item XXIV—Editorial Revisions

(Note: The asterisked items are revisions being made only in the looseleaf edition of DFARS.)

(a) DFARS 202.101 is amended to update the Air Force list of contracting activities due to organizational change.

(b) DFARS 204.670-5(d) is amended by changing "DD Form 250" to read "DD Form 350."

(c) DFARS 206.7203(b) is amended by revising the word "natural" to read "national."

(d) DFARS 210.002 is amended by changing the designation paragraph "(c)" to read paragraph "(e)."

(e) DFARS 216.501(a)(i)(B) is amended by changing the word "by" to read "By."

(f) DFARS Part 219 Table of Contents is amended by changing "291.304 Solicitation provisions" to read "219.304 Solicitation provisions."

(g) DFARS 219.501 is amended in paragraph (a) by revising the word "procedures" to read "procedure."

(h) DFARS 219.506 is amended in paragraph (d) by removing the acronym "(SDB)."

(i) DFARS 219.1007 is amended to revise "252.219-7003" to read "252.219-7006."

(j) Delete DFARS 223.301 as overlooked in DAC 91-1.

(k) DFARS part 225 Table of Contents is amended by changing the title "Subpart 227.73—Acquisitions For Foreign Military Sales" to read "Subpart 225.73—Acquisitions for Foreign Military Sales."

(l) DFARS 225.109(d)(iii) is revised to clarify the language.

(m) DFARS 225.305-70(b)(1) is amended to revise "conern" to read "concern."*

(n) DFARS 225.407(a)(2)(A) is amended by revising "225.403(d)(i)(B)" to read "225.403(d)(1)(B)."

(o) DFARS 225.870-2(a) is amended by revising "225.870-1(b)(1)" to read "225.870-1(c)(1)."

(p) DFARS 225.870-4(a) is amended by revising "225.870-1(b)(1)" to read "225.870-1(c)(1)."

(q) DFARS 225.7303-2(a)(2)(i)(C) is amended to remove an obsolete reference.

(r) DFARS 226.7008(b) is amended by revising "252.219-7003" to read "252.219-7006."

(s) DFARS 227.402-71(a) is amended by removing in the third sentence the words "(see Subpart 217.72)" and by adding a period after the word "interests."

(t) DFARS 228.370(d) is amended by changing "War-Hazard Compensation Act" to read "War Hazards Compensation Act."

(u) DFARS 232.503-15(d) is amended by revising the reference "242.7206(b)(7)" to read "252.242-7004(f)(7)."

(v) DFARS 236.570(b)(4) is amended by changing "Limitations" to "Limitation."

(w) DFARS 237.203-70(a)(3) is amended by revising the acronym "DoDD" to read "DoDI."

(x) DFARS 237.203-70(a)(4) is amended by revising the acronym "DoDD" to read "DoD."

(y) DFARS 239.7411(b)(2) is amended to change "Communication" to "Telecommunication."

(z) DFARS 239.7411(c)(3) is amended to change "Orders" to read "Communication Service Authorizations."

(aa) DFARS 242.7202(d) is amended to correct an inadvertent misstatement of the DoD policy on contractor material management and accounting systems.

(bb) DFARS 245.310-70 is amended for clarification.

(cc) DFARS 245.604(3) is amended to revise "clearane" to read "clearance."*

(dd) DFARS 245.7308(a) is amended by updating the report control symbol.

(ee) DFARS 251.102(e)(3)(ii) is amended by removing the extra word "and" between the word "procedure" and the word "form."*

(ff) DFARS 252.201-7000 is amended by adding at the end of the clause the words "(End of clause)."

(gg) DFARS 252.204-7000(c) is amended to revise the word "Subcontractotrs" to read "Subcontractors."*

(hh) DFARS 252.217-7001(b)(1) is amended to revise the reference "DI-P-1634A" to read "DI-MGMT-80969."

(ii) DFARS 252.217-7026(b)(3) is amended to revise "catelog" to read "catalog."*

(jj) DFARS 252.225-7003(d)(1) is amended for clarification.

(kk) DFARS 252-225.7022 is amended to read "252.225-7022."

(ll) DFARS 252.227-7013 is amended by realigning text.*

(mm) DFARS 252.228-7003(a)(4), (b)(2), and (e) are amended by changing "War Risk Hazards Compensation Act" to read "War Hazards Compensation Act."

(nn) DFARS 252.232-7001 is amended to revise in the clause title the word "payment" to read "payments."

(oo) DFARS 252.237-7019 is amended to change the date of the clause from "DEC 1991" to "Apr 1992."

(pp) DFARS 252.242-7001(c) is amended in the fourth line of paragraph 3. by changing the word "or" to read "of."

(qq) DFARS 252.247-7022 is amended by revising in the first sentence of paragraph (a) the word "clause" to read "provision."

(rr) DFARS 253.204-70(c)(4)(iv) is amended to clarify the coding instructions for Block C4 of DD Form 350.

(ss) DFARS 253.204-70(c)(4)(ix)(B)*(2)* is amended to clarify the coding instructions for Block C9 of DD Form 350.

Interim Rules Adopted as Final Without Changes

PARTS 204 AND 252—[AMENDED]

1. The interim rules amending section 204.402 and adding section 252.204–7003 that were published as Item III of DAC 91–2 at 57 FR 14988 on April 23, 1992, are adopted as final rules without change.

PARTS 225 and 252—[AMENDED]

2. The interim rules amending section 225.7014 and the clause at 252.225–7023 that were published as Item IX of DAC 91–2 at 57 FR 14988 on April 23, 1992, are adopted as final rules without change.

PART 239—[AMENDED]

3. The interim rules adding subpart 239.75, that were published as Item XVII of DAC 91–2 at 57 FR 14988 on April 23, 1992, are adopted as final rules without change.

Amendments to Defense FAR Supplement

The Defense FAR Supplement is amended as set forth below.

The authority for 48 CFR parts 202, 204, 208, 210, 214, 215, 216, 219, 223, 225, 226, 227, 228, 231, 232, 236, 237, 239, 242, 245, 252 and 253 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, and FAR subpart 1.3.

PART 202—DEFINITION OF WORDS AND TERMS

4. Section 202.101 is amended under the definition "Contracting activity" to revise AIR FORCE contracting activities to read as follows:

202.101 Definitions.

* * * * *

Air Force

Office of the Deputy Assistant Secretary (Contracting)
Air Force Logistics Command
Air Force Systems Command
Air Combat Command
Air Force Communications Command
Air Mobility Command
Air Training Command
Pacific Air Forces
United States Air Forces in Europe
Space Command
Electronic Security Command

* * * * *

PART 204—ADMINISTRATIVE MATTERS

204.670–5 [Amended]

5. Section 204.670–5 is amended in paragraph (d) by revising "DD Form 250" to read "DD Form 350."

6. Section 204.7202–2 is revised to read as follows:

204.7202–2 CEC codes.

Use of the contractor establishment code (CEC) is prescribed by 253.204–70(b)(5)(ii)(A). The CEC is an alphanumeric code in the Government system that is operated by a contractor. When the CEC is not already available within the contracting activity, use the following procedures in the order listed—

(a) Look in the Federal Procurement Data Center (FPDC) Contractor Establishment Code file alphabetical listing available from the FPDC, GSA Regional Office Building, Room 5652, 7th and D Streets, SW., Washington, DC 20407, (202) 401–1529;

(b)(1) If the listing in paragraph (a) of this subsection has no entry, ask the FPDC contractor for a CEC by—

(i) Telephone (215) 865–0204.

(ii) Facsimile (215) 882–7295.

(iii) Writing to FPDC Department, Dun & Bradstreet Information Services, 899 Eaton Avenue, Bethlehem, PA 18025–0013.

(2) All requesters should provide the following information:

(i) Name of requesting contracting office;

(ii) Contracting office code (Block A3 on the DD Form 350) assigned by the departmental data collection point;

(iii) Appropriate agency code as follows:

(A) Army activities—2100;

(B) Navy activities—1700;

(C) Air Force activities—5700;

(D) Defense Logistics Agency—97AS;

(E) Other DoD contracting activities—9700.

(iv) Contracting office area code and commercial telephone number;

(v) Name of individual making the request;

(vi) Total number of CEC requests, if more than one; and

(vii) Contractor establishment name, street address, P.O. Box, city/town, state, ZIP code, and telephone number (if available). For foreign offerors, include province, country, and postal code.

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

208.7203 [Amended]

7. Section 208.7203 is amended in paragraph (b) by revising the word "natural" to read "national."

PART 210—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

210.002 [Amended]

8.–9. Section 210.002 is amended by changing the designation paragraph "(c)" to read paragraph "(e)."

PART 214—SEALED BIDDING

10. Section 214.406–3 is revised to read as follows:

214.406–3 Other mistakes disclosed before award.

(e) Authority for making a determination under FAR 14.406–3(a), (b) and (d) is delegated for the defense agencies, without power of redelegation, as follows:

(i) Defense Advanced Research Projects Agency:
General Counsel, DARPA.
General Counsel, DARPA.

(ii) Defense Information Systems Agency:
General Counsel, DISA.

(iii) Defense Intelligence Agency:
Principal Assistant for Acquisition.

(iv) Defense Logistics Agency:
(A) General Counsel, DLA; and
(B) Associate General Counsel, DLA.

(v) Defense Mapping Agency:
General Counsel, DMA.

(vi) Defense Nuclear Agency:
General Counsel, DNA.

(vii) National Security Agency:
Director of Procurement, NSA.

(viii) On-Site Inspection Agency:
General Counsel, OSIA.

(h) Send a signed copy of the document authorizing correction of the bid to the appropriate finance center with its copy of the contract.

PART 215—CONTRACTING BY NEGOTIATION

11. Section 215.804–1 is added to read as follows:

215.804–1 General.

(a) When certified cost or pricing data are not required, the contracting officer may ask for partial or limited data when the data are necessary for the Government's analysis. The contracting officer shall not ask the contractor to certify these data.

215.804–3 [Amended]

12. Section 215.804–3 is amended by removing the introductory paragraph.

PART 216—TYPES OF CONTRACTS

216.501 [Amended]

13. Section 216.501 is amended in paragraph (a)(i)(B) by revising the word "by" to read "By."

PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

14. In the Table of Contents for part 219 "291.304 Solicitation provisions" is revised to read "219.304 Solicitation provisions."

219.508 [Amended]

15–16. Section 219.508 is amended in paragraph (d) by removing the acronym "(SDB)."

17. Section 219.703 is revised to read as follows:

219.703 Eligibility requirements for participating in the program.

(a) Qualified nonprofit agencies for the blind and other severely handicapped, that have been approved by the Committee for Purchase from the Blind and Other Severely Handicapped under the Javits-Wagner-O'Day Act (41 U.S.C. 46–48), are eligible as a result of Section 8082 of Pub. L. 102–172 through September 30, 1992, to participate in the program. Subcontracts awarded to such entities may be counted toward the prime contractor's small business subcontracting goal.

(2)(A) To be eligible as an SDB subcontractor, a concern must meet the definition in the provision at 252.219–7000, Small Disadvantaged Business Concern Representation (DoD Contracts).

(B) To be eligible as a historically black college or university or minority institution subcontractor, such entity must meet the definition in the clause at 252.219–7003, Small Business and Small Disadvantaged Business Subcontracting Plan (DoD Contracts).

(b) A contractor may also rely on the written representation as to status of—

(i) A historically black college or university or minority institution; or

(ii) A qualified nonprofit agency for the blind and other severely handicapped approved by the Committee for Purchase from the Blind and Other Severely Handicapped.

219.1007 [Amended]

18. Section 219.1007 is amended to revise "252.219–7003" to read "252.219–7006."

PART 223—ENVIRONMENTAL, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

19. Section 223.301 is removed in its entirety.

PART 225—FOREIGN ACQUISITION

20. DFARS Part 225 Table of Contents is amended by changing the title "Subpart 227.73—Acquisitions for Foreign Military Sales" to read "Subpart 225.73—Acquisitions for Foreign Military Sales."

225.102 [Amended]

21. Section 225.102 is amended by revising paragraph (a)(3)(A) to add the words "and 225.872" at the end of the sentence.

22. Section 225.109 is amended by revising paragraph (d)(iii) to read as follows:

225.109 Solicitation provision and contract clauses.

* * * * *

(d) * * *

(iii) The clause may be used if the contracting officer anticipates a waiver of the restrictions in paragraphs (d)(ii)(A) or (B) of this section.

225.302 [Amended]

23. Section 225.302 is amended by revising the reference in paragraph (b)(ii) to read "225.302(b)(i)" in lieu of "FAR 25.302(b)(2) and (3)" and to remove the words "of this section."

225.407 [Amended]

24. Section 225.407 is amended in paragraph (a)(2)(A) by revising "225.403(d)(i)(B)" to read "225.403(d)(1)(B)."

225.770–1 [Amended]

25. Section 225.770–1 is amended by revising "8027A" to read "8072A."

26. Section 225.802–71 is added to read as follows:

225.802–71 End user certificates.

Contracting officers considering the purchase of an item from a foreign source may encounter a request for the signing of a certificate to the effect that the Armed Forces of the United States is the end user of the equipment, and that it will not be transferred to third parties without authorization from the Government of the country selling the item. When encountering this situation, refer to DoD Directive 2040.3, End User Certificates, for guidance.

225.870–2 [Amended]

27. Section 225.870–2 is amended in paragraph (a) by revising "225.870–1(b)(1)" to read "225.870–1(c)(1)."

225.870–4 [Amended]

28. Section 225.870–4 is amended in paragraph (a) by revising "225.870–1(b)(1)" to read "225.870–1(c)(1)."

29. Section 225.872–4 is amended by revising paragraphs (b) and (c) to read as follows:

225.872–4 Evaluation of offers.

* * * * *

(b) Evaluate offers of end products from the qualifying country sources in 225.872–1(a) without application of the 50 percent Buy American Act or Balance of Payments Program evaluation factor, in accordance with 225.105 and 225.303.

(c) Evaluate offers of end products from the qualifying country sources in 225.872–1(b) without application of the 50 percent Buy American Act or Balance of Payments Program evaluation factor. If the offer, as evaluated, is low or otherwise eligible for award, the contracting officer shall request an exemption of the Buy American Act/Balance of Payments Program as inconsistent with the public interest.

(1) To obtain an exemption, process a Determination and Findings for signature—

(i) At a level above the contracting officer, for acquisitions of $25,000 or less;

(ii) By the chief of the contracting office, for acquisitions of $250,000 or less;

(iii) By the head of the contracting activity (HCA), for acquisitions of $2 million or less; or

(iv) By the head of the agency, or designee at a level no lower than an HCA, for acquisitions over $2 million.

(2) The Determination and Findings shall be substantially as follows for end items, or modified as necessary for components—

Service or Agency

Exemption of the Buy American Act/Balance of Payments Program

Determination and Findings

Upon the basis of the following findings and determination which I hereby make in accordance with the provisions of FAR 25.102, acquisition of (*qualifying country—identify country*) (*describe item*) may be made as provided below.

Findings

1. The (*contracting activity*) proposes to purchase under contract number, _____, mined, produced, or manufactured in (*country of origin*). The total estimated cost of this acquisition is _____.

2. The United States Government and the Government of _____ have agreed to remove barriers to procurement at the prime and subcontract level for defense equipment produced in each other's countries insofar as laws and regulations permit.

3. The agreement provides that competitive offers of (*qualifying country*) end products will be evaluated by the Department of Defense without imposing any price differential under the Buy American Act or Balance of Payments Program and without taking applicable U.S. customs and duties into consideration so that (*qualifying country*) items may better compete, for sales of defense equipment to the Department of Defense. In addition, the Agreement stipulates that acquisitions of (*qualifying country*) items must fully satisfy Department of Defense requirements for performance, quality, and delivery and shall cost the Department of Defense no more than would comparable U.S. source or other foreign source defense equipment eligible for award.

4. In order to achieve the above objectives, the solicitation contained the Buy American Act and Balance of Payments Program clause, 252.225-7001. Offers were solicited from other sources and the offer received for (*qualifying country end item*) is found to be otherwise eligible for award.

Determination

Pursuant to the Buy American Act and Balance of Payments Program, I hereby determine that it is inconsistent with the public interest to apply the restrictions of the Buy American Act or the Balance of Payments Program to the proposed offer.

_____ _____

(Date)

30. Section 225.7303-2 is amended by revising paragraph (a)(2)(i)(C) to read as follows:

225.7303-2 Cost of doing business with a foreign government or an international organization.

(a) * * *

(2) * * *

(i) * * *

(C) Sales promotions, demonstrations, and related travel for sales to foreign governments. Paragraph 126.8 of the International Traffic in Arms Regulations (ITAR) (22 CFR Part 121) may require Government approval for these costs to be allowable. If Government approval is required for promotion or demonstration costs to be allowable, the approval must be obtained.

* * * * *

PART 226—OTHER SOCIOECONOMIC PROGRAMS

226.7008 [Amended]

31. Section 226.7008 is amended in paragraph (b) by revising "252.219-7003" to read "252.219-7006."

PART 227—PATENTS, DATA, AND COPYRIGHTS

227.402-71 [Amended]

32. Section 227.402-71 is amended by removing in the third sentence of paragraph (a) the words "(see subpart 217.72)" and by adding a period after the word "interests."

PART 228—BONDS AND INSURANCE

33. Section 228.102-1 is amended by adding introductory text and paragraphs (1) through (4) to read as follows:

228.102-1 General.

For Defense Environmental Restoration Program construction contracts executed between December 5, 1991, and December 31, 1992—

(1) Any rights of action under the performance bond shall only accrue to, and be for the exclusive use of, the obligee named in the bond.

(2) In the event of default, the surety's liability on the performance bond is limited to the cost of completion of the contract work, less the balance of unexpended funds. Under no circumstances shall the liability exceed the penal sum of the bond.

(3) The surety shall not be liable for indemnification or compensation of the obligee for loss or liability arising from personal injury or property damage, even if the injury or damage was caused by a breach of the bonded contract.

(4) Once it has taken action to meet its obligations under the bond, the surety receives any indemnification and identical standard of liability to which the contractor was entitled under the contract or applicable laws and regulations.

* * * * *

228.370 [Amended]

34. Section 228.370 is amended by revising in paragraph (d) the words "War-Hazard Compensation Act" to read "War Hazards Compensation Act."

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 231.3 [Removed]

35. Subpart 231.3 is removed in its entirety.

36. Section 231.603 is revised to read as follows:

231.603 Requirements.

Under 10 U.S.C. 2324(e), the following costs are unallowable—

(1) Costs of entertainment, including amusement, diversion, and social activities and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities).

(2) Costs incurred to influence (directly or indirectly) legislative action on any matter pending before Congress or a State legislature.

(3) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of any false certification) brought by the United States where the contractor is found liable or has pleaded nolo contendere to a charge of fraud or similar proceeding (including filing of a false certification).

(4) Payments of fines and penalties resulting from violations of, or failure to comply with, Federal, State, local, or foreign laws and regulations, except when incurred as a result of compliance with specific terms and conditions of the contract or specific written instructions from the contracting officer authorizing in advance such payments in accordance with applicable regulations of the Secretary of Defense.

(5) Costs of any membership in any social, dining, or country club or organization.

(6) Costs of alcoholic beverages.

(7) Contributions or donations, regardless of the recipient.

(8) Costs of advertising designed to promote the contractor or its products.

(9) Costs of promotional items and memorabilia, including models, gifts, and souvenirs.

(10) Costs for travel by commercial aircraft which exceed the amount of the standard commercial fare.

(11) Costs incurred in making any payment (commonly known as a "golden parachute payment") which is—

(i) In an amount in excess of the normal severance pay paid by the contractor to an employee upon termination of employment; and

(ii) Is paid to the employee contingent upon, and following, a change in management control over, or ownership of, the contractor or a substantial portion of the contractor's assets.

(12) Costs of commercial insurance that protects against the costs of the contractor for correction of the contractor's own defects in materials or workmanship.

(13) Costs of severance pay paid by the contractor to foreign nationals employed by the contractor under a service contract performed outside the United States, to the extent that the amount of the severance pay paid in any case exceeds the amount paid in the industry involved under the customary or prevailing practice for firms in that industry providing similar services in the United States, as determined by

regulations prescribed by the Secretary of Defense.

(14) Costs of severance pay paid by the contractor to a foreign national employed by the contractor under a service contract performed in a foreign country if the termination of the employment of the foreign national is the result of the closing of, or curtailment of activities at a United States military facility in that country at the request of the government of that country.

(15) Costs incurred by a contractor in connection with any criminal, civil, or administrative proceedings commenced by the United States or a State, to the extent provided in 10 U.S.C. 2324(k).

37. Section 231.703 is revised to read as follows:

231.703 Requirements.

Under 10 U.S.C. 2324(e), the costs cited in 231.603 are unallowable.

PART 232—CONTRACT FINANCING

232.173-1 [Amended]

38. Section 232.173-1 is amended by inserting in paragraph (a) the word "further" between the word "of" and the word "payments."

39. Section 232.173-4 is amended by revising in paragraph (a) the word "payment" to read "payments"; by inserting the word "further" between the word "suspend" and the word "payments"; by inserting in paragraph (c) the word "further" between the word "suspend" and the word "payments"; by inserting in paragraph (d) the word "further" between the word "suspend" and the word "payment(s)"; by revising paragraph (e); by inserting in paragraph (g)(1) the word "further" between the word "suspend" and the word "payments"; to read as follows:

232.173-4 Procedures.

* * * * *

(e) Before making a decision to reduce or suspend further payments, the agency head shall, in accordance with agency procedures—

(1) Notify the contractor in writing of the action proposed by the remedy coodination official and the reasons therefore; and

(2) Provide the contractor an opportunity to submit information within a reasonable time, in response to the action proposed by the remedy coordination official.

* * * * *

232.173-5 [Amended]

40. Section 232.173-5 is amended by inserting in the introductory sentence the words "(Report control symbol DD-ACQ(A) 1891)" between the word "reports" and the word "containing."

232.503-15 [Amended]

41. Section 232.503-15 is amended by revising in paragraph (d) the reference "242.7206(b)(7)" to read "252.242-7004(f)(7)."

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

236.570 [Amended]

42. Section 236.570 is amended by revising in paragraph (b)(4) the word "Limitations" to read "Limitation."

PART 237—SERVICE CONTRACTING

237.203-70 [Amended]

43. Section 237.203-70 is amended by revising in paragraph (a)(3) the acronym "DoDD" to read "DoDI"; and by revising in paragraph (a)(4) the acronym "DoDD" to read "DoD".

PART 239—ACQUISITION OF INFORMATION RESOURCES

44. Section 239.001 is revised to read as follows:

239.001 Policy.

(1) The General Services Administration (GSA) has certain exclusive authority under "The Brooks Act" (40 U.S.C. 759) for the acquisition of Federal information processing (FIP) resources. GSA implements this authority in the Federal Information Resources Management Regulation (FIRMR), which is codified in 41 CFR 201. FIP resources are defined in the FIRMR at 201-4.001.

(2) When the acquisition is subject to "The Brooks Act" (40 U.S.C. 759), the FIRMR takes precedence over this part.

(3) Unless one of the exemptions of the Warner Amendment (10 U.S.C. 2315) applies, or unless otherwise specifically exempted, DoD must comply with FIRMR requirements.

(4) The Warner Amendment (10 U.S.C. 315), exempts certain DoD information resource acquisitions from the requirements of "The Brooks Act" and GSA's implementing regulations. If an acquisition is exempt under the Warner Amendment, clauses from the FIRMR do not have to be included in the solicitation or contract. However, all acquisitions for FIP resources, including those exempt under the Warner Amendment, must comply with Federal standards (see Subpart 239.72). Even if a Warner Amendment exemption applies, DoD may use the FIRMR simplified process (see 201-39.803 of FAR Appendix A) for obtaining the FIP resources when it is determined by the Contracting Officer to be in the Government's best interests.

239.7411 [Amended]

45. Section 239.7411 is amended by revising in paragraph (b)(2) the word "Communication" to read "Telecommunication."

46. Section 239.7411 is amended in paragraph (c)(3) to change "Orders" to read "Communication Service Authorizations."

PART 242—CONTRACT ADMINISTRATION

47. Section 242.7202 is amended by revising paragraph (d) to read as follows:

242.7202 Policy.

* * * * *

(d) Conforms to the standards at 252.242-7004(f) when the contractor has cost reimbursement or fixed-price contracts with progress or other contract financing provisions, except when all of the contracts and subcontracts are—

(1) Awarded under the set-aside or section 8(a) procedures of FAR part 19; or

(2) Greater than the small purchase threshold in FAR part 13.

48. Section 245.310-70 is revised to read as follows:

245.310-70 Contract clause.

Use the clause at 252.245-7000, Government-Furnished Mapping, Charting, and Geodesy Property, in solicitations and contracts when mapping, charting, and geodesy property is to be furnished.

PART 245—GOVERNMENT PROPERTY

49. Section 245.7002 is revised to read as follows:

245.7002 Duties and responsibilities of plant clearance officers.

The plant clearance officer shall—

(a) Instruct the contractor on the preparation of inventory schedules;

(b) Make pre-inventory scrap determinations;

(c) Determine the acceptability of inventory schedules and DD Forms 1342, DoD Property Record;

(d) Prepare and maintain plant clearance cases and disposal documents;

(e) Initiate screening and provide technical support to screeners in the selection of assets;

(f) Conduct or arrange for verification of the following—

(1) Quantity, condition, description, and special processing requirements of property listed on inventory schedules;

(2) Technical and quantitative allocability of property;

(g) Ensure the timely shipment or release by the contractor of property selected for transfer and donation;

(h) Determine the appropriate method of disposal for items not selected for Federal agency use or donation and ensure final plant clearance is accomplished;

(i) Evaluate and monitor the contractor's surplus property sales program;

(j) For individual surplus property sales—

(1) Approve method of sale;

(2) Ensure the sales offerings meet prescribed requirements;

(3) Witness bid openings;

(4) Evaluate bids;

(5) Approve sale awards;

(6) Secure anti-trust clearances, as required;

(7) Recommend the reasonableness of selling expenses; and

(8) Ensure that sales proceeds are collected and property credited;

(k) Monitor ongoing plant clearance actions to ensure delays are minimized and, when necessary, work with the contractor and property administrator to implement improvements;

(l) Evaluate the adequacy of the contractor's property disposal procedures;

(m) Support the property administrator during the compliance analysis of the disposition portion of the contractor's property control procedures;

(n) Report all disposal deficiencies to the property administrator;

(o) Account for all contractor inventory reported for disposal by the contractor and prepare prescribed plant clearance reports; and

(p) Advise and assist the contractor, contracting officer, inventory manager, Federal agencies, and eligible donees in actions related to the proper and timely disposal of contractor inventory.

245.7308 [Amended]

50. Section 245.7308 is amended by revising in paragraph (a) the words "Report Control Symbol DD-P&L(AR)" to read "Report Control Symbol DD-ACQ(AR). "

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.201-7000 [Amended]

51. Section 252.201-7000 is amended by adding at the end of the clause the words "(End of clause)."

252.217-7001 [Amended]

52. Section 252.217-7001 is amended by revising the clause date "(DEC 1991)" to read "(AUG 1992)"; and by revising in paragraph (b)(1) the reference "(DI-P-1634A)" to read "(DI-MGMT-80969)."

53. Section 252.225-7003 is amended by revising the clause date "(DEC 1991)" to read "(AUG 1992)"; and by revising paragraph (d)(1) to read as follows:

252.225-7003 Information for Duty-Free Entry Evaluation.

* * * * *

(d) * * * —

(1) The supplies are qualifying country end products as defined in the Buy American Act and Balance of Payments Program clause of this solicitation; or

* * * * *

252.225-7022 [Amended]

54. Section number "252-225.7022" is amended to read "252.225-7022."

252.228-7003 [Amended]

55. Section 252.228-7003 is amended by revising in paragraphs (a)(4), (b)(2) and (e) the reference "War Risk Hazards Compensation Act" to read "War Hazards Compensation Act."

252.232-7001 [Amended]

56. Section 252.232-7001 is amended by revising in the clause title the word "payment" to read "payments."

57. Section 252.232-7006 is revised to read as follows:

252.232-7006 Reduction or Suspension of Contract Payments Upon Finding of Fraud.

As prescribed in 232.111-70, use the following clause:

Reduction or Suspension of Contract Payments Upon Finding of Fraud (Aug 1992)

(a) 10 U.S.C. 2307(e) permits the head of the agency to reduce or suspend further payments to the Contractor upon a written determination by the agency head that substantial evidence exists that the Contractors request for advance, partial, or progress payments is based on fraud. The provisions of 10 U.S.C. 2307(e) are in addition to any other rights or remedies provided the Government by law or under contract.

(b) Actions taken by the Government in accordance with 10 U.S.C. 2307(e) shall not constitute an excusable delay under the Default clause of this contract or otherwise relieve the Contractor of its obligations to perform under this contract.

(End of clause)

252.237-7019 [Amended]

58. Section 252.237-7019 is amended to change the date of the clause from "DEC 1991" to "APR 1992."

252.242-7001 [Amended]

59. Section 252.242-7001 is amended to revise in paragraph (c), No. 3 the word "or" to read "of."

252.243-7000 [Amended]

60. Section 252.243-7000 is amended by changing the clause date to read "(AUG 1992)" in lieu of "(DEC 1991)"; and by amending in paragraph (c) the amount "$100,000" to read "$500,000."

252.247-7022 [Amended]

61. Section 252.247-7022 is amended by revising the clause date "(DEC 1991)" to read "(AUG 1992)"; and by revising in the first sentence of paragraph (a) the word "clause" to read "provision."

PART 253—FORMS

62. Section 253.204-70 is amended by revising paragraphs (b)(5)(ii)(A), (c)(4)(iv)(A), (B), and (C) and (c)(4)(ix)(B)(2) to read as follows:

253.204-70 DD Form 350, Individual Contracting Action Report.

* * * * *

(b) * * *

(5) * * *

(ii) * * *

(A) Block B5A, Establishment Code.

Enter the contractor's 9-position contractor establishment code (CEC). If the CEC is not available within the contracting activity, use the procedures at 204.7202-2 to obtain one.

* * * * *

(c) * * *

(4) * * *

(iv) * * *

(A) *Code Y—Yes—Positive Response to DFARS 252.247-7022.* Enter code Y when the contractor's response to the provision at 252.247-7022, Representation of Extent of Transportation by Sea, indicates the contractor anticipates that some of the supplies being provided may be transported by sea.

(B) *Code N—No—Negative Response to DFARS 252.247-7022.* Enter code N when the contractor's response to the provision at 252.247-7022 indicates that the contractor anticipates that none of the supplies being provided will be transported by sea.

(C) *Code U—Unknown—No Response or Provision Not Included in Solicitation.* Enter code U when the contractor did not complete the representation at 252.247-7022 or the solicitation did not include it.

* * * * *

(ix) * * *

(B) * * *

(2) Code 1B—Follow-on Contract. Enter code 1B if the action was justified pursuant to FAR 6.302-1(a)(2) (ii) or (iii).

* * * * *

Appendix B to Chapter 2 [Amended]

63. DFARS appendix B, part 1—Army Assignments is amended by revising Federal Supply Class Code 2320 P to read as follows:

Federal supply class code	Commodity
2320 P	Trucks and Truck Tractors. These two partial assignments apply to tactical vehicles and the following types of vehicles: Bus, convertible to ambulance. Truck, 4×4, convertible to ambulance Truck 4×4, dump, 9,000 GVW, with cut-down cab. These assignments do not apply to tracked landing vehicles which are not under DoD Coordinated Acquisition assignment, and airport crash rescue vehicles, which are under DoD Coordinated Acquisition assignment to the Department of the Air Force. With the exception of the types enumerated above, these assignments do not apply to commercial, non-tactical, passenger carrying vehicles and trucks which are assigned for DoD Coordinated Acquisition to the General Services Administration.

64. DFARS Appendix B, Part 6—General Services Administration Assignments is amended by revising Federal Supply Class Code 2320 P to read as follows:

Federal supply class code	Commodity
2320 P	Trucks and Truck Tractors. These two partial assignments apply to all commercial, non-tactical, passenger carrying vehicles and trucks except the following types which are assigned for DoD Coordinated Acquisition to the Department of the Army— Bus, convertible to ambulance. Truck, 4×4, convertible to ambulance. Truck, 4×4, dump, 9,000 pounds GVW, with cut-down cab. (See Army Coordinated Acquisition assignments in FSC 2310 and 2320).

Appendix D to Chapter 2 [Amended]

65. DFARS Appendix D, D-105 is amended to add a second sentence to paragraph (c) to read: "The records must contain the assessments, calculations, and analyses discussed in D-104, including the trade-off analysis between savings and increased risk to the Government because of responsibility for Government-furnished equipment."

66. Appendix G to chapter 2 is revised to read as follows:

Activity Address Numbers

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G-101 Assignment and use of a number
G-102 Activity address number data base maintenance
Part 2—Army Activity Address Numbers.
Part 3—Navy Activity Address Numbers.
Part 4—Marine Corps Activity Address Numbers.
Part 5—Air Force Activity Address Numbers.
Part 6—Defense Logistics Agency Activity Address Numbers.
Part 7—Defense Information Systems Agency Activity Address Numbers.
Part 8—Defense Mapping Agency Activity Address Numbers.
Part 9—Defense Nuclear Agency Activity Address Numbers.
Part 10—Miscellaneous Defense Activities Activity Address Numbers.
Part 11—On-Site Inspection Agency Activity Number.
Part 12—Strategic Defense Initiative Organization Activity Number.
Part 13—Defense Commissary Agency Activity Numbers.

PART 1—GENERAL

G-100 Scope

This appendix identifies the activity address numbers to be used with the uniform procurement instrument identification numbering system prescribed in DFARS subpart 204.70.

G-101 Assignment and Use of a Number

(a) Activities coding solicitations, contracts and related instruments shall use only those codes assigned by their respective department/agency activity address monitor(s).

(b) The six-character code is used in the first six positions of the procurement instrument identification number (PIIN). When required, activities also will be assigned a two position code. The two position code is used in the first two positions of the call/order serial number.

(c) Activity address monitors are—

Army—U.S. Army Contracting Support Agency, Attn: Contract Support Office (SFRD-KS), 5109 Leesburg Pike, suite 916, Falls Church, VA 22041-3201

Navy—*Navy Accounting and Finance Center, (NAFC-5511), Washington, DC 20376-5001

Air Force—SAF/AQCX, Directorate of Contracting and Manufacturing Policy, Washington, DC 20330-5040

Defense Logistics Agency—Defense Logistics Agency, Contracting Systems Support Office (DLA-PS), Cameron Station, Alexandria, VA 22304-6100

Marine Corps—*Headquarters, U.S. Marine Corps, (Code LBP), Washington, DC 20380-0001

**Defense Mapping Agency—Director of Acquisition, Defense Mapping Agency, Washington, DC 20305-3000

**Defense Nuclear Agency—Chief, Contract Division, Defense Nuclear Agency, Washington, DC 20305-1000

**Defense Information Systems Agency—Chief, Logistics Management Office, Code 202, Defense Information Systems Agency, Washington, DC 20305-2000

G-102 Activity Address Number Data Base Maintenance

(a) The Defense Logistics Agency, DLA-PS, Cameron Station, Alexandria, VA 22304-6100 is the executive agent for maintenance of six and two character code assignments. The executive agency distributes blocks of two character codes to department/agency activity address monitors for further assignment.

(b) Contracting activities submit requests for assignment of or changes in either the six character or two character codes to their activity address monitor in accordance with department/agency procedures. Activity address monitors—

(1) Approve requests for additions, deletions, or changes;

(2) Notify the executive editor, Defense Acquisition Regulations System, OUSD(A)DP(DARS), Washington, DC 20301-3000; and

(3) Provide a copy of the notification to the executive agent.

(c) A copy of the Appendix G data base is available on tape or MS-DOS compatible floppy diskettes from the executive agent.

PART 2—ARMY ACTIVITY ADDRESS NUMBERS

DAAA03—B1
Pine Bluff Arsenal, ATTN: SMCPB-PO, Pine Bluff, AR 71602-9500

DAAA05—B2
Directorate of Contracting, Rocky Mountain Arsenal, ATTN: XRMAC-DOC, Commerce City, CO 80022-2180

DAAA06—B7
Rock Island Arsenal, ATTN: SMCRI-CT, Rock Island, IL 61299-5000

DAAA09—BA
HQ, AMCCOM, ATTN: AMSMC-PC (R), Rock Island, IL 61299-6000

*The Navy and Marine Corps Activity Address Monitor for assignment of two-character call/order serial numbers is: Office of the Assistant Secretary of the Navy (RD&A), room 536, Crystal Plaza 5, Washington, DC 20350-1000.

**Agency activity address monitors forward requests for Appendix G maintenance to the U.S. Army Contracting Support Agency (SFRD-KS).

DAAA15—ZU
HQ, AMCCOM, ATTN: AMSMC-PC (A), Aberdeen Proving Ground, MD 21010-5423
DAAA21—2T
HQ, AMCCOM, ATTN: AMSMC-PC (D), Picatinny Arsenal, NJ 07806-5000
DAAA22—BV
Watervliet Arsenal, ATTN: SMCWV-PP, Watervliet, NY 12189-4050
DAAA31—GJ
McAlester Army Ammunition Plant, ATTN: SMCMC-PC, McAlester, OK 74501-5000
DAAB07—BG
USA Communications-Electronics Command, ATTN: AMSEL-PC, Fort Monmouth, NJ 07703-5000
DAAB08—2V
USA Comunications-Electronics Command, ATTN: Procurement Directorate, Base Ops, Fort Monmouth, NJ 07703-5008
DAAB10—ZP
Headquarters, U.S. Army Garrison, Vint Hill Farms Station, ATTN: SELVH-PC-OP, Warrenton, VA 22186-5172
DAAC01—BH
Anniston Army Depot, ATTN: SDSAN-DOC, Anniston, AL 36201-5003
DAAC09—ZR
Sacramento Army Depot, ATTN: SDSSA-K, Sacramento, CA 95813-5021
DAAC67—ZN
Letterkenny Army Depot, ATTN: SDSLE-P, Chambersburg, PA 17201-4152
DAAC69—D2
New Cumberland Army Depot, ATTN: SDSNC-P, New Cumberland, PA 17070-5001
DAAC71—ZS
Tobyhanna Army Depot, ATTN: SDSTO-K, Tobyhanna, PA 18466-5100
DAAC79—D7
Red River Army Depot, ATTN: SDSRR-P, Texarkana, TX 75507-5000
DAAC83—BJ
Corpus Christi Army Depot, ATTN: SDSCC-C, Corpus Christi, TX 78419-6170
DAAC89—BK
Tooele Army Depot, ATTN: SDSTE-CD, Tooele, UT 84074-0839
DAAD01—B5
USA Yuma Proving Ground, Procurement Directorate, ATTN: STEYP-CR, Yuma, AZ 85365-9103
DAAD03—B6
USA Jefferson Proving Ground, ATTN: STEJP-LG-C, Madison, IN 47250-5100
DAAD05—BM
USA Aberdeen Proving Ground, Support Activity, ATTN: STEAP-PR/(Bldg No. 314), Aberdeen Proving Ground, MD 21005-5001
DAAD07—BN
USA White Sands Missile Range, Directorate of Contracting, ATTN: STEWS-PR, White Sands Missile Range, NM 88002-5201
DAAD09—BP
USA Dugway Proving Ground, Procurement Directorate, ATTN: STEDP-DOC, Dugway, UT 84022-0538,
DAAD10—ZX
USA Test & Evaluation Command, ATTN: AMSTE-PR, Aberdeen Proving Ground, MD 21005-5055
DAAE07—BR
USA Tank-Automotive Command, Warren, MI 48397-5000
DAAG60—G8
USA Military Academy, Purchasing & Contracting Division, Bldg 667A, ATTN: MAPC, West Point, NY 10996-1594
DAAG99—ZY
USA Program Manager-SANG, ATTN: AMCPM-NGA-A, APO New York, NY 09038-5005
DAAH01—CC
USA Missile Command, ATTN: AMSMI-PC, Redstone Arsenal, AL 35898-5280
DAAH03—D8
USA Missile Command, ATTN: AMSMI-PC-FC (Lab/Base Ops), Redstone Arsenal, AL 35898-5280
DAAJ02—D9
Aviation Applied Technology Directorate, ATTN: SAVRT-TY-CD, Fort Eustis, VA 23604-5577
DAAJ04
USA Charles Melvin Price Support Center, ATTN: AMSAV-PHI, Granite City, IL 62040-1801
DAAJ05—ZF
USA Aviation Systems Command, Building 404, ATTN: I.A.S. 21-Working Group, Fort Eustis, VA 23604-5577
DAAJ09—BS
USA Aviation Systems Command, 4300 Goodfellow Blvd., ATTN: AMSAV-PR, St. Louis, MO 63120-1798
DAAK01—BB
USA Troop Support Command (TROSCOM), 4300 Goodfellow Blvd., ATTN: AMSTR-PYMB, St. Louis, MO 63120-1798
DAAK60—C5
USA Natick Research, Development and Engineering Center, Directorate of Procurement, ATTN: AMSTR-PN, Natick, MA 01760-5011
DAAK70—E1
USA Belvoir Research, Development and Engineering Center, Procurement & Production Directorate, ATTN: AMSTR-PBP, Fort Belvoir, VA 22060-5606
DAAL01—1Y
Electronics Technology & Devices Laboratory, ATTN: SLCET-DP, Fort Monmouth, NJ 07703-5302
DAAL02—D3
USA Laboratory Command Installation, Support Activity, 2800 Powder Mill Road, ATTN: SLCIS-C, Adelphi, MD 20783-1145
DAAL03
U.S. Army Research Laboratory, P.O. Box 12211, ATTN: SLCRO-PR, Research Triangle Park, NC 27709-2211
DAAL04—D6
USA Materials Technology Laboratory, Arsenal Street, ATTN: SLCMT-PR, Watertown, MA 02172-0001
DABT01—F6
Commander, U.S. Army Aviation Center, Contracting Office, Building T-00116, ATTN: ATZQ-C, Fort Rucker, AL 36362-5000
DABT02—2A
Commander, U.S. Army Chemical and Military Police Centers and Fort McClellan, ATTN: ATZN-DOC, Fort McClellan, AL 36205-5000
DABT10—2B
Commander, U.S. Army Infantry Center and Fort Benning, Bldg. 35, ATTN: ATZB-KTC, Fort Benning, GA 31905-5000
DABT11—2C
Commander, U.S. Army Signal Center and Fort Gordon, Building 2050, ATTN: ATZI-CT, Fort Gordon, GA 30905-5041
DABT15—F9
Commander, U.S. Army Soldier Support Center and Fort Benjamin Harrison, ATTN: ATZI-CT, Fort Benjamin Harrison, IN 46216-5230
DABT19—2D
Commander, U.S. Army Combined Arms Center and Fort Leavenworth, ATTN: ATZL-GDC, Fort Leavenworth, KS 66027-5000
DABT23—2E
Commander, U.S. Army Armor Center and Fort Knox, Bldg. 4022, ATTN: ATZK-DC, Fort Knox, KY 40121-5000
DABT31—2F
Commander, U.S. Army Engineer Center and Fort Leonard Wood, ATTN: ATZT-DOC, Fort Leonard Wood, MO 65473-5000
DABT35—2G
Commander, U.S. Army Training Center and Fort Dix, Bldg. 5418, ATTN: ATZD-CO, Fort Dix, NJ 08640-6150
DABT39—2H

Commander, U.S. Army Field Artillery Center and Fort Sill, ATTN: ATZR-Q, Fort Sill, OK 73503-0501

DABT43—2J
Commander, Carlisle Barracks, Bldg. 46, ATTN: ATZE-DOC, Carlisle Barracks, PA 17013-5002

DABT47—2K
Commander, U.S. Army Training Center and Fort Jackson, Bldg. 4350, ATTN: ATZJ-DOC, Fort Jackson, SC 29207-5490

DABT51—2L
Commander, U.S. Army Air Defense Artillery Center & Fort Bliss, P.O. Box 6078, ATTN: ATZC-DOC, Fort Bliss, TX 79906-0078

DABT57—2N
Commander, U.S. Army Transportation Center and Fort Eustis, Bldg. 2746, ATTN: ATZF-CO, Fort Eustis, VA 23604-5000

DABT58—2P
Commander, Fort Monroe, Bldg. T-195, ATTN: ATZG-C #62, Fort Monroe, VA 23651-6000

DABT59—2Q
Commander, U.S. Army Quartermaster Center and Fort Lee, Bldg. T-7124, ATTN: ATZM-DC, Fort Lee, VA 23801-5000

DABT60—1L
Director, TRADOC Contracting Activity, ATTN: ATCA, Fort Eustis, VA 23604-5538

DABT61—BF
Commandant, The Judge Advocate General's School, USA, ATTN: JAGS-SSL, Charlottesville, VA 22904-1781

DABT63—BL
Commander, U.S. Army Information Systems Command, ATTN: ASQH-DOC, Fort Huachuca, AZ 85613-5000

DABT64—YV
Chief, Purchasing and Contracting Office, Bldg. 440, ATTN: ATZR-ZQ, Fort Chaffee, AR 72905-5000

DABT65
Mission Contracting Activity at Fort Leavenworth, ATTN: MCAL, Fort Leavenworth, KS 66027-5000

DACA01, DACW01—CK
USA Engineer District, Mobile, P.O. Box 2288, Mobile, AL 36628-0001

DACA03, DACW03—CL
USA Engineer District, Little Rock, P.O. Box 867, Little Rock, AR 72203-0867

DACA05, DACW05—CM
USA Engineer District, Sacramento, 650 Capital Mall, Sacramento, CA 95814-4794

DACA06, DACW06—CN
USA Engineer Division, South Pacific, 630 Sansone Street, Room 1216, San Francisco, CA 94111-2206

DACA07, DACW07—CP
USA Engineer District, San Francisco, 211 Main Street, San Francisco, CA 94105-1905

DACA09, DACW09—CQ
USA Engineer District, Los Angeles, P.O. Box 2711, Los Angeles, CA 90053-2325

DACA17, DACW17—CS
USA Engineer District, Jacksonville, P.O. Box 4970, Jacksonville, FL 32232-0019

DACA19, DACW19—CU
USA Engineer Division, South Atlantic, 77 Forsyth Street, S.W., Room 313, Atlanta, GA 30335-6801

DACA21, DACW21—CV
USA Engineer District, Savannah, P.O. Box 889, Savannah, GA 31402-0889

DACA22, DACW22—CW
USA Engineer Division, North Central, 536 South Clark Street, Chicago, IL 60605-1592

DACA23, DACW23—CX
USA Engineer District, Chicago, 219 South Dearborn Street, Chicago, IL 60604-1797

DACA25, DACW25—CD
USA Engineer District, Rock Island, P.O. Box 2004, Rock Island, IL 61204-2004

DACA27, DACW27—CY
USA Engineer District, Louisville, P.O. Box 59, Louisville, KY 40201-0059

DACA29, DACW29—CZ
USA Engineer District, New Orleans, P.O. Box 60267, New Orleans, LA 70160-0267

DACA31, DACW31—DA
USA Engineer District, Baltimore, P.O. Box 1715, Baltimore, MD 21203-1715

DACA33, DACW33—DB
USA Engineer District, New England, 424 Trapelo Road, Waltham, MA 02254-9149

DACA35, DACW35—DC
USA Engineer District, Detroit, P.O. Box 1027, Detroit, MI 48231-1027

DACA37, DACW37—DD
USA Engineer District, St. Paul, 1421 USPO a Custom House, 180 East Kellogg Boulevard, St. Paul, MN 55101-1427

DACA38, DACW38—DE
USA Engineer District, Vicksburg, P.O. Box 60, Vicksburg, MS 39180-0060

DACA39, DACW39—DF
USA Engineer Water-Ways, Experiment Station, P.O. Box 631, Vicksburg, MS 39181-0631

DACA40, DACW40—DG
USA Engineer Division, Lower Mississippi Valley, P.O. Box 80, Vicksburg, MS 39181-0080

DACA41, DACW41—DH
USA Engineer District, Kansas City, 700 Federal Bldg., 601 East 12th Street, Kansas City, MO 64106-2896

DACA43, DACW43—DJ
USA Engineer District, St. Louis, 210 Tucker Boulevard North, St. Louis, MO 63101-1986

DACA45, DACW45—DK
USA Engineer District, Omaha, 215 North 17th Street, Omaha, NE 68102-4978

DACA46, DACW46—DL
USA Engineer Division, Missouri River, P.O. Box 103, Downtown Station, Omaha, NE 68101-0103

DACA47, DACW47—DM
USA Engineer District, Albuquerque, P.O. Box 1580, Albuquerque, NM 87103-1580

DACA49, DACW49—DN
USA Engineer District, Buffalo, 1776 Niagara Street, Buffalo, NY 14207-3199

DACA51, DACW51—CE
USA Engineer District, New York, 26 Federal Plaza, New York, NY 10278-0090

DACA52, DACW52—DP
USA Engineer Division, North Atlantic, 90 Church Street, New York, NY 10007-2979

DACA54, DACW54—DQ
USA Engineer District, Wilmington, P.O. Box 1890, Wilmington, NC 28402-1890

DACA55, DACW55—DR
USA Engineer Division, Ohio River, P.O. Box 1159, Cincinnati, OH 45201-1159

DACA56, DACW56—DS
USA Engineer District, Tulsa, P.O. Box 61, Tulsa, OK 74121-0061

DACA57, DACW57—DT
USA Engineer District, Portland, P.O. Box 2946, Portland, OR 97229-2946

DACA58, DACW58—DU
USA Engineer Division, North Pacific, P.O. Box 2870, Portland, OR 97208-2870

DACA59, DACW59—DV
USA Engineer District, Pittsburgh, William S. Moorehead Federal Bldg., 1000 Liberty Avenue, Pittsburgh, PA 15222-4186

DACA60, DACW60—DW
USA Engineer District, Charleston, P.O. Box 919, Charleston, SC 29402-0919

DACA61, DACW61—CF
USA Engineer District, Philadelphia, Custom House, 2nd & Chestnut Streets, Philadelphia, PA 19106-2991

DACA62, DACW62—DX
USA Engineer District, Nashville, P.O. Box 1070, Nashville, TN 37202-1070

DACA63, DACW63—DY
USA Engineer District, Fort Worth, P.O. Box 17300, Fort Worth, TX 76102-0300

DACA64, DACW64—DZ
USA Engineer District, Galveston, P.O. Box 1229, Galveston, TX 77553

DACA65, DACW65—EA
USA Engineer District, Norfolk, 803 Front Street, Norfolk, VA 23510-1096
DACA66, DACW66—EB
USA Engineer District, Memphis, 167 N. Mid-America Mall, B-202, Clifford Davis Federal Bldg., Memphis, TN 38103-1894
DACA67, DACW67—EC
USA Engineer District, Seattle, P.O. Box C-3755, Seattle, WA 98124-2255
DACA68, DACW68—YW
USA Engineer District, Walla Walla, Building 602, City-County Airport, Walla Walla, WA 99362-9265
DACA69, DACW69—CG
USA Engineer District, Huntington, 502 8th Street, Huntington, WV 25701-2070
DACA70, DACW70—YX
USA Engineer Division, Southwestern, 1114 Commerce Street, Dallas, TX 75242-0216
DACA72, DACW72—ZA
USA Humphreys Engineer Center, Support Activity, Kingman Building, Fort Belvoir, VA 22060
DACA73, DACW73—CH
Headquarters, U.S. Army Corps of Engineers, 20 Massachusetts Avenue, N.W., ATTN: CEPR, Washington, DC 20314-1000
DACA75, DACW75—ZC
USA Engineer Division, Middle East, APO New York, NY 09038
DACA76, DACW76—ZD
USA Engineer Topographic Laboratories, Cude Bldg. #2592, Fort Belvoir, VA 22060-5546
DACA78, DACW78—9V
USA Engineer Middle East/Africa, Projects Office, P.O. Box 2250, Winchester, VA 22601-1450
DACA79, DACW79—2R
USA Engineer District, Japan, APO San Francisco, CA 96343-0061
DACA81—DACW81
USA Engineer District, Far East, APO San Francisco, CA 96301-0427
DACA84, DACW84—ZH
USA Engineer Division, Pacific Ocean, Building 230, Fort Shafter, HI 96858-5440
DACA85, DACW85—ZJ
USA Engineer District, Alaska, P.O. Box 898, Anchorage, AK 99506-0898
DACA86—DACW86
USA Engineer District, Riyadh, APO New York, NY 09038
DACA87, DACW87—ZW
USA Engineer Division, Huntsville, P.O. Box 1600, Huntsville, AL 35807-4301
DACA88, DACW88—0S
USA Construction Engineering Research Laboratory, P.O. Box 4005, Champaign, IL 61824-4005
DACA89, DACW89—Z
USA Cold Regions Research and Engineering Laboratory, 72 Lyme Road, Hanover, NH 03755-1290
DACA90—DACW90
USA Engineer Division, Europe, ATTN: CEEUD-CT, APO New York, NY 09757-5301
DADA01—2S
Letterman Army Medical Center, Bldg 1060, ATTN: HSHH-LCP, Presido of San Francisco, CA 94129-6700
DADA03—6W
Fitzsimons Army Medical Center, Directorate of Contracting, Bldg 205, ATTN: HSHG-LOC, Aurora, CO 80045-5001
DADA09—YY
William Beaumont Army Medical Center, P.O. Box 70003, ATTN: HSAA-W, El Paso, TX 79920-5001
DADA10—ZQ
USA Health Services Command, Bldg 129, Central Contracting Activity, ATTN: HSAA-C, Fort Sam Houston, TX 78234-6000
DADA11—0V
Brooke Army Medical Center, Contracting Branch, Log Div., ATTN: HSHE-LOC, Fort Sam Houston, TX 78234-6200
DADA13—0W
Madigan Army Medical Center, Purchasing and Contracting Office, ATTN: HSAA-M, Tacoma, WA 98431-5100
DADA15—0X
Walter Reed Army Medical Center, Directorate of Industrial Operations, Bldg T-20, 1st Floor, ATTN: HSHL-ZF(SD), Washington, DC 20307-5001
DADA16—0Y
Tripler Army Medical Center, Contracting Office, Bldg 160, ATTN: HSHK-LD-PC, Tripler AMC, HI 96859-5000
DAEA08—E4
Headquarters, 7th Signal Command & Ft. Ritchie, Office of Acquisition, Bldg 148, ATTN: ASN-OA-PC, Fort Ritchie, MD 21719-5010
DAEA16—E7
Headquarters, 5th Signal Command, DCSLOG, ATTN: ASE-LG-CT, APO New York, NY 09056-3104
DAEA20—E8
Commander, HQ, 1st Signal Brigade, ATTN: ASQK-AM, APO San Francisco, CA 96301-0044
DAEA31—1K
USAISC, Directorate of Contracting, Fort Devens, ATTN: ASPC-D, Ayers, MA 01433-5340
DAEA32—Y6
HQ, USAISC, Office of Acquisition Management, ATTN: ASPC-T, Fort Huachuca, AZ 85613-5000
DAHA01—9B
USPFO for Alabama, P. O. Box 3715, Montgomery, AL 36193-4801
DAHA02—0G
USPFO for Arizona, 5636 E. McDowell Road, Phoenix, AZ 85008-3495
DAHA03—9D
USPFO for Arkansas, Camp Robinson, North Little Rock, AR 72118-2200
DAHA04—9N
USPFO for California, P.O Box 8104, San Luis Obispo, CA 93403-8104
DAHA05—Z0
USPFO for Colorado, Camp George West, Golden, CO 80401-3997
DAHA06—1S
USPFO for Connecticut, State Armory, 360 Broad Street, ATTN: Contracting Officer, Hartford, CT 06105-3795
DAHA07—9A
USPFO for Delaware, Grier Bldg., 1161 River Road, New Castle, DE 19720-5199
DAHA08—2W
USPFO for Florida, P.O. Box 1008, St. Augustine, FL 32085-1008
DAHA09
USPFO for Georgia, P.O. Box 17882, Atlanta, GA 30316-0882
DAHA10—2Y
USPFO for Idaho, P.O. Box 45, Boise, ID 83707-4501
DAHA11—9E
USPFO for Illinois, 1301 North McArthur Blvd., Springfield, IL 62702-2399
DAHA12—4E
USPFO for Indiana, P.O. Box 41346, Indianapolis, IN 46241-0346
DAHA13—9L
USPFO for Iowa, Camp Dodge, 7700 NW Beaver Drive, Johnston, IA 50131-1902
DAHA14—4Z
USPFO for Kansas, P.O. Box 2099, Topeka, KS 66601-2099
DAHA15—6P
USPFO for Kentucky Boone National Guard Center Frankfort, KY 40601-6192
DAHA16—0A
USPFO for Louisiana, Jackson Barracks, New Orleans, LA 70146-0330
DAHA17—0B
USPFO for Maine, Camp Keys, Augusta, ME 04333-0032
DAHA18—0C
USPFO for Maryland, State Mil Reservation, 301 Old Bay Lane, Havre de Grace, MD 21078-4094
DAHA19—0D
USPFO for Massachusetts, 143 Speen Street, ATTN: Contracting Officer, Natick, MA 01760-2599
DAHA20—9F
USPFO for Michigan, 3111 W St. Joseph Street, Lansing, MI 48913-5102
DAHA21—9K

USPFO for Minnesota, P.O. Box 288, Camp Ripley, Little Falls, MN 56345–0288
DAHA22
USPFO for Mississippi, 144 Military Drive, Jackson, MS 39208–8880
DAHA23—9H
USPFO for Missouri, 1715 Industrial Avenue, Jefferson City, MO 65101–1468
DAHA24—9P
USPFO for Montana, P.O. Box 1157, Helena, MT 59624–1157
DAHA25
USPFO for Nebraska, 1234 Military Road, Lincoln, NE 68508–1092
DAHA26
USPFO for Nevada, 2601 South Carson Street, Carson City, NV 89701–5596
DAHA27
USPFO for New Hampshire, P.O. Box 2003, Concord, NH 03301–2003
DAHA28—ZK
USPFO for New Jersey, 131 Eggert Crossing Road, Lawrenceville, NJ 08648–2805
DAHA29
USPFO for New Mexico, P.O. Box 4277, ATTN: Contracting Officer, Santa Fe, NM 87502–4277
DAHA30
USPFO for New York, 330 Old Niskayuna Road, Latham, NY 12110–2224
DAHA31
USPFO for North Carolina, 4201 Reedy Creek Road, Raleigh, NC 27607–6412
DAHA32
USPFO for North Dakota, P.O. Box 5511, Bismarck, ND 58502–5511
DAHA33—9M
USPFO for Ohio, 2811 W. Granville Road, Columbus, OH 43235–2712
DAHA34—9J
USPFO for Oklahoma, 3501 Military Circle, N.E., Oklahoma City, OK 73111–4398
DAHA35
USPFO for Oregon, P.O. Box 14840, ATTN: USPFO–P, Salem, OR 97309–5008
DAHA36
USPFO for Pennsylvania, Dept. of Military Affairs, ATTN: Contracting Officer, Annville, PA 17003–5003
DAHA37
USPFO for Rhode Island, 330 Camp Street, Providence, RI 02906–1954
DAHA38
USPFO for South Carolina, 9 National Guard Road, Columbia, SC 29201–4766
DAHA39
USPFO for South Dakota, Camp Rapid, Rapid City, SD 57702–8186
DAHA40
USPFO for Tennessee, Powell Avenue, P.O. Box 40748, Nashville, TN 37204–0748
DAHA41—9C
USPFO for Texas, P.O. Box 5218, ATTN: Contracting Officer, Austin, TX 78563–5218
DAHA42
USPFO for Utah, P.O. Box 2000, Draper, UT 84020–2000
DAHA43
USPFO for Vermont, Camp Johnson, Bldg. #3, Colchester, VT 05446–3004
DAHA44
USPFO for Virginia, 501 East Franklin Street, Richmond, VA 23219–2317
DAHA45
USPFO for Washington, Camp Murray, Tacoma, WA 98430–5000
DAHA46
USPFO for West Virginia, 50 Armory Road, Buckhannon, WV 26201–2396
DAHA47—9G
USPFO for Wisconsin, Camp Douglas, WI 54618–9002
DAHA48
USPFO for Wyoming, P.O. Box 1709, Cheyenne, WY 82003–1709
DAHA49
USPFO for the District of Columbia, Bldg. 350, Anacostia Naval Air Station, Washington, DC 20315–0001
DAHA50
USPFO for Hawaii, 3949 Diamond Head Road, Honolulu, HI 96816–4495
DAHA51
USPFO for Alaska, 800 E. Diamond Blvd. #3–580, Anchorage, AK 99515–2097
DAHA70
USPFO for Puerto Rico, P.O. Box 3786, San Juan, PR 00904–3786
DAHA72
USPFO for Virgin Islands, #11–12 Golden Rock, Christiansted, St. Croix, VI 00820–1050
DAHA74
USPFO for Guam, P.O. Box 56, NAS, FPO San Francisco, CA 96637–1256
DAHA90
National Guard Bureau, Contracting Support, 5109 Leesburg Pike, Suite 401–B, Falls Church, VA 22041–3201
DAHC21—G3
MTMC Eastern Area, Acquisition Division, Bldg. 42, Military Ocean Terminal, ATTN: MTEA–LOA, Bayonne, NJ 07002–5302
DAHC22
HQ MTMC, Directorate of Passenger Traffic, 5611 Columbia Pike, ATTN: MTPT, Falls Church, VA 22041–5050
DAHC23—G4
MTMC, Western Area, Oakland Army Base, ATTN: MTWA–LOA, Oakland, CA 94626–5000
DAHC24—1B
HQ MTMC Acquisition Division, 5611 Columbia Pike, ATTN: MT–LOA, Falls Church, VA 22041–5050
DAHC26—0E
HQ MTMC, TOPS Project Management Office, ATTN: MT–TP, Fort Belvoir, VA 22060–5898
DAHC30—0F
MDW, DCS for Acquisition, Bldg. 15, Cameron Station, Alexandria, VA 22304–5050
DAHC32—0M
National Defense University, Bldg. 59/ Contracting Office Rm. 113, Fort Leslie J. McNair, Washington, DC 20319
DAHC35—2M
Ft. Belvoir Directorate of Contracting, Bldg. T742, Fort Belvoir, VA 22060–5075
DAHC76—8U
HQS, 6th Inf Div(L) & USA Garrison, AK, Directorate of Contracting, P.O. Box 5–525, ATTN: APVR–DOC, Fort Richardson, AK 99505–0525
DAHC77—CJ
U.S. Army Support Command, Hawaii, ATTN: APZV–KO, Fort Shafter, HI 96858–5025
DAHC90—YJ
U.S. Army Intelligence and Security Command (INSCOM), Contract Support Activity, ATTN: IAPARC–CSA, Fort Belvoir, VA 22060–5368
DAHC92—1V—ZT
U.S. Army South, U.S. Army Garrison—Panama, Directorate of Contracting, ATTN: SOCO–CO, APO Miami, FL 34002–5000
DAHC94 U.S. Army, Information Systems Selection BD and Acquisition Agency (ISSAA) 2461 Eisenhower Avenue Alexandria, VA 22331–0700
DAJA01 Regional Contracting Office, 9Q Vicenza ATTN: AEUCC–I APO New York, NY 09221–5122
DAJA02 Regional Contracting Office G5 Seckenheim ATTN: AEUCC–S APO New York, NY 09333–5000
DAJA04 Regional Contracting Office 9R Fuerth ATTN: AEUCC–FU APO New York, NY 09696–5345
DAJA06 Regional Contracting Office, 9S Stuttgart ATTN: AEUCC–ST APO New York, NY 09154–0503
DAJA09 Giessen Suboffice, BT RCO Frankfurt ATTN: AEUCC–F–G APO New York, NY 09169
DAJA10 Regional Contracting Office, 9U Augsburg ATTN: AEUCC–A APO New York, NY 09178–0505
DAJA16 Regional Contracting Office, 8X Grafenwoehr ATTN: AEUCC–G APO New York, NY 09114–5413
DAJA23 Directorate of Contracting, 9W USA Berlin ATTN: AEBA–C APO New York, NY 09742–5003

DAJA25 Regional Contracting Office, 9X Bremerhaven ATTN: AEUCC-BR APO New York, NY 09069-5505
DAJA37 USAREUR Contracting Center G6 ATTN: AEUCC-C APO New York, NY 09710-5345
DAJA45 Regional Contracting Office, 9Y Burtonwood ATTN: AEUCC-BW APO New York, NY 09075-3738
DAJA61 HQ USAREUR & 7th Army 9Z ATTN: Regional Contracting Office Benelux APO New York, NY 09667-5005
DAJA76 Regional Contracting Office, 8V Frankfurt Box 73 ATTN: AEUCC-F APO New York, NY 09710-5345
DAJA83 Rheinberg Suboffice, 2Z RCO Bremerhaven ATTN: AEUCC-BR-R APO New York, NY 09712-5511
DAJA84 Fulda Suboffice, B0 RCO Frankfurt ATTN: AEUCC-F-FD APO New York, NY 09146
DAJA85 Hanau Suboffice, B8 RCO Frankfurt ATTN: AEUCC-F-H APO New York, NY 09165-5345
DAJA86 Mainz-Kastel Suboffice, C0 RCO Frankfurt ATTN: AEUCC-F-MK APO New York, NY 09457
DAJA87 Mid-East CAS Branch D0 USAREUR Contract Center ATTN: AEUCC-C-CI APO New York, NY 09672-0008
DAJA88 United Kingdom CAS Branch E0 USAREUR Contract Center ATTN: AEUCC-C-CU APO New York, NY 09083-5000
DAJA89 Wuerzburg Suboffice, F0 RCO Fuerth ATTN: AEUCC-FU-W APO New York, NY 09800-2013
DAJA90 Bad Kreuznach Suboffice, 0T RCO Frankfurt ATTN: AEUCC-F-BK APO New York, NY 09252-0029
DAJB03 U.S. Army Korea Contracting Agency F4 ATTN: EAKC-CO APO San Francisco, CA 96301-0062
DAKF01 Directorate of Contracting 1A ATTN: AFKC-ZM-DOC Presidio of San Francisco, CA 94129-5000
DAKF03 Directorate of Contracting 0Q P.O. Box 27 ATTN: AFZW-DOC Fort Ord, CA 93941-0027
DAKF04 Directorate of Contracting ZE P.O. Box 10039 ATTN: AFZJ-DC Fort Irwin, CA 92310-5000
DAKF06 Directorate of Contracting 1C Building 6222 ATTN: AFZC-DOC Fort Carson, CO 80913-5022
DAKF10 Directorate of Contracting 1D ATTN: AFZP-DC Fort Stewart, GA 31314-5189
DAKF11 Directorate of Contracting 1E ATTN: AFZK-DOC Fort McPherson, GA 30330-5000
DAKF12 FORSCOM Central Contracting Office BC ATTN: FCJ4-PRC Fort McPherson, GA 30330-6000
DAKF15 Directorate of Contracting 1F ATTN: AFKE-ZO-DOC Fort Sheridan IL 60037-5000
DAKF19 Directorate of Contracting 1G ATTN: AFZN-DOC Fort Riley, KS 66442-0248
DAKF23 Directorate of Contracting 1H ATTN: AFZB-DOC Fort Campbell, KY 42223-1100
DAKF24—G1
Directorate of Contracting, ATTN: AFZX-DOC, Fort Polk, LA 71459-5000
DAKF27—1J
Directorate of Contracting, ATTN: AFKA-ZI-DOC, Fort George G. Meade, MD 20755-5081
DAKF36—1M
Directorate of Contracting, ATTN: AFZS-DOC, Fort Drum, NY 13602-5220
DAKF40—1N
Directorate of Contracting, Drawer 70120, ATTN: AFZA-DC, Fort Bragg, NC 28307-0120
DAKF48—1Q
Directorate of Contracting, ATTN: AFZF-DOC, Fort Hood, TX 76544-5059
DAKF49—1R
Directorate of Contracting, ATTN: AFZG-DOC, Fort Sam Houston, TX 78234-5000
DAKF57—1T
Directorate of Contracting, ATTN: AFZH-DOC, Fort Lewis, WA 98433-5000
DAKF61—1U
Directorate of Contracting, ATTN: AFZR-DOC, Fort McCoy, WI 54656-5000
DAMD17—B3
US Army Medical Research, Acquisition Activity, Fort Detrick, ATTN: SGRD-RMA, Frederick, MD 21702-5014
DASG60—CB
USA Strategic Defense Command, Deputy Commander, P.O. Box 1500, ATTN: CSSD-CM-AC, Huntsville, AL 35807-3801

PART 3—NAVY ACTIVITY ADDRESS NUMBERS

* An asterisk indicates a two-digit code of a major command, which is shared with subordinate activities. Such subordinate activities will indicate the Unit Identification Code of the major command in parentheses, e.g. (MAJ00011).

N00011, LB*—LBZ
Chief of Naval Operations, Washington, DC 20350-2000
N00012, HX*, V8*—V8Y
Assistant for Administration, Under Secretary of the Navy, Washington, DC 20350
N00013—MR
Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332
N00014, EE*—EE0-9
Office of Naval Research, Arlington, VA 22217
N00015, L0*—L0Z
Naval Intelligence Command HQ (Suitland, MD), 4600 Silver Hill Road, Washington, DC 20389
N00018, MC*, MD*, J5*, QA*—MCZ
Bureau of Medicine and Surgery, Washington, DC 20372-5120
N00019, EF*, GU*—EF0-9
Naval Air Systems Command, Washington, DC 20361
N00023, 4J*, L5*—4J0-9
Commander, Naval Supply Systems Command, Washington, DC 20376
N00024, EH*, U0*—EH0-9
Naval Sea Systems Command, Washington, DC 20360
N00025, EJ*, FZ*—EJ0-9
Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332
N00030, EK*—EK0-9
Strategic Systems Programs, Department of the Navy, Washington, DC 20376-5002
N00033, EL*—EL0-9
Commander, Military Sealift Command, Washington, DC 20390
N00039, NS*—NS0-9
Space and Naval Warfare Systems Command, Washington, DC 20360
N00060, LH*, J0*—LHZ
Commander-in-Chief, Atlantic Fleet, Norfolk, VA 23511
N00061, NL*—NLZ
Commander-in-Chief, U.S. Naval Forces, Europe (London, U.K.), FPO New York 09510
N00062, 8A*, L9*, R0*—8A0-9
Chief of Naval Education and Training, Code 013, NAS, Pensacola, FL 32508-5100
N00063, NT*—NTZ
Naval Computer and Telecommunications Command, 4401 Massachusetts Avenue, NW., Washington, DC 20394-5290
N00065, S0*—S0Z
Naval Oceanography Command, Stennis Space Center, Bay St. Louis, MS 39529-5000
N00069, 8Q*—8QZ
Naval Security Group HQ, 3801 Nebraska Avenue, NW., Washington, DC 20390-0008
N00070, LP*, V5*, 4L*—LPZ
Commander in Chief Pacific Fleet, NAVBASE, Pearl Harbor, HI 96860-7000
N00072, 9T*, LC*—9TZ
Commander, Naval Reserve Force, Code 17, New Orleans, LA 70146
N00074, QH*—QHZ
Naval Special Warfare Command, NAVPHIBASE Coronado, San

Diego, CA 92155
N00101—3R
Naval Air Station, South Weymouth, MA 02190
N00102—EN
Portsmouth Naval Shipyard, Portsmouth, NH 03801
N00104, EP—EQ
Navy Ships Parts Control Center, Mechanicsburg, PA 17055
N00105—JT
Naval Medical Clinic, NAVSHIPYD, Portsmouth, NH 03801
N00109—F1
Naval Weapons Station, Yorktown, VA 23491
N00123—ES
Commanding Officer, Naval Regional Contracting Center, 937 N. Harbor Drive, San Diego, CA 92132-5106
N00124—M5
Naval War College, Newport, RI 02840
N00127—H1
Naval Air Station, Quonset Point, RI 02819
N00128—EU
Supply Department, Naval Administrative Command, Naval Training Station, Great Lakes, IL 60088
N00129—EV
Submarine Base, New London, Groton, CT 06340
N00140, EX—LA
Commanding Officer, Naval Regional Contracting Center, Naval Base Bldg. No. 600, Philadelphia, PA 19112
N00146—QK
Marine Corps Air Station, Cherry Point, NC 28533
N00151—EY
Philadelphia Naval Shipyard, Philadelphia, PA 19112
N00153—N0
Governor, Naval Home, 01800 East Beach Blvd., Gulfport, MS 39501
N00158—3V
Naval Air Station, Willow Grove, PA 19090
N00161—FA
Naval Academy, Annapolis, MD 21402
N00162 (MAJ00018)—MDG-H
Naval Medical Clinic, Annapolis, MD 21402-5050
N00163—FB
Naval Air Warfare Center, Aircraft Division Indianapolis, 21st and Arlington Avenue, Indianapolis, IN 46218
N00164—FC
Naval Surface Warfare Center, Crane Division, Crane, IN 47522
N00166 (MAJ00072)—LC0-1
Naval Air Facility, Bldg 3086, Andrews AFB, Washington, DC 20396-5130
N00167—FD
Naval Surface Warfare Center, Carderock Division, Bethesda, MD 20084-5000
N00168—FE
National Naval Medical Center, National Capital Region, Bethesda, MD 20014
N0017A—
Atlantic Fleet Weapons Training, Facility (Code 51) (Roosevelt Roads, PR), Naval Station, Box 3023, FPO Miami, FL 34051
N00171—N5
HQ, Naval District Washington, Washington Navy Yard, Washington, DC 20374
N00173—FF
Naval Research Laboratory, Washington, DC 20390
N00174—FG
Naval Surface Warfare Center, Indian Head Division, Indian Head, MD 20640
N00178
Naval Surface Warfare Center, Dahlgren Division, Dahlgren, VA 22448
N00181—FJ
Norfolk Naval Shipyard, Portsmouth, VA 23709
N00183—JX
Commanding Officer, Naval Hospital, Portsmouth, VA 23708-5100
N00187—3J
Navy Public Works Center, Norfolk, VA 23511
N00188—H2
Naval Air Station, Norfolk, VA 23511
N00189—FK, H3
Naval Supply Center, Norfolk, VA 23512
N00191—FL
Charleston Naval Shipyard, Naval Base, Charleston, SC 29408
N00193 (MAJ00024)—EHD-G
Commanding Officer (Code 11), Naval Weapons Station, Charleston, SC 29408-7000
N00196—3K
Commanding Officer (Code 60), Naval Air Station, Atlanta, Marietta, GA 30060
N00197—FM
Naval Surface Warfare Center, Naval Ordnance Station, Crane Division, Louisville, KY 40214
N00203 (MAJ00018)—MCL
Commanding Officer, Naval Hospital, Pensacola, FL 32512
N00204—FN
Naval Air Station (Code 19P10), Pensacola, FL 32508
N00205—FP
Naval Support Activity (Code N443), New Orleans, LA 70146
N00206
Naval Air Station, New Orleans, LA 70146
N00207—FQ
Naval Air Station, Jacksonville, FL 32212
N00211 (MAJ00018)—MCQ-S
Naval Hospital, Great Lakes, IL 60088-5230
N00213—H4
Naval Air Station, Key West, FL 33040
N00215—3W
Naval Air Station (Code 60), Dallas, TX 75211
N00216—FR
Commanding Officer (Code 194), Naval Air Station, Bldg 10, Corpus Christi, TX 78419
N00221—K5
Mare Island Naval Shipyard, Vallejo, CA 94592
N00228—FU
Naval Supply Center, Oakland, CA 94625
N00231
Commanding Officer, Naval Medical Clinic, Quantico, VA 22134
N00232 (MAJ00018)—MCC-E
Naval Hospital, Jacksonville, FL 32214-5222
N00236—NX
Naval Air Station, Alameda, CA 94501
N00244—NW
Naval Supply Center, Naval Base, 937 North Harbor Drive, San Diego, CA 92132
N00245 (MAJ00070)—LPN
Naval Station, San Diego, CA 92136-5000
N00246—H5
Naval Air Station, North Island, San Diego, CA 92135
N00247—HC
Naval Training Center, San Diego, CA 92133
N00249
Commanding Officer, Civil Engineer Support Office, Naval Construction Battalion Center, Port Hueneme, CA 93043
N00250—FW
Commander, Navy Exchange Service Command, NAVSTA New York, Staten Island, NY 10305
N00251—FX
Puget Sound Naval Shipyard, Bremerton, WA 98314
N00253—FY
Commanding Officer, Naval Undersea Warfare Center, Division Keyport, Keyport, WA 98345
N00255 (MAJ00070)—LPS-T, LPW-Y
Naval Station Puget Sound, Seattle, WA 98115-5000
N00267 (MAJ00018)—MC0-1
Commanding Officer, Navy Medical Clinic, Key West, FL 33040
N00274 (MAJ00072)—LCA-B
Naval Air Facility, Detroit, Selfridge Air Force Base, Supply Department, Mt. Clemens, MI 48045
N00275—3M
Naval Air Station, Glenview, IL 60026

N00276
Naval Air Station, Twin Cities, Minneapolis, MN 55450
N00281 (MAJ00062)—L90-1
Commanding Officer, Fleet Combat Training Center, Atlantic, Dam Neck, Virginia Beach, VA 23461
N00285 (MAJ00018)—MDR
Commanding Officer, Naval Hospital, Corpus Christi, TX 78419
N00288
Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120
N00296—NY
Naval Air Station, Moffett Field, CA 94035
N00311—GA
Pearl Harbor Naval Shipyard, Box 400, Pearl Harbor, HI 96860
N0031A (MAJ00060)—J0K-M
Commander, Naval Special Warfare Group Two, Naval Amphibious Base, Little Creek, Norfolk, VA 23521-5340
N00314—M7
Submarine Base, Pearl Harbor, HI 96860
N00334—N6
Naval Air Station, Barbers Point, HI 96862
N00383—GB, GC
Navy Aviation Supply Office, 700 Robbins Avenue, Philadelphia, PA 19111
N00389—KL, MM
Contracting Officer (Code 192), U.S. Naval Station (Roosevelt Roads, PR), Box 3002, FPO Miami 34051
N00408—GE
Naval Supply Center, Puget Sound, Bremerton, WA 98314
N00421—M8
Naval Air Warfare Center, Aircraft Division, Patuxent River, MD 20670
N00600—GG
Naval Regional Contracting Center, Washington Navy Yard, Washington, DC 20374
N00604—NQ
Naval Supply Center, Pearl Harbor, Pearl Harbor, HI 96860
N00612—GH
Commanding Officer, Naval Supply Center, RCD, Code 200M, Charleston, SC 29408
N00619 (MAJ00018)—QA0-9
Naval Hospital, Oakland, CA 94627-5000
N00[illegible]0—H6
N[illegible]val Air Station, Whidbey Island, Oak Harbor, WA 98277
N00639—H7
Commanding Officer, Naval Air Station, Memphis (84), Millington, TN 38054
N00651—H8
Naval Supply Depot, Subic Bay (Philippines), Box 33, FPO San Francisco, CA 96651
N00702 (MAJ00069)—8QM-N
Naval Security Group Activity, Winter Harbor, ME 04693
N00743—8N
Commanding Officer, Naval Computer and Telecommunications Station (Roosevelt Roads, PR), Box 3022, FPO Miami 34051
N00788 (MAJ00063)—NTR-S
Commanding Officer, Naval Communication Det., Washington, (Cheltenham, MD), Washington, DC 20390
N00849 (MAJ00069)—8QC
Naval Security Group Activity, Skaggs Island, Sonoma, CA 95476-5000
N00886—QB
Naval Communication Station, San Francisco, Rough and Ready Island, Stockton, CA 95203
N00927 (MAJ00063)—NTA
U.S. Naval Computer and Telecommunications Station (San Miguel, Cubi Point, Philippines), FPO San Francisco 96856-1803
N00950—8R
Naval Computer and Telecommunications Area, Master Station, EASTPAC, Wahiawa, HI 96786
N0417A (MAJ00025)—EJA
Naval Support Facility, P.O. Box 1000, Thurmont, MD 21788
N0428A—3Q
Naval Air Station, Patuxent River, MD 20670
N0429A—3A
Naval Air Warfare Center, Weapons Division, Point Mugu, CA 93042
N0434A (N62980)—MQL
United States Navy Band, Washington Navy Yard, Washington, DC 20374-1052
N0463A (MAJ00024)—EHC
Commanding Officer, Navy Experimental Diving Unit, NAVCOASTSYSCEN, Bldg. 321 Panama City, FL 32401
V04697 (MAJ00060)—LHA
USS Simon Lake, FPO Miami, FL 34085-2500
N0597A (MAJ00012)—HXP-W
Director, Office of Civilian Personnel Management, Southeast Region, Bldg A-67, Naval Base, Norfolk, VA 23511-6098
N0598A (MAJ00012)—HXN
Director, Office of Civilian Personnel Management, Pacific Division, Box 119, Pearl Harbor, HI 96860-5060
N0604A (MAJ00012)—HXJ-L
Director, Office of Civilian Personnel Management, Northwest Region, 2890 North Main Street, Suite 301, Walnut Creek, CA 94596-2739
N0605A (MAJ00012)—HXG-H
Director, Office of Civilian Personnel Management, Northeast Region, Bldg 75-3, Naval Base, Philadelphia, PA 19112-5006
N0618A (MAJ00062)—8AE
School of Music, Naval Amphibious Base, Little Creek, Norfolk, VA 23521-5240
N0619A—8E
Naval Health Sciences Education & Training Command, NAVMEDCOM NATCAPREG, Bethesda, MD 20814
N0708A (MAJ00024)—U0A-B
Naval Warfare Engineering Activity, Port Hueneme Division, Naval Surface Warfare Center, Yorktown, VA 23961-5076
N08939
Navy Section, US Military Group (Caracas, Venezuela), Department of State, Washington, DC 20521
N09534
Navy Section, US Military Group (Lima, Peru), APO Miami 34031
N09550—4G
Commander, Fleet Air Mediterranean (Naples, Italy), FPO New York, NY 09521
N30492 (MAJ00039)—NSC
David W. Taylor Naval Ship Research and Development Center Detachment, Puget Sound, Bremerton, WA 98324-5215
N30776—4N
Naval Air Station, Kingsville Auxiliary Landing Field Detachment, Orange Grove, TX 77630
N30779—3Z
Naval Auxiliary Landing Field, Goliad, TX 77963
N30829 (MAJ00061)—NL0-2
Officer in Charge, Naval Support Activity, Naples Detachment (Gaeta, Italy), FPO New York 09522
N30929
Commanding Officer, Navy Flight Demonstration Squadron (Blue Angels), Naval Air Station, (Attn: Supply Officer), Pensacola, FL 32508
N31149 (MAJ00024)—EHA-B
Naval Sea Logistics Center Det Philadelphia, Naval Base, Philadelphia, PA
N31699 (MAJ00012)—V8Z
Office of Under Secretary of the Navy, Washington, DC 20350-1000
N31863
Director, Naval Audit Service, Capital Region, P.O. Box 1206, Falls Church, VA 22041
N31954 (MAJ00062)—R0X
Submarine Training Facility, San Diego, CA 92106
N32525—8S
U.S. Naval Communication Station, Naples Detachment (Sigonella, Italy), FPO New York 09523
N32778 (MAJ00070)—4LE
Fleet Activities, Chinhae (Korea), FPO

San Francisco 98769-1100
N32832—7K
Naval Aviation Logistics Center, European Repair and Rework, Activity Representative, (Alverca, Portugal), APO New York, NY 09285
N32960—K2
Navy Support Office, La Maddalena, (Sardinia, Italy), FPO New York 09533
N33137 (MAJ00015)—L0A-C
Naval Intelligence Operations Group DET CTG 168.4, (Munich, Germany), APO New York 09108
N35316 (MAJ00060)—J0G
Patrol Combatant Missile Squadron Two, Mobile Logistic Support Group, Trumbo Point Annex, NAS Key West, FL 33040
N35949 (MAJ00018)—J5S
Naval Hospital, Twentynine Palms, CA 92278-5008
N39167
Commanding Officer, Naval Branch Medical Clinic, Naval Air Station, Meridian, MS 39309
N39353—GV
Commanding Officer, Integrated Combat Systems Test Facility, San Diego, CA 92152
N41756—LE
Navy Engineering Logistics Office, Washington, DC 20000
N42237—7A
Commanding Officer, Naval Submarine Base, Code N411, Kings Bay, GA 31547
N44405 (MAJ00062)—6AA
Antilles Consolidated School System, Box 3200 (Roosevelt Roads, PR), FPO Miami 34051
N44416 (MAJ00023)—4JL
Defense Printing Service Northeast Area, 700 Robbins Avenue, Philadelphia, PA 19111-5083
N44930—KN
Intra-Fleet Supply Support Operations Program, Norfolk, VA 23512
N44967—KP
Naval Sea Systems Command Detachment, (PERA CSS) San Francisco, CA 94124-2995
N45045 (MAJ00012)—V8A
Navy Comptroller Standard Systems Activity Det., Raleigh Oaks Plaza Office Bldg, 3606 Austin Peay Highway, Memphis, TN 38128-3757
N45406—LD
Officer in Charge, Naval Sea Systems Command Detachment, (PERA CV), Puget Sound Naval Shipyard, Bremerton, WA 98310-0206
N45411 (MAJ00070)—LPE
Assault Craft #5, MCB Camp Pendleton, CA 92055-5003
N45534 (MAJ00024)—EHN
AEGIS Combat Systems Center, Bldg. D-11, Wallops Island, VA 23337
N45854 (MAJ00011)—LBE
Fleet Surveillance Support Command, Chesapeake, Chesapeake, VA 23322-5010
N46079
Military Sealift Command Office, Northern Europe, (Bremerhaven, Germany) APO New York 09069-0006
N46450 (MAJ00023)—L50-9
Naval Supply Center, Charleston Detachment, Naval Submarine Base, Kings Bay, GA 31547
N46531 (MAJ00012)—HX0-E
Office of Civilian Personnel Management, National Capital Region, 801 N. Randolph Street, Arlington, VA 22203
N46656—NP
Telecommunication Management Detachment West, 937 North Harbor Drive, San Diego, CA 92132-5104
N46657 (MAJ00063)—NT0-NT1
Telecommunication Management Detachment Pacific, Wahiawa, HI 96786-3050
N46658—LQ
Telecommunications Management Detachment East, Wards Corner Executive Center, Suite 222, 138 E. Little Creek Road, Norfolk, VA 23505
N46659—KJ
Telecommunications Management Detachment Europe, (Naples, Italy), FPO New York 09524
N46904 (MAJ00060)—J00-1
Commanding Officer, Precommissioned Unit, Antisubmarine Warfare Training Group Atlantic, Bldg. CEP 104, Naval Station, Norfolk VA 23511-6495
N47408 (MAJ00025)—EJP-W
Naval Facilities Engineering Command Contracts Office, Naval Construction Battalion Center, Port Hueneme, CA 93043-5000
N47427 (MAJ00070)—V5G
Naval Air Pacific Repair Activity Detachment, New Zealand, c/o U.S. Naval Support Force Antarctic Det., FPO San Francisco 96690-2900
N47875 (MAJ00019)—GUP-S
Naval Technical Representative Detachment Bethpage, Grumman Aerospace Corporation, Bethpage, NY 11714-3593
N47876 (MAJ00019)—GUJ-L
Naval Technical Representative Detachment Burbank, Lockheed Aeronautical Systems Company, P.O. Box 551, Burbank, CA 91503
N47877—GD
Naval Technical Representative Detachment St. Louis, McDonnell Douglas Corporation, P.O. Box 516, St. Louis, MO 63166-0516
N47878 (MAJ00019)—GUV
Naval Technical Representative Detachment Lynn, General Electric Company, Aircraft Engine Business Group, 1000 Western Avenue, Lynn, MA 01910-0445
N47879 (MAJ00019)—GU0-B
Naval Technical Representative Detachment Stratford, United Technologies Corporation, Sikorsky Aircraft Division, Stratford, CT 06497
N48142 (MAJ00012)—V80-1
Assistant Secretary of the Navy, Research Development and Acquisition, Washington, DC 20350-1000
N48521 (MAJ00019)—GUX
Naval Technical Representative Detachment Bell, Bell Helicopter Textron, P.O. Box 482, Bldg. 2, Fort Worth, TX 76101
N48758 (MAJ00070)—V5R
Naval Air Pacific Repair Activity Plant Rep. Office, Box 39, FPO Seattle 98767-2710
N52731 (MAJ00072)—LCU
Reserve Naval Construction Force, First Reserve Naval Construction Brigade, Support Detachment, Naval Construction Battalion Center, Bldg. 121, Gulfport, MS 39501-5016
N52846 (MAJ00019)—EFA-B
Naval Aviation Depot Operations Center Detachment, European Repair and Rework Activity (NERRA), (Naples, Italy), Box 50, FPO New York 09520-5000
N52855—LZ
Special Boat Unit 11, FPO San Francisco 96601-4517
N53210 (MAJ00060)—LHJ-K
Assault Craft Unit 2, Naval Amphibious Base, Little Creek, Norfolk, VA 23520
N53825—GY
Naval Surface Force, US LANTFLT, Norfolk, VA 23511-6002
N53999 (MAJ00060)—J0Q-R
Seal Team Six, Naval Amphibious Company, Norfolk, VA 23521
N55131 (MAJ00060)—J0A-B
Cargo Handling and Port Group, Williamsburg, VA 23187-5792
N55322 (MAJ00060)—LHN
Explosive Ordnance Disposal Group Two, Fort Story, VA 23459-5024
N55418 (MAJ00070)—V50
Naval Antarctic Support Unit, (Christchurch, New Zealand), FPO San Francisco 96690
N57007—V0
Commander, Middle East Force (Jufair, Bahrain), FPO New York 09501-6008
N57012—GQ
Commander Naval Air Force, U.S. Atlantic Fleet, Naval Air Station, Norfolk, VA 23511
N57016 (MAJ00060)—J0N

Commander Submarine Force, U.S. Atlantic Fleet, Norfolk, VA 23511-6295
N57023—GT
Commander, Operational Test and Evaluation Force, Naval Base, Norfolk, VA 23511
N57032 (MAJ00061)—NLF-H
Naval Air Facility (Mildenhall, UK), FPO New York 09127-5000
N57049 (MAJ00060)—J0E-F, V-X
Naval Support Facility (Antigua, West Indies), FPO Miami 34054
N57053 (MAJ00070)—LPQ
Naval Facility, Centreville Beach, Ferndale, CA 95536-9766
N57070 (MAJ00060)—LH7
Commander, Undersea Surveillance, U.S. Atlantic Fleet, Norfolk, VA 23511-6687
N57075 (MAJ00060)—LH9
Commanding Officer, Naval Facility (Argentia, Canada), FPO New York 09597-1051
N57095 (MAJ00060)—LH0-1
Atlantic Fleet Headquarters Support Activity, CINCLANTFLEET, Norfolk, VA 23511
N57100 (MAJ00070)—LP0-1
Naval Special Warfare Group One, NAVPHIBASE Coronado, San Diego, CA 92155
N60002 (MAJ00018)—QAD
Commanding Officer, Naval Hospital, Millington, TN 38054
N60028—QC
Naval Station, Treasure Island, San Francisco, CA 94130
N60036—QD
Naval Weapons Station, Concord, CA 94520
N60042 (MAJ00070)—LPU
Naval Air Facility, El Centro, CA 92243
N60050—HD
Marine Corps Air Station, El Toro, Santa Ana, CA 92709
N60087—3P
Naval Air Station, Brunswick, ME 04011
N60169—W0
Commanding Officer, Marine Corps Air Station, Beaufort, SC 29904
N60191—4A
Naval Air Station, Oceana, Virginia Beach, VA 23460
N60200—3G
Commanding Officer, Naval Air Station, Cecil Field, FL 32215
N60201—L7
Commanding Officer, Naval Station, P.O. Box M, Mayport, FL 32228
N60211—3D
Naval Auxiliary Landing Field, Crows Landing, CA 95313
N60234—4R
Naval Air Station, Whiting Field, OLF Saufley Field, Pensacola, FL 32508
N60241—3X
Commanding Officer, Naval Air Station, Bldg. 2701, Kingsville, TX 78363
N60258—GK
Long Beach Naval Shipyard, Long Beach, CA 90801
N60259—H9
Naval Air Station, Miramar, San Diego, CA 92145-5000
N60268 (MAJ62980)—MQ0-1
Navy Recruiting District Chicago, Glenview, IL 60026-5200
N60376—3Y
Commanding Officer, Naval Air Station, Chase Field, Beeville, TX 78103
N60462—WE
Naval Air Station, Adak (Alaska), FPO Seattle, WA 98791-1200
N60478—3C
U.S. Naval Weapons Station, Earle, Colts Neck, NJ 07722
N60495—3T
Naval Air Station, Fallon, NV 89406
N60508—4Q
Commanding Officer, Naval Air Station, Whiting Field, Milton, FL 32570
N60514—GL
Commanding Officer, Naval Station (Guantanamo Bay, Cuba), Box 33, FPO New York 09593
N60530—GM
Naval Air Warfare Center, Weapons Division, China Lake, CA 93555
N60656—GN
Navy Exchange, Naval Station, Annapolis, MD 21402
N60663—GR
Officer in Charge, Navy Resale Activity, Commissary Support Office, Naval Base, Bldg 2600, Great Lakes, IL 60088
N60666—GS
Navy Exchange, Naval Air Station, Key West, FL 33040
N60676—GX
Navy Resale and Services Support Office, Field Support Office Commissary Div., Naval Air Station, Mechanicsburg, PA 17055
N60681—HA
Commissary OPS Division, NAVRESSOFSO, Naval Station, San Diego, CA 92136
N60693—HB
Navy Resale Activity, Commissary Support Office, Naval Base Pearl Harbor, Box 110, Pearl Harbor, HI 96860
N60701—4M
Naval Weapons Station, Seal Beach, CA 90740
N60865 (MAJ00070)—V5X
Naval Forces, Marianas, (Guam), FPO San Francisco 96630
N60872 (MAJ00070)—V5T
Naval Magazine (Guam), FPO San Francisco 96630-1300
N60895—HF
Commissary OPS Division, NAVRESSOFSO, Naval Air Station, Alameda, CA 94501
N60921—HG, FH
Commander, Naval Surface Warfare Center, Dahlgren Division, Detachment White Oak, 10901 New Hampshire Avenue, Silver Spring, MD 20903
N60935—HH
Commissary OPS Div, NAVRESSOFSO, Naval Air Station, Jacksonville, FL 32212
N60936—HJ
Navy Resale Activity Commissary Support Office, Naval Air Station, Pensacola, FL 32508
N60937—HK
Navy Exchange Det., Naval Support Activity, New Orleans, LA 70140
N60938—HL
Navy Resale Activity, Commissary Support Office, Naval Air Station, Corpus Christi, TX 78419
N60939—HM
Navy Exchange, Naval Air Station, Memphis 32, Millington, TN 38054
N60951 (MAJ00060)—LHU
Fleet Accounting and Disbursing Center, Operating Forces Accounting, U.S. Atlantic Fleet, Norfolk, VA 23511-6096
N60956 (MAJ00012)—V8J-N
Navy Regional Finance Center, Great Lakes, IL 60088-5797
N61115—HN
Navy Exchange Activity, Submarine Base, New London, Groton, CT 06340
N61119—HP
Naval Supply Depot, Guam, PSC 455, Box 190, FPO AP 96540-1500
N61165—NN
Supply Officer, Bldg NS46, Naval Station, Charleston, SC 29408-5000
N61174—7B
Naval Station, New York, Brooklyn, NY 11251
N61189 (MAJ00060)—J0T
Naval Station, Philadelphia, PA 19112
N61217—HQ
Navy Exchange, Naval Air Station, Bermuda, FPO New York 09560
N61331—HR
Naval Surface Warfare Center, Dahlgren Division, Coastal Systems Station, Panama City, FL 32407
N61337—H0
Commanding Officer, Naval Hospital, Beaufort, SC 29904
N61339—HT
Commanding Officer, Naval Training Systems Center (N-601), 12350 Research Parkway, Orlando, FL 32826-3275
N61414—4B
Naval Amphibious Base, Little Creek,

Norfolk, VA 23521
N61463 (MAJ00060)—LHC
Naval Base, Norfolk, VA 23511-6002
N61466
Commander, Naval Base, Bldg NH48, Charleston, SC 29408
N61510—HU
Navy Exchange, Naval Station, (Guam) Box 179, FPO San Francisco, CA 96630
N61533—HW
David W. Taylor Naval Ship Research and Development Laboratory, Annapolis, MD 21402
N61564—FS
Naval Hospital, NAVBASE (Guantanamo Bay, Cuba), FPO New York 09593
N61577 (MAJ00070)—V5P
Naval Air Station, Agana (Guam), Box 60, FPO San Francisco 96630-1200
N61581 (MAJ00070)—4LT
Fleet Activities, Naval Base, (Yokosuka, Japan), FPO Seattle 98762-1100
N61685 (MAJ00065)—S0A
Naval Oceanography Command Center (Guam), Box 12, FPO San Francisco 96630-2928
N61726—QL
Naval Hospital, Naval Submarine Base New London, Groton, CT 06349
N61751 (MAJ00018)—MCK,M,N,P
Naval Medical Research Unit No. 3, Cairo (Egypt), FPO New York 09527-1600
N61755 (MAJ00070)—V5E
Naval Station (Guam), FPO San Francisco 96630-1000
N61762—HY
Naval Ordnance Missile Test Station, White Sands Missile Range, NM 88002
N62021—7V
Naval Amphibious Base, Coronado, San Diego, CA 92155
N62161—HZ
Navy Exchange Det, NAVCOMSTA, Rough and Ready Island, Stockton, CA 95203
N62190 (MAJ00014)—EEY
Commanding Officer, Naval Research Laboratory, Underwater Sound Reference Detachment, P.O. Box 8337, Orlando, FL 32856
N62191 (MAJ00062)—L97
Commanding Officer, Naval Reserve Officers Training Corps and Naval Administrative Unit, Room 20E-125, Massachusetts Institute of Technology, Cambridge, MA 02139
N62254 (MAJ00070)—4LX
Commander Fleet Activities, Okinawa, Naval Air Facility, Kadena (Ryukyu Islands Southern), Box SU/CR, FPO Seattle 98770-1100
N62269—JC
Commander, Naval Air Warfare Center, Aircraft Division Warminster, Warminster, PA 18974
N62271—QE
Naval Postgraduate School, Monterey, CA 93940
N62285 (MAJ00065)—S00-1
Naval Observatory, Washington, DC, 34th and Massachusetts Avenue, NW, Washington, DC 20390-5100
N62306—7C
Commanding Officer (Code 4410), Naval Oceanographic Office, Stennis Space Center, Bay St. Louis, MS 39522
N62367 (MAJ00023)—4JC
Navy Clothing and Textile Research Facility, 21 Strathmore Road, Natick, MA 01760-2490
N62376—4K
Commanding Officer, Naval Air Warfare Center, Aircraft Division Trenton, P.O. Box 7176, Trenton, NJ 08628
N62381—JG
Military Sealift Command, Atlantic, Military Ocean Terminal, Building 42, Bayonne, NJ 07002
N62382
Military Sealift Command Office, Gulf Subarea, 4400 Dauphin Street, New Orleans, LA 70146
N62383—JH
Military Sealift Command, Pacific, Naval Supply Center, Oakland, CA 94625
N62387
Commander, Military Sealift Command Central Technical Activity (Code M10-3), 4228 Wisconsin Avenue, Washington, DC 20016
N62395—JK
Navy Public Works Center, (Marianas Islands, Guam), FPO San Francisco 96630-2937
N62401—3F
Defense Printing Service Branch Office, The Pentagon, Washington, DC 20350-3000
N62404—JJ
Military Sealift Command, Far East, (Yokohama, Japan), FPO Seattle 98760
N62410 (MAJ62980)—MQ6
Navy Recruiting District, P.O. Box 8667, Albuquerque, NM 87198-8667
N62412 (MAJ62980)—MLR
Commanding Officer, Navy Recruiting District, Perry Hill Office Park, 3815 Interstate Court, Montgomery, AL 36109-5294
N62415 (MAJ62980)—MLX
Commanding Officer, Navy Recruiting District, Strom Thurmond Federal Bldg., Suite 771, 1835 Assembly Street, Columbia, SC 29201-2430
N62416—NV
Navy Recruiting District Columbus, Room 609 Federal Bldg., 200 North High Street, Columbus, OH 44142-2474
N62419
Commanding Officer, Navy Recruiting District, Melrose Bldg., 1121 Walker Street, Houston, TX 77002
N62421 (MAJ62980)—MQM
Commanding Officer, Navy Recruiting District, 8925 North Meridian Street, Room 250, Indianapolis, IN 46260
N62422
Commanding Officer, Navy Recruiting District, 2974 Woodcock Drive, Jacksonville, FL 32207
N62423
Commanding Officer, Navy Recruiting District, 301 Center Street, Little Rock, AR 72201
N62425
Commanding Officer, Navy Recruiting District, 1808 West End Ave., Suite 1312, Nashville, TN 37203
N62427 (MAJ62980)—MLP
Navy Recruiting District Omaha, Overland-Wolf Bldg., 6910 Pacific, Omaha, NE 68106
N62429 (MAJ62980)—MLE
Navy Recruiting District Portland, 1220 SW Third Avenue, Suite 576, Portland, OR 97204
N62430
Commanding Officer, Navy Recruiting District, 1001 Navaho Drive, Raleigh, NC 27609
N62432 (MAJ62980)—MQG
Navy Recruiting District, St. Louis, 1222 Spruce Street, St. Louis, MO 63103-2814
N62435 (MAJ62980)—MQE
Navy Recruiting District Boston, 495 Summer Street, Boston, MA 02210-2103
N62437 (MAJ62980)—MQ4
Commanding Officer, Navy Recruiting District, 918 So. Ervay Street, Dallas, TX 75201
N62438 (MAJ62980)—MLQ
Navy Recruiting District Denver, Capital Life Center, 3rd Floor, 1600 Sherman Street, Denver, CO 80203-1668
N62440 (MAJ62980)—MLT
Navy Recruiting District, 2420 Broadway, Kansas City, MO 64108
N62441 (MAJ62980)—MLG
Navy Recruiting District Los Angeles, 5051 Rodeo Road, Los Angeles, CA 90016
N62442
Commanding Officer, Navy Recruiting District Atlanta, 612 Tinker Street, Suite C, Marietta, GA 30060
N62443 (MAJ62980)—MLV
Navy Recruiting District, Federal Office Bldg., 2nd & Washington Avenues, S., Minneapolis, MN 55401
N62444
Commanding Officer (Code 602-2C),

Navy Recruiting District, 4400 Dauphine Street, New Orleans, LA 70146

N62448 (MAJ62980)—MLN
Navy Recruiting District San Francisco, 1500 Broadway, Room 210, Oakland, CA 94612-1430

N62449 (MAJ62980)—MLC
Navy Recruiting District Seattle, Naval Station, Bldg 30, Seattle, WA 98115-5105

N62467—JM
Commanding Officer, Naval Facilities Engineering Command Southern Division, (SOUTHNAVFACENGCOM), 2155 Eagle Drive, P.O. Box 10068, Charleston, SC 29411-0068

N62470—JN
Naval Facilities Engineering Command, Atlantic Division, Norfolk, VA 23511

N62471—N7
Officer in Charge of Construction, Naval Facilities Engineering Command Contracts, Mid-Pacific, Pearl Harbor, HI 96860

N62472—JP
Naval Facilities Engineering Command, Northern Division, U.S. Naval Base, Philadelphia, PA 19112

N62474—JR
Naval Facilities Engineering Command, Western Division, San Bruno, CA 94066

N62477—JU
Naval Facilities Engineering Command, Chesapeake Division, Washington Navy Yard, Washington, DC 20374

N62481—N8
Naval Air Station (Bermuda), FPO New York 09560

N62507 (MAJ00070)—4LJ
Commanding Officer, Naval Air Facility (Atsugi, Japan), Box 3, FPO Seattle 98767-1200

N62522—JV
Military Sealift Command, Europe, (London, UK), Box 3, FPO New York 09510-3700

N62535—HE
Marine Corps Air Station (HELO), Tustin, CA 92710

N62537
Military Sealift Command, Mediterranean Sub-Area, (Naples, Italy), Box 23, FPO New York 09521-0600

N62538—K1
Military Sealift Command Office, Middle Atlantic, NSC, Bldg Y100A, Norfolk, VA 23512

N62539
Military Sealift Command Office, United Kingdom, (London, UK), Box 29, FPO New York 09510-3700

N62573—K8
Marine Corps Air Station, New River Plaza, Jacksonville, NC 28540

N62576 (MAJ00023)—4JG
Defense Printing Service Branch Office, 700 Robbins Avenue, Philadelphia, PA 19111-5094

N62578—J2
Naval Construction Battalion Center, Davisville, RI 02854

N62583—J3
Naval Construction Battalion Center, Port Heuneme, CA 93041

N62585—K3
Commander, Naval Activities, United Kingdom, (London, UK), FPO New York 09510

N62586 (MAJ00070)—V5A-B
Naval Ship Repair Facility (Guam), FPO San Francisco 96630-1400

N62588—NR
Naval Support Activity (Naples, Italy), FPO New York 09521

N62593—
Director, Defense Printing Service Det Office, Southeast Div., 4400 Dauphine St., Unit 601-3-B, New Orleans, LA 70146

N62603
Commanding Officer Fleet & Mine Warfare Training Center, Naval Base, Bldg 647, Charleston, SC 29408

N62604—J4
Commanding Officer, Naval Construction Battalion Center, Gulfport, MS 39501

N62613 (MAJ00027)—MUE
Commanding Officer, Marine Corps Air Station, (Iwakuni, Japan), FPO Seattle 98764-5001

N62638 (MAJ00072)—LCN
Naval Inshore Undersea Warfare, Group Two, NSC Cheatham Annex, Bldg. 111, Williamsburg, VA 23187-8792

N62645—EG
Naval Medical Logistics Command, Fort Detrick, Frederick, MD 21701-5015

N62649—JY
Naval Supply Depot (Yokosuka, Japan), FPO Seattle 98762

N62651
Director, Defense Service Office, Southeast Division, Pensacola, FL 32508

N62653 (MAJ00023)—4JW-X
Director, Defense Printing Service Branch Office, Southeast Division, Bldg. 1628, Naval Base, Charleston, SC 29408

N62654 (MAJ00019)—EFE
Naval Weapons Evaluation Facility, Kirtland AFB, Albuquerque, NM 87117

N62661 (MAJ00082)—L97
Naval Education and Training Center, Newport, RI 02841-5000

N62665—JQ
Supervisor of Shipbuilding, Conversion and Repair, USN, Barnes Building—6th Floor, 495 Summer Street, Boston, MA 02210

N62670—8B
Supervisor of Shipbuilding, Conversion and Repair, USN, Drawer T, Mayport Naval Station, Jacksonville, FL 32228

N62673—8P
Supervisor of Shipbuilding, Conversion and Repair, USN, Naval Base, Charleston, SC 29408

N62678—8C
Supervisor of Shipbuilding, Conversion and Repair, USN, P.O. Box 215, Portsmouth, VA 23705

N62686—T0
Defense Printing Service Office, Naval District Washington, Building 157-2, Washington Naval Yard, Washington, DC 20374-1572

N62688—GW
Naval Station, Naval Base, Norfolk, VA 23511-6002

N62695
Auditor General of the Navy, Naval Audit Services Headquarters, P.O. Box 1206, Falls Church, VA 22041

N62700 (MAJ00023)—4JJ
Defense Printing Service Detachment Office, Northern Division, Bldg 2A, Great Lakes, IL 60088-5708

N62703 (MAJ00023)—4JA
Defense Printing Service Branch Office, Bldg 530, Puget Sound Naval Shipyard, Bremerton, WA 98314

N62705 (MAJ00023)—4JN
Defense Printing Service Detachment Office, Naval Supply Center, Oakland, CA 94625-5045

N62706—JS
Defense Printing Service Branch Office, Western Division, Bldg. 154, San Diego, CA 92136-5148

N62707 (MAJ00023)—4JS-U
Defense Printing Service Detachment Office, Western Area, Pearl Harbor, Box 126, Pearl Harbor, HI 96860-5120

N62735 (MAJ00070)—4LP
Commander, Fleet Activities, (Sasebo, Japan), FPO Seattle 98766-1100

N62741—MB
Commanding Officer, Navy Supply Corps School, Code 60, Athens, GA 30606

N62742—KB
Naval Facilities Engineering, Command, Pacific Division, Pearl Harbor, HI 96860

N62745 (MAJ00025)—FZC-E
Officer in Charge of Construction, Naval Facilities Engineering Command Contracts, Mediterranean (Madrid, Spain), APO New York 09285

N62755—J7
Commanding Officer, Navy Public Works Center, Pearl Harbor, HI

96860-5470
N62757 (MAJ00072)—9TV-Y
Naval Reserve Center, 7410 West Roosevelt Road, Forest Park, IL 60130-2592
N62762 (MAJ00024)—EHU-W
Navy Shipbuilding Liaison Office, Spain, Box 36, (Madrid, Spain), APO New York 09285
N62766—L1
Officer in Charge of Construction, Naval Facilities Engineering Command Contracts (Guam), FPO San Francisco, CA 96630
N62770 (MAJ00070)—LPJ-L
Naval Ship Repair Facility, (Subic Bay, Philippines), Box 34, FPO San Francisco 96651-1400
N62786—ER
Supervisor of Shipbuilding, Conversion and Repair, USN, 574 Washington Street, Bath, ME 04530-0998
N62789—L8
Supervisor of Shipbuilding, Conversion and Repair, USN, Groton, CT 06340
N62791—NU
Supervisor of Shipbuilding, Conversion and Repair, USN, Naval Station, Box 119, San Diego, CA 92136-5119
N62793—4T
Supervisor of Shipbuilding, Conversion and Repair, USN, Newport News, VA 23607-2785
N62794—7D
Supervisor of Shipbuilding, Conversion and Repair, USN, Flushing & Washington Avenues, Brooklyn, NY 11251-9000
N62795—7F
Supervisor of Shipbuilding, Conversion and Repair, USN, Pascagoula, MS 39568-2210
N62798—4X
Supervisor of Shipbuilding, Conversion and Repair, USN, San Francisco, CA 94124-2996
N62799—7M
Supervisor of Shipbuilding, Conversion and Repair, USN, Seattle, WA 98115-5001
N62802 (MAJ00012)—V8P
Naval Audit Service Northeast Region, 5 Executive Campus, Suite 200, Cherry Hill, NJ 08002-4104
N62808 (MAJ00025)—FZ0
Public Works Center, Subic Bay, (Luzon, Republic of the Philippines), FPD San Francisco 96651-2900
N62816 (MAJ00023)—L5A-C
Defense Printing Service Det. Br. Office(Naples, Italy), Box 108, FPO New York 09524-1400
N62832
Naval Activities (Rota, Spain), FPO New York 09540
N62836—L4
Officer in Charge of Construction, Naval Facilities Engineering Command Contracts, Far East, Yokosuka, Box 61, FPO Seattle, WA 98762
N62841 (MAJ00030)—EKA
Commanding Officer, Naval Ordnance Test Unit, Cape Canaveral, FL 32920-1623
N62844—K0
Naval Imaging Command, Washington Navy Yard, Washington, DC 20350-2000
N62849 (MAJ00019)—EFC
Naval Aviation Engineering Service Unit, Philadelphia, PA 19112-5088
N62852
Naval Electronic System Security Engineering Center, Naval Security Station, 3801 Nebraska Avenue, NW, Washington, DC 20390
N62856 (MAJ00060)—LHW-X
Naval Air Facility (Lajes Azores, Portugal), APO New York 09406-5000
N62863—K4
Naval Station (Rota, Spain), FPO New York 09540
N62864—L2
Officer in Charge of Construction, Naval Facilities Engineering Command Contracts, Southwest Pacific (Manila, Philippines), APO San Francisco, CA 96528
N62892 (MAJ00069)—8QA
Commanding Officer, Naval Security Group Activity, Site "B", Card Sound Road, Homestead, FL 33039-6428
R62894 (MAJ00070)—4LA
Commander, U.S. Naval Forces Korea (Yongsan, South Korea), APO San Francisco, CA 96301-0023
N62907—KG
Naval Plant Representative Office, Applied Physics Laboratory, Johns Hopkins Road, Laurel, MD 20810
N62908—8D
Naval Weapons Engineering Support Activity, Washington Navy Yard, Washington, DC 20374
N62911 (MAJ62980)—MQC
Navy Recruiting Area One, Scotia, NY 12302-9462
N62913 (MAJ62980)—MLL
Commander, Naval Recruiting Area Three, 451 College Street, P.O. Box 4887, Macon, GA 31208-4887
N62915 (MAJ62980)—MQJ
Navy Recruiting Area Five, Building 3, NTC, Great Lakes, IL 60088-5135
N62917 (MAJ62980)—MLO-1
Commander, Navy Recruiting Area Seven, 1499 Regal Row, Suite 501, Dallas, TX 75247
N62918 (MAJ62980)—MLA
Navy Recruiting Area Eight, 7677 Oakport Street, Suite 650, Oakland, CA 94621-1929
N62922—7W
Resident Officer in Charge of Construction, Pacific, Department of the Navy, P.O. Box 418, San Bruno, CA 94067
N62954 (MAJ62980)—MQN
Navy Recruiting District Cleveland, 17535 Rosbough Boulevard, Middleburgh Heights, OH 44130
N62974—JB
Marine Corps Air Station, Yuma, AZ 85364
N62980—ML*, MQ*, NV*, MQR-Z
Bureau of Naval Personnel, Washington, DC 20370-5000
N62990—L3
Supervisor of Shipbuilding, Conversion and Repair, USN, P.O. Box 26, Sturgeon Bay, WI 54235
N62995—4H
Naval Air Station, Sigonella (Italy), FPO New York 09523
N63005 (MAJ00011)—LBL-N
Commanding Officer, Administrative Support Unit, Bahrain, FPO New York 09526
N63007 (MAJ00060)—LHS
Nuclear Weapons Training Group, Atlantic, Norfolk, VA 23511
N63015—7Y
Naval Education and Training Support Center, Pacific Fleet Station, PO Bldg, San Diego, CA 92132
N63026 (MAJ00027)—MUJ
Marine Corps Air Station (Futenma, Japan), FPO Seattle 98772-5001
N63028—U2
Polaris Missile Facility Atlantic, Charleston, SC 29408
N63032—KS
U.S. Naval Station, Keflavik (Iceland), FPO New York 09571
N63038—8M
U.S. Naval Computer and Telecommunications Station, Cutler, East Machias, ME 04630
N63042—NZ
Naval Air Station, Lemoore, CA 93245
N63043—3S
Commanding Officer, Naval Air Station, Meridian, MS 39301
N63051
Commanding Officer, Naval Investigative Service, Southeast Region, Naval Base, Bldg NH 53, Charleston, SC 29408
N63053
Commanding Officer, Naval Investigative Service Regional Office, P.O. Box 6438, New Orleans, LA 70174
N63055 (MAJ00011)—LBJ
Naval Investigative Service, Mid-Atlanta Region Norfolk, 293 Independence Blvd, Suite 525, Pembroke 5, Virginia Beach, VA 23462
N63058 (MAJ00011)—LBC

Naval Investigative Service, Northwest Region, P.O. Box 4247, Walnut Creek, CA 94596
N63073 (MAJ00069)—8Q6–8
U.S. Naval Security Group Activity RAF (Edzell UK), FPO New York 09518
N63080—KT
Navy Resale Activity, Chinhae (South Korea), FPO Seattle, WA 98769
N63082
Commanding Officer, Naval Technical Training Center, Corry Station (Code 4460), Pensacola, FL 32511
N63110
Commanding Officer, Chief of Naval Air Training (Code N–73), Naval Air Station, Corpus Christi, TX 78419
N63111
Commanding Officer, Chief of Naval Technical Training, Naval Air Station, Memphis, Millington, TN 38054
N63124 (MAJ00024)—U00–9
Supervisor of Shipbuilding, Conversion and Repair, USN, New Orleans, LA 70146
N63134—7R
Fleet Numerical Oceanography Center, Monterey, CA 93940
N63135 (MAJ00023)—4JD–E
Defense Printing Service Management Office, Washington, DC 20374–1762
N63136
Navy Section, U.S. Military Group, Argentina (Buenos Aires), Department of State, Washington, DC 20521
N63143—8K
Naval Computer and Telecommunications Station (Keflavik, Iceland), Box 22, FPO New York 09571
N63152—GZ
Fleet Combat Direction Systems, Support Activity, San Diego, CA 92147–5081
N63165—7U
Navy Regional Data Automation Center, Washington, Washington Navy Yard, Washington, DC 20374
N63182—8T
Naval Computer and Telecommunications Station (Rota, Spain), FPO New York 09539
N63204—KV
Naval Plant Representative Office, Goodyear Aerospace Corp., Akron, OH 44305
N63209 (MAJ00062)—L9A
Commanding Officer, Naval Reserve Officers Training Corps Unit, University of New Mexico, Albuquerque, NM 87106
N63210 (MAJ00062)—L9B
Commanding Officer, Naval Reserve Officers Training Corps Unit, Iowa State University of Science and Technology, Ames, IA 50011–3010
N63211 (MAJ00062)—L9C
Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Michigan, Ann Arbor, MI 48109–1085
N63212 (MAJ00062)—L9G
Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Texas at Austin, Austin, TX 78712
N63213 (MAJ00062)—L9J
Commanding Officer, Naval Reserve Officers Training Corps Unit, University of California, Berkeley, CA 94720–0001
N63214 (MAJ00062)—L9M
Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Colorado, Box 374, Boulder, CO 80309–0374
N63215 (MAJ00062)—L9U
Commanding Officer, Naval Reserve Officers Training Corps Unit, Illinois Institute of Technology, 3300 S. Federal Street, Chicago, IL 60616–3793
N63216 (MAJ00062)—L9W
Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Missouri, Columbia, MO 65201
N63217 (MAJ00062)—L9Z
Commanding Officer, Naval Reserve Officers Training Corps Unit, Oregon State University, Corvallis, OR 97331
N63218 (MAJ00062)—R0B
Commanding Officer, Naval Reserve Officers Training Corps Unit, Northwestern University, Evanston, IL 60201
N63219 (MAJ00062)—R0E, L99
Commanding Officer, Naval Reserve Officers Training Corps Unit, Rice University, P.O. Box 1892, Houston, TX 77001
N63220 (MAJ00062)—R0L
Commanding Officer, Naval Reserve Officers Training Corps Unit, UCLA, Mens Gym Room 123, 405 Milgard Avenue, Los Angeles, CA 90024–1399
N63221 (MAJ00062)—8AB
Commanding Officer, Naval Reserve Officers Training Corps Unit, PED 101, University Park MC 0654, University of Southern California, Los Angeles, CA 90089–0654
N63222 (MAJ00062)—R0H
Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Kansas, Lawrence, KS 66044
N63223 (MAJ00062)—R0K
Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Nebraska, Lincoln, NE 68508
N63224 (MAJ00062)—8AD
Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Wisconsin, 1610 University Avenue, Madison, WI 53705
N63225 (MAJ00062)—8AH
Commanding Officer, Naval Reserve Officers Training Corps Unit, Marquette University, Milwaukee, WI 53233
N63226 (MAJ00062)—8AJ
Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Minnesota, Minneapolis, MN 55455–0108
N63227 (MAJ00062)—8AK
Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Idaho, Moscow, ID 83843–3244
N63228 (MAJ00062)—8AM
Commanding Officer, Naval Reserve Officers Training Corps Unit, Tulane University, New Orleans, LA 70118
N63229 (MAJ00062)—8AN
Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Oklahoma, Norman, Oklahoma 73019
N63230 (MAJ00062)—8AR
Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Notre Dame, Notre Dame, IN 46556–5601
N63231 (MAJ00062)—8AW
Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Utah, Salt Lake City, UT 84112–1107
N63232 (MAJ00062)—8AY
Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Washington, Seattle, WA 98195
N63234 (MAJ00062)—L9Q
Commanding Officer, Naval Reserve Officers Training Corps Unit, 505 East Armory Street, University of Illinois, Champaign, IL 61820–6288
N63235 (MAJ00062)—R05
Commanding Officer, Naval Reserve Officers Training Corps Unit, Purdue University, West Lafayette, IN 47907–0001
N63273—4S
Fleet Combat Direction Systems Support Activity, Dam Neck, Port Hueneme Division, Naval Surface Warfare Center, Virginia Beach, VA 23461
N63274—4F, 4W
Naval Electronic Systems Engineering Center, Vallejo, CA 94592
N63285 (MAJ00011)—LB0
Naval Security and Investigative Command, Washington, DC 20388
N63290 (MAJ00062)—R00–1

Commanding Officer, Combat Systems Technical Schools Command, Mare Island, Vallejo, CA 94592

N63291 (MAJ00062)—R0F
Commanding Officer, Naval Reserve Officers Training Corps Unit, Barton Hall, Cornell University, Ithaca, NY 14853

N63294 (MAJ00062)—8AV
Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Rochester, Rochester, NY 14627

N63295 (MAJ00062)—R0M
Commanding Officer, Naval Reserve Officers Training Corps Unit, Rensselaer Polytechnic Institute, Troy, NY 12180-3590

N63296 (MAJ00062)—L9F
Commanding Officer, Naval Reserve Officers Training Corps Unit, Auburn University, Auburn, AL 36830

N63299 (MAJ00062)—R0A
Commanding Officer, Naval Reserve Officers Training Corps Unit, Duke University, Durham, NC 27706

N63301 (MAJ00062)—L9D
Commanding Officer, Naval Reserve Officers Training Corps Unit, Georgia Tech, Atlanta, GA 30313

N63303 (MAJ00062)—R0U
Commanding Officer, Naval Reserve Officers Training Corps Unit, College of the Holy Cross, Worcester, MA 01610-2389

N63306 (MAJ00062)—8AS
Commanding Officer, Naval Reserve Officers Training Corps Unit, Miami University, Oxford, OH 45056-1698

N63307 (MAJ00062)—R0N
Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Mississippi, Box 69, University, MS 38677

N63308 (MAJ00062)—L9R
Commanding Officer, Naval Reserve Officers Training Corps Unit, University of North Carolina, Chapel Hill, NC 27515

N63309 (MAJ00062)—L9Y
Commanding Officer, Naval Reserve Officers Training Corps Unit, The Ohio State University, Columbus, OH 43210-1169

N63310 (MAJ00062)—R0P
Commanding Officer, Naval Reserve Officers Training Corps Unit, Wagner Bldg., The Pennsylvania State University, University Park, PA 16802

N63311 (MAJ00062)—8AT
Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Pennsylvania, Philadelphia, PA 19104

N63313 (MAJ00062)—L9X
Commanding Officer, Naval Reserve Officers Training Corps Unit, University of South Carolina, Columbia, SC 29208

N63315 (MAJ00062)—8AL
Commanding Officer, Naval Reserve Officers Training Corps Unit, Vanderbilt University (Westside Hall), Nashville, TN 37240

N63316 (MAJ00062)—R0R
Commanding Officer, Naval Reserve Officers Training Corps Unit, Villanova University, Villanova, PA 19085-1699

N63317 (MAJ00062)—L9T
Commanding Officer, Naval Reserve Officers Training Corps Unit, Maury Hall, University of Virginia, Charlottesville, VA 22903-3194

N63325—7X
Naval Education & Training Support Center, Atlantic, Bldg. Z-86, Naval Station, Norfolk, VA 23511

N63339—LL
Navy Exchange, Naval Air Station, Adak (Alaska), FPO Seattle, WA 98791

N63340—LM
Navy Exchange, Newfoundland (Argentia, Canada), FPO New York 09597

N63341—LN
Navy Exchange Det., Naval Air Station, Chase Field, Beeville, TX 78102

N63344—LR
Navy Commissary Store Region, Charleston, SC 29408

N63345—LS
Navy Exchange, Naval Station, Guantanamo Bay (Cuba), FPO New York 09598

N63346—LT
Navy Resale Activity, Commissary Support Office, Naval Station, Keflavik (Iceland), FPO New York 09571

N63348—LV
Navy Exchange Det., Naval Air Station, Kingsville, TX 78364

N63349—LW
Navy Exchange, Naval Air Station, Lemoore, CA 93246

N63350—3L
Navy Exchange (Dunstable, UK), FPO New York 09510

N63351—LY
Navy Commissary Store Region, Naval Station, Long Beach, CA 90802

N63352—KE
Navy Exchange Det., Naval Air Station, Meridian, MS 39301

N63353—MA
Officer in Charge, Navy Resale Activity, Commissary Support Office, Naval Support Activity, Naples (Italy), FPO New York 09521

N63357—ME
Navy Exchange, Naval Station, Rota (Spain), FPO New York 09540

N63362—MK
Officer in Charge, Navy Resale Activity, Commissary Support Office, Naval Station (Subic Bay, Philippines), P.O. Box 28, FPO San Francisco 96651

N63365—MN
Navy Resale Activity, Commissary Support Office (Yokosuka, Japan), Box 33, FPO Seattle 98762

N63367—MP
Officer in Charge, Commissary OPS Div., Navy Resale and Services Support Office, Field Support Office, Norfolk, VA 23511

N63369
Military Sealift Command Office, Benelux (Rotterdam, Netherlands), APO New York 09159

N63381 (MAJ00011)—LBA
Joint U.S. Military Advisory Group, Thailand (Bangkok, Thailand), APO San Francisco 96346

N63387—JD
Navy Public Works Center, Naval Base, San Diego, CA 92136

N63394—L6
Naval Surface Warfare Center, Port Hueneme Division, Port Hueneme, CA 93043

N63395—8L
U.S. Naval Communication Station Thurso (Caithness, UK), FPO New York 09516

N63402—K7
Commanding Officer, Strategic Weapons Facility, Pacific, Bremerton, WA 98383

N63406 (MAJ00070)—V5C
Naval Submarine Base San Diego, 140 Sylvester Road, San Diego, CA 92106-3521

N63408—HV
Navy Material Transportation Office, Norfolk, VA 23511-6691

N63410—KA
Navy Manpower and Material Analysis Center, Atlantic, Norfolk, VA 23511

N63427—8F
U.S. Naval Communication Station, Harold E. Holt, Exmouth, Western Australia, FPO San Francisco 96680

N63429—MH
Naval Computer and Telecommunications, Station London (UK), FPO New York 10000

N63439—K9
Naval Ophthalmic Support and Training Activity, Yorktown, VA 23690

N63543 (MAJ00072)—9TC
Naval Reserve Center, 3070 Ross Lane, Central Point, OR 97502-1399

N63821 (MAJ00039)—NSA-B
Officer in Charge, Naval Underwater Systems Center, AUTEC Andros

Range Detachment (Andros Island, Bahama Islands), FPO New York 09559
N63886 (MAJ00069)—8Q0-1
Naval Security Group Activity, (Adak, AK), FPO Seattle 98777
N63891 (MAJ00069)—8QG
Naval Security Group, Northwest, Chesapeake, VA 23322
N64165 (MAJ00062)—R0Z
Naval Unit, Lowry Air Force Base, CO 80230
N64181 (MAJ00062)—R0W
Department of Naval Science, Texas Maritime Academy, Galveston, TX 77553-1675
N64267—M9
Naval Warfare Assessment Center, Corona Annex, Corona, CA 91720
N64281—3U, KX
Commanding Officer, Naval Sea Combat Systems Engineering Station, Naval Station, Norfolk, VA 23511
N64356—KF
Commanding Officer, Naval Administrative Command, Armed Forces Staff College, Norfolk, VA 23511-6097
N64980 (MAJ00061)—NLA-C
Officer in Charge, Naval Weapons Facility, Detachment Machrihanish (UK), FPO New York 09515
N64981 (MAJ00061)—NL5-7
Commanding Officer, Naval Weapons Facility (St. Mawgan, UK), FPO New York 09511-9511
N65113—EZ
Navy Public Works Center, Bldg 1A, Great Lakes, IL 60088-5600
N65114 (MAJ00025)—EJC
Commanding Officer, Navy Public Works Center, Naval Air Station, Pensacola, FL 32508-6500
N65115 (MAJ00025)—FZA
Navy Public Works Center, Box 13 (Yokosuka, Japan), FPO Seattle 98762-3100
N65116—MZ
Officer in Charge, Navy-Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Washington Navy Yard, Washington, DC 20374-2001
N65146—7E
Procurement Branch, OP-09B31, Office of the Chief of Naval Operations Support Activity, Washington, DC 20350
N65198—3H
Naval Administrative Unit, 550 First Street, Idaho Falls, ID 83401
N65236—V7
Naval Electronic Systems Engineering Center, 4600 Goer Road, North Charleston, SC 29406
N65256 (MAJ00012)—V8C
Navy Office of Information, East, 133 East 58th Street, 1st Floor, New York, NY 10022
N65428 (MAJ00018)—MDP
Commanding Officer, Naval Hospital (Roosevelt Roads, PR), FPO Miami 34051-6100
N65440—4V
Officer in Charge, Navy Exchange, NAVCOMMSTA Harold E. Holt (Exmouth, Australia), FPO San Francisco 96680
N65491 (MAJ00018)—J5P
Naval Hospital (Subic Bay, Philippines), FPO San Francisco 96652-1600
N65492 (MAJ00018)—MCA
Commanding Officer, Naval Hospital, Fiscal & Supply Service, Code 32C, Orlando, FL 32813-5200
N65497—4U
Commissary OPS Division, NAVRESSO, Field Support Office, 2801 "C" Street, SW, Auburn, WA 98001
N65538 (MAJ00024)—U0D
Naval Sea Logistics Center, 5450 Carlisle Pike, P.O. Box 2060, Mechanicsburg, PA 17055-0795
N65540 (MAJ00024)—EHP-S
Carderock Division, Naval Surface Warfare Center Naval Base, Philadelphia, PA 19112-5083
N65575 (MAJ00018)—MCY
Naval Medical Clinic, Seattle, WA 98115
N65576
Navy Space Systems Activity, P.O. Box 92960, Worldway Postal Center, Los Angeles, CA 90009
N65580—M2
Naval Electronic Systems Engineering Center, P.O. Box 55, Portsmouth, VA 23705
N65584—EW, 3E, KU, 3B
Naval Electronic Systems Engineering Center, P.O. Box 80337—Building #4, Code 104, San Diego, CA 92138
N65849 (MAJ00012)—HXY-Z
Office of Civilian Personnel Management, Southwest Region, San Diego, CA 92188
N65870—M4
Supervisor of Shipbuilding, Conversion and Repair, USN Long Beach Naval Shipyard, Long Beach, CA 90822
N65886
Commanding Officer, Aviation Depot, Naval Air Station, Jacksonville, FL 32212
N65888—ED
Aviation Depot, North Island, San Diego, CA 92135
N65889
Commanding Officer, Aviation Depot, Naval Air Station, Code 56000, Pensacola, FL 32508
N65912—GP
Commanding Officer, Naval Sea Support Center, Atlantic, St. Juliens Creek Annex, Portsmouth, VA 23702
N65913—7L
Naval Sea Support Center, Pacific, San Diego, CA 92138
N65918—FT
Shore Intermediate Maintenance Activity, Naval Station, San Diego, CA 92136-5000
N65926 (MAJ00039)—NSA-B
Officer in Charge, Naval Underwater Systems Center Detachment, AUTEC West Palm Beach, West Palm Beach, FL 33402
N65928—N3
Naval Training Systems Center, Orlando, FL 32813
N65980 (MAJ00039)—NSL-N
Naval Electronic Systems Engineering Activity, St. Inigoes, MD 20684
N65995—KM
Officer in Charge, Naval Support Activity, (Holy Loch, UK), FPO New York 09514
N66001—7N
Naval Command Control and Ocean Surveillance Center, RDT&E Division, San Diego, CA 92152
N66021—7G
Naval Air Pacific Repair Activity, (Atsugi, Japan), FPO Seattle, WA 98767
N66022 (MAJ00018)—MDW,
Naval Dental Center, San Diego, CA
N66032—LK
Information Technology Acquisition Center, Building 218, Washington Navy Yard, Washington, DC 20374
N66074 (MAJ00062)—8AU
Commanding Officer, Naval Reserve Officers Training Corps Unit, Prairie View A&M University, Prairie View, TX 77445
N66094 (MAJ00018)—QAA-B
Naval Hospital, Cherry Point, NC 28533-5008
N66095 (MAJ00018)—J5E
Naval Hospital, NAS, Lemoore, CA 93246
N66096 (MAJ00018)—QAJ
Naval Hospital Naples, Box 19 (Naples, Italy), FPO New York 09521-0700
N66097 (MAJ00018)—MDE
Naval Hospital, Oak Harbor, WA 98278-8500
N66125 (MAJ00070)—V5J
Naval Facility (Guam), FPO San Francisco 96630-2903
N66231 (MAJ00072)—9TS
Naval Reserve Readiness Center, Bldg 2711, Naval Training Center, Great Lakes, IL 60088-5707
N66398 (MAJ62980)—ML6-7
Navy Motion Picture Service, Flushing & Washington Avenues, Brooklyn, NY 11251-8400
N66458 (MAJ00065)—S0C
Naval Oceanography Command

Facility, NAS, Brunswick, ME 04011-5000
N66540 (MAJ62980)—NVZ
Morale, Welfare and Recreation Division, Bureau of Naval Personnel, Washington, DC 20370-5000
N66604—N4
Naval Undersea Warfare Center, Newport, RI 02840
N66612 (MAJ00062)—L95
Commanding Officer, Naval Reserve Officers Training Corps Unit, The Citadel, Charleston, SC 29409-0770
N66630 (MAJ00072)—LCS
Naval Air Reserve, Naval Air Station, Point Mugu, CA 93042-5018
N66691—4P
Commanding Officer, Naval Support Activity, (Souda Bay, Crete, Greece), FPO New York 09528
N66715—VJ
Commander, Navy Recruiting Command, Washington, DC 22203-1191
N66753 (MAJ00062)—R0G
Commanding Officer, Naval Reserve Officers Training Corps Unit, Jacksonville University, Jacksonville, FL 32211
N66754 (MAJ00069)—8QX
Commanding Officer, Naval Security Group Activity, (Sabana Seca, PR), FPO Miami 34053
N66809 (MAJ00062)—R0V
Commanding Officer, Naval Reserve Officers Training Corps Unit, Savannah State College, Savannah, GA 31404
N66810 (MAJ00062)—L9H
Commanding Officer, Naval Reserve Officers Training Corps Unit, Southern University and A&M College, Baton Rouge, LA 70813
N66833 (MAJ00060)—LHL
Commanding Officer, U.S. Naval Station Panama (Rodman, Canal Zone), FPO Miami 34061-1000
N66863 (MAJ00018)—MCU-X
Commanding Officer, Naval Biodynamics Laboratory, 13800 Old Gentilly Road, Michout Assembly Facility, New Orleans, LA 70189
N66890—LJ
Naval Station, Mare Island, Supply and Fiscal Code 90, Bldg 851, Vallejo, CA 94592
N66898 (MAJ00018)—QAF
Commanding Officer, Naval Medical Clinic, New Orleans, LA 70142
N66957
Defense Printing Service Det. Office, Bldg. 2049, NTC, Orlando, FL 32813
N66959 (MAJ00023)—4JR
Defense Printing Service Det. Office, P.O. Box 3, NAS, Jacksonville, FL 32212
N66965 (MAJ00023)—4JQ
Defense Printing Service Det. Office, Point Mugu, CA 93042-5027
N66972
Commanding Officer, Navy Recruiting District, 5901 S.W. 74th Street, Miami, FL 33143
N67596
Commanding Officer, Navy Recruiting District, 102 W Rector Street, San Antonio, TX 78216
N68011
Commanding Officer, Navy Recruiting District, 8 North Third Street, Sterick Bldg., Memphis, TN 38103
N68047 (MAJ00070)—4L0
Naval Regional Contracting Center (Singapore), FPO San Francisco, CA 96699-2100
N68056—JE
Naval Medical Command Southwest Region, San Diego, CA 92134
N68057—VZ
Commanding Officer, Naval Regional Data Automation Center, Code 212, Norfolk, VA 23511
N68064 (MAJ00062)—R0D
Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Florida, Van Fleet Hall, Room 26, Gainesville, FL 32601
N68072 (MAJ00062)—L9V
Commanding Officer, Naval Reserve Officers Training Corps Unit, Texas A&M University, College Station, TX 77843
N68073 (MAJ00063)—NTU
Naval Computer and Telecommunications Station Diego Garcia (British Indian Ocean Territory), FPO AP 96464-0008
N68084 (MAJ00018)—MDJ-M
Commanding Officer (Code 206), Naval Hospital, Charleston, SC 29408-6900
N68086—7S
Naval Hospital, Newport, RI 02841
N68088 (MAJ00061)—NLL-N
National Support Unit Headquarters, Commander-in-Chief Iberian Atlantic Area (Lisbon, Portugal), APO New York 09678-001
N68090 (MAJ00018)—MD0-9
Naval Hospital, Long Beach, CA 90822-5199
N68092
Naval Medical Command Northeast Region, Great Lakes, IL 60088
N68093 (MAJ00018)—MCG-H
Naval Hospital, Camp LeJeune, NC 28542-5008
N68094—V9
Naval Hospital, Camp Pendleton, CA 92055-5008
N68095—JF
Naval Hospital, Boone Road, Bremerton, WA 98312-1898
N68096 (MAJ00018)—J50
Commanding Officer, Naval Hospital (Guam), FPO San Francisco 96630-1600
N68097
Naval Medical Command Northwest Region, Oakland, CA 94627
N68098 (MAJ00018)—QAL-M
Naval Medical Clinic, Box 121 Code 01.3, Pearl Harbor, HI 96860-5080
N68101 (MAJ00018)—MDT-V
Naval Medical Clinic, 17th Street and Pattison Avenue, Philadelphia, PA 19145-5199
N68139 (MAJ00062)—8AZ
Commanding Officer, Naval Reserve Officers Training Corps Unit, Florida A&M University, Tallahassee, FL 32307
N68141 (MAJ00062)—L9P
Commanding Officer, Naval Reserve Officers Training Corps Unit, Maine Maritime Academy, Castine, ME 04421-0902
N68142—NK
Naval Computer & Telecommunications Station, Naval Air Station, Pensacola, FL 32508-5100
N68165 (MAJ00060)—J06-6
Naval Facility, (Brawdy, Wales, UK), FPO New York 09519
N68166 (MAJ00015)—L01-2
Naval Technical Intelligence Center, 4301 Suitland Road, Washington, DC 20390
N68171—M3
Commanding Officer, Naval Regional Contracting Center, (Naples, Italy), FPO New York 09521
N68175 (MAJ62980)—MQA
Navy Recruiting District New Jersey, Parkway Towers, Bldg A, 485 US Route 1, So., Iselin, NJ 08830-3012
N68199
Commanding Officer, Navy Office of Information, Southeast, 1459 Peachtree Street, NE—Suite 300, Atlanta, GA 30309
N68200—VM
Director, Navy Office of Information, Southwest, 1114 Commerce Street, Suite 811, Dallas, TX 75242
N68221—7J
Commanding Officer, Navy Personnel Research and Development Center, San Diego, CA 92152
N68246 (MAJ00070)—4LL
Officer in Charge, U.S. Naval Supply Depot, Yokosuka Det., (Sasebo, Japan), FPO Seattle 98766-2900
N68248—V6
Officer in Charge of Construction, Naval Facilities Engineering Command Contracts, Naval Submarine Base, Kings Bay, GA 31547
R68251 (MAJ00070)—LPC
Shore Intermediate Maintenance Activity, Box 141, Pearl Harbor, HI 96860
N68292 (MAJ00018)—J5A

Naval Hospital (Yokosuka, Japan), FPO Seattle 98765-1615
N68297—ET
Naval Magazine, Lualualei, Oahu HI 96792-4301
N68303 (MAJ00062)—R0C
Commanding Officer, Naval Reserve Officers Training Corps Unit, State University of New York, Maritime College, Fort Schuyler, Bronx, NY 10465-4198
N68306 (MAJ00072)—9TF
Commander, Naval Reserve Readiness Command, Region Six, WNY Bldg. 200, Washington, DC 20374-2003
N68307 (MAJ00072)—LCJ
Commander, Code 431, Naval Reserve Readiness Command, Region Ten, New Orleans, LA 70142
N68308 (MAJ00072)—9TQ
Naval Reserve Readiness Command, Region 20, Bldg. 1, NAVSTA Treasure Island, San Francisco, CA 94130-5032
N68311—JL
Naval Station, Long Beach, CA 90822
N68322—7Z
Naval Education & Training Program, Management Support Activity, Code SU1, Saufley Field, Pensacola, FL 32509
N68323 (MAJ00011)—LBC
Naval Legal Service Office, 200 Stovall Street, Alexandria, VA 22332-2400
N68327 (MAJ62980)—MLS
Commanding Officer, Naval Reserve Personnel Center, New Orleans, LA 70149-7800
N68328 (MAJ00072)—9TJ
Naval Reserve Readiness Command, Regional 22, Bldg. 9, Naval Station, Seattle, WA 98115-5009
N68329 (MAJ00072)—LCL
Naval Reserve Readiness Command, Region Five, Bldg. 1033, USAAP, Ravenna, OH 44266-9211
N68330 (MAJ00072)—9TN
Naval Reserve Readiness Command, Region 13, Bldg. 1, Code 712, NTC, Great Lakes, IL 60088-5026
N68331 (MAJ00072)—LCE-F
Naval Reserve Readiness Command, Region Four, Bldg. 662, Naval Base, Philadelphia, PA 19112
N68332 (MAJ00072)—9T0-1
Commander, Naval Reserve Readiness Command, Region 18, 301 Navy Drive, Industrial Airport, KS 66031-0031
N68335—4Y
Commanding Officer, Naval Air Warfare Center, Aircraft Division Lakehurst, Supply Dept., Purchase Division, Lakehurst, NJ 08733
N68348 (MAJ00072)—9TG
Commander, Naval Reserve Readiness Command, Region Nine, NAS Memphis (76), Bldg. E-35, Millington, TN 38054
N68349
Commander, Naval Reserve Readiness Command, Region 16, Bldg. 715, Minneapolis-St. Paul IAP, Minneapolis, MN 55450-2996
N68351 (MAJ00072)—LCQ
Naval Reserve Readiness Command, Region One, Newport, RI 02840-5016
N68355 (MAJ00062)—R0J
Commanding Officer, Naval Reserve Officers Training Corps Unit, Virginia Military Institute, Lexington, VA 24450-2697
N68356 (MAJ00072)—9TD
Commander, Naval Reserve Readiness Command, Region Seven, Naval Base, Charleston, SC 29408
N68357 (MAJ00072)—9TL
Commander, Naval Reserve Readiness Command, Region Two, Scotia, NY 12302-9465
N68358 (MAJ00072)—9TA
Commander, Naval Reserve Readiness Command, Region Eight, Naval Air Station, Jacksonville, FL 32212
N68359 (MAJ00072)—9TB
Commander, Naval Reserve Readiness Command, Region Eleven, Bldg. 11, Naval Air Station, Dallas, TX 75211
N68378—KQ
Navy Public Works Center, San Francisco Bay, Oakland, CA 94623
N68391 (MAJ62980)—MLB
Navy Recruiting District, Harrisburg, 310 North Second Street, Harrisburg, PA 17101-1304
N68401 (MAJ62980)—MLJ
Navy Recruiting District, San Diego, Naval Training Center, Bldg. 335, San Diego, CA 92133-6800
N68402 (MAJ00012)—V8E
Navy Office of Information, New England Branch, 408 Atlantic Avenue, Boston, MA 02210-2203
N68409 (MAJ00018)—QAU
Naval Dental Center, San Francisco, CA 94130-5030
N68436, KC—J6
Naval Submarine Base, Bangor, Code 863, Bremerton, WA 98315
N68441
Commanding Officer, Naval Dental Clinic, Naval Air Station, Pensacola, FL 32508
N68443—7T
Commanding Officer, Naval Dental Clinic, Bremerton, WA 98314
N68451—MF
Navy Regional Data Automation Center, San Francisco, Naval Air Station, Alameda, CA 94501
N68470 (MAJ00018)—J5J-M
Naval Hospital (Okinawa, Japan), FPO Seattle 98778-1610
N68497
Commanding Officer, Code 40, Naval Administrative Command, Naval Training Station, Orlando, FL 32813
N68499—LX
Director, Naval Council of Personnel Boards, Ballston Center Tower #2, 801 North Randolph Street, Arlington, VA 22203-1989
N68518
Commanding Officer, Naval Reserve Financial Information Processing Center, Code S43, 4400 Dauphine Street, New Orleans, LA 70146
N68520—7P
Aviation Depot Operations Center, Naval Air Station, Patuxent River, MD 20670
N68527 (MAJ00072)—9TT
Naval & MC Reserve Readiness Center, Armed Forces Reserve Center, Floyd Bennett Field, Brooklyn, NY 11234-7097
N68546—QG
Navy Environmental Health Center, Naval Station, Norfolk, VA 23511
N68547 (MAJ00060)—LHQ
Personnel Support Activity, Naval Station, Norfolk, VA 23511-5115
N68560—QM
Naval Computer & Telecommunications Station, Jacksonville, FL 32212-0111
N68561 (MAJ00039)—NSE
Navy Management Systems Support Office, 1441 Crossways Blvd., Chesapeake, VA 23320-2843
N68593 (MAJ00060)—LHE
Naval Ocean Processing Facility, Dam Neck, VA 23461-5450
N68608 (MAJ00011)—LBP-Y
Naval Computer Telecommunications Station, 4400 Dauphine Street, New Orleans, LA 70145-7700
N68610—GF
Officer in Charge, Fleet Hospital Support Office, 620 Central Ave., Bldg. #5, Alameda, CA 94501-3674
N68636 (MAJ00024)—EHJ-K
Naval Sea Systems Command, Automated Data Systems Activity, P.O. Box 100, Indian Head, MD 20640-0100
N68691—JW
Naval Plant Representative Office (Melbourne, Australia), APO San Francisco 96405
N68692 (MAJ00062)—8AX
Commanding Officer, Naval Reserve Officers Training Corps Unit, University of San Diego/San Diego State University, Alcala Park, San Diego, CA 92110-2496
N68695 (MAJ00060)—LHG
Shore Intermediate Maintenance Activity, Naval Reserve Maintenance Facility, Bldg. 133, Naval Base, Philadelphia, PA 19112-5096

N68699 (MAJ00062)—8AP
Commanding Officer, Naval Reserve Officers Training Corps Unit, Old Dominion University/Hampton Institute, Norfolk State University, 5215 Hampton Blvd., Norfolk, VA 23508-8556
N68707 (MAJ00072)—9TU
Naval Reserve Maintenance Training Facility, Puget Sound Naval Shipyard, Bremerton, WA 98314-5270
N68709 (MAJ00060)—J0C
Naval Air Station, Mayport, FL 32228
N68710 (MAJ00062)—L9K
Commanding Officer, Naval Reserve Officers Training Corps Unit, Virginia Polytechnic Institute and State University, Blacksburg, VA 24061-2306
N68717 (MAJ00062)—L9L
Commanding Officer, Naval Reserve Officers Training Corps Unit, Boston University, 116 Bay State Road, Boston, MA 02215
N68725 (MAJ00062)—R0Q
Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Arizona, Tucson, AZ 85721
N68726 (MAJ00062)—R0T
Commanding Officer, Naval Reserve Officers Training Corps Unit, The George Washington University, Washington, DC 20052
N68727 (MAJ00062)—8AF
Commanding Officer, Naval Reserve Officers Training Corps Unit, Memphis State University, Memphis, TN 38152-0001
N68728 (MAJ00062)—8AQ
Commanding Officer, Naval Reserve Officers Training Corps Unit, Norwich University, Northfield, VT 05663-1097
N68733 (MAJ00030)—EKC
Strategic Weapons Facility, Atlantic, Kings Bay, GA 31547-6600
N68742 (MAJ00070)—LPA
Naval Base, Seattle, WA 98115-5012
N68753 (MAJ00070)—V5L
Naval Air Pacific Repair Activity Det., Singapore, SAE Singapore, FPO San Francisco 96699-2700
N68829 (MAJ00060)—J0J
Shore Intermediate Maintenance Activity (NRMF), Pier 2, Bldg. 68 NETC, Newport, RI 02841-5001
N68831 (MAJ00070)—LPG
Shore Intermediate Maintenance Activity, San Francisco, Bldg. 162, NAS, Alameda, CA 94501-5065
N68836—J9
Commanding Officer, Naval Supply Center, Jacksonville, FL 32212
N68857 (MAJ00062)—8AC
Commanding Officer, Naval Reserve Officers Training Corps Unit, Texas Tech University, Lubbock, TX 79409-4559
N68860—KR
Naval Supply Center—Pensacola, Pensacola, FL 32508-6200
N68875 (MAJ00018)—QAP-S
Naval Hospital (Keflavik, Iceland), PSC 1003, Box 8, FPO AE 09728-0308
N68877 (MAJ00062)—R0Y
Commanding Officer, Naval Reserve Officers Training Corps Unit, Carnegie Mellon University, Pittsburgh, PA 15213
N68881 (MAJ00062)—L9E
Commanding Officer, Naval Reserve Officers Training Corps Unit, Morehouse College, Atlanta, GA 30314
N68891 (MAJ00060)—LH5
Naval Station, Ingleside, TX 78362-5000
N68899 (MAJ00072)—LCW
Naval Reserve Intelligence Command, Bldg. 11, Naval Air Station, Dallas, TX 75211-9541
N70092 (MAJ00069)—8QJ-K, Q-R
Naval Security Station, 3801 Nebraska Avenue, NW, Washington, DC 20390-8230
N70240—M6
Commanding Officer, Naval Computer and Telecommunications Station, Naval Air Station, 937 N. Harbor Drive, San Diego, CA 92132
N70272—8G,ND
Naval Computer and Telecommunications Area, Master Station Atlantic, Norfolk, VA 23511-6898
N70273—V3
Naval Radio Station, Jim Creek, Oso, WA 98223
N70278—V4
Naval Computer and Telecommunications Station, (Yokosuka, Japan), Box 3, FPO Seattle 98762
N70283 (MAJ00069)—8QE
Commanding Officer, Code 30, Naval Security Group Activity, (Galeta Island, Canal Zone), FPO Miami 34060-9998
N70294—8H
U.S. Naval Computer and Telecommunications Area, Master Station MED, (Naples, Italy), FPO New York 09524
N70310—N2
Naval Radio Station R, Sugar Grove, WV 26815

PART 4—MARINE CORPS ACTIVITY ADDRESS NUMBERS

M00027, MS*, MU*—MS0-9
Headquarters, U.S. Marine Corps, Washington, DC 20380
M00146—MT
Marine Corps Air Station, Cherry Point, NC 28533
M00243—NE
Marine Corps Recruit Depot, San Diego, CA 92140
M00263—MX
Marine Corps Recruit Depot, Parris Island, SC 29905
M00264 (MAJ00027)—MUT
Marine Corps Combat Development Command, Marine Corps Air Facility, Quantico, VA 22134-5001
M00318
Marine Corps Air Station (Kaneohe Bay, Oahu, HI), FPO San Francisco, CA 96628
M00681—NG
Marine Corps Base, Camp Pendleton, Oceanside, CA 92054
M60050—MV
Marine Corps Air Station, El Toro, Santa Ana, CA 92709
M62204—MW
Marine Corps Logistics Base, Barstow, CA 92311
M62974—NA
Marine Corps Air Station, Yuma, AZ 85364
M67001—NB
Marine Corps Base, Camp Lejeune, NC 28542
M67004—NC
Marine Corps Logistics Base, Albany, GA 31704
M67011 (MAJ00027)—MSA
Director, 1st Marine Corps District, Garden City, Long Island, NY 11530
M67013 (MAJ00027)—MSC
Director, 4th Marine Corps District, Philadelphia, PA 19112-5072
M67015 (MAJ00027)—MSE
Director, 6th Marine Corps District, Atlanta, GA 30303
M67016 (MAJ00027)—MSG
Director, 8th Marine Corps District, New Orleans, LA 70113
M67017 (MAJ00027)—MSJ
Director, 9th Marine Corps District, Shawnee Mission, KA 66204
M67019 (MAJ00027)—MSL
Director, 12th Marine Corps District, San Francisco, CA 94130
M67021 (MAJ00027)—MUC
Marine Aircraft Wing 4, New Orleans, 4400 Dauphine Street, New Orleans, LA 70146-0125
M67025
Headquarters, Fleet Marine Force, Pacific, (Pearl Harbor, HI), FPO San Francisco 96610
M67029 (MAJ00027)—MSN
Marine Barracks, Washington, DC 20003
M67030 (MAJ00027)—MUP
Marine Corps Security Force Battalion Pacific, NAVSTA Mare Island, Vallejo, CA 94592-5022
M67290 (MAJ00027)—MSY
Marine Aviation Training Support

Group-90, NATTC, NAS Memphis, Millington, TN 38054-5123
M67351
Marine Corps Security Force Company (London, UK), APO New York 09510
M67353 (MAJ00027)—MSQ
Headquarters Battalion, Marine Corps, Henderson Hall, Arlington, VA 22214
M67354
Post Supply Officer, Headquarters Marine Corps, Navy Annex, Arlington, VA 20380
M67355 (MAJ00027)—MUN
Landing Force Training Command Atlantic, Naval Surface Force, U.S. Atlantic Fleet, Naval Amphibious Base, Little Creek, Norfolk, VA 23521-2350
M67385 (MAJ00027)—MU0-1
Camp H.M. Smith, U.S. Marine Corps, Halawa Heights, Oahu, Hawaii 96861
M67391—KY
Marine Corps Camp Det. (Camp Elmore), Norfolk, VA 23511
M67399—NF
Marine Corps Air-Ground Combat Center, Twentynine Palms, CA 92278
M67400—QJ
Marine Corps Procurement Office, Okinawa, Marine Corps Base, Camp Smedley D. Butler (Ryuku Island, Southern), FPO Seattle, WA 96773
M67428—JA
Marine Corps Air Bases Western Area, MCAS El Toro, Santa Ana, CA 92709
M67443—LG
Defense Finance and Accounting Service, Kansas City Center, Kansas City, MO 64197
M67842—K6
East Coast Commissary Complex, Marine Corps Base, Camp Lejeune, NC 28542
M67853 (MAJ00027)—MUR
Marine Corps Security Force Battalion Atlantic, Naval Base, Norfolk, VA 23511-5697
M67854 (MAJ00027)—MU6-8
Marine Corps Research, Development and Acquisition Command, Washington, DC
M68479 (MAJ00027)—MSU
4th Marine Division (Rein), FMF, USMCR, 4400 Dauphine Street, New Orleans, LA 70146-5400
M68522 (MAJ00027)—MSW
Marine Corps Reserve Support Center, Purchasing Department, 16950 El Monte, Overland Park, KS 66211-1408

PART 5—AIR FORCE ACTIVITY ADDRESS NUMBERS

F01600—5A
3800 LS/LGC, Maxwell AFB, AL 36112-5320
F01620—6K
SSC/PK, Gunter AFS, AL 36114-6343
F02600—5B
82 SG/LGC, Williams AFB, AZ 85240-5004
F02601—5C
355 CONS/CC, Davis-Monthan AFB, AZ 85707-5320
F02604—5D
58 CONS/CC, Luke AFB, AZ 85309-5320
F03601—5E
97 LOGSS/LGLC, Eaker AFB, AR 72317-5320
F03602—5F
314 CONS/LGC, Little Rock AFB, AR 72076-5320
F04604—5G
93 CONS/LGC, Castle AFB, CA 95342-5320
F04605—5H
22 CONS/LGC, March AFB, CA 92518-5320
F04606—SM
SM-ALC/PK, Directorate of Contracting, Sacramento Air Logistics Center, McClellan AFB, CA 95652-5320
F04607—5J
63 MAW/LGC, Norton AFB, CA 92409-5320
F04609—5K
35 FW/LGC, George AFB, CA 92394-5320
F04611—QQ
AFFTC/PK, Edwards AFB, CA 93523-5320
F04612—5L
323 LG/LGC, Mather AFB, CA 95655-5320
F04626—5M
60 MAW/LGC, Travis AFB, CA 94535-5320
F04666—5N
9 CONS/LGC, Beale AFB, CA 95903-5320
F04684—QW
4392 AEROSW/LGC, Vandenberg AFB, CA 93437-5320
F04689—RN
2nd Satellite Tracking Group/LKD, Onizuka Air Force Base, P.O. Box 3430, Sunnyvale, CA 94088-3430
F04690—
CSTC/PM, P.O. Box 3430, Sunnyvale, CA 94088-3430
F04693—MG
SSD/PMB, Base Contracts, P.O. Box 92960, Worldway Postal Center, Los Angeles, CA 90009-9260
F04699—Q5
SM-ALC/PKO, Operational Contracting, McClellan AFB, CA 95652-5320
F04700—Q2
AFFTC/PKO, Operational Contracting, Edwards AFB, CA 93523-5000
F04701—TB
SSD/PK, Space Systems Division, P.O. Box 92960, Worldway Postal Center, Los Angeles, CA 90009-9260
F04702—
1352 AVS/PK, Norton AFB, CA 92409-5996
F04703—R8
30 SW/PK, Vandenberg AFB, CA 93437-6021
F04704—R9
BMO/PK, Ballistic Missile Organization, Norton AFB, CA 92409-6463
F04709—S5
Det 42, SM-ALC, Norton AFB, CA 92409-6447
F05600—5P
3415 CONS/LGC, Lowry AFB, CO 80230-5320
F05603—
HQ Air Force Space Command/PKD, Director of Systems Contracting, Stop 7, Peterson AFB, CO 80914-5001
F05604—SX
3d Space Support Wing/PKB, Stop 20, Peterson AFB, CO 80914-5000
F05611—5Q
USAFA/LGC, USAF Academy, CO 80840-0189
F07603—5R
436 AW/LGC, Dover AFB, DE 19902-5320
F08602—5S
56 CONS/CC, MacDill AFB, FL 33608-5320
F08606—RG
45 SW/PK, Patrick AFB, FL 32925-5472
F08620—5T
1 SOW/LGC, Hurlburt Field, FL 32544-5320
F08621—5U
31 CONS/CC, Homestead AFB, FL 33039-5320
F08626—QU
ASD-OL/PK, Aeronautical Systems Division, Eglin AFB, FL 32542-5000
F08630—S1
WL/MNK, Eglin AFB, FL 32542-5000
F08635—RH
AFDTC/PK, Air Force Development Test Center, Eglin AFB, FL 32542-5000
F08637—5V
325 CONS/CC, Tyndall AFB, FL 32403-5320
F08650—TJ
ESMC/PMK, Base Contracts, Patrick AFB, FL 32925-5472
F08651—Q3
AFDTC/PKO, Operational Contracting, Eglin AFB, FL 32542-5320
F09603—RJ, RR
WR-ALC/PK, Warner Robins Air

Logistics Center, Robins AFB, GA 31098–5320
F09604—RU
Det 8, 2762 Logistics Sq Special (AFMC), Robins AFB, GA 31098
F09607—5W
347 CONS/CC, Moody AFB, GA 31699–5320
F09609—5X
94 CSG/LGC, Dobbins AFB, GA 30069–5320
F09634—5Y
HQ AFRES/LGC, Robins AFB, GA 31098–6001
F09650—Q6
WR-ALC/PKO, Operational Contracting, Robins AFB, GA 31098–5320
F10603—5Z
366 CONS/CC, Mountain Home AFB, ID 83648–5320
F11602—6A
3345 LG/LGC, Chanute AFB, IL 61868–5320
F11603—6B
928 TAG/LGC, Chicago O'Hare ARFF, IL 60666–5000
F11623—6C
375 AAW/LGC, Scott AFB, IL 62225–5320
F11624—X4
CSPO/PGZ, Scott AFB, IL 62225–6001
F11626—RL
HQ AMC/XOK, Scott AFB, IL 62225–5001
F12617—6D
305 CONS/LGC, Grissom AFB, IN 46971–5320
F14614—6E
384 CONS/LGC, McConnell AFB, KS 67221–5320
F16600—6F
23 FW/LGC, England AFB, LA 71311–5320
F16602—6G
2 CONS/LGC, Barksdale AFB, LA 71110–5320
F17600—6H
42 CONS/LGC, Loring AFB, ME 0475–5320
F17608
101 AREFW/LGC, Bangor International Airport, ME 04401–5320
F19617—R5
439 CSG/LGC, Westover AFB, MA 01022–5320
F19628—RS
FSD/PK, Electronic Systems Division, Hanscom AFB, MA 01731–5000
F19630—RV
AFCAC/PK, Hanscom AFB, MA 01731–6340
F19650—SH
ESD/PKO, Operational Contracting, Hanscom AFB, MA 01731–5320
F20603—6J
379 LOGSS/LGLC, Wurtsmith AFB, MI 48753–5320
F20613—6L
410 CONS/LGC, K.I. Sawyer AFB, MI 49843–5320
F21611—6N
934 CSS/LGC, Minneapolis-St. Paul IAP, MN 55450–5000
F22600—RC
3380 CONS/LGC, Keesler AFB, MS 39534–5000
F22608—6Q
14 CONS/LGC, Columbus AFB, MS 39701–5000
F23606—6R
351 CONS/LGC, Whiteman AFB, MO 65305–5320
F23608—6S
442 CSG/LGC, Richards-Gebaur AFB, MO 64030–5000
F24604—6T
301 CONS/LGC, Malmstrom AFB, MT 59402–5320
F25600—6U
55 CONS/LGC, Offutt AFB, NE 68113–5320
F25606—TD
3908 CONS/LGC, Offutt AFB, NE 68113–5000
F26600—S4
554 CONS/CC, Nellis AFB, NV 89191–5320
F26606—6M
37 FW/LGC, Nellis AFB, NV 89191–5320
F28609—6V
438 MAW/LGC, McGuire AFB, NJ 08641–5320
F28620—SN
OL-A, 1605 MASW/LGC, McGuire AFB, NJ 08641–5000
F29601—RW
PL/PK, Phillips Laboratory, Kirtland AFB, NM 87117–5320
F29605—6W
27 CONS/CC, Cannon AFB, NM 88103–5320
F29650—R3
PL/PKO, Operational Contracting, Phillips Laboratory, Kirtland AFB, NM 87117–5320
F29651—6X
49 CONS/CC, Holloman AFB, NM 88330–5320
F30602—RX
RL/PK, Rome Lab, Griffiss AFB, NY 13441–5700
F30617—6Y
914 TAG/LGC, Niagara Falls IAP, NY 14304–5320
F30635—S3
416 CONS/LGC, Griffiss AFB, NY 13441–5320
F30636—6Z
380 CONS/LGC, Plattsburgh AFB, NY 12903–5320
F31601—BU
317 CONS, Pope AFB, NC 28308–5320
F31610—BW
4 CONS/CC, Seymour Johnson AFB, NC 27531–5320
F32604—BX
5 CONS/LGC, Minot AFB, ND 58705–5320
F32605—BY
319 CONS/LGC, Grand Forks AFB, ND 58205–5320
F33600—RZ
WPCC/PKR, PKS, PKT & PKY, Wright-Patterson AFB, OH 45433–5320
F33601—Q7
WPCC/PKO, Operational Contracting, Wright-Patterson AFB, OH 45433–5320
F33615—SG
WL/PK, Wright Laboratory, Wright Patterson AFB, OH 45433–6503
F33630—C1
910 TAG/LGC, Youngstown MAP, OH 44473–0910
F33657—SC
ASD/PK, Aeronautical Systems Division, Wright-Patterson AFB, OH 45433–6503
F33659—Q8
AGMC/PK, Directorate of Contracting, Newark AFB, OH 43055–5320
F33660—TA
AGMC/PKO, Operational Contracting, Newark AFB, OH 43057–5320
F33733—J8
WL/MTD, Wright-Patterson AFB, OH 45433–6503
F34600—C2
71 FTW/CVC, Vance AFB, OK 73705–5000
F34601—SD
OC-ALC/PK, Directorate of Contracting, Oklahoma City Air Logistics Center, Tinker AFB, OK 73145–5320
F34608—TF
HQ CSC/PK, Tinker AFB, OK 73145–6343
F34612—C3
443 CON SQ/LGC, Altus AFB, OK 73523–5320
F34650—Q9
OC-ALC-PKO, Operational Contracting, Tinker AFB, OK 73145–5320
F35610—C4
114 TFTS/LGC, Kingsley Field, Klamath Falls, OR 97601
F36629—C7
911 TAG/LGC, Greater Pittsburgh IAP, PA 15231–5320
F38700—C8
913 TAG/LGC, Willow Grove ARF, PA 19090–5130
F38601—C9
363 CONS/CC, Shaw AFB, SC 29152–5320
F38604—T3
HQ USCENTAF/LGC, Shaw AFB, SC 29152–5002

F38606—CA
354 FW/LGG, Myrtle Beach AFB, SC 29579–5320
F38610—CR
437 MAW/LGC, Charleston AFB, SC 29404–5320
F39601—CT
28 CONS/LGC, Ellsworth AFB, SD 57706–5320
F40600—Q4
AEDC/PK, Arnold Engineering Development Center, Arnold AFB, TN 37389–5000
F40650—D1
AEDC/PKO, Operational Contracting, Arnold AFB, TN 37389–5000
F41608—SA
SA–ALC/PK, Directorate of Contracting, San Antonio Air Logistics Center, Kelly AFB, TX 78241–5320
F41612—D4
3750 CONS/LGC, Sheppard AFB, TX 76311–5000
F41613—D5
7 LOGSS/LGLC, Carswell AFB, TX 76127–5320
F41614—E2
3499 CONS/LGC, Goodfellow AFB, TX 76908–5000
F41620—E3
64 CONS/LGC, Reese AFB, TX 79489–5000
F41621—SJ
HQ AFIC/LEC, San Antonio, TX 78243–5000
F41622—QY
HSD/PKO, Operational Contracting, Brooks AFB, TX 78235–5320
F41624—RQ
HSD/PK, Brooks AFB, TX 78235–5320
F41636—ZV
3700 CONS/CC, Lackland AFB, TX 78236–5000
F41640
HQ AFCOMS/DOC, Kelly AFB, TX 78241–6290
F41650—YA
SA–ALC/PKO, Operational Contracting, Kelly AFB, TX 78241–5320
F41652—E5
96 CONS/LGC, Dyess AFB, TX 79607–5320
F41685—E6
47 CONS, Laughlin AFB, TX 78840–5000
F41687—E9
67 RW/LGC, Bergstrom AFB, TX 78743–5320
F41689—SK
3303 CONS/CC, Randolph AFB, TX 78150–5001
F41691—Y0
12 CONS/LGC, Randolph AFB, TX 78150–5000
F41999
AFNAF Purchasing Office, HQ AFMPC/DPMSK, 9504 IH 35 North, Rm 330, San Antonio, TX 78233
F42600—QP, SY
OO–ALC/PK, Directorate of Contracting, Ogden Air Logistics Center, Hill AFB, UT 84056–5320
F42610—TE
OO–ALC/PK, ICBM Directorate Contracting, Ogden Air Logistics Center, Hill AFB, UT 84056–5320
F42620—TG
OO–ALC/PK, Aircraft Directorate Contracting, Ogden Air Logistics Center, Hill AFB, UT 84056–5320
F42630—XP
OO–ALC/PK, Commodities Directorate Contracting, Ogden Air Logistics Center, Hill AFB, UT 84056–5320
F42650—R2
OO–ALC/PKO, Operational Contracting, Hill AFB, UT 84056–5320
F44600—F3
1 CONS/CC, Langley AFB, VA 23665–5320
F44650—Q1
4400 CONS/LGCN, Langley AFB, VA 23665–5000
F45603—F5
62 CONS, McChord AFB, WA 98438–5320
F45613—F8
92 CONS/LGC, Fairchild AFB, WA 99011–5320
F47606—G7
440 TAW/LGC, Gen. Billy Mitchell Field, 00 College Ave., Milwaukee, WI 53207–5000
F48608—G9
90 CONS/LGC, F.E. Warren AFB, WY 82001–5320
F49620
AFOSR/PK, Bolling AFB, DC 20332–6448
F49642—J1
1100 CNS/CN (AFDW), Operational Contracting, Andrews AFB, DC 20331–5320
F49650—X0
1100 CNS/SP (AFDW), Specialized Contracting, Andrews AFB, DC 20331–5320
F61040—M1
1605 MASW/LGC, APO AE 09720–5320
F61051
USDAO, American Embassy—Brussels, APO AE 09724
F61060
USDAO, American Embassy—Sofia, APO AE 09242
F61080
USDAO, American Consulate General—Prague, APO AE 09242
F61100
USDAO, American Embassy—Copenhagen, APO AE 09716
F61101—T1
Det 1, Space Combat Operations Staff/LGC, APO AE 09716–5000
F61130
USDAO, American Embassy—Helsinki, APO AE 09723
F61171
USDAO, American Embassy—Athens, APO AE 09840
F61180
USDAO, American Consulate General—Budapest, APO AE 09242
F61210
USDAO, American Embassy—Rome, APO AE 09624
F61211—N9
401 FW/LGC, APO AE 09601–5320
F61214—U9
7275 ABG/LGC, APO AE 09605–5320
F61230—XV
OL–PM WR–ALC/PKE, Bldg 519, APO AE 09094–5000
F61260
USDAO, American Embassy—The Hague, APO AE 09715
F61270
USDAO, American Embassy—Oslo, APO AE 09707
F61271—T8
USAFE Contracting Office, OL–D Det 4, 7000 CONS/LGC, APO AE 09707–5320
F61280
USDAO, American Consulate General—Belgrade, APO AE 09242
F61290
USDAO, American Embassy—Lisbon, APO AE 09726
F61301
USDAO, American Embassy—Bucharest, APO AE 09242
F61308—W3
USAFE Contracting Region—Spain, OL–B Det 5, 7000 CONS/LGC, APO AE 09643–5320
F61310
USDAO, American Embassy—Madrid, APO AE 09285
F61354—W8
7241 ABG/LGC, APO AE 09821–5320
F61355—T4
7217 ABG/LGC, APO AE 09822
F61358—W9
39 TACG/LGC, APO AE 09824–5320
F61503—UC
435 TAW/LGC, APO AE 09097–5320
F61504—T6
7350 ABG/LGC, APO AE 09187–5320
F61517—UF
USAFE Contracting Region—Eifel, Det 3, 7000 CONS/LGC, APO AE 09132–5320
F61521—UH
USAFE Contracting Office, Det 2, 7000 CONS/LGC, APO AE 09094–5320
F61546—UJ
USAFE Contracting Center, OL A, Det 2/7000 CONS/LG, APO AE 09196–5320
F61708—UK

USAFE Contracting Region—Thames Valley, OL-E Det 4, 7000 CONS/LGC, APO AE 09466-5320
F61712—UM
USAFE Contracting Office, OL-B Det 4, 7000 CONS/LGC, APO AE 09405-5320
F61730—UQ
USAFE Contracting Office, OL-C Det 4, 7000 CONS/LGC, APO AE 09470-5320
F61775—UV
USAFE Contracting Region—UK North, Det 4, 7000 CONS/LGC, APO AE 09461-5320
F61815—T7
32 FG/LGC, APO AE 09719-5320
F61817—UW
USAFE Contracting Office, OL-A Det 5, 7000 CONS/LGC, APO AE 09646-5320
F61910—WJ
USAFE Contracting Office, OL-A Det 3, 7000 CONS/LGC, APO AE 09122-5320
F62032—4D
HQ USMTM/SAS-LGC, APO AE 09603-1300
F62321—RA
18 CONS/LGC, APO AP 96368-5320
F62509—QZ
432 CONS/LGC, APO AP 96319-5320
F62562—SW
475 CONS/LGC, APO AP 96328-5320
F62600
5 DSCS/LGC, APO SF 96287-5000
F63197—UX
7276 ABG/LGC, APO AE 09846-5320
F64133—S9
633 CONS/LGC, APO AP 96542-5320
F64605—TN
15 CONS/LGC, Hickam AFB, HI 96853-5320
F64620—SZ
HQ PACAF/LGC, Hickam AFB, HI 96853-5001
F64719—TK
13 AF/OLAB, FPO AP 96534
F65501—WF
3 CONS/LGC, Elmendorf AFB, AK 99506-5001
F65503—WH
343 CONS/LGC, Eielson AFB, AK 99702-5320
F66501—R7
24 CONS/LGC, APO AA 34001-5320

PART 6—DEFENSE LOGISTICS AGENCY ACTIVITY ADDRESS NUMBERS

DLAH00—YK
Defense Logistics Agency, ADP/Telecommunications Contracting Office, Cameron Station, Alexandria, VA 22304-6100
DLA003—TT
Defense Depot Ogden, Ogden, UT 84407-5000
DLA004—WX
Defense Distribution Region East (DDRE), Office of Contracting, New Cumberland, PA 17070-5001
DLA005—TV
Defense Distribution Region West (DDRW), Office of Contracting, Bldg S-4, Lathrop, CA 95330-5000
DLA100—TW
Defense Personnel Support Center, Directorate of Clothing & Textiles, 2800 South 20th Street, Philadelphia, PA 19101-8419
DLA120—TX
Defense Personnel Support Center, Directorate of Medical Materiel, 2800 South 20th Street, Philadelphia, PA 19101-8419
DLA13H—UE
Defense Personnel Support Center, Directorate of Subsistence, 2800 South 20th Street, Philadelphia, PA 19101-8419
DLA132
Defense Subsistence Office, Kansas City, 601 E. 12th Street, Room 1768, Kansas City, MO 64106-2895
DLA136—W5
Defense Subsistence Office, Cheatham, Cheatham Annex, Bldg 113, Williamsburg, VA 23185-0001
DLA137—W6
Defense Subsistence Region, Pacific, 2155 Mariner Square Loop, Alameda, CA 94501-1022
DLA139—U6
Defense Subsistence Region, Europe, APO New York, NY 09052
DLA140—W7
Defense Personnel Support Center, (Installation Support), 2800 South 20th Street, Philadelphia, PA 19101-8419
DLA200—X1
Defense Reutilization and Marketing Service, Federal Center—Hazardous System, Battle Creek, MI 49017-3092
DLA210—X1
Defense Reutilization and Marketing Service, Federal Center—Supply System, Battle Creek, MI 49017-3092
DLA300—VS
Defense National Stockpile Center, 1745 Jefferson Davis Hwy, Suite 100, Arlington, VA 22202-5000
DLA301—VT
Defense National Stockpile Center, Zone 1 Management Office, Room 19-116, 26 Federal Plaza, New York, NY 10278-5000
DLA302—VU
Defense National Stockpile Center, Zone 2 Management Office, 3200 Sheffield Avenue, Hammond, IN 46327-5000
DLA303—VY
Defense National Stockpile Center, Zone 3 Management Office, 819 Taylor Street, Fort Worth, TX 76102-5000
DLA400—TY
Defense General Supply Center, 8000 Jefferson Davis Highway, Richmond, VA 23297-5000
DLA410—XH
Defense General Supply Center, Contracts Division III, Special Acquisition and Base Support Branch, 8000 Jefferson Davis Highway, Richmond, VA 23297-5312
DLA411—TY
Defense General Supply Center, Contracts Division III, Emergency Supply Operations Center Support, 8000 Jefferson Davis Highway, Richmond, VA 23297-5313
DLA 412—TY
Defense General Supply Center, Contracts Division III, Electronic Source Branch, 8000 Jefferson Davis Highway, Richmond, VA 23297-5314
DLA413—TY
Defense General Supply Center, Contracts Division III, Special Purchase Branch, 8000 Jefferson Davis Highway, Richmond, VA 23297-5320
DLA 414—TY
Defense General Supply Center, Contracts Division III, Systems Automated Small Purchase I, 8000 Jefferson Davis Highway, Richmond, VA 23297-5316
DLA420—XK
Defense General Supply Center, Educational Supplies Branch, 8000 Jefferson Davis Highway, Richmond, VA 23297-5320
DLA430—TY
Defense General Supply Center, Commodity Oriented Logistics Office, 8000 Jefferson Davis Hwy, Richmond, VA 23297-5330
DLA440—TY
Defense General Supply Center, Contracts Division I, Branch A, 8000 Jefferson Davis Highway, Richmond, VA 23297-5341
DLA441—TY
Defense General Supply Center, Contracts Division I, Branch B, 8000 Jefferson Davis Highway, Richmond, VA 23297-5344
DLA450—TY
Defense General Supply Center, Contracts Division II, Branch A, 8000 Jefferson Davis Highway, Richmond, VA 23297-5351
DLA451—TY
Defense General Supply Center, Contracts Division II, Branch B, 8000 Jefferson Davis Highway, Richmond, VA 23297-5355
DLA460—TY
Defense General Supply Center, Aviation Division, Aircraft

Structural Components Branch, 8000 Jefferson Davis Highway, Richmond, VA 23297-5361

DLA461—TY
Defense General Supply Center, Aviation Division, Aircraft Accessories & Components Branch, 8000 Jefferson Davis Highway, Richmond, VA 23297-5362

DLA490—TY
Defense General Supply Center, Industrial Plant Equipment Branch, 8000 Jefferson Davis Highway, Richmond, VA 23297-5100

DLA491—TY
Defense Industrial Plant Equipment Center, Defense General Supply Center Site Command, Base Operations Support, Memphis, TN 38114-5297

DLA500—TZ
Defense Industrial Supply Center, 700 Robbins Avenue, Philadelphia, PA 19111-5096

DLA510—W2
Defense Industrial Supply Center, Base Operating Support System (BOSS), 700 Robbins Avenue, Philadelphia, PA 19111-5096

DLA520
Defense Industrial Supply Center, Product Verification Testing (PVT) Acquisitions, 700 Robbins Avenue, Philadelphia, PA 19111-5096

DLA600—UA
Defense Fuel Supply Center, Cameron Station, Alexandria, VA 22304-6160

DLA700—UB
Defense Construction Supply Center, P.O. Box 3990, Columbus, OH 43216-5000

DLA710—YL
Defense Construction Supply Center, Commercial Activities & Services Branch, P.O. Box 16704, Columbus, OH 43216-5010

DLA720—YM
Defense Construction Supply Center, Wood Products Branch, P.O. Box 16704, Columbus, OH 43216-5010

DLA730—WZ
Defense Construction Supply Center, Military Interdepartmental Purchase Request, MIPR Division, P.O. Box 3990, Columbus, OH 43216-5000

DLA740—XJ
Defense Construction Supply Center, High Demand Group (MINI-ICP), P.O. Box 3990, Columbus, OH 432316-5000

DLA750—UB
Defense Construction Supply Center, Contracts Division I, P.O. Box 16704, Columbus, OH 43216-5010

DLA760—UB
Defense Construction Supply Center, Contracts Division II, P.O. Box 16704, Columbus, OH 43216-5010

DLA770—UB
Defense Construction Supply Center, Contracts Division III, P.O. Box 16704, Columbus, OH 43216-5010

DLA8AC—UG
DCMAO, Santa Ana, 34 Civic Center Plaza, P.O. Box C 12700, Santa Ana, CA 92712-2700

DLA8AL—Y1
DCMAO, Atlanta, 805 Walker Street, Marietta, GA 30060-2789

DLA8AM—YQ
DPRO McDonnell Douglas, P.O. Box 5669, Titusville, FL 32783-5669

DLA8AN—Z4
DCMAO Clearwater, 1100 Cleveland Street, Suite 200, Clearwater, FL 34615-4822

DLA8AP—Z5
DPRO Grumman St. Augustine, 5000 US HWY 1, North, P.O. Drawer 3447, St. Augustine, FL 32085-3447

DLA8AQ—U8
DCMC Aircraft Program Management Office, 805 Walker Street, Marietta, GA 30060-2789

DLA8AR
DPRO Michoud, 13800 Old Gentilly Highway, Bldg. 350, P.O. Box 29503, New Orleans, LA 70189-0503

DLA8AS
DCMAO Atlanta, Termination Settlement Division, 805 Walker Street, Marietta, GA 30060-2789

DLA8AT—UL
DCMD South, 805 Walker Street, Marietta, GA 30060-2789

DLA8AU—QV
DPRO Aerojet, Sacramento, P.O. Box 15846, Sacramento, CA 95852-1846

DLA8BC—UP
DCMAO Bridgeport, 555 Lordship Blvd, Stratford, CT 06497-5000

DLA8BF—W1
DPRO Bell Helicopter Textron, P.O. Box 1605, Fort Worth, TX 76101-1605

DLA8BG—WM
DPRO, Stewart and Stevenson Inc, Attn: DCMDS-RXD, 5000 Interstate 10 West, P.O. Box 457, Sealy, TX 77474-0457

DLA8BL—Y4
DPRO Textron Lycoming Division, 550 Main Street, Stratford, CT 06497-7593

DLA8BM—UR
DCMAO Baltimore, 200 Towsontown Blvd., West, Towson, MD 21204-5299

DLA8BN—US
DPRO AT&T Technologies, Inc., 204 Graham Hopedale Road, Burlington, NC 27217-2941

DLA8BP—UT
DCMD Northeast, 495 Summer Street, Boston, MA 02210-2184

DLA8BQ—TU
DPRO Boeing Helicopter, P.O. Box 16859, Philadelphia, PA 19142-0859

DLA8BR—SP
DPRO Boeing, Seattle, P.O. Box 3707, Seattle, WA 98124-3707

DLA8BS—Y3
DCMAO Boston, 495 Summer Street, Boston, MA 02210-2184

DLA8BT—UU
DPRO Allied Signal, Route 46, Teterboro, NJ 07068-1173

DLA8BU—XC
DCMAO Buffalo, 1103 Federal Building, 111 W. Huron Street, Buffalo, NY 14202-2392

DLA8BV—YT
DPRO General Electric, Lakeside Avenue, Burlington, VT 05401-4984

DLA8BW—RP
DPRO Boeing Military Airplanes, P.O. Box 7730, Wichita, KS 62777-7730

DLA8CD—UZ
DCMAO Cedar Rapids, 1231 Park Place, NE, Cedar Rapids, IA 52402-2023

DLA8CH—UY
DCMD North Central, O'Hare International Airport, P.O. Box 66475, Chicago, IL 60666-0475

DLA8CL—VB
DCMAO Cleveland, A.J. Celebreeze Federal Building, 1240 East Ninth Street, Cleveland, OH 44199-2063

DLA8CM—U5
DPRO BMY Marysville, 13311 Industrial Parkway, Marysville, OH 43040-9599

DLA8CO—X6
DPRO Loral, 1432 Exeter Road, Akron, OH 44306-3893

DLA8CS—VE
DPRO General Dynamics, 5001 Kearny Villa Road, P.O. Box 85375, San Diego, CA 92138-5357

DLA8DB—Z7
DCMAO Dallas, P.O. Box 50500, Dallas, TX 75250-5050

DLA8DC—VH
DCMAO San Diego, 7675 Dagget Street, Suite 200, San Diego, CA 92111-2241

DLA8DD—U4
DPRO Rockwell International, 3200 E Renner Road, MS 462-115, Richardson, TX 75082-2402

DLA8DL—TC
DPRO Douglas, Long Beach, 3855 Lakewood Boulevard, Long Beach, CA 90846-0001

DLA8DM—Y7
DCMAO Detroit, McNamara Federal Building, 477 Michigan Avenue, Detroit, MI 48226-2506

DLA8DN—VK
DCMAO, Denver, Orchard Place 2, 5975 Greenwood Plaza Building, Englewood, CO 80111-5000

DLA8DP—VL
DCMAO, Dayton, c/o Defense Electronics Supply Center, Building

1, Dayton, OH 45444-5300
DLA8EC—YP
DCMAO, Chicago, O'Hare International Airport, P.O. Box 66911, Chicago, IL 60666-0911
DLA8EG—ST
DPRO, Eaton, AIL DIV, Commack Road, Deer Park, NY 11729-9998
DLA8FL—VN
DPRO, ITT, Defense Group, 500 Washington Ave., Nutley, NJ 07110-3698
DLA8FM—3N
DPRO, FMC, Minneapolis, 4800 East River Road, Minneapolis, MN 55421-1402
DLA8FS—VR
DPRO, FMC, 1125 Coleman Avenue, P.O. Box 367, San Jose, CA 95103-0367
DLA8FT—Y2
DPRO, Ford Newport Beach, Administration Building, Room 303, Ford Road, Newport Beach, CA 92658-8900
DLA8GB—KK
DPRO, Grumman Aerospace, Bethpage, Bethpage, NY 11714-3531
DLA8GC—SB
DPRO, GE Aircraft Engines, Cincinnati, Mail Drop N-1, Cincinnati, OH 45215-6303
DLA8GD—YB
DPRO, Westinghouse, 18901 Euclid Ave, Cleveland, OH 44117-1388
DLA8GE—7Q
DPRO, General Electric, Aircraft Engines, Lynn, 1000 Western Avenue, Lynn, MA 0910-0445
DLA8GF, SL—TH
DPRO, General Dynamics, Fort Worth, P.O. Box 371, Fort Worth, TX 76101-0371
DLA8GG—KD
DPRO, General Dynamics, Pomona, P.O. Box 2505, Pomona, CA 91769-2505
DLA8GL—VV
DPRO, General Electric Company, M/S 9-2 Automated Systems Department, Bedford Street, P.O. Box 588, Burlington, MA 01803-0949
DLA8GM—VW
DCMAO, Grand Rapids, Riverview Center Building, 678 Front Street, NW, Grand Rapids, MI 49504-5352
DLA8GN—VX
DCMAO, Garden City, 605 Stewart Avenue, Garden City, NY 11530-4761
DLA8GP—YF
DPRO, General Dynamics, Lima, 1155 Buckeye Road, Lima, OH 45804-1898
DLA8GR, M0—NJ
DPRO, General Electric, Pittsfield, 100 Plastics Avenue, Pittsfield, MA 01201-3696
DLA8GW—Z2
DPRO, General Dynamics, Warren, 28251 Van Dyke Street, Warren, MI 48090-5000
DLA8HB—WA
DPRO, PEMCO Aeroplex, Inc., P.O. Box 12447, Birmingham, AL 35202-2447
DLA8HC—WB
DCMAO, Hartford, 130 Darlin Street, East Hartford, CT 06108-3234
DLA8HD—WC
DPRO, GEC/Kearfott, 164 Totowa Road, M/S 11A30, Wayne, NJ 07474-0975
DLA8HL—QT
DPRO, Hughes, Los Angeles, P.O. Box 92463, Los Angeles, CA 90009-2463
DLA8HM—WD
DPRO, Honeywell, Alliant Techsystems, Honeywell Plaza, 2701 Fourth Avenue, South, Minneapolis, MN 55408-1792
DLA8HN
DPRO, Hercules, Magna, P.O. Box 157, Magna, UT 84044-0157
DLA8HR—Z9
DCMAO San Francisco, Hawaii Residency, Federal Building, Room 4115, 300 Ala Moana Boulevard, Honolulu, HI 96813-4908
DLA8HS—XT
DPRO, Hamilton Standard, 1 Hamilton Road, Windsor Locks, CT 06096-0463
DLA8HT—SR
DPRO, Hughes, P.O. Box 11337, M/S E-4, Tucson, AZ 85734-1337
DLA8HU—XG
DPRO, Hughes, Building 600, Mail Station C107, P.O. Box 3310, Fullerton, CA 92634-3310
DLA8JJ—WG
DCMAO, Indianapolis, Building 1, Fort Benjamin Harrison, IN 46249-5701
DLA8JL—X2
DPRO, Magnavox, 1616 Directors Row, Fort Wayne, IN 46808-1286
DLA8KA—XY
DPRO, Kaman Aerospace, Old Windsor Road, P.O. Box 2, Bloomfield, CT 06002-0002
DLA8LA—WL
DCMAO, El Segundo, 222 N Sepulveda Boulevard, El Segundo, CA 90245-4320
DLA8LD—WP
DPRO, LTV Aerosapce and Defense, P.O. Box 655907, M/S 4915, Dallas, TX 75265-5907
DLA8LF—QX
DPRO, Lockheed, Sunnyvale, P.O. Box 3504, Sunnyvale, CA 94088-3504
DLA8LG—RK
DPRO, Lockheed Aeronautical, Systems Company—Georgia, 86 S. Cobb Drive, Marietta, GA 30063-0260
DLA8LT—WN
DPRO, E-Systems, Inc., P.O. Box 6379, Greenville, TX 75401-0379
DLA8MB—V1
DPRO, Harris, Melbourne, 1425 Troutman Boulevard, N.E., Palm Bay, FL 32905-4102
DLA8MC—V2
DPRO, Rockwell International-TSD, P.O. Box 1357, Duluth, GA 30136-4099
DLA8MD—RE
DPRO, Martin Marietta, Denver, P.O. Box 179, Denver, CO 80201-0179
DLA8MF—QF
DCMAO, Puerto Rico, Box DLA N S G A, FPO Miami, FL 34053-0007
DLA8MH—X9
DPRO, McDonnell Douglas, Space Systems Company, 5301 Bolsa Avenue, Huntington Beach, CA 92647-2048
DLA8ML—TR
DPRO, McDonnell Douglas Helicopter, 5000 East McDowell Road, Mesa, AZ 85025-9797
DLA8MM—XL
DPRO, Martin Marietta, Orlando, P.O. Box 55837, Mail Point 49, Orlando, FL 32855-5837
DLA8MN—WQ
DCMAO, Twin Cities, 3001 Metro Drive, Bloomington, MN 55425-1573
DLA8MS—JZ
DPRO, McDonnell Douglas, St. Louis, P.O. Box 516, St. Louis, MO 63166-0516
DLA8MW—WR
DCMAO, Milwaukee, H. S. Reuss Federal Building, Suite 340, 310 West Wisconsin Avenue, Milwaukee, WI 53203-2282
DLA8NC—WV
DCMAO, Ottawa, P.O. Box 3416, Station D, Ottawa, On Canada K1P 6L4
DLA8NF—WW
DCMAO, Orlando, 3555 Maguire Boulevard, Orlando, FL 32803-3726
DLA8NH—YS
DPRO, Lockheed Sanders, Inc., Daniel Webster Highway, South, P.O. Box 868, Nashua, NH 03061-0868
DLA8NJ—WT
DCMAO, Springfield, 955 South Springfield Avenue, Springfield, NJ 07081-3170
DLA8NK—QR
DPRO, Northrop, Hawthorne, One Northrop Avenue, Hawthorne, CA 90250-3296
DLA8NM—YR
DPRO, IBM, Route 17C, Owego, NY 13827-1298
DLA8NN—YN
DPRO, Harris, 6801 Jericho Turnpike, Syosset, NY 11791-4465
DLA8NY—WU
DCMAO, New York, 201 Varick

Street, New York, NY 10014-4811
DLA8PA—WY
DCMAO, Phoenix, The Monroe School, 215 N 7th Street, Phoenix, AZ 85034-1012
DLA8PE—T5
DPRO, Pratt & Whitney, East Hartford, 400 Main Street, East Hartford, CT 06108-0969
DLA8PH—XA
DCMD, Mid Atlantic, P.O. Box 7478, Philadelphia, PA 19101-7478
DLA8PL—X3
DCMAO, Philadelphia, P.O. Box 7699, Philadelphia, PA 19101-7699
DLA8PM—XB
DPRO, IBM Manassas, 9500 Godwin Drive, Manassas, VA 22110-4198
DLA8PP—XD
DCMAO, Pittsburgh, 1612 Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222-4190
DLA8PR—X7
DPRO, GE Aerospace, Marne Highway and Borton Landing Road, Moorestown, NJ 08057-3095
DLA8PW—T2
DPRO, Pratt & Whitney, West Palm Beach, P.O. Box 109600, West Palm Beach, FL 33410-9600
DLA8RA—7H
DCMC Residency, Annapolis, P.O. Box 1488, Annapolis, MD 21401-1488
DLA8RB—XF
DPRO, Raytheon, Spencer Laboratory, Wayside Ave, Burlington, MA 01803-0901
DLA8RC—RY
DPRO, Rockwell, Canoga Park, 6633 Canoga Avenue, Canoga Park, CA 91303-2790
DLA8RD—RB
DPRO, Rockwell, Anaheim, 3370 Miraloma Avenue M/SAB02A, Anaheim, CA 92803-3110
DLA8RP—XM
DCMAO, Reading, 45 South Front Street, Reading, PA 19602-1094
DLA8SA—XN
DCMAO, San Antonio, 615 East Houston, P.O. Box 1040, San Antonio, TX 78294-1040
DLA8SF—XR
DCMAO, San Francisco, 1250 Bayhill Drive, San Bruno, CA 94066-3070
DLA8SK—XQ
DPRO, Link Flight Simulation, Kirkwood Plant, P.O. Box 1237, Binghamton, NY 13902-1237
DLA8SL—XS
DCMAO, St. Louis, 1222 Spruce Street, St. Louis, MO 63103-2811
DLA8SN—XU
DCMAO, Syracuse, 615 Erie Boulevard, West, Syracuse, NY 13204-2408
DLA8SS—LF
DPRO, Silorsky, Stratford, CT 06497-7553
DLA8SW—XW
DCMAO, Seattle, Building 5D, Naval Station Puget Sound, Seattle, WA 98115-5010
DLA8SY—XX
DPRO, GTE Government Systems Corporation, 200 First Ave, Needham, MA 02194-9123
DLA8TB—R6
DPRO, Thiokol, P.O. Box 524, Mail Stop Z-10, Brigham City, UT 84302-0524
DLA8TE—XZ
DPRO, Texas Instruments, Inc., P.O. Box 660246, M/S 256, Dallas, TX 75266-0246
DLA8TR—S6
DPRO, TRW, Redondo Beach, One Space Park, Redondo Beach, CA 90278-1078
DLA8TW—SQ
DPRO, Textron Defense Systems, 201 Lowell Street, Wilmington, MA 01887-2941
DLA8UG—NH
DPRO, Unisys, Great Neck, Long Island, Great Neck, NY 11020-7001
DLA8VC—YC
DCMAO, Van Nuys, 6230 Van Nuys Boulevard, Van Nuys, CA 91401-2713
DLA8WB—S2
DPRO, Westinghouse Electric, Baltimore, P.O. Box 1693, M/S 1265, Baltimore, MD 21203-1693
DLA8WK—YD
DCMAO, Wichita, U.S. Courthouse, Suite B-34, 401 North Market, Wichita, KS 67202-2095
DLA8WP
Defense Contract Management Command, International Contracts Division, Wright Patterson Air Force Base, OH 45433-5000
DLA8WR—YH
DPRO, Williams International, c/o Williams International Corporation, 2280 West Maple Road, Walled Lake, MI 48088-0200
DLA8WS—YG
DPRO, Westinghouse, 401 East Hendy Avenue, P.O. Box 3499, M/S 11-7, Sunnyvale, CA 94088-3499
DLA8WT—Z8
DPRO, Grumman Aerospace Corporation, P.O. Box 9015, Stuart, FL 33495-9015
DLA8WV
DPRO, Grumman, P.O. Box 9650, Melbourne, FL 32902-9650
DLA900—UD
Defense Electronics Supply Center, 1507 Wilmington Pike, Dayton, OH 45444-5000
DLA910—U7
Defense Electronics Supply Center, Base Contracting Section, 1507 Wilmington Pike, Dayton, OH 45444-5000
DLA920—W4
Defense Electronics Supply Center, DESC-PKCC, 1507 Wilmington Pike, Dayton, OH 45444-5000

PART 7—DEFENSE INFORMATION SYSTEMS AGENCY ACTIVITY ADDRESS NUMBERS

DCA100—VC
Defense Information Systems Agency (ZD10), Contract Management Division, ATTN: PL, Washington, DC 20305-2000
DCA200—VP
DECCO (ZD11), ATTN: RGC, Scott AFB, IL 62225-8300
DCA400
DECCO-Europe (ZD13), ATTN: RS, APO New York, NY 09136-5000

PART 8—DEFENSE MAPPING AGENCY ACTIVITY ADDRESS NUMBERS

DMA600—BQ
Defense Mapping Agency System Center (ZD40), 12100 Sunset Hills Road, Suite 200, Reston, VA 22090-3207
DMA650
Defense Mapping Agency (ZD43), Hydrographic/Topographic Center "SXO", Building 4011, Ft. Sam Houston, TX 78234-5000
DMA700—8Y
Defense Mapping Agency (ZD41), Aerospace Center, 3200 South Second Street, ATTN: AQI, St. Louis, MO 63118-3399
DMA800—YZ
Defense Mapping Agency (ZD42), Hydrographic/Topographic Center AQ, 6500 Brookes Lane, Washington, DC 20315-0030

PART 9—DEFENSE NUCLEAR AGENCY ACTIVITY ADDRESS NUMBERS

DNA001—8Z
Defense Nuclear Agency, Headquarters, 6801 Telegraph Road, ATTN: AM, Washington, DC 22310 (ZD30)
DNA002—0N
Defense Nuclear Agency, Field Command, ATTN: Office of Procurement, Kirtland AFB, NM 87115-5000 (ZD31)
DNA004
DNA Armed Forces Radiobiology Research Institute, ATTN: Building 42, Bethesda, MD 20814-5145 (ZD32)

PART 10—MISCELLANEOUS DEFENSE ACTIVITIES ACTIVITY ADDRESS NUMBERS

MDA902

Armed Forces Radio and Television Service, 10888 La Tuna Canyon Road, Sun Valley, CA 91352-2058 (ZD02)

MDA903—F7
Defense Supply Service—Washington, Room 1D245, The Pentagon, Washington, DC 20310-5200 (ZD03)

MDA904—BE
Maryland Procurement Office, 9800 Savage Road, ATTN: L411, Ft. George G. Meade, MD 20755-6000 (ZD04)

MDA905—B4
Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, MD 20814-4799 (ZD05)

MDA906
Office for the Civilian Health & Medical Program of the Uniformed Services (CHAMPUS), ATTN: Contract Management, Aurora, CO 80045-6900 (ZD06)

MDA907
Purchasing and Contracting Office, Menwith Hill Station, APO New York 09210 (ZD07)

MDA908—2X
Virginia Contracting Activity, P.O. Box 46563, ATTN: RSQ, Washington, DC 20050-6563 (ZD50)

MDA911—2U
Headquarters, U.S. Special Operations Command, ATTN: SOKO, MacDill Air Force Base, FL 33608-6001 (ZD22)

MDA946
WHS Contracting Office, Real Estate/Facilities Directorate, The Pentagon, Room 2E174, Washington, DC 20301-1155 (ZD46)

MDA970—ZL
Defense Evaluation Support Activity, Building 20451, ATTN: DESA-CM, Kirtland AFB, NM 87117-5000 (ZD70)

MDA972—WS
DARPA Contract Management Office, 1400 Wilson Blvd., Arlington, VA 22209-2309 (ZD72)

PART 11—ON-SITE INSPECTION AGENCY ACTIVITY NUMBER

0S1A01
On-Site Inspection Agency, Washington/Dulles International Airport, Washington, DC 20041-0498 (ZD74)

PART 12—STRATEGIC DEFENSE INITIATIVE ORGANIZATION ACTIVITY NUMBER

SDIO84
Strategic Defense Initiative Organization, The Pentagon, Room 1E1019, ATTN: SDIO/CT (Mrs. Wilhelm), Washington, DC 20301-7100 (ZD60)

PART 13—DEFENSE COMMISSARY AGENCY ACTIVITY ADDRESS NUMBERS

DECA01—ZG
Defense Commissary Agency, East Service Center, ATTN: Contracting Division, Fort Lee VA 23801-6300 (ZD81)

DECA02—ZT
Defense Commissary Agency, West Service Center, ATTN: Contracting Division, Kelly AFB, TX 78241-6290 (ZD82)

DECA03—0H
Defense Commissary Agency, North East Region, ATTN: Contracting Division, Fort George G. Meade, MD 20755-5220 (ZD83)

DECA04—BE
Defense Commissary Agency, Central Region, ATTN: Contracting Division, Norfolk, VA 23511 (ZD84)

DECA05—0L
Defense Commissary Agency, Southern Region, ATTN: Contracting Division, Maxwell AFB, AL 36112-6722 (ZD85)

DECA06—0J
Defense Commissary Agency, Midwest Region, ATTN: Contracting Division, Kelly AFB, TX 78241-6290 (ZD86)

DECA07—0Z
Defense Commissary Agency, South West Region, Marine Corps Air Station El Toro, ATTN: Contracting Division, Bldg 317, Santa Ana, CA 92709-5002 (ZD87)

DECA08—0K
Defense Commissary Agency, Northwest Region, ATTN: Contracting Division, Fort Lewis, WA 98433-7300 (ZD88)

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federal register

Tuesday
September 15, 1992

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 91, et al.
Miscellaneous Operational Amendments; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 121, 125, and 135

[Docket No. 26142; Amendment Nos. 91-231, 121-230, 125-17, and 135-44]

RIN: 2120-AB45

Miscellaneous Operational Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Aviation Regulations by requiring operators and certificate holders to allow the use of approved child restraint systems and by updating certain regulations concerning passenger and crewmember safety, attitude indicators, and check airmen. This action is in response to requests from the public, consumer groups, and Congress; reports from FAA inspectors; and investigations and recommendations by the National Transportation Safety Board. The rule is intended to increase the safety of crewmembers and passengers on board aircraft and to update other operational amendments.

EFFECTIVE DATE: October 15, 1992.

FOR FURTHER INFORMATION CONTACT: Donell Pollard, Project Development Branch (AFS-240), Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; Telephone (202) 267-8096.

SUPPLEMENTARY INFORMATION:

Background

In recent years, the FAA has received information from a variety of sources indicating a need to revise several regulations to increase passenger and crewmember safety aboard aircraft. The information included requests from the public, consumer groups, and Congress about smoking aboard aircraft and about passenger noncompliance with crewmember instructions concerning smoking and the fastening of safety belts. Some of these requests also stated that certain air carriers do not allow the use of approved child restraint systems aboard airplanes, even when a passenger purchases a ticket for this purpose. Reports from FAA inspectors indicated that improperly stowed food and beverage trays, passenger service carts, and movie screens could hamper passenger emergency egress in the event of an incident or accident during airplane movement on the surface. Investigations conducted by the National Transportation Safety Board (NTSB) indicated that safety belts and shoulder harnesses can save lives in aircraft crashes, and the Board recommended that the required use of these safety devices should be expanded to helicopters and airships. The NTSB issued Safety Recommendation No. A-80-19, which recommends that the FAA require an additional attitude-indicating instrument on large turboprop airplanes. Lastly, the airline industry requested clarification of the requirement for location of fire extinguishing equipment on board an airplane.

In response to these concerns, the FAA issued Notice of Proposed Rulemaking (NPRM) No. 90-6 (55 FR 7414, March 1, 1990). The NPRM proposed the following revisions: (1) Certificate holders would have to accept approved child restraint systems provided by a parent or guardian if a ticket is purchased for a seat in which to place the child restraint system, or the seat is otherwise made available; (2) passenger information signs would have to be turned on or posted while the aircraft is moving on the surface, and compliance with the signs is mandatory for both passengers and crew; (3) passenger service equipment would have to be stowed and inflatable slides (or other approved emergency evacuation assisting means) would have to be ready for evacuation (armed) during movement on the surface; (4) helicopter crewmembers generally would be required to wear shoulder harnesses during takeoff and landing; (5) passengers on airships equipped with safety belts would have to be briefed before flight on the use of such belts; (6) an independently-powered attitude indicator would be required on large turboprop airplanes; (7) requirements for the location of fire extinguishers and protective breathing equipment for use in galleys would be clarified; and (8) an obsolete provision on check airmen would be removed.

Discussion of Comments

The FAA received several hundred comments in response to the proposed rule. Most of the comments addressed only the issue of child restraints. Other comments addressed other issues concerning cabin safety. A few comments addressed the proposed changes to attitude indicators and check airmen. Comments were submitted by passengers, parents, consumer groups, universities, manufacturers, airlines, airline associations, pilot and flight attendant associations, the NTSB, and others. A discussion and response to the issues raised follow.

Child Restraint Systems

The FAA's proposed rule and these amendments allow for the voluntary use of child restraint systems. A certificate holder will be required to allow the use of an approved child restraint system on its aircraft when requested and when an approved child restraint system is provided by the child's parent, guardian, or attendant and when a ticket is purchased for a passenger seat in which to place the restraint system, or when a passenger seat is otherwise made available by the certificate holder. The certificate holder may also provide the child restraint system. The certificate holder will allow the use of any child restraint system which has been certified as complying with the regulations of the U.S. Department of Transportation, the United Nations, or a foreign government as long as the restraint can be secured to a forward-facing passenger seat. The certificate holder will ensure that the child restraint system is properly secured to a forward-facing passenger seat and that the child is properly secured in the child restraint system. If a child restraint system is placed in a sideward- or rearward-facing passenger seat, it may not be occupied during movement on the surface, or during takeoff or landing. (§§ 91.107 (a)(3), (b), and (c); 121.311; 125.211; 135.128).

Comments on the proposal were solicited in a number of areas as discussed below.

Public Desire for Mandatory Requirements

The largest number of comments addresses the issue of whether use of child restraint systems should be mandatory. Most of the commenters favor mandatory use of child restraint systems, including the Air Transport Association (ATA), the National Transportation Safety Board (NTSB), the Airline Pilots Association (ALPA), the Association of Flight Attendants (AFA), the Association of Professional Flight Attendants (APFA), the Independent Federation of Flight Attendants (IFFA), the Independent Union of Flight Attendants (IUFA), several State and congressional representatives and senators, and a large number of parents and individuals, many represented by the Aviation Consumer Action Project (ACAP). These commenters provide varying arguments for safety: Children who are secured in child restraints are safer than those who are lap-held; children should have the same

protection as adults; child restraints should be required for use on aircraft in the same way that they are required for use in automobiles. Other commenters support voluntary use of child restraints. Arguments given are that this should be a parental (not governmental) decision; and that if parents with children under 2 years of age (infants) are forced to purchase a ticket to use an additional passenger seat, many will no longer be able to afford to fly. A number of commenters point out, as did a draft economic analysis prepared for the FAA, that a mandatory requirement could increase the number of transportation deaths on highways if families chose automobile transportation because of the additional cost of air travel.

FAA Response: The issue of mandatory use of child restraint systems has two components. For children 2 years of age or older the only question is whether a child restraint system would be safer for children below a specified height and weight limit than adult-type lap belts. For children under 2 years of age the question is more complex, because under present rules these children are not required to occupy a separate passenger seat and traditionally have flown for free.

To facilitate discussion of these issues throughout this document, "child" is used to refer to children of any age who may use a child restraint system aboard an aircraft and "infant" is used to refer to children under 2 years of age.

Because present rules do not require an infant to have a separate seat, and because most infants carried on an adult's lap have been allowed to fly for free, a decision to mandate the use of a child restraint for an infant would have significant economic impact. It would require that the accompanying adult purchase a separate seat unless the certificate holder volunteered to provide the seat free of charge.

Based on an economic analysis prepared for the FAA by Apogee Research, Inc., "If airlines follow current rules and sell seats for infants on the same discounted terms as used for children 2 to 12 years of age, travel costs will increase by $185 for the average traveling family or more than $250 million in the first year for all families who continue to fly; this later figure will increase to more than $3 billion through the year 2000".

Because of the potential costs and other factors discussed elsewhere in this preamble, the FAA is not requiring separate seating of infants in approved child restraints at this time, nor is the FAA requiring that a child within certain height and weight limits, regardless of age, use a approved child restraint system. The FAA may consider additional requirement in the future if further investigation warrants such action.

Air Carriers' Willingness To Provide Restraint Systems and/or Free Seats

No explicit comments were received from air carriers on this issue. However, under these amendments, certificate holders would not be required to provide child restraints or free seats. They would be required to allow the use of a child restraint system for a child whose parents have purchased a ticket for the passenger seat for the child's use, or in cases where the certificate holder allows the parents to use an available passenger seat for an infant.

Parents' Willingness to Purchase an Extra Seat

Comments were split among those who think parents should pay for extra passenger seats for infants who currently fly free, those who believe that air carriers should provide free passenger seats for infants, and those who believe that air carriers and parents should share the cost. Several commenters indicate that if carriers provide passenger seats for infants free of charge, the additional cost would be spread out over the air traveling population.

FAA Response: Because the FAA has decided not to require separate seating of infants in child restraint systems at this time, the question of how to spread the cost is not relevant to this rulemaking.

Who Will Provide the Child Restraints

The opinions of commenters are divided as to who should provide the child restraints (parents, air carrier, or both).

Some commenters believe that parents should provide child restraints, because many parents already own such restraints for use in their automobiles. The use of child restraints is required in all 50 States and the District of Columbia. On the other hand, some commenters, especially parents, believe that it would be an added burden to carry on board their own child restraints. Others believe that provision of a child restraint could be optional: either parents could provide their own child restraints or the carriers could provide child restraints for those parents who do not provide one.

FAA Response: These amendments do not mandate who shall provide the child restraint system if one is used. As in the proposed rule, the approved child restraint system may be furnished either by the certificate holder or by the person accompanying the child.

Because of the number of concerns raised on who will provide child restraint systems, this issue will be addressed further should the FAA take further rulemaking action to mandate the use of an approved child restraint system.

Types of Restraint Systems

The proposed rule would have allowed the use only of child restraint systems currently certified as complying with the regulations of the U.S. Department of Transportation for automobile and aircraft use and which require a separate passenger seat. Many commenters, however, recommend alternative child restraint systems that do not require the purchase of an additional passenger seat. Some individuals and companies presented designs for such alternatives. ATA advocates continued joint research, on a domestic and international level, to devise the most effective, cost-beneficial child restraint system, preferably one that does not require an additional passenger seat. Other commenters stress the importance of standardization. For example, the International Air Transport Association (IATA) calls for international safety standards on child restraints, and ATA presents a petition requesting the FAA to approve the use of British-approved child restraints (approved by the British Civil Aviation Authority [CAA]) on U.S. air carriers. This would be to reciprocate the CAA's recent action approving the use of child restraints which have been certified as complying with DOT regulations on British air carriers. In addition, some commenters, such as RAA, comment that existing systems may not always be compatible with smaller aircraft operated by regional air carriers. RAA advocates the continuation of ongoing studies to address the issues of child restraint compatibility and effectiveness, particularly in terms of child restraint use in smaller aircraft.

FAA Response: The FAA agrees that continued research is appropriate to better ensure: (1) Compatibility of child restraint systems between aircraft and automobiles, between large and small aircraft, and between U.S. and foreign air carriers; and (2) development of alternative forms of child restraint systems that may not require an additional passenger seat. In the meantime, to provide an appropriate level of safety and flexibility, the FAA has decided to broaden the categories of usable child restraint systems to include

child restraint systems approved under United Nations standards or by any foreign government.

These amendments expand the number of approved systems to include those approved by any foreign government or those manufactured under standards of the United Nations (U.N.) agreement concerning approval of restraining devices for child occupants of power-driven vehicles. The FAA has no knowledge that child restraint systems showing manufacture under the U.N. standards have been developed; however, it is anticipated that such seating systems could be in use eventually.

The FAA recognizes that there is a prohibition against the importation of child restraints which have not been certified as complying with the regulations of the United States Department of Transportation. While the FAA does not wish to encourage the use or importation of child restraint devices not certified as meeting U.S. safety standards, it is concerned about the safety of young children flying from abroad to visit this country. Enhancing their safety cannot be readily accomplished using child restraints certified to U.S. standards since persons living abroad cannot readily purchase such restraints in their countries of origin. The type of child restraints readily available to those persons are child restraint devices which have been approved by a foreign government or those manufactured under U.N. standards. Using these restraints in an aircraft will provide a level of safety greater than that which would be provided if the young children were held in the arms of adults or if safety belts alone were used.

The FAA wishes to emphasize its belief that importation of child restraints not certified to U.S. standards would be not only temporary, but also relatively brief. That is, most would be used by persons who would be in the United States only for a short time. The restraints would exit the country when the persons depart for their countries of origin. In view of the temporary nature of the importation, and the considerations of safety and practicability discussed above, the FAA will allow the use of child restraints which are approved by a foreign government or manufactured under U.N. standards and which have a stamp, decal, or some other mark which indicates foreign government approval or conformance with the U.N. standards.

Age vs. Stature and Weight Requirements

Several commenters propose a variety of standards for use in determining when child restraints can be safely used. The NTSB recommends stature (length, height) and weight (versus age) requirements. Other commenters propose child restraints for children using age cut-offs.

FAA Response: The new rule contains two standards relating to age and weight. First, it continues the current cut-off of the second birthday for the age above which a child *must* be in a separate passenger seat and may no longer be lap-held. Second, it establishes that, when a child restraint system is used, the child may not exceed the weight limit for the particular restraint-system.

Ability of Air Carrier Personnel To Determine Whether a Child Restraint System Is Safe and Secure

The FAA received few comments in this area. ATA recommends the continuation of the practice of early boarding to allow adequate time for children to be properly secured in child restraint systems; ATA also recommends further research to develop child restraint systems that are easily installed and secured. A safety belt advocacy group recommends training and literature for flight attendants on the proper use of child restraint systems.

FAA Response: The FAA has reviewed the proposal to allow an operator or a certificate holder to refuse to permit use of a child restraint system that has an obvious defect and, in the operator's or certificate holder's judgment, may not function properly. The proposed rule would have allowed an operator to refuse the use of a child restraint system even though the child restraint system was properly labeled, the child did not exceed the specified weight limit, and the child restraint system could be properly secured to the passenger seat. Upon review of this proposal, the FAA has determined that it could create more problems than it would solve. It raises questions such as what should be done if a dispute arises between a parent or guardian and the airline personnel over the condition of a particular child restraint system. Because of the uncertainty, the FAA has removed the proposed provision in §§ 91.107(b), 121.311(d), 125.211(d), and 135.128(c) that would have allowed an operator or certificate holder to refuse to permit the use of a child restraint system that, in the operator's judgment, may not function properly.

The operator or certificate holder has the responsibility under this rule to ensure that a child restraint system is properly secured to a forward-facing seat, the child is properly secured and does not exceed the weight limit for the restraint system, and the child restraint system is properly labeled. Nevertheless, the FAA has determined that, when a parent or guardian provides a child restraint system, it is the responsibility of the parent or guardian to ensure that the child restraint system to be used is free of any obvious defects and functions properly. These are the same systems that should be used to transport the infant or child to and from the airport, probably in an automobile. The parent or guardian has the responsibility for determining that the child restraint device is safe for use in both modes of transportation. The intent of this change is to increase the chances that a child restraint system will be used.

Estimates or Evidence of Infants Traveling by Air or of Infant Fatalities

The FAA had requested available data on the number of infants traveling and infant fatalities to compare it to data presented in the NPRM preamble and to assess better the need for child restraint systems. Few comments were received. Commenters who provide estimates of infants traveling by air generally support the statistics used by the FAA in the NPRM preamble. (The FAA estimated over 4 million enplanements by infants [children under 2 years of age] per year.) A few commenters cite statistics from ATA, estimating 5,000–10,000 infants traveling by air per day, or .5 to 1 percent of the traveling public, which (based upon 452.4 million enplanements in 1989) is between 2.3 and 4.5 million enplanements per year.)

FAA Response: There appears to be no disagreement that the number of infants traveling by air is very large. The FAA will continue to rely on the data as originally presented in the NPRM because the ATA statistics support the original FAA estimate of 4 million enplanements.

On the issue of infant fatalities, a draft economic analysis prepared after the NPRM was published presents somewhat different data from that given in the NPRM. The most recent analysis, using NTSB accident data, estimates that in the last 12 years, there were 9–10 infant fatalities in 6 accidents; of these 6 accidents, 1 accident might have had 1 preventable infant fatality. In comparison, the FAA's original data estimated 8 accidents in the last 15

years where child restraint systems might have prevented some infant fatalities; the number of fatalities that could have been prevented was not estimated. The FAA will rely on the updated information; those data show fewer cases than originally estimated where child restraint systems could have prevented infant fatalities.

Cost/Benefit: Mandatory Use of Restraints

In the NPRM, the FAA solicited comments on its cost/benefit analysis. Commenters on this area are divided into two groups: those who support mandatory use of child restraint systems and those who are against mandatory use of child restraint systems (some of whom expressed support for voluntary use of restraints). Some of those who support mandatory use of child restraint systems comment that the benefits are underestimated by the FAA in terms of lives saved and future tax revenues and earnings produced by those children whose lives would be saved by child restraint systems. Some commenters also believe that if use of child restraint systems is not made mandatory, the medical costs will be great for those children injured who were not secured in child restraint systems.

Those who are against mandatory use of child restraint systems comment that the costs of child restraints would be higher than that estimated by the FAA. One commenter presents its own cost/benefit analysis, concluding that mandatory use of child restraint systems would cause more people to drive due to the cost of buying additional tickets for passenger seats for infants, resulting in more deaths in automobile accidents; it claims that the FAA's estimates of highway fatalities are too low.

Another commenter also presents its own cost/benefit analysis and concludes that making the use of child restraint systems mandatory would increase regulation and result in fewer passenger miles flown and more people driving. This, in turn, would result in more fatalities in automobile accidents, which would be greater than the number of lives saved if use of child restraint systems were mandated for airplanes.

Finally, some commenters state that the number of lives saved because of child restraint systems would be minimal due to the overall safety of air travel and, therefore, it would not be worth the additional costs.

FAA Response: As noted above, an economic analysis was prepared for the FAA after the NPRM was published. This analysis concluded that mandatory use of a child restraint would reduce substantially the safety benefit as the additional cost to parents results in less air travel and more—but less safe—highway travel. For the purposes of making a decision on this action, however, all analyses placed in the docket show that mandating the use of child restraint systems would result in increased transportation-related child fatalities and in other ways would have societal costs in excess of the benefits of the action. There are no analyses available to the FAA that contradict that fundamental conclusion. The FAA finds that while air travel is extremely safe overall, the ability to use child restraint systems should be guaranteed as a further safety enhancement when a passenger seat is made available by the air carrier or a ticket for a passenger seat is purchased by an accompanying adult.

Passenger Information

Regulations on passenger information are being revised to require that passenger briefings include information on safety belt and smoking regulations and to require that passengers comply with these regulations. The rule includes: (1) Requiring that passenger information signs ("no smoking" and "fasten seat belt") be turned on or posted while the aircraft is moving on the surface [§§ 91.517 (a) and (b); 121.317 (b) and (j); 125.217(a); 135.127(e); and 135.177(a)(3)]; (2) requiring passenger compliance with lighted signs, instructions, etc., in those regulations that do not currently contain such a requirement [§§ 91.517 (c), (d), and (e); 121.317 (f), (g), and (k); 125.217 (b) and (c); and 135.127 (b) and (g)]; and (3) requiring passenger briefings on safety belts and smoking, and passenger compliance in those regulations that currently do not require such briefings and compliance [§§ 91.519 (a)(1) and (a)(2); 121.317(d); 121.571 (a)(1)(i) and (a)(1)(iii); 125.327 (a)(1) and (a)(2); and 135.117 (a)(1) and (a)(2)].

(It should be noted that the requirements concerning the prohibition on smoking have changed (55 FR 8364, March 7, 1990). Although these changes were not reflected in NPRM No. 90-6, they are reflected in these amendments. These changes are primarily organizational and do not affect the substance of these amendments.)

Comments and FAA responses regarding passenger information are divided into the categories discussed below. The FAA has also addressed any comments suggesting editorial changes to the final rule.

Aircraft Movement on the Surface

Several commenters, including RAA and ATA, express a need to clarify whether the proposed language would require flight attendants to be seated with safety belts and shoulder harnesses fastened during aircraft movement on the surface. Some of these commenters oppose such a requirement; three others favor it.

One commenter states that current § 121.391 requires only that "required" flight attendants remain seated during taxi, which allows any nonrequired attendants to provide service during taxi. The commenter recommends that all flight attendants be seated during taxi.

Flight attendant and pilot associations request that language be included that would specifically require flight attendants to be seated with safety belts and harnesses fastened whenever the lighted seat belt sign is on. This would include times during movement on the surface.

An operator of seaplanes is concerned that the requirement for fastening safety belts and shoulder harnesses while the aircraft is moving on the surface cannot be implemented in seaplane operations. According to the commenter, either the pilot or a passenger must get out of a seaplane after the engine is shut down to dock and moor the seaplane. The same situation occurs during pushoff from the dock before the engine is started.

One commenter asks if the requirements would prohibit serving refreshments during runway delays. (See discussion under "Passenger Equipment.")

Finally, AFA recommends that the rule require that overhead bins be closed during surface movement.

FAA Response: The new rule language of §§ 91.107 and 121.311(b) and of §§ 125.211(b) and 135.128(a) without the reference to shoulder harnesses is the same as the current rule with the exception that the phrases "movement on the surface" and "or her" have been added.

Current §§ 121.391(d), which pertains to flight attendants and is not being revised in these amendments, states in part, "During taxi, flight attendants required by this section must remain at their duty stations with safety belts and shoulder harnesses fastened except to perform duties related to safety of the airplane and its occupants." These duties might include safety briefings, attending to distressed passengers, and responding to emergency situations. Flight attendants in excess of the number required by § 121.391 are, in effect, other "person(s) on board a(n) * * * aircraft" and are required by § 121.311(b) to be seated with safety

belts secured during movement on the surface. Therefore, no flight attendant may provide food or beverage service during any movement on the surface. (See "Passenger Service" section for further discussion.)

Regarding the comment concerning surface movement of seaplanes, the FAA agrees that a pilot would be unable to moor or to launch such an aircraft, including float equipped rotorcraft, without first unfastening his or her safety belt and shoulder harness. This issue is already addressed in §§ 91.105(b)(2) and 135.171(b) which state that a shoulder harness must be fastened unless "the crewmember would be unable to perform his or her required duties with the shoulder harness fastened." To extend this exemption to safety belts and passengers, a sentence has been added to §§ 135.129(a) and 91.107(a)(3) that allows either a pilot or another person to have his or her safety belt or shoulder harness unfastened for the purpose of launching or mooring a seaplane or a rotorcraft equipped with floats.

The comment concerning the issue of closing overhead bins is already addressed in the requirements for carry-on baggage in § 121.589(b), i.e., that all such items must be properly stowed before pushback.

Passenger Compliance

A joint comment from several flight attendant associations (APFA, AFFA, and IUFA) suggests that proposed §§ 91.519, 121.317(k), 121.571(a)(1)(iii), 135.117(a)(2), and 135.127(g), which would require passengers to comply with safety belt and smoking rules, be broadened to include compliance with "all safety items."

FAA Response: Because the FAA only proposed compliance with the safety belt and smoking rules, inclusion of other safety items would be beyond the scope of the notice.

Passenger Briefings

One commenter states that the proposed requirements to brief passengers "on when, where, and under what conditions" smoking is prohibited and safety belts or, as applicable, shoulder harnesses must be fastened are unnecessary and might be stated more generally.

FAA Response: The requirements are not overly specific. Passengers must be told that smoking is prohibited while the "no smoking" sign is lighted or posted (when); if applicable, anywhere in the cabin, including lavatories (where); and, if applicable, during emergency situations (under what conditions). Passengers must also be briefed on the use of safety belts and shoulder harnesses, that they must use them when the "fasten seat belt" sign is lighted or posted (when); that they must return to their seat when the sign is lighted (where); that they will be asked to use their safety belts during turbulence, takeoffs, landings, and at all other times they are in their seat (under what conditions).

Passenger Briefing Cards

ALPA recommends that passenger briefing cards be written in several languages and that the safety briefing be given in multiple languages.

FAA Response: Most air carriers engaged in international flights and some air carriers engaged in domestic flights provide multiple language directions on briefing cards and some conduct safety briefings in more than one language. To make this a requirement for all air carriers would impose an unnecessary burden on operators who do not conduct international flights. Also, given the random language distribution on any given flight, requiring that safety briefings be conducted in particular languages might not meet the needs of the passengers with any consistency. Such a requirement would constitute a particularly heavy burden on smaller operators. However, operators are encouraged to conduct briefings in multiple languages when and where appropriate.

Order of Briefing Presentation

The Airline Passengers Association of North America (APANA) suggests that passenger briefings be done in a specific order.

FAA Response: It is not necessary that the regulations specify a particular order to the briefing items as long as all safety items are covered. There is no empirical evidence to indicate that the order of items covered in the briefing has any safety significance. Flight attendants should be allowed flexibility in conducting the briefing in order to address properly specific needs of a flight. For example, because passengers might be attempting to stand, it might be expedient to give the safety belt announcement out of some set order.

Placards

RAA suggests that current § 121.317(d) be revised to allow for placement of safety placards in a "location in full view of the passenger" instead of requiring them on each passenger seat back.

FAA Response: This suggestion had previously been proposed (48 FR 45214), but the FAA has not yet taken final action on the proposal. As a result of the comment, and because the requested change would simplify the requirement without decreasing its effectiveness, the FAA is relaxing the requirement of § 121.317(d) to permit the location of legible signs or placards in appropriate locations where the message would be visible to each seated passenger.

Smoking on the Flight Deck

A joint comment from the flight attendant associations suggests that proposed § 135.127 be revised to allow smoking on the flight deck only if a solid door separates the flight deck from the passenger compartment.

FAA Response: The purpose of prohibiting smoking in the cabin is in part to protect the cabin air quality for passengers. The proposed language is § 135.127 implies that the physical separation would be such that the smoke would not affect air quality in the passenger compartment. The proposed language is adequate and has not been changed in the amendment. However, the FAA is currently studying the issue of smoking on the flight deck as a result of a petition for rulemaking on this subject. When the studies are complete, the FAA will address this issue in its response to the petition. (See Docket No 26139.)

Passenger Service Equipment

The proposed rule and these amendments require all food, beverages, and tableware; food and beverage trays; seat back tray tables; passenger service carts; and movie screens to be secured and stowed during aircraft movement on the surface, takeoff, and landing. (§§ 91.535; 121.577; 125.333; and 135.122)

Several commenters, including ALPA, APANA, and NTSB, concur with the proposed requirements. A number of commenters oppose the food and beverage requirement primarily because it would pose a hardship on operators of small aircraft that have no galley for storing food. These operators normally store the food in plastic containers on empty passenger seats. Commenters believe that food and beverages in plastic or styrofoam containers pose no hazard to passengers.

A few commenters object to the proposal because it would curtail the current practice of providing food and beverages during ground operations before takeoff. Also some operators would like to provide food and beverages during delays that may occur after pushback.

One commenter expresses concern that the proposal would prohibit pre-departure beverages in first class

thereby causing some potential loss of revenue through a decrease in first-class ticket sales.

ATA states that several airlines use a movie screen to conduct safety briefings during aircraft movement on the surface.

FAA Response: The proposed rule and this amendment clarify the requirements for food and beverage service under part 121 and add food and beverage service requirements to parts 91, 125, and 135 to increase cabin safety.

As stated in the preamble of the proposed rule, FAA inspectors have reported instances in which movie screens that extend into the aisles and food, beverages, tableware, food and beverage trays and containers, passenger service carts, and seat back tray tables were not stowed in secure positions while the aircraft was moving on the surface. Such items could become a safety hazard during an emergency and could block or slow passenger movement during an evacuation.

Before an aircraft moves, all of these items must be stowed in secured positions. This requirement is intended to prevent food and beverage service during movement on the surface because food, beverages, containers, and trays may impede passenger egress in the event of an emergency.

To ensure the maximum safety of occupants in the event of an incident or accident or of an emergency evacuation, all items of food and beverage service must be stowed in secure positions.

Operators of small aircraft that do not have galleys may comply with the proposed requirements by stowing all food and beverage service items in other secured positions. Food and beverage items may be stowed in a passenger seat if the items are secured in accordance with current cargo-carrying requirements in §§ 91.525, 121.285, 125.183, and 135.87. The FAA is not requiring the installation of a galley on such aircraft. Food, beverages, and service items must be securely stowed to prevent such items from falling into the aisle and impeding passenger egress in the event of an emergency.

The FAA intends the rule to prohibit food and beverage service during movement on the surface. If food or beverages are served during delays after pushback when the aircraft is stationary, all food service items and equipment must be stowed in secured positions before aircraft movement on the surface may be resumed. However, this requirement would effectively prohibit providing food and beverage service during any short duration delays interspersed with some aircraft movement on the surface.

The FAA recognizes that food and beverage service provided by an airline is important to passengers; however, such a service does not take priority over safety considerations. During aircraft movement on the surface "required" flight attendants should be alert to any safety problems and should not be distracted by conducting food and beverage service. Current § 121.391(d) requires that during taxi, flight attendants required by the section must remain at their duty stations with safety belts and shoulder harnesses fastened, except to perform duties related to the safety of the airplane and its occupants. Section121.391 allows certificate holders to provide more than the "required" flight attendants. In accordance with § 121.391(d), these extra attendants do not have to be at a duty station during taxi and in the past may have provided food and beverage service. This rulemaking, in effect, prohibits such food service during movement of the aircraft on the surface because all food and beverages provided by the air carrier and all service items must be securely stowed before movement. This rulemaking also requires these extra flight attendants to be seated during movement on the surface. (See related discussion under "Aircraft Movement on the Surface.")

One commenter concludes that a decrease in pre-departure beverage service may result in a decrease in first-class ticket sales. The rule would prohibit providing food and beverage service during movement on the surface. (Food and beverage service is already prohibited during takeoff and landing.) That means that, from pushback to takeoff, beverages will not be served. In most cases, this is less than 15 minutes. Moreover, if there is a delay on the taxiway prior to takeoff, the delay is usually no more than several minutes. Thus, the time involved is relatively short. The commenter does not assign a value to beverage service offered during this time period. Given the short duration of time involved, the FAA is not persuaded that the diminished value, if any, of a first-class ticket due to this amendment would result in a decrease in first-class ticket sales.

Regarding the use of movies to conduct safety briefings, the requirement will not affect safety briefings as long as the movie screen does not protrude into the aisle.

Fire Extinguishers and Protective Breathing Equipment

The NPRM proposed changes to and these amendments revise §§ 121.309(c) and 121.337(b)(9) to specify the airplane compartments for which hand fire extinguishers and protective breathing equipment (PBE) must be provided.

The ALPA comment and the joint comment from the flight attendant associations state that in addition to the proposed language, the equipment location should be uniform so that crewmembers would not have to relearn the location with each airplane.

Some commenters state that the requirements of §§ 121.309 (c)(3) and (c)(6) are unclear about whether a hand fire extinguisher must be located inside or outside a galley.

FAA Response: While it may seem preferable to require uniform location of fire extinguishers and PBE, many factors may affect the location of the equipment and these factors may vary from airplane to airplane. Crewmembers are required to be familiar with the location and use of all emergency equipment on an airplane to which they are assigned duties.

The language of § 121.309(c)(3) means that fire equipment must be located inside a galley which is not within a passenger, cargo, or crew compartment; such galleys are not accessible through passenger, cargo, or crew compartments and therefore, the fire equipment would, in effect, be inside these galleys. The language of § 121.309(c)(6) means that fire equipment can be located either inside or outside a galley that is located in a passenger compartment as long as that equipment is easily accessible.

Safety Belts in Airships

The NPRM proposed to and these amendments modify the exclusion for airships in current §§ 91.107 (a)(1), (a)(2), and (a)(3) and 91.205(b)(12). Airships type certificated on or after November 2, 1987, would be required to have safety belts available for all occupants who have reached their second birthday, and pilots would be required to brief passengers on how and when to fasten safety belts. Also §§ 91.107(b) and 91.205(b)(12) are revised to remove obsolete references.

The NTSB concurs but recommends companion requirements that would require all airship occupants to wear safety belts during takeoff, landing, and turbulent conditions, and to require persons under the age of 2 to occupy approved restraint devices during takeoff, landing, and turbulence. The comment also suggests that the FAA encourage operators and manufacturers to install safety belts in airships that were type certificated before November 2, 1987.

FAA Response: These amendments require airship occupants to wear safety belts during movement on the surface.

takeoff, and landing (§ 91.107(a)(3)). Rather than specify "turbulence," § 91.517 and comparable sections of these amendments state "during aircraft movement on the surface, for each takeoff, for each landing, and when otherwise considered to be necessary."

Section 91.107 has been revised to allow for the use of child restraint systems if a parent or guardian wishes to use one for his or her child. Mandatory requirements for use of child restraint systems are not included in this rulemaking.

While not required in this rulemaking, in the interest of safety to occupants of airships type certificated before November 2, 1987, the FAA encourages operators and manufacturers of airships to install safety belts and use them in airships that are not required to have them.

Shoulder Harnesses

Current § 91.105(b) requires that each required flight crewmember of a U.S.-registered civil "airplane" shall, during takeoff and landing, keep the shoulder harness fastened while at his or her station. The proposal revises the current language to include all U.S.-registered civil "aircraft," thereby expanding the requirements to rotorcraft.

Three comments were received on the proposal. One comment said the FAA should mandate the installation of shoulder harnesses. AFA says that the proposed requirement does not address the accident cited in the preamble of the proposed rule that involved a helicopter not equipped with shoulder harnesses. The NTSB concurs with the proposal.

FAA Response: The FAA is not mandating the installation of shoulder harnesses, because such action would be beyond the scope of the notice. The use of shoulder harnesses is required only where they are installed on the aircraft. The FAA encourages operators and manufacturers to install shoulder harnesses in aircraft that do not already have them.

Airplane Evacuation

The NPRM proposed establishing a new § 121.570 to require that an airplane carrying passengers cannot move on the surface, take off, or land unless each automatically deployable emergency evacuation assisting means installed on the airplane is ready for evacuation (armed). It also would require that at all times passengers are on board prior to airplane movement on the surface, at least one floor-level exit must provide for the egress of passengers through normal or emergency means.

Two commenters, including RAA, state that arming evacuation means before airplane movement on the surface could interfere with other ground operations.

Three comments concern the number of emergency exits. The joint comment from the flight attendant associations suggests that in the interest of safety another exit should be available besides the floor-level exit opened for passenger enplaning and deplaning. The NTSB states that at least half of the floor-level exits should be available for egress.

FAA Response: Current rules require that evacuation assisting means be ready for evacuation during taxi, takeoff, and landing (§ 121.310(a)). This leaves a period of time after the passenger loading door is closed and the loading ramp pulled back but before taxi when no means of egress is available. The amendment requires arming of evacuation means when an airplane is to be moved on the surface. This could occur after completion of ground operations, but before the movement of the airplane.

The FAA is requiring that one floor-level exit be available for passenger egress at all times passengers are on board prior to airplane movement on the surface. The intent of this amendment is to ensure that, whenever the airplane has passengers on board, a means for egress is available. Because the aircraft is at the gate during the time period covered by this new requirement, the FAA is not requiring that additional exits be available as several commenters suggest. Due to its gate location, additional help to expedite egress is readily available in an emergency situation.

Attitude Indicator

The NPRM proposed to revise § 121.305 to extend its applicability to all large turboprop airplanes. This rule requires an additional attitude-indicating instrument for bank and pitch operating from a source of power independent of the normal electrical generating system.

One commenter states that a simple turn-and-slip indicator should suffice. Several commenters raise questions concerning the requirement that the additional attitude-indicating instrument must operate from a source of power independent of the normal electrical generating system. One commenter asks whether the additional source of power must be independent of engine-driven sources. Another recommends that the attitude indicator should be powered by an independent battery because the main battery may already power too many required items in the event of failure. ALPA says that the FAA has neglected a significant group of airplanes, namely turboprops between 10 and 30 passenger seats. The NTSB concurs with the proposal but does not think a 2-year compliance date is needed since the equipment is available now.

FAA Response: As stated in the NPRM, the purpose of the change is to respond to NTSB Safety Recommendation No. A-80-19 by extending the applicability of § 121.305 to large turboprop airplanes. The question of the adequacy of the required additional power source need not be addressed in the regulation because it would be addressed as part of the retrofit process. While the FAA is requiring that a third attitude indicator be installed in these airplanes, the FAA is not specifying how this requirement should be met as long as the power source for the indicator is independent from the electrical generating system. Installation is an engineering concern, and the acceptable means to accomplish this are detailed in other guidance documents.

The 2-year compliance date proposed by the FAA is considered to be standard for such equipment installation.

While the ALPA proposal has merit, it was not consistent with the purpose of the proposed regulation, and ALPA did not provide enough data to warrant inclusion in this particular rulemaking activity. If ALPA wishes to do so, they may submit more data regarding the need for a third attitude indicator in turboprop airplanes, and the FAA will consider that for future rulemaking.

Check Airman Practical Tests

The rule action removes § 135.303 because it is obsolete. Check airman training and checking are now in §§ 135.337 and 135.339.

One concurring comment was received from the NTSB.

Economic Summary

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if the potential benefits to society for the regulatory change outweigh the potential costs to society. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is likely to result in an annual effect on the economy of $100 million or more, a major increase in consumer costs, or a significant adverse effect on competition.

These amendments are determined not to be "major" as defined in the Executive Order, so a full regulatory analysis evaluating alternative approaches has not been prepared. However, a more concise final Regulatory Evaluation has been prepared that includes an analysis of the economic consequences of these amendments. This analysis is included in the docket and quantifies, to the extent practical, estimated costs as well as the anticipated benefits and impacts. In addition to a summary of the Regulatory Evaluation, this section also contains a final regulatory flexibility determination required by the 1980 Regulatory Flexibility Act (Pub. L. 96–354) and an international trade impact assessment. If the reader desires more detailed economic information than this summary contains, then he or she should consult the Regulatory Evaluation contained in the docket.

In this Regulatory Evaluation, the FAA evaluated nine amendments. All but one of these amendments impose no significant costs. The FAA found that all nine amendments are cost beneficial. A summary of the evaluation of each of these nine amendments follows. For a more detailed analysis, the reader is referred to the full evaluation contained in the docket.

Child Restraint Systems

The FAA will require under these amendments that certificate holders accept for use in passenger seats approved child restraint systems provided by a child's parent, guardian, or attendant. From an economic perspective, the important point of the final regulation is its optional nature. Children under 2 can still fly for free if they sit in an adult's lap. Those parents of children under 2, however, who decide to place their children in child restraint systems will now be able to do so. The cost would be the purchase of an airline seat to use for the child restraint system. This cost is not a cost of the regulation because child restraint systems are not required by this rule. Moreover, the air carriers are not required to purchase or to stock these seats; therefore they incur no costs.

In an economic study prepared for the FAA by Apogee Research, Inc., 9–10 infant fatalities were identified in 6 accidents over the 12-year period between 1978 and April 1990. The FAA believes that some, but not all, of these casualties could have been prevented by the proper use of child restraint systems. Based upon seating location, damage to the aircraft, and the types and extent of injuries sustained, the FAA believes that one fatality, one serious injury, and 2–5 minor injuries were preventable. The estimated total discounted benefits resulting from the use of child restraint systems as a result of this amendment would be as high as $5.91 million. As there are no costs for this rule, the FAA finds that this amendment would be cost beneficial.

Attitude Indicators

The FAA is amending part 121 of the Federal Aviation Regulations (FAR) to require an additional attitude indictor (for bank and pitch) to be installed on all turboprop airplanes that are used in operations under that part and that this additional indicator operate from a power source independent of the airplane's normal electrical generating system. This recommendation came as a result of two accidents over the last 10 years in which large turboprop cargo airplanes were flying in IFR conditions when they lost their attitude-indicating instruments; in both cases, the flightcrew lost control and crashed, killing all on board.

This amendment should eliminate this type of accident. The FAA estimates that the benefits of a cargo turboprop airplane avoiding this type of accident are $6.0 million, and that the estimated benefits for passenger turboprop airplanes are $30.2 million for 30- to 40-seat airplanes and $41.0 million for 40+-seat airplanes. Each of these benefit estimates was multiplied by the annual probability that a turboprop airplane would have such an accident. The expected values were then projected out over a 10-year period and finally discounted to obtain the present value of benefits. The estimated present value of the benefits per turboprop airplane are:

Type of airplane	Present value—benefits
Cargo	$23,200
30-40 Seat passenger	116,800
40+ Seat passenger	158,600

The installation costs for the third gyroscopic attitude indicator required by this amendment will depend on whether the airplane is used or new. The older large turboprop airplanes need to be retrofitted with a third gyroscopic attitude indicator that must be connected to an independent power source. The newer turboprop airplanes have this type of an indicator already installed, but these indicators might not be connected to an independent power source. All newly manufactured turboprop airplanes will be required to have such an indicator installed and connected to an independent power source. Factoring in the costs due to the weight penalty for the extra equipment on each of these different types of airplanes, as well as the annual maintenance and inspection costs, projecting over a 10-year time period, and finally discounting these costs yields:

Type and age of airplane	Present value—costs
Old turboprop airplanes	$7,900
New turboprop airplanes	3,100
Future turboprop airplanes	7,400

For each type of airplane, the benefits from this amendment exceed the costs. Accordingly, the FAA determines that this amendment is cost beneficial.

Passenger Information

The FAA has recognized three issues concerning the dissemination of passenger information. First, existing regulations do not require that the lighted passenger information signs such as the "no smoking" and the "fasten seat belt" signs be turned on while the airplane is taxiing. Second, in some circumstances certain parts of the FAR do not require passenger compliance with these lighted passenger information signs, posted signs and placards, and crewmember safety-related instructions. Finally, some passenger briefing requirements lack specific information about safety belts, smoking aboard aircraft, or passenger compliance. As a result, the FAA is changing the FAR to address these issues.

The FAA finds that there are no costs to this amendment. The intent of these changes is to clarify the type of passenger-safety related information that needs to be disseminated and to codify the requirements concerning issuing such material. None of the changes would involve any costs to the air carrier or passengers. The actions that are being required would still have to be performed prior to takeoff and landing.

There are benefits, however, in requiring passengers to comply with the fasten safety belt requirements. The FAA has found a number of incidents since 1970 where passengers and/or flight attendants not using safety belts have been injured during taxiing. Some of these incidents involved airplane collisions wherein seated and belted-in passengers avoided injuries. Therefore, the FAA concludes that the use of safety belts could have prevented some of

these injuries. Thus, the FAA finds that this rule is cost beneficial.

Passenger Service Equipment

Current FAA regulations do not require passenger service carts, food and beverage trays, seat back tray tables, and movie screens to be stowed during taxiing. Because of this, given an emergency evacuation situation during the taxiing phase, passenger emergency departure procedures could be impeded. Accordingly, the FAA would require an operator to secure all such apparatus before the aircraft is taxiing.

This amendment does not involve any additional costs to the air carrier operator. These actions would still have to be performed before takeoff. The only difference is that they would have to be done before pushback. There are, however, potential benefits as a result of this rule change (facilitating passenger egress during emergency situations). The FAA, therefore, finds that this amendment is cost beneficial.

Shoulder Harnesses

Currently, all crewmembers aboard U.S.-registered civil airplanes that are equipped with shoulder harnesses are required to wear them at specific times and under specific conditions. The amendment mandates the wearing of shoulder harnesses on all aircraft, but only if the crewmember's seat is equipped with a shoulder harness and the crewmember is able to perform required duties with the shoulder harness fastened. This amendment, however, does not require the retrofitting of shoulder harnesses on those aircraft. Therefore, the FAA finds that there are no economic costs to this amendment. Studies completed by the NTSB have shown that wearing shoulder harnesses has saved lives during accidents and that not wearing shoulder harnesses has resulted in fatalities or serious injuries during survivable accidents. Previous studies done by the FAA also have shown positive net benefits from using shoulder harnesses. Given the benefits of lives saved and injuries prevented, the FAA finds that this amendment is cost beneficial.

Airplane Evacuation

While the current regulations governing part 121 airplanes call for the automatic deployable emergency evacuation assisting means (such as exit doors and slides) to be ready for evacuation during taxiing, takeoffs, and landings, there are not provisions for this equipment to be ready for evacuation before taxiing. If an emergency occurs while the airplane is still at the gate or during pushback, there is no safe way for the passengers to leave the airplane except over the wing. This amendment requires the arming of such equipment before any airplane surface movement when passengers are on board.

The FAA has determined that there are no additional economic costs to this amendment. All that the amendment does is require a specific action (the arming of this equipment) earlier than is currently required. Given the possibility of emergency situations requiring passenger egress when the assisting means has not been made ready for evacuation, the FAA finds that this amendment will facilitate emergency evacuations and is, therefore, cost beneficial.

Fire Extinguishers and Protective Breathing Equipment

The current FAA regulations governing the placement of fire extinguishers and protective breathing equipment are unclear. Accordingly, the FAA is changing the language of the applicable sections of Part 121 to clarify these regulations. As the total quantity of this equipment would not change as a result of this amendment, there are no costs involved; the principal benefit would involve clarifying the location of such equipment. The FAA, therefore, finds that this amendment is cost beneficial.

Check Airmen Practical Tests

Existing § 135.303 of the FAR, which requires check airman to pass oral and flight tests, is unclear about what constitutes these tests. Because there are other training and checking requirements in the FAR, the FAA has determined that this part of the FAR is obsolete and is removing this section. Benefits will accrue to the airlines that will no longer have to request exemptions from this section. The FAA, therefore, finds that this amendment is cost beneficial.

Safety Belts in Airships

Currently FAA regulations exclude airships from the requirements of briefing passengers on how and when to fasten their safety belts and shoulder harnesses and on requiring each occupant to use them. The FAA is revising the FAR by removing the exceptions to airships. This amendment, however, does not require that airships be retrofitted with either safety belts or shoulder harnesses.

The amendment mandates the wearing of such equipment on airships if such safety belts or shoulder harnesses are already installed in the airship. Thus, this amendment does not impose any additional costs. It is well known, however, that safety belts and shoulder harnesses, whether they are used in automobiles, airplanes, or rotorcraft, have helped to save lives and prevent injuries. Similar benefits will be achieved by occupants of airships wearing safety belts or shoulder harnesses. Thus, given the potential economic benefits of lives saved and injuries prevented from using safety belts and shoulder harnesses, the FAA finds that this amendment is cost beneficial.

International Trade Impact Assessment

These amendments will have little or no impact on international trade. Most of the provisions will impose little or no additional operating costs on Part 121 certificate holders. Only one of the rules will have any cost impact. That amendment will only affect part 121 certificate holders that operate large turboprop airplanes.

This amendment requires those part 121 operators who operate large turboprop airplanes to install a third gyroscopic attitude indicator. This amendment will have minimal effect on operators that provide international air carrier service because most operate turbojet airplanes and must already comply with this requirement. The Part 121 operators affected by these amendments mostly provide domestic and supplemental service and thus for the most part would not complete with foreign air carriers.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities."

These amendments will impact entities regulated by part 121. The FAA's criteria for "a substantial number" are a number that is not fewer than 11 and which is more than one third of the small entities subject to this rule. For air carriers, a small entity has been defined as one who owns, but does not necessarily operate, nine or fewer aircraft. The FAA's criteria for "a significant economic impact" are at least $4,150 per year for an unscheduled carrier, $59,100 per year for a scheduled carrier having airplanes with only 60 or fewer seats, and $105,700 per year for a scheduled carrier having an airplane with 61 or more seats.

Requiring part 121 scheduled operators of turboprop airplanes to install a third gyroscopic attitude indicator will impose, at most, an annualized cost of $1,290 per year per airplane. If a small part 121 scheduled operator has nine turboprop airplanes, these costs ($11,600) would not exceed either of the above two thresholds ($59,100 and $105,700) for scheduled carriers. If a small part 121 unscheduled operator had three or more turboprop airplanes, the costs of these amendments would exceed the $4,150 threshold per year for unscheduled carriers. This, however, is the case of only three unscheduled operators. Thus, a substantial number of small unscheduled operators are not affected by this rule. The FAA, therefore, determines that the final amendments to part 121 will not have a significant economic impact on a substantial number of small entities.

Federalism Implications

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this regulation will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

Under the terms of the Regulatory Flexibility Act, the FAA has reviewed these amendments to determine what impact they may have on small entities. The rule changes are only expected to affect a few small entities. Therefore, the FAA certifies that these amendments will not result in a significant economic impact, positive or negative, on a substantial number of small entities. In addition, the rule is not likely to result in an annual effect on the economy of $100 million or more or in a major increase in costs for consumers or Federal, State, or local government agencies. Accordingly, it has been determined that this is not a major rule under Executive Order 12291. In addition, this rule will have little or no impact on trade opportunities for U.S. firms doing business overseas or foreign firms doing business in the United States. Finally, the FAA has determined that this rule is significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

A Regulatory Evaluation of this rule, including a regulatory flexibility determination and an international trade impact assessment, has been placed in the regulatory docket.

List of Subjects

14 CFR Part 91

Air carriers, Air transportation, Aviation safety, Safety.

14 CFR Part 121

Air carriers, Air transportation, Aviation safety, Common carriers, Safety, Transportation.

14 CFR Part 125

Air carriers, Air transportation, Aviation safety, Safety.

14 CFR Part 135

Air carriers, Air taxi, Air transportation, Aviation safety, Safety.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends parts 91, 121, 125, and 135 of the Federal Aviation Regulations (14 CFR parts 91, 121, 125, and 135) as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. Section 91.105 is amended by revising the introductory text of paragraph (b) to read as follows:

§ 91.105 Flight crewmembers at stations.

* * * * *

(b) Each required flight crewmember of a U.S.-registered civil aircraft shall, during takeoff and landing, keep his or her shoulder harness fastened while at his or her assigned duty station. This paragraph does not apply if—

* * * * *

3. Section 91.107 is revised to read as follows:

§ 91.107 Use of safety belts, shoulder harnesses, and child restraint systems.

(a) Unless otherwise authorized by the Administrator—

(1) No pilot may take off a U.S.-registered civil aircraft (except a free balloon that incorporates a basket or gondola, or an airship type certificated before November 2, 1987) unless the pilot in command of that aircraft ensures that each person on board is briefed on how to fasten and unfasten that person's safety belt and, if installed, shoulder harness.

(2) No pilot may cause to be moved on the surface, take off, or land a U.S.-registered civil aircraft (except a free balloon that incorporates a basket or gondola, or an airship type certificated before November 2, 1987) unless the pilot in command of that aircraft ensures that each person on board has been notified to fasten his or her safety belt and, if installed, his or her shoulder harness.

(3) Except as provided in this paragraph, each person on board a U.S.-registered civil aircraft (except a free balloon that incorporates a basket or gondola or an airship type certificated before November 2, 1987) must occupy an approved seat or berth with a safety belt and, if installed, shoulder harness, properly secured about him or her during movement on the surface, takeoff, and landing. For seaplane and float equipped rotorcraft operations during movement on the surface, the person pushing off the seaplane or rotorcraft from the dock and the person mooring the seaplane or rotorcraft at the dock are excepted from the preceding seating and safety belt requirements. Notwithstanding the preceding requirements of this paragraph, a person may:

(i) Be held by an adult who is occupying a seat or berth if that person has not reached his or her second birthday;

(ii) Use the floor of the aircraft as a seat, provided that the person is on board for the purpose of engaging in sport parachuting; or

(iii) Notwithstanding any other requirement of this chapter, occupy an approved child restraint system furnished by the operator or one of the persons described in paragraph (a)(3)(iii)(A) of this section provided that:

(A) The child is accompanied by a parent, guardian, or attendant designated by the child's parent or guardian to attend to the safety of the child during the flight;

(B) The approved child restraint system bears one or more labels as follows:

(*1*) Seats manufactured to U.S. standards between January 1, 1981, and February 25, 1985, must bear the label: "This child restraint system conforms to all applicable Federal motor vehicle safety standards." Vest- and harness-type child restraint systems manufactured before February 26, 1985, bearing such a label are not approved for the purposes of this section;

(*2*) Seats manufactured to U.S. standards on or after February 26, 1985, must bear two labels:

(*i*) "This child restraint system conforms to all applicable Federal motor vehicle safety standards"; and

(*ii*) "THIS RESTRAINT IS CERTIFIED FOR USE IN MOTOR VEHICLES AND AIRCRAFT" in red lettering;

(*3*) Seats that do not qualify under paragraphs (a)(3)(iii)(B)(*1*) and (a)(3)(iii)(B)(*2*) of this section must bear either a label showing approval of a foreign government or a label showing that the seat was manufactured under the standards of the United Nations; and

(C) The operator complies with the following requirements:

(*1*) The restraint system must be properly secured to an approved forward-facing seat or berth;

(*2*) The child must be properly secured in the restraint system and must not exceed the specified weight limit for the restraint system; and

(*3*) The restraint system must bear the appropriate label(s).

(b) Unless otherwise stated, this section does not apply to operations conducted under part 121, 125, or 135 of this chapter. Paragraph (a)(3) of this section does not apply to persons subject to § 91.105.

4. Section 91.205 is amended by revising paragraph (b)(12) to read as follows:

§ 91.205 Powered civil aircraft with standard category U.S. airworthiness certificates: Instrument and equipment requirements.

* * * * *

(b) * * *

(12) An approved safety belt with an approved metal-to-metal latching device for each occupant 2 years of age or older.

* * * * *

5. Section 91.517 is revised to read as follows:

§ 91.517 Passenger information.

(a) Except as provided in paragraph (b) of this section, no person may operate an airplane carrying passengers unless it is equipped with signs that are visible to passengers and flight attendants to notify them when smoking is prohibited and when safety belts must be fastened. The signs must be so constructed that the crew can turn them on and off. They must be turned on during airplane movement on the surface, for each takeoff, for each landing, and when otherwise considered to be necessary by the pilot in command.

(b) The pilot in command of an airplane that is not required, in accordance with applicable aircraft and equipment requirements of this chapter, to be equipped as provided in paragraph (a) of this section shall ensure that the passengers are notified orally each time that it is necessary to fasten their safety belts and when smoking is prohibited.

(c) If passenger information signs are installed, no passenger or crewmember may smoke while any "no smoking" sign is lighted nor may any passenger or crewmember smoke in any lavatory.

(d) Each passenger required by § 91.107(a)(3) to occupy a seat or berth shall fasten his or her safety belt about him or her and keep it fastened while any "fasten seat belt" sign is lighted.

(e) Each passenger shall comply with instructions given him or her by crewmembers regarding compliance with paragraphs (b), (c), and (d) of this section.

6. Section 91.519 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 91.519 Passenger briefing.

(a) * * *

(1) Smoking: Each passenger shall be briefed on when, where, and under what conditions smoking is prohibited. This briefing shall include a statement, as appropriate, that the Federal Aviation Regulations require passenger compliance with lighted passenger information signs and no smoking placards, prohibit smoking in lavatories, and require compliance with crewmember instructions with regard to these items;

(2) Use of safety belts and shoulder harnesses: Each passenger shall be briefed on when, where, and under what conditions it is necessary to have his or her safety belt and, if installed, his or her shoulder harness fastened about him or her. This briefing shall include a statement, as appropriate, that Federal Aviation Regulations require passenger compliance with the lighted passenger sign and/or crewmember instructions with regard to these items;

* * * * *

7. Section 91.535 is added to subpart F to read as follows:

§ 91.535 Stowage of food, beverage, and passenger service equipment during aircraft movement on the surface, takeoff, and landing.

(a) No operator may move an aircraft on the surface, take off, or land when any food, beverage, or tableware furnished by the operator is located at any passenger seat.

(b) No operator may move an aircraft on the surface, take off, or land unless each food and beverage tray and seat back tray table is secured in its stowed position.

(c) No operator may permit an aircraft to move on the surface, take off, or land unless each passenger serving cart is secured in its stowed position.

(d) No operator may permit an aircraft to move on the surface, take off, or land unless each movie screen that extends into the aisle is stowed.

(e) Each passenger shall comply with instructions given by a crewmember with regard to compliance with this section.

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS, AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

8. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

9. Section 121.305 is amended by revising the introductory text of paragraph (j) to read as follows:

§ 121.305 Flight and navigational equipment.

* * * * *

(j) After October 17, 1994 on large airplanes other than reciprocating-engine-powered airplanes, in addition to two gyroscopic bank-and-pitch indicators (artificial horizons) for use at the pilot stations, a third such instrument that—

* * * * *

10. Section 121.309 is amended by revising paragraph (c) introductory text and (c)(2); by redesignating paragraphs (c)(3), (c)(4), and (c)(5) as (c)(4), (c)(5), and (c)(7), respectively; by revising newly redesignated paragraphs (c)(4), (c)(5), and (c)(7); and by adding new paragraphs (c)(3) and (c)(6) to read as follows:

§ 121.309 Emergency equipment.

* * * * *

(c) Hand fire extinguishers for crew, passenger, cargo, and galley compartments. Hand fire extinguishers of an approved type must be provided for use in crew, passenger, cargo, and galley compartments in accordance with the following:

* * * * *

(2) Cargo compartments. At least one hand fire extinguisher must be conveniently located for use in each class E cargo compartment that is accessible to crewmembers during flight.

(3) Galley compartments. At least one hand fire extinguisher must be conveniently located for use in each galley located in a compartment other than a passenger, cargo, or crew compartment.

(4) Flightcrew compartment. At least one hand fire extinguisher must be conveniently located on the flight deck for use by the flightcrew.

(5) Passenger compartments. Hand fire extinguishers for use in passenger compartments must be conveniently located and, when two or more are required, uniformly distributed throughout each compartment. Hand fire extinguishers shall be provided in passenger compartments as follows:

(i) For airplanes having passenger seats accommodating more than 6 but fewer than 31 passengers, at least one.

(ii) For airplanes having passenger seats accommodating more than 30 but fewer than 61 passengers, at least two.

(iii) For airplanes having passenger seats accommodating more than 60 passengers, there must be at least the following number of hand fire extinguishers:

Minimum Number of Hand Fire Extinguishers

Passenger seating accommodations:	
61 through 200	3
201 through 300	4
301 through 400	5
401 through 500	6
501 through 600	7
601 or more	8

(6) Notwithstanding the requirement for uniform distribution of hand fire extinguishers as prescribed in paragraph (c)(5) of this section, for those cases where a galley is located in a passenger compartment, at least one hand fire extinguisher must be conveniently located and easily accessible for use in the galley.

(7) At least two of the required hand fire extinguishers installed in passenger-carrying airplanes must contain Halon 1211 (bromochlorofluoromethane) or equivalent as the extinguishing agent.

* * * * *

11. Section 121.311 is amended by revising paragraph (b); by redesignating paragraphs (c) through (h) as (d) through (i), respectively; by removing the words "After September 30, 1969, each" from newly redesignated paragraph (d) and inserting the word "Each" in their place' and by adding new paragraph (c) to read as follow:

§ 121.311 Seats, safety belts, and shoulder harnesses.

* * * * *

(b) Except as provided in this paragraph, each person on board an airplane operated under this part shall occupy an approved seat or berth with a separate safety belt properly secured about him or her during movement on the surface, takeoff, and landing. A safety belt provided for the occupant of a seat may not be used by more than one person who has reached his or her second birthday. Notwithstanding the preceding requirements, a child may:

(1) Be held by an adult who is occupying an approved seat or berth if that child has not reached his or her second birthday; or

(2) Notwithstanding any other requirement of this chapter, occupy an approved child restraint system furnished by the certificate holder or one of the persons described in paragraph (b)(2)(i) of this section, provided:

(i) The child is accompanied by a parent, guardian, or attendant designated by the child's parent or guardian to attend to the safety of the child during the flight;

(ii) The approved child restraint system bears one or more labels as follows:

(A) Seats manufactured to U.S. standards between January 1, 1981, and February 25, 1985, must bear the label: "This child restraint system conforms to all applicable Federal motor vehicle safety standards." Vest- and harness-type child restraint systems manufactured before February 26, 1985, bearing such a label are not approved for the purposes of this section;

(B) Seats manufactured to U.S. standards on or after February 26, 1985, must bear two labels:

(*1*) "This child restraint system conforms to all applicable Federal motor vehicle safety standards"; and

(*2*) "THIS RESTRAINT IS CERTIFIED FOR USE IN MOTOR VEHICLES AND AIRCRAFT" in red lettering;

(C) Seats that do not qualify under paragraphs (b)(2)(ii)(A) and (b)(2)(ii)(B) of this section must bear either a label showing approval of a foreign government or a label showing that the seat was manufactured under the standards of the United Nations; and

(iii) The certificate holder complies with the following requirements:

(A) The restraint system must be properly secured to an approved forward-facing seat or berth;

(B) The child must be properly secured in the restraint system and must not exceed the specified weight limit for the restraint system; and

(C) The restraint system must bear the appropriate label(s).

(c) No certificate holder may prohibit a child, if requested by the child's parent, guardian, or designated attendant, from occupying a child restraint system furnished by the child's parent, guardian, or designated attendant, provided the child holds a ticket for an approved seat or berth, or such seat or berth is otherwise made available by the certificate holder for the child's use, and the requirements contained in paragraphs (b)(2)(i) through (b)(2)(iii) of this section are met. This section does not prohibit the certificate holder from providing child restraint systems or, consistent with safe operating practices, determining the most appropriate passenger seat location for the child restraint system.

* * * * *

12. Section 121.317 is amended by removing the words "After December 31, 1988, no" from paragraph (e) and inserting the word "No" in their place; by revising paragraphs (b), (d), (f), (g), and (j); and by adding new paragraph (k) to read as follows:

§ 121.317 Passenger information.

(b) The "Fasten Seat Belt" sign shall be turned on during any movement on the surface, for each takeoff, for each landing, and at any other time considered necessary by the pilot in command.

* * * * *

(d) No person may operate a passenger-carrying airplane under this part unless at least one legible sign or placard that reads "Fasten Seat Belt While Seated" is visible from each passenger seat. These signs or placards need not meet the requirements of paragraph (a) of this section.

* * * * *

(f) Each passenger required by § 121.311(b) to occupy a seat or berth shall fasten his or her safety belt about him or her and keep it fastened while the "Fasten Seat Belt" sign is lighted.

(g) No person may smoke while a "No Smoking" sign is lighted or if "No Smoking" placards are posted, except that the pilot in command may authorize smoking on the flight deck except during airplane movement on the surface, takeoff, or landing.

* * * * *

(j) On flight segments other than those described in paragraph (c) of this section, the "No Smoking" sign must be turned on during any movement on the surface, for each takeoff, for each landing, and at any other time

considered necessary by the pilot in command.

(k) Each passenger shall comply with instructions given him or her by crewmembers regarding compliance with paragraphs (f), (g), and (h) of this section.

* * * * *

13. Section 121.337 is amended by revising paragraph (b)(9)(ii) to read as follows:

§ 121.337 Protective breathing equipment.

* * * * *

(b) * * *

(9) * * *

(ii) One PBE is required for each hand fire extinguisher located for use in a galley other than a galley located in a passenger, cargo, or crew compartment.

14. Section 121.570 is added to subpart T to read as follows:

§ 121.570 Airplane evacuation capability.

(a) No person may cause an airplane carrying passengers to be moved on the surface, take off, or land unless each automatically deployable emergency evacuation assisting means, installed pursuant to § 121.310(a), is ready for evacuation.

(b) Each certificate holder shall ensure that, at all times passengers are on board prior to airplane movement on the surface, at least one floor-level exit provides for the egress of passengers through normal or emergency means.

15. Section 121.571 is amended by revising paragraphs (a)(1)(i) and (a)(1)(iii) to read as follows:

§ 121.571 Briefing passengers before takeoff.

(a) * * *

(1) * * *

(i) *Smoking.* Each passenger shall be briefed on when, where, and under what conditions smoking is prohibited (including, but not limited to, any applicable requirements of part 252 of this title). This briefing shall include a statement that the Federal Aviation Regulations require passenger compliance with the lighted passenger information signs, posted placards, areas designated for safety purposes as no smoking areas, and crewmember instructions with regard to these items. The briefing shall also include a statement that Federal law prohibits tampering with, disabling, or destroying any smoke detector in an airplane lavatory; smoking in lavatories; and, when applicable, smoking in passenger compartments.

* * * * *

(iii) The use of safety belts, including instructions on how to fasten and unfasten the safety belts. Each passenger shall be briefed on when, where, and under what conditions the safety belt must be fastened about that passenger. This briefing shall include a statement that the Federal Aviation Regulations require passenger compliance with lighted passenger information signs and crewmember instructions concerning the use of safety belts.

* * * * *

16. Section 121.577 is revised to read as follows:

§ 121.577 Stowage of food, beverage, and passenger service equipment during airplane movement on the surface, takeoff, and landing.

(a) No certificate holder may move an airplane on the surface, take off, or land when any food, beverage, or tableware furnished by the certificate holder is located at any passenger seat.

(b) No certificate holder may move an airplane on the surface, take off, or land unless each food and beverage tray and seat back tray table is secured in its stowed position.

(c) No certificate holder may permit an airplane to move on the surface, take off, or land unless each passenger serving cart is secured in its stowed position.

(d) No certificate holder may permit an airplane to move on the surface, take off, or land unless each movie screen that extends into an aisle is stowed.

(e) Each passenger shall comply with instructions given by a crewmember with regard to compliance with this section.

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE

17. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 1354, 1421 through 1430 and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

18. Section 125.211 is amended by revising paragraph (b); by redesignating paragraphs (c) through (e) as (d) through (f), respectively; and by adding new paragraph (c) to read as follows:

§ 125.211 Seats and safety belts.

* * * * *

(b) Except as provided in paragraphs (b)(1) and (b)(2) of this section, each person on board an airplane operated under this part shall occupy an approved seat or berth with a separate safety belt properly secured about him or her during movement on the surface, takeoff, and landing. A safety belt provided for the occupant of a seat may not be used for more than one person who has reached his or her second birthday. Notwithstanding the preceding requirements, a child may:

(1) Be held by an adult who is occupying a seat or berth if that child has not reached his or her second birthday; or

(2) Notwithstanding any other requirement of this chapter, occupy an approved child restraint system furnished by the certificate holder or one of the persons described in paragraph (b)(2)(i) of this section, provided:

(i) The child is accompanied by a parent, guardian, or attendant designated by the child's parent or guardian to attend to the safety of the child during the flight;

(ii) The approved child restraint system bears one or more labels as follows:

(A) Seats manufactured to U.S. standards between January 1, 1981, and February 25, 1985, must bear the label: "This child restraint system conforms to all applicable Federal motor vehicle safety standards." Vest- and harness-type child restraint systems manufactured before February 26, 1985, bearing such a label are not approved for the purposes of this section;

(B) Seats manufactured to U.S. standards on or after February 26, 1985, must bear two labels:

(*1*) "This child restraint system conforms to all applicable Federal motor vehicle safety standards"; and

(*2*) "THIS RESTRAINT IS CERTIFIED FOR USE IN MOTOR VEHICLES AND AIRCRAFT" in red lettering;

(C) Seats that do not qualify under paragraphs (b)(2)(ii)(A) and (b)(2)(ii)(B) of this section must bear either a label showing approval of a foreign government or a label showing that the seat was manufactured under the standards of the United Nations; and

(iii) The certificate holder complies with the following requirements:

(A) The restraint system must be properly secured to an approved forward-facing seat or berth;

(B) The child must be properly secured in the restraint system and must not exceed the specified weight limit for the restraint system; and

(C) The restraint system must bear the appropriate label(s).

(c) No certificate holder may prohibit a child, if requested by the child's parent, guardian, or designated attendant from occupying a child restraint system furnished by the child's parent, guardian, or designated

attendant, provided the child holds an authorization for an approved seat or berth and the requirements contained in paragraphs (b)(2)(i) through (b)(2)(iii) of this section are met. This section does not prohibit the certificate holder from providing child restraint systems or, consistent with safe operating practices, determining the most appropriate passenger seat location for the child restraint system.

* * * * *

19. Section 125.217 is revised to read as follows:

§ 125.217 Passenger information.

(a) Except as provided in paragraph (b) of this section, no person may operate an airplane carrying passengers unless it is equipped with signs that meet the requirements of § 25.791 of this chapter and that are visible to passengers and flight attendants to notify them when smoking is prohibited and when safety belts must be fastened. The signs must be so constructed that the crew can turn them on and off. They must be turned on during airplane movement on the surface, for each takeoff, for each landing, and when otherwise considered to be necessary by the pilot in command.

(b) No passenger or crewmember may smoke while any "No Smoking" sign is lighted nor may any passenger or crewmember smoke in any lavatory.

(c) Each passenger required by § 125.211(b) to occupy a seat or berth shall fasten his or her safety belt about him or her and keep it fastened while any "Fasten Seat Belt" sign is lighted.

(d) Each passenger shall comply with instructions given him or her by crewmembers regarding compliance with paragraphs (b) and (c) of this section.

20. Section 125.327 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 125.327 Briefing of passengers before flight.

(a) * * *

(1) *Smoking.* Each passenger shall be briefed on when, where, and under what conditions smoking is prohibited. This briefing shall include a statement that the Federal Aviation Regulations require passenger compliance with the lighted passenger information signs, posted placards, areas designated for safety purposes as no smoking areas, and crewmember instructions with regard to these items.

(2) The use of safety belts, including instructions on how to fasten and unfasten the safety belts. Each passenger shall be briefed on when, where, and under what conditions the safety belt must be fastened about him or her. This briefing shall include a statement that the Federal Aviation Regulations require passenger compliance with lighted passenger information signs and crewmember instructions concerning the use of safety belts.

* * * * *

21. Section 125.333 is added to Subpart J to read as follows:

§ 125.333 Stowage of food, beverage, and passenger service equipment during airplane movement on the surface, takeoff, and landing.

(a) No certificate holder may move an airplane on the surface, take off, or land when any food, beverage, or tableware furnished by the certificate holder is located at any passenger seat.

(b) No certificate holder may move an airplane on the surface, take off, or land unless each food and beverage tray and seat back tray table is secured in its stowed position.

(c) No certificate holder may permit an airplane to move on the surface, take off, or land unless each passenger serving cart is secured in its stowed position.

(d) Each passenger shall comply with instructions given by a crewmember with regard to compliance with this section.

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

22. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

23. Section 135.117 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 135.117 Briefing of passengers before flight.

(a) * * *

(1) *Smoking.* Each passenger shall be briefed on when, where, and under what conditions smoking is prohibited (including, but not limited to, any applicable requirements of part 252 of this title). This briefing shall include a statement that the Federal Aviation Regulations require passenger compliance with the lighted passenger information signs (if such signs are required), posted placards, areas designated for safety purposes as no smoking areas, and crewmember instructions with regard to these items. The briefing shall also include a statement (if the aircraft is equipped with a lavatory) that Federal law prohibits: tampering with, disabling, or destroying any smoke detector installed in an aircraft lavatory; smoking lavatories; and, when applicable, smoking in passenger compartments.

(2) The use of safety belts, including instructions on how to fasten and unfasten the safety belts. Each passenger shall be briefed on when, where, and under what conditions the safety belt must be fastened about that passenger. This briefing shall include a statement that the Federal Aviation Regulations require passenger compliance with lighted passenger information signs and crewmember instructions concerning the use of safety belts.

* * * * *

24. Section 135.122 is added to subpart B to read as follows:

§ 135.122 Stowage of food, beverage, and passenger service equipment during aircraft movement on the surface, takeoff, and landing.

(a) No certificate holder may move an aircraft on the surface, take off, or land when any food, beverage, or tableware furnished by the certificate holder is located at any passenger seat.

(b) No certificate holder may move an aircraft on the surface, take off, or land unless each food and beverage tray and seat back tray table is secured in its stowed position.

(c) No certificate holder may permit an aircraft to move on the surface, take off, or land unless each passenger serving cart is secured in its stowed position.

(d) Each passenger shall comply with instructions given by a crewmember with regard to compliance with this section.

25. Section 135.127 is amended by revising paragraphs (b) and (f) and by adding new paragraphs (g) and (h) to read as follows:

§ 135.127 Passenger information.

* * * * *

(b) No person may smoke while a "No Smoking" sign is lighted or while "No Smoking" placards are posted, except that the pilot in command may authorize smoking on the flight deck (if it is physically separated from the passenger compartment) except during any movement of an aircraft on the surface, takeoff, and landing.

* * * * *

(f) On flight segments other than those described in paragraph (a) of this section, the "No Smoking" sign required by § 135.177(a)(3) of this part must be turned on during any movement of the aircraft on the surface, for each takeoff or landing, and at any other time

considered necessary by the pilot in command.

(g) The passenger information requirements prescribed in § 91.517 (b) and (d) of this chapter are in addition to the requirements prescribed in this section.

(h) Each passenger shall comply with instructions given him or her by crewmembers regarding compliance with paragraphs (b), (c), and (e) of this section.

* * * * *

26. Section 135.128 is added to subpart B to read as follows:

§ 135.128 Use of safety belts and child restraint systems.

(a) Except as provided in this paragraph, each person on board an aircraft operated under this part shall occupy an approved seat or berth with a separate safety belt properly secured about him or her during movement on the surface, takeoff, and landing. For seaplane and float equipped rotorcraft operations during movement on the surface, the person pushing off the seaplane or rotorcraft from the dock and the person mooring the seaplane or rotorcraft at the dock are excepted from the preceding seating and safety belt requirements. A safety belt provided for the occupant of a seat may not be used by more than one person who has reached his or her second birthday. Notwithstanding the preceding requirements, a child may:

(1) Be held by an adult who is occupying an approved seat or berth if that child has not reached his or her second birthday; or

(2) Notwithstanding any other requirement of this chapter, occupy an approved child restraint system furnished by the certificate holder or one of the persons described in paragraph (a)(2)(i) of this section, provided:

(i) The child is accompanied by a parent, guardian, or attendant designated by the child's parent or guardian to attend to the safety of the child during the flight;

(ii) The approved child restraint system bears one or more labels as follows:

(A) Seats manufactured to U.S. standards between January 1, 1981, and February 25, 1985, must bear the label: "This child restraint system conforms to all applicable Federal motor vehicle safety standards." Vest- and harness-type child restraint systems manufactured before February 26, 1985, bearing such a label are not approved for the purposes of this section;

(B) Seats manufactured to U.S. standards on or after February 26, 1985, must bear two labels:

(*1*) "This child restraint system conforms to all applicable Federal motor vehicle safety standards"; and

(*2*) "THIS RESTRAINT IS CERTIFIED FOR USE IN MOTOR VEHICLES AND AIRCRAFT" in red lettering;

(C) Seats that do not qualify under paragraphs (a)(2)(ii)(A) and (a)(2)(ii)(B) of this section must bear either a label showing approval of a foreign government or a label showing that the seat was manufactured under the standards of the United Nations; and

(iii) The certificate holder complies with the following requirements:

(A) The restraint system must be properly secured to an approved forward-facing seat or berth;

(B) The child must be properly secured in the restraint system and must not exceed the specified weight limit for the restraint system; and

(C) The restraint system must bear the appropriate label(s).

(b) No certificate holder may prohibit a child, if requested by the child's parent, guardian, or designated attendant from occupying a child restraint system furnished by the child's parent, guardian, or designated attendant, provided the child holds a ticket for an approved seat or berth, or such seat or berth is otherwise made available by the certificate holder for the child's use, and the requirements contained in paragraphs (a)(2)(i) through (a)(2)(iii) of this section are met. This section does not prohibit the certificate holder from providing child restraint systems or, consistent with safe operating practices, determining the most appropriate passenger seat location for the child restraint system.

27. Section 135.177 is amended by revising paragraph (a)(3) to read as follows:

§ 135.177 Emergency equipment requirements for aircraft having a passenger seating configuration of more than 19 passengers.

(a) * * *

(3) Signs that are visible to all occupants to notify them when smoking is prohibited and when safety belts must be fastened. The signs must be constructed so that they can be turned on during any movement of the aircraft on the surface, for each takeoff or landing, and at other times considered necessary by the pilot in command. "No smoking" signs shall be turned on when required by § 135.127.

* * * * *

§ 135.303 [Removed]

34. Section 135.303 is removed.

Issued in Washington, DC, on September 8, 1992.

Thomas C. Richards,

Administrator.

[FR Doc. 92-22064 Filed 9-14-92; 8:45 am]

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federal register

Tuesday
September 15, 1992

Part IV

The President

Proclamation 6471—Commodore John Barry Day, 1992

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The President

Proclamation 6471 of September 12, 1992

Commodore John Barry Day, 1992

By the President of the United States of America

A Proclamation

The members of the United States Navy continue a long and distinguished tradition of service to our country that began more than 200 years ago during our Nation's War for Independence, when a small yet tenacious American fleet achieved several key victories against powerful British forces. Those victories were made possible, in large part, by the extraordinary courage and seamanship of leaders such as Commodore John Barry, whose legacy we celebrate today.

As one of the first and most successful captains of the Continental Navy, John Barry set standards of bravery and selflessness that generations of U.S. naval personnel have since strived to emulate. Under his command in April 1776, the crew of the brig LEXINGTON achieved the first capture in battle of a British vessel by a regularly commissioned American warship. Captain Barry continued to serve with distinction throughout the long war at sea, taking part in the last American naval victory of the Revolution when he led the frigate ALLIANCE against the HMS SYBILLE in March 1783. During that 7-year period, which included action as an Army artillery officer at the Battle of Trenton, Captain Barry earned the respect of General George Washington, who commended his "gallantry and address." Ironically, perhaps, Captain Barry also earned the admiration of the enemy, which, through General Lord Howe, sought to entice the Irish-born Barry away from the American cause. Captain Barry erased any doubts about his patriotism and devotion to freedom when he rebuked Howe's offer, declaring: "Not the value and command of the whole British fleet can lure me from the cause of my country."

So devoted to our country's cause was Captain Barry that he continued to champion the ideals of freedom and democracy long after the end of the Revolutionary War. Active in Pennsylvania politics, he became a strong advocate of our Constitution, which was ratified by the State Assembly on December 12, 1787. In 1794, President George Washington personally conferred upon Captain Barry "Commission No. 1," entrusting him with the command of the new frigate USS UNITED STATES, one of six that were built as part of a permanent American naval armament. Until his death on September 13, 1803, Commodore Barry continued to shape the young United States Navy.

The Congress, by House Joint Resolution 413, has designated Sunday, September 13, 1992, as "Commodore John Barry Day" and has requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim September 13, 1992, as Commodore John Barry Day. I invite all Americans to observe this day with appropriate ceremonies and activities in honor of the courageous individuals, past and present, who have served in the United States Navy.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of September, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and seventeenth.

George Bush

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Filed 9-14-92; 10:42 am]
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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV-92-003FR]

Nectarines and Peaches Grown in California; Finalize Revised Size, Maturity, Maturity Variance Procedure, and Container Marking Requirements for California Nectarines (M.O. 916) and California Peaches (M.O. 917)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting as a final rule, with appropriate changes, an interim final rule which revised size, maturity, maturity variance procedure, and container marking requirements for fresh nectarines and peaches grown in California effective May 15, 1992. Those revisions were designed to provide handlers with more marketing flexibility, and to promote the marketing of these fruits.

EFFECTIVE DATE: October 16, 1992.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2533-S, Washington, DC 20090-6456; telephone: (202) 720-5331, or Kurt J. Kimmel, Marketing Field Office, USDA/AMS, 2202 Monterey St., suite 102-B, Fresno, California 93721; telephone: (209) 487-5901.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order Nos. 916 and 917 (7 CFR parts 916 and 917) regulating the handling of nectarines and fresh pears and peaches grown in California. The orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Purusant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 300 California nectarine and peach handlers subject to regulation under the marketing orders covering nectarines and peaches grown in California, and about 1,800 producers of nectarines and peaches in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A majority of these handlers and producers may be classified as small entities.

The Nectarine Administrative Committee and the Peach Commodity Committee (hereinafter referred to as the committees) met January 10, 1992, and recommended revision of size, maturity, maturity variance procedure, and container marking requirements for fresh nectarines and peaches grown in California beginning with 1992 season shipments. The interim final rule generally incorporated the committees' recommendations regarding size, container marking, and maturity changes, but modified their recommendations concerning the maturity variance procedures to grant full authority to the Federal-State Inspection Service (FSIS) to make all determinations regarding maturity. The interim final rule was based upon the two committees' recommendations, information submitted by the committees, information received at a public meeting held by the Department last September to discuss the future of the California nectarine and peach marketing orders, and other available information.

The interim final rule was issued on May 12, 1992, and published in the **Federal Register** (57 FR 20735, May 15, 1992; 57 FR 31235, July, 14, 1992), with an effective date of May 15, 1992. That rule amended § § 916.350, 916.356, 917.442, and 917.459 of these marketing orders. That rule also provided a 30-day comment period which ended June 15, 1992. One comment was received.

Mr. Fitzgerald Kelly of Reedley, California, a nectarine and peach farmer/packer, filed a comment requesting that the container maturity marking requirements be changed, so that they apply to mature fruit only, and not to well matured fruit. Currently, containers of mature fruit must be marked "U.S. Mature", except that well matured fruit may instead be marked "California Well Matured". Mr. Kelly advises that since he ships mostly well matured fruit, the required marking of

containers of such fruit imposes an unnecessary burden on him, and that he is of the opinion that it would be adequate to only require that containers of "mature" fruit be marked. The container marking requirements currently in effect were unanimously recommended by the committees, and are designed to help buyers determine the maturity level of the fruit purchased. These container markings are intended to help handlers of well matured fruit to realize any price premiums which such fruit may bring. Such required marking also assists the committees in assuring compliance with the maturity requirements under the orders. Since requiring containers of well matured fruit to be marked helps meet these objectives, Mr. Kelly's request is denied.

The interim final rule relaxed the minimum maturity requirement to "mature" from the "well-matured" standard, and established a two-tiered maturity system. Fruit meeting the "mature" standard must meet the maturity requirements specified for U.S. No. 1 grade fruit, while fruit meeting the "well-matured" standard must meet the requirements specified for such standard under each marketing order. The relaxation was designed to provide growers and handlers greater flexibility in marketing their fruit, since they could ship fruit meeting either maturity standard.

Further, the interim final rule revised the maturity variance procedures used when changes to the color chip guide assigned to a peach or nectarine variety as an indicator of "well-matured" are considered. As revised, all final determinations of maturity are made by the FSIS, rather than the committees. This revision was somewhat different from the committees' recommendation that committee employees and industry members remain involved in maturity appeals procedures. This revision was designed to grant full authority to the FSIS to make all determinations regarding maturity, and to simplify the maturity variance procedures.

The interim final rule also established variety-specific size requirements for six new varieties of nectarines and three new peach varieties now produced in commercially significant quantities, and removed variety-specific size requirements for six varieties of nectarines and for six peach varieties which are no longer produced in commercially significant quantities. This action was designed to establish minimum size requirements for these fruits consistent with expected crop and market conditions.

In addition, the interim final rule required handlers to mark the maturity level of fruit on most containers. Handlers must mark the containers "U.S. Mature" if the fruit meets the maturity requirements of U.S. No. 1 grade; or instead may mark the containers "California Well Matured" if the fruit meets the "well-matured" requirements. As noted above, this requirement was designed to differentiate shipments of well-matured fruit from mature fruit, and to help shippers realize any price premiums which the well-matured fruit might bring, since such container markings inform buyers of the maturity level of the fruit purchased.

Following issuance of the container marking requirements on an expedited basis, the Department learned that due to space limitations on the containers some nectarine and peach handlers were having difficulty placing the words "U.S. Mature" and "California Well Matured" on the containers. To help resolve that problem, the Department advised nectarine and peach handlers that the abbreviation "US MAT" could be used instead of the words "U.S. Mature", and abbreviation "CA WELL MAT" could be used instead of "California Well Matured". These abbreviations are currently being successfully used by nectarine and peach handlers, and their meaning is well known by the industry and the trade. Therefore, the container marking regulations in § 916.350(a)(3) and § 917.442(a)(3) are amended to incorporate these abbreviations into the language of these sections along with words currently specified.

It is the Department's view that this action will continue to provide handlers and growers additional opportunities for marketing the 1992 season California nectarine and peach crops.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committees, and other information, it is found that finalizing the interim final rule, as published in the **Federal Register** (57 FR 20735, May 15, 1992; 57 FR 31235, July 14, 1992), with the changes herein specified, will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

Accordingly, the interim final rule amending 7 CFR parts 916 [§ § 916.350 and 916.356] and 917 [§ § 917.442 and 917.459] which was published at 57 FR 20735 on May 15, 1992, and at 57 FR 31235 on July 14, 1992, is adopted as final rule with the following changes.

1. The authority citation for 7 CFR parts 916 and 917 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 916—NECTARINES GROWN IN CALIFORNIA

2. Section 916.350(a)(3) is revised to read as follows:

Note: This section will appear in the annual Code of Federal Regulations.

§ 916.350 California nectarine container and pack regulation.

(a) * * *

(3) Each package or container of nectarines, except for consumer packages in master containers and consumer packages mailed directly to consumers, shall bear on one outside end in plain sight and in plain letters the words "U.S. Mature" or "US MAT" if such nectarines are mature as defined in the United States Standards for Grades of Nectarines (7 CFR 51.3145 through 51.3160); or may instead bear on one outside end in plain sight and in plain letters the words "California Well Matured" or "CA WELL MAT" if such nectarines are well matured as defined in § 916.356.

* * * * *

PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

3. Section 917.442(a)(3) is revised to read as follows:

Note: This section will appear in the annual Code of Federal Regulations.

§ 917.442 California peach container and pack regulation.

(a) * * *

(3) Each package or container of peaches, except for consumer packages in master containers and consumer packages mailed directly to consumers, shall bear on one outside end in plain sight and in plain letters the words "U.S. Mature" or "US MAT" if such peaches are mature as defined in the United States Standards for Grades of Peaches (7 CFR 51.1210 through 51.1223); or may instead bear on one outside end in plain

sight and in plain letters the words "California Well Matured" or "CA WELL MAT" if such peaches are well matured as defined in § 917.459 of this part.

* * * * *

Dated: September 10, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92-22285 Filed 9-15-92; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 917

[Docket No. FV-92-094IFR]

Expenses for Marketing Order Covering Fresh Pears Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures for the 1992–93 fiscal year (March 1–February 28) under Marketing Order No. 917. Authorization of this budget will permit the Pear Commodity Committee (committee), the agency responsible for the administration of the order, to finance several research projects from operating reserve funds. An annual budget of expenses is prepared by the committee and submitted to the Department of Agriculture (Department) for approval.

DATES: Effective beginning March 1, 1992, through February 28, 1993. Comments reviewed by October 16, 1992, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted. Copies of material received will be made available for public inspection in the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Christian Nissen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–5127.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Marketing Order No. 917 (7 CFR part 917) regulating the handling of fresh pears and peaches grown in California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action authorizes expenditures for the 1992–93 fiscal year (March 1, 1992–February 28, 1993). This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this interim final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 45 handlers of California pears subject to regulation under Marketing Order No. 917 and about 300 producers of pears in California. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those with annual receipts of less than $3,500,000 and small agricultural producers have been defined as those having annual receipts of less than $500,000. The majority of these handlers and producers may be classified as small entities.

The budget of expenses for the 1992–93 fiscal period was prepared by the committee and submitted to the Department for approval. The members of the committee are handlers and producers of the regulated commodities. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local areas, and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The committee met June 26, 1992, and unanimously recommended 1992–93 expenditures of $86,509 be allocated from the committee's operating reserve funds to conduct several research projects and to provide for nominal committee expenses. The committee had $86,509 in reserves as of March 1, 1992, an amount within the maximum authorized. Budgeted expenditures represent the entire carryover for the committee. No provision for assessments was made. In comparison, 1991–92 fiscal period actual expenditures were $1,157,620 and the assessment rate was $0.25 per 36-pound carton or equivalent.

The absence of assessments and the differences between this budget and the budget for the 1991–92 fiscal period are due to the fact that the committee also voted to suspend the marketing order at the conclusion of this season. The budget is designed to utilize the total amount of funds remaining in the committee's reserve during this fiscal season.

Major committee expenditures proposed for 1992–93 are $86,391 for research projects and $118 for nominal committee expenses. This compares with major committee expenditures proposed for 1991–92, which were: Salaries and employee benefits, $88,279; market development and promotion, $1,140,501; and uncollected assessment accounts, $5,000. Total reserves will be sufficient to cover all anticipated 1992–93 expenditures.

Since the expenses will be financed from the committee's operating reserve, no additional costs will be imposed on

handlers. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committee and other available information, it is hereby found that this rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the fiscal year began March 1, 1992; (3) the industry is aware of this action which was unanimously recommended by the Committee at its public meeting; and (4) this interim final rule provides a 30 day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Parts 917

Marketing agreements, Pears, Peaches, Plums, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, this interim final rule amends 7 CFR part 917 as follows:

PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 917 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 917.255 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 917.255 Expenses.

Expenses of $86,509 by the Pear Commodity Committee are authorized for the fiscal year ending February 28, 1993.

Dated: September 10, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–22293 Filed 9–15–92; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 920

[Docket No. FV-91-448]

Kiwifruit Grown in California; Final Rule Revising Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule will relax the size requirement for kiwifruit packed in volume-filled containers. Currently, size designations for volume-filled containers are defined in terms of numerical counts per 8-pound sample. This change permits the weight of individual samples to be up to 4 ounces less than the specified 8 pounds. This action is intended to result in reduced packing costs.

EFFECTIVE DATE: September 21, 1992.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone 202–720–8139.

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Agreement and Order No. 920 (7 CFR part 920), regulating the handling of kiwifruit grown in California. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 handlers of California kiwifruit subject to regulation under the marketing order, and approximately 850 producers in the production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the producers and about 30 to 40 percent of the handlers of California kiwifruit may be classified as small entities.

The 1990 fresh utilized production of California kiwifruit totaled 9.7 million trays and tray equivalents. This was a 5 percent decrease in production from the previous year and 1 million trays less than what was projected for the season. For the past 10 years, kiwifruit production has increased in California and is expected to increase slightly this season to a total of about 10 million trays. Most of the crop is shipped to fresh markets with only a small volume utilized by processors. It is estimated that about 92 percent of the 1991 crop will be consumed in Canada and the United States. Most of the remaining 8 percent is expected to be exported to Hong Kong, Korea, and Mexico.

Under the terms of the marketing order, fresh market shipments of kiwifruit are required to be inspected and are subject to grade, size, maturity, pack, and container requirements. The handling requirements for fresh California kiwifruit are specified in 7 CFR 920.302 [50 FR 36568, September 9, 1985, as amended at 54 FR 41436, October 10, 1989, 55 FR 19717, May 10,

1990, and 55 FR 42179 October 10, 1990]. Current requirements include specifications that such shipments be at least Size 49 and contain a minimum of 6.5 percent soluble solids. Also included in the handling regulations are a minimum grade requirement and a number of pack and container requirements, including minimum net weight requirements for kiwifruit packed in trays, and uniform size requirements for fruit packed in volume-filled containers.

At a meeting held on April 26, 1991, the Kiwifruit Administrative Committee (KAC), the agency responsible for local administration of the marketing order, recommended changes in the existing size requirements.

The KAC voted 10 to 1 to recommend amending the size designations established for kiwifruit packed in volume-filled containers, as shown in subparagraph (a)(4)(ii) of 920.302 (previously (a)(4)(iii)). Such amendment was proposed in the **Federal Register** publication of September 26, 1991 (56 FR 48764). These size designations are defined by numerical counts, which establish maximum numbers of fruit per 8-pound sample for each of the 9 established sizes. The recommendation permits individual samples to be up to 4 ounces below the specified 8-pound sample weight as long as the average weight of all samples from a given lot is least 8 pounds.

Each size designation has a maximum number of fruit permitted per 8-pound sample. Currently during inspection, the inspector takes from a container the maximum number of fruit permitted for a particular size. For example, Size 30 fruit is defined as having a maximum of 32 pieces of fruit in an 8-pound sample. The inspector takes 32 pieces of fruit as a sample, and weighs the sample. If the sample weighs 8 pounds or more, it is consider to meet the pack requirements; any sample below that weight is considered to fail those requirements. The revision permits a weight variance of up to 4 ounces below the specified 8 pounds for individual samples. However, the average weight of all samples has to be at least 8 pounds for the lot to pass.

The effect of this revision is minimal and provides needed flexibility in the current size requirements, and reduces additional repacking costs due to slight variances of weight that occur during packing.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the September 26, 1991, **Federal Register** (56 FR 48762) and afforded interested persons until October 28, 1991, to submit written comments. No comments were received. A final rule was published in the December 13, 1991, **Federal Register** (56 FR 64941) which finalized the provisions of the September 26 proposal with the exception of the proposed revision of size designations. The proposed revision of size designations is made final in this rule. In addition, section 8e of the Act provides that whenever specified commodities, including kiwifruit, are regulated under a federal marketing order, imports of these commodities are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for domestically produced commodities. Accordingly, an appropriate change to the kiwifruit import regulation (§ 944.550 (56 FR 10503)) will also be published in the **Federal Register**.

After consideration of all relevant matter presented, including the information and recommendations submitted by the KAC and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the shipping season has started and therefore this rule should be implemented as soon as possible. Further, handlers are aware of this rule, which was recommended by the KAC at a public meeting.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements.

For the reasons set forth in the preamble, 7 CFR part 920 is hereby amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 920 continues to read as follows:

Authority: Secs. 1–19, 48 Stat 31, as amended; 7 U.S.C. 601–674.

2. Section 920.302(a)(4)(ii) is revised to read as follows:

Note: This section will appear in the Code of Federal Regulations.

§ 920.302 Grade, size, pack, and container regulations.

(a)* * *

(4)* * *

(ii) Kiwifruit packed in bags, volume filled or bulk containers may not vary more than ½-inch (12.7 mm) in diameter if Size 30 or larger; not more than ⅜-inch (9.5 mm) in diameter if Size 33, 36, 39, or 42; and not more than ¼-inch in diameter (6.4 mm) if Size 45/46 or smaller. Such containers shall be marked with a numerical count size designation as shown in Column 1 or the following table, and the number of fruit per 8-pound sample shall not exceed the corresponding number shown in Column 2 of the table:

Column 1, numerical count size designation	Column 2, maximum number of fruit per 8-pound sample
25	27
27/28	30
30	32
33	35
36	40
39	45
42	50
45/46	57
49	60

The average weight of all sample units in a lot must weigh at least 8 pounds, but no sample unit may be more than 4 ounces less than 8 pounds.

* * * * *

Dated: September 10, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–22290 Filed 9–15–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 944

[Docket No. FV–92–071IFR]

Kiwifruit Imported into the United States; Relaxation of Quality Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule revises the quality requirements for kiwifruit imported into the United States. Such fruit is currently subject to U.S. No. 1 grade requirements, except for those relating to cleanness and shape. This rule increases the allowance for misshapen kiwifruit. This action is intended to make the import requirements comparable to those in effect for domestically produced kiwifruit, consistent with section 8e of the Agricultural Marketing Agreement Act of 1937.

DATES: This action is effective September 21, 1992. Comments which are received by October 16, 1992 will be considered before the issuance of any final rule.

ADDRESSES: Written comments concerning this rule should be submitted in triplicate to the Docket Clerk, F&V Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456. All comments submitted will be made available for public inspection in the above office during regular business hours. Comments should reference the docket number and the date and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone (202) 690-3670.

SUPPLEMENTARY INFORMATION: This rule is issued under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act, which provides that whenever certain specified commodities, including kiwifruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality or maturity requirements as those that are in effect for a domestically produced commodity, subject to concurrence by the United States Trade Representative (USTR).

This interim final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Import regulations issued under the Act are based on those established under Federal marketing orders. Thus, they should also have small entity orientation, and impact both small and large business entities in a manner comparable to rules issued under such marketing orders.

There are approximately 75 importers of kiwifruit subject to regulation under this action. Small agricultural service firms, which include kiwifruit importers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $3,500,000. The majority of kiwifruit importers may be classified as small entities.

This action is necessary because section 8e of the Act provides that when certain domestically produced commodities, including kiwifruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality or maturity requirements. This interim final rule revises current import requirements so that imported kiwifruit will meet the same minimum quality requirements as domestically produced kiwifruit that is grown in California and regulated under Marketing Order No. 920 (7 CFR part 920). The domestic handling regulation is being changed in separate rulemaking by relaxing the minimum quality requirements to permit an additional 7 percent tolerance specifically for "badly misshapen" kiwifruit.

Minimum quality requirements for imported kiwifruit are based on the domestic handling regulation under the marketing order, which provides that fresh shipments of kiwifruit be at least KAC No. 1 quality. The term "KAC No. 1 quality" means fruit that is subject to U.S. No. 1 grade requirements, except for those relating to cleanness and shape. The Standards list a number of grade defects, which include bruises, growth cracks, misshapen fruit and discoloration. Imported kiwifruit must meet all the requirements of the U.S. No. 1 grade, except that such fruit shall be "not badly misshapen" as defined in the Standards. According to the Standards, "badly misshapen" means the fruit is so decidedly deformed that the appearance is seriously affected.

Currently, an 8 percent tolerance is allowed for fruit which fails to meet the specified quality requirements. This action relaxes the minimum quality requirements to permit an additional 7 percent tolerance specifically for "badly misshapen" kiwifruit. The additional tolerance for misshapen kiwifruit will allow more kiwifruit to be imported into the United States.

Based on available information, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant information available it is found that this action, as set forth below, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is found and determined upon good cause that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exits for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. Kiwifruit is currently being imported into the U.S. and marketed, subject to the established size, quality and maturity requirements. To be consistent with section 8e of the Act, which provides that domestic and imported kiwifruits be subject to the same requirements, this action should become effective as soon as possible.

A 30-comment period is provided to allow interested persons to respond to this interim final rule. All written comments received within the comment period will be considered before a final determination is made on this matter.

In accordance with section 8e of the Act, the USTR has concurred with the issuance of this interim final rule.

List of Subjects in 7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, and Oranges.

For the reasons set forth in the preamble, 7 CFR part 944 is amended as follows:

PART 944—FRUITS; IMPORT REGULATIONS

1. The authority citation for 7 CFR part 944 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 944.550 is amended by revising paragraph (a) to read as follows:

Note: This section will appear in the annual Code of Federal Regulations.

§ 944.550 Kiwifruit import regulation.

(a) Pursuant to section 8e of the Agricultural Marketing Agreement Act of 1937, as amended, the importation into the United States of any kiwifruit is prohibited unless such kiwifruit meets all the requirements of a U.S. No. 1 grade as defined in the United States Standards for Grades of Kiwifruit (7 CFR 51.2335 through 51.2340), except that the kiwifruit shall be "not badly misshapen;" and an additional tolerance of 7 percent is provided for kiwifruit that is "badly misshapen." Such fruit shall be at least Size 49, which means there shall be a maximum of 60 pieces of fruit and to average weight of all samples in a specific lot must weigh at least 8 pounds, provided that no individual sample may be less than 7 pounds 12 ounces in weight.

* * * * *

Dated: September 9, 1992.

William W. Paterson,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92-22298 Filed 9-15-92; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 944

[Docket No. FV-91-284]

Kiwifruit Imported Into the United States; Relaxation of Minimum Size Requirement

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule relaxes the minimum size requirement for imported kiwifruit. Currently, size designations are defined in terms of numerical counts which establish maximum numbers of fruit per 8-pound sample. The intent of this action is to permit the weight of individual samples to be up to 4 ounces less than the specified minimum net weight requirement. This action should benefit kiwifruit producers, handlers, importers, and consumers.

DATES: The interim final rule is effective September 21, 1992; comments received by October 16, 1992 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the Office of the Docket Clerk during regular business hours. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456, telephone (202) 690-3670.

SUPPLEMENTARY INFORMATION: This rule is issued under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act, which provides that whenever certain specified commodities, including kiwifruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality or maturity requirements as those in effect for a domestically produced commodity.

This interim final rule has been reviewed by the Department of Agriculture in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Import regulations issued under the Act are based on those established under Federal marketing orders. Thus, they should also have small entity orientation, and impact both small and large business entities in a manner comparable to rules issued under such marketing orders.

There are approximately 75 importers of kiwifruit subject to regulation under this action. Small agricultural service firms, which include kiwifruit importers, have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $3,500,000. The majority of the importers of kiwifruit may be classified as small entities.

This action is being initiated by the U.S. Department of Agriculture because section 8e of the Act was amended to require imported kiwifruit to meet the same or comparable requirements as those established under a domestic marketing order. Under this interim final rule, imported kiwifruit will have to meet the same minimum size requirement as domestically produced kiwifruit that is grown in California and regulated under Marketing Order No. 920 (7 CFR part 920).

The current import requirements for imported kiwifruit appear in § 944.550 as published in the **Federal Register** as an interim final rule on March 13, 1991 (56 FR 10503).

Under the terms of the marketing order, fresh market shipments of kiwifruit are required to be inspected and are subject to grade, size, maturity, pack and container requirements. Current requirements include specifications that such shipments be at least Size 49 and contain a minimum of 6.5 percent soluble solids. Also included in the handling regulation are a number of pack and container requirements. However, pack and container requirements that are present in the domestic handling regulation are not applicable to imports because they are not authorized by section 8e.

The size requirements for California kiwifruit packed in volume filled containers are being revised to permit the weight of individual samples to be up to 4 ounces less than the specified 8 pounds. A final rule is being published in this issue of the **Federal Register**. This rule relaxes the minimum size requirement established for imported kiwifruit. Size designations are defined by numerical counts, which establish maximum numbers of fruit per 8-pound sample. This action permits individual samples to be up to 4 ounces below the specified minimum net weight requirement for an 8-pound sample as long as the average weight of all samples from a given lot is at least 8 pounds. For example, Size 49 fruit, the minimum size allowed, is defined as having a maximum of 60 pieces of fruit in an 8-pound sample. During an

inspection, the inspector takes 60 pieces of fruit as a sample, and weighs the sample. If the sample weighs 8 pounds or more, it is considered to meet the size requirements; any sample below that weight is considered to fail those requirements. The revision will permit a weight variance of up to 4 ounces below the specified 8 pounds for individual samples. However, the average weight of all samples from a specific lot has to be at least 8 pounds for the lot to pass.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is found and determined upon good cause that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule relaxing kiwifruit size requirements into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. Kiwifruit is currently being imported into the U.S. is now being marketed, subject to the established grade, size, quality and maturity requirements. To be consistent with section 8e of the Act, which provides that domestic and imported kiwifruit be subject to comparable requirements, this action should become effective as soon as possible.

A 30-day comment period is provided to allow interested persons to respond to this interim final rule. All written comments received within the comment period will be considered before a final determination is made on this matter.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this interim final rule.

List of Subjects in 7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth in the preamble, 7 CFR part 944 is amended as follows:

PART 944—FRUITS; IMPORT REGULATIONS

1. The authority citation for 7 CFR part 944 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 944.550 is amended by revising paragraph (a) to read as follows:

§ 944.550 Kiwifruit import regulation.

(a) Pursuant to section 8e of the Agricultural Marketing Agreement Act of 1937, as amended, the importation into the United States of any kiwifruit is prohibited unless such kiwifruit meet all the requirements of a U.S. No. 1 grade, except that such fruit shall be "not badly misshapen" as defined in the United States Standards for Grades of Kiwifruit (7 CFR 51.2335 through 51.2340). Such fruit shall be at least Size 49, which means there shall be a maximum of 60 pieces of fruit and to average weight of all samples in a specific lot must be at least 8 pounds, provided that no individual sample may be less than 7 pounds 12 ounces in weight.

* * * * *

Dated: September 10, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–22291 Filed 9–15–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Parts 966 and 980

[Docket No. FV–91–434FR]

Tomatoes Grown in Florida, and Tomatoes Imported Into the United States; Change in Effective Date for Domestic and Imported Tomato Handling Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The U.S. Department of Agriculture (Department) is adopting, without modification, as a final rule the provisions of an interim final rule which changed the effective period of the handling regulations in effect for fresh market shipments of Florida tomatoes and imported tomatoes from October 10 through June 30 to October 10 through June 15 of each season. The change in the effective period applicable to domestic tomatoes is based on a recommendation of the Florida Tomato Committee (committee), which is the agency responsible for local administration of the order. The change applicable to tomatoes offered for importation is necessary under section 8e of the Agricultural Marketing Agreement Act of 1937.

EFFECTIVE DATE: September 16, 1992.

FOR FURTHER INFORMATION CONTACT: John R. Toth, Officer-in-Charge, Southeast Marketing Field Office, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, P.O. Box 2276, Winter Haven, FL, 33883–2276; telephone: (813) 299–4770 or Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523–S., P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2170.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement No. 125 and Marketing Order No. 966 (7 CFR part 966) (order), both as amended, regulating the handling of tomatoes grown in Florida. The order is authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions is order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 50 handlers of Florida tomatoes subject to regulation under the marketing order and approximately 250 producers in the production area. In addition, there are approximately 70 importers of tomatoes who are subject to the tomato import regulations. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $3,500,000 and small agricultural producers are defined as those whose annual receipts are less than $500,000. The majority of the handlers, producers, and importers of tomatoes may be classified as small entities.

Prior to the interim final rule, tomatoes produced in the production area and shipped to fresh market channels were required to meet certain handling requirements in effect from October 10 through June 30 of each year. The production area is defined as the counties of Pinellas, Hillsborough, Polk, Osceola, and Brevard and all counties situated south of the before-mentioned counties.

The committee met on September 5, 1991, and unanimously recommended changing the end of the effective period of the handling regulations from June 30 to June 15.

Producers in the production area harvest tomatoes into late June. In recent years, tomatoes produced in areas of North Florida which are not regulated under the order also have been available in late June and have been in direct competition with tomatoes produced in the production area. Abundant supplies of North Florida tomatoes were expected to be again available this season.

Such tomatoes produced outside the production area are not covered by the marketing order and, therefore, are not required to meet the grade, size, pack, and container requirements established for tomatoes grown in the production area. According to the committee, handlers regulated under the marketing order believed that having to meet the requirements of the handling regulations during the last two weeks of June placed them at a competitive disadvantage. Because tomatoes produced in North Florida are not regulated, handlers of such tomatoes do not have to pay inspection and assessment fees, and thus, are able to sell their tomatoes at lower prices. The committee believes that ending the handling requirements two weeks early would allow production area tomatoes to successfully compete in the marketplace with tomatoes produced in other areas.

Section 8e of the Act requires that whenever grade, size, quality, or maturity requirements are in effect for tomatoes under a domestic marketing order, imported tomatoes must meet the same or comparable requirements. Because the interim final rule changed the effective period of the domestic handling regulations, a corresponding change was made in the tomato import regulations. In accordance with section 8e of the Act, the United States Trade Representative has concurred with this action.

To avoid duplication of regulations, § 966.323(f), Applicability to imports, was removed from the domestic handling regulations and the requirements therein are provided in 7 CFR 980.212, Import Regulations; tomatoes. That regulation was changed to reflect this action.

An interim final rule revising the domestic handling regulations was published in the **Federal Register** on June 19, 1992 (57 FR 27350). A 30-day comment period was provided which allowed an opportunity for interested persons to submit written comments. The comment period ended on July 20, 1992, and no comments were received.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committee and other available information, it is found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The interim final rule changed the effective date beginning with the1991–92 season, which has already ended; (2) tomato handlers will need no additional time to comply with the revised requirements next season; (3) the interim final rule provided a 30-day comment period and no comments were received; and (4) no useful purpose will be served by delaying the effective date until 30 days after publication.

List of Subjects

7 CFR Part 966

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

7 CFR Part 980

Import regulations, Tomatoes.

For the reasons set forth in the preamble, 7 CFR parts 966 and 980 are amended to read as follows:

1. The authority citation for 7 CFR parts 966 and 980 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 966—TOMATOES GROWN IN FLORIDA

2. Accordingly, the interim final rule amending the provisions of § 966.323, published in the **Federal Register** (57 FR 27351, June 19, 1992), is adopted as a final rule without change.

PART 980—VEGETABLES; IMPORT REGULATIONS

3. Accordingly, the interim final rule amending the provisions of § 980.212, published in the **Federal Register** (57 FR 27352, June 19, 1992), is adopted as a final rule without change.

Note: These sections will appear in the annual Code of Federal Regulations.

Dated: September 10, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–22289 Filed 9–15–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 967

[FV–92–082IFR]

Handling Regulation for Celery Grown in Florida

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This action establishes the quantity of Florida celery which handlers may ship to fresh markets during the 1992–93 marketing season at 6,612,910 crates or 100 percent of producers' base quantities. The 1992–93 marketing season covers the period August 1, 1992, through July 31, 1993. This interim final rule is intended to lend stability to the industry, and, thus, help provide consumers with an adequate supply of the product. As in past marketing seasons, the limitation on the quantity of Florida celery handled for fresh shipment is not expected to restrict the quantity of Florida celery actually produced or shipped to fresh markets, because production and shipments are anticipated to be less than the marketable quantity. This action was

unanimously recommended by the Florida Celery Committee (Committee), the agency responsible for local administration of the order.

DATES: This action is effective September 16, 1992. Comments which are received by October 16, 1992 will be considered prior to any finalization of this interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and will be made available for public inspection in the Office of the Docket Clerk during regular business hours. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Richard Lower, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2020.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 967 7 CFR part 967, both as amended, regulating the handling of celery grown in Florida. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended 7 U.S.C. 601–674, hereinafter referred to as the Act.

This interim final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291, and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action establishes the quantity of Florida celery (at 6,612,910 crates or 100 percent of producers' base quantities) which handlers may ship to fresh markets during the 1992–93 marketing season which covers the period August 1, 1992 through July 31, 1993. This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are an estimated seven handlers of celery grown in Florida subject to regulation under the celery marketing order, and approximately seven producers of celery in the production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of celery handlers and producers may be classified as small entities.

This action is based upon a recommendation and information submitted by the Committee and upon other available information. The Committee met on June 10, 1992, and unanimously recommended a marketable quantity of 6,612,910 crates of fresh celery for the 1992–93 marketing season beginning August 1, 1992. Additionally, a uniform percentage of 100 percent was recommended which will allow each producer, registered pursuant to § 967.37(f) of the order, to market 100 percent of such producer's base quantity. These recommendations were based on an appraisal of expected 1992–93 supply and demand.

As required by § 967.37(d)(1) of the order, a reserve of 6 percent (396,775 crates) of the 1991–92 total base quantities was made available to new producers and for increases for existing producers. As of May 1, 1992, the deadline for requesting changes in base quantities, no applications for new base quantities or adjustments in base quantities from current producers were received by the Florida Celery Committee.

The interim final rule will limit the quantity of Florida celery which handlers may purchase from producers and ship to fresh markets during the 1992–93 marketing season to 6,612,910 crates. This marketable quantity is slightly reduced from the 1991–92 marketable quantity, but is more than the average number of crates marketed fresh during the 1987–88 through 1991–92 seasons. It is expected that such quantity will be more than actual shipments for the 1992–93 season. Thus, the 6,612,910 crate marketable quantity is not expected to restrict the amount of Florida celery which growers produce or the amount of celery which handlers ship. For these reasons, the interim final rule should lend stability to the industry, and, thus, help provide consumers with an adequate supply of the product.

On the basis on the foregoing, the Administrator of the AMS has determined that issuance of this interim final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of the information and recommendations submitted by the Committee and other available information, is found that this interim final rule will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impractical, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action was recommended at a public meeting and all interested persons had an opportunity to express their views and provide input; (2) it is desirable to have this action in place as soon as possible because celery planting begins in July and the beginning of the 1992–93 crop year is August 1, 1992; and (3) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 967

Celery, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 967 is amended as follows:

PART 967—CELERY GROWN IN FLORIDA

1. The authority citation for 7 CFR part 967 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Subpart—Administrative Rules and Regulations

2. A new section 967.327 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 967.327 Handling regulation, marketable quantity, and uniform percentage for the 1992–93 season beginning August 1, 1992.

(a) The marketable quantity established under § 967.36(a) of this part is 6,612,910 crates of celery.

(b) As provided in § 967.38(a) of this part, the uniform percentage shall be 100 percent.

(c) Pursuant to § 967.38(b) of this part, no handler shall handle any harvested celery unless it is within the marketable allotment of a producer who has a base quantity and such producer authorizes the first handler thereof to handle it.

(d) As required by § 967.37(d)(1) of this part, a reserve of six percent of the total base quantities is hereby authorized for:

(1) New producers, and

(2) Increases for existing base quantity holders.

(e) Terms used herein shall have the same meaning as when used in the said marketing agreement and order.

Dated: September 10, 1992.

Martha B. Ransom,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–22292 Filed 9–15–92; 8:45 am]

BILLING CODE 3410–02–M

Farmers Home Administration

7 CFR Part 1956

Processing of Debt Settlement Cases

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations regarding the internal processing of debt settlement cases to clarify which forms are to be submitted to the Finance Office for processing and which forms can be processed by the FmHA field offices. This action is necessary due to Agency provisions which require debt settlement forms coded as "Compromise," "Adjustment," or "Bankruptcy" to be processed by the Finance Office. The intended effect is to ensure correct processing of all debt settlements.

EFFECTIVE DATE: September 16, 1992.

FOR FURTHER INFORMATION CONTACT: Kris Dilger, Systems Accountant, Accounting Policy and Procedures Section II, FmHA, USDA, Finance Office, 1520 Market Street, St. Louis, Missouri 63103, telephone FTS 262–6026 or commercial (314) 539–6026.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and since this action has no impact on FmHA borrowers or other members of the public, it has been determined to be exempt from those requirements because it involves only internal Agency management. It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts, notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking since it involves only internal Agency management and publication for comment is unnecessary. Specifically, the procedures are revised to clarify the processing procedures for Forms FmHA 1956–1 and FmHA 1956–2.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an environmental impact statement is not required.

Programs Affected

These programs/activities are listed in the Catalog of Federal Domestic Assistance under the following numbers:

10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.410 Low Income Housing Loans

Intergovernmental Consultation

For the reasons set forth in the final rule related to notice 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program/activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with state and local officials. This action does not directly affect any FmHA programs or projects which are subject to intergovernmental consultation.

The proposed regulation has been reviewed in light of Executive Order 12778 and meets the applicable standards provided in sections 2(a) and (2)(b)(2) of that Order. Provisions within this part which are inconsistent with state law are controlling. All administrative remedies pursuant to 7 CFR part 1900 subpart B must be exhausted prior to filing suit.

List of Subjects in 7 CFR Part 1956

Accounting, Loan programs—Agriculture, Rural areas.

Accordingly, part 1956, chapter XVIII, title 7, of the Code of Federal Regulations is amended as follows:

PART 1956—DEBT SETTLEMENT

1. The authority citation for part 1956 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart B—Debt Settlement—Farmer Programs and Housing

2. Section 1956.58 is amended by revising paragraph (b)(1) to read as follows:

§ 1956.58 Approval or rejection.

* * * * *

(b) * * *

(1) Execute completed Form FmHA 1956–1 or Form FmHA 1956–2, whichever is applicable. Process the Forms FmHA 1956–1 and FmHA 1956–2 in accordance with the applicable forms manual insert. If a "Compromise," "Adjustment," or "Bankruptcy" is involved, the Finance Office must process the form.

* * * * *

Dated: June 26, 1992.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 92–22311 Filed 9–15–92; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-NM-17-AD; Amendment 39-8313; AD 92-16-04]

Airworthiness Directives; Aerospatiale Model ATR42 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to all Aerospatiale Model ATR42 series airplanes, that currently requires modification or replacement of certain fuselage and wing structural components. This amendment will provide alternative methods for accomplishing certain of those modification and replacement requirements. This amendment is prompted by an evaluation of recently developed methods for modification and replacement of the subject structural components. The actions specified by this AD are intended to prevent failure of the structural components of the fuselage and wing.

DATES: Effective October 21, 1992. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 21, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Lium, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227-1112; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by revising AD 89-25-12, Amendment 39-6414 (54 FR 50343, December 6, 1989), which is applicable to all Aerospatiale Model ATR42 series airplanes, was published in the **Federal Register** on March 5, 1992 (57 FR 7895). That action proposed to provide alternative methods for accomplishing certain currently required modification and replacement requirements.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Paragraph (h) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 16 airplanes of U.S. registry will be affected by this AD. The entire cost of the required modifications and replacements will be borne by the manufacturer; therefore, there is no cost impact of the AD on U.S. operators.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-6414 (54 FR 50343, December 6, 1989), and by adding a new airworthiness directive (AD), amendment 39-8313, to read as follows:

92-16-04. Aerospatiale: Amendment 39-8313. Docket 92-NM-17-AD. Revises AD 89-25-12, Amendment 39-6414.

Applicability: Model ATR42 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the structural components of the fuselage and wing, accomplish the following:

(a) For airplane Serial Numbers 003 through 151, inclusive: Reinforce fuselage frame 26 in accordance with Aerospatiale Service Bulletin ATR42-53-0042, dated May 3, 1989; or revision 1, dated April 22, 1991.

(b) For airplane Serial Numbers 003 through 032, inclusive; 034; and 035: Reinforce the fuselage secondary frames in accordance with Aerospatiale Service Bulletin ATR42-53-0023, revision 2, dated May 25, 1989.

(c) For airplane Serial Numbers 003 through 059, inclusive: Perform a cold expansion of the outer wing lower skin attach fastener holes in accordance with Aerospatiale Service Bulletin ATR42-57-0010, revision 1, dated May 20, 1989; or revision 2, dated April 15, 1991.

(d) For airplane Serial Numbers 003 through 071, inclusive: Reinforce fuselage frames 24 and 28 in accordance with Aerospatiale Service Bulletin ATR42-53-0004, revision 4, dated July 25, 1989.

(e) For airplane Serial Numbers 003 through 084, inclusive; 086; 087; and 089 through 093, inclusive: Perform a cold expansion of attach holes and reinforce wing/fuselage junction fittings in accordance with Aerospatiale Service Bulletin ATR42-53-0031, revision 1, dated May 20, 1989; or revision 2, dated May 31, 1990; or revision 3, dated February 19, 1991.

(f) For airplane Serial Numbers 003 through 119, inclusive: Perform a cold expansion of the wing front and rear spar attach holes in accordance with Aerospatiale Service Bulletin ATR42-57-0021, revision 1, dated May 20, 1989; or revision 2, dated September 25, 1990; or revision 3, dated April 10, 1991; or revision 4, dated August 28, 1991.

(g) For airplane Serial Numbers 003 through 151, inclusive: Replace the wing center box, in accordance with Aerospatiale Service Bulletin ATR42-57-0027, revision 2, dated July 6, 1989; or revision 3, dated March 27, 1991; or revision 4, dated August 23, 1991; or revision 5, dated October 22, 1991.

(h) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may

be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from Standardization Branch, ANM-113.

(i) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(j) The reinforcement, replacement, and the cold expansion shall be done in accordance with the following Aerospatiale service bulletins, which contain the specified effective pages:

Service bulletin referenced and date	Page No.	Revision level shown on page	Date shown on page
ATR42-53-0042, May 3, 1989	1-42	Original	May 3, 1989.
ATR42-53-0042, Revision 1, Apr. 22, 1991	3-40, 42	Original	May 3, 1989.
	1-2, 41	1	Apr. 22, 1991.
ATR42-53-0023, Revision 2, May 25, 1989	3-8, 10-26, 28-50, 52-53, 55-64, 66-78, 81-200, 203.	Original	July 26, 1988.
	2, 9, 27, 51, 54	1	Jan. 26, 1989.
	1, 65, 79-80, 201-202	2	May 25, 1989.
ATR42-57-0010, Revision 1, May 20, 1989	2-5, 14, 20-38	Original	Apr. 18, 1989.
	1, 6-13, 15-19, 39-40	1	May 20, 1989.
ATR42-57-0010, Revision 2, Apr. 15, 1991	5, 14, 21-38	Original	Apr. 18, 1989.
	6-13, 15, 17-19	1	May 20, 1989.
	1-4, 16, 20, 39, 40	2	Apr. 15, 1991.
ATR42-53-0004, Revision 4, July 25, 1989	3-8, 13-20, 25-30, 33-34	Original	Sept. 2, 1988.
	2, 11	2	Feb. 16, 1989.
	9, 12, 21-22, 31-32, 35-36	3	May 25, 1989.
	1, 10, 23-24, 37	4	July 25, 1989.
ATR42-53-0031, Revision 1, May 20, 1989	2-7, 10-29	Original	Jan. 13, 1989.
	1, 8-9	1	May 20, 1989.
ATR42-53-0031, Revision 2, May 31, 1990	15-17, 19-28	Original	Jan. 13, 1989.
	1-14, 18, 29	2	May 31, 1990.
ATR42-53-0031, Revision 3, Feb. 19, 1991	15-16, 17, 19-28	Original	Jan. 13, 1989.
	3-14, 18, 29	2	May 31, 1990.
	1-2, 15-16 bis	3	Feb. 19, 1991.
ATR42-57-0021, Revision 1, May 20, 1989	3-6, 11-21	Original	Apr. 18, 1989.
	1-2, 7-10	1	May 20, 1989.
ATR42-57-0021, Revision 2, Sept. 25, 1990	1-23	2	Sept. 25, 1990.
ATR42-57-0021, Revision 3, Apr. 10, 1991	2, 4, 7-10, 12-22	2	Sept. 25, 1990.
	1, 3, 5-6, 11, 23	3	Apr. 10, 1991.
ATR42-57-0021, Revision 4, Aug. 28, 1991	7-9, 13-22	2	Sept. 25, 1990.
	2-6, 11-12, 23	3	Apr. 10, 1991.
	1, 10	4	Aug. 28, 1991.
ATR42-57-0027, Revision 2, July 6, 1989	5-6, 9, 11, 13, 27-71	Original	Apr. 18, 1989.
	2-4, 7-8, 10, 12, 14-18, 26	1	May 25, 1989.
	1, 19-25, 72-80	2	July 6, 1989
ATR42-57-0027, Revision 3, Mar. 27, 1991	5-6, 9, 11, 13, 27-71	Original	Apr. 18, 1989.
	2-4, 7-8, 10, 12, 14-18, 26	1	May 25, 1989.
	19-25, 72-74, 76, 78, 80	2	July 6, 1989.
	1, 75, 77, 79	3	Mar. 27, 1991.
ATR42-57-0027, Revision 4, Aug. 23, 1991	6, 9, 11, 13, 27-71	Original	Apr. 18, 1989.
	3-4, 8, 10, 12, 14-18, 26	1	May 25, 1989.
	22-25, 72-74, 76, 78	2	July 6, 1989.
	75, 77, 79	3	Mar. 27, 1991.
	1-2, 5, 7, 19-21	4	Aug. 23, 1991.
ATR42-57-0027, Revision 5, Oct. 22, 1991	6, 9, 11, 13, 27-71	Original	Apr. 18, 1989.
	3-4, 8, 10, 12, 14-18	1	May 25, 1989.
	22-25, 72-74	2	July 6, 1989.
	75-79	3	Mar. 27, 1991.
	7, 19-21, 80	4	Aug. 23, 1991.
	1-2, 5, 26	5	Oct. 22, 1991.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(k) This amendment becomes effective on October 21, 1992.

Issued in Renton, Washington, on July 9, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-22287 Filed 9-15-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 92-NM-14-AD; Amendment 39-8365; AD 92-19-07]

Airworthiness Directives; Fokker Model F-27 Mark 100, 200, 300, 400, 500, 600, and 700 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD),

applicable to all Fokker Model F-27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, that currently requires supplemental structural inspections to detect fatigue cracks, and repair or replacement, as necessary, to ensure continued airworthiness. This amendment requires the same inspections, but adds and revises certain significant structural items for which inspection is necessary. This amendment is prompted by structural re-evaluation by the manufacturer which identified additional structural elements where fatigue damage is likely to occur. The actions specified by this AD are intended to prevent reduced structural integrity of these airplanes.

DATES: Effective October 21, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 21, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2145; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 90-21-07, Amendment 39-6758 (55 FR 40159, October 2, 1990), which is applicable to all Fokker Model F-27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, was published in the **Federal Register** on May 1, 1992 (57 FR 18849). The action proposed to add or revise certain significant structural items for which inspection is necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Paragraph (d) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 44 airplanes of U.S. registry will be affected by this AD, that it will take approximately 243 work hours per airplane per year to accomplish the actions required by AD 90-21-07, and that the average labor rate is $55 per work hour. The new requirements required by this amendment (implementation of the inspections, repairs, or replacements specified in the revisions to the SIP Document into an operator's maintenance program) are estimated to require approximately 52 additional work hours (including removal, inspection, and installation) per airplane per year, at an average labor rate of $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $713,900, or $16,225 per airplane for the first year and annually thereafter. (This figure includes an estimated $125,840 per year to accomplish the new requirements of this amendment.) This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the State, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-6758 (55 FR 40159, October 2, 1990), and by adding a new airworthiness directive (AD), amendment 39-8365, to read as follows:

92-19-07. Fokker: Amendment 39-8365. Docket 92-NM-14-AD. Supersedes AD 90-21-07, Amendment 39-6758.

Applicability: Model F-27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, all serial numbers, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of these airplanes, accomplish the following:

(a) Within 6 months after November 9, 1990 (the effective date of Amendment 39-6758, AD 90-21-07), incorporate into the FAA-approved maintenance program the inspections, inspection intervals, repairs, or replacements defined in Fokker Structural Integrity Program (SIP) Document No. 27438, part I, including revisions up through February 1, 1990; and inspect, repair, and replace, as applicable. The non-destructive inspection techniques referenced in this document provide acceptable methods for accomplishing the inspections required by this AD. Inspection results, where a crack is detected, must be reported to Fokker, in accordance with the instructions of the SIP document. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) and have been assigned OMB Control Number 2120-0056.

(b) Within 6 months after the effective date of this AD, incorporate into the FAA-approved maintenance program the inspections, inspection intervals, repairs, or replacements defined in Fokker Structural Integrity Program (SIP) Document No. 27438, part I, including revisions up through November 1, 1991; and inspect, repair, and replace, as applicable. The non-destructive inspection techniques referenced in this document provide acceptable methods for accomplishing the inspections required by this AD. Inspection results, where a crack is detected, must be reported to Fokker, in accordance with the instructions of the SIP document.

(c) Cracked structure detected during the inspections required by paragraph (a) or (b) of this AD must be repaired or replaced, prior

to further flight, in accordance with the instructions in Fokker SIP Document No. 27438, part I, including revisions up through February 1, 1990, or Fokker SIP Document No. 27438, part I, including revisions up through November 1, 1991, respectively; or in accordance with other data meeting the certification basis of the airplane which is approved by the FAA or by the Rijksluchtvaartdienst (RLD).

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspections and repairs shall be done in accordance with the latest revisions of Fokker SIP Document No. 27438, part I, revised up through November 1, 1991, which contains the following list of effective pages:

Item No.	Page No.	Revision level shown on page	Date shown on page
INTRODUCTION			
	8	3	Feb. 1, 1991.
	9-12	3	Nov. 1, 1989.
	13-14	4	Feb. 1, 1991.
	15	3	Feb. 1, 1991.
	16	5	Feb. 1, 1991.
	17	3	Feb. 1, 1991.
	18	0	Feb. 1, 1991.
INSPECTIONS			
26-20-01	1	2	Nov. 1, 1989.
27-20-01	1	2	Nov. 1, 1989.
27-50-01	1	2	Nov. 1, 1989.
32-00-00	1-2	5	Nov. 1, 1991.
32-00-00	3	4	Nov. 1, 1991.
32-20-06	1	1	Nov. 1, 1989.
36-00-00	1	5	Nov. 1, 1991.
36-10-02	1	1	Feb. 1, 1990.
52-10-01	1		Nov. 1, 1991.
52-20-01	1		Nov. 1, 1991.
52-30-01	1		Nov. 1, 1991.
52-31-01	1	1	Nov. 1, 1989.
53-10-01	1	3	Nov. 1, 1989.
53-10-02	1	4	Feb. 1, 1991.
53-10-03	1	3	Nov. 1, 1989.
53-10-04	1	2	Nov. 1, 1989.
53-10-05	1	3	Nov. 1, 1989.
53-10-06	1	3	Nov. 1, 1989.
53-10-07	1	3	Nov. 1, 1989.
53-10-08	1	3	Nov. 1, 1989.
53-10-09	1	3	Nov. 1, 1989.
53-10-10	1	3	Nov. 1, 1989
53-10-11	1	2	Nov. 1, 1989.
53-10-12	1	3	Nov. 1, 1989.
53-10-13	1	3	Feb. 1, 1991.
53-10-14	1	3	Nov. 1, 1989.
53-10-20	1	2	Feb. 1, 1990.
53-30-01	1	2	Nov. 1, 1991.
53-30-01	2	2	Feb. 1, 1990.
53-30-02	1	3	Nov. 1, 1989.
53-30-03	1	3	Nov. 1, 1991
53-30-04	1	4	Nov. 1, 1991.
53-30-06	1	1	Nov. 1, 1989.
53-30-07	1	1	Nov. 1, 1989
53-30-08	1	1	Nov. 1, 1989
53-30-09	1	1	Nov. 1, 1989.
53-30-10	1	1	Nov. 1, 1989.
53-30-11	1		Feb. 1, 1991.
53-40-01	1	2	Nov. 1, 1989.
53-40-02	1	3	Nov. 1, 1989
53-40-03	1		Nov. 1, 1991.
54-40-01	1	2	Nov. 1, 1989.
54-40-02	1	4	Feb. 1, 1991.
54-40-02	2		Feb. 1, 1991.
54-40-05	1	2	Nov. 1, 1989.
54-40-05	2-3	2	Nov. 1, 1991.
54-40-07	1	1	Nov. 1, 1989.
54-40-08	1	1	Feb. 1, 1991.
55-20-01	1	3	Nov. 1, 1991.
55-20-02	1-2	3	Feb. 1, 1991.
55-20-02	3		Nov. 1, 1991.
55-20-03	1	4	Feb. 1, 1991.
55-30-02	1		Nov. 1, 1991.
55-40-01	1	3	Nov. 1, 1989.

Item No.	Page No.	Revision level shown on page	Date shown on page
55-50-01	1	2	Nov. 1, 1989.
~~55-50-02~~	1	2	Nov. 1, 1989.
55-50-02	2		Nov. 1, 1991.
55-50-06	1		Nov. 1, 1989.
57-10-01	1	4	Feb. 1, 1991.
57-10-02	1	3	Nov. 1, 1989.
57-10-04	1	3	Nov. 1, 1989.
57-10-06	1	1	Nov. 1, 1989.
57-10-09	1	1	Nov. 1, 1989.
57-10-10	1	3	Feb. 1, 1991.
57-10-11	1	2	Feb. 1, 1991.
57-10-12	1	2	Feb. 1, 1991.
57-10-13	1	2	Feb. 1, 1991.
57-30-01	1	3	Nov. 1, 1989.
57-30-02	1	3	Nov. 1, 1989.
57-30-03	1	3	Nov. 1, 1989.
57-30-04	1	4	Feb. 1, 1991.
57-30-05	1-2	1	Nov. 1, 1989.
57-30-05	3	2	Nov. 1, 1991.
57-30-05	4-5	1	Nov. 1, 1989.
57-30-05	6	2	Nov. 1, 1991.
57-30-06	1	3	Nov. 1, 1989.
57-30-08	1	3	Nov. 1, 1989.
57-30-09	1	3	Nov. 1, 1989.
57-30-10	1	3	Nov. 1, 1989.
57-30-11	1	3	Nov. 1, 1989.
57-30-12	1	3	Nov. 1, 1989.
57-30-13	1	4	Nov. 1, 1989.
57-30-14	1	4	Feb. 1, 1990.
57-30-15	1	2	Nov. 1, 1989
57-30-17	1	Temporary Rev. 57-1	Mar. 15, 1991.
57-30-18	1	1	Nov. 1, 1989.
57-30-19	1	2	Nov. 1, 1989.
57-30-20	1	2	Nov. 1, 1989.
57-30-21	1	1	Nov. 1, 1989.
57-30-22	1	1	Nov. 1, 1989.
57-40-01	1	3	Nov. 1, 1989.
57-40-02	1	3	Nov. 1, 1989.
57-40-03	1	3	Nov. 1, 1989.
57-40-05	1		Nov. 1, 1991.
57-40-06	1		Nov. 1, 1991.
57-40-10	1	1	Nov. 1, 1989.
57-40-11	1		Nov. 1, 1991.
57-50-01	1	3	Nov. 1, 1989.
57-50-02	1		Nov. 1, 1991.
57-50-05	1		Nov. 1, 1991.
61-00-00	1-2		Nov. 1, 1989.
71-20-01	1	5	Nov. 1, 1991.
72-00-00	1	3	Feb. 1, 1990.

ILLUSTRATIONS

27-20-01	1	1	Nov. 1, 1989.
27-50-01	1	1	Nov. 1, 1989.
32-20-06	1	1	Nov. 1, 1989.
52-10-01	1		Nov. 1, 1991.
52-20-01	1		Nov. 1, 1991.
52-30-01	1		Nov. 1, 1991.
52-31-01	1	1	Nov. 1, 1989.
53-10-01	1	1	Mar. 16, 1981.
53-10-03	1	1	Nov. 1, 1989.
53-10-04	1	1	Nov. 1, 1989.
53-10-05	1	1	Nov. 1, 1989.
53-10-06	1	1	Nov. 1, 1989.
53-10-07	1	1	Nov. 1, 1989.
53-10-09	1	1	Nov. 1, 1989.
53-10-11	1	2	Feb. 1, 1991.
53-10-12	1	1	Nov. 1, 1989.
53-10-13	1	1	Nov. 1, 1989.
53-10-20	1	1	Nov. 1, 1989.
53-30-01	1	1	Nov. 1, 1989.
53-30-02	1	1	Nov. 1, 1989.
53-30-03	1	1	Nov. 1, 1989.
53-30-06	1	1	Nov. 1, 1989.
53-30-08	1	1	Nov. 1, 1989.
53-30-09	1	1	Nov. 1, 1989.
53-30-11	1		Feb. 1, 1991.
53-40-03	1		Nov. 1, 1991.
54-40-02	1	2	Nov. 1, 1989.
54-40-04	1	1	Nov. 1, 1989.
54-40-05	1	1	Nov. 1, 1989.

Item No.	Page No.	Revision level shown on page	Date shown on page
54-40-07	1	1	Nov. 1, 1989.
54-40-08	1		Nov. 1, 1989.
55-20-01	1	2	Nov. 1, 1991.
55-20-02	1	1	Nov. 1, 1989.
55-20-03	1	1	Nov. 1, 1989.
55-30-02	1		Nov. 1, 1991.
55-40-01	1	2	Feb. 1, 1991.
55-50-01	1	1	Nov. 1, 1989.
55-50-02	1	1	Nov. 1, 1989.
55-50-06	1	1	Nov. 1, 1989.
57-10-01	1	1	Nov. 1, 1989
57-10-02	1	3	Feb. 1, 1991.
57-10-04	1	2	Nov. 1, 1989.
57-10-08	1	1	Nov. 1, 1989.
57-10-09	1	1	Nov. 1, 1989.
57-10-10	1	1	Nov. 1, 1989.
57-10-13	1	2	Feb. 1, 1991.
57-30-01	1	2	Feb. 1, 1991.
57-30-02	1	2	Nov. 1, 1989.
57-30-03	1	1	Nov. 1, 1989.
57-30-04	1	4	Feb. 1, 1991.
57-30-05	1-7	1	Nov 1, 1989.
57-30-06	1	2	Nov. 1, 1989.
57-30-08	1	1	Nov. 1, 1989.
57-30-09	1	2	Nov. 1, 1989.
57-30-10	1	1	Nov. 1, 1989.
57-30-11	1	2	Nov. 1, 1989.
57-30-12	1	2	Nov. 1, 1989.
57-30-13	1	2	Nov. 1, 1989.
57-30-14	1	1	[1] Nov. 1
57-30-15	1	1	[1] Nov. 1.
57-30-17	1		Feb. 1, 1991.
57-30-18	1	1	Nov. 1, 1989.
57-30-22	1	1	Nov. 1, 1989.
57-40-01	1	1	Nov. 1, 1989.
57-40-05	1		Nov. 1, 1991.
57-40-06	1		Nov. 1, 1991
57-40-10	1	1	Nov. 1, 1989.
57-40-11	1		Nov. 1, 1991.
57-50-01	1	1	Nov. 1, 1989.
57-50-02	1		Nov. 1, 1991.
57-50-05	1		Nov. 1, 1991.
71-20-01	1	3	Nov. 1, 1989.

[1] No year indicated.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on October 21, 1992.

Issued in Renton, Washington, on August 20, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-22288 Filed 9-15-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 24

[T.D. 92-89]

Adjustment to Ad Valorem User Fee for Imported Merchandise

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final determination to adjust fee rate.

SUMMARY: Notice is hereby given that Customs has made a final determination to adjust the merchandise processing fee rate on formal entries of imported merchandise at 0.19 percent ad valorem, pursuant to the Omnibus Budget Reconciliation Act of 1986.

EFFECTIVE DATE: October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Linda Walfish, User Fee Task Force, (202-927-1167).

SUPPLEMENTARY INFORMATION:

Background

Section 8101 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509, codified as 19 U.S.C. 58c), provided that, with certain exceptions, an ad valorem user fee was to be collected by Customs on formal entries of merchandise entered, or withdrawn from warehouse, for consumption, beginning on December 1, 1986. The fee was to be based on the appraised Customs value of the merchandise. The Act provided that the proceeds of the user fees were to be deposited in a dedicated account of the Treasury and, subject to authorization and appropriation, were to be used to offset Customs appropriations for the salaries and expenses of Customs incurred in processing merchandise that is formally entered or released during any fiscal year.

The current merchandise processing fee rate is 0.17 percent ad valorem, subject to a maximum fee of $400 and a minimum fee of $21. T.D. 91-33, 56 FR 15038; 19 CFR 24.23(b)(1)(i)(A). However,

a statutory exemption from the fee applies with respect to most articles covered by Chapter 98, Harmonized Tariff Schedule of the United States (HTSUS), products of insular possessions (General Note 3(a)(iv), HTSUS), products of beneficiary countries of the Caribbean Basin Economic Recovery Act (General Note 3(c)(v), HTSUS), products of least-developed beneficiary developing countries (General Note 3(c)(ii)(B), HTSUS), merchandise covered by General Note 4, HTSUS, merchandise released under 19 U.S.C. 1321, and merchandise imported by mail. See 19 CFR 24.23(c)(1) (i)–(v). In addition, certain statutory limitations or restrictions on the assessment of the fee are in effect for articles covered by subheading 9802.00.60 or 9802.00.80, HTSUS, goods originating in Canada as defined in General Note 3 (c)(vii), HTSUS, and agricultural products processed and packed in a foreign trade zone. See 19 CFR 24.23(c) (2)–(4).

Pursuant to 19 U.S.C. 58c(a)(9)(B)(i), the Secretary of the Treasury may, under certain conditions, adjust the fee rate to a maximum of 0.19 percent ad valorem, in order to offset the salaries and expenses that will likely be incurred by Customs in the processing of formal entries or releases during the fiscal year in which such costs have been incurred.

To this end, Customs has projected that an increase is needed in order to offset the salaries and expenses which are to be incurred in Fiscal Year (FY) 1993. Customs has estimated the number of entries and releases expected to be processed during FY 1993, and has further estimated the value of FY 1993 imports. Estimates have also been made of the number of entries and releases, and their values, which would be subject to the minimum, ad valorem and maximum merchandise processing rates.

Specifically, for FY 1993, the Customs commercial costs for covered merchandise processing operations are expected to be $682 million. The current fee is inadequate to produce sufficient revenues. Indeed, even at the 0.19 percent rate, it is anticipated that only $540 million in fees will be generated. Hence, a deficit of approximately $142 million will still exist.

Similarly, in FY 1992, while the cost of covered merchandise processing operations is expected to be approximately $726 million, the merchandise processing fee revenue is expected to be only $485 million, thereby resulting in a projected deficit in the 58c account of roughly $241 million.

Accordingly, as prescribed in 19 U.S.C. 58c(a)(B), a notice of intent to adjust the fee at 0.19 percent ad valorem was published in the **Federal Register** on December 11, 1991 (56 FR 64680), providing for a period of 30 days for public comment as well as consultation with the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, regarding the proposed adjustment and the methodology used in its determination.

Discussion of Comments

Seven commenters responded to the notice, all raising various issues in opposition to the proposed adjustment to the fee rate. Six commenters were concerned that an increase in the rate would put U.S. companies at a competitive disadvantage. Two commenters believed that GATT (General Agreement on Tariffs and Trade) trading partners might retaliate against the increase in the fee rate. A number of commenters stated that Customs should reduce its costs by curbing inefficiency, rather than raising the fee rate, and that, inasmuch as the fee collected went into the general fund, there was no assurance that an increase in the fee rate would result in increased quality of Customs commercial operations. Two commenters were also opposed in principle to the user fee, and one commenter wanted assurance that the maximum and minimum limits on the fee rate would be maintained.

In addition, the following views were put forth: the fee rate increase would result in increased costs to consumers; the cost of collecting the fee and associated recordkeeping to U.S. business as well as the Government would more than offset the revenue collected; as increases in the dollar value of imports automatically increased the revenue collected, Customs costs had to be increasing faster than the value of imported products; minor changes to the fee would not offset revenue losses due to the limitations on the rate, as well as exemptions from it; the maximum and minimum limits on the rate discriminated against small importers in favor of large and wealthy ones; and the fee was not being collected from exporters.

Customs Analysis

Customs is bound by law to assess a user fee and to adjust the fee rate as provided for thereunder, in order to offset appropriations for Customs salaries and expenses incurred in processing imported merchandise subject to the fee, that is formally entered or released during the fiscal year. For this purpose exclusively, the proceeds collected from the assessment of the fee are deposited in a dedicated account in the General Fund of the Treasury. Concerning those imports to which it is properly applicable, the fee is assessed equally against both domestic as well as foreign importers.

The fee rate assessed for the processing of a covered entry of merchandise is limited to a minimum of $21 and a maximum of $400. These limits were added by statute (Pub. L. 101–382), and Customs must adhere to them. Also, the retention of these maximum and minimum limits is essential in order to keep the ad valorem fee rate compatible with the General Agreement on Tariffs and Trade (GATT).

In this latter regard, Article VIII, para. 1, of GATT 61 Stat. A28, requires that user fees assessed for Customs services be limited in amount to the "approximate cost of services rendered". As circumscribed by the maximum and minimum levels, the merchandise processing fee rate is so limited. "The maximum and minimum fee levels ensure that imports of very high or very low value items, which might not differ substantially in the cost of import processing, do not pay unduly different import fees. The maximum and minimum levels eliminate the excess collections on high value entries associated with the current across-the-board ad valorem fee. As a result, it also avoids the subsidization of low-value entries." H. Conf. Rep. No. 101–650, 1990 U.S. Code Cong. & Admin. News 928, 995.

The purpose of the merchandise processing fee, it must be remembered, is not to enhance the Customs budget, but rather to offset the cost of covered merchandise processing operations. Such costs are not being met by the current 0.17 percent rate, and even with an increase in the rate to 0.19 percent ad valorem, which is the maximum rate permissible under present law, these costs will still not be completely offset. It should further be noted in this connection that Customs, for its part, continually strives to control costs by improving the quality and efficiency of its commercial services, and streamlining its merchandise entry processing operations.

Conclusion

In view of the foregoing, and following careful consideration of the comments received and further review of the matter, Customs has determined to adjust the merchandise processing fee rate at 0.19 percent ad valorem. In accordance with 19 U.S.C. 58c(a)9(B), Customs has notified the Committee on Finance of the Senate and the

Committee on Ways and Means of the House of Representatives of its intention to adjust the fee rate, and is able to proceed with publication of a notice of this final adjustment in the **Federal Register**, which will become effective with respect to formal entries and releases on or after the 15th day following publication, and which will remain in effect until otherwise adjusted pursuant to section 58c(a)(9)(B).

Drafting Information

The principal author of this document was Russell Berger, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

Approved: August 4, 1992.

Michael H. Lane,

Acting Commissioner of Customs.

Peter K. Nunez,

Assistant Secretary of the Treasury.

[FR Doc. 92-22329 Filed 9-15-92; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 3

[CGD 92-046]

Realignment of Marine Inspection Zones and Captain of the Port Zones for New Orleans, and Morgan City, LA, and Port Arthur, TX

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; correction.

SUMMARY: The temporary rule realigning the Marine Inspection and Captain of the Port Zones for the Coast Guard Marine Safety Offices in New Orleans and Morgan City, Louisiana, and Port Arthur, Texas, published in the **Federal Register** on September 1, 1992 at 57 FR 39613 is no longer necessary. The temporary changes to the zones were made due to the damage resulting from Hurricane Andrew in the Morgan City, Louisiana, area. Effective command and control has been reestablished in Morgan City and the temporary realignment is no longer necessary. This correction changes the termination date of the temporary final rule to September 9, 1992.

EFFECTIVE DATE: This correction is effective September 9, 1992.

FOR FURTHER INFORMATION CONTACT: Commander David W. Jones, Project Manager, Office of Marine Safety, Security, and Environmental Protection (G-MPS-3), (202) 267-0491, between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

Correction: Page 39613, third column, the effective date is corrected to read as follows:

EFFECTIVE DATE: This rule is effective from August 28, 1992 until September 9, 1992.

Dated: September 9, 1992.

R.C. North,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 92-22350 Filed 9-15-92; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 1F4015/R1160; FRL-4161-1]

RIN 2070-AB78

Pseudomonas Fluorescens A506, Pseudomonas Fluorescens 1629RS, and Pseudomonas Syringae 742RS; Exemptions From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement for a tolerance for residues of the biological pesticides *Pseudomonas fluorescens* strain A506, *Pseudomonas fluorescens* strain 1629RS, and *Pseudomonas syringae* strain 742RS in or on all agricultural commodities when applied as a frost protection agent or biological control agent to growing agricultural crops in accordance with good agricultural practices. This exemption was requested by the Frost Technology Corp.

EFFECTIVE DATE: This regulation becomes effective September 16, 1992.

ADDRESSES: Written objections, identified by the document control number, [PP 1F4015/R1160], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Susan T. Lewis, Product Manager (PM) 21, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1900.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 15, 1992 (57 FR 31371), EPA issued a notice that the Frost Technology Corp., 6701 San Pablo Ave., Oakland, CA 94608-1239, had submitted pesticide petition (PP) 1F4015 to EPA proposing to amend 40 CFR part 180 by establishing a regulation pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a, to exempt from the requirement of a tolerance the residues of the biological pesticides *Pseudomonas fluorescens* and *Pseudomonas syringae* in or on all raw agricultural commodities when applied as a frost prevention or biological control agent to growing crops in accordance with good agricultural practices.

There were no comments or requests for referral to an advisory committee received in response to the notice.

These bacteria are naturally occurring isolates selected for their ability to compete with and reduce populations of ice-nucleating bacteria on plant surfaces. Reduction of numbers of ice-nucleating bacteria may result in the prevention of frost damage to plants. The bacteria will also aid in the control of fire blight of apples and pears. *Pseudomonas fluorescens* is ubiquitous in the environment and is a natural component of the microbial flora of soil, water, and plants. *Pseudomonas syringae* is similarly widespread and may commonly be found on the majority of plant surfaces and less commonly in soil and water. These bacteria are not generally regarded as human or animal pathogens.

The data submitted in the petition and all other relevant material have been evaluated. The toxicological data considered in support of the exemption from the requirement of a tolerance include an acute oral toxicity/pathogenicity study in the rat and an acute intraperitoneal injection study in the mouse, using a combination of *Pseudomonas fluorescens* strains A506 and 1629RS and *Pseudomonas syringae* strain 742RS. The results of these studies indicated that these organisms were not toxic or pathogenic to rats by the oral route of exposure and not lethal or significantly toxic to mice by intraperitoneal injection. Testing of various *Pseudomonas* strains closely related to those considered in the petition was conducted. Acute oral and acute inhalation toxicity tests indicated that the strains tested were not lethal or toxic to rats. Primary eye and primary dermal studies in rabbits using closely related strains showed no significant irritation effects. The toxicology data provided are sufficient to demonstrate that there are no foreseeable human health hazards likely to arise from the

use of *Pseudomonas fluorescens* strain A506, *Pseudomonas fluorescens* strain 1629RS and *Pseudomonas syringae* strain 742RS.

The petition which was submitted requested a generic exemption for the bacterial species *Pseudomonas fluorescens* and *Pseudomonas syringae*. It was concluded that at the present time there is insufficient data available to support an exemption from tolerance requirements for all strains of these very common and widespread bacteria. The data, however, are sufficient to support an exemption for the specific strains listed above.

Acceptable Daily Intake (ADI) and maximum permissible intake (MPI) considerations are not relevant to this petition because the data submitted demonstrate that these biological control agents are not toxic to humans. No enforcement actions are expected. Therefore, the requirement for an analytical method for enforcement purposes is not applicable to this exemption request. This is the first exemption from the requirement of a tolerance for these strains of *Pseudomonas*.

Pseudomonas fluorescens strain A506, *Pseudomonas fluorescens* strain 1629RS, and *Pseudomonas syringae* strain 742RS are considered useful for the purpose for which the exemption from the requirement of a tolerance is sought. Based on the information considered, the Agency concludes that establishment of the exemption will protect the public health. Therefore, the regulation is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 1, 1992.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By adding new § 180.1114, to read as follows:

§ 180.1114 Pseudomonas fluorescens A506, Pseudomonas fluorescens 1629RS, and Pseudomonas syringae 742RS; exemptions from the requirement of a tolerance.

The biological pesticides *Pseudomonas fluorescens* A506, *Pseudomonas fluorescens* 1629RS, and *Pseudomonas syringae* 742RS are exempted from the requirement of a tolerance in or on all raw agricultural commodities when applied as a frost protection agent or biological control agent to growing agricultural crops in accordance with good agricultural practices.

[FR Doc. 92-22253 Filed 9-15-92; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Parts 180, 185, and 186

[PP 6F3380, FAP 8H5502, and FAP 8H5568/R1161; FRL-4162-1]

RIN 2070-AB78

Pesticide Tolerances and Food and Feed Additive Regulations for Glyphosate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes tolerances and food and feed additive regulations for the combined residues of the herbicide glyphosate (*N*-(phosphonomethyl)glycine) and its metabolite aminomethyl phosphonic acid. The specific proposals are: an amended tolerance in or on the raw agricultural commodities (RACs) soybeans from 6 parts per million (ppm) to 20 ppm; a tolerance on soybean straw at 20 ppm; a food additive regulation proposing increases in tolerances for the processed human food instant tea from 4.0 ppm to 7.0 ppm; a feed additive regulation for citrus molasses at 1 ppm; and amended feed additive tolerances for dried citrus pulp from 0.4 ppm to 1 ppm and soybean hulls from 20 ppm to 100 ppm. These regulations were requested by the Monsanto Co. and would establish the maximum permissible residues of the herbicide in or on these RACs, this processed human food, and these animal feed commodities.

EFFECTIVE DATE: These regulations become effective September 16, 1992.

ADDRESSES: Written objections, identified by the document control number, [PP 6F3380, FAP 8H5502, and FAP 8H5568/R1161], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Robert J. Taylor, Product Manager (PM) 25, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 241, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-6800.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 23, 1992 (57 FR 32753), EPA issued a proposed rule that gave notice that the Monsanto Co., 1101 17th St., NW., Washington, DC 20036, proposed amending 40 CFR 180.364 by increasing established tolerances under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, for the combined residues of the

herbicide glyphosate (*N*-phosphonomethylglycine) and its metabolite aminomethyl-phosphonic acid in or on soybeans from 6 ppm to 20 ppm and soybean hay from 15 ppm to 200 ppm and proposed amending 21 CFR 561.253 by increasing the established food additive regulation under section 409 of the FFDCA, 21 U.S.C. 348, permitting residues of glyphosate in or on soybean hulls from 20 ppm to 100 ppm. (The summary to the proposed rule incorrectly stated a proposed tolerance for soybean straw at 20 ppm, but the correct increase to 200 ppm was stated elsewhere in the document.)

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 180, 185, and 186

Administrative practice and procedure, Agricultural commodities, Animal feeds, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 31, 1992.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. In § 180.364, by revising the entry in the paragraph (a) table for soybeans and adding alphabetically the raw agricultural commodity soybean straw to read as follows:

§ 180.364 Glyphosate; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Soybean straw	200
Soybeans	20.0
* * * * *	

* * * * *

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 348

b. In § 180.3500(a)(2), by revising in the table therein the entry for tea, instant to read as follows:

§ 185.3500 Glyphosate.

(a) * * *

(2) * * *

Food	Parts per million
* * * * *	
Tea, instant	7.0
* * * * *	

PART 186—[AMENDED]

3. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. In § 186.3500(a), by revising the table therein to read as follows:

§ 186.3500 Glyphosate.

(a) * * *

Feeds	Parts per million
Citrus molasses	1.0
Citrus, pulp, dried	1.0
Soybean hulls	100
* * * * *	

* * * * *

[FR Doc. 92-22252 Filed 9-15-92; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91-140, FCC 92-361]

Revision of Radio Rules and Policies

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: This Memorandum Opinion and Order modifies rules adopted in Report and Order in MM Docket No. 91-140, 7 FCC Rcd 2755 (1992), 57 FR 18089 (April 29, 1992). In addition, the Commission declines to modify the restrictions on time brokerage agreements between stations adopted in the Report and Order, but it does clarify certain procedures regarding time brokerage. The Commission intends that the effect of these changes will be to strengthen the radio industry by allowing broadcasters to achieve economies of scale in the face of increasing competitive challenges within the communications industry in general and within the radio industry in particular.

EFFECTIVE DATE: September 16, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jane Kinckley Halprin, Mass Media Bureau, Policy and Rules Division, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction

Public reporting burden for a party seeking a ruling regarding a time brokerage agreement is estimated to average 45 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Information and Records Management Branch, room 416, Washington, DC 20554, and to the Office of Management and Budget, Paperwork Reduction Project (3060-xxxx), Washington, DC 20503.

This is a synopsis of the Commission's Memorandum Opinion and Order and Further Notice of Proposed Rule Making in MM Docket No. 91-140, adopted August 5, 1992, and released September 4, 1992.

The complete text of this Memorandum Opinion and Order Further Notice of Proposed Rule Making is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, Downtown Copy Center, at (202) 452-1422, 1919 M Street, NW., room 246, Washington, DC 20554.

Synopsis of Memorandum Opinion and Order

1. The Memorandum Opinion and Order and Further Notice of Proposed Rule Making (MO&O) addresses issues raised in 20 petitions for reconsideration of the Report and Order in MM Docket No. 91-140, 7 FCC Rcd 2755 (1992), 57 FR 18089 (April 29, 1992) (Report and Order), and in related pleadings. In the Report and Order, the Commission had significantly relaxed the local and national radio ownership rules and included certain local time brokerage agreements within the scope of the new ownership restrictions. The Report and Order detailed the dramatic increase in competition and diversity in the radio industry over the last decade and concluded that intense inter-industry and intra-industry competition has produced an extremely fragmented radio marketplace in which existing and future radio broadcasters will be subject to increasingly severe economic and financial stress.

2. Accordingly, the Report and Order relaxed the national ownership limit to allow single licensee to own up to 30 AM stations and 30 FM stations nationwide. The Commission also modified the local ownership rule to permit a single owner to own an increased number of stations within a local radio market, depending on market size. For all but the smallest markets, the Commission adopted a 25 percent cap on the combined audience share of all owned stations, based on shares at the time of any new station acquisition. The Commission also limited simulcasting on commonly owned stations in the same service (AM/AM or FM/FM) serving substantially the same area to 25 percent of the broadcast schedule. In addition, the Report and Order restricted local time brokerage by providing that if a station licensee programs more than 15 percent of the time of another station and the principal community contours of the brokering and brokered stations overlap, then the brokered station would be counted against the brokering station's permissible ownership levels. The Commission further required that time brokerage contracts be placed in the stations' public inspection files, and that local brokerage agreements that would be attributed to the broker for purposes of the Commission's ownership rules be filed with the Commission within 30 days of execution.

3. *National Ownership Rules.* In its Memorandum Opinion and Order and Further Notice of Proposed Rule Making, the Commission stated that it remains convinced that changes in the radio ownership rules are essential to ensure the continued availability of broad and diverse radio broadcast service to the public. The Commission also stated, however, that after a thorough review of the record in this proceeding, it will adopt more moderate increases in the national and local ownership rules. The Commission therefore amended its national ownership rule to permit a single entity to hold an attributable interest in up to 18 AM and 18 FM stations. After two years, that limit will increase to 20 AM and 20 FM stations. An entity may also have a non-controlling attributable interest in an additional three AM and three FM stations if those stations are controlled by minorities or small businesses. The Commission stated by modifying the national ownership rules to include a higher minority/small business limit, it hopes to encourage the entry of new minority and small business entities into broadcasting, as well as the expansion of existing minority and small broadcasting organizations. Like other group owners, a minority entity that has reached the overall national limit will not be permitted to own additional stations outright, but may take a non-controlling attributable interest in three stations per service that are controlled by other minority entities or small businesses.

4. The "small business" definition used for purposes of allowing the acquisition of additional stations will apply to all small businesses which, at the time of application to the Commission, had total annual revenues of less that $500,000 and total assets of less than $1,000,000. The Commission chose to use a purposely conservative definition until it has had some experience with applications under this provision and has had an opportunity to evaluate information from its Small Business Advisory Committee. The asset limit of $1.0 million is an additional safeguard to ensure that a traditionally wealthy business will not be permitted to take advantage of the cap merely because it had a low revenue year. The annual revenues and assets of commonly-controlled businesses will be aggregated for purposes of this definition. Eligible entities will include both organizations and individuals that do not presently have any mass media interests as well as organizations or individuals owning several radio stations or other mass media outlets, as long as they do not exceed the revenue and asset limits.

5. In addition, this item also includes a Further Notice of Proposed Rule Making to explore investment incentive programs for radio broadcasters. (A summary of the Further Notice is published in the **Federal Register** on the same day as this item.)

6. *Local Ownership Rules.* On reconsideration, the Commission revised its local market tiers to reduce from the levels set forth in the Report and Order the maximum number of stations that may be commonly owned in the same local area. The new local ownership rule consists of two tiers; one tier includes those markets with 15 or more commercial radio stations and the other market tier includes those markets with fewer than 15 radio stations. In the larger markets, a single entity will be permitted to own up to two AM and two FM stations, provided that the proposed combination will not lead to excessive concentration in the local market. In the

smaller markets, a single entity will be permitted to own up to three radio stations, no more than two of which may be in the same service, provided that the owner's stations represent less than 50 percent of the total number of stations in the market.

7. A radio market will be defined as that area encompassed by the principal community contours (*i.e.*, predicted or measured 5 mV/m for AM stations and predicted 3.16 mV/m for FM stations) of the mutually overlapping stations proposing to have common ownership. The number of stations in the market will be determined based on the principal community contours of all commercial stations whose principal community contours overlap or intersect the principal community contours of the commonly-owned and mutually overlapping stations. For purposes of counting the number of stations in the market, the Commission will include all operating commercial full-power stations, including daytimers and foreign stations, but will exclude noncommercial stations, translators or stations not operational (*i.e.*, stations for which construction permits have been authorized but that are not yet on the air, or stations that have gone off the air and been silent for more than six months).

8. For purposes of the larger market tier (15 or more stations), excessive concentration will be presumed where the combined audience share of an owner's stations in a market exceeds 25 percent. The Commission stated its belief that widely-used audience survey data, while not exact, are a probative and accessible measure of market power relevant to the Commission's regulatory concerns. The Commission indicated that it has incorporated audience share into the new rules as a screening mechanism to identify potential problems with concentration. To the extent that petitioners are concerned that Arbitron's measuring tools may be too rough-hewn and thus may unfairly foreclose them from acquiring stations due to inaccuracies in the data, applicants will be free to submit additional showings demonstrating compliance with the share limit based on more accurate survey methods or alternative measures of market share.

9. The Commission will continue, with the exceptions described below, to calculate audience share based on metro market data where such data are available. The Commission will require the use of either audience data for the metro market if the contours of both stations at issue are mainly located within a single metro market, or audience data for the counties covered in whole or in part by the principal community contours of the stations at issue. The relevant audience share figures in such cases will include audience statistics either for the metro market or from each county encompassed all or in part by the area covered by the principal community contours of the stations proposing to merge. The Commission stated that it recognized that disclosure of complete underlying survey reports may in some circumstances raise questions as to the confidentiality of some of the data contained therein. Accordingly, it will not require that stations provide the complete underlying survey reports if they report and certify their combined shares and note the source of that information.

10. The rules adopted in the Report and Order required an audience share calculation based on the share among *rated* commercial stations rather than on the share of the entire local market audience. The Commission stated its belief that this extra calculation appears to add an unnecessary complication to the rules and make access to the relevant data more difficult without providing a necessarily more relevant or accurate measure and without any other significant countervailing regulatory benefit. The Commission will therefore amend the rules accordingly. This change will generally not make a major per-station rating difference and will allow parties to use widely reported data generally relied on for other industry purposes.

11. In addition, the Commission will permit parties to submit data that improves upon the accuracy of the regularly available metro market or county data or to make alternative showings where the applicant certifies that regular survey data are not readily available. In markets with 15 or more stations, the applicant will be required to demonstrate in an exhibit to its application for a proposed acquisition that the proposed combination will not result in an overly concentrated market. If audience share data for the market (*e.g.*, from Arbitron, another ratings service or other published source) are readily available, the applicant will be required to provide such information on the resulting market share in the exhibit. A demonstrated combined market share of 25 percent or more will raise a *prima facie* concern that the transaction will lead to excessive concentration. A combination resulting in less than a 25 percent market share will not raise such concerns.

12. In cases where the applicant certifies that market data are not readily available (*i.e.*, not in the applicant's possession, publicly available or obtainable without undue expense), the applicant may substitute other information that can serve as a proxy for such data in an exhibit to its application. Alternative showings of the market share that will result from a proposed acquisition may include the stations' share of market advertising revenues or the market value of such stations relative to the other stations in that market. In addition, it may be possible to demonstrate with a high degree of certainty, based on the number of stations in the market and the nature of stations involved, that no public interest concern associated with a high market share would exist. The Commission stated that while it is clearly not adequate to simply recite data as to the number of local stations in operation, certain types of stations, for example daytime AM stations or relatively low power AM and FM stations, rarely have substantial audience shares in markets with a large number of stations. The Commission stated that while it is providing applicants with some additional flexibility in terms of the specific nature of the data they may present (*i.e.*, either regularly available audience share data or an alternative showing), each applicant will bear the burden of proof in demonstrating that they have complied with the audience share threshold. Applications that do not include the necessary demonstration and that leave the Commission unable to evaluate compliance will be dismissed.

13. In addition, the Commission notes that apparent uncertainty emerges from some parties' pleadings regarding our rules governing the simulcasting of programming as a result of the increased ownership permitted within a market under the new local ownership limits. Simulcasting remains unlimited for stations in different services. For stations in the same service whose principal community contours overlap such that the overlap area constitutes more than 50 percent of either station's principal community contour area, simulcasting may not exceed 25 percent of either station's daily broadcast time. These rules apply both to stations commonly owned and to those separately owned but time brokered.

14. *Joint Ventures—Time Brokerage.* The Commission concluded that the petitioners have raised no new arguments to support reconsideration of time brokerage restrictions adopted in

the Report and Order. The Report and Order restricted local time brokerage by providing that if a station licensee programs more than 15 percent of the time of another station and the principal community contours of the brokering and brokered stations overlap, then the brokered station would be counted against the brokering station's permissible ownership levels. The Report and Order further required that time brokerage contracts be placed in the stations' public inspection files, and that local brokerage agreements that would be attributed to the broker for purposes of the Commission's ownership rules be filed with the Commission within 30 days of execution. Agreements entered into prior to the effective date of the rules will be required to come into compliance with the simulcasting provisions one year following the effective date of the rules, but, with respect to the ownership rules, will be treated in the same manner as are station ownership acquisitions entered into prior to the rules (*i.e.*, termination of the agreement generally will not be required).

15. Finally, the Commission clarified procedures for implementing the time brokerage reporting requirements adopted in the Report and Order. All time brokerage agreements between radio stations must be included in the public inspection files of both the brokering station and the brokered station. Confidential or proprietary information may be redacted where appropriate. These agreements must remain in the stations' public inspection files for the term of the time brokerage contract. Time brokerage agreements in existence on or before the effective date of these rules must be placed in the stations' public inspection files within 30 days of the effective date of these rules. In addition, the brokering station must report the existence of an attributable brokerage agreement on its ownership report (FCC Form 323, at Question 3).

16. A station that is brokering time on another station must also file, within 30 days of execution, a copy of any local time brokerage agreement which would result in the arrangement being counted in determining the brokering licensee's compliance with local and national multiple ownership rules. Such arrangements already in existence must be filed with the Commission within 30 days of the effective date of these rules. Filing of brokerage agreements with the Commission is primarily informational. However, in light of the modifications to the local rules adopted in this Memorandum Opinion and Order, this filing must include, as part of the certification already required, a verification that the arrangement complies with the ownership rules. In those situations where parties are unable to verify the relevant audience share data due to the absence of such information or for other reasons, those parties must first seek a ruling from the Commission, before implementing the time brokerage agreement, that the arrangement will not lead to excessive concentration in the market. Any request for such a ruling should contain the same detailed information regarding market concentration as would be included in an assignment or transfer application (see discussion above) and will be processed following the same procedures that are followed with an assignment or transfer application (*i.e.*, will be put on public notice and be made available for comment in accordance with the transfer or assignment pleading schedules). These requirements relating to time brokerage rulings will become effective November 20, 1992, to allow sufficient time to apply for and receive approval from the Office of Management and Budget.

Final Regulatory Flexibility Analysis

I. Need for and Purpose of this Action

This action is taken to relax the Commission's national and local ownership rules and to refine its policies regarding joint ventures. The Commission believes that this action will strengthen the radio industry.

II. Summary of Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis

None.

III. Significant Alternatives Considered and Rejected

First, in the Report and Order in this proceeding, the Commission adopted a 30 AM/30 FM numerical limit for radio ownership. The Commission concluded in this Memorandum Opinion and Order that a slight reduction in the limit would be effective in benefitting the radio industry and the listening public while also guarding against undue market dominance. Second, in the Report and Order in this proceeding, the Commission adopted a local ownership limit consisting of four market size tiers. The Commission concluded in this Memorandum Opinion and Order that a modification of the rule to allow for two tiers would be effective in benefitting the radio industry and the listening public while also guarding against undue market dominance. Finally, petitioners for reconsideration of the Report and Order in this proceeding urged the Commission to adopt more stringent restrictions on time brokerage arrangements between radio stations. The Commission declined to do so in this Memorandum Opinion and Order.

17. *It is therefore Ordered* that, Pursuant to the authority contained in section 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 303(r), part 73 of the Commission's Rules, 47 CFR part 73, is amended as set forth below. The rules will become effective upon publication in the **Federal Register**.

18. *It is further ordered* That the stay of the rules adopted in the Report and Order (*See* 57 FR 35763 (August 11, 1992) is lifted as of the effective date of these rules.

19. *It is further ordered* that the petitions for reconsideration filed in this proceeding are granted to the extent indicated herein and are otherwise denied.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communication Commission.

William F. Caton,

Acting Secretary.

Amendatory Text

Part 73 of title 47 of the U.S. Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. §§ 154, 303.

2. Section 73.3526 is amended by revising paragraph (a)(12) to read as follows:

§ 73.3526 Local public inspection file of commercial stations.

* * * * *

(a)(12) For commercial radio stations, a copy of every agreement or contract involving time brokerage of the licensee's station or of another station by the licensee, with confidential or proprietary information redacted where appropriate.

* * * * *

3. Section 73. 3555 is amended by revising paragraph (a), revising paragraph (e)(1)(i), adding paragraph (e)(3)(v), revising note 4, and revising the first sentence of notes 5 and 7, to read as follows:

§ 73.3555 Multiple ownership.

(a)(1) *Radio contour overlap rule.* No license for an AM or FM broadcasting station shall be granted to any party

(including all parties under common control) if the grant of such license will result in overlap of the principal community contour of that station and the principal community contour of any other broadcasting station directly or indirectly owned, operated, or controlled by the same party, except that such license may be granted in connection with a transfer or assignment from an existing party with such interests, or in the following circumstances:

(i) In radio markets with 14 or fewer commercial radio stations, a party may own up to 3 commercial radio stations, no more than 2 of which are in the same service (AM or FM), provided that the owned stations, if other than a single AM and FM station combination, represent less than 50 percent of the stations in the market.

(ii) In radio markets with 15 or more commercial radio stations, a party may own up to 2 AM and FM commercial stations, provided, however, that evidence that grant of any application will result in a combined audience share exceeding 25 percent will be considered *prima facie* inconsistent with the public interest.

Note: When evaluating audience share evidence submitted under § 73.3555(a)(1)(ii), the Commission will consider data that eliminates statistical anomalies, provides a better focused survey area or includes revenue data or other relevant information. Where applicants certify that they do not have readily available audience share data, they may substitute other information that can serve as a proxy for each data. See Memorandum Opinion and Order in MM Docket No. 91-140, FCC 92-361 (released Sept. 4, 1992).

(iii) Overlap between two stations in different services is permissible if neither of those two stations overlaps a third station in the same service.

(2)(i) Where the principal community contours of two radio stations overlap and a party (including all parties under common control) with an attributable ownership interest in one such station brokers more than 15 percent of the broadcast time per week of the other such station, that party shall be treated as if it has an interest in the brokered station subject to the limitations set forth in paragraph (a) and (e) of this section. This limitation shall apply regardless of the source of the brokered programming supplied by the party to the brokered station.

(ii) Every time brokerage agreement of the type described in paragraph (a)(2)(i) of this section shall be undertaken only pursuant to a signed written agreement that shall contain a certification by the licensee or permittee of the brokered station verify, that it maintains ultimate control over the station's facilities, including specifically control over station finances, personnel and programming, and by the brokering station that the agreement complies with the provisions of paragraphs (a)(1) and (e)(1) of this section.

(iii) Any party operating in conflict with the requirements of paragraph (a)(2)(ii) of this section on September 16, 1992 shall come into compliance within one year thereafter.

(3) For purposes of this paragraph:

(i) The "principal community contour" for AM stations is the predicted or measured 5 mV/m groundwave contour computed in accordance with § 73.183 or § 73.186 and for FM stations is the predicted 3.16 mV/m contour computed in accordance with § 73.313.

(ii) The number of stations in a radio market, is the number of commercial stations whose principal community contours overlap, in whole or in part, with the principal community contours of the stations in question (*i.e.*, the station for which an authorization is sought and any station in the same service that would be commonly owned whose principal community contour overlaps the principal community contour of that station). In addition, if the area of overlap between the stations in question is overlapped by the principal community contour of a commonly owned station or stations in a different service (AM or FM), the number of stations in the market includes stations whose principal community contours overlap the principal community contours of such commonly owned station or stations in a different service.

(iii) A station's "audience share" is the average number of persons age 12 or older on an average quarter hour basis, Monday–Sunday, 6 a.m.–midnight, who listen to the station, expressed as a percentage of the average number of persons listening to AM and FM stations in that radio metro market or a recognized equivalent, in which a majority of the overlap between the stations in question takes place. The "combined audience share" is the total audience share of all AM or FM stations that would be under common ownership or control following a proposed acquisition. In situations where no metro market or recognized equivalent exists, the relevant audience share data is the data for all counties that are within the principal community contours of the stations in question, in whole or in part.

(iv) "Time brokerage" is the sale by a licensee of discrete blocks of time to a "broker" that supplies the programming to fill that time and sells the commercial spot announcements in it.

* * * * *

(e)(1) * * *

(i) More than 18 AM or more than 18 FM stations, or more than 20 AM or more than 20 FM stations two years after the effective date of this rule, provided, however, that an entity may have an attributable but noncontrolling interest in an additional 3 AM and 3 FM stations that are small business controlled or minority-controlled.

* * * * *

(3) * * *

(v) "Small business" means an individual or business entity which, at the time of application to the Commission had, including all affiliated entities under common control, annual revenues of less than $500,000 and assets of less than $1,000,000.

* * * * *

Note 4: Paragraphs (a) through (e) of this section will not be applied so as to require divestiture, by any licensee, of existing facilities, and will not apply to applications for increased power for Class C stations, to applications for assignment of license or transfer of control filed in accordance with § 73.3540(f) or § 73.3541(b), or to applications for assignment of license or transfer of control to heirs or legatees by will or intestacy if no new or increased overlap would be created between commonly owned, operated or controlled broadcast stations in the same service and if no new encompassment of Communities proscribed in paragraphs (c) and (d) of this section as to commonly owned, operated or controlled broadcast stations or daily newspapers would result. Said paragraphs will apply to all applications for new stations, to all other applications for assignment or transfer, and to all applications for major changes in existing stations except major changes that will result in overlap of contours of broadcast stations in the same service with each other no greater than already existing. (The resulting areas of overlap of contours of such broadcast stations with each other in such major change cases may consist partly or entirely of new terrain. However, if the population in the resulting areas substantially exceeds that in the previously existing overlap areas, the Commission will not grant the application if it finds that to do so would be against the public interest, convenience or necessity.) Commonly owned, operated or controlled broadcast stations with overlapping contours or with community-encompassing contours prohibited by this section may not be assigned or transferred to a single person, group or entity, except as provided above in this note and by § 73.3555(a). If a commonly owned, operated or controlled broadcast station and daily newspaper fall within the encompassing proscription of this section, the station may not be assigned to a single person, group or entity if the newspaper is being

simultaneously sold to such single person, group or entity.

Note 5: Paragraphs (a) through (e) of this section will not be applied to cases involving television stations that are "satellite" operations. * * *

* * * * *

Note 7: The Commission will entertain requests to waive the restrictions of paragraph (c) of this section on a case-by-case basis. * * *

4. Section 73.3556 is amended by revising paragraph (a) and by adding paragraph (c) to read as follows:

§ 73.3556 Duplication of programming on commonly owned or time brokered stations.

(a) No commercial AM or FM radio station shall operate so as to devote more than 25 percent of the total hours in its average broadcast week to programs that duplicate those of any station in the same service (AM or FM) which is commonly owned or with which it has a time brokerage agreement if the principal community contours (predicted or measured 5 mV/m groundwave for AM stations and predicted 3.16 mV/m for FM stations) of the stations overlap and the overlap constitutes more than 50 percent of the total principal community contour service area of either station.

* * * * *

(c) Any party engaged in a time brokerage arrangement which conflicts with the requirements of paragraph (a) of this section on September 16, 1992, shall bring that arrangement into compliance within one year thereafter.

5. Section 73.3613 is amended by revising paragraphs (d) and (e) to read as follows:

§ 73.3613 Filing of contracts.

* * * * *

(d) Time brokerage agreements: Time brokerage agreements involving radio stations, where the licensee (including all parties under common control) is the brokering entity, there is a principal community contour (predicted or measured 5 mV/m groundwave for AM stations and predicted 3.16 mV/m for FM stations) overlap with the brokered station, and more than 15 percent of the time of the brokered station, on a weekly basis, is brokered by that licensee. Confidential or proprietary information may be redacted where appropriate but such information shall be made available for inspection upon request by the FCC.

(e) The following contracts, agreements or understandings need not be filed but shall be kept at the station and made available for inspection upon request by the FCC: contracts relating to the sale of television broadcast time to "time brokers" for resale; subchannel leasing agreements for Subsidiary Communications Authorization operation; franchise/leasing agreements for operation of telecommunications services on the TV vertical blanking interval; time sales contracts with the same sponsor for 4 or more hours per day, except where the length of the events (such as athletic contests, musical programs and special events) broadcast pursuant to the contract is not under control of the station; and contracts with chief operators.

[FR Doc. 92-22349 Filed 9-15-92; 8:45 am]

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47 CFR Part 90

[FCC No. 92-369]

Licensing of Low-Power Medical Devices in the 450-470 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has decided that hospitals and healthcare institutions will no longer be required to separately license low-power medical devices operating on the offset frequencies in the 450-470 MHz band. Instead, they will be permitted to operate such devices under the authority of other licensed radio facilities. This action will reduce the cost and burden associated with the licensing of these devices.

EFFECTIVE DATE: October 16, 1992.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Marty Liebman, Private Radio Bureau, (202) 634-2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, FCC 92-369, adopted August 13, 1992 and released August 25, 1992. The complete text may be purchased from the Commission's copy contractor, Downtown Copy Center, 1990 M Street NW., Suite 640, Washington, DC 20026, telephone (202) 452-1422.

Summary of Order

The 12.5 kHz offset frequencies in the 450-470 MHz band are available for low power operation on a secondary basis to primary operation in the band. Among the users of these frequencies are hospitals and healthcare institutions that operate low-power devices to remotely monitor the vital signs of their patients. Each of these devices must currently be licensed and this requirement imposes a significant burden on both licensees and Commission staff. Consistent with a previous, similar action in the licensing of radar speed detection devices by local government entities, the Commission will no longer require the individual licensing of low-power medical devices on the 450-470 MHz offset frequencies where the hospitals or healthcare institutions utilizing such devices are licensed for other radio facilities. Thus, hospitals or healthcare institutions that have other properly licensed radio transmitters will be authorized to use, under such licenses, multiple, low-power medical devices without the need for frequency coordination or application to the Commission for separate licensing. The operation of these devices will continue to be on a secondary basis to primary operations in the band.

Regulatory Flexibility Act Certification

The Commission has determined that this rule will not have a significant economic impact on a substantial number of small entities. The rule will reduce the number of radio licenses that must be acquired by these entities. While this represents a cost savings, it does not represent a significant economic impact under the Regulatory Flexibility Act.

List of Subjects in 47 CFR Part 90

Communications equipment, Radio.

Amendatory Text

Part 90 of title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 90 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, and 332, unless otherwise noted.

2. Section 90.267 is amended by adding a new paragraph (a)(7) to read as follows:

390.267 Assignment and use of 12.5 kHz frequency offsets.

(a) * * *

(7) A hospital or healthcare institution eligible for licensing under this Section and holding a license to operate a radio station under this Part may operate a medical device with an output power not to exceed 20 milliwatts without specific authorization from the Commission. All licensees operating under this authority must comply with the requirements and limitations set forth in this section.

* * * * *

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 92-22266 Filed 9-15-92; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 228, 232, and 252

Defense Federal Acquisition Regulation Supplement; Subcontractor Payment Protections

AGENCY: Department of Defense (DOD).

ACTION: Final rule.

SUMMARY: The Defense Acquisition Regulations Council has agreed on a final rule that revises the Defense FAR Supplement (DFARS) to provide guidance on the statutory requirement to disclose certain payment and bonding information under DoD contracts.

EFFECTIVE DATE: September 8, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Mens, (703) 697-7266. Please cite DAR Case 9-311.

SUPPLEMENTARY INFORMATION:

A. Background

The rule implements section 806 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Pub. L. 102-190). Background information was published with the proposed rule in the **Federal Register** on July 1, 1992 (57 FR 29269). As a result of public comments, language was added at 228.106-6, to clarify that the contracting officer will provide the information either orally or in writing, as appropriate; at 232.970-1(a)(1)(i), to add a parenthetical reference to the Prompt Payment Act; at 232.970-1(a) and 232.970-2, to make it clear that the references to "contractor" means "prime contractor"; at 232.970-1(b), to reflect the language of the statute regarding "compliance" and clarify that the two courses of action available to the contracting officer apply to both construction and non-construction contracts; and at 232.970-1(b)(2), to clarify that the reduction or suspension in progress payments must be in accordance with the applicable progress payments clause of the contract.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act applies. A Final Regulatory Flexibility Analysis has been prepared and submitted to the Chief Counsel for Advocacy of the Small Business Administration. The FRFA states that it is impossible to accurately estimate the number of small businesses that may be impacted because it is impossible to accurately determine the number of small businesses that prospectively will hold DoD construction contracts subject to the Miller Act and subsequently, the number of prospective subcontractors or suppliers that will request a copy of the payment bond. However, based on available data, DoD estimates that the final rule will impact less than 20 percent of all small businesses that will hold DoD construction contracts which will be subject to the Miller Act.

A copy of the FRFA may be obtained from: Defense Acquisition Regulations Council, ATTN: Mr. Eric R. Mens, IMD 3D139, OUSD(A), 3062 Defense Pentagon, Washington, DC 20301-3062.

C. Paperwork Reduction Act

The final rule imposes additional recordkeeping requirements, or information collection requirements, or collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et. seq.* OMB has approved this information collection (Control Number 0704-0345).

List of Subjects in 48 CFR Parts 228, 232, and 252

Government procurement.

Claudia L. Naugle,
Executive Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 228, 232, and 252 are amended as follows:

1. The authority citation for 48 CFR parts 228, 232, and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, and Defense FAR Supplement 201.301.

PART 228—BONDS AND INSURANCE

2. Sections 228.106, 228.106-4, 228.106-4-70, 228.106-6, and 228.106-7 are added to read as follows:

228.106 Administration.

228.106-4 Contract clause.

228.106-4-70 Additional contract clause.

Use the clause at 252.228-7006, Prospective Subcontractor Requests for Bonds, in all solicitations and resultant contracts which are subject to the Miller Act (see FAR 28.102-1).

228.106-6 Furnishing information.

Section 806(a)(2) of Public Law 102-190 requires that DoD provide subcontractors information on payment bonds. Upon the written or oral request of a subcontractor/supplier, or prospective subcontractor/supplier, under a contract subject to the Miller Act, the contracting officer shall promptly provide, either orally or in writing, as appropriate, any of the following:

(i) Name and address of the surety or sureties on the payment bond.

(ii) Penal amount of the payment bond.

(iii) Copy of the payment bond. The contracting officer may impose reasonable fees to cover the cost of copying and providing a copy of the payment bond.

228.106-7 Withholding contract payments.

(a) Withholding may be appropriate in other than construction contracts (see 232.970-1(b)).

PART 232—CONTRACT FINANCING

3. Sections 232.970, 232.970-1, and 232.970-2 are added to read as follows:

232.970 Payment of subcontractors.

232.970-1 Subcontractor assertions of nonpayment.

(a) In accordance with Public Law 102-190, title VIII, section 806(a)(4), upon the assertion by a subcontractor or supplier of a DoD contractor that the subcontractor or supplier has not been paid in accordance with the payment terms of the subcontract, purchase order, or other agreement with the prime contractor, the contracting officer may determine—

(1) For a construction contract, whether the contractor has made—

(i) Progress payments to the subcontractor or supplier in compliance with chapter 39 of title 31, United States Code (Prompt Payment Act);

(ii) Final payment to the subcontractor or supplier in compliance with the terms of the subcontract, purchase order, or other agreement with the prime contractor;

(2) For a contract other than construction, whether the contractor has made progress payments, final payments, or other payments to the subcontractor or supplier in compliance with the terms of the subcontract, purchase order, or other agreement with the prime contractor;

(3) For any contract, whether the contractor's certification of payment of a subcontractor or supplier accompanying its payment request to the Government is accurate.

(b) If, in making the determination in paragraphs (a) (1) and (2) of this subsection, the contracting officer finds the prime contractor is not in compliance, the contracting officer may—

(1) Encourage the contractor to make timely payment to the subcontractor or supplier; or

(2) If authorized by the applicable payment clauses, reduce or suspend progress payments to the contractor.

(c) If the contracting officer determines that a certification referred to in (a)(3) of this subsection is inaccurate in any material respect, the contracting officer shall initiate administrative or other remedial action.

232.970-2 Subcontractor requests for information.

(a) In accordance with Public Law 102-190, title VIII, section 806(a)(1), upon the request of a subcontractor or supplier under a DoD contract, the contracting officer shall promptly advise the subcontractor or supplier as to—

(1) Whether the prime contractor has submitted requests for progress payments or other payments under the contract to DoD; and

(2) Whether final payment has been made by the DoD to the prime contractor.

(b) This subsection does not apply to matters that are—

(1) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy; and

(2) Properly classified pursuant to such Executive Order (see 5 U.S.C. 552(b)(1)).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 252.2—Texts of Provisions and Clauses

4. Section 252.228-7006 is added to read as follows:

252.228-7006 Prospective subcontractor requests for bonds.

As prescribed in 228.106-4-70, use the following clause:

Prospective Subcontractor Requests for Bonds (SEP 1992)

In accordance with sections 806(a)(3) of Public Law 102-190, upon the request of a prospective subcontractor or supplier offering to furnish labor or material for the performance of this contract for which a payment bond has been furnished to the Government pursuant to the Miller Act, the Contractor shall promptly provide a copy of such payment bond to the requestor.

(End of clause)

[FR Doc. 92-22318 Filed 9-15-92; 8:45 am]

BILLING CODE 3810-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 525 and 552

[APD 2800.12A CHGE 42]

General Services Administration Acquisition Regulation

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR), chapter 5 (APD 2800.12A), is amended to revise paragraph (b) of section 525.402 to incorporate the change made by Acquisition Circular (AC-90-2) to reflect the results of the General Services Administration Board of Contract Appeals (GSBCA) decision GSBCA No. 10532-P, May 18, 1990; to revise section 525.407 to prescribe a provision and a clause for use in solicitations and contracts subject to the Trade Agreements Act; to add sections 552.225-8 and 552.225-9 to incorporate the text of the provision and clause to be used in lieu of the FAR provision at 52.225-8 and the clause 52.225-9; and to revise section 552.225-72 to incorporate the changes made by AC-91-2. The intended effect is to provide guidance to offerors and GSA contracting activities regarding procurements subject to the Trade Agreements Act.

EFFECTIVE DATE: September 22, 1992.

FOR FURTHER INFORMATION CONTACT: John Joyner, Office of GSA Acquisition Policy, (202) 501-1224.

SUPPLEMENTARY INFORMATION:

A. Public Comments

Temporary regulations were published in the **Federal Register** on November 1, 1990 (AC-90-1, 55 FR 46068) and March 20, 1991 (AC-91-2, 56 FR 11692), which solicited comments from the public. No comments were received from the public, however, comments received from various GSA offices have been considered and where appropriate incorporated in the final rule.

B. Executive Order 12291

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule.

C. Regulatory Flexibility Act

The General Services Administration certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. The rule authorizes a deviation from a FAR provision and clause that will resolve an inconsistency with the current FAR provision and clause based upon the GSBCA's ruling. This rule also provides offerors with the means to offer products from nondesignated countries that may be considered for award where specific circumstances exist and GSA decides to exercise the authority delegated by the U.S. Trade Representative.

D. Paperwork Reduction Act

This rule does not contain information collection requirements that require the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501).

List of Subjects in 48 CFR Parts 525 and 552

Government procurement.

Accordingly, 48 CFR parts 525 and 552 are amended to read as follows:

1. The authority citation for 48 CFR parts 525 and 552 reads as follows:

Authority: 40 U.S.C. 486(c).

PART 525—FOREIGN ACQUISITION

2. Section 525.402 is amended by revising paragraph (b) to read as follows:

525.402 Policy.

* * * * *

(b) As a result of the General Services Administration Board of Contract Appeals (GSBCA) decision in the protest of International Business Machines Corporation, GSBCA no. 10532-P, May 18, 1990, contracting officers are hereby authorized to deviate from the FAR provision at 52.225-8, Buy American Act-Trade Agreements Act-Balance of Payment Program Certificate and FAR clause at 52.225-9, Buy American Act-Trade Agreements Act-Balance of Payment Program, in solicitations and contracts that are subject to the Trade Agreements Act by incorporating the provision and clause prescribed in 525.407(a).

* * * * *

3. Section 525.407 is revised to read as follows:

525.407 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 552.225-8, Trade Agreements Act Certificate, and the clause at 552.225-9, Trade Agreements Act, in solicitations and contracts subject to the Trade Agreements Act in

lieu of the FAR provision at 52.225–8 and the clause at 52.225–9.

(b) The contracting officer shall insert the clause at 552.225–72, Eligible Products From Nondesignated Countries—Waiver, in solicitations and contracts subject to the Trade Agreements Act.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Sections 552.225–8 and 552.225–9 are added to read as follows:

552.225–8 Trade Agreements Act Certificate.

As prescribed in 525.407(a), insert the following provision:

Trade Agreements Act Certificate (AUG 1992) (Deviation FAR 52.225–8)

(a) The Offeror, by signing this offer, certifies that each end product to be delivered under this contract is a U.S.-made end product, a designated country end product, or a Caribbean Basin country end product as defined in the clause entitled "Trade Agreements Act" at 48 CFR 552.225–9.

(b) Offers will be evaluated in accordance with subpart 25.4 of the Federal Acquisition Regulation except that offers of U.S.-made end products shall be evaluated without the restrictions of the Buy American Act or the Balance of Payments Program.

(End of Provision)

552.225–9 Trade Agreements Act.

As prescribed in 525.407(a), insert the following clause:

Trade Agreements Act (Aug 1992) (Deviation FAR 52.225–9)

(a) This clause implements the Trade Agreements Act of 1979 (19 U.S.C. 2501–2582) by providing a preference for U.S.-made end products, designated country end products, and Caribbean Basin country end products over other products.

Caribbean Basin country end products, as used in this clause, means an article that: (1) Is wholly the growth, product, or manufacture of a Caribbean Basin country (as defined in section 25.401 of the Federal Acquisition Regulation (FAR)), or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term includes service (except transportation services) incidental to its supply provided that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such. The term excludes products that are excluded from duty-free treatment from Caribbean countries under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(b)). These exclusions presently consist of (i) textiles and apparel articles that are subject to textile agreements; (ii) footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel not designated as eligible articles for the purpose of the Generalized System of Preference under title V of the Trade Act of 1974; (iii) tuna, prepared or preserved in any manner in airtight containers; (iv) petroleum, or any product derived from petroleum; and (v) watches and watch parts (including cases, bracelets and straps) of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the Tariff Schedule of the United States (TSUS) column 2 rates of duty apply.

Designated country end product, as used in this clause, means an article that (1) is wholly the growth, product, or manufacture of the designated country (as defined in section 25.401 of the Federal Acquisition Regulation (FAR)), or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term includes services (except transportation services) incidental to its supply provided that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such.

End products, as used in this clause, means those articles, materials, and supplies to be acquired under this contract for public use.

U.S.-made end product, as used in this clause, means an article which (1) is wholly the growth, product, or manufacture of the United States, or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

Nondesignated country end products, as used in this clause, means any end product which is not a U.S.-made end product or designated country end product.

United States, as used in this clause, means the United States, its possessions, Puerto Rico, and any other place which is subject to its jurisdiction, but does not include leased bases or trust territories.

(b) The Contractor agrees to deliver under this contract only U.S. made end products, designated country end products, Caribbean Basin country end products, or, if a national interest waiver is granted under section 302 of the Trade Agreements Act of 1979, nondesignated country end products. Only if such waiver is granted may a nondesignated country end product be delivered under this contract(s).

(c) Offers will be evaluated in accordance with the policies and procedures of part 25 of the FAR except that offers of U.S. made end products shall be evaluated without the restrictions of the Buy American Act or the Balance of Payments Program.

(End of Clause)

5. Section 552.225–72 is revised to read as follows:

§ 552.225–72 Eligible Products from Nondesignated Countries—Waiver.

As prescribed in 525.407(b), insert the following clause:

Eligible Products From Nondesignated Countries—Waiver (Aug 1992)

(a) In accordance with the Trade Agreements Act of 1979 and 48 CFR 25.402(b), no eligible product that originates in a nondesignated country may be purchased by a Federal agency. However, this restriction may be waived before award when it is determined to be in the national interest. Accordingly, offers to furnish products originating in a nondesignated country identified in paragraph (c) below, may be submitted in response to this solicitation and will be considered for award if a waiver is obtained from the U.S. Trade Representative or a designee (19 U.S.C. 2512) on the basis that:

(1) No responsive bid or technically acceptable offer from a responsible Offeror is received offering U.S. or designated country end products as defined in the clause entitled "Trade Agreements Act" in this solicitation; or

(2) Responsible offerors do not offer a sufficient quantity to meet the Government's requirements.

(b) The determination to seek a waiver is at the sole discretion of the acquiring activity, and the granting of such waiver will be at the sole discretion of the U.S. Trade Representative or designee (48 CFR 525.402).

(c) The Offeror certifies that the following product(s) is an end product other than an end product of the United States, a designated country or a Caribbean Basin country as such end products are defined in the clause entitled "Trade Agreements Act" in this solicitation:

Line item number	Country of origin

(End of Clause)

Dated: September 1, 1992.

Richard H. Hopf III,

Associate Administrator for Acquisition Policy.

[FR Doc. 92–22228 Filed 9–15–92; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 920407-2159]

Atlantic Tuna Fisheries; Bluefin Tuna

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: NMFS closes the fishery for Atlantic bluefin tuna conducted by vessels permitted in the General category and fishing for large medium and giant Atlantic bluefin tuna. Closure of this segment of the fishery is necessary because it has been determined that the annual quota for this category, minus a 40-metric ton (mt) set-aside amount, will be attained by September 15, 1992. Vessels permitted in the General category may continue to fish for and retain a special 40-mt ton set-aside in the area that includes the waters of Narragansett Bay, Buzzards Bay, Pleasant Bay, and all waters south of a straight line originating at a point on the southeastern shore of Cape Cod at 41° 45'N. latitude (near the north end of Pleasant Bay) and running East 90° true, until 20 mt is harvested and NMFS publishes a notice of closure for that 20-mt allocation. At that time, vessels permitted in the General category may continue to fish for and retain the remaining 20-mt ton set-aside in the area west of a straight line originating at a point on the southern shore of Long Island at 72° 50'W. longitude and running SSE 150° true. The intent of this action is to prevent overharvest of the quota established for this fishery while providing a fishing opportunity in areas south of Cape Cod.

EFFECTIVE DATES: The closure is effective from 0001 hours local time on September 16, 1992, through December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Richard B. Stone, 301-713-2347.

SUPPLEMENTARY INFORMATION: Regulations promulgated under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971-971h) regulating the harvest of Atlantic bluefin tuna by persons and vessels subject to U.S. jurisdiction appear at 50 CFR part 285.

Section 285.22(a) of the regulations provides for an annual quota of 531 mt of large medium and giant Atlantic bluefin tuna to be harvested from the Regulatory Area by vessels permitted in the General category. The Assistant Administrator for Fisheries, NOAA, (Assistant Administrator) is required under § 285.20(b)(1) to monitor the catch and landing statistics, and on the basis of these statistics, to project a date when the total catch of Atlantic bluefin tuna will equal any quota under § 285.22. The Assistant Administrator is further required under § 285.20(b)(1) to prohibit the fishing for, or retention of, Atlantic bluefin tuna by the category of gear subject to the quotas. In the case of the General category, under § 285.22(a) the Assistant Administrator may set aside an allocation for an identified area, not to exceed the greater of 40 mt or the maximum reported landings from the identified area in any of the preceding 3 years. This set-aside is made when the Assistant Administrator has determined, based on landings reports, that fishermen in an identified area will be precluded from harvesting their share of the quota due to variations in seasonable distribution, abundance, or migration patterns and the catch rate. In addition, the governing regulations require the daily catch limit for the identified area to be set at one large medium or giant Atlantic bluefin tuna per day per vessel.

Based on landings reports, the Assistant Administrator has determined that the quota of Atlantic bluefin tuna allocated for the General category, minus a 40-mt set-aside amount for the area identified below, has been attained. Fishing for, or retention of, large medium or giant Atlantic bluefin tuna by vessels in the General category must cease by 0001 hours September 16, 1992, except that vessels permitted in the General category may continue to fish in the area that includes the waters of Narragansett Bay, Buzzards Bay, Pleasant Bay, and all waters south of a straight line originating at a point on the southeastern shore of Cape Cod at 41° 45'N. latitude (near the north end of Pleasant Bay) and running East 90° true, until 20 mt is harvested and NMFS publishes a notice of closure for that 20-mt allocation. At that time, vessels permitted in the General category may continue to fish for and retain the remaining 20-mt of the set-aside in the area west of a straight line originating at a point on the southern shore of Long Island at 72° 50'W. longitude (near the town of Moriches) and running SSE 150° true. The intent of this action is to prevent overharvest of the quota established for this fishery while providing a fishing opportunity in areas south of Cape Cod.

Classification

Notice of this action will be faxed to Atlantic bluefin tuna dealers and fisherman, several industry publications, associations, and state agencies. This action is taken under the authority of 50 CFR 285.20, and is taken in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements, Treaties.

Authority: 16 U.S.C. 971 *et seq.*

Dated: September 10, 1992.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-22378 Filed 9-11-92; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 675

[Docket No. 911172-2021]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Appointment of reserve; rescission of prohibition of retention; closure; request for comments.

SUMMARY: NMFS announces that amounts of the operational reserve are needed in the fishery for pollock in the Bering Sea subarea (BS) of the Bering Sea and Aleutian Islands Management Area (BSAI) and in the fishery for Pacific cod in the BSAI. NMFS is rescinding the prohibition of retention of pollock by the offshore component in the BS and is prohibiting that directed fishery. This action is necessary to avoid unnecessary discard of pollock and to allow harvest of the total allowable catch (TAC) of Pacific cod.

DATES: Effective 12 noon, Alaska local time (A.l.t.), September 11, 1992, through 12 midnight, A.l.t., December 31, 1992. Comments may be submitted until September 28, 1992.

ADDRESSES: Comments should be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, Alaska 99802-1668, or be delivered to 9109 Mendenhall Mall Road, Federal Building Annex, Suite 6, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS at 907/586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI Area (FMP) prepared by the North Pacific Fishery Management Council under

authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

Reserve Releases

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 675.20(b)(1)(i), that the initial TAC specified for Pacific cod needs to be supplemented from the non-specific reserve in order to continue operations. Therefore, NMFS apportions 22,000 metric tons (mt) from the reserve to the TAC in the BS, resulting in a revised Pacific cod TAC of 176,700 mt.

The Regional Director has also determined, in accordance with § 675.20(b)(1)(i), that the TAC specified for pollock needs to be supplemented from the non-specific reserve in order to continue operations and avoid unnecessary discard of pollock. Therefore, NMFS apportions 38,500 mt from the reserve to the pollock TAC in the BS, resulting in a revised pollock TAC of 1,241,000 mt. The first pollock season harvest was 534,131 mt, leaving 706,869 mt for the second pollock season. The revised amounts for the second pollock season for the inshore and offshore components are 247,404 mt and 459,465 mt, respectively, in accordance with § 675.20(a)(3)(ii).

Rescission of Prohibited Species Status

NMFS has established a directed fishing allowance of 415,000 mt for the offshore component (57 FR 33904, July 31, 1992). In accordance with § 675.20(c), the offshore component was required to treat pollock as a prohibited species in the BS effective 12 noon, A.l.t., August 17, 1992, (57 FR 37731, August 20, 1992).

Because the pollock allowance for the offshore component is increased, 44,465 mt remains to support anticipated groundfish fisheries. Therefore, NMFS rescinds the prohibition of retention of pollock by the offshore component in the BS effective 12 noon, A.l.t., September 11, 1992.

The Regional Director has also determined, in accordance with § 675.20(a)(8), that the pollock allowance available for the offshore component in the BS will be necessary as bycatch to support other anticipated groundfish fisheries. Consequently, NMFS is prohibiting directed fishing for pollock in the BS by the offshore component effective from 12 noon, A.l.t., September 11, 1992, through 12 midnight, A.l.t., December 31, 1992.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under 50 CFR 675.20, and is in compliance with E.O. 12291.

The Assistant Administrator for Fisheries, NOAA, finds for good cause that providing prior notice and public comment or delaying the effective date of this notice is impracticable, unnecessary, or contrary to the public interest. Without this apportionment, U.S. groundfish fishermen would have to discard bycatches of pollock in the BS, resulting in needless economic waste of valuable fishery resources, and the directed fishery for Pacific cod would have to be closed, causing economic hardship for the industry. Under § 675.20(b)(2), interested persons are invited to submit written comments on this apportionment to the above address until September 28, 1992.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 et seq.

Dated: September 11, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-22379 Filed 9-11-92; 4:03 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 180
Wednesday, September 16, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

Removal of Reedville and Cape Charles City as Ports of Entry

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes an amendment to part 101 of the Customs Regulations which would remove Cape Charles City and Reedville, both in Virginia, from the list of ports of entry. Customs has reviewed the history of activity at these ports, and has determined that its resources could be better utilized if these ports in the Norfolk District were removed from the list of ports of entry.

DATES: Comments must be received on or before November 16, 1992.

ADDRESSES: Comments (preferably in triplicate) may be submitted to and inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, room 2119, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Margaret Reyen, Office of Workforce Effectiveness, Office of Inspection and Control, U.S. Customs Service (202) 566-8157.

SUPPLEMENTARY INFORMATION:

Background

The Customs Service, in its continuing attempt to more efficiently manage its personnel, facilities and resources, as well as improve the service it provides the public, regularly reviews activity levels at its ports of entry and other locations. It then attempts to allocate its limited available resources and employees where they can best manage the workload.

Customs has recently completed a survey of activity within the Norfolk District which has shown that the ports of entry of Reedville, Virginia and Cape Charles City, Virginia have not had any merchandise imported or exported from them for several years. Because there is no vessel activity at these ports, there is no need for Customs officials to be available. Similarly, there is no projected commercial activity which would create a need for Customs services at these ports. Accordingly, Customs is proposing to remove these locations from the listing of ports of entry in § 101.3(b) of the Customs Regulations (19 CFR 101.3(b)).

Pursuant to the requirements of 19 U.S.C. 2075, Customs notified the Senate Finance Committee and the Ways and Means Committee of the House of Representatives of this proposed action in June 1991. No objection to the proposed closures was received from Congress during the prescribed six-month waiting period; accordingly, Customs is proceeding with this Notice of Proposed Rulemaking to the public. Because there has been no Customs activity at either location for many years, it is not anticipated that this proposed change will have any adverse financial impact on either the agency or the community.

If the proposed elimination of the ports is adopted, the listing of Customs regions, districts, and ports of entry in 19 CFR 101.3(b) will be amended accordingly.

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m., at the Regulations and Disclosure Law Branch, room 2119, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229.

Authority: This change is proposed under the authority of 5 U.S.C. 301 and 19 U.S.C. 2, 66 and 1624.

Regulatory Flexibility Act and Executive Order 12291

Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Although this document is being issued with notice for public comment, it is not subject to the notice and public procedure requirements of 5 U.S.C. 553 because it relates to agency management and organization. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this document relates to agency organization and management, it is not subject to E.O. 12291.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

Michael H. Lane,
Acting Commissioner of Customs.

Approved: August 20, 1992.

Peter K. Nunez,
Assistant Secretary of the Treasury.

[FR Doc. 92-22344 Filed 9-15-92; 8:45 am]
BILLING CODE 4820-02-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS-103-90]

RIN 1545-AP23

Election Out of Subchapter K for Producers of Natural Gas

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations regarding certain requirements that must be met by producers of natural gas subject to a gas balancing agreement in order to elect under section 761(a) to be excluded form the application of subchapter K of chapter 1 of the Internal Revenue Code.

DATES: Written comments must be received by November 16, 1992. A public hearing on these proposed regulations has been scheduled for 10 a.m. on Tuesday, November 16, 1992. Persons wishing to speak at this hearing must

deliver their comments, requests to speak, and outlines of their comments by October 27, 1992.

ADDRESSES: Send comments and requests (with outlines of oral comments) for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (PS-103-90), room 5228, Washington, DC 20044. In the alternative, submissions may be hand-delivered to the Internal Revenue Service, Attn: CC:CORP:T:R (PS-103-90), room 5228, 1111 Constitution Ave., NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Grace Kim, 202-622-3060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information requirement contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information requirement should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attention: IRS Reports Clearance Officer T:FP, Washington, DC 20224.

The collection of information is required by § 1.761-2(d)(5)(i) of the proposed regulations. The Internal Revenue Service requires the information in § 1.761-2(d)(5)(i) of the proposed regulations to ensure that gas producers are in compliance with the general rules for changes in method of accounting and with the rules of § 1.761-2(d) of the proposed regulations. The likely respondents are individuals, businesses, and other for-profit institutions.

These estimates approximate the average time expected to be necessary to collect required information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require more or less time, depending on their particular circumstances.

Estimated total annual reporting burden: 2,500 hours.

The estimated average annual burden associated with the collection of information is .5 hour per respondent.

Estimated total number of respondents: 5,000.

Estimated annual frequency of responses: one time only.

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 761 of the Internal Revenue Code (Code). The amendments are to be issued under the authority contained in sections 446(b), 761(a) and 7805 of the Code.

Explanation of Provisions

I. General Background

Section 761(a) of the Code authorizes the Secretary to issue regulations permitting the members of certain unincorporated organizations to elect to have the organization excluded from the application of all or part of subchapter K of chapter 1 of the Code ("subchapter K"). Unincorporated organizations that are used for the joint production, extraction, or use of property, but not for the purpose of selling services or property produced or extracted, are eligible to make the election. However, the election is available only if the income of the members of the organization may be adequately determined without the computation of partnership taxable income. See § 1.761-2 (a)(1) through (a)(3) of the regulations.

Section 1.761-2(a)(3) of the regulations describes certain organizations involved in the joint production, extraction, or use of property that may be excluded from the application of subchapter K. In general, the organizations are those whose members (i) own the property as co-owners, (ii) reserve the right separately to take in kind or dispose of their shares of any property produced, extracted, or used, and (iii) do not jointly sell services or the property produced or extracted. These requirements generally would be met by members of an unincorporated organization that produce natural gas under a joint operating agreement ("JOA").

II. Description of the Gas Balancing Problem and the Service's Proposed Resolution

Co-owners ("producers") of a property producing natural gas enter into a JOA to define the rights and obligations of each producer of the gas in place. Generally, production operations are managed under a JOA. Additionally, the JOA describes each producer's proportionate share of gas as it is produced from the reservoir.

Under a JOA, each producer may take and dispose of its proportionate share of current gas production. When producers take current gas production in proportions differing from the producers' proportions under the JOA, a gas imbalance arises. A producer that takes less than its proportionate share under the JOA of current gas production is referred to as an "underproducer," and a producer that take more than its proportionate share of current gas production is referred to as an "overproducer."

Gas producers that operate under a JOA generally enter into a gas balancing agreement ("GBA") or similar agreement as an addendum to, or part of, the JOA to establish their rights and obligations when a gas imbalance arises. The GBA is primarily an accounting mechanism that defers the underproducer's cotenancy right (established under the JOA and state or common law) to an accounting and current payment for the proceeds of the underproducer's gas that is sold by the overproducer, that is, the overproduced gas. A typical GBA gives the overproducer the right to take and dispose of the overproduced gas. Further, it entitles the underproducer to recoup the amount of the overproduced gas at a later time either from the volume of the gas remaining in the reservoir or by a cash balancing payment. In addition, a GBA typically requires that upon exhaustion of the reservoir any remaining gas imbalance be accounted for through a cash balancing payment to the underproducer to reflect the underproducer's lost share of total production.

Under current industry practice, producers account for sales of gas subject to balancing under either of two accounting methods: (1) The entitlements method, under which a producer reports income currently only for its proportionate share under the JOA of current gas production regardless of the gas that it actually markets; and (2) the sales method, under which a producer reports income currently for the gas that it actually markets and for any balancing payments received. It is common for producers operating under the same GBA not to use the same method to account for gas sales.

Under existing accounting practices, income from sales of gas subject to balancing might not be recognized when the sale of the gas occurs and might remain unrecognized until balancing occurs. For example, if the overproducer uses the entitlements method of accounting, the overproducer does not currently recognize the income from its sales of overproduced gas. If the underproducer under the same JOA uses the sales method of accounting, the underproducer does not currently recognize the income from its gas subject to balancing until the

underproducer receives a balancing payment from the overproducer. When balancing does not occur until the reservoir is exhausted, recognition of the income from the overproduced gas might be deferred for a prolonged period of time after the sale of the overproduced gas.

This deferred income recognition is made possible because co-owners of a gas producing property treat their partnership as eligible to elect out of subchapter K. Without the section 761 election, these co-owners, constitution a partnership, would have to use the same method of accounting for gas sales and thus would not be able to defer recognizing income from gas sales by using different methods to account for the overproduced gas.

Under section 761 of the Code, the Service has broad authority to regulate the availability of, and conditions for, the section 761 election. The Service believes that the section 761 election was not intended, and should not be used, to allow co-owners of a gas producing property to defer income for substantial periods of time. Additionally, the Service believes that allowing co-producers to use differing methods of accounting that permit prolonged deferral is inconsistent with the rule in section 761 that permits the election-out only for unincorporated organizations whose members can adequately compute income without the necessity of computing partnership taxable income. Moreover, under section 446(b), the Service has broad regulatory authority to prescribe methods of accounting to ensure a clear reflection of income. Accordingly, the Service proposes to eliminate this potential for prolonged income deferral under its authority to regulate the section 761 election and to prescribe methods of accounting.

In developing these regulations, the Service considered numerous suggestions from industry representatives. The Service has concluded that co-owners of a gas producing property that account for gas imbalances under a GBA should continue to be permitted to elect out of subchapter K. However, the Service believes that additional rules are needed under section 761 to eliminate the potential for prolonged deferral of income. The Service intends for these rules to be consistent with the existing election-out requirements under section 761, and not to be unduly disruptive to existing business practices.

Accordingly, the Service proposes to amend the regulations under section 761, as described below, to modify the specific methods of accounting for gas imbalances that may be used by co-owners of a gas producing property that seek to make or maintain an election under section 761.

III. Description of the New Provisions

A. Permissible Gas Balancing Methods

Under the proposed regulations, for taxable years beginning on or after September 16, 1992, in order to make or maintain an election out of subchapter K, all parties to the same GBA (including a similar agreement) must use the same permissible gas balancing method to account for their sales of gas and for certain deductions and credits arising from those sales. For this purpose, the permissible gas balancing methods are (i) the "annual gas balancing method," as described in the proposed regulations, and (ii) the "cumulative gas balancing method," as described in the proposed regulations. The proposed regulations further provide that, unless all the producers operating under the same GBA agree in writing to use the annual gas balancing method, the producers must use the cumulative gas balancing method.

B. Change in Method of Accounting and Section 481(a) Adjustment

The annual gas balancing method and the cumulative gas balancing method are methods of accounting for purposes of section 446 of the Code and the regulations thereunder. Thus, a change to or from either of these methods constitutes a change in method of accounting that requires the prior consent of the Commissioner. Under the proposed regulations, producers of natural gas operating under the same JOA and accounting for gas imbalances under in GBA in effect on the effective date of the regulations, upon complying with certain rules relating to timing and procedures, are granted the Commissioner's consent to change to one of the two specified methods for their first taxable year beginning on or after the effective date ("year of change"). A change in method of accounting under this provision of the proposed regulations is not subject to a user fee.

Additionally, the proposed regulations provide that, upon a change to either new method, a section 481(a) adjustment must be taken into account to prevent the omission or duplication of income. Generally, the section 481(a) adjustment relating to a GBA is equal to the difference between the amount of income reported under the producer's former method of accounting for all taxable years prior to the year of change and the amount of income that would have been reported if the producer's new method had been used in those years. Under the proposed regulations, the section 481(a) adjustment, whether positive or negative, generally is taken into account ratably over 6 taxable years beginning with the year of change (the "section 481(a) adjustment period").

Special rules are provided for producers that change to the annual gas balancing method and that make or receive certain balancing payments during or after the section 481(a) adjustment period. *Example 6* of § 1.761–2(d)(6) of the proposed regulations illustrates the application of these rules.

C. Description of the Annual Gas Balancing Method

The annual gas balancing method ("annual method") is a method of accounting for gas sales and for certain deductions and credits arising from those sales that takes into account each producer's ownership rights and obligations, as described in the JOA and the GBA, with respect to the producer's current proportionate share of gas as it is produced from the reservoir. Under the annual method, an overproducer is required annually to make a balancing payment to the underproducer to eliminate any gas imbalance remaining at the end of the overproducer's taxable year. The overproducer must make the balancing payment by the due date of its tax return for its taxable year (including extensions) during which it sold the overproduced gas.

In reporting income from sales of gas under the annual method, each producer must include all of the income from its sales of gas, including sales of any overproduced gas. However, for purposes of sections 613 and 613A, in computing its "gross income from the property," the overproducer does not include any amount relating to the sale of overproduced gas, and in computing "taxable income from the property" the overproducer does not deduct the amount of any balancing payment relating to the sale of overproduced gas.

An overproducer that makes the required balancing payment under the annual method deducts the amount of that payment from its gross income for the appropriate year under its overall method of accounting (*i.e.*, cash or accrual).

An underproducer receiving a balancing payment under the annual method must treat that payment as proceeds from the sale of its gas and must include that payment in gross income for the appropriate year under its overall method of accounting.

Each producer deducts its proportionate share of production expenses, as provided in the JOA, under its regular method of accounting for such expenses.

In addition, each producer computes its depletion deduction and any available production credit (*e.g.*, the credit under section 29 of the Code for producing fuel from a nonconventional source) on its proportionate share of production as provided in the JOA.

D. Description of the Cumulative Gas Balancing Method

The cumulative gas balancing method ("cumulative method") is a method of accounting for income from gas sales and for certain related deductions and credits that treats each producer subject to the same gas balancing agreement as the sole owner of its percentage share of the total gas in the reservoir and that disregards the ownership arrangement described in the JOA and GBA for gas as it is produced from the reservoir. Each producer is considered to be taking exclusively its share of the total gas in the reservoir as long as the gas remaining in the reservoir is sufficient to satisfy the ownership rights of the other producers in their percentage shares of the total gas in the reservoir. While each producer is taking its share of the total gas in the reservoir, each producer is taxed and computes an allowance for depletion and a production credit, if available, based on the total volume of its sales. Each producer deducts its proportionate share of production expenses, as provided in the JOA, using its regular method of accounting for such expenses.

After a producer has taken its entire share of the total gas in the reservoir, the producer ("taking producer") is considered to be taking from the other co-producers' ("nontaking producers") total share of gas. However, because the taking producer retains the proceeds from the sale of gas, subject to an obligation to pay the nontaking producers for the sale of their gas, the taking producer is required to include the sales proceeds in gross income for that year. To eliminate the potential for prolonged income deferral from current gas sales, the taking producer is permitted a deduction, with respect to its obligation to pay the nontaking producers, only for the taxable year in which it actually makes the payment. Thus, the taking producer is not allowed a current deduction for any accrued liability to pay the nontaking producers for the sale of their gas.

Consistent with the treatment of the taking producer, a nontaking producer does not include in gross income any amount relating to sales of its gas by the taking producer until the nontaking producer receives a payment from the taking producer for the sale of its gas. The nontaking producer must treat the payment as proceeds from the sale of its gas and must include the payment in gross income in the taxable year received.

The proposed regulations contain special rules for determining the amount of any production credit (if available) and depletion deductions allowable to producers using the cumulative method. Generally, a producer is allowed a production credit and a deduction for depletion only for sales of its gas (as determined under the cumulative method) in the taxable year that the amounts relating to the sales are included in the producer's gross income. Thus, a taking producer may not claim a production credit or an allowance for depletion for sales of a coproducer's gas. Additionally, a nontaking producer claims a production credit and an allowance or depletion relating to sales of its gas by the taking producer only for the taxable year that the nontaking producer includes a payment from the taking producer in gross income.

The Service understands that in certain circumstances a producer may not be able to reasonably determine exactly when the producer is no longer taking its gas and has begun taking a co-producer's gas. Thus, if a taking producer claims an allowance for depletion and a production credit on its sales of a co-producer's gas under a reasonable, but mistaken, belief that it is still producing from its percentage share of the total gas in the reservoir, the Service will not disallow the depletion deduction or the production credit.

In addition, rules are provided to take into account, in the taxable year that the taking producer makes a payment to a co-producer for sales of the co-producer's gas, any depletion deduction and production credits relating to sales of the co-producer's gas.

The proposed regulations provide that, when the taking producer makes a payment to a co-producer for sales of the co-producer's gas, the taking producer must reduce the deduction allowable for making the payment by the amount of any depletion deductions previously allowed for sales of the co-producer's gas. Additionally, if the percentage limitation of section 613A(d)(1) applied to disallow a depletion deduction for a previous year, the taking producer also must reduce the amount of any carried over depletion deduction allowable in the year of the payment or in a future year by the portion of the deduction, if any, that relates to a co-producer's gas.

When the taking producer makes a payment to a co-producer for sales of the co-producer's gas, the taking producer must add to its tax for the taxable year in which it makes the payment the amount of any production credit allowed for sales of the co-producer's gas to the extent that the credit actually reduced the taking producer's tax. Additionally, the taking producer must reduce the amount of the producer's minimum tax credit allowable by reason of section 53(d)(1)(B)(iii) in the year of the payment or in a future year by the portion of the credit, if any, that relates to a co-producer's gas.

The proposed regulations also contain an anti-abuse rule to prevent gas producers from using the cumulative method to improperly shift income, deductions, or credits with a principal purpose of avoiding tax. The cumulative method is intended to allow producers affected by production imbalances to continue to conduct their operations under their existing business arrangements. However, the service does not intend the cumulative method to foster the arranging of production for tax avoidance purpose.

Accordingly, if the Service determines that, based on an examination of all the facts and circumstances, co-producers under the cumulative method have arranged or altered their taking or production, as compared to the ownership percentages under the JOA, with a principal purpose of shifting the income, deductions, or credits relating to that production to avoid tax, the Service will revoke the producers' section 761 election for that year and for subsequent years. Examples 4 and 5 of § 1.76–2(d)(6) of the proposed regulations describe situations in which the anti-abuse rule would and would not apply.

IV. Effective Date

This amendment is proposed to apply to producers that are members of unincorporated organizations that produce natural gas under JOAs and that account for gas imbalances under GBAs or similar agreements in effect on or after September 16, 1992, for taxable year beginning on or after such date.

Comments and Public Hearing

Before the adoption of these proposed regulations, consideration will be given to any written comments that are timely submitted (preferably an original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A

public hearing will be held at 10 a.m. on Tuesday, November 17, 1992, in the I.R.S. Commissioner's Conference Room, room 3313 of the Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. Outlines of comments from persons wishing to speak at this hearing must be received by October 27, 1992.

Special Analyses

The Service has concluded that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administration Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

Drafting Information

The principal author of these regulations in H. Grace Kim of the Office of Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR 1.761–1 through 1.761–2

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, title 26, chapter I, part 1 is proposed to be amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * Section 1.761–2 also issued under 26 U.S.C. 446(b) and 26 U.S.C. 761(a). * * *

Par. 2. Section 1.761–2 is amended as follows:

1. The section heading for § 1.761–2 is revised.
2. A new sentence is added to the end of paragraph (a)(3).
3. Paragraph (d) is redesignated as paragraph (e).
4. New paragraph (d) is added.
5. The revised and added provisions read as follows:

§ 1.761–2 Exclusion of certain unincorporated organizations from the application of all or part of subchapter K of chapter 1 of the Internal Revenue Code.

(a) * * *

(3) * * * In addition, this paragraph (a)(3) does not apply to any unincorporated organization that produces natural gas under a joint operating agreement and that accounts for gas imbalances under a gas balancing agreement (as described in paragraph (d)(1) of this section) that is in effect on or after September 16, 1992, unless all members of the unincorporated organization comply with the provisions of paragraph (d) of this section.

* * * * *

(d) *Rules for gas producers subject to gas balancing agreements*—(1) *Gas balancing agreements.* A gas balancing agreement is an addendum to, or part of, a joint operating agreement entered into by co-producers of a natural gas reservoir. The joint operating agreement determines, among other things, each producer's proportionate share of the natural gas as it is produced from the reservoir, together with the associated production expenses. A gas imbalance arises when a producer is unable to take its proportionate share of current gas production under the joint operating agreement ("underproducer") and another producer takes more than its proportionate share of current production ("overproducer"). The gas balancing agreement describes the rights and obligations among the co-producers when a gas imbalance arises. It customarily provides that the overproducer may take the amount of the gas imbalance ("overproduced gas") and that the underproducer is entitled to recoup the overproduced gas either from the volume of the gas remaining in the reservoir or by a cash balancing payment as determined under the gas balancing agreement. Any agreement similar to a gas balancing agreement is treated as a gas balancing agreement for purposes of this § 1.761–2.

(2) *Permissible gas balancing methods*—(i) *General requirements.* All producers of natural gas operating under the same joint operating agreement that account for gas imbalances under a gas balancing agreement must use the same permissible gas balancing method to account for sales of gas and for certain related deduction and credits. The permissible gas balancing methods for purposes of this paragraph (d)(2)(i) are the annual gas balancing method and the cumulative gas balancing method. Co-producers must use the cumulative gas balancing method unless they agree in writing to use the annual gas balancing method.

(ii) *Change in method of accounting.* The annual gas balancing method and the cumulative gas balancing method are methods of accounting. Accordingly, a change to or from either of these methods is a change in method of accounting that requires the consent of the Commissioner. See section 446(e) and § 1.446–1(e). Producers that are subject to a gas balancing agreement in effect on September 16, 1992, must change their method of accounting for sales of gas and certain related deductions and credits with respect to each agreement to either of the permissible methods under the rules of paragraph (d)(5)(i) of this section. For each gas balancing agreement entered into on or after September 16, 1992, co-producers may adopt either of the permissible methods by using the method on their timely filed return for the first taxable year beginning on or after such date.

(3) *Annual gas balancing method*—(i) *In general.* The annual gas balancing method ("annual method") is a method of accounting for gas sales and certain related deductions and credits that takes into account each producer's ownership rights and obligations, as described in the joint operating agreement and the gas balancing agreement, with respect to the producer's current proportionate share of gas as it is produced from the reservoir. Under the annual method, gas imbalances for the taxable year must be eliminated on an annual basis.

(ii) *Requirements*—(A) *Reporting of income from sales of gas.* Under the annual method, each producer must include the amount of its sales of gas produced under the joint operating agreement, including overproduced gas, in gross income for the appropriate year under this overall method of accounting (*i.e.*, cash or accrual). However, in computing "gross income from the property" for purposes of sections 613 and 613A, an overproducer does not include in gross income any amount relating to the sale of overproduced gas.

(B) *Required balancing payment by overproducer.* Any gas imbalance remaining at the end of the taxable year of an overproducer must be eliminated by a balancing payment from the overproducer to the underproducer by the due date of the overproducer's tax return for that taxable year (including extensions). The balancing payment

may be made in cash, gas, or other property.

(C) *Deduction by overproducer of balancing payment.* An overproducer deducts the amount of a balancing payment from gross income for the appropriate year under its overall method of accounting. In computing "taxable income from the property" for purposes of sections 613 and 613A, the amount of the balancing payment is not deducted.

(D) *Reporting of income by underproducer for balancing payment.* An underproducer receiving a balancing payment must treat the amount of that payment as proceeds from the sale of its gas and must include that amount in gross income for the appropriate year under its overall method of accounting.

(E) *Computation of production credits and depletion deductions.* Each producer must compute for its taxable year a production credit (*e.g.*, the credit under section 29 for producing fuel from a nonconventional source), if available, and an allowance for depletion as provided in part I of subchapter I of chapter 1 of the Internal Revenue Code only on its proportionate share of production and income as provided in the joint operating agreement. Thus, an overproducer may not claim a production credit or an allowance for depletion on its sale of overproduced gas, but an underproducer claims a production credit and an allowance for depletion on the amount of any balancing payment in the taxable year that the amount is included in the underproducer's gross income.

(F) *Reporting of production expenses.* Each producer deducts for its taxable year its proportionate share of production expenses, as provided in the joint operating agreement, under its regular method of accounting for the expenses.

(4) *Cumulative gas balancing method*—(i) *In general.* The cumulative gas balancing method ("cumulative method") is a method of accounting for income from gas sales and for certain related deductions and credits that treats such producer subject to the same gas balancing agreement as the sole owner of its percentage share of the total gas in the reservoir and that disregards the ownership arrangement described in the joint operating agreement and the gas balancing agreement for gas as it is produced from the reservoir. Each producer is considered to be taking only its share of the total gas in the reservoir as long as the gas remaining in the reservoir is sufficient to satisfy the ownership rights of the co-producers in their percentage shares of the total gas in the reservoir. After a producer has taken its entire share of the total gas in the reservoir, any additional gas taken by that producer ("taking producer") is treated as having been taken from the co-producers' share of the total gas in the reservoir. The effect of being treated as a taking producer under the cumulative method is that the taking producer generally may not claim an allowance for depletion and a production credit on its sales of the co-producers' percentage shares of the total gas in the reservoir.

(ii) *Requirements*—(A) *Reporting of income from sales of gas.* Under the cumulative method, each co-producer must include in gross income under its overall method of accounting the amount of its sales from all gas produced from the reservoir, including sales of gas taken from a co-producer's share of the gas in the reservoir.

(B) *Reporting of deduction of taking producer.* A taking producer deducts the amount of a payment made to a co-producer for sales of the co-producer's gas, but only for the taxable year that the payment is made. Thus, an accrual method taking producer is not permitted a deduction for any obligation that it has to pay a co-producer for sales of the co-producer's gas until a payment is made. See paragraph (d)(4)(iii)(B) of this section for a rule requiring a reduction of the amount of the deduction described in this paragraph (d)(4)(ii)(B) if the taking producer had claimed a depletion deduction relating to those sales.

(C) *Reporting of income by other co-producers.* A co-producer that is entitled to receive a payment from a taking producer must include the amount of the payment in gross income as proceeds from the sale of its gas only for the taxable year that the payment is actually received, regardless of its overall method of accounting.

(D) *Reporting of production expenses.* Each co-producer deducts its proportionate share of production expenses, as provided in the joint operating agreement, under its regular method of accounting for the expenses.

(iii) *Special rules for production credits and depletion deductions under the cumulative method*—(A) *In general.* Under the cumulative method, a producer's depletion allowance and production credit for a taxable year are based on the producer's income from gas sales and production of gas from the producer's percentage share of the total gas in the reservoir, and are not based on the producer's current proportionate share of income and production as determined under the joint operating agreement. Thus, in general, a taking producer is not allowed a production credit or an allowance for depletion on its sales of gas in excess of its percentage share of the total gas in the reservoir. However, the Service will not disallow depletion deductions or production credits claimed by a taking producer on a co-producer's gas if the taking producer had a reasonable but mistaken belief that the deductions or credits were claimed with respect to the taking producer's percentage share of total gas in the reservoir. The reasonableness of the mistaken belief is determined at the time of filing the return claiming the deductions or credits. See paragraphs (d)(4)(iii)(B) and (d)(4)(iii)(C) of this section for the treatment of a depletion deduction and a production credit claimed by a taking producer on a co-producer's gas. A co-producer receiving a payment for sales of its gas from a taking producer claims a production credit and an allowance for depletion relating to those sales only for the taxable year that the amount of the payment is included in its gross income.

(B) *Reduction of taking producer's payment deduction for depletion claimed on a co-producer's gas.* If a taking producer claims an allowance for depletion on a co-producer's gas, the taking producer must reduce its deduction claimed in a later year for making a payment to a co-producer for sales of the co-producer's gas by the amount of any depletion deduction allowed on the gas sales to which the payment relates. If the percentage limitation of section 613A(d)(1) applied to disallow a depletion deduction for a previous year, the taking producer also must reduce the amount of any carried over depletion deduction allowable in the year of the payment or in a future year by the portion of the deduction, if any, that relates to a co-producer's gas.

(C) *Addition to tax of taking producer for production credit claimed on a co-producer's gas.* If a taking producer claims a production credit on a co-producer's gas, the taking producer must add to its tax for the taxable year that it makes a payment to a co-producer for sales of the co-producer's gas any production credit allowed in an earlier taxable year on the gas sales to which the payment relates, but only to the extent that the credit allowed actually reduced the taking producer's tax in any earlier year. The taking producer also must reduce the amount of the producer's minimum tax credit allowable by reason of section 53(d)(1)(B)(iii) in the year of the payment or in a future year by the portion of the credit, if any, that relates to a co-producer's gas.

(iv) *Anti-abuse rule.* If the Commissioner determines that co-producers using the cumulative method have arranged or altered their taking of production for a taxable year with a principal purpose of shifting the income, deductions, or credits relating to that production to avoid tax, the producers' election to be excluded from all or part of subchapter K will be revoked for that year and for subsequent years. In determining that a principal purpose was to avoid tax, the Commissioner will examine all the facts and circumstances surrounding the use by the producers of the cumulative method. See *Examples 4* and *5* of paragraph (d)(6) of this section.

(5) *Transitional rules for producers subject to a gas balancing agreement in effect on September 16, 1992.*—(i) *Automatic consent to change in method of accounting.* A producer subject to one or more gas balancing agreements in effect on September 16, 1992 is granted the consent of the Commissioner to change its method of accounting with respect to each agreement to either the annual method or the cumulative method, provided the producer—

(A) Makes the change on its timely filed return for its first taxable year beginning on or after September 16, 1992 ("year of change");

(B) Attaches a completed and signed Form 3115 to the producer's tax return for the year of change;

(C) Attaches to the Form 3115 a separate statement listing those gas balancing agreements for which the producer is changing to the annual method and those gas balancing agreements for which the producer is changing to the cumulative method; and

(D) Attaches an agreement, in the case of a change to the annual method, signed by all of the co-producers to use that method.

(ii) *Application of section 481(a)*—(A) *In general.* A change in method of accounting under paragraph (d)(5)(i) of this section is a change in method of accounting to which the provisions of section 481(a) apply. Thus, a section 481(a) adjustment must be taken into account in the manner provided by this paragraph (d)(5)(ii) to prevent the omission or duplication of income. The section 481(a) adjustment of a producer relating to a gas balancing agreement is computed as of the first day of the producer's year of change for that gas balancing agreement and is equal to the difference between the amount of income reported under the producer's former method of accounting for all taxable years prior to the year of change and the amount of income that would have been reported if the producer's new method had been used in all those taxable years. In the case of a change to the annual method, in computing the amount of income that would have been reported if the producer's new method had been used in the prior years, the overproducer does not accrue any deduction and the underproducer does not accrue any income under paragraphs (d)(3)(ii) (C) and (D) of this section, respectively, for payments made by the extended due date of the tax return for the taxable year immediately preceding the year of change relating to any gas imbalance remaining at the end of the taxable year immediately preceding the year of change. The section 481(a) adjustment is taken into account in the manner specified in paragraph (d)(5)(ii)(B) of this section.

(B) *Section 481(a) adjustment period.* Except as provided in paragraph (d)(5)(iii)(B) of this section, a producer's section 481(a) adjustment, whether positive or negative, is taken into account in computing taxable income ratably over the 6-taxable-year period beginning with the year of change ("the section 481(a) adjustment period"). If the producer has been in existence less than 6 taxable years, the adjustment is taken into account over the number of years the producer has been in existence. If the producer ceases to engage in the trade or business that gave rise to the section 481(a) adjustment at any time during the section 481(a) adjustment period, the entire remaining balance of the section 481(a) adjustment relating to that trade or business must be taken into account in the year of the cessation. Solely for purposes of this paragraph (d)(5)(ii)(B), production under each joint operating agreement constitutes a separate trade or business. The determination as to whether the producer ceases to engage in its trade or business is to be made under the principles of § 1.446-1(e)(3)(ii) and its underlying administrative procedures. For example, the permanent cessation of production under a producer's joint operating agreement and gas balancing agreement constitutes the cessation of a trade or business of the producer. Accordingly, for the year that production under a joint operating agreement and gas balancing agreement permanently ceases, the remaining balance of the section 481(a) adjustment relating to the joint operating agreement and the gas balancing agreement must be taken into account.

(iii) *Special rules for producers that change to the annual method*—(A) *Computation of gas imbalances remaining at the end of each taxable year.* In applying the annual method of paragraph (d)(3) of this section, the gas imbalances remaining at the end of each taxable year are computed without regard to gas imbalance existing as of the close of the taxable year immediately preceding the year of change.

(B) *Treatment of balancing payment.* An overproducer that changes to the annual method with respect to a gas balancing agreement and that makes a balancing payment relating to a gas imbalance existing under the gas balancing agreement as of the beginning of the year of change ("prior year gas imbalance") deducts the amount of the payment for the taxable year in which the payment is made. Similarly, an underproducer that changes to the annual method with respect to a gas balancing agreement and that receives a balancing payment relating to a prior year gas imbalance must include the amount of the payment in gross income for the taxable year in which the payment is received.

(C) *Acceleration of section 481 adjustment under certain circumstances.* Under paragraph (d)(5)(ii)(A) of this section, a portion of the section 481(a) adjustment of a producer changing to the annual method may relate to a prior year gas imbalance under a gas balancing agreement. Under paragraph (d)(5)(ii)(B) of this section, the producer generally must take into account the section 481(a) adjustment ratably over the section 481(a) adjustment period. However, if a producer makes (or receives) a balancing payment relating to the prior year gas imbalance in a taxable year within the section 481(a) adjustment period, the producer must accelerate in that taxable year any remaining section 481(a) adjustment relating to the prior year gas imbalance to the extent that the cumulative balancing payments relating to the prior year gas imbalance exceed the cumulative section 481(a) adjustment relating to the prior year gas imbalance taken into account as of the end of that year. Thus, in computing taxable income for the year the payment is made (or received), the producer must take into account any accelerated portion of the section 481(a) adjustment in addition to that year's section 481(a) adjustment. The producer's section 481(a) adjustment relating to the prior year gas imbalance remaining after the acceleration is taken into account in computing taxable income ratably over the remaining years in the producer's section 481(a) adjustment period. See *Example 6* of paragraph (d)(6) of this section.

(6) *Examples.* The following examples illustrate the application of the rules of

paragraphs (d)(2) through (d)(5) of this section.

Example 1. (i) L, a corporation using the cash receipts and disbursements method of accounting, and M, a corporation using an accrual method, file returns on a calendar year basis. On December 1, 1992, L and M enter into a joint operating agreement (JOA) to produce natural gas as an unincorporated organization from a reservoir located in State Y. The JOA allocates reservoir production 60 percent to L and 40 percent to M. L and M enter into a gas balancing agreement (GBA) as an addendum to the JOA. L and M agree in writing to use the annual method to account for gas sales from the reservoir. L and M elect under section 761(a) and this section to exclude the organization from the application of subchapter K.

(ii) State Y sets a monthly production allowable of 100 million cubic feet (mmcf) of natural gas for the reservoir, and gas production under the JOA begins on January 1, 1993. Each month in 1993, L is able to sell 60 mmcf of gas, but M is able to sell only 20 mmcf of gas. Thus, in 1993, the reservoir produces only 80 percent of its monthly production allowable, that is, 80 mmcf per month, for a total of 960 mmcf.

(iii) For 1993, under the JOA, L's proportionate share of gas produced from the reservoir is 576 mmcf (60 percent of 960 mmcf), and M's proportionate share is 384 mmcf (40 percent of 960 mmcf). Because L's sales exceeded L's proportionate share, L overproduced 144 mmcf (720 mmcf minus 576 mmcf) for 1993 and M underproduced by the same amount (384 mmcf minus 240 mmcf). On March 14, 1994, L makes a cash balancing payment to M for 144 mmcf of gas at the value established under the GBA.

(iv) For 1993, L must include in gas income the amount relating to its total sales of 720 mmcf. M must include in gross income the amount relating to gas sales of 384 mmcf (240 mmcf of M's own 1993 gas sales, and 144 mmcf for which M received a balancing payment from L on March 14, 1994, and that is includible in 1993 under M's accrual method). Because L uses the cash method of accounting, L deducts from its 1994 gross income the amount of L's balancing payment for 144 mmcf. For 1993, under paragraph (d)(3)(ii)(E) of this section, both L and M compute an allowance for depletion based upon their proportionate share of current production as provided in the JOA (that is, based upon 576 mmcf and 384 mmcf for L and M, respectively).

Example 2. (i) L, a corporation using the cash receipts and disbursements method of accounting, and M, a corporation using an accrual method, file returns on a calender year basis. On December 1, 1992, L and M enter into a JOA to produce natural gas as an unincorporated organization from a reservoir located in State Y. The JOA allocates reservoir production 60 percent to L and 40 percent to M. L and M enter into a GBA as an addendum to the JOA. L and M agree to use the cumulative method to account for gas sales from the reservoir and elect under section 761(a) and this section to exclude the organization from the application of subchapter K. Production from the reservoir is eligible for the section 29 credit for producing fuel from a nonconventional source. L and M produce and sell the following amounts of natural gas (in mmcf) until 1998 during which year production from the reservoir ceases:

1993	
L	720
M	240
1994	
L	480
M	60
1995	
L	600
M	120
1996	
L	0
M	160
1997	
L	0
M	80
1998	
L	0
M	40

(ii) By the end of 1994, neither L nor M has fully produced its percentage share of the total gas in the reservoir. In 1995, L produces a total of 600 mmcf of gas at the rate of 50 mmcf per month. Prior to filing its return for 1995, L determines that it fully produced its percentage share of gas in the reservoir as of June 30, 1995. Pursuant to the GBA executed by L and M, at the end of 1998, L pays M for the 300 mmcf of M's gas (as determined under the cumulative method) that L sold in the last half of 1995.

(iii) For 1993, L and M must include in their gross income the amounts relating to gas sales of 720 mmcf and 240 mmcf, respectively. For 1994, L and M must include the amounts relating to gas sales of 480 mmcf and 60 mmcf, respectively. For both 1993 and 1994, L and M compute an allowance for depletion and a section 29 credit based upon gas taken and sold by each from the reservoir for each taxable year.

(iv) For 1995, L and M must include in gross income the amounts relating to their gas sales of 600 mmcf and 120 mmcf, respectively. Under paragraph (d)(4)(iii)(A) of this section, L computes an allowance for depletion and the section 29 credit based only on production from L's proportionate share of gas in the reservoir (that is, based on L's production through June 30, 1995). Accordingly, for 1995, L claims depletion and the section 29 credit only with respect to 300 mmcf of gas (50 mmcf per month × 6 months). For 1995, because M has not fully produced from its percentage share of the total gas in the reservoir as of the end of 1995, M claims depletion and the section 29 credit on the 120 mmcf that M produced in 1995.

(v) In 1996 and 1997, M must include in gross income the amounts relating to M's sales of gas, that is, 160 mmcf for 1996 and 80 mmcf for 1997. For 1998, M must include in gross income the amount relating to sales of 340 mmcf of gas, which consists of its own sales of 40 mmcf plus the payment for 300 mmcf of gas that L made to M for having sold from M's share of the total gas in the reservoir during the last half of 1995. Because M produced from its percentage share of the total gas in the reservoir during 1996, 1997 and 1998, M claims a depletion deduction and a section 29 credit on its income and production for those years, that is, 160 for 1996, 80 mmcf for 1997, and 40 mmcf for 1998. Additionally, for 1998, M claims depletion and the section 29 credit relating to the payment that M received from L for the 300 mmcf of M's gas that L sold in the last half of 1995. Under paragraph (d)(4)(ii)(B) of this section, L's deduction for its payment to M for the 300 mmcf of M's gas that L sold in 1995 is allowable only for 1998.

Example 3. (i) L, a corporation using the cash receipts and disbursements method of accounting, and M, a corporation using an accrual method, file returns on a calendar year basis. On December 1, 1992, L and M enter into a JOA to produce natural gas as an unincorporated organization from a reservoir located in State Y. The JOA allocates reservoir production 60 percent to L and 40 percent to M. L and M enter into a GBA as an addendum to the JOA. L and M agree to use the cumulative method to account for gas sales from the reservoir and elect under section 761(a) and this section to exclude the organization from the application of subchapter K. Production from the reservoir is eligible for the section 29 credit for producing fuel from a nonconventional source. L and M produce and sell the following amounts of natural gas (in mmcf) until 1998 during which year production from the reservoir ceases:

1993	
L	720
M	240
1994	
L	480
M	60
1995	
L	600
M	120
1996	
L	60
M	60
1997	
L	60
M	60
1998	
L	0
M	40

(ii) In addition, L does not realize until December 31, 1997, that L fully produced its percentage share of the total gas in the reservoir as of June 30, 1995. At the time of filing its returns for 1995 and 1996, L reasonably believes that during 1995 and 1996, respectively, it did not fully produce its percentage share of the total gas in the reservoir. Thus, L claims depletion and the section 29 credit for its total sales of 600 mmcf in 1995 and 60 mmcf in 1996. Pursuant to the GBA executed by L and M, L pays M at the end of 1998 for the 420 mmcf of M's gas (as determined under the cumulative method) that L sold (300 mmcf in the last half of 1995, 60 mmcf in 1996, and 60 mmcf in 1997).

(iii) In 1995 and 1996, L and M include in gross income the amounts relating to their respective sales of gas, that is, for L 600 mmcf

for 1995 and 60 mmcf for 1996, and for M 120 mmcf for 1995 and 60 mmcf for 1996.

(iv) For 1997, L must include in gross income the amount of its sales of 60 mmcf, but may not claim depletion or the section 29 credit on those sales. For 1997, M must include in gross income the amount of its sales of 60 mmcf and claims depletion and the section 29 credit with respect to those 60 mmcf.

(v) For 1998, M must include in gross income the amount relating to gas sales of 460 mmcf, that is, the amount of M's own gas sales of 40 mmcf and the amount of the payment received from L for the 420 mmcf of M's gas that L sold (consisting of 300 mmcf in 1995, 60 mmcf in 1996, and 60 mmcf in 1997). Under paragraph (d)(4)(iii)(A) of this section, M computes a depletion deduction and a production credit relating to the amount of M's actual gas sales for 1998 and the payment received from L, that is, relating to a total of 460 mmcf of gas (M's sales of 40 mmcf for 1998, plus L's payment for 420 mmcf of gas). Under paragraph (d)(4)(ii)(B) of this section, L's deduction for making its payment to M for 420 mmcf of gas is allowable only for 1998. Under paragraph (d)(4)(iii)(B) of this section, L must reduce its deduction by the amount of the depletion deductions allowed on its sales of M's gas, that is, relating to 360 mmcf of gas (300 mmcf for 1995 and 60 mmcf for 1996). In addition, under paragraph (d)(4)(iii)(C) of this section, L must increase its tax for 1998 by the amount of any section 29 credit L claimed on its sales of M's gas, but only to the extent that the credit claimed actually reduced L's tax in any earlier year.

Example 4. (i) C and D enter into a JOA and a GBA on December 1, 1992, for gas production from a reservoir. The JOA allocates production at 50 percent to C and 50 percent to D. C and D agree in writing to use the cumulative method to account for gas sales. Additionally, C and D elect under section 761(a) and this section to exclude their organization from the application of subchapter K. C and D arrange to sell all their production under annually renewable contracts. In 1993, C and D each sell 480 mmcf of gas from the reservoir.

(ii) In November, 1993, D is notified that its contract with its purchaser will not be renewed for 1994. D is unable to find a new purchaser for its gas for 1994. In December 1993, D notifies C that it will not be taking production from the reservoir in 1994. Pursuant to the GBA, C then contracts with its current gas purchaser to sell an additional 20 mmcf per month in 1994. Accordingly, C sells 720 mmcf in 1994 (60 mmcf per month × 12 months). Under the facts described in this example, a principal purpose of altering the taking of production is not to avoid tax. Accordingly, the producers' election under section 761(a) will not be revoked by reason of altering the taking of production.

Example 5. The facts are the same as in *Example 4*(i). For 1994, C anticipates that C's regular tax (reduced by the credits allowable under sections 27 and 28) will not exceed C's tentative minimum tax. Accordingly, under section 29(b)(6), C's credit allowed under section 29(a) for sales of its gas will be zero. For 1995, C anticipates that its credit allowed under section 29(a) will not be limited by section 29(b)(6). On the other hand, D anticipates that any credit it may claim under section 29(a) for 1994, even including a credit based on sales of C's share of current production under the JOA, will not be limited by section 29(b)(6). However, for 1995, D anticipates that its credit under section 29(a) will be limited by section 29(b)(6). On January 1, 1994, C and D agree that D will contract with its purchaser to sell the entire 960 mmcf produced from the reservoir in 1994 and that C will contract with its purchaser to sell the entire 960 mmcf produced from the reservoir in 1995. Under these facts, a principal purpose of altering the taking of production is to avoid tax. Accordingly, the producers' election under section 761(a) will be revoked for 1994 and for subsequent years.

Example 6. (i) R and G, both calendar year taxpayers, are subject to a GBA on September 16, 1992, and agree in writing that each will change its method of accounting with respect to the GBA to the annual method. A 300 mmcf gas imbalance amounting to $300x ("prior year gas imbalance") exists at the end of 1992, the taxable year immediately preceding the year of the change in method of accounting by R and G to the annual method. R is the overproducer and G is the underproducer. R's section 481(a) adjustment relating to the prior year gas imbalance is positive $300x, and G's section 481(a) adjustment is negative $300x. In the absence of any balancing payments relating to the prior year gas imbalance during the 6-year section 481(a) adjustment period (1993 through 1998), R and G must take into account, for each year in the section 481(a) adjustment period, positive $50x and negative $50x, respectively, beginning with the 1993 taxable year.

(ii) R makes a $180x balancing payment to G for 180 mmcf in 1995, the third year of the section 481(a) adjustment period. Under paragraph (d)(5)(iii)(B) of this section, R deducts $180x for 1995, the year that R makes the payment, and G must include $180x in gross income for 1995, the year that G receives the payment. Under paragraph (d)(5)(iii)(C) of this section, in computing taxable income for 1995, R and G each must take into account $30x of their remaining section 481(a) adjustment (in addition to the $50x section 481(a) adjustment for 1995), because the cumulative balancing payments relating to their prior year gas imbalance as of the end of 1995 ($180x) exceed the cumulative section 481(a) adjustment relating to that imbalance as of the end of 1995 ($150x) by $30x. The section 481(a) adjustment of R and G relating to the prior year gas imbalance and remaining as of the beginning of 1996 (positive $120 for R and negative $120 for G) is taken into account ratably over the remaining section 481(a) adjustment period (1996 through 1998). Thus, for each of 1996, 1997, and 1998, the portion of the section 481(a) adjustment of R and G relating to the prior year gas imbalance is positive $40 and negative $40, respectively. The section 481(a) adjustments (in $) for R and G relating to the prior year gas imbalance are taken into account as follows:

1993	
R	+50x
G	−50x
1994	
R	+50x
G	−50x
1995	
R	+80x (+50x+30x)
G	−80x (−50x−30x)
1996	
R	+40x
G	−40x
1997	
R	+40x
G	−40x
1998	
R	+40x
G	−40x

(iii) In 1999, after the section 481(a) adjustment period expires, R makes a balancing payment of $120x to G for the remaining 120 mmcf of the prior year gas imbalance. R deducts the amount of that payment only for 1999, the taxable year in which R makes the payment. G must include the amount of the payment in gross income for 1999, the taxable year in which G receives the payment.

(7) *Effective date.* The provisions of this paragraph (d) apply to any producer that is a member of an unincorporated organization that produces natural gas under a joint operating agreement and that accounts for gas imbalances under a gas balancing agreement in effect on or after September 16, 1992, for taxable years beginning on or after such date.

* * * * *

Phil Brand,

Acting Commissioner of Internal Revenue.

[FR Doc. 92-22000 Filed 9-15-92; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 1

[PS-103-90]

RIN 1545-AP23

Election Out of Subchapter K for Producers of Natural Gas; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations regarding certain requirements that must be met by producers of natural gas subject to a gas balancing agreement in order to elect under section 761(a) to be excluded from the application of subchapter K of chapter 1 of the Internal Revenue Code.

DATES: The public hearing will be held on Tuesday, November 17, 1992, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Tuesday, October 27, 1992.

ADDRESSES: The public hearing will be held in the IRS Commissioner's Conference Room, room 3313, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R [PS-103-90], room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-622-8803 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 761 of the Internal Revenue Code. These regulations appear in the proposed rules section of this issue of the **Federal Register**.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Tuesday, October 17, 1992, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue:

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92-22294 Filed 9-15-92; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 920775-2175]

RIN 0651-AA44

Changes in Patent Drawing Standards

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Patent and Trademark Office (Office) is proposing to amend the rules of practice regarding patent drawings to adopt international standards and to eliminate unnecessary requirements.

The Office proposes to amend the rules to: (1) Revise § 1.84 to provide clarification and adopt international standards; (2) delete § 1.88; (3) delete in § 1.123 the reference to changes by bonded draftsmen since the Office will no longer release drawings from patent applications; (4) revise § 1.152 for design drawings to include the option of submitting black and white photographs in lieu of black ink drawings; and (5) revise § 1.165 for plant patent drawings to eliminate the acceptability of mounted photographs.

DATES: Written comments must be received on or before October 16, 1992 to ensure consideration. An oral hearing will not be conducted.

ADDRESSES: Address written comments to Office of the Assistant Commissioner for Public Services and Administration, Commissioner of Patents and Trademarks, Washington, DC 20231, marked to the attention of Richard A. Bawcombe. Comments may also be sent by facsimile transmission to the attention of Richard A. Bawcombe at (703) 305-8294.

FOR FURTHER INFORMATION CONTACT: Richard A. Bawcombe by telephone at (703) 305-8594 or by mail marked to his attention and addressed to Commissioner of Patents and Trademarks, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: Drawings acceptable for patent applications filed outside of the United States are not always acceptable when filed in a patent application filed in the United States. Therefore, the rules relating to drawing requirements are proposed to be amended to enable the Office, when appropriate, to accept drawings that are capable of clear reproduction for the printing of any resulting patent. Drawings in compliance with the present § 1.84 will be in compliance with proposed § 1.84.

Discussion of Specific Sections to be Changed or Added

Section 1.17(h) is proposed to be amended to include the appropriate processing fee for accepting color drawings or photographs in utility patent applications as set forth in § 1.84.

Section 1.19(a)(3) is proposed to be amended to change the citation of § 1.84(p) to § 1.84(a)(2) so that § 1.19(a)(4), which sets the fee for submitting color drawings, refers to the proper paragraph of § 1.84 that discusses color drawings.

Section 1.71(d) is proposed to be amended to change the citation of § 1.84(o) to § 1.84(s) because § 1.84(s) specifies how mask work notices should be placed on the drawings.

Section 1.84 is proposed to be revised as follows:

(a) Drawings. This paragraph is proposed to classify drawings into two categories, i.e., black ink and color and delete the limitation that the use of white pigment to cover lines is not normally acceptable. The black ink drawing requirements are proposed to be amended to allow computer-generated drawings to be accepted subject to the same standards applied to pen and ink drawings. Color drawing requirements would be moved from § 1.84(p) to proposed § 1.84(a). Color drawings may be acceptable upon the granting of a petition filed under this paragraph explaining why the color drawings are necessary. A petition is required because the special handling necessary for color drawings is time consuming and the Office cannot permit such a special procedure except in exceptional circumstances. Since utility patents are not printed in color, 5 sets of color drawings are necessary for proper distribution within the Office. One set will be attached to the Letters Patent for routing to the applicant. The remaining four sets will be attached to patent copies for routing to (1) the patent file, (2) the Office of Administrative Services for archival storage at Boyers, Pennsylvania, (3) the plant patent search room for archival storage at the Office, and (4) the Office of Patent and Trademark Information Services for copying purposes.

(b) Photographs. This paragraph is proposed to permit the acceptance of photographs (limited to a single photograph per sheet), upon granting of an applicant's petition. The Office proposes to accept black and white and color photographs or photomicrographs (not photolithographs or other

reproductions of photographs made by using screens) developed on double weight photographic paper in lieu of ink drawings. Mounted photographs would not be acceptable. The photographs must be of sufficient quality so that all details in the drawing are reproducible in the printed patent.

(c) Identification of drawings. This paragraph is proposed to be changed and broadened to permit an applicant to provide proper identification information on the reverse side of each sheet of drawings. The identification information allows the Office to match drawing sheets with the proper application. The identification information should include the application number, if known, or the title of the invention, inventor's name, docket number (if any), and name and telephone number of the person to call if the drawings cannot be matched to the proper patent application. The Office will not object if identifying information is not present; however, if the drawings become separated, the Office will not be able to match those drawings to the application. This paragraph is restructured from current § 1.84(1) and revised to state that the preferred placement of the information is on the back side of the drawing sheets.

(d) Graphic forms in drawings. This paragraph is proposed to set standards for chemical and mathematical formulae to align Office standards for formulae, tables, and waveforms with international standards.

(e) Type of paper. This paragraph is proposed as a revision of current § 1.84(a) to set forth the requirement for the type of paper to be used for drawings, including the type of paper for photographs.

(f) Size of paper. This paragraph is proposed to clarify Office requirements set forth in current § 1.84(b) and to provide that color drawings and photographs must be 21.0 cm. by 29.7 cm. (DIN size 4A). Other drawings may be any of 3 sizes: 21.0 cm. by 29.7 cm. (DIN size 4A), 21.6 cm. by 33.1 cm. (8 ½ by 13 inches), or 21.6 cm. by 35.6 cm. (9 ½ by 14 inches).

(g) Margins. This paragraph is restructured from current § 1.84(b) to indicate how the size of the paper changes the margin requirements. The Office will accept 3 sizes of paper, however, the sight (i.e. the usable surface) is the same for 2 of the paper sizes, i.e., 21.6 cm. by 33.1 cm. (8 ½ by 13 inches), or 21.6 cm. by 35.6 cm. (8 ½ by 14 inches).

(h) Views. This paragraph is proposed to reformat current § 1.84(i) to provide a logical arrangement of the different views provided in the rules, to revise the standards for purposes of clarification, to include the standard for waveforms to show the relative timing, to provide clearer language relative to hatching shown on drawings, to set forth the standard for depicting hatching in sectional view as regularly-spaced parallel oblique strokes which precludes use of cross-hatching strokes, and to include requirements pertaining to alternate positions. In addition, both Roman and Arabic numerals would be acceptable to designate the section being illustrated.

(i) Arrangement of views. This paragraph is proposed to be relocated from current § 1.84(j) and to be revised to incorporate international standards. In addition, this paragraph is proposed to be changed and broadened to provide placement of words on drawings, as set forth in proposed § 1.84(i). One view is not to be superimposed within the outline of another. The changes expand the possibilities for presenting graphs to conform to standard scientific conventions, while using a format which is compatible with automated patent searching displays. See 1121 Off. Gaz. Pat. Office 54 (Dec. 25, 1990) and 1129 Off. Gaz. Pat. Office 22 (Aug. 13, 1991).

(j) View for Official Gazette. This paragraph is proposed to be relocated from current § 1.84(k).

(k) Scale. This paragraph is proposed to be relocated from current § 1.84(e) and § 1.84(i) and to be revised to indicate that the words "actual size" or "scale ½" on the drawings are not permitted since the meaning is lost in reduction/enlargement; and to provide that elements of the same view must be in proportion to each other, unless a difference in proportion is indispensable for the clarity of the view. As a preferred alternative to a difference in proportion within one view for the purpose of achieving the necessary clarity, a supplementary view may be added giving a larger-scale illustration of an element from the initial view. When a supplementary view is included, it is recommended that the enlarged element shown in the second view be surrounded by a finely drawn or "dot-dash" circle in the first view pinpointing its location, without obscuring the view.

(l) Character of lines, numbers, and letters. This paragraph is proposed to be relocated from current § 1.84(c) and to be revised to show that lines and strokes of different thicknesses may be used in the same drawing where different thicknesses have different meanings. In addition, this paragraph is proposed to be changed and broadened to indicate that all drawings must be made by a process which will give them satisfactory reproduction characteristics.

(m) Shading. This paragraph is proposed to be changed and broadened to expand definitions for shading and to delete the limitation that drawings transmitted to the Office should be sent flat, protected by a sheet of heavy binder's board, or may be rolled for transmission in a suitable mailing tube. This proposed change would provide the individual practitioner with greater discretion on how to send drawings. In addition, this paragraph is proposed to be relocated from current § 1.84(d) to separate shading requirements from hatching requirements by stating that shading may be used to indicate the surface or shape of spherical, cylindrical, and conical elements of an object, and that spaced lines are preferred for shading purposes. Solid black areas are not permitted, except when used to represent bar graphs or color.

(n) Symbols. This paragraph is proposed to be relocated from current § 1.84(g) to separate symbols requirements from legends requirements and to enlarge the number of acceptable symbols. Known devices should be illustrated by symbols which have a universally-recognized meaning, and which are generally accepted in the art, provided no further detail is essential for understanding the subject matter of the claimed invention. All symbols must be approved by the examiner. Other symbols may be used if they are not likely to be confused with existing conventional symbols and if they are readily identifiable.

(o) Legends. This paragraph is proposed to be relocated from current § 1.84(g) to separate legends requirements from symbols requirements and to be revised to integrate international standards. Where text matter is deemed indispensable for understanding the drawing, a minimum of words should be used. Words should not be used to describe the figure itself, such as "this is a bar graph." All text legends must be approved by the examiner.

(p) Numbers, letters, and reference characters. This paragraph is proposed to be relocated from current § 1.84(f) and to be revised to include numbers and letters in the heading formerly designated "reference characters." This section has been reformatted into five subsections and revised to integrate international standards, where possible. Although the Latin alphabet is used in the international standard, the Office takes the view that the English alphabet is more universally acceptable for

letters, except where another alphabet is customarily used, such as the Greek alphabet to indicate angles, wavelengths, and mathematical formulas. In addition, the characters used must be oriented in the same direction as the view so as to avoid having to rotate the sheet. Reference characters should be so arranged to follow the profile of the object depicted.

(q) Lead lines. This paragraph is proposed to integrate international standards, to incorporate brief language which appears in current § 1.84(f), and to change and expand the definition for lead lines. Lead lines are those lines between the reference characters and the details referred to, and they must be executed in the same way as other lines in drawing.

(r) Arrows. This paragraph is proposed to be relocated from current § 1.84(g) and to be revised to indicate the meaning of the use of arrows, and to show that they may be used at the end of lead lines only if their meaning is clear.

(s) Copyright or mask work notice. This paragraph is proposed to be relocated from current § 1.84(o).

(t) Numbering of sheets of drawings. This paragraph is proposed to be relocated from current § 1.84(n) and to be changed and broadened to allow for the placement of sheet numbers within the sight of the drawing. It is preferable that the sheets be numbered with two Arabic numerals placed on either side of an oblique line, with the first number being the sheet number and the second the total number of sheets of drawings.

(u) Numbering of views. This paragraph is proposed to be relocated from current § 1.84(i) and, for clarity, to be separately identified in this new section. Use of the abbreviation "FIG." must precede all view numbers.

(v) Security markings. This paragraph is proposed to be relocated from current § 1.84(l) to provide that security markings may be placed on the drawings if they are outside the sight and preferably centered in the top margin.

(w) Corrections. This paragraph is proposed to provide that any corrections made on drawings submitted to the Office must be durable and permanent. The language is revised from current § 1.84(a) which prohibits the use of white pigment to cover lines.

(x) Holes. This paragraph is proposed to be relocated from current § 1.84(b) to permit two holes to be punched in the top margin of the drawings with their centerlines spaced 7.0 cm. (2¾ inches) apart.

Section 1.88 is proposed to be removed and reserved since the changes effective January 1, 1991, in § 1.85(b) make the regulation regarding the transfer of drawings unnecessary. Since the Office no longer releases drawings from patent applications, generally applicants are retaining the master copy of the drawings. Accordingly, applicants can easily file a copy of drawings in an application and therefore eliminate the need for the Office to transfer drawings. Any situations which present a hardship to applicants may be accommodated by the filing of a petition under § 1.182 requesting the transfer of the drawings.

Section 1.123 prescribes procedures for amending drawings. With the adoption of new rules for amending drawings effective January 1, 1989, the Office no longer requires the submission of formal drawings upon filing a patent application. See 1097 Off. Gaz. Pat. Office 36 (Dec. 13, 1988). Since corrections are the responsibility of the applicant, the original drawing(s) should be retained by the applicant for future correction, if necessary.

As a result of adoption of the new rules in 1989 relating to drawings, the Office will no longer release to applicants, bonded drafting companies or others, drawings from patent applications. Effective January 1, 1991, § 1.85(b) prohibits release of drawings from all patent applications. Accordingly, it is proposed that the reference to changes by bonded draftsmen be deleted from § 1.123.

Section 1.152 is proposed to be revised to provide that photographs and ink drawings must not be combined in one design application. The reason for this requirement is to avoid inconsistencies between the photograph and the drawing, and further eliminate views that may distort the proportionate relationship between the corresponding elements on the drawing and the photograph. It is also proposed that all design photographs be limited to the design claimed and not include environmental structure. It is proposed that color drawings and color photographs not be permissible in design patent applications. Solid black surface shading is inappropriate on a design drawing, but is acceptable when used to represent color contrast.

Section 1.165 is proposed to be revised to provide that plant patent drawings must comply with the requirements of § 1.84. It is proposed that the current exception that plant patent drawings do not automatically require view numbers and reference characters be maintained. It is also proposed that mounted color photographs would not be acceptable in plant patent applications.

Other Considerations

The proposed rule change is in conformity with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), Executive Orders 12291 and 12612, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that these proposed rule changes will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The principal impact of these proposed changes is to revise and reformat the drawing standards to adopt international standards, to the extent possible, and to facilitate access to sections through inclusion of pertinent subsection headings, which should be helpful to small entities.

The Office has determined that this proposed rule change is not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increase in costs or prices for consumers, individuals, industries, Federal, state or local government agencies, or geographic regions because most of the proposed changes reduce procedural burdens. There will be no adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Office has also determined that this notice has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

These proposed rule changes contain a collection of information requirements subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., which has previously been approved by the Office of Management and Budget under Control No. 0651-0011.

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Authority delegation (Government agencies), Courts, Freedom of Information, Inventions and patents, Lawyers, Small businesses.

For the reasons set out in the preamble, and pursuant to the authority contained in 35 U.S.C. § 6, the Office proposes to amend 37 CFR Part 1 as follows, wherein deletions are indicated by brackets ([ ]), and additions are

indicated by arrows (> <), except for § 1.84 where the entire section has been revised:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 would continue to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. Section 1.17(h) is proposed to be revised to read as follows:

§ 1.17 Patent application processing fees.

* * * * *

(h) For filing a petition to the Commissioner under a section of this part listed below which refers to this paragraph: $130.00.

§ 1.47—for filing by other than all the inventors or a person not the inventor.

§ 1.48—for correction of inventorship.

>§ 1.84—for accepting color drawings or photographs.<

§ 1.182—for decision on questions not specifically provided for.

§ 1.183—to suspend the rules.

§ 1.295—for review of refusal to publish a statutory invention registration.

§ 1.377—for review of decision refusing to accept and record payment of a maintenance fee filed prior to expiration of patent.

§ 1.378(e)—for reconsideration of decision on petition refusing to accept delayed payment of maintenance fee in expired patent.

§ 1.644(e)—for petition in an interference.

§ 1.644(f)—for request for reconsideration of a decision on petition in an interference.

§ 1.666(c)—for late filing of interference settlement agreement.

§§ 5.12, 5.13, & 5.14—for expedited handling of a foreign filing license.

§ 5.15—for changing the scope of a license.

§ 5.25—for retroactive license.

* * * * *

3. Section 1.19(a)(3) is proposed to be revised to read as follows:

§ 1.19 Document supply fees.

* * * * *

(a) *Uncertified copies of patents:*

* * * * *

(3) Copy of a utility patent or statutory invention registration containing color drawing (see § 1.84([p]>a)(2<): $24.00.

* * * * *

4. Section 1.71(d) is proposed to be revised to read as follows:

§ 1.71 Detailed description and specification of the invention.

* * * * *

(d) A copyright or mask work notice may be placed in a design or utility patent application adjacent to copyright and mask work material contained therein. The notice may appear at any appropriate portion of the patent application disclosure. For notices in drawings, see § 1.84([o]>s<). The content of the notice must be limited to only those elements >provided for< [required] by law. For example, "©1983 John Doe" (17 U.S.C. 401) and "*M* John Doe" (17 U.S.C. 909) would be properly limited and, under current statutes, legally sufficient notices of copyright and mask work, respectively. Inclusion of a copyright or mask work notice will be permitted only if the authorization language set forth in paragraph (e) of this section is included at the beginning (preferably as the first paragraph) of the specification.

* * * * *

5. Section 1.84 is proposed to be revised to read as follows:

§ 1.84. Standards for drawings.

>(a) *Drawings.* There are two acceptable categories for presenting drawings in utility patent applications:

(1) *Black ink.* Black and white drawings are normally required. India ink, or its equivalent in quality, must be used for drawings to secure black solid lines.

(2) *Color.* On rare occasions, color drawings may be necessary as the only practical medium by which to disclose the subject matter sought to be patented in utility patent applications or to be the subject matter of a Statutory Invention Registration (SIR). The Patent and Trademark Office will accept color drawings in utility patent applications and SIR's only after granting a petition filed under this paragraph explaining why the color drawings are necessary. Any such petition must include the following:

(i) The appropriate fee set forth in § 1.17(h);

(ii) Five (5) sets of color drawings on 21.0 by 29.7 cm. (DIN size A4) sheets; and

(iii) If the specification does not address color drawings, the following language is to be inserted as the first paragraph in that portion of the specification relating to the brief description of the drawing:

The file of this patent contains at least one drawing executed in color. Copies of this patent with color drawing(s) will be provided by the Patent and Trademark Office upon request and payment of the necessary fee.

If the above language is not in the specification, a proposed amendment to insert the language must accompany the petition.

(b) *Photographs*—(1) *Black and white.* Photographs are not ordinarily permitted in utility and design patent applications. However, the Office will accept photographs in utility and design patent applications only after granting a petition, filed under this paragraph which requests that photographs be accepted. Any such petition must include the following:

(i) The appropriate fee set forth in § 1.17(h); and

(ii) Five (5) sets of photographs on 21.0 by 29.7 cm. (DIN size A4) sheets.

Photographs must be developed on double weight photographic paper. Mounted photographs are not acceptable. No more than one photograph per sheet will be permitted. The photographs must be of sufficient quality so that all details in the drawing are reproducible in the printed patent.

(2) *Color.* Color photographs will be accepted in utility patent applications if the conditions for accepting color drawings have been satisfied. See paragraph (a)(2) of this section.

(c) *Identification of drawings.* Identifying indicia, if provided, should include the application number or the title of the invention, inventor's name, docket number (if any), and the name and telephone number of a person to call. This information should be placed on the back of each sheet of drawings a minimum distance of 1.5 cm. (⅝ inch) down from the top of the page.

(d) *Graphic forms in drawings.* Chemical or mathematical formulae, tables, and waveforms may be submitted as drawings, and are subject to the same requirements as drawings. Each chemical or mathematical formula must be labeled as a separate figure, using brackets when necessary, to show that information is properly integrated. Each group of waveforms must be presented as a single figure, using a common vertical axis with time extending along the horizontal axis. Each individual waveform discussed in the specification must be identified with a separate letter designation adjacent to the vertical axis.

(e) *Type of paper.* Drawings submitted to the Office must be made upon paper which is flexible, strong, white, smooth, non-shiny, and durable. All sheets must be free from cracks, creases, and folds. Only one side of the sheet shall be used for the drawing. Each sheet must be reasonably free from erasures and must

be free from alterations, overwritings, and interlineations. Photographs must be on double weight photographic paper. See paragraph (b) of this section for other requirements for photographs.

(f) *Size of paper.* All drawing sheets in an application must be the same size, except that color drawings or photographs which are required to be DIN size A4 may differ in size from the other sheets. One of the shorter sides of the sheet is regarded as its top. The size of the sheets on which drawings are made must be:

(1) 21.6 cm. by 35.6 cm. (8½ by 14 inches),

(2) 21.6 cm. by 33.1 cm. (8½ by 13 inches), or

(3) 21.0 cm. by 29.7 cm. (DIN size A4).

(g) *Margins.* The sheets must not contain frames around the sight, i.e., the usable surface.

(1) On 21.6 cm. by 35.6 cm. (8½ by 14 inch) drawing sheets, each sheet must include a top margin of 5.1 cm. (2 inches), and bottom and side margins of 6.4 mm. (¼ inch) from the edges, thereby leaving a sight precisely 20.3 cm. by 29.8 cm. (8 by 11¾ inches).

(2) On 21.6 cm. by 33.1 cm. (8½ by 13 inch) drawing sheets, each sheet must include a top margin of 2.5 cm. (1 inch) and bottom and side margins of 6.4 mm. (¼ inch) from the edges, thereby leaving a sight precisely 20.3 cm. by 29.8 cm. (8 by 11¾ inches).

(3) On 21.0 cm. by 29.7 cm. (DIN size A4) drawing sheets, each sheet must include a top margin of at least 2.5 cm., a left side margin of 2.5 cm., a right side margin of 1.5 cm., and a bottom margin of 1.0 cm., thereby leaving a sight precisely 17.0 cm. by 26.2 cm.

(h) *Views.* The drawing must contain as many views as necessary to show the invention. The views may be plan, elevation, section, or perspective views; and detail views of portions of elements, on a larger scale, if necessary, may also be used. All views of the drawing must be grouped together and arranged on the sheet(s) without wasting space, preferably in an upright position, clearly separated from one another, and must not be included in the sheets containing the specifications, claims, or abstract. Views must not be connected by projection lines and must not contain center lines. Waveforms of electrical signals may be connected by dashed lines to show the relative timing of the waveforms.

(1) *Exploded views.* Exploded views, with the separated parts of the same view embraced by a bracket, to show the relationship or order of assembly of various parts are permissible. When an exploded view is shown in a figure which is on the me sheet as another figure, the exploded view should be placed, in brackets.

(2) *Partial views.* When necessary, a view of a large machine or device in its entirety may be broken into partial views on a single sheet, or extended over several sheets if there is no loss in facility of understanding the view. Partial views drawn on separate sheets must always be capable of being linked edge to edge so that no partial view contains parts of another partial view. A smaller scale view should be included showing the whole formed by the partial views and indicating the positions of the parts shown. When a portion of a view is enlarged for magnifications purposes, the view and the enlarged view must each be labeled as separate views.

(i) Where views on two or more sheets form in effect a single complete view, the views on the several sheets must be so arranged that the complete figure can be assembled without concealing any part of any of the views appearing on the various sheets.

(ii) A very long view may be divided into several parts placed one above the other on a single sheet. However, the relationship between the difference parts must be clear and unambiguous.

(3) *Sectional views.* The plane upon which a sectional view is taken should be indicated on the view from which the section is cut by a broken line, the ends of which should be designated by Arabic or Roman numerals corresponding to the view number of the sectional view, and have arrows applied to indicate the direction of sight. Hatching must be used to indicate section portions of an object, and must be made by regularly spaced oblique parallel lines spaced sufficiently apart to enable the lines to be distinguished without difficulty. Hatching should not impede the clear reading of the reference characters and lead lines. If it is not possible to place reference characters outside the hatched area, the hatching may be broken off wherever reference characters are inserted. Hatching must be at a substantial angle to the surrounding axes or principal lines, preferably 45°. A cross-section must be set out and drawn to show all of the materials as they are shown in the view from which the cross-section was taken. The parts in cross-section must show proper material(s) by hatching with regularly spaced parallel oblique strokes, the space between strokes being chosen on the basis of the total area to be hatched. The various parts of a cross-section of the same item should be hatched in the same manner and should accurately and graphically indicate the nature of the material(s) that is illustrated in cross section. The hatching of juxtaposed different elements must be angled in a different way. In the case of large areas, hatching may be confined to an edging drawn around the inside of the outline of the area to be hatched. Different types of hatching should have different conventional meanings as regards the nature of a material seen in cross-section.

(4) *Alternate position.* A moved position may be shown by a broken line superimposed upon a suitable view if this can be done without crowding; otherwise, a separate view must be used for this purpose.

(5) *Modified forms.* Modified forms of construction must be shown in separate views.

(i) *Arrangement of views.* One view must not be placed upon another or within the outline of another. All views on the same sheet should stand in the same direction and, if possible, stand so that they can be read with the sheet held in an upright position. If views longer than the width of the sheet are necessary for the clearest illustration of the invention, the sheet may be turned on its side so that the top of the sheet, with the appropriate top margin to be used as the heading space, is on the right-hand side. Words must appear in a horizontal, left-to-right fashion when the page is either upright or turned so that the top becomes thee right side, except for graphs utilizing standard scientific convention to denote the axis of abscissas (of X) and the axis of ordinates (of Y).

(j) *View for Official Gazette.* One of the views should be suitable for publication in the Official Gazette as the illustration of the invention.

(k)*Scale.* (1) The scale to which a drawing is made must be large enough to show the mechanism without crowding when the drawing is reduced in size to two-thirds in reproduction. Views of portions of the mechanism on a larger scale should be used when necessary to show details clearly. Two or more sheets may be used if one does not give sufficient room. The number of sheets should be kept to a minimum.

(2) When approved by the examiner, the scale of the drawing may be graphically represented. Indications such as "actual size" or "scale ½" on the drawings, are not permitted, since these lose their meaning with reproduction in a different format.

(3) Elements of the same view must be in proportion to each other, unless a difference in proportion is indispensable for the clarity of the view. Instead of showing elements in different proportion, a supplementary view may

be added giving a larger-scale illustration of the element of the initial view. It is recommended that the enlarged element shown in the second view by surrounded by a finely drawn or "dot-dash" circle in the first view pinpointing its location without obscuring the view.

(l) *Character of lines, numbers, and letters.* All drawings must be made by a process which will give them satisfactory reproduction characteristics. Every line, number, and letter must be durable, clean, sharp, black (except for color drawings), sufficiently dense and dark, and uniformly thick and well-defined. The weight of all lines and letters must be heavy enough to permit adequate reproduction. This direction applies to all lines however fine, to shading, and to lines representing cut surfaces in sectional views. Lines and strokes of different thicknesses may be used in the same drawing where different thicknesses have a different meaning.

(m) *Shading.* The use of shading in views is encouraged if it aids in understanding the invention and if it does not reduce legibility. Shading is used to indicate the surface or shape of spherical, cylindrical, and conical elements of an object. Flat parts may also be lightly shaded. Such shading is preferred in the case of parts shown in perspective, but not for cross-sections. Spaced lines for shading are preferred. These lines must be thin, as few in number as practicable, and they must contrast with the rest of the drawings. As a substitute for shading, heavy lines on the shade side of objects can be used except where they superimpose on each other or obscure reference characters. Light should come from the upper left corner at an angle of 45°. Surface delineations should preferably be shown by proper shading. Solid black shading areas are not permitted, except when used to represent bar graphs or color.

(n) *Symbols.* Graphical drawing symbols may be used for conventional elements when appropriate, subject to approval by the Office. The elements for which such symbols and labeled representations are used must be adequately identified in the specification. Known devices should be illustrated by symbols which have a universally-recognized conventional meaning and are generally accepted in the art provided no further detail is essential for understanding the subject matter of the claimed invention. Other symbols may be used if they are not likely to be confused with existing conventional symbols, and if they are readily identifiable.

(o) *Legends.* Suitable descriptive legends may be used, subject to approval by the Office. They should contain as few words as possible.

(p) *Numbers, letters, and reference characters.* (1) Reference characters (numerals are preferred), sheet numbers, and view numbers must be plain and legible, and must not be used in association with brackets, inverted commas, or enclosed within outlines, e.g., encircled. They must be oriented in the same direction as the view so as to avoid having to rotate the sheet. Reference characters should be arranged to follow the profile of the object depicted.

(2) The English alphabet must be used for letters, except where another alphabet is customarily used, such as the Greek alphabet to indicate angles, wavelengths, and mathematical formulas.

(3) Numbers, letters, and reference characters must measure at least 3.2 mm. (⅛ inch) in height. They should not be placed in the drawing so as to interfere with its comprehension. Therefore, they should not cross or mingle with the lines. They should not be placed upon hatched or shaded surfaces. When necessary, a blank space may be left in the hatching or shading where the character occurs so that it appears perfectly distinct.

(4) The same part of an invention appearing in more than one view of the drawing must always be designated by the same reference character, and the same reference character must never be used to designate different parts.

(5) Reference characters not mentioned in the description shall not appear in the drawings. Reference characters mentioned in the description must appear in the drawings.

(q) *Lead lines.* Lead lines are those lines between the reference characters and the details referred to. Such lines may be straight or curved and should be as short as possible. They must originate in the immediate proximity of the reference character and extend to the feature indicated. Lead lines must not cross each other. Lead lines are required for each reference character except for those which indicate the surface or cross-section on which they are placed. Such a reference character must be underlined to make it clear that a lead line has not been left out by mistake. Lead lines must be executed in the same way as lines in the drawing.

(r) *Arrows.* Arrows may be used at the ends of lines, provided that their meaning is clear, as follows:

(1) On a lead line, a freestanding arrow to indicate the entire section towards which it points;

(2) On a lead line, an arrow touching a line to indicate the surface shown by the line looking along the direction of the arrow; or

(3) To show the direction of movement.

(s) *Copy or Mask Work Notice.* A copyright or mask work notice may appear in the drawing, but must be placed within the sight of the drawing immediately below the figure representing the copyright or mask work material and be limited to letters having a print size of 3.2 mm. to 6.4 mm. (⅛ to ¼ inches) high. The content of the notice must be limited to only those elements provided for by law. For example, "©1983 John Doe" (17 U.S.C. 401) and "*M* John Doe" (17 U.S.C. 909) would be properly limited and, under current statutes, legally sufficient notices of copyright and mask work, respectively. Inclusion of a copyright or mask work notice will be permitted only if the authorization language set forth in § 1.71(e) is included at the beginning (preferably) as the first paragraph) of the specification.

(t) *Numbering of sheets of drawings.* The sheets of drawings should be numbered in consecutive Arabic numerals within the sight as defined in paragraph (g) of this section. These numbers, if present, must be placed in the middle of the top of the sheet, but not in the margin. The numbers can be placed on the right-hand side if the drawing extends too close to the middle of the top edge of the usable surface. The drawing sheet numbering must be clear and larger than the numbers used as reference characters to avoid confusion. Sheets of drawings must be paginated from 1 onward. The number of each sheet should be shown by 2 Arabic numerals placed on either side of an oblique line, with the first being the sheet number, and the second being the total number of sheets of drawings, with no other marking.

(u) *Numbering of views.* (1) The different views must be numbered in Arabic numerals consecutively, starting with 1, independent of the numbering of the sheets and, if possible, in the order in which they appear on the drawing sheet(s). Partial views intended to form one complete view, on one or several sheets, must be identified by the same number followed by a capital letter. View numbers must be preceded by the abbreviation "FIG." Where a single view is used to illustrate the claimed invention, it must not be numbered and

the abbreviation "FIG." must not appear.

(2) Numbers and letters identifying the views must be simple and clear and must not be used in association with brackets, circles, or inverted commas. The view numbers must be larger than the numbers used for reference characters.

(v) *Security markings.* Authorized security markings may be placed on the drawings provided they are outside the sight, preferably centered in the top margin.

(w) *Corrections.* Any corrections on drawings submitted to the Office must be durable and permanent.

(x) *Holes.* The drawing sheets may be provided with 2 holes in the top margin. The holes should be equally spaced from the respective side edges, and their centerlines should be spaced 7.0 cm. (2¾ inches) apart. (See § 1.152 for design drawings, § 1.165 for plant drawings, and § 1.174 for reissue drawings.)<

6. Section 1.88 is proposed to be removed and reserved as follows:

§ 1.88 >[Reserved]< [Use of old drawings.]

[If the drawings of new application are to be identical with the drawings of a previous application of the applicant on file in the Office, or with part of such drawings, the old drawings or any sheets thereof may be used if the prior application is, or is about to be, abandoned, or if the sheets to be used are cancelled in the prior application. The new application must be accompanied by a letter requesting the transfer of the drawings, which should be completely identified.]

7. Section 1.123 is proposed to be revised to read as follows:

§ 1.123 Amendments to the drawing.

No change in the drawing may be made except by permission of the Office. Permissible changes in the construction shown in any drawing may be made only by [bonded draftsmen, at applicant's expense, or by] the submission of >a< substitute [drawings] >drawing< by applicant. A sketch in permanent ink showing proposed changes, to become part of the record, must be filed for approval by the examiner and should be a separate paper.

8. Section 1.152 is proposed to be revised to read as follows:

§ 1.152 >Design< Drawing.

The design must be represented by a drawing >that complies< [made in conformity] with the >requirements of § 1.84< [rules laid down for drawings of mechanical inventions]>,< and must contain a sufficient number of views to constitute a complete disclosure of the appearance of the article. Appropriate surface shading must be used to show the character or contour of the surfaces represented. >Solid black surface shading is not permitted except when used to represent color contrast.< Broken lines may be used to show visible environmental structure, but may not be used to show hidden planes and surfaces which cannot be seen through opaque materials. >Alternate positions of a design component, illustrated by full and broken lines in the same view are not permitted in a design drawing. Photographs and ink drawings must not be combined in one application. Photographs submitted in lieu of ink drawings in design patent applications must comply with § 1.84(b) and must not disclose environmental structure but must be limited to the design claimed. Color drawings and color photographs are not permitted in design patent applications.<

9. Section 1.165 is proposed to be revised to read as follows:

§ 1.165 >Plant< Drawings.

(a) Plant patent drawings [are not mechanical drawings and] should be artistically and competently executed [. Figure] >and must comply with the requirements of § 1.84. View< numbers and reference characters need not be employed unless required by the examiner. The drawing must disclose all the distinctive characteristics of the plant capable of visual representation.

(b) The drawing may be in color and when color is a distinguishing characteristic of the new variety, the drawing must be in color. Two copies of color drawings >or color photographs< must be submitted. [Color drawings may be made either in permanent water color or oil, or in lieu thereof may be photographs made by color photography or properly colored on sensitized paper. Permanently mounted color photographs are acceptable. The paper in any case must correspond in size, weight and quality to the paper required for other drawings. See § 1.84.]

Dated: September 9, 1992.

Douglas B. Comer,

Acting Assistant Secretary and Acting Commissioner of Patents and Trademarks.

[FR Doc. 92-22312 Filed 9-15-92; 8:45 am]

BILLING CODE 3510-16-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300259; FRL-4077-8]

RIN 2070-AC18

Alkyl Acrylate/Methacrylate Copolymers; Tolerance Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that an exemption from the requirement of a tolerance be established for residues of certain copolymers when used as inert ingredients (controlled-release agents) in pesticide formulations applied to growing crops, raw agricultural commodities, and animals. This proposed regulation was requested by Landec Corp.

DATES: Comments, identified by the document control number [OPP-300259], must be received on or before October 16, 1992.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part of all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by the EPA without prior notice. The public docket is available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Kerry B. Leifer, Registration Support Branch, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 711I, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-5180.

SUPPLEMENTARY INFORMATION: At the request of Landec Corp., 3603 Haven

Ave., Menlo Park, CA 94025, the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), proposes to amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance for residues of tetradecyl acrylate-acrylic acid copolymer, hexadecyl acrylate-acrylic acid copolymer, octadecyl acrylate-acrylic acid copolymer, docosyl methacrylate-acrylic acid copolymer, hexadecyl acrylate-butyl acrylate-acrylic acid copolymer, hexadecyl acrylate-dodecyl acrylate-acrylic acid copolymer, octadecyl methacrylate-butyl acrylate-acrylic acid copolymer, octadecyl methacrylate-hexyl acrylate-acrylic acid copolymer, octadecyl acrylate-dodecyl acrylate-acrylic acid copolymer, octadecyl methacrylate-dodecyl methacrylate-acrylic acid copolymer, and docosyl methacrylate-octadecyl methacrylate-acrylic acid copolymer when used as inert ingredients (controlled-release agents) in pesticide formulations applied to growing crops, raw agricultural commodities after harvest, and animals.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 152.3(m), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be biologically active.

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency established data requirements which will be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. Exemptions from some or all of the requirements may be granted if it can be determined that the inert ingredient will present minimal or no risk. The Agency has decided that the data normally required to support the proposed tolerance exemptions for alkyl acrylate/methacrylate copolymers will not need to be submitted. The rationale for this decision is described below.

In the case of certain chemical substances which are defined as "polymers" the Agency has established a set of criteria which identify categories of polymers that present low risk. These criteria (described in 40 CFR 723.250) limit potential risks by identifying polymers that are relatively unreactive and stable compared to other chemical substances as well as polymers that typically are not readily absorbed. These properties generally limit a polymer's ability to cause adverse effects. In addition, these criteria exclude polymers about which little is known. The Agency believes that polymers meeting the criteria noted above will present minimal or no risk. The alkyl acrylate/methacrylate copolymers conform to the definition of a polymer given in 40 CFR 723.250(b)(11) and meet the following criteria which are used to identify low-risk polymers:

1. The number average molecular weight of a representative alkyl acrylate/methacrylate copolymer (hexadecyl acrylate-dodecyl acrylate-acrylic acid copolymer) is approximately 20,000. Substances with molecular weights greater than 400 are generally not readily absorbed through the intact skin, and substances with molecular weights greater than 1,000 are generally not absorbed through the intact gastrointestinal (GI) tract. Chemicals not absorbed through the skin or GI tract are generally incapable of eliciting a toxic response.

2. Alkyl acrylate/methacrylate copolymers are not cationic polymers, nor are they reasonably anticipated to become cationic polymers in a natural aquatic environment.

3. Alkyl acrylate/methacrylate copolymers do not contain less than 32.0 percent by weight of the atomic element carbon.

4. Alkyl acrylate/methacrylate copolymers contain as an integral part of their composition the atomic elements carbon, hydrogen, nitrogen, and oxygen.

5. Alkyl acrylate/methacrylate copolymers do not contain as an integral part of their composition, except as impurities, any elements other than those listed in 40 CFR 723.250(d)(3)(ii).

6. Alkyl acrylate/methacrylate copolymers are not biopolymers, synthetic equivalents of a biopolymer, or derivatives or modifications of a biopolymer that are substantially intact.

7. Alkyl acrylate/methacrylate copolymers are not manufactured from reactants containing, other than as impurities, halogen atoms or cyano groups.

8. Alkyl acrylate/methacrylate copolymers do not contain reactive functional groups that are intended or reasonably expected to undergo further reaction.

9. Alkyl acrylate/methacrylate copolymers are not designed or reasonably expected to substantially degrade, decompose, or depolymerize.

Based upon the above information and review of its use, EPA has found that, when used in accordance with good agricultural practice, these ingredients are useful and do not pose a risk to human health. Because a tolerance for these ingredients is not needed to protect the public health, EPA proposes that the exemptions from the requirement of a tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300259]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, agricultural commodities, pesticides and pests, recording and recordkeeping requirements.

Dated: August 25, 1992.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In subpart D, by adding new § 180.1112, to read as follows:

§ 180.1112 Alkyl acrylate/methacrylate copolymers; exemptions from the requirement of a tolerance.

Tetradecyl acrylate-acrylic acid copolymer, hexadecyl acrylate-acrylic acid copolymer, octadecyl acrylate-acrylic acid copolymer, docosyl methacrylate-acrylic acid copolymer; hexadecyl acrylate-butyl acrylate-acrylic acid copolymer, hexadecyl acrylate-dodecyl acrylate-acrylic acid copolymer, octadecyl methacrylate-butyl acrylate-acrylic acid copolymer, octadecyl methacrylate-hexyl acrylate-acrylic acid copolymer, octadecyl acrylate-dodecyl acrylate-acrylic acid copolymer, octadecyl methacrylate-dodecyl acrylate-acrylic acid copolymer, octadecyl methacrylate-dodecyl methacrylate-acrylic acid copolymer, and docosyl methacrylate-octadecyl methacrylate-acrylic acid copolymer, minimum average molecular weight 20,000, are exempted from the requirement of a tolerance when used as inert ingredients (controlled-release agents) in pesticide formulations applied to growing crops, raw agricultural commodities after harvest, or animals.

[FR Doc. 92-22254 Filed 9-15-92; 8:45 am]

BILLING CODE 6560-50-F

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40 CFR Part 180

[PP 8E3628/P550; FRL-4161-5]

RIN 2070-AC18

Pesticide Tolerance for 2-(2-Chlorophenyl)Methyl-4,4-Dimethyl-3-Isoxazolidinone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for residues of the herbicide 2-(2-chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone (also referred to as clomazone) in or on the raw agricultural commodity sweet potato. The proposed regulation to establish a maximum permissible level for residues of the herbicide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATES: Comments, identified by the document control number [PP 8E3628/P550], must be received on or before October 16, 1992.

ADDRESSES: By mail, submit written comments to: Public Information Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (H7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716C, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5310.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition (PP) 8E3628 to EPA on behalf of the Agricultural Experiment Stations of Georgia, Louisiana, North Carolina, and Oklahoma.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a), propose the establishment of a tolerance for residues of the herbicide 2-(2-chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone in or on the raw agricultural commodity sweet potato at 0.05 part per million (ppm). The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerance include:

1. A 1-year feeding study in dogs fed diets containing 100, 500, 2,500, and 5,000 ppm with a no-observed-effect level (NOEL) of 500 (equivalent to 12.5 milligrams (mg)/kilogram (kg) day) based on increased absolute and relative liver weights in male and female dogs.

2. A development toxicity study in rats with NOEL's for maternal and fetotoxic effects of 100 mg/kg/day, and no developmental toxicity observed at the highest dose level tested (600 mg/kg/day).

3. A developmental toxicity study in rabbits given gavage doses of 30, 240, and 700 mg/kg/day with NOEL's for maternal toxicity and fetotoxic effects of 240 mg/kg/day based on decreased weight gain and an increase in the number of resorptions. There was no developmental toxicity observed under the conditions of the study.

4. A 2-year feeding/carcinogenicity study in rats fed diets containing 20, 100, 500, 1,000, and 2,000 ppm with a systemic NOEL of 100 ppm (equivalent to 4.3 mg/kg/day) based on elevated cholesterol, in absolute and relative liver weights, and in the incidence of liver cytomegaly. There were no carcinogenic effects observed under the conditions of the study at any dosage level tested.

5. A 2-year feeding/carcinogenicity study in mice fed diets containing 20, 100, 500, 1,000 and 2,000 ppm with a NOEL of 100 ppm (equivalent to 15 mg/kg/day) for systemic effects based on an increase in white blood cell count. The study was negative for carcinogenic effects at all dosage levels tested.

6. Mutagenic studies: including unscheduled DNA synthesis, negative; reverse mutation (two studies in *Salmonella*), both negative with/without activation; point mutation (CHO/HGPT), weakly positive without activation; and in vivo cytogenetic (chromosomal aberration), negative for mutagenicity.

The reference dose (RfD), based on the 2-year feeding study in rats (NOEL of 4.3 mg/kg/day) and using an uncertainty factor of 100, is calculated to be 0.043 mg/kg of body weight (bw)/day. The theoretical maximum residue contribution (TMRC) from existing tolerances is calculated to be 0.000028 mg/kg/day for the overall U.S. population. Published tolerances and the proposed tolerance for sweet potato utilize less than 1.0 percent of the RfD.

The nature of the residue in plants is adequately understood. An adequate analytical method, gas-liquid chromatography using a nitrogen/phosphorus detector, is available for enforcement purposes. Prior to its publication in the Pesticide Analytical Manual (PAM), Vol. II, the enforcement methodology is being made available in the interim to anyone who is interested in pesticide residue enforcement when requested from: By mail, Calvin Furlow, Public Response and Program Resource Branch, Field Operations Division (H-7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Crystal Mall #2, Rm. 1128, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-5232.

No secondary residues are expected to occur in meat, milk, poultry, or eggs since sweet potato is not considered a livestock feed item. There are presently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency the tolerance established by amending 40 CFR 180.425 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 8E3628/P550]. All written comments filed in response to this petition will be available in the Public Information Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 28, 1992.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.425 is amended in the table therein by adding, and alphabetically inserting, the raw agricultural commodity sweet potato, to read as follows:

§ 180.425 2-(2-Chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone; tolerances for residues.

* * * * *

Commodity	Parts per million
* * * * * *	
Sweet potato	0.05

[FR Doc. 92-22255 Filed 9-15-92; 8:45 am]

BILLING CODE 6560-50-F

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40 CFR Part 180

[OPP-300263; FRL-4159-7]

RIN 2070-AC18

D & C Red No. 33; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that an exemption from the requirement of a tolerance be established for residues of D & C Red No. 33 (5-amino-4-hydroxy-3-phenylazo-2,7-naphthalene disulfonic acid, disodium salt; CAS Registry No. 3567-66-6) when used as an inert ingredient (dye) in pesticide formulations applied to growing crops only. This proposed regulation was requested by the BASF Corp.

DATES: Comments, identified by the document control number [OPP-300263], must be received on or before October 16, 1992.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part of all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by the EPA without prior notice. The public docket is available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Connie Welch, Registration Support Branch, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 711I, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-7252.

SUPPLEMENTARY INFORMATION: At the request of BASF Corp., Agricultural Chemicals Division, P.O. Box 13528, Research Triangle Park, NC 27709-3528, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), the Administrator proposes to amend 40 CFR 180.1001(d) by establishing an exemption from the requirement of a tolerance for residues of D & C Red No. 33 (5-amino-4-hydroxy-3-phenylazo-2,7-naphthalene disulfonic acid, disodium salt; CAS Registry No. 3567-66-6) when used as an inert ingredient (dye) in pesticide formulations applied to growing crops only.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and

hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency established data requirements which will be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. Exemptions from some or all of the requirements may be granted if it can be determined that the inert ingredient will present minimal or no risk.

The Agency has decided that the data normally required to support the proposed tolerance exemption for D & C Red No. 33 will not need to be submitted. The rationale for this decision is described below.

1. Based upon an extensive review of numerous toxicological studies, the U.S. Food and Drug Administration (FDA) permanently listed D & C Red No. 33 as safe for general use in drugs and cosmetics, with the exception of those used within the area of the eye (53 FR 33110; August 30, 1988).

2. D & C Red No. 33 is approved by the FDA for use as a color additive in oral drugs other than mouthwashes and dentrifices, in amounts not to exceed 0.75 milligram per daily dose of the drug under 21 CFR 74.1333.

3. D & C Red No. 33 is approved by the FDA for use as a color additive for externally applied drugs, mouthwashes, and dentifices in amounts consistent with current good manufacturing practices under 21 CFR 74.1333.

4. D & C Red No. 33 is approved by the FDA for use as a color additive for cosmetic lip products in amounts not to exceed 3 percent total color by weight of the finished cosmetic products under 21 CFR 74.2333.

5. The U.S. Food and Drug Administration has specified the manufacturing process and established specification limits for carcinogenic impurities for use of this dye in drug and cosmetic formulations under 21 CFR 74.1333.

6. The manufacturing process and limits for impurities contained in D & C Red No. 33 must conform to the specifications listed in 21 CFR 74.1333 for use in pesticide formulations applied to growing crops only.

Based upon the above information and review of its use, EPA has found that, when used in accordance with good agricultural practice, this ingredient is useful and a tolerance is not necessary to protect the public health. Therefore, EPA proposes that the exemption from the requirement of a tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended that contains any of the ingredients listed herein may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300263]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: August 26, 1992.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001(d) is amended by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
* * * * *	* * * * *	*
D & C Red No. 33 (CAS Registry No. 3567-66-6); meeting the specifications listed in 21 CFR 74.1333		Dye
* * * * *	* * * * *	*

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[FR Doc. 92-22256 Filed 9-15-92; 8:45 am]

BILLING CODE 6560-50-F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3800

[WO-600-4143-09]

Intent To Prepare Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an environmental impact statement and to request comments on the scope of the environmental impact statement.

SUMMARY: The Bureau of Land Management (BLM) is preparing to draft an environmental impact statement (EIS) relating to a proposed revision of the regulations for administration of operations under the Mining Law of 1872. This notice solicits comments and suggestions as to the scope of the EIS.

ADDRESSES: Director (680), Bureau of Land Management, room 3538, Main Interior Bldg., 1849 C Street, NW., Washington, DC 20240. Scoping comments must be received no later than 30 days from the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Jack Mills, Environmental Coordinator, Federal Building, 2800 Cottage Way, E-2841, Sacramento, CA 95825; telephone (916) 978-4722.

SUPPLEMENTARY INFORMATION: The EIS will analyze the impact of the regulations in 43 CFR subpart 3809 for administration of operations under the 1872 mining law. The proposed action would: (a) Require plans of operation in sensitive areas that are identified in land use plans, where occupancy occurs, or where leaching or the use of certain chemicals will take place; (b) add a penalty section; (c) modify the notice-level time frame to allow for on-site visits by BLM; (d) provide for decisions by the authorized officer to remain in effect pending appeal; (e) make mandatory the filing of a reclamation plan; (f) classify use of suction dredges of 4 inches or less as casual use; and (g) establish the deadline for duration of active notices and plans.

The EIS process will be coordinated with the Bureau's rulemaking process. Concurrently, BLM will release the draft EIS for public review and will publish the proposed rule in the **Federal Register**. The EIS will analyze the alternatives and in doing so will consider the input of the workshops and the written comments. The proposed revised regulations and the EIS will be available simultaneously.

Alternatives to be analyzed in the EIS include: Continuation of the existing 43 CFR subpart 3809 regulations (the No Action alternative), and an alternative that eliminates entirely the current 5-acre exemption for filing a plan of operations.

The proposed action involves the Public Lands subject to the 1872 mining law, primarily in the western states including Alaska. Social and economic impacts on the minerals industry and on affected communities; impacts on cultural resources and Native American values; and impacts on wildlife and fish, plants, recreation use and opportunities, visual resources, air, soil, water, and wilderness will be examined.

No meetings are planned for scoping purpose. Input from a series of public workshops that were conducted by BLM in Anchorage, Spokane, Denver, and Reno during December, 1991, will be used to help scope the EIS. The workshops and a public comment period were provided for the purpose of determining the strengths and weaknesses of the 43 CFR subpart 3809 regulations and whether or not the regulations should be revised. The Director subsequently decided to revise the regulations based on all input. Comments from the workshops and the written comments will be used to help scope the EIS. Anyone wishing to provide additional comments on the scope of the EIS may submit written comments to the Bureau.

Adam A. Sokoloski,

Deputy Director for Energy and Mineral Resources.

[FR Doc. 92-22322 Filed 9-15-92; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91-140, FCC 92-361]

Revision of Radio Rules and Policies

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This further notice of proposed rule making in MM Docket No. 91-140 seeks further comment on development of an investment incentives program for radio broadcasters. The Commission notes that evidence submitted in this proceeding suggests that some parties, particularly minorities and small businesses, have had difficulty acquiring the resources to become station owners. The intended effect of this further notice of proposed rule making is to strengthen the radio service as a whole by allowing minority owners, new entrants and small businesses to take advantage of certain efficiencies that may be associated with group ownership.

DATES: Initial comments due October 30, 1992; reply comments due November 15, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jane Hinckley Halprin, Mass Media Bureau, Policy and Rules Division, (202) 632-7792.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's further notice of proposed rule making in MM Docket No. 91-140, adopted August 5, 1992, and released September 4, 1992.

The complete text of this further notice of proposed rule making, which was adopted in conjunction with memorandum opinion and order in MM Docket No. 91-140, is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, Downtown Copy Center, at (202) 452-1422, 1919 M Street, NW., room 246, Washington, DC 20554.

Synopsis of Further Notice of Proposed Rule Making

1. To explore alternative means of facilitating the introduction of minority owners, new entrants and small businesses generally into the broadcasting field, the Commission adopted a further notice of proposed rule making. The Commission sought comment on a proposal that would permit a group owner to own or have a controlling interest in some number of stations beyond the otherwise applicable national limits if it establishes and successfully implements a broadcast ownership "incubator" program designed to ease entry barriers and provide assistance to small businesses or individuals seeking to enter the radio field. Such a program would permit a group owner to acquire an attributable interest (including a controlling interest) in stations above the otherwise applicable ownership limit upon a prior demonstration that it has in place a small business investment incentives program involving a meaningful and ongoing commitment to

increasing pluralism in radio station ownership and stimulating investment in the radio industry. These programs would be designed to aid small businesses, including in particular minority owned businesses, that have limited access to capital and limited broadcast business experience, and that have expressed an interest in station ownership.

2. The Commission sought comment on what should constitute a qualifying incentives program. The Commission stated that, without attempting to limit additional creative mechanisms that may be developed, some general guidelines and examples of qualifying programs can be provided. For example, a group owner might create an SBA-like program which offers to eligible participants: (1) Management or technical assistance; (2) loan guarantees; (3) direct financial assistance through loans or equity investment; (4) training; and (5) business planning assistance. Alternatively, a group owner could enter into a joint venture with an established Small Business or Minority Enterprise Small Business Investment Company (SBIC or MESBIC) to accomplish the intended objective. The Commission also might consider an administrative relationship between the stations' owners. The Commission observed that if properly structured, such an arrangement might both provide a greater incentive for investment in the operations of hitherto untested owners as well as allow these owners to enjoy some of the administrative efficiencies associated with group ownership.

3. The Commission proposes that terminating the program or ceasing its implementation could result in the expanded ownership limit being withdrawn. The Commission invites commenting parties to suggest variants on the proposal or alternative means of accomplishing the same objective. Comment is invited, in particular, on: (1) The number of stations above the regular limit that might be obtainable through this process; (2) the nature of a program that might be approved, including the amount and types of financial assistance involved, particularly in relation to the financial size of the group owner involved, and the extent to which training and management and technical assistance should be a component of any program; (3) how such a program should be integrated with the "investment incentive" provisions of the rules already adopted; and (4) the best means of identifying and defining the beneficiaries of such a program. The Commission will also ask its Small Business Advisory Committee to address this and alternative proposals in this area. Parties wishing to address proposals of this type beyond the immediate area of radio ownership or that have alternative suggestions of broader coverage are invited to file such comments in the Commission's general video marketplace rulemaking proceeding, notice of proposed rule making in MM Docket No. 91-221, 7 FCC Rcd 4111 (1992), by October 30, 1992.

Initial Regulatory Flexibility Analysis

As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in the further notice of proposed rule making. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the further notice of proposed rule making, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of the further notice of proposed rule making, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Public Law No. 96-354, 94 Stat. 1164, 5 U.S.C. 601, *et seq.* (1980).

I. *Reason for this action:* The further notice of proposed rule making was adopted to explore ways to encourage investment in broadcasters that are small businesses.

II. *Objective of this action:* The actions proposed in the further notice of proposed rule making are intended to encourage entities to establish "incubator" programs designed to ease entry barriers and provide assistance to small businesses or individuals seeking to enter the radio industry.

III. *Legal basis:* Authority for the actions proposed in the further notice of proposed rule making may be found in sections 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154 and 303.

IV. *Reporting, recordkeeping and other compliance requirements inherent in the proposed rule:* None.

V. *Federal rules which overlap, duplicate or conflict with the proposed rule:* none.

VI. *Description, potential impact and number of small entities involved:* Incubator programs would be specifically designed to aid small businesses, including in particular minority owned businesses, that have limited access to capital and limited business experience, and that have expressed an interest in station ownership. Approximately 11,000 existing radio broadcasters of all sizes may be affected by the proposals contained in the further notice of proposed rule making.

VII. *Any significant alternatives minimizing the impact on small entities consistent with stated objectives:* All the proposals included in the further notice of proposed rule making are aimed at assisting small entities gain entry into the radio industry.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 92-22073 Filed 9-15-92; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1105 and 1150

[Ex Parte No. 392 (Sub-Nos. 2 and 3)]

Class Exemption for the Construction of Connecting Track and Class Exemption for Rail Construction

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Proposed Exemptions and Rulemakings.

SUMMARY: The Commission is requesting comments on whether our regulations should be amended to include two new class exemptions for rail construction and operation. The Commission also requests comments addressing the applicability of 49 U.S.C. 10901 and the possible application of the proposed exemptions to construction of conventional, high speed, or magnetic levitation (MagLev) passenger lines. Our goal is to reduce regulatory burdens, thus facilitating new railroad construction, and increasing competition.

DATES: Comments are due by October 16, 1992.

ADDRESSES: Send an original and 10 copies to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 927-5660. (TDD for hearing impaired (202) 927-5721.)

SUPPLEMENTARY INFORMATION: These exemption proposals have been held in abeyance for several years while the Commission revised the environmental regulations at 49 CFR part 1105. We are proposing new rules, set forth below, which are designed to expedite construction requests, as well as comply with the environmental regulations.

We believe that exemption for rail construction is in the public interest, and that the only obstacle, certain environmental requirements, can be satisfied by the procedures set fourth below. These exemptions would facilitate investment initiatives and expand rail service. Captive shippers could benefit by being able to obtain competitive rail service.

We are concerned, however, that in order to comply with the requirements of the environmental laws, the procedures for these class exemptions may be so involved that they are not an improvement over the current procedure for processing individual construction exemption requests. We seek comments on the proposed rules set out below and whether they will indeed reduce regulatory burdens, or whether it would be better to continue with the current procedure for processing individual exemptions. We also seek to determine whether the proposed exemptions could be useful in encouraging the development of high speed passenger rail transportation by lessening the regulatory burden imposed upon sponsors of new construction of passenger lines. Although Congress has not yet determined whether construction involving new passenger train technologies is or should be subject to regulation by the Commission or other federal agencies, consideration of the usefulness of the proposed exemptions may provide some insight. Accordingly, we also request comments addressing (1) the applicability of section 10901 and the Commission's environmental rule to construction of conventional, high speed, or MagLev passenger lines; (2) the applicability of the exemption criteria of 49 U.S.C. 10505 to such projects; (3) the potential application and usefulness of the proposed exemptions to such projects; and (4) any other matters that interested parties believe are pertinent to the proposed exemptions as they relate to the construction of passenger rail lines.

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, room 2215, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 927-7428. (Assistance for the hearing impaired is available through TDD services (202) 927-5721.)

The Commission certifies that, if promulgated, the proposed rules will not have a significant economic impact on a substantial number of small entities. Adopting these class exemptions should have a positive impact on small carriers by reducing regulatory barriers to rail construction.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects

49 CFR Part 1105

Environmental impact statements, Reporting and recordkeeping requirements.

49 CFR Part 1150

Administrative practice and procedure, Railroads.

Decided: August 13, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, parts 1105 and 1150 of the Code of Federal Regulations are proposed to be amended as follows:

PART 1105—PROCEDURES FOR IMPLEMENTATION OF ENVIRONMENTAL LAWS

1. The authority citation for part 1105 would continue to read as follows:

Authority: 49 U.S.C. 10321, 10505, 10901, 10903–10906, and 11343; 16 U.S.C. 470f, 1451, and 1531; 42 U.S.C. 4332 and 6362(b); and 5 U.S.C. 553 and 559.

2. In § 1105.7, paragraph (c), a new sentence is proposed to be added, before the last sentence of that paragraph to read as follows:

§ 1105.7 Environmental reports.

* * * * *

(c) * * * In a proceeding under the class exemption for the construction and operation of connecting track under 49 CFR 1150.36, or the class exemption for other rail constructions and operations under 49 CFR 1150.37, petitioner shall certify that it has notified the appropriate State Public Service Commissions, State Departments of Transportation (or equivalent agency) and the State Clearinghouses at least 20 days prior to filing a notice of exemption. * * *

* * * * *

PART 1150—CERTIFICATE TO CONSTRUCT, ACQUIRE, OR OPERATE RAILROAD LINES

3. The authority citation for part 1150 would continue to read as follows:

Authority: 49 U.S.C. 10321, 10901, and 10505; 5 U.S.C. 553 and 559.

§ 1150.31 [Amended]

4. The heading of § 1150.31 is proposed to be revised to read as follows: "Scope of Acquisition and Operation Exemption."

§§ 1150.32, 1150.33, 1150.34 and 1150.35 [Amended]

5. In the headings of §§ 1150.32, 1150.33, 1150.34, and 1150.35 remove the word "transactions" and add in its place the words "Acquisitions and Operations."

6. A new § 1150.36 is proposed to be added to read as follows:

§ 1150.36 Exempt construction of connecting track.

(a) *Scope.* This exemption applies to proceedings involving the construction and operation of connecting lines of railroad within existing rail rights-of-way, or on land owned by connecting railroads, under 49 U.S.C. 10901(a), (b), and (c). See 49 CFR 1105.6(b)(1), defining connecting track. This exemption is designed to expedite and facilitate connecting track construction while ensuring full and timely environmental review. The Commission has found that its prior review of connecting track construction and operation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101a; and that continued regulation under 49 U.S.C. 10901 is not necessary to protect shippers from an abuse of market power. 49 U.S.C. 10505. To use this class exemption, a prefiling notice, Environmental Report and Notice of Exemption must be filed following the procedures in § 1150.36 (b) and (c).

(b) *Environmental requirements.* The environmental regulations at 49 CFR part 1105 must be complied with fully. An Environmental Report containing the information specified at 49 CFR 1105.7(e), as well as a historic report under 49 CFR 1105.8(d), must be filed either before or at the same time as the notice of exemption is filed. See 49 CFR 1105.7(a). The entity seeking the exemption authority also must serve copies of the Environmental Report on the agencies listed at 49 CFR 1105.7(b). Since the Environmental Report must include a certification that appropriate agencies have been consulted in its preparation (49 CFR 1105.7(c)), parties shall begin environmental and historic

consultations well before the notice of exemption is filed. Environmental requirements may be waived or modified where a petitioner demonstrates in writing that such action is appropriate. See 49 CFR part 1105. It is to the advantage of parties to consult with the Commission's Section of Energy and Environment ("SEE") at the earliest possible date to began environmental review.

(c) *Procedures and dates.* (1) At least 20 days prior to the filing of a notice of exemption with the Commission, the party seeking the exemption authority must notify in writing: The State Public Service Commission, the State Department of Transportation (or equivalent agency), and the State Clearinghouse (if there is no clearinghouse, the State Environmental Protection Agency), of each State involved. The pre-filing notice shall include: The name and address of the railroad (or other entity proposing to construct the line) and the proposed operator; a complete description of the proposed construction and operation, including a map; an indication that the class exemption procedure is being used; and the approximate date that construction is proposed to begin. This prefiling notice also shall include a certification that the petitioner will comply with the Commission's Environmental regulations, codified at 49 CFR part 1105, and a statement that those regulations generally require the Commission to:

(i) Prepare an Environmental Assessment ("EA") (or Environmental Impact Statement ("EIS"), if necessary),

(ii) Make the document (EA or EIS, as appropriate) available to the parties (and to the public, upon request to the Commission's Section of Energy and Environment ("SEE") and,

(iii) Accept for filing and consideration comments on the environmental document as well as petitions for stay and reconsideration.

(2) Petitioner must file a verified Notice of Exemption with the Commission at least 90 days before the construction is proposed to begin. In addition to the information contained in § 1150.36(c)(1), the notice shall include a statement certifying compliance with the environmental rules at 49 CFR part 1105 and the prefiling notice requirements of 49 CFR 1150.36(c)(1).

(3) The Commission, through the Director of the Office of Proceedings, shall publish notice in the **Federal Register** describing the construction project and inviting comments within 20 days after the notice of exemption is received. SEE then will prepare an EA (or, if necessary an EIS). The EA generally will be made available 15 days after the **Federal Register** notice. It will be served on all parties and appropriate agencies. Others may request a copy from SEE. The deadline for submission of comments on the EA will generally be within 30 days of its availability (49 CFR 1105.10(b)). If an EIS is prepared, the time frames and procedures set forth in 49 CFR 1105.10(a) generally will apply.

(4) The Commission's environmental document (together with any comments and SEE's recommendations) shall be used in deciding whether to allow the particular construction project to proceed under the class exemption and whether to impose appropriate mitigating conditions upon its use (including use of an environmentally preferable route). The Commission may decide on the "no-build" alternative, where it concludes that a party has demonstrated that the need for a particular line is outweighed by adverse environmental consequences and that therefore the *status quo* should be retained.

(5) No construction may begin until the Commission has completed its environmental review and issued a final decision.

(6) Petitions to stay the effective date of the notice of exemption on other than environmental grounds must be filed within 10 days of the **Federal Register** publication. Petitions to stay the effective date of the notice on environmental and/or historic preservation grounds may be filed at any time but must be filed sufficiently in advance of the effective date to allow the Commission to consider and act on the petition before the notice becomes effective. Petitions for reconsideration must be filed within 20 days of the **Federal Register** publication.

(7) The exemption will be effective 70 days after publication in the **Federal Register**, unless stayed. If the notice of exemption contains false or misleading information, the exemption is void *ab initio* and the Commission shall summarily reject the exemption notice.

(8) Where significant environmental issues have been raised, the Commission shall issue on or before the effective date of the exemption a final decision allowing appropriate mitigating conditions or taking other appropriate action such as selecting the "no build" alternative.

(9) Where there has been full environmental review and *no* environmental issues have been raised, the Commission, through the Director of the Office of Proceedings, shall issue, on or before the effective date of the exemption, a final decision consisting of a Finding of No Significant Impact ("FONSI") to show that the environmental record has been considered (49 CFR 1105.10(g)).

(10) The Commission, on its own motion, will stay the effective date of individual notices of exemption when an informed decision on environmental issues cannot be made prior to the date that the exemption authority would otherwise become effective. Stays will be granted initially for a period of 60 days to permit resolution of environmental issues and issuance of a final decision. The Commission expects that this 60-day period will usually be sufficient for these purposes unless preparation of an EIS is required. If, however, environmental issues remain unresolved upon the expiration of this period the Commission, upon its own motion, or the request of a party to the case, will extend the stay, as necessary to permit completion of environmental review and issuance of a final decision. The Commission's order will specify the duration of each extension of the initial stay period. In cases requiring the preparation of an EIS, the Commission will extend the stay for a period sufficient to permit compliance with the procedural deadlines established by the Commission's environmental regulations.

(d) *Third-party consultants.* An environmental and historic report required under 49 CFR 1107.5 and 8 will not be required where a petitioner engages a consultant who is approved by SEE and acts under SEE's direction and supervision in preparing the EA or EIS. In such a case, the third-party consultant must act on behalf of the Commission, working under SEE's direction to collect the environmental information that is needed and to compile it into a draft EA or EIS, which is prepared under SEE's direction and then submitted to SEE for its final review and approval. See 49 CFR 1105.10(d).

7. A new § 1150.37 is proposed to be added to read as follows:

§ 1150.37 Other exempt rail construction.

(a) *Scope.* This exemption applies to all rail construction and operation proceedings under 49 U.S.C. 10901 (a), (b), and (c), except those involving the construction and operation of connecting track under 49 CFR 1150.36. This exemption is designed to expedite and facilitate these rail constructions and operations while ensuring full and timely environmental review. The Commission has found that its prior review of proposals for construction and operation of rail lines is not necessary to carry out the rail transportation policy

of 49 U.S.C. 10101a; and that continued regulation under 49 U.S.C. 10901 is not necessary to protect shippers from an abuse of market power. 49 U.S.C. 10505. To use this class exemption, a prefiling notice, Environmental Report, and Notice of Exemption must be filed following the procedures in section 1150.37 (b) and (c).

(b) *Environmental requirements.* The environmental regulations at 49 CFR part 1105 must be complied with fully. The environmental rules provide that rail constructions normally require an Environmental Impact Statement ("EIS") (49 CFR 1105.6(a)) and a 6 month prefiling notification (49 CFR 1105.10(a)(1)). Parties seeking a waiver from these provisions must file a request for reclassification demonstrating that their particular proposal is not likely to have significant environmental impacts sufficient to require an EIS and/or a request for waiver of the 6 month prefiling notice requirement (49 CFR 1105.6(d); 1105.10(c)). Parties also may seek a waiver from other requirements in the environmental rules by demonstrating in writing that such action is appropriate. See 49 CFR part 1105. Such requests must be filed well in advance of the filing of the Notice of Exemption. It is to the advantage of parties to consult with the Commission's Section of Energy and Environment ("SEE") at the earliest possible date to begin environmental review.

(c) *Procedures and dates.* (1) At least 20 days prior to the filing of a notice of exemption with the Commission, the party seeking the exemption authority must notify in writing: the State Public Service Commission, the State Department of Transportation (or equivalent agency), and the State Clearinghouse (if there is no clearinghouse, the State Environmental Protection Agency), of each State involved. The pre-filing notice shall include: the name and address of the railroad (or other entity proposing to construct the line) and the proposed operator; a complete description of the proposed construction and operation, including a map; an indication that the class exemption procedure is being used; and the approximate date that construction is proposed to begin. This prefiling notice also shall include a certification that the petitioner will comply with the Commission's Environmental regulations, codified at 49 CFR part 1105, and a statement that those regulations generally require the Commission to:

(i) Prepare an Environmental Assessment ("EA") (or Environmental Impact Statement ("EIS"), if necessary),

(ii) Make the document (EA or EIS, as appropriate) available to the parties (and to the public, upon request to the Commission's Section of Energy and Environment ("SEE") and,

(iii) Accept for filing and consideration comments on the environmental document as well as petitions for stay and reconsideration.

(2) To use the class exemption petitioner must file a verified Notice of Exemption with the Commission. The notice should be filed at the earliest possible date in advance of the date construction is proposed to begin. In addition to the information contained in Section 1150.36(c)(1), the notice shall include a statement certifying compliance with the environmental rules at 49 CFR part 1105 and the prefiling notice requirement in 49 CFR 1150.37(c)(1).

(3) An environmental report containing the information specified at 49 CFR 1105.7(e) and a historic report under 49 CFR 1105.8(d) must be filed either before or at the same time as the Notice of Exemption is filed. The petitioner must comply with the service and consultation requirements at 49 CFR 1105.7 (b) and (c).

(4) The Commission, through the Director of the Office of Proceedings, shall publish notice in the **Federal Register** describing the construction project and inviting comments within 30 days after the notice of exemption is received. The environmental review under this class exemption will generally be an EIS. See 49 CFR 1105.6(a). In the preparation of an EIS, the procedures and time frames set forth at 49 CFR 1105.10(a) will generally apply. If the petitioner demonstrates to the Commission under 49 CFR 1105.6(d) that only an EA is sufficient, then the time frames and procedures set forth in 49 CFR 1105.10(b) generally will apply.

(5) The Commission's environmental document (together with any comments and SEE's recommendations) shall be used in deciding whether to allow the particular construction project to proceed under the class exemption and whether to impose appropriate mitigating conditions upon its use (including use of an environmentally preferable route). The Commission may decide on the "no-build" alternative, where it concludes that a party has demonstrated that the need for a particular line is outweighed by adverse environmental consequences and that therefore the *status quo* should be retained.

(6) The notice of exemption will not be effective, and construction may not begin, until completion of the Commission's environmental review and issuance of a final Commission decision.

(7) Petitions to stay the effective date of the notice of exemption on other than environmental grounds must be filed within 10 days of the **Federal Register** publication. Petitions to stay the effective date of the notice on environmental and/or historic preservation grounds may be filed at any time but must be filed early enough to allow the Commission to consider and act on the petition before the notice of exemption becomes effective. Petitions for reconsideration must be filed within 20 days of the **Federal Register** publication if an EA is prepared. If an EIS is prepared, the time frames and procedures of 49 CFR 1105.10(a) will apply. If the notice of exemption contains false or misleading information, the exemption is void *ab initio* and the Commission shall summarily reject the exemption notice.

(8) The Commission, on its own motion, will withhold a decision, stay the effective date of an individual notice of exemption, or impose appropriate conditions upon any authority granted, when an environmental issue has not yet been resolved.

(9) Where there has been full environmental review and *no* environmental issues have been raised, the Commission, through the Director of the Office of Proceedings shall issue, on or before the effective date of the exemption, a final decision consisting of a Finding of No Significant Impact ("FONSI") to show that the environmental record has been considered (49 CFR 1105.10(g)).

(d) *Third-party consultants.* The environmental and historic report required under 49 CFR 1105.7 and 1105.8 will not be required where a petitioner engages a consultant who is approved by SEE and acts under SEE's direction and supervision in preparing the EIS or EA. In such a case, the third-party consultant must act on behalf of the Commission, working under SEE's direction to collect the environmental information that is needed and to compile it into a draft EA or EIS, which is then prepared under SEE's direction and submitted to SEE for its final review and approval. See 49 CFR 1105.10(d).

[FR Doc. 92-22367 Filed 9-15-92; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 57, No. 180
Wednesday, September 16, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Upper Swiftwater Timber Sale: Nez Perce National Forest; Idaho County, ID

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement to analyze and disclose the environmental impacts of a proposal to harvest timber and construct and reconstruct roads in the Swiftwater Creek drainage located about 24 air miles northeast of Grangeville, Idaho. This EIS will tier to the Nez Perce Forest Land and Resource Management Plan and EIS, which provide overall guidance for achieving the desired forest condition of the area. The purpose of the proposed action is to help satisfy short-term demands for timber and to move toward an equal distribution of timber age classes on suitable lands.

DATES: Written comments and suggestions should be received on or before October 16, 1992.

ADDRESSES: Send written comments to Cynthia Lane, District Ranger, Selway Ranger District, HC 75, Box 91, Kooskia, Idaho 83539.

FOR FURTHER INFORMATION CONTACT: Jerry Bird, Planning Assistant, (208) 926-4258.

SUPPLEMENTARY INFORMATION: On December 11, 1991, the Nez Perce National Forest issued a decision notice on an environmental assessment (EA) for the Upper Swiftwater timber sale. Three organizations subsequently appealed this decision to the Regional Forester under 36 CFR part 217. The decision was reversed by the Regional Forester on May 8, 1992.

These three appeals demonstrated that the environmental effects of the Upper Swiftwater timber sale are controversial and are likely to become highly controversial. Therefore, as required by 36 CFR 1508.27(b)(4), preparation of an environmental impact statement (EIS) is necessary.

The timber sale under consideration would occur within a 4,000-acre analysis area entirely within the Swiftwater Creek watershed. The analysis area adjoins the Selway Recreation River corridor on the northeast. The proposed action would harvest about 8.9 million board feet from about 309 acres. About 1.0 miles of new road would be constructed and 1.6 miles of existing road would be reconstructed.

The principal environmental issues identified to date are related to:

1. Impacts on view-sheds seen from the Selway River road;
2. Impacts on elk summer and winter habitat; including impacts of road construction, road use restrictions, and road obliteration;
3. Impacts on fish habitat and water quality, including impacts on the threatened Snake River fall chinook salmon, impacts on other sensitive fish species, and achievement of an upward trend in fish habitat conditions;
4. Impacts on threatened, endangered, and sensitive species other than fish species, including the goshawk and several sensitive plant species which are known to occur in the analysis area.

Although not an environmental issue, timber sale revenues versus timber sale costs, including road costs, is a relevant issue which will be important to a decision.

Eight alternatives to the proposed action were considered in the Upper Swiftwater EA. Three of these alternatives were eliminated from detailed study. In those alternatives studied in detail, tractor, skyline, and helicopter logging systems were considered. Different roading schemes were evaluated. Different ratios of harvest on elk summer range and elk winter range were investigated. Different rates of upward trend in fish habitat condition were established.

All of the alternatives contained in the EA will be reconsidered in the EIS. They may be modified, and additional alternatives may be added. Toward that end, additional comments or questions are now being solicited. While public participation in this analysis is welcome at any time, comments received within 30 days of the publication of this notice will be especially useful in the preparation of the draft EIS, which is expected to be filed with the EPA and available for public review in November, 1992. A 45-day comment period will follow publication of a Notice of Availability of the draft EIS in the **Federal Register**. The comments received will be analyzed and considered in preparation of a final EIS, which is expected to be filed in March, 1993. The final EIS will be followed by a Record of Decision, in which an alternative from the final EIS will be selected for implementation.

The Forest Service believes it is important at this early stage to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft EISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 513 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages Inc.* v. *Harris*, 490 F.Supp. 1334, 1338 (E.D. Wis., 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

I am the responsible official for this environmental impact statement.

Dated: September 4, 1992.

Michael King,

Forest Supervisor, Nez Perce National Forest, Route 2, Box 475, Grangeville ID 83530.

[FR Doc. 92-22047 Filed 9-15-92; 8:45 am]

BILLING CODE 3410-11-M

Rural Electrification Administration

Fall River Rural Electric Cooperative, Inc.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, as amended, the Council on Environmental Quality Regulations (40 CFR parts 1500-1508), and REA Environmental Policies and Procedures (7 CFR part 1794), has made a finding of no significant impact (FONSI) with respect to a project proposed by Fall River Rural Electric Cooperative, Inc. (Fall River), of Ashton, Idaho. The proposed project consists of constructing a hydroelectric generating plant of 4.8 megawatts at the Island Park Dam, an existing dam operated by the Bureau of Reclamation and the Fremont Madison Irrigation District in Fremont County, Idaho. The FONSI is based on an environmental assessment (EA) prepared by the Federal Energy Regulatory Commission (FERC). REA made an independent evaluation of the impacts resulting from the proposed construction and concurs with its scope and content. In accordance with REA Environmental Policies and Procedures, 7 CFR Subpart I, Adoption of Environmental Documents, REA has adopted the FERC EA as its EA for the project.

FOR FURTHER INFORMATION CONTACT: Lawrence R. Wolfe, Chief, Environmental Compliance Branch, Electric Staff Division,Room 1246, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, telephone (202) 720-1784.

Copies of the EA and FONSI are available for review at, or can be obtained from, REA at the address provided herein or from Mr. Dee M. Reynolds, Manager, Fall River Rural Electric Cooperative, Inc., 614 Main Street, Ashton, Idaho 83420, telephone (208) 652-7431.

SUPPLEMENTARY INFORMATION: REA has reviewed the FERC EA and has determined that it represents an accurate assessment of the scope and level of environmental impacts of the proposed project. The FERC EA, which includes input from certain Federal and state agencies, has been adopted by REA to serve as its EA.

REA has determined that the FERC EA adequately considered the potential impacts of the proposed project and concluded that approval of the project would not result in a major Federal action significantly affecting the quality of the human environment. REA determined that the proposed project will have no effect on cultural resources, important farmland, floodplains, wetlands, water quality, threatened or endangered species, or critical habitat. REA has identified no other potential significant impact resulting from construction and operation of the proposed hydroelectric generating plant.

Alternatives examined for the proposed project included no action and denial of license by FERC to build the project. REA determined that the proposed project is an environmentally acceptable alternative that meets Fall River's need with a minimum of adverse environmental impact. REA has concluded that project approval would not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, the preparation of an environmental impact statement is not necessary.

In accordance with their regulations, FERC published notices and requested comments on the application submitted by Fall River. All comments received were adequately addressed in the FERC EA. The notices published by FERC meet the REA notice requirements contained in 7 CFR Part 1794.62. On October 19, 1988, FERC issued a license to Fall River to build the proposed project.

Dated: September 8, 1992.

George E. Pratt,

Deputy Administrator Program Operations.

[FR Doc 92-22355 Filed 9-15-92; 8:45 am]

BILLING CODE 3410-15-F

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Malcolm Baldrige National Quality Award's Panel of Judges

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Panel of Judges of the Malcolm Baldrige National Quality Award will meet on Wednesday, October 7, 1992, from 8:30 a.m. to 5:30 p.m.; on Thursday, October 8, 1992, from 8 a.m. to 5:30 p.m.; and on Friday, October 9, 1992, from 8 a.m. to 2 p.m. The Panel of Judges is composed of nine members prominent in the field of quality management and appointed by the Director of the National Institute of Standards and Technology.

DATES: The meeting will convene October 7, 1992, at 8:30 a.m. and adjourn at 2 p.m. on October 9, 1992. The meeting will be closed on October 7 from 8:30 a.m. to 5:30 p.m., and on October 8 from 8 a.m. to 5:30 p.m. The meeting will be open to the public on October 9 from 8 a.m. to 2 p.m..

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Curt W. Reimann, Director for Quality Programs, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975-2036.

SUPPLEMENTARY INFORMATION: The purpose of the meeting on October 7-8, 1992, is to review site visit reports and to process related reports on the 1992 feedback and will involve review of individual proposals. The discussion on October 7-8, 1992, beginning at 8:30 a.m. on October 7, 1992, and ending at 5:30 p.m. on October 8, 1992, will be closed. The purpose of the meeting on October 9, 1992, is to review the August 5-6, 1992, minutes; discuss the roles of the National Institute of Standards and Technology and the Panel of Judges; begin planning for 1993 with discussions on Examiner software, technology transfer, Examiner selection process, estimate of applicants for 1993, and the application guidelines; new business; review of action items; and plan the agenda for the February meeting.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on March 27, 1992, that the meeting of the Panel of Judges will be closed pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by section 5(c) of the Government in the Sunshine Act, Public Law 94-409. The meeting, which involves examination of records and discussion of Award applicant data, may be closed to the public in accordance with section 552b(c)(4) of title 5, United States Code, since the meeting is likely to disclose trade

secrets and commercial or financial information obtained from a person which is privileged or confidential.

Date: September 10, 1992.

John Lyons,

Director.

[FR Doc. 92-22393 Filed 9-15-92; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council; Statement of Organization, Practices and Procedures

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of revision to statement of organization, practices and procedures.

SUMMARY: Pursuant to section 302(f)(6) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), 16 U.S.C. 1801 *et seq.*, each Regional Fishery Management Council (Council) is responsible for carrying out its functions under the Magnuson Act, in accordance with such uniform standards as are prescribed by the Secretary of Commerce (Secretary). Further, each Council must make available to the public a statement of its organization, practices and procedures (SOPP).

On January 6, 1992, NOAA published in the **Federal Register** (57 FR 375) a final rule that revised the regulations (50 CFR parts 601 and 605) and guidelines concerning the operations of the Councils under the Magnuson Act. The final rule, effective February 5, 1992, implemented parts of sections 108 and 109 of Public Law 101-627, the Fishery Conservation Amendments of 1990, which amended and reauthorized the Magnuson Act through September 30, 1993.

In accordance with the above-mentioned final rule, the Caribbean Fishery Management Council (Caribbean Council) has revised its SOPP, which was originally published in the **Federal Register** on October 13, 1977. Interested parties may obtain a copy of the Caribbean Council's revised SOPP by contacting Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, Suite 1108, Banco de Ponce Building, Hato Rey, Puerto Rico 00918-2577; telephone (809) 753-6910.

Dated: September 9, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-22297 Filed 9-15-92; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Licensing information may be obtained by writing to: National Technical Information Service, Center for Utilization of Federal Technology—Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151 or by telephoning (703) 487-4732. All patent applications may be purchased, specifying the serial number listed below, by writing NTIS, 5285 Port Royal Road, Springfield, Virginia 22161 or by telephone the NTIS Sales Desk at (703) 487-4650. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Acting Director, Office of Federal Patent Licensing

Department of Health and Human Services

7-210,00—(U.S. 5,108,708) Aliquot Collection Adapter for HPLC Automatic Injector Enabling Simultaneous Sample Analysis and Sample Collection

7-261,014—(U.S. 5,106,731) Kaposi's Sarcoma Endothelia Cells and Growth Factor

7-386,114—(U.S. 5,104,898) Method of Preventing Graft Rejection in Solid Organ Transplantation

7-356,528—(U.S. 5,126,132) Tumor Infiltrating Lymphocytes as a Treatment Modality for Human Cancer

7-430,049—(U.S. 5,128,254) A cDNA Encoding the Long Isoform of the Rate D2 Dopamine Receptor: Expression of Receptor Protein in Plasmid-Transfected Cell Lines

7-454,171—(U.S. 5,104,792) Novel Method For Amplifying Unknown Nucleic Acid Sequences

7-485,871—(U.S. 5,126,251) Stable Mammalian Cell Line Expressing A Bacteriophage RNA Polymerase

7-691,894—(U.S. 5,105,585) Dust Emissions Control Mechanism for Hand Sanders

Department of Interior

7-596,669—(U.S. 5,104,551) Method of Flocculating Clay-Containing Waste Slurries

7-618,196—(U.S. 5,113,923) Method for Determining the Moten Pool Configuration in Melting of Metals

7-696,805—(U.S. 5,110,546) Method for Locating Metallic Nitride Inclusions in Metallic Alloy Ingots

7-734,002—(U.S. 5,127,769) Thrust Bolting: Roof Bolt Support Apparatus

7-832,833—Fish Egg and Larvae Collection System

7-834,401—Bonded-Sand/Loose-Sand Composite Mold

7-844,057—Disposable Device for Delivery of Accurate and Filtered Liquid Samples

7-862,164—Enzymatic Reduction & Precipitation of Uranium

7-874,139—Process for Mitigating Corrosion and Increasing the Conductivity of Steel Studs in Soderberg Anodes of Aluminum Reduction Cells.

Department of Agriculture

6-526,751—(U.S. 4,541,231) Process for Reinforced Yarn With Glass Fiber Core

7-351,347—(U.S. 5,104,789) Monoclonal Antibodies Which Discriminate Between Strains of Citrus Tristeza Virus

7-447,352—(U.S. 5,125,279) System for Analyzing Cotton

7-551,100—(U.S. 5,106,637) Laser Treatment of Livestock Feeds

7-552,381—(U.S. 5,103,522) Sequential Oxidative and Reductive Bleaching in a Multicomponent Single Liquor System

7-608,786—(U.S. 5,112,637) Extraction of Gossypol from Cottonseed

7-694,589—(U.S. 5,101,672) System for Analyzing Entrained Solids Such as Cotton or Seed

7-724,722—Marek's Disease Virus Gene Encoding pp38 Phosphoprotein

7-832,196—Chemical Pulping Process Employing Separate Alkali and Peroxymonosulfate Treatments

7-839,000—Pressure and Depth Control in Agricultural Implement

7-855,804—Plasmid-DNA Based Probes & Procedures for Rapid and Specific Detection of *Xanthomonas Campestris* pv. *Citri*
7-855,805—A method of Rapid Fat and Oil Splitting Using a Lipase Catalyst Found in Seeds
7-857,060—Method of Removing Color from kraft Wood Pulps
7-857,146—Method and Apparatus for Evaluating the Drying Properties of Un-dried Wood
7-863,274—Temperature Adaptable Glyoxal-Modified Fibers and Method of Preparing Same
7-880,912—Industrial Alkaline Protease from Shipworm Bacterium
7-883,434—Steinernema Sp. Nematode for Suppression of Helicoverpa Zea and Spodoptera Frugiperda
7-883,749—Cytotoxic Proteins from the Yeast Pichia Acaciae
7-909,263—Portable Water Bag
7-912,391—Method and Apparatus for *in-Situ* Evaluation of Wooden Members

[FR Doc. 92-22333 Filed 9-15-92; 8:45 am]

BILLING CODE 3510-04-M

Prospective Grant of Co-Exclusive Patent License

This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of a co-exclusive license in the United States to practice the invention embodied in U.S. Patent Application 7-429,328, titled "Polymer Bead Containing Immobilized Metal Extractant," to either Ashtabula Trading Company, having a place of business in Ashtabula, OH, or Enviro-Dewatering & Recovery, Inc., having a place of business in Charlotte, NC. The patent rights in this invention have been assigned to the United States of America.

The prospective co-exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective co-exclusive license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establish that the grant of the license to either company would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The invention covers spherical polymeric beads having internal pore structures containing extractant material capable of sorbing toxic metals, a process for producing such beads and a method for removing toxic metal wastes dissolved in dilute aqueous streams.

The availability of the invention for licensing was published in the **Federal Register**, Vol. 55, No. 138, p. 29255 (July 18, 1990). A copy of the instant patent application may be purchased from the NTIS Sales Desk by telephoning 703/487-4650 or by writing the Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Inquiries, comments and other materials relating to the contemplated license must be submitted to Neil L. Mark, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151. Properly filed competing applications received by the NTIS in response to this notice will be considered as objections to the grant of the contemplated license.

Douglas J. Campion,

Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 92-22334 Filed 9-15-92; 8:45 am]

BILLING CODE 3510-04-M

Patent and Trademark Office

Public Advisory Committee for Trademark Affairs; Meeting

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the open meeting of the Public Advisory Committee for Trademark Affairs.

DATES: The Public Advisory Committee for Trademark Affairs will meet from 10 a.m. until 4 p.m. on October 27, 1992.

PLACE: U.S. Patent and Trademark Office, 2121 Crystal Drive, Crystal Park 2, room 912, Arlington, Virginia.

STATUS: The meeting will be open to public observation; seating will be available for the public on a first-come-first-served basis. Members of the public will be permitted to make oral comments of three (3) minutes each. Written comments and suggestions will be accepted before or after the meeting on any of the matters discussed. Copies of the minutes will be available upon request.

MATTERS TO BE CONSIDERED: The agenda for the meeting is as follows:

(1) Finance
(2) Automation
(3) Strategic Planning
(4) Current Trademark Office Practice Issues
(5) International Trademark Law.

CONTACT PERSON FOR MORE INFORMATION: For further information, contact Lynne Beresford, Office of the Assistant Commissioner for Trademarks, Building CPK2, room 910, Patent and Trademark Office, Washington, DC 20231. Telephone: (703) 305-9464.

Dated: September 3, 1992.

Douglas B. Comer,

Acting Assistant Secretary and Acting Commissioner of Patents and Trademarks.

[FR Doc. 92-22384 Filed 9-15-92; 8:45 am]

BILLING CODE 3510-16-M

COUNCIL ON ENVIRONMENTAL QUALITY

National Acid Precipitation Assessment Program Oversight Review Board

AGENCY: Council on Environmental Quality, Executive Office of the President, the National Acid Precipitation Assessment Program Oversight Review Board.

ACTION: Establishment of an advisory committee known as the National Acid Precipitation Assessment Program Oversight Review Board.

SUMMARY: The National Acid Precipitation Assessment Program (NAPAP) is administered by a federal interagency Acid Precipitation Task Force. The task force, which is chaired by the Chairman of the Council on Environmental Quality (CEQ), has determined that NAPAP's work will be enhanced by the creation of an advisory committee to provide advice to NAPAP regarding the quality, scientific integrity credibility, scope, and practicality of NAPAP's research, monitoring, and assessment program. This advisory committee will be known as the NAPAP Oversight Review Board (ORB).

The ORB will consist of up to ten members appointed by the CEQ Chairman in consultation with the interagency task force. Each ORB member will be a person who, as a result of his or her training and experience, is exceptionally well-qualified to analyze, interpret, and appraise scientific and technical information over a broad range of issues relevant to the purpose and responsibility of NAPAP. The ORB will report and provide recommendations to the CEQ Chairman in his capacity as chairman of the task force.

In his capacity as chair of the Acid Precipitation Task Force, CEQ Chairman Deland has determined that the

establishment of the ORB is necessary and in the public interest.

FOR FURTHER INFORMATION CONTACT: Dr. Charles Herrick, Associate Director for Environmental Trends, Council on Environmental Quality, 722 Jackson Place, NW., Washington, DC 20503. Telephone: 202/395-5750.

David B. Struhs,

Chief of Staff, Council on Environmental Quality.

[FR Doc. 92-22317 Filed 9-15-92; 8:45 am]

BILLING CODE 3125-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Wednesday, 23 September 1992.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Warner Kramer, AGED Secretariat, 2011 Crystal Drive, suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military proposes to initiate with industry, universities or in their laboratories. The microelectronics area includes such programs on semiconductor materials, integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. 92-463, as amended, (5 U.S.C. App. II 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: 10 September 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-22326 Filed 9-15-92; 8:45 am]

BILLING CODE 3810-01-M

Nuclear Failsafe and Risk Reduction Advisory Committee; Meeting

AGENCY: Nuclear Failsafe and Risk Reduction Advisory Committee, DOD.

ACTION: Cancellation.

SUMMARY: The Federal Advisory Committee meeting scheduled September 18, 1992 (57 FR 38487, August 25, 1992) is hereby canceled. The meeting will be rescheduled in the future.

Dated: September 10, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-22325 Filed 9-15-92; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Performance Review Boards; List of Members

Below is a list of additional individuals who are eligible to serve on the Performance Review Boards for the Department of the Air Force in accordance with the Air Force Senior Executive Appraisal and Award System.

Secretariat

Mr. John W. Beach
Mr. Robert D. Stuart

Air Staff

Brig. Gen. Stephen C. Mannell

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92-22327 Filed 9-15-92; 8:45 am]

BILLING CODE 3910-01-M

Department of the Navy

Privacy Act of 1974; Amend Record Systems

AGENCY: Department of the Navy, DOD.

ACTION: Amend record systems.

SUMMARY: The Department of the Navy proposes to amend two existing systems of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendments will be effective on October 16, 1992 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Head, PA/FOIA Branch, Office of the Chief of Naval Operations (OP-09B30), Department of the Navy, The Pentagon, Washington, DC 20350-2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Gwendolyn Aitken at (703) 614-2004.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, were published in the **Federal Register** as follows:

51 FR 12908, April 16, 1986
51 FR 18086, May 16, 1986 (DON Compilation changes follow)
51 FR 19884, June 3, 1986
51 FR 30377, August 26, 1986
51 FR 30393, August 26, 1986
51 FR 45931, December 23, 1986
52 FR 2147, January 20, 1987
52 FR 2149, January 20, 1987
52 FR 8500, March 18, 1987
52 FR 15530, April 29, 1987
52 FR 22671, June 15, 1987
52 FR 45846, December 2, 1987
53 FR 17240, May 16, 1988
53 FR 21512, June 8, 1988
53 FR 25363, July 6, 1988
53 FR 39499, October 7, 1988
53 FR 41224, October 20, 1988
54 FR 8322, February 28, 1989
54 FR 14376, April 11, 1989
54 FR 32682, August 9, 1989
54 FR 40160, September 29, 1989
54 FR 41495, October 10, 1989
54 FR 43453, October 25, 1989
54 FR 45781, October 31, 1989
54 FR 48131, November 21, 1989
54 FR 51784, December 18, 1989
54 FR 52976, December 26, 1989
55 FR 21910, May 30, 1990 (Updated Mailing Addresses)
55 FR 37930, September 14, 1990
55 FR 42758, October 23, 1990
55 FR 47508, November 14, 1990
55 FR 48678, November 21, 1990
55 FR 53167, December 27, 1991
56 FR 424, January 4, 1991
56 FR 12721, March 27, 1991
56 FR 27503, June 14, 1991
55 FR 28144, June 19, 1991
56 FR 31394, July 10, 1991 (DOD Updated Indexes)
56 FR 40877, August 16, 1991
56 FR 46167, September 10, 1991
56 FR 59217, November 25, 1991
56 FR 63503, December 4, 1991
57 FR 2719, January 23, 1992
57 FR 2726, January 23, 1992
57 FR 2898, January 24, 1992
57 FR 5430, February 14, 1992
57 FR 9246, March 17, 1992
57 FR 12914, April 14, 1992
57 FR 14698, April 22, 1992
57 FR 18472, April 30, 1992
57 FR 26422, June 10, 1992
57 FR 26821, June 16, 1992

57 FR 28499, June 25, 1992
57 FR 28502, June 25, 1992
57 FR 31700, July 17, 1992
57 FR 33326, July 28, 1992
57 FR 34127, August 3, 1992
57 FR 37791, August 20, 1992

The amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of altered systems reports. The specific changes to the systems of records are set forth below followed by the systems of records notices published in their entirety, as amended.

Dated: September 9, 1992.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N01070-12

SYSTEM NAME:

Administrative Files System, (51 FR 18091, May 16, 1986).

CHANGES:

SYSTEM NAME:

At beginning of entry, add "NISCOM".

SYSTEM LOCATION:

Delete entry and replace with "Primary - Naval Investigative Service Command, Washington, DC 20388-5000.

Decentralized Segments - Naval Investigative Service Regional Offices (NISROs) retain duplicate copies of certain segments of the administrative files. Official mailing addresses are published as an appendix to the Navy's compilation of system of records notices."

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Personnel and Resource Information System - contains personnel management information/statistical information on Naval Investigative Service (NIS) personnel.

Special Agent Career Development Files - contains correspondence unique to the NIS Special Agent, including annual physical examinations, assignment preferences, and special qualifications, which has a bearing on world-wide assignability, promotion, and general career assessment.

Weapons and Equipment Files - identifies credential numbers, badges, PSP pins, and weapons assigned to authorized NIS personnel.

Personnel Security Clearance File - identifies the classified material access level and date of last security clearance for assigned civilian and military personnel of NIS.

Personnel Utilization Data File - provides statistical information regarding the manner by which available NIS manhours are expended in the execution of its assigned investigative and counterintelligence mission. The file is formed by the submission (monthly) of individual manhour diaries. All assigned personnel input to this system; their manhours are categorized by function.

Freedom of Information Act and Privacy Act Requests File - contains correspondence and responses made to requests for information pursuant to the Freedom of Information Act and the Privacy Act of 1974."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

At end of entry, add "Executive Order 9397."

PURPOSE(S):

Delete entry and replace with "The Personnel and Resource Information System is used to prepare all personnel documents and personnel statistical studies. It provides such information as the average grade, the total number and composition of personnel at each NIS component, and the past assignments of personnel. It is used on a daily basis by personnel in the formation and execution of staffing actions for the various NIS components, information verification of employee's tenure, and the compilation of necessary statistical studies.

Special Agent Career Development Files are used for in-house agency decisions regarding reassignment, promotion, career training, and long-range development. They form in-house agency repository for both adverse and favorable documents regarding Special Agents. The files have a long-range function, that of forming the basis for law enforcement retirement service certification. Though part of the file is duplicated in the official file maintained by the Civilian Personnel Office, the Special Agent Career Development File is considered privileged information and its contents are not released outside NIS. Within NIS, the files are maintained and controlled exclusively within the Career Services Division, NISCOM, and by assigned personnel of that Division. The files are released for review only to senior management personnel of NISCOM.

Weapons and Equipment Files are used to identify and inventory credentials, weapons, badges, and handcuffs issued to authorized NIS personnel.

Personnel Security Clearance Files are used to informally verify and authenticate security clearances issued to NIS personnel. The file has a daily working purpose of acting as a check sheet for the updating of security clearances. It is used by the Commander, NISCOM to certify the access level of certain assigned NIS personnel to other Navy commands as well as civilian contractors. Personnel Utilization Data File is used to make analyses which modify the staffing levels at various NIS components based on the actual work level. It further provides a tool to NIS management to gauge the efficiency of all components by comparing their workload with the amount of manhours available.

The records in this system may be used by other DOD components requiring confirmation of security clearance levels and for statistical purposes.

Freedom of Information Act and Privacy Act Request Files are used to record actions taken on requests/appeals/amendments."

* * * * *

STORAGE:

Delete entry and replace with "Automated and paper records."

RETRIEVABILITY:

Delete entry and replace with "For the Special Agent Career Development File - name only.

For the Weapons and Equipment File by name or by item number (i.e., badge, credential, weapon, handcuff serial number).

For the Personnel and Resource Information System - by name and Social Security Number or by individual data characteristic, such as GS-grade level, duty-station, special qualifications, or language qualifications.

For the Personnel Utilization Data File - normally accessed and retrieved by location and functional category of employment (i.e., Special Agent, clerical, etc.). The capability exists, however, to retrieve by Social Security Number. The Personnel Security Classification File, which is a subordinate file to the Personnel and Resource Information System, is accessed by name and Social Security Number.

For the Freedom of Information Act and Privacy Act Requests File - by name and year request was made."

SAFEGUARDS:

Delete entry and replace with "Files are protected by limited controlled access, safes, locked cabinets, and locked doors. Visitor control and

security computer software measures (where applicable) are utilized."

RETENTION AND DISPOSAL:

Delete entry and replace with "Personnel indexed in the Personnel and Resource Information System and the Personnel Security Clearance Files are deleted from the magnetic tape data storage upon termination of employment. Residual paper records are retained from two to five years and then destroyed.

Personnel indexed in the Weapons and Equipment Files are deleted as assigned equipment is accounted for or returned. Residual paper printouts are destroyed at least semi-annually.

The Special Agent Career Development Files are semi-permanent and are retained, at least in essential skeletal format, indefinitely.

Personnel indexed in the Freedom of Information Act and Privacy Act Requests File are deleted after two years if their request was granted or no record found and six years if the request was denied in whole or in part."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Commander, Naval Investigative Service Command, Washington, DC 20388-5000."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commander, Naval Investigative Service Command, Washington, DC 20388-5000. Individuals submitting requests should provide their full name, date of birth, Social Security Number, and dates of employment or assignment with NIS.

In the case of personal visits, individuals requesting access to files in this system will be required to present reasonable proof of identity to minimally include a driver's license or similar document at least one of which must bear a current photograph and be able to provide (orally) some element of unique identifying data such as name of spouse or a past duty station with NIS."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commander, Naval Investigative Service Command, Washington, DC 20388-5000. Individuals submitting requests should provide their full name, date of birth, Social Security Number, and dates of employment or assignment with NIS.

In the case of personal visits, individuals requesting access to files in this system will be required to present reasonable proof of identity to minimally include a drivers' license or similar document at least one of which must bear a current photograph and be able to provide (orally) some element of unique identifying data such as name of spouse or a past duty station with NIS."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager."

RECORD SOURCE CATEGORIES:

Delete entry and replace with "Information for the Personnel and Resource Information System and the Personnel Utilization Data System is obtained from the individual employee, who is the prime source of information both for initial access to the files as well as for the periodic update.

Information for the Personnel Security Clearance File information is obtained from the Personnel and Resource Information System.

The information for the Weapons and Equipment Files is obtained from personnel charged with the issuance of various items inventoried therein (with verification by the personnel to whom the items are issued.)

Information for the Special Agent Career Development File is obtained from the individuals' supervisors, from various naval commands, and other federal and state agencies with whom the special agent has had professional contact and from the individual. Also, this file contains copies of each physical examination required annually of assigned civilian special agents.

Information for the Freedom of Information Act and Privacy Act Requests file is obtained from the individual requesting the information."

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N01070-12

SYSTEM NAME:

NISCOM Administrative Files System.

SYSTEM LOCATION:

Primary - Naval Investigative Service Command, Washington, DC 20388-5000.

Decentralized Segments - Naval Investigative Service Regional Offices (NISROs) retain duplicate copies of certain segments of the administrative files. Official mailing addresses are published as an appendix to the Navy's compilation of system of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Past and present civilian, military, and foreign national personnel assigned world-wide to the Naval Investigative Service Command.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel and Resource Information System - contains personnel management information/statistical information on NIS personnel.

Special Agent Career Development Files - contains correspondence unique to the NIS Special Agent, including annual physical examinations, assignment preferences, and special qualifications, which has a bearing on world-wide assignability, promotion, and general career assessment.

Weapons and Equipment Files - identifies credential numbers, badges, PSP pins, and weapons assigned to authorized NIS personnel.

Personnel Security Clearance File - identifies the classified material access level and date of last security clearance for assigned civilian and military personnel of NIS.

Personnel Utilization Data File - provides statistical information regarding the manner by which available NIS manhours are expended in the execution of its assigned investigative and counterintelligence mission. The file is formed by the submission (monthly) of individual manhour diaries. All assigned personnel input to this system; their manhours are categorized by function.

Freedom of Information Act and Privacy Act Requests File - contains correspondence and responses made to requests for information pursuant to the Freedom of Information Act and the Privacy Act of 1974.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and Executive Order 9397.

PURPOSE(S):

The Personnel and Resource Information System is used to prepare all personnel documents and personnel statistical studies. It provides such information as the average grade, the total number and composition of personnel at each NIS component, and

the past assignments of personnel. It is used on a daily basis by personnel in the formation and execution of staffing actions for the various NIS components, information verification of employee's tenure, and the compilation of necessary statistical studies.

Special Agent Career Development Files are used for in-house agency decisions regarding reassignment, promotion, career training, and long-range development. They form in-house agency repository for both adverse and favorable documents regarding Special Agents. The files have a long-range function, that of forming the basis for law enforcement retirement service certification. Though part of the file is duplicated in the official file maintained by the Civilian Personnel Office, the Special Agent Career Development File is considered privileged information and its contents are not released outside NIS. Within NIS, the files are maintained and controlled exclusively within the Career Services Division, NISCOM, and by assigned personnel of that Division. The files are released for review only to senior management personnel of NISCOM.

Weapons and Equipment Files are used to identify and inventory credentials, weapons, badges, and handcuffs issued to authorized NIS personnel.

Personnel Security Clearance Files are used to informally verify and authenticate security clearances issued to NIS personnel. The file has a daily working purpose of acting as a check sheet for the updating of security clearances. It is used by the Commander, NISCOM to certify the access level of certain assigned NIS personnel to other Navy commands as well as civilian contractors. Personnel Utilization Data File is used to make analyses which modify the staffing levels at various NIS components based on the actual work level. It further provides a tool to NIS management to gauge the efficiency of all components by comparing their workload with the amount of manhours available.

The records in this system may be used by other DOD components requiring confirmation of security clearance levels and for statistical purposes.

Freedom of Information Act and Privacy Act Request Files are used to record actions taken on requests/appeals/amendments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To law enforcement activities conducting criminal or suitability investigations.

To the Office of Personnel Management when making personnel determinations, e.g., awards or disciplinary actions.

To credit companies in response to credit queries.

To personal physicians regarding medical records.

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated and paper records.

RETRIEVABILITY:

For the Special Agent Career Development File - name only.

For the Weapons and Equipment File - by name or by item number (i.e., badge, credential, weapon, handcuff serial number).

For the Personnel and Resource Information System - by name and Social Security Number or by individual data characteristic, such as GS-grade level, duty-station, special qualifications, or language qualifications.

For the Personnel Utilization Data File - normally accessed and retrieved by location and functional category of employment (i.e., Special Agent, clerical, etc.). The capability exists, however, to retrieve by Social Security Number. The Personnel Security Classification File, which is a subordinate file to the Personnel and Resource Information System, is accessed by name and Social Security Number.

For the Freedom of Information Act and Privacy Act Requests File - by name and year request was made.

SAFEGUARDS:

Files are protected by limited controlled access, safes, locked cabinets, and locked doors. Visitor control and security computer software measures (where applicable) are utilized.

RETENTION AND DISPOSAL:

Personnel indexed in the Personnel and Resource Information System and the Personnel Security Clearance Files are deleted from the magnetic tape data storage upon termination of employment. Residual paper records are retained from two to five years and then destroyed.

Personnel indexed in the Weapons and Equipment Files are deleted as assigned equipment is accounted for or returned. Residual paper printouts are destroyed at least semi-annually. The Special Agent Career Development Files are semi-permanent and are retained, at least in essential skeletal format, indefinitely.

Personnel indexed in the Freedom of Information Act and Privacy Act Requests File are deleted after two years if their request was granted or no record found and six years if the request was denied in whole or in part.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Naval Investigative Service Command, Washington, DC 20388–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commander, Naval Investigative Service Command, Washington, DC 20388–5000. Individuals submitting requests should provide their full name, date of birth, Social Security Number, and dates of employment or assignment with NIS. In the case of personal visits, individuals requesting access to files in this system will be required to present reasonable proof of identity to minimally include a driver's license or similar document at least one of which must bear a current photograph and be able to provide (orally) some element of unique identifying data such as name of spouse or a past duty-station with NIS.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commander, Naval Investigative Service Command, Washington, DC 20388–5000. Individuals submitting requests should provide their full name, date of birth, Social Security Number, and dates of employment or assignment with NIS.

In the case of personal visits, individuals requesting access to files in this system will be required to present reasonable proof of identity to minimally include a drivers' license or similar document at least one of which must bear a current photograph and be able to provide (orally) some element of unique identifying data such as name of spouse or a past duty-station with NIS.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information for the Personnel and Resource Information System and the Personnel Utilization Data System is obtained from the individual employee, who is the prime source of information both for initial access to the files as well as for the periodic update.

Information for the Personnel Security Clearance File information is obtained from the Personnel and Resource Information System.

The information for the Weapons and Equipment Files is obtained from personnel charged with the issuance of various items inventoried therein (with verification by the personnel to whom the items are issued.)

Information for the Special Agent Career Development File is obtained from the individuals' supervisors, from various naval commands, and other federal and state agencies with whom the special agent has had professional contact and from the individual. Also, this file contains copies of each physical examination required annually of assigned civilian special agents.

Information for the Freedom of Information Act and Privacy Act Requests file is obtained from the individual requesting the information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N12930-1

SYSTEM NAME:

Industrial Relations Personnel Records, (54 FR 51794, December 18, 1989).

CHANGES:

SYSTEM NAME:

Delete entry and replace with "Human Resources Group Personnel Records."

SYSTEM LOCATION:

Delete entry and replace with "Commander, Navy Exchange Service Command, Naval Station New York, Staten Island, NY 10305-5097 and at all Navy Exchanges. Mailing addresses for Navy Exchanges are available from the Commander, Navy Exchange Service Command, Naval Station New York, Staten Island, NY 10305-5097."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Civilian employees, former civilian employees, and applicants for employment with the Navy Exchange Service Command and Navy Exchanges located worldwide. Employees who are paid from nonappropriated funds are regular full time, regular part-time, temporary full time, temporary part-time and intermittent."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Personnel jackets, including but not limited to Personnel Information Questionnaire, Personnel Action; Certification of Medical Examination Indoctrination Checklist; Election forms for all life, health, and retirement programs, applicant participation data for each program; notice of excessive absence and tardiness and warnings; disciplinary actions; certified record of court attendance; certified copy of completed military orders for any annual duty tours with recognized reserve organizations; employee job description; tuition assistance records; examination papers and tests, if any; evidence of date of birth, where required; official letters of commendation; cash register overage/shortage records; report of hearings and recommendations relative to employee's grievances; official work performance rating; designation beneficiary for unpaid compensation; reference check records; applicant files; employee profiles; personnel security information (including copies of National Agency Check (NAC) and Naval Investigative Service (NIS) reports); Certificate of Standards of Conduct and Fraud, Waste and Abuse training; travel requests, travel allowance and claims record; transportation agreements; employee affidavits; privilege card application, work assignments, work performance capability, counseling records, work-related records, training records including courses, type and completion dates; and related data.

Labor and Employee Relations Records include notices of excessive absence, tardiness and warnings; disciplinary actions; unsatisfactory work performance evaluations; grievances, appeals, complaint and appeal records; reports of potential grievances and appeals; congressional correspondence; investigative reports and summaries of personnel administrative actions.

Employee Benefits Records include data relating to Quality Salary Increase, Superior Accomplishment Recognition Awards, beneficial suggestions and similar awards; and personnel listings of the aforementioned services. Election forms for all life, health, and retirement programs and claims made for those programs."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "5 U.S.C. 301, Departmental Regulations; 29 U.S.C. 201; 29 U.S.C. 633a; 29 U.S.C. 791 and 794a; Pub. L. 93-259, Equal Employment Act of 1972; and Executive Order 9397."

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

At end of entry, add the following: "*Note: Records of identity, diagnosis, prognosis or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided herein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd-3 and 290ee-3. These statutes take precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. The Department of the Navy's "Blanket Routine Uses" do not apply to these records.*"

STORAGE:

Delete entry and replace with "The media in which these records are maintained vary, but include file folders; magnetic tapes; automated minicomputer data base, disks and diskettes (hard drive); rolodex files; cardex files; ledgers; and printed reports."

* * * * *

SAFEGUARDS:

Delete entry and replace with "Locked desks in supervisor's office and also, locked cabinets in locked offices supervised by appropriate personnel; periodic system backup and microcomputer records to data cartridge, microcomputer power supply locks and/or hard drive locks; security guards."

RETENTION AND DISPOSAL:

Delete entry and replace with "Current employee records remain on file at the local Navy Exchange

personnel office. Records on former employees are retained for one year and then forwarded to the Director, National Personnel Records Center, (Civilian Personnel Records), 111 Winnebago Street, St. Louis, MO 63118 for retention of permanent papers and destruction of temporary papers. Applicant files are retained for six months and then destroyed."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Policy Official is the Commander, Navy Exchange Service Command, Naval Station New York, Staten Island, NY 10305–5097.

Master Record Holder is the Manager, Staffing & Career Management, HRG–3, Navy Exchange Service Command, Naval Station New York, Staten Island, NY 10305–5097.

Local Record Holder is the Manager at the local Navy Exchange. Mailing addresses are available from the Commander, Navy Exchange Service Command, Naval Station New York, Staten Island, NY 10305–5097."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commander, Navy Exchange Service Command, Naval Station New York, Staten Island, NY 10305–5097 or to the manager of the local Navy Exchange where employed.

The request should contain full name, Social Security Number, activity where last employed or where last application for employment was filed. A list of other offices the requester may visit will be provided after initial contact is made at the office listed above. At the time of a personal visit, requester must provide proof of identity containing the requester's signature."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commander, Navy Exchange Service Command, Naval Station New York, Staten Island, NY 10305–5097 or to the manager of the local Navy Exchange where employed.

The request should contain full name, Social Security Number, activity where last employed or where last application for employment was filed. A list of other offices the requester may visit will be provided after initial contact is made at the office listed above. At the time of a personal visit, requester must provide proof of identity containing the requester's signature."

* * * * *

N12930–1

SYSTEM NAME:

Human Resources Group Personnel Records.

SYSTEM LOCATION:

Commander, Navy Exchange Service Command, Naval Station New York, Staten Island, NY 10305–5097 and at all Navy Exchanges. Mailing addresses for Navy Exchanges are available from the Commander, Navy Exchange Service Command, Naval Station New York, Staten Island, NY 10305–5097.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian employees, former civilian employees, and applicants for employment with the Navy Exchange Service Command and Navy Exchanges located worldwide. Employees who are paid from nonappropriated funds are regular full time, regular part-time, temporary full time, temporary part-time and intermittent.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel jackets, including but not limited to Personnel Information Questionnaire, Personnel Action; Certification of Medical Examination Indoctrination Checklist; Election forms for all life, health, and retirement programs, applicant participation data for each program; notice of excessive absence and tardiness and warnings; disciplinary actions; certified record of court attendance; certified copy of completed military orders for any annual duty tours with recognized reserve organizations; employee job description; tuition assistance records; examination papers and tests, if any; evidence of date of birth, where required; official letters of commendation; cash register overage/shortage records; report of hearings and recommendations relative to employee's grievances; official work performance rating; designation beneficiary for unpaid compensation; reference check records; applicant files; employee profiles; personnel security information (including copies of National Agency Check (NAC) and Naval Investigative Service (NIS) reports); Certificate of Standards of Conduct and Fraud, Waste and Abuse training; travel requests, travel allowance and claims record; transportation agreements; employee affidavits; privilege card application, work assignments, work performance capability, counseling records, work-related records, training records including courses, type and completion dates; and related data.

Labor and Employee Relations Records include notices of excessive absence, tardiness and warnings; disciplinary actions; unsatisfactory work performance evaluations; grievances, appeals, complaint and appeal records; reports of potential grievances and appeals; congressional correspondence; investigative reports and summaries of personnel administrative actions.

Employee Benefits Records include data relating to Quality Salary Increase, Superior Accomplishment Recognition Awards, beneficial suggestions and similar awards; and personnel listings of the aforementioned services. Election forms for all life, health, and retirement programs and claims made for those programs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 29 U.S.C. 201; 29 U.S.C. 633a; 29 U.S.C. 791 and 794a; Pub. L. 93–259, Equal Employment Act of 1972; and Executive Order 9397.

PURPOSE(S):

To provide a basis by which an employee or an applicant may be determined to be suitable for employment, transfer, promotion or retention in employment; for verification of employment; to provide a record of travel performed and verification that the employees received proper remuneration for the travel performed; to ensure employees received timely consideration in the processing of work/appraisals and salary increases; for recognition of accomplishments and contributions by employees, and in the processing, administration, and adjudication of discipline, grievances, complaints, appeals, litigation, and program evaluation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To appeals officers and complaints examiners of the Equal Employment Opportunity Commission for the purpose of conducting hearings in connection with employees appeals from adverse actions and formal discrimination complaints.

To a federal agency in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract or the issuance of a license, grant or other benefit by the

requesting agency, to the extent that the information is relevant and necessary.

To the National Archives and Records Administration (GSA) in records management inspection conducted under authority of 5 U.S.C. 2904 and 2906.

In response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in the pending judicial or administrative proceeding.

To officials of labor organizations recognized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices and matters affecting working conditions.

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices also apply to this system.

Note: Records of identity, diagnosis, prognosis or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided herein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–3 and 290ee–3. These statutes take precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. The Department of the Navy's "Blanket Routine Uses" do not apply to these records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

The media in which these records are maintained vary, but include: file folders; magnetic tapes; automated minicomputer data base, disks and diskettes (hard drive); rolodex files; cardex files; ledgers; and printed reports.

RETRIEVABILITY:

Name and/or Social Security Number; employee payroll number.

SAFEGUARDS:

Locked desks in supervisor's office and also, locked cabinets in locked offices supervised by appropriate personnel; periodic system backup and microcomputer records to data cartridge, microcomputer power supply locks and/or hard drive locks; security guards.

RETENTION AND DISPOSAL:

Current employee records remain on file at the local Navy Exchange personnel office. Records on former employees are retained for one year and then forwarded to the Director, National Personnel Records Center, (Civilian Personnel Records), 111 Winnebago Street, St. Louis, MO 63118 for retention of permanent papers and destruction of temporary papers. Applicant files are retained for six months and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official is the Commander, Navy Exchange Service Command, Naval Station New York, Staten Island, NY 10305–5097.

Master Record Holder is the Manager, Staffing and Career Management, HRG-3, Navy Exchange Service Command, Naval Station New York, Staten Island, NY 10305–5097.

Local Record Holder is the Manager at the local Navy Exchange. Mailing addresses are available from the Commander, Navy Exchange Service Command, Naval Station New York, Staten Island, NY 10305–5097.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commander, Navy Exchange Service Command, Naval Station New York, Staten Island, NY 10305–5097 or to the manager of the local Navy Exchange where employed.

The request should contain full name, Social Security Number, activity where last employed or where last application for employment was filed. A list of other offices the requester may visit will be provided after initial contact is made at the office listed above. At the time of a personal visit, requester must provide proof of identity containing the requester's signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commander, Navy Exchange Service Command, Naval Station New York, Staten Island, NY 10305–5097 or to the manager of the local Navy Exchange where employed.

The request should contain full name, Social Security Number, activity where last employed or where last application for employment was filed. A list of other offices the requester may visit will be provided after initial contact is made at the office listed above. At the time of a personal visit, requester must provide proof of identity containing the requester's signature.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The individual to whom the record pertains; current and previous supervisors/employers; other records of the activity concerned; counseling records and comparable papers; educational institutions; applicants; applicant's previous employees; current and previous associates of the employee named by the employee as references; other records of activity investigators; witnesses; correspondents; investigative results and information provided by appropriate investigative agencies of the Federal Government.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt under 5 U.S.C. 552a(k)(5) and (6), as applicable.

An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 701, subpart G. For additional information, contact the system manager.

[FR Doc. 92–22328 Filed 9–15–92; 8:45 am]

BILLING CODE 3810-01-F

DEPARTMENT OF ENERGY

Chicago Field Office; Chicago Support Office

AGENCY: Department of Energy.

ACTION: Notice of intent to make an award based on an unsolicited application.

SUMMARY: The Department of Energy (DOE), Chicago Field Office, through the Chicago Support Office (CSO), announces, pursuant to the DOE Financial Assistance Rules 10 CFR 600.14(f), that DOE intends to award a grant to Kent State University, for developing and testing an engineering prototype of their polymer dispersed Ferroelectric Smectic-C* display technology. The anticipated overall

objective is to test the electrical and optical properties of this particular type of liquid crystal system so as to determine the liquid crystal's potential in several application areas under varying conditions.

SUPPLEMENTARY INFORMATION: DOE announces further that pursuant to 10 CFR 600.6(a)(2), this discretionary financial assistance award to Kent State University, would be based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(ii).

Advantages over current technology are the potential for significant improvements for this type of flat panel display for application in laptop computers and higher resolution television sets at reduced energy consumption. The proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current, or planned solicitation. The extent of the energy savings will depend upon the penetration of this technology for the above applications.

(Award to Kent State University—continued)

The project period for the grant award is 24-months, expected to begin in September 1992. DOE plans to provide funding in the amount of $99,993.

FOR FURTHER INFORMATION CONTACT: Raymond J. Swiderski, U.S. Department of Energy, Chicago Support Office, 9800 South Cass Avenue, Argonne, IL 60439.

Issued in Chicago, Illinois on August 31, 1992.

Johnnie D. Greenwood,

Director, Contracts Division.

[FR Doc. 92-22373 Filed 9-15-92; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award Intent to Award a Cooperative Agreement to the University of Kentucky Research Foundation—Kentucky Geological Survey

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of intent to make a restricted eligibility financial assistance award DE-FC01-92EI23622 to the University of Kentucky Research Foundation—Kentucky Geological Survey.

SUMMARY: The Department of Energy (DOE) announces that, pursuant to 10 CFR 600.7, it is making a restricted eligibility financial assistance award for the above listed Cooperative Agreement. The award will total $100,000.00. This cooperative agreement will provide for the awardee to develop coal resource data for the demonstrated reserve base (DRB) and minable reserve estimates of bituminous coal in eastern Kentucky.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, Attn: Mr. Mark A. Guilfoil, PR-322.4, 1000 Independence Avenue, SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: The objective of the proposed cooperative agreement is to develop coal DRB data allocated to specific ranges of sulfur and heat content. Data development will include analyses of coal geology, resource quantities, coal quality characteristics, and other factors that affect resource accessibility and minability. Data output will include original and remaining identified resources, DRB, accessible resources, and reserves allocated by type of mining and by heat and sulfur content.

The Kentucky Geological Survey (KGS) is the State authority on Kentucky coal reserves, continually collecting data on coal quality for the performance of geological mapping to determine the quantity and quality of coal reserves in the State. In addition, the KGS conducts research into coal geology, including the development of depositional models useful in assessing characteristics of coal based on geologic parameters and limited data. The KGS is an active and leading participant in the U.S. Geological Survey Coal Availability Cooperative Program in which reliable data on coal accessibility, minability, and recoverability are being developed. No other private or government entity is known to have the data and mapping capability required to estimate the quality of coal reserves for the state of Kentucky.

Thomas S. Keefe,

Director, Division "B" Office of Placement and Administration.

[FR Doc. 92-22376 Filed 9-15-92; 8:45 am]

BILLING CODE 6450-01-M

Chicago Field Office; Financial Assistance Award, Unsolicited Proposal; Melink Corp.

AGENCY: Department of Energy.

ACTION: Notice of intent to make an award based on an unsolicited application.

SUMMARY: The Department of Energy (DOE), Chicago Field Office, through the Chicago Support Office (CSO), announces, pursuant to the DOE Financial Assistance Rules 10 CFR 600.14(f), that DOE intends to award a grant to Melink Corporation for the purpose of developing a new and unique method for controlling exhaust fans in commercial kitchens.

SUPPLEMENTARY INFORMATION: The Department of Energy announces further that pursuant to 10 CFR 600.6(a)(2), this discretionary financial assistance award to Melink Corporation would be based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(ii). The patented technology uses temperature and smoke sensors to regulate the speed of the exhaust fan. The proposed project represents a unique idea that would be eligible for financial assistance under a recent, current, or planned solicitation.

(Award to Mr. Melink Corporation—continued)

The project period for the grant award is 18-months, expected to begin in September 1992. DOE plans to provide funding in the amount of $88,000.

FOR FURTHER INFORMATION CONTACT: Raymond J. Swiderski, U.S. Department of Energy, Chicago Support Office, 9800 South Cass Avenue, Building 201, Argonne, IL 60439.

Issued in Chicago, Illinois on August 31, 1992.

Johnnie D. Greenwood,

Director, Contracts Division.

[FR Doc. 92-22372 Filed 9-15-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Arms Control and Nonproliferation Technology Support; Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Switzerland concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/EU(SD)-77, for the transfer of 51 irradiated power reactor assemblies from Switzerland to the United Kingdom for reprocessing and storage. The assemblies contain 9,100 kilograms of uranium, enriched to 0.82 percent in the isotope uranium-235, and 80 kilograms of plutonium.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice and after fifteen days of continuous session of the Congress, beginning the day after the date on which the reports required by section 131(b)(1) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), are submitted to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate. The two time periods referred to above may run concurrently.

Issued in Washington, DC, on September 10, 1992.

Salvador N. Ceja,

Acting Director, Office of Nuclear Nonproliferation Policy.

[FR Doc. 92-22377 Filed 9-15-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 92-18-NG]

Northwest Pipeline Corp., Cascade Natural Gas Corp., Northwest Natural Gas Co., Washington Natural Gas Co., and the Washington Water Power Co.; Order Transferring Authority To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order transferring Northwest Pipeline Corporation's authorization to import natural gas from Canada granted by DOE/FE Opinion and Order No. 383 (1 FE § 70,301). The authorization was transferred to Cascade Natural Gas Company, Northwest Natural Gas Company, Washington Natural Gas Company, and the Washington Water Power Company.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 9, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-22375 Filed 9-15-92; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 92-112-NG]

Pepperell Power Associates Limited Partnership; Application for Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application filed by Pepperell Power Associates Limited Partnership (PPA) on August 24, 1992, to amend its application to import natural gas from Canada filed with the Economic Regulatory Administration (ERA) in ERA Docket No. 87-71-NG. In the amended application, PPA requests authorization to import up to 9,700 Mcf per day of natural gas from Canada for a period of ten years beginning November 1, 1992.

The revised gas supply arrangement in PPA's amended application is materially different from the filing which has been pending since December 14, 1987, in Docket No. 87-71-NG. Also, certain environmental implications relating to the import project have been superseded by intervening events. Therefore, DOE is closing the original docket and establishing a new proceeding under FE Docket No. 92-112-NG. In addition, the conditional import authorization issued to PPA on October 25, 1988, in DOE/ERA Opinion and Order No. 275 will be vacated because DOE's findings are based on the old information.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, October 16, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Peter Lagiovane, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6116.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: PPA is a Massachusetts limited partnership with its principal place of business in Syracuse, New York. Its general partners are HCE Pepperell, Inc. and KES Pepperell, Inc. The imported gas would be consumed in an existing 39-megawatt cogeneration powerplant owned and operated by PPA in Pepperell, Massachusetts. The powerplant is currently being fueled entirely by domestic natural gas supplies. The imported volumes would enter the United States at the interconnection of the pipeline systems of Tennessee Gas Pipeline Company (Tennessee) and TransCanada Pipelines Limited (TCPL) at the U.S.-Canada border near Niagara Falls, New York. Tennessee would transport the gas across New York and Massachusetts to an interconnection with Colonial Gas Pipeline Company (Colonial) in Berkshire County, Massachusetts. Colonial will then deliver the gas to the cogeneration plant. The proposed import would be accomplished using existing pipeline facilities and no new construction would take place. Electricity produced by the cogeneration plant is sold to Commonwealth Electric Company (Commonwealth) under the terms of a long-term power purchase agreement and steam is sold to Merrimac Paper Company, on whose land the cogeneration facility is located.

According to PPA, it is negotiating a gas purchase contract with Western Gas Marketing Limited (WGML) to import up to 9,700 Mcf of gas per day from Canada over a ten-year period. Pending conclusion of this long-term agreement, PPA and WGML have executed a letter agreement dated July 30, 1992, with respect to a five-term interim supply arrangement. The proposed "Interim Gas Sales Contract" would begin November 1, 1992, and continue through October 31, 1997, unless at an earlier date (1) the parties execute the new long-term contract; (2) PPA terminates the interim contract after the second contract year upon prior notice to WGML; or (3) PPA extends the contract for an additional five-year period.

The Interim Gas Sales Contract provides for firm deliveries of a maximum daily quantity (MDQ) of 9,700 Mcf and up to 3.5 Bcf per year, for the first two contract years and interruptible deliveries of the same amounts for the final three contract years. After the initial period, the contract stipulates that PPA may extend the term by five years under the same contractual provisions. The point of delivery for the natural gas sold by WGML to PPA would be the interconnection of the Tennessee and TCPL pipeline systems near Niagara Falls, New York.

The import price at Niagara Falls would be $1.70 (U.S.) per MMBtu for the first and second contract years. For gas imported each month of the remaining three years of the contract, the import price would be the sum of a commodity charge and a transportation charge. The commodity charge would be the simple average of: (a) The average Alberta spot price for such month published in "Canadian Natural Gas Focus"; (b) the average Alberta spot price for such month published in "Canadian Gas Price Reporter"; and (c) the average price for Alberta gas sold on a one year basis published in "Canadian Gas Price Reporter". The transportation charge is equal to the cost to transport the gas on TCPL from western Canada to Niagara Falls. There are no take-or-pay requirements or reservation charges in the contract.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the market served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In a long-term arrangement such as this, other matters that will be considered in making a public interest determination include need for the gas and security of the long-term supply. Parties, especially those that may oppose this application, should comment on the issues of competitiveness, need for the gas, and security of supply as they relate to requested import authority. PPA states that the import price under the Interim Sales Contract would be competitive with the price of other available fuel supplies, including domestic natural gas, and that the supply is secure. Parties opposing this arrangement bear the burden of overcoming these assertions.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notice of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notice of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of PPA's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on September 9, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-22374 Filed 9-15-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-66166; FRL-4163-6]

b-Napthyloxy Acetic Acid: Receipt of Request to Cancel; Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of request for voluntary cancellation; cancellation order.

SUMMARY: This notice, pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), announces EPA's receipt of a request from Security Products Company of Delaware, Inc. (Security) to cancel the registration of its product, No Seed-Blossom-Set, which contains the active ingredient (*b*-napthyloxy) acetic acid. EPA grants Security's request for voluntary cancellation effective September 16, 1992. Security may distribute and sell its existing stocks of No Seed-Blossom-Set through May 31, 1993. Retailers and distributors may sell and distribute, and all others may use, existing stocks of the product until supplies are exhausted. Any sale, distribution, or use of existing stocks of the canceled product must be in accordance with the product's existing approved labeling.

DATES: The cancellation shall become effective September 16, 1992.

FOR FURTHER INFORMATION CONTACT: Ruby Whiters, Special Review and Reregistration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (703) 308-8079.

SUPPLEMENTARY INFORMATION: This notice announces the receipt of a request for cancellation of (*b*-napthyloxy) acetic acid.

I. Request for Voluntary Cancellation

On July 2, 1992, EPA issued Notices of Intent to Suspend registration of pesticide product(s) containing (*b*-napthyloxy) acetic acid for failure to comply with the (*b*-napthyloxy) acetic acid phase 2 reregistration data requirements notice dated May 24, 1989, and phase 3 reregistration data requirements notice dated March 1990. These notices required each affected registrant to submit materials relating to the election of the options to address each of the data requirements. On May 23, 1990, Security as a (*b*-napthyloxy) acetic acid registrant committed to undertake required testing of its product No Seed-Blossom-Set. The May 1989 and March 1990 notices further required that data be submitted by certain deadlines. Security did not satisfy the data requirements by those deadlines. EPA therefore issued the Notices of Intent to Suspend.

On August 14, 1992, Security sent EPA a letter requesting that the registration of its product No Seed-Blossom-Set be voluntarily cancelled, and requesting that Security be permitted to continue to distribute and sell its existing stocks under conditions discussed in Unit II, below.

Under section 6(f)(1) of FIFRA, a registrant may request at any time that EPA cancel any of its pesticide registrations. EPA must publish in the **Federal Register** a notice of receipt of the request and allow public comment before granting the request unless either the registrant requests a waiver of the comment period or the Administrator determines that the continued use of the pesticide would pose an unreasonable adverse effect on the environment. By letter dated August 25, 1992, Security requested waiver of the public comment period. EPA hereby grants the request for voluntary cancellation of No Seed-Blossom-Set effective [insert date of publication in the **Federal Register**].

II. Existing Stocks Determination

In its letter of August 14, 1992, Security stated that it wished to continue to distribute and sell existing stocks of the product, consisting of approximately 4,055 cases of 12, 8-oz. bottles. The letter further stated that the active ingredient contained in each bottle of the product is by weight 0.0042 percent, and therefore, the total amount of active ingredient contained in the existing inventory of the product is approximately 16.4 oz. The letter explained that the product is used primarily by home gardeners to individually treat blossoms on tomato plants, and Security's selling season is concentrated in the first quarter of each year. Security therefore estimated based on a pattern of sales that disposition of existing stocks could be completed by May 1993.

For purposes of this Order, existing stocks are defined as those stocks of a previously-existing (*b*-napthyloxy) acetic acid product which were in the United States and were packaged, labeled, and released for shipment prior to August 14, 1992.

EPA grants Security's request to distribute and sell its existing stocks of No Seed-Blossom-Set through May 31, 1993. Retailers and distributors may sell and distribute, and all others may use the product, until supplies are exhausted. Any sale, distribution, or use of existing stocks of canceled product must be in accordance with the product's existing approved labeling.

III. Cancellation Order

EPA hereby grants Security's August 14, 1992, request that the registration of its product No Seed-Blossom-Set, which contains the active ingredient (*b*-Napthyloxy) acetic acid, be voluntarily cancelled. This Cancellation Order shall become effective on September 16, 1992.

Accordingly, as of September 16, 1992, no person may distribute or sell No Seed-Blossom-Set for use as a pesticide, except existing stocks of the product as permitted in the Existing Stocks provision of this Order. Any distribution, sale or use of existing stocks of the product that is not consistent with the terms of the Existing Stocks Provision of this Order will be considered a violation of FIFRA section 12(a)(2)(K) and, if distribution or sale, section 12(a)(1)(A).

Dated: September 3, 1992.

Daniel M. Barolo,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 92-22113 Filed 9-15-92; 8:45 am]

BILLING CODE 6560-50-F

[OPP-240100; FRL-4082-9]

State Registrations of Pesticides; Special Local Needs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received notices of registration of pesticides to meet special local needs under section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, from 31 States. A registration issued under this section of FIFRA shall not be effective for more than 90 days if the Administrator disapproves the registration or finds it to be invalid within that period. If the Administrator disapproves a registration or finds it to be invalid after 90 days, a notice giving that information will be published in the **Federal Register**. This document also contains notice of three disapproved State registrations from two States.

DATES: The last entry for each item is the date the State registration of that product became effective.

FOR FURTHER INFORMATION CONTACT: Edith Minor, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW. Washington, DC 20460. Office location and telephone number: Rm. 718, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5978.

SUPPLEMENTARY INFORMATION: This notice only lists the section 24(c) applications submitted to the Agency. The Agency has 90 days to approve or disapprove each application listed in this notice. Applications that are not approved are returned to the appropriate State for action. Most of the registrations listed below were received by the EPA in May through June of 1992. Receipts-of-State registrations will be published periodically. Of the following registrations, nine involve a changed-use pattern (CUP). The term "changed use pattern" is defined in 40 CFR 162.3(k) as a significant change from a use pattern approved in connection with the registration of a pesticide product. Examples of significant changes include, but are not limited to, changes from a nonfood to food use, outdoor to indoor use, ground to aerial application, terrestrial to aquatic use, and nondomestic to domestic use.

Alabama

EPA SLN No. AL 92 0005. Hub States Corp. Registration is for Esfenvalerate to be used on stored peanuts to control moths and beetles. June 3, 1992.

Arizona

EPA SLN No. AZ 92 0003. DowElanco. Registration is for Trifluralin to be used on chili peppers to control weeds. June 8, 1992.

Arkansas

EPA SLN No. AR 92 0006. E. I. Du Pont de Nemours and Co., Inc. Registration is for Nicosulfuron to be used on field and popcorn to control weeds. May 26, 1992.

California

EPA SLN No. CA 92 0009. J. G. Boswell Co. Registration is for EPTC to be used on safflower to control weeds. June 24, 1992.

Florida

EPA SLN No. FL 92 0003. Sandoz Crop Protection Corp. Registration is for Prodiamine to be used on leatherleaf fern to control weeds. May 7, 1992.

EPA SLN No. FL 92 0004. Valent U.S.A. Corp. Registration is for Methamidophos to be used on tomatoes (fresh only) to control thrips. May 6, 1992.

EPA SLN No. FL 92 0005. Ciba-Geigy Corp. Registration is for Methidathion to be used on carambola and longan to control mealy bug and scale insects. May 6, 1992.

EPA SLN No. FL 92 0006. Ciba-Geigy Corp. Registration is for Cyromazine to be used on chrysanthemums to control leafminer. June 25, 1992.

Georgia

EPA SLN No. GA 92 0002. Hub States Corp. Registration is for A-70 to be used on stored peanuts to control stored grain pests. May 11, 1992.

Hawaii

EPA SLN No. HI 92 0006. Platte Chemical Co. Registration is for Diazinon to be used on bananas to control greenhouse thrips. June 23, 1992.

Idaho

EPA SLN No. ID 92 0008. Gowan Co. Registration is for Dimethoate to be used on cherries to control cherry fruit fly. May 6, 1992.

EPA SLN No. ID 92 0013. Uniroyal Chemical Co., Inc. Registration is for Propargite to be used on hops to control spider mites. June 18, 1992.

Illinois

EPA SLN No. IL 92 0004. FMC Corp. Registration is for Endosulfan to be used on succulent peas to control ground beetles, cutworms, and stink bugs. June 10, 1992.

Kansas

EPA SLN No. KS 92 0001. E. I. Du Pont de Nemours & Co., Inc. Registration is for Nicosulfuron to be used on field and popcorn grown for seed to control grasses and broadleaves. May 13, 1992.

EPA SLN No. KS 92 0002. Ciba-Geigy Corp. Registration is for Primisulfuron-methyl to be used on field corn to control weeds. May 14, 1992.

EPA SLN No. KS 92 0003. Miles, Inc. Registration is for Metribuzin to be used on field corn to control weeds. May 27, 1992.

Louisiana

EPA SLN No. LA 92 0007. E. I. Du Pont de Nemours & Co., Inc. Registration is for Nicosulfuron to be used on field corn grown for seed to control annual grasses. May 29, 1992.

EPA SLN No. LA 92 0009. ICI Americas, Inc. Registration is for Paraquat Dichloride to be used on hot peppers to control perennial weeds. May 29, 1992

Maine

EPA SLN No. ME 92 0001. Valent U.S.A. Corp. Registration is for Diquat Dibromide to be used on potatoes to control weeds. May 8, 1992.

EPA SLN No. ME 92 0002. Ciba-Geigy Corp. Registration is for Metalaxyl and Mancozeb to be used on potatoes to control late blight, tuber and pink rot. June 19, 1992.

EPA SLN No. ME 92 0003. USDA/APHIS Science Technology. Registration is for Compound DRC-1339 to be used on structural roosting sites to control starlings, cowbirds, and common crows. June 16, 1992.

Minnesota

EPA SLN No. MN 92 0001. Platte Chemical Co. Registration is for Malathion to be used on wild rice to control wild rice worms and midge. May 12, 1992.

Mississippi

EPA SLN No. MS 92 0008. ICI Americas, Inc. Registration is for Fluazifop-p-butyl to be used on kenaf to control grass and weeds. June 25, 1992.

Missouri

EPA SLN No. MO 92 0002. E. I. Du Pont de Nemours & Co., Inc. Registration is for Nicosulfuron to be used on field and popcorn grown for seeds to control annual weeds. May 18, 1992.

EPA SLN No. MO 92 0003. E. I. Du Pont de Nemours & Co., Inc. Registration is for Metsulfuron-methyl to be used in pastures and on rangeland to control weeds. May 18, 1992.

EPA SLN No. MO 92 0004. E. I. Du Pont de Nemours & Co., Inc. Registration is for Bensulfuron-methyl to be used on rice to control yellow nutsedge and rice flatsedge. May 29, 1992.

Montana

EPA SLN No. MT 92 0001. Gowan Co. Registration is for Dimethoate to be used on cherries to control cherry fruit fly. May 6, 1992.

EPA SLN No. MT 92 0002. Gowan Co. Registration is for Methyl Parathion to be used on canola and rapeseed to control insects. May 11, 1992.

EPA SLN No. MT 92 0003. Platte Chemical Co. Registration is for Methyl Parathion to be used on rapeseed and canola to control insects. May 11, 1992.

EPA SLN No. MT 92 0004. Wilbur Ellis Co. Registration is for Methyl Parathion to be used on rapeseed and canola to control insects. May 11, 1992.

EPA SLN No. MT 92 0005. ICI Americas, Inc. Registration is for Fluazifop-p-butyl to be used on alfalfa to control quackgrass. May 15, 1992.

Nebraska

EPA SLN No. NE 92 0004. Miles, Inc. Registration is for Metribuzin to be used on field corn to control weeds. May 20, 1992

EPA SLN No. NE 92 0005. Miles, Inc. Registration is for Metribuzin to be used on field corn to control weeds. May 20, 1992

EPA SLN No. NE 92 0006. FMC Corp. Registration is for Carbofuran to be used on wheat, barley, and oats to control grasshoppers. May 20, 1992.

Nevada

EPA SLN No. NV 92 0005. Nevada State Dept. of Agriculture. Registration is for Strychnine to be used in gopher burrows to control pocket gophers. May 14, 1992.

EPA SLN No. NV 92 0006. ICI Americas, Inc. Registration is for Lamda-cyhalothrin to be used on alfalfa grown for seed to control lygus bugs and pea aphids. June 26, 1992.

EPA SLN No. NV 92 0007. FMC Corp. Registration is for Bifenthrin to be used on carrots grown for seeds to control lygus bugs, aphids, and spider mites. June 25, 1992.

New Hampshire

EPA SLN No. NH 92 0002. Rhone-Poulenc AG Co. Registration is for Thiodicarb to be used on sweet corn to control European corn borers, corn earworms, and armyworms. June 25, 1992.

New Mexico

EPA SLN No. NM 92 0001. E. I. Du Pont de Nemours & Co., Inc. Registration is for Nicosulfuron to be used on popcorn and field corn grown for seed to control weeds. June 11, 1992.

New York

EPA SLN No. NY 92 0001. Valent U.S.A. Corp. Registration is for Diquat Dibromide to be used in ponds, lakes, and ditches to control weeds. May 26, 1992.

EPA SLN No. NY 92 0002. Valent U.S.A. Corp. Registration is for Naled to

be used over wetlands to control mosquitos. June 30, 1992.

Oklahoma

EPA SLN No. OK 92 0010. E. I. Du Pont de Nemours & Co., Inc. Registration is for Metsulfuron-methyl to be used on rangelands and pastures to control weeds. June 11, 1992.

Pennsylvania

EPA SLN No. PA 92 0002. FMC Corp. Registration is for Endosulfan to be used on rapeseed to control insects. May 20, 1992.

South Carolina

EPA SLN No. SC 92 0004. Gowan Co. Registration is for Phosmet to be used on blueberries to control cranberry fruitworms and blueberry maggots. May 2, 1992.

South Dakota

EPA SLN No. SD 92 0003. Miles, Inc. Registration is for Metribuzin to be used on field corn to control weeds. May 7, 1992.

EPA SLN No. SD 92 0004. Sandos Crop Protection Corp. Registration is for Dicamba to be used on wheat to control annual weeds. May 26, 1992.

EPA SLN No. SD 92 0005. American Cyanamid Co. Registration is for Imazethapyr to be used on legume vegetables to control weeds. June 6, 1992.

EPA SLN No. SD 92 0006. E. I. Du Pont de Nemours & Co., Inc. Registration is for Nicosulfuron to be used on pop and field corn grown for seed to control grasses. June 22, 1992.

EPA SLN No. SD 92 0007. FMC Corp. Registration is for Bifenthrin to be used on seed crown vetch to control lygus bugs, aphids, weevils, and spider mites. June 30, 1992.

Texas

EPA SLN No. TX 92 0010. E. I. Du Pont de Nemours & Co., Inc. Registration is for Methomyl to be used on cotton to control cotton aphid. May 5, 1992.

EPA SLN No. TX 92 0011. E. I. Du Pont de Nemours & Co., Inc. Registration is for Methomyl to be used on cotton to control cotton aphid. May 5, 1992.

EPA SLN No. TX 92 0012. Ameron Protective Coastings Division. Registration is for Amercoat 698HS to be used on oceanographic instruments to control aquatic organisms. May 5, 1992.

EPA SLN No. TX 92 0013. Ameron Protective Coastings Division. Registration is for Amercoat 635 to be used on oceanographic instruments to control aquatic organisms. May 5, 1992.

EPA SLN No. TX 92 0014. Morgan International Products, Inc. Registration is for Permacide to be used on beef cattle and calves to control horn flies and insects. May 5, 1992.

EPA SLN No. TX 92 0015. Ciba-Geigy Corp. Registration is for Metalaxyl and Mancozeb to be used on roses to control downy mildew. May 15, 1992.

EPA SLN No. TX 92 0016. E. I. Du Pont de Nemours & Co., Inc. Registration is for Metsulfuron to be used in pastures and rangeland to control weeds. May 21, 1992.

EPA SLN No. TX 92 0017. E. I. Du Pont de Nemours & Co., Inc. Registration is for Oxamyl to be used on non-bell peppers to control insects. May 21, 1992.

EPA SLN No. TX 92 0018. Sandoz Crop Protection Corp. Registration is for Dicamba to be used on wheat to control broadleaf weeds. May 28, 1992.

EPA SLN No. TX 92 0019. Nor-Am Chemical Co. Registration is for Formetanate Hydrochloride to be used on greenhouse-grown ornamental plants to control western flower thrips. June 11, 1992.

EPA SLN No. TX 92 0020. Valent U.S.A. Corp. Registration is for Thiobencarb to be used on rice to control annual weeds, aquatic weeds, goose weeds, and crabgrass. June 25, 1992.

Utah

EPA SLN No. UT 92 0003. Gowan Co. Registration is for Methyl Parathion to be used on canola and rapeseed to control cabbage aphid and fleabeetles. May 5, 1992.

EPA SLN No. UT 92 0004. American Cyanamid Co. Registration is for Pendimethalin to be used on alfalfa grown for seed to control grasses and broadleaf weeds. May 5, 1992.

EPA SLN No. UT 92 0005. E. I. Du Pont de Nemours & Co., Inc. Registration is for Metsulfuron-methyl to be used on pastures and rangelands to control weeds. May 20, 1992.

Virginia

EPA SLN No. VA 92 0006. Miles, Inc. Registration is for Disulfoton granular to be used on peanuts to control insects. May 11, 1992.

EPA SLN No. VA 92 0007. FMC Corp. Registration is for Endosulfan to be used on rapeseed to control insects. May 20, 1992.

Washington

EPA SLN No. WA 92 0011. ICI Americas, Inc. Registration is for Captan to be used on raspberries and blackberries to control spur blight and botrytis. May 8, 1992.

EPA SLN No. WA 92 0012. ICI Americas, Inc. Registration is for Captan to be used raspberries and blackberries to control spur blight and botrytis. May 8, 1992.

EPA SLN No. WA 92 0013. Gowan Co. Registration is for Methyl Parathion to be used on canola and rapeseed to control insects. May 6, 1992.

EPA SLN No. WA 92 0014. Helena Chemical Co. Registration is for Methyl Parathion to be used on rapeseed and canola to control flea beetles and aphids. May 6, 1992.

EPA SLN No. WA 92 0015. American Cyanamid Co. Registration is for Pendimethalin to be used on carrots to control grasses and broadleaf weeds. May 5, 1992.

EPA SLN No. WA 92 0016. Wilbur Ellis Co. Registration is for Methyl Parathion to be used on rapeseed and canola to control insects. May 6, 1992.

EPA SLN No. WA 92 0017. Platte Chemical Co. Registration is for Methyl Parathion to be used on canola and rapeseed to control insects. May 5, 1992.

EPA SLN No. WA 92 0018. All-Pure Chemical Co. Registration is for Sodium Hypochlorite 12.5 to be used on tomato, pepper seed, and carrots to control bacterial blight. May 13, 1992.

EPA SLN No. WA 92 0019. Uniroyal Chemical Co., Inc. Registration is for Propargite to be used on apples to control mites. May 28, 1992.

EPA SLN No. WA 92 0020. Uniroyal Chemical Co., Inc. Registration is for Propargite to be used on apples to control mites. May 28, 1992.

EPA SLN No. WA 92 0021. Miles, Inc. Registration is for Cyfluthrin to be used on ornamentals to control black vine weevil. May 28, 1992.

EPA SLN No. WA 92 0022. Orco, Inc. Registration is for Chlorophacinone to be used on orchards and pastures to control ground squirrels. June 16, 1992.

EPA SLN No. WA 92 0023. E. I. Du Pont de Nemours & Co., Inc. Registration is for Diuron to be used on hybrid poplar plantings to control weeds. June 2, 1992.

EPA SLN No. WA 92 0024. E. I. Du Pont de Nemours & Co., Inc. Registration is for Terbacil to be used on hybrid poplar plantings to control weeds. June 2, 1992.

EPA SLN No. WA 92 0025. ICI Americas, Inc. Registration is for Cyhalothrin to be used on alfalfa grown for seeds to control insects. May 22, 1992.

EPA SLN No. WA 92 0026. Columbia Basin Vegetable Seed Association. Registration is for Disulfoton to be used on radishes grown for seed to control aphids. June 3, 1992.

EPA SLN No. WA 92 0027. Miles, Inc. Registration is for Disulfoton to be used on seed radishes to control aphids. June 3, 1992.

EPA SLN No. WA 92 0028. Miles, Inc. Registration is for Carbofuran to be used on potatoes to control insects. June 16, 1992.

EPA SLN No. WA 92 0029. Gowan Co. Registration is for Phosmet to be used on blueberries to control blueberry maggots. June 11, 1992.

EPA SLN No. WA 92 0030. Roussel Uclaf. Registration is for Tralomethrin to be used on alfalfa grown for seed to control pea aphids. June 12, 1992.

EPA SLN No. WA 92 0031. Haco, Inc. Registration is for Diphacinone to be used on ditch banks and orchards to control ground squirrels. June 30, 1992.

Wisconsin

EPA SLN No. WI 92 0006. FMC Corp. Registration is for Clomazone to be used on tobacco to control grasses and broadleaves. May 6, 1992.

EPA SLN No. WI 92 0007. FMC Corp. Registration is for Endosulfan to be used on succulent peas to control insects. May 1, 1992.

EPA SLN No. WI 92 0008. Rhone-Poulenc AG Co. Registration is for Bromoxynil to be used on spray millet to control broadleaf weeds. June 25, 1992.

Wyoming

EPA SLN No. WY 92 0004. DowElanco. Registration is for Ethalfluralin to be used on alfalfa to control nightshade. May 20, 1992.

DISAPPROVALS

The following State registrations of pesticides under section 24(c) of FIFRA were disapproved by the Administrator:

Hawaii

EPA SLN No. HI 92 0004. E. I. Du Pont DeNemours, Inc. Registration is for Benomyl in ginger root as seed piece treatment to control fusarium yellow disease. Disapproved June 30, 1992.

Louisiana

EPA SLN No. LA 92 0004. Ciba-Geigy Corp. Registration is for Metalaxyl on water-seeded rice to control feeder root necrosis. Disapproved June 30, 1992.

EPA SLN No. LA 92 0006. Griffin Corp. Registration is for Mancozeb on cotton to control damping off and seedling blight. Disapproved June 23, 1992.

Authority: Sec. 24, as amended, 92 Stat. 835 (7 U.S.C. 136).

Dated: August 12, 1992.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 92-22257 Filed 9-15-92; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1907]

Petitions for Reconsideration or Clarification of Actions in Rule Making Proceedings

September 8, 1992.

Petitions for reconsideration or clarification have been filed in the Commission rule making proceedings listed in this Public Notice and published pursuant to 47 CFR § 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor Downtown Copy Center (202) 452-1422. Opposition to these petitions must be filed October 1, 1992. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

SUBJECT: Codification of the Commission's Political Programming Policies
(MM Docket No. 91-168)
Number of Petitions Filed: 1

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 92-22385 Filed 9-15-92; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Tampa Port Authority et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.6 and/or 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224-002810-009.

Title: Tampa Port Authority/Harborside Refrigerated Services Terminal Agreement.

Parties: Tampa Port Authority ("Authority"), Harborside Refrigerated Services, Inc. ("Harborside").

Filing Party: H. E. Welch, Traffic Manager, Tampa Port Authority, Post Office Box 2192, 811 Wynkoop Road, Tampa, Florida 33601.

Synopsis: This modification of the lease between the parties establishes a payment schedule wherein Harborside will reimburse the Authority for monies due under provisions of the Agreement.

Agreement No.: 224-003079-014.

Title: Tampa Port Authority/Eller & Company Terminal Agreement.

Parties: Tampa Port Authority ("Authority"), Eller & Company, Inc. ("Eller").

Filing Party: H. E. Welch, Traffic Manager, Tampa Port Authority, Post Office Box 2192, 811 Wynkoop Road, Tampa, Florida 33601.

Synopsis: This modification of the lease between the parties establishes a payment schedule wherein Eller will reimburse the Authority for monies due under provisions of the Agreement.

By Order of the Federal Maritime Commission.

Dated: September 10, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 92-22296 Filed 9-15-92; 8:45 am]

BILLING CODE 6730-01-M

Thompson Shipping Co.; Agreement Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations.

Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–011385.
Title: Cayman Islands Agreement.
Parties: Thompson Shipping Co., Ltd., Kirk Freight Line Ltd.
Synopsis: The proposed Agreement will permit the parties to discuss, exchange information, and agree on rates, rules and conditions of service in the trade between ports in Florida and the Cayman Islands, British West Indies. Adherence to any agreement reached by the parties is strictly voluntary.

By Order of the Federal Maritime Commission.

Dated: September 10, 1992.

Joseph C. Polking,
Secretary.

[FR Doc. 92–22295 Filed 9–15–92; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Equivalent Examinations for Alien Physicians Seeking Temporary Nonimmigrant H–1B Visa Status

The Miscellaneous and Technical Immigration and Naturalization Amendments (MTINA) of 1991 (Pub. L. 102–232) amended section 101 of the Immigration and Nationality Act, as amended by the Immigration Act (IMMACT) of 1990 (8 U.S.C. 1101) to, among other things, establish requirements for certain aliens who are graduates of medical schools seeking temporary admittance to the United States principally to perform services as members of the medical profession. Public Law 102–232 provides that these aliens could obtain H–1B classification in either of two ways.

First (mirroring the pre-IMMACT statutory language), an alien may be accorded H–1B classification if the alien is coming to the United States pursuant to an invitation from a public or nonprofit private educational or research institution or agency to teach or conduct research.

Second, an alien may be accorded H–1B classification if he or she, in addition to meeting other requirements, has passed the Federation Licensing Examination (FLEX), or an equivalent examination as determined by the Secretary of Health and Human Services.

Notice is hereby given that the Parts I, II and III National Board of Medical Examiners (NBME) certifying examinations, and the Steps 1, 2, and 3 examinations of the new United States Medical Licensing Examinations (USMLE) program, have been recognized by the Secretary of Health and Human Services to be equivalent to the FLEX for purposes of section 101 of the Immigration and Nationality Act (8 U.S.C. 1101), as amended by the MTINA of 1991.

First and foremost, any examination(s) determined equivalent to the FLEX and for use for the H–1B visa, must have like power to assess possession of the expertise requisite to practice quality medicine anywhere in the United States.

Currently, most physicians are licensed to practice in the United States on the basis of passing the FLEX or endorsement of the NBME Certificate which requires passage of all three NBME examinations.

The Federation of State Medical Boards (FSMB) and the NBME have announced that over the next several years all current licensure programs will be replaced by a single examination program. The new examination program will be called the United States Medical Licensing Examination (USMLE) and will replace the FSMB's FLEX and certification by the NBME.

Step 1 of the USMLE was administered for the first time in June 1992, and the USMLE Step 2 examination will be administered initially on September 24–25, 1992. Step 3 of the USMLE will be administered for the first time in June 1994.

The NBME, the USMLE, and the FLEX examinations have been determined to be equivalent for alien physicians seeking temporary nonimmigrant H–1B visa status because these tests have like power to assess possession of the expertise required to practice medicine.

Obtaining H–1B visa status in and of itself does not qualify a person to practice medicine in a State. H–1B visa holders must meet all relevant licensing and other requirements for clinical practice in the State or jurisdiction where the petitioning employer is located.

Persons interested in obtaining additional information concerning the USMLE examinations should contact USMLE Secretariat, 3930 Chestnut Street, Philadelphia, PA 19104. Telephone: (215) 590–9600.

Persons interested in obtaining additional information concerning the FLEX examinations may contact the Federation of State Medical Boards, 6000 Western Place, Suite 707, Fort Worth, Texas 76107. Telephone: (817) 735–8445.

Persons interested in obtaining information concerning the NBME examinations may contact NBME, Department of Testing Services, 3930 Chestnut Street, Philadelphia, PA 19104. Telephone: (215) 590–9700.

Persons interested in obtaining information concerning this Notice should contact Marc L. Rivo, M.D., M.P.H., Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 4C–25, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone: (301) 443–6190.

Dated: August 24, 1992.

Louis W. Sullivan,
Secretary.

[FR Doc. 92–22314 Filed 9–15–92; 8:45 am]

BILLING CODE 4160–15–M

Agency for Toxic Substances and Disease Registry

[Program Announcement Number 280]

Development of a Medical School Curriculum for Environmental Health

Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 1992 funds for a cooperative agreement with the National Academy of Sciences (NAS). The proposed program is for the development of a medical school curriculum for environmental health, to include materials on environmental lead exposure.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (For ordering a copy of Healthy People 2000, see the section **WHERE TO OBTAIN ADDITIONAL INFORMATION**).

Authority: This program is authorized under section 104(i)(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) [42 U.S.C. 9604(i)(14)].

Eligible Applicant

Assistance will be provided only to NAS. No other applications will be solicited. As described below, NAS by virtue of its previous work is uniquely suited to develop a medical curriculum for environmental health.

In its report, Role of the Primary Care Physician in Occupational and Environmental Medicine, NAS defines "environmental medicine" to include the caring for individuals exposed to toxic substances in their homes and neighborhoods through such media as contaminated soil, water, and air. The report states that physicians are inadequately trained in environmental medicine. This is due, in part, to the lack of clinical role models, a limited research presence, few published articles in the general medical literature, little information in standard medical textbooks, and overcrowded curriculum. The report recommends that environmental medicine should be better represented in the medical school curriculum, be a vital part of the traditional student clinical assignments, and be included as part of third- and fourth-year teaching programs.

Because of NAS's unique position in assisting Federal Government agencies with important issues and problems that relate to health and medicine, and because of NAS's previous work directly related to the proposed cooperative agreement, the Academy has an unparalleled capacity to carry out the purpose of this cooperative agreement in an appropriate, timely, and efficient manner.

NAS has demonstrated the ability to: (1) Identify, for study and analysis, important issues and problems that relate to health and medicine; (2) initiate and conduct studies on national policy and planning for health care and health-related education and research; (3) respond to requests from the Federal government and other agencies for studies and advice on matters relating to health and medicine; (4) establish liaisons with the major scientific and professional societies in the field; and (5) disseminate information to the public and relevant professions.

Availability of Funds

Approximately $250,000 is available in FY 1992 to fund this award. It is expected that the award will begin on or about September 30, 1992, for a 12-month budget period, with a 12-month project period. The funding estimate may vary and is subject to change.

Purpose

The purpose of this cooperative agreement is to assist NAS in investigating and recommending how to develop, implement, and finance curricula activities in environmental medicine, including materials on environmental lead exposure. This work will help primary care physicians to identify possible occupationally or environmentally induced conditions and to make the appropriate referrals for follow-up.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A., below and ATSDR shall be responsible for conducting activities under B., below.

A. NAS-Based Activities

1. Define the discipline of environmental medicine.
2. Identify essential competencies in environmental medicine.
3. Develop learning objectives for medical students.
4. Recommend methods for faculty development in environmental medicine.
5. Identify resources for faculty training and development.
6. Recommend strategies for implementing environmental medicine into a curriculum.
7. Develop a method to evaluate the effectiveness of an environmental medicine curriculum.

B. ATSDR-Based Activities

1. Collaborate with NAS in the design, implementation, and evaluation of an environmental medicine curriculum.
2. Provide NAS with required information and instructional resources on environmental medicine for curriculum development.
3. Collaborate with NAS on identifying essential competencies in environmental medicine.
4. Assist NAS in the identification of resources for faculty training and development.
5. Participate with NAS in workshops, conferences, and meetings to exchange current information, opinions, and findings concerning environmental medicine.
6. Collaborate with NAS in the evaluation plan to determine the effectiveness of an environmental medicine curriculum.

Evaluation Criteria

The application will be reviewed and evaluated based on the following criteria:

1. Proposed Project and Appropriateness of Project Design—60%

a. Applicant's understanding of the project's purpose.

b. Applicant's understanding of the need or problem to be addressed.

c. Quality of project objectives in terms of specificity, measurability, and feasibility.

d. Appropriateness and thoroughness of the methods used to evaluate the project.

2. Proposed Project Management—40%

a. Ability of the applicant to provide appropriate program staff and support staff to the project.

b. Ability of the applicant to provide staff time, facilities, space, equipment, financial, and other resources required to perform the applicant's responsibilities in the project.

c. Extent to which the applicant has provided an administrative plan, outlined strategic and operational plans for the 1-year project period, and designated a qualified administrator to manage the project.

3. Proposed Budget—Not Scored

Appropriateness of the estimated cost of project. The proposed budget is clearly justified and consistent with intended use of funds. A budget narrative is included.

Executive Order 12372 Review

The application to be submitted under this announcement is not subject to the Intergovernmental Review of Federal Programs as governed by Executive Order 12372.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.161

Application Submission Deadline

The NAS must submit an original and two copies of application PHS Form 5161–1 to Henry S. Cassell, III, Grant Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E–14, Atlanta, Georgia 30305. (By formal agreement, the CDC Procurement and Grants Office will act on behalf of and for ATSDR on this matter.)

Where To Obtain Additional Information

If you are interested in obtaining additional information regarding this program, please refer to Announcement 280 and contact Van Malone, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300 Mailstop E–14, Atlanta, Georgia 30305, Telephone (404) 842–6630, for business management technical assistance. Programmatic technical assistance may be obtained from Donna Orti, M.S., Chief, Health Professions

Education Unit, Division of Health Education, ATSDR, 1600 Clifton Road, NE., Mailstop E-33 Atlanta, Georgia 30333, Telephone (404) 639-6205.

A copy of Healthy People 2000 (Full Report, Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report, Stock No. 017-001-00473-1) referenced in the Introduction may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325, telephone (202) 783-3238.

Dated: September 8, 1992.

William L. Roper,

Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 92-22369 Filed 9-15-92; 8:45 am]

BILLING CODE 4160-70-M

[ATSDR-56]

Quarterly Public Health Assessments Completed and Public Health Assessments To Be Conducted in Response to Requests From the Public

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice contains the following:

1. A lost of sites for which ATSDR has completed a public health assessment, or issued an addendum to a previously completed public health assessment, during the period April-June 1992. This list includes sites that are on, or proposed for inclusion on, the National Priorities List (NPL) and a non-NPL site for which ATSDR has prepared a public health assessment in response to a request from the public (petitioned site).

2. A list of sites for which ATSDR, during the same period, has accepted a request from the public to conduct a public health assessment (petitioned public health assessment). Acceptance for a request for the conduct of a public health assessment is based on a determination by the Agency that there is a reasonable basis for conducting a public health assessment is based on a determination by the Agency that there is a reasonable basis for conducting a public health assessment at the site.

FOR FURTHER INFORMATION CONTACT: Robert C. Williams, P.E., Director, Division of Health Assessments and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E-32, Atlanta, Georgia 30333, telephone (404) 639-0610.

SUPPLEMENTARY INFORMATION: The most recent list of completed public health assessments, public health assessments with addenda, and petitioned public health assessments which were accepted by ATSDR during January-March 1992, was published in the **Federal Register** on June 30, 1992, (57 FR 29092). The quarterly announcement is the responsibility of ATSDR under the regulation, Public Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities (42 CFR part 90). This rule sets forth ATSDR's procedures for the conduct of public health assessments under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA) (42 U.S.C. 9604(i), and appeared in the **Federal Register** on February 13, 1990, (55 FR 5136).

Availability

The completed public health assessments are available for public inspection at the Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, Building 33, Executive Park Drive, Atlanta, Georgia (not a mailing address), between 8 a.m. and 4:30 p.m., Monday through Friday except legal holidays. The completed public health assessments are also available by mail through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, or by telephone at (703) 487-4650. There is a charge determined by NTIS for these public health assessments. The NTIC order numbers are listed in parentheses after the site name.

1. Public Health Assessments or Addenda Completed or Issued

Between April 1, 1992 and June 30, 1992, public health assessments or addenda to public health assessments were issued for the sites listed below:

NPL Sites

Alaska: Arctic Surplus—Fairbanks—(PB92-201078).

Arkansas: Magnolia City Landfill—Magnolia—(PB92-178037). Monroe Auto Equipment Company (Paragould Pit)—Paragould—(PB92-201052).

California: CTS Printex—Mountain View—(PB92-185909). Industrial Waste Processing—Pinedale—(PB92-179522). Synertek (Building #1)—Santa Clara—(PB92-184209). United Heckathorn—Richmond—(PB92-178136).

Delaware: Sussex County Landfill #5—Laurel—(PB92-178185).

Minnesota: Dakhue Sanitary Landfill—Hampton—(PB92-178029). East Bethel Demolition Landfill—Cedar—(PB92-177823). Oak Grove Township Sanitary Landfill—Oak Grove Township—(PB92-178102). Pine Bend Sanitary Landfill—Inver Grove Heights—(PB92-178011).

Nebraska: Lindsay Manufacturing Company—Lindsay—(PB92-177807). Nebraska Army Ordnance Plant (Former)—Mead—(PB92-177815).

New Jersey: Chemical Insecticide Corporation—Edison Township—(PB92-193382).

New York: Sealand Restoration—Lisbon—(PB92-185628). Warwick Landfill—Warwick—(PB92-204106).

Pennsylvania: Old City of York Landfill—Seven Valleys—(PB92-197185). Osborne Landfill—Grove City—(PB92-196120).

Texas: Crystal Chemical Company—Houston—(PB92-179548). Motco Incorporated—Texas City—(PB92-186014). Texarkana Wood Preserving Company—Texarkana—(PB92-185990).

Wisconsin: Sauk County Landfill—Excelsior—(PB92-197177).

Petitioned Site: (Non-NPL Site).

Kentucky: Calvert City Industrial Complex—Calvert City—(PB92-191477).

2. Petition for Public Health Assessment Accepted

Between April 1, 1992, and June 30, 1992, ATSDR determined that there was a reasonable basis to conduct a public health assessment for the site listed below in response to requests from the public. As of June 30, 1992 ATSDR initiated a public health assessment at this site.

Pennsylvania: C and D Recycling—Foster Township.

Dated: September 8, 1992.

William L. Roper,

Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 92-22370 Filed 9-15-92; 8:45 am]

BILLING CODE 4160-70-M

Food and Drug Administration

[Docket No. 87D-0356]

Compressed Medical Gases—Warning Letters for Specific Violations Covering Liquid and Gaseous Oxygen; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of revised Compliance

Policy Guide (CPG) 7132a.16 entitled "Compressed Medical Gases—Warning Letters for Specific Violations Covering Liquid and Gaseous Oxygen." The CPG provides guidance to FDA district offices for issuing warning letters to firms that are engaged in filling cylinders with gas(es) for medical use that are not operating in conformance with the adulteration, misbranding, and/or new drug provisions of the Federal Food, Drug, and Cosmetic Act (the act).

ADDRESSES: A copy of revised CPG 7132a.16 entitled "Compressed Medical Gases—Warning Letters for Specific Violations Covering Liquid and Gaseous Oxygen" may be ordered from National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161. Orders must reference NTIS order number PB92-221845 and include payment of $12.50 for each copy of the document. Payment may be made by check, money order, charge card (American Express, VISA, or MasterCard), or billing arrangements made with NTIS. Charge card orders must include the charge card account number and expiration date. For telephone orders or further information on placing an order, call NTIS at 703-487-4650. CPG 7132a.16 is available for public examination in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Duane S. Sylvia, Center for Drug Evaluation and Research (HFD-322), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8095.

SUPPLEMENTARY INFORMATION: FDA revised the CPG to update guidance to district offices for issuing warning letters to firms that are engaged in filling cylinders with gas(es) for medical use that are not operating in conformance with the adulteration, misbranding, and/or new drug provisions of the act.

The statements made herein are not intended to create or confer any rights, privileges, or benefits on or for any private person, but are intended merely for internal guidance.

Dated: September 9, 1992.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 92-22339 Filed 9-15-92; 8:45 a.m.]

BILLING CODE 4160-01F

Health Care Financing Administration; Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services, Health Care Financing Administration (HCFA) (49 FR 35247, dated September 6, 1984) is amended to include the Secretary's delegation of authority to the Administrator, HCFA, under section 2326(a) of the Deficit Reduction Act of 1984 (Pub. L. 98-369), as amended by the Omnibus Budget Reconciliation Acts of 1986 (Pub. L. 99-509) and 1989 (Pub. L. 101-239). The delegation includes the authority to: (1) Enter into competitive agreements with intermediaries and contracts with carriers for the purpose of replacing intermediaries and carriers that have agreements and contracts under sections 1816 or 1842 of the Social Security Act (the Act), as amended, whose performance rankings have been in the lowest 20th percentile over a 2-year period of time, and (2) to enter into intermediary agreements and carrier contracts without regard to cost reimbursement limitations contained in sections 1816 and 1842 of the Act.

The specific changes to Part F. are described below:

• Section F.30., Delegations of Authority, is amended to reflect the two new delegations of authority from the Secretary to the Administrator, Health Care Financing Administration, under section 2326(a) of the Deficit Reduction Act of 1984 (DEFRA), as amended. Section F. 30. now includes a new paragraph FF. which reads as follows:

FF. Delegations of Authority Under Section 2326(a) of the Deficit Reduction Act of 1984 (Pub. L. 98-369), As Amended

1. The authority under section 2326(a) of the Deficit Reduction Act (DEFRA) of 1984 (Pub. L. 98-369), as amended by section 9321(b) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509), by sections 6215(a) (1) and (2) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239), and as may hereafter be amended, to enter into agreements under section 1816 of the Social Security Act (the Act), as amended, and contracts under section 1842 of the Act, as amended, for the purpose of replacing an intermediary or carrier which over a 2-year period of time has been in the lowest 20th percentile of intermediaries and carriers having agreements or contracts under sections 1816 and 1842 of the Act, as measured by the cost and performance criteria established by the Health Care Financing Administration. These agreements and contracts must be entered into on the basis of competitive bidding. In addition, they may be entered into without regard to the nominating process under section 1816(a) of the Act or the cost reimbursement provisions under section 1816(c) or 1842(c) of the Act during the term of any such agreements or contracts.

This delegation includes the authority to determine which intermediaries' and carriers' performance rankings are in the lowest 20th percentile as well as the authority to determine which intermediaries and carriers from the lowest 20th percentile should be replaced. If a decision is made to terminate or nonrenew an intermediary agreement and/or carrier contract as a result of exercising the authority under section 2326(a) of DEFRA, as amended, the termination or nonrenewal action must be approved by the Administrator or Deputy Administrator, HCFA.

The authority herein delegated under section 2326(a) of DEFRA, as amended, to enter into competitive agreements and contracts to replace poor performing intermediaries and carriers may be redelegated except for the termination and nonrenewal authority.

2. The authority under section 2326(a) of the Deficit Reduction Act (DEFRA) of 1984 (Pub. L. 98-369), as amended by section 9321(b) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509), by section 6215(a)(3) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239), and as may hereafter be amended, to enter into agreements and contracts with intermediaries and carriers on a basis of other than cost if both the Health Care Financing Administration and the intermediaries and carriers agree to waive the cost reimbursement provisions contained in section 1816 or 1842 of the Social Security Act, as amended.

The authority herein delegated may be redelegated.

The delegation of the authorities under section 2326(a) of Deficit Reduction Act of 1984, as amended, is effective immediately. In addition, I hereby affirm and ratify any actions taken by the Administrator or other HCFA officials which, in effect, involved the exercise of the subject authorities prior to the effective date of this delegation.

• Section F.50., Limitations of Authority, is amended to reflect the limitation of the Administrator's authority to terminate or nonrenew an

intermediary agreement and/or carrier contract which could result from exercising the authority under section 2326(a) of DEFRA, as amended. The new Paragraph reads as follows:

6. Under the Deficit Reduction Act of 1984, As Amended

a. If a decision is made to terminate or nonrenew an intermediary agreement and/or carrier contract as a result of exercising the authority under section 2326(a) of the Deficit Reduction Act of 1984, as amended, the termination or nonrenewal action must be approved by the Administrator or Deputy Administrator, Health Care Financing Administration. Refer to section F.30., paragraph FF.1.

• Section F.60., Redelegation of Authority, is amended to reflect the restriction of the Administrator's authority to redelegate the termination or nonrenewal authority under section 2326(a) of the Deficit Reduction Act of 1984, as amended. The new paragraph reads as follows:

c. The authority to approve actions to terminate or nonrenew an intermediary agreement and/or carrier contract as a result of exercising the authority under section 2326(a) of the Deficit Reduction Act of 1984, as amended, may not be redelegated. Refer to section F.30., paragraph FF.1.

Dated: August 28, 1992.

Louis W. Sullivan,

Secretary, Department of Health and Human Services.

[FR Doc. 92-22342 Filed 9-15-92; 8:45 am]

BILLING CODE 4120-03-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO-150-4830-11-24-1A]

National Public Lands Advisory Council; Call for Nominations

AGENCY: Bureau of Land Management, (BLM), Interior.

ACTION: Call for nominations for the National Public Lands Advisory Council.

SUMMARY: The purpose of this notice is to call for nominations for seven memberships on the BLM's National Public Lands Advisory Council.

The Council consists of 21 members. Under the established staggered-term arrangement, the terms of seven members on the Council will expire on December 31, 1992. Current Council members may be reappointed or new members may be appointed. Terms of appointment will be for 3 years, beginning January 1, 1993, and expiring December 31, 1995.

Nominees for membership should be well qualified through education, training and experience to give informed and objective advice concerning land use and resource planning for the public lands.

DATE: Nominations should be received by the BLM by October 15, 1992.

ADDRESS: Persons wishing to nominate individuals to serve on the Council should send biographical data that include name, address, profession, and other relevant information about the candidate's qualifications to Director (150), Bureau of Land Management, MS-5626, Department of the Interior, 1849 C Street, NW., Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The function of the Council is to advise the Secretary of the Interior, through the Director, BLM, on policies and programs of a national scope related to the resources and uses of public lands under the jurisdiction of the BLM.

The Council is expected to meet three times a year. Additional meetings may be called by the Director in connection with special needs for advice. Members will serve without salary, but will be reimbursed for travel and per diem expense rates prevailing for Government employees.

FOR FURTHER INFORMATION: Nan Morrison, Bureau of Land Management (150), MS-5626, Department of the Interior, 1849 C Street NW., Washington, DC 20240, Telephone: (202) 208-5101.

Date Signed: September 10, 1992.

Cy Jamison,

Director.

[FR Doc. 92-22304 Filed 9-15-92; 8:45 am]

BILLING CODE 4310-84-M

[WO-150-00-4830-11-24-1A]

National Public Lands Advisory Council; Meeting

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of meeting of the National Public Lands Advisory Council.

SUMMARY: Notice is hereby given that the National Public Lands Advisory Council will meet Friday, October 16, 1992, at the Inn Best Western, 700 Scott Avenue, Farmington, New Mexico 87401. Meeting hours will be 8 a.m. to 4:30 p.m. on Friday, October 16.

The proposed agenda for the meeting is:

Opening remarks by BLM Director Cy Jamison, National Public Lands Advisory Council Chairman Mark Murphy, and BLM New Mexico State Director Larry Woodard.

The Council has ongoing task force groups. The issues that these groups have been addressing include mining, recreation, the Endangered Species Act, and peer review. The appropriate Council member will provide an update on the status of these working groups.

The BLM will provide briefings to the Council members on various issues, including oil and gas, land exchanges and BLM's Automated Land and Mineral Record System.

All meetings of the Council are open to the public. Opportunity will be given for members of the public to make oral statements to the Council beginning at 1 p.m. on Friday, October 16. Speakers should address specific national public land issues and are encouraged to submit a copy of their written statements prior to oral delivery. Please send written comments by October 10 to the BLM's Farmington, New Mexico, Resource Area Office at the address listed below. Depending on the number of people who wish to address the Council, it may be necessary to limit the length of oral presentations.

DATES: Friday, October 16, 1992—National Public Lands Advisory Council Meeting.

ADDRESSES: Copies of Public Statements should be received by October 10.

PLEASE MAIL TO: Mr. Mike Pool, Area Manager, Bureau of Land Management, 1235 La Plata Highway, Farmington, New Mexico 87401.

FOR FURTHER INFORMATION CONTACT: Nan Morrison, Washington, DC, Office, BLM, telephone (202) 208-5101.

SUPPLEMENTARY INFORMATION: The Council advises the Secretary of the Interior through the Director, BLM, regarding policies and programs of a national scope related to public lands and resources under the jurisdiction of the BLM.

Date Signed: September 10, 1992.

Cy Jamison,

Director.

[FR Doc. 92-22303 Filed 9-15-92; 8:45 am]

BILLING CODE 4310-84-M

National Park Service

Concession Contract Negotiations; Eastern National Park and Monument Association

AGENCY: National Park Service Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to negotiate a concession permit with Eastern National Park & Monument

Association authorizing it to continue to provide for a sale of convenience items for the public at various parks within the Southeast Region for a period of five (5) years from January 1, 1991 through December 31, 1995.

EFFECTIVE DATE: November 16, 1992.

ADDRESSES: Interested parties should contact the Regional Director, Southeast Region, 75 Spring Street, SW., Atlanta Georgia 30303, for information as to the requirements of the proposed permit.

SUPPLEMENTARY INFORMATION: This permit has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under existing permits which expired by limitation of time on December 31, 1990, and therefore pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the permits and in the negotiation of a new permit as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Dated: August 31, 1992.

James W. Coleman, Jr.,

Regional Director, Southeast Region.

[FR Doc. 92-22383 Filed 9-15-92; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA-624 and 625 (Preliminary)]

Certain Helical Spring Lockwashers from the People's Republic of China and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of preliminary antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigations Nos. 731-TA-624 and 625 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the People's Republic of China and Taiwan of certain helical spring lockwashers,[1] provided for in subheading 7318.21.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by October 23, 1992.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: September 8, 1992.

FOR FURTHER INFORMATION CONTACT: Jonathan Seiger (202-205-3183), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on September 8, 1992, by the Shakeproof Industrial Products Division, Illinois Tools Works, Milwaukee, WI.

Participation in the Investigations and Public Service List

Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 270.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register.** The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

[1] For purposes of these investigations, "certain helical spring lockwashers" consist of circular, twisted-helix washers of iron or steel (including stainless steel), whether or not heat-treated or plated, designed to function as a spring to compensate for out-of-tolerance looseness between component parts of an assembly, to provide a hardened bearing surface, or for similar functions.

Limited Disclosure of Business Proprietary Information (BPI) under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these preliminary investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register.** A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on September 30, 1992, at the U.S. International Trade Commission Building, 550 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Jonathan Seiger (202-205-3183) not later than September 28, 1992, to arrange for their appearance. Parties in support of opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the commission on or before October 5, 1992, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of

1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules.

Issued: September 10, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-22347 Filed 9-15-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 332-333]

Mackerel; Competitiveness of the U.S. Industry in Domestic and Foreign Markets

AGENCY: United States International Trade Commission.

ACTION: Notice of investigation and request for comments.

EFFECTIVE DATE: September 4, 1992.

SUMMARY: Following the receipt on August 6, 1992, of a request from the Committee on Finance, U.S. Senate, the Commission instituted investigation No. 332-333 under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) for the purpose of assessing the competitiveness of U.S. mackerel products in foreign markets. The Committee requested that in its investigation, the Commission should, to the extent possible, develop information on the following subjects:

(1) *U.S. and foreign industry profiles.* Provide economic profiles of the U.S. and foreign mackerel harvesting and processing sectors, including the extent of direct government involvement in the industry.

(2) *U.S. and foreign markets.* Describe the U.S. market and important foreign markets for mackerel products, particularly markets in the Middle East, Europe, West Africa, and the Caribbean. In addition, descriptions should be provided of tariff and non-tariff barriers encountered in these markets.

(3) *Competitiveness assessment.* An analysis should be provided of the principal factors having a significant bearing on the competitiveness of U.S. mackerel products in both U.S. and foreign markets, including trade barriers, government policies, and other economic factors.

As requested by the Finance Committee, the Commission will seek to report the results of its investigation by June 8, 1993.

FOR FURTHER INFORMATION CONTACT: Roger Corey ((202) 205-3327), Agriculture Division, Office of Industries, U.S. International Trade Commission. For information on the legal aspects of this investigation, contact William Gearhart ((202) 205-3091) of the Office of the General Counsel. Hearing-impaired persons can obtain information on this investigation by contacting the Commission's TDD terminal on (202) 205-1810.

PUBLIC HEARING: A public hearing in connection with the investigation will be held in the Commission Hearing Room, 500 E Street SW., Washington, DC 20436, beginning at 9:30 a.m. on January 26, 1993. All persons have the right to appear by counsel or in person, to present information, and to be heard. Persons wishing to appear at the public hearing should file a letter asking to testify (state the names and titles of witnesses) with the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC, 20436, no later than the close of business (5:15 p.m.) on January 12, 1993. In addition, persons testifying must file prehearing briefs (original and 14 copies) with the Secretary by the close of business on January 19, 1993. Any posthearing briefs should be filed not later than the close of business on February 12, 1993.

WRITTEN SUBMISSIONS: Interested persons may submit written statements concerning the investigation. To be assured of consideration, written statements must be received by the close of business on February 12, 1993. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform to the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary, U.S. International Trade Commission, 500 E St. SW., Washington, DC 20436.

Issued: September 9, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-22346 Filed 9-15-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-354]

Stainless Steel Pipes and Tubes from Sweden

AGENCY: U.S. International Trade Commission.

ACTION: Notice of remand determination.

SUMMARY: The Commission hereby gives notice of its final affirmative determination, made pursuant to court remand, in the above-identified antidumping duty investigation.

FOR FURTHER INFORMATION CONTACT: George Thompson, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436; (202) 205-2349. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 205-1810.

SUPPLEMENTARY INFORMATION: On November 25, 1987, the Commission published its determination that an industry of the United States was not injured by reason of imports of Swedish welded stainless steel pipes and tubes. 55 FR 45256 (Nov. 25, 1987); *Stainless Steel Pipes and Tubes from Sweden,* Investigation No. 731-TA-354, USITC Pub. No. 2033 (November 1987). Domestic producers of welded stainless steel pipe and tube sought review of that final determination.

On June 20, 1990, the Court of International Trade (CIT) remanded the determination of then-Chairman Liebeler to the Commission with instructions to evaluate the investigation in relation to certain required statutory factors. In that decision, the CIT held that Chairman Liebeler's determination was not supported by substantial evidence because her analysis was based on a five-factor test she had originated in an earlier investigation, rather than on the statutory factors outlined in 19 U.S.C. 1677(7)(C)(iii), and focused improperly on the intent of the importer rather than on injury to the domestic industry, as required by 19 U.S.C. 1677(7)(B)(iii). *Trent Tube Div., Crucible Materials Corp.* v. *United States,* 741 F. Supp. 921 (Ct. Int'l Trade 1990).

On July 6, 1990, in response to a motion by defendant-intervenors for a rehearing, the CIT held that Chairman Liebeler's departure from the Commission since the Commission's original negative determination was rendered was not a sufficient ground for a rehearing or a reopening of the investigation. The remand order required an institutional response by the Commission rather than responses by each of the individual Commissioners participating in the majority's determination. *Trent Tube Div., Crucible Materials Corp.* v. *United*

States, 741 F. Supp. 227, 230 (Ct. Int'l Trade 1990).

On remand, the Commission reversed its earlier negative determination. By this time, Chairman Liebeler and Commissioner Eckes had left the Commission, and then-Commissioner Newquist joined. Acting Chairman Brunsdale and Commissioner Rohr adopted their original negative determinations, and Commissioner Lodwick adopted his original affirmative determination. Commissioner Newquist voted in the affirmative. Thus, by a 2–2 affirmative vote, the Commission issued its affirmative remand determination, and filed that decision with the CIT. *Stainless Steel Pipes and Tubes from Sweden*, Inv. No. 731 TA–354 (Final) (Remand), USITC Pub. No. 2304 (August 1990). At the time, the Commission withheld publication of a **Federal Register** notice of its remand determination until the CIT held that the Commission had complied with its remand order.

On November 27, 1990, the CIT held that the Commission had complied with its remand order, and affirmed the remand determination. *Trend Tube Div. Crucible Materials Corp.* v. *United States*, 752 F. Supp. 468 (Ct. Int'l Trade 1990). Notice of the CIT's decision was published by the Department of Commerce on December 17, 1990. According to that notice, an antidumping duty order on welded stainless steel pipe and tube from Sweden would issue if the CIT's opinion in that case was not appealed, or if appealed, was affirmed on appeal. Also, in accordance with *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990), Commerce ordered the suspension of liquidation of the subject merchandise. 55 FR 51745 (December 17, 1990).

Thereafter, an appeal was taken to the Court of Appeals for the Federal Circuit (CAFC) by the Swedish defendants Avesta Sandvik Tube AB and Avesta Stainless, Inc. The CAFC affirmed the CIT's decisions to remand the Commission's original negative determination and to uphold the Commission's affirmative remand determination. *Trent Tube Div., Crucible Materials Corp.* v. *U.S. Intern'l Trade Comm'n*, No. 91–1173 (Fed. Cir. July 27, 1992).

On August 27, 1992, the CAFC denied a petition for rehearing in the case. The mandate was issued on September 3, 1992. The judicial proceedings having finally ended, the Commission now publishes notice of its remand determination.

Issued: September 8, 1992.

By order of the Commission.

Paul Bardos,

Acting Secretary.

[FR Doc. 92–22345 Filed 9–15–92; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32097]

Burlington Northern Railroad Co.; Purchase Exemption; Chicago Central & Pacific Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, under 49 U.S.C. 10505, exempts from the prior approval requirements of 49 U.S.C. 11343, Burlington Northern Railroad Company's purchase from Chicago Central & Pacific Railroad Company (CCP) of 12.43 miles of track and related rail property between milepost 168.96 near Portage, IL, and milepost 181.20 (at the south line of Fifth Street) in East Dubuque, IL, and CCP's interlocker and both main tracks between mileposts 168.77 and 168.96, near Portage.

DATES: This exemption will be effective on September 15, 1992. Petitions for reconsideration must be filed by September 28, 1992.

ADDRESSES: Send pleadings referring to Finance Docket No. 32097 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

Petitioner's representatives:

(2) Michael E. Roper, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102–5384, and

Richard B. Herzog, 1300 19th Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927–5610, [TDD for hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: September 8, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–22365 Filed 9–15–92; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–167 (Sub-No. 1094)]

Chelsea Property Owners; Abandonment; Portion of the Consolidated Rail Corporation's West 30th Street Secondary Track in New York, NY; Findings

The Commission has found that the public convenience and necessity permit Consolidated Rail Corporation to abandon a 1.45-mile segment of its West 30th Street Secondary track between 34th Street on the north and the northern border of Gansevoort Street on the south, in the Borough of Manhattan, New York, NY.

A certificate will be issued authorizing abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served on the applicant and the railroad no later than 10 days from publication of this Notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope: "Rail Section, AB–OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Decided: August 28, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–22366 Filed 9–15–92; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–55 (Sub-No. 437X)]

CSX Transportation, Inc.; Abandonment Exemption; in Fremont, Newaygo County, MI

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR 1152 subpart F—Exempt Abandonments

to abandon its line of railroad from Milepost CED–19.98, Valuation Station 1055+00, to Milepost CED–20.28, Valuation Station 1070+80, a distance of approximately 0.30 miles, in Fremont, Newaygo County, MI.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of a complainant within the 2-year period, and (4) the requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

This exemption will be effective on October 16, 1992, unless stayed or a formal expression of intent to file an offer of financial assistance (OFA) is filed. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 [3] must be filed by September 28, 1992. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 6, 1992, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street J150, Jacksonville, FL 32202.

[1] A stay will be issued routinely where an informed decision on environmental issues, whether raised by a party or by the Commission's Section of Energy and Environment (SEE), cannot be made before the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental grounds is encouraged to file promptly so that the Commission may act on the request before the effective date.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

CSXT has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEE will issue an environmental assessment (EA) by September 21, 1992. Interested persons may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: September 11, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–22368 Filed 9–15–92; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 92–70; Exemption Application No. D–8984, et al.]

Grant of Individual Exemptions; Truck Dispatch Service, Inc. Profit Sharing Plan and Trust, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Truck Dispatch Service, Inc. Profit Sharing Plan and Trust (the Plan) Located in Fresno, California

[Prohibited Transaction Exemption 92–70; Exemption Application No. D–8984]

Exemption

The restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the cash purchase (the Purchase) of a certain promissory note and trust deed (the Note) by the Plan from Truck Dispatch Service, Inc., a party in interest with respect to the Plan, provided the Plan pays the lesser of either (1) the sum of $155,000, or (2) the fair market value of the Note as determined by a qualified, independent appraiser on the date of the Purchase.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of

proposed exemption published on August 4, 1992, at 57 FR 34309.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Polymer Group Retirement Savings Plan and Trust (the Plan) Located in Dayton, Ohio

[Prohibited Transaction Exemption 92-71; Exemption Application No. D-9075]

Exemption

The restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) the extension of interest-free credit (the Advances) to the Plan by Cadillac Plastic Group, Inc. and its affiliates, parties in interest with respect to the Plan, and (2) the repayment of the Advances to the Plan, provided that (a) no interest and/or expenses are paid by the Plan, (b) the Advances are used only in lieu of withdrawals due from the Guaranteed Investment Contract, Number CG01302A3A (the GIC) issued by Executive Life Insurance Company (Executive Life), (c) the repayment by the Plan of the Advances is restricted to cash proceeds paid by the Plan by or on behalf of Executive Life with respect to the obligations of Executive Life under the GIC, and (d) repayment of the Advances will be waived to the extent to the Plan receives less from disposition of the GIC than the total amount of the Advances.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 23, 1992, at 57 FR 32817.

EFFECTIVE DATE: This exemption is effective as of June 1, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 523-8881. (This is a toll-free number.)

Gerber Childrenswear, Inc. Salaried Investment Plan (the Plan) Located in Greenville, South Carolina

[Prohibited Transaction Exemption 92-72; Exemption Application No. D-9058]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of sections 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the extension of credit (the Loan) to the Plan by Gerber Childrenswear, Inc., the sponsor of the Plan, with respect to group annuity contract number GA-CG0121503A issued by Executive Life Insurance Company of California (Executive Life) and group annuity contract number GA-5244 (together, the GACs) issued by Mutual Benefit Life Insurance Company of New Jersey (Mutual Benefit); and (2) the potential repayment of the Loan (the Repayments) by the Plan; provided that the following conditions are satisfied:

(a) All terms of such transactions are no less favorable to the Plan than those which the Plan could obtain in arm's-length transactions with an unrelated party;

(b) No interest and/or expenses are paid by the Plan;

(c) The Loan is made only in lieu of payments due from Executive Life and Mutual Benefit with respect to the GACs;

(d) The Repayments shall not exceed the amounts of the Loan;

(e) The Repayments shall not exceed the amounts actually received by the Plan from Executive Life, Mutual Benefit, and other responsible third party payors with respect to the GACs; and

(f) The Repayment of the Loan shall be waived to the extent that the amount of the Loan exceeds the amounts recovered by the Plan with respect to the GACs from Executive Life, Mutual Benefit, or any other source.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 7, 1992 at 57 FR 29897.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Aetna Life Insurance Company (Aetna) Located in Hartford, Connecticut

[Prohibited Transaction Exemption 92-73; Exemption Application No. D-8919]

Exemption

The restrictions of sections 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the code, shall not apply to the proposed purchase or sale by an employee benefit plan to which Aetna or an affiliate is a party in interest (the Plan) of shares of an open-end investment company registered under the Investment Company Act of 1940 (the Fund), where the Fund is also a party in interest with respect to the Plan as a result of Aetna or its affiliates owning 50% or more of the Fund's outstanding shares at the time of the transaction; provided that the following conditions are met:

(a) Neither Aetna nor any affiliate has discretionary authority or control for the investment of the Plan's assets involved in the transaction or renders investment of the Plan's assets involved in the transaction or renders investment advice (within the meaning of 29 CFR 2510.3-21(c)) for those assets.

(b) The price paid by the Plan for shares of the Fund is the net asset value per share at the time of the transaction and is the same price which would be paid for the shares by any other investor at that time.

(c) The Plan does not pay a sales commission in connection with the purchase or sale of shares of the Fund.

(d) The Plan does not pay a redemption fee in connection with the sale by the Plan to the Fund of such shares unless (1) the redemption fee is paid only to the Fund and such fee is disclosed in the Fund prospectus in effect both at the time of the purchase of such shares and at the time of the sale.

(e) A fiduciary for the Plan who is independent of and unrelated to Aetna and its affiliates (an Independent Fiduciary), receives full written disclosure of information concerning the Fund (including a current prospectus for the Fund and a statement of additional information which describes, among other things, the relationship of Aetna and its affiliates to the Fund and the fee structure for such Fund). For purposes of this exemption, such fiduciary will not be deemed to be an Independent Fiduciary with respect to Aetna and its affiliates if:

(1) The fiduciary directly or indirectly controls, is controlled by, or is under common control with Aetna or any affiliate;

(2) The fiduciary, or any officer, director, partner, employee or relative of such fiduciary, is an officer, director, partner, or employee of Aetna or any affiliate (or is a relative of such persons); or

(3) The fiduciary directly or indirectly receives any compensation or other consideration for his or her own personal account in connection with any transaction described in this exemption.

If an officer, director, partner, or employee of Aetna or any affiliate (or a relative of such persons) is a director of such fiduciary, and if he or she abstains from participation in any such purchase or sale between the Plan and the Fund, then section (e)(2) shall not apply.

(f) On the basis of the information referred to in section (e), the

Independent Fiduciary decides whether to purchase or sell shares of the Fund consistent with the responsibilities, obligations, and duties imposed on fiduciaries by part 4 of title I of the Act.

(g) The combined total of all fees received by Aetna and its affiliates for the provision of services to the Plan, and in connection with the provision of services to the Funds in which the Plan may invest, are not in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(h) Immediately following the acquisition by a Fund of any securities that are issued by Aetna and its affiliates, the percentage of that Fund's net assets invested in such securities will not exceed one percent.

(i) Aetna maintains for a period of six years the records necessary to enable the persons described below in section (j) to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Aetna or its affiliates, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest other than Aetna shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by section (j) below.

(j)(1) Except as provided in paragraph (2) of this section and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in section (i) are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(ii) Any fiduciary of the Plan who has authority to acquire or dispose of shares of the Funds owned by the Plan, or any duly authorized employee or representative of such fiduciary, and

(iii) Any participant or beneficiary of the Plan or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in section (j)(1)(ii) and (iii) shall be authorized to examine trade secrets of Aetna, any of its affiliates, or commercial or financial information which is privileged or confidential.

Definitions

For purposes of this exemption,

(a) An *affiliate* of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative of, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(b) The term *control* means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) The term *net asset value* means the amount computed by dividing the total value of the Fund's securities (as described in the prospectus and statement of additional information for such Fund) plus any cash or other assets (including dividends accrued but not collected) less all liabilities (including accrued expenses), by the number of shares outstanding.

(d) The term *Fund* means an open-end investment company registered under the Investment Company Act of 1940 for which Aetna or an affiliate serves as the principal underwriter and/or investment adviser.

(e) the term *relative* means a *relative* as that term is defined in section 3(15) of the Act (or a *member of the family* as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or sister.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on July 7, 1992, at 57 FR 29891.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Panhandle Eastern Corporation Retired Employee and Dependent Life Insurance Plan (the Retiree Life Plan), Panhandle Eastern Corporation Active Employee and Dependent Life Insurance Plan (the Active Life Plan), Panhandle Eastern Corporation Permanent and Total Disability Plan (the Disability Plan), Panhandle Eastern Corporation Medical Plan (the Medical Plan) and Panhandle Eastern Corporation Dental Plan (the Dental Plan; collectively, the Plans) Located in Kansas City, MO

[Prohibited Transaction Exemption 92–74; Exemption Application Nos. L–8771, L–8772, L–8773 and L–8774]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act shall not apply to the proposed cash sale of certain improved real property (the South Building) by the Panhandle Eastern Corporation Employee Benefit Trust (the VEBA), which maintains the assets of the Plans, to Panhandle Eastern Pipe Line Company (PEPL), a party in interest with respect to the Plans, provided the following conditions are satisfied: (1) The amount paid for the South Building is not less than the greater of $7,565,000 or the fair market value of such property at the time the transaction is consummated, (2) the VEBA does not pay any real estate fees or commissions in connection with the transaction and (3) the independent fiduciary, who has made an initial determination that the proposed sale is an appropriate transaction for the VEBA, monitors its terms on behalf of the VEBA.[1]

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 22, 1992 at 57 FR 27795.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an

[1] Because the VEBA is not qualified under section 401 of the Code, there is no jurisdiction under title II of the Act pursuant to section 4975 of the Code. However, there is jurisdiction under title I of the Act pursuant to section 3(1) of the Act.

administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 11th day of September, 1992.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 92-22360 Filed 9-15-92; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 92-48]

NASA Advisory Council (NAS), Space Station Advisory Committee (SSAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Station Advisory Committee.

DATES: September 23, 1992, 8:30 a.m. to 5:30 p.m. and September 24, 1992, 8:30 a.m. to Noon.

ADDRESSES: Capital Gallery Building, 600 Maryland Avenue, SW., Suite 300 (East), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Dr. W.P. Raney, Code D, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-4165.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—U.S.—Russian Cooperation
—Space Station Freedom Program Update
—Procurement
—Operations Report
—Space Station Advisory Committee Panel Reports

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the participants. Visitors will be requested to sign a visitor's register.

Dated: September 9, 1992.

John W. Gaff,

Advisory Committee Management Office.

[FR Doc. 92-22335 Filed 9-15-92; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Visual Arts/Media/Design/Literary Arts Section) to the National Council on the Arts will be held on October 6, 1992 from 9:15 a.m.-6 p.m., October 7 from 9 a.m.-6 p.m., and October 8 from 9 a.m.-5:30 p.m. in room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public on October 6 from 9:15 a.m.-10:30 a.m. and October 8 from 3 p.m.-5:30 p.m. The topics will be opening remarks, general overview, and policy discussion.

The remaining portions of this meeting on October 6 from 10:30 a.m.-6 p.m., October 7 from 9 a.m.-6 p.m., and October 8 from 9 a.m.-3 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applications. In accordance with the determination of the Chairman of November 20, 1991, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682/5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5439.

Dated: September 10, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92-22336 Filed 9-15-92; 8:45 am]

BILLING CODE 7537-01-M

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Federal Advisory Committee on International Exhibitions will be held on October 5, 1992 from 10 a.m.-3 p.m. in room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 10 a.m.-10:30 a.m. for introductory remarks.

The remaining portion of this meeting from 10:30 a.m.-3 p.m. is for the purpose of reviewing proposals for support under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, this session will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5439.

Dated: September 10, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92-22337 Filed 9-15-92; 8:45 am]

BILLING CODE 7537-01-M

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Fellowships for Creative Writers: Poetry Section) to the National Council on the Arts will be held on October 7-8, 1992 from 9 a.m.-6:30 p.m. and October 9 from 9 a.m.-5 p.m. in room M-14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on October 9 from 2 p.m.-5 p.m. for policy discussion.

The remaining portions of this meeting on October 7-8 from 9 a.m.-6:30 p.m. and October 9 from 9 a.m.-2 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendations on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5439.

Dated: September 8, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92-22323 Filed 9-15-92; 8:45 am]

BILLING CODE 7537-01-M

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Fellowships for Creative Writers: Prose Section) to the National Council on the Arts will be held on October 14-15, 1992 from 9 a.m.-6:30 p.m. and October 16 from 9 a.m.-5 p.m. in Room M-14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on October 16 from 2 p.m.-5 p.m. for policy discussion.

The remaining portions of this meeting on October 14-15 from 9 a.m.-6:30 p.m. and October 16 from 9 a.m.-2 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, or advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5439.

Dated: September 8, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92-22324 Filed 9-15-92; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SPACE COUNCIL

Meeting of the National Space Policy Assessment Task Group

AGENCY: National Space Council.

ACTION: Notice of meeting.

SUMMARY: The Vice President's Space Policy Advisory Board National Space Policy Assessment Task Group will meet October 1, 1992.

DATES: October 1, 1992.

ADDRESSES: 1215 Jefferson Davis Highway, Suite 800, Arlington, Virginia, 22202.

FOR FURTHER INFORMATION CONTACT: Stephen Hopkins, (703) 685-3307 or James Beale, National Space Council, Executive Office of the President, Washington, D.C., (202) 395-6175.

SUPPLEMENTARY INFORMATION: The National Space Policy Assessment Task Group of the Vice President's Space Policy Advisory Board will meet between 8:30 a.m. and 5:30 p.m. on October 1, 1992 at the ANSER Corporation, Suite 800, 1215 Jefferson Davis Highway, Arlington, Virginia. The agenda for the meeting includes briefings summarizing current national space policies, briefings on the history of current space-related policies, and discussions of institutional roles and responsibilities. This meeting will be closed to the public under exception 1 of the Government in the Sunshine Act (5 U.S.C. 552b) from 3:30 p.m. to 5:30 p.m. October 1, 1992. All other portions will be open session. Persons interested in attending should contact Stephen Hopkins, (703) 685-3307 no later than September 29, 1992.

James R. Beale,

Designated Federal Officer.

[FR Doc. 92-22352 Filed 9-15-92; 8:45 am]

BILLING CODE 3128-01-M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice

Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from August 24, 1992, through September 3, 1992. The last biweekly notice was published on September 2, 1992 (57 FR 40206).

Notice Of Consideration Of Issuance Of Amendment To Facility Operating License And Proposed No Significant Hazards Consideration Determination And Opportunity For Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Directives Review Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 16, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period.

However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: August 6, 1992Description of amendments request: The proposed amendment would amend Section 6 of the Technical Specifications to implement the functional role and responsibilities of the recently created Nuclear Assessment Department (NAD). The NAD performs internal evaluations and assessment activities. The fundamental role is to assist in the early identification of deficiencies that may prevent the Company's nuclear projects from achieving the desired level of performance on a sustained basis and to ensure effective correction of deficiencies. The NAD has also assumed the responsibility for administering the independent review program and the independent assessment of unit activity.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because it is programmatic and does not physically alter any safety-related systems, nor does it affect the way in which any safety-related systems perform their functions. The independent review function is being revised to provide program consistency among the nuclear units while maintaining compliance with ANSI N18.7. The independent assessment requirements for the NAD are being removed from the Technical Specifications (TSs) and reference made to the Quality Assurance (QA) Program for these details. Since the design of the facility and system operating parameters are not changing, the proposed amendment does not involve an increase in the probability or consequences of any accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. As stated in Item 1, the proposed amendment is programmatic and does not physically alter any safety-related systems; nor does it affect the way in which any safety-related systems perform their functions. Since the design of the facility and system operating parameters are not changing, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety because it is a programmatic change. As stated in Item 1, the proposed amendment does not physically alter any safety-related systems; nor does it affect the way in which any safety related systems perform their functions. Since the design of the facility and system operating parameters are not changing, the proposed amendment does not involve any reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: August 10, 1992

Description of amendment request: The proposed amendment would amend Section 6 of the Technical Specification to implement the functional role and responsibilities of the recently created Nuclear Assessment Department (NAD). The NAD performs internal evaluations and assessment activities. The fundamental role is to assist in the early identification of deficiencies that may prevent the Company's nuclear projects from achieving the desired level of performance on a sustained basis and to ensure effective correction of deficiencies. The NAD has also assumed the responsibility for administering the independent review program and the independent assessment of unit activity.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase inthe probability or consequences of an accident previously evaluated because it is programmatic and does not physically alter any safety-related systems, nor does it affect the way in which any safety-related systems perform their functions. The independent review function is being revised to provide program consistency among the nuclear units while maintaining compliance with ANSI N18.7. The independent assessment

requirements for the NAD are being removed from the Technical Specifications (TSs) and reference made to the Quality Assurance (QA) Program for these details. Since the design of the facility and system operating parameters are not changing, the proposed amendment does not involve an increase in the probability or consequences of any accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. As stated in Item 1, the proposed amendment is programmatic and does not physically alter any safety-related systems; nor does it affect the way in which any safety-related systems perform their functions. Since the design of the facility and system operating parameters are not changing, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety because it is a programmatic change. As stated in Item 1, the proposed amendment does not physically alter any safety-related systems; nor does it affect the way in which any safety related systems perform their functions. Since the design of the facility and system operating parameters are not changing, the proposed amendment does not involve any reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: August 6, 1992

Description of amendment request: The proposed amendment would amend Section 6 of the Technical Specifications to implement the functional role and responsibilities of the recently created Nuclear Assessment Department (NAD). The NAD performs internal evaluations and assessment activities. The fundamental role is to assist in the early identification of deficiencies that may prevent the Company's nuclear projects from achieving the desired level of performance on a sustained basis and to ensure effective correction of deficiencies. The NAD has also assumed the responsibility for administering the independent review program and the independent assessment of unit activity.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because it is programmatic and does not physically alter any safety-related systems, nor does it affect the way in which any safety-related systems perform their functions. The independent review function is being revised to provide program consistency among the nuclear units while maintaining compliance with ANSI N18.7. The independent assessment requirements for the NAD are being removed from the Technical Specifications (TSs) and reference made to the Quality Assurance (QA) Program for these details. Since the design of the facility and system operating parameters are not changing, the proposed amendment does not involve an increase in the probability or consequences of any accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. As stated in Item 1, the proposed amendment is programmatic and does not physically alter any safety-related systems; nor does it affect the way in which any safety-related systems perform their functions. Since the design of the facility and system operating parameters are not changing, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety because it is a programmatic change. As stated in Item 1, the proposed amendment does not physically alter any safety-related systems; nor does it affect the way in which any safety related systems perform their functions. Since the design of the facility and system operating parameters are not changing, the proposed amendment does not involve any reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: June 29, 1992, as supplemented August 28, 1992

Description of amendment request: The proposed amendment would change Technical Specification Section 3/4.9 by revising the requirements for assuring the operability of a diesel generator upon loss of other auxiliary electrical equipment, revising the battery availability requirements to address use of the alternate 125 volt batteries, and revise battery Service and Performance test surveillance requirements to reflect current industry standards. In addition, the Quad Cities Technical Specifications would be changed so that a modification could be made that allows the backfeed of power from the offsite distribution system through the main power transformer and unit auxiliary transformer of a shutdown unit to any operating unit through the 4160-volt bus tie. (The same modification is being installed at Dresden, but the current Dresden Technical Specifications do not have to be changed to accommodate the modification.) This request partially supersedes an August 9, 1991, request for Dresden published in the **Federal Register** on April 29, 1992 (57 FR 18171).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below: The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because:

Diesel Generator Requirements

Proposed Specification 4.9.D.1 for Dresden, and 4.9.A.1.a for Quad Cities, separates the start and loading portions of the monthly test. Separating the start and loading portions of the test is administrative and does not impact the current diesel generator requirements. Therefore, the proposed changes will not affect the operational readiness or availability of the diesel generators, and will not significantly increase the probability or

consequences of previously defined accidents requiring the diesel generators for successful mitigation.

Revisions are proposed for the required diesel generator operation as a result of the inoperability or unavailability of other equipment. These include: a) revising the requirement for operating the diesel generators upon loss of two incoming offsite power lines, b) revising the requirement for the demonstration of operability, or c) when making a diesel generator inoperable for the performance of pre-planned preventive maintenance to include surveillance testing. Removing the requirement to operate the diesel generators connected to the bus following the loss of both offsite power lines or the other diesel generator decreases the probability of the diesel generators to attempt to pick up non-safety related loads during an accident and increases the probability of their availability should they be required in these situations.

Similarly, the removal of the requirement to start the diesel generator for periodic maintenance or surveillance testing of the other diesel generator when there is no demonstrated or suspected generic condition which would cause the otherwise operable diesel generator to be inoperable reduces the stress and wear on the diesel generators and increases their reliability. The diesel generator is not considered an initiator in any previously evaluated accident and the changes increase the reliability of the diesel generators. Therefore, the revision to the diesel generator operability requirements will have no significant increase in the probability or consequences of any previously evaluated accidents.

Battery Requirements

The addition of new surveillance requirements to reflect the service and performance testing of the batteries will increase the reliability of the batteries. Since the alternate power system is not considered to initiate any previously evaluated accidents, the probability of such accidents is not increased. Additionally, since the additional testing does not adversely impact the response of the alternate power system, the change will not increase the consequences of any previously evaluated accidents. The addition of surveillance requirements for the use of the alternate 125 volt batteries represents an addition of equipment, but does not increase the probability of any previously evaluated accident since the batteries are not considered as accident initiators.

Quad Cities-Redundant ECCS Testing

The present testing requirements for ECCS at Quad Cities when one system (or subsystem) is inoperable represent requirements beyond those necessary to adequately demonstrate system operability. The proposed deletion of multiple system testing will conform Quad Cities to current BWR plant operating practices. ECCS perform accident mitigation functions. Because changing testing requirements will not change the probability of accident precursors, this proposed amendment does not affect the probability of an accident previously evaluated. The proposed amendment does not involve a significant increase in the consequences of an accident previously evaluated because testing other than multiple system testing ensures that the present level of operability for the ECCS system is maintained.

The proposed changes to Technical Specification Section 3/4.9 represents an administrative change which enhances clarity and reduces the potential of misinterpretation. The emergency diesel generators and station batteries will be operated in a more reliable manner than previously evaluated as result of the proposed changes. Existing failure modes for the station's auxiliary electrical equipment are not affected by the proposed changes. Therefore, no significant increase in the probability or consequences of any previously evaluated accidents results from the proposed amendments.

Battery Clarification

The addition of provisions which state more clearly when the use of the 125 volt DC alternate batteries is appropriate will prevent use of the battery in situations beyond its current design capability. The proposed LCOs assure that use of the alternate battery is limited to a period when testing and maintenance is performed on the permanent batteries. The alternate batteries are not considered to be initiators of any previously evaluated accidents, therefore, the introduction of restrictions on the use of the alternate 125 volt system will not increase the probability of any previously evaluated accident.

Backfeed Modification Changes (Quad Cities Only)

The proposed change will provide additional flexibility to the current requirement for a second source of offsite power. This flexibility will allow the use of the Main Power Transformer/Unit Auxiliary Transformer (MPT/UAT) of a shutdown unit, in addition to the current requirement of the Reserve Auxiliary Transformer (RAT), to supply power through the 4160-volt bus tie to an operating unit. This proposed change does not affect any accident initiators or precursors. Therefore it cannot increase the probability of an accident previously evaluated. By allowing for the use of the MPT/UAT (in addition to the RAT) as a second source of offsite power for an operating unit, the proposed change will provide an additional means to obtain auxiliary power from the offsite transmission system. Therefore, the proposed change does not increase the consequences of an accident previously evaluated.

The proposed changes do not [increase] the possibility of a new or different kind of accident from any accident previously evaluated because:

The restructuring of Technical Specification Section 3/4.9 will not cause the station's auxiliary electrical equipment to be operated in a less reliable manner. The plant will not be placed in an operational condition which has not been previously evaluated as a result of the proposed restructuring and surveillance changes. The revisions to the monthly diesel generator surveillance requirements and to the diesel generator operating requirements for inoperability or unavailability of required equipment does not introduce any new operating modes or new equipment. The upgrade of surveillance requirements for the station batteries does not create the possibility of an accident of a type different from any previously evaluated. Therefore, the possibility of a new or different kind of accident has not been created.

The change deletes excessive testing requirements for ECCS systems at Quad Cities. These changes do not introduce any new modes of operation which could initiate a new or different kind of accident. The proposed amendment will not introduce any new types of equipment failure that could cause a new or different kind of accident.

Battery Clarification

The clarification of operability requirements for the use of the alternate 125 volt battery reflects the addition of requirements which govern the use of new equipment. However, the alternate battery will be used to serve the same function as the permanent battery. Use of the alternate battery is limited to plant configurations supportable by its current design capabilities. The possibility of a new or different accident is not increased by the addition of restrictions on the use of the alternate batteries.

Backfeed Modification Changes (Quad Cities Only)

The design function of the auxiliary power system is to ensure an adequate supply of electric power for loads which are required to operate to mitigate the consequences of postulated abnormal occurrences and design bases events. The proposed Technical Specification amendment does not change or decrease the ability of the auxiliary power system to meet the design function. The proposed change will increase the availability of a second source of offsite power to an operating unit. The proposed change does not introduce any new or different modes of plant operation. Therefore the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes do not involve a significant reduction in a margin of safety because:

The revisions to the monthly diesel generator surveillance requirements and to the diesel generator operating requirements for inoperability or unavailability of requirement equipment do not reduce the operability requirements or capabilities of the auxiliary electrical equipment. Additionally, no setpoints have been revised and the surveillance requirements have been revised to increase the availability and reliability of the equipment. Therefore, the changes do not involve a significant reduction in the margin of safety.

The revisions to Technical Specification Section 3/4.9 will not cause the station's auxiliary electrical equipment to be operated in a less reliable manner, reduce any equipment operability requirements or increase any associated allowable out of service times (except as described above). New surveillance requirements have been introduced; however, these surveillance are performed by observation and no equipment

manipulations (or new equipment) are required, or the tests are performed while the unit is in a refueling outage. Therefore, there is no significant reduction in a margin of safety.

The proposed amendment will not reduce the availability of ECCS systems at Quad Cities when required to mitigate accident conditions. Excessive testing of systems and components can reduce rather than increase reliability. An acceptable level of testing to demonstrate operability currently being used at later BWR plants does not include multiple testing of other ECCS systems when one or more systems is inoperable. The testing that will remain in the technical specifications provides adequate assurance of system performance.

Battery Clarification

The addition of clearer limitations on the use of the 125 VDC alternate battery assures that use of the battery is prohibited during plant configurations which 125 VDC availability is required but cannot be assured by the alternate source over the full range of postulated events. The availability of an alternate DC source combined with surveillance requirements for the alternate battery equivalent to those for the permanent battery serves to increase the margin of safety. Therefore, there is no significant reduction in a margin of safety.

Backfeed Modification Changes (Quad Cities Only)

The proposed change to Technical Specification 3.9.A.3 does not change the accident transient analysis of the plant nor does it make plant operations less conservative. The proposed amendment will allow for the use of the MPT/UAT of a shutdown unit in place of the RAT to supply a second source of offsite power to the operating unit through the 4160-volt bus tie. Protective relay modifications will ensure that this configuration for the second source of offsite power will not negatively impact the MPT and UAT. Plant operations and safety are improved by minimizing unnecessary shutdowns during extended RAT outages. This in turn will minimize the associated challenges to plant safety systems. No established safety limit, operating limit or design assumption is altered by the proposed amendment. Therefore, the proposed change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: For Dresden, the Morris Public Library, 604 Liberty Street, Morris, Illinois 60450; and for Quad Cities, the Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: Richard J. Barrett

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of amendment request: November 22, 1991

Description of amendment request: The proposed amendment would add the Technical Specifications (TS) for some of the accident monitoring instrumentation covered by NUREG-0737, Regulatory Guide 1.97, and Generic Letter 83-37. The following instrumentation will be added in the TS for Zion: Core Exit Thermocouples, Containment Water Level Wide Range, Containment Recirculation Sump Level, Reactor Coolant Inventory Tracking System, Condensate Storage Tank Level, Neutron Flux Indication, and Containment Isolation Value Position Indicators. In addition, the amendments will make some administrative changes and revise a few other TS to make them consistent with the guidance provided by the staff. The November 22, 1991, submittal superceeds the previous submittals dated May 23, 1990, and August 26, 1990, published in the **Federal Register** on June 27, 1990 (55 FR 26280).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The proposed changes have been broken down into five distinct categories, based on the changes made. The No Significant Hazards Consideration has been broken down into separate assessments, to reflect these categories, and to appropriately address all the changes made. The licensee's analysis is presented below:

ADMINISTRATIVE CHANGES (A)

The following changes have been categorized as administrative in nature. These changes do not involve a change in intent, requirement, or regulation. As such, this No Significant Hazards Considerations will address these items:

- Page number changes and additions,
- Title changes, relocations, and additions,
- Location and wording of notes associated with the PORVs and PORV Block Valves,
- Clarified proper mode to eliminate ambiguity
- Changes in terminology,
- Addition of notes clarifying current exemptions to performing periodic surveillances,
- Changes providing reference to base documents and revision numbers,
- Deletion of surveillance frequency notation addressed appropriately elsewhere in the Technical Specifications,
- Reformatting of pages, and
- Inclusion of reporting requirements into the administrative section of the Technical Specifications, required to be performed under an action statement.

The proposed changes do not result in a significant increase in the probability or consequences of accidents previously evaluated. The proposed changes to the Technical Specification listed above have been determined to be administrative in nature. The proposed amendment to the Technical Specifications does not change or alter any current operator actions, or requirements for the mitigation of any previously evaluated accident. These changes have no impact on assumed margins or actions during an evaluated accident. Plant response to previously evaluated accidents will not be altered as a result of these changes. As such, the probability and consequences associated with evaluated accidents have remained unchanged.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. These proposed changes will not impose or result in plant operation that differ from any existing requirements. No new equipment is being introduced as a result of these changes. As such, the possibility of a new or different kind of accident from any accident previously evaluated will not occur as a result of these changes. The proposed changes do not involve a significant reduction in a margin of safety. These changes do not alter the manner in which equipment required for safe operation of the plant is operated. There are no setpoint, or operational limitations being altered or changed as a result of these revisions. As such, these changes have no significant effect on the margin of safety.

ADDITION OR CHANGES OF INSTRUMENTATION (B)

The following changes involve the addition of instrumentation as a result of the guidance given in the Commission's Interim Policy Statement and Generic Letter 83-37 regarding "NUREG 0737 Technical Specifications". As such, this No Significant Hazards Considerations will address the following items:

- Containment Pressure (Wide Range) changing from narrow range to wide range. In addition, the total number of instrument channels has been changed from 4 to 2 to address the appropriate number of qualified instruments,
- Changing of the Pressurizer Safety Valve Position Indicator to include both a Technical Specification for the primary and the backup indicators,
- Revision of the RCS Subcooling Monitor, to delete previously approved manual calculations in lieu of utilization of installed instrumentation, and
- The addition of the following instrumentation into the Technical Specifications:

Core Exit Thermocouples,
Containment Water Level Wide Range,
Containment Recirculation Sump Level,
Reactor Coolant Inventory Tracking System,
Condensate Storage Tank Level,

Neutron Flux Indication, and
Containment Isolation Valve Position Indicators

The proposed change does not result in a significant increase in the probability or consequences of accidents previously evaluated. The purpose of the Accident Monitoring Instrumentation is to provide sufficient information to perform required manual actions, and to monitor and assess plant status and behavior during and following an accident. The instrumentation referenced in the Technical Specifications to perform these functions must be capable of providing this information under assumed accident conditions. Therefore, there must both be an adequate number of parameters monitored, and these parameters must be monitored by appropriately qualified instrumentation. The probability for an evaluated accident is independent of the number and type of instruments designated for monitoring purposes. The probability for an accident is linked to the precursor events leading to an accident. None of the accident monitoring instrument changes addressed here are linked in any fashion to these precursor events.

As such, the probability for previously evaluated events has remained unchanged. The consequences of evaluated events are lessened by assuring that the minimum number of parameters required to perform required manual actions, and monitor and assess plant status following an accident are available.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes will not approve or result in plant operation that could create a new or different kind of accident. The addition of these instruments to the technical specifications will provide assurance in regards to their availability, through the establishment of Limiting Conditions for Operation, Remedial Actions, and appropriate Surveillance Requirements. The accident monitoring instrumentation is directly tied to accident mitigation, through the accomplishment of manual actions and assessment. Through proper decision making the possibility of different type of accident or accident conditions propagating in a different manner will be prevented.

The proposed change does not involve a significant reduction in a margin of safety. The inclusion of these instruments into the Technical Specification will provide assurance that an adequate number of the appropriate instruments are available to monitor required plant parameters in the event of an accident. By referencing instrumentation that is appropriately qualified for the expected condition, assurance is gained that these parameters will be available if required. By reducing the total number of channels for the Containment Wide Range Pressure Instruments from 4 to 2 the appropriately qualified instruments are referenced. However the margin of safety has remained unchanged by virtue of the required number of channels remaining the same. For the instrumentation being added, these changes will enhance the safety of the plant through the establishment of minimum acceptable levels of performance and availability for these instruments in the Technical Specifications. Through the establishemnt of these minimum levels, information required for appropriate decision making during and following an accident can be assured. Surveillance requirements are being specified for the purpose of determining operability. The remedial actions associated with the added Specifications will require the plant to be placed into a shutdown condition, after providing an appropriate time frame to restore the inoperable instrument(s) to operable status. As such, these proposed changes to the Technical Specifications will result in an increase in the current margin of safety.

ACTION AND PROGRAMMATIC CHANGES (C)

The following assessment involves the revision of the action statements associated with the accident radiation monitoring instruments. This assessment also addresses the addition of programmatic control to assure these monitoring capabilities. As such, this No Significant Hazards Considerations will address the following items:

- Addition of action statement 31 regarding the actions associated with the Containment High Range Radiation Monitors, and
- The addition of the requirement to have Post Accident sampling programs capable of obtaining and analyzing reactor coolant and containment atmosphere, and to collect and analyze or measure radioactive iodines and particulates in plant gaseous effluents samples under accident conditions.

The proposed changes do not result in a significant increase in the probability or consequences of accidents previously evaluated. The radiation monitor action statement changes and programs being added to the administrative section of the Technical Specifications of themselves have no impact on the probability of any events that are inputs to evaluated accidents. As such, the probability for evaluated events has remained the same. The changes made are providing assurance to the availability of these monitors or alternative methods of providing comparable information during and following an accident. Through assuring the availability of these parameters and programs, the consequences of evaluated accidents remain the same.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes address the revisions to programs and action statements. There is no new equipment being proposed for installation that could present the possibility for a new or different type of accident, as a result of these changes. Plant operations will not be altered in any fashion that could create the possibility for a new or different type of accident. Through assuring the availability of these parameters during an accident, proper decision making can be assured. As such, these changes will not create the possibility for a new or different type of accident. In addition, the potential for accident conditions propagating in a differing manner will be prevented.

The proposed change does not involve a significant reduction in a margin of safety. The proposed additional actions will result in the preparation and submittal of a report to the NRC after establishment of alternate methods of monitoring the effluent release paths for the Containment Area High Range Monitors if the affected monitor is not restored to OPERABLE status within 7 days. The administrative changes being added to the Technical Specifications involve the addition of the requirements to have Post Accident sampling programs capable of obtaining and analyzing reactor coolant and containment atmosphere, and to collect and analyze or measure radioactive iodines and particulates in plant gaseous effluents samples under accident conditions. These programs include; the training of personnel, procedures for sampling and analysis, and provisions for maintenance of sampling and analysis equipment. These changes help provide assurance that these capabilities and programs will be established and maintained. The results of these changes are viewed as an improvement in the plants overall ability to assess accident conditions, and the potential for or qualification of releases. As such, these changes do not result in a significant reduction in the margin of safety.

CHANGES TO REQUIRED NUMBER OF INSTRUMENTS (D)

The following assessment involves changes to the required number of instruments, and parameters that must be monitored. As such, this No Significant Hazards Considerations will address the following items:

- Changes to the Required and Minimum Number of instruments for the Steam Generator Wide Range Level Indicators,
- Changes to the Required and Minimum Number of instruments for the Auxiliary Feedwater Flow Rate Monitoring Instruments,
- The deletion of the PZR PORV acoustic monitors from the Technical Specification, and
- Revision of the PZR PORV Block Valve Position Indicator, increasing the Minimum Number of channels from 0 to 1.

The proposed changes do not result in a significant increase in the probability or consequences of accidents previously evaluated. The above noted instruments provide monitoring capabilities of parameters important for the proper assessment of plant status. These proposed changes are not linked to increasing the probability of any accident. These changes do not alter any of the assumed initial conditions for evaluated accidents at the Zion Station. As such, the probability and consequences for an evaluated accident has remained unchanged. In the case of the Steam Generator Wide Range Level and the Auxiliary Feedwater Flow Monitoring Instruments, the required number of instruments have become more restrictive. In addition, the PZR PORV Block Valve Position Indicator, the Minimum Number of Channels has also become more restrictive. The proposed change will increase the Minimum Number of Channels required for the Steam Generator Wide Range Level and Auxiliary Feedwater Flow Monitoring instruments based on the more restrictive limits imposed on the Required Number of Channels operable. In addition,

the Steam Generator Narrow Range Level instruments provide redundant indication of heat sink status for both the Steam Generator Wide Range Level instruments, and the Auxiliary Feedwater Flow Rate instruments. As such, there is redundancy available for monitoring these parameters. The Steam Generator Narrow Range Level instruments have a required number of 2, and a minimum number of 1, and are powered from redundant safety related power supplies. In this fashion, it can be shown that there is sufficient redundancy available to justify a 7 day action statement alone for the Steam Generator Wide Range Level and Auxiliary Feedwater Flow Rate instruments. In reference to the PORV Position Indicator, the safety related limit switch position indicators will still be retained in the Technical Specifications.

These indicators on their own are sufficient to provide valve status indication in the Control Room. In this fashion, the consequences of previously evaluated accidents will remain unchanged. Based on the diversity available for monitoring the parameter associated with the Steam Generator Wide Range Level and the Auxiliary Feedwater Flow Rate indicator, in addition to the safety related limit switches associated with the PZR PORV Position indication, sufficient monitoring capability will be maintained. As such, the consequences of evaluated events will remain the same through the assurance that the minimum number of parameters required to perform required manual actions, and monitor and assess plant status following an accident are available.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes will not impose or result in plant operation that will challenge the integrity of any fission product barriers. Post accident monitoring instrumentation is directly tied to accident mitigation in regards to assessment and decision making process. The number and type of instruments specified in the Technical Specifications, of there own will not result in the possibility of a different type of accident. All of these items as proposed, will still have adequate indication available through either safety related or diverse indication. Through the assurance that the required parameters necessary for appropriate decision making during and following an accident are available, it can be determined that the possibility of a different type of accident or an accident conditions propagating in a differing manner will be prevented.

The proposed change does not involve a significant reduction in a margin of safety. These changes will enhance the safety of the plant through the establishment of more restrictive minimum acceptable levels of performance and availability for the Steam Generator Wide Range Level and Auxiliary Feedwater Flow Rate Instruments in the Technical Specifications. The current Technical Specifications do not invoke any required remedial actions until at least 3 instruments fail. In the event of 3 failures, a 7 day action statement would be entered. In the event of all 4 instruments failing, a 48 hour action statement time clock is entered. The proposed changes would invoke a 7 day time clock based on a single failure and a 48 hour time clock would apply for two or more channel failures. The Steam Generator Narrow Range Level instruments provide redundant indication of heat sink status for both the Steam Generator Wide Range Level instruments, and the Auxiliary Feedwater Flow Rate instrument. As such, there is redundancy available for monitoring these parameters. The Steam Generator Narrow Range Level instruments have a required number of 2, and a minimum number of 1. In this fashion, it can be shown that there is sufficient redundancy available to justify a 7 day action statement alone for the Steam Generator Wide Range Level and Auxiliary Feedwater Flow Rate instruments.

Based on the diversity available for monitoring this parameter, it can be concluded that sufficient monitoring capability will be maintained. As such, based on the redundancy in indication, and the lower threshold for action statement entry, it has been concluded that the overall margin of safety has been enhanced. In regards to the PZR PORV Valve Position Indicators, valve position indication will be available from the safety related limit switches associated with these valves. Based on the current Technical Specifications, operations could continue for a period of 7 days based on the inoperability of either a stem mounted limit switch, or an acoustical monitor. If both of these indicators were inoperable, operations could continue for a period of time not to exceed 48 hours. If, the required number of channels or minimum operable channels are not restored within these time frames, the unit will be placed in Mode 4 within the next 12 hours. The proposed changes will allow operations to continue for a period of time not to exceed 48 hours based on the inoperability of the stem mounted limit switch alone. If, the required number of channels (same as the minimum operable number) are not restored within this time frame, the unit will be placed in Mode 4 within the next 12 hours. In the event that the acoustical monitor is inoperable, the actions required will [remain] the same. As such, it can be concluded that the restoration time frame for an inoperable limit switch is the same in the proposed change, is the same as the current Technical Specifications assuming loss of the acoustic monitor. Regarding the PZR PORV Block Valve Position Indicators, valve position indication will be available from the safety related limit switches associated with these valves. Based on the current Technical Specifications, operations could continue for a period of 7 days based on the inoperability of a stem mounted limit switch. If the required number of channels is not restored within this time frame, the unit will be placed in Mode 4 within the next 12 hours. The proposed changes will allow operations to continue for a period of time not to exceed 48 hours based on the inoperability of the stem mounted limit switch. If, the required number of channels (same as the minimum operable number) are not restored within this time frame, the unit will be placed in Mode 4 within the next 12 hours. In this fashion, the margin of safety will remain the same.

MODE OF APPLICABILITY CHANGE (E)

The following No Significant Hazards Considerations addresses the addition of Mode 7 as a required mode for the accident monitoring instrumentation.

The Mode of Applicability for Specification 3.8.9, Accident Monitoring Instrumentation has been revised to include Mode 7. Generic Letter 83-37 was written to address the Modes of Applicability as defined in the Standardized Technical Specifications. Mode 7 in the Zion Station Technical Specifications is defined as; less than or equal to 5% power with reactivity and temperature stated per the specific test. This mode is synonymous with Mode 2, incorporating specified tests from the Special Test Exemptions in the Standard Technical Specifications. This change will require the Accident Monitoring Instruments to be operable in Modes 1, 2, 3, and 7.

The proposed change does not result in a significant increase in the probability or consequences of accidents previously evaluated. Mode 7 at the Zion Station is Low Power Physics Testing. Low Power Physic Testing involves operation at power levels not to exceed 5% of rated thermal power. In order to establish these conditions, the plant must transition Mode 3. In transitioning Mode 3 the plant is in a condition where the accident monitoring instruments are required to be operable. The probability for a previously evaluated accident has remained unchanged. The addition of this mode has no effect on an events or conditions that are precursors to any evaluated accidents. By assuring the operability of these instruments, in all appropriate modes, the consequences of previously evaluated accidents will remain the same.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes does not approve or result in the installation of new equipment. The proposed changes will not impose or result in plant operation that will deviate from current practices. In order to establish Mode 7, the plant must first enter Mode 3. The Accident Monitoring Instruments are currently required operable in Mode 3. As such, this change does not result in operations different from current. As such, the proposed change will not create the possibility for a new or different kind of accident from those previously evaluated.

The proposed change does not involve a significant reduction in a margin of safety. This proposed change will result in the accident monitoring instruments specified in table 3.8.9, being required to be operable in Mode 7. The inclusion of this mode provides assurance that these instruments would be maintained operable during low power physics testing. As such, the margin of safety will not be significantly reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the

amendment request involves no significant hazards consideration.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: Richard J. Barrett

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: June 12, 1992

Description of amendment request: The amendment proposes that Specification 3.19 be changed to delete the requirements relating to the Iodine Removal System Hydrazine Storage Tank, T-102. In addition, it proposes that the remaining requirements of Specification 3.19 be rearranged in an updated format.

A. Item 3.19.1.a, specifying T-102 volume, concentration, and pressure requirements, should be deleted.

B. Item 3.19.1.c, specifying system operability requirements, should be revised to delete reference to T-102.

C. Table 4.2.2, items 12.b.1, and 12.b.2, specifying surveillance requirements for tank volume and concentration should be revised to delete reference to T-102.

D. Table 4.2.2, item 12.c, specifying surveillance requirements for automatic valves, should be deleted. The only automatic valves in the Iodine Removal System are those associated with T-102.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The hydrazine tank was installed solely for mitigation of the effects of a Loss of Coolant Accident (LOCA); it functions only following initiation of containment spray. Therefore, the probability of an accident will be unaffected by removal of the hydrazine tank requirements.

The function of the hydrazine tank, when it was installed, was to increase the removal of iodine from the post LOCA containment atmosphere. The presence of hydrazine in the containment spray solution has no effect on the iodine removal rate coefficients, as calculated in accordance with the current version of the Standard Review Plan.

Hydrazine, at Palisades, is not used for control of post accident pH in the containment pump. Sodium hydroxide is added to the post accident solution in the containment sump. Removal of the hydrazine tank will not affect the functioning of the sodium hydroxide tank. Therefore, the consequences of an accident are not increased due to the removal of the Hydrazine Tank.

Therefore, operation of the facility in accordance with the proposed change to the Technical Specifications would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2.Create the possibility of a new or different kind of accident from any previously evaluated.

The hydrazine addition tank was required only as an aid to removal of iodine from the post LOCA containment atmosphere. It has no function in preventing occurrence of any accident. Deletion of the requirements for the hydrazine tank, and subsequent removal of the tank and associated piping, will not introduce any new operation conditions. It will not affect the capacity, functioning, or settings of any other equipment.

Therefore, operation of the facility in accordance with the proposed change to the Technical Specifications would not create the possibility of a new or different kind of accident from any previously evaluated.

3.

Involve a significant reduction in a margin of safety.

The sole function of the hydrazine tank was to enhance the removal of iodine from the post LOCA containment atmosphere. Current methods used for calculation of iodine removal rates predict no such enhancement from the use of hydrazine addition. The rate of iodine removal, calculated using the methodology of the current revision of the SRP, would be higher than the removal rate, calculated by older methodology, which was found to be acceptable in the Safety Evaluation Report for Amendment 31 to the Palisades operating license.

Therefore, the proposed change to the Technical Specifications would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Van Wylen Library, Hope College, Holland, Michigan 49423

Attorney for licensee: Judd L. Bacon, Esq., Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201

NRC Project Director: L. B. Marsh

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: August 12, 1992

Description of amendment request: The amendment proposes that the operability requirements for the main condenser low vacuum scram function in Table 3.1.1 of the Technical Specifications be revised to more accurately reflect the as-built design of the main condenser vacuum trip system.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

GPU Nuclear Corporation has determined that:

A. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated. No credit is taken for the low condenser vacuum scram in any of the transients analyzed in the [Final Safety Analysis Report] FSAR. This change does not effect previously evaluated accidents.

B. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed operability requirement will provide greater assurance that main condenser and turbine integrity is protected in a loss of vacuum event.

C. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. The proposed operability requirement for the low condenser vacuum scram trip will enhance the protection of non-safety related equipment.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753

Attorney for licensee: Ernest L. Blake, Jr., Esquire. Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: September 20, 1991, as superseded by letter dated June 5, 1992

Description of amendment request: This amendment request was previously noticed in the **Federal Register** on January 22, 1992 (57 FR 2598). The proposed amendment to the Technical

Specifications (TS) would change the limitations associated with the Regulatory Control Element Assembly (CEA) insertion limits during hot standby and power operations for TS 2.10.2(7) and 2.10.2(7)c. The proposed amendment also modifies TS 2.10.2(9)b(i) to achieve consistency with the Combustion Engineering (CE) Standard Technical Specifications (STS) as contained in NUREG-0212, Revision 2. Omaha Public Power District (the licensee) had previously submitted an amendment request by letter dated September 20, 1991, to change the TS as above. The June 5, 1992, submittal supersedes the September 20, 1991, letter, and includes and incorporates the NRC staff comments. The licensee's analysis of no significant hazards consideration has not changed; however, it will be repeated for completeness.

Basis for proposed no significant hazards consideration determination: The first part of the proposed amendment to the TS deals with limitations associated with Regulatory CEA insertion limits. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed amendment does not involve a significant hazards consideration because the operation of Fort Calhoun Station in accordance with this amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed amendment changes the CEA long term insertion limits in the third (or longest time interval) category from "14 EFPD [effective full-power days] per calendar year" to "14 EFPD per fuel cycle." Since a fuel cycle is greater than a calendar year, the proposed changes are more conservative. Evaluation of the impact of CEA insertions on the fuel residing in the core for a given fuel cycle is also more appropriate than evaluating the insertions on a calendar year basis, which may impact two fuel cycles.

(2) Create the possibility of a new or different kind of a accident. It has been determined that a new or different type of accident is not created because no new or different modes of operation result from this change.

(3) Involve a significant reduction in the margin of safety. The CEA insertion duration limits proposed by this change are more conservative than the current Technical Specifications. Therefore, the margin of safety remains unchanged.

The second part of the proposed amendment to the TS deals with achieving consistency with the CE STS. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed amendment does not involve a significant hazards consideration because the operation of Fort Calhoun Station in accordance with this amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes result in a consistency between the Fort Calhoun Station Technical Specifications and the NUREG-0212 Revision 2 CE Standard Technical Specifications for the STS 3/4.10.1 exception on required shutdown margin during measurement of CEA worths. Maintaining an available shutdown margin equivalent to at leastthe highest estimated CEA worth during CEA worth measurement ensures the reactor can be adequately shut down if the need arises. Thus, the proposed change establishes a consistency with the STS while not significantly deviating from the existing Specifications 2.10.2(9)b(i)1 and 2.10.2(9)b(i)2 and does not increase the probability or consequences of a previously evaluated accident.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. It has been determined that a new or different type of accident is not created because no new or different modes of operation are proposed for the plant. Maintenance of an adequate available shutdown margin, defined as the reactivity equivalent to the highest estimated CEA worth, prevents possibility of a new or different kind of accident.

(3) Involve a significant reduction in a margin of safety. The available shutdown margin is allowed to be reduced for CEA measurements which confirm core design and further insure shutdown margin Mode 1 operations. The brief time period the shutdown margin is reduced is deemed acceptable as confirmed by the current allowed reduction for shutdown CEA worth measurements and also in the CE Standard Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1875 Connecticut Avenue, N.W., Washington, D.C. 20009-5728

NRC Project Director: John T. Larkins

Pennsylvania Power and Light Company, Docket No. 50-388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of amendment request: June 30, 1992 and supplemented by letter dated July 21, 1992

Description of amendment request: The proposed amendment would make changes to the Susquehanna Steam Electric Station (SSES), Unit 2 Technical Specifications in support of the ensuing Cycle 6 reload. Changes to the following Technical Specifications and bases are requested:

a. B 2.1 Safety Limits
b. 3/4.2.1 Average Planar Linear Heat Generation Rate
c. 3/4.2.2 APRM Setpoints
d. 3/4.2.3 Minimum Critical Power Ratio
e. 3/4.2.4 Linear Heat Generation Rate
f. 3/4.4.1 Recirculation System
g. B 3/4.1 Reactivity Control Systems
1h. B 3/4.2 Power Distribution Limits
i. B 3/4.4.1 Recirculation System
j. 5.3.1 Fuel Assemblies

The references discussed in the analysis below are available with the incoming application.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

No Significant Hazards Considerations

The following three questions are addressed for each of the proposed Technical Specification changes.

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

3. Does the proposed change involve a significant reduction in a margin of safety?

Specification 3/4.2.1, Average Planar Linear Heat Generation Rate

The change to this specification extends the Average Planar Linear Heat Generation Rate limits to a bundle exposure of 48,000 [Mega-watt days per metric ton] MWd/MT. The prior Average Planar Linear Heat Generation Rate limits prior to 40,000 MWd/MT are unaffected by this change.

1. No. Additional [Loss of Coolant Accident] LOCA heatup calculations were performed by [Siemans Nuclear Power] SNP, using NRC-approved methods, at exposures of 40,000 and 48,000 MWd/MT for one of the fresh fuel types to be loaded in Unit 2 Cycle 6 (U2C6). The results of these calculations showed that the [Peak Cladding Temperature] PCTs were less than 2200 °F and the [Metal-Water reaction] MWRs were less than 17% at both 40,000 and 48,000 MWd/MT. The results also showed that the calculated values at an exposure of 48,000 MWd/MT were no higher than the calculated results at an exposure of 40,000 MWd/MT. Based on the results of the SNP calculations, the extension of the Average Planar Linear Heat Generation Rate limits to an exposure of 48,000 MWd/MT does not involve a significant increase in the probability or

consequences of an accident previously evaluated.

2. No. The methodology and results described above can only be evaluated for their effect on the consequences of analyzed events; they cannot create new ones.

3. No. Based on 1. above, the methodology and results do not indicate a significant reduction in a margin of safety.

Specification 3/4.2.2, APRM Setpoints

The primary change to this specification is to add the Linear Heat Generation Rate for [Average Power Range Monitor] APRM setpoints (Figure 3.2.2-2) which are to be used for XN-1 fuel bundles. In addition, editorial changes were made to change "[Advanced Nuclear Fuels] ANF" to "SNP" and to correct words which were inadvertently reversed.

1. No. Based on the results provided in Attachment 'A' to the Reload Summary Report, the use of the new Linear Heat Generation Rate [LHGR] limits for APRM setpoints for the XN-1 fuel bundles at exposures up to 57,300 MWd/MT does not involve a significant increase in the probability or consequences of an accident previously evaluated. The extension of the LHGR for APRM setpoint limits (Figure 3.2.2-2) to 57,300 MWd/MT is necessary to support the exposure extension demonstration of the XN-1 fuel assemblies.

The editorial changes do not revise the technical methods or limits. Therefore, these changes cannot impact the probability or consequences of an accident previously evaluated.

2. No. The methodology and results described above can only be evaluated for their effect on the consequences of analyzed events; they cannot create new ones.

3. No. Based on 1. above, the methodology and results do not indicate a significant reduction in a margin of safety.

Specification 3/4.2.3, Minimum Critical Power Ratio

The changes to this specification support new [Minimum Critical Power Ratio] MCPR operating limits based on the [Pennsylvania Power and Light Company] PP&L reactor analysis methods described in Reload Summary Report Reference 3 and 7. The limits calculated for U2C6 will be a function of scram speed. The bounding analyses of the core design with the four XN-1 fuel bundles and the core design without the four XN-1 fuel bundles was chosen to develop the MCPR Operating Limits. Therefore, the requirements have been revised to reflect these bases.

1. No. The MCPR Operating Limits for U2C6 were generated using PP&L's reactor analysis methods described in PP&L reports PL-NF-87-001-A (see Reload Summary Report Reference 1), PL-NF-89-005 (see Reload Summary Report Reference 2 and 4), PL-NF-90-001 (see Reload Summary Report References 3 and 7). As a result of these analyses [the changes in] [Critical Power Ratio] CPRs were generated, and after combining with the MCPR Safety Limit as calculated by SNP, MCPR operating limits were developed as MCPR versus Percent of Rated Core Flow and MCPR versus Percent of Rated Core Thermal Power. These limits cover the allowable operating range of power and flow. As specified in PL-NF-90-001, seven major events were analyzed. These events can be divided into two categories: Core Wide Transients and Local Transients; the core wide transient events analyzed were:

1) Generator Load Rejection Without Bypass (GLRWOB),

2) Feedwater Controller Failure (FWCF),

3) Recirculation Flow Controller Failure-Increasing Flow (RFCF), and

4) Loss of Feedwater Heating (LOFWH).

As discussed in PL-NF-90-001, the other core wide transients are non-limiting (i.e., they would produce lower calculated [changes in] CPRs then one of the above four events). The local transient events analyzed were:

1) Rod Withdrawal Error (RWE), and

2) Fuel Loading Error (FLE).

The fuel loading error evaluation includes analysis of both rotated and mislocated fuel assemblies.

Sufficient analyses were performed to define the MCPR operating limits as a function of core power, core flow, and scram speed. These limits were also determined for three plant equipment availability conditions:

1) Main Turbine Bypass and EOC-RPT operable,

2) Main Turbine Bypass inoperable, and

3) EOC-RPT inoperable.

Core-Wide Transients

The PP&L RETRAN model and methods described in PL-NF-89-005 (see Reload Summary Report Reference[s] 2 and 4), PL-NF-90-001 (see Reload Summary Report Reference[s] 3 and 7), were used to analyze the GLRWOB, FWCF, and RFCF events. The [changes in] CPRs were evaluated using the XN-3 Critical Power Correlation (see Relaod Summary Report Reference 26) consistent with the methods described in PL-NF-90-001. The GLRWOB and FWCF events were analyzed based on an average scram speed of 4.4 feet/second and the minimum allowed Technical Specification scram speed. Thus, given that these two events are limiting, the Technical Specification power dependent MCPR operating limits determined for U2C6 will be a function of scram speed for the three plant equipment availability conditions as discussed above. The RFCF event was conservatively analyzed at the Technical Specification scram speed. The RFCF event is the limiting event in determining the Technical Specification flow dependent MCPR operating limits for U2C6. The [changes in] CPR results for the GLRWOB, FWCF, and RFCF are provided in Reload Summary Report Tables 2, 3, and 4, respectively.

The LOFWH event was conservatively analyzed by PP&L using the stead[y] state core physics methods described in PL-NF-90-001 and Reload Summary Report Reference 7. The [change in] CPR calculated for the LOFWH event is 0.11 and is bounded by the results of the other three core-wide transients.

Local Transients

The RWE and FLE (rotated and mislocated bundle) were analyzed using the methodology described in PL-NF-87-001-A (see Reload Summary Report Reference 1), PL-NF-90-001 (see Reload Summary Report, Reference[s] 3 and 7). The [change in] CPR resulting from the RWE analysis (based on a Rod Block Monitor setpoint of 108%) and the [changes in] CPRs resulting from the FLE analyzes are provided in Reload Summary Report Table 5. The results of these events are bounded by those of the GLRWOB, and thus these events are non-limiting for U2C6.

Based on the above, the methodology used to develop the new MCPR operating limits for the Technical Specifications does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. No. The methodology and results described above can only be evaluated for their effect on the consequences of analyzed events; they cannot create new ones. The consequences of analyzed events were evaluated in 1. above.

3. No. Based on 1. above, the methodology used to generate the MCPR operating limits for U2C6 is both sufficient and conservative.

Specification 3/4.2.4, Linear Heat Generation Rate

The primary change to this specification is to add the Linear Heat Generation Rate (Figure 3.2.4-2) which is to be used for the XN-1 fuel bundles. In addition, editorial changes were made to change "ANF" references to "SNP."

1. No. Based on the results provided in Attachment 'A' to the Reload Summary Report, the use of the new Linear Heat Generation Rate limits for XN-1 fuel bundles at exposures up to 57,300 MWd/MT does not involve a significant increase in the probability of consequences of an accident previously evaluated. The extension of the LHGR limits to 57,300 MWd/MT is necessary to support the exposure extension demonstration of the XN-1 fuel bundles.

The editorial changes do not revise the technical methods or limits. Therefore, these changes cannot impact the probability or consequences of an accident previously evaluated.

2. No. The methodology and results described above can only be evaluated for their effect on the consequences of analyzed events; they cannot create new ones.

3. No. Based on 1. above, the methodology and results do not indicate a significant reduction in a margin of safety.

Specification 3/4.4.1, Recirculation System (Two Loop Operation)

The changes to this specification (i.e., Figure 3.4.1.1.1-1) reflect the results of cycle-specific stability analysis.

1. No. The stability operating regions which will be used for Unit 2 Cycle 6 are the same as described in Attachment 1 to the interim requirements of NRC Bulletin No. 88-07, Supplement 1 "Power Oscillations in Boiling Water Reactors," (see Reload Summary Report, Reference 18). As in the previous cycle, Regions B and C of the NRC Bulletin have been combined into a single region (i.e., Region II), and Region A of the NRC Bulletin corresponds to Region I.

In addition to the region definitions, PP&L has performed stability tests in SSES Unit 2 over the course of Cycles 2, 3, and 4 to

demonstrate stable reactor operation with SNP 9X9 fuel. The test conditions covered a range from a mixed core of SNP 9X9 and GE 8X8R fuel (Cycles 2 and 3) to a full core of SNP 9X9 fuel (Cycle 4). Reload Summary Report Reference[s] 19 provided an NRC evaluation of the test data and concluded that the use of 9X9 fuel does not produce significant changes in stability behavior as compared to [Boiling Water Reactor] BWRs loaded with standard 8X8 fuel.

Based on the above, operation within the limits specified by the proposed changes will ensure that the probability and consequences of unstable operation will not significantly increase.

2. No. The methodology described above can only be evaluated for its effect on the consequences of unstable operation; it cannot create new events. The consequences were evaluated in 1. above.

3. No. PP&L believes that the use of Technical Specifications that comply with NRC Bulletin 88-07, Supplement 1, and the tests and analyses described above, provide assurance that SSES Unit 2

Cycle 6 will comply with General Design criteria 12, Suppression of Reactor Pool Oscillations. Therefore, no margin of safety will be significantly reduced as a result of the proposed changes.

Specification 3/4.4.1, Recirculation System (Single Loop Operation)

The changes to this specification are evaluated above. The changes to the single loop limits for Specification 3.2.3 are the result of the MCPR operating limit analyses evaluated above.

1. No. The changes are evaluated elsewhere in the No Significant Hazards Consideration evaluation.

2. No. See 1. above.

3. No. See 1. above.

Specification 5.3.1, Fuel Assemblies

The change to this specification is to reflect that the U2C6 core will contain only 9X9 fuel assemblies, which contain 79 fuel rods and 2 Zircaloy-2 water rods.

1.No. The changes are editorial to reflect the configuration of the Unit 2 Cycle 6 core, i.e., all 9X9 fuel assemblies which contain 79 fuel rods and 2 Zircaloy-2 water rods. The changes cannot impact the probability or consequences of any previously evaluated event.

2. No. See 1. above.

3. No. See 1. above.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, D.C. 20037

NRC Project Director: Charles L. Miller

Pennsylvania Power and Light Company, Docket No. 50-388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of amendment request: August 19, 1992

Description of amendment request: This amendment would make changes to the Technical Specifications to revise the logic which controls the automatic transfer of the High Pressure Coolant Injection (HPCI) pump suction source on high suppression pool level.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change does not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

All pertinent [Final Safety Analysis Report] FSAR and [Design Analysis Report] DAR evaluations were reexamined based on the proposed modification. The probability of a failure of the new relay has been minimized by the use of the same type already in use in Engineered Safety Feature control systems. Further, its operability will be confirmed through periodic testing. A probabilistic evaluation based on a review of reliability studies performed for the Susquehanna [Individual Plant Evaluation] IPE considered failures of the F042 and F006 valves to open. This evaluation determined that the increase in failure rate due to the addition of the relay falls within the error band of the predicted failure rate of the valves without the additional relay installed. The new relay has no interconnections with any other components which could impact safety. Therefore, the proposed change will not significantly increase the probability of previously evaluated events.

With regard to the consequences of previously evaluated events, as stated earlier, HPCI failure is bounded by the operation of [Automatic Depressurization System] ADS by design. If rather than HPCI failure, a pipe break is assumed while HPCI is aligned for pressure control with suppression pool level potentially greater than 24 feet, the resulting loads on safety-related components and structures are bounded by existing analysis as discussed previously. Based on the above, the consequences are bounded by existing analysis, and therefore, do not constitute any increase in the consequences of previously evaluated events.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

Postulated failures of the new design, as described above, could result in the loss of the HPCI [Emergency Core Cooling System] ECCS function. However, the ADS system exists as part of the design basis for this purpose. Other failures postulated while HPCI is operating in pressure control mode are bounded by previously evaluated events as described in 1. above. Therefore, the proposed change will not create the possibility of a new or different kind of event.

3. Involve a significant reduction in a margin of safety.

The motivation for proposing this modification is to improve the operators' ability to control level and pressure in the reactor after an [Main Steam Isolation Valve] MSIV closure event. [Pennsylvania Power & Light Company] PP&L believes this will improve the safe operation of Susquehanna SES. It will not significantly reduce any margin of safety because:

* It will continue to ensure that HPCI realigns to the suppression pool for HPCI injection if suppression pool level approaches the Technical Specification limit and injection into the vessel is required.

* Failure of the new relay will prevent the above realignment when required, but other single failures exist which can create this effect, and we have determined that the increase in failure rate due to the new relay is within the error band of the currently predicted failure rate (without the relay installed).

* When HPCI is in pressure control mode the change does not prevent operation of suppression pool level above the Technical Specification limit as long as HPCI is not required to inject. However, based on consideration of worst case single failures while in pressure control mode, it is concluded that the impact of such events on containment analysis results is bounded by previous analysis.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, D.C. 20037

NRC Project Director: Charles L. Miller

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: September 1, 1992

Description of amendment request: The amendments would change the technical specifications (TSs) to facilitate operation of the Limerick Generating Station (LGS), Units 1 and 2, in a 24-month fuel cycle. The 24- month refueling cycle will require numerous

revisions to the TSs to change the current 18-month TS surveillance testing interval to a 24-month testing interval. This amendment application is the second of three applications being submitted to the NRC to support the proposed changeover to a 24-month fuel cycle. The first application was submitted May 8, 1991 and May 15, 1992, noticed in the **Federal Register** on June 10, 1992 (57 FR 24675), and approved by Amendment Nos. 56 and 21 dated August 20, 1992. In the applications, the licensee stated that "These TS changes were evaluated in accordance with the guidance provided in NRC Generic Letter (GL) No. 91-04, 'Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle'" dated April 2, 1991.

The subject application involves proposed changes to the TS surveillance intervals for non-instrumentation (i.e., non-instrument calibration) TS line items (e.g., pump, valve and flow testing, logic system functional testing, response time testing, etc.). Proposed changes to TS surveillance intervals for instrument calibrations and the remaining TS line items to support a 24-month refueling cycle will be requested in a separate, forthcoming (i.e., third) application.

The proposed TS changes generically involve changing the surveillance test interval, typically stated as "at least once per 18 months," to "at least once per 24 months." The proposed TS changes also involve specific additional changes to certain Surveillance Requirements (SRs) that are required because of the change to 24-month refueling cycles, e.g., a change to the percent sampling required, or a change to the total number of years over which sampling occurs. In addition, the proposed TS changes involve a change to certain TS, SRs or associated bases that indicate conformance to a specific Regulatory Guide (RG) related to the system being tested, i.e., the proposed change would indicate that the change to a 24-month testing interval would be an exception to the 18-month testing interval guidance provided in the RG.

The proposed TS changes only involve a change to the surveillance intervals; there are no changes to the SRs themselves with the exceptions indicated above which do not change the overall requirement. Additionally, the proposed TS changes do not change the way in which the surveillances are performed. Also, the proposed changes do not involve any physicalchanges to plant systems or components. For a detailed description and discussion of each proposed change, the reader is referred to the licensee's application.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS changes involved a change in the surveillance testing intervals to facilitate the current change in the LGS Unit 1 and Unit 2 refueling cycles from 18 months to 24 months. The proposed TS changes do not physically impact the plant nor do they impact any design or functional requirements of the associated systems. That is, the proposed TS changes do not degrade the performance or increase the challenges of any safety systems assumed to function in the accident analysis. The proposed TS changes do not impact the TS surveillance requirements themselves, other than the frequency, nor the way in which the surveillance[s] are performed. Additionally, the proposed TS changes do not introduce any new accident initiators since no accidents previously evaluated have as their initiators anything related to the change in the frequency of surveillance testing. Also, the proposed TS changes do not affect the availability of equipment or systems required to mitigate the consequences of an accident because of other, more frequent testing and/or the availability of redundant systems or equipment. Furthermore, an historical review of surveillance test results indicated that any failures identified were unique, non-repetitive, and not related to any time-based failure modes, and that there was no evidence of any failures that would invalidate the above conclusions. Therefore, the proposed TS changes do not increase the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS changes involve a change in the surveillance testing intervals to facilitate the current change in the LGS Unit 1 and Unit 2 refueling cycles from 18 months to 24 months. The proposed TS changes do not introduce nor increase the number of failure mechanisms of a new different type than those previously evaluated since there are no physical changes being made to the facility. Additionally, the surveillance test requirements themselves, other than the frequency, and the way surveillance tests are performed will remain unchanged. Furthermore, an historical review of surveillance test results indicated there was no evidence of any failures that would invalidate the above conclusions. Therefore, the proposed TS changes do not create the possibility of a new or difference kind of accident from any previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

Although the proposed TS changes will result in an increase in the interval between surveillance tests, the impact on system availability, if any, is small based on other, more frequent testing or redundant systems or equipment. Furthermore, a review of surveillance test history demonstrated that there is no evidence of any failures that would impact the availability of the systems. Accordingly the assumptions in the plant licensing basis are not impacted, and therefore the proposed TS changes do not reduce the margin of safety of the affected equipment/components.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V. P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: Charles L. Miller

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: August 10, 1992

Description of amendment request: The proposed amendment to the James A. FitzPatrick Radiological Effluent Technical Specifications would change the offgas system steam dilution flow isolation setpoints. The proposed changes would increase the offgas dilution steam low flow and high flow isolation setpoints to 6300 pounds per hour and 7900 pounds per hour, respectively. The proposed steam dilution low setpoint is designed to ensure adequate steam flow through the recombiner during normal plant operation to prevent overheating or ignition of the catalyst. The proposed steam dilution high setpoint is designed to provide recombiner isolation in the event of a break as described in the Final Safety Analysis Report (FSAR). The associated Bases will also be revised to describe more accurately the offgas steam dilution function.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed Amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated.

The offgas system is not used to mitigate any of the transients or the accidents described in the FSAR. The proposed change increases the offgas dilution steam low flow and high flow setpoints to greater than or equal to 6300 and less than or equal to 7900 pounds per hour respectively. The proposed setpoints do not change the normal operation of the system. The proposed steam dilution low setpoint will continue to ensure adequate steam flow through the recombiner during normal plant operation to prevent overheating or ignition of the catalyst. The proposed low setpoint follows the guidance provided in [General Electric Service Information Letter] GE SIL 150, Rev. 2. which recommends that the low flow setpoint be set at a value no lower than 92% of the design steam flow required to keep the process below the flammability limit. In addition, this value is conservative for both the current licensed power level and for the planned power uprate. The proposed steam dilution high setpoint will continue to provide recombiner isolation in the event of a break as described in the FSAR. If a postulated break occurs, the difference of the release between the old and new setpoint will be negligible. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes involve changing the instrument setpoints but do not change the operation of the offgas system or the ability of the recombiner to perform its intended function. The proposed changes will ensure sufficient steam to prevent overheating the recombiner catalyst as well as isolation and pipe break detection. The changes do not introduce new equipment or any new failure modes to the plant. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. involve a significant reduction in a margin of safety.

Increasing the existing low and high dilution flow setpoints will provide an adequate window for normal plant operation. The proposed changes will ensure that existing margin of safety will be maintained. The offgas system will continue to meet all of its safety design bases as described in the FSAR. Changing the setpoints values will ensure safe plant operation since the probability of hydrogen combustion within the offgas system remains unchanged and within acceptable levels. In addition, the isolation function will continue to be provided by the revised setpoints. The proposed setpoints will ensure an adequate operational band when instrument uncertainty is considered. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Robert A. Capra

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: June 16, 1992

Description of amendment request: The proposed amendment would issue a one-time schedular exemption to Technical Specification (TS) Surveillance Requirement 4.6.1.2.a and its associated Bases, that requires three Type A Containment Integrated Leakage Rate Tests (CILRT) be performed at 40 + 10 month intervals during each 10-year service period. This one-time schedular exemption would allow the third test of the first 10-year service period to be performed during Refuel 7 at approximately a 53-month interval instead of the current maximum interval of 50 months and would extend the first 10-year service period by approximately 14 months.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed exemption to Technical Specification Surveillance Requirement 4.6.1.2.a does not involve a significant hazards consideration because operation of Callaway Plant with this exemption would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. This exemption applies to the integrated leak rate test and does not affect the local leak rate testing of containment penetrations and isolation valves where the majority of the leakage occurs. The allowable containment leakage used in accident analysis of offsite doses, L_a is 0.2 wt.%/day and for conservatism the leakage is limited to 75% L_a to account for possible degradation of the containment leakage barriers between tests. Based on the "as-left" leakage data from the past two CILRTs, the additional time period added to the testing interval would not adversely impact the containment leakage barriers to where degradation would cause leakage to exceed that assumed in accident analysis.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated. There are no design changes being made that would create a new type of accident or malfunction and the method and manner of plant operation remain unchanged. The change to the Surveillance Requirement is a one-time exemption to extend the surveillance interval for performance of the third CILRT.

3. Involve a significant reduction in a margin of safety. There are no changes being made to the safety limits or safety system settings that would adversely impact plant safety. The change is a one-time exemption to extend the time interval for performing a CILRT approximately 3 months beyond the current maximum interval. This change does not reduce any technical specification margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, DC 20037

NRC Project Director: John N. Hannon

Yankee Atomic Electric Company, Docket No. 50-029, Yankee Nuclear Power Station (YNPS), Franklin County, Massachusetts

Date of amendment request: August 27, 1992

Description of amendment request: The proposed amendment would move the Radiological Effluent Technical Specifications from the facility Technical Specifications to the Offsite Dose Calculation Manual (ODCM) and the Process Control Program (PCP). In addition, programmatic controls will be added to the Administrative Controls section of the Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes have been evaluated and determined to present no significant hazards. The modifications to the Technical Specification, ODCM, and PCP documents:

(1) Do not involve a significant increase in the probability or consequence of an accident previously evaluated. The radioactive

effluent and radiological environmental monitoring systems and equipment are not being changed. The proposed changes involve only the way such systems and equipment will be controlled.

(2) Do not create the possibility of a new or different type of accident from any accident previously evaluated. The radioactive effluent and radiological environmental monitoring systems and equipment are not being changed.

The proposed changes involve only the way such systems and equipment will be controlled.

(3) Do not involve a significant reduction in the margin of safety. There are no changes being made to systems or equipment. The changes being made are administrative in nature.

Based on the considerations contained herein, there is reasonable assurance that maintenance of YNPS consistent with the proposed changes will not endanger the health and safety of the public. This proposed change has been reviewed by the Plant Operations and Review Committee and the Nuclear Safety Audit and Review Committee.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301

Attorney for licensee: Thomas Dignan, Esquire, Ropes and Gray, One International Place, Boston, Massachusetts 02110-2624

NRC Project Director: Seymour H. Weiss

Previously Published Notices Of Consideration Of Issuance Of Amendments To Operating Licenses And Proposed No Significant Hazards Consideratinn Determination And Opportunity For Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: August 24, 1992

Description of amendment request: The proposed amendment would change the repair criteria for the Unit 1 Steam Generators for Catawba Unit 1 Cycle 7 operation. The amendment would modify Technical Specifications 3/4.4.5, Steam Generators, and 3/4.4.6, Reactor Coolant System Leakage, along with their associated Bases, to allow use of an interim tube plugging criteria, which will utilize a bobbin probe voltage-based plugging criteria.Date of publication of individual notice in Federal Register:August 28, 1992 (57 FR 39250)

Expiration date of individual notice: September 28, 1992

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: January 9, 1991, and its supplements dated August 19, 1991, June 22, 1992, and August 3, 1992ıI11ıT3Brief description of amendment request: The amendment would make changes to the technical specifications to prevent inadvertent isolation of the Reactor Water Cleanup System due to high seasonal temperatures while still providing timely leak detection capability.Date of publication of individual notice in **Federal Register**: September 1, 1992 (57 FR 39713)

Expiration date of individual notice: October 1, 1992

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Notice Of Issuance Of Amendment To Facility Operating License

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: February 27, 1992

Brief description of amendment: The amendment modifies the auxiliary feedwater system Surveillance Requirement 4.7.1.2.1 and Bases section B3/4.7.1.2 to add full flow surveillance test capability for both the motor-driven AFW pumps, provide consistent motor-driven and turbine-driven AFW pump surveillance test acceptance criteria, acknowledge a revised AFW design flow, and provide consistent application of and reference to the non-applicability of Technical Specification 4.0.4 for the turbine-driven AFW pump.

Date of issuance: September 2, 1992

Effective date: September 2, 1992

Amendment No. 29

Facility Operating License No. NPF-63. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** April 1, 1992 (57 FR 11105) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 2, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: March 10, as revised May 11, 1992, and July 10, 1992

Brief description of amendment: The amendment changes the TS to: (1) increase the boron concentration in the refueling water storage tank and the safety injection system accumulators from 2000-2200 ppmB to 2400-2600 ppmB, (2) increase the specified volume of NaOH in the spray additive tank from 2736-2912 gallons to 3268-3964 gallons and add the level range of 92-96 percent, (3) change the level of boric acid in the boric acid tank from 60 percent (21,400 gallons) to 74 percent (24,150 gallons) in Modes 5-6, and (4) reference the Core Operating Limits Report for determining the necessary reactor coolant system and refueling canal boron concentration.

Date of issuance: September 2, 1992.

Effective date: September 2, 1992.

Amendment No. 30

Facility Operating License No. NPF-63. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** April 15, 1992 (57 FR 13128) and August 5, 1992 (57 FR 34580) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 2, 1992.No significant hazards consideration comments received: No

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois; Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: March 31, 1992

Brief description of amendments: Revision of Technical Specifications to add an NRC-approved Topical Report to the list of analytical methods for determining the Cycle Specific Limits in the Core Operating Limits Report.

Date of issuance: August 21, 1992

Effective date: August 21, 1992

Amendment Nos.: 136, 132, 84, and 68

Facility Operating License Nos. DPR-29, DPR-30, NPF-11 and NPF-18. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 29, 1992 (57 FR 18171)The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 21, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: For Quad Cities, the Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021; and for LaSalle the Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: May 22, 1991

Brief description of amendments: The amendments change the Technical Specifications (TS) by removing the TS on radioactive effluents and radiological environmental monitoring and adding controls to include them in the Offsite Dose Calculation Manual (ODCM). Specifications on radioactive wastes will be relocated to the Process Control Program (PCP). These revisions are in response to Generic Letter 89-01, dated January 31, 1989. Various administrative changes were also made to indicate specification sections that have been deleted and are not being used.

Date of issuance: September 1, 1992

Effective date: Immediately, to be implemented within 30 days.

Amendment Nos.: 85 and 69

Facility Operating License Nos. NPF-11 and NPF-18. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 10, 1991 (56 FR 31431)The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 1, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: January 21, 1992

Brief description of amendments: Changes the Technical Specifications to allow 14 days before shutdown upon failure of the high pressure flow test of the High Pressure Core Injection or the Reactor Core Isolation Cooling systems.

Date of issuance: August 27, 1992

Effective date: August 27, 1992

Amendment Nos.: 137 and 133

Facility Operating License Nos. DPR-29 and DPR-30. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 19, 1992 (57 FR 6036)The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 27, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut, and Northeast Nuclear Energy Company, Docket Nos. 50-245, 50-336, and 50-423, Millstone Nuclear Power Station, Unit Nos. 1, 2 and 3, New London County, Connecticut

Date of application for amendments: February 25, 1992, as supplemented March 18, 1992.

Brief description of amendments: The amendments revise the Administrative Controls, Section 6, of the Technical Specifications to reflect recent organizational and administrative title changes at the facilities, clarify the responsibilities of the onsite review groups and increase the quorum of the Millstone Site Operations Review Committee.

Date of issuance: August 28, 1992

Effective date: August 28, 1992

Amendment Nos.: 155 - Haddam Neck, 58, 163, 69 - Millstone Units 1,2,3

Facility Operating License Nos. DPR-61, DPR-21, DPR-65, NPF-49. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 1, 1992 (57 FR 11106) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 28, 1992.No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457, for the Haddam Neck Plant; Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360, for Millstone 1, 2 and 3.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: July 31, 1989

Brief description of amendment: This amendment revises

Facility Operating License No. DPR-20 by adding a new license condition in Section 2.C.(3), removes fire protection TS 3.22, 4.17, 6.2.2.c and 6.4.2 and revises TS 4.2.2 and 6.5.2.4.1. Generic Letter 86-10, dated April 24, 1986 and Generic Letter 88-12, dated August 2, 1988, provided guidance to licensees for removal of the fire protection TS. This amendment is in response to these Generic Letters.

Date of issuance: August 21, 1992

Effective date: August 21, 1992

Amendment No.: 152

Facility Operating License No. DPR-20. The amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** September 6, 1989 (54 FR 37044)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 21, 1992.No significant hazards consideration comments received: No.

Local Public Document Room location: Van Wylen Library, Hope College, Holland, Michigan 49423.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: January 30, 1992

Brief description of amendment: The amendment revises Technical Specification (TS) Tables 3.4.3.2-1 and 3.4.3.2-2 to remove two valves from the listing of Rector Coolant System Pressure Isolation Valves. These valves will remain in TS Table 3.6.3-1, "Primary Containment Isolation Valves."

Date of issuance: July 31, 1992

Effective date: This license amendment is effective as of the date of its issuance with full implementation within 45 days.

Amendment No.: 85

Facility Operating License No. NPF-43. The amendment revises the Technical Specifications

Date of initial notice in **Federal Register:** May 27, 1992 (57 FR 22261)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 31, 1992.No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Duke Power Company, Docket Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units 1, 2 and 3, Oconee County, South Carolina

Date of application for amendments: May 20, 1992

Brief description of amendments: The amendments to the Technical Specifications would allow a one-time extension of the outage time for each 125 VDC battery and associated distribution center servicing the 230 kV switchyard. The extension would allow battery replacement without shutdown of the three Oconee nuclear plants.

Date of issuance: August 26, 1992

Effective date: August 26, 1992

Amendment Nos.: 196, 196, and 193

Facility Operating License Nos. DPR-38, DPR-47 and DPR-55. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 24, 1992 (57 FR 28199)The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 26, 1992, and in an Environmental Assessment dated August 19, 1992.No significant hazards consideration comments received: No.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Entergy Operations, Inc., Docket No. 50-382, Waterford Steam ElectricStation, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: May 11, 1992

Brief description of amendment: The amendment revised the Technical Specifications for Engineered Safety Features Actuation Instrumentation and A.C. Sources-Operating to adjust the degraded voltage protection relay setpoints.

Date of issuance: August 24, 1992

Effective date: August 24, 1992

Amendment No.: 74

Facility Operating License No. NPF-38. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 24, 1992 (57 FR 28200)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 24, 1992.No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Entergy Operations, Inc., Docket No. 50-382, Waterford Steam ElectricStation, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: May 5, 1992, as supplemented July 23, 1992

Brief description of amendment: The amendment revised the Technical Specifications (TS) by removing the component lists "Secondary Containment Bypass Leakage Paths," "Containment Isolation Valves," "Containment Penetration Conductor Overcurrent Protective Devices," and "Motor-Operated Valves Thermal Overload Protection and/or Bypass Devices" from the TS. This removal implements the staff's recommendations contained in NRC Generic Letter 91-08.

Date of issuance: August 25, 1992

Effective date: August 25, 1992

Amendment No.: 75

Facility Operating License No. NPF-38. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 8, 1992 (57 FR 30248) The additional information contained in the supplemental letter dated July 23, 1992, was clarifying in nature and thus, within the scope of the initial notice and did not affect the staff's proposed no significant hazards consideration.The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 25, 1992.No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122. Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: May 26, 1992, as supplemented by letter dated June 3, 1992.

Brief description of amendments: The amendments change the Technical Specifications in Sections 3/4.9 and 5.6 related to the prevention of criticality in the spent fuel pool. The revised specifications introduce a required boron concentration in the spent fuel pool during refueling operations and define categories of fuel assemblies based upon enrichment, burnup, and presence of burnable poisons. The allowable arrangement of assemblies within the spent fuel pool is determined as a function of the defined categories.

Date of issuance: August 25, 1992

Effective date: August 25, 1992, to be implemented within 10 days of issuance.

Amendment Nos.: Amendment Nos. 43 and 32.

Facility Operating License Nos. NPF-76 and NPF-80: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 22, 1992 (57 FR 32572)The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 25, 1992.No significant hazards consideration comments received: No.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: June 19, 1992

Brief description of amendments: The amendment revises Technical Specifications 3/4.7.9 related to the schedule for snubber visual inspections. The changes are in accordance with the guidance provided in Generic Letter 90-09, "Alternate Requirements for Snubber Visual Inspection Intervals and Corrective Actions."

Date of issuance: August 27, 1992

Effective date: August 27, 1992, to be implemented within 10 days of issuance.

Amendment Nos.: Amendment Nos. 44 and 33.

Facility Operating License Nos. NPF-76 and NPF-80: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 22, 1992 (57 FR 32573)The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 27, 1992.No significant hazards consideration comments received: No.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488.

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461 Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of application for amendment: July 11, 1990, as supplemented May 7, 1991

Description of amendment request: The amendment revised Technical Specifications (TS) in response to NRC Generic Letter GL) 88-01 by changing Section 4.0.5, Surveillance Requirements for Inservice Inspection andTesting; Section 3/4.4.3.1, Reactor Coolant System Leakage Detection Systems Section, and Bases; and, 3/4.4.3.2, Operational Leakage and Bases. The revisions added a commitment to perform the Inservice Inspection Program for piping as identified in GL 88-01, changed the actions for out of service leakage detection systems, and added Limiting Conditions for Operation and Action Statements for sudden increases in Reactor Coolant System leakage.

Date of issuance: August 21, 1992

Effective date: August 21, 1992

Amendment No.: 65

Facility Operating License No. NPF-62. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 5, 1990 (55 FR 36345) and February 5, 1992 (57 FR 4488). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 21, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy, Center, Linn County, Iowa

Date of application for amendment: February 18, 1992

Brief description of amendment: The amendment changed the Technical Specifications by revising the setpoints for isolation of the High Pressure Coolant Injection and Reactor Core Isolation Cooling systems on a high steam flow condition.

Date of issuance: August 25, 1992

Effective date: August 25, 1992

Amendment No.: 187

Facility Operating License No. DPR-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 18, 1992 (57 FR 9446)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 25, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S. E., Cedar Rapids, Iowa 52401.

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: March 24, 1992

Brief description of amendment: This amendment 1) increases the fuel enrichment limit from a maximum nominal value of 3.70 weight percent U-235, to a maximum value of 3.95 weight percent U-235 radially averaged within any axial enrichment zone, and 2) changes the nominal active fuel length from 136.7 inches, to a range of 136 to 137 inches.

Date of issuance: September 3, 1992

Effective date: September 3, 1992

Amendment No.: 133

Facility Operating License No. DPR-36: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 29, 1992 (57 FR 18175)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 3, 1992.No significant hazards consideration comments received: No

Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578.

North Atlantic Energy Service Corporation, Docket No. 50-443, SeabrookStation, Rockingham County, New Hampshire

Date of application for amendment: June 11, 1992

Brief description of amendment: This amendment would change the Seabrook Station Technical Specifications (TS) to implement the guidance of NRC Generic Letter (GL) 91-08, "Removal of Component Lists from Technical Specifications". The guidance of GL 91-08 is implemented by removing the listing of Secondary Containment Bypass Leakage Paths (Table 3.6-1) from TS. The listing of leak paths will instead be included in the licensee's Technical Requirements Manual and the Final Safety Analysis Report. Additionally, TS 3.6.3 is revised to permit locked or sealed closed containment isolation valves to be opened on an intermittent basis under administrative control.

Date of issuance: August 27, 1992

Effective date: August 27, 1992

Amendment No.: 14

Facility Operating License No. NPF-86: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 8, 1992 (57 FR 30259)The Commission's related evaluation of the

amendment is contained in a Safety Evaluation dated August 27, 1992.No significant hazards consideration comments received: No

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

North Atlantic Energy Service Corporation, Docket No. 50-443, Seabrook Station, Rockingham County, New Hampshire

Date of application for amendment: May 5, 1992

Brief description of amendment: This amendment changes the Seabrook Station Technical Specifications to allow a relaxation in the pressurizer safety valve (PSV) and main steam safety valve (MSSV) setpoint tolerances to +3%. The +3% tolerance is used for the "as found" acceptance criteria for additional valve testing.

Date of issuance: September 3, 1992

Effective date: September 3, 1992

Amendment No.: 15

Facility Operating License No. NPF-86: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 10, 1992 (57 FR 24677)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 3, 1992.No significant hazards consideration comments received: No

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: March 18, 1991, as supplemented December 23, 1991

Brief description of amendment: The amendment incorporates into the Technical Specifications additional fire detection and suppression systems resulting from various 10 CFR 50, Appendix R, modifications, design changes, and other changes, including changes to correct errors in the Technical Specifications and to provide consistency with those changes made in response to Generic Letter 87-09 and Amendment No. 151, as described in the licensee's submittal.

Date of issuance: August 26, 1992

Effective date: August 26, 1992

Amendment No.: 162

Facility Operating License No. DPR-65: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 1, 1991 (56 FR 20041)The December 23, 1991, submittal provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 26, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County,Minnesota

Date of application for amendments: June 15, 1992

Brief description of amendments: The amendments consist of changes to the Technical Specifications in response to your application dated June 15, 1992. The application requests changes that would implement Generic Letter 87-09 provisions relating to missed surveillances and applicability of action requirements.

Date of issuance: August 20, 1992

Effective date: August 20, 1992

Amendment Nos.: 101 and 94

Facility Operating License Nos. DPR-42 and DPR-60. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 8, 1992 (57 FR 30254) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 20, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: May 8, 1991, as supplemented by letter dated May 15, 1992

Brief description of amendments: The amendments changed the Technical Specifications to 1) revise the channel calibration frequency for the peak acceleration seismic monitoring recorder mounted on the reactor vessel head flange from 18 to 24 months and 2) revise the frequency of surveillance testing of the main steam safety relief valves from 18 to 24 months.

Date of issuance: August 20, 1992

Effective date: August 20, 1992Amendment Nos. 56 and 21

Facility Operating License Nos. NPF-39 and NPF-85. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 10, 1992 (57 FR 24675)The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 20, 1992.No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Portland General Electric Company, et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: June 26, 1992

Brief description of amendment: The amendment revises Technical Specification Section 6.0, "Administrative Controls," to clarify the responsibilities of the Vice President and Chief Nuclear Officer and responsibilities of the Vice President, Nuclear. Additionally, the amendment corrects editorial errors. These errors consisted of misspelled words, improper capitalization of terms, omitted words, an omitted definition, improper punctuation, and errors introduced by overlapping amendments. The application for amendment was designated as LCA 222.

Date of issuance: August 26, 1992

Effective date: August 26, 1992

Amendment No.: 187

Facility Operating License No. NPF-1: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 22, 1992 (57 FR 32575)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 26, 1992.No significant hazards consideration comments received: No.

Local Public Document Room location: Branford Price Millar Library, Portland State University, 934 S.W. Harrison Street, P.O. Box 1151, Portland, Oregon 97207

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: May 19, 1992

Brief description of amendment: Allows an exception to the Technical Specification 4.0.4 Surveillance requirements for the Intermediate Range Monitors (IRMs) and Source Range Monitors (SRMs) when Operational

Condition 2 or 3 is entered from Operational Condition 1.

Date of issuance: August 24, 1992

Effective date: August 24, 1992

Amendment No.: 54

Facility Operating License No. NPF-57: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 10, 1992 (57 FR 24678)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 24, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of application for amendment: April 6, 1992

Brief description of amendment: The amendment extends the maximum interval between steam generator tube inspections from 24 to 28 months for the inspection interval ending in 1992.

Date of issuance: August 26, 1992

Effective date: August 26, 1992

Amendment No.: 149

Facility Operating License No. DPR-13: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 27, 1992 (57 FR 22265)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 26, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P. O. Box 19557, Irvine, California 92713

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: February 2, 1990

Brief description of amendment: The amendment revised TS 3/4.3.3.6, Post-Accident Monitoring Instrumentation, by adding neutron flux (wide range) and neutron flux (source range) instrumentation to Tables 3.3-10 and 4.3-10 to reflect the appropriate surveillance requirements for the new monitors. Additionally the amendment revised TS 3/4.9.2, Refueling Operations - Instrumentation, by adding a requirement to calibrate the neutron flux monitors prior to entry into Mode 6.

Date of issuance: August 24, 1992

Effective date: August 24, 1992

Amendment No. 172

Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 4, 1991 (56 FR 43813)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 24, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Yankee Atomic Electric Company, Docket No. 50-029, Yankee Nuclear PowerStation, Franklin County, Massachusetts

Date of application for amendment: February 3, 1992

Brief description of amendment: Removed the 3.25 limit on extending surveillance intervals in the Technical Specifications, following the guidance of Generic Letter 89-14.

Date of issuance: August 18, 1992

Effective date: August 18, 1992

Amendment No.: 143Possession Only License No. DPR-3: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 24, 1992, (57 FR 28208). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 18, 1992.No significant hazards consideration comments received: No

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Yankee Atomic Electric Company, Docket No. 50-029, Yankee Nuclear PowerStation, Franklin County, Massachusetts

Date of application for amendment: June 5, 1992,

Brief description of amendment: Revise the Fire Protection Program following the guidance of NRC Generic Letters 86-10 and 88-12.

Date of issuance: August 20, 1992

Effective date: August 20, 1992

Amendment No.: 144Possession Only License No. DPR-3: Amendment revised the Technical Specifications and a license condition.

Date of initial notice in **Federal Register:** July 8, 1992, (57 FR 30265). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 20, 1992.No significant hazards consideration comments received: No

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301

Notice Of Issuance Of Amendment To Facility Operating License And Final Determination Of No Significant Hazards Consideration And Opportunity For Hearing (Exigent Or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without

opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By October 16, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests

for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: August 26, 1992

Brief description of amendments: The amendments changed the Technical Specifications to incorporate a portion of a Westinghouse Owners' Group topical report (WCAP-10271 and supplements) that, among other things, provides for longer surveillance intervals and changes the action requirements for a failed channel.

Date of issuance: August 28, 1992

Effective date: August 28, 1992

Amendment Nos.: 135 and 114

Facility Operating License Nos. DPR-70 and DPR-75: Amendments revised the Technical Specifications.Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendments, consultation with the State of New Jersey and final no significant hazards considerations determination are contained in a Safety Evaluation dated August 28, 1992.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW, Washington, D.C., 20005-3502.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: August 17, 1992

Brief description of amendment: The amendment changes the Technical Specifications by adding a footnote to Note 11 of Table 4.3-1 which states that the complete verification of the operability of the shunt trip relay circuitry shall be implemented prior to Wolf Creek's startup from the first shutdown to Mode 3 occurring after August 14, 1992. The change was required due to the discovery that the existing surveillance procedure does not adequately verify the operability of the shunt trip contacts associated with the manual reactor trip function.

Date of issuance: August 27, 1992

Effective date: August 27, 1992

Amendment No.: Amendment No. 55

Facility Operating License No. NPF-42. Amendment revised the Technical Specifications.Public comments requested as to proposed no significant hazards consideration: No.The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated August 27, 1992.

Local Public Document Room location: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621.

Dated at Rockville, Maryland, this 9th day of September 1992.

For the Nuclear Regulatory Commission

Bruce A. Boger,

Director, Division of Reactor Projects-III, IV, V Office of Nuclear Reactor Regulation

[Doc. 92-22200 Filed 9-15-92; 8:45 am]

BILLING CODE 7590-01-F

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Thursday, October 8, 1992
Thursday, October 22, 1992

The meetings will start at 10:45 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives from five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information of these matters may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, room 1340, 1900 E Street, NW., Washington, DC 20415 (202) 606-1500.

Dated: September 8, 1992.

Anthony F. Ingrassia,

Chairman, Federal Prevailing Rate Advisory Committee.

[FR Doc. 92-22331 Filed 9-15-92; 8:45 am]

BILLING CODE 6325-01-M

Hispanic Federal Employment Advisory Group; Meeting

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice of open meeting.

SUMMARY: According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that the first meeting of the Hispanic Federal Employment Advisory Group will be held at the time and place shown below:

Date: September 30, 1992, 9 a.m.

Place: U.S. Office of Personnel Management's Conference Center, room 1350, 1900 E Street NW., Washington, DC.

Agenda: The focus of the September 30th meeting will be the discussion of employment issues facing Hispanics in the Federal Government.

FOR FURTHER INFORMATION CONTACT: Evelyn Day, Special Assistant for Hispanic Employment, Office of Personnel Management, room 6332, 1900 E Street, NW., Washington, DC 20415.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. If time permits, an opportunity will be provided for members of the public in attendance at the meeting to provide their views. Persons wishing to address the Advisory Group orally at the meeting should submit a written request no later than the close of business on September 22, 1992.

The request must include the name and address of the person wishing to appear, the capacity in which the appearance will be made, a short summary of the intended presentation, and the amount of time desired.

U.S. Office of Personnel Management.

Douglas A. Brook,

Acting Director.

[FR Doc. 92-22330 Filed 9-15-92; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-31174, File No. SR-CBOE-91-40]

Self-Regulatory Organizations: Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change Relating to Exchange Policy with Respect to Joint Account Trading in OEX and SPX Options

September 10, 1992.

On October 25, 1991, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change that modifies Exchange policies and procedures regarding permissible trading activity by joint account participants in Standard and Poor's ("S&P") 100 Index options ("OEX") and S&P 500 Index options ("SPX") classes.

The proposed rule change was published in Securities Exchange Act Release No. 30299 (January 28, 1992), 57 FR 4505.[3] No comments were received on the proposed rule change.

Currently, Exchange policies and procedures regarding permissible joint account trading activity by Exchange members in OEX and SPX classes are contained in four separate Exchange documents, specifically (1) an Exchange Memo to members regarding joint account members simultaneously trading in the same class of options, dated May 31, 1984; (2) an Exchange Bulletin to members regarding joint account participants simultaneously trading in the same class of options, dated April 15, 1987; (3) an Exchange Surveillance Memo, dated 1980; and (4) an Exchange Circular to members regarding joint account identification, dated August 14, 1990.

The Exchange proposes to codify these existing policies and procedures in one circular and to make three modifications to existing Exchange policy regarding permissible joint account trading activity by Exchange members in OEX and SPX options.[4] First, the Exchange proposes that joint accounts participants, who are not trading in-person in an index option trading crowd, may enter orders for the joint account with floor brokers, even if other joint account participants are trading the same joint account in-person in the same trading crowd. Second, the Exchange proposes that managers of groups that participate in the Exchange's Retail Automatic Execution System ("RAES") be permitted to enter orders with floor brokers for the RAES joint account even if the manager is trading in-person for his individual account in the same index option crowd. Third, joint account members may alternate trading in-person for their individual account and their joint account while in the crowd.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6,[5] and the rules and regulations thereunder. Specifically, the Commission believes that it is appropriate for the CBOE to modify certain joint account trading policies for OEX and SPX options, while keeping restrictions in place that are designed to ensure market integrity. First, the Commission believes that it will facilitate hedging and thereby contribute to improvements in market quality to permit joint account participants who are not trading in-person in an index option trading crowd to enter orders for the joint account with floor brokers even if other joint account participants are trading in the same trading crowd. Second, the Commission recognizes the need of managers of OEX and SPX RAES group accounts to manage effectively not only the RAES group account for which they are the manager, but also their individual account. Accordingly, the Commission believes that it is appropriate that RAES group managers be permitted to enter orders with floor brokers for the RAES joint account even if the RAES group manager is trading in-person for his individual account in the same index option crowd. The Commission notes, however, that the RAES group manager still may not enter an order for the joint account with a floor broker if the RAES group manager is trading in-person for the joint account. Third, the Commission believes that it may contribute to market liquidity as well as facilitate hedging to permit joint account members to alternate trading in-person for their individual account and their joint account while in a stock index option trading crowd.

As mentioned above, the Commission notes that the CBOE's proposed circular contains provisions designed to ensure that joint account participants do not engage in abusive or illegal trading, thereby ensuring the maintenance of fair and orderly markets and market integrity. Specifically, the proposed circular provides that "member must ensure that they do not trade in-person or by orders such that any of the following results: (a) A trade occurs between a joint account participant's individual market maker account and the joint account he or she is a

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 250.19b-4 (1989).

[3] The Exchange originally submitted its proposal pursuant to Section 19(b)(3) of the Act, but on November 25, 1992, the CBOE submitted Amendment No. 1 to its proposal which indicated that the Exchange was submitting its proposal pursuant to Section 19(b)(2) of the Act. On December 5, 1991, the CBOE sent the Commission additional information on the Exchange's existing joint account trading procedures for OEX and SPX options classes. *See* letter from Patricia L. Cerney, Director, Department of Market Surveillance, CBOE to Thomas Gira, Branch Chief, Options Regulation, Division of Market Regulation, dated December 5, 1991. Finally, on August 14, 1992, the Exchange further amended its proposal to stipulate that members of a joint account may not participate on opposite sides of an options transaction involving the account. *See* letter from Joanne Moffic-Silver, Associate General Counsel & Chief Enforcement Attorney, CBOE, to Sharon Lawson, Assistant Director, Division of Market Regulation, dated August 14, 1992.

[4] As noted *supra* note 3, the Exchange also clarified its existing policies by specifically stating that members of a joint account may not participate on opposite sides of an options transaction involving the account.

[5] 15 U.S.C. 78f (1982).

participant of, or (b) a trade occurs between two joint accounts that have common participants, or (c) a trade occurs in which the buyer and seller are representing the same joint account and are on opposite sides of a transaction." In addition, the Commission notes that the CBOE has surveillance procedures designed to detect and deter abusive trading by joint account participants. Accordingly, the Commission believes that expanding the ability of joint account participants to trade in OEX and SPX options classes in limited circumstances will not threaten the integrity of CBOE's market.

Finally, the Commission believes that it is beneficial for the CBOE to codify into one circular existing Exchange policies and procedures regarding permissible joint account trading activity by Exchange members in OEX and SPX options. Specifically, the Commission believes that this consolidation will make it easier for joint account participants to understand and have access to all relevant trading policies and procedures with respect to joint account activity in OEX and SPX option classes.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (SR-CBOE-91-40) hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-22361 Filed 9-15-92; 8:45 am]

BILLING CODE 8010-01-M

[6] 15 U.S.C. 78s(b)(2) (1982).

[7] 17 CFR 200.30-3(a)(12) (1989).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

September 10, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Consolidated-Tomoka Land Co.
Common Stock, $1.00 Par Value (File No. 7-9069)

Cousins Properties, Incorporated
Common Stock, $1.00 Par Value (File No. 7-9070)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Intersted persons are invited to submit on or before October 1, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-22307 Filed 9-15-92; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Midwest Stock Exchange, Inc. Findings and Order Granting Application for Unlisted Trading Privileges in One Over-the-Counter Issue and Application To Withdraw Unlisted Trading Privileges in One Over-the-Counter Issue

September 8, 1992.

On August 3, 1992, the Midwest Stock Exchange, Inc. ("MSE") submitted an application for unlisted trading privileges ("UTP") pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") security, *i.e.*, a security not registered under section 12(b) of the Act:

File No.	Symbol	Issuer
7-8890	ADPT	Adaptec, Inc. Common Stock $.001 par value.

The MSE also applied to withdraw UTP pursuant to section 12(f)(4) of the Act in the following issue:

File No.	Symbol	Issuer
7-8891	TSQM	T [2] Medical, Inc. Common Stock $.01 par value.

The Commission published notice of the application in Securities Exchange Act Release No. 31050 (August 17, 1992), 57 FR 38706, but did not receive any comments.

In considering an application for extension of UTP to an OTC security under section 12(f)(1)(C), the Commission is required to consider, among other matters, the public trading activity in the security, the character of that trading, the impact of an extension of UTP on the existing markets for the security, and the desirability of removing impediments to and the progress that has been made toward the development of a National Market System. The Commission believes that granting the MSE's application for UTP is consistent with the maintenance of fair and orderly markets and the protection of investors. Transactions in the subject security, regardless of the market in which they occur, will be reported in the consolidated transaction reporting system established under a joint transaction reporting plan between the MSE and the National Association of Securities Dealers.[1] The availability of last sale information for the subject security should contribute to pricing efficiency and to assuring that transactions on the MSE are executed at prices that are reasonably related to those occurring in the OTC market.

The MSE also applied to the Commission pursuant to section 12(f)(4) to withdraw UTP in one issue. The MSE requested that T [2] Medical, Inc. will be listed on the New York Stock Exchange, rendering it ineligible for the OTC/UTP program.

Section 12(f)(4) provides that the Commission may approve such an application if it determines that a termination of UTP is necessary or appropriate in the public interest or for the protection of investors. The Commission believes that approving the MSE's application to withdraw UTP in this issue is appropriate in the public interest because the issue was listed on the NYSE.

For these reasons, the MSE's application for UTP in the above-named security, and to withdraw UTP in the above-named security, is approved pursuant to section 12(f) of the Act.

[1] See Securities Exchange Act Release Nos. 28146, 28147 (June 26, 1990), 55 FR 27917, 28122. One precondition to the grant of OTC/UTP to exchanges was the development of a joint transaction reporting plan to accommodate OTC/UTP.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(2).

Jonathan G. Katz,

Secretary.

[FR Doc. 92-22309 Filed 9-15-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31166; File No. SR-NASD-92-32]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Prefiling of Advertisements Relating to Collateralized Mortgage Obligations

September 9, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 15, 1992, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend Article III, Section 35 of the NASD's Rules of Fair Practice and Section 8 of the NASD's Government Securities Rules to require members to file advertisements concerning collateralized mortgage obligations issued by a corporation or an agency of the United States government with the Association prior to use. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

Communications With the Public

Sec. 35.

* * * * *

(c) Filing Requirements and Review Procedures

[(1) Advertisements and sales literature concerning registered investment companies (including mutual funds, variable contracts and unit investment trusts) shall be filed with the Association's Advertising Department within 10 days of first use or publication by any member. Filing in advance of use is recommended. Members are not required to file advertising and sales literature which have previously been filed and which are used without change.]

[(2) Advertising and sales literature concerning public direct participation programs as defined in Article III, Section 34 of the Rules of Fair Practice shall be filed with the Association's Advertising Department for review within 10 days of first use or publication. Filing in advance of use is recommenced. Members need not file for review advertising and sales literature which has been filed by the sponsor, general partner or underwriter of the program or by another member.]

(1) Advertisements and sales literature concerning registered investment companies (including mutual funds, variable contracts and unit investment trusts) and public direct participation programs (as defined in Article III, Section 34 of the Rules of Fair Practice) shall be filed with the Association's Advertising Department within 10 days of first use or publication by any member. Filing in advance of use is recommended. Members are not required to file advertising and sales literature which have previously been filed and which are used without change.

(2) Advertisements concerning collateralized mortgage obligations registered under the Securities Act of 1933 shall be filed with the Association's Advertising Department for review at least 10 days prior to use (or such shorter period as the Department may allow in particular circumstances) for approval and, if changed or expressly disapproved by the Association, shall be withheld from publication or circulation until any changes specified by the Association have been made or, in the event of disapproval, until the advertisement or sales literature has been refiled for, and has received, Association approval. This subsection (c)(2) shall remain in effect for one year from (the date of SEC approval) unless modified or extended prior thereto by the Board of Governors.

Government Securities Rules

Communications With the Public

Sec. 8

* * * * *

(c) Filing Requirements and Review Procedures

(1) *Members shall file advertisements for review with the Association's Advertising Department as follows:*

(*A*) Advertisements concerning government securities (as defined in Section 3(a)(42) of the Securities Exchange Act of 1934) *other than collateralized mortgage obligations* shall be filed by members with the Association's Advertising Department of review within 10 days of first use or publication*; and*

(B) Advertisements concerning collateralized mortgage obligations shall be filed with the Association's Advertising Department for review at least 10 days prior to use (or such shorter period as the Department may allow in particular circumstances) for approval and, if changed or expressly disapproved by the Association, shall be withheld from publication or circulation until any changes specified by the Association have been made or, in the event of disapproval, until the advertisement or sales literature has been refiled for, and has received, Association approval. This subsection (c)(1)(B) shall remain in effect for one year from (the date of SEC approval) unless modified or extended prior thereto by the Board of Governors.

(2) [(A)] Each member of the Association that has not previously filed advertisements with the Association shall file its initial advertisement concerning government securities with the Association's Advertising Department at least 10 days prior to use and shall continue to file its advertisements concerning government securities at least 10 days prior to use for a period of one year.

[(B) Each member that, on the effective date of this section, had been filing advertisements with the Association for a period of less than one year shall continue to file its advertisements concerning government securities at least 10 days prior to use, until the completion of one year from the date the first advertisement was filed with the Association.]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning

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[1] The NASD filed Amendment Nos. 1 and 2 to the proposed rule change on September 1 and September 2, 1992, respectively. Amendment No. 1 provides the results of the NASD member vote on the proposed rule. The proposal was approved by the membership, with 1,810 voting in favor, 296 opposed, 9 not voting and 33 unsigned, out of 2,150 ballots received. Amendment No. 2 amends the text of the proposal in order to codify the fact that the proposed amendments will be effective for one year unless modified or extended by the Board of Governors and approved by the Commission. As provided below, the text of the proposal reflects the changes filed in Amendment No. 2.

the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD is proposing to amend Article III, section 35 of the NASD's Rules of Fair Practice and Section 8 of the NASD's Government Securities Rules to require members to file advertisements concerning collateralized mortgage obligations ("CMOs") issued by a corporation or an agency of the United States government with the Association prior to use. The requirement would be temporary, lasting for a period of one year. Prior to the end of the firstyear the Association will evaluate the efficacy of the rule and determine whether to extend the rule, propose alternative requirements or eliminate it.[2]

The proposed amendments resulted from the NASD's increasing concern over misleading advertisements for CMOs and an increase in the number of complaints associated with advertisements for CMOs. NASD believes that CMOs are extremely complex and require full and fair disclosure to assist the investor in understanding them. CMO advertisements generally are brief and emphasize high yields, safety, government guarantees (where applicable) and liquidity. The NASD has found, however, that it is difficult to distinguish between CMOs based on the content of such advertisements. Even though two CMOs have the same underlying collateral, they may differ substantially in their prepayment predictability or volatility. In particular, the terms "interest only" or "principal only" are generally inadequately explained.

As a result of these concerns, the NASD issued Notice to Members 92–27 (May 1992) (attached to the rule filing as Exhibit 2) detailing the problems relating to CMO advertising and recommending that members' CMO advertisements comply with certain standards set forth in the Notice. For example, the NASD believes that an advertisement which includes the "yield" of a CMO is misleading without disclosure of the prepayment assumption used to calculate the yield and that the anticipated yield and average life of the security will fluctuate depending on the actual prepayment experience and current interest rates.

The NASD also recommended in Notice to members 92–27 (May 1992) that CMO advertisements not contain comparisons between CMOs and any other investment vehicles. The NASD is particularly concerned that advertising CMOs as alternatives to certificates of deposit ("CDs") falsely implies that CMOs offer the same level of safety and guarantee of interest and principal as CDs.

In light of these concerns, the NASD believes that CMO advertisements should be subject to a pre-use filing to provide NASD staff an opportunity to comment on the fairness and reasonableness of such advertisements prior to use and permit potentially misleading advertisements to be identified and withheld from publication. At present, advertisements concerning government securities must be filed with the NASD within 10 days of first use or publication. Additionally, advertisements and sales literature concerning registered investment companies and direct participation programs must be filed within 10 days of first use. Advertising and sales literature pertaining to options must be approved in advance of its use or publication. While the NASD believes that a pre-use filing requirement for CMO advertisements, similar to the requirement for options advertising, is appropriate, the NASD recognizes that the flexibility of member firm advertising programs is impaired. Accordingly, the NASD is proposing that the rule be approved on a temporary basis for one year only. During that year, the NASD's Fixed Income Committee will review the impact of the proposed rule and determine whether additional or alternative requirements should be put in place to ensure that CMO advertising is not misleading.

The NASD is, therefore, proposing to amend Article III, section 35 of the NASD's Rules of Fair Practice to consolidate the current filing requirements with respect to registered investment companies and public direct participation programs set forth in subsections (c) (1) and (2), respectively, into new subsection (c)(1). The requirements regarding registered investment companies and public direct participation programs are not proposed to be changed.

The new requirement with respect to CMO advertising is proposed to be set forth in proposed new subsections (c)(2) of section 35. The new provision would require that all advertisements concerning corporate collateralized mortgage obligations be filed with the Association's Advertising Department at least 10 days prior to first use unless the Department permits a shorter period in particular circumstances. The advertisement must be approved prior to use and if changed or expressly disapproved by the Association shall be withheld from publication or circulation until any changes specified by the Association have been made. In the event of disapproval by the Association, the advertisement must be refiled for, and have received, Association approval prior to publication or circulation. The proposed new provision is similar to that previously adopted with respect to options advertisements that is contained in subsection (c)(1) to Article III, section 35A to the Rules of Fair Practice.[3]

The NASD is also proposing to add a new subsection 8(c)(1)(B) to its Government Securities Rules with respect to collateralized mortgage obligations issued by an agency of the United States government. A technical amendment is also proposed to delete current subsection 8(c)(2)(B) which applied to the filing of advertisements concerning government securities during the first year of the operation of the Government Securities Rules which were adopted by the NASD in 1989.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act[4] which requires the rules of the NASD be designed to prevent fraudulent and manipulative acts and practices and, in general, to protect investors and the public interest. The proposed rule change strengthens the NASD's regulatory framework for reviewing communications relating to CMOs and enhances the industry's ability to police such communications.

The NASD is requesting that the proposed rule change be effective immediately on SEC approval.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that any burden on competition resulting from the proposed rule change is outweighed by

[2] Any changes, other than elimination of the rule, must be filed with the Commission pursuant to Section 19(b) of the Act.

[3] Article III, section 35A adopted by the NASD after SEC approval of SR–NASD–91–02, filed January 8, 1991. Securities Exchange Act Release No. 29682 (September 13, 1991); 56 FR 47973 (September 23, 1991).

[4] 15 U.S.C. 78o–3 (1988).

the enhanced investor protection which will result from prefiling of CMO advertising and is otherwise necessary and appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by October 7, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz,

Secretary.

[FR Doc. 92-22306 Filed 9-15-92; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Incorporated

September 10, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following security:

Society Corporation
Common Stock, $1.00 Par value (File No. 7-9068)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 1, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-22308 Filed 9-15-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18943; 811-854]

IIC Industries Inc.; Notice of Application

September 10, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 ("the Act").

APPLICANT: IIC Industries Inc. (formerly Israel Investors Corporation).

RELEVANT ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed November 23, 1990, and amended on June 11, 1991, March 23, 1992, and June 24, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 5, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 475 Park Avenue South, New York, New York 10016.

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, Staff Attorney, at (202) 272-7648, or Elizabeth G. Osterman, Branch Chief, at (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end management company, registered under the Act since 1959. Applicant's assets had a fair value of approximately $52,787 thousand as of June 30, 1982. Of that amount, over $40,543 thousand (over 70%) consisted of investment securities. On August 25, 1982, a proxy statement was submitted to applicant's stockholders in connection with a proposal to deregister applicant as an investment company and to convert it to an industrial company. The proxy statement also provided that applicant, in connectiofn with its deregistration, reserved the right to change its policy of investing in enterprises located or doing business in the State of Israel and in enterprises located or doing business elsewhere that furthered the

development of Israel's economy. Applicant's stockholders approved the proposal to deregister applicant and convert it to an industrial company on August 19, 1982.

2. Following shareholder approval of the proposal to deregister, applicant commenced selling equity interests held by it in companies it did not control or wholly own. A portion of the proceeds from the sale of these interests was used to make additional investments in and loans to operating companies controlled by applicant. The balance of those proceeds was placed in liquid assets to be used to acquire industrial companies.

3. Until July 1989, applicant's principal shareholder, Koor USA, Inc. ("Koor"), was affiliated with Israel's largest industrial enterprise, making it difficult for applicant to find a suitable acquisition candidate. On July 25, 1989, CP Holdings Limited ("CP"), an English company engaged in the business of selling, hiring, and utilizing for its own business purposes tractors and other related heavy machinery, acquired from Koor and one other shareholder a majority of applicant's shares.[1] CP's primary reasons for acquiring a majority interest of applicant's voting securities were operations related; applicant's then sole operating subsidiary, Israel Tractors and Equipment Co., Ltd. ("Israel Tractors"), was a distributor of tractors and engaged in essentially the same business as CP. CP is committed to applicant's plan to deregister as an investment company.

4. In May 1991, through its interest in Balton C.P. Limited ("Balton"), applicant acquired from a Koor affiliate, for a purchase price of $3.5 million, an indirect majority interest in certain companies engaged in the trading business in Kenya, Ghana, Zambia, and Tanzania and a controlling interest in a company engaged in the trading business in Nigeria. Balton is owned 51% by applicant and 49% by the Koor affiliate. Balton's assets consist primarily of operating subsidiaries and other assets relating to its operations. Applicant controls Balton's board of directors and designates Balton's chairman of the board and chief financial officer. Balton's day-to-day operating decisions are subject to the supervision and control of its board of directors. The Koor affiliate designates the general manager.

5. On January 30, 1992, applicant purchased from the State Property Agency for the Republic of Hungary, a 60% interest in Investor R.T. ("Investor") for a purchase price of $34 million. Investor's assets consist of majority interests in operating subsidiaries and other assets relating to its operations. Investor's subsidiaries' principal areas of business activity include trade in agricultural products, retail shops and supermarkets, the distribution of fuel, auto dealerships, and foreign trading. Applicant's 60% equity stake in Investor, under Investor's organizational documents and under Hungarian law, gives it control over Investor's management. Applicant has exercised this control since consummation of the acquisition by appointing applicant's president as Investors' chairman and appointing other of applicant's directors and their nominees to senior posts within Investors' group of companies.

Applicant's Legal Analysis

1. On June 30, 1982, applicant's investment securities constituted the major portion of its total assets, excluding cash items and United States government securities. Applicant states that it has since disposed of the majority of its investment securities and acquired two operating businesses. Applicant states that it anticipates that over 90% of its revenues will be derived from its subsidiaries. Accordingly, applicant argues that it is no longer an investment company under section 3(a)(1) or (3) and requests deregistration as such under section 8(f).

2. Section 3(a)(1) of the Act defines an investment company as an issuer which "is or holds itself out as being engaged primarily. * * * in the business of investing, reinvesting or trading in securities." Section 3(a)(3) of the Act defines an investment company as any issuer which "is engaged * * * in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities [2] having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis."

3. With respect to section 3(a)(1), applicant states that it ceased to hold itself out as an investment company following the 1982 shareholder vote. Applicant also states that since 1982 its principal business activities have been the management and operation of Israel Tractors, a 100% owned subsidiary since 1972, the conversion of its investment securities to cash, and the utilization of such cash toward the acquisition of operating businesses. In addition, applicant asserts that its majority shareholder is committed to applicant's deregistration as an investment company under the Act, and, in that connection, to acquiring operating businesses outside of Israel.

4. As set forth in section 3(a)(3) of the Act, securities issued by majority-owned subsidiaries of the owner which are not investment companies are not "investment securities." Applicant states that its total assets had a fair value of approximately $61,989 thousand as of the date of filing of the application. Of that amount, applicant had assets with a fair value of approximately $55,384 thousand, or over 89%, consisting of interests in majority or wholly owned subsidiaries engaged in operating businesses. Accordingly, applicant argues that it has ceased to be an investment company under section 3(a)(3) of the Act.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-22362 Filed 9-15-92; 8:45 am]

BILLING CODE 8010-01-M

[1] Koor held 49.71% of applicant's outstanding voting securities through July 25, 1989. According to a Schedule 13D filed by applicant, Koor sold the entire 49.71% interest held by it to CP in the July 25, 1989 transaction.

[2] Investment securities are defined in the last paragraph of section 3(a) to include all securities except (A) Government securities, (B) securities issued by employees' securities companies, and (C) securities issued by majority owned subsidiaries of the owner which are not investment companies.

[Release No. IC-18941; 812-7693]

ML Venture Partners II, L.P., et al.; Notice of Application

September 10, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: ML Venture Partners II, L.P. ("MLVP"), Merrill Lynch Venture Capital Inc., (the "Management Company"), ML Oklahoma Venture Partners, Limited Partnership ("ML Oklahoma"), Merrill Lynch Interfunding Inc. ("MLIF"), Merrill Lynch & Co., Inc. ("ML & Co."), and DLJ Capital Management Corporation (the "Sub-Manager").

RELEVANT 1940 ACT SECTIONS: Order requested under sections 57(c) and 57(i) of the 1940 Act and Rule 17d-1 thereunder authorizing certain transactions otherwise prohibited by sections 57(a)(1) and 57(a)(4) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek exemptions from sections 57(a)(1) and 57(a)(4) of the 1940 Act in

connection with the proposed acquisition by MLVP and ML Oklahoma of securities of SMG–II Holdings Corporation ("SMG–II Holdings") from the Management Company.

FILING DATES: The application was filed on March 6, 1991, and amended and restated applications were filed on August 1, 1991 and August 12, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 5, 1992 and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. MLVP, the Management Company, MLIF and ML & Co., North Tower, World Financial Center, New York, New York 10281. ML Oklahoma, 6100 South Yale, One Warren Place, Suite 2019, Tulsa, Oklahoma 74136. The Sub-Manager, 140 Broadway, New York, New York 10005.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 272-3030 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. MLVP, a Delaware limited partnership, is a business development company under the 1940 Act whose investment objective is to seek long-term capital appreciation through venture capital investment. MLVP has five General Partners, consisting of four individuals (the "MLVP Individual General Partners") and one managing general partner, MLVP II Co., L.P. (the "MLVP Managing GP"). The MLVP Individual General Partners include three MLVP Independent General Partners (individuals who are not "interested persons" of MLVP within the meaning of section 2(a)(19) of the 1940 Act) and one individual who is an affiliated person of the MLVP Managing GP.

2. The MLVP Individual General Partners supervise the operations of MLVP and perform all duties that the 1940 Act imposes on directors of business development companies organized in corporate form. The MLVP Independent General Partners assume the responsibilities and obligations the 1940 Act imposes on the non-interested directors of a business development company. The MLVP Managing GP, subject to the supervision of the MLVP Individual General Partners, is authorized to arrange for management services relative to the venture capital investments of MLVP. The Management Company, an indirect subsidiary of ML & Co. and the general partner of the MLVP Managing GP, performs management and administrative services for MLVP pursuant to a management agreement with MLVP. Both the MLVP Managing GP and the Management Company are registered investment advisers under the Investment Advisers Act of 1940.

3. On May 23, 1991, MLVP, the MLVP Managing GP, and the Management Company retained the Sub-Manager, a registered investment adviser that is an indirect wholly-owned subsidiary of Donaldson, Lufkin & Jenrette, Inc., to assume primary responsibility for evaluating and making the venture capital investments of MLVP pursuant to a Sub-Management Agreement (the "Sub-Management Agreement"). Under the Sub-Management Agreement, the Sub-Manager receives from the Management Company 95 percent of the compensation paid to the Management Company under its management agreement with MLVP. In addition, under the partnership agreement of the MLVP Managing GP, the Sub-Manager and its affiliates have been allocated that portion of the profits allocable to the Managing GP that previously were allocated to the Management Company as general partner of the MLVP Managing GP.

4. ML Oklahoma, an Oklahoma limited partnership, is a business development company under the 1940 Act and a "qualified venture capital company" under Oklahoma law. The investment objective of ML Oklahoma is to seek long-term capital appreciation by making venture capital investments, and it intends to invest at least 55% of its capitalization in companies that constitute "Oklahoma business ventures" under Oklahoma law. ML Oklahoma has five General Partners, consisting of four individuals (the "ML Oklahoma Individuals General Partners") and one managing general partner, MLOK Co., Limited Partnership (the "ML Oklahoma Managing GP"). The ML Oklahoma Individual General Partners include the three ML Oklahoma Independent General Partners who are not "interested persons" of ML Oklahoma and one individual who is an affiliated person of the ML Oklahoma Managing GP. The Management Company is the general partner of the ML Oklahoma Managing GP.

5. The ML Oklahoma Individual General Partners supervise the operations of ML Oklahoma and perform all duties that the 1940 Act imposes on directors of business development companies organized in corporate form. The ML Oklahoma Independent General Partners bear the responsibilities imposed by the 1940 Act on the non-interested directors of a business development company. The ML Oklahoma Managing GP, a registered investment adviser, is responsible for identification and management of ML Oklahoma's venture capital investments. The Management Company performs management and administrative services for ML Oklahoma pursuant to a management agreement with ML Oklahoma.

6. ML & Co. is a diversified financial services holding company which, through its subsidiaries, provides investment and financing, insurance, real estate and related services. Its principal subsidiary, Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLPF&S") engages through subsidiaries in a broad range of activities in the securities and investment banking industries. MLIF, an indirect wholly-owned subsidiary of ML & Co., specializes in leveraged buyout, bridge loans and other short-term financings.

7. Supermarkets General Holdings Corporation ("SG Holdings"), a Delaware corporation formed in 1987 as the successor to the business of Supermarkets General Corporation, is a diversified retailer primarily engaged in the operation of large supermarket-drug stores in the northeastern United States. SG Holdings acquired Supermarkets General Corporation in October 1987 through a leveraged buyout structured by Merrill Lynch Capital Partners, Inc., a wholly-owned subsidiary of ML & Co.

8. Prior to the Financing (defined in the following paragraph), SG Holdings' equity securities were owned by certain members of Supermarket General's management, certain affiliates of ML & Co., MH Capital Partners Inc. (formerly Manufacturers Hanover Venture Capital Corporation), and The Equitable Life Assurance Society of the United States (the indirect parent of the Sub-Manager) and certain of its affiliates ("Equitable

Life" and, with such affiliates, the "Equitable Investors"). Affiliates of ML & Co., beneficially owned approximately 84% (approximately 76% on a fully diluted basis) of the outstanding shares of the SG Holdings voting common stock (representing approximately 56% of the total number of shares of SG Holdings common stock outstanding).

9. As a result of the Financing (defined immediately below), SG Holdings now is wholly-owned by SMG–II Holdings, a Delaware corporation organized as the holding company for SG Holdings. SMG–II Holdings was formed to effect a series of transactions that collectively were intended to enable SG Holdings to adjust its capital structure to provide greater financial flexibility and to reduce its future aggregate cash interest and dividend expenses (the "Financing"). As a result of an equity exchange offer made relating to the Financing, the owners of SG Holdings common stock now own a corresponding number of shares of SMG–II Holdings common stock. The investment banking division of MLPF&S received a fee of approximately $1.2 million for acting as dealer-manager in connection with certain tender offers made relating to the Financing.

10. As part of the Financing, SMG–II Holdings offered shares of its Series A Cumulative Convertible Preferred Stock, with a stated value of $200 per share (the "Series A Preferred Stock") and its Series B Cumulative Convertible Preferred Stock, with a stated value of $200 per share (the "Series B Preferred Stock" and, together with the Series A Preferred Stock, the "SMG–II Holdings Preferred Stock") in a private placement to a limited number of institutional investors at $200 per share raising $83.5 million. The proceedings of the offering were used by SMG–II Holdings to purchase SG Holdings preferred shares and debt securities pursuant to a tender offer, in open market purchases, and otherwise for general corporate purposes of SG Holdings.

11. The SMG–II Holdings Preferred Stock bears dividends at the annual rate of 10% of the stated value per share. The holders of shares of the Series A Preferred Stock are entitled to one vote per share of SMG–II Holdings Class A Common Stock into which such preferred stock is convertible on all matters to be voted on by stockholders. As described more fully in the application, the holders of the Series B Preferred Stock will have more limited voting rights. Subject to compliance with certain procedures and the provisions of SMG–II Holdings' Certificate of Designation (which sets forth the terms of the SMG–II Holdings Preferred Stock), holders of Series B Preferred Stock may exchange their shares for Series A Preferred Stock, and holders of Series A Preferred Stock may exchange their shares for Series B Preferred Stock, on a share-for-share basis.

12. On February 4, 1991, MLIF purchased 43,498 shares of Series A Preferred Stock for $8,699,600; [1] certain partnerships affiliated with ML & Co. purchased 175,733 shares of Series A Preferred Stock for $35,146,600; MH Capital Partners, Inc. purchased 12,500 shares of Series B Preferred Stock for $2.5 million; and the Equitable Investors purchased 168,269 shares of Series B Preferred Stock for $33,653,800.

13. Limited partners in certain of the partnerships affiliated with ML & Co. that purchased Series A Preferred Stock were institutional investors that were not otherwise required to participate in an investment in SMG–II Holdings. Nineteen institutional investors, who invested more than $22 million in partnerships investing in the Series A Preferred Stock, did not have a prior investment or economic interest in SG Holdings and were thus making an initial investment decision to invest in SMG–II Holdings on terms no more favorable than those offered to MLVP and ML Oklahoma.

14. The investment opportunity in the Series A Preferred Stock was brought to the attention of the Management Company in November 1990. The MLVP Managing GP and the ML Oklahoma Managing GP conducted separate evaluations of the proposed investment in SMG–II Holdings and independently determined to approve investments of up to $3 million and $500,000 for MLVP and ML Oklahoma, respectively. The investments by MLVP and ML Oklahoma could not be made concurrently with MLIF and the ML & Co. affiliated partnerships on February 4, 1991, however, without the requested exemptive relief. Accordingly, on that date, the Management Company purchased 15,000 shares of Series A Preferred Stock for $200 a share on behalf of MLVP and 2,500 shares of Series A Preferred Stock at the same price on behalf of ML Oklahoma.

[1] In accordance with the terms of the organizational documents relating to the other ML & Co. affiliated partnerships, certain of which had been formed expressly to acquire SMG–II Holdings Preferred Stock, ML & Co. had committed to purchase through its affiliates SMG–II Holdings Preferred Stock amounting to 25% of the amount purchased by such ML & Co., affiliated partnerships. The amount proposed to be invested by MLVP and ML Oklahoma in SMG–II Holdings Preferred Stock was not included in this 25% commitment by ML & Co.

15. The price to be paid by MLVP and ML Oklahoma, respectively, to the Management Company for the Series A Preferred Stock will be the lower of (i) the fair value of the investment on the date MLVP and ML Oklahoma acquire the Preferred Stock (as determined by the MLVP Independent General Partners and ML Oklahoma Independent General Partners and ML Oklahoma Independent General Partners, respectively) or (ii) the cost to the Management Company of purchasing and holding the investment. With respect to clause (i), the value of the investment shall be determined in the manner specified in the conditions below. With respect to clause (ii), such cost shall be the original purchase price of $ 3 million and $500,000 paid by the Management Company, respectively, for the Series A Preferred Stock on February 4, 1991, plus carrying costs related to such investment as separately determined for MLVP and ML Oklahoma. Neither MLVP nor ML Oklahoma will pay carrying costs in respect of the period prior to February 4, 1991, which is subsequent to the dates the MLVP Independent General Partners and the ML Oklahoma Independent General Partners respectively authorized the proposed investment. For purposes of these transactions, carrying costs would consist of interest charges computed at the lower of (i) the prime commercial lending rate charged by Citibank, N.A., during the period for which carrying costs are being paid or (ii) the effective cost of borrowings by ML & Co. during such period. The effective cost of borrowings by ML & Co. is its actual "Average Cost of Funds," as calculated monthly by dividing its consolidated financing expenses by the total amount of borrowings during the period.

Applicants' Legal Analysis

A. Exemptive Relief Under Section 57(c)

1. The Management Company is an "affiliated person," within the meaning of section 2(a)(3)(D) of the 1940 Act, of the MLVP Managing GP, which in turn is an "affiliated person" of MLVP also within the meaning of section 2(a)(3)(D). The Management Company is thus an affiliated person of an affiliated person of ML Oklahoma. As a result, sales of securities on a principal basis by the Management Company to MLVP or ML Oklahoma are prohibited by section 57(a)(1) of the 1940 Act without an order under section 57(c) thereof.

2. Section 57(c) provides for the issuance of such an order if, as here relevant, the evidence establishes that (a) the terms of the transaction,

including the consideration paid, are reasonable and fair and do not involve overreaching of the business development company or its partners on the part of any person concerned; (b) the transaction is consistent with the policies of the business development company as recited in its registration statement, reports to shareholders, and other documents; and (c) the transaction is consistent with the general purposes of the 1940 Act. Applicants request an order pursuant to section 57(c) exempting from the provisions of Section 57(a)(1) both the proposed sale by the Management Company of 15,000 shares of Series A Preferred Stock to MLVP and the proposed sale by the Management Company of 2,500 shares of Series A Preferred Stock to ML Oklahoma on the terms described above.

3. As indicated in condition 1 below, the Sub-Manager will be required to review and evaluate the proposed investment in SMG–II Holdings. Such review will be supervised by a senior officer of the Sub-Manager who was not previously employed by the Management Company,[2] and the Sub-Manager will provide a written report to the MLVP Independent General Partners with an investment recommendation. From the perspective of ML Oklahoma as indicated in the introductory part to the conditions below, if the exemptive order is granted and MLVP does not acquire securities of SMG–II Holdings, ML Oklahoma will not acquire securities of SMG–II Holdings without obtaining an amendment to the order.

4. Applicants further submit that the involvement of the Sub-Manager provides protection against potential conflicts of interest. The Sub-Manager has primary control over the venture capital investments of MLVP and operates independently from the Management Company. In this regard, while the Sub-Management Agreement may be terminated by the MLVP Individual General Partners, the limited partners of MLVP, or by the Sub-Manager, it is not terminable by the Management Company. Since the Sub-Manager and its affiliates have been allocated that portion of the performance allocation payable by MLVP previously allocated to the Management Company, the Sub-Manager has a direct financial incentive to approve investments for MLVP that are appropriate solely on the basis of their investment merits.

[2] Three officers of the Management Company became officers of the Sub-Manager in connection with MLVP's retention of the Sub-Manager

5. Following their investment in the Series B Preferred Stock on February 4, 1991, the Equitable Investors, consisting of investors affiliated with entities controlling the Sub-Manager, owned an aggregate of 31% of the capital stock of SMG–II Holdings on a fully-diluted basis. Applicants do not believe, however, that this fact impacts the value of the protections afforded by the Sub-Manager's participation in the investment decision-making process, which is carried out independently from its parent companies, including Equitable Life. Nor do Applicants believe that the sale of the Series A Preferred Stock proposed by the application would have any identifiable effect on the investment of the Equitable Investors.[3]

6. Applicants believe that the retention of an independent consultant (the "Independent Consultant") also provides protection to MLVP and ML Oklahoma. The Independent Consultant will be required to consider the factors specified in condition 3 below in reaching its opinion. The provision to the MLVP Independent General Partners of a separate opinion from an independent third party will assist the decision-making process of MLVP and ML Oklahoma. Also, conditions 4 and 5 below require the MLVP and ML Oklahoma Independent General Partners to approve the investment and to make an independent determination as to the value of the investment, taking into account the report of the Independent Consultant.

7. Furthermore, the MLVP Managing GP (on behalf of MLVP) and the ML Oklahoma Managing GP (on behalf of ML Oklahoma) already have reviewed the proposed investments in detail. In this regard, the MLVP Managing GP and ML Oklahoma Managing GP considered all information deemed relevant, including the nature of the investments by affiliates of ML & Co. and the fairness of the purchase prices proposed to be paid by MLVP and ML Oklahoma. The Managing General Partners both determined that the proposed investments by MLVP and ML Oklahoma will not directly or indirectly benefit ML & Co. or entities affiliated with ML & Co. At meetings of the MLVP Independent General Partners held on December 7, 1990 and January 21, 1991, MLVP's investment in SMG–II Holdings was approved after consideration of each of the factors set forth in section 57(c). At a meeting of the ML Oklahoma Independent General Partners held on December 26, 1990, ML Oklahoma's investment in SMG–II Holdings also was approved after consideration of the same factors.

[3] The Division of Investment Management notes that the interests of the Equitable Investors would not appear to be affected by any determination as to whether the Management Company will continue to own the SMG–II Holdings Series A Preferred Stock or such securities will be resold to MLVP and ML Oklahoma. While the Equitable Investors own securities of SMG–II Holdings, the value of this interest should not be affected by the identity of other owners of SMG–II Holdings securities. As a result, there is a diminished likelihood that Equitable Life or any other parent company of the Sub-Manager would seek to exercise undue influence on the Sub-Manager's review of the proposed investment.

8. The MLVP and ML Oklahoma Independent General Partners also considered the fact that the proposed purchase prices to be paid by MLVP and ML Oklahoma, respectively, will include carrying costs incurred by an affiliated person (*i.e.*, the Management Company) if the value of the investment at the time of acquisition by MLVP or ML Oklahoma, as applicable, is more than the sum of the purchase price plus the Management Company's carrying costs. MLVP and ML Oklahoma believe that it is appropriate to reimburse the Management Company for carrying costs in a situation where the Management Company purchased the investments as, in effect, their nominee and they would have purchased such investments directly if it had not been deemed necessary to obtain the requested exemptive relief.

9. The proposed investments are not otherwise available to MLVP or ML Oklahoma. The MLVP Managing GP and ML Oklahoma Managing GP have approved such investments after review of a considerable number of possible investments for MLVP and ML Oklahoma. MLVP and ML Oklahoma thus submit that their respective investment programs will be prejudiced if they are not permitted to make the investments in SMG–II Holdings. Furthermore, the proposed transactions in the Series A Preferred Stock are consistent with MLVP's and ML Oklahoma's investment objectives and the kinds of transactions in which it was contemplated MLVP and ML Oklahoma would participate. Accordingly, MLVP and ML Oklahoma also submit that the relief requested pursuant to section 57(c) is consistent with the purposes of MLVP and ML Oklahoma and their stated policies.

B. Exemptive Relief under section 57(i) and Rule 17d–1

1. Section 57(a)(4) of the 1940 Act makes it unlawful for any person who is related to a business development company in a manner described in section 57(b)(2), acting as principal,

knowingly to effect any transaction in which such business development company is a joint participant with such person in contravention of such rules and regulations as the SEC may prescribe to limit or prevent such participation by the business development company on a basis less advantageous than that of such person. The persons specified in section 57(b)(2) include the Management Company and persons under common control with the Management Company. The Management Company, MLVP, ML Oklahoma, MLIF, and the ML & Co. affiliated partnerships might be deemed to be under the common control of ML & Co.

2. The SEC has not adopted any rules or regulations under section 57(a)(4). Section 57(i) of the 1940 Act provides that, until the adoption of rules and regulations under section 57(a), the rules and regulations of the SEC under section 17(d) applicable to registered investment companies shall apply to transactions subject to section 57(a). Accordingly, Applicants request that, pursuant to section 57(i) of the 1940 Act and Rule 17d-1 thereunder, the order authorize the joint investment by MLVP and ML Oklahoma in securities of SMG-II Holdings. Paragraph (b) of Rule 17d-1 provides, in part, that, in passing on applications subject to that Rule, the SEC must consider whether the participation of a registered company in the joint arrangement on the basis proposed is consistent with the provisions, policies, and purposes of the 1940 Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

3. With respect to the relief requested pursuant section 57(i) and Rule 17d-1, the MLVP Managing GP and the ML Oklahoma Managing GP reviewed the proposed investment in the Series A Preferred Stock and determined that such investment was consistent with MLVP's and ML Oklahoma's objectives of seeking long-term capital appreciation. They also determined that the investment by MLIF and the ML & Co. affiliated partnerships would not disadvantage MLVP or ML Oklahoma in making such investment, maintaining their investment position or disposing of such position. The MLVP Independent General Partners and the ML Oklahoma Independent General Partners also made such determinations with respect to the proposed investment.

4. In reaching such determinations, the MLVP Managing GP, the MLVP Independent General Partners, the ML Oklahoma Managing GP and the ML Oklahoma Independent General Partners considered several factors, including the difference in the amount proposed to be invested by the entities affiliated with ML & Co. It was recognized that the terms of purchase by such participants would be the same in terms of the price paid per share of stock. With respect to the different number of shares to be purchased, however, it was recognized that the participants were each at different points in their investment programs and had different amounts of assets available for investment. MLVP and ML Oklahoma believe that this factor does not make MLVP or ML Oklahoma's proposed investment any more or less advantageous than the investment by any other participant. To the extent that the investment proves to be successful, MLVP, ML Oklahoma and the other participants will profit equally in proportion to their respective investments.

5. Accordingly, Applicants submit that the terms of the proposed investments are not unfair or less advantageous to MLVP or ML Oklahoma, but rather are the result of business considerations. It is further submitted that the proposed investments would be consistent with the provisions, policies, and purposes of the 1940 Act.

Applicants' Conditions

If the requested order is granted, Applicants agree to the conditions set forth below.[4] If the requested order is granted and MLVP does not acquire securities of SMG-II Holdings, ML Oklahoma will not acquire securities of SMG-II Holdings under such order unless an amendment to the order is obtained.

1. If the requested order is issued, the Sub-Manager will review the proposed investment by the Partnership; such review will be conducted under the supervision of a senior officer of the Sub-Manager who was not previously an employee of the Management Company. The Sub-Manager will provide a written report to the Independent General Partners setting forth its preliminary valuation of the investment and its recommendation as to the acquisition of the investment, based on the Sub-Manager's analysis of all factors it deems relevant.

2. If (i) the Sub-Manager recommends that the investment be made and (ii) the Independent General Partners determine that it continues to be appropriate for the Partnership to acquire the investment, the Partnership will retain an Independent Consultant to provide a valuation of the Series A Preferred Stock proposed to be acquired by the Partnership. Any Independent Consultant retained by the Partnership must be a firm or individual that the Sub-Manager and the Individual General Partners determine has sufficient professional expertise that it is able to provide a valuation of the proposed investment that can be relied upon by the Independent General Partners. To ensure that the Independent Consultant is independent with respect to the proposed transaction, the Independent Consultant will not be eligible to serve in this capacity if it is an "affiliated person," within the meaning of the 1940 Act, of the Partnership, its Managing General Partner, the Sub-Manager, or the Management Company and it must have had no material business relationship, within the last two fiscal years of the Partnership, with any of such entities.[5] MLVP and ML Oklahoma may utilize the same or different firms as the Independent Consultant. To the extent a single consultant is utilized, the portions of the fees of the Independent Consultant to be borne by each Partnership will be allocated on the basis of the number of shares acquired by the Management Company for each entity.

3. In retaining the Independent Consultant, the Partnership will require that the Independent Consultant consider the following factors in preparing the valuation, together with any other factors deemed relevant by the Independent Consultant: the historical and prospective growth of SMG-II Holdings, industry and company profitability, the competitive position of SMG-II Holdings, the current liquidity of SMG-II Holdings and comparative data as to the price payable by the Partnership for SMG-II Holdings stock and prices paid by others to comparable

[4] The conditions will be identical for MLVP and ML Oklahoma (the "Partnerships"), except that references to the Sub-Manager in the context of MLVP are to be considered references to the ML Oklahoma Managing GP in the case of ML Oklahoma. Otherwise, references to the "Partnership," the "Managing General Partner," the "Independent General Partners," and the "Individual General Partners" shall be applicable to both MLVP and ML Oklahoma.

[5] For this purpose, a "material business relationship" will be deemed not to exist so long as the aggregate total revenues received by any Independent Consultant from MLVP, ML Oklahoma, the Sub-Manager, or ML & Co. or any of its subsidiaries during the past two years (other than fees to be paid in connection with the transactions that are the subject of the application) represent no more than 10% of the aggregate total revenues earned by such Independent Consultant during the same period.

companies. The Partnership will require that the Independent Consultant review financial statements prepared by SMG–II Holdings and public information relating to SMG–II Holdings' competitors and industry. The Partnership will also require the preparation and submission of a report of the Independent Consultant to the Independent General Partners and that such report be submitted to the Independent General Partners in the form of a written opinion that outlines tasks performed and significant factors considered in reaching the conclusion in such report.

4. If the report by the Independent Consultant on the proposed investment by the Partnership indicates a valuation in excess of the cost to the Management Company of purchasing and holding such investment as described in paragraph 15 of the representations above (referred to in these conditions as "Cost"), and the Independent General Partners, taking into account the Sub-Manager's recommendation at that time, (i) concur that the fair value of such investment is higher than its Cost and (ii) determine that the investment in SMG–II Holdings continues to be appropriate for the Partnership, the Partnership will acquire the investment at a purchase price equal to its Cost. If the Independent General Partners do not make the finding described in clause (ii), the Partnership will not acquire the investment. If the Independent General Partners do not make the determination in clause (i), the Partnership will acquire the investment at a price equal to the value as determined by the Independent General Partners, subject to the right of the Management Company under such circumstances to determine not to sell the security to the Partnership.

5. If the report by the Independent Consultant on the proposed investment by the Partnership indicates a value less than Cost, the Independent General Partners, taking into account the report of the Independent Consultant and the Sub-Manager's recommendation at that time, will determine (i) whether the investment continues to be appropriate for the Partnership and (ii) if so, their valuation of the investment at that time. If the Independent General Partners determine that the investment continues to be appropriate, the Partnership will purchase the investment at the valuation determined by the Independent General Partners, subject to the right of the Management Company under such circumstances to determine not to sell the security to the Partnership.

6. The Partnership will maintain at its office written records concerning the purchase of the Series A Preferred Stock, including a copy of the written report prepared by the Sub-Manager, the valuation report prepared by the Independent Consultant, and written records of the factors considered by the Independent General Partners in approving such investment.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–22359 Filed 9–15–92; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18940; 812–7513]

Counsellors Tandem Securities Fund, Inc. and Sequoia Partners, L.P.; Notice and Order for Hearing

September 10, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of and Order for Hearing on Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Counsellors Tandem Securities Fund, Inc. ("Fund") and Sequoia Partners, L.P. ("Sequoia").

RELEVANT ACT SECTIONS: Order for hearing issued under section 40(a) and rule 0–5(c); exemption requested under section 17(d) and rule 17d–1.

SUMMARY OF APPLICATION: Applicants request an order of the SEC permitting the Fund, a closed-end investment company, to reimburse Sequoia $240,000 in expenses incurred in connection with a proxy contest instituted by Sequoia as a means of effecting either an open-ending or liquidation of the Fund.

FILING DATE: The application was filed on May 1, 1990, and supplemented by letter dated May 22, 1990, affidavit, memorandum, and letter dated August 2, 1990, letter dated July 26, 1990, supplemental affidavit dated September 5, 1990, and letters dated September 11 and 12, 1990.

NOTICE OF AND ORDER FOR HEARING ON APPLICATION: Notice is given that the Commission has determined that it is appropriate in the public interest and for the protection of investors that a hearing be held with respect to the application.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant: Counsellors Tandem Securities Fund, Inc., 466 Lexington Avenue, New York, New York 10017; Sequoia Partners, L.P., c/o Delta Management Group, 308 Pondfield Road, Bronxville, New York 10708.

FOR FURTHER INFORMATION CONTACT: Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Sequoia is a Delaware limited partnership formed for the purpose of investing in publicly-traded equity securities of closed-end investment companies that trade at a discount to net asset value ("NAV").

2. The Fund is a closed-end management investment company registered under the Act, with both common and preferred shares issued and outstanding. Historically, the Fund's common shares have traded on the New York Stock Exchange at a discount to NAV.

3. Sequoia made its initial purchase of Fund common shares in March 1989. In July 1989 Sequoia filed with the Commission an initial Schedule 13D that disclosed its beneficial ownership of 8.7% of the Fund's common stock then outstanding, and Sequoia's intention to contact Fund management to discuss means to reduce the common stock's trading discount. In August, Sequoia's representatives met with members of Fund management and urged them to recommend that shareholders approve either the Fund's conversion to an open-end investment company or the Fund's liquidation.

4. In February 1990 the Fund announced that it would hold a combined annual and special meeting of shareholders on April 10, 1990. The meeting agenda include election of directors and consideration of two non-binding advisory proposals, one relating to converting the company to an open-end investment company and the other to liquidating it. The Fund did not announce its position on either proposal. Sequoia then advised in a press release that it intended to nominate its own slate of directors, who were committed to conversion or liquidation of the Fund; Sequoia nominated its directors on February 16, 1990. Thereafter, by letter dated March 5, 1990, Sequoia proposed to withdraw its nomination proposal if the Fund, among other things, agreed to recommend that shareholders approve one of the Fund's non-binding proposals and to implement the proposal if approved. By this time Sequoia owned 485,000 shares of Fund common stock, or 10% of the outstanding common shares.

In addition, other persons acting in concert with Sequoia (together with Sequoia, the "13D Group") owned in the aggregate another 750,700 common shares of the Fund, representing an additional 15.5% of the Fund's outstanding common shares.

5. Fund management countered Sequoia's offer by urging Sequoia to abandon the contest and support one of the advisory proposals. Sequoia responded by mailing its proxy statement to Fund shareholders. On or about March 10, 1990, the Fund mailed to all shareholders of record a Notice of Combined Annual and Special Meeting of Stockholders to be held on April 10, 1990. The Fund also mailed materials soliciting proxies for management's slate of directors who opposed structural changes to the Fund. The Fund's board of directors recommended that the holders of common stock vote against the advisory proposals regarding open-ending or liquidating the company.

6. On April 5, 1990, five days before the scheduled meeting, the Fund and Sequoia executed a settlement agreement that ended the proxy contest. Independent legal counsel represented the Fund's non-interested directors in connection with their approval of the settlement agreement.

7. The settlement agreement required that Sequoia terminate its proxy contest and withdraw its slate of directors. It also required the Fund to make an all-cash tender offer for (1) up to 2,000,000 shares (about 41%) of its outstanding common stock at a price equal to 95% of the net asset value per share as of the close of business on a specified date, and (2) 303,030 shares (about 34%) of its outstanding preferred stock at $49.50 per share plus accrued dividends to the date of purchase. The Fund agreed to terminate the tender offer without purchasing any tendered shares and call a special shareholders meeting to vote upon a binding proposal to liquidate the Fund, which the Fund directors would support, if, upon the expiration of the tender offer, 2,500,000 or more (at least 51.5% of the outstanding) common shares were tendered. The Fund also agreed to reimburse Sequoia for its "reasonable, documented and direct out-of-pocket expenses incurred in connection with the proxy contest, up to a maximum of $240,000, plus any interest earned thereon," if the Commission permitted such reimbursement.

8. As the agreement required, the Fund deposited in a segregated account with its custodian cash in the amount of $240,000 shortly after the settlement was reached.

9. Sequoia incurred direct out-of-pocket expenses totalling $316,888 in connection with the proxy contest and in the negotiation of the settlement agreement.

10. The Fund commenced the tender offer on April 13, 1990. The Fund's board of directors unanimously recommended that common stockholders reject the offer and not tender their shares. In its letter to shareholders, the board stated its belief in the Fund's long-term prospects and stressed that the board had structured the tender offer to increase the net asset value of the common stock not tendered.

11. The Fund and Sequoia filed an application for an order under section 17(d) of the Act and rule 17d–1 thereunder to permit the Fund to comply with the reimbursement provision of the settlement agreement on May 1, 1990; the tender offer was to expire by its terms on May 10, 1990. On May 7, 1990, in accordance with the terms of the settlement agreement, the Fund fixed the tender offer price for its common shares. By that date the Fund had accrued as a $240,000 expense its commitment to reimburse Sequoia's proxy expenses.

12. Approximately 2.247 million shares of common stock (46% of that outstanding) and 693,970 shares of preferred shares (78% of that outstanding) had been validly tendered when the offer expired on May 10, 1990. The percentage of common stock tendered was not sufficient to trigger the special meeting/liquidation provision of the settlement agreement.

13. Sequoia and other members of the 13D Group tendered their 1.24 million common shares and 1600 preferred shares in the offer. Like other tendering shareholders, Sequoia received $10.85 cash per share for its common stock and $49.50 plus accrued dividends for its preferred stock. The closing price of the common stock on the date the tender offer price was set was $10.25; the NAV per share was $11.42. The tender offer price for preferred shares was $2.50 higher than the $47.00 market price.

14. The tender offer reduced the Fund's assets (approximately $100 million before the tender offer) by about $36.7 million.

15. Applicants submit that the proposed reimbursement is consistent with the provisions, policies and purposes of the Act and that the Fund's participation in the arrangement is not disadvantageous to it. Applicants assert that the settlement agreement benefited all Fund shareholders; applicants note that the board of directors of the Fund, including all of the disinterested directors, unanimously approved the settlement agreement as being in the best interests of the Fund and its shareholders. Applicants also assert that the benefits conferred by the settlement resulted from Sequoia's efforts. Accordingly, applicants reason it is appropriate that the Fund underwrite a reasonable portion of Sequoia's expenses in the proxy contest.

Applicable Standards

1. Sequoia was an "affiliated person" of the Fund under section 2(a)(3) of the Act because at the time of the settlement with the Fund it owned ten percent of the Fund's outstanding common shares.

2. Section 17(d) and rule 17d–1 prohibit any affiliated person of a registered investment company from participating in or effecting any transaction in connection with any joint enterprise or other joint arrangement in which such registered investment company is a participant without prior Commission approval.

3. Rule 17d–1 provides that, in reviewing applications for orders under section 17(d), the Commission will consider whether the participation of the investment company in a joint enterprise or arrangement on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from, or less advantageous than, that of other participants.

4. It appears to the Commission that it is appropriate in the public interest and in the interest of investors that a hearing be held with respect to the application. Accordingly,

It is ordered, Under section 40(a) of the Act and rule 0–5(c) thereunder, that a hearing on the application under the applicable provisions of the Act and rules of the Commission be held at a time and place to be fixed by further order as provided by rule 6 of the Commission's Rules of Practice (17 CFR 201.6), and that an administrative law judge to be designated by further order preside at the hearing. Any person, other than applicants, who desires to be heard or otherwise wishes to participate in the proceeding is directed to file with the Secretary of the Commission, on or before October 6, 1992, an application as described in rule 9(c) of the Commission's Rules of Practice (17 CFR 201.19(c)). The request should set forth the nature and extent of the requestor's interest in the proceeding, any issues of fact or law which the requestor desires to controvert, and any additional issues which the requestor deems raised by this Notice and Order or by the

exemptive application. A copy of the request should be served on applicants, personally or by mail. Proof of such service on applicants, in the form of an affidavit or, for lawyers, a certificate of service, shall be filed contemporaneously with the request. Persons filing an application to participate or to be heard will receive notice of the date and place of the hearing, any adjournments, and other actions of the Commission involving the subject matter of this proceeding.

The Division of Investment Management has advised the Commission that it has examined the application and all supplemental materials and that, upon the basis thereof, the following matters and questions are presented for consideration without prejudice to its specifying additional matters and questions upon further examination:

(1) Whether the Commission should deny an application under section 17(d) and rule 17d-1 as untimely because, notwithstanding the requirement of rule 17d-1 that the Commission issue an order permitting any joint transaction before it is effected, applicants have engaged substantially in a joint transaction.

(2) With respect to the merits of the application,

(a) whether the Fund's participation in the joint transaction on the basis proposed is consistent with the provisions, policies, and purposes of the Act; and

(b) whether such participation is on a basis different from or less advantageous than that of other participants.

It is further ordered That at the hearing attention shall be given to the foregoing matters.

It is further ordered That the Division of Investment Management shall be a party to the proceeding.

It is further ordered That the Secretary of the SEC shall give notice of the hearing by mailing a copy of this Notice and Order by certified mail to applicants at the addresses noted above; that notice to all other persons be given by publication of this Notice and Order in the **Federal Register**; that a copy of this Notice and Order shall be published in the SEC Docket; and that an announcement of the hearing shall be included in the SEC News Digest.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-22358 Filed 9-15-92; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Rel. No. 18944; International Series Rel. No. 453; 812-8012]

Sanford C. Bernstein Fund, Inc.; Notice of Application

September 10, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANT: Sanford C. Bernstein Fund, Inc.

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from the provisions of section 12(d)(3) of the Act and rule from 12d3-1 thereunder.

SUMMARY OF APPLICATION: Applicant seeks a conditional order under section 6(c) of the Act exempting its Bernstein International Value Portfolio (the "Portfolio") and certain other registered investment companies and series thereof from the provisions of section 12(d)(3) of the Act and rule 12d3-1 thereunder to the extent necessary to permit the Portfolio and such other investment companies and series to invest in equity and convertible debt securities of foreign issuers that, in each of their most recent fiscal year, derived more than 15% of their gross revenues from their activities as a broker, dealer, underwriter, or investment adviser, provided such investments meet the conditions in the proposed amendments to rule 12d3-1.

FILING DATE: The application was filed on July 31, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. On October 5, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC 450 5th Street, NW., Washington, DC 20549. Applicant, 767 Fifth Avenue, New York, New York 10153.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist (202) 272-3023, or Elizabeth G. Osterman, Branch Chief, at (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representation

1. Applicant is an open-end management investment company registered under the Act. Applicant is organized as a series company and currently has seven separate investment series, including the Portfolio. Applicant is managed and advised by Bernstein, a registered investment adviser.

2. Applicant seeks relief for the Portfolio and for any other registered investment company or series thereof that is managed by Bernstein or for which Bernstein serves as principal underwriter from the provision of section 12(d)(3) and rule 12d3-1 thereunder.[1] The relief would permit them to invest in foreign issuers that, in each of their most recent fiscal years, derived more than 15% of their gross revenues from their activities as a broker, dealer, underwriter, or investment adviser ("Foreign Securities Companies").

Applicant's Legal Conclusions

1. Section 12(d)(3) of the Act prohibits an investment company from acquiring any security issued by any person who is a broker, dealer, underwriter, or investment adviser. Rule 12d3-1 under the Act provides an exemption from section 12(d)(3) for investment companies acquiring securities of an issuer that derived more than 15% of its gross revenues in its most recent fiscal year from securities-related activities,provided the acquisitions satisfy certain conditions set forth in the rule.

2. Subparagraph (b)(4) of rule 12d3-1 provides that "any equity security of the issuer * * * [must be] a 'margin security' as defined in Regulation T

[1] Applicant, by its counsel, advised the Commission staff in a supplemental letter dated September 1, 1992 that no existing registered investment companies other than applicant and its series currently intend to rely on any relief granted pursuant to the application. Applicant, by its counsel, further represented that, in the future, any other registered investment companies or series thereof for which Bernstein acts as investment manager or for which Bernstein acts as principal underwriter may make investments in equity or convertible debt securities, or both, of Foreign Securities Companies, as defined in this notice, provided such registered investment companies or series thereof act in accordance with the representations and comply with the conditions set forth in this notice and any order issued by the Commission pursuant to this notice.

promulgated by the Board of Governors of the Federal Reserve System." While margin securities are securities that are principally traded in the United States, certain equity securities issued outside the United States can now qualify as margin securities under recent amendments to Regulation T. Any foreign equity security meeting specified qualification requirements will be eligible as a margin security provided it appears on a list of "foreign margin stocks" published quarterly by the Board of Governors of the Federal Reserve System. However, because the requirements for inclusion on the list of "foreign margin stocks" are substantially more stringent than the requirements for inclusion on the list of "over-the-counter margin stocks," many securities issued outside the United States will not be margin securities for purposes of rule 12d3-1.

3. Proposed amended rule 12d3-1 provides that the "margin security" requirement would be excused if the acquiring company purchases the equity securities of Foreign Securities Companies that meet criteria comparable to those applicable to equity securities of United States securities-related businesses. The criteria, as set forth in the proposed amendments, "are based particularly on the policies that underlie the requirements for inclusion on the list of over-the-counter stocks." Investment Company Act release No. 17096 (Aug. 3, 1989), 54 FR 33027 (Aug. 11, 1989).

Applicant's Condition

Applicant agrees to the following condition in connection with the relief requested:

Applicant will company with the provisions of the proposed amendments to Rule 12d3-1 [Investment Company Act Release No. 17096 (Aug. 3, 1989); 54 FR 33027 (Aug. 11, 1989)] as such amendments are currently proposed, or as they may be reproposed, adopted, or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-22357 Filed 9-15-92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice #1693]

Study Group 9 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 9 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will hold an open meeting October 2, 1992, at the Federal Communication Commission, 1919 M Street, NW., Washington, DC in room 315 commencing at 10 a.m. The meeting will be continued on October 28, 1992, at 10 a.m. in room 535 at the same location.

Study Group 9 deals with matters relating primarily to the study of radio relay systems. The purpose of the meeting is to prepare for the November 1992 meetings of Working parties 9A-9D and Task Group 9/1.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Requests for further information should be directed to Mr. Alex Latker, International Conference Staff, Common Carrier Bureau, Federal Communication Commission, Washington, DC 20554, phone (202) 632-3214.

Dated: September 1, 1992.

Warren G. Richards,

Chairman, U.S. CCIR National Committee.

[FR Doc. 92-22316 Filed 9-15-92; 8:45 am]

BILLING CODE 4710-45-M

Shipping Coordinating Committee; Meeting

Subcommittee on Safety of Life at Sea Working Group on Lifesaving, Search and Rescue

The Working Group on Lifesaving, Search and Rescue of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting at 9:30 a.m. on September 30, 1992 in room 4315 at Coast Guard Headquarters, 2100 Second Street SW., Washington, DC.

The purpose of the meeting is to prepare U.S. positions for the 24th Session of the International Maritime Organization (IMO) Sub-Committee on Lifesaving, Search and Rescue (LSR), scheduled for February 15-19, 1993, at the IMO Headquarters in London. Among other things, the items of particular interest are:

—Continue work on review and amendment of SOLAS Chapter III, to clarify the intent of the chapter and to cover more specifically various lifesaving arrangements (such as free-fall lifeboats and marine evacuation systems) which are recently gaining wider application

—406 MHz satellite Emergency Position Indicating Radio Beacon (EPIRB) coding and registration

—Method and content of safety instruction of passengers on ships, and safety awareness and training

—Role of the human element in maritime casualties (including on board communication problems)

—International approval of life-saving appliances.

The IMO LSR Sub-Committee works to develop international agreements, guidelines, and standards for Search and Rescue and for lifesaving equipment installed on commercial ships. In many cases, the work of the Sub-Committee forms the basis for national standards and regulations and classification society rules. The U.S. SOLAS Working Group supports the U.S. Representative to the LSR Sub-Committee in developing U.S. positions on issues raised at those meetings. Because of the potential impact of the Sub-Committee's work on U.S. regulations and standards, the U.S. SOLAS Working Group serves as an excellent forum for the U.S. maritime industry to express their ideas in the areas under the Sub-Committee's purview. Since these meetings are open to the public, anyone may attend up to the seating capacity of the room.

For further information contact Mr. Kurt J. Heinz at (202) 267-1444, U.S. Coast Guard Headquarters (G-MVI-3/1404), 2100 Second Street SW., Washington, DC 20593-0001.

Dated: September 2, 1992.

Bruce Carter,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 92-22320 Filed 9-15-92; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 92-044]

Certification of Alternative Advisory Group in lieu of a Council

AGENCY: Coast Guard, DOT.

ACTION: Notice of certification.

SUMMARY: Under the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990 (the Act), the Coast Guard may certify, on an annual basis, a voluntary advisory group in lieu of a Regional Citizens' Advisory Council for Cook Inlet, Alaska. This certification allows the advisory group to monitor the activities of oil tankers and facilities under the Cook Inlet Program established by the Act. The purpose of this notice is to inform the public that the Coast Guard has certified an alternative voluntary advisory group for Cook Inlet, Alaska.

EFFECTIVE DATE: July 24, 1992 through May 31, 1993.

FOR FURTHER INFORMATION CONTACT: Mrs. Janice Jackson, Project Manager, Marine Environmental Protection Division, (G-MEP), (202) 267-0500, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION: As part of the Oil Pollution Act of 1990 (section 5002) Congress passed the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990 (the Act), 33 U.S.C. 2732, to foster the long-term partnership between industry, government, and local communities in overseeing compliance with environmental concerns in the operation of crude oil terminals and oil tankers.

Paragraph (o) of the Act (33 U.S.C. 2732(o)), permits a voluntary advisory group in lieu of a council of the type specified in 33 U.S.C. 2732(d) to represent the communities and interests in the vicinity of the oil terminal facilities in Cook Inlet, if certain conditions are met. The advisory group's purpose is to monitor the operations of the oil tankers and terminal facilities and provide advice and recommendations to industry and government.

The Act requires annual certification by the President that any alternative voluntary advisory group in the Cook Inlet area fosters the general goals and purposes of the Act and is broadly representative of the community and interests in the vicinity of the terminal facilities in order for that group to function in lieu of the specified council. Accordingly, in 1991 the President granted certification to the Cook Inlet Regional Citizens' Advisory Council, an alternative voluntary advisory group. That certification has expired. The authority to certify alternative advisory groups was delegated to the Commandant of the Coast Guard and has been redelegated to the Chief, Office of Marine Safety, Security and Environmental Protection.

The Coast Guard received a request from the Cook Inlet Regional Citizens' Advisory Council requesting recertification in 1992 as the alternative voluntary advisory group for Cook Inlet. The request to recertify the group in accordance with 33 U.S.C. 2732(o) was evaluated without the benefit of formal standards and was approved. The Coast Guard is currently developing standards for recertification of voluntary advisory groups which are in the process of being finalized. In the future, recertification requests will be approved only if the advisory groups meet the criteria developed by the Coast Guard.

Certification

By letter dated July 24, 1992 the Chief, Office of Marine Safety, Security and Environmental Protection certified that the Cook Inlet Regional Citizens' Advisory Council qualifies as an alternative voluntary advisory group under the provisions of 33 U.S.C. 2732(o). This certification terminates on May 31, 1993.

Dated: September 9, 1992.

R. C. North,

Acting Chief, Office of Marine Safety, Security and Environmental Protection

[FR Doc. 92-22351 Filed 9-15-92; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Blair County Airport, Altoona, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Blair County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before October 16, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. L. W. Walsh, Manager Harrisburg Airports District Office, 3911 Hartzdale Drive, Suite 1, Camp Hill, Pennsylvania 17011.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Joseph McKelvey, Airport Manager of the Blair County Airport Authority at the following address: Blair County Airport Authority, 2 Airport Drive, Martinsburg, Pennsylvania 16662.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Blair County Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. L. W. Walsh, Manager Harrisburg Airports District Office, 3911 Hartzdale Drive, Suite 1, Camp Hill, Pennsylvania 17011 (Tel (717)-975-3423). The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Blair County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On August 20, 1992, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Blair County Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 10, 1992.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: January 1, 1993.

Proposed charge expiration date: September 30, 1995.

Total estimated PFC revenue: $198,000.

Brief description of proposed projects:

—Land Acquisition to complete entrance road
—Construct Airport entrance road
—Terminal building improvements
—Rehabilitate North Apron
—Construct T-Hangar access Taxiways
—Acquisition of navigational easements
—Design of Runway 2/20 extension (Impose Only)
—Design Runway 12/30 extension (Impose Only)
—Environmental Assessment for airfield improvements (Impose Only)

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT**" and at the FAA regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Blair County Airport Authority.

Issued in Jamaica, New York State on August 27, 1992.

Louis P. DeRose,

Manager, Airports Division, Eastern Region.

[FR Doc. 92-22366 Filed 9-15-92; 8:45 am]

BILLING CODE 4910-13-M

Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Westchester County Airport, White Plains, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Westchester County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before October 16, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Philip Brito, Manager New York Airports District Office, 181 South Franklin Avenue, room 305, Valley Stream, New York, 11581.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Eric B. Langeloh, Commissioner of Transportation of the County of Westchester, New York, at the following address: Department of Transportation, 112 East Post Road, White Plains, New York 10601.

Air carriers and foreign air carriers may submit copies of written comments previously provided to Westchester County under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Brito, Manager of the New York Airports District Office, 181 South Franklin Avenue, room 305, Valley stream, New York, 11581, Tel. (718) 553–18182. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Westchester County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On August 7, 1992, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Westchester County Department of Transportation was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 5, 1992.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: October 1, 1992.

Proposed charge expiration date: September 30, 2023.

Total estimated PFC revenue: $29,483,000.

Brief description of proposed projects:

—Construct Crash Fire Rescue Training Facility
—Construct Airport Peripheral Safety Road
—Construct Parallel Taxiway System
—Construct Heated Storage Facility
—Construct General Aviation Infrastructure
—Acquire land for Airport Approach Protection Zone

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Charter Operators.

Any person may inspect the application in person at the FAA office listed above under **"FOR FURTHER INFORMATION CONTACT"** and at the FAA regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Westchester County Airport.

Issued in Jamaica, New York State on August 27, 1992.

Louis P. DeRose,

Manager, Airports Division, Eastern Region.

[FR Doc. 92–22197 Filed 9–15–92; 8:45 am]

BILLING CODE 4910–13–M

UNITED STATES SENTENCING COMMISSION

Revisions to the Sentencing Guidelines for the United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of final action regarding amendments to sentencing guidelines and policy statements effective November 1, 1992.

SUMMARY: The Sentencing Commission hereby gives notice of several actions taken pursuant to its authority under Section 217(a) of the Comprehensive Crime Control Act of 1984 (28 U.S.C. 994 (a) and (u)). The Commission has reviewed amendments submitted to Congress on April 30, 1992, that may result in a lower guideline range and has designated one such amendment for inclusion in policy statement § 1B1.10 (Retroactivity of Amended Guideline Range). An earlier commentary amendment, (effective November 1, 1991), which the present amendment ratifies, was also designated for inclusion in § 1B1.10. In addition, the Commission has made a number of editorial, clarifying, and conforming amendments to the Guidelines Manual.

DATES: The Commission has specified an effective date of November 1, 1992, for these actions.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Information Officer, Telephone: (202) 626–8500.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the U.S. Government. The Commission is empowered by 28 U.S.C. 994(a) to promulgate sentencing guidelines and policy statements for Federal sentencing courts. Sections 994 (o) and (p) of Title 28, United States Code, further direct the Commission to periodically review and revise guidelines and policy statements previously promulgated, and require that guideline amendments be submitted to Congress for review. Absent action of the Congress to the contrary, guideline amendments become effective following 180 days of Congressional review on the date specified by the Commission (i.e., November 1, 1992). Unlike new guidelines and amendments thereto issued pursuant to 28 U.S.C. 994 (a) and (p), sentencing policy statements, commentary, and amendments thereto promulgated by the Commission are not required to be submitted to Congress for 180 days' review prior to their taking effect.

In connection with its ongoing review of the Guidelines Manual, the Commission continues to welcome comment on any aspect of the sentencing guidelines, policy statements, and official commentary. Comments should be sent to: The United States Sentencing Commission, 1331 Pennsylvania Avenue, NW., suite 1400, Washington, DC 20004, Attn: Public Information Officer. Effective November 16, 1992, comments should be sent to: The United States Sentencing Commission, One Columbus Circle, NE., suite 2–500, Washington, DC 20002–8002, Attn: Public Information Officer.

Authority: Section 217(a) of the Comprehensive Crime Control Act of 1984 (28 U.S.C. 994(a)).

William W. Wilkins, Jr.,

Chairman.

Additional Revisions to the Guidelines Manual

(1) Section 1B1.10(d) is amended by deleting "and 380" and inserting in lieu thereof "380, 433, and 461".

This amendment expands the listing in subsection (d) to implement the directive in 28 U.S.C. 994(u) in respect to guideline amendments that may be considered for retroactive application.

(2) Section 1B1.11 (Policy Statement) is amended in subsection (b)(1) by inserting "of conviction" immediately following "offense".

The commentary to § 1B1.11 captioned "Background" is amended in the first sentence by inserting "and policy statements" immediately following "guidelines".

This amendment clarifies the operation of this section.

(3) The commentary to § 2D1.1 captioned "Application Notes," as amended, is further amended in Note 10 in the "Drug Equivalency Tables" in the subdivision captioned "Cocaine and Other Schedule I and II Stimulants" by inserting the following additional entries:

"1 gm of Aminorex=100 gm of marihuana
1 gm of Methcathinone=380 gm of marihuana".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 in the "Drug Equivalency Tables" by inserting an asterisk immediately following each of the following subdivision captions: "Schedule I or II Opiates", "Cocaine and Other Schedule I or II Stimulants (and their immediate precursors)", and "LSD, PCP, and Other Schedule I and II Hallucinogens (and their immediate precursors)"; and by inserting the following additional sentence at the end of each of the above noted subdivisions:

"'*Provided*, That the minimum offense level from the Drug Quantity Table for any of these controlled substances individually, or in combination with another controlled substance, is level 12.".

The Commentary to § 2D1.1 captioned "Application Notes," as amended is further amended by inserting the following additional note:

"15. Certain pharmaceutical preparations are classified as Schedule III, IV, or V controlled substances by the Drug Enforcement Administration under 21 CFR 1308.13–15 even though they contain a small amount of a Schedule I or II controlled substance. For example, Tylenol 3 is classified as a Schedule III controlled substance even though it contains a small amount of codeine, a Schedule II opiate. For the purposes of the guidelines, the classification of the controlled substance under 21 CFR 1308.13–15 is the appropriate classification.".

This amendment adds equivalencies for two controlled substances to make the Drug Equivalency Tables more comprehensive, adds notes to the Drug Equivalency Tables to make clear the interaction between the minimum offense level for certain types of controlled substances in the Drug Quantity Table and the instructions for determining a combined offense level in a case with multiple controlled substances, and clarifies the treatment of certain pharmaceutical preparations that are classified as Schedule III, IV, or V substances under 21 CFR 1308.13–15.

(4) The commentary to § 2F1.1 captioned "Application Notes" is amended in Note 7 in the first paragraph by inserting the following additional sentence as the second sentence:

"As in theft cases, loss is the value of the money, property, or services unlawfully taken; it does not, for example, include interest the victim could have earned on such funds had the offense not occurred.".

The Commentary to § 2F1.1 captioned "Application Notes" is amended in Note 7(b) by deleting:

"In fraudulent loan application cases and contract procurement cases where the defendant's capabilities are fraudulently represented, the loss is the actual loss to the victim (or if the loss has not yet come about, the expected loss). For example, if a defendant fraudulently obtains a loan by misrepresenting the value of his assets, the loss is the amount of the loan not repaid at the time the offense is discovered, reduced by the amount the lending institution has recovered, or can expect to recover, from any assets pledged to secure the loan.",

and inserting in lieu thereof:

"In fraudulent loan application cases and contract procurement cases, the loss is the actual loss to the victim (or if the loss has not yet come about, the expected loss). For example, if a defendant fraudulently obtains a loan by misrepresenting the value of his assets, the loss is the amount of the loan not repaid at the time the offense is discovered, reduced by the amount the lending institution has recovered (or can expect to recover) from any assets pledged to secure the loan. However, where the intended loss is greater than the actual loss, the intended loss is to be used.".

This amendment clarifies that interest is not included in the determination of loss. In addition, it clarifies that in fraudulent loan application cases, as in other types of fraud, if the intended loss is greater than the actual loss, the intended loss is used. Finally, it makes an editorial improvement in this commentary by deleting an unnecessary phrase.

(5) The Commentary to § 2K1.3 captioned "Application Notes" is amended by inserting the following additional note:

"11. As used in subsections (b)(3) and (c)(1), 'another felony offense' and 'another offense' refer to offenses other than explosives or firearms possession or trafficking offenses. However, where the defendant used or possessed a firearm or explosive to facilitate another firearms or explosives offense (e.g., the defendant used or possessed a firearm to protect the delivery of an unlawful shipment of explosives), an upward departure under § 5K2.6 (Weapons and Dangerous Instrumentalities) may be warranted.".

The Commentary to § 2K2.1 captioned "Application Notes" is amended in Note 15 by deleting "or (a)(5)" and inserting in lieu thereof "(a)(4)(B), or (a)(6)".

The Commentary to 2K2.1 captioned "Application Notes" is amended by inserting the following additional note:

"18. As used in subsections (b)(5) and (c)(1), 'another felony offense' and 'another offense' refer to offenses other than explosives or firearms possession or trafficking offenses. However, where the defendant used or possessed a firearm or explosive to facilitate another firearms or explosives offense (e.g., the defendant used or possessed a firearm to protect the delivery of an unlawful shipment of explosives), an upward departure under § 5K2.6 (Weapons and Dangerous Instrumentalities) may be warranted.".

This amendment clarifies the meaning of the terms "another felony offense" and "another offense," and corrects a clerical error.

(6) The Commentary to § 3C1.1 captioned "Application Notes" is amended by inserting the following additional note:

"7. Under this section, the defendant is accountable for his own conduct and for conduct that he aided or abetted, counseled, commanded, induced, procured, or willfully caused.".

The Commentary to § 3C1.2 captioned "Application Notes," as amended, is further amended by renumbering Note 5 as Note 6 and by inserting the following additional note:

"5. Under this section, the defendant is accountable for his own conduct and for conduct that he aided or abetted, counseled, commanded, induced, procured, or willfully caused.".

This amendment clarifies the scope of the conduct for which the defendant is accountable under §§ 3C1.1 and 3C1.2.

(7) The Commentary to § 4A1.2 captioned "Application Notes" is

amended in Note 8 by deleting the last sentence as follows:

"If the government is able to show that a sentence imposed outside this time period is evidence of similar misconduct or the defendant's receipt of a substantial portion of income from criminal livelihood, the court may consider this information in determining whether to depart and sentence above the applicable guideline range.",

and by inserting in lieu thereof:

"If the court finds that a sentence imposed outside this time period is evidence of similar, or serious dissimilar, criminal conduct, the court may consider this information in determining whether an upward departure is warranted under § 4A1.3 (Adequacy of Criminal History Category).".

This amendment clarifies that dissimilar, serious prior offenses outside the applicable time period may be considered in determining whether an upward departure is warranted under § 4A1.3. The amendment provides additional Commission guidance on an issue that has produced conflicting decisions among the courts of appeals. Compare, e.g., *United States* v. *Leake*, 908 F.2d 550, 554 (9th Cir. 1990) (upward departure impermissible for remote prior convictions dissimilar to instant offense) and *United States* v. *Samuels*, 938 F.2d 210, 215 (D.C. Cir. 1991) (suggesting the same) with *United States* v. *Williams*, 910 F.2d 1574, 1579 (7th Cir. 1990), rev'd on other grounds, 112 S. Ct. 1112 (1992) (although older prior crimes dissimilar to instant offense, upward departure permissible if convictions are reliable information of increased recidivism risk) and *United States* v. *Russell*, 905 F.2d 1439, 1444 (10th Cir. 1990) (same).

(8) The Commentary to § 7B1.1 captioned "Application Notes" is amended by deleting Notes 2 and 3 as follows:

"2. 'Crime of violence' has the same meaning as set forth in § 4B1.2(1), and includes any offense under federal or state law punishable by imprisonment for a term exceeding one year that—

(i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or

(ii) is burglary of a dwelling, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another.

A crime of violence includes murder, manslaughter, kidnapping, aggravated assault, forcible sex offenses, robbery, arson, extortion, extortionate extension or credit, and burglary of a dwelling. Other offenses are included where (A) that offense has as an element the use, attempted use, or threatened use of physical force against the person of another, or (B) the conduct set forth in the violation charged involved use of explosives or, by its nature, presented a serious potential risk of physical injury to another. A crime of violence also includes the offenses of aiding and abetting, conspiring, and attempting to commit such offenses.

3. 'Controlled substance offense' includes any offense under a federal or state law prohibiting the manufacture, import, export, distribution, or dispensing of a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with the intent to manufacture, import, export, distribute, or dispense. A controlled substance offense also includes the offenses of aiding and abetting, conspiring, and attempting to commit such offenses.",

and by inserting in lieu thereof:

"2. 'Crime of violence' is defined in § 4B1.2 (Definitions of Terms Used in Section 4B1.1). See § 4B1.2(1) and Application Notes 1 and 2 of the Commentary to § 4B1.2.

3. 'Controlled substance offense' is defined in § 4B1.2 (Definitions of Terms Used in Section 4B1.1). See § 4B1.2(2) and Application Note 1 of the Commentary to § 4B1.2.".

This amendment clarifies the Commission's intent that the terms "crime of violence" and "controlled substance offense" in § 7B1.1 have the same meaning as these terms have in § 4B1.2.

In addition, the Commission has updated the "Historical Notes" following the amended guideline sections, and has made a number of additional minor conforming and editorial revisions to improve the internal consistency and appearance of the Manual.

[FR Doc. 92-22332 Filed 9-15-92 8:45 am]

BILLING CODE 2210-40-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 180
Wednesday, September 16, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Wednesday, September 16, 1992, 10:00 a.m.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:

Enforcement Matter OS #5736.

The staff will brief the Commission on issues concerning enforcement matter OS #5736.

For a Recorded Message Containing the Latest Agenda Information, Call (301) 504-0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 (301) 504-0800.

Dated: September 10, 1992.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 92-22567 Filed 9-14-92; 1:41 pm]

BILLING CODE 6355-01-M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Thursday, September 17, 1992, 10:00 a.m.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: *Open to the Public.*

MATTERS TO BE CONSIDERED:

1. *Pride in Public Service Award.*

The Commission will present the Pride in Public service award to September's recipient.

2. *Labeling Requirements for Art Materials.*

The Commission will consider a draft **Federal Register** notice containing the final codification of ASTM D-4236, final chronic hazard guidelines, and final supplemental definition of "toxic."

For a Recorded Message Containing the Latest Agenda Information, Call (301) 504-0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 (301) 504-0800.

Dated: September 10, 1992.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 92-22568 Filed 9-14-92; 1:41 pm]

BILLING CODE 6355-01-M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m., September 23, 1992.

PLACE: 1st Floor Hearing Room—Federal Maritime Commission, 800 North Capitol St., NW, Washington, DC. 20573-0001.

STATUS: Part of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTER(S) TO BE CONSIDERED:

Portion open to the public:

1. Docket No. 92-16—Conference Independent Action Provisions—Consideration of comments.
2. Docket No. 92-31—Service Contracts—Consideration of comments.
3. Docket No. 92-35—Notice of Inquiry Concerning Various Regulatory Issues—Consideration of comments on Issue No. 4.

Portion closed to the public:

1. Docket No. 91-24—Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Korea Trade—Consideration of comments.
2. Docket No. 92-42—Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Korea Trade—Consideration of comments.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523-5725.

Joseph C. Polking,

Secretary.

[FR Doc. 92-22466 Filed 9-14-92; 1:26 pm]

BILLING CODE 6730-01-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-92-25]

TIME AND DATE: September 22, 1992 at 2:30 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public, except for a closed portion.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings
2. Minutes
3. Ratification List
4. Inv. No. 731-TA-527 (Final) (Extruded Rubber Thread from Malaysia)
5. Consideration of all action jackets which have been outstanding for 30 days or longer as of August 31, 1992:
   1. Notice of proposed final rulemaking for 19 CFR Parts 210 and 211
   2. Breach of the administrative protective order (APO) in an investigation under Title VII of the Tariff Act of 1930
   3. Possible breach of the APO in an investigation under Title VII of the Tariff Act of 1930
   4. Breach of the APO in an investigation under section 337 of the Tariff Act of 1930
   5. Possible breach of the APO in an investigation under Title VII of the Tariff Act of 1930
   6. Amendment to the Proposed Outreach Plan for the Trade Remedy Assistance Office
6. Any items left over from previous agenda

On September 11, 1992 the United States International Trade Commission, in conformity with 19 C.F.R. 201.36, unanimously determined to close a portion of the meeting of September 22, 1992. This action was taken pursuant to the specific exemptions of 5 U.S.C. 552b(c)(3), (c)(4), and (c)(5), and in conformity with 19 C.F.R. 201.36(b)(3), (b)(4), and (b)(5), and considering the public interest. Those persons, all members or staff of the Commission, expected to be present at this closed portion are listed with their respective corresponding affiliations as follows:

Don E. Newquist, Chairman
Peter S. Watson, Vice Chairman
David B. Rohr, Commissioner
Anne E. Brunsdale, Commissioner
Carol T. Crawford, Commissioner
Janet A. Nuzum, Commissioner
All members of each Commissioner's personal staff
Paul R. Bardos, Acting Secretary
Karen McGriff, Office of the Secretary
Robert A. Rogowsky, Director of Operations
Lyn M. Schlitt, General Counsel
N. Tim Yaworski, Office of the General Counsel
Charles H. Nalls, Office of the General Counsel

The General Counsel certifies that in her opinion a portion of the meeting may be closed to the public pursuant to 19 C.F.R. 201.36(b)(3), (b)(4), and (b)(5).

CONTACT PERSON FOR MORE INFORMATION: Paul R. Bardos, Acting Secretary, (202) 205-2000.

Issued: September 11, 1992.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-22477 Filed 9-14-92; 1:27 pm]

BILLING CODE 7020-02-M

Corrections

Federal Register
Vol. 57, No. 180
Wednesday, September 16, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6942

[AK-932-4214-10; F-01981]

Partial Revocation of Public Land Order No. 547 and Public Land Order No. 5187; Alaska

Correction

In rule document 92-20539 beginning on page 38782 in the issue of Thursday, August 27, 1992, in the third column, above the signature, the date should read August 19, 1992.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 51

RIN 1024-AB96

Concession Contracts and Permits

Correction

In rule document 92-20843 beginning on page 40496 in the issue of Thursday, September 3, 1992, make the following correction on page 40503, in the first column, in the third paragraph, "reviewed" should read "revised".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219-AA75

High-Voltage Longwall Equipment Standards for Underground Coal Mines

Correction

In proposed rule document 92-20480 beginning on page 39041 in the issue of Thursday, August 27, 1992, make the following correction:

On page 39044, in the second column, in the second full paragraph, the last line should read "starting without nuisance tripping".

BILLING CODE 1505-01-D

federal register

Wednesday
September 16, 1992

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 71 and 93
Offshore Airspace Reconfiguration, etc.; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 71 and 93

[Docket No. 26968; Notice No. 92-13]

RIN 2120-AE32

Offshore Airspace Reconfiguration; Additional Control Areas; Continental Control Area; Area Low Routes; Control Areas Associated With Jet Routes Outside the Continental Control Area; Reporting Points; Flushing (New York) Airport Traffic Rule; and Valparaiso, Florida Terminal Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend the Federal Aviation Regulations (FAR) by designating additional control areas as offshore airspace areas or en route domestic airspace areas, as appropriate; revising certain additional control areas; adding restricted and prohibited areas in the Continental Control Area; eliminating domestic area low routes; eliminating control areas associated with jet routes outside the Continental Control Area; eliminating domestic high and low altitude reporting points; eliminating the special air traffic rules for Flushing, New York; and replacing the Valparaiso, Florida terminal area and special air traffic rules with the Eglin, Florida Class D airspace area. The proposals in this NPRM respond to recommendations from the National Airspace Review (NAR) and meet a goal of the Airspace Reclassification final rule—to simplify airspace assignment and use.

DATES: Comments must be submitted on or before November 2, 1992.

ADDRESSES: Comments on this NPRM should be mailed, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. 26968, 800 Independence Avenue SW., Washington, DC 20591. Comments delivered must be marked Docket No. 26968. The official docket may be examined in the Office of the Chief Counsel, room 915G, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. William M. Mosley, Air Traffic Rules Branch ATP-230, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-9251.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments relating to the overall regulatory, economic, aeronautical, environmental, energy-related, or federalism impacts of the proposals contained in this NPRM are also invited. Substantive comments should be accompanied by actual and anticipated cost impact statements, as appropriate. Comments should identify the regulatory docket number and be submitted in triplicate to the Rules Docket address specified above. Commenters wishing to have the FAA acknowledge receipt of their comments on this NPRM must submit with those comments a self-addressed, stamped postcard with the following statement: "Comments to Docket No. 26968." The postcard will be date stamped and mailed to the commenter. All comments received on or before the closing date for comments will be considered by the Administrator before taking action on the proposed amendments. The proposals contained in this NPRM may be changed in light of comments received. All comments received will be available for examination in the Rules Docket, before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel regarding this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3485. Communications must identify the docket number of this NPRM.

Persons interested in being placed on a mailing list for future NPRM's should request from the above office a copy of Advisory Circular Number 11-2A, "Notice of Proposed Rulemaking Distribution System," which describes the application procedure.

Background

On April 22, 1982, the NAR plan was published in the **Federal Register** (47 FR 17448). The plan reviewed airspace use and the procedural aspects of the air traffic control system. The main objectives of the NAR were to:

(1) Develop and incorporate a more efficient relationship among traffic flows, airspace allocation, and system capacity in the air traffic control system. This relationship would permit improved air traffic flow management to maximize system capacity and improve airspace management;

(2) Review and eliminate, wherever practicable, governmental restraints on system efficiency, thereby simplifying the air traffic control system; and

(3) Revalidate air traffic control services within the National Airspace System (NAS) in light of state-of-the-art and future technological improvements

On December 17, 1991, the final rule on Airspace Reclassification was published (56 FR 65638). The new airspace classes described in the final rule will be effective on September 16, 1993. That final rule amends FAR part 71 (14 CFR part 71) to reclassify U.S. airspace in accordance with the airspace classes adopted by the International Civil Aviation Organization (ICAO).

Under the Airspace Reclassification final rule, effective September 16, 1993, positive control areas (PCA's), jet routes, and area high routes are classified as Class A airspace areas; terminal control areas (TCA's) are classified as Class B airspace areas; airport radar service areas (ARSA's) are classified as Class C airspace areas; control zones for airports with operating control towers and airport traffic areas that are not associated with the primary airport of a TCA or an ARSA are classified as Class D airspace areas; all other controlled airspace is classified as Class E airspace; and airspace that is not otherwise designated as controlled airspace is classified as Class G airspace.

In addition, the Airspace Reclassification final rule incorporated part 75 into part 71 and established subpart M-Jet Routes and Area High Routes in existing part 71, effective December 17, 1991. This new subpart includes the sections formerly found in part 75, which has been removed and reserved. The Airspace Reclassification final rule also amended parts 1, 45, 61, 65, 91, 93, 101, 103, 105, 121, 127, 135, 137, 139, and 171 and Special Federal Aviation Regulation (SFAR) Nos. 51-1, 60, and 62, effective September 16, 1993, to change the terminology and integrate the adopted airspace classifications into the respective regulations that relate to airspace assignments and operating rules.

Related Agency Actions

The Airspace Reclassification final rule discussed the need to revise, by separate rulemaking actions, certain existing controlled airspace areas to implement the new airspace classification. These actions are addressed in this NPRM and in another rulemaking action. These actions are being issued after the publication of the Airspace Reclassification final rule, but before the reclassification effective date of September 16, 1993. Therefore, the actions proposed in this notice use both existing and future terminology. However, the actual airspace areas are essentially the same, whether the airspace area is entitled, for example, and "additional control area" (existing terminology) or a "Class E airspace area" (future terminology). The actions would not change the basic requirements for operations under visual flight rules (VFR) or instrument flight rules (IFR).

The final rule on the first rulemaking action, "Terminal Airspace Reconfiguration," which addressed control zones, transition areas, and specific TCA's and ARSA's, was published on August 27, 1992 (Docket No. 26852; 57 FR 38962).

This NPRM is the second rulemaking action. It addresses offshore airspace and other areas related to the reclassification of airspace. This proposal, if adopted, would be effective no later than September 16, 1993.

The Proposal

The FAA proposes to revise certain existing airspace areas designated in FAA Order 7400.7, effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. This NPRM also proposes to revise the corresponding airspace areas and to establish airspace areas in FAA Order 7400.9, effective September 16, 1993, which is also incorporated by reference in 14 CFR 71.1.

The FAA also proposes other revisions in this NPRM, which are in concert with the goal of the Airspace Reclassification final rule—to simplify airspace assignment and use. This NPRM proposes to eliminate the special air traffic rules at Flushing, New York airport and to replace the Valparaiso, Florida terminal area with the Eglin, Florida, Class D airspace area.

Additional Control Areas

As part of the implementation of the Airspace Reclassification final rule, the FAA is proposing to designate additional control areas as either offshore airspace areas or en route domestic airspace areas, as appropriate. This NPRM is in accordance with Executive Order 10854, which requires the FAA to consult with the Departments of State and Defense before designating international airspace as controlled airspace.

This NPRM also revises controlled airspace in accordance with Presidential Proclamation No. 5928, "Territorial Sea of the United States of America," signed on December 27, 1988, which extended the sovereignty of the U.S. Government for international purposes to 12 nautical miles from the coast of the United States (including its territories) in accordance with international law. On January 4, 1989, the FAA published Amendment Nos. 71-12 and 91-207, "Applicability of Federal Aviation Regulations in the Airspace Overlying the Waters Between 3 and 12 Nautical Miles From the United States Coast" (54 FR 264). These amendments extended controlled airspace and applied certain flight rules to the airspace overlying the waters between 3 and 12 nautical miles from the U.S. coast.

The proposed revisions to additional control areas would: (1) Designate additional control areas as offshore airspace areas or en route domestic airspace areas, as appropriate; (2) implement, to the extent practicable, a uniform base of 5,500 feet MSL for offshore airspace areas; (3) identify offshore airspace areas by name, to the extent possible; (4) classify offshore airspace as Class A or Class E airspace areas, as appropriate; and (5) classify en route domestic airspace areas as Class E airspace areas. These proposals are addressed below under the title "Offshore Airspace Areas" or "En Route Domestic Airspace Areas."

The proposed separation of additional control areas into offshore airspace areas or en route domestic airspace areas would only apply to the airspace areas found in subpart E of FAA Order 7400.9, which is effective September 16, 1993. Specifically, the FAA proposes to revise, effective September 16, 1993, § 71.33 to designate Class A offshore airspace areas, § 71.71(e) to designate Class E en route domestic airspace areas, and to add § 71.71(f) to designate Class E offshore airspace areas.

Offshore Airspace Areas

The FAA proposes to modify the additional control areas in § 71.163 of FAA Order 7400.7 as discussed below. These are airspace areas for which the United States has jurisdiction through an ICAO regional agreement.

As noted above, the FAA has decided to establish a uniform base of 5,500 feet MSL to the extent possible for offshore airspace areas. This is higher than the NAR recommendation of a uniform base of 1,200 feet above the surface for offshore airspace areas. After reviewing the requirement for air traffic control services over the high seas, the FAA has decided to propose establishing this higher uniform base, except in areas that require air traffic control services below 5,500 feet MSL. This decision is based upon the limited volume of air traffic, and the reduced requirement for air traffic control services over the high seas below 5,500 feet MSL. In most cases, a proposed uniform base of 5,500 feet MSL would raise the floor of existing airspace areas.

In addition to the modifications discussed specifically for each airspace description, all modifications to offshore airspace areas are being proposed to: (1) Replace the existing lateral boundaries designated at 3 nautical miles from the U.S. coast with lateral boundaries designated at 12 nautical miles from the U.S. coast; and (2) replace all references to distances in statute miles to the corresponding nearest equivalent in nautical miles.

The FAA proposes to eliminate the existing control areas entitled Newport, Oregon; San Francisco, California; and Santa Barbara, California, and to establish the Pacific High and Pacific Low offshore airspace areas. The lateral boundaries of the Pacific High and Pacific Low offshore airspace areas would be based upon the existing lateral boundaries of the Newport, Oregon; San Francisco, California; and Santa Barbara, California control areas except that the eastern boundaries would be changed from 3 to 12 nautical miles. The Pacific Low would extend upward from 5,500 feet MSL up to, but not including, 18,000 feet MSL. The overlying Pacific High would have a floor of 18,000 feet MSL and a ceiling of flight level (FL) 600.

The FAA proposes to eliminate the existing control areas entitled Barnegat, New Jersey; Brunswick, Maine; North Atlantic; and South Atlantic; to revise the South Florida control area; and to establish the Atlantic Low and Atlantic High offshore airspace areas.

The FAA proposes to revise the existing South Florida control area by aligning its lateral boundaries with the Miami Oceanic control area (CTA)/flight information region (FIR) lateral boundaries. This revised boundary would include the existing portion of the South Atlantic control area south of latitude 28°00'00" North. Because of the high volume of air traffic and the requirement for air traffic control services below 5,500 feet MSL, the South Florida Low offshore airspace area

would extend upward from 2,700 feet MSL up to, but not including, 18,000 feet MSL. However, the proposed floor of 2,700 feet MSL would be higher than the current floor of 1,200 feet MSL.

The lateral boundaries of the Atlantic Low would be based upon the existing boundaries of the Brunswick, Maine; North Atlantic; and South Atlantic control areas, north of latitude 28°00'00" North except that the western boundaries would be changed from 3 to 12 nautical miles. The Atlantic Low would extend upward from 5,500 feet MSL up to, but not including, 18,000 feet MSL.

The FAA proposes to establish the Atlantic High offshore airspace area, which would have a floor of 18,000 feet MSL and a ceiling of FL 600. The lateral boundaries of the Atlantic High would be based upon the existing boundaries of the following control areas: (1) Brunswick, Maine; (2) North Atlantic; and (3) South Atlantic, north of latitude 28°00'00" North; as well as the proposed boundaries of the South Florida Low offshore airspace area. As with the Atlantic Low, the western boundary would begin at 12 nautical miles from the parallel to the shore.

The FAA proposes to revise the existing Gulf of Mexico control area by dividing it into two airspace areas: The Gulf of Mexico Low and Gulf of Mexico High offshore airspace areas. The lateral boundaries of the proposed areas would be based on the existing lateral boundaries for the Gulf of Mexico control area, except the eastern boundaries of the proposed areas would be aligned with the Houston Oceanic CTA/FIR and the northern boundaries would be changed from 3 to 12 nautical miles. The Gulf of Mexico Low would extend upward from 1,200 feet MSL up to, but not including, 18,000 feet MSL. The floor of the proposed Gulf of Mexico Low would remain at 1,200 feet MSL due to the high volume of air traffic and the requirement for air traffic control services below 5,500 feet MSL. The Gulf of Mexico High would have a floor of 18,000 feet MSL and a ceiling of FL 600.

The FAA proposes to revise the existing control area for San Juan, Puerto Rico, which is currently a portion of the San Juan, Puerto Rico transition area in § 71.181 of FAA Order 7400.7. The floor would be raised from 2,000 feet MSL to 5,500 feet MSL. However, the low altitude, inter-island traffic in the vicinity of Saint-Martin and Anguilla would require a floor of 2,700 feet MSL. The offshore airspace area would be redesignated as the San Juan Low, and listed in § 71.163 of FAA Order 7400.7.

Controls 1141, 1142, 1143, 1144, and 1146 are each proposed to be redesignated with an "L" suffix to denote a low area. The floors for these offshore airspace areas are proposed to be raised to 5,500 feet MSL and the ceilings would extend up to, but not including, 18,000 feet MSL.

Control 1155, Control 1156, Control 1176, Control 1177, Control 1316, Control 1318, Control 1415, Control 1416, Control 1418, Control 1419, Control 1486, and Control 1487 are each proposed to be divided into two offshore airspace areas. These areas would retain their current lateral boundaries. One offshore airspace area would extend upward from 5,500 feet MSL up to, but not including, 18,000 feet MSL. The other offshore airspace area would have a floor at 18,000 feet MSL and a ceiling at FL 450. To distinguish between the offshore airspace areas with the same identification, the titles of those offshore airspace areas proposed to be below 18,000 feet MSL would have an "L" suffix and the titles of those that are proposed to be above 18,000 feet MSL would have an "H" suffix.

Control 1154 and Control 1173 are proposed to be divided into two offshore airspace areas each. The western boundaries of the areas would be revised to meet the current western boundary of the Oakland Oceanic CTA/FIR. The current areas were established to meet the western boundary of the Oakland Oceanic CTA/FIR that existed at the time. However, they were never revised when the western boundary of the Oakland Oceanic CTA/FIR was moved to its current position. The current southeast boundary of Control 1173 would also be revised to meet Warning Area 283, Warning Area 285A, and Warning Area 285B, which are adjacent controlled airspace areas. Control 1154L and Control 1173L would have floors of 5,500 feet MSL and ceilings of up to, but not including, 18,000 feet MSL. Control 1154H and Control 1173H would have floors at 18,000 feet MSL and ceilings at FL 450.

Control 1234 would also be divided into two offshore airspace areas. Control 1234L would retain the existing floor of Control 1234, which is 2,000 feet above the surface, so that aircraft operating under IFR at low altitudes over the Alaskan Peninsula, the Aleutian Islands, and the surrounding waters would remain within controlled airspace. Control 1234L would extend up to, but not including, 18,000 feet MSL. Control 1234H would have a floor at 18,000 feet MSL and a ceiling at FL 450. Both Control 1234L and Control 1234H would retain the current lateral boundaries of Control 1234.

The Gulf of Alaska control area would be divided into two offshore airspace areas. Both areas would retain the current lateral boundaries except the northern boundaries would be changed from 3 to 12 nautical miles. The Gulf of Alaska Low would extend upward from 700 feet MSL to, but not including, 18,000 feet MSL. The Gulf of Alaska High would have a floor of 18,000 feet MSL and a ceiling of FL 450.

The control areas for Norton Sound and Woody Island, Alaska, are proposed to be divided into two offshore airspace areas. Both areas would retain their current lateral boundaries except the eastern boundaries for Norton Sound would be changed from 3 to 12 nautical miles. The Norton Sound and Woody Island Low areas would extend upward from 14,500 feet MSL to, but not including, 18,000 feet MSL. The Norton Sound and Woody Island High areas would have floors of 18,000 feet MSL and ceilings of FL 450.

The FAA proposes to designate Control 1485 as Control 1485H. The revised offshore airspace area would retain its existing lateral boundaries, and would have a floor of FL 230, and a ceiling of FL 450.

The FAA proposes to revise subparts A and E of FAA Order 7400.9, effective September 16, 1993, by: (1) Revising, as described above, the areas that correspond to the proposed revisions to the offshore airspace areas in § 71.163 of FAA Order 7400.7; and (2) designating these control areas as Class A or Class E airspace areas as noted below.

The FAA proposes to designate those offshore airspace areas listed below, which would have a floor of 18,000 feet MSL, or higher, as Class A airspace areas. The Airspace Reclassification final rule established 18,000 feet MSL as the floor of Class A airspace areas. These offshore airspace areas meet the criteria of Class A airspace as adopted by ICAO and the United States. For example, pilots who operate in these areas are already required to conduct operations under IFR and the pilots are subject to air traffic control clearances and instructions. By designating these areas as Class A airspace areas, the FAA would simplify airspace by designating airspace with a floor of 18,000 feet MSL, or more, as Class A airspace.

Proposed Offshore Airspace Areas That Would Become Class A Airspace

Atlantic High
Control 1154H
Control 1155H
Control 1156H
Control 1173H
Control 1176H
Control 1177H

Control 1234H
Control 1316H
Control 1318H
Control 1415H
Control 1416H
Control 1418H
Control 1419H
Control 1485H
Control 1486H
Control 1487H
Gulf of Alaska High, Alaska
Gulf of Mexico High
Norton Sound High, Alaska
Pacific High
Woody Island High, Alaska

The offshore airspace areas listed below would be designated as Class E airspace. These airspace areas would have a floor set at a specified altitude and extend up to, but not including, 18,000 feet MSL.

Proposed Offshore Airspace Areas That Would Become Class E Airspace

Atlantic Low
Control 1141L
Control 1142L
Control 1143L
Control 1144L
Control 1146L
Control 1154L
Control 1155L
Control 1156L
Control 1173L
Control 1176L
Control 1177L
Control 1234L
Control 1316L
Control 1318L
Control 1415L
Control 1416L
Control 1418L
Control 1419L
Control 1486L
Control 1487L
Gulf of Alaska Low, Alaska
Gulf of Mexico Low
Norton Sound Low, Alaska
Pacific Low
San Juan Low, Puerto Rico
South Florida Low
Woody Island Low, Alaska

En Route Domestic Airspace Areas

The FAA proposes to revise § 71.163 in FAA Order 7400.7. The additional control areas entitled Kirksville, Missouri and Ottumwa, Iowa, would be eliminated. The airspace described for these areas is already encompassed in the statewide transition areas for Iowa and Missouri, which have floors at 1,200 feet above the surface. The additional control area entitled Sault Sainte Marie, Michigan, would be renamed Upper Peninsula, Michigan. This would distinguish the additional control area entitled Sault Sainte Marie, Michigan, from the transition area entitled Sault Sainte Marie, Michigan.

The FAA also proposes to modify subpart E of FAA Order 7400.9, effective September 16, 1993, by eliminating the corresponding airspace designations that are proposed to be eliminated in § 71.163 of FAA Order 7400.7, and by renaming the area entitled Sault Sainte Marie, Michigan, as Upper Peninsula, Michigan. In addition, the FAA proposes to designate the following en route domestic airspace areas as Class E airspace areas.

Proposed En Route Airspace Areas That Would Become Class E Airspace

Badlands, South Dakota
Boardman, Oregon
Boise, Idaho
Bozeman, Montana
Browerville/Barter Island, Alaska
Burley, Idaho
Colville, Washington
Lakeview, Oregon
Ogden, Utah
Olympic Peninsula, Washington
Omak, Washington
Rattlesnake, Wyoming
Reveille, Nevada
Schloredt, Wyoming
Sidney, Montana
Upper Peninsula, Michigan
Zuni, New Mexico

Continental Control Area

Currently, the Continental Control Area consists of the airspace at and above 14,500 feet MSL overlying the 48 contiguous States including the waters 12 nautical miles from the coast, the District of Columbia, and Alaska including the waters 12 nautical miles from the coast, excluding the Alaska peninsula west of longitude 160°00'00" West. The Continental Control Area does not include: Airspace less than 1,500 feet above the surface; prohibited areas; or restricted areas other than the restricted areas currently listed in part 71, subpart D. Effective September 16, 1993, the Continental Control Area will be designated as Class E airspace extending upward from 14,500 feet MSL to, but not including 18,000 feet MSL.

The FAA proposes that the Continental Control Area include the airspace in any prohibited area and restricted area that extends at or above 14,500 feet MSL. To ensure that the following discussion is clear, it refers to the Continental Control Area (existing terminology); however, the proposal would also include the corresponding Class E airspace area (future terminology).

The proposal to include the airspace in any prohibited and restricted area that extends at or above 14,500 feet MSL in the Continental Control Area would not have an adverse effect on flight operations. The current practice of automatically excluding prohibited areas or restricted areas other than the restricted areas currently listed in part 71, subpart D from the Continental Control Area does not facilitate the goal of real time joint use of special use airspace. Regardless of whether a restricted area is in the Continental Control Area, a pilot still requires permission from the using or controlling agency before entering the area. Additionally, the inclusion of a restricted area in the Continental Control Area would promote the use of this airspace by pilots who are operating aircraft under IFR when the airspace is released to air traffic control by the using agency.

Because of the proposal to include any prohibited and restricted area that extends above 14,500 feet MSL in the Continental Control Area, the FAA proposes to: (1) Revise existing § 71.9 "Continental control area" by deleting the provision to exclude prohibited and restricted areas; (2) revise § 71.71(a), effective September 16, 1993, by deleting the provision to exclude prohibited and restricted areas; (3) remove and reserve § 71.151 in FAA Order 7400.7, which lists all restricted areas included in the Continental Control Area; and (4) revise subpart E of FAA Order 7400.9, effective September 16, 1993, by eliminating the restricted areas included in the Class E airspace area described in § 71.71(a), effective September 16, 1993.

Area Low Routes

Currently, in the national airspace system, no area low routes exist and the FAA has no plans to create any new area low routes. Therefore, the FAA proposes to remove the provisions for establishing area low routes.

To accomplish this, the FAA proposes to: (1) Remove and reserve existing § 71.6, "Extent of area low routes"; (2) remove and reserve § 71.301 in FAA Order 7400.7 which, if any existed, would list the airspace designations for area low routes; (3) remove and reserve § 71.77, "Extent of area low routes," effective September 16, 1993; (4) revise subpart E of FAA Order 7400.9, effective September 16, 1993, by deleting the provision that would list the airspace designations for area low routes; and (5) revise § 71.71(d), effective September 16, 1993, by eliminating the reference to area low routes.

Control Areas Associated with Jet Routes Outside the Continental Control Area

To provide protection for expanding air carrier activity outside the

Continental Control Area, the FAA designated control areas to be associated with jet route segments outside the Continental Control Area. They have a floor of 18,000 feet MSL and a ceiling at FL 450.

The FAA proposes to revise subpart E of FAA Order 7400.7 which is currently in effect, and subpart A of FAA Order 7400.9, effective September 16, 1993, by eliminating control areas associated with jet routes outside the Continental Control Area. The FAA is of the opinion that these areas are no longer necessary; they were first established in 1964 and have not been revised since 1978. If the proposal to designate airspace areas off the U.S. coast and over Alaska, that extend upward from 18,000 feet MSL to FL 450 is adopted, these areas would encompass the airspace in the control areas associated with jet routes outside of the Continental Control Area. Therefore, retaining these control areas associated with jet routes outside of the Continental Control Area would be unnecessarily duplicative.

Reporting Points

The FAA proposes to eliminate the provisions for designating mandatory reporting points. This action would remove and reserve existing § 71.203, "Domestic Low Altitude Reporting Points," and § 71.207, "Domestic High Altitude Reporting Points," in FAA Order 7400.7. In addition, the FAA proposes to revise subpart H of FAA Order 7400.9, effective September 16, 1993, by deleting domestic low altitude reporting points and domestic high altitude reporting points.

Because of extensive domestic radar coverage, pilots are seldom required to report passing these points. For example, whenever an air traffic controller advises a pilot of "radar contact," the pilot can discontinue reporting over compulsory reporting points. Nevertheless, air traffic controllers would retain the option of requiring pilots to make position reports in instances of radar system limitations or as circumstances warrant.

Flushing (New York) Airport Traffic Rule

The special air traffic rules for Flushing, New York, specified in subpart P of FAR part 93 establish special communications, operations, and equipment requirements for arriving and departing aircraft at Flushing Airport.

The Flushing, New York airport is now closed and no known plans exist to reopen it in the immediate future. Therefore, this NPRM proposes to eliminate the special air traffic rules for the Flushing, New York airport. Under this proposal, the FAA would remove and reserve subpart P of part 93.

Valparaiso, Florida Terminal Area

The special air traffic rules for Valparaiso, Florida, are specified in subpart F of FAR part 93. The rules require a pilot who desires to enter that area to establish two-way radio communications with air traffic control and to receive an air traffic control advisory on operations being conducted in the vicinity of Eglin Air Force Base. The area is divided into a north-south corridor and an east-west corridor.

The FAA proposes to replace the Valparaiso, Florida Terminal Area, with the Eglin, Florida, Class D airspace areas: one for the north-south corridor and one for the east-west corridor. Under the Airspace Reclassification final rule, a pilot who operates an aircraft in Class D airspace is required to establish two-way radio communications with the air traffic control facility having jurisdiction in that airspace. Therefore, the operating rules for a pilot who operates in the Valparaiso, Florida terminal area would not change if it were replaced with the Eglin, Florida, Class D airspace areas. The FAA believes this proposal contributes to the goal of simplifying airspace by replacing special rules with standard rules.

The FAA proposes to revise the lateral boundary that currently separates the existing north-south and east-west corridors. The separation between the corridors would be moved from north of Eglin Air Force Base to south of Eglin Air Force Base. This revision would ensure restricted access to the north-south corridor during military testing without constraining access to the east-west corridor.

The FAA also proposes to revise the current vertical limits of the area. The existing east-west corridor extends upward from the surface up to, but not including 8,500 feet MSL. The FAA proposes that the corresponding portion of the Eglin, Florida, Class D airspace area also have a ceiling of 8,500 feet MSL, except that the portion of the existing corridor that does not underlie Restricted Areas R-2915C, R-2929B, and R-2914B is proposed to extend upward from the surface to, but not including, 18,000 feet MSL. The existing north-south corridor does not have a specified ceiling; the FAA proposes that the corresponding portion of the Eglin, Florida, Class D airspace area have a vertical limit up to, but not including, 18,000 feet MSL.

Under this proposal, the FAA would remove and reserve subpart F of part 93, "Valparaiso, Florida, Terminal Area" and would revise subpart D of FAA Order 7400.9, effective September 16, 1993, by establishing the Eglin, Florida, Class D airspace areas. The Eglin Air Force Base and Eglin AF Aux No. 3 Duke Field, Florida, Class D airspace areas would be encompassed by the proposed Eglin, Florida, Class D airspace area. Therefore, the FAA proposes to revise subpart D of FAA Order 7400.9, effective September 16, 1993, by deleting these areas. A portion of the Hurlburt Field, Florida, Class D airspace area and the Crestview, Florida, Class E airspace area would overlap a portion of the proposed Eglin, Florida, Class D airspace area; therefore, the FAA proposes to revise subpart D and subpart E of FAA Order 7400.9 by modifying these areas to exclude that airspace in the proposed Eglin, Florida, Class D airspace area.

Incorporation by Reference

The FAA proposes to amend the airspace descriptions of certain additional control areas and to eliminate domestic low altitude reporting points, domestic high altitude reporting points, restricted areas included in the Continental Control Area, area low routes, and control areas associated with jet routes outside the Continental Control Area. The descriptions of these airspace areas, reporting points, and routes are not listed in the Code of Federal Regulations (CFR) and are not set forth in the full text of this NPRM. The full listing for all additional control areas, domestic low altitude reporting points, domestic high altitude reporting points, restricted areas included in the Continental Control Area, area low routes, and control areas associated with jet routes outside the Continental Control Area are contained in FAA Order 7400.7, Compilation of Regulations, effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The airspace descriptions proposed to be amended or created by this notice would be published subsequently in the Handbook.

Under the Airspace Reclassification final rule, descriptions of additional control areas, restricted areas included in the Continental Control Area, area low routes, and control areas associated with jet routes outside the Continental Control Area are set forth as Class E airspace areas in subpart E of FAA Order 7400.9, and descriptions of domestic low altitude reporting points and domestic high altitude reporting points are set forth in subpart H of FAA Order 7400.9. Class D airspace areas are set forth in subpart D of FAA Order 7400.9. FAA Order 7400.9, Airspace

Reclassification, effective September 16, 1993, is also incorporated by reference in 14 CFR 71.1. These descriptions are not listed in the CFR and are not set forth in the full text of this NPRM.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), there are no requirements for information collection associated with this proposed rule.

Regulatory Evaluation Summary

This section summarizes the regulatory evaluation prepared by the FAA. The regulatory evaluation provides more detailed information on estimates of the potential economic consequences of this proposal. This summary and the evaluation quantify, to the extent practicable, estimated costs of the proposal to the private sector, consumers, and Federal, State, and local governments, as well as the anticipated benefits.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The executive order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. Executive Order 12291 defines a "major" rule as one that is likely to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, productivity, or innovation.

The FAA has determined that this proposal is not "major" as defined in the executive order. Therefore, a full regulatory impact analysis, which includes the identification and evaluation of cost-reducing alternatives to the proposal, has not been prepared. Instead, the agency has prepared a more concise document termed a "regulatory evaluation," which analyzes only this proposed rule without identifying alternatives. In addition to summarizing the regulatory evaluation, this section also contains an initial regulatory flexibility determination required by the 1980 Regulatory Flexibility Act (Pub. L. 96–354) an an international trade impact assessment. If the reader desires more detailed economic information than this summary contains, the reader should consult the regulatory evaluation contained in the docket.

Costs

The costs of the offshore airspace proposal are encompassed within the $1.9 million cost of the Airspace Reclassification final rule, including modification of manuals, charts, and training materials. For a detailed discussion of how these costs were derived, the reader is directed to the regulatory evaluation summary of the Airspace Reclassification final rule (56 FR 65638; December 17, 1991). A brief discussion explaining each of these costs is presented below.

Revisions to Aeronautical Charts

The cost to modify the aeronautical charts to reflect the new offshore airspace areas is part of the total estimated $1.2 million discounted cost specified in the Airspace Reclassification final rule. This cost estimate was provided by the National Ocean Service, which publishes and distributes aeronautical charts. The estimate represents the cost of changing the airspace dimensions and symbols on the plates from which aeronautical charts are printed.

Revisions of Air Traffic Training Courses

The cost of revising the courses used to instruct air traffic controllers in offshore airspace areas is part of the estimated $53,000 (discounted) in controller training costs noted in the Airspace Reclassification final rule. This includes developing and conducting a 1-week seminar for FAA student controllers ($10,000) and revising lesson plans, visual aids, handouts, laboratory exercises, and tests ($43,000).

Re-education of the Pilot Community

The cost of re-educating the pilot community on the modifications in the offshore airspace proposal is part of the estimated $625,000 (discounted) specified in the Airspace Reclassification final rule. This includes the publication and mailing of an advisory circular ($550,000) and the production of a videotape documenting the new airspace classifications ($75,000).

Conversion of Statute Miles to Nautical Miles

The statute mile designations in FAA Order 7400.7, Compilation of Regulations, and FAA Order 7400.9, Airspace Reclassification, are being converted to nautical miles as part of the Airspace Reclassification final rule. The offshore airspace proposal would share some of the $1.2 million (discounted) cost to complete the revision to aeronautical charts.

Revising Offshore Airspace Areas

The current base levels of offshore airspace areas, except those off the coast of Alaska, range from 700 feet MSL to 6,000 feet MSL. Most of the base levels, however, are below 5,500 feet MSL, so the proposal would, in effect, raise them. This would convert controlled airspace into uncontrolled airspace and consequently lower the minimum visibility and cloud clearance requirements. The volume of air traffic offshore and the requirement for air traffic control services are minimal below 5,500 feet MSL. Thus, the FAA contends that raising the base levels would not result in a decrease in safety or impose any costs on the FAA or the flying public.

Deletion of Area Low Routes

Because no area low routes currently exist, and the FAA has no need to create any, no monetary cost or decrease in safety would occur if their reference is removed from the FAR.

Removal of High and Low Altitude Reporting Points

Advances in radar technology have increased domestic radar coverage so extensively that reporting points have become an unnecessary redundancy in the air traffic control system. Therefore, there would be no reduction in safety if domestic high and low altitude reporting points are removed.

Continental Control Area

The proposal to include prohibited and restricted areas above 14,500 feet MSL in the Continental Control Area would not impose costs or decrease safety. This is because restricted or prohibited airspace would be released to air traffic control only with the permission of the using agency; and then IFR aircraft operators would be allowed in only with a clearance from air traffic control.

Benefits

The offshore airspace proposal would enhance aviation safety and operational efficiency, like the Airspace Reclassification final rule. Like the costs, most of the benefits of this proposal have already been attributed to the Airspace Reclassification final rule. However, some additional unique safety and efficiency benefits of this proposal are discussed below.

Offshore Airspace Reconfiguration

The proposal would reclassify certain airspace areas that were not specifically addressed in the Airspace Reclassification final rule. However, these changes would be carried out in conjunction with that rule. The areas that would be reclassified by the offshore proposal are as follows:

- Offshore airspace areas from 18,000 feet MSL to FL 600 would be designated as Class A airspace.
- Offshore airspace areas between 5,500 feet MSL, or other specified altitude, and 18,000 feet MSL, would be designated as Class E airspace.

These new offshore airspace classifications would enhance aviation safety by simplifying the airspace classifications and by reducing airspace complexity. The airspace areas affected by the proposal would be designated on aeronautical charts with fewer airspace names, terms, and symbols. Furthermore, the new airspace classifications would mirror those established by ICAO, making U.S. airspace more standardized and more familiar to foreign pilots. All of these changes would generate easier and more precise navigation and safer operation in offshore airspace areas.

Uniform Base Levels

Establishing a uniform base of 5,500 feet MSL for offshore areas would convert controlled offshore airspace into uncontrolled airspace and lower the minimum visibility and cloud clearance requirements. Pilots would benefit by being able to operate in more uncontrolled offshore airspace with less stringent requirements.

Continental Control Area

By eliminating the automatic exclusion of prohibited and restricted areas from the Continental Control Area, these areas automatically revert to controlled airspace when released to air traffic control by the using agency. This action benefits aircraft operators and air traffic control by allowing air traffic control to route IFR aircraft through the special use airspace.

Simplification of U.S. Airspace

The offshore airspace proposal would generate a simpler and more efficient airspace system. This would be accomplished by deleting several airspace designations that have become obsolete or redundant due to advances in radar technology, expansion of radar and radio coverage, and changes in air traffic control and aircraft operator's airspace requirements.

High and Low Altitude Reporting Points

Advances in radar technology have increased domestic radar coverage so extensively that domestic reporting points have become an unnecessary redundancy in the air traffic control system. Currently, air traffic control is able to determine the location of an aircraft with radar and pilots are not required to report passing such points. Therefore, there would be no reduction in safety if domestic high and low altitude reporting points are removed.

Area Low Routes

Deleting area low routes would not reduce aviation safety because no routes exist.

Conclusion

The cost of the offshore proposal is part of the estimated $1.9 million cost (discounted, 1990 dollars) previously accounted for in the Airspace Reclassification final rule. The benefits of the proposal would be a simpler, more efficient, and more uniform airspace system. This would ultimately result in increased safety to the aviation community. Thus, the FAA contends that the proposal is cost beneficial.

International Trade Impact Analysis

Because the proposed rule would only affect U.S. airspace and airspace over which the United States has jurisdiction, it would not impose any adverse operating requirements on foreign aircraft operators. By September 16, 1993, virtually all foreign aircraft operators will be operating under requirements similar to those proposed in this NPRM and the Airspace Reclassification final rule. These requirements are based on those established by ICAO's airspace reclassification. Thus, this proposal would have no effect on the sale of foreign aviation products or services in the United States, nor would it affect the sale of U.S. products or services in foreign countries.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires agencies to review rules that may have "a significant cost impact on a substantial number of small entities." The small entities that the proposed rule could potentially affect are pilot training schools.

Training materials used in the courses offered by the pilot training schools would have to be modified to reflect the changes of the airspace reclassification. However, pilot training schools would not incur any cost impact because the documents they use must be regularly updated as a normal cost of doing business. Thus, the proposal would not have a significant cost impact on pilot schools classified as small entities. Therefore, this proposal would not have a significant cost impact on a substantial number of small entities.

Federalism Implications

The amendments proposed herein would not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, the FAA has determined that this proposed rule would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Initial Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not major under Executive Order 12291. In addition, the FAA certifies that this proposal, if adopted, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). An initial regulatory evaluation of the proposal, including an initial Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "FOR FURTHER INFORMATION CONTACT."

List of Subjects

14 CFR Part 71

Airspace, Airways, Incorporation by reference.

14 CFR Part 93

Special air traffic rules.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend parts 71 and 93 of the Federal Aviation Regulations (14 CFR parts 71 and 93) as follows:

The following proposed amendments are to part 71 currently in effect:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS, JET ROUTES, AND AREA HIGH ROUTES

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; Executive Order 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

2. Section 71.1 is revised to read as follows:

§ 71.1 Applicability.

The complete listing for all jet routes, area high routes, Federal airways, control zones, transition areas, terminal control areas, airport radar service areas, positive control areas, reporting points, and other controlled airspace can be found in FAA Order 7400.7, Compilation of Regulations, which was last published April 30, 1991, and effective November 1, 1991. This incorporation be reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The approval to incorporate by reference FAA Order 7400.7 is effective as of December 17, 1991 through September 15, 1993. During the incorporation by reference period, proposed changes to the listings of jet routes, area high routes, Federal airways, control zones, transition areas, terminal control areas, airport radar service areas, positive control areas, reporting points, and other controlled airspace will be published in full text as proposed rule documents in the **Federal Register**. Amendments to the listings of jet routes, area high routes, Federal airways, control zones, transition areas, terminal control areas, airport radar service areas, positive control areas, reporting points, and other controlled airspace will be published in full text as final rules in the **Federal Register**. Periodically, the final rule amendments will be integrated into a revised edition of the compilation and submitted to the Director of the Federal Register for approval for incorporation by reference in this section. Copies of this order may be obtained from the Document Inspection Facility, APA–220, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–3484. Copies may be inspected in Docket Number 26968 at the Federal Aviation Administration, Office of the Chief Counsel, AGC–10, room 915G, 800 Independence Avenue, SW., Washington, DC 20591 weekdays between 8:30 a.m. and 5 p.m., or at the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC. This section is effective as of December 17, 1991, through September 15, 1993.

§ 71.6 [Removed]

3. Section 71.6 is removed and reserved.

4. Section 71.9 is revised to read as follows:

§ 71.9 Continental control area.

The Continental Control Area consists of the airspace at and above 14,500 feet MSL overlying the 48 contiguous States, including the waters within 12 nautical miles from the coast of the 48 contiguous States; the District of Columbia; Alaska, including the waters within 12 nautical miles from the coast of Alaska; excluding the Alaska peninsula west of longitude 16°00′00″W.; but does not include the airspace less than 1,500 feet above the surface of the earth.

The following proposed amendments are to part 71 in effect as of September 16, 1993:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; Executive Order 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

2. Section 71.33 is amended by adding paragraph (c) to read as follows:

§ 71.33 Class A airspace areas.

* * * * *

(c) The airspace areas listed as offshore airspace areas in subpart A of FAA Order 7400.9 (incorporated by reference, see § 71.1) that are designated in international airspace within areas of domestic radio navigational signal or ATC radar coverage, and within which domestic ATC procedures are applied.

3. Section 71.71 is amended by revising paragraphs (a), (d), and (e), and by adding paragraph (f) to read as follows:

§ 71.71 Class E airspace.

* * * * *

(a) The airspace of the United States, including that airspace overlying the waters within 12 nautical miles of the coast of the 48 contiguous states and Alaska, extending upward from 14,500 feet MSL to, but not including, 18,000 feet MSL, and excluding—

(1) The Alaska peninsula west of longitude 16°00′00″ W.; and

(2) The airspace below 1,500 feet above the surface of the earth.

* * * * *

(d) The Federal airways described in subpart E of FAA Order 7400.9 (incorporated by reference, see § 71.1).

(e) The airspace areas listed as en route domestic airspace areas in subpart E of FAA Order 7400.9 (incorporated by reference, see § 71.1). Unless otherwise specified, each airspace area has a lateral extent identical to that of a Federal airway and extends upward from 1,200 feet above the surface of the earth to the overlying or adjacent controlled airspace.

(f) The airspace areas listed as offshore airspace areas in subpart E of FAA Order 7400.9 (incorporated by reference, see § 71.1) that are designated in international airspace within areas of domestic radio navigational signal or ATC radar coverage, and within which domestic ATC procedures are applied. Unless otherwise specified, each airspace area extends upward from a specified altitude up to, but not including, 18,000 feet MSL.

§ 71.77 [Removed]

4. Section 71.77 is removed and reserved.

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

5. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. app. 1302, 1303, 1348, 1354(a), 1421(a), 1424, 2451 *et seq.* 49 U.S.C. 106(g).

Subpart F—[Removed]

6. Part 93 is amended by removing and reserving subpart F (§§ 93.81 and 93.83).

Subpart P—[Removed]

7. Part 93 is amended by removing and reserving subpart P. (§§ 93.181, 93.183, 93.185, 93.187, 93.189, and 93.191).

Issued in Washington, DC on September 3, 1992.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92–21969 Filed 9–15–92; 8:45 am]

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Wednesday
September 16, 1992

Part III

Office of Management and Budget

Cumulative Report on Budget Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

September 1, 1992.

This report is submitted in fulfillment of the requirement of section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) requires a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to Congress.

This report gives the status, as of September 1, 1992, of 128 rescission proposals and 12 deferrals contained in the special messages for FY 1992. These messages were transmitted to Congress on September 30, and December 19, 1991, and on February 19, March 10, March 20, April 8, April 9, June 25, and August 26, 1992.

Rescissions (Table A and Attachment A)

The President proposed 128 rescissions totaling $7,879.5 million. Public Law 102–298 (approved June 4, 1992) rescinded $2,066.9 million of the $7,879.5 million proposed by the President. Attachment A shows the history and status of each rescission proposed during FY 1992.

Deferrals (Table B and Attachment B)

As of September 1, 1992, $1,243.0 million in budget authority was being deferred from obligation. Attachment B shows the history and status of each deferral reported during FY 1992.

Information from Special Messages

The special messages containing information on the rescission proposals and deferrals that are covered by this cumulative report are printed in the **Federal Register** cited below:

56 FR 50620, Monday, October 7, 1991
56 FR 67402, Monday, December 30, 1991
57 FR 6644, Wednesday, February 26, 1992
57 FR 11140, Wednesday, April 1, 1992
57 FR 11528, Friday, April 3, 1992
57 FR 13151, Wednesday, April 15, 1992
57 FR 13779, Friday, April 17, 1992
57 FR 29610, Thursday, July 2, 1992
57 FR 40566, Thursday, September 3, 1992

Richard Darman,
Director.

BILLING CODE 3110-01-M

TABLE A

STATUS OF FY 1992 RESCISSIONS

	Amounts (In millions of dollars)
Rescissions proposed by the President.....	7,879.5
Accepted by Congress as of September 1, 1992.....	2,066.9
Rescission proposals for which funding was previously withheld and has been released.....	7,330.1
Rescission proposals for which funding was not withheld.....	25.0
Rescission proposals for which funding is currently being withheld.....	---

TABLE B

STATUS OF FY 1992 DEFERRALS

	Amounts (In millions of dollars)
Deferrals proposed by the President.....	5,791.8
Routine Executive releases through August 1, 1992 (OMB/Agency releases of $6,411.9 million, partially offset by cumulative positive adjustments of $1,863.0 million).....	-4,548.9
Overturned by the Congress.....	---
Currently before the Congress.....	1,243.0

Attachments

ATTACHMENT A
Status of FY 1992 Rescission Proposals – As of September 1, 1992
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Amount Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
DEPARTMENT OF AGRICULTURE								
Cooperative State Research Service								
Building and facilities	R92–36		250	3–20–92	250	5–29–92		
	R92–37		500	3–20–92	500	5–29–92		
	R92–38			3–20–92	500	5–29–92	500	P.L. 102–298
	R92–39		2,710	3–20–92	2,710	5–29–92		
	R92–40		375	3–20–92	375	5–29–92		
	R92–41		3,050	3–20–92	3,050	5–29–92		
	R92–42		225	3–20–92	225	5–29–92		
Cooperative State Research Service	R92–43		225	3–20–92	225	5–29–92		
	R92–44			3–20–92	750	5–29–92	750	P.L. 102–298
	R92–45		94	3–20–92	94	5–29–92		
	R92–46		39	3–20–92	39	5–29–92		
	R92–47		387	3–20–92	387	5–29–92		
	R92–48		85	3–20–92	85	5–29–92		
	R92–49			3–20–92	49	5–29–92	49	P.L. 102–298
	R92–50		125	3–20–92	125	5–29–92		
	R92–51		185	3–20–92	185	5–29–92		
	R92–52		120	3–20–92	120	5–29–92		
	R92–53		134	3–20–92	134	5–29–92		
	R92–54		100	3–20–92	100	5–29–92		
	R92–55		46	3–20–92	46	5–29–92		
	R92–56		200	3–20–92	200	5–29–92		
	R92–57		250	3–20–92	250	5–29–92		
	R92–58			3–20–92	50	5–29–92	50	P.L. 102–298
	R92–59		187	3–20–92	187	5–29–92		
	R92–60		140	3–20–92	140	5–29–92		
	R92–61		76	3–20–92	76	5–29–92		
Extension Service								
Extension Service	R92–62		647	3–20–92	647	5–29–92		
	R92–63		150	3–20–92	150	5–29–92		

ATTACHMENT A
Status of FY 1992 Rescission Proposals – As of September 1, 1992
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Amount Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
National Agricultural Library								
National Agricultural Library	R92-64		500	3-20-92	462 1/	5-29-92		
Animal and Plant Inspection Service								
Salaries and expenses	R92-35		100	3-20-92	100	5-29-92		
DEPARTMENT OF COMMERCE								
National Telecommunications and Information Administration								
Public telecommunications facilities, planning and construction	R92-2		18,425	3-10-92	21,425	5-11-92	3,000	P.L. 102-298
DEPARTMENT OF DEFENSE								
Operation and Maintenance								
Operation and maintenance, Army	R92-3		80,798	3-10-92	92,850	5-11-92	12,052	P.L. 102-298
Operation and maintenance, Navy	R92-4		104,520	3-10-92	104,650	5-11-92	130	P.L. 102-298
Operation and maintenance, Marine Corps	R92-5		14,834	3-10-92	22,000	5-11-92	7,166	P.L. 102-298
Operation and maintenance, Air Force	R92-6		3,848	3-10-92	4,500	5-11-92	652	P.L. 102-298
Operation and maintenance, Defense Agencies	R92-7		20,200	3-10-92	20,200	5-11-92		
Procurement								
Aircraft procurement, Army	R92-103		133,000	4-9-92	133,000	6-19-92		
Procurement of weapons and tracked combat vehicles, Army	R92-9		60,000	3-10-92	110,000	5-11-92	50,000	P.L. 102-298
	R92-104		225,000	4-9-92	225,000	6-19-92		
	R92-105			4-9-92			196,300	P.L. 102-298
	R92-106		17,600	4-9-92	17,600	6-19-92		
Procurement of ammunition, Army	R92-10		1,000	3-10-92	1,000	5-11-92		
Aircraft procurement, Navy	R92-11		223,000	3-10-92	262,000	5-11-92	39,000	P.L. 102-298

1/ Only $462,000 was withheld from obligation.

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Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Amount Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
	R92–107			4–9–92			15,000	P.L. 102–298
	R92–108		8,000	4–9–92	8,000	6–19–92		
Weapons procurement, Navy	R92–12		13,200	3–10–92	13,200	5–11–92		
	R92–109		130,000	4–9–92	130,000	6–19–92		
	R92–110			4–9–92			4,000	P.L. 102–298
	R92–111			4–9–92			60,000	P.L. 102–298
Shipbuilding and conversion, Navy	R92–13		238,100	3–10–92	238,100	5–11–92		
	R92–101		1,615,900	3–20–92	2,765,900	5–21–92	1,150,000	P.L. 102–298
Other procurement, Navy	R92–14		41,300	3–10–92	41,300	5–11–92		
	R92–102			3–20–92	189,400	5–21–92	189,400	P.L. 102–298
	R92–112		10,000	4–9–92	10,000	6–19–92		
	R92–113		4,000	4–9–92	4,000	6–19–92		
	R92–114		2,000	4–9–92	2,000	6–19–92		
Procurement, Marine Corps	R92–15		40,200	3–10–92	40,200	5–11–92		
	R92–115		6,500	4–9–92	6,500	6–19–92		
Procurement, Defense Agencies	R92–16		154,800	3–10–92	154,800	5–11–92		
National guard and reserve equipment	R92–116		21,000	4–9–92	21,000	6–19–92		
	R92–117		799,300	4–9–92	799,300	6–19–92		
	R92–118		67,000	4–9–92	67,000	6–19–92		
	R92–119		9,300	4–9–92	9,300	6–19–92		
	R92–120		45,000	4–9–92	45,000	6–19–92		
	R92–121		15,000	4–9–92	15,000	6–19–92		
	R92–122		20,000	4–9–92	20,000	6–19–92		
	R92–123		60,000	4–9–92	60,000	6–19–92		
	R92–124		15,000	4–9–92	15,000	6–19–92		
Research, Development, Test and Evaluation								
Research, development, test, and evaluation, Army	R92–18		102,200	3–10–92	102,200	5–11–92		
	R92–125		4,000	4–9–92	4,000	6–19–92		
Research, development, test, and evaluation, Navy	R92–19		140,600	3–10–92	140,600	5–11–92		

ATTACHMENT A
Status of FY 1992 Rescission Proposals – As of September 1, 1992
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Amount Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
Research, development, test, and evaluation, Air Force	R92–20		127,100	3–10–92	127,100	5–11–92		
	R92–21		320,900	3–10–92	375,900	5–11–92	55,000	P.L. 102–298
	R92–126		3,000	4–9–92	3,000	6–19–92		
	R92–127			4–9–92			248,800	P.L. 102–298
Research, development, test, and evaluation, Defense Agencies	R92–128		5,000	4–9–92	5,000	6–19–92		
	R92–129		6,000	4–9–92	6,000	6–19–92		
	R92–130		70,000	4–9–92	70,000	6–19–92		
Military Construction								
Military construction, Army	R92–22		200	3–10–92	9,050	5–11–92	8,850	P.L. 102–298
Military construction, Navy	R92–23		17,400	3–10–92	17,400	5–11–92		
Military construction, Air Force	R92–24		6,000	3–10–92	6,000	5–11–92		
Military construction, Defense Agencies	R92–25		39,000	3–10–92	48,000	5–11–92	9,000	P.L. 102–298
Military construction, Army National Guard	R92–26		16,565	3–10–92	16,565	5–11–92		
Military construction, Air National Guard	R92–27			3–10–92	306	5–11–92	306	P.L. 102–298
Military construction, Army Reserve	R92–28		2,749	3–10–92	2,749	5–11–92		
Military construction, Naval Reserve	R92–29		25,100	3–10–92	36,000	5–11–92	10,900	P.L. 102–298
DEPARTMENT OF DEFENSE–CIVIL								
Corps of Engineers								
Construction, general	R92–91		3,000	3–20–92	3,000	5–21–92		
Operation and maintenance, general	R92–92		1,350	3–20–92	1,350	5–21–92		
DEPARTMENT OF ENERGY								
Energy Programs								
Fossil energy research and development	R92–34		1	4–8–92	1	6–18–92	144	P.L. 102–298

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ATTACHMENT A
Status of FY 1992 Rescission Proposals – As of September 1, 1992
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Amount Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
DEPARTMENT OF HEALTH AND HUMAN SERVICES								
Health Resources and Services Administration								
Health resources and services	R92-30		25,000 2/	3-10-92				
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Housing Programs								
Annual contributions for assisted housing	R92-65		547,659	3-20-92	547,659	5-21-92		
	R92-66		1,500	3-20-92	1,500	5-21-92		
	R92-67		1,000	3-20-92	1,000	5-21-92		
	R92-68		2,000	3-20-92	2,000	5-21-92		
	R92-69		150	3-20-92	150	5-21-92		
	R92-70		100	3-20-92	100	5-21-92		
	R92-71		1,200	3-20-92	1,200	5-21-92		
	R92-72		1,000	3-20-92	1,000	5-21-92		
	R92-73		1,300	3-20-92	1,300	5-21-92		
	R92-74		3,900	3-20-92	3,900	5-21-92		
	R92-75		2,500	3-20-92	2,500	5-21-92		
	R92-76		1,500	3-20-92	1,500	5-21-92		
	R92-77		500	3-20-92	500	5-21-92		
	R92-78		1,000	3-20-92	1,000	5-21-92		
	R92-79		1,000	3-20-92	1,000	5-21-92		
	R92-80		505	3-20-92	505	5-21-92		
	R92-81		65	3-20-92	65	5-21-92		
	R92-82		101	3-20-92	101	5-21-92		

2/ Funding was never withheld

ATTACHMENT A
Status of FY 1992 Rescission Proposals – As of September 1, 1992
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Amount Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
	R92-83		1,500	3-20-92	1,500	5-21-92		
	R92-84		700	3-20-92	700	5-21-92		
	R92-85		1,000	3-20-92	1,000	5-21-92		
Annual contributions for assisted housing	R92-86		800	3-20-92	800	5-21-92		
Congregate services program	R92-1		16,700	2-19-92	16,700	4-6-92		
Flexible subsidy fund	R92-31		25,000	3-10-92	25,000	5-11-92		
Policy Development and Research								
Research and technology	R92-87		400	3-20-92	400	5-21-92		
DEPARTMENT OF THE INTERIOR								
National Park Service								
Construction	R92-89		7,700	3-20-92	7,700	5-21-92		
Operation of the national park system	R92-90		1,975	3-20-92	1,975	5-21-92		
Bureau of Indian Affairs								
Operation of Indian programs	R92-32		5,880	3-10-92	5,880	5-11-92		
Construction	R92-88		2,696	3-20-92	8,593	5-21-92	5,897	P.L. 102-298
DEPARTMENT OF TRANSPORTATION								
Federal Railroad Administration								
Local rail freight assistance	R92-33		9,880	3-10-92	9,880	5-11-92		

ATTACHMENT A
Status of FY 1992 Rescission Proposals – As of September 1, 1992
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Amount Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
ENVIRONMENTAL PROTECTION AGENCY								
Research and development	R92-98		116	3-20-92	116	5-21-92		
Abatement, control and compliance	R92-93		1,250	3-20-92	1,250	5-21-92		
	R92-94		390	3-20-92	390	5-21-92		
	R92-95		70	3-20-92	70	5-21-92		
	R92-96		1,450	3-20-92	1,450	5-21-92		
Buildings and facilities	R92-97		20,000	3-20-92	20,000	5-21-92		
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION								
Construction of facilities	R92-99		3,400	3-20-92	3,400	5-21-92		
Research and development	R92-100		750	3-20-92	750	5-21-92		
TOTAL RESCISSIONS		0	5,812,527		7,330,191		2,066,946	

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ATTACHMENT B
Status of FY 1992 Deferrals – As of September 1, 1992
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(–): Cumulative OMB/ Agency	Releases(–): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 9–1–92
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund	D92–1	244,777		09–30–91					
	D92–1A		1,623,312	12–19–91	2,413,863			1,108,866	563,092
Foreign military financing	D92–8	1,908,000		12–19–91					
	D92–8A		93,098	06–25–92	2,672,877			695,578	23,799
Agency for International Development									
International disaster assistance, Executive	D92–2	40,704		09–30–91					
	D92–2A		12,483	02–19–92	65,032			34,068	22,224
Demobilization and transition fund	D92–9	13,000		12–19–91					13,000
Housing guaranty program	D92–12	17,630		08–26–92	14,985				2,645
DEPARTMENT OF AGRICULTURE									
Forest Service									
Cooperative work	D92–3	482,378		09–30–91	135,434				346,944
Expenses, brush disposal	D92–10	101,006		12–19–91					101,006
Timber salvage sales	D92–11	131,549		02–19–92					
	D92–11A		50,000	06–25–92	30,000				151,549
DEPARTMENT OF DEFENSE – CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, Defense	D92–4	1,416		09–30–91	93				1,324

ATTACHMENT B
Status of FY 1992 Deferrals – As of September 1, 1992
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(–): Cumulative OMB/ Agency	Releases(–): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 9–1–92
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Social Security Administration									
Limitation on administrative expenses	D92–5	7,317		09–30–91					7,317
DEPARTMENT OF STATE									
Bureau for Refugee Programs									
United States emergency refugee and migration assistance fund, executive	D92–6	30,053		09–30–91					
	D92–6A		24,750	12–19–91	69,200			24,520	10,123
DEPARTMENT OF TRANSPORTATION									
Federal Aviation Administration									
Facilities and equipment (Airport and airway trust fund)	D92–7	1,010,375		09–30–91	1,010,375				0
TOTAL, DEFERRALS		3,988,205	1,803,643		6,411,860	0		1,863,033	1,243,021

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[FR Doc. 92–22315 Filed 9–15–92; 8:45 am]

BILLING CODE 3110–01–C

federal register

Wednesday
September 16, 1992

Part IV

Environmental Protection Agency

40 CFR Parts 264 and 265

Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Financial Responsibility for Third-Party Liability, Closure, and Post-Closure; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 264 and 265

[FRL-4106-2]

RIN 2050-AC71

Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Financial Responsibility for Third-Party Liability, Closure, and Post-Closure

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is amending its financial assurance requirements under subtitle C of the Resource Conservation and Recovery Act (RCRA). On July 1, 1991 (56 FR 30201), the Agency proposed several amendments to the regulations related to third-party liability coverage, namely, the claims reporting provision and the provisions for obtaining a letter of credit. The Agency proposed to expand the use of the non-parent corporate guarantee to owners and operators of hazardous waste facilities for demonstrating financial responsibility for closure and post-closure care. In this action the Agency is promulgating those changes.

EFFECTIVE DATE: September 16, 1992.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline at 1-800-424-9346 (in Washington, DC, call 260-3000), or Ed Coe at (202) 260-6259, Office of Solid Waste (OS-341), U.S. Environmental Protection Agency, Washington DC, 20460.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Authority
II. Amendments to the September 1, 1988 Rule Regarding Third-Party Liability Coverage
A. Background
B. Claims Reporting Requirement
C. Standby Trust for Owners and Operators Who Use a Letter of Credit to Demonstrate Liability Coverage
D. Instruments Available to Owners and Operators that No Longer Meet the Requirements of the Financial Test
III. The Expanded Guarantee for Demonstrating Financial Assurance for Closure and Post-Closure Care
IV. Effective Date
V. State Authorization
A. Applicability of Rules in Authorized States
B. Effect of Rule on State Authorization
VI. Regulatory Analysis
A. Regulatory Impact Analysis
B. Regulatory Flexibility Act

I. Authority

This proposed rule is issued under the authority of section 3004 of the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. 6924.

II. Amendments to the September 1, 1988 Rule Regarding Third Party Liability Coverage

A. Background

On September 1, 1988, the Agency issued a final rule that expanded the instruments available to owners and operators to demonstrate financial responsibility for third party liability. (see 53 FR 33938). Prior to the September 1, 1988 rule, the RCRA regulations at 40 CFR 264.147 allowed the use of a financial test, a parent corporate guarantee, or insurance for third party liability assurance. In the September 1, 1988 rulemaking, the Agency expanded the options to include the letter of credit, surety bond, trust fund, and non-parent corporate guarantee. The September 1, 1988 rulemaking also established in §§ 264.147 and 265.145 a claims reporting requirement for third-party claims.

Chemical Waste Management, Inc. (CWM) challenged several provisions of the September 1, 1988 rulemaking, in particular, several provisions related to the letter of credit and the claims reporting requirement. On February 23, 1990 the parties entered into a Joint Stipulation of Settlement in which the Agency agreed to: (1) Revise the claims reporting requirement of §§ 264.147 and 265.147 to clarify the type of claims that must be reported; (2) amend § 264.151(k) to authorize the creation of a standby trust fund for owners and operators who obtain letters of credit to demonstrate liability coverage; and (3) issue a correction to §§ 264.147(a)(2) and 265.147(a)(2) to insert a reference to the financial test. In accordance with the February 23 settlement agreement, the Agency proposed changes to the claims reporting requirement of §§ 264.147 and 265.147 and the use of a standby trust fund under § 264.151(k) on July 1, 1991 (56 FR 30201). The technical correction to §§ 264.147(a)(2) and 265.147(a)(2) was also published on that date. Today's notice promulgates the changes pertaining to claims reporting and the standby trust proposed on July 1, 1991.

In addition to the changes resulting from the settlement agreement, today's notice also promulgates a conforming change to §§ 264.147(f)(6) and 265.147(f)(6) to expand the instruments available to owners and operators that no longer meet the requirements of the financial test for liability coverage. This change was proposed in the July 1, 1991 notice.

The July 1, 1991 notice also proposed provisions not promulgated today. First, that notice proposed modifications to the financial tests for closure, post-closure and third-party liability. In addition, it proposed amendments to the post-closure deed requirement at §§ 264.119(b)(2), 264.143(i), 265.119(b)(2), and 265.143(h). EPA is continuing to evaluate comments received on the proposed revisions to the financial tests and has decided not to proceed with those revisions and the revisions to the post-closure deed requirements at this time. EPA believes deferring action on the amendments promulgated today until such time as revisions to the financial tests and all other issues arising from the July 1, 1991 notice are resolved is not necessary to protect human health and the environment and would unduly burden the regulated community. Because the July 1, 1991 notice would have amended the financial tests and other provisions that the Agency is continuing to evaluate, the notice included proposed changes to the wording of the financial assurance instruments in § 264.151 that differ from the language in today's rule. Today's rule amends the language of the financial assurance instruments only to the extent necessary to reflect amendments to §§ 264.143, 264.145, and 264.147, and §§ 265.143, 265.145, 265.147.

B. Claims Reporting Requirement

As is discussed above, the September 1, 1988 rule established in §§ 264.147 and 265.147 a requirement that owners and operators report, in writing, to the Regional Administrator whenever: (1) A claim for bodily injury or property damages caused by the operation of a hazardous waste management facility is made against the owner, operator, or instrument providing financial assurance for liability coverage; and (2) the amount of financial assurance for liability coverage is reduced. In its complaint filed in response to the September 1, 1988 rulemaking, CWM asserted that the claims reporting requirement, as worded, was overly broad and thereby unduly burdensome. CWM argued that it required reporting of every claim filed against the owner or operator, no matter how valid.

This reporting requirement was intended to provide the Agency with early warning of potential instrument failure due to pending claims and to provide the Agency with data concerning the incidence of third party claims. EPA certainly did not intend the interpretation of this provision

suggested by CWM. Instead, in a memorandum, from Sylvia K. Lowrance to the RCRA Branch Chiefs, of January 25, 1990, EPA clarified that it expected reporting of valid claims only. Today's rule revises §§ 264.147(a)(2), 264.147(b)(2), 265.147(a)(2), and 265.147(b)(2) to clarify that intent and require reporting of third party claims only when: (1) a claim results in reduction of the amount of an instrument; (2) a Certification of Valid Claim is entered between the owner or operator and third party claimant; or (3) a final court order establishing a judgment is issued.

In general, comments generally favored the revised claims reporting requirement. Commentors felt that the revised reporting requirement would clarify the types of claims that need to be reported to the Regional Administrator. However, one commentor felt that "Certification of Valid Claim" was not defined clearly enough. This commentor should note the regulatory language of § 264.151 (h)(2), (k), (l), (m), and (n). In those sections, the Agency has established precise language for a Certification of Valid Claim. This language is not modified by today's rule. In light of the precise language in § 264.151, the Agency disagrees that further clarification of the term, "Certification of Valid Claim", is required.

Another commentor expressed concern that States that have adopted the September 1, 1988 reporting requirement will not adopt the revised reporting requirement contained in this rule. The Agency understands this commentor's concern. However, as was discussed in the preamble of the July 1, 1992 proposal, the revised rule language promulgated today is not more stringent than the claims reporting requirement of the September 1, 1988 rule. Because authorized States can have requirements that are more stringent than the Federal program, States are free to interpret the September 1, 1988 language more broadly than EPA does. This is explained in more detail in the Effect of Rule on State Authorization section found later in this notice. However, the Agency urges States to accept the interpretation of EPA's January 25, 1990 memorandum and adopt the specific language promulgated today.

C. Standby Trust for Owners and Operators Who Use a Letter of Credit to Demonstrate Liability Coverage

The September 1, 1988 rule, discussed above, required that: (1) owners or operators using letters of credit to demonstrate liability coverage designate third-party claimants as beneficiaries in the event of a valid claim, and (2) the issuer of the letter of credit determine whether a claim against the instrument is valid and should be paid. In the February 23, 1990 settlement agreement with CWM, the Agency agreed to amend the letter of credit requirements (§§ 264.147(h) and 265.147(h)) and the language of the letter of credit mechanism (§ 264.151(k)) to allow for the creation of a standby trust fund and the designation of an independent trustee as beneficiary. Thus, the trustee, rather than the issuer of the letter of credit, is responsible for distributing funds to the claimants when a claim for damages is filed against the owner or operator.

This rule promulgates those changes to the letter of credit instrument by adding new §§ 264.147(1), 265.147(1) and 264.151(n) relating specifically to the requirements and instrument language of the standby trust. The Agency believes that these revisions make the letter of credit more available to owners and operators without reducing its integrity.

Commentors generally favored the addition of this financial instrument to those currently available for use by owners and operators to demonstrate financial responsibility.

One commentor expressed concern that the letter of credit with standby trust mechanism would replace the letter of credit mechanism that is currently allowed for use by owners and operators. The Agency reiterates that the letter of credit mechanism with a standby trust is an additional mechanism that owners and operators can use to demonstrate financial responsibility.

One commentor suggested several modifications to the wording of the letter of credit with standby trust instrument that were unrelated to creation of the standby trust. The Agency did not, in proposing this rule, contemplate modification to its existing financial assurance mechanisms, and did not, therefore, solicit comment on those types of changes. Other wording changes were made that were minor and not addressed by this commentor. Therefore the suggestions received from the commentor are outside the scope of this rule, but the Agency does note these suggested wording changes and may address them at a later date. The wording changes suggested by this commentor are potentially major and need to be fully assessed by the Agency before it can consider proposing them.

D. Instruments Available to Owners and Operators that no Longer Meet the Requirements of the Financial Test

The Agency is also promulgating, as proposed, conforming changes to §§ 264.147(f)(6) and 265.147(f)(6). Before these changes, those sections required owners or operators that have been using the financial test to assure for third party liability, but no longer meet the requirements of the test, to obtain insurance. Today's rule expands the available instruments to allow those owners and operators to obtain insurance or a letter of credit, surety bond, trust fund, or a guarantee. EPA received no comments on this issue. These conforming changes implement the intent of the September 1, 1988 rule expanding the allowable instruments for third party liability coverage.

III. The Expanded Guarantee for Demonstrating Financial Assurance for Closure and Post-Closure Care

The use of a parent corporate guarantee for liability coverage was authorized in the interim final rule on July 11, 1986 (51 FR 25350) and promulgated as a final regulation on November 18, 1987 (52 FR 44314). Several commentors on the interim final rule urged EPA to allow non-parent firms to provide guarantees. After analyzing the validity and enforceability of guarantee contracts by non-parent firms, the Agency in the September 1, 1988 rulemaking discussed earlier in this preamble, authorized guarantees for third-party liability coverage provided by: (1) Corporate grandparents, (2) corporate "sibling" firms, and (3) firms with a "substantial business relationship" with the owner or operator. Further discussion of the parent guarantee can be found in the September 1, 1988 rule (53 FR 33938).

Since authorizing the non-parent guarantee as an allowable mechanism for third-party liability coverage, the Agency has received many requests to extend its use to closure and post-closure care financial responsibility requirements. This rule revises §§ 264.143, 264.145, 265.143 and 265.145 to allow the same non-parent guarantee for closure and post-closure as is currently allowed for third-party liability.

In general, commentors generally favored expanding the use of the non-parent guarantee mechanism to owners and operators who wish to demonstrate financial responsibility for closure and post-closure care.

One commentor felt that the expanded non-parent guarantee should be

classified as more stringent than the current rule. The Agency disagrees. A program that allows an additional instrument for compliance is less stringent than a program that does not allow the use of that instrument. Thus, though this rule expands the allowable instruments under the Federal program, the States can choose whether or not to adopt it. This is explained in more detail in the Effect of Rule on State Authorization section found later in this notice.

IV. Effective Date

Today's rule is effective immediately. Section 3010(b) of RCRA provides that regulations respecting permits for the treatment, storage, or disposal of hazardous waste shall take effect six months after the date of promulgation. However, section 3010(b)(1) of the RCRA allows EPA to shorten the time to the effective date if the Agency finds that the regulated community does not need six months to come into compliance with the new regulation.

The provisions of this rule either reduce the regulatory burden or provide additional flexibility in complying with the regulations for owners and operators.

As a result, the Agency finds that the regulated community does not need six months to come into compliance. Hence, today's rule is immediately effective under section 553(d) of the Administrative Procedure Act.

V. State Authorization

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State (See 40 CFR part 271 for the standards and requirements for authorization). Following authorization, the Agency retains enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of the Federal program. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in a State where the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized States until the State adopted the requirements as state law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as state law to retain final authorization, the HSWA requirements and prohibitions apply in authorized States in the interim.

B. Effect of Rule on State Authorization

Today's rule proposes standards that are not effective in authorized States because the requirements are not imposed pursuant to HSWA. Thus, the requirements are applicable only in those States that do not have final authorization. In authorized States, the requirements will not be applicable until the State revises its program to adopt equivalent requirements under state law.

In general, 40 CFR 271.21(e)(2) requires States that have final authorization to modify their programs to reflect Federal program changes and to subsequently submit the modifications to EPA for approval. It should be noted, however, that authorized States are only required to modify their programs when EPA promulgates Federal standards that are more stringent or broader in scope than the existing Federal standards. Section 3009 of RCRA allows States to impose standards more stringent than those in the Federal program. For those Federal program changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs (See 40 CFR 271.1(i)).

The provisions of today's rule that expand the allowable instruments for demonstrating financial assurance are less stringent than the current program. Those provisions are: (1) Revisions to § 264.147(h) (4) and (5), §§ 265.147(h) (4) and (5), and 264.151(k), and addition of new § 264.151(n), which provide for the use of a stand-by trust with the letter of credit to demonstrate financial assurance for liability coverage requirements; and (2) revisions to §§ 264.147(f)(6) and 265.147(f)(6), which expand the mechanisms available to owners and operators that no longer meet the requirements of the financial test for liability coverage; and (3) revisions to §§ 264.143(f)(10), 264.145(f)(11), 265.143(e)(11), and 265.145(e)(11), which expand the use of the non-parent guarantee to owners or operators demonstrating financial assurance for closure and post-closure care. For these Federal program changes that are less stringent or reduce the scope of the Federal program, an authorized State is not required to modify its authorized program. If the State does modify its program, EPA must approve the modification for the state requirements to become Subtitle C RCRA requirements.

The September 1, 1988 rule related to liability coverage established a claims reporting requirement at §§ 264.147(a)(7) and (b)(7) and 265.147(a)(7) and (b)(7). The preamble characterized all provisions of that rule as less stringent and, therefore, authorized States were not required to adopt the new provisions, including the claims reporting requirement. However, upon further consideration the Agency has determined that this claims reporting requirement was, in fact, more stringent than the Federal program in effect before that time because there was no reporting requirement before that time.

Because the claims reporting requirement of §§ 264.147(a)(7), 264.147(b)(7), 265.147(a)(7), and 265.147(b)(7) was more stringent than the Federal Program in place prior to the September 1, 1988 rule, States should have been required to modify their programs to include it in order to maintain an equivalent program. In accordance with § 271.21(e)(2), the deadline for States to modify their program to reflect changes adopted on September 1, 1988 was July 1, 1990. However, the States were not notified of this obligation since the rule was originally classified as less stringent. Because of the confusion related to the stringency characterization of the claims reporting requirement and the fact that the Agency is in the process of clarifying that requirement, the Agency will, for purposes of determining applicable deadlines under § 271.21(e)(2), treat the claims reporting requirement of the September 1, 1988 rule as if it were promulgated and amended today. This means that the deadline for adopting the provision is the applicable deadline under § 271.21(e)(2) for today's final rule. States that have not yet adopted the reporting requirement of the September 1, 1988 rule should not do so but should adopt the clarified version promulgated today. In addition, States whose programs have been modified to adopt the current claims reporting requirement but wish to adopt the clarified reporting requirement should

follow the deadlines of 40 CFR 271.21(e)(2) for today's final rule.

The revisions to the claims reporting requirement that are promulgated today, however, are not more stringent than the current claims reporting requirement at §§ 264.147(a)(7) and (b)(7) and 265.147(a)(7) and (b)(7) promulgated in the September 1, 1988 rule. Therefore, States that have already adopted the current claims reporting requirement are not required to adopt the clarified reporting requirement, though EPA urges them to do so.

A commentor suggested that the Agency's treatment of the revised claims notification language as not being more stringent than the language promulgated on September 1, 1988 imposed an arbitrary and unreasonable burden on the regulated community. The commentor believed that EPA's determination that the proposed language was not more stringent than the September 1, 1988 language would require the regulated community to challenge 50 state rules in litigation in 50 States. In the commentor's view, the Agency should vacate the claims reporting provisions of the September 1, 1988 rule, vacate approvals of state program revisions that adopted the September 1, 1988 language, and require States to change their rules to conform to the newly promulgated language.

EPA carefully considered commentor's views and concerns about the state authorization aspects of today's final rule and has determined that it does not have the authority to grant the relief that commentor suggests. Under RCRA section 3009, the Agency cannot require a State to adopt today's language if the State has a claims reporting provisions that is broader (or that the State interprets as being broader) than that required by the RCRA program. However, EPA has taken several steps that it believes will be effective in minimizing the likelihood of and need for the excessive litigation suggested by the commentor. First, on January 25, 1990, EPA issued a memorandum from Sylvia K. Lowrance to the RCRA Branch Chiefs entitled "Clarification of 40 CFR 264.147(a)(7), (b)(7), and § 265.147(a)(7), (b)(7)" in which EPA interpreted the September 1, 1988 language (see Docket Number 91-RCFP-FFFFF). This guidance on implementing the 1988 reporting requirement directs States and Regions to require reporting of only valid claims, that is, those required by today's revised reporting requirement. Thus, in States, that have adopted the 1988 reporting requirement and are following the guidance set forth in the January 25, 1990 memorandum, a failure to revise the state program to adopt today's provisions would have no practical effect on owners and operators (though for purposes of clarity the Agency encourages those States to adopt today's provision).

There are other factors that should reduce the problem cited by the commentor. First, many States have not yet adopted the language of the September 1, 1988 rule; these States will be able to obtain approval by submitting today's language and need not submit the September 1, 1988 language. Second, many States that adopted the September 1, 1988 claims reporting provision automatically conform their regulations and statutes to the provisions of the Federal program; therefore, these States will adopt today's clarified language in due course without litigation. Third, many of the States that adopted the September 1, 1988 language, obtained authorization, and do not automatically use the Federal regulatory language, will want to adopt today's clarification. Therefore, EPA believes the regulated community will not need to challenge these state rules as applied.

For the few States that have adopted the September 1, 1988 provision, that interpret the language more expansively than EPA, and that wish to retain that language, EPA lacks a legal and practical mechanism for requiring these States to adopt today's language. EPA cannot require States to modify their programs to comply with less stringent Federal program changes. However, for the reasons discussed above, EPA anticipates that there will be far fewer States in this position than the commentor suggests.

VI. Regulatory Analysis

A. Regulatory Impact Analysis

Under Executive Order 12291, EPA must determine whether a regulation is "major" and thus whether it must prepare and consider a Regulatory Impact Analysis in connection with the rule. Today's rule is not major because it will not result in an annual effect on the economy of $100 million or more, nor will it result in an increase in costs or prices to industry. There will be no adverse impact on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore the Agency has not prepared a Regulatory Impact Analysis for today's rule. This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. at the time an Agency publishes a proposed or final rule, it must prepare a Regulatory Flexibility Analysis that describes the impact of the rule on small entities, unless the Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities. Today's rule expands the instruments available for owner or operator to demonstrate financial responsibility. Therefore, pursuant to 5 U.S.C. 601b, I certify that this regulation will not have a significant economic impact on a substantial number of small entities.

Dated: September 4, 1992.

F. Henry Habicht II,

Acting Administrator.

List of Subjects

40 CFR Part 264

Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds.

40 CFR Part 265

Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Water supply.

40 CFR part 264 is amended as follows:

PART 264—STANDARDS FOR OWNERS OR OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924 and 6925.

2. Section 264.143 is amended by revising the introductory text of paragraph (f)(10) to read as follows:

264.143 Financial assurance for closure.

* * * * *

(f) * * *

(10) An owner or operator may meet the requirements of this section by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the

requirements for owners or operators in paragraphs (f)(1) through (8) of this section and must comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording specified in § 264.151(h). The certified copy of the guarantee must accompany the items sent to the Regional Administrator as specified in paragraph (f)(3) of this section. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the guarantee must provide that:

* * * * *

3. Section 264.145 is amended by revising the introductory text of paragraph (f)(11) to read as follows:

§ 264.145 Financial assurance for post-closure care.

* * * * *

(f) * * *

(11) An owner or operator may meet the requirements for this section by obtaining a written guarantee. The guarantor must be the direct of higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraphs (f)(1) through (9) of this section and must comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording specified in § 264.151(h). A certified copy of the guarantee must accompany the items sent to the Regional Administrator as specified in paragraph (f)(3) of this section. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the guarantee must provide that:

* * * * *

4. Section 264.147 is amended by revising paragraphs (a)(7), (b)(7), and (f)(6) and by adding new paragraphs (h)(4) and (h)(5) to read as follows:

§ 264.147 Liability requirements.

(a) * * *

(7) An owner or operator shall notify the Regional Administrator in writing within 30 days whenever:

(i) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in paragraphs (a)(1) through (a)(6) of this section; or

(ii) A Certification of Valid Claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third-party claimant for liability coverage under paragraphs (a)(1) through (a)(6) of this section; or

(iii) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under paragraphs (a)(1) through (a)(6) of this section.

(b) * * *

(7) An owner or operator shall notify the Regional Administrator in writing within 30 days whenever:

(i) A Claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in paragraphs (b)(1) through (b)(6) of this section; or

(ii) A Certification of Valid Claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third-party claimant for liability coverage under paragraphs (b)(1) through (b)(6) of this section; or

(iii) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under paragraphs (b)(1) through (b)(6) of this section.

* * * * *

(f) * * *

(6) If the owner or operator no longer meets the requirements of paragraph (f)(1) of this section, he must obtain insurance, a letter of credit, a surety bond, a trust fund, or a guarantee for the entire amount of required liability coverage as specified in this section. Evidence of liability coverage must be submitted to the Regional Administrator within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the test requirements.

* * * * *

(h) * * *

(4) An owner or operator who uses a letter of credit to satisfy the requirements of this section may also establish a standby trust fund. Under the terms of such a letter of credit, all amounts paid pursuant to a draft by the trustee of the standby trust will be deposited by the issuing institution into the standby trust in accordance with instructions from the trustee. The trustee of the standby trust fund must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(5) The wording of the standby trust fund must be identical to the wording specified in § 264.151(n).

* * * * *

5. Section 264.151 is amended by revising paragraphs (f), (g), (h), and (k) and adding a new paragraph (n) to read as follows:

§ 264.151 Wording of the instruments.

* * * * *

(f) A letter from the chief financial officer, as specified in § 264.143(f) or 264.145(f), or § 265.143(e) or 265.143(e) of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Letter From Chief Financial Officer

[Address to Regional Administrator of every Region in which facilities for which financial responsibility is to be demonstrated through the financial test are located].

I am the chief financial officer of [name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance for closure and/or post-closure costs, as specified in subpart H of 40 CFR parts 264 and 265.

[Fill out the following five paragraphs regarding facilities and associated cost estimates. If your firm has no facilities that belong in a particular paragraph, write

"None" in the space indicated. For each facility, include its EPA Identification Number, name, address, and current closure and/or post-closure cost estimates. Identify each cost estimate as to whether it is for closure or post-closure care].

1. This firm is the owner or operator of the following facilities for which financial assurance for closure or post-closure care is demonstrated through the financial test specified in subpart H of 40 CFR parts 264 and 265. The current closure and/or post-closure cost estimates covered by the test are shown for each facility: _____.

2. This firm guarantees, through the guarantee specified in subpart H of 40 CFR parts 264 and 265, the closure or post-closure care of the following facilities owned or operated by the guaranteed party. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility: _____. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee _____; or (3) engaged in the following substantial business relationship with the owner or operator _____, and receiving the following value in consideration of this guarantee _____]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter].

3. In States where EPA is not administering the financial requirements of subpart H of 40 CFR part 264 or 265, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in subpart H of 40 CFR parts 264 and 265. The current closure and/or post-closure cost estimates covered by such a test are shown for each facility: _____.

4. This firm is the owner or operator of the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated either to EPA or a State through the financial test or any other financial assurance mechanism specified in subpart H of 40 CFR parts 264 and 265 or equivalent or substantially equivalent State mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility: _____.

5. This firm is the owner or operator of the following UIC facilities for which financial assurance for plugging and abandonment is required under part 144. The current closure cost estimates as required by 40 CFR 144.62 are shown for each facility: _____.

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Fill in Alternative I if the criteria of paragraph (f)(1)(i) of § 264.143 or § 264.145, or of paragraph (e)(1)(i) of § 265.143 or § 265.145 of this chapter are used. Fill in Alternative II if the criteria of paragraph (f)(1)(ii) of § 264.143 or § 264.145, or of paragraph (e)(1)(ii) of § 265.143 or § 265.145 of this chapter are used.]

Alternative I

1. Sum of current closure and post-closure cost estimate [total of all cost estimates shown in the five paragraphs above] $_____

*2. Total liabilities [if any portion of the closure or post-closure cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4] $_____

*3. Tangible net worth $_____

*4. Net worth $_____

*5. Current assets $_____

*6. Current liabilities $_____

7. Net working capital [line 5 minus line 6] $_____

*8. The sum of net income plus depreciation, depletion, and amortization $_____

*9. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.) $_____

10. Is line 3 at least $10 million? (Yes/No) _____

11. Is line 3 at least 6 times line 1? (Yes/No) _____

12. Is line 7 at least 6 times line 1? (Yes/No) _____

*13. Are at least 90% of firm's assets located in the U.S.? If not, complete line 14 (Yes/No) _____

14. Is line 9 at least 6 times line 1? (Yes/No) _____

15. Is line 2 divided by line 4 less than 2.0? (Yes/No) _____

16. Is line 8 divided by line 2 greater than 0.1? (Yes/No) _____

17. Is line 8 divided by line 6 greater than 1.5? (Yes/No) _____

Alternative II

1. Sum of current closure and post-closure cost estimates [total of all cost estimates shown in the five paragraphs above] $_____

2. Current bond rating of most recent issuance of this firm and name of rating service _____

3. Date of issuance of bond _____

4. Date of maturity of bond _____

*5. Tangible net worth [if any portion of the closure and post-closure cost estimates is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line] $_____

*6. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.) $_____

7. Is line 5 at least $10 million ? (Yes/No) _____

8. Is line 5 at least 6 times line 1? (Yes/No) _____

*9. Are at least 90% of firm's assets located in the U.S.? If not, complete line 10 (Yes/No) _____

10. Is line 6 at least 6 times line 1? (Yes/No) _____

I hereby certify that the wording of this letter is identical to the wording specified in 40 CFR 264.151(f) as such regulations were constituted on the date shown immediately below.

[Signature] _____

[Name] _____

[Title] _____

[Date] _____

(g) A letter from the chief financial officer, as specified in § 264.147(f) or § 265.147(f) of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

Letter From Chief Financial Officer

[Address to Regional Administrator of every Region in which facilities for which financial responsibility is to be demonstrated through the financial test are located].

I am the chief financial officer of [firm's name and address]. This letter is in support of the use of the financial test to demonstrate financial responsibility for liability coverage [insert "and closure and/or post-closure care" if applicable] as specified in subpart H of 40 CFR parts 264 and 265.

[Fill out the following paragraphs regarding facilities and liability coverage. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number, name, and address].

The firm identified above is the owner or operator of the following facilities for which liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences is being demonstrated through the financial test specified in subpart H of 40 CFR parts 264 and 265: _____

The firm identified above guarantees, through the guarantee specified in subpart H of 40 CFR parts 264 and 265, liability coverage for [insert "sudden" or "nonsudden" of "both sudden and nonsudden"] accidental occurrences at the following facilities owned or operated by the following: _____. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee _____; or (3) engaged in the following substantial business relationship with the owner or operator _____, and receiving the following value in consideration of this guarantee _____]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter.]

[If you are using the financial test to demonstrate coverage of both liability and closure and post-closure care, fill in the following five paragraphs regarding facilities and associated closure and post-closure cost estimates. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA identification number, name, address,

and current closure and/or post-closure cost estimates. Identify each cost estimate as to whether it is for closure or post-closure care.]

1. The firm identified above owns or operates the following facilities for which financial assurance for closure or post-closure care or liability coverage is demonstrated through the financial test specified in subpart H of 40 CFR parts 264 and 265. The current closure and/or post-closure cost estimate covered by the test are shown for each facility: _____.

2. The firm identified above guarantees, through the guarantee specified in subpart H of 40 CFR parts 264 and 265, the closure and post-closure care or liability coverage of the following facilities owned or operated by the guaranteed party. The current cost estimates for closure or post-closure care so guaranteed are shown for each facility: _____.

3. In States where EPA is not administering the financial requirements of subpart H of 40 CFR parts 264 and 265, this firm is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in subpart H or 40 CFR parts 264 and 265. The current closure or post-closure cost estimates covered by such a test are shown for each facility: _____.

4. The firm identified above owns or operates the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated either to EPA or a State through the financial test or any other financial assurance mechanisms specified in subpart H of 40 CFR parts 264 and 265 or equivalent or substantially equivalent State mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility: _____.

5. This firm is the owner or operator or guarantor of the following UIC facilities for which financial assurance for plugging and abandonment is required under part 144 and is assured through a financial test. The current closure cost estimates as required by 40 CFR 144.62 are shown for each facility: _____.

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

Part A. Liability Coverage for Accidental Occurrences

[Fill in Alternative I if the criteria of paragraph (f)(1)(i) of § 264.147 or § 265.147 are used. Fill in Alternative II if the criteria of paragraph (f)(1)(ii) of § 264.147 or § 265.147 are used.]

Alternative I

1. Amount of annual aggregate liability coverage to be demonstrated $ _____.

*2. Current assets $ _____.

*3. Current $ _____.

4. Net working capital (line 2 minus line 3) $ _____.

*5. Tangible net worth $ _____.

*6. If less than 90% of assets are located in the U.S., give total U.S. assets $ _____.

7. Is line 5 at least $10 million? (Yes/No) _____.

8. Is line 4 at least 6 times line 1? (Yes/No) _____.

9. Is line 5 at least 6 times line 1? (Yes/No) _____.

*10. Are at least 90% of assets located in the U.S.? (Yes/No) _____. If not, complete line 11.

11. Is line 6 at least 6 times line 1? (Yes/No) _____.

Alternative II

1. Amount of annual aggregate liability coverage to be demonstrated $ _____.

2. Current bond rating of most recent issuance and name of rating service _____ _____.

3. Date of issuance of bond _____ _____.

4. Date of maturity of bond _____ _____.

*5. Tangible net worth $ _____.

*6. Total assets in U.S. (required only if less than 90% of assets are located in the U.S.) $ _____.

7. Is line 5 at least $10 million? (Yes/No) _____.

8. Is line 5 at least 6 times line 1? _____.

9. Are at least 90% of assets located in the U.S.? If not, complete line 10. (Yes/No) _____.

10. Is line 6 at least 6 times line 1? _____.

[Fill in part B if you are using the financial test to demonstrate assurance of both liability coverage and closure or post-closure care.]

Part B. Closure or Post-Closure Care and Liability Coverage

[Fill in Alternative I if the criteria of paragraphs (f)(1)(i) of § 264.143 or § 264.145 and (f)(1)(i) of § 264.147 are used or if the criteria of paragraphs (e)(1)(i) of § 265.143 or § 265.145 and (f)(1)(i) of § 265.147 are used. Fill in Alternative II if the criteria of paragraphs (f)(1)(ii) of § 264.143 or § 264.145 and (f)(1)(ii) of § 264.147 are used or if the criteria of paragraphs (e)(1)(i) of § 265.143 or § 265.145 and (f)(1)(ii) of § 265.147 are used.]

Alternative I

1. Sum of current closure and post-closure cost estimates (total of all cost estimates listed above) $ _____

2. Amount of annual aggregate liability coverage to be demonstrated $ _____

3. Sum of lines 1 and 2 $ _____

*4. Total liabilities (if any portion of your closure or post-closure cost estimates is included in your total liabilities, you may deduct that portion from this line and add that amount to lines 5 and 6) $ _____

*5. Tangible net worth $ _____

*6. Net worth $ _____

*7. Current assets $ _____

*8. Current liabilities $ _____

9. Net working capital (line 7 minus line 8) $ _____

10. The sum of net income plus depreciation, depletion, and amortization $ _____

*11. Total assets in U.S. (required only if less than 90% of assets are located in the U.S.) $ _____

12. Is line 5 at least $10 million? (Yes/No)

13. Is line 5 at least 6 times line 3? (Yes/No)

14. Is line 9 at least 6 times line 3? (Yes/No)

*15. Are at least 90% of assets located in the U.S.? (Yes/No) If, not, complete line 16.

16. Is line 11 at least 6 times line 3? (Yes/No)

17. Is line 4 divided by line 6 less than 2.0? (Yes/No)

18. Is line 10 divided by line 4 greater than 0.1? (Yes/No)

19. Is line 7 divided by line 8 greater than 1.5? (Yes/No)

Alternative II

1. Sum of current closure and post-closure cost estimates (total of all cost estimates listed above) $ _____

2. Amount of annual aggregate liability coverage to be demonstrated $ _____

3. Sum of lines 1 and 2 $ _____

4. Current bond rating of most recent issuance and name of rating service _____ _____

5. Date of issuance of bond _____ _____

6. Date of maturity of bond _____ _____

*7. Tangible net worth (if any portion of the closure or post-closure cost estimates is included in "total liabilities" on your financial statements you may add that portion to this line) _____ $ _____

*8. Total assets in the U.S. (required only if less than 90% of assets are located in the U.S.) $ _____

9. Is line 7 at least $10 million? (Yes/No)

10. Is line 7 at least 6 times line 3? (Yes/No)

*11. Are at least 90% of assets located in the U.S.? (Yes/No) If not complete line 12.

12. Is line 8 at least 6 times line 3? (Yes/No)

I hereby certify that the wording of this letter is identical to the wording specified in 40 CFR 264.151(g) as such regulations were constituted on the date shown immediately below.

[Signature] _____

[Name] _____

[Title] _____

[Date] _____

(h)(1) A corporate guarantee, as specified in § 264.143(f) or § 264.145(f), or § 265.143(e) or § 265.145(e) of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Corporate Guarantee for Closure or Post-Closure Care

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of the State of [insert name of State], herein referred to as guarantor. This guarantee is made on behalf of the [owner or operator] of [business address], which is [one of the following: "our subsidiary"; "a subsidiary of [name and address of common parent corporation], of which guarantor is a subsidiary"; or "an entity with which guarantor has a substantial

business relationship, as defined in 40 CFR [either 264.141(h) or 265.141(h)]" to the United States Environmental Protection Agency (EPA).

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in 40 CFR 264.143(f), 264.145(f), 265.143(e), and 265.145(e).

2. [Owner or operator] owns or operates the following hazardous waste management facility(ies) covered by this guarantee: [List for each facility: EPA Identification Number, name, and address. Indicate for each whether guarantee is for closure, post-closure care, or both.]

3. "Closure plans" and "post-closure plans" as used below refer to the plans maintained as required by subpart G of 40 CFR parts 264 and 265 for the closure and post-closure care of facilities as identified above.

4. For value received from [owner or operator], guarantor guarantees to EPA that in the event that [owner or operator] fails to perform [insert "closure," "post-closure care" or "closure and post-closure care"] of the above facility(ies) in accordance with the closure or post-closure plans and other permit or interim status requirements whenever required to do so, the guarantor shall do so or establish a trust fund as specified in subpart H of 40 CFR part 264 or 265, as applicable, in the name of [owner or operator] in the amount of the current closure or post-closure cost estimates as specified in subpart H of 40 CFR parts 264 and 265.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is(are) located and to [owner or operator] that he intends to provide alternate financial assurance as specified in subpart H of 40 CFR part 264 or 265, as applicable, in the name of [owner or operator]. Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless [owner or operator] has done so.

6. The guarantor agrees to notify the EPA Regional Administrator by certified mail, of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by an EPA Regional Administrator of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of closure or post-closure care, he shall establish alternate financial assurance as specified in subpart H of 40 CFR part 264 or 265, as applicable, in the name of [owner or operator] unless [owner or operator] has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure or post-closure plan, amendment or modification of the permit, the extension or reduction of the time of performance of closure or post-closure, or any other modification or alteration of an obligation of the owner or operator pursuant to 40 CFR part 264 or 265.

9. Guarantor agrees to remain bound under this guarantee for as long as [owner or operator] must comply with the applicable financial assurance requirements of subpart H of 40 CFR parts 264 and 265 for the above-listed facilities, except as provided in paragraph 10 of this agreement.

10. [Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator]:

Guarantor may terminate this guarantee by sending notice by certified mail to the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is(are) located and to [owner or operator], provided that this guarantee may not be terminated unless and until [the owner or operator] obtains, and the EPA Regional Administrator(s) approve(s), alternate closure and/or post-closure care coverage complying with 40 CFR 264.143, 264.145, 265.143, and/or 265.145.

[Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with its owner or operator]

Guarantor may terminate this guarantee 120 days following the receipt of notification, through certified mail, by the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is(are) located and by [the owner or operator].

11. Guarantor agrees that if [owner or operator] fails to provide alternate financial assurance as specified in subpart H of 40 CFR part 264 or 265, as applicable, and obtain written approval of such assurance from the EPA Regional Administrator(s) within 90 days after a notice of cancellation by the guarantor is received by an EPA Regional Administrator from guarantor, guarantor shall provide such alternate financial assurance in the name of [owner or operator].

12. Guarantor expressly waives notice of acceptance of this guarantee by the EPA or by [owner or operator]. Guarantor also expressly waives notice of amendments or modifications of the closure and/or post-closure plan and of amendments or modifications of the facility permit(s).

I hereby certify that the wording of this guarantee is identical to the wording specified in 40 CFR 264.151(h) as such regulations were constituted on the date first above written.

Effective date: _____

[Name of guarantor] _____

[Authorized signature for guarantor] _____

[Name of person signing] _____

[Title of person signing] _____

Signature of witness or notary: _____

(2) A guarantee, as specified in § 264.147(g) or § 265.147(g) of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Guarantee for Liability Coverage

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of [if incorporated within the United States insert "the State of _____" and insert name of State; if incorporated outside the United States insert the name of the country in which incorporated, the principal place of business within the United States, and the name and address of the registered agent in the State of the principal place of business], herein referred to as guarantor. This guarantee is made on behalf of [owner or operator] of [business address], which is one of the following: "our subsidiary;" "a subsidiary of [name and address of common parent corporation], or which guarantor is a subsidiary;" or "an entity with which guarantor has a substantial business relationship, as defined in 40 CFR [either 264.141(h)]", to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee.

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in 40 CFR 264.147(g) and 265.147(g).

2. [Owner or operator] owns or operates the following hazardous waste management facility(ies) covered by this guarantee: [List for each facility: EPA identification number, name, and address; and if guarantor is incorporated outside the United States list the name and address of the guarantor's registered agent in each State.] This corporate guarantee satisfies RCRA third-party liability requirements for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences in above-named owner or operator facilities for coverage in the amount of [insert dollar amount] for each occurrence and [insert dollar amount] annual aggregate.

3. For value received from [owner or operator], guarantor guarantees to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operations of the facility(ies) covered by this guarantee that in the event that [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [sudden and/or nonsudden] accidental occurrences, arising from the operation of the above-named facilities, or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor will satisfy such judgment(s), award(s) or settlement agreement(s) up to the limits of coverage identified above.

4. Such obligation does not apply to any of the following:

(a) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert owner or operator]

would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator]; or

(2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert owner or operator]. This exclusion applies:

(A) Whether [insert owner or operator] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert owner or operator];

(2) Premises that are sold, given away or abandoned by [insert owner or operator] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert owner or operator];

(4) Personal property in the care, custody or control of [insert owner or operator];

(5) That particular part of real property on which [insert owner or operator] or any contractors or subcontractors working directly or indirectly on behalf of [insert owner or operator] are performing operations, if the property damage arises out of these operations.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the EPA Regional Administrator[s] for the Region[s] in which the facility[ies] is[are] located and to [owner or operator] that he intends to provide alternate liability coverage as specified in 40 CFR 264.147 and 265.147, as applicable, in the name of [owner or operator]. Within 120 days after the end of such fiscal year, the guarantor shall establish such liability coverage unless [owner or operator] has done so.

6. The guarantor agrees to notify the EPA Regional Administrator by certified mail of a voluntary or involuntary proceeding under title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by an EPA Regional Administrator of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor, he shall establish alternate liability coverage as specified in 40 CFR 264.147 or 265.147 in the name of [owner or operator], unless [owner or operator] has done so.

8. Guarantor reserves the right to modify this agreement to take into account amendment or modification of the liability requirements set by 40 CFR 264.147 and 265.147, provided that such modification shall become effective only if a Regional Administrator does not disapprove the modification within 30 days of receipt of notification of the modification.

9. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable requirements of 40 CFR 264.147 and 265.147 for the above-listed facility(ies), except as provided in paragraph 10 of this agreement.

10. [Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator]:

Guarantor may terminate this guarantee by sending notice by certified mail to the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is(are) located and to [owner or operator], provided that this guarantee may not be terminated unless and until [the owner or operator] obtains, and the EPA Regional Administrator(s) approve(s), alternate liability coverage complying with 40 CFR 264.147 and/or 265.147.

[Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with the owner or operator]:

Guarantor may terminate this guarantee 120 days following receipt of notification, through certified mail, by the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is(are) located and by [the owner or operator].

11. Guarantor hereby expressly waives notice of acceptance of this guarantee by any party.

12. Guarantor agrees that this guarantee is in addition to and does not affect any other responsibility or liability of the guarantor with respect to the covered facilities.

13. The Guarantor shall satisfy a third-party liability claim only on receipt of one of the following documents:

(a) Certification from the Principal and the third-party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert Principal] and [insert name and address of third-party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Principal's hazardous waste treatment, storage, or disposal facility should be paid in the amount of $.

[Signatures] _____

Principal _____

(Notary) Date _____

[Signatures] _____

Claimant(s) _____

(Notary) Date _____

(b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Principal's facility or group of facilities.

14. In the event of combination of this guarantee with another mechanism to meet liability requirements, this guarantee will be considered [insert "primary" or "excess"] coverage.

I hereby certify that the wording of the guarantee is identical to the wording specified in 40 CFR 264.151(h)(2) as such regulations were constituted on the date shown immediately below.

Effective date: _____

[Name of guarantor] _____

[Authorized signature for guarantor] _____

[Name of person signing] _____

[Title of person signing] _____

Signature of witness of notary: _____

* * * * *

(k) A letter of credit, as specified in § 264.147(h) or 265.147(h) of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Irrevocable Standby Letter of Credit

Name and Address of Issuing Institution ____

Regional Administrator(s) _____

Region(s) _____

U.S. Environmental Protection Agency ____

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No _____ in the favor of ["any and all third-party liability claimants" or insert name of trustee of the standby trust fund], at the request and for the account of [owner or operator's name and address] for third-party liability awards or settlements up to [in words] U.S. dollars $_____ per occurrence and the annual aggregate amount of [in words] U.S. dollars $_____, for sudden accidental occurrences and/or for third-party liability awards or settlements up to the amount of [in words] U.S. dollars $_____ per occurrence, and the annual aggregate amount of [in words] U.S. dollars $_____, for nonsudden accidental occurrences available upon presentation of a sight draft bearing reference to this letter of credit No. _____, and [insert the following language if the letter of credit is being used without a standby trust fund: "(1) a signed certificate reading as follows:

Certificate of Valid Claim

The undersigned, as parties [insert principal] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operations of [principal's] hazardous waste treatment, storage, or disposal facility should be paid in the amount of $[ ]. We hereby certify that the claim does not apply to any of the following:

(a) Bodily injury or property damage for which [insert principal] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert principal] would be

obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert principal] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert principal] arising from, and in the course of, employment by [insert principal]; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert principal].

This exclusion applies:

(A) Whether [insert principal] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert principal];

(2) Premises that are sold, given away or abandoned by [insert principal] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert principal];

(4) Personal property in the care, custody or control of [insert principal];

(5) That particular part of real property on which [insert principal] or any contractors or subcontractors working directly or indirectly on behalf of [insert principal] are performing operations, if the property damage arises out of these operations.

[Signatures] _____

Grantor _____

[Signatures] _____

Claimant(s) _____

or (2) a valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.

This letter of credit is effective as of [date] and shall expire on [date] at least one year later], but such expiration date shall be automatically extended for a period of [at least one year] on [date and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify you, the USEPA Regional Administrator for Region [Region #], and [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us.

[Insert the following language if a standby trust fund is not being used: "In the event that this letter of credit is used in combination with another mechanism for liability coverage, this letter of credit shall be considered [insert "primary" or "excess" coverage]."

We certify that the wording of this letter of credit is identical to the wording specified in 40 CFR 264.151(k) as such regulations were constituted on the date shown immediately below. [Signature(s) and title(s) of official(s) of issuing institution] [Date].

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits published by the International Chamber of Commerce" or "the Uniform Commercial Code"].

* * * * *

(n)(1) A standby trust agreement, as specified in § 264.147(h) or 265.147(h) of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Standby Trust Agreement

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator] a [name of a State] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert, "incorporated in the State of _____" or "a national bank"], the "trustee."

Whereas the United States Environmental Protection Agency, "EPA," an agency of the United States Government, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility or group of facilities must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental occurrences arising from operations of the facility or group of facilities.

Whereas, the Grantor has elected to establish a standby trust into which the proceeds from a letter of credit may be deposited to assure all or part of such financial responsibility for the facilities identified herein.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. *Definitions.* As used in this Agreement:

(a) The term *Grantor* means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term *Trustee* means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. *Identification of Facilities.* This agreement pertains to the facilities identified on attached schedule A [on schedule A, for each facility list the EPA Identification Number, name, and address of the facility(ies) and the amount of liability coverage, or portions thereof, if more than one instrument affords combined coverage as demonstrated by this Agreement].

Section 3. *Establishment of Fund.* The Grantor and the Trustee hereby establish a standby trust fund, hereafter the "Fund," for the benefit of any and all third parties injured or damaged by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee, in the amounts of _____ [up to $1 million] per occurrence and _____ [up to $2 million] annual aggregate for sudden accidental occurrences and _____ [up to $3 million] per occurrence and _____ [up to $6 million] annual aggregate for nonsudden occurrences, except that the Fund is not established for the benefit of third parties for the following:

(a) Bodily injury or property damage for which [insert Grantor] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert Grantor] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert Grantor] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee or [insert Grantor] arising from , and in the course of, employment by [insert Grantor]; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert Grantor].

This exclusion applies:

(A) Whether [insert Grantor] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert Grantor];

(2) Premises that are sold, given away or abandoned by [insert Grantor] if the property damage arises out of any part of those premises;

(3) Property loaned [insert Grantor];

(4) Personal property in the care, custody or control of [insert Grantor];

(5) That particular part of real property on which [insert Grantor] or any contractors or subcontractors working directly or indirectly on behalf of [insert Grantor] are performing operations, if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the fund shall be considered [insert "primary" or "excess"] coverage.

The Fund is established initially as consisting of the proceeds of the letter of credit deposited into the Fund. Such proceeds and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to

collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by EPA.

Section 4. *Payment for Bodily Injury or Property Damage.* The Trustee shall satisfy a third party liability claim by drawing on the letter of credit described in Schedule B and by making payments from the Fund only upon receipt of one of the following documents:

(a) Certification from the Grantor and the third party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert Grantor] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Grantor's] hazardous waste treatment, storage, or disposal facility should be paid in the amount of $[ ].

[Signature] _____
Grantor _____
[Signatures] _____
Claimant(s) _____

(b) A valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.

Section 5. *Payments Comprising the Fund.* Payments made to the Trustee for the Fund shall consist of the proceeds from the letter of credit drawn upon by the Trustee in accordance with the requirements of 40 CFR 264.151(k) and Section 4 of this Agreement.

Section 6. *Trustee Management.* The Trustee shall invest and reinvest the principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a–2(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or a State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. *Commingling and Investment.* The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a–1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. *Express Powers of Trustee.* Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depositary even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depositary with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. *Taxes and Expenses.* All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements to the Trustee shall be paid from the Fund.

Section 10. *Advice of Counsel.* The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. *Trustee Compensation.* The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. *Successor Trustee.* The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment; the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the EPA Regional Administrator and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 13. *Instructions to the Trustee.* All orders, requests, certifications of valid claims, and instructions to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendments to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the EPA Regional Administrator hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or EPA, except as provided for herein.

Section 14. *Amendment of Agreement.* This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the EPA Regional Administrator, or by the Trustee and the EPA Regional Administrator if the Grantor ceases to exist.

Section 15. *Irrevocability and Termination.* Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the EPA

Regional Administrator, or by the Trustee and the EPA Regional Administrator, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be paid to the Grantor.

The Regional Administrator will agree to termination of the Trust when the owner or operator substitutes alternative financial assurance as specified in this section.

Section 16. *Immunity and indemnification.* The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor and the EPA Regional Administrator issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonable incurred in its defense in the event the Grantor fails to provide such defense.

Section 17. *Choice of Law.* This Agreement shall be administered, construed, and enforced according to the laws of the State of [enter name of State].

Section 18. *Interpretation.* As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation of the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 40 CFR 264.151(n) as such regulations were constituted on the date first above written.

[Signature of Grantor]
[Title]
Attest:
[Title]
[Seal]

[Signature of Trustee]
Attest:
[Title]
[Seal]

(2) The following is an example of the certification of acknowledgement which must accompany the trust agreement for a standby trust fund as specified in section 264.147(h) or 265.147(h) of this chapter. State requirements may differ on the proper content of this acknowledgement.

State of _____

County of _____

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

40 CFR part 265 is amended as follows:

PART 265—INTERIM STATUS STANDARDS FOR OWNERS OR OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935.

2. Section 265.143 is amended by revising the introductory text of paragraph (e)(10) to read as follows:

§ 265.143 Financial assurance for closure.

* * * * *

(e) * * *

(10) An owner or operator may meet the requirements of this section by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraphs (e)(1) through (8) of this section and must comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording specified in § 264.151(h). A certified copy of the guarantee must accompany the items sent to the Regional Administrator as specified in paragraph (e)(3) of this section. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the guarantee must provide that:

* * * * *

3. Section 265.145 is amended by revising the introductory text of paragraph (e)(11) to read as follows:

§ 265.145 Financial assurance for post-closure care.

* * * * *

(e) * * *

(11) An owner or operator may meet the requirements of this section by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraphs (e)(1) through (9) of this section and must comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording specified in § 264.151(h). A certified copy of the guarantee must accompany the items sent to the Regional Administrator as specified in paragraph (e)(3) of this section. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the guarantee must provide that:

* * * * *

4. Section 265.147 is amended by revising paragraphs (a)(7), (b)(7), and (f)(6), and by adding new paragraphs (h)(4) and (h)(5) to read as follows:

§ 265.147 Liability requirements.

(a) * * *

(7) An owner or operator shall notify the Regional Administrator in writing within 30 days whenever:

(i) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in paragraphs (a)(1) through (a)(6) of this section; or

(ii) A Certification of Valid Claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third-party claimant for liability coverage under paragraphs (a)(1) through (a)(6) of this section; or

(iii) A final court order establishing a judgment for bodily injury or property

damage caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under paragraphs (a)(1) through (a)(6) of this section.

(b) * * *

(7) An owner or operator shall notify the Regional Administrator in writing within 30 days whenever:

(i) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in paragraphs (b)(1) through (b)(6) of this section; or

(ii) A Certification of Valid Claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third-party claimant for liability coverage under paragraphs (b)(1) through (b)(6) of this section; or

(iii) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under paragraphs (b)(1) through (b)(6) of this section.

* * * * *

(f) * * *

(6) If the owner or operator no longer meets the requirements of paragraph (f)(1) of this section, he must obtain insurance, a letter of credit, a surety bond, a trust fund, or a guarantee for the entire amount of required liability coverage as specified in this section. Evidence of liability coverage must be submitted to the Regional Administrator within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the test requirements.

* * * * *

(h) * * *

(4) An owner or operator who uses a letter of credit to satisfy the requirements of this section may also establish a standby trust fund. Under the terms of such a letter of credit, all amounts paid pursuant to a draft by the trustee of the standby trust will be deposited by the issuing institution into the standby trust in accordance with instructions from the trustee. The trustee of the standby trust fund must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(5) The wording of the standby trust fund must be identical to the wording specified in § 264.151(n).

* * * * *

[FR Doc. 92-22248 Filed 9-15-92; 8:45 am]

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September 16, 1992

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 21 and 36

Alternative Noise Certification Procedure for Primary, Normal, Transport, and Restricted Category of Helicopters Not Exceeding 6,000 Pounds Maximum Takeoff Weight; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 36

[Docket No. 26910; Amendment Nos. 21-71, and 36-20]

RIN: 2120-AE50

Alternative Noise Certification Procedure for Primary, Normal, Transport, and Restricted Category of Helicopters not Exceeding 6,000 Pounds Maximum Takeoff Weight

AGENCY: Federal Aviation Administration (DOT).

ACTION: Final rule; Request for comments.

SUMMARY: This final rule adds a new appendix to the noise standards regulations. The new appendix provides for an alternative noise certification procedure for primary, normal, transport, and restricted category helicopters not exceeding 6,000 pounds maximum takeoff weight. The new appendix is an optional alternative to existing helicopter noise requirements and is not an additional regulatory requirement. Applicants for certification may demonstrate compliance with the noise standards of either Appendix H or the less costly but more stringent new Appendix J. The new certification procedure is intended to provide regulatory relief to manufacturers of light helicopters by substantially reducing the costs of demonstrating compliance with the noise regulations.

DATES: Effective September 11, 1992.

The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of September 16, 1992.

Comments must be submitted on this final rule on or before January 15, 1993.

ADDRESSES: Send comments on this final rule in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Docket No. 26910, 800 Independence Avenue SW., Washington, DC 20591, or deliver comments in triplicate to: FAA Rules Docket, room 915G, 800 Independence Avenue SW., Washington, DC. Comments may be inspected in room 915G between 8:30 a.m. and 5 p.m., weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth E. Jones, Research and Engineering Branch (AEE-110), Technology Division, Office of Environment and Energy, FAA, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3554, facsimile (202) 267-5594.

SUPPLEMENTARY INFORMATION: The purpose of this rulemaking is to add an alternative noise certification procedure to the existing requirements prescribed in the Federal Aviation Regulations (14 CFR part 36). This amendment is based on Notice No. 92-7 (57 FR 28142, June 24, 1992; Docket No. 26910) in which comments were invited. All comments received were fully considered in the issuance of this Final Rule.

Additional Comments Invited

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments and by commenting on the overall regulatory, environmental, energy, or economic aspects that might suggest a need to modify the rule. The additional comment period, subsequent to this publication of the final rule, is being initiated to accommodate requests for extension of the comment period for the Notice of Proposed Rulemaking (NPRM). Comments should identify the regulatory docket number (26910) and be submitted in triplicate to the address above. All comments received, as well as summaries of substantive public contact with Federal Aviation Administration (FAA) personnel on this rule will be filed in the docket, and will be considered by the Administrator. The docket is available for public inspection both before and after the closing date for comments. The FAA will acknowledge the receipt of a comment if the commenter includes a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 26910." When the comment is received by the FAA, the postcard will be dated, time stamped, and returned to the commenter.

Background

Helicopter Noise Standards Development: FAA

On July 9, 1979, the FAA first addressed helicopter noise certification requirements by publishing an NPRM, Notice No. 79-13 (44 FR 42410). After consideration of the economic impact of the proposed rule, the NPRM was withdrawn (46 FR 61486, December 17, 1981). Because of advances in helicopter noise abatement technology, the FAA again initiated rulemaking and issued NPRM No. 86-3 (51 FR 7878, March 6, 1986), which resulted in the present helicopter noise certification standards, part 36, appendix H (53 FR 3534, February 5, 1988). Appendix H was effective upon publication.

Data submitted recently to the ICAO by various helicopter manufacturers indicates that the cost of an appendix H noise test for a light helicopter can range from $121,000 to $239,000. These figures do not include the substantial non-recurring costs for equipment and training. In addition, because the current rule requires that an applicant for a supplemental type certificate (STC) either demonstrate that the modified helicopter is no noisier than the original helicopter or perform a noise test, the costs associated with helicopter STC's have had an adverse effect on the development of helicopter modifications.

In the 1980's, the United States (in appendix H) adopted a complex and comprehensive helicopter noise test procedure that was developed with the support of ICAO. During the development of the ICAO-recommended procedure for the original helicopter noise certification requirements, the relative cost and complexity of the proposed testing procedures were debated as a potential problem for manufacturers of small, low-cost helicopters. Because the majority of civil helicopters produced in the United States are exported, the unilateral adoption by the United States of an additional simplified noise certification procedure for light helicopters would have little practical benefits for the U.S. manufacturers without the adoption of a similar procedure by foreign countries that would make U.S.-manufactured helicopters acceptable to importing nations. Therefore, the United States and other members of ICAO addressed this issue by participating in the research and development of a simplified noise certification procedure with the support of ICAO. The final rule adopts a similar procedure to provide immediate regulatory relief to U.S. light helicopter manufacturers and modifiers in anticipation of the formal adoption of the standards proposed by ICAO.

Helicopter Standards Development: ICAO

The current ICAO helicopter noise standards (Chapter 8, Annex 16) parallel those of appendix H. When ICAO adopted its helicopter noise standards in 1985, it recognized that a simpler flight test procedure was needed for lighter helicopters. Accordingly, the ICAO committee responsible for formulating noise certification standards, the Committee on Aviation Environmental Protection (CAEP), formed a working group and charged it with the development of a new standard applicable to light helicopters. The

product of the working group's efforts, an alternative noise certification procedure for piston-powered helicopters, was amended at the request of the United States during the most recent CAEP meeting (December 1991) to include turbine-powered helicopters and to establish the maximum weight at 6,000 pounds. Compared to the current ICAO standard (Chapter 8), the new ICAO Chapter 11 standard will: (1) Change the noise metric from Effective Perceived Noise Level (EPNL) to Sound Exposure Level (SEL); (2) reduce the required microphone locations from three to one; (3) require only a level flyover test instead of level flyover, approach, and takeoff tests; and (4) reduce the complexity of the data corrections procedures. However, these changes make it impossible to set a limit that is equally stringent for all helicopters. For this reason, it was undesirable to attempt to develop a replacement standard for the existing ICAO Chapter 8 standard. Thus, the CAEP decided to develop an alternative standard (ICAO Chapter 11) that is simpler to perform, but that has an SEL limit that is more stringent (by two decibels) than the current ICAO Chapter 8 EPNL limit. After an extensive analysis of existing data, the CAEP set the Chapter 11 SEL limit such that it is unlikely that an applicant would pass the newly recommended ICAO Chapter 11 standard and yet fail a full ICAO Chapter 8 test if the Chapter 8 test were also performed.

The new ICAO Chapter 11 standard was approved by the CAEP during its December 1991 meeting in Montreal, Canada. The CAEP approval was the major hurdle facing the new ICAO standard. Before formal adoption, the CAEP recommendations must be submitted to the ICAO council, which in turn will send them to ICAO member States for comment. If member States unanimously concur, the Council will issue the recommended standard. If member States do not concur, the Council will refer the issue to the ICAO Air Navigation Commission (ANC) along with member States' comments. The ANC will review the CAEP recommendations and member States' comments, and make recommendations to the Council, which in turn will send the revisions back to the member States for approval. The ICAO staff estimates that the new ICAO Chapter 11 will be formally adopted in November 1993.

Synopsis of the Rule

Part 36 of the Federal Aviation Regulations (14 CFR) contains noise standards for aircraft type and airworthiness certification. Subpart H and the related appendix H prescribe noise levels and test procedures for civil helicopters certificated in the primary, normal, transport, or restricted category, including the rules governing the issuance of original, amended, or supplemental type certificates for helicopters for which application is made on or after March 6, 1986.

This final rule adds and reserves a new appendix I, and adds a new appendix J to part 36. It also amends subpart H of part 36 to incorporate the requirements of the new appendix J. The amendments to subpart H and the new requirements of appendix J do not represent additional regulatory requirements, but rather provide an alternative helicopter noise certification procedure for light helicopters that complements the existing helicopter noise test requirements of appendix H. The term "light helicopters" as used in this preamble refers to helicopters in the primary, normal, transport, or restricted category not exceeding 6,000 pounds maximum certificated takeoff weight. Compared to the existing appendix H requirements, the test procedures of appendix J are simpler and less costly, but more stringent relative to the existing noise limits under appendix H. An applicant has the option of certificating a light helicopter under appendix H or the new, less costly but more stringent appendix J. The noise limits prescribed under appendix J are, on the average, two decibels more stringent than the noise limits prescribed under appendix H. If an applicant fails the more stringent limits prescribed under appendix J, the applicant would be able to apply for certification under the existing requirements prescribed under appendix H. The need for this optional certification standard is based on the unanticipated and disproportionate costs to small helicopter manufacturers that are associated with the testing requirements of appendix H.

The following is a section-by-section discussion of the final rule.

Section 21.115 Applicable Requirements

This section sets forth the airworthiness, noise, and fuel venting and exhaust emissions requirements that must be met by each applicant for a supplemental type certificate. Section 21.115(a) is amended to reinstate a reference to the noise requirements of 14 CFR Part 36. This reference was inadvertently removed in recent rulemaking.

Appendix J to Part 36

Part 36 is amended by adding a new appendix J. Appendix J provides an alternative noise certification procedure for certain civil helicopters certificated in the primary, normal, transport, or restricted category.

Appendix J follows the general outline and all applicable definitions, technical specifications, reference conditions, reference flight procedures, and the specific language of the existing appendix H on a section-by-section basis. Appendix J provides a high degree of commonality between U.S. standards and those expected to be adopted by ICAO and other ICAO member countries. However, subsequent to development of the specifications for the ICAO Chapter 11 standard, three technical issues of significance were identified by the FAA, that have led to differences between appendix J and the ICAO Chapter 11 test standards that are presently proposed. After review of these issues, the FAA found the potential errors associated with them to be excessive and contrary to the agency's expectations regarding the accuracy and integrity of the aircraft noise certification process. The three issues are discussed below.

As proposed, chapter 11 does not provide for a correction of off-reference conditions (in particular, ambient temperature) regarding the mechanical generation of noise at its source during the flyover test procedure. Noise levels generated by a typical helicopter vary as a function of rotor tip speed and the speed of sound. Since the speed of sound varies as a function of ambient temperature, helicopter noise levels will also vary as a function of ambient temperature. Appendix J and chapter 11 require the measurement of noise levels at, or corrected to, the reference ambient temperature of 77 degrees Fahrenheit. At temperatures above the reference, the helicopter noise generated at the source is less than the noise generated at the reference temperature. At temperatures less than the reference, the noise generated is correspondingly greater than at reference conditions. The FAA's solution to the off-reference generation of noise caused by off-reference temperature is to require an adjustment to the reference airspeed so the helicopter is flown at the reference advancing blade tip Mach number. Such a calculated adjustment to the reference airspeed will be made just prior to the actual flight test, and will account for the ambient temperature at the time of the test. This is the procedure proposed by the International Coordinating

Council of the Aerospace Industries Association in their working paper WP/48 presented at the recent CAEP meeting in Montreal (December 1991). A copy of working paper WP/48 is included in the docket.

Chapter 11 also does not provide for a correction of off-reference atmospheric attenuation. The FAA's solution to the error caused by failure to correct for off-reference atmospheric attenuation is to reduce the size of the test window prescribed under section J36.101(c) to preclude testing in the portion of the temperature and relative humidity test window where high rates of atmospheric absorption are encountered. By restricting the test window, any error caused by off-reference atmospheric absorption is reduced, and the need for correction is negated.

The FAA's third concern is the Chapter 11 provision allowing the use of a strip chart recorder and an "estimation" equation to determine SEL from the duration and the maximum A-weighted level of the noise trace. During development of the NPRM, the FAA examined data from numerous helicopter noise tests which indicated that the error introduced by the strip chart method ranged from zero to 1.7 decibels when compared with helicopter noise measured and analyzed by the Appendix H procedure. The error did not favor the applicant in any of the data. Accordingly, the NPRM did not include the strip chart method as one of the allowable measurement methods specified under proposed section J36.109(d). As proposed, appendix J would have allowed the use of an integrating sound level meter to directly measure the SEL during the flyover, or the helicopter flyover noise signal could be tape recorded for subsequent analysis by an integrating sound level meter.

After further consideration of this issue subsequent to issuance of the NPRM, the FAA has decided to permit the use of a strip chart recorder and an "estimation" equation as an optional method of calculating SEL from maximum level and duration readings taken from the strip chart trace. This change is made in the interest of harmonizing appendix J and ICAO Chapter 11. The addition of the strip chart method as an optional measurement method has no impact on any other provision of appendix J. Since the amount of error, if any, is unpredictable from helicopter to helicopter, the consequence of the use of the strip chart method relative to the other measurement methods is also unpredictable. However, since the FAA's data indicate that any error from the strip chart method works against applicants, the FAA advises all applicants wishing to use such a procedure that errors are possible, and suggests that the applicants choose one of the other SEL-measurement methods specified under appendix J. The strip chart method involves the use of strip chart recorder and equations for calculating SEL from the time-history trace recorded on the strip chart. Accordingly, section J36.109(d)(1) includes the strip chart recorder as an optional measurement method. Further, a new section J36.109(b)(5) is added to the final rule to incorporate the equations necessary to calculate the SEL from the strip chart trace.

Appendix H has a provision that allows less stringent limits, i.e., Stage 2 plus 2 EPNdB, for acoustical changes for Stage 1 helicopters, and a provision that allows similar less stringent limits for the first civil version of a military helicopter. In the interest of harmonizing the U.S. and ICAO helicopter noise certification regulations, these provisions were not included in the proposed rule. The practical effect of not including these provisions is that certain older helicopters will not have the benefit of the more liberal noise limits allowed under appendix H.

With the adoption of appendix J, applicants have a choice of two noise certification procedures for certain helicopters. An analysis performed to demonstrate a "no acoustic change" must assume that either appendix H or appendix J is the noise certification basis of the parent helicopter. For the purpose of demonstrating "no acoustic change" under § 21.93(b), the demonstration must be consistent with the noise certification basis of the parent helicopter. Thus, if the parent helicopter is certificated under part 36, appendix H, the "no acoustic change" analysis must consider all three flight configurations (flyover, approach, takeoff). If the parent is certificated under part 36, appendix J, the "no acoustic change" analysis is limited to consideration of flyover noise levels. If the parent helicopter is a Stage 1 helicopter, the noise certification basis of the parent helicopter is under appendix H. Subject to the approval of the FAA, the noise certification basis of a Stage 2 helicopter having a maximum certificated takeoff weight of not more than 6,000 pounds may be changed from appendix H to appendix J through an FAA-approved reanalysis of the original appendix H noise test data for that helicopter, or by retesting that helicopter under the requirements of appendix J. Helicopters that are noise certificated under appendix J can be converted to appendix H noise certification only by performing the noise tests prescribed under appendix H.

Section 36.1, 36.6, 36.801, 36.805, and 36.1581 are also amended to add a reference the alternative noise certification procedure contained in the new appendix J.

Discussion of Comments

Interested persons were afforded the opportunity to participate in development of this rulemaking by submitting written comments to the public regulatory docket on or before July 6, 1992. All comments received have been reviewed and duly considered in promulgating this amendment; comments received after July 6, 1992, have been considered to the extent possible without delaying this rulemaking action. Seven comments were received; two from individuals, two from helicopter industry groups, and three from a foreign civil aviation authority.

Three requests for an extension of the comment period were received by the FAA. The FAA considered these requests and determined that any further delay in the issuance of this rule would result in an undue burden on U.S. manufacturers of light helicopters and would be contrary to the public interest. However, the FAA has determined that the interests of all affected persons will best be served by establishing a time during which comments on this final rule will be considered. At the conclusion of this comment period, the FAA will, if appropriate, take action to amend this rule.

One commenter suggests that use of the parenthetical phrase "(internal load)" is inappropriate and does not convey the proper intent as proposed in section J36.3(d) in prescribing the reference helicopter weight at which the noise tests are to be performed. The FAA agrees and offers the following discussion to clarify the matter. The maximum certificated takeoff weight to be used for noise certification purposes is the "maximum weight" defined under § 27.25(a) or § 29.25(a) of this chapter unless the applicant chooses a lesser noise certification weight and complies with any associated restrictions. If the applicant chooses to conduct the noise certification tests at a weight less than the maximum weight established under § 27.25(a) or § 29.25(a), then as prescribed under § 36.1581, that lesser weight must be furnished as an operating limitation in the operating limitations section of the Rotorcraft

Flight Manual, in FAA-approved manual material, or on an FAA-approved placard. Alternatively, in anticipation of future changes in type design involving a change in weight, an applicant may choose to conduct supplemental flight tests to establish a sensitivity curve of noise versus weight whereby a noise certification level can be calculated, through interpolation, for the change in type design and the associated maximum weight. It is not the intent of the FAA to require noise certification testing at the weight defined under § 27.25(c) or § 29.25(c), "total weight with jettisonable external load." The effort in the NPRM to qualify the noise certification weight by the parenthetical phrase "(internal load)" in section J36.3(d) was found to be confusing and is not adopted in the final rule.

A commenter requests FAA guidance on supplemental noise flight testing to develop noise versus drag data in anticipation of future changes in type design involving the addition (or removal) of aerodynamically-significant optional external devices. Appendix J does not require supplemental noise flight testing. Requests for supplemental testing will be considered by the FAA under the equivalent procedure provision of § 36.801. The same commenter also suggests that the helicopter should be tested in a clean configuration and that all future changes in type design involving the addition of external drag-inducing attachments should be exempted from the acoustic change provisions prescribed under § 21.93(b) of this chapter. The FAA will study this suggestion for a future rulemaking action; however, the suggestion is outside the scope of this rulemaking action.

Three commenters note the difference in height (above ground) between the relative humidity and temperature measurement locations as prescribed in the NPRM, and recommend that the measurements be made at the same height. The FAA agrees that such measurements, which are used to determine absolute humidity by the off-reference atmospheric attenuation correction method of Aerospace Recommended Practice 866A, should be made at the same location and the same height above the ground. The FAA agrees that the temperature, relative humidity, and wind speed and direction measurements should be made between the heights of 4 feet and 33 feet. This provision will ensure that an applicant can make one set of meteorological measurements that will satisfy the requirements of appendix J and of ICAO chapter 11. Section J36.101(c)(4) is adopted with the change noted above.

Several commenters suggest that the temperature and relative humidity test window proposed in section J36.101(c) be reduced in size to eliminate testing under highly absorptive regions of the test window. In a related suggestion, if the temperature and relative humidity test window is reduced in size, they suggest the adoption of a "zero correction window" over the remaining portion of the reduced temperature and relative humidity test window where correction for off-reference atmospheric attenuation would not be required. Such a "zero correction window" would be achieved by eliminating the requirement for correction of off-reference atmospheric attenuation proposed in section J36.113 and by eliminating the procedures for performing the correction of off-reference atmospheric attenuation proposed in section J36.205(c). The FAA agrees. The commenters differ slightly in the amount of reduction they recommend in the size of the test window. The final rule adopts the test window proposed in section J36.101(c) with the added requirement that testing may not take place where combinations of temperature and relative humidity would result in a rate of atmospheric attenuation greater than 10dB per 100 meters (30.5 dB per 1000 ft) in the one-third octave band centered at 8 kiloHertz. With the test window thus restricted, any error caused by off-reference atmospheric attenuation is reduced and the need for correction is negated. These changes further serve to harmonize Appendix J with Chapter 11 and are adopted in anticipation of a similar restriction in the test window being adopted by ICAO member States during individual implementation of the Chapter 11 standards. Proposed section J36.113, which prescribed the requirement for off-reference atmospheric attenuation correction, is not adopted. Proposed section J36.205(c), which prescribed the procedures for the correction of off-reference atmospheric attenuation, is not adopted. Proposed section J36.101(c)(2), which prescribes the temperature and relative humidity test window, is adopted with the change noted above.

One commenter submits data demonstrating the adverse impact of anomalous conditions in temperature and relative humidity vertical profiles on the accuracy of the noise test results. The commenter suggests that proposed section J36.101(c)(6) be changed to add the phrase "other anomalous meteorological conditions" to the weather restrictions prescribed under that section. The FAA agrees. The commenter is correct that the air temperature measured at the reference altitude, which is required elsewhere in the test procedure, will provide sufficient information for test personnel to detect the presence of an anomalous conditions along the noise propagation path. The FAA also agrees with the commenter that the proposed change is consistent with the requirements of ICAO chapter 11. Proposed section J36.101(c)(6), which is redesignated as section J36.101(c)(5) in the final rule, is adopted with the changes noted.

Two commenters suggest a clarification in the language describing the number and direction of the test flyovers in proposed section J36.105(b) to explicitly require flyovers in equal numbers in opposite directions so that the helicopter is tested with both headwind and tailwind components when winds aloft are present. The FAA agrees. The intent of the proposed provision is to nullify the effect of off-reference ground speed caused by winds aloft on the average noise level calculated from the individual noise levels of each flyover event. A test helicopter flying along the established reference flight path with a tailwind will experience an increase in the flyover velocity relative to the noise measurement position, thus reducing the acoustical duration of the flyover and lowering the measured SEL value. Conversely, if the helicopter is flown in the opposite direction with a headwind under the same meteorological conditions, lowering the groundspeed and increasing acoustical duration, the consequent increase in the measured SEL value caused by the headwind should numerically offset the opposite effects caused by the tailwind. By requiring equal numbers of flights in opposite directions, correcting individual flyovers for off-reference groundspeed is not necessary. Proposed section J36.105(b) is adopted with the suggested clarification. However, one of the commenters notes that applicants should be aware that, although Appendix J does not require the measurement of ground speed and the correction of off-reference ground speed for individual flyovers, failure to correct the individual flyovers for off-reference groundspeed can adversely affect the number of flyovers required to establish statistically a 90 percent confidence limit that does not exceed ±1.5 dB(A) as prescribed under section J36.203(b). An applicant may elect to measure groundspeed during the flyovers and correct for off-reference groundspeed in order to improve the confidence limit

under the provisions of section J36.205(e) which simply states that such measurements and corrections are not required. Such measurement and correction procedures would require FAA approval. In a similar manner, applicants may perform the necessary measurements and apply corrections for off-reference source noise and atmospheric attenuations as permitted in section J36.205(d) and section J36.205(f), respectively.

One commenter states that any differences between Appendix J and ICAO chapter 11 would be economically burdensome because industry will have to test to two different procedures. The FAA disagrees. One of the basic criteria used by the FAA in developing appendix J was that any additional or different appendix J requirements would impose little or no additional costs on the applicant when compared to chapter 11 requirements. Appendix J differs from chapter 11 in two procedures. Appendix J has a temperature and relative humidity test window that is smaller than the test window allowed in chapter 11, and appendix J requires testing at an adjusted reference airspeed to offset the effects of off-reference source noise; Chapter 11 does not require that applicants make a similar adjustment. Foreign certification authorities have expressed their general acceptance of the adjusted reference airspeed procedure required under appendix J as an equivalency to the procedure prescribed under chapter 11. The smaller temperature and relative humidity test window in appendix J, or a similar restriction, is expected to be adopted by other ICAO countries. In the worst-case scenario where an applicant is required to test at two airspeeds to satisfy different certificating authorities, the addition of six additional flyovers during a certification test is not considered a significant technical, logistical, or economic challenge. The FAA concludes that these additional requirements do not involve a significant economic burden.

One commenter states that although the adjustment process in section J36.105(c)(1) for source noise variation is based on the tip speed of the main rotor blades, the main rotor system may not be the primary source of noise for a given helicopter, leading to substantial inaccuracies in the measurement procedure. The FAA disagrees. The actual source of noise is irrelevant to the correction process. This is an issue common to an appendix H test as well. For a typical noise certification test, the relative noise levels produced by various sources of noise on a given helicopter will not be known accurately, nor is it necessary for the dominant source to be known. Since the RPM of the rotor system is a fixed value and ambient temperature is an uncontrolled variable, what is really measured by source noise sensitivity testing is helicopter noise versus airspeed as adjusted to a reference temperature, not main rotor, tail rotor, or engine noise versus tip speed. If, for example, a piston helicopter is entirely dominated by exhaust noise, the peak helicopter noise will be insensitive to changes in main rotor tip speed (and helicopter airspeed). Under appendix J, any change in the SEL caused by the change in duration from the difference between reference and adjusted reference airspeeds is corrected by the mandatory <delta J_3> correction. Thus, it is not necessary to account for the dominant source of noise for a given helicopter for purposes of correction of the effects of off-reference source noise.

In the worst-case situation where source noise is entirely independent of airspeed, RPM, or ambient temperature, the mandatory procedure for addressing off-reference source noise will have no net effect on the measured noise levels. In all other situations, the procedure will improve the accuracy of the test procedure. However, knowledge of the dominant source of noise would be important under appendix H and appendix J when an applicant for a change in type design alters the helicopter noise source(s) (i.e., blade diameter, RPM, etc.) and wishes to use the source noise sensitivity curves previously measured under Appendix H, or measured as an option under Appendix J, during the noise testing of the parent helicopter. In a related comment, one commenter states that the term "translational speed" as used in the calculation of advancing blade tip Mach number under section J36.105(c)(1)(i) is inappropriate and should be replaced with "true air speed". The FAA agrees that the terminology "true air speed" is more descriptive of the actual airspeed required in the calculation, and section J36.105(c)(1)(i) is adopted with the change as noted. The remainder of section J36.105(c)(1) is adopted as proposed.

One commenter requests a 3 dB reduction in the maximum allowable noise levels prescribed by section J36.305(a). The commenter states that the increase in maximum allowable noise levels proposed in ICAO chapter 11 over the maximum allowable noise levels contained in ICAO chapter 8, and consequently, appendix J over appendix H, accounts for small inaccuracies inherent in the simplification process, and that such inaccuracies are removed by the addition of adjustment procedures for the effects of off-reference ambient temperature on source noise and off-reference temperature and relative humidity on atmospheric attenuation. The FAA disagrees. These limits are not based on a perceived inaccuracy incurred as a result of not providing for a correction for the effects of off-reference relative humidity and/or temperature on source noise and atmospheric attenuation. The process used to establish the maximum allowable noise levels were based entirely on fundamental differences between the SEL and EPNL metrics, and the helicopter-to-helicopter variation in the relationship between: (1) SEL and EPNL; (2) the centerline noise level and the average of the noise levels from three microphone locations; and (3) flyover noise levels and the relative noise levels from the flyover, approach, and takeoff test procedures. Accordingly, section J36.305(a) is adopted as proposed.

One commenter states that the ±3 knot limit on airspeed variation is too restrictive operationally and suggests an alternative specification. The FAA disagrees. Appendix J prescribes a ±3 knot airspeed specification under section J36.105(c)(1)(ii) as opposed to the ±5 knot specification in appendix H under section H36.105(d). However, appendix H has a requirement for an adjustment for off-reference airspeed under section H36.205(e). Appendix J does not have a similar requirement. Therefore, appendix J requires a more restrictive limitation on variation in airspeed to minimize any error that might occur from the absence of a correction for off-reference airspeed. However, the FAA will consider an alternative specification as an equivalent procedure if the alternative specification provides a mechanism for ensuring that the average of the noise levels from the individual flyovers is representative of the noise level measured at reference airspeed conditions. Chapter 11 also has a ±3 knot airspeed requirement. Accordingly, section J36.105(c)(1)(ii) is adopted as proposed.

One commenter states that a sound level meter will: (1) Result in a longer "10 dB down" duration time than would appendix H, which will increase the SEL; and (2) sample a wider frequency spectrum than otherwise required under Appendix H using the 24 contiguous one-third octave bands. The FAA agrees that the skill of the sound level meter

operator in starting and stopping the integration at the precise 10 dB down points in the time history may have some small effect on the SEL value. The FAA reviewed data from recent helicopter noise research tests to assess the influence of the difference between the spectral width sampled by a sound level meter and that sampled using the appendix H data reduction procedure. The net SEL difference between the two procedures for twelve helicopter certification-type noise tests was found to be zero.

Two commenters request changes to or clarification of the requirement under section J36.111(b)(6) that helicopter speed, position, and engine performance data be recorded at an FAA-approved sampling rate. The FAA agrees. Section J36.111(b)(6) has been rewritten to better define the requirement. The phrase "FAA-approved sampling rate" is consistent with the requirements of ICAO chapter 11 and appendix H and recognizes that an appropriate sampling rate for a given parameter may depend on the equipment, operators, and procedures employed by the applicant. The requirement that the parameters must be "recorded" does not necessarily imply that electronic data recording systems must be used. For many of the parameters, an FAA-approved cockpit observer may scan the appropriate instrumentation throughout the measured portion of the flyover and record the data by hand. The observer may note the lateral position of the helicopter relative to ground markers to ensure that the helicopter stays within the prescribed limits for lateral deviation. Audio cassette recorders and video camcorders may be useful to augment a cockpit observer. The section is adopted with the change noted.

One commenter states that an inconsistency exists between appendix J and appendix H regarding the definition of the reference rotor RPM, and recommends that the word "maximum" (corresponding to the top of the green arc on the rotor tachometer) be added to the prescribed rotor operating condition prescribed under sections J36.3(c) and J36.105(c)(2). The FAA agrees. Sections J36.3(c) and J36.105(c)(2) are adopted with the change noted below.

One commenter states that the data adjustment limitation of 2 dB under proposed section J36.205(g) is too restrictive given the possibility that the correction for off-reference atmospheric absorption can alone approach this limit, and recommends that the restriction be eliminated. Although the requirement for correction of off-reference atmospheric absorption was not adopted in the final rule, the comment is still valid and the FAA agrees in part. The final rule retains the 2 dB limitation, but changes the applicability of the restriction to only those corrections made to account for the differences between test and reference flight procedures prescribed under section J36.105. The change also brings the restriction in Appendix J into harmony with the similar restriction in ICAO chapter II. Section J36.205(g) is adopted with the change noted above.

One commenter states that the requirement of section J36.109(e)(2)(i) to calibrate the noise measurement system at intervals not exceeding one hour is unnecessarily restrictive, and recommends a 1.5 to 2 hour maximum interval as more appropriate. The FAA disagrees. Experience has shown that the one-hour restriction is not a hindrance to the orderly conduct of the flight test. The time necessary to perform a required calibration is at most a few minutes for a tape recording system and even less for a sound level meter. The ICAO chapter 11 requires such calibrations before the start of testing and at intervals during the test. Unless substantial complications occur or the applicant extends the test to perform additional supplemental tests, the entire test series prescribed under this rule can be performed in less than one hour. Good engineering practice, in general, dictates frequent equipment calibration at available opportunities in order to monitor equipment performance. Accordingly, section J36.109(e)(2)(i) is adopted as proposed.

In proposed section J36.109(d), the FAA proposed to retain the discretion to require the applicant to tape record the noise signal from the flyover tests. This proposed provision is consistent with a similar requirement in ICAO chapter 11. The FAA intended to reserve the authority to require such recordings as an auditing procedure for a given test and for maintaining the integrity of the overall helicopter certification process by auditing the application of the rule and monitoring the rule's efficacy as a representative test for unusual and previously (acoustically) untested helicopter design configurations. One commenter requests that this provision be deleted, and that application criteria be provided if the provision is retained. After further consideration, the FAA has determined that the development of uniform and equitable application criteria across the broad spectrum of potential applicants is not practicable. Accordingly, the FAA agrees that the proposed provision should be deleted in the final rule. However, the FAA retains the authority to perform acoustic measurements and recordings in parallel with the applicant during a noise test conducted for the purpose of demonstrating compliance with this rule. The FAA also retains the authority to independently review all recorded data, including the tape recorded helicopter flyover noise if recorded by the applicant. The proposed section J36.109(d)(1) is adopted with the change noted above and, as previously discussed in this preamble, with the added provision that a strip chart recorder may be used as one of the methods to measure the helicopter flyover noise.

One commenter suggests adding a requirement that multi-engine helicopters be tested with all engines operating at approximately the same power. The FAA agrees that this is an important factor and will consider it for further rulemaking, since such a requirement was not proposed in the NPRM. Accordingly, section J36.105(c)(3) is adopted as proposed.

No comments were received on the NPRM concerning the form of the equation for calculating the allowable noise limit in section J36.301. The proposed equation follows the general form of the equations incorporated in the ICAO aircraft noise standards. However, the FAA has previously published equations for part 36 noise limits in Advisory Circular 36.1 that are different in form from their ICAO counterparts. The FAA inadvertently overlooked the published FAA equations during the development of the NPRM. After further consideration, the FAA has changed the form of the proposed equation in section J36.301 to coincide with the general equation form used in the other appendixes of this part as presented in FAA Advisory Circular 36.1. The slight difference in the form of the FAA equations and the form of the ICAO equations may be the subject of future discussions regarding the harmonization of the FAA rules and the ICAO standards. However, the FAA does not wish to pursue the harmonization issue on a piecemeal basis. The maximum difference between the equation proposed in the NPRM and the equation adopted in the final rule is 0.0005 dB, which occurs at 6,000 pounds.

Proposed section J36.105(d) includes the appendix H requirement that "at least one flyover test in the flyover test series must be conducted at a test weight at or above the maximum takeoff weight for which certification under this part is requested." No comments were received on this proposed requirement. However, after further consideration,

the FAA has not adopted this requirement in the final rule. This change is made in the interest of harmonizing the requirements of appendix J with the requirements of ICAO chapter 11. Deleting this requirement in the final rule does not adversely affect the conduct of the test and does not diminish the integrity of the rule. The affected section retains the requirement that the helicopter test weight for each flyover must be within plus 5 percent or minus 10 percent of the maximum takeoff weight. However, applicants should understand that the deviations allowed under section J36.105 from reference test conditions must be random. An applicant will not be permitted to deliberately abuse the allowable random deviations prescribed in section J36.105 to artificially lower the noise levels measured during the flyover test. The proposed section J36.105(d) is adopted with the change noted above.

Regulatory Evaluation Summary

This section summarizes the regulatory evaluation prepared by the FAA on the amendments to 14 CFR part 36—Noise Standards: Aircraft Type and Airworthiness Certification. This summary and the full regulatory evaluation quantify, to the extent practicable, estimated costs to manufacturers, modifiers, and Federal, State, and local governments, as well as anticipated benefits.

Executive Order 12291, February 17, 1981, directs federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The Executive Order requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is likely to result in an annual effect on the economy of $100 million or more, that is likely to result in a major increase in consumer costs, that has a significant adverse effect on competition, or that is highly controversial.

The FAA has determined that this final rule is not "major" as defined in the Executive Order; therefore, a full regulatory impact analysis that includes the identification and evaluation of cost-reducing alternatives to this rule has not been prepared. Instead, the agency has prepared a more concise document termed a regulatory evaluation that analyzes only this final rule without identifying alternatives. In addition to a summary of the regulatory evaluation, this section also contains a Regulatory Flexibility Determination required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) and an International Trade Impact Assessment. If more detailed information is desired, the reader may examine the full regulatory evaluation contained in the docket.

Under this final rule, an applicant seeking certification of a light helicopter will be permitted to choose between two noise certification procedures: Appendix H of appendix J. The new noise certification procedure, appendix J, will (1) reduce the required microphone locations from three to one; (2) require only a level flyover test rather than level flyover, approach, and takeoff tests as in Appendix H; and (3) reduce the complexity of the data correction procedures. Compared to Appendix H, each of these three factors will lower compliance costs.

Benefit Analysis

The FAA has determined that this final rule will accommodate the advancement of the helicopter manufacturing industry by reducing compliance costs and improving relationships among manufacturers, modifiers, and operators of helicopters, while providing a potential for a reduced level of noise. The following is a discussion of the benefits, including reduced compliance costs, that will accrue as a result of this final rule.

The Appendix J noise certification procedure will create a commonality with international standards. The International Civil Aviation Organization (ICAO), Committee on Aviation Environmental Protection, met in December of 1991 in Montreal, Canada, and recommended noise certification standards for light helicopters that are very similar to the U.S. certification procedures contained in this final rule.

In July 1991, the FAA conducted a series of acoustic flight tests of 12 helicopter configurations in order to supplement an existing light helicopter noise data base of seven helicopter models. An analysis of the 19 helicopter tests resulted in the establishment of an SEL-based limit under Appendix J that is, on average, 2.0 dB more stringent than the limit each of the 19 helicopters would have to meet under Appendix H.

The more stringent noise certification requirements may foster better relationships between the airports, heliports, local communities, and helicopter operators by providing the potential for quieter helicopters. In some instances, local communities have opposed the establishment of nearby heliports. For example, a zoning request for a heliport to be located just outside of Washington, DC, was denied in the mid-to-late 1980's. Excessive noise was cited as one reason for not granting this request.

In recent years, the number of heliports, helistops, and helipads at airports has increased. In 1987, there were 3,325 heliports in the United States; by the end of 1990, that number had increased to 4,462. As the number of heliports has grown, so has the U.S. helicopter fleet. The FAA estimates that the new alternative procedure will encourage manufacturers to comply with the substantially less costly but more stringent Appendix J requirements, and therefore may result in the manufacturer of quieter light helicopters.

In addition to providing for a reduced level of noise, the FAA estimates that the manufacturers of light helicopters will have lower one-time noise certification procedure costs. These savings include those primarily associated with the noise abatement technology. The present value cost savings to helicopter manufacturers will be about $5.43 million over the next 15 years.

A helicopter modifier may concentrate on a particular type of aircraft, and that entity may be in the business of continually developing, selling, and installing modification kits for a particular type of aircraft. The present value cost savings to helicopter modifiers will be $17.01 million over the next 15 years. The FAA has examined the impact that this final rule will have on helicopter operators, and concludes that there will be no impact on helicopter operators. In addition, the FAA estimates that the agency will have lower costs because less labor will be required to process and witness the new test procedure. On a per-certificate basis, the annual cost savings to the FAA will be about $12,300. The present value cost savings to the FAA is estimated to be $1.78 million over the next 15 years.

International Trade Impact Analysis

The final rule will have little or no impact on trade for either U.S. firms doing business in foreign countries, or foreign firms doing business in the United States. In the U.S. market, foreign manufacturers will have the option of producing helicopters that satisfy the new standards and, therefore, will not be at a competitive disadvantage with U.S. manufacturers.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 requires agencies to review rules that have "a significant economic impact on substantial number of small entities".

The FAA's criteria for "a substantial number" is a number that is not less than 11 and that is more than one-third of the small entities subject to this final rule.

According to FAA Order 2100.14A, "Regulatory Flexibility Criteria and Guidance," the definition of a small entity (aircraft and aircraft parts manufacturer) is one with 75 or fewer employees. There are no small U.S. helicopter manufacturers that are manufacturing helicopters for the U.S. market.

Although FAA Order 2100.14A does not specifically identify the aircraft modifiers affected by this rulemaking as an entity type in its lists of threshold criteria, an "aircraft repair facilities" entity is listed in the order. This entity would include repair stations certificated and rated under 14 CFR part 145 and shops employing persons who are holders of a mechanic or repairman certificate issued under 14 CFR part 65 that deal with helicopters. Mechanics employed by such entities may perform maintenance, preventative maintenance, and alteration work as prescribed by § 43.3 of 14 CFR part 43. The corresponding size threshold given in the order is 200 employees.

An aircraft modifier conducts engineering and supplemental type certificate application activities, and typically performs the alteration work. A modifier also may separately offer repair or maintenance services. The nature of the work performed by a modifier is generally analogous to that of an aircraft repair facility, and the corresponding threshold levels given in the order are assumed to apply here. For the purpose of this regulatory flexibility determination, an aircraft modifier is considered a small entity if it has 200 or fewer employees.

The Order does not define a threshold value for significant annualized cost for the aircraft repair facilities entity. The FAA estimates that the annualized 1991 cost threshold is $5,400.

Based upon information presented in the cost analysis, the one-time cost savings to a small modifier will be about $155,290 per supplemental type certificate. Annualized at 10 percent over 10 years, the costs savings will be $27,270. This is above the annualized cost threshold.

The total population of modifiers is about 200, and in recent years, about 75 of them have applied for supplemental type certificates which require a noise test under 14 CFR part 36. Typically, between 10 to 12 modifiers would initiate a change annually. Using the lower population estimate, about 16 percent (12/75=0.16) of the total population of rotorcraft modifiers would be affected annually.

The FAA concludes that a substantial number of small entities (more than one third) are not affected significantly by this final rule. Therefore, the final rule would not impose a significant economic impact on a substantial number of small entities, and thus, a regulatory flexibility analysis is not required.

Federalism Implications

The regulations adopted herein do not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Analysis

The procedures implemented by this rule have been determined to not significantly affect the quality of the human environment.

Pursuant to the Department of Transportation "Policies and Procedures for Considering Environmental Impacts" (FAA Order 1050.1D), a Finding of No Significant Impact has been prepared and placed in the docket.

Justification for Immediate Adoption

The FAA has determined that further delay in the adoption of this rule would cause undue burden to U.S. manufacturers of light helicopters. Many U.S. manufacturers of light helicopters have new type certification projects that are nearing completion. These certification actions will require noise testing. These manufacturers have participated in and supported the establishment of the ICAO standards similar to those adopted here. Without this rule, these U.S. manufacturers must comply with the more costly testing requirements of appendix H of this chapter. Accordingly, the FAA has determined that good cause exists to make this rule effective in less than 30 days.

Interested persons are invited to submit comments as they may desire regarding this amendment. Communications should identify the docket number and be submitted in triplicate to the address above. All communications received on or before the close of the comment period will be considered by the Administrator. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. After review of the comments, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulations. All comments will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number _____." The postcard will be date stamped and returned to the commenter.

Because of the substantial public interest in this rule noted above, the FAA has determined that this rule is significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

Conclusion

For the reasons stated above, I certify that this final rule: (1) Is not a major rule under Executive Order 12291; (2) is a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not have a significant economic impact on a substantial number of small entities. In addition, this final rule has little or no impact on trade opportunities for U.S. firms doing business overseas, or on foreign firms doing business in the United States.

List of Subjects

14 CFR Part 21

Aircraft, Helicopters, Noise control.

14 CFR Part 36

Aircraft, Helicopters, Incorporation by reference, Noise control.

The Amendments

Accordingly, the Federal Aviation Administration amends 14 CFR parts 21 and 36 of the Federal Aviation Regulations as follows:

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

1. The authority citation for part 21 is revised to read as follows:

Authority: 49 U.S.C. App. 1344, 1348(c) 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 7572; E.O. 11514, 35 FR 4247, 3 CFR 1966–1970 Comp., p. 902; 49 U.S.C 106(g).

2. Section 21.115(a) is revised to read as follows:

§ 21.115 Applicable requirements.

(a) Each applicant for a supplemental type certificate must show that the altered product meets applicable airworthiness requirements as specified in paragraphs (a) and (b) of § 21.101 and, in the case of an acoustical change described in § 21.93(b), show compliance with the applicable noise requirements of part 36 of this chapter and, in the case of an emissions change described in § 21.93(c), show compliance with the applicable fuel venting and exhaust emissions requirements of part 34 of this chapter.

* * * * *

PART 36—NOISE STANDARDS: AIRCRAFT TYPE AND AIRWORTHINESS CERTIFICATION

3. The authority citation for part 36 is revised to read as follows:

Authority: 49 U.S.C. App. 1344, 1348, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430, 1431(b), 1651(b)(2), 2101, 2121 through 2125; 42 U.S.C. 4321, et seq.; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970 Comp., p. 902; 49 U.S.C. 106(g).

4. Section 36.1 is amended by revising paragraph (h) to read as follows:

§ 36.1 Applicability and definitions.

* * * * *

(h) For the purpose of showing compliance with this part, for helicopters in the primary, normal, transport, and restricted categories, the following terms have the specified meanings:

(1) *Stage 1 noise level* means a takeoff, flyover, or approach noise level greater than the Stage 2 noise limits prescribed in section H36.305 of Appendix H of this part, or a flyover noise level greater than the Stage 2 noise limits prescribed in section J36.305 of appendix J of this part.

(2) *Stage 1 helicopter* means a helicopter that has not been shown under this part to comply with the takeoff, flyover, and approach noise levels required for Stage 2 helicopters as prescribed in section H36.305 of Appendix H of this part, or a helicopter that has not been shown under this part to comply with the flyover noise level required for Stage 2 helicopters as prescribed in section J36.305 of Appendix J of this part.

(3) *Stage 2 noise level* means a takeoff, flyover, or approach noise level at or below the Stage 2 noise limits prescribed in section H36.305 of Appendix H of this part, or a flyover noise level at or below the Stage 2 limit prescribed in section J36.305 of Appendix J of this part.

(4) *Stage 2 helicopter* means a helicopter that has been shown under this part to comply with Stage 2 noise limits (including applicable tradeoffs) prescribed in section H36.305 of Appendix H of this part, or a helicopter that has been shown under this part to comply with the Stage 2 noise limit prescribed in section J36.305 of Appendix J of this part.

5. Section 36.6 is amended by adding a new paragraph (c)(1)(v) to read as follows:

§ 36.6 Incorporation by reference.

* * * * *

(c) * * *

(1) * * *

(v) IEC Publication No. 804, entitled "Integrating-averaging Sound Level Meters," first edition, dated 1985.

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6. Section 36.11 is revised to read as follows:

§ 36.11 Acoustical change: Helicopters.

This section applies to all helicopters in the primary, normal, transport, and restricted categories for which an acoustical change approval is applied for under § 21.93(b) of this chapter on or after March 6, 1986. Compliance with the requirements of this section must be demonstrated under appendix H of this part, or, for helicopters having a maximum certificated takeoff weight of not more than 6,000 pounds, compliance with this section may be demonstrated under Appendix J of this part.

(a) *General requirements.* Except as otherwise provided, for helicopters covered by this section, the acoustical change approval requirements are as follows:

(1) In showing compliance with the requirements of appendix H of this part, noise levels must be measured, evaluated, and calculated in accordance with the applicable procedures and conditions prescribed in parts B and C of appendix H of this part. For helicopters having a maximum certificated takeoff weight of not more than 6,000 pounds that alternatively demonstrate compliance under appendix J of this part, the flyover noise level prescribed in appendix J of this part must be measured, evaluated, and calculated in accordance with the applicable procedures and conditions prescribed in parts B and C of appendix J of this part.

(2) Compliance with the noise limits prescribed in section H36.305 of appendix H of this part must be shown in accordance with the applicable provisions of part D of appendix H of this part. For those helicopters that demonstrate compliance with the requirements of appendix J of this part, compliance with the noise levels prescribed in section J36.305 of appendix J of this part must be shown in accordance with the applicable provisions of part D of appendix J of this part.

(b) *Stage 1 helicopters.* Except as provided in § 36.805(c), for each Stage 1 helicopter prior to a change in type design, the helicopter noise levels may not, after a change in type design, exceed the noise levels specified in section H36.305(a)(1) of appendix H of this part where the demonstration of compliance is under appendix H of this part. The tradeoff provisions under section H36.305(b) of appendix H of this part may not be used to increase any Stage 1 noise level beyond these limits. If an applicant chooses to demonstrate compliance under appendix J of this part, for each Stage 1 helicopter prior to a change in type design, the helicopter noise levels may not, after a change in type design, exceed the Stage 2 noise levels specified in section J36.305(a) of Appendix J of this part.

(c) *Stage 2 helicopters.* For each helicopter that is Stage 2 prior to a change in type design, the helicopter must be a Stage 2 helicopter after a change in type design.

7. Section 36.801 is revised to read as follows:

§ 36.801 Noise measurement.

For primary, normal, transport, or restricted category helicopters for which certification is sought under appendix H of this part, the noise generated by the helicopter must be measured at the noise measuring points and under the test conditions prescribed in part B of appendix H of this part, or under an FAA-approved equivalent procedure. For those primary, normal, transport, and restricted category helicopters having a maximum certificated takeoff weight of not more than 6,000 pounds for which compliance with appendix J of this part is demonstrated, the noise generated by the helicopter must be measured at the noise measuring point and under the test conditions prescribed in part B of appendix J of this part, or an FAA-approved equivalent procedure.

8. Section 36.803 is revised to read as follows:

§ 36.803 Noise evaluation and calculation.

The noise measurement data required under § 36.801 and obtained under appendix H of this part must be corrected to the reference conditions contained in part A of appendix H of this part, and evaluated under the procedures of part C of appendix H of

this part, or an FAA-approved equivalent procedure. The noise measurement data required under § 36.801 and obtained under appendix J of this part must be corrected to the reference conditions contained in part A of appendix J of this part, and evaluated under the procedures of part C of appendix J of this part, or an FAA-approved equivalent procedure.

9. Section 36.805 is revised to read as follows:

§ 36.805 Noise limits.

(a) Compliance with the noise levels prescribed under part D of appendix H of this part, or under part D of appendix J of this part, must be shown for helicopters for which application for issuance of a type certificate in the primary, normal, transport, or restricted category is made on or after March 6, 1986.

(b) For helicopters covered by this section, except as provided in paragraph (c) or (d)(2) of this section, it must be shown either:

(1) For those helicopters demonstrating compliance under Appendix H of this part, the noise levels of the helicopter are no greater than the applicable limits prescribed under section H36.305 of Appendix H of this part, or

(2) For helicopters demonstrating compliance under Appendix J of this part, the noise level of the helicopter is no greater than the limit prescribed under section J36.305 of appendix J of this part.

(c) For helicopters for which application for issuance of an original type certificate in the primary, normal, transport, or restricted category is made on or after March 6, 1986, and which the FAA finds to be the first civil version of a helicopter that was designed and constructed for, and accepted for operational use by, an Armed Force of the United States or the U.S. Coast Guard on or before March 6, 1986, it must be shown that the noise levels of the helicopter are no greater than the noise limits for a change in type design as specified in section H36.305(a)(1)(ii) of Appendix H of this part for compliance demonstrated under appendix H of this part, or as specified in section J36.305 of appendix J of this part for compliance demonstrated under appendix J of this part. Subsequent civil versions of any such helicopter must meet the Stage 2 requirements.

(d) Helicopters in the primary category:

(1) Except as provided in paragraph (d)(2) of this section, for a helicopter for which application for a type certificate in the primary category is made, and that was not previously certificated under Appendix H of this part, compliance with Appendix H of this part must be shown.

(2) For a helicopter that:

(i) Has a normal or transport type certificate issued under this chapter,

(ii) Has a standard airworthiness certificate issued under this chapter,

(iii) Has not undergone an acoustical change from its type design,

(iv) Has not previously been certificated under Appendix H of this part, and

(v) For which application for conversion to the primary category is made, no further showing of compliance with this part is required.

10. Section 36.1581 is amended by revising paragraph (f) to read as follows:

§ 36.1581 Manuals, markings, and placards.

* * * * *

(f) For primary, normal, transport, and restricted category helicopters, if the weight used in meeting the takeoff, flyover, or approach noise requirements of appendix H of this part, or the weight used in meeting the flyover noise requirement of appendix J of this part, is less than the certificated maximum takeoff weight established under either § 27.25(a) or § 29.25(a) of this chapter, that lesser weight must be furnished as an operating limitation in the operating limitations section of the Rotorcraft Flight Manual, in FAA-approved manual material, or on an FAA-approved placard.

* * * * *

11. A new Appendix I is added and reserved.

12. A new Appendix J is added to read as follows:

Appendix J—Alternative Noise Certification Procedure For Helicopters Under Subpart H Having A Maximum Certificated Takeoff Weight Of Not More Than 6,000 Pounds

Part A—Reference Conditions

J36.1 General.
J36.3 Reference Test Conditions.
J36.5 [Reserved]

Part B—Noise Measurement Procedure Under § 36.801

J36.101 Noise certification test and measurement conditions.
J36.103 [Reserved]
J36.105 Flyover test conditions.
J36.107 [Reserved]
J36.109 Measurement of helicopter noise received on the ground.
J36.111 Reporting requirements.
J36.113 [Reserved]

Part C—Noise Evaluation and Calculation Under § 36.803

J36.201 Noise evaluation in SEL.
J36.203 Calculation of noise levels.
J36.205 Detailed data correction procedures.

Part D—Noise Limits Procedure Under § 36.805

J36.301 Noise measurement, evaluation, and calculation.
J36.303 [Reserved]
J36.305 Noise limits.

Part A—Reference Conditions

Section J36.1 General

This appendix prescribes the alternative noise certification requirements identified under § 36.1 of this part and subpart H of this part for helicopters in the primary, normal, transport, and restricted categories having maximum certificated takeoff weight of not more than 6,000 pounds including:

(a) The conditions under which an alternative noise certification test under subpart H of this part must be conducted and the alternative measurement procedure that must be used under § 36.801 of this part to measure the helicopter noise during the test;

(b) The alternative procedures which must be used under § 36.803 of this part to correct the measured data to the reference conditions and to calculate the noise evaluation quantity designated as Sound Exposure Level (SEL); and

(c) The noise limits for which compliance must be shown under § 36.805 of this part.

Section J36.3 Reference Test Conditions

(a) *Meteorological conditions.* The following are the noise certification reference atmospheric conditions which shall be assumed to exist from the surface to the helicopter altitude:

(1) Sea level pressure of 2116 pounds per square foot (76 centimeters mercury);

(2) Ambient temperature of 77 degrees Fahrenheit (25 degrees Celsius);

(3) Relative humidity of 70 percent; and

(4) Zero wind.

(b) *Reference test site.* The reference test site is flat and without line-of-sight obstructions across the flight path that encompasses the 10 dB down points of the A-weighted time history.

(c) *Level flyover reference profile.* The reference flyover profile is a level flight 492 feet (150 meters) above ground level as measured at the noise measuring station. The reference flyover profile has a linear flight track and passes directly over the noise monitoring station. Airspeed is stabilized at $0.9V_H$; $0.9V_{NE}$; $0.45V_H + 65$ kts ($0.45V_H + 120$ km/h); or $0.45V_{NE} + 65$ kts ($0.45V_{NE} + 120$ km/h), whichever of the four speeds is least. Rotor speed is stabilized at the power on maximum normal operating RPM throughout the 10 dB down time period.

(1) For noise certification purposes, V_H is defined as the airspeed in level flight obtained using the minimum specification engine power corresponding to maximum continuous power available for sea level, 77 degree Fahrenheit (25 degrees Celsius) ambient conditions at the relevant maximum certificated weight. The value of V_H thus defined must be listed in the Rotorcraft Flight Manual.

(2) V_{NE} is the never-exceed airspeed.

(d) The weight of the helicopter shall be the maximum takeoff weight at which noise certification is requested.

Section J36.5 [Reserved]

Part B—Noise Measurement Procedure Under § 36.801

Section J36.101 Noise certification test and measurement conditions

(a) *General.* This section prescribes the conditions under which helicopter noise certification tests must be conducted and the measurement procedures that must be used to measure helicopter noise during each test.

(b) *Test site requirements.* (1) The noise measuring station must be surrounded by terrain having no excessive sound absorption characteristics, such as might be caused by thick, matted, or tall grass, shrubs, or wooded areas.

(2) During the period when the flyover noise measurement is within 10 dB of the maximum A-weighted sound level, no obstruction that significantly influences the sound field from the helicopter may exist within a conical space above the noise measuring position (the point on the ground vertically below the microphone), the cone is defined by an axis normal to the ground and by half-angle 80 degrees from this axis.

(c) *Weather restrictions.* The test must be conducted under the following atmospheric conditions:

(1) No rain or other precipitation;

(2) Ambient air temperature between 36 degrees and 95 degrees Fahrenheit (2 degrees and 35 degrees Celsius), inclusively, and relative humidity between 20 percent and 95 percent inclusively, except that testing may not take place where combinations of temperature and relative humidity result in a rate of atmospheric attenuation greater than 10 dB per 100 meters (30.5 dB per 1000 ft) in the one-third octave band centered at 8 kiloHertz.

(3) Wind velocity that does not exceed 10 knots (19 km/h) and a crosswind component that does not exceed 5 knots (9 km/h). The wind shall be determined using a continuous averaging process of no greater than 30 seconds;

(4) Measurements of ambient temperature, relative humidity, wind speed, and wind direction must be made between 4 feet (1.2 meters) and 33 feet (10 meters) at the noise monitoring station. Unless otherwise approved by the FAA, ambient temperature and relative humidity must be measured at the noise measuring station at the same height above the ground.

(5) No anomalous wind conditions (including turbulence) or other anomalous meteorological conditions that will significantly affect the noise level of the helicopter when the noise is recorded at the noise measuring station; and

(6) The location of the meteorological instruments must be approved by the FAA as representative of those atmospheric conditions existing near the surface over the geographical area where the helicopter noise measurements are made. In some cases, a fixed meteorological station (such as those found at airports or other facilities) may meet this requirement.

(d) *Helicopter testing procedures.* (1) The helicopter testing procedures and noise measurements must be conducted and processed in a manner which yields the noise evaluation measure designated Sound Exposure Level (SEL) as defined in section J36.109(b) of this appendix.

(2) The helicopter height relative to the noise measurement point sufficient to make corrections required under section J36.205 of this appendix must be determined by an FAA-approved method that is independent of normal flight instrumentation, such as radar tracking, theodolite triangulation, laser trajectography, or photographic scaling techniques.

(3) If an applicant demonstrates that the design characteristics of the helicopter would prevent flight from being conducted in accordance with the reference test conditions prescribed under section J36.3 of this appendix, then with FAA approval, the reference test conditions used under this appendix may vary from the standard reference test conditions, but only to the extent demanded by these design characteristics which make compliance with the reference test conditions impossible.

Section J36.103 [Reserved]

Section J36.105 Flyover test conditions

(a) This section prescribes the flight test conditions and allowable random deviations for flyover noise tests conducted under this appendix.

(b) A test series must consist of at least six flights with equal numbers of flights in opposite directions over the noise measuring station:

(1) In level flight and in cruise configuration;

(2) At a height of 492 feet ±50 feet (150 ±15 meters) above the ground level at the noise measuring station; and

(3) Within ±10 degrees from the zenith.

(c) Each flyover noise test must be conducted:

(1) At the reference airspeed specified in section J36.3(c) of this appendix, with such airspeed adjusted as necessary to produce the same advancing blade tip Mach number as associated with the reference conditions;

(i) Advancing blade tip Mach number (M_{AT}) is defined as the ratio of the arithmetic sum of blade tip rotational speed (V_R) and the helicopter true air speed (V_T) over the speed of sound (c) at 77 degrees Fahrenheit (1135.6 ft/sec or 346.13 m/sec) such that $M_{AT} = (V_R + V_T)/c$; and

(ii) The airspeed shall not vary from the adjusted reference airspeed by more than ±3 knots (±5 km/hr) or an equivalent FAA-approved variation from the reference advancing blade tip Mach number. The adjusted reference airspeed shall be maintained throughout the measured portion of the flyover.

(2) At rotor speed stabilized at the power on maximum normal operating rotor RPM (±1 percent); and

(3) With the power stabilized during the period when the measured helicopter noise level is within 10 dB of the maximum A-weighted sound level (L_{AMAX}).

(d) The helicopter test weight for each flyover test must be within plus 5 percent or minus 10 percent of the maximum takeoff weight for which certification under this part is requested.

(e) The requirements of paragraph (b)(2) of this section notwithstanding, flyovers at an FAA-approved lower height may be used and the results adjusted to the reference measurement point by an FAA-approved method if the ambient noise in the test area, measured in accordance with the requirements prescribed in section J36.109 of this appendix, is found to be within 15 dB(A) of the maximum A-weighted helicopter noise level (L_{AMAX}) measured at the noise measurement station in accordance with section J36.109 of this appendix.

Section J36.107 [Reserved]

Section J36.109 Measurement of helicopter noise received on the ground

(a) *General.* (1) The helicopter noise measured under this appendix for noise certification purposes must be obtained with FAA-approved acoustical equipment and measurement practices.

(2) Paragraph (b) of this section identifies and prescribes the specifications for the noise evaluation measurements required under this appendix. Paragraphs (c) and (d) of this section prescribe the required acoustical equipment specifications. Paragraphs (e) and (f) of this section prescribe the calibration and measurement procedures required under this appendix.

(b) *Noise unit definition.* (1) The value of sound exposure level (SEL, or as denoted by symbol, L_{AE}), is defined as the level, in decibels, of the time integral of squared 'A'-weighted sound pressure (P_A) over a given time period or event, with reference to the square of the standard reference sound pressure (P_0) of 20 micropascals and a reference duration of one second.

(2) This unit is defined by the expression:

$$L_{AE} = 10\,Log_{10}\,\frac{1}{T_0}\int_{t_1}^{t_2}\left(\frac{P_A(t)}{P_0}\right)^2 dt \quad dB$$

Where T_0 is the reference integration time of one second and (t_2-t_1) is the integration time interval.

(3) The integral equation of paragraph (b)(2) of this section can also be expressed as:

$$L_{AE} = 10\,Log_{10}\,\frac{1}{T_0}\int_{t_1}^{t_2} 10^{0.1\,L_A(t)}\,dt \quad dB$$

Where $L_A(t)$ is the time varying A-weighted sound level.

(4) The integration time (t_2-t_1) is practice shall not be less than the time interval during which $L_A(t)$ first rises to within 10 dB(A) of its maximum value (L_{AMAX}) and last falls below 10 dB(A) of its maximum value.

(5) The SEL may be approximated by the following expression:

$$L_{AE} = L_{AMAX} + \langle delta \rangle A$$

where <delta> A is the duration allowance given by:

$$\langle delta \rangle A = 10 \log_{10} (T)$$

where $T = (t_2-t_1)/2$ and L_{AMAX} is defined as the maximum level, in decibels, of the A-weighted sound pressure (slow response) with reference to the square of the standard reference sound pressure (P_0).

(c) *Measurement system.* The acoustical measurement system must consist of FAA-approved equipment equivalent to the following:

(1) A microphone system with frequency response that is compatible with the measurement and analysis system accuracy prescribed in paragraph (d) of this section;

(2) Tripods or similar microphone mountings that minimize interference with the sound energy being measured;

(3) Recording and reproducing equipment with characteristics, frequency response, and dynamic range that are compatible with the response and accuracy requirements of paragraph (d) of this section; and

(4) Acoustic calibrators using sine wave noise and, if a tape recording system is used, pink noise, of known levels. When pink noise (defined in section H36.109(e)(1) of Appendix H of this part) is used, the signal must be described in terms of its root-mean-square (rms) value.

(d) *Sensing, recording, and reproducing equipment.* (1) The noise levels measured from helicopter flyovers under this appendix may be determined directly by an integrating sound level meter, or the A-weighted sound level time history may be written onto a graphic level recorder set at "slow" response from which the SEL value may be determined. With the approval of the FAA, the noise signal may be tape recorded for subsequent analysis.

(i) The SEL values from each flyover test may be directly determined from an integrating sound level meter complying with the Standards of the International Electrotechnical Commission (IEC) Publication No. 804, "Integrating-averaging Sound Level Meters," as incorporated by reference under § 36.6 of this part, for a Type 1 instrument set at "slow" response.

(ii) The acoustic signal from the helicopter, along with the calibration signals specified under paragraph (e) of this section and the background noise signal required under paragraph (f) of this section may be recorded on a magnetic tape recorder for subsequent analysis by an integrating sound level meter identified in paragraph (d)(1)(i) of this section. The record/playback system (including the audio tape) of the tape recorder must conform to the requirements prescribed in section H36.109(c)(3) of Appendix H of this part. The tape recorder shall comply with specifications of IEC Publication No. 561, "Electro-acoustical Measuring Equipment for Aircraft Noise Certification," as incorporated by reference under § 36.6 of this part.

(iii) The characteristics of the complete system shall comply with the recommendations given in IEC Publication No. 651, "Sound Level Meters," as incorporated by reference under § 36.6 of this part, with regard to the specifications concerning microphone, amplifier, and indicating instrument characteristics.

(iv) The response of the complete system to a sensibly plane progressive wave of constant amplitude shall lie within the tolerance limits specified in Table IV and Table V for Type 1 instruments in IEC Publication No. 651, "Sound Level Meters," as incorporated by reference under § 36.6 of this part, for weighting curve "A" over the frequency range of 45 Hz to 11500 Hz.

(v) A windscreen must be used with the microphone during each measurement of the helicopter flyover noise. Correction for any insertion loss produced by the windscreen, as a function of the frequency of the acoustic calibration required under paragraph (e) of this section, must be applied to the measured data and any correction applied must be reported.

(e) *Calibrations.* (1) If the helicopter acoustic signal is tape recorded for subsequent analysis, the measuring system and components of the recording system must be calibrated as prescribed under section H36.109(e) of Appendix H of this part.

(2) If the helicopter acoustic signal is directly measured by an integrating sound level meter:

(i) The overall sensitivity of the measuring system shall be checked before and after the series of flyover tests and at intervals (not exceeding one-hour duration) during the flyover tests using an acoustic calibrator using sine wave noise generating a known sound pressure level at a known frequency.

(ii) The performance of equipment in the system will be considered satisfactory if, during each day's testing, the variation in the calibration value does not exceed 0.5 dB. The SEL data collected during the flyover tests shall be adjusted to account for any variation in the calibration value.

(iii) A performance calibration analysis of each piece of calibration equipment, including acoustic calibrators, reference microphones, and voltage insertion devices, must have been made during the six calendar months proceeding the beginning of the helicopter flyover series. Each calibration shall be traceable to the National Institute of Standards and Technology.

(f) *Noise measurement procedures.* (1) The microphone shall be of the pressure-sensitive capacitive type designed for nearly uniform grazing incidence response. The microphone shall be mounted with the center of the sensing element 4 feet (1.2 meters) above the local ground surface and shall be oriented for grazing incidence such that the sensing element, the diaphragm, is substantially in the plane defined by the nominal flight path of the helicopter and the noise measurement station.

(2) If a tape recorder is used, the frequency response of the electrical system must be determined at a level within 10 dB of the full-scale reading used during the test, utilizing pink or pseudorandom noise.

(3) The ambient noise, including both acoustical background and electrical noise of the measurement systems shall be determined in the test area and the system gain set at levels which will be used for helicopter noise measurements. If helicopter sound levels do not exceed the background sound levels by at least 15 dB(A), flyovers at an FAA-approved lower height may be used and the results adjusted to the reference measurement point by an FAA-approved method.

(4) If an integrating sound level meter is used to measure the helicopter noise, the instrument operator shall monitor the continuous A-weighted (slow response) noise levels throughout each flyover to ensure that the SEL integration process includes, at minimum, all of the noise signal between the maximum A-weighted sound level (L_{AMAX}) and the 10 dB down points in the flyover time history. The instrument operator shall note the actual db(A) levels at the start and stop of the SEL integration interval and document these levels along with the value of L_{AMAX} and the integration interval (in seconds) for inclusion in the noise data submitted as part of the reporting requirements under section J36.111(b) of this appendix.

Section J36.111 Reporting Requirements

(a) *General.* Data representing physical measurements, and corrections to measured data, including corrections to measurements for equipment response deviations, must be recorded in permanent form and appended to the record. Each correction is subject to FAA approval.

(b) *Data reporting.* After the completion of the test the following data must be included in the test report furnished to the FAA:

(1) Measured and corrected sound levels obtained with equipment conforming to the standards prescribed in section J36.109 of this appendix;

(2) The type of equipment used for measurement and analysis of all acoustic, aircraft performance and flight path, and meteorological data;

(3) The atmospheric environmental data required to demonstrate compliance with this appendix, measured throughout the test period;

(4) Conditions of local topography, ground cover, or events which may interfere with the sound recording;

(5) The following helicopter information:

(i) Type, model, and serial numbers, if any, of helicopter, engine(s) and rotor(s);

(ii) Gross dimensions of helicopter, location of engines, rotors, type of antitorque system, number of blades for each rotor, and reference operating conditions for each engine and rotor;

(iii) Any modifications of non-standard equipment likely to affect the noise characteristics of the helicopter;

(iv) Maximum takeoff weight for which certification under this appendix is requested;

(v) Aircraft configuration, including landing gear positions;

(vi) V_H or V_{NE} (whichever is less) and the adjusted reference airspeed;

(vii) Aircraft gross weight for each test run;

(viii) Indicated and true airspeed for each test run;

(ix) Ground speed, if measured, for each run;

(x) Helicopter engine performance as determined from aircraft instruments and manufacturer's data; and

(xi) Aircraft flight path above ground level, referenced to the elevation of the noise measurement station, in feet, determined by an FAA-approved method which is independent of normal flight instrumentation, such as radar tracking, theodolite triangulation, laser trajectography, or photoscaling techniques; and

(6) Helicopter position and performance data required to make the adjustments prescribed under section J36.205 of this appendix and to demonstrate compliance with the performance and position restrictions prescribed under section J36.105 of this appendix must be recorded at an FAA-approved sampling rate.

Section J36.113 [Reserved]

Part C—Noise Evaluation and Calculations Under § 36.803

Section J36.201 Noise Evaluation in SEL

The noise evaluation measure shall be the sound exposure level (SEL) in units of dB(A) as prescribed under section J36.109(b) of this appendix. The SEL value for each flyover may be directly determined by use of an integrating sound level meter. Specifications for the integrating sound level meter and requirements governing the use of such instrumentation are prescribed under section J36.109 of this appendix.

Section J36.203 Calculation of Noise Levels

(a) To demonstrate compliance with the noise level limits specified under section J36.305 of this appendix, the SEL noise levels from each valid flyover, corrected as necessary to reference conditions under section J36.205 of this appendix, must be arithmetically averaged to obtain a single SEL dB(A) mean value for the flyover series. No individual flyover run may be omitted from the averaging process, unless otherwise specified or approved by the FAA.

(b) The minimum sample size acceptable for the helicopter flyover certification measurements is six. The number of samples must be large enough to establish statistically a 90 percent confidence limit that does not exceed ±1.5 dB(A).

(c) All data used and calculations performed under this section, including the calculated 90 percent confidence limits, must be documented and provided under the reporting requirements of section J36.111 of this appendix.

Section J36.205 Detailed Data Correction Procedures

(a) When certification test conditions measured under part B of this appendix differ from the reference test conditions prescribed under section J36.3 of this appendix, appropriate adjustments shall be made to the measured noise data in accordance with the methods set out in paragraphs (b) and (c) of this section. At minimum, appropriate adjustments shall be made for off-reference altitude and for the difference between reference airspeed and adjusted reference airspeed.

(b) The adjustment for off-reference altitude may be approximated from:

$$<\text{delta}>J_1 = 12.5 \log_{10}(H_T/492) \text{ dB};$$

where $<\text{delta}>J_1$ is the quantity in decibels that must be algebraically added to the measured SEL noise level to correct for an off-reference flight path, H_T is the height, in feet, of the test helicopter when directly over the noise measurement point, and the constant (12.5) accounts for the effects on spherical spreading and duration from the off-reference altitude.

(c) The adjustment for the difference between reference airspeed and adjusted reference airspeed is calculated from:

$$<\text{delta}>J_3 = 10 \log_{10}(V_{RA}/V_R) \text{ dB};$$

Where $<\text{delta}>J_3$ is the quantity in decibels that must be algebraically added to the measured SEL noise level to correct for the influence of the adjustment of the reference airspeed on the duration of the measured flyover event as perceived at the noise measurement station, V_R is the reference airspeed as prescribed under section J36.3(c) of this appendix, and V_{RA} is the adjusted reference airspeed as prescribed under section J36.105(c) of this appendix.

(d) No correction for source noise during the flyover other than the variation of source noise accounted for by the adjustment of the reference airspeed prescribed for under section J36.105(c) of this appendix need be applied.

(e) No correction for the difference between the reference ground speed and the actual ground speed need be applied.

(f) No correction for off-reference atmospheric attenuation need be applied.

(g) The SEL adjustments must be less than 2.0 dB(A) for differences between test and reference flight procedures prescribed under section J36.105 of this appendix unless a larger adjustment value is approved by the FAA.

(h) All data used and calculations performed under this section must be documented and provided under the reporting requirements specified under section J36.111 of this appendix.

Part D—Noise Limits Procedure Under § 36.805

Section J36.301 Noise Measurement, Evaluation, and Calculation

Compliance with this part of this appendix must be shown with noise levels measured, evaluated, and calculated as prescribed under parts B and C of this appendix.

Section J36.303 [Reserved]

Section J36.305 Noise Limits

For compliance with this appendix, the calculated noise levels of the helicopter, at the measuring point described in section J36.101 of this appendix, must be shown to not exceed the following (with appropriate interpolation between weights):

(a) For primary, normal, transport, and restricted category helicopters having a maximum certificated takeoff weight of not more than 6,000 pounds and noise tested under this appendix, the Stage 2 noise limit is 82 decibels SEL for helicopters with maximum certificated takeoff weight at which the noise certification is requested, of up to 1,764 pounds and increasing at a rate of 3.01 decibels per doubling of weight thereafter. The limit may be calculated by the equation:

$$L_{AS(limit)} = 82 + 3.01[\log_{10}(MTOW/1764)/\log_{10}(2)] \text{ dB};$$

where MTOW is the maximum takeoff weight, in pounds, for which certification under this appendix is requested.

(b) The procedures required in this amendment shall be done in accordance with the International Electrotechnical Commission IEC Publication No. 804, entitled "Integrating-averaging Sound Level Meters," First Edition, dated 1985. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Bureau Central de la Commission Electrotechnique Internationale, 1, rue de Varembe, Geneva, Switzerland or the American National Standard Institute, 1430 Broadway, New York City, New York 10018, and can be inspected at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

Issued in Washington, DC, on September 11, 1992.

Thomas C. Richards,

Administrator.

[FR Doc. 92-22382 Filed 9-11-92; 8:45 a n]

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federal register

Wednesday
September 16, 1992

Part VI

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved amendment to Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority has approved the Amendment to the Preamble and section 1 of the Tribal-State Compact for Control of Blackjack on the Red Lake Band of Chippewa Reservation in Minnesota, which was approved on September 25, 1991.

DATES: This action is effective September 16, 1992.

ADDRESSES: Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, MS/MIB 4603, 1849 "C" Street, NW., Washington DC 20240.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Chief, Division of Tribal Government Services Bureau of Indian Affairs, Washington, DC 20240, (202) 208–7446.

SUPPLEMENTARY INFORMATION: This is to give notice of a change to the Tribal-State Compact between the Red Lake Band of Chippewa Indians and the State of Minnesota, which was published as a notice in the **Federal Register** in 56 FR 50222 on October 3, 1991. The compact has been amended by the Amendment to the Preamble and Section 1 of the Tribal-State Compact for Control of Blackjack on the Red Lake Band of Chippewa Reservation in Minnesota, enacted on July 9, 1992.

Dated: September 9, 1992.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 92–22380 Filed 9–15–92; 8:45 am]

BILLING CODE 4310-02-M

federal register

Wednesday
September 16, 1992

Part VII

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice

DEPARTMENT OF THE INTERIOR

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved amendment to Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary-Indian Affairs, Department of the Interior, through his delegated authority has approved the Amendment to the Preamble and section 1 of the Tribal-State Compact for Control of Class III Video Games of Chance on the Red Lake Band Chippewa Reservation in Minnesota, which was approved on August 2, 1991.

DATES: This action is effective September 16, 1992.

ADDRESSES: Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, MS/MIB 4603, 1849 "C" Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Chief, Division of Tribal Government Services, Bureau of Indian Affairs, Washington, DC 20240, (202) 208–7446.

SUPPLEMENTARY INFORMATION: This is to give notice of a change to the Tribal-State Compact between the Red Lake Band of Chippewa Indians and the State of Minnesota, which was published as a notice in the **Federal Register** in 56 FR 37956 on August 9, 1991. The compact has been amended by the Amendment to the Preamble and section 1 of the Tribal-State Compact for Control of Class III Video Games of Chance on the Red Lake Band of Chippewa Reservation in Minnesota, enacted July 9, 1992.

Dated: September 9, 1992.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 92–2238 Filed 9–15–92; 8:45 am]

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federal register

Wednesday
September 16, 1992

Part VIII

Department of Transportation

Office of the Secretary

14 CFR Part 207, et al.
Aviation Charter Rules; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 207, 208, 212, 294, 298, 380, 389

[Docket 48341; 92-14]

RIN 2105-AB91

Aviation Charter Rules

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Transportation is proposing a major overhaul of its charter air transportation regulations. This regulatory reform effort is designed to remove unnecessary burdens on airlines and charter operators (*i.e.*, companies that do not operate aircraft, but purchase and resell charter air transportation to the public) in order to foster competition and facilitate low-cost air transportation for the public. The proposal would eliminate the filing of prospectuses for Public Charters (those passenger charter flights which may be sold to the general public) and government regulation of so-called "major changes" and of specific terms of charter operator-participant contracts, while assuring that consumers have access to all contract terms and receive actual notice of important terms affecting price and refunds. It would also simplify financial security measures applicable to charter operators while retaining necessary protections for consumer payments to charter operators, and would remove bonding or escrow requirements applicable to direct air carriers. The proposal would further liberalize sales of charters by removing the prohibition against charter sales within seven days of departure by direct air carriers or charter operators affiliated with direct air carriers and by removing restrictions that inhibit consumers from making credit card payments to charter operators for Public Charters. In addition, the proposal would simplify and eliminate unnecessary requirements applicable to non-public charters (*i.e.*, single entity, affinity, and mixed charters), and would add provisions for the operation of gambling junkets. Finally, the proposal would consolidate parts 207 and 208 into a revised part 212, as well as remove various obsolete references and requirements.

DATES: Comments must be submitted on or before October 16, 1992. If adopted in a final rule, these amendments would take effect 30 days after publication of the final rule in the **Federal Register**.

ADDRESSES: Comments should refer to Docket 48341 and be submitted to: Dockets Section (C-55), room 4107, Office of the Secretary, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. The Dockets Section is open from 9 a.m. to 5 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Charles W. McGuire, Chief, Regulatory Analysis Division (P-57), Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 (202) 366-1037.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this rulemaking proceeding by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions. Communications should identify the regulatory docket number and be submitted in duplicate to the address listed above. Commenters wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments on Docket 48341." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date will be considered by the Assistant Secretary for Policy and International Affairs before taking action on any further rulemaking. Also, this proposal may be changed in light of comments received. All comments submitted will be available for examination in Docket 48341. A report summarizing each substantive public contact with DOT personnel concerned with this rulemaking will be filed in the docket.

Background

This rulemaking is in response to the President's memorandum of January 28, 1992, "Reducing the Burden of Government Regulation," which requested each agency to set aside a 90-day period to evaluate existing programs and regulations and to identify and accelerate action on initiatives that would eliminate any unnecessary regulatory burdens or otherwise promote economic growth. This proposal is the result of a comprehensive review of the Department's charter regulations, the deletion or modification of which should result in a reduced burden to the charter industry, with commensurate public benefits. Our aim through this proposed rule is to retain only such provisions as are needed to provide basic public protection and the regulatory tools necessary to carry out the nation's aviation policy.

The Public Charter industry is composed of nearly 300 charter operators and approximately 100 active U.S. and foreign air carriers. We estimate that over 4.5 million customers were carried on Public Charters during 1991 to destinations throughout the U.S. and the world. While the number of enplanements on domestic and international charters has been remarkably stable over the past 15 years, except for a large decrease between 1980 and 1983, the makeup of the three major components of the industry—charter operators, air carriers and the financial institutions that provide depository and surety services—has changed significantly: the industry has become more mature and stable.

Revision of the aviation charter rules had been the subject of proposed rulemaking for nearly a decade. An NPRM issued in 1982 by our predecessor agency, the Civil Aeronautics Board, proposed to liberalize substantially and simplify charter rules for both direct air carriers and charter operators (EDP-439/SPDR-86, 47 FR 7443, February 19, 1982). That proposal recommended eliminating all prospectus filing requirements on charter operators, as well as the restrictions on dealings between charter operators and direct air carriers. It also sought a new simplified registration and bonding requirement, and elimination of financial protection requirements on direct air carriers flying charters. The objective was to reduce the rules concerning charters to the minimum necessary for public protection. The proposal was not received favorably and, in 1983, a revised NPRM was issued (EDR-456/SPDR-88, 48 FR 15639, April 12, 1983). The revised NPRM retained the financial protections of the existing rules applicable to direct air carriers, as well as the surety and depository requirements and contract rules applicable to charter operators. The revised version of the rule received no more favorable support than the 1982 proposal and, in July 1991, the rulemaking was withdrawn (RIN2105-AA41, 56 FR 31092, July 9, 1991).

The Department acknowledges the many similarities between the changes we are proposing here and the 1982 NPRM. In preparing this proposal, we have reread and carefully considered the comments placed in the dockets in

response to both EDR-439 and EDR-456. The elemental changes in this document are responsive to many of those comments. We also acknowledge the comments submitted at the Department's invitation to Docket 47978 as a result of the President's regulatory review initiative. These inputs provided the Department with a valuable current industry viewpoint of the Public Charter rule which we find very helpful and expressive of needs in the 1990s. The Department is clearly driven, however, by the twin goals (1) reducing the burden of charter regulations while (2) maintaining appropriate protections for consumers.

With the move to deregulation that culminated in the changes brought about by the Airline Deregulation Act of 1978, Public Law 95-504, some of the original reasons for the charter rules disappeared. When the scheduled air transportation system was regulated by the Federal Government as a carefully allocated network of routes with a limited number of major airlines whose prices were also closely regulated, charters, with their substantially lower fares, were seen as a potential threat to scheduled service because they could "divert" significant numbers of passengers from scheduled flights and thereby alter the traffic assumptions and economics upon which the scheduled system was based. When the law changed to allow market forces to determine which carriers would fly where, their levels of service, and the prices they would charge, this rationale for restrictive rules disappeared.

The Department's current charter rules still impose limitations on direct air carriers flying charters that are relatively stringent compared with those relating to the operation of scheduled air service. The rules applicable to most direct air carrier charters (14 CFR parts 207, 208, and 212) still have detailed requirements concerning, for example, contracts with charters, records and record retention, time of payment, financial protection for deposited payments, and dealings with "single entity" and so-called "affinity groups." Similarly detailed requirements apply to Public Charter operators who sell charters to the general public (14 CFR part 380) including many specific provisions relating to the contracts between the charterer and the prospective passengers (*i.e.*, charter participants); procedures governing "major changes" in itinerary; detailed bonding and escrow rules, and filing and prior Department approval requirements. We are now tentatively of the opinion that it is in the public interest to remove or revise many of the regulations applicable to charters, foremost of which are changes to the Public Charter rules and to the financial security requirements for direct air carriers.[1]

Public Charters

The substantial body of current Public Charter requirements can be divided into three areas: (1) Rules pertaining to the filing of prospectuses and amendments; (2) rules concerning price changes, cancellations, itinerary change, and the contents of operator-participant contracts designed to protect participants' expectations; and (3) rules pertaining to passenger payments and the protection of those funds. We are proposing revisions in each of these areas.

Filing Requirements

Under the present Public Charter rules, a charter operator may not advertise or sell any charter flights to the public unless it has filed with the Department a prospectus under § 380.28. The prospectus contains details about the proposed charter program, including (1) the proposed flight schedule; (2) a statement signed by the charter operator and the direct air carrier that they have entered into a contract covering the flights and that it complies with applicable Department regulations; (3) a statement signed by the charter operator and its securer certifying that the required security agreement is in place; and (4) if applicable, a statement signed by the charter operator, direct air carrier, and escrow bank that they have entered into the required depository agreement. The Department has 10 days after it receives a prospectus to accept or reject it. During this 10-day waiting period, charters may not be advertised or sold. Any changes to the information set forth in the prospectus must be submitted to the Department in the form of amendments, which are subject to the same 10-day waiting period for acceptance by the Department and advertising and sales by the charter operator.

The present rules also require "mini prospectuses" to be filed by a direct air carrier operating a foreign-originating Public Charter on behalf of a foreign charter operator. These prospectuses must include basic information about the proposed charter flights, but do not require evidence of financial security arrangements (§ 380.42).

Under the proposed rules, the prospectus-filing requirements would be eliminated in their entirety. They would be replaced with an annual registration requirement for charter operators (new § § 380.4 and 380.5). A U.S. charter operator would file with the Department's Regulatory Analysis Division a simple form giving its name, address, telephone and facsimile (fax) numbers, names and nationalities of its principal stockholders (*i.e.*, those holding 10 percent or more of the voting stock), and certification that it has in place, and will maintain in place during the sale and operation of all charters, a security agreement that complies with the requirements of part 380 and a contract(s) with a direct air carrier(s) to furnish the necessary air transportation for the flights. The form would also require the name, address, telephone and fax numbers of the securer, the amount of the initial security agreement, along with any identifying number(s) assigned to that agreement, and a certification by the securer that the agreement meets the requirements of part 380. Charter operators would be required to notify the Department of any change in the required information within 10 days of the change.[2] Securers would be required to confirm any change in the security agreement, including its amount. The registration form would be filed in duplicate and a stamped copy would be returned to the charter operator indicating the due date of the next registration, which would be one-year after the previous filing.

Once a proper filing was made, a U.S. charter operator could begin sales immediately, provided it has a contract with a direct air carrier covering the charter transportation to be sold. Failure to have such contract before beginning sales would violate this rule (new § 380.3(d)) and would constitute an unfair and deceptive practice or unfair method of competition in violation of section 411 of the Federal Aviation Act (49 U.S.C. 1381). Although U.S. and foreign charter operators would be required to reregister every year, charter programs would not have to be set up to correspond with the registration period. The purpose of the annual registration is

[1] At this time, we are not proposing to make changes to the rules contained in 14 CFR Part 372 which apply to the operation of Overseas Military Personnel Charters. Those charters are limited to a narrow group of eligible participants, and reflect arrangements with foreign host countries that have been worked out over the years. However, we specifically request comments on whether separate rules for this type of charter are still required, or whether such flights could be incorporated under the Public Charter rules.

[2] § 389.25, Schedule of Processing Fees, would also be amended to establish a U.S. and foreign charter operator registration fee of $39 in place of the Public Charter prospectus fee of the same amount.

to ensure that the information that the Department has on each operator is accurate and complete and that only those companies actually engaging in Public Charter operations are registered.

The treatment of foreign charter operators would be slightly different. To enable the Department to make sure that adequate reciprocity was afforded by their homelands, foreign charter operators would have to be registered before beginning operations, as they must be now. In addition to the information required of U.S. charter operators, a foreign charter operator's registration application would include the operator's country of citizenship, its agent for service in the U.S., and an indication as to whether the operator was seeking authority to engage in interstate, overseas, or foreign air transportation (or any combination). As is now the case, any person wishing to object to a foreign charter operator registration would have 28 days after the Department receives the filing to do so. No charter operations could be conducted until after the period for filing objections and the Department's approval of the foreign charter operator's registration (new § 380.5).

Compliance with the registration requirements would entitle charter operators to exemptions from section 401 (certificates for U.S. carriers) and section 402 (permits for foreign carriers), as applicable, and other provisions of the Federal Aviation Act (new § 380.8). The Department could withdraw the exemptions from an individual charter operator if we found that there was a failure of effective reciprocity or a substantial ownership change warranting such action (for foreign entities only), that the charter operator had failed to adhere to the requirements of our rules, or that such action was otherwise warranted in the public interest. The Department could also reject the registration of a charter operator if the public interest so required, for example, where the registrant was a recent convicted felon or otherwise had an inadequate compliance disposition (new § 380.4(d)). In such an event, further advertising and sales by the charter operator would constitute violations of part 380 and sections 401 and 411 of the Act.

In 1991, Public Charter operators file over 750 prospectuses with the Department requesting approval of their flight prospectuses and financial security arrangements; during the first months of 1992, 375 prospectuses have been filed. In addition to these, hundreds of amendments to those prospectuses and over 1,800 requests for waivers, most of which were to allow sales to begin prior to the end of the 10-day waiting period, have been filed. Over $100,000 in fees were collected by the Department for these filings. Providing for an annual registration with no subsequent waiting time for advertising and sales to begin will result in substantial savings to the charter industry in time, paperwork requirements, and filing fees.[3]

Protection of Public Charter Participant Expectations

The current charter rules also contain provisions designed to protect the expectations of members of the public flying on Public Charters (§§ 380.30–380.33a). This group of requirements was adopted at a time when charters were growing rapidly in popularity and were beginning to handle a significant portion of the vacation travel market. Numerous complaints against charter operators about changes in advertised itineraries and of failures to deliver accommodations promised to passengers had been received by the Civil Aeronautics Board. In response, specific rules were issued on the content of contracts between charter operators and passengers, and provisions were imposed identifying "major changes" (hotels, flight dates, origin and destination cities, price) that were so significant that, if made, they would entitle passengers to cancel and claim a refund. Included were precise requirements regarding the time for notifying passengers of such changes and providing refunds, if necessary.

The Civil Aeronautics Board recognized when these requirements were adopted that they would impose additional costs on charter operations which would ultimately be borne by the traveling public. At that time, these costs were found to be justified by the fact that they included substantive protections for consumers against willful acts by charter operators that would seriously alter the service the customer expected and had paid for. Public Charters were already heavily regulated, with detailed requirements for prospectus filing, written contracts with all passengers, and bonding and escrow arrangements for handling passengers' money. While the rules appear, in general, to have succeeded in clarifying participants' rights in this area, and may be responsible in part for lowering the incidence of public complaints, the Department now desires to reassess whether this group of requirements is still justified, particularly when regulation of the airline industry has otherwise long been drastically reduced. We further believe that airline customers have become far more accustomed to restrictions on scheduled service discount fares and are better able to make an informed choice as to their travel arrangements than when these protective charter rules were adopted over ten years ago.

The Department is, therefore, proposing to eliminate the specific "Major Change" provisions contained in § 380.33 which require that participants be offered the right to a full refund if specified changes are made in the departure or return date, origin or destination city, hotel, or price. In the case of charters to the Super Bowl that include the promise of tickets, failure to provide the tickets is also considered a major change (§ 380.18a).

Keeping in existence the rules intended to protect participants' expectations may be more costly than justified by the benefits, particularly since they may unnecessarily restrict the ability of charters to compete with scheduled services which are not subject to similar rules. Whenever possible, the Department seeks to remove regulatory impediments to competition where it appears that the market and the normal processes of private dispute resolution will, in the main, arrive at satisfactory results for the concerned public. Charters no longer command a substantial price advantage over scheduled service. In the case of problems with passengers' expectations as to the contents and details of their charter trips, we now see no reason why the operators' own commercial incentive for reasonably satisfying their customers, along with the possibility of legal action where significant problems remain unresolved, should not be sufficient to ensure fair treatment of the public as a general matter. The Department will continue to be available for aid in dispute resolution, or for the issuance of new rules where any difficulties appear widespread and necessitate such action. In addition, § 380.27 has always prohibited charter operators from engaging in unfair or deceptive practices and the Department will continue to enforce this section (new § 380.11). Moreover, § 399.87 already states that it is an unfair and deceptive practice to advertise or accept payments for trips to the Super Bowl, on either scheduled or charter service, that

[3] The proposed registration procedure will also allow us to eliminate the separate rules applicable to Special Event charters (§ 380.18), which permit the filing of prospectuses on less than 10-days notice when the charter is for a significant event, such as a championship sporting event, that could not be arranged sufficiently far in advance to comply with the 10-day filing requirement.

include the promise of tickets unless the operator has those tickets to sell.

We also believe that individual airlines that depend on charter flights for much-needed revenue will step in to assure consumer satisfaction. Leaving airlines and charter operators free of regulation in their day-to-day charter activities would minimize administrative and opportunity costs and allow charters to be more readily available, flexible, uncomplicated, and competitive. We are not, however, prepared to relieve direct air carriers of the responsibility to return passengers whom they transported on an outbound leg of a trip for which the passenger purchased round-trip transportation and who may become stranded as a result of a charter operator's business failure.[4] That responsibility will continue and will be expressly stated in new § 212.3(c).

We are also proposing to eliminate detailed regulation of the contents of operator-participant contracts (§ 380.31), as well as the current prohibition on accepting charter participant payments without first obtaining a signed operator-participant contract. However, charter operators would still be required to provide prospective participants with notice of, and access to, conditions imposed by the operator (new § 380.7) in a manner similar to the requirement for scheduled service (14 CFR part 253). Moreover, participants would have an opportunity after reviewing the contract to cancel the reservation and receive a full refund. To the extent that an operator wished to rely on conditions, the operator would have to give each participant, at the time of the sale, a brief notice similar to the one in § 253.5. This notice would state:

(1) The operator's name and address, and the name of the direct air carrier performing the flight;

(2) That this is a charter flight and it is subject to a contract, a copy of which is available free upon request, and the procedures for obtaining a copy;

(3) The details of any terms by which the operator reserves the right to change outbound or return cities or dates, to cancel or divert the charter at any time, or to raise prices at any time for participants who have already booked;

(4) The terms describing the participant's cancellation and refund rights if any of the events described in paragraph (3) above occurs;

(5) The terms describing the participant's right to a refund if he or she voluntarily changes plans;

(6) The terms describing the operator's baggage liability to passengers, if any, and the baggage liability to passengers of the direct air carrier operating the charter; and

(7) The name and address of the surety company, and the provisions for submitting claims.

This notice could be part of the charter operator's brochures or other solicitation materials. Just as with scheduled service, if a participant does not receive such notice, he or she will not be bound by any term restricting refunds, imposing monetary penalties, or allowing the operator to change the itinerary or raise prices.[5] Moreover, the full contract must be mailed promptly to anyone who requests it, including prospective participants who have not yet booked. The proposed rule would also provide that, if a person purchases a charter and requests the full contract within five days of the purchase, his or her payment shall be fully refundable if he or she cancels within five days after receiving the full contract, or by the day of the flight, whichever is earlier. We tentatively conclude that such notice provisions strike a reasonable balance between the existing burdensome requirement that charter operators must adhere to specific terms and conditions set by the Department and must refrain from accepting participant payments without first receiving a signed contract, and the rights of consumers to be fully informed as to the conditions under which they are purchasing charter air transportation.

Protection of Charter Participants' Fund

The current charter rules also contain requirements for the protection of charter participants' funds by both direct air carriers and Public operators. Public Charter operators must obtain either (1) a surety bond or trust agreement in an amount equal to the charter price for the air transportation if air-only or, if land arrangements are involved, in an amount equal to one, two, or three times the price of the air transportation depending on the duration of the charter, or (2) a surety bond or trust agreement in the amount of $10,000 per flight up to a maximum of $200,000 for 20 or more flights plus a depository (escrow) account at a bank into which all passenger funds must be placed and may not be removed except under specified conditions (§§ 380.34, 380.34a, 380.35).

Direct air carriers conducting charter flights are required to establish either (1) a surety bond in an unlimited amount, or (2) an escrow account into which all charterer payments are to be deposited until after the flight is operated (§§ 207.17, 208.40, 212.12). The direct air carrier requirements apply to all U.S.-originating passenger charter flights, including Public and "non-public-type" charters, as well as Overseas Military Personnel Charters originating outside of the United States. Moreover, direct air carriers using escrow accounts that engage in direct sales of Public Charters (*i.e.*, without using an independent Public Charter operator) are required to meet the bonding requirements of Part 380 applicable to Public Charter operators.

When the financial security requirements applicable to direct air carriers were adopted, airlines specializing in charters tended to be smaller and less capitalized than those providing scheduled service; however, since airline deregulation, the historical differences between charter and scheduled airlines in the United States have gradually diminished. Air carriers proposing to operate charters are now subject to the same initial and continuing "fitness" requirements as carriers conducting scheduled service. Indeed, there are certificated charter carriers that presently serve more airports in the United States and may be more financially stable than certain certificated schedule carriers. In addition, many carriers that operate charters also provide scheduled service. While both charter and scheduled carriers currently bear the regulatory burdens of having to obtain a bond or escrow when operating charter flights, we question the need for imposing such requirements on charter operations when they are not applicable to scheduled flights which carried over 95 percent of all passengers transported in 1991. We, therefore, tentatively conclude that the present financial security requirements applicable to direct air carriers conducting charters are unnecessary and we propose to eliminate those requirements found in parts 207, 208, and 212.[6]

We are not, however, prepared to eliminate all requirements aimed at protecting consumer funds when handled by charter operators. Charter

[4] *See Arrow Air, Inc.* v. *Dole*, 784 F.2d 1118 (D.C. Cir. 1986).

[5] On telephone sales, this notice must be mailed to the participant within two business days after the call.

[6] Direct air carriers conducting direct sale Public Charters would also be relieved of the financial security requirements applicable to Public operators. Moreover, U.S. and Canadian air taxi operators that conduct Public Charters are also subject to the financial security requirements applicable to direct air carriers. Under the proposed rule, those requirements, contained in §§ 298.34 and 298.32, would also be eliminated.

operators are not required to undergo fitness determinations as are direct air carriers. Those fitness determinations include a review of the direct air carrier's financial condition, management, and compliance disposition, and they assure at least a threshold level of funding to support the airline's operations. Charter operators, on the other hand, may collect several hundred thousand dollars for a single planeload of charter passengers, with very little expenditure of capital other than advertising costs, and with no financial backing. Over the years, there have been cases in which both large and small charter operators have ceased operations in the middle of charter programs and have been unable to provide their passengers either with the transportation already paid for or with refunds.

Accordingly, certain protections for charter participants' funds, through bonding and escrow requirements, have been necessary. In those cases involving failure of a charter program, the financial security measures required by the Department's rules have provided affected passengers with a source of funds for payment of claims in addition to whatever assets the charter operator had remaining.

On the other hand, we are concerned that the present financial security requirements, particularly the depository account requirements which restrict the charter operator's use of its revenues, may be unduly burdensome on or costly to charter operators. We are tentatively of the view that a simpler financial security system might relieve unnecessary burdens while continuing to provide a measure of protection for charter participants' funds. The Department is therefore proposing to substitute one or more of the financial protection options discussed below for the present surety/escrow options available under § 380.34 of the Public Charter rules.

Not all parties who commented on prior proposed Public Charter rule changes, or in response to the Department's recent invitation in Docket 47978, felt that the current financial protection system was unnecessary or so burdensome on charter operators that it should be amended. Accordingly, in addition to requesting comment on any of the options noted below, we request comment on whether we should retain the current surety/escrow system as it pertains to charter operators.[7] We specifically ask that commenters address not only the issue of whether financial protection continues to be necessary, but the specific costs associated with the present financial security requirements and those proposed as possible replacements.

We are therefore considering as financial security options the current surety/escrow system and the following alternatives (none of which retains an escrow requirement):

(1) A security agreement[8] in an amount of at least $30,000 times the number of flights up to a maximum of $600,000;

(2) A security agreement sufficient to cover the cost of air transportation sold but not yet provided to consumers. Under this "rolling bond" alternative, the amount of the security could increase or decrease over time as the number of charter participants who have paid but have not completed their travel changes;

(3) A requirement that U.S. or foreign direct air carriers participating in Public Charter programs bear financial responsibility for passenger funds paid for charter air transportation (*i.e.*, by either refunding monies paid or providing the transportation for which it was paid) in the event of insolvency or other failure to perform by the charter operator;

(4) A security agreement in an amount not less than the charter price for the air transportation (whether or not the charter flights being sold include land accommodations); or

(5) A security agreement in an amount not less than the cost of the charter trip paid by the participant, including air transportation and land accommodations, if applicable.

We are also tentatively of the opinion that, under any option relying upon a charter operator security agreement,[9] the direct air carrier must make a reasonable effort to verify that the charter operator has met the Department's financial security requirements, as well as the other requirements of part 380. Should the direct air carrier fail to make such a reasonable effort, it would bear the responsibility to provide the charter transportation or refund the air transportation portion of the passenger payments in the event of the charter operator's failure to perform. Such a rule would reduce government oversight of the charter industry and minimize the potential for harm to consumers from charter operators entering into contracts for charter transportation without having in place the requisite financial security arrangements. This proposed rule is similar to § 380.40 of our present Public Charter rules, which states that the direct air carrier shall make a "reasonable effort" to verify compliance with all provisions of the Public Charter rules.

While all but the last of the above proposals might cover only a portion of the total outstanding payments for a charter flight or series of charter flights, they nonetheless offer some important protections. Such security arrangements act as a minimal financial screening device and introduce another party, the securer or the direct air carrier, that would have a clear incentive to be satisfied with the charter operator's competence, honesty, and solvency. Given the unique financial risk inherent in the sale of air travel by charter operators that have not been required to meet our fitness requirements, we tentatively conclude that the public benefits of any of the proposed requirements outweigh the cost of compliance.

The third option opens a significantly different approach to the specific question of financial protection. This option would be modeled on the several orders affecting contract bulk fare air transportation.[10] Comments of interested parties to the last two charter NPRMs and assertions made by industry representatives in various forums since the last government examination of the issue underscore the imbalance that exists between persons who market charter programs and the rest of the tour operator industry. Their plea is simple: put us on the same footing with the purveyors of the scheduled service forms of tours. They seek the same level of flexibility as the bulk fare operator, *i.e.*, no filing or registration provisions,

[7] Although we are proposing a number of financial security alternatives, for the sake of simplicity, the draft rule incorporates only language applicable to the first option—the $30,000/$600,000 security agreement. If any of the other options is chosen, appropriate amendments will be included in the final rule.

[8] The term security agreement would be defined as it is today to include a surety bond, a surety trust agreement, or letter-of-credit that provides protection equal to or greater than that provided by a bond (*See* new § 380.2). For purposes of determining the amount of the agreement, the agreement would need to cover all one-way or round-trip flights which the Public Charter operator will actively advertise, sell, or operate at any one time, including any flights which may be completed but are within the 60-day period for the filing of claims.

[9] This would include options 1, 2, 4, and 5 above, as well as any security agreement that might be applicable were we to retain our current surety/escrow system of financial security.

[10] *See* Orders 80-2-112, 80-11-24, 81-7-109, 82-3-132, 86-9-81, and 88-9-2.

no terms for financial protection of consumer monies, and no requirements for contracts with consumers.

The principle applied under this approach would be to treat the charter operator as a primary participant in the process, but not the bearer of the entire entrepreneurial responsibility. The operator would contract with direct air carriers through "marketing programs" in which the operator would assume the inventory risk as it already does with respect to contract bulk fare air transportation. Similarly, the direct air carrier would retain the ultimate responsibility for financial and other consumer protection duties as it now does in contract bulk fare operations on scheduled service. Thus, the direct air carrier would have the incentive to ensure that the operator was taking adequate steps to protect consumer monies, because in the end the airline would be responsible to provide the air service or return the air transportation portion of the payment, as is the case with bulk fare arrangements as well as other scheduled airline service.

We also recognize that the proposed options that require security only in the amount of the price of the air transportation paid by the passengers may be subject to abuse. In this regard, in arranging its security agreement, a charter operator may attempt to "allocate" only a small portion of the total cost of an air/land package to the air transportation to be provided. Although failure to full fund a security agreement could violate the certification that we propose to accompany a charter operator's registration, and thereby subject the violator to criminal penalties for false statements in addition to civil penalties for violations of our rules, there may be additional ways to discourage any such abuse.

One solution would be for the Department to require charter operators to state separately their prices for air and land and make available for purchase the air-only portion of a charter flight. An alternative would be to impose a specific rule requiring charter operators to retain records sufficient to demonstrate the separate cost to consumers of the air transportation portion of an air/land charter package. We are tentatively of the view that the former requirement would be too intrusive into the marketplace, because certain charter flights may only make sense economically when sold as an air/land package. Furthermore, it may be that the latter requirement regarding recordkeeping may do little to dissuade those truly intent on abusing our rules. We, therefore, invite comment on the manner in which we might deal with this potential problem.

Depending on the financial security option adopted by the Department, the required security agreement would have to be maintained as long as the charter operator continues to sell and operate charters. The securer would be responsible for notifying the Department if the agreement was canceled or modified to reduce coverage, and would be held liable in the full amount if such notification was not made (new § 380.6(e)). Moreover, as is the case under the present rule regarding security agreements, participants would have 60 days after the date they should have completed their travel to submit a claim against the agreement, or against any direct air carrier should we adopt the option requiring direct air carriers to bear responsibility for charter participants' funds. The securer's obligation, to guarantee payment of a refund on the basis of failure of the charter operator to provide transportation or a timely refund, would be explicitly stated in the rule, and the failure of the securer to pay would be a violation of the rule.[11] Any required security agreement would be considered "impaired" (and thus would require replenishment of coverage) if either a judgment was obtained against the principal or the securer admitted a claim.

Use of Credit Cards

We have also tentatively concluded that the provisions in the current rules that inhibit the use of credit cards in payment for Public Charter transportation are no longer desirable. Although credit cards are a widely accepted form of payment for most purchases, including most air transportation, the Public Charter regulations as currently written inhibit the use of credit cards to purchase charter transportation. This is because the present consumer protection rules require that payments to charter operators by or on behalf of participants be by check or money order payable to the escrow bank (§ 380.34(b)(2)(i)) and prohibit charter operators from accepting payments without the paying customer's first having signed an operator-participant contract (§ 380.31(a)). The proposed amendment permitting credit card sales would give consumers and charter operators an added degree of flexibility, while enhancing the consumer protection provisions of the regulation.

The present situation regarding use of credit cards to purchase charter transportation is inconsistent with the reality of today's marketplace. Since part 380 was first promulgated in 1978, use of credit cards by consumers for their travel arrangements has increased dramatically. For example, credit card bookings through travel agencies in September 1991 accounted for a record 72.91 percent of all sales. (*TRAVEL WEEKLY*, October 28, 1991, at 1, 4, reporting figures of the Airlines Reporting Corp.; in 1983, this figure was 46%.)

Payment by credit card also offers several advantages over payment by check or money order. Under the Consumer Credit Protection Act, consumers gain additional protections when they use a credit card to pay for goods and services. As a general matter, if a consumer does not receive or has a problem with goods or services purchased using a credit card, the consumer may not be required to pay any remaining amount due on the goods and services and may in fact get a refund on his or her credit card bill for amounts already paid. Moreover, several credit card issuers have established affiliations with airline frequent flyer programs, under which credit card users may obtain frequent flyer mileage with each use of a particular credit card.

The Department's own limited experience with credit card usage for Public Charter transportation supports the view that consumers prefer to use credit cards to pay for charter flights and that consumers and charter operators alike can benefit from a change in the Public Charter rules to facilitate such use.

In summary, the Department is of the opinion that allowing direct credit card sales of charter fights by charter operators is in the public interest because it will increase the options of both consumers and operators of Public Charters while at the same time providing an additional measure of protection for charter participants.

We recognize that if we adopt a charter rule containing one of the new financial security options described above and we also determine to eliminate the requirement of a signed operator-participant contract at the time of sale, any impediment to the use of

[11] Under the current rule, there have been instances where the amount of the security agreement has been insufficient to pay participants the refunds to which they are entitled. We invite comments on when a securer should begin paying timely claims and in what amount. For example, if a charter operator shuts down after receiving payments toward trips extending eight months into the future, should the securer pay claims as it receives them or wait and prorate them at some future date.

credit cards as a form of payment for charters will be eliminated. Should we determine to retain our present financial security arrangements, which include the use of depository accounts, we propose to amend § 380.34(b)(2)(i), as it may be numbered, specifically to allow charter participants to pay by credit card, as well as by check or money order, and to require that credit card payments be forwarded from the credit card issuer bank directly into the charter operator's escrow merchant account.

Direct Air Carrier Rules

In addition to the rules in part 380 applicable to Public Charters, parts 207, 208, and 212 contain additional rules applicable to the operation of charter flights by U.S. scheduled, charter, and foreign air carriers, respectively. Aside from the financial security requirements for direct air carriers, which we are proposing to eliminate,[12] these rules can be divided into three areas: (1) Rules dealing with the relations between the direct air carrier and the charterer; (2) rules applicable to other charter types, which are discussed below; and (3) rules relating to operational limitations.

Relations Between Direct Air Carriers and Charterers

The current charter rules contain detailed requirements on the contents of contracts between the direct air carrier and the person or company chartering the flight (the charterer).[13] These requirements include payment schedules, cancellation provisions, and the conditions under which certain passengers may be carried (§§ 207.4a, 207.13, 207.22, 207.25, 208.31b, 208.32, 208.201, 208.202b, 212.7, 212.8, 212.22 and 212.25). The Department finds little basis for rules intended, at least in part, to regulate dealings between business enterprises in a system that depends on market forces to determine the services and prices offered. In this context, there is no public interest reason for the government to oversee whether persons managing the enterprises involved in chartering aircraft are capable of choosing carefully the businesses with which they deal and arranging their contracts with appropriate protections. The very existence of a body of government rules in this area that must be learned and observed by those who would use the charter form of transportation, even if the rules considered individually are not onerous, limits flexibility in what is basically a private contractual matter and imposes added costs with little if any corresponding public benefit. While we will continue to require that a charter contract be in place before charter flights may be operated (new § 212.3(c)) or, in the case of Public Charters, advertised or sold (new § 380.3(b)), we no longer intend to specify the contents of these contracts.

Other Charter Types

Rules for single entity and affinity group charters predate the adoption of the Public Charter rules and most of the other rules that have allowed sale of charter seats to members of the general public. Under the single entity rules (§§ 207.50–207.53, 208.300–303, 212.50–212.53), passengers pay no monies, directly or indirectly, for the cost of the charter flight; that cost is borne by the "single entity" chartering the aircraft. A charter by a professional sports team, where the cost of the flight is borne completely by the sports team and not by the players and coaches who are passengers on the flight, is a single entity flight.[14] Since single entity passengers bear no risk of financial loss, rules designed to protect passenger payments or expectations on flights sold to the public (such as from changes in dates, price, or points served) were never deemed necessary, and single entity charterers were thus relieved of the prospectus filing, financial security, and operator-participant contract provisions imposed in the Public Charter rules.

Under the pro rata/affinity rules (§§ 207.20–207.47, 208.22–208.217, 212.20–212.47), an organization whose purpose is something other than to provide transportation services to its members, such as a school, church, or fraternal group, is permitted to charter aircraft and offer seats to bona fide members of the organization and their immediate families. Business establishments and offices may similarly arrange for charters on behalf of their employees. Costs of such charter flights are divided equally, *i.e.*, prorated, among the charter participants. Because participants would have an on-going relationship—an affinity—with the chartering organization, consumer protection rules were never deemed necessary for such flights. However, detailed rules on the qualifications and activities of affinity groups were imposed to ensure that the members of the groups were genuinely associated and not just members of the public assembled by charter operators seeking to evade the Public Charter rules.

The "mixed charter" is a hybrid of the single entity and affinity charters, that is, the charter participants must meet the qualifications for an affinity group, but rather than the cost of the charter being pro rated among those participants, part of the cost is borne by the chartering organization (§§ 207.60, 208.400, 212.60). A charter sponsored by a company on behalf of its employees, where part of the cost is paid by the company and the rest by the employees themselves, is an example of a mixed charter.

It seems clear that there continues to be a demand for single entity, affinity, and mixed charters, and that rules that specifically relieve those charter types from the requirements applicable to Public Charters, even as we propose to modify them here, are still appropriate. We further believe that the rules applicable to these non-public charter types—which have not been updated in several decades—can be simplified or, in many cases, eliminated. Specifically, we have tentatively decided to remove the requirements that single entity, affinity, and mixed charter groups complete the detailed "Statement of Supporting Information" form (Appendix B to parts 207, 208, and 212) which requires, among other things, a description of the organization, the purpose of the flights, whether commissions have been paid in connection with the charter, and, for mixed and affinity flights, such items as how the charter price was calculated, whether other charters have been operated on behalf of that organization, how passengers were solicited for the flight, and how long participants have been members of the chartering organization. Requirements that passenger lists be provided to the direct air carrier identifying the relationship of each passenger to the chartering organization, the date the passenger joined the organization, and whether they are travelling one-way or round-trip (§§ 207.45, 208.215, and 212.45) would be replaced with a requirement that the chartering organization provide a certification to the direct air carrier that all passengers on the charter are eligible for such transportation under the affinity rules (new § 212.5(f)). We also propose to simplify the requirements pertaining to how affinity and mixed charter passengers may be solicited (§§ 207.40, 208.210, and 212.40) and to liberalize the definition of

[12] *See* discussion on *Protection of Charter Participants' Funds.*

[13] In the case of Public Charters, the Public Charter operator is the charterer.

[14] Another type of single entity charter is a charter to another direct air carrier. This is commonly known as a "wet lease," *i.e.*, the lease of an aircraft (or part of its capacity) with crew. Where only part of the capacity is so leased, the charter arrangement may be called a "blocked space" arrangement.

"immediate family" (§§ 207.42, 208.212, 212.42) to allow spouses, parents, and children of the member to participate whether or not they are living in the member's household (new § 212.5(c)). Rules pertaining to the operation of such charters are contained in new § 212.5. Finally, we intend to change the reference to pro rata charters in our current rules to include the word "affinity" since that is the name by which this charter type is commonly referred.

We are undecided, however, as to whether rules pertaining to yet another charter type—those conducted by educational institutions on behalf of participants in a formal academic course of study abroad—continue to be required. Under § 380.17, schools conducting such charters must file a one-time statement with the Department certifying that they meet the eligibility requirements of part 380. Such institutions are relieved of the prospectus-filing and financial security requirements applicable to Public Charter operators, but are subject to the remainder of the Public Charter rules, including the operator-participant contract requirements. Since we do not receive prospectuses for these flights, we have no means of determining whether such charters are still being operated and, thus, whether there is a need to retain rules for this type of charter. Our tentative view is to retain educational institution charters as a type of Public Charter (new §§ 380.2 and 380.3(g)), subject only to the registration and proposed notice-of-contract requirements applicable to Public Charter flights; however, we specifically request comments on whether this charter type is still required.

Another form of charter that has become popular is the so-called "gambling junket," *i.e.*, a charter operated by or on behalf of a hotel or casino to transport passengers to those establishments in order to gamble. In 1977, the Civil Aeronautics Board granted a blanket waiver of the single-entity rules to direct air carriers to allow the operation of gambling junkets where certain conditions were present, as long as passengers did not incur any expense in taking the trip.[15] We are of the tentative view that the terms of this blanket waiver should be codified in the proposed rules as a new charter type (new § 212.6). Gambling junkets which do not meet the proposed conditions would continue to be conducted under the Public Charter rules.

Operational Provisions

Many of the provisions of parts 207, 208, and 212 are identical and thus duplicative. We are proposing to modify the substantive provisions of those Parts and to consolidate parts 207 and 208 into a revised part 212. Parts 207 and 208 would continue to exist, but would contain only an applicability statement and a general reference to the requirements of part 212, as is the case with part 214.[16] This approach is intended to avoid the confusion that outright removal of parts 207 and 208 might cause, particularly since a number of Department and Civil Aeronautics Board orders are in effect that refer or require adherence to the requirements of either or both of those Parts.

As revised, part 212 would define the types of charters that could be operated by U.S. and foreign air carriers and would allow the operation of those charter types except as restricted by statute, the carriers's operating authority, any bilateral undertaking, or Department rules or action (new §§ 212.1 and 212.4). For example, carriers holding certificates to operate cargo service only would be restricted to cargo charters (new § 212.3(f)(5)). Moreover, prior Department approval in the form of a statement of authorization would be required before a U.S. or foreign air carrier could operate certain types of charters (new §§ 212.8 and 212.9). U.S. air carriers holding certificates to engage in either scheduled or charter operations would be permitted to conduct both domestic and foreign charters as long as the operation of those charters did not constitute a "substantial change in operations" for that carrier as defined in part 204 of the Department's rules (new § 212.3(f)(2)).[17]

As drafted, the proposed rule would not retain the minimum contract size of twenty (20) seats for less-than-planeload charters (new § 212.3(b)). Our tentative view is that this restriction has not been burdensome in the past, but that such a limitation is no longer required under our new simplified regime. However, we are concerned that removal of a contract size may open the doors to abuse of the rules (*e.g.*, a planeload of one-person charters) and we are particularly interested in comments on this issue.

Under the proposal, direct air carriers would continue to be responsible for ensuring that any charters they conduct met the requirements of the charter rules—that is, Public Charter operators would have to meet the filing and financial security requirements of part 380, and single entity or affinity charters would have to meet the definitional requirements for those charter types (new §§ 212.3(d) and 212.5(f))—and would be free to establish whatever contractual requirements they deem necessary in order to ensure compliance with the rules. Direct air carriers would also be responsible, as they have been in the past, for providing return transportation to any charter passenger who has purchased round-trip transportation and whom they transported on an outbound flight, unless that passenger's return flight is covered by a contract with another direct air carrier (new § 212.3(e)).

The revised part 212 would continue to authorize sales of charters directly to the public by direct air carriers or affiliated charters (§§ 207.70–72, 208.500–502, and 212.70–72), but would remove, for the most part, the present restrictions on when those seats may be sold (new § 212.7). At present, a direct air carrier may not sell a seat to a charter participant within seven days of the scheduled departure of a charter flight. A similar prohibition applies to charter operators that are under common control with a direct air carrier where the transportation is to be provided by the affiliated carrier (§ 380.25a). This rule was originally designed, in major part, to maintain a distinction between charter and scheduled services. As a general matter, we see no reason to maintain this artificial difference, and we therefore propose to eliminate the restriction on direct sales within seven days. However, the proposed rule would allow the Department to limit or prohibit the operation of direct sale Public Charters by a foreign air carrier if we find that such action is necessary in the public interest.

The Department also proposes to delete the special provisions for amenities and substitute transportation during charter flight delays by charter air carriers in §§ 208.32a–208.33. We see no justification for requiring this on

[15] Specifically, the CAB stated that casinos or hotels could require prospective passengers to pay nominal reservation fees that were fully refundable before the flight, to establish a minimum line-of-credit at the casino, to bring (but not necessarily spend) a specified minimum amount of money, or to meet other requirements that did not place the passenger in financial jeopardy; optional land packages could also be offered. (Order 77–6–64. *See* Orders 91–7–36 and 91–9–43.)

[16] Part 214, which applies to foreign air carriers authorized to conduct charters only, provides that any charters conducted by these carriers must meet the requirements of Part 212.

[17] For example, a U.S. direct air carrier holding a domestic scheduled certificate and conducting operations with "small aircraft," *i.e.*, with under 60 seats, could not conduct charter operations either domestically or internationally using large aircraft without meeting the substantial change requirements of 14 CFR Part 204.

charters when we don't require it on scheduled flights. Both direct air carriers and charter operators have a commercial interest in providing suitable amenities for passengers who are caught in flight delays, or in arranging for alternate transportation if these delays are extensive. We are of the opinion that the marketplace will deal adequately with this need, as it has with respect to scheduled air transportation, and that the rules are no longer required. Moreover, carriers that engage in unfair or deceptive practices in this area will remain subject to enforcement action under § 411 of the Act.

Other Changes

Because of the scope and number of changes we are proposing to the charter rules, we propose to reissue parts 207, 208, 212, and 380 in their entirety. This will also enable us to reorganize the parts in a more logical fashion, replace references to the Civil Aeronautics Board and its offices with appropriate references to the Department, and eliminate definitions and rules which are obsolete or have become unnecessary under the proposed simplified and more liberal regulatory scheme.[18] These include such items as the filing of notices by U.S. scheduled air carriers proposing to operate "special services" (§ 207.8), limits on providing substitute transportation of passengers in an emergency (§§ 207.14, 208.36, 212.9), minimum service requirements for charter carriers (§ 208.25), the operation of military backhaul charters (§§ 208.100–150), procedures for restricting the operation of Public Charters (§ 380.5), and rules on charter types that no longer exist (§ 380.19). To the extent that any person believes that any of these provisions, or others that are being eliminated, should be retained or revised in the new rule, we request that these provisions be identified specifically in the comments with the reasons why they should be maintained.

If the proposed revisions to parts 207, 208, 212, and 380 are adopted, conforming amendments (cross-references, etc.) will be made as appropriate to other parts of 14 CFR chapter II.

[18] With respect to these regulations, this rulemaking supersedes RIN 2105–AB84, Docket 47939, 57 FR 3388, January 29, 1992.

Executive Order 12291, Federalism Assessment, Regulatory Flexibility Act Analysis and Paperwork Reduction Act of 1980

This proposed action has been reviewed under Executive Order 12291, and it has been determined that, while it is not a major rule and will not result in an annual effect on the economy of $100 million or more, it is expected to provide an annual savings of at least $5 million to the aviation charter industry which can be passed along to the traveling public. There will be no increase in production costs or prices to consumers, individual industries, Federal, State or local governments, agencies or geographic regions. Furthermore, the proposed rule would not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, a preliminary regulatory impact analysis is not required. The proposed rule is considered significant under the Department's Regulatory Policies and Procedures, dated February 26, 1979, because it concerns a matter of substantial public interest and was submitted as a High Priority Administrative Action in the Department's Report to The President: Review of Regulations, dated April 22, 1992. The projected economic and regulatory impact of these amendments may be found in the Regulatory Evaluation contained in the public docket. A copy of that evaluation may be obtained by contacting Charles W. McGuire, Chief, Regulatory Analysis Division, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 (202) 366–1037.

The Department has considered the implications of this proposed action under the requirements of Executive Order 12612, *Federalism*, and has determined that the preparation of a Federalism Assessment is not warranted. The regulations herein would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibility among the various levels of government.

For purposes of the Regulatory Flexibility Act, the Department recognizes that approximately 300 business entities, known commercially as charter operators, as well as 100 direct air carriers would receive administrative and economic benefits in these proposed amendments to the rule. Benefits would accrue with the decreased reporting requirements, elimination of the requirement for direct air carrier bonding or escrow accounts and removal of restrictions on the advertising and sale of charter programs.

The reporting and regulatory requirement associated with this rule has been submitted to the Office of Management and Budget for approval in accordance with 44 U.S.C. chapter 35 under *OMB No.:* 2106–0033; *Administration:* Department of Transportation, Office of the Secretary; *Title:* Aviation Charter Rules; *Proposed Use of Information:* To relieve charter operators and direct air carriers from parts of title IV of the Federal Aviation Act, and to retain a limited authority over the conduct of charter flights; *Frequency:* Annual; *Burden estimate:* 620 hours; *Respondents:* Charter operators; *Forms:* one—(see Appendix); *Average Burden Hours Per Respondent:* 1 hour and 40 minutes. For further information contact: The Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–1887. Comments on the proposed information collection requirements should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503, Attention: Desk Officer for OST. Comments addressed to OMB should also be sent to the OST Docket (No. 48341) for this proposed rule.

List of Subjects

14 CFR Parts 207, 208, 212, 380

Air carriers, Air transportation, Charter flights, Reporting and recordkeeping requirements, Surety bonds.

14 CFR Parts 294, 298

Air carriers, Air taxis, Air transportation, Canada, Charter flights, Surety bonds.

14 CFR Part 389

Administrative costs, Airline regulation, Fees for services.

For the reasons set out in the Supplementary Information, title 14, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

1. Part 207 is revised to read as follows:

PART 207—CHARTER TRIPS BY U.S. SCHEDULED AIR CARRIERS

Sec.
207.1 Applicability.
207.2 Terms of service.

Authority: 49 U.S.C. 1301, 1302, 1324, 1326, 1371, 1372, 1373, 1374, 1377, 1381, 1386, 1387, 1388, 1482.

§ 207.1 Applicability.

This part establishes the terms, conditions, and limitations applicable to charter air transportation conducted by air carriers holding certificates under section 401(d)(1) of the Act authorizing the operation of scheduled air transportation services.

§ 207.2 Terms of service.

Charter air transportation under this part shall be performed in accordance with the provisions of part 212 of this chapter.

2. Part 208 is revised to read as follows:

PART 208—CHARTER TRIPS BY U.S. CHARTER AIR CARRIERS

Sec.
208.1 Applicability.
208.2 Terms of service.

Authority: 49 U.S.C. 1301, 1302, 1324, 1326, 1371, 1372, 1373, 1374, 1377, 1381, 1386, 1387, 1388, 1482.

§ 208.1 Applicability.

This part establishes the terms, conditions, and limitations applicable to charter air transportation conducted by air carriers holding certificates under section 401(d)(3) of the Act authorizing the operation of charter air transportation services.

§ 208.2 Terms of service.

Charter air transportation under this part shall be performed in accordance with the provisions of part 212 of this chapter.

3. Part 212 is revised to read as follows:

PART 212—CHARTER RULES FOR U.S. AND FOREIGN DIRECT AIR CARRIERS

Sec.
212.1 Scope.
212.2 Definitions.
212.3 General Provisions.
212.4 Authorized charter types.
212.5 Operation of affinity (pro rata) charters.
212.6 Operation of gambling junket charters.
212.7 Direct sales.
212.8 Prior authorization requirements.
212.9 Applications for statement of authorization.
212.10 Issuance of statement of authorization.
212.11 Waiver.

Authority: 49 U.S.C. 1301, 1302, 1324, 1326, 1371, 1372, 1373, 1374, 1377, 1381, 1386, 1387, 1388, 1482.

§ 212.1 Scope.

This part applies to all charter flights, and all other flights carrying charter passengers or cargo, in air transportation by U.S. certificated air carriers or in foreign air transportation by foreign air carriers. It does not apply to any flights performed by a certificated air carrier under part 298 of this chapter. Nothing in this part gives authority to operate a type or level of service not authorized by certificate, foreign air carrier permit, or exemption.

§ 212.2 Definitions.

For the purposes of this part:

Act means the Federal Aviation Act of 1958, as amended.

Affinity (pro rata) charter means a charter arranged by an organization on behalf of its membership, and which meets the requirements of § 212.5.

Certificated air carrier means a U.S. direct air carrier holding a certificate issued under section 401 of the Act.

Charter flight means a flight operated under the terms of a charter contract between a direct air carrier and its charterer or lessee. It does not include scheduled air transportation, scheduled foreign air transportation, or nonscheduled cargo foreign air transportation, sold on an individually ticketed or individually waybilled basis.

Direct air carrier means a certificated or foreign air carrier that directly engages in the operation of aircraft under a certificate, permit, or exemption issued by the Department.

Fifth freedom charter means a charter flight carrying traffic that originates and terminates in countries other than the carrier's home country, regardless of whether the flight operates via the home country.

Foreign air carrier means a direct air carrier that holds a foreign air carrier permit issued under section 402 of the Act or an exemption issued under section 416(b) of the Act authorizing direct foreign air transportation.

Fourth freedom charter means a charter flight carrying traffic that terminates in the carrier's home country having originated in another country.

Gambling junket charter means a charter arranged by a casino or hotel, or its agents, the purpose of which is to transport passengers to casinos where gambling facilities are available, and which meets the requirements of § 212.6.

Long-term wet lease means a wet lease which either:

(1) Lasts more than 60 days, or

(2) Is part of a series of such leases that amounts to a continuing arrangement lasting more than 60 days.

Mixed charter means a charter, the cost of which is borne partly by the charter participants and partly by the charterer, where all the passengers meet the eligibility requirements for "affinity (pro rata)" charters of § 212.5.

Part charter means a flight carrying both charter and scheduled passenger traffic.

Single entity charter means a charter the cost of which is borne by the charterer and not by individual passengers, directly or indirectly.

Third freedom charter means a charter flight carrying traffic that originates in the carrier's home country and terminates in another country.

Wet lease means a lease between direct air carriers by which the lessor provides all or part of the capacity of an aircraft, and its crew, including operations where the lessor is conducting services under a blocked space or code-sharing arrangement.

§ 212.3 General provisions.

(a) Certificated and foreign air carriers may conduct charter flights as described in this Part, and may carry charter passengers on scheduled flights, or charter cargo on scheduled or nonscheduled flights (or on the main deck or in the belly of passenger charter flights), subject to the requirements of this chapter and any orders of, or specific conditions imposed by, the Department.

(b) Charter flights may be operated on a round-trip or one-way basis, with no minimum group, shipment, or contract size.

(c) Contracts to perform charter flights must be in writing and signed by an authorized representative of the certificated or foreign air carrier and the charterer prior to the operation of the flights involved.

(d) A certificated or foreign air carrier must make a reasonable effort to verify that any charterer with which it contracts, and any charter it conducts, meets the applicable requirements of this chapter.

(e) A certificated or foreign air carrier operating a U.S.-originating passenger charter accepts the responsibility to return to his or her point of origin any passenger who purchased round trip transportation on that charter and who was transported by that carrier on his or her outbound flight; except that this provision will not apply in cases where the return transportation is to be provided by another certificated or foreign air carrier.

(f) A certificated or foreign air carrier may not perform any charter flight for which a statement of authorization is required under § 212.8 until one has been granted by the Department. In addition, if a foreign air carrier is required to obtain a statement of authorization under paragraph (e) of § 212.8, neither it, nor any charter operator, or any other person shall advertise or sell any passenger charter services except those that have been specifically authorized by the Department;

(g) A certificated air carrier may not operate charters where such operations would result in a substantial change in the scope of its operations within the meaning of part 204 of this chapter;

(h) A certificated air carrier may not limit its baggage liability for interstate and overseas charter flights except as set forth in part 254 of this chapter;

(i) A certificated air carrier may not, except as set forth in part 121 of the Federal Aviation Regulations (14 CFR part 121), limit the availability, upon reasonable request, of air transportation and related services to a person who may require help from another person in expeditiously moving to an emergency exit for evacuation of an aircraft;

(j) A certificated air carrier holding a certificate to conduct only cargo operations may not conduct passenger charters;

(k) A certificated air carrier may not perform any charter in interstate commerce within the State of Alaska; and

(l) A foreign air carrier may operate charters in foreign air transportation only to the extent authorized by its foreign air carrier permit under § 402 of the Act or exemption authority under § 416(b) of the Act, and only to the extent to which such operations are consistent with the provisions of any applicable bilateral aviation undertaking.

§ 212.4 Authorized charter types.

Certificated and foreign air carriers may conduct the following charter types, subject to the provisions of this part:

(a) Affinity (pro-rata) charters;

(b) Single entity charters, including:

(1) Wet leases involving the carriage of passengers and/or cargo, *provided*, that the wet lessee holds appropriate economic authority from the Department to conduct the proposed operations; and

(2) Charters pursuant to contracts with the Department of Defense, *Provided*, that foreign air carriers may conduct charters for the Department of Defense only to the extent that such operations are consistent with the provisions of Section 1117 of the Act;

(c) Mixed charters;

(d) Gambling junket charters;

(e) Public charters in accordance with part 380 of this chapter (including operations by educational institutions as defined in that part);

(f) Overseas military personnel charters in accordance with part 372 of this charter; and

(g) Cargo charters.

§ 212.5 Operation of affinity (pro-rata) charters.

An affinity (pro-rata) charter operated by a certificated or foreign air carrier must meet the following criteria:

(a) The aircraft must be chartered by an organization, no part of whose business is the formation of groups for transportation or solicitation or sale of transportation services, for the purpose of providing air transportation to its members and their immediate families;

(b) The charter must be organized by the organization itself, or by a person or company who acts not as a principal, but as an agent for the chartering organization or the certificated or foreign air carrier;

(c) No solicitation, sales, or participation may take place beyond the bona fide members of an eligible chartering organization, and their immediate families (spouse, children, and parents);

(d) *bona fide members* are members of an organization who: have not joined the organization merely to travel on a charter flight; and who have been members of the chartering organization for a minimum of six months prior to the date of commencement of the affected flight; *Provided*, that the "six month" rule does not apply to:

(1) Employees of a single commercial establishment, industrial plant, or government agency, or

(2) Students and employees of a single school;

(e) The charter price due the direct air carrier shall be prorated equally among all the charter passengers, except that children under 12 may be offered discounted or free transportation; and

(f) The certificated or foreign air carrier shall make reasonable efforts to assure that passengers transported meet the eligibility requirements of this section. The certificated or foreign air carrier shall also obtain (no later than the date of departure), and maintain for two years, a certification by a representative of the chartering organization that all passengers are eligible for transportation under this section.

§ 212.6 Operation of gambling junket charters.

A gambling junket charter operated by a certificated or foreign air carrier must meet the following criteria:

(a) The aircraft must be chartered by:

(1) A casino or hotel duly licensed by the government of any state, territory or possession of the United States, or by a foreign government, or

(2) An agent of such a casino or hotel on behalf of that casino or hotel;

(b) The casino or hotel, or its agents, may not require a passenger to incur any expense in taking the trip, *Provided*, that this provision shall not preclude the casino or hotel, or its agents, from requiring prospective passengers to pay nominal reservation fees that are fully refundable by the casino or hotel before the flight, establish a minimum line-of-credit at the casino, bring (but not necessarily spend) a specified minimum amount of money, or meet other requirements that do not place them in financial jeopardy; nor does it preclude the casino or hotel, or its agents, from offering optional land packages.

§ 212.7 Direct sales.

(a) Certificated and foreign air carriers may sell or offer for sale, and operate, as principal, Public Charter flights under part 380 of this chapter directly to the public.

(b) Each certificated or foreign air carrier operating a charter trip under this section shall comply with all the requirements of part 380 of this chapter, except that a certificated air carrier need not comply with the registration requirement of §§ 380.4 or 380.5, and neither a certificated air carrier nor a foreign air carrier need comply with the requirement of § 380.6 concerning financial security arrangements.

(c) The Department reserves the right to limit or prohibit the operation of direct sale Public Charters by a foreign air carrier upon a finding that such action is necessary in the public interest.

§ 212.8 Prior authorization requirements.

(a) Certificated air carriers shall obtain a statement of authorization for each long-term wet lease to a foreign air carrier.

(b) Foreign air carriers shall obtain a statement of authorization for each:

(1) Fifth freedom charter flight to or from the United States;

(2) Long-term wet lease,

(3) Charter flight for which the Department specifically requires prior authorization under paragraph (e) or (f) of this section, or

(4) Part charter.

(c) The Department may issue blanket statements of authorization to foreign air carriers to conduct fifth freedom charters. The standards for issuing such blanket authorizations shall be those stated in § 212.10. The Department may revoke any authority granted under this paragraph at any time without hearing.

(d) The Department may at any time, with or without hearing, but with at least 30 days' notice, require a foreign air carrier to obtain a statement of authorization before operating any charter flight. In deciding whether to impose such a requirement, the Department will consider (but not be limited to considering) whether the country of the carrier's nationality:

(1) Requires prior approval for third or fourth freedom charter flights by U.S. air carriers,

(2) Has, over the objection of the U.S. Government, denied rights of a U.S. air carrier guaranteed by a bilateral agreement, or

(3) Has otherwise impaired, limited, or denied the operating rights of U.S. air carriers, or engaged in unfair, discriminatory, or restrictive practices with respect to air transportation services to, from, through, or over its territory.

(e) The Department, in the interest of national security, may require a foreign air carrier to provide prior notification or to obtain a statement of authorization before operating any charter flight over U.S. territory.

§ 212.9 Application for statement of authorization.

(a) Application for a statement of authorization shall be submitted on an OST Form (obtainable from the Regulatory Analysis Division, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590) except that for part charters or long-term wet leases the application may be in letter form. An application for a long-term wet lease shall describe the purpose and terms of the wet lease agreement. An original and two copies of an application shall be submitted to the Department of Transportation, Office of International Aviation, U.S. Air Carrier Licensing Division, P–44 (for an application by a certificated air carrier), or Foreign Air Carrier Licensing Division, P–45 (for an application by a foreign air carrier), 400 Seventh Street, SW., Washington, DC 20590. Upon a showing of good cause, the application may be transmitted by facsimile (fax) or telegram, or may be made by telephone, *provided*, that in the case of a fax or telephone application, the applicant must confirm its request (by filing an original and two copies of its application as described above) within three business days.

(b) A copy of each application for a long-term wet lease shall also be served on the Director of Flight Standards Service (AFS–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, and on each certificated air carrier that is authorized to serve the general area in which the proposed transportation is to be performed.

(c)(1) Applications for statements of authorization filed by foreign air carriers shall include documentation to establish the extent to which the country of the applicant's nationality deals with U.S. air carriers on the basis of reciprocity for similar flights, if such flights are not subject to a bilateral agreement and

(i) The Department has not established that the country accords reciprocity,

(ii) The Department has found reciprocity defective in the most recent prior approval application involving the country, or

(iii) Changes in reciprocity have occurred since the most recent Department finding for the country in question.

(2) Applications filed by certificated or foreign air carriers to conduct long-term wet leases shall include, for the country of the lessee's nationality, the documentation specified in paragraph (c)(1) of this section.

(d)(1) Applications shall be filed at least 5 business days before commencement of the proposed flight or flights, except as specified in paragraphs (d)(2), (d)(3), and (d)(4) of this section. Late applications may be considered upon a showing of good cause for the lateness.

(2) Applications for a part charter or for a long-term wet lease shall be filed at least 45 calendar days before the date of the first proposed flight.

(3) Applications specifically required under § 212.8(e) shall be filed at least 30 calendar days before the proposed flight or flights (10 calendar days for cargo charters), unless otherwise specified by the Department.

(4) Applications required by a Department order under § 212.8(f) shall be filed at least 14 calendar days before the proposed flight or flights, unless otherwise specified by the Department.

(5) Where an application is required by more than one provision of this part and/or order of the Department, only one application need be filed, but it must conform to the earliest applicable filing deadline.

(6) The Department may require service of applications as it deems necessary.

(e)(1) Any party in interest may file a memorandum supporting or opposing an application. Three copies of each memorandum shall be filed within 7 business days after service of the application or before the date of the proposed flight or flights, whichever is earlier. Memoranda will be considered to the extent practicable; the Department may act on an application without waiting for supporting or opposing memoranda to be filed.

(2) Each memorandum shall set forth the reasons why the application should be granted or denied, accompanied by whatever data, including affidavits, the Department is requested to consider.

(3) A copy of each memorandum shall be served on the certificated or foreign air carrier applying for approval.

(f)(1) Unless otherwise ordered by the Department, each application and memorandum filed in response will be available for public inspection at the Office of International Aviation immediately upon filing. Notice of the filing of all applications shall be published in the Department's Weekly List of Applications Filed.

(2) Any person objecting to public disclosure of any information in an application or memorandum must state the grounds for the objection in writing. If the Department finds that disclosure of all or part of the information would adversely affect the objecting person, and that the public interest does not require disclosure, it will order that the injurious information be withheld.

§ 212.10 Issuance of statement of authorization.

(a) The Department will issue a statement of authorization if it finds that the proposed charter flight, part charter, or wet lease meets the requirements of this part and that it is in the public interest. Statements of authorization may be conditioned or limited.

(b) In determining the public interest the Department will consider (but not be limited to) the following factors:

(1) The extent to which the authority sought is covered by and consistent with bilateral agreements to which the United States is a party.

(2) The extent to which an applicant foreign air carrier's home country (and, in the case of a long-term wet lease, the lessee's home country) deals with U.S. air carriers on the basis of substantial reciprocity.

(3) Whether the applicant or its agent has previously violated the provisions of this part.

(4) Where the application concerns a long-term wet lease:

(i) Whether the lessor (applicant) or its agent or the lessee (charterer) or its agent has previously violated the provisions of the Department's charter regulations.

(ii) Whether, because of the nature of the arrangement and the benefits involved, the authority sought should be the subject of a bilateral agreement.

(iii) To what extent the lessor owns and/or controls the lessee, or is owned and/or controlled by the lessee.

(c) The Department will submit any denial of an authorization specifically required of a foreign air carrier under § 212.8(e) to the President of the United States at least 10 days before the proposed departure. The denial will be subject to stay or disapproval by the President within 10 days after it is submitted. A shorter period for Presidential review may be specified by the Department where the application for authorization is not timely or properly filed. Denial of a late-filed application need not be submitted to the President. For the purposes of this paragraph, an application filed by a foreign air carrier under § 212.8(e) to conduct a cargo charter will be considered as timely filed only if it is filed at least 30 calendar days before the proposed flight, notwithstanding the 10-day filing requirement for cargo charters in § 212.9(d)(3).

(d) The Department will publish notice of its actions on applications for statements of authorization in the Status of Charter Application attachments to the Weekly List of Applications Filed. Interested persons may upon request obtain copies of letters or endorsed forms advising applicants of action taken on their applications.

§ 212.11 Waiver.

The Department may grant a waiver of any of the provisions of this part upon finding that such waiver is in the public interest. A certificated or foreign air carrier may request a waiver by filing a written application with the Department, citing the specific provision to be waived and providing justification for such waiver.

PART 294—[AMENDED]

§ 294.32 [Removed]

4. Section 294.32 is removed and reserved.

PART 298—[AMENDED]

§ 298.38 [Removed]

5. Section 298.38 is removed and reserved.

6. Part 380 is revised to read as follows:

PART 380—PUBLIC CHARTERS

Sec.
380.1 Applicability.
380.2 Definitions.
380.3 General provisions.
380.4 Registration procedures for U.S. Public Charter operators.
380.5 Registration procedures for foreign Public Charter operators.
380.6 Financial security for charter participants' funds.
380.7 Notice of conditions imposed by the Public Charter operator.
380.8 Exemptions.
380.9 Waivers.
380.10 Direct air carrier to ensure compliance with part.
380.11 Methods of competition.
380.12 Enforcement.

Authority: 49 U.S.C. 1301, 1324, 1371, 1372, 1377, 1388, 1502.

§ 380.1 Applicability.

This part applies to Public Charter air transportation of passengers in interstate, overseas, or foreign air transportation, whether furnished by certificated air carriers, foreign air carriers, or Public Charter operators. This part also relieves U.S. and foreign Public Charter operators from various provisions of Title IV of the Federal Aviation Act of 1958, as amended, for the purpose of enabling them to provide Public Charters utilizing aircraft chartered from such direct air carriers. It also declines jurisdiction over foreign Public Charter operators operating foreign-originating Public Charters.

§ 380.2 Definitions.

For the purposes of this part:

Act means the Federal Aviation Act of 1958, as amended.

Certificated air carrier means a U.S. direct air carrier holding a certificate issued under section 401 of the Act.

Charter flight means a flight operated under the terms of a charter contract between a direct air carrier and its customer. It does not include scheduled air transportation, scheduled foreign air transportation, or nonscheduled cargo foreign air transportation, sold on an individually ticketed or individually waybilled basis.

Direct air carrier means a certificated or foreign air carrier, or an air taxi operator or commuter air carrier registered under part 298 of this chapter, that directly engages in the operation of aircraft under a certificate, permit or exemption issued by the Department.

Educational institution means a school that is operated as such on a year-round basis and is empowered to grant academic degrees or secondary school diplomas by any government in the United States or by a foreign government.

Foreign air carrier means a direct air carrier that holds a foreign air carrier permit issued under section 402 of the Act or an exemption issued under section 416(b) of the Act authorizing direct foreign air transportation.

Foreign Public Charter operator means an indirect air carrier which is not a citizen of the United States as defined section 101(16) of the Act, that is authorized to engage in the formation of groups for transportation on Public Charters in accordance with this part.

Indirect air carrier means any person who undertakes to engage indirectly in air transportation operations and who uses for such transportation the services of a direct air carrier.

Public Charter means a one-way or round-trip charter flight to be performed by one or more direct air carriers that is arranged and sponsored by a charter operator and that is advertised and available for purchase by the public.

Public Charter operator means a U.S. or foreign Public Charter operator.

Security agreement means:

(1) A surety bond issued by a company; (i) which is listed in Best's Insurance Reports (Fire and Casualty) with a general policyholders' rating of "A" or better; (ii) whose surety bonds are accepted by the Interstate Commerce Commission under 49 CFR 1084.6; or (iii) which is listed in the U.S. Department of Treasury's notice listing companies holding Certificates of Authority as acceptable sureties on Federal bonds and as acceptable reinsuring companies, published in the **Federal Register** in the first week in July; or

(2) A surety trust agreement or a letter-of-credit, issued by a Federal Deposit Insurance Corporation-insured financial institution, which provides substantially equivalent protection.

U.S. Public Charter operator means an indirect air carrier which is a citizen of the United States as defined in section 101(16) of the Act, that is authorized to engage in the formation of groups for transportation on Public Charters in accordance with this part.

§ 380.3 General provisions.

(a) Public charters may be operated on a one-way or round-trip basis, with no minimum group or contract size. Public charters may be sold on an air-only basis, or with mandatory or optional land arrangements.

(b) A U.S. Public Charter operator shall not sell, offer to sell, or operate Public Charter air transportation unless it has met the requirements of this part, and has on file with the Department a

current registration as provided in § 380.4.

(c) A foreign Public Charter operator shall not sell, offer to sell, or operate Public Charter air transportation unless it has met the requirements of this part, has on file with the Department a current registration as provided in § 380.5, and has received notice from the Department that its registration has been approved.

(d) Prior to the marketing or sale of any Public Charter air transportation by a Public Charter operator, there must be in place a written contract to perform the flights, signed by an authorized representative of the direct air carrier and the Public Charter operator, evidencing a binding commitment on the part of the direct air carrier to furnish the air transportation required for the charters.

(e) A U.S. Public Charter operator operating a Public Charter which originates in a foreign country shall not be subject to the requirements of § 380.4, § 380.6, or § 380.7.

(f) The Department declines to exercise jurisdiction over a foreign Public Charter operator which operates a Public Charter originating in a foreign country, but reserves the right to exercise its jurisdiction over any foreign Public Charter operator at any time it finds that such action is in the public interest.

(g)(1) An educational institution operating a Public Charter need not comply with the financial security requirements of § 380.6 of this part if each student participant in the charter is enrolled in a formal academic course of study outside the United States, sponsored by or in conjunction with that institution, that is of at least four weeks' duration.

(2) The spouse, children, and parents of a student participant may accompany the participant on a charter operated under this subsection.

§ 380.4 Registration procedures for U.S. Public Charter operators.

(a) Prior to conducting any operations under this part, including advertising, reservations, and sales, a U.S. Public Charter operator shall file in duplicate a completed OST Form with the Regulatory Analysis Division (P–57), Office of Aviation Analysis, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, providing the following information:

(1) The Public Charter operator's name, address, and telephone and facsimile (fax) numbers;

(2) The names and nationalities of those stockholders holding 10 percent or more of the voting stock;

(3) A certification that it has in place, and will maintain in effect during the advertising, sale, and operation of any transportation to be performed under this part, (a) charter contract(s) with (a) direct air carrier(s) to furnish the air transportation required for the charters, and a security agreement complying with this part; and

(4) A certification from the securer that it has issued a security agreement covering the transportation to be performed under this part (the certification shall include the name, address, telephone number, and authorized signature of the securer, the monetary amount of the security agreement, and any identifying numbers assigned to that agreement).

(b) The Department will enter on each properly filed OST Form the effective date of the registration and the due date of the next registration (which will be one year from the date of the last registration), and will return to the U.S. Public Charter operator a copy of the OST Form which will serve to confirm that the operator has registered with the Department in compliance with this part. The Department reserves the right to reject an application to register as a U.S. Public Charter operator if it finds that the public interest (*e.g.*, the compliance disposition of that applicant) warrants such action.

(c) Once a U.S. Public Charter operator has filed a registration as required by this section, it may advertise, sell, offer to sell, and operate Public Charter air transportation in accordance with this part.

(d) Within ten days of any changes in the information contained in its current registration, a U.S. Public Charter operator shall notify the Department of those changes by filing in duplicate an amended OST Form. Any changes to the security agreement, including changes in the amount of the agreement, must be verified by the securer in the manner described in § 380.4(a)(4).

(e) Prior to the due date for reregistration shown on a U.S. Public Charter operator's current registration, the operator shall reregister with the Department by filing in duplicate a completed OST Form as described in § 380.4(a). Pending Department action on a reregistration, the existing registration of the operator shall remain valid.

(f) Failure to reregister as required by this section shall result in the expiration of the exemption provided to a U.S. Public Charter operator under § 380.8.

§ 380.5 Registration procedures for foreign Public Charter operators.

(a) Prior to conducting any operations under this part, including advertising, reservations, and sales, a foreign Public Charter operator shall file in duplicate a completed OST Form (obtainable from the Regulatory Analysis Division, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590) with the Regulatory Analysis Division (P–57), Office of Aviation Analysis, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, providing the information required of U.S. Public Charter operators in § 380.4(a), and the following:

(1) The foreign Public Charter operator's country of citizenship;

(2) An indication as to whether the foreign Public Charter operator seeks authority to engage in foreign, interstate, or overseas air transportation (or any combination); and

(3) The name, address, and telephone number of its agent for service in the United States.

(b) A notice of the filing of all registration applications by foreign Public Charter operators shall be published in the Department's Weekly List of Applications Filed.

(c)(1) Any interested party may file a memorandum supporting or opposing a registration application by a foreign Public Charter operator.

(2) Each memorandum shall set forth the reasons why the registration application should be granted or denied, accompanied by whatever data, including affidavits, the Department is requested to consider.

(3) An original and one copy of each memorandum shall be filed no later than 28 days after the filing of the registration application with the Department, with a copy served on the applicant foreign Public Charter operator.

(d) Upon review of the registration application and any responsive pleadings, the Department will approve the registration of a foreign Public Charter operator if it finds that the homeland of the applicant affords effective reciprocity to U.S. Public Charter operators, and if such approval is otherwise in the public interest. The Department will enter on each approved OST Form the effective date of the registration and the due date of the next registration (which will be one year from the date of the last registration) and will return to the foreign Public Charter operator a copy of the approved OST Form.

(e) Once the Department has approved the registration of a foreign

Public Charter operator, that operator may advertise, sell, offer to sell, and operate Public Charter air transportation, to the extent of such approval and in accordance with this part.

(f) Within ten days of any changes in the information contained in its current registration, a foreign Public Charter operator shall notify the Department of those changes by filing in duplicate an amended OST Form. Any changes to the security agreement, including changes in the amount of the agreement, must be verified by the securer in the manner described in § 380.4(a)(4).

(g) Prior to the due date for re-registration shown on a foreign Public Charter operator's current registration, the operator shall reregister with the Department by filing in duplicate a completed OST Form as described in § 380.4(a). Failure to reregister as required by this section shall result in the expiration of the exemption provided to a foreign Public Charter operator under § 380.8.

(h) If a reregistration or amendment contains changes to information required by § 380.4(a)(2), § 380.5(a)(1), or § 380.5(a)(2), the foreign Public Charter operator shall serve a copy of its completed OST Form on any party which filed an answer to its initial registration application, and the 28-day period for filing memoranda in support of or opposing approval of the amended registration or reregistration shall apply.

(i) The Department shall apply the standards set forth in § 380.5(d) in determining whether to approve a request for reregistration or amendment of the registration of a foreign Public Charter operator. Pending Department action on the reregistration or amendment, the existing registration of the foreign Public Charter operator shall remain valid.

(j) By accepting an approved registration, amendment or reregistration under this section, a foreign Public Charter operator waives any right it may have to assert any defense of sovereign immunity from suit in any proceeding against it, in any court or other tribunal of the United States, that is based upon a claim arising out of operations by the foreign Public Charter operator under this part.

§ 380.6 Financial security for charter participants' funds.

(a) A Public Charter operator shall provide security for Public Charter participants' advance charter payments in accordance with this section. The securer shall pay each Public Charter participant an amount of money equal to the charter price that participant has paid for air transportation and any mandatory land arrangements, that:

(1) Is determined by the person providing the security or adjudged by a court of competent jurisdiction to be due from the Public Charter operator to that person because of failure to refund the money or provide the transportation for which the money was paid, and

(2) The Public Charter operator does not or cannot pay.

(b) The security that satisfies this part shall be a security agreement, as defined in § 380.2 of this part, in the amount of at least $30,000 times the number of flights, up to a maximum of $600,000. For the purpose of determining the necessary amount of the security agreement, "the number of flights" means the number of one-way or round-trip flights which the Public Charter operator will actively advertise, sell, or operate at any one time, including any flights which may be completed but are within the 60-day period for the filing of claims.

(c) Whenever any judgment creates a claim against the securer in accordance with the terms of the security agreement, or the securer admits a claim, the Public Charter operator shall make no further sales of Public Charter air transportation until either the judgment or claim is paid or the Department receives a new certification of security agreement coverage in the full amount required by this part.

(d) The security agreement shall allow each charter participant at least 60 days after the termination of a Public Charter flight to make a claim against the Public Charter operator. Termination means the date of arrival (or in the case of a canceled charter, the intended date of arrival) of the return flight. If there is no return flight in a participant's itinerary, termination means the date of departure of the last flight in the participant's itinerary.

(e) The security agreement shall specify that it shall remain in force, and may not be replaced, canceled, withdrawn, or in any way modified to reduce its coverage, or expire by its terms, until ten days after written notice by the securer, or the securer's agent, is received by the Regulatory Analysis Division (P-57), Office of Aviation Analysis, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

§ 380.7 Notice of conditions imposed by the Public Charter operator.

(a) Each Public Charter operator shall provide to each participant, at the time of sale of any Public Charter air transportation, either a copy of the complete contract of carriage covering the transportation, or a notice providing the following information:

(1) The operator's name and address, and the name of the direct air carrier performing the flight;

(2) That this is a charter flight and is subject to a contract, a copy of which is available free upon request, and the procedures for obtaining a copy;

(3) The details of any terms by which the operator reserves the right to change outbound or return cities or dates, to cancel or divert the charter at any time, or to raise prices at any time for participants who have already booked;

(4) The terms describing the participant's cancellation and refund rights if any of the events described in paragraph (a)(3) of this section occurs;

(5) The terms describing the participant's right to a refund if he or she voluntarily changes plans;

(6) The terms describing the operator's baggage liability to passengers, if any, and the baggage liability to passengers of the direct air carrier operating the charter; and

(7) The name and address of the securer, and the provisions for submitting claims.

(b) On telephone sales, the information required by § 380.7(a) must be mailed to the participant within two business days after the call.

(c) Any participant who does not receive the notice described in this section is not bound by any terms in the contract that restrict refunds, impose monetary penalties, or permit the operator to change the itinerary or raise prices.

(d) The Public Charter operator shall promptly provide, by mail or otherwise, a copy of the full contract of carriage to any person requesting it, including a prospective participant who has not yet purchased a charter.

(e) Any participant who requests a copy of the contract within five days of purchase may cancel and receive a full refund at any time within five days after receiving the contract, or the day of the flight, whichever is earlier.

§ 380.8 Exemptions.

(a) Public Charter operators are hereby relieved from the following provisions of the Federal Aviation Act, if and so long as they comply with the provisions of this part, and to the extent necessary to enable them to provide Public Charter air transportation as indirect air carriers:

(1) Section 401 (certificates for U.S. carriers).

(2) Section 402 (permits for foreign carriers).

(3) Section 403.

(4) Section 404(a), except the requirements to provide adequate service in connection with Public Charters operated hereunder.

(5) Section 405(b).

(6) Section 407 (b) and (c).

(7) If foreign Public Charter operators receive interstate or overseas air transportation rights, any other provision of the Act that would otherwise prohibit them from organizing or arranging Public Charters in interstate or overseas air transportation.

(b) The Department reserves the right to amend, modify, or revoke, without hearing, the exemption authority conferred by this part to:

(1) Any Public Charter operator, if the Department finds that the operator has violated this Part or if the public interest otherwise so requires;

(2) Any foreign Public Charter operator, if the Department finds that:

(i) The foreign Public Charter operator has undergone a substantial change of ownership warranting such action, or

(ii) The country of citizenship of the foreign Public Charter operator has failed to provide effective reciprocity to U.S. Public Charter operators; and

(iii) The Department finds such action to be warranted in the public interest.

§ 380.9 Waivers.

A waiver of any of the provisions of this part may be granted by the Department upon its own initiative or upon submission of a written request by a direct air carrier or Public Charter operator, provided that such a waiver is in the public interest and it appears to the Department that special or unusual circumstances warrant a departure from the provisions of this part.

§ 380.10 Direct air carrier to ensure compliance with part.

For all Public Charters other than foreign-originating charters organized by foreign Public Charter operators, a direct air carrier must make a reasonable effort to verify that the charter complies with all provisions of this part, including the financial security requirements of § 380.6. A direct air carrier that fails to comply with this section shall, if the Public Charter operator fails to do so, either provide the air transportation or refund the air transportation portion of any payments by participants.

§ 380.11 Methods of competition.

No Public Charter operator or direct air carrier shall engage in unfair or deceptive practices or unfair methods of competition in air transportation or the sale thereof.

§ 380.12 Enforcement.

In the case of any violation of the Act, or of this part, or of any rule, regulation, or order issued under the Act, the violator may be subject to one or more of the following:

(a) A proceeding pursuant to Sections 1002 and 1007 of the Act before the Department or a U.S. District Court, as the case may be, to compel compliance therewith;

(b) Civil penalties pursuant to Section 901(a) of the Act;

(c) Criminal penalties pursuant to Section 902 of the Act; or

(d) Other lawful sanctions.

PART 389—[AMENDED]

§ 389.25 [Amended]

7. In § 389.25 next to Code 40, remove the word "Prospectus" after "Public Charter" and replace it with the word "Registration."

Issued in Washington, DC, on September 11, 1992.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 92-22457 Filed 9-15-92; 8:45 am]

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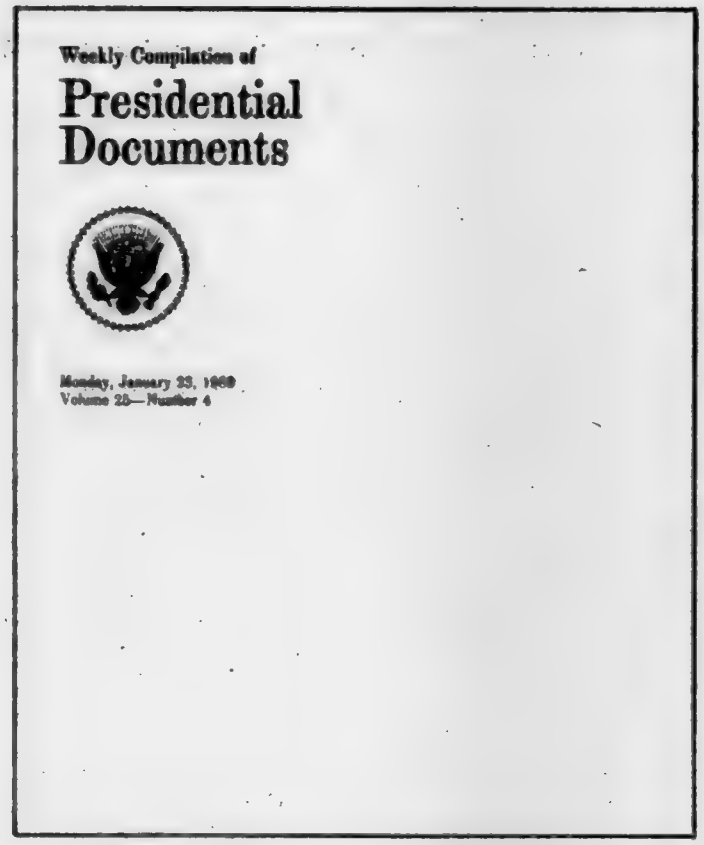

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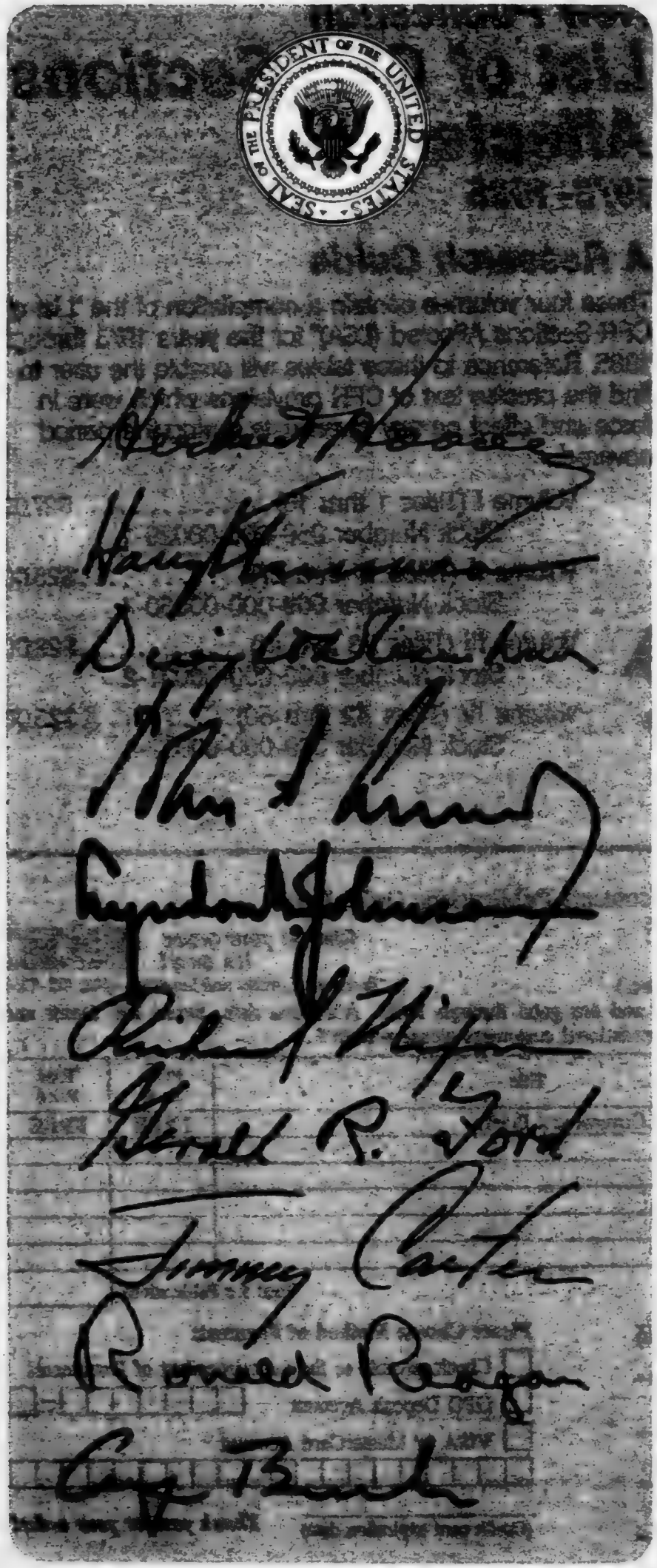

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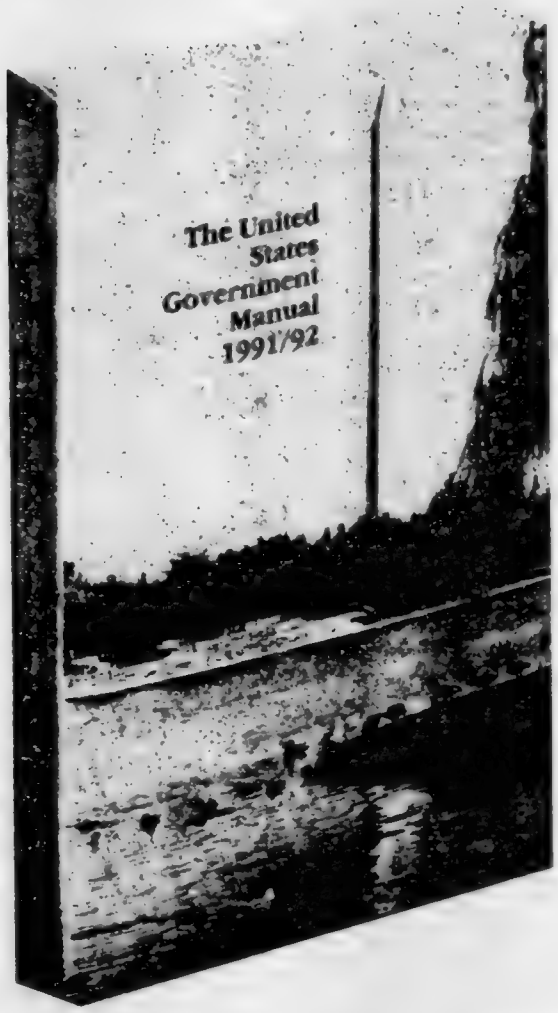

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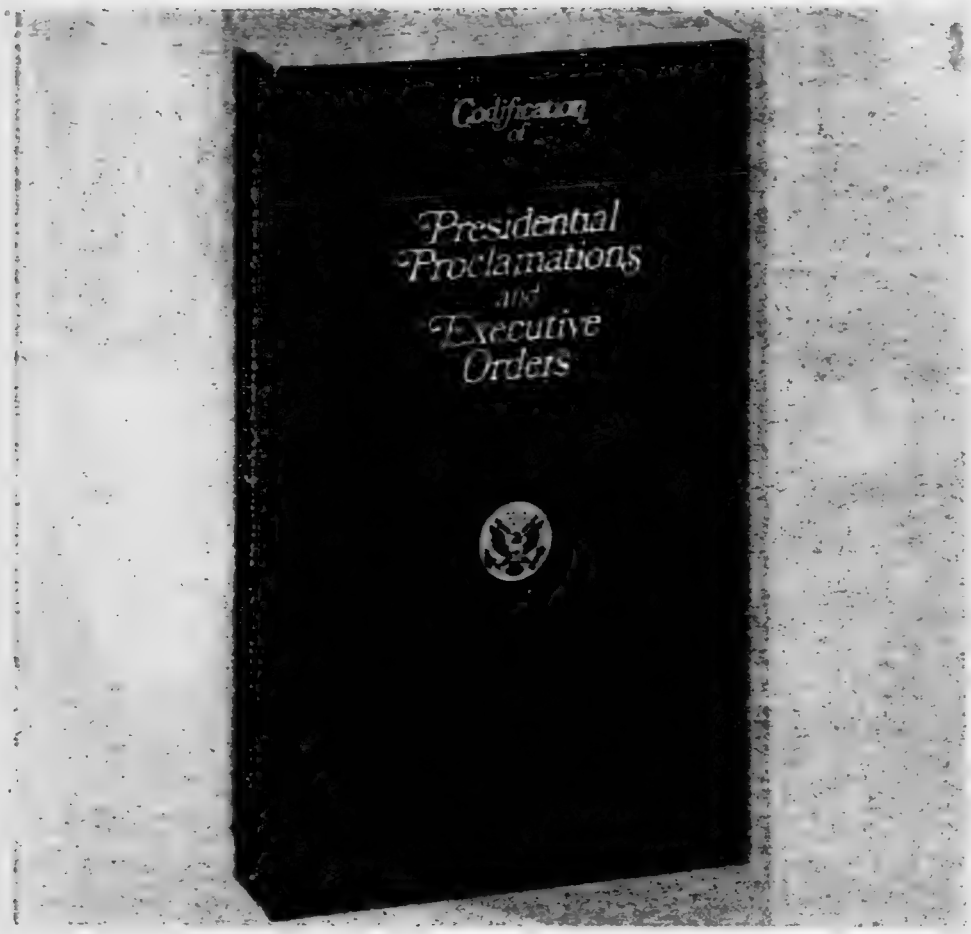

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Presidential Documents

Title 3—

The President

Presidential Determination No. 92–46 of September 4, 1992

Determination on Export-Import Bank Support for United States Exports to Romania

Memorandum for the Secretary of State

Pursuant to section 2(b)(4) of the Export-Import Bank Act of 1945, as amended (12 U.S.C. 635(b)(4)), I hereby determine that it is in the national interest for the Export-Import Bank to guarantee, insure, or extend credit, or participate in the extension of credit in support of United States exports to Romania.

You are authorized and directed to report this determination to the Congress, along with the justification explaining the basis for this determination, and to publish this memorandum in the **Federal Register**.

George Bush

THE WHITE HOUSE,
Washington, September 4, 1992.

[FR Doc. 92–22086
Filed 9–15–92; 2:35 pm]
Billing code 3195–01–M

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 209

[INS No. 1426-91]

RIN 1115-AC50

Adjustment Procedures for Aliens Granted Asylum

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule implements section 104 of the Immigration Act of 1990, which amended procedures to be used in filing for adjustment to lawful permanent resident status under section 209(b) of the Immigration and Nationality Act, as amended by the Refugee Act of 1980. This rule establishes the availability of adjustment without numerical restriction for certain asylee adjustment applicants, and increases from 5,000 to 10,000 the annual limitation on asylee adjustments. This rule is necessary to allow certain asylees to adjust to permanent resident status even though they are no longer refugees due to a change in circumstances in their country of origin.

EFFECTIVE DATE: This final rule is effective September 17, 1992.

FOR FURTHER INFORMATION CONTACT: Marilyn Lee, Senior Supervisory Asylum Officer, Immigration and Naturalization Service, (INS) 425 I Street NW., room 1203, Washington, DC 20536, telephone (202) 514-5498.

SUPPLEMENTARY INFORMATION: Section 104 of the Immigration Act of 1990 includes a provision increasing the number of asylee adjustments to lawful permanent resident status allowed each year under section 209(b) of the Immigration and Nationality Act from 5,000 to 10,000. The law also provides for the adjustment of certain aliens who have been granted asylum but whose country conditions have changed so that they no longer continue to be refugees within the definition of section 101(a)(42) of the Immigration and Nationality Act. This provision applies to asylees who were or would be qualified for adjustment as of November 28, 1990, but for the requirements that the alien have been physically present in the United States for one year and continue to be a refugee or a spouse or child of such refugee. These aliens may be adjusted and are exempt from the numerical limitations of section 209(b) of that Act, provided they were granted asylum prior to November 29, 1990. Section 104 of the Immigration Act of 1990 also exempts from numerical limitation all asylees who filed for adjustment prior to June 1, 1990.

An interim rule with request for comments was published in the **Federal Register** on June 12, 1991, at 56 FR 26897-26898. The INS received three comments. These comments are discussed as follows:

One commenter stated that the paragraph numbers set forth in § 209.2(a)(1)(v) should be renumbered to correspond to the numbers as amended by the Immigration Act of 1990. The INS agrees and has amended the final rule accordingly.

Another commenter suggested that asylees should not be charged a fee to adjust. The INS has determined that a fee should be charged to the applicant filing Form I-485 so that applicants for adjustment to lawful permanent resident status who receive special services and benefits that do not accrue to the public at large are responsible for bearing the Government's cost of providing these special services. An asylee who has been in the United States for a year, unlike the applicant who may have recently arrived, has normally had employment authorization for at least a year and should be treated no differently than other adjustment applicants in this respect. A fee waiver is available under 8 CFR 103.7(c) for any applicant who is genuinely unable to pay the fee. Alternatively, the Service would be forced to charge other applicants for adjustment of status a higher fee to cover the costs of processing adjustment of status applications for asylees. The INS is in the process of amending the fee schedule and has published a proposed rule on Fees for Processing Certain Asylee-Related and Refugee-Related Applications with request for comments at 57 FR 1404-1405 (January 14, 1992).

Another commenter suggested that the rule should reconcile the language in § 209.2(c) regarding asylum seekers in deportation proceedings with that referring to asylum seekers in exclusion proceedings. The INS agrees with this comment and has amended the final rule to reflect this change.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule will not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of section 1(b) E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

The information collection requirement contained in this rule has been cleared by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. The OMB Control Number for this collection is contained in 8 CFR 299.5.

List of Subjects in 8 CFR Part 209

Administrative practice and procedure, Aliens, Asylum, Immigration, Refugees, Reporting and recordkeeping requirements.

Accordingly, under the authority of 8 U.S.C. 1101, 1103, 1157, 1158, and 1159, the interim rule amending 8 CFR part 209, which was published at 56 FR 26897-26898 on June 12, 1991, is adopted as a final rule with the following changes.

PART 209—ADJUSTMENT OF STATUS OF REFUGEES AND ALIENS GRANTED ASYLUM

1. The authority citation for part 209 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1157, 1158, and 1159.

§ 209.2 [Amended]

2. In § 209.2, paragraph (a)(1)(v) is amended by revising the reference "paragraphs (14), (15), (20), (21), (25), and (32) of section 212(a) of the Act," to read

"paragraphs (4), (5)(A), (5)(B), and (7)(A)(i) of section 212(a) of the Act,".

3. In § 209.2, paragraph (c) is amended in the last sentence by revising the phrase "If an alien has been served with an order to show cause or placed under exclusion proceedings" to read "If an alien has been placed in deportation or exclusion proceedings".

Dated: July 13, 1992.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 92-22424 Filed 9-16-92; 8:45 am]

BILLING CODE 4410-10-M

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8 CFR Parts 214 and 274a

[INS NO. 1455-92]

RIN 1115-AD13

N—Nonimmigrant Classes; Control of Employment of Aliens

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rulemaking will expand the list of aliens authorized to accept employment in the United States by including those nonimmigrant employment-authorized classifications created by the Immigration Act of 1990 (IMMACT). Failure to include these new employment-authorized classes could result in confusion by employers regarding whether a particular alien is authorized to accept employment and (if so) under what restrictions. Also, it could affect adversely the Service's efforts to impose sanctions against employers or unauthorized aliens. This rulemaking will alleviate problems for both employers and Service personnel seeking to determine whether an alien is authorized to accept employment in the United States. This rulemaking also eliminates a misleading phrase from § 214.2(n)(4) which has caused some people to think mistakenly that N nonimmigrants are not required to apply for and obtain an employment authorization document.

EFFECTIVE DATE: This final rule is effective September 17, 1992.

FOR FURTHER INFORMATION CONTACT: Michael L. Shaul, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., room 7228, Washington, DC 20536, telephone (202) 514-3240.

SUPPLEMENTARY INFORMATION: Section 274A of the Immigration and Nationality Act ("the Act") provides for the imposition of sanctions against employers who employ aliens who are not authorized to work in the United States. Section 274A(h)(3) of the Act defines an unauthorized alien for employment purposes as an alien who is not either (A) an alien lawfully admitted for permanent residence or (B) authorized to be so employed by the Act or by the Attorney General. Those classes of aliens who are authorized to be employed in the United States are listed in 8 CFR 274a.12.

On November 29, 1990, President Bush signed the Immigration Act of 1990 ("IMMACT") into law. Sections 207, 208, and 209 of IMMACT created new nonimmigrant categories for aliens of extraordinary ability (O-1), accompanying aliens (O-2), athletes and entertainers (P-1, P-2, and P-3), international cultural exchange program participants (Q), and aliens in religious occupations (R-1), all of whom are authorized to work in the United States. Accordingly, the Service is revising 8 CFR 274a to include these nonimmigrant classifications in the list of aliens who are authorized for employment with a specific employer incident to status contained in 8 CFR 274a.12(b). In so doing, the Service is also designating such aliens as among those who, upon filing a timely application for extension of nonimmigrant status, may continue to work for a period of 240 days for the same employer as previously authorized during the pendency of such application. (IMMACT also created classifications for dependents of the O, P, and R nonimmigrants, but these dependents are not authorized to accept employment in the United States.)

Finally, this rulemaking eliminates the phrase "and such authorization need not be requested." from the discussion of employment authorization for certain nonimmigrant parents and children of section 101(a)(27(I) special immigrants (N nonimmigrants) at 8 CFR 214.2(n)(4). This action is being taken because § 214.2(n)(4) already states that employment is authorized incident to N status, making the phrase being deleted redundant; and because the phrase had given rise to the erroneous impression that N nonimmigrants were not required to apply for and obtain an employment authorization document.

The Service's implementation of this rule as a final rule is based upon the "good cause" exceptions found at 5 U.S.C. 553(b) (A)-(B) and (d)(3). This rulemaking falls under the good cause exception because it immediately incorporates the statutory changes made by IMMACT and implemented by other regulatory action. A notice and comment period would have been impracticable and contrary to the public interest. Moreover, this rulemaking confers a benefit upon eligible persons, clarifies an ambiguity, and does not impose a penalty of any kind. It is imperative that this final rule become effective upon publication so that those persons who are entitled to the benefit may apply accordingly. This action will simply bring 8 CFR 214.2(n) and 274a.12(b) into conformity with other regulatory provisions.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

List of Subjects

8 CFR Part 214

Administrative practice and procedure, Aliens, Employment, Reporting and recordkeeping requirements.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1186a; 8 CFR part 2.

§ 214.2 [Amended]

2. In § 214.2, paragraph (n)(4) is amended by replacing the "," with a "." after the phrase "type of employment", and by removing the phrase "and such authorization need not be requested.".

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

3. The authority citation for part 274a is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

4. Section 274a.12 is amended by:

a. Redesignating paragraphs (b)(13) as (b)(17), (b)(14) as (b)(18), (b)(15) as (b)(20), and (b)(16) as (b)(19);

b. Removing the word "or" at the end of newly redesignated paragraph (b)(18);

c. Replacing the "." at the end of newly redesignated paragraph (b)(19) with "; or"; and

d. Adding new paragraphs (b)(13), (b)(14), (b)(15) and (b)(16), and revising the first sentence of newly redesignated paragraph (b)(20) to read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

* * * * *

(b) * * *

(13) An alien having extraordinary ability in the sciences, arts, education, business, or athletics (O–1), and an accompanying alien (O–2), pursuant to § 214.2(o) of this chapter. An alien in this status may be employed only by the petitioner through whom the status was obtained;

(14) An athlete, artist or entertainer (P–1, P–2 or P–3), pursuant to § 214.2(p) of this chapter. An alien in this status may be employed only by the petitioner through whom the status was obtained;

(15) An international cultural exchange visitor (Q), pursuant to § 214.2(q) of this chapter. An alien in this status may only be employed by the petitioner through whom the status was obtained;

(16) An alien having a religious occupation, pursuant to § 214.2(r) of this chapter. An alien in this status may be employed only by the religious organization through whom the status was obtained;

* * * * *

(20) A nonimmigrant alien within the class of aliens described in paragraphs (b)(2), (b)(5), (b)(8), (b)(9), (b)(10), (b)(11), (b)(12), (b)(13), (b)(14), (b)(16), and (b)(19) of this section whose status has expired but who has filed a timely application for an extension of such stay pursuant to § 214.2 of this chapter. * * *

* * * * *

Dated: August 13, 1992.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 92–22425 Filed 9–16–92; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 318 and 319

[Docket No. 87–015F]

RIN 0583–AA78

Use of Binders in Certain Cured Pork Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat inspection regulations to permit the use of food starch-modified, sodium caseinate, isolated soy protein, and carrageenan as binders, individually, and not in combination, in cured pork products labeled as "Ham Water Added" and "Ham and Water Products—X% of Weight is Added Ingredients." The use of such binders would prevent purging of the pumped brine solution from the products. This final rule is in response to petitions submitted by various companies and industry associations.

EFFECTIVE DATE: October 19, 1992.

FOR FURTHER INFORMATION CONTACT: Charles Edwards, Director, Product Assessment Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 205–0080.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that this final rule is not a major rule under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in export or domestic markets.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. States and local jurisdictions are preempted under the Federal Meat Inspection Act (FMIA) from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected meat products that are in addition to, or different than, those imposed under the FMIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat products that are outside official establishments for the purpose of preventing the distribution of meat products that are misbranded or adulterated under the FMIA, or in the case of imported articles, which are not at such an establishment, after their entry into the United States. Under the FMIA, States that maintain meat and poultry inspection programs must impose requirements on State-inspected products and establishments that are at least equal to those required under the FMIA. These States may, however, impose more stringent requirements on such State-inspected products and establishments.

This rule is not intended to have retroactive effect. There are no applicable administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule. However, the administrative procedures specified in 9 CFR 306.5 must be exhausted prior to any judicial challenge of the application of the provisions of this rule.

Effects on Small Entities

The Administrator, FSIS, has made a determination that this final rule will not have a significant economic impact on a substantial number of small entities. The final rule permits the use of certain binders to prevent purging of added brine solution in specific cured pork products. Manufacturers opting to use such binders in this manner will be required to revise the ingredients statements of their labels to show the presence of such binders. However, the use of these binders would be voluntary and any costs associated with new label applications are covered under existing approved paperwork requirements of FSIS's prior label approval system.

Currently, there are approximately 1,079 establishments, both large and small, producing "Ham Water Added" and "Ham and Water Products—X% of Weight is Added Ingredients." Decisions by individual manufacturers on whether to use binders in these pork products would be based on their conclusions that the benefits would outweigh the implementation costs.

Background

FSIS has been petitioned to permit the following substances as binders to prevent purging of added brine solution in certain cured pork products, as provided in 9 CFR 319.104, as follows:

1. *Food starch-modified,* submitted by Corn Refiners Association, Inc., Washington, DC, to be used at a level not to exceed 2 percent of the product formulation. The Federal meat inspection regulations do not currently permit the use of food starch-modified for any purpose in meat food products.

The Food and Drug Administration (FDA) lists food starch-modified as a direct food additive at 21 CFR 172.892 for use in foods when used in accordance with good manufacturing practices.

2. *Sodium caseinate,* submitted by DVM Campina, Inc., Stone Mountain, GA, to be used at a level not to exceed 2 percent of the product formulation. The

Federal meat inspection regulations permit the use of sodium caseinate as a binder and extender at a level sufficient for purpose in imitation sausage, nonspecific loaves, soups, and stews (9 CFR 318.7(c)(4)).

FDA lists sodium caseinate as generally recognized as safe (GRAS) for use in foods at 21 CFR 182.1748 when used in accordance with good manufacturing practices.

3. *Isolated soy protein*, submitted by Protein Technologies International, St. Louis, MO, to be used at a level not to exceed 2 percent of the product formulation. The use of isolated soy protein has been permitted in certain meat food products since 1966 as a result of a final rule published by the Department (30 FR 8673). The Federal meat inspection regulations permit the use of isolated soy protein as a binder and extender in sausage, chili con carne, spaghetti with meatballs, and similar products at levels ranging between 2 percent and 12 percent, depending on the product in which it is used (9 CFR 318.7(c)(4)).

Although FDA does not currently list isolated soy protein in its regulations, FDA has determined, in a February 8, 1977, memorandum, that isolated soybean protein is a food and therefore GRAS.[1] During the development of this rulemaking, FSIS reconfirmed FDA's earlier determination. FDA has permitted the use of isolated soy protein in a variety of foods, including meat products, when used within good manufacturing practices.

4. *Carrageenan*, submitted jointly by Hercules, Wilmington, DE, and FMC Corporation, Rockland, ME, to be used at a level not to exceed 1.5 percent of the product formulation. The Federal meat inspection regulations permit the use of carrageenan as an extender and stabilizer in breading mixes and sauces at a level sufficient for purpose in formulating meat products (9 CFR 318.7(c)(4)).

FDA lists carrageenan at 21 CFR 172.620 as a direct food additive that may be safely used in the amount necessary as an emulsifier, stabilizer, or thickener in foods when used in accordance with good manufacturing practices. It is common practice in the meat industry to use these terms of technical functions interchangeably with "binder." Thus, these functions are considered in this rulemaking under the category of "binders."

[1] A copy of this memorandum is available for public review in the FSIS Hearing Clerk's office. Copies may be obtained, without charge, from the FSIS Hearing Clerk.

Regulations on Cured Pork Products

Section 319.104 of the Federal meat inspection regulations (9 CFR 319.104) provides standards of composition and labeling requirements for cured pork products depending on the product's minimum protein fat-free content; for example, "Ham", "Ham with Natural Juices", "Ham Water Added", and "Ham and Water Product—X% of Weight is Added Ingredients." However, 9 CFR 319.104 does not currently provide for the use of binders or extenders in these products. FSIS has determined that it is appropriate to permit the addition of certain binders and extenders in the cured pork products labeled as "Ham Water Added", and "Ham and Water Product—X% of Weight is Added Ingredients" for the reasons discussed below.

During manufacturing, the cured pork products labeled as "Ham Water Added", and "Ham and Water Product—X% of Weight is Added Ingredients" are pumped with a brine solution in an amount equal to various percentages of the weight of the green ham. These two products are normally packaged in clear plastic and are enclosed by a vacuum seal. As the brine drains from the product, it settles in the package around the product. This drained brine solution may appear to consumers as excessive and may create an aesthetically displeasing product. As a result, some retailers remove and discard these products well before the shelf life expiration date, creating economic losses for both industry and consumers. None of the ingredients in the brine solution, either alone or in combination, serves to completely control purging of the moisture in these products.

The petitioners contend that the addition of food starch-modified, sodium caseinate, isolated soy protein, or carrageenan to these products will prevent moisture purge. They have supplied technical data information supporting their claims regarding the technical effects of these individual binders at the requested use levels.[2]

Proposed Rule

After reviewing the petitioners' technical data and information, the Administrator determined that (1) the proposed use of these binders would be in compliance with applicable FDA requirements, (2) their use would be functional and suitable for the products intended, (3) the substances would be used at the lowest level necessary to accomplish their intended technical effect, and (4) the use of these substances in products would not render them adulterated, misbranded, or otherwise not in accordance with the requirements of the Federal Meat Inspection Act. In addition, the use of binders will not affect the protein fat-free calculations for the products to which they are added. All added nonmeat proteins are subtracted from the total protein of the finished product by the laboratory before calculating the protein fat-free value of the product.

[2] A copy of the supporting data is available for public review in the FSIS Hearing Clerk's office.

On January 31, 1992, FSIS proposed to allow the use of carrageenan at a level not to exceed 1.5 percent of the product formulation, and food starch-modified, sodium caseinate, and isolated soy protein at a level not to exceed 2 percent of the product formulation (57 FR 3732). The substances would not be permitted in combination with one or more such substances because the data presented by the petitioners involved only the use of each individual binder.

Discussion of Comments

FSIS received 16 comments in response to the proposed rule—9 from food ingredients manufacturers, 4 from trade associations, 1 from a food processor, 1 from a university professor, and 1 from a food consulting firm. All of the comments supported the intent of the proposed rule, but some suggested changes or additions to various elements of the proposed rule. The following are their comments and FSIS's response to each:

1. *Comment:* The consulting firm and two food ingredient manufacturers requested that FSIS provide for the use of other additional substances, such as hydrolyzed rice protein, in cured pork products. The food processor requested that the proposed substances be allowed in cured turkey ham.

Response: FSIS's proposed rule to add the use of food starch-modified, carrageenan, isolated soy protein, and sodium caseinate to prevent purging in cured pork products was based on two solid reasons. First, these substances have been evaluated by FDA and determined to be either GRAS or may be safely used in food. Second, technical data and information submitted with the petitions requesting the use of each substance supported the efficacy of these substances in cured pork products. FSIS cannot propose the use of any substance in any meat or poultry product without adequate supporting technical data demonstrating the safety of the intended use of a specific substance in a specific product.

FSIS welcomes the commenters to submit petitions, along with supporting data, to allow the use of carrageenan, food starch-modified, sodium caseinate, and isolated soy protein in cured turkey ham, or to allow the use of additional substances in cured pork products. It should be noted, however, that the additional substances requested for use in cured pork products are not currently listed as GRAS in FDA's regulations.

2. *Comment:* A food ingredient manufacturer submitted supplementary data for petition submitted in 1989 for the use of soy protein concentrate at a level of 2 percent in cured pork products to prevent purging.

Response: FSIS has evaluated the data and intends to issue a separate proposed rule requesting comments on the use of soy protein concentrate at a level of 2 percent in cured pork products to prevent purging.

3. *Comment:* A trade association expressed that FSIS should adjust the table of approved substances in 9 CFR 318.7 through automatic publication of final rules without issuing proposed rules.

Response: The Administrative Procedure Act (5 U.S.C. 553 (b) and (c)) requires that general notice of proposed rulemaking shall be published in the Federal Register to provide interested parties an opportunity to submit written data, views, or arguments concerning the proposed rulemaking. Therefore, FSIS cannot automatically issue only final rules involving any amendments to the Federal meat and poultry products inspection regulations.

4. *Comment:* A university professor and a trade association believe that food starch-modified should be used at levels higher than the proposed 2 percent level. However, a food ingredient manufacturer voiced strong opposition to the proposed level of food starch-modified stating that such level was too high.

Response: FSIS believes that the data submitted by the petitioner adequately demonstrated that levels of food starch-modified up to 2 percent are effective in preventing purging of added brine solution in cured pork products.

5. *Comment:* A food ingredient manufacturer opposed the use of semi-refined seaweed flour (or Philippine Natural Grade (PNG)) as carrageenan in cured pork products. The commenter noted that although FDA classifies PNG as carrageenan, European regulations do not permit the use of PNG in food nor allow the product to be labeled as carrageenan. According to the commenter, this could prevent U.S. producers of cured pork products from selling their products in international commerce.

Response: The classification of PNG as carrageenan does not fall within the scope of this rulemaking. The evaluation and classification of direct food ingredients, such as carrageenan, to be used in foods, including meat and poultry products, fall under FDA's authority. FDA has determined that carrageenan is GRAS and thus approved for use in foods in the amount necessary under specific conditions as prescribed in 21 CFR 172.620, 172.623, and 172.626.

6. *Comment:* Several commenters pointed out the incorrect reference of 21 CFR 172.602 as the FDA regulations citing the approval of carrageenan as a food additive. The correct citations are 21 CFR 172.620, 172.623, and 172.626.

Response: FSIS has revised the chart to reference the correct FDA citations.

7. *Comment:* A university professor and a food ingredient manufacturer requested an extension of the comment period on the proposed rule.

Response: FSIS believes that sufficient time was provided to allow interested parties an opportunity to comment on the proposed rule.

Final Rule

After careful consideration of the comments, FSIS is adopting the proposed rule as final.

List of Subjects

9 CFR Part 318

Food additives, Food packaging, Laboratories, Meat inspection, Reporting and recordkeeping requirements, Signs and symbols.

9 CFR Part 319

Food grades and standards, Food labeling, Frozen foods, Meat inspection, Oils and fats.

Accordingly, FSIS is amending 9 CFR Parts 318 and 319 of the Federal meat inspection regulations as follows:

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

1. The authority citation for part 318 continues to read as follows:

Authority: 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

2. In the chart in § 318.7(c)(4), the Class of substance "Binders and extenders" is amended by adding at the end thereof the following new entries to read as follows:

§ 318.7 Approval of substances for use in the preparation of products.

* * * * *

(c) * * *

(4) * * *

Class of substance	Substance	Purpose	Products	Amount
*	*	*	*	*
Binders and extenders				
*	*	*	*	*
	Carrageenan	To prevent purging of brine solution.	Cured pork products as provided in 9 CFR 319.104.	Not to exceed 1.5 percent of product formulation; not permitted in combination with other binders approved for use in cured pork products; in accordance with 21 CFR 172.620, 172.623, and 172.626.
	Food starch modified	do	do	Not to exceed 2 percent of product formulation; not permitted in combination with other binders approved for use in cured pork products; in accordance with 21 CFR 172.892.
	Sodium caseinate	do	do	Not to exceed 2 percent of product formulation; not permitted in combination with other binders approved for use in cured pork products; in accordance with 21 CFR 182.1748.
	Isolated soy protein	do	do	Not to exceed 2 percent of product formulation; not permitted in combination with other binders approved for use in cured pork products.
*	*	*	*	*

PART 319—DEFINITIONS AND STANDARDS OF IDENTITY OR COMPOSITION

3. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

4. Section 319.104 would be amended by adding a new paragraph (d) to read as follows:

§ 319.104 Cured pork products.

* * * * *

(d) The binders provided in § 318.7(c)(4) of this subchapter for use in cured pork products may be used singly in those cured pork products labeled as "Ham water added" and "Ham and water product—X% of weight is added ingredients." These binders are not permitted to be used in combination with one or more such binders approved for use in cured pork products. When any such substance is added to these products, the substance shall be designated in the ingredients statement by its common or usual name in order of predominance.

Done at Washington, DC on:

Dated: September 1, 1992.

H. Russell Cross,

Administrator, Food Safety and Inspection Service.

[FR Doc. 92–22398 Filed 9–16–92; 8:45 am]

BILLING CODE 3410–DM–M

FARM CREDIT ADMINISTRATION

12 CFR Part 603

RIN: 3052–AB31

Privacy Act Regulations; New Exempt System of Records; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published final regulations under part 603 on July 22, 1992 (57 FR 32420). The final regulations amend 12 CFR part 603 to exempt the system of records, "Office of Inspector General (OIG) Investigative Files—FCA," from certain Privacy Act provisions, due to the law enforcement nature of the records. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the Federal Register during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is September 16, 1992.

EFFECTIVE DATE: September 16, 1992.

FOR FURTHER INFORMATION CONTACT:

Elizabeth M. Dean, Counsel to the Inspector General, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4030,

or

Rebecca S. Orlich, Senior Attorney, Regulatory and Legislative Law Division, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

(12 U.S.C. 2252(a) (9) and (10))

Dated: September 11, 1992.

Nan P. Mitchem,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 92–22404 Filed 9–16–92; 8:45 am]

BILLING CODE 6705–01–M

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 935 and 940

[No. 92–533.3]

Advances

AGENCY: Federal Housing Finance Board.

ACTION: Interim final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is revising its regulation and statement of policy regarding Federal Home Loan Bank (FHLBank) advances to members by eliminating the 20-year maximum maturity on FHLBank advances. The interim final rule provides the Banks with the discretion to make advances with maturities greater than 10 years, consistent with safe and sound operation.

DATES: This rule is effective September 17, 1992. Comments must be submitted by October 19, 1992.

ADDRESSES: Mail comments to Elaine Baker, Executive Secretary, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Christine M. Freidel, Financial Analyst, (202) 408–2976; Thomas D. Sheehan, (202) 408–2870, Assistant Director, District Banks Directorate; or James H. Gray, Jr., (202) 408–2552, Associate General Counsel, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: Part 935 of the Finance Board's regulations governs the granting of advances by the FHLBanks to their members. Section 935.6 (12 CFR 935.6) currently authorizes the FHLBanks to make advances with maturities of up to 20 years. Section 940.1 (12 CFR 940.1) codifies the Finance Board's policy regarding FHLBank advances to members, directing the FHLBanks to offer advances with maturities of up to 10 years, and allowing the Banks the discretion to offer advances with maturities of up to 20 years.

Today, the Finance Board is amending 12 CFR 935.6 and 940.1 to authorize the FHLBanks to make advances of any maturity, consistent with safe and sound operation. It is anticipated that this expanded authority will afford greater opportunity for the FHLBanks in providing flexible and affordable housing finance to their members.

It is anticipated that eliminating the 20-year maturity limit on advances will facilitate the asset/liability management of FHLBank members engaged in affordable housing by permitting participants to lock-in FHLBank financing over the life of a project. Members are often understandably reluctant to provide such long-term financing without matched funding, particularly for mortgage loans that would not conform to secondary market standards. The regulatory change will be especially beneficial to those members engaged in multi-family and other affordable housing loans that are not normally eligible for securitization.

The Banks are encouraged to offer such funding only to the extent they are able to limit their own interest rate risk exposure. Although offering longer-term funding could expose the Banks to additional interest rate risk, their ability to raise long-term debt, the availability of hedging options, and their expertise in asset/liability management should allow the Banks to offer a broad range of advance maturities without undue financial risk.

This interim final rule is being adopted in advance of other changes the Finance Board expects to make in the near future to part 935 of its regulations. The Finance Board is currently reviewing its advances regulations in

their entirety to ensure conformity with the legislative intent that the Banks make affordable housing finance available to all eligible institutions.

The Finance Board is adopting these regulations as an interim final rule, effective immediately. However, the Finance Board is incorporating a 30-day comment period. The Administrative Procedures Act (APA) requires executive agencies to publish a substantive rule in the **Federal Register** not less than 30 days prior to its effective date. 5 U.S.C. 553(d) (Supp. I 1989). The APA provides an exception to the 30-day publication requirement when the substantive rule in question relieves a restriction. 5 U.S.C. 553(d)(1). Although these regulations will be effective immediately, the Finance Board recognizes the importance and value of public input on FHLBank System operations. Accordingly, the Finance Board has provided for a 30-day comment period from the date of publication of these regulations. The comments received during this 30-day period may result in revisions to these regulations after their effective date.

List of Subjects in 12 CFR Parts 935 and 940

Advances, Federal home loan banks.

Accordingly, the Federal Housing Finance Board hereby amends Parts 935 and 940, Subchapter B, Chapter IX of Title 12 of the Code of Federal Regulations, as set forth below.

PART 935—ADVANCES

1. The authority citation for Part 935 continues to read as follows: Secs. 2A, 2B, as added by sec. 702, 103 Stat. 413, 414 (12 U.S.C. 1422a, 1422b); sec. 10, 47 Stat. 731, as amended (12 U.S.C. 1430).

2. Section 935.6 is revised to read as follows:

§ 935.6 Terms of advances.

The Banks shall offer advances with maturities of up to 10 years and may offer advances with longer maturities, consistent with safe and sound operation.

PART 940—STATEMENTS OF POLICY

1. The authority citation for part 940 continues to read as follows:

Authority: Sec. 11, 47 Stat. 733, as amended (12 U.S.C. 1431); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464; secs. 802–806, 91 Stat. 1147–1148 (12 U.S.C. 2901 et seq.); sec. 701, as added by sec. 503, 88 Stat. 1521 (15 U.S.C. 1691); sec. 16, 16 Stat. 144, as amended (42 U.S.C. 1981); secs. 801–819, 82 Stat. 81–89, as amended (42 U.S.C. 3601–3619); E.O. 11063, 27 FR 11527.

2. Section 940.1(b) is revised to read as follows:

§ 940.1 Policy on advances to members.

* * * * *

(b) *Terms and conditions.* The Banks shall offer a range of advances with maturities of up to 10 years and may offer advances with longer maturities, consistent with safe and sound operation. Advances shall be offered within a range of rates established by the Board that is above the current replacement cost of Federal Home Loan Bank obligations of comparable maturities. Prepayment and commitment fees which protect the Banks from undue interest-rate risk generally shall be required.

* * * * *

Dated: July 17, 1992.

By the Federal Housing Finance Board.

Daniel F. Evans, Jr.,

Chairman.

[FR Doc. 92–21842 Filed 9–16–92; 8:45 am]

BILLING CODE 6725–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN1–1–5092; FRL–4202–3]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: USEPA is approving a revision to the Indiana State Implementation Plan (SIP) for ozone. On April 11, 1988, the Indiana Department of Environmental Management (IDEM) submitted to USEPA amendments to the Indiana Administrative Code (IAC) 14–1, General Provisions; 326 IAC 14–8, Emission Standards for Equipment Leaks; and 326 IAC 14–9, Emission Limitations for Benzene from Furnace Coke Oven By-product Recovery Plants. The requested revisions to the SIP pertain to the control of volatile organic compound (VOC) emissions from coke oven by-product recovery plants, located in the ozone nonattainment counties of Lake and Porter. USEPA's action is based upon a revision request which was submitted by the State to satisfy the requirements of part D of the Clean Air Act (Act).

DATES: This action will be effective November 16, 1992 unless notice is received by October 19, 1992 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the SIP revision and other materials relating to this rulemaking are available for inspection at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, Regulation Development Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the regulations being incorporated by reference in today's rule are available for inspection at: U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460.

Comments on this rulemaking should be addressed to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (5AR–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Fayette Bright (5AR–18J), Regulation Development Section, Regulation Development Branch, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6069.

SUPPLEMENTARY INFORMATION: Under section 107 of the pre-amended Act, USEPA designated certain areas in each State as not attaining the National Ambient Air Quality Standards (NAAQS) for ozone. For Indiana, see 43 FR 8962 (March 3, 1978), 43 FR 45993 (October 5, 1978) and 40 CFR 81.315. For these areas, part D of the pre-amended Act required that the State revise its SIP to provide for attaining the primary NAAQS as expeditiously as practicable, but not later than December 31, 1982. Part D allowed USEPA to grant extensions up to December 31, 1987, to those States that could not demonstrate attainment of the ozone standard by December 31, 1982, if certain conditions were met by the State in revising its air pollution program. Indiana requested an extension, and on February 11, 1982, (47 FR 6276) USEPA granted an extension to December 31, 1987, for achieving the ozone NAAQS for four counties: Clark, Floyd, Lake, and Porter ("extension counties").

The requirements for an approvable SIP under the pre-amended Act are described in the "General Preamble" for part D rulemakings published at 44 FR 20372 (April 4, 1979), 44 FR 38583 (July 2, 1979), 44 FR 50371 (August 28, 1979), 44 FR 53761 (September 17, 1979), and 44 FR 67182 (November 23, 1979).

On January 22, 1981, (46 FR 7182) USEPA published guidance for the development of 1982 ozone SIPs in "State Implementation Plans: Approval of 1982 Ozone and Carbon Monoxide Plan Revisions for Areas Needing an Attainment Date Extension". The pre-amended Act required that for stationary sources, an approvable SIP must include legally enforceable requirements reflecting the application of reasonably available control technology (RACT) to VOC sources. (For a definition of RACT see December 9, 1976, memorandum from the Assistant Administrator of Air and Waste Management.)

In Indiana's 1982 ozone plan,[1] it committed to obtain VOC emission reductions in Lake and Porter Counties either from the implementation of the NESHAP for coke oven by-product recovery plants or by other regulations comparable in emission reductions adopted under State rules. Because the USEPA had not promulgated a NESHAP for this source category,[2] Indiana adopted State rules to control emissions from coke oven by-product recovery plants.

USEPA notified the Governor of Indiana of its VOC SIP deficiencies on May 26, 1988, and a follow-up SIP call letter was sent to the IDEM on June 17, 1988, reiterating the State's RACT VOC requirements and acknowledging the receipt of Indiana's coke oven rules which were under USEPA review. (For further detail a copy of these letters may be obtained from USEPA, Region 5).

In partial response to the requirement for RACT VOC rules, on April 11, 1988, the State of Indiana submitted to USEPA for incorporation into the Indiana Ozone SIP, regulations which control VOC emissions from coke oven by-product recovery plants located in Indiana's ozone nonattainment counties of Lake and Porter, the only extension counties where such major sources exist. The submittal consists of the following rules: 326 IAC 14-1—General Provisions; 326 IAC 14-8—Emission Standards for Equipment Leaks (Fugitive Emission Sources); and 326 IAC 14-9—Emission Limitations for Benzene from Furnace Coke Oven By-Product Recovery Plants. Some of these rules adopt certain provisions in USEPA's National Emission Standards for Hazardous Air Pollutants (NESHAP) regulations at 40 CFR part 61, subpart A and L, by reference.

The Clean Air Act Amendments (Amendments) of 1990 were enacted on November 15, 1990, Public Law 101-549, 104 Stat. 2399, codified at 42 U.S.C. 740-76"1q. In amended section 182(a)(2)(A), Congress statutorily adopted the requirement that ozone nonattainment areas fix up their RACT rules for ozone. Areas designated nonattainment before enactment of the Admendments and which retained that designation were classified as marginal or above as of enactment and are required to meet the RACT fix-up requirement. Under section 182(a)(2)(A), those areas were required by May 15, 1991, to correct RACT as it was required under pre-amended section 172(b), as that requirement was interpreted in USEPA's pre-amendment guidance.[3] The SIP call letters interpreted that guidance and indicated corrections necessary for specific nonattainment areas. Lake and Porter counties are classified as severe 17.[4] Therefore, these areas are subject to the RACT fix-up requirement and the May 15, 1991, deadline.

Although this submittal preceded the date of enactment of the Amendments, it was intended to fulfill part of the "RACT fix-up" requirement of section 182(a)(2)(A) for Lake and Porter Counties. Indiana subsequently requested that USEPA take rulemaking action on this SIP revision.

USEPA's evaluation of the State's submittal is contained in technical support documents which are available at the Region 5 office. The following paragraphs provide a summary of the State's submittal.

A. Summary of State's Submittal

1. 326 IAC 14-1-1-(b)—Applicability

This rule is revised to exclude 40 CFR 61.11(f) and 61.12(d) from the incorporation by reference into the State rules. Section 61.11(f) states that granting of a waiver under § 61.11 shall not abrogate the USEPA Administrator's authority for inspection, monitoring and entry under section 114 of the Act. Because the State is not directly bound by the Act, this section has not been adopted. (The USEPA, however, will retain its inspection, monitoring and entry rights as they apply to sources under part 61, subpart A and section 114 of the Act, and will not be bound by any waivers that may be granted by the State.) Section 61.12(d) states that the Administrator will publish a notice in the **Federal Register** if he decides to approve alternative means of emission limitations. Since the State cannot publish in the **Federal Register**, § 61.12(d) has not been adopted by reference.

2. 326 IAC 14-1-2—Definitions

This section contains nonsubstantive wording changes that do not affect regulatory requirements.

3. 326 IAC 14-8-1-(b)—Applicability

Indiana's rule adopts by reference 40 CFR part 61, subpart V, concerning equipment leaks [5] with the exception of revisions to 40 CFR 61.241, 61.245, 61.246 and 61.247 specified in 326 IAC 14-8-2 through 326 IAC 14-8-5. The revision is consistent with 40 CFR part 61, subpart V.

4. 326 IAC 14-8-2—Definitions

Indiana's rule revises certain definitions contained in 40 CFR 61.241 to include Indiana's definitions of terms applicable to 326 IAC 14-8. The revised definitions are consistent with 40 CFR part 61, subpart V.

5. 326 IAC 14-8-3—Test Methods and Procedures

This rule expands upon 40 CFR 61.245(b), (c), and (d)(3) to extend the applicability of these sections to equipment leaks from coke oven by-product recovery plants. 326 IAC 14-8-

[1] USEPA disapproved this plan for Lake and Porter Counties on November 18, 1988, (53 FR 46609), because of continued violations of the ozone NAAQS in the greater Chicago area. Even though USEPA disapproved this plan, it is continuing to rulemake on individual elements within Indiana's ozone plan, and Indiana is continuing to submit such elements in the effort to improve further Indiana's air quality. On October 23, 1990, and August 19, 1991, the IDEM submitted regulations intended to address many of the deficiencies identified by USEPA in Indiana's Stationary Source Control Strategy for VOC. On March 6, 1992, (57 FR 8062), USEPA approved the incorporation of these measures into the Indiana SIP.

[2] USEPA ultimately promulgated the NESHAP standard for benzene on September 14, 1989, (54 FR 38044). The purpose of this standard is to regulate benzene emissions from coke oven by-product recovery plants (40 CFR part 61, subpart L). Regulating hazardous pollutants under section 112 of the Act often requires more stringent controls than non-hazardous pollutants. The emission limits and other requirements in the Indiana rule may be (and, in certain areas, are) less stringent than those in the NESHAP rule. However, the VOC RACT regulations USEPA is approving today are in addition to, and not in lieu of, the NESHAP regulations. Affected industry must comply with both sets of regulations.

[3] Among other things, the pre-amendment guidance consists of the Post-87 policy, 52 FR 45044 (November 24, 1987); the Bluebook, "Issues Relating to VOC Regulation Cutpoints, Deficiencies and Deviations, Clarification to appendix D of November 24, 1987, **Federal Register** Notice" (of which notice of availability was published in the **Federal Register** on May 25, 1988); and the existing Control Techniques Guidelines (CTGs).

[4] Lake and Porter counties retained their designation of nonattainment and were classified by operation of law pursuant to section 107(d) and 181(a) upon enactment of the Amendments, 56 FR 56694. These areas have 17 years from the date of enactment (November 15, 1990) to come into attainment.

[5] Please note that all 40 CFR part 61 requirements continue to apply to all sources in Indiana affected by 326 IAC Article 14.

3(c) states that: "Samples used in determining the percent volatile hazardous air pollutant (VHAP) content shall be representative, as determined by the Commissioner, of the process fluid that is contained in or contacts the equipment or the gas being combusted in the flare." This language differs from the Federal NESHAP rule [40 CFR 61.245(d)(3)] in that it provides for a State commissioner determination of representativeness. It should be noted that USEPA retains its authority for such determinations under the NESHAP rule.

6. 326 IAC 14-8-4—Recordkeeping Requirements and 326 IAC 14-8-5—Reporting Requirements

Indiana's rules expand upon 40 CFR 61.246 and 61.247(b)(5) to include the applicability of these sections to equipment leaks from coke oven by-product recovery plants.

7. 326 IAC 14-9-1—Applicability

This rule states that 326 IAC 14-9 applies to furnace coke oven by-product recovery plants in Lake and Porter Counties. It also specifies that once a plant becomes a furnace coke oven by-product recovery plant, it will continue to be considered a furnace coke oven by-product recovery plant under rule 326 IAC 14-9 regardless of the type of coke produced in the future. Because there currently are no foundry coke oven by-product plants in Lake and Porter Counties, this rule applies to all coke oven by-product plants in these counties.

8. 326 IAC 14-9-3—Light-oil Sumps and 326 IAC 14-9-4—Final Coolers and Final-Cooler Cooling Towers

These rules contain standards for light oil pumps, final coolers, and final-cooler cooling towers. 326 IAC 14-9-3 requires installation and maintenance of a closed system to contain emissions from light-oil pumps. 326 IAC 14-0-4 requires zero benzene emissions from final coolers and final-cooler cooling towers.

9. 326 IAC 14-9-5—Equipment Leaks

This rule contains standards for equipment leaks at coke oven by-product recovery plants.

10. 326 IAC 14-9-6—Compliance Determinations

This rule specifies methods of determining compliance with the requirements of 326 IAC 14-9-3 through 326 IAC 14-9-5.

11. 326 IAC 14-9-7—Compliance Schedule

This rule specifies the following compliance schedules which apply to 326 IAC 14-9-3 through 326 IAC 14-9-5:

(a) Each owner or operator shall comply with the requirements of 326 IAC 14-9-3, prior to June 30, 1989.

(b) Each owner or operator shall comply with the requirements of 326 IAC 14-9-5, prior to November 30, 1988.

(c) Each owner or operator shall comply with the requirements of 326 IAC 14-9-4 prior to December 31, 1990.

12. 326 IAC 14-9-8—Test Methods and Procedures and 326 IAC 14-9-9—Recordkeeping and Reporting Requirements

These rules specify test methods and procedures and recordkeeping and reporting requirements for sources subject to 326 IAC 14-9.

B. Summary of USEPA's Final Rulemaking Action

USEPA believes that Indiana's rule controls the applicable sources to at least RACT for VOC. USEPA has determined that these rules will result in reduced VOC emissions in northwest Indiana, thereby resulting in lower ambient ozone levels in the greater Chicago area. USEPA approves the incorporation of the State's revised regulation into the Indiana ozone SIP.

USEPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will become effective on November 16, 1992. However, if we receive notice by October 19, 1992 that someone wishes to submit critical comments, then USEPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective November 16, 1992.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989, (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state-relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 16, 1992. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Incorporation by reference, Intergovernmental relations, Ozone.

Note: Incorporation by reference of the State Implementation Plan for the State of Indiana was approved by the Director of the Federal Register on July 1, 1982.

Dated: August 26, 1992.

Valdas V. Adamkus,

Regional Administrator.

For the reasons set out in the preamble, part 52 of chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Subpart P—Indiana

Authority: 42 U.S.C. 7401–7671(q).

2. Section 52.770 is amended by adding paragraph (c)(81) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(81) On April 11, 1988, the State submitted, as a portion of its 1982 ozone plan, rules to control volatile organic compound (VOC) emissions in Lake and Porter Counties. These rules consist of the provisions and requirements in 326 IAC 14–1, General Provisions; 326 IAC 14–8, Emission Standards for Equipment Leaks; and 326 IAC 14–9, Emission Limitations for Benzene from Furnace Coke Oven By-product Recovery Plants.

(i) Incorporation by reference.

(A) Amendments to title 326, Air Pollution Control Board, Indiana Administrative Code (IAC) 14–1 General Provisions; 326 IAC 14–8 Emission Standards for Equipment Leaks; (Fugitive Emission Sources); and 326 IAC 14–9 Emission Limitations for Benzene from Furnace Coke Oven By-Product Recovery Plants, as published in the June 1, 1988, Indiana Register (IR) at 11 IR 3011. Filed with the Secretary of State on April 13, 1988.

* * * * *

[FR Doc. 92–22299 Filed 9–16–92; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[Region II Docket No. 108; FRL–4203–5]

Approval and Promulgation of Implementation Plans; Revisions to the State of New Jersey State Implementation Plan for Ozone and Carbon Monoxide

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: This action announces that the Environmental Protection Agency is approving a request by New Jersey to revise its State Implementation Plan for attainment of the ozone and carbon monoxide national ambient air quality standards. The result of this revision is the incorporation of revised regulations concerning the State's motor vehicle emissions inspection and maintenance program.

EFFECTIVE DATE: This action will be effective October 19, 1992.

ADDRESSES: Copies of the State submittals are available for inspection at the following addresses during normal business hours:

Environmental Protection Agency, Air Programs Branch, Jacob K. Javits Building, 26 Federal Plaza, Room 1034A, New York, New York 10278.

New Jersey Department of Environmental Protection and Energy, Division of Environmental Quality, Bureau of Air Pollution Control, 401 East State Street, CN–027, Trenton, New Jersey 08625.

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, Jacob K. Javits Federal Building, 26 Federal Plaza, room 1034A, New York, New York 10278, (212) 264–2517.

SUPPLEMENTARY INFORMATION: On November 9, 1983, the Environmental Protection Agency (EPA) announced final approval of a revision to the New Jersey State Implementation Plan (SIP) (48 FR 51472). As part of that revision, the State committed to study and, as appropriate, to implement certain improvements to its motor vehicle emissions inspection and maintenance (I/M) program. On March 6, 1987, New Jersey submitted a revision to its SIP which included the results of this study and the adopted regulations. New Jersey also committed to implement additional program improvements. On October 2, 1990, EPA proposed approval of this revision to the New Jersey SIP (55 FR 40202). Specifically, this revision includes:

- Adoption of more stringent emissions standards,
- Implementation of an I/M program for heavy-duty gasoline vehicles,
- Establishment of an anti-tampering/malfunction diagnosis program for light-duty vehicles, and
- Elimination of the 24–35 month inspection exemption for new vehicles.

These measures are described fully on EPA's October 2, 1990 proposal.

In its October 2, 1990 notice, EPA proposed to require that New Jersey submit a schedule re-establishing the fuel inlet restrictor inspection portion of the anti-tampering check as part of the normal inspection process. While the provisions requiring the inspection were adopted and initially implemented, the inspection of inlet restrictors had been suspended on April 24, 1987 due to the inspectors' concerns about exposure to gasoline during the inspection. A subsequent study concluded that there is no increased health risk and EPA has received notification from New Jersey stating that this inspection was formally re-established on June 1, 1990. EPA is satisfied with New Jersey's fulfillment of its commitment to implement this inspection and a schedule is not needed.

Section 15.8 of Chapter 27 permits the Director of the Division of Motor Vehicles (DMV) in consultation with the Commissioner of the Department of Environmental Protection and Energy to prescribe alternative emission inspection standards should a particular vehicle or vehicle class not be able to comply with the provisions in this regulation. In this regard it should be noted that EPA cannot recognize any variance or alternate requirement until it is submitted to EPA by the State for approval as a SIP revision. Approval will be based on the effect of the proposed variance on air quality and on the ability of the vehicle or vehicle class to comply with the existing regulation.

EPA has reviewed New Jersey's request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Amendments to the Clean Air Act enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment. The revision incorporates program modifications which are equivalent to those committed to in the SIP, and results in a more effective program which obtains greater emission reductions than those provided by the current SIP. Therefore, New Jersey's meets the requirements of Section 193 (specifically, the second sentence of the provision). Beyond that, the revision in no way would interfere with the SIP's ability to meet the new Act's requirements, and thus meets the test in section 110(l).

Under the provisions of section 183(f) of the amended Clean Air Act, EPA is required to publish in the **Federal Register** guidance on enhanced vehicle I/M programs. EPA published the preamble to the proposed regulations on July 13, 1992 (57 FR 134), while the actual SIP requirements were published on July 28, 1992 (57 FR 145). When finalized the states must rely on this guidance in meeting enhanced I/M

provisions. The guidance will specify when the states need to revise their regulations. Should New Jersey's regulations not meet this guidance, the State will be required to make the appropriate revisions. Today's action provides an improvement over the program contained in the current SIP.

Conclusion

EPA received no comments on the October 2, 1990 proposed rulemaking action. Therefore, EPA is approving New Jersey's March 6, 1987 SIP revision which incorporates the four amendments to two State regulations into the SIP. These regulations have been adopted by the State and are currently in effect.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Today's action makes final the action proposed on October 2, 1990. As noted, EPA received no adverse public comment on the proposed action. As a direct result, the Regional Administrator has reclassified this action from Table 1 to Table 2 under the processing procedures established at 54 FR 2214, January 19, 1989.

EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The Office of Management and Budget has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit within 60 days from date of publication. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by references, Ozone, Reporting and Recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of New Jersey was approved by the Director of the Federal Register on July 1, 1992.

Dated: August 13, 1992.

Constantine Sidamon-Eristoff,

Regional Administrator.

Title 40, chapter I, part 52 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671g.

SUBPART FF—New Jersey

2. Section 52.1570 is amended by adding paragraph (c)(47) to read as follows:

§52.1570 Identification of plan.

* * * * *

(c) * * *

(47) Revisions to the New Jersey State Implementation Plan (SIP) for ozone concerning the motor vehicle inspection and maintenance (I/M) program dated March 6, 1987, submitted by the New Jersey Department of Environmental Protection (NJDEP).

(i) Incorporation by reference.

(A) Amendments to title 7, chapter 27, subchapter 15 of the New Jersey Administrative Code, entitled "Control and Prohibition of Air Pollution From Gasoline-Fueled Motor Vehicles," effective January 21, 1985.

(B) Amendments to title 13, chapter 20, subchapter 28 of the New Jersey Administrative Code, entitled "Enforcement Service Inspection of New Passenger Vehicles and New Motorcycles," effective January 21, 1985.

(ii) Additional material.

(A) July 24, 1990 letter from David West, NJDEP, to Rudolph Kapichak, EPA, submitting the results of the study by Pacific Environmental Services on the health risks of performing the fuel inlet restrictor inspections.

(B) July 1, 1990 letter from David West, NJDEP, to Rudolph Kapichak, EPA, notifying of the resumption of fuel inlet restrictor inspections.

3. Section 52.1605 is amended by revising the entry for Title 7, Chapter 27: Subchapter 15 and adding a new entry for Title 13: Chapter 20, Subchapter 28 in numerical order as follows:

§ 52.1605 EPA—approved New Jersey regulations.

State regulation	State effective date	EPA approved date	Comments
* * *	* * *	* * *	* * *
Title 7, Chapter 27:			
* * *	* * *	* * *	* * *
Subchapter 15, "Control and Prohibition of Air Pollution From Light-Duty Gasoline-Fueled Motor Vehicles".	Jan. 21, 1985	September 17, 1992. Citation of this action.	Variances adopted by the State pursuant to § 15.8 become applicable only if approved by EPA as SIP revisions.
* * *	* * *	* * *	* * *
Title 13, Chapter 20:			
Subchapter 28, "Enforcement Service Inspection of New Passenger Vehicles and New Motorcyles".	Jan. 21, 1985	September 17, 1992. Citation of this action.	
* * *	* * *	* * *	* * *

[FR Doc. 92–22300 Filed 9–16–92; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[PA-12-1-5343; FRL-4204-2]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Good Engineering Practice Stack Height Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. These revisions to chapters 121 and 141 of the Pennsylvania SIP conform with the revised stack height regulations promulgated by EPA on July 8, 1985 (50 FR 27892). EPA is also approving revisions to delete outdated provisions of chapter 141 pertaining to variances. The intended effect of this action is to approve revisions submitted by the Commonwealth of Pennsylvania which meet the stack height regulation.

EFFECTIVE DATE: This rule will become effective on October 19, 1992.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations: U.S. Environmental Protection Agency Region III, Air Programs Branch, 841 Chestnut Building, Philadelphia, PA 19107; Pennsylvania Department of Environmental Resources, Bureau of Air Quality Control, Post Office Box 2357, Harrisburg, PA 17120; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M. Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Joseph W. Kunz (3AT11) at the EPA, Region III address above or telephone (215) 597-8486.

SUPPLEMENTARY INFORMATION: On December 8, 1987, EPA published a Notice of Proposed Rulemaking (NPR) for the Commonwealth of Pennsylvania (52 FR 46495). The NPR proposed to approve the revisions to chapters 121 & 141 of the Pennsylvania regulations to conform with the revised stack height regulation of July 8, 1985 (50 FR 27892) and to delete outdated provisions of chapter 141 pertaining to variances.

A description of the revision was provided in the NPR and will not be restated here. As discussed in the NPR, the Pennsylvania submittal did not include definitions of "Emission limitation" and "Stack" which were added to part 51 with the stack height regulations promulgated on February 8, 1982 (47 FR 5868).

On March 11, 1986, Pennsylvania submitted a letter committing the Department of Environmental Resources to conduct new source review in accordance with the good engineering practice requirements of EPA. Pennsylvania's regulations in 25 PA Code Chapter 127, require, at § 127.12(4) and § 127.22(5), that new sources being reviewed for permits comply with all requirements promulgated by the Administrator of the United States Environmental Protection Agency pursuant to provisions of the Clean Air Act. EPA has agreed that the language of 25 PA Code Chapter 127, along with the letter of commitment, satisfies the requirements of 40 CFR part 51, subpart I for applying the stack height revision to new source review. The omitted definitions are implicitly applicable through the requirements of 25 PA Code § 127.12(4) and § 127.22(5).

Public Participation

The SIP revision was proposed under a procedure called "parallel processing" (47 FR 27073). Under this procedure, the State and EPA propose the regulation at the same time, announce concurrent comment periods, and jointly review the comments. If the State and EPA do not receive comments that would necessitate changes to the regulation, it is adopted by the State and submitted to EPA. The State adopted regulation is then processed by EPA as a final rulemaking. If significant changes are made to the regulation, EPA would have to propose the regulation again. In the case of Pennsylvania's stack height regulation, public hearings were held on August 24, August 26, and August 31, 1987. On July 19, 1988, Pennsylvania submitted the adopted regulations and a summary of comments. The only changes to the regulations were revisions to the referenced portions of 40 CFR part 51, to reflect the recodification promulgated on November 7, 1986, (51 FR 40656). There were no comments received by EPA on the NPR published on December 8, 1987, proposing to approve this revision.

Stack Height Remand

The EPA's stack height regulations were challenged in *NRDC* v. *Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). On January 22, 1988, the U.S. Court of Appeals for the D.C. Circuit issued its decision affirming the regulations in large part, but remanding three provisions to the EPA for reconsideration.

These provisions are:

1. Grandfathering pre-October 11, 1983, within-formula stack height increases from demonstration requirements [40 CFR 51.100(kk)(2)];
2. Dispersion credit for sources originally designed and constructed with merged or multiflue stacks [40 CFR 51.100(hh)(2)(ii)(A)]; and
3. Grandfathering pre-1979 use of the refined H+1.5L formula [40 CFR 51.100(ii)(2)].

Although the EPA generally approves Pennsylvania's stack height rules on the grounds that they satisfy 40 CFR part 51, EPA also provides notice that this action may be subject to modification when EPA completes rulemaking to respond to the decision in *NRDC* v. *Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). If the EPA's response to the *NRDC* remand modifies the July 8, 1985 regulations, EPA will notify the State of Pennsylvania that its rules must be changed to comport with EPA's modified requirements. This may result in revised emission limitations or may affect other actions taken by Pennsylvania and source owners or operators.

Final Action

EPA is approving the amendments to chapters 121 and 141 of the Pennsylvania regulations submitted on July 19, 1988, by the Department of Environmental Resources as revisions to the Pennsylvania SIP.

The Agency has reviewed this request for revision of the Federally-approved State implementation plan for conformance with the provisions of the 1990 amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action to approve Pennsylvania's GEP stack height regulations has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive

Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 16, 1992. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Particulate matter, Sulfur oxides.

Note: Incorporation by reference of the State Implementation Plan for the State of Pennsylvania was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 1, 1992.

Edwin B. Erickson,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(73) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(73) Good engineering practice stack height regulations were submitted by the Secretary, Pennsylvania Department of Environmental Resources on July 19, 1988.

(i) Incorporation by reference.

(A) Letter from the Pennsylvania Department of Environmental Resources dated July 19, 1988, submitting a revision to the Pennsylvania State Implementation Plan.

(B) Amendments to Pennsylvania regulations, title 25, part I, subpart C, article III; chapters 121 (definitions) and 141 (variances and alternate standards) adopted May 14, 1988.

(ii) Additional materials.

(A) Remainder of the State submittal including the letter of commitment dated March 11, 1986, from the Department of Environmental Protection stating that new source review shall be conducted in accordance with the good engineering practice requirements of 40 CFR part 51.

[FR Doc. 92–22301 Filed 9–16–92; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[WV–6–1–5551; FRL–4204–5]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Revised Regulations Controlling Volatile Organic Compound Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of West Virginia. This revision consists of revised regulations which establish and require reasonably available control technology (RACT) for volatile organic compound (VOC) emissions in Putman, Kanawha, Wood, Cabell, Wayne and Greenbrier Counties, and the Valley Magisterial District of Fayette County. The intended effect of this action is to approve VOC RACT regulations that West Virginia submitted in response to EPA's November 8, 1989 SIP Call letter.

EFFECTIVE DATE: This rule will become effective on October 19, 1992.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation & Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and West Virginia Air Pollution Control Commission, 1558 Washington Street, East, Charleston, West Virginia 25311.

FOR FURTHER INFORMATION CONTACT: Jacqueline R. Lewis, 3AT13, at the above listed EPA Region III address. Phone (215) 597–6863.

SUPPLEMENTARY INFORMATION: On May 5, 1992, EPA published a Notice of Proposed Rulemaking (NPR) for a revision to the West Virginia SIP. The NPR proposed approval of amendments to Series 21, 23, and 24 of the regulations of the West Virginia Air Pollution Control Commission (WVAPCC) (57 FR 19271). The formal SIP revision was submitted by the WVAPCC on June 4, 1991.

Background

On November 8, 1989, EPA sent a "SIP call" letter to Gaston Caperton, Governor of West Virginia, notifying him that the West Virginia SIP was substantially inadequate to achieve the National Ambient Air Quality Standard (NAAQS) for ozone n Putnam, Kanawha, and Greenbrier Counties. Through a SIP call, EPA makes a finding that the SIP does not provide for attainment of the NAAQS and EPA requires the State to revise the SIP to correct the inadequacies. In response to the SIP call letter, the state was required to: (1) Correct identified deficiencies in the existing SIP's VOC regulations, (2) adopt VOC regulations previously required or committed to but never adopted, and (3) update the areas' based year emissions inventory. On December 1, 1989, EPA sent a letter to the Director of WVAPCC outlining specific corrections to West Virginia's existing VOC regulations necessary to eliminate the deficiencies and inconsistencies in the regulations identified in the November 8, 1989 SIP call.

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. Pursuant to section 107(d) of the Act, the counties of Greenbrier, Putnam, Kanawha, Cabell, Wayne, and Wood were designated as ozone nonattainment areas in a November 6, 1991 **Federal Register** Notice, with an effective date of January 6, 1992 (56 FR 56694). Putnam, Kanawha, Cabell, Wayne, and Wood Counties are classified as moderate ozone nonattainment areas. Greenbrier County is classified as a marginal nonattainment area. Fayette County, which includes the Valley Magisterial District, is designated unclassifiable/attainment.

Under section 182(b)(2) of the Act, moderate ozone nonattainment areas must adopt RACT for sources covered by a pre- or post-amendment CTG and for major sources of VOC emissions that are not covered by a CTG. The West Virginia SIP submittal fulfills this requirement for source categories covered by three pre-amendment CTGs—bulk gasoline terminals, petroleum refineries, and storage of petroleum liquids in fixed roof tanks. Areas that are not classified as moderate (or more serious) ozone nonattainment areas are not subject to this RACT requirement. Therefore, Greenbrier and Fayette Counties (including the Valley Magisterial District) are not subject to the requirements of section 182(b)(2).

Specific requirements of the revised regulations and the rationale for EPA's

proposed action are explained in the NPR and will not be restated here. In response to the proposed rulemaking, a comment was received from the U.S. Small Business Administration (U.S. SBA). The comment and EPA's response are summarized below.

Public Comment

The U.S. SBA commented that the proposed rule indicates that compliance with the Regulatory Flexibility Act (RFA) is inadequate because no explanation was provided for EPA's certification of the proposed rule. The U.S. SBA further stated that section 605(b) of the RFA requires that the certification and statement be transmitted to the U.S. SBA Chief Counsel for Advocacy.

Response: For the reasons stated in the "Final Action" section below, EPA has complied with the requirements of section 605(b) of the RFA. Furthermore, the Small Business Administration previously waived the requirement in the RFA that EPA transmit a copy of the regulatory flexibility certification for SIP approval's to the U.S. SBA's Chief Counsel for Advocacy.

Final Action

EPA is approving a revision to the West Virginia SIP submitted on June 4, 1991, by the WVAPCC as meeting the RACT catch-up requirement of section 182(b)(2) as it applies to Putnam, Kanawha, Cabell, Wayne, and Wood Counties. In addition, EPA is approving the June 4, 1991, submittal as strengthening the SIP as it applies to Greenbrier County and the Valley Magisterial District of Fayette County. This revision includes amendments to the following WVAPCC regulations: Series 21, "Regulations to Prevent and Control Air Pollution From the Emissions of Volatile Organic Compounds From the Storage of Petroleum Liquids in Fixed Roof Tanks," Series 23, "Regulations to Prevent and Control Air Pollution From the Emissions of Volatile Organic Compounds From the Bulk Gasoline Terminals," and Series 24, "Regulations to Prevent and Control Air Pollution From the Emission of Volatile Organic Compounds from Petroleum Refinery Sources." These amendments are designed to make the regulations consistent with EPA guidance.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. section 605(b), the Administrator certifies that SIP approvals under sections 107, 110 and 172 of the Clean Air Act will not have a significant economic impact on a substantial number of small entities. SIP approvals do not create any new requirements but simply approve requirements that are already State law. SIP approvals, therefore, do not add any additional requirements for small entities. Moreoever, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis for a SIP approval would constitute Federal inquiry into the economic reasonableness of the State actions. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds.

This action has been classified as a Table 3 action for signature by the Regional Administrator under procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. The Office of Management and Budget has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action, approving West Virginia's RACT requirements on Series 21, 23, and 24, relating to fixed roof tanks, bulk gasoline terminals, and petroleum refinery sources, respectively, as a SIP revision, must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from date of publication). Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of West Virginia was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 1, 1992.

Edwin B. Erickson,

Regional Administrator, Region III.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52 [AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart XX—West Virginia

2. Section 52.2520 is amended by adding paragraph (c)(25) to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(c) * * *

(25) Revisions to the State Implementation Plan submitted by the West Virginia Air Pollution Control Commission, which define and impose RACT to control volatile organic compound emissions from bulk gasoline terminals, petroleum refineries, and storage of petroleum liquids in fixed roof tank facilities.

(i) Incorporation by reference.

(A) A letter from the West Virginia Air Pollution Control Commission dated June 4, 1991, submitting a revision to the West Virginia State Implementation Plan.

(B) Amendments to Series 21, 23, and 24 of the regulations of the West Virginia Air Pollution Control Commission, submitted June 4, 1991, and effective May 6, 1991.

(ii) Additional materials.

(A) The nonregulatory portions of the state submittal.

[FR Doc. 92–22302 Filed 9–16–92; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 400

Refugee Resettlement Program: Refugee Cash Assistance and Refugee Medical Assistance

AGENCY: Administration for Children and Families (ACF), HHS, Office of Refugee Resettlement.

ACTION: Final rule.

SUMMARY: This rule amends current rules to continue a duration of 8 months for the special programs of refugee cash assistance (RCA) and refugee medical assistance (RMA) in Federal FY 1993. Under current regulations, the duration of RCA and RMA reverts to 12 months on October 1, 1992. Changing current policy by regulation is necessary to avoid the needless litigation which would likely occur if a reduction in RCA and RMA coverage were implemented outside the regulatory process. If a regulation is not issued, funds for RCA and RMA are expected to be insufficient under current policy to provide support during the latter months of FY 1993, seriously jeopardizing the health and welfare of an estimated 30,000 refugees who are not eligible for AFDC, Medicaid, or SSI.

EFFECTIVE DATE: October 1, 1992.

ADDRESSES: Office of Refugee Resettlement, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade, Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Toyo A. Biddle, (202) 401-9253.

SUPPLEMENTARY INFORMATION:

Background

Current regulations at 45 CFR 400.203(b) and 400.204(b) provide for Federal refugee funding, subject to the availability of funds, to be provided to States for the special programs of refugee cash assistance (RCA) and refugee medical assistance (RMA) "during the 12-month period (except during Federal FY 1992, 8-month period) beginning with the first month the refugee entered the United States."

Description of the Proposed Regulation

The Department expects that funds will not be sufficient in FY 1993 to provide RCA and RMA for more than the 8-month level currently in effect for FY 1992. The Department anticipates that appropriations for the refugee program for FY 1993 will not exceed the FY 1992 appropriation level, which is sufficient for only 8 months of RCA and RMA, and, therefore, will not be sufficient to sustain a 12-month RCA/RMA eligibility period to which the program would revert in FY 1993 in the absence of additional regulatory action.

Subject to the availability of funds, the Department expects to continue the RCA/RMA eight-month eligibility period during a transition period to the new Private Resettlement Program (PRP) as approved in the report accompanying the House-passed appropriations bill, H.R. Rep. No. 706, 102d Congress, 2d Sess. 116–117 (1992). If necessary, the Department intends to issue a second regulation to accommodate FY 1993 funding levels.

The Department considers it of the utmost importance to provide refugee support at a level that does not exceed available funds. Failure to do so would result in an insufficient level of support during the latter months of FY 1993, seriously jeopardizing the health and welfare of an estimated 30,000 needy refugees who are not eligible for AFDC, Medicaid, or SSI.

This rule will address this issue by continuing the current 8-month period of RCA/RMA eligibility, and therefore reducing costs, during FY 1993 in order to help assure the availability of refugee cash and medical support during the remainder of the year.

Consistent with the preceding actions, 45 CFR 400.2, 400.60(b), 400.100(b), 400.203(b), 400.204(b), and 400.209(b) are being amended to continue the duration of RCA and RMA for a refugee's first 8 months in the U.S. during FY 1993.

Justification for Dispensing With Notice of Proposed Rulemaking

A period of public comment is not being provided because it would be impracticable, unnecessary, and not in the public interest for the following reasons:

In FY 1992, Congress appropriated $234 million to fund cash and medical assistance provided to refugees, which enabled ORR to make RCA and RMA available during a refugee's first 8 months in the United States. While the appropriations process for FY 1993 is not yet completed, the report accompanying the House-passed appropriations bill substantially reduces the amount that could be used for similar purposes in FY 1993.

ORR must necessarily base its FY 1993 RCA/RMA time-eligibility period on the reasonable and historically supported assumption that Congress will not increase ORR's FY 1993 appropriations for RCA/RMA over the FY 1992 appropriations level. Therefore, based on all available evidence and with past experience as a guide, ORR does not anticipate a final appropriations level which will permit RCA and RMA to be provided to an eligible refugee for a period greater than 8 months in FY 1993.

Given the current time constraints, it is impracticable to consider other options through the rulemaking process without adversely impacting the public interest in avoiding the premature exhaustion of funds and having a finite amount equitably distributed throughout the fiscal year. Because there is a continuing flow of refugees into the United States and because States are continually incurring costs for RCA and RMA, any delays in maintaining an 8-month period of time-eligibility in FY 1993 will create a dire situation. If this final regulation is not published immediately, the time-eligibility period will revert back to 12 months on October 1, 1992, with the harsh result that when the FY 1993 appropriation runs out, the assistance that refugees are currently receiving will be abruptly terminated and refugees arriving after that point in time will receive no Federal refugee assistance. Accordingly, the Secretary finds good cause for issuance of an immediately effective final rule.

Regulatory Procedures

Regulatory Impact Analysis

Under Executive Order 12291, we must judge whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. This regulation does not meet the definition of a "major" regulation because it does not have a $100 million annual impact.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Secretary certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule does not contain collection-of-information requirements.

Statutory Authority

Section 412(a)(9) of the Immigration and Nationality Act, 8 U.S.C. 1522(a)(9), authorizes the Secretary of HHS to issue regulations needed to carry out the program.

(Catalogue of Federal Domestic Programs: 93.026, Refugee and Entrant Assistance—State-Administered Programs)

List of Subjects in 45 CFR Part 400

Grant programs—Social programs, Health care, Public assistance programs, Refugees, Reporting and recordkeeping requirements.

Dated: August 8, 1992.

JoAnne B. Barnhart,

Assistant Secretary for Children and Families.

Approved: August 28, 1992.

Louis W. Sullivan,

Secretary, Department of Health and Human Services.

For the reasons set forth in the preamble, 45 CFR part 400 is amended as follows:

PART 400—REFUGEE RESETTLEMENT PROGRAM

1. The authority citation for part 400 continues to read as follows:

Authority: Section 412(a)(9), Immigration and Nationality Act (8 U.S.C. 1522(a)(9)).

§ 400.2 [Amended]

2. Section 400.2 is amended in the definitions of "Refugee cash assistance" and "Refugee medical assistance" by removing the words "(except during Federal FY 1992, less than an 8-month period)" and by inserting in their place "(except during Federal FY 1993, less than an 8-month period)".

§§ 400.60(b) and 400.100(b) [Amended]

3. Sections 400.60(b) and 400.100(b) are amended by removing the words "(except during Federal FY 1992, 8-month period)" and inserting in their place "(except during Federal FY 1993, 8-month period)".

§§ 400.203(b) and 400.204(b) [Amended]

4. Sections 400.204(b) and 400.203(b) are amended by removing the words "(except during Federal FY 1992, 8-month period)" and inserting in their place "(except during Federal FY 1993, 8-month period)".

§ 400.209(b) [Amended]

5. Section 400.209(b) is amended by removing the words "(except during Federal FY 1992, 8 months)" and inserting in their place "(except during Federal FY 1993, 8 months)".

[FR Doc. 92-22542 Filed 9-16-92; 8:45 am]

BILLING CODE 4150-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 920400-2100]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure and request for comments.

SUMMARY: NOAA announces a prohibition on further processing at sea of Pacific whiting. This action is necessary to provide adequate amounts of whiting for delivery to shorebased processors and to achieve the allocations adopted for 1992.

DATES: Effective from 1400 hours (local time) September 12, 1992, until modified, superseded, or rescinded. Comments will be accepted through October 2, 1992.

ADDRESSES: Submit comments to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN-C15700, Seattle, Washington 98115-0070; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd; Suite 4200, Long Beach, California 90802-4213.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at (206) 526-6140; or Rodney McInnis at (310) 980-4040.

SUPPLEMENTARY INFORMATION: The emergency interim rule allocating the 1992 Pacific whiting resource at 50 CFR 663.23(b)(5) (57 FR 13661, April 17, 1992, extended at 57 FR 32181, July 21, 1992) initially limited the amount of the 1992 Pacific whiting (whiting) harvest guideline of 208,800 metric tons (mt) that could be processed at sea, in the exclusive economic zone off the coasts of Washington, Oregon and California (fishery management area), to 98,000 mt, with 80,000 mt set aside for shoreside processing and the remaining 30,000 mt set aside as a reserve. At-sea processors took 98,979 mt before they were closed on May 6, 1992; the 179 mt overage was deducted from the reserve. The remainder of the reserve of whiting (29,821 mt) was released for at-sea processing on September 4, 1992 (57 FR 40136, September 2, 1992), increasing the limit for at-sea processing from 98,800 mt to 128,800 mt. Additional amounts of whiting may be made available for at-sea processing on October 1, 1992, or soon thereafter, as set forth at 57 FR 13661.

The best available information on September 9, 1992, indicates that approximately 116,000 mt of whiting had been processed at sea through September 8, 1992, and that the 128,800-mt limit for at-sea processing would be reached by 1400 hours (local time) September 12, 1992.

The regulations at 50 CFR 663.23(b)(5)(vii) state that the Secretary of Commerce will announce in the **Federal Register** when additional amounts made available for at-sea processing have been reached, at which time further at-sea processing in the fishery management area will be prohibited. Also in accordance with 50 CFR 663.23(b)(5)(vii), and in order to prevent exceeding the limits or underutilizing the resource, adjustments may be made effective immediately by actual notice to fishermen and processors, followed by publication in the **Federal Register**. The at-sea processing industry was advised of this action by "actual notice" on September 10, 1992, to avoid exceeding the limit for at-sea processing. This **Federal Register** notice confirms the action.

Secretarial Action

For the reason stated above, at 1400 hours (local time) on September 12, 1992, further at-sea processing of Pacific whiting in the fishery management area is prohibited (except for Pacific whiting that was on board the processing vessel prior to that time), and further taking and retaining, or receiving (except as cargo) of Pacific whiting by a vessel with processed whiting on board is prohibited.

Classification

This action is taken under the authority of, and in accordance with 50 CFR 663.23(b)(5)(iv) and (vii). The aggregate data upon which this action is based are available for public inspection at the Office of the Director, Northwest Region (see **ADDRESSES**) during business hours until October 2, 1992.

This action is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 663

Administrative practice and procedure, Fisheries, Fishing, and Recordkeeping and reporting requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 11, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-22394 Filed 9-11-92; 4:03 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 181
Thursday, September 17, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1033, 1036, and 1049

[Docket Nos. AO-166-A61, AO-179-A56; and AO-319-A39; DA-90-015]

Milk in the Ohio Valley, Eastern Ohio-Western Pennsylvania and Indiana Marketing Areas; Extension of Time for Filing Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Extension of time for filing exceptions to proposed rule.

SUMMARY: This notice extends the time for filing exceptions to a recommended decision issued July 30, 1992, concerning proposed amendments to the Ohio Valley, Eastern Ohio-Western Pennsylvania, and Indiana milk marketing orders. Counsel for a group of proprietary handlers requested the additional time to complete exceptions to the recommended decision.

DATES: Exceptions now are due on or before October 2, 1992.

ADDRESSES: Exceptions (four copies) should be filed with the Hearing Clerk, Room 1083, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456 (202) 720-2357.

SUPPLEMENTARY INFORMATION: Prior documents in the proceeding:

Notice of Hearing: Issued July 25, 1990; published July 31, 1990 (55 FR 31056).

Notice of Reconvened Hearing: Issued August 21, 1990; published August 23, 1990 (55 FR 34589).

Recommended Decision: Issued July 30, 1992; published August 13, 1992 (57 FR 36536).

Notice is hereby given that the time for filing exceptions to the recommended decision with respect to the proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Ohio Valley, Eastern Ohio-Western Pennsylvania, and Indiana marketing areas which was issued July 30, 1992, is hereby extended from September 14 to October 2, 1992.

This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Dated: September 14, 1992.

Daniel Haley,

Administrator.

[FR Doc. 92-22549 Filed 9-14-92; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1413

RIN 0560-AC73

Common Provisions for the 1993 Wheat, Feed Grains, Cotton, and Rice Programs

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Act of 1949 (1949 Act) sets forth numerous discretionary provisions that may be implemented by the Commodity Credit Corporation (CCC) with respect to the 1993 crops of wheat, feed grains, upland and Extra Long Staple (ELS) cotton, and rice. CCC proposes to make the following program determinations with respect to the price support and production adjustment programs: (a) The types of crops that may not be planted on "flexible acreage"; (b) targeted option payments (TOP); (c) allowing the planting of designated crops on up to one-half of the reduced acreage; (d) allowing the planting of oats on wheat and feed grains acreage conservation reserve (ACR); (e) planting of conserving crops on ACR; (f) allowing alternatives crops on conserving use acreage for payment; and (g) whether producers of malting barley should be exempt from complying with the acreage reduction requirements and maintain eligibility for feed grain loans, purchases, and payments. This proposed rule sets forth CCC's proposed action regarding these determinations.

DATES: Comments must be received on or before October 19, 1992 in order to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments to Deputy Administrator, Policy Analysis, P.O. Box 2415, Washington, DC 20013-2415, telephone number 202-702-7583.

FOR FURTHER INFORMATION CONTACT: James A. Langley, Senior Policy Analyst, Office of the Deputy Administrator, Policy Analysis, U.S. Department of Agriculture (USDA), Agricultural Stabilization and Conservation Service, room 3090-S, P.O. Box 2415, Washington, DC 20013-2415 or call 202-690-0445.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512-1 and has been designated as "major". It has been determined that these program provisions will result in an annual effect on the economy of $100 million or more.

The Preliminary Regulatory Impact Analysis describing the options considered in developing this proposed determination and the impact of the implementation of each option is available on request from the above-named individual.

This proposed rule has been reviewed in accordance with Executive Order 12778. The provisions of the proposed rule are not retroactive and preempt State laws only to the extent such provisions are inconsistent with State laws. Before any judicial action may be brought concerning these provisions, the administrative appeal remedies at 7 CFR part 780 must be exhausted.

The titles and numbers of the Federal assistance programs, as found in the catalog of Federal Domestic Assistance, to which this final rule applies are as follows:

Titles	Numbers
Commodity loans and purchases	10.051
Cotton production stabilization	10.052

Titles	Numbers
Feed grains production stabilization	10.055
Wheat production stabilization	10.058
Rice production stabilization	10.065

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

The amendments to 7 CFR 1413 set forth in this proposed rule do not contain information collections that require clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

Background

This proposed rule would amend 7 CFR part 1413 to set forth the determination of whether certain discretionary provisions of the 1949 Act will be implemented and, if implemented, the manner in which implementation would be made.

Accordingly, the following program determinations are proposed to be made with respect to the provisions that are applicable to the 1993 crops of wheat, feed grains, upland and ELS cotton, and rice:

A. The Types of Crops That May Not Be Planted on Flexible Acres

Section 504 of the 1949 Act states that producers may plant crops other than the program crop on up to 25 percent of any participating crop acreage base. This acreage is known as "flexible" acreage.

Crops that may be planted on flexible acreage are: (1) Any program crop; (2) any oilseed crop; (3) any other crop, except any fruit or vegetable crop (including potatoes, dry edible beans, lentils and peas); and (4) mung beans. The planting of certain fruits or vegetables may be permitted if such crop is an industrial or experimental crop, or if no substantial domestic production or market exists for the crop. The planting of any crop on flexible acres may also be prohibited.

CCC intends to permit the same crops to be grown on flexible acreage in 1993 as were allowed in 1992. however, CCC will consider adding or removing crops to the list of prohibited crops that is set forth at 7 CFR 1413.11(b)(4).

B. Whether the TOP Will Be Implemented

Sections 107B(e)(3), 105B(e)(3), 103B(e)(3), and 101B(e)(3) of the 1949 Act, with respect to wheat, feed grains, upland cotton, or rice, provide that if an acreage limitation program is in effect, the Secretary may offer producers the option of increasing or decreasing the acreage reduction level, within certain restrictions, with a corresponding decrease or increase in the target price. The target price may be decreased or increased by not less than 0.5 percent nor more than 1 percent for each percentage point change in the acreage reduction level. The acreage limitation requirement cannot be increased by more than 15 percentage points or above 25 percent total for wheat; by more than 10 percentage points or above 20 percent of the total for feed grains; by more than 10 percentage points or above 25 percent of the total for cotton; and by more than 5 percentage points for rice. The decrease in the acreage limitation requirement for all crops cannot be more than one-half of the announced acreage limitation percentage.

The Secretary shall, to the extent practicable, ensure that the TOP does not have a significant effect on program participation, total production or budget outlays.

It is proposed that this provision not be implemented for the 1993 crops.

C. Whether To Permit the Planting of Designated Crops on up to Half of the Announced Acreage Reduction

Sections 107B(e)(2)(F)(i), 105B(e)(2)(F)(i), 103B(e)(2)(F)(i), and 101B(e)(2)(F)(i) of the 1949 Act, with respect to wheat, feed grains, upland cotton, and rice, provide that the Secretary may permit producers to plant a designated crop on not more than one-half of the reduced acreage on the farm.

The designated crops may be: (a) Any oilseed crop; (b) any industrial or experimental crop designated by CCC; and (c) any other crop, except any fruit or vegetable (including potatoes and dry edible beans), not designated by the Secretary as (i) an industrial or experimental crop, or (ii) a crop for which no substantial domestic production or market exist. In addition, program crops may not be planted on the reduced acreage on the farm.

If producers on a farm elect to plant a designated crop, the amount of deficiency payments that the producers are otherwise eligible to receive shall be reduced, for each acre that is planted to the designated crop, by an amount equal to the deficiency payment that would be made with respect to a number of acres of the crop that the Secretary considers appropriate. Such reductions in deficiency payments must be sufficient to ensure that this provision does not increase CCC outlays.

Comments on whether this provision should be implemented for the 1993 crops are requested.

D. Whether To Permit the Planting of Oats on ACR

In any crop year that it is determined that projected domestic production of oats will not fulfill the projected domestic demand for oats, CCC: (A) May provide that acreage designated as ACR under the wheat and feed grains programs may be planted to oats for harvest under sections 107B(e)(8) and 105B(e)(8) of the 1949 Act; (b) may make program benefits (including loans, purchases, and payments) available under the annual program for oats under section 105B of the 1949 Act for oats planted on ACR; and (c) shall not make program benefits other than the benefits specified in (b) available to producers with respect to acreage planted to oats under this provision.

It is proposed that the planting of oats on wheat and feed grains ACR for harvest not be permitted for the 1993 crops.

E. Whether To Permit Conserving Crops To Be Planted on ACR

Under sections 107B(e)(4)(B)(iii), 105B(e)(4)(B)(iii), 103B(e)(4)(B)(iii), and 101B(e)(4)(B)(iii) of the 1949 Act, with respect to wheat, feed grains, upland cotton, and rice, producers may be authorized to plant all or any part of the ACR to be planted to castor beans, crambe, sweet sorghum, guar, sesame, plantago ovato, triticale, rye, mung beans, milkweed or other commodity, if the Secretary determines that the production is needed to provide an adequate supply of the commodities, is not likely to increase the cost of the price support program and will not adversely affect farm income.

It is proposed that this provision not be implemented for the 1993 crops.

F. Alternative Crops on Conserving Use Acres

Under sections 107B(c)(1)(F)(i), 105B(c)(1)(F)(i), 103B(c)(1)(E)(i), and 101B(c)(1)(E)(i) of the 1949 Act, with

respect to wheat, feed grains, upland cotton, and rice, producers may be authorized to plant all or any part of acreage otherwise required to be devoted to conserving uses as a condition of qualifying for payment under the 0/92 or 50/92 provisions to sweet sorghum, guar, castor beans, plantago ovato, triticale, rye, millet, mung beans, commodities for which no substantial domestic production or market exists but that could yield industrial raw material being imported, or likely to be imported, or commodities grown for experimental purposes (including kenaf and milkweed). The Secretary may permit these crops to be planted on conserving use acres only if the Secretary determines that the production is not likely to increase the cost of the price support program, is needed to provide an adequate supply of the commodities, or is needed to encourage domestic manufacture of industrial raw materials derived from these crops.

Comments on whether this provision should be implemented for the 1993 crops are requested.

G. Malting Barley Exemption From Acreage Reduction Requirements

Under section 105B(p) of the 1949 Act with respect to feed grains, the Secretary may exempt producers of malting barley, as a condition of eligibility for feed grain loans, purchases and payments, from complying with the acreage reduction requirements.

It is proposed that malting barley not be exempted from the feed grain acreage reduction requirements for the 1993 crop.

Accordingly, comments are requested with respect to these foregoing issues.

List of Subjects in 7 CFR Part 1413

Cotton, Feed grains, Price support programs, Rice, Wheat.

Accordingly, it is proposed that 7 CFR part 1413 be amended as follows:

PART 1413—FEED GRAIN, RICE, UPLAND AND EXTRA LONG STAPLE COTTON, WHEAT AND RELATED PROGRAMS

1. The authority citation for 7 CFR part 1413 continues to read as follows:

Authority: 7 U.S.C. 1308, 1308a, 1309, 1441–2, 1444–2, 1444f, 1445b–3a, 1461–1469; 15 U.S.C. 714b and 714c.

2. In § 1413.11, paragraph (b)(4)(iii) is added to read as follows:

§ 1413.11 Planting flexibility.

* * * * *

(b) * * *

(4) * * *

(iii) For 1993, any other crop with the exception of those crops listed in paragraphs (b)(4)(i) and (b)(4)(ii) of this section.

* * * * *

3. In § 1413.54, paragraphs (b) and (e) are revised to read as follows:

§ 1413.54 Acreage reduction program provisions.

* * * * *

(b) Targeted option payments shall not be available with respect to the 1991, 1992, and 1993 crops of wheat, feed grains, upland cotton, and rice.

* * * * *

(e) With respect to the 1991, 1992, and 1993 crop years, in order to receive feed grain loans, purchases and payments in accordance with this part and part 1421 of this title, producers of malting barley must comply with the acreage reduction requirements of this part.

* * * * *

Signed September 11, 1992, at Washington, DC.

John A. Stevenson,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 92–22548 Filed 9–16–92; 8:45 am]

BILLING CODE 3410-05-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 26, 70 and 73

RIN: 3150–AD30 and 3150–AD68

Physical Fitness Programs and Day Firing Qualifications for Security Personnel at Category I Licensee Fuel Cycle Facilities and Fitness-for-Duty Requirements for Licensees Who Possess, Use, or Transport Category I Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: On December 13, 1991, the Nuclear Regulatory Commission (NRC) published a proposed rule (56 FR 65204) that would amend security personnel performance regulations in 10 CFR Part 73 for fuel cycle facilities possessing formula quantities of strategic special nuclear material (Category I licensees). Certain security personnel at these facilities would be required to participate in a continuing physical fitness training program and pass an annual performance test according to new criteria. These individuals would also be required to qualify and annually requalify according to new criteria for day firing using their assigned weapons. In addition, on April 30, 1992, the NRC published a proposed rule (57 FR 18415) that would amend 10 CFR Parts 26, 70, and 73 to establish fitness-for-duty requirements for licensees authorized to possess, use, or transport unirradiated formula quantity of strategic special nuclear material (Category I material).

Babcock & Wilcox, Naval Nuclear Fuel Division has requested a meeting with NRC staff to discuss their comments on these proposed rules. The Nuclear Regulatory Commission is making this meeting open to the public and is announcing it in this document.

DATES: September 17, 1992, 9 a.m.

ADDRESSES: 11555 Rockville Pike, Room: 1–F–5, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: Mr. Theodore S. Sherr, Chief, Domestic Safeguards Branch, Office of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 504–3371.

Dated at Rockville, Maryland, this 11th day of September, 1992.

For the Nuclear Regulatory Commission.

Robert F. Burnett,

Director, Division of Safeguards and Transportation.

[FR Doc. 92–22546 Filed 9–16–92; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 92–18]

Risk-Based Capital: Multifamily Housing Loans

AGENCY: Office of the Comptroller of the Currency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is issuing this proposed rule to implement the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991 (RTCRRIA). The purposes of this proposed rule is to permit national banks to hold less capital against certain loans secured by qualifying multifamily residential property. This proposed rule amends the risk-based capital guidelines to include in the 50% risk weight category certain loans secured by qualifying multifamily residential properties. This proposed rule also will have an effect on the risk weighting of certain privately-issued mortgage-backed securities (MBS). The proposed rule amends the risk-based

capital guidelines to permit MBSs to qualify for a 50% risk weight if at the time of origination of the MBSs, they are secured by qualifying multifamily residential property loans which have performed in accordance with the terms of the loans for at least one year.

In addition, this proposed rule amends the risk-based capital guidelines to provide that the portion of multifamily residential property loans that is sold subject to a *pro rata* loss sharing arrangement may be treated by the selling bank as sold to the extent that the sales agreement provides for the purchaser of the loan to share in any loss incurred on the loan on a *pro rata* basis with the selling bank. The OCC notes that this provision is consistent with the current OCC policy with respect to assets sold with resources.

DATES: Comments must be received on or before October 19, 1992.

ADDRESSES: Interested persons are invited to submit written comments to Docket No. [92-18], Communications Division, Ninth Floor, Office of the Comptroller of the Currency, 250 E Street, Southwest, Washington, DC 20219. Attention: Karen Carter. Comments will be available for inspection and photocopying at that address.

FOR FURTHER INFORMATION CONTACT: Donna E. Duncan, National Bank Examiner, Office of the Chief National Bank Examiner, (202) 874-5070; James Wright, Community Development Specialist, Customer and Industry Affairs, (202) 874-4930; Roger Tufts, Senior Economic Advisor, Office of the Chief National Bank Examiner, (202) 874-5070; Elizabeth Milor, Financial Economist, Economic and Regulatory Policy Analysis, (202) 874-5220; or Ronald Shimabukuro, Senior Attorney, Legal Advisory Services Division, (202) 874-5330.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The OCC's risk-based capital guidelines were adopted in 1989 (codified at 12 CFR part 3, appendix A.) See 54 FR 4168 (January 27, 1989). The risk-based capital guidelines impose capital requirements based on the credit risk profiles of financial institutions. The risk-based capital guidelines implement the Agreement on International Convergence of Capital Measurement and Capital Standards of July 1988, as reported by the Basle Committee on Banking Supervision (the Basle Agreement) and were developed in cooperation with the Federal Deposit Insurance Corporation (FDIC) and the Federal Reserve Board (FRB).

The risk-based capital guidelines are structured so that all assets receive a 100% risk weight unless the asset specifically qualifies for some lower risk weight category. Under the current risk-based capital guidelines, loans secured by first liens on multifamily rental properties are risk weighted at 100%.

However, 12 CFR part 3, appendix A, section 3(a)(3)(iii) specifically provides that a loan secured by a first mortgage on a one-to-four family residential property qualifies for a 50% risk weight.[1]

The purpose of this proposed rule is to implement section 618(b) of RTCRRIA, Public Law 102-233, 105 Stat. 1761 (December 12, 1991) and section 305(b)(1)(B) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), Public Law 102-242, 105 Stat. 2236 (December 19, 1991). Section 618(b) of RTCRRIA provides that the OCC and the other federal bank supervisory agencies should implement the requirements by April 10, 1992. Because of this deadline and the potential benefit of these amendments to national banks, the OCC has made every effort to promulgate this rule as quickly as possible. Therefore, the OCC is issuing this proposed rule with a 30 day comment period. The FRB, FDIC, and the Office of Thrift Supervision (OTS) are also working on similar proposals.

The main purpose of RTCRRIA is to recapitalize the Resolution Trust Corporation. However, RTCRRIA also contains provisions relating to the capital treatment of certain single-family and multifamily residential property loans. Specifically, section 618(b) of RTCRRIA requires the OCC to promulgate regulations providing a 50% risk weight, with certain conditions, for loans secured by multifamily residential properties.

Under section 618(b)(1)(B), in order for a multifamily residential property loan to qualify for a 50% risk weight (1) the loan must be secured by a first lien on a multifamily residential property consisting of 5 or more dwelling units, (2) if the loan has a rate of interest that does not change over the term of the loan, then (A) the loan to value ratio cannot exceed 80%, and (B) the ratio of annual net operating income generated by the property (before payment of any debt service on the loan) to annual debt service on the loan cannot be less than 120%, (3) if the loan has a variable rate, then (A) the loan to value ratio cannot exceed 75%, and (B) the ratio of annual net operating income generated by the property (before payment of any debt service on the loan) to annual debt service on the loan cannot be less than 115%, (4) the loan must have a maturity of not less than seven years but not more than 30 years, (5) the loan must have been performing according to its terms for at least one year, and (6) the loan must satisfy prudent underwriting standards as established by the appropriate federal banking agency.

Section 618(b)(1) also provides that any security collateralized by a qualifying multifamily residential property loan shall be considered as a loan or security within the 50% risk weight category. In addition, section 618(b)(2) requires that the portion of any loan fully secured by a first lien on a multifamily housing property that is sold by a bank subject to a *pro rata* loss sharing arrangement shall be treated as a sale to the extent that loss is incurred by the purchaser of the loan. Furthermore, section 618(b)(3) permits the OCC discretion to treat any other loan fully secured by a first lien on a multifamily housing project sold by a bank not on a *pro rata* loss sharing arrangement as a sale and not as a recourse transaction. In addition to the requirements in RTCRRIA, section 305(b)(1(B) of FDICIA, among other things, requires the OCC to revise the risk-based capital guidelines to reflect the actual performance and expected risk of loss of multifamily mortgages.

The purpose of this proposed rule is to amend the risk-based capital guidelines to implement section 618(b)[2] of RTCRRIA and section 305(b)(1)(B) of FDICIA. Therefore, pursuant to section 618 of RTCRRIA, section 305(b)(1)(B) of FDICIA, and 12 U.S.C. 83a, the OCC is amending 12 CFR part 3, appendix A, section 3(a)(3), to include in the 50% risk weight category, certain loans fully secured by a first lien on multifamily residential properties. It should be noted that paragraph numbers of the proposed regulatory text are based on a prior notice of proposed rulemaking on the capital treatment of residential construction loans secured by presold homes. See 57 FR 12218 (April 9, 1992).

[1] Under section 3(a)(3)(iii) residential property may be either owner occupied or rented; however, the mortgage cannot be more than 90 days past due, on nonaccrual or restructured.

[2] Section 618(a) of RTCRRIA requires the OCC to promulgate regulations providing a 50% risk weight for certain loans to builders to finance the construction of one-to-four family residential construction. A notice of proposed rulemaking to implement section 618(a) was published in the **Federal Register** on April 9, 1992. See 57 FR 12218 (April 9, 1992).

Proposal

A. Proposed 50% Risk Weight for Multifamily Housing Loans

Currently, loans secured by multifamily residential properties consisting of five or more dwelling units are risk weighted at 100%. In order to implement section 618(b) of RTCRRIA and section 305(b)(1)(B) of FDICIA, the OCC is proposing to amend 12 CFR part 3, appendix A, section 3, by adding a new paragraph (a)(3)(v) to permit certain loans secured by multifamily residential properties to qualify for a 50% risk weight. Specifically, loans secured by multifamily residential properties qualify for a 50% risk weight subject to the following conditions:

(1) The loan must be secured by a first mortgage on a multifamily residential property consisting of five or more dwelling units;

(2) The amortization of principal and interest must not exceed 30 years;

(3) The minimum maturity for repayment of principal must not be less than seven years;

(4) All principal and interest payments must have been made on a timely basis in accordance with the terms of the loan for at least one year before the loan may qualify for a 50% risk weight;

(5) The loan cannot be more than 90 days past due or carried in nonaccrual status;

(6) The loan must be in accordance with applicable lending limit requirements and prudent underwriting standards;

(7) The multifamily residential property securing the loan must have a sustained average annual occupancy rate of at least 80% of the total units; and

(8) If the rate of interest does not change over the term of the loan, then the loan amount at origination must not exceed 80% of the appraised value of the property, and in the most recent fiscal year, the ratio of annual net operating income generated by the property (before payment of any debt service on the loan) to annual debt service on the loan must not be less than 120%; or

(9) If the rate of interest changes over the term of the loan, then the loan amount at origination must not exceed 75% of the appraised value of the property, and in the most recent fiscal year, the ratio of annual net operating income generated by the property (before payment of any debt service on the loan) to annual debt service on the loan must not be less than 115%.

Two general aspects of this proposed rule should be noted. First, the term "multifamily residential property" is defined as residential property [3] consisting of five or more dwelling units. This proposed rule does not place any upper limit on the number of units that can be in a multifamily residential property. The OTS risk-based capital rules already permit loans secured by multifamily residential property to qualify for a 50% risk weight. The OTS risk-based capital rules define multifamily residential property to mean residential property consisting of five to 36 units. See 12 CFR 567.1(v) and 567.6(a)(1)(iii)(B). The OCC is considering the adoption of the OTS definition of multifamily residential property. However, more data is required to distinguish the credit risks between multifamily residential properties based on the number of units.

Second, this proposed rule affects the risk weighting of private-issued MBSs by amending 12 CFR part 3, appendix A, section 3(a)(3)(iv), to permit privately issued MBSs to qualify for a 50% risk weight if, at the time the MBSs are issued, the MBSs are fully secured by mortgages that qualify for a 50% risk weight. The result of this amendment is to permit MBSs secured by multifamily residential property loans to qualify for a 50% risk weight if, at the time the MBSs are issued (rather than at the time the underlying mortgages are originated), each of the underlying multifamily residential property loans qualify for a 50% risk weight.

Currently, section 3(a)(3) includes in the 50% risk weight category:

> Privately-issued mortgage-backed securities, *i.e.*, those that do not carry the guarantee of a government or a government sponsored agency, fully secured by mortgages that, *at the time of origination*, qualify for this 50% risk weight * * *

See 12 CFR part 3, appendix A, section 3(a)(3)(iv) (emphasis added). Section 3(a)(3)(iv) permits privately issued MBSs to qualify for a 50% risk weight only if the underlying mortgages were originated. This means that with respect to the multifamily residential property loans, MBSs secured by multifamily residential property loans could never have qualified for a 50% risk weight because the underlying loans themselves could not qualify for the 50% risk weight at the time of origination. As discussed above, multifamily residential property loans do not qualify for a 50% risk weight at the time of origination; rather, multifamily residential property loans must perform in accordance with the terms of the loans for at least one year before they could qualify for the lower 50% risk weight.

The OCC believes that for prudential reasons, multifamily residential property loans should be required to perform in accordance with the terms of the loans for at least one year before qualifying for the lower 50% risk weight. However, the OCC does not believe that this requirement should prohibit MBSs secured by multifamily residential property loans from ever qualifying for the 50% risk weight. Consequently, this proposed rule would amend section 3(a)(3)(iv) to permit MBSs to qualify for a 50% risk weight if fully secured by qualifying multifamily residential property loans which have performed in accordance with their terms for at least one year.

Most of the conditions described in this proposed rule are conditions specifically imposed by section 618(b) of RTCRRIA. However, section 618(b)(1)(B)(iv) gives the OCC discretion to establish other underwriting standards consistent with the purposes of the minimum acceptable capital requirement to maintain the safety and soundness of national banks. Therefore, pursuant to section 618(b)(1)(B)(iv) and to maintain consistency with the Basle Agreement, this proposed rule would impose certain additional requirements to ensure that the more favorable 50% risk weight is warranted for qualifying multifamily residential property loans as distinguished from nonqualifying multifamily residential property loans risk weighted at 100%.

The following table gives the aggregate real estate performance figures (in percentages) of national banks for 1991.

[3] 12 CFR part 3, appendix A, section 1(c)(21) defines residential property to mean "houses, condominiums, cooperative units, and manufactured homes . . . [but] does not include boats or motor homes, even if used as a primary residence."

TABLE 1.—REAL ESTATE PERFORMANCE FOR NATIONAL BANKS (1991)

Type of loan	Volume of loans (thousands of dollars)	Charge-offs	Recoveries	Net charge-offs	Past due (30 to 90 days)	Past due (Over 90 days)	Nonaccrual	Nonperforming
Secured by multifamily	14,168,747	2.52	0.08	2.44	2.84	0.73	6.04	6.77
Secured by 1–4 family residential	251,686,223	0.20	0.02	0.17	1.73	0.43	1.07	1.50
Construction and land development	62,325,535	4.12	0.12	4.00	4.75	1.19	15.40	16.59
Secured by farmland	7,061,018	0.56	0.12	0.44	1.33	0.40	3.57	3.96
Secured by nonfarm nonresidential	144,340,290	1.57	0.08	1.49	2.88	0.47	6.46	6.92
Total loans secured by real estate	479,581,813	1.19	0.06	1.14	2.50	0.55	4.74	5.29

Amounts given as percentages unless otherwise specified. Charge-offs and recoveries are for full year 1991. All other data as of December 31, 1991. Domestic offices, all national banks. Primary data as of December 31, 1991.

Source Reports of Condition and Income (Call Reports). Compiled by OCC Banking Research & Statistics (March 18, 1992).

As indicated by the data in Table 1, the net charge-off rate for multifamily residential property loans by all national banks for 1991 was 2.44% of total multifamily residential property loans outstanding. The percentage of multifamily residential property loans that were 90 days or more past due as of December 31, 1991, was 0.73%. The percentage of multifamily residential property loans that were in nonaccrual status as of that same date was 6.04%.

By contrast, the net charge-off rate for qualifying single-family residential property loans in the 50% risk weight category, for 1991, was only 0.17% of the total qualifying single-family residential property loans outstanding. Qualifying single-family residential property loans that were 90 days or more past due or in nonaccrual status as of December 31, 1991, were 0.43% and 1.07%, respectively.

The next charge-off rates indicate that the overall credit risk for multifamily residential property loans is significantly greater than the credit risk for qualifying single-family residential property loans. Notwithstanding the relatively greater credit risk, certain multifamily residential property loans can merit a 50% risk weight if they are well-secured, demonstrate consistent good performance, and conform with prudent underwriting standards.

In addition, the OCC believes that certain other requirements are necessary to make the proposed rule consistent with the Basle Agreement. Under the Basle Agreement, "loans fully secured by mortgages on residential property which is rented or is (or is intended to be) occupied by the borrower" may be assigned a 50% risk weight. *See* Paragraph 41, Basle Agreement. However, the Basle Agreement also cautions that the bank supervisory authorities should apply the "concessionary [50%] weight * * * restrictively for residential purposes and in accordance with strict prudential criteria. This may mean, for example, that in some member countries the 50[%] weight * * * will only be applied where strict, legally-based, valuation rules ensure a substantial margin of additional security over the amount of the loan." *Id.* For these reasons, and for the reasons discussed below, the OCC is adopting certain additional underwriting requirements beyond the requirements specified by section 618 of RTCRRIA.

While RTCRRIA provides specific minimum loan-to-value ratios for qualifying multifamily residential property loans (based on whether the interest rate is fixed or variable), section 618(b) is unclear as to when the bank must attain these loan-to-value ratios. This proposed rule would require that the bank meet these loan-to-value ratios at the time of the origination of the loan. Prudent real estate loan underwriting dictates that a borrower have a substantial equity interest in the property to demonstrate a commitment to repay the loan.

Where the borrower has a substantial equity commitment in the property, the risk of losing this equity interest provides strong motivation for the borrower to properly service the loan. Therefore, the loan-to-value ratio at the time of origination of the loan is an important factor in determining whether the multifamily residential property loan qualifies for a 50% risk weight. This requirement is consistent with the OTS risk-based capital rules for thrift institutions. *See* 12 CFR 567.1(v).

A borrower can build equity over time as the principal amount of the loan is repaid or if the appraised value of the property securing the loan increases. Conversely, the equity of the borrower can also decline if the appraised value of the property declines. In view of these possibilities, the OCC is considering whether a multifamily residential property loan that does not satisfy the applicable loan-to-value ratio at the time of origination may qualify for a 50% risk weight at some later time during the life of the loan. The OCC also is considering whether a multifamily residential property loan that satisfies the applicable loan-to-value ratio at the time of origination, but subsequently does not, should be ineligible for a 50% risk weight.

Section 618(b)(1)(B)(iii)(III) requires timely payment of all principal and interest in accordance with the terms of the loan in order to qualify for a 50% risk weight. A borrower may have made all scheduled payments for the past 12 months but may have missed several scheduled payments in previous periods that remain unpaid under the existing loan terms. In addition, a situation may occur (such as a sudden significant increase in the vacancy rate) that indicates that full payment of principal and interest will not be made, notwithstanding past repayment experience, cash flow, and occupancy rates. As a result, in addition to the one year timely payment requirement, the OCC is requiring that the multifamily residential property loan cannot be more than 90 days past due or in nonaccrual status. This condition is consistent with the risk-based capital requirements for qualifying single-family residential property loans. See 12 CFR part 3, appendix A, section 3(a)(3)(iii).

This proposed rule also would require that multifamily residential property securing the loan have a sustained average annual occupancy rate of at least 80% of the total number of units. This provision complements the annual net income requirement in section 618(b)(1)(B). While a high occupancy rate by itself does not guarantee that the multifamily residential property will generate sufficient cash flow to service a loan secured by the property, the combination of cash flow and occupancy rate requirements increases the probability that the loan will be repaid. The OCC believes that the occupancy rate requirement further ensures that only multifamily residential property loans of high credit quality will qualify for a 50% risk weight. This

requirement is consistent with the current OTS risk-based capital rules for thrift institutions. See 12 CFR 567.1(v).

Finally, this proposed rule would require that a multifamily residential property loan be made in accordance with the applicable legal lending limit as well as other prudent underwriting standards. The legal lending limit promotes risk diversification and thereby avoids undue concentrations of credit with a single borrower. Bank compliance with prudent underwriting standards likewise will manage and control the credit risks inherent in the lending process. These requirements are also necessary to maintain consistent treatment with one-to-four family residential property loans under the risk-based capital guidelines. As with any other type of loan, the bank must maintain sufficient documentation on each multifamily residential property loan to permit OCC examiners to determine that the loan qualifies for a 50% risk weight.

B. Recourse Arrangements

This proposed rule would permit the portion of multifamily residential property loans that is sold subject to a *pro rata* loss sharing arrangement to be treated by the selling bank as sold to the extent that the sales agreement provides for the purchaser of the loan to share in any loss incurred on the loan on a *pro rata* basis with the selling bank. This provision is required by section 618(b)(2) of RTCRRIA, which provides that any loan fully secured by a first lien on a multifamily housing project that is sold is subject to a *pro rata* loss sharing arrangement shall be treated as sold to the extent that loss is incurred by the purchaser of the loan. Section 618(b)(2) further defines *pro rata* loss sharing arrangement as an agreement providing that the purchaser of a loan shares in any loss incurred on the loan with the selling institution on a *pro rata* basis.

While sales treatment is required by section 618(b)(2) for that portion of multifamily residential property loans sold on a *pro rata* loss sharing basis, the OCC notes that this statutory requirement restates the current OCC policy on assets sold with recourse. Under the risk-based capital guidelines, the definition of the sale of assets with recourse is adopted from the definition of the sale of assets with recourse is adopted from the definition contained in the instructions to the Reports of Condition and Income (Call Reports). See 12 CFR part 3, appendix A, section 3(b)(1)(iii) (footnote 14). Specifically, the instructions to the Call Reports state:

> if the risk retained by the seller is limited to some fixed percentage of any loss that might be incurred and there are no other provisions, resulting in retention of risk, either directly or indirectly, by the seller, the maximum amount of possible loss for which the selling bank is at risk (the stated percentage times the sale proceeds) shall be reported as a borrowing and the remaining amount of the assets transferred reported as a sale.

See Call Report, Glossary—Sale of Assets: Interpretation and illustrations of the general rule ¶ 2, A–50 (5–89). Therefore, the sale of a loan fully secured by a first lien on a multifamily residential property is accorded sales treatment and not treated as recourse to the extent that loss is shared proportionately by the purchaser of the loan.

Section 618(b)(3) of RTCRRIA also permits the OCC to consider other loss sharing arrangements (besides *pro rata* loss sharing arrangements) in connection with the sale of a loan fully secured by a multifamily residential property. As explained above, the risk-based capital guidelines do not provide a separate recourse rule for the sale of multifamily residential property loans. At this time, the OCC is not adopting any other loss sharing arrangement specifically regarding the sale of multifamily residential property loans. Instead, this proposed rule would amend 12 CFR part 3, appendix A, section 3(a)(3), to make clear that with respect to recourse arrangements other than on a *pro rata* loss sharing basis the sale of multifamily residential property loans is accorded the same capital treatment as the sale of any other type of loan.

As to the general capital treatment of asset sales with recourse, two proposals have been published. On October 17, 1990, the OCC published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend the risk-based capital guidelines. See 55 FR 42017 (October 17, 1990). In particular, the OCC proposed to amend 12 CFR part 3, appendix A, section 3(b)(1)(iii) (footnote 14), to clarify that assets sold with recourse may be subject to the risk-based capital provisions for off-balance sheet activities even if the transaction qualifies for sales treatment under the Call Report instructions. See *id.* at 42019–42020. However, the NPRM also proposed an exception for mortgage sales in which the bank retains insignificant recourse and meets certain other conditions. See *id.* In addition to the NPRM issued by the OCC, on June 29, 1990, the Federal Financial Institutions Examination Council (FFIEC) also published in the **Federal Register**, a request for comment concerning the overall treatment of asset sales with recourse. See 55 FR 26766 (June 29, 1990).

C. Issues for Specific Comment

The OCC invites comments on all aspects of this proposed rule; however, the OCC is particularly interested in comments on the following specific issues:

(1) Should there be a restriction on the maximum number of units a multifamily residential property can have before it can qualify for a 50% risk weight?

(2) What should be the proper treatment for MBSs secured by qualifying multifamily residential property loans?

(3) Should multifamily residential property loans that do not satisfy the appropriate loan-to-value ratio at the time of origination be permitted to do so at some later time?

(4) Should a multifamily residential property loan that satisfies the applicable loan-to-value ratio at the time of origination, but subsequently does not, be thereafter ineligible for a 50% risk weight?

(5) Is the 80% occupancy rate requirement for the multifamily residential property securing the loan appropriate?

(6) Will this proposed rule assist organizations in their ability to provide low and moderate-income multifamily housing (rehabilitated or new construction)?

(7) Are there any other loss sharing arrangements, other than *pro rata* loss sharing, that should be permitted to qualify for sales treatment?

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, it is hereby certified that this proposed rule, if adopted as a final rule, will not have a significant impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

This proposed rule reduces the amount of capital required to be maintained by national banks for qualifying multifamily residential property loans. However, lowering the capital requirements for these types of loans should not significantly impact national banks, regardless of size. Nonetheless, the OCC believes that this proposed rule, if adopted as a final rule, will reduce somewhat the cost of bank operations. In addition, this proposed rule would affect all national banks and would not have a disproportionate effect on small banks.

Executive Order 12291

The OCC has determined that this proposed rule does not constitute a major rule within the meaning of Executive Order 12291. Accordingly, a regulatory impact analysis is not required. This proposed rule will reduce the amount of capital required to be maintained by national banks for qualifying multifamily residential property loans. However, lowering the capital requirements for these types of loans should not significantly impact national banks, regardless of size. Nonetheless, the OCC believes that this proposed rule will reduce somewhat the cost of bank operations.

List of Subjects in 12 CFR Part 3

Administrative practice and procedure, Capital, National banks, Reporting and recordkeeping requirements, Risk.

Authority and Issuance

For the reasons set forth in the preamble, appendix A of title 12 chapter I, part 3 of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 3—AMENDED

1. The authority citation for part 3 continues to read as follows:

Authority: 12 U.S.C. 93a, 161, 1818, 1831n note, 3907, 3909.

2. In appendix A, section 3, paragraph (a)(3)(v) is redesignated as paragraph (a)(3)(vi), the introductory text of new by designated paragraph (a)(3)(vi) is revised, and a new paragraph (a)(3)(v), including new footnote 11a, is added, to read as follows:

Appendix A—Risk—Based Capital Guidelines

* * * * *

Section 3. Risk Categories/Weights for On-Balance Sheet Assets and Off-Balance Sheet Items

* * * * *

(a) * * *

(3) * * *

(v) Loans secured by a first mortgage on multifamily residential properties consisting of five or more units, provided: [11a]

(A) The amortization of principal and interest occurs in not more than 30 years;

(B) The minimum maturity for repayment of principal is not less than 7 years;

(C) all principal and interest payments have been made on a timely basis in accordance with the terms of the loan for at least one year before the loan can qualify for a 50% risk weight, and the loan is not otherwise more than 90 days past due or on nonaccrual status;

(D) The loan is made in accordance with applicable lending limit requirements and prudent underwriting standards;

(E) The property securing the loan has had an average annual occupancy rate of at least 80% of the total units for at least one year; and

(F) The rate of interest:

(I) Does not change over the term of the loan, and the loan amount at origination does not exceed 80% of the appraised value of the property, and in the most recent fiscal year, the ratio of annual net operating income generated by the property (before payment of any debt service on the loan) to annual debt service on the loan is not less than 120%; or

(II) Changes over the term of the loan, and the loan amount at origination does not exceed 75% of the appraised value of the property, and in the most recent fiscal year, the ratio of annual net operating income generated by the property (before payment of any debt service on the loan) to annual debt service on the loan is not less than 115%.

(vi) Privately-issued mortgage-backed securities, *i.e.* those that do not carry the guarantee of a government or government-sponsored agency, if the privately-issued mortgage-backed securities are at the time of origination fully secured by mortgages that qualify for the 50% risk weight under section 3(a)(3) (iii), (iv) and (v) above,[12] provided that they meet the following criteria:

* * * * *

3. In appendix A, table 1, category 3, is amended by adding item 5 to read as follows:

Table 1—Summary of Risk Weights and Risk Categories

* * * * *

Category 3: 50 Percent

* * * * *

5. Assets secured by a first mortgage on multifamily residential properties.

* * * * *

[11a] The portion of multifamily residential property loans that is sold subject to a *pro rata* loss sharing arrangement may be treated by the selling bank as sold to the extent that the sales agreement provides for the purchaser of the loan to share in any loss incurred on the loan on a *pro rata* basis with the selling bank. The portion of multifamily residential property loans sold subject to any loss sharing arrangement other than *pro rata* sharing of the loss shall be accorded the same treatment as any other asset sold under an agreement to repurchase or sold with recourse under section 3(b)(1)(ii) (footnote 14).

[12] If all of the underlying mortgages in the pool do not qualify for the 50% risk weight, the bank should generally assign the entire value of the security to the 100% risk category of section 3(a)(4) of this appendix A; however, on a case-by-case basis, the OCC may allow the bank to assign only the portion of the security which represents an interest in, and the cash flows of, nonqualifying mortgages to the 100% risk category, with the remainder being assigned a risk weight of 50%. Before the OCC will consider a request to risk weight a mortgage backed security on a proportionate basis, the bank must have current information for the reporting date that details the composition and cash flows of the underlying pool of mortgages.

Dated: May 18, 1992.

Stephen R. Steinbrink,

Acting Comptroller of the Currency.

[FR Doc. 92-22305 Filed 9-16-92; 8:45 am]

BILLING CODE 4810-33-M

Office of Thrift Supervision

12 CFR Part 517

[No. 92-229]

RIN 1550-AA53

Minority, Women, and Disabled Business Outreach Program: Contracting for Goods and Services

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Proposed rule; request for comments.

SUMMARY: The Office of Thrift Supervision (OTS) intends to adopt a Minority and Women-Owned Contract Outreach Program (Outreach Program) pursuant to Section 1216(c) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). The regulation would ensure to the maximum extent possible that business concerns owned and controlled by members of minority groups and women participate in the OTS contracting programs. It also designates the official responsible for implementing the program and its oversight.

In addition, the proposed regulation includes outreach activities for disabled business owners which are consistent with the intent of the Americans with Disabilities Act of 1990 and broader Federal guidelines pertaining to equal employment opportunity for disabled individuals.

DATES: Comments must be submitted on or before October 19, 1992.

ADDRESSES: Send comments to Director, Information Services Division, Public Affairs, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 92-229. These submissions may be hand delivered to 1700 G Street NW., from 9 a.m. to 5 p.m. on business days; they may be sent by facsimile transmission to FAX Number (202) 906-7753 or (202) 906-7755. Submissions must be received by 5 p.m. on the day they are due in order to be considered by the OTS. Late-filed, misaddressed or misidentified submissions will not be considered in this rulemaking. Comments will be available for inspection at 1776 G Street NW., Street Level.

FOR FURTHER INFORMATION CONTACT: Frances L. Sullivan, Director,

Procurement Management Division, (202) 906–6193, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The OTS is proposing to establish the Outreach Program, which would ensure the participation of certain designated groups in the OTS contracting program.

The OTS outreach Program applies to the contracting activities of the OTS required by section 1216(c) of FIRREA (12 U.S.C. 1833e (1990)). The FIRREA requires the OTS to prescribe regulations establishing and overseeing a minority outreach program ensuring, to the maximum extent possible, the participation of minorities and women, and entities owned by minorities and women, including financial institutions, investment banking firms, underwriters, accountants, and providers of legal services, in all contracts entered into by the OTS with public or private sector contractors. The program also applies to businesses owned by individuals with disabilities consistent with the intent of the Americans with Disabilities Act of 1990 (Pub. L. 101–336, 101 Cong., 2nd Sess. (1990), 104 Stat. 327).

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the OTS certifies that this proposal will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

The Director of the OTS has determined that this proposal does not constitute a major rule. Therefore, a regulatory impact analysis is not required.

List of Subjects in 12 CFR Part 517

Government contracts, Individuals with disabilities, Minority businesses, Small businesses, Women.

Accordingly, OTS hereby proposes to amend subchapter A, chapter V, title 12, Code of Federal Regulations as set forth below:

SUBCHAPTER A—ORGANIZATION AND PROCEDURES

1. Part 517 is added to read as follows:

PART 517—THE MINORITY, WOMEN, AND DISABLED BUSINESS OUTREACH PROGRAM: CONTRACTING FOR GOODS AND SERVICES

Sec.

517.1 Purpose.
517.2 Definitions.
517.3 Policy.
517.4 Certification.
517.5 Contract award guidelines.

Authority: 12 U.S.C. 1833(e); 42 U.S.C. 12101 et seq.

§ 517.1 Purpose.

The purpose of the OTS Minority, Women, and Disabled Business Outreach Program (Outreach Program) is to ensure that firms owned and operated by minorities, women and disabled individuals are given the opportunity to participate to the maximum extent possible in all contracting activities of OTS.

§ 517.2 Definitions.

(a) *Minority- and/or women-owned (small and large) businesses and entities owned by minorities and women* means firms at least fifty-one (51) percent owned and controlled by one or more members of the minority group or by one or more women who are either citizens or permanent residents of the United States. In the case of publicly-owned companies, at least fifty-one (51) percent of each class of voting stock must be owned and controlled by one or more members of the minority group or by one or more women who are either citizens or permanent residents of the United States. In the case of a partnership, at least fifty-one (51) percent of the partnership interest must be owned and controlled by one or more members of the minority group or by one or more women who are either citizens or permanent residents of the United States. Additionally, the management and daily business operations must be controlled by one or more such individuals.

(b) *Minority* means any Black American, Native American, Hispanic American, Asian American, Pacific Islander, or Eskimo.

(c) *Small and large businesses and entities owned by individuals with disabilities* (the term *disability* as used in this program has the same meaning as defined in section 3 of the Americans With Disabilities Act of 1990, Pub. L. 101–336, 104 Stat. 327 (42 U.S.C. 12101 et seq.)), means firms at least fifty-one (51) percent owned and controlled by individuals with disabilities who are either citizens or permanent residents of the United States. In the case of publicly-owned companies, at least fifty-one (51) percent of each class of voting stock must be owned and controlled by individuals with disabilities who are either citizens or permanent residents of the United States. In the case of a partnership, at least fifty-one (51) percent of the partnership interest must be owned and controlled by individuals with disabilities who are either citizens or permanent residents of the United States. Additionally, the management and daily business operations must be controlled by one or more such individuals.

§ 517.3 Policy.

(a) *General.* Minority, women and disabled business concerns shall:

(1) Operate consistent with the principle of full and open competition for all the OTS contracts and the concept of contracting for the minimum agency needs at the lowest practical cost; and

(2) Not be construed to be a substitute means of procurement for the OTS's established procedural process for the procurement of goods or services.

(b) *Oversight and monitoring.* The Director of OTS shall appoint a Chairperson for the Outreach Program, who shall appoint an Outreach Program Advocate, who shall have primary responsibility for furthering the purposes of the Outreach Program.

(c) *Outreach.* (1) The Outreach Program Advocate will perform outreach activities and act as liaison between the OTS and the public on Outreach Program issues.

(2) Outreach activities include the identification and registration of minority, women-owned (small and large) businesses and entities owned by individuals with disabilities who can provide goods and services utilized by the OTS. This includes distributing information concerning the Outreach Program and providing appropriate registration materials for use by vendors and/or contractors. Identification will primarily be accomplished by:

(i) Obtaining various lists and directories maintained by other federal, state and local governmental agencies of Outreach Program businesses;

(ii) Participating in conventions, seminars and professional meetings oriented towards Outreach Programs;

(iii) Conducting seminars, meetings, workshops and various other functions; and

(iv) Monitoring to assure that OTS contracting staff understand and actively promote the Outreach Program.

§ 517.4 Certification.

In order to qualify as an Outreach Program participant, each business or contractor must either:

(a) Self-certify ownership status by filing with the OTS Outreach Program Advocate a completed and signed Solicitation Mailing List Application, Standard Form 129 (SF–129), as

prescribed by the Federal Acquisition Regulation, (48 CFR Part 53); or

(b) Submit a valid Outreach Program certification received from a federal agency, designated state or authorized local agency.

§ 517.5 Contract award guidelines.

Contracts for goods or services will be awarded in accordance with the established OTS procurement rules and policies. The OTS Outreach Program Advocate shall work to facilitate the maximum participation of minority, women-owned (small and large) businesses and entities owned by individuals with disabilities in the OTS procurement of goods or services.

Dated: June 2, 1992.

By: The Office of Thrift Supervision.

Timothy Ryan,

Director.

[FR Doc. 92-22343 Filed 9-16-92; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 884

[Docket No. 89N-0507]

Obstetrical and Gynecological Devices; Classification of the Glans Cap

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to classify glans cap devices (previously named "short condoms" or "glans condoms") into class III. The Medical Device Amendments of 1976 (the amendments) to the Federal Food, Drug, and Cosmetic Act (the act) require FDA to classify all medical devices intended for human use into three categories: Class I (general controls); class II (special controls); and class III (premarket approval). The effect of classifying a preamendments device into class III is to require each manufacturer of the device to submit to FDA a premarket approval application (PMA) or a notice of completion of a product development protocol (PDP) that includes information concerning the device's safety and effectiveness, after the publication under section 515(b) of the act of a final rule specifying the date by which a PMA or completed PDP must be filed with FDA.

DATES: Comments by November 16, 1992. FDA proposes that any final regulation based on this proposal become effective 30 days after its date of publication in the **Federal Register**.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert R. Gatling, Jr., Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1220.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of April 3, 1979 (44 FR 19894), FDA published a proposed regulation to classify obstetrical and gynecological devices which explained the medical device classification procedures, and the activities of the Obstetrics-Gynecology Device Panel (the Panel). The proposed regulation included a proposal to classify the condom into class II (44 FR 19957). Subsequently, in the **Federal Register** of February 26, 1980 (45 FR 12710), FDA published a final rule classifying the condom (21 CFR 884.5300) into class II as a part of its final regulation to classify obstetrical and gynecological devices.

During an open meeting held on March 7, 1989, the Panel reviewed all available information concerning the classification of short condom-like devices that are known as "short condoms" or "glans condoms." The Panel noted that the classification regulation for a condom in 21 CFR 884.5300 identifies the device as "a sheath *which completely covers the penis* (emphasis added) with a closely fitting membrane." The regulation also states that the condom device is used "for contraceptive and for prophylactic purposes (preventing transmission of venereal disease)" and "to collect semen to aid in the diagnosis of infertility." Because "short condom" or "glans condom" devices do not cover the entire shaft of the penis and disclaim protecting the shaft or foreskin of the penis against infection, and because there is no safety or effectiveness data for their prophylactic use, the Panel recommended that FDA find that the "short condom" or "glans condom" is not included in the classification regulation promulgated for condom devices. FDA concurs with this recommendation.

II. Panel Recommendation

The Panel made the following recommendations with respect to the classification of the glans cap:

1. *Identification*: A glans cap is a sheath which covers only the glans and the area in the immediate proximity thereof, the corona and the frenulum, but not the entire shaft of the penis. It is indicated only for the prevention of pregnancy and not for the prevention of sexually transmitted diseases. The Panel strongly recommends that this device group not contain the term "condom" in its name because the term would suggest that these types of products will perform similarly to conventional condoms that cover the entire shaft of the penis. Therefore, the Panel recommends that this group of devices be called "glans cap," rather than "short condom" or "glans condom"—two of the primary names used previously to identify devices within this generic class.

2. *Recommended classification*: Class III. The Panel unanimously recommends assigning a high priority to premarket approval of the glans cap because of the absence of test and clinical data regarding the safety and effectiveness of the device and because device failure could result in release of semen into the vagina leading to unwanted pregnancies and transmission of disease, such as acquired immunodeficiency syndrome (AIDS) caused by the human immunodeficiency virus (HIV) from HIV-infected semen. For women for whom pregnancy is contraindicated due to medical conditions such as heart disease or diabetes mellitus, the risk of an unwanted pregnancy can be severe, even life threatening.

3. *Summary of reasons for recommendation*: The Panel recommends that the glans cap be classified into class III because no published studies or clinical data can be found demonstrating the safety and effectiveness of the device. References to this type of device in the literature describe it as an unsafe method of contraception (Refs. 1 and 2). Although the safety of some device characteristics, such as the biocompatibility of device materials contacting the body, could be controlled through tests and specifications, the Panel believes there is insufficient evidence that a performance standard could be established to provide reasonable assurance of the safety and effectiveness of the device. For example, no valid scientific evidence demonstrates how well or how long the

glans cap will stay on the glans during vigorous or protracted intercourse.

The Panel notes that failure of the glans cap due to breakage, leakage, or dislodgement leading to the release of semen could result in undesired pregnancies, and in the transmission of sexually transmitted diseases, such as AIDS. Thus, the Panel recommends further that the labeling of these devices include pregnancy rate information and adequate directions for use. The Panel believes that the device must be subject to premarket approval to ensure that manufacturers demonstrate satisfactory performance of the device and thus assure its safety and effectiveness.

4. *Summary of data on which the recommendation is based:* The Panel based its recommendation on the references cited in this notice and on the Panel members' personal knowledge of, and experience with, contraceptive methods of birth control, including barrier-type contraceptives. Additionally, the Panel found no data in the literature to support the safety and effectiveness of the device.

5. *Risks to health*: (a) Pregnancy: leakage, breakage, or dislodgement of the device during intercourse could result in the occurrence of undesired pregnancy; (b) disease transmission: if the device fails due to leakage, breakage, or dislodgement, contact with infected semen or vaginal secretions could result in the transmission of sexually transmitted diseases, including AIDS; (c) adverse tissue reaction: unless the biocompatibility of materials and substances comprising the device are tested, local tissue irritation and sensitization or systemic toxicity could occur when the glans cap contacts the glans penis or vaginal and cervical mucosa.

III. Proposed Classification

FDA agrees with the Panel's conclusions and recommendations regarding the unproven contraceptive effectiveness and the misuse of the glans cap to avoid sexually transmitted diseases. The agency has neither received nor found in the literature valid scientific evidence from laboratory tests, preclinical studies, or clinical investigations that demonstrates the biocompatibility of materials used in the glans cap, or that measures performance characteristics, such as slippage, bursting, and tearing, or that assesses the safety and effectiveness of the device in preventing pregnancy, resulting in a reported failure or pregnancy rate based upon usage. The agency believes that the present voluntary industry standard and the agency's methodology for testing conventional condoms for pinhole leaks are not suitable for testing the glans cap for leaks without significant modification and validation.

FDA notes that the labeling of barrier contraceptive devices, such as the contraceptive diaphragm (21 CFR 884.5350) and the cervical cap (21 CFR 884.5250), identify pregnancy rates expected with use of the products. The expected failure or pregnancy rates for use of the conventional full-sheath condom are widely published. Such information is not available for the glans cap. Hence, the agency agrees with the Panel that pregnancy rate information, derived from valid clinical study data, should be included in glans cap labeling. Otherwise, the labels would fail to disclose a material fact regarding the consequences which may result from using a glans cap.

The agency concurs with the Panel's recommendation that the labeling and tradenames of glans cap devices should not contain the word "condom" since the glans cap covers only the glans and the area in immediate proximity thereof, the corona and frenulum, while a condom is defined as a sheath which completely covers the penis. Also, the agency is concerned that the use of the name "condom" to describe the glans cap device may imply that the glans cap will be as effective as a condom in the prevention of sexually transmitted diseases including AIDS. Although the glans cap is neither suitable for nor intended for prevention of disease, and although marketed devices of this type have in the past disclaimed protecting the shaft and foreskin of the penis against infection, failure of the glans cap may result in the release of infected semen into the vagina or otherwise result in the transmission of disease.

FDA believes that insufficient information exists to determine that general controls, or special controls, such as postmarket-surveillance, the development of guidelines, the establishment of a performance standard, or other actions, will provide reasonable assurance of the safety and effectiveness of the glans cap. FDA believes that the glans cap presents a potential unreasonable risk of unwanted pregnancy or infection and should, therefore, be subject to premarket approval to provide reasonable assurance of its safety and effectiveness.

FDA concurs with the Panel's recommendation that premarket approval requirements for the glans cap be given a high priority due to the public health considerations involved. Devices classified into class III by a regulation under section 513(b) of the act (21 U.S.C. 360c(b)) remain subject only to the general controls provisions of the act until an additional regulation is promulgated under section 515(b) of the act (21 U.S.C. 360e(b)) establishing an effective date of the requirement for premarket approval. Because of the lack of safety and effectiveness data, the glans cap may be improperly used as contraceptive and failure of the device can result in significant health risks. Accordingly, in the near future the agency intends to publish, pursuant to section 515(b) of the act, a proposed rule to establish the effective date of the requirement for premarket approval for the glans cap. Such a rule under section 515(b) of the act will be published soon after the effective date of a final classification regulation based on this proposed rule.

After the establishment by additional regulation of such an effective date for premarket approval, devices classified by regulation into class III may remain in commercial distribution without approved premarket approval applications, in accordance with section 501(f)(2)(B) of the act (21 U.S.C. 351(f)(2)(B)), for 30 months following the effective date of classification of the device into class III, or for 90 days following the promulgation of a final regulation under section 515(b) of the act, whichever occurs later (21 CFR 884.3).

IV. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. "Other methods, past, present and future * * * American, or Grecian tips," in "Sex With Health The Which? Guide to Contraceptives, Abortion and Sex-related Diseases," published by Consumers' Association (British), November 1974.

2. Peel, J., and M. Potts, "The Condom," *in* "Textbook of Contraceptive Practice," Cambridge University Press, 1969, p. 58.

3. Willson, J., and R. Carrington, *Obstetrics and Gynecology*, C.V. Mosby Co., chs. 22 and 28, 1987.

V. Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) that this proposed classification action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Economic Impact

FDA has carefully analyzed the economic effects of this proposed classification rule and has determined that the final rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act. In accordance with Executive Order 12291, FDA has carefully analyzed the impact of any final rule based on this proposal and has determined that the final rule would not constitute a major rule as defined by section 1(b) of the Executive Order.

VII. Submission of Comments

Interested persons may, on or before November 16, 1992, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 884

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 884 be amended as follows:

PART 884—OBSTETRICAL AND GYNECOLOGICAL DEVICES

1. The authority citation for 21 CFR part 884 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

2. New § 884.5320 is added to subpart F to read as follows:

§ 884.5320 Glans cap.

(a) *Identification.* A glans cap is a sheath which covers only the glans and the area in the immediate proximity thereof, the corona and frenulum, but not the entire shaft of the penis. It is indicated only for the prevention of pregnancy and not for the prevention of sexually transmitted diseases.

(b) *Classification.* Class III (premarket approval).

(c) *Date premarket approval application (PMA) or notice of completion of a product development protocol (PDP) is required.* No effective date has been established of the requirement for premarket approval. See § 884.3.

Editorial Note: This document was received in the Office of the Federal Register on September 11, 1992.

Dated: December 24, 1991.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-22396 Filed 9-16-92; 8:45 am]

BILLING CODE 4160-01-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2610

RIN 1212-AA58

Payment of Premiums

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule; extension of comment period.

SUMMARY: In a recent proposal to amend its regulation on Payment of Premiums (29 CFR part 2610), the Pension Benefit Guaranty Corporation indicated that it anticipated making the amendment effective generally as of the beginning of 1993; to meet that schedule, the comment period was limited to 45 days. The PBGC has now decided to defer the changes by a year. Accordingly, the PBGC is extending the comment period on the proposed amendment.

DATES: Comments must be received on or before November 16, 1992.

ADDRESSES: Comments may be mailed to the office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006-1860, or delivered to Suite 7200 at that address between 9 a.m. and 5 p.m. on business days. Written comments (including those submitted both heretofore and hereafter) will be available for public inspection at the PBGC's Communications and Public Affairs Department, suite 7100 at the same address, between 9 a.m. and 4 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006-1860; 202-778-8850 (202-778-1958 for TTY and TDD).

SUPPLEMENTARY INFORMATION: The regulation on Payment of Premiums (29 CFR part 2610), issued by the Pension Benefit Guaranty Corporation ("PBGC") under sections 4006 and 4007 of the Employee Retirement Income Security Act of 1974 ("ERISA"), describes (in conjunction with the PBGC's premium payment forms and instructions) how to compute and pay premiums and interest and penalties thereon.

All plans covered by the PBGC insurance system pay a flat-rate per-participant premium assessment; in addition, the premium for a single-employer plan also includes a variable rate assessment based on the value of the plan's unfunded vested benefits.

Since 1988, the premium regulation has provided two methods for determining the amount of a plan's unfunded vested benefits—the "general rule", which closely tracks the statute, and the "alternative calculation method", which requires the plan administrator to calculate the amount of the plan's unfunded vested benefits from the plan's annual report for the preceding plan year.

On April 10, 1992, the PBGC published in the **Federal Register** (at 57 FR 12666) a proposed amendment to the premium regulation. Included in the proposal were a change in the definition of the term "participant"; a new simplified filing method ("SFM") to replace the alternative calculation method ("ACM"); acceleration of the early filing date applicable to large plans and deferral of the final filing date applicable to all plans; raising the number of participants a plan must have in order to be required to make the early premium payment; widening the scope of the early payment to cover the variable rate, as well as the flat rate, portion of the premium; and charging neither penalties nor interest on early payments that equaled at least a definitely determinable amount. The preamble to the proposed amendment discussed in detail the statutory and regulatory background of the proposals as well as the proposals themselves and requested public comments. The PBGC envisioned making the proposed changes effective generally for premium payment years beginning after 1992, and in order to meet that schedule the comment period on the proposed amendment was limited to 45 days.

The PBGC has now decided to defer the changes by a year, and to make the final amendment of the premium regulation effective generally for premium payment years beginning after 1993. The deferral will provide an opportunity to consider possible additional refinements, permit a more orderly introduction of the changes, and assure a smooth and effective integration of the amended regulation with a new computerized premium accounting system capable of processing premium filings under the new premium rules. This schedule change makes it possible to accommodate a longer

comment period. Accordingly, the PBGC hereby extends the comment period on the proposed amendment until November 16, 1992.

Issued at Washington, DC, this 11th day of September, 1992.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 92-22539 Filed 9-16-92; 8:45 am]

BILLING CODE 7708-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OAQPS No. CA-11-9-5342; FRL-4507-2]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Bay Area Air Quality Management District; San Luis Obispo County Air Pollution Control District; Santa Barbara County Air Pollution Control District; San Diego County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing approval of revisions to the California State Implementation Plan (SIP) adopted by the Bay Area Air Quality Management District (AQMD) on July 12, 1989, by the San Luis Obispo County Air Pollution Control District (APCD) on July 18, 1989, by the Santa Barbara County APCD on July 10, 1990, and by the San Diego County APCD on October 16, 1990. The California Air Resources Board (CARB) submitted the Bay Area and San Luis Obispo revisions to EPA on December 31, 1990, and submitted the San Diego and Santa Barbara revisions on April 5, 1991. The revisions concern the adoption of San Luis Obispo's Rule 424, Gasoline Dispensing Facilities, Santa Barbara's Rule 316, Storage and Transfer of Gasoline, San Diego's Rule 61.0, Definitions Pertaining to the Storage and Handling of Organic Liquids, and Bay Area's Rule 8-46, Marine Tank Vessel to Marine Tank Vessel Loading. The San Luis Obispo and Santa Barbara rules regulate Stage I and Stage II gasoline vapor recovery at gasoline dispensing facilities. The San Diego rule defines terms used in other rules regulating the storage and handling of organic liquids. The Bay Area rule is a new rule that regulates emissions during the transfer of organic liquids between marine vessels (lightering). EPA has evaluated each of these rules and is proposing to approve them under section 110(k)(3) as meeting the requirements of section 110(a) and Part D of the Clean Air Act, as amended in 1990 (CAA or the Act).

DATES: Comments must be received on or before October 19, 1992.

ADDRESSES: Comments may be mailed to: Daniel A. Meer, Southern California and Arizona Rulemaking Section (A-5-3), Air and Toxics Division, Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revisions and EPA's Technical Support Document for each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109

San Luis Obispo County Air Pollution Control District, 2156 Sierra Way, Suite B, San Luis Obispo, CA 93401

Santa Barbara County Air Pollution Control District, 26 Castillan Drive, B-23, Goleta, CA 93117

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123-1095

FOR FURTHER INFORMATION CONTACT: William E. Davis, Jr., Northern California, Nevada and Hawaii Rulemaking Section (A-5-4), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1183.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 CAA or pre-amended Act) that included the San Francisco Bay Area, Santa Barbara County and San Diego County (but not San Luis Obispo County). (43 FR 8964) 49 CFR 81.305. Because these areas were unable to reach attainment by the statutory attainment date of December 31, 1982, California requested under section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. 40 CFR 52.238. On May 26, 1988, EPA notified the Governor of California that the three districts' portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101-549, 104 Stat. 2399, codified at 42 U.S.C. §§ 7401-7671q. In amended section 183(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amended guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The San Francisco Bay Area and Santa Barbara County are classified as moderate and the San Diego area is classified as severe;[2] therefore, these areas are subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The San Luis Obispo County APCD is part of the South Central Coast Air Basin and is classified as an attainment area for ozone. 56 FR 56694. It was not subject to the SIP-call or to fixing RACT rules by May 15, 1991. However, the District adopted Rule 424 to help maintain the ozone standard and California has submitted it to EPA for incorporation into the SIP.

The State of California submitted many revised RACT rules to EPA for incorporation into its SIP on December 31, 1990 and April 5, 1991, including the rules being acted on in this notice. This notice addresses EPA's proposed action for four (4) rules: (1) Bay Area's new Rule 8-46, Marine Tank Vessel to Marine Tank Vessel Loading, (2) San Luis Obispo's revised Rule 424, Gasoline Dispensing Facilities, (3) Santa

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[1] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to appendix D of November 24, 1987 Federal Register Notice" (Blue Book) (notice of availability was published in the Federal Register on May 25, 1988); and the existing control techniques guidelines (CTGs).

[2] The San Francisco Bay Area, Santa Barbara County, and the San Diego Area retained their designations and were classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

Barbara's revised Rule 316, Storage and Transfer of Gasoline, and (4) San Diego's revised Rule 61.0, Definitions Pertaining to the Storage and Handling of Organic Compounds. The Bay Area and San Luis Obispo rules were submitted to EPA on December 31, 1990 and were found to be complete on February 28, 1991 pursuant to EPA's completeness criteria adopted on February 16, 1990 (55 FR 5830) and set forth in 40 CFR part 51, Appendix V.[3] The Santa Barbara and San Diego rules were submitted to EPA on April 5, 1991 and were found to be complete on May 21, 1991. All four rules are being proposed for approval into the SIP.

Each of these rules controls volatile organic compound (VOC) emissions from organic liquids. VOCs contribute to the production of ground level ozone and smog. Bay Area's Rule 8-46 is a new rule controlling VOC emissions during transfer of organic liquids between marine vessels (lightering). San Luis Obispo's Rule 424 controls VOC emissions from gasoline service station operations. Santa Barbara's Rule 316 controls VOC emissions from the storage and transfer of gasoline while San Diego's Rule 61.0 supplies common definitions for several other rules controlling VOC emissions from organic liquid handling and storage. The Santa Barbara and San Diego rules were originally adopted as part of each district's efforts to achieve the National Ambient Air Quality Standards (NAAQS) for ozone and in response to the SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for the four rules.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Techniques Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTGs applicable to Santa Barbara Rule 316 are the following EPA documents: EPA-450/2-77-026, "Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals", EPA-450/2-77-035, "Control of Volatile Organic Emissions from Bulk Gasoline Plants" and EPA-450/2-78-051, "Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems". For the San Luis Obispo County Rule 424, the applicable CTG is EPA document EPA-450/2-77-035, "Control of Volatile Organic Emissions from Bulk Gasoline Plants", and the document "Design Criteria for Stage I Vapor Control Systems—Gasoline Service Stations". A CTG for lightering operations covered by the Bay Area Rule 8-46 has not been developed by EPA [4] nor has a CTG been developed for the definitions covered by San Diego Rule 61.0. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 1. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

Bay Area APCD Rule 8-46, Marine Tank Vessel to Marine Tank Vessel Loading

This is a new rule which controls VOCs from marine vessel lightering and complements Bay Area's Rule 8-44, Marine Vessel Loading Terminals. (Rule 8-44 will be the subject of a separate notice.) It is estimated that implementation of Rule 8-46 will account for VOC emission reductions amounting to nearly 1,000 tons per year. The rule contains the following provisions among others:

—Sets emission limits at 2 pounds per 1000 barrels transferred or requires at least 95% control of emissions.
—Requires emission control equipment to be designed to collect and process all emissions.
—Requires certification that the equipment is leak free and gas tight and requires that work stops when leaks are detected.
—Requires that loading will cease on days predicted by the District to be in excess of NAAQS for ozone.
—Provides for compliance schedules, loading event notification, monitoring, and recordkeeping.
—References the test methods to be used for determining compliance.

San Luis Obispo County APCD Rule 424, Gasoline Dispensing Facilities

This rule revises and replaces those portions of the existing SIP Rule 407 which address delivery of gasoline to service stations. The rule provides for the control of VOC emissions from the transfer of gasoline to storage tanks at service stations (Stage I vapor control) and adds requirements for vapor control for the transfer of gasoline to motor vehicles (Stage II control). The rule includes the following significant changes from the current SIP:

—Adds leakage restrictions and methods for detection.
—Adds Stage II vapor control requirements for service stations.
—Requires California Air Resources Board certification of Stage II control systems.
—Adds recordkeeping provisions for exempt stations.
—Provides a compliance schedule for new and existing stations.

Santa Barbara County APCD, Rule 316, Storage and Transfer of Gasoline

This revision of the existing SIP rule 316 eliminates an exemption for bulk plants effective January 1, 1992. Certain deficiencies identified by EPA have also been corrected. The rule includes the following significant changes from the current SIP:

—Previously exempted tanks with a daily throughput of 20,000 gallons or less are now subject to the rule.
—Certain exemptions in the current SIP rule for the "Northern Zone" have been deleted.
—The capacity of tanks that require Phase I and Phase II equipment and certification has been reduced from 1500 to 250 gallons.
—The limits for VOC emissions from bulk terminals has been changed from 90% recovery to 0.08 pounds per 1000 gallons transferred.

[3] EPA has since adopted completeness criteria pursuant to section 110(k)(1)(A) of the amended Act. See 56 FR 42216 (August 26, 1991).

[4] Section 183(f) of the CAA provides the Administrator with authority to regulate certain types of VOC emissions from marine vessels. Once EPA establishes such emissions applicable to specific transfers of materials from marine vessels, the state or political subdivision cannot adopt or enforce a standard that is inconsistent with, and less stringent than, the federal standard. However, since no federal standard currently exists and because the regulation being proposed for approval today strengthens the existing SIP, the District may adopt and enforce this regulation. If EPA adopts a federal standard applicable for the same sources, the District may only enforce this regulation to the extent that it is more stringent than the federal standard.

—"Leak free" requirements for bulk terminals and plants have been added.
—An EPA method for determining the vapor tightness of delivery vessels has been added.
—Test methods for determining compliance have been added.
—Compliance schedules have been added.

San Diego County APCD, Rule 61.0, Definitions Pertaining to the Storage and Handling of Organic Compounds

This rule revises the definitions for Rules 61.1 through 61.9, which are rules controlling VOC emissions from gasoline and other organic liquid storage and transfer. Several revisions have been made to correct deficiencies identified by EPA. The more important changes to the rule are:

—Definitions for floating and fixed roof tanks have been added.
—The definition of "fugitive vapor leak" has been made more stringent.
—A definition of "gas tight" has been added.

EPA has evaluated the four submitted rules and has determined that they are consistent with the CAA, EPA regulations and EPA policy. Furthermore, the addition of the Bay Area Rule 8–46 and the more stringent standards in the revised Santa Barbara Rule 316 should lead to greater VOC emission reductions. Therefore, Bay Area's submitted Rule 8–45, San Luis Obispo's submitted Rule 424, Santa Barbara's submitted Rule 316, and San Diego's submitted Rule 61.0 are being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities.(5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number a small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and Part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis for a SIP approval would constitute Federal inquiry into the economic reasonableness of the State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 9, 1992.

John Wise,

Acting Regional Administrator.

[FR Doc. 92–22517 Filed 9–16–92; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–14–12–5420; FRL–4507–3]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Bay Area Air Quality Management District; San Diego County Air Pollution Control District; San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) adopted by the Bay Area Air Quality Management District (BAAQMD), the San Diego County Air Pollution Control District (SDCAPCD), and the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) on September 6, 1989, December 4, 1990, and April 11, 1991, respectively. The California Air Resources Board submitted the revisions from SJVUAPCD, BAAQMD and SDCAPCD to EPA on May 30, 1991, December 31, 1990 and April 5, 1991, respectively. The revisions concern BAAQMD's Rule 8–28, Pressure Relief Valves at Petroleum Refineries and Chemical Plants; SDCAPCD's Rule 67.12, Polyester Resin Operations; and SJVUAPCS's Rule 465.3, Components Serving Light Crude Oil or Gases at Light Crude Oil and Gas Production Facilities and Components at Natural Gas Processing Facilities. EPA has evaluated these rules and is proposing a limited approval under sections 110(k)(3) and 301 (a) of the Clean Air Act, as amended in 1990 (CAA or the Act) because these rules strengthen the SIP. At the same time, EPA is proposing a limited disapproval under section 110(k)(3) of the CAA because these rules do not fully meet the Part D, section 182(a)(2)(A) requirement of the CAA.

DATES: Comments must be received on or before October 19, 1992.

ADDRESSES: Comments may be mailed to: Esther Hill, Northern California, Nevada and Hawaii, Rulemaking Section (A–5–4), Air and Toxics Division, Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1219 "K" Street, Sacramento, CA 95814
Bay Area Air Quality Management District, 939 Ellis St., San Francisco, CA 94109
San Diego County Air Pollution Control District, 9150 Chesapeake Dr., San Diego, CA 92123
San Joaquin Valley Unified Air Pollution Control District, 1745 West Shaw, Suite 104, Fresno, CA 93711

FOR FURTHER INFORMATION CONTACT: Doris Lo, Rulemaking Section I (A-5-4), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1202.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the 1977 Clean Air Act (1977 CAA) that included BAAQMD, SDCAPCD, and the following seven districts, which, along with the San Joaquin Valley portion of Kern County, have combined to form SJVUAPCD:[1] Fresno County Air Pollution Control District (APCD), Kings County APCD, Madera County APCD, Merced County APCD, San Joaquin County APCD, Stanislaus County APCD, and Tulare County APCD. 43 FR 8964; 40 CFR 81.305. Because these districts were unable to reach attainment by the statutory attainment date of December 31, 1982, California requested under Section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987.[2] 40 CFR 52.238. None of these districts attained the ozone standard by the approved attainment date. On may 26, 1988, EPA notified the Governor of California that the above districts' portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 (the amendments) were enacted. Public Law 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designates as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended Section 172(b) as interpreted in pre-amendment guidance.[3] EPA SIP-Call also used that guidance to indicate the necessary corrections for specific nonattainment areas. The BAAQMD, SDCAPCD and those districts that combined to form SJVUAPCD were pre-amendment Section 107 nonattainment areas that were subject to the RACT fix-up requirement and the may 15, 1991 deadline.[4]

The State of California submitted many revised RACT rules to EPA for incorporation into its SIP, including the rules being acted on in this notice. This notice addresses EPA's proposed action for BAAQMD's Rule 8-28, Pressure Relief Valves at Petroleum Refineries and Chemical Plants; SDCAPCD's Rule 67.12, Polyester Resin Operations; and SJVUAPCD's Rule 465.3, Components Serving Light Crude Oil or Gases at Light Crude Oil and Gas Production Facilities and Components at Natural Gas Processing Facilities. BAAQMD's Rule 8-28, SDCAPCD's Rule 67.12 and SJVUAPCD's Rule 465.3 were found to be complete on February 28, 1991, April 21, 1991 and July 10, 1991, respectively, pursuant to EPA's completeness criteria adopted on February 16, 1990 (55 FR 5830) and set forth in 40 CFR part 51, Appendix V.[5] These three rules are being proposed for limited approval and limited disapproval.

SJVUAPCD's Rule 465.3 controls VOC emissions from leaking equipment at light crude oil and gas production facilities and natural gas processing facilities. BAAQMD's Rule 8-28 controls VOC emissions from leaking pressure relief valves (PRVs) at petroleum refineries and chemical plants. SDCAPCD's Rule 67.12 controls VOC emissions from polyester resin operations including operations to fabricate fiberglass products such as spas, tubs, pools, and boat hulls. VOCs contribute to the production of ground level ozone and smog. These rules were originally adopted as part of each district's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and have been revised in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for these three rules.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 3. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of reasonably available control technology (RACT) for stationary sources of VOC emissions. This requirement was carried forth from the 1977 CAA.

For the purposes of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents that, based on the underlying requirements of the Act, specified the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTG applicable to BAAQMD's Rule 8-28 is entitled, "Control of Volatile Organic Compound Leaks from Synthetic Organic Chemical and Polymer Manufacturing Equipment," EPA document # EPA-450/3-83-006. For SJVUAPCD's Rule 465.3, there is a CTG applicable to the requirements for natural gas processing facilities, but not

[1] SJVUAPCD was formed on March 20, 1991 and has authority over the San Joaquin Valley Air Basin which includes the seven districts listed and the San Joaquin Valley portion of Kern County. The Kern County Air Pollution Control District still exists, but only has authority over the Southeast Desert Air Basin portion of Kern County. Thus, the SJVUAPCD's rule proposed in today's notice only control emissions from sources in the SJVUAPCD's jurisdiction.

[2] This extension was not requested for all the above counties. Thus, for the counties that did not receive extension, the attainment date remained December 31, 1982. 40 CFR 52.238.

[3] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control techniques guidelines (CTGs).

[4] BAAQMD, SDCAPCD, and SJVUAPCD retained their nonattainment designation and were classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the amendments., BAAQMD was classified as serious. See 56 FR 56694 (November 6, 1991).

[5] EPA has since adopted completeness criteria pursuant to section 110(k)(1)(A) of the amended Act. See 56 FR 42216 (August 26, 1991).

for oil and gas production facilities; this document is entitled, "Control of Volatile Organic Compound Equipment Leaks from Natural Gas/Gasoline Processing Plants," EPA document # EPA-450/3-83-007. There is no CTG applicable to SDCAPCD's Rule 67.12. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 3. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

BAAQMD's submitted Rule 8-28 is a revision of a SIP approved rule. The submitted rule includes the following significant changes:

—Deletes an exemption for PRVs in liquid service and replaces it with an exemption for PRVs in heavy liquid service.

—Adds a leak standard for vapor leaks of 10,000 rpm.

—Adds a requirement to conduct inspections according to the procedures in EPA Method 21.

—Adds recordkeeping requirements.

SDCAPCD's submitted Rule 67.12 is a new rule that has not been previously approved into the SIP. This rule controls emissions from polyester resin operations by requiring at least one of a set of control options that include the use of resin material with no more than 35% by weight monomer content, the use of low-VOC-emission resins, or the use of a closed-mold system.

SJVUAPCD's submitted Rule 465.3 is a new rule that has not been previously approved into the SIP for any of the districts that merged to form SJVUAPCD. The rules control VOC emissions from leaking equipment at natural gas processing facilities and light crude oil and gas production facilities. The control requirements for natural gas processing facilities follow the CTG guidelines mentioned above. The control requirements for production facilities are nearly the same as for natural gas processing, except that inspections start out on an annual frequency and revert to quarterly inspections only if a 2% leak frequency is exceeded.

EPA has evaluated each of the three submitted rules for consistency with the CAA, EPA regulations, and EPA policy and has found that the revisions address and correct many deficiencies previously identified by EPA. These corrected deficiencies have resulted in clearer, more enforceable rules. Furthermore, the new rules should achieve further emission reductions through the control of previously unregulated sources.

Although the approval of these rules will strengthen the SIP, each rule still contains deficiencies which were required to be corrected pursuant to the section 182(a)(2)(A) requirements of part D of the CAA. The deficiencies in BAAQMD's Rule 8-28 include the lack of control requirements for liquid leaks, unapprovable exemptions to the rule, missing test methods, and incomplete recordkeeping requirements. The deficiencies in SJVAPCD's Rule 465.3 include unapprovable exemptions to the rule, a missing test method, an allowance for variances to the rule, and incomplete recordkeeping requirements. The deficiencies in SPCAPCD's Rule 67.12 include a missing test method for determining compliance with monomer content limits in the rule. A more detailed discussion of each rule deficiency can be found in the Technical Support Document for each rule prepared by EPA, Region 9, which is available from the EPA, Region 9 office. Because of these deficiencies, the rules are not approvable pursuant to section 182(a)(2)(A) of the CAA because they are not consistent with the interpretation of section 172 of the 1977 CAA as found in the Blue Book and may lead to rule enforceability problems.

Due to the above deficiencies, EPA cannot grant full approval of these rules under section 110(k)(3) and part D. Also, because the submitted rules are not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rules under section 110(k)(3). However, EPA may grant a limited approval of the submitted rules under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval due to the fact that the rules do not meet the section 182(a)(2)(A) requirement of part D because of the noted deficiencies. Thus, in order to strengthen the SIP, EPA is proposing a limited approval of BAAQMD's Rule 8-28, SDCAPCD's Rule 67.12, and SJVUAPCD's Rule 465.3 under section 110(k)(3) and 301(a) of the CAA.

At the same time, EPA is also proposing a limited disapproval of these rules because they contain deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAA, and, as such, the rules do not fully meet the requirements of Part D of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: Highway funding and offsets. The 18 month period referred to in section 179(a) will begin at the time EPA publishes final notice of this disapproval. Moreover, the final disapproval triggers the federal implementation plan (FIP) requirement under section 110(c).

Upon publishing a final notice of a limited approval and limited disapproval, that action will approve the rules into the SIP so that the rules are federally enforceable, and at the same time, it will require that the districts correct the deficiencies in the rules within eighteen months in order to avoid the promulgation of sanctions and a FIP.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirments.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq. EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include government businesses, small not-for-profit enterprises, and government entities with jurisdiction over population of less than 50,000.

Limited approvals under sections 110 and 301 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S.*

E.P.A., 427 U.S. 246, 256–66 (S. ct. 1976); 42 u.s.c. 7410(A)(2).

EPA's limited disapproval of the State request under sections 110 and 301 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose any new federal requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it impose any new federal requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 9, 1992.

John Wise,

Acting Regional Administrator.

[FR Doc. 92–22518 Filed 9–16–92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[ET Docket 92-191; FCC 92-370]

Upgrading the Mobile-Satellite Service Allocation at 19.7–20.2 GHz and 29.5–30.0 GHz

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposed to upgrade the secondary allocation for Mobile-Satellite Service (MSS) at 19.7–20.2 GHz and 29.5–30.0 GHz (20/30 GHz) to a primary allocation. This action will also conform the U.S. Table of Frequency Allocations in these bands with the results of the World Administrative Radio Conference, Malaga-Torremolinos, 1992 (WARC–92). The objective of this proposed action is to stimulate development of the 20/30 GHz bands by enabling satellite operators to offer, from a single satellite, a variety of communications services from one frequency band.

DATES: Comments are due by November 2, 1992 and reply comments are due by December 2, 1992.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Carl Huie, Office of Engineering and Technology, Frequency Allocations Branch, (202) 653–8112.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Proposed Rule Making in ET Docket 92–191, FCC 92–370, adopted August 14, 1992, and released September 4, 1992.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch, Public Reference Room (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision also may be purchased from the Commission's duplication contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452–1422.

Synopsis of Notice of Proposed Rule Making

In response to a petition for rule making filed by Norris Satellite Communications, Inc. on July 16, 1990, and to amendments to the international Table of Frequency Allocations adopted at WARC–92, the Commission proposed to upgrade the secondary MSS allocation at 20/30 GHz to primary status shared with the Fixed-Satellite Service. The Commission believes that this reallocation will serve satellite communications needs and maximize efficient use of this spectrum. It also believes that this action will encourage non-government participation in NASA's Advanced Communications Technology Satellite program to determine the viability of various "generic" satellite services. The Commission also requested comment on any technical standards that it should consider.

List of Subjects in 47 CFR Part 2

Frequency allocations, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 92–22470 Filed 9–16–92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Parts 2, 21, 22, and 94

[ET Docket No. 92-9; FCC 92-357]

Redevelopment of Spectrum To Encourage Innovation in the Use of New Telecommunications Technologies

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Reallocation and rechannelization plans are proposed for fixed microwave licensees for bands above 3 GHz. These plans are intended to accommodate the relocation of existing 2 GHz licensees as well as new microwave systems. These proposals respond to petitions for rulemaking filed by the Utilities Telecommunications Council (UTC) and Alcatel Network Systems, Inc. (Alcatel).

DATES: Comments are due by December 4, 1992. Reply comments are due by January 6, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Office of Engineering and Technology, (202) 653–8116.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Further Notice of Proposed Rule Making*, adopted August 5, 1992, and released September 4, 1992. In the *Notice of Proposed Rule Making (Notice)* in this proceeding (57 FR 5993; February 19, 1992), the Commission proposed allocating 220 MHz of the 1.85–2.20 GHz (2 GHz) band for services employing emerging telecommunications technologies. In this Further Notice of Proposed Rule Making (Further Notice) the Commission proposed reallocating five bands above 3 GHz so that both private and common carrier fixed microwave users could have access to them on a co-primary basis. The full text of Commission decisions are available for inspection and copying during regular business hours in the FCC Dockets Branch (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's duplication contractor, Downtown Copy Center, (202) 452–1422, 1114 21st Street, NW., Washington, DC 20036.

Summary of Further Notice of Proposed Rule Making

1. The Notice proposed to allocate the 1850–1990, 2110–2150, and 2160–2200 MHz bands for emerging technologies. In the Notice, the Commission recognized that the private and common

carrier licensees operating in the 2 GHz band provide important and essential services, and therefore emphasized that any relocation of existing licensees required by the proposed reallocation should not disrupt these services. The Commission also stated that it appears to be technically feasible to relocate 2 GHz licensees to alternative media or to other fixed microwave bands. The Commission therefore proposed to make the 3.7–4.2, 5.925–6.425, 6.525–6.875, 10.7–11.7, 11.7–12.2, 12.7–13.25, and 17.7–19.7 GHz bands available to existing 2 GHz licensees and to apply the technical rules and coordination procedures for each of these bands to the relocated operations. To provide for this reaccommodation of 2 GHz licensees, a "blanket" waiver of the eligibility requirements was proposed in these bands.

2. *UTC Petition.* In its petition, UTC—the national representative on communications matters for electric, gas, water, and steam utilities—contended that the Commission must adopt specific technical rules to accommodate in other bands the 2 GHz private and common carrier fixed stations potentially affected by the proposals contained in the Notice and urged the Commission to adopt appropriate channeling plans and technical standards in these bands. UTC proposed that three common carrier bands and the 1.71–1.85 GHz government band be made available for private microwave use. UTC also proposed deferring action on the proposals made in the Notice pending consideration of its petition.

3. *Alcatel Petition.* In its petition, Alcatel—a manufacturer and supplier of telecommunications equipment—stated that the Commission should not require fixed microwave users to vacate the 2 GHz band until it adopts specific rules to allow the 2 GHz services to operate in other bands. In particular, Alcatel expressed concern about 2 GHz low and medium capacity fixed systems being relocated to primarily high capacity bands above 3 GHz. Accordingly, Alcatel proposed that six bands be reallocated to permit shared use by private and common carrier fixed microwave services, and also proposed a detailed channelization plan for the reallocated bands and major amendments to several technical rules.

4. *Proposals.* The Commission found merit in many of the proposals made by UTC and Alcatel and proposed to adopt their reallocation and rechannelization proposals, with certain modifications. Specifically, it proposed to reallocate and rechannelize the 3.7–4.2 GHz (4 GHz) and 5.925–6.425 GHz (6 GHz) bands allocated for part 21 (common carrier Domestic Public Fixed Radio Services) and part 25 (common carrier satellite communications) uses, the 6.525–6.875 GHz (6 GHz) band allocated for part 94 (private fixed microwave) use, the 10.565–10.615/10.630–10.680 GHz (10 GHz) band allocated for private and common carrier point-to-multipoint use, and the 10.7–11.7 GHz (11 GHz) band allocated for part 21 use, to permit co-primary private and common carrier fixed microwave use. It also proposed to allow the approximately 20 existing point-to-multipoint users of the 10 GHz band to remain on a grandfathered basis.

5. The Commission did not adopt Alcatel's proposal to reallocate the 3.6–3.7 GHz government/non-government band to permit fixed microwave use. The Commission stated that it does not believe this band can accommodate additional non-government users at this time. However, it said that it would approach the National Telecommunications and Administration (NTIA) and open formal discussions to determine whether some form of shared access to the 3.6–3.7 GHz band by fixed microwave users is feasible. The Commission also said that it would continue negotiations with NTIA regarding non-government access to the 1.71–1.85 GHz government band.

6. The Commission also did not adopt Alcatel's and UTC's proposal that 80 MHz of spectrum in the 4 GHz band allocated to the Fixed-Satellite Service (FSS) on a primary basis be downgraded to secondary. The Commission concluded that the requirements of the FSS outweigh the needs of fixed terrestrial users for an exclusive primary allocation of 80 MHz in this band. Given the large amount of spectrum proposed to be made available to terrestrial fixed users in bands above 3 GHz, the Commission said it was not convinced that such an exclusive allocation is necessary. Moreover, the Commission concluded that the adverse impact of such a reallocation on satellite services would not be acceptable.

7. Regarding technical issues, the Commission stated that it believes that an industry committee can serve a highly useful function in addressing the technical proposals contained in the Further Notice, but that it was not convinced that there is a need for the Commission to participate in such a committee. Accordingly, it encouraged fixed microwave users to form such a committee and stated that it will consider any comments they may have on the proposals contained in the Further Notice within the comment period.

8. With respect to coordination procedures in the bands proposed for reallocation, the Commission stated that it would be least disruptive to existing users to maintain current procedures in each band, as proposed by UTC. Thus, in the 4, 6, 10, and 11 GHz common carrier bands, it proposed that part 21 coordination procedures be used, and, in the 6 GHz private band, it proposed that part 94 procedures be used. In all of these bands, the Commission solicited comments on whether frequency coordinators should establish time limits for the reservation of growth channels, such as a six month reservation period.

9. The Commission also proposed new digital standards in parts 21 and 94, while proposing to maintain existing voice channel loading requirements and analog standards for the large number of licensees that still use analog equipment. It further proposed to permit the expansion of existing microwave systems under current channelization plans without waiver, stating that its goal is to permit new users to access the five bands without adversely affecting existing licensees. Further, the Commission solicited comment on proposals for automatic transmit power control, minimum path lengths and channel loading, frequency diversity transmissions, and power, emission, and bandwidth limitations.

10. Finally, the Commission said that it was unnecessary to defer action on the proposals made in the Notice in order to consider both UTC's and Alcatel's proposals, stating that deferring action could delay the implementation of important new services. Accordingly, it contemplated proceeding with final action on its emerging technology proposals and those contained in the Further Notice in an expeditious manner, whether jointly or separately.

List of Subjects

47 CFR Part 2

Frequency Allocations and Radio Treaty Matters; General Rules and Regulations.

47 CFR Part 21

Domestic Public Fixed Radio Services.

47 CFR Part 22

Public Mobile Service.

47 CFR Part 94

Private Operational-Fixed Microwave Service.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 92-22473 Filed 9-16-92; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 57, No. 181
Thursday, September 17, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

September 11, 1992.

The Department of Agricultural has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Revision

- Animal and Plant Health Inspection Service

Gypsy Moth Identification Worksheet
PPQ Forms 305
Daily & Biweekly
State or local governments; Federal agencies or employees; 214,464 responses; 68,616 hours
Milt Holmes, (301) 436–8247.

- Agricultural Stabilization and Conservation Service

7 CFR 704 and 7 CFR 1410, Conservation Reserve Program CRP–1, CRP–1 Appendix, CRP–1A Continuation, CRP–1C, CRP–1D, CRP–1E, CRP–2, CRP15, ASCS–893, CCC–111, 113, 113A, 114
On occasion
Individuals or households; State or local governments; Farms; 225,000 responses; 25,517 hours
Charles Sims, (202) 729–7334.

Extension

- Food and Nutrition Service

WIC Program Regulations—Reporting and Recordkeeping Burden Recordkeeping; Monthly; Semi-annually; Annually Individuals or households; State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations; 7,736,884 responses; 992,064 hours
Michael T. Buckley, (703) 305–2730.

Larry Roberson,
Deputy Departmental Clearance Officer.

[FR Doc. 92–22419 Filed 9–16–92; 8:45 am]

BILLING CODE 3410-01-M

Cooperative State Research Service

National Competitive Research Initiative Grants Program (Competitive Research Grants Program); Solicitation for Applications for Fiscal Year 1993

Applications are invited for competitive grant awards in agricultural, forestry and related environmental sciences under the National Competitive Research Initiative Grants Program (NCRIGP) administered by the Office of Grants and Program Systems, Cooperative State Research Service (CSRS), for fiscal year 1993.

The authority for this program is contained in section 2(b) of the Act of August 4, 1965, as amended by section 1615 of the Food, Agriculture, Conservation, and Trade Act of 1990 (FACT Act) (7 U.S.C. 450i(b)). Under this program, subject to the availability of funds, the Secretary may award competitive research grants, for periods not to exceed five years, for the support of research projects to further the programs of the Department of Agriculture (USDA). Proposals may be submitted by any State agricultural experiment station, college, university, other research institution or organization, Federal agency, private organization, corporation, or individual. Proposals from scientists at non-United States organizations will not be considered for support.

Section 726 of Public Law No. 102–341, an Act Making Appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 1993, and for other purposes, prohibits CSRS from using the funds available for the NCRIGP for fiscal year 1993 to pay indirect costs exceeding 14 per centum of the total Federal funds provided under each award on competitively awarded research grants.

Applicable Regulations

Regulations applicable to this program include the following:

(a) The regulations governing the NCRIGP, 7 CFR part 3200, which set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and the awarding of grants, and regulations relating to the post-award administration of grant projects;

(b) The USDA Uniform Federal Assistance Regulations, 7 CFR part 3015; and

(c) The USDA Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 7 CFR part 3016.

Section 1402 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended by section 1602 of the FACT Act, requires that research supported by the NCRIGP address, among other things, one or more of the following purposes of agricultural research and extension:

(1) Continue to satisfy human food and fiber needs;

(2) Enhance the long-term viability and competitiveness of the food production and agricultural system of the United States within the global economy;

(3) Expand economic opportunities in rural America and enhance the quality of life for farmers, rural citizens and society as a whole;

(4) Improve the productivity of the American agricultural system and develop new agricultural crops and new uses for agricultural commodities;

(5) Develop information and systems to enhance the environment and the natural resource base upon which a sustainable agricultural economy depends; or

(6) Enhance human health by fostering the availability and affordability of a safe, wholesome and nutritious food supply that meets the needs and preferences of the consumer and by assisting farmers and other rural residents in the detection and prevention of health and safety concerns.

Section 1404 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended by section 1603 of the FACT Act, defines "sustainable agriculture" as an integrated system of plant and animal production practices having a site-specific application that will, over the long term:

(1) Satisfy human food and fiber needs;

(2) Enhance environmental quality and the natural resource base upon which the agricultural economy depends;

(3) Make the most efficient use of nonrenewable resources and on-farm resources and integrate, where appropriate, natural biological cycles and controls;

(4) Sustain the economic viability of farm operations; and

(5) Enhance the quality of life for farmers and society as a whole.

The Secretary of Agriculture has identified several specific areas to support American agriculture in the 1990s including: Alternative fuels, new products and processes, mechanisms for expanding markets abroad, providing the public with a safe and wholesome food supply, and protecting the land and water for future generations, while ensuring farmers the best return on their efforts. Furthermore, the Secretary has identified global change, information technology systems, rural development, biotechnology, and strengthening of the Nation's agricultural research capabilities as key parts of the Department's agenda.

Specific Research Divisions to be Supported in Fiscal Year 1993

CSRS is soliciting proposals, subject to the availability of funds, for support of high priority research of importance to agriculture, forestry, and related environmental sciences, in the following Research Divisions:

Natural Resources and Environment ($17.039 M)
Nutrition, Food Quality, and Health ($6.153 M)
Animal Systems ($23.666 M)
Plant Systems ($37.866 M)
Markets, Trade, and Policy ($3.787 M)
Processing for Adding Value or Developing New Products ($3.787 M)

Pursuant to the provisions of section 2(b)(10) of the Act of August 4, 1965, as amended by section 1615 of the FACT Act (1965 Act, as amended) no less than 10 percent ($9.230 M) of the available funds listed above will be made available for Agricultural Research Enhancement Awards (excluding New Investigator Awards), and no more than 2 percent ($1.846 M) of the available funds listed above will be made available for equipment grants. Further, no less than 30 percent ($27.690 M) of the funds listed above shall be made available for grants for research to be conducted by multidisciplinary teams, and no less than 20 percent ($18.460 M) of the funds listed above shall be made available for grants for mission-linked research. (See below).

The opportunities for research in the above areas have been underscored as a means of providing the scientific and technological advances urgently needed for meeting major challenges now facing agriculture in the United States. Many agricultural and scientific communities, among them the Board on Agriculture of the National Research Council, the State Experiment Station Committee on Organization and Policy, the Joint Council on Food and Agricultural Sciences, the National Agricultural Research and Extension Users Advisory Board, user communities, USDA agencies, and professional and scientific groups have called for an increased investment in competitively awarded research as a means of providing new knowledge for improved national agricultural competitiveness, sustainability, and economic performance; for credible environmental stewardship; for improved human health; and for the revitalization of rural communities.

Research is needed which will form a broad base of knowledge for addressing cost-effective prevention and solution of problems associated with agricultural production, particularly for generating production systems that are sustainable both environmentally and economically; for developing means to protect natural resources and wildlife; for optimizing national and international economic factors; for optimizing livestock and crop quality and productivity; for protecting human health and food safety; for finding new uses of agricultural products, including use as fuel; and for adding value to all stages of agricultural products. In order to focus limited resources in selected areas of fundamental and mission-linked research that have the potential to expand the knowledge base needed, research in the following six specific research divisions will be supported:

Natural Resources and the Environment

Increased knowledge is necessary to develop innovative techniques for prudent management of our nation's natural resources and for addressing potential environmental problems such as excess UV-B radiation and global change. Accordingly, in the area of Natural Resources and the Environment, research programs will include: Water Quality, Plant Responses to the Environment, Forest/Rangeland/Crop Ecosystems, and Improved Utilization of Wood and Wood Fiber. Research opportunities in forest biology will be provided in the above four program areas, as well as in all programs in the Plant Systems research area.

Nutrition, Food Quality, and Health

In response to the increased awareness of the dependency of optimal human health on optimum nutrition and food quality, research opportunities on nutritional requirements for optimal health will be continued. Research proposals will be supported in food safety, specifically focused on microbial agents responsible for food-borne illness.

Animal Systems

Research across a broad range of animal science areas is needed to enhance animal production efficiency, to improve animal products, and to better protect the health and well-being of animals of agricultural importance including aquaculture species. Accordingly, research areas will include: Reproductive Biology of Animals, Cellular Growth and Developmental Biology of Animals, Animal Molecular Genetics and Gene Mapping, and Mechanisms of Animal Disease.

Plant Systems

The Plant Genome program will continue to provide opportunities in mission-oriented research targeted for the identification, characterization, alteration, and manipulation of genes controlling traits of agricultural importance. This program area is part of the larger USDA Plant Genome Research Program. This is the second year of the expanded Photosynthesis/Respiration Program which now also provides research opportunities in plant respiration and metabolism in chloroplasts and mitochondria. It is expected that studies in Plant Systems will contribute to more efficient and enhanced production of feed stocks for use as biofuels. Other NCRIGP programs in the FY 92 Plant Systems (Nitrogen Fixation and Metabolism; Plant Genetic

Mechanisms and Molecular Biology; Plant Growth and Development; Plant Pest Interactions; and Alcohol Fuels) will continue in FY 1993.

Markets, Trade, and Policy

In the increasingly competitive global market environment, export of commodities and value-added products needs to be increased in ways that can revitalize rural economies. Accordingly, the area of Markets, Trade, and Policy will support research in two areas:

(1) Market Assessments, Competitiveness, and Technology Assessments; and

(2) Rural Development.

Processing Antecedent to Adding Value or Developing New Products

In response to a growing awareness of the need to enhance the competitive value and quality of U.S. agricultural and forestry products, research is needed to develop new uses for agricultural and forestry materials and to increase the value of food and non-food products. Accordingly, research will be supported in the Processing for Value-Added Products program. Research dealing with processing of wood material for value-added forest products also will be supported in this Division.

While basic guidelines are provided to assist members of the scientific community in assessing their interest in the program areas and to describe areas where new information is vitally needed, the guidelines are not meant to establish boundaries or to discourage the creativity of potential applicants. The USDA encourages submission of innovative projects that are "high-risk", as well as innovative proposals with potential for more immediate application.

For research addressing biological issues, agriculturally important organism(s) should be used to accomplish the research objectives. The use of other organisms as experimental model systems MUST be justified relative to the goals of the appropriate research program areas and to the long-term objectives of USDA.

Types of Proposals

Under the NCRIGP, CSRS may make project grants, including renewals to existing NCRIGP-funded projects, to support research, including research conferences, and to improve research capabilities in selected areas related to the food and agricultural sciences. 7 CFR 3200.1(a) states that each year CSRS will announce through publication of a Notice the high priority research areas and categories to improve research capabilities for which proposals will be solicited and the extent to which funds are available.

The NCRIGP solicits proposals that are single or multidisciplinary, fundamental or mission-linked. The following definitions apply:

- *Fundamental Research:* Research that tests scientific hypotheses and provides basic foundation knowledge that supports applied research and from which major conceptual breakthroughs are expected to occur.
- *Mission-linked Research:* Research on specifically identified agricultural problems which, through a continuum of efforts, provides information and technology that may be transferred to users and may relate to a product or process.
- *Multidisciplinary Research:* Research in which scientists from two or more disciplines are collaborating closely. These collaborations, where appropriate, may integrate the biological, physical, chemical and/or social sciences.

Note to Multidisciplinary Research Teams

The NCRIGP recognizes the value of research performed as a team effort and recommends the following be taken into consideration when assembling a research team and constructing a proposal:

In order to be competitive, the number of objectives and the level of personnel involved in the proposal should be appropriate to the NCRIGP program area and to the research proposed. A clear management strategy should be provided which identifies the contribution of each member of the team. Participation should be limited to those investigators integral to the proposed research and should not include investigators or objectives peripheral to the hypothesis being tested. It is unlikely that requests for more than three years of funding will be supported.

The project types for which proposals are solicited include:

I. Conventional projects.

(a) *Standard Research Grants:* Research will be supported that is fundamental or mission-linked conducted by individual investigators, co-investigators within the same discipline, or multidisciplinary teams. Any State agricultural experiment station, college, university, other research institution or organization, Federal agency, private organization, corporation or individual may apply. The research proposed must be solicited specifically in the research program areas described herein.

(b) *Conferences:* Scientific meetings that bring together scientists to identify research needs, update information, or advance an area of research are recognized as integral parts of research efforts. Support for a limited number of such meetings covering subject matter encompassed by this solicitation will be considered for partial or, if modest, total support. These proposals should be submitted to the appropriate research program areas described in this solicitation. Applicants considering submission under this category are strongly advised to consult the appropriate NCRIGP staff before preparation and submission of the proposal. Any State agricultural experiment station, college or university, other research institution or organization, Federal agency, private organization, corporation, or individual is an eligible applicant in this area.

II. Agricultural research enhancement awards. In order to contribute to the enhancement of research capabilities in the research program areas described herein, applications are solicited for competitive grants to be awarded in the following categories:

(a) *Postdoctoral Fellowships:* In accordance with section 2(b)(3)(D) of the 1965 Act, as amended, individuals who have recently received or will soon receive their doctoral degree are encouraged to submit proposals. These proposals can be submitted directly by the individual or through an institution. The following requirements apply: (1) The doctoral degree must be received after January 1, 1990, and no later than June 15, 1993; (2) the individual must be a citizen of the United States; (3) the proposal must contain documentation that (a) arrangements have been made with an established investigator with regard to all necessary facilities and space for conduct of the research and (b) that the host institution has been informed of these arrangements and concurs with them; and (4) the research proposed must be solicited in and directly submitted to one of the program areas described in this document. The proposal should initiate the individual's independent program, rather than supplement or augment research programs in the laboratory of the established investigator. Postdoctoral awards are limited to two year's duration and are not renewable. Funds should be requested primarily for salary support, although limited expenditures for supplies, travel, and publication are allowable costs. A separate peer review panel will not be assembled for the purpose of reviewing these proposals. Proposals should be submitted to the

appropriate research program area described in this solicitation by the designated deadline for that particular program area. Applicants are urged to contact program staff concerning questions related to eligibility, budget, and similar matters.

(b) *New Investigator Awards:* Pursuant to section 2(b)(3)(E) of the 1965 Act, as amended, investigators or co-investigators who have completed graduate or post-doctoral training, are beginning their independent research careers, and do not have an extensive research publication record are encouraged to submit proposals. All individuals who have not received competitively-awarded Federal research funds beyond the level of pre- or postdoctoral research awards, and who have less than five years of post-graduate research experience, are eligible for this award. The proposal must contain documentation which lists all prior Federal research support. The research proposed shall be appropriate to one of the program areas described in this document, and the proposal must be submitted directly to that program area. A separate peer review panel will not be assembled for the purpose of reviewing these proposals. Proposals should be submitted to the appropriate research program area described in this solicitation by the designated deadline for that particular program area. No specific amount of funds is mandated to be set aside for these projects.

(c) *Strengthening Awards:* Pursuant to sections 2(b)(3) (D) and (F) of the 1965 Act, as amended, proposals are solicited that request funds for Research Career Enhancement Awards, Equipment Grants, Seed Grants, or Strengthening Standard Research Project Awards. Research Career Enhancement Awards, Seed Grants, and Strengthening Standard Research Project Awards will be available to ensure that faculty of small and mid-sized institutions who have not previously been successful in obtaining competitive grants under section 2(b) of the 1965 Act, as amended (Competitive Research Grants Program), receive a portion of the grants. See program area 80.0 for eligibility requirements.

The project subject for any Strengthening Award shall be appropriate to one of the research program areas described in this document.

More specific description of the Strengthening Awards Program is found under Program Area 80.0.

Specific Research Divisions

The following specific Research Divisions and the program areas therein and guidelines are provided as a base from which proposals for both Conventional Projects and Agricultural Research Enhancement Awards shall be developed.

Natural Resources and the Environment

Knowledge is needed in the area of natural resources and the environment to address contemporary issues of importance, not only for agriculture, but for society as a whole. Biological systems are influenced markedly by the environment. Further, the impact of possible environmental changes on sustainability and economic viability of agriculture and forestry, and the need to enhance the stewardship of natural resources and to minimize negative environmental consequences require expanded knowledge in diverse scientific disciplines. To garner such knowledge, research will be supported in the following topic and program areas:

21.0 Water Quality. Non-point runoff of water contaminants and pollutants, including pesticides and other organics, inorganic nutrients, animal wastes, excess salts, and metals is a major landscape problem. The goal of this program area is to support innovative research that tests hypotheses regarding basic underlying mechanisms that affect water quality. It is anticipated that results from this research will be readily transferable to the development of methods for enhancement of water quality within and exiting from specific agricultural and forest ecosystems. Studies are needed in the disciplines of soil chemistry and physics; uptake, transport, degradation, and fate of water-borne contaminants of agricultural origin; and ecology of landscape elements affecting water quality, including interactions of wetland, riparian, or buffer ecosystems with agricultural and forest ecosystems. Proposals may be developed from the following specific research areas and guidelines:

Soils/Microorganisms. This area will support research on soil and microbial processes that affect accumulation, persistence, degradation, disappearance, and transport of water contaminants and pollutants, including pesticides and other organics, inorganic nutrients (including nitrogen and phosphorus), excess salts, and metals. Proposals should emphasize studies that will enhance basic knowledge of the biological and physico-chemical mechanisms affecting these phenomena. The problem areas include, but are not limited to:

(a) Physical properties and processes of soils (including litter or surface sediments) under both aerobic and anaerobic conditions, including surface chemistry of soil components, adsorption, diffusion and mass flow of contaminants and their accessibility to microorganisms and plant roots;

(b) Basic biochemical, genetic, and molecular mechanisms of microbial uptake, transformation, sequestration, or detoxification of metals, nutrients, pesticides, and other organics; and

(c) Ecology of microbes involved in the above processes.

Plant/Water Contaminant Interaction. This area will support research on:

(a) Basic biochemical, genetic, and molecular mechanisms of whole plant uptake, transport, transformation, sequestration, and detoxification of water contaminants;

(b) Cellular, morphological, and developmental adaptations of plants as related to water contaminants (i.e., anatomy, physiology, biochemistry, root morphology and rhizosphere interactions); and

(c) Basic studies involving tolerant species that accumulate or modify contaminants.

(See also the Plant Responses to the Environment Program, 22.1).

Wetland and Riparian Systems. This area will support research on biogeochemical, physiological, and/or ecological processes and mechanisms in wetland, riparian, or buffer ecosystems related to disposal, treatment, storage, and/or reduction of contaminated non-point source run-off from agricultural or forest systems. Proposals are encouraged which study mechanisms related to reduction, interception and processing, and interactions of source and receiving sites, rather than solely with impact at receiving sites. Nutrient budget studies and estimates of contaminant retention and treatment capacity should be included and should be presented in the context of hypotheses regarding mechanisms affecting such parameters. Proposals that will enhance basic knowledge of wetland and riparian systems are encouraged, as are statistically-based studies that emphasize spatial variability. Development of models should include strong experimental and field validation objectives. Although proposals are encouraged that deal with questions at the landscape level, as well as those that deal with interactions of components of ecosystems, the questions should be unique, hypothesis-driven and discrete from other on-going studies in these landscapes and the

objectives should be at a scale appropriate to this program.

Additional guidelines for proposal development are: That the three research areas presented above are not mutually exclusive and that questions that span two or more research areas and/or two or more scientific disciplines may require a multicollaborator, multidisciplinary approach.

Another competitive grant program, complementary, in part, to this part of the NCRIGP program, is the Special Research Grants Water Quality Program, also administered by CSRS. Research problem areas that may be included in the Special Research Grants program are: Assessment, Sampling and Testing; Fate and Transport; Management and Remediation Practices or Systems; Regional Application and Transferability of Research Results; and Social, Economic and Policy Considerations. For further information about either or both of the programs—NCRIGP Water Quality and/or the Special Research Grants Water Quality—investigators are encouraged to call or write to the two programs at the numbers and addresses listed below under "How to Obtain Application Materials." A given proposal should be submitted to either the NCRIGP or the Special Research Grants Water Quality Program, depending upon the specific research problem areas supported in the two programs; investigators are encouraged to compare descriptions of the two programs before preparing proposals. Submission of duplicate proposals, or proposals with substantial overlap, is discouraged.

Global Change

A strong scientific basis is needed for understanding the impact of potential global change. The objective of this program area, which is a part of the U.S. Global Change Research Program, is to support research which provides an understanding of plant responses to the environment. Such knowledge can provide the basis for developing strategies for adapting to possible changes accompanying projected global fluctuations and for decreasing the impact of environmental stress on agricultural and forest productivity and sustainability.

22.1 Plant Responses to the Environment. The goal of this program is to understand the fundamental mechanisms of the plant's response to environmental factors, both natural and anthropogenically perturbed. Environmental factors may include: water, temperature, light (including UV-B), nutrient, and atmospheric chemical composition (including carbon dioxide, ozone, sulfur dioxide, and other greenhouse gases). Mechanisms may be studied at the ecophysiological, whole plant, cellular, or molecular levels. It is recommended, however, that studies at the cellular and molecular levels be considered in relation to the response at the level of the whole plant. Proposals are encouraged that are based on testable hypotheses and that go beyond descriptive levels of experimentation. Hypotheses that consider single or multiple factors are appropriate. Examples of research to be supported include but are not limited to:

(a) Expression and regulation of genes and gene products that are relevant in plant response to environmental factors;

(b) Identification of biochemical, cellular, morphological, and phenological changes that take place in plants in response to environmental signals; and

(c) The interactions of multiple factors and how they affect plant physiological processes.

Ecosystem studies specifically directed toward understanding the physiological response to the environmental factors listed above are also appropriate for this program; other ecosystem studies should be submitted to the Forest/Rangeland/Crop Ecosystem Program (23.0). Program areas that support studies directed toward understanding aspects of plant biology that do not emphasize an environmental component are described in Plant Systems (51.0–54.0). For plant-water interactions, see also the Water Quality Program (21.0).

23.0 Forest/Rangeland/Crop Ecosystems. The goal of this program area is to further the understanding of underlying biological, ecological and socioeconomic processes that can contribute to sustained productivity and to the well-being and sustainability of ecosystems. Structure and function of ecosystems reflect the many complex interactions and interdependencies among plant species, other organisms, and the physical factors operating within these systems. Human influence contributes to complex perturbations of these systems; yet, a lack of understanding of the intricacies of ecosystems is a barrier to obtaining sustainable agricultural and forest production. Therefore, investigations on the manner in which major landscapes function at ecophysiological, population, community, and biogeochemical levels will provide knowledge essential for improving long-term agricultural and forestry sustainability.

Within this context, studies that examine the developmental, structural, or functional attributes controlling component ecosystem processes, as well as whole ecosystem responses, will be considered. Proposals that explore the implications of alternative management systems on ecosystem processes also are encouraged. Simulation modelling may be useful for integration of research results. Studies are encouraged in, but not limited to, the following areas:

(a) Influence of abiotic and biotic factors on carbon, nutrient, water, and energy flow in ecosystems and on the mechanisms that control such fluxes;

(b) Soil physical and chemical properties and processes that affect water and nutrient availability; and

(c) Responses of ecosystems to disturbance and to environmental, management, and socioeconomic factors.

Such research may include studies of succession and mycorrhizae.

Because of limited funding, applicants are encouraged to address research problems appropriate to the size of this program. Studies that focus only on the mechanisms of plant physiological response to abiotic or biotic factors should be submitted to the Plant Responses to the Environment Program (22.1) or the Plant Pest Interactions topic area (51.0), respectively.

24.0 Improved Utilization of Wood and Wood Fiber. This program area encourages research on critical barriers to improved wood utilization, providing the scientific base from which new research and development can proceed. The program area will place emphasis on the following.

Wood chemistry and biochemistry represent important areas where new fundamental knowledge has potential for expanding efficient wood utilization. Research is needed that advances understanding of the principles governing the biological, physical, or chemical reactions in wood and wood-based materials. Examples of research topics include, but are not limited to: Conversion to products; deterioration mechanisms; recycling of wood fiber; new wood treatment chemistry; lignocellulosic polymer modification; surface chemistry; and adhesion and properties of adhesives.

Physical/mechanical properties of wood and basic wood processing technology constitute an area of investigation in which an improved base of scientific knowledge can ensure future development of new materials, products, and processes. Research is encouraged that advances an understanding of the structure, physical properties, and basic processing characteristics of wood and wood-based materials and leads to a more efficient

conversion of wood-based materials into value-added products. Examples of such research include, but are not limited to: Anatomy and ultrastructure; wood formation; viscoelasticity; heat and mass transfer phenomena; lignocellulosic modification; particle/fiber consolidation; surface and defect evaluation methods; non-destructive property evaluation; and material science.

Structural wood engineering relates to the structural performance of wood and wood-based materials as individual components and in systems. Significant improvements in the use of wood will depend on the development of an expanded scientific base of knowledge. The goal of research in this area is to stimulate innovative approaches in the structural use of wood. Examples of relevant research include, but are not limited to: Reliability-based design; performance modeling and behavior of wood/non-wood composites; new approaches in fasteners and connectors; moisture and environmental effects; and basic failure mechanisms.

Forest engineering research that emphasizes the impact of engineering practices upon forest operations and the resource will be considered in this program area. Examples of such research include, but are not limited to: Impact of harvesting equipment on the forest environment; studies of engineering-system-related stand regeneration; relationships of forest engineering to trees, stands, and soils; ergonomics of forest system components; and systems for controlling and monitoring equipment. Research on the development of equipment, instrumentation, and control systems should contain a significant portion of work involving effects of equipment and instrumentation on wood quality or wood products.

Nutrition, Food Quality, and Health

The health of the U.S. citizen significantly depends on the quality and quantity of the country's food supply and the nutrients consumed by individuals. Research will be supported which will contribute to the improvement of human nutritional status by increasing our understanding of requirements of nutrients and factors affecting optimal human nutrition. Data generated from these studies will form the scientific basis for dietary recommendations, as well as for new developments by the food industry in response to the needs engendered by those recommendations. Safety of food products is of paramount importance to the producer, processor, distributor, and consumer. In response to this need, research in food safety, particularly focusing on the pathogenesis, and prevention and control of food-borne disease-causing microorganisms is being conducted.

31.0 Human Nutrient Requirements for Optimal Health. Our need to understand the interplay between optimal nutrition and optimal health serves as an impetus for research which will improve our understanding of nutrient requirements in the normal healthy human population. The primary objective of this program is to support research that will help to fill gaps in our knowledge of human nutrient requirements and factors influencing them.

Examples of research that will be emphasized include:

(a) Bioavailability of nutrients;

(b) The interrelationship of nutrients;

(c) Nutrient requirements of healthy individuals across all age groups;

(d) Mechanisms underlying the relationship between diet and health maintenance, such as the effect of nutrients on the immune system;

(e) The cellular and molecular mechanisms underlying nutrient requirements, including the modulation of gene expression by nutrients; and

(f) Food consumer behavior, including identifying and developing methods to overcome obstacles to adopting healthful food habits, to convey knowledge to target audiences, and to ascertain factors that affect food choices.

A better understanding of human nutrient requirements and food choice behavior contributes to the USDA's emphasis on nutrition education.

Support will not be provided for research concerned with nutrient requirements and disease states, demonstration of action projects, or for surveys of the nutritional status of population groups. In addition, the use of animals as model systems must be justified.

Proposals dealing with processing techniques in food technology should be clearly oriented toward determining effects on human nutrient bioavailability or metabolism.

Proposals that concern utilization or production of a food commodity should emphasize the relationship to specific human nutrient requirements.

32.0 Food Safety. The primary objective of this program is to increase our understanding of the disease-causing microorganisms that contaminate food, with the goal of decreasing food-borne illnesses. Proposals are solicited for research on the mechanisms of microbial pathogenesis in humans and control of food-borne microoganisms. Proposals may address either pre- or post-harvest (slaughter) origin of the microbial agent. Such proposals should clearly address areas of microbial food safety and not plant or animal health issues. Model systems must clearly address microbial food safety concerns and be justified along program guidelines.

Animal Systems

Research across a broad range of animal systems areas is needed urgently for the future enhancement of animal production efficiency as well as to address such areas as the modification of animal products. The critical need for a better understanding of the biology of animal production performance necessitates this broad approach. To accomplish this, research will be supported under the following categories:

(a) Animal reproductive biology;

(b) Cellular growth and developmental biology of animals;

(c) Animal molecular genetics and gene mapping; and

(d) Mechanisms of animal disease.

Emphasis should be given to innovative approaches to research questions related to animals primarily raised for food or fiber, including aquaculture species, or that otherwise contribute significantly to the agricultural enterprise of the country. The use of experimental model systems should be justified relative to the objectives of the specific research program area.

41.0 Reproductive Biology of Animals. Suboptimal reproductive performance in animals of agricultural importance is a major factor limiting more efficient production of animal food products. New knowledge in this area is required to solve the problem of increase costs of animal production and to decrease the impact of consequent high costs of animal food products to the consumer. Therefore, the primary objective of this program area is to increase our knowledge of reproductive biology in animals of agricultural importance with the goal of increasing reproductive efficiency.

This program will consider for support innovative research on:

(a) Mechanisms affecting embryo survival, endocrinological control of embryo development, mechanisms of embryo-maternal interactions, embryo implantation and development of optimal embryo culture methods;

(b) Factors controlling ovarian function including follicular

development, ovulation, and corpus luteum formation and function;

(c) Factors controlling male reproductive function;

(d) Gamete physiology, including oogenesis and spermatogenesis, gamete maturation, mechanisms regulating gamete survival *in vivo* or *in vitro*;

(e) Parturition, postpartum interval to conception, and neonatal survival.

Because alterations in animal behavior and animal well-being may impair fecundity, this program also encourages research on the mechanisms controlling animal responses to physical and biological stresses that impinge upon reproductive efficiency. Research should contribute to an understanding of the causes, consequences, and avoidance of stress, rather than merely describing the physiological effects of stress on reproductive efficiency.

Model systems should be justified in terms of the program guidelines. Multidisciplinary research is encouraged.

42.0 Cellular Growth and Developmental Biology of Animals. Suboptimal growth and development are limiting factors in animal productivity, and basic information regarding developmental processes in animals of agricultural importance, including aquaculture species, is largely lacking. The primary objective of the program is to increase our understanding of the biological mechanisms underlying animal growth, development, and lactation. Increased knowledge in these areas would be useful in increasing protein and decreasing fat in food products of animal origin, improving production, and improving control and manipulation of muscling, growth, metabolism, tissue partitioning, and mammary function.

The following categories of research should be emphasized:

(a) Cell proliferation and differentiation (e.g., mechanisms controlling the cell cycle; genetic regulation of cell differentiation);

(b) Genetic mechanisms underlying growth and development;

(c) Metabolic regulators such as growth factors;

(d) Synthesis and degradation of protein and lipid at the cellular or tissue level;

(e) Metabolic and nutritional aspects of growth and development including rumen microfloral development;

(f) Developmental biology of the immune system; and

(g) Cellular and molecular aspects of the effect of environmental stress on growth and development.

Model systems should be justified in terms of the program guidelines. Multidisciplinary research is encouraged.

Proposals dealing essentially with aspects of reproduction should be submitted to the Reproductive Biology of Animals Program (41.0). Proposals addressing research on disease agents (biotic or abiotic) should be submitted to the Mechanisms of Animal Disease Program (44.0).

43.0 Animal Molecular Genetics and Gene Mapping. A lack of basic information about the genes and gene products of traditional food and fiber animals and aquaculture species currently exists. The primary objective of this program is to increase our understanding of the structure, organization, function, regulation, and expression of genes in agriculturally important animals. Increased knowledge in this area would aid in maintaining the genetic diversity of animals, improving animal productivity and efficiency, genetic localization of economically important production traits, marker assisted selection, and use of transgenic methodology.

The following areas of research should be emphasized:

(a) Gene mapping and the identification, isolation, characterization of genes, gene products, and their regulatory mechanisms;

(b) Identification and mapping of DNA segregation markers including quantitative trait loci (QTL) and variable number tandem repeats (VNTR);

(c) Interactions between nuclear and organellar genes and the molecular basis of genetic replication; and

(d) Development an application of methods to modify the animal gnome, e.g., embryonic stem cells and transgenics.

Model systems should be justified in terms of the program guidelines. Multidisciplinary research is encouraged.

44.0 Mechanisms of Animal Disease. A major limiting factor in agriculture is the lack of basic information about both infectious and noninfectious causes of disease in traditional food and fiber animals and aquaculture species. In order to sustain animal health and well-being and to prevent animal disease, the primary objective of this program is to increase our understanding of pathogenesis and disease mechanisms. Host-agent interactions and defense mechanisms of the host animal are also of interest. Increased knowledge in this area would result in decreased contamination of food products of animal origin, decreased use of antimicrobial agents and more effective immunizations and diagnostic methods to provide assistance with preventive herd health management schemes with the outcome of improved efficiency and sustainability of the animal production unit and its environmental setting.

The following categories of research represent areas of emphasis of the program:

(a) Mechanisms that alter the normal physiologic state at the molecular, cellular or organ level to produce disease resulting from both biotic and abiotic causes;

(b) genetic and cellular mechanisms of disease resistance, e.g., molecular immunology and immunogenetics;

(c) Pathogenesis;

(d) Both host and microbial factors influencing colonization of mucosal surfaces;

(e) Host-environment interactions that compromise the host defense systems or cause predisposition to disease;

(f) Epidemiologic studies on animal diseases that provide insight into etiologic factors and/or control; and

(g) Basic research that would support the development of diagnostic tests and immunizations for emerging or reemerging disease problems such as tuberculosis.

Studies on economic models which address the costs of animal disease and the cost/benefit ratios of animal disease prevention and therapy are also invited.

Alterations in animal behavior and animal well-being may impair animal health; this program also encourages research on the mechanisms controlling animal responses to physical and biological stresses and the development of objective indicators of animal health and well-being. Proposals which address this relationship in an attempt to develop definitive indictors of the well-being of animals are encouraged.

Model systems should be justified in terms of the program guidelines. Multidisciplinary research is encouraged. Proposals involving reagent development *per se* will not be considered for support.

Plant Systems

Additional knowledge in a broad range of plant sciences is critical for improvement of crop and forest quality; productivity, including that of feedstock for use as biofuels; sustainability; and for addressing the environmental impact of agricultural practices. Innovative research on plant systems will be supported in the following areas:

(a) Plant pest interactions;

(b) Genomes, genetics,and diversity;

(c) Plant growth and development;

(d) Energy and metabolism;

(e) Alcohol fuels; and
(f) Ecosystems.

51.0 Plant/Pest Interactions. Damage resulting from plant pests is a major factor in reducing crop and forest quality and productivity. In addition to direct damage to food products, certain plant pathogens can introduce dangerous mycotoxins into the food chain of humans and farm animals. In some situations, plant pests can be controlled by chemical pesticides, but chemical application may result in negative environmental consequences. Understanding plant pest interactions has significantly improved our ability to develop successful and environmentally-safe control strategies that lead to sustainable agricultural or forest systems. However, despite considerable successful research on plant/pest interactions, a considerable void exists in our understanding of the basis of plant susceptibility and mechanisms of resistance, as well as details of the basic biology of both stress-causing organisms and biotic agents that suppress pests.

The goal of this topic area is to support research on biotic stresses encountered by plants during interactions with other plants, including weeds; with pathogens such as fungi, viruses, bacteria, and nematodes; and with arthropods such as insects and mites. The research supported in this topic area will focus on the identification of novel pest control strategies that are effective, compatible with social and environmental concerns, and enhance the sustainability of managed and natural ecosystems. Within this context, research which emphasizes the following is encouraged:

(a) How plant-pest interactions are established;
(b) Mechanisms of plant response to biotic stresses;
(c) Mechanisms of pest response to host defenses; and
(d) Genetics of these interactions.

Fundamental studies which incorporate integrated pest management concepts into the research objectives are appropriate. Applications using molecular genetics as a tool to clarify plant/pest relations also are appropriate to this program area. Proposals focused on mapping of plant resistance genes or traits should be directed to the Plant Genome program area, 52.1.

Additionally, the program recognizes that fundamental research in the area of biological control will provide critical information leading to sustainable agricultural and forest production systems and for the development of alternatives to pesticides. Therefore, research which emphasizes how damage from pests can be reduced, including basic studies on biological control organisms and the ecological factors that influence biocontrol systems, is encouraged.

Host plants, pests, or components of natural control may be studies separately or as in interactive unit. However, all proposals should indicate how the anticipated information will further our understanding of plant/pest interactions and the cause, consequence, or mechanism of stress avoidance in crop plants an forest species.

Research at the molecular, cellular, organismal, or population level will be considered for the program areas described below.

51.1 Pathology. Emphasis will be placed on crop and forest diseases arising from interactions with biological agents such as fungi, bacteria, viruses, viroids, and mycophasma-like organisms. Studies may focus on interactions of the host and pathogen, as well as environmental factors that influence these interactions. These studies may include aspects of the biochemical, genetic, or cellular determinants of either pathogenicity or plant response. Studies may include investigations on the biochemical or toxicological consequences of disease-associated changes in plants. The ecological factors regulating the efficacy and survival of biological control agents may be studies at either the organismal or population level and may include both foliar and soil-borne ecosystems.

51.2 Entomology (includes Mites). In addition to the aforementioned subject areas related directed to insect-plant relations, studies of the basic biology of insects in the following areas are encourages:

(a) Behavioral physiology;
(b) Chemical ecology;
(c) Endocrinology;
(d) Population dynamics;
(e) Genetics;
(f) Behavioral ecology;
(g) Pathology;
(h) Predator/parasite-insect relationships; and
(i) Toxicology including basic pesticide resistance studies.

Proposed studies in these areas must include a justification for how anticipated results will be relevant to as reduction in plant stress. Proposal on *Apis* and other non-*Apis* pollinators are appropriate to this section.

51.3 Nematology. Emphasis will be placed on understanding the basic biology of plant parasitic and entomophagous nematodes and their interactions with host organisms. Applicants may propose to study the nematode separately from the host if there is significant justification.

51.4 Weed Science. Emphasis will be placed on crop and forest stresses arising from interactions with other plants, particularly weedy species. This program area will emphasize studies on how stressful interactions are established between plants, how plants react to stresses generated by such interactions, how such interactions are influenced by environmental and other factors inherent to the interacting organisms, and how the interactions reduce plant productivity and usefulness.

To provide adequate scientific evaluation of applications, proposals submitted under these program areas will be reviewed by the peer review panel whose collective expertise is most appropriate to the scientific content of each proposal.

52.0 Genomes, Genetics and Diversity. Significant impact on agricultural productivity can be achieved by understanding the molecular and cellular processes of plants and their inheritance and by translating such understanding into desirable plant performance. In the topic area of Genomes, Genetics and Diversity, research to promote the genetic improvement of crop plants and forest species will be encouraged in two program areas. The Plant Genome program area will support mission-oriented studies to produce low density maps, localized high density maps, and development of methods with high potential applicability to crop improvement. The Genetic Mechanisms and Molecular Biology program area will focus on obtaining basic information about plant genes and genetic processes. Specific information about the two program areas follows:

52.1 Plant Genome. The grant program area is part of the USDA Plant Genome Research Program. The goals of the Plant Genome program are to foster and coordinate research to identify, characterize, alter, and rapidly and precisely manipulate genes which control traits of agricultural importance.

Potential applicants to the NCRIGP Plant Genome Program area are advised that this is a mission-oriented, targeted program area. As such, the program is seeking proposals that are not only high scientific quality but also are of high potential applicability to improvement of crop and forest species. The use of non-cultivated plants as experimental model systems must be justified with regard to applicability to agriculture and

forestry. Priority will be given to proposals that plan timely dissemination of information, mapping data, and materials to a clearly identified community of users as well as to the scientific community as a whole. Well-coordinated multidisciplinary proposals designed to bring complementary talents to bear on mapping needs are encouraged; however proposals from single investigators are also appropriate The specific areas of emphasis listed below offer exceptional opportunities for advancing agriculture and forestry.

(a) Construction of genetic and/or physical maps. The objective of this section of the program is to construct maps for crop and forest species that are directly useful to breeders of crop improvement and to other biologists for fundamental plant science research. While there are no prescribed priorities for specific commodities or for types of maps, the applicant should justify the nature of the map to be constructed (e.g., genetic of physical, high density or low density) and the use of the particular species chosen. An assessment of the present state of the species' genome map, available genetic materials, the rationale for chose of the mapping population, and the future applications of the map for plant breeding or other research should be described in the proposal. It is not anticipated that any complete plant nuclear genome sequencing project will be supported under this program.

Construction of low resolution maps (i.e., those with a goal of containing gaps no larger than 25 centimorgans) will suffice for many plant breeding and research applications. High resolution maps (i.e., with gaps no larger than 5 centimorgans) likely will be limited in the number that will be funded, depending on the relationship of physical and genetic distances in the particular species. Strong justification will be needed in terms of a high density map's immediate and future scientific impact. For construction of genome maps with molecular markers at low or high density, a time frame of three years will usually be appropriate, unless unusual aspects of the particular species' genome produce difficulties that justify a longer-term effort.

Proposal for mapping should clearly describe communication or involvement with scientists (such as plant breeders, geneticists, physiologists, or biochemists) who will use the mapping tools that are to be created. Interaction of laboratories engaged in mapping with the users of the technology is essential to ensure early and efficient application of the tools developed.

(b) Detailed mapping and sequencing of specific regions of the genome. The identification and isolation of genes involved in specific genetic traits of economic significance are important components of this program. The goal is to provide support so that investigators may use the available tools, such as existing physical and genetic maps, cytogenetic stocks, alien addition lines, near-isogenic lines, mutants, transposons, and molecular markers to locate, identify, and isolate specific genes that are important to agriculture and forestry. Economically important traits are complex and likely will require experimental approaches drawn from many disciplines.

While no priorities for specific commodities have been established, applicants should identify genes that have potential agricultural or forestry value. In order to justify the project duration, investigators should describe the genetic tools presently available and the biological properties of the particular species of interest with respect to their impact on the length of time required to identify, locate, isolate, and transfer genes of interest. (c) Development of new mapping, cloning and sequencing technologies. Research to produce new methods and materials that can be applied to genome mapping, genome manipulation, gene isolation, or gene transfer is encouraged. The biology of the plant and its genome exhibits some fundamental differences from other eukaryotic systems and may require unique technical strategies. These differences include, but are not limited to, the polyploid nature of many plant genomes, the existence of the chloroplast genome and a large mitochondrial genome, the presence of the cell wall, the meristematic control of plant growth, and additional complex biosynthetic pathways. At the same time, plant systems offer unique advantages because of the ability to produce inbreds and interspecific sexual and somatic hybrids, the relative simplicity of introducing genes into many plant species, the possibility of regenerating plants from single cells, and the ease of cultivating large segregating populations. Research leading to the development of mapping, gene cloning, gene introduction, and sequencing technologies that are designed to overcome technical obstacles due to the complexity of plant systems, or research that is designed to take advantage of unique features of the plant systems will be supported. Proposals that present innovative approaches to technology development are encouraged.

All investigators funded by the USDA Plant Genome Research Program are expected to report genome sequencing and mapping information that results from NCRIGP-supported research to the centralized database at the Plant Genome Data and Information Center, USDA National Agricultural Library. Plant genome maps, DNA sequences, and other information for individual crop and forest species should be made available to the scientific community.

52.2 Plant Genetic Mechanisms and Molecular Biology. The goal of this program area is to encourage new approaches for the development of genetically superior varieties of crop and forest species. One of the major limiting factors for the application of biotechnology to agriculture is the lack of basic information about genes. Studies addressing the basic molecular, cellular, genetic and cytogenetic processes that contribute new information required for the development of novel approaches to crop and forest improvement will be given high priority. This program area will emphasize, but is not limited to, research in the following categories:

(a) Characterization of agriculturally important genes and gene products;

(b) Relationships between gene structure and function;

(c) Regulatory mechanisms of expression of nuclear and organellar genes, including all stages from transcription to post-translational modification;

(d) Interactions between nuclear and organellar genomes;

(e) Mechanisms of recombination, transposition, replication and repair;

(f) Molecular, biochemical, and cellular processes controlling regeneration of whole plants from single cells; and

(g) Alteration and use of germplasm resources.

Proposals focusing on the development of gene transfer methodologies should be directed to the Plant Genome program area (52.1).

53.0 Plant Growth and Development. Optimal growth and development are essential for optimal productivity of agriculturally important crop plants and forest species. A basic understanding of developmental processes in these plants is largely lacking, but new experimental approaches are being developed through advances in molecular and cellular biology. The goal of this program area is to further the understanding of the fundamental mechanisms that underlie the regulation of the plant life cycle, including seed germination, differentiation, organogenesis,

flowering, fertilization, embryogenesis, fruit development, seed development, senescence, and dormancy. This program area will emphasize, but is not limited to, studies on:

(a) Developmental regulation of gene expression;

(b) Mechanisms of cell division, expansion, and differentiation;

(c) Development and organization of meristems;

(d) Photomorphogenesis;

(e) Cell biology including cytoskeleton, membrane biology, organelle development, and cell wall structure and properties (for photosynthetic membranes and chloroplast development, see also the Photosynthesis and Respiration Program (54.1));

(f) Biochemistry of primary and secondary metabolism related to plant growth and development (proposals dealing with metabolism unique to chloroplasts or mitochondria should be directed to the Photosynthesis and Respiration Program (54.1); investigators studying nitrogen metabolism should consider whether submission to the Nitrogen Fixation and Metabolism Program (54.2) is more appropriate);

(g) Hormonal regulation of growth and development, including biosynthesis, metabolism, perception, and mode of action of hormones; and

(h) Analysis and control of growth patterns.

Proposals emphasizing the use of emerging experimental techniques for the investigation of these processes are encouraged.

54.0 Energy and Metabolism.

54.1 Photosynthesis and Respiration. Central to crop and timber production are the plant processes by which solar energy is captured and transformed into the forms of energy found in food and fiber. Many of the complexities of these unique processes are still poorly understood, and thus, cannot be subjected to molecular, genetic and managerial manipulations designed to solve agricultural problems such as sustainability, yield, efficiency, and resource utilization.

The objectives of this program area are to encourage research that will elucidate underlying mechanisms of energy capture, transduction, and utilization in crop and forest plants.

Categories of innovative research sought in this area will include, but not be limited to, studies of the following processes:

(a) Photosynthetic energy conversion, including early events of photon capture and charge separation;

(b) Electron transport and energy transduction, including studies of biosynthesis, organization, and function of components of electron transport in photosynthesis and respiration (see also 52.2 and 53.0);

(c) Carbon dioxide transport and concentration;

(d) Biochemistry of carbon fixation, carbon assimilation and respiration;

(e) Control of photosynthate partitioning, translocation, and utilization;

(f) Mechanisms controlling photosynthetic and respiratory processes in leaves, plants, and canopies (see also 22.1 and 23.0);

(g) Interactions (see also 52.2 and 53.0) of various cellular compartments that are involved in photosynthesis or respiration; and

(h) Metabolism unique to chloroplasts and mitochondria. Investigators proposing studies that focus primarily on mechanisms regulating expression of genes involved in photosynthesis and respiration should consider whether submission to the Plant Genetic Mechanisms and Molecular Biology program is more appropriate.

Those investigators focusing on development of photosynthetic and respiratory structures should consider whether submission to the Plant Growth and Development Program (53.0) is more appropriate.

It is expected that experimental approaches to the study of the processes outlined above will be drawn from many disciplines, including biochemistry, biophysics, chemistry, microbiology, genetics, physiology, and cellular, development and molecular biology. Multidisciplinary approaches are encouraged.

54.2 Nitrogen Fixation/Metabolism. The high levels of nitrogen required by crops must be supplied to soils in the form of compounds usable to plants, such as ammonia and nitrate which are then assimilated by plants. These compounds are supplied, for the most part, either by application of fertilizers or by the action of microorganisms that "fix" atmospheric nitrogen. Fertilizer application can be costly in terms of energy costs and effects on the quality of surface and ground water. Only certain groups of crop and forest plants are capable of forming the bacterial-plant symbiosis capable of the more cost-effective, environmentally-sound biological nitrogen fixation. Development of alternative crop production methods for supplying nitrogen is desired. As a basis for developing such alternatives, a broad understanding is sought of the fate of nitrates and ammonia in the soil, as well as how nitrogen is fixed biologically. Furthermore, enhancement of crop yield, quality, nutritive value, and development of novel plant products will depend upon elucidation of mechanisms by which plants take up, transport, and metabolize nitrogen compounds.

Innovative research is solicited which uses disciplinary approaches of biochemistry, molecular biology, microbiology, genetics, physiology, cellular and developmental biology, and ecology. Multidisciplinary approaches are encouraged. Problem areas include, but are not limited to:

(a) Nitrification and denitrification;

(b) Ecology and competitive interactions of nitrogen-fixing organisms;

(c) Factors controlling symbiont specificity;

(d) Mechanisms regulating infection and nodulation of the root by symbiotic nitrogen-fixing organisms;

(e) Mechanisms of nitrogen-fixation in free-living, associative, and symbiotic organisms;

(f) Mechanisms influencing uptake and transport of nitrogen in the plant; and

(g) Plant metabolism of nitrogenous compounds, related to problems (a–f) listed above.

55.0 Alcohol Fuels Research. Proposals will be considered for research relating to the physiological, microbiological, biochemical, and genetic processes controlling the biological conversion of agriculturally important biomass material to alcohol fuels and industrial hydrocarbons. The scope of this program area includes studies on factors that limit efficiency of biological production of alcohol fuels and the means for overcoming these limitations.

Forest/Rangeland/Crop Ecosystems. The goal of this program area is to further the understanding of underlying biological, ecological, and cultural processes that can contribute to sustained productivity and to the well-being and sustainability of ecosystems. Interested applicants are directed to the complete program area description under the Natural Resources and the Environment Research Division (23.0).

Markets, Trade, and Policy

Increased export of agricultural, fish, and forest products, as well as value-added goods, is needed particularly in an increasingly competitive global market environment. Further, increased volumes of exports are expected to be produced by sustainable production practices and to contribute to revitalization of rural economies through

employment and income growth. Research is needed to provide knowledge of efficient, environmentally compatible, cost-reducing technologies to enhance producer and processor competitiveness in the marketplace. Knowledge about the implications of such new technologies and export market growth prospects is needed in order to assess employment and income opportunities and to determine supplemental infrastructure and organizational needs.

Two research program areas are offered to begin to fulfill these research needs. They are: (1) Market Assessments, Competitiveness, and Technology Assessments; and (2) Rural Development. The former includes the development of new methodologies and data sets and their application to assessments of specific markets. The purpose is to ascertain preferences, demand, utilization, and forecasts for various agricultural, fish, and forest products and commodities; determine the ability of the United States to compete for these markets; and assess the impacts of new product and sustainable production technologies on U.S. competitiveness, the environment, and rural economies. The Rural Development program has three subareas:

(a) Development of new theoretical and conceptual techniques and other methodologies that apply to rural revitalization issues;

(b) Determination of forces impacting rural areas; and

(c) Evaluation of methods for revitalizing rural areas.

In both program areas, multidisciplinary studies are encouraged.

61.0 Market Assessments, Competitiveness, and Technology Assessments. This Program Area will support research in three broad categories: (1) *Market Assessments.* The purpose of market assessment studies is to identify, describe, and quantify the size of potential international markets for agricultural, fish, and forest commodities and value-added products that may be supplied by the United States. Information is needed on the demographic, cultural, social, religious, economic, and other factors that influence consumer preferences. These factors may include sensory properties, preservation method, form, packaging, labeling, and other characteristics. Empirical estimates are needed on the sensitivity of quantities purchased to changes in own price, income, and the prices of substitute foods, along with forecasts of future use. Similar economic information is needed for semiprocessed food and non-food items of agricultural origin that are exported by the U.S. further processing into finished products for local consumption or export.

Research proposals are requested that will assess international markets for agricultural, fish, and forest products. Proposals may include, but are not limited to: Manufactured dairy products; beef, pork, broiler, and turkey products; fish products; fresh and processed fruits and vegetables; oilseeds and oilseed products; feed and cereal grain value-added products; natural fibers, including cotton and wool; and forest products, including lumber, composite materials, veneer, furniture, chips, and pulp. International markets may include, but are not limited to, those countries located in North and South America, Africa, Asia, and Eastern Europe. Applications proposing studies on commodities produced using alternative or sustainable practices are encouraged.

Additionally, research proposals are encouraged that identify and evaluate strategies to overcome private and/or institutional impediments to entry or expansion into international markets by the U.S. Of special interest are proposals that address industrial organizational arrangements or linkages that limit entry or require compliance with specified practices; government or trade organization product preparation and formulation standards and/or quality labeling requirements; and government licenses, permits, and fee structures for importers.

(2) *Competitiveness.* The purpose of competitiveness studies is to ascertain the ability of the United States to compete in specific global markets for agricultural, fish, and forest products and determine public and private strategies that can be employed to enhance U.S. competitiveness. "Global" is defined as any marketplace, including the U.S. Research is needed to provide empirical analyses and assessments of U.S. competitiveness in global markets relative to its principal competitors for raw and processed agricultural, fish, and forest products. The research should estimate the sensitivity of U.S. export activity to changes in costs of marketing, fiscal policies, trade policies, monetary exchange rates, market regulations, and other factors that affect competitiveness. This research should determine the conditions under which agricultural, fish, and forest product value-adding industries can locate in the U.S. and compete effectively for the domestic and export markets.

Proposals also are invited that identify and assess structural problems and provide alternative solutions to enable the U.S. to achieve its export market potential for agricultural, fish, and forest products. Examples of these problem areas are deficiencies in the educational and skill levels of the labor force; availability of capital and credit; transportation infrastructure; and adequacy of technology information and transfer services.

(3) *Technology Assessment.* Technology assessment studies are encouraged that provide new methods and the application of these methods to determine the benefits and costs of adopting new products and/or production methods for agricultural and forest materials produced using sustainable and alternative agricultural and forestry practices. Proposals should be designed to either assess the potential impacts of new technologies or products or their actual impacts on productivity, prices, domestic and export market sales, profitability, employment, capital requirements, management and labor skill-level needs, environmental impacts, adoption rates, industrial organization, and other factors relevant to the use of sustainable or other agricultural and forestry practices.

62.0 Rural Development. Rural areas dependent on agriculture, forestry, and other natural resource extractive industries have been subjected to various forces that reduce their economic vitality. Other sectors of the rural economy and society are also experiencing difficulties. Symptoms of reduced economic vitality include outmigration, loss and degradation of essential services, and multiple job holding.

The action and interaction of these forces are poorly understood, thus inhibiting the development of effective public policies that may revitalize depressed rural areas. Both theoretical and empirical research is needed to describe and measure the forces that reduce economic vitality and guide the policies that can restore vitality. New critical thinking also is needed to provide new theories, concepts, and methodological techniques for developing rural revitalization policies.

Proposals are being requested in three areas:

(1) New theoretical and methodological studies to focus on improving the social and economic well-being of rural families and communities at the national, regional, and community levels. These may be abstract studies based entirely on theory, or they may be implementations or trials of new analytical methods or data-generating procedures;

(2) Empirical studies to identify the forces that influence population change, employment, wage levels, and other indicators of social and economic viability. These studies are encouraged to assess the influence of particular agricultural, fiscal, monetary, trade, labor, industrial, and environmental policies and programs. Other elements for study may include the influence of industry restructuring, growth in labor productivity, and factors contributing to migration by various segments of the population; and

(3) Empirical research proposals to address the issue of how to diversify the economies of rural areas, particularly those highly dependent on agriculture, forestry, and other natural resource extractive industries.

These proposals may involve case studies, sectorial analyses, or regional comparisons that evaluate the likelihood of success for specific programs or policies which might be employed. Examples of these programs and policies include the restructuring of labor and capital markets, changes in support services, and investigations of sustainable agricultural systems as they affect employment diversification and entrepreneurial opportunity.

Processing For Adding Value or Developing New Products

Research in the are of processing for adding value or developing new products is needed to enhance the competitive value and quality of U.S. agricultural and forestry products. European countries sell about 75% of their agricultural output as value-added consumer products, while only one-third of U.S. agricultural exports are high value-added products. Instead, the U.S. sells over 50% of its agricultural and forestry output as bulk commodities such as corn, wheat and logs. In the U.S., the food processing and distribution system accounts for about 75% of the retail price of food and fiber products. Less than 30% of U.S. food exports are considered high value-added products.

Research will be supported in the area of Processing for Value-Added Products, both food and non-food. Research which leads to increased understanding of structure, physical properties, and basic processing characteristics of wood and wood-based materials in relation to their conversion into value-added products will also be supported in this Division. Proposals concerned with processing of wood products should be directed to, and will be evaluated by, the Improved Utilization of Wood and Wood Fiber Program (24.0), a description of which appears under the Natural Resources and the Environment Division.

71.0 Processing For Value-Added Products. Developing new uses for agricultural materials by enhancing process efficiencies and developing the knowledge base to support quantifiable and innovative processing/preservation methods for conversion of agriculture materials into new value-added industrial, non-food (non-wood), and food products is a top priority for U.S. agriculture. Research should emphasize processes that are environmentally acceptable, energy-efficient and economically feasible. Proposals should identify potential applications of the research or address an identified market need.

Proposals are encouraged in two general areas:

(1) To increase the understanding of the physical, chemical and biological properties of agricultural materials and food products that are important for quantifying, predicting, protecting, and controlling the quality of food and non-food (non-wood) products; and

(2) To develop innovative processes for better utilization and more efficient conversion of agricultural materials and co-products to high value-added food and non-food (non-wood) products.

Examples of research to be supported in the food area include but are not limited to:

(1) Methods for rapid monitoring of quality during processing and distribution;

(2) New uses for food components in further processed foods;

(3) Innovative methods of extending shelf life and maintaining quality; and

(4) Innovative processing as a substitute for food additives in food preservation.

Proposals dealing with issues of microbiological safety of foods should be directed to the Food Safety Program (32.0).

Examples of research to be supported in the non-food (non-wood) area include, but are not limited to, development of:

(1) New products such as superior lubricating and coating products from oilseeds; specialty fibers such as those used for garment and bedding insulation, yarn, and facial tissue; and polymers such as higher nylons and interpenetrating polymer networks, strippable coatings, and flexible coatings; and

(2) Improved methods for processing agriculturally-derived by-products such as leather and pharmaceutical products. Proposals dealing with biological conversion of agricultural materials to alcohol fuels should be directed to the Alcohol Fuels Research Program (55.0).

III. Agricultural research enhancement awards program. This program is designed to help institutions develop competitive research programs and to attract new scientists into careers in high priority areas of national need in agriculture, food, and environmental sciences. In addition to providing support for postdoctoral fellowships and for research awards for new investigators as described earlier, this program will include Strengthening Awards.

Strengthening Awards consist of Research Career Enhancement Awards, Equipment Grants, and Seed Grants. The program particularly encourages applications to the Research Career Enhancement Awards Program. All proposals submitted under this part of the solicitation of applications, in addition to fulfilling the requirements in this part, also shall be appropriate to one of the research program areas described under the Specific Research Divisions part of this solicitation.

80.0 Strengthening Awards. Strengthening Awards are available to ensure that faculty of small- and mid-sized institutions who have not previously been successful in obtaining competitive research grants under section 2(b) of the 1965 Act, as amended, receive a portion of the grants. For the purpose of this announcement, small- and mid-sized institutions are defined as those with total enrollment of 15,000 or less. In addition, in order to ensure that such grants shall have the maximum strengthening effect, strengthening awards will be limited to faculty at small- and mid-sized institutions that previously have had limited institutional success in obtaining grants under any Federal competitive research grants program. To confirm eligibility, contact the Strengthening Awards Program at the telephone number listed in this document. Further, institutions in States that have had an average funding level from the USDA NCRIGP no higher than the 33rd percentile, based on a three year rolling average of funding by the USDA NCRIGP and the Competitive Research Grants Office, which was subsumed by the NCRIGP, are particularly encouraged to apply for Strengthening Awards. The following States (USDA–EPSCoR States) fall into this category:

Alaska	Hawaii
Arkansas	Idaho
Connecticut	Maine
Delaware	Mississippi

Montana	South Carolina
New Hampshire	South Dakota
New Mexico	Vermont
North Dakota	West Virginia
Rhode Island	Wyoming

However, all applicants for strengthening awards must meet the criteria described herein for the type of award for which the applicant applies. An individual applicant may submit only one proposal to the Strengthening Awards Program (80.1, 80.2, 80.3) this fiscal year. A separate peer review panel, aside from the peer review panels assembled for review of Standard Research Grant applications, will be assembled for the evaluation of Research Career Enhancement Awards, Equipment, and Seed Grants. Strengthening Standard Research Project Award applications will be reviewed by the peer review panel in the appropriate research program area along with Standard Research Grant applications.

In addition to being appropriate to one of the research program areas described under the Research Divisions described in this solicitation, proposals for Strengthening Awards also should fit within one of the following specified program areas:

80.1 Research Career Enhancement Awards. Grants within this program area are authorized by section 2(b)(3)(F) of the 1965 Act, as amended. The purpose of these awards is to provide an opportunity for faculty to enhance their research capabilities by funding sabbatical leaves. Funds will be designated for faculty at small- and mid-sized institutions who have not received a competitive grant under section 2(b) of the 1965 Act as amended (Competitive Research Grants Program) within the past five years. These awards will be limited to faculty at small-and mid-sized institutions that previously have had limited institutional success in obtaining grants under any Federal competitive research grants program. This sabbatical leave shall be conducted in a Federal research laboratory or a research laboratory at an institution which confers doctoral degrees in the topic area.

Documentation that arrangements have been made with an established investigator with regard to all facilities and space necessary for conduct of the research must be provided in the proposal. Awards will be limited to one year's salary and funds for supplies. These awards are not renewable. Proposals should be submitted by the deadline date indicated in this solicitation.

80.2 Equipment Grants. Grants within this program area are authorized by Section 2(b)(3)(D) of the 1965 Act, as amended. Funds will be designated for equipment grants to strengthen the research capacity of institutions. Institutions that previously have had limited success in obtaining grants under any Federal competitive research grants program may apply. Each request shall be limited to one major piece of equipment within the cost range of $10,000–$100,000. The amount requested shall not exceed 50 percent of this cost. Documentation that the remaining 50 percent will be matched with non-Federal funds should be provided by the applicant. Arrangements for sharing equipment among faculty are encouraged; however, it must be evident that the principal investigator is a principal user of the requested equipment. This program is not intended to replace requests for equipment in individual research projects. Rather, it is intended to help fund items of equipment that will upgrade the research infrastructure. Proposals should be submitted by the deadline date indicated in this solicitation.

80.3 Seed Grants. Grants within this program area are authorized by section 2(b)(3)(F) of the 1965 Act, as amended. The purpose of these awards is to provide funds to enable investigators at small and mid-sized institutions to collect preliminary data in preparation for applying for a standard research project grant. Faculty who have not been successful in obtaining a competitive grant under section 2(b) of the 1965 Act, as amended (Competitive Research Grants Program) within the past five years are eligible. These awards will be limited to faculty at small and mid-sized institutions that have had limited institutional success in obtaining grants under any Federal competitive research grants program. These awards will be limited to a total of $50,000 (including indirect costs) for two years and are not renewable. Proposals should be submitted by the deadline date indicated in this solicitation.

Strengthening Standard Research Project Awards. Grants within this program area are authorized by section 2(b)(3)(F) of the 1965 Act, as amended. Investigators at small and mid-sized institutions may wish to apply for a Standard Research Project Grant. Faculty who have not been successful in obtaining a competitive grant under section 2(b) of the 1965 Act, as amended (Competitive Research Grants Program) within the past five years are eligible. These awards will be limited to faculty at small and mid-sized institutions that have had limited institutional success in obtaining grants under any Federal competitive research grants program. Proposals should be submitted to the appropriate research program area described in this solicitation by the designated deadline for that particular program area. A separate peer review panel will not be assembled for the purpose of reviewing these proposals.

How To Obtain Application Materials

Please note that potential applicants who are on the Competitive Research Grants mailing list, who sent applications in fiscal year 1992, or who recently requested placement on the list for fiscal year 1993, will automatically receive copies of this solicitation and the Application Kit. All others may request copies from: Proposal Services Branch, Awards Management Division, Cooperative State Research Service, U.S. Department of Agriculture, room 303, Aerospace Center, Washington, DC 20250–22200; telephone: (202) 401–5048. Applicants also may request the program description and application materials for the Special Research Grants Water Quality Program at the same address and telephone number.

Specific Guidelines for Proposal Preparation and Submission

Section I. Overview

The following are specific guidelines presented to provide direction in proposal preparation and submission. Pursuant to 7 CFR 3200.4(c), the following guidelines for proposal format and content supplement those guidelines set out by that section. If the section and the supplemental guidelines herein conflict, the supplemental guidelines take precedence, in accordance with 7 CFR 3200.4(c).

Format and Contents for Applications

Pursuant to 7 CFR 3200.4(c), the following guidelines for proposal format and content supplement those guidelines set out by that section. If the section and the supplemental guidelines herein conflict, the supplemental guidelines take precedence, in accordance with 7 CFR 3200.4(c). For purposes of in-depth evaluation as well as for consistency, organization, and clarity, it is important that proposals contain certain information and that they be of similar format. Therefore, all applications submitted should follow the guidelines listed below and be assembled in the indicated order.

1. Conventional Projects.

(a) *Standard Research Grants.*

Application Cover Page (Form CSRS-661). Each copy of the proposal must contain an Application Cover Page.

which should be assembled as the first page of the application. At least one copy of this form must contain pen-and-ink signatures as outlined below. A copy of this form is located in the Application Kit and may be duplicated as necessary. In completing the Cover Page, please note the following:

• Title of Proposal (Block 6). Choose an appropriate project title and place it in this block. The other guidelines for this component are listed in 7 CFR 3200.4(c)(1).

• Program Area and Number (Block 8). From among the announced research program areas, choose the program area that is most appropriate to the effort being proposed and insert the name and number in this block. It is important that only one program area be selected. In instances where the appropriateness of the chosen program area may be in question, the final program area assignment will be made by the NCRIGP scientific staff. The principal investigator will be informed of any changes in assigned program areas.

• Principal Investigator(s)/Project Director(s)—Block 15. List the name(s) of the proposing principal investigator(s) in this block. If there is more than one investigator, all must be listed and all must sign the Application Cover Page. Co-principal Investigators should be limited to those required for genuine scientific collaboration; minor collaborators or consultants should not be designated as co-principal investigators. Only the principal investigator listed in Block 15.a. will receive direct correspondence from the NCRIGP.

• Other Possible Sponsors (Block 22). List the names or acronyms of all other public or private sponsors including other agencies within USDA, to whom the application, or a substantially similar application, has been or will be sent. In addition, if the application is submitted to another organization after it has been submitted to the NCRIGP, you must inform the NCRIGP program officer immediately. Failure to accurately and completely identify other possible sponsors will delay the processing of the application and may result in its being returned without review. The identification of other sponsors must include the name(s) of the program(s) within the sponsoring organization to which you have applied or will apply.

• Signatures. Sign and date the Application Cover Page in the places indicated at the bottom of the page. The other guidelines for this component are listed in 7 CFR 3200.4(c)(1). Applications that do not contain the signature of the authorized organizational representative cannot be considered for support. Proposals submitted by individuals who lack organizational affiliation need only be signed by the proposing principal investigator.

Table of Contents. To facilitate the location of information, each proposal must contain a table of contents, which should be assembled as page 2.

Project Summary. The proposal must contain a project summary. The other guidelines for the project summary are listed in 7 CFR 3200.4(c)(2).

Project Description. All proposals should be submitted on standard 8½" x 11" paper with typing on one side of the page only. In addition, margins must be at least 1", type size must be 12 characters per inch or larger, and there must be no page reductions. Applicants are encouraged to include original illustrations (photographs, color prints, etc.) in all copies of the proposal. Reviewers are not required to read beyond the 15-page limit. Other guidelines for the project description are listed in 7 CFR 3200.4(c)(3).

The project description must contain the following components:

• Introduction. The guidelines for this component are listed in 7 CFR 3200.4(c)(3)(i).

• Progress Report. The guidelines for this component are listed in 7 CFR 3200.4(c)(3)(ii). In addition, the progress report must be limited to three pages (within the 15-page limit).

• Rationale and Significance. The guidelines for this component are set out in 7 CFR 3200.4(c)(3)(iii).

• Experimental Plan. The guidelines for this component are set out in 7 CFR 3200.4(c)(3)(iv).

Facilities and Equipment. The guidelines for facilities and equipment are set out in 7 CFR 3200.4(c)(4).

Collaborative Arrangements. The guidelines for this area are set out in 7 CFR 3200.4(c)(5).

References to Project Description. The guidelines for this area are set out in 7 CFR 3200.4(c)(6).

Vitae and Publication List(s). The guidelines for this area are set out in 7 CFR 3200.4(c)(7).

Conflict of Interest List. To assist program staff in excluding from proposal review those individuals who have conflicts of interest with the project personnel, a list of such persons should be appended for each investigator for whom a curriculum vitae is provided. Please list only the individuals in the following categories *:

• Collaborators on research projects within the past five years.

• Co-authors on publications published within the past five years.

• Thesis or postdoctoral advisors within the past five years.

• Graduate students or postdoctoral associates within the past five years.

It is not necessary to list separately individuals in each category; rather, a single alphabetical list is preferred.

Budget (Form CSRS–55. In addition to the following, the guidelines for this area are set out in 7 CFR 3200.4(c)(8).

Salaries of faculty members and other personnel who will be working on the project may be requested in proportion to the effort they will devote to the project. However, grant funds may not be requested to augment the salary or rate of salary for project personnel or to reimburse them for consulting or other activities that constitute a part of their normal assignment. In addition, the recovery of indirect costs under grant awards made to institutional recipients may not exceed the lesser of the institution's applicable negotiated indirect cost rate or the equivalent of 14% of the total Federal funds provided under each award.

Budget Justification. All salaries and wages, nonexpendable equipment, foreign travel, and "All Other Direct Costs" for which support is requested must be individually listed (with costs) and justified on a separate sheet of paper and placed immediately behind Form CSRS–55.

Current and Pending Support (Form CSRS–663). The guidelines for this area are set out in 7 CFR 3200.4(c)(10).

Addenda to Project Description. The guidelines for this subject are set out in 7 CFR 3200.4(c)(11).

Assurance Statements (Form CSRS–662). In addition to the following, the guidelines for this subject are set out in 7 CFR 3200.4(c)(9).

With regard to compliance with the regulations set out in 7 CFR 3200.4(c)(9) for research involving special considerations, proposing scientists who lack organizational affiliation or whose organization finds it impractical to maintain the required Institutional Review Board or Institutional Animal Care and Use Committee may wish to negotiate with a local university or other research organization to have this service performed for them.

Certifications Regarding Debarment and Suspension, Drug-Free Work Place, and Lobbying. In addition to the

* NCRIGP does not regard other investigators working in the applicant(s)' specific research area as being in conflict of interest with the applicant(s) unless those investigators fit within one of the above categories.

following, the guidelines for this subject are set out in 7 CFR 3200.4(c)(12). By signing the Application Cover Page, applicants are providing the certifications required by Departmental regulations. Submission of the individual forms found in the Application Kit is no longer required. For additional information, refer to the certification at the bottom of Form CSRS-661, Application Cover Page.

Compliance with the National Environmental Policy Act. As outlined in 7 CFR Part 3407 (CSRS's implementing regulations of the National Environmental Policy Act of 1969 (NEPA)), environmental data or documentation for the proposed project is to be provided to CSRS in order to assist CSRS in carrying out its responsibilities under NEPA. The applicant should review the following categorical exclusions and determine whether the proposed project may fall within one of the exclusions. If the applicant determines that the proposed project may fall within the categorical exclusions, the applicant must identify the specific exclusion.

(1) Department of Agriculture Categorical Exclusions (7 CFR 1b.3).

(i) Policy development, planning and implementation which are related to routine activities such as personnel, organizational changes, or similar administrative functions;

(ii) Activities which deal solely with the functions of programs, such as program budget proposals, disbursements, and transfer or reprogramming of funds;

(iii) Inventories, research activities, and studies, such as resource inventories and routine date collection when such actions are clearly limited in context and intensity;

(iv) Educational and informational programs and activities;

(v) Civil and criminal law enforcement ad investigative activities;

(vi) Activities related to trade representation and market development activities abroad; and

(vii) Activities which are advisory and consultative to other agencies and public and private entities, such as legal counseling and representation.

(2) CSRS Categorical exclusions. Based on previous experience, the following categories of CSRS actions are excluded because they have been found to have limited scope and intensity and to have no significant individual or cumulative impacts on the quality of the human environment:

(i) The following categories of research programs or projects of limited size and magnitude or with only short-term effects on the environment:

(A) Research conducted within any laboratory, greenhouse, or other contained facility where research practices and safeguards prevent environmental impacts;

(B) Surveys, inventories, and similar studies that have limited context and minimal intensity in terms of changes in the environment; and

(C) Testing outside of the laboratory, such as in small isolated field plots, which involves the routine use of familiar chemicals or biological materials.

(ii) Routine renovation, rehabilitation, or revitalization of physical facilities, including the acquisition and installation of equipment, where such activity is limited in scope and intensity.

In order for CSRS to make a determination regarding NEPA, pertinent information regarding the environmental aspects of the proposed project is necessary; therefore, a separate statement, indicating the applicant's determination of whether or not the project falls within a categorical exclusion, and the reasons and supporting documentation therefor, must be included in the proposal. If the applicant determines that the proposed project may fall within a categorical exclusion, the specific exclusion must be identified. The information submitted in association with NEPA compliance should be identified in the Table of Contents as "NEPA Considerations" and the narrative statement and supporting documentation should be placed at the back of the proposal.

Even though a particular proposed project may or may not fall within a categorical exclusion, CSRS may determine that an Environmental Assessment or an Environmental Impact Statement is necessary for a proposed project should substantial controversy on environmental grounds exist or if other extraordinary conditions or circumstances are present that may cause such activity to have a significant environmental effect.

(b) *Research Conference Applications.* Proposals requesting support for research conferences should be submitted under the appropriate research program area described herein by the designated deadline for that particular program area. Applicants considering submission under this category are strongly advised to consult the appropriate NCRIGP staff before preparation and submission of the proposal. In addition to the following, the guidelines set forth in 7 CFR 3200.4(c), not in conflict with the following guidelines, apply to this category:

- An Application Cover Page (Form CSRS-661), appropriately completed and signed;
- The project summary page stating the objectives of the research conference, symposium, or workshop, as well as the proposed location and probable inclusive date(s) of the conference;
- A justification for the meeting;
- Names and organizational affiliations of the chairperson and other members of the organizing committee;
- A proposed program (or agenda) for the conference, including a listing of scheduled participants and their institutional affiliations;
- The method of announcement or invitation that will be used;
- A curriculum vitae for the submitting project director(s) and a brief listing of relevant publications (each vitae and publications listing, combined, should not exceed three (3) pages); and
- An estimated total budget (Form CSRS-55) for the conference, together with an itemized breakdown of all support requested from the NCRIGP. The budget for the conference may include an appropriate amount for transportation and subsistence costs for participants and for other conference-related costs.
- A Current and Pending Support statement (Form CSRS-663) as described in 7 CFR 3200.4(c)(11).

Section II. Agricultural Research Enhancement Awards Applications

(a) Postdoctoral Fellowships

Proposals requesting support for postdoctoral fellowships should be submitted under the appropriate research program area described herein by the designated deadline for that particular program area. Such proposals can be submitted directly by the individual or through an institution. In either case, applications should contain the specified information and be assembled in the order indicated in 7 CFR 3200.4(c) and the supplemental guidelines under "Format and Content" for Standard Research Grants herein. Indicate on the Project Summary Page that this is a Postdoctoral Fellowship Application.

Applciations also should include:

- A letter of support from the scientific host stating his or her willingness to serve in this capacity and to allow the use of all facilities and space necessary for conduct of the research. The letter also must provide assurance that the project is not simply an extension of the host's ongoing research.

• Documentation that the host investigator's institution has been informed of these arrangements and concurs with them. Postdoctoral applicants from Federal laboratories must notify the appropriate regional office.

• A budget primarily limited to salary support for the postdoctoral fellow which is within the current salary range of postdoctorals at the host institution although limited support also may be requested for supplies, travel and publication costs.

The Application Cover Page (Form CSRS–661) of proposals submitted by individuals who lack organizational affiliation need only be signed by the proposing principal investigator. Proposals submitted through an institution must be signed by the proposing principal investigator and endorsed by the authorized organizational representative.

(b) New Investigator Awards

Research proposal applications from new investigators should be submitted under the appropriate research program area described herein by the designated deadline for that particular program area. Applications should contain the specified information and be assembled in the order indicated in 7 CFR 3200.4(c) and the supplemental guidelines under "Format and Content" for Standard Research Grants herein. Indicate on the Project Summary Page that this is a New Investigator application.

(c) Strengthening Awards

See Program Description contained under Section 80.0, Strengthening Awards, for eligibility requirements.

(1) Research Career Enhancement Awards. Applications from faculty wishing to enhance their research capabilities through sabbatical leaves are encouraged and should be submitted under the research Career Enhancement Program. Proposals should originate through the applicant's home institution and be submitted by the Research Career Enhancement Awards deadline date found in the program announcement. In addition to following the guidelines set forth in 7 CFR 3200.4(c), the following guidelines also apply:

• An Application Cover Page (CSRS–661) completed as described in the supplemental guidelines under "Format and Contents" for Standard Research Grants herein. Indicate Program Area 80.1 in Block 8.

• Project Summary Page indicating overall project goals and supporting objectives. Indicate on the Project Summary Page that this is a Research Career Enhancement Award application.

• Sabbatical description (limited to five (5) single- or double-space pages):

(1) A general description of the research interests and goals of the applicant in order to provide perspective for the proposal.

(2) A statement of how the proposed activities will serve to enhance the scientific research capabilities of the applicant.

(3) A statement of future research goals once the sabbatical is completed and how the sabbatical will enable the applicant to pursue these goals.

• Curriculum vitae and a list of publications. Guidelines for this component are contained in 7 CFR 3200.4(c)(7).

• A letter from the scientific host willingness to serve in this capacity, and a description of the host's contribution to the proposed activities both scientifically and with regard to use of facilities and equipment.

• A statement signed by the Department Head or equivalent official at the host institution indicating a commitment to provide research space and facilities for the period of the applicant's presence.

• Budget (Form CSRS–55), Budget Justification, and Current and Pending Support (CSRS–663) as outlined in the supplemental guidelines under "Format and Contents" for Standard Research Grants herein. (Note that the budget should be limited to one year's salary and funds for supplies.)

(2) Equipment Grants. Applicants requesting assistance in purchasing equipment should be submitted to the Equipment Grant Program. Proposals must be submitted by the Equipment Grants deadline date found in this program announcement. In addition to following the guidelines set forth in 7 CFR 3200.4(c), the following guidelines also apply. Proposals for Equipment Grants should include the following:

• An Application Cover Page (CSRS–661) completed as described in the supplemental guidelines under "Format and Contents" for Standard Research Applications herein. Indicate Program Area 80.2 in Block 8.

• Project Summary Page indicating equipment sought and the overall project goals for its use. Indicate on the project summary page that this is an Equipment Grant application.

• A general description of the research interests and goals of the applicant, how the equipment will fit into or enhance the research program, and how the equipment will allow the applicant to become competitive for future funding or move into new research areas. (Limit five (5) pages).

• A brief description of other similar or complementary equipment available to investigator at the institution and why the requested equipment is necessary.

• Curriculum vitae and a list of publications (including titles) for the applicant and other major users of the equipment. Follow detailed instructions for these items provided under "Format and Contents" for Standard Research Projects herein.

• Budget (Form CSRS–55 and Budget Justification). Justification should: describe the instrument requested, including the manufacturer and model number if known; provide a detailed budget breakdown of the equipment and accessories required; indicate the amount of funding requested from USDA; and provide a statement that the necessary non-federal matching funds will be made available from an institutional or other source. (Note that no more than 50 percent of the equipment cost will be provided by the USDA.

• Current and Pending Support (Form CSRS–663), as outlined in the supplemental guidelines under "Format and Contents" for Standard Research Grants herein. If the applicant has significant funding from other sources, a justification must be given for how this equipment will strengthen the applicant's research program or institution.

No installation, maintenance, warranty, or insurance expenses may be paid from these awards. Computer equipment is eligible only if it is to be used specifically for scientific purposes and is carefully justified. Purchase of a computer primarily for use as a word processor or for other administrative purposes is not permitted.

(3) Seed Grants. Applications from faculty wishing to collect preliminary data should be submitted to the Seed Grant Program. Proposals should be submitted by the Seed Grants deadline date found in the program announcement. Such proposals should be completed as described in 7 CFR 3200.4(c) and the supplemental guidelines under "Format and Contents" for Standard Research Grants herein, with the following modifications:

• Program Area 80.3 should be indicated in Block 8 of the Application Cover Page (CSRS–661), and the Project Summary Page should indicate that this is a Seed Grant application.

• Project Description must be limited to five (5) single- or double-spaced pages. The description should include all the components of a standard research

project grant. It also should indicate long-term research goals and should include a statement on how this seed grant will allow the applicant to become competitive for future funding.

• Note that the budget should be limited to a total of $50,000 (including indirect costs) for two years.

(4) Strengthening Standard Research Projects. Faculty who are eligible for the Strengthening Award Program may wish to apply for a Standard Research Project Award. Such applications should be completed as described in 7 CFR 3200.4(c) as supplemented by "Format and Contents" for Standard Research Grants herein and should be directed to the appropriate research program area described herein and submitted by the designated deadline for that particular program area.

• Indicate on the Project Summary Page that this proposal qualifies as a Strengthening Standard Research Project application.

What to Submit

An original and 14 copies of the application and pertinent addenda to the project description are requested. Due to the heavy volume of proposals that are received each year and the difficulty in identifying proposals submitted in several packages, all copies of each proposal must be mailed in a single package. In addition, please see that each copy of the proposal is stapled securely in the upper left-hand corner. DO NOT BIND any of the copies of the proposal, as it will only delay processing.

Every effort should be made to ensure that the proposal contains all pertinent information when originally submitted.

Where to Submit

The research grant application must be postmarked by the relevant date indicated in the program announcement and submitted to the following address:

National Competitive Research Initiative Grants Program, c/o Proposal Services Branch, Awards Management Division, Cooperative State Research Service, Room 303 Aerospace Center, U.S. Department of Agriculture, Washington, DC 20250-2200, telephone: (202) 401-5046.

If you plan to hand deliver your proposal or use special mail services such as overnight express, the following street address must be included and a different zip code used: 901 D Street, SW., Washington, DC 20024.

Do not submit the proposal to individual program officers and do not submit it through your Senator or Congressional Representative, as these actions could delay the receipt of the application.

When to Submit

To be considered for funding during FY 1993, proposals must be postmarked by the following dates:

Postmarked dates	Program codes	Program areas	Contacts (202)
Dec. 7, 1992	23.0	Forest/Rangeland/Crop Ecosystems	401-5114
	51.1	Pathology	401-4310
	51.4	Weed Science	401-4310
Dec. 14, 1992	52.1	Plant Genome	401-4871
Dec. 21, 1992	31.0	Human Nutrient Requirements for Optimal Health	205-0250
	52.2	Plant Genetic Mechanisms and Molecular Biology	401-5042
Jan. 11, 1993	43.0	Animal Molecular Genetics and Gene Mapping	401-4399
	54.1	Photosynthesis and Respiration	401-6030
Jan. 19, 1993	41.0	Reproductive Biology of Animals	401-6234
	51.2	Entomology	401-5114
	51.3	Nematology	401-5114
Jan. 25, 1993	22.1	Plant Responses to the Environment	401-4871
	55.0	Alcohol Fuels	401-4310
Feb. 1, 1993	21.0	Water Quality	401-4082
	24.0	Improved Utilization of Wood and Wood Fiber	401-1952
Feb. 8, 1993	61.0	Market Assessments, Competitiveness, and Technology Assessment	401-4772
	62.0	Rural Development	401-4425
Feb. 16, 1993	53.0	Plant Growth and Development	401-5042
Feb. 22, 1993	42.0	Cellular Growth and Development Biology of Animals	205-0250
	44.0	Mechanisms of Animal Disease	401-4399
Mar. 1, 1993	71.0	Processing for Value-Added Products	401-1952
Mar. 15, 1993	54.2	Nitrogen Fixation/Metabolism	401-6030
	32.0	Food Safety	401-4399
Mar. 22, 1993	80.1	Research Career Enhancements Awards	401-6234
	80.2	Equipment Grants	401-6234
	80.3	Seed Grants	401-6234

Programmatic questions regarding the Special Research Grants Water Quality Program should be directed to (202) 401-4504.

Section III. Proposal Review and Evaluation Peer Evaluation

In addition to the following, Peer Evaluation will be conducted in accordance with 7 CFR 3200.11 and 3200.14.

Evaluation Factors

So that the respective peer panel may accomplish the most complete review possible, the panel will take into account the evaluation factors that follow, pursuant to 7 CFR 3200.5(a).

Standard Research Grants, Postdoctoral Fellowships and New Investigator Awards. The following evaluation factors will be used in reviewing applications for Standard Research Grants, Postdoctoral Fellowships, New Investigator Awards:

• *Scientific merit of the proposal,* consisting of:

• Conceptual adequacy of the hypothesis;

• Objectives and approach;

• Preliminary data;

• Impact of anticipated results;

• Probability of success of project;

• Qualifications of proposed project personnel and adequacy of facilities;

• Relevance of project to long-range improvements in and sustainability of U.S. agriculture or to one or more of the research purposes set out in Section 1402 of the 1977 Act, as amended.

However, because section 2(b)(10) of the 1965 Act, as amended, requires not less than 30% of the funds appropriated to carry out section 2(b) to be available for research conducted by

multidisciplinary teams and requires not less than 20% of the funds appropriated to carry out section 2(b) to be available for mission-linked research, CSRS reserves the right to reevaluate standard research grant proposals to attain these amounts.

Research Conference Applications. In evaluating proposals for the support of research conferences, the following factors will be considered:

- *Relevance of the proposed conference to agriculture in the U.S. and the appropriateness of the conference in fostering scientific exchange;*
- *Qualifications of organizing committee and appropriateness of invited speakers to the topic areas being covered;*
- *Uniqueness and timeliness of conference;*
- *Appropriateness of budget request.*

Strengthening Awards. The following evaluation factors will be used in reviewing applications for Research Career Enhancement Awards, Equipment Grants, and Seed Grants:

- The merit of the proposed activities or research equipment as a means of enhancing the research capabilities and competitiveness of the applicant and/or institution;
- The applicant's previous research experience and background;
- The appropriateness of the proposed activities or research equipment for the goals proposed;
- Relevance of project to long-range improvements in and sustainability of U.S. agriculture or to one or more of the research purposes set out in section 1402 of the 1977 Act, as amended;
- Whether or not the applicant institution is located within a USDA-EPSCoR State.

The evaluation factors used for Standard Research Projects also will apply for Strengthening Standard Research Project Grants with the addition of the following factor:

- Whether or not the applicant institution is located within a USDA-EPSCoR State.

Proposal Disposition

In addition to the following, the guidelines set out in 7 CFR 3200.5(b) apply to this subject.

The NCRIGP reserves the right to negotiate with the principal investigator or project director and/or with the submitting organization or institution regarding project revisions (e.g., reductions in the scope of work), funding level, or period or method of support prior to recommending any project for funding.

A proposal may be withdrawn at any time before a final funding decision is made regarding the proposal; however, withdrawn proposals normally will not be returned. One copy of each proposal that is not selected for funding (including those that are withdrawn) will be retained by the NCRIGP for a period of one year. The remaining copies will be destroyed.

Section IV. Grant Awards

General

This topic is covered by the guidelines set out in 7 CFR 3200.6.

Obligations

In addition to the following, the guidelines for this subject are set out in 7 CFR 3200.6(e). For any grant awarded, the maximum financial obligation of CSRS shall be the amount of funds *authorized* for the award. This amount will be stated on the award instrument and on the approved budget. However, in the event an erroneous amount is stated on the grant award instrument, the approved budget, or any supporting document, CSRS reserves the unilateral right to make the correction and to make an appropriate adjustment in the amount of the award to align with the authorized amount.

Section V. Post-Award Administration Conditions That Apply

The guidelines set forth in 7 CFR 3200.7 apply to this subject area.

Release of Information

The guidelines for this subject are contained in 7 CFR 3200.13.

Supplementary Information

The Competitive Research Grants Program is listed in the Catalog of Federal Domestic Assistance under No. 10.206. For reasons set forth in the Final rule-related Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials. In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this notice have been approved under OMB Document No. 0524-0022.

The award of any grant under the NCRIGP during FY 1993 is subject to the availability of funds.

Done at Washington, DC, this 11th day of September, 1992.

William D. Carlson,

Associate Administrator, Cooperative State Research Service.

[FR Doc. 92-22455 Filed 9-16-92; 8:45 am]

BILLING CODE 3410-22-M

Forest Service

Exemption From Appeal, Shoreline Salvage Sale, Boise National Forest, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of exemption from appeal.

SUMMARY: This is notification that timber salvage, and insect baiting and trapping to recover and rehabilitate natural resources from recent insect epidemics on the Shoreline project area, Cascade Ranger District, Boise National Forest, are exempt from appeal in accordance with 36 CFR 217.4(a)(11).

EFFECTIVE DATES: Effective on September 17, 1992.

FOR FURTHER INFORMATION CONTACT: Steve Patterson, Timber Management Assistant, Cascade Ranger District, Boise National Forest, P.O. Box 696, Cascade, ID, 83611, Telephone: 208-382-4271.

SUPPLEMENTARY INFORMATION: Several years of drought in southwest Idaho have reduced soil moisture and weakened conifer trees. Consequently, Douglas-fir beetle, mountain pine beetle and Douglas-fir Tussock moth populations have dramatically increased and reached epidemic levels on the Boise National Forest. It is estimated that more than 400,000 trees larger than 12 inches in diameter have died on the Forest as a result of insect damage since 1986.

As part of the effort to recover and rehabilitate natural resources damaged by the insect epidemic, Cascade Ranger District personnel have developed a proposal to harvest dead and dying timber, and bait and trap insects. The Forest Service has completed the Shoreline Timber Salvage Environmental Assessment (EA), identified issues, developed alternatives, and analyzed the effects of implementing timber salvage and other recovery activities.

The analysis area for the Shoreline Timber Salvage EA is located 25 miles east of Cascade, Idaho and is adjacent to Warm Lake, a high recreational use area. Numerous cabins are located around the lake on National Forest Land, and campgrounds, swimming areas and picnic areas are nearby.

Many trees have died in and around recreation facilities in the Warm Lake area because of the bark beetle epidemic. These dead trees pose a safety hazard to people and property in the area, and have reduced aesthetic values. In response to this hazard and loss of aesthetic values. In response to

this hazard and loss of aesthetic value, a proposal was developed to remove hazardous trees in an environmentally acceptable way that is consistent with the management direction in the Boise National Forest Plan.

The purpose and need for this project is to maintain recreational facilities, including summer home areas: (1) Reduce the hazard of dead trees falling on people or property, (2) reduce the risk of wildfire damaging buildings in the area, (3) enhance the visual quality of this recreation setting, (4) slow the spread of bark beetles into other nearby trees, and (5) salvage timber before it loses its value.

This project will harvest approximately 112 Mbf of timber on fourteen acres around Warm Lake. Seven locations around Warm Lake, which are near recreation sites or summer home areas, have been identified for hazard tree removal.

Included in this harvest will be 92 Mbf of beetle killed Douglas-fir trees, 10 Mbf of green hazard trees, and 10 Mbf of green Douglas-fir trees which are included to trap and remove bark beetles. All timber will be skidded by tractor or winched to a tractor and then skidded to existing roads. No road construction or reconstruction is planned. All trees will be individually marked.

Management direction for the area is described in Management Area 57 of the Boise National Forest Plan, and is based upon Prescription K. This direction emphasizes maintenance or improvement of anadromous fish habitat, management of wildlife habitat, and protection of scenic qualities. Existing developed facilities around Warm Lake should be maintained or improved. Wildfire suppression strategies should protect the area's high value summer homes and reduce natural fuel hazards.

The Warm Lake area lies within the South Fork Salmon River (SFSR) drainage. The Forest Plan, page IV-76 provides general direction for the SFSR area: land disturbing activities are limited to a few acceptable categories until interim goals for fish habitat improvement have been achieved. Maintenance of existing facilities, including roads, campground, and trailheads is one land disturbing activity that is acceptable. This project is part of the maintenance of the Warm Lake recreational facilities.

The Forest Supervisor has determined through preliminary scoping and environmental analysis that there is justification to expedite this project.

The decision for the Shoreline project will be implemented after publication of this notice in the **Federal Register**. If the project is delayed because of an appeal (delays of up to 150 days are possible), it is likely that the salvage harvest could not be implemented until the 1993 summer season. Winter logging is not practical because of the deep snow and high recreational use (snowmobiling and skiing). This delay would result in hazard trees left during the winter recreation season, a significant loss in the value of the dead trees, additional trees attacked and killed by bark beetles, and could potentially make the salvage sale unattractive to timber purchasers. This would jeopardize the objectives of the recovery and rehabilitation project, and would pose unnecessary safety risks to recreationists.

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt the Shoreline Salvage and Recovery Project, Cascade Ranger District, Boise National Forest from appeal. The environmental assessment discloses the effects of the proposed actions on the environment and addresses issues resulting from the proposal.

Dated: September 10, 1992.

Robert C. Joslin,

Deputy Regional Forester, Intermountain Region, USDA Forest Service.

[FR Doc. 92-22469 Filed 9-16-92; 8:45 am]

BILLING CODE 3410-11-M

Sierra National Forest; Exemption

AGENCY: Forest Service, USDA.

ACTION: Notice of exemption from appeal, Kings River Ranger District, Sierra National Forest, Pacific Southwest Region.

SUMMARY: The Forest Service is exempting from appeal the decision resulting from the Turtle Helicopter Salvage Sale analysis. This environmental analysis is being prepared in response to the severe timber mortality in the BearWallow, Bull, Cabin, Nutmeg, Muley, Ross, and Turtle compartments (portions of the Dinkey Creek Drainage) on the Kings River Ranger District, Sierra National Forest. The unusual mortality is being caused by drought and related insect infestation. The Turtle Helicopter analysis area lies south of the Big Fir Road (10S13) and the McKinley Grove Road (11S40), west of Bear Creek and the eastern half loop of the Ross Crossing Road (10S24), north of BearWallow Creek, and east of Oak Flat Creek and the western half loop of the Ross Crossing Road (10S24).

There are currently much higher than normal levels of tree mortality occurring throughout the Sierra National Forest as a result of six consecutive years of below normal precipitation. The Kings River Ranger District is proposing a helicopter harvest of 6.0 million board feet (MMBF) on approximately 10,000 acres, of which approximately 200 acres would be directly affected. The proposed project involves no new road construction or road reconstruction.

The drought has caused a high degree of stress within the trees, which reduces their natural defense mechanisms and weakens them to the extent that they are now predisposed to attack by bark and engraver beetles. Trees killed by insect attack deteriorate rapidly. This is particularly true of fir and pine trees in the lower elevations of the analysis area.

Prompt removal of the dead and dying timber minimizes value and volume loss and provides for long-term protection of all resources from wildfire. Any unnecessary delays of the proposed salvage sales could delay harvesting until the 1993 logging season which could decrease the timber value by as much as $250,000. In addition, excessive numbers of dead trees produce heavy fuel concentrations, which makes wildfire control extremely difficult. The analysis area lies within an area that is highly valued for its wildlife habitat and is at the same time extremely vulnerable to fire. The accumulation of dead fuels will compound this problem, therefore the chances of losing key wildlife habitat is increased.

The decision for the proposed project is scheduled to be issued in late September 1992. If the project is delayed because of an appeal (delays can be up to 100 days, with an additional 15-20 days for discretionary review by the Chief of the Forest Service), it is likely that the project could not be implemented at all due to the relatively high costs associated with helicopter logging and the lowered value of the dead and dying trees if they are allowed to deteriorate for another season. The significant deterioration of dead and dying timber would result in a loss of timber value which would cause a substantial monetary loss. Any delay in removing dead and dying trees will increase the chances of not being able to suppress a wildfire, due to excessive fuel buildups. The result could be a substantial loss of key wildlife habitat.

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt from appeal the decision relating to the harvest and restoration of lands affected by drought induced timber mortality within the Turtle Helicopter Salvage project area, on the Kings River Ranger District,

Sierra National Forest. The environmental document being prepared will address the effects of the proposed actions on the environment, will document public involvement, and will address issues raised by the public.

EFFECTIVE DATE: This decision is effective September 17, 1992.

FOR FURTHER INFORMATION CONTACT: Questions about this decision should be addressed to Ed Whitmore, Timber Management Staff Director, Pacific Southwest Region, USDA Forest Service, 630 Sansome Street, San Francisco, CA 94111, (415) 705–2684, or to James L. Boynton, Forest Supervisor, Sierra National Forest, 1600 Tollhouse Road, Clovis, CA 93611, (209) 487–5155.

ADDITIONAL INFORMATION: The environmental analysis for this proposal will be documented in the Turtle Helicopter Salvage Timber Sale environmental document. A public scoping notice was mailed out to 130 individuals and groups listed on the Sierra National Forest's public involvement list to provide information on the project and to generate public issues and concerns. In addition, a field trip was conducted for all interested parties to discuss the project proposals and review them on the ground. The project files and related maps are available for public review at the Kings River Ranger District, 34849 Maxon Road, Sanger, CA 93657.

The catastrophic damage presently occurring within the BearWallow, Bull, Cabin, Nutmeg, Muley, Ross, and Turtle compartments involves approximately 10,000 acres. Within this area, approximately 200 acres would be directly affected by harvest operations, with an associated volume of 6.0 MMBF. This area is presently being analyzed for salvage harvest under one timber sale. The value to the government of the salvage volume is estimated at $500,000. This figure does not include the many jobs and thousands of dollars in benefits that are realized in related service, supply, and construction industries. Fresno County will share 25 percent of the selling value for any timber that is salvaged in a commercial timber sale. Rehabilitation and restoration measures will be necessary for watershed protection, erosion prevention, and fuels reduction.

This proposal is not expected to adversely affect any furbearer habitat or any of the known pairs of California spotted owls which are within the planning area. Biological evaluations along with biological assessments will be prepared for vertebrate, invertebrate, and plant species and the suggested mitigation measures will be followed in the implementation of the proposed project. No Wild and Scenic Rivers, wetlands, wilderness areas, roadless areas, or threatened or endangered species are within the proposed project area.

Dated: September 10, 1992.

Dale N. Bosworth,

Reviewing Officer, Deputy Regional Forester.

[FR Doc. 92–22468 Filed 9–16–92; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Manufacturers' Shipments to Federal Government Agencies.

Form Number(s): MC–9675.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 7,700 hours.

Number of Respondents: 7,700.

Avg Hours Per Response: 1 hour.

Needs and Uses: The Bureau of the Census will conduct this survey as part of the 1992 Census of Manufactures in order to collect information from a sample of manufacturers in selected industries on their shipments to Federal Government agencies. Both prime and subcontract value of shipments data are collected in order to measure the widespread effect of these shipments. This survey is the only source of information on the value of Manufacturers' Shipments to Federal Government Agencies by Standard Industrial Classification (SIC) and on employees engaged in work related to Government expenditures for manufactured products. This information is important in determining the effect of purchases by the Federal Government on the economy.

Affected Public: Businesses or other for–profit organizations.

Frequency: Once every 5 years.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: September 11, 1992.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 92–22414 Filed 9–16–92; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Questionnaire Pretesting Research.

Form Number(s): Will vary by survey.

Agency Approval Number: 0607–0725.

Type of Request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Burden: 3,000 hours.

Number of Respondents: 3,000.

Avg Hours Per Response: 1 hour.

Needs and Uses: Last year, the Census Bureau obtained a generic clearance on an experimental basis, which relaxed some of the time constraints and enabled the Census Bureau to begin conducting extended cognitive and questionnaire design research as part of testing for its censuses and surveys. The clearance covered data collections in the demographic, economic, and decennial areas of the Census Bureau, and specifically applied to research that is focused on questionnaire design and procedures aimed at reducing measurement errors in surveys. The Census Bureau is seeking a renewal of the generic clearance for pretesting, over the next three years. Types of research will include field testing, respondent debriefings, split samples, cognitive interviews, and focus groups.

Affected Public: Individuals or households, farms, businesses or other for–profit organizations, and small businesses or organizations.

Frequency: On occassion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377–3271,

Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: September 11, 1992.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 92-22415 Filed 9-16-92; 8:45 am]

BILLING CODE 3510-07-F

Bureau of the Census

[Docket No. 920895-2236]

Decision on Whether to Incorporate Information From the Post-Enumeration Survey (PES) into the Base for Intercensal Population Estimates

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of deferral of final decision and request for comments.

SUMMARY: This is a notice informing the public of deferral of the final decision of the Director of the Census Bureau on the issue of whether to incorporate information from the Post-Enumeration Survey (PES) into the base for Intercensal Population Estimates produced by the Bureau of the Census and to request further comments on this important issue. This deferral is based on comments received from the public and further deliberations regarding option implementation within the Census Bureau.

DATES: Comments may be sent on or before November 13, 1992. Any comments received after November 13 will not be considered.

ADDRESSES: Comments may be sent to: Dr. Barbara Everitt Bryant, Director, Bureau of the Census, Washington, DC 20233-0100.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Bounpane, Assistant Director, Bureau of the Census, Telephone (301) 763-5613.

SUPPLEMENTARY INFORMATION: On August 10, 1992, a notice was published in the **Federal Register** (57 FR 35562-35564), informing the public about the alternatives available to the Director of the Census Bureau for potential improvement in the base for intercensal estimates of population by incorporating adjustment factors for the undercount developed from the Post Enumeration Survey (PES). The notice also sought comments on the five (5) alternative options addressing this important issue. In addition, a public hearing was held on August 31, 1992 at the Census Bureau to provide the public the opportunity to present views on this matter and to give the Census Bureau the opportunity to hear comments of interested parties. The Senate Committee on Governmental Affairs also held a hearing on this issue on August 12, 1992, at which Census Bureau Director Dr. Bryant testified and received comments from various members of the Committee as well as other Members of Congress.

It had been the intention to make a decision on this matter in early September. The Census Bureau received public comments from approximately 800 individuals and organizations. The Bureau also heard testimony from 17 people during the August 31 hearing. As a result of the large number and the nature of the comments received in response to the notice and at the public hearing, as well as comments of various Members of Congress, the Director of the Census Bureau decided to postpone the decision on whether to incorporate information from the Post-Enumeration Survey (PES) into the base for intercensal population estimates.

After reviewing the written comments received pursuant to the August 10 **Federal Register** notice (57 FR 35562-35564) and written and oral comments received during the August 31 hearing at the Census Bureau, it is clear that more time is needed to review and evaluate the options presented in the August 10 **Federal Register** notice. Study conducted and comments received subsequent to the notice suggest that the Director should consider this matter further and consider modifications to the options. [For example, a serious concern noted during the original comments period regarding Option #4 is that Option #4 does not reflect the full measured undercount at the national level. As a result, the Census Bureau is pursing further research on whether an adjustment can use the results of Option #4 in a manner that takes the full measured undercount into consideration.] Additional research will be made public, on request, as soon as it becomes available.

Comments are still being sought on the five (5) options published in the August 10 **Federal Register** notice.

Options

The original five (5) options published in the August 10 **Federal Register** notice follow.

Option #1

Incorporate the results of the PES into the base for intercensal estimates at all levels of geography.

Based on Census Bureau findings, this option would result in intercensal estimates that are generally more accurate at the national and state levels, but generally less accurate at sub-state levels than counts without the PES results. This option would produce a set of additive estimates.

Option #2

Incorporate the PES results into the intercensal base at the national and state levels. At the sub-state level, use a simple synthetic estimate based on the percentage of state-level estimated undercount. (Example: if a state has an estimated undercount of 1% as measured by the PES, then the base for every sub-state area is increased by 1% regardless of the actual PES estimate of undercount for each area.)

Based on Census Bureau findings, this option results in intercensal estimates that are generally more accurate at the state and national levels, while accuracy at sub-state levels may be improved or diminished depending upon the relationship between the measured undercount at the state and sub-state levels. The Census Bureau does not have a detailed evaluation of the technical merits of population counts for this option at the sub-state levels. However, for the proportional distribution of sub-state areas within a state, under this option, a city's population as a percentage of the total state population would be the same using either the census counts or the synthetic counts. This option would produce a set of additive estimates.

Option #3

Incorporate the results of the PES into the intercensal base for national and state level estimates, but not for sub-state levels (counties, cities, etc.).

Based on Census Bureau findings, this option would result in intercensal estimates that are generally more accurate at the national and state levels, and retain the relative accuracy of the 1990 census counts at sub-state levels. As a result of the inclusion of the PES results at the state level and exclusion at sub-state levels, this option would produce a series of estimates that are not additive from sub-state to state.

Option #4

The base for intercensal estimates for all levels of geography would be a simple average of the 1990 census count

and an estimate incorporating the results of the PES.

Under this option, the Census Bureau would attempt to achieve some improvements in the accuracy of intercensal estimates by including PES results averaged with the 1990 census counts. While this option would produce intercensal estimates less accurate than options #1, 2, and 3 at the national level and for some states, it would produce sub-state level estimates that are potentially more accurate. Within the Census Bureau, there has been prior use of composite data developed by averaging two different estimates. Because the Census Bureau has not completed a thorough investigation into the technical merits of averaging in this case, this option is based on limited technical findings. This option would produce a set of additive estimates.

Option #5

Do not incorporate the PES results into the intercensal estimates for any jurisdiction.

This option would not address the potential to improve generally the state and national level estimates based on the PES. It would retain the relative accuracy of the 1990 decennial census counts, which the Census Bureau determines cannot be improved upon, at the sub-state level. This option would produce a set of additive estimates.

Request for Comments

The Census Bureau invites the public to submit written comments for receipt by November 13, 1992. Written comments will be made part of the public record, and will be available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, Herbert C. Hoover building, 14th & Constitution Avenue, NW., Washington, DC 20230.

Dated: September 15, 1992.

Barbara Everitt Bryant,

Director, Bureau of the Census.

[FR Doc. 92-22640 Filed 9-16-92; 8:45 am]

BILLING CODE 3510-07-M

Bureau of Export Administration

Iran Air; Authorizations under Denial Order

ACTION: Notice.

On August 21, 1992, the Acting Under Secretary for Export Administration, United States Department of Commerce, issued a Final Order in an administrative enforcement proceeding against Iran Air, Mehrabad Airport Tehran, Iran. 57 FR 39178, August 28, 1992. The Order finds that Iran Air committed a violation of the Export Administration Regulations (EAR) and imposes as sanctions a civil penalty of $100,000 and a denial of Iran Air's U.S. export privileges for a period of 24 months, with 21 months suspended if the civil penalty is paid within 30 days.

Under the terms of the denial order and of EAR § 787.12(a) (15 CFR 787.12(a)), authorization can be given by the Office of Export Licensing, Bureau of Export Administration for actions otherwise prohibited by the denial order. Accordingly, on August 27, 1992, the undersigned Director of the Office of Export Licensing, Bureau of Export Administration, United States Department of Commerce, issued a general authorization under the Denial Order of August 21, 1992. 57 FR 40171, September 2, 1992.

Following consultation with the Office of Export Enforcement, I hereby issue the following second general authorization with respect to the denial order against Iran Air under the terms of the denial order and of EAR § 787.12(a) (15 CFR 787.12(a)), for actions otherwise prohibited by the denial order:

(1) The denial order will not apply to Iran Air's handling of U.S.-origin freight or baggage at any airport located in Iran, provided however, that title to the freight or baggage does not pass to Iran Air and that the intermediate consignee(s) and ultimate end user(s) are all parties other than Iran Air;

(2) The denial order will not apply to any road feeder services or other freight handling operations designed to transport U.S.-origin freight or baggage on to their ultimate destination within Iran, provided however, that title to the freight or baggage does not pass to Iran Air and that the intermediate consignee(s) and ultimate end user(s) are all parties other than Iran Air.

Dated: September 9, 1992.

Iain S. Baird,

Director, Office of Export Licensing, Bureau of Export Administration, Department of Commerce.

[FR Doc. 92-22526 Filed 9-16-92; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

U.S. and Foreign Commercial Services, Export Promotion Services; Export Promotion Resources Product User Fees

ACTION: Notice.

SUMMARY: Notice is hereby given that The U.S. and Foreign Commercial Service (US&FCS), U.S. Department of Commerce, is increasing user fee rates for the Agent Distributor Service (ADS) to $250 per report.

EFFECTIVE DATE: October 1, 1992.

SUPPLEMENTARY INFORMATION: The Agent/Distributor Service provides a report of interested and qualified agents and distributors to represent U.S. firms in overseas markets. A typical ADS report includes the name and address of the foreign firm(s); name and title of contact person; telephone/fax numbers; level of interest; preferred language for correspondence; each prospect's opinion on the market for the product; comments on the agent's capability and current activities and other pertinent marketing information. A user fee increase from $125 to $250 per report will take effect as of October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Maurice Kogon, Office of Export Promotion Resources, Export Promotion Services, U.S. and Foreign Commercial Service, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 20230. Telephone (202) 377-8246.

Although the Department of Commerce is not legally required to issue this notice under 15 U.S.C. 1525, this notice is being issued as a matter of general policy.

ITA has the authority to collect user fees for commercial information under the Department of Commerce general user fee authority 15 U.S.C. 1525 and 22 U.S.C. 2455(f). These fees reflect only the actual costs involved in collecting and distributing the commercial information.

Dated: September 9, 1992.

Susan C. Schwab,

Assistant Secretary and Director General, U.S. and Foreign Commercial Service.

[FR Doc. 92-22465 Filed 9-16-92; 8:45 am]

BILLING CODE 3510-FP-M

[A-351-809]

Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 17, 1992.

FOR FURTHER INFORMATION CONTACT: Judith Wey or Edward Easton, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230;

telephone: (202) 377-8320 or (202) 377-1777, respectively.

Final Determination

We determine that circular welded non-alloy steel pipe (standard pipe) from Brazil is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the issuance of our notice of preliminary determination and postponement of the final determination (57 FR 17883 (April 28, 1992)), the following events have occurred:

We received a request for a public hearing from Persico Pizzamiglio S.A. (Persico) on April 22, 1992, and from the petitioners on May 5, 1992. Persico submitted its response to the Department's Cost of Production and Constructed Value questionnaire (section D) on May 1, 1992. Persico submitted supplemental information for its section D response, revisions and corrections to its other responses, and revised computer tapes in May and June 1992.

We conducted verification of Persico's sales and cost questionnaire responses from June 28 through July 1, 1992, at the company's headquarters in Sao Paulo, Brazil.

Petitioners and Persico filed case briefs on August 3 and rebuttal briefs on August 10, 1992. On August 10 and 11, 1992, Persico and petitioners, respectively, withdrew their requests for a public hearing.

Scope of Investigation

The merchandise subject to this investigation is circular welded non-alloy steel pipes and tubes, of circular cross-section, not more than 406.4mm (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, bevelled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipe, though they may also be called structural or mechanical tubing in certain applications. Standard pipes and tubes are intended for the low pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing and mechanical applications, such as for fence tubing, and for protection of electrical wiring, such as conduit shells.

The scope is not limited to standard pipe and fence tubing, or those types of mechanical and structural pipe that are used in standard pipe applications. All carbon steel pipes and tubes within the physical description outlined above are included within the scope of this investigation, except line pipe, oil country tubular goods, boiler tubing, cold-drawn or cold-rolled mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished rigid conduit. Standard pipe that is dual or triple certified/stenciled that enters the U.S. as line pipe of a kind used for oil or gas pipelines is also not included in this investigation.

Imports of these products are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation (POI) is April 1, 1991, through September 30, 1991.

Such or Similar Comparisons

We have determined that all the products covered by this investigation constitute a single category of such or similar merchandise.

Fair Value Comparisons

To determine whether sales of standard pipe from Brazil to the United States were made at less than fair value (LTFV), we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

Although Persico responded to the Department's questionnaires, at verification, we found significant inconsistencies and deficiencies in the information reported by Persico. Most significantly, we were unable to verify the total volume and value of Persico's sales to the United States during the POI. Therefore, in accordance with section 776(c) of the Act, our results are based on best information available (BIA).

United States Price

In the petition, petitioners provided U.S. prices based on the average customs value of imported standard pipe during the second quarter of 1991. While we have accepted the methodology used by petitioners for calculating USP, because of Brazil's hyperinflationary economy, we have based USP on the average customs value of imported standard pipe during the third quarter of 1991, to provide for more contemporaneous price comparisons with FMV contained in the petition.

Foreign Market Value

We based FMV on information provided in the petition. Petitioners based FMV on July 1991 actual price quotations from Persico obtained through a consultant. The prices were FOB Persico's mill; therefore, petitioners made no adjustments to these prices.

Currency Conversion

No certified rates of exchange, as furnished by the Federal Reserve Bank of New York, were available for the POI. In place of the official certified rates, we used the daily official exchange rates for Brazil published by the Central Bank of Brazil.

Verification

As provided in section 776(b) of the Act, we attempted to verify information provided by respondents by using standard verification procedures, including the examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

Best Information Available

We have determined that the questionnaire responses of the respondent provide an inadequate basis for estimating dumping margins. The Department determined that, for the information we examined at verification, the omissions from and inaccuracies in the responses were so material as to make the responses inherently unreliable, compelling the Department to use BIA.

At verification, we found that Persico had not provided a complete reporting of its U.S. and home market sales. For example, one verification document indicates that as many as one-third of Persico's U.S. sales may not have been reported. Moreover, we were unable to ascertain the actual quantity sold in either market. Consequently, we cannot conduct an accurate cost of production analysis or a LTFV analysis using either price-to-price comparisons or constructed value. In addition, because we encountered difficulties throughout the verification while trying to verify the completeness of Persico's response, most of the sales-specific information

remains unverified. The numerous inconsistencies found are outlined in detail in the public version of our verification report (dated July 28, 1992) and the public version of our decision memorandum from Richard W. Moreland to Francis J. Sailer (dated September 2, 1992) which are on file in room B-099 of the Main Commerce Building.

In determining what rate to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower rates for those respondents who cooperated in an investigation and rates based on more adverse assumptions for those respondents who did not cooperate in an investigation. *See*, Final Antidumping Duty Determination: Aspheric Ophthalmoscopy Lenses From Japan, 57 FR 6703 (February 27, 1992). In this investigation, Persico attempted to provide the information that the Department requested; however, as noted above, the inaccuracies and discrepancies in Persico's information were so pervasive as to make the responses inherently unreliable. Consistent with Department practice, after adjusting petitioners' information to provide for contemporaneous price comparisons (as discussed in the USP section of this notice), we have assigned Persico a margin based on an average of the margins contained in the petition, as a cooperative respondent.

Interested Party Comments

Although numerous comments were submitted by both petitioners and the respondent, they are not being addressed here because of our decision to reject Persico's response and base this determination on BIA. Only the comment concerning the use of total BIA is addressed below.

Comment 1

Petitioners assert that the Department should use total BIA because the cumulative effect of the inaccuracies and omissions in the cost of production and price information submitted by Persico renders that information useless for calculating an estimated LTFV margin. In addition, petitioners maintain that the Department should use the highest margin in the petition for its determination of Persico's LTFV margin.

Persico contends that it has never refused to produce information to the Department, nor has it significantly impeded the Department's antidumping investigation. Accordingly, Persico argues that the Department has no basis to use total BIA.

DOC Position

We agree with petitioners, in part. As explained in the BIA section of this notice, the incomplete and inaccurate data submitted by Persico deprive the Department of a reasonable basis on which to conduct the cost of production and LTFV price analyses. This lack of compete and reliable information compels the Department to rely totally on BIA to estimate Persico's margin.

On the other hand, Persico has complied with the Department's request for information and clarification. Accordingly, as more fully discussed in the BIA section of this notice, the highest margin in the petition is inappropriate for Persico's estimated margin.

Continuation of Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of circular welded non-alloy steel pipe that are entered, or withdrawn from warehouse, for consumption on or after April 28, 1992, the date of publication of our preliminary determination in the **Federal Register**.

The product under investigation is also subject to a countervailing duty (CVD) investigation. The Department has determined that no benefits which constitute subsidies within the meaning of the CVD law are being provided to manufacturers, producers, or exporters of the subject merchandise in Brazil, and, therefore no adjustment to the estimated dumping margin is required.

The Customs Service shall require a cash deposit or bond equal to the estimated amount by which the FMV of the merchandise subject to this investigation exceeds the U.S. price, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Producer/manufacturer/exporter	Weighted-average margin percentage
Persico Pizzamiglio S.A.	103.38
All others	103.38

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.35(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 753(d) of the Act and 19 CFR 353.20(a)(4).

Dated: September 10, 1992.

Rolf Th. Lundberg, Jr.,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-22560 Filed 9-16-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-580-809]

Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 17, 1992.

FOR FURTHER INFORMATION CONTACT: Mark Wells or Andrew McGilvray, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-3003 or (202) 377-0108, respectively.

Final Determination

We determine that circular welded non-alloy steel pipe (standard pipe) from the Republic of Korea (Korea) is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the issuance of our notice of preliminary determination and postponement of final determination (57 FR 17885 (April 28, 1992)), the following events have occurred:

Verification of respondents' responses to the Department's questionnaires regarding sales information took place in Korea, Japan, and the United States during May and June of 1992. Verification of respondents' responses to the Department's questionnaires regarding cost of production (COP)

information took place in Korea during June and July of 1992.

We received requests for a public hearing from Hyundai Steel Pipe Co., Ltd. (Hyundai), Korea Steel Pipe Co., Ltd. (KSP), and Pusan Steel Pipe Co., Ltd. (Pusan), on May 1, 1992, and from petitioners on May 5, 1992. Masan Steel Tube Works Co., Ltd. (Masan), filed a case brief on July 24, 1992, while Hyundai, KSP, Pusan, and petitioners filed case briefs on August 7, 1992. Hyundai, KSP, Pusan, and petitioners filed rebuttal briefs on Augsust 12, 1992. A public hearing was held on August 14, 1992.

Scope of Investigation

The merchandise subject to this investigation is circular welded non-alloy steel pipes and tubes, or circular cross-section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, bevelled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipe, though they may also be called structural or mechanical tubing in certain applications. Standard pipes and tubes are intended for the low pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing and mechanical applications, such as for fence tubing, and for protection of electrical wiring, such as conduit shells.

The scope is not limited to standard pipe and fence tubing, or those types of mechanical and structural pipe that are used in standard pipe applications. All carbon steel pipes and tubes within the physical description outlined above are included within the scope of this investigation, except line pipe, oil country tubular goods, boiler tubing, cold-drawn or cold-rolled mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished rigid conduit. Standard pipe that is dual or triple certified-stenciled that enters the U.S. as line pipe of a kind used for oil or gas pipelines is also not included in this investigation.

Imports of these products are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation (POI) is April 1, 1991, through September 30, 1991.

Such of Similar Comparisons

We have determined that all the products covered by this investigation constitute a single category of such or similar merchandise. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we made comparisons on the basis of: (1) Commercial or industry grade/classification; (2) nominal pipe size; (3) wall thickness; (4) surface finish or coating; and (5) end finish. We made adjustment for differences in the physical characteristics of the merchandise, in accordance with section 773(a)(4)(C) of the Act.

We made sales comparisons on the basis of theoretical weight, the weight basis on which respondents reported that U.S. sales were made.

Fair Value Comparisons

To determine whether sales of standard pipe from Korea to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

We calculated USP using the methodology described in the preliminary determination, with the following exceptions:

A. Hyundai

1. We adjusted USP of Hyundai's claimed duty drawback.
2. We excluded Hyundai's U.S. sales of returned goods from our calculations.
3. We recalculated credit on Hyundai's exporter's sales price (ESP) sales to take into account discounts given or certain U.S. sales.
4. We deducted discounts.

B. KSP

1. We adjusted USP for KSP's claimed duty drawback on ESP sales.

C. Pusan

1. We adjusted USP for Pusan's claimed duty drawback.
2. We recalculated credit expenses on purchase price sales from the date of shipment from Korea to the date of payment by the customer. Where dates of shipment from Korea were not reported, we used as best information available (BIA) the highest credit period calculated for a sale with its Korean shipment date reported.
3. We recalculated credit expenses on ESP sales where the date of payment was not reported. Where dates of payment were not reported, we calculated credit from the date of shipment to the date of payment, using the date of this determination as BIA for the date of payment.

D. Masan

1. We recalculated credit on Masan's U.S. sales to reflect information found at verification regarding Masan's U.S. interest rate.
2. We did not adjust USP for the following charges first reported by Masan after verification:

a. Foreign brokerage charges,

b. Bank charges for transactions between related parties.

Foreign Market Value

We calculated FMV using the methodology described in the preliminary determination, with the following exceptions:

A. Hyundai

1. We disallowed Hyundai's claimed adjustment for inventory carrying costs. See, Comment 7.

B. KSP

1. We disallowed KSP's claimed adjustment for inventory carrying costs. See, Comment 7.

C. Pusan

1. We disallowed Pusan's claimed adjustment for inventory carrying costs. See, Comment 7.

D. Masan

1. We recalculated Masan's third country credit to accurately reflect the period from the date of shipment to an unrelated party to the date of payment, and to take into account information found at verification regarding Masan's third country interest rate.
2. We did not adjust FMV for the following charges first reported by Masan after verification:

a. Foreign brokerage charges,

b. Bank charges for transactions between related parties.

Cost of Production

Based on petitioners' allegations, and in accordance with section 773(b) of the Act, we investigated whether Hyundai, KSP, and Pusan had home market sales that were made at less than their respective COP.

If over 90 percent of a respondent's sales of a given model were at prices above the COP, we did not disregard any below-cost sales because we determined that the respondent's below-cost sales were not made in substantial quantities over an extended period of time. If between ten and 90 percent of a respondent's sales were at prices above the COP, we disregarded only the below-cost sales. Where we found that more than 90 percent of respondent's sales were at prices below the COP, we disregarded all sales for that model and calculated FMV based on constructed value (CV). In such cases, we determined that the respondent's below-cost sales were made in substantial quantities over an extended period of time. In order to determine whether home market prices were above the COP, we calculated the COP based on the sum of a respondent's cost of materials, fabrication, general expenses, and packing. The submitted COP data was relied upon, except in the following instances where the costs were not appropriately quantified or valued;

A. General

We revised G&A expense to exclude income from operations unrelated to the production of the subject merchandise.

B. Company Specific

1. Hyundai

a. We adjusted depreciation expense to reflect the amount of depreciation reported on the financial statements.

2. KSP

a. We adjusted labor expense to include year-end adjustments which were not included in the questionnaire response.

b. We revised the reported interest expense to exclude long-term interest income from corporate bonds (*see*, Comment 39). We also added amortization of stock issuance cost and bond issuance cost which were reported in the financial statements but excluded from the questionnaire response.

c. We adjusted the submitted factor for conversion between weight bases to reflect differences noted at verification.

3. Pusan

a. For identical products with reported different costs, we revised the submission to reflect a weighted-average cost.

b. We increased fabrication costs to account for costs reported in the financial statements, but not reflected in the questionnaire response.

c. We adjusted the submitted factor for conversion between weight bases to reflect differences noted at verification.

In accordance with section 773(e)(1)(b)(i) of the Act, we included in CV the greater of a company's reported general expenses, adjusted as detailed above, or the statutory minimum of 10 percent of cost of manufacture (COM). For profit, we used the statutory minimum of eight percent of the total of COM and general expenses because, for each of the respondents, actual profit on home market sales was less than eight percent. See section 773(e)(b)(ii) of the Act.

Currency Conversion

We made currency conversions in accordance with 19 CFR 353.60(a) based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we verified information provided by respondents by using standard verification procedures, including the examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

Interested Party Comments

Comment 1

Petitioners contend that the Department should state whether the four respondents in this investigation account for 60 percent or more of exports to the United States from Korea, or whether the Department has used a standard other than the 60 percent standard of the regulations.

Hyundai, KSP, and Pusan state that the Department stated in its preliminary determination that the four respondents in this investigation accounted for 60 percent of exports to the United States. These respondents further state that even if the "60 percent rule" had not been met precisely, 19 CFR 353.42(b) gives the Department the discretion to cover less than 60 percent.

Department Position

The Department has not applied a different standard from that articulated in 19 CFR 353.42(b)(1). The four respondents in this investigation account for slightly more than 60 percent of exports to the United States.

Comment 2

Petitioners state that any lack of time to examine issues at verification was the fault of Hyundai, KSP, and Pusan and should weigh against them, precipitating the use of BIA.

Hyundai, KSP, and Pusan state that any lack of time to examine issues at verification was a result of the Department's decision to limit verifications to three days because of budgetary constraints. These respondents contend that, in any case, the time allotted was sufficient for the Department to verify the accuracy and veracity of the submitted data. These respondents cite *Boment Industries* v. *United States*, 733 F. Supp. 1507, 1508 (CIT 1990), where the court stated that "of course, verification is like an audit, the purpose of which is to test information provided by a party for accuracy and completeness. Normally, an audit entails selective examination rather than testing of an entire universe." These respondents conclude that the items examined during the Department's verifications in this case confirmed the accuracy and completeness of their submissions.

Department Position

We agree with respondents. Through selective examination and sampling of elements of the respondents' responses at verification, the information used for this determination was successfully verified by the Department. Items that could not be verified have been accounted for in the final margin calculations.

Comment 3

Petitioners state that the Department should continue to calculate prices and charges for Hyundai, KSP, and Pusan on a theoretical weight basis. Petitioners contend that the "actual" thickness of steel coils, as recorded in these respondents' records, is simply the nominal thickness on the supplier's invoice, that the resulting inaccuracy in the actual thickness means that these respondents cannot calculate an accurate actual weight of their merchandise, and that use of respondents' "contrived actual weights" results in understatement of costs. Petitioners further contend that gauge build-up occurring in the production process should result in an increase in the unit costs for these respondents. Finally, petitioners state that the statute, regulations, and Department precedent require that an adjustment be made to foreign market value to reflect the different weight bases on which these respondents sell the subject merchandise in the United States and in their home market.

Hyundai, KSP, and Pusan state that the Department's margin analysis will be correct, regardless of the weight basis used, as long as the prices and costs are reported on the same basis in the U.S. and home markets. These respondents further state that their

factors used to convert prices and costs between weight bases are based on a universal industry formula, that the Department verified that the conversion factors were calculated correctly, and that, for two of the three companies, actual weights are calculated in their books by use of the same formula. These respondents contend that their "contrived" actual weights are the actual weights on the books, with minor differences, generally caused by rounding. Finally, these respondents contend that petitioners' argument that an adjustment to prices must be made to reflect the different weight bases on which these respondents sell the subject merchandise is a moot point, and that home market prices and expenses have already been adjusted to a theoretical weight basis, for comparison to U.S. merchandise sold on that weight basis.

Department Position

We agree with petitioners that prices and charges should be calculated on the basis of theoretical weight, and with respondents, that the necessary adjustments have been made.

The actual thickness of steel coils may be greater or less than the nominal thickness, within the allowable tolerances. Production processes have an effect on the thickness of the pipe. Thus, we also recognize that the use of the nominal thickness of the coil to calculate the weight of the pipe may under- or over-state the actual weight of the pipe. As such, this calculation may have an effect on cost calculations. Even so, we cannot agree with petitioners that the information on the record supports their contention that these calculations necessarily understate the actual weight of the pipe, and thus the cost. Furthermore, the methods applied by the respondents to calculate the "actual weight" of the pipe are the same methods they apply in their internal bookkeeping systems. Absent convincing evidence that the calculation methodology biases the dumping calculation, we may not disregard the respondents' approach and resort to the best information otherwise available.

Comment 4

Petitioners state that differences in coating costs between markets for Hyundai, KSP, and Pusan must be accounted for in these respondents' differences in merchandise (difmer) adjustments, and that their packing costs must be recalculated to exclude the cost of coating.

Hyundai, KSP, and Pusan state that while coating is properly classified as a packing expense, the treatment of coating costs as either packing or as part of the difmer has absolutely no effect on the dumping margin.

Department Position

We agree with respondents that coating is properly classified as a packing cost. The coating in question is performed by packing departments to protect the pipe during shipment to export markets. Such coating is not performed for domestic shipments. Therefore, coating is properly classified as a packing expense.

Comment 5

Petitioners state that the Department should not grant duty drawback adjustments to KSP and Pusan on sales for which the "individual application system" was used, and that the Department should not grant duty drawback adjustments for any of Hyundai's sales. They maintain that for these sales, these respondents should have been able to match the exact drawback amount received to each individual sale, since the individual application system requires that individual import and export documents be matched. They further argue that it is unacceptable for the respondents to provide average drawback information where the exact information is available. Moreover, petitioners maintain that these respondents have not proven that they actually received drawback on each of the sales for which they have claimed an adjustment, and claim that the record shows that these respondents used some domestic material in their exports of pipe.

Regarding KSP, petitioners state that it has admitted that while only a portion of some shipments was eligible for drawback, KSP allocated all drawback paid over all tonnage shipped. Regarding Hyundai, petitioners also state that the average drawback figures provided are inaccurate because Hyundai used an inaccurate lag time in its calculations. Petitioners add that on a per ton basis, because the Korean government collects duties on the basis of actual weight and rebates duties on the basis of theoretical weight, Hyundai's drawback is greater than the duty paid. Petitioners conclude that the statute precludes claims for drawback for sales on which no drawback payment was received and that, since these companies have claimed drawback on all sales, regardless of the fact that some sales received no drawback, the Department should deny their entire claimed drawback adjustments.

Hyundai, KSP, and Pusan state that (1) their methodologies for calculating duty drawback are reasonable, (2) the Department agreed, subject to verification, that the methodologies were reasonable, and (3) their duty drawback claims were successfully verified. These respondents state that while petitioners have not presented any statutory provision, case law, or administrative precedent demonstrating that respondents are required to calculate duty drawback on a sale-by-sale basis, there is precedent specifically permitting the use of averages. They further state that to calculate duty drawback on a sale-by-sale basis would have required extraordinary cost and effort. Hyundai, KSP, and Pusan also claim that the Department verified (1) that they do not maintain records in the ordinary course of business which link export permits to specific customer invoices and (2) that the information on which the Department based its May 1, 1991, assessment that these respondents' methodologies was reasonable and accurate.

Hyundai states that petitioners are in error when claiming that Hyundai used a lag time in its calculations of duty drawback, and that it only used a lag to reflect the period during which the pipe was held in inventory for ESP sales. Finally, Hyundai states that petitioners' claims of excessive drawback are unsupported, that any excessive rebates by the Korean government would have to be addressed in a countervailing duty petition, and that petitioners' claim that the Korean duty drawback system permits the claiming of drawback by matching any type of pipe made with any type of hot-rolled coil to any other type of hot-rolled coil is simply incorrect.

Department Position

We agree with respondents. Based on information in the responses to the Department's questionnaire and on findings at verification, these respondents' methodologies for calculating duty drawback are reasonable. The Department does prefer for a company to document duty drawback on a sale- or shipment-specific basis. See, e.g., Certain Circular Welded Carbon Steel Pipes and Tubes from Thailand, 56 FR 58355 (1991)). We do accept methodologies, however, which employ averages when the calculation of more specific figures is impossible or unduly burdensome to the respondents, and when the methodology proves to be reasonable. See, e.g., Final Results of Administrative Review: Color Picture Tubes from Korea, 56 FR 19084 (1991).

At verification, we confirmed that duties were in fact paid and rebated. Accordingly, respondents were able to establish the necessary link between duties imposed and rebated. See *Far East Machinery Co., Ltd.* v. *United States*, 699 F. Supp. 309 (CIT 1988) (Far East Machinery). There is no dispute that the first prong of the Department's two-prong test has been met. The second prong of the test requires that respondents "demonstrate that there were sufficient imports of raw materials to account for the duty drawback received on the exports of the manufactured product." *Id.* This second prong encompasses the principle of drawback substitution. The Department, like governments applying duty drawback programs, does not attempt to determine whether raw materials used in producing the exported merchandise actually came from imported sources, but rather assesses whether there were sufficient imports of relevant raw materials to account for the duty drawback received on the exports of the manufactured product. See Far East Machinery. The respondents in this investigation have met the requirements of the second prong. Other claims by petitioners do not speak to the test traditionally applied by the Department, but rather seek to hold respondents to additional standards for duty drawback claims. Finally, petitioners have failed to convincingly support their claims that Hyundai received excessive drawback.

Comment 6

Petitioners claim that Hyundai, KSP, and Pusan should not be granted adjustments for home market credit expenses because they did not furnish the Department with sale-specific or customer-specific credit information, although they were able to do so. Petitioners maintain that for Hyundai, in particular, its methodology was proven inaccurate by certain documents collected at verification.

These respondents state that, as admitted by petitioners, the Department will accept a reasonable equivalent to customer-specific data if the respondent is unable to provide the requested information. They further state that they could not provide customer-specific payment data from their normal accounting records, and that their methodologies, as verified by the Department, were a reasonable equivalent. Hyundai contends that petitioners misrepresent the documents cited as proof of the inaccuracy of Hyundai's methodology. Hyundai states that the documents in question show the date of receipt of promissory notes, not date of receipt of payment, thus further proving its claim that its records do not track customer-specific or sale-specific dates of payment.

Department Position

We agree with respondents. The methodologies applied by these respondents are reasonable, given that their accounting records do not track customer-specific or sale-specific dates of payment. Furthermore, Hyundai is correct in stating that its verification documents documents do not demonstrate an ability to track such payment dates. On those bases, we have granted the adjustments claimed by Hyundai, KSP, and Pusan for home market credit expenses.

Comment 7

Petitioners state that the Department should exclude Hyundai's, KSP's, and Pusan's claimed home market inventory carrying costs from home market indirect selling expenses used as offsets on ESP sales. Petitioners contend that all of these respondents' inventory carrying costs are based on flawed home market interest rate calculations (see Comment 8). Further more, petitioners maintain that these respondents' use of calculations based on sales value, rather than cost of manufacture, overstates the inventory carrying costs. In addition, petitioners further state that Hyundai's and Pusan's calculations also include an incorrectly calculated average inventory period, and were not verified. Finally, with respect to KSP, petitioners contend that, if the Department does grant an offset for inventory carrying costs, no offset should be made on order sales because these sales by definition are not carried in inventory.

These respondents maintain that they correctly calculated their home market inventory carrying costs. They state that their inventory carrying cost calculations do not overstate these costs and that their interest rate calculations are accurate (*see* Comment 8). Hyundai further states that the Department confirmed at verification the overall integrity and completeness of Hyundai's response, although time constraints did not permit examination of every specific element of Hyundai's response. KSP states that its home market inventory carrying expense was developed based on all sales and should be applied to all sales.

Department Position

We agree with petitioners that these respondents' reported inventory carrying costs are overstated. Following its standard practice, the Department requested that respondents provide inventory carrying cost based on the cost of manufacture of the products sold (see Final Determination of Sales at Less than Fair Value: Certain Internal-Combustion Forklift Trucks from Japan, 53 FR 12552 (April 15, 1988)). Although all of these respondents have placed cost of manufacture information on the record which could have been used as the basis for their inventory carrying cost calculations, they have failed to apply the appropriate methodology as requested. Therefore, as BIA, we have accepted the reported expenses as a reduction to USP but have disallowed them as offsets to the ESP cap.

Comment 8

Petitioners state that the Department should reject Hyundai's, KSP's, and Pusan's claimed home market short-term interest rates because these rates were not based on interest rates set forth in loan documents but instead were calculated using accumulated balances and accumulated interest. Petitioners thus maintain that these respondents have not met their burden of demonstrating that their methodology provides an accurate weighted-average interest rate. As such, they contend that adjustments based on these interest rates must be denied. Petitioners further state that if the Department does not deny these adjustments, it must base them on an interest rate determined using BIA. For Hyundai, petitioners state that, at a minimum, the Department must adjust Hyundai's claimed interest rate to exclude Hyundai's notes receivable discount, which does not represent Hyundai's cost of financing.

Respondents contend that they properly calculated their short-term interest rates. They state that (1) administratively, they could not calculate interest loan by loan, (2) their methodologies, in effect, calculate the actual interest rates, and (3) their methodologies, to their knowledge, are the normal approach taken to calculate a company's overall interest rate. KSP states that petitioners do not understand KSP's interest rate methodology which, as verified by the Department, accurately matches an interest amount with the appropriate loan, resulting in an accurate short-term average interest rate for the POI. Hyundai states that in the normal course of business it incurs expenses by discounting to banks notes receivable received from customers, and that given the nature of this discounting expense and the short-term nature of these notes, it was perfectly reasonable for it to include this as part of its overall calculation of its short-term interest expense.

Department Position

We agree with respondents that their home market interest rate methodologies are reasonable, because they use data from company records which reflect the relevant costs to these companies of borrowing in the home market. Such documentation reflects the home market interest expenses actually incurred by these companies.

We have also determined that Hyundai should be allowed to include in its cost of borrowing those expenses which Hyundai incurs when discounting to banks the notes receivable received from customers. In this instance, the discounting of notes receivable means that a shorter period enters into Hyundai's calculation of average accounts receivable and, therefore, into Hyundai's calculation of the home market credit period. Any expenses related to discounting of notes receivable are inherently offset by a shorter credit period, thus ensuring that overall expenses are not overstated.

Comment 9

Petitioners state that the Department should calculate credit on Hyundai's ex-dock duty paid and net 30-day sales from the date of shipment from Korea, not the date of shipment after landing in the United States. Petitioners maintain that the cost to respondents of financing the merchandise while en route to the United States in purchase price situations is a credit expense, and not an inventory carrying cost.

Respondents maintain that credit on such "back-to-back" purchase price sales should be calculated from the date that the merchandise arrives in the United States. Hyundai states that it is only upon arrival of the goods in the United States that an invoice is issued to the unrelated customer and that the sale is posted to the company's accounts receivable ledger. Hyundai asserts that, under long-standing practice, the Department considers the creation of an accounts receivable to the unrelated customer to be the triggering event for the calculation of credit, and that no circumstances exist here to warrant a different approach.

Department Position

We agree with petitioners. Contrary to respondents' assertions, the Department's long-standing practice is to calculate credit on purchase price sales from the time that the merchandise is shipped from the foreign production site. See, *e.g.*, Final Determination of Sales at Less Than Fair Value: 3.5" Microdisks and Coated Media from Japan, 54 FR 6433 (February 10, 1989).

Because terms of sale are established prior to the shipment of the merchandise from the foreign production sites, respondents incur credit expenses on these sales from that shipment date, regardless of when the final invoices to the customers are issued. We have calculated the credit period on all purchased price sales from the date of shipment from Korea to the date of payment.

Comment 10

Petitioners state that for ESP transactions, the Department should not grant Hyundai and KSP offsets for indirect selling expenses on home market sales because these respondents failed to allocate all indirect selling expenses on the basis of sales value, as instructed by the Department. Petitioners also state that Hyundai has incorrectly included certain production overhead expenses and inappropriate general and administrative expenses in its calculation of indirect selling expenses.

These respondents contend that for the limited number of expenses which they allocated on a basis other than sales value, their allocation was more appropriate than one based on sales value. Hyundai adds that all expenses challenged by petitioners are properly categorized as indirect selling expenses, and that petitioners' allegations that Hyundai included certain inappropriate general and administrative expenses in indirect selling expenses can be refuted by examining Hyundai's previous submissions.

Department Position

We agree with respondents. In the limited instances where respondents allocated indirect selling expenses on a basis other than sales value, it was reasonable to do so. For example, expenses such as heat and water for a building are reasonably allocated based on the number of personnel in each department contained in the building, rather than on the sales value of each department. In addition, petitioners have not supported their claims that elements of Hyundai's indirect selling expense calculations are inappropriate. Therefore, we have granted offsets for indirect selling expenses on home market sales being compared to ESP sales.

Comment 11

Hyundai, KSP, and Pusan state that in matching home market sales to U.S. sales, the Department should exhaust the three alternative matches provided in the companies' concordances for each U.S. product before using constructed value for FMV. These respondents further state that when the most similar home market product match is found to be below the cost of production, there is nothing in the statute or in the Department's application of the statute that precludes the use of a second (or third) similar model. Indeed, these respondents state it is clear that the statute generally shows a legislative preference for the use of a similar model before resorting to constructed value, and maintain that the Department has expressed intentions to completely exhaust home market sales in its search for model matches, prior to resorting to constructed value.

Petitioners state that respondents' argument for the use of alternative model matches is contrary to statute, Department precedent, and the Department's stated intent in this case. Petitioners cite Final Results of Administrative Review: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from France, 57 FR 26373 (June 23, 1992), where the Department resorted to constructed value after it found that there were insufficient above-cost sales of a given model match. The Department stated in that case that "[a]lthough section 773(b) expresses a preference for using sales rather than CV as the basis of FMV, it does not instruct the Department to use the next most similar merchandise as the basis for FMV, but rather it requires the use of CV." Finally, petitioners cite the Department's letter of April 8, 1992, to these respondents, which stated that the Department would base FMV on constructed value for any model match where more than 90 percent of its sales were found to be below cost.

Department Position

We agree with petitioners. In our April 8, 1992, letter to Hyundai, KSP, and Pusan, we accepted these respondents' proposal to limit the reporting of cost information for home market sales to products within their sales concordances, which included several alternative matches for each product in the United States. Our letter also stated that the Department would base FMV on constructed value for any model match where more than 90 percent of its sales were found to be below cost. This approach is consistent with sections 773(b) and 771(16) of the Act. Furthermore, these respondents have only provided information on a limited number of sales in the such or similar category. Therefore, even assuming, *arguendo*, that the respondents are correct in asserting that the Department

should use similar home market product matches before resorting to CV, the respondents' limited reporting would unacceptably permit them to control which product comparisons the Department could make. Therefore, we based FMV on CV when the most similar home market product match was found to be below COP.

Comment 12

Hyundai, KSP, and Pusan state that the level of trade (LOT) analysis used by the Department in its preliminary determination was inappropriate. These respondents state that the presumed correlation between specific, named levels of trade and prices, as exists in the U.S. market, does not exist in the Korean home market and that, without such a correlation, sales comparisons should be made without regard to LOT.

Petitioners state that the Department should continue to base its margin analysis on comparisons of sales to distributors in both markets since there is an absence of reliable, verified data indicating that this analysis should be changed. Petitioners maintain that respondents' arguments, as presented in their case brief, are based on pricing analysis which was not verified. Petitioners further contend that respondents' pricing analysis was based on selected sales, and is thus meaningless, while other statements about pricing patterns in the United States are unsupported speculation.

Department Position

We agree with petitioners. In their case brief, respondents argued for the first time that there is no consistent pattern between LOT and the price at which pipe is sold either in the home market or in the U.S., and that the Department should not make sales matches based on LOT. Citing to Import Administration Policy Bulletin, 92–1 (1992), respondents argue that lack of correlation between price and LOT is sufficient evidence to rebut the presumption that FMV is affected by LOT. However, the Policy Bulletin states, "only if a contesting party has shown that there is not a significant correlation between prices and selling expenses on the one hand, and LOT on the other, will we disregard the LOT when making sales comparisons in cases where different functional levels of trade exist." Respondents have not alleged that the identical levels of trade in the U.S. and in Korea perform different functions and, furthermore, have failed to address the relationship between selling expenses and LOT. Therefore, we have determined that there is insufficient evidence to rebut the presumption that FMV is affected by LOT and will continue to match sales using LOT.

Comment 13

Hyundai and Pusan state that certain home market "overrun" sales were sold outside of the ordinary course of trade and should be excluded from the Department's margin calculations. Hyundai states that evidence on the record demonstrates that prices of overrun sales are consistently below average when compared to average prices of commercial sales. Hyundai cites to Final Results of Administrative Review: Certain Welded Carbon Steel Standard Pipes and Tubes from India, 56 FR 64,753 (December 12, 1991) (Pipes and Tubes from India) to maintain that the Department's consistent practice is to exclude overrun sales from its analysis. Pusan states that its overrun sales were of small quantities of foreign-specification pipe for which there is no ready market in Korea. Pusan cites the Department's consistent exclusion of overrun sales, as evidenced by the statement that "to the extent that a company under investigation sells products in the home market manufactured according to foreign engineering specifications and cannot demonstrate that they were made to satisfy a home market customer's order, we consider those products to be production overruns not sold in the ordinary course of trade." Final Determination of Sales at Less than Fair Value: Rectangular Welded Carbon Steel Pipes and Tube from the Republic of Korea, 49 FR 9,936 (March 16, 1984).

Petitioners state that home market overrun sales may only be excluded from the Department's margin calculations after such or similar matches have been made. Petitioners contend that precedents cited by respondents to support exclusion of their overrun sales do not, in fact, support that proposition. Petitioners state that, in this investigation, there is a regular market for merchandise of the same foreign specification as the overrun merchandise, and that average size of sales in the overrun market have not been shown to be significantly different from the regular market in Korea for merchandise of the same technical standard. Petitioners conclude that the Department is required to seek the first identical or similar product match under the criteria in that section, without regard to any other factor, and that only then may be Department determine if that merchandise is not suitable for comparison to the U.S. merchandise for other reasons.

Department Position

We disagree with respondents. First, the Department's consistent practice is to exclude overrun production from its analysis only if the products are sold outside the ordinary course of trade. Section 773(a)(1)(A) of the Act and 19 CFR 353.46(a) provides that foreign market value shall be based on the price at which such or similar merchandise is sold in the exporting country in the ordinary course of trade for home consumption. Section 771(15) of the Act defines "ordinary course of trade" as "the conditions and practices which, for a reasonable time prior to the exportation of the merchandise which is the subject of an investigation, have been normal in the trade under consideration with respect to merchandise of the same class or kind." See also, 19 CFR 353.46(b).

As we stated in Pipes and Tubes From India, in determining whether home-market sales are within the ordinary course of trade, the Department does not rely on one factor taken in isolation but rather considers all the circumstances particular to the sales in question. Therefore, whether respondents' sales consisted of "overrun" production is not the issue. The issue is whether the sales in question were made within the ordinary course of trade. In Pipes and Tubes from India the question concerned whether there was a ready market in the standard pipe trade for American Society Testing Materials (ASTM) products compared to Indian Standard pipe. The Department concluded there was not. In the present case, we agree with petitioners that there does appear to be a ready market for ASTM pipe in Korea (*see* the Department's Concurrence Memorandum for this determination, on file in Room B–099 of the main Commerce building). Respondents report many sales of ASTM as being sold in a regular market. The average sales quantity of pipe which respondents call overrun production did not differ significantly from the average sales quantity of other ASTM pipe sold in the home market. Moreover, Hyundai's claims that its ASTM overrun sales were priced consistently below the average price of commercial sales are unsubstantiated. We conclude that sales of ASTM pipe were made in the ordinary course of trade in Korea during the POI; and, based on the similar prices and quantities, respondents' so-called overrun sales were also within the ordinary course of trade. This situation is therefore distinguishable from Pipe and Tubes From India.

Comment 14

Pusan states that its sales of returned goods should be excluded from the Department's margin calculations. Hyundai states that the seven sales of returned goods presented at the outset of verification should be excluded from the Department's margin calculations. These respondents maintain that the first sales of these goods to unrelated customers were made outside the POI. Respondents cite Final Determination of Sales at Less than Fair Value: Polyethelene Terephthalate Film, Sheet, and Strip from Japan, 56 FR 16,300 (April 22, 1991), stating that the Department concluded that sales of returned goods should be excluded because (1) the goods had originally been purchased prior to the POI and (2) a sale can only be examined once. Respondents maintain that the Department has no statutory authority to consider sales that are not within the scope of the investigation. Respondents further contend that, even if the Department should decide not to exclude these sales because they were originally sold before the POI, these sales should not be included in the Department's margin analysis because they are aberrant sales of damaged or defective merchandise.

Petitioners maintain that the Department cannot exclude Pusan's sales of returned goods from the overall margin calculation. Petitioners state that the Department should either make appropriate adjustments to ESP or use BIA to calculate margins for these sales.

Department Position

We agree with these respondents that the small number of sales in question should be excluded from any analysis because of the aberrant nature of these sales or damaged or defective merchandise, as confirmed at verification. Since we have excluded these sales on that basis, we do not needs to address respondents' contentions regarding other bases for excluding the sales.

Comment 15

Petitioners state that Hyundai has not reported in its U.S. sales listing certain purchase price sales that were confirmed on Hyundai's books during the POI, but were not confirmed on the books of Hyundai's U.S. subsidiary until after the POI. Petitioners further state that since Hyundai deliberately withheld this information from the Department, the Department should use as BIA for these sales either the highest margin calculated for any other reported sale or the highest margin listed in the petition.

Hyundai states that it properly reported all U.S. sales. Hyundai notes that petitioners misstated the implication of figures in verification exhibits, and that to properly assess Hyundai's total sales during the POI, it is necessary to take into account the proper dates of sale.

Department Position

We agree with Hyundai that it properly reported its U.S. sales. The Department successfully verified Hyundai's reported sales figures and found no evidence that any sales with dates of sale during the POI had not been reported to the Department.

Comment 16

Petitioners state that the Department should deduct from U.S. price previously unreported discounts revealed at Hyundai's verification.

Hyundai states that it has properly reported to the Department all discounts on its U.S. sales.

Department Position

We have deducted the discounts in question from U.S. price.

Comment 17

Petitioners state that Hyundai failed to include interest expenses for a U.S. subsidiary in its calculation of selling expenses. Petitioners maintain that since there is no detailed information on these expenses, as BIA the Department should allocate all of these expenses to Hyundai's selling expenses. Petitioners also state that Hyundai has failed to include in its selling expenses a portion of the SGA of the corporate headquarters of Hyundai's U.S. subsidiary. Petitioners conclude that, as BIA, all the SGA for that office must be included in Hyundai's selling expenses.

Hyundai states that the Department's verification report contradicts petitioners assertion that Hyundai failed to include any relevant expenses in its indirect selling expenses.

Department Position

We agree with respondent. Our examination of these expenses at verification found no discrepancies. Therefore, we have accepted Hyundai's indirect selling expense calculations as reported.

Comment 18

Petitioners state that the Department found at verification extra shipping charges for certain of KSP's U.S. sales. Petitioners maintain that the Department should ensure that those charges have been included in the ocean freight deduction claimed by KSP.

KSP states that the additional charges for ocean freight have been included, as appropriate, in the ocean freight fields in KSP's sales listing.

Department Position

We agree with respondent. At verification, we confirmed that extra charges incurred on shipments to certain ports located on the Eastern Coast of the United States were included in the ocean freight charges reported by respondent.

Comment 19

Petitioners claim that all of KSP's bank and letter of credit (L/C) charges are direct selling costs associated with the sale, and not indirect selling expenses as claimed by KSP. Petitioners argue that the fact that the charges are incurred by Korea Steel Pipe America (KSPA), a related party to KSP, on ex-dock duty-paid (EDDP) net 30 day sales is irrelevant in determining whether the sales are direct or indirect. Petitioners contend that KSPA is temporarily absorbing the credit costs on behalf of the purchasers and the costs are being passed on to the unrelated purchases in the sales price.

KSP states the charges in question are associated with the transfer of merchandise between related companies, and that consistent Department practice considers any credit-related expenses associated with transfers between related companies as inventory carrying costs.

Department Position

We agree with respondent. These expenses result from intra-company transfers which occurred before the sale to the first unrelated party, and are not directly tied to individual sales to unrelated customers. The Department considers such expenses to be indirect selling expenses. See, e.g., Final Results of Antidumping Duty Administrative Review: Color Television Receivers from Korea, 55 FR 26225 (July 27, 1990). Therefore, we have included these expenses in the total U.S. indirect selling expenses for this determination.

Comment 20

Petitioners state that the Department should make an adjustment to U.S. price for commissions discovered at verification which KSP paid to an employee for all U.S. sales made through KSPA or Certified Pipe and Tube (CPT). Petitioners further state that by failing to report these commissions until the time for submission of new factual information had passed, KSP waived its

right to challenge this item as an adjustment to U.S. price.

KSP contends that (1) the "commissions" in question were on the record prior to verification, (2) the payments in question are not true commissions, and do not vary directly with the quantity or value of particular sales, (3) these payments are made only to KSPA, not to an employee, and (4) these payments are associated with sales of all of KSP's merchandise, not just subject merchandise. KSP concludes that, given the aforementioned facts, these expenses are properly classified as indirect selling expenses.

Department Position

We disagree with both parties. The "Commission Receivable" in question is not a real expense to KSP, but simply an intra-company transfer of funds between KSP and KSPA. No actual expense was incurred by either KSP or KSPA. Therefore, we have made no adjustment.

Comment 21

Petitioners claim that KSP has understated U.S. indirect selling expenses by overstating KSPA's sales during the POI. Petitioners maintain that since KSPA's sales figure is unusable, and since KSP has not placed information on the record permitting the calculation of an accurate figure, the Department should use one half of the KSPA's reported sales for the year 1991 as a BIA figure for sales during the six-month POI.

KSP states that petitioner's claim is disproved by the Department's verification report, the verification exhibits, and KSP previous submissions.

Department Position

We agree with respondent. In its April 10, 1992, submission, KSP explained the methodology it used to allocate indirect selling expenses. Petitioners have failed to convincingly support their claim that KSP has overstated KSPA's sales. We have therefore used KSP's indirect selling allocation as reported.

Comment 22

Petitioners state that KSP has understated ESP charges, such as marine insurance. With respect to marine insurance, petitioners claim that by overstating CPT's profit percentage on sales during the POI, KSP has overstated the factor used to calculate the adjustment, and understated the adjustment for ESP sales.

KSP states that the Department's verification report confirms the correctness of the calculations in question, and that its adjustment factors were based on audited financial statements.

Department Position

We agree with respondent. The elements in question were successfully verified. Therefore, we are accepting the charges in question as reported by KSP.

Comment 23

Petitioners state that the Department should correct several data errors in KSP's most recent sales listing. Petitioners further state that the Department should use BIA to determine margins for ESP sales observations which lack control numbers, and thus have no match offered in KSP's concordance. Petitioners state that Pusan's U.S. sales with control numbers which do not appear in Pusan's product concordance are unmatched to home market sales, and the Department must also use BIA to calculate the margins for those sales.

KSP states that the Department has the information necessary to match the four ESP sales observations for which the control number was inadvertently omitted, and requests that the Department insert the control number for these observations. Pusan states that there is information on the record to correctly match the sales in question, and it requests that the Department do so.

Department Position

Because of the limited nature of the errors, we have corrected the data errors in question, which involve information previously on the record which was inadvertently deleted from these respondents' most recent tape submissions to the Department.

Comment 24

Petitioners state that Pusan's claimed short-term interest rate should be recalculated to exclude overdraft interest rates on a commercial checking account and interest rates which Pusan charges on promissory notes from customers. Petitioners also maintain that Pusan incorrectly calculated its figure for average accounts and notes receivables.

Pusan contends that its short-term interest rate calculation was acceptable, with each item representing a bona-fide short-term financing expense related to the financing of sales. Pusan concludes that its credit calculation was in line with its records and was verified.

Department Position

We agree with respondent. These elements of Pusan interest rate calculation are legitimate short-term financing costs. In particular, petitioners have misstated that Pusan's calculation includes interest rates which Pusan charges on promissory notes from customers. In fact the rates in question are those which Pusan's banks use to discount promissory notes which Pusan receives from its customers, and thus are an accurate reflection of Pusan's short-term financing costs. We have accepted Pusan's short-term interest rate calculation as reported.

Comment 25

Petitioners state that Pusan has improperly included in its claimed home market indirect selling expenses (1) items that are not indirect selling expenses and (2) expenses incurred in selling non-subject merchandise. Petitioners maintain that, based on this incorrect calculation of indirect selling expenses, the Department should deny Pusan's indirect selling expense offset on ESP sales.

Pusan states that all expenses which it included in indirect selling expenses are indirect selling expenses incurred during the POI. Pusan also states that certain expenses, by nature, cannot be identified with a particular product or products, but that all expenses were properly allocated.

Department Position

We agree with respondent. We examined Pusan's indirect selling expense methodology at verification and the elements in question were successfully verified.

Comment 26

Hyundai states that the Department should include its sales to related customers in the calculation of FMV. Hyundai maintains that evidence on the record demonstrates that its sales to related parties were at arm's length, and that any difference in overall pricing to related customers versus pricing to unrelated customers is due to differences in product mix.

Department Position

We disagree with respondent. The Department will not calculate FMV based on sales to related parties unless it is satisfied that such sales are made at arm's length (*i.e.*, at prices equivalent to or above prices charged to unrelated parties). See 19 CFR 353.45(a). The analysis presented by Hyundai in its case brief shows that Hyundai's sales to related parties are at prices below its prices to unrelated parties. While Hyundai attributes this difference in pricing to differences in product mix, this conclusion is unsupported. Indeed,

differences in product mix, which Hyundai's calculations have failed to take into account, could just as easily be masking larger pricing differentials between sales to related and unrelated customers. Given the unconvincing analysis performed by Hyundai, we find no reason to consider its home market sales to related customers to be at arm's length. We have only compared Hyundai's U.S. sales to sales to unrelated customers in the home market.

Comment 27

Masan states that the Department must make allowances for differences in the quantities of comparison merchandise sold in individual transactions in the U.S. and third country markets.

Department Position

We agree with Masan that the Department's regulations require the Department to compare sales of comparable quantities and to make reasonable allowances where price differentials result from differences in quantities. See 19 CFR 353.55. However, Masan presented no information in its questionnaire response, and indeed has presented no detailed information whatsoever, to justify or quantify any adjustments for quantity differences. Furthermore, Masan's arguments in its brief cite quantities of pipe with different surface finishes and/or end finishes sold in the U.S. and in its third country market, but the Department must match merchandise based on similarity in physical characteristics before considering comparability of sales quantities.

Comment 28

Masan states that the Department should make sales comparisons at comparable levels of trade in the U.S. and third country markets or, where that is not possible, make adjustments for differences in trade levels affecting price comparability.

Department Position

We agree with Masan that its sales comparisons should be made at comparable levels of trade, and we have done so. However, in those instances where sales comparisons at comparable levels of trade in the U.S. and third country markets were not possible, Masan has presented no detailed information to support its reported adjustment for sales comparisons at different levels of trade. Therefore, we have made no additional adjustments to Masan's prices for claimed differences in levels of trade.

Cost Issues

Comment 29

Petitioners contend that the Department should either base costs on those used by the respondents to value inventory or increase the submitted costs by an adjustment factor. They state that methodologies used by the respondents deviated significantly from their normal cost accounting procedures, and contend that the methodology used by respondents shifted costs to products which were not subject to investigation.

Respondents state that any deviations from their normal accounting systems were not significant and were explained. Respondents contend that they proved that total costs were reflected in their questionnaire responses, and state that a comparison of inventory values and submitted costs is not relevant.

Department Position

We agree with respondents. The submitted cost methodology did not deviate significantly from the systems used in their normal accounting records. The instances where respondents did deviate from their normal accounting systems were appropriate to comply with the reporting requirements. Furthermore, we have no evidence that costs were shifted to products not covered by the investigation.

Comment 30

Petitioners contend that costs were understated because of the methodology used to account for second-grade pipe. Petitioners state that since the respondents are in business to produce and sell standard grade pipe, all manufacturing cost should be allocated to its production. Petitioners claim that this second-grade pipe is a by-product of prime grade standard pipe, and thus the costs associated with producing the two should be allocated differently. Any revenues earned on the sale of by-products should be treated as an offset to the cost of producing the standard grade product. Petitioners contend that the second-grade pipe is not a co-product because there is no distinct and developed market.

Respondents argue that the statute directs the Department to value prime and second-grade pipe equally. Respondents claim that they expend the same material, capital, labor and overhead for both grades of pipe and therefore costs should be allocated in such a manner. Respondents state that second grade pipe is different from scrap in that scrap is what is left over as waste while second grade pipe is counted as a product. Respondents argue that existence of separate sub-market is irrelevant.

Department Position

We agree with respondents. In this case, the so-called second-grade pipe consisted of overruns and pipe not meeting specification. The costs incurred to produce this pipe have been directly identified to this type of pipe. This methodology is consistent with the Department's treatment in other similar cases and has been upheld by the Court of International Trade. See *IPSCO, Inc.* v. *United States*, Slip Op. 91-1236, -1257 (Fed. Cir. June 6, 1992).

Comment 31

Petitioners contend that total duties paid should be allocated to home market production costs, since any duty paid on exported products is rebated upon exportation. Petitioners state that total duties paid should be divided only by the cost of materials used in domestically-sole and duty paid exported merchandise, and not by the total cost of materials for all domestically-sold and duty paid exported products. Petitioners state that using total material costs in the denominator understates the per unit duty costs. Petitioners also claim that duty costs and duty drawback amounts should be exactly correlated since Korean law only allows for the rebate of duties up to the amount of duty costs.

Respondents argue that their methodology of allocating total duty costs over total purchases of domestic and import material is appropriate. Respondents state that this methodology supports the Department's practice of calculating identical costs for identical products sold in export and domestic markets. Respondents also argue that the antidumping laws and Department practice do not require that duty costs claimed on raw materials mirror duty drawback claims.

Department's Position

The Department requested that respondents report CV exclusive of import duties, as any duty paid on materials would have been refunded upon exportation. Rather than comply with the Department's request, respondents submitted CV inclusive of duty. However, respondents did not provide their information to the Department in a manner which identifies the amount of duty reported in the material cost of the specific pipe, thus making it impossible for us to exclude the duty from the reported CV. As BIA, the Department used the costs submitted by the respondents, which

included duty. However, also as BIA, we did not adjust USP for duty drawback when compared to CV.

Comment 32

Petitioners, asserting that Hyundai's material costs for galvanized pipe are understated, contend that the "ground-up" methodology used by Hyundai was unrealistic in that total zinc physically incorporated plus zinc recovered actually exceeded total zinc consumed.

Hyundai argues that the galvanization costs were based on actual costs from the financial records and allocated to the products on the basis of total standard usage. Hyundai maintains that all costs were absorbed and that the allocation was made on a consistent basis.

Department Position

We agree with respondent. During verification we reviewed the allocation methodology used by Hyundai and found that it adequately captured costs for the galvanizing process. The zinc costs reported in their financial records were properly allocated to each model.

Comment 33

Petitioners assert that Hyundai understated its depreciation costs in the submission by not basing them on the revalued balances of its fixed assets as reflected in the financial statements.

Hyundai argues that calculating depreciation costs based on the revalued basis is distortive and contrary to U.S. Generally Accept Accounting Principles (GAAP). Hyundai contends that the Department's past precedent dictates that depreciation on a revalued basis is warranted only in cases of hyperinflation, and that aside from hyperinflationary economies, historical costs provide the most accurate method of recording true depreciation cost.

Department Position

We agree with petitioners. In general, the Department adheres to an individual firm's recording of costs in accordance with the GAAP of its home country when the Department is assured that foreign GAAP accurately recognizes the actual costs incurred by that company. See, *e.g.*, Final Determination of Sales at Less Than Fair Value: Small Business Telephone Systems From Korea, 54 FR 53141 (December 27, 1989). We find in this case that Hyundai's financial statements were prepared in accordance with Korean GAAP using a revaluation of its fixed assets. In their submissions, however, Hyundai deviated from its own accounting practice by reporting depreciation on a historical cost basis. Although in the United States assets are not normally revalued, U.S. GAAP states that when fixed assets are written up to market or appraisal value, the depreciation should be based on the written-up amount (ARB–43). Therefore, we consider revaluation to be an accurate methodology for valuing depreciation, and we have relied on it for purposes of this investigation.

Comment 34

Petitioners assert that Hyundai and KSP should not have used rental income and proceeds from the sale of scrap to offset G&A expenses.

Hyundai and KSP argue that since the depreciation expense associated with the rental units was included as part of the total G&A expense, the income associated with it should be used as an offset. Hyundai further argues that the sale of scrap was derived from various items used in the factory, and accordingly should be offset against production costs.

Department Position

We agree with petitioners with respect to rental income. The rental income is derived from activities unrelated to the production of the subject merchandise. Accordingly, we did not reduce G&A by the amount of this income. We also did not include the depreciation costs associated with this activity. With regard to the sale of scrap, however, the Department verified that this income was derived from general operation of the factory. Therefore, we reduced the submitted costs by the amount of scrap income.

Comment 35

Petitioners assert that KSP overstated the amount of zinc recovered in the production process. Petitioners contend that KSP's methodology ignored the fact that in any galvanization process, a significant quantity of zinc is lost in the pot as zinc dust.

KSP argues that its methodology provided for the total absorption of zinc costs and included both usage and recovery.

Department Position

We agree with KSP. During verification, the Department examined the zinc costs included in the submission and concluded that zinc costs were fully allocated to COP and CV.

Comment 36

Petitioners asset that KSP's interest expense should not be offset with interest income from long-term bonds.

KSP argues that the Department should include the interest from corporate bonds as short-term interest income. KSP contends that income is earned on this investment every three months and, accordingly, is short-term in nature.

Department Position

We agree with petitioners. The fact that income was received every three months on this investment does not necessarily dictate that this income was derived from a short-term investment. Indeed, during verification, the Department noted that this income was derived from investments that were held longer than one year. In accordance with our well-established practice of not including interest income earned from long-term investments, we did not offset the submitted costs with this interest income. See, *e.g.*, Final Determination of Sales at Less Than Fair Value: Sweaters of Man-Made Fibers From Korea, 55 FR 32659 (August 10, 1990).

Comment 37

Petitioners contend that the Department should increase Pusan's process costs for costs included in the financial statements but not reflected in the submission. Petitioners state that it is more appropriate to use year-end adjusted costs than the monthly amounts because these costs reflect adjustments which relate to the cost of the subject merchandise.

Pusan contends that the majority of the depreciation costs relate to non-subject merchandise. Pusan also contends that the difference in the year-end amount and the submitted amount does not result from a year-end adjustment, but rather from a change in the monthly cost. Pusan also contends that the Department should adjust insurance and labor entitlement costs as the amount in the submission was estimated as part of the year-end adjustment.

Department Position

We agree with petitioners. While Pusan recorded year-end adjustments in months outside the POI, these costs relate to all months during the year, including the POI. Accordingly, we recalculated Pusan's data to include these costs. We have no evidence that these costs relate to non-subject merchandise.

Comment 38

Petitioners argue that the Department should revise Pusan's submitted G&A expense to exclude income from activities unrelated to the subject merchandise. Petitioners state that dividend income from stock investments

should be considered long term in nature. Furthermore, petitioners argue that dividend income is not related to current operations as this activity is entirely unrelated to manufacturing operations.

Pusan argues that the dividend income was derived from short-term investments in stocks. Pusan argues that these investments are similar to short-term certificates of deposit which the Department allows as an offset to interest expense. Pusan also argues that the commission income relates to income items whose costs were included in general expenses and therefore should be allowed as reduction to costs.

Department Position

We agree with petitioners. The Department did not reduce costs by including income derived from activities unrelated to the production of the subject merchandise. Dividend income differs from interest income earned from investment of working capital in short-term investments because dividend income represents income from an investment activity unrelated to the production of the subject merchandise. The commission income relates to various activities unrelated to the production of the subject merchandise. Accordingly, we did not reduce the submitted costs by this income. The expenses associated with commission income were not separately identified by Pusan, so the Department had no means to identify and exclude these costs.

Continuation of Suspension of Liquidation

We are directing the Customs Service to continue to suspend liquidation of all entries of circular-welded non-alloy steel pipe that are entered, or withdrawn from warehouse, for consumption on or after April 28, 1992, the date of publication of our preliminary determination in the **Federal Register**. The Customs Service shall require a cash deposit or bond equal to the estimated amount by which the FMV of the merchandise subject to this investigation exceeds the U.S. price, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Producer/manufacturer/exporter	Weighted-average margin percentage
Hyundai Steel Pipe Co., Ltd	5.80
Korea Steel Pipe Co., Ltd	6.21
Masan Steel Tube Co	11.63
Pusan Steel Pipe Co., Ltd	4.91
All Others	5.97

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: September 10, 1992.

Rolf Th. Lundberg, Jr.,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-22561 Filed 9-16-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-201-805]

Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe From Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 17, 1992.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-4136, or (202) 377-1769, respectively.

Final Determination

We determine that circular welded non-alloy steel pipe (standard pipe) from Mexico is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the issuance of our notice of preliminary determination (57 FR 17868 (April 28, 1992)), the following events have occurred:

Based on the April 28, 1992, request of HYLSA, S.A. de C.V. (Hylsa), a respondent in this investigation which accounts for a significant proportion of exports of the subject merchandise from Mexico, we postponed the final determination until September 10, 1992 (57 FR 22208 (May 27, 1992)).

We received requests for a public hearing from petitioners on May 5, 1992 and from Hylsa and Industrias Monterrey, S.A. (IMSA), another Mexican producer and exporter of the subject merchandise, on May 8, 1992. Sales verification took place on May 18-20, 1992, at Hylsa's Tubular Products division headquarters in Monterrey, N.L., Mexico.

Hylsa submitted revisions and corrections to its antidumping questionnaire responses during May 1992, and submitted revised computer tapes incorporating these changes and verification findings on June 5, 1992.

Petitioners, Hylsa and IMSA filed case briefs on June 17, 1992, and rebuttal briefs on June 24, 1992. A public hearing was held on June 26, 1992.

Scope of Investigation

The merchandise subject to this investigation is circular welded non-alloy steel pipes and tubes, of circular cross-section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, bevelled end, threaded, or threaded and coupled). Those pipes and tubes are generally known as standard pipe, though they may also be called structural or mechanical tubing in certain applications. Standard pipes and tubes are intended for the low pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing and mechanical applications, such as for fence tubing, and for protection of electrical wiring, such as conduit shells.

The scope is not limited to standard pipe and fence tubing, or those types of mechanical and structural pipe that are used in standard pipe applications. All carbon steel pipes and tubes within the physical description outlined above are included within the scope of this investigation, except line pipe, oil country tubular goods, boiler tubing, cold-drawn or cold-rolled mechanical tubing, pipe and tube hollows for

redraws, finished scaffolding, and finished rigid conduit. Standard pipe that is dual or triple certified/stenciled that enters the U.S. as line pipe of a kind used for oil or gas pipelines is also not included in this investigation.

Imports of these products are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50,85, and 7306.30.50.90.

Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation (POI) is April 1, 1991, through September 30, 1991.

Such or Similar Comparisons

We have determined that all the products covered by this investigation constitute a single category of such or similar merchandise. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we made similar comparisons on the basis of: (1) Commercial or industry grade/classification; (2) nominal pipe size; (3) wall thickness; (4) surface finish or coating; and (5) end finish. We made adjustments for differences in the physical characteristics of the merchandise in accordance with section 773(a)(4)(C) of the Act.

Fair Value Comparisons

To determine whether sales of standard pipe from Mexico to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

We calculated USP using the methodology described in the preliminary determination.

Foreign Market Value

In accordance with section 773(a)(1) of the Act, we found that the home market was viable for sales of standard pipe. We calculated FMV using the methodology described in the preliminary determination. Based on Hylsa's questionnaire response revisions and information developed at verification, we made the following changes from the preliminary determination:

We made no deduction for co-export program rebates on those sales where this rebate was granted since this discount is already reflected in the gross unit price reported to the Department.

We did not recalculate credit expenses in either market because the revised sales listings included reported credit expenses which correctly accounted for all expenses borne by Hylsa prior to customer payment.

We made an additional circumstance of sale adjustment for differences in warranty expenses, which were not reported prior to the preliminary determination.

We compared U.S. sales to home market sales without regard to level of trade, with the exception of home market sales to retailers, which we have excluded from our analysis. See Comment 3.

Currency Conversion

No certified rates of exchange, as furnished by the Federal Reserve Bank of New York, were available for the POI. In place of the official certified rates, we used the average monthly or elected not to participate or whose questionnaire response was deemed insufficient, as in, *e.g.*, Final Determination of Sales at Less than Fair Value: Silicon Metal from Brazil, 56 FR 26977 (June 12, 1991), IMSA contends that it should be assigned the "all others" deposit rate.

Petitioners contend that the Department's resort to BIA was justified as IMSA was clearly aware that it had been chosen as a mandatory respondent on the day the questionnaire was presented. Petitioners cite the Department's Memorandum to the File of December 6, 1992, which indicates that IMSA understood its classification as a mandatory respondent at the time it received the questionnaire. Further, petitioners argue that it was within the Department's power and discretion to name IMSA as a mandatory respondent.

DOC Position

The Department has reconsidered its earlier classification of IMSA as a mandatory respondent and has assigned it the "All Others" rate. At the time of the preliminary determination, the Department was reassessing its policy regarding the treatment of voluntary respondents. At that time, we stated that once a company notified us of its intention to participate, it would be subject to the potential use of BIA if it failed to cooperate. We have since refined the policy. Accordingly, as previously announced, in all ongoing and future proceedings, once a voluntary respondent is provided an antidumping duty questionnaire by the Department and demonstrates its intent to participate in an antidumping investigation by submitting a quarterly exchange rates published by the International Monetary Fund.

Verification

As provided in section 776(b) of the Act, we verified information provided by respondent by using standard verification procedures, including the examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

Interested Party Comments

Comment 1

IMSA objects to its classification as a mandatory respondent in this investigation, which resulted in ISMA's preliminary determination margin being based on best information available (BIA) following IMSA's decision not to submit a questionnaire response. IMSA states that there is no reason given in the record of this case why the Department decided to reclassify it from a voluntary to a mandatory respondent in this case. IMSA notes that examination of its exports to the U.S. was not necessary in order for the Department to examine at least 60 percent of POI subject merchandise sales, pursuant to 19 CFR 353.42(b). Without any other grounds in the record for this reclassification, IMSA contends that, under the regulations and consistent agency practice prior to the preliminary determination, IMSA should not be considered a mandatory respondent in this investigation. Consistent with Department treatment of other proceedings where a voluntary respondent has response to the questionnaire, the Department will treat that respondent on the same basis as a mandatory respondent in all respects, including the potential use of adverse BIA. See Addendum to Notice of Initiation: Certain Flat-rolled Steel Products from Various Countries, 57 FR 33487 (July 29, 1992).

Comment 2

Hylsa claims that, because it grants quantity discounts to at least 20 percent of its sales to home market customers, which are categorized as "Class 1 customers", all U.S. sales should be compared to home market Class 1 sales as these home market transactions meet the quantity discount criteria of 19 CFR 353.55(b).

Petitioners contend that the Department properly rejected this argument in the preliminary determination. They state that Hylsa has turned the regulation on its head and would have the Department

compare the prices on sales of completely different quantities. Based on its reading of the statute, petitioners state that sales at quantity discounts shall be the sole basis of foreign market value only when all the sales in the U.S. market are made in comparable quantities. In this case, not all U.S. sales are made in those comparable quantities. Petitioners also argue that Hylsa's claimed home market quantity discounts are not quantity discounts within the meaning of 19 CFR 353.55(b), as they are based on purchase volume expectations rather than quantities of specific sales.

DOC Position

We agree with petitioners. First, Hylsa's claimed home market quantity discounts are not quantity discounts within the meaning of 19 CFR 353.55. Adjustments for quantity discounts under the regulation are based on the premise that higher volume sales lead to cost savings on each individual sale used to establish FMV. See, *e.g.*, Final Results of Antidumping Duty Administrative Review; Color Television Receivers from the Republic of Korea, 55 FR 26225 (June 27, 1990). Hylsa's quantity discounts, in contrast, are based on cumulative sales, without regard to the volume of individual sales. Second, even if Hylsa had established the requisite quantity discounts, we do not interpret 19 CFR 353.55(b), when read in conjunction with 19 CFR 353.55(a), to mean that simply because a respondent may grant quantity discounts on 20 percent or more of its home market sales, only those sales should be the basis of comparison to 100 percent of U.S. sales. Rather, as petitioners note, such a comparison is inappropriate for those U.S. sales made in smaller quantities than the discounted home market sales.

Comment 3

Hylsa contends that, while it has identified its home market customers as functioning as either industrial end users, distributors, or retailers, the Department should consider industrial end users and distributors as a single level of trade, since these two categories are not generally distinguished and some customers act in both functions. As there are no sales to retailers in the U.S., Hylsa asserts that home market sales to retailers should be excluded from comparison. Hylsa adds that, if industrial end users and distributors are considered to be separate levels of trade, the Department should compare U.S. distributor sales to home market Class 1 distributor sales, and U.S. industrial end user sales to home market Class 1 industrial end user sales.

Petitioners agree with Hylsa that home market sales to retailers should be excluded from comparison, and that distributors and industrial end users should be considered a single level of trade. Petitioners add that these functional classifications are based only on Hylsa's perceptions of the use which the purchaser makes of the majority of the purchased products. They do not agree with limiting home market comparisons to Class 1 sales for the reasons stated in Comment 2.

DOC Position

We agree that different levels of trade exist between sales to retailers and sales to industrial end users and distributors. Since no sales were made to retailers in the U.S. market, we have excluded home market retailer sales from comparison. For the final determination, we have treated the remaining functions as a single level of trade in both markets. While Hylsa was able to identify these customers as either distributors or end-users, it has reported from the outset that some of its customers act in both distributor and industrial end user functions, thus blurring the distinction between these categories. The fact that some purchasers are classified based on what is sold to their corporate affiliates, rather than the purchaser itself, further demonstrates that distributors and industrial end users are not sufficiently distinct from each other to be considered as separate levels of trade.

Comment 4

Hylsa contends that, like a duty drawback, the steel supplier rebate increases Hylsa's revenues on each export sale on a sale-specific basis, in an amount that was predictable at the time Hylsa entered into each export transaction, and thus is directly related to individual export sales. Accordingly, Hylsa asserts that it is entitled to a circumstance of sale adjustment for the rebate amount. Hylsa continues that this adjustment is necessary in order to achieve a fair comparison under the antidumping statute, stating that the steel supplier rebate is economically identical to duty drawback. To deny an adjustment here would make the antidumping margins depend on the accident of where the exporter happened to choose to purchase inputs for the particular export sales. Hylsa also takes issue with the Department's rejection of this type of adjustment in two recent cases, Final Results of Antidumping Administrative Review: Certain Welded Carbon Steel Standard Pipes and Tubes from India, 56 FR 64753 (December 12, 1991) ("India Pipes"), and Final Results of Antidumping Administrative Review: Light-Walled Rectangular Carbon Steel Tubing from Taiwan, 56 FR 26382 (June 7, 1991) ("Taiwan Tubing"), where the Department distinguished between circumstances related to production and circumstances related to sale. Hylsa argues that both the courts and the Department have recognized that adjustments are appropriate for programs that have nothing to do with marketing practices. In addition, Hylsa asserts that, as the steel supplier rebate is paid as a result of the act of exportation, and not as a result of production, it should be treated as a circumstance of sale much as a royalty is paid for production technology but determined based on sale amounts.

Petitioners cite India Pipes and Taiwan Tubing as the basis for their objection to granting an adjustment for Hylsa's steel supplier rebate. They note that, since the purpose of the rebate program is to minimize the difference between domestic and international steel prices used to produce the subject merchandise, the rebate results in a difference in production costs, not selling costs, and therefore does not qualify as a circumstance of sale under the regulations. Petitioners also assert that the steel supplier rebate and other dual pricing schemes are different from duty drawback programs in purpose, operation, and effect, noting the Department's rejection of this comparison in Taiwan Tubing and, in contrast, that the use of duty drawback programs is specifically recognized in the General Agreement on Tariffs and Trade (GATT).

DOC Position

The Department's opinion on this issue has been detailed in India Pipes and Taiwan Tubing and Hylsa has not offered a sufficient basis for us to overturn these recent determinations. Hylsa's steel supplier rebate is akin to the IPRS scheme in India Pipes. As such, this rebate program does not qualify for a circumstance of sale adjustment because it reflects a cost adjustment to the price of material inputs used in production, rather than a difference in selling expenses. Adjustments for circumstances of sale are, by definition, limited to consideration of a seller's marketing practices and expenses, and are unaffected by conditions affecting production.

Comment 5

Petitioners argue that, consistent with the decision in *LMI-La Metalli Industriale, S.p.A.* v. *United States*, 912 F.2d 455, 460 (Fed. Cir. 1990) (*LMI*), in the absence of actual borrowings in the home market currency, the Department should use the actual borrowings in U.S. currency to calculate home market credit expenses for the final determination in order to reflect commercial reality.

Hylsa states that, although it did not have any peso-denominated borrowings, its corporate parent did. Further, since its home-market customers paid in pesos, its imputed credit expense must also be measured using a Mexican-peso interest rate which will reflect the Mexican peso inflation rate.

DOC Position

In order to reflect "usual and reasonable business behavior," as LMI requires, we are using the reported Mexican peso interest rate to impute home market credit expenses. While Hylsa did not borrow in Mexico during the POI, it has demonstrated access to Mexican peso financing and reported an interest rate consistent with that situation. Furthermore, because Hylsa's home market sales also were made in pesos, we believe it appropriate here to impute an interest rate based on that currency rather than apply an interest rate tied to the U.S. dollar to sales made in pesos. LMI is not to the contrary. It does not direct the Department simply to use the lowest interest rate available to a respondent, regardless of the market. LMI also does not suggest that we disregard the currency in which the credit expense is imputed, as petitioners would have us do. Indeed, in *United Engineer & Forging* v. *United States*, 779 F.Supp. 1375 (CIT 1991), the Court of International Trade (CIT) acknowledged that the Department is not limited to a comparison of the rates of interest in the home market and the U.S. market when deciding how to impute credit expenses, but may consider other factors that likely affect a rational borrower's selection of financing.

Comment 6

Petitioners claim that the Department must determine the amount of the Mexican value-added tax (VAT) passed through to Hylsa's home market customers before making an adjustment. Petitioners cite *Zenith Electronics Corp.* v. *United States*, 633 F.Supp. 1382 (CIT 1986) (Zenith), and *Daewoo Electronics Co.* v. *United States*, 712 F.Supp 931 (CIT 1989) (Daewoo), to support their contention that 19 USC 1677a(d)(1)(C) requires the Department to analyze the incidence of the VAT to determine the amount that is actually passed through to consumers in the home market.

Hylsa states that this argument has been consistently rejected by the Department. As discussed in such proceedings as Final Results of Administrative Review: Color Television Receivers from Taiwan, 56 FR 65218 (December 16, 1991), the Department has indicated that it does not agree with this interpretation of the statute. For this determination, Hylsa argues that the Department should continue to reject this argument.

DOC Position

We do not agree with the CIT's decisions in Zenith and Daewoo, but have not had an opportunity to appeal this issue. Therefore, consistent with our long-standing practice, we have not attempted to measure the amount of tax incidence in the Mexican home market. We do not agree that the statutory language, limiting the amount of adjustment to the amount of commodity tax "added to or included in the price" of standard pipe sold in the Mexican home market, requires the Department to measure the home market tax incidence. See, *e.g.*, Final Results of Antidumping Administrative Review; Color Television Receivers, Except for Video Monitors, from Taiwan, 57 FR 20241, 20242 (May 12, 1992).

Comment 7

Petitioners claim that the Department failed to correctly subtract a portion of freight expenses in both markets for the preliminary determination margin calculations. Petitioners also claim that the Department incorrectly accounted for these expenses in its credit calculations.

Hylsa explains that petitioners apparently misunderstand Hylsa's reporting of freight expenses. The expenses that they discuss were not incurred by Hylsa because they are not included in the gross price. Hylsa bills its customers separately for these expenses. Additional freight expenses which were not covered by the invoiced freight amount were reported separately and correctly accounted for in the preliminary determination. Thus, Hylsa contends that no further adjustments need to be made. Similarly, in the credit calculation, the imputed credit on the additional freight is already included as part of the gross unit price base. Hylsa adds that including the freight charges due from the customer in the credit base is proper because they are part of the total amount due from the customer.

DOC Position

We agree with Hylsa. All freight expenses in both markets were correctly accounted for in calculating USP and FMV, and were also properly included in the gross price base for credit calculations.

Comment 8

Petitioners claim that the Department failed to add U.S. credit expenses to FMV and must do so for the final determination. They also claim that the Department incorrectly failed to deduct U.S. credit expenses from the U.S. price.

Hylsa asserts that this expense was correctly added to FMV in the Department's preliminary determination computer program. In doing so, Hylsa states that the Department followed standard purchase price methodology, where U.S. credit expenses are not deducted from USP, but are added to FMV, in accordance with the Department's Study of Antidumping Adjustments Methodology and Recommendations for Statutory Change (November 1985). Hylsa further notes that petitioners' allegations in this regard are inconsistent, since to deduct U.S. credit expenses from USP and also to add them to FMV would result in a double-counting of these expenses.

DOC Position

We agree with Hylsa. U.S. credit expenses have been properly treated by adding them to FMV.

Comment 9

Petitioners contend that the Mexican VAT should not be included in the gross price base used to calculate credit expenses because they claim Hylsa does not incur the credit expense until Hylsa pays the government. They state that, since Hylsa has not demonstrated that it has extended credit to its customers on the VAT amount, the Department should not include VAT in the credit calculation base price.

Hylsa responds that it extends credit on the VAT amount since it is part of the invoice total. Therefore, it is appropriate to include this amount in the credit base since it properly reflects the opportunity cost incurred by Hylsa.

DOC Position

We agree with Hylsa. As above with respect to the separately-invoiced freight expenses (Comment 7), while Hylsa's customers pay Hylsa the full amount of the assessed VAT, the customers do not pay it for the imputed opportunity cost Hylsa incurs on that invoiced item from the time of shipment until the time of payment. Therefore,

this amount is properly included in the credit expense calculation base.

Continuation of Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of standard pipe that are entered, or withdrawn from warehouse, for consumption on or after April 28, 1992, the date of publication of our preliminary determination in the **Federal Register**. The Customs Service shall require a cash deposit or bond equal to the estimated amount by which the FMV of the merchandise subject to this investigation exceeds the U.S. price, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Producer/manufacturer/exporter	Weighted-average margin percentage
HYLSA, S.A. de C.V.	32.62
All Others	32.62

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.35(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: September 10, 1992.

Rolf Th. Lundberg, Jr.,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-22562 Filed 9-16-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-485-802]

Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe From Romania

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 17, 1992.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-4136, or (202) 377-1769, respectively.

Final Determination

We determine that circular welded non-alloy steel pipe (standard pipe) from Romania is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the issuance of our notice of preliminary determination on (57 FR 17890 (April 29, 1992)), the following events have occurred:

Based on the April 29, 1992, request of Metalexportimport, S.A. (MEI), the respondent in this investigation, we postponed the final determination until September 10, 1992 (57 FR 22208 (May 27, 1992)).

We received requests for a public hearing from MEI on April 23, 1992, and from the petitioners on May 5, 1992.

Petitioners and MEI filed case briefs on July 13, 1992, and rebuttal briefs on July 20, 1992. A public hearing was held on July 22, 1992.

Scope of Investigation

The merchandise subject to this investigation is circular welded non-alloy steel pipes and tubes, of circular cross-section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, bevelled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipe, though they may also be called structured or mechanical tubing in certain applications. Standard pipes and tubes are intended for the low pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing and mechanical applications, such as for fence tubing, and for protection of electrical wiring, such as conduit shells.

The scope is not limited to standard pipe and fence tubing, or those types of mechanical and structural pipe that are used in standard pipe applications. All carbon steel pipes and tubes within the physical description outline above are included within the scope of this investigation, except in line pipe, oil country tubular goods, boiler tubing, cold-drawn or cold-rolled mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished rigid conduit. Standard pipe that is dual or triple certified/stenciled that enters the U.S. as line pipe of a kind used for oil or gas pipelines is also not included in this investigation.

Imports of these products are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90.

Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation (POI) is April 1, 1991, through September 30, 1991.

Fair Value Comparisons

To determine whether sales of standard pipe from Romania to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

We calculated USP using the methodology described in the preliminary determination.

Foreign Market Value

As discussed in the preliminary determination, we calculated FMV using a factors of production methodology under Section 773(c)(1) of the Act. Romania is considered a nonmarket economy country (NME).

Surrogate County

Section 773(c) of the Act requires the Department to value the factors of production, to the extent possible, in one or more market economy countries that are at a level of economic development comparable to that of the NME and that are significant producers of comparable merchandise. As discussed in the preliminary determination, the Department determined that Thailand, Turkey, Argentina, Malaysia, and Chile are the most comparable to Romania in terms of overall economic development,

based on per capita gross national product (GNP), the national distribution of labor, and growth rate in per capita GNP. Of the countries that are comparable to Romania and produce comparable merchandise, Thailand is the most comparable and therefore is the preferred surrogate country for purposes of valuing the factors of production used in producing the subject merchandise. See also Comment 1. Where Thai factor values were not available, we used available data from the next most comparable surrogate country.

We calculated FMV in the same manner as in the preliminary determination with the following exceptions:

Hot-rolled steel and scrap steel unit values were updated based on publicly available statistical data for Thailand for the POI, rather than for 1990, as utilized in the preliminary determination. In addition, we excluded statistical data for Japanese and Taiwanee hot-rolled steel imports, as discussed in Comment 4.

We used a methane value based on publicly available data for Argentina, instead of a value obtained from the U.S. Embassy in Turkey, as discussed in Comment 8.

The selling, general and administrative (SG&A) expense ratios derived from Thai experience were recalculated to exclude the Thai domestic business tax included in the amounts used in the original calculation. Because the recalculated SG&A ratio applied to certain products is below the statutory minimum of 10 percent, we are using the statutory minimum for those products. See Comment 9.

Currency Conversion

When calculating FMV, we made currency conversions in accordance with 19 CFR 353.60(a). For conversions from Thai currency, we used the official exchange rates as certified by the Federal Reserve Bank.

Interested Party Comments

Comment 1

MEI argues that Indonesia, rather than Thailand, is the appropriate surrogate county for purposes of calculating FMV. MEI bases its assertion on the comparison of Romania's 1991 per capita GNP estimates to Indonesia's per capita GNP which, it contends, shows that Indonesia is the most comparable country.

Petitioners support the continued use of Thailand as the surrogate country. Petitioners contend that a change to Indonesia at this point is untimely and inappropriate. Moreover, petitioners note that Indonesia was not among any of the proposed surrogate countries cited in the Department's surrogate country selection memorandum of December 3, 1991, as prepared by the Department's Office of Policy. Citing Final Results of Administrative Review: Antifriction Bearings (Other-than Tapered Roller Bearings) and Parts Thereof from France et. al.), 57 FR 28422 (June 24, 1992) (AFSs), petitioners maintain that the Department may only select a surrogate country from the list of surrogates provided by the Department's Office of Policy.

DOC Position

The Department continues to hold that Thailand is the most appropriate surrogate country for this investigation, based on the reasoning detailed in the surrogate country selection memorandum of December 3, 1991. Our reasons for selecting Thailand were further detailed in a February 10, 1992 memorandum, in which we pointed out that the information now cited by MEI to support its position was inconsistent with other data on the Romanian economy.

As the February 10 memorandum points out, the price inflation in Romania during October 1990–June 1991 far exceeded the decline in Romanian output, making extremely unlikely a decline in Romania's nominal (*i.e.*, as expressed in current Romanian lei) GNP. Given this fact, it is reasonable to reject respondent's claim, which is based on an income estimate that implies an absolute decline in Romania's lei GNP over the 1990–1991 period. The "low", lei-denominated income estimate on which MEI's claim is based is not a nominal income figure; most likely it has been "deflated" (*i.e.*, adjusted downward for inflation). Using a deflated income estimate and a dollar-lei market exchange rate, which itself reflects the inflation in Romania, results in a double discounting of Romanian GNP for inflation. It is this double counting that makes MEI's estimate unacceptable; it is also this double counting that explains why MEI's income estimate is so low relative to the Department's estimate.

Comment 2

MEI objects to the use of data from Foreign Trade Statistics of Thailand (FTST) for calculating the Thai surrogate value of hot-rolled steel material inputs. Thailand is not a producer of hot-rolled steel coil and, citing Final Determination of Sales at Less than Fair Value: Urea from Romania, 52 FR 19553 (May 26, 1987) and Final Determination of Sales at Less than Fair Value: Urea from the German Democratic Republic, 52 FR 19549 (May 26, 1987), MEI contends that the Department must select a surrogate country that is a producer of key inputs. As Thailand is not a producer of hot-rolled steel, MEI holds that the Department has inherently biased the calculation of this key surrogate value by using values derived from import values of merchandise imported from Japan, Korea, and Taiwan. Nevertheless, if Thai prices are to be used as the basis for the surrogate value of hot-rolled steel, MEI objects to the use of FTST data for steel inputs because the unit value is derived from "basket" Thai HTS categories that include higher value pickled or patterned-in-relief steel, in addition to the basic, commodity grade hot-rolled steel used by the Romanian manufacturer, Tepro, S.A. (Tepro). Accordingly, MEI contends that this surrogate value should be calculated based on the specific type of steel used by Tepro, which is not possible with the FTST data. As its preferred alternative, MEI proposes the use of unit values derived from the European Economic Community (EEC) Export Statistics of shipments to Thailand. MEI states that this data is superior to FTST data because the trade statistics are classified in such a way as to allow calculation of a unit value based on the specific type of steel used by Tepro.

Petitioners argue that the Department was correct to use FTST data to value hot-rolled steel since they are public, published data and thus, citing Final Determination of Sales at Less than Fair Value: Butt-Weld Pipe Fittings from the People's Republic of China, 57 FR 21058 (May 18, 1992), (PRC Pipe Fittings), the preferred source for factor valuation purposes. Petitioners also contend, citing the same case, that even if the FTST data were based on basket categories, the Department's continued use of these data would be in keeping with its practice of preferring the use of basket categories from the surrogate country over other sources of data.

Doc Position

Section 773(c)(4) of the Act only requires the Department to select a surrogate country that is a significant producer of comparable merchandise, and does not require that the country also produce the inputs for manufacturing that merchandise. Accordingly, we determine that it is proper to value hot-rolled steel based on Thai prices.

As we stated in PRC Pipe Fittings, our preference is to calculate a surrogate value based on published, publicly

available data in the first choice surrogate country. The FTST data are exactly the sort of data that meet this criterion. The import categories used for hot-rolled steel are sufficiently specific to cover the type of steel used by Tepro for its subject merchandise production. Further, unlike the EEC data, FTST data account for all of Thailand's imports during the period of time covered by the data. While also publicly available and perhaps more specific with respect to the type of steel covered, the EEC data are inferior to the FTST data because they only cover a fraction—around five percent—of the steel imported into the Thai market. In contrast, FTST data cover 100 percent of Thai steel imports and, thus, are far more representative of Thai imports.

Comment 3

MEI proposes that, if the Department rejects the use of EEC statistics for valuing hot-rolled steel inputs, published Metal Bulletin prices should be used. MEI contends that the Metal Bulletin prices reflect general European market prices available to Romanian users and are indicative of actual prices. Should these prices be used, MEI further argues that the price should be adjusted to deduct commissions and discounts, and to reflect the steel quality used by Tepro.

DOC Position

As discussed above in Comment 2, we hold that FTST data are most appropriate for valuing steel inputs. Moreover, we have no legal basis to consider Metal Bulletin prices as surrogate values. Section 773(c)(4) of the Act requires the Department to value the factors of production in the surrogate county. Metal Bulletin prices are world values, not specific to the surrogate county, and thus cannot be used for surrogate values.

Comment 4

MEI contends that, if the FTST data are to be used for valuing steel factors, several adjustments should be made. First, the Department should calculate the unit value using FTST data for January through September 1991, rather than the POI (April through September 1991), since the longer period provides the Department with a more representative value based upon a longer period of time rather than the POI "snapshot". Second, MEI contends that the unit value should be adjusted to deduct the costs of ocean freight included in the FTST data. Third, MEI asserts that the values of Thai imports from NME countries should not be excluded from the calculation because the Department has no basis to do so. Fourth, MEI contends that the unit value should be adjusted downward by 50 dollars per metric ton to account for the inclusion of pickled or patterned steel in the data. Finally, MEI argues that Japanese and Taiwanese data should be excluded in calculating the weighted-average unit value because the higher unit value from these two sources means it is likely that imports from these countries include value-added and/or higher quality merchandise that is not used by Tepro in its production of the subject merchandise.

Petitioners contend that ocean freight costs should not be deducted from the FTST data because the Department should be concerned with what the input costs a producer in the surrogate country. Since all Thai producers must import hot-rolled steel, all will incur ocean freight charges as part of the price of the steel input. Petitioners state that it is proper for the Department to exclude NME imports from its calculation as the Department has excluded such data in other proceedings because the prices charged by state owned producers in NME countries do not necessarily reflect market forces. Petitioners argue that to adjust the unit value for allegedly higher value products is not possible at this point since there is no evidence on record as to the additional costs of these products. Finally, petitioners maintain that the Department should not exclude Japanese or Taiwanese steel imports from the value calculation since the world steel market contains a range of prices and to conclude that these imports are different solely because they are more expensive is pure speculation.

DOC Position

We agree with petitioners on all points except the last. Our analysis of the specific FTST data used shows a substantial difference in price between Thai imports from Japan and Taiwan, and imports from other countries. The weighted-average unit values of Japanese and Taiwanese imports is nearly 60 percent greater than the weighted-average unit values for imports from all other countries. This price difference alone does not demonstrate conclusively that these imports are physically different than the other imports, as suggested by MEI. Nevertheless, given the range of products covered by this HTS category, it is reasonable to assume that such prices probably reflect types of steel that are of a higher quality than the basic low-quality steel used by Tepro. Excluding these imports from our calculations results in a surrogate value that is a more reasonable indication of a market-based price for the type of steel used. We therefore excluded Thai imports of Japanese and Taiwanese steel in our final calculation.

No further changes to the FTST-based value calculation have been made. Our normal practice is to base all costs and expenses, where practical, on those incurred in the POI, to insure consistency in all calculations. We continue to exclude NME exports to Thailand since the prices charged by state owned producers in NME countries do not necessarily reflect market forces. Since there is no domestic producer of steel, the Thai producer must import the raw materials and will therefore incur ocean freight charges. Thus, ocean freight charges should be included because they are a part of the input costs for a producer in the surrogate country. Finally, we find no objective basis to make further adjustments to the value because of alleged physical differences in the merchandise.

Comment 5:

MEI contends that, since the FTS value for lacquer is acknowledged to have been derived from a "basket" category which included paints and enamels as well as lacquer, this value should be rejected and the lacquer value submitted by MEI, as obtained by MEI from Thai lacquer price quotes, should be used.

Petitioners maintain that the Department should reject MEI's data since they are derived from an unverified source, whereas the FTST data were obtained from a published, publicly available source.

DOC Position:

We agree with petitioners. The FTST data are preferred (see PRC Pipe Fittings) since the information is public, published data. MEI's submitted price quotes cannot be accepted because this information, obtained independently from MEI's own sources, may be self-serving and is unverified.

Comment 6:

MEI argues that the Department should not adjust any pre-POI surrogate values for Thai rates of inflation since these adjustments are applied to import data which reflect price levels in the country of exportation, rather than Thailand.

DOC Position:

We disagree. The Department has consistently adjusted all noncontemporaneous surrogate values, including import data, for inflation based on the inflation rate in the surrogate country. See, *e.g.*, Final Determination of Sales at Less Than Fair Value: Lug Nuts from the People's Republic of China, 56 FR 46153

(September 10, 1991), and Final Determination of Sales at Less Than Fair Value: Oscillating Fans and Ceiling Fans from the People's Republic of China, 56 FR 55271 (October 25, 1991). This adjustment is appropriate in order to accurately reflect the price levels and general conditions in the surrogate country during the POI. Accordingly, we consider import prices to be a component of price levels in the surrogate country. Therefore, we ajusted the data to reflect the inflation rate in Thailand.

Comment 7

MEI claims that the Department double-counted energy costs in its FMV calculation for the preliminary determination because the factory overhead data used to calculate the factory overhead percentage already included these energy costs. MEI states that, based on its analysis of the information used to calculate the factory overhead ratio (*i.e.*, the public version of an antidumping duty questionnaire response submitted by a Thai producer of standard pipe in another proceeding), there is no basis to believe that the overhead costs reported by the Thai respondent were exclusive of energy costs.

Petitioners argue that MEI's claim of double-counted overhead is mere speculation since MEI offers no factual basis for its assertion that the Thai respondent's overhead rate already includes these energy costs. Petitioners also maintain that energy costs are not normally an element of overhead.

DOC Position

In responding to this comment, it must be noted that two types of energy consumption are involved. First, there is the energy consumption that is incurred as part of factory overhead, such as for climate control and lighting. Second, there is the energy consumption that is incurred for production line use. In the questionnaire response, the latter consumption was the type reported for the energy factors of production. Thus, we agree with the petitioner that MEI has no basis for their claim that costs for production line energy consumption were double-counted. In addition, our valuation methodology for this factor is consistent with Tepro's accounting, where overall factory energy consumption (*e.g.*, factory lights, heat, etc.) is included in overhead and thus is part of the factory overhead calculation, while production line energy consumption is measured and valued separately.

Comment 8

MEI argues that the Turkish methane price obtained from the U.S. Embassy in Turkey and used in the preliminary determination is unreasonable for valuing this factor because the price used is an annual average, which is inappropriate for a high-inflation economy such as Turkey's where a more specific date for a value must be used. Further, MEI states that the Turkish value reported is inconsistent with world methane prices, based on information MEI submitted for the record. As alternatives, MEI proposes the use of either prices in Argentina or Chile, alternative surrogate countries, obtained from publicly available statistical sources as submitted by MEI, or a 1984 Thai methane price cited in a 1986 Court of International Trade (CIT) proceeding.

Petitioners contend that, since Thai data on methane prices was not available, the Department was correct in choosing a methane price from the second most comparable surrogate country, Turkey. Moreover, petitioners reject the use of the 1984 Thai methane price because it is too untimely.

DOC Position

We agree that, as the Turkish economy experienced high inflation during 1991, time specificity of data is important. Since the Turkish price reported appears to be an annual average, we cannot accurately account for Turkey's high inflation in using this price. We agree with petitioners that the Thai price suggested by MEI is inappropriate since the quote was obtained at least seven years prior to the POI. Accordingly, we have used a methane value based on the January 1990 Argentine value obtained from publicly available published data, as submitted by MEI prior to the preliminary determination, and adjusted to the POI for Argentine inflation.

Comment 9

MEI contends that the Thai selling, general, and administrative (SG&A) ratios used in the preliminary determination for calculating FMV should be adjusted to exclude Thai business tax expenses from the data used to calculate the ratios. MEI contends that, according to the source of the SG&A data, the Thai business tax is only charged on domestic sales and thus must be excluded when calculating FMV.

DOC Position

Our analysis of the information submitted for calculating SG&A shows that the business tax would not be assessed if the merchandise were to be exported. Thus, we agree with MEI that this expense should be excluded from our SG&A ratio calculations.

Our recalculation of the SG&A ratios for the two types of standard pipe products results in one of these ratios falling below the statutory minimum of 10 percent. For those products, we have therefore applied the statutory minimum in calculating SG&A.

Comment 10

Petitioners contend that the Department should adjust the Thai ratios for factory overhead and SG&A used in the preliminary determination, as derived from public versions of 1988 antidumping duty questionnaire responses, to account for cost changes between 1988 and the POI. According to petitioners, the price changes for material and labor inputs between 1988 and the POI result in higher factory overhead and SG&A ratios that more accurately estimates surrogate country experience during the POI.

MEI maintains that there is no evidence that the Thai respondents in the 1988 proceeding experienced a decrease in its raw material costs, as suggested by petitioners. MEI counters that raw material prices have actually increased since 1988, which, in turn, would result in a reduction of the overhead and SG&A ratios, rather than an increase.

DOC Position

Petitioners' assertion rests on speculation regarding the input prices used to calculate these ratios. Rather than revise the valuation of these factors based on such speculation, we continue to calculate these ratios based on the actual data provided.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue suspension of liquidation of all entries of circular welded non-alloy steel pipe from Romania, as defined in the "Scope of Investigation" section of this notice that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or bond equal to the estimated weighted-average amount by which the foreign market value of the subject merchandise exceeds the United States price as shown below. The suspension of liquidation will remain in effect until further notice.

The weighted-average dumping margins for Metalexportimport, S.A., and all others is 14.90%.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.35(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: September 10, 1992.

Rolf Th. Lundberg, Jr.,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-22563 Filed 9-16-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-814]

Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 17, 1992.

FOR FURTHER INFORMATION CONTACT: Erik Warga, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-8922.

Final Determination

We determine that imports of circular welded non-alloy steel pipe (standard pipe) from Taiwan are being, or are likely to be, sold in the United States at less than fair value (LTFV) as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since our preliminary determination (57 FR 17892, April 28, 1992), the following events have occurred:

On May 5, 1992, Yieh Hsing Enterprise Co., Ltd., (Yieh Hsing), an exporter accounting for a significant proportion of exports of standard pipe from Taiwan, requested that we postpone our final determination. We published a notice postponing the final determination until not later than September 10, 1992 (57 FR 22208, May 27, 1992). On May 5, 1992, petitioners requested that a public hearing be held in this proceeding; that request was withdrawn on May 27, 1992.

Verification took place May 18-21, 1992, at the offices of Kao Hsing Chang Iron & Steel Corp. (KHS) in Kaohsiung, Taiwan. Petitioners filed a case brief on June 9, 1992. Neither respondent filed a case brief, and no party filed a rebuttal brief.

Scope of Investigation

The merchandise subject to this investigation is (1) circular welded non-alloy steel pipes and tubes, of circular cross-section over 114.3 millimeters (4.5 inches), but not over 406.4 millimeters (16 inches) in outside diameter, with a wall thickness of 1.65 millimeters (0.065 inches) or more, regardless of surface finish (black, galvanized, or painted), or end finish (plain end, bevelled end, threaded, or threaded and coupled); and (2) circular welded non-alloy steel pipes and tubes, of circular cross-section less than 406.4 millimeters (16 inches), with a wall thickness of less than 1.65 millimeters (0.065 inches), regardless of surface finish (black, galvanized, or painted) or end finish (plain end, bevelled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipe, though they may also be called structural or mechanical tubing in certain applications. Standard pipes and tubes are intended for the low pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing and mechanical applications, such as for fence tubing, and for protection of electrical wiring, such as conduit shells.

The scope is not limited to standard pipe and fence tubing, or those types of mechanical and structural pipe that are used in standard pipe applications. All carbon steel pipes and tubes, within the physical description outlined above, are included within the scope of this investigation, except line pipe, oil country tubular goods, boiler tubing, cold-drawn or cold-rolled mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished rigid conduit. Standard pipe that is dual or triple certified/stenciled that enters the U.S. as line pipe of a kind used for oil or gas pipelines is also not included in this investigation.

Imports of these products are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation (POI) is April 1,1991, through September 30, 1991.

Such or Similar Comparisons

We have determined that all the products covered by this investigation constitute a single category of such or similar merchandise.

Fair Value Comparisons

To determine whether sales of standard pipe from Taiwan to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. We used best information available (BIA) as required by section 776(c) of the Act and 19 CFR 353.37 because (1) Yieh Hsing failed to provide requested information in a timely manner and (2) KHC's response could not be verified. See Comments 1 and 2 in the "Interested Party Comments" section of this notice.

Given that KHC responded to all of the Department's requests for information, we are considering it to be a cooperative respondent, even though verification revealed significant inconsistencies in the information reported by KHC. We have, therefore, consistent with our normal practice, determined BIA for KHC to be the average of margins calculated based on information in the petition. See Final Antidumping Duty Determination: Aspheric Ophthalmoscopy Lenses from Japan, 57 FR 6703 (February 27, 1992).

Yieh Hsing, however, failed to respond to the Department's second deficiency letter by the April 14, 1992, deadline. As such, we consider it to be an uncooperative respondent. Accordingly, we have determined BIA to be the highest of the margins calculated based on information in the petition.

United States Price

We calculated USP for both KHC and Yieh Hsing using the methodology described in the preliminary determination.

Foreign Market Value

We calculated FMV for both KHC and Yieh Hsing using the methodology

described in the preliminary determination.

Currency Conversion

We made all currency conversions in accordance with 19 CFR 353.60 (1992) by using the exchange rates certified by the Federal Reserve Bank of New York.

Verification

As provided in section 776(b) of the Act, we attempted to verify information provided by KHC by using standard verification procedures, including the examination of relevant sales and financial records, and selection of original source documentation containing relevant information. No verification of Yieh Hsing was conducted because its response was unusable and it failed to respond to our deficiency letter.

Interested Party Comments

Comment 1

Petitioners contend that still-unremedied deficiencies in the information submitted by KHC warrant the use of BIA for the final determination. Specifically, petitioners contend that KHC improperly calculated its adjustment for differences in merchandise; failed to file a printout of its most recent encoded data submission; and submitted data that were improperly formatted. Thus, petitioners argue, the Department should rely on information in the petition as the basis for its final determination.

DOC Position

We agree. Verification revealed that KHC had failed to report numerous home market sales, including all home market sales of galvanized pipe. KHC's failure to report these sales casts doubt upon whether KHC's model matching methodology was in accordance with the Department's hierarchy set forth in the questionnaire that was presented to KHC. We also discovered at verification that KHC had improperly reported packing expenses, credit expenses, rebates, and commissions for home market sales, and packing expenses and credit expenses for U.S. sales. In addition, KHC's encoded data contained numerous typographical and formatting errors. Thus, KHC's responses are replete with deficiencies and cannot be relied upon for purposes of determining whether and to what extent KHC is selling the subject merchandise at less than fair value in the United States.

Comment 2

Petitioners contend that Yieh Hsing's failure to respond to the Department's supplemental deficiency letter warrants the use of BIA for purposes of the Department's final determination. As BIA, petitioners urge the Department to continue to use the highest margin in the petition as was done for the preliminary determination.

DOC Position

We agree. As stated in our preliminary determination, Yieh Hsing's failure to respond to our second deficiency letter leaves the Department no choice but to base its determination on BIA. We therefore have based our final determination on information in the petition.

Comment 3

Petitioners contend that the Department must, pursuant to section 772(d)(1)(C) of the Act, base its value-added-tax (VAT) adjustment only on the portion of the nominal percentage that is actually passed through to consumers in the home market. Petitioners cite *Zenith Electronics Corp.* v. *United States*, 633 F. Supp. 1382 (CIT 1986) (Zenith); and *Daewoo Electronics Company, Ltd.*, v. *United States*, 712 F. Supp. 931 (CIT 1989) (Daewoo).

DOC Position

Although our fair value comparisons are based on information in the petition, we have nevertheless made the adjustment for VAT as required by section 772(d)(1)(C) of the Act. We do not agree with the U.S. Court of International Trade's decision in Zenith and Daewoo, but have not had an opportunity to appeal this issue. Consistent with our longstanding practice, we have not attempted to measure the amount of tax incidence in the home market. We do not believe that the statutory language limiting the amount of adjustment to the amount of commodity tax "added to or included in the price" of pipe and tube sold in Taiwan requires us to measure the home market tax incidence.

Continuation of Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of standard pipe from Taiwan entered, or withdrawn from warehouse, for consumption on or after April 28, 1992, the date of publication of our preliminary determination in the **Federal Register**. The Customs Service shall require a cash deposit or bond equal to the estimated amount by which the FMV of the merchandise subject to this investigation exceeds the U.S. price, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Producer/manufacturer/exporter	Margin percentage
Kao Hsing Chang Iron & Steel Corp	19.46
Yieh Hsing Enterprise Co., Ltd	27.65
All others	23.56

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.35(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: September 10, 1992.

Rolf Th. Lundberg, Jr.,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-22564 Filed 9-16-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-307-805]

Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe From Venezuela

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 17, 1992.

FOR FURTHER INFORMATION CONTACT: Judith Wey or Steve Alley, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-8320 or (202) 377-5288, respectively.

Final Determination

We determine that circular welded non-alloy steel pipe (standard pipe) from Venezuela is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the

"Suspension of Liquidation" section of this notice.

Case History

Since the issuance of our notice of preliminary determination (57 FR 17893 (April 28, 1992)), the following events have occurred:

Based on the April 27, 1992, request of C.A. Conduven (Conduven), the respondent in this investigation, we postponed the final determination until September 10, 1992 (57 FR 22208, May 27, 1992).

We received a request for a public hearing from petitioners on May 5, 1992. On May 26, 1992, Conduven informed the Department that it would no longer actively participate in this investigation and cancelled verification. Petitioners withdrew their request for a public hearing on May 28, 1992. Petitioners submitted a case brief on July 17, 1992.

Scope of Investigation

The merchandise subject to this investigation is circular welded non-alloy steel pipes and tubes, of circular cross-section, not more than 406.4mm (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, bevelled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipe, though they may also be called structural or mechanical tubing in certain applications. Standard pipes and tubes are intended for the low pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing and mechanical applications, such as for fence tubing, and for protection of electrical wiring, such as conduit shells.

The scope is not limited to standard pipe and fence tubing, or those types of mechanical and structural pipe that are used in standard pipe applications. All carbon steel pipes and tubes within the physical description outlined above are included within the scope of this investigation, except line pipe, oil country tubular goods, boiler tubing, cold-drawn or cold-rolled mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished rigid conduit. Standard pipe that is dual or triple certified/stenciled that enters the U.S. as line pipe of a kind used for oil or gas pipelines is also not included in this investigation.

Imports of these products are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation (POI) is April 1, 1991, through September 30, 1991.

Such or Similar Comparisons

We have determined that all the products covered by this investigation constitute a single category of such or similar merchandise.

Fair Value Comparisons

To determine whether sales of standard pipe from Venezuela to the United States were made at less than fair value (LTFV), we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. Because the respondent chose not to participate in this investigation and did not allow verification, in accordance with section 776(c) of the Act, we based our results on best information available (BIA). We have determined that the BIA was information contained in the petition. As an uncooperative respondent, we have assigned Conduven the highest of the margins calculated based on the information in the petition.

United States Price

We based USP on information provided in the petition. Petitioners provided U.S. prices based on the average customs value of imported standard pipe during the second quarter of 1991.

Foreign Market Value

We based FMV on information provided in the petition. Petitioners based FMV on actual home market price quotations from Venezuelan producers of standard pipe and from retail sellers of standard pipe in Venezuela. The petitioners adjusted, where appropriate, for quantity discounts, cash discounts, and distributor and retailer mark-ups.

Currency Conversion

No certified rates of exchange, as furnished by the Federal Reserve Bank of New York, were available for Venezuela for the POI. In place of the official certified rates, we used the average quarterly exchange rates published by the International Monetary Fund.

Interested Party Comments

Although numerous comments were submitted by petitioners, they are not being addressed here because of Conduven's decision not to participate in this investigation, compelling us to base this determination on BIA. Only the comment concerning the use of total BIA is addressed below.

Comment 1

Petitioners assert that the refusal of Conduven to provide the information requested by the Department and allow verification requires the Department to use BIA. As BIA, petitioners contend that the Department should use the highest margin in the petition, modified by updated exchange rates.

Petitioners argue that the Department should adjust the bolivar-denominated Venezuelan price data in the petition to reflect the average exchange rate for the period of investigation. While the Department used an average exchange rate for the second quarter of 1991 in the preliminary determination, petitioners contend that, since the POI spans the entire second and third quarters of 1991, an average exchange rate for the six-month period is more appropriate.

DOC Position

We agree with petitioners, in part. We have based Conduven's final determination margin on BIA and, as an uncooperative respondent, we have assigned Conduven the highest of the margin's calculated based on the information in the petition. We disagree with petitioners concerning the appropriate exchange rate, however. Since USP is based on second quarter 1991 import data, our use of the second quarter 1991 exchange rate is consistent with Department practice of converting FMV on the date of the U.S. sale.

Continuation of Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of circular welded non-alloy steel pipe that are entered, or withdrawn from warehouse, for consumption on or after April 28, 1992, the date of publication of our preliminary determination in the **Federal Register**.

The product under investigation is also subject to a countervailing duty investigation. Article VI.5 of the General Agreement of Tariffs and Trade (GATT) provides that "[n]o . . . product shall be

subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act which prohibits assessing dumping duties on the portion of the margin attributable to an export subsidy. In this case, however, because the subsidy has been determined to be a domestic subsidy rather than an export subsidy, no adjustment to the estimated dumping margin is required.

The Customs Service shall require a cash deposit or bond equal to the estimated amount by which the FMV of the merchandise subject to this investigation exceeds the U.S. price, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Producer/manufacturer/exporter	Weighted-average margin percentage
C.A. Conduven	52.51
All others	52.51

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

Notification to Interested Parties

This notice also serve as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.35(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: September 10, 1992.

Rolf Th. Lundberg, Jr.,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-22565 Filed 9-16-92; 8:45 am]

BILLING CODE 3510-DS-M

[C-307-806]

Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Circular Welded Non-Alloy Steel Pipe From Venezuela

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 16, 1992.

FOR FURTHER INFORMATION CONTACT: Elizabeth Graham or Larry Sullivan, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-4105 or 377-0114, respectively.

Final Determination

The Department determines that benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Venezuela of circular welded non-alloy steel pipe.

For information on the estimated net bounty or grant, please see the "Suspension of Liquidation" section of this notice.

Case History

Since the publication of the preliminary determination (57 FR 24470 (June 9, 1992)), the following events have occurred.

We verified the information used in making our preliminary determination from June 22 through June 26, 1992.

On June 25, 1992, we aligned the final countervailing duty determination with the final antidumping duty determination (57 FR 29290 (July 1, 1992)).

Parties submitted case and rebuttal briefs on August 11 and 18, 1992, respectively.

Scope of Investigation

The merchandise subject to this investigation is circular welded non-alloy steel pipes and tubes, of circular cross-section, not more than 406.4mm (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, bevelled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipe, though they may also be called structural or mechanical tubing in certain applications. Standard pipes and tubes are intended for the low pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing and mechanical applications, such as for fence tubing, and for protection of electrical wiring, such as conduit shells.

The scope is not limited to standard pipe and fence tubing, or those types of mechanical and structural pipe that are used in standard pipe applications. All carbon steel pipes and tubes within the physical description outlined above are included within the scope of this investigation, except line pipe, oil country tubular goods, boiler tubing, cold-drawn or cold-rolled mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished rigid conduit. Standard pipe that is dual or triple certified/stenciled that enters the U.S. as line pipe of a kind used for oil or gas pipelines is also not included in this investigation.

Imports of these products are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Analysis of Programs

For purposes of this final determination, the period for which we are measuring bounties or grants (the review period) is calendar year 1991, which corresponds to the fiscal year of SIDOR. Based upon our analysis of the petition, responses to our questionnaires, verification and written comments from respondents and petitioners, we determine the following:

I. Program Determined To Confer Bounties Or Grants

We determine that bounties or grants are being provided to manufacturers, producers, or exporters in Venezuela of circular welded non-alloy steel pipe as follows:

Export Bond Program

The Export Bond Program was established in 1973. The program was designed to provide partial compensation for the requirement that exporters convert export earnings at an official exchange rate significantly lower than the free market exchange rate. The export bonds can only be used for the payment of taxes; they cannot be redeemed for cash. The value of the export bond is based on a percentage of the f.o.b. value of the product exported. The applicable export bond percentage for a company corresponds to that company's national value-added percentage. To receive an export bond, exporters must submit the following export documents to their commercial bank: (1) Commercial Invoice; (2) Bill of Lading; (3) Certificate of Income on Foreign Currency; (4) Export Manifest;

and (5) Classification de Valor Agregado Nacional (includes national value-added percentage (VAN)). The application documents are reviewed by the commercial bank and forwarded to the Central Bank of Venezuela which issues the export bond.

Because this program is limited to exporters, we determine that this program confers an export bounty or grant on standard pipe. To calculate the benefit for the review period, we divided the bolivar amount of bonds earned on export sales of standard pipe to the United States by the export sales of standard pipe to the United States. On this basis, we calculated a net bounty or grant of 3.61 percent *ad valorem*.

On June 13, 1991, the Ministry of Foreign Relations and the Ministry of Finance excluded all manufactured products, including standard pipe, from eligibility for the Export Bond Program. In Preliminary Affirmative Countervailing Duty Investigation: Gray Portland Cement and Clinker from Venezuela, 56 FR 41522 (August 21, 1991) we verified, prior to the signature of the suspension agreement, that this program was in fact terminated. Consistent with our policy of taking into account any measurable program-wide changes that occur before the preliminary determination, we are taking into account the termination of the export bond program for duty deposit purposes. See, *e.g.*, section 355.50 of the Department's proposed regulations (Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments, 54 FR 23366 (May 31, 1989) (Proposed Regulations). Therefore, the duty deposit rate for this program is zero for all manufacturers, producers, and exporters in Venezuela of standard pipe.

II. Upstream Subsidy Analysis

The petitioners have alleged that manufacturers, producers, and exporters of standard pipe in Venezuela receive benefits in the form of upstream subsidies. Section 771A of the Tariff Act of 1930, as amended ("the Act") defines upstream subsidies as follows: The term "upstream subsidy" means any subsidy by the government of a country that:

(1) Is paid or bestowed by that government with respect to a product (hereinafter referred to as an "input product") that is used in the manufacture or production in that country of merchandise which is the subject of a countervailing duty proceeding;

(2) In the judgment of the administering authority bestows a competitive benefit on the merchandise; and

(3) Has a significant effect on the cost of manufacturing or producing the merchandise.

Each of the three elements listed above must be satisfied in order for the Department to determine the existence of an upstream subsidy.

a. *Upstream Subsidies Bestowed Upon the Input Product.* SIDOR, the only upstream producer in this investigation, did not respond to the Department's questionnaire. Therefore, we have determined, in accordance with section 776(c) of the Act, that the use of best information available (BIA) is appropriate for SIDOR. Section 776(c) requires the Department to use BIA whenever a party or any other person refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation.

Where the petition included information which allowed us to value the subsidy under a given program, we used that value. Where petitioners did not supply adequate information to value the alleged subsidy, we looked to prior Venezuelan CVD investigations for that information in accordance with Department practice (see, *e.g.*, *Industrial Belts from Israel*, 54 FR 15509 (April 18, 1989). Because none of these cases established a rate for the subsidies alleged by petitioners in this investigation, we did not include BIA rates for those programs in our overall BIA determination. Based on the information provided in the petition regarding subsidies allegedly received by SIDOR, we calculated a bounty or grant rate for SIDOR of 31.23 percent *ad valorem*.

b. *Competitive Benefit.* In determining whether subsidies to an upstream supplier confer a competitive benefit within the meaning of section 771A(a)(2) of the Act on the producer of the subject merchandise, section 771A(b) directs that a competitive benefit has been bestowed when the price for the input product is lower than the price that the manufacturer or producer of merchandise which is the subject of a countervailing duty proceeding would otherwise pay for the product in obtaining it from another seller in an arms-length transaction.

Section 355.45(d) of the Proposed Regulations offers the following hierarchy of benchmarks for determining whether a competitive benefit exists:

In evaluating whether a competitive benefit exists * * * the Secretary will determine whether the price for the input product is lower than:

(1) The price which the producer of the merchandise otherwise would pay for the input product, produced in the same country, in obtaining it from another unsubsidized seller in an arm's-length transaction; or

(2) A world market price for the input product.

Therefore, we first look for the price at which the standard pipe producer, Conduven, could have bought the input from an unsubsidized supplier in Venezuela. SIDOR is the only known Venezuelan producer of flat-rolled steel. As noted above, based on BIA, we have determined that SIDOR, Conduven's supplier, received benefits under certain of the upstream subsidy programs alleged in the petition. Lacking an unsubsidized price in Venezuela, we must look to a world market price as a benchmark. Because a published world market price for flat-rolled steel does not exist, we constructed such a price for calendar year 1991 by averaging the following data:

(a) Prices published in the Metal Bulletin for "hot coil" traded on the steel trading exchange in Brussels;

(b) Prices published by the Metal Bulletin for "hot-rolled coil (dry)" sold by steel companies in Latin America;

(c) Export prices for U.S. flat-rolled steel as provided by the U.S. Census Bureau (these data and the data from the two sources listed below include only the prices for the three HTS categories of hot-rolled steel in flat-rolled coils which, according to Persico, correspond to the steel it uses in its production of standard pipe);

(d) Export prices for Korean hot-rolled steel in flat-rolled coils as provided by official Korean export statistics; and

(e) Export prices for Japanese hot-rolled steel in flat-rolled coils as provided by official Japanese export statistics.

We collected the prices listed under (a) and (b) on a weekly basis and the prices listed under (c) through (e) on a monthly basis. We then calculated a simple average of these prices for each month, expressed in U.S. dollars per metric ton, f.o.b.

In our preliminary determination, we compared the price Conduven paid SIDOR for flat-rolled steel to the "world market price," unadjusted for delivery (*i.e.*, f.o.b.), to determine whether a competitive benefit existed. In this final determination, we compared Conduven's price to the "world market price," as adjusted upward for delivery (*i.e.*, c.i.f.) to determine the existence of a competitive benefit. After considering the extensive comments made by the

petitioners and respondents on this issue (see Comment 1, below), we have determined that the proper statutory focus of any competitive benefit inquiry is the price the producer of the subject merchandise "would otherwise pay" for the subsidized input product. We believe the approach outlined above (*i.e.*, c.i.f. comparison) best measures the competitive benefit bestowed upon the producer of the subject merchandise as it reflects an actual, commercial alternative to purchasing from subsidized domestic suppliers.

Therefore, we made an upward adjustment to the simple average f.o.b. world market price for delivery charges, thereby achieving a c.i.f. price. Because we have constructed a "world market price," *i.e.*, the price Conduven "would otherwise pay" for the input product anywhere on the world market, we assume that Conduven would purchase that input from wherever delivery charges would be the lowest. Thus, we based our upward adjustment on the smallest differential between the f.o.b. and c.i.f. price quotes received by Conduven.

To determine whether a competitive benefit was bestowed on Conduven through its purchases of subsidized flat-rolled steel from SIDOR, we weighted each monthly average world market c.i.f. price by the quantity of flat-rolled steel purchased by Conduven in that month to arrive at a weighted annual benchmark. We than compared this weighted benchmark price to an identically weighted annual price for Conduven and found that Conduven's price was lower. Thus, we found that a competitive benefit was bestowed on Conduven during the POI.

c. *Significant Effect.* In Certain Agricultural Tillage Tools from Brazil; Final Affirmative Countervailing Duty Determination, 50 FR 34525 (August 26, 1985) (Tillage Tools), we established thresholds regarding the existence of a significant effect. We presume no significant effect if the *ad valorem* subsidy rate on the input product multiplied by the proportion of the input product in the cost of producing the merchandise accounts for less than one percent. If the result of the calculation is higher than five percent, we presume that there is a significant effect. If the result is between one and five percent, we examine the effect of the input subsidy on the competitiveness of the merchandise.

In this instance, the product of the total *ad valorem* subsidy rate on the steel input and the proportion of the total production cost of standard pipe accounted for by the steel input exceeds five percent. Therefore, we presume that the upstream subsidies have a significant effect on the cost of producing the subject merchandise.

d. *Calculation of the Upstream Subsidy to Conduven.* Because the three requirements of section 771A(a) of the Act have been met, we determine that Conduven receives an upstream subsidy through its purchases of flat-rolled steel from SIDOR. As discussed above, the weighted-average world market price for flat-rolled steel during the POI exceeded the weighted-average price Conduven paid SIDOR during the POI for flat-rolled steel. Because the difference between these prices is smaller than the amount of subsidies SIDOR received during the POI, the bounty or grant will be limited, or "capped," by this price differential. See, *e.g.*, Proposed Regulations § 355.45(f).

To calculate the benefit, we divided the price differential between the average world market price and an average of SIDOR's prices to Conduven by the average price Conduven paid for each metric ton of flat-rolled steel. Next, we multiplied the result, by the total value of flat-rolled steel used to produce the standard pipe exported to the United States. This was then divided total sales of standard pipe to the United States. On this basis, we determine that the *ad valorem* bounty or grant received by Conduven from upstream subsidies to be 0.78 percent.

III. Programs Determined To Be Not Used

A. Short-Term FINEXPO Financing

B. Preferential Export Financing

C. Excessive Tariff Drawbacks

D. Preferential Financing Company of Venezuela (FIVCA) Financing

E. VENEXPORT Financing

IV. Programs Determined Not To Exist

A. Provision of Preferential Pricing on Raw Materials for Export

Comments

Comment 1

Petitioners assert that the Department erroneously used f.o.b. prices instead of delivered prices to calculate a world benchmark price. According to petitioners, 19 U.S.C. section 1677–1(b)(1) dictates use of a benchmark price that reflects what the manufacturer or producer of the merchandise would otherwise pay for the input product. Petitioners argue that where there are no other domestic producers of an input product, the Department has no discretion but to consider the delivered price that the respondent would otherwise pay for the imported input.

Petitioners further assert that the legislative history demonstrates that Congress intended the Department to use a delivered price as a benchmark price. The legislative history indicates that the provision was intended to codify past Department practice. That practice was reflected in Carbon Steel Wire Rod from Belgium, 47 FR 30541 (July 14, 1982) and Certain Carbon Steel Products from Belgium, 47 FR 26300 (June 17, 1982), where petitioners allege that the Department determined that coal subsidies at most only equalized the prices of domestic and foreign coal, putting them both on the same commercial level. Petitioners assert that by "commercial level," the final cost to the customer must be equivalent. Similarly, in Oil Country Tubular Goods from Korea, 49 FR 46766 (November 28, 1984), the Department found no countervailable upstream subsidy because the price that respondent paid the subsidized domestic supplier was comparable to the price that respondent paid its foreign supplier. Petitioners contend that "price paid" means the delivered price to Korea.

Petitioners also argue that use of a delivered price is consistent with the Department's decisions since the upstream provision was added to the Act. In Certain Circular Welded Carbon Steel Line Pipe from Venezuela, 50 FR 46801, 46804 (November 13, 1985); and Steel Wheels from Brazil, 54 FR 15523, 15527 (April 18, 1989), the benchmark price used in the competitive benefit analysis included freight, insurance and other charges.

Finally, petitioners assert that the premise underlying the Department's preliminary determination is incorrect. That premise is that the benchmark price should be calculated from the point of view of a hypothetical upstream supplier, *i.e.*, it is the price the upstream supplier would charge for the input absent subsidization. Petitioners point out that market forces would cause the unsubsidized domestic price to approximate the delivered world market price.

In response to petitioners' arguments, respondents contend that, prior to its preliminary determination, the Department reviewed the statute, Department regulations, and the legislative history, and concluded that the benchmark should be based on f.o.b. prices. The Department determined that the benchmark should reflect the price the upstream supplier would charge for the import absent the subsidy. Contrary to petitioners' contention, the Department's regulations which list the hierarchy of benchmarks does not

address whether the benchmark should include movement expenses.

Respondents also contest petitioners' argument that Congress intended to codify Department practice in the upstream subsidy legislation. They state that prior to the passage of the upstream provision, there was no consistent Department practice concerning this issue. Additionally, the Belgian cases cited by petitioners did not discuss the use of delivered prices in the calculation of the benchmark. Petitioners have no real basis to conclude that reference in those cases to "comparisons on the same commercial terms" meant that the Department included delivery costs in its calculation of the benchmarks. Additionally, respondents point out that in companion legislation, addressing this same issue, Congress intended benchmark input prices to be exclusive of the same costs petitioners argue should be included in this case.

Respondents further maintain that Department practice in prior upstream cases is irrelevant to this investigation. The Department has the authority to depart from its past practice when the information and record before the Department requires a change. Respondents argue that this is particularly true in this case, since there have been so few previous upstream subsidy cases.

Respondents also address petitioners' argument that the benchmark should be a delivered price because unsubsidized, profit maximizing firms will price their product at a level approximately the only viable alternative price, *i.e.*, the imported delivered price. Respondents emphasize that there is no single world market price with which SIDOR competes. In setting its prices, SIDOR reviews export prices from various sources, which reflect differences in quality, specifications, delivery schedules, credit terms, etc.

When Conduven makes its sourcing decisions it also looks at several factors, including exchange rate risk. As discussed at verification, Conduven did not source abroad during 1991, due to the instability of the Venezuelan economy and unpredictable exchange rates.

DOC Position

After careful consideration of the arguments submitted on this issue, the Department has reconsidered its position in the preliminary determination and agrees with petitioners that the Department should use delivered prices to adjust its calculation of a benchmark price for flat-rolled steel. While neither the statute nor the Department's proposed regulations specify the basis for calculation of a benchmark price, section 771A of the Act does refer to "* * * the price that the manufacturer or producer of merchandise which is the subject of a countervailing duty proceeding *would otherwise pay* for the product in obtaining it from another seller in an arms-length transaction" (emphasis added). We understand this to mean not the price a hypothetical unsubsidized producer in Venezuela would charge for the input product, but the price which represents a commercial alternative to the producer of the subject merchandise. When the commercial alternative is to import, then the price of the alternative must be adjusted for the cost of delivering the input to the producer of the subject merchandise. F.O.B. prices do not provide a measurement of the commercial alternative costs to the downstream producer. Further, the use of delivered prices is consistent with the precedent established in Steel Wheels and Tillage Tools, and Certain Circular Welded Carbon Steel Line Pipe from Venezuela, 50 FR 46801 (November 13, 1985).

Comment 2

Petitioners disagree with the Department's use of Metal Bulletin prices in the benchmark. Three of the six prices used by the Department to determine an average world price were sourced from the industry publication Metal Bulletin. According to petitioner, the Metal Bulletin prices are unreliable and inaccurate for purposes of calculating a benchmark. In particular, the Metal Bulletin price for Latin America is largely based on the heavily subsidized export prices of Brazil.

Similarly, petitioners allege that the European prices reported in Metal Bulletin and used in the Department's benchmark calculations are also heavily subsidized. Petitioners realize that the sale of subsidized steel in the world market affects the prices charged by unsubsidized sellers. While it is impossible to remove the effect completely, it can be minimized by excluding the prices from those countries which are known to subsidize their steel industries.

If the Department determines that it must use a European Metal Bulletin price, then it should use only one of the two used in the preliminary determination to avoid placing undue weight on Europe in calculating the average world market price.

Respondents contend that the Department properly used Metal Bulletin prices in calculating the benchmark. Since there is no one world price for hot-rolled coil, prices for a wide variety of countries are necessary to construct a world price. Regarding petitioners' assertion that the Metal Bulletin prices are inaccurate all, compilations of price information are subject to errors, misclassifications, typos, etc. However, respondents assert, the Metal Bulletin prices are important references for the steel industry, providing a reliable, transparent, and predictable method for price monitoring by Venezuelan steel producers.

Respondents attempt to rebut petitioners' argument that the Department inappropriately included ECSC and Brussels Metal Bulletin prices in calculating the benchmark. Respondents argue that in actuality, the Department has probably understated the importance of European steel prices, since the European countries account for a greater percent of production than any single country included in the benchmark. Respondents further assert that it is essential to include Latin American prices in the calculation of the benchmark. Latin American prices are important in the sourcing and pricing strategies of SIDOR and Conduven. Moreover, contrary to petitioners' argument, the Metal Bulletin prices are not synonymous with Brazilian prices, because they are based on prices for producers in several Latin American countries, including Argentina, Brazil, Venezuela, Mexico, Chile and Trinidad.

Finally, respondents support the Department's view that "the world market price reflects the combined effects of prices from various countries which include highly efficient producers, as well as high cost producers." By using a range of export prices from numerous geographic regions, the Department is accounting for differences in coil quantities, specifications, sales terms, delivery schedules, etc.

DOC Position

In the absence of a clearly defined and generally accepted world market price of flat-rolled steel, we believe that our constructed benchmark price is a reasonable approximation of the "world market price." With respect to petitioners' argument that we should not include prices charged by subsidized suppliers in our benchmark, we disagree. Although we stated in Tillage Tools that we would seek an unsubsidized import price as the benchmark for that investigation, neither the statute nor the proposed regulations limit us to the use of only unsubsidized import prices as benchmarks. Moreover, we believe that inclusion of a variety of prices best reflects what the standard pipe producer

otherwise would pay for the steel input. As discussed above, a competitive benefit arises when the producer of the subject merchandise pays less for the input than the commercially available alternative. This alternative could be provided by a subsidized foreign steel producer. It would, therefore, be inappropriate to exclude all subsidized producers, even assuming that we could identify them.

Regarding the Metal Bulletin, we continue to use the prices listed in this publication in our benchmark calculation. The petitioners have not substantiated their allegation that the information in the Metal Bulletin is "unreliable and inaccurate." However, we agree with the petitioners that by including two sets of European steel prices, we may have given undue weight to European prices for flat-rolled steel in our preliminary determination. Contrary to respondents' assertion that "double counting" of European prices may be appropriate, we are not fine-tuning our benchmark to reflect the frequency with which Conduven might use alternative potential sources of supply. We have, therefore, used the "Brussels prices" which include a wider range of steel producer (*i.e.*, European producers from countries outside the ECSC) and dropped the ECSC prices to eliminate any overlap.

Comment 3

Respondents argue that the Department should issue a final negative determination in this investigation. The only countervailable subsidy program, the Export Bond program, was terminated prior to the preliminary determination in this case and there is nothing on the record to indicate that the GOV would reinstate the Export Bond program.

Petitioners contend that the Department's decision to issue an affirmative preliminary determination is consistent with past practice and the Department's proposed regulations. Conduven's assertion that the GOV will not revive this program is pure speculation.

DOC Position

This issue is moot as the Department has reached a final determination that Conduven benefits from upstream subsidies.

Verification

In accordance with section 776(b) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with government and company officials, examination of relevant accounting records, and examination of original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit (Room B-099) of the Main Commerce Building.

Suspension of Liquidation

We are directing the U.S. Customs Service to suspend liquidation of entries of standard pipe from Venezuela and to require the deposit of estimated countervailing duties at the country-wide rate of .78 percent *ad valorem*.

Return of Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)) and 19 CFR 355.20(a)(4).

Dated: September 10, 1992.

Rolf Th. Lundberg, Jr.,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-22559 Filed 9-16-92; 8:45 am]

BILLING CODE 3510-DS-M

[C-351-810]

Final Negative Countervailing Duty Determination: Circular Welded Non-Alloy Steel Pipe From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 17, 1992.

FOR FURTHER INFORMATION CONTACT: Paulo F. Mendes or Annika L. O'Hara, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-5050 or 377-0588, respectively.

Final Determination

The Department determines that no benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Brazil of circular welded non-alloy steel pipe from Brazil.

Case History

Since the publication of the preliminary determination (57 FR 24466 (June 9, 1992)), the following events have occurred. On June 11, 1992, the petitioners requested that this final determination be aligned with the final determination in the companion antidumping duty investigation of circular welded non-alloy steel pipe from Brazil ("standard pipe"). We published our decision to align these determinations on July 1, 1992 (57 FR 29290).

On June 25, 1992, the Department determined that it would not include two upstream suppliers, Companhia Siderúrgica Nacional ("CSN") and Usinas Siderúrgicas de Minas Gerais S.A. ("USIMINAS"), in its upstream subsidy analysis since a single company, Companhia Siderúrgica Paulista ("COSIPA"), supplied most of the flat-rolled steel purchased by the respondent, Persico Pizzamiglio S.A. ("Persico"), during the period of investigation.

We verified the questionnaire responses in Brazil between June 22, and July 3, 1992. Case briefs were filed on August 7 and 10, 1992, and rebuttal briefs were filed on August 18, 1992.

Scope of Investigation

The merchandise subject to this investigation is circular welded non-alloy steel pipes and tubes, of circular cross-section, not more than 406.4 mm (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, bevelled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipe, though they may also be called structural or mechanical tubing in certain applications. Standard pipes and tubes are intended for the low pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing and mechanical applications, such as for fence tubing, and for protection of electrical wiring, such as conduit shells.

The scope is not limited to standard pipe and fence tubing, or those types of mechanical and structural pipe that are used in standard pipe applications. All carbon steel pipes and tubes within the physical description outlined above are included within the scope of this investigation, except line pipe, oil country tubular goods, boiler tubing, cold-drawn or cold-rolled mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and

finished rigid conduit. Standard pipe that is dual or triple certified/stenciled that enters the U.S. as line pipe of a kind used for oil or gas pipelines is also not included in this investigation.

Imports of these products are currently classifiable under the following Harmonized Tariff Schedule ("HTS") subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Analysis of Programs

For purposes of this final determination, the period for which we are measuring subsidies (the period of investigation, "POI") is calendar year 1991, which corresponds to the fiscal years of Persico and COSIPA. Our findings are based upon our analysis of the petition, responses to our questionnaires, verification and written comments from respondents and petitioners.

A. Programs Determined Not To Confer Subsidies

We determine that no subsidies are being provided to manufacturers, producers, or exporters in Brazil of standard pipe in the form of upstream subsidies conferred upon the producers of hot-rolled carbon steel in flat-rolled coils ("flat-rolled steel"), the main input product in the production of standard pipe.

Upstream Analysis

Section 771A(a) of the Trade Act of 1930, as amended, ("the Act") defines upstream subsidies as follows:

The term "upstream subsidy" means any subsidy * * * by the government of a country that:

(1) Is paid or bestowed by that government with respect to a product (hereinafter referred to as an "input product") that is used in the manufacture or production in that country of merchandise which is the subject of a countervailing duty proceeding;

(2) In the judgment of the administering authority bestows a competitive benefit on the merchandise; and

(3) Has a significant effect on the cost of manufacturing or producing the merchandise.

Each of the three elements listed above must be satisfied in order for the Department to determine the existence of an upstream subsidy.

1. Subsidies Bestowed Upon the Input Product

a. *Government Equity Infusions.* Historically, the Government of Brazil ("GOB") has been the principal owner of the Brazilian steel industry, primarily through the state-owned holding company Siderurgia Brasileira S.A. ("SIDERBRÁS"). In March 1990, the GOB decided to liquidate SIDERBRAS and privatize its steel mills, including COSIPA. Since the beginning of the privatization process, COSIPA has operated largely as an independent entity. SIDERBRÁS ceased operations following the GOB's March 1990 liquidation decision and did not exercise any operational or financial control over COSIPA during the POI.

We verified that COSIPA received government equity infusions during the period 1977–1989 and in 1991 in the form of cash transfers and debt assumptions in return for equity. The equity infusions were made pursuant to the Stage III Expansion Project for the state-owned steel mills and the Financial Restructuring Plan for SIDERBRÁS. We looked at the time period since 1977 because, pursuant to section 355.49(b)(3) of our *Proposed Regulations* (*see Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments* (54 FR 23366 (May 31, 1989)), "*Proposed Regulations*") the benefits from equity infusions shall be measured over the average useful life of renewable physical assets set forth in the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (*i.e.*, 15 years for integrated steel mills).

We have consistently held that government provision of equity does not *per se* confer a subsidy (see, e.g., Steel Wheels from Brazil; Final Affirmative Countervailing Duty Determination, 54 FR 15523 (April 18, 1989) ("Steel Wheels"). Government equity infusions bestow a countervailable benefit only when provided on terms inconsistent with commercial considerations. Therefore, we examined whether COSIPA was a reasonable investment (a condition we have termed "equityworthy") in order to determine whether the equity infusions were inconsistent with commercial considerations.

A company is a reasonable investment if it shows the ability to generate a reasonable rate of return within a reasonable period of time. To make this determination, we examine a company's financial ratios, profitability and other factors, such as market demand projections and current operating results, to evaluate its current and future ability to earn a reasonable rate of return on investment. We do not, nor did we in this case, take into account the broader goals of the GOB in making these investments because such goals are not relevant to a private investor. In the Final Affirmative Duty Determination; Certain Carbon Steel Products from Brazil, 49 FR 17988 (April 26, 1984) and subsequent administrative reviews, the Department found COSIPA to be unequityworthy during the period 1977–1984. Nothing on the record of this investigation leads us to reconsider this determination.

Upon reviewing COSIPA's financial statements for the period 1985–1991, we noted that the company exhibited negative returns on equity and investment in every year except 1989. In addition, except for 1988 and 1989, the company's current ratios indicate low levels of liquidity available to pay debts. Furthermore, during the 1985–1991 period there was no meaningful indication of future profitability that might have justified the equity infusions received by the company. Therefore, we determine that equity investments in COSIPA were on terms inconsistent with commercial considerations during the period 1985 through 1991.

Where we find that the government's investment has been commercially unreasonable, we examine the "rate of return shortfall" for the POI, *i.e.*, the difference between the national average rate of return on equity during the POI and the company's rate of return on equity during the POI. If no shortfall exists for the POI, there is no countervailable subsidy for that year. If a shortfall does exist, we multiply the rate of the shortfall by the amount of the original equity investment to find the benefit bestowed during the POI.

We measured COSIPA's rate of return on equity for the POI by dividing the company's net result achieved in 1991 by its total capital in that year. Using this methodology, we arrived at the negative rate of return on equity of 2.3 percent. We then compared COSIPA's rate to the national average rate of return on equity in Brazil for 1991, which was negative 2.0 percent according to the August 1992 edition of Exame, a Brazilian business publication. The difference between the two rates, *i.e.*, 0.3 percent, constitutes the rate of return shortfall.

To calculate the value of the equity investment, we converted the nominal amount of each equity infusion into a BTN (Brazilian Treasury Bill) or FAP (Equity Adjustment Factor) equivalent by dividing the nominal amount received by the value of the BTN or FAP. (The BTN index was used for the years 1977–1989 and the FAP index for 1991; COSIPA did not receive any equity infusions in 1990.) In order to adjust the value of all equity infusions to December 31, 1991, we multiplied the BTN/FAP equivalents by the value of the FAP on December 31, 1991. The use of adjusted as opposed to nominal amounts for equity investments is necessitated by Brazil's hyperinflationary economy.

We multiplied the rate of return shortfall by the December 31, 1991 value of all equity investments made in COSIPA between 1977 and 1989 and in 1991. We then divided this amount by COSIPA's total 1991 sales, valued as of December 31, 1991. On this basis, we determine COSIPA's subsidy under this program to be 0.81 percent *ad valorem*.

b. *IPI Incentives.* Under this program, Brazilian steel producers are eligible to receive a rebate of the IPI tax (Imposto sobre Produtos Industrializados), which is a value-added sales tax paid on domestic sales of industrial products. The steel producers must meet the following conditions in order to receive IPI rebates under this program:

(a) The company must product liquid steel;

(b) The IPI rebate must be used to increase the production of certain steel productions;

(c) The company must have an ongoing capital investment project, originally approved by the Conselho do Desenvolvimento Industrial ("CDI"; the Industrial Development Council);

(d) The company must receive quarterly approval from the Department for Industry

and Commerce (a division of the Ministry of Economy, Finance and Planning) to ensure that capital investment in the approved project is continuing; and

(e) The company must have a net IPI tax obligation in each quarter.

The IPI rebate program was originally established in 1977 (Decree Law 1547). Although the program was suspended in April 1990 (Law 8034), steel companies with projects approved before April 12, 1990, are eligible to continue to receive IPI rebates until 1996 pursuant to the old legislation (Law 7554).

Because only steel producers are eligible to receive IPI rebates, we determine that this program is limited to a specific enterprise or industry, or group of enterprises or industries. We have found that COSIPA received benefits under this program during the POI. To calculate the benefit, we divided the total amount of the IPI rebates received by COSIPA during the POI by the company's total sales in 1991. On this basis, we determine COSPIA's subsidy under this program to be 0.69 percent *ad valorem*.

2. Significant Effect

In Certain Agricultural Tillage Tools from Brazil; Final Affirmative Countervailing Duty Determination, 50 FR 34525 (August 26, 1985) ("Tillage Tools"), we established thresholds regarding the existence of a significant effect. We presume no significant effect if the *ad valorem* subsidy rate on the input product multiplied by the proportion of the input product in the cost of producing the merchandise accounts for less than one percent. If the result of the calculation is higher than five percent, we presume that there is significant effect. If the result is between one and five percent, there is no presumption made either way, and we will examine the effect of the input subsidy on the competitiveness of the merchandise.

For purposes of determining whether the upstream subsidies have a significant effect on the cost of producing standard pipe, we multiplied the total *ad valorem* subsidy rate on the flat-rolled steel input by the proportion of the total production cost of standard pipe accounted for by the input.

In this case, the input subsidy allocated to standard pipe yields a rate lower than one percent. We have, therefore, concluded that the effect of the flat-rolled steel subsidies on the cost of producing standard pipe is not significant.

Because we determined that the subsidies bestowed upon the input product did not have a significant effect upon the cost of producing the subject merchandise, we need not examine whether a competitive benefit existed. Thus, because one of the three requirements of section 771(a) of the Act has not been met, we determine that Persico did not receive an upstream subsidy.

B. Programs Determined Not To Be Used

1. Direct Subsidy Programs

a. Exemption from the IPI tax and import duties under the BEFIEX program.

b. Preferential export financing under the FINEX program.

c. Preferential export financing under the PROEX program.

2. Upstream Subsidy Programs

a. Government privatization assistance.

b. Government provision of operating capital.

c. Fiscal benefits by virtue of a project approved by the CDI.

Comments

Comment 1: Persico alleges that the Department erroneously calculated the significant effect of the upstream subsidies on the cost of manufacturing standard pipe by multiplying COSIPA's subsidy rate by the percentage that flat-rolled steel accounts for in the cost of manufacturing standard pipe. Persico argues that, based on the Proposed Regulations, we should have used instead the percentage that the input accounts for in the total cost of production of standard pipe.

The petitioners believe that the Department should continue to use the cost of manufacturing because to do otherwise would be inconsistent with past practice, and it is in conformity with the statutory purpose. The petitioners argue that the Department's analysis should focus on the competitiveness of the final product. Since a product's competitiveness depends on its cost of manufacture, not on its cost of production, which includes items such as selling, general, and administrative expenses, it would be wrong to use the cost of production as the basis for the significance test.

DOC Position: In accordance with § 355.45(e) of our Proposed Regulations, we calculated the significant effect on the basis of the cost of production. We believe that using the cost of production reflects the commercial impact of the subsidized input on the total costs of the producer of the subject merchandise and, therefore, on the eventual price charged for the subject merchandise.

Comment 2: COSIPA states that the Department departed from its previous practice when it converted the value of the infusions by using an end-of-POI index value rather than the average index value during the POI. COSIPA asserts that the purpose of using an average index value is to approximate more closely the benefit to COSIPA throughout the POI. Furthermore, COSIPA believes that the most accurate method to calculate the benefit associated with the equity infusions would be to convert the equity infusions to a beginning-of-POI value.

DOC Position: We disagree. By adjusting the amount of the equity received using an end-of-POI index and using a sales amount adjusted to the same point in time, both the amount of the equity and the sales figure are then comparably indexed. Using a beginning of the POI or middle of the POI conversion rate would be appropriate only if the sales value for the year also was expressed in beginning of the POI or middle of the POI terms.

Comment 3: COSIPA argues that the Department should exclude COSIPA's end of 1991 equity infusion from its calculation because an end-of-the-year infusion could not have had any impact on the company's sales during the POI. COSIPA believes that the Department can only measure the effect of this infusion against the company's sales in 1992.

Contrary to COSIPA's argument, the petitioners state that the Department, following its past practice, correctly included COSIPA's end of the POI equity infusion in its calculations for 1991.

DOC Position: We agree with the petitioners. It is our past practice to include all funds received during the POI and we have, therefore, included the equity infusion received by COSIPA at the end of the POI in our calculations. This reflects the cash-flow methodology which is based upon the premise that a company receives a benefit when its cash flow is affected (see Proposed Regulations, § 355.48(b)(1)); Final Countervailing Duty Determination: Steel Wire Rope from India, 56 FR 46292 (September 11, 1991).

Verification

In accordance with section 776(b) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with government and company officials, inspecting relevant accounting records, and examining original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit (Room B-099) of the Main Commerce Building.

Termination of Suspension of Liquidation

In accordance with this final determination, we will instruct the U.S. Customs Service to terminate suspension of liquidation of all entries of standard pipe from Brazil. The U.S. Customs Service shall release any cash deposits or bonds posted on entries of standard pipe made prior to this determination.

ITC Notification

In accordance with section 705(d) of the Act we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO. This determination is published pursuant to section 705(d) of the Act (19 U.S.C. 1671(d)) and 19 CFR 355.20(a)(4).

Dated: September 10, 1992.

Rolf Th. Lundberg, Jr.,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-22555 Filed 9-16-92; 8:45 am]

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[C-428-812]

Preliminary Affirmative Countervailing Duty Determination: Certain Hot Rolled Lead and Bismuth Carbon Steel Products From Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 17, 1992.

FOR FURTHER INFORMATION CONTACT: Rick Herring or Magd Zalok, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, room 3099, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-3530 or 377-4162, respectively.

Preliminary Determination

The Department preliminarily determines that benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Germany of certain hot rolled lead and bismuth carbon steel products. The final determination is currently scheduled for November 24, 1992.

For information on the estimated net subsidy, please see the "Suspension of Liquidation" section of this notice.

Case History

Since the publication of the notice of initiation in the **Federal Register** (57 FR 19884, May 8, 1992), the following event occurred. On June 17, 1992, we found this investigation to be extraordinarily complicated and postponed the preliminary determination until no later than September 10, 1992 (57 FR 27025).

Scope of Investigation

The products covered by this investigation are hot rolled bars and rods of nonalloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, in coils or cut lengths, and in numerous shapes and sizes. Excluded from the scope of this investigation are other alloy steels (as defined by the Harmonized Tariff Schedule of the United States (HTSUS) Chapter 72, note 1 (f)), except steels classified as other alloy steels by reason of containing by weight 0.4 percent or more of lead, or 0.1 percent or more of bismuth, tellurium, or selenium. Also excluded are semi-finished steels and flat-rolled products. Most of the products covered in this investigation are provided for under subheadings 7213.20.00.00 and 7214.30.00.00 of the HTSUS. Small quantities of these products may also enter the United States under the following HTSUS subheadings: 7213.31.30.00, 60.00; 7213.39.00.30, 00.60, 00.90; 7214.40.00.10, 00.30, 00.50; 7214.50.00.10, 00.30, 00.50; 7214.60.00.10, 00.30, 00.50; and 7228.30.80.00. Although the HTSUS subheadings are provided for convenience and customs purposes, our description of the scope of this proceeding is dispositive.

Injury Test

Because Germany is a "country under the Agreement" within the meaning of section 701(b) of the Tariff Act of 1930, as amended (the Act), the International Trade Commission (ITC) is required to determine whether imports of the hot rolled lead and bismuth carbon steel products from Germany materially injure, or threaten material injury to, a U.S. industry. On May 28, 1992, the ITC preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Germany of this merchandise (57 FR 27739).

Analysis of Programs

For purpose of this preliminary determination, the period for which we are measuring subsidies (the period of investigation) is calender year 1991. The investigation includes two producers, Saarstahl AG (Saarstahl) and Thyssen Stahl AG (Thyssen).

Because there is a significant differential in the estimated net subsidy calculated for Saarstahl and Thyssen, we have preliminarily assigned individual company rates pursuant to 19 CFR 355.15(a)(2)(ii).

Based upon our analysis of the petition and the responses to our questionnaires, we preliminarily determine the following:

A. Programs Preliminarily Determined To Be Countervailable

We preliminarily determine that subsidies are being provided to manufacturers, producers, or exporters in Germany of certain hot rolled lead and bismuth carbon steel products under the following programs:

1. Government Forgiveness of Saarstahl's Debt in 1989

In the years 1971 through 1989, the companies which were eventually to become Saarstahl AG, went through various mergers, restructurings, and name changes. For the sake of simplicity, we are using the name "Saarstahl" when referring to assistance provided to Saarstahl AG or to assistance provided to any of its predecessor companies.

In response to the poor economic condition of the steel industry in the Saarland in the 1970's, the Governments of Germany and Saarland, and the steel companies which were to become Saarstahl, adopted their first restructuring plan in an attempt to create a viable steel industry in Saarland. In order to facilitate the implementation of the restructuring plan, the Federal Government authorized the provision of DM 244 million in funds to Saarstahl in 1978. Repayment of these funds was contingent upon Saarstahl returning to profitability. This contingent repayment

obligation was called a Ruckzahlungsverpflichtung (RZV).

In addition, the Governments of Germany and Saarland guaranteed loans in the amount of DM 1.18 billion made to Saarstahl by a group of private banks. According to the response of Saarstahl, the banks would not have made the loans to Saarstahl without the government guarantees because of the company's poor financial condition. These loans were also used to finance the restructuring plan. Saarstahl made payments on the guaranteed loans until April, 1983. At that time, The governments of Germany and Saarland assumed the payment of interest and principal. Again, these government payments of principal and interest were to be repaid by Saarstahl under RZVs.

The initial provision of DM 244 million by the Government of Germany and the payments of interest and principal by the two governments were the first in a long line of assistance provided by both governments to Saarstahl. Assistance provided to the company from 1981 through 1985 was used to modernize the company, make capital investments, cover operating expenses, and cover employee expenses pursuant to a number of Saarstahl restructuring plans. In addition, the government payments of the interest and principal of the guaranteed loans continued until 1989. All of this assistance was tied to RZVs which obligated Saarstahl to repay the assistance provided the company earned a profit in the future. By 1989, Saarstahl had accumulated DM 3.936 billion in repayment obligations to both governments.

During the period when most of the government assistance was being provided to Saarstahl, the company was wholly-owned by the Luxembourg company, Arbed. By 1985, Arbed was no longer able or willing to function as the owner of Saarstahl. Because of the importance of Saarstahl to the economy of Saarland, the Government of Saarland decided to look for a new owner to replace Arbed. Another steel company in Saarland, the French-owned Dillinger, expressed an interest in Saarstahl. At that time, Dillinger and Saarstahl were already joint venture partners in a company which produced pig iron.

In order to facilitate finding a new investor for Saarstahl, Arbed transferred 76 percent of the ownership of Saarstahl to the Governments of Germany and Saarland for one DM in 1986. A trustee was appointed to hold the shares for both governments while a new investor was sought. At the same time, an agreement was signed under which Dillinger would manage Saarstahl. In April 1989, an agreement was reached between the Government of Saarland and Dillinger's parent company, Usinor Sacilor, regarding the purchase of Saarstahl.

Under the terms of this purchase agreement, Saarstahl and Dillinger became wholly-owned subsidiaries of a newly-created holding company, DHS-Dillinger Hutte Saarstahl AG (DHS). The Government of Saarland contributed the assets of Saarstahl and DM 145.1 million in cash in return for 27.5 percent ownership of Saarstahl's new parent company, DHS.

Pursuant to the purchase agreement, the Governments of Germany and Saarland, and Saarstahl entered into an agreement concerning the previous assistance received by Saarstahl. Under the latter agreement, the Entschuldungsvertrag (the EV), all outstanding RZV repayment obligations for all the funds provided to Saarstahl by the Governments of Germany and Saarstahl, as well as additional rights held by both governments for repayment of principal on the guaranteed loans, were unconditionally forgiven and relinquished. The EV was signed in June 1989.

Because the debt forgiveness under the EV was only provided to Saarstahl, we preliminarily determine it to be countervailable because it was limited to a specific enterprise or industry or group of enterprises or industries.

To calculate the benefit arising from the debt forgiveness, we are treating the amount of the forgiveness, DM 3.936 billion, as a nonrecurring grant since the forgiveness of this debt constitutes a one-time government action, rather than assistance provided pursuant to an ongoing government program. Our policy with respect to nonrecurring grants is to allocate the benefits from such grants over the average useful life of assets in the industry, unless the sum of grants under a particular program is less than 0.5 percent of a firm's total or export sales (depending on whether the program is a domestic or export subsidy.) See, *e.g.*, Final Affirmative Countervailing Duty Determination; Fresh and Chilled Atlantic Salmon from Norway, 56 FR 7678 (February 25, 1991). Therefore, we have allocated the benefits from this forgiveness over 15 years, the average useful life of assets in the steel industry.

The benefit for the period of investigation was calculated using the declining balance methodology described in the Department's proposed rules (Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments, 54 FR 23366 (May 31, 1989) (*Proposed Regulations*)), and used in prior investigations (*see, e.g.*, Final Affirmative Countervailing Duty Determination; Oil Country Tubular Goods from Canada, 51 FR 15037 (April 22, 1986).) For the discount rate in this calculation, we included a risk premium since we have preliminarily determined that Saarstahl was uncreditworthy in 1989, the year in which the debt was forgiven. Our determination that Saarstahl was uncreditworthy is based on an analysis of the company's financial statements and the fact that Saarstahl was unable to obtain commercial lending in 1989 without a guarantee from the government.

When we determine that a company is uncreditworthy, we base our discount rate on the highest long-term interest rate applicable to firms in the country in question, plus an amount equal to 12 percent of the country's prime rate. *See, e.g.*, the Final Affirmative Countervailing Duty Determination: New Steel Rail, Except Light Rail, from Canada, 54 FR 31991 (August 3, 1989), and the Proposed Regulations. According to the response of the Government of Germany, there are no official statistics on long-term interest rates or interest rates comparable to the U.S. prime rate in Germany. Therefore, we reviewed the interest rates published in the International Monetary Fund's International Financial Statistics and used the average annual interest rate reported in that publication for 1989, the year in which Saarstahl's debt was forgiven. We then added to this interest rate an amount equal to 12 percent of the annual average short- and medium-term interest rate in Germany as published in the International Financial Statistics. Based on this approach, we calculated a discount rate of 11.13 percent.

The portion of the benefit allocated to the period of investigation was adjusted pursuant to section 771(6) of the Act. Under this section of the Act, the Department may subtract any application fee, deposit, or similar payment from the benefit if that payment was made in order to qualify for, or to receive, benefits under the program. According to the EV agreement, Saarstahl is required to pay a yearly fee of DM 300,000 to the Government of Germany. Therefore, we deducted DM 300,000 from the portion of the benefit attributable to the period of investigation and divided the resultant sum by DHS's total sales (which includes the total sales of both Saarstahl and Dillinger). We used the sales of DHS because the forgiveness of Saarstahl's debt resulted in a benefit to DHS. Using this methodology, we

calculated an estimated net subsidy of 16.87 percent *ad valorem*.

Respondents have argued that the 1989 formation of DHS resulted in the privatization of Saarstahl. They claim, further, that each participant received the full net worth of its contribution to the new company. Therefore, consistent with the Department's past policy as articulated in Lime from Mexico: Preliminary Results of Changed Circumstances Review, 54 FR 1753 (January 17, 1989), we should find that none of the benefits previously provided to Saarstahl by the German and Saarland governments flow through to the new company.

As respondents submitted this argument on September 1, 1992, we have not had time to review their claim. Moreover, we are requesting additional information on this transaction, particularly with respect to whether the Saarland government's capital contribution to DHS was made on terms inconsistent with commercial considerations.

2. Debt Forgiveness by Private Banks

Commercial banks also participated in the restructuring of Saarstahl during the period from 1978 through the final restructuring of the company in 1989. During part of this time period they provided both short- and long-term loans to Saarstahl which were not guaranteed by the Governments of Germany or Saarland. In the years 1983 through 1985, the banks forgave Saarstahl DM 106.8 million in interest on these loans. According to the response of Saarstahl, this forgiveness was in response to the company's poor financial condition and was not made at the request of, or related to any assistance provided by, the Governments of Germany and Saarland.

Toward the end of 1985, the Government of Saarstahl presented a long-term restructuring plan for Saarstahl to Saarstahl's creditors and requested that they forgive an additional amount of DM 350 million in loans. Based on this request, the banks agreed to forgive DM 217.1 million of debt owed to them by Saarstahl, if the Governments of Germany and Saarland would forgive all the debt owed to them by Saarstahl, and if the Government of Saarland would assure the liquidity of Saarstahl. With the signing of the EV, the governments forgave Saarstahl's debt owed to them, as discussed above, and the commercial banks forgave a portion their unguaranteed loans to Saarstahl.

According to the response of the Governments of Germany and Saarland, the talks on the forgiveness of Saarstahl's debt were based on the common notion that all of the participants, including the private and public creditors, would have to contribute to restoring the company to health. The response states that the Governments of Germany and Saarland made their forgiveness dependent on private creditors also waiving a portion of their claims against Saarstahl. The private creditors laid down the same condition with regard to the claims of the Governments of Germany and Saarland.

We preliminarily determine the forgiveness of interest payments in the years 1983 through 1985 did not confer a countervailable subsidy on Saarstahl because the banks were acting independently without any direction or participation by the Governments of Germany and Saarland. However, we also preliminarily determine that the subsequent forgiveness of DM 217.1 million in principal to be countervailable because it was required by the governments as part of a government-led debt reduction package for Saarstahl.

Saarstahl's response states that the forgiveness of the bank loans was effective as of January 1, 1989. However, according to the financial statements of Saarstahl, a grace period was extended on these loans until they were forgiven as part of the 1989 package. The financial statement for 1989 shows that these loans were removed from the company's reported liabilities owed to credit institutions in that year, the same year the EV was signed. Therefore, we are treating the debt forgiveness of DM 217.1 million as having occurred in 1989.

Using the same methodology used to calculate the subsidy for the government forgiveness of Saarstahl's debt in 1989, we calculated an estimated net subsidy of 0.93 percent *ad valorem* for Saarstahl.

3. Worker Assistance Program

Under Article 56 of the European Coal and Steel Community (ECSC) Treaty, persons employed in the coal and steel industry who lose their jobs may receive assistance for "social adjustment." This assistance is provided for workers affected by restructuring measures, particularly as workers withdraw from the labor market into early retirement or are forced into unemployment. Assistance is also provided for training and redeployment efforts. The ECSC disburses assistance on the condition that the affected country makes an equivalent contribution.

German companies seeking assistance under Article 56 of the ECSC Treaty must apply to both the Federal Minister of Labor and Social Affairs and to the Federal Minister of Economics. Notification of approval is provided by the Federal Minister of Labor and Social Affairs which is also in charge of distributing such funds on its own account and on behalf of the ECSC.

During the period of investigation, Saarstahl and Thyssen received payments for their workers under Article 56(2)(b) of the ECSC Treaty. The payments were made to provide for the early retirement of company employees. According to the responses of Saarstahl and Thyssen, the companies include payments under Article 56 as part of the severance pay arrangements which they have with their employees. These arrangements are part of the social plans the companies have with their employees.

We consider the assistance provided under this program to be recurring since the program is longstanding and payments are made automatically, every year, whenever the eligibility requirements are met. Therefore, we limited our analysis to the period of investigation, 1991.

The ECSC share of the payments is provided from its budget, which is financed by contributions from the coal and steel industry and the interest earned on the investment of the contributions. Deficits in the budget are made up by Member State contributions. However, no contributions have been made by the Member States since 1984. Because the ECSC payments were financed solely from producer contributions, we preliminarily determine that they do not confer a countervailable benefit.

However, we preliminarily determine that the German Government's share of funds under this program is countervailable because the provision of these funds is limited to a specific industry or group of industries, and because the funds relieved the companies of obligations they normally would have incurred. Saarstahl and Thyssen would have otherwise incurred these expenses because these severance pay benefits are mandated by the social plans the companies have with their employees.

To calculate the benefit, we took half of the funds received by the companies under this program in 1991, which is that portion attributable to the Government of Germany, and divided it by each company's total sales during the period of investigation. Using this methodology, we calculated an estimated net subsidy of 0.39 percent *ad valorem* for Saarstahl and 0.16 percent *ad valorem* for Thyssen.

Verification

In accordance with section 776(b) of the Act, we will verify the information used in making our final determination.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of certain hot rolled lead and bismuth carbon steel products from Germany, which are entered or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register** and to require a cash deposit or bond for such entries of this merchandise in the amount of 18.19 percent *ad valorem*, except for merchandise produced by Thyssen. Thyssen is exempt from the suspension of liquidation because its estimated net subsidy is *de minimis*. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If our final determination is affirmative, the ITC will make its final determination within 45 days after the Department's final determination.

Public Comment

In accordance with 19 CFR 355.38 of the Department's regulations, we will hold a public hearing, if requested, on November 13, 1992, at 10 a.m. in room 1412, to afford interested parties an opportunity to comment on this preliminary determination. Individual parties who wish to request or participate in a hearing must submit a request within ten days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of issues to be discussed. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

In accordance with 19 CFR 355.38(c) and (d), ten copies of the business proprietary version and five copies of the nonproprietary version of the case briefs must be submitted to the Assistant Secretary no later than November 4, 1992. Ten copies of the business proprietary version and five copies of the nonproprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than November 10, 1992. If the case and rebuttal brief contain only nonproprietary information, then ten copies of each respective brief must be submitted to the Department. An interested party may make an affirmative presentation only on arguments included in the party's case or rebuttal briefs. If no hearing is requested, interested parties still may comment on these preliminary results in the form of case and rebuttal briefs. Written arguments should be submitted in accordance with § 355.38 of the Department's regulations and will be considered if received within the time limits specified in this notice.

This determination is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Dated: September 10, 1992.

Rolf Th. Lundberg, Jr.,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-22557 Filed 9-16-92; 8:45 am]

BILLING CODE 3510-DS-M

[C-412-811]

Preliminary Affirmative Countervailing Duty Determination: Certain Hot Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 17, 1992.

FOR FURTHER INFORMATION CONTACT: Stephanie L. Hager or Annika L. O'Hara, Office of Countervailing Investigations, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-5055 or (202) 377-0588, respectively.

Preliminary Determination

The Department preliminarily determines that benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended ("the Act"), are being provided to manufacturers, producers, or exporters in the United Kingdom of certain hot rolled lead and bismuth carbon steel products. The final determination is currently scheduled for November 24, 1992.

For information on the estimated net subsidy, please see the "Suspension of Liquidation" section of this notice.

Case History

Since the publication of the notice of initiation in the **Federal Register** (57 FR 19884, May 8, 1992), the following events have occurred. On June 17, 1992, we found this investigation to be extraordinarily complicated and postponed the preliminary determination until no later than September 10, 1992 (57 FR 27025).

Scope of Investigation

The product covered by this investigation is hot rolled bars and rods of non-alloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, in coils or cut lengths, and in numerous shapes and sizes. Excluded from the scope of this investigation are other alloy steels (as defined by the Harmonized Tariff Schedule of the United States ("HTSUS") Chapter 72, note 1 (f)), except steels classified as other alloy steels by reason of containing by weight 0.4 percent or more of lead or 0.1 percent or more of bismuth, tellurium, or selenium. Also excluded are semi-finished steels and flat-rolled products.

Most of the products covered in this investigation are provided for under subheadings 7213.20.00.00 and 7214.30.00.00 of the HTSUS. Small quantities of the following products may also enter the United States under the following HTSUS subheadings: 7213.31.30.00, 60.00; 7213.39.00.30, 00.60, 00.90; 7214.40.00.10, 00.30, 00.50; 7214.50.00.10, 00.30, 00.50; 7214.60.00.10, 00.30, 00.50; and 7228.30.80.00. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Injury Test

Because the United Kingdom is "a country under the Agreement" within the meaning of section 701(b) of the Act, the International Trade Commission ("ITC") is required to determine whether imports of the subject merchandise from the United Kingdom materially injure, or threaten material injury to, a U.S. industry. On May 28, 1992, the ITC preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured

by reason of imports from the United Kingdom of the subject merchandise (57 FR 27739).

Analysis of Programs

For purposes of this preliminary determination, the period for which we are measuring subsidies (the period of investigation—"POI") is calendar year 1991, which corresponds to the fiscal year of UES Holdings Limited ("UES") and ASW Limited ("ASW"). The fiscal years of British Steel plc ("BS plc") and Glynwed International plc ("Glynwed") change from year to year.

We received a questionnaire response from Glynwed, a holding company registered in the United Kingdom. One company in Glynwed International's Steel & Engineering Division, Glynwed Steels Limited, produced and exported the subject merchandise to the United States during the POI. According to the response, Glynwed did not receive any government assistance during the POI.

Because there is a significant differential in the estimated net subsidy calculated for UES and Glynwed, we have preliminarily assigned individual company rates pursuant to 19 CFR 355.15(a)(2)(ii).

Based upon our analysis of the petition and the responses to our questionnaires, we preliminarily determine the following:

A. Program Preliminarily Determined To Be Countervailable

UES, the company which is the main focus of our investigation, was created as a joint venture between Guest, Keen and Nettlefolds ("GKN") and the British Steel Corporation ("BSC"). Consideration of the joint venture was part of a wider program of the UK Government which sought to rationalize and restructure the overlapping interests of the smaller, independent, and essentially profitable private sector steel industry and the peripheral steelmaking activities of the then-state-owned BSC.

The Department of Trade and Industry ("DTI"), the branch of the UK government with responsibility for BSC at the time, sought to bring about commercially viable arrangements that would remedy the fundamental problems of overcapacity and continue the process of privatizing peripheral operations of BSC. An area of significant product overlap between BSC and GKN was the production of engineering equality and special steels in bloom, billet, and bar form. BSC and GKN had formed successful joint ventures in the past (*e.g.*, ASW) and, therefore, the managements of the two companies were familiar to each other. Discussions on a possible joint venture between BSC and GKN, which began in 1982, culminated in an agreement in principle between BSC, GKN, and DTI in late 1985. The agreement was subjected to detailed verification by independent advisors which concluded that BSC was realizing a fair deal from the transaction.

On January 14, 1986, the formation of UES was announced. UES began trading on March 24, 1986.

In determining whether UES received a countervailable benefit during the POI, the Department examined the formation of the joint venture to determine whether the government's participation could be considered consistent with commercial considerations. The formation of UES involved contributions by the government (BSC) and GKN. In return for these contributions, BSC and GKN received rights to the future earnings of UES in the form of shares. In our analysis, we have attempted to determine whether the future earnings BSC could expect to receive were "adequate" in light of the amount BSC contributed to UES. To the extent that the expected future earnings were not commensurate with BSC's contribution to the joint venture, BSC paid too much and its investment was not consistent with commercial considerations. Put another way, from UES's point of view, UES may have paid too little for the assets and other elements contributed to it by BSC. The amount of the subsidy to UES would be the amount by which it underpaid BSC.

This approach is consistent with our Final Affirmative Countervailing Duty Determination; Certain Fresh Atlantic Groundfish from Canada ("Groundfish") 51 FR 10041 (March 24, 1986), where the Department, in examining a governmental equity investment, did not look at the equityworthiness of the company receiving the funds *per se*, but examined the expected rate of return on the investment. In Groundfish, we determined that the expected rate of return on shares purchased by the government was below that which would be required by a private investor and, therefore, we found that the government's investment was inconsistent with commercial considerations. The subsidy to the company receiving the equity investment was the difference between the expected rate of return to the private investor and the expected rate of return to the government.

In the present investigation, like Groundfish, we have a private investor against which we can measure the government's actions to determine whether the government's investment in UES was consistent with commercial considerations.

BSC and GKN contributed four general types of assets to the joint venture: (1) Fixed (land, buildings, and related facilities); (2) accounts receivable; (3) stocks (investories); and (4) cash. The parties used book value as the starting point for the valuation of the fixed assets contributed to UES. Several upward adjustments were made to assets contributed by both parties as a consequence of the negotiations. GKN received goodwill for its contributions to the joint venture, the amount of which was determined on a negotiated basis between the parties and was intended to reflect the "marketedly better historic profitability" of the GKN businesses involved than those contributed by BSC. The "marketedly better historic profitability" of the GKN businesses contributed to the joint venture is not supported by information on the record. For example, when stated in accordance with "Generally Accepted Accounting Principles", the financial statements for GKN's Brymbo operations, indicate that this business was actually operating at a loss for the four years proceeding the formation of the joint venture. (Brymbo Steelworks, a melting shop and billet mill, was among the assets that GKN contributed to the joint venture.) Because GKN received credit for significantly higher profitability for its contributed assets than BSC, when there is no evidence of such higher profitability, the price per share it paid for UES must be adjusted downward.

In order to determine whether UES received a benefit from this transaction, we used the amount of GKN's contribution to the joint venture, minus goodwill, as our "private investor" benchmark. We then compared the price paid per share by GKN to the price paid per share by BSC. To the extent that BSC overpaid for the shares it received in the joint venture, we determined that UES received a benefit.

To calculate the benefit arising from this overpayment, we are treating the amount of the overpayment as a nonrecurring grant. Our policy with respect to nonrecurring grants is to allocate the benefits from such grants over the average useful life of assets in the industry, unless the sum of grants under a particular program is less than 0.5 percent of a firm's total or export sales (depending on whether the program is a domestic or export subsidy). See, *e.g.*, Final Affirmative Countervailing Duty Determination; Fresh and Chilled Atlantic Salmon from Norway, 56 FR 7678 (February 25, 1991). Therefore, we have allocated the benefit

from this overpayment over 15 years, the average useful life of assets in the steel industry.

The benefit for the POI was calculated using the declining balance methodology described in the Department's proposed rules (Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments (Proposed Regulations), 54 FR 23366 (May 31, 1989)), and used in prior investigations (see, e.g., Final Affirmative Countervailing Duty Determination; Oil Country Tubular Goods from Canada, 51 FR 15037 (April 22, 1986)). Applying the Department's grant methodology and dividing the subsidy allocated to the POI by UES' total sales during the POI, we calculated an estimated net subsidy of 0.67 percent *ad valorem*.

In the formation of UES, BSC agreed to joint control of the new company despite the fact that BSC owned the majority of shares. We have considered the possibility that BSC should have received additional remuneration to account for this, but have not been able to establish a "price" for relinquishing control. We invite interested parties to comment on this issue so that we may give it fuller consideration in the final determination.

We find that the benefit received by UES in 1986 is unaltered by the privatization of BSC in 1988 because the structure of the joint venture remained the same after the privatization. Furthermore, when only part of the equity in a company changes hands, the Department may reasonably treat any previous benefits as still residing in the portion of the company did not change hands. See Certain Carbon Steel Products from Sweden; Final Results of Countervailing Duty Administrative Review, 56 FR 47184 (September 18, 1991). Therefore, we preliminarily determine that the 1988 privatization of BSC had no effect on the benefits received by UES in 1986.

B. Program Preliminarily Determined Not To Be Counteravailable

Bloom Caster Loan

BSC lent the joint venture £55 million in funds which had been provided to BSC by the DTI in accordance with section 18(1) of the Iron and Steel Act 1975. These funds were convertible on a quarterly basis as expenditures were made on a bloom caster at one of UES' facilities. The loans were to be converted into a combination of 35 million Preference Shares and 20 million 'A' Loan Stock. Prior to conversion, these funds were to be provided interest-free for at least four years. By September 30, 1988, however, all of the loans had been converted. The 20 million 'A' Loan Stock was repaid by UES on January 2, 1990.

We preliminarily determine that the loan capital provided by BSC constitutes an interest-free loan to the joint venture. However, the portion that was not converted to Preference Shares was repaid by 1990, prior to our POI. Therefore, we are only concerned with the outstanding portion of this loan which was converted to equity, *i.e.*, the 35 million Preference Shares. Based on our review of UES' financial statements from 1986 to 1988, the years in which in this loan was converted to equity, we determine that UES was equityworthy. Therefore, we determine that the equity was not provided on terms inconsistent with commercial considerations. Accordingly, we preliminarily determine that this program is not counteravailable.

C. Program Preliminarily Determined Not To Be Used Award Under the Energy Efficiency Best Practice Program

This program was established in 1989. It is administered by the Energy Efficiency Office (EEO), which is part of the Department of the Environment. The objective of the program is to disseminate information on efficient energy use. One of the program's four elements, "Good Practice," seeks to promote information in the form of guides or case studies on energy saving techniques that are being practices by British companies. In order to collect the information needed to prepare these guides or case studies and to disseminate them, the EEO pays up to £10,000 to companies that provide the information.

According to the questionnaire response, the assistance received under this program did not benefit the production or exportation of the subject merchandise. Therefore, we preliminarily determine that this program was not used.

D. Program for Which Additional Information Is Needed Formation of ASW

ASW was formed as a joint venture between BSC and GKN in 1981 to undertake steelmaking and re-rolling. Although information on the record provides the general outlines of the formation of ASW, the Department does not have sufficient information to conduct a thorough analysis of the formation of this joint venture (*e.g.*, the joint venture agreement, completion accounts, independent advisor reports, financial statements reflecting the assets contributed to this joint venture.) Accordingly, we determine that we require additional information to properly analyze this transaction.

Verification

In accordance with section 776(b) of the Act, we will verify the information used in making our final determination.

Suspension of Liquidation

In accordance with 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of additive steel from the United Kingdom, which are entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register** and to require a cash deposit or bond for such entries of the merchandise in the amount of 0.67 percent *ad valorem* except for merchandise produced by ASW and Glynwed. Glynwed is exempt from the suspension of liquidation because its established net subsidy is zero. ASW is exempt from the suspension of liquidation because the Department needs more information before it is able to analyze this company. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If our final determination is affirmative, the ITC will make its final determination within 45 days after the Department make its final determination.

Public Comment

In accordance with 19 CFR 355.38 of the Department's regulations, we will hold a public hearing, if requested, on November 9, 1992, at 9 a.m. in room 3708, to afford interested parties an opportunity to comment on this preliminary determination. Interested parties who wish to request or participate in a hearing must submit a request within ten days of the publication of this notice in the **Federal**

Register to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Requests should contain: (1) The party's name, address, and telephone number; (2) the number participants; (3) the reason for attending; and (4) a list of the issues to be discussed. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

In accordance with 19 CFR 355.38 (c) and (d), ten copies of the business proprietary version and five copies of the nonproprietary version of the case briefs must be submitted to the Assistant Secretary no later than October 28, 1992. Ten copies of the business proprietary version and five copies of the nonproprietary version of rebuttal briefs must be submitted to the Assistant Secretary no later than November 4, 1992. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal brief. If no hearing is requested, interested parties still may comment on these preliminary results in the form of case and rebuttal briefs. Written argument should be submitted in accordance with section 355.38 of the Department's regulations and will be considered if received within the time limits specified in this notice.

This determination is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Dated: September 10, 1992.

Rolf Th. Lundberg, Jr.,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-22558 Filed 9-16-92; 8:45 am]

BILLING CODE 3510-DS-M

[C-427-805]

Preliminary Affirmative Countervailing Duty Determination: Certain Hot Rolled Lead and Bismuth Carbon Steel Products From France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 17, 1992.

FOR FURTHER INFORMATION CONTACT: Julie Anne Osgood or Susan Strumbel, Office of Countervailing Investigations, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-0167 or 377-1442, respectively.

Preliminary Determination

The Department preliminarily determines that benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in France of certain hot rolled lead and bismuth carbon steel products.

For information on the estimated net subsidy, please see the "Suspension of Liquidation" section of this notice.

Case History

Since the publication of the notice of initiation in the **Federal Register** (57 FR 19884, May 8, 1992) the following events have occurred. On June 17, 1992, we found this investigation to be extraordinarily complicated and postponed the preliminary determination until no later than September 10, 1992 (57 FR 27025).

Scope of Investigation

The products covered by this investigation are hot-rolled bars and rods of nonalloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, in coils or cut lengths, and in numerous shapes and sizes. Excluded from the scope of these investigations are other alloy steels (as defined by the *Harmonized Tariff Schedule of the United States* (HTSUS) Chapter 72, note 1 (f)), except steels classified as other alloy steels by reason of containing by weight 0.4 percent or more of lead, or 0.1 percent or more of bismuth, tellurium, or selenium. Also excluded are semi-finished steels and flat-rolled products. Most of the products covered in this investigation are provided for under subheadings 7213.20.00.00 and 7214.30.00.00 of the HTSUS. Small quantities of these products may also enter the United States under the following HTSUS subheadings: 7213.31.30.00, 60.00; 7213.39.00.30, 00.60, 00.90; 7214.40.00.10, 00.30, 00.50; 7214.50.00.10, 00.30, 00.50; 7214.60.00.10, 00.30, 00.50; and 7228.30.80. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Injury Test

Because France is a "country under the Agreement" within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the certain hot rolled lead and bismuth carbon steel products from France materially injure, or threaten material injury to, a U.S. industry. On May 28, 1992, the ITC preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from France of this merchandise (57 FR 27739).

Analysis of Programs

For purposes of this preliminary determination, the period for which we are measuring subsidies (the period of investigation (POI)) is calendar year 1991, which corresponds to the fiscal year of Usinor Sacilor.

Based upon our analysis of the petition and the responses to our questionnaire, we preliminarily determine the following:

A. Programs Preliminarily Determined To Be Countervailable

We preliminarily determine that subsidies are being provided to manufacturers, producers, or exporters in France of certain hot-rolled lead and bismuth carbon steel products under the following programs:

1. *Reductions in Paid-in Capital.* During the period 1978 through 1988, the paid-in capital of Usinor, Sacilor, and their successor, Usinor Sacilor was increased through conversions and reclassification of various financial instruments into common stock. As the companies sustained losses over this same period, the paid-in capital was used to offset these losses. The conversions, reclassifications, and reductions in paid-in capital are described below.

In 1978, the GOF, the principal steel companies (Usinor, Sacilor, Chatillon-Neuves-Maisons, their subsidiaries), and their creditors agreed upon a plan to help the steel companies restructure their debt. This plan included a reduction in paid-in capital.

Furthermore, the steel companies and their creditors, Fonds de Developpement Economique et Social (FDES), Credit National and bondholders, created a new instrument called "Loans with Special Characteristics" (PACs) to provide additional equity so as to allow steel companies to reconstitute their capital. According to the responses, pre-1978 loans from Credit National and FDES to the steel companies were converted into PACs.

The PAC was an instrument akin to redeemable subordinated nonvoting preferred stock. PACs could be included in shareholders' equity on the balance sheet and had the following characteristics: 1) a symbolic 0.10 percent enumeration for the first five years and 1.0 percent thereafter, 2) no schedule of reimbursement but in the

event the steel companies became profitable, the PACs holders could elect to redeem their PACs or share in profits according to a predetermined formula, and 3) PACs were subordinated to all but the common stock.

Additionally, prior to 1978, bonds were issued for the benefit of the steel companies by various financial institutions. The Societe de Gestion D'Emprunts Collectifs pour la Siderurgique (GECS) was created by the GOF and was substituted for the steel companies as the debtor on these bonds. Consequently, the GECS also became a creditor of the French steel companies for the bond amounts. The amounts owed to the GECS were also converted to PACs.

The Corrected Finance Law of 1981 allowed the PACs resulting from the 1978 debt conversion to be used to cover operating losses. According to the responses, the process involved two steps, neither of which involved the injection of new funds: first, the steel companies were permitted to reclassify PACs issued between 1978 and 1981 as common stock, and, second, paid-in capital was immediately reduced by a similar amount.

In addition to allowing the conversion of PACs and reduction of capital, the 1981 Corrected Finance Law granted Usinor and Sacilor the authority to issue convertible bonds. The Fonds d'Intervention Siderurgique (FIS) or steel intervention fund was created by decree of May 18, 1983, in order to implement that authority. According to the responses, Usinor and Sacilor issued convertible bonds to the FIS, which, in turn, with the GOF guaranty, floated bonds to the public and to institutional investors. In 1983, 1984, and 1985, Usinor and Sacilor issued convertible bonds to the FIS.

Furthermore, the GOF financed the recurring needs of Usinor and Sacilor through shareholders' advances beginning in 1982. These shareholders' advances carried no interest and there was no precondition for receipt of these funds. Consistent with the GOF policy of adherence to the EC State Aids Code, and with the GOF private investor policy articulated by President Mitterand in 1984, the GOF, in 1986, paid out the last of the advances it had agreed to make under this program.

Another restructuring plan, developed at the end of 1985 and implemented in late 1986, called for significant reductions of capacity, deep cuts in employment, modernization of equipment and alleviation of financing costs. Pursuant to this plan, the capital of Usinor and Sacilor was restructured. The restructuring did not include the injection of any new funds into the capital of either Usinor or Sacilor. Rather, it involved the additional reclassification of PACs as common stock as well as the conversion of FIS convertible bonds and shareholders' advances into common stock. The GOF then reduced the paid-in capital of both companies.

At the end of 1987, Usinor and Sacilor, companies owned by the GOF, were merged to become one holding company called Usinor Sacilor. According to the responses, this transaction entailed bookkeeping entries only and did not involve any new capital being injected into Usinor Sacilor or any of its subsidiaries.

At the end of 1988, Usinor Sacilor was substituted as debtor for Usinor and Sacilor for the bonds issued by them to the FIS between 1983 and 1985. The GOF then purchased the bonds from the FIS. As a result, the GOF became a creditor of Usinor Sacilor for a like amount. Usinor Sacilor then issued new shares to the GOF which paid for them by canceling the debt represented by the bonds. The increase in shareholders' equity stemming from this cancellation of bond indebtedness was then offset by accumulated losses from past years, *i.e.*, paid-in capital was reduced to reflect these losses.

Because the restructurings described above, including the reclassification and conversions of PACS, FIS bonds, and shareholders' advances into common stock, and the corresponding reductions in paid-in capital, were limited to the companies in question, we have preliminarily determined that these measures provided subsidies to Usinor Sacilor.

For purposes of calculating the benefit, we have treated each reduction of paid-in capital in the years 1978, 1981, 1986, and 1988, as discussed above, as non-recurring grants. Our policy with respect to nonrecurring grants is to allocate the benefits from such grants over the average useful life of assets in the industry, unless the sum of grants under a particular program is less than 0.50 percent of a firm's total or export sales (depending on whether the program is a domestic or export subsidy.) *See, e.g., Final Affirmative Countervailing Duty Determination: Fresh and Chilled Atlantic Salmon from Norway*, 56 FR 7678 (February 25, 1991). Therefore, we have allocated the benefits from these reductions over 15 years, the average useful life of assets in the steel industry.

We calculated the benefit for the POI using the declining balance methodology described in the Department's proposed rules (*Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments*, 54 FR 23366 (May 31, 1989) (*Proposed Regulations*)), and used in prior investigations (*see, e.g., Final Affirmative Countervailing Duty Determinations: Oil Country Tubular Goods from Canada*, 51 FR 15037 (April 22, 1986)). For the discount rate, we included a risk premium since we have preliminarily determined that Usinor, Sacilor, and Usinor Sacilor were uncreditworthy from 1978 through 1988.

For the years 1978 and 1981, where we previously found Usinor and Sacilor uncreditworthy, (*See, Final Affirmative Countervailing Duty Determination: Certain Steel Products from France*, 47 FR 39335 (August 17, 1982)), we have continued to consider Usinor and Sacilor uncreditworthy for purposes of the preliminary determination. The GOF has provided certain information arguing that the companies should be considered creditworthy during 1978 through 1981, but it was not provided in the requested format and we have not had sufficient time to analyze the data actually provided. We will consider this information for the final determination. Our determination of uncreditworthiness for the years 1986 and 1988 is based on our analysis of Usinor, Sacilor and Usinor Sacilor's cash flow, interest expense, and various other ratios, *e.g.*, times interest earned.

When we determine that a company is uncreditworthy, we base our discount rate on the highest lending rate applicable to firms in the country in question, plus an amount equal to 12 percent of the country's prime rate. *See, Final Affirmative Countervailing Duty Determination: New Steel Rail, Except Light Rail, from Canada*, 54 FR 31991 (August 3, 1989), and the *Proposed Regulations*. We used the interest rates published in the International Monetary Fund's *International Financial Statistics* and used the highest annual interest rate reported in that publication for the years the reductions in paid-in capital took place. We then added to this interest rate an amount equal to 12 percent of the prime rate in France for the same year. We calculate 12 percent of this prime rate and added it to the annual interest rate. On this basis, we calculated an estimated net subsidy of 11.71 percent *ad valorem*.

2. *Repaid PACS*. Shareholders' advances held by the former majority shareholders were converted to PACs in 1978. Unlike the other PACs, discussed above, the PACs created from the shareholders' advances were repaid. Although Sacilor paid no interest on the PACs, the full value of the advances was repaid in 1989. Therefore, we are

treating this as a zero interest loan where benefits expired prior to the POI. However, the amount repaid by Usinor in 1981 was less than the original shareholders' advance. Therefore, we are treating the difference between the original shareholders' advance and the amount repaid as a nonrecurring grant. Accordingly, we have applied the grant methodology discussed above to calculate an estimated net subsidy of 0.01 percent *ad valorem*.

3. *Long-term Loans from FDES.* The Law of July 13, 1978, created participative loans (prets participatifs), which were by law available to all French companies. Under these loans, which were issued by the FDES and the Caisse Francaise de Developpement Industriel (CFDI), the borrower paid a lower-than-market interest rate plus a share of future profits according to an agreed upon formula. These loans were obtained by either Usinor, Sacilor, or their subsidiaries. On July 1, 1990, the outstanding principal on the FDES loans to Usinor and Sacilor was consolidated into long-term loans.

We have preliminarily determined that we should treat the 1990 consolidation as loans given in 1990. The GOF did not provide information regarding the distribution of FDES loans for that year. However, for the period 1985 through 1989, the GOF provided a chart showing by sector, *i.e.*, agricultural and food industries, mineral extraction and metallurgy, electrical and mechanical industries, chemical, rubber and glass-related industries, miscellaneous industries and textiles, building materials and construction related industries, and other activities, the total distribution of FDES loans for the years 1985 through 1989.

Comparing the amount of Usinor Sacilor's consolidated loans with this information indicates that Usinor Sacilor's consolidated loans exceeded the total amount of FDES loans distributed to all sectors of the economy for the years 1987, 1988, and 1989 combined. Based on this comparison, we preliminarily conclude that the FDES loans are *de facto* limited to a specific enterprise or industry or group of enterprises or industries.

To determine whether the loans were made on terms inconsistent with commercial considerations, we used the methodology described in section 355.44(b)(4) of the Department's proposed regulations. Because we have preliminarily found Usinor Sacilor to be creditworthy in 1990, we have used as the benchmark and the discount rate a rate from the OECD Financial Statistics publication "Typical Short-term Interest Rates" publication as our benchmark rate for 1990. On this basis, we preliminarily determine that the FDES loans to Usinor Sacilor are on terms inconsistent with commercial considerations. Using this methodology, we calculated an estimated net subsidy during the POI of 0.01 percent *ad valorem*.

4. *Loans from Credit National and CFDI.* In 1991, outstanding loans to Usinor Sacilor from Credit National and CFDI were consolidated. Consistent with our treatment of the FDES loans, we are treating these consolidations as new loans in 1991. Because it is reasonable to assume that no interest would be due on a long-term loan taken out in 1991 until 1992, no cash flow effect would occur until 1992. Only at that time would any potential subsidy be realized. Therefore, given our POI is 1991, we have not analyzed whether the 1991 consolidations of Credit National and CFDI loans confer a subsidy on Usinor Sacilor.

However, the loans which were consolidated were outstanding during our POI. No information was submitted on the terms of these "old loans" or whether these loans were limited to a specific enterprise or industry or group of enterprises or industries. Lacking such information, we are applying best information available, in accordance with section 355.37 of the Department's regulations.

To calculate the benefit arising from these loans during the POI, we have assumed that no interest was paid and have compared this to the rate from the OECD Financial Statistics publication "Typical Short-term Interest Rates" as our benchmark rate. On this basis, we calculated an estimated net subsidy rate of 0.67 percent *ad valorem* for "old" Credit National and CFDI loans.

5. *Equity Infusions.* a. *Purchase of Common Shares by Credit Lyonnais.* On July 12, 1991, an official announcement was made regarding the acquisition by Credit Lyonnais of 20 percent of the voting capital stock of Usinor Sacilor. The transaction was set to close on December 31, 1991, in order to allow the EC Commission time to examine the transaction with regard to the EC State Aids Code. Under the EC State Aids Code, the Commission examined whether the proposed transaction was on terms consistent with commercial considerations. To that end, the EC Commission retained the services of a Swiss consulting firm whose task was to evaluate the value of Usinor Sacilor as a whole so as to enable the Commission to decide whether Credit Lyonnais' proposed investment was one which a prudent investor would make. On November 28, 1991, the EC Commission granted its approval of the transaction.

According to the responses, Credit Lyonnais purchased both newly issued shares of Usinor Sacilor and existing shares held by the GOF at the same price. The only objective of the GOF was that the shares be sold at a price reflecting the value of the company.

For purposes of this preliminary determination, we have examined profit trends and other information on the record regarding Usinor Sacilor's future financial prospects and have determined that Usinor Sacilor was unequityworthy during 1991. Therefore, Credit Lyonnais' purchase of 20 percent of Usinor Sacilor's voting capital stock is found to be inconsistent with commercial considerations.

To calculate the benefit we have followed the methodology described in section 355.44(e)(1) of the Proposed Regulations and applied in previous cases (see, *e.g.*, *Preliminary Affirmative Countervailing Duty Determination: Circular Welded Non-Alloy Steel Pipe from Brazil*, 57 FR 24466 (June 9, 1992)) the rate of return shortfall during the period of investigation by comparing Usinor Sacilor's rate of return for 1991 to the national average rate of return in France for the same year. We then multiplied this rate of return shortfall by the amount of the investment made by Credit Lyonnais to derive the total benefit.

b. *Equity Infusion in 1988.* Although most of the increases in paid-in capital resulting from the reclassification of PACs and the conversions of FIS bonds and shareholder's advances into common stock were used to offset losses, as discussed above, a balance remained in 1988. Accordingly, we have treated this residual amount as an equity infusion.

Because we have preliminarily determined Usinor Sacilor was unequityworthy for 1988, based on our analysis of profit trends and other information on the record regarding Usinor Sacilor's future financial prospects from 1988 forward, this equity investment was made on terms inconsistent with commercial considerations.

c. *Equity Infusion in 1991.* In 1991, the GOF decided to redeem the last remaining PACs which were outstanding. The transaction took the form of a capital increase to Usinor Sacilor, which then used the proceeds to redeem the PACs.

Because we have preliminarily determined that Usinor Sacilor was unequityworthy during 1991, we find this equity investment to be on terms

inconsistent with commercial considerations.

Following the methodology discussed above under 5a, we calculated an estimated net subsidy for these equity infusions of 0.50 percent *ad valorem*.

The Department has received comments from interested parties regarding its methodology for treating government equity infusions into unequityworthy companies. We are soliciting comments from all interested parties on this issue. We will address these comments in the final determination.

B. Programs Preliminarily Determined Not to be Used

EC Programs

a. Article 54 of the Treaty of Paris—the ECSC guarantees commercial loans to coal and steel industries
b. Article 54 of the Treaty of Paris, Industrial Investment Loans
c. Article 56—Loans for Investment in Non-Steel Enterprises in areas of decreased steel activity
d. Article 56 Conversion Loans
e. Article 56 of the Treaty of Paris—Labour Assistance and Rehabilitation Aid
f. Under Article 54 of the Treaty of Paris—Interest Rebates on Investment and Reconversion Loans
g. European Investment Bank Loans
h. NCI Loans

C. Program Preliminarily Determined Not To Be Countervailable

Assistance for Research and Development. Petitioners alleged that the French producers of hot-rolled lead and bismuth carbon steel products benefit from research and development performed by the Institute de Recherches de la Siderurgie Francaise (IRSID).

According to the responses, IRSID is a wholly-owned subsidiary of Usinor Sacilor. IRSID carries out basic research on steel properties as well as research on production processes and publishes its results in scientific and technical journals. In addition, the results of IRSID-sponsored seminars and colloquia are open to interested parties throughout the world.

Because the results of the research and development performed by IRSID are made publicly available, we find this program to be not countervailable for purposes of this preliminary determination.

Verification

In accordance with section 776(b) of the Act, we will verify the information used in making our final determination.

Suspension of Liquidation

In accordance with 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of hot-rolled lead and bismuth carbon steel products from France, which are entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register** and to require a cash deposit or bond for such entries of the merchandise in the amount of 12.88 percent *ad valorem*. This suspension will remain in effect until further notice.

ITC Notification

In accordance with Section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Public Comment

In accordance with 19 CFR 355.38 of the Department's regulations, we will hold a public hearing, if requested, on November 16, 1992, at 9:30 a.m. in room 3708, to afford interested parties an opportunity to comment on this preliminary determination. Interested parties who wish to request or participate in a hearing must submit a request with ten days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B-099, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

In accordance with 19 CFR 355.38 (c) and (d), ten copies of the business proprietary version and five copies of the nonproprietary version of the case briefs must be submitted to the Assistant Secretary no later than November 6, 1992. Ten copies of the business proprietary version and five copies of the nonproprietary version of rebuttal briefs must be submitted to the Assistant Secretary no later than November 12, 1992. If the case and rebuttal brief contain only nonproprietary information, then ten copies of each respective brief must be submitted to the Department. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal brief. If no hearing is requested, interested parties still may comment on these preliminary results in the form of case and rebuttal briefs. Written argument should be submitted in accordance with section 355.38 of the Department's regulations and will be considered it received within the time limits specified in this notice.

This determination is published pursuant to Section 703(f) of the Act (19 U.S.C. 1671b(f)).

Dated: September 10, 1992.

Rolf Th. Lundberg, Jr.,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-22556 Filed 9-16-92; 8:45 am]

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[C-351-812]

Preliminary Affirmative Countervailing Duty Determination; Certain Hot Rolled Lead and Bismuth Carbon Steel Products From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 17, 1992.

FOR FURTHER INFORMATION CONTACT: Philip Pia or Laurel Lynn, Office of Countervailing Compliance, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-1168, respectively.

Preliminary Determination

The Department of Commerce (the Department) preliminarily determines that benefits which constitute subsidies within the meaning of Section701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Brazil of the subject merchandise, certain hot rolled lead and bismuth carbon steel products (leaded bar). The final determination is currently scheduled for November 24, 1992.

For information on the estimated net subsidy please see the "Suspension of Liquidation" section of this notice.

Case History

The publication of the notice of initiation in the **Federal Register** (57 FR 19884, May 1992). We found this investigation to be extraordinarily complicated and postponed the preliminary determination until September 10, 1992 (57 FR 27025, June 17, 1992).

A. Limiting Respondent Selection

On June 6, 1991, the respondents requested that the Department not require one producer of leaded bar, the Villares Group, to respond to the Department's questionnaire because of its insignificant share of exports of leaded bar from Brazil to the United States. On June 19, 1992, we decided that the Villares Group would not be required to answer our questionnaire because its share of leaded bar exports to the United States is extremely small. Therefore, this investigation includes two producers/exporters of the subject merchandise, ACESITA and Mannesmann S.A.. The Villares Group's share of exports of leaded bar to the United States is subject to verification.

B. Additional Programs Being Investigated

As stated in the May 8, 1992, initiation notice of this investigation, we determined that we would not initiate an investigation of BNDES financing programs because BNDES financing had been found not countervailable in Certain Carbon Steel Products from Brazil (49 FR 17989, April 26, 1984), and petitioners did not provide sufficient new information to warrant re-examination of the program.

On July 24, 1992, we initiated a countervailing duty investigation of certain steel products from Brazil (57 FR 32970, July 24, 1992). In that case, petitioner alleged that BNDES financing was provided disproportionately to the steel industry and provided sufficient new information for the Department to initiate an investigation.

Because leaded bar is a steel product, we requested information regarding BNDES financing programs from respondents in the instant case.

In addition, based on information supplied in the questionnaire responses, we determined that a reasonable basis existed to believe or suspect that, one respondent, ACESITA, was not a commercially viable investment at the time of the Brazilian government's conversion of *partes beneficiarias* (profit participation certificates) into equity in 1989. Therefore, on August 11, 1992, we issued a supplemental questionnaire requesting information regarding the equityworthiness of ACESITA at the time the *partes beneficiarias* were converted into equity.

Scope of Investigation

The merchandise subject to this investigation is hot rolled bars and rods of nonalloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, in coils or cut lengths, and in numerous shapes or sizes. Excluded from the scope of this investigation are other alloy steels (as defined by the Harmonized Tariff Schedule of the United States (HTSUS) Chapter 72, note 1(f), except steels classified as other alloy steels by reason of containing weight 0.4 percent of lead, or 0.1 percent or more of bismuth, tellurium, or selenium. Also excluded are semi-finished steels and flat-rolled products. Most of the products covered in this investigation are provided for under subheadings 7213.20.00.00, and 7214.30.00.00 of the HTSUS. Small quantities of these products may also enter the United States under the following HTSUS subheadings: 7213.31.30.00, 60.00; 7213.39.00.30, 00.60, 00.90; 7214.40.00.10, 00.30, 00.50; 7214.50.00.10, 00.30, 00.50; 7214.60.00.10, 00.30, 00.50; and 7228.30.80.00. Although the HTSUS subheadings are provided for convenience and customs purposes, our description of the scope of this proceeding is dispositive.

Injury Test

Because Brazil is a "country under the Agreement" within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Brazil materially injure, or threaten material injury to, a U.S. industry. On May 28, 1992, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Brazil of the subject merchandise (57 FR 23428, June 3, 1992).

Analysis of Subsidies

Consistent with our practice in preliminary determinations, when a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses, however, are subject to verification. If the responses cannot be supported at verification, and a program is otherwise countervailable, the program will be considered a countervailable subsidy in the final determination.

For purposes of this preliminary determination, the period for which we are measuring subsidies (the period of investigation—"POI") is calendar year 1991.

In determining the rates under the various programs described below, we used the following methodology. We first calculated a country-wide rate for Brazil. This rate comprised the sum of the *ad valorem* rates received by each firm weighted by each firm's share of exports to the United States of the subject merchandise. Pursuant to 19 CFR 355.20(d), we compared the total *ad valorem* rate received by each firm to the country-wide rate for all programs. The rate for ACESITA was significantly different from the weighted-average country-wide rate. Therefore, ACESITA received its own rate. Because ACESITA's rate is significantly different from the country-wide rate, its rate is removed from the calculation of the rate applied to all remaining companies (all other rate). Because Mannesmann is the only remaining firm, it will receive its own rate, and its rate will become the all other rate which will be assigned to all other exports of leaded bar from Brazil.

A. Programs Preliminarily Determined To Be Countervailable

We preliminarily determine that subsidies are being provided to manufacturers, producers, or exporters in Brazil of leaded bar under the following programs:

1. Government Debt Forgiveness to ACESITA

A government-owned bank, the Banco do Brasil, financed a repurchase of ACESITA's foreign-denominated debt in 1990. Banco do Brasil provided a loan to a third party to purchase ACESITA's foreign-denominated debt at a discount, with the understanding that the third party would then contract with ACESITA to waive the foreign-denominated debt in return for ACESITA's assumption of the third party's loan from the Banco do Brasil. Because ACESITA's foreign-denominated debt to the Banco do Brasil was repurchased at a significant discount, we preliminarily determine that such a transaction is essentially debt forgiveness by the Government of Brazil (GOB), and as such bestowed a

countervailed benefit to ACESITA. ACESITA was relieved from a debt that it otherwise would have had to pay absent government intervention. Therefore, we have treated the amount of debt that was forgiven as a nonrecurring grant and used the grant methodology described for such grants in our proposed regulations. (Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments (Proposed Regulations), 54 FR 23366 (May 31, 1989)). See also, Final Affirmative Countervailing Duty Determination; Oil Country Tubular Goods from Canada, 51 FR 15037 (April 22, 1986)). Using our grant methodology, we allocated the amount of debt forgiven in 1990 over 15 years, the average useful life of assets in the steel industry. We divided the result by ACESITA's total sales in 1991. On this basis we preliminarily determine the benefit to ACESITA to be 8.02 percent *ad valorem*.

We have insufficient evidence to date on the record to determine that such transactions by the Banco do Brasil are not limited to a specific enterprise, or industry, or group of enterprises or industries. However, we are requesting additional information from the Banco do Brasil regarding its practices in such transactions.

We also preliminarily determine that the Banco do Brasil loan used to finance this arrangement, does not, in and of itself, confer a countervailable benefit. Although the Department determined that ACESITA was uncreditworthy at the time the loan was made, the interest rate charged by Banco do Brasil for this loan is higher than the Department's benchmark rate including the risk premium for uncreditworthy companies. Therefore, we preliminarily determine that the loan was made on terms consistent with commercial considerations.

2. Government Equity Infusions Into ACESITA

Historically, the GOB has been the principal owner of the Brazilian steel industry, primarily through the state-owned holding company Siderurgia Brasileira S.A. (SIDERBRAS). In March 1990, the GOB decided to liquidate SIDERBRAS and sell its steel mills, including ACESITA. The sale of ACESITA is scheduled to be completed in 1992.

According to the questionnaire responses, ACESITA received government equity infusions from the Banco do Brasil in the form of conversions of redeemable *partes beneficiarias* to equity in 1989.

Partes beneficiarias are hybrid instruments which have qualities of both debt and equity. *Partes beneficiarias* are similar to a liability because the issuer repays the bearer the nominal purchase value in equal yearly installments following a grace period. *Partes beneficiarias* are also similar to equity because the purchaser has the right to share in the company's annual profits.

ACESITA issued *partes beneficiarias* in 1983, 1984, and 1985. We have determined that the *partes beneficiarias* should be considered an equity infusion at the time of the 1989 decision to convert all outstanding *partes beneficiarias* to equity. ACESITA recorded the *partes beneficiarias* as equity in their balance sheet. After the 1989 decision, all redemption obligations ceased, but profit-sharing obligations continued. Thus, *partes beneficiarias* retain the qualities of equity, but not the qualities of debt.

We have consistently held government provision of equity does not *per se* confer a subsidy (see, *e.g.*, Final Affirmative Countervailing Duty Determination; Steel Wheels from Brazil (54 FR 15523, April 18, 1989) (Steel Wheels)). Government equity infusions bestow a countervailable benefit only when provided on terms inconsistent with commercial considerations. Therefore, we examined whether ACESITA was a reasonable investment in 1989 (a condition we have termed equityworthy) in order to determine whether the equity infusions were inconsistent with commercial considerations.

A company is a reasonable investment if it shows the ability to generate a reasonable rate of return within a reasonable period of time. To make this determination, we examine the company's financial ratios and profitability for a period of three years prior to the year of each infusion, as well as other factors such as market demand projections and feasibility studies to evaluate its future ability to earn a reasonable rate of return on investment.

Based on our analysis of the information on the record, we conclude that ACESITA was unequityworthy at the time that the Banco do Brasil voted to convert its *partes beneficiarias* into equity, *i.e.*, 1989. Accordingly, we determine that the equity infusion made into ACESITA by the GOB was inconsistent with commercial considerations and may confer a subsidy.

To the extent that we find government investment to be commercially unreasonable and the government's rate of return on its investment less than the national average rate of return on investment, we consider the investment to provide a countervailable benefit (see, Proposed Regulations and, *e.g.*, Steel Wheels). We examine the "rate of return shortfall" for the POI, which is the difference between the national average rate of return on equity during the POI and ACESITA's rate of return on equity. If no shortfall exists for the POI, there is no countervailable benefit for that year. If a shortfall does exist, we multiply the rate of the shortfall by the amount of the equity infusion to find the benefit for the POI. The Department has received comments from interested parties regarding its methodology for treating government equity infusion into unequityworthy companies. We are soliciting comments from all interested parties on this issue. We will address these comments in the final determination.

Due to hyperinflation in the Brazilian economy, the normal value of the original equity infusions have increased substantially. We have, therefore, used the U.S. dollar values of the *partes beneficiarias* converted into equity in our calculations. In its response to our questionnaires, ACESITA also used the U.S. dollar values of the *partes beneficiarias* to correct their nominal value.

We measured the rate of return for ACESITA by dividing its net loss in 1991 by its total capital. We then compared the result with the national average rate of return on equity in Brazil in 1991, as reported in the August 1992 edition of *Exame*, a Brazilian business publication. ACESITA's rate of return on equity in 1991 was lower than the national average. The difference between ACESITA's rate of return on equity and the national average rate of return on equity constitutes the rate of return shortfall. We multiplied the rate of return shortfall by the value of the equity infusions provided to ACESITA. Finally, we divided this benefit amount by the dollar value of ACESITA's total sales for 1991.

Under no circumstances do we countervail in any year an amount greater than what we would have countervailed in that year had we treated the government's equity infusion as an outright grant (see, Proposed Regulations). Therefore, we compared the amount of subsidy that resulted from our calculation with the amount of subsidy that would have resulted had we treated the equity infusion as an outright grant. Based on this comparison we determine that we have no need to cap the amount of the subsidy for the

POI at the level that would have resulted if we had treated the equity infusion as a grant.

To determine the grant cap for the POI, we allocated the U.S. dollar value of the equity infusion in 1989 using a declining balance methodology and the 15-year allocation period. We have used as a discount rate the cost of dollar-denominated, long-term, fixed-rate debt of ACESITA in 1989. We divided the amount of the benefit attributable to 1991 by the U.S. dollar value of ACESITA's total sales in 1991.

On this basis, we determine that the subsidy to ACESITA from the government equity infusions was 12.43 percent *ad valorem*.

3. IPI Rebate Program Under Law 7554/86

The IPI Rebate Program, which consists of a rebate of 95 percent of the value-added sales tax (IPI) paid on domestic sales of industrial products, was established by Decree-Law 1.547 in 1977. After several amendments to Decree-Law 1.547, the program was suspended on April 12, 1990, by Decree-Law 8.034. Pursuant to this law, only companies with projects approved prior to April 1990 are eligible to continue to receive benefits from this program. ACESITA and Mannesmann received benefits under this program during the POI.

In Steel Wheels we determined that this program is limited to specific enterprises or industries. We have no information that warrants a reconsideration of that determination. Therefore, we preliminarily determine that this program is limited to a specific enterprise or industry, or group of enterprises or industries. To calculate the benefit, we divided the total amount of each company's IPI rebates received during the POI by their respective total sales in 1991. On this basis, we determine the subsidy under this program to be 2.90 percent *ad valorem* for ACESITA, and 0.67 percent *ad valorem* for Mannesmann during the POI.

4. Exemption of IPI and Duties on Imports Under Decree-Law 2324

Decree-Law 2324 of March 30, 1987, provided exporters of manufactured products exemptions from IPI and duties on imported spare parts and machinery. Because this exemption was limited to exporters, and because the imported goods were not physically incorporated into the subject merchandise, we preliminarily determine that it is countervailable. One respondent, Mannesmann, was provided exemptions under this law during the POI. To calculate the benefit, we divided the amount of IPI and import duties exempted in 1991 by Mannesmann's total exports in 1991. On this basis, we determine the benefit to be 0.15 percent *ad valorem* for Mannesmann during the POI. In its questionnaire response, the GOB stated that the program was terminated in June 1991. However, because the GOB provided no documentation to support its claim that this exemption has been terminated and that no residual benefits have been provided, we have not adjusted the cash deposit of estimated countervailing duties.

5. Exemptions of IPI and Duties on Imports Under Law 2894

Law 2894 of October 1, 1956 specifically exempts ACESITA from import duties and IPI on imports of all goods which are destined for the improvement, expansion and maintenance of steel and hydro-electric plants owned by ACESITA. This law provides different benefits from the IPI Rebate Program under Law 7554/86 mentioned above, because this law applies to IPI and duties due only on imports. The law is effective as long as the Banco do Brasil remains the majority shareholder of ACESITA. Because this exemption was limited to one company, we preliminarily determine that it is countervailable. To calculate the benefit, we divided the amount of IPI and import duties exempted in 1991 by ACESITA's total sales in 1991. On this basis, we determine the benefit to be 0.21 percent *ad valorem* for ACESITA during the POI.

B. Programs Preliminarily Determined Not To Be Countervailable

1. Long-Term Loans Through FINEP

The Fund of Studies and Projects (*FINEP; Financiadora de Estudos e Projectos*) is a government agency within the Secretary of Science and Technology that provides and administers loans given under this program. FINEP, which was founded in 1976 and became a public company in 1985, lends funds in connection with technological development projects. Sectors receiving financing from FINEP include electric, electronic and communications equipment, civil construction, engineering and consulting, mining, metallurgy, and mechanics, infrastructure, transportation, and communications, and livestock, fishing, and agriculture. According to information provided in the questionnaire responses, we found no evidence that FINEP loans are limited either by law, or in fact, to an industry or group of industries, or regions. Therefore, we preliminarily determine that FINEP loans are not provided to a specific enterprise or industry, or group of enterprises or industries, and hence do not bestow a countervailable benefit to exporters or producers of the subject merchandise.

C. Programs Preliminarily Determined Not To Be Used

1. BNDES Preferential Financing

2. FINEX Preferential Export Financing

3. PROEX Preferential Export Financing

4. Import-Export Reform Plan Preferential Financing

5. Tax Incentives and Funds Through Project CONSERVE

6. IPI and Import Duties Exemptions Through the BEFIEX Program

Verification

In accordance with section 776(b) of the Act, we will verify the information used in making our final determination.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of leaded bar from Brazil which are entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register** and to require a cash deposit or bond for such entries of the merchandise in the amounts indicated below. This suspension will remain in effect until further notice:

Producer/exporter	Estimated net subsidy/duty deposit rate
ACESITA	23.56 percent, ad valorem
Mannesmann	0.82 percent, ad valorem.
All others	0.82 percent, ad valorem.

In accordance with section 703(f) of the Act, we will notify the International Trade Commission (ITC) of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If our final determination is affirmative, the ITC will make its final

determination within 45 days after the Department makes its final determination.

Public Comment

In accordance with 19 CFR 355.38 of the Department's regulations, we will hold a public hearing, if requested, on November 12, 1992, to afford interested parties an opportunity to comment on this preliminary determination. We will notify all interested parties of the place and time of the hearing. Interested parties who wish to request or participate in a hearing must submit a request within ten days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-099, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

In accordance with 19 CFR 355.38(c) and (d), ten copies of the business proprietary version and five copies of the nonproprietary version of the case briefs must be submitted to the Assistant Secretary no later than November 3, 1992. Ten copies of the business proprietary version and five copies of the nonproprietary version of rebuttal briefs must be submitted to the Assistant Secretary no later than November 10, 1992. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal brief. If no hearing is requested, interested parties still may comment on these preliminary results in the form of case and rebuttal briefs. Written argument should be submitted in accordance with Section 355.38 of the Department's regulations and will be considered if received within the time limits specified in this notice.

This determination is published pursuant to Section 703(f) of the Act (19 U.S.C. 1671b(f)).

Dated: September 10, 1992.

Rolf Th. Lundberg, Jr.,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 92-22832 Filed 9-16-92; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Denial of Participation in the Special Access and Special Regime Programs

September 11, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs denying the right to participate in the Special Access and Special Regime Programs.

EFFECTIVE DATE: November 1, 1992.

FOR FURTHER INFORMATION CONTACT: Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-3400.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Committee for the Implementation of Textile Agreements (CITA) has determined that CN & M Industrial is in violation of the requirements set forth for participation in the Special Access and Special Regime Programs.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs, effective on November 1, 1992, to deny CN & M Industrial the right to participate in the Special Access and Special Regime Programs, for a period of three years, beginning November 1, 1992 and ending October 31, 1995.

Requirements for participation in the Special Access Program are available in **Federal Register** notices 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; and 54 FR 50425, published on December 6, 1989.

Requirements for participation in the Special Regime Program are available in **Federal Register** notices 53 FR 15724, published on May 3, 1988; 53 FR 32421, published on August 25, 1988; 53 FR 49346, published on December 7, 1988; and FR 50425, published on December 6, 1989.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 11, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: The purpose of this directive is to notify you that the Committee for the Implementation of Textile Agreements has determined that CN & M Industrial is in violation of the requirements for participation in the Special Access and Special Regime Programs.

Effective on November 1, 1992, you are directed to prohibit CN & M Industrial from further participation in the Special Access and Special Regime Programs, for a period of three years, beginning November 1, 1992 and ending October 31, 1995. Goods accompanied by Form ITA-370P which are presented to U.S. Customs for entry under the Special Access and Special Regime Programs will no longer be accepted. In addition, for the period November 1, 1992 through October 31, 1995, you are directed not to sign ITA-370P forms for export of U.S.-formed and cut fabric for CN & M Industrial.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Committee for the Implementation of Textile Agreements.

[FR Doc. 92-22467 Filed 9-16-92; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of the Defense Intelligence Agency Advisory Board

ACTION: Notice.

SUMMARY: Under the provisions of Public Law 92-463, the "Federal Advisory Committee Act," notice is hereby given that the Defense Intelligence Agency Advisory Board (DIAAB) has been renewed, effective September 7, 1992.

The DIAAB provides the Director, Defense Intelligence Agency with scientific and technical expertise and advice on current and long-term operational and intelligence matters covering the total range of the mission of the Agency. The DIAAB provides a link between the scientific/technical and military operations communities and the Defense Intelligence Agency. In the military operations area, the DIAAB will continue to address issues concerning intelligence support to combat units, joint intelligence doctrine, net assessments, arms control, and integration of intelligence and operational planning.

The DIAAB will continue to be composed of approximately 25 to 30 members, who are acclaimed leaders and experts in the scientific and technical areas relating to Defense Intelligence Agency programs. A fairly

balanced membership is achieved in terms of the points of view obtained and relative to the diverse intelligence disciplines represented. Members are drawn from large and small corporations, government agencies, private consultant firms, and the academic community.

For additional information regarding the DIAAB, please contact LTC Bob Hymel, telephone: 703-693-3680.

Dated: September 14, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-22523 Filed 9-16-92; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Joint Precision Interdiction (JPI)

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Joint Precision Interdiction (JPI) will meet in closed session on September 17-18, 1992 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Director, Defense Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will review acquisition strategies needed for an optimum family of surveillance, reconnaissance, and target acquisition systems, C3I systems and weapon systems required to perform the JPI mission.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92-463, as amended (5 U.S.C. App. II, (1988)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c) (1) (1988), and that accordingly these meetings will be closed to the public.

Dated: September 14, 1992.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-22522 Filed 9-16-92; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Open Meeting, Armed Forces Epidemiological Board

AGENCY: Armed Forces Epidemiological Board, DOD.

ACTION: Notice of open meeting.

1. In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L.92-463), announcement is made of the following committee meeting:

Name of Committee: Armed Forces Epidemiological Board, DOD.

Date of Meeting: 28 October 1992.

Time: 1300-1600.

Place: Comfort Inn, Gransville, Maryland.

Proposed Agenda: Health Promotion and Disease Control.

2. This meeting will be open to the public but limited by space accommodations. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advise the Executive Secretary, AFEB, Skyline Six, 5109 Leesburg Pike, room 667, Falls Church, Virginia 22041-3258.

Kenneth L. Denton,

Army Federal Register, Liaison Officer.

[FR Doc. 92-22533 Filed 9-16-92; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Stealth and Stealth Countermeasures Task Force will meet October 8-9, 1992, from 9 am to 5 pm, at Lockheed Advanced Development Company and Northrop Corporation, Los Angeles, California. These sessions will be closed to the public.

The purpose of this meeting is to evaluate U.S. Navy requirements for stealth and stealth countermeasures systems. The entire agenda for the meeting will consist of discussions of key issues related to stealth, stealth countermeasures, and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept top secret in the interest of national defense and, are in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact: Judith A. Holden, Executive Secretary to the CNO Executive Panel, 4401 Ford Avenue, Room 601, Alexandria Virginia, 22302-0268, Telephone (703) 756-1205.

Dated: September 11, 1992.

Geoffrey P. Lyon,

Lt. Col, United States Marine Corps, Federal Register Liaison Officer.

[FR Doc. 92-22535 Filed 9-16-92; 8:45 am]

BILLING CODE 3810-AE-F

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Management Service, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by September 30, 1992.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Wallace R. McPherson, Department of Education, 400 Maryland Avenue SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Cary Green, (202) 708-5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Resources Management Service, publishes this notice with the attached proposed

information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title, (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: September 11, 1992.

Cary Green,

Director, Information Resources Management Service.

Office of Educational Research and Improvement

Type of Review: Expedited.
Title: Application for Grants under the Fund for the Improvement and Reform of Schools and Teaching: Schools and Teachers Program/Family-School Partnership.
Abstract: This form will be used by eligible applicants to apply for grants under the Fund for the Improvement and Reform of Schools and Teaching: Schools and Teachers Program/Family-School Partnership. The Department uses this information to make grant awards.
Additional Information: The Office of Educational Research and Improvement is requesting an expedited review from OMB for the Fund for the Improvement and Reform of Schools and Teaching: Schools and Teachers Program/Family-School Partnership in order to process the grant awards in a timely fashion.
Frequency: Annually.
Affected Public: State or local governments; non-profit institutions.
Reporting Burden:
Responses: 800.
Burden Hours: 13,596.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.

Office of Educational Research and Improvement

Type of Review: Expedited.
Title: Application for Grants under the Dwight D. Eisenhower National Program for Mathematics and Science Education.
Abstract: This form will be used by eligible applicants to apply for grants under the Dwight D. Eisenhower National Program for Mathemathics and Science Education. The Department uses this information to make grant awards.
Additional Information: The Office of Educational Research and Improvement is requesting an expedited review from OMB for the Dwight D. Eisenhower National Program For Mathematics and Science Education in order to process the grant awards in a timely fashion.
Frequency: Annually.
Affected Public: State or local governments; non-profit institutions.
Reporting Burden:
Responses: 500.
Burden Hours: 10,404.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.

[FR Doc. 92–22458 Filed 9–16–92; 8:45 am]

BILLING CODE 4000–1–M

Notice of Proposed Information Collection Requests

AGENCY: Department of Education

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Management Service, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An Emergency review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by September 14, 1992.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Wallace R. McPherson, Department of Education, 400 Maryland Avenue SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Cary Green, (202) 708–5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Resources Management Service, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: September 11, 1992.

Cary Green,

Director, Information Resources, Management Service.

Office of Postsecondary Education

Type of Review: Emergency.
Title: Nomination Form For Regulations Negotiators.
Abstract: This form will be used by participants at the four regional meetings to nominate individuals, including themselves, to work with the Department in late November and early December 1992 to finalize proposed regulations for programs authorized by the Higher Education Act, as amended.
Additional Information: An emergency review is requested in order to have this form available for the first of the four regional meetings which begins on September 14, 1992 in San Francisco, California.

In the **Federal Register** on August 26, 1992, the Secretary published an invitation to all interested individuals and organizations to participate in four regional meetings to be held between September 16 and September 30, 1992. These meetings are part of the Department's response to the charge by Congress to obtain full public participation in the development of program regulations. Following these meetings further regulation negotiation and development will continue at meetings held in Washington DC.

Based on the requirements of the Public Law 102–325, the Secretary is establishing a procedure whereby participants at the regional meetings can nominate individuals, including themselves, to work with the Department in late November and early December 1992 to finalize proposed regulations for programs authorized by the Higher Education Act, as amended. The information

requested on this nomination form is only that information specified by Congress in Public Law 102-325.

Frequency: One-time-only.

Affected Public: Individuals.

Reporting Burden:

Responses: 200

Burden Hours: 4

Recordkeeping Burden:

Recordkeepers: 0

Burden Hours: 0

Nomination Form For Regulations Negotiators To Department of Education For HEA Reauthorization Part B, G, & H of Title IV

[Negotiations Tentatively Scheduled For November 30—December 5, 1992 In Washington, D.C.]

I nominate the following person to be a negotiator: [Include Self-nomination].

Print Name: Position:
Address: Affiliation:
[Area Code/Number]
Phone: Fax:

The above nominee represents one or more of the following categories: (Check all appropriate categories):

_____ Legal Assistance Organization Representing Students
_____ Local _____ National
_____ Urban _____ Rural
_____ Institution of Higher Education
_____ Public 4-Yr _____ Public 2-Yr
_____ Private 4-Yr _____ Private 2-Yr
_____ Proprietary _____ Foreign
_____ Other
_____ Guaranty Agency _____ State _____ National
_____ Lender _____ State/Local _____ National
_____ Secondary Market _____ State/Local _____ National
_____ Loan Servicer _____ State/Regional _____ National
_____ Guaranty Agency Servicer _____ State/Regional _____ National
_____ Collection Agency _____ State/Local _____ National
_____ Accrediting Agency _____ State/Regional _____ National
_____ Student Affiliation _____ _____ National
_____ Institutional _____ State Association
_____ Regional _____ National
Other group involved in Student Financial Assistance Programs (specify)

Other factors that would promote diversity in negotiated rulemaking (specify)

Nominated by: [Optional]
Print Name:
Address:
[Area Code/Name]
Phone: Fax:
Nomination Form Must Be Returned To: Robert W. Evans, Director, Division of Policy Development, Policy, Training, & Analysis Service, ROB-3 Room 4310, 7th & D Street, S.W., Washington, D.C. 20202
Fax Nomination Form To: Fax Number 202-205-0786, Robert W. Evans, Division of Policy Development
Nomination Form Must Be *Received* by Close of Business, October 9, 1992, 5:00 PM, Eastern Standard time, Mail or Fax Copy

[FR Doc. 92-22459 Filed 9-16-92; 8:45 am]
BILLING CODE 4000-1-M

[CFDA No.: 84.237D]

Program for Children and Youth With Serious Emotional Disturbance; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1993

Purpose of Program: To support projects, including research projects, for the purpose of improving special education and related services to children and youth with serious emotional disturbance, and demonstration projects to provide services for children and youth with serious emotional disturbance.

This program supports AMERICA 2000, the President's strategy for achieving the National Education Goals, by improving our understanding of how to enable children and youth with serious emotional disturbance to reach the high levels of academic achievement called for by the National Education Goals and by encouraging the creation of communities where learning can happen.

Eligible Applicants: Institutions of higher education, State and local educational agencies, and other appropriate public and private nonprofit institutions or agencies are eligible for awards under this competition.

Deadline for Transmittal of Applications: March 19, 1993.

Deadline for Intergovernmental Review: May 19, 1993.

Applications Available: November 20, 1992.

Available Funds: $1,337,000.

Estimated Average Size of Awards: $334,000 for the first 24 months of the projects ($167,000 per 12 month period). Projects are likely to be level funded at $167,000 for the third year unless there are increases in costs attributable to significant changes in activity level.

Estimated Number of Awards: 4.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 328.

Priority: Under 34 CFR 75.105(c)(3) and 34 CFR 328.3 the Secretary gives an absolute preference to applications that meet the following priority. The Secretary will select for funding only

those applications proposing projects that meet this priority:

Priority—Development and Support for Enhancing Professional Knowledge, Skills, and Strategies (CFDA 84.237D1)

This priority provides support to institutions of higher education, State and local educational agencies, and other appropriate public and private nonprofit institutions or agencies for research projects that improve special education and related services to children and youth with serious emotional disturbance. Projects must develop the knowledge, skills and strategies for effective collaboration among special education, regular education, related services, and other professionals and agencies.

Invitation Priority: Within the absolute priority specified in this notice, the Secretary is particularly interested in applications that meet the following invitational priority. However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over other applications:

Projects that conduct research on providing training and support for education, mental health, social work, and other relevant personnel to improve services for children and youth with serious emotional disturbance. The Secretary encourages projects that include the following activities: (a) Identifying knowledge and skills needed by "post-entry" personnel (i.e. personnel who have completed preservice training and are currently engaged in service delivery) to enhance collaboration and improve services for children and youth with serious emotional disturbance; (b) testing staff development methods to impart the identified knowledge and skills to posf-entry personnel; (c) testing staff development, organizational approaches, and other strategies to decrease professional burn-out and attrition, and to promote motivation, a sense of empowerment, and continuing commitment to achieving better outcomes for children and youth with serious emotional disturbance.

The Secretary is particularly interested in supporting projects in a variety of settings, and particularly encourages projects emanating from service providers in collaboration with researchers and other appropriate experts.

For Applications or Information Contact: Dr. David Malouf, U.S. Department of Education, 400 Maryland Avenue SW. Switzer Building, room 3521, Washington, DC 20202–2640. Telephone: (202) 205–8111. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 1426.

Dated: September 11, 1992.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 92–22463 Filed 9–16–92; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No.: 84.024J]

Early Education Program for Children With Disabilities Notice Inviting Applications for New Awards for Fiscal Year (FY) 1993

Purpose of Program: To provide Federal support for a variety of activities designed to address the special problems of infants, toddlers, and preschool aged children with disabilities, and to assist State and local entities in expanding and improving programs and services for those children and their families. Activities include demonstration, outreach, experimental, research, and training projects, and research institutes.

This program supports AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals, by assisting those with disabilities in meeting Goal 1, School Readiness.

Eligible Applicants: States are eligible for grants or cooperative agreements under this competition.

Deadline for Transmittal of Applications: March 8, 1993.

Deadline for Intergovernmental Review: May 8, 1993.

Applications Available: December 31, 1992.

Available Funds: $750,000.

Estimated Range of Awards: $140,000–$160,000.

Estimated Average Size of Awards: $150,000.

Estimated Number of Awards: 5.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 309 as amended on October 22, 1991 (56 FR 54686) and June 29, 1992 (57 FR 28964).

Absolute Priority—Statewide Data Systems Projects

Under 34 CFR 75.105(c)(3) and 34 CFR 309.3(i) the Secretary gives an absolute preference to applications that meet this priority. The Secretary funds under this competition only applications that meet this absolute priority.

For Application or Information Contact: Joseph Clair, U.S. Department of Education, 400 Maryland Avenue SW., room 4622, Switzer Building, Washington, DC 20202–2644. Telephone (202) 205–9503. Deaf and hard of hearing individuals may call (202) 205–6170 for TDD services.

Program Authority: 20 U.S.C. 1423.

Dated: September 11, 1992.

Philip S. Link,

Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 92–22464 Filed 9–16–92; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No.: 84.180G1]

Technology, Educational Media and Materials for Individuals With Disabilities Program; Notice Inviting Applications for New Awards Under the Technology, Educational Media, and Materials for Individuals With Disabilities Program for Fiscal Year (FY) 1993

Purpose of Program: To support projects and centers for advancing the availability, quality, use, and effectiveness of technology, educational media, and materials in the education of children and youth with disabilities and the provision of related services and early intervention services to infants and toddlers with disabilities.

These priorities support AMERICA 2000, the President's strategy for achieving the National Education Goals, by improving our understanding of how to enable children with disabilities to reach the high levels of educational performance envisioned by the Goals.

Eligible Applicants: Institutions of higher education, State and local educational agencies, public agencies, and private nonprofit or for profit organizations.

Deadline for Transmittal of Applications: November 30, 1992.

Deadline for Intergovernmental Review: January 29, 1993.

Applications Available: October 1, 1992.

Available Funds: $832,000.

Estimated Average Size of Awards: $166,000 for the first 12 months of the projects. Multi-year projects are likely to be level funded unless there are

increases in costs attributable to significant changes in activity level.

Estimated Number of Awards: 5.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 333, as amended on October 22, 1991 at 56 FR 54703–54704.

Priority: Under 34 CFR 75.105(c)(3), 34 CFR 333.1, and 34 CFR 333.3, the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this program only applications that meet this absolute priority:

Absolute Priority—Technology, Educational Media, and Materials Research Projects That Promote Literacy

This priority provides support for research projects that examine how advancing the availability, quality, use, and effectiveness of technology, educational media, and materials can address the problem of illiteracy among individuals with disabilities.

Invitational Priority: Within the absolute priority specified in this notice, the Secretary is particularly interested in applications that meet the following invitational priority. However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over other applications:

The Secretary is particularly interested in projects that—

(a) Define literacy as: To read, to communicate, to compute, to make judgments and to take appropriate action;

(b) Are of rigorous design and employ clearly explicated quantitative or qualitative methodologies, or both, appropriate to the purpose of the project; and,

(c) Consider learning and psycho-social factors in examining the availability, quality, and use of specified technology, educational media, and materials, and in examining their effectiveness in providing experiences and opportunities that improve the literacy of children and youth with disabilities.

For Applications or Information Contact: Jane Hauser, U.S. Department of Education, 400 Maryland Avenue, SW., room 3521, Switzer Building, Washington, DC 20202-2640. Telephone: (202) 205–8126. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 1461.

Dated: September 11, 1992.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 92–22462 Filed 9–16–92; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No.: 84.180E1]

Technology, Educational Media and Materials for Individuals With Disabilities Program; Notice Inviting Applications for New Awards Under the Technology, Educational Media, and Materials for Individuals With Disabilities Program for Fiscal Year (FY) 1993

Purpose of Program: To support projects and centers for advancing the availability, quality, use, and effectiveness of technology, educational media, and materials in the education of children and youth with disabilities and the provision of related services and early intervention services to infants and toddlers with disabilities.

These priorities support AMERICA 2000, the President's strategy for achieving the National Education Goals, by improving our understanding of how to enable children with disabilities to reach the high levels of educational performance envisioned by the Goals.

Eligible Applicants: Institutions of higher education, State and local educational agencies, public agencies, and private nonprofit or for-profit organizations.

Deadline for Transmittal of Applications: November 30, 1992.

Deadline for Intergovernmental Review: January 29, 1993.

Applications Available: October 1, 1992.

Available Funds: $1,300,000.

Estimated Average Size of Awards: $216,000 for the first 12 months of the projects. Multi-year projects are likely to be level funded unless there are increases in costs attributable to significant changes in activity level.

Estimated Number of Awards: 6 grants.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 333, as amended on October 22, 1991 at 56 FR 54703–54704.

Priority: The notice of final priority for Demonstrating and Evaluating the Benefits of Educational Innovations Using Technology, published in the **Federal Register** on May 13, 1992 at 57 FR 20621. The published priority indicated that 4 projects would be funded. However, the anticipated number of projects to be funded in fiscal year 1993 is 6, not 4 as shown in the priority.

For Applications or Information Contact: Dr. David Malouf, U.S. Department of Education, 400 Maryland Avenue, SW., room 3521, Switzer Building, Washington, DC 20202–2640. Telephone: (202) 205–8111. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 1461.

Dated: September 11, 1992.

Robert R. Davila,

Assistant Secretary Office of Special Education and Rehabilitative Services.

[FR Doc. 92–22461 Filed 9–16–92; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Noncompetitive Financial Assistance Award to Southern Methodist University

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of intent to make a noncompetitive financial assistance award.

SUMMARY: DOE announces that it plans to award a noncompetitive grant to Southern Methodist University (SMU) under Grant Number DE–FG01–92IE11185. The scope of work will include the following: (1) To determine and report on present and future energy trends Internationally and within the United States (U.S.), and (2) to provide U.S. energy companies exposure and experience to the International Energy

Market through participation in SMU's Institute for the Study of Earth and Man (ISEM), a series of energy briefings designed to introduce new opportunities in energy development. Pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b)(2)(i)(B and D), DOE has determined that eligibility for this grant be limited to Southern Methodist University. The estimated cost for the ISEM conferences is at least $104,100, with $30,000 being provided by DOE with this grant. The procurement request number for this requirement is DE-FC01-92IE11185.000.

FOR FURTHER INFORMATION CONTACT: John Wells, PR-322.4, U.S. Department of Energy, Office of Placement and Administration, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 634-4471.

SUPPLEMENTARY INFORMATION: Approximately five years ago, the U.S. domestic petroleum exploration industry began to seriously deteriorate, affecting the independent explorations as well as the major operators. In response to this, SMU's ISEM was initiated to introduce new opportunities overseas by focusing attention on areas which have been regarded as inaccessible terrain by the industry. Since the advent of this series four years ago, ISEM has hosted delegations from locations world wide. The format is to invite senior level representatives from interested American companies to briefings that typically feature key energy officials from other countries that have the potential to develop new energy resources. ISEM seeks financial assistance from DOE to help maintain a viable and healthy energy industry within the U.S. SMU's ISEM not only contributes to the maintenance of a healthy U.S. energy industry, but also provides developing countries the opportunity to present information on their resources and development potential. SMU has developed a unique and innovative program (ISEM) that potentially may help revive the U.S. domestic energy industry. No other private or government entity possesses ISEM's level of expertise on the subject matter in question. Therefore, the DOE has determined that this award to Southern Methodist University on a restricted eligibility basis is appropriate.

Thomas S. Keefe,

Director, Division "B", Office of Placement and Administration.

[FR Doc. 92-22550 Filed 9-16-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Conservation and Renewable Energy

Energy Conservation Program for Consumer Products: Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver of DOE Furnace Test Procedures From Armstrong Air Conditioning, Inc. (Case No. F-055)

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to Armstrong Air Conditioning, Inc. (Armstrong) from the existing Department of Energy (DOE) test procedure regarding blower time delay for the company's EG6H, EG7H, and EDG6H series of condensing furnaces.

Today's notice also publishes a "Petition for Waiver" from Armstrong. Armstrong's Petition for Waiver requests DOE to grant relief from the DOE furnace test procedure relating to the blower time delay specification. Armstrong seeks to test using a blower delay time of 30 seconds for its EG6H, EG7H, and EDG6H series of condensing furnaces instead of the specified 1.5-minute delay between burner on-time and blower on-time. DOE is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: DOE will accept comments, data, and information not later than October 19, 1992.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Conservation and Renewable Energy, Case No. F-055, Mail Stop CE-90, room 6B-025, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-0561.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-431, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95-619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100-12, and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100-357, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. Thereafter DOE further amended the appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On July 23, 1992, Armstrong filed an Application for Interim Waiver regarding blower time delay.

Armstrong's Application seeks an Interim Waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, Armstrong requests the allowance to test using a 30-second blower time delay when testing its EG6H, EG7H, and EDG6H series of condensing furnaces. Armstrong states that the 30-second delay is indicative of how these furnaces actually operate. Such a delay results in an energy savings of approximately 1.3 percent. Since current DOE test procedures do not address this variable blower time delay, Armstrong asks that the Interim Waiver be granted.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 55 FR 3253, January 31, 1990, 56 FR 2920, January 25, 1991, and 57 FR 34560, August 5, 1992; Trane Company, 54 FR 19226, May 4, 1989, and 56 FR 6021, February 14, 1991; Lennox Industries, 55 FR 50224, December 5, 1990; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991; Inter-City Products Corporation, 55 FR 51487, December 14, 1991, and 56 FR 63945, December 6, 1991; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, and 56 FR 63940, December 6, 1991; Snyder General Corporation, 56 FR 45960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, and 57 FR 10160, March 24, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; and The Ducane Company, 56 FR 63943, December 6, 1991. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

In those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting Armstrong an Interim Wavier for its EG6H, EG7H, and EDG6H series of condensing furnaces. Pursuant to paragraph (e) of § 430.27 of the Code of Federal Regulations part 430, the following letter granting the Application for Interim Waiver to Armstrong was issued.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. DOE solicits comments, data, and information respecting the petition.

Issued in Washington, DC, September 10, 1992.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

Department of Energy

Washington, DC 20585

Mr. Bruce R. Maike,
Vice-President Product Engineering, Armstrong Air Conditioning, Inc., 421 Monroe Street, Bellevue, Ohio 44811

Dear Mr. Maike: This is in response to your July 23, 1992, Application for Interim Waiver and Petition for Waiver from the Department of Energy (DOE) test procedure regarding blower time delay for the Armstrong Air Conditioning, Inc. (Armstrong) EG6H, EG7H, and EDG6H series of condensing furnaces.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 50 FR 3253, January 31, 1990, 56 FR 2920, January 25, 1991, and 57 FR 34560, August 5, 1992; Trane Company, 54 FR 19226, May 4, 1989, and 56 FR 6021, February 14, 1991; Lennox Industries, 50 FR 50224, December 5, 1990; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991; Inter-City Products Corporation, 50 FR 51487, December 14, 1991, and 56 FR 63945, December 6, 1991; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, and 56 63940, December 6, 1991; Snyder General Corporation, 56 FR 45960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, and 57 FR 10160, March 24, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; and The Ducane Company, 56 FR 63943, December 6, 1991.

Armstrong's Application for Interim Waiver does not provide sufficient information to evaluate what, if any, economic impact or competitive disadvantage Armstrong will likely experience absent a favorable determination on its application. However, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, Armstrong's Application for an Interim Waiver from the DOE test procedure for its EG6H, EG7H, and EDG6H series of condensing furnaces regarding blower time delay is granted.

Armstrong shall be permitted to test its EG6H, EG7H, and EG7H, and EDG6H series of condensing furnaces on the basis of the test procedures specified in 10 CFR part 430, subpart B, appendix N, with the modification set forth below.

(i) Section 3.0 in appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE 103–82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 in appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t−), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t−), using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

Sincerely,

J. Michael Davis, P.E.,

Assistant Secretary, Conservation and Renewable Energy.

Armstrong Air Conditioning Inc.

July 23, 1992.

Assistant Secretary, Conservation & Renewable Energy,
United States Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585

Subject: Petition for Waiver and Application for Interim Waiver

Gentlemen: This is a Petition for Waiver and application for Interim Waiver submitted

pursuant to Title 10 CFR 430.28. Waiver is requested from the test procedure for measuring Furnace Energy Consumption as found in Appendix H to Subpart B of Part 430.

The current test requires a 1.5 minute delay between burner ignition and the start of the circulating air blower. Armstrong Air Conditioning Inc. is requesting waiver and authorization to use a 30 second delay instead of the specified 1.5 minutes for blower start-up after main burner ignition. Armstrong intends to use a fixed timing control on our EG6H, EG7H, and EDG6H condensing gas furnaces to gain additional energy savings that are achieved with the use of shorter blower on times.

Test data for these furnaces with a 30 second delay indicate an increase in AFUE up to 1.3 percentage points. The use of a 30 second delay reduces flue losses thus increasing furnace efficiency. Copies of confidential test data confirming these energy savings will be forwarded to you upon request.

The current test procedure does not give Armstrong credit for the energy savings that can be obtained using fixed timing. The proposed ASHRAE 103-1988 that is under consideration by D.O.E. addresses the use of timed blower operation. Granting of this Waiver permits testing of similar competitive products to be rated on a comparable basis to that of Armstrong.

Armstrong is confident that this Waiver will be granted, and therefore requests an Interim Waiver be granted until a final ruling is made. Armstrong, as well as other manufacturers of domestic furnaces, have been granted similar waivers.

Manufacturers that domestically market similar products have been sent a copy of this Petition for Waiver and Application for Interim Waiver.

Sincerely,
Armstrong Air Conditioning Inc.
Bruce R. Maike,
Vice President Product Engineering.

[FR Doc. 92-22554 Filed 9-16-92; 8:45 am]

BILLING CODE 8450-01-M

Southeastern Power Administration

Proposed Power Marketing Policy; Cumberland System of Projects

AGENCY: Southeastern Power Administration, Department of Energy.

ACTION: Notice.

SUMMARY: Southeastern Power Administration (Southeastern) has developed the following proposed power marketing policy for its Cumberland System of Projects pursuant to Notice published in the **Federal Register** of February 14, 1992, 57 FR 5443, and in accordance with Procedure for Public Participation in the formulation of Marketing Policy published July 6, 1978, 43 FR 29186. The policy, when finalized, will constitute written guidelines for future disposition of power from the system. The policy is developed under authority of section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, and section 302(a) of the Department of Energy Organization Act, 42 U.S.C. 7152. Interested persons are invited to submit written comment directly to Southeastern and/or present written or oral views, data or arguments at the public comment forum on the proposed policy.

DATES: Written comments are due on or before December 4, 1992. Comments should be submitted to the Administrator at the address shown below. A public comment forum will be held in Nashville, Tennessee, at 10 a.m., on November 18, 1992, in Conference Room A-761 in the U.S. Courthouse Annex.

TO SUBMIT COMMENTS OR FOR FURTHER INFORMATION CONTACT: Mr. John A. McAllister, Jr. Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia 30635; Phone: 706-283-9911.

SUPPLEMENTARY INFORMATION: Southeastern received 72 responses to its solicitation for proposals and recommendations contained in its February 14, 1992, Notice of Intent to Formulate Revised Power Marketing Policy. These responses were carefully considered. Major issues raised by the proposed policy are:

1. Are the current policy conditions and the resultant contracts still satisfactory to the parties, thereto, and

2. In light of the existing policy's provision that the policy will be implemented through contracts for terms of approximately 10 years, should the policy and contracts be revised to extend the term of contracts for a greater period of time.

The majority of the responses to the notice of intent to formulate a revised power marketing policy indicate a desire to maintain the existing policy and to extend the term of contracts.

Additionally, an Environmental Assessment (EA) has been prepared and a Finding of No Significant Impact (FONSI) issued regarding the proposed power marketing policy. A copy of the EA, FONSI, and the current marketing policy may be obtained by contacting the Administrator at the address and telephone number listed above.

The public comment forum will not be adjudicative in nature. The Administrator shall act as or appoint a forum chairman. At the start of the forum the chairman shall briefly explain procedures and rules. Customers and the public shall be allowed to make oral statements and comments, introduce relevant documents, and ask questions regarding the proposed power marketing policy of Southeastern representatives at the forum. Persons desiring to speak shall so notify Southeastern at least 3 days before the forum is scheduled so that a list of forum participants can be prepared. If necessary, the chairman may establish time limitations for oral presentations by these participants to assure that all who register to speak shall have an opportunity to do so. Others will be permitted to speak if time allows. Those unable to speak because of time limitations and others who so desire, may submit written comments. The chairman and Southeastern representatives may question forum participants and, the chairman, at his discretion, may permit other participants a like privilege.

Questions not answered by Southeastern representatives during the forum shall be subsequently responded to by Southeastern in writing. All documents introduced and written answers to questions shall be available for inspection and copying at Southeastern headquarters in accordance with the Freedom of Information Act. Forum proceedings shall be transcribed. Copies of the transcript may be purchased from the reporter.

Customers and the public may consult, or file written comments and questions, with Southeastern regarding the proposed marketing policy on or before December 4, 1992. Questions shall receive expeditious response. Comments, questions, and answers shall be available at Southeastern headquarters for inspection or copying in accordance with the Freedom of Information Act. The forum transcript will likewise be available for inspection at Southeastern headquarters in Elberton, Georgia.

Issued at Elberton, Georgia, September 10, 1992.

Leon Jourolmon,
Acting Administrator.

Proposed Power Marketing Policy

Cumberland Projects

General. The projects and power subject to this policy are:

	Capacity (kilowatt) (name-plate)	Energy (mega-watt-hours) (average annual)
Barkley	130,000	[1] 550,000
Center Hill	135,000	385,000
Cheatham	36,000	165,000
Cordell Hull	[1] 00,000	360,000
Dale Hollow	54,000	125,000

	Capacity (kilowatt) (nameplate)	Energy (megawatt-hours) (average annual)
Laurel	61,000	69,000
Old Hickory	100,000	475,000
J. Percy Priest	29,000	72,000
Wolf Creek	270,000	920,000

[1] Does not include increased output resulting from Barkley-Kentucky Canal.

The policy for the Cumberland System of Projects will be implemented as of midnight, May 31, 1993, or as soon thereafter as contracts can be amended or negotiated.

The policy will be implemented through negotiated contracts for terms of approximately 20 years.

Southeastern will seek the use of transmission facilities owned by the Tennessee Valley Authority (TVA) and other utilities within the marketing area for all necessary purposes including bulk transmission and transmitting to load centers where required. Power deliveries may be made at the projects, at utility interconnections with TRA or at customer substations, as determined by Southeastern. The projects will be hydraulically, electrically, and financially integrated and will be operated to make maximum contribution to the TVA System and to permit deliveries to the other utility areas within the selected marketing area. Preference in the sale of power shall be given to public bodies and cooperatives.

Marketing Area. The marketing area will be the TVA service area and the service areas of the following utilities: Big Rivers Electric Corporation; Carolina Power and Light Company, Western Division; East Kentucky Power Cooperative; Kentucky Utilities Company; Municipal Energy Agency of Mississippi, the seven cooperative members of South Mississippi Electric Power Association currently receiving Cumberland Power; and Southern Illinois Power Cooperative. The geographic marketing area will consist of approximately 148,000 square miles. Except where duplication of allocations would result, public bodies and cooperatives located outside the TVA service area and listed on Appendix A attached hereto are eligible to share in Cumberland power marketable under this policy; provided that Cumberland power shall not be made available to meet any portion of any preference entity demand within the selected Cumberland marketing area which is in part required to be met by power from any other Southeastern system. Power marketed to TVA will be for the sole benefit of the 160 preference customers on the TVA system and which are served by TVA.

Allocation of Power. Power available under this policy for allocation from the Cumberland System will be peaking power only. The power will be divided as follows:

Customer	KW
Big Rivers Electric Cooperative	178,000
East Kentucky Power Cooperative	170,000
City of Henderson, Kentucky	12,000
Municipal Energy Agency of Mississippi for its eight municipal members	30,000
Southern Illinois Power Cooperative	29,000
South Mississippi Electric Power Association for its 7 cooperative members currently receiving Cumberland power	51,000
Tennessee Valley Authority	405,000
Municipalities in Kentucky Utilities Company area	62,000
CP&L Western Division Cooperatives & Municipality	14,000

The energy accompaniment of such capacity, except TVA, will be 1,500 kilowatt-hours per kilowatt per year, except that if additional energy is required in given utility areas to make viable capacity allocations under acceptable arrangements such additional energy will be made available from the Cumberland projects. All remaining capacity and energy will be allocated to TVA for the benefit of public bodies and cooperatives in its area. Capacity reserved for the municipalities in the Kentucky Utilities Company area will continue to be marketed to TVA until contracts can be negotiated with the municipalities.

Utilization of Utility Systems. In the absence of transmission facilities of its own, Southeastern will acquire the use of area generation and transmission systems to integrate the Cumberland projects, provide firming, wheeling, exchange and other functions as may be necessary to dispose of system power under reasonable and acceptable marketing arrangements. Utility systems providing such services shall be entitled to adequate compensation. Southeastern will make declarations of all energy available from the Cumberland System to TVA and cooperatively determine the magnitude of delivery from particular projects in accordance with acceptable procedures generally followed by Southeastern and the Corps of Engineers with respect to its other systems. TVA will schedule all of the power to generally meet its own system requirements and will transmit portions of such power to its interconnections in response to allowable schedules submitted by neighboring utilities entitled to receive under appropriate arrangements designated quantities of system power Specific terms and conditions of arrangements between Southeastern and TVA and Southeastern and the other utilities will be the subject of negotiations. Distribution preference agencies directly affected by negotiations with wheeling utilities shall stand in an advisory role to Southeastern and shall be involved as determined by Southeastern and otherwise kept currently advised as to the status and progress of negotiations.

Wholesale Rates. Rate schedules shall be drawn so as to recover all costs associated with producing and transmitting the power in accordance with the current repayment criteria. Production costs will be determined on a system basis and rate schedules will be related to the integrated output of the projects. Transmission costs may cause rate schedules to vary between utility areas. Rate schedules may be revised periodically.

Resale Rates. Resale rate provisions requiring the benefits of SEPA power to be passed on to the ultimate consumer will be included in each SEPA customer contract which provides for SEPA to supply more than 25 percent of the customer's total power requirements during the term of the contract.

Energy and Economic Efficiency Measures. Each customer purchasing SEPA power shall agree to participate in an integrated resource planning process and to encourage the efficient use of energy by ultimate consumers.

Appendix A—Preference Agencies in the Cumberland System Area

Kentucky

Big Rivers Electric Corporation

Member Cooperatives:
- Green River EC
- Henderson-Union REC
- Meade County REC
- Jackson-Purchase EC

Associated Utilities:
- Henderson Municipal Power & Light

East Kentucky Power Cooperative, Inc.

Member Cooperatives:
- Big Sandy REC
- Blue Grass REC
- Clark REC
- Cumberland Valley REC
- Farmers REC
- Fleming-Mason REC
- Fox Creek REC
- Grayson REC
- Harrison REC
- Inter-County REC
- Jackson County REC
- Licking Valley REC
- Nolin REC
- Owen County REC
- Salt River REC
- Shelby REC
- South Kentucky REC

Taylor County REC

Kentucky Utilities Company Area

Barbourville
Bardstown
Bardwell
Benham
Corbin
Falmouth
Frankfort
Madisonville
Nicholasville
Paris
Providence

Associated Utilities:
Owensboro Municipal Utilities

Mississippi

Municipal Energy Agency of Mississippi

Member Municipalities
Canton
Clarksdale
Durant
Greenwood
Itta Bena
Kosciusko
Leland
Yazoo City

South Mississippi Electric Power Association

Member Cooperatives:
Coahoma EPA
Delta EPA
Magnolia EPA
Southern Pine EPA
Southwest Mississippi EPA
Twin County EPA
Yazoo Valley EPA

North Carolina

Carolina Power & Light Company Area (Western Division)

Waynesville
French Broad EMC
Haywood EMC

Illinois

Southern Illinois Power Cooperative

Member Cooperatives:
Egyptian ECA
Southeastern Illinois EC
Southern Illinois EC

[FR Doc. 92-22551 Filed 9-16-92; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Mutual Assistance Program, Notice of Proposed Cooperative Agreement

AGENCY: Western Area Power Administration, DOE.

ACTION: The Western Area Power Administration (Western)/State Energy Office Conservation and Renewable Energy (C&RE) Mutual Assistance Program, Notice of Proposed Cooperative Agreement.

SUMMARY: The Department of Energy announces that, pursuant to 10 Code of Federal Regulations 600.7(b), eligibility for a cooperative agreement to develop and implement cofunded C&RE activities for the State of Nevada has been restricted to the Nevada Energy Office, Office of Community Services.

ADDRESSES: Requests for further information should be submitted to the following address: Ms. Ruth Adams, Contract Specialist, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401, (303) 231-7709, Purchase Requisition Number: GG-PR-19032.

SUPPLEMENTARY INFORMATION: Western's C&RE program is designed to ensure wise stewardship of the Federal hydropower resources and to encourage energy conservation and the development of renewable energy resources. To meet these ends, Western offers a number of C&RE program activities to its customers, including educational workshops and seminars, equipment loan programs, and cost sharing of C&RE projects. Joint program sponsorship with State Energy Offices is one of the methods that Western uses to effectively deliver its C&RE activities to customers within the 15-State marketing area.

Western's Phoenix Area Office has cosponsored joint C&RE activities with the Nevada Energy Office since 1987. Programs cosponsored to date include workshops on subjects such as pump efficiency, infrared thermography, commercial and residential indoor air quality, commercial and industrial energy efficiency, utility scale solar energy technologies, small scale photovoltaics and passive solar technologies, and energy efficiency in mining. Such joint participation mutually benefits the State and the Federal Government through the pooling of resources to provide cost-effective C&RE activities in Nevada.

The Nevada Energy Office is committed to promoting energy efficiency and renewable energy development in its State. Its resources, technical ability, and statewide credibility put it in the best position to manage this cooperative program.

Solicitation Number: DE-RP65-92WG19550.

Scope of Project

The Western/State Energy Office C&RE Mutual Assistance program is designed to allow joint sponsorship of C&RE activities within the State of Nevada by Western and the Nevada Energy Office. The program will provide cost-shared funding for the development and implementation of C&RE activities in three general categories: (1) Technology development and transfer; (2) public information; and (3) economic analysis of C&RE projects. Activities funded under this program may include, but are not limited to: educational workshops and seminars on energy efficiency and renewable energy; State, regional, and national C&RE conferences; energy efficiency tests and monitoring; C&RE publication development; energy efficiency demonstration and evaluation projects; and community energy management activities.

Issued at Golden, Colorado, September 4, 1992.

William H. Clagett,
Administrator.

[FR Doc. 92-22553 Filed 9-16-92; 8:45 am]

BILLING CODE 6450-01-M

Mutual Assistance Program, Notice of Proposed Cooperative Agreement

AGENCY: Western Area Power Administration, DOE.

ACTION: The Western Area Power Administration (Western)/State Energy Office Conservation and Renewable Energy (C&RE) Mutual Assistance Program, Notice of Proposed Cooperative Agreement.

SUMMARY: The Department of Energy announces that, pursuant to 10 Code of Federal Regulations 600.7(b), eligibility for a cooperative agreement to develop and implement cofunded C&RE activities for the State of Nevada has been restricted to the Nevada Energy Office, Office of Community Services.

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The Nevada Energy Office is committed to promoting energy efficiency and renewable energy development in its State. Its resources, technical ability, and statewide credibility put it in the best position to manage this cooperative program.

Solicitation Number: DE-RP65-92WG19550.

Scope of Project

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Issued at Golden, Colorado, September 4, 1992.

William H. Clagett,

Administrator.

[FR Doc. 92-22552 Filed 9-16-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 7045-003 New Hampshire]

Mainstream Hydro Corp.; Availability of Environmental Assessment

September 11, 1992.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has reviewed the application for amendment of license for the Claremont Water Power Project.

The amendment includes a redesign of the entire project as licensed on February 2, 1987 (38 FERC ¶ 62,084). A new diversion dam will be constructed 250 feet downstream of the previous diversion point at Broad Street Dam. The penstock, powerhouse, and tailrace will be constructed on the north shore of the river rather than the south shore. Upper Sullivan Dam remains a component of the project. The capacity of the project is revised from 1,890 kilowatts (kw) to 1,555 kw. The project is located on the Sugar River, a tributary of the Connecticut River, in Sullivan County, New Hampshire.

The staff of OHL's Division of Project Compliance and Administration has prepared an Environmental Assessment (EA) for the proposed action. In the EA, staff concludes that approval of the amendment of license would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Reference and Information Center, room 3308, of the Commission's Offices at 941 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22453 Filed 9-16-92; 8:45 am]

BILLING CODE 6717-01-M

Application Filed With the Commission

September 11, 1992.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Application:* Minor License.

b. *Project No.:* 11322-000.

c. *Date filed:* August 20, 1992.

d. *Applicant:* Tuolumne Utilities District.

e. *Name of Project:* Columbia Water Supply/Hydroelectric Project.

f. *Location:* Partially on lands administered by the Bureau of Land Management and Bureau of Reclamation near the town of Sonora in Tuolumne County, California. T2N, R14E in sections 1, 2, and 3; T3N, R14E in sections 34 and 35.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Malcolm D. Crawford, Tuolumne Utilities District, P.O. Box 3728, 13144 Mono Way, Sonora, CA 95370, (209) 532-5536.

i. *FERC Contact:* Mr. Michael Strzelecki, (202) 219-2827.

j. *Description of Project:* The proposed project would consist of: (1) The applicant's existing 5-mile-long Columbia Ditch which gets water from the Main Tuolumne Canal or Pacific Gas & Electric's licensed Phoenix Project No. 1061; (2) an intake structure on the ditch; (3) an 18,700-foot-long steel penstock; (4) a powerhouse containing one generating unit with an installed capacity of 350 Kw; (5) a 500-foot-long tailrace returning water to the Bureau of Reclamation's existing New Melones Reservoir; (6) a 1,588-foot-long transmission line interconnecting with an existing Tuolumne County Public Power Agency transmission line; and (7) appurtenant facilities.

k. Under § 4.32(b)(7) of the Commission's regulations (18 CFR), if any resource agency, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission not later than 60 days after the application is filed, and must serve a copy of the request on the applicant.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22442 Filed 9-16-92; 8:45 am]

BILLING CODE 6717-01-M

Hydroelectric Application

September 11, 1992.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Minor License.

b. *Project No.:* 11313-000.

c. *Date filed:* July 30, 1992.

d. *Applicant:* Edward M. Clark, dba White Mountain Hydroelectric Power Company.

e. *Name of Project:* Apthorp Dam Project.

f. *Location:* On the Ammonoosuc River, near Littleton, Grafton County, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)-825(r).

h. *Applicant Contract:* William K. Fay, P.E., P.O. Box 581, Bolyston, Massachusetts 01505, (508) 869-6091.

i. *FERC Contact:* Mary C. Golato (202) 219-2804.

j. *Comment Date:* September 28, 1992.

k. *Description of Project:* The proposed project consists of the

following features: (1) An existing dam 20 feet high and 180 feet long; (2) an existing reservoir with a surface area of 20 acres and an estimated gross storage of 210 acre-feet; (3) an existing penstock; (4) an existing powerhouse containing one 425-kilowatt turbine-generating unit and a new 175-kW unit; (5) a short transmission line; and (6) appurtenant facilities.

1. Pursuant to § 4.32(b)(7) of 18 CFR of the Commission's regulations if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the filing date and serve a copy of the request on the applicant.

Lois D. Cashell,

Secretary.

[FR Doc. 92- 22441 Filed 9-16-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-161-023]

ANR Pipeline Co., Proposed Changes in FERC Gas Tariff

September 11, 1992.

Take notice that ANR Pipeline Company (ANR), on August 28, 1992, tendered for filing a document outlining its acceptance of the settlement approved by the Commission's August 5, 1992 "Order Approving Settlement on an Interim Basis as Modified and Denying Rehearing" in the captioned proceeding, together with the tariff sheets listed on Attachment A to the filing as part of its FERC Gas Tariff. ANR requests approval of the filing on an expedited basis, in order to permit ANR to implement its settlement and make the subject tariff sheets effective on November 1, 1992.

ANR states that all of its Volume No. 1, 1A, 2 and 3 customers and interested state commissions, and all parties to the proceedings, have been apprised of this filing via overnight mail.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before September 18, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22435 Filed 9-16-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP92-687-000]

Columbia Gas Transmission Corp.; Application

September 9, 1992.

Take notice that on September 1, 1992, Columbia Gas Transmission Corporation (Columbia) 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed an abbreviated application pursuant to Section 7(c) of the Natural Gas Act (NGA), as amended, and Part 157 of the Commission's Regulations for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities subject to the jurisdiction of the Federal Energy Regulatory Commission (Commission) to be utilized for firm transportation service, under part 284 of the Commission's Regulations, of 16,200 Dth per day of natural gas for Indeck-Olean Limited Partnership (Indeck). Volumes will be received by Columbia at an existing interconnection between Columbia and ANR Pipeline Company (ANR) and delivered by Columbia to Empire Exploration, Inc. (Empire), an intrastate pipeline, at a proposed interconnection between Columbia and Empire in Cattaraugus County, New York for transportation and re-delivery by Empire to the Indeck cogeneration facility in Olean, New York, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia requests authority to construct and operate the following facilities to provide the service described above:

(1) Delmont Compressor Station—Install one 650-horsepower unit and related equipment and buildings in Westmoreland County, Pa.

(2) Empire Measuring Station—Establish a point of interconnection with Empire, for firm transportation service to Indeck.

The cost of facilities for which Columbia seeks specific authorization is estimated to be $3,774,440. Indeck will make advance contributions in-aid-of-construction equal to Columbia's facility costs, plus applicable "gross up" for tax purposes. Columbia's cost will be limited to the filing fee of $39,440.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 30, 1992, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22440 Filed 9-16-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-7-23-000]

Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff

September 11, 1992.

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on August 27, 1992 certain revised tariff sheets included in appendix A attached to the filing. Such sheets are proposed to be effective September 1, 1992.

The above referenced tariff sheets are being filed pursuant to § 154.308 of the Commission's regulations and §§ 21.2

and 21.4 of the General Terms and Conditions of ESNG's FERC Gas Tariff to reflect changes in ESNG's jurisdictional rates. The increased gas cost in the instant filing result from: (1) Updating ESNG's pipeline supplier demand rates payable to Transcontinental Gas Pipe Line Corporation and Columbus Gas Transmission Corporation, and (2) updating various storage rates payable to Transcontinental Gas Pipe Line Corporation.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 18, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22437 Filed 9-16-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-7-23-001]

Eastern Shore Natural Gas Co. Proposed Changes in FERC Gas Tariff

September 11, 1992.

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on September 3, 1992 certain substitute tariff sheets included in Appendix A attached to the filing. Such sheets are proposed to be effective September 1, 1992.

ESNG states that such tariff sheets are being filed pursuant to Section 154.308 of the Commission's regulations and § 21.2 and 21.4 of the General Terms and Conditions of ESNG's FERC Gas Tariff to reflect changes in ESNG's jurisdictional rates. ESNG is filing the above referenced tariff sheets in order to correct sales rates on Sheet No. 13 (WSS-1 Washington Storage Service) and correct pagination of Sheet Nos. 5, 6, 10, 11, 12 and 14 to comply with FERC requirements.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before September 18, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22438 Filed 9-16-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-77-000]

High Island Offshore System; Proposed Changes in FERC Gas Tariff

September 11, 1992.

Take notice that on September 8, 1992, High Island Offshore System ("HIOS") filed with the Federal Energy Regulatory Commission ("Commission") the following tariff sheets to be effective October 1, 1992.

First Revised Volume No. 1:

Eighth Revised Sheet No. 8
Fifth Revised Sheet No. 8A

HIOS states that the above-referenced tariff sheets are being filed to adjust its Annual Charge Adjustment ("ACA") rate from $0.0024 per Mcf to $0.0023 per Mcf pursuant to Section 5 of the Schedule of Rates and Charges of its FERC Gas Tariff, First Revised Volume No. 1.

HIOS requests that the Commission waive its notice requirements to permit the revised tariff sheets to become effective less than 30 days from the date of the filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 18, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22439 Filed 9-16-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-136-025]

National Fuel Gas Supply Corp.; Compliance Filing

September 11, 1992.

Take notice that on August 28, 1992, National Fuel Gas Supply Corporation ("National") filed a "Compliance Filing" pursuant to section V of the Settlement approved by the Commission in the above-captioned proceedings. National proposes to adjust its rates to recover costs associated with Account No. 858 effective on September 1, 1992.

National states that copies of this filing were served upon the Company's jurisdictional customers and the Regulatory Commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts and New Jersey.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before September 18, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22454 Filed 9-16-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-259-057]

Northern Natural Gas Co.; Report of Distribution of Refund Paid

September 11, 1992.

Take notice that Northern Natural Gas Company, (Northern) on August 25, 1992 tendered for filing its Interim Gas Inventory Charge Report of Distribution of Refunds in the above proceeding.

Northern states that on August 20, 1992 it remitted refunds to its

jurisdictional sales and transportation customers of $241,340.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before September 18, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22449 Filed 9-16-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-1582-009]

National Fuel Gas Supply Corp.; Refund Report

September 11, 1992.

On August 31, 1992, National Fuel Gas Supply Corporation (National) filed a report showing that refunds totalling $196,026.30 were distributed on August 31, 1992, to its firm customers. The refunds are required under Article II, Section 1 of the Settlement Agreement approved by Commission order on April 15, 1992, in Docket Nos. CP89-1582-000, *et al.* The agreement requires National to refund to its customers total revenues received by National for gathering services performed during the period April 1, 1992 through June 30, 1992, plus $75,000.

National states that copies of the report were served upon its customers and upon all interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be field on or before September 18, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22443 Filed 9-16-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-259-058, RP92-228-000 and RP92-1-008]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

September 11, 1992.

Take notice that Northern Natural Gas Company (Northern) on September 9, 1992, tendered for filing its F.E.R.C. Gas Tariff Fourth Revised Volume No. 1 proposed to be effective November 1, 1992.

Northern states that such tariff sheets are being submitted in compliance with the Commission's Order issued June 26, 1992, in Docket Nos. RP88-259-046 et al. to implement Northern's New Services Settlement effective November 1, 1992.

In addition, Northern is filing to add to the New Services Tariff the provisions approved by the Commission since the filing of the New Services Settlement, as well as certain other clarifications described in the filing. Northern is also filing to effectuate rates on November 1, 1992, in the New Services structure as anticipated in Northern's rate case in Docket No. RP92-1 filed on October 1, 1991.

Northern further states that copies of the filing have been mailed to each of its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests must be filed on or before September 18, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22438 Filed 9-16-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RS92-22-000, RP91-229-000, and RP92-166-000]

Panhandle Eastern Pipe Line Co.; Technical Conference

September 11, 1992.

Take notice that a technical conference has been scheduled in the above-captioned proceeding for 10 a.m. on September 18, 1992 at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. The purpose of the conference is to discuss Panhandle Eastern Pipe Line Company's status capacity rights as an Alaska Natural Gas Transportation System prebuild shipper on Northern Border Pipeline Company.

All interested parties are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested parties can call Joel Arneson at (202) 208-2169.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22450 Filed 9-16-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP92-142-001 and RP91-68-014]

Penn-York Energy Corp.; Refund Report

On July 20, 1992, Penn-York Energy Corporation (Penn-York) filed a report showing refunds totalling $845,979.21 to its customers for the period October 3, 1991 through July 16, 1992. Penn-York was directed to make the refunds by Commission orders issued in Docket Nos. RP92-142-000 and RP91-68-000. Penn-York has appealed the Commission's orders to the U.S. Court of Appeals for the District of Columbia Circuit. The refund report and the refunds were made under protest.

Any person desiring to protect said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before September 18, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22444 Filed 9-16-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-80-000 and RP92-164-003]

Tarpon Transmission Co.; Tariff Filing

September 11, 1992.

Take notice that on September 8, 1992, Tarpon Transmission Company ("Tarpon") tendered for filing with the Commission as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets:

Revised Substitute Eighth Sheet No. 2A
Revised Substitute First Sheet No. 86A
Revised Substitute Second Sheet No. 96A

Tarpon has requested that the Commission waive its 30-day notice requirement and any other applicable regulations to permit the above-listed tariff sheets to become effective on October 1, 1992.

Tarpon also tendered for filing the following tariff sheets, proposed to be effective on November 1, 1992 (consistent with the Commission's order of May 29, 1992, in Docket No. RP92-164-000 suspending Tarpon's April 30, 1992 rate increase filing, Tarpon Transmission Co., 59 FERC ¶ 61,239 (1992)):

Tenth Revised Sheet No. 2A
Third Revised Sheet No. 86A
Fourth Revised Sheet No. 96A
Alternate Tenth Revised Sheet No. 2A
Alternate Third Revised Sheet No. 86A
Alternate Fourth Revised Sheet No. 96A

Tarpon states that these nine tariff sheets are submitted pursuant to § 154.38(d)(6) of the Commission's Regulations and the Annual Charge Adjustment ("ACA") provision of Tarpon's FERC Gas Tariff.

Tarpon states that on July 27, 1992, the Commission notified Tarpon that the ACA unit charge to be applied to interstate pipeline rates in fiscal year 1993 for the recovery of 1992 Annual Charges assessed pursuant to part 382 of the Commission's Regulations had been revised from $0.0024 per Mcf to $0.0023 per Mcf. Each of the above-listed tariff sheets reflects no change in Tarpon's rates for transportation service other than this revision to the ACA unit charge.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures 18 CFR 385.211 and 385.214. Such motions or protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person desiring to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22451 Filed 9-16-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. IN86-6-010]

Tennessee Gas Pipeline Co.; Refund Report

September 11, 1992.

On June 30, 1992, Tennessee Gas Pipeline Company (Tennessee) filed a report showing that it flow through refunds of $114,370.47, inclusive of interest, to its jurisdictional sales customers. Tennessee collected the refund from Ozark Gas Transmission System through a $0.005/mcf monthly billing credit to invoices during the period of May 1991 through April 1992, pursuant to a Stipulation and Consent Agreement approved by the Commission in Docket No. IN86-6-000 on August 3, 1987. Tennessee's report and refunds are in accordance with the Commission's orders issued in Docket Nos. IN86-6-001 and IN86-6-002 on February 29, 1988 and April 27, 1988, respectively.

Tennessee states that copies of the report have been mailed to all of its jurisdictional sales customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before September 18, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22527 Filed 9-16-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-629-023 and CP90-639-014]

Tennessee Gas Pipeline Co.; Refund Report

September 11, 1992.

Take notice that on August 24, 1992, Tennessee Gas Pipeline Company (Tennessee) filed a refund report in compliance with the Commission's order issued July 23, 1992, in Docket Nos. CP89-629-020 and CP90-639-011. Tennessee states that the report reflects refunds paid on August 21, 1992, to its customers under Rate Schedules NET-Niagara and NET-Northeast. Tennessee states that the refunds are owed because it collected an incorrect GRI surcharge during the first seventeen days of January, 1992. The report is on file with the Commission and open for public inspection.

To be heard or to protest this filing, a person must file a motion to intervene or a protest on or before September 30, 1992. A person filing a motion to intervene or a protest must follow the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All motions to intervene or protests must be filed with the Federal Energy Regulatory Commission, Washington, DC 20426.

The Commission will consider all filed protests in deciding the appropriate action to take but filing a protest does not make protestants parties to a proceeding. A person wishing to be a party to a proceeding or to participate as a party in a hearing must file a motion to intervene.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22445 Filed 9-16-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-09228T Texas-71]

State of Texas; NGPA Determination by Jurisdictional Agency Designating Tight Formation

September 10, 1992.

Take notice that on September 8, 1992, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Wilcox 8,200' Sand Formation in a portion of Webb County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The recommended area lies within Railroad Commission District 4 and consists of all or portions of the following surveys:

Abundio Solis Survey No. 2086 (A-2673)
Jose Anaya Survey No. 2088 (A-2524)
Eugenio R. Rodriguez Survey Porcion 41 (A-269)
Eugenio Sanchez Survey Porcion 42 (A-285)
Jose Cayetano De La Garza Survey Porcion 43 (A-45)
Dolores Garcia Survey Porcion 44 (A-54)
Dolores Garcia Survey Porcion 45 (A-55)

The notice of determination also contains Texas' findings that the referenced portion of the Wilcox 8,200' Sand Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22433 Filed 9-16-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-09229T Texas-72]

State of Texas; NGPA Determination by Jurisdictional Agency Designating Tight Formation

September 10, 1992.

Take notice that on September 8, 1992, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Edwards Formation in a portion of DeWitt County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The recommended area lies within Railroad Commission District 2 and consists of all or portions of the following surveys:

Survey	Abstract
Franz Henecke	A-218
I.R.R.	A-245
Benj. Haral	A-219
Edw. Edwards	A-805
J.E. Wilson	A-557
W.H. Hartmann	A-522
Rufus Smith	A-543
Indianola R.R.	A-248
Rufus Smith	A-547
L.M. Mason	A-339
John York	A-502
James Foster	A-176

The notice of determination also contains Texas' findings that the referenced portion of the Edwards Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22434 Filed 9-16-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-7-077]

Transcontinental Gas Pipe Line Corp., Report of Refunds

September 11, 1992.

Take notice that on August 14, 1992, Transcontinental Gas Pipe Line Corporation (Transco) tendered its Report of Refunds in compliance with the Commission order issued June 4, 1992 in Docket No. RP87-7-075. The refund represents the difference between the amounts billed and the amounts computed utilizing the settlement rates and fuel retention factors for each of Transco's sales, storage, and transportation customers for the period April 10, 1990 through July 31, 1991.

Transwestern states that on August 5, 1992, it issued all applicable refunds totalling $100,162,382.33, including interest, to its customers in accordance with the order.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before September 18, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22447 Filed 9-16-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP83-137-034 and RP85-31-005]

Transcontinental Gas Pipe Line Corp.; Filing of Refund Plan

September 11, 1992.

Take notice that on August 24, 1992, Transcontinental Gas Pipe Line Corporation (Transco) tendered its Refund Plan in compliance with the Commission Order on Rehearing issued July 24, 1992 in Docket No. RP83-137-033, which directed Transco to file a refund plan within 30 days detailing its proposed disposition of refunds. The refunds represent the difference between rates charged Transco's transportation customers based upon actual volumes retained at an average retention factor of 6.1%, as compared with an average retention factor of 4.8%, for the period April 1984 through March 1987.

Transco states that it proposes to issue refunds totalling $43,579,762.12, including interest computed through August 24, 1992, plus any additional accrued interest, to its transportation customers as soon as the Commission has acted upon its refund plan. Transco has also indicated the difference in refunds under its proposed plan and the refunds it has already made, with additional refunds (or surcharges) indicated for each customers as appropriate. In accordance with the Commission order, Transco's obligation to make refunds and the required filing of a refund report is delayed until the Commission has acted on the refund plan.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before September 18, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22448 Filed 9-16-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-54-000]

Western Transmission Corp.; Prefiling Conference

September 11, 1992.

Take notice that a prefiling conference will be convened in this proceeding on Friday, October 2, 1992, at 10 a.m. at the offices of the Federal Regulatory Commission, 810 First Street, NE., Washington, DC. The purpose of the conference is to address Western Transmission Corporation's proposal to comply with Order Nos. 636 and 636-A.

Any party, as defined in 18 CFR 385.102(c), or any participant, as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations, 18 CFR 385.214.

For additional information, contact Kathleen Dias at (202) 208-0909.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22446 Filed 9-16-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP92-691-000]

Williams Natural Gas Co.; Request Under Blanket Authorization

September 9, 1992.

Take notice that on September 3, 1992, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP92-691-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to abandon the transportation of natural gas for direct sale to Coastal Derby Refining Company (Coastal), for use at the Coastal crude oil pump station, and to reclaim measuring, regulating and appurtenant facilities in Sumner County, Kansas, under its blanket certificate issued in Docket No. CP82-479-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Coastal notified WNG that it no longer requires gas at the crude oil pump station in Sumner County, Kansas. WNG therefore states that it requests authorization to abandon the transportation of gas for direct sale to Coastal and also requests authorization to reclaim the associated measuring, regulating and appurtenant facilities in Sumner County, Kansas. WNG states that the cost to reclaim the measuring, regulating and appurtenant facilities is estimated to be $595.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22452 Filed 9-16-92; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL-4507-7]

National Emission Standards for Hazardous Air Pollutants; Compliance Extensions for Early Reductions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of complete enforceable commitments received.

SUMMARY: This notice provides a list of companies that have submitted "complete" enforceable commitments to the EPA under the Early Reductions Provisions [section 112(i)(5)] of the Clean Air Act (CAA) as amended in 1990. The list covers commitments determined by the EPA to be complete through the month of July 1992 and includes the name of each participating company, the associated emissions source location, and the EPA Regional Office which is the point of contact for further information. This is the third of a series of notices of this type. The first was published in the May 15, 1992 issue of the **Federal Register** (57 FR 20824) and covered the period through March 31, 1992. Another notice was published on August 3, 1992 for one enforceable commitment found to be complete in the month of May (57 FR 34132). No enforceable commitments were determined to be complete during April or June of 1992 and, therefore, no notices were published for those months. The EPA will publish additional lists of complete submittals on a monthly basis, as needed.

FOR FURTHER INFORMATION CONTACT: David Beck (telephone: 919-541-5421), Rick Colyer (telephone: 919-541-5262), or Mark Morris (telephone: 919-541-5416), Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711 for general information on the Early Reductions Program. For further information on specific submittals received under the Early Reductions Program contact the appropriate EPA Regional Office representative listed below.

Region I—Janet Beloin (617) 565-2734.

Region II—Umesh Dholakia or Harish Patel (212) 264-6676.

Region III—Jim Baker (215) 597-3499.

Region IV—Anthony Toney (404) 347-2864.

Region V—John Pavitt (312) 886-6858.

Region VI—Tom Driscoll or Tanya Murray (214) 655-7549, (214) 655-7547.

Region VII—Carmen Torres-Ortega (913) 551-7873.

Region VIII—Dean Gillam (303) 293-1762.

Region IX—Ken Bigos (415) 744-1240.

Region X—Chris Hall (206) 553-1949.

SUPPLEMENTARY INFORMATION: Under section 112(i)(5) of the Clean Air Act (CAA) as amended in 1990, an existing source of hazardous air pollutant emissions may obtain a 6-year extension of compliance with an emission standard promulgated under section 112(d) of the CAA, if the source achieves sufficient reductions of hazardous air pollutant emissions prior to certain dates. On June 13, 1991, the EPA published a proposed rule to implement this "Early Reductions" provision (56 FR 27338). A final rule will be issued shortly.

Sources choosing to participate in the Early Reductions Program must document base year emissions and post-reduction emissions to show that sufficient emission reductions have been achieved to qualify for a compliance extension. As a first step toward this demonstration, some sources may be required to submit an enforceable commitment containing base year emission information, or if not required, may voluntarily submit such emission information to the EPA for approval. As stated in the proposed Early Reductions rule, the EPA will review these submittals to verify emission information, and also will provide the opportunity for public review and comment. Following the review and comment process and after sources have had the chance to revise submittals (if necessary), the EPA will approve or disapprove the base year emissions.

To facilitate the public review process for program submittals, the proposed rule contains a commitment by the EPA to give monthly public notice of submittals received which have been determined to be complete and which are about to undergo technical review within the EPA. Members of the public wishing to obtain more information on a specific submittal then may contact the appropriate EPA Regional Office representative listed above. Approximately sixty-five enforceable

commitments have been received by the EPA, and five have been determined to be complete to date.

Some of the early reductions submittals received actually contain multiple enforceable commitments; that is, some companies have decided to divide their particular plant sites into more than one early reductions source. Each of these sources must achieve the required emissions reductions individually to qualify for a compliance extension. The first three commitments found to be complete were listed in the initial notice of this series which covered the period through March 31, 1992, and appeared in the May 15, 1992, issue of the **Federal Register**. That notice actually listed only two companies; however, the Amoco Chemical submittal contained commitments for two sources at the plant site. Therefore, the first notice should have stated that there were three complete commitments at that time. Another commitment was found to be complete in May, 1992. No commitments were determined to be complete during April or June of 1992 and no notices were published covering those periods. The purpose of today's notice is to add PPG Industries, Inc. to the previously published list of companies that have submitted enforceable commitments determined to be complete by the EPA under the Early Reductions Program. As the remaining submittals are determined to be complete, they will appear in subsequent monthly notices.

At a later time (most likely within one to three months of today's date), the EPA Regional Offices will provide a formal opportunity for the public to comment on the submittal added to the list by today's notice. To do this, the Regional Office will publish a notice in the source's general area announcing that a copy of the source's submittal is available for public inspection and that comments will be received for a 30 day period.

The table below lists those companies that have made complete enforceable commitments or base year emission submittals under the Early Reductions Program through July 31, 1992. These submittals are undergoing technical review within the EPA at this time.

TABLE 1.—COMPLETE ENFORCEABLE COMMITMENTS AS OF JULY 31, 1992

Company	Location	EPA region
1. Kalama Chemical, Inc.	Kalama, WA	X
2. Amoco Chemical Co. (first source).	Texas City, TX	VI

TABLE 1.—COMPLETE ENFORCEABLE COMMITMENTS AS OF JULY 31, 1992—Continued

Company	Location	EPA region
3. Amoco Chemical Co. (second source).	Texas City, TX	VI
4. Johnson & Johnson Medical, Inc.	Sherman, TX	VI
5. PPG Industries	Lake Charles, LA	VI

Dated: September 9, 1992.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 92-22515 Filed 9-16-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4506-7]

Proposed Administrative Settlement; Limon Elevator Site, Limon, CO

AGENCY: U.S. Environmental Protection Agency (U.S. EPA).

ACTION: Proposed administrative settlement.

SUMMARY: In accordance with the requirements of section 122(i)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), notice is hereby given of a proposed administrative settlement under section 122(h) concerning the Limon Elevator Site in Limon, Colorado. The proposed administrative settlement requires Union Pacific Railroad, a potentially responsible party at the site, to pay $264,389.79 in removal costs incurred by U.S. EPA in cleaning up the site.

DATES: Comments must be submitted by October 19, 1992.

ADDRESSES: Comments should be addressed to Maureen O'Reilly, (8HWM-ER), U.S. Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202-2405, and should refer to Limon Elevator Site, Limon, Colorado.

FOR FURTHER INFORMATION CONTACT: Jessie A. Goldfarb, Office of Regional Counsel, at (303) 293-1458.

It is so agreed:

Jack W. McGraw,

Acting Regional Administrator, Environmental Protection Agency, Region VIII.

[FR Doc. 92-22521 Filed 9-16-92; 8:45 am]

BILLING CODE 6560-50-M

[OPPTS-140189; FRL-4162-5]

Access to Confidential Business Information by Unisys Corporation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Unisys Corporaton (UNI), of McLean, Virginia, for access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than September 28, 1992.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, TSCA Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: Under contract number 68-01-7437, contractor UNI, of 8201 Greensboro Drive, McLean, VA, will assist the Office of Pollution Prevention and Toxics (OPPT) in systems software maintenance and the operation of the TSCA CBI computer system.

In accordance with 40 CFR 2.306(j), EPA has determined that undef EPA contract number 68-01-7437, UNI will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. UNI personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

In a previous notice published in the **Federal Register** of September 27, 1988 (53 FR 37640), UNI was authorized for access to CBI submitted to EPA under all sections of TSCA. EPA is issuing this notice to extend UNI's access to TSCA CBI under a contract extension.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide UNI access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA's National Computer Center in Research Triangle Park, NC.

Clearance for access to TSCA CBI under this contract may continue until January 11, 1993.

UNI personnel will be required to sign nondisclosure agreements and will be

briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: September 2, 1992.

George A. Bonina,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92-22536 Filed 9-16-92; 8:45 am]

BILLING CODE 6560-50-F

[OPPTS-140187; FRL-4162-3]

Access to Confidential Business Information by ASCI Corporation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, ASCI Corporation (ASCI), of McLean, Virginia, for access to information which has been submitted to EPA under sections 4, 5, 6, 8, 9, and 21 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than September 28, 1992.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, TSCA Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: Under contract number 68-D9-0156, contractor ASCI, of 1365 Beverly Road, McLean, VA, will assist the Office of Pollution Prevention and Toxics (OPPT) in providing support for the identification and analysis of options and strategies for chemical regulation and in evaluating New Chemical Program documents.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68-D1-0156, ASCI will require access to CBI submitted to EPA under sections 4, 5, 6, 8, 9, and 21 of TSCA to perform successfully the duties specified under the contract. ASCI personnel will be given access to information submitted to EPA under sections 4, 5, 6, 8, 9, and 21 of TSCA. Some of the information may be claimed or determined to be CBI.

In a previous notice published in the **Federal Register** of January 9, 1990 (55 FR 781), ASCI was authorized for access to CBI submitted to EPA under sections 4, 5, 6, 8, and 21 of TSCA. EPA is issuing this notice to extend ASCI's access to TSCA CBI under a contract extension.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, 8, 9, and 21 of TSCA that EPA may provide ASCI access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters only.

Clearance for access to TSCA CBI under this contract may continue until December 31, 1992.

ASCI personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: September 2, 1992.

George A. Bonina,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92-22537 Filed 9-16-92; 8:45 am]

BILLING CODE 6560-50-F

[OPPTS-140188; FRL-4162-4]

Access to Confidential Business Information by Sociometrics, Incorporated

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Sociometrics, Inc. (SOC), of Hyattsville, Maryland, for access to information which has been submitted to EPA under sections 4, 5, 6, 8, 9, and 21 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than September 28, 1992.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, TSCA Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: Under contract number 68-D2-0150, contractor SOC, of 6525 Belcrest Rd., Suite 202, Hyattsville, MD, will assist the Office of Pollution Prevention and Toxics (OPPT) in providing support for the identification and analysis of options and strategies for chemical regulation and in evaluating New Chemical Program documents.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68-D2-0150, SOC will require access to CBI submitted to EPA under sections 4, 5, 6, 8, 9, and 21 of TSCA to perform successfully the duties specified under the contract. SOC personnel will be given access to information submitted to EPA under sections 4, 5, 6, 8, 9, and 21 of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, 8, 9, and 21 of TSCA that EPA may provide SOC access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters only.

Clearance for access to TSCA CBI under this contract may continue until July 31, 1997.

SOC personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: September 2, 1992.

George A. Bonina,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92-22538 Filed 9-16-92; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Dixie Broadcasting, Inc.; Applications for Hearing

1. The Commission has before it the following applications for renewal of the licenses of Stations WHOS(AM)/WDRM(FM), Decatur, Alabama:

Applicant, city and state	File No.	MM Docket No.
Dixie Broadcasting, Inc., Decatur, AL.	BR-881201XN; BRH-881201XO	92-207

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e), the above applications have been designated for hearing upon the following issues:

(a) To determine whether the licensee made misrepresentations of fact or was lacking in candor and violated 47 CFR 73.1015 with regard to the stations' EEO program and documents submitted in support thereof;

(b) To determine the extent to which the licensee complied with affirmative action provisions specified in 47 CFR 73.2080;

(c) To determine whether, in light of evidence adduced pursuant to the foregoing issues, a grant of the subject license renewal applications would serve the public interest, convenience and necessity.

3. A copy of the complete Hearing Designation Order (FCC 92-391) in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC 20554. The complete text may also be purchased from the Commission's duplicating contractor, Downtown Copy Center, 1114 21st Street NW., Washington, DC 20036 (telephone (202) 452-1422).

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 92-22472 Filed 9-16-92; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Georgia Ports Authority/Lykes Bros. Steamship Co. Terminal Agreement

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200637-001.

Title: Georgia Ports Authority/Lykes Bros. Steamship Co. Terminal Agreement.

Parties: Georgia Ports Authority ("GPA") Lykes Bros. Steamship Co., Inc. ("Lykes").

Synopsis: This modification incorporates annual revisions to the GPA's schedule of rates pertaining to container handling for Lykes.

By order of the Federal Maritime Commission.

Dated: September 11, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 92-22480 Filed 9-16-92; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BPD-757-CN]

RIN 0938-AF80

Medicare Program; Schedule of Limits on Home Health Agency Costs Per Visit for Cost Reporting Periods Beginning On or After July 1, 1992; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice with comment period; correction.

SUMMARY: In the July 1, 1992 issue of the **Federal Register** (FR Doc. 92-15496) (57 FR 29410), we published a notice with comment period that set forth a revised schedule of limits on home health agency costs that may be paid under the Medicare program. The July 1, 1992 notice applies to cost reporting periods beginning on or after July 1, 1992. This notice corrects errors made in the July 1, 1992 document.

EFFECTIVE DATE: July 1, 1992.

FOR FURTHER INFORMATION CONTACT: Michael Bussacca, (410) 966-4602.

SUPPLEMENTARY INFORMATION: In a notice with comment period published in the **Federal Register** on July 1, 1992 (FR Doc. 92-15496) (57 FR 29410), we set forth a revised schedule of limits on home health agency costs that may be paid under the Medicare program. The schedule of limits is effective for cost reporting periods beginning on or after July 1, 1992.

As stated in the July 1, 1992 notice, we calculated the HHA basic service limits using 112 percent of the mean per-visit costs of free-standing HHAs. We also provided for an add-on to the HHA cost limits in the amount of $.14 per visit for those HHAs that incur costs associated with the universal precaution requirements of the Occupational Safety and Health Administration (OSHA). However, we inadvertently did not apply the 112 percent in calculating the OSHA add-on. Therefore, this correction notice is necessary to clarify that the OSHA add-on should be $.16 per visit ($.14×112 percent=$.1568, rounded to $.16). In addition, the July 1, 1992 notice contained several typographical and technical errors.

Accordingly, we are making the following corrections to the July 1, 1992 notice.

1. On page 29411, in the first column, in the tenth line, the figure "1.59" is changed to "5.9".

2. On page 29411, in the second column, under "A. Data Used", in the first paragraph, in the sixth line, the date "October 31, 1988" is changed to "October 1, 1988".

3. On page 29411, in the third column, in the second full paragraph, in the ninth line, the figure "$.14" is changed to "$.16".

4. On page 29414, in the first column, in the third line from the bottom of the page, the figure "$.14" is changed to "$.16".

5. On page 29414, in the second column, in the "Computation of Revised Limit for Occupational Therapy" example, the figure "1.0283" is changed to "1.0278" and the figure "94.46" is changed to "94.41".

6. On page 29414, in the second column, in the second paragraph, in the fifth line, the figure "$94.46" is changed to "$94.41".

7. On page 29414, the example at the bottom of the second and third columns is revised to read as follows:

Visits	11,000
OSHA Adjustment	×$.16
Subtotal	1,760
Cost Limit	839,910
Adjusted Cost Limit	841,670

8. On page 29416, in the first column, under "IX. Wage Indexes", following the MSA name "Allentown-Bethlehem, PA-NJ", the figure "1.0258" is deleted.

9. On page 29416, in the first column, under "IX. Wage Indexes", following the MSA name "Altoona, PA", the figure "0.9767" is deleted.

10. On page 29421, in the first column, in the last line, the equation in the parentheses is revised to read "(1.0488×1.004×1.004=1.0572)".

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: September 10, 1992.

Joanne Amato,

Acting Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 92-22397 Filed 9-16-92; 8:45 am]

BILLING CODE 4120-01-M

National Institutes of Health National Heart, Lung, and Blood Institute; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the following Heart, Lung, and Blood Special Emphasis Panel.

This meeting will be open to the public to discuss administrative details relating to Special Emphasis Panel (SEP) business for approximately one half hour at the beginning of the first session of the meeting. Attendance by the public will be limited to space available. This meeting will be closed thereafter in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual contract proposals. These contracts and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, National Heart, Lung, and Blood Institute, Westwood Building, room 7A15, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–496–7548, will furnish meeting information upon request. Since it is necessary to schedule meetings well in advance, it is suggested that anyone planning to attend the meeting contact the Scientific Review Administrator to confirm the exact date, time, and location.

Name of Panel: NHLBI SEP on Planning, Developing, Implementing and Evaluating Education Strategies for NHLBI Education Programs.

Scientific Review Administrator: Dr. C. James Scheirer, telephone 301–496–7363.

Dates of Meeting: September 29–30, 1992.

Place of Meeting: Holiday Inn, Bethesda, Maryland.

Time of Meeting: 7:30 p.m.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: September 14, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–22657 Filed 9–16–92; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Subcommittee of the National Vaccine Advisory Committee (NVCA), Public Meeting

AGENCY: Office of the Assistant Secretary for Health, HHS.

SUMMARY: The Department of Health and Human Services (DHHS) and the Office of the Assistant Secretary for Health (OASH) are announcing the forthcoming meeting of the NVAC Subcommittee on Vaccine Licensure and Regulation.

DATE: Date, Time and Place: October 23, 1992, at 1 p.m. to 5 p.m., Parklawn Building, Chesapeake Conference Room, Third Floor, 5600 Fishers Lane, Rockville, Maryland 20857. The entire meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Written requests to participate should be sent to Kenneth J. Bart, M.D., M.P.H., Director and Executive Secretary, National Vaccine Advisory Committee, National Vaccine Program Office, 5600 Fishers Lane, Parklawn Building, room 13A–56, Rockville, Maryland 20857, (301) 443–0715.

Agenda: Open Public Hearing: Interested persons may formally present data, information, or views orally or in writing on issues pending before the Subcommittee or on any of the duties and responsibilities of the Subcommittee as described below. Because of limited seating, those desiring to make such presentations should make a request to the contact person before October 12, and submit a brief description of the information they wish to present to the Subcommittee. Those requests should include the names and addresses of proposed participants and an indication of the approximate time required to make their comments. A maximum of 10 minutes will be allowed for a given presentation. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting will be allowed to make an oral presentation at the conclusion of the meeting, if time permits, at the chairperson's discretion.

Open Subcommittee Discussion: The Subcommittee will evaluate and review specific licensing and regulatory processes and make recommendations on mechanisms, procedures, or legislation, if appropriate, to enhance and/or facilitate the licensing and other regulatory processes. The agenda for this meeting will include an industry view of the regulatory process, and if time permits, further discussion on the government's role from agencies other than the Food and Drug Administration.

Persons interested in specific agenda items may ascertain from the contact person the approximate time of discussion. A list of Subcommittee members and the charter of the Advisory Committee will be available at the meeting. Those unable to attend the meeting may request this information from the contact person.

September 9, 1992.

Kenneth J. Bart,

Executive Secretary, NVAC.

[FR Doc. 92–22481 Filed 9–16–92; 8:45 am]

BILLING CODE 4160–17–M

Social Security Administration

Disability Benefits Programs; Status of the Rules for Considering Vocational Factors in Evaluating Social Security and Supplemental Security Income Claims Based on Disability (the Medical-Vocational Rules)

AGENCY: Social Security Administration, HHS.

ACTION: Notice of status.

SUMMARY: In the preamble to the final regulations on the "Rules for Adjudicating Disability Claims in Which Vocational Factors Must Be Considered," published November 28, 1978 (43 FR 55349), we stated that we planned to monitor the performance and validity of the medical-vocational rules. On December 20, 1988 (53 FR 51097), we published a notice which reported on the results of our monitoring of the performance of these rules and provided an update as to their validity with respect to our adjudication of claims based on disability in which we consider vocational factors. This notice reports on the continuing validity of the medical-vocational rules.

FOR FURTHER INFORMATION CONTACT: Elbert Spivey, Social Security Administration, 3–A–7 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–9139.

SUPPLEMENTARY INFORMATION: In the preamble to the final regulations on the "Rules for Adjudicating Disability Claims in Which Vocational Factors Must Be Considered," published November 28, 1978 (43 FR 55349), we stated on page 55357 that we planned to monitor the disability program to make sure there were no unforeseen effects as a result of the final rules. We also stated on page 55361 that while we did not anticipate any major changes of job incidence or other occupational data, if later analyses indicated that any rules should be restructured, we would notify the public. In our December 20, 1988, notice, we reported the results of the performance monitoring. We advised that, "Quality assurance data, gathered continuously from all regions of the country, have been compared with data which preceded publication of the medical-vocational rules and have shown no change in overall allowance/denial rates of disability claims where

the medical-vocational rules are applicable." We further advised that since we had received no significant data or other evidence to indicate that the unskilled occupational base as described in the text of these rules had changed substantially, they did not need to be restructured on this basis. The purpose of the present notice is to provide the public with an update concerning the current validity of these rules.

When the medical-vocational rules were published, the third edition of the Dictionary of Occupational Titles (DOT) and its companion volumes were the chief occupational reference sources of the disability program. These sources identified, at the various functional levels, the unskilled occupations which comprise the administratively noticed occupational base for decisions made under the medical-vocational rules. Subsequently, the fourth edition of the DOT (1977–81) and its companion volumes and supplements (1982 and 1986) have replaced the third edition.

As reported in the notice we published on December 20, 1988, when we analyzed the fourth edition of the DOT in detail and compared it with the third edition, we found that while the numbers of individually identifiable occupations showed some variance, the range of work (of which the medical-vocational rules take administrative notice) continued to represent more occupations than would be required to represent significant numbers. A revised version of the fourth edition of the DOT was subsequently issued in September of 1991. A similar analysis of the revised fourth edition and the available data for the upcoming companion volume, Selected Characteristics of Occupations Defined in the Dictionary of Occupational Titles, again shows that the range of work of which the medical-vocational rules take administrative notice continues to represent more occupations than would be required to represent significant numbers.

During the period since our last notice, we have received no significant data or other evidence to indicate that there were any unforeseen effects of the medical-vocational rules or that the unskilled occupational base as described in the text of these rules has changed substantially. Therefore, we have no reason to propose any changes to the rules at this time. However, it will continue to be our policy to monitor the use of these rules and to analyze occupational data as they become available.

We had planned to publish a notice of the performance and validity of these rules biennially. Following this schedule would have resulted in the publication of a notice in December 1990. However, we deferred publication of the notice until this time so that we could review the revised edition of the DOT that was issued September 1991 and determine if any changes in the data reflected in that publication would necessitate any changes in the medical-vocational rules. We will continue to inform the public of the results of our reviews and the continuing validity of these rules.

(Catalog Federal Domestic Assistance: Program Nos. 93.802, Social Security Disability Insurance; and 93.807, Supplemental Security Income)

Dated: September 1, 1992.

Gwendolyn S. King,

Commissioner of Social Security.

[FR Doc. 92–22475 Filed 9–16–92; 8:45 am]

BILLING CODE 4190-29-M

Settlement Agreement—Stieberger, et al. v. Sullivan, et al. 84 Civ. 1302 (LBS) S.D.N.Y.

AGENCY: Social Security Administration, HHS.

ACTION: Notice.

SUMMARY: The Commissioner of Social Security (the Commissioner) gives notice of the settlement agreement in Stieberger.

FOR FURTHER INFORMATION CONTACT: Gaye Wallace, Litigation Staff, Social Security Administration, 3–K–26 Operations Building, 6401 Security Boulevard Baltimore, MD 21235, (410) 965–1770.

SUPPLEMENTARY INFORMATION: Pursuant to the settlement agreement approved June 18, 1992, by the United States District Court for the Southern District of New York in the case of *Steiberger, et al.* v. *et al.* 84 Civ. 1302 (LBS), the Commissioner hereby publishes this instruction to all persons who decide Social Security Act disability benefit claims of New York State residents or who review such decisions. This instruction is entitled "Application of Second Circuit Decisions to Social Security Act Disability Benefit Claims of New York Residents" and is referred to in the settlement agreement as Attachment 1.

Dated: September 10, 1992.

Gwendolyn S. King,

Commissioner of Social Security.

Attachment 1—Application of Second Circuit Decisions to Social Security Act Disability Benefit Claims of New York Residents

A. General Rule

Effective immediately, all persons who decide Social Security Act disability benefit claims of New York State residents or who review such decisions shall follow and apply the holdings of the United States Court of Appeals for the Second Circuit, except when written instructions to the contrary are issued pursuant to paragraphs D and E. This instruction applies to all Second Circuit disability decisions except those that are expressly designated not for publication.

B. How to Apply Holdings

Holdings of the Second Circuit Court of Appeals must be applied at all levels of administrative review to all claims for title II and title XVI disability benefits filed by New York State residents, unless written instructions to the contrary are issued pursuant to paragraphs D and E. You must apply those holdings in good faith and to the best of your ability and understanding whether or not you view them as correct or sound.

In general, a holding in a decision is a legal principle that is the basis of the court's decision on any issue in the case. There may be more than one holding in a decision. A holding must be applied whenever the legal principles is relevant.

Not all of the discussion in a decision is a holding. For example, the factual discussion in a decision is not a holding although it can help you understand the holding by placing it in context. Also, in their decisions courts may make observations or other remarks that are helpful in understanding the court's reasoning. You are required to apply the holdings, not those observations or other comments of the court.

Of course, you should continue to make sure that the decision whether a claimant is disabled is an individualized decision based on the evidence regarding that claimant.

c. Availability of Decisions and Instructions

To help ensure that decisionmakers and reviewers of decisions apply Second Circuit holdings, SSA will do the following:

1. SSA will provide each office of decisionmakers and reviewers of decisions with a copy of the settlement approved by the Court in *Stieberger* v.

Sullivan.

2. SSA will provide all decisionmakers and reviewers of decisions with a Manual of Second Circuit disability decisions ("Manual")—containing excerpts of the principal holdings of the Second Circuit issued before June 18, 1992, the date that the settlement in Stieberger was approved by the Court.

3. SSA will provide each office of decisionmakers and reviewers of decisions with a copy of each Second Circuit disability decision issued after June 17, 1992, promptly after the decision is issued by the Court. Each such office shall maintain a volume containing copies of these decisions. This volume shall be readily accessible to decisionmakers and reviewers of decisions.

4. SSA will issue instructions to ODD decisionmakers and reviewers of decisions about applying Second Circuit decisions rendered after June 17, 1992. These instructions must be added to the Manual as supplements. SSA may issue instructions to OHA adjudicators.

You should familiarize yourself with the Manual, with SSA's instructions on Second Circuit holdings, and with Second Circuit decisions as they are issued.

While SSA will take the steps described above to help you apply Second Circuit holdings, you must apply the holdings even in the absence of an instruction, and even if they are not included in the Manual.

Example: You have become aware of a Second Circuit disability decision (for example, a claimant draws it to your attention or you receive notification of it from SSA), but you have not yet received an instruction from SSA on how to apply the decision and it is not in the Manual. You must apply the holding(s) of that decision to all claims where it is relevant.

D. Instructions Regarding when Decisions Become Effective

1. You must apply the holdings in a decision once the decision becomes effective. A decision of the Second Circuit generally becomes effective 20 days after the decision is issued by the Court, unless a specific written instruction is issued that requires the decision to be applied earlier or later. If you have not received instructions about a particular Second Circuit decision issued after the date of this instruction, consult with your supervisor for further guidance about whether the decision has become effective. (If you are an administrative law judge, you may inquire with the Regional Office concerning the status of the decision.)

2. As long as a Second Circuit decision is pending further court review, SSA may instruct decisionmakers and reviewers of decisions not to apply some or all holdings stated in that Second Circuit decision. In such instances SSA will issue specific instructions explaining which holdings are not to be applied and identifying the issues addressed by those holdings. When such instructions are issued, decisionmaking and reviewing offices will maintain a list of disability claims decisions that may be affected because the Second Circuit holding is not being applied.

Any notice sent to claimants on the list, denying benefits in whole or in part, will include the following language:

If you do not agree with this decision, you can appeal. You must ask for an appeal within 60 days.

You should know that we decided your claim without applying all of what the court said about the law in _____. _____ is a recent court ruling that we do not consider final because it may be reviewed further by the courts. If it becomes final, we may contact you again.

If you disagree with our decision in your case, do not wait for us to contact you. You should appeal within 60 days of the date you receive this notice. If you do not appeal within 60 days, you may lose benefits.

3. When no further judicial review of a Second Circuit decision will occur, SSA will promptly rescind any instructions issued under this paragraph D, and will advise decisionmakers and reviewers of decisions about the final decision in the case. SSA will also explain what action is to be taken, including any reopenings, with respect to claimants whose cases may have been affected by the instruction not to apply the Second Circuit decision pending further court review.

E. Issuance and Rescission of Acquiescence Rulings

This instruction on application of Second Circuit decisions to disability benefit claims does not prevent SSA from issuing or rescinding acquiescence rulings, or relitigating issues under 20 C.F.R. 404.985 and 416.1485.

F. Questions Concerning this Instruction and Second Circuit Decisions

This instruction is issued pursuant to the settlement agreement in *Stieberger* v. *Sullivan*, 84 Civ. 1302 (S.D.N.Y.). A copy of the complete agreement is available in your office. Any questions about applying Second Circuit decisions that you cannot resolve yourself may be directed to your supervisors and, if more guidance is needed, through supervisory channels to the Litigation Staff in SSA Central Office in Baltimore, Maryland. In addition, a team of SSA personnel will visit the New York ODD one month after you receive this instruction and quarterly thereafter for 3 years to discuss any questions decisionmakers and reviewers of decisions have about applying Second Circuit disability decisions.

G. Binding Effect of This Instruction

This instruction is binding on all personnel, including state employees, ALJs, Appeals Council Administrative Appeals Judges, quality assurance staff, and all other personnel who process, render decisions on, or review claims of New York residents for disability benefits under the Social Security Act.

Because this instruction arises out of a lawsuit, it does not apply to claims of any persons who do not reside in the State of New York. However, this limitation does not lessen the extent to which court decisions are to be applied to claims of persons who reside in any other state. This limitation also should not be deemed to suggest that such decisions are not given or should not be given proper consideration in any other state.

[FR Doc. 92-22395 Filed 9-16-92; 8:45 am]

BILLING CODE 4190-29-M

Social Security Acquiescence Ruling 92-6(10)—Walker v. Secretary of Health and Human Services, 943 F.2d 1257 (10th Cir. 1991)—Entitlement to Trial Work Period Before Approval of an Award for Benefits and Before Twelve Months Have Elapsed Since Onset of Disability—Titles II and XVI of the Social Security Act

AGENCY: Social Security Administration, HHS.

ACTION: Notice of Social Security Acquiescence Ruling.

SUMMARY: In accordance with 20 CFR 404.985(b), 416.1485(b) and 422.406(b)(2) published January 11, 1990 (55 FR 1012), the Commissioner of Social Security gives notice of Social Security Acquiescence Ruling 92-6(10)

EFFECTIVE DATE: September 17, 1992.

FOR FURTHER INFORMATION CONTACT: Darlynda Bogle, Litigation Staff, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (410) 965-4237.

SUPPLEMENTARY INFORMATION: Although not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security

Acquiescence Ruling in accordance with 20 CFR 422.406(b)(2).

A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

We will apply the holding of the Court of Appeals decision as explained in this Social Security Acquiescence Ruling to cases at the disability hearing/reconsideration, Administrative Law Judge and Appeals Council levels within the Tenth Circuit. This Social Security Acquiescence Ruling will apply to all determinations and decisions made on or after September 17, 1992. If we made a determination or decision on your application for benefits between September 5, 1991, the date of the Court of Appeals' decision, and September 17, 1992, the effective date of this Social Security Acquiescence Ruling, you may request application of the Social Security Acquiescence Ruling to your claim if you first demonstrate, pursuant to 20 CFR 404.985(b) or 416.1485(b), that application of the Ruling could change our prior determination or decision.

If this Social Security Acquiescence Ruling is later rescinded as obsolete, we will publish a notice in the **Federal Register** to that effect as provided for in 20 CFR 404.985(e) or 416.1485(e). If we decide to relitigate the issue covered by this Social Security Acquiescence Ruling as provided for by 20 CFR 404.985(c) or 416.1485(c), we will publish a notice in the **Federal Register** stating that we will apply our interpretation of the Act or regulations involved and explaining why we have decided to relitigate the issue.

(Catalog of Federal Domestic Assistance Programs Nos. 93.802 Social Security—Disability Insurance; 93.803 Social Security—Retirement Insurance; 93.805 Social Security Survivor's Insurance; 93.806—Special Benefits for Disabled Coal Miners; 93.807—Supplemental Security Income.)

Dated: July 9, 1992.

Gwendolyn S. King,

Commissioner of Social Security.

Acquiescence Ruling 92–6(10)

Walker v. *Secretary of Health and Human Services*, 943 F.2d 1257 (10th Cir. 1991)—Entitlement to Trial Work Period Before Approval of an Award for Benefits and Before Twelve Months Have Elapsed Since Onset of Disability—Titles II and XVI of the Social Security Act.

Issue: Does a person's return to substantial gainful activity (SGA) within 12 months of the onset date of his or her disability, and prior to an award of benefits, preclude an award of benefits and entitlement to a trial work period?

Statute/Regulation/Ruling Citation: Sections 222(c), 223, and 1614(a)(3) and (4) of the Social Security Act (42 U.S.C. §§ 422(c), 423, and 1382c(a)(3) and (4)); 20 CFR §§ 404.1505, 404.1520(b), 404.1592, 416.905, 416.920(b), 416.992; SSR 82–52

Circuit: Tenth (Colorado, Kansas, New Mexico, Oklahoma, Utah, Wyoming).

Walker v. *Secretary of Health and Human Services*, 943 F.2d 1257 (10th Cir. 1991).

Applicability of Ruling: This Ruling applies to determinations or decisions at all administrative levels (*i.e.*, initial, reconsideration, Administrative Law Judge hearing and Appeals Council).

Description of Case: Billy Walker applied for disability insurance benefits and supplemental security income (SSI) on October 2, 1987, alleging disability due to degenerative disc disease and ulcers. His claim was denied initially and upon reconsideration. Mr. Walker then requested a hearing before an Administrative Law Judge (ALJ). While he was awaiting his hearing, Mr. Walker returned, in April 1988, to his work as a truck driver. He was still performing this job at the time of his hearing in September 1988.

The ALJ, in determining that Mr. Walker was not disabled, denied benefits at step one of the five–step sequential evaluation process. Specifically, the ALJ found that Mr. Walker had engaged in substantial gainful activity since April 1988, within twelve months of the date he claimed disability, by virtue of his work as a truck driver. The Appeals Council denied Mr. Walker's request for review and the U.S. District Court for the District of New Mexico affirmed the ALJ's decision.

On his appeal to the U.S. Court of Appeals for the Tenth Circuit, Mr. Walker argued that, despite his return to work in April 1988, he was still disabled as defined by the Social Security Act ("the Act"). He maintained that his work as a truck driver constituted a trial work period, which the ALJ should not have considered in determining his eligibility for benefits.

Holding: In vacating the district court's judgment and remanding the case to the Secretary, the U.S. Court of Appeals for the Tenth Circuit held that:

> * * * a fair reading of the Act indicates that an individual who suffers from an impairment that has lasted, or is expected to last, twelve months is entitled to disability insurance benefits, as well as a trial work period, after waiting five months. [1]

In reaching this conclusion, the court relied upon the Seventh Circuit's reasoning and decision in *McDonald* v. *Bowen*, 818 F.2d 559 (7th Cir. 1987), which held that a person could return to work after the five–month waiting period, yet before an award of benefits, and still be eligible for an award, since the return to work represents a trial work period and is not evidence of the person's work capabilities. [2]

The court directed the Secretary, on remand, to determine whether Mr. Walker was disabled for five consecutive months before he began work in April 1988, and, if so, to assess whether such work constituted a trial work period.

Statement As To How Walker Differs From Social Security Policy

Social Security Ruling (SSR) 82–52 contains a clear statement of Social Security policy on this subject.[3] The pertinent provision is as follows:

> When the [individual's] return to work demonstrating ability to engage in SGA occurs before approval of the award and prior to the lapse of the 12-month period after onset, the claim must be denied. When an individual returns to SGA during the waiting period and such work continues, the claim for benefits must be denied if the award has not been approved. If the award was previously approved, the claim must be reopened and revised to a denial.

The holding in Walker is inconsistent with this policy in that it directs the Secretary, on remand, to grant Mr. Walker a trial work period provided only that he establishes a consecutive five-month period of disability prior to his return to work in April 1988. This raises the possibility that Mr. Walker may receive a benefit award and a trial work period even if he returned to work within 12 months of the onset of his

[1] The Act provides that "[a] period of trial work * * * shall begin with the month in which [the individual] becomes entitled to disability insurance benefits." 42 U.S.C. 422(c)(3). A trial work period ends with the ninth month in any period of 60 consecutive months in which the individual renders services (although the nine months need not be consecutive), or, if earlier, with the month in which disability ceases. 42 U.S.C. § 422(c)(4)(A),(B).

[2] Under the Act, "any services rendered by an individual during a period of trial work shall be deemed not to have been rendered by such individual in determining whether his disability has ceased in a month during such period." 42 U.S.C. § 422(c)(2).

[3] The Social Security Administration has since issued SSR 91–7c, which supersedes SSR 82–52 only to the extent that SSR 82–52 discusses the former procedures used to determine disability in children. The issue in this AR does not relate to those former procedures and the cited policy statement remains in effect.

disability and before an award of benefits could be made.

Explanation of How SSA Will Apply the Decision Within the Circuit

This ruling applies only to cases in which the claimant resides in Colorado, Kansas, New Mexico, Oklahoma, Utah or Wyoming at the time of the determination or decision at any administrative level, *i.e.*, initial, reconsideration, Administrative Law Judge hearing or Appeals Council review.

A claim for title II disability insurance benefits, widow(er)'s insurance benefits based on disability, or child's insurance benefits based on disability in which the claimant returns to work within 12 months of the established onset date should be allowed and the claimant granted a trial work period if the following conditions are met:

• The claimant establishes that, at the time he/she returned to work and thereafter, the impairment was still expected to last for at least 12 consecutive months from the date of onset;

• The person returns to work after any necessary waiting period after the established onset date (but within the 12-month period following such onset date); and

• The return to work demonstrating ability to engage in substantial gainful activity occurs either before or after approval of the award.

A claim for title XVI benefits based on disability in which the claimant returns to work within 12 months of the established onset date should be allowed and the claimant granted section 1619 status [4] if the following conditions are met:

• The claimant establishes that, at the time he/she returned to work and thereafter, the impairment was still expected to last at least 12 consecutive months from the date of onset;

• The person returns to work in a month subsequent to the month of established onset (but within the 12-month period following such onset date); and

• The return to work demonstrating ability to engage in substantial gainful activity occurs either before or after approval of the award.

EFFECTIVE DATE: September 17, 1992.

[FR Doc. 92-22534 Filed 9-16-92; 8:45 am]

BILLING CODE 4190-29-M

[4] Pursuant to statutory amendments made by Public Law 99-643, effective July 1, 1987, the trial work provisions are no longer applicable to title XVI disability claims. Beginning July 1, 1987, a disabled individual, who was eligible to receive "regular" SSI benefits (section 1611) for a month and subsequently has earnings ordinarily considered to represent substantial gainful activity, will move directly to section 1619 status rather than be accorded a trial work period. This Ruling extends to such individuals, *i.e.*, claimants for title XVI benefits based on disability should be allowed and granted section 1619 status if the return to work is on or after July 1, 1987, and the same conditions are met.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N-92-3502]

Office of Administration; Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 8, 1992.

John T. Murphy,

Director, Information Resources Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Operating Budget and Supporting Schedules.

Office: Public and Indian Housing.

Description of the Need for the Information and its Proposed Use: This schedule will ensure that Public Housing Authorities (PHAs) follow sound financial practices and that Federal Funds are used for eligible expenditures. PHAs will use the form as a financial summary and analysis of immediate and long-term operating programs and plans to provide control over operations and achieve objectives.

Form Number: HUD -52564, 52566, 52567, 52571 and 52573.

Respondents: State or Local Governments and Non-Profit Institutions.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD-52564	3,780		1		116.5		440,370
HUD-52566	3,780		1		1.0		3,780
HUD-52567	3,780		1		.75		2,835
HUD-52571	3,780		1		1.0		3,780

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD-52573	3,780		1		.75		2,835

Total Estimated Burden Hours: 453,600.

Status: Reinstatement.

Contact: John T. Comerford, HUD, (202) 708-1872, Angela Antonelli, OMB, (202) 395-6880.

Dated: September 8, 1992.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Contract for Development A/E Services

Office: Public and Indian Housing.

Description of the Need for the Information and its Proposed Use: Public Housing Agencies and Indian Housing Authorities (PHA/IHA) use Forms HUD-51915 and HUD-51915.1 for contracting for professional architect/engineer (A/E) services to prepare the necessary documents for construction, rehabilitation and modernization of housing developments and to administer the construction work for PHAs/IHAs. PHAs/IHAs are required to submit Forms HUD-51915 and HUD-51915.1 to HUD for review and approval to assure that the necessary design work at appropriate fees are proposed.

Form Number: HUD -51915 and HUD-51915.1.

Respondents: State or Local Government.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD-51915 and HUD-51915.1	1,240		1		3.5		4,340
Recordkeeping	1,240		1		.25		310

Total Estimated Burden Hours: 4,650.

Status: Reinstatement.

Contact: William C. Throson, HUD, (202) 708-4703, Angela Antonelli, OMB, (202) 395-6880.

Dated: September 8, 1992.

[FR Doc. 92-22411 Filed 9-16-92; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. 92-3507]

Office of Administration; Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESS: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction act (44 U.S.C. chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 10, 1992

John T. Murphy,

Director, Information Resources, Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Management Documents for Multifamily Housing Projects.

Office: Housing.

Description of the Need for the Information and its Proposed Use: The Management documents for Multifamily Housing projects are needed by HUD to determine the acceptability of proposed management agents, assure compliance with program requirements, provide leverage for removing poor managers and recover excessive management fees.

Form Number: HUD-9832, 9839A, 9839B, and 9839C.

Respondents: Individual or Households, Businesses or Other For-Profit, and Non-Profit Institutions.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Initial profile	900		1		2		1,800
Updated profile	2,700		1		½		1,350
Staff and salaries	3,600		1		⅙		600

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Mgmt. certification	3,600		1		⅙		600

Total Estimated Burden Hours: 4,350.

Status: Extension.

Contact: James J. Tahash, HUD (202) 708–3944, Angela Antonelli, OMB, (202) 395–6880.

Dated: September 10, 1992.

Proposal: Schedule of Buydown Escrow Accounts.

Office: Government National Mortgage Association.

Description of the Need for the Information and its Proposed Use: GNMA provides a form for use by mortgage-backed securities issuers to advise GNMA of the name, address and account number for each escrow account established relating to the mortgages included in the buydown mortgage-backed securities pool. The submission of the form with the requested information is necessary to protect GNMA's interest in the pooled mortgages in the event of a default by the issuer. The data is used by GNMA's pool processing agent when reviewing the documentation submitted by approved mortgage-backed securities issuers to assure that the issuer has complied with applicable GNMA rules and regulations.

Form Number: HUD–11744.

Respondents: Businesses or Other For-Profit and Small Businesses or Organizations.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
HUD–11744	12		2		.25		6

Total Estimated Burden Hours: 6.

Status: Reinstatement.

Contact: Charles Clark, HUD, (202) 708–2234, Brenda Countee, HUD, (202) 708–2234, Angela Antonelli, OMB, (202) 395–6880.

Dated: September 10, 1992.

[FR Doc. 92–22423 Filed 9–16–92; 8:45 am]

BILLING CODE 7210-01-M

Office of the Assistant Secretary for Public And Indian Housing

[Docket Nos. N-92-3294; FR-3060-N-02; N-92-3364; FR-3159-N-02]

Public and Indian Housing Youth Sports Program Announcement of Funding Awards

AGENCY: Office of the Assistant Secretary for Public and Indian Housing.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards made under the Public and Indian Housing Youth Sports Program. The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Julie Fagan, Drug-Free Neighborhoods Division, Office of Resident Initiatives, Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–1197 or 708–3502. A telecommunications device for hearing impaired persons (TDD) is available at (202) 708–0850. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION: This program is authorized by section 520 of the National Affordable Housing Act (NAHA) (approved November 28, 1990, Pub. L. 101–625). Program funds are to be used for sports, cultural, educational, recreational, or other activities designed to appeal to youth as alternatives to the drug environment in public or Indian housing projects.

A Notice of Funding Availability (NOFA) announcing HUD's FY 1991 funding of $7,500,000 for the Youth Sports Program (YSP) was published in the **Federal Register** of October 28, 1991, (56 FR 55584). In a NOFA published in the **Federal Register** on December 23, 1991 (56 FR 66484), the Department announced the availability of $8,250,000 in funds for the FY 1992 YSP. This notice provides information concerning the recipients of awards under both of these NOFAs.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing details concerning the recipients of these awards, as follows:

FY 91 and FY 92 Funding Decisions Public and Indian Housing Youth Sports Program

Authoring Statute: Section 520, Public Law 101-625, November 28, 1990.

Region and PHA/IHA funding recipient	Amount approved
1—New Britain Housing Authority, 34 Marimac Road, New Britain, CT 06053–2699	$125,000
1—New London Housing Authority, 78 Walden Avenue, New London, CT 06320–0119	105,000
1—Lowell Housing Authority, P.O. Box 60, Lowell, MA 01853	125,000
1—Boston Housing Authority, 52 Chauncy Street, Boston, MA 02111–2302	125,000
1—Cambridge Housing Authority, 270 Green Street, Cambridge, MA 02139–3360	125,000
1—Fall River Housing Authority, P.O. Box 989, Fall River, MA 02722–0989	78,167
1—Lawrence Housing Authority, 353 Elm Street, Lawrence, MA 01842	125,000
1—Brockton Housing Authority, P.O. Box 340, Brockton, MA 02403	125,000
1—Gloucester Housing Authority, P.O. Box 1599, Gloucester, MA 01931–1599	25,000
1—Providence Housing Authority, 100 Broad Street, Providence, RI 02903	125,000
2—Jersey City Housing Authority, 400 US Highway 1, Jersey City, NJ 07306	125,000
2—Camden Housing Authority, 422 Dudley Street, Camden, NJ 8105	125,000

Region and PHA/IHA funding recipient	Amount approved
2—Yonkers Housing Authority, P.O. Box 35, Yonkers, NY 10710-0035	$125,000
2—New York City Housing Authority, 250 Broadway, New York, NY 10007	125,000
2—Albany Housing Authority, 4 Lincoln Square, Albany, NY 12202-1637	125,000
2—Poughkeepsie Housing Authority, 221 Smith Street, Poughkeepsie, NY 12601-0632	43,954
2—City of Peekskill Housing Authority, 840 Main Street, Peekskill, NY 10566	125,000
3—Housing Opportunities of Montgomery County, 10400 Detrick Avenue, Kensington, MD 20895	124,864
3—City of Rockville Maryland Housing Authority, 14 Moore Drive, Rockville, MD 20850-1230	84,272
3—Pittsburgh Housing Authority, 200 Ross Street, 9Fl, Pittsburgh, PA 15219-2068	124,610
3—Philadephia Housing Authority, 2012 Chestnut Street, Philadelphia, PA 19103	107,982
3—Allentown Housing Authority, 1339 Allen Street, Allentown, PA 18102-2143	124,680
3—Allegheny County Housing Authority, 341 Fourth Avenue, Pittsburgh, PA 15222	117,227
3—Harrisburg Housing Authority, 351 Chestnut Street, Harrisburg, PA 17105-9713	123,960
3—Reading Housing Authority, 400 Hancock Blvd., Reading, PA 19611	125,000
3—Montgomery County Housing Authority, 55 E. Marshall Str., Norristown, PA 19401-4866	125,000
3—Beaver County Housing Authority, 300 State Street, Beaver, PA 15009-1798	90,185
3—Carbondale Housing Authority, 77 N. Main Street, Carbondale, PA 18407-1931	125,000
3—City of Lancaster Housing Authority, 333 Church Street, Lancaster, PA 17602-4253	59,060
3—Lackawanna County Housing Authority, 2019 W. Pine Street, Dunmore, PA 18512-0079	121,088
3—Pittson Housing Authority, 500 Kennedy Blvd., Pittson, PA 18640-1798	47,103
3—Chester County Housing Authority, 222 N. Church Street, West Chester, PA 19380-2695	28,000
3—Shamokin Housing Authority, 1 E. Independence, Shamokin PA 17872-5861	14,760
3—Newport News Redevelopment Housing Authority, P.O. Box 77, Newport News, VA 23607-0077	125,000
3—Alexandria Redevelopment Housing Authority, 600 N. Fairfax Str., Alexandria, VA 22314-2094	60,000
3—Danville Redevelopment Housing Authority, P.O. Box 2669, Danville, VA 24541-0669	67,627
3—City of Roanoke Housing Authority, P.O. Box 6359, Roanoke, VA 24017-6359	120,630
4—Montgomery Housing Authority, 1020 Bell Street, Montgomery, AL 36197-3501	125,000
4—Auburn Housing Authority, P.O. Box 1912, Auburn, AL 36830	125,000
4—Opelika Housing Authority, P.O. Box 785, Opelika, AL 36801-0786	125,000
4—City of Jacksonville Housing Authority, 1300 Broad Street, Jacksonville, FL 32202-3901	125,000
4—St. Petersburg Housing Authority, P.O. Box 12649, St. Petersburg, FL 33733-2949	42,300
4—Tampa Housing Authority, P.O. Box 4766, Tampa, FL 33607-0000	125,000
4—Orlando Housing Authority, 300 Reeves Court, Orlando, FL 32801-3199	125,000
4—Dade County Housing Authority, P.O. Box 35020, Miami, FL 33125	125,000
4—Daytona Beach Housing Authority, 118 Cedar Street, Daytona Beach, FL 32014-4904	125,000
4—Key West Housing Authority, P.O. Box 2476, Key West, FL 33040-2476	125,000
4—Ft. Myers Housing Authority, 4224 Michigan Ave., Fort Myers, FL 33916	125,000
4—Clearwater Housing Authority, P.O. Box 960, Clearwater, FL 33517-0960	122,600
4—Savannah Housing Authority, P.O. Box 1179, Savannah, GA 31402-1179	125,000
4—Macon Housing Authority, P.O. Box 4928, Macon, GA 31208-4928	125,000
4—City of Tocca Housing Authority, P.O. Drawer "J", Tocca, GA 30577-0257	70,100
4—Covington Housing Authority, 2940 Madison Avenue, Covington, KY 41015	125,000
4—Lexington-Fayette Housing Authority, 635 Ballard Street, Lexington, KY 40508	125,000
4—Biloxi Housing Authority, P.O. Box 447, Biloxi, MS 39533	125,000
4—Holly Springs Housing Authority, P.O. Box 550, Holly Springs, MS 38635-0550	13,190
4—Forest Housing Authority, P.O. Box 677, Forest, MS 39074-0677	85,325
4—Wilmington Housing Authority, P.O. Box 899, Wilmington, NC 28402-0889	110,868
4—Greensboro Housing Authority, P.O. Box 21287, Greensboro, NC 27420-1287	125,000
4—Kingsport Housing Authority, P.O. Box 44, Kingsport, TN 37662-0044	125,000
4—Pulaski Housing Authority, 606 Washington Heigh, Pulaski, TN 38478	97,080
5—Poarch Creek Indian HA, Route 3 Box 243-A, Atmore, AL 36502	125,000
5—Seminole Tribal IHA, 3101 NW 63rd Avenue, Hollywood, Fl 33024	112,025
5—Chicago Housing Authority, 22 W. Madison Street, Chicago, IL 60602	125,000
5—Peoria Housing Authority, 814 W. Brotherson St., Peoria, IL 61606	125,000
5—Decatur Housing Authority, 1808 East Locust St., Decatur, IL 62521-1409	125,000
5—Rock Island City Housing Authority, 111 Twentieth Street, Rock Island, IL 61201-8827	125,000
5—Waukegan Housing Authority, 200 S. Utica Street, Waukegan, IL 60085	125,000
5—Bloomington Housing Authority, Wood Hill Towers, Bloomington, IL 61701-6768	125,000
5—Marion County Housing Authority, 719 E. Howard Street, Centralia, IL 62801	125,000
5—Elgin Housing Authority, 1845 Grandstand Pl., Elgin, IL 60123	5,585
5—Elkhart Housing Authority, 1396 Benham Avenue, Elkhart, IN 46516-2505	125,000
5—East Chicago Housing Authority, P.O. Box 498, East Chicago, IN 46312-0498	125,000
5—Ironwood Housing Commission, 515 E. Vaughn Street, Ironwood, MI 49938	73,987
5—Jackson Housing Commission, 301 Steward Avenue, Jackson, MI 49201	4,469
5—Sault Ste. Marie Tribal IHA, 2218 Shunk Road, Sault Ste. Marie, MI 49783	125,000
5—St. Paul Housing Authority, 413 Wacouta Street, St. Paul, MN 55101	119,000
5—Leech Lake Reservation IHA, Route 3 Box 100, Cass Lake, MN 56633-0100	125,000
5—White Earth Reservation IHA, P.O. Box 436, White Earth, MN 56591-0436	113,197
5—Fond du Lac Reservation IHA, 105 University Ave., Cloquet, MN 55720	125,000
5—Qualla Housing Authority IHA, P.O. Box 1749, Cherokee, NC 28719-1749	125,000
5—Cincinnati Metropolitan Housing Authority, 16 W. Central Pkwy, Cincinnati, OH 45210-1991	125,000
5—Lucas Metropolitan Housing Authority, P.O. Box 477, Toledo, OH 43692-0477	125,000
5—Oneida Housing Authority IHA, P.O. Box 68, Oneida, WI 54155-0068	125,000
5—Bad River IHA, P.O. Box 57, Odanah, WI 54861	125,000
5—Saint Croix IHA, P.O. Box 347, Hertel, WI 54845-0347	94,781
5—Menominee Tribal IHA, P.O. Box 476, Keshena, WI 54135-0476	95,834
6—North Little Rock Housing Authority, P.O. Box 516, North Little Rock AR 72115-0516	116,658
6—Little Rock Housing Authority, 1000 Wolfe Street, Little Rock, AR 72202-4614	125,000
6—West Memphis Housing Authority, 2820 Harrision St., West Memphis, AR 72301-6099	125,000
6—Kickapoo IHA, P.O. Box 111, Horton, KS 66439-0111	125,000
6—Monroe Housing Authority, P.O. Box 1194, Monroe, LA 71201-1194	125,000
6—Houma Housing Authority, 332 W. Park Avenue, Houma, LA 70364-4267	18,390

Region and PHA/IHA funding recipient	Amount approved
6—Haynesville Housing Authority, P.O. Box 751, Haynesville, LA 71038–0751	125,000
6—Oklahoma City Housing Authority, 1700 NE Fourth St., Oklahoma City, OK 73117	125,000
6—Cherokee Nation IHA, P.O. Box 1007, Tahlequah, OK 74464–1007	118,426
6—McAlester Housing Authority, P.O. Box 819, McAlester, OK 74501–0819	62,820
6—Sac & Fox Nation of OK IHA, P.O. Box 1252, Shawnee, OK 74801	125,000
6—Austin Housing Authority, P.O. Box 6159, Austin, TX 78762–6159	125,000
6—Fort Worth Housing Authority, P.O. Box 430, Fort Worth, TX 76101–0430	125,000
6—Galveston Housing Authority, 920 53rd Street, Galveston, TX 77550–1012	125,000
6—Kingsville Housing Authority, 1000 Brown Villa, Kingsville, TX 78363	124,597
6—Pearsall Housing Authority, 501 W. Medina, Pearsall, TX 78061	116,000
7—Kansas City Housing Authority, 1124 N. Ninth Street, Kansas, KS 66101–2197	125,000
7—St. Louis Housing Authority, 4100 Lindell Bl., St. Louis, MO 63108–2999	123,802
7—Kansas City Housing Authority, 299 Paseo, Kansas City, MO 64106–2606	37,800
7—Omaha Housing Authority, 540 27th Street, Omaha, NE 68105–1521	125,000
8—Denver Housing Authority, P.O. Box 4305, Denver, CO 80204	124,100
8—City of Pueblo Housing Authority, 1414 N. Santa Fe Ave, Pueblo, CO 81003	123,850
8—Southern Ute IHA, P.O. Box 447, Ignacio, CO 81137–0447	121,403
8—City of Boulder Housing Authority, 3120 Broadway Avenue, Boulder, CO 80304	122,119
8—City of Lakewood Housing Authority, 445 S. Allison Pkwy, Lakewood, CO 80226–3105	116,320
8—City of Aurora Housing Authority, 10745 E. Kentucky Av., Aurora, CO 80012	108,057
8—Billings Housing Authority, 2415 First Avenue, Billings, MT 59101	16,250
8—Chippewa Cree IHA, P.O. Box 615, Box Elder, MT 59521	125,000
8—Northern Cheyenne IHA, P.O. Box 327, Lame Deer, MT 59043–0327	121,079
8—Salish-Kootenai IHA, P.O. Box 38, Pablo, MT 59855–0038	125,000
8—Standing Rock IHA, P.O. Box 484, Fort Yates, ND 58538–0484	124,919
8—Sisseton-Wahpeton IHA, P.O. Box 687, Sisseton, SD 57262	62,500
8—City of Ogden Housing Authority, 2650 Washington Blvd, Ogden, UT 84401	120,000
8—Salt Lake City Housing Authority, 1800 SW Temple, Salt Lake City, UT 84115	124,921
8—City of Casper Housing Authority, 1985 East "A" Street, Casper, WY 82601	98,350
9—San Carlos Tribe IHA, P.O. Box 187, San Carlos, AZ 85550	125,000
9—Cocopah IHA, P.O. Box AF, Somerton, AZ 85350	39,471
9—Pascua Yaqui Housing Authority, 4720 W. Calle Tetaku, Tucson, AZ 85746	60,000
9—Los Angeles County Housing Authority, 4800 Brooklyn Avenue, Los Angeles, CA 90022–1399	124,000
9—Housing Authority City of Los Angeles, P.O. Box 17157, Los Angeles, CA 90017–1295	125,000
9—San Diego Housing Commission, 1625 Newton Street, San Diego, CA 92113	43,438
9—City of Santa Barbara Housing Authority, 808 Laguna Street, Santa Barbara, CA 93101–1590	124,500
9—Northern Circle Tribe IHA, 694 Pinoleville Dr., Ukiah, CA 95482	79,780
9—Washoe Indian Tribe IHA, 1588 Watashearnu Dr., Gardnerville, NV 89410	125,000
9—Fallon IHA, 8955 Mission Road, Fallon, NV 89406	48,322
9—Reno Sparks IHA, 15–A Reservation Rd., Reno, NV 89502	79,217
9—Te-Moak IHA, 504 Sunset Street, Elko, NV 89801	125,000
10—Interior Regional IHA, 628 27th Avenue, Fairbanks, AK 99701	125,000
10—Bristol Bay Housing Authority, P.O. Box 50, Dillingham, AK 99576	125,000
10—Coeur D'Alene IHA, P.O. Box 267, Plummer, ID 83851–0267	125,000
10—Nez Perce Tribal IHA, P.O. Box 186, Lapwai, ID 83540–0188	125,000
10—Housing Authority, City of Portland, 135 SW Ash, Portland, OR 97204	125,000
10—Lane County Housing Authority, 177 Day Island Road, Eugene, OR 97401	125,000
10—Siletz IHA, P.O. Box 549, Siletz, OR 97380–0549	23,740
10—City of Tacoma Housing Authority, 1728 44th Street, Tacoma, WA 98404–4699	125,000
10—Quinault IHA, P.O. Box 160, Taholah, WA 98587	125,000
10—Makah IHA, P.O. Box 888, Neah Bay, WA 98357–0888	125,000
10—Port Gamble Klallam IHA, P.O. Box 155, Kingston, WA 98346–0155	59,962
10—Quileute IHA, P.O. Box 160, Taholah, WA 98587–0160	110,327
10—Lower Elwha Tribe IHA, 1705 Stratton Road, Port Angeles, WA 98362–0155	116,500
10—Puyallup Tribe IHA, 2002 East 28th St. B, Tacoma, WA 98404	33,771

Dated: September 10, 1992.

Joseph G. Schiff,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 92–22422 Filed 9–16–92; 8:45 am]

BILLING CODE 4210–33–M

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N–92–3506; FR–3332–N–01]

Mortgages Review Board Administrative Actions

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: In compliance with section 202(c) of the National Housing Act, notice is hereby given of the cause and description of administrative actions taken by HUD's Mortgagee Review Board against HUD-approved mortgagees.

FOR FURTHER INFORMATION CONTACT: William Heyman, Director, Office of Lender Activities and Land Sales Registration, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–1824. The Telecommunications Device for the Deaf (TDD) number is (202) 708–4594. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION: Section 202(c)(5) of the National Housing Act (added by section 142 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989)) requires that HUD "publish in the Federal

Register a description of and the cause for administrative action against a HUD-approved mortgagee" by the Department's Mortgagee Review Board. In compliance with the requirements of section 202(c)(5), notice is hereby given of administrative actions that have been taken by the Mortgagee Review Board from May 1, 1992 through August 31, 1992.

1. Prime Mortgage Investors, Inc., Coral Gables, Florida

Action: Settlement Agreement that provides for indemnification to HUD in the amount of $125,754 for claim losses, agreement by the company not to submit future claims in connection with seven improperly originated loans, and voluntary exclusion of the company from HUD programs for a period of nine months.

Cause: A HUD monitoring review citing violations of HUD–FHA program requirements that included: failure to implement and maintain a Quality Control Plan for the origination of HUD–FHA insured mortgages; failure to comply with HUD–FHA reporting requirements under the Home Mortgage Disclosure Act (HMDA); submitting false information to HUD–FHA; failure to properly verify the income of self-employed mortgagors; processing, approving and closing loans prior to the borrower completing face-to-face interviews with mortgagors; and permitting a loan officer to act as a realtor on the same transaction.

2. First National Bank, San Diego, California

Action: Settlement Agreement that includes reimbursement to HUD in the amount of $250,000 for losses resulting from deficient loan servicing procedures, and voluntary withdrawal from HUD–FHA programs for a period of 18 months.

Cause: A HUD monitoring review citing violations of HUD–FHA loan servicing requirements that included: failure to implement a Quality Control Plan; failure to act promptly on delinquent accounts; noncompliance with the Assignment Program; failure to hold a preforeclosure review meeting prior to issuing Assignment Letters; failure to promptly secure properties known to be vacant/abandoned; failure to properly service Section 235 mortgages; and charging an unallowable fee for payoff information.

3. First Home Mortgage, Inc., Jonesboro, Arkansas

Action: Settlement Agreement that includes indemnification to HUD in the amount of $78,751 for claim losses in connection with seven improperly originated mortgages, agreement by the company not to submit future claims on 11 loans, and divestiture of ownership interest by the principals of the company.

Cause: A HUD monitoring review citing violations of HUD–FHA program requirements that included: failure to develop and implement a Quality Control Plan in accordance with HUD–FHA requirements; failure to disclose to mortgagors an identity of interest between the company and a settlement agent; failure to separate loan development, processing, and underwriting functions; failure to disclose and improperly processed sweat equity arrangements; failure to ensure that borrowed funds were not used for closing; failure to reduce the acquisition cost of properties by the amount of sellers' concessions; failure to report liabilities of mortgagors; failure to adequately verify the income of self-employed mortgagors; failure to verify that the income of mortgagors would continue for five years; and failure to verify sources of funds.

4. Stratford Mortgage Corporation, Richardson, Texas

Action: Proposed withdrawal of HUD mortgagee approval.

Cause: A HUD monitoring review citing violations of HUD–FHA single family program loan origination requirements that included: failure to perform face-to-face interviews with mortgagors; failure to assure that borrowers signed a properly completed HUD Form 92900 application prior to loan approval by the company's underwriters; failure to assure that borrowers made the required minimum investment in the property; overinsured mortgages; false gift letters; inaccurate verifications of employment, deposit or rent; using a false Social Security number; permitting mortgagors to handcarry verifications of employment, deposit or rent; omitting mortgagor dependents; failure to verify the sale of mortgagor's previous residence; and failure to implement a Quality Control Plan.

5. Heritage Mortgage Company, Chicago, Illinois

Action: Withdrawal of HUD mortgagee approval.

Cause: Noncompliance by the company with the terms and conditions of a Settlement Agreement with the Department, and violations of HUD–FHA single family program loan origination requirements including the submission of mortgages in default for HUD–FHA mortgage insurance endorsement.

6. American Western Mortgage Company, Scottsdale, Arizona

Action: Settlement Agreement that includes indemnification for HUD's claim losses in the amount of $78,018; agreement by the company not to submit future claims and/or indemnify the Department in connection with 61 overinsured mortgages; and payment to the Department of $200,000 to settle any proposed administrative action against an affiliated building company.

Cause: A HUD Office of Inspector General Audit Report which cited violations of HUD–FHA single family loan origination requirements including: failure to consider sales inducements paid by a builder/seller in determining the mortgagors' HUD–FHA maximum insurable mortgage which resulted in overinsured mortgages; failure to verify mortgagors' employment and income information; and failure to implement a Quality Control Plan for the origination of HUD–FHA insured mortgages.

7. Saxon Equities Corporation, Levittown, New York

Action: Settlement Agreement that includes: corrective action by the company to bring it into compliance with HUD–FHA requirements; indemnification to HUD for future claim losses in connection with 10 improperly originated loans; and a buydown of an overinsured mortgage.

Cause: A HUD monitoring review citing violations of HUD–FHA single family program requirements which included: failure to implement an acceptable Quality Control Plan; failure to report to HUD under the provisions of the Home Mortgage Disclosure Act (HMDA); payment to a mortgage broker for originating HUD–FHA loans; failure to verify the source and adequacy of funds to close; permitting unallowable secondary financing; falsified gift letter; falsified Verifications of Employment; failure to properly document and calculate the income of self-employed borrowers; closing overinsured loans; failure to conduct a face-to-face interview with a borrower; submitting incorrect HUD–1 Settlement Statements to HUD; charging borrowers unallowable fees; and failure to comply with the HUD–FHA guidelines for Direct Endorsement staff appraisers.

8. Dover Mortgage Company, Charlotte, North Carolina

Action: Settlement Agreement that provides for the buydown by the company of an overinsured mortgage to its proper loan amount.

Cause: A HUD monitoring review which cited a violation of HUD–FHA

single family program loan origination requirements.

9. Marble, George & McGinley, Inc., Orange, California

Action: Settlement Agreement which includes indemnification to HUD for claim losses in the amount of $144,799 in connection with eight improperly originated mortgages; corrective action by the company to assure compliance with HUD–FHA requirements; agreement not to submit future claims in connection with seven improperly originated mortgages; and refunds to mortgagors who were charged excessive fees.

Cause: A HUD monitoring review which cited violations of HUD–FHA single family program requirements that included: Failure to implement an adequate Quality Control Plan for the origination of HUD–FHA insured mortgages; failure to implement the Home Mortgage Disclosure Act (HMDA) reporting requirements; submission of false information to HUD in connection with HUD–FHA insured mortgage transactions; failure to verify the source of all funds used for downpayments and/or closing costs; failure to verify that income used for qualifying purposes would continue for at least a five year period of time; overinsured mortgage; collection of fees paid outside of closing twice or in excess of the amount stated in the contract; and failure to conduct a face-to-face interview with a borrower.

10. Reliance Mortgage Company, Dallas, Texas

Action: Withdrawal of HUD mortgage approval.

Cause: Violations of HUD–FHA requirements including: involvement of the company's president and another employee in HUD–FHA programs while under suspension and debarment by HUD; failure to timely submit mortgages for HUD–FHA mortgage insurance endorsement; and charging a fee for services not performed.

11. Mortgage Brokers Services, Inc., Seattle, Washington

Action: Settlement Agreement that includes implementation of corrective actions to assure compliance with HUD-FHA requirements; and indemnification to HUD for future claim losses in connection with two improperly originated mortgages.

Cause: A HUD monitoring review citing violation of HUD-FHA single family program requirements that included: Failure to maintain and implement an adequate Quality Control Plan for loan origination; failure to implement HUD's requirement to report under the Home Mortgage Disclosure Act (HMDA); permitting a false verification of employment form to be submitted to HUD; failure to ensure a borrower met HUD's minimum investment requirements; collection of unallowable loan origination fees.

12. Sun American Mortgage Corporation, Mesa, Arizona

Action: Settlement Agreement which includes indemnification to HUD in the amount of $43,916 for an improperly originated loan; reimbursement for two overinsured mortgages; and continued implementation of a Quality Control Plan for loan origination.

Cause: A HUD monitoring review citing violation of HUD-FHA single family program requirements which included: Overinsured mortgages; and submission of a false employment verification for a borrower.

13. Troy & Nichols, Inc., Monroe, Louisiana

Action: Settlement Agreement that includes indemnification to HUD in the amount of $201,769 for the Department's claim losses; and agreement not to submit future claims on three improperly originated mortgages.

Cause: A HUD monitoring review citing violation of HUD-FHA single family program requirements which included: Failure to conduct face-to-face interviews with mortgagors; failure to properly verify mortgagors' source of funds; failure to assure that mortgagors made the minimum required investment in the property; and submission of false information in connection with HUD-FHA insured mortgage transactions.

14. First Financial of London, Inc., Spring Hill, Florida

Action: Letter of Reprimand.

Cause: A HUD monitoring which cited violation of HUD-FHA requirements including: Failure to implement a Quality Control Plan for the origination of HUD-FHA insured mortgages; and failure to comply with HUD-FHA reporting requirements under the Home Mortgage Disclosure Act (HMDA).

15. Southern State Mortgage Corporation, Goldsboro, North Carolina

Action: Letter of Reprimand.

Cause: A HUD monitoring review which cited violation of HUD-FHA single family program requirements including: Failure to comply with HUD-FHA reporting requirements under the Home Mortgage Disclosure Act (HMDA); and permitting the holder of a power of attorney to sign mortgagor affidavits and closing documents for the borrower.

Dated: September 10, 1992.

Arthur J. Hill,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 92–22412 Filed 9–16–92; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR120–6310–02 GPO 2–426]

Advisory Council Meeting

ACTION: Notice of meeting of the Coos Bay District Advisory Council.

SUMMARY: Notice is hereby given in accordance with Public Law 94–579 and 43 CFR part 1780, that a meeting of the Coos Bay District Advisory Council will be held on October 15, 1992 at 1 p.m. in the conference room of the Coos Bay District Office at 1300 Airport Lane, North Bend, Oregon.

The agenda will include continued discussion by the Advisory Council of the Draft Coos Bay District Resource Management Plan.

The Coos Bay District Advisory Council is composed of 10 individuals with expertise in a wide variety of program areas including renewable resources, recreation, environmental protection and transportation and Rights-of-way. The function of the Council is to provide the Coos Bay District Manager with advice on the management of district programs.

The meeting is open to the public and time will be provided for public comments. Individuals wishing to address the Council should notify Alan Hoffmeister, BLM Public Affairs Officer in the Coos Bay District Office, 1300 Airport Lane, North Bend, Oregon, 756–0100 by October 13, 1992.

Cary A. Osterhaus,

District Manager.

[FR Doc. 92–22501 Filed 9–16–92; 8:45 am]

BILLING CODE 4310-84-M

[NV–040–91–4320–10]

Ely District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Ely District Grazing Advisory Board meeting.

SUMMARY: Notice is hereby given in accordance with Public Law 92–463 that a meeting of the Ely District Grazing Advisory Board will be held Wednesday, October 7, 1992. The

meeting will begin at 8 a.m. in the conference room of the Ely District Office, 702 North Industrial Way, Ely, Nevada. The agenda will include discussion of Fiscal Year 92 project accomplishments and Fiscal Year 93 planned projects. A field tour of rangeland improvement projects on the Ely District is also planned.

The meeting is open to the public, and members of the public may make statements beginning at 8:10 a.m. Anyone wishing to make an oral statement should notify the District Manager, Bureau of Land Management, 702 North Industrial Way, HC 33, Box 33500, Ely, Nevada 89301-9408 by October 6, 1992.

The tour is also open to the public; however, members of the public must provide their own transportation and lunch. Minutes of the meeting will be maintained in the Ely District Office and will be available for public inspection and reproduction during regular office hours within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: Chris Mayer, (702) 289-4865.

Dated: September 1, 1992.

Timothy B. Reuwsaat,

Acting District Manager.

[FR Doc. 92-22409 Filed 9-16-92; 8:45 am]

BILLING CODE 4310-HC-M

[NV-040-92-4130-02]

Ely District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Ely District Advisory Council meeting.

SUMMARY: Notice is hereby given in accordance with Public Law 94-579 and 43 CFR part 1780, that the District Advisory Council for the Ely District, Nevada, will meet on October 15, 1992, at 9 a.m. at the Ely District Office, in the conference room, 702 North Industrial Way, Ely, Nevada.

The agenda is as follows:

9 a.m.—Business Meeting
9:30 a.m.—Public Comment Period
—Review of Magma Nevada Mining Co., Robinson Project
—Recreation Discussion

The meeting is open to the public, and members of the public may make statements before the Council. Persons wishing to make a statement to the Council should contact Chris Mayer at the Ely District Office at (702) 289-4865 no later than October 14, 1992.

ADDRESSES: Comments and suggestions should be sent to: Bureau of Land Management, HC 33, Box 33500, Ely, NV 89301-9408.

FOR FURTHER INFORMATION CONTACT: Chris Mayer, (702) 289-4865.

Dated: September 1, 1992.

Timothy B. Reuwsaat,

Acting District Manager.

[FR Doc. 92-22410 Filed 9-16-92; 8:45 am]

BILLING CODE 4310-HC-M

[NM-060-4760-02- ADVB 612]

Roswell District Multiple Use Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Roswell District Multiple Use Advisory Council Meeting.

SUMMARY: This notice sets forth the schedule and agenda of a forthcoming meeting of the Roswell District Multiple Use Advisory Council.

DATE: Thursday, October 15, 1992, beginning at 10 a.m.

FOR FURTHER INFORMATION CONTACT: Tony L. Ferguson, Associate District Manger, Bureau of Land Management, P.O. Box 1397, Roswell, NM 88201, (505) 622-9042.

SUPPLEMENTARY INFORMATION: The proposed agenda will include presentations on the Rio Bonito Exchange, Environmental Protection Agency (EPA) Fines, Law Enforcement, Boots and Saddles, Cave/Karst Technical Report and Disposal of Produced Water. Summary minutes will be maintained in the District Office and will be available for public inspection during regular business hours within 30 days following the meeting. Copies will be available for the cost of duplication.

Dated: September 9, 1992.

Leslie M. Cone,

District Manager.

[FR Doc. 92-22500 Filed 9-16-92; 8:45 am]

BILLING CODE 4310-FB-M

[G-010-G2-0118-4020-13; NMNM 83247 and NMNM 83357]

Issuance of Exchange Conveyance Document of Public Land in Sandoval, McKinley, and San Juan Counties; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 79,726.53 acres of public land out of Federal ownership. This action also reconveys 21,464.77 acres of land to Federal ownership.

FOR FURTHER INFORMATION CONTACT: Farmington Resource Area Manager, 1235 La Plata Highway, Farmington, New Mexico 87401.

SUPPLEMENTARY INFORMATION: The United States issued exchange conveyance documents to the Navajo Tribe of Indians on December 19, 1991, for the surface estate in the following described land in Sandoval, McKinley, and San Juan Counties, New Mexico, pursuant to Section 206 of the Act of October 21, 1976 (43 U.S.C. 1716) and the Chaco National Historic Park Act of December 19, 1980 (16 U.S.C. 410ii et seq.).

NMNM 83247

New Mexico Principal Meridian

T. 18 N., R. 3 W.,
sec. 21, SW¼;
sec. 28, NW¼;
sec. 29, SE¼
T. 19 N., R. 3 W.,
sec. 21, NW¼.
T. 17 N., R. 4 W.,
sec. 7, NE¼;
sec. 17, NW¼.
T. 18 N., R. 4 W.,
sec. 20, NW¼;
sec. 24, SE¼.
T. 19 N., R. 4 W.,
sec. 6, lots 1, 2, and S½NE¼;
sec. 7, lots 2, 3, and SE¼NW¼, and NE¼SW¼;
sec. 9, SE¼;
sec. 24, N½.
T. 18 N., R. 5 W.,
sec. 8, SW¼;
sec. 9, NW¼;
sec. 14, NE¼;
sec. 18, NE¼.
T. 19 N., R. 5 W.,
sec. 3, S½.
T. 20 N., R. 5 W.,
sec. 4, SW¼;
sec. 27, N½;
sec. 30, lots 3, 4, and E½SW¼;
sec. 34, NW¼.
sec. 36, N½SW¼ and S½NW¼.
T. 21 N., R. 5 W.,
sec. 8, NE¼;
sec. 9, NW¼.
T. 17 N., R. 6 W.,
sec. 11, NW¼;
sec. 23, NW¼;
sec. 25, NW¼;
sec. 27, SW¼;
sec. 32, lots 1, 2, 5, 6, and W½NE¼.
T. 19 N., R. 6 W.,
sec. 6, SE¼.
T. 22 N., R. 6 W.,
sec. 6, SE¼;
sec. 7, NE½.
T. 23 N., R. 6 W.,
sec. 21, N½SE¼NE¼.
T. 20 N., R. 7 W.,

sec. 2, SW¼;
sec. 6, lots 3, 4, 5, and SE¼NW¼.
T. 21 N., R. 7 W.,
sec. 32, NW¼.
T. 20 N., R. 8 W.,
sec. 12, E½.
T. 21 N., R. 8 W.,
sec. 22, SW¼.
sec. 34, lots 5 to 8, inclusive.
T. 23 N., R. 8 W.,
sec. 2, lots 1, 2, and S½NE¼;
sec. 5, lots 1, 2, and S½NE¼.
T. 22 N., R. 9 W.,
sec. 27, W½;
sec. 28, S½;
sec. 32, NE¼;
sec. 33, NW¼.
T. 24 N., R. 9 W.,
sec. 31, lots 3, 4, and E½SW¼.
T. 25 N., R. 9 W.,
sec. 29, SE¼.
T. 22 N., R. 10 W.,
sec. 17, SW¼;
sec. 19, lots 3, 4, and E½SW¼;
sec. 23, SE¼;
sec. 24, W½;
sec. 30, lots 1, 2, NE¼, and E½NW¼.
T. 25 N., R. 10 W.,
sec. 21, NE¼;
sec. 35, SE¼.
T. 15 N., R. 11 W.,
sec. 29, N½.
T. 16 N., R. 11 W.,
sec. 22, SW¼.
T. 22 N., R. 11 W.,
sec. 22, NE¼.
T. 24 N., R. 11 W.,
sec. 1, lots 5 to 8, inclusive.
T. 16 N., R. 12 W.,
sec. 28, SE¼.
T. 25 N., R. 12 W.,
sec. 24, NE¼.
T. 14 N., R. 13 W.,
sec. 20, SW¼.
T. 17 N., R. 13 W.,
sec. 28, N½SW¼.
T. 23 N., R. 13 W.,
sec. 28, SW¼.
T. 16 N., R. 15 W.,
sec. 14, SW¼.
T. 16 N., R. 17 W.,
sec. 14, NW¼.
T. 14 N., R. 18 W.,
sec. 9, S½;
sec. 28, SW¼.
T. 13 N., R. 19 W.,
sec. 2, SW¼.
Containing 12,283.64 acres.

NMNM 83357

T. 17 N., R. 5 W.,
sec. 1, lots 1 to 4, inclusive, S½N½, and S½;
sec. 3, SW¼.
T. 17 N., R. 6 W.,
sec. 17, lots 1 to 4, inclusive, W½E½, and W½;
sec. 19, lots 1 to 4, inclusive, E½, and E½W½;
sec. 29, lots 1 to 4, inclusive, W½E½, and W½;
sec. 31, lots 1 to 4, inclusive, E½, and E½W½.
T. 18 N., R. 6 W.,
sec. 19, NE¼;
sec. 21, SE¼;
sec. 25, SW¼.
T. 18 N., R. 7 W.,
sec. 13, N½;
sec. 17, SE¼.
T. 20 N., R. 7 W.,
sec. 5, S½;
sec. 11, NE¼ and SW¼;
sec. 19, lots 3, 4, and E½SW¼;
sec. 21, E½;
sec. 29, S½;
sec. 33, SW¼.
T. 17 N., R. 8 W.,
sec. 17, SW¼;
sec. 19, NE¼.
T. 18 N., R. 8 W.,
sec. 3, lots 3, 4, S½NW¼, and SW¼;
sec. 5, lots 1, 2, and S½NE¼;
sec. 7, lots 1, 2, E½NW¼, and SE¼;
sec. 9, NW¼ and S½.
T. 19 N., R. 8 W.,
sec. 19, E½;
sec. 21, S½SE¼;
sec. 29, N½;
secs. 33 and 35.
T. 20 N., R. 8 W.,
sec. 9;
sec. 11, W½;
sec. 13,
sec. 15, SE¼;
sec. 23;
sec. 25, E½;
sec. 27, N½.
T. 19 N., R. 9 W.,
sec. 3, SE¼;
secs. 11 and 13;
sec. 15, NE¼;
sec. 25;
sec. 35, SE¼.
T. 13 N., R. 11 W.,
sec. 11, N½.
T. 15 N., R. 11 W.,
sec. 1, lots 1 to 4, inclusive, S½N½, and SE¼;
sec. 3, lots 1 to 4, inclusive;
sec. 9, W¼;
sec. 19, lots 1 to 4, inclusive, and E½W½;
sec. 21;
sec. 25, S½;
sec. 29, S½;
sec. 31, E½.
T. 16 N., R. 11 W.,
sec. 1, lots 3, 4, and S½NW¼;
sec. 3, lots 1 to 4, inclusive, and S½N½;
sec. 11, NW¼;
sec. 13, SW¼;
sec. 21, SE¼;
sec. 23, NW¼;
sec. 25;
sec. 31, SE¼;
sec. 35, W½.
T. 17 N., R. 11 W.,
sec. 3, lots 1, 2, and S½NE¼;
secs. 11, 13 and 15;
sec. 19, lots 3, 4, and E½SW¼;
sec. 21, NW¼;
sec. 27, SE¼;
sec. 31, lots 1 to 4, inclusive, E½, and E½W½;
sec. 33, SE¼.
T. 18 N., R. 12 W.,
sec. 3, lots 1, 2, S½NE¼, and SE¼;
sec. 5, lots 1 to 4, inclusive, S½N½, and S½;
sec. 7, lots 1 to 4, inclusive, E½, and E½W½;
secs. 9, 15, and 17;
sec. 19, lots 1 to 4, inclusive, E½, and E½W½;
secs. 21, 27, and 29;
sec. 33, N½;
sec. 35.
T. 19 N., R. 12 W.,
sec. 5, lots 1 to 4, inclusive, S½N½, and S½;
sec. 7, lots 1 to 4, inclusive, E½, and E½W½;
sec. 9, NW¼, and S½;
sec. 15, SW¼;
sec. 17;
sec. 19, lots 3, 4, and E½SW¼;
sec. 27, NE¼;
sec. 29, NW¼ and S½;
sec. 31, lots 1 to 4, inclusive, E½, and E½W½;
sec. 35, E½.
T. 17 N., R. 13 W.,
sec. 1, lots 3, 4, S½NW¼, and S½;
sec. 3, lots 1, 2, S½NE¼, and SE¼;
sec. 5, lots 3, 4, S½NW¼, and S½;
sec. 7, lots 1 to 4, inclusive, NE¼, and E½W½;
sec. 9, NW¼;
sec. 13, NE¼;
sec. 15, SE¼;
sec. 21, NW¼;
sec. 25, NE¼;
sec. 27, SE¼;
sec. 31, lots 1 to 4, inclusive, E½, and E½W½.
T. 19 N., R. 13 W.,
sec. 1, lots 1 to 4, inclusive, S½N½, and S½;
sec. 3, lots 1 to 4, inclusive, S½N½, and S½;
sec. 11, N½ and SW¼;
sec. 13, lots 1 to 16, inclusive;
sec. 23, E½ and SW¼;
sec. 25, lots 1 to 16, inclusive;
sec. 27, S½;
sec. 35, lots 1 to 16, inclusive.
T. 21 N., R. 13 W.,
sec. 11, NW¼;
secs. 15, 27, and 33.
T. 22 N., R. 13 W.,
sec. 1, lots 3, 4, and S½NW¼;
sec. 3, SW¼;
sec. 11, S½;
sec. 13, NE¼, NE¼SW¼, and N½SE¼;
sec. 23, NE¼;
sec. 35.
T. 23 N., R. 13 W.,
sec. 27, NW¼;
sec. 31, lots 1 to 4, inclusive, and E½W½;
sec. 35, NW¼ and SE¼.
T. 13 N., R. 17 W.,
sec. 5, S½N½ and S½.
T. 15 N., R. 17 W.,
sec. 14, lots 2, 3, 4, and 6.
T. 12 N., R. 18 W.,
sec. 1, lots 1 to 4, inclusive, S½N½, and S½;
sec. 3, lots 1, 2, S½NE¼, and SE¼;
sec. 11, N½ and SE¼;
sec. 13;
sec. 15, N½N½ and S½;
sec. 23;
sec. 25, N½ and N½S½;
sec. 27, E½ and NW¼;
sec. 35.
T. 14 N., R. 18 W.,
sec. 3, S½;

sec. 7, lots 1 to 4, inclusive, E½, and E½W½;
sec. 9, N½;
sec. 13, SW¼;
sec. 15, N½ and N½S½;
sec. 17;
sec. 19, E½;
sec. 21, SE¼;
sec. 23, S½;
sec. 27, N½;
sec. 33, SW¼.
T. 11 N., R. 19 W.,
sec. 5, SW¼;
sec. 7, lots 1, 2, NE¼, and E½NW¼.
T. 14 N., R. 19 W.,
sec. 1, SE¼;
sec. 3, lots 1 to 4, inclusive, S½N½, and S½;
sec. 11;
sec. 15, W½W½;
sec. 17, NE¼ and S½;
sec. 23;
sec. 25, SW¼;
sec. 27, NE¼.
T. 11 N., R. 20 W.,
sec. 1, lots 1, 2, S½NE¼, and SW¼;
sec. 5, SE¼;
sec. 9, NW¼ and SE¼;
sec. 11, N½.
T. 12 N., R. 20 W.,
sec. 33, SE¼.
T. 13 N., R. 20 W.,
sec. 5, lots 1, 2, and S½NE¼;
sec. 9, N½;
sec. 19, lots 1, 2, and E½NW¼.
sec. 23;
sec. 27, NE¼.
T. 14 N., R. 20 W.,
sec. 17;
sec. 19, lots 1 to 4, inclusive, E½, and E½W½;
sec. 21, N½SW¼.
T. 15 N., R. 20 W.,
sec. 1, lots 1 to 4, inclusive, S½N½, and S½;
sec. 3, lots 1, 2, and S½NE¼;
sec. 5, S½.
T. 12 N., R. 21 W.,
sec. 11, E½.
T. 13 N., R. 21 W.,
sec. 1, SE¼;
sec. 3, lots 1 to 4, inclusive;
sec. 13, SE¼NE¼ and S½;
sec. 15, lots 2, 3, and 4.
T. 14 N., R. 21 W.,
sec. 35, NE¼NE¼, S½NE¼, SW¼NW¼, and S½.
T. 15 N., R. 21 W.,
sec. 11, S½;
sec. 13, NE¼;
sec. 15, lots 1 to 4, inclusive.
Containing 67,462.89 acres.

In exchange for the surface estate in the land described above, the Navajo Tribe conveyed to the United States the surface estate in the following described land located in McKinley and San Juan Counties, Nex Mexico:

New Mexico Principal Meridian

T. 19 N., R. 7 W.,
sec. 27, SE¼;
sec. 29;
sec. 31, lots 1 to 14, inclusive, NE¼, and E½NW¼;
sec. 33, lots 1 to 12, inclusive, and N½.
T. 21 N., R. 9 W.,
Portions of secs. 3 and 4.
T. 20 N., R. 10 W.,
secs. 3, 11 and 12, That portion lying northeasterly from the 6400 foot contour line;
T. 21 N., R. 10 W.,
sec. 4, lots 3, 4, S½N½, and S½;
sec. 5, lots 1, 3, E½SW¼, and SE¼;
sec. 9;
sec. 30, lots 1, 2, 3, 4, E½, and E½W½;
secs. 33 and 34, That portion lying northeasterly from the 6400 foot contour line.
T. 19 N., R. 11 W.,
sec. 27, S½NW¼ and W½SW¼;
sec. 28, S½NE¼ and SE¼;
sec. 29, SW¼SE¼;
sec. 33, N½N½NE¼;
T. 20 N., R. 11 W.,
sec. 22, NE¼NE¼;
sec. 23, W½NW¼NW¼.
T. 21 N., R. 11 W.,
secs. 15, 21, 22, 23, and 25;
sec. 26, NE¼.
T. 20 N., R. 12 W.,
sec. 5, lots 3, 4, S½NW¼, SW¼, and W½SE¼;
sec. 6, lot 8;
sec. 8, SW¼;
sec. 17, NW¼NE¼ and N½NW¼.
T. 21 N., R. 12 W.,
sec. 24, NW¼;
sec. 25;
sec. 31, E½SE¼.
T. 24 N., R. 12 W.,
sec. 3, lots 8, 9, 16, and 17;
sec. 4, lots 5 to 20, inclusive;
sec. 5, lots 5, 6, 11 to 14, inclusive, 19 and 20;
sec. 8, lots 1, 2, and 7 to 16, inclusive;
sec. 9, lots 3 to 6, inclusive, 12 and 13;
sec. 17, lots 1 to 16, inclusive;
sec. 18, lots 5, 6, and 11 to 20, inclusive;
sec. 19, lots 5 to 19, inclusive;
sec. 20, lots 2 to 6, inclusive;
sec. 30, lots 6 to 11, inclusive, and 14 to 19, inclusive;
sec. 31, lots 6 to 11, inclusive; 14, 15, 16, 18, and 19.
T. 20 N., R. 13 W.,
sec. 7, lot 2, W½SW¼NE¼, and SE¼NW¼.
T. 24 N., R. 13 W.,
sec. 13, S½;
sec. 14, SE¼;
sec. 21, E½SE¼ and SW¼SE¼;
secs. 22 to 26;
sec. 27, E½ and NW¼;
sec. 28, N½;
sec. 35;
sec. 36, N½, SW¼, and N½SE¼.
T. 17 N., R. 18 W.,
sec. 33, SW¼SE¼SE¼.
Containing 21,464.77 acres.

The purpose of these exchanges were to enhance management potential and help block up land ownership. The public interest was served through the completion of these exchanges.

NMNM 83247 exchange was to acquire lands forming a link between the Bisti and De-Na-Zin Wilderness Area, increasing the ability of the Bureau's management of lands within the designated Chacra Mesa Area for the protection of numerous cultural sites, and to resolve unauthorized occupancy by members of the Navajo Tribe.

NMNM 83357 exchange was to acquire land within the Chaco Culture National Historic Park boundaries that will be managed by the National Park Service and acquire Chacoan outliers identified in Public Law 96–550 for protection. All of the land that the Tribe acquired had been withdrawn and administered by the Bureau of Indian Affairs for many years.

The values of the Federal public land and the non-Federal land in NMNM 83247 exchange are approximately equal. NMNM 83357 exchange was made on other than equal value as allowed by Public Law 96–550.

Dated: September 8, 1992.

Monte G. Jordan,

Associate State Director.

[FR Doc. 92–22497 Filed 9–16–92; 8:45 am]

BILLING CODE 4310-FB-M

[WY-060-02-4212-14; W-101872]

Realty Action; Direct and Modified Competitive Sale of Public Lands; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, direct and modified competitive sale of public lands in Crook County.

SUMMARY: The following public surface estate has been determined to be suitable for disposal by direct and modified competitive sale under Section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976, (90 STAT. 2750; 43 U.S.C. 1713). The Bureau of Land Management (BLM) is required to receive fair market value for the land sold and any bid for less than fair market value will be rejected. The BLM may accept or reject any and all offers, or withdraw any land or interest in the land for sale if the sale would not be consistent with FLPMA or other applicable law.

Sixth Principal Meridian

	Acres
Parcel Number 1: T. 56 N., R. 66 W., sec. 2, lot 5	1.37
Parcel Number 2: T. 57 N., R. 66 W., sec. 23, lot 9	21.04
Parcel Number 3: T. 56 N., R. 66 W., sec. 9 lot 5,6; sec. 16, lot 1	63.25

FOR FURTHER INFORMATION CONTACT: Floyd Ewing, Area Manager, Bureau of Land Management, Newcastle Resource Area, 1101 Washington Blvd., Newcastle, Wyoming 82701, 307-746-4453.

SUPPLEMENTARY INFORMATION: This sale is consistent with Bureau of Land Management policies and the Newcastle Management Framework Plan. The purpose of this sale is to dispose of three isolated parcels of public lands. The fair market values, planning document, and environmental assessment covering the proposed sale will be available for review at the Bureau of Land Management, Newcastle Resource Area, Newcastle, Wyoming.

Parcel 2 will be offered by direct sale to the adjoining landowner. The adjoining landowner will be required to submit proof of adjoining land ownership before a bid can be accepted.

Parcels 1 and 3 will be offered by modified competitive sale to the adjoining landowners. The apparent high bidder will be required to submit proof of adjoining land ownership before the high bid can be accepted.

The publication of this Notice of Realty Action in the Federal Register shall segregate the above public lands from appropriation under the public land laws, including the mining laws. Any subsequent application shall not be accepted, shall not be considered as filed and shall be returned to the applicant if the Notice segregates the land from the use applied for the application. The segregative effect of this Notice will terminate upon issuance of a conveyance document, 270 days, or when a cancellation Notice is published, whichever occurs first. Sale Procedures:

1. All bidders must be U.S. citizens, 18 years of age or older, corporations authorized to own real estate in the State of Wyoming, a state, state instrumentality or political subdivision authorized to hold property, or an entity legally capable of conveying and holding land or interests in Wyoming.

2. Sealed bidding is the only acceptable method of bidding. All bids must be received in the Newcastle Resource Area Office by 11 a.m., November 25, 1992, at which time the sealed bid envelopes will be opened and the high bid announced. The high bidder will be notified in writing within 30 days whether or not the BLM can accept the bid. The sealed bid envelope must be marked on the front lower left-hand corner with the words "Public Land Sale, (W-101872 and the Parcel Number). Sale held November 25, 1992.

3. All sealed bids must be accompanied by a payment of not less than 10 percent of the total bid. Each bid and final payment must be accompanied by certified check, money order, bank draft, or cashier's check made payable to: Department of the Interior-BLM.

4. Failure to pay the remainder of the full bid price within 180 days of the sale will disqualify the apparent high bidder and the deposit shall be forfeited and disposed of as other receipts of the sale. If the apparent high bidder is disqualified, the next highest qualified bid will be honored or the land will be reoffered under competitive procedures. If two or more envelopes containing valid bids of the same amount are received, supplemental sealed bidding will be used to determine the high bid. Additional sealed bids will be submitted to resolve all ties.

5. If any parcels fail to sell, they will be reoffered for sale under competitive procedures. For reoffered land, bids must be received in the Newcastle Resource Area Office by 11 a.m. on the fourth Wednesday of each month beginning December 23, 1992. Reoffered land will remain available for sale until sold or until the sale action is cancelled or terminated. Reappraisals of the parcels will be made periodically to reflect the current fair market value. If the fair market value of a parcel changes, the land will remain open for competitive bidding according to the procedures and conditions of this notice.

Patent Terms and Conditions:

Any patent issued will be subject to all valid existing rights. Specific patent reservations include:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals will be reserved to the United States, together with the right to prospect for, mine, and remove the minerals. A more detailed description of this reservation, which will be incorporated into the patent document, is available for review at the BLM Newcastle Resource Area Office.

3. Any conveyance will be subject to the exiting grazing use of F.A. Bush, Inc. (GR49-8412). The rights of F.A. Bush, Inc. to graze domestic livestock on the real estate according to the conditions and terms of grazing authorization No. GR49-8412 shall cease 2 years from the date of sale. If any persons other than F.A. Bush, Inc. are the successful bidders on the land being offered for sale, those persons shall be entitled to receive annual grazing fees from F.A. Bush, Inc. in an amount not to exceed that which would be authorized under the Federal grazing fee published in the **Federal Register**.

For a period of 45 days from the date of this notice published in the **Federal Register**, interested parties may submit comments to the BLM, District Manager, Casper District Office, 1701 East "E" Street, Casper, Wyoming 82601. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become final.

Dated: September 9, 1992.

Mike Karbs,

District Manager.

[FR Doc. 92-22498 Filed 9-16-92; 8:45 am]

BILLING CODE 4310-23-M

[CA-940-92-4730-12]

Filing of Plats of Survey; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested state and local government officials of the latest filing of Plats of Survey in California.

EFFECTIVE DATES: Filing was effective at 10 a.m. on the date of submission to the Bureau of Land Management (BLM), California State Office, Public Room.

FOR FURTHER INFORMATION CONTACT: Clifford A. Robinson, Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), California State Office, 2800 Cottage Way, Room E-2845, Sacramento, CA 95825, 916-978-4775.

SUPPLEMENTARY INFORMATION: The Plats of Survey of lands described below have been officially filed at the California State Office, Sacramento, CA.

Humboldt Meridian, California

Tps. 10 N., Rs. 7 and 8 E.—Metes-and-bounds survey of Tract 46, (Group 1089) accepted July 30, 1992, to meet certain administrative needs of the U.S. Forest Service, Klamath National Forest.

Mount Diablo Meridian, California

T. 28 N., R. 17 E.—Dependent resurvey, survey, and metes-and-bounds survey, (Group 1102) accepted June 16, 1992, to meet certain administrative needs of the Department of the Army, Sierra Army Depot.

T. 16 N., R. 7 W.—Supplemental plat of W½ of sections 7 and 18, accepted July 9, 1992, to meet certain administrative needs of the U.S. Forest Service, Mendocino National Forest.

T. 39 N., R. 12 W.—Metes-and-bounds survey of Tract 46, (Group 1108) accepted July 10, 1992, to meet certain administrative needs of the U.S. Forest Service, Klamath National Forest.

San Bernardino Meridian, California

T. 4 S., R. 14 E.—Supplemental plat of sections 1 and 2, accepted June 10, 1992, to meet certain administrative needs of the BLM, California Desert District, Palm Springs/S. Coast Resource Area.

T. 4 S., R. 14 E.—Supplemental plat, accepted July 15, 1992, to meet certain administrative needs of the BLM, California Desert District, Palm Springs/S. Coast Resource Area.

T. 4 N., R. 2 E.—Corrective dependent resurvey of the section line between sections 17 and 18, accepted July 17, 1992, to meet certain administrative needs of the BLM, California Desert District, Barstow Resource Area.

T. 2 N., R. 7 W.—Metes-and-bounds survey of Lot 2 in Tract 37, accepted July 28, 1992, to meet certain administrative needs of the U.S. Forest Service, Angeles National Forest.

All of the above listed survey plats are now the basic record for describing the lands for all authorized purposes. The survey plats will be placed in the open files in the BLM, California State Office, and will be available to the public as a matter of information. Copies of the survey plats and related field notes may be furnished to the public upon payment of the appropriate fee.

Dated: September 4, 1992.

Clifford A. Robinson,

Chief, Branch of Cadastral Survey.

[FR Doc. 92-22496 Filed 9-16-92; 8:45 am]

BILLING CODE 4310-40-M

[CO-942-92-4730-12]

Colorado: Filing of Plats of Survey

September 3, 1992.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m., September 3, 1990.

The plat (in six sheets) representing the dependent resurvey of a portion of the Second Standard Parallel North (south boundary), T. 9 N., Rs. 96 and 97 W., portions of the Twelfth Guide Meridian West (east boundary), the south and west boundaries, subdivisional lines, and the boundaries of certain land claims and the subdivision of certain sections, T. 8 N., R. 97 W., Sixth Principal Meridian, Colorado, Group No. 834, was accepted July 23, 1992.

The plat representing the dependent resurvey of the subdivisional line between sections 25 and 36 and a metes-and-bounds survey of lot 39, in section 36, T. 2 S., R. 73 W., Sixth Principal Meridian, Colorado, Group No. 995, accepted July 28, 1992.

These surveys were executed to meet certain administrative needs of this Bureau.

The plat representing the dependent resurvey of a portion of the subdivision of section 9 and a metes-and-bounds survey in section 9, T. 5 S., R. 80 W., Sixth Principal Meridian, Colorado, Group No. 954, was accepted July 23, 1992.

This survey was executed to meet certain administrative needs of the U.S. Forest Service.

The following plat will be immediately placed in the open files and will be available to the public as a matter of information. Copies of this plat may be furnished to the public upon payment of the appropriate fee. This plat will be regarded as officially filed as of 10:00 a.m. on October 19, 1992, as provided for in 43 CFR 1813.1-2 (BLM Manual) Section 2097—Opening Orders is required.

The plat representing the dependent resurvey of a portion of the state boundary between Colorado and Utah, from the 3½ mile post to the 9½ mile post, the Eighth Standard Parallel North (north boundary of T. 32 N., R.20 W.), and a portion of the north boundary and the survey of the subdivisional lines of Fractional T. 33 N., R. 20 W., New Mexico Principal Meridian, Colorado, Group No. 924, was accepted July 23, 1992.

This survey was executed to meet certain administrative needs of the Bureau of Indian Affairs.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215.

Jack A. Eaves,

Chief, Cadastral Surveyor for Colorado.

[FR Doc. 92-22408 Filed 9-16-92; 8:45 am]

BILLING CODE 4310-JB-M

[ID-942-02-4730-12]

Idaho: Filing of Plats of Survey; Idaho

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m., September 8, 1992.

The plat representing the dependent resurvey of portions of Homestead Entry Survey No. 419 and the survey of tracts 37, 38, and 39 in unsurveyed T. 11 N., R. 15 E., Boise Meridian, Idaho, Group No. 831, was accepted, August 28, 1992.

This survey was executed to meet certain administrative needs of the USDA Forest Service, Region IV.

All inquiries concerning the survey of the above described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: September 8, 1992.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 92-22494 Filed 9-16-92; 8:45 am]

BILLING CODE 4310-GG-M

[NM-920-4214-11; NMNM 0556981]

Proposed Continuation of Withdrawal; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes that a portion of a withdrawal continue for an additional 20 years. The lands would remain closed to mining, but have been and will remain open to mineral leasing.

DATES: Comments should be received by December 16, 1992.

ADDRESSES: Comments should be sent to the New Mexico State Director, BLM, P.O. Box 27115, Santa Fe, New Mexico 87502-0115.

FOR FURTHER INFORMATION CONTACT: Georgiana E. Armijo, BLM, New Mexico State Office, 505-438-7594.

SUPPLEMENTARY INFORMATION: The Forest Service proposes that portions of the withdrawal of land made by Public Land Order 4643 be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988). The land is described as follows:

New Mexico Principal Meridian, Gila National Forest

Lake Roberts Recreation Area

T. 14 S., R. 13 W.,
Sec. 35, that portion lying outside the Gila Wilderness described as S½NW¼, and S½ (80 acres).

T. 15 S., R. 13 W.,
Sec. 1, lots 1 to 4, inclusive and S½NE¼;
Sec. 2, lots 1 and 2.

Scorpion Corral Recreation Area

T. 12 S., R. 14 W.,
Sec. 26, NW¼NE¼ and N½N½NW¼.

Forks Recreation Area

T. 13 S., R. 13 W.,
Sec. 8, W½NE¼ and E½NE¼NW¼.

Grapevine Recreation Area

T. 13 S., R. 13 W.,
Sec. 8, N½NW¼SE¼.

East Fork Recreation Area

T. 13 S., R. 13 W.,

Sec. 6, SE¼NE¼NE¼, NE¼SE¼NE¼, S½SE¼NE¼, and N½NE¼SE¼.

Black Mountain Administrative Site

T. 11 S., R. 13 W.,
Sec. 6, that portion lying outside the Gila Wilderness described as S½ of lot 15.

Catwalk Recreation Area (formerly Whitewater Forest Camp)

T. 11 S., R. 19 W.,
Approximately 403.997 acres in the following legal subdivision:
Sec. 4, lot 20, N½SW¼, N½SE¼SW¼, SE¼SE¼SW¼, and S½SE¼;
Sec. 5, lots 13 and 14, S½ of lot 15, N½ of lot 17, N½ of lot 18, and SE¼ of lot 17;
Sec. 6, SE¼ of lot 16, and N½ of lot 17.

Copperas Canyon—Cliff Dwelling Road

750 acres—that portion lying outside the Gila Wilderness and described as a strip of land 600 feet wide, 300 feet on each side of centerline of State Highway No. 527, through the following legal subdivisions:

T. 13 S., R. 13 W.,
Sec. 8, W½NE¼NW¼, S½NW¼SE¼ and S½SE¼;
Sec. 16, W½SW¼;
Sec. 17, NE¼ and E½SE¼;
Sec. 20, NE¼NE¼;
Sec. 21, W½;
Sec. 28, W½;
Sec. 32, SE¼SE¼;
Sec. 33, N½NW¼, SE¼NW¼, SW¼, and NW¼SE¼.

T. 14 S., R. 13 W.,
Sec. 4, lots 3 and 4, S½N½, SE¼SW¼, and W½SE¼;
Sec. 5, lot 1;
Sec. 8, SW¼SE¼ and E½SE¼;
Sec. 9, N½NW¼, SW¼NW¼, and NW¼SW¼;
Sec. 17, W½E½;
Sec. 20, NE¼, E½SW¼, and NW¼SE¼;
Sec. 29, W½NE¼, E½NW¼, and SW¼;
Sec. 32, N½NW¼NW¼.

T. 12 S., R. 14 W.,
Sec. 25, SW¼SW¼;
Sec. 26, NE¼SE¼;
Sec. 36, SE¼NE¼ and NE¼NW¼.

Gila River (West, Middle, and East Forks) Streamside Zones

91 acres—that portion lying outside the Gila Wilderness and described as a strip of land 300 feet on each side of the stream through the following legal subdivisions:

T. 12 S., R. 13 W.,
Sec. 31, lot 1;
Sec. 32, S½SW¼.

T. 13 S., R. 13 W.,
Sec. 4, E½SW¼;
Sec. 8, SW¼NE¼NE¼, NW¼SE¼NE¼, E½SW¼, and S½NE¼SE¼;
Sec. 17, W½W½NE¼, S½NW¼, and SW¼;
Sec. 20, lot 1.

T. 12 S., R. 14 W.,
Sec. 25, SW¼NW¼.

The areas described aggregate approximately 2,421.867 acres in Grant and Catron Counties.

The withdrawal is essential for protection of substantial capital improvements on the sites. The withdrawal currently segregates the lands from mining but not from mineral leasing. The Forest Service requests no changes in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the New Mexico State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: September 8, 1992.

Monte G. Jordan,

Associate State Director.

[FR Doc. 92-22495 Filed 9-16-92; 8:45 am]

BILLING CODE 4310-FB-M

[OR-943-4214-11; GP2-440; OR-1070(WASH), et al.]

Proposed Continuation of Withdrawals; Washington; Correction

A Secretarial Order date in FR Doc. 92-17444 published on page 33005-6, in the issue of Friday, July 24, 1992, is hereby corrected as follows:

On page 33006, the date in "7. OR-22463(WASH), Secretarial Order dated December 22, 1905" is corrected to read "December 27, 1909".

Dated: September 9, 1992.

Catherine H. Crawford,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 92-22499 Filed 9-16-92; 8:45 am]

BILLING CODE 4310-33-M

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Review of the Florida Panther Captive Management and Health Protocol

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Under provisions of U.S. Fish and Wildlife Service policy on continued environmental review of Florida panther recovery activities, this is to advise the public that review of the Florida panther Captive Management and Health Protocol has been carried out through the Florida Panther Technical Advisory Council.

ADDRESSES: Please send correspondence concerning this notice to the Regional Director, U.S. Fish and Wildlife Service, 75 Spring Street, SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis B. Jordan, Florida Panther Coordinator, U.S. Fish and Wildlife Service, 117 Newins-Ziegler Hall, University of Florida, Gainesville, Florida 32611-0307, telephone 904/392-1861.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Fish and Wildlife Service (Service) issued a "Statement of Policy on Continued Environmental Review" (Policy) of Florida panther recovery activities on February 5, 1992 (**Federal Register**, April 22, 1992, 14733-14735). This Policy establishes a peer review process through the Florida Panther Technical Advisory Council (Council).

This Service requested Council review of the Florida panther Captive Management and Health Protocol on February 27, 1992. Results of the Council's review were received by the Service on April 20, 1992. The Council made two suggestions for modification. First, the words "should" and "will" be replaced with "shall" as noted throughout the document. Second, clarification is needed under management strategies for the two categories of captive panthers.

The Service has accepted both suggestions and the Florida panther Captive Management and Health Protocol will be updated to reflect these changes. All documents involved in this review are available for public inspection, by appointment, during normal business hours at the above address.

Author

The primary author of this notice is Dennis B. Jordan, U.S. Fish and Wildlife Service, 117 Newins-Ziegler Hall, University of Florida, Gainesville, Florida 32611-0307, telephone 904/392-1861.

Authority: The authority for this action is the Endangered Species Act (16 U.S.C. 1531-1544).

Dated: September 8, 1992.

James W. Pulliam, Jr.,

Regional Director.

[FR Doc. 92-22321 Filed 9-16-92; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Delaware and Lehigh Navigation Canal National Heritage Corridor; Meeting

AGENCY: National Park Service; Delaware and Lehigh Navigation Canal National Heritage Corridor Commission.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Delaware and Lehigh Navigation Canal National Heritage Corridor Commission.

DATES: October 16, 1992 at 1:30 p.m.

INCLEMENT WEATHER RESCHEDULE DATE: None.

ADDRESSES: Allentown City Hall, 435 Hamilton Street, 5th Floor Conference Room, Allentown, PA.

FOR FURTHER INFORMATION CONTACT: Millie Alvarez, Delaware and Lehigh Navigation Canal National Heritage Corridor Commission, 10 East Church Street, room P-206, Bethlehem, PA 18018 (215) 861-9345.

SUPPLEMENTARY INFORMATION: The Commission was established by Public Law 100-692 to assist the Commonwealth and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historical and natural resources. The Commission will report to the Secretary of the Interior and to Congress. The agenda for the meeting will focus on the planning process.

The meeting will be open to the public. Any member of the public may file a written statement concerning agenda items. The statement should be addressed to National Park Service, Mid-Atlantic Regional Office, Division of Park and Resource Planning, 260 Custom House, 200 Chestnut Street, Philadelphia, PA, 19106, attention: Deirdre Gibson.

Minutes of the meeting will be available for inspection four weeks after the meeting, at the above-named address.

Joseph W. Gorrell,

Acting Regional Director, Mid-Atlantic Region.

[FR Doc. 92-22420 Filed 9-16-92; 8:45 am]

BILLING CODE 4310-70-M

Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Golden Gate National Recreation Area (GGNRA) Advisory Commission will be held at 7:30 p.m. (PDT) on Thursday, October 1, 1992, at Building 201, Fort Mason, San Francisco, California. The Advisory Commission was established by Public Law 92-589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin, San Francisco and San Mateo Counties.

Members of the Commission are as follows:

Mr. Richard Bartke, Chairman
Ms. Amy Meyer, Vice Chair
Mr. Ernest Ayala
Dr. Howard Cogswell
Brig. Gen. John Crowley, USA (ret)
Mr. Margot Patterson Doss
Mr. Neil D. Eisenberg
Mr. Jerry Friedman
Mr. Steve Jeong
Ms. Daphne Greene
Ms. Gimmy Park Li
Mr. Gary Pinkston
Mr. Merritt Robinson
Mr. R.H. Sciaroni
Mr. John J. Spring
Dr. Edgar Wayburn
Mr. Joseph Williams
Mr. Mel Lane

The main agenda item at the public meeting will be a presentation of the GGNRA Natural Resource Management Plan. The Natural Resource Management Plan identifies GGNRA's natural resources and their condition. It lays a foundation to preserve and restore, where necessary, the natural native California habitats, and ecosystems on which they depend. It identifies the pressures existing from the ever-growing metropolitan population adjacent to the park's natural areas, and it provides strategies for protecting the natural systems and resources. The plan revises the previous GGNRA Natural Resource Management Plan of 1982.

A second agenda item will be a presentation of the GGNRA Fire Management Plan and Environmental Assessment. These documents were made available to the public in March 1992. The Fire Management Plan is an addendum to the Natural Resource Management Plan. The National Park Service Wildland Fire Management Guideline requires that all areas with vegetation capable of sustaining fire will develop a fire management plan. The plan revises the previous GGNRA Fire Management Plan of 1985. Following the presentation there will be comments of the Marin and San Mateo Committees and the Advisory Commission of the GGNRA Fire Management Plan.

The third agenda item at this meeting will be a presentation about the GGNRA research program. A major source of GGNRA park research activities are grants from Earthwatch, a Massachusetts private organization which recruits and organizes volunteers to team up with scientists around the world who need labor and capital to support their projects. The grants help support GGNRA's natural resource inventory and monitoring program.

The fourth agenda item at this meeting will be a presentation on the wetlands restoration project at Bolinas Lagoon by the California Department of Transportation (CALTRANS) as mitigation to the National Park Service for the Highway 1 slide repair project which impacted GGNRA in Marin County.

The meeting will also contain a Superintendent's Report.

This meeting is opened to all environmental, neighborhood, and community groups and others interested in being involved in the planning process for the Golden Gate National Recreation Area.

Copies of the GGNRA Natural Resource Management Plan and the GGNRA Fire Management Plan and Environmental Assessment can be obtained by writing to Superintendent, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

This meeting will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. A transcript will be available after October 23, 1992. For copies of the minutes contact the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

Dated: September 11, 1992.

Stanley T. Albright,

Regional Director, Western Region.

[FR Doc. 92-22525 Filed 9-16-92; 8:45 am]

BILLING CODE 4310-70-M

Mississippi River Corridor Study Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of Meeting.

SUMMARY: This notice sets the schedule for the forthcoming meeting of the Mississippi River Corridor Study Commission. Notice of this meeting is required under the Federal Advisory Committee Act.

DATES & TIME: October 14, 1992, 3:30 p.m. to 5 p.m. October 15, 1992, 8 a.m. until business completed but no later than 12 p.m. October 16.

ADDRESSES: Executive Inn, One Executive Boulevard, Paducah, Kentucky.

The business meeting will be open to the public. Space and facilities to accommodate members of the public are limited and persons will be accommodated on a first-come, first-served basis. The Chairman will permit attendees to address the Commission, but may restrict the length of presentations. An agenda will be available from the National Park Service, Midwest Region, 1 week prior to the meeting.

FOR FURTHER INFORMATION CONTACT: David N. Given, Associate Regional Director, Planning and Resources Preservation, National Park Service, Midwest Region, 1709 Jackson Street, Omaha, Nebraska 68102, (402) 221-3082.

SUPPLEMENTARY INFORMATION: The Mississippi River Corridor Study Commission was established by Public Law 101-398, September 28, 1990.

Dated: September 11, 1992.

Don H. Castleberry,

Regional Director, Midwest Region.

[FR Doc. 92-22524 Filed 9-16-92; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-55 (Sub-No. 402)]

CSX Transportation Co., Inc.; Abandonment; Between Woodlawn and Walmar, in Jefferson, Washington, Clinton, and St. Clair Counties, IL; Findings

The Commission has found that the public convenience and necessity permit CSX Transportation Company, Inc. to abandon a 30.27-mile segment of its Woodlawn-Walmar line, between Venedy (milepost H448.6) and Walmar (milepost H478.87), in Washington, Clinton and St. Clair Counties, IL.

A certificate will be issued authorizing abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served on the applicant and the railroad no later than 10 days from publication of this Notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope: "The Section of Legal Counsel, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are continued in 49 U.S.C. 10905 and 49 CFR 1152.27.

Decided: September 1, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-22532 Filed 9-16-92; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 371X)]

CSX Transportation, Inc.; Abandonment Exemption; Polk County, FL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903 et seq. the abandonment by CSX Transportation, Inc., of 4.09 miles of its Valrico Subdivision between mileposts AYC-864.65 and AYC-868.74 in Ridgewood, Polk County, FL, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on October 17, 1992. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by September 28, 1992, petitions to stay must be filed by October 2, 1992, and petitions for reconsideration must be filed by October 12, 1992. Requests for a public use condition must be filed by October 7, 1992.

ADDRESSES: Send pleadings referring to Docket No. AB-55 (Sub-No. 371X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927-5610, [TDD for hearing impaired: (202 927-5721].

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359.

[Assistance for the hearing impaired is available through TDD services (202) 927-5721.]

Decided: September 9, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-22529 Filed 9-16-92; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 436X)]

CSX Transportation, Inc.; Abandonment Exemption; in Perry County, KY

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon 2.86 miles of its line of railroad between milepost VE-245.40, V.S. 215+39, near Bulan, and milepost VE-248.26, V.S. 372+42, at Hardburly, in Perry County, KY.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service over the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) that the requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

revocation under 49 U.S.C. 10505(d) must be filed.

This exemption will be effective on October 17, 1992, unless stayed or a formal expression of intent to file an offer of financial assistance (OFA) is filed. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 [3] must be filed by September 28, 1992. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 7, 1992, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to CSXT's representative: Charles M. Rosenberger, Senior Counsel, 500 Water Street J150, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

CSXT has filed an environmental report that addresses the abandonment's effects, if any, on the environment and historic resources. SEE will issue an environmental assessment (EA) by September 22, 1992. Interested persons may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927-6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: September 10, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-22531 Filed 9-16-92; 8:45 am]

BILLING CODE 7035-01-M

[1] A stay will be issued routinely where an informed decision on environmental issues, whether raised by a party or by the Commission's Section of Energy and Environment (SEE), cannot be made before the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental grounds is encouraged to file promptly so that the Commission may act on the request before the effective date.

[2] See Exempt. of Rail Abandonment—offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

[Docket No. AB-375X]

Lake Erie, Franklin and Clarion Railroad Co.; Abandonment Exemption; in Clarion and Jefferson Counties, PA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by Lake Erie, Franklin and Clarion Railroad Company (LEF&C) of its entire 15-mile rail line in Clarion and Jefferson Counties, PA, extending between milepost 0.0 in Clarion and milepost 15.0 in Summerville. Since LEF&C is abandoning its entire line, the Commission is not imposing labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on October 2, 1992. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) and requests for a public use condition must be filed by September 27, 1992, petitions to stay must be filed by September 22, 1992, and petitions to reopen must be filed by September 28, 1992.

ADDRESSES: Send pleadings referring to Docket No. AB-375X to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative:

Richard A. Allen, 888 Seventeenth Street, NW., Suite 600, Washington, DC 20006-3959.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder (202) 927-5610, [TDD for hearing impaired: (202) 927-5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 927-5721.]

Decided: September 9, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-22528 Filed 9-16-92; 8:45 am]

BILLING CODE 7035-01-M

[1] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[Ex Parte No. 386 (Sub-No. 22)]

Intrastate Rail Rate Authority; New Mexico

AGENCY: Interstate Commerce Commission.

ACTION: Extension of provisional recertification.

SUMMARY: By decision served March 13, 1990, the Commission granted 180-day provisional recertification for New Mexico, through its State Corporation Commission, to regulate intrastate rail rates, practices, and procedures pending filing of its application for recertification pursuant to *State Intrastate Rail Rate Authority*, 5 I.C.C.2d 680 (1989). By decisions served September 13, 1990, March 18, 1991, September 17, 1991, and March 18, 1992, the Commission extended the provisional recertification for another 180 days. Pursuant to a request from the State, the Commission grants another extension so that New Mexico can complete modifications of its procedures and prepare an application for recertification.

DATES: New Mexico's provisional recertification is extended for 180 days from September 17, 1992.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927-5610, [TDD for hearing impaired: (202) 927-5721].

Decided: September 11, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-22530 Filed 9-16-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

AVX Corp., et al.; Lodging of Consent Decree

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on September 4, 1992, a proposed consent decree in *United States of America* v. *AVX Corporation, et al.*, Civil Action No. 83-3882-Y, was lodged with the United States District Court for the District of Massachusetts. This case concerns claims by the United States and the Commonwealth of

Massachusetts for past and future cleanup costs, for injunctive relief, and for natural resource damages at the New Bedford Harbor Superfund site (the Site) in southeastern Massachusetts. The United States' claims are under sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), section 7003 of the Resource Conservation and Recovery Act, section 504 of the Clean Water Act, and the Rivers and Harbors Act. The Commonwealth has similar claims under section 107 of the CERCLA and state law.

The proposed consent decree resolves these claims against the last two defendants named in the lawsuit. The consent decree requires the settling defendants, Federal Pacific Electric Company and Cornell Dubilier Electronic, Inc. to pay a total of $21 million, plus accrued interest from June 1992, towards the costs incurred by the federal and state governments for investigation and cleanup of PCB contemination in New Bedford Harbor and for natural resource damages. Of this amount, $1 million, plus accrued interest, will be paid to the Environmental Protection Agency's (EPA) Superfund for past cleanup costs, $10 million, plus accrued interest, will be paid to the National Oceanic and Atmospheric Administration (NOAA), which is the lead federal natural resource trustee at this site, and the Massachusetts Secretary of Environmental Affairs, who is the designated state natural resource trustee, for natural resource damages, and the remaining $10 million will be allocated between future cleanup cost and natural resource restoration based upon the extent of cleanup selected for the lower portion of New Bedford Harbor. Most of this damages amount will be placed in a fund in the Registry of the U.S. District Court and will be used jointly by NOAA, the Department of the Interior, and the state trustee to restore, replace, or acquire the equivalent of natural resources that have been injured by the PCB contamination in New Bedford Harbor.

The Department of Justice will receive comments on the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *AVX Corporation*, D.J. Ref. 90-11-2-32.

The proposed consent decree may be examined at the office of the United States Attorney, 1107 J.W. McCormack Post Office/Courthouse, Boston, Massachusetts 02109 and at the Region I office of the Environmental Protection Agency, 2203 JFK Federal Building, Boston, Massachusetts 02203. Copies of the consent decree may also be examined at the Consent Decree Library, 601 Pennsylvania, NW., Washington, DC 20004 (202-347-2072). Copies of the proposed consent decree may be obtained in person or by mail from the Consent Library at the above address. In requesting a copy, please enclose a check in the amount of $7.75 (25 cents per page reproduction cost) payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 92-22405 Filed 9-16-92; 8:45 am]

BILLING CODE 4410-01-M

Dexter Corp.; Lodging of Consent Decree

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on September 3, 1992, a proposed Consent Decree in *United States* v. *Dexter Corporation*, Civil No. H89-393 (AHN), was lodged with the United States District Court for the District of Connecticut resolving the matter. The proposed Consent Decree concerns violations by Dexter Corporation of the Clean Water Act ("CWA"), 33 U.S.C. 1251 *et seq.*, and the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6901 *et seq.*, at Dexter's facilities located in Windsor Locks, Connecticut. The CWA violations alleged in the amended complaint include discharges in excess of National Pollutant Discharge Elimination System permit limits, discharging pollutants without a permit, bypassing the company's treatment system and failing to comply with reporting requirements. The RCRA violations include generator violations, operation of a treatment, storage or disposal facility ("TSD") facility without a permit, violation of TSD requirements, and land ban violations. The State of Connecticut is a Plaintiff-Intervernor with respect to CWA claims and is participating in the settlement.

Under the terms of the Consent Decree, the defendant will pay a total civil penalty of $9 million, of which $5.6 million will be paid to the United States and $3.6 million to the State of Connecticut. In addition, Dexter will undertake significant injunctive relief to come into compliance with the CWA, including installation of equipment to achieve compliance with effluent limits. Dexter will demonstrate compliance with the RCRA provisions at issue, characterize and close numerous areas pursuant to EPA-approved plans, and conduct a RCRA Facilities Assessment. In addition, Dexter will hire an independent firm to conduct a multi-media environmental compliance audit at the Windsor Locks facilities. The audit will also examine management systems and waste minimization systems.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Dexer Corporation*, D.J. Ref. 90-5-1-1-3338.

The proposed Consent Decree may be examined at the Region 1 Office of the Environmental Protection Agency, One Congress Street, Boston, Massachusetts. Copies of the Consent Decree may be examined at the Environmental Enforcement Section Document Center, 1333 F Street, NW., suite 600, Washington, DC 20044, (202) 347-7829. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $17.75 (25 cents per page reproduction cost for the Consent Decree excluding Appendices) made payable to Consent Degree Library.

Roger Clegg,

Deputy Assistant Attorney General, Environment and Natural Resources Division

[FR Doc. 92-22402 Filed 9-16-92; 8:45 am]

BILLING CODE 4410-01-M

Krilich; Lodging Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a consent decree in *United States* v. *Krilich*, (N.D. Ill.) was lodged with the United States District Court for the Northern District of Illinois on or about August 6, 1992. This Consent Decree concerns a Complaint filed by the United States against Robert R. Krilich, *et al.* pursuant to Section 309 of the Clean Water Act, 33 U.S.C. 1319, to obtain injunctive relief and impose civil penalties upon the Defendants for discharges of dredged or fill material in

violation of CWA section 301(a), 33 U.S.C. 1311(a), and for subsequent violation of an EPA Administrative Order issued pursuant to CWA section 309(a), 33 U.S.C. 1319(a).

The consent decree prohibits additional illegal discharges by the Defendants, requires either restoration of, or mitigation for, wetland areas buried under the fill, and provides for payment of a civil penalty in the amount of $185,000.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Attention: Michael D. Rowe, Esq., 10th Street & Constitution Ave., room 7115-Main Bldg., Washington, DC 20530 and refer to *United States* v. *Krilich*, DOJ. Ref. No. 90-5-2-1-3405.

The proposed Consent Decree may be examined at the Clerk's office, United States District Court, 219 South Dearborn Street, Chicago, Ill. 60604, and at the following additional locations: (1) The United States Department of Justice, Environmental Defense Section, 9th & Pennsylvania Ave., NW., Washington, DC 20026 (Contact Michael Cole (202) 514-5452); and (2) the Villa Park Public Library, 305 South Ardmore Avenue, Villa Park, Illinois 60181 (Contact Ms. Marilyn Ryan, Assistant Administrator (708) 834-1164).

Vicki A. O'Meara,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92-22406 Filed 9-16-92; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on September 2, 1992, a proposed Consent Decree in *United States and State of Ohio* v. *City of Portsmouth, Ohio*, Civil Action No. C-1-91-398, was lodged with the United States District Court for the Southern District of Ohio, Western Division. The United States filed this action against the defendant, City of Portsmouth, Ohio, in response to violations by the City of Section 301(a) of the Clean Water Act, 33 U.S.C. 1311(a), and of the National Pollutant Discharge Elimination System ("NPDES") permits for its two wastewater treatment plants. The proposed Consent Decree requires the defendant to pay a civil penalty of $65,000.00, complete a number of corrective actions so that it can achieve and maintain compliance with the Clean Water Act and its NPDES permits, and comply in the future with the Clean Water Act and its NPDES permits.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Acting Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States and State of Ohio* v. *City of Portsmouth, Ohio*, D.J. Ref. 90-5-1-1-3655.

The proposed Consent Decree may be examined at the office of the United States Attorney, Southern District of Ohio, 220 U.S. Post Office and Courthouse, Fifth and Walnut Streets, Cincinnati, Ohio 45202; at the Region V Office of the United States Environmental Protection Agency, Water Division, 77 West Jackson Boulevard, Chicago, Illinois 60604; and at the Consent Decree Library, 601 Pennsylvania Avenue Building, NW., Washington, DC 20044.

Copies of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004, [(202) 347-2072]. In requesting a copy, please enclose a check in the amount of $6.25 (25 cents per page for reproduction cost).

Vicki A. O'Meara,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92-22399 Filed 9-16-92; 8:45 am]

BILLING CODE 4410-01-M

United Technologie Automotive; Lodging of Consent Decree

In accordance with section 122 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 6922, and Departmental policy, 28 CFR 50.7, notice is hereby given that on September 4, 1992, the United States Department of Justice, by the authority of the Attorney General and acting at the request of and on behalf of the Administrator of the United States Environmental Protection Agency, lodged a Consent Decree in *United States* v. *United Technologies Automotive, Inc.*, Civil Action No. C2-92-795, with the United States District Court for the Southern District of Ohio. The Consent Decree addresses the hazardous substance contamination at the Zanesville municipal well field site in the City of Zanesville, Muskingum County, Ohio. The Consent Decree requires the Settling Defendant, United Technologies Automotive, Inc., to implement the remedial action selected and achieve cleanup standards set forth in the Record of Decision and the Scope of Work for the Zanesville site. In addition, the Consent Decree requires the Settling Defendant to reimburse the United States for $305,724 in past response costs incurred by the United States Environmental Protection Agency at the Zanesville site.

The Department of Justice will receive written comments relating to the Consent Decree for a period of thirty (30) days from the date of this notice. Comments should be addressed to Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *United Technologies Automotive, Inc.*, DOJ Reference No. 90-11-2-788.

The Consent Decree may be examined at the Office of the United States Attorney, Two Nationwide Plaza, 280 N. High Street, 4th Floor, Columbus, Ohio 43215; Region V Office of Regional Counsel, United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604; or at the Consent Decree Library, 601 Pennsylvania Avenue, NW., Washington, DC 20004 (202-347-2072). A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20044. In requesting a copy, please enclose a check for $45.75 (25 cents per page reproduction cost) payable to Consent Decree Library.

Vicki A. O'Meara,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92-22401 Filed 9-16-92; 8:45 am]

BILLING CODE 4410-01-M

Consent Decree in Action Brought Under the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a partial consent decree in *United States* versus *Washington Department of Transportation, et al.*, Civil Action No. C92-1351R, was lodged with the United States District Court for the Western District of Washington on August 26, 1992. As to one defendant, McDonald's Corporation, this Consent Decree settles an action filed by the United States pursuant to section 113 of the Clean Air Act, 42 U.S.C. 7413, and

section 309(b) of the Clean Water Act, 33 U.S.C. 1319(b).

The United States Department of Justice brought this action on behalf of the U.S. Environmental Protection Agency, to recover civil penalties from and obtain injunctive relief against defendants Washington Department of Transportation, McDonald's Corporation and James M. Pirie Construction Co., Inc., for alleged violations of the Clean Air Act, the National Emission Standards for Hazardous Air Pollutants for asbestos ("the asbestos NEHAP") promulgated thereunder, and the Clean Water Act during the 1987 renovation and demolition of the old Crabpot restaurant on the Coleman Dock, Pier 52, in downtown Seattle, Washington. In this settlement, McDonald's Corporation will pay the United States a civil penalty of $150,000. Also, any future demolition and renovation operations conducted at its facilities will be subject to an absestos program set out in the consent decree, as well as to the inspection, notification, and work practice requirements of the asbestos NESHAP.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044 and refer to the United States versus Washington Department of Transportation, et al., DOJ number 90-5-2-1-1686.

Copies of the proposed Consent Decree may be examined at the Office of the United States Attorney, Western District of Washington, 800 Fifth Avenue Plaza, Seattle, Washington 98104, and at the U.S. Environmental Protection Agency, Office of the Regional Counsel, Region X, 1200 Sixth Avenue, Seattle, Washington 98101. Copies of the proposed Consent Decree may also be obtained from the Consent Decree Library, 601 Pennsylvania Avenue, Box 1097, Washington, DC 20004, (202) 347-2072. A copy of the proposed Consent Decree may be obtained by mail or in person from the Consent Decree Library. When requesting a copy of the Consent Decree, please enclose a check in the amount of $3.75 (25 cents per page reproduction costs) payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division

[FR Doc. 92-22493 Filed 9-16-92; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree in United States v. World Color Press, Inc. Under the Clean Air Act

In accordance with the policy of the Department of Justice established in 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *World Color Press, Inc.*, Civil Action No. 91-4039, was lodged with the United States District Court for the Southern District of Illinois on September 1, 1992. This action was brought on February 27, 1991 to address violations of the "Prevention of Significant Deterioration" ("PSD") provisions of the Clean Air Act, 42 U.S.C. § 165(a), that have occurred at World Color Press's three web offset printing plants located in Salem, Sparta and Mt. Vernon, Illinois. The Consent Decree requires World Color, in accordance with the current PSD permits for its Salem and Sparta plants, to install and properly operate and maintain afterburner systems at its Salem and Sparta plants to reduce volatile organic compound emissions from those plants. World Color's Mt. Vernon plant ceased operating in July 1991. The Decree also requires World Color to pay a civil penalty of $500,000 for the violations alleged in the Complaint.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530. All comments should refer to *United States* v. *World Color Press, Inc.*, DJ Ref. #90-5-2-1-1467.

The proposed consent decree may be examined at the Office of the United States Attorney for the Southern District of Illinois, 9 Executive Drive, Suite 300, Fairview Heights, Illinois 62208; the Region V Office of the U.S. Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60604; and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Washington, DC 20004 (202-347-2072). A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $7.50 (twenty-five cents per page reproduction costs) payable to the "Consent Decree Library."

Vicki A. O'Meara,

Acting Assistant Attorney General, Environment & Natural Resources Division.

[FR Doc. 92-22403 Filed 9-16-92; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Importation of Controlled Substances; Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on July 13, 1992, Stanford Seed Company, 340 South Muddy Creek Road, Denver, Pennsylvania 17517, made application to the Drug Enforcement Administration to be registered as an importer of marihuana (7360) a basic class of controlled substance in Schedule I. This application is exclusively for the importation of marihuana seed which will be rendered non-viable and used as bird seed.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than October 19, 1992.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745-46 (September 23, 1975), all applicants for

registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: September 9, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92-22426 Filed 9-16-92; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Glass Ceiling Commission; Open Meeting

SUMMARY: Pursuant to title II of the Civil Rights Act of 1991 (Pub. L. 102-166) and section 9 of the Federal Advisory Committee Act (FACA) (Pub. L. 92-462, 5 U.S.C. app. II) a Notice of Establishment for the Glass Ceiling Commission was published in the **Federal Register** on March 30, 1992 (57 FR 10776). Pursuant to section 10(a) of FACA, this is to announce the first meeting of the Commission which is to take place on Friday, October 2, 1992. The purpose of the Commission is to, among other things, focus greater attention to the importance of eliminating artificial barriers to the advancement of women and minorities to management and decisionmaking positions in business. The Commission has the practical task of: (a) Conducting basic research into the practices, policies and manner in which management and decisionmaking positions in business are filled; (b) conducting comparative research of businesses and industries in which women and minorities are promoted to management and decisionmaking positions, and businesses and industries in which women and minorities are not promoted to such positions; and (c) recommending measures designed to enhance opportunities for and the elimination of artificial barriers to the advancement of women and minorities to management and decisionmaking positions.

TIME AND PLACE: The meeting will be held on Friday, October 2, 1992 from 10 a.m. to noon in the Great Hall of the Department of Labor, 200 Constitution Avenue, NW., Washington, DC.

AGENDA: The agenda for the meeting is as follows:

(a) Introduction of Commission Members;

(b) Opening Statement by Secretary of Labor Martin;

(c) Discussion of Procedures to be followed in conducting Commission business;

(d) Discussion of Commission objectives including, to the extent practicable, delineation of specific tasks and projected time frames for achieving such objectives; and

(e) Ancillary considerations attendant to commencing Commission activities.

PUBLIC PARTICIPATION: The meeting will be open to the public. Seating will be available to the public on a first-come, first-serve basis—seats will be reserved for the media. Handicapped individuals wishing to attend should contact the Commission to obtain appropriate accommodations. Individuals or organizations wishing to submit written statements should send ten (10) copies to Mrs. Tish Leonard, Executive Director, Glass Ceiling Commission, U.S. Department of Labor, 200 Constitution Avenue, NW., room S-2508-A, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mrs. Tish Leonard, Executive Director, Glass Ceiling Commission, U.S. Department of Labor, 200 Constitution Avenue, NW., room S-2508-A, Washington, DC 20210, (202) 523-8271.

Signed at Washington, DC this 14th day of September, 1992.

Lynn Martin,

Secretary of Labor.

[FR Doc. 92-22514 Filed 9-16-92; 8:45 am]

BILLING CODE 4510-23-M

Employment and Training Administration

Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance; Inland Steel Co. et al.

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of August 1992.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-27,270; Inland Steel Co., East Chicago, IN

TA-W-27,401; Mayville Metal Products, Mayville, WI

TA-W-27,297; Mercer Rubber Co., Hamilton Square, NJ

TA-W-27,097; Foamex, Corry, PA

TA-W-27,278; NRM Corp., Columbiana, OH

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-27,539; Mid Plains Div. of Total Petroleum, Inc., Oklahoma City, OK

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-27,443; United Technologies Automotive, Troy, MO

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-27,464; Newfield Publications, Inc., Columbus, OH

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-27,338; Arco Alaska, Inc., Anchorage, AK

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-27,371; Yamato Lock Inspection Systems, Inc., (formerly Barkley & Dexter Laboratories, Inc., Fitchburg, MA

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-27,271; Trim-Line, Inc., Penndel, PA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-27,292; Webco Industries, Inc., Oil City Tube Div., Oil City, PA

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

Affirmative Determinations

TA-W-27,482; Elk Brank Mfg. Co., Inc., Hopkinsville, KY

A certification was issued covering all workers separated on or after June 30, 1991 and before January 1, 1992.

TA-W-27,402; Kinney Shoe Corp., Fairfield, PA

A certificate was issued covering all workers separated on or after June 9, 1991.

TA-W-27,452; H & H Star Energy, Inc., Houston, TX

A certification was issued covering all workers separated on or after June 22, 1991.

TA-W-27,365; Keystone Franklin, Inc., Ft. Washington, PA

A certification was issued covering all workers separated on or after May 31, 1991.

TA-W-27,463; Clint Hurt & Associates, Inc., Midland, TX

A certification was issued covering all workers separated on or after June 4, 1991.

I hereby certify that the aforementioned determinations were issued during the month of August 1992. Copies of these determinations are available for inspection in Room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: September 9, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-22511 Filed 9-16-92; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance; Lewis Bolt & Nut Co. et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 28, 1992.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 28, 1992.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 31st day of August 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition number	Articles produced
Lewis Bolt & Nut Co. (IUE)	Minneapolis, MN	08/31/92	08/12/92	27,715	Bolts and nuts.
Harmony Drilling Co., Inc. (Co.)	Big Spring, TX	08/31/92	08/17/92	27,716	Oil and gas.
BC Tong Service, Inc. (Co.)	Wickett, TX	08/31/92	08/14/92	27,717	Oil and gas services.
Tomkins Industries, Lau Div. (AIW)	Cleveland, OH	08/31/92	08/05/92	27,718	Blower wheels for air conditioners.
Osborn Manufacturing (wkrs)	Henderson, KY	08/31/92	08/18/92	27,719	Industrial brushes.
Miller Energy, Inc., (Co.)	Kalamazoo, MI	08/31/92	08/05/92	27,720	Oil and gas.
Gougler Industries, Inc. (UAW)	Kent, OH	08/31/92	08/12/92	27,721	Air tools.
Ozark Cutting (Co.)	Hermann, MO	08/31/92	08/12/92	27,722	Cut Izod Lacoste alligator.
Norwood Shoe Corp. (wkrs)	DeSota, MO	08/31/92	08/18/92	27,723	Women's shoes.
Prestolite Electric, Inc. (wkrs)	Cleveland, OH	08/31/92	08/25/92	27,724	Heavy-duty alternators.
Pride Refinery, Inc. (Co.)	Abilene, TX	08/31/92	08/17/92	27,725	Refined petroleum.
Fruehauf Trailer Operations (USWA)	Uniontown, PA	08/31/92	08/17/92	27,726	Dump trailers.
Brown Shoe Company (UFCW)	Savannah, TN	08/31/92	08/12/92	27,727	Women's shoes.
Brown Shoe Co. (UFCW)	Union City, TN	08/31/92	08/13/92	27,728	Women's and childrens shoes.
Maidenform, Inc. (ILGWU)	Bayonne, NJ	08/31/92	08/20/92	27,729	Women's intimate apparel.
Maidenform, Inc. (ILGWU)	Bayonne, NJ	08/31/92	08/20/92	27,730	Women's intimate apparel.
Maidenform, Inc. (ILGWU)	Edison, NJ	08/31/92	08/20/92	27,731	Women's intimate apparel.
JFP Energy, Inc. (Co.)	Houston, TX	08/31/92	08/19/92	27,732	Oil and gas drilling.
Presidio Exploration, Inc. (wkrs)	Englewood, CO	08/31/92	08/18/92	27,733	Oil, gas.
Presidio Exploration, Inc. (wkrs)	Dallas, TX	08/31/92	08/18/92	27,734	Oil and gas.
Total Minatome Corp. (Co.)	Houston, TX	08/31/92	08/19/92	27,735	Oil and gas.
AMP, Incorporated (wkrs)	Valley Forge, PA	08/31/92	08/05/92	27,736	Sales, office workers.
Fender Musical Instruments (wkrs)	Chula Vista, CA	08/31/92	08/19/92	27,737	Guitar strings.
Downeast Manufacturing (wkrs)	Livermore Falls, ME	08/31/92	08/14/92	27,738	Shoes.
Rocky Mount Undergarment (wkrs)	Rocky Mount, NC	08/31/92	08/18/92	27,739	Ladies' and children's undergarments.
Martin Automatic Fishing Reel Co. (wkrs)	Mohawk, NY	08/31/92	08/13/92	27,740	Fishing fly reels.
J-TRAC, Inc. (wkrs)	Mansfield, OH	08/31/92	08/12/92	27,741	Warehouse, distribution.
TIMCO Services, Inc. (Co.)	Lafayette, LA	08/31/92	08/17/92	27,742	Oil field services.
Hercules, Inc. (Co.)	Kenril, NJ	08/31/92	08/05/92	27,743	Smokeless propellant.
Chevron USA Products Co. (IAM)	Port Arthur, TX	08/31/92	08/17/92	27,744	Petrochemical products.
Dole Packaged Foods Co. (ILWU)	Lunal, HI	08/31/92	07/17/92	27,745	Fresh pineapple.
Hein-Werner Corp. (IAMAW)	Waukegha, WI	08/31/92	08/07/92	27,746	Hydraulic jacks, pumps.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition number	Articles produced
William Brooks Shoe Co. (ACTWU)	Nelsonville, OH	08/31/92	08/19/92	27,747	Men's & women's footwear.
Sandra Sportswear, Inc. (ILGWU)	Weaver, AL	08/31/92	08/18/92	27,748	Ladies' skirts.
Otis Engineering Corp. (Co.)	Dallas, TX	08/31/92	08/25/92	27,749	Oilfield services.
Otis Engineering Corp. (Co.)	Anchorage, AK	08/31/92	08/25/92	27,750	Oilfield services.
Otis Engineering Corp. (Co.)	Fort Smith, AR	08/31/92	08/25/92	27,751	Oilfield services.
Otis Engineering Corp. (Co.)	Bakersfield, CA	08/31/92	08/25/92	27,752	Oilfield services.
Otis Engineering Corp. (Co.)	Denver, CO	08/31/92	08/25/92	27,753	Oilfield services.
Otis Engineering Corp. (Co.)	Jay, FL	08/31/92	08/25/92	27,754	Oilfield services.
Otis Engineering Corp. (Co.)	Saint Elmo, IL	08/31/92	08/25/92	27,755	Oilfield services.
Otis Engineering Corp. (Co.)	Belle Chasse, LA	08/31/92	08/25/92	27,756	Oilfield services.
Otis Engineering Corp. (Co.)	Kalkaska, MI	08/31/92	08/25/92	27,757	Oilfield services.
Otis Engineering Corp. (Co.)	Laurel, MS	08/31/92	08/25/92	27,758	Oilfield services.
Otis Engineering Corp. (Co.)	Farmington, NM	08/31/92	08/25/92	27,759	Oilfield services.
Otis Engineering Corp. (Co.)	Williston, ND	08/31/92	08/25/92	27,760	Oilfield services.
Otis Engineering Corp. (Co.)	Elk City, IN	08/31/92	08/25/92	27,761	Oilfield services.
Otis Engineering Corp. (Co.)	Carrollton, TX	08/31/92	08/25/92	27,762	Oilfield services.
Otis Engineering Corp. (Co.)	Vernal, UT	08/31/92	08/25/92	27,763	Oilfield services.
Otis Engineering Corp. (Co.)	Casper, WY	08/31/92	08/25/92	27,764	Oilfield services.
Marathon Oil Co. (Co.)	Midland, TX	08/31/92	08/02/92	27,765	Oil, gas NGL's.
Marathon Oil Co. (Co.)	Oklahoma City, OK	08/31/92	08/02/92	27,766	Oil, gas NGL's.
Marathon Oil Co. (Co.)	Findlay, OH	08/31/92	08/02/92	27,767	Oil, gas NGL's.
Marathon Oil Co. (Co.)	Ruston, LA	08/31/92	08/02/92	27,768	Oil, gas NGL's.
Marathon Oil Co. (Co.)	Bridgeport, IL	08/31/92	08/02/92	27,769	Oil, gas NGL's.
Marathon Oil Co. (Co.)	Lafayette, LA	08/31/92	08/02/92	27,770	Oil, gas NGL's.
Marathon Oil Co. (Co.)	Lindsey, OK	08/31/92	08/02/92	27,771	Oil, gas NGL's.
Marathon Oil Co. (Co.)	Medicine Lodge, KS	08/31/92	08/02/92	27,772	Oil, gas NGL's.
Marathon Oil Co. (Co.)	Shreveport, LA	08/31/92	08/02/92	27,773	Oil, gas NGL's.
Marathon Oil Co. (Co.)	Anchorage, AK	08/31/92	08/02/92	27,774	Oil, gas NGL's.

[FR Doc. 92-22510 Filed 9-16-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-27,074 Mid-Continent Division Houston, TX, et. al.]

Noble Drilling (U.S.), Inc; Amended Certification Regarding Eligibility To Apply for Workers Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 29, 1992 applicable to all workers of the Mid-Continent Division and the Gulf Coast Division of Noble Drilling (U.S.), Inc. located in Houston, Texas. The notice was published in the Federal Register on June 12, 1992 (57 FR 25081).

At the request of the State Agency, the Department is amending the subject certification to properly reflect the correct location of the Gulf Coast Marine Division. The correct location for the Gulf Coast Marine Division of Noble Drilling should be the State of Louisiana. The amended notice applicable to TA-W-27,074 is hereby issued as follows:

"All workers of Noble Drilling (U.S.), Inc., Mid-Continent Division, Houston, Texas and Gulf Coast Marine Division operating in the State of Louisiana who became totally or partially separated from employment on or after February 27, 1991 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed in Washington, D.C., this 9th day of September 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-22512 Filed 9-16-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-26,968]

Signetics Co., Orem, Utah; Revised Determination on Reconsideration

On July 10, 1992, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of Signetics Company in Orem, Utah. The notice was published in the **Federal Register** on July 24, 1992 (57 FR 33015).

Investigation findings show that the workers fabricate and assemble bipolar integrated circuits. The major share of the workers are involved in fabrication and the remaining portion are in assembly. Workers are not separately identifiable by operation.

Other findings show that production and employment declined in 1991 compared in 1990. The plant is scheduled to close in December 1992.

On reconsideration, new findings were obtained showing that assembly operations are being transferred to a company facility in Bangkok, Thailand and the remaining fabrication operations are being transferred to Caen, France and to a company plant in Albuquerque, New Mexico.

Company imports of fabricated parts and bipolar circuits have arrived at Signetics headquarters in Sunnyvale, California for distribution into the U.S. market.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that Signetics Company in Orem, Utah were adversely affected by increased imports of articles like or directly competitive with the bipolar circuits produced at the Signetics Company in Orem, Utah. In accordance with the provisions of the Act, I make the following revised determination for workers of the Signetics Company in Orem, Utah.

"All workers of Signetics Company in Orem, Utah who became totally or partially separated from employment on or after February 24, 1991 are eligible to apply for adjustment assistance under Section 223 of the trade Act of 1974."

Signed at Washington, DC, this 4th day of September 1992.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 92-22513 Filed 9-16-92; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 USC 3303a(a).

DATES: Request for copies must be received in writing on or before November 2, 1992. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Distruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of the Air Force (N1-AFU-92-30). Records relating to uniforms worn by civilian employees.

2. Department of the Navy, Naval Supply Systems Command (N1-347-92-1). Routine administrative correspondence files.

3. Department of the Navy (N1-NU-92-13). Dependents dental treatment records.

4. Department of the Navy, Board of Decorations and Medals (N1-NU-92-14). Case files of individual and unit awards and Routine correspondence concerning medals and awards.

5. Department of Energy, Lawrence Berkeley Laboratory (N1-434-92-5). Personnel radiation exposure dose records (film badges).

6. Department of State, Bureau of European Affairs (N1-59-92-7). Routine, facilitative, and duplicative records.

7. Department of State, Information Services (N1-59-92-21). Routine and facilitative records of the Office of User Services.

8. Department of State (N1-59-92-26). Routine and facilitative records of the Bureau of Educational and Cultural Affairs and the Special Assistant for Mutual Security Coordination.

9. Federal Communications Commission, Office of Legislative Affairs (N1-173-92-2). Reduction in retention period for legislative files.

10. Federal Deposit Insurance Corporation (N1-34-92-1). Reduction in retention period for excepted service applications.

Dated: September 9, 1992.

Claudine J. Weiher,

Acting, Archivist of the United States.

[FR Doc. 92-22407 Filed 9-16-92; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL COMMISSION ON AMERICA'S URBAN FAMILIES

Meeting

Notice is hereby given, pursuant to Public Law 92-463, that the National Commission on America's Urban Families will hold a meeting in Washington, DC, on Tuesday, September 29 and Wednesday, September 30, 1992 at the Department of Health & Human Services, 330 Independence Avenue SW., room 5051, Washington, DC 20201. The purpose of the meeting is to discuss the Commission's ongoing work. For the exact time please contact the Commission two days prior to the event at 202-690-6462.

Records shall be kept of all Commission proceedings and shall be available for public inspection at 200 Independence Avenue SW., room 305-F, Washington, DC 20201.

Anna Kondratas,

Executive Director.

[FR Doc. 92-22580 Filed 9-16-92; 8:45 am]

BILLING CODE 6160-04-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel; Meeting

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786-0322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on 202/786-0282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation

and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated September 9, 1991, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. Date: October 5, 1992
   Time: 8:30 a.m. to 5 p.m.
   Room: 315
   Program: This meeting will review Editions applications in History, submitted to the Division of Research Programs, for projects beginning after April 1, 1993.
2. Date: October 9, 1992
   Time: 8:30 a.m. to 5 p.m.
   Room: 315
   Program: This meeting will review Editions applications in Literature, submitted to the Division of Research Programs, for projects beginning after April 1, 1993.
3. Date: October 13, 1992
   Time: 8:30 a.m. to 5 p.m.
   Room: 315
   Program: This meeting will review Editions applications in Philosophy, Religion, History of Science, and Musicological Studies, submitted to the Division of Research Programs, for projects beginning after April 1, 1993.
4. Date: October 15–16, 1992.
   Time: 8:30 a.m. to 5 p.m.
   Room: 415
   Program: This meeting will review applications submitted to Humanities Projects in Media program, for projects beginning after April 1, 1993.
5. Date: October 19, 1992
   Time: 8:30 a.m. to 5 p.m.
   Room: 430
   Program: This meeting will review applications in Translations in Literature and Folklore, submitted to the Division of Research Programs, for projects beginning after April 1, 1993.
6. Date: October 22–23, 1992
   Time: 8:30 a.m. to 5 p.m.
   Room: 415
   Program: This meeting will review applications submitted to Humanities Projects in Media program, for projects beginning April 1, 1993.
7. Date: October 23, 1992
   Time: 8:30 a.m. to 5 p.m.
   Room: 430
   Program: This meeting will review Translations applications in Asian Studies, submitted to the Division of Research Programs, for projects beginning after April 1, 1993.
8. Date: October 23, 1992
   Time: 8:30 a.m. to 5 p.m.
   Room: M–07
   Program: This meeting will review applications submitted to Humanities Projects in Libraries and Archives program, submitted to the Division of Public Programs, for projects beginning after April 1, 1993.
9. Date: October 26, 1992
   Time: 8:30 a.m. to 5 p.m.
   Room: 430
   Program: This meeting will review Translations applications in American, African, and Near Eastern Studies, submitted to the Division of Research Programs, for projects beginning after April 1, 1993.
10. Date: October 26, 1992
    Time: 9 a.m. to 5:30 p.m.
    Room: M–07
    Program: This meeting will review applications submitted to Public Humanities Project program, submitted to the Division of Public Programs, for projects beginning after April 1, 1993.
11. Date: October 29–30, 1992
    Time: 8:30 a.m. to 5 p.m.
    Room: 415
    Program: This meeting will review applications submitted to Humanities Projects in Media, for projects beginning after April 1, 1993.

David C. Fisher,

Advisory Committee Management Officer.

[FR Doc. 92–22520 Filed 9–16–92; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Committee Management; Renewal

The Assistant Director for Geosciences has determined that the renewal of the DOE/USGS/NSF Council for Continental Scientific Drilling is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), by 42 U.S.C. 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Authority for this Council expires October 1, 1994, unless it is renewed.

Dated : September 14, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–22482 Filed 9–16–92; 8:45am]

BILLING CODE 7555–01–M

Advisory Panel for Biochemistry; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Date and Time: Thursday, Friday, and Saturday, October 22, 23, and 24, 1992; 8:30 a.m. to 5 p.m.

Place: The National Science Foundation, 1800 G Street NW., Washington, DC 20550, room 1243.

Type of Meeting: Closed.

Contact Person: Marcia Steinberg, Program Director for Biochemistry, room 325, Division of Molecular and Cellular Biosciences, National Science Foundation, 1800 G St. NW., Washington, DC 20550, room 325. Telephone: (202) 357–7945.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Biochemistry Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 14, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–22508 Filed 9–16–92; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Biochemistry; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Date and Time: Monday, Tuesday and Wednesday, October 19, 20 and 21, 1992, 8:30 a.m. to 5 p.m.

Place: The National Science Foundation, 1800 G Street, NW., Washington, DC 20550, room 1242.

Type of Meeting: Closed.

Contact Persons: Arthur Kowalsky or Kamal Shukla, Program Directors for Biophysics, room 325, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7777.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Biophysics Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals.

These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 14, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–22507 Filed 9–16–92; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Biochemistry; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Date and Time: Thursday, Friday, and Saturday, October 15, 16, and 17, 1992; 8:30 a.m. to 5 p.m.

Place: The National Science Foundation, 1110 Vermont Avenue, NW. Washington, DC room 500 B.

Type of Meeting: Closed.

Contact Person: Robert Uffen, Program Director for Cellular Biochemistry, Room 325, Division of Molecular and Cellular Biosciences, National Science Foundation, 1800 G St. NW., Washington, DC 20550, room 325. Telephone: (202) 357–7945.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Biochemistry Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 14, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–22505 Filed 9–16–92; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Developmental Biology; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Date and Time: October 21–23, 1992; 8:30 a.m. to 5 p.m.

Place: Inn by the Sea, Sanddollar Conference Room, 7830 Fay Avenue, La Jolla, CA.

Type of Meeting: Closed.

Contact Person: Dr. Judith Plesset, Program Director, Division of Integrative Biology and Neuroscience, room 321, National Science Foundation, 1800 G Street NW., Washington, DC. Telephone (202) 357–7989.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Developmental Biology research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 14, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–22509 Filed 9–16–92; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Earth Sciences; Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meetings.

Date and Time: October 5–6 1992; 8:30 a.m. 5 p.m.

Place: Room 1243, National Science Foundation, 1800 G St., NW., Washington, DC.

Contact Person: Dr. Daniel F. Weill, Program Director, Division of Earth Sciences, rm. 602, National Science Foundation, 1800 G St., NW., Washington, DC 20550. Telephone: (202) 357–7807.

Agenda: To review and evaluate Instrumentation and Facilities proposals as part of the selection process for awards.

Date and Time: October 16, 1992; 8 a.m. to 6 p.m.

Place: Room 523, National Science Foundation, 1800 G St., NW., Washington, DC.

Contact Person: Dr. Ian D. MacGregor, Section Head, Division of Earth Sciences, rm. 602, National Science Foundation, 1800 G St., NW., Washington, DC 20550. Telephone: (202) 357–9591.

Agenda: To review and evaluate hydrologic science proposals as part of the selection process for awards.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 14, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–22503 Filed 9–16–92; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Earth Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Date and Time: October 9, 1992; 8 a.m. to 6 p.m.

Place: Room 403, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. John Maccini, Program Director, Division of Earth Sciences, room 602, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7866.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Geologic Record of Global Change proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 14, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–22485 Filed 9–16–92; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Earth Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science

Foundation announces the following meeting.

Date and Time: October 14–16, 1992; 9 a.m. to 5 p.m.

Place: National Science Foundation, 1800 G Street NW., Washington, DC 20550, room 1242.

Type of Meeting: closed.

Contact Person: Dr. Leonard E. Johnson, Program Director, Division of Earth Sciences, room 602, National Science Foundation, 1800 G Street NW., Washington, DC 20550. Telephone: (202) 357–7721.

Purpose of Meeting: to provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Continental Dynamics proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 14, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–22486 Filed 9–16–92; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Materials Research

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: October 8, 1992; 8 p.m. to 9 p.m.; October 9, 1992; 8:30 a.m. to 5 p.m.

Place: Massachusetts Institute of Technology, Department of Physics, Cambridge MA.

Type of Meeting: Closed.

Contact Person: Dr. Ralph P. Hudson, Division of Materials Research, room 408, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–9787.

Purpose of Meeting: To provide advice and recommendations concerning support for research on Spin-Polarized Hydrogen.

Agenda: Site visit, presentation, and discussion of research.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 14, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–22483 Filed 9–16–92; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Mechanical and Structural Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Mechanical and Structural Systems.

Date and Time: October 6–7; 9 a.m. to 5 p.m.

Place: 1110 Vermont Avenue, NW., room 500 B&C, Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Devendra Garg, Program Director, 1800 G Street, NW., room 1108, Washington, DC 20550, Telephone: (202) 357–9542.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to Mechanical and Structural Systems.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 522b.(c) (4), and (6) of the Government in the Sunshine Act.

Dated: September 14, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–22502 Filed 9–16–92; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Neural Mechanisms of Behavior; Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meetings.

Date & Time: October 21–23, 1992, 9 a.m.–5 p.m.

Place: Vacation Village, Laguna Beach, California.

Contact Person: Kathie L. Olsen, Program Director for Neuroendocrinology, rm. 321, National Science Foundation, 1800 G St., NW., Washington, DC 20550. Telephone: (202) 357–7040.

Agenda: To review and evaluate Neuroendocrinology proposals as part of the selection process for awards.

Date & Time: November 12–13, 1992, 9 a.m.-5 p.m.

Place: Rm 500D, 1100 Vermont Avenue, Washington, DC.

Contact Person: Donald Edwards, Program Director for Cognitive Computational and Theoretical Neurobiology, rm. 321, National Science Foundation, 1800 G St., NW., Washington, DC 20550. Telephone: (202) 357–7040.

Agenda: To review and evaluate Neural Mechanisms of Behavior and Cognitive Computational and Theoretical Neurobiology proposals as part of the selection process for awards.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: September 14, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–22506 Filed 9–16–92; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Physiological Processes; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: October 22–23, 1992; 8:30 a.m. to 5 p.m.

Place: Room 523, National Science Foundation, 1800 G Street, NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Machi Dilworth, Program Director, Division of Biological Instrumentation and Resources, rm. 321, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7987.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate cellular biochemistry and metabolism research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 14, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–22487 Filed 9–16–92; 8:45 am]

BILLING CODE 7555-01-M

Division of Environmental Biology; Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463,

as amended), the National Science Foundation (NSF) announces the following meetings.

Name: Advisory Panel for Population Biology and Physiological Ecology.

Date & Time: October 10–13, 1992, 8 a.m.–5 p.m.

Place: Room 1243, National Science Foundation, Washington, DC.

Contact Person: Dr. Conrad A. Istock, Program Director, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–9728.

Agenda: To review and evaluate Population Biology proposals as part of the selection process for awards.

Name: Advisory Panel for Ecosystem Studies.

Date & Time: October 15 & 16, 1992, 8 a.m.–5 p.m.

Place: Room 500D, 1100 Vermont Ave., Washington, DC.

Contact Person: Dr. Richard Dame, Program Director, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–9734.

Agenda: To review and evaluate Ecosystem proposals as part of the selection process for awards.

Name: Advisory Panel for Ecology.

Date & Time: October 15 & 16, 1992, 8 a.m.–5 p.m.

Place: Room 500A, 1100 Vermont Ave. Washington, DC.

Contact Person: Dr. Laurel Fox, Program Director, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone (202) 357–9734.

Agenda: To review and evaluate Ecology proposals as part of the selection process for awards.

Name: Advisory Panel for Systematic Biology.

Date & Time: October 18–20, 1992, 8 a.m.–5 p.m.

Place: Room 500D, 1100 Vermont Ave. Washington, DC.

Contact Person: Dr. Rodney Honeycutt, Program Director, National Science Foundation 1800 St. NW., Washington, DC. 20550. Telephone: (202) 357–9588.

Agenda: To review and evaluate Systematic Biology proposals as part of the selection process for awards.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 14, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–22504 Filed 9–16–92; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Science Resources Studies; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: October 7–8, 1992; 8:30 a.m. to 5 p.m.

Place: NSF Conference Center, 1110 Vermont Avenue, NW., Washington, DC.

Type of Meeting: Open.

Contact Person: Dr. Carolyn Shettle, Director, Personnel Program, Division of Science Resources Studies, Rm. L–609, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 634–4664.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning the design of the surveys constituting the Scientific and Technical Personnel Data System (STPDS).

Agenda: To review and evaluate plans for the 1993 STPDS surveys.

Dated: September 14, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–22484 Filed 9–16–92; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–275–OLA–2 and 50–323–OLA–2 ASLBP No. 92–669–03–OLA–2]

Pacific Gas & Electric Co., (Construction Period Recovery); Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered.

Pacific Gas & Electric Co.

Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2 Facility Operating License Nos. DPR–80 and DPR–82

This Board is being established pursuant to a notice published by the Commission on July 22, 1992, in the **Federal Register** (57 FR 32571 and 32575) entitled, "Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing." The proposed amendment would extend the expiration date of the Operating License for Unit 1 from April 23, 2008 to September 22, 2021, and the expiration date for the Unit 2 license from December 9, 2010 to April 26, 2025.

The Board is comprised of the following administrative judges:

Charles Bechhoefer, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Jerry R. Kline, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Frederick J. Shon, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

All correspondence, documents and other materials shall be filed with the judges in accordance with 10 CFR 2.701 (1980).

Issued at Bethesda, Maryland, this 10th day of September 1992.

Robert M. Lazo,

Acting Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 92–22541 Filed 9–16–92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–322]

Long Island Power Authority; Correction

On September 3, 1992, the **Federal Register** published an Environmental Assessment and Finding of No Significant Impact, (57 FR 40481) Document 92-21215:

In the title "Long Island Power Company" should read "Long Island Power Authority."

First paragraph, line four, "Facility Operating" should read "*Possession Only.*"

First paragraph, line five, "Long Island Power Company" should read "Long Island Power Authority."

Second paragraph, line five, "February 29, 1993, should read "February 29, 1992."

Dated at Rockville, Maryland, this 10th day of September 1992.

For the Nuclear Regulatory Commission

Seymour H. Weiss,

Director, Non-Power Reactors, Decommissioning and Environmental Project Directorate, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92–22544 Filed 9–16–92; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Nuclear Waste; Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 46th meeting on Tuesday, September 22, 1992, 1 p.m. until 6 p.m., in room P-422 and Friday, September 25, 1992, 8:30 a.m. until 5 p.m., in room P-110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance, with the exception of a portion of item F that may be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6). The agenda for the subject meeting shall be as follows:

A. Prepare the next four-month plan of ACNW activities.

B. Discuss with EPA representatives results of the EPA's Science Advisory Board's recent consideration of C-14 release limits from a high-level waste repository.

C. Continue to prepare a response to a supplemental request from Chairman Selin made on April 24, 1992, on a systems analysis approach to reviewing the overall high-level waste program.

D. Discussion with and progress report by the NRC's Division of Low-Level Waste Management on the Site Decommissioning Management Plan (SDMP) list. Generic objectives and examples will be considered.

E. Review a proposed regulatory guide on 10 CFR part 20, ALARA criteria for material licensees.

F. Discuss proposed NRC regulations and their impact on the outside financial interests of members and their immediate families.

G. Discuss anticipated and proposed Committee activities, future meeting agenda, administrative, and organizational matters, as appropriate. Also, discuss matters and specific issues that were not completed during previous meetings as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. Use of still, motion picture, and television cameras during this meeting may be limited to select portions of the meeting as determined by the ACNW Chairman. The office of the ACRS is providing staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the office of the ACRS as far in advance as practical so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the Executive Director of the office of the ACRS, Mr. Raymond F. Fraley (telephone 301/492-4516), prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director or call the recording (301/492-4600) for the current schedule if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Public Law 92-463 that it is necessary to close portions of this meeting noted above to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACNW Executive Director, Mr. Raymond F. Fraley (telephone 301-492-8049), between 8 a.m. and 4:30 p.m. EST.

Dated: September 11, 1992

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 92-22540 Filed 9-16-92; 8:45 am]

BILLING CODE 7590-01-M

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Revision 3 to Regulatory Guide 1.101, "Emergency Planning and Preparedness for Nuclear Power Reactors," provides guidance on methods acceptable to the NRC staff for complying with the Commission's regulations for emergency response plans and preparedness at nuclear power reactors.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082, telephone (202) 512-2249 or (202) 512-2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 25th day of August 1992.

For the Nuclear Regulatory Commission.

C.J. Heltemes, Jr.,

Deputy Director for Generic Issues and Rulemaking, Office of Nuclear Regulatory Research.

[FR Doc. 92-22547 Filed 9-16-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-333]

Power Authority of The State of New York, (James A. FitzPatrick Nuclear Power Plant); Exemption

I.

The Power Authority of the State of New York (PASNY/licensee) is the holder of Facility Operating License No. DPR-59, which authorizes operation of the James A. FitzPatrick Nuclear Power Plant (the facility). The license provides, among other things, that the facility is subject to all rules, regulations, and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility is a boiling water reactor located at the licensee's site in Oswego County, New York.

II.

On November 19, 1980, the Commission published a revised § 50.48 and a new appendix R to 10 CFR part 50 regarding fire protection features of nuclear power plants (45 FR 76602). The revised § 50.48 and appendix R became effective on February 17, 1981.

By letter dated June 26, 1992, as revised by letter dated July 31, 1992, the licensee requested six exemptions from 10 CFR part 50, appendix R, "Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979," as a result of a recent reassessment of the Fire Protection Program at the James A. FitzPatrick Nuclear Power Plant. Specifically, the licensee is requesting exemptions from 10 CFR part 50, appendix R, sections III.L.1.b, III.L.2.b., III.G.2, III.G.3, III.L, III.J and III.G.1. The exemption requests are divided into three exemption categories: revised, new, and temporary. The revised exemptions are necessary to include additional fire areas and/or equipment. The new exemption results from the new 1992 10 CFR part 50, appendix R, reanalysis for FitzPatrick. The temporary exemptions are necessary to permit plant startup before modifications to bring the plant into compliance with appendix R can be completed.

The Commission may grant exemptions from the requirements of the regulations which, pursuant to 10 CFR 50.12(a): (1) Are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security, and (2) present special circumstances. Section 50.12(a)(2) of 10 CFR part 50 indicates the special circumstances which must be present for the Commission to consider granting an exemption.

III.

III.A Alternate Shutdown With Control Room Evacuation—(Revised)

III.A.1 Description

The licensee requests a revised exemption from the requirements of 10 CFR part 50, appendix R, sections III.L.1.b and III.L.2.b, as they apply to the James A. FitzPatrick Nuclear Power Plant, so that the reactor coolant level be permitted to drop below the top of the core during use of alternative safe shutdown procedures which includes the possibility of Control Room evacuation following a fire in any of five fire zones: (1) Control Room; (2) Relay Room; (3) Cable Spreading Room; (4) North Cable Tunnel; and (5) Battery Room Corridor.

This exemption would extend the current exemption that allows the use of alternate shutdown with Control Room evacuation to two additional fire areas: (1) Fire Area ID (North Cable Tunnel) and (2) Fire Area XVI (Battery Room Corridor). The result of this request is to treat a fire in these two areas in the same fashion as the current exemption treats a fire in Fire Area VII (Control Room, Relay Room, and Cable Spreading Room).

III.A.2 Evaluation

By letter dated April 26, 1983, the NRC approved the use of the Automatic Depressurization System (ADS) in conjunction with the Residual Heat Removal (RHR) system in the Low Pressure Coolant Injection (LPCI) mode of operation for achieving remote reactor shutdown for a fire in Fire Area VII (Control Room, Relay Room, and Cable Spreading Room).

By letter dated September 15, 1986, the NRC approved an exemption from the requirements of 10 CFR part 50, appendix R, sections III.L.1.b and III.L.2.b, so that the reactor coolant level be permitted to drop below the top of the core during the use of alternate safe shutdown following a postulated fire which renders the Control Room uninhabitable. The associated exemption request was based on an analysis which determined the amount of time available for operator action before ADS initiation was necessary. Assuming the loss of all high pressure makeup coincident with reactor scram and isolation, this analysis justified an increase in the operator response time from 10 to 30 minutes. This increase in operator action time would result in a temporary uncovery of the top of the core for a maximum duration of 150 seconds.

The proposed exemption would extend the current exemption that allows the use of alternate shutdown with Control Room evacuation to two additional fire areas: (1) Fire Area ID (North Cable Tunnel) and (2) Fire Area XVI (Battery Room Corridor).

The NRC staff has reviewed the licensee's request for exemption dated June 26, 1992, and the staff's safety evaluation associated with the exemption dated September 15, 1986. Based on this review, the staff has determined that the proposed revised exemption does not pose a threat to the fuel cladding integrity. Furthermore, the staff has determined that an operator action time of 30 minutes will not compromise the ability of the suppression pool to condense steam in a stable condition during steam discharge via safety/relief valves, or compromise the integrity of the suppression pool. The NRC staff finds that our original conclusions for Fire Area VII (Control Room, Relay Room, and Cable Spreading Room) are valid for the two new areas; i.e., Fire Area ID (North Cable Tunnel) and Fire Area XVI (Battery Room Corridor). Therefore, the NRC staff finds that the revised exemption is acceptable.

III.B Torus Room—(Revised)

III.B.1 Description

The licensee requests a revised exemption from the requirements of 10 CFR part 50, appendix R, sections III.G.2, III.G.3, and III.L, as they apply to the James A. FitzPatrick Nuclear Power Plant, with respect to the separation of redundant safe shutdown circuits in that they are not in accordance with section III.G.2 and alternate shutdown capability has not been provided in accordance with sections III.G.3 and III.L in the Torus Room (Fire Area XV).

This exemption would revise the current exemption to more accurately reflect the equipment in the Torus Room. It would also provide a revised technical basis for the exemption to reflect the new area description.

III. B.2 Evaluation

On July 1, 1983, the NRC approved an exemption from the provisions of sections III.G.2, III.G.3, and III.L of 10 CFR part 50, appendix R, to the extent that separation and/or fire protection of redundant shutdown divisions or the installation of an alternate shutdown capability is required for the Torus Room. The licensee justified the exemption request by stating that: the area contains only the suppression pool and is a controlled access area bounded on all sides by 3-hours fire-rated masonry construction; there are no combustible materials and no significant fire hazards in the area; and the shutdown-related components in the area consist only for the RHR suction valves of both divisions which were disabled in the open position. This description of the Torus Room did not accurately reflect the Torus Room and the equipment in the Torus Room.

The proposed revised exemption is from the requirement of 10 CFR part 50, appendix R, sections III.G.2, III.G.3, and III.L, with respect to the separation of redundant safe shutdown circuits in that they are not in accordance with section III.G.2 and alternate shutdown capability has not been provided in accordance with sections III.G.3 and III.L in the Torus Room (Fire Area XV). This exemption request revises the July

1, 1983, exemption to more accurately reflect the equipment in the Torus Room and the unsealed penetrations of this room.

The Torus Room (Fire Area XV) is located in the Reactor Building and is bound on all sides by masonry construction. The floor and more than half of the walls of the Torus Room are below grade, adjacent to the exterior and thus not an issue since fire propagation from the exterior is not a concern. The walls that separate the Torus Room from the crescent areas (Fire Areas XVII and XVIII) are 3-feet thick reinforced concrete. The ceiling that separates the Torus Room from Reactor Building elevation 272' (Fire Areas IX and X) is 2-foot thick reinforced concrete. The Torus Room is essentially devoid of exposed combustibles.

The licensee has identified unsealed penetrations in the stated walls and ceiling. The licensee has evaluated the subject walls and ceiling and has determined that they are adequate fire area boundaries for the Torus Room. Specifically, a fire is not expected to damage circuits and/or equipment in the Torus Room via the unrated and/or unsealed openings. Furthermore, in the unlikely event that such a fire did cause damage in the Torus Room, the damage would not cause loss of redundant safe shutdown capability.

The Torus Room contains the torus, valves, pipes, non-combustible insulation, instrument tubes, and cables installed in conduits. In the subject exemption dated July 1, 1983, the description of the Torus Room stated that shutdown-related components in the area consist only of the RHR pump suction valves for both division. In the revised exemption request dated June 26, 1992, as revised on July 31, 1992, the licensee identified other shutdown system components located in the Torus Room. However, the licensee's evaluation concluded that even with the additional shutdown system components in the Torus Room, adequate safe shutdown capability remains available in the event of a fire.

The NRC staff has reviewed the licensee's request for exemption dated June 26, 1992, as revised on July 31, 1992, and the staff's safety evaluation associated with the exemption dated July 1, 1983. Based on this review, the staff has determined that our original conclusion for the Torus Room (Fire Area XV) remains valid given the new description of the area. Specifically, we conclude that the modifications required to achieve compliance with sections III.G.2, III.G.3, and III.L of 10 CFR part 50, appendix R, would not significantly enhance the level of safety above that provided by the existing fire protection. Therefore, the NRC staff finds that the revised exemption is acceptable.

III.C Outdoor 8-Hour Appendix R Lighting—(New)

III.C.1 Description

The licensee requests an exemption from the requirements of 10 CFR part 50, appendix R, section III.J, as they apply to the James A. FitzPatrick Nuclear Power Plant, which mandate permanently installed 8-hour appendix R lighting in outdoor areas. The requested exemption is to use general outdoor lights, outdoor security lights, vehicle headlights and/or flashlights for exterior access and egress routes not only for the fire areas listed in this exemption request, but for any fire area where exterior access and egress routes may be used.

A fire in Fire Area ID, VII, IX, X, XI, XV, XVII, or XVIII requires operator actions in the Containment Atmosphere Dilution (CAD) housing which is reached via exterior access and egress routes. A fire in Fire Area IV, VII, or XVI requires the transport of equipment from the warehouse to the plant. Operator actions take place inside buildings or next to doors where interior 8-hour Appendix R lighting is available.

III.C.2 Evaluation

The licensee requests an exemption from the requirements of 10 CFR part 50, appendix R, section III.J, that mandate permanently installed 8-hour appendix R lighting in outdoor areas. The requested exemption is to use general outdoor lights, outdoor security lights, vehicle headlights and/or flashlights for exterior access and egress routes not only for the fire areas listed in this exemption request, but for any fire area where exterior access and egress routes may be used.

The fire areas and fire zones affected are:

Fire area	Fire zone	Area description
ID	CT-4	North Cable Tunnel el. 278'.
IV	BR-3	Battery Room 3 el. 272'.
	BR-4	Battery Room 4 el. 272'.
VII	CR-1	Control Room el. 300'.
	RR-1	Relay Room el. 284'.
	CS-1	Cable Spreading Room el. 272'.
IX	SB-1	Standby Gas Filter Room el. 272'.
	RB-1A	Reactor Building East Side el. 272'. Southeast Quadrant el. 300', and entire Floor on el. 326', el. 344', and el. 369'.
X	RB-1B	Reactor Building East Side el. 272' and Southwest Quadrant el. 300'.
XI	CT-3	South Cable Tunnel el. 286'.
XV	SU-1	Torus Room.
XVI	BR-5	Battery Room Corridor el. 272'.
XVII	RB-1E	Reactor Building East Crescent Area el. 227'.
XVIII	RB-1W	Reactor Building West Crescent Area el. 227'.
YARD	CAD-1	West End of Containment Air Dilution Building.
	CAD-2	East End of Containment Air Dilution Building.
	CST-V	Condensate Storage Tank Concrete Vault.
	MH-2	Manhole No. 2 Located East of Reactor Building and South of Auxiliary Boiler Room.

The licensee's technical justification for this proposed new exemption states that for locations inside buildings where access, egress, and operator actions are required for appendix R safe shutdown, 8-hour appendix R lighting has been or will be installed prior to startup from the current refueling outage. Only the outdoor areas that provide access/egress for many of these indoor areas do not have 8-hour battery powered emergency lights as required by section III.J of 10 CFR part 50, appendix R. However, lighting is provided by general outdoor lights, outdoor security lights, vehicle headlights and/or flashlights.

The NRC staff has reviewed the licensee's technical justification and bases supporting this exemption request. The staff concludes that adequate lighting will be provided for all outdoor locations that serve as access/egress routes to and from areas required for operator actions during fires. Therefore, the NRC staff finds that this new exemption is acceptable.

III.D Pump Room Ventilation—(Temporary)

III.D.1 Description

The licensee requests a temporary exemption from the requirements of 10 CFR part 50, appendix R, section III.G.1, as they apply to the James A. Fitzpatrick Nuclear Power Plant, with respect to the ventilation systems in the Emergency Service Water (ESW) and Residual Heat Removal Service Water (RHRSW) Pump Rooms (Fire Areas XII and XIII) being free of fire damage. The exemption is needed until the modifications can be completed to assure that one division of RHRSW and ESW pumps and either the electric-driven fire pump or diesel-driven fire pump and their associated ventilation systems will be available in the event of a fire in Fire Areas IB or II. The modifications are scheduled to be completed prior to startup form the

Reload 11/Cycle 12 refueling outage which is currently scheduled to begin in October 1993. Interim compensatory actions will be implemented until the modifications are completed.

III.D.2 Evaluation

The RHRSW A Pump and C Pump, the ESW A Pump, and the Electric Fire Pump are located in the North Safety Related Pump Room (Fire Area XIII). The RHRSW B Pump and D Pump as well as the ESW B Pump are located in the South Safety Related Pump Room (Fire Area XII). The Diesel Fire Pump is located in the West Diesel Fire Pump Room (Fire Area IB). These rooms are separate compartments in the Screenwell House. Air to cool these compartments is drawn and exhausted through openings in the Screenwell House. Control Panels for the exhaust fans serving these compartments are located in the Screenwell House approximately 10 feet apart.

A fire in the Screenwell House (Fire Area IB/Fire Zone SH–13) could damage the Control Panels which could deenergize the exhaust fans. Additionally, the fire could close the dampers in the room air intakes. A fire in the East Cable Tunnel (Fire Area II/ Fire Zone CT–2) could damage cables which could denergize the exhaust fans. The loss of cooling to these compartments when the pumps are operating could cause the pumps to overheat and fail.

The licensee is in the process of developing modifications that will assure that ventilation is available to one division of RHRSW and ESW and either the electric- or diesel-driven fire pump in the event of a fire in the Screenwell House or in the East Cable tunnel. However, it is anticipated that the modifications will be extensive and, due to the procurement of long lead time equipment, will require approximately 18 months to complete. The licensee has proposed interim compensatory actions until the above stated modifications are complete. These interim compensatory actions are as follows:

(a) Close fire doors 76FDR–SP–255–2 and 76FDR–SP–255–4 to assure separation between the North and South Safety Related Pump Rooms and the East Cable tunnel.

(b) Close fire damper 73FD–1F to assure separation between the North Safety Related Pump Room and the West Diesel Fire Pump Room.

(c) ETLs associated with four fire dampers (73–FD–1A, 73–FD–1B, 73–FD–1C, and 73–FD–1D) will be replaced with 165 degree F fusible links (closure of the dampers is annunciated in the Control Room).

(d) Modify the fire detection circuitry to assure that two fans (73FN–3A and 73FN–3B) will not stop in the event of detection activation. The existing logic circuitry turns these fans off if the associated thermal detector in the area is activated.

(e) Combustible free zones will be established around Control Panels 73HV-11B and 73HV–11A and around fire dampers 73FD–1A, 73FD–1B, 73FD–1C, and 73FD-1D.

(f) Portable smoke ejectors will be readily available to ventilate the North Safety Related Pump Room in the unlikely event of a fire. The operations staff and the plant fire brigade will be instructed on the purpose of these ejectors.

(g) Establish a 1-hour roving fire watch who will be instructed to assure that the combustible free zones are maintained.

The NRC staff has reviewed the licensee's technical justification, bases, and interim compensatory actions supporting this temporary exemption request. The staff has determined that early detection is assured by thermal fire detection, area smoke detection, and high area temperature detection, all of which alarm in the Control Room. Furthermore, early detection capability is augmented by the stated fire watch, who also serves to manage combustible material levels. The staff concludes that the interim compensatory actions, in addition to the current level of fire protection and detection, provide an equivalent level of protection as that provided by strict compliance with 10 CFR part 50, appendix R, section III.G.1. Furthermore, the exemption provides only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation. Therefore, the NRC staff finds that this temporary exemption is acceptable.

III.E Cable Tunnel Suppression Systems—(Temporary)

III.E.1 Description

The licensee requests a temporary exemption from the requirements of 10 CFR part 50, appendix R, sections III.G.2 and III.G.3, as they apply to the James A. FitzPatrick Nuclear Power Plant, with respect to a full area suppression system being required in the West Cable Tunnel (Fire Area IC) to protect redundant circuits that are installed in this area. The exemption is needed until modifications can be completed to provide fire suppression adequate for the hazards present. Interim compensatory actions will be implemented until the modifications are completed.

In addition, a full area suppression system is being installed in the East Cable Tunnel (Fire Area II). The inoperability of the existing suppression system is governed by the requirements of Branch Technical Position (BTP) 9.5-1, appendix A, and the Technical Specifications.

III.E.2 Evaluation

On January 15, 1992, the licensee declared the automatic fire suppression systems in the East and West Cable Tunnels inoperable. The systems were declared inoperable after a review of the hydraulic design calculations indicated that the spray systems did not provide adequate coverage. Although the existing systems have been declared inoperable, they are still available, and provide a level of protection. The licensee has developed modifications to the cable tunnel suppression systems. The installation of the new systems will be done in series so that at least one tunnel has an available suppression system. The modifications will be completed no later than July 31, 1993.

Early detection of a fire in either tunnel is provided by an existing automatic ionization smoke detection system. This system provides indication of a fire to operators in the Control Room. Fire suppression capabilities include portable carbon dioxide fire extinguishers installed throughout each tunnel and backup manual fire suppression available with installed hose stations throughout each tunnel as well as hose stations in adjacent areas. In addition to the stated fire detection and suppression capabilities, the licensee will implement interim compensatory actions until fire suppression systems capable of providing coverage adequate for the East and West Cable tunnels can be installed. These compensatory actions are a continuous fire watch that will be posted in each tunnel and daily walkdowns to assure that transient combustibles in each tunnel are held to an absolute minimum.

The NRC staff has reviewed the licensee's technical justification, bases, and interim compensatory actions supporting this temporary exemption request. The staff concludes that the interim compensatory actions, in addition to the current level of fire protection and detection, provide an equivalent level of protection as that provided by strict compliance with 10 CFR part 50, appendix R, sections III.G.2 and III.G.3. Furthermore, the exemption provides only temporary relief from the

applicable regulation and the licensee has made good faith efforts to comply with the regulation. Therefore, the NRC staff finds that this temporary exemption is acceptable.

III.F Piping Penetrations—(Temporary)

III.F.1 Description

The licensee requests a temporary exemption from the requirements of 10 CFR part 50, appendix R, section III.G.2, as they apply to the James A. FitzPatrick Nuclear Power Plant with respect to 3-hour-rated fire barrier penetration seals. The exemption is needed until concerns associated with bondstrand, greenthread, and PVC (polyvinyl chloride) piping penetrations can be resolved and modifications can be completed to assure separation by a 3-hour-rated fire barrier. Interim compensatory actions will be implemented until the modifications are completed. The modifications are scheduled to be completed by November 30, 1992.

III.F.2 Evaluation

During a recent fire barrier penetration seal baseline inspection, the licensee identified several fire barrier penetrations that have penetrating items of bondstrand, greenthread, or PVC piping. In accordance with the requirements of FitzPatrick Technical Specification Section 3.12.F, "Fire Barrier Penetration Seals," the licensee declared the penetrations inoperable because of a lack of qualifying tests and the potential of the piping to degrade the existing 3-hour-rated fire barrier penetration seals. Subsequently, the licensee identified additional bondstrand, greenthread, and PVC piping penetrations and declared them inoperable. Preliminary testing of typical bondstrand, greenthread, and PVC piping penetration configurations has revealed that the ability of penetration seals of closed (or non-vented) piping systems to meet the requirements for a 3-hour-rated fire barrier penetration seal is highly probable. However, the ability of penetration seals of open (or vented) piping systems to meet the requirements for a 3-hour-rated fire barrier penetration seal is questionable.

The licensee proposes to implement hourly fire watch patrols in each of the fire areas where bondstrand, greenthread, or PVC piping systems penetrate 3-hour-rated fire barriers. This compensatory action will be taken in conjunction with existing fire protection features which include automatic suppression and/or detection systems, manual hose stations and portable fire extinguishers, and the trained on-site fire brigade.

The NRC staff has reviewed the licensee's technical justification, bases, and interim compensatory actions supporting this temporary exemption request. The staff concludes that the interim compensatory actions, in addition to the current level of fire protection and detection, provide an equivalent level of protection as that provided by strict compliance with 10 CFR part 50, appendix R, section III.G.2. Furthermore, the exemption provides only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation. Therefore, the NRC staff finds that this temporary exemption is acceptable.

IV.

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that the exemptions as described in section III: (1) are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security, and (2) present special circumstances.

Accordingly, the Commission hereby grants the exemptions from the requirements of sections III.L.1.b, III.L.2.b, III.G.2, III.G.3, III.L, III.J, and III.G.1. as described in section III.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of these exemptions would have no significant effect on the quality of the human environment (57 FR 40701).

These exemptions are effective upon issuance.

Dated at Rockville, Maryland, this 10th day of September.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92-22545 Filed 9-16-92; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-31170; File No. SR-MCC-92-06]

Self-Regulatory Organizations; Midwest Clearing Corp. Filing of Proposed Rule Change To Reduce the Time Frames for Processing Dividend Settlement Service Claims

September 10, 1922.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 15, 1992, the Midwest Clearing Corporation ("MCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, III below, which Items have been prepared mainly by MCC, a self-regulatory organization ("SRO"). The Commission is published this notice to solicit comments on the proposed rule change from interested persons.

I. SRO's Statement of the Terms of Substance of the Proposed Rule Change

The proposal amends Article V, Rule 7, section 4 of MCC's Rules to shorten the time frames in which a Claim Form must be delivered by a participant who has filed a claim against another participant for dividends or bond interest. Specifically, the proposed rule change reduces the time frames for delivering the applicable Claim Form from ten business days to five business days and from twenty business days to ten business days for items aged six months or more.

II. SRO'S Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the SRO included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The SRO has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. SRO's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to expedite the settlement of claims for dividends or bond interest by shortening the time frame in which the Corporation requires delivery of Claim Forms by participants who are filing such claims against other participants. Under the Dividend Settlement Service ("DSS"), MCC will continue to process and settle the claims for dividends and registered bond interest. Before participants submit claims against other participants under the DSS, they must deliver to MCC a Notice of Intent which must include either documents which establish the basis for a claim or a written explanation of the basis for the claim.

[1] 15 U.S.C. 78s(b)(1) (1988).

The current rules require the claiming participant to deliver two copies of a Claim Form to the participant against whom the claim is made and to do so within ten business days after delivering the Notice of Intent. Where the Notice of Intent is delivered six months or more after the record date of the dividend or interest claimed, the Claim Form must be delivered within twenty business days after the delivery of the Notice of Intent. Both the Notice of Intent and Claim Form are delivered through the facilities of MCC.

Once MCC receives the Notice of Intent and Claim Form, MCC distributes the Claim Form to the participant against whom the claim is made on the same day the Claim Form is received. MCC's rules require such participant to respond to the Claim Form by a Charge Date which appears on the Claim Form.

A participant who receives a Claim Form may honor it or file an "Intent Rejection" with MCC. If an Intent Rejection is filed, the participants may settle the matter between themselves or may submit the matter to arbitration. Failure to respond to a Claim Form will result in MCC debiting the account of the participant who failed to respond and crediting the account of the claiming participant. The proposed rule change, by shortening the time limits for the delivery of Claim Forms, will help participants resolve claims and disputes regarding dividends and interest claims more quickly.

MCC states that the proposed rule change is consistent with the purposes and requirements of Section 17A of the Act [2] in that it provides for the prompt, accurate, and efficient clearance and settlement of securities transactions.

B. SRO's Statement on Burden on Competition.

MCC believes that the proposed rule change will impose no burden on completion.

C. SRO'S Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for such finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule changes or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal office of MCC. All submissions should refer to File No. SR-MCC-92-06 and should be submitted by October 8, 1992.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland

Deputy Secretary.

[FR Doc. 92-22429 Filed 9-16-92; 8:45 am]

BILLING CODE 8010-01-M

[2] 15 U.S.C. 78q-1 (1988).

[3] 17 CFR 200.30V3(A)(12) (1991).

[Release No. 34-31169; File No. SR-OCC-92-13]

Self-Regulatory Organizations; The Options Clearing Corporation; Proposed Rule Change Relating to the Valuation Rate Applied to Deposits of Valued Securities

September 10, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,[1] notice is hereby given that on May 4, 1992, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-OCC-92-13) as described in Items I, II, and III below, which Items have been prepared by OCC, a self-regulatory organization ("SRO"). On June 8, 1992, OCC filed an amendment, which also is described below. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. SRO's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will amend the rate at which OCC values Clearing Member deposits of valued securities for margin purposes.

II. SRO's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the SRO included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The SRO has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. SRO's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this proposed rule change is to amend the rate used to value debt and equity issues deposited for margin purposes pursuant to OCC Rule 604(d)(1).[2] Currently, OCC values on a daily basis deposits of equity and debt issues at the previous maximum loan value (*i.e.*, 50%) permitted under the provisions of Regulation U of the Board of Governors of the Federal Reserve System ("FRB").[3] The proposed amendments will permit OCC to value deposits of these forms of margin at 70% of their current market value or at such lower rate as determined by OCC's Membership/Margin Committee.[4] OCC will similarly amend Rule 705 which relates to the forms of margin that may be deposited in cross-margin accounts.[5]

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] OCC Rule 604(d)(1) sets forth the requirements for the use of equity and debt issues as forms of margin.

[3] 12 CFR 221 (1991).

[4] The Membership/Margin Committee is a committee of six OCC Board members that reviews membership applications and makes margin policy. Telephone conversation between Jean Cawley, Staff Counsel, OCC, and Thomas C. Etter, Jr., Attorney, Division of Market Regulation, Commission (May 7, 1992).

[5] With this rule filing, OCC proposes to amend Rule 705 to provide that common stock may be deposited as margin in cross-margin accounts only if mutually acceptable to OCC and the Participating Commodities Clearing Organization ("CCO"). If so accepted, such deposits would be valued in accordance with the cross-margin agreement between OCC and the Participating CCO. This amendment is intended to preserve OCC's and the Participating CCO's rights to determine whether they will accept common stock as a form of margin

Continued

OCC also proposes in its June 8, 1992 amendment to this filing to delete Interpretations and Policies ("I&P") .09 to Rule 604. I&P .09 provides that for margin purposes equity and debt issues shall not be valued in excess of 50% of their current market value.[6]

(1) Background

In 1975, OCC proposed to institute a program through which OCC would accept deposits of common stocks as clearing margin collateral [*i.e.*, "valued securities program" under Rule 604(d)]. Stocks so deposited would have been valued at no more than 70% of current market value. The novelty of the program, however, resulted in extensive regulatory review by the staffs of the FRB and the Commission. Through this process, several significant changes were made to the valued securities program as initially proposed.[7] First, OCC was permitted to accept deposits of stock for margin purposes provided that such stock meet certain financial standards. As is the case today, in order to be eligible for deposit a stock was required to (i) have a-market price of greater than $10 a share and (ii) be either traded on a national securities exchange or designated as a National Market System Security. Second, in adopting Rule 604(d), OCC agreed to value such deposits at no more than the then maximum loan value prescribed by the FRB in Regulation U and agreed not to change such valuation without the consent of the FRB. The maximum loan value under Regulation U was and currently is 50% of current market value.

(2) OCC's Valued Securities Program

OCC has accepted deposits of common stock as clearing margin since 1985 and, accordingly, has gained substantial experience in operating what is a mature, well-defined program. The valued securities program has been successful in reducing OCC's reliance on letters of credit by expanding acceptable forms of margin deposits. It also has enhanced the efficiency of Clearing Member capital allocation.[8]

OCC states that, from the program's commencement, Clearing Members have requested that deposits of stock be valued at 70% of current market value, but OCC was unable to accommodate their requests because of its agreement with the FRB's staff. OCC, however, states that it has now been advised by the FRB's staff that favorable consideration might be given to a proposal to increase the valuation rate applied to deposits of debt and equity issues. OCC, therefore, proposes to value deposits of stocks and bonds for margin purposes at 70% of their current market value or at such lesser value as OCC's Membership/Margin Committee may prescribe from time to time with respect to such stocks or bonds.

OCC believes that the proposed valuation rate is prudent and establishes an appropriately safe level of protection for OCC as it is consistent with subsections (c)(2)(vi) (F), (G), (H), and (J) of Securities Exchange Act Rule 15c3–1 applicable to nonconvertible debt securities, convertible debt securities, preferred stock, and common stock.[9] As necessary, OCC's Membership/Margin Committee has the authority to prescribe a lower valuation rate from time to time. Rule 604(d)(1) further precludes the deposit of any issue that is suspended from trading by its primary market or is subject to special margin requirements imposed by that market. In OCC's view, these provisions, coupled with the threshold eligibility standards, create sufficient safeguards for its protection. OCC also believes that this proposal will further reduce its reliance on letters of credit.

OCC believes that the proposed rule change is consistent with section 17A of the Act [10] because it reduces costs to persons facilitating transactions by and acting on behalf of public investors without adversely affecting OCC's ability to safeguard funds and securities in its custody or control or for which it is responsible.

B. SRO's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. SRO's Statement on Comments on the Proposed Rule Change Received from Members, Participant or Others

Written comments were not solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the SRO consents, the Commission will:

(A) By order approve the proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to File Number SR–OCC–92–13 and should be submitted by October 8, 1992.

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collateral and provides a means for OCC and the Participating CCO to value these deposits without OCC's needing to further amend Rule 705.

[6] OCC notes in its proposal that I&P .09 to Rule 604 was approved by the Commission in Securities Exchange Act Release No. 29576 (August 16, 1991), 56 FR 41873 (File No. SR–OCC–88–03) but was never added to OCC's rulebook. As a result, a later I&P to Rule 604, which was approved by the Commission, was numbered and entered into OCC's rulebook as I&P .09. Securities Exchange Act Release No. 29920 (November 15, 1991), 56 FR 58105 [File No. SR–OCC–91–04]. Thus, there are currently two I&P .09s to Rule 604. OCC states that the proposed amendment, among other things, will correct this situation.

[7] In connection with a comprehensive revision to Regulation T in 1983, the FRB adopted § 220.14(b) [12 CFR 220.14(b)] which exempted the deposit of margin securities with a registered options clearing agency from Regulation T's provisions. [Regulation T; Credit by Brokers and Dealers, FRB Docket No. R–0500 (March 7, 1984), 49 FR 9559]. With this amendment, OCC understood that the deposit of such securities with a registered options clearing agency would also be exempt under Regulation G. In 1991, the FRB adopted an amendment to § 207.1(b)(2) of Regulation G [12 CFR 207.1(b)(2)] to specifically provide for this exemption. [Amendments to Margin Regulations To Accommodate Deposit Requirements of Regulated Clearing Agencies, FRB Docket No. R–0732 (September 4, 1991), 56 FR 46109].

[8] Since margin securities are the major source of collateral for letters of credit, OCC's valued securities program was designed to eliminate an intermediate step, which involved the deposit of margin securities at a bank in return for a letter of credit, taken by Clearing Members.

[9] Uniform Net Capital Rule, 17 CFR 240.15c3–1 (1991).

[10] 15 U.S.C. 78q–1 (1988).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-22430 Filed 9-16-92; 8:45 am]

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[Release No. 34-31173; International Series Release No. 454; File No. SR-OCC-92-18]

Self-Regulatory Organizations; The Options Clearing Corp.; Filing of a Proposed Rule Change Relating to Agreement for Services with International Clearing Systems, Inc.

September 10, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 21, 1992, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would permit OCC to enter into an Agreement for Services with its wholly-owned subsidiary, International Clearing Systems, Inc. ("ICSI") whereby OCC would provide administrative and operational services related to the netting of foreign exchange transactions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On October 12, 1988, the Commission issued an Order [2] approving a proposed rule change of OCC, authorizing OCC to invest excess funds in a wholly-owned subsidiary, ICSI, to develop data processing and communications services for foreign currency exchange transactions and related collateral and settlement obligations. As contemplated by the Order, OCC has established and invested funds in ICSI to provide ICSI with the operational capability to provide data processing and other support services to clearing houses or banking entities that process, clear, and settle foreign currency transactions. ICSI is a separate corporate entity from OCC.

In accordance with the terms of the Commission's Order, OCC has agreed to submit the appropriate documents establishing the parameters of any OCC/ICSI service agreement to the Commission for review under section 19 of the Act.[3] OCC intends to perform facilities management services for ICSI as contemplated by the services agreement. The services are largely administrative in nature. OCC, in its sole discretion will determine which of its facilities and personnel, and what percentage of their time, will be devoted to the affairs of ICSI.

After ICSI is operational, it is intended to be self-supporting and obtain revenues by charging fees to its users. Because OCC and ICSI are structured as separate corporations, OCC will not be legally responsible for ICSI's future debts and liabilities. OCC has taken appropriate measures to ensure that its involvement with ICSI does not adversely affect OCC's ability to conduct its clearance and settlement activities or to satisfy its statutory obligations under section 17A of the Act.[4]

The proposed rule change is consistent with the purposes and requirements of section 17A of the Act [5] because the operation of ICSI may also provide OCC and its members with indirect benefits. ICSI is designed to recover its costs and make a profit, so it may provide OCC with a return on its investment that could be used to fulfill its responsibilities under section 17A of the Act.[6] Moreover, existing OCC members are expected to use ICSI to more efficiently handle their foreign currency trade operations.

B. Self-Regulatory Organization's Statement on the Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

With thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if its funds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to File No. SR-OCC-92-18 and should be submitted by October 8, 1992.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-22428 Filed 9-16-92; 8:45 am]

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[11] 17 CFR 200.30-3(a)(12) (1991).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Release No. 26171 (March 2, 1988), 53 FR 7616 [File No. SR-OCC-87-20].

[3] 15 U.S.C. 78s (1988).

[4] 15 U.S.C. 78q-1 (1988).

[5] *Id.*

[6] *Id.*

[Release No. 34-31172; File No. SR-PSE-92-25]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Notice of Filing of and Order Granting Accelerated Approval to Proposed Rule Change Extending the Effectiveness of the PSE's Ten-Up Pilot Program

September 10, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and rule 19b-4 thereunder,[2] the Pacific Stock Exchange, Inc. ("PSE" or "Exchange"), on July 27, 1992, filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to extend the Exchange's Trading Crowd Firm Disseminated Market Quote ("ten-up Rule") pilot program through November 13, 1992.[3] The text of the proposed rule change is available at the Compliance Department of the PSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In May 1990, the Commission approved the Exchange's ten-up Rule on a one-year pilot basis.[4] The Exchange subsequently obtained Commission approval to extend the ten-up pilot program through August 14, 1992.[5] The PSE is now requesting a three-month extension of the pilot program through November 13, 1992, in order to complete its evaluation of the effectiveness of the program. In particular, the PSE states that the extension of the ten-up pilot program will enable the Exchange: (1) To complete its evaluation of the program and its effect on the public and member and member organizations and (2) to continue the benefits to the public resulting from the implementation of the ten-up Rule during the evaluation process. Upon completion of its evaluation, the PSE represents that it will submit a proposal requesting permanent approval of the rule.

The PSE believes the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it promotes just and equitable principles of trade.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes a burden on competition.

(c) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that the proposed rule change be given accelerated approval pursuant to section 19(b)(2) of the Act. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, and, in particular, the requirements of sections 6, 11(b), and 11A thereunder, in that it will result in improved quality of PSE options markets and better market maker performances. The ten-up rule provides public customers with the assurance of order execution to a minimum depth of ten contracts at the best disseminated bid or offer. This results in better executions of small customer orders by ensuring greater depth to the PSE's options markets.[6]

The Commission notes, as it has in prior orders extending the ten-up rule, that the Exchange, before seeking permanent approval of the rule, is expected to study the operation of the ten-up rule and its effect, if any, on the PSE's options markets. Specifically, the Exchange should study the effect of the ten-up rule on the speed of execution of trades, its impact on average bid/ask spreads and any increase or decrease in market depth. The Commission also expects that the Exchange will provide a report to the Commission on its findings on these matters, along with any violations of the ten-up rule and any complaints about its operation, prior to filing a proposal for permanent approval of the ten-up rule. The Commission expects the evaluation to be submitted no later than October 1, 1992.

Specifically, before requesting permanent approval of the pilot program the PSE must submit by October 1, 1992, a pilot program report that addresses: (1) Whether there have been any complaints regarding the operation of the pilot; (2) whether the PSE has taken any disciplinary action against any member due to the operation of the pilot; (3) the extent to which the pilot has been used on the PSE; and (4) the impact of the pilot on bid/ask spreads, depth and liquidity of in PSE options markets.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** because of the importance that the Ten-Up pilot program continue uninterrupted. A three-month extension of the pilot also will provide the PSE with additional time to study the effectiveness of the ten-up rule in improving the quality of PSE options markets and market maker performance. The PSE's study would be a significant factor in the Commission's analysis of any future PSE filing for permanent approval of the ten-up rule. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with Section 6 of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW.,

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1991).

[3] The Exchange's ten-up Rule requires PSE trading crowds to provide a depth of ten contracts for all non-broker/dealer customer orders, at the disseminated market quote at the time such orders are announced or displayed at a trading post. See Securities Exchange Act Release No. 28021 (May 16, 1990), 55 FR 21131 (Ten-Up Approval Order).

[4] *Id.*

[5] See Securities Exchange Act Release Nos. 29325 (June 17, 1991), 56 FR 29300 (First Extension); 29909 (November 6, 1991), 56 FR 57914 (Second Extension); 30418 (February 28, 1992), 57 FR 7832 (Third Extension); and 30841 (June 19, 1992), 57 FR 29111 (Fourth Extension).

[6] *See supra* note 3.

Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR-PSE-92-25 and should be submitted by October 8, 1992.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR-PSE-92-25) is approved until November 13, 1992, on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-22432 Filed 9-16-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31171; International Series Release No. 452; File No. SR-PHLX-91-41]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Agent/Principal Trading Restrictions During Foreign Currency Option Trading Sessions

September 10, 1992.

On October 16, 1991, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to provide that the expansion of foreign currency option trading hours corresponding to a late night/early morning trading session is separate and distinct from the day and evening trading sessions for purposes of the Exchange's agent/principal trading restrictions imposed on Registered Options Traders ("ROTs"). The agent/principal trading prohibition provides that, with respect to an option on the same underlying interest, a ROT cannot act as a floor broker and trade for his own proprietary account during the same trading session.

The proposed rule change was published in Securities Exchange Act Release No. 30417 (February 26, 1992), 57 FR 7835. No comments were received on the proposed rule change. This order approves the proposal.

The Exchange proposes to amend Commentary .16 to PHLX Rule 1014 in order to address the expansion of the Exchange's foreign currency options trading hours to include a late night/early morning trading session and clarify the application of the prohibition contained in PHLX Rule 1014(e) regarding the agent/principal trading restriction imposed on ROTs during the same trading session. Specifically, the PHLX proposal would delete reference to the specific time periods that constitute foreign currency options trading sessions and provide that the trading sessions established by the PHLX's Board of Governors shall be considered separate sessions for purposes of the prohibitions contained in PHLX Rule 1014(e). Currently, Commentary .16 to PHLX Rule 1014 separates trading sessions on the Foreign Currency Options Floor into a daytime session from 8 a.m. to 2:30 p.m. and an evening session from 7 p.m. to 11 p.m.[3]

Under PHLX Rule 1014(e), with respect to options on the same underlying security, a ROT is prohibited from acting as a market maker and as a floor broker who executes off-floor orders during the same trading session. The purpose of this provision is to avoid the possibility that a market maker may trade ahead of a customer order or otherwise take advantage of a customer account in conducting proprietary trading activities. Currently, the daytime trading sessions during the hours of 8 a.m. and 2:30 p.m. are considered separate and distinct from the evening trading sessions during the hours of 7:00 p.m. and 11:00 p.m. The proposed rule change is designed to reflect the addition of the late night/early morning trading session so that there are now three segments of the trading day for foreign currency options: (1) the late night/early morning session from 12:30 a.m. to 8:00 a.m. (EDT); (2) the day session from 8:00 a.m. to 2:30 p.m. EDT; and (3) the night session from 6:00 p.m. to 10:00 p.m. EDT.[4] Under the proposal, the restrictions in Rule 1014(e) will apply to each trading segment separately. Accordingly, the proposal will permit a ROT to act as a floor broker or a market maker during different trading sessions on a particular day without running afoul of the restriction in PHLX Rule 1014(e).

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) and the rules and regulations thereunder. The Commission believes that treating each trading session as separate and distinct from each other for purposes of the agent/principal trading restrictions contained in PHLX Rule 1014(e) is reasonable and consistent with the manner in which the PHLX treats these trading sessions. Specifically, the Commission notes that the Exchange ceases trading and commences a new trading rotation for foreign currency options at 8 a.m. (EDT), thereby segregating the trading day into three distinct "trading sessions" noted above. Moreover, the Commission does not believe that limiting the dual trading prohibition to each distinct foreign currency options trading session will compromise the investor protection concerns underlying the existence of the trading restriction. Under the PHLX proposal, ROTs will still be prohibited from engaging in dual trading during each trading session thereby, ensuring, among other things, that ROTs will not be able to trade in their proprietary account on the basis of information gleaned from customer orders to the disadvantage of customer orders.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change (SR-PHLX-91-41) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-22431 Filed 9-16-92; 8:45 am]

BILLING CODE 8010-01-M

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[7] 15 U.S.C. 78s(b)(2) (1982).

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1989).

[3] The PHLX expanded its foreign currency options trading hours on September 20, 1990, in order to coincide with the afternoon business hours in Japan and the Far East. The foreign currency options trading hours on the Exchange are 18 hours in duration lasting from 7 p.m. to 11 p.m. (EDT) and 12:30 a.m. to 2:30 p.m. (EDT). See Securities Exchange Act Release No. 28470 (September 25, 1990), 55 FR 40253.

[4] *See* Securities Exchange Act Release No. 30417 (February 26, 1992), 57 FR 7835.

[5] 15 U.S.C. 78s(b)(2) (1982).

[6] 17 CFR 200.30-3(a)(12) (1990).

SMALL BUSINESS ADMINISTRATION

Region I Advisory Council; Public Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Concord, will hold a public meeting at 10 a.m. on Tuesday, September 22, 1992, in the Stewart Nelson Plaza building, Suite 202, 143 N. Main Street, Concord, New Hampshire, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. William K. Phillips, District Director, U.S. Small Business Administration, P.O. Box 1257, Stewart Nelson Plaza, 143 N. Main Street, Concord, New Hampshire 03302–1257, (603) 225–1400.

Dated: September 3, 1992.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92–22573 Filed 9–16–92; 8:45 am]

BILLING CODE 8025–01–M

[Application No. 99/00–0070]

Green Mountain Capital, L.P.; Application for License to Operate as a Small Business Investment Company (SBIC)

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (Section 107.102 (1992)) by Green Mountain Capital, L.P., Elmore Mountain Road, Stowe, Vermont 05672, for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. *et seq.*).

The proposed officers and partners are:

Name	Title	Percentage of ownership
Ian M. Sweatman, Elmore Mountain Rd., Stowe, Vermont 05672.	General Manager & General Partner.	% of 1
Wayne G. Granquist, Elmore Mountain Rd., Stowe, Vermont 05672.	General Partner	2.44
Charles F. Kireker III, Elmore Mountain Rd., Stowe, Vermont 05672.	General Partner	2.44

Initially, there will be seventeen (17) other investors, each of whom will own no more than a 10 percent interest.

The Applicant will begin operations with a capitalization of $3,153,061, and will be a source of equity capital and long-term loan funds for qualified small business concerns.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Federal Regulations.

Notice is hereby given that any person may, not later than thirty (30) days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in the Burlington, Vermont area.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies).

Dated: September 4, 1992.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 92–22572 Filed 9–16–92; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Benson County, ND

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Benson County, North Dakota.

FOR FURTHER INFORMATION CONTACT: George A. Jensen, Division Administrator, Federal Highway Administration, 1471 Interstate Loop, Bismarck, ND 58501. Telephone number is (701) 250–4204 (FTS 783–4204).

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the North Dakota Department of Transportation, will prepare an Environmental Impact Statement (EIS) on a proposal for improvements to ND Highway 57. The proposed improvement would involve reconstruction of the existing highway from the intersection of US 281, west of Fort Totten, to a point approximately 1.6 miles south of the junction with ND Highway 20. The 1.6 miles was previously improved as a part of another project in 1982. The grade raise across Fort Totten Bay will not be included in the project as it was also improved in 1982. The entire project is approximately 11.7 miles long.

Improvements to the corridor are considered necessary to eliminate existing geometric deficiencies and provide for the existing and projected traffic demand. The "No Action" alternate is also under consideration.

Letters soliciting views and comments on the proposed project were sent to various federal, state, and local agencies. The project is located on the Devils Lake Sioux Indian Reservation and crosses a portion of Sullys Hill National Game Preserve. Coordination with the Tribal Council, residents of the Reservation, and U.S. Fish and Wildlife Service has occurred and will continue throughout the project development. The Draft EIS will be available for public and agency review and comment. A public hearing will be held to discuss alternates and impacts of the proposed action. Public notice will be given for the time and place of the public hearing. No formal scoping meeting will be held.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities apply to this program.)

Wayne A. McCollam,

Assistant Division Administrator, Federal Highway Administration.

[FR Doc. 92–22488 Filed 9–16–92; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement; Covington County, AL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Covington County, Alabama.

FOR FURTHER INFORMATION CONTACT: Mr. Joe D. Wilkerson, Division Administrator, Federal Highway Administration, 500 Eastern Boulevard, suite 200, Montgomery, Alabama 36117, Telephone: (205) 223-7370, Mr. Perry Hand, Director, State of Alabama Highway Department, 1409 Coliseum Boulevard, Montgomery, Alabama 36130, Telephone (205) 242-6311.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the State of Alabama Highway Department, will prepare and circulate for comment an Environmental Impact Statement (EIS) for Alabama Highway Project NHF-128(8)&(9) Covington County, Alabama. This is a proposed 8 mile Eastern Bypass of the city of Opp from a point on U.S. Route 331 south of Opp to a point on U.S. Route 331 north of Opp.

There is presently no bypass for the city of Opp. The main north/south traffic artery through Opp is U.S. Route 331. There is considerable traffic congestion on this route through Opp. In addition, there is a three block jog in the alignment downtown which creates a hazard and congestion with large trucks negotiating the turns. A bypass will significantly reduce the congestion and allow large log trucks, etc. to bypass the downtown area.

Alternatives under consideration and to be discussed in the Environmental Impact Statement include: (1) No Action; (2) Postponing the Action; (3) Reduced Facility; (4) Improving the Existing Facility; (5) Alternate Locations for the Build Alternative; (6) Alternate Design Features.

Early coordination letters describing the proposed action and soliciting comments will be sent to appropriate federal, state and local agencies, and to private organizations and citizens who have expressed or are known to have an interest in the proposal. A scoping meeting has been held and a public involvement meeting will be held later. In addition, a corridor location public hearing will be held after circulation of the Draft Environmental Impact Statement. The Draft EIS will be available for public and agency review and comment prior to and at the corridor location hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Joe D. Wilkerson,

Division Administrator, Federal Highway Administration, Montgomery, Alabama.

[FR Doc. 92-22490 Filed 9-16-92; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; Montgomery County, AL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Montgomery County, Alabama.

FOR FURTHER INFORMATION CONTACT: Mr. Joe D. Wilkerson, Division Administrator, Federal Highway Administration, 500 Eastern Boulevard, Suite 200, Montgomery, Alabama 36117, Telephone: (205) 223-7370, Mr. Perry Hand, Director, State of Alabama Highway Department, 1409 Coliseum Boulevard, Montgomery, Alabama 36130, Telephone (205) 242-6311.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with State of Alabama Highway Department, will prepare and circulate for comment an Environmental Impact Statement (EIS) for Alabama Highway Project DPI-0035(001) Montgomery County, Alabama. This is a proposed approximately 18 mile outer lop bypassing the city of Montgomery on the southside beginning on U.S. Route 80 west Montgomery and extending south and east to Interstate 85 east of Montgomery. The proposal is a multi-lane controlled access facility.

The existing Montgomery Southern Bypass has become extremely congested. According to estimated traffic projection this congestion will significantly intensify in the future. It is not practical to up-grade and improve the existing facility due to the right-of-way constraints and the heavy development along each side. Another limited access bypass south of this existing facility will reduce this congestion and provide an additional vital link between I-65 U.S.-80 south and west of Montgomery to I-85 east of Montgomery.

Alternatives under consideration and to be discussed in the Environmental Impact Statement include: (1) No action; (2) Postponing the Action; (3) Reduced Facility; (4) Improving the Existing Facility; (5) Alternate Locations for the Build Alternative; (6) Alternate Design Features.

Early coordination letters describing the proposed action and soliciting comments will be sent to appropriate federal, state and local agencies, and to private organizations and citizen who have expressed or are known to have an interest in the proposal. A scoping meeting will be held and a public involvement meeting will be held later. In addition, a corridor location public hearing will be held after circulation of the Draft Environmental Impact Statement. The Draft EIS will be available for public and agency review and comment prior to and at the corridor location hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Joe D. Wilkerson,

Division Administrator, Federal Highway Administration, Montgomery, Alabama.

[FR Doc. 92-22491 Filed 9-16-92; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; Talladega County, AL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Talladega County, Alabama.

FOR FURTHER INFORMATION CONTACT: Mr. Joe D. Wilkerson, Division Administrator, Federal Highway Administration, 500 Eastern Boulevard, Suite 200, Montgomery, Alabama 36117, Telephone: (205) 223-7370, Mr. Perry Hand, Director, State of Alabama Highway Department, 1409 Coliseum Boulevard, Montgomery, Alabama 36130, Telephone (205) 242-6311.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the State of Alabama Highway Department, will prepare and circulate for comment an Environmental Impact Statement (EIS) for the Alabama Highway Project

STPAA-PE92(3) Talladega County, Alabama. This is a proposed approximately 10 mile west and north State Route 21 Bypass of the city of Talladega from the south end of the existing two-lane west bypass extending northeast to State Route 77 where existing two-lane west bypass terminates and continuing northeast and around Talladega to a point tying back to existing State Route 21 approximately 2.5 miles northeast of Talladega.

Present State Route 21 traverses through the center of downtown Talladega. With the exception of the 3 mile section of the two-lane west bypass to State Route 77, there is no bypass for the city of Talladega. The existing State Route 21 through Talladega is an antiquated congested facility with a narrow roadway and bridges and a none block jog in the alignment. This jog in alignment along with the narrow roadway and bridges creates a hazardous condition with large trucks. A bypass will reduce downtown congestion and allow large trucks, through traffic, etc. to bypass the downtown area.

Alternatives under consideration and to be discussed in the Environmental Impact Statement include: (1) No Action; (2) postponing the Action; (3) Reduced Facility; (4) Improving the Existing Facility; (5) Alternate Locations for the Build Alternative; (6) Alternate Design Features.

Early coordination letters describing the proposed action and soliciting comments have been sent to appropriate federal, state and local agencies, and to private organizations and citizens who have expressed or are known to have an interest in the proposal. A scoping meeting has been held and a public involvement meeting will be held later. In addition, a corridor location public hearing will be held after circulation of the Draft Environmental Impact Statement. The Draft EIS will be available for public and agency review and comment prior to and at the corridor location hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Joe D. Wilkerson,

Division Administrator, Federal Highway Administration, Montgomery, Alabama.

[FR Doc. 92-22492 Filed 9-16-92; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; Tuscaloosa County, AL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Tuscaloosa County, Alabama.

FOR FURTHER INFORMATION CONTACT: Mr. Joe D. Wilkerson, Division Administrator, Federal Highway Administration, 500 Eastern Boulevard, Suite 200, Montgomery, Alabama 36117, Telephone: (205) 223-7370, Mr. Perry Hand, Director, State of Alabama Highway Department, 1409 Coliseum Boulevard, Montgomery, Alabama 36130, Telephone (205) 242-6311.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the State of Alabama Highway Department, will prepare and circulate for comment an Environmental Impact Statement (EIS) for Alabama Highway Project DPI-0080(001) Tuscaloosa County, Alabama. This is a proposed approximately 18 mile Northern Bypass of the cities of Northport and Tuscaloosa from Interstate 59 east of Tuscaloosa and extending north and west around Tuscaloosa and Northport to U.S. Route 82 west of Northport. The proposal is a limited access multi-lane facility.

Present U.S. Route 82 originally traversed the northern outer limits of Tuscaloosa and Northport, however, these cities have expanded far beyond the present U.S. 82 location. This route has become severely congested and there has been a significant increase in development. Also, the Black Warrior River runs generally east and west through the center of the cities with only two existing highway crossings in the immediate area. A bypass around the fringe of the existing development will significantly reduce congestion on U.S.-82 and other transportation arteries in Tuscaloosa and Northport. Also, the bypass will provide an additional river crossing.

Alternatives under consideration and to be discussed in the Environmental Impact Statement include: (1) No Action; (2) Postponing the Action; (3) Reduced Facility; (4) Improving the Existing Facility; (5) Alternate Locations for the Build Alternative; (6) Alternate Design Features.

Early coordination letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have expressed or are known to have an interest in the proposal. A scoping meeting has been held and a public involvement meeting will be held later. In addition, a corridor location public hearing will be held after circulation of the Draft Environmental Impact Statement. The Draft EIS will be available for public and agency review and comment prior to and at the corridor location hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Joe D. Wilkerson,

Division Administrator, Federal Highway Administration, Montgomery, Alabama.

[FR Doc. 92-22489 Filed 9-16-92; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: September 10, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission (s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0015.

Form Number: IRS Form 706 and Related Schedules.

Type of Review: Revision.

Title: United States Estate (and Generation-Skipping Transfer) Tax Return.

Description: Form 706 is used by executors to report and compute the Federal Estate Tax imposed by Internal Revenue Code (IRC) section 2001, the Federal Generation-Skipping Transfer (GST) tax imposed by IRC section 2601, and the additional Estate Tax imposed by Code section 4980a. IRS uses the information to enforce these taxes and

to verify that the tax has been properly computed.

Respondents: Individuals or households, Businesses of other for profit.

Estimated Number of Repondents/Recordkeepers: 65,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Form/schedule	Recordkeeping	Learning about the form or the law	Preparing the form	Copying assembling and sending, the form to the IRS
706	2 hr., 11 min	1 hr., 9 min	3 hr., 26 min	49 min.
Sch. A	20 min	16 min	10 min	20 min.
Sch. A1	46 min	25 min	59 min	49 min.
Sch. B	20 min	10 min	11 min	20 min.
Sch. C	13 min	2 min	8 min	20 min.
Sch. D	7 min	6 min	8 min	20 min.
Sch. E	40 min	7 min	24 min	20 min.
Sch. F	33 min	6 min	21 min	20 min.
Sch. G	26 min	18 min	11 min	14 min.
Sch. H	26 min	6 min	10 min	14 min.
Sch. I	26 min	25 min	11 min	20 min.
Sch. J	26 min	5 min	16 min	20 min.
Sch. K	26 min	9 min	10 min	20 min.
Sch. L	13 min	5 min	10 min	20 min.
Sch. M	13 min	31 min	25 min	20 min.
Sch. O	20 min	9 min	18 min	17 min.
Sch. P	7 min	14 min	18 min	14 min.
Sch. Q	7 min	10 min	11 min	14 min.
Sch. Q Wksht	7 min	10 min	59 min	20 min.
Sch. R	20 min	34 min	1 hr., 1 min	49 min.
Sch. R-1	7 min	29 min	24 min	20 min.
Sch. S	26 min	22 min	37 min	25 min.
Continuation	20 min	3 min	7 min	20 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 1,437,065 hours.

OMB Number: 1545-0409.

Form Number: IRS Forms 211 and 211SP.

Type of Review: Revision.

Title: Application for Reward for Original Information (211) Solictud de Recompensa por Informacion Original (Spanish Version) (211SP).

Description: Forms 211 and 211SP are the official application forms used by persons requesting rewards for submitting information concerning alleged violations of the tax laws by other persons. Such rewards are authorized by Internal Revenue Code (IRC) 7623. The data is used to determine and pay awards to those persons that voluntarily submit information.

Respondents: Individuals or households.

Estimated Number of Respondents: 11,200.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 2,800 hours.

OMB Number: 1545-0534.

Form Number: IRS Form 5303.

Type of Review: Revision.

Title: Application for Determination for Collectively Bargained Plan.

Description: IRS uses Form 5303 to get information needed about the finances and operation of employee benefit plans set up by employers under a collective bargaining agreement. The information obtained on Form 5303 is used to make a determination on whether the plan meets the requirements to qualify under section 401(a) and whether the related trust qualifies for exemption under section 501(a) of the Code.

Respondents: State or local government, Businesses or other for profit.

Estimated Burden of Respondents/Recordkeepers: 2,500.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	31 hours, 34 minutes.
Learning about the law or the form.	5 hours, 50 minutes.
Preparing the form	10 hours, 20 minutes.
Copying, assembling and sending the form to the IRS.	1 hour, 4 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 122,050 hours.

Clearance Officer: Garrick Shear, (202) 622-3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Department Reports, Management Officer.

[FR Doc. 92-22421 Filed 9-16-92; 8:45 am]

BILLING CODE 4830-01-M

Office of Thrift Supervision

[No. 92-397]

Valuation of Purchased Mortgage Servicing Rights

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Request for comment.

SUMMARY: The Office of Thrift Supervision (OTS) proposes to issue a thrift bulletin on the valuation of purchased mortgage servicing rights (PMSR). This bulletin will provide guidance for thrifts to determine, in a manner acceptable to the OTS, the market value of PMSR and what OTS considers to be an independent PMSR appraiser. The proposed bulletin is being published here in order to obtain a wide range of public comments.

DATES: Comments must be received on or before October 19, 1992.

ADDRESSES: Send comments to Director, Information Services Division, Public Affairs, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 92-397.

These submissions may be hand delivered to 1700 G Street, NW. from 9 a.m. to 5 p.m. on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7753 or (202) 906–7755. Submissions must be received by 5 p.m. on the day they are due in order to be considered by the OTS. Late-filed, misaddressed or misidentified submissions will not be considered. Comments will be available for inspection at 1776 G Street, NW., Street Level.

FOR FURTHER INFORMATION CONTACT: Clarke Sanders, Project Manager, 202–906–5654, Michael Scott, Program Manager, Policy 202–906–5748; or Timothy Stier, Deputy Chief Accountant, Policy, 202–906–5699; Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Background

The OTS requires the valuation of PMSR to comply with the 90% of fair market value limitation for inclusion in regulatory capital that is contained in The Financial Institutions Reform and Recovery Act of 1989 (FIRREA). Additionally, the OTS Capital Rule limits PMSR included in regulatory capital to the lower of 90% of fair market value, 90% of cost, or 100% of the unamortized book value. The Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) also limits PMSR for inclusion in regulatory capital to no more than 90% of its market value.

PMSR are not homogeneous assets and do not have publicly reported sales prices. Thus, the determination of 90% of the market value of PMSR is not as simple as the valuation of a stock or bond. Instead, PMSR values must be estimated using a discounted cash flow technique. This technique calculates the net servicing income after the deduction of all expenses for the expected life of the mortgages and then discounts that future income by a market yield to determine the present value. The proposed bulletin provides guidelines for the present value calculation of PMSR in order to be included in regulatory capital.

The notice of proposed rulemaking for "Regulatory Capital: Intangible Assets" was published in the **Federal Register** on April 13, 1992, 57 FR 12761 (April 13, 1992). The proposed rule would require an annual independent valuation of PMSR. The proposed bulletin also provides guidelines on what OTS considers to be an independent PMSR Appraiser.

Request for Comment

While OTS is interested in receiving comments on all aspects of the proposed Thrift Bulletin, comment is specifically invited on the following issues:

(1) Whether thrifts not deemed to be "problem" institutions and with 25% or less of core capital invested in PMSR should be excused from the independent appraisal requirement, and, if so, is 25% of core capital or below an appropriate cutoff level?

(2) Whether the discount rate used for PMSR book value should be required to be at least as high as that used at purchase?

(3) Whether the PMSR book value amortization should be limited to 15 years?

(4) Whether PMSR brokers currently working with a savings association or brokers that have previously been involved in the sale to the association of more than 10% of its current PMSR portfolio, should be allowed to appraise that association's PMSR if the appraisal is done through a separate division or affiliated corporation? and

(5) Whether independent appraisers should be required to verify on-site the accuracy of a thrift's PMSR computer records?

Consistency With Intangibles Regulation

The proposed Thrift Bulletin is entirely consistent with the pending interagency Intangibles Regulation as of the date the Thrift Bulletin was released for publication and comment. Subsequent changes in the final Intangibles Regulation will be incorporated into the final Thrift Bulletin when it is issued, so that both the regulation and the bulletin will be consistent as of their effective dates.

Paperwork Reduction Act

The proposed Thrift Bulletin provides guidelines for the valuation of PMSR and the collection of supporting data for information which is currently required by the quarterly Thrift Financial Report. The reporting and recordkeeping guidelines discussed are already approved under OMB Control Number 1550–0023, Thrift Financial Report.

The proposed text of the bulletin reads as follows:

The Valuation of Purchase Mortgage Servicing Rights

This Thrift Bulletin provides guidance on the valuation of purchased mortgage servicing rights (PMSR). The valuation of PMSR is mandated by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), and by the regulatory capital requirements of the Office of Thrift Supervision (OTS). The fair market value of PMSR must be determined annually through an independent valuation and quarterly through either internal or independent valuations.

Introduction

Mortgage servicing rights are the contractual rights to collect mortgage payments, maintain escrow accounts for the payment of taxes and insurance, and provide other services on behalf of the owner of the mortgages (investor) in exchange for a servicing fee and related float and ancillary income. PMSR are mortgage servicing rights that have been purchased or acquired in a purchase business transaction. (The valuation of excess or retained mortgage servicing assets is covered in Thrift Bulletin 43.)

FIRREA and FDICIA limit the inclusion of PMSR in the regulatory capital of savings associations to no more than 90% of the fair market value of the readily marketable purchased mortgage servicing rights determined at least quarterly. The OTS Capital Rule limits PMSR for inclusion in regulatory capital to the lower of (1) 90% of original cost, (2) 90% of current fair market value, or (3) 100% of the remaining unamortized book value. The pending "Regulatory Capital: Intangible Assets" rule further limits PMSR for inclusion in regulatory capital as follows:

1. Book Value

To be included in regulatory capital, PMSR book value must not exceed the present value of the estimated net future servicing income, discounted at a rate no less than the expected rate at acquisition.

2. Fair Market Value

The fair market value of PMSR must be determined annually through an independent (*i.e.*, third party) valuation and quarterly through either internal or independent valuations.

3. Core Capital Limits

Any PMSR that exceed 50% of the core capital of a savings association must be deducted for regulatory capital purposes. The 50% limit is calculated before the PMSR regulatory capital deduction.

4. Grandfathering

PMSR purchased, or under contract to be purchased, on or before February 9, 1990 are not subject to the core capital limitation. If grandfathered PMSR exceeded the core capital limit at the

time of the grandfather cut-off date, any PMSR acquired after that date are not grandfathered. All PMSR, regardless of the purchase date, are subject to the 90% of cost of fair market value "haircuts" and the appraisal requirements.

Valuation Guidelines

A "fair market" valuation of PMSR is required at least quarterly by FIRREA and FDICIA. The estimated fair market value of PMSR should be based on the prices currently being paid for servicing rights that are similar to those being valued. Other values of PMSR such as book value and the economic value to the savings association owning the rights (where it differs from fair market value) are impermissible values for PMSR that are included in regulatory capital.

The estimated fair market value of a portfolio of PMSR is defined as the price that the portfolio would reasonably be expected to sell for in the current market between an informed buyer and a willing seller. The estimated value should be based on the assumption that the PMSR would be marketed in portfolios of a size and compositional structure that will bring the highest price, with the seller providing the customary representations and warranties, but no recourse or other reserve provisions. The total of any necessary reserve accounts, holdbacks, or VA "no-bid" recourse agreements, etc. should be deducted from the final value of the PMSR.

Since actual PMSR trade data is unavailable, estimates of the market value of PMSR should be determined through a present value, or discounted cash flow analysis. Under this methodology, market value is determined by estimating the amount and timing of future cash flows associated with the servicing rights, and discounting those cash flows using market discount rates.

The fair market value of PMSR is the present value of the expected income from the portfolio less the present value of the projected expenses. The income stream includes servicing fees, float income from payments and escrow accounts, and ancillary income. The expenses include general servicing costs, foreclosure costs, and interest expenses for funds advanced.

The following guidelines should be followed in estimating the fair market value of PMSR. Departures from these guidelines may result in the exclusion of PMSR from an association's regulatory capital.

1. Servicing Costs

General servicing costs include normal expenses such as data processing expenses, personnel expenses, occupancy expense, expenses to service foreclosures and REOs, expenses related to the maintenance of escrow accounts (including the payment of taxes and insurance), and any interest expenses from advances on mortgage securities. Foreclosure costs should be shown separately in the valuation report. The costs of amortizing the purchase costs are excluded.

Long-term servicing cost projections used in valuations should be comparable to those used by most market participants to value similar types of PMSR as reported by PMSR brokers. Cost estimates should be documented and should represent a reasonable mid-range of the current market estimates of cost rather than the high or low end of a range. The servicing costs of the savings association owning the rights are not appropriate for determining market values.

2. Prepayment Estimates

The prepayment assumptions used to estimate market value should be based on long-term consensus or average prepayment estimates for mortgages with characteristics similar to those being serviced. In general, the prepayment estimates should represent the average prepayment estimates for geographically dispersed pools of mortgages made by the major mortgage market participants (*i.e.*, "national prepayment estimates"). National prepayment estimates for fixed-rate mortgages can be obtained from various reporting services.

When national prepayment estimates are not available for unusual types of mortgages, when prepayment rates deviate significantly from the actual experience of a particular pool, or when the PMSR being valued are concentrated in particular geographic regions that traditionally have different prepayment speeds, prepayment estimates may be adjusted to show a correlation to relevant historical data. Such historical data should come from recognized mortgage dealers, the federal secondary market agencies, or the association's own experience. If the association uses its own historical prepayment experience to estimate future prepayments, that experience should be for similar types of mortgages, should cover a period of at least three years, and should be carefully documented. In all cases the association will be responsible for defending any prepayment estimates that deviate from the national averages.

Prepayment rates should be expressed in terms of a "CPR" (constant prepayment rate) or "PSA," a standard prepayment measure developed by the Public Securities Association. The use of the average life method or any measure other than CPR or PSA is not acceptable. Exceptions to this rule should be made for non-standard mortgages such as multifamily and ballon payment mortgages where a different method of measuring prepayments may be justified. All prepayment estimates used in valuations should be supported with documentation.

3. Discount Rates

The discount rates used to value each segment of a portfolio should correspond to the rates currently demanded by investors for similar types of PMSR. In selecting a similar discount rate for PMSR valuations, consideration should be given to such factors as mortgage type, investor, market demand, insuring agency, conformance to agency requirements, geographic location, interest on escrow requirements, delinquency and foreclosure rates, tax services, and other generally accepted market factors. The discount rates used by the association when the PMSR were purchased, the interest rate of the underlying mortgages, and the yield on interest only strips should not be used to estimate market value.

4. Projected Interest Rates

The interest rates used to project interest income from escrow, principal and interest, and prepayment float, and to project expenses for escrow and investor advances, should be consistent with consensus market expectations that are reflected in the Treasury yield curve.

5. Escrow and Other Float

The assumptions made as to the average yearly balance of escrow accounts per mortgage, the number of days of principal and interest float, and the number of days of prepayment float should all be shown separately in the valuation report. They should be based on the past experience of the portfolio of PMSR being valued and the remittance requirements of the investors.

6. Delinquency and Foreclosure Rates

Projected delinquency and foreclosure rates should be based on the actual experience of the portfolio of PMSR. when mortgages are less than 24 months old, the valuation should be based on

the national and state averages of delinquency and foreclosure rate published by the Mortgage Bankers Association (MBA) for similar mortgages.

7. Foreclosure Costs

Foreclosure costs should be shown separately in the valuation report. They should be the actual anticipated costs and should reflect the differences in costs among types of mortgages (FHA, VA, or conventional) and, if material, their location, since states have different foreclosure laws. The VA portion of GNMA servicing should be shown as a separate segment of the GNMA portfolio.

8. Growth of Escrows

The rate used to estimate the growth of escrow accounts should be based on realistic long-term projections and not short-term experience. We will allow any reasonable rate of growth for escrows as long as it is documented and supported by market practice.

9. Ancillary Income

Ancillary income is generated by such items as late charges, insurance premiums, and assumption and payoff fees. Ancillary income should be shown separately in the valuation report. The average annual ancillary income per mortgage should be based on the actual performance of the portfolio without inflation. For PMSR portfolios less than 24 months old, industry averages of ancillary income as reported by the MBA should be used.

10. Debt Leveraging

Borrowing to finance the purchase of PMSR, or debt leveraging, increases the internal rate of return for savings associations by lowering the investment needed to produce the same PMSR earnings. Debt leveraging, however, is not relevant to the calculation of the market value of PMSR.

11. ARMs, GPARMs, Recourse, etc

Relative to fixed-rate 1–4 family residential mortgages, the servicing and foreclosure costs as well as discount rates and prepayment estimates are generally higher for ARMs, Graduated Payment ARMs (GPARMs), negative amortization mortgages, second mortgages, multifamily mortgages, mortgages not conforming to agency guidelines, wrap-around mortgages, and recourse servicing. Some types of PMSR, such as non-conforming GPARMs, are not readily marketable, and therefore, may have little appraised value. Each type of PMSR should be valued individually.

12. Transfer Costs.

Transfer costs are the buyers' expenses of conducting due diligence on servicing portfolios prior to purchase and of transferring that servicing to the new servicer. These items are normally included in the market bids of buyers, and therefore, should be included in the determination of market value. The costs used should reflect the current market conditions as reported by PMSR brokers and not the association's actual costs. Sales expenses, including brokers commissions, should not be included in transfer costs.

13. Portfolios Segregation/Stratification

Portfolios of PMSR should be segregated, at a minimum, by mortgage type (fixed-rate or ARM, and conventional, FHA, VA, etc.), mortgage term (15 and 30 years), investor (FNMA, GNMA, FHLMC, private, etc.), recourse and non-recourse, and coupon interest rate ranges. The stratification of pools by interest rate ranges should encompass no more than a 50 basis point range except for small percentages of the portfolio.

14. Aggregate Portfolio Valuation

PMSR should be valued in the aggregate, not on an individual mortgage or pool basis. PMSR valuations can avoid the 90 percent of cost limitation of the OTS Capital rule for each purchase by using the aggregate valuation method. Thus, PMSR with minimal or no accounting cost basis may be included in valuations at 90 percent of its total fair market value up to the limits of 90 percent of cost of the total portfolio or 100 percent of the total remaining unamortized book value. (Retained or excess servicing assets and mortgage servicing rights on the association's originated portfolio are not includable with PMSR.)

15. Market Value of Hedging

The value of any financial instruments that are used to hedge PMSR should not be included in the market value of PMSR.

16. Market Value of Insurance

FNMA and FHLMC recourse servicing that includes recourse loss insurance or prepayment insurance for PMSR may be included in the determination of market value. The OTS permits the value of such policies (i.e., conversion of recourse PMSR to non-recourse) to be included in the value of PMSR, provided the cost of the insurance policy is deducted from the servicing fee or added to the per mortgage servicing cost of the PMSR portfolio. OTS reserves the right to disregard this type of insurance if concerns exist about the insurance firm's ability to meet its financial obligations.

17. Split PMSR

PMSR whose ownership is shared by two or more parties in violation of servicing contracts should not be included in the appraised value or regulatory capital of either the buyer or seller. (FNMA and FHLMC servicing contracts contain prohibitions against splitting the ownership of servicing.) If allowed under the servicing contract, split ownership servicing must always leave the servicer a minimum spread of no less than the GAAP "normal" servicing fee for OTS to allow its inclusion in regulatory capital. Servicing owned by two or more affiliated companies should have formal servicing agreements in place that specifically allow the split ownership of servicing and that provide for at least a normal servicing fee in order to be counted in regulatory capital.

18. Contents of PMSR Valuation Reports

Valuation reports should be a self contained product which identifies the portfolio being valued and provides all data used in the calculation of each segment's value. Valuations should explain the methodology used and state that its purpose is to estimate the current fair market value in compliance with these guidelines. Valuations should be supported with adequate documentation, should contain a statement of the appraiser's independence, and should be signed and dated by the appraiser. Finally, the valuation should conform with the Principles of Appraisal Practice and Code of Ethics by the American Society of Appraisers (ASA) and so state.

19. Appraiser Due Diligence

Independent appraisers are not required to perform on-site verifications to back up the association's PMSR computer tapes that are sent for valuation. Appraisers should, however, investigate any significant discrepancies or inconsistencies where there is a reasonable basis to doubt the accuracy of the information supplied by the association. Appraisers must not knowingly prepare or sign a false or misleading appraisal.

20. OTS MVPE Model

The servicing values from the OTS Market Value of Portfolio Equity Model should not be used as the fair market value of PMSR. The OTS model estimates the value of all mortgage servicing, including off-balance sheet

retained servicing which is not allowed to be treated as regulatory capital. Also, the value of the escrow and principal and interest float are included with deposits in the model and not with servicing values.

21. Appraiser Qualifications

PMSR appraisers should be experienced experts in valuing mortgage servicing rights. The qualifications and experience of the appraiser should be described in each valuation report.

22. Independence of Appraisers

Independent PMSR appraisers must comply with the ASA Principles of Appraisal Practice and Code of Ethics. These principles preclude appraisers from basing their appraisals fees on the amount of the appraisal value or related business, such as brokerage services performed for the association. Free appraisals or substantially reduced price appraisals offered by firms because the provide other services for the association are also not acceptable. Appraisers that have a past, current, or a planned future interest in the PMSR being appraised, or its financing or sale, either as principal, agent, or broker, will not be considered independent.

Separate valuation divisions or affiliated corporations of PMSR brokers or financiers currently used or who were used in the past to purchase, sell, or finance parts of the PMSR portfolio being appraised, generally will not be considered independent appraisers. However, a part relationship that involved the purchase or financing of 10 percent or less of the current dollar amount of the PMSR portfolio will not disqualify a broker or financier from PMSR valuations if there is not a current or planned future interest in the PMSR being appraised.

Consultants who are not brokers and brokers acting only as consultants or appraisers generally will be considered independent appraisers as long as they did not advise or assist the association on the purchase of more than 10 percent of the PMSR being appraised. Brokers having an association on their mailing list of potential PMSR buyers is not considered a planned future interest in that association's PMSR. Thus, the mailing list inclusion, by itself, would not disqualify a broker from PMSR appraisals involving that association. Actual purchase, sale, or financing negotiations involving the portfolio being appraised, however, would disqualify a PMSR broker or financier.

23. PMSR Not Included in Capital

PMSR that is not included in regulatory capital does not have to be valued either annually or quarterly. However, all PMSR that is included in regulatory capital should be valued each quarter to comply with FIRREA and FDICIA.

Dated: September 8, 1992.

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

[FR Doc. 92-22341 Filed 9-16-92; 8:45 am]

BILLING CODE 6720-01-M

THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

Thrift Depositor Protection Oversight Board; Meeting

AGENCY: Thrift Depositor Protection Oversight Board.

ACTION: Notice of Meeting.

DATE: Thursday, October 1, 1992, 3 to 4 p.m.

ADDRESS: Federal Deposit Insurance Corporation, Board Room 6010, 550 17th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Bonnie Limbach, Director, Corporate Communications, 1777 F Street, NW., Washington, DC 20232, (202) 786-9672.

SUPPLEMENTARY INFORMATION:

Discussion Agenda

- RTC Operations Report
- National Housing Advisory Board Activities

Closed session to follow.

September 11, 1992.

Jill Nevius,

Committee Management Officer.

[FR Doc. 92-22427 Filed 9-16-92; 8:45 am]

BILLING CODE 2222-01-M

UNITED STATES INFORMATION AGENCY

Programs of Student Exchange with the Baltic Countries, the Newly Independent States and Central and Eastern Europe

AGENCY: United States Information Agency.

ACTION: Notice, request for proposals.

SUMMARY: The United States Information Agency (USIA) invites applications from U.S. educational, cultural, and other not-for-profit institutions to conduct exchanges of college students with Albania, Armenia, Azerbaijan, Belarus, Bosnia-Hercegovina, Bulgaria, Croatia, the Czech and Slovak Federal Republic, Estonia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Macedonia, Moldova, Poland, Romania, Russia, Serbia and Montenegro, Slovenia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. These exchanges represent part of the activities of the President's University Student Exchange (the 1000-1000 Student Exchange) and the Samantha Smith Memorial Exchange Program and are subject to the availability of funding for Fiscal Year 1993.

Support is offered for three categories of exchange programs: CATEGORY A; President's University Student Exchange (the 1000-1000 Student Exchange Program) with Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan; CATEGORY B: Samantha Smith Memorial Exchange with Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan; and, CATEGORY C: Samantha Smith Memorial Exchange with East and Central Europe (Albania, Bosnia-Hercegovina, Bulgaria, Croatia, the Czech and Slovak Federal Republic, Hungary, Macedonia, Poland, Romania, Serbia and Montenegro, and Slovenia). Each category has separate conditions and requirements, which are stated in this announcement. Institutions may compete in one, two or three of the categories, but must submit a separate proposal and budget for each category. Institutions applying under any or all categories must follow the requirements stipulated in this RFP, the application guidelines, and any additional material specific to a given category. Failure to do so may result in a proposal being deemed technically ineligible. Programs and projects must conform with all Agency requirements and guidelines, and are subject to final review by a USIA contracting officer. Proposals must be for study programs for which academic credit is given. While programs may include internships, the focus of projects should be classroom work or research.

DATES: Deadline for proposals: November 4, 1992. All copies of proposals for Categories A, B and C must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Wednesday, November 4, 1992. Faxed documents will not be accepted, nor will documents postmarked on November 4, 1992, but received at a later date. It is the responsibility of each grant applicant to ensure that its proposals are received by the

appropriate deadline. No funds may be expended until the grant agreement is signed with USIA's Office of Contracts.

ADDRESSES: The original and 14 complete copies of the application, including required forms, should be addressed as follows:

U.S. Information Agency
Reference: _____;
(Program Title)
Category _____
Office of Grants Management
E/XE Room 357
301 4th Street, SW.,
Washington, DC 20547

FOR FURTHER INFORMATION: Interested U.S. organizations should write or call: Mr. Ted Kniker or Ms. Effie Wingate, U.S. Information Agency, 301 4th Street, SW., European Branch, Academic Exchanges Division, E/AEE room 208, Washington, DC 20547; telephone (202) 205–0525, to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, formats, guidelines for preparing proposals, and for other technical information.

SUPPLEMENTARY INFORMATION: Overall authority for these exchanges is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87–256 (Fulbright-Hays Act). The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and people of other countries by means of educational and cultural exchange; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations . . . and thus to assist in the development of friendly, sympathetic, and peaceful relations between the United States and other countries of the world." Pursuant to the Bureau of Educational and Cultural Affairs authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life. Programs shall also "maintain their scholarly integrity and shall meet the highest standards of academic excellence or artistic achievement."

Category A: President's University Student Exchange (the 1000–1000 Student Exchange Program) with Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan

Grant funding under this category is intended to enhance and expand the scope of U.S. academic exchanges with undergraduate and graduate students from Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. For academic year 1993–94 the intention is to exchange 500 students in each direction. Priority will be given to applications from international exchange organizations and consortia of universities that have a demonstrated ability to exchange students from multiple countries in the former USSR. Preference will be given to applications from single institutions for programs outside Russia. For projects in Russia, preference will be given to applications involving multiple foreign partner institutions. Both existing and new projects are eligible.

Participants must be citizens either of the U.S. or of the host country. Undergraduate students are defined as students who have not received their baccalaureates prior to participation in this program. Graduate students for this program should be studying at the equivalent of the Master's degree level. Doctoral candidates are not eligible. Students in all academic fields are eligible; students of agriculture are especially encouraged to apply (please note special conditions for agriculture programs below). Projects that include graduate students must delineate between the number of graduate and undergraduate participants, separately describe the academic programs, and include for each a separate line item in the budget. All projects must include undergraduate students.

Language Qualifications: Students should have sufficient fluency in the instructional language of the host country to be able to pursue university study in that language and to be able to converse with citizens of the country without the aid of interpreters. Generally, the equivalent of two years of college-level study is considered the minimum.

Duration: Applications will be accepted for projects with durations of at least eight weeks to no more than one academic year, including programs lasting an academic quarter, trimester, or semester. Exchanges of less than eight weeks duration or more than one full academic year will be considered technically ineligible. Although grant awards may begin earlier, the actual exchange of participants may not begin before April 1, 1993 and must be completed by December 31, 1994. Programs for exchanges in subsequent academic years will be considered technically ineligible.

Institutional Commitment: Proposals must include documentation of institutional support for the proposed program in the form of signed letters of endorsement from the U.S. and foreign institutions' directors, or in the form of signed agreement by the same persons Letters of endorsement must describe each institution's or organization's commitment and make specific reference to the proposed program, and each institution's activities in support of that program. Documentation of support from governmental ministries or academies will be acceptable when appropriate, replacing individual documentation from each foreign educational institution involved. Applicants must submit this documentation as part of the completed application. Applying institutions are expected to make their own arrangements with the appropriate foreign institutions.

Preference Factors:

—Preference will be given to proposals in which incoming students study in the U.S. for a full academic year
—Preference will be given to programs that reflect wide geographic distribution in recruitment of participants

Reciprocity: Proposals should be reciprocal, but not necessarily equal in numbers. In cases where political or practical circumstances do not allow for the placement of U.S. students, one way programs will be considered. The proposal should provide detailed information on the activities in both the U.S. and the partner country.

Orientation Programs: Participating students should be provided with a substantive and comprehensive orientation to the country where they will be studying, and proposals should describe these programs, including costs, in detail.

Special Allowances for Agriculture Programs: In order to give added encouragement to the participation of students of agriculture as provided for in the bilateral agreement, language standards may be modified for participating students of agriculture. Programs including agriculture students need not exchange agriculture students in both directions.

Allowable Costs for Category A

Projects: Project awards to U.S. organizations will be made in a wide range of amounts. The Agency reserves the right to reduce, revise or increase proposal budgets in accordance with the

needs of the program. For organizations with less than four years of experience in international exchange activities, grants will be limited to a maximum of $60,000, and proposed budgets should not exceed this amount. All organizations must submit a comprehensive line item budget, the details and format of which are contained in the application packet. Grant-funded items of expenditure will be limited to the following categories:

Program Costs

—International Travel (via American flag carrier);
—Domestic travel;
—Excursionary travel and lodging for cultural enrichment (not to exceed $200.00 per participant);
—Maintenance and per diem;
—Academic program costs (e.g. tuition, book allowance);
—Travel and partial maintenance costs (not to exceed 50% of U.S. Government per diem rates for stays of 30 days or less, or 35% for stays over 30 days) for accompanying faculty or resident directors; for no more than one program supervisor per twenty students;
—Orientation costs (speaker honoraria are not to exceed $150 per day per speaker);
—Cultural enrichment expenses (admissions, tickets, etc.; limited to $150 per participant);
—Medical insurance for participants (participants are covered by the Agency's self-insurance policy when USIA is funding over fifty percent of the total cost of the project);
—Taxes and visa fees.

Administrative Costs—Not to Exceed 20% of the Requested Budget

—Salaries and benefits;
—Communications (e.g. fax, telephone, postage);
—Office Supplies;
—Administration of tax withholding and reporting as required by Federal, State and local authorities and in accordance with relevant tax treaties;
—Other Direct Costs;
—All Indirect Costs applied to both administrative and program expenses.

Please Note: It is required that requested administrative funds, including indirect costs and administrative expenses for orientation, not exceed 20 percent of the total amount requested from USIA; administrative expenses should be cost-shared.

Applications should demonstrate substantial cost-sharing (dollar and in-kind) in both program and administrative expenses, including tuition waivers and overseas partner contributions.

Category B: Samantha Smith Memorial Exchange with Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan

Granting funding under this category is intended to enhance and expand the scope of U.S. academic exchanges with Armenia, Azerbaijan, Belarus, Estonia, Georgia Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan for undergraduate students under the age of 26. Participants must be citizens either of the U.S. or of the host country. Both existing and new projects are eligible. Programs designed specifically for U.S. teacher preparation in foreign language/area studies and/or programs in which foreign participants teach their native language or area studies in American institutions are ineligible for support.

Category C: Samantha Smith Memorial Exchange/Central and Eastern Europe

Grant funding under this category is intended to enhance and expand the scope of U.S. academic exchanges with Albania, Bosnia-Hercegovina, Bulgaria, Croatia, the Czech and Slovak Federal Republic, Hungary, Macedonia, Poland, Romania, Serbia and Montenegro, and Slovenia for undergraduate students under the age of 26. Participants must be citizens either of the U.S. or of the partner country. Both existing and new projects are eligible. Programs designed specifically for U.S. teacher preparation in foreign language/area studies and/or programs in which foreign participants teach their native language or area studies in American institutions are ineligible for support.

Criteria for Categories B and C

Applications for Categories B and C: Applications for substantive academic exchanges will be accepted from accredited, degree-granting U.S. universities or colleges, consortia of such universities and colleges, university systems, and not-for-profit organizations engaged in international educational exchange programs.

Language Qualifications: It is desirable, but not required, that undergraduate students have sufficient fluency in the language of the country to be visited for the pursuit of university study in the language and to converse with citizens of the country without the aid of interpreters. Preference will be given to programs in which U.S. participants will have had a minimum of two years of relevant language study.

Duration: Applications will be accepted for projects of at least twelve weeks duration. Projects of less than twelve weeks duration will be considered technically ineligible. Grants generally will be made for exchanges occurring within a 12-month period, but requests may be for longer periods of time. Preference will be given to proposals in which incoming students study in the U.S. for an academic year.

Institutional Commitment: Each proposal must include documentation of institutional support for the proposed program in the form of signed letters of endorsement from the U.S. and foreign partners' directors, or in the form of a signed agreement by the same persons. Letters of endorsement must describe each institution's or organization's commitment and make specific reference to the proposed program and each institution's activities in support of that program. Documentation of support from governmental ministries or academies will be acceptable when appropriate, replacing individual documentation from each foreign educational institution involved. Applicants must submit this documentation as part of the completed, original application. Applicant institutions are expected to make their own arrangements with the appropriate foreign institutions.

Reciprocity: Preference will be given to reciprocal exchanges, although two-way programs are not a requirement. It is desirable, but not required, that the number of U.S. and foreign participants be nearly equal. The proposal should provide detailed information on the activities in both the U.S. and the partner country.

Orientation Programs: Participating students should be provided with a substantive and comprehensive orientation to the country of their visit, and proposals should describe these programs, including costs, in detail.

Allowable Costs for Categories B and C

Projects: Project awards will be made in a wide range of amounts but will not exceed $75,000. The Agency reserves the right to reduce, revise or increase proposal budgets in accordance with the needs of the program. For organizations with less than four years of experience in international exchange activities, grants will be limited to a maximum of $60,000, and proposed budgets should not exceed this amount. All organizations must submit a comprehensive line item budget, the details and format of which are contained in the application packet. Grant-funded items of expenditure will be limited to the following categories:

Program Costs

—International Travel (via American flag carrier);
—Domestic travel;
—Excursionary travel and lodging for cultural enrichment (not to exceed $200.00 per participant);
—Maintenance and per diem for students;
—Academic program costs (e.g. tuition, book allowance);
—Travel and partial maintenance costs (not to exceed 50% of U.S. Government per diem rates for stays of 30 days or less or 35% for stays over 30 days) for accompanying faculty or resident directors; for no more than one program supervisor per twenty students;
—Orientation costs (speaker honoraria are not to exceed $150 per day per speaker);
—Cultural enrichment expenses (admissions, tickets, etc.; limited to $150 per participant);
—Medical insurance for participants (participants are covered by the Agency's self-insurance policy when USIA is funding over fifty percent of the total cost of the project);
—Taxes and visa fees.

Administrative Costs—Not to Exceed 20% of the Requested Budget

—Salaries and Benefits;
—Communications (e.g. fax, telephone, postage);
—Administration of tax withholding and reporting as required by Federal, State and local authorities and in accordance with relevant tax treaties;
—Other Direct Costs;
—All Indirect Costs applied to both administrative and program expenses.

Please Note: It is required that requested administrative funds, including indirect costs and administrative expenses for orientation, not exceed 20 percent of the total amount requested from USIA; administrative expenses should be cost-shared.

Applications should demonstrate substantial cost-sharing (dollar and in-kind) in both program and administrative expenses, including tuition waivers and overseas partner contributions.

Application Notice

Please be advised: Proposals submitted by the same institution under Categories A, B and C may not be duplicative. Each proposal must sponsor different students and employ separate budgets. Proposals not adhering to this restriction will be deemed technically ineligible and will not be reviewed for funding. Organizations applying for exchanges with the Commonwealth of Independent States are encouraged to submit under one category.

Review Process (All Categories)

USIA will acknowledge receipt of all proposals and will review them for technical eligibility.

Ineligible Proposals: Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the Application Package, including the Guidelines for Preparing Proposals [E/AEE-93-01].

Eligible Proposals: Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, and the budget and contracts offices. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria (All Categories)

Technically eligible applications will be competitively reviewed according to the following criteria:

a. Quality of program plan, including academic rigor, thorough conception of project, demonstration of meeting student needs, contributions to understanding the partner country, proposed follow-up, and qualifications of program staff and participants.

b. Feasibility of the program plan and the capacity of the organization to conduct the exchange. Proposals should clearly demonstrate how the institution will meet the program objectives and plan.

c. Track record—relevant Agency and outside assessments of the organization's experience with international exchanges; for organizations that have not worked with USIA, the demonstrated potential to achieve program goals will be evaluated.

d. Multiplier effect/impact—the impact of the exchange activity on the wider community and on the development of continuing ties, as well as the contribution of the proposed activity in promoting mutual understanding.

e. Value of U.S.-partner country relations—the assessment by USIA's geographic area office of the need, potential impact, and significance of the project with the partner country.

f. Cost effectiveness—greatest return on each grant dollar; degree of cost-sharing exhibited.

g. Diversity and pluralism—preference will be given to proposals that demonstrate efforts to provide for the participation of students with a variety of major disciplines, from diverse regions, and of different socio-economic and ethnic backgrounds, to the extent feasible for the applicant institutions.

h. Adherence of proposed activities to the criteria and conditions described above.

i. Institutional commitment as demonstrated by financial and other support to the program.

j. Follow-on Activities—proposals should provide a plan for continued follow-on activity (without USIA support) which insures that USIA supported programs are not isolated events.

k. Evaluation plan—proposals must provide a plan for evaluation by the grantee institution.

Application Disclaimer (All Categories)

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of this request for proposals does not constitute an award commitment on the part of the government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants for Categories A, B and C will be notified in writing of the results of the review process on or about April 1, 1993. All funded proposals will be subject to periodic reporting and evaluation requirements.

Options for Renewal (All Categories)

Subject to the availability of funding for FY 1994 and the satisfactory performance of grant programs, USIA may invite grantee organizations to submit proposals for renewals of awards.

Dated: September 9, 1992.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 92-22348 Filed 9-16-92; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 181
Thursday, September 17, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, September 22, 1992, 10 a.m.

PLACE: 999 E Street, NW, Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, September 24, 1992, 10 a.m.

PLACE: 999 E Street, NW., Washington, DC. (Ninth Floor.)

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Title 26 Certification Matters
Advisory Opinion 1992-31: Kathy A. Magraw of LaRouche for President
Advisory Opinion 1992-35: George Cochran on behalf of Jon Khachaturian
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219-4155.

Delores Harris,
Administrative Assistant.

[FR Doc. 92-22700 Filed 9-15-92; 3:47 pm]

BILLING CODE 6715-01-M

FEDERAL HOUSING FINANCE BOARD

TIME AND DATE: 8:00 a.m., Wednesday, September 23, 1992.

PLACE: Second Floor Board Room, Federal Housing Finance Board, 1777 F Street, N.W., Washington, DC 2006

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

PORTIONS OPEN TO THE PUBLIC: The Board will consider the following:

1. Monthly Reports
   A. District Banks Directorate
   B. Housing Finance Directorate
2. Advances Regulation—Proposed Final Rule

PORTIONS CLOSED TO THE PUBLIC: The Board will consider the following:

1. Approval of the August Board Minutes
2. Office of Finance (OF)
   A. Discussion of Proposed Lease
   B. FHLBank Consolidated Bond Selling Group Agreement
   C. Fourth Quarter 1992 Financing Plan
   D. Report on OF Restructuring
3. Office of Strategic Planning
   • Strategic Plan—Progress Report
4. Preliminary 1993 System Budget
5. Board Management Issues

The above matters are exempt under one or more of sections 552b(c)(9)(A)(B) of title 5 of the United States Code. 5 U.S.C. 552(b)(c)(9)(A)(B).

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Executive Secretary to the Board, (202) 408-2837.

Philip L. Conover,
Deputy Executive Director.

[FR Doc. 92-22804 Filed 9-14-92; 4:41 pm]

BILLING CODE 6725-01-M

FOREIGN CLAIMS SETTLEMENT COMMISSION

F.C.S.C. Meeting Notice No. 12-92—Correction

Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date Time, and Subject Matter

Wednesday, September 23, 1992 at 10:30 a.m.—Consideration of Proposed Decisions on claims against Iran

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 601 D Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 601 D Street, NW., Room 10000, Washington, DC 20579. Telephone: (202) 208-7727.

Dated at Washington, D.C. on September 14, 1992.

Judith H. Lock,
Administrative Officer.

[FR Doc. 92-22805 Filed 9-14-92; 4:42 pm]

BILLING CODE 4410-01-M

LEGAL SERVICES CORPORATION

Board of Directors and Committee Meetings and Hearing

TIME AND DATE: Meetings of the Legal Services Corporation Board of Directors and the Board's Audit and Appropriations Committee will be held on September 26, 1992. In addition, on that date, a meeting and hearing of the Board's Reauthorization Committee will be held. The meetings will commence at 8:00 a.m., and will be held in the following order, with each meeting continuing until all business has been concluded:

1. Audit and Appropriations Committee Meeting;
2. Reauthorization Committee Meeting and Hearing; and
3. Board of Directors Meeting.

PLACE: The Hyatt Regency Minneapolis Hotel, 1300 Nicollet Mall, The Mirage Room, Minneapolis, Minnesota 55403, (612) 370-1234.

AUDIT AND APPROPRIATIONS COMMITTEE MEETING:

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Approval of Minutes of September 14, 1992 meeting.
3. Consideration and Review of Proposed Fiscal Year 1993 Consolidated Operating Budget.
4. Consideration of Status Report on the Leasing of the Corporation's Former Headquarters Office Space.
5. Consideration of Whether the Corporation's Annual Financial Audit Should be Conducted In Accordance With Generally Accepted Governmental Auditing Standards.

REAUTHORIZATION COMMITTEE MEETING AND HEARING:

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Approval of Minutes of August 9, 1992 Meeting.
3. Consideration of Public Comment Regarding Proposed Reauthorization Legislation for the Corporation.

4. Consideration of Proposed Reauthorization Legislation for the Legal Services Corporation.

BOARD OF DIRECTORS MEETING:

STATUS OF MEETING: *Open*, except that a portion of the meeting may be closed if a majority of the Board of Directors votes to hold an executive session. At the closed session, pursuant to receipt of the aforementioned vote, the Board of Directors will consider and vote on approval of the draft minutes of the executive session held on August 10, 1992. In addition, the Board of Directors will hear and consider the report of the General Counsel on litigation to which the Corporation is a party. The Board of Directors will also consider a status report on several investigations from the Inspector General. Likewise, the Board of Directors will discuss the future of the Corporation's regional offices and personnel assigned to the same. Further, the Board of Directors will consider the results of the performance assessments of the Corporation's Inspector General and President. The closing will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Sections 552b (c)(2), (6), (7)(C), (D) and (10)], and the corresponding regulation of the Legal Services Corporation [45 C.F.R. Sections 1622.5(a), (e), (f)(3), (4) and (h)].[1] The closing will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 750 First Street, N.E., Washington, D.C., 20002, in its two reception areas, and will otherwise be available upon request.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda
2. Approval of Minutes of August 10, 1992 Meeting
3. Presentations by the Honorable Allan Spear, State of Minnesota, Robert Guzy, President, Minnesota State Bar Association, Mary Schneider, Executive Director, Legal Services of NW Minnesota, and Caty Jirik, Director, First Call for Help, Minneapolis United Way, Regarding "Issues Facing Legal Services—Some Minnesota Perspectives."
4. Chairman's and Members' Reports
5. Presentations by Alan Houseman, Executive Director, and Linda Perle, Senior Staff Attorney, Center for Law and Social Policy, on Behalf of the Project Advisory Group and the National Legal Aid and Defender Association, Regarding Proposed Changes to 45 C.F.R. Parts 1607, 1609, 1610, 1611, 1612 and 1626
6. Consideration of Operations and Regulations Committee Report
7. Consideration of Office of the Inspector General Oversight Committee Report
8. Consideration of Provision for the Delivery of Legal Services Committee Report
9. Consideration of Audit and Appropriations Committee Report
   a. Consideration of and Review of Proposed Fiscal Year 1993 Consolidated Operating Budget
   b. Consideration of the Method to be Proposed to Congress to Incorporate 1990 Census Data in Making 1993 Grants
10. Consideration of Reauthorization Committee Report
11. Consideration of Adoption of Proposed Guidelines for the Conduct of the Corporation's Annual Financial Audit
12. Consideration of Status Report on Efforts to Retain an Independent Insurance Consultant for the Corporation
13. Consideration of Disposition of the Corporation's Regional Offices
14. President's Report
15. Inspector General's Report

CLOSED SESSION:

16. Consideration of Results of Annual Assessments of the Job Performance of the Corporation's:
    a. President; and
    b. Inspector General.

CLOSED SESSION: (Continued)

17. Consideration of the Inspector General's Report on Several On-going Investigations Involving Allegations of Violations of Criminal Laws
18. Consideration of the Disposition of the Corporation's Regional Offices and Regional Office Personnel
19. Consideration of the General Counsel's Report on Pending Litigation to which the Corporation is a Party
20. Approval of Minutes of Executive Session Held on August 10, 1992

OPEN SESSION: (Resumed)

21. Consideration of Other Business

CONTACT PERSON FOR INFORMATION: Patricia Batie (202) 336–8896.

Date Issued: September 14, 1992.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 92–22610 Filed 9–14–92; 4:52 pm]

BILLING CODE 7050–01–M

[1] As to the Board's consideration and approval of the draft minutes of the executive session held on August 10, 1992, the closing is authorized as noted in the **Federal Register** notice corresponding to that Board meeting.

Corrections

Federal Register
Vol. 57, No. 181
Thursday, September 17, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Environmental Restoration and Waste Management Advisory Committee (EMAC); Open Meeting

Correction

In notice document 92–21986 beginning on page 41737 in the issue of Friday, September 11, 1992, make the following corrections:

1. On page 41738, in the first column, under **TENTATIVE AGENDA**, under Wednesday, September 30, 1992, the eighth line reading "12Noon Lunch" should be removed.

2. On the same page, in the second column, the signature reading "J. Robert Frank" should read "J. Robert Franklin".

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

[Project Nos. 710–000, et al.]

Hydroelectric Applications (Wisconsin Power and Light Company, et al.); Applications

Correction

In notice document 92–21520 beginning on page 40900 in the issue of Tuesday, September 8, 1992, make the following correction:

On page 40902, in the second column, in the first line, "b. *Project No.*: 2581–003." should read "b. *Project No.*: 2581–002."

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Revised Federal Allotments to States for Developmental Disabilities Basic Support and Protection and Advocacy Formula Grant Programs for Fiscal Year 1993

Correction

In notice document 92–19024 beginning on page 35829 in the issue of Tuesday, August 11, 1992, make the following correction:

1. On page 35830, in the second column of the table, in the entry for Kentucky, "1,214,052" should read "1,217,052".

2. On the same page, in the third column, in the signature, "Deborah" was misspelled.

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 131

[Docket No. 91P–0090/CP]

Evaporated Milk; Proposed Amendment of the Standard of Identity

Correction

In the issue of Friday, August 21, 1992, on page 38095, in the second column, in the correction of proposed rule 92–17182, in correction 3., in the last line, "ADBI". should read "ADPI".

BILLING CODE 1505–01–D

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1321

[Ex Parte No. MC–208]

Nonoperating Motor Carriers—Collection of Undercharges

Correction

In rule document 92–21536 beginning on page 40857 in the issue of Tuesday, September 8, 1992, make the following correction:

On page 40857, in the second column, in the table of contents, in § 1321.5, "of" should read "to".

BILLING CODE 1505–01–D

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32136]

William E. Gardner and Railroad Acquisition Corporation—Control Exemption—Wisconsin & Calumet Railroad Co., Inc.

Correction

In notice document 92–21537 appearing on page 40923 in the issue of Tuesday, September 8, 1992, the finance docket number should read as set forth above.

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 10

[T.D. 92–85]

Theatrical Effects, Works of Art and Other Articles for Temporary or Permanent Exhibition

Correction

In rule document 92–21279 beginning on page 40604 in the issue of Friday, September 4, 1992, make the following correction:

On page 40604, in the second column, in the **EFFECTIVE DATE:**, "August 4, 1992." should read "September 4, 1992."

BILLING CODE 1505–01–D

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federal register

Thursday
September 17, 1992

Part II

Department of Transportation

Research and Special Programs Administration

49 CFR Part 110

Interagency Hazardous Materials; Public Sector Training and Planning Grants; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 110

[Docket No. HM-209; Amdt. No. 110-1]

RIN 2137-AC09

Interagency Hazardous Materials Public Sector Training and Planning Grants

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule implements a reimbursable grant program to enhance existing State, Indian tribal, and local hazardous materials emergency preparedness and response programs. This final rule sets forth application procedures for the planning and training grant programs established by the Hazardous Materials Transportation Act (HMTA), as amended by the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA), for grants to States for emergency response planning and to States and Indian tribes for emergency response training. This rule sets forth procedures for the reimbursable grant program, and provides the application requirements for specific public sector training and planning grants. The requirements adopted under this final rule are intended to: increase State, local, and Indian tribal effectiveness in safely and efficiently handling hazardous materials accidents and incidents; enhance implementation of the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA); and encourage a comprehensive approach to emergency planning and training by incorporating response to transportation situations.

DATES: The effective date of the final rule is October 19, 1992. Grant applications will be accepted after that date. Initial awards will be made after November 15, 1992.

FOR FURTHER INFORMATION CONTACT: Charles Rogoff, HMTUSA Grants Manager, Office of the Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration (RSPA), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001, Telephone: 202-366-4900.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Hazardous Materials Transportation Uniform Safety Act of 1990

The HMTA (49 App. U.S.C. 1801 *et seq.*), as amended by HMTUSA, gives the Secretary of Transportation the regulatory authority to strengthen interagency coordination and technical assistance with respect to hazardous materials emergency response planning and training. Section 17 of HMTUSA added a new Section 117A to the HMTA entitled, "Public Sector Training and Planning". Section 117A of the HMTA creates a reimbursable grant program to provide financial and technical assistance, national direction, and guidance to enhance State and local hazardous materials emergency planning and training, and enhance overall implementation of EPCRA.

Section 117A of the HMTA requires the Secretary of Transportation to make grants to States for: Developing, improving, and implementing emergency response plans under EPCRA, including the determination of flow patterns of hazardous materials within a State and between a State and another State; and determining the need for regional hazardous materials response teams. Section 117A of the HMTA also requires the Secretary to make grants to States and to Indian tribes for training public sector employees to respond to accidents and incidents involving hazardous materials. The grant programs will increase the emphasis on transportation in ongoing efforts to improve the capability of communities to plan for and respond to the full range of potential risks posed by accidents and incidents involving hazardous materials.

This reimbursable grant program is supported by fees collected pursuant to section 117A(h) of the HMTA. Section 106 of the HMTA establishes a registration program for shippers and carriers of certain hazardous materials. On July 9, 1992, a final rule was published in the **Federal Register** [57 FR 30620] establishing a program to assess and collect from all persons who are required to be registered an annual fee to fund this reimbursable grant program.

B. The Notice of Proposed Rulemaking (NPRM)

On March 2, 1992, a notice of proposed rulemaking (NPRM; 57 FR 7474) was published in the **Federal Register** which contained requirements for two separate grant programs authorized by the HMTA, as amended by HMTUSA. The NPRM proposed to provide financial assistance to States for emergency response planning, and to States and Indian tribes for training public sector employees to respond to hazardous materials incidents. Many of the activities eligible for funding under the two programs are closely related. Section 117A of the HMTA does not provide authority to include Indian tribes in the planning grant program. The NPRM contained requirements for reimbursement of the costs of activities that are conducted under the grant program. The purpose of the grants is to increase State, local and Indian tribal effectiveness in safely and efficiently handling hazardous materials incidents, and to enhance implementation of EPCRA.

Implementing guidance, which addresses such issues as allocation criteria, measures against which grant applications will be evaluated, explanation of certifications required, and relationship of the grant program to the national curriculum, is in development. This guidance will be included in an application package which will be provided to potential applicants following publication of this final rule.

II. Discussion of Comments Received on the NPRM

RSPA received over 150 comments in response to the NPRM. Comments were received from a variety of sources, including Members of Congress, State Governors, Indian tribal organizations, State and local fire and police departments, State and local emergency response planning councils, committees and agencies, Federal and State environmental agencies and commissions, other Federal, State and local government agencies, trade associations, transportation companies, and colleges and universities. The majority of the commenters supported the intent of the grants program to assist State and local governments with financial and technical assistance to develop and implement emergency response plans, and to provide training to public sector employees responding to hazardous materials emergencies, particularly those involving transportation. Several commenters opposed implementation of the grant programs for various reasons. A discussion of the comments and the actions being taken by RSPA in this final rule follows.

Regulatory review comments. In response to the President's January 28, 1992 announcement of a federal regulatory review, DOT published a notice on February 7, 1992, [57 FR 4744] soliciting public comments on the

Department's regulatory programs. In response to that notice, RSPA received one comment from the National Association of State Title III Program Officials (NASTTPO) on the proposed financial and technical assistance to States and Indian tribes with respect to hazardous materials emergency response planning and training grants. NASTTPO urged adoption of the final rule as soon as possible.

Major Issues

A. Reimbursable Grants

A number of commenters objected to a "reimbursable grant" program, and favored "up-front" money, or funding advances to fund the grant programs. Most of the State and local emergency response and planning organizations are opposed to the reimbursable grant procedure due to economic conditions in their States. They urged RSPA to recognize the tight budgets under which they believe most States and local governments operate. Many commenters believe it will be difficult, if not impossible, to find funds for the cost of any program conducted under the planning or training grants, and that it will be a hardship on rural States because the emergency response personnel in many of these communities are volunteers with little or no working funds. The commenters believe requiring States to fund project costs may preclude many States from participating in the award program. The State of Nebraska, Military Department, stated that, if this must be a reimbursable grant program, some up-front administrative funds should be provided so the states can implement the program and then start into the reimbursable portion. The commenters requested that RSPA promote participation in the areas with the greatest need, and develop a funding mechanism to provide federal grant funds or portions thereof in advance, rather than by reimbursement.

RSPA understands the concerns of the State and local governments and their need, at a minimum, for available start-up funds. RSPA believes that the language under HMTUSA relative to reimbursement allows advances to be made to States for emergency response planning programs, and States and Indian tribes for public sector emergency response training programs, provided the advances are consistent with the administrative requirements and grant procedures found in 49 CFR part 18. Therefore, the final rule provides that the Associate Administrator for Hazardous Materials Safety may make advances or provide working capital on a case-by-case basis to a State or Indian tribe. Accordingly, a new paragraph (c) regarding advance funds is added to § 110.70, financial administration.

Several commenters opposed the planning and training grants program because they believe that the economic benefit to units of local government would be minimal under the grant programs, and that there is little, if anything, to be gained by providing financial and technical assistance, particularly to Local Emergency Planning Committees (LEPCs).

RSPA disagrees with the commenters that completely oppose the planning and training grant programs. The financial and technical assistance provided under the grant programs will increase the emphasis on emergency planning related to hazardous materials moving in transportation, and improve the capability of local jurisdictions to plan for and respond to potential risks posed by hazardous materials in transportation, as well as at fixed sites.

B. Non-Federal Cost-Share

As specified in section 117A(d) of the HMTA, RSPA proposed that a recipient provide 20 percent of the direct and indirect costs of all activities covered by the grant award, and that a recipient be prohibited from using funds expended to qualify for the grant for cost-sharing purposes. RSPA specifically requested comments on whether to accept in-kind contributions under non-federal cost-share requirements, and if so, what types.

Many commenters favored in-kind (soft-match) contributions rather than cash (hard-match) as the required 20 percent match. Several commenters pointed out that, although the NPRM proposed to require that States and Indian tribes satisfy the cost-sharing requirement with cash, there was no stipulation in HMTUSA that the non-Federal cost share be in cash. The commenters recommended that the 20% match be allowed through either cash contributions or in-kind contributions to produce a viable program.

The Arizona Emergency Response Commission (AERC) stated that most federal grant programs, e.g., the SARA Title III training grants program, utilize "in-kind" contributions. The AERC believes it would be difficult to obtain State appropriations to satisfy cost-share requirements, especially since the State has funded a state hazardous materials training and hazardous materials emergency management program for the past five years. The AERC recommended that cost-share requirements be authorized to be satisfied with "in-kind" contributions. Many commenters believed that using existing management, support personnel, and equipment and facilities would be more cost-effective, rather than using Federal funding for new hiring, acquisition, and construction specifically for the grant award program activities.

HMTUSA did not stipulate that a hard-match was required for meeting the non-Federal cost-share requirement. An accommodative matching funds policy is appropriate to address State budget pressures and encourage participation. Accordingly, the provision for cost sharing (§ 110.60) for planning and training grants is revised to allow for either cash (hard-match) or in-kind (soft-match) contributions, or a combination of a hard and soft match. Contributions for matching or cost-sharing purposes must comply with 49 CFR part 18. A soft-match for cost sharing purposes could be, for example, the dollar equivalent value used for technical staff to support the planning effort. This should alleviate some of the most serious funding problems, and provide more opportunities for States and Indian tribes to participate in the program.

c. Allocation Criteria

Section 117A(b)(7) of the HMTA contains criteria for allocating training funds, based on need. There is no comparable provision for allocating planning funds. RSPA proposed to use the same criteria for allocating training funds, to the extent practicable, to allocate planning funds. RSPA requested comments on the factors that should be considered as allocation criteria.

The U.S. Environmental Protection Agency (EPA) recommended that a portion of the grants should be set aside for Indian tribes, and that the State allocation factors should include objective criteria, such as population, hazardous materials facilities, etc., and criteria based on performance, compliance and innovation. The EPA stated that the latter factor should be reviewed by the Interagency Coordinating Group (representing seven Federal agencies, including, EPA, DOL/OSHA, DHHS/NIEHS, and DOT), and allocation criteria should be based in part on information from the monitoring and technical assistance functions carried out in the field. RSPA concurs with EPA on this issue as it pertains to training grants, and the Interagency Coordinating Group is currently working to fully develop objective allocation criteria. The restriction on allocation of planning grants to Indian tribes is discussed in paragraph D.

One commenter stated that the proposed training grant program fails, in allocating grant funds, to place sufficient emphasis on the needs of the entity seeking funds. The commenter went on to suggest that needs-based tests should be determined through a comprehensive cost-benefit analysis of each proposed project. In HMTUSA, one of the stated findings of the Congress is "* * * 1,500,000 emergency response personnel need better basic or advanced training for responding to the unintentional release of hazardous materials * * *" RSPA agrees that there is a clear need for training of emergency response personnel. In addition, RSPA anticipates that the most needy projects will be clearly identified through hazard-specific information which must be provided by an applicant and considered in the grant award process. Therefore, applicants are not required to submit a cost-benefit analysis.

Commenters were concerned that funds be distributed fairly. Several commenters stated that the allocation criteria specified in the NPRM are vague, that the factors should be heavily weighted with regard to need, and that the list of criteria proposed to be used excludes the most needy States. In addition to the allocation criteria proposed in the NPRM, several commenters proposed other criteria, including: population within a given State Emergency Response Commission's (SERC) or Local Emergency Planning Committees' (LEPC) jurisdictional area, as appropriate; equal division of funds on a per capita basis; State or local population density; whether a municipality has a dedicated hazardous materials response team; a system that would more closely match potential risk with available resources; the ratio of volunteer responders to paid responders; natural and cultural resources at risk; and degree of hazard or risk of the hazardous material moving in transportation. Generally, most commenters urged flexibility as the guiding principle in allocating funds, and recognition of the differences between the States.

RSPA will consider several factors in allocating funds. Some factors under review are the number of hazardous materials facilities, types and amounts of hazardous materials transported, population at risk, frequency and number of incidents recorded in past years, high mileage transportation corridors, whether the State or Indian tribe assesses and collects fees on the transportation of hazardous materials and whether such assessments or fees are used solely to carry out purposes related to the transportation of hazardous materials. RSPA will use these factors to the extent practicable in allocating both planning and training funds.

One commenter suggested that the rule should specifically prohibit the award of a grant in instances where there is no clear demonstration that State-levied hazardous materials fees are being used as required by HMTUSA section 13(b). Section 110.30(a)(4) of this final rule requires applicants to provide information on the assessment, collection and disposition of State, local or Indian tribe imposed fees on the transportation of hazardous materials. RSPA is sensitive to the issue raised by this commenter and will carefully consider that information in its grants-review process. However, it is not necessary to revise the rule in the manner suggested by the commenter.

Section 117A(a)(3) of the HMTA requires that not less than 75 percent of planning grant funds be made available to State LEPCs. The Texas Division of Emergency Management stated that RSPA must recognize and incorporate state emergency planning concepts and requirements in the certification process. In Texas, the LEPCs do not generate plans. Rather, that is a function of counties and cities. Also, most of those LEPCs lack the fiscal infrastructure to adequately control public funds. The commenter suggested that the rule be revised to also permit authorized agents of LEPCs to be identified as the legal subgrantee designated to receive and expend funds on behalf of the LEPC to meet the intent of the law. RSPA recognizes that many LEPCs depend on associated organizations for administrative support. Therefore, RSPA will accept planning grant applications which adequately demonstrate that, in lieu of direct LEPC funding, funds are provided for LEPC-directed projects.

D. Exclusion of Indian Tribes From Planning Grant Program

Several commenters, including some Indian tribes, recommended that Indian tribes be included in the planning grant program. The commenters believe that funding training without providing funds for planning will prevent effective implementation of emergency response preparedness programs, which could create an incomplete response capability.

Section 117A(a)(1) of the HMTA specifies that the Secretary shall make grants to the States and makes no reference to Indian tribes, in contrast to section 117A(a)(2), which explicitly provides for training grants to both States and Indian tribes. The two terms are defined in section 103 of the HMTA. Therefore, RSPA does not have the authority to make planning grants to Indian tribes.

E. Maintenance of Effort Requirement

Some commenters were concerned that the proposed requirement for a recipient to maintain expenditures at a level not less than the average level of its expenditures for the last two fiscal years, coupled with the proposed requirement for a 20 percent matching share, would make it difficult for States and Indian tribes to qualify for grants. Most commenters favor relaxation of the two-fiscal year aggregate funding requirements.

Section 117A of the HMTA requires that a State or Indian tribe certify its maintenance of a certain expenditure level in order to receive a grant. Therefore, RSPA does not have discretion in this matter. However, RSPA is providing some flexibility in this final rule by allowing in-kind (soft match) contributions.

F. National Curriculum

A National Curriculum is being developed for use in training public sector employees to respond safely and efficiently to accidents and incidents involving hazardous materials. Although several commenters opposed the development of the National Curriculum, the HMTA requires that grant recipients certify that they will use it.

One commenter was concerned that development of the National Curriculum will not give adequate consideration to current training programs and courses conducted at the State or local level, and that the Federal Government's development of a National Curriculum may delay the award of training grants. RSPA acknowledges that development of a National Curriculum will require a considerable amount of time as fields of study and candidate courses are reviewed and evaluated. However, we anticipate a significant number of those candidate courses will come from current State and local emergency response training programs. Additional guidance in this matter will be included with implementing instructions which RSPA will forward to grant applicants and, upon request, to other interested persons.

G. Grant Mechanism and Administrative Requirements

Several commenters opposed the use of 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State

and Local Governments". RSPA proposed that recipients of planning or training grants comply with 49 CFR part 18, and other DOT regulations incorporated by reference in 49 CFR part 18.

Several commenters stated that the proposed grant application process ignores an existing grant application and management system, Federal Emergency Management Agency's (FEMA) Comprehensive Cooperative Agreement (CCA) system. These commenters believe that it would be a duplication of effort to establish and maintain a separate grant system for HMTA grants. They stated that the proposed grant mechanism and administrative requirements impose a significant administrative burden which could more readily be assimilated under FEMA's CCA process.

Although there are many positive features in the existing CCA process, RSPA identified a number of areas where the CCA process would not meet program needs. Although some of these areas could be adjusted to accommodate legal or program requirements, such as the proposed use of multi-year scopes of work, others could not be changed without compromising the CCA structure itself. RSPA had to determine whether the CCA process, which serves over 26 established programs, would easily accommodate RSPA's grant programs, or whether another process was needed to fully meet RSPA's legal and programmatic requirements. Another factor RSPA considered was its commitment to low cost grant administration with minimal oversight of State or Indian tribal program management.

Under the CCA structure, RSPA review and participation would have to be completed before negotiations began. All negotiations on grant awards would be performed by FEMA Regional Directors within a predetermined time frame to coincide with the regional discussions with the State agencies on other components of the CCA. RSPA participation in that process would jeopardize the schedule for award of the other CCA grants. Therefore, RSPA determined that the CCA process would not be responsive to RSPA's legal and programmatic requirements and has decided to retain management of the grant programs within the Department of Transportation. To minimize duplication and to ensure efficient administration, RSPA will utilize a small staff in anticipation of continuing support from existing FEMA and EPA hazardous materials staff in headquarters and the regions.

III. Key Features of the Reimbursable Grant Program and Discussion of Additional Related Comments

A. The Planning Grant Program

Planning grants may be made to reimburse States for: (1) Developing, improving, and implementing emergency plans under EPCRA; (2) determining the flow patterns of hazardous materials within a State and between a State and another State; and (3) determining the need for regional hazardous materials emergency response teams.

To qualify for a planning grant, a State must: (1) Certify that it is complying with Sections 301 and 303 of EPCRA; (2) certify that it will maintain the aggregate expenditure of funds for its last two fiscal years for developing, improving, and implementing emergency plans under EPCRA; and (3) agree to make at least 75 percent of the Federal funds provided available to LEPCs established pursuant to section 301(c) of EPCRA.

B. The Training Grant Program

Training grants may be made to reimburse States and Indian tribes for training public sector employees to respond to emergencies involving hazardous materials. The term "public sector employee," as defined in HMTUSA, is not repeated in this rulemaking. However, that definition is applicable to the term in each instance that it appears in part 110, as well as subsequent guidance documents issued by the HMTUSA Grants Manager. Several commenters suggested that the term be added to § 110.20 (Definitions), and one commenter wanted the definition expanded to specifically include State Troopers and Emergency Medical Service (EMS) personnel. The definition is broad and applies to all categories of public sector personnel routinely called upon to assist in emergency response activities. Thus, State Troopers and EMS personnel are public sector employees.

To qualify for a training grant, a State must: (1) Certify that it is complying with sections 301 and 303 of the EPCRA; (2) certify that it will maintain the aggregate expenditure of funds for its last two fiscal years for training public sector employees to respond to accidents and incidents involving hazardous materials; (3) agree to make at least 75 percent of the Federal funds provided available for the purpose of training such employees either employed or used by political subdivisions; and (4) agree to use courses consistent with the National Curriculum developed under section 117A(g).

To qualify for a training grant, an Indian tribe must: certify that it will maintain the aggregate expenditure of funds for each of its last two fiscal years for training public sector employees to respond to accidents and incidents involving hazardous materials; and agree to use courses consistent with the National Curriculum.

C. Relationship to the EPCRA

Section 117A(a)(1) of the HMTA requires RSPA to provide financial assistance to States for emergency response planning called for under EPCRA. States, in turn, are required to make at least 75 percent of the Federal funds available to LEPCs. A State may not receive a planning or training grant unless it certifies compliance with sections 301 and 303 of EPCRA. RSPA will accept self-certification of a State's current status and progress in achieving compliance.

RSPA is requiring, with respect to section 301, that an applicant certify that a SERC has been established, emergency planning districts have been designated, and LEPCs have been appointed by the SERC. The applicant must describe the status of the LEPCs' emergency response plans and their compliance with EPCRA section 303. Section 117A of the HMTA does not require Indian tribes to make these assurances.

D. Financial Issues

This final rule requires the States to make available (pass-through) 75 percent of the planning funds to LEPCs, and at least 75 percent of the benefits for training public sector employees employed or used by the political subdivisions. HMTA does not require Indian tribes to make this assurance for training purposes. States may pass-through funding to a local political subdivision for training public sector employees. If a State elects to conduct training itself, assurances must be provided that the training will in fact benefit public sector employees at the local level.

States and Indian tribes must contribute a matching share to any grant awarded. The cost-share requirement for both planning and training is 20 percent. RSPA will allow States and Indian tribes to satisfy the cost-sharing requirement with approved third party in-kind contributions consistent with 49 CFR 18.24. Funds may be used to carry out activities eligible for funding as specified in 49 CFR 110.40. Procurement

of operational equipment to be used in response actions is excluded from consideration for funding under this grant program.

Several commenters were concerned that the restriction on procurement of operational equipment may be too narrowly interpreted. They recommended that RSPA specifically identify expendable materials and equipment that may be procured in support of planning and training projects. The final rule is not revised to reflect that level of detail in activities eligible for funding. However, RSPA clearly recognizes that it must permit procurements of a variety of planning and training aids required to achieve basic goals and objectives of most projects funded under this grant program. The restriction applies to the procurement of operational equipment that is intended primarily for use in actual emergencies.

RSPA expects to make the first round of funding decisions in December 1992. Thereafter, decisions will be made on all applications pending in RSPA on January and July 1st of each year. Decisions on grant awards will be made within a reasonable time of receipt of grant application. RSPA will receive and review applications and make grant awards from its Washington, D.C. offices. Preapplication support, including assistance from other cooperating Federal agencies, will commence on the date this final rule is published.

IV. Role of Other Federal Agencies in the Implementation of Section 117A of HMTA.

RSPA holds delegated authority for administering the grant program. Representatives of the EPA and FEMA will assist RSPA in reviewing planning and training grant applications.

FEMA, in coordination with DOT, EPA, DOE, and NIEHS, will monitor public sector emergency response training and planning for accidents and incidents involving hazardous materials. These same agencies will provide technical assistance to States, political subdivisions and Indian tribes, and assist RSPA in developing and periodically updating the National Curriculum.

V. The Grant Mechanism and Administrative Requirements

Federal agencies collectively issued the "common rule". The Office of Management and Budget (OMB) issued a revised OMB Circular A–102 that provided guidance to Federal agencies in the development of the "common rule". DOT implemented the "common rule" through 49 CFR part 18, establishing uniform and administrative rules for Federal grants and cooperative agreements to State, local and Indian tribal governments.

RSPA is required to comply with these administrative and procedural requirements. Consequently, recipients of section 117A planning and training grants must comply with the provisions under 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments", as well as other regulations incorporated by reference under this Part, pertaining to grants.

RSPA is encouraging submission of applications for multi-year projects from States and Indian tribes. However, an applicant may elect to apply for a grant on an annual basis for a specific project. Under the multi-year project approach, activities approved in a scope of work will be funded for one-year budget periods. Subsequent budget periods will be funded subject to availability of funds, satisfactory progress, and in accordance with the schedule of project activities authorized in the grant.

Performance reports must be submitted upon the completion of budget periods or upon completion of activities/projects for which reimbursement is being requested. Recipients must report on planning and training separately. Before proceeding with the next budget period or set of activities, recipients are required to provide a performance report.

Recipients must submit quarterly financial reports which will also be used for reimbursement. Except for advance funds, a recipient may be permitted to carry unexpended obligations from one year to the next. Carryover funds would provide recipients flexibility in the use of grant funds and, generally, expands the amount of funding which could be made available for planning and training grant programs. RSPA may reallocate resources if carryover spending authority is not used within one calendar year after receipt of grant award. Grant recipients may petition RSPA to waive non-statutory requirements that are not applicable to their circumstances.

Planning and training are two parts of a comprehensive national grant program; applicants are encouraged to request funds to conduct one or both in a single application package. RSPA will award funds for both in one award agreement. However, since both components are funded separately by a special registration fee program, RSPA has a fiduciary responsibility to obligate and account for planning and training funds separately. Recipients must rely on their own procurement methods unless they conflict with Federal laws and standards as defined in 49 CFR part 18.

VI. Section-by-Section Review

Section 110.1. This section implements a reimbursable grant program for both planning and training activities.

Section 110.5. This section prescribes requirements on the applicability of the training and planning grants, and administrative procedures.

Section 110.7. This section contains the Office of Management and Budget (OMB) control number for the information collection contained in this part.

Section 110.10. This section specifies who is eligible to apply for training and planning grants under this part.

Section 110.20. This section includes definitions of terms under part 110. For clarity, certain terms have been changed, as follows: "cost analysis" is changed to read "cost review", and "funding period" is changed to read "budget period".

Section 110.30. This section specifies grant application requirements and procedures, and includes information on where grant applications must be submitted. Also, January 1st and July 1st of each year are specified as deadlines for the filing of applications which will be considered in the semi-annual review and award process. To expedite implementation of this grant program, an initial award of grants will consider applications received on or before October 1, 1992.

Section 110.40. This section contains requirements on the types of activities which are eligible for funding under the grant programs prescribed in this Part. Several changes were made to proposed paragraph (a) in response to a comment that certain proposed activities go beyond the scope of the grant program established under HMTUSA. The changes are as follows: paragraph (a)(4) is revised by removing the words "to determine the distribution of Federal funds under the grant" since they suggest that a capabilities assessment is intended primarily to justify the awarding of a grant; paragraph (a)(5) is removed because it focused on awareness levels of the general public, rather than public sector employees; paragraph (a)(6) for planning is changed to paragraph "(a)(5)", and revised to change the reference to "RSPA" to read the "Associate Administrator for Hazardous Materials Safety"; in paragraph (a)(7) the last sentence is unnecessary and therefore deleted, and paragraph (a)(7) is changed to paragraph

"(a)(6)"; and paragraph (a)(6) is changed to paragraph "(a)(7)". Proposed paragraph (b)(6) for training has been revised to change the reference to "RSPA" to read the "Associate Administrator for Hazardous Materials Safety".

Section 110.50. This section prescribes requirements for disbursement of Federal funds. Proposed paragraph (a) of this section was changed for clarity to read: "Preaward expenditures may not be reimbursed."

Section 110.60. This section specifies requirements for cost sharing for planning and training grants under this Part. This section allows use of in-kind (soft-match) contributions for cost sharing purposes.

Section 110.70. This section prescribes requirements for financial administration and accounting procedures of the grant programs. Paragraph (c) is changed to (d), and a new paragraph (c) on advances is added to this section.

Section 110.80. This section specifies that procurement procedures must be used which reflect applicable State laws and regulations and Federal requirements under 49 CFR Part 18.

Section 110.90. This section prescribes requirements for monitoring, reports, and record retention for grant award recipients under this Part.

Section 110.100. This section specifies the requirements for enforcement of the terms of a grant award if a recipient fails to comply. In this proposed section, the reference to "RSPA" so changed to read "Associate Administrator for Hazardous Materials Safety".

Section 110.110. This section specifies after-grant requirements for closing out awards. In this proposed section, the reference to "RSPA" is changed to read "Associate Administrator for Hazardous Materials Safety".

Section 110.120. This section specifies requirements for requesting non-statutory deviations of this Part. In this proposed section, the reference to "RSPA" is changed to read "Associate Administrator for Hazardous Materials Safety." The address where requests for deviations must be submitted is added to this section.

Section 110.130. This section prescribes requirements for resolving disputes. In this proposed section, the reference to "RSPA" is changed to read "Administrator, RSPA".

VII. Rulemaking Analyses and Notices

A. Executive Order 12291 and DOT Regulatory Policies and Procedures

RSPA has determined that this final rule is not a "major rule" under Executive Order 12291. The final rule is not considered a significant rule under DOT's Regulatory Policies and Procedures ("the Procedures"; 44 FR 11034; February 26, 1979). In accordance with the Procedures, RSPA has determined that preparation of a Regulatory Evaluation is not necessary because the costs of the regulation are expected to be minimal.

B. Regulatory Flexibility Act

RSPA certifies that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

C. Executive Order 12612

The rule has been reviewed in accordance with Executive Order 12612 ("Federalism"). The HMTA specifies that States may apply for grants if they meet certain statutory criteria. The rule will implement the statutory requirements at a minimum level. The Federal-State relationship will be enhanced as a result of the grant funding provided. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

D. Paperwork Reduction Act

The new requirements for information collection have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) under OMB control number 2137–0586 (expiration date: May 31, 1995). The information requirements for this rule are the same as those set forth for most Federal grant programs and are consistent with OMB Circular A–102.

E. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

F. National Environmental Policy Act

RSPA has evaluated this regulation in accordance with its procedures for ensuring full consideration of the environmental impacts of DOT actions as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, executive orders, and DOT Order 5610.1C. This final rule meets the criteria that establish it as a non-major action for environmental purposes.

List of Subjects in 49 CFR Part 110

Disaster assistance, Education, Emergency preparedness, Grant programs—Environmental protection, Grant programs—Indians, Hazardous materials transportation, Hazardous substances, Indians, Reporting and recordkeeping requirements.

In 49 CFR, a new part 110 is added to read as follows:

PART 110—HAZARDOUS MATERIALS PUBLIC SECTOR TRAINING AND PLANNING GRANTS

Sec.
110.1 Purpose.
110.5 Scope.
110.7 Control Number under the Paperwork Reduction Act.
110.10 Eligibility.
110.20 Definitions.
110.30 Grant application.
110.40 Activities eligible for funding.
110.50 Disbursement of Federal funds.
110.60 Cost sharing for planning and training.
110.70 Financial administration.
110.80 Procurement.
110.90 Grant monitoring, reports, and records retention.
110.100 Enforcement.
110.110 After-grant requirements.
110.120 Deviation from this part.
110.130 Disputes.

1. The authority citation for Part 110 is added to read as follows:

Authority: 49 App. U.S.C. 1815; 49 CFR Part 1.

§ 110.1 Purpose.

This part sets forth procedures for reimbursable grants for public sector planning and training in support of the emergency planning and training efforts of States, Indian tribes, and local communities to deal with hazardous materials emergencies, particularly those involving transportation. These grants will enhance the implementation of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001).

§ 110.5 Scope.

(a) This part applies to States and Indian tribes and contains the program requirements for public sector training and planning grants to support hazardous materials emergency planning and training efforts.

(b) The requirements contained in 49 CFR part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments", apply to grants issued under this Part.

(c) Copies of standard forms and OMB circulars referenced in this part are available from the HMTUSA Grants Manager, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington DC. 20590–0001.

§ 110.7 Control Number under the Paperwork Reduction Act.

The Office of Management and Budget control number assigned to collection of information in §§ 110.30, 110.70, 110.80, and 110.90 is *2137–0586*.

§ 110.10 Eligibility.

This Part applies to States and Indian tribes. States may apply for planning and training grants. Federally-recognized Indian tribes may apply for training grants.

§ 110.20 Definitions.

Unless defined in this Part, all terms defined in Section 103 of the Hazardous Materials Transportation Act (HMTA) (49 App. U.S.C. 1802) are used in their statutory meaning and all terms defined in 49 CFR Part 18 and OMB Circular A–102, with respect to administrative requirements for grants, are used as defined therein. Other terms used in this Part are defined as follows:

Allowable costs means those costs that are: eligible, reasonable, necessary, and allocable to the project permitted by the appropriate Federal cost principles, and approved in the grant.

Budget period means the period of time specified in the grant agreement during which the project manager may expend or obligate project funds.

Cost review means the review and evaluation of costs to determine reasonableness, allocability, and allowability.

Indian country means Indian country as defined in 18 U.S.C. 1151. That section defines Indian country as all land within the limits of any reservation under the jurisdiction of the U.S. Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation; all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Indian tribe means a tribe "Federally-recognized" by the Secretary of the Interior under 25 CFR 272.2.

Local Emergency Planning Committee (LEPC) means a committee appointed by the State Emergency Response Commission under Section 301(c) of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001(c)) that includes at a minimum, representatives from each of the following groups or organizations: elected State and local officials; law enforcement, firefighting, civil defense, first aid, health, local environmental, hospital, and transportation personnel; broadcast and print media; community groups; and owners and operators of facilities subject to the emergency planning requirements.

National curriculum means the curriculum required to be developed under Section 117A of HMTA and necessary to train public sector emergency response and preparedness teams, enabling them to comply with performance standards as stated in Section 117A(g)(4).

Political subdivision means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937 (42 U.S.C. 1401 et seq.), school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under State law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

Project means the activities and tasks identified in the grant agreement.

Project manager means the State or Indian tribal official designated in a grant as the recipient agency's principal program contact with the Federal Government.

Project officer means the Federal official designated in a grant as the program contact with the project manager. The project officer is responsible for monitoring the project.

Project period means the length of time specified in a grant for completion of all work associated with that project.

State Emergency Response Commission (SERC) means the State Emergency Response Commission appointed by the Governor of each State and Territory under the Emergency Planning and Community Right-to-Know Act of 1986.

Statement of Work means that portion of a grant that describes the purpose and scope of activities and tasks to be carried out as part of the proposed project.

§ 110.30 Grant application.

(a) *General.* An applicant for a planning or training grant shall use only the standard application forms approved by the Office of Management and Budget (OMB) (SF–424 and SF–424A) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3502). Applicants are required to submit an original and two copies of the application package to: HMTUSA Grants Manager, Research and Special Programs Adminstration, U.S. Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590–0001. Applications received on or before January 1st and July 1st of each year will be considered in that cycle of the semi-annual review and award process. An initial round of the review and award process will consider applications received on or before November 15, 1992. Requests and continuation applications must include an original and two copies of the affected pages; previously submitted pages with information that is still current do not have to be resubmitted. The application must include the following:

(1) Application for Federal Assistance for non-construction programs (SF–424) and Budget sheets (SF–424A). A single application may be used for both planning and training if the budgets for each are entered separately on all budget sheets.

(2) For States, a letter from the Governor designating the State agency that is authorized to apply for a grant and to provide the written certifications required to receive a grant.

(3) For Indian tribes, a letter from the tribal government, governing body, or tribal council to the effect that the applicant is authorized to apply for a grant and to provide the written certifications required to receive a grant.

(4) A written statement explaining whether the State or tribe assesses and collects fees on the transportation of hazardous materials and whether such assessments or fees are used solely to carry out purposes related to the transportation of hazardous materials.

(5) A statement designating a project manager and providing the name, position, address and phone number of that individual who will be responsible for coordinating the funded activities with other agencies/organizations.

(6) A project narrative statement of the goals and objectives of the proposed project, project design, and long range plans. The proposed grant project and budget periods may be one or more years.

(7) A statement of work in support of the proposed project that describes and sets priorities for the activities and tasks to be conducted, the costs associated with each activity, the number and types

of deliverables and products to be completed, and a schedule for implementation.

(8) A description of the major items of costs needed to implement the statement of work and a copy of any cost or price analysis if conducted.

(9) *Drug-Free Workplace Certification.* The applicant must certify as specified in appendix C of 49 CFR part 29 that it will comply with the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 51 U.S.C. 701 et seq.).

(10) *Anti-Lobbying Certification.* The applicant must certify as specified in appendix A of 49 CFR part 20 that no Federal funds will be expended to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress (section 319 of Pub. L. 101-121, 31 U.S.C. 1352).

(11) *Debarment and Suspension Certification.* The applicant must certify as specified in subpart G of 49 CFR part 29 that it will not make an award or permit any award to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs.

(b) *Planning.* In addition to the requirements specified in paragraph (a) of this section, eligible State applicants must include the following in their application package:

(1) A written certification that the State is complying with sections 301 and 303 of the Emergency Planning and Community Right-to-Know Act of 1986, including a brief explanation of how compliance has been achieved.

(2) A written statement specifying the aggregate expenditure of funds of the State, exclusive of Federal funds, for each of its last two fiscal years for developing, improving, and implementing emergency plans under the Emergency Planning and Community Right-to-Know Act of 1986, including an explanation specifying the sources of these funds. A written certification that the State's aggregate expenditures, as defined by the State, of funds for this purpose, exclusive of Federal funds, will not fall below the average level of its expenditures for its last two fiscal years. The applicant may not claim any of these expenditures for cost-sharing.

(3) A written statement agreeing to make at least 75 percent of the Federal funds awarded available to LEPCs and an explanation of how the applicant intends to make such funds available to them for developing, improving, or implementing emergency plans.

(4) Designation of a project manager to serve as contact for coordinating planning funds under this program.

(5) A project narrative statement of the goals and objectives of each proposed project, including the following:

(i) A background statement describing the applicant's long-term goals and objectives with respect to:

(A) The current abilities and authorities of the applicant's program for preparedness planning;

(B) The need to sustain or increase program capability;

(C) Current degree of participation in or intention to assess the need for a regional hazardous materials emergency response team; and

(D) The impact that the grant will have on the program.

(ii) A discussion of whether the applicant's program currently knows, or intends to assess, transportation flow patterns of hazardous materials within the State and between that State and another State.

(iii) A schedule for implementing the proposed grant activities.

(iv) A statement describing the ways in which planning will be monitored by the project manager.

(v) A statement indicating that all members of the State Emergency Response Commission were provided the opportunity to review the grant application.

(c) *Training.* In addition to the requirements specified in paragraph (a) of this section, eligible State and Indian Tribe applicants must include the following in their application package:

(1) For a State applicant, a written certification explaining how the State is complying with sections 301 and 303 of the Emergency Planning and Community Right-to-Know Act.

(2) A written statement specifying the aggregate expenditure of funds of the State or Indian tribe, exclusive of Federal funds, for each of its last two fiscal years for training public sector employees to respond to accidents and incidents involving hazardous materials, including an explanation specifying the sources of these funds. A written certification that the applicant's aggregate expenditure, as defined by the State or tribe, of funds for this purpose, exclusive of Federal funds, will not fall below the average level of its expenditures for its last two fiscal years. The applicant may not claim any of these expenditures for cost-sharing purposes.

(3) For a State applicant, a written statement agreeing to make at least 75 percent of the Federal funds awarded available for the purpose of training public sector employees employed or used by political subdivisions. A State applicant may elect to pass all or some portion of the grant on to political subdivisions for this purpose. The applicant must include a specific explanation of how it intends to meet this requirement.

(4) Designation of a primary point of contact for coordinating training funded under this program. Identification of a single repository for copies of course materials delivered under the grant as specified in § 110.90 of this part.

(5) A project narrative statement of the long-range goals and objectives of each proposed project, including the following:

(i) A background statement describing:

(A) The current hazardous materials training program(s);

(B) Training audience, including numbers and levels of training and accreditation program for each level or criterion required to advance to the next level;

(C) Estimated total number of persons to be trained under the proposed project;

(D) The ways in which training grants will support the integrated delivery of training to meet the needs of individualized geographic and resource needs and time considerations of local responders. When appropriate, a statement describing how the proposed project will accommodate the different training needs for rural versus urban environments; and

(E) The impact that the grant and the National Curriculum will have on the program.

(ii) A statement describing how the National Curriculum will be used or modified to train public sector employees at the local level to respond to accidents and incidents involving hazardous materials.

(iii) A statement describing the ways in which effectiveness of training will be monitored by the project manager, including, but not limited to, examinations, critiques, and instructor evaluations.

(iv) A schedule for implementing the proposed training grant activities.

(v) A statement indicating that all members of the State or Tribal Emergency Response Commission were provided the opportunity to review the grant application.

§ 110.40 Activities eligible for funding.

(a) *Planning.* Eligible State applicants may receive funding for the following activities:

(1) Development, improvement, and implementation of emergency plans

required under the Emergency Planning and Community Right-to-Know Act of 1986, as well as exercises which test the emergency plan. Enhancement of emergency plans to include hazard analysis as well as response procedures for emergencies involving transportation of hazardous materials, including radioactive materials.

(2) An assessment to determine flow patterns of hazardous materials within a State, between a State and another State or Indian country, and development and maintenance of a system to keep such information current.

(3) An assessment of the need for regional hazardous materials emergency response teams.

(4) An assessment of local response capabilities.

(5) Conduct of emergency response drills and exercises associated with emergency preparedness plans.

(6) Provision of technical staff to support the planning effort.

(7) Additional activities the Associate Administrator for Hazardous Materials Safety deems appropriate to implement the scope of work for the proposed project plan and approved in the grant.

(b) *Training.* Eligible State and Indian tribe applicants may receive funding for the following activities:

(1) An assessment to determine the number of public sector employees employed or used by a political subdivision who need the proposed training and to select courses consistent with the National Curriculum.

(2) Delivery of comprehensive preparedness and response training to public sector employees. Design and delivery of preparedness and response training to meet specialized needs. Financial assistance for trainees and for the trainers, if appropriate, such as tuition, travel expenses to and from a training facility, and room and board while at the training facility.

(3) Emergency response drills and exercises associated with training, a course of study, and tests and evaluation of emergency preparedness plans.

(4) Expenses associated with training by a person (including a department, agency, or instrumentality of a State or political subdivision thereof or an Indian tribe) and activities necessary to monitor such training including, but not limited to examinations, critiques and instructor evaluations.

(5) Provision of staff to manage the training effort designed to result in increased benefits, proficiency, and rapid deployment of local and regional responders.

(6) Additional activities the Associate Administrator for Hazardous Materials Safety deems appropriate to implement the scope of work for the proposed project and approved in the grant.

§ 110.50 Disbursement of Federal funds.

(a) Preaward expenditures may not be reimbursed.

(b) Reimbursement may not be made for a project plan unless approved in the grant award.

(c) If a recipient agency seeks additional funds, the amendment request will be evaluated on the basis of needs, performance and availability of funds. An existing grant is not a commitment of future Federal funding.

§ 110.60 Cost sharing for planning and training.

(a) The recipient agency must provide 20 percent of the direct and indirect costs of all activities covered under the grant award program with non-Federal funds. Recipients may either use cash (hard-match), in-kind (soft-match) contributions, or a combination of in-kind plus hard match to meet this requirement. In-kind (soft-match) contributions are in addition to the maintenance of effort required of recipients of grant awards. The types of contributions allowed are as follows:

(1) Any funds from a State, local, or other non-Federal source used for an eligible activity as defined in § 110.40 in this part.

(2) The dollar equivalent value of an eligible activity as defined in § 110.40 of this part provided by a State, local, or other non-Federal source.

(3) The value of participants' salary while attending a planning or training activity contained in the approved grant application provided by a State, local, or other non-Federal source.

(4) Additional types of in-kind contributions the Associate Administrator for Hazardous Materials Safety deems appropriate.

(b) Funds used for matching purposes under any other Federal grant or cooperative agreement may not be used for matching purposes. The funds expended by a recipient agency to qualify for the grant may not be used for cost-sharing purposes.

(c) Acceptable contributions for matching and cost sharing purposes must conform to 49 CFR Part 18.

§ 110.70 Financial administration.

(a) A State must expend and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors, must be sufficient to:

(1) Permit the preparation of reports required by 49 CFR Part 18 and this Part, including the tracing of funds provided for planning to a level of expenditure adequate to establish that at least 75 percent of the funds provided were made available to LEPCs for developing, improving, and implementing emergency plans; and the tracing of funds provided for training to a level of expenditure adequate to establish that at least 75 percent of the funds provided were made available for the purposes of training public sector employees employed or used by political subdivisions.

(2) Permit the tracing of funds to a level of expenditure adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

(b) The financial management systems of Indian tribes and any subgrantees must meet the standards of 49 CFR 18.20, including the ability to trace funds provided for training to a level of expenditure adequate to establish that at least 75 percent of the funds provided were made available for the purposes of training public sector employees employed or used by political subdivisions.

(c) Advances shall be made to States and Indian tribes consistent with 49 CFR part 18 and 31 CFR part 205. The Associate Administrator for Hazardous Materials Safety shall base these advances on demonstrated need, which will be determined on a case-by-case basis, considering such factors as State/Tribal budget constraints and reductions in amounts budgeted for hazardous materials activities. To obtain an advance, a State or Indian tribe must comply with the following requirements:

(1) A letter from the Governor or Tribal leader or their designee is required specifying the extenuating circumstances requiring the funding advance for the grant;

(2) The maximum advance request may not be more than $25,000 for each State or Indian tribe;

(3) Recipients of advance funding must obligate those funds within 3-months of receipt;

(4) Advances including interest will be deducted from the initial reimbursement to the State or Indian tribe; and

(5) The State or Indian tribe will have its allocation of current grant funds reduced and will not be permitted to apply for future grant funds until the advance is covered by a request for reimbursement. For example, if $25,000 is advanced for personnel costs, this advance would be deducted from the

initial reimbursement in the year the advance was made.

(d) To be allowable, costs must be eligible, reasonable, necessary, and allocable to the approved project in accordance with OMB Circular A–87 and included in the grant award. Costs incurred prior to the award of any grant are not allowable. Recipient agencies are responsible for obtaining audits in accordance with the Single Audit Act of 1984 (31 U.S.C. 7501), 49 CFR part 90, and OMB Circular A–128. Audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits. The Associate Administrator for Hazardous Materials Safety may audit a recipient agency at any time.

§ 110.80 Procurement.

Project managers shall use procurement procedures and practices which reflect applicable State laws and regulations and Federal requirements as specified in 49 CFR 18.36.

§ 110.90 Grant monitoring, reports, and records retention.

(a) *Grant monitoring.* Project managers are responsible for managing the day-to-day operations of grant, subgrant and contract-supported activities. Project managers must monitor performance of supported activities to assure compliance with applicable Federal requirements and achievement of performance goals. Monitoring must cover each program, function, activity, or task covered by the grant. Monitoring and reporting requirements for planning and training are contained in this Part; general grant reporting requirements are specified in 49 CFR 18.40.

(b) *Reports.* (1) The project manager shall submit a performance report at the completion of an activity for which reimbursement is being requested or with a request to amend the grant. The final performance report is due 90 days after the expiration or termination of the grant.

(2) Project managers shall submit an original and two copies of all performance reports. Performance reports for planning and training must include comparison of actual accomplishments to the stated goals and objectives established for the performance period, and the reasons for not achieving those goals and objectives, if applicable.

(3) Project managers shall report developments or events that occur between the required performance reporting dates which have significant impact upon the planning and training activity such as:

(i) Problems, delays, or adverse conditions which will impair the ability to meet the objective of the grant; and

(ii) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

(4) Financial reporting, except as provided in § 110.70 and 49 CFR 18.41, shall be supplied quarterly using Standard Form 270, Request for Advance or Reimbursement, to report the status of funds. The project manager shall report separately on planning and training.

(c) *Records retention.* In accordance with 49 CFR 18.42, all financial and programmatic records, supporting documents, statistical records, training materials, and other documents generated under a grant shall be maintained by the project manager for three years from the date the project manager submits the final financial status report (SF 269) or Request for Advance or Reimbursement (SF 270). The project manager shall designate a repository and single-point of contact for planning and for training, or both, for these purposes. If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

§ 110.100 Enforcement.

If a recipient agency fails to comply with any term of an award (whether stated in a Federal statute or regulation, an assurance, a State plan or application, a notice of award, or elsewhere) a noncompliance action may be taken as specified in 40 CFR 18.43. The recipient agency may appeal any such actions as specified in 49 CFR part 18. Costs incurred by the recipient agency during a suspension or after termination of an award are not allowable unless the Associate Administrator for Hazardous Materials Safety authorizes it in writing. Grant awards may be terminated in whole or in part with the consent of the recipient at any agreed upon effective date, or by the recipient upon written notification.

§ 110.110 After-grant requirements.

The Associate Administrator for Hazardous Materials Safety will close out the award upon determination that all applicable administrative actions and all required work of the grant are complete in accordance with Subpart D of 49 CFR part 18. The project manager must submit all financial, performance, and other reports required as a condition of the grant, within 90 days after the expiration or termination of the grant. This time frame may be extended by the Associate Administrator for Hazardous Materials Safety for cause.

§ 110.120 Deviation from this part.

Recipient agencies may request a deviation from the non-statutory provisions of this part. The Associate Administrator for Hazardous Materials Safety will respond to such requests in writing. If appropriate, the decision will be included in the grant agreement. Request for deviations from Part 110 must be submitted to: HMTUSA Grants Manager, Research and Special Programs Administration, U.S. Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590–0001.

§ 110.130 Disputes.

Disputes should be resolved at the lowest level possible, beginning with the project manager and the project officer. If an agreement cannot be reached, the Administrator, RSPA, will serve as the dispute resolution official, whose decision will be final.

Issued in Washington, DC, on August 24, 1992, under authority delegated in 49 CFR part 106, appendix A.

Douglas B. Ham,

Acting Administrator, Research and Special Programs Administration.

[FR Doc. 92–22220 Filed 9–16–92; 8:45 am]

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federal register

Thursday
September 17, 1992

Part III

Department of Agriculture

Forest Service

36 CFR Part 242

Department of the Interior

Fish and Wildlife Service

50 CFR Part 100

Subsistence Management Regulations for Public Lands in Alaska; Proposed Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018-AB43

Subsistence Management Regulations for Public Lands in Alaska, Subpart D—1993-1994 Subsistence Taking of Fish and Wildlife Regulations

AGENCY: Forest Service, USDA, Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish regulations for seasons, bag limits, methods, and means related to subsistence taking of fish and wildlife during the entire 1993-1994 regulatory year. The rulemaking is necessary because subpart D is subject to an annual review cycle. The rulemaking, when final, will replace the regulations identified as "Subsistence Management Regulations for Public Lands in Alaska, Subpart D," which expire on June 30, 1993.

DATES: Written public comments and proposals for change will be accepted regarding this proposed rulemaking until November 16, 1992. Public hearings on this proposed rulemaking will be held during the week of October 5-9, 1992, in the following locations: Anchorage, Barrow, Bethel, Dillingham, Fairbanks, Galena, Kodiak, Kotzebue, Nome, and Sitka. Proposals for changes to subpart D will then be compiled and made available for review on or about the beginning of November 1992. The public will then have 60 days to submit written comments on said complied proposals for change. Oral comments on the proposals for change may be submitted at a Federal Subsistence Board (Board) meeting to be held in March 1993. At that meeting the Board will take action on proposals for changes to the 1993-1994 Subsistence Taking of Fish and Wildlife Regulations included herein.

ADDRESSES: Written comments and proposals for change may be sent to the Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503.

FOR FURTHER INFORMATION CONTACT: Richard S. Pospahala, Office of Subsistence Management, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786-3447. For questions specific to National Forest System lands, contact Norman R. Howse, Assistant Director Subsistence, USDA, Forest Service, Alaska Region, P.O. Box 21628, Juneau, Alaska 99802-1628, telephone (907) 586-8890.

SUPPLEMENTARY INFORMATION:

Proposed Changes from 1992-1993 Seasons and Bag Limits

The season and bag limit portions of the 1992-1993 subpart D, with minor corrections and adjustments to seasons and harvest area descriptions, serves as the proposed text for subpart D season and bag limit regulations for 1993-1994. Those corrections and modifications include:

- New Preamble.
- Definition of *Possession*.

Navigable Waters

At this time, the Federal Subsistence Management Program (FSMP) regulations apply to all non-navigable waters located on public lands and to navigable waters located on the public lands identified at § _____.3(b) of the regulations. Nothing in these regulations is intended to enlarge or diminish the authority of the Departments to manage submerged lands title to which is held by the United States.

Public Comments/Proposals and Hearings

Interested persons may submit written comments or proposals regarding the 1993-1994 regulatory year for subpart D to the address noted at the beginning of this rulemaking. Comments or proposals may also be submitted at public hearings that will be held during the week of October 5-9, 1992, in Anchorage, Barrow, Bethel, Dillingham, Fairbanks, Galena, Kodiak, Kotzebue, Nome, and Sitka. The public will be afforded a 60-day period commencing in December, in which to comment on proposed changes regarding the 1993-1994 regulatory year. Regional workshops will be held in January 1993, to facilitate detailed local review and comment on specific proposed changes affecting each region. In March 1993, the Board will hold a public hearing on this proposed rule and any submitted proposals for change.

Any proposals for change to the seasons, bag limits, methods and/or means set out in this proposed rule must include, at a minimum, the following information:

a. Name, address and telephone number of the individual or organization submitting the proposal;

b. Section and/or paragraph of the proposed rule associated with the proposal for change;

c. A statement as to why the change to the regulation is necessary for subsistence uses;

d. A proposed solution;

e. Suggested wording for the addition or change; and

f. Any supporting information.

Proposals for change which fail to include the above information may be rejected. To avoid such rejection, the public is encouraged to use standardized forms for submission of proposals which are available on request from U.S. Fish and Wildlife Service at the previously noted address.

Federal Regional Advisory Councils

The Record of Decision, Subsistence Management for Federal Public Lands in Alaska, signed in early April, 1992, and the final Subsistence Management Regulations for Public Lands in Alaska, 57 FR 22940-64 (1992) (to be codified at 50 CFR 100), identify the structure of the public advisory system that will be employed in the Federal Subsistence Management Program (FSMP). Alaska has been divided into ten subsistence resource regions, each to be represented by a Regional Advisory Council. These Councils will be composed of no fewer than seven and no more than thirteen members who are rural residents of the region and knowledgeable of local subsistence concerns. Regional Advisory Councils will possess the authority to make recommendations to the Federal Subsistence Board on subsistence seasons and bag limits, methods and means of taking, customary and traditional use determinations and rural determinations. Establishment of Regional councils requires that the Secretary of the Interior approve each Council's charter and appoint the members of each Council with the concurrence of the Secretary of Agriculture. Completion of these requirements is not expected before the Federal Subsistence Board deliberates on proposals for change to the 1993-1994 subsistence hunting and fishing regulations in March 1993.

In order to ensure meaningful local contribution to the development of the 1993-1994 subsistence taking regulations, the Federal Subsistence Board has adopted a plan to hold information meetings and workshops in each regional center. In conjunction with public hearings to be held in early October 1992, an informational meeting and workshop will be held to help interested individuals develop proposals for changes to this proposed rule. In January 1993, additional workshops will be held in regional centers to facilitate

detailed local review and comment on specific proposals for change which effect each region. Written summaries of these workshops will be prepared and presented to the Federal Subsistence Board prior to its meeting on subpart D regulations in late March of 1993.

Conformance With Statutory and Regulatory Authorities

Paperwork Reduction Act

These rules contain information collection requirements subject to Office of Management and Budget (OMB) approval under 44 U.S.C. 3501–3520. They apply to the use of public lands in Alaska. The information collection requirements described above are approved by the OMB under 44 U.S.C. 3501 and have been assigned clearance number 1018–0075.

Public reporting burden for this form is estimated to average .1382 hours per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments on the burden estimate or any other aspect of this form to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1016–0075), Washington, DC 20903. Additionally, information collection requirements may be imposed if the councils and committees subject to the Federal Advisory Committee Act are established under subpart B. Such requirements will be submitted to OMB for approval prior to their implementation.

Economic Effects

Executive Order 12291, "Federal Regulation," of February 19, 1981, requires the preparation of regulatory impact analysis for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions.

The Departments of the Interior and Agriculture have determined that this rulemaking is not a "major rule" within the meaning of Executive Order 12291, and certify that it will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This rulemaking will impose no significant costs on small entities; the exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities. The number of small entities affected is unknown, but the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue pre-existing uses of public lands indicates that they will not be significant.

These regulations do not meet the threshold criteria of "Federalism Effects" as set forth in Executive Order 12612. Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no significant takings implication relating to any property rights as outlined by Executive Order 12630.

Drafting Information

These regulations were drafted under the guidance of Richard S. Pospahala, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional guidance was provided by Thomas H. Boyd, Alaska State Office, Bureau of Land Management, Robert Gerhard, Alaska Regional Office, National Park Service; John Borbridge, Alaska Area Office, Bureau of Indian Affairs; and Norman Howse, USDA, Forest Service, both of Juneau, Alaska.

The primary author was Sharon Fleek. Contributors were Peggy Fox, Sue Detwiler, and Dick Marshall of the U.S. Fish and Wildlife Service.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National Forests, Public Lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, Public Lands, Reporting and recordkeeping requirements, Wildlife.

Words of Issuance

For the reasons set out in the preamble, title 36, part 242, and title 50, part 100, of the Code of Federal Regulations, are amended as set forth below.

PART _____—SUBSISTENCE MANAGEMENT REGULATIONS FOR FEDERAL PUBLIC LANDS IN ALASKA

1. The authority citation for both 36 CFR part 242 and 50 CFR part 100 is revised to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

2. Subpart D is revised to read as follows:

Subpart D—Subsistence Taking of Fish and Wildlife

Sec.

_____.25 Subsistence taking of wildlife.
_____.26 Subsistence taking of fish.
_____.27 Subsistence taking of shellfish.

Subpart D—Subsistence Taking of Fish and Wildlife

§ _____.25 Subsistence taking of wildlife.

(a) Definitions. The following definitions shall apply to all regulations contained in this section.

ADF&G means the Alaska Department of Fish and Game.

Aircraft means a fixed-wing machine or device that is used or intended to be used to carry persons or objects through the air, including airplanes and gliders.

Airport means an airport listed in the Federal Aviation Administration, Alaska Airman's Guide and chart supplement.

Animal means those species with a vertebral column (backbone).

Bag limit means the number of any one species permitted to be taken by any one person in the unit or portion of a unit in which the taking occurs; however, additional numbers of a species may be taken in another designated open unit or portion of a unit where a greater limit on that species is prescribed. In no case may the total or cumulative bag for one person exceed the limit set for the unit or portion of a unit in which the additional animals are taken. A Federal subsistence bag limit and a State bag limit for the same species may not be accumulated.

Big game means black bear, brown and grizzly bear, caribou, deer, mountain goat, moose, musk oxen, Dall sheep, wolf and wolverine.

Bow means long bow, recurve bow, or compound bow, but not crossbow, or bows equipped with any other mechanical device that holds arrows at full draw.

Broadhead means an arrowhead with two or more steel cutting edges having

minimum cutting diameter of not less than seven-eighths inch.

Bull moose means any male moose.

Closed season means the time when wildlife may not be taken.

Cub bear means a brown or grizzly bear in its first or second year of life, or a black bear (including cinnamon and blue phases) in its first year of life.

Edible meat means, in the case of big game, except wolf and wolverine, the meat of the ribs, neck, brisket, front quarters as far as the juncture of the humerus and radius-ulna (knee), hindquarters as far as the distal joint of the tibia-fibula (hock) and that portion of the animal between the front and hindquarters; in the case of wild fowl, the meat of the breast; however, *edible meat* of big game or wild fowl does not include: meat of the head; meat that has been damaged and made inedible by the method of taking; bones, sinew and incidental meat reasonably lost as a result of boning or a close trimming of the bones; or viscera.

Full curl horn means the horn of a male Dall sheep; the tip of which has grown through 360 degrees of a circle described by the outer surface of the horn, as viewed from the side, or that both horns are broken or that the sheep is at least 8 years of age as determined by horn growth annuli.

Fur animal means coyote, arctic fox, red fox, lynx, or red squirrel; *fur animals* is a classification of animals subject to taking with a hunting license.

Furbearer means beaver, coyote, arctic fox, red fox, lynx, marten, mink, weasel, muskrat, river (land) otter, red squirrel, flying squirrel, marmot, wolf or wolverine; *furbearers* is a classification of animals subject to taking with a trapping license.

Highway means the drivable surface of any constructed road.

Household means that group of people residing in the same residence.

Motorized vehicle means a motor-driven land, air or water conveyance.

Open season means the time when wildlife may be taken; each period prescribed as an open season includes the first and last days of the period prescribed.

Permit hunt means a hunt for which State or Federal permits are issued by registration or other means.

Poison means any substance which is toxic or poisonous upon contact or ingestion.

Possession means having direct physical control of the wildlife at a given time or having both the power and intention at a given time to exercise dominion or control of the wildlife either directly or through another person or persons.

Registration permit means a hunting permit issued to a person who agrees to the conditions specified for the hunt. Registration permit hunts begin on a date announced and continue throughout the open season, or until the season is closed by Board action. Permits are issued in the order applications are received and/or based on priorities as determined by § _____.17.

Sealing means placing a mark or tag on a portion of an animal by an authorized representative of the ADF&G; *sealing* includes collecting and recording information concerning the conditions under which the animal was harvested, and measurements of the specimen submitted for sealing, or surrendering a specific portion of the animal for biological information.

Seven-eighths curl horn means the horn of a male Dall sheep, the tip of which has grown through seven-eights of a circle (315 degrees), described by the outer surface of the horn, as viewed from the side, or with both horns broken.

Skin, hide, or pelt are all the same thing, and mean any tanned or untanned external covering of an animal's body: skin, hide, or pelt of a bear shall mean the entire external covering with claws attached.

Small game means all species of grouse, hares, rabbits, and ptarmigan.

Take or *Taking* means to pursue, hunt, shoot, trap, net capture, collect, kill, harm, or attempt to engage in any such conduct.

Tine or *antler point* refers to any point on an antler whose length is at least one inch, and is greater in length than in width, measured one inch or more from the tip.

Transportation means to ship, convey, carry or transport by any means whatever, and deliver or receive for such shipment, conveyance, carriage, or transportation.

Unclassified game means all species of game not otherwise classified in the definitions.

Unit means one of the 26 geographical areas listed herein as Game Management Units.

Wild fowl means small game birds.

Wildlife means any bird, big game, small game, furbearer, fur animal, or unclassified game and includes any part, product, egg, or offspring thereof, or carcass or part thereof.

(b) Small game and unclassified game, fur animals, fur bearers, and big game may be taken for subsistence by any method, unless prohibited below or by other Federal statute. Taking wildlife for subsistence by a prohibited method is a violation of this regulation. Seasons are closed unless opened by Federal regulation. Hunting during a closed season or in an area closed by these regulations is prohibited.

(1) The following methods of taking wildlife for subsistence are prohibited:

(i) By shooting from, on, or across a highway;

(ii) With the use of any poison;

(iii) With the use of a helicopter in any manner, including transportation of individuals, equipment or wildlife; this paragraph does not apply to transportation of an individual, gear or wildlife during an emergency rescue operation in a life-threatening situation;

(iv) Taking wildlife from a motorized vehicle except in the following situations: from a motor-driven boat if the motor has been completely shut off and the boat's progress from the motor's power has ceased; from a motor-driven boat or snow machine to take caribou in Game Management Unit 23; or where otherwise provided in this subpart;

(v) Using a motorized vehicle to drive, herd, or molest wildlife;

(vi) With the use or aid of a machine gun, set gun, or a shotgun larger than 10 gauge;

(vii) With the aid of a pit, fire, artificial light (except that coyotes may be taken in Units 6(B) and 6(C) with the aid of artificial lights), radio communication, artificial salt lick, explosive, barbed arrow, bomb, smoke, chemical, or a conventional steel trap with a jaw spread over nine inches; however, the "conibear" style trap with a jaw spread of less than 11 inches may be used;

(viii) With a snare, except for taking unclassified game, fur bearer, or small game.

(2) The following methods and means of taking big game for subsistence are prohibited in addition to the prohibitions in paragraph (b)(1) of this section:

(i) With the use of a firearm other than a shotgun, muzzle-loaded rifle, or rifle or pistol using a center-firing cartridge, except that—

(A) In Unit 23, swimming caribou may be taken with a firearm using rimfire cartridges;

(B) The use of a muzzle loading rifle is prohibited for brown bear, black bear, moose, musk ox and mountain goat unless such a firearm is .54 caliber or larger, or at least .45 caliber and a 250 grain or larger elongated slug is used;

(ii) With a crossbow in any area restricted to hunting by bow and arrow only;

(iii) With a longbow, recurve bow, or compound bow unless the bow is capable of casting a broadhead-tipped arrow at least 175 yards horizontally,

the arrow is tipped with a broadhead of at least ⅞" width, and arrow and broadhead together weigh at least one ounce (437.5 grains), and the broadhead is not barbed;

(iv) With the use of bait; except that black bears may be taken with the use of bait in Units 14(A) between April 15 and May 25; in Unit 14(B) between April 15 and May 31; in Units 1 (A) (B) (D), 2, 3, 5, 6, 7 (except Resurrection Creek and its tributaries), 11, 13 and 16 (except Denali State Park), 15 and 17, between April 15 and June 15; and in Units 12, 19–21, 24, and 25, between April 15 and June 30. Baiting of black bears is subject to the following restrictions—

(A) Only biodegradable materials may be used for bait; only the head, bones, viscera, or skin of legally harvested fish and game may be used for bait;

(B) No person may use bait within one-quarter mile of a publicly maintained road or trail;

(C) No person may use bait within one mile of a house or other permanent dwelling, or within one mile of a developed campground or developed recreational facility;

(D) A person using bait shall clearly mark the site with a sign reading "black bear bait station" that also displays the person's hunting license number and ADF&G assigned number;

(E) A person using bait shall remove litter and equipment from the bait station site when hunting is completed;

(F) No person may give or receive remuneration for the use of a bait station, including barter or exchange of goods;

(G) No person may have more than two bait stations established (bait present) at any one time;

(H) No person may establish a black bear bait station unless he or she first registers the site with ADF&G;

(v) With the use of a trap or snare;

(vi) While a big game animal is swimming, except that a swimming caribou may be taken in Unit 23;

(vii) No person who has been airborne, except in regularly scheduled commercial aircraft flights, may take or assist in taking a big game animal until after 3 a.m. following the day in which the flying occurred; however, this restriction does not apply to subsistence taking of deer;

(viii) From a boat in Units 1–5 except for persons certified as disabled;

(ix) Taking a bear cub or a sow accompanied by cub(s).

(3) The following methods and means of taking fur animals for subsistence under a hunting license are prohibited, in addition to the prohibitions in paragraph (b)(1) of this section:

(i) By using a trap, snare, net, or fish trap;

(ii) By disturbing or destroying a den;

(iii) By having been airborne and using a firearm to take or assist in taking an arctic or red fox until after 3 a.m. on the day following the day in which the flying occurred.

(4) The following methods and means of taking fur bearers for subsistence under a trapping license are prohibited, in addition to the prohibitions in paragraph (b)(1) of this section:

(i) By disturbing or destroying a den, except that any muskrat pushup or feeding house may be disturbed in the course of trapping;

(ii) By disturbing or destroying any beaver house;

(iii) Taking beaver by any means other than a steel trap or snare, except that a firearm may be used to take beaver in Unit 18 from April 1 through June 10, in Unit 21(E) from April 1 through June 1, and in Units 8, 22, and 23 throughout the seasons established herein;

(iv) Taking land otter with a steel trap having a jaw spread of less than five and seven-eighths inches during any closed mink and marten season in the same game management unit;

(v) using a net, or fish trap (except a blackfish or fyke trap);

(vi) Taking beaver in the Minto Flats Management Area with the use of an aircraft for ground transportation or by landing within one mile of a beaver trap or set used by the person transported;

(vii) Taking a wolf in Units 12 and 20(E) during March, April or October with a steel trap, or with a snare smaller than 3X;

(viii) Having been airborne and using a firearm to take or assist in taking a wolf, or wolverine until after 3:00 a.m. on the day following the day in which the flying occurred; this paragraph does not apply to a trapper using a firearm to dispatch a wolf, or wolverine caught in a trap or snare; or in taking an artcic fox, red fox, coyote or lynx if the person is over 100 feet from the airplane;

(ix) Taking a red fox in Unit 15 by any means other than a steel trap or snare;

(x) Taking beaver in Unit 13 from October 10–November 9, except with underwater traps or snares.

(c) Possession and Transportation of Wildlife.

(1) Unless otherwise provided, no person may take a species of wildlife in any unit or portion of a unit if that person's total statewide take of that species under Federal and State regulations already equals or exceeds the bag limit for that species in that unit or portion of a unit except as specified in paragraph (c)(3) of this section.

(2) Wildlife taken by a person, pursuant to § _____.6, as part of a community harvest, does not count toward any individual bag limit.

(3) The bag limit specified herein for a subsistence season for a species and the State bag limit set for a State season for the same species are not separate and distinct.

(4) The bag limit specified for a trapping season for a species and the bag limit set for a hunting season for the same species are separate and distinct. This means that a person who has taken a bag limit for a particular species under a trapping season may take additional animals under the bag limit specified for a hunting season or vice versa.

(5) A bear taken in a unit or portion of a unit having a bag limit of one bear per year counts against a one bear every four regulatory years bag limit in other units; an individual may not take more than one bear in a regulatory year.

(6) A bag limit applies to a regulatory year unless another time period is specified in the bag limit.

(7) Unless otherwise provided, any person who gives or receives wildlife shall furnish upon request of a Federal or State agent a signed statement describing the following: Names and addresses of persons who gave and received wildlife, when and where the wildlife was taken, and what wildlife was transferred. Where a qualified subsistence user has designated another qualified subsistence user to take fish or wildlife on his or her behalf in accordance with § _____.6, the permit shall be furnished in place of a signed statement.

(8) A rural Alaska resident who has been designated to take fish and wildlife on behalf of another rural Alaska resident in accordance with § _____.6, shall promptly deliver the fish or wildlife to that rural Alaska resident.

(9) No person may possess, transport, or give, receive or barter wildlife that was taken in violation of Federal or State statutes or a regulation promulgated thereunder.

(10) Evidence of sex and identity.

(i) No person may possess or transport a Dall sheep unless both horns accompany the animal, if the subsistence take is restricted to a single sex.

(ii) If the subsistence taking of a big game animal, except sheep, is restricted to one sex in the local area, no person may possess or transport the carcass of an animal taken in that area unless sufficient portions of the external sex organs remain attached to indicate conclusively the sex of the animal; however, this section does not apply to

the carcass of a big game animal that has been cut and placed in storage or otherwise prepared for consumption upon arrival at the location where it is to be consumed.

(iii) If a moose bag limit includes an antler size or configuration restriction, no person may possess or transport the moose carcass or its parts unless both antlers accompany the carcass or its parts. A person possessing a set of antlers with less that the required number of brow tines on one antler shall leave the antlers naturally attached to the unbroken, uncut skull plate; however, this subsection does not apply to a moose carcass or its parts that have been cut and placed in storage or otherwise prepared for consumption after arrival at the place where it is to be stored or consumed.

(d) A person who takes an animal that has been marked or tagged for scientific studies must, within a reasonable time, notify ADF&G or agency identified on the collar or marker, when and where the animal was killed. Any ear tag, collar, radio, tattoo, or other identification must be retained with the hide until it is sealed, if sealing is required, and in all cases any identification equipment must be returned to the ADF&G or to an agency identified on such equipment.

(e) Sealing of bear skins and skulls.

(1) As used in paragraph (e), *bear* means brown bears in all units, and black bears of all color phases taken in Units 1–7, 11–16, and 20;

(2) No person may possess or transport from Alaska, the untanned skin or skull of a bear unless the skin and skull have been sealed by an authorized representative of ADF&G in accordance with State regulation, except that the skin and skull of a brown bear taken under a registration permit in the Western Alaska Brown Bear Management Area or the Northwest Alaska Brown Bear Management Area need not be sealed unless removed from the area.

(3) A person who possesses a bear shall keep the skin and skull together until a representative of the ADF&G has removed a rudimentary premolar tooth from the skull and sealed both the skull and the skin; except that this provision shall not apply to brown bears taken within the Western Alaska Brown Bear Managment Area or the Northwest Alaska Brown Bear Management Area which are not removed from the Management Area.

(i) In areas where sealing is required by Federal regulations, until the hide has been sealed by a representative of ADF&G, no person may possess or transport the hide of a bear which does not have the penis sheath or vaginal orifice naturally attached to indicate conclusively the sex of the bear.

(ii) If the skin or skull of a bear taken in the Western Alaska Brown Bear Management Area is removed from the area, it must be sealed by an ADF&G representative in Behtel, Dillingham, or McGrath; at the time of sealing the ADF&G representative shall remove and retain the skin of the skull and front claws of the bear.

(iii) If the skin or skull of a bear taken in the Northwestern Alaska Brown Bear Management Area is removed from the area, it must be sealed by an ADF&G representative in Barrow, Fairbanks, Galena, or Kotzebue; at the time of sealing the ADF&G representative shall remove and retain the skin of the skull and front claws of the bear.

(4) No person may falsify any information required on the sealing certificate or temporary sealing form provided by the ADF&G in accordance with State regulation.

(f) Sealing of Marten, Lynx, Beaver, Otter, Wolf, and Wolverine. No person may possess or transport from Alaska the untanned skin of a marten taken in Units 1—5, 7, 13(E), 14, 15, and 16 or the untanned skin of a lynx, beaver, land otter, wolf, or wolverine, whether taken inside or outside the State, unless the skin has been sealed by an authorized representative of ADF&G in accordance with State regulation.

(g) A person who takes a species listed in paragraph (f) of this section but who is unable to present the skin in person must complete and sign a temporary sealing form and ensure that the completed temporary sealing form and skin are presented to an authorized representative of ADF&G for sealing consistent with requirements listed in paragraph (f) of this section.

(h) Utilization of Wildlife.

(1) No person may use wildlife as food for a dog or fur bearer, or as bait, except for the following:

(i) The hide, skin, viscera, head, or bones of wildlife;

(ii) The skinned carcass of a fur bearer or a fur animal;

(iii) Red squirrels and small game; however, the breast meat of small game birds may not be used as animal food or bait;

(iv) Legally taken unclassified game.

(2) A person taking game for subsistence shall salvage the following parts for human use:

(i) The hide of a wolf, wolverine, coyote, fox, lynx, marten, mink, weasel and land otter, and the hide or meat of a beaver or muskrat;

(ii) The hide and edible meat of a brown bear, except that the hide of brown bears taken in the Western and Northwestern Alaska Brown Bear Management Areas need not be salvaged;

(iii) The hide and edible meat of a black bear;

(iv) The hide, feathers, or meat of a squirrel, marmot, or unclassified game.

(3) Failure to salvage the edible meat of big game (except wolf or wolverine), or wild fowl is prohibited.

(4) Failure to salvage or possess the edible meat may not be a violation if due to circumstances beyond the control of a person; including theft of the animal or fowl, unanticipated weather conditions, or unavoidable loss to another wild animal.

(5) It is unlawful for a person to possess the horns or antlers of a big game animal that was taken after the opening of the current or most recent lawful season for the animal unless the person also possesses the edible meat of the animal. However, this does not apply to the acquisition of the horns or antlers as a gift after the edible meat of the big game animal was salvaged, or the edible meat is no longer present due to personal consumption or legal transfer.

(i) Wildlife taken in defense of life or property is the property of the State and is not a subsistence taking. A person taking such wildlife is required to salvage immediately the meat, or, in the case of a black bear, wolf, wolverine, or coyote, the hide and surrender it to the State immediately. All bear hides surrendered (brown or black) must include claws. In the case of brown or grizzly bear, the hide and skull must be salvaged and surrendered to the State immediately. The person taking the wildlife must notify the ADF&G of the taking immediately and must submit a written report of the circumstances of the taking of wildlife in defense of life or property to the ADF&G within 15 days of the taking.

(j) These regulations do not apply to the subsistence taking and use of those fish and wildlife resources regulated pursuant to the Fur Seal Act of 1966 (80 Stat. 927, 16 U.S.C. 1187), the Endangered Species Act of 1973 (87 Stat. 884, 16 U.S.C. 1531–1543), the Marine Mammal Protection Act of 1972 (86 Stat. 1027; 16 U.S.C. 1361–1407), the Migratory Bird Treaty Act (40 Stat. 755; 16 U.S.C. 703–711), and the Fishery Conservation and Management Act of 1976 (90 Stat. 331; 16 U.S.C. 1801–1882), or any amendments to these acts. The taking and use of fish and wildlife resources, covered by these acts, will conform to the specific provisions contained in

these acts, as amended, and any implementing regulations.

(k) There may be additional requirements for eligibility to harvest fish and wildlife resources in National Parks. Contact your local National Park Service office for details.

(l) Rural, or non-rural residents, and non-residents not specifically prohibited by Federal regulations from hunting or trapping on public lands in an area, may hunt or trap on public lands in accordance with the appropriate State regulations.

(m) Specific Game Management Units and Regulations. Subsistence taking of bat, shrew, rat, mouse, porcupine; red, ground, and flying squirrel is allowed in all GMU, without limitations to bag limits for the period of July 1 through June 30. The subsistence taking of wildlife outside of the following established seasons or in excess of the following establish bag limits, unless modified by Board action, is prohibited. Taking of wildlife under State regulations on public lands is permitted except as otherwise restricted.

(1) GMU 1. Game Management Unit 1 consists of all mainland drainages from Dixon Entrance to Cape Fairweather, and those islands east of the center line of Clarence Strait from Dixon Entrance to Caamano Point and all islands in Stephens Passage and Lynn Canal north of Taku Inlet;

(i) Unit 1(A) consists of all drainages south of the latitude of Lemesurier Point including all drainages into Behm Canal and excluding all drainages of Ernest Sound;

(ii) Unit 1(B) consists of all drainages between the latitude of Lemesurier Point and the latitude of Cape Fanshaw, including all drainages of Ernest Sound and Farragut Bay, and including the islands east of the center lines of Frederick Sound, Dry Strait (between Sergief and Kadin Islands), Eastern Passage, Blake Channel (excluding Blake Island), Ernest Sound and Seward Passage;

(iii) Unit 1(C) consists of that portion of Unit 1 draining into Stephens Passage and Lynn Canal north of Cape Fanshaw and south of the latitude of Eldred Rock, including Berners Bay, Sullivan Island, and all mainland portions north of Chichagof Island and south of the latitude of Eldred Rock, and excluding drainages into Farragut Bay;

(iv) Unit 1(D) consists of that portion of Unit 1 north of the latitude of Eldred Rock, excluding Sullivan Island and the drainages of Berners Bay;

(v) Public lands within the following areas are closed to subsistence take or subsistence take is restricted as specified—

(A) public lands within Glacier Bay National Park are closed to all subsistence take;

(B) Unit 1(A);

(1) In the Ketchikan area, a strip one-fourth mile wide on each side of the Tongass Highway system, including the Ward, Connel, and Harriet Hunt Lake Roads, is closed to the taking of big game;

(2) In the Hyder area, the Salmon River drainage downstream from the Riverside Mine, excluding the Thumb Creek drainage, is closed to the taking of bears;

(C) Unit 1(B)—the Anan Creek drainage is closed to the taking of black bears;

(D) Unit 1(C);

(1) In the Juneau area, that area between the coast and a line one-fourth mile inland of the following road systems is closed to the taking of big game: Glacier Highway from Mile 0 to Mile 24 at Peterson Creek, Douglas Highway from the Douglas city limits to Milepost 7 on the North Douglas Highway, Mendenhall Loop Road, and Thane Road;

(2) The area within one-fourth mile of Mendenhall Lake, the U.S. Forest Service Mendenhall Glacier Visitor's Center, and the Center's parking area, is closed to hunting;

(3) The area of Mt. Bullard bounded by the Mendenhall Glacier, Nugget Creek from its mouth to its confluence with Goat Creek, and a line from the mouth of Goat Creek north to the Mendenhall Glacier, is closed to the taking of mountain goat;

(4) Mt. Juneau drainage, bounded by the Glacier Highway, Salmon Creek and its reservoir, a line from the head of the Salmon Creek drainage to the head of Granite Creek, and down Granite Creek and Gold Creek to the Glacier Highway, is closed to the taking of mountain goat;

(E) Unit 1(D)—a strip one-fourth mile wide on each side of the Lutak Road between Mile 7 and Chilkoot Lake, and from the Chilkoot River bridge to the end of the Lutak Road spur at the head of Lutak Inlet, is closed to the taking of big game;

(vi) The following areas are closed to the trapping of furbearers for subsistence as indicated—

(A) Glacier Bay National Park;

(B) Unit 1(C) (Juneau area)

(1) A strip within one-quarter mile of the mainland coast between the end of Thane Road and the end of Glacier Highway at Echo Cove;

(2) Auke Lake and the area within one-quarter mile of Auke Lake;

(3) That area of the Mendenhall Valley bounded on the south by the Glacier Highway, on the west by the Mendenhall Loop Road and Montana Creek Road and Spur Road to Mendenhall Lake, on the north by Mendenhall Lake, and on the east by the Mendenhall Loop Road and Forest Service Glacier Spur Road to the Forest Service Visitor Center;

(4) A strip within one-quarter mile of the Douglas Island coast along the entire length of the Douglas Highway and a strip within one-quarter mile of the Eaglecrest Road;

(5) That area within the U.S. Forest Service Mendenhall Glacier Recreation Area;

(6) A strip within one-quarter mile of the following trails as designed on U.S. Geological Survey maps: Herbert Glacier Trail, Windfall Lake Trail, Peterson Lake Trail, Spaulding Meadows Trail (including the loop trail), Nugget Creek Trail, Outer Point Trail, Dan Moller Trail, Perseverance Trail, Granite Creek Trail, Mt. Roberts Trail and the Nelson Water Supply Trail, Sheep Creek Trail, and Point Bishop Trail.

Bag Limits and Open Season

Black Bear: Unit 1—2 bears, not more than one of which may be a blue or glacier bear—Sept. 1–June 30

Brown Bear: Unit 1—1 bear every four regulatory years by State registration permit only—Sept. 15–Dec. 31 and Mar. 15–May 31

Deer:

Unit 1(A)—4 antlered deer—Aug. 1–Dec. 31

Unit 1(B)—2 antlered deer—Aug. 1–Dec. 31

Unit 1(C)—4 deer; however, antlerless deer may be taken only from Sept. 15–Dec. 31—Aug. 1–Dec. 31

Goat:

Unit 1(A)—Revillagigedo Island only—No open season

Unit 1(B)—that portion North of the Bradfield Canal and the North fork of the Bradfield River. 1 goat by State registration permit only; that portion between LeConte Bay and the north fork of Bradfield River/canal will require a Federal Registration permit for the taking of a second goal; the taking of kids or nannies accompanied by kids is prohibited—Aug. 1–Dec. 31

Unit 1(A) and Unit 1(B)—Remainder—2 goats by State registration permit only—Aug. 1–Dec. 31

Unit 1(C)—that portion draining into Lynn Canal and Stephens Passage between Antler River and Eagle Glacier and River—1 goat by State registration permit only—Oct. 1–Nov. 30

Unit 1(C)—that portion draining into Stephens Passage and Taku Inlet between Eagle Glacier and River and Taku Glacier, and all drainages of the Chilkat Range south of the Endicott River—No open season

Remainder of Unit 1(C)—1 goat by State registration permit only—Aug. 1–Nov. 30

Unit 1(D)—that portion lying north of the Katzehin River and northeast of the Haines Highway—1 goat by State registration permit only—Sept. 15–Nov. 30
Remainder of Unit 1(D)—1 goat by State registration permit only—Aug. 1–Dec. 31
Moose:
Unit 1(A) and 1(B) south of LeConte Glacier—1 bull—Sept. 15–Oct. 15
Remainder of Unit 1(C)—1 bull by State registration permit only—Sept. 15–Oct. 15
Beaver: Trapping—Unit 1(A), (B), and (C)—No limit—Dec. 1–May 15
Coyote:
Hunting—2 Coyotes—Sept. 1–Apr. 30
Trapping—No limit—Dec. 1–Feb. 15
Fox, Red (including Cross, Black, and Silver Phases):
Hunting—2 Foxes—Nov. 1–Feb. 15
Trapping—No limit—Dec. 1–Feb. 15
Hare (Snowshoe and Arctic): 5 hare per day—Sept. 1–Apr. 30
Lynx:
Hunting—2 Lynx—Dec. 1–Feb. 15
Trapping—No limit—Dec. 1–Feb. 15
Marten: Trapping—No limit—Dec. 1–Feb. 15
Mink and Weasel: Trapping—No limit—Dec. 1–Feb. 15
Muskrat: Trapping—No limit—Dec. 1–Feb. 15
Otter (land only): Trapping—No limit—Dec. 1–Feb. 15
Wolf:
Hunting—No limit—July 1–June 30
Trapping—No limit—Nov. 10–Apr. 30
Wolverine:
Hunting—1 Wolverine—Nov. 10–Feb. 15
Trapping—No limit—Nov. 10–Apr. 30
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 5 per day, 10 in possession—Aug. 1–May 15
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession—Aug. 1–May 15

(2) GMU 2. Game Management Unit 2 consists of Prince of Wales Island and all islands west of the center lines of Clarence Strait and Kashevarof Passage, south and east of the center lines of Sumner Strait, and east of the longitude of the western most point of Warren Island.

Bag Limits and Open Season

Black Bear: Unit 2—2 bears, not more than one of which may be a blue or glacier bear—Sept. 1–June 30
Deer: Unit 2—4 antlered deer—Aug. 1–Dec. 31
Beaver: Trapping—No limit—Dec. 1–May 15
Coyote:
Hunting—2 Coyotes—Sept. 1–Apr. 30
Trapping—No limit—Dec. 1–Feb. 15
Fox, Red (including Cross, Black, and Silver Phases):
Hunting—2 Foxes—Nov. 1–Feb. 15
Trapping—No limit—Dec. 1–Feb. 15
Hare (Snowshoe and Arctic): 5 hare per day—Sept. 1–Apr. 30
Lynx:
Hunting—2 Lynx—Dec. 1–Feb. 15
Trapping—No limit—Dec. 1–Feb. 15
Marten: Trapping—No limit—Dec. 1–Feb. 15
Mink and Weasel: Trapping—No limit—Dec. 1–Feb. 15
Muskrat: Trapping—No limit—Dec. 1–Feb. 15
Otter (land only): Trapping—No limit—Dec. 1–Feb. 15
Wolf:
Hunting—No limit—July 1–June 30
Trapping—No limit—Nov. 10–Apr. 30
Wolverine:
Hunting—1 Wolverine—Nov. 10–Feb. 15
Trapping—No limit—Nov. 10–Apr. 30
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 5 per day, 10 in possession—Aug. 1–May 15
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession—Aug. 1–May 15

(3) GMU 3.

(i) Game Management Unit 3 consists of all islands west of Unit 1(B), north of Unit 2, south of the center line of Frederick Sound, and east of the center line of Chatham Strait, including Coronation, Kuiu, Kupreanof, Mitkof, Zarembo, Kashevarof, Woronkofski, Etolin, Wrangell, and Deer Islands;

(ii) Public lands within the following areas are closed to subsistence take or subsistence take is restricted as specified—

(A) A strip one-fourth mile wide on each side of the Stikine (Zimovia) Highway from the Wrangell city limits to Milepost 9 is closed to the taking of big game;

(B) In the Petersburg vicinity, a strip one-fourth mile wide on each side of the Mitkof Highway from Milepost 0 to the Crystal Lake campground is closed to the taking of big game;

(C) The Petersburg Creek drainage on Kupreanof Island is closed to the taking of black bears;

(D) Blind Slough, draining into Wrangell Narrows, and a strip one-fourth mile wide on each side of Blind Slough, from the hunting closure markers at the southernmost portion of Blind Island to the hunting closure markers one mile south of the Blind Slough bridge, are closed to all hunting.

Bag Limits and Open Season

Black Bear: Unit 3—2 bears, not more than one of which may be a blue or glacier bear—Sept. 1–June 30
Deer:
Unit 3—that portion south of Sumner Strait and Decision Passage, including the Vank Island group, but not including Level, Conclusion—2 antlered deer—Aug. 1–Nov. 30
Unit 3—that portion of Mitkof Island, south of city limits of Petersburg only; Woewodski and Butterworth Islands—1 antlered deer by State registration permit only—Oct. 15–Oct. 31
Moose: Unit 3—Mitkof and Wrangell Islands—1 bull with spike-fork or 50-inch antler—Oct. 1–Oct. 15
Beaver:
Trapping—Unit 3—Mitkof Island—No limit—Dec. 1–Apr. 15
Trapping—Unit 3 (except Mitkof Island—No limit—Dec. 1–May 15
Coyote:
Hunting—2 Coyotes—Sept. 1–Apr. 30
Trapping—No limit—Dec. 1–Feb. 15
Fox, Red (including Cross, Black, and Silver Phases):
Hunting—2 Foxes—Nov. 1–Feb. 15
Trapping—No limit—Dec. 1–Feb. 15
Hare (Snowshoe and Arctic): 5 hare per day—Sept. 1–Apr. 30
Lynx:
Hunting—2 Lynx—Dec. 1–Feb. 15
Trapping—No limit—Dec. 1–Feb. 15
Marten: Trapping—No limit—Dec. 15–Feb. 15
Mink and Weasel: Trapping—No limit—Dec. 1–Feb. 15
Muskrat: Trapping—No limit—Dec. 1–Feb. 15
Otter (land only): Trapping—No limit—Dec. 1–Feb. 15
Wolf:
Hunting—No limit—July 1–June 30
Trapping—No limit—Nov. 10–Apr. 30
Wolverine:
Hunting—1 Wolverine—Nov. 10–Feb. 15
Trapping—No limit—Nov. 10–Apr. 30
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 5 per day, 10 in possession—Aug. 1–May 15
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession—Aug. 1–May 15

(4) GMU 4.

(i) Game Management Unit 4 consists of all islands south and west of Unit 1(C) and north of Unit 3, including Admiralty, Baranof, Chichagof, Yakobi, Inian, Lemesurier, and Pleasant Islands;

(ii) Public lands within the following areas are closed to subsistence take or subsistence take is restricted as specified—

(A) In the Sitka area, a strip one-fourth mile wide on each side of all State highways is closed to the taking of big game;

(B) The Seymour Canal Closed Area (Admiralty Island), including all drainages into northwestern Seymour Canal between Staunch Point and the southernmost tip of the unnamed peninsula separating Swan Cove and King Salmon Bay, and including Swan and Windfall Islands, is closed to the taking of bears;

(C) The Salt Lake Bay Closed Area (Admiralty Island), including all lands within one-fourth mile of Salt Lake above Klutchman Rock at the head of Mitchell Bay, is closed to the taking of bears;

(D) Port Althorp (Chichagof Island), that area within the Port Althorp watershed south of a line from Point Lucan to Salt Chuck Point (Trap Rock), is closed to the taking of brown bears;

(E) Northeast Chichagof Controlled Use Area (NECCUA) consisting of that portion of Unit 4 on Chichagof Island north of Tenakee Inlet and east of Idaho Inlet and north of a line from the headwaters of Trail River to the head of

Tenakee Inlet is closed to the use of any motorized land vehicle for brown bear hunting or for the taking of marten, mink, or weasel.

Bag Limits and Open Season

Brown Bear:

Unit 4—Chichagof Island south and west of a line that follows the crest of the island from Rock Point (58° N. lat., 136° 21′ W. long.), to Rodgers Point (57° 35′ N. lat., 135° 33′ W. long.) including Yakobi and other adjacent islands; Baranof Island south and west of a line which follows the crest of the island from Nismeni Point (57° 34′ N. lat., 135° 25′ W. long.), to the entrance of Gut Bay (56° 44′ N. lat., 134° 38′ W. long.) including the drainages into Gut Bay and including Kruzof and other adjacent islands—1 bear every four regulatory years by State registration permit only—Sept. 15–Dec. 31 and Mar. 15–May 31

Unit 4—that portion in the Northeast Chichagof Controlled Use Area—1 bear every four regulatory years by State registration permit only—Mar. 15–May 20

Remainder of Unit 4—1 bear every four regulatory years by State registration permit only—Sept. 15–Dec. 31 and Mar. 15–May 20

Deer:

Unit 4—All drainages of Chichagof west of the drainage divide which begins at the southwest entrance of Gull Cove and extends southward to Point Leo. This includes all drainages into Slocum Arm, Lisianski Inlet, Idaho Inlet, and all offshore islands including the Inian Islands. Lemesurier Island is excluded. All of Admiralty Island and its associated offshore islands that lie within Unit 4. That portion of Baranof Island south of the divide from North Point of Kasnyku Bay southwest to North Cape of Whale Bay—6 deer; however, antlerless deer may be taken only from Sept. 15–Jan. 31— Aug. 1–Jan. 31

Unit 4—All drainages of Chichagof Island east of the drainage divide which begins at the southwest entrance of Gull Cove and extends southward to the divide between Trail River and Upper Tenakee Inlet and including all drainages into Chatham Straits north of the Kook Lake drainage. Lemesurier, Pleasant, and associated offshore islands are included—6 deer; however, antlerless deer may be taken only from Sept. 15–Jan. 31. For hunters who are not residents of GMU 4, Kake, Gustavus, Haines, Petersburg, Pt. Baker, Klukwan, Port Protection, or Wrangell the bag limit is 3 deer. Federal public lands are closed beginning Nov. 1 to hunters who are not residents of GMU 4, Kake, Gustavus, Haines, Petersburg, Pt. Baker, Klukwan, Port Protection, or Wrangell—Aug. 1–Jan 31

Unit 4—All drainages of Baranof Island north of the divide from North Point of Kasnyku Bay southwest to North Cape of Whale Bay; and all drainages on Chichagof Island draining into Peril Straits, Hoonah Sound, and Salisbury Sound east of Point Leo, and all offshore islands including Kruzof, Biorka, and Catherine—4 deer; however, antlerless deer may be taken only from Sept. 15–Dec. 31. Federal public lands are closed to the taking of deer by persons who are not residents of GMU 4, Kake, Gustavus, Haines, Petersburg, Pt. Baker, Klukwan, Port Protection, or Wrangell—Aug. 1–Dec. 31

Goat: 1 goat by State registration permit only—Aug. 1–Dec. 31

Beaver: Trapping—Unit 4 (that portion east of Chatham Stait)—No limit— Dec. 1–May 15

Coyote:

Hunting—2 Coyotes—Sept. 1–Apr. 30

Trapping—No limit—Dec. 1–Feb.15

Fox, Red (including Cross, Black, and Silver Phases):

Hunting—2 Foxes—Nov. 1–Feb. 15

Trapping—No limit—Dec. 1–Feb. 15

Hare (Snowshoe and Arctic): 5 hare per day—Sept. 1–Apr. 30

Lynx:

Hunting—2 Lynx—Dec. 1–Feb. 15

Trapping—No limit—Dec. 1–Feb. 15

Marten:

Trapping—Unit 4 that portion within the NECCUA—no limit. Public lands within the NECCUA are closed to marten trapping except by eligible rural Alaska residents—Dec. 1–Dec. 31

Trapping—Remainder of Unit 4—No limit—Dec. 1–Feb. 15

Mink and Weasel:

Trapping—Unit 4 that portion within the NECCUA—no limit. The taking of mink and weasel on public lands within the NECCUA is closed except to eligible rural Alaska residents—Dec. 1–Dec. 31

Trapping—Remainder of Unit 4—No limit—Dec. 1–Feb. 15

Muskrat: Trapping—No limit—Dec. 1–Feb. 15

Otter (land only): Trapping—No limit—Dec. 1–Feb.15

Wolf:

Hunting—No limit—July 1–June. 30

Trapping—No limit—Nov. 10–Apr.30

Wolverine:

Hunting—1 Wolverine—Nov. 10–Feb. 15

Trapping—No limit—Nov. 10–Apr.30

Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 5 per day, 10 in possession—Aug. 1–May. 15

Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession

(5) GMU 5.

(i) Game Management Unit 5 consists of all Gulf of Alaska drainages and islands between Cape Fairweather and the center line of Icy Bay, including the Guyot Hills;

(A) Unit 5(A) consists of all drainages east of Yakutat Bay, Disenchantment Bay, and the eastern edge of Hubbard Glacier, and includes the islands of Yakutat and Disenchantment Bays;

(B) Unit 5(B) consists of the remainder of Unit 5;

(ii) Public lands within Glacier Bay National Park are closed to subsistence uses.

Bag Limits and Open Season

Black Bear: Unit 5—2 bears, not more than 1 of which may be a blue or glacier bear—Sept. 1–June 30

Brown Bear: 1 bear every four regulatory years—Sept. 1–May 31

Deer: Unit 5(A)—1 buck—Nov. 1–Nov. 30

Goat: 1 goat by State registration permit only—Aug. 1–Dec. 31

Moose:

Unit 5(A), except Nunatak Bench—1 bull by State registration permit only. The season will be closed when 60 bulls have been taken from the unit. The season will be closed in that portion west of the Dangerous River when 30 bulls have been taken in that area. From Oct. 15–21, public lands will be closed to taking of moose, except by rural Alaska residents of GMU 5(A)—Oct. 15–Nov. 15

Unit 5(B)—1 bill by State registration permit only—Sept. 1–Nov. 15

Beaver: Trapping—No limit—Nov. 10–May 15

Coyote:

Hunting—2 Coyotes—Sept. 1–Apr. 30

Trapping—No limit—Dec. 1–Feb. 15

Fox, Red (including Cross, Black and Silver Phases):

Hunting—2 Foxes—Nov. 1–Feb. 15

Trapping—No limit—Dec. 1–Feb. 15

Hare (Snowshoe and Arctic): 5 hare per day—Sept. 1–Apr. 30

Lynx:

Hunting—2 Lynx—Dec. 1–Feb. 15

Trapping—No limit—Dec. 1–Feb. 15

Marten: Trapping—No limit—Nov. 10–Feb. 15

Mink and Weasel Trapping—No limit—Nov. 10–Feb. 15

Muskrat: Trapping—No limit—Dec. 1–Feb. 15

Otter (land only): Trapping—No limit—Nov. 10–Feb. 15

Wolf:

Unit 5(A)—Hunting—No limit—July 1–June 30

Unit 5(B)—Hunting—5 Wolves—Aug. 1–Apr. 30

Trapping—No limit—Nov. 10–Apr. 30

Wolverine:

Hunting—1 Wolverine—Nov. 10–Feb. 15

Trapping—No limit—Nov. 10–Apr. 30

Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 5 per day, 10 in possession—Aug. 1–May 15

Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession—Aug. 1–May 15

(6) GMU 6.

(i) Game Management Unit 6 consists of all Gulf of Alaska and Prince William Sound drainages from the center line of Icy Bay (excluding the Guyot Hills) to Cape Fairfield, including Kayak, Hinchinbrook, Montague, and adjacent islands, and Middleton Island, but excluding the Copper River drainage upstream from Miles Glacier, and excluding the Nellie Juan and Kings River drainages;

(A) Unit 6(A) consists of Gulf of Alaska drainages east of Palm Point near Katalla, including Kanak, Wingham, and Kayak Islands;

(B) Unit 6(B) consists of Gulf of Alaska and Copper River Basin drainages west of Palm Point near Katalla, east of the west bank of the Copper River, and east of a line from Flag Point to Cottonwood Point;

(C) Unit 6(C) consists of drainages west of the west bank of the Copper River, and west of a line from Flag Point to Cottonwood Point, and drainages east of the east bank of Rude River and drainages into the eastern shore of Nelson Bay and Orca Inlet;

(D) Unit 6(D) consists of the remainder of Unit 6;

(ii) Public lands within the following areas are closed to subsistence take or subsistence take is restricted as specified.

(A) The Goat Mountain goat observation area, which consists of that portion of Unit 6 bounded on the north by Miles Lake and Miles Glacier, on the south and east by Pleasant Valley River and Pleasant Glacier, and on the west by the Copper River, is closed to the taking of mountain goat;

(B) The Heney Range goat observation area, which consists of that portion of Unit 6(C) south of the Copper River Highway and west of the Eyak River, is closed to the taking of mountain goat.

Bag Limits and Open Season

Black Bear
- Unit 6(A)—1 bear—Sept. 1–June 30
- Unit 6(B) and (C)—1 bear—Sept. 1–June 30
- Unit 6(D)—1 bear—Sept. 1–June 30

Deer: Unit 6—4 deer; however, antlerless deer may be taken only from Nov. 1—Dec. 31—Aug. 1–Dec. 31

GOATS:
- Unit 6(A), (B)—1 goat by State registration permit only—Aug. 20–Jan. 31
- Unit 6(D) (subareas 822, 823, 824, 828, 829, 830, and 879 only)—1 goat by Federal registration permit only. The season will be closed when harvest limits are reached—Aug. 20–Jan. 31

Beaver: Trapping—20 Beaver per season—Dec. 1–Mar. 31

Coyote:
- Unit 6(A) and (D)—Hunting—2 Coyotes—Sept. 1–Apr. 30
- Unit 6(A)—Trapping—No limit—Nov. 10–Mar. 31
- Unit 6(B)—Hunting—No limit—July 1–June 30
- Unit 6(B)—Trapping—No limit—Nov. 10–Mar. 31
- Unit 6(C)—South of the Copper River Highway and east of the Heney Range—Hunting—No limit—July 1–June 30
- Trapping—No limit—Nov. 10–Apr. 30
- Remainder of Unit 6(C)—Hunting—No limit—July 1–June 30
- Trapping—No limit—Nov. 10–Mar. 31

Fox, Red (including Cross, Black and Silver Phases):
- Hunting—2 Foxes—Nov. 1–Feb. 15
- Trapping—No limit—Nov. 10–Feb. 28

Hare (Snowshoe and Arctic): Hunting—No limit—July 1–June 30

Lynx:
- Hunting—2 Lynx—Dec. 15–Jan. 15
- Trapping—No limit—Dec. 15–Jan. 15

Marten: Trapping—No limit—Nov. 10–Jan. 31

Mink and Weasel: Trapping—No limit—Nov. 10–Jan. 31

Muskrat: Trapping—No limit—Nov. 10–June 10

Otter (land only): Trapping—No limit—Nov. 10–Mar. 31

Wolf:
- Hunting—1 Wolves—Aug. 10–Apr. 30
- Trapping—No limit—Nov. 10–Mar. 31

Wolverine:
- Hunting—2 Wolverine—Sept. 1–Mar. 31
- Trapping—No limit—Nov. 10–Feb. 28

Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 5 per day, 20 in possession—Aug. 1–May 15

Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession—Aug. 1–May 15

(7) GMU 7.

(i) Game Management Unit 7 consists of Gulf of Alaska drainages between Gore Point and Cape Fairfield, including the Nellie Juan and Kings River drainages, and including the Kenai River drainage upstream from the Russian River, the drainages into the south side of Turnagain Arm west of and including the Portage Creek drainage, and east of 150° W. long., and all Kenai Peninsula drainages east of 150° W. long., from Turnagain Arm to the Kenai River;

(ii) Public lands within the following areas are closed to subsistence take or subsistence take is restricted as specified—

(A) The Portage Glacier Closed Area in Unit 7, which consists of Portage Creek drainages between the Anchorage-Seward Railroad and Placer Creek in Bear Valley, Portage Lake, the mouth of Byron Creek, Glacier Creek and Byron Glacier, is closed to hunting; however, small game may be hunted with shotguns after September 1;

(B) The Seward Closed Area in Unit 7, which consists of the south side drainages of the Resurrection River downstream from the Kenai Fjords National Park's eastern boundary, and Resurrection Bay drainages between the mouth of the Resurrection River and the mouth of Lowell Creek, are closed to the taking of big game; Kenai Fjords National Park is closed to all subsistence uses;

(C) The Cooper Landing Closed Area, which consists of that portion of Units 7 and 15 bounded by a line from the junction of the Sterling Highway and the Chugach National Forest boundary, then along the national forest boundary to Thurman Creek, then southeasterly along Thurman Creek and the northeast side of Trout Lake, then to the confluence of Juneau Creek and Falls Creek, then easterly along Falls Creek and the North Fork of Falls Creek and over the connecting saddle to Devils Creek, then southeasterly along Devils Creek to its confluence with Quartz Creek, then southwesterly along Quartz Creek to the Sterling Highway and then to the point of beginning, is closed to the taking of Dall sheep and mountain goat;

(D) The Resurrection Creek Closed Area, which consists of the drainage of Resurrection Creek downstream from and including the drainage of Rimrock and Highlands Creeks, (and including Palmer Creek), is closed to the taking of moose.

Bag Limits and Open Season

Black Bear: Unit 7—3 bears—July 1–June 30

Beaver: Trapping—20 Beaver per season—Dec. 1–Mar. 31

Coyote:
- Hunting—No limit—Sept. 1–Apr. 30
- Trapping—No limit—Nov. 10–Feb. 28

Fox, Red (including Cross, Black and Silver Phases):
- Hunting—2 Foxes—Nov. 1–Feb. 15
- Trapping—No limit—Nov. 10–Feb. 28

Hare (Snowshoe and Arctic): Hunting—No limit—July 1–June 30

Marten: Trapping—No limit—Nov. 10–Jan. 31

Mink and Weasel: Trapping—No limit—Nov. 10–Jan. 31

Muskrat: Trapping—No limit—Nov. 10–May 15

Otter (land only): Trapping—No limit—Nov. 10–Feb. 28

Wolf:
- Hunting—1 Wolf—Aug. 10–Apr. 30
- Trapping—No limit—Nov. 10–Feb. 28

Wolverine:
- Hunting—1 Wolverine—Sept. 1–Mar. 31
- Trapping—No limit—Nov. 10–Feb. 28

Grouse (Spruce, Blue, Ruffled, and Sharp-tailed): 15 per day, 30 in possession—Aug. 10–Mar. 31

Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession—Aug. 10–Mar. 31

(8) GMU 8. Game Management Unit 8 consists of all islands southeast of the centerline of Shelikof Strait, including Kodiak, Afognak, Whale, Raspberry, Shuyak, Spruce, Marmot, Sitkalidak, Amook, Uganik, and Chirikof Islands, the Trinity Islands, the Semidi Islands, and other adjacent islands.

Bag Limits and Open Season

Caribou: No limit—July 1–June 30

Deer:
- Unit 8, that portion of Kodiak Island north of a line from the head of Settlers Cove to Crescent Lake (57° 52′ N. lat., 152° 58′ W. long.), and east of a line from the outlet of Crescent Lake to Mount Ellison Peak and from Mount Ellison Peak to Pokati Point at Whale Passage, and that portion of Kodiak Island east of a line from the mouth of Saltery Creek to Crag Point, and adjacent small islands in Chiniak Bay—1 deer; however, antlerless deer may be taken only from Oct. 25–Oct. 31—Aug. 1–Oct. 31

Unit 8—That portion of Kodiak Island and adjacent islands south and west of a line from the head of Terror bay to the head of the south western-most arm of Ugak Bay—5 deer; however, antlerless deer may be taken only from Oct. 1–Dec. 31—Aug. 1–Dec. 31

Remainder of Unit 8—5 deer; however, antlerless deer may be taken only from Oct. 1–Dec. 31; no more than 1 antlerless deer may be taken from Oct. 1–Nov. 30—Aug. 1–Dec. 31

Beaver: Trapping—30 Beaver per season—Nov. 10–Apr. 30

Fox, Red (including Cross, Black and Silver Phases):

Hunting—2 Foxes—Sept 1.–Feb. 15

Trapping—No limit—Nov. 10–Mar. 31

Hare (Snowshoe and Arctic): Hunting—No limit—July 1–June 30

Marten: Trapping—No limit—Nov. 10–Jan. 31

Mink and Weasel: Trapping—No limit—Nov. 10–Jan. 31

Muskrat: Trapping—No limit—Nov. 10–June 10

Otter (land only): Trapping—No limit—Nov. 10–Jan. 31

Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession—Aug. 10–Apr. 30

(9) GMU 9.

(i) Game Management Unit 9 consists of the Alaska Peninsula and adjacent islands, including drainages east of False Pass, Pacific Ocean drainages west of and excluding the Redoubt Creek drainage, drainages into the south side of Bristol Bay, drainages into the north side of Bristol Bay east of Etolin Point, and including the Sanak and Shumagin Islands;

(A) Unit 9(A) consists of that portion of Unit 9 draining into Shelikof Strait and Cook Inlet between the southern boundary of Unit 16 (Redoubt Creek) and the northern boundary of Katmai National Park and Preserve;

(B) Unit 9(B) consists of the Kvichak River drainage;

(C) Unit 9(C) consists of the Alagnak (Branch) River drainage, the Naknek River drainage, and all land and water within Katmai National Park and Preserve;

(D) Unit 9(D) consists of all Alaska Peninsula drainages west of a line from the southernmost head of Port Moller to the head of American Bay, including the Shumagin Islands and other islands of Unit 9 west of the Shumagin Islands;

(E) Unit 9(E) consists of the remainder of Unit 9;

(ii) Katmai National Park is closed to all subsistence uses.

Bag Limits and Open Season

Black Bear: Unit 9—3 bears—July 1–June 30

Brown Bear:

Unit 9(B)—1 bear every four regulatory years—Oct. 1–Oct. 21 (odd years only), May 10–May 25 (even years only)

Unit 9(E)—1 bear by Federal registration permit only—Oct. 1–Dec. 31 and May 10–May 25

Caribou:

Unit 9 (A), (B), (C), and (E)—4 caribou; however, no more than 2 caribou may be taken Aug. 10–Sept. 30 and no more than 1 caribou may be taken Oct. 1–Nov. 30—Aug. 10–Mar. 31

Unit 9(D)—1 bull. Public lands are closed to the hunting of caribou except by rural Alaska residents of Unit 9(D) and False Pass—Aug. 10–Sept. 30, Dec. 1–Mar. 31

Sheep: Unit 9—1 ram with ⅞ curl horn—Aug. 10–Sept. 20

Moose:

Unit 9(A)—1 bull—Sept. 1–Sept. 15

Unit 9(B)—1 bull—Sept. 1–Sept. 15, Dec. 1–Dec. 31

Unit 9(C)—that portion draining into the Naknek River from the north—1 bull. The December hunt will be by Federal registration permit only—Sept. 1–Sept. 15, Dec. 1–Dec. 31

Unit 9(C)—that portion draining into the Naknek River from the south—1 bull. However, during the December hunt 5 antlerless moose may be taken by Federal Registration permit only. The season will be closed when 5 antlerless moose have been taken. Public lands are closed during December for the hunting of moose except by eligible rural Alaska residents—Sept. 1–Sept. 15, Dec. 1–Dec. 31

Remainder of Unit 9(C)—1 moose; however, antlerless moose may be taken only from Dec. 1–Dec. 31—Sept. 1–Sept. 15, Dec. 1–Dec. 31

Unit 9(E)—1 bull—Sept. 1–Sept. 20, Dec. 1–Dec. 31

Beaver: Trapping—40 Beaver per season—Jan. 1–Mar. 31

Coyote:

Hunting—2 Coyotes—Sept. 1–Apr. 30

Trapping—No limit—Nov. 10–Mar. 31

Fox, Arctic (Blue and White):

Hunting—No limit—Dec. 1–Mar. 15

Trapping—No limit—Nov. 10–Feb. 28

Fox, Red (including Cross, Black and Silver Phases):

Hunting—2 Foxes—Sept. 1–Feb. 15

Trapping—No limit—Nov. 10–Feb. 28

Hare (Snowshoe and Arctic): Hunting—No limit—July 1–June 30

Lynx:

Hunting—2 Lynx—Nov. 10–Feb. 28

Trapping—No limit—Nov. 10–Feb. 28

Marten: Trapping—No limit—Nov. 10–Feb. 28

Mink and Weasel: Trapping—No limit—Nov. 10–Feb. 28

Muskrat: Trapping—No limit—Nov. 10–June 10

Otter (land only): Trapping—No limit—Nov. 10–Mar. 31

Wolf:

Hunting—10 Wolves—Aug. 10–Apr. 30

Trapping—No limit—Nov. 10–Mar. 31

Wolverine:

Hunting—1 Wolverine—Sept. 1–Mar. 31

Trapping—No limit—Nov. 10–Feb. 28

Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession—Aug. 10–Apr. 30

Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession—Aug. 10–Apr. 30

(10) GMU 10.

(i) Game Management Unit 10 consists of the Aleutian Islands, Unimak Island and the Pribilof Islands;

(ii) Public lands within the following area are closed to subsistence take or subsistence take is restricted as specified: Otter Island in the Pribilof Islands is closed to hunting.

Bag Limits and Open Season

Caribou:

Unit 10—Unimak Island only—1 bull. Public lands are closed to the hunting of caribou except by rural Alaska residents of False Pass—Aug. 10–Sept. 30, Dec. 1–Mar. 31

Remainder of Unit 10—No limit—July 1–June 30

Coyote:

Hunting—2 Coyotes—Sept. 1–Apr. 30

Trapping—No limit—Nov. 10–Mar. 31

Fox, Arctic (Blue and White Phase):

Hunting—No limit—July 1–June 30

Trapping No limit—Nov. 10–Feb. 28

Fox, Red (including Cross, Black and Silver Phases):

Hunting—2 Foxes—Sept. 1–Feb. 15

Trapping—No limit—Nov. 10–Feb. 28

Hare (Snowshoe and Arctic) Hunting—No limit:—July 1–June 30

Mink and Weasel: Trapping—No limit—Nov. 10–Feb. 28

Muskrat: Trapping—No limit—Nov. 10–June 10

Otter (land only): Trapping—No limit—Nov. 10–Mar. 31

Wolf:

Hunting—2 Wolves—Aug. 10–Apr. 30

Trapping—No limit—Nov. 10–Mar. 31

Wolverine:

Hunting—1 Wolverine—Sept. 1–Mar. 31

Trapping—No limit—Nov. 10–Feb. 28

Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession—Aug. 10–Apr. 30

(11) GMU 11. Game Management Unit 11 consists of that area draining into the headwaters of the Copper River south of Suslota Creek and the area drained by all tributaries into the east bank of the Copper River between the confluence of Suslota Creek with the Slana River and Miles Glacier.

Bag Limits and Open Season

Black Bear: Unit 11—3 bears—July 1–June 30

Caribou: Unit 11—1 bull by Federal registration permit only. Harvest quota will be announced by the Federal Subsistence Board—To be announced by the Federal Subsistence Board

Sheep: Unit 11—1 sheep—Aug. 10–Sept. 20

Moose: Unit 11—1 bull—Aug. 25–Sept. 20

Beaver: Trapping—30 Beaver per season—Nov. 10–Apr. 30

Coyote:

Hunting—2 Coyotes—Sept. 1–Apr. 30

Trapping—No limit—Nov. 10–Mar. 31

Fox, Red (including Cross, Black and Silver Phases):

Hunting—2 Foxes—Sept. 1–Feb. 15

Trapping—No limit—Nov. 10–Feb. 28

Hare (Snowshoe and Arctic): Hunting—No limit—July 1–June 30
Lynx:
Hunting—2 Lynx—Dec. 15–Jan. 15
Trapping—No limit—Dec. 15–Jan. 15
Marten: Trapping—No limit—Nov. 10–Jan. 31
Mink and Weasel: Trapping—No limit—Nov. 10–Jan. 31
Muskrat: Trapping—No limit—Nov. 10–June 10
Otter (land only): Trapping—No limit—Nov. 10–Mar. 31
Wolf:
Hunting—5 Wolves—Aug. 10–Apr. 30
Trapping—No limit—Nov. 10–Mar. 31
Wolverine:
Hunting—1 Wolverine—Sept. 1–Jan. 31
Trapping—2 Wolverine—Nov. 10–Jan. 31
Public lands are closed to the taking of wolverine except by eligible rural Alaska residents
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession—Aug. 10–Mar. 31
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession—Aug. 10–Mar. 31

(12) GMU 12. Game Management Unit 12 consists of the Tanana River drainage upstream from the Robertson River, including all drainages into the east bank of the Robertson River, and the White River drainage in Alaska, but excluding the Ladue River Drainage.

Bag Limits and Open Season

Black Bear: Unit 12—3 bears—July 1–June 30
Caribou:
Unit 12—that portion west of the Nabesna River within the drainages of Jack Creek, Platinum Creek, and Totschunda Creek—1 bull by Federal registration permit only. Harvest quota to be announced by the Federal Subsistence Board—To be announced by the Federal Subsistence Board
Remainder of Unit 12—1 bull
1 bull caribou may be taken by a Federal registration permit during a winter season to be announced for the rural Alaska residents of Tetlin and Northway only—Sept. 1–Sept. 20, Winter season to be announced by the Federal Subsistence Board
Moose:
Unit 12—that portion drained by the Tanana, Nabesna, and Chisana Rivers east of the Tetlin Reservation boundary and north of the Winter Trail from Pickerel Lake to the Canadian border—1 bull—Sept. 1–Sept. 15, Nov. 20–Nov. 30
Unit 12—that portion lying east of the Nabesna River and south of the Winter Trail running southeast from Pickerel Lake to the Canadian border—1 bull—Sept. 1–Sept. 30
Unit 12—Remainder—1 bull—Sept. 1–Sept. 15
Beaver: Trapping—15 Beaver per season—Nov. 1–Apr. 15
Coyote:
Hunting—2 Coyotes—Sept. 1–Apr. 30
Trapping—No limit—Nov. 1–Feb. 28
Fox, Red (including Cross, Black and Silver Phases):
Hunting—10 Foxes; however, no more than 2 foxes may be taken prior to Oct. 1—Sept. 1–Mar. 15
Trapping—No limit—Nov. 1–Feb. 28
Hare (Snowshoe and Arctic): Hunting—No limit—July 1–June 30
Lynx:
Hunting—2 Lynx—Nov. 1–Jan. 31
Trapping—No limit—Nov. 1–Jan. 31
Marten: Trapping—No limit—Nov. 1–Feb. 28
Mink and Weasel: Trapping—No limit—Nov. 1–Feb. 28
Muskrat: Trapping—No limit—Sept. 20–June 10
Otter (land only): Trapping—No limit—Nov. 1–Apr. 15
Wolf:
Hunting—5 Wolves—Aug. 10–Apr. 30
Trapping—No limit—Oct. 1–Apr. 30
Wolverine:
Hunting—1 Wolverine—Sept. 1–Mar. 31
Trapping—No limit—Nov. 1–Feb. 28
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession—Aug. 10–Mar. 31
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession—Aug. 10–Apr. 30

(13) GMU 13.

(i) Game Management Unit 13 consists of that area westerly of the east bank of the Copper River and drained by all tributaries into the west bank of the Copper River from Miles Glacier and including the Slana River drainages north of Suslota Creek; the drainages into the Delta River upstream from Falls Creek and Black Rapids Glacier; the drainages into the Nenana River upstream from the southeast corner of Denali National Park at Windy; the drainage into the Susitna River upstream from its junction with the Chulitna River; the drainage into the east bank of the Chulitna River upstream to its confluence with Tokositna River; the drainages of the Chulitna River (south of Denali National Park) upstream from its confluence with the Tokositna River; the drainages into the north bank of the Tokositna River upstream to the base of the Tokositna Glacier; the drainages into the Tokositna Glacier; the drainages into the east bank of the Susitna River between its confluences with the Talkeetna and Chulitna Rivers; the drainages into the north bank of the Talkeetna River; the drainages into the east bank of the Chickaloon River; the drainages of the Matanuska River above its confluence with the Chickaloon River;

(A) Unit 13(A) consists of that portion of Unit 13 bounded by a line beginning at the Chickaloon River bridge at Mile 77.7 on the Glenn Highway, then along the Glenn Highway to its junction with the Richardson Highway, then south along the Richardson Highway to the foot of Simpson Hill at Mile 111.5, then east to the east bank of the Copper River, then northerly along the east bank of the Copper River to its junction with the Gulkana River, then northerly along the west bank of the Gulkana River to its junction with the West Fork of the Gulkana River, then westerly along the west bank of the West Fork of the Gulkana River to its source, an unnamed lake, then across the divide into the Tyone River drainage, down an unnamed stream into the Tyone River, then down the Tyone River to the Susitna River, then down the southern bank of the Susitna River to the mouth of Kosina Creek, then up Kosina Creek to its headwaters, then across the divide and down Aspen Creek to the Talkeetna River, then southerly along the boundary of Unit 13 to the Chickaloon River bridge, the point of beginning;

(B) Unit 13(B) consists of that portion of Unit 13 bounded by a line beginning at the confluence of the Copper River and the Gulkana River, then up the east bank of the Copper River to the Gakona River, then up the Gakona River and Gakona Glacier to the boundary of Unit 13, then westerly along the boundary of Unit 13 to the Susitna Glacier, then southerly along the west bank of the Susitna Glacier and the Susitna River to the Tyone River, then up the Tyone River and across the divide to the headwaters of the West Fork of the Gulkana River, then down the West Fork of the Gulkana River to the confluence of the Gulkana River and the Copper River, the point of beginning;

(C) Unit 13(C) consists of that portion of Unit 13 east of the Gakona River and Gakona Glacier;

(D) Unit 13(D) consists of that portion of Unit 13 south of Unit 13(A);

(E) Unit 13(E) consists of the remainder of Unit 13;

(ii) Public lands within the following areas are closed to subsistence take or subsistence take is restricted as specified—

(A) Lands within Mount McKinley National Park as it existed prior to December 2, 1980 are closed to subsistence. Denali National Preserve and lands added to Denali National Park on December 2, 1980 are open to subsistence;

(B) Delta Controlled Use Area consisting beginning at the confluence of Miller Creek and the Delta River then west to VABM Miller, then west to include all drainages of Augustana Creek and Black Rapids Glacier, then north and east to include all drainages of McGinnis Creek to its confluence with the Delta River, then east in a straight line across the Delta River to Mile 236.7 Richardson Highway, then north along the Richardson Highway to

its junction with the Alaska Highway, then east along the Alaska Highway to the west bank of the Johnson River, then south along the west bank of the Johnson River and Johnson Glacier to the head of the Canwell Glacier, then west along the north bank of the Canwell Glacier and Miller Creek to the Delta River;

(C) The Paxson Closed Area in Unit 13(b), which consists of the eastern drainage of the Gulkana River lying west of the Richardson Highway and the western drainage of the Gulkana River between the Denali Highway and the north end of Paxson Lake where the Gulkana River enters Paxson Lake, is closed to the taking of big game;

(D) The Sheep Mountain Closed Area which lies along the Glenn Highway in Unit 13(A) and is bounded by a line from Caribou Creek, Milepost 107 Glenn Highway, then easterly along the Glenn Highway to Milepost 123, then north to Squaw Creek, then downstream to Caribou Creek, then down Caribou Creek to the point of beginning, is closed to the taking of mountain goat and Dall sheep;

(E) The Sourdough Controlled Use Area

(*1*) Consisting of that portion of Unit 13(B) bounded by a line beginning at the confluence of Sourdough Creek and the Gulkana River, then northerly along Sourdough Creek to the Richardson Highway at approximately Mile 148, then northerly along the Richardson Highway to the Meiers Creek Trail at approximately Mile 170, then westerly along the trail to the Gulkana River, then southerly along the east bank of the Gulkana River to its confluence with Sourdough Creek, the point of beginning;

(*2*) Which is closed to the use of any motorized vehicle for hunting; however, this does not prohibit motorized access or transportation of game on the Richardson Highway, Sourdough and Haggard Creeks, Meiers Lake trails, or other trails designated by the Alaska Department of Fish and Game;

(F) The Clearwater Creek Controlled Use Area

(*1*) Consisting of that portion of Unit 13(B) north of the Denali Highway, west of and including the MacLaren River drainage, east of and including the eastern bank drainages of the Middle Fork of the Susitna River downstream from and including the Susitna Glacier, and the eastern bank drainages of the Susitna River downstream from its confluence with the Middle Fork;

(*2*) Which is closed to the use of any motorized vehicle for hunting; however, this does not prohibit motorized access, or transportation of game, on the Denali Highway;

(G) The Tonsina Controlled Use Area

(*1*) Consisting of that portion of Unit 13(D) bounded on the west by the Richardson Highway from the Tiekel River to the Tonsina River at Tonsina, on the north along the south bank of the Tonsina River to where the Edgerton Highway crosses the Tonsina River, then along the Edgerton Highway to Chitina, on the east by the Copper River from Chitina to the Tiekel River, and on the south by the north bank of the Tiekel River;

(*2*) Which is closed to the use of any motorized vehicle or pack animal for hunting, from August 5 to September 30.

Bag Limits and Open Season

Black Bear: Unit 13—3 bears—July 1–July30

Caribou: Unit 13—2 caribou by Federal registration permit only. Hunting within the Trans-Alaska Oil Pipeline right-of-way is prohibited. The right-of-way is identified as the area occupied by the pipeline (buried or above ground) and the cleared area 25 feet on either side of the pipeline—Aug. 10–Sept. 20, Jan. 5–Mar. 31

Sheep: Unit 13—excluding Unit 13(D) and the Tok and Delta Management Areas—1 Ram with ⅞ curl horn—Aug. 10–Sept. 20

Moose: Unit 13—1 bull moose by Federal registration permit only; only 1 permit will be issued per household—Aug. 25–Sept. 20

Beaver: Trapping—30 Beaver per season—Nov. 10–Apr. 30

Coyote:
- Hunting—2 Coyotes—Sept. 1–Apr. 30
- Trapping—No limit—Nov. 10–Mar. 31

Fox, Red (including Cross, Black and Silver Phases):
- Hunting—2 Foxes—Sept. 1–Feb. 15
- Trapping—No limit—Nov. 10–Feb. 28

Hare (Snowshoe and Arctic): Hunting—No limit—July 1–June 30

Lynx:
- Hunting—2 Lynx—Dec. 15–Jan. 15
- Trapping—No limit—Dec. 15–Jan. 15

Marten: Trapping—No limit—Nov. 10–Jan. 31

Mink and Weasel: Trapping—No limit—Nov. 10–Jan. 31

Muskrat: Trapping—No limit—Nov. 10–June 10

Otter (land only) Trapping—No limit—Nov. 10–Mar. 31

Wolf:
- Hunting—10 Wolves—Aug. 10–Apr. 30
- Trapping—No limit—Nov. 10–Mar. 31

Wolverine:
- Hunting—1 Wolverine—Sept. 1–Jan. 31
- Trapping—2 Wolverine—Nov. 10–Jan. 31
- Public lands are closed to the taking of wolverine except by eligible rural Alaska residents

Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession—Aug. 10–Mar. 31

Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession—Aug. 10–Mar. 31

(14) GMU 14.

(i) Game Management Unit 14 consists of drainages into the north side of Turnagain Arm west of and excluding the Portage Creek drainage, drainages into Knik Arm excluding drainages of the Chickaloon and Matanuska Rivers in Unit 13, drainages into the north side of Cook Inlet east of the Susitna River, drainages into the east bank of the Susitna River downstream from the Talkeetna River, and drainages into the south bank of the Talkeetna River;

(A) Unit 14(A) consists of drainages in Unit 14 bounded on the west by the Susitna River, on the north by Willow Creek, Peters Creek, and by a line from the head of Peters Creek to the head of the Chickaloon River, on the east by the eastern boundary of Unit 14, and on the south by Cook Inlet, Knik Arm, the south bank of the Knik River from its mouth to its junction with Knik Glacier, across the face of Knik Glacier and along the north side of Knik Glacier to the Unit 6 boundary;

(B) Unit 14(B) consists of that portion of Unit 14 north of Unit 14(A);

(C) Unit 14(C) consists of that portion of Unit 14 south of Unit 14(A);

(ii) Public lands within Fort Richardson Management Area, consisting of the Fort Richardson Military Reservation, subsistence take is restricted to the taking of big game by permit only.

Bag Limits and Open Season

Black Bear: Unit 14 (A) and (C)—1 bear—July 1–June 30

Brown Bear: Unit 14(A)—1 bear every four regulatory years—Sept. 15–Oct. 10 and May 1–May 25

Beaver:
- Trapping—Unit 14(A)—30 Beaver per season—Nov. 10–Apr. 30
- Trapping—Unit 14(C)—That portion within the drainages of Glacier Creek, Kern Creek, Peterson Creek, the Twentymile River and the drainages of Knik River outside Chugach State Park—20 Beaver per season—Dec. 1–Apr. 15

Coyote:
- Hunting—Unit 14 (A) and (C)—2 Coyotes—Sept. 1–Apr. 30
- Trapping—Unit 14(A)—No limit—Nov. 10–Mar. 31
- Trapping—Unit 14(C)—No limit—Nov. 10–Feb. 28

Fox, Red (including Cross, Black and Silver Phases):
- Hunting—Unit 14—2 Foxes—Nov. 1–Feb. 15
- Trapping—Unit 14(A)—No limit—Nov. 10–Feb. 28
- Trapping—Unit 14(C)—1 Fox—Nov. 10–Feb. 28

Hare (Snowshoe and Arctic):
- Hunting—Unit 14(A)—5 hares per day—July 1–June 30
- Hunting—Unit 14(C)—5 hares per day—Sept. 8–Apr. 30

Lynx:
- Hunting—2 Lynx—Dec. 15–Jan. 15
- Trapping—No limit—Dec. 15–Jan. 15

Marten: Trapping—No limit—Nov. 10–Jan. 31
Mink and Weasel: Trapping—No limit—Nov. 10–Jan. 31
Muskrat: Trapping—No limit—Nov. 10–May 15
Otter (land only):
Trapping—Unit 14(A)—No limit—Nov. 10–Mar. 31
Trapping—Unit 14(C)—No limit—Nov. 10–Feb. 28
Wolf:
Hunting—Unit 14(A)—4 Wolves—Aug. 10–Apr. 30
Trapping—No limit—Nov. 10–Mar. 31
Hunting—Unit 14(C)—1 Wolf—Aug. 10–Apr. 30
Trapping—No limit—Nov. 10–Feb. 28
Wolverine:
Hunting—1 Wolverine—Sept. 1–Mar. 31
Trapping—No limit—Nov. 10–Feb. 28
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):
Unit 14(A)—15 per day, 30 in possession—Aug. 10–Mar. 31
Unit 14(C)—5 per day, 10 in possession—Sept. 8–Mar. 31
Ptarmigan (Rock, Willow, and Whitetailed):
Unit 14(A)—10 per day, 20 in possession—Aug. 10–Mar. 31
Unit 14(C)—10 per day, 20 in possession—Sept. 8–Mar. 31
Remainder of Unit 14—20 per day, 40 in possession—Aug. 10–Mar. 31

(15) GMU 15.

(i) Game Management Unit 15 consists of that portion of the Kenai Peninsula and adjacent islands draining into the Gulf of Alaska, Cook Inlet and Turnagain Arm from Gore Point to the point where longitude line 150°00′ W. crosses the coast line of Chickaloon Bay in Turnagain Arm, including that area lying west of longitude line 150°00′ W. to the mouth of the Russian River, then southerly along the Chugach National Forest boundary to the upper end of Upper Russian Lake; and including the drainages into Upper Russian Lake west of the Chugach National Forest boundary;

(A) Unit 15(A) consists of that portion of Unit 15 north of the Kenai River and Skilak Lake;

(B) Unit 15(B) consists of that portion of Unit 15 south of the Kenai River and Skilak Lake, and north of the Kasilof River, Tustumena Lake, Glacier Creek, and Tustumena Glacier;

(C) Unit 15(C) consists of the remainder of Unit 15;

(ii) Public lands within the following areas are closed to subsistence take or subsistence take is restricted as specified—

(A) The Kenai Controlled Use Area, consisting of that portion of Unit 15(A) north of the Sterling Highway, is closed during moose-hunting season to the use of aircraft for hunting moose, including transportation of a moose hunter or moose part; however, this does not apply after 12:01 a.m., September 11, and does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the Controlled Use Area or between a publicly owned airport within the area and points outside of the area;

(B) The Lower Kenai Controlled Use Area, consisting of Unit 15(C), is closed to the use of any motorized vehicle except an aircraft or boat for hunting moose from September 11 through September 20, including transportation of a moose hunter or moose part; however, this does not apply to a motorized vehicle on a State- or Borough-maintained highway or on the gravel portion of Oilwell and Brody Roads;

(C) The Skilak Loop Management Area; consisting of that portion of Unit 15(A) bounded by a line beginning at the eastern most junction of the Sterling Highway and the Skilak Loop (milepost 76.3), then due south to the south bank of the Kenai River, then southerly along the south bank of the Kenai River to its confluence with Skilak Lake, then westerly along the north shore of Skilak Lake to Lower Skilak Lake Campground, then northerly along the Lower Skilak Lake Campground Road and the Skilak Loop Road to its western most junction with the Sterling Highway, then easterly along the Sterling Highway to the point of beginning; is closed to hunting and trapping except that small game may be taken only from October 1 through March 1 by bow and arrow only, and antlerless moose may be taken by permit only;

(iii) The following areas are closed to the trapping of furbearers for subsistence as indicated—

(A) Within the city limits of Homer (Unit 15) as those limits existed in November 1987;

(B) The Skilak Loop Wildlife Management Area;

(C) That portion of Unit 15(B) east of the Kenai River, Skilak Lake, Skilak River, and Skilak Glacier is closed to the trapping of marten.

Bag Limits and Open Season

Black Bear: Unit 15—3 bears—July 1–June 30
Beaver: Trapping—20 Beaver per season—Dec. 1–Mar. 31
Coyote:
Hunting—No limit—Sept. 1–Apr. 30
Trapping—No limit—Nov. 10–Feb. 28
Fox, Red (including Cross, Black and Silver Phases): Trapping—1 Fox—Nov. 10–Feb. 28
Hare (Snowshoe and Arctic): Hunting—No limit—July 1–June 30
Marten:
Trapping—Unit 15(B)—that portion east of the Kenai River, Skilak Lake, Skilak River and Skilak Glacier—No open season
Remainder of Unit 15—No limit—Nov. 10–Jan. 31
Mink and Weasel: Trapping—No limit—Nov. 10–Jan. 31
Muskrat: Trapping—No limit—Nov. 10–May 15
Otter (land only):
Trapping—Unit 15(A), (B)—No limit—Nov. 10–Jan. 31
Trapping—Unit 15(C)—No limit—Nov. 10–Feb. 28
Wolf:
Hunting—1 Wolf—Aug. 10–Apr. 30
Trapping—No limit—Nov. 10–Feb. 28
Wolverine:
Hunting—Unit 15—1 Wolverine—Sept. 1–Mar. 31
Trapping—Unit 15 (B) and (C)—No limit—Nov. 10–Feb. 28
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession—Aug. 10–Mar. 31
Ptarmigan (Rock, Willow, and White-tailed):
Unit 15 (A) and (B)—20 per day, 40 in possession—Aug. 10–Mar. 31
Unit 15(C)—20 per day, 40 in possession—Aug. 10–Dec. 31
5 per day, 10 in possession—Jan. 1–Mar. 31

(16) GMU 16.

(i) Game Management Unit 16 consists of the drainages into Cook Inlet between Redoubt Creek and the Susitna River, including Redoubt Creek drainage, Kalgin Island, and the drainages on the west side of the Susitna River (including the Susitna River) upstream to its junction with the Chulitna River; the drainages into the west side of the Chulitna River (including the Chulitna River) upstream to the Tokositna River, and drainages into the south side of the Tokositna River upstream to the base of the Tokositna Glacier, including the drainage of the Kahiltna Glacier;

(A) Unit 16(A) consists of that portion of Unit 16 east of the east bank of the Yentna River from its mouth upstream to the Kahiltna River, east of the east bank of the Kahiltna River, and east of the Kahiltna Glacier;

(B) Unit 16(B) consists of the remainder of Unit 16;

(ii) Public Lands within the following areas are closed to subsistence take or subsistence take is restricted as specified—

(A) Lands within Mount McKinley National Park as it existed prior to December 2, 1980 are closed to subsistence. Denali National Preserve and lands added to Denali National Park on December 2, 1990, are open to subsistence.

(B) [Reserved].

Bag Limits and Open Season

Black Bear: Unit 16—3 bears—July 1–June 30
Caribou: Unit 16—1 caribou—Aug. 10–Oct. 31
Moose:

Unit 16(B)—Redoubt Bay. Drainages south and west of, and including the Kustatan River drainage—1 bull—Sept. 1–Sept. 15
Remainder of Unit 16(b)—1 moose; however, antlerless moose may be taken only from Sept. 25–Sept. 30 and from Dec. 1 to Feb. 28 by February registration permit only—Sept. 1–Sept. 30 and Dec. 1–Feb. 28
Beaver: Trapping—30 Beaver per season—Nov. 10–Apr. 30
Coyote:
Hunting—2 Coyotes—Sept. 1–Apr. 30
Trapping—No limit—Nov. 10–Mar. 31
Fox, Red (including Cross, Black and Silver Phases):
Hunting—2 Foxes—Sept. 1–Feb. 15
Trapping—No limit—Nov. 10–Feb. 28
Hare (Snowshoe and Arctic): Hunting—No limit—July 1–June 30
Lynx:
Hunting—2 Lynx—Dec. 15–Jan. 15
Trapping—No limit—Dec. 15–Jan. 15
Marten: Trapping—No limit—Nov. 10–Jan. 31
Mink and Weasel: Trapping—No limit—Nov. 10–Jan. 31
Muskrat: Trapping—No limit—Nov. 10–June 10
Otter (land only): Trapping—No limit—Nov. 10–Mar. 31
Wolf:
Hunting—4 Wolves—Aug. 10–Apr. 30
Trapping—No limit—Nov. 10–Mar. 31
Wolverine:
Hunting—1 Wolverine—Sept. 1–Mar. 31
Trapping—No limit—Nov. 10–Feb. 28
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession—Aug. 10–Mar. 31
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession.—Aug. 10–Mar. 31

(17) GMU 17.

(i) Game Management Unit 17 consists of drainages into Bristol Bay and the Bering Sea between Etolin Point and Cape Newenham, and all islands between these points, including Hagemeister Island and the Walrus Islands;

(A) Unit 17(A) consists of the drainages between Cape Newenham and Cape Constantine, and Hagemeister Island and the Walrus Islands;

(B) Unit 17(B) consists of the Nushagak River drainage upstream from and including the Mulchatna River drainage, and the Wood River drainage upstream from the outlet of Lake Beverley;

(C) Unit 17(C) consists of the remainder of Unit 17;

(ii) Public lands within the following areas are closed to subsistence take or subsistence take is restricted as specified—

(A) All islands and adjacent waters within one-half mile of each island in the Walrus Islands State Game Sanctuary, as described in Alaska Statute 16.20.110, except for those islands known as the Twins and their adjacent waters are closed to hunting;

(B) The Upper Mulchatna Controlled Use Area consisting of Unit 17(B), is closed to the use of any motorized vehicle, except aircraft and boats and in legally permitted hunting camps, for hunting big game from August 1 to November 1, including transportation of big game hunters and parts of big game;

(C) The Western Alaska Brown Bear Management Area consisting of Unit 17(A), that portion of 17(B) draining into Nuyakuk Lake and Tikchik Lake, Unit 18, and that portion of Unit 19 (A) and (B) downstream of and including the Aniak River drainage is open to brown bear hunting by State registration permit in lieu of a resident tag; no resident tag is required for taking brown bears in the Western Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting;

(iii) The following areas are closed to the trapping of furbearers for subsistence as indicated: all islands within the Walrus Islands State Game Sanctuary as described in Alaska Statute 16.20.110.

Bag Limits and Open Season

Black Bear: Unit 17—3 bears—July 1–June 30
Brown Bear:
Unit 17(A) and that portion of Unit 17(B) draining into the Nuyakuk Lake and Trikchik Lake—1 bear—Sept. 1–May 31
Remainder of Unit 17(B)—1 bear every four regulatory years—Sept. 20–Oct. 10, May 10–May 25
Unit 17(C)—1 bear every four regulatory years—Sept. 10–Oct. 10, Apr. 10–May 25
Caribou: Unit 17 (B) and (C)—that portion of 17(C) east of the Nushagak River—4 caribou; however, no more than 2 caribou may be taken Aug. 10–Aug. 31, and no more than 1 caribou may be taken Sept. 1–Nov. 30—Aug. 10–Mar. 31
Sheep: Unit 17—1 ram with full curl horn or larger—Aug. 10–Sept. 20
Moose:
Unit 17(B)—that portion that includes all the Mulchatna River drainage upstream from and including the Chilchitna River drainage—1 bull—Sept. 1–Sept. 20
Remainder of Unit 17(B)—1 bull; however, during the period Aug. 20–Aug. 31 bull moose may be taken by State registration permit only—Aug. 20–Sept. 20, Dec. 1–Dec. 31
Unit 17(C)—that portion that includes the Iowithla drainage and Sunshine Valley and all lands west of Wood River and south of Aleknagik Lake—1 bull; however, during the period Aug. 20–Aug. 31 bull moose may be taken by State registration permit only—Aug. 20–Sept. 15
Remainder of Unit 17(C)—1 bull; however, during the period Aug. 20–Aug. 31 bull moose may be taken by State registration permit only—Aug. 20–Sept. 15, Dec. 1–Dec. 31
Beaver:
Trapping—Unit 17(A)—20 Beaver per season—Jan. 1–Jan. 31
Trapping—Unit 17 (B) and (C)—20 Beaver per season—Jan. 1–Feb. 28
Coyote:
Hunting—2 Coyotes—Sept. 1–Apr. 30
Trapping—No limit—Nov. 10–Mar. 31
Fox, Arctic (Blue and White Phase):
Hunting—No limit—Dec. 1–Mar. 15
Trapping—No limit—Nov. 10–Feb. 28
Fox, Red (including Cross, Black and Silver Phases):
Hunting—2 Foxes—Sept. 1–Feb. 15
Trapping—No limit—Nov. 10–Feb. 28
Hare (Snowshoe and Arctic): Hunting—No limit—July 1–June 30
Lynx:
Hunting—2 Lynx—Nov. 10–Feb. 28
Trapping—No limit—Nov. 10–Feb. 28
Marten: Trapping—No limit—Nov. 10–Feb. 28
Mink and Weasel: Trapping—No limit—Nov. 10–Feb. 28
Muskrat: Trapping—No limit—Nov. 10–June 10
Otter (land only): Trapping—No limit—Nov. 10–Mar. 31
Wolf:
Hunting—10 Wolves—Aug. 10–Apr. 30
Trapping—No limit—Nov. 10–Mar. 31
Wolverine:
Hunting—1 Wolverine—Sept. 1–Mar. 31
Trapping—No limit—Nov. 10–Feb. 28
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession—Aug. 10–Apr. 30
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession.—Aug. 10–Apr. 30

(18) GMU 18.

(i) Game Management Unit 18 consists of that area draining into the Yukon and Kuskokwim Rivers downstream from a straight line drawn between Lower Kalskag and Paimiut and the drainages flowing into the Bering Sea from Cape Newenham on the south to and including the Pastolik River drainage on the north; Nunivak, St. Matthew, and adjacent islands between Cape Newenham and the Pastolik River;

(ii) Public lands within the following area are closed to subsistence take or subsistence take is restricted as specified—

(A) The Kalskag Controlled Use Area consisting of that portion of Unit 18 bounded by a line from Lower Kalskag on the Kuskokwim River, northwesterly to Russian Mission on the Yukon River, then east along the north bank of the Yukon River to the old site of Paimiut, then back to Lower Kalskag is closed to the use of aircraft for hunting big game, including transportation of any big game hunter and big game part; however, this does not apply to transportation of a big game hunter or big game part by aircraft between publicly owned airports in the controlled use area or between a publicly owned airport within the area and points outside the area;

(B) The Western Alaska Brown Bear Management Area consisting of Unit

17(A), that portion of 17(B) draining into Nuyakuk Lake and Tikchik Lake, Unit 18, and that portion of Unit 19 (A) and (B) downstream of and including the Aniak River drainage is open to brown bear hunting by State registration permit in lieu of a resident tag; no resident tag is required for taking brown bears in the Western Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting.

Bag Limits and Open Season

Black Bear: Unit 18—3 bears—July 1–June 30
Brown Bear: Unit 18—1 bear—Sept.1–May 31
Caribou:
Unit 18—that portion south of the Yukon River—Kilbuck caribou herd; rural Alaska residents domiciled in Tuluksak, Akiak, Akiachak, Kwethluk, Bethel, Oscarville, Napaaskiak, Napakiak, Kasigiuk, Atmauthluak, Nunapitchuk, Tuntutuliak, Eek, Quinhagak, Goodnews Bay, Platinum, Togiak, and Twin Hills, only. The number of permits available for these hunts will be determined at a later date. There is a total harvest quota of 130 caribou bulls during the fall hunt administered by the Alaska Department of Fish and Game and the two Federal subsistence seasons. A Federal registration permit is required—Dec. 15–Jan. 9 and Feb. 23–Mar. 15
Remainder of Unit 18—Public lands are closed to the taking of caribou by rural or non-rural Alaska residents and non-residents—Closed to all caribou hunting
Moose:
Unit 18—that portion north and west of a line from Cape Romanzof to Kuzilvak Mountain, and then to Mountain Village, and west of but not including the Andreafsky River drainage; and those portions contained in the Kanektok and Goodnews drainages—Closed to all moose hunting
Remainder of Unit 18—1 antlered moose. A 10 day hunt falling sometime between Dec. 1 and Feb. 28 shall also be opened by announcement of the Federal Subsistence Board—Sept. 1–Sept. 30; Winter season to be announced
Public lands in Unit 18 are closed to the hunting of moose except by rural Alaska residents of Unit 18 and Upper Kalskag
Beaver: Trapping—No limit—Nov. 1–June 10
Coyote:
Hunting—2 Coyotes—Sept. 1–Apr. 30
Trapping—No limit—Nov.10–Mar. 31
Fox, Arctic (Blue and White Phase):
Hunting—2 Foxes—Sept. 1–Apr. 30
Trapping—No limit—Nov. 10–Mar.31
Fox, Red (including Cross, Black and Silver Phases):
Hunting—10 Foxes; however, no more than 2 Foxes may be taken prior to Oct. 1—Sept. 1–Mar. 15
Trapping—No limit—Nov. 10–Mar. 31
Hare (Snowshoe and Arctic): No limit—July 1–June 30
Lynx:
Hunting—2 Lynx—Nov. 10–Mar. 31
Trapping—No limit—Nov. 10–Mar. 31
Marten: Trapping—No limit—Nov. 10–Mar. 31
Mink and Weasel: Trapping—No limit—Nov. 10–Jan. 31
Muskrat: Trapping—No limit—Nov. 10–June 10
Otter (land only): Trapping—No limit—Nov. 10–Mar. 31
Wolf:
Hunting—4 Wolves—Aug. 10–Apr. 30
Trapping—No limit—Nov. 10–Mar. 31
Wolverine:
Hunting—1 Wolverine—Sept. 1–Mar 31
Trapping—No limit—Nov. 10–Mar. 31
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession—Aug. 10–Apr. 30
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession—Aug. 10–Apr. 30

(19) GMU 19.

(i) Game Management Unit 19 consists of the Kuskokwim River drainage upstream from Lower Kalskag;

(A) Unit 19(A) consists of the Kuskokwim River drainage downstream from and including the Moose Creek drainage on the north bank and downstream from and including the Stony River drainage on the south bank, excluding Unit 19(B);

(B) Unit 19(B) consists of the Aniak River drainage upstream from and including the Salmon River drainage, the Holitna River drainage upstream from and including the Bakbuk Creek drainage, that area south of a line from the mouth of Bakbuk Creek to the radar dome at Sparrevohn Air Force Base, including the Hoholitna River drainage upstream from that line, and the Stony River drainage upstream from and including the Can Creek drainage;

(C) Unit 19 (C) consists of that portion of Unit 19 south and east of a line from Benchmark M#1.26 (approximately 1.26 miles south of the northwest corner of the original Mt. McKinley National Park boundary) to the peak of Lone Mountain, then due west to Big River, including the Big River drainage upstream from that line, and including the Swift River drainage upstream from and including the North Fork drainage;

(D) Unit 19(D) consists of the remainder of Unit 19;

(ii) Public lands within the following areas are closed to subsistence take or subsistence take is restricted as specified—

(A) Lands within Mount McKinley National Park as it existed prior to December 2, 1980, are closed to subsistence uses. Denali National Preserve and lands added to Denali National Park on December 2, 1980, are open to subsistence uses;

(B) The Upper Kuskokwim Controlled Use Area consisting of that portion of Unit 19(D) upstream from the mouth of Big River including the drainages of the Big River, Middle Fork, South Fork, East Fork, and Tonzona River, and bounded by a line following the west bank of the Swift Fork (McKinley Fork) of the Kuskokwim River to 152°50′ W. long., then north to the boundary of Denali National Preserve, then following the western boundary of Denali National Preserve north to its intersection with the Minchumina-Telida winter trail, then west to the crest of Telida Mountain, then north along the crest of Munsatli Ridge to elevation 1,610, then northwest to Dyckman Mountain and following the crest of the divide between the Kuskokwim River and the Nowitna drainage, and the divide between the Kuskokwim River and the Nixon Fork River to Loaf bench mark on Halfway Mountain, then south to the west side of Big River drainage, the point of beginning, is closed during moose hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the Controlled Use Area or between a publicly owned airport within the area and points outside the area;

(C) The Holitna-Hoholitna Controlled Use Area consisting of the waters of the Holitna River downstream from Kashegelok, the Titnuk River downstream from Fuller Mountain and the Hoholitna River downstream from the confluence of the South Fork and main Hoholitna River is closed to the use of any boat equipped with inboard or outboard motor(s) with an aggregate horsepower in excess of manufacturer's rating of 40 horsepower for the purpose of taking big game, including transportation of big game hunters or parts of big game during the period August 1 to November 1;

(D) The Western Alaska Brown Bear Management Area consisting of Unit 17(A), that portion of 17(B) draining into Nuyakuk Lake and Tikchik Lake, Unit 18, and that portion of Unit 19 (A) and (B) downstream of and including the Aniak River drainage is open to brown bear hunting by State registration permit in lieu of a resident tag; no resident tag is required for taking brown bears in the Western Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting.

Bag Limits and Open Season

Black Bear: Unit 19—3 bears—July 1–June 30
Brown Bear:
Unit 19 (A) and (B) that portion which is downstream of and including the Aniak River drainage—1 bear—Sept. 1–May 31

Remainder of Unit 19 (A), (B), and (D)—1 bear every four regulatory years—Sept. 10–May 25

Caribou:

Unit 19(A) north of Kuskokwim River—1 caribou—Aug. 10–Sept. 30, Nov. 1–Feb. 28

Unit 19(A) south of the Kuskokwim River, and Unit 19(B) (excluding rural Alaska residents of Lime Village)—4 caribou—Aug. 10–Mar. 31

Unit 19(C)—1 caribou—Aug. 10–Oct. 10

Unit 19(D) south and east of the Kuskokwim River and North Fork of the Kuskokwim River—1 caribou—Aug. 10–Sept. 30, Nov. 1–Jan. 31

Unit 19(D)—Remainder—1 caribou—Aug. 10–Sept. 30

Unit 19—Rural Alaska residents domiciled in Lime Village only; no individual bag limit but a village harvest quota of 200 caribou; cows and calves may not be taken from Apr. 1–Aug. 9–July 1–June 30

Sheep: Unit 19—1 ram with ⅞ curl—Aug. 10–Sept. 20

Moose:

Unit 19—Rural Alaska residents of Lime Village only—No individual bag limit, but a village harvest quota of 40 moose; either sex—July 1–June 30

Unit 19(A)—1 moose; however, antlerless moose may be taken only from Jan. 1–Jan 10 and Feb. 1–Feb. 5–Sept. 5–Sept. 25, Jan. 1–Jan. 10, Feb. 1–Feb. 5

Unit 19(B)—1 bull—Sept. 1–Sept. 30

Unit 19(C)—1 bull—Sept. 1–Oct. 10

Unit 19(D)—that portion of the Upper Kuskokwim Controlled Use Area within the North Fork drainage upstream from the confluence of the South Fork to the mouth of the Swift Fork—1 bull—Sept. 1–Sept. 10

Unit 19(D)—remainder of the Upper Kuskokwim Controlled Use Area—1 bull—Sept. 1–Sept. 30, Dec. 1–Feb. 28

Unit 19(D)—Remainder—1 bull—Sept. 1—Sept. 30, Dec. 1–Dec. 15

Beaver: Trapping—No limit—Nov. 1–Apr. 15

Coyote:

Hunting—2 Coyotes—Sept. 1–Apr. 30

Trapping—No limit—Nov. 1–Mar. 31

Fox, Red (including Cross, Black and Silver Phases):

Hunting—10 Foxes; however, no more than 2 Foxes may be taken prior to Oct. 1–Sept. 1–Mar. 15

Trapping—No limit—Nov. 1–Mar. 31

Hare (Snowshoe and Arctic): No limit—July 1–June 30

Lynx:

Hunting—2 Lynx—Nov. 1–Feb. 28

Trapping—No limit—Nov. 1–Feb. 28

Marten: Trapping—No limit—Nov. 1–Feb. 28

Mink and Weasel: Trapping—No limit—Nov. 1–Feb. 28

Muskrat: Trapping—No limit—Nov. 1–June 10

Otter (land only): Trapping—No limit—Nov. 1–Apr. 15

Wolf:

Hunting—10 Wolves—Aug. 10–Apr. 30

Trapping—No limit—Nov. 1–Mar. 31

Wolverine:

Hunting—1 Wolverine—Sept. 1–Mar. 31

Trapping—No limit—Nov. 1–Mar. 31

Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession—Aug. 10–Apr. 30

Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession—Aug. 10–Apr. 30

(20) GMU 20.

(i) Unit 20 consists of the Yukon River drainage upstream from and including the Tozitna River drainage to and including the Hamlin Creek drainage, drainages into the south bank of the Yukon River upstream from and including the Charley River drainage, the Ladue River and Fortymile River drainages and the Tanana River drainage north of Unit 13 and downstream from the east bank of the Robertson River;

(A) Unit 20(A) consists of that portion of Unit 20 bounded on the south by the Unit 13 boundary, bounded on the east by the west bank of the Delta River, bounded on the north by the north bank of the Tanana River from its confluence with the Delta River downstream to its confluence with the Nenana River, and bounded on the west by the east bank of the Nenana River;

(B) Unit 20(B) consists of drainages into the north bank of the Tanana River from and including Hot Springs Slough upstream to and including the Banner Creek drainage;

(C) Unit 20(C) consists of that portion of Unit 20 bounded on the east by the east bank of the Nenana River and on the north by the north bank of the Tanana River downstream from the Nenana River;

(D) Unit 20(D) consists of that portion of Unit 20 bounded on the east by the east bank of the Robertson River and on the west by the west bank of the Delta River, and drainages into the north bank of the Tanana River from its confluence with the Robertson River downstream to, but excluding, the Banner Creek drainage;

(E) Unit 20(E) consists of drainages into the south bank of the Yukon River upstream from and including the Charley River drainage, and the Ladue River drainage;

(F) Unit 20(F) consists of the remainder of Unit 20;

(ii) Public lands within the following areas are closed to subsistence take or subsistence take is restricted as specified—

(A) Lands within Mount McKinley National Park as it existed prior to December 2, 1980, are closed to subsistence uses; Denali National Preserve and lands added to Denali National Park on December 2, 1980, are open to subsistence uses;

(B) Delta Controlled Use Area consisting beginning at the confluence of Miller Creek and the Delta River then west to VABM Miller, then west to include all drainages of Augustana Creek and Black Rapids Glacier, then north and east to include all drainages of McGinnis Creek to its confluence with the Delta River, then east in a straight line across the Delta River to Mile 236.7 Richardson Highway, then north along the Richardson Highway to its junction with the Alaska Highway, then east along the Alaska Highway to the west bank of the Johnson River, then south along the west bank of the Johnson River and Johnson Glacier to the head of the Canwell Glacier, then west along the north bank of the Canwell Glacier and Miller Creek to the Delta River;

(C) The Dalton Highway Corridor Management Area, consisting of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to the Prudhoe Bay Closed Area, is closed to the use of motorized vehicles, except aircraft and boats, and licensed highway vehicles. The use of licensed highway vehicles is limited only to designated roads within the Dalton Highway Corridor Management Area;

(D) Birch Lake and the area within one-half mile of Birch Lake (Mile 56 Richardson Highway) is closed to the taking of big game;

(E) Harding Lake and the area within one-half mile of Harding Lake (Mile 44 Richardson Highway) is closed to the taking of big game;

(F) Lost Lake and the area within one-half mile of Lost Lake (Mile 56 Richardson Highway) is closed to the taking of big game with firearms and crossbows;

(G) The Delta Junction Closed Area (Unit 20(D) near Delta Junction), which consists of that portion of Unit 20(D) bounded by a line beginning at the confluence of Donnelly Creek and the Delta River, then up Donnelly Creek to the Richardson Highway (Mile 238), then north along the east side of the highway to the "12 mile crossing trail" (Mile 252.4), then east along the south side of the "12 mile crossing trail" and across Jarvis Creek to the 33-Mile Loop Road then northeast along the 33-Mile Loop Road to the intersection with the Alaska Highway (Mile 1414), then southeast along the north side of the Alaska Highway to the bridge at Sawmill Creek (Mile 1403.9), then down the west bank of Sawmill Creek to its confluence with Clearwater Creek and down the south bank of Clearwater Creek to its confluence with the Tanana River, then down the Tanana River to its confluence with the Delta River, and upstream along the east bank of the Delta River to the point of beginning at Donnelly Creek, is closed to the taking of moose;

(H) The Glacier Mountain Controlled Use Area consisting of that portion of Unit 20(E) bounded by a line beginning at Mile 140 of the Taylor Highway, then north along the highway to Eagle, then west along the cat trail from Eagle to Crooked Creek, then from Crooked Creek southwest along the west bank of Mogul Creek to its headwaters on North Peak, then west across North Peak to the headwaters of Independence Creek, then southwest along the west bank of Independence Creek to its confluence with the North Fork of the Fortymile River, then easterly along the south bank of the North Fork of the Fortymile River on its confluence with Champion Creek, then across the North Fork of the Fortymile River to the south bank of Champion Creek and easterly along the south bank of Champion Creek to its confluence with Little Champion Creek, then northeast along the east bank of Little Champion Creek to its headwaters, then northeasterly in a direct line to Mile 140 on the Taylor Highway is closed to the use of any motorized vehicle for hunting, from August 5 to September 20; however, this does not prohibit motorized access via, or transportation of game on, the Taylor Highway or any airport;

(I) The Wood River Controlled Use Area consisting of that portion of Unit 20(A) bounded on the north by the south side of the Rex Trail beginning at its intersection with the Totatlanika River then easterly along the Rex trail to Gold King airstrip, then from Gold King airstrip along the trail's extension along the north side of Japan Hills to the Wood River; on the east by the Wood River, including the Wood River drainage upstream from and including the Snow Mountain Gulch Creek drainage; on the south by the divide separating the Yanert River drainage from the drainages of Healy Creek, Moody Creek, Montana Creek and the Wood River; and on the west by the east bank of the Nenana River from the divide separating the drainage of the Yanert River and Montana Creek north to Healy Creek, then easterly along the south bank of Healy Creek to the north fork of Healy Creek, then along the north fork of Healy Creek to its headwaters, then along a straight line to the headwaters of Dexter Creek, then along Dexter Creek to the Totatlanika River, and then down the east bank of the Totatlanika River to the Rex Trail is closed to the use of any motorized vehicle except aircraft for big game hunting and transportation of any big game part, from August 1 through September 30;

(j) The Macomb Plateau Controlled Use Area, consisting of that portion of Unit 20(D) south of the Alaska Highway, drainage into the south side of the Tanana River between the east bank of the Johnson River upstream to Prospect Creek, and the east bank of Bear Creek (Mile 1357.3), is closed to the use of any motorized vehicle, except a floatplane on Fish Lake, for hunting or transportation of any game part, from August 10 through September 30;

(K) The Yanert Controlled Use Area, consisting of that portion of Unit 20(A) drained by the Nenana River upstream from and including the Yanert Fork drainage, is closed to the use of any motorized vehicle, except aircraft, for big game hunting and transportation of any big game part; however, this does not prohibit motorized access via, and transportation of game on, the Parks Highway;

(L) The Minto Flats Management Area consisting of that portion of Unit 20 bounded by the Elliot Highway beginning at Mile 118, then northeasterly to Mile 96, then east to the Tolovana Hotsprings Dome, then east to the Winter Cat Trail, then along the Cat Trail south to the Old Telegraph Trail at Dunbar, then westerly along the trail to a point where it joins the Tanana River three miles above Old Minto, then along the north bank of the Tanana River (including all channels and sloughs except Swan Neck Slough), to the confluence of the Tanana and Tolovana Rivers and then northerly to the point of beginning, is open to moose hunting by permit only;

(M) The Fairbanks Management Area consisting of the Goldstream subdivision (SE¼ SE¼, Section 28 and Section 33, Township 2 North, Range 1 West, Fairbanks Meridian) and that portion of Unit 20(B) bounded by a line from the confluence of Rosie Creek and the Tanana River, northerly along Rosie Creek to the divide between Rosie Creek and Cripple Creek, then down Cripple Creek to its confluence with Ester Creek, then up Ester Creek to its confluence with Ready Bullion Creek, then up Ready Bullion Creek to the summit of Ester Dome, then down Sheep Creek to its confluence with Goldstream Creek, then easterly along Goldstream Creek to its confluence with First Chance Creek, then up First Chance Creek to Tungsten Hill, then southerly along Steele Creek to its intersection with the Trans-Alaska Pipeline, then southerly along the pipeline right-of-way to the Chena River, then along the north bank of the Chena River to the Moose Creek dike, then southerly along Moose Creek dike to its intersection with the Tanana River, and then westerly along the north bank of the Tanana River to the point of beginning is open to moose hunting by bow and arrow only;

(N) The Ferry Trail Management Area consisting of that portion of Unit 20(A) bounded on the north by the Rex Trail; on the west by the east bank of the Nenana River from its intersection with the Rex Trail south to the divide forming the north boundary of the Lignite Creek drainage; on the south by that divide easterly and southerly to the headwaters of Sanderson Creek at Usibelli Peak, then along a southwesterly line to the confluence of Healy Creek and Coal Creek, then upstream easterly along the south bank of Healy Creek to the north fork of Healy Creek, then along the north fork of Healy Creek to its headwaters; on the east by a straight line from the headwaters of Healy Creek to the headwaters of Dexter Creek, then along Dexter Creek to the Totatlanika River, then down the east bank of the Totatlanika River to the Rex Trail is open to caribou hunting by permit only;

(O) The Healy-Lignite Management Area consisting of that portion of Unit 20(A) that includes the entire Lignite Creek drainage, and that portion of the Nenana River drainage south of the Lignite Creek drainage and north of a boundary beginning at the confluence of the Nenana River and Healy Creek, then easterly along the south bank of Healy Creek to its confluence with Coal Creek, then northeasterly to the headwaters of Sanderson Creek at Usibelli Peak is open to hunting by bow and arrow only.

Bag Limits and Open Season

Black Bear: Unit 20–3 bears—July 1–June 30

Brown Bear: Unit 20–except Unit 20(E)—1 bear every four regulatory years—Sept. 1–May 31

Caribou:

Unit 20(E)—that portion drained by the Yukon River downstream from and including the Seventy-mile and Charley Rivers, the North Fork Fortymile River upstream from and including Independence Creek, the Middle Fork Fortymile River upstream from Fish Creek, and the Mosquito Fork Fortymile River upstream from and including Ketchumstuck Creek—1 caribou—Aug. 10–Sept. 30 and Dec. 1–Feb. 28

Unit 20(E)—Remainder of Unit 20(E) accessible by the Taylor Highway and associated trails, as described in the permit—1 caribou by State registration permit only; however, only bulls may be taken prior to Dec. 1—Aug. 10–Sept. 30 and Dec. 1–Feb 28

Unit 20(F)—South of the Yukon River and west of the Dalton Highway-1 bull.—Aug. 10–Sept. 20

Unit 20(F)—Tozitna River drainage—1 caribou; however, only bull caribou may

be taken Aug. 10–Sept. 30—Aug. 10–Sept. 30, Nov. 26–Dec. 10, Mar. 1–Mar. 15
Remainder of Unit 20(F)—1 bull—Aug. 10–Sept. 30
Moose:
Unit 20(A)—the Ferry Trail Management Area and the Yanert Controlled Use Area—1 bull with a spike-fork or 50-inch antlers—Sept. 1–Sept. 20
Unit 20(A)—Remainder 1 bull—Sept. 1—Sept. 20
Unit 20(B)—that portion within the Minto Flats Management Area—1 bull by Federal registration permit only—Sept. 1–Sept. 20, Jan. 10–Feb. 28
Unit 20(B)—the drainage of the Middle Fork of the Chena River and that portion of the Salcha River Drainage upstream from and including Goose Creek—1 bull—Sept. 1–Sept. 20
Remainder of Unit 20(B)—(except the Fairbanks Management Area; No subsistence)—1 bull—Sept. 1–Sept. 20
Unit 20(C)—1 bull; however, white-phased or partial albino (more than 50 percent white) moose may not be taken—Sept. 1–Sept. 20
Unit 20(E)—that portion drained by the Ladue, Sixty-mile, and Forty-mile Rivers (all forks) from Mile 9½ to Mile 145 Taylor Highway, including the Boundary Cutoff Road—1 bull—Sept. 1–Sept. 15
Remainder of Unit 20(E)—that portion draining into the Yukon River upstream from and including the Charley River drainage to and including the Boundary Creek drainages and the Taylor Highway from mile 145 to Eagle—1 bull—Sept. 5–Sept. 25
Unit 20(F)—that portion within the Dalton Highway Corridor Management Area—1 bull by Federal registration permit only—Sept. 1–Sept. 25
Remainder of Unit 20(F)—1 bull—Sept. 1–Sept. 25
Beaver:
Trapping—Unit 20(A)—25 Beaver per season—Nov. 1–Apr. 15
Trapping—Unit 20(B)—Remainder of Unit 20(B) and Unit 20 (C), (E), and that portion of 20(D) draining into the north bank of the Tanana River, including the islands in the Tanana River—25 Beaver per season—Nov. 1–Apr. 15
Trapping—Unit 20(D)—Remainder 15 Beaver per season—Feb. 1–Apr. 15
Trapping—Unit 20(F)—50 Beaver per season—Nov. 1–Apr. 15
Coyote:
Hunting—Unit 20—2 Coyotes—Sept. 1–Apr. 30
Trapping—Unit 20(E)—No limit—Nov. 1–Feb. 28
Trapping—Unit 20—Remainder (except 20(D))—No limit—Nov. 1–Mar. 31
Fox, Red (including Cross, Black and Silver Phases):
Hunting—10 Foxes; however, no more than 2 Foxes may be taken prior to Oct. 1—Sept. 1–Mar 15
Trapping—No Limit—Nov. 1–Feb. 28
Hare (Snowshoe and Arctic): No limit—July 1–June 30
Lynx:
Hunting—Unit 20(E)—2 Lynx—Nov. 1–Jan. 31
Trapping—Unit 20(E)—No limit—Nov. 1–Jan. 31
Hunting—Unit 20—Remainder (except (D))—2 Lynx—Dec. 1–Jan. 31
Trapping—Unit 20—Remainder (except 20(D))—No limit—Dec. 1–Jan 31
Marten: Trapping—No limit—Nov. 1–Feb. 28
Mink and Weasel: Trapping—No limit—Nov. 1–Feb 28
Muskrat:
Trapping—Unit 20(E)—No limit—Sept. 20–June 10
Trapping—Unit 20—Remainder (except 20(D))—Nov. 1–June 10
Otter (land only): Trapping—No limit—Nov. 1–Apr. 15
Wolf:
Hunting—Unit 20—10 Wolves per season—Aug. 10–Apr. 30
Trapping—Unit 20(E)—No limit—Oct. 1–Apr. 30
Trapping—Unit 20—Remainder (except 20(D))—No limit—Nov. 1–Mar. 31
Wolverine:
Hunting—1 Wolverine—Sept. 1–Mar. 31
Trapping—No limit—Nov. 1–Feb. 28
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):
Unit 20(D))—that portion south of the Tanana River and west of the Johnson River—15 per day, 30 in possession, provided that not more than 5 per day and 10 in possession are sharp-tailed grouse—Aug. 25–Mar. 31
Unit 20—Remainder—15 per day, 30 in possession—Aug. 10–Mar. 31
Ptarmigan (Rock, Willow, and White-tailed):
Unit 20—those portions within five miles of Alaska Route 6 (Steese Highway) and Alaska Route 5 (Taylor Highway, both to Eagle and the Alaska-Canada boundary) and that portion of Alaska Route 4 (Richardson Highway) south of Delta Junction—20 per day, 40 in possession—Aug. 10–Mar. 31
Unit 20—Remainder—20 per day, 40 in possession—Aug. 10–Apr. 30

(21) GMU 21.

(i) Game Management Unit 21 consists of drainages into the Yukon River upstream from Paimiut to but not including the Tozitna River drainage on the north bank and to, but not including the Tanana River drainage on the south bank; and excluding the Koyukuk River upstream and including from the Dulbi River drainage;

(A) Unit 21(A) consists of the Innoko River drainage upstream from and including the Iditarod River drainage, and the Nowitna River drainage upstream from the Little Mud River;

(B) Unit 21(B) consists of the Yukon River drainage upstream from Ruby and east of the Ruby-Poorman Road, downstream from and excluding the Tozitna River and Tanana River drainages, and excluding the Nowitna River drainage upstream from the Little Mud River, and excluding the Melozitna River drainage upstream from Grayling Creek;

(C) Unit 21(C) consists of the Melozitna River drainage upstream from Grayling Creek, and the Dulbi River drainage upstream from and including the Cottonwood Creek drainage;

(D) Unit 21(D) consists of the Yukon River drainage from and including the Blackburn Creek drainage upstream to Ruby, including the area west of the Ruby-Poorman Road, excluding the Koyukuk River drainage upstream from the Dulbi River drainage, and excluding the Dulbi River drainage upstream from Cottonwood Creek;

(E) Unit 21(E) consists of the Yukon River drainage from Paimiut upstream to but not including the Blackburn Creek drainage, and the Innoko River drainage downstream from the Iditarod River drainage;

(ii) Public Lands within the following areas are closed to subsistence take or subsistence take is restricted as specified—

(A) The Koyukuk Controlled Use Area consisting of those portions of Units 21 and 24 bounded by a line from the north bank of the Yukon River at Koyukuk, then northerly to the confluences of the Honhosa and Kateel Rivers, then northeasterly to the confluences of Billy Hawk Creek and the Huslia River (65° 57′ N. lat., 156° 41′ W. long.), then easterly to the south end of Solsmunket Lake, then east to Hughes, then south to Little Indian River, then southwesterly to the crest of Hochandochtla Mountain, then southwest to the mouth of Cottonwood Creek then southwest to Bishop Rock, then westerly along the north bank of the Yukon River (including Koyukuk Island) to the point of beginning is closed during moose-hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or between a publicly owned airport within the area and points outside the area; all hunters on the Koyukuk River passing the Department of Fish and Game operated check station at Ella's Cabin (15 miles upstream from the Yukon on the Koyukuk River) are required to stop and report to department personnel at the check station;

(B) Paradise Controlled Use Area consisting of that portion of Unit 21 bounded by a line beginning at the old village of Paimiut, then north along the west bank of the Yukon River to Paradise, then northwest to the mouth of Stanstrom Creek on the Bonasila River, then northeast to the mouth of the Anvik

River, then along the west bank of the Yukon River to the lower end of Eagle Island (approximately 45 miles north of Grayling), then to the mouth of the Iditarod River, then down the east bank of the Innoko River to its confluence with Paimiut Slough, then south along the east bank of Paimiut Slough to its mouth, and then to the old village of Paimiut, is closed during moose hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or part of moose; however, this does not apply to transportation of a moose hunter or part of moose by aircraft between publicly owned airports in the Controlled Use Area or between a publicly owned airport within the area and points outside the area.

Bag Limits and Open Season

Black Bear Unit 21—3 bears—July 1–June 30
Brown Bear Unit 21—1 bear every four regulatory years—Sept. 1–May 31
Caribou
Unit 21 (A), (B), (C), and (E)—1 caribou—Aug. 10–Sept. 30
Unit 21(D) North of the Yukon River and east of the Koyukuk River 1 caribou; however, 2 additional caribou may be taken during a winter season to be announced—Aug. 10–Sept. 30. Winter season to be announced
Unit 21(D)—Remainder (Western Arctic Caribou herd)—5 caribou per day, however, cow caribou may not be taken May 16–June 30—July 1–June 30
Moose
Unit 21(A)—1 bull—Sept. 5–Sept. 30, Nov. 1–Nov. 30
Unit 21 (B) and (C)—1 bull—Sept. 5–Sept. 25
Unit 21(D)—1 moose; antlerless moose may be taken only from Sept. 21–Sept. 25 and Feb. 1–Feb. 5; moose may not be taken within one-half mile of the Yukon River during the February season—Sept. 5–Sept. 25, Feb. 1–Feb. 5
Unit 21(E)—1 moose; however, only bulls may be taken from Sept. 5–Sept. 25—Sept. 5–Sept. 25, Feb. 1–Feb. 10
Beaver
Unit 21(E) Trapping—No Limit—Nov. 1–Jun. 1
Remainder of Unit 21—Trapping—No Limit—Nov. 1–Apr. 15
Coyote
Hunting—2 Coyotes—Sept. 1–Apr. 30
Trapping—No limit—Nov. 1–Mar. 31
Fox, Red (including Cross, Black and Silver Phases)
Hunting—10 Foxes; however, no more than 2 Foxes may be taken prior to Oct. 1—Sept. 1–Mar. 15
Trapping—No limit—Nov. 1–Feb. 28
Hare (Snowshoe and Arctic)
No limit—July 1–June 30
Lynx
Hunting—2 Lynx—Nov. 1–Feb. 28
Trapping—No limit—Nov. 1–Feb. 28
Marten
Trapping—No limit—Nov. 1–Feb. 28
Mink and Weasel
Trapping—No limit—Nov. 1–Feb. 28
Muskrat
Trapping—No limit—Nov. 1–June 10
Otter (land only)
Trapping—No limit—Nov. 1–Apr. 15
Wolf
Hunting—10 Wolves—Aug. 10–Apr. 30
Trapping—No limit—Nov. 1–Mar. 31
Wolverine
Hunting—1 Wolverine—Sept. 1–Mar. 31
Trapping—No limit—Nov. 1–Mar. 31
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed)
15 per day, 30 in possession—Aug. 10–Apr. 30
Ptarmigan (Rock, Willow, and White-tailed)
20 per day, 40 in possession—Aug. 10–Apr. 30

(22) GMU 22. (i) Game Management Unit 22 consists of Bering Sea, Norton Sound, Bering Strait, Chukchi Sea, and Kotzebue Sound drainages from, but excluding, the Pastolik River drainage in southern Norton Sound to, but not including, the Goodhope River drainage in Southern Kotzebue Sound, and all adjacent islands in the Bering Sea between the mouths of the Goodhope and Pastolik Rivers:

(A) Unit 22(A) consists of Norton Sound drainages from, but excluding, the Pastolik River drainage to, and including, the Ungalik River drainage, and Stuart and Besboro Islands;

(B) Unit 22(B) consists of Norton Sound drainages from, but excluding, the Ungalik River drainage to, and including, the Topkok Creek drainage;

(C) Unit 22(C) consists of Norton Sound and Bering Sea drainages from, but excluding, the Topkok Creek drainage to, and including, the Tisuk River drainage, and King and Sledge Islands;

(D) Unit 22(D) consists of that portion of Unit 22 draining into the Bering Sea north of but not including the Tisuk River to and including Cape York, and St. Lawrence Island:

(E) Unit 22(E) consists of Bering Sea, Bering Strait, Chukchi Sea, and Kotzebue Sound drainages from Cape York to, but excluding, the Goodhope River drainage, and including Little Diomede Island and Fairway Rock.

(ii) [Reserved].

Bag Limits and Open Season

Black Bear
Unit 22—3 bears—July 1–June 30
Brown Bear
Unit 22(C)—1 bear every four regulatory years—Sept. 1–Oct. 31, May 10–May 25
Remainder of Unit 22—1 bear every four regulatory years—Sept. 1–Oct. 31, Apr. 15–May 25
Caribou
Unit 22 (A) and (B)—5 caribou per day; however, cow caribou may not be taken May 16–June 30—July 1–June 30
Moose
Unit 22(A)—1 bull—Aug. 1–Sept. 30, Dec. 1–Jan. 31
Unit 22 (B)—1 moose; however, antlerless moose may be taken only from Dec. 1–Dec. 31—no person may take a cow accompanied by a calf—Aug. 1–Jan. 31
Unit 22(C)—1 bull—Sept. 1–Sept. 14
Unit 22(D)—1 moose; however, antlerless moose may be taken only from Aug. 1–Dec. 31—no person may take a cow accompanied by a calf—Aug. 1–Jan. 31
Unit 22(E)—1 moose; No person may take a cow accompanied by a calf—Aug. 1–Mar. 31
Beaver
Trapping—Unit 22 (A) and (B)—50 Beaver per season—Nov. 1–June 10
Trapping—Unit 22 (C), (D), and (E)—50 Beaver per season—Nov. 1–Apr. 15
Coyote
Hunting—2 Coyotes—Sept. 1–Apr. 30
Trapping—No limit—Nov. 1–Apr. 15
Fox, Arctic (Blue and White Phase)
Hunting—2 Foxes—Sept. 1–Apr. 30
Trapping—No limit—Nov. 1–Apr. 15
Fox, Red (including Cross, Black and Silver Phases)
Hunting—10 Foxes—Nov. 1–Apr. 15
Trapping—No limit—Nov. 1–Apr. 15
Hare (Snowshoe and Arctic)
No limit—July 1–June 30
Lynx
Hunting—2 Lynx—Nov. 1–Apr. 15
Trapping—No limit—Nov. 1–Apr. 15
Marten
Trapping—No limit—Nov. 1–Apr. 15
Mink and Weasel
Trapping—No limit—Nov. 1–Jan. 31
Muskrat
Trapping—No limit—Nov. 1–June 10
Otter (land only)
Trapping—No limit—Nov. 1–Apr. 15
Wolf
Hunting—No limit—Aug. 10–Apr. 30
Trapping—No limit—Nov. 1–Apr. 15
Wolverine
Hunting—1 Wolverine—Sept. 1–Mar. 31
Trapping—No limit—Nov. 1–Apr. 15
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed)
15 per day, 30 in possession—Aug. 10–Apr. 30
Ptarmigan (Rock, Willow, and White-tailed)
20 per day, 40 in possession—Aug. 10–Apr. 30

(23) GMU 23.

(i) Game Management Unit 23 consists of Kotzebue Sound, Chukchi Sea, and Arctic Ocean drainages from and including the Goodhope River drainage to Cape Lisburne;

(ii) Public lands within the following area are closed to subsistence take or subsistence take is restricted as specified—

(A) The Noatak Controlled Use Area, consisting of that portion of Unit 23 in a corridor extending five miles on either side of the Noatak River beginning at the mouth of the Kugururok River, and extending easterly along the Noatak River to the mouth of Sapun Creek, is closed for the period August 20—

September 20 to the use of aircraft in any manner for big game hunting, including transportation of big game hunters or game;

(B) The Northwest Alaska Brown Bear Management Area consisting of those portions of Unit 23, except the Baldwin Peninsula north of the Arctic Circle, Unit 24 west of the Dalton Highway Corridor Management Area, and Unit 26(a) is open to brown bear hunting by State registration permit in lieu of a resident tag; no resident tag is required for taking brown bears in the Northwest Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting; aircraft may not be used in the Northwest Alaska Brown Bear Management Area in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears or parts of bears; however, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

Bag Limits and Open Season

Black Bear Unit 23—3 bears—July 1–June 30
Brown Bear
Unit 23—except the Baldwin Peninsula north of the Arctic Circle—1 bear—Sept. 1–May 31
Remainder of Unit 23—1 bear every four regulatory years—Sept. 1–Oct. 10, Apr. 15–May 25
Caribou
Unit 23—5 caribou per day; however, cow caribou may not be taken May 16–June 30—July 1–June 30
Sheep
Unit 23—1 ram with 7/8 curl horn or larger. Unit 23—that portion south and east of the Noatak River, excluding Gates of the Arctic National Park, a State registration permit is required. A harvest quota will be announced before the permit hunt—Aug. 10–Sept. 20
Unit 23—1 sheep. In that portion of Unit 23 south and east of the Noatak River, excluding Gates of the Arctic National Park, the hunt will be closed when 30 sheep have been taken. From Oct. 1–Apr. 30, public lands will be closed to the taking of sheep, except by rural Alaska residents of Unit 23 living north of the Arctic Circle—Oct. 1–Apr. 30
Moose
Unit 23—that portion north and west of and including the Kivalina River drainage—1 moose; however, antlerless moose may be taken only from Sept. 1–Mar. 31; no person may take a cow accompanied by a calf—July 1–Mar. 31
Remainder of Unit 23—1 moose; however, antlerless moose may be taken only from Sept. 1–Mar. 31; no person may take a cow accompanied by a calf—Aug. 1–Mar. 31
Beaver
Trapping—Unit 23—the Kobuk and Selawik River drainages—50 Beaver per season—Nov. 1–June 10
Trapping—Unit 23—Remainder—30 Beaver per season—Nov. 1–June 10
Coyote
Hunting—3 Coyotes—Sept. 1–Apr. 30
Trapping—No limit—Nov. 1–Apr. 15
Fox, Arctic (Blue and White Phase)
Hunting—2 Foxes—Sept. 1–Apr. 30
Trapping—No limit—Nov. 1—Apr. 15
Fox, Red (including Cross, Black and Silver Phases)
Hunting—10 Foxes; however, no more than 2 Foxes may be taken prior to Oct. 1—Sept. 1–Mar. 15
Trapping—No limit—Nov. 1–Apr. 15
Hare (Snowshoe and Arctic) No limit—July 1–June 30
Lynx
Hunting—2 Lynx—Dec. 1–Jan. 15
Trapping—3 Lynx—Dec. 1–Jan. 15
Marten
Trapping—No limit—Nov. 1–Apr. 15
Mink and Weasel
Trapping—No limit—Nov. 1–Jan. 31
Muskrat
Trapping—No limit—Nov. 1–June 10
Otter (land only)
Trapping—No limit—Nov. 1–Apr. 15
Wolf
Hunting—10 Wolves—Aug. 10–Apr. 30
Trapping—No limit—Nov. 1–Apr. 15
Wolverine
Hunting—1 Wolverine—Sept. 1–Mar. 31
Trapping—No limit—Nov. 1–Apr. 15
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed)
15 per day, 30 in possession—Aug. 10–Apr. 30
Ptarmigan (Rock, Willow, and White-tailed)
20 per day, 40 in possession—Aug. 10–Apr. 30

(24) GMU 24.

(i) Game Management Unit 24 consists of the Koyukuk River drainage upstream from but not including the Dulbi River drainage;

(ii) Public lands within the following areas are closed to subsistence take or subsistence take is restricted as specified—

(A) The Dalton Highway Corridor Management Area, consisting of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to the Prudhoe Bay Closed Area, is closed to the use of motorized vehicles, except aircraft and boats, and licensed highway vehicles. The use of licensed highway vehicles is limited only to designated roads within the Dalton Highway Corridor Management Area;

(B) The Kanuti Controlled Use Area, consisting of that portion of Unit 24 bounded by a line from the Bettles Field VOR to the east side of Fish Creek lake, to Old Dummy Lake, to the south end of Lake Todatonten (including all waters of these lakes), to the northernmost headwaters of Siruk Creek, to the highest peak of Double Point Mountain, then back to the Bettles Field VOR, is closed during moose-hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or between a publicly owned airport within the area and points outside the area;

(C) The Koyukuk controlled Use Area consists of those portions of Units 21 and 24 bounded by a line from the north bank of the Yukon River at Koyukuk, then northerly to the confluences of the Honhosa and Kateel Rivers, then northeasterly to the confluences of Billy Hawk Creek and the Huslia River (65°57′ N. lat., 156°41′ W. long.), then easterly to the south end of Solsmunket Lake, then east to Hughes, then south to Little Indian River, then southwesterly to the crest of Hochandochtla Mountain, then southwest to the mouth of Cottonwood Creek then southwest to Bishop Rock, then westerly along the north bank of the Yukon River (including Koyukuk Island) to the point of beginning. The area is closed during moose-hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or between a publicly owned airport within the area and points outside the area; all hunters on the Koyukuk River passing the Department of Fish and Game operated check station at Ella's Cabin (15 miles upstream from the Yukon on the Koyukuk River) are required to stop and report to department personnel at the check station;

(D) The Northwest Alaska Brown Bear Management Area consisting of those portions of Unit 23, except the Baldwin Peninsula north of the Arctic Circle, Unit 24 west of the Dalton Highway Corridor Management Area, and Unit 26(A) is open to brown bear hunting by State registration permit in lieu of a resident tag. No resident tag is required for taking brown bears in the Northwest Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting. Aircraft may not be used in the Northwest Alaska Brown Bear Management Area in any manner for brown bear hunting under the authority of a brown bear State

registration permit, including transportation of hunters, bears or parts of bears. However, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transporation of aircraft to or between publicly owned airports.

Bag Limits and Open Season

Black Bear Unit 24–3 bears—July 1–June 30
Brown Bear
Unit 24—that portion west of the Dalton Highway Corridor Management Area—1 bear—Sept. 1–May 31
Remainder of Unit 24–1 bear every four regulatory years—Sept. 1–May 31
Caribou
Unit 24—the Kanuti River drainage upstream from Kanuti, Chalatna Creek, the Fish Creek drainage (including Bonanza Creek)—1 bull—Aug. 10–Sept. 30
Remainder of Unit 24–5 caribou per day; however, cow caribou may not be taken May 16–June 30—July 1–June 30
Sheep
Unit 24—that portion within the Gates of the Arctic National Park—3 sheep—Aug. 1–Apr. 30
Unit 24—that portion within the Dalton Highway Corridor Management Area; except, Gates of the Arctic National Park—1 ram with ⅞ curl horn or larger by Federal registration permit only—Aug. 10–Sept. 20
Remainder of Unit 24–1 ram with ⅞ curl horn or larger—Aug. 10–Sept. 20
Moose
Unit 24—that portion within the Koyukuk Controlled Use Area—1 moose; however, antlerless moose may be taken only from Sept. 21–Sept. 25, Dec. 1–Dec. 10, and Mar. 1–Mar. 10—Sept. 5–Sept. 25, Dec. 1–Dec. 10, Mar. 1–Mar. 10
Unit 24—that portion that includes the John River drainage upstream from but excluding the Hunt Fork drainage—1 moose—Aug. 1–Dec. 31
Unit 24—the Alatna River drainage upstream from and including Helpmejack Creek drainage, the John River drainage upstream from and including the Malemute Fork drainage and downstream from and including the Hunt Fork drainage, the Wild River drainage upstream from and including the Michigan Creek drainage, and the North Fork Koyukuk River drainage north of the Bettles/Coldfoot winter trail—1 moose; however, antlerless moose may be taken only from Sept. 21–Sept. 25 and Mar. 1–Mar. 10—Aug. 25–Sept. 25, Mar. 1–Mar. 10
Unit 24—that portion within the Dalton Highway Corridor Management Area; except, Gates of the Arctic National Park—1 bull by Federal registration permit only—Aug. 25–Sept. 25
Remainder of Unit 24–1 bull. Public lands in the Kanuti Controlled Use Area are closed to taking of moose, except by eligible rural Alaska residents—Aug. 25–Sept. 25
Beaver
Trapping—No limit—Nov. 1–Apr. 15
Coyote
Hunting—2 Coyotes—Sept. 1–Apr. 30
Trapping—No limit—Nov. 1–Mar. 31
Fox, Red (including Cross, Black and Silver Phases)
Hunting—10 Foxes; however, no more than 2 Foxes may be taken prior to Oct. 1—Sept. 1–Mar. 15
Trapping—No limit—Nov. 1–Feb. 28
Hare (Snowshoe and Arctic)
Hunting—No limit—July 1–June 30
Lynx
Hunting—2 lynx—Nov. 1–Feb. 28
Trapping—No limit—Nov. 1–Feb. 28
Marten
Trapping—No limit—Nov. 1–Feb. 28
Mink and weasel
Trapping—No limit—Nov. 1–Feb. 28
Muskrat

Trapping—No limit—Nov. 1–June 10
Otter (land only)
Trapping—No limit—Nov. 1–Apr. 15
Wolf
Hunting—10 Wolves—Aug. 10–Apr. 30
Trapping—No limit—Nov. 1–Mar. 31
Wolverine
Hunting—1 Wolverine—Sept. 1–Mar. 31
Trapping—No limit—Nov. 1–Mar. 31
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed)
15 per day, 30 in possession—Aug. 10–Apr. 30
Ptarmigan (Rock, Willow, and White-tailed)
20 per day, 40 in possession—Aug. 10–Apr. 30

(25) GMU 25.

(i) Game Management Unit 25 consists of the Yukon River drainage upstream from but not including the Hamlin Creek drainage, and excluding drainages into the south bank of the Yukon River upstream from the Charley River;

(A) Unit 25(A) consists of the Hodzana River drainage upstream from the Narrows, the Chandalar River drainage upstream from and including the East Fork drainage, the Christian River drainage upstream from Christian, the Sheenjek River drainage upstream from and including the Thluichohnjik Creek, the Coleen River drainage, and the Old Crow River drainage;

(B) Unit 25(B) consists of the Little Black River drainage upstream from but not including the Big Creek drainage, the Black River drainage upstream from and including the Salmon Fork drainage, the Porcupine River drainage upstream from the confluence of the Coleen and Porcupine Rivers, and drainages into the north bank of the Yukon River upstream from Circle, including the islands in the Yukon River;

(C) Unit 25(C) consists of drainages into the south bank of the Yukon River upstream from Circle to the Subunit 20(E) boundary, the Birch Creek drainage upstream from the Steese Highway bridge (milepost 147), the Preacher Creek drainage upstream from and including the Rock Creek drainage, and the Beaver Creek drainage upstream from and including the Moose Creek drainage;

(D) Unit 25(D) consists of the remainder of Unit 25;

(ii) Public lands within the following areas are closed to subsistence take or subsistence take is restricted as specified—

(A) The Dalton Highway Corridor Management Area, consisting of those portion of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to the Prudhoe Bay Closed Area, is closed to the use of motorized vehicles, except aircraft and boats, and licensed highway vehicles. The use of licensed highway vehicles is limited only to designated roads within the Dalton Highway Corridor Management Area;

(B) The Arctic Village Sheep Management Area encompasses approximately 567,680 acres north and west of Arctic Village. The area consists of that portion of Game Management Unit 25(A) which is bounded on the east by the East Fork Chandalar River beginning at the confluence of Cane Creek and proceeding southwesterly downstream past Arctic Village to the confluence with Crow Nest Creek, continuing up Crow Nest Creek, through Portage Lake, to its confluence with the Junjik River; then down the Junjik River past Timber Lake and a larger tributary, to a major, unnamed tributary located directly south of Little Njoo Mountain; the boundary leaves the river and continues upstream along this unnamed tributary, northwesterly, for approximately 6 miles where the stream forks into two roughly equal drainages; the boundary follows the easternmost fork, proceeding almost due north to the headwaters and intersects the Continental Divide; the boundary then follows the Continental Divide easterly, through Carter Pass, then easterly and northeasterly approximately 20 miles along the divide to an unnamed peak, elevation 6,460, located north of the most southerly major fork of the headwaters of Cane Creek; then the boundary continues due south 1.5 miles to the high point of a saddle, then down the headwaters tributary to Cane Creek and down the creek to the confluence of Cane Creek and the East Fork Chandalar. Sheep hunting in this area is restricted to residents of Arctic Village, Venetie, Fort Yukon, Kaktovik and Chalkytsik.

Bag Limits and Open Season

Black Bear: Unit 25—3 bears—July 1–June 30

Caribou:
Unit 25(A), (B), and the remainder of Unit 25(D)—10 caribou; however, no more than 5 caribou may be transportated from these units per regulatory year—July 1–Apr. 30
Unit 25(C)—1 bull—Aug. 10–Sept. 20, Feb. 15–Mar. 15
Unit 25(D)—that portion of Unit 25(D) drained by the west fork of the Dall River west of 150° W. long.—1 bull—Aug. 10–Sept. 30
Sheep:
Unit 25(A)—that portion within the Dalton Highway Corridor Management Area—3 sheep by Federal registration permit only; the Aug. 10–Sept. 20 season is restricted to 1 ram with 7/8 curl horn or larger—Oct. 1–Apr. 30, Aug. 10–Sept. 20
Units 25(A)—Arctic Village Sheep Management Area—2 rams by Federal registration permit only. Public lands are closed to the taking of sheep except by rural Alaska residents of Arctic Village, Venetie, Fort Yukon, Kaktovik and Chalkytsik—Aug. 10–Apr. 30
Remainder of Unit 25(A)—3 sheep by Federal registration permit only—Aug. 10–Apr. 30
Moose:
Unit 25(A)—that portion within the Dalton Highway Management Area—1 bull by Federal registration permit only—Aug. 25–Sept. 25, Dec. 1–Dec. 10
Remainder of Unit 25(A)—1 bull—Aug. 25–Sep. 25, Dec. 1–Dec. 10
Unit 25(B)—that portion within the Porcupine River drainage upstream from but excluding the Coleen River drainage—1 bull—Aug. 25–Sept. 30, Dec. 1–Dec. 10
Remainder of Unit 25(B)–1 bull—Aug. 25–Sept. 25, Dec. 1–Dec. 15
Unit 25(C)—1 bull—Sept. 1–Sept. 15
Unit 25(D) (West)—that portion within the Dalton Highway Corridor Management Area—1 bull by Federal registration permit only—Aug. 25–Sept. 25, Dec. 1–Dec. 10, Feb. 18–Feb. 28
Unit 25(D) (West)—that portion of Unit 25(D), not within the Dalton Highway Corridor Management Area, lying west of a line extending from the Unit 25(D) boundary on Preacher Creek, then downstream along Preacher Creek, Birch Creek and Lower Mouth Birch Creek to the Yukon River, then downstream along the north bank of the Yukon River (including islands) to the confluence of the Hadweenzik River, then upstream along the west bank of the Hadweenzik River to the confluence of Forty and One-Half Mile Creek, then upstream along Forty and One-Half Mile Creek to Nelson Mountain on the Unit 25(D) boundary—1 bull by Federal registration permit or State Tier II permit. Season will be closed after 35 bulls have been harvested.—Aug. 25–Sept. 25, Dec. 1–Dec. 10, Feb. 18–Feb. 28
Remainder of Unit 25(D)—1 bull, August 25–Sept. 25, Dec. 1–Dec. 20
Beaver:
Trapping—Unit 25(C)—25 Beaver per season—Nov. 1–Apr. 15
Trapping—Unit 25—Remainder—50 Beaver per season—Nov. 1–Apr. 15
Coyote:
Hunting—2 Coyotes—Sept. 1–Apr. 30
Trapping—No limit—Nov. 1–Mar. 31
Fox, Red (including Cross, Black and Silver Phases):
Hunting—10 Foxes; however, no more than 2 Foxes may be taken prior to Oct. 1–Sept. 1–Mar. 15
Trapping—No limit—Nov. 1–Feb. 28
Hare (Snowshoe and Arctic): Hunting—No limit—July 1–June 30
Lynx:
Hunting—Unit 25(C)—2 Lynx—Dec. 1–Jan. 31
Trapping—Unit 25(C)—No limit—Dec. 1–Jan. 31
Hunting—Unit 25—Remainder—2 Lynx—Nov. 1–Feb. 28
Trapping—Unit 25—Remainder—No limit—Nov. 1–Feb. 28
Marten: Trapping—No limit—Nov. 1–Feb. 28
Mink and Weasel: Trapping—No limit—Nov. 1–Feb. 28
Muskrat: Trapping—No limit—Nov. 1–June 10
Otter (land only): Trapping—No limit—Nov. 1–Apr. 15
Wolf:
Hunting—Unit 25(A)—No limit—Aug. 10–Apr. 30
Hunting—Unit 25—Remainder—10 Wolves—Aug. 10–Apr. 30
Trapping—No limit—Nov. 1–Mar. 31
Wolverine:
Hunting—1 Wolverine—Sept. 1–Mar. 31
Trapping—Unit 25(C)—No limit—Nov. 1–Feb. 28
Trapping—Unit 25—Remainder—No limit—Nov. 1–Mar. 31
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):
Unit 25(C)—15 per day, 30 in possession—Aug. 10–Mar. 31
Unit 25—Remainder—15 per day, 30 in possession—Aug. 10–Apr. 30
Ptarmigan (Rock, Willow, and White-tailed):
Unit 25(C)—those portions within 5 miles of Alaska Route 6 (Steese Highway) and Route 5 (Taylor Highway, both to Eagle and the Alaska-Canada boundary), and that portion of Route 4 (Richardson Highway) south of Delta Junction—20 per day, 40 in possession—Aug. 10–Mar. 31
Unit 25—Remainder—20 per day, 40 in possession—Aug. 10–Apr. 30

(26) GMU 26.

(i) Game Management Unit 26 consists of Arctic Ocean drainages between Cape Lisburne and the Alaska-Canada border, including the Firth River drainage within Alaska;

(A) Unit 26(A) consists of that portion of Unit 26 lying west of the Itkillik River drainage, and west of the east bank of the Colville River between the mouth of the Itkillik River and the Arctic Ocean;

(B) Unit 26(B) consists of that portion of Unit 26 east of Unit 26(A), west of the west bank of the Canning River and west of the west bank of the Marsh Fork of the Canning River;

(C) Unit 26(C) consists of the remainder of Unit 26;

(ii) Public lands within the following areas are closed to subsistence take or subsistence take is restricted as specified—

(A) The GMU 26(A) Controlled Use Area, consisting of Unit 26(A), from August 1 through August 31 is closed to the use of aircraft in any manner for moose hunting, including transportation of moose hunters or parts of moose. No hunter may take or transport a moose, or part of a moose in GMU 26(A) after having been transported by aircraft into the unit. However, this does not apply to transportation of moose hunters or moose parts by regularly scheduled flights to and between villages by carriers that normally provide scheduled service to this area, nor does it apply to transportation by aircraft to or between publicly owned airports;

(B) The Prudhoe Bay Closed Area is closed to the taking of big game; this closed area consists of the area bounded by a line beginning at 70° 22′ N. lat., 148° W. long., then running south approximately 14 miles to a point at 70° 10′ N. lat., 148° W. long., then west approximately 15 miles to a point at 70° 10′ N. lat., 148° 40′ W. long., then north approximately two miles to a point at 70° 12′ N. lat., 148° 40′ W. long., then west approximately eight miles to a point at 70° 12′ N. lat., 148° 56′ W. long., then north approximately two miles to a point at 70° 15′ N. lat., 148° 56′ W. long., then west approximately 12 miles to a point at 70° 15′ N. lat., 149° 28′ W. long., then north approximately 12 miles to a point at 70° 26′ N. lat., 149° 28′ W. long., then east approximately 14 miles to a point at 70° 26′ N. lat., 148° 52′ W. long., then south approximately 2 miles to a point at 70° 24′ N. lat., 148° 52′ W. long., then east approximately 16 miles to a point at 70° 24′ N. lat., 148° 11′ W. long., then south approximately 2 miles to a point at 70°24′ N. lat., 148°11′ W. long., then east approximately 6 miles to the point of beginning;

(C) The Dalton Highway Corridor Management Area, consisting of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to the Prudhoe Bay Closed Area, is closed to the use of motorized vehicles, except aircraft and boats, and licensed highway vehicles. The use of licensed highway vehicles is limited only to designated roads within the Dalton Highway Corridor Management Area;

(D) The Northwest Alaska Brown Bear Management Area consisting of those portions of Unit 23, except the Baldwin Peninsula north of the Arctic Circle, Unit 24 west of the Dalton Highway Corridor Management Area, and Unit 26(A) is open to brown bear hunting by State registration permit in

lieu of a resident tag; no resident tag is required for taking brown bears in the Northwest Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting; aircraft may not be used in the Northwest Alaska Brown Bear Management Area in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears or parts of bears; however, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

Bag Limits and Open Season

Black Bear: Unit 26—3 bears—July 1–June 30
Brown Bear:
Unit 26(A)—1 bear—Sept. 1–May 31
Remainder of Unit 26—1 bear every four regulatory years—Sept. 1–May 31
Caribou:
Unit 26(A)—5 caribou per day; however, cow caribou may not be taken May 16–June 30—July 1–June 30
Unit 26(B)— 5 caribou; however, cow caribou may be taken only from Oct. 1–Apr. 30—July 1–June 30
Unit 26(C)—10 caribou; however, not more than 5 caribou may be transported from Unit 26(C) per regulatory year—July 1–Apr. 30
Sheep:
Unit 26(A)—those portions within the Gates of the Arctic National Park—3 sheep—Aug. 1–Apr. 30
Unit 26(B)—that portion within the Dalton Highway Corridor Management Area—1 ram with ⅞ curl horn or larger by Federal registration permit only—Aug. 10–Sept. 20
Remainder of Unit 26(A) and (B)—including the Gates of the Arctic National Preserve—1 ram with ⅞ curl horn or larger—Aug. 10–Sept. 20
Unit 26(C)—3 sheep per year; the Aug. 10–Sept. 20 season is restricted to 1 ram with ⅞ curl horn or larger. A State registration permit is required for the Oct. 1–Apr. 30 season—Aug. 10–Sept. 20, Oct. 1–Apr. 30
Moose:
Unit 26(A)—1 moose; however, no person may take a cow accompanied by a calf—Aug. 1–Dec. 31
Unit 26(B) That portion within two miles of the Dalton Highway—No open season
Unit 26(B) Remainder and (C)—1 moose—Aug. 1–Dec. 31
Musk Oxen: Unit 26(C)—1 bull by Federal registration permit only; up to 10 permits may be issued to rural Alaska residents of the village of Kaktovik only. Public lands are closed to the taking of musk oxen, except by rural Alaska residents of the village of Kaktovik—Oct. 1–Oct. 31 and Mar. 1–Mar. 31
Coyote:
Hunting—2 Coyotes—Sept. 1–Apr. 30
Trapping—No limit—Nov. 1–Apr. 15
Fox, Arctic (Blue and White Phase):
Hunting—2 Foxes—Sept. 1–Apr. 30
Trapping—No limit—Nov. 1–Apr. 15
Fox, Red (including Cross, Black and Silver Phases):
Unit 26(A) and (B) Hunting—10 Foxes; however, no more than 2 Foxes may be taken prior to Oct. 1—Sept. 1–Mar. 15
Unit 26(C) Hunting—10 Foxes—Nov. 1–Apr. 15
Trapping—No limit—Nov. 1–Apr. 15
Hare (Snowshoe and Arctic): Hunting—No limit—July 1–June 30
Lynx:
Hunting—2 Lynx—Nov. 1–Apr. 15
Trapping—No limit—Nov. 1–Apr.15
Marten: Trapping—No limit—Nov. 1–Apr. 15
Mink and Weasel: Trapping—No limit—Nov. 1–Jan. 31
Muskrat: Trapping—No limit—Nov. 1–June 10
Otter (land only) Trapping—No limit—Nov. 1–Apr. 15
Wolf:
Hunting—No limit—Aug. 10–Apr. 30
Trapping—No limit—Nov. 1–Apr. 15
Wolverine:
Hunting—1 Wolverine—Sept. 1–Mar. 31
Trapping—No limit—Nov. 1–Apr. 15
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed) 15 per day, 30 in possession—Aug. 10–Apr. 30
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession—Aug. 10–Apr. 30

§ _____.26 Subsistence taking of fish.

(a) Applicability.

(1) Regulations in this section apply to subsistence fishing for salmon, herring, pike, bottomfish, smelt, and other types of finfish or their parts except halibut, and aquatic plants.

(2) Aquatic plants and finfish other than salmon may be taken for subsistence purposes at any time by any method unless restricted by the subsistence fishing regulations in this section. Salmon may be taken for subsistence purposes only as provided in this section.

(b) Definitions. The following definitions shall apply to all regulations contained in this section and in § _____.27.

Abalone Iron is a flat device used for taking abalone and which is more than one inch (24 mm) in width and less than 24 inches (61 cm) in length and with all prying edges rounded and smooth.

Anchor is a device used to hold a salmon fishing vessel or net in a fixed position relative to the beach; this includes using part of the seine or lead, a ship's anchor or being secured to another vessel or net that is anchored.

Bag Limit means the maximum legal take per person or designated group, per specified time period, even if part or all of the fish are preserved.

Beach seine is a floating net designed to surround fish which is set from and hauled to the beach.

Crab means the following species: *Paralithodes camshatica* (red king crab); *Paralithodes platypus* (blue king crab); *Lithodes couesi*; *Lithodes aequispina* (brown king crab); all species of the genus Chionoecetes (tanner or snow crab); *Cancer magister* (Dungeness crab).

Dip net is a bag-shaped net supported on all sides by a rigid frame; the maximum straight-line distance between any two points on the net frame, as measured through the net opening, may not exceed five feet; the depth of the bag must be at least one-half of the greatest straight-line distance, as measured through the net opening; no portion of the bag may be constructed of webbing that exceeds a stretched measurement of 4.5 inches; the frame must be attached to a single rigid handle and be operated by hand.

Diving Gear is any type of hard hat or skin diving equipment, including SCUBA equipment.

Drainage means all of the waters comprising a watershed including tributary rivers, streams, sloughs, ponds and lakes which contribute to the supply of the watershed.

Drift gill net is a drifting gill net that has not been intentionally staked, anchored or otherwise fixed.

Fishwheel is a fixed, rotating device for catching fish which is driven by river current or other means of power.

Freshwater of streams and rivers means the line at which freshwater is separated from saltwater at the mouth of streams and rivers by a line drawn between the seaward extremities of the exposed tideland banks at the present stage of the tide.

Fyke net is a fixed, funneling (fyke) device used to entrap fish.

Gear means any type of fishing apparatus.

Gill net is a net primarily designed to catch fish by entanglement in the mesh and consisting of a single sheet of webbing hung between cork line and lead line, and fished from the surface of the water.

Grappling hook is a hooked device with flukes or claws and attached to a line and operated by hand.

Groundfish—Bottomfish means any marine finfish except halibut, osmerids, herring and salmonids.

Hand purse seine is a floating net designed to surround fish and which can be closed at the bottom by pursing the lead line; pursing may only be done by hand power, and a free-running line

through one or more rings attached to the lead line is not allowed.

Hand troll gear consists of a line or lines with lures or baited hooks which are drawn through the water from a vessel by hand trolling, strip fishing or other types of trolling, and which are retrieved by hand power or hand-powered crank and not by any type of electrical, hydraulic, mechanical or other assisting device or attachment.

Herring pound is an enclosure used primarily to retain herring alive over extended periods of time.

Hung measure means the maximum length of the cork line when measured wet or dry with traction applied at one end only.

Inclusive season dates means whenever the doing of an act between certain dates or from one date to another is allowed or prohibited, the period of time thereby indicated includes both dates specified; the first date specified designates the first day of the period, and the second date specified designates the last day of the period.

Jigging gear means a line or lines with lures or baited hooks which are operated during periods of ice cover from holes cut in the ice and are drawn through the water by hand.

Lead is a length of net employed for guiding fish into a seine, set gill net, or other length of net, or fencing employed for guiding fish into a fishwheel, fyke net or dip net.

Legal limit of fishing gear means the maximum aggregate of a single type of fishing gear permitted to be used by one individual or boat, or combination of boats in any particular regulatory area, district or section.

Line attached to a rod or pole means a device upon which a line is stored on a fixed or revolving spool and deployed through guides mounted on a flexible pole or a line is attached to a pole.

Long line is a stationary buoyed or anchored line or a floating, free drifting line with lures or baited hooks attached.

Net gear site means the in-water location of stationary net gear.

Possession limit means the maximum number of fish a person or designated group may have in possession if the fish have not been canned, salted, frozen, smoked, dried or otherwise preserved so as to be fit for human consumption after a 15-day period.

Pot is a portable structure designed and constructed to capture and retain fish and shellfish alive in the water.

Purse seine is a floating net designed to surround fish and which can be closed at the bottom by means of a free-running line through one or more rings attached to the lead line.

Ring net is a bag-shaped net suspended between no more than two frames; the bottom frame may not be larger in perimeter than the top frame; the gear must be non-rigid and collapsible so that when fishing it does not prohibit free movement of fish or shellfish across the top of the net.

Rockfish means all species of the genus *Sebastes*.

Salmon stream means any stream used by salmon for spawning or for travelling to a spawning area.

Salmon stream terminus means a line drawn between the seaward extremities of the exposed tideland banks of any salmon stream at mean lower low water.

Set gill net is a gill net that has been intentionally set, staked, anchored, or otherwise fixed.

Shovel is a hand-operated implement for digging clams or cockles.

Spear is a shaft with a sharp point or fork-like implement attached to one end, used to thrust through the water to impale or retrieve fish and is operated by hand.

To operate fishing gear means the deployment of gear in the waters of Alaska, the removal of gear from the waters of Alaska, the removal of fish or shellfish from the gear during an open season or period, or possession of a gill net containing fish during an open fishing period, except that a gill net which is completely clear of the water is not considered to be operating for the purposes of minimum distance requirement.

Trawl is a bag-shaped net towed through the water to capture fish or shellfish.

(c) Methods, Means, and General Restrictions.

(1) The bag limit specified herein for a subsistence season for a species and the State bag limit set for a State general season for the same species are not cumulative. This means that a person or designated group who has taken the bag limit for a particular species under a subsistence season specified herein may not after that, take any additional fish of that species under any other bag limit specified for a State general season.

(2) Unless otherwise provided in this section, gear specified in definitions in subsection (b) are legal types of gear for subsistence fishing.

(3) Gill nets used for subsistence fishing for salmon may not exceed 50 fathoms in length, unless otherwise specified by the regulations in particular areas set forth in this section.

(4) It is prohibited to buy or sell subsistence-taken fish, their parts, or their eggs, unless otherwise specified in this section or unless, prior to the sale, the prospective buyer or seller obtains a determination from the Board that the sale constitutes customary trade.

(5) Fishing for, taking or molesting any fish by any means, or for any purpose, in prohibited within 300 feet of any dam, fish ladder, weir, culvert or other artificial obstruction.

(6) The use of explosives and chemicals for taking fish is prohibited.

(7) Each person subsistence fishing shall plainly and legibly inscribe his/her first initial, last name, and address on his/her fishwheel, or on a keg or buoy attached to gill nets and other unattended subsistence fishing gear.

(8) All pots used to take fish must contain an opening in the webbing of a side wall of the pot which has been laced, sewn or secured together by untreated cotton twine or other natural fiber no larger than 120 thread, which upon deterioration or parting of the twine produces an opening in the web with a perimeter equal to or exceeding one half of the tunnel eye opening perimeter.

(9) Persons licensed by the State of Alaska under Alaska Statutes to engage in a fisheries business may not receive for commercial purposes or barter or solicit to barter for subsistence taken salmon or their parts. Further restrictions on the bartering of subsistence taken salmon or their parts may be implemented by the Federal Subsistence Board if necessary.

(10) Gill net web must contain at least 30 filaments and all filaments must be of equal diameter, or the web must contain at least six filaments, each of which must be at least 0.20 millimeter in diameter. Gill net should not be monofilament and should not be more than 6 inches in mesh size.

(11) Except as provided elsewhere in this regulation, the taking of rainbow trout and steelhead is prohibited.

(12) Fish taken for subsistence use or under subsistence fishing regulations may not be subsequently used as bait for commercial and sport fishing purposes.

(13) The use of live non-indigenous fish as bait is prohibited.

(d) Unlawful Possession of Subsistence Finfish. No person may possess, transport, give, receive or barter subsistence-taken fish or their parts that the person knows or should know were taken in violation of Federal or State statute or a regulation promulgated thereunder.

(e) Fishery Management Area Restrictions. For detailed descriptions of Fishery Management Areas, see Alaska Fishing Regulations.

(1) Kotzebue-Northern Area.

(i) Allowed gear and specifications:

(A) Salmon may be taken only by gill nets, beach seines, or a line attached to a rod or pole.

(B) Fish other than salmon may be taken by set gill net, drift gill net, beach seine, fishwheel, pot, long line, fyke net, dip net, jigging gear, spear, lead, or a line attached to a rod or pole.

(C) A gill net may obstruct not more than one-half the width of any fish stream. A stationary fishing device may obstruct not more than one-half the width of any salmon stream.

(D) Each fishwheel must have the first initial, last name, and address of the operator plainly and legibly inscribed on the side of the fishwheel facing midstream of the river.

(E) For all gill nets and unattended gear that are fished under the ice, the first initial, last name, and address of the operator must be plainly and legibly inscribed on a stake inserted in the ice and attached to the gear.

(F) Fish may be taken for subsistence purposes without a subsistence fishing permit.

(G) Fish may be taken at any time except that during the weekly fishing closures of the commercial salmon fishing season in the Kotzebue District commercial fishermen may not fish for subsistence purposes.

(ii) Kotzebue District.

(A) In the Kotzebue District, kegs or buoys attached to subsistence gill nets may be any color except red.

(B) In the Kotzebue District, gill nets used to take sheefish may not be more than 50 fathoms in aggregate length nor 12 meshes in depth, nor have a mesh size larger than seven inches.

(2) Norton Sound-Port Clarence Area.

(i) General Area Regulations.

(A) Salmon may only be taken by gill net, beach seine, fishwheel, or a line attached to a rod or pole.

(B) Fish other than salmon may be taken by set gill net, drift net, beach seine, fishwheel, pot, long line, fyke net, jigging gear, spear, lead, or a line attached to a rod or pole.

(C) A gill net may not obstruct more than one-half the width of any fish stream. A stationary fishing device may obstruct not more than one-half the width of any salmon stream.

(D) Each fishwheel must have the first initial, last name, and address of the operator plainly and legibly inscribed on the side of the fishwheel facing midstream of the river.

(E) For all gill nets and unattended gear that are fished under the ice, the first initial, last name, and address of the operator must be plainly and legibly inscribed on a stake inserted in the ice and attached to the gear.

(F) Except as provided in this subsection, fish may be taken for subsistence purposes without a subsistence fishing permit. A subsistence fishing permit is required as follows:

(*1*) In the Port Clarence District—Pilgrim River drainage including Salmon Lake;

(*2*) In the Norton Sound District: for net fishing in all waters from Cape Douglas to Rocky Point.

(G) Only one subsistence fishing permit will be issued to each household per year.

(ii) The Norton Sound District.

(A) In the Norton Sound District, fish may be taken at any time except as follows:

(B) In Subdistrict 1 from June 15 through August 31, salmon may be taken only from 6 p.m. Monday until 6 p.m. Wednesday and from 6 p.m. Thursday until 6 p.m. Saturday.

(C) In Subdistricts 2 through 6, commercial fishermen may not fish for subsistence purposes during the weekly closures of the commercial salmon fishing season [except that from July 15 through August 1, commercial fishermen may take salmon for subsistence purposes seven days per week in the Unalakleet and Shaktoolik River drainages with gill nets which have a mesh size that does not exceed 4½ inches, and with beach seines].

(D) In the Unalakleet River from June 1 through July 15, salmon may be taken from 8 a.m. Monday until 8 p.m. Saturday.

(E) In the Norton Sound District, kegs or buoys attached to subsistence gill nets may be any color except red.

(F) In the Unalakleet River from June 1 through July 15, no person may operate more than 25 fathoms of gill net in the aggregate.

(G) Gill nets with a mesh size of less than four and one-half inches and beach seines may not be used in the Sinuk River upstream of Alaska Department of Fish and Game regulatory markers placed two miles above the mouth, in the Nome River, and in the Solomon River upstream from Alaska Department of Fish and Game regulatory markers places near the village of Solomon.

(H) In the Nome River, no person may operate more than 50 feet of gill net in the aggregate.

(I) The Nome River, from its terminus upstream for a distance of 200 yards and upstream from an Alaska Department of Fish and Game regulatory marker located near Osborn, is closed to the taking of fish.

(iii) The Port Clarence District.

(A) In the Port Clarence District, fish may be taken at any time except that during the period July 1 through August 15, salmon may only be taken from 6 p.m. Thursday until 6 p.m. Tuesday.

(B) In the Port Clarence District, Salmon Lake, its tributaries, and within 300 feet of the Alaska Department of Fish and Game regulatory markers placed at the outlet of Salmon Lake, are closed to subsistence fishing from July 15 through August 31.

(3) Yukon Area.

(i) Unless otherwise restricted, salmon may be taken in the Yukon Area at any time.

(ii) Salmon may only be taken by gill net, beach seine, fishwheel, or a line attached to a rod or pole subject to the restrictions set forth in this section.

(iii) Unless otherwise specified in this section, fish other than salmon may be taken only by set gill net, drift gill net, beach seine, fishwheel, long line, fyke net, dip net, jigging gear, spear, lead, or a line attached to a rod or pole subject to the following restrictions, which also apply to subsistence salmon fishing:

(A) During the open weekly fishing periods of the commercial salmon fishing season, a commercial fisherman may not operate more than one type of gear at a time, for commercial and subsistence purposes, except that in Subdistrict 4–A, upstream from the mouth of Stink Creek, a commercial fisherman may, at any time, assist subsistence fishermen in the operation of subsistence fishing gear;

(B) The aggregate length of set gill net in use by an individual may not exceed 150 fathoms and each drift gill net in use by an individual may not exceed 50 fathoms in length;

(C) In Subdistricts 4, 5, and 6, it is unlawful to set subsistence fishing gear within 200 feet of other operating commercial or subsistence fishing gear;

(D) A gill net may obstruct not more than one-half the width of any fish stream; a stationary fishing device may obstruct not more than one-half width of any salmon stream.

(iv) Salmon may be taken only by set gill net, fishwheel, or a line attached to a rod or pole. No person may operate a gill net having a mesh size larger than six inches after a date specified by emergency order issued between July 5 through July 25.

(v) Each fishwheel must have the first initial, last name, and address of the operator plainly and legibly inscribed on the side of the fishwheel facing midstream of the river.

(vi) For all gill nets and unattended gear that are fished under the ice, the first initial, last name, and address of the operator must be plainly and legibly

inscribed on a stake inserted in the ice and attached to the gear.

(vii) In Districts 1, 2, and 3, commercial fishermen may not take salmon for subsistence purposes by gill nets larger than six-inch mesh during periods established by emergency order.

(viii) In Districts 4, 5, and 6, salmon may not be taken for subsistence purposes by drift gill nets, except as follows:

(A) In Subdistrict 4–A, upstream from the mouth of Stink Creek king salmon may be taken by drift gill nets from June 21 through July 14, and chum salmon may be taken by drift gill nets after August 2;

(B) No person may operate a drift gill net that is more than 150 feet in length during the seasons described in this section.

(ix) Except as provided in this section, fish may be taken for subsistence purposes without a subsistence fishing permit.

(x) A subsistence fishing permit is required as follows:

(A) For the Yukon River drainage from the mouth of Hess Creek to the mouth of the Dall River;

(B) For the Yukon River drainage from Alaska Department of Fish and Game regulatory markers placed near the upstream mouth of 22 Mile Slough upstream to the U.S.-Canada border;

(C) For the Tanana River drainage above the mouth of the Wood River;

(D) For whitefish and suckers in the waters listed;

(E) For the taking of pike in waters of the Tolovana River drainage upstream of its confluence with the Tanana River;

(F) For the taking of salmon in Subdistricts 6–A and 6–B.

(xi) Except as otherwise provided, and except as may be provided by the terms of a subsistence fishing permit, there is no closed season on fish other than salmon.

(xii) In addition to the subsistence fishing permit conditions, permits issued for fish other than salmon may also designate restrictive measures for the conservation of salmon.

(xiii) Only one subsistence fishing permit will be issued to each household per year.

(xiv) Birch Creek and the Dall River of the upper Yukon drainage, and waters within 500 feet of their mouths, are closed to subsistence fishing June 10 through September 10, except that whitefish and suckers may be taken under the authority of a subsistence fishing permit designating measures for the protection of other fish.

(xv) The following drainages located north of the main Yukon River are closed to subsistence fishing:

(A) Kanuti River, upstream from a point five miles downstream of the State highway crossing;

(B) Fish Creek, upstream from the mouth of Bonanza Creek;

(C) Bonanza Creek;

(D) Jim River, including Prospect Creek and Douglas Creek;

(E) South Fork of the Koyukuk River system upstream from the mouth of Jim River;

(F) Middle Fork of the Koyukuk River system upstream from the mouth of the North Fork;

(G) North Fork of the Chandalar River system upstream from the mouth of Quartz Creek.

(xvi) The main Tanana River and its adjoining sloughs are closed to subsistence fishing between the mouth of the Salcha River and the mouth of the Gerstle River, except that salmon may be taken in the area upstream of the Richardson Highway bridge to the mouth of Clearwater Creek after November 20.

(xvii) Waters of the Tanana River drainage are closed to the subsistence taking of pike between the mouth of the Kantishna River and Delta River at Black Rapids on the Richardson Highway and Cathedral Rapids on the Alaska Highway, except that pike may be taken for subsistence purposes in the Tolovana River drainage upstream from its confluence with the Tanana River.

(xviii) The Delta River is closed to subsistence fishing, except that salmon may be taken after November 20.

(xix) The following locations are closed to subsistence fishing:

(A) The following rivers and creeks and within 500 feet of their mouths: Delta Clearwater River (Clearwater Creek at 64° 06′ N. lat., 145° 34′ W. long.), Richardson Clearwater Creek (Clear Creek at 64° 14′ N. lat., 146° 16′ W. long.), Goodpaster River, Chena River, Little Chena River, Little Salcha River, Blue Creek, Big Salt River, Shaw Creek, Bear Creek, McDonald Creek, Moose Creek, Hess Creek, and Beaver Creek;

(B) Ray River and Salcha River upstream of a line between Alaska Department of Fish and Game regulatory markers located at the mouth of the rivers;

(C) Deadman, Jan, Boleo, Birch, Lost, Harding, Craig, Fielding, Two-Mile, Quartz, and Little Harding lakes;

(D) Piledriver and Badger (Chena) sloughs.

(xx) The following waters are closed to the taking of chum salmon from August 15 through December 31:

(A) Toklat River;

(B) Kantishna River from the mouth of the Toklat River to its confluence with the Tanana River.

(xxi) Salmon may be taken only by set gill nets in those locations described in below after July 19:

(A) Waters of the Black River including waters within one nautical mile of its terminus;

(B) Waters of Kwikluak Pass downstream of Agmulegut and the waters of Kwemeluk Pass;

(C) Waters of Alakanuk Pass downstream from the mouth of Kuiukpak Slough;

(D) Waters of Kwiguk Pass downstream to the mouth of Kawokhawik Slough;

(E) Waters of Kawanak Pass downstream from Sea Gull Point;

(F) Waters of Apoon Pass downstream from the mouth of the Kotlik River and waters of Okwega Pass downstream from its confluence with Apoon Pass;

(G) Waters within one nautical mile seaward from any grassland bank in District 1.

(xxii) In the following locations, salmon may be taken only during the open weekly fishing periods of the commercial salmon fishing season and may not be taken for 24 hours before the opening and 24 hours after the closure of the commercial salmon fishing season except:

(A) Through July 19 in Districts 1 and 2 subsistence fishing periods will be established by emergency order every other weekend during commercial salmon fishing closures;

(B) After July 19 in District 1, except for the set net only locations, and in District 2, a 24 hour subsistence fishing period will be established by emergency order each weekend during commercial salmon fishing closures;

(C) In Subdistrict 4–A from June 15 through August 1, salmon may be taken from 6 p.m. Sunday until 6 p.m. Tuesday and from 6 p.m. Wednesday until 6 p.m. Friday;

(D) In Subdistricts 4–B and 4–C from June 15 through September 30, salmon may be taken from 6 p.m. Sunday until 6 p.m. Tuesday and from 6 p.m. Wednesday until 6 p.m. Friday;

(E) District 5, excluding the Tozitna River drainage and Subdistrict 5–D;

(F) District 6, excluding

(*1*) The Kantishna River drainage and that portion of the Tanana River drainage upstream of the mouth of the Salcha River;

(*2*) Subdistrict 6–B, from the downstream end of Crescent Island to three miles upstream of the mouth of the Totchaket Slough, where salmon may be taken from 6 p.m. Friday until 6 p.m. Wednesday.

(xxiii) During any commercial salmon fishing season closure of greater than five days in duration, salmon may not be taken during the following periods in the following districts:

(A) In District 4, excluding the Koyukuk and Innoko River drainages, salmon may not be taken from 6 p.m. Friday until 6 p.m. Sunday;

(B) In District 5, excluding the Tozitna River drainage and Subdistrict 5–B, salmon may not be taken from 6 p.m. Sunday until 6 p.m. Tuesday;

(C) In Subdistrict 6–A and 6–B, excluding the Kantishna River drainage and that portion of the Tanana River drainage upstream of the mouth of the Salcha River, salmon may not be taken from 6 p.m. Wednesday until 6 p.m. Friday.

(xxiv) In Subdistrict 6–C and that portion of the Tanana River drainage upstream to the mouth of the Salcha River, salmon may not be taken following the closure of the commercial salmon fishing season from 6 p.m. Monday until 6 p.m. Friday.

(xxv) Adjustments may have to be made to the subsistence salmon fishing seasons and fishing periods to protect healthy populations.

(xxvi) Pike may not be taken with gill nets in the waters of the Tolovana River drainage from October 15 through April 14.

(xxvii) An Alaska Commercial Fisheries Entry Commission salmon permit holder registered for the set net only locations may not use drift gill nets for the subsistence taking of salmon in Districts 1, 2, and 3.

(xxviii) A commercial salmon fisherman who is registered for Districts 1, 2, or 3 may not take salmon for subsistence purposes in any other district located downstream from Old Paradise Village.

(xxix) During any commercial salmon fishing season closure of greater than five days in duration, salmon may not be taken during the following periods in District 4, excluding the Koyukuk and Innoko River drainages, salmon may not be taken from 6 p.m. Friday until 6 p.m. Sunday.

(xxx) In District 4, commercial fishermen may not take salmon for subsistence purposes during the commercial salmon fishing season by gill nets larger than six inch mesh after a date specified by emergency order issued between July 10 and July 31.

(xxxi) In Districts 4, 5 and 6, salmon may not be taken for subsistence purposes by drift gill nets, except as follows:

(A) In Subdistrict 4–A, upstream from the mouth of Stink Creek king salmon may be taken by drift gill nets from June 21 through July 14, and chum salmon may be taken by drift gill nets after August 2;

(B) No person may operate a drift gill net that is more than 150 feet in length during the seasons described in this section.

(xxxii) In Subdistricts 5–A, 5–B, 5–C, and that portion of Subdistrict 5–D downstream from Long Point, no person may possess salmon taken for subsistence purposes during a commercial fishing period, unless the dorsal fin has been immediately removed from the salmon. A person may not sell or purchase salmon from which the dorsal fin has been removed.

(xxxiii) In addition to the subsistence fishing permit conditions, permits issued for the taking of salmon in Subdistricts 6–A and 6–B must also contain the following requirements:

(A) Salmon may be taken only by set gill net or fishwheel. No household may operate more than one fishwheel;

(B) Each person subsistence fishing shall keep accurate daily records of his/her catch, the number of fish taken by species, location and date of the catch, and other information that the Federal Subsistence Board or Alaska Department of Fish and Game may require for management or conservation purposes;

(C) In that portion of Subdistrict 6–B three miles or more upstream of the mouth of Totchaket Slough, each permittee shall report the number of salmon taken to the Alaska Department of Fish and Game once each week, or as specified on the permit. In the remainder of Subdistrict 6–B and in Subdistrict 6–A, each permittee shall report the total number of salmon taken to the Alaska Department of Fish and Game no later than October 31.

(xxxiv) Subsistence fishermen taking salmon in Subdistrict 6–C shall report their salmon catches at designated Alaska Department of Fish and Game check stations by the end of each weekly fishing period. Immediately after salmon have been taken, catches must be recorded on a harvest form provided by the Alaska Department of Fish and Game.

(xxxv) The annual possession limit for the holder of a Subdistrict 6–C subsistence salmon fishing permit is 10 king salmon and 75 chum salmon for periods through August 15 and 75 chum and coho salmon for periods after August 15.

(xxxvi) Subsistence salmon harvest limits in Subdistrict 6–C are 750 king salmon and 5,000 chum salmon taken through August 15 and 5,200 chum and coho salmon combined taken after August 15. When either the king or chum salmon harvest limit for periods before August 16 has been taken, the subsistence salmon fishing season in Subdistrict 6–C will close. A later season will open after August 15 to allow the taking of the harvest limit for periods after August 15. If the chum salmon harvest limit has not been obtained through August 15, the remaining harvest will not be added to the chum salmon harvest level for periods after August 15.

(xxxvii) Subsistence salmon fishing seasons and weekly fishing periods for Subdistrict 6–C are as follows:

(A) Salmon may be taken at any time except salmon may not be taken for 24 hours before the opening and after the closing of the commercial salmon fishing seasons and during closed weekly commercial salmon fishing periods;

(B) Weekly subsistence salmon fishing periods that follow closures of the commercial salmon fishing seasons will be established by emergency order;

(C) The annual harvest limit for the holder of a Subdistrict 6–A or 6–B subsistence salmon fishing permit is 60 chinook salmon and 500 chum salmon for the period through August 15 of a year, and 2,000 chum and coho salmon combined for the period after August 15. Upon request, permits for additional salmon may be issued by the Alaska Department of Fish and Game;

(D) Unless otherwise provided, from June 20 through September 30, open subsistence salmon fishing periods are concurrent with open commercial salmon fishing periods. During closures of the commercial salmon fishery, open subsistence salmon fishing periods are as specified in 5 Alaska Administrative Code 05.367;

(E) In the Kantishna River drainage, the open subsistence salmon fishing periods are seven days per week;

(F) In Subdistrict 6–B from the downstream end of Crescent Island to a line three miles upstream from the mouth of the Totchaket Slough, the open subsistence salmon fishing periods are from 6 p.m. Friday through 6 p.m. Wednesday.

(4) Kuskokwim Area.

(i) Unless otherwise restricted, salmon may be taken in the Kuskokwim area at any time.

(ii) Except as otherwise provided, there is no closed season on fish other than salmon.

(iii) Salmon may only be taken by gill net, beach seine, fishwheel, or by a line attached to a rod or pole, subject to the restrictions set forth in this chapter, except that salmon may also be taken by spear in the Holitna River drainage.

(iv) The aggregate length of set gill nets or drift gill nets in use by any individual for taking salmon may not exceed 50 fathoms.

(v) Fish other than salmon may only be taken by set gill net, drift gill net, beach seine, fishwheel, pot, long line, fyke net, dip net, jigging gear, spear, lead, or by a line attached to a rod or pole.

(vi) Each subsistence gill net operated in tributaries of the Kuskokwim River must be attached to the bank, fished substantially perpendicular to the bank and in a substantially straight line.

(vii) Fish may be taken for subsistence purposes without a subsistence fishing permit.

(viii) A gill net may obstruct not more than one-half the width of any fish stream. A stationary fishing device may obstruct not more than one-half the width of any salmon stream.

(ix) Kegs or buoys attached to subsistence gill nets may be any color except red during any open weekly commercial salmon fishing period.

(x) The maximum depth of gill nets is as follows:

(A) Gill nets with six-inch or smaller mesh may not be more than 45 meshes in depth;

(B) Gill nets with greater than six-inch mesh may not be more than 35 meshes in depth.

(xi) In addition to the previously stated requirements,

(A) Each fishwheel must have the first initial, last name, and address of the operator plainly and legibly inscribed on the side of the fishwheel facing midstream of the river;

(B) For all gill nets and unattended gear that are fished under the ice, the first initial, last name, and address of the operator must be plainly and legibly inscribed on a stake inserted in the ice and attached to the gear.

(xii) In that portion of the Kuskokwim River drainage from the north end of Eek Island upstream to the mouth of the Kolmakof River, no part of a set gill net located within a tributary to the Kuskokwim River may be set or operated within 150 feet of any part of another set gill net.

(xiii) The Goodnews River is closed to the subsistence taking of fish by nets east of a line between Alaska Department of Fish and Game regulatory markers placed near the mouth of the Ufigag River and Alaska Department of Fish and Game regulatory marker placed near the mouth of the Tunulik River 24 hours before, during, and six hours after each open commercial salmon fishing period.

(xiv) The Kanektok River is closed to the subsistence taking of fish by nets upstream of Alaska Department of Fish and Game regulatory markers placed near the mouth 24 hours before, during and six hours after each open commercial salmon fishing period.

(xv) The Arolik River is closed to the subsistence taking of fish by nets upstream of Alaska Department of Fish and Game regulatory markers placed near the mouth 24 hours before, during, and six hours after each open commercials fishing period.

(xvi) In District 1 and in those waters of the Kuskokwim River between Districts 1 and 2, excluding the Kuskokuak Slough, salmon may be taken at any time except salmon may not be taken for 16 hours before, during and for six hours after, each open commercial salmon fishing period for District 1.

(xvii) In District 1, Kuskokuak Slough only, salmon may be taken at any time except:

(A) From June 1 through July 31, salmon may not be taken for 24 hours before and during each open commercial salmon fishing period in the district;

(B) From August 1 through August 31, salmon may not be taken for 15 hours before and during each open commercial salmon fishing period in the district.

(xviii) In District 2, and anywhere in tributaries that flow into the Kuskokwim River within that district, salmon may be taken at any time, except that from June 1 through September 8 salmon may not be taken for 24 hours before, during, and six hours after each open commercial salmon fishing period in the district.

(xix) In Districts 4 and 5, salmon may be taken at any time except from June 1 through September 8, salmon may not be taken for 24 hours before, during, and 6 hours after each open commercial salmon fishing period in each district.

(5) Bristol Bay Area.

(i) Unless restricted in this section or unless restricted under the terms of a subsistence fishing permit, fish may be taken at any time and by any gear, as specified in the definitions at § _____.26(b), for the Bristol Bay Area.

(ii) Within the waters of a district open during the commercial salmon fishing season, salmon may be taken only during open commercial salmon fishing periods.

(iii) Salmon, trout and char may only be taken under authority of a subsistence fishing permit.

(iv) Only one subsistence fishing permit may be issued to each household per year.

(v) No set gill net may obstruct more than one-half the width of a stream.

(vi) Each set gill net must be staked and buoyed.

(vii) No person may operate or assist in operating subsistence salmon net gear while simultaneously operating or assisting in operating commercial salmon net gear.

(viii) Within any district, salmon, herring, and capelin may only be taken by drift and set gill nets and by a line attached to a rod or pole.

(ix) Outside the boundaries of any district, salmon may only be taken by set gill net, except that salmon may also be taken by spear in the Togiak River including its tributaries.

(x) The maximum lengths for set gill nets used to take salmon are as follows:

(A) In the Naknek, Egegik and Ugashik Rivers, in the Nushagak District, set gill nets may not exceed 10 fathoms in length;

(B) In the remaining waters of the area, set gill nets may not exceed 25 fathoms in length.

(xi) Subsistence fishing is not permitted within the boundaries of Katmai National Park.

(xii) In the Naknek River outside the Katmai National Park, and the Egegik, and Ugashik Rivers from 9 a.m. June 23 through 9 a.m. July 17, salmon may be taken only from 9 a.m. Tuesday to 9 a.m. Wednesday and 9 a.m. Saturday to 9 a.m. Sunday. Subsistence fishing is not permitted within the boundaries of Katmai National Park.

(xiii) Except for the western shore of the Newhalen River, waters used by salmon are closed to the subsistence taking of fish within 300 feet of a stream mouth.

(xiv) Nushagak District.

(A) In the open waters of the Nushagak District, provision shall be made for subsistence salmon fishing by emergency order whenever there are commercial salmon fishing closures of five or more days. During these emergency order openings,

(1) Set gill nets may not be more than 10 fathoms in length;

(2) No set gill net may be set or operated within 450 feet of another set gill net, and

(3) Catches during the emergency order openings must be reported to the Dillingham Alaska Department of Fish and Game office within 24 hours after the closure.

(B) In the Nushagak District from an Alaska Department of Fish and Game regulatory marker located two statute miles south of Bradford Point to an Alaska Department of Fish and Game regulatory marker located at Red Bluff on the west shore of the Wood River, from 9 a.m. June 16 through 9 a.m. July 17, salmon may be taken only from 9 a.m. Monday to 9 a.m. Tuesday, 9 a.m.

Wednesday to 9 a.m. Thursday, and 9 a.m. Friday to 9 a.m. Saturday.

(xv) Naknek-Kvichak District.

(A) Subsistence salmon fishing permits for the Naknek River drainage will be issued only through the Alaska Department of Fish and Game King Salmon office.

(B) Subsistence fishing with nets is prohibited in the following waters and within one-fourth mile of the terminus of those waters during the period from September 1 through June 14: Lower Talarik Creek, Roadhouse Creek, Nick G. Creek, Middle Talarik Creek, Alexi Creek, Copper River, Upper Talarik Creek, Tazimina River, Kakhonak River, Pete Andrew Creek, Young's Creek, Gibralter River, Zacker Creek, Chekok Creek, Dennis Creek, Newhalen River, Tomokok Creek, Belinda Creek.

(C) Gill nets are prohibited in that portion of the Naknek River upstream from Sovonaski.

(xvi) Togiak District. After August 20, no person may possess coho salmon for subsistence purposes in the Togiak River Section and the Togiak River drainage unless the head has been immediately removed from the salmon. It is unlawful to purchase or sell coho salmon from which the head has been removed.

(6) Aleutian Islands Area.

(i) Salmon may be taken by seine and gill net, with gear specified on a subsistence fishing permit, or by a line attached to a rod or pole.

(ii) Fish other than salmon may be taken by gear, as specified in the definitions at § ____.26(b), unless restricted under the terms of a subsistence fishing permit.

(iii) The Adak District is closed to the taking of salmon.

(iv) Salmon, trout and char may be taken only under the terms of a subsistence fishing permit, except that a permit is not required in the Akutan, Umnak and Adak Districts. Not more than 250 salmon may be taken for subsistence purposes unless otherwise specified on the subsistence fishing permit. A record of subsistence caught fish must be kept on the reverse side of the permit. The record must be completed immediately upon taking subsistence caught fish and must be returned to the local representative of the Alaska Department of Fish and Game no later than October 31.

(7) Alaska Peninsula Area.

(i) Salmon may be taken at any time except within 24 hours before and within 12 hours following each open weekly commercial salmon fishing period within a 50 mile radius of the area open to commercial salmon fishing, or as may be specified on a subsistence fishing permit.

(ii) Fish other than salmon may be taken at any time unless restricted under the terms of a subsistence fishing permit.

(iii) Salmon may be taken by seine and gill net, with gear specified on a subsistence fishing permit, or by a line attached to a rod or pole.

(iv) Fish other than salmon may be taken by gear, as specified in the definition at § ____.26(b), unless restricted under the terms of a subsistence fishing permit.

(v) No set gill net may exceed 100 fathoms in length.

(vi) The following waters are closed to subsistence fishing for salmon:

(A) Russell Creek and Nurse Lagoon;

(B) Trout Creek;

(C) Humboldt Creek.

(vii) Salmon, trout and char may be taken under the authority of a subsistence fishing permit. A record of subsistence caught fish must be kept on the reverse side of the permit. The record must be completed immediately upon taking subsistence caught fish and must be returned to the local representative of the Alaska Department of Fish and Game no later than October 31.

(8) Chignik Area.

(i) Salmon may be taken by seines and gill nets, or with gear specified on a subsistence fishing permit, or by a line attached to a rod or pole, except that in Chignik Lake, salmon may not be taken with purse seines.

(ii) Fish other than salmon may be taken by gear, as specified in the definitions at § ____.26(b), unless restricted under the terms of a subsistence fishing permit.

(iii) Salmon may not be taken in the Chignik River, upstream from the Alaska Department of Fish and Game weir site or counting tower, in Black Lake, or any tributary to Black and Chignik Lakes.

(iv) Salmon, trout and char may only be taken under the authority of a subsistence fishing permit. A record of subsistence caught fish must be kept on the reverse side of the permit. The record must be completed immediately upon taking subsistence caught fish and must be returned to the local representative of the Alaska Department of Fish and Game no later than October 31.

(v) From June 10 through September 30, commercial fishing license holders may not subsistence fish for salmon.

(9) Kodiak Area.

(i) Salmon may be taken for subsistence purposes from 6 a.m. until 9 p.m. from January 1 through December 31, with the following exceptions:

(A) From June 1 through September 15, salmon seine vessels may not be used to take subsistence salmon for 24 hours before, during, and for 24 hours after any open commercial salmon fishing period;

(B) From June 1 through September 15, purse seine vessels may be used to take salmon only with gill nets and no other type of salmon gear may be on board the vessel.

(ii) Fish other than salmon may be taken at any time unless restricted by the terms of a subsistence fishing permit.

(iii) Unless restricted by this section or under the terms of a subsistence fishing permit, fish may be taken by gear, as specified in definitions at § ____.26(b).

(iv) Salmon may be taken only by gill net, seine, or by a line attached to a rod or pole.

(v) Subsistence fishermen must be physically present at the net at all times the net is being fished.

(vi) The following locations are closed to the subsistence taking of salmon:

(A) All waters of Mill Bay and all those waters bounded by a line from Spruce Cape to the northernmost point of Woody Island, then to the northernmost point of Holiday Island, then to a point on Near Island opposite the Kodiak small boat harbor entrance and then to the small boat harbor entrance;

(B) All Freshwater systems of Little Afognak River and Portage Creek drainage in Discoverer Bay;

(C) All water closed to commercial salmon fishing in Barbara Cove, Chiniak Bay, Saltery Cove, Pasagshak Bay, Monashka Bay and Anton Larsen Bay, and all waters closed to commercial salmon fishing within 100 yards of the terminus of Selief Bay Creek and north and west of a line from the tip of Las Point to the tip of River Mouth Point of Afognak Bay;

(D) All waters 300 yards seaward of the terminus of Monks Creek;

(E) From August 15 through September 30, all waters 500 yards seaward of the terminus of Little Kitoi Creek;

(F) All freshwater systems of Afognak Island;

(G) All waters of Ouzinkie Harbor north of a line from 57°55'10" N. lat., 152°36' W. long. to 57°55'03" N. lat., 152°29'20" W. long.

(vii) A subsistence fishing permit is required for taking salmon, trout and char for subsistence purposes. A subsistence fishing permit is required for taking herring and bottomfish for subsistence purposes during the commercial herring sac roe season from

May 1 through June 30. All subsistence fishermen shall keep a record of the number of subsistence fish taken each year. The number of subsistence fish shall be recorded on the reverse side of the permit. The record must be completed immediately upon landing subsistence caught fish and must be returned to the local representative of the Alaska Department of Fish and Game by February 1 of the year following the year the permit was issued.

(10) Cook Inlet Area.

(i) Unless restricted in this section or unless restricted under the terms of a subsistence fishing permit, fish may be taken at any time in the Cook Inlet area.

(ii) Unless otherwise restricted or under the terms of a subsistence fishing permit, fish may be taken by gear, as specified in the definitions at § ____.26(b).

(iii) Smelt may be taken only with gill nets and dip nets. Gill nets used to take smelt may not exceed 50 feet in length and two inches in mesh size.

(iv) Whitefish may be taken only in the Tyonek River drainage and only under the authority of a permit issued by Alaska Department of Fish and Game.

(v) Gill nets may not be used, except for the taking of whitefish in the Tyonek River drainage.

(vi) Trout, grayling, char, and burbot may not be taken in fresh water, except that dolly varden may be taken in fresh water in the Port Graham Subdistrict.

(vii) Dolly varden may be taken in fresh water only under the authority of a subsistence fishing permit issued by the Alaska Department of Fish and Game; only one permit may be issued to a household each year. A subsistence fishing permit holder shall record daily dolly varden catches on forms provided by the Alaska Department of Fish and Game.

(viii) Dolly varden may be taken in fresh water for subsistence purposes in the Port Graham Subdistrict only from April 1 through May 31.

(ix) Dolly varden may be taken in fresh water only by beach seines not exceeding 10 fathoms in length.

(x) Salmon may be taken only under the authority of a subsistence fishing permit issued by the Alaska Department of Fish and Game; only one permit may be issued to a household each year. A subsistence fishing permit holder shall record daily salmon catches on forms provided by the department.

(xi) No person may operate or assist in the operation of subsistence salmon net gear on the same day that person operates or assists in the operation of commercial salmon gear.

(11) Prince William Sound Area.

(i) Unless restricted in this section or unless restricted under the terms of a subsistence fishing permit, fish may be taken at any time in the Prince William Sound Area.

(ii) Salmon and freshwater fish species may be taken only under the authority of a subsistence fishing permit.

(iii) Only one subsistence fishing permit will be issued to each household per year.

(iv) Fish may be taken by gear, as specified in the definitions at § ____.26(b), unless restricted in this section or under the term of a subsistence fishing permit.

(v) Use of fishwheels.

(A) Fishwheels used for subsistence fishing may not be rented, leased, or otherwise used for personal gain.

(B) Subsistence fishwheels must be removed from the water at the end of the permit period.

(C) Each permittee may operate only one fishwheel at any one time.

(D) No person may set or operate a fishwheel within 75 feet of another fishwheel.

(E) No fishwheel may have more than two baskets.

(F) The permit holder must personally operate the fishwheel or dip net. A subsistence fishwheel or dip net permit may not be loaned or transferred except as permitted by this part.

(G) A wood or metal plate at least 12 inches high by 12 inches wide, bearing the permit holder's name and address in letters and numerals at least one inch high, must be attached to each fishwheel so that the name and address are plainly visible.

(vi) Except as provided in this section, fish other than salmon and freshwater fish species may be taken for subsistence purposes with a subsistence fishing permit.

(vii) Salmon may not be taken in any area closed to commercial salmon fishing unless otherwise permitted.

(viii) In locations open to commercial salmon fishing and in conformance with commercial salmon fishing regulations, the annual subsistence salmon limit is as follows:

(A) 15 salmon for a household of one person;

(B) 30 salmon for a household of two persons;

(C) 10 salmon for each additional person in a household over two;

(D) No more than five king salmon may be taken per permit.

(ix) All tributaries of the Copper River and waters of the Copper River are closed to the taking of salmon.

(x) Crosswind Lake is closed to all subsistence fishing.

(xi) Salmon may be taken for subsistence purposes in the waters of the Southwestern District only as follows:

(A) Only pink salmon may be taken;

(B) Pink salmon may be taken by dip nets or by a line attached to a rod or pole;

(C) Salmon may be taken only from May 15 through September 30;

(D) Fishing periods are from May 15 until two days before the commercial opening of the Southwestern District, seven days per week; during the commercial salmon fishing season, only during open commercial salmon fishing periods; and from two days following the closure of the commercial salmon season until September 30, seven days per week;

(E) No fishing is allowed within the closed waters areas for commercial salmon fisheries;

(F) There are no bag and possession limits for this fishery;

(G) Permits may be issued only at Chenega Bay village.

(xii) Salmon may be taken for subsistence purposes in the waters north of a line from Porcupine Point to Granite Point, and south of a line from Point Lowe to Tongue Point, only as follows:

(A) Only pink salmon may be taken;

(B) Pink salmon may be taken by dip nets or by a line attached to a rod or pole;

(C) Salmon may be taken only from May 15 through September 30;

(D) Fishing periods are from May 15 until two days before the commercial opening of the Southwestern District, seven days per week; during the commercial salmon fishing season, only during open commercial salmon fishing periods; and from two days following the closure of the commercial salmon season until September 30, seven days per week;

(E) No fishing is allowed within the closed waters areas for commercial salmon fisheries;

(F) There are no bag and possession limits for this fishery;

(G) Permits may be issued only at Tatitlek village.

(12) Yakutat Area.

(i) Unless restricted in this section or unless restricted under the terms of a subsistence fishing permit, fish may be taken at any time in the Yakutat area.

(ii) Salmon may not be taken during the period commencing 48 hours before an opening until 48 hours after the closure of an open commercial salmon net fishing season. This applies to each river or bay fishery individually.

(iii) When the length of the weekly commercial salmon net fishing period

exceeds two days in any Yakutat Area salmon net fishery, the subsistence fishing period is from 6:00 a.m. to 6:00 p.m. on Saturday in that location.

(iv) Fish may be taken by gear, as specified in the definitions at § ____.26(b), unless restricted in this section or under the terms of a subsistence fishing permit.

(v) Salmon, trout, and char may be taken only under authority of a subsistence fishing permit.

(vi) Salmon, trout, or char taken incidentally by gear operated under the terms of a subsistence permit for salmon are legally taken and possessed for subsistence purposes. The holder of a subsistence salmon permit must report any salmon, trout, or char taken in this manner on his or her permit calendar.

(vii) Subsistence fishermen must remove the dorsal fin from subsistence caught salmon when taken.

(13) Southeastern Alaska Area.

(i) Salmon, trout, char and herring spawn on kelp may be taken only under authority of a subsistence fishing permit.

(ii) No person may possess subsistence-taken and sport-taken salmon on the same day.

(iii) Subsistence taking of steelhead trout is prohibited except that steelhead trout taken incidentally by gear operated under the terms of a subsistence permit for salmon are legally taken and possessed for subsistence purposes. The holder of a subsistence salmon permit must report any steelhead trout taken in this manner on his or her permit calendar.

(iv) Salmon, trout, or char taken incidentally by gear operated under the terms of a subsistence permit for salmon are legally taken and possessed for subsistence purposes. The holder of a subsistence salmon permit must report any salmon, trout, or char taken in this manner on his or her permit calendar.

(v) Subsistence fishermen shall immediately remove the dorsal fin of all salmon when taken.

(vi) Fish may be taken by gear, as specified in the definitions at § ____.26(b), except as may be restricted under the terms of a subsistence fishing permit and except as follows: set gill nets may not be used to take salmon except in the mainstream and side channels, but not the tributaries, of the Chilkat River from the terminus to one mile upstream of Wells Bridge.

(vii) From July 7 through July 31, sockeye salmon may be taken in the waters of the Klawock River, and Klawock Lake only from 8 a.m. Monday until 5 p.m. Friday

§ ____.27 Subsistence taking of shellfish.

(a) Regulations in this section apply to subsistence taking of dungeness crab, king crab, tanner crab, shrimp, clams, abalone, and other types of shellfish or their parts.

(b) Shellfish may be taken for subsistence uses at any time in any area of the public lands by any method unless restricted by the subsistence fishing regulations of this section or § ____.26.

(c) Methods, Means, and General Restrictions.

(1) The bag limit specified herein for a subsistence season for a species and the State bag limit set for a State general season for the same species are not cumulative. This means that a person or designated group who has taken the bag limit for a particular species under a subsistence season specified herein may not after that, take any additional shellfish of that species under any other bag limit specified for a State general season.

(2) Unless otherwise provided in this section, gear as specified in the definitions of § ____.26 is legal for subsistence taking of shellfish.

(3) It is prohibited to buy or sell subsistence-taken shellfish, their parts, or their eggs, unless otherwise specified in this section.

(4) The use of explosives and chemicals is prohibited, except that chemical baits or lures may be used to attract shellfish.

(5) Each subsistence fisherman shall plainly and legibly inscribe their first initial, last name and address on a keg or buoy attached to unattended subsistence fishing gear. Subsistence fishing gear may not display a permanent Alaska Department of Fish and Game vessel license number.

(6) A side wall of all subsistence shellfish pots must contain an opening with a perimeter equal to or exceeding one-half of the tunnel eye opening perimeter. The opening must be laced, sewn, or secured together by untreated cotton twine or other natural fiber no larger than 120 thread. Dungeness crab and shrimp pots may have the pot lid tiedown straps secured to the pot at one end by untreated cotton twine no larger than 120 thread, as a substitute for the above requirement.

(7) No person may mutilate or otherwise disfigure a crab in any manner which would prevent determination of the minimum size restrictions until the crab has been processed or prepared for consumption.

(8) In addition to the marking requirements in paragraph (c)(5) of this section, keg or buoys attached to subsistence crab pots must also be inscribed with the name or U.S. Coast Guard number of the vessel used to operate the pots.

(9) No more than five pots per person and 10 pots per vessel may be used to take crab, except as specified in paragraph (f) of this section.

(10) In the subsistence taking of shrimp in the Glacier Bay National Preserve, no person may use more than 10 pots, and no more than 20 pots may be operated from a vessel. In the subsistence taking of shellfish other than shrimp in the Glacier Bay National Preserve, no person may operate more than five pots of any type, and no more than 10 pots of any type may be operated from a vessel.

(d) Subsistence Take by Commercial Vessels—No fishing vessel which is commercially licensed and registered for shrimp pot, shrimp trawl, king crab, tanner crab, or dungeness crab fishing may be used for subsistence take during the period starting 14 days before an opening until 14 days after the closure of a respective open season in the area or areas for which the vessel is registered.

(e) Unlawful Possession of Subsistence Shellfish. No person may possess, transport, give, receive or barter subsistence taken shellfish or their parts that the person knows or should know were taken in violation of a Federal or State statute or a regulation promulgated thereunder.

(f) Subsistence Shellfish Areas and Pertinent Restrictions.

(1) Southeastern Alaska-Yakutat Area. Shellfish may be taken for subsistence purposes in the Glacier Bay National Preserve only under the authority of a subsistence shellfish fishing permit.

(2) Cook Inlet Area. All waters within the boundaries of the Kenai National Wildlife Refuge are closed to the taking of shellfish for subsistence purposes.

(3) Kodiak Area.

(i) Shellfish may be taken for subsistence purposes only under the authority of a subsistence shellfish fishing permit.

(ii) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the Alaska Department of Fish and Game before subsistence shrimp fishing during a closed commercial shrimp fishing season or within a closed commercial shrimp fishing district, section or subsection. The permit shall specify the area and the date the vessel operator intends to fish. No more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(iii) The daily bag and possession limit is 12 dungeness crab per person. Only male dungeness crab may be taken.

(iv) In the subsistence taking of king crab:

(A) The daily bag and possession limit is six crab per person and only male crab may be taken;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a two-week period shall have all bait and bait containers removed and all doors secured fully open;

(C) No more than five crab pots may be used to take king crab;

(D) King crab may be taken only from June 1 through January 31, except that the subsistence taking of king crab is prohibited in waters 25 fathoms or greater in depth during the period 14 days before and 14 days after open commercial fishing seasons for red king crab, blue king crab, or tanner crab in the location.

(v) In the subsistence taking of tanner crab:

(A) No more than five crab pots may be used to take tanner crab;

(B) From July 15 through February 10, the subsistence taking of tanner crab is prohibited in waters 25 fathoms or greater in depth, unless the commercial tanner crab fishing season is open in the location;

(C) The daily bag and possession limit is 12 crab per person and only male crab may be taken.

(4) Alaska Peninsula-Aleutian Islands area.

(i) Shellfish may be taken for subsistence purposes only under the authority of a subsistence shellfish fishing permit.

(ii) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the Alaska Department of Fish and Game prior to subsistence shrimp fishing during a closed commercial shrimp fishing season or within a closed commercial shrimp fishing district, section, or subsection. The permit shall specify the area and the date the vessel operator intends to fish. No more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(iii) The daily bag and possession limit is 12 dungeness crab per person. Only male dungeness crab may be taken.

(iv) In the subsistence taking of king crab:

(A) The daily bag and possession limit is six crab per person and only male crab may be taken;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a two-week period shall have all bait and bait containers removed and all doors secured fully open;

(C) Crab may be taken only from June 1 through January 31.

(v) The daily bag and possession limit is 12 tanner crab per person. Only male crab may be taken.

(5) Bering Sea Area.

(i) In waters South of 60° North latitude, shellfish may be taken for subsistence purposes only under the authority of a subsistence shellfish fishing permit.

(ii) In that portion of the area north of the latitude of Cape Newenham, shellfish may only be taken by shovel, jigging gear, pots and ring net.

(iii) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the Alaska Department of Fish and Game prior to subsistence shrimp fishing during a closed commercial shrimp fishing season or within a closed commercial shrimp fishing district, section or subsection. The permit shall specify the area and the date the vessel operator intends to fish. No more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(iv) In waters south of 60° North latitude, the daily bag and possession limit is 12 dungeness crab per person. Only male dungeness crab may be taken.

(v) In the subsistence taking of king crab:

(A) In waters south of 60° North latitude, the daily bag and possession limit is six crab per person, and only male crab may be taken;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a two-week period shall have all bait and bait containers removed and all doors secured fully open;

(C) In waters south of 60° North latitude, crab may be taken only from June 1 through January 31.

(vi) In waters south of 60° North latitude, the daily bag and possession limit is 12 tanner crab, and only males may be taken.

Curtis V. McVee,

Chair, Federal Subsistence Board.

Michael A. Barton,

Regional Forester, USDA—Forest Service.

[FR Doc. 92-22139 Filed 9-16-92; 8:45 am]

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Thursday
September 17, 1992

Part IV

Department of Education

National Institute on Disability and Rehabilitation Research; Certain Rehabilitation Research and Training Centers; Funding Priorities for Fiscal Years 1993–1994; Notice

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research; Certain Rehabilitation Research and Training Centers; Proposed Funding Priorities for Fiscal Years 1993–1994

AGENCY: Department of Education.

ACTION: Notice of proposed funding priorities for fiscal years 1993–1994 for certain Rehabilitation Research and Training Centers.

SUMMARY: The Secretary proposes funding priorities for Rehabilitation Research and Training Centers (RRTCs) under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1993–1994. The Secretary takes this action to focus research attention on areas of national need identified through NIDRR's long-range planning process. These priorities are intended to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: Comments must be received on or before October 19, 1992.

ADDRESSES: All comments concerning these proposed priorities should be addressed to David Esquith, U.S. Department of Education, 400 Maryland Avenue, SW., room 3426, Switzer Building, Washington, DC 20202–2601.

FOR FURTHER INFORMATION CONTACT: David Esquith. Telephone: (202) 205–8801. Deaf and hearing-impaired individuals may call (202) 205–5516 for TDD services.

SUPPLEMENTARY INFORMATION: This notice contains 14 proposed priorities under the RRTC program. Ten of the priorities are in areas related to employment and vocational rehabilitation; two of the priorities are for research related to individuals with mental retardation; and two of the priorities are for research on issues related to families in which one or more members have a disability. NIDRR has published other proposed priorities for other RRTCs and other programs for fiscal years 1993–1994.

Authority for the RRTC program of NIDRR is contained in section 204(b) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760–762).

Under this program the Secretary makes awards to public agencies and to nonprofit and for-profit private agencies and organizations, including institutions of higher education, Indian tribes, and tribal organizations. The statute provides that RRTCs must be operated in collaboration with institutions of higher education.

The Secretary may make awards for up to 60 months through grants or cooperative agreements. The purpose of the awards is for planning and conducting research, training, demonstrations, and related activities leading to the development of methods, procedures, and devices that will benefit individuals with disabilities, especially those with the most severe disabilities.

Under the regulations for this program (see 34 CFR 352.32) the Secretary may establish research priorities by reserving funds to support particular research activities.

Description of the Rehabilitation Research and Training Center Program

RRTCs are established to conduct coordinated and advanced programs of rehabilitation research on designated rehabilitation problem areas and to provide training to researchers, service providers, and consumers. Each Center must disseminate and encourage the use of new rehabilitation knowledge and publish all materials for dissemination or training in alternate formats to make them accessible to individuals with a range of disabling conditions.

The statute requires that each Center conduct training for providers of rehabilitation services at various levels, which may include undergraduate, in-service, and postgraduate education. Each RRTC also must conduct an interdisciplinary program of training in rehabilitation research, including training in research methodology and applied research experience, that will contribute to the number of qualified researchers working in the area of rehabilitation research. NIDRR encourages all Centers to involve individuals with disabilities and minorities in clinical and research training.

Each Center must involve individuals with disabilities and, if appropriate, their family members, as well as rehabilitation service providers—including vocational rehabilitation service providers—in planning and implementing the research and training programs, in interpreting and disseminating the research findings, and in evaluating the Center.

To achieve the goals specified in the priority, the Secretary expects each RRTC to conduct a multifaceted program of research to develop solutions to problems confronted by individuals with disabilities. Applicants have considerable latitude in proposing the specific research and related projects they will undertake to achieve the designated outcomes; however, the regulatory selection criteria for the program (34 CFR 352.31) require that applicants justify their choice of research projects in terms of the relevance to the priority and to the needs of individuals with disabilities. The regulations also require applicants to present a scientific methology that includes reasonable hypotheses, methods of data collection and analysis, and a means to evaluate the extent to which project objectives have been achieved.

The Department of Education is particularly interested in ensuring that the expenditure of public funds is justified by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. Not later than three years after the establishment of any RRTC, NIDRR will conduct one or more reviews of the activities and achievements of the Center. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment.

NIDRR is in the process of developing a revised long-range plan focused on achieving six goals for individuals with disabilities (1) full integration into the community; (2) full employment; (3) independence and empowerment; (4) maximum human functioning and health; (5) improved vocational rehabilitation services; and (6) the translation of new knowledge and technology into practice. The priorities proposed in this notice are derived from the long-range planning process and are intended to achieve one or more of these six outcomes.

The Secretary will announce the final funding priorities in a notice in the **Federal Register**. The final priorities will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the final priorities, the availability of funds, and the quality of the applications received. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priorities does not solicit applications, and application materials are not available. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following publication of the notice of final priorities.

Priorities: Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that

meet one of the following priorities. The Secretary proposes to fund under this competition only applications that meet one of these absolute priorities:

Ten Priorities on Vocational Rehabilitation and Employment

The NIDRR long-range goals include facilitating increased employment and improved vocational rehabilitation services for individuals with disabilities. Achievement of these goals affects other NIDRR long-range goals of promoting community integration, independence, empowerment, and improved functioning. Testimony and deliberations of the NIDRR long-range planning process emphasized the need (1) to make meaningful work and rewarding careers accessible to all Americans with disabilities; and (2) to assist the State-Federal vocational rehabilitation (VR) system to provide more effective services to individuals who are members of previously under-served groups, including minorities, persons with severe disabilities, rural residents, persons with substance abuse disabilities, and persons with long-term mental illness or specified learning disabilities. NIDRR proposed an intensive and extensive program of 10 Rehabilitation Research and Training Centers to enhance the vocational rehabilitation service delivery system in order to improve the employment outcomes of persons with disabilities.

NIDRR requires that each Center conducting research in the areas of employment and vocational rehabilitation cooperate and coordinate with the relevant State VR agencies.

Proposed Priority 1—Enhancing Employability

Background

The employment status of persons with disabilities is well-documented—only about one-third of persons with disabilities of working age are employed, and only about one-fourth are employed full-time (Kraus and Stoddard, 1991). This priority focuses on improving the vocational skills and work behaviors that will enable individuals to obtain and retain suitable and satisfying employment in an increasingly demanding economy if they are (1) unemployed; (2) employed only part-time or part of the year when they seek full-time, year-round employment; or (3) employed below their skill level because they cannot obtain more suitable employment.

The International Center for the Disabled sponsored a survey of employers (Louis Harris and Associates, 1987) that revealed the importance of improving the vocational skills of persons with disabilities. The report on the survey concluded that the pool of qualified applicants with disabilities must be increased through improved education and appropriate job training. The report also indicated that employers generally do not have the in-service training capacity to assist employees in developing the skills needed for promotion. The report further suggested that current skills training programs are not meeting the needs of persons with disabilities who seek employment and, further, are not meeting their needs when they seek job advancement after initial employment has been achieved.

Persons with clear career goals are more likely to benefit from rehabilitation services than are clients without those goals (Sanderson, 1978). Career aspirations represent ambitions and motivations that are a central force in the attainment of educational and occupational achievements (Otto and Haller, 1979). Career exploration activities occur during adolescence or early adulthood. The limited research available suggests that youth with disabilities lag behind their non-disabled peers in the growth of career awareness and development of vocational interests (Chubon and Black, 1985; Simpson, 1986).

While there is a paucity of research on the career development of individuals with disabilities, there is even less information available on strategies that State vocational rehabilitation and educational agencies might use to place and maintain individuals with disabilities in jobs with opportunities for skill and salary advancement.

Overcoming barriers to opportunity and capitalizing on the increased access to employment provided by the Americans with Disabilities Act (ADA) require improvements in service delivery systems to increase the employability of individuals with disabilities.

An RRTC funded under this priority shall coordinate its efforts with the RRTCs that will be funded under Proposed Priority 2—Promoting Placement and Proposed Priority 3—Career Development and Advancement.

Priority

An RRTC on enhancing employability shall—

- Develop and evaluate model programs, involving collaborative efforts of multiple service delivery systems—including private and State rehabilitation agencies, independent living programs, and community facilities—to promote employment readiness, vocational skills, and positive work habits that will enhance the employability of individuals with disabilities;
- Identify, develop, and evaluate techniques to promote career awareness and career exploration in young persons with disabilities, using strategies that involve special education, secondary education, vocational education, transition programs, and youth manpower programs;
- Identify, develop, and evaluate the best practices for enhancing employability, involving special education, adult and vocational education, secondary education, transition programs, and other manpower training programs, and develop and test community-based employment planning and advancement strategies for all persons with disabilities, with emphasis placed on those individuals with various severe disabilities;
- Identify skills and knowledge required to empower consumers of employment-related services, and develop and demonstrate model services emphasizing consumer choice and self-advocacy in planning for and gaining access to education and training programs that can improve their employment status;
- Evaluate the effectiveness of new and emerging technology in improving vocational rehabilitation eligibility determinations, vocational assessment, job preparation, and job placement; and
- Collect and maintain research that has been conducted on issues related to the employability of all individuals with disabilities.

Proposed Priority 2—Promoting Placement

Background

In the past decade the population served by rehabilitation agencies has included more individuals who have severe cognitive, emotional, and physical disabilities. Accompanying this increase in the number of individuals with severe disabilities has been an increase in the technical and interpersonal complexities of jobs, a decrease in the supply of entry level jobs available to individuals with disabilities, and higher unemployment rates in those occupations in which individuals with disabilities traditionally have found work. Placement specialists have responded to these circumstances with training in marketing methods and job clubs (Greenwood and Johnson, 1985, 1987;

Schriner, Johnson, and Greenwood, 1988, 1991).

Rehabilitation counselors are being asked to place a larger number of persons with more severe disabilities in a more demanding and complex labor market. New placement techniques are needed to increase the number of placements. Providing rehabilitation counselors with training on these techniques will enable them to match the skills of their clients with the demands of the market.

An RRTC funded under this priority shall coordinate its efforts with the RRTCS that will be funded under Proposed Priority 1—Enhancing Employability and Proposed Priority 3—Career Development and Advancement.

Priority

An RRTC on promoting placement shall—

• Develop and evaluate placement models, with emphasis placed on persons with severe disabilities, using general marketing strategies and involving multiple service delivery systems, including private and State rehabilitation agencies, independent living programs, and community facilities;

• Develop methodologies to document best practices in placement and follow-up services for individuals, with emphasis placed on persons with severe disabilities;

• Identify and analyze concerns and practices of employers regarding their expectations and the contributions they are prepared to make in integrating individuals with disabilities into the workplace, with emphasis placed on persons with severe disabilities;

• Develop strategies to enhance VR agencies' use of technology and other job accommodation techniques to increase the number of appropriate placements into competitive employment, with emphasis placed on persons with severe disabilities, and to assist in matching client skills with market demands;

• Develop and maintain a national database on the number and type of placements made by VR agencies; and

• Provide technical assistance to VR agencies and rehabilitation educators in promoting job placement for persons with severe disabilities.

Proposed Priority 3—Career Development and Advancement

Background

Assisting individuals with disabilities to achieve vocational goals is the objective of vocational rehabilitation. However, the pressure to place individuals can compromise efforts of counselors to assist persons with disabilities to pursue vocations that offer opportunities for promotion and career development.

There has not been sufficient emphasis on career development and advancement for individuals with disabilities (Bagley, 1985). While there is a paucity of research on the career development of individuals with disabilities, there is even less information available on strategies that State vocational rehabilitation and educational agencies might use to place and maintain individuals with disabilities in jobs with opportunities for skill and salary advancement.

An RRTC funded under this priority shall coordinate its efforts with the RRTCs that will be funded under Proposed Priority 1—Enhancing Employability and Proposed Priority 2—Promoting Placement.

Priority

An RRTC on career development and advancement shall—

• Identify and analyze state-of-the-art career development practices for non-disabled individuals and develop and test, for individuals with disabilities, modifications that incorporate the latest knowledge on job training and job accommodations;

• Develop and evaluate career counseling techniques to assist clients with disabilities in identifying careers that most appropriately fit their individual interests and abilities;

• Develop research-based criteria to document best practices in aiding individuals with various disabilities to enter the careers they choose;

• Identify and analyze expectations, concerns, and practices of employers related to promoting the careers of individuals with disabilities;

• Develop standards and performance indicators that enable VR agencies, educational agencies, independent living centers, and individuals with disabilities and their families to assess the effectiveness of career development activities;

• Develop and maintain a national database on research on the career experiences of individuals with disabilities; and

• Provide technical assistance to VR agencies and to employers on expanding career options and professional development for persons with disabilities.

Proposed Priority 4—Supported Employment

Background

Since its inception in 1985, supported employment has evolved into an integral component of the State-Federal vocational rehabilitation program. The Survey of Supported Employment Implementation (Virginia Commonwealth University, 1991) indicated that approximately 70,000 individuals were receiving services through local supported employment programs in FY 1990. An estimated one-third of these individuals had never worked before, and those who had worked experienced 400-to-500 percent increases in their earnings after participation in supported employment (Virginia Commonwealth University, 1991). In addition to enhancing economic self-sufficiency, supported employment has also had a tremendous impact on the personal and social lives of individuals with severe disabilities.

There remains a considerable unmet need for supported employment services. In FY 1989 State VR agencies reported data on 51,992 consumers with severe disabilities who had been served in supported employment programs (Rehabilitation Services Administration, 1991). This represents a 600 percent increase from 9,876 served in fiscal year 1986 (OSERS News in Print, 1990). These agencies estimated that more than two million other clients need supported employment services.

Research on supported employment can expand the knowledge base about effective practices in order to maximize the usefulness of the resources that are available. In order to serve more persons, new supported employment techniques must be developed, evaluated, and disseminated.

Priority

An RRTC on supported employment shall—

• Develop and evaluate service delivery strategies and interventions that will enhance the capacity of supported employment programs to meet the employment needs of those who could benefit from these programs;

• Develop and evaluate strategies to leverage VR funds to attract additional resources from other sources for long-term support;

• Develop guidelines and provide technical assistance for the involvement of individuals with severe disabilities and their families in determining supported employment objectives and evaluating outcomes;

• Determine the most effective methods to augment existing resources in order to increase the number and diversity of individuals with severe disabilities in supported employment programs;

• Develop models to facilitate assessment of the effectiveness of supported employment programs;

• Develop strategies for tracking individuals in supported employment programs longitudinally, beyond the 18-month period of VR agency support;

• Examine operational costs and consumer benefits of supported employment in relation to those obtainable through other service alternatives in order to address unmet needs;

• Develop and maintain a national database on research involving supported employment, particularly that which relates to innovative practices and the creative use of resources to address unmet needs; and

• Provide technical assistance to VR agencies and to employers on expanding supported employment options for persons with disabilities through the creative use of resources.

Proposed Priority 5—Vocational Rehabilitation for Individuals with Substance Addiction Disabilities

Background

The implication of substance addiction for employment and vocational rehabilitation requires more intensive study. Data from the National Institute on Drug Abuse (NIDA) 1988 National Household Survey indicates that 70 percent of the people who use illegal substances are in the workforce. According to NIDA (June, 1990) this suggests that over 10 million employed people are current users of illicit drugs. Studies have shown that substance addiction impairs employee performance and productivity and also causes substantial increases in accident rates, absenteeism, and health care costs.

One major question facing service providers is whether substance rehabilitation techniques or traditional vocational rehabilitation methods provide the most effective approach to serving individuals with substance addiction disabilities. For the purpose of this priority, substance addiction is limited to substances other than alcohol, although alcohol addiction may be present, as well. Any RRTC to be funded under this priority shall distinguish between those individuals with substance addiction disabilities who are skilled and employed from those who are unskilled, unemployed, have a history of long-term drug abuse and may need more comprehensive treatment and rehabilitation services. In addition, any RRTC to be funded under this priority shall coordinate its efforts with any other drug-related center funded by NIDRR and with those of the National Institute on Drug Abuse and the Rehabilitation Services Administration.

Priority

An RRTC on vocational rehabilitation for individuals with substance addiction disabilities shall—

• Identify the vocational rehabilitation needs of individuals whose substance addiction has resulted in work disabilities;

• Develop, demonstrate, and evaluate effective models of vocational rehabilitation services for substance-addicted individuals that result in the achievement of vocational goals that are employer-responsive;

• Develop and evaluate vocational rehabilitation models for individuals having substance addiction problems;

• Develop and evaluate models of long-term support services as needed for substance-addicted persons placed in employment; and

• Provide training and technical assistance in the delivery of vocational rehabilitation services to this population.

Priority 6—Vocational Rehabilitation and Specific Learning Disabilities

Background

Specific learning disability (SLD) is an "invisible" disability, affecting an individual's ability to learn and process knowledge through traditional channels. It is a condition that may have severe manifestations that are often mistaken for lack of motivation and interest, psychological dysfunction, or mental retardation. Frequently, the functional and vocational limitations connected with SLD are masked by the traditional assessment approaches used by rehabilitation agencies (paper and pencil tests, psychometrics, vocational evaluations, or review of academic records).

In summarizing rehabilitation statistics in State VR programs, the Rehabilitation Services Administration reports that the percentage of clients with SLD as the primary disability rose from 1.3 percent in 1983 to an estimated 5 percent in 1990. During this same period, the percentage of persons with SLD as a secondary disability rose from 0.2 percent to 0.5 percent, making individuals with SLD the fastest growing disability population served in the State-Federal VR program. (Carney, 1991). This may be due to new developments in identifying and reporting learning disabilities rather than to an increase in the actual incidence of the impairment. Adults, including young adults, did not necessarily have the opportunity to receive special education, and particularly not the enhanced special education services guaranteed by P.L. 94-142, and therefore require special interventions to enhance their employability.

Although State VR agencies have been serving this new and challenging population with limited success, the varied approaches to training and service and the limited research activities that they have generated have not been integrated into a cohesive service model. (Berkeley Planning Associates, 1989). There is a serious gap in applied research on SLD rehabilitation issues.

Priority

An RRTC on vocational rehabilitation and specific learning disabilities shall—

• Improve techniques for vocational rehabilitation professionals to assess the functional and work limitations, rehabilitation needs, and vocational potential of individuals with SLD, with a special emphasis on adults;

• Develop and evaluate rehabilitation intervention strategies that will lead to better employment outcomes for individuals with SLD;

• Develop, demonstrate, and evaluate service delivery models that coordinate the services of secondary education—including special education—postsecondary education, and other human resource service providers—including community-based facilities—in order to optimize employment and career outcomes for individuals with SLD served or having the potential to be served by vocational rehabilitation agencies; and

• Develop techniques for staff development and training to increase the availability of rehabilitation service professionals trained to identify and meet the special vocational needs of individuals with SLD.

Proposed Priority 7—Improving Vocational Rehabilitation for Minority Populations

Background

Research on the prevalence of disabilities in minority populations (Anderson, 1988; Bowe, 1985; Hopkins, 1988) and the employment status of minority individuals with disabilities (Asbury, Walker, Malhomes, Rackley, and White, 1991) indicates the

importance of the vocational rehabilitation system in serving minority individuals with disabilities. In the early and mid-1980s, some researchers concluded that African-Americans were faring worse than their white counterparts in the rehabilitation process (Atkins and Wright, 1980; Johnson, 1983; Baldwin and Smith, 1984). While these studies raise serious issues concerning the status of African-Americans, their implications for the current vocational rehabilitation system are uncertain due to their limited size and scope, as well as the fact that the vocational rehabilitation system has undergone considerable change in the ensuing years (e.g., the growth of supported employment activities and the increasing utilization of assistive technology). In addition, the literature contains virtually no empirically-based research on the status of other minority populations such as Hispanic-Americans or Asian-Americans with disabilities in the vocational rehabilitation system.

While little quantitative current research exists regarding the status of minority populations with disabilities in vocational rehabilitation services as a whole, there is a substantial body of data, which is largely unanalyzed, about minority individuals who are eligible for services from the State-Federal vocational rehabilitation system. For example, the Rehabilitation Services Administration's Case Service Report contains considerable information on minority individuals served by the State vocational rehabilitation service system. Other databases such as the U.S. Current Population survey, the National Health Interview Survey, and the Survey of Income and Program Participation also include information about minority individuals with disabilities that may have significant implications for the future direction of vocational rehabilitation services to individuals with disabilities who are members of minority groups.

The RRTC funded under this priority will use the most recent databases on the status of minority individuals with disabilities as a starting point in order to conduct research that is national in scope and that addresses the common, as well as unique, vocational rehabilitation issues that may pertain to African-Americans, Hispanic-Americans, and Asian-Americans with disabilities. The RRTC funded under this priority shall not include American Indians with disabilities because Proposed Priority 6—Rehabilitation of American Indians with Disabilities—will conduct research in this area.

Priority

An RRTC on the vocational rehabilitation of minority populations shall be carried out in two phases. In the first phase, this RRTC shall—

- Analyze existing disability data to determine the relative prevalence of various disabling conditions among African-Americans, Hispanic-Americans, and Asian-Americans with disabilities;
- Analyze existing disability data, including data from the Rehabilitation Services Administration's Case Service Report, to compare the experiences within the vocational rehabilitation system of African-Americans, Hispanic-Americans, and Asian-Americans with disabilities to their white counterparts at major junctures of the vocational rehabilitation process, including analyses of data on acceptances, case closures, services provided, and employment outcomes;
- Analyze existing disability data to determine the extent to which African-Americans, Hispanic-Americans, and Asian-Americans with disabilities are recruited for positions as vocational rehabilitation practitioners and are appropriately trained for these positions;

Based on the needs identified by the above analyses, in the second phase, an RRTC on the vocational rehabilitation of minority populations shall—

- Design interventions to improve outreach and participation rates for African-Americans, Hispanic-Americans, and Asian-Americans with disabilities;
- Develop and test service delivery models for the most underserved minority populations that result in higher rates of services and better employment outcomes; and
- Identify those vocational rehabilitation policies, programs, or practices that contribute to improved employment outcomes for African-Americans, Hispanic-Americans, and Asian-Americans with disabilities.

Proposed Priority 6—Rehabilitation of American Indians With Disabilities

Background

The prevalence of disability is unusually high among American Indians. There is evidence that some disabling conditions are disproportionately represented in this population (Northern Arizona University; University of Arizona, 1987). Testimony presented to the NIDRR public hearings for long-range planning emphasized concern with the prevalence of fetal alcohol syndrome, spinal cord and traumatic brain injuries, substance abuse, and diabetes.

American Indian tribes have had discrete formal vocational rehabilitation service programs for a relatively short period of time. Traditionally, the needs of individuals with disabilities were considered the responsibility of the reservation governance, the rehabilitation programs within State agencies, the Indian Health Service, and the Bureau of Indian Affairs. In recent years individual tribes have become directly involved in the provision of vocational rehabilitation services to their members.

A report on the special problems and needs of American Indians with disabilities, both on and off the reservation, recommended the following action steps in improving the rehabilitation of American Indians with disabilities (1) address the cultural influences on rehabilitation service delivery; (2) provide rehabilitation services to young American Indians with disabilities; (3) address the variability in the distribution of disabling conditions; (4) facilitate Vocational Rehabilitation-Tribal relationships to improve service delivery to American Indians; (5) increase efforts to conduct cooperative interagency activities; (6) increase rehabilitation efforts for American Indians who are disproportionately represented in certain disability-related conditions; (7) improve the employment status of American Indians with disabilities; and (8) improve the database on American Indians with disabilities. (Northern Arizona University; University of Arizona, 1987).

Priority

An RRTC on rehabilitation of American Indians with disabilities shall—

- Develop, demonstrate, and evaluate culturally relevant vocational rehabilitation techniques for use in the development of more effective services to American Indians;
- Develop, demonstrate, and evaluate specialized interventions that effectively address disabilities of high prevalence among American Indians;
- Develop strategies to improve employment outcomes for American Indian clients of the VR service system, including higher rates of employment and more promising occupational placements;
- Develop strategies to increase the number of qualified American Indian professionals providing VR services through State and tribal agencies; and

• Develop models to improve rehabilitation and independent living services for American Indians in their communities.

Proposed Priority 9—Community-Based Rehabilitation Programs

Background

The nearly 7,000 rehabilitation community-based rehabilitation programs are faced with significant challenges, including the increased complexity and severity of the disabilities of individuals they serve, the increasingly diverse cultural backgrounds of their clients, and the potential of new technology for enabling clients to achieve many of their objectives. The changing nature of the client population, which numbers 800,000 on average per day, creates different expectations of these community-based service providers and their role in the rehabilitation process by individuals, families, and employers (Botterbusch, 1990; Menz, 1985, 1988, 1990; Thomas and Menz, 1990).

Nearly 90 percent of the individuals with disabilities who receive vocational rehabilitation services from community-based rehabilitation service providers are sponsored in part by public funds, and one-third are clients of the State-Federal vocational rehabilitation program, accounting for approximately 40 percent of vocational rehabilitation case service dollars. The primary focus in these programs continues to be on the independence, community integration, and vocational development of the individual.

Priority

An RRTC on improving community-based rehabilitation programs shall—

• Identify, evaluate, adapt, and demonstrate model community-based rehabilitation programs that reflect advances in rehabilitation practice, adapt to local labor market conditions, emphasize consumer self-direction in identifying effective rehabilitation and placement strategies, and promote community integration and quality employment;

• Develop techniques for community-based rehabilitation providers to access a variety of community resources, including non-traditional funding sources, to support ongoing rehabilitation services in the community;

• Develop training and technical assistance materials to increase the expertise of personnel of these programs in obtaining community-based employment for, and providing a wide range of services to, complex and diverse populations; and

• Develop and demonstrate methods to increase participation by individuals with disabilities in the management and operation of rehabilitation programs.

Proposed Priority 10—Management of Information and Information Systems in State VR Agencies

Background

Information systems can be useful to VR agencies in financial and program management, client tracking, job development and placement, and measuring performance and outcomes. Contemporary VR information systems may be difficult to use and may be inadequate for the purposes of managers, counselors, individuals with disabilities and their families, and policy makers in the public and private sectors (President's Committee on Employment of Persons with Disabilities, 1990).

Measuring progress, overcoming existing barriers to opportunity, and capitalizing on promising social and policy initiatives require a modern rehabilitation information system that, at a minimum (1) addresses well-defined objectives and serves the needs of specific users; (2) is both comprehensive and versatile; (3) is kept current through frequent updates, enabling it to document patterns and trends; (4) is user friendly to the extent that development, maintenance, and updating of the information system can be handled by existing staff; (5) is readily accessible to researchers, service providers, consumers, and others; and (6) provides timely response to requests from Federal policy-makers.

The RRTC funded under this priority shall coordinate its efforts with the Rehabilitation Services Administration's study "Assessment of Client Information Systems" and the longitudinal evaluation of the VR system.

Priority

An RRTC on management of information and information systems in State VR agencies shall—

• Develop systems to provide VR agencies with access to both private-sector and public-sector data—regarding economic trends and identification or prediction of long-term job and career opportunities—that can be used for aiding individuals with disabilities;

• Expedite the transfer of policy, program, and training information; and maintain special outreach and dissemination efforts, including an electronic bulletin board to reach professionals in State VR agencies, other Federal agencies, NIDRR grantees, independent living programs, and consumers;

• Evaluate all existing State Vocational Rehabilitation agencies' management information systems and identify exemplary practices; and

• Provide training on the establishment and operation of information systems to State-Federal VR personnel and other rehabilitation service providers.

Two Priorities Related to Mental Retardation

The deinstitutionalization of individuals with mental retardation, together with rising expectations for productive and rewarding lives among individuals with mental retardation and their families, creates demands for new and improved services in the community to meet the needs of this population. The service system must develop the capacity to assist and empower individuals with mental retardation and their families to choose from a range of options in work, living arrangements, education, and recreation. For the first time a significant and growing number of individuals with mental retardation are aging in community-based settings and experiencing a wider range of the typical problems of aging—exacerbated manifestations of their disability, new health impairments, and loss or aging of parents and other family members.

The following two priorities address the need for new service models to address the emerging problems related to community integration and aging with mental retardation.

Proposed Priority 11—Aging With Mental Retardation

Background

The process of aging is often accelerated among individuals with various forms of mental retardation. Some of the phenomena that have been observed include decline in physical strength and endurance and general health earlier than in the general population, earlier onset of dementia, and accelerated decline in cognitive functions and behavior. These additional functional losses may compromise the individual's ability to compensate or use other adaptive strategies to cope with the original functional loss.

Advances in medical technology and lifetime medical care have resulted in increased longevity for individuals with mental retardation. While data indicate that life expectancy is still somewhat shorter in individuals with mental retardation as a whole than in the

general population, it is not unusual for individuals with mental retardation to outlive their parents. Thus, the need for planning and provision of future services has become an important issue for parents and other family members. In addition, as a result of the deinstitutionalization of substantial numbers of individuals with mental retardation, many of these individuals will age in community living situations.

Although mental retardation is the single largest category of life-long disability in developed nations, most research and service attention has been concentrated on infants, children, and youth with mental retardation. There has been little study of older individuals with mental retardation, resulting in a need for research focused on the increasing number of these aging individuals who live and work in the community and who have expectations and needs for support services to enable them to remain in least restrictive environments.

In recent years, service providers, families, and individuals with disabilities have recognized the need for age-appropriate services for mentally retarded adults. Research is needed on how a new and expanded service continuum, including innovative technology, and enhanced self-determination skills can enable members of this population to achieve and maintain independence, productivity, community integration, and full citizenship.

Priority

An RRTC on aging with mental retardation shall—

- Develop models and assess techniques for empowering individuals aging with mental retardation to participate in decision-making processes of their future service plans, housing, life-planning, health care, and community participation;
- Acquire data on the medical conditions associated with aging with mental retardation;
- Increase the understanding of their families and service providers about the changing physical, psychological, vocational, and life-planning needs of this aging population;
- Demonstrate successful techniques, including assisitive technologies, that enable individuals aging with mental retardation to cope with and compensate for deteriorating physical and psychological functional capacities;
- Develop and evaluate counseling and other techniques to assist aging individuals with mental retardation to cope with and adjust to the death or incapacity of their parents or other caregivers; and
- Evaluate strategies and interventions to improve the retirement, financial security, health care, and independent living status of this aging population.

Proposed Priority 12—Community Integration for Persons With Mental Retardation

Background

Nearly four million Americans have mental retardation and other developmental disabilities of diverse levels and types, and with varied individual capabilities (U.S. Department of Health and Human Services, 1989). Of these four million persons, approximately one million may require an extensive array of services (Gettings, 1990). The number of individuals with mental retardation and other developmental disabilities in State institutions decreased by more than 50 percent, or more than 100,000 persons, during the two decades from 1967 to 1988 (Braddock and Hemp, 1990), thus leading to increased demands on community resources.

Consequently, individuals with mental retardation need to have opportunities and support to achieve full integration into the community, productive employment, and self-direction. Three areas of research have demonstrated particularly promising approaches to enhancing community integration—development of appropriate technologies; model services to cope with transitions and family support issues; and strategies to increase empowerment and self-advocacy for individuals with developmental disabilities.

During the past decade there has been an increase in assistive technology to aid individuals with disabilities to become more independent. There is a need to identify (1) the variables that contribute to the successful use of technology by individuals with mental retardation; and (2) the types of technology that will contribute to their community integration. Individuals with mental retardation and their families, service providers, vocational rehabilitation counselors, employers, and others need training in the benefits and uses of assistive technology that can promote maximum independence and community integration.

Successful community integration of persons with disabilities is dependent, in part, on the skills of family members. Moroney (1979) has stated that the limited options and minimal support currently provided to families of persons with mental retardation and other developmental disabilities is the result of public policies emphasizing *substitution* for the family rather than its *enhancement*. Very little research has been undertaken to determine how best to help families of persons with mental retardation, particularly those from minority, poor, rural, and non-traditional backgrounds (Testimony of the Association for Retarded Citizens, NIDRR Long-Range Plan Hearing, 1990).

Priority

An RRTC on community integration for persons with mental retardation shall—

- Demonstrate and evaluate models to improve use of technology for communication, self-management, employment, and home management by individuals with mental retardation;
- Develop and evaluate models to increase physical and social integration of individuals with mental retardation in their communities and in the workplace;
- Demonstrate and evaluate the effect of enhanced family participation in community integration of persons with mental retardation; and
- Demonstrate and evaluate models that result in more effective self-direction and self-representation by persons with mental retardation.

Two Priorities on Families of Individuals with Disabilities

Families that have members with disabilities can contribute significantly to an enhanced quality of life for those members. Throughout the long-range planning process, NIDRR was reminded of the importance of the family in attaining successful outcomes for both children and adults with disabilities. Because of the need for a significant volume of research on families, and because of some basic differences in the issues confronting families in which the disabled members are adults versus those in which disabled members are children, NIDRR has chosen to propose two Centers to focus separately on strategies to meet the needs of each of these two family configurations.

Proposed Priority 13—Families of Children With Disabilities

Background

The major goals of family support programs are to "deter out-of-home placements; enhance the care-giving capacities of the families; and enable persons to return to their families if they have been living in institutions" (Agosta and Bradley, 1985). There are several specific areas in which research and training could contribute to the

achievement of these family-centered goals. These include (1) the use of technology to enhance functioning and meet needs for care; (2) strategies to improve the service systems; (3) strategies to serve minority groups; (4) strategies to reduce the incidence of neglect and abuse; and (5) strategies to serve as effective advocates for themselves and their children in reforming policy and gaining access to appropriate services.

As many as 17,000 children rely on medical technology to perform vital life functions, and many thousands more could benefit from assistive technology for communications, adaptive seating, mobility, and interactions with the environment. Families need information on the potential and uses of technology and on resources to obtain technology. Public policy and financing practices may either facilitate or impede access to technology, and these effects must be better understood.

The existing services systems for families of children with disabilities have been developed with an imperfect understanding of or lack of focus on family needs. Many service delivery systems are still tied to the concepts of "family dysfunction or incapacity, with the child and family as the target for change" (Franke, 1988). There is a need to investigate the ways in which families can identify accurately their strengths, resources, and needs and a concomitant need to identify effective family-centered service delivery systems. Parents and service providers, as well as children with disabilities themselves, need training and technical assistance in effective self-representation and validated strategies to access family supports.

There is evidence that certain children may be at a higher risk for abuse and neglect than others. "Children who are difficult to manage and exacerbate already high stress levels in the family, or who are perceived as 'different' are more likely to become victims of maltreatment from high risk caretakers" (Ammerman, 1988). Indeed, a number of studies have found an over-representation of physically and mentally disabled children among samples of maltreated children (Kurland and Burgess, 1982). Researchers need to identify the factors that contribute to and are predictive of maltreatment of children with disabilities and develop appropriate interventions.

Priority

An RRTC on families of children with disabilities shall—

- Demonstrate and evaluate appropriate use of technology to facilitate in-home care and community integration for children with disabilities;
- Develop, demonstrate, and evaluate service delivery models that identify critical family needs and develop interventions to meet those needs;
- Develop, demonstrate, and evaluate an array of service delivery models that encourage families to serve as effective advocates for themselves and their children in reforming policy and gaining access to appropriate services;
- Develop, demonstrate, and evaluate service delivery models that meet the needs of all parents, regardless of their individual circumstances, for effectively parenting children with disabilities; and
- Develop, demonstrate, and evaluate service delivery models that reduce the incidence of neglect and abuse of children with disabilities.

Proposed Priority 14—Families of Adults with Disabilities

Background

Whether families are formed through marriage, birth, adoption, or other commitments, they are basic units in which the individuals have a commitment and shared responsibility to provide emotional, physical, and financial supports to maintain each member's well-being. While there is a growing body of literature on families with children with disabilities, less is known about families in which the disabled member is an adult. The challenges a family might face when an adult has a disability will vary greatly depending on the type of disability, the time of life in which it occurs, and the impact of the disability on need for care, ability to earn income, and life expectancy.

Problems of family function that may confront adults with disabilities and their families include, but are not limited to (1) establishing appropriate independence from parents; (2) creating and maintaining a marital relationship; (3) reproducing or adopting children or becoming foster parents; (4) parenting children; (5) caring for aging parents; (6) providing economic well-being and security for the family; (7) providing for personal care and assistance; and (8) planning for future economic and care needs in light of anticipated future diminution in functional capacity or reduced life expectancy. These problems may be common to all families, but individuals who have disabilities frequently need additional supports and technologies to enable them to solve these problems.

Priority

An RRTC on families of adults with disabilities shall—

- Identify and assess current options, and develop new options for individuals with disabilities to become parents; and develop strategies to effectively parent their children, including increased access to support services;
- Identify and assess current techniques, and develop new techniques to provide tangible and intangible supports to spouses and other members of families of adults with disabilities, particularly during crises caused by the onset of a disability or its significant exacerbation;
- Develop strategies that promote the ability of adults with disabilities to provide long-term financial support, insurance, health benefits, education, and other benefits for their families; and
- Promote appropriate assistive technology to enhance parenting, self-care, care by and of others, independence in the family, community integration, and work.

Invitation To Comment: Interested persons are invited to submit comments and recommendations regarding these proposed priorities. All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in room 3423, Mary Switzer Building, 330 "C" Street SW., Washington, DC, between the hours of 8 a.m. and 3:30 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations: 34 CFR parts 350 and 352.

Program Authority: 29 U.S.C. 760–762

(Catalog of Federal Domestic Assistance Number 84.133B, Rehabilitation Research and Training Centers)

Dated: September 10, 1992.

Lamar Alexander,

Secretary of Education.

[FR Doc. 92–22460 Filed 9–16–92; 8:45 am]

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Part V

Department of Labor

Employment and Training Administration

20 CFR Part 655

Labor Certification Process for the Temporary Employment of Aliens in Agriculture in the United States; Prevailing Practice Determinations; Final Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

RIN 1205-AA93

Labor Certification Process for the Temporary Employment of Aliens in Agriculture in the United States: Prevailing Practice Determinations

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: The Employment and Training Administration of the Department of Labor is amending the regulations for the temporary alien agricultural labor certification (H-2A) program. The amendment explains the standard for determining when or where a particular employment practice is prevailing in the occupation in the area of intended employment. Such determinations are made with respect to the provision by covered employers of family housing and transportation advances, and the frequency of such employers' wage payments to workers, and such employers' utilization of farm labor contractors.

EFFECTIVE DATE: October 19, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Flora Richardson, Chief, Division of Foreign Labor Certifications, United States Employment Service, Telephone: 202-535-0163 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

On February 12, 1991, the Employment and Training Administration (ETA) of the Department of Labor (DOL or Department) published a Notice of Proposed Rulemaking (NPRM) to amend the regulations for the temporary alien agricultural labor certification (H-2A) program. 56 FR 5670. The proposed rule reflects program experience ETA has gained since the H-2A program interim final rule was published on June 1, 1987 (52 FR 20496), and since ETA Handbook No. 398 was published on June 13, 1988 (53 FR 22076). See also 20 CFR part 655, subpart B; 29 CFR part 501; and 54 FR 28037 (July 5, 1989). The NPRM explained the standard for determining when or where a particular employment practice is prevailing in the occupation in the area of intended employment.

Whether to grant or deny an employer's petition to import a nonimmigrant alien to the United States for the purpose of temporary employment is solely the decision of the Attorney General and his designee, the Commissioner of the Immigration and Naturalization Service (INS). ETA's regulations for the temporary employment of nonimmigrant aliens in agriculture in the United States are issued pursuant to the Immigration and Nationality Act (INA). 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188. One aspect of ETA's role in reviewing an employer's application for temporary alien agricultural labor (H-2A) certification is determining whether the benefits and working conditions offered by a prospective employer of H-2A workers are acceptable or would have an adverse effect on U.S. workers similarly employed in the area of employment. In evaluating an employer's job offer, ETA must determine if certain benefits and procedures are in accordance with the prevailing practice in the area and occupation.

To clarify the methodology utilized in determining whether it is prevailing practice to engage in a practice or offer a benefit, ETA proposed the following standard:

(1) A majority of employers of employees in an occupation in an area engage in the practice (or offer the benefit); and

(2) This majority of employers also employs a majority of U.S. workers in the occupation in the area.

If this standard is not met, the practice or benefit would not be determined to be prevailing. See also Employment and Training Administration Handbook No. 398 at II-6 and II-7; and 56 FR 5670 (February 12, 1991).

This standard is used for determining whether covered employers must offer to provide family housing and advance transportation, what the frequency of wage payments by such employers to workers shall be, and whether such employers must offer to use farm labor contractors. See 20 CFR 655.102(b)(1)(vi), (b)(5)(i), and (b)(10), 655.102(d), and 655.103(f). For determinations concerning family housing and frequency of payments, "the majority of employers" component of the measurement includes H-2A and non-H-2A employers in the area and the occupation. For determinations concerning transportation advances and utilization of farm labor contractors, the "majority of employers" component includes only non-H-2A user employers in the area and the occupation. The inclusion or exclusion of H-2A employers in these measurements is determined by pertinent statutory or regulatory descriptions of the particular practice or benefit.

In adopting the definition, ETA also examined two other approaches, considering a practice (or provision of a benefit) to be prevailing when:

(1) A simple majority of U.S. workers in an occupation and area receive a benefit, irrespective of the number of employers who provide the benefit; or

(2) A simple majority of employers of U.S. workers in an area engage in the practice or provide the benefit, irrespective of the number of workers who receive the benefit or are affected by the practice.

II. Comments Received on Proposed Rule

The NPRM invited interested parties to submit written comments on the proposed amendment on or before March 14, 1991. 56 FR 5670 (February 12, 1991). Comments by sixteen individuals and/or organizations were received by ETA. All of the comments were analyzed and considered in the preparation of this final rule.

Eight commenters supported the amendments as clarifying the procedures for prevailing practice determinations, stating either that the rule would maintain past practice or that it would clearly establish the most equitable process for the subject determinations. One commenter supported the amendment, but suggested additional clarifying language for other terms in the regulations.

Seven commenters opposed the amendment. Of those, six viewed it as being too restrictive and one viewed it as not being restrictive enough.

A discussion of the major comments received on the proposed definition, hereinafter referred to as "double majority," follows.

A. The Meaning of "Prevailing"

All of the commenters alluded to or discussed at some length the appropriateness of the proposed amendment's use of the word "prevailing," in terms of both its general or dictionary sense and the sense in which it has been commonly applied in prevailing practice determinations under the H-2A program.

ETA has determined from its analysis of the comments that a simple dictionary definition of "prevailing" cannot be relied upon for purposes of this rulemaking. In order to establish a rule which would be objective and unambiguous, the word "prevailing" should be quantified, and dictionaries do not universally quantify this word. See, *e.g.*, Webster's New Twentieth Century Dictionary of the English Language Unabridged (2nd ed., The World Publishing Company: New York,

NY, 1970): "predominant; widely existing; prevalent"; and Webster's New Collegiate Dictionary (G. & C. Merriam Company: Springfield, MA, 1979): "1. having superior force or influence. 2a. most frequent. b. generally current; common."

Various commenters proposed different standards as the threshold for a prevailing practice determination and showed no clear preference for applying a "predominant" or "most frequent" standard with respect to the number of employers and the number of workers surveyed. This alone is a clear indication that a dictionary definition is an insufficient basis for establishing the standard.

Some commenters referred to the 40-percent rule used in ETA Handbook No. 385 (prevailing wage determinations) as a potential standard. One commenter suggested at least 60 percent and preferably as high as 80 percent be established as the threshold to be utilized for a practice to be found prevailing. ETA believes that accepted usage strongly suggests that any percentage greater than 50 percent is "predominant" and "most frequent" and should continue to be the presumptive standard for a finding of prevailing.

B. Past ETA Policy

Several commenters expressed their views that DOL had already established its standard for determining when a benefit being provided or a practice being engaged in was prevailing. Of the five commenters who made assertions about past agency policy, three claimed that ETA had implemented a policy whereby a practice or benefit was found to be prevailing when engaged in or offered by a majority of employers, or if the practice or benefit affected a majority of employees. One commenter claimed that ETA's past procedure was to determine a practice as prevailing if a majority of employers (exclusive of employees) engaged in it. Another commenter stated that ETA's longstanding procedure was to determine a practice as prevailing if a majority of employees (exclusive of employers) were affected by it. None of the five commenters presented sufficient evidence to support their positions that would convince ETA that their preferred standards had indeed been past agency practices and should be continued.

One commenter asserted that an Administrative Law Judge (ALJ) decision (which is thereby the decision of the Secretary of Labor, see 20 CFR 655.112(a)(2)) found the policy of the Department to be that a practice is deemed to be prevailing when a majority of employers (exclusive of employees) engage in it. The referenced ALJ decision was issued in relation to a dispute involving ETA's interpretation of the meaning of the phrase "area of intended employment". See *Azor* v. *Hepburn*, Case No. 87-JSA-1 at 12. ETA has not been persuaded by this comment, since the decision ascribed more to the predecessor regulation at 20 CFR 655.202(b)(1) (1986 ed.) than was warranted. In the decision, the ALJ wrote:

> 20 CFR 655.202(b)(1) requires the employer to provide housing if the *majority* of growers in the area of intended employment provide it, *i.e.*, if the most *frequent* practice is to provide family housing.

The regulation cited makes, in fact, no reference to "majority of growers" or "most frequent practice." In its entirety, 20 CFR 655.202(b)(1) (1986 ed.) stated:

> The employer will provide the worker with housing without charge to the worker. The housing will meet the full set of standards set forth at 29 CFR 1910.142 or the full set of standards set forth at Part 654, Subpart E of this chapter, whichever is applicable under the criteria of 20 CFR 654.401; except that, for mobile range housing for sheepherders, the housing shall meet existing Departmental guidelines. *When it is the prevailing practice in the area of intended employment to provide family housing, the employer will provide such housing to such workers.* [Emphasis added.]

None of these comments have persuaded ETA that, prior to publication of ETA Handbook No. 398, the agency had ever generally and clearly articulated and published a formal policy on the standard for measuring "prevailing." One exception occurred in 1985, when a memorandum from ETA's National Office to the Regional Administrator of ETA in Philadelphia set forth double majority (majority of employers and majority of workers) as the standard by which the Regional Administrator should make a determination regarding the provision of family housing.

C. Adverse Effect Considerations

The six commenters who oppose double majority as too restrictive a standard all provide arguments based on the statutory and regulatory requirements under which DOL must ensure that "the employment of the alien * * * will not adversely effect the * * * working conditions of workers in the United States similarly employed." All six posit an obligation of the Department to choose regulatory options and establish labor standards which have the potential to provide the greatest benefits to U.S. workers. As discussed below, that stance has consistently been rejected by the courts, and must be rejected by DOL again in relation to this rulemaking. The INA did not establish the H-2A program as a means to attract workers to agricultural occupations. Instead, it is designed to protect workers, in part, from adverse effect.

The issue of "adverse effect" and its meaning under the INA was discussed at length by the U.S. Court of Appeals for the Seventh Circuit in *Industrial Holograph* v. *Brock*, 722 F.2d 1362 (1983), with respect to the related permanent alien labor certification program under INA sec. 212(a)(14) (now at INA 212(a)(5)(A)):

> The statute [INA] itself says nothing about how the Secretary should determine whether the alien's employment will have an adverse effect, and the legislative history offers little insight on this issue.

The language of section 212(a)(14) does little more than identify Congressional goals: aliens should not take jobs from "able, willing, qualified, and available" American workers, and an alien's employment should not "adversely effect" the wages and working conditions of American workers. The statute leaves to the Secretary the task of developing operational standards to effect the Congressional purpose. The breadth of the statutory language and the volume of decisions [certifications] virtually require the Secretary to develop systematic standards and procedures for deciding upon labor certification applications.

A complete and thorough analysis of all relevant factors affecting the impact of each individual alien's employment on the labor market is clearly out of the question. Sound administration and concern for consistency and fairness require simplified rules of general application for imposing the statutory standards. [722 F.2d at 1366–1367.]

Any perceived obligation imputed to the Department to establish standards designed to attract U.S. workers and enhance their employment opportunities was rejected by the U.S. Court of Appeals for the Fifth Circuit in *Williams* v. *Usery*, 531 F.2d 305 (1976):

> Even if desirable, the Secretary has no authority to set a wage rate on the basis of attractiveness to workers. [531 F.2d at 306.]
>
> * * * * *
>
> Williams' notion of a wage rate high enough to attract those domestic workers not otherwise willing to work [in sugar cane], jumps well beyond the discretionary authority of the Secretary. Clearly his authority to insure against a lowering of wages is hardly synonymous with the affirmative power to raise wages which Williams here proposes. "Attractiveness" is

the wrong test for measuring the Secretary's determination. [531 F.2d at 308.]

In support of an extended argument regarding possible adverse effect, one commenter included tables of probability based on the relative proportion of large and small employers in the particular benefit universe and those employers' share of total employment. While ETA found the analysis interesting, it also found it to be flawed in two respects. First, the table is mathematically based and posits random behavior on the part of employers. While there are numerous behaviors or events which have been shown to have certain patters at varying degrees of statistical reliability, there is no evidence adduced to show that these tables have any relation to actual work situations as they exist. As most of the commenters discussed, employers tend to be aware of their competitors' behavior and adjust their own accordingly. Thus, the tables which distribute behavior randomly do not reflect actual experience. Second, the tables presuppose a failure to find a practice prevailing as a definite loss to workers, and implies that most employers will abandon a practice not found to be prevailing. In the tables, this proposed scenario occurs most frequently when a small number of large employers employ a high percentage of the work force. It is unlikely that a large employer who has successfully recruited an adequate workforce for years would abandon a practice simply because a number of small employers did not offer a benefit. Even if the tables accurately reflected the likelihood of a benefit or practice, the court opinions cited above make clear that such likelihood of enhancement or greater attractiveness to U.S. workers is not an appropriate basis for rulemaking in this program.

D. Other Options for Consideration

Several commenters stated that, when proposing policy or changing policy, an agency should present possible options and provide a discussion of why other options were rejected. Some commenters faulted DOL for not considering and presenting more options to the methodology chosen. ETA reviewed other procedures, including those utilized by the Employment Standards Administration (ESA) in administering the Davis-Bacon Act, for making prevailing practice determinations and did not find any others which fit the conditions of agricultural employment covered by the H–2A program. ETA has concluded from its review and analysis of the comments that the two parties in an employment relationship—(1) employers in an area in an occupation and (2) employees in an area in the occupation—are the only appropriate categories for measurement. With those two categories as a starting point, ETA agrees that more options could have been listed, but views them as variations on the three set forth in the NPRM.

The six commenters who advocated a rule which maximized the likelihood of making a finding of a prevailing practice stressed that each of the practices at issue was likely to increase the attractiveness of an employer's job offer to U.S. workers. As discussed above, the Fifth Circuit in *Williams* v. *Usery* stated that it is beyond the authority of DOL under the INA. The U.S. Court of Appeals for the First Circuit dealt with the issue of a more attractive job offer in *Flecha* v. *Quiros*, 567 F.2d 1154 (1977), and rejected the requirement that an employer go beyond what is normal to attract U.S. workers:

> It is plaintiffs' [workers'] position that the U.S. conditions are merely a minimum, and that they neither forbid employers offering more, nor employees from seeking more. We agree with this, but it does not follow, as plaintiffs would seem to think, that if the workers are unwilling—or unable—to come unless they receive more, they meet the section 1182(a)(14)(A) definition. If they did, it requires but little reflection to see that the statute would be used to require employers to meet whatever demands might be made by domestic workers. The effect, indeed, the necessary effect would be that the alien market would never be reached—the employer would have to pay whatever the domestic workers sought, it being obvious that if there were no limit on the price that could be asked, workers could always be found. [567 F.2d at 1156.]

The test, then, for the rule should be whether it fairly identifies a prevailing practice, which then becomes the standard for any new employer-applicants to the H–2A program and remains the standard for all current employer users of the program.

1. A Standard Less Than a Majority

Earlier, in discussing the meaning of "prevailing", reference was made to a 40 percent standard used in determinations of prevailing wages in accordance with ETA Handbook No. 385. A number of commenters suggested the 40-percent standard for a prevailing wage in ETA Handbook No. 385 be applied to prevailing practice determinations. For the following reasons, in presenting the proposed rule, DOL specifically rejected applying the prevailing wage methodology to prevailing practice determinations and continues to do so.

All employers provide wages. An employer is not obliged to change the way in which it does business to pay such a wage. Unlike wages, each practice and benefit subject to the rule at issue here either exists with respect to an employer and occupation or employee, or it does not exist. A prevailing practice finding could make it necessary for an employer to establish a practice or offer a benefit it does not currently provide. In establishing a prevailing wage, one arrays a number of wages and establishes if there is a wage which is paid to 40 percent or more of the workers. Such a wage can realistically be said to be "predominant" or "most common." However, the prevailing wage methodology recognizes that there will not always be a wage which is paid to 40 percent or more of the workers in the survey. If no single rate or schedule accounts for 40 percent or more of the workers and the rates are all in the same unit of payment, the rates are arrayed in descending order and then the cumulative number of workers are counted, starting with the lowest rate in the array. The rate reached at the point that the cumulative number covers 51 percent of workers in the survey is the prevailing wage.

With a dichotomous variable, as in the area of prevailing practices, to say that 40 percent is prevailing when 60 percent do not engage in the practice is flawed on its face; this has never been the policy of the Department in determining prevailing practices under the H–2A program. The Department believes that any other variation which involves a standard below a majority is also defective.

2. A Single Majority Standard

Two commenters recommended that a majority of relevant employers should be the standard, and two others who supported the proposed double majority rule stated a strong preference for an employer-based determination should a single majority rule be chosen. After reviewing the comments, DOL finds no reason to revise its original position against a single majority of employers methodology for determining a prevailing practice.

The possibility exists and actually occurs in a number of occupations in various areas of the country where a large number of small employers employ far less than a majority of the workforce. To allow such a numerical majority of small employers to determine the standard when a number of large employers employ most of the workforce in an area and engage in practices and provide benefits which affect many more workers does not present a

realistic picture of conditions in an area and does not seem fair and equitable.

Only one commenter preferred a single majority of employees as the best methodological option, but those commenters who supported a single majority of employers or employees all chose the majority of employees standard as their second choice. ETA's concern in regard to a simple majority of workers methodology is that one or a very small number of large employers with a majority of employees and superior resources would inappropriately force a larger number of small employers to establish a practice in order to participate in the program.

A number of commenters criticized DOL's concern for small employers as inappropriate. However, the Regulatory Flexibility Act, Public Law 96–254, at sec. 2(b), states:

(b) It is the purpose of this Act to establish as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulations.

Further, as a number of commenters point out, small entities often compete in a variety of ways to make themselves attractive to workers. Forcing small employers to match practices in which they are unlikely to do better than large employers may force the small employers to abandon those practices which they have used to recruit and retain workers.

3. A Majority of Either Employers or Employees

Three commenters recommended a standard which would determine a practice to be prevailing if either the majority of employers in an occupation in an area engaged in the practice or provided the benefit or the majority of employees of the relevant employers received the benefit. If both the single majority of employers or of employees are unacceptable as the basis for a determination, then it follows that an option which posits either of their conditions as establishing a prevailing practice is also unacceptable because such an option would be more likely than either single majority standard alone to determine unrepresentative practices as prevailing.

4. A Standard Greater Than a Majority

One commenter proposed that a standard above a majority, at least 60 percent or preferably 80 percent, be necessary to establish a truly prevailing practice. An option establishing a standard above 51 percent would represent a significant shift in policy, since a standard in excess of a majority has not been a criterion used by the Department in making a determination of "prevailing." The commenter who proposed such an option stressed the dictionary definition "predominant," and argued that a majority is not necessarily predominant. Since the proposed rule requires a double majority, the Department believes that it does require a threshold that would commonly be considered to be predominant.

5. Including or Excluding H–2A User Employers

The proposed regulation included H–2A employers in determinations concerning the provision of family housing and frequency of payment. Three commenters argue that H–2A employers should always be excluded from such determinations, stating that such employers always will choose employment practices unfavorable to workers. As noted in the proposed rule, the inclusion or exclusion of H–2A employers is determined by pertinent statutory or regulatory descriptions of the particular practice or benefit. Another problem with excluding H–2A employers is the fact that they often employ large numbers of U.S. workers. The commenters who oppose the rule framed their arguments as if H–2A employers employ only foreign workers. In fact, in a number of instances, H–2A employers employ the majority of U.S. workers in an area in an occupation.

E. Crewmember Prevailing Practice Distinguishable From Farmworker Prevailing Practice

In a comment submitted after the closing date for comments on the proposed rule, a commenter suggested that DOL's publication of an interim final rule pertaining to the use of alien crewmembers for longshore activities in U.S. ports under the Immigration Act of 1990 (56 FR 24648 (May 30, 1991)) supports a proposal made in an earlier submittal from the commenter. In that submittal, the commenter proposed a single majority rule for H–2A prevailing practice determinations, establishing "prevailing" with either a majority of employers or a majority of workers.

In response to this comment, it is appropriate to distinguish the standard for determining prevailing practice for the use of alien crewmembers in longshore work from that used with respect to certain employer-provided benefits to nonimmigrant alien farmworkers and similarly employed U.S. workers under the H–2A program. See 20 CFR part 655, subparts B, F, and G, and 29 CFR part 506, 56 FR 24648 (May 30, 1991). In the proposed rule on crewmembers, the Department stated that the prevailing practice standard it would use for the program was consistent with other immigration programs of the Department "which use the concept of a simple majority." 56 FR 16031, 16033 (April 19, 1991). That statement needs to be clarified, since it is not consistent with those immigration programs which do not use a simple majority, such as the H–2A program.

In the crewmember regulations, the Department accepts longshore work by alien crewmembers as prevailing in a port if:

(1) The majority of vessels used alien crewmembers for longshore work; or

(2) Over 50 percent of the workers in the port performing such work are aliens.

20 CFR 655.510(d)(1) and 29 CFR 506.510(d)(1), 56 FR 24648, 24657 (May 30, 1991).

The commenter has questioned the distinction, and asked whether the crewmember regulations will affect the H–2A regulations. In the Department's view, the unique nature of each of these two types of employment requires a standard reflecting of the nature of the industry.

Specifically, the Department could have taken two courses under the crewmember regulations. The legislative history of the crewmember program references "well-established" prevailing practices "long * * * accepted by all local interests concerned * * *." H.R. Conf. Rep. No. 101–955 at 124 and 125. The "all local interests concerned" language has been argued by some to support a double-majority test, as in the H–2A regulations. On the other hand, some commenters on the crewmember regulations have argued that the language in the INA stating that the measure for longshore prevailing practice is the permitting of alien crewmembers to do this work rather than the actual performance of the work by alien crewmembers, implies a somewhat looser standard in determining prevailing practice for crewmember longshore work (see 8 U.S.C. 1288(c)(1)(B)(i)).

In response to the proposed crewmember rule, some commenters sought a prevailing practice standard less than single majority. While the Department modified the methodology slightly in its interim final crewmember rule, by eliminating measurement of tonnage in the port worked on by alien workers, the Department did not effect a less-than-single-majority standard for the crewmember program, stating its

desire to be consistent with other immigration programs. 56 FR at 24650.

As in many rulemaking actions, the Department received comments on the crewmember rulemaking from various interests with opposing views. In that rulemaking, as in the H-2A rulemaking, the Department took into consideration the comments as well as the unique nature of the employment. For example, in the H-2A program, the number of employers using farmworkers in an area of intended employment and the number of farmworkers employed are generally relatively stable from year-to-year. To avoid having the practice of a number of small employers, or the practice of a small number of large employers, determine prevailing practice in an area, the Department, as described above, determined that it would be fairer under the farmworker program to require a double majority of both workers and employers as the standard for establishing a prevailing practice.

In the crewmember program, however, the variation in workforce size of affected employers is not as great as in agriculture, and application of a double majority standard is not necessary to provide prevailing practice protection to U.S. workers. The Department's experience is that in a labor market area where H-2A farmworkers are employed, such as picking apples, there may be as many as 70 or more agricultural workers on some farms engaged in the same crop activity and as few as 5 or less workers on others.

By contrast, the Department's experience is that the workforce-per-employer in the crewmember program varies much less. For example, it is fairly standard that refrigerator vessels carrying processed fish in Alaska have crews of 15 to 20 doing longshore work. Other area longshore employers, such as barge operators, employ 5 to 7 workers; and fish processors use only a fraction of their crews for longshore work. Thus, it is not necessary, and would be unduly burdensome administratively, for employers to have to attest to a double majority prevailing practice in the crewmember program.

Further, while U.S. longshore workers are, to a large extent, based in one location, alien crewmembers performing longshore work are a mobile workforce, as is true for many farmworkers under the H-2A program. In contrast to the H-2A program, however, and unlike most of the other immigration programs with which the Department is involved, the crewmember program also involves mobile employers. The same employers are not necessarily in a port on a repetitive, continuous, seasonal, or even annual basis. As such, the Department determined that the double majority approach was not necessary, too administratively burdensome, and inappropriate for the crewmember program.

F. Clarification for Situations Involving Survey Findings in Which the Categories (Employers and/or Employees) Divide Evenly

One commenter brought to ETA's attention an aspect of the proposed rule which needs to be articulated in the final rule to minimize future disagreements about the establishment of a prevailing practice. The instance cited was one in which a survey establishes that exactly 50 percent of a category (employers or employees) engage in or are subject to a practice or benefit. This is more likely to happen with the employer category, because it is generally a smaller universe, but it is theoretically possible in any instance in which the relevant universe is an even number. Therefore, ETA is providing in the final rule that a 50/50 split shall be decided in favor of "prevailing".

III. Conclusion

After review and analysis of all the comments submitted in response to the NPRM and further review of experience since the policy was published in ETA Handbook No. 398, the Department has determined that the proposed double majority is the most appropriate standard. It should produce more consistent results from year to year than the less rigorous options, since a finding under this standard is more likely to be firmly embedded as a practice among the employer community. It avoids the potential distortions of the other options as discussed above. It is clear and easy to establish and explain.

Any employer who wishes to use the H-2A program is required to provide the benefit or engage in a practice determined to be prevailing. If a practice or benefit is determined to be prevailing and an employer can not or will not provide it, that employer is denied access to the program. A general principle to be followed in adopting regulations is that, consistent with applicable statutes, a regulation should not create unnecessary burdens or erect barriers that permit only certain types or sizes of employers access to a program. As the court decisions cited above clearly state, rulemaking for the H-2A program is not a vehicle for change in industry practices; it is intended to protect against adverse effect, not attract workers to the occupations. The H-2A program has been operating under the current methodology since 1988. There is no evidence to show that employers have abandoned practices or stopped providing benefits simply because the benefit or practice was not determined to be prevailing.

The definition of prevailing practice chosen by ETA is an entirely reasonable interpretation of the plain meaning of the word "prevailing." For DOL to adopt a lesser standard of measurement would mean that a benefit or practice could be determined prevailing which was not provided by a majority of employers, or which was not received by a majority of workers. Either of those circumstances would violate common understanding of the meaning of the word "prevailing."

If only a majority of employers or a majority of employees were the standard, practices could be determined to be prevailing that would be excessively burdensome, as a practical matter, for some employers to provide. For example, farmers in close proximity to towns might have options that farmers in more remote areas do not have. The farmer in close proximity to a town may have a motel or no-cost public housing available to comply with a requirement to provide family housing. The farmer who is located near a stop for an interstate bus line can provide non-refundable bus tickets if he is required to provide advance transportation. The farmer who is located in a remote area may have much more difficulty in availing himself of workers through the H-2A system.

In most cases, where a practice applies to a majority of workers it is likely to be practiced by a majority of employers, and vice versa. However, it is precisely in those instances where this is not the case that the greatest potential exists for inappropriate determinations to be made as a result of unusual situations applicable only to smaller or larger employers. Although DOL's definition requiring a double majority will not prevent some employers from being blocked out of the H-2A program either through their choice or through economic or practical necessity, it will reduce the incidence of such cases while still assuring benefits to workers when such benefits are truly the prevailing practice.

Therefore, with the addition of the clarifying language regarding survey findings where the appropriate universe (employers and/or employees of those employers) is evenly divided (50/50), DOL adopts as its final rule the double majority standard proposed in the NPRM.

Regulatory Impact

This document affects only those employers using nonimmigrant alien

workers in temporary agricultural jobs in the United States (H-2A visaholders). It does not have the financial or other impact to make it a major rule and, therefore, the preparation of a regulatory impact analysis is not necessary. See Executive Order No. 12291, 3 CFR, 1981 Comp., Page 127, 5 U.S.C. 601 note.

When the proposed rule was published, the Department of Labor notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to the Regulatory Flexibility Act at 5 U.S.C. 605(b), that the rule does not have significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This document contains no paperwork requirements which mandate clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*)

Catalogue of Federal Domestic Assistance Number

This program is listed in the *Catalogue of Federal Domestic Assistance* as number 17.02, "Certification of Foreign Workers for Agricultural and Logging Employment."

List of Subjects in 20 CFR Part 655

Administrative practice and procedure, Agriculture, Aliens, Crewmembers, Employment, Enforcement, Forest and forest products, Guam, Health professions, Immigration, Labor, Longshore work, Migrant labor, Nurse, Penalties, Registered nurse, Reporting and recordkeeping requirements, Specialty occupation, Students, Wages.

Final Rule

Accordingly, part 655 of chapter V of title 20, Code of Federal Regulations, is amended as follows:

PART 655—LABOR CERTIFICATION PROCESS FOR THE TEMPORARY EMPLOYMENT OF ALIENS IN THE UNITED STATES

1. The authority citation for part 655 continues to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(H) (i) and (ii), 1182 (m) and (n), 1184, 1188, and 1288(c); 29 U.S.C. 49 *et seq.*; sec. 3(c)(1), Pub. L. 101-238, 103 Stat. 2099, 2103 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101-649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); and 8 CFR 214.2(h)(4)(i).

Section 665.00 issued under 8 U.S.C. 1101(a)(15)(H)(ii), 1184, and 1188; 29 U.S.C. 49 *et seq.*; and 8 CFR 214.2(h)(4)(i).

Subparts A and C issued under 8 U.S.C. 1101(a)(15)H)(ii)(b) and 1184; 29 U.S.C. 49 *et seq.*; and 8 CFR 214.2(h)(4)(i).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184, and 1188; and 29 U.S.C. 49 *et seq.*

Subparts D and E issued under 8 U.S.C. 1101(a)(15)(H)(i)(a), 1182(m), and 1184; 29 U.S.C. 49 *et seq.*; and sec. 3(c)(1), Pub. L. 101-238, 103 Stat. 2099, 2103 (8 U.S.C. 1182 note).

Subparts F and G issued under 8 U.S.C. 1184 and 1288(c); and 29 U.S.C. 49 *et seq.*

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b), 1182(n), and 1184; 29 U.S.C. 49 *et seq.*; and sec. 303(a)(8), Pub. L. 102-232, 105 Stat. 1733, 1748 (8 U.S.C. 1182 note).

Subparts J and K issued under 29 U.S.C. 49 *et seq.*; and sec. 221(a), Pub. L. 101-649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note).

2. In § 655.100, paragraph (b) is amended by adding, between the definitions of "Positive Recruitment" and "Regional Administrator, Employment and Training Administration (RA)," a definition of "Prevailing," to read as follows:

§ 655.100 Overview of this subpart and definition of terms.

* * * * *

(b) * * *

Prevailing means, with respect to certain benefits other than wages provided by employers and certain practices engaged in by employers, that:

(i) Fifty percent or more of employers in an area and for an occupation engage in the practice or offer the benefit; and

(ii) This 50 percent or more of employers also employs 50 percent or more of U.S. workers in the occupation and area (including H-2A and non-H-2A employers for purposes of determinations concerning the provision of family housing, frequency of wage payments, and workers supplying their own bedding, but non-H-2A employers only for determinations concerning the provision of advance transportation and the utilization of farm labor contractors)

* * * * *

Signed at Washington, DC, this 11th day of September, 1992.

Lynn Martin,

Secretary of Labor.

[FR Doc. 92-22456 Filed 9-16-92; 8:45 am]

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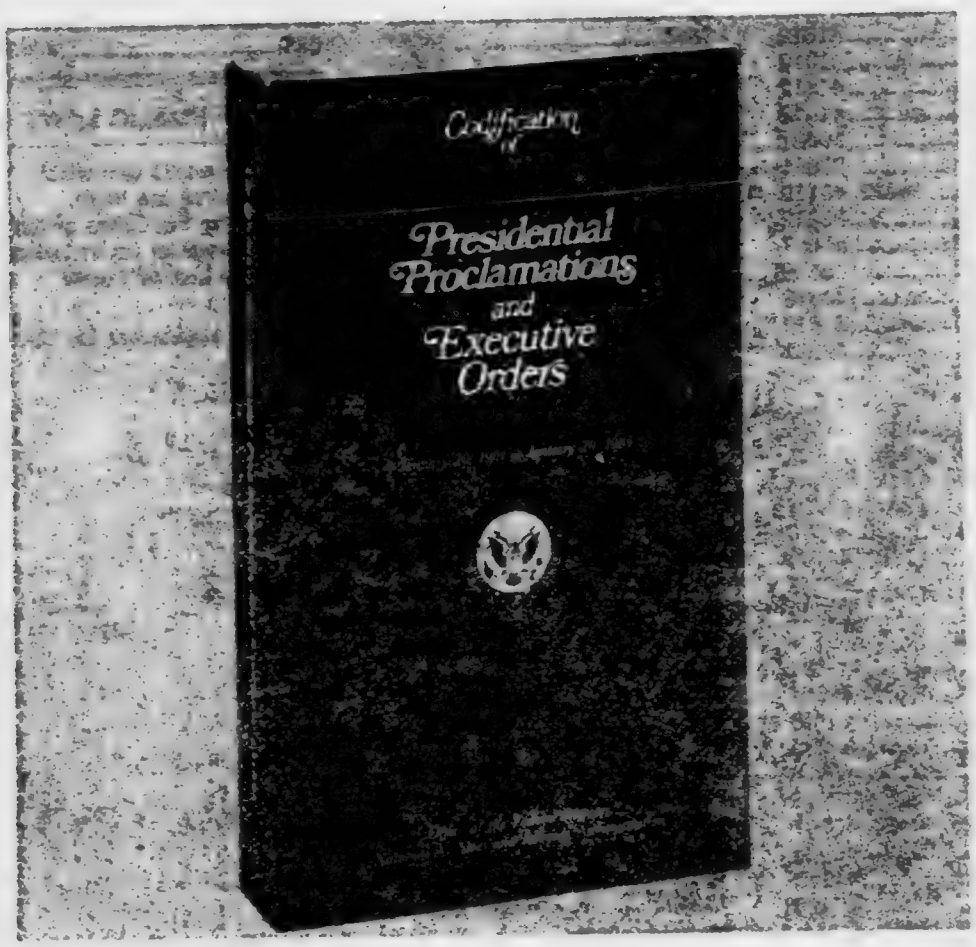

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Friday
September 18, 1992

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Friday, September 18, 1992

Presidential Documents

Title 3—

The President

Presidential Determination No. 92–45 of August 28, 1992

Extension of the Exercise of Certain Authorities Under the Trading With the Enemy Act

Memorandum for the Secretary of State [and] the Secretary of the Treasury

Under section 101(b) of Public Law 95–223 (91 Stat. 1625; 50 U.S.C. App. 5(b) note), and a previous determination made by me on September 13, 1991 (56 FR 48415), the exercise of certain authorities under the Trading With the Enemy Act is scheduled to terminate on September 14, 1992.

I hereby determine that the extension for one year of the exercise of those authorities with respect to the applicable countries is in the national interest of the United States.

Therefore, pursuant to the authority vested in me by section 101(b) of Public Law 95–223, I extend for one year, until September 14, 1993, the exercise of those authorities with respect to countries affected by:

(1) the Foreign Assets Control Regulations, 31 CFR Part 500;

(2) the Transaction Control Regulations, 31 CFR Part 505;

(3) the Cuban Assets Control Regulations, 31 CFR Part 515; and

(4) the Foreign Funds Control Regulations, 31 CFR Part 520.

The Secretary of the Treasury is directed to publish this determination in the **Federal Register**.

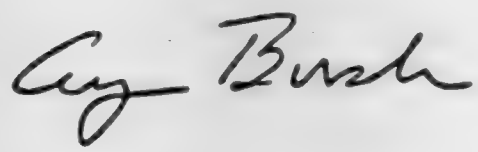

THE WHITE HOUSE,
Washington, August 28, 1992.

[FR Doc. 92–22845
Filed 9–16–92; 3:45 pm]
Billing code 3195–01–M

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Presidential Documents

Proclamation 6472 of September 16, 1992

National Breast Cancer Awareness Month, 1992

By the President of the United States of America

A Proclamation

As we Americans once again observe National Breast Cancer Awareness Month, we can be heartened by the progress that we have made in fighting this disease. In recent years, our knowledge of breast cancer has increased significantly. Researchers continue to develop new and better means of treatment, and expanded access to breast cancer screening is enabling more and more women to benefit from early detection and intervention.

While such trends are encouraging, the National Cancer Institute reports that as many as 180,000 American women will be diagnosed as having breast cancer this year. Although most women who are treated for breast cancer in its early stages can be cured, this disease remains the second leading cause of death by cancer among American women. Hence, this month we recognize the importance of ensuring that every woman is informed about breast cancer and about the importance of screening, early detection, and treatment.

Women can take an active role against breast cancer through monthly self-examination and through clinical examinations and mammography as recommended by their physicians. Mammography is invaluable: many breast cancers can be seen on a mammogram up to 2 years before they could be otherwise detected by a woman or her physician.

Because access to such screening is vital for all women, I am pleased to report that third-party reimbursement for mammography is increasing, allowing more women to benefit from this potentially lifesaving procedure. Through Medicare, the Department of Health and Human Services helps to cover the cost of screening mammography for women age 65 and older. Private insurers offer coverage for this procedure, and a major effort is underway to inform employers how businesses can provide screening mammography.

In addition to encouraging employers, insurers, and health care providers to voluntarily develop policies that expand access to affordable mammography, the Federal Government is also helping to lead the way in research against breast cancer. In a program that has the potential to save many lives in the future, women who are at high risk for breast cancer are participating in the first large-scale study to prevent the disease. We look forward to significant results from the Women's Health Initiative, the largest-ever research effort directed specifically at women. This comprehensive program will target the major causes of illness and death in older women, including breast cancer. In addition, the President's Cancer Panel this year established a Special Commission on Breast Cancer to undertake a comprehensive review of all aspects of the breast cancer problem and to make recommendations on how to accelerate progress against this disease.

Together with the Federal Government, private researchers, health care providers, members of breast cancer support groups, and other concerned Americans are working hard to ensure that women and their physicians are aware of each important advance in breast cancer research. This joint effort is saving lives, and during National Breast Cancer Awareness Month, we reaffirm our commitment to ensuring that it continues.

The Congress, by Senate Joint Resolution 303, has designated October 1992 as "National Breast Cancer Awareness Month."

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim October 1992 as National Breast Cancer Awareness Month. I invite the Governors of the States and the appropriate officials of all other areas under the jurisdiction of the United States to issue similar proclamations. I also encourage health care providers and other interested organizations and individuals to observe this month with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of September, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and seventeenth.

George Bush

[FR Doc. 92-22862
Filed 9-16-92; 4:32 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 6473 of September 16, 1992

Citizenship Day and Constitution Week, 1992

By the President of the United States of America

A Proclamation

On September 17, 1787, after 4 months of rigorous debate, study, compromise, and decision, delegates to the Federal Convention in Philadelphia signed our Constitution and submitted it to the States for ratification. Their hopes and prayers for a successful Convention had been answered. Today, more than 200 years later, we Americans continue to enjoy the blessings of liberty and self-government guaranteed by our Constitution.

When our Nation's Founders convened during the long, hot summer of 1787, leaving behind their farms and other personal interests in order to preserve our fragile Confederation of States, America looked very different from today. The United States has grown from a population of about 3,500,000 people who lived primarily along the Atlantic coast to a population of some 250,000,000 that now extends from the Great Lakes to the Gulf of Mexico, as well as to Alaska and Hawaii. In 1787 the primary means of transportation was the horse. The Constitution itself was carried from Philadelphia to the Confederation Congress in New York by stagecoach, on a journey that took Major William Jackson 2 days. Today, by contrast, one can travel the same distance within hours.

Despite such dramatic changes, our Constitution remains the guiding charter of American government. This great document is, therefore, both a tribute to the wisdom and foresight of its Framers and a symbol of our abiding commitment to liberty under law.

The Framers of our Constitution were well aware of the lasting significance of their actions, and James Madison expressed a commonly held sense of destiny when he suggested that the outcome of the Federal Convention would "decide forever the fate of republican government." Our Constitution thus codifies in law the timeless truths that were first set forth in our Declaration of Independence: "that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."

Generations of Americans have cherished our Constitution, and hundreds of thousands have given their lives to defend the principles it enshrines. We must continue to promote knowledge of, and reverence for, our Constitution if we are to preserve this great experiment in self-government and achieve further progress for America in the generations to come. As President Calvin Coolidge said: "If we wish to build new structures, we must have a definite knowledge of the old foundations. . . . We must frequently take our bearings from the fixed stars of our political firmament if we expect to hold a true course."

To become naturalized citizens, immigrants to the United States must pass an examination on the guiding tenets and basic institutions of American government, including those set forth in our Constitution. Yet the responsibilities of citizenship belong to each of us, native-born and naturalized Americans alike. We fulfill those duties when we study our Nation's history and strive to maintain the great moral and spiritual heritage that inspired our Founders' vision for America. Indeed, good citizenship goes hand in hand with traditional values of faith and devotion to family, honesty and hard work, personal

responsibility, and respect and concern for others. We also fulfill our obligations as a free people when we take advantage of our many opportunities to participate in the democratic process, including the consistent and prudent exercise of our right to vote.

In commemoration of the signing of our Constitution and in recognition of the importance of informed, responsible citizenship in our system of self-government, the Congress, by joint resolution of February 29, 1952 (36 U.S.C. 153), designated September 17 as "Citizenship Day." Also, by joint resolution of August 2, 1956 (36 U.S.C. 159), the Congress designated the week beginning September 17 and ending September 23 of each year as "Constitution Week."

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim September 17, 1992, as Citizenship Day and call for the display of the flag of the United States on all government buildings on that day. I also proclaim the week of September 17 through September 23, 1992, as Constitution Week and urge all Americans to join in observing these occasions with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of September, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and seventeenth.

George Bush

[FR Doc. 92-22863
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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

RIN 3206–AE63

5 CFR Parts 531, 536, and 550

Portability of Benefits for Nonappropriated Fund Employees

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is adopting as final the interim rule published in the **Federal Register** (57 FR 12403, April 10, 1992) on pay-setting and crediting of former nonappropriated fund (NAF) service for within-grade increases, grade and pay retention, and severance pay for certain former NAF employees under the Portability of Benefits for Nonappropriated Fund Employees Act of 1990 (Portability Act).

EFFECTIVE DATE: Final rules effective retroactively to January 1, 1987.

FOR FURTHER INFORMATION CONTACT: Bernadette Christie, (202) 606–2858.

SUPPLEMENTARY INFORMATION: On April 10, 1992, OPM published interim regulations implementing the pay provisions of the Portability of Benefits for Nonappropriated Fund Employees Act of 1990 providing that interested parties could file comments through June 9, 1992.

OPM received no comments on the substance of the interim regulations. However, a labor organization commented on a remark in the supplementary information addressing eligibility for grade retention of former NAF employees who move to civil service system positions under the provisions of the Portability Act. The labor organization objected to the statement that an employee moving from one employment system to another would not do so as the result of reduction-in-force or reclassification procedures and, therefore, would not be eligible for grade retention. The labor organization indicated that movement from one pay system to another would require a change in the employee's job classification in order to include the position in the gaining classification system. The supplementary information was correct. An employee moving from the NAF employment system to the civil service employment system does not simply have his or her position reclassified. Rather, he or she moves to a position in a different employment system. The purpose of the Portability Act is to give the employee credit for previous service in his or her former employment system. The final regulations credit the employee's NAF service for the purpose of grade retention, should the employee be reduced in grade after moving to the civil service employment system.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they apply only to Federal agencies and employees.

List of Subjects in 5 CFR 531, 536, and 550

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.

Douglas A. Brook,

Acting Director.

Accordingly, the interim rule amending 5 CFR parts 531, 536, and 550 which was published at 57 FR 12403 on April 10, 1992, is adopted as a final rule without change.

[FR Doc. 92–22585 Filed 9–17–92; 8:45 am]

BILLING CODE 6325–01–M

5 CFR Parts 870 and 890

RIN 3206–AF20

Federal Employees' Group Life Insurance Program and Federal Employees Health Benefits Program; Benefits for Hostages in Iraq, Kuwait, and Lebanon

AGENCY: Office of Personnel Management.

ACTION: Interim regulations with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to amend its existing regulations to reflect the provisions of Public Law 102–138 (The Foreign Relations Authorization Act, Fiscal Years 1992–1993) that amend Pub. L. 101–513 (the Hostage Relief Act of 1990). Public Law 101–513 extended coverage under the Federal Employees' Group Life Insurance (FEGLI) Program and the Federal Employees Health Benefits (FEHB) Program to certain U.S. hostages in Iraq, Kuwait, and Lebanon while they were in hostage status and for 12 months thereafter. Pub. L. 102–138 provides for the continuation of FEGLI and FEHB coverage for up to 60 months after hostage status in Lebanon ended and 12 months after hostage status ended in Iraq and Kuwait. It also changes the earliest possible effective date of coverage for hostages in Lebanon from January 1, 1990, to June 1, 1982 (or as soon thereafter as they become eligible for benefits).

DATES: Interim regulations are effective September 18, 1992.

Comments must be received on or before November 17, 1992.

ADDRESSES: Written comments may be sent to Andrea S. Minniear, Assistant Director for Retirement and Insurance Policy, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or delivered to OPM, Room 4351, 1900 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Abby L. Block, (202) 606–0191.

SUPPLEMENTARY INFORMATION: Under these interim regulations, FEGLI and FEHB coverage for hostages in Lebanon and their families may continue for up to

60 months after hostage status ended and for hostages in Iraq and Kuwait, for up to 12 months after hostage status ended, unless the hostage cancels the coverage earlier. In the case of individuals who were hostages in Lebanon before January 1, 1990, coverage may begin as early as the date that hostage status began, but no earlier than June 1, 1982, subject to the determination of the U.S. Department of State. The U.S. Department of State continues to have the responsibility for determining the eligibility of individuals under Public Law 101-513, as amended, and the appropriate date for coverage to begin.

These interim regulations also provide that FEHB coverage for survivors of hostages who die before the 60-month or 12-month period ends may continue for the full period following the end of the hostage status.

Waiver of Notice of Proposed Rulemaking

Pursuant to section 553(b)(3)(B) of title 5 of the U.S. Code, I find that good cause exists for waiving the general notice of proposed rulemaking. The amendments to Public Law 101-513 were effective retroactive to the date of enactment of Public Law 101-513, November 5, 1990. Therefore, there is no purpose in delaying the effective date of these interim regulations.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals who were hostages in Iraq, Kuwait, and Lebanon during a specific period of time.

List of Subjects

5 CFR Part 870

Administrative practice and procedure, Government employees, Hostages, Life insurance, Retirement.

5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Reporting and recordkeeping requirements, Retirement.

U.S. Office of Personnel Management.

Douglas A. Brook,

Acting Director.

Accordingly, OPM is amending 5 CFR parts 870 and 890 as follows:

PART 870—BASIC LIFE INSURANCE

1. The authority citation for part 870 is revised to read as follows:

Authority: 5 U.S.C. 8716; § 870.202(c) also issued under 5 U.S.C. 7701(b)(2); subpart J is also issued under section 599C of Pub. L. 101-513, 104 Stat. 2064, as amended.

2. In § 870.1002, the definition of "period of eligibility" is revised to read as follows:

§ 870.1002 Definitions.

* * * * *

Period of eligibility means the period beginning on the effective date set forth in § 870.1004 and ending 60 months after hostage status ended for hostages in Lebanon and 12 months after hostage status ended for hostages in Iraq and Kuwait.

3. Section 870.1004 is revised to read as follows:

§ 870.1004 Effective date of coverage.

Unless the U.S. Department of State determines that a later date is appropriate, coverage under this subpart was effective on August 2, 1990, for hostages in Iraq and Kuwait and on the later of the date hostage status began or June 1, 1982, for hostages in Lebanon.

4. In § 870.1006, paragraph (a) is revised to read as follows:

§ 870.1006 Termination of coverage.

(a) Coverage of an individual under § 870.1003(a) terminates 60 months after hostage status ended for hostages in Lebanon and 12 months after hostage status ended for hostages in Iraq and Kuwait, unless the individual cancels the coverage earlier.

* * * * *

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

5. The authority citation for part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c-1; subpart L also issued under sec. 599C of Pub. L. 101-513, Stat. 2064, as amended.

6. In § 890.1202, the definition of "period of eligibility" is revised to read as follows:

§ 890.1202 Definitions.

* * * * *

Period of eligibility means the period beginning on the effective date set forth in § 890.1204 of this subpart and ending 60 months after hostage status ended for hostages in Lebanon and 12 months after hostage status ended for hostages in Iraq and Kuwait.

7. In § 890.1203, paragraph (d) is revised to read as follows:

§ 890.1203 Coverage.

* * * * *

(d) Eligible surviving family members of an individual covered under this subpart whose hostage status ended because of death or who dies during the 60 months or 12 months following the end of hostage status are eligible to continue enrollment under this part. The enrollment terminates no later than 60 months or 12 months after hostage status ended.

* * * * *

8. Section 890.1204 is revised to read as follows:

§ 890.1204 Effective date of coverage.

Unless the U.S. Department of State determines that a later date is appropriate, coverage under § 890.1203(b) is effective on August 2, 1990, for hostages in Iraq and Kuwait and on the later of the date hostage status began or June 1, 1982, for hostages in Lebanon.

9. In § 890.1207, paragraph (a) is revised to read as follows:

§ 890.1207 Termination of coverage.

(a) Coverage of an individual under § 890.1203(b) terminates 60 months or 12 months after hostage status ended unless the individual cancels the coverage earlier.

* * * * *

[FR Doc. 92-22587 Filed 9-17-92; 8:45 am]

BILLING CODE 6325-01-M

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5 CFR Part 890

RIN 3206-AF19

Federal Employees Health Benefits Program; an Opportunity To Change to a Family Enrollment

AGENCY: Office of Personnel Management.

ACTION: Interim regulations with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to allow separating employees to change from a self only to a family enrollment under the Federal Employees Health Benefits (FEHB) Program during the final pay period if the employee or the employee's spouse is pregnant. The purpose of this regulation is to give employees an opportunity to elect family coverage before separation so that the health care costs of a child born during the 31-day temporary extension of coverage

following the separation from Federal service would be covered through the end of the 31-day period of the temporary extension of coverage. Although these employees may elect a family enrollment under the temporary continuation of coverage (TCC) provisions, the TCC enrollments do not begin until the temporary extension expires.

DATES: Interim regulations are effective October 19, 1992. Comments must be received on or before November 17, 1992.

ADDRESSES: Written comments may be sent to Andrea S. Minniear, Assistant Director for Retirement and Insurance Policy, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or delivered to OPM, room 4351, 1900 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Abby L. Block, (202) 606-0191.

SUPPLEMENTARY INFORMATION: Under FEHB law and OPM regulations, Federal employees may change from a self only enrollment to a family enrollment within 60 days after the birth of a child. The change is effective retroactively to the first day of the pay period during which the child was born. Therefore, the health costs of a child born to a Federal employee become covered though the employee has self only coverage at the time of the birth.

The FEHB law provides for a temporary extension of coverage for conversion to a nongroup policy following the termination of an enrollment due to separation from Federal service. Regulations specify that the temporary extension of coverage is for 31 days. There is no cost to the separated employee for this extended coverage since it is merely an extension of the coverage that existed when the employee separated. No change of enrollment can occur during that period.

When an enrolled Federal employee separates from Federal service, he or she is also eligible to enroll for TCC for up to 18 months, unless the separation is involuntary due to gross misconduct. The separating employee may choose either a self only or family enrollment under TCC regardless of the type of enrollment he or she had at separation. That is, a pregnant employee with self only coverage at the time of separation can elect a family enrollment under TCC in order to cover the child when it is born. By law, the TCC enrollment begins when the 31-day temporary extension of coverage expires. After the TCC enrollment begins, a former employee whose initial TCC enrollment was for self only coverage may change to family coverage within 60 days after the birth of a child and the change will be retroactive, just as it is for employees with regular FEHB coverage. In both cases, the birth must occur after the enrollment begins.

However, there is no provision by which a child born to an employee with self only coverage during the 31-day temporary extension can acquire coverage before the TCC enrollment begins. In most cases, of course, an employee can time his or her separation so that the TCC coverage begins before the child is born. Occasionally, however, a child is born during the 31-day temporary extension either because the birth occurs early or because the employee had no control over the date of separation. In these cases, the child's health care costs are not covered from the date of birth until the TCC coverage begins.

For these reasons, OPM is revising its regulations to allow an employee to change from self only to family coverage during his or her final pay period if the employee or the employee's spouse is pregnant. If the separating employee chooses to change enrollment under this regulation, the change would be effective on the first day of the employee's final pay period. Thus, the coverage terminated by the separation would be a family enrollment and any child born during the 31-day extension of that coverage would be covered. In addition, those few employees who are barred from enrolling under TCC because of the circumstances of their separation could make this change in order to have the opportunity to convert to a nongroup contract for the family.

Waiver of Notice of Proposed Rulemaking

Pursuant to section 553(b)(3)(B) of title 5 of the U.S. Code, I find that good cause exists for waiving the general notice of proposed rulemaking. The interim regulations simply allow certain parents to ensure health coverage for infants born during the 31-day period before temporary continuation of FEHB coverage begins. Delaying the effective date of these regulations would be contrary to the public interest and would serve no useful purpose.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect a small number of Federal employees.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Reporting and recordkeeping requirements, Retirement.

U.S. Office of Personnel Management.

Douglas A. Brook,

Acting Director.

Accordingly, OPM is amending 5 CFR Part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c-1; subpart L also issued under sec. 599C of Pub. L. 101-513, 104 Stat. 2064, as amended.

2. In § 890.301, a new paragraph (dd) is added to read as follows:

§ 890.301 Opportunities to register to enroll and change enrollment.

* * * * *

(dd) *Separating employees.* An employee may change enrollment from self only to self and family during the pay period in which the employee's coverage terminates due to separation if the employee or the employee's spouse is pregnant. The employee must supply medical documentation of the pregnancy.

3. In § 890.306, a new paragraph (m) is added to read as follows:

§ 890.306 Effective dates.

* * * * *

(m) *Separating employees.* The effective date of a change in enrollment under § 890.301(dd) is the first day of the pay period in which the health benefits registration form is received by the employing office.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 87-005-2]

RIN 0579-AA21

Importation of Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are revising certain importation prohibitions, restrictions and procedural requirements contained in "Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products." We believe these revisions are necessary due to changes in the distribution of plant pests known to be present in certain foreign countries, and due to reevaluations of the risks that these pests could be inadvertently introduced into the United States. These revisions will affect the types of nursery stock and related articles allowed to be imported into the United States, and the procedures required for their importation.

DATES: Final rule effective October 19, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Cooper, Senior Operations Officer, Port Operations, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 635, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-3249.

SUPPLEMENTARY INFORMATION:

Background

The Plant Quarantine Act (7 U.S.C. 151 *et seq.*) and the Federal Plant Pest Act (7 U.S.C. 150aa *et seq.*) authorize us to prohibit or restrict the importation into the United States of any plants, roots, bulbs, seeds, or other plant products in order to prevent the introduction into the United States of plant pests.

Regulations promulgated under this authority include, among others, 7 CFR 319.37 through 319.37-14, "Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products" (the regulations). These regulations govern the importation of living plants, plant parts, and seeds for or capable of propagation, and related articles. Other sections of part 319 deal with articles such as cut flowers, or fruits and vegetables intended for consumption.

The Federal Plant Pest Act defines "plant pest" as "any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured, or other products of plants." The regulations in 7 CFR 319.37-1 contain a similar definition of "plant pest." We use the term "plant pests" in many places in the regulations, to refer to these living stages. Occasionally, where the intent of the regulations is to address certain types of pests and exclude others, we use more specific terms, e.g., "plant diseases" where we discuss virus indexing procedures useful in detecting plant diseases but not other types of plant pests.

The regulations prohibit or restrict the importation of most nursery stock, plants, roots, bulbs, seeds, and other plant products. These articles are classified as either *prohibited articles* or *restricted articles*.

A *prohibited article* is an article that the Deputy Administrator for Plant Protection and Quarantine (PPQ) has determined cannot feasibly be inspected, treated, or handled to prevent it from introducing plant pests new to or not widely prevalent or distributed within and throughout the United States, if imported into the United States. Prohibited articles may not be imported into the United States, unless imported by the United States Department of Agriculture for experimental or scientific purposes under specified safeguards.

A *restricted article* is an article that the Deputy Administrator for PPQ has determined can be inspected, treated, or handled to eliminate the risk of its spreading plant pests if imported into the United States. Restricted articles may be imported into the United States if they are imported in compliance with restrictions that may include permit and phytosanitary certificate requirements, inspection, treatment, or postentry quarantine.

Comments on the Proposed Rule

On February 15, 1991, we published in the **Federal Register** a proposed rule (56 FR 6297-6315, Docket No. 87-005) that proposed to change the regulations by: (1) Adding certain articles to the list of prohibited articles; (2) changing the conditions under which certain restricted articles may be imported into the United States; and (3) changing certain operating procedures regarding inspections, certification, permits, and agreements. The proposed rule invited comments to be submitted on these proposed changes until April 16, 1991. We also held a public hearing, announced in the proposed rule, on March 28, 1991, in Washington, DC.

We received 53 written comments prior to the closing date of the comment period. At the public hearing, 13 speakers presented comments. These comments and our responses to them are discussed below. We have made changes to the proposed rule in response to some of the comments, and these changes are also identified and discussed below.

We received numerous comments on this proposal after the closing date of the comment period. The great majority of these comments concerned our proposal to require postentry quarantine growing for rose plants from Canada. For the most part, these comments expressed concern for the economic impact of the proposed change. None of these late comments provided biological or pest risk reasons to justify withdrawing the proposal to require postentry quarantine for rose plants from Canada. However, we have received information which was not submitted as a comment on the proposed rule, which has caused us to withdraw the proposal to require postentry quarantine for roses from Canada. See "Withdrawal of Postentry Quarantine Requirement For Roses From Canada," below.

Comments on Lists of Countries, Plant Pests, and Prohibited and Restricted Articles

Comment: In *Prunus* seed listing in § 319.37-2, the language needs to be clarified by placing "(almond, apricot, nectarine, peach, plum, prune)" immediately behind the "*Prunus* spp." heading and then following with "(except species in subgenus Cerasus)."

Response: We agree that the listing for *Prunus* needs clarification, and are changing it to read "*Prunus* ssp. seed only (almond, apricot, nectarine, peach, plum and prune, but not species in subgenus Cerasus) not meeting the conditions for importation in § 319.37-5(j)". This should make it clear that *Prunus* seed is prohibited import unless it is seed of the subgenus Cerasus, or is accompanied by a certificate in accordance with § 319.37-5(j) certifying that the nursery or country of origin is free of plum pox (Sharka) virus.

Comment: APHIS should reconsider the survey data relied on to propose removing Israel from the list requiring certification for potato cyst nematode, because it is bordered by countries (Egypt and Jordan) with the pest.

Response: The European and Mediterranean Plant Protection Organization (EPPO), which provided the data evaluated by APHIS in making this decision, is a recognized regional plant health organization which provides standards for use by any member country prior to EPPO's acceptance and announcement that a member country is free from a specific organism. In addition, at present, the bordering Arab countries have sanctions that prohibit commercial trade with Israel.

Comment: In the list of plant diseases in § 319.37–5(b)(2), entry (xxxvii), "Grapevine yellows disease bacterium," is a misnomer. Yellows is a general term that includes flavescence-doree, bois-noir and other diseases that appear to be caused by a mycoplasma-like organism, not a bacterium.

Response: Mycoplasma-like pathogens have been associated with flavescence doree and other yellows type diseases. Collectively, these diseases are often referred to as "yellows." However, a bacterium has also been associated with yellows symptoms in Germany and Greece. It is this bacterium that we are referring to by the name "grapevine yellows disease bacterium."

Comment: The list of prohibited articles and countries suggests there is a lack of focus on arthropods. For example, *Liriomyza huidobrensis* should be listed as a pest for Chrysanthemums.

Response: In general, the life stages of most arthropods, including *L. huidobrensis*, and the damage they cause are consistently detectable by visual inspections at ports of entry or plant inspection stations. Therefore, the minimum regulation required to protect U.S. agriculture from the introduction of these pests is inspection and treatment, or postentry quarantine, or rejection of infested shipments. Since prohibition is unnecessary for successful exclusion in most cases, few arthropods are named in the list of plant pests in § 319.37–2.

Grapevine From Germany

The proposal to add a new § 319.37–5(h) to allow importation of *Vitis* spp. from German nurseries that meet certain conditions elicited a large number of comments. Commenters identified three significant problems with the proposal, and we do not currently see any practical way to resolve these problems in the final rule. Therefore, we are eliminating proposed § 319.37–5(h) from the final rule.

The three issues that convinced us to withdraw this proposed change may be summarized as follows:

1. The proposal required the German nurseries to propagate the *Vitis* in soil fumigated with methyl bromide, but regulations of the German government prohibit the nurseries from employing most fumigants, including methyl bromide.

2. German land use restrictions require the nurseries to grow *Vitis* on the same land year after year. This re-use of the same land greatly increases the risk that nematodes carrying viruses can be established and spread in *Vitis* grown on the land.

3. The German nurseries are located in a flood plain and have been subjected to flooding in recent years. Flooding greatly increases the risk of spreading material containing nematodes that may carry grape viruses into the fields where the nurseries grow *Vitis*.

In addition to these problems identified by commenters, reports from the Canadian plant protection service indicate that *Vitis* material recently imported into Canada from German nurseries involved in this program was found to be infected with prohibited viruses.

Although we are withdrawing proposed § 319.37–5(h), we are responding below to some additional comments objecting to the proposal. Some of these comments apply to importations of *Vitis* or other materials in general, and some bring up objections that we do not consider valid.

Comment: Vitis from Europe should be given a hot water treatment to destroy leafhoppers that could carry the agents for flavesence doree, Bois noir, or other mycoplasma-like organism diseases. Most German rootstock is grown in Italy, Greece, or France, where the agents spread naturally through leafhoppers; therefore indexing alone is not enough protection.

Response: The flavescence doree pathogen has been identified as a mycoplasma-like organism that was originally described in France and is transmissible by the leafhopper *Scaphoideus littoralis*. Based on reports of plant pest occurrence submitted to APHIS by foreign plant protection services and in the scientific literature, the flavescence doree organism has not been shown to occur in Germany. The pathogen of the yellows disease called Vergilbungskrankheit in Germany has not been identified or shown to be transmitted by any insect and is not affected by the application of insecticides. If rootstocks and scions originate in Germany, the use of any treatment to destroy leafhoppers or the flavescence doree pathogen cannot be justified.

If the rootstocks or scions originate in France or Italy, there is a possibility the flavescence doree pathogen could spread to these grapes and eventually be exported to the United States where the leafhopper vector occurs. This pathogen does not consistently cause symptoms each year, so visual inspections of the German nursery may not always detect its presence. A hot water treatment for 72 hours at 30 °C can be used to treat this pathogen in grapevines, but this treatment may not be 100% effective. Therefore, scions and rootstocks originating in Germany, but not in France or Italy, can be considered free of this pathogen.

If a treatment to eliminate leafhoppers is considered desirable, the biology of *S. littoralis* must be evaluated. Limited information indicates this leafhopper overwinters as eggs on grapevines. Eggs are not a potential threat, because flavescence doree and the other grapevine yellows pathogens are not known to be transmitted from an infected adult leafhopper through the egg to their progeny. However, overwintering nymphs and adults on dormant plant material or nymphs and adults on green vines represent a threat because the flavescence doree pathogen can be transmitted by *S. littoralis* for life after acquisition. In this case, inspections and treatments, even mandatory treatments, to eliminate leafhoppers would be advisable.

Comment: The bacterial blight pathogen, *Xylophilus ampelinus*, can be easily transmitted in dormant wood, and U.S. Thompson Seedless varieties are particularly susceptible. Hot water treatment may help reduce *X. ampelinus* populations in *Vitis* imported from Europe.

Response: The bacterial blight pathogen, *Xylophilus ampelinus*, has not been reported to occur in Germany. However, it does occur in France and Italy; consequently, the use of French or Italian rootstocks or scions increases the risk of importing this pathogen. The risk of importing this pathogen is another reason for insisting that both the scions and rootstocks of exported grapevines must be of German origin. The symptoms caused by this bacterium should be obvious either in Germany before export or during postentry quarantine in the U.S., but if introduced this pathogen would be difficult to eradicate. Grapevines imported into Australia are treated with hot water before growing in quarantine to prevent introduction of this pathogen, and APHIS may evaluate details of this treatment if we consider importation of German *Vitis* at some time in the future.

Comment: The U.S. should adopt a *Vitis* postentry system like that of Canada, which includes woody, herbaceous, and serological indexing of samples from each nursery in their international program.

Response: If at any time in the future APHIS approves importation of certified German grapevines into postentry quarantine, the conditions would likely require that a sample of each variety from each nursery be taken at the appropriate inspection station and shipped to the National Plant Germplasm Quarantine Center in Beltsville, Maryland, for testing by sap transmission, grafting and serological techniques. A similar system has been used to monitor commercial shipments of apple, pear, and stone fruit trees imported from Europe into the U.S. under postentry quarantine.

Comment: The U.S. does not have the infrastructure to test and treat grape materials under controlled quarantine conditions. Such test facilities would be the only way to assure safe *Vitis* imports.

Response: Neither the USDA, nor the universities, nor the State departments of agriculture have the capacity to test commercial quantities of imported grapevines for all exotic pests under controlled quarantine conditions. However, as with many other commercial crops, a foreign certification program operated under safeguards agreed to by APHIS and the foreign plant protection service can provide commercial quantities of plants free of hazardous pests that do not occur in the United States. These cooperative efforts between APHIS and foreign officials have been successful for decades in assuring the safe importation of fruits and vegetables, bulbs, ornamentals in growing media, and fruit trees.

Comment: All imported *Vitis* materials should be subjected to quarantine and indexing prior to release, unless they supply certification similar to the Foundation Plant Material service provided by the USDA/UC National Grape Importation and Clean Stock Facility at Davis, California.

Response: Any program for *Vitis* imports that APHIS might propose in the future likely require the *Vitis* to be accompanied by a phytosanitary certificate with an added declaration stating that the grapevines meet U.S. entry requirements, which would likely include indexing in the country of origin. If the certificate did not have the added declaration or is improperly completed, the grapevine in that shipment would not be admitted.

Comment: Importation of German *Vitis* without absolute assurance that the materials are disease free could devastate the U.S. grapevine industry.

Response: Absolute assurance of freedom from disease is impossible to establish. We agree that if certain grapevine diseases became established in the United States they could devastate the domestic grapevine industry, and the goal of our program with regard to *Vitis* is to minimize that possibility. We agree that the proposed system for allowing German *Vitis* imports could not be followed in Germany and therefore could not sufficiently minimize the risk associated with importing German *Vitis*, which is why we have withdrawn the proposal.

Comment: There will be no way to verify that German *Vitis* nurseries fumigate their soil and use virus free materials.

Response: We believe that the withdrawn proposal and normal APHIS operating procedures would have ensured that these conditions were met. Under the withdrawn proposal, the phytosanitary certificate that must accompany the grapevines destined for postentry quarantine must contain an added declaration by the German plant protection service that the fumigation was performed and that the parent stock had been indexed for listed viruses and other pathogens. The postentry quarantine requirement was designed to provide a check on the health of the imported grapevines. A sample of each shipment would have been tested by APHIS personnel to monitor the health of the German grapevines. State or federal inspectors would periodically observe the growing grapevines for obvious diseases during the two growing seasons that the German grapevines are held in postentry quarantine. Diagnostic evaluations on grapevines with suspicious symptoms would also have been performed by APHIS or State personnel. The German participants knew that if a hazardous pest is detected or introduced, the program and their export market could be canceled, so they had some incentive to follow phytosanitary procedures agreed upon.

Comment: Vitis imports should follow the technical guidelines for safe movement of grape germplasm outlined in the WRCC24 report on Grape Pests and diseases (August 7, 1988) and the FAO–IBPGR Report (1990).

Response: The technical aspects of the German program have been reviewed by scientists both inside and outside APHIS. The parent plants in the German program have been tested for pathogens by internationally accepted procedures, and the progeny of these parent plants have been maintained in a manner designed to minimize the possibility of infection by local pathogens.

Comment: Vitis imports should be tested and indexed at a facility like the USDA/UC National Grape Importation and Clean Stock Facility at Davis, California.

Response: The National Grape Importation and Clean Stock Facility being built in Davis, California, is being designed to test small quantities of commercial cultivars and some germplasm which are prohibited entry in commercial quantities from various countries. This facility will not be designed or staffed to process commercial quantities of grapevines from any country. In fact, just the demand for prohibited commercial cultivars and germplasm is overwhelming present resources committed to quarantine activities. Instead of inundating this program with grapevines to process, we proposed to accept and monitor the importation of only certified grapevines from a foreign certification program which we have carefully evaluated to determine that it can provide grapevines of comparable health to those produced by U.S. certification programs.

Comment: German nurseries should re-test *Vitis* after it is planted in their fields.

Response: A requirement to retest grapevines in the nursery fields without reasonable cause is inconsistent with our certification standards for other foreign certification programs and is not mandatory for U.S. certification programs which produce plants for export. However, under the withdrawn proposal, if suspicious symptoms were detected by German inspectors in grapevines before export, the affected grapevines would not be certified unless the cause can be determined as abiotic in origin. After arrival in the United States, a sample of each cultivar from each nursery would have been tested by APHIS personnel to monitor the health of the German grapevines.

Comment: Imported *Vitis* should be accompanied by adequate documentation showing the complete origin and growing history, to prevent import of vines with a "German address" regardless of the country in which they were grown.

Response: The current regulations require each shipment of restricted articles to be accompanied by a phytosanitary certificate of inspection issued by the plant protection service of the country where the articles were grown.

We believe this certificate constitutes adequate documentation to inform

inspectors at the port of first arrival in the United States where the articles were grown.

Comment: European laws allow growers up to 15% off type vines; there should be zero tolerance for off type vines for import into the U.S.

Response: The laws administered by APHIS authorizing the regulation of imported plants and plant parts were enacted to prevent the introduction of hazardous pests with this imported plant material. These laws do not require or authorize efforts to insure genetic homogeneity or trueness-to-type of imported plant material. These are quality control issues which must be negotiated between the U.S. buyer and the foreign seller in the same way the U.S. buyer would do with a U.S. seller.

Comment: Specific German *Vitis* indexing procedures and test protocols must be reviewed by APHIS and made available for U.S. industry review.

Response: As discussed below in the response to a comment about the definition of "indexing," we rely on foreign plant protection services to evaluate the effectiveness of indexing protocols that are used as the basis for issuing phytosanitary certificates for regulated articles. Although they are not specifically required to do so under the regulations, these services sometimes consult with APHIS regarding the effectiveness of new indexing protocols before they begin to issue certificates based on the protocol.

Comment: Even assuming adequate German indexing and testing of *Vitis*, some pests could be introduced through error and negligence, and could spread from postentry quarantine sites through vectors known to occur in the U.S.

Response: If we propose a *Vitis* import procedure in the future, safeguards would be implemented both before export and during postentry quarantine in the U.S. to minimize the possibility of pest introduction. However, error and negligence are always possible when human beings are involved. If grapevines infected with an exotic pest are imported, symptoms on the growing vines should alert the importer or State inspector early enough so that eradication is possible. The only exotic obscure German pathogens with known vectors are the nepoviruses. In many cases, the European nepoviruses cannot be transmitted by American nematode species. Even if a domestic nematode species in the area can transmit the introduced nepovirus, the nematode will not move the virus far beyond the originally infected vines.

Comment: USDA lacks the resources to effectively monitor the large number of *Vitis* imports expected, as evidenced by the recent call for a limit on the number of plants allowed to enter California under postentry quarantine.

Response: We are working on methods to improve the procedures for monitoring postentry quarantine material, and are considering proposing regulations to address improved methods for postentry quarantine management.

Comments on Definitions

Comment: The proposed revision of the definition of "indexing" is too vague and broad and constitutes a relaxation. The current definition is valuable because it allows only the use of sensitive indicator plants for pathogen detection. If tests such as serology or nucleic acid hybridization are used, the regulations must state this and must include the protocol and specific antisera or probes and controls to be employed in performing the test.

Response: During recent years, the use of the term "indexing" in scientific research and certification programs has evolved to include not only inoculation of indicator plants but also serology, electron microscopy and nucleic acid hybridization. The actual tests used in the indexing of each crop will differ with the crop and will change as technology improves. Therefore, it would be impractical to specify all specific protocols, antisera or probes that would be acceptable for indexing.

Foreign plant protection services evaluate the effectiveness of indexing protocols used as the basis for issuing phytosanitary certificates for regulated articles. Before they agree to issue phytosanitary certificates attesting to the results of indexing, the foreign plant protection services ensure that protocols use scientifically valid procedures and materials that will effectively detect the plant diseases in question. Foreign plant protection services also consult with APHIS regarding the effectiveness of new indexing protocols before they begin to issue certificates based on the protocol.

We believe that protocols used by laboratories performing indexing are effective, because foreign plant protection services evaluate each protocol before its use, and because the foreign plant protection services and APHIS monitor the use of the protocols in the laboratories. Foreign plant protection services have an interest in the accuracy of the indexing they certify in phytosanitary certificates. These foreign plant protection services operate some indexing laboratories directly, and supervise or monitor the indexing performed in other, private laboratories. In this area, as in many other areas of our plant import regulations, APHIS relies to some extent on the activities of foreign plant protection services. Finally, exporters have a commercial interest in ensuring that their products are effectively indexed to protect their export markets.

We agree that because the proposed definition of "indexing" is more inclusive than the old definition, it could be considered vague or overly broad. The proposed definition could lead some readers to believe that any procedure, regardless of accuracy, would be accepted by APHIS as indexing.

Therefore we are changing the definition to list the approved indexing procedures, which may be employed using any protocols acceptable to the plant protection service that issues phytosanitary certificates based on them. The revised definition also describes the purpose for which indexing is used in the regulations, and states which indexing procedures may be used with each plant genus that requires indexing. The experience of USDA, foreign plant protection services, and research facilities in using these procedures has demonstrated that the procedures authorized for each genus effectively detect the relevant pests for the genus.

As revised in response to this comment, the definition reads as follows:

Indexing. A procedure for using plant material or its extracts to determine the presence or absence of one or more pests in or on the tested plant material. For the purposes of this subpart, indexing is performed in foreign countries to test the parent stock of designated articles that must meet special foreign inspection and certification requirements in accordance with § 319.37–5 to be eligible for importation into the United States. The results of indexing tests are used by the plant protection services of foreign countries to issue phytosanitary certificates declaring plant articles free of specified diseases. The following indexing procedures are authorized for use with the specified plant genera, if the procedures are performed using protocols acceptable to the plant protection service that issues phytosanitary certificates based on them: Mechanical transmission of the pest to an indicator plant for *Dianthus, Malus, Prunus, Rubus,* and *Syringa;* graft transmission of the pest to an indicator plant for *Chaenomeles, Cydonia, Malus, Prunus, Pyrus, Rubus,* and *Syringa;* serology for *Dianthus, Malus, Prunus, Pyrus, Rubus,* and *Syringa;* electron microscopy for *Dianthus* and *Prunus,* and nucleic acid probes for *Chaenomeles, Cydonia, Malus,* and *Pyrus.*

Comment: The term "disease" should be used correctly. The term "pathogen" should be used to define the causal agent that causes the disease which is

being regulated. The term "pest" should be exclusive of all organisms defined as causing disease.

Response: We recognize that the term "disease" as used in the regulations in not in accord with generally accepted scientific usage. However, the term is used in the regulations with the same meaning given to the term in the Plant Quarantine Act, which is the primary statutory authority for 7 CFR part 319. A pending act of Congress, the Plant Protection Act, would correct this discrepancy.

Comments on Canadian Greenhouse-Grown Articles and Imports From Canada

Comment: APHIS should spot check shipments from Canada to be certain that transhipping does not take place.

Response: As it has in the past, APHIS will continue to spot check shipments from Canada to ensure that the articles comply with regulatory requirements. This checking is inspection in accordance with § 319.37–4(b) of the regulations, which states that any restricted article "may be sampled and inspected by an inspector at the port of first arrival and/or under preclearance inspection arrangements in the country in which the article was grown * * *" In addition, we consider the certificate and labeling requirements for restricted articles from Canada, which must indicate that they are "from" Canada in accordance with the definition of "from" contained in § 319.37–1, to be an effective means of preventing transshipment.

Comment: APHIS should add a requirement that growers in Canada keep records of "date of receipt" of greenhouse-grown plants for shipment to the United States.

Response: We agree, and we have changed the regulations concerning the Canadian greenhouse program to state that Agriculture Canada, in a written agreement with each grower, will require the grower to maintain records of the date of receipt, as well as the origin, kinds, and quantities of plants grown for shipment to the United States (see § 319.37–4(c)(1)(ii) and (c)(2)(i)). We feel that this requirement is needed to help ensure that the greenhouse plants shipped to the United States meet the regulatory requirements.

Comment: Does the working regarding the placement of labels, "so as to be readily visible to inspectors and customs officials," mean that APHIS has checked with the United States Customs Service regarding their country of origin labeling requirements, contained in 19 CFR part 134? If not, the need for two labels could be confusing to both APHIS and Customs, and burdensome to the shipper.

Response: Our requirement was not meant to meet U.S. Customs Service county or origin labeling requirements. Customs Service and APHIS labeling requirements differ because the purposes of the two agencies' regulations and certain basic definitions used in them differ, and it is not feasible to meet both sets of requirements in a single label. The APHIS label is meant to identify the grower of the article, not its country of origin, and to inform U.S. Customs Service or APHIS officials that the article is eligible for importation into the United States in accordance with the requirements of 7 CFR 319.37–4(c). As the label will not specify country of origin, we do not feel that it will confuse U.S. Customs Service or APHIS officials seeking country of origin information. We also believe that the burden of using this label is slight, and is significantly less burdensome than using certificate forms or other alternatives.

Comment: In the Canadian greenhouse program in § 319.37–4, the standards for the inspection or review used to justify the statement that a green-house "is believed from injurious plant pests" should be spelled out, including frequency of inspection. The Statement " is believed to be free" is insufficient certification for entry into Washington State.

Response: The rule requires that the Plant Protection Division of Agriculture Canada "inspect greenhouses and the plants being grown in them using inspection methods and schedules approved by Plant Protection and Quarantine." Plant Protection and Quarantine, APHIS, will specify to the Plant Protection Division of Agriculture Canada the nature and frequency of inspections that we consider necessary to justify the statement that a greenhouse "is believed free from injurious pests," based on our experience with initial shipments under the Canadian greenhouse program. If we develop standards of general applicability regarding what is necessary to justify this statement, we will publish these standards in future rulemaking.

Comment: In § 319.37–4, who will ensure that labels are controlled, that growing season inspections are performed and that plant material shipped under this program is of Canadian origin?

Response: The Plant Protection Division of Agriculture Canada, subject to monitoring by APHIS, will ensure that labels are controlled, inspections are performed, and that the plants shipped under the program are of Canadian origin. Under § 319.37(c)(2)(i), all grower records of the kinds, quantities, and origin of the plants shipped will be available for APHIS review.

Comment: Postentry quarantine is required for *Rosa* spp. imported from Canada. We would support an exemption for rose bushes from the United States that are moved to Canada for further growth and then returned to the United States, if Agriculture Canada is capable of enforcing the exception and keeping foreign-grown roses from entering the U.S. in this less restrictive manner.

Response: This suggestion is outside the scope of the changes APHIS proposed in the proposed rule, and further, we have decided to withdraw the proposed provisions affecting importation of rose bushes from Canada. See "Withdrawal of Postentry Quarantine Requirement for Roses From Canada," below.

Comment: Vitis from Canada should not be allowed to be imported with a certificate statement, in lieu of indexing, that certain pests do not occur in Canada. Because Canada allows direct import of *Vitis* from France, *Vitis* from Canada should be indexed for European pests. The certificate should state that the article is free of specified diseases based on visual examination and indexing of the parent stock and inspection of the nursery where it was grown.

Response: Whenever certification programs of foreign countries are reviewed for compliance with U.S. entry requirements, the foreign plant protection service is allowed to certify absence of a pest on the basis that the pest does not occur in the exporting country. Other countries, including Canada, allow us to do the same for our exports. Up to this date, Canada has not reported the detection or introduction of any of the exotic European pests in certified grapevines imported under the new agreement with France.

If an exotic European pest is introduced into Canada in the future, we will reevaluate our entry requirements for Canadian grapevines. At the present time, a requirement to test grapevines of Canadian origin for European pests not known to occur in Canada would be inconsistent with the regulations' requirements for other articles that present similar risk levels.

Comments on the Basis for and Background of the Proposed Rule

Comment: The basis that the proposed rule cites for revising the regulations (that it is necessary due to changes in the distribution of plant pests known to

be present in certain foreign countries, and due to reevaluation of the risks that these plant pests could be inadvertently introduced into the U.S.), is weak, because there is relatively little comprehensive information on pest distribution.

Response: We agree that there is a paucity of information on world pest distribution in general. However, we proposed new prohibitions on the basis of positive reports of particular pests occurring in particular countries. We believe this action is logical and results in better quarantine protection for American agriculture. Proposals to remove certain prohibitions or restrictions were based on specific information about particular pests and plants. These proposals are well-supported by data on distribution of particular pests provided to APHIS by national plant protection organizations, despite the general scarcity of information on world pest distribution.

Comment: A current pest distribution listing is essential if APHIS is going to make decisions that will affect United States agriculture. Such lists cannot be put together for minor crops in the document.

Response: We agree that there is a paucity of information on the pests of minor crops. Current pest distribution listings would be invaluable tools for APHIS, but we can and must make decisions affecting United States agriculture based on the best available scientific information. We believe this approach is logical and legally defensible. The proposed changes in the regulations represent our best efforts to protect United States agriculture from the introduction of hazardous foreign pests.

Comments on Packing Materials

Comment: There is a problem with rock wool as a packing material. Recycled rock wool infested with *Pythium* may be used as a packing material. APHIS should take steps to ensure that rock wool used as packing material is not used for other purposes prior to that use.

Response: All packing materials are required to be new (not to have been recycled and/or used previously as a packing material or otherwise; see § 319.37–9).

Comment: Plant materials can be packed in packing materials that may in fact become the rooting medium. Geranium cuttings may be put into a rooting sponge two weeks before shipment; there is no control on the conditions under which the plant is grown from the time the cutting is stuck until it is shipped. Nematodes will move between substrates in just a few weeks. If the "intent" is to cause roots to develop in the "packing material," then the plant species and "rooting media" in question should be put through the APHIS pest risk analysis program.

Response: We must assume that cuttings are continuously growing and that, therefore, some internal microscopic root initiation begins soon after a cutting is placed into the packing material. If the plants are then held in a pestiferous area, infestation of the plant and/or packing material might occur. This is true regardless of the kind of plant or packing material. Therefore, we are adding a provision to § 319.37–9 that "plants are to be packed in approved packing material immediately prior to shipment." This requirement should help reduce the possibility of infestation of the plant or packing material.

Comment: "A Study of Pest and Disease Risks Associated with the Importation of Potted Ornamental Plants Into the United States," a study submitted to APHIS in May of 1984, shows there are plant pathogenic fungi and nematodes in peat. Therefore peat should be removed from both the list of approved packing materials and growing media.

Response: The cited study lists three species and six genera of nematodes found in soil-free media such as peat. These species and genera are widespread in the United States, and thus cannot be regulated under the Plant Quarantine Act. In order to prohibit peat under the Act, we would have to have information that peat frequently contains injurious insects or dangerous plant diseases new to or not theretofore widely prevalent or distributed within and throughout the United States.

Comments Regarding Executive Order 12291 and Regulatory Flexibility Act

Comment: Why is the economic analysis of the proposed rule not based on the 1987 agricultural census instead of older data?

Response: At the time the proposed rule was drafted, 1987 Census of Agriculture data were not available. We have updated the economic analysis and incorporated 1987 data. Please see the "Executive Order 12291 and Regulatory Flexibility Act" section of this document.

Comment: The economic analysis that concludes a negligible effect from *Vitis* imports does not take into account that the German production cost per vine is 50% of the U.S. cost, and that German production is 18–20 million vines/year versus German demand of only 12 million vines/year. The effect of increased German *Vitis* imports would be a European takeover of the small ($15 million) U.S. grape nursery industry. The economic analysis should also address the probability that German nurseries would undercut U.S. prices and claim superior clonal material, causing enormous losses to U.S. nurseries.

Response: As discussed above, due to pest risk considerations we are withdrawing the proposal to allow importation of *Vitis* from German nurseries that meet specified conditions. Therefore we will not respond to this comment about potential economic impacts of the withdrawn proposal. Should we publish a proposal to allow importation of *Vitis* from German nurseries in the future, we would publish updated economic analysis information at the time of the proposal.

Comment: Exotic pest, like *Thrips palmi*, have the potential to damage a wide range of agricultural commodities. The economic analysis does not consider this possibility. As a result the estimates for economic loss are understated.

Response: Our economic analysis recognizes that introduction of exotic plant pests could have harmful economic effects, and indeed the basic purpose of the regulations is to prevent such introductions. When analyzing the economic impacts of the regulations, we focus primarily on the effects that occur when the regulations operate as planned and achieve their purpose of pest exclusion. If we assume that the regulations fail to exclude pests, then we could very quickly invent a scenario in which United States agriculture suffers massive economic losses. These losses would be the result of *pest introduction*, not effects of the regulations. The economic analysis deals with such scenarios as low-probability events that could occur despite the regulations, not as possible effects of the regulations.

Comment: APHIS predicts that the domestic floriculture industry will suffer an estimated annual loss in total revenue of 3 to 8 percent when additional plant genera in growing media enter the country. This is a direct loss of $65 to $172 million to the domestic industry. These estimates do not consider the potential loss from the unforeseen introduction of a new plant pest. These are unacceptable costs that the regulations should prevent.

Response: Cash receipts for nursery and floriculture crops in the United States totaled $6.4 billion in 1987. We have not predicted an annual loss of 3 to 8 percent of this figure as a result either of this final rule or of possible future proposed rules addressing importation

of plants established in growing media. That 3 to 8 percent range was discussed as a possibility in various informal APHIS documents, but does not represent an official APHIS conclusion about economic impacts. Potential economic impacts of the regulations are discussed in the Executive Order 12291 and Regulatory Flexibility Act section of this document, and future proposed rules concerning importation of plants in growing media will discuss estimated economic impacts of those proposals, in conjunction with preparation of a Regulatory Impact Analysis covering those proposals.

Comment: Economic factors will hurt American industry because of lax use of agricultural chemicals in Europe resulting in resistant pests being imported, unidentified pests reported in Germany, shipment of New Zealand and Australia plants to Europe and then to the United States under the current program. U.S. growers are at a big disadvantage economically because our temperatures are generally lower. European growers have a more cohesive research and sales program, and better access to capital.

Response: APHIS has found no evidence to support the conclusion that use of agricultural chemicals in Europe is resulting in new varieties of chemically resistant pests being imported into the United States. Regarding the economic competitiveness of United States growers, we do not agree that they are at a disadvantage with regard to European growers, but in any event we are not authorized to regulate importation of nursery stock in such a way as to address perceived market inequities. The Federal Plant Pest Act and the Plant Quarantine Act require us to address the risk of introducing plant pests, not economic competitiveness.

Comment: Has adequate consideration been given to the fact that the economic impact of pathogens and pests is often unpredictable, especially if they are introduced into a new environment without their natural enemies?

Response: We are aware that the economic impact of pests is often unpredictable. Non-pests may become pests, or pests in one location may cause little trouble in another location. In attempting to predict the impact of plant pests, we apply the standards of the Plant Quarantine Act, which tells us to address those organisms which are recognized as plant diseases and injurious insect pests, and which are new to or not widespread in the United States.

Comments on Proposal To Allow Chestnut (Castanea) Imports Without Postentry Quarantine

Comment: APHIS should retain restrictions on *Castanea* imports to protect commercial industry in California, Oregon, and Washington that would be harmed by introduction of chestnut blight, gall wasp, chestnut weevils and other pests, including unknown pests. While many chestnut pests (such as gall wasp) exist in other areas of the U.S., they are kept out of California, Oregon and Washington by State quarantines. This will not be possible with large imports of foreign chestnuts occurring. Chestnut pests that exist in the U.S. could be strengthened and made more harmful by allowing exotic pests of the same species but with greater genetic diversity to enter the U.S.

Response: Upon further consideration of this issue, after examining information submitted by commenters, we have decided that to prevent the introduction of plant pests, no *Castanea* plants should be allowed to enter the United States, not even under conditions of postentry quarantine. Therefore, we are withdrawing the proposal to allow *Castanea* to enter without postentry quarantine, and we are instead adding *Castanea* (except seeds) to the list in § 319.37–2(a), as an article prohibited importation from all places, including Canada.

Chestnut blight (caused by *Cryphonectria parasitica* (Murrill) Barr) is a significant disease problem and has all but eradicated the American chestnut from the eastern United States. However, many western States are not affected, or are only minimally affected by this disease. For example, Oregon and Washington are not infested, and California and Wisconsin have only a few localized infestations. The causal organism, or its host, is the subject of quarantine action by some States. The westward movement of the disease has been hindered by these quarantines and by natural barriers. However, if large-scale importation of *Castanea* were allowed, these quarantines and natural barriers would probably not be sufficient to prevent the disease from moving into western States.

The gall wasp (*Dryocosmus kuriphilus* Yasumatsu) is currently a serious introduced pest in parts of Georgia and Alabama and is spreading north and west at a rate of about 15 miles a year. The ultimate limit of this spread is unknown. The host range of the wasp includes several varieties of *Castanea* (*C. mollisima*, *C. dentata*, and *C. pumila*). The wasp lays eggs in dormant buds in June, and the first instar larvae overwinter in the buds without producing the usual characteristic gall symptoms until bud-break occurs the following spring. This makes it unlikely that inspection could detect presence of the organism in *Castanea* at an inspection station. In addition, eradication or control measures for the organism in the field are currently uncertain and expensive. Therefore, large-scale importation of *Castanea* would likely hasten the spread of this pest throughout the United States. For these reasons, we are prohibiting the importation of *Castanea* (except seeds).

Comment: The proposed rule's list in § 319.37–7 no longer lists *Dianthus* as requiring postentry quarantine.

Response: The amendatory language of the proposed rule only contained text that was being added or changed, which is the usual method for **Federal Register** documents proposing to amend regulations. The proposed rule's list in § 319.37–7 contained numerous rows of asterisks, indicating Code of Federal Regulations text that was not repeated in the proposal because it was not being changed. The listing for *Dianthus* is one of the many articles already listed in § 319.37–7 that the proposal did not propose to change. Therefore, *Dianthus* remains listed as an article that requires postentry quarantine growing if imported.

Comments on Special Certification and Treatment Requirements

Comment: Methyl bromide cannot be used in the Netherlands as required by proposed § 319.37–5(i) to fumigate soil where *Syringa* spp. (lilac) would be grown for export to the United States; therefore this provision should be deleted. An alternative can be realized.

Response: Soil fumigation was specified in order to minimize the possibility that lilacs for export would be infected with European nepoviruses by viruliferous nematodes present in the soil. Any treatment that effectively reduces the populations of nematode vectors of viruses to below a detectable level would be acceptable. Certification that nematode vectors of viruses were not detectable in fields where lilacs were grown for export would also be acceptable if we define the level of sampling required to make such a certification. APHIS is willing to consider any proposal for either an alternative soil fumigant or a soil virus vector sampling scheme for *Syringa* imports, if we are provided with further data indicating how such alternatives are effective and practical.

Comment: Elm mottle virus has been detected in pollen of infected *Syringa;* therefore, the proposed requirement that *Syringa* for import be separated by three meters from the nearest non-indexed plant may not be adequate to prevent transmission.

Response: Elm mottle virus has not been transmitted from infected lilac to healthy lilac by pollination with infected pollen. In fact, in the German publication [1] usually cited as evidence for the occurrence of this virus in lilac pollen, the virus was not recovered from pollen in any of the tests. Therefore, precautions to prevent spread of this virus by pollen from lilacs separated by 3 meters from the nearest non-indexed plant cannot be justified.

Comment: Regarding the special certification requirement in proposed § 319.37–5(m) for maple due to maple variegation virus, research in the Netherlands has proven that the variegation symptoms in *Acer palmatum* or *Acer japonicum* are not caused by this virus. There is no risk of introduction and no reason to include the prohibition.

Response: In view of the trade and widespread planting of ornamental maples, it is difficult for us to accept the assertion that all of the variegation symptoms observed in maple trees in the Netherlands, now and in the future, are caused by nonpathogenic factors. Therefore, the testing of parent trees and controlled propagation from these tested trees are prudent requirements to prevent the introduction into the U.S. of European maple pathogens. APHIS would consider a proposal for the plant protection service of the Netherlands for review of a maple certification program using *Acer palmatum* and *A. japonicum* clones previously tested for maple variegation agent as parent plants.

Comment: In § 319.37–5, the change to require that certificates accompany certain articles "at the time of arrival at the port of first arrival" rather than "at the time of importation or offer for importation" fails to address security between the time of importation and the time of arrival at the port of first arrival. Material in transit to the port of first arrival should be in sealed containers.

Response: Due to standard shipping practices, most plant material is shipped in closed containers. In addition, restricted articles subject to a permit requirement under the regulations must enter the United States at a designated port for clearance at a plant inspection station where the material is safeguarded prior to release.

Comment: Changes to special foreign inspection and certification requirements in § 319.37–5 exclude numerous herbaceous and vegetable pathogens that should be included.

Response: We cannot respond to this non-specific comment. If the commenter had provided specific names of pathogens and hosts of concern, we could have addressed them in our response.

Comment: In § 319.37–6(c), the decision to drop treatment for *Verticillium* seeds because industry uses resistant varieties ignores the high cost of developing such varieties and the fact that pathogens often develop new strains to overcome resistant lines of plants.

Response: Verticillium is borne internally within the seed, whereas the required fungicide treatment is applied externally. If APHIS is presented with evidence that there are exotic and highly virulent strains of this fungus on alfalfa, we will consider proposing additional restrictions.

Comment: APHIS should not remove the seed treatment required by the former regulations for hosts of *Phakopsora pachyrhizi.* The proposal said the treatment is not necessary due to commercial cleaning applied to seeds for import. However, much of the seed from germplasm collections is hand-harvested and not commercially cleaned, and could easily carry debris that harbors inoculum.

Response: APHIS experience inspecting seed shipments at the port of entry has shown that germplasm of the affected genera is free or nearly free of debris. If debris is present, it is removed by hand.

Comments Regarding Coconut Imports

Comment: Coconuts from Jamaica and Costa Rica could jeopardize the date industry in California and elsewhere by introducing diseases. Has it been conclusively shown that the varieties can not serve as symptomless carriers of lethal yellowing?

Response: The lethal yellowing mycoplasma-like organism (MLO) has not been shown to be transmitted by seed to the progeny of any susceptible palm species. Consequently, prohibition of nut importation because of this pathogen is not justified at this time.

Comment: If coconuts are to be allowed importation from Costa Rica, a phytosanitary certification program is needed for such imports due to the red ring nematode (*Bursaphelenchus cocophilus*) and the palm weevil vector (*Rhynchophorus palmarum*). Fumigation of nuts on arrival in the United States should be required for *R. palmarum,* and postentry quarantine should be required to check nuts for *B. cocophilus.* Red ring nematode could also be handled by careful and thorough samplings of coconut plantations on the Atlantic side of Costa Rica, and with a nematicide dip treatment with phenamiphos. The University of Costa Rica has the qualified personnel and facilities to help carry out such a program.

Response: We consider the risk of coconut seed introducing *Bursaphelenchus cocophilus* (red ring nematode) to be low. Nuts on infected trees often fall prematurely, and would not be imported. Only on rare occasions do nematodes invade the inflorescence so as to be found in immature fruit. Several literature references [2] state that red ring nematode has not been recovered from nuts from diseased trees. In studies, artificial infection of seednuts did not produce the red ring disease in grown plants.

With regard to the palm weevil (*Rhynchophorus palmarum*), feeding takes place on the palm stem, and punctures may be made on the undamaged surfaces of immature nuts. Nuts on infected trees often fall prematurely. Typically, oviposition by the female weevil is made on the internodal stem region, at the bases of young petioles, in the fibers running from the sides of the petioles around the stems, and in the endosperm of damaged mature nuts. The immature nut is not the normal oviposition site for the female weevil. The coconuts would be inspected at the port of entry for exotic pests. If *R. palmarum* is present, the appropriate actions will be taken to exclude the pest.

Based on these facts, we believe the risk of moving the red ring nematode and the palm weevil is minimal and does not warrant additional safeguards.

Miscellaneous Comments

Comment: Risks associated with importing many herbaceous and vegetable seeds are neglected. The current standards for visual inspection and entry without permit are inadequate to detect numerous serious foreign seed-borne pathogens such as cowpea mottle, lucerne transient streak, and peanut clump virus.

Response: Potato, lentil and peanut seeds are vegetable seeds prohibited under § 319.37 because of foreign pathogens. However, we recognize the

[1] Citations available on request to the staff identified above in FOR FURTHER INFORMATION CONTACT.

[2] Citations available on request to the staff identified above in "FOR FURTHER INFORMATION CONTACT."

need for a comprehensive study of seed-borne pathogens, and we encourage research in this area. Future changes in the entry status of various vegetable seeds would probably result from such a study.

Comment: Certain plants offered for import unrooted or in medium should be put through culture virus indexing and culture indexing procedures before exportation when such procedures are normally used in the crops in question in the United States, e.g., chrysanthemums tested for chrysanthemum stunt and wilt. This would afford maximum protection to domestic growers and help maintain the integrity of existing culture virus indexing and culture indexing programs in this country.

Response: If plants imported in growing media are shown by research to be natural hosts of an exotic pest, future rulemaking will require safeguards to minimize the possibility of pest importation. In the case of exotic viruses or other small pathogens, indexing of the parent plants and precautions to prevent infection after indexing will be required.

Comment: Persons who export contaminated articles to the United States should be held accountable for damage caused by exotic pests that accompany the articles to the United States.

Response: Under the Federal Plant Pest Act foreign exporters may be accountable for plant pests that are in their shipments. There are criminal and civil penalties for violation of the Act or regulations issued thereunder, and the Act specifically prohibits any person from knowingly moving any plant pest from a foreign country into or through the United States. Further, importers have legal recourse in this area, and can negotiate it in their contracts. Also, if APHIS finds repeated pest infestations from one source, actions we might take would include refusing further shipments from a particular grower or exporter, or prohibiting importation of a restricted article from a particular country until we receive evidence that steps have been taken to reduce the threat that hazardous plant pests will accompany shipments from that country.

Comment: Peanuts from peanut stripe virus countries (e.g., Peoples Republic of China) are being imported. Transshipments with rebagging and retagging are taking place. Blanching after importation is not an answer since major blanching volume is found in the U.S. peanut belt. Therefore, impose an immediate quarantine on all propagable non-U.S. origin peanuts.

Response: If transshipment is occurring by rebagging and/or retagging, the phytosanitary certificates accompanying these shipments are inaccurate. Our inspectors are aware of these possible misrepresentations. APHIS will present reports of misrepresentation to the plant protection service of the country where this occurs with a stern warning that prohibition will result unless this situation is corrected. Only after reasonable efforts fail to correct the problem should peanuts be prohibited, but only from that particular country. Prohibition of all non-U.S. peanuts for propagation because of the actions or negligence of a few countries is not justifiable.

Comments Outside the Scope of the Proposed Rule

Some commenters submitted comments that did not address the changes we proposed to "Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products." These comments are not addressed in this final rule. The majority of these comments were anticipatory of future rulemaking actions concerning importation of plants established in growing media in accordance with 7 CFR 319.37–8.

As we announced in the proposed rule, APHIS intends to propose several more amendments to "Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products" during the next three years. Primarily, these amendments will consist of changes to the list of plants allowed to be imported established in growing media (7 CFR 319.37–8). APHIS has received requests to allow more than 60 additional genera and families of plants established in growing media to be imported into the United States.

To prevent unnecessary delay in the publication of regulations, APHIS has decided to publish revisions to § 319.37–8 in several phases. Each time APHIS completes the pest risk analysis and decision-making process for 5–15 genera, we intend to publish a proposed rule proposing to permit entry of those genera we believe can be safely imported.

Comments submitted to proposed rule 87–005 that concern the upcoming proposals to change § 319.37–8 will be reviewed by APHIS staff developing those proposals. Additional opportunity for public comment will occur when each proposal is published. As we announced in an Advance Notice of Proposed Rulemaking published on October 7, 1991 (Docket No. 91–036, 56 FR 50523), the first five genera of plants for which we are developing a proposal are *Anthurium, Alstroemeria, Ananas, Nidularium,* and *Rhododendron.*

Withdrawal of Postentry Quarantine Requirement for Roses From Canada

The list in § 319.37–7(a) of the current regulations requires postentry quarantine for *Rosa* spp. (rose bushes) if they are imported from any place except Australia, Canada, Italy, and New Zealand. In the proposed rule, we stated:

> We propose to remove Canada from this listing in § 319.37–7(a) and require postentry quarantine for *Rosa* spp. from Canada because Canada does not restrict the entry of *Rosa* spp. from any foreign place, and it is therefore possible that *Rosa* spp. imported from Canada may spread rose wilt, through either re-export of rose stock imported into Canada or infection of Canadian rose stock by stock imported from other foreign places. [56 FR 6306]

Since the proposed rule was published, APHIS has received information that indicates the symptoms ascribed to the disease "rose wilt" may actually be caused by one or several common rose disease agents that currently exist in the United States. These agents are *Verticillium*, the *Prunus* necrotic ringspot virus, and the crown gall bacterium.

At present, there is no conclusive evidence in the scientific literature that rose wilt is caused by any of these pathogens or any pathogen that is already present in the United States. Research over the next few years may confirm or disprove this theory.

However, the information indicating this possibility caused APHIS to reexamine its basis for requiring postentry quarantine for *Rosa* from Canada because of rose wilt. After the reexamination, we have concluded that we should withdraw the proposal to require postentry quarantine for *Rosa* from Canada, pending availability of research results concerning the agents responsible for rose wilt.

Therefore, we are withdrawing the proposal to require postentry quarantine for *Rosa* from Canada. We will continue to evaluate reports concerning the agents responsible for rose wilt, and will evaluate any reports concerning rose wilt symptoms in Canadian *Rosa*. If we determine in the future that importing Canadian *Rosa* presents a significant pest risk, we will publish rulemaking addressing that risk.

Executive Order 12291 and Regulatory Flexibility Act

We are promulgating this rule in conformance with Executive Order 12291, and we have determined that the cyclical review and revisions of 7 CFR 319.37, including both the current final rule and future proposals that will

concern additions to the list of plants allowed entry established in growing media, constitute a "major rule," within the broad intent of the Executive Order. Based on information compiled by the Department, we have determined that the amendments proposed for the first phase of this rulemaking, contained in this proposed rule, would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We have prepared a preliminary Regulatory Impact Analysis (RIA) and a preliminary Regulatory Flexibility Analysis (RFA) concerning the cyclical review and revisions of 7 CFR 319.37, including both the current rule and future proposals that will concern additions to the list of plants allowed entry established in growing media. The exact content of future rules to be proposed in this area, including the final list of plants proposed to be allowed entry established in growing media, will not be known until APHIS completes pest risk analysis and decision-making processes necessary for the development of these proposed rules. Therefore, the preliminary RIA and RFA take a broad approach and make certain necessary assumptions in order to form a preliminary estimate of economic effects. The RIA and RFA assume that APHIS will propose to allow entry of all plants in growing media for which we have received requests for entry, and make generic assumptions about safeguards and precautionary procedures that may be required for entry of some genera. However, it is unlikely that APHIS, after conducting pest risk analyses, will propose to allow entry of all requested plants. In addition, the safeguards and precautionary procedures necessary for safe entry of some genera will be developed and refined later in the rule development process. Therefore, precise information on these areas will not be available for the preliminary RIA and RFA.

Therefore, the preliminary RIA and RFA will be revised and extended to achieve greater specificity as rulemaking continues. Each proposed rule that is published concerning additions to the list of plants allowed entry established in growing media will include a discussion of changes made to the earlier versions of the RIA and RFA, addressing more complete and specific economic impacts as data and program decisions become available.

Copies of the RIA and RFA may be obtained by sending a written request to the Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

This final rule prohibits the importation of certain nursery stock and other articles that are currently allowed importation and allows importation of certain nursery stock and other articles that are now prohibited. The businesses that may be affected by this rule include importers of nursery stock, domestic growers of these articles, and sellers of these articles. The total number of articles affected is small compared with the millions of articles imported each year. Since dealers in nursery stock normally deal in a wide variety of articles, and have numerous domestic and foreign sources available as alternatives, we do not expect the rule to have a substantial effect on either large or small entities of the nursery stock industry.

We estimate that the changes to the regulations made by this final rule will minimally affect the importation of live plants and propagative plant materials (nursery stock, roots, bulbs, seeds, and other plant products). Revisions to the regulations are necessary to insure that the $6.4 billion domestic floriculture industry is protected from the threat of exotic pests and diseases.

Plants and propagative plant materials are imported into the United States from many different nations. In 1987, the United States imported nursery stock with an estimated total value of $132 million and field and garden seed at an estimated total of $154 million. Foreign nursery products accounted for about two percent of the total value of nursery stock sold in the United States over the past three years. Shipments from The Netherlands and Canada constituted approximately 82 percent of the total dollar value for imported nursery stock. Seed imports include vegetable, flower, garden, grass, trees and shrubs, and some grains. Canada and The Netherlands contribute approximately 50 percent of the field and garden seeds available in the U.S. market.

The changes made by this rule should have a minor economic impact on both domestic producers and importers of plants and propagative plant materials. Each of the changes will only impact a relatively small segment of the U.S. nursery and floriculture crop industry. The potential impacts for each of the proposed revisions are addressed below. A descriptive analysis was applied to cases where information was not available.

We estimate the total value of imports of plants and propagative plant materials covered by the final rule to be about $286 million per year. It is also estimated that approximately 323.9 million propagative plant materials were imported into the United States during 1989. Changes made by the final rule will only prevent approximately 30 plant shipments or 16,579 plants and other plant materials from entering the country in any given year. The estimated prohibition of 30 plant shipments per year would not have a profound adverse economic impact on the U.S. nursery industry. APHIS estimates that the dollar value loss resulting from the prohibited imports would range between $10,000 to $20,000 per year.

In the short-run, a few domestic plant wholesalers would be faced with limited foreign supplies of the articles prohibited by the final rule. However, the restrictions on foreign imports should not have a major impact on the domestic supply given the relatively small number of plants involved. A price change would also be unlikely, due to the small quantity of imported nursery stock that would be affected and the availability of substitute nursery crops. Most of the prohibited plant genera are grown domestically or in other countries that would not be impacted by the proposed import restrictions.

The final rule also relaxes import restrictions on the entry of previously prohibited articles from certain countries, and changes certification requirements for some plant genera. These revisions require exporting countries to ensure that specific precautions are taken that ensure plants and plant products shipped to the United States are free of exotic pests and diseases. Potential benefits from these proposed changes would include greater access to foreign suppliers of some plant genera, stimulation of competition in the U.S. import market, and lower shipping charges for some packaged items. Relaxation of import restrictions for some plants and plant products from certain countries will likely offset the economic loss caused by new prohibitions for shipments from other countries.

The proposal to allow grapevine imports from the Federal Republic of Germany, and the proposal to require

postentry quarantine for rosebushes from Canada, have been withdrawn.

Changes in the certification requirements for certain plants, which would require exporting countries to take extra precautions and observe specific growing conditions for certain shipments, would have a negligible effect on U.S. dealers, due to the small number of plant genera involved and the very small incremental cost increase associated with this change.

The addition of five approved packing materials may slightly reduce the cost of shipping some plants, and may enhance the survival of some plants that could benefit from being shipped packed in the new materials.

Finally, the addition of five packing materials permits more flexibility for firms importing live plants and propagative plant materials.

To summarize the effects of this final rule, the proportion of nursery stock affected by it is too small to have a major impact on current wholesale plant markets. The rule will have some impacts on small business entities and some regional effects, discussed below.

Census of Agriculture statistics state that approximately 35,000 domestic commercial firms or entities produce nursery and floriculture crops. Most of these entities have diversified production operations consisting of multiple combinations of bedding plants, bulbs, sod, plant seeds, foliage and flowering plants, and other greenhouse products.

Criteria established by the Small Business Administration classify small entities in this industry as those firms having a sales volume of less than $0.5 million annually. Based on Census of Agriculture data on farm receipts by income group, it is estimated that approximately 96 percent or 34,000 farms that produce nursery and floriculture crops would be classified as small entities. These 34,000 small farms accounted for 39 percent of the total sales volume for the industry.

The 12 year period from 1976 through 1987 witnessed a high rate of expansion in the domestic production of nursery and floriculture crops. Grower cash receipts increased at an annual average rate of 11 percent, from $2 billion in 1976 to $6.4 billion in 1987. Nursery products accounted for approximately two-thirds of the total domestic production and consist mainly of greenhouse crops such as annuals, perennials, bulbs, woody and herbaceous plants, flower seeds, turfgrass, and other plant stock. Floriculture products accounted for the remaining one-third and consist of cut flowers, potted flowering plants, foliage plants, bedding plants, and cut decorative greens.

Approximately one half of the total value of U.S. floriculture crops and nursery products is produced in three States: California (22 percent in 1987), Florida (14 percent), and Texas (6 percent). California produced the largest volume of potted flowering and bedding plants, while Florida is the main producer of foliage plants.

During 1987, live plant imports rose to $67 million, an increase of 7 percent from 1986. Canadian plant imports exceed those from all other countries, and doubled in value and quantity between 1978 and 1987. Current regulations allow Canada to ship many kinds of plants, otherwise restricted from other countries, in most types of growing media.

Other countries that export large quantities of plants to the United States include The Netherlands, Belgium-Luxembourg, Germany, and Israel. Shipments of plants in growing media from The Netherlands and Israel totaled 3.5 million in 1988. In addition, Costa Rica and Guatemala ship three-fourths (73 percent) of all propagative plant material imports. The majority of imported orchids are shipped from The Netherlands, Thailand, Taiwan, and Germany.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR 3015, subpart V.)

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Upon adoption of this rule: (1) All State and local laws and regulations regarding nursery stock imported under this rule while the nursery stock is in foreign commerce will be preempted; (2) no retroactive effect will be given to this rule; and (3) it will not require administrative proceedings before parties may file suit in court challenging its provisions.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 0579–0049.

List of Subjects in 7 CFR Part 319

Agricultural commodities, Bees, Coffee, Cotton, Fruits, Honey, Imports, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Transportation, Vegetables.

Accordingly, 7 CFR part 319 is amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for "Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products," §§ 319.37 through 319.37–14, would continue to read as follows:

Authority: 7 U.S.C. 150dd, 150ff, 154, 155, 157, 159, 160, 162, and 164a; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 319.37 is revised to read as follows:

§ 319.37 Prohibitions and restrictions on importation: disposal of articles refused importation.

(a) No person shall import or offer for entry into the United States any prohibited article, except as otherwise provided in § 319.37–2(c) of this subpart. No person shall import or offer for entry into the United States any restricted article except in accordance with this subpart.

(b) The importer of any article denied entry for noncompliance with this subpart must, at the importer's expense and within the time specified in an emergency action notification (PPQ Form 523), destroy, ship to a point outside the United States, or apply treatments or other safeguards to the article, as prescribed by an inspector to prevent the introduction into the United States of plant pests. In choosing which action to order and in setting the time limit for the action, the inspector shall consider the degree of pest risk presented by the plant pest associated with the article, whether the article is a host of the pest, the types of other host materials for the pest in or near the port, the climate and season at the port in relation to the pest's survival range, and the availability of treatment facilities for the article.

(c) No person shall remove any restricted article from the port of first arrival unless and until a written notice is given to the collector of customs by the inspector that the restricted article

has satisfied all requirements under this subpart.

§ 319.37-1 [Amended]

3. In paragraph (b) of the definition of "From" in § 319.37-1, the phrase "or (g)" is removed, and the phrase "(g), (h), (i), (j), (k), (l), or (m)" is added in its place.

4. In § 319.37-1, the definition of "Indexing" is revised as follows and a definition of "Port of first arrival" is added in alphabetical order:

§ 319.37-1 Definitions.

* * * * *

Indexing. A procedure for using plant material or its extracts to determine the presence or absence of one or more pests in or on the tested plant material. For the purposes of this subpart, indexing is performed in foreign countries to test the parent stock of designated articles that must meet special foreign inspection and certification requirements in accordance with § 319.37-5 to be eligible for importation into the United States. The results of indexing tests are used by the plant protection services of foreign countries to issue phytosanitary certificates declaring plant articles free of specified diseases. The following indexing procedures are authorized for use with the specified plant genera, if the procedures are performed using protocols acceptable to the plant protection service that issues phytosanitary certificates based on them: mechanical transmission of the pest to an indicator plant for *Dianthus, Malus, Prunus, Rubus,* and *Syringa;* graft transmission of the pest to an indicator plant for *Chaenomeles, Cydonia, Malus, Prunus, Pyrus, Rubus,* and *Syringa;* serology for *Dianthus, Malus, Prunus, Pyrus, Rubus,* and *Syringa;* electron microscopy for *Dianthus* and *Prunus,* and nucleic acid probes for *Chaenomeles, Cydonia, Malus,* and *Pyrus.*

* * * * *

Port of first arrival. The land area (such as a seaport, airport, or land border station) where a person, or a land, water, or air vehicle, first arrives after entering the territory of the United States, and where inspection of articles is carried out by inspectors.

* * * * *

§ 319.37-2 [Amended]

5. In § 319.37-2(a), the table headings are revised to read as follows: the listings for *Acer, Aesculus, Althaea, Chaenomeles, Chrysanthemum, Cocos nucifera, Cydonia, Eucalyptus, Euonymus, Gladiolus, Hibiscus, Jasminum, Larix, Ligustrum, Malus, Mangifera,* Mulbery mosaic virus, *Oryza, Prunus, Pyrus, Ribes nigrum, Rosa, Solanum* spp. true seed, *Sorbus, Syringa, Vitis,* and *Zizania* are removed, and the following are added in alphabetical order:

§ 319.37-2 Prohibited articles.

(a) * * *

Prohibited article (includes seeds only if specifically mentioned)	Foreign places from which prohibited	Plant pests existing in the places named and capable of being transported with the prohibited article
Abelmoschus spp. (okra)	Africa	Cotton leaf curl agent.
	Brazil	Cotton Anthocyanosis agent.
	Bangladesh, India, Sri Lanka	Bhendi yellow vein mosaic agent.
	Ivory Coast, Nigeria	Okra mosaic virus.
	Iraq	Okra yellow leaf curl agent.
	Papua New Guinea, Trinidad and Tobago	Okra mosaic agents.
* * *	* * *	* * *
Acer spp. (maple) (except *Acer palmatum and Acer japonicum* meeting the conditions for importation in § 319.37-5(m).	Japan	*Xanthomonas acernea* (Ogawa) Burk.
	Europe, Japan	Maple mosaic or variegation diseases.
* * *	* * *	* * *
Aesculus spp. (horsechestnut)	Czechoslovakia, Federal Republic of Germany, Romania, United Kingdom.	Horsechestnut variegation or yellow mosaic diseases.
Aiphanes spp. (coyure, ruffle, and spine palm)	All	A diversity of diseases including but not limited to: lethal yellowing disease; cadang-cadang disease.
* * *	* * *	* * *
Althaea spp. (althaea, hollyhock)	Africa	Cotton leaf curl agent.
	Bangladesh, India, Sri Lanka	Bhendi yellow vein mosaic agent.
Arachis spp. (peanut) seed only (all other *Arachis* articles are included under Fabaceae).	India, Indonesia, Japan, People's Republic of China, Philippines, Taiwan, Thailand.	Peanut stripe virus.
	Ivory Coast, Senegal, Upper Volta	Peanut clump virus.
	India	Indian peanut clump virus.
* * *	* * *	* * *
Blighia sapida (*akee*)	Nigeria, Ivory Coast	Okra mosaic virus.
* * *	* * *	* * *
Castanea spp. (chestnut)	All	*Cryphonectria parasitica* (Murrill) Barr (chestnut blight); *Dryocosmus kuriphilus* Yasumatsu (gall wasp).
* * *	* * *	* * *
Chaenomeles spp. (flowering quince) not meeting the conditions for importation in § 319.37-5(b).	All	A diversity of diseases including but not limited to those listed for *Chaenomeles* in § 319.37-5(b)(1).
* * *	* * *	* * *
Chrysanthemum spp. (chrysanthemum)	Argentina, Brazil, Canary Islands, Chile, Colombia, Europe, Republic of South Africa, Uruguay, Venezuela, and all countries, territories, and possessions of countries located in part or entirely between 90° and 180° East longitude.	*Puccinia horiana* P. Henn. (white rust of chrysanthemum).
Cocos nucifera (coconut) (including seed) (Coconut seed without husk or without milk may be imported into the United States in accordance with § 319.56).	All except from Jamaica or Costa Rica if meeting the conditions for importation in § 319.37-5(g).	A diversity of diseases including but not limited to: lethal yellowing disease; cadang-cadang disease.

Prohibited article (includes seeds only if specifically mentioned)	Foreign places from which prohibited	Plant pests existing in the places named and capable of being transported with the prohibited article
* * *	* * *	* * *
Crocosmia spp. (montebretia)	Africa	*Puccinia mccleanii* Doidge (rust), *Uredo gladioli-buettneri* Bub. (rust), *Uromyces gladioli* P. Henn. (rust), *U. nyikensis* Syd. (rust).
	Africa, Brazil, France, Italy, Malta, Mauritius, Portugal	*U. transversalis* (Thuem.) Wint. (rust).
	Argentina, Uruguay	*U. gladioli* P. Henn. (rust).
Cydonia spp. (quince) not meeting the conditions for importation in § 319.37-5(b).	All	A diversity of diseases including but not limited to those listed for *Cydonia* in § 319.37-5(b)(1).
* * *	* * *	* * *
Dendranthema spp. (chrysanthemum)	Argentina, Brazil, Canary Islands, Chile, Colombia, Europe, Republic of South Africa, Uruguay, Venezuela, and all countries, territories, and possessions of countries located in part or entirely between 90° and 180° East longitude.	*Puccinia horiana* P. Henn. (white rust of chrysanthemum).
* * *	* * *	* * *
Eucalyptus spp. (eucalyptus)	Europe, Sri Lanka, and Uruguay	*Pestalotia disseminata* Thuem. (parasitic leaf fungus).
Euonymus spp. (euonymus)	Europe, Japan	*Euonymus* mosaic diseases.
Fabaceae (=Leguminosae) (herbaceous spp. only)	All except Canada	A diversity of diseases including but not limited to: African soybean dwarf agent, alfalfa enation virus, azuki bean mosaic virus, bean golden mosaic virus, cowpea mild mottle virus, French bean mosaic virus, groundnut chlorotic leaf streak virus, groundnut chlorotic spotting virus, groundnut rosette agents, groundnut witches broom Mt.O, horsegram yellow mosaic virus, Indonesian soybean dwarf virus, lima bean mosaic virus, lucerne Australian symptomless virus, lucerne vein yellowing virus, mung bean yellow mosaic virus, peanut stripe virus, red clover mottle virus, and soybean dwarf virus.
* * *	* * *	* * *
Gladiolus spp. (gladiolus)	Africa	*Puccinia mccleanii* Doidge (rust), *Uredo gladioli-buettneri* Bub. (rust), *Uromyces gladioli* P. Henn. (rust), *U. nyikensis* Syd. (rust).
	Africa, Brazil, France, Italy, Malta, Mauritius, Portugal	*U. transversalis* (Thuem.) Wint. (rust).
	Argentina, Uruguay	*U. gladioli* P. Henn. (rust).
* * *	* * *	* * *
Hibiscus spp. (kenaf, hibiscus, rose mallow)	Africa	Cotton leaf curl agent.
	Brazil	Cotton anthocyanosis agent.
	India	Hibiscus leaf curl agent.
* * *	* * *	* * *
Hyophorbe spp. (palm)	All	A diversity of diseases including but not limited to: lethal yellowing disease; cadang-cadang disease.
* * *	* * *	* * *
Jasminum spp. (jasmine)	Belgium, Federal Republic of Germany, Great Britain	Jasmine variegation diseases.
	India	Chlorotic ringspot, phyllody, yellow ring mosaic diseases.
	Philippines	Sampaguita yellow ringspot mosaic diseases.
* * *	* * *	* * *
Larix spp. (larch)	Provinces of New Brunswick and Nova Scotia in Canada, Europe, and Japan.	*Lachnellula willkommii* (Hartig) Dennis (European larch canker).
	Europe	*Phacidiopycnis pseudotsuga* (M. Wils.) Hahn (Douglas fir canker).
* * *	* * *	* * *
Leersia spp. (cutgrass) seed only (all other *Leersia* articles are included under *Poaceae*).	All	*Xanthomonas campestris* pv. *oryzae* (Ishiyama) Dye.
* * *	* * *	* * *
Leptochloa spp. (sprangletop) seed only (all other *Leptochloa* articles are included under *Poaceae*).	All	*Xanthomonas campestris* pv. *oryzae* (Ishiyama) Dye.
Ligustrum spp. (privet)	Europe	*Ligustrum* mosaic diseases.
* * *	* * *	* * *
Malus spp. (apple, crabapple) not meeting the conditions for importation in § 319.37-5(b).	All	A diversity of diseases including but not limited to those listed for *Malus* in § 319.37-5(b)(1).
Mangifera spp. (mango) seed only	All except North and South America (excluding Barbados, Dominica, French Guiana, Guadeloupe, Martinique, and St. Lucia).	*Cryptorhynchus mangiferae* F. (mango weevil).
* * *	* * *	* * *
Morus spp. (mulberry)	India, Japan, Korea, People's Republic of China, Thailand, and the geographic area formerly known as the Union of Soviet Socialist Republics.	Mulberry dwarf or mulberry mosaic diseases.
* * *	* * *	* * *
Neodypsis spp. (palm)	All	A diversity of diseases including but not limited to: lethal yellowing disease; cadang-cadang disease.

Prohibited article (includes seeds only if specifically mentioned)	Foreign places from which prohibited	Plant pests existing in the places named and capable of being transported with the prohibited article
* * *	* * *	* * *
Poaceae (vegetative parts of all grains and grasses)	All except Canada	A wide diversity of plant diseases, including but not limited to: banana streak virus, barley yellow mosaic virus, barley yellow striate mosaic virus, brome streak mosaic virus, cereal chlorotic mosaic virus, cocksfoot mild mosaic virus, corn stunt spiroplasma, Cynodon chlorotic streak virus, cynosurus mottle virus, Echinochloa ragged stunt virus, European aster yellows MLO, European wheat striate mosaic virus, Iranian maize mosaic virus, maize bushy stunt MLO, maize chlorotic mottle virus, maize mosaic virus, maize mottle/chlorotic stunt virus, maize rough dwarf virus, maize streak virus, maize stripe virus, northern cereal mosaic virus, oat red streak mosaic virus, oat sterile dwarf virus, rice dwarf virus, rice gall dwarf virus, rice tungro virus, rice wilted stunt virus, rice yellow mottle virus, rice yellow dwarf agent, yellow dwarf agent, sugarcane white leaf MLO, wheat yellow leaf virus, and wheat yellowing stripe bacterium.
* * *	* * *	* * *
Prunus spp. (almond, apricot, cherry, cherry laurel, English laurel, nectarine, peach, plum, prune) not meeting the conditions for importation in § 319.37-5(b).	All	A diversity of diseases including but not limited to those listed for *Prunus* in § 319.37-5(b)(1).
Prunus spp. seed only (almond, apricot, nectarine, peach, plum, and prune, but not species in subgenus *Cerasus*) not meeting the conditions for importation in § 319.37-5(j).	All	Plum pox (Sharka) virus.
Pseudolarix spp. (golden larch)	Provinces of New Brunswick and Nova Scotia in Canada, Europe, and Japan.	*Lachnellula willkommii* (Hartig) Dennis (European larch canker).
* * *	* * *	* * *
Pyrus spp. (pear) not meeting the conditions for importation in § 319.37-5(b).	All	A diversity of diseases including but not limited to those listed for *Pyrus* in § 319.37-5(b)(1).
* * *	* * *	* * *
Ravenea spp. (palm)	All	A diversity of diseases including but not limited to: lethal yellowing disease; cadang-cadang disease.
Ribes spp. (currant, gooseberry)	Europe	Black currant reversion agent.
Rosa spp. (rose)	Australia, Bulgaria, Italy, and New Zealand	Rose wilt virus.
* * *	* * *	* * *
Solanum spp. true seed (tuber bearing species only—Section Tuberarium).	All except Canada and New Zealand	Andean potato latent virus, potato virus T, tobacco ringspot virus (Andean potato calico strain).
Sorbus spp. (mountain ash)	Czechoslovakia, Denmark, Federal Republic of Germany.	Mountain ash variegation or ringspot mosaic disease.
Syringa spp. (lilac) not meeting the conditions for importation in § 319.37-5(i).	Europe	Elm mottle virus.
Theobroma spp. (cacao)	All	A diversity of diseases and pests including but not limited to: cocoa swollen shoot virus, cocoa mottle leaf virus, cocoa yellow mosaic virus, cocoa necrosis virus, *Crinipellis perniciosa* (Stahel) Singer (witches broom fungus), *Monilia roreri—Moniliophthora roreri* (CIF.) H.C. Evans *et al.* (watery pod rot), cocoa isolates of *Ceratocystis fimbriata* Ellis and Halst (wilts), *Trachysphaera fructigena* Tabor and Bunting (mealy pod agents of cushy gall disease), *Oncobasidum theobromae* Talbot and Keane (vascular streak die-back), *Xyleborus* spp. beetles and *Acrocercops cramella* (Snellen) (cocoa moth).
* * *	* * *	* * *
Vitis spp. (grape) not meeting the conditions for importation in § 319.37-5(b).	All	A diversity of diseases including but not limited to those specified for *Vitis* in § 319.37-5(b)(1).
Watsonia spp. (bugle lily)	Africa	*Puccinia mccleanii* Doidge (rust), *Uredo gladiolibuettneri* Bub. (rust), *Uromyces gladioli* P. Henn. (rust), *U. nyikensis* Syd. (rust).
	Africa, Brazil, France, Italy, Malta, Mauritius, Portugal	*U. transversalis* (Thuem.) Wint. (rust).
	Argentina, Uruguay	*U. gladioli* P. Henn. (rust).
Zizania spp. (wild rice) seed only (all other *Zizania* articles are included under Poaceae).	All except Canada	*Xanthomonas campestris* pv. *oryzae* (Ishiyama) Dye.

6. In § 319.37-2, paragraph (b), the introductory text is amended by removing the phrase "countries and localities" and inserting the word "places" in its place, and by revising paragraph (b)(6) to read as follows:

§ 319.37-2 Prohibited articles.

* * * * *

(b) * * *

(6)(i) Plants (other than stem cuttings, cactus cuttings, artificially dwarfed plants such as bonsai, and palms and plants whose growth habits simulate

palms) exceeding 460 millimeters (approximately 18 inches) in length from soil line (top of rooting zone for plants produced by air layering) to the farthest terminal growing point and whose growth habits simulate the woody habits of trees and shrubs, including but not limited to cacti, cycads, yuccas, and dracaenas.

(ii) Palms and plants whose growth habits simulate palms, that exceed a total length (stem plus leaves) of 915 millimeters (approximately 36 inches) in length.

* * * * *

7. Section 319.37-2 is amended by removing from paragraph (c)(4) the phrase "tree, plant, or fruit diseases, injurious insects, and other".

§ 319.37-3 [Amended]

8. Section 319.37-3 is amended by revising paragraph (a)(3) to read as follows:

(a) * * *

(3) Bulbs of *Allium sativum* spp. (garlic), *Crocosmia* spp. (montebretia), *Gladiolus* spp. (gladiolus), and *Watsonia* spp. (bugle lily); true seed of *Solanum* spp. (tuber bearing species only—Section Tuberarium) from New Zealand;

* * * * *

§§ 319.37-5, 319.37-6, 319.37-7, and 319.37-13 [Amended]

9. In § 319.37-13, Footnote 10 and its reference are redesignated as Footnote 11; Footnote 9 and its reference are redesignated as Footnote 10; in § 319.37-6, the first Footnote 8 and its reference in paragraph (a) are redesignated as Footnote 9 and revised to read "[See Footnote 6 in § 319.37-4]", and the second Footnote 8 and the references to Footnote 8 in paragraphs (b) and (f) are removed; and in § 319.37-5, Footnote 7 and its reference are redesignated as Footnote 8 and revised to read "Such testing is done under a Raspberry Plant Certification Program of Canada."; and Footnote 6 and its reference are removed.

10. Section 319.37-4 is revised to read as follows:

§ 319.37-4 Inspection, treatment, and phytosanitary certificates of inspection.

(a) *Phytosanitary certificates of inspection.* Any restricted article offered for importation into the United States must be accompanied by a phytosanitary certificate of inspection or, in the case of greenhouse-grown plants from Canada imported in accordance with paragraph (c) of this section, a certificate of inspection in the form of a label in accordance with paragraph (c)(1)(iv) of this section attached to each carton of the articles and to an airway bill, bill of lading, or delivery ticket accompanying the articles.

(b) *Inspection and treatment.* Any restricted article may be sampled and inspected by an inspector at the port of first arrival and/or under preclearance inspection arrangements in the country in which the article was grown, and must undergo any treatment contained in the Plant Protection and Quarantine Treatment Manual [6] that is ordered by the inspector. Any restricted article found upon inspection to contain or be contaminated with plant pests, that cannot be eliminated by treatment, shall be denied entry at the first United States port of arrival.

(c) *Greenhouse-grown plants from Canada.* A greenhouse-grown restricted plant may be imported from Canada if the Plant Protection Division of Agriculture Canada signs a written agreement with the Animal and Plant Health Inspection Service allowing such importation if the following conditions are met:

(1) The Plant Protection Division of Agriculture Canada shall:

(i) Eliminate individual inspections and phytosanitary certification of each shipment of articles exported in accordance with this section;

(ii) Enter into written agreements with, and assign a unique identification number to, each greenhouse grower participating in the greenhouse program;

(iii) Inspect greenhouses and the plants being grown in them using inspection methods and schedules approved by Plant Protection and Quarantine to ensure that the criteria of this subsection are met;

(iv) Issue labels to each grower participating in the program. The labels issued to each grower shall bear a unique number identifying that grower, and shall bear the following statement: "This shipment of greenhouse-grown plants meets the import requirements of the United States, and is believed to be free from injurious plant pests. Issued by Plant Protection Division, Agriculture Canada." The Plant Protection Division, Agriculture Canada shall also ensure that the label is placed on the outside of each container of articles exported under the agreement and that the grower's label is placed on an airway bill, bill of lading, or delivery ticket accompanying each shipment of articles; and

(v) Ensure that only plants that are not excluded shipment by the criteria of this subsection are shipped.

(2) Each greenhouse grower participating in the program shall enter into an agreement with the Plant Protection Division of Agriculture Canada in which the grower agrees to:

(i) Maintain records of the kinds and quantities of plants grown in their greenhouses, including the date of receipt and place of origin of the plants, keep the records for at least one year after the plants are shipped to the United States, and make the records available for review and copying upon request by either the Plant Protection Division of Agriculture Canada or an authorized representative of the Secretary of Agriculture.

(ii) Apply to the outside of each carton of plants grown in accordance with this subsection, so as to be readily visible to inspectors and customs officials, and to an airway bill, bill of lading, or delivery ticket for plants to be shipped to the United States, a label issued by Agriculture Canada including the identification number assigned to the grower by the Plant Protection Division of Agriculture Canada and the following certification statement: "This shipment of greenhouse grown plants meets the import requirements of the United States, and is believed to be free from injurious plant pests. Issued by Plant Protection Division, Agriculture Canada."

(iii) Apply labels in accordance with paragraph (c)(2)(ii) of this section solely to cartons of plants that meet requirements of this chapter for import of these plants from Canada into the United States; and

(iv) Use pest control practices approved by Plant Protection and Quarantine and the Plant Protection Division of Agriculture Canada to exclude pests from the greenhouses.

§ 319.37-5 [Amended]

11. In paragraphs (a), (c), (d), (e), (f), and (g) of § 319.37-5, the phrase "importation or offer for importation into" is removed and the phrase "arrival at the port of first arrival in" is added in its place each time it appears.

12. In § 319.37-5(a) Israel is removed from the list of places, and the following countries are added in alphabetic order to the list of places: Australia, Bulgaria, Costa Rica, Crete, Cyprus, Egypt, Hungary, Jordan, Malta, Morocco, Pakistan, the Philippines, and Tunisia.

13. Section 319.37-5 is amended by revising paragraph (b)(1) to read as follows:

[6] The Plant Protection and Quarantine Treatment Manual is incorporated by reference in the Code of Federal Regulations. For further information on the content and availability of this manual, see 7 CFR 300.1, "Materials incorporated by reference."

§ 319.37–5 Special foreign inspection and certification requirements.

* * * * *

(b) (1) Any of the following restricted articles (except seeds) at the time of arrival at the port of first arrival in the United States must be accompanied by a phytosanitary certificate of inspection which contains an additional declaration that the article was grown in a nursery in Belgium, Canada, Federal Republic of Germany, France, Great Britain, or The Netherlands and that the article was found by the plant protection service of the country in which grown to be free of the following injurious plant diseases listed in paragraph (b)(2) of this section: For *Chaenomeles* spp. (flowering quince) and *Cydonia* spp. (quince), diseases (i), (ii), (iv), (xviii), (xix), (xx), and (xxi); for *Malus* spp. (apple, crabapple), diseases (i), (ii), (iii), (vi), (vii), (xxii), and (xxiii); for *Prunus* spp. (almond, apricot, cherry, cherry laurel, English laurel, nectarine, peach, plum, prune), diseases (i), (ix) through (xvii), and (xxii); and for *Pyrus* spp. (pear), diseases (i), (ii), (iv), (v), (xviii), (xix), (xx), (xxi) and (xxii); and for *Vitis* spp. (grape) from Canada, diseases (xiv) through (xvii) and (xxiv) through (xliii). The determination by the plant protection service that the article is free of these diseases will be based on visual examination and indexing of the parent stock of the article and inspection of the nursery where the restricted article is grown to determine that the nursery is free of the specified diseases.[7] An accurate additional declaration on the phytosanitary certificate of inspection by the plant protection service that a disease does not occur in the country in which the article was grown may be used in lieu of visual examination and indexing of the parent stock for that disease and inspection of the nursery.

* * * * *

[7] *Chaenomeles* spp., *Cydonia* spp., *Malus* spp., *Pyrus* spp., and certain *Prunus* spp. (i.e., *P. avium*, *P. cerasus*, *P. effusa*, *P. laurocerasus*, *P. mahaleb*, *P. padus*, *P. sargentii*, *P. serotina*, *P. serrula*, *P. serrulata*, *P. subhirtella*, *P. yedoensis*, and *P. virginiana*) can be certified from government operated nurseries (research stations) and private nurseries in Belgium, Germany, Great Britain, and The Netherlands. Species of *Prunus* not immune to plum pox virus (i.e., those not listed above) from these four countries can only be certified from the government operated nurseries (research stations) where the original parent stock is indexed for the appropriate national fruit tree certification program. *Chaenomeles* spp., *Cydonia* spp., *Malus* spp., *Prunus* spp., and *Pyrus* spp. from France can only be certified from the government operated nurseries (research stations) where the original parent stock is indexed for the national fruit tree certification program.

14. In § 319.37–5 paragraphs (b)(2)(xxiv) through (b)(2)(xliii) are added in numerical order as follows:

* * * * *

(b) * * *

(2) * * *

(xxiv) The following nematode transmitted viruses of the polyhedral type: Artichoke Italian latent virus, Grapevine Bulgarian latent virus, Grapevine fanleaf virus and its strains, and Hungarian chrome mosaic virus.

(xxv) Grapevine asteroid mosaic agent.

(xxvi) Grapevine Bratislava mosaic virus.

(xxvii) Grapevine chasselas latent agent.

(xxviii) Grapevine corky bark "Legno riccio" agent.

(xxix) Grapevine leaf roll agent.

(xxx) Grapevine little leaf agent.

(xxxi) Grapevine stem pitting agent.

(xxxii) Grapevine vein mosaic agent.

(xxxiii) Grapevine vein necrosis agent.

(xxxiv) Flavescence-doree agent.

(xxxv) Black wood agent (bois-noir).

(xxxvi) Grapevine infectious necrosis bacterium.

(xxxvii) Grapevine yellows disease bacterium.

(xxxviii) *Xanthomonas ampelina* Panagopoulas.

(xxxix) *Peyronellaea glomerata* Ciferri.

(xl) *Pseudopeziza tracheiphila* Muller-Thur-gau.

(xli) *Rhacodiella vitis* Sterenberg.

(xlii) *Rosellinia necratrix* Prill.

(xliii) *Septoria melanosa* (Vialla and Ravav) Elenk.

* * * * *

15. In § 319.37–5(c), the phrase "of *Chrysanthemum* spp. (chrysanthemum) from Great Britain or from any other country or locality except Europe (other than Great Britain)" is changed to read "of *Chrysanthemum* spp. (chrysanthemum) or *Dendranthema* spp. (chrysanthemum) from any foreign place except Europe,"; the phrase "Canary Islands, Chile, Colombia" is added immediately following the word "Canada,"; and the phrase "Uruguay, Venezuela," is added immediately following the phrase "Republic of South Africa,".

16. In § 319.37–5(e), "Ontario," is removed; the phrase "rubus stunt virus" is removed, and the phrase "*Rubus* stunt agent" is added in its place.

17. In § 319.37–5(f), the phrase "rubus stunt virus" is removed and the phrase "*Rubus* stunt agent" is added in its place.

18. In § 319.37–5(g) the phrase "Costa Rica or of" is added immediately before the word "Jamaica".

19. In § 319.37–5, newly designated paragraphs (h) through (m) are added to read as follows:

§ 319.37–5 Special foreign inspection and certification requirements.

* * * * *

(h) [RESERVED]

(i) Any restricted article of *Syringa* spp. (lilac) from the Netherlands is prohibited as specified in § 319.37–2(a) unless at the time of arrival at the port of first arrival in the United States the phytosanitary certificate accompanying the article of *Syringa* spp. (lilac) contains an accurate additional declaration that stipulates that the parent stock was found free of plant diseases by inspection and indexing and that the *Syringa* spp. (lilac) to be imported were propagated either by rooting cuttings from indexed parent plants or by grafting indexed parent plant material on seedling rootstocks, and were grown in fumigated soil (fumigated by applying 400 to 870 pounds of methyl bromide per acre and covering the soil with a tarpaulin for 7 days) in a field at least three meters from the nearest non-indexed *Syringa* spp. (lilac).

(j) (1) Seeds of *Prunus* spp. (almond, apricot, nectarine, peach, plum, and prune, but not species in the subgenus *Cerasus*) from Belgium, France, Federal Republic of Germany, The Netherlands, or Great Britain shall, at the time of arrival at the port of first arrival in the United States, be accompanied by a phytosanitary certificate of inspection, containing accurate additional declarations that:

(i) The seeds are from parent stock grown in a nursery in Belgium, France, Federal Republic of Germany, The Netherlands, or Great Britain that is free of plum pox (Sharka) virus; and

(ii) The seeds have been found by the plant protection service of the country in which grown to be free of plum pox (Sharka) virus based on the testing of parent stock by visual examination and indexing.

(2) Seeds of *Prunus* spp. (almond, apricot, nectarine, peach, plum, and prune, but not species in the subgenus *Cerasus*), from all countries except those in Europe, Cyprus, Syria, and Turkey shall, at the time of arrival at the port of first arrival in the United States, be accompanied by a phytosanitary certificate of inspection, containing an accurate additional declaration that plum pox (Sharka) virus does not occur

in the country in which the seeds were grown.

(k) Any restricted article of *Feijoa* (feijoa, pineapple guava) from New Zealand shall undergo postentry quarantine in accordance with § 319.37–7 unless the article, at the time of arrival at the port of first arrival in the United States, is accompanied by a phytosanitary certificate of inspection, containing an accurate additional declaration that New Zealand is free of *Monilinia fructigena*.

(l) Any restricted article of *Gladiolus*, *Watsonia* or *Crocosmia* spp. from Luxembourg or Spain shall, at the time of arrival at the port of first arrival in the United States, be accompanied by a phytosanitary certificate of inspection, containing accurate additional declarations that:

(1) The plants were grown in a disease free environment in a greenhouse;

(2) The plants were subjected to 12 hours of continuous misting per day with water at 15–20 degrees Celsius on 2 consecutive days; and

(3) The plants were inspected by a plant quarantine official of the country where grown 20 days after the completion of the misting and were found free of gladiolus rust.

(m) Any restricted article of *Acer palmatum* or *Acer japonicum* from the Netherlands is prohibited unless the article is accompanied, at the time of arrival at the port of first arrival in the United States, by a phytosanitary certificate of inspection, containing an accurate additional declaration that the article is of a nonvariegated variety of *A. palmatum* or *A. japonicum*.

20. In § 319.37–6 paragraphs (c), (d), and (e) are removed, paragraph (f) is redesignated as (c), and new paragraphs (d), (e), and (f) are added to read as follows:

§ 319.37–6 Specific treatment and other requirements.

* * * * *

(d) Seeds of *Guizotia abyssinica* (niger seed) from any foreign place, at the time of arrival at the port of first arrival, shall be heat treated for possible infestation with *Cuscuta* spp. in accordance with the applicable provisions of the Plant Protection and Quarantine Treatment Manual.

(e) Seeds of all species of the plant family *Rutaceae* from Afghanistan, Andaman Islands, Argentina, Bangladesh, Brazil, Burma, Caroline Islands, Comoro Islands, Fiji Islands, Home Island in Cocos (Keeling) Islands, Hong Kong, India, Indonesia, Ivory Coast, Japan, Kampuchea, Korea, Madagascar, Malaysia, Mauritius, Mexico, Mozambique, Nepal, Oman, Pakistan, Papua New Guinea, Paraguay, Peoples Republic of China, Philippines, Reunion Island, Rodriquez Islands, Ryukyu Islands, Saudi Arabia, Seychelles, Sri Lanka, Taiwan, Thailand, Thursday Island, United Arab Emirates, Uruguay, Vietnam, Yemen (Sanaa), and Zaire, at the time of arrival at the port of first arrival in the United States shall be treated for possible infection with citrus canker by being immersed in water at 125 °F (51.6 °C) or higher for 10 minutes, and then immersed for a period of at least 2 minutes in a solution containing 200 parts per million sodium hypochlorite at a pH of 6.0 to 7.5.

(f) Seeds of *Castanea* and *Quercus* from all countries except Canada and Mexico at the time of arrival at the port of first arrival in the United States shall be treated for possible infestation with *Curculio elephas* (Cyllenhal), *C. nucum* L., *Cydia* (*Laspeyresia*) *splendana* Hubner, *Pammene fusciana* L. (*Hemimene juliana* (Curtis)) and other insect pests of chestnut and acorn in accordance with the applicable provisions of the Plant Protection and Quarantine Treatment Manual.

§ 319.37–7 [Amended]

21. In § 319.37–7(a)(2) the listings for *Acer*, *Aesculus*, *Althaea*, *Chrysanthemum*, *Eucalyptus*, *Euonymus*, *Gladiolus*, *Hibiscus*, *Jasminum*, *Larix*, *Ligustrum*, *Morus*, *Ribes nigrum*, *Rosa*, *Sorbus*, and *Syringa* are removed, and the following entries are added in alphabetical order:

§ 319.37–7 Postentry quarantine.

(a) * * *

(2) * * *

Restricted articles (excluding seeds)	Foreign place from which imported
Abelmoschus spp. (okra)	All except Africa, Bangladesh, Brazil, Canada, India, Iraq, Papua New Guinea, Sri Lanka, and Trinidad and Tobago.
* * *	* * * *
Acer spp. (maple)	All except Canada, Europe, and Japan.
* * *	* * * *
Aesculus spp. (horsechestnut)	All except Canada, Czechoslovakia, Federal Republic of Germany, Romania, and the United Kingdom.
Althaea spp. (althaea, hollyhock)	All except Africa, Bangladesh, Canada, India, and Sri Lanka.
* * *	* * * *
Blighia sapida (akee)	All except Canada, Ivory Coast, and Nigeria.
* * *	* * * *
Chrysanthemum spp. (chrysanthemum) meeting the conditions in § 319.37–5(c).	All except Argentina, Brazil, Canada, Canary Islands, Chile, Colombia, Europe, Republic of South Africa, Uruguay, Venezuela, and all countries, territories, and possessions of countries located in part or entirely between 90° and 180° East longitude.
* * *	* * * *
Crocosmia spp. (montebretia) (except bulbs) not meeting the conditions for importation in § 319.37–5(l).	All except Africa, Argentina, Brazil, Canada, France, Italy, Luxembourg, Malta, Mauritius, Portugal, Spain, and Uruguay.
* * *	* * * *
Dendranthema spp. (chrysanthemum) meeting the conditions in § 319.37–5(c).	All except Argentina, Brazil, Canada, Canary Islands, Chile, Colombia, Europe, Republic of South Africa, Uruguay, Venezuela, and all countries, territories, and possessions of countries located in part or entirely between 90° and 180° East longitude.
* * *	* * * *
Eucalyptus spp	All except Canada, Europe, Sri Lanka, and Uruguay.
Euonymus spp. (euonymus)	All except Canada, Japan, and Europe.
* * *	* * * *
Gladiolus spp. (gladiolus) (except bulbs) not meeting the condition for importation in § 319.37–5(l).	All except Africa, Argentina, Brazil, Canada, France, Italy, Luxembourg, Malta, Mauritius, Portugal, Spain, and Uruguay.
Hibiscus spp. (kenaf, hibiscus, rose mallow)	All except Africa, Brazil, Canada, and India.
* * *	* * * *
Jasminum spp. (jasmine)	All except Canada, Belgium, Federal Republic of Germany, Great Britain, India, and the Philippines.
* * *	* * * *
Larix spp. (larch)	All except Canada, Japan, and Europe.

Restricted articles (excluding seeds)	Foreign place from which imported
Ligustrum spp. (privet)	All except Canada and Europe.
* * *	* * * *
Morus spp. (mulberry)	All except Canada, India, Japan, Korea, People's Republic of China, Thailand, and the geographic area formerly known as the Union of Soviet Socialist Republics.
* * *	* * * *
Pseudolarix spp. (golden larch)	All except Canada, Japan, and Europe.
* * *	* * * *
Ribes spp. (currant, gooseberry)	All except Canada and Europe.
Rosa spp. (rose)	All except Australia, Bulgaria, Canada, Italy, and New Zealand.
* * *	* * * *
Sorbus spp. (mountain ash)	All except Canada, Czechoslovakia, Denmark, and Federal Republic of Germany.
Syringa spp. (lilac)	The Netherlands, if the articles meet the conditions for importation in § 319.37-5(i), and all other places except Canada and Europe.
* * *	* * * *
Watsonia spp. (bugle lily) (except bulbs) not meeting the conditions for importation in § 319.37-5(l).	All except Africa, Argentina, Brazil, Canada, France, Italy, Luxembourg, Malta, Mauritius, Portugal, Spain, and Uruguay.
* * *	* * * *

22. In paragraph (b) of § 319.37-7, the listings "*Blighia*—akee", "*Bouea*—kundangan", "*Calocarpum*—sapote", "*Carya*—hickory, pecan", "*Castanea*—chestnut", "*Coccoloba*—sea grape, pigeon plum", "*Pouteria*—lucuma", "*Ribes* (other than *Ribes nigrum*)—red currant, white currant, gooseberry", and "*Theobroma*—cacao" are removed and the listing "*Feijoa*—feijoa, pineapple guava" is changed to read "*Feijoa*—feijoa, pineapple guava (except from New Zealand if accompanied by a phytosanitary certificate of inspection in accordance with § 319.37-5(k))".

§ 319.37-8 [Amended]

23. Paragraph (b) of § 319.37-8 is revised to read as follows:

§ 319.37-8 Growing media.

* * * * *

(b) A restricted article from Canada, other than from Newfoundland or from that portion of the Municipality of Central Saanich in the Province of British Columbia east of the West Saanich Road, may be imported in any growing medium.

* * * * *

§ 319.37-9 [Amended]

24. In § 319.37-9, the introductory text is amended by adding the phrase "the plants were packed in the packing material immediately prior to shipment;" immediately following the word "unless", and the following is added in alphabetical order to the list of approved packing materials:

§ 319.37-9 Approved packing materials.

* * * * *

Baked or expanded clay pellets

* * * * *

Perlite

* * * * *

Rock wool

* * * * *

Volcanic rock

* * * * *

25. In the first sentence of § 319.37-13, the phrase "the inspector" is removed and the phrase "a Plant Protection and Quarantine inspector" is added in its place.

Done in Washington, DC, this 10th day of September 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-22245 Filed 9-17-92; 8:45 am]

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INTERSTATE COMMERCE COMMISSION

49 CFR Part 1023

[Ex Parte No. MC-100 (Sub-No. 7)]

Single State Insurance Registration—1993 Rules

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission is revising its regulations pertaining to registration of certificates and permits with the States on an interim basis by eliminating the so-called "bingo card" system (whereby States issue stamps to be affixed to cab cards) while retaining and augmenting existing rules permitting State regulatory agencies to assign motor carriers identification numbers. This action is necessary to relieve the trucking industry of undue administrative burdens that the current registration system imposes. Consistent with Congressional intent and the public interest, the rules are intended immediately to alleviate burdens while the ICC formulates single State insurance registration rules to take effect in 1994.

EFFECTIVE DATE: October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Kenneth H. Schwartz (202) 927-5316 or Richard B. Felder (202) 927-5610 (TDD for hearing impaired: (202) 927-5721)

SUPPLEMENTARY INFORMATION: Congress has determined that the "bingo card" program embraced in the ICC's regulations at 49 CFR Part 1023 is inefficient and has been an administrative burden on the trucking industry and the States. Therefore, in section 4005 of title IV of the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102-240), Congress acted to benefit interstate carriers and, ultimately, the public by replacing the present "bingo card" program with a simplified insurance registration system under which States no longer may require carriers to register or identify specific vehicles operated.

In Ex Parte No. MC-100 (Sub-No. 6), Single State Insurance Registration (not printed), decision served May 8, 1992, and Advance Notice of Proposed Rulemaking published at 57 FR 20072-20073 on May 11, 1992, the Commission examined the new law and requested the trucking industry and State regulatory agencies to participate in the formulation of revised regulations. The record in that proceeding has been completed, and the Commission is formulating proposed regulations.

In the meantime, believing that it would be consistent with the Congressional intent and the public interest to take immediate action to alleviate the burdens that the present registration system imposes, the ICC proposed transitional rules to govern filings for the 1993 registration year. In Ex Parte No. MC-100 (Sub-No. 7), Single State Insurance Registration—1993 Rules (not printed), decision served June 16, 1992, and Notice of Proposed Rulemaking published at 57 FR 27009-27010 on June 17, 1992, the ICC proposed

rules that would eliminate the "bingo card" system while retaining and augmenting existing provisions permitting State regulatory agencies to assign motor carriers identification numbers.

The Commission has reviewed the public comments it received, primarily from motor carrier interests and State regulatory agencies, and has found that, on balance, the public interest would best be served by the ICC's adopting the proposed rules, but with minor modifications. First, the Commission is adding language making it clear that carriers must continue to file for "bingo stamps" under the predecessor rules until December 31, 1992. Second, the ICC is revising time frames specified in the rules to comport with those specified in the predecessor rules. In this connection, the ICC is removing the 3 week limit for State action on carrier filings. Finally, in recognition that not all carriers are corporations, the ICC is deleting the word "corporate" from the provision concerning the place at which carriers must maintain receipts.

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 298-4357/4359. [TDD for the hearing impaired (202) 927-5721.]

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

We conclude that our action in this proceeding will not have a significant economic impact on a substantial number of small entities. No new regulatory requirements are imposed, directly or indirectly, on such entities. The purpose and effect of our action is to reduce regulation. The impact on small entities, if any, will be to reduce administrative burdens.

List of Subjects in 49 CFR Part 1023

Insurance, Motor carriers, Surety bonds.

Decided: September 3, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emm., Vice Chairman McDonald and Commissioner Simmons dissented with separate expressions.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1023 of the Code of Federal Regulations is amended as follows:

PART 1023—STANDARDS FOR REGISTRATION OF CERTIFICATES AND PERMITS WITH STATES

1. The authority citation for part 1023 continues to read as follows:

Authority: 49 U.S.C. 11506.

2. Section 1023.32 is revised to read as follows:

§ 1023.32 Registration and identification.

(a) On or before December 31, 1992, but not earlier than October 1, 1992, such motor carrier shall apply to the Commission of such State for the assignment of an identification number for the registration and identification of the vehicle or vehicles which it intends to operate, or driveaway operations which it intends to conduct, within the borders of such State during the ensuing year. The motor carrier may thereafter file one or more supplements to its application for the purpose of registering and identifying additional vehicles or driveaway operations if the need therefor arises or is anticipated. Notwithstanding the provisions of this part governing the 1993 registration year, until December 31, 1992, the States may require carriers to apply for, and affix to uniform cab cards, identification stamps covering vehicles operated during the 1992 registration year.

(b) If the State Commission determines that the motor carrier has complied with all applicable provisions of these standards, the Commission shall assign the motor carrier an identification number.

(c) An identification number assigned under the provisions of this subpart shall be used for the purpose of registering and identifying a vehicle or driveaway operations as being operated or conducted by a motor carrier under authority issued by the Interstate Commerce Commission, and shall not be used for the purpose of distinguishing between the vehicles operated by the same motor carrier. A motor carrier receiving an identification number under the provisions of this subpart shall not knowingly permit the use of same by any other person or organization.

(d) The registration and identification of a vehicle or driveaway operations under the provisions of this subpart and the number evidencing same shall become void on the date or dates to be designated in the subsequent amendments to this part to take effect by January 1, 1994, unless such registration is terminated prior thereto.

3. Section 1023.33 is revised to read as follows:

§ 1023.33 Form and execution of application for identification number.

The application for the issuance of such identification number shall be in the form set forth in Form B appended to this part and made a part of this part. The application shall be printed on a rectangular card or sheet of paper 11 inches in height and 8½ inches in width. The application shall be duly completed and executed by an official of the motor carrier, and shall be accompanied by the fee, if any, prescribed by the law of such State. The fee shall, as pertinent, either equal the flat fee or be calculated by using the per vehicle fee (not to exceed $10 per vehicle), collected by the State as of November 15, 1991, for the issuance of identification stamps or an identification number under the former provisions of this part.

4. Section 1023.34 is revised to read as follows:

§ 1023.34 Form of identification number.

Any identification number issued by a State Commission under the provisions of this subpart shall be specified on a written receipt or other document issued by the State Commission. The receipt or document shall specify the name of the State Commission, the name of the carrier, the carrier's ICC MC number, the amount of fees paid the State by the carrier, and the carrier's identification number. The carrier shall maintain the receipt or document at its principal offices.

5. Section 1023.35 is revised to read as follows:

§ 1023.35 Form of evidence of payment of fees.

Beginning February 1, 1993, each carrier shall maintain in each of the vehicles it operates pursuant to the provisions of this part a copy of a list setting forth the States to which the carrier has paid a fee under this subpart and the identification number issued the carrier by each such State. No State shall require a carrier to display a decal, sticker, or emblem or otherwise maintain evidence of payment except as provided under this part. However, each carrier shall continue to maintain a cab card in each of its vehicles, covering registration for the 1992 registration year, until February 1, 1993.

§§ 1023.36 and 1023.37 [Removed]

§§ 1023.38, 1023.39 [Redesignated as §§ 1023.36 and 1023.37]

6. Sections 1023.36 and 1023.37 are removed, and §§ 1023.38 and 1023.39 are redesignated as new §§ 1023.36 and 1023.37 respectively and revised to read as follows:

§ 1023.36 Use of list in driveaway operations.

In the case of a driveaway operation, a copy of the list specified in § 1023.35 shall be maintained in the cab of the vehicle furnishing the motive power for the driveaway operation whenever such an operation is conducted under the authority of the carrier identified on the list. A cab card shall be maintained in the cab, covering registrations for the 1992 registration year, until February 1, 1993.

§ 1023.37 Inspection of list.

A copy of the list specified in section 1023.35 shall, upon demand, be presented by the driver to any authorized Government personnel for inspection. Until February 1, 1993, a cab card covering registrations for the 1992 registration year must be presented.

§§ 1023.40–1023.42 [Removed]

7. Sections 1023.40, 1023.41, and 1023.42 are removed.

§ 1023.101 [Removed and Reserved]

8. Section 1023.101 is removed and reserved.

[FR Doc. 92-22638 Filed 9-17-92; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 920246-2229]

National Marine Fisheries Service; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NMFS changes the total allowable catch (TAC), allocations and quotas for the Gulf of Mexico migratory group of king mackerel, changes the bag limits from the Atlantic and Gulf migratory groups of king and Spanish mackerel, and changes the maximum sustainable yield (MSY) for cobia in accordance with the framework procedure of the Fishery Management Plan for the Coastal Migratory Pelagic Resources (FMP). This final rule for the Gulf migratory group of king mackerel, increases: The TAC and allocations, and in the western area (off Texas) and central area (off Louisiana, Mississippi, and Alabama), removes the three-fish alternative bag limited available for persons fishing from charter vessels; for the Atlantic migratory group of king mackerel, changes the daily bag limit applicable to the southern area (off Florida), from five per person to the limit applicable to Florida's waters, but not to exceed five per person; for the Gulf migratory group of Spanish mackerel, changes the daily bag limit applicable to (a) the eastern area (off Florida) from five per person to the limit applicable to Florida's waters, but not to exceed ten per person; and (b) the western area (off Texas) from three per person to the limit applicable to Texas' waters, but not to exceed ten per person; for the Atlantic migratory group of Spanish mackerel, changes the daily bag limit applicable to the southern area (off Florida), from five per person to the limit applicable to Florida's waters, but not to exceed ten per person; and for cobia, increases the MSY from 1.0 to 2.2 million pounds (m. lb.). The intended effects are to protect the mackerels and cobia from overfishing and continue stock rebuilding programs while still allowing catches by important recreational and commercial fisheries dependent on these species.

EFFECTIVE DATE: September 18, 1992.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813-893-3161.

SUPPLEMENTARY INFORMATION: The mackerel fisheries are regulated under the FMP, which was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils), and its implementing regulations at 50 CFR part 642.

In accordance with the FMP and its implementing regulations, the Councils recommended and NMFS published a proposed rule containing changes in TACs, allocations, quotas, and bag limits for king and Spanish mackerel and the MSY for cobia (57 FR 33924, July 31, 1992). That proposed rule (1) described the framework procedures of the FMP through which the Councils recommended changes in TACs, allocations, quotas, bag limits, and MSY; (2) specified the recommended changes, and (3) described the need and rationale for the recommended changes. Those descriptions are not repeated here.

No comments were received on the proposed rule. Accordingly, the proposed rule is adopted as final. However, one change has been made to the final rule to clarify that the rule's incorporation of the Florida and Texas bag limits automatically will include any future amendments to those States' bag limits.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this final rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291.

The Councils prepared a regulatory impact review for this action, the conclusions of which were summarized in the proposed rule and are not repeated here.

The General Counsel of the Department of Commerce certified to the Small Business Administration that the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. Accordingly, the preparation of a regulatory impact analysis is not required.

The increased allocations and quotas for the Gulf migratory group of king mackerel in this final rule are effective for the fishing year that began July 1, 1992. Delay in implementing these allocations and quotas may cause unnecessary closures of the commercial fisheries and/or reductions of the bag limits to zero when the existing, lower allocations and quotas are reached. Removal of the alternative bag limit, currently available for persons fishing for king mackerel from charter vessels in parts of the Gulf of Mexico, in combination with other measures, is expected to prolong the recreational fishery. Delay in implementation will unnecessarily reduce that benefit. The bag limit changes in this final rule simplify the regulations and foster compatibility of Federal and state limits. Delay in implementation will unnecessarily prolong incompatible Federal/state bag limits for Spanish mackerel off Texas. Accordingly, the Assistant Administrator finds for good cause, namely, to provide effective conservation and management of the coastal migratory pelagic resources, that it is impracticable and contrary to the public interest to delay for 30 days the effective date of this rule under the provisions of section 553(d)(3) of the Administrative Procedure Act.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 11, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 642 is amended as follows:

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND SOUTH ATLANTIC

1. The authority citation for part 642 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 642.21 [Amended]

2. In § 642.21, the numbers are revised in the following places to read as follows:

Paragraph	Removed	Added
(a)(1), first sentence	1.84	2.50
(a)(1)(i)	1.27	1.73
(a)(1)(ii)	0.57	0.77
(b)(1)	3.91	5.30

3. In § 642.28, paragraphs (a)(1)(i) through (a)(1)(iv) and (a)(3) are revised to read as follows:

§ 642.28 Bag and possession limits.

(a) * * *

(1) * * *

(i) *King mackerel Gulf migratory group.* Possessing two king mackerel per person per day.

(ii) *King mackerel Atlantic migratory group.*

(A) *Northern area.* Possessing five king mackerel per person per day.

(B) *Southern area.* Possessing the limit specified by Florida in Rule 46–12.004, Rules of the Department of Natural Resources, Florida Marine Fisheries Commission, Florida Administrative Code, or as subsequently amended, but in any event not to exceed five king mackerel per person per day.

(iii) *Spanish mackerel Gulf migratory group.*

(A) *Eastern area.* Possessing the limit specified by Florida in Rule 46–23.005, Rules of the Department of Natural Resources, Florida Marine Fisheries Commission, Florida Administrative Code, or as subsequently amended, but in any event not to exceed ten Spanish mackerel per person per day.

(B) *Central area.* Possessing ten Spanish mackerel per person per day.

(C) *Western area.* Possessing the limit specified by Texas in Rule 31–65.72, Texas Administrative Code, or as subsequently amended, but in any event not to exceed ten Spanish mackerel per person per day.

(iv) *Spanish mackerel Atlantic migratory group.*

(A) *Northern area.* Possessing ten Spanish mackerel per person per day.

(B) *Southern area.* Possessing the limit specified by Florida in Rule 46–23.005, Rules of the Department of Natural Resources, Florida Marine Fisheries Commission, Florida Administrative Code, or as subsequently amended, but in any event not to exceed ten Spanish mackerel per person per day.

* * * * *

(3) *Areas.* For the purpose of paragraph (a)(1) of this section:

(i) The boundary between the northern and southern areas is a line extending directly east from the Georgia/Florida boundary (30°42′45.6″ N. latitude) to the outer limit of the EEZ;

(ii) The boundary between the eastern and central areas is a line extending directly south from the Alabama/Florida boundary (87°31′06″ W. longitude) to the outer limit of the EEZ (identical to the boundary between the eastern and western zones in the commercial fishery); and

(iii) The boundary between the central and western areas is an extension of the boundary between Louisiana and Texas, namely, a line from point A (on the seaward limit of Texas' waters) at 29°32.1′ N. latitude, 93°47.7′ W. longitude to point B (on the outer limit of the EEZ) at 26°11.4′ N. latitude, 92°53′ W. longitude.

* * * * *

[FR Doc. 92–22578 Filed 9–17–92; 8:45 am]

BILLING CODE 3510–22–M

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50 CFR Part 675

[Docket No. 911172–2021]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure to directed fishing.

SUMMARY: NMFS is establishing a directed fishing allowance and is closing the directed fishery for Pacific cod in the Bering Sea and Aleutian Islands Management Area (BSAI). This action is necessary to prevent exceeding the total allowable catch (TAC) for Pacific cod in the BSAI.

EFFECTIVE DATES: Effective 12 noon, Alaska local time (A.l.t.), September 17, 1992, through 12 midnight, A.l.t., December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, 907/586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The Pacific cod initial TAC in the BSAI was established by the final notice of specifications (57 FR 2844, February 3, 1992) and increased by a release from the non-specific reserve to 176,700 metric tons (mt) effective September 11, 1992 (published in the **Federal Register** September 16, 1992).

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 675.20(a)(8), that the Pacific cod TAC will soon be reached. Therefore, NMFS is establishing a directed fishing allowance of 173,700 mt, and is setting aside the remaining 3,000 mt as bycatch to support other anticipated groundfish fisheries. The Regional Director has determined that the directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod in the BSAI, effective from 12 noon, A.l.t., September 17, 1992, through 12 midnight, A.l.t., December 31, 1992.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under 50 CFR 675.20 and is in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

(Authority: 16 U.S.C. 1801 *et seq.*)

Dated: September 14, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–22609 Filed 9–15–92; 10:18 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 57, No. 182
Friday, September 18, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 108

Loans to State and Local Development Companies; Associate Development Company Program

AGENCY: Small Business Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule revises the regulations governing the 503 development company program by requiring a probationary period for newly certified 503 companies. It also provides for a class of entities designated as Associate Development Companies which do not have full 503 company status. Insufficiently active existing 503 companies may be converted into this new class of development companies so that they may continue to serve economic development needs in a more efficient manner.

DATES: Comments must be received on or before October 19, 1992.

ADDRESSES: Comments should be sent to LeAnn M. Oliver, Deputy Director, Office of Rural Affairs and Economic Development, Small Business Administration, 409 3rd Street SW., suite 8300, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: LeAnn M. Oliver, Deputy Director, Office of Rural Affairs and Economic Development, Small Business Administration, Telephone (202) 205-6485.

SUPPLEMENTARY INFORMATION: The proposed rule would provide for an Associate Development Company (ADC) designation to increase program availability in underserved areas by allowing organizations that do not have the interest or ability to be a full fledged 503 company to play a role in program delivery. An ADC would be permitted to provide information to potential borrowers and to form a relationship with a fully certified 503 company under which it would contract to do some part of development company loan processing, although only certified 503 companies would be eligible to receive SBA guarantees and would be responsible for loans made to small businesses with the proceeds of those guarantees. This approach allows maximum flexibility to permit a variety of organizations to assist in program delivery, but at the same time allows SBA to focus its full regulatory efforts on 503 development companies that are ultimately responsible for processing, making, and servicing loans. An ADC will not be subjected to the degree of regulatory oversight necessary for an organization that is responsible for loan making.

The proposed rule would also amend the existing 503 development company rules to provide for a probationary period for new certified 503 companies. If a new 503 company is unable to deliver the 504 program during the probationary period, its exit from the program will be automatic. Such development company will have the option of transferring to status as an ADC, which will allow it to continue to provide information to local borrowers while being relieved of the burden of loan delivery. If the development company successfully delivers the 504 program, SBA may provide permanent status under § 108.503.

Lastly, the proposed regulation provides for transfer of a 503 company not meeting the activity requirements to a classification as an ADC. Once again, SBA's goal is to eliminate burdensome regulation of organizations that do not efficiently provide loan delivery while still encouraging avenues for information to reach small businesses.

Compliance With Executive Orders 12291, 12612, and 12778, the Regulatory Flexibility Act and the Paperwork Reduction Act

SBA has determined that this proposed rule, if promulgated in final, would not constitute a major rule for the purposes of Executive Order 12291. The annual effect of this rule on the national economy cannot attain $100 million because it addresses the oversight of essentially non-loan producing CDCs. While the creation of this new classification of ADCs has as its goal an increased number of projects due to greater program visibility, such increase is unlikely to result in more than $40 million because it is unlikely that there will be one additional loan created as a result of the existence of each ADC.

These proposed rules, if promulgated in final, would not result in a major increase in costs or prices to consumers, individual industries, Federal, state and local government agencies or geographic regions, and would not have adverse effects on competition, employment, investment productivity, or innovation.

SBA certifies that this proposed rule, if promulgated in final, would not warrant the preparation of a Federalism Assessment in accordance with Executive Order 12612.

For purposes of Executive Order 12778, SBA certifies this proposed rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

For the purpose of compliance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, SBA certifies that this proposed rule, if promulgated in final, would not have a significant economic impact on a substantial number of small entities for the same reason that it is not a major rule.

For purposes of the Paperwork Reduction Act, Public Law 98-115, 44 U.S.C. ch. 35, SBA certifies that § 108.507 will impose a new reporting requirement. SBA is presently seeking clearance for this paperwork requirement from the Office of Management and Budget.

List of Subjects in 13 CFR Part 108

Equal employment opportunity, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth above, part 108 of title 13 of the Code of Federal Regulations is amended as follows:

PART 108—[AMENDED]

1. The authority citation for part 108 continues to read as follows:

Authority: 15 U.S.C. 687(c), 695, 696, 697a, 697b, 697c.

2. Section 108.503-2 is amended by adding new paragraphs (d) and (e) to read as follows:

§ 108.503-2 Certification.

* * * * *

(d) *Probationary period.* All 503 companies certified after [INSERT EFFECTIVE DATE OF FINAL RULE] will be subject to a probationary period

of two (2) years from the date of certification. No later than two (2) months prior to the end of the probationary period a 503 company may: Petition for permanent status under § 108.503; petition for a one time only, one year extension of the probationary period; or petition for status as an Associate Development Company (ADC) under § 108.507. Failure to file a petition prior to the end of the probationary period shall be considered an automatic election of expiration of status under this part 108. If the third option is elected, or if no petition is filed, all documents related to funded and/or approved loans shall be transferred to a 503 company in good standing, SBA, or another servicer pursuant to instructions form SBA.

(e) *Transfer of certification to associate status.* Any 503 development company which does not meet the activity requirement of § 108.503–3(c) on average for any two (2) consecutive fiscal years shall be transferred to status as an ADC pursuant to § 108.507. SBA shall provide written notice of such determination at least ten (10) business days prior to the effective date of such action. Such notice shall inform the 503 development company of the opportunity for a hearing pursuant to part 134 of this chapter. During the period of any proceedings under part 134 of this chapter, the action of the SBA shall remain in effect.

* * * * *

3. Section 108.503–3(c) is revised to read as follows:

§ 108.503–3 Operational requirements for 503 companies.

* * * * *

(c) *Levels of activity.* In order to meet the needs of small business in its area of operations, a 503 company shall conduct active operations. For the purposes of this paragraph, such company shall be presumed to be inactive if, during any full fiscal year, it has not provided financing under Title V of the Small Business Investment Act to at least two small concerns.

* * * * *

4. A new undesignated center heading, § 108.507 and §§ 108.507–1 through 108.507–5 are added to read as follows:

Associate Development Companies

§ 108.507 Program objectives.

This section establishes policy and procedures for the designation and administration of Associate Development Companies (ADCs), created for the purpose of assisting in the promotion of the development company programs provided for in this part 108. ADCs shall foster economic development in both urban and rural areas by assisting those organizations qualified under § 108.503 to deliver long term, fixed asset financing. SBA shall not guarantee financing by organizations designated under § 108.507.

§ 108.507–1 Permissible functions of an ADC.

An ADC shall provide information about SBA programs to small businesses, financial institutions, and others participating in economic development activities, and may contract with a 503 company to aid the 503 company in the provision of financial assistance to small concerns if such ADC meets the staff requirements of § 108.507–2(d) and administers an existing portfolio of loans to small businesses.

§ 108.507–2 Eligibility requirements.

An applicant shall demonstrate to SBA's satisfaction that it has:

(a) *Status and purpose.* A state charter as a non-profit organization which, at least in part, supports local economic development efforts.

(b) *Management.* Adequate management ability in its board of directors, officers and professional staff to direct and administer its functions prudently. An executive director or other person managing day-to-day operations is considered an officer of the ADC.

(c) *Board of directors.* The board of directors shall be composed of individuals chosen from the membership by the stockholders or members. Such board shall meet at least quarterly to make management decisions for the company.

(d) *Professional staff.* Each ADC shall have a full-time professional staff and professional management ability. The number of personnel may vary, but there must be at least one qualified person available during regular business hours. Such staff shall be adequate and qualified by training and/or experience satisfactory to SBA to market the 503 program. For ADCs contracting with a 503 company to assist in processing a 504 loan, the staff must possess small business lending experience acceptable to SBA. Any contract for these functions, other than contracts for employment of individuals, shall require SBA's prior written approval, shall be approved annually by SBA and shall prohibit self-serving actions which would increase costs to a small business borrower. Compensation under such contracts shall be reasonable and customary for like services by like organizations. Such contracts shall be subject to audit by SBA at no cost to the ADC.

(e) *Management services.* Where an ADC provides management advice and services to small concerns, such services provided pursuant to a contract for other than employment of individuals shall be subject to audit by SBA at no cost to the ADC.

(f) *Financial capability.* An ADC shall have the ability to sustain its operations on a continuous basis from reliable sources of funds. An ADC shall submit a budget or copy of financial statements for its operations which demonstrates that adequate resources will be available to perform the ADC functions.

§ 108.507–3 Operational requirements for ADCs.

An ADC shall provide assistance to small concerns pursuant to § 108.507–1, maintain the eligibility requirements set forth in § 108.507–2 of this part, and meet the following operational requirements:

(a) *Records.* The ADC shall develop a system to ensure and document the dissemination of SBA-related information. Documents, or a photographic copy thereof, relating to its operations shall be made available to SBA.

(b) *Reporting requirements.* The requirements of §§ 108.4(c), 108.5(c), (d), (e), and (f) apply to an ADC, and in addition, each ADC shall submit to the SBA an annual report, in duplicate, containing financial statements, and operational and management information. SBA may require, within a stated period, additional or interim reports of a similar nature. The Report shall be prepared in accordance with the Guide for Preparation of the Annual ADC Report (SBA Form _____).

(1) The operational and management part of the annual report shall contain an explanation of the ADC's activity and accomplishments for the year then ended and plans for the next year.

(2) In addition to the required Form 1081, personal resumes of new officers, directors and professional staff employed by the ADC shall be promptly filed with the SBA office servicing the area where the development company's headquarters are located. The requirement for a personal resume and form 1081 may be waived by SBA if such documents have been previously filed with SBA under a development company program, and no significant changes have occurred.

(c) *Training.* The ADC shall provide evidence that staff members are receiving appropriate training.

§ 108.507–4 Fees which may be received by the ADC.

(a) *Charges and fees.* An ADC may contract with a 503 company to perform some or all of the loan packaging and non-legal staff functions related to a loan. Such contract shall specify the responsibilities of the ADC and identify the amount and schedule of compensation to be paid by the 503 company to the ADC. The 503 company shall be solely responsible to SBA for the processing, closing, and servicing of a loan.

(b) *Service fee paid by small concern.* Use of an ADC shall not result in any greater cost charged by a 503 company to a small business concern.

§ 108.507–5 Oversight and evaluation; suspension and revocation.

(a) *Operational review.* An ADC shall be subject to an operational review by SBA. The ADC shall cooperate with SBA by making its staff, records, and facilities available.

(b) *Compliance audit.* Each development company shall be subject to compliance audits conducted, supervised or coordinated by the SBA Office of the Inspector General pursuant to the Investor General Act (5 U.S.C. App., section 1, *et seq.*).

(c) *Revocation, suspension and other corrective actions.*—(1) *Corrective Actions.* SBA reserves the right to suspend temporarily the eligibility of any ADC, or to require any other corrective action for a violation of law or SBA regulation, or the terms of any agreement with SBA, or any inability to meet the operational requirements set forth in this part.

(2) *Revocation and appeal of suspensions.* Revocation proceedings and appeals of suspension actions shall be conducted in accordance with the provisions of Part 134 of this chapter. The Assistant Administrator of the Office of Hearings and Appeals or an Administrative Law Judge of such office shall be the reviewing official for purposes of §§ 134.32(b)(6) and 134.34 of this chapter.

(Catalog of Federal Domestic Assistance 59.036 Certified Development Company Loans (503 Loans); 59.041 Certified Development Company Loans (504 Loans))

Dated: August 14, 1992.

Patricia Saiki,

Administrator.

[FR Doc. 92–22574 Filed 9–17–92; 8:45 am]

BILLING CODE 8025–01–M

13 CFR Part 108

Loans to State and Local Development Companies; CDC Designations and Valuation of Land

AGENCY: Small Business Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule revises the regulations governing the 503 development company program by requiring that SBA approve the designations of new certified 503 companies and proposed changes of designations for existing 503 companies. This rule also would allow the use of land as a 503 company's injection even if the land has a building or other structure.

DATES: Comments must be received on or before October 19, 1992.

ADDRESSES: Comments should be sent to LeAnn M. Oliver, Deputy Director, Office of Rural Affairs and Economic Development, Small Business Administration, 409 3rd Street SW., suite 8300, Washington DC, 20416.

FOR FURTHER INFORMATION CONTACT: LeAnn M. Oliver, Deputy Director, Office of Rural Affairs and Economic Development, Small Business Administration, Telephone (202) 205–6485.

SUPPLEMENTARY INFORMATION: The proposed rule would amend the existing 503 development company rule to give SBA the right to approve the names of new certified 503 companies and proposed name changes for existing 503 companies. This rule is necessary because many 503 companies across the country are selecting identical designations such as "Small Business Finance Corporation". This increases the chance of posting and other errors in administering the program. In order to avert a growing problem, SBA proposes to amend the rule to allow for approval of 503 company designations. SBA would use this authority to require that local identification, such as city, country or region, be made part of CDCs' names where necessary to avoid confusion.

This proposed rule also would allow the use of land with improvements as a 503 company's injection. Currently, only unimproved land can be used for this purpose. This proposed rule change would allow real estate owned by a borrower or 503 company to serve as the injection even if there is a structure present, so long as it was valued at the price of unimproved land.

The market value of commercial structures is frequently difficult to determine with accuracy. To protect the public's interest, SBA in the past has not permitted either land or building to be counted as part of the owner's equity injection when an existing building is present because of this valuation problem. SBA is proposing to narrow the exclusion in order to accommodate such cases, while protecting the government against the risk of over-valuation of commercial structures.

Compliance With Executive Orders 12291, 12612, and 12778, the Regulatory Flexibility Act and the Paperwork Reduction Act

SBA has determined that this proposed rule, if promulgated in final, would not constitute a major rule for the purposes of Executive Order 12291. The annual effect of this rule on the national economy cannot attain $100 million because the first item is administrative and the second has no monetary consequences because the injection is and will continue to be the borrower's responsibility in all transactions. While adoption of this rule will give the borrower more flexibility in providing the injection the net effect on SBA's loan making is neutral.

This proposed rule, if promulgated in final, would not result in a major increase in costs or prices to consumers, individual industries, Federal, state and local government agencies or geographic regions, and would not have adverse effects on competition, employment, investment productivity, or innovation.

SBA certifies that this proposed rule, if promulgated in final, would not warrant the preparation of a Federalism Assessment in accordance with Executive Order 12612.

For purposes of Executive Order 12778, SBA certifies this proposed rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

For the purpose of compliance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, SBA certifies that this proposed rule, if promulgated in final, would not have a significant economic impact on a substantial number of small entities for the same reason that it is not a major rule.

For purposes of the Paperwork Reduction Act, Public Law 98–115, 44 U.S.C. ch.35, SBA certifies that this proposed rule, if promulgated in final, would impose no new reporting or recordkeeping requirements.

List of Subjects in 13 CFR Part 108

Equal employment opportunity, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth above, part 108 of title 13 of the Code of Federal Regulations is amended as follows:

PART 108—[AMENDED]

1. The authority citation for part 108 continues to read as follows:

Authority: 15 U.S.C. 687(c), 695, 696, 697a, 697b, 697c.

2. Section 108.4 is amended by redesignating paragraphs (c) through (e) as paragraphs (d) through (f), respectively, and adding new paragraph (c) to read as follows:

§ 108.4 Operational requirements.

* * * * *

(c) *Name of 503 development company.* In order to avoid confusion caused by identical designations, the name of each development company and/or any subsequent request for name change is subject to approval by SBA.

* * * * *

3. Section 108.503–5(d)(2) is amended by adding a new sentence immediately following the second sentence and by republishing the first two sentences to read as follows:

§ 108.503–5 Eligible and ineligible uses of 503 loan proceeds.

* * * * *

(d) *Expenditures made in anticipation of a 503 loan.* * * *

(2) Land previously acquired by the small concern or the 503 company may be contributed as the 503 company's injection in a project involving new construction. The value of the contribution shall be the contributor's equity in such land. The value of any structure on such land shall not be considered for purposes of this paragraph. * * *

* * * * *

Catalog of Federal Domestic Assistance 59.036 Certified Development Company Loans (503 Loans); 59.041 Certified Development Company Loans (504 Loans).

Dated: July 24, 1992.

Patricia Saiki,

Administrator.

[FR Doc. 92–22576 Filed 9–17–92; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 806

[Docket No. 920606–2208]

RIN 0691–AA08

BE–12, Benchmark Survey of Foreign Direct Investment in the United States—1992

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 4(b) of the International Investment and Trade in Services Survey Act requires that a benchmark survey of foreign direct investment in the United States be conducted covering 1980, 1987, and every fifth year thereafter. These proposed rules will revise 15 CFR 806.17 to set forth the reporting requirements for the survey covering 1992 and to delete the rules now in Part 806.17, which were for the last benchmark survey covering 1987.

DATES: Comments on the proposed rules will receive consideration if submitted in writing on or before November 2, 1992.

ADDRESSES: Comments may be mailed to the Office of the Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230, or hand delivered to room 1008, Tower Building, 1401 K Street, NW., Washington, DC 20005. Comments received will be available for public inspection in room 1008, Tower Building, between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Betty L. Barker, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 523–0659.

SUPPLEMENTARY INFORMATION: These proposed rules set forth the reporting requirements for the BE–12, Benchmark Survey of Foreign Direct Investment in the United States—1992. This survey is to be conducted by the Bureau of Economic Analysis, U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act, (Pub. L. 94–472, 90 Stat. 2059, 22 U.S.C. 3101–3108; as amended by P.L. 98–573 and P.L. 101–533) hereinafter, "the Act." Section 4(b) of the Act, as amended, requires that "With respect to foreign direct investment in the United States, the President shall conduct a benchmark survey covering year 1980, a benchmark survey covering year 1987, and benchmark surveys covering every fifth year thereafter * * *. In conducting surveys pursuant to this subsection, the President shall, among other things and to the extent he determines necessary and feasible—

(1) Identify the location, nature, and magnitude of, and changes in the total investment by any parent in each of its affiliates and the financial transactions between any parent and each of its affiliates;

(2) Obtain (A) information on the balance sheet of parents and affiliates and related financial data, (B) income statements, including the gross sales by primary line of business (with as much product line detail as necessary and feasible) of parents and affiliates in each country in which they have significant operations, and (C) related information regarding trade, including trade in both goods and services, between a parent and each of its affiliates and between each parent or affiliate and any other person;

(3) Collect employment data showing both the number of United States and foreign employees of each parent and affiliate and the levels of compensation, by country, industry, and skill level;

(4) Obtain information on tax payments by parents and affiliates by country; and

(5) Determine, by industry and country, the total dollar amount of research and development expenditures by each parent and affiliate, payments or other compensation for the transfer of technology between parents and their affiliates, and payments or other compensation received by parents or affiliates from the transfer of technology to other persons."

The responsibility for conducting benchmark surveys of foreign direct investment in the United States has been delegated to the Secretary of Commerce, who has redelegated it to the Bureau of Economic Analysis (BEA).

The benchmark surveys are BEA's censuses, intended to cover the universe of foreign direct investment in the United States in value terms. Foreign direct investment in the United States is defined as the ownership or control, directly or indirectly, by one foreign person of 10 percent or more of the voting securities of an incorporated U.S. business enterprise or an equivalent interest in an unincorporated U.S. business enterprise, including a branch.

The purpose of the benchmark survey is to obtain data on the amount, types, and financial and operating characteristics of foreign direct investment in the United States. The

data from the survey will be used to measure the economic significance of such investment and to analyze its effects on the U.S. economy. They will also be used in formulating, and assessing the impact of, U.S. policy on foreign direct investment. They will provide benchmarks for deriving current universe estimates of direct investment from sample data collected in other BEA surveys. In particular, they will serve as benchmarks for the quarterly direct investment estimates included in the U.S. international transactions and national income and product accounts, and for annual estimates of the foreign direct investment position of the United States at book value and of the operations of the U.S. affiliates of foreign companies.

The benchmark surveys are also the most comprehensive of BEA's surveys in terms of subject matter in order that they obtain the detailed information on foreign direct investment needed for policy purposes. As specified in the Act, policy areas of particular interest include, among other things, trade in both goods and services, employment and employee compensation, taxes, and technology.

As proposed, the survey will consist of an instruction booklet, a claim for not filing the BE-12, and the following report forms:

1. Form BE-12(LF) (Long Form) for reporting by nonbank U.S. affiliates with assets, sales, or net income of more than $50 million (positive or negative);
2. Form BE-12(SF) (Short Form) for reporting by nonbank U.S. affiliates with assets, sales or net income of more than $1 million, but not more than $50 million (positive or negative);
3. Form BE-12 Bank for reporting by U.S. affiliates that are banks with assets, sales, or net income of more than $1 million (positive or negative).

Although the proposed survey is intended to cover the universe of foreign direct investment in the United States, in order to minimize the reporting burden, U.S. affiliates with assets, sales, and net income each equal to or less than $1 million (positive or negative) are exempt from reporting on Forms BE-12(LF), BE-12(SF), and BE-12 Bank, but are required to file, on Form BE-12(X), a claim for exemption from filing in the benchmark survey.

In designing this survey, BEA solicited comments from an extensive number of representatives of both data users and survey respondents. BEA held a meeting with interagency data users on April 16, 1992 and held follow-up meetings with key users on specific issues on May 5 and May 8, 1992. It solicited and received input from several nongovernment data users. BEA also solicited comments from respondents through the Business Council on the Reduction of Paperwork (BCORP) and the Organization for International Investment (OFII), and directly contacted nine large current respondents to BEA surveys. Although no written comments were received by BEA from these respondents, the survey forms were discussed, by telephone, with each of the nine current respondents. The proposed draft incorporates comments received from users and respondents. In reaching decisions on what questions to include in the survey, BEA considered the Government's need for the data, the burden imposed on respondents, the quality of the likely responses (e.g., whether the data are readily available on the respondents' books), and its experience in previous benchmark surveys.

Two changes from the last (1987) survey to the 1992 survey, which are reflected in these proposed rules, are:

1. Nonbank affiliates with assets, sales, or net income greater than $50 million (positive or negative) will be required to file the BE-12 long form; all other nonbank affiliates will file the BE-12 short form. In the 1987 benchmark survey, the long-form exemption level was $20 million. This proposed change will shift approximately 1,600 affiliates from the long form to the short form, reducing both reporting and editing burden from what it would otherwise be. Because of growth in the foreign direct investment universe since 1987, however, the total number of long forms to be filed would remain roughly the same as in the 1987 survey.

2. A new BE-12 Bank form was designed for reporting by all foreign-owned U.S. banks. In the 1987 benchmark survey, bank affiliates reported on the BE-12 short form, as did nonbank affiliates below a certain size. This approach did not work well because short form questions were not written with banks in mind. The new, separate bank form has questions that are specifically targeted at banks, which should substantially reduce the need for follow-up contact with bank reporters. In addition, BEA proposes broadening the definition of "banking" to include savings institutions and credit unions, to be consistent with the 1987 revision of the Standard Industrial Classification System.

Other proposed changes in the survey from 1987 to 1992 include revisions to clarify instructions and the modification, addition, deletion, or combination of some items on the forms. These changes do not require changes to the rules and should, on balance, result in a net reduction in reporting burden.

A copy of the proposed survey forms may be obtained from: Chief, Direct Investment in the United States Branch, International Investment Division, BE-50(IN), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 523-0547.

Paperwork Reduction Act

This proposed rule contains a collection of information requirement subject to the Paperwork Reduction Act. The collection of information is necessary to secure data on the amount, types, and financial and operating characteristics of foreign direct investment in the United States for use in measuring the economic significance of, and formulating U.S. Government policy on, such investment. A request has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act. Comments from the public on this collection of information requirement should be addressed to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Department of Commerce.

The public reporting burden for this collection of information is estimated to vary from 2 to 750 hours per response, with an average of 15.5 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding the burden estimate, including suggestions for reducing this burden, may be sent to the Director, Bureau of Economic Analysis (BE-1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, Paperwork Reduction Project 0608-0042, Washington, DC 20503.

Executive Order 12291

BEA has determined that this proposed rule is not "major" as defined in E.O. 12291 because it is not likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based

enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12612

These proposed rules do not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 12612.

Regulatory Flexibility Act

The General Counsel, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the proposed rules will not have a significant economic impact on a substantial number of small entities. Most small businesses are not foreign owed, and many that are will not be required to report in the benchmark survey because their assets, sales, and net income are equal to or less than the $1 million exemption level below which reporting is not required. Also, under these proposed rules, companies with assets, sales, or net income above $1 million, but not above $50 million (positive or negative), would report on the abbreviated BE-12 short form, rather than on the BE-12 long form. This provision significantly reduces the reporting burden on smaller companies.

List of Subjects in 15 CFR Part 806

Balance of payments, Economic statistics, Foreign investment in the United States, Reporting requirements.

Dated: August 12, 1992.

Carol S. Carson,

Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA proposes to revise 15 CFR part 806 as follows:

PART 806—DIRECT INVESTMENT SURVEYS

1. The authority citation for 15 CFR part 806 follows:

Authority: 5 U.S.C. 301, 22 U.S.C. 3101-3108, and E.O. 11961, as amended.

2. Section 806.17 is revised to read as follows:

§ 806.17 Rules and regulations for BE-12, Benchmark Survey of Foreign Direct Investment in the United States—1992.

A BE-12, Benchmark Survey of Foreign Direct Investment in the United States will be conducted covering 1992. All legal authorities, provisions, definitions, and requirements contained in §§ 806.1 through 806.13 and § 806.15 (a) through (g) are applicable to this survey. Specific additional rules and regulations for the BE-12 survey are given below.

(a) *Response required.* A response is required from persons subject to the reporting requirements of the BE-12, Benchmark Survey of Foreign Direct Investment in the United States—1992, contained herein, whether or not they are contacted by BEA. Also, a person, or their agent, contacted by BEA concerning their being subject to reporting, either by sending them a report form or by written inquiry, must respond in writing pursuant to § 806.4. This may be accomplished by completing and returning either Form BE-12(X) within 30 days of its receipt if Form BE-12(LF), Form BE-12(SF), or Form BE-12 Bank do not apply, or by completing and returning Form BE-12(LF), Form BE-12(SF), or Form BE-12 Bank, whichever is applicable, by May 31, 1993.

(b) *Who must report.* A BE-12 report is required for each U.S. affiliate, i.e., for each U.S. business enterprise in which a foreign person owned or controlled, directly or indirectly, 10 percent or more of the voting securities if an incorporated U.S. business enterprise, or an equivalent interest if an unincorporated U.S. business enterprise, at the end of the business enterprise's 1992 fiscal year. A report is required even though the foreign person's ownership interest in the U.S. business enterprise may have been established or acquired during the reporting period. Beneficial, not record, ownership is the basis of the reporting criteria.

(c) *Forms to be filed.* (1) Form BE-12(LF)—Benchmark Survey of Foreign Direct Investment in the United States—1992 (Long Form) must be completed and filed by May 31, 1993, by each U.S. business enterprise that was a U.S. affiliate of a foreign person at the end of its 1992 fiscal year, if:

(i) It is not a bank, and

(ii) On a fully consolidated, or, in the case of real estate investment, an aggregated basis, one or more of the following three items for the U.S. affiliate (not the foreign parent's share) exceeded $50 million (positive or negative) at the end of, or for, its 1992 fiscal year:

(A) Total assets (do not net out liabilities)

(B) Sales or gross operating revenues, excluding sales taxes, or

(C) Net income after provision for U.S. income taxes.

(2) Form BE-12(SF)—Benchmark Survey of Foreign Direct Investment in the United States—1992 (Short Form) must be completed and filed by May 31, 1993, by each U.S. business enterprise that was a U.S. affiliate of a foreign person at the end of its 1992 fiscal year, if:

(i) It is not a bank, and

(ii) On a fully consolidated, or, in the case of real estate investments, an aggregated basis, one or more of the following three items for the U.S. affiliate (not the foreign parent's share) exceeded $1 million, but no one item exceeded $50 million (positive or negative) at the end of, or for, its 1992 fiscal year:

(A) Total assets (do not net out liabilities)

(B) Sales or gross operating revenues, excluding sales taxes, or

(C) Net income after provision for U.S. income taxes.

(3) Form BE-12 Bank—Benchmark Survey of Foreign Direct Investment in the United States—1992 BANK must be completed and filed by May 31, 1993, by each U.S. business enterprise that was a U.S. affiliate of a foreign person at the end of its 1992 fiscal year, if:

(i) The U.S. affiliate is a bank or a bank holding company, and

(ii) On a fully consolidated basis, one or more of the following three items for the U.S. affiliate (not the foreign parent's share) exceeded $1 million (positive or negative) at the end of, or for, its 1992 fiscal year:

(A) Total assets (do not net out liabilities)

(B) Sales or gross operating revenues, excluding sales taxes, or

(C) Net income after provision for U.S. income taxes.

(4) Form BE-12(X)—Benchmark Survey of Foreign Direct Investment in the United States—1992, Claim for Exemption from Filing BE-12(LF), BE-12(SF), and BE-12 Bank must be completed and filed within 30 days of the date it was received, or by May 31, 1993, whichever is sooner, by:

(i) Each U.S. business enterprise that was a U.S. affiliate of a foreign person at the end of its 1992 fiscal year (whether or not the U.S. affiliate, or its agent, is contacted by BEA concerning its being subject to reporting in the 1992 benchmark survey), but is exempt from filing Form BE-12(LF), Form BE-12(SF), and Form BE-12 Bank; and

(ii) Each U.S. business enterprise, or its agent, that is contacted, in writing, by BEA concerning its being subject to reporting in the 1992 benchmark survey but that is not otherwise required to file the Form BE-12(LF), Form BE-12(SF), or Form BE-12 Bank.

(d) *Aggregation of real estate investments.* All real estate investments of a foreign person must be aggregated for the purpose of applying the reporting criteria. A single report form must be

filed to report the aggregate holdings, unless written permission has been received from BEA to do otherwise. Those holdings not aggregated must be reported separately.

(e) *Exemption.* (1) A U.S. affiliate as consolidated, or aggregated in the case of real estate investments, is not required to file a Form BE-12(LF), BE-12(SF), or Form BE-12 Bank if each of the following three items for the U.S. affiliate (not the foreign parent's share) did not exceed $1 million (positive or negative) at the end of, or for, its 1992 fiscal year:

(i) Total assets (do not net out liabilities)

(ii) Sales or gross operating revenues, excluding sales taxes, and

(iii) Net income after provision for U.S. income taxes.

(2) If a U.S. business enterprise was a U.S. affiliate at the end of its 1992 fiscal year but is exempt from filing a completed Form BE-12(LF), BE-12(SF), or Form BE-12 Bank, it must nevertheless file a completed and certified Form BE-12(X).

(f) *Due date.* A fully completed and certified Form BE-12(LF), Form BE-12(SF), or Form BE-12 Bank is due to be filed with BEA not later than May 31, 1993. A fully completed and certified Form BE-12(X) is due to be filed with BEA within 30 days of the date it was received, or by May 31, 1993, whichever is sooner.

[FR Doc. 92-22566 Filed 9-17-92; 8:45 am]

BILLING CODE 3510-06-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 864

[Docket No. 85P-0270]

Medical Devices; Reclassification of the Automated Heparin Analyzer

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to reclassify the automated heparin analyzer from class III (premarket approval) into class II (special controls) based on new information regarding the device. The automated heparin analyzer is a device used to determine the heparin level in a blood sample by mixing the sample with protamine (a heparin-neutralizing substance) and determining photometrically the onset of air-activated clotting. Heparin is administered to extend the clotting time and thereby lessen the danger of thrombus formation. The analyzer also determines the amount of protamine necessary to neutralize the heparin in the patient's circulation.

This proposed rule summarizes the basis for the agency's proposed finding that sufficient valid scientific evidence is available to support reclassification of the automated heparin analyzer and to establish special controls, including the promulgation of performance standards, to provide reasonable assurance of the safety and effectiveness of the device.

DATES: Comments by November 17, 1992.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph L. Hackett, Center for Devices and Radiological Health (HFZ-440), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1096.

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I. Classification and Reclassification of Devices Under the Medical Device Amendment of 1976

Under section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c), as established by the Medical Device Amendments of 1976 (1976 amendments), FDA must classify devices into one of three regulatory classes, class I, class II, or class III. FDA's classification of a device is determined by the amount of regulation necessary to provide reasonable assurances of safety and effectiveness of a device and focuses on the availability of public information concerning the applicability of the act's regulatory controls to a device to assure its safety and effectiveness.

Under the 1976 amendments, devices were to be classified in class I (general controls) if there was information showing that the general controls of the act were sufficient to assure safety and effectiveness; devices were to be classified in class II (performance standards) if there was insufficient information showing that general controls themselves would ensure safety and effectiveness, but there was sufficient information to establish a performance standard that would provide such assurance; while devices were to be classified in class III (premarket approval) if there was insufficient information to support placing a device in class I or class II and the device was a life sustaining or life supporting device or was for a use which is of substantial importance in preventing impairment of human health.

Most generic types of devices that were on the market before the date of the 1976 amendments (May 28, 1976) (generally referred to as preamendment devices) have been classified by FDA under the procedures set forth in sections 513(c) and 513(d) of the act (21 U.S.C. 360c(c) and 360c(d)) through the promulgation of classification regulations into one of these three regulatory classes. Under sections 513 (c) and (d), FDA secures expert panel recommendations on the appropriate device classifications for generic types of devices. FDA then considers the panel's recommendations and, through notice and comment rulemaking, promulgates classification regulations.

For those devices introduced into interstate commerce for the first time after May 28, 1976, the device is classified through the premarket notification process under section 510(k) of the act. Those devices that FDA finds to be substantially equivalent to a classified preamendment generic type of device are thereby classified in the same class as the predicate, preamendment device.

Reclassification of classified preamendment devices is governed by section 513(e) of the act (21 U.S.C. 360c(e)). This section provides that FDA may, by rulemaking, reclassify a device (in a proceeding that parallels the initial classification proceeding) based on "new information." The reclassification can be initiated by FDA or by the petition of an interested person.

The term "new information," as used in section 513(e) of the act includes information developed as a result of a reevaluation of the data before the agency when a device was originally

classified, as well as information not presented, not available, or not developed at that time. (See, e.g., *Holland Rantos* v. *United States Department of Health, Education, and Welfare*, 587 F.2d 1173, 1174 n.1 (D.C. Cir. 1978); *Upjohn* v. *Finch*, 422 F.2d 944 (6th Cir. 1970); *Bell* v. *Goddard*, 366 F.2d 177 (7th Cir. 1966).)

Reevaluation of the data previously before the agency is an appropriate basis for subsequent regulatory action where the reevaluation is made in light of changes in "medical science." (See *Upjohn* v. *Finch*, *supra*, 422 F.2d at 951.) However, regardless of whether data before the agency are past or new data, the "new information" on which any reclassification is based is required to consist of "valid scientific evidence," as defined in section 513(a)(3) of the act (21 U.S.C. 360c(a)(3)) and 21 CFR 860.7(c)(2). FDA relies upon "valid scientific evidence" in the classification process to determine the level of regulation for devices. For the purpose of reclassification, the valid scientific evidence upon which the agency relies must be publicly available. Publicly available information excludes trade secret and/or confidential commercial information, e.g., the contents of premarket approval applications (PMA's). (See section 520(c) of the act (21 U.S.C. 360j(c).)

II. Reclassification Under the Safe Medical Devices Act of 1990

The Safe Medical Devices Act of 1990 (SMDA) further amended the act to change the definition of a class II device. Under the SMDA, class II devices are those devices for which there is insufficient information to show that general controls themselves will ensure safety and effectiveness, but there is sufficient information to establish special controls to provide such assurance, including the promulgation of a performance standard. Thus, the definition of a class II device was changed from "performance standards" to "special controls."

It is the agency's position that the SMDA does not require the agency to obtain new reclassification recommendations from a panel which had recommended reclassification under the previous standards. The panel recommended the automated heparin analyzer be reclassified from class III (premarket approval) into class II (performance standards). Under the SMDA, FDA may establish a performance standard, as well as establish other special controls, including postmarket surveillance, patient registries, guidelines, and other appropriate actions it believes necessary to provide reasonable assurance of the safety and effectiveness of the device. Therefore, FDA's final determination will be made under the standard set forth in the SMDA.

III. History of the Proceedings

In the **Federal Register** of September 12, 1980 (45 FR 60601), FDA issued a final rule classifying the automated heparin analyzer into class III (21 CFR 864.5680). The preamble to the proposal to classify the device (44 FR 52984, September 11, 1979) included the classification recommendation of the Hematology and Pathology Devices Panel (the Panel). This Panel's recommendation included a summary of the reasons why the device should be subject to premarket approval and identified certain risks to health presented by the device. The Panel also recommended a high priority for initiating a proceeding to require PMA's under section 515(b) of the act (21 U.S.C. 360e(b)).

In the **Federal Register** of September 6, 1983 (48 FR 40272), FDA published a notice of intent to initiate proceedings to require premarket approval of 13 preamendment class III devices assigned a high priority by FDA for the application of premarket approval requirements. Among other things, the notice describes the factors FDA considered in establishing priorities for initiating proceedings under section 515(b) of the act for promulgating final rules requiring that preamendment class III devices have approved PMA's or product development protocols (PDP's) which have been declared completed. Using these factors, FDA concurred with the Panel that the automated heparin analyzer should be subject to a high priority for initiating a proceeding to require premarket approval. However, on April 29, 1985, before FDA initiated a proceeding under section 515(b) of the act to require that the automated heparin analyzer have an approved PMA or a PDP that has been declared completed, HemoTec, Inc., submitted a petition to reclassify the automated heparin analyzer from class III into class II. The petition was submitted under section 513(e) of the act. Consistent with the act and the regulations, FDA referred the petition to the Panel for its recommendation on the requested change in classification.

IV. Device Description

An automated heparin analyzer is a device used to determine the heparin level in a blood sample by mixing the sample with protamine (a heparin-neutralizing substance) and determining photometrically the onset of air-activated clotting. The analyzer also determines the amount of protamine necessary to neutralize the heparin in the patient's circulation. (See 21 CFR 864.5680(a).)

An automated heparin analyzer measures the relative air-activated clotting times of aliquots of a blood sample that have been added to increasing amounts of protamine. The instrument photometrically detects any clotting occurring in the above heparinized blood-protamine mixtures and automatically calculates the heparin level in the circulating blood and the protamine dose needed to neutralize it. An automated heparin analyzer can also verify that the heparin in the circulating blood has been neutralized and that the patient's blood has returned to its presurgical coagulation state.

Modern cardiovascular surgery, particularly cardiopulmonary bypass surgery, was made possible by the use of anticoagulation therapy employing heparin. Heparin lowers the coagulability of blood thereby permitting the use of cardiopulmonary bypass equipment for the extended periods necessary for this surgery. Heparin is administered prior to surgery to greatly extend the clotting time and thereby lessen the danger of thrombus formation. During surgery, additional doses of heparin may be administered to maintain the clotting time at an acceptably extended level. At the completion of surgery protamine is administered to counter the circulating heparin and return the patient's blood to its presurgical coagulation state.

V. Recommendation of the Panel

In a public meeting on April 25, 1986, the Panel unanimously abstained from voting because the members believed that insufficient performance data describing the precision and accuracy of the device had been presented. The FDA concurred with the Panel's decision and requested supplemental information. Subsequently, the petitioner submitted supplemental data, and on February 29, 1988, the Panel unanimously recommended that the automated heparin analyzer be reclassified from class III into class II and that a low priority be assigned for the establishment of a performance standard.

VI. Summary of Reasons for the Recommendation

The Panel gave the following reasons in support of its recommendation to reclassify the automated heparin analyzer from class III into class II:

(1) General controls by themselves are insufficient to provide reasonable assurances of the safety and effectiveness of the device.

(2) There is sufficient publicly available information to demonstrate that the device is not potentially hazardous to life, health, or well-being of the patient when put to its intended use. Thus, the probable benefits to health outweigh any probable risks to health.

(3) There is sufficient publicly available information to demonstrate that the risks to health have been characterized for the automated heparin analyzer and that the relationships between the performance characteristics and these risks have been established.

(4) There is sufficient publicly available information to establish a performance standard to provide reasonable assurance of the safety and effectiveness of the device for its intended use (Ref. 1).

(5) Existing voluntary standards (Refs. 2, 3, and 4) applicable to the device and its components are sufficient to adequately control the performance characteristics of the device.

The Panel believes that the present and any subsequent manufacturer of the automated heparin analyzer can comply with these standards, that FDA can assure the safety and effectiveness of the device made by new manufacturers through the premarket notification procedures under section 510(k) of the act (21 U.S.C. 360(k)), and that a regulatory level of class III is unnecessary.

VII. Risks to Health

When the device was classified into class III (see 45 FR 60601), the Panel identified the risks to health presented by the automated heparin analyzer. The risks were identified as hepatitis infection and hemorrhage or thrombosis.

Although the risk of hepatitis is minimal, the risk associated with the automated heparin analyzer is to the user or technician who handles the blood sample and not to the donor or patient. This risk to the user or technician is no greater than user risk associated with any other instruments or blood sampling procedures (Ref. 1, appendix D).

The Panel's concern that the device would incorrectly report the level of heparin in the patient's circulation thereby placing the patient at risk of hemorrhage or thrombosis was answered by the scientific evidence presented in the petition. The earlier automated heparin analyzer utilized predetermined or fixed doses of heparin and protamine normally required for other neutralization assays. The currently marketed automated heparin analyzer determines the level of heparin in blood by automatically detecting coagulation in a heparin/protamine titration procedure. This current device measures the relative activated clotting times of aliquots of a blood sample that have been added to increasing amounts of protamine in four channels of a cartridge. The clotting of the heparinized blood in the presence of the heparin-neutralizing protamine is detected using an optical method, and calculations for determing heparin and protamine doses are automatically performed, thereby reducing the probability of hemorrhage or thrombosis due to incorrectly reported heparin levels (Ref. 1). Therefore, the Panel now believes that the use of the automated heparin analyzer does not present a potential unreasonable risk to the public health.

VIII. Summary of Data Upon Which the Proposed Recommendation Is Based

A primary reason FDA classified the automated heparin analyzer into class III was the absence of sufficient information upon which to determine the safety and effectiveness of the device. The Panel also believed that a potential existed for causing serious harm to the patient undergoing heparin therapy if the device did not adequately and appropriately measure heparin levels. Thus, the device presented a potential risk to the patient if the physician relied upon the information derived from the device. Therefore, the Panel believed that requiring premarket approval would assure that manufacturers demonstrated satisfactory performance, i.e., the safety and effectiveness of the device.

Subsequent to the classification of the device, additional data and information became available. The Panel reviewed the data, which is summarized below, and based its recommendation for reclassification of the generic type of device on data contained in the petition. The Panel now believes in light of the new information, that premarket approval of the generic type of device is unnecessary to provide reasonable assurance of the device's safety and effectiveness.

A. Accuracy

The Panel believes sufficient data have been presented describing instrument accuracy. As requested by the Panel, the petitioner conducted an additional study to confirm instrument accuracy (Ref. 5). Assays were performed on blood samples obtained from five normal, healthy volunteers (Ref. 5). The freshly drawn blood was diluted with Ringer's solution to simulate hemodilution during cardiopulmonary bypass. The samples were evaluated by using five different heparin concentrations over a range that would encompass at least one value below the acceptable therapeutic range, and one value above that range. Three values would be within the expected therapeutic range. For this study, the actual heparin level with the upper and lower U.S. Pharmacopeia (U.S.P.) tolerance limits (Ref. 4) was plotted against the mean measured heparin levels. The correlation coefficient was 0.99 with a slope of 0.94 and intercept of 0.42. Forty-nine out of 50 runs (98 percent) met the product specifications for accuracy of +/−½ channel or 1 channel separation. The variation of the run may be the result of possible variations in the blood sample resulting from the time required to run the sequential assays. The instrument used in this study was the HemoTec Hepcon/System Four (Ref. 5).

The Panel believes that the study results confirm that sufficient tests exist to determine the accuracy of the device and thereby provide a reasonable assurance of the safety and the effectiveness of the device.

B. Precision

The precision of the above test was also determined. The coefficient of variation (CV) ranged from 0.0 to 17.9 percent. The mean heparin level x 100 units per kilogram (kg) body weight was 3.52 (Ref. 5). The standard deviation (S.D.) was 0.22. These values are within the expected precision for this type of instrument (Ref. 5). The relatively high CV for the 1.0 heparin level is due to the large interchannel resolution within the cartridge compared to the heparin level. However, this is not a problem because this cartridge is normally used to verify neutralization of heparin at the end of a surgical procedure or to determine heparin rebound after the procedure.

In another study to determine instrument precision, assays were performed on blood samples obtained from five different patients undergoing cardiovascular surgery (Ref. 5). The samples were run sequentially on the same heparin analyzer (HemoTec Hepcon/ System Four) using 10 different heparin/protamine titration cartridges covering the therapeutic range likely to be encountered. For this study, the in-run CV ranged from 0.0 to 12.2 percent. The mean heparin level x 100 units per kg body weight was 2.90. The standard deviation was 0.20 (Ref. 5). These values are well within the expected precision for this type instrument (Refs. 6, 7, and

8). Variation in individual patient assays may be due to the variation in the sample resulting from the time to run the sequential assay.

The petitioner referenced studies in the scientific literature demonstrating that the accuracy and precision of the HemoTec automated heparin analyzer meet or exceed the accuracy and precision of other instruments and procedures used in the management of heparin therapy (Refs. 6, 7, and 8). Additionally, other publicly available data show that the HemoTec automated heparin analyzer is a safe and effective instrument for use in heparin therapy management during cardiovascular surgery (Refs. 9 through 12).

C. Quality Control Materials Precision

To evaluate the precision of the quality control materials used to monitor the instrument, 10 measurements were performed for a single lot of each of the 5 different levels of HemoTec's coagulation controls (Ref. 5). The CV ranged from 0.0 (3 to 5 levels) to 19.9 percent. The 1.0 level control with the CV of 19.9 percent was still consistent with the product labeling specification. Performance of the controls at all 5 levels, in 49 out of 50 runs (98 percent), fell within 3 S.D. of the mean. These data were used to determine the upper and lower limits on Levey-Jennings plots to define as acceptable range of values to which the observed values were compared (Refs. 5 and 13). The manufacturer's control showed consistent results within the Levey-Jennings chart limit for up to 21 weeks from the date of manufacture and showed no deterioration over this time (Ref. 5).

Finally, the Panel noted that by the end of September 1989, the manufacturer estimates that more than 500,000 cardiovascular procedures had been performed which have used the cartridges (Ref. 15). During the period through October 18, 1989, there were no reported medical device reporting events associated with these devices (21 CFR Part 803) (Ref. 16). In February 1988, the manufacturer reported that its complaint rate has been less than .001 percent (Ref. 14).

In summary, the Panel believes that, based on publicly available, valid scientific evidence, the automated heparin analyzer be regulated as a class II device to reasonably assure the device's safety and effectiveness when it is used as intended

IX. References

The following references have been place on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m. Monday through Friday.

1. HemoTec, Inc., reclassification petition, Docket No. 85P-0270.
2. ANSI/AAMI SCL/12-78, "Safe Current Limits for Electromedical Apparatus."
3. Underwriters Laboratories 544, "Standard for Safety: Medical and Dental Equipment."
4. U.S.P. Heparin Reference Standards: U.S.P. Heparin and U.S.P. Protamine Assays.
5. HemoTec, Inc., supplement to petition dated February 17, 1987.
6. Triplett, D.A., and C. Smith, "Sensitivity of the Activated Partial Thromboplastin Time: Results in the CAP Survey and a Series of Mild and Moderate Factor Deficiencies," Standardization of Coagulation Assays: An Overview, pp. 142-143. Triplett, D.A., editor, College of American Pathologists, 1981.
7. Donahoo, K.M. et al., "A Promising New Multi-Functional Instrument for Monitoring Heparin Therapy," Advances in Therapy, 2(4):150-159, July/August 1985.
8. Teien, A.N., and M. Lie, "Heparin Assay in Plasma: A Comparison of Five Clotting Methods," Thrombosis Research, vol. 7, pp. 777-788, Pergamon Press, Inc., 1975.
9. Fox, D.J. et al., "Vehicles of Heparin Management: A Comparison," Journal of Extracorporeal Technology, 11:137, 1979.
10. Pifarre, R. et al., "Management of Postoperative Heparin Rebound Following Cardiopulmonary Bypass," Journal of Thoracic Cardiovascular Surgery, 81:378, 1981.
11. Bowie, J.E., and G.D. Kemna, "Automated Management of Heparin Anticoagulation in Cardiovascular Surgery," Proceedings of the American Academy of Cardiovascular Perfusion, vol. 6, January 1985.
12. Kemna, G.D., and J.E. Bowie, "Heparin Protamine Management for Cardiopulmonary Bypass Patients with Abnormal Heparin Dose Response," Proceedings of the American Academy of Cardiovascular Perfusion, vol. 6, January 1985.
13. Levey, S., and E.R. Jennings, "The Use of Control Charts in the Clinical Laboratory," American Journal of Clinical Pathology, 20:1059, 1950.
14. Transcript, Hematology Devices Panel conference call meeting, February 29, 1988.
15. Memo of telephone conversation on October 23, 1989, between Larry Brindza, FDA, and Robert Bough, HemoTec, Inc., regarding the titration cartridges.
16. Memo of telephone conversation on October 18, 1989, between Charles Gressle, Center for Devices and Radiological Health/Office of Compliance and Surveillance, and Larry Brindza, Center for Devices and Radiological Health/Office of Device Evaluation, regarding medical device reporting events of the automated heparin analyzer.

X. FDA's Tentative Findings

FDA tentatively concurs with the recommendation of the Panel that automated heparin analyzers should be classified into class II and that a low priority should be assigned for the development of a performance standard. The agency also tentatively concludes that "new information" in the form of publicly available, valid scientific evidence exists for establishing a performance standard to provide reasonable assurance of the safety and effectiveness of the automated heparin analyzer for its intended use. Consistent with the purpose of the act, class II controls as defined by section 513(a)(1)(B) of the act would provide the least amount of regulation necessary to reasonably assure that current automated heparin analyzers are safe and effective for their intended use.

XI. Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

XII. Economic Impact

Generally reclassification of preamendment devices from class III into class II should not have any adverse economic impact because manufacturers are relieved of the cost of complying with the premarket approval requirements in section 515 of the act. Although there may be offsetting costs that a manufacturer of the device could incur to comply with provisions of special controls under section 514 of the act (21 U.S.C. 360d), the economic impact would be the result of actions taken to comply with the special controls and not the act of reclassification, and would likely not exceed costs that may be associated with the device in its present regulatory classification. Nonetheless, the economic impact of the establishment and promulgation of a performance standard will be assessed prior to its actual proposal as part of the agency's regulatory planning process under Executive Order 12291. After considering the economic consequences of reclassifying the device as discussed above, FDA concludes that this proposal would not be a major rule as specified in Executive Order 12291. Further, the agency certifies under the Regulatory Flexibility Act (Pub. L. 96-354), that the proposed rule would not have a significant economic impact on a substantial number of small entities.

XIII. Request for Comments

Interested persons may, on or before November 17, 1992, submit to the Dockets Management Branch (address

above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the name of the device and the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 864

Blood, Medical devices, Packaging and containers.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 864 be amended as follows:

PART 864—HEMATOLOGY AND PATHOLOGY DEVICES

1. The authority citation for 21 CFR part 864 continues to read as follow:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

2. Section 864.5680 is amended by revising paragraph (b) to read as follows:

§ 864.5680 Automated heparin analyzer.

* * * * *

(b) *Classification.* Class II (special controls).

* * * * *

Dated: August 6, 1992.

Micahel R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-22620 Filed 9-17-92; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 872

[Docket No. 92N-0281]

Medical Devices; Classification of Temporomandibular Joint Implants

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to classify certain temporomandibular joint (TMJ) implants into class III (premarket approval). Based upon the recommendations of FDA's Dental Device Classification Panel, the agency published a final regulation classifying 110 preamendments dental device on August 12, 1987 (52 FR 30082 at 30097). The TMJ prostheses were inadvertently omitted from the dental devices considered for classification by the Dental Device Classification Panel and the agency. Based upon the recommendations of the Dental Products Panel, FDA is now proposing to classify certain TMJ prostheses, including the interarticular disc prosthesis (the interpositional implant), the mandibular condyle prosthesis, and the glenoid fossa prosthesis into class III. After considering public comments on the proposed classifications, FDA will publish a final regulation classifying the devices. These actions are being taken under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976 (the amendments) and the Safe Medical Devices Act of 1990 (the SMDA).

DATES: Written comments by November 17, 1992. The Commissioner of Food and Drugs proposes that any final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 12720 Twinbrook Pkwy., Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION:

I. Background

The act, as amended by the amendments (Pub. L. 94-295) and the SMDA (Pub. L. 101-629), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are as follows: Class I, general controls; class II, special controls; and class III, premarket approval.

Devices that were in commercial distribution before May 28, 1976 (the date of enactment of the amendments) are classified under 21 U.S.C. 360c after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. A device that is first offered in commercial distribution after May 28, 1976, and is substantially equivalent to device classified under this scheme, is also classified into the same class as the device to which it is substantially equivalent.

A device that was not in commercial distribution prior to May 28, 1976, and that is not substantially equivalent to a preamendments device, is classified by statute into class III without any FDA rulemaking proceedings. The agency determines whether new devices are substantially equivalent to previously offered devices by means of the premarket notification procedure in section 510(k) of the act (21 U.S.C. 360(k)) and part 807 of the regulations (21 CFR part 807).

Based upon the recommendations of FDA's Dental Device Classification Panel, the agency published a final regulation classifying 110 preamendments dental devices on August 12, 1987 (52 FR 30082 at 30097). The TMJ implants were inadvertently omitted from the dental devices considered for classification by the Dental Device Classification Panel and the agency. Based upon the recommendations of the Dental Products Panel, following its April 21, 1989, meeting, FDA is now proposing to classify the interarticular disc prosthesis (the interpositional implant), the mandibular condyle prosthesis, and the glenoid fossa prosthesis into class III.

The effect of classifying a device into class III is to require each manufacturer of the device to submit to FDA a premarket approval application (PMA) by a date to be set in a future regulation under section 515(b) of the act (21 U.S.C. 360e(b)). Each application must include sufficient valid scientific evidence to provide reasonable assurance that the device is safe and effective under the conditions of use prescribed, recommended, or suggested in its proposed labeling. PMA's for class III preamendments devices must be submitted within 30 months after their final classification, or 90 days after the agency publishes a final regulation under 21 U.S.C. 360e(b) requiring PMA's for the device, whichever is later.

FDA is also advising interested persons that the agency lacks evidence that the total TMJ prosthesis was legally in commercial distribution in the United States on or before May 28, 1976. FDA invites comment on this issue. If the agency concludes that the total temporomandibular prosthesis is not a preamendments device, it is automatically classified into class III, and would require an approved PMA before it could be marketed. In accordance with section 501(f)(1)(B)(i) of the act (21 U.S.C. 351(f)(1)(B)(i)), the device would therefore be adulterated if its commercial distribution were to

continue without such approval in effect. Rather than delay classification of this device, however, in the event FDA concludes that it is, in fact, a preamendments device, the agency is now proposing to classify the device into class III, based upon the recommendations of the Dental Products Panel.

FDA advises manufacturers of the devices being classified that, if the devices are classified into class III, the agency intends to require PMA's to be filed for these devices at the earliest date allowed under the statute. Therefore, PMA's (or approved investigational device exemptions) would be required for these devices on the last day of the 30th month following final classification into class III.

It is the agency's position that the SMDA does not require the agency to obtain new classification recommendations from a panel that had made classification recommendations under the previous standards. In addition, the agency believes that, in light of the reasons for which the Dental Products Panel recommended that the TMJ devices be classified into class III, its recommendation of class III would be the same under the new standards. FDA's decision concerning classification of these devices will be made under the standards set forth in the act as amended by the SMDA.

II. The Dental Products Panel Recommendations

A. Total TMJ Prosthesis

The Dental Products Panel, an FDA advisory committee, made the following recommendation regarding the classification of the total TMJ prosthesis:

1. *Identification:* A total TMJ prosthesis is a device that is intended to be implanted in the human jaw to replace the mandibular condyle and augment the glenoid fossa to functionally reconstruct the temporomandibular joint.

2. *Recommended classification:* Class III (premarket approval). The Panel recommended that premarket approval of the total TMJ prosthesis be low priority.

3. *Summary of reasons for recommendation:* The Dental Products Panel recommended that the total TMJ prosthesis be classified into class III because the Panel believed that premarket approval is necessary to provide reasonable assurance of the safety and effectiveness of the device. The Dental Products Panel also believed that the device presents a potential unreasonable risk to health and that insufficient information exists to determine that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. The Dental Products Panel believed that a performance standard would not provide reasonable assurance of the safety and effectiveness of the device and that there is not sufficient information to establish such a standard. Therefore, the device should be subject to premarket approval to ensure that each manufacturer of this device develops sufficient information to provide reasonable assurance that it is safe and effective.

4. *Summary of data on which the recommendation is based:* The Dental Products Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device and presentations by Panel members and interested parties (Ref. 1).

5. *Risks to health:* The following risks are associated with the total TMJ prosthesis: (a) Implant loosening or displacement. The screws used to anchor the implant may loosen, resulting in implant loosening or displacement, causing changes in bite, difficulty in chewing, limited joint function and unpredictable wear on implant components (Refs. 2 through 5); (b) Erosion or resorption of the glenoid fossa. Implant breakdown may result in erosion or resorption of the glenoid fossa. The erosion or resorption may result in intense pain, changes in bite, difficulty in chewing and limited joint function (Refs. 2 through 5); (c) Foreign body reaction. Implant deterioration and migration may result in a foreign body reaction characterized by multinucleated giant cells (Refs. 2 through 5); (d) Infection. If the implant cannot be properly sterilized, infection may result; (e) Loss of implant integrity. If the implant materials are unable to withstand mechanical loading, the implant can be torn, worn, perforated, delaminated, fragmented, fatigued, or fractured, resulting in failure of the device to function properly (Refs. 2 through 5); (f) Chronic pain. Degenerative changes within the articular surfaces and components of the temporomandibular joint due to implant breakdown may result in chronic pain (Refs. 2 through 5); (g) Corrosion. If the implant materials are subject to corrosion, toxic elements may migrate to various parts of the body; (h) Changes to the contralateral joint. Unilateral placement of the implant may result in deleterious effects to the contralateral joint; and (i) Malocclusion. Placement of the device may produce an improper occlusal relationship.

FDA agrees with the Dental Products Panel's classification recommendation and is proposing that the total TMJ prosthesis be classified into class III (premarket approval). FDA does not concur with the Dental Products Panel's recommendation that premarket approval of the total TMJ prostheses be low priority. FDA believes that insufficient information exists to identify the proper materials or design for the total TMJ prosthesis. Therefore, FDA is proposing that premarket approval of the total TMJ prosthesis be high priority.

The act requires the agency to classify into class III a device that presents a potential unreasonable risk of illness or injury unless it determines that premarket approval is not necessary to provide reasonable assurance of the safety and effectiveness of the device. In this case, the agency has determined that premarket approval is necessary for this device. FDA believes that the device presents a potential unreasonable risk of illness or injury to the patient if there are not adequate data to ensure the safe and effective use of the device. The agency believes that general controls, either alone or in combination with the special controls applicable to class II devices, are insufficient to provide reasonable assurance of the safety and effectiveness of the device.

B. Glenoid Fossa Prosthesis

The Dental Products Panel did not make a recommendation respecting classification of the glenoid fossa prosthesis, but noted that the implanted glenoid fossa should not be used with a naturally occurring mandibular condyle. FDA has determined, however, that the implanted glenoid fossa has been used to replace a naturally occurring glenoid fossa. Therefore, FDA makes the following proposal regarding the glenoid fossa prosthesis:

1. *Identification:* A glenoid fossa prosthesis is a device that is intended to be implanted in the temporomandibular joint to augment a glenoid fossa and provide an articulation surface for the head of a naturally occurring mandibular condyle.

2. *Recommended classification:* Class III (premarket approval). FDA proposes that premarket approval of the glenoid fossa prosthesis be high priority.

3. *Summary of reasons for proposal:* FDA proposes that the glenoid fossa prosthesis be classified into class III.

The act requires the agency to classify into class III a device that presents a

potential unreasonable risk of illness or injury unless it determines that premarket approval is not necessary to provide reasonable assurance of the safety and effectiveness of the device. In this case, the agency has determined that premarket approval is necessary for this device. FDA believes that the device presents a potential unreasonable risk of illness or injury to the patient if there are not adequate data to ensure the safe and effective use of the device. The agency believes that general controls, either alone or in combination with the special controls applicable to class II devices, are insufficient to provide reasonable assurance of the safety and effectiveness of the device. Therefore, the device should be subject to premarket approval to ensure that each manufacturer of this device develops sufficient information to provide reasonable assurance that it is safe and effective.

4. *Summary of data on which the proposal is based:* FDA is basing its proposal on the Dental Products Panel members' personal knowledge of, and clinical experience with, the device and presentations by Panel members and interested parties (Ref. 1).

5. *Risks to health:* The following risks are associated with the glenoid fossa prosthesis: (a) Implant loosening or displacement. The screws used to anchor the implant may loosen, resulting in implant loosening or displacement causing changes in bite, difficulty in chewing, limited joint function and unpredictable wear on implant components (Refs. 2 through 5); (b) Degenerative changes to the natural articulating surfaces. Implant breakdown may result in erosion or resorption of the head of the mandibular condyle or the glenoid fossa. The erosion or resorption may result in intense pain, changes in bite, difficulty in chewing, limited joint function, and perforation into the middle cranial fossa (Refs. 2 through 5); (c) Foreign body reaction. Implant deterioration and migration may result in a foreign body reaction characterized by multinucleated giant cells (Refs. 2 through 5); (d) Infection. If the implant cannot be properly sterilized, infection may result; (e) Loss of implant integrity. If the implant materials are unable to withstand mechanical loading, the implant can be torn, worn, perforated, delaminated, fragmented, fatigued, or fractured, resulting in failure of the device to function properly (Refs. 2 through 5); (f) Corrosion. If the implant materials are subject to corrosion, toxic elements may migrate to various parts of the body; (g) Chronic pain. Degenerative changes within the articular surfaces and components of the temporomandibular joint due to implant breakdown may result in chronic pain (Refs. 2 through 5); (h) Changes to the contralateral joint. Unilateral placement of the implant may result in deleterious effects to the contralateral joint; (i) Malocclusion. Placement of the device may produce an improper occlusal relationship.

C. Mandibular Condyle Prosthesis

The Dental Products Panel did not make a recommendation regarding the classification of the mandibular condyle prosthesis, but noted that the implanted mandibular condyle should not be used with a naturally occurring glenoid fossa. FDA has determined, however, that the implanted mandibular condyle has been used to replace a naturally occurring mandibular condyle. Therefore, FDA makes the following proposal regarding the mandibular condyle prosthesis:

1. *Identification:* A mandibular condyle prothesis is a device that is intended to be implanted in the human jaw to replace the mandibular condyle and to articulate within a naturally occurring glenoid fossa.

2. *Recommended classification:* Class III (premarket approval). FDA proposes that premarket approval of the mandibular condyle joint prosthesis be high priority.

3. *Summary of reasons for proposal:* FDA proposes that the mandibular condyle prothesis be classified into class III.

The act requires the agency to classify into class III a device that presents a potential unreasonable risk of illness or injury unless it determines that premarket approval is not necessary to provide reasonable assurance of the safety and effectiveness of the device. In this case, the agency has determined that premarket approval is necessary for this device. FDA believes that the device presents a potential unreasonable risk of illness or injury to the patient if there are not adequate data to ensure the safe and effective use of the device. The agency believes that general controls, either alone or in combination with the special controls applicable to class II devices, are insufficient to provide reasonable assurance of the safety and effectiveness of the device. Therefore, the device should be subject to premarket approval to ensure that each manufacturer of this device develops sufficient information to provide reasonable assurance that it is safe and effective.

4. *Summary of data on which the proposal is based:* FDA is basing its proposal on the Dental Products Panel members' personal knowledge of, and clinical experience with, the device and presentations by Panel members and interested parties (Ref. 1).

5. *Risks to health:* The following risks are associated with the mandibular condyle prothesis: (a) Implant loosening or displacement. The screws used to anchor the implant may loosen, resulting in implant loosening or displacement causing changes in bite, difficulty in chewing, limited joint function and unpredictable wear on implant components; (b) Degenerative changes to the natural articulating surfaces. Implant breakdown may result in erosion or resorption of the glenoid fossa. The erosion or resorption may result in intense pain, changes in bite, difficulty in chewing and limited joint function; (c) Foreign body reaction. Implant deterioration and migration may result in a foreign body reaction characterized by multinucleated giant cells; (d) Infection. If the implant cannot be properly sterilized, infection may result. (e) Loss of implant integrity. If the implant materials are unable to withstand mechanical loading, the implant can be torn, worn, perforated, delaminated, fragmented, fractured, or fatigued, resulting in failure of the device to function properly; (f) Corrosion. If the implant materials are subject to corrosion, toxic elements may migrate to various parts of the body; (g) Chronic pain. Degenerative changes within the articular surfaces and components of the temporomandibular joint due to implant breakdown may result in chronic pain; (h) Changes to the contralateral joint. Unilateral placement of the implant may result in deleterious effects to the contralateral joint; and (i) Malocclusion. Placement of the device may produce an improper occlusal relationship.

D. Interarticular Disc Prosthesis (Interpositional Implant)

The Dental Products Panel made the following recommendation regarding the classification of the interarticular disc prosthesis (interpositional implant):

1. *Identification:* An interarticular disc prosthesis (interpositional implant) is a device that is intended to be implanted in the human jaw to replace the natural disc and act as an interface between the natural articulating surface of the mandibular condyle and the glenoid fossa.

2. *Recommended classification:* Class III (premarket approval). The Panel recommends that premarket approval of

the interarticular disc prothesis (interpositional implant) be high priority.

3. *Summary of reasons for recommendation:* The Dental Products Panel recommends that the interarticular disc prothesis be classified into class III because the Panel believes that premarket approval is necessary to provide reasonable assurance of the safety and effectiveness of the device. The Dental Products Panel also believes that the device presents a potential unreasonable risk to health and that insufficient information exists to determine that general controls would provide reasonable assurance of the safety and effectiveness of the device. The Dental Products Panel believes that a performance standard would not provide reasonable assurance of the safety and effectiveness of the device and that there is not sufficient information to establish such a standard. Therefore, the device should be subject to premarket approval to ensure that each manufacturer of this device develops sufficient information to provide reasonable assurance that it is safe and effective.

4. *Summary of data on which the recommendation is based:* The Dental Products Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device and presentations by Panel members and interested parties (Ref. 1).

5. *Risks to health:* The following risks are associated with the interarticular disk prothesis (interpositional implant): (a) Loss of implant integrity. If the implant materials are unable to withstand mechanical loading, the implant materials can be torn, perforated, delaminated, or fragmented, resulting in failure of the device to function properly (Refs. 4, 6 through 10, and 12 through 15); (b) Implant migration. Torn, worn, perforated, delaminated, and fragmented implant materials are capable of migrating to surrounding tissues, including the lymph nodes (Refs. 4 and 13); (c) Foreign body reaction. Implant deterioration and migration may result in a foreign body reaction characterized by multinucleated giant cells (Refs. 4 and 6 through 15); (d) Degenerative changes within the articular surfaces and components of the joint. Implant breakdown may result in severe resorption of the head of the mandibular condyle and glenoid fossa. The degenerative changes may result in joint noise, changes in bite, difficulty in chewing, severely limited joint function, erosion or perforation into the middle cranial fossa, crepitus, avascular necrosis and fibrous ankylosis (Refs. 4 and 6 through 14); (e) Implant displacement. Displacement of the implant may result in changes in bite, difficulty in chewing and limited joint function (Refs. 6 through 9, 11, and 12); (f) Infection. If the implant cannot be properly sterilized, infection may result.

FDA agrees with the Dental Products Panel's recommendation and is proposing that the interarticular disc prosthesis (interpositional implant) be classified into class III (premarket approval).

The act requires the agency to classify into class III a device that presents a potential unreasonable risk of illness or injury unless it determines that premarket approval is not necessary to provide reasonable assurance of the safety and effectiveness of the device. In this case, the agency has determined that premarket approval is necessary for this device. FDA believes that the device presents a potential unreasonable risk of illness or injury to the patient if there are not adequate data to ensure the safe and effective use of the device. The agency believes that general controls, either alone or in combination with the special controls applicable to class II devices, are insufficient to provide reasonable assurance of the safety and effectiveness of the device.

The agency notes that, in addition to the risks to health identified by the Dental Products Panel, the following risks to health also are associated with the device: (g) Chronic pain. Degenerative changes within the articular surfaces and components of the joint due to implant breakdown may result in chronic pain (Refs. 6 through 8 and 11); (h) Calcification. Implant breakdown may result in the formation of scar tissue, leading to calcification (Refs. 10 and 15); (i) Granulomatous reaction. Implant particulate may produce a mass or nodule of chronically inflamed tissue with granulation (Refs. 12 through 15); (j) Leaching of elements. Toxic elements may be leached from the implant materials and migrate to various parts of the body.

III. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. Transcripts of the Dental Products Panel meeting, April 21, 1989.

2. Fontenot, M.G. and J.N. Kent, "In-vitro and In-Vivo Wear Performance of TMJ Implants," abstract, International Association of Dental Research, 1991.

3. Kent, J.N. and M.S. Block, "Comparison of FEP and UPE Glenoid Fossa Prosthesis," abstract, International Association of Dental Research, 1991.

4. "Clinical Information on the Vitek TMJ Interpositional (IPI) Implant and the Vitek-Kent (VK) and Vitek-Kent 1 (VK-1) TMJ Implants," and in "Vitek Patient Notification Program," an FDA publication, 1991.

5. Kent, J.N., "VK Partial and Total Joint Reconstruction," Current Concepts of TMJ Total Joint Replacement, University of Medicine and Dentistry of New Jersey, pp. 1–8, March 1992.

6. Primely, D., Jr., "Histological and Radiological Evaluation of the Proplast-Teflon Interpositional Implant in Temporomandibular Joint Reconstruction Following Meniscectomy," thesis, Masters Degree in Oral Maxillofacial Surgery, University of Iowa, May 1987.

7. Westlund, K.J., "An Evaluation Using Computerized Tomography of Clinically Asymptomatic Patients Following Meniscectomy and Temporomandibular Joint Reconstruction Using the Proplast-Teflon Interpositional Implant," thesis, Masters Degree in Oral and Maxillofacial Surgery, University of Iowa, May 1989.

8. Wagner, J.D. and E.L. Mosby, "Assessment of Proplast-Teflon Disc Replacements," Journal of Oral and Maxillofacial Surgery, 48:1140–1144, 1990.

9. Florine, B.L. et al., "Tomographic Evaluation of Temporomandibular Joints Following Discoplasty or Placement of Polytetrafluoroethylene Implants," Journal of Oral and Maxillofacial Surgery, 48:183–188, 1988.

10. Heffez, L. et al., "CT Evaluation of TMJ Disc Replacement with a Proplast Teflon Laminate," Journal of Oral and Maxillofacial Surgery, 45:657–665, 1987.

11. Ryan, D.E., "Alloplastic Impants in the Temporomandibular Joint," Oral and Maxillofacial Surgery Clinics of North America, 1:427, 1989.

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13. Logrotteria, L. et. al., "Patient with Lymphadenopathy Following Temporomandibular Joint Arthroplasty with Proplast," The Hour of Craniomandibular Practice, vol. 4, No. 2:172–178, 1986.

14. Berarduci, J.P. et al., "Perforation into Middle Cranial Fossa as a Sequel to Use of a Proplast-Teflon Implant for Temporomandibular Joint Reconstruction," Journal of Oral and Maxillofacial Surgery, 46:496–498, 1990.

15. Berman, D.N. and S.L. Pronstein, "Osteo Phytic Reaction to a Polytetrafluoroethylene Temporomandibular Joint Implant," Oral Surgery, Oral Medicine, Oral Pathology (continues the Oral Surgery Section of the American Journal of Orthodonitcs and Oral Surgery), 69:20–23, 1990.

IV. Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) that this action is of a type that does not individually or cumulatively have a significant effect on

the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Economic Impact

The agency has examined the economic impact of this proposed rule and has determined that it does not require a regulatory impact analysis, as specified in Executive Order 12291, because the proposed rule would not impose any new requirements. Therefore, the agency concludes that the proposed rule is not a major rule as defined in Executive Order 12291. The proposed rule does not impose any paperwork requirements.

List of Subjects in 21 CFR Part 872

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 872 be amended as follows:

PART 872—DENTAL DEVICES

1. The authority citation for 21 CFR Part 872 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

2. New §§ 872.3940, 872.3950, 872.3960, and 872.3970 are added to subpart D to read as follows:

§ 872.3940 Total temporomandibular joint prosthesis.

(a) *Identification.* A total temporomandibular joint prosthesis is a device that is intended to be implanted in the human jaw to replace the mandibular condyle and augment the glenoid fossa to functionally reconstruct the temporomandibular joint.

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* (Insert date 90 days after date of publication of the final rule in the **Federal Register**.)

§ 872.3950 Glenoid fossa prosthesis.

(a) *Identification.* A glenoid fossa prosthesis is a device that is intended to be implanted in the temporomandibular joint to augment a glenoid fossa and to provide an articulation surface for the head of a naturally occurring mandibular condyle.

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* The effective date of the requirement for premarket approval has not been established. See § 872.3.

§ 872.3960 Mandibular condyle prosthesis.

(a) *Identification.* A mandibular condyle prosthesis is a device that is intended to be implanted in the human jaw to replace the mandibular condyle and to articulate within a naturally occurring glenoid fossa.

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* The effective date of the requirement for premarket approval has not been established. See § 872.3.

§ 872.3970 Interarticular disc prosthesis (interpositional implant).

(a) *Identification.* An interarticular disc prosthesis (interpositional implant) is a device that is intended to be implanted in the human jaw to replace the natural disc and act as an interface between the natural articulating surface of the mandibular condyle and glenoid fossa.

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* The effective date of the requirement for premarket approval has not been established. See § 872.3.

Dated: August 9, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-22621 Filed 9-17-92; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 89

[CGD 91-050]

RIN 2115-AE09

Waters on Which Certain Inland Navigation Rules Apply

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the Inland Navigation Rules by defining certain portions of the Gulf Intracoastal-Coastal Waterway as waters "specified by the Secretary". This will allow towboat operators on designated portions of the Gulf Intracoastal Waterway to use a rule designed for certain rivers and narrow waterways, exempting them from using white masthead lights, thus improving navigation safety.

DATES: Comments must be received on or before November 17, 1992.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA/3406) (CGD 91-050), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Epstein, Navigation Rules and Information Branch, Office of Navigation Safety and Waterway Services, (202) 267-0352 or (202) 267-0357.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGD 91-050) and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under "**ADDRESSES.**" If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Jonathan Epstein, Project Manager, Office of Navigation Safety and Waterway Services, and Donald W. Faleris, Project Counsel, Office of the Chief Counsel.

Background and Purpose

The Inland Navigation Rules Act of 1980 (Pub. L. 96-591, 33 U.S.C. 2001 *et seq.*) consolidated numerous regional navigation rule systems into one document. These rules apply to all vessels operating on the inland waters of the United States, and to vessels of the United States on the Canadian waters of the Great Lakes to the extent

that there is no conflict with Canadian law [Rule 1, 33 U.S.C. 2001]. However, on the Great Lakes, Western Rivers, and "waters specified by the Secretary [of Transportation]", several specific rules apply in order to best meet the navigational needs in these areas.

Under Inland Navigation Rule 24(c), a power-driven vessel when pushing ahead or towing alongside must exhibit two masthead lights in a vertical line (in addition to sidelights and two towing lights in a vertical line). Under Inland Navigation Rule 22(b) masthead light intensity must be sufficient for visibility of at least five miles, if the vessel is 20 meters or more in length. Thus, presently on the Gulf Intracoastal Waterway, tugboats pushing a barge ahead or alongside are required to exhibit these white masthead lights with 5-mile visibility.

In 1989, the American Waterways Operators, Inc., representing many of the towboat operators, voiced concern over the 5-mile visibility masthead lights. These white masthead lights can seriously hamper the vision of oncoming traffic in narrow waterways, such as the Gulf Intracoastal Waterway. The lights can also create a glare problem caused by reflection of the masthead lights off large tows when pushing ahead. The Navigation Safety Advisory Council and the Towing Safety Advisory Council have both endorsed a change to the Inland Navigation Rules to address these glare problems.

On these winding waterways, the long-range visibility of the white masthead lights is of little practical use. However, since the Gulf Intracoastal Waterway crosses 12 major channels used by large seagoing merchant ships, total exemption from the masthead lights requirement of Inland Rule 24(c) may be inappropriate. Many of these navigable channels are in large open bays where masthead lights would be useful. For these reasons, local pilots raised concerns over visibility of towboats in these areas, citing the adage: "brighter is better". The Coast Guard also agrees that this visibility issue should be addressed.

Discussion of Proposed Amendments

Certain Inland Navigation Rules, by their terms, apply "on the Great Lakes, Western Rivers, and waters specified by the Secretary." Subchapter II of the Inland Navigation Rules, 33 U.S.C. 2071, gives to the Secretary of Transportation the authority to issue regulations necessary to implement and interpret the Inland Navigation Rules, including these specific provisions. Implementing regulations are set forth in 33 CFR part 89.

Inland Navigation Rule 24(i) is one such provision that applies only on the Great Lakes, Western Rivers, and waters specified by the Secretary. It states: "Notwithstanding paragraph (c) [the general provision requiring two white masthead lights], on the Western Rivers (except below the Huey P. Long Bridge on the Mississippi River) and on waters specified by the Secretary, a power driven vessel when pushing ahead or towing alongside, except as paragraph (b) applies, shall exhibit: (i) Sidelights; and (ii) two towing lights in a vertical line." Since it requires only sidelights and towing lights, this Inland Navigation Rule provision would exempt tugboats pushing a barge ahead or alongside from the requirement to show white masthead lights. By including the Gulf Intracoastal Waterway in the list of waters "specified by the Secretary" in 33 CFR part 89, Inland Navigation Rule 24(ii) would apply to power-driven vessels pushing ahead or towing alongside operating in the Gulf Intracoastal Waterway. This provision would address the glare problems created by these lights as discussed above.

However, in order to provide for visibility of tugs and tows while in major channels intersecting the Gulf Intracoastal Waterway, the exemption from the white masthead lights requirement should only be partial. To accomplish this, the Coast Guard proposes to amend 33 CFR part 89, subpart B, by removing the reference to Rule 24(i) from § 89.25, and by adding a new section (§ 89.27) to specify waters on which Inland Rule 24(i) applies. New § 89.27 would list those areas currently listed in § 89.25, as well as the Gulf Intracoastal Waterway. But with respect to the Gulf Intracoastal Waterway, it would also indicate ship channels where Rule 24(i) would not apply. Therefore, a towboat operator would not be required to use white masthead lights while in the Gulf Intracoastal Waterway, as described in § 89.27(b). However, when approaching or crossing the major channels listed in that paragraph, the towboat operator would be required to turn the masthead lights on, so as to be more visible. These designated areas are clearly delineated by mile marker and fixed landmark in the proposed rule.

The following other options were considered:

(a) Amending existing 33 CFR 89.25 by adding the Gulf Intracoastal Waterway as a specified waterway under a new subparagraph (j). However, because of the language in § 89.25, Inland Rules 9(a)(ii), 14(d), and 15(b) would also be applied to the Gulf Intracoastal Waterway. These Rules were especially designed for use in rivers with appreciable current (*i.e.*, on the Mississippi and Western Rivers). These rules would have little or no applicability on the Gulf Intracoastal Waterway, where there is little current, except when crossing major rivers. Therefore, application of Inland Rules 9(a)(ii), 14(d), and 15(b) to the Gulf Intracoastal Waterway serves no practical purpose and only increases the chance of confusion or misinterpretation of the Inland Navigation Rules.

(b) Allowing masthead light of variable intensity. This would alleviate the glare problem, while still allowing full brightness when crossing major channels. However, this would require equipment changes on all towboats using the Gulf Intracoastal Waterway. Additionally, Annex I(8)(b) of the International Regulations for Preventing Collisions at Sea (1972 COLREGS) specifically states that "the maximum luminous intensity of navigation lights should be limited to avoid undue glare. This shall not be achieved by a variable control of the luminous intensity." Therefore a U.S. requirement for a variable control would put operators using both inland and international waters in a situation where compliance with the Inland Navigation Rules and the COLREGS would not be possible.

(c) Designating the Gulf Intracoastal Waterway as "waters specified by the Secretary," except when within 3 miles of major channels. While this would simplify the wording of the regulation, it leaves more room for misinterpretation. Towboat operators on the Gulf Intracoastal Waterway use mile markers and fixed landmarks for communication and navigation. Therefore, defining the 12 major channel areas using mile markers and landmarks will give towboat operators clear points at which to turn on or off their masthead lights.

The Coast Guard is requesting comments on the proposed § 89.27, which would make Inland Navigation Rule 24(i) applicable on portions of the Gulf Intracoastal Waterway, as set forth in the proposal, as well as comments which address the alternatives discussed above, and other matters related to this strulemaking.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be

so minimal that a Full Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Under federal law, authority to issue regulations to implement the Inland Navigational Rules is vested in the Secretary of Transportation and delegated to the Coast Guard. Therefore, if this rule becomes final, the Coast Guard intends it to preempt State action addressing this subject matter.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this rulemaking is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under "**ADDRESSES.**"

List of Subjects in 33 CFR Part 89

Navigation (water), Reporting and record keeping requirements, Waterways.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 89 as follows:

PART 89—[AMENDED]

1. The authority citation for part 89 continues to read as follows:

Authority: 33 U.S.C. 2071; 49 CFR 1.4b(n)(14).

2. Section 89.25 is revised to read as follows:

§ 89.25 Waters upon which Inland Rules 9(a)(ii), 14(d), and 15(b) apply.

Inland Rules 9(a)(ii), 14(d), and 15(b) apply on the Great Lakes, the Western Rivers, and the following specified waters:

(a) Tennessee-Tombigbee Waterway;
(b) Tombigbee River;
(c) Black Warrior River;
(d) Alabama River;
(e) Coosa River;
(f) Mibile River above the Cochrane Bridge at St. Louis Point;
(g) Flint River;
(h) Chattachoochee River; and
(i) The Apalachicola River above its confluence with the Jackson River.

3. A new § 89.27 is added to 33 CFR part 89, subpart B, to read as follows:

§ 89.27 Waters upon which Inland Rule 24(i) applies.

(a) Inland Rule 24(i) applies on the Western Rivers and the specified waters listed in § 89.25 (a) through (i).

(b) Inland Rule 24(i) applies on the Gulf Intracoastal Waterway from St. Marks, Florida, to the Rio Grande, Texas, including the Morgan City-Port Allen Alternate Route and the Galveston-Freeport Cutoff, except that a power-driven vessel pushing ahead or towing alongside shall exhibit the lights required by Inland Rule 24(c), while transiting within the following areas:

(1) St. Andrews Bay from the Hathaway Fixed Bridge at Mile 284.6 EHL to the DuPont Fixed Bridge at Mile 295.4 EHL.

(2) Pensacola Bay, Santa Rosa Sound and Big Lagoon from the Light "10" off of Trout Point at Mile 176.9 EHL to the Pensacola Fixed Bridge at Mile 189.1 EHL.

(3) Mobile Bay and Bon Secour Bay from the Dauphin Island Causeway Fixed Bridge at Mile 127.7 EHL to Little Point Clear at Mile 140 EHL.

(4) Mississippi Sound from Grand Island Waterway Light "1" at Mile 53.8 EHL to Light "40" off of West Point of Dauphin Island at Mile 118.7 EHL.

(5) The Mississippi River at New Orleans, Miss. River-Gulf Outlet Canal and the Inner Harbor Navigation Canal from the junction of the Harvey Canal and the Algiers Alternate Route at Mile 6.5 WHL to the Michoud Canal at Mile 18 EHL.

(6) The Calcasieu River from the Calcasieu Lock at Mile 238.6 WHL to the Ellender Lift Bridge at Mile 243.6 WHL.

(7) The Sabine Neches Canal from mile 262.7 WHL to mile 291.5 WHL.

(8) Bolivar Roads from the Bolivar Assembling Basin at Mile 346 WHL to the Galveston Causeway Bridge at Mile 357.3 WHL.

(9) Freeport Harbor from Surfside Beach Fixed Bridge at Mile 393.8 WHL to the Bryan Beach Pontoon Bridge at Mile 397.6 WHL.

(10) Matagorda Ship Channel area of Matagorda Bay from Range "K" Front Light at Mile 468.7 WHL to the Port O'Connor Jetty at Mile 472.2 WHL.

(11) Corpus Christi Bay from Redfish Bay Day Beacon "55" at mile 537.4 WHL when in the Gulf Intracoastal Waterway main route or from the north end of Lydia Ann Island mile 531.1A when in the Gulf Intracoastal Waterway Alternate Route to Corpus Christi Bay LT 76 at Mile 543.7 WHL.

(12) Port Isabel and Brownsville Ship Channel south of the Padre Island Causeway Fixed Bridge at Mile 665.1 WHL.

Dated: September 14, 1992.

W.J. Ecker,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 92-22834 Filed 9-17-92; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 260, 264, 265, 270, and 271

[FRL-4507-8]

RIN 2060-AB94

Hazardous Waste Treatment, Storage, and Disposal Facilities; Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability.

SUMMARY: This notice announces the availability of additional data that will be considered by the EPA in establishing air emission standards for hazardous waste treatment, storage, and disposal facilities (TSDF) under the authority of the Resource Conservation and Recovery Act (RCRA), as amended. The additional data are available for public inspection at the EPA RCRA Docket Office.

DATES: Comments on these additional data will be accepted through October 19, 1992.

ADDRESSES: Comments Written comments regarding these data may be mailed to the Docket Clerk (OS-305).

U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Please send an original and two copies of all comments, and refer to Docket Number F-92-CESA-FFFFF. Docket. The docket is available for inspection between the hours of 9 a.m. and 4 p.m. Monday through Friday, excluding Federal holidays, at the EPA RCRA Docket Office (OS-305), room 2427, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying. To make an appointment to view the docket, call (202) 260-9327.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline by calling (800) 424-9346 toll-free, or (703) 920-9810. For information on specific aspects of this Notice contact Ms. Michele Aston, Chemicals and Petroleum Branch, Emissions Standards Division (MD-13), U.S. EPA, Research Triangle Park, NC 27711, telephone (919) 541-2363.

SUPPLEMENTARY INFORMATION: On July 22, 1991, the Environmental Protection Agency (EPA) proposed standards and amendments to existing standards that would reduce air emissions from hazardous waste management units subject to regulation under the Resource Conservation and Recovery Act (RCRA) as amended "Hazardous Waste Treatment, Storage, and Disposal Facilities; Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers," (56 FR 33490, July 22, 1991). These standards were proposed for hazardous waste treatment, storage, and disposal facilities (TSDF) subject to permitting requirements under RCRA subtitle C. The Agency based the selection of the control requirements for the proposed standard on impact analyses of various control options using the National Impacts Model described in Appendix D of "Hazardous Waste TSDF—Background Information for Proposed RCRA Air Emission Standards" (EPA-450/3-89-23).

In the proposed regulation preamble, the Agency requested comments on several specific topics related to the emission modeling and the risk assessments which support the selection of the proposed control requirements. As noted in that preamble, the Agency has obtained additional TSDF industry data which is pertinent to the modeling and analysis. The Agency has made modifications to the national impact analysis following a review of the public comments and the additional TSDF industry data. The Agency will consider the results of the revised analysis in its evaluation of different control options and in making its final determination regarding this rule.

By this Notice, the Agency is announcing the availability of additional TSDF industry and waste characterization data, descriptions of modeling methodologies that will be used to analyze that data, and revised assumptions concerning TSDF industry practices which result from that data.

The additional data sources incorporated into the revised National Impacts Model are: (1) The 1986 National Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities (TSDR Survey); (2) additional information from the OSW Industry Studies Data Base (ISDB); (3) the Best Demonstrated Achievable Technology (BDAT) data base; (4) the Hazardous Waste Generator's Survey of 1986 (Generator Survey); (5) information gathered through phone surveys, public comments, and site visits; (6) results from waste fixation experimental data.

Information from the TSDR Survey, which is composed of TSDF hazardous waste management information collected by the EPA Office of Solid Waste (OSW), has been used to update the Industry Profile Data Base. This data base is used by the National Impacts Model to characterize waste management practices at facilities nationwide and to model the emissions from these facilities. At the time of the initial analysis, the data base totalled 2,336 facilities derived from the 1981 Westat Survey (465 facilities), EPA's 1980 Hazardous Waste Data Management System (HWDMS) (comprised of responses to Part A permit questions), and the OSW 1986 TSDR Screener Survey (422 facilities). The revised data base totals 2,331 facilities: 1,783 facilities from the 1986 TSDR Survey, 546 storage-only facilities from the original data base, and two modeled facilities which represent TSDR Survey facilities whose respondents claimed their information to be Confidential Business Information (CBI). The original and the revised versions of the Industry Profile Data Base represent the same data set of facilities; however, when the 1986 TSDR Survey data became available, it was substituted for the former data because it was more recent and was believed to better reflect the current industry practices.

The ISDB contains detailed waste stream information from a facility sampling study of certain industries which OSW was in the process of conducting when the National Impacts Model was developed for the proposed regulation. At that time, available ISDB information was included in the Model and information not yet available from the ISDB (e.g. petroleum industry data) was obtained from the OSW listing program and placed in a separate data base called Field Data. When the ISDB was completed, the final version was included in the Model, petroleum refining data was deleted from the Field Data data base and Field Data was renamed FORSTREAM. Information from the ISDB also contributed to the DFNOFORM data base, a set of default waste profiles for 32 RCRA waste codes.

The BDAT data base contains waste constituent information for three industries which was collected by OSW in 1986 to support the first and second third BDAT regulations. It was not available for use when the Model was developed for the proposed regulation. Information from the BDAT data base also contributed to the RTILIST data base, a default set of waste stream profiles.

The Generator Survey contains detailed information about specific waste stream constituents, waste form and waste composition from facilities that generate hazardous waste. This information was compiled into the GENSUR data base for use in the National Impacts Model. Information from the Generator Survey was also included in the DFNOFORM and the RTILIST default data bases, described above.

In the proposed regulation preamble, the Agency requested public comments on assumptions made in the National Impacts Model about TSDF industry practices and hazardous waste operations. The Agency conducted site visits to assess the impact of the Toxicity Characteristic (TC) rule, discover how facilities were responding to LDR, and help determine the extent to which tank operations were replacing surface impoundments (refer to FR proposed regulation docket F-92-CESP-S00500 through S00503). Also, the Agency conducted a telephone survey of various facilities to determine to what extent tank operations were replacing surface impoundments at TSDF sites. As a result of the information obtained by the Agency, assumptions made in the National Impacts Model were reevaluated and modified, where necessary, to better characterize TSDF industry practices (refer to "Memorandum and Attachment, S. York, Research Triangle Institute, to Docket, Revised BID Appendix D—Source Assessment Model, July 31, 1992).

The Agency received public comments stating that the National

Impacts Model overestimated emissions from waste fixation processes. The Agency has reviewed the results of more recent waste fixation experimental data, including full-scale and bench-scale emission analyses. These new data supported the original estimates of emissions from fixation operations; however, the nationwide baseline estimate of emissions attributable to waste fixation decreased because information from the TSDR Survey indicated that less fixation operations occur than was initially estimated.

New data placed onto the docket include:

- Memorandum, P. Murphy, Research Triangle Institute, to R. Lucas, EPA:CPB, Incorporating the Industrial Studies Data Base into the Waste Characterization Data Base, March 13, 1989.
- Memorandum, P. Murphy, Research Triangle Institute, to R. Lucas, EPA:CPB, Analytical BDAT Data from SAIC, July 31, 1989.
- Memorandum, M. Branscome, Research Triangle Institute, to K. Hustvedt, EPA:CPB, Nationwide Distributions for TSDF Processes, September 12, 1989.
- Memorandum, P. Murphy, Research Triangle Institute, to R. Lucas, EPA:CPB, Review of Use of Organic Concentration Caps on RCRA Waste Codes Managed in Open Sources, October 20, 1989.
- Technical Note, C. Allen, Research Triangle Institute, to P. Lassiter, EPA:CPB, Theoretical Analysis of the Use of the UNIFAC Method to Predict the VO Recovery from a Mixture of 50% Polyethylene Glycol and Water, November 17, 1989.
- Report, Hazardous Waste Treatment, Storage and Disposal Facilities (TSDF)—Air Emission Models, EPA:OAQPS, EPA-450/3-87-026, July 1990.
- Memorandum, D. Coy, E. Kong, P. Murphy, Research Triangle Institute, to S. Shedd, EPA:CPB, Recommended Assumptions for SAM II Simulation of Surface Impoundments After Land Disposal Restrictions are in Place, November 30, 1990.
- Memorandum, D. Coy, Research Triangle Institute, to S. Shedd, EPA:CPB, Recommended Approach for Simulation of Subpart Kb Rules in SAM II, January 3, 1991.
- Report, Field Evaluation of a Hazardous Waste Stabilization Operation at Chem-Met Services, Inc., Wyandotte, Michigan, International Technology Corporation, prepared for EPA:RREL, EPA Contract 68-002-4284, March 1991. [2 volumes]
- Report, Volatile Emissions from Stabilization/Solidification of Hazardous Waste, Accurex Corporation, prepared for EPA:RREL, EPA Contract 68-02-4284, October 1991.
- Memorandum, J. Coburn, Research Triangle Institute, to M. Najarian, EPA:CPB, Summary of Organic Air Emission Test Results for a Hazardous Waste Fixation Process at Chem-Met Services, Inc., Wyandotte, Michigan, October 28, 1991.
- Memorandum and Attachment, S. York, Research Triangle Institute, to Docket, Revised BID Appendix D—Source Assessment Model, July 31, 1992 (revised Appendix D attached).
- Memorandum and Attachment, S. York, Research Triangle Institute, to Docket, Supplement to BID Appendix E—Estimating Health Effects, July 31, 1992 (BID Appendix E Supplement attached).
- Memorandum, S. York, Research Triangle Institute, to Docket, Public Access to Non-Confidential Business Information in 1986 National Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities (TSDR), July 31, 1992.
- Memorandum, S. York, Research Triangle Institute, to Docket, Public Access to Non-Confidential Business Information in EPA 1986 National Survey of Hazardous Waste Generators, July 31, 1992.
- Memorandum, S. York, Research Triangle Institute, to Docket, Public Access to Non-Confidential Business Information in RCRA Industrial Studies Data Base (ISDB), July 31, 1992.
- Memorandum, S. York, Research Triangle Institute, to Docket, EPA Method 25D Recovery Factors Used for Source Assessment Model, July 31, 1992.
- Memorandum, P. Peterson, Research Triangle Institute, to Docket, Summary of Model Output for Preliminary Runs, July 31, 1992.

The Agency will consider these new data in the regulatory decision-making process for this regulation. Therefore, the new data are being placed into the RCRA docket for public inspection and review. For all readers to clearly distinguish these new data, they have been placed under a new docket number: F-92-CESA-FFFFF. The Agency will consider all comments on the new data received by the close of the comment period when making a final regulatory determination on the control option for this regulation.

Dated: September 10, 1992.

Michael Shapiro,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 92-22516 Filed 9-17-92; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 61

[FRL-4506-7]

National Emission Standards for Hazardous Air Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a rule to stay the effectiveness of subpart I of 40 CFR part 61 as it is applied to facilities other than commercial nuclear power reactors which are licensed by the Nuclear Regulatory Commission (NRC) or by NRC Agreement States. This stay would remain in effect during a subsequent rulemaking concerning rescission of subpart I for these facilities, but in no case will extend beyond November 15, 1993. A stay currently in effect for these facilities expires on November 15, 1992. During the current stay, EPA has been evaluating air emissions of radionuclides from NRC licensees other than nuclear power reactors and the NRC regulatory program to control such emissions pursuant to section 112(d)(9) of the Clean Air Act. This proposal is based on that evaluation and reflects the Agency's intention to issue a proposed rule to rescind Subpart I for NRC-licensed facilities other than nuclear power reactors on or before November 15, 1992.

DATES: Comments concerning this proposed rule must be received by EPA on or before October 19, 1992, unless a public hearing is held, in which case the comment period will be extended until October 28, 1992. A hearing concerning this proposed rule will be held on September 28, 1992, if a request for such a hearing is received by September 25, 1992. For the location of the hearing, please contact Fran Jonesi at (202) 233-9229. EPA intends to take final action concerning this proposed rule no later than November 15, 1992.

ADDRESSES: Comments, requests for hearing, and questions should be addressed to: Central Docket Section LE-131, Environmental Protection Agency, Attn: Docket No. A-92-31, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Fran Jonesi, Air Standards and Economics Branch, Criteria and Standards Division (ANR-460W), Office of Radiation Programs, Environmental Protection Agency, Washington, DC 20460, (202) 233-9221.

SUPPLEMENTARY INFORMATION:

A. Background

On October 31, 1989, EPA promulgated standards controlling radionuclide emissions to the ambient air from several source categories, including emissions from licensees of the Nuclear Regualatory Commission ("NRC") and from Federal facilities not licensed by the NRC or owned or operated by the Department of Energy ("non-DOE Federal facilities") (subpart I, 40 CFR part 61). This rule was published in the **Federal Register** on December 15, 1989 (54 FR 51654). At the same time as the rule was promulgated, EPA granted reconsideration of Subpart I based on comments received late in the rulemaking from NRC and NIH on the subject of duplicative regulation by NRC and EPA and on potential negative effects of the standard on nuclear medicine. EPA established a comment period to receive further information on these subjects, and also grants a 90-day stay of subpart I as permitted by Clean Air Act section 307(d)(7)(B), 42 U.S.C. 7607 (d)(7)(B).

EPA subsequently extended the stay of the effective date of Subpart I on several occasions, pursuant to the authority provided by section 10(d) of the Administrative Procedure Act (APA), 5 U.S.C. 705, and section 301(a) of the Clean Air Act, 42 U.S.C. 7601(a). (55 FR 10455, March 21, 1990; 55 FR 29205, July 18, 1990; and 55 FR 38057, September 17, 1990).

In October 1990, Congress passed new legislation amending the Clean Air Act. Section 112(d)(9) of the amendments provides.

> No standard for radionuclide emissions from any category or subcategory of facilities licensed by the Nuclear Regulatory Commission (or an Agreement State) is required to be promulgated under this section if the Administrator determines, by rule, and after consultation with the Nuclear Regulatory Commission, that the regulatory program established by the Nuclear Regulatory Commission pursuant to the Atomic Energy Act for such category or subcategory provides an ample margin of safety to protect the public health.

After evaluating the information received during the reconsideration of subpart I, EPA made an initial determination that the NRC regulatory program to control emissions of radionuclides from commercial nuclear power reactors provided an ample margin of safety to protect the public health. Based on that determination, EPA then issued a proposed rule to rescind subpart I for nuclear power reactors, 56 FR 37196 (August 5, 1991), and a final rule staying the effectiveness of subpart I for such facilities during the pendency of the rulemaking on rescission. 56 FR 38158 (August 5, 1991). However, EPA also concluded that for all categories of NRC-licensed facilities other than nuclear power reactors the Agency lacked sufficient information to determine whether the regulatory program established by NRC provided an ample margin of safety to protect the public health.

On April 15, 1991, EPA issued a final rule staying the effectiveness of Subpart I for all categories of NRC-licensed facilities except nuclear power reactors until November 15, 1992, or until such earlier date that EPA is prepared to make an initial determination under Clean Air Act section 112(d)(9) and conclude its reconsideration under section 307(d)(7)(B). 56 FR 18735 (April 24, 1991). The purpose of this stay was to enable EPA to collect the additional information necessary to make the substantive determination contemplated by section 112(d)(9).

In order to assess whether the public health is adequately protected from air emissions of radionuclides from NRC-licensed facilities other than nuclear power reactors, EPA undertook a study to determine the doses that currently result from emissions from these facilities. A major component of this study was a random survey and analysis of a representative subset of the approximately 6,000 NRC and Agreement State licensees. A second group of "targeted" facilities selected based on their potential to cause higher doses was also investigated. In order to gather the necessary information, letters were sent to selected NRC or Agreement State licensees under the authority of section 114 of the Clean Air Act. Doses were then determined by EPA using the compliance procedures specified in Subpart I.

EPA has recently concluded its analysis of the data collected in this study. The results of the study indicate that current air emissions of radionuclides from NRC licensees consistently provide an ample margin of safety to protect the public health. A preliminary draft of the report setting forth the results of the study has been placed in the docket for this proposed rule. EPA is also currently engaged in consultations with the NRC concerning measures which will assure EPA that future emissions from NRC licensees will not exceed levels that will provide an ample margin of safety. Based on the results of its study and on the pending consultations with NRC, EPA expects to make an initial determination that the NRC regulatory program to control emissions from licensees other than nuclear power reactors provides an ample margin of safety, and to propose to rescind Subpart I for this group of licensees on or before November 15, 1992, and to take final action by November 15, 1993.

B. Proposed Rule staying Subpart I for NRC-Licensed Facilities Other than Nuclear Power Reactors

Today's proposal reflects the Agency's interpretation of the Congressional policy embodied in section 112(d)(9) of the Clean Air Act Amendments of 1990. In section 112a(d)(9), Congress authorized EPA not to regulate radionuclide emissions from NRC licensees in those instances where NRC regulation is sufficient to provide an ample margin of safety. Congress clearly intended to give EPA the discretion to relieve affected facilities from the burdens associated with parallel regulation when this would not adversely affect public health.

If EPA determines based on its investigation of NRC licensees other than nuclear power reactors and on consultations with NRC that the NRC regulatory program governing radionuclide emissions from such facilities provides an ample margin of safety to protect the public health and commences a rulemaking under section 112(d)(9) to rescind subpart I for such facilities, it would frustrate the clear purpose of section 112(d)(9) for EPA to permit subpart I to take effect during the rulemaking on rescission. Therefore, under the authority provided by section 112(d)((9) and section 301(a) of the Clean Air Act, EPA is proposing this rule to stay the effectiveness of Subpart I as applied to NRC-licensed facilities other than nuclear power reactors during the pendency of a substantive rulemaking concerning rescission. EPA expects to issue a proposed rule to rescind Subpart I for NRC-licensed facilities other than nuclear power reactors, and to take final action concerning this proposed stay, on or before November 15, 1992.

C. Miscellaneous

1. Paperwork Reduction Act

There are no information collection requirements in this rule.

2. Executive Order 12291

Under Executive Order 12291, EPA is required to judge whether this regulation is a "major rule" and therefore subject to certain requirements of the Order. The EPA has determined that issuing this stay of subpart I for nuclear power reactors will result in none of the adverse economic effects set forth in section I of the Order as grounds for finding a regulation to be a "major rule."

This regulation is not major because the nationwide compliance costs do not meet the $100 million threshold, the regulation does not significantly increase prices or production costs, and the regulation does not cause significant adverse effects on domestic competition, employment, investment, productivity, innovation or competition in foreign markets.

The Agency has not conducted a Regulatory Impact Analysis (RIA) of this regulation because this action does not constitute a major rule.

3. Regulatory Flexibility Analysis

Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, requires EPA to prepare and make available for comment an "initial regulatory flexibility analysis" which describes the effect of the rule on small business entities. However, section 604(b) of the Act provides that an analysis will not be required when the head of an Agency certifies that the rule will not, if promulgated, have a significant economic impact on any number of small entities.

This rule staying 40 CFR part 61, subpart I for facilities other than nuclear power reactors will have the effect of preventing the burden which would otherwise result from imposition of the requirements in subpart I. I therefore certify that this rule will not have significant economic impact on any number of small entities.

Dated: September 14, 1992.

William K. Reilly,

Administrator.

List of Subjects in 40 CFR Part 61

Air pollution control.

For all of the reasons given in the preamble, it is proposed that part 61 of title 40 of the Code of Federal Regulations be amended as follows:

PART 61—[AMENDED]

1. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 7401, 7412, 7414, 7416, 7601.

2. Section 61.109 is revised to read as follows:

§ 61.109 Stay of Effective Date.

The effective date for subpart I is stayed for all facilities other than commercial nuclear power reactors which are licensed by the Nuclear Regulatory Commission or an Agreement State until the date on which EPA takes final action concerning its proposal to rescind subpart I for such facilities pursuant to section 112(d)(9) of the Clean Air Act, or November 15, 1993, whichever comes first. EPA will publish any such final action in the Federal Register.

[FR Doc. 92-22651 Filed 9-17-92; 8:45 am]

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Notices

Federal Register
Vol. 57, No. 182
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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

1992–93 National Marketing Quota and Price Support Level for Flue-cured Tobacco

AGENCY: Agricultural Stabilization and Conservation Service (ASCS) and Commodity Credit Corporation (CCC), (USDA).

ACTION: Notice of determination.

SUMMARY: The purpose of this notice is to affirm determinations made by the Secretary of Agriculture with respect to the 1992 crop of flue-cured tobacco in accordance with the Agricultural Adjustment Act of 1938, as amended, and the Agricultural Act of 1949, as amended.

In addition to other determinations, the Secretary of Agriculture proclaimed marketing quotas for the 1992–94 marketing years, determined the 1992 marketing quota for flue-cured tobacco to be 891.8 million pounds, and set the price support level for 1992 at 156.0 cents per pound.

EFFECTIVE DATE: December 16, 1991.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, Agricultural Economist, Tobacco and Peanuts Analysis Division, ASCS, room 3736, South Building, P.O. Box 2415, Washington, DC 20013, (202) 720–8839.

The Final Regulatory Impact Analysis describing the options considered in developing this notice and the impact of implementing each option is available on request from Robert L. Tarczy.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified "not major." This action has been classified "not major" since implementation of these determinations will not result in: (1) An annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this notice applies are: Commodity Loan and Purchases: 10.051.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since neither the Agricultural Stabilization and Conservation Service (ASCS) nor the Commodity Credit Corporation (CCC) are required by 5 U.S.C. 553 or any provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

This notice is issued pursuant to the provisions of the Agricultural Adjustment Act of 1938 (1938 Act), as amended, and the Agricultural Act of 1949 (1949 Act), as amended. On December 16, 1991, the Secretary of Agriculture announced the price support level and national marketing quota for 1992 crop flue-cured tobacco and, likewise, based on the most reliable data available (principally statistics of the federal government), a number of related determinations for that crop were also made at that time.

This notice, for that crop, affirms the following:

1. The proclamation of quota for the 1992–94 marketing years;
2. The amount of domestic manufacturers; intentions;
3. The amount of the average exports for the 1989, 1990, and 1991 crop years;
4. The amount of the reserve stock level;
5. The amount of adjustment needed to maintain loan stocks at the reserve stock level;
6. The amount of the national marketing quota;
7. The national average yield goal;
8. The national acreage allotment;
9. The national acreage reserve:

A. For establishing acreage allotments for new farms, and

B. For making corrections and adjusting inequities in old farms;

10. The national acreage factor;
11. The national yield factor; and
12. The price support level.

Marketing Quotas

Section 317(a)(1)(B) of the 1938 Act provides, in part, that the national marketing quota for a marketing year for flue-cured tobacco is the quantity of such tobacco that is not more than 103 percent nor less than 97 percent of the total of: (1) The amount of flue-cured tobacco that domestic manufacturers of cigarettes estimate they intend to purchase on U.S. auction markets or from producers, (2) the average quantity exported annually from the U.S. during the three marketing years immediately preceding the marketing year for which the determination is being made, and (3) the quantity, if any, that the Secretary, in the Secretary's discretion, determines necessary to adjust loan stocks to the reserve stock level.

Section 317(a)(1)(C) further provides that, with respect to the 1990 through 1993 marketing years, any reduction in the national marketing quota being determined shall not exceed 10 percent of the previous year's national marketing quota. The "reserve stock level" is defined in section 301(b)(14)(C) of the 1938 Act as the greater of 100 million pounds or 15 percent of the national marketing quota for flue-cured tobacco for the marketing year immediately preceding the marketing year for which the level is being determined.

Section 320A of the 1938 Act provides that all domestic manufacturers of cigarettes with more than 1 percent of U.S. cigarette production and sales shall submit to the Secretary a statement of purchase intentions for the 1992 crop of flue-cured tobacco by December 1, 1991. Six such manufacturers were required to submit such a statement for the 1992 crop and the total of their intended purchases for the 1992 crop was 497.2 million pounds.

The three-year average of exports is 393.7 million pounds. Beginning in January 1991, the Bureau of Census has required U.S. exporters to report the U.S.-grown and foreign portions of flue-cured leaf exports. Accordingly, beginning in calendar 1991 (the last half of the 1990 crop year) all reports of U.S. flue-cured exports on a farm sales

weight basis will represent only U.S.-grown tobacco. For the 1989 crop year and the first half of the 1990 crop year, raw census data were used.

In accordance with section 301(b)(14)(C) of the 1938 Act, the reserve stock level is the greater of 100 million pounds or 15 percent of the 1991 marketing quota for flue-cured tobacco. The national marketing quota for the 1991 crop year was 877.7 million pounds (56 FR 19975). Accordingly, the reserve stock level for use in determining the 1992 marketing quota for flue-cured tobacco is 131.7 million pounds.

As of November 27, the Flue-Cured Tobacco Stabilization Corporation had in its inventory 130.8 million pounds of flue-cured tobacco (excluding pre-1985 stocks committed to be purchased by manufacturers and covered by deferred sales). Accordingly, the adjustment to maintain loan stocks at the reserve supply level is an increase of 0.9 million pounds.

The total of the three marketing quota components for the 1992–93 marketing year is 891.8 million pounds. Section 317(a)(1)(B) of the 1938 Act further provides that the Secretary may increase or decrease the total by 3 percent. Because the Secretary has determined that supplies were adequate to satisfy export markets at the 891.8 million-pound-quota level, it was determined the discretionary authority to adjust the three-component total would not be used. Accordingly, the national marketing quota for the marketing year beginning July 1, 1992, for flue-cured tobacco is 891.8 million pounds.

Section 317(a)(2) of the 1938 Act provides that the national average yield goal be set at a level, which on a national average basis, the Secretary determines will improve or ensure the usability of the tobacco and increase the net return per pound to the growers. Yields in crop year 1991 did not change significantly from the previous year. Accordingly, in the national average yield goal for the 1992–93 marketing year will be 2,088 pounds per acre, the same as last year.

In accordance with section 317(a)(3) of the 1938 Act, the national acreage allotment for the 1992 crop of flue-cured tobacco is determined to be 427,107.28 acres, which is the result of dividing the national marketing quota by the national average yield goal.

In accordance with section 317(e) of the 1938 Act, the Secretary is authorized to establish a national reserve from the national acreage allotment in an amount equivalent to not more than 3 percent of the national acreage allotment for the purpose of making corrections in farm acreage allotments, adjusting for inequities, and for establishing allotments for new farms. The Secretary has determined that a national reserve for the 1992 crop of flue-cured tobacco of 1,278 acres is adequate for these purposes.

Price Support

Price support is required to be made available for each crop of a kind of tobacco for which quotas are in effect, or for which marketing quotas have not been disapproved by producers, at a level which is determined in accordance with a formula prescribed in section 106 of the 1949 Act.

With respect to the 1992 crop of flue-cured tobacco, the level of support is determined in accordance with sections 106(d) and (f) of the 1949 Act. Section 106(f)(7)(A) of the 1949 Act provides that the level of support for the 1992 crop of flue-cured tobacco shall be:

(1) The level in cents per pound at which the 1991 crop of flue-cured tobacco was supported, plus or minus, respectively,

(2) An adjustment of not less than 65 percent nor more than 100 percent of the total, as determined by the Secretary after taking into consideration the supply of the kind of tobacco involved in relation to demand, of:

(A) 66.7 percent of the amount by which:

(I) The average price received by producers for flue-cured tobacco on the United States auction markets, as determined by the Secretary, during the 5 marketing years immediately preceding the marketing year for which the determination is being made, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period, is greater or less than

(II) The average price received by producers for flue-cured tobacco on the United States auction markets, as determined by the Secretary, during the 5 marketing years immediately marketing year before the marketing year for which the determination is being made, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period; and

(B) 33.3 percent of the change, expressed as a cost per pound of tobacco, in the index of prices paid by tobacco producers from January 1 to December 31 of the calendar year immediately preceding the year in which the determination is made.

The difference between the two 5-year averages (the difference between (A)(I) and (II)) is 2.9 cents per pound. The difference in the cost index from January 1 to December 31, 1991 is 3.9 cents per pound. Applying these components to the price support formula (2.9 cents per pound, two-thirds weight; 3.9 cents per pound, one-third weight) result in a weighted total of 3.2 cents per pound. As indicated, section 106 provides that the Secretary may on the basis of supply and demand conditions limit the change in the price support level to no less than 65 percent of that amount. Supply and demand are reasonably in balance. Accordingly, the 1992 crop of flue-cured tobacco will be supported at 156.0 cents per pound, 3.2 cents higher than in 1991.

Affirmation

The following determinations have been made for flue-cured tobacco for the marketing year beginning July 1, 1992 and are hereby affirmed:

(a) *Proclamation of quota.* Since the 1991–92 marketing year in the last of three consecutive marketing years for which marketing quotas previously proclaimed will be in effect for flue-cured tobacco, a national marketing quota for such kind of tobacco for each of the three marketing years beginning July 1, 1992; July 1, 1993; and July 1, 1994 is hereby proclaimed.

(b) *Domestic manufacturers' intentions.* Manufacturers' intentions for the 1992 year totaled 497.2 million pounds.

(c) *3-year average exports.* The 3-year average of exports is 393.7 million pounds, based on exports of 387.6 million pounds, 403.4 million pounds, and 390.0 million pounds for the 1989, and 1990 crop years, respectively.

(d) *Reserve stock level.* The reserve stock level is 131.7 million pounds, based on 15 percent of 1991's national marketing quota of 878 million pounds.

(e) *Adjustment for the reserve stock level.* The adjustment for the reserve stock level is plus 0.9 million pounds, based on a reserve stock level of 131.7 million pounds and anticipated loan stocks of 130.8 million pounds.

(f) *National marketing quota.* The national marketing quota is 891.8 million pounds, based on the three component total.

(g) *National average yield goal.* The national average yield goal is determined to be 2,088 pounds.

(h) *National acreage allotment.* The national acreage allotment on an acreage-poundage basis is determined to be 427,107.28 acres. This allotment is determined by dividing the national marketing quota of 891.8 million pounds by the national average yield goal of 2,088 pounds.

(i) *National reserve.* The national reserve for making corrections and adjusting inequities in old farm acreage allotments and for establishing allotments for new farms has been determined to be 1,278 acres.

(j) *National acreage factor.* The national acreage factor is determined to be 1.015.

(k) *National yield factor.* The national yield factor is determined and announced to be .9272.

(l) *Types of tobacco.* It has been determined that types 11, 12, 13, and 14 shall constitute one kind of tobacco for the 1992–93, 1993–94, and 1994–95 marketing years. It has been determined also that no substantial difference exists in the usage or market outlets for any one or more of the types of flue-cured tobacco.

(m) *Price support level.* The level of support for the 1992 crop of flue-cured tobacco is 156.0 cents per pound.

Authority: 7 U.S.C. 1301, 1313, 1314c, 1314g, 1375, 1445, and 1421.

Signed at Washington, DC on September 11, 1992.

John A. Stevenson,

Acting Administrator, Agricultural Stabilization and Conservation Service and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 92–22649 Filed 9–17–92; 8:45 am]

BILLING CODE 3410–05–M

Commodity Credit Corporation

1992–93 National Marketing Quota and Price Support Level of Burley Tobacco

AGENCY: Agricultural Stabilization and Conservation Service (ASCS) and Commodity Credit Corporation (CCC), (USDA).

ACTION: Notice of determination.

SUMMARY: The purpose of this notice is to affirm determinations made by the Secretary of Agriculture with respect to the 1992 crop of burley tobacco in accordance with the Agricultural Adjustment of 1938, as amended, and the Agricultural Act of 1949, as amended. In addition to other determinations, the Secretary of Agriculture proclaimed marketing quotas for the 1992–94 marketing years. The Secretary determined that the 1992 marketing quota for burley tobacco would be 670.0 million pounds and the price support level for the 1992 crop would be $1.649 per pound.

EFFECTIVE DATE: February 3, 1992.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, Agricultural Economist, Tobacco and Peanuts Analysis Division, ASCS, room 3736 South Building, P.O. Box 2415, Washington, DC 20013, (202) 720–8839. The Final Regulatory Impact Analysis describing the options considered in developing this notice and the impact of implementing each option is available on request from Robert L. Tarczy.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified "not major." This action has been classified "not major" since implementation of these determinations will not result in: (1) An annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical region, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has also been determined that this notice is not subject to Executive Order 12778.

The title and number of the Federal Assistance Program, as found in the catalog of Federal Domestic Assistance, to which this notice applies are: Title—Commodity Loan and Purchases; Number 10.051.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since neither the ASCS nor the CCC is required by 5 U.S.C. 553 or any provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

This notice of determination is issued in accordance with the Agricultural Adjustment Act of 1938, as amended (the 1938 Act), and the Agricultural Act of 1949, as amended (the 1949 Act), in order to announce for the 1992 marketing year for burley tobacco the following:

1. The amount of domestic manufacturers' purchase intentions;
2. The amount of the average exports for the 1989, 1990, and 1991 crop years;
3. The amount of the reverse stock level;
4. The amount of adjustment needed to maintain loan stocks at the reserve stock level;
5. The amount of the national marketing quota;
6. The national reserve:
   A. For establishing marketing quotas for new farms, and
   B. For making corrections and adjusting inequities in old farms;
7. The national factor to reflect the adjustment in the preliminary farm quotas in order that the national marketing quota affirmed in this notice has been achieved; and
8. The average price support level.

The determination set forth in this notice have been made on the basis of the latest available statistics of the Federal Government, these being the most reliable data available for purposes of these determinations.

Marketing Quotas

Section 319 of the 1938 Act provides, in part, that the national marketing quota for a marketing year for burley tobacco is the quantity of such tobacco that is not more than 103 percent and not less than 97 percent of the total of: (1) The amount of burley tobacco that domestic manufacturers of cigarettes estimate they intend to purchase on U.S. auction markets or from producers, (2) the average quantity exported annually from the U.S. during the three marketing years immediately preceding the marketing year for which the determination is being made, and (3) the quantity, if any, necessary to adjust loan stocks to the reserve stock level. Section 319(c)(3)(B) further provides that, with respect to the 1990 through 1993 marketing years, that any reduction in the national marketing quota being determined shall not exceed 10 percent of the previous year's national marketing quota. The "reserve stock level" is defined in section 301(b)(14)(D) of the 1938 Act for burley tobacco as the greater of 50,000,000 pounds (farm sales weight) or 15 percent of the national marketing quota for burley tobacco for the marketing year immediately preceding the marketing year for which the level is being determined.

Section 320A of the 1938 Act provides that all domestic manufacturers of cigarettes that produce and sell more than 1 percent of the cigarettes produced and sold in the United States shall submit the Secretary a statement of purchase intentions for the 1992 crop of burley by January 15, 1992. Six such manufactures were required to submit such a statement for the 1992 crop and the total of their intended purchases for the 1992 crop was 445.5 million pounds.

The three-year average of exports is 187.6 million pounds.

Beginning in January 1991, the Bureau of the Census has required U.S. exporters to report the U.S-grown and foreign portions of burley leaf exports. So beginning in calendar 1991 (the three-fourths of the 1990 crop year) all reports of U.S. burley exports on a farm sales weight basis will represent only U.S.-

grown tobacco. For the 1989 crop year and the one-fourth of the 1990 crop year, raw census data were used.

In accordance with section 301(b)(14)(D) of the 1938 Act, the reserve stock level must be the greater of 50 million pounds or 15 percent of the 1991 marketing quota for burley tobacco. The national marketing quota for the 1991 crop year was 726.0 million pounds (56 FR 19973). Accordingly, the reserve stock level for use in determining the 1992 marketing quota for burley tobacco is 108.9 million pounds, which is 15 percent of the 1991 national quota.

As of January 3, 1992, the two burley tobacco loan associations had in their inventory 33 million pounds of the 1985–90 crops which remained unsold (net of deferred sales). The 1991 crop is expected to add about 39 million pounds to inventory. Accordingly, the adjustment to maintain loan stocks at the reserve supply level is an increase of 36.9 million pounds.

The total of the three marketing quota components for the 1992–93 marketing year, accordingly, is 670 million pounds. Section 319 of the 1938 Act further provides that the Secretary may set the quota at a figure that is within 3 percent of that figure. Since use of an unadjusted figure in recent crop years appears to have produced satisfactory results, it was determined that an unadjusted figure should be used for the 1992 crop as well. Accordingly, the national marketing quota for the marketing year beginning October 1, 1992, for burley tobacco is 670.0 million pounds.

In accordance with section 319(c) of the 1938 Act, the Secretary is authorized to establish a national reserve from the national acreage allotment in an amount equivalent to not more than 1 percent of the national acreage allotment for the purpose of making corrections in farm acreage allotments, adjusting for inequities, and for establishing allotments for new farms. Based on the experience of recent crops years, the Secretary has determined that a national reserve for the 1992 crop of burley tobacco of 704,000 pounds is adequate for these purposes. In setting farm allotments for the 1992 burley crop it was also determined based on past practice that a factor of 92.5 percent would be used to adjust preliminary from quota to reach the national poundage quota.

Price Support

Under provisions of the 1949 Act, price support is required to be made available for each crop of a kind of tobacco for which quotas are in effect, or for which marketing quotas have not been disapproved by producers, at a level which is determined in accordance with a formula prescribed in section 106 of that Act.

With respect to the 1992 crop of burley tobacco, the level of support is required to be determined in accordance with sections 106 (d) and (f) of the 1949 Act.

Section 106(f)(7)(A) of the 1949 Act provides that the level of support for the 1992 crop of burley tobacco shall be the level in cents per pound at which the 1991 crop of burley tobacco was supported, plus or minus, an adjustment of not less than 65 percent nor more than 100 percent of the total, as determined by the Secretary after taking into consideration the supply of the kind of tobacco involved in relation to demand, of:

(A) 66.7 percent of the amount by which:

(I) The average price received by producers for burley tobacco on the United States auction markets, as determined by the Secretary, during the 5 marketing years immediately preceding the marketing year for which the determination is being made, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period, is greater or less than:

(II) The average price received by producers for burley tobacco on the United States auction markets, as determined by the Secretary, during the 5 marketing years immediately preceding the marketing year prior to the marketing year for which the determination is being made, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period; and

(B) 33.3 percent of the change, expressed as a cost per pound of tobacco, in the index of prices paid by burley tobacco producers from January 1 to December 31 of the calendar year immediately preceding the year in which the determination is made.

The difference between the two 5-year averages (the difference between (A) (I) and (A)(II) is a positive 6.2 cents per pound. The difference in the cost index from January 1 to December 31, 1991, is a positive 7.3 cents per pound. Adjusted two-thirds to one-third, as provided for in the statute, the adjusted total for these two components is a positive 6.5 cents.

Section 106, as indicated, permits the change from the preceding year's support level to be 65–100% of that adjusted figure. As supply and demand are reasonably in balance and are expected to continue to have that balance without further adjustment, it was determined that the 1992 crop of burley tobacco should be supported at 164.9 cents per pound, 6.5 cents higher than in 1991. This will be the average support level as adjustments for individual lots of tobacco may be made for quality and other factors.

The level of support and the national marketing quota for the 1992 burley marketing year was announced on February 3, 1992, by the Secretary of Agriculture. This notice affirms these determinations and also pursuant to section 319 of the 1938 Act proclaims that marketing quotas will, subject to a producers referendum, be in effect in the three years beginning with the marketing year that starts October 1, 1992.

Affirmation

Accordingly, the following determinations made by the Secretary for burley tobacco for the marketing year beginning October 1, 1992, are hereby affirmed:

(a) *Proclamation of marketing quotas.* Since the 1991–92 marketing year is the last of three consecutive marketing years for which marketing quotas previously proclaimed will be in effect for burley tobacco, a national marketing quota for such kind of tobacco for each of the three marketing years beginning October 1, 1992; October 1, 1993; and October 1, 1994, is hereby proclaimed.

(b) *Domestic manufacturers' intentions.* Manufacturers' intentions to purchase for the 1992 year totaled 445.5 million pounds.

(c) *Three-year average exports.* The 3-year average exports is 187.6 million pounds, based on exports of 168.7 million pounds, 199.0 million pounds and 195.0 million pounds for the 1989, 1990, and 1991 crop years, respectively.

(d) *Reserve stock level.* The reserve stock level is 108.9 million pounds, based on 15 percent of 1991 national marketing quota of 726.0 million pounds.

(e) *Adjustment for the reserve stock level.* The adjustment for the reserve stock level is plus 36.9 million pounds, based on a reserve stock level of 108.9 million pounds less anticipated loan stocks of 72.0 million pounds.

(f) *National marketing quota.* The national marketing quota is 670.0 million pounds, based on the three component total.

(g) *National reserve.* The national reserve for making corrections and adjusting inequities in old farm marketing quotas and for establishing marketing quotas for new farms has been determined to be 704,000 pounds.

(h) *National Factor.* The national factor for adjusting preliminary farm

quotas in order that the national marketing quota affirmed in this notice is achieved has been determined to be .925.

(i) *Price support level.* The average level of support for the 1992 crop of burley tobacco is 164.9 cents per pound.

Authority: 7 U.S.C. 1301, 1313, 1314c, 1314e, 1314g, 1375, 1445, 1421.

Signed at Washington, DC on September 11, 1992.

John A. Stevenson,

Acting Administrator, Agricultural Stabilization and Conservation Service and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 92-22650 Filed 9-17-92; 8:45 am]

BILLING CODE 3410-05-M

Forest Service

National Environmental Policy Act; Revised Policy and Procedures

AGENCY: Forest Service, USDA.

ACTION: Notice of adoption of final policy.

SUMMARY: The Forest Service gives notice that it is adopting revised policy and procedures for implementing the National Environmental Policy Act (NEPA) and Council on Environmental Quality (CEQ) regulations. These guidelines replace policy and procedures published in the **Federal Register** on June 24, 1985, (50 FR 26078, Part II), and will be issued through the agency directive system as Chapter 1950 of the Forest Service Manual and as Forest Service Handbook 1909.15, Environmental Policy and Procedures Handbook.

EFFECTIVE DATE: These procedures are effective on September 21, 1992. These procedures apply to the fullest extent practicable to analyses and documents begun before that date. However, work completed under previous policy and guidelines need not be revised.

FOR FURTHER INFORMATION CONTACT: Robert S. Cunningham, Environmental Coordination, USDA-Forest Service, Box 96090, Washington, DC 20090-6090. Telephone (202) 205-0865.

SUPPLEMENTARY INFORMATION: Chapter 1950 of the Forest Service Manual (FSM) and Forest Service Handbook (FSH) 1909.15 contain Forest Service policy and procedures for implementing the National Environmental Policy Act (NEPA) in compliance with the Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500-1508).

Consistent with agency directive policy, FSM 1950 has been revised to specify desired results, to minimize procedural detail, to rely as much as practicable on judgment of field professionals, and to permit discretion in achieving operational results appropriate to local situations and conditions. FSM 1950, as revised, contains only that direction needed by line and primary staff officers. More detailed procedures for environmental analyses and documentation needed by line and staff officers and resource specialists are set forth in the Handbook, FSH 1909.15.

Response to Comments

Draft policy and procedures were published for public review and comment in the **Federal Register** of April 29, 1991 (56 FR 19718, Part II). Nearly 2,000 comments were received from 270 groups and individuals representing private organizations, Federal and State agencies, and private citizens. The agency has considered each comment and made a number of substantive as well as editorial changes in response to these comments. A summary of major comments received and the agency response follows.

General Comments

Reviewers tended to support the proposed changes. Many offered valuable suggestions for improving the wording of specific passages to ensure desired results.

From these general comments, frequent topics surfaced for clarification and explanation. For example, many respondents were unsure or unaware of the role of NEPA in considerations leading to natural resource management decisions. Also, others were confused about the applicability of NEPA to decisions in Forest Service Research, State and Private forestry, and the National Forest System program areas. In response, the agency notes that, in accordance with 40 CFR Parts 1500-1508, these policies and procedures apply to all agency actions that may affect the quality of the human environment.

Several reviewers wanted to know how consideration of social impacts combines with the NEPA process as described in the policy and procedures. The text has been edited in several places to place greater emphasis on the consideration of social impacts along with the biological, physical, and economic effects of proposed agency actions as required by the CEQ regulations.

Specific Comments on Forest Service Manual FSM 1950

The Forest Service Manual (1950) sets forth Forest Service management objectives, policy, and responsibility and broad agency standards for meeting the requirements of the National Environmental Policy Act. Most reviewers agreed that the process-related direction for agency action is better suited to the Handbook (FSH 1909.15) than the Manual (FSM 1950). Reviewers did request that the meaning of "environment" be more clearly described in FSM 1950.2 which sets out broad management objectives to be achieved through NEPA compliance. In response, the text has been revised to refer explicitly to the physical, biological, social, and economic aspects of the human environment. Reviewers also commented that paragraph 5 of the objectives that states that line officers are "allowed" to carry out the direction in the FSH 1909.15 should be changed to make clearer that the direction in the FSM 1950 and that of FSH 1909.15 is mandatory. This change has been adopted. FSM 1950.3 sets out the broad policies governing agency implementation of NEPA and CEQ regulations. Requests were made to enumerate the meaning of "parties" and "public" in FSM 1950.3, paragraph 3. This paragraph has been clarified. It was further noted that the first criterion under the proposed policy in FSM 1950.3 had no real meaning. The criterion read, "Determine the depth and breadth of environmental analysis required for a proposed action." In response, this statement has been removed so that the policy now reads, "It is the Forest Service policy to:

a. Give early notice of upcoming proposals to interested and affected persons (FSH 1909.15, sec. 07);

b. Give timely notice to interested and affected persons, federal agencies, State and local governments, and organizations of the availability of environmental and accompanying decision documents; and

c. Make documents available to the public free of charge to the extent practicable."

Minor editorial changes also were made in the remaining text of section 1950.3 for clarity. No other comments were received on the remainder of the chapter. Therefore, except for minor editorial changes for clarity throughout, the rest of the chapter is adopted as proposed.

Comments on Forest Service Handbook FSH 1909.15

Zero Code Chapter

The "zero code" chapter of the Handbook sets forth the broad legal authority, policies, responsibilities, and other direction that govern or apply to

all subsequent direction in the Handbook. This chapter describes: Legal authorities and management objectives; assigns responsibility to Forest Service employees; defines specialized terms; provides an overview of the environmental analysis and documentation process; establishes procedures for early public notice of upcoming proposals; and provides direction on handling emergency and classified actions.

The Definitions section (05) incorporated selected terms and defintions directly from the CEQ regulations (40 CFR parts 1500-1508). Public comment requested clarification of terms used in the definitions for "environmental design arts, " "issues," "irreversible," and "irretrievable." These terms have been added to the list of definitions in section 05 to conform these terms to CEQ regulations and to clarify meaning.

Section 06 displayed a flow chart of the environmental analysis and documentation process. Some reviewers felt that the chart was hard to understand and that the arrowheads for the lines connecting various actions were missing. In response, the flow chart in Exhibit 01 has been edited by adjusting the flow lines and adding arrowheads to more clearly visualize the development of a proposed action, conduct of appropriate environmental analysis, and completion of needed documentation.

Section 07 proposed the establishment of a new requirement that each Forest Supervisor and District Ranger as directed by the Forest Supervisor prepare and distribute a calendar of proposed actions that may undergo environmental analysis. The calendar is intended to give early and informal notice of proposals so that the public can become aware of Forest Service activities, indicate their interest in specific proposals, and become involved early in the environmental analysis and documentation process. The calendar would be distributed two times a year.

Several respondents requested that the calendar of proposed actions be issued more frequently than twice per year. This request seemed reasonable and offered a possible improvement in public notice of Forest Service activities. Therefore, the agency has decided to require issuance of the calendar of proposed actions once every 3 months rather than once every 6 months. In addition, language has been added to point out that issuance of the calendar is not a substitute for necessary scoping of proposed actions. To avoid confusion with other uses of the term "calendar" and specific government printing requirements, the term "schedule of proposed actions" has been substituted to describe the listing of proposed actions.

Finally, minor editorial changes have been made throughout the zero code chapter to improve readability.

Chapter 10—Environmental Analysis. This chapter of the Handbook describes the conduct of environmental analyses and documentation. The chapter begins with a description of management objectives, policy, and responsibilities. The chapter describes: conduct of scoping; use of interdisciplinary analysis; collection and interpretation of data; development of alternatives to the proposed action; estimated effects of each alternative; evaluation of alternatives; identification of the preferred alternative(s) for environmental impact statements (EIS's); determination of the type of environmental documents needed; and review of new information after a decision has been made.

Direction for scoping of proposed actions was placed in this chapter to emphasize that scoping is an integral part of environmental analysis and that involving the public early in the environmental analysis and documentation of proposed actions are important. Almost all who commented on scoping supported its early and expanded use to identify issues and to focus on the relevant environmental analysis and subsequent documentation. Clearly, reviewers want to be advised and informed of proposed Forest Service actions, particularly those implementing Forest Land and Resource Management Plans (forest plans) on National Forest System lands.

Proposed section 10.3, Policy, stated that scoping applies to all proposed actions which are analyzed using the NEPA procedures except for actions which are categorically excluded from documentation as described in FSH 1909.15, Chapter 30. The proposed elimination of scoping for Categorical Exclusions (CE's) was not favorably received. Many respondents wanted scoping included in the consideration of actions which might be categorically excluded as it now is under current direction. The agency agrees and has revised section 10.3 to require scoping on all proposed actions. Changes were also made in section 11 to show that scoping is required.

Proposed section 10.4, Responsibility, set out the responsibilities of the Responsible Official which included ensuring that the appropriate level of scoping and environmental analysis occurs. Several reviewers said that responsibilities should include the appropriate documentation of scoping and analyses. The agency agrees. The term "documentation" has been added to the responsibilities in section 10.4 that a Responsible Official has in reaching a decision regarding a proposed action. This change has been made elsewhere throughout the chapter to emphasize the importance of appropriate documentation. In addition, section section 10.4 has been expanded to list other key duties of the Responsible Official that are mentioned later in this chapter so that Forest Service line officers have a comprehensive list in one location for their duties and responsibilities.

Several reviewers sought clarification of the role of the Responsible Official and interdisciplinary team members relative to determining the scope of the proposed action and necessary analysis and documentation of environmental effects. In response, sections 11.3 and 11.4 have been revised to emphasize the role of the Responsible Official in the identification and description of the proposed action and in the establishment of the purpose and need for a proposed action (sections 12.3d and 14.2). Section 12.2 also has been revised to clarify that interdisciplinary analysis is required, rather than just the establishment of an interdisciplinary team. In addition, changes have been made to clarify that interdisciplinary team members are responsible for offering "recommendations" rather than making "decisions."

Many reviewers said that the role of State and local governments and agencies was not adequately addressed in required procedures. In response, sections 11.31, 11.31b, 11.4 and 11.51 have been modified to more clearly describe the necessary coordination and consultation with State and local government agencies. A Reference to CEQ's "40 Questions" also has been added to section 11.31 as an aid to understanding the role of State and local governments and agencies in environmental analysis and documentation.

Some reviewers said that participation in interdisciplinary teams by State agency personnel or private citizens was not clear. Section 12.1 has been reorganized to clarify that only federal personnel may be members of an interdisciplinary team, yet other people can provide information in other ways.

Policy and procedure for addressing incomplete or unavailable information was described in proposed section 22.34. Requests were made to move this guidance to section 13, Collection and Interpretation of Data. In response

section 13, Collect and Interpret Data, has been expanded to include the requirements for addressing incomplete or unavailable information when evaluating significant adverse impacts.

Proposed section 14, Develop Alternatives, described the process used to develop alternatives to a proposed action and the considerations leading to a full range of reasonable alternatives. From some of the comments, it appeared that there was confusion regarding the necessary range of alternatives that must be evaluated in an environmental analysis and the role of the "no action" alternative. Reviewers pointed out that proposed section 14 did not state that the Forest Service must consider all reasonable alternatives to a proposed action (alternatives which would still accomplish the purpose and need of the proposed action), even those which may be contrary to law, beyond the authority of the agency, or inconsistent with a forest plan. In response, section 14 has been revised to clarify that the Forest Service must consider all reasonable alternatives that fulfill the purpose and need of the proposed action as required by CEQ regulations (40 CFR parts 1500–1508), even those which are not within the jurisdiction of the Forest Service. References to CEQ's "40 Questions" also have been added to sections 14 and 14.1 to improve employee understanding of the necessary range of alternatives including the "no action" alternative.

Respondents wanted to ensure that all proposed actions, even those proposed by other federal agencies, State or local organizations, Indian tribes, companies, or private citizens are consistent with forest plan direction. To further clarify the relationship of reasonable alternatives to requirements of forest plans, section 12.3d has been revised to require a discussion of consistency with the applicable forest plan for each alternative which would affect National Forest System lands, including proposals from entities other than the Forest Service.

Some respondents stated that the description of alternative development in section 14.2, Other Alternatives, did not clearly identify that alternatives should, when appropriate, include mitigation and monitoring requirements, such as State water quality standards. In response, this section has been revised to incorporate the requested change.

Proposed section 15, Estimate Effects of Each Alternative, described the analysis necessary to estimate the environmental effects of alternative actions on the environment. No changes from current direction was proposed in this section. However, comments were received. Many reviewers said that the description of the necessary analysis of the cumulative effects of a proposed action or alternatives was not clearly stated. Some thought that the cumulative effects analysis would stop at the boundary of National Forest System land. Further, these reviewers felt that the term "human environment" was not adequately described. In response, section 15.1 has been revised to be fully consistent with CEQ regulations (40 CFR parts 1500–1508) which require the consideration of cumulative effects of actions without regard to ownership of land. A corollary change has been made to section 16, Evaluate Alternatives and Identify Preferred Alternative(s), to clarify that the human environment includes physical, biological, social, and economic components.

A new section 18 was proposed to be added to the Handbook. This section gives direction on consideration of new information related to a proposed action after a decision has been made. It also describes how to correct, supplement, or revise environmental documents (an EIS, an environmental assessment (EA), or Finding of No Significant Impact).

Several comments were received on this proposed section. Most respondents sought clarification of the direction with regard to the discovery of new information after a Responsible Official has made a decision to act. In response, this section has been rewritten to better describe the process and to note the need to consider new information for actions which have been categorically excluded.

In addition to the substantive changes made in response to comments, minor corrections and improvement in word choice and sentence structure have been made throughout chapter 10.

Chapter 20—Environmental Impact Statements and Related Documents. This chapter of the Handbook describes the content of EIS's, related documents, and necessary processing procedures. The proposed chapter replaces existing chapter 40 of the same title. Proposed section 20.6 was added to describe the classes of actions that require EIS's. In the proposed chapter, specific requirements were listed for the content of the notice of intent to prepare an EIS and the content of a record of decision which documents the rationale for the selection of an action which has its environmental effects described in an EIS.

The majority of the 68 comments received on this chapter addressed the classes of actions requiring EIS's listed in proposed section 20.6. Some reviewers said that considerations of proposed actions in areas with wilderness potential and larger than 5,000 acres should require an EIS. Others said that the acreage criterion was too small or totally inappropriate.

The direction in proposed section 20.6, Classes of Actions Requiring Environmental Impact Statements, states that a proposed action would have to "substantially alter the undeveloped character of an inventoried roadless area of 5,000 acres or more" to require an EIS. This direction allows the Responsible Official, with appropriate public involvement, to determine whether or not an EIS would be required for a specific proposed action. The area criterion is intended to alert agency officials of the increased concern people have expressed regarding the environmental effects of actions within inventoried roadless areas greater than 5,000 acres. An action within a roadless area less than 5,000 acres could also require an EIS, if the proposal may result in significant environmental effects. The agency has used the 5,000-acre criterion in the past and has found it useful in the identification and description of roadless areas. The 5,000-acre criterion is currently used in FSH 1909.12, Land and Resource Management Planning Handbook, Chapter 7—Wilderness Evaluation. Therefore, no change has been made in the class of actions requiring an EIS.

Examples of actions within one class of actions, Other Proposals to Take Major Federal Actions That May Significantly Affect the Quality of the Human Environment, have been added for clarification.

Proposed Section 21.1, Preparation and Distribution of Notices of Intent, included mandatory language for the public to be involved early in the NEPA process. This mandatory language notes that failure to become involved early in the process may lessen the likelihood of subsequent successful legal redress of agency decisions. No comments were received on this specific addition. However, there was comment on the meaning and timing of notices of intent to prepare an EIS and the notice of availability that a draft or final EIS is available for public review. In response, section 21, Notices of Intent, has been revised to improve the description of the notice of intent to prepare an EIS. Also, section 23.2, Circulation and Filing a Draft Environmental Impact Statement, has been revised to better describe the notice of availability. A description of the roles of the Washington Office of Environmental Coordination, the National Office of the Environmental Protection Agency, and others has been

added as they relate to the development and processing of these documents. Revision procedures for notices of intent and notices of availability have been described along with their required content.

Reviewers noted that the period of review for draft EIS's is sometimes confusing. Section 23.2 has been changed to note that a draft EIS must be available for public review a minimum of 45 days after a notice of availability is published by EPA in the **Federal Register**. Exceptions to the required review period are noted with appropriate procedures.

Proposed section 24.3, which required transmittal of documents to the Washington Office Director of Environmental Coordination for agency review of EIS's affecting roadless areas, has not been retained in the final Handbook. This provision is no longer needed and was inadvertently retained in the proposal. Internal agency review is accomplishing necessary Washington Office oversight of environmental documents involving roadless areas of the National Forest System.

A few respondents asked why the information dealing with corrections, supplements, and revisions was listed in proposed section 24.4, Corrections, Supplements, and Revisions, rather than in proposed section 18 which addresses the review of new information after a decision has been made. In response, the text in section 24.3 has been moved to section 18 and remaining paragraphs of section 24 renumbered.

One reviewer said that the requirement that a Responsible Official "read and understand" an EIS before documentation of a decision in a record of decision was unnecessary or impossible considering the size and detail of many EIS's. This section has not been changed; environmental documents must be clear and understandable and used by the Responsible Official in reaching a decision.

Proposed section 27.21, paragraph 2, Decision, described the needed description of the decision in a record of decision. Proposed section 27.21, paragraph 5, listed the required format to describe the reasons for a decision. To improve clarity, the description of the required elements of the record of decision were combined into one paragraph, "Decision and Reasons for the Decision."

Chapter 30—Categorical Exclusions. The CEQ regulations provide that agencies may define categories of actions that may be excluded from documentation in an EIS or an EA (40 CFR 1508.4). This proposed chapter was developed to provide more specific categories of actions that may be excluded from environmental documentation. The proposed chapter sets forth policy; definitions; categories of actions that could be excluded from documentation without decision memos; and categories of actions which would require decision memos. The proposed chapter listed 17 categories established by the Chief, nine of which would require the issuance of a decision memo, a document which describes a decision to take a proposed action and to explain the rationale for categorically excluding it from the preparation of an EIS or an EA.

Proposed chapter 30 received the greatest number of comments representing a wide range of views. Some respondents felt that the listed categories went much too far in eliminating documentation. Others thought that the categories were adequate and would help the agency avoid unneeded paperwork. Some respondents said that documentation was excessive or that the use of a categorical exclusion was a "poor guise" to "cut the public out of the process." Also, some reviewers thought that the categories were much too general and vague to be useful.

After fully considering these comments, this chapter has been rewritten to better describe the categories of actions which can be excluded from documentation. The changes clarify the actions which, based on agency experience, are known to have no significant effect on the human environment, individually or cumulatively.

Many reviewers requested that "scoping" be included in actions which would be categorically excluded from documentation in an EIS or an EA. As noted in the discussion of chapter 10, scoping has been included to the extent necessary to determine whether or not the action will fit an existing category and whether or not there are any extraordinary circumstances.

Proposed chapter 30 described the use of the term "extraordinary circumstances" to aid a Responsible Official in the determination that a proposed action would have no significant effects on the environment. Because of the widely divergent physical, biological, and cultural environments within which the Forest Service operates, the agency must have NEPA procedures which can be applied effectively and judiciously to fit the on-the-ground conditions encountered on a daily basis. To date, the agency has successfully used the "extraordinary circumstances" criterion to identify situations where proposed actions normally excluded from documentation cannot be excluded due to the unique environment surrounding the action.

Several reviewers said that "extraordinary circumstances" were not well defined and that the mere presence or absence of one of the listed circumstances was insufficient to determine if an action was or was not to be placed in a category for exclusion. In response, section 30.3, Policy, has been revised to clarify that an action may be categorically excluded only if it falls within a category and is without extraordinary circumstances. The examples given in proposed section 30.3 are illustrative of conditions that could cause an action to have a significant effect. The list is not exhaustive. Other conditions could cause a normally excluded action to create significant environmental effects. The agency believes that the Responsible Official must determine if a normally excluded action involves an extraordinary circumstance which would require the preparation of an EIS or an EA. In addition, the following definition of "extraordinary circumstance" has been added to section 30.5: "Conditions associated with an action normally excluded from documentation that are identified during scoping as potentially having effects which may significantly affect the environment (sec. 05)."

The proposed chapter 30 had a provision for documentation of a decision in a decision memo to record the decision to act and to acknowledge that the action was excluded from environmental documentation. This proposed provision was added to reflect changes to the agency's administrative review procedures at 36 CFR part 217 adopted January 23, 1989 (54 FR 3357).

Some reviewers noted that the use of decision memos to identify decisions which could be appealed through the agency's administrative review process (36 CFR part 217) did not seem appropriate since some actions within categories did not require a formalized decision document while others did. The decision memo was intended to facilitate the administrative review process for actions which have been categorically excluded.

Since publication of the proposed NEPA procedures, the agency has proposed to revise the administrative review procedures at 36 CFR part 217, **Federal Register** of March 26, 1992; 57 FR 10445). That proposed rulemaking would eliminate from administrative appeal and review those actions which have been categorically excluded from documentation in an EIS or an EA. In

lieu of formalized appeal, the rule provides that a person may request at any time that a higher-level official review the decision of a lower-level official. With the adoption of this final rule, a formal document to describe an action that has been categorically excluded from environmental documentation would no longer be necessary or appropriate. Therefore, it should be noted that upon adoption of the final rule, appropriate sections of the Handbook will be revised to remove the requirement for decision memos.

Several of the categories in proposed section 31.1b and 31.2 and some of the actions within categories identified the potential damage to soil, air, water, or sensitive resource values as a condition which would eliminate an action from placement within the category. Reviewers noted that an analysis of an action to determine if it would damage natural resources is tantamount to an environmental analysis that must be accompanied by an EA or an EIS. The agency does not agree. An appropriate evaluation of the potential effects of a proposed action can and should be made by the Responsible Official prior to the placement of the proposed action in a category for exclusion.

To clarify the decisionmaking process that would be used to place a proposed action within a category and to determine that no extraordinary circumstances exist, references to the potential effects of an action to cause damage to air, soil, water or sensitive resource values have been removed from the description of categories and actions. Corollary with this change, section 30.3, Policy, has been revised to include steep slopes and highly erosive soils as additional examples of extraordinary circumstances.

Several of the categories listed in the proposed chapter 30 included a statement that they must be consistent with the applicable forest plan in order to be included in the category.

Some reviewers asserted that meeting or not meeting direction within a forest plan should have no bearing on the possible significance of environmental effects or the appropriateness of placing an action within a category. The agency agrees; thus, references to compliance with a forest plan have been removed. However, all actions implemented within a National Forest must by statute still be consistent with the forest plan (16 U.S.C. 1601–1614).

The last two paragraphs of proposed policy section 30.3 described what is to be done if an action has received appropriate environmental review but not implemented by a Responsible Official. Reviewers noted that these last two paragraphs refer to actions which have been "identified" in a decision document. Reviewers were unsure if the referenced action would have been selected for implementation or just addressed in the decision document. In response, the term "identified" has been replaced with "approved" to clarify the intent that an "approved" action requires no further review or documentation to proceed to implementation.

To improve the clarity of section 31.1b, Categories Established by the Chief, the description of categories of routine repair and maintenance actions in paragraph 3 has been partitioned into three groups: administrative sites; roads, trails, and landline boundaries; and recreation sites and facilities. Other categories also have been revised to be consistent in their presentation.

Reviewers thought paragraph 5 of proposed section 31.1b was somewhat confusing. This paragraph established a category for proposals to issue, reissue, or adjust land use authorizations which are consistent with an existing Forest Land and Resource Management Plan where the proposed activity will have little potential for soil movement, loss of soil productivity, water and air quality degradation, or impact on sensitive resource values.

In response, the category of actions described in paragraph 5, section 31.1b, has been changed to read as follows: "Approval, modification, or continuation of minor, short-term (one year or less) special uses of National Forest System lands." A specific time limit was placed on actions within the category to better describe the temporary nature of the actions within the category. The examples of actions in this category also have been revised to show that the Responsible Official would approve a "use" of National Forest System lands. After approval of a use, the Responsible Official issues a particular legal instrument such as a permit or a maintenance agreement to implement the decision.

The category of actions to carry out small scale pest management activities (proposed paragraph 6) has been removed. Several respondents commented that the minor actions described may be better placed in another category. The agency agrees. Actions that were proposed in this category are now displayed as examples of maintenance actions in section 31.1b.

Proposed paragraph 2, section 31.2, established a category for proposals or issuance of authorizations to construct, reconstruct, or upgrade facilities or utilities on approved sites that have little potential for soil movement, loss of soil productivity, water and air quality degradation, or impact on sensitive resource values. The examples of land uses within this proposed category had no upper limitation on the size of the actions. Some respondents said that the lack of an upper limit was unreasonable. Others said that any size limit would be artificial and difficult to use.

After consideration of comments, the agency has modified this category of action to place an upper limit of five contiguous acres for minor uses of National Forest System lands. The agency believes that the limitation on the size of minor uses suitable for categorical exclusion is reasonable and consistent with experience in the evaluation of environmental effects of such uses.

One reviewer noted that the categories of actions listed in section 31.2, Categories of Actions for Which a Project or Case File and Decision Memo Are Required, did not include the term "routine" as did those in section 31.1b. The intent of the agency is that only routine actions that have no extraordinary circumstances should be within categories for exclusion. Therefore, the term "routine" has been removed from each category and examples of actions and placed as a criterion applicable to all categorically excluded actions in sections 31.1b and 31.2.

Several respondents asked for additions or deletions to the examples of actions in many of the categories in section 31.2, Categories of Actions for Which a Project or Case File and Decision Memo Are Required. Upon consideration of these suggestions, the agency has made the following changes: Trail use by handicapped individuals has been added to examples of actions in category 1; the use of explosives to kill tree tops for wildlife habitat improvement has been removed from category 3; and the exchange of landownership actions paragraphs (c) and (d) are not adopted. These changes are minor but should assist in better understanding and utility of the categories.

In review of the categories in section 31.2, Categories of Actions for Which a Project or Case File and Decision Memo Are Required, research-related activities were placed in a category for exclusion based upon their research purpose, rather than based upon their possible effect on the environment. Categories of actions should address the potential physical and biological effects of proposed actions rather than their intended purpose. Therefore, proposed paragraph 5 of section 31.2, related to

proposals to conduct research activities and administrative studies which do not involve genetically engineered organisms and which have little potential for soil movement, loss of soil productivity, water and air quality degradation, or impact on sensitive resources, has not been retained in the final chapter as a category; and the examples have been placed in other categories as appropriate.

Several reviewers wrote that the limitation on the size of timber harvests (paragraph 7 of section 31.2) of one million board-feet was too large for an action to be excluded. Others felt that the limitation was not large enough. Considering the wide divergence of views and the concern several respondents expressed regarding the visual effects of cutting practices used in the harvest of live timber, the agency has reduced the size of timber harvests of live trees suitable for inclusion in a category to 250,000 board-feet or less of merchantable wood products. The size limitation for salvage sales of dead and dying timber has remained unchanged from the proposed limit of one million board-feet or less of merchantable wood products.

Several reviewers said that minor mineral and energy-related activities should be in a category which did not require the issuance of a decision memo. As noted in the discussion above, the requirement for decision memos may be removed as a result of revisions to the appeal rules.

Additionally, a reviewer commented that the mineral-related activities should have limitations on the duration of actions that could be placed in a category. In response, this category has been revised to limit it to actions of one year or less duration. The category now covers "short-term (one year or less) mineral, energy, or geophysical investigations and their incidental support activities that may require cross-county travel by vehicles and equipment, construction or less than one mile of low standard road (Service Level D, FSH 7709.56), or use and minor repair of existing roads."

Several reviewers commented on the proposal to have a categorical exclusion for Allotment Management Plans and permits to authorize grazing. Many of these comments addressed other laws and regulations regarding the appropriateness of grazing, the relationship of the permittee and the Forest Service, or the applicability or non-applicability of NEPA to grazing activities. Decisions to implement grazing practices are made through development and approval of Allotment Management Plans (AMPs); subsequent administration of allotments in accordance with AMPs is executed through administration of grazing permits. The agency agrees that appropriate environmental disclosure should occur in the adoption of AMPs. Categorical exclusions are neither necessary or appropriate for actions which implement AMPs. Therefore, no change has been made to this paragraph.

Paragraph 14 of proposed section 31.2, Amendments to Forest Land and Resource Management Plans which do not change decisions made in forest plans, had not been retained. After careful review of this category, it was concluded that changes to forest plans which do not affect the decisions made in a forest plan could not entail any action that would have any environmental effect. Since no environmental effects could result, NEPA procedures do not apply; therefore, a categorical exclusion from documentation is not appropriate. Such changes to a forest plan could be corrections of typographical errors, minor management area boundary changes, changes resulting from budget adjustments which do not affect the range of outputs identified in the forest plan, and additions or deletions to forest plan schedules that do not change the objectives of a forest plan.

Paragraphs 6, 7, 8, and 9 of section 31.2, Categories of Actions for Which a Project or Case File and Decision Memo Are Required, have been reorganized to improve clarity.

In addition to the preceding changes resulting from consideration of comments, the chapter has been edited to improve clarity and the presentation of categories of actions suitable for exclusion from environmental documentation.

Chapter 40—Environmental Assessment and Related Documents. This chapter of the Handbook describes the purpose and content of environmental assessments. It also describes the methods to reduce paperwork through, "tiering," "adoption," and "incorporation by reference." The chapter concludes with a description of the "Finding of No Significant Impact" (FONSI) and the format and content of a "decision notice."

Some reviewers commented that the direction for the preparation of EA's should be much more specific and should use the criteria for EIS's to describe necessary analysis and format. Others liked the direction that EA's can be in any format that is useful to facilitate planning, decisionmaking, and public disclosure of environmental effects. Agency experience has shown that flexibility in the format of EA's has improved agency compliance with NEPA and reduced unnecessary paperwork. Therefore, chapter 40 retains the flexibility in the format for EA's.

Some reviewers questioned whether a FONSI could be issued separately from a decision notice; and, if so, if there is a required public review period for the FONSI. Section 43.1, Finding of No Significant Impact (FONSI), has been revised to require a 30-day public review period for FONSI's that are issued as separate documents from a decision notice. This will ensure that the public is afforded an opportunity to comment on a FONSI and its associated EA before a decision is made.

Section 43.21, paragraph 5, second sentence was removed; since it repeated the content of a FONSI described in section 43.1. A reviewer noted that the language in the proposed sections 43.2 and 44 was somewhat unclear. In response, the text of section 43.21, Format and Content, and section 44, Notice and Distribution of FONSI and Decision Notice, has been revised to improve clarity.

Chapter 50—Implementation and Monitoring. This chapter of the Handbook describes the implementation of actions described in an environmental document and the limitations on actions which normally require an EIS or those of an unprecedented nature. The description of monitoring and mitigation measures concludes the chapter.

Reviewers suggested that chapter contents were confusing and did not seem to match the titles of the sections. They further suggested that any mitigation and monitoring identified in an EIS, EA, or a FONSI and a decision documents must be implemented along with the selected action and that the requirement was not included. In response, the chapter has been revised by changing the title of section 51, Implementing Decisions Based on Environmental Impact Statements, to "Implementing Decisions Documented in a Record of Decision." Similarly, the test of section 52 Implementing Decisions Based on Environmental Assessments, has been revised to "Implementing Decisions Documented in a Decision Notice." Finally, section 53, Monitoring, was revised to clarify that mitigation and monitoring requirements must be met.

Proposed 51 required, "In addition, if an EIS allocates an inventoried roadless area or a RARE II (further planning) area(s) to nonwilderness uses, do not implement any activity that would alter

the roadless character of the area(s) until a letter is received from the Washington Office Environmental Coordination Staff indicating implementation may take place." Upon review of this requirement, the agency concluded that it no longer needs special provisions for Washington Office-level review of EIS's which describe the effects of possible actions within an inventoried roadless area. Normal agency reviews and internal controls are sufficient to ensure that policy and procedures are followed. Therefore, the requirement has been removed from section 51.

Proposed section 52.11, Actions Involving Flood Plains and Wetlands, required a 30-day delay in the implementation of any decision involving a flood plain or wetland after a decision notice has been signed. This requirement has been in effect for several years and was intended to provide a reasonable period of public review as required by Executive Orders 11988 and 11990. Often the process duplicated normal agency scoping activities and public notification of proposed actions. With the implementation of a quarterly public notification of scheduled actions as described in chapter 10, this requirement is no longer needed to accomplish the intent of the Executive Orders and has been removed.

Chapter 60—References. This chapter contains reference material needed to assist in conducting analyses, preparing documents, and giving notices of decisions. Because of the chapter's length and because the information contained in this chapter is generally available to the public, only the table of contents of chapter 60 is published in this notice. It is included in the Handbook to ensure that Forest Service employees have ready access to these materials.

Some reviewers asked that reference to Executive Order 12630, Takings Implication Assessment, be included in the list of Executive Orders applicable to environmental quality. Executive Order 12630 refers to the effect of Federal actions on the property rights of individuals. It directs agencies to consider these rights before actions are implemented. The consideration is an important one. However, reference to Executive Order 12630 was not added to the Handbook since procedures are in place in other agency directives to ensure individual property rights are not encumbered through neglect or ignorance of applicable rights.

The full text of FSM 1950 and FSH 1909.15, except for chapter 60 as noted, is set out at the end of this notice.

Environmental Impact

Based on experience and environmental analysis, the implementation of the revised Forest Service environmental policy and procedures will not significantly affect the quality of the human environment, individually or cumulatively. Therefore, this action is categorically excluded from documentation in an environmental impact statement or an environmental assessment (FSH 1909.15 chapter 40 and 40 CFR 1508.4).

Controlling Paperwork Burdens on the Public

These policies and procedures do not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 and, therefore, impose no paperwork burden on the public.

Regulatory Impact

This policy has been reviewed under USDA procedures and Executive Order 12291. It has been determined that this policy is not a major rule. The policy will not have an effect of $100 million or more on the economy; substantially increase prices or costs for consumers, industry, or State or local governments; nor adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in foreign markets. In short, little or no effect on the National economy will result from this policy as it consists primarily of minor changes in agency procedures and it does not increase costs to the Government or users of the national forests.

Moreover, this policy has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it has been determined that this action will not have a significant economic impact on a substantial number of small entities as defined by that Act.

Therefore, after notice and consideration of comments received and for the reasons noted in the preamble, the Forest Service is adopting final policy and procedures for implementing the National Environmental Policy Act. The text of FSM 1950 and FSH 1909.15, chapters Zero Code through 50 as adopted is set out at the end of this notice.

Dated: August 27, 1992.

F. Dale Robertson,

Chief.

Forest Service Manual

Chapter 1950—Environmental Policy and Procedures

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This chapter sets forth Forest Service management objectives, policy, and responsibilities for meeting the requirements of the National Environmental Policy Act (NEPA).

1950.1 Authority

1. *The National Environmental Policy Act of 1969 (NEPA)*, as amended (42 U.S.C. 4321–4346). NEPA declares a national policy which encourages "productive and enjoyable harmony between man and his environment." NEPA requires Federal agencies to: (a) Use a systematic interdisciplinary approach in planning and decisionmaking; (b) consider the environmental impact of proposed actions; (c) identify adverse environmental effects which cannot be avoided should the proposal be implemented; (d) consider alternatives to the proposed action; (e) consider the relationship between local short-term uses of the human environment and the maintenance and enhancement of long-term productivity; and (f) identify any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

2. *Council on Environmental Quality Regulations.* The regulations at title 40, Code of Federal Regulations, parts 1500–1508 (40 CFR parts 1500–1508) set forth specific requirements for implementing the National Environmental Policy Act. The regulations establish procedures and rules governing environmental analysis and documentation; ensure that environmental information is available to public officials and the public, including identification of significant issues; and provide direction to assist

public officials in making decisions based on an understanding of environmental consequences.

3. *U.S. Department of Agriculture NEPA Regulations.* The regulations at title 7, Code of Federal Regulations, Part 1b (7 CFR part 1b) direct Department of Agriculture agencies to develop and to implement procedures for compliance with NEPA. The regulations exclude seven categories of activities from documentation such as program funding, educational and informational activities, and civil and criminal law enforcement and investigation activities.

The full texts of these authorities, along with supplementary Council on Environmental Quality guidance, are printed in chapter 60 of the Forest Service Environmental Policy and Procedures Handbook (FSH 1909.15).

1950.2 Objectives

In meeting the requirements of the National Environmental Policy Act, the Forest Service seeks to:

1. Fully integrate National Environmental Policy Act requirements into agency planning and decisionmaking.

2. Fully consider the impacts of Forest Service proposed actions on the physical, biological, social, and economic aspects of the human environment (40 CFR 1508.14).

3. Involve interested and affected agencies, State and local governments, organizations, and individuals in planning and decisionmaking.

4. Conduct and document environmental analyses and subsequent decisions appropriately, efficiently, and cost effectively.

1950.3 Policy

Compliance with NEPA is fundamental to managing all Forest Service resource, research, and cooperative forestry programs and must be integrated into the management processes of those programs.

1. Procedures of this chapter apply to the fullest extent practicable to analyses and documentation of Forest Service actions. However, work completed under previous policy and guidelines need not be revised.

2. It is Forest Service policy to:

a. Give early notice of upcoming proposals to interested and affected persons (FSH 1909.15, sec. 07).

b. Give timely notice to interested and affected persons, Federal agencies, State and local governments, and organizations of the availability of environmental and accompanying decision documents.

c. Make documents available to the public free of charge to the extent practicable.

d. Apply the concepts of tiering, adoption, and incorporation by reference to both environmental impact statements and environmental assessments.

2. Line and primary staff officers are subject to the requirements of FSH 1909.15, which sets forth the procedural instructions for environmental analysis and documentation.

3. Matters which require consultation with the Council on Environmental Quality shall be referred to the Washington Office Director of Environmental Coordination.

1950.4 Responsibility

1950.41 Authority to Act as Responsible Official

The responsible official is the agency employee who has the delegated authority to make and implement a decision on a proposed action.

1950.41a Chief

The Chief reserves the discretion to be the responsible official (sec. 1950.5) for environmental analyses, documentation, and decisions relating to proposed actions of national importance. In accordance with the general delegations of authority at FSM 1235, the Associate Chief may act as responsible official on any matter reserved by the Chief, unless the Chief directs otherwise.

In cases of proposed legislation where the Secretary of Agriculture is the responsible official, the Chief is responsible for providing support for the analysis and documentation.

1950.41b Deputy Chiefs and Associate Deputy Chiefs

In accordance with delegations at FSM 1235, the Deputy Chiefs and Associate Deputy Chiefs may serve and sign as the responsible official on any environmental matter of national importance within their areas of jurisdiction, unless the Chief specifically directs otherwise.

1950.41c Regional Foresters, Station Directors, and Area Director

As provided in FSM 1235, Regional Foresters, Station Directors, and the Area Director are delegated responsibility for conducting environmental anlayses, preparing environmental documents, and making decisions related to proposed actions under their jurisdiction.

Regional Foresters, Station Directors, and the Area Director may file environmental impact statements directly with the Environmental Protection Agency for proposed actions within their authority.

Station Directors and the Area Director may, by supplement to this code, redelegate responsibility for conducting environmental analyses, preparing the necessary documentation, filing environmental impact statements, and making decisions on proposed actions to Assistant Station Directors, Research project leaders, and State and Private Forestry field representatives.

1950.41d Forest Supervisors

Unless otherwise provided in the Forest Service Manual or Handbooks, Forest Supervisors have authority and responsibility for conducting environmental analyses, preparing the necessary documentation, and making decisions on proposed actions under their jurisdiction unless specifically reserved by the Regional Forester. This authority may be redelegated to District Rangers by supplement to this code or, by letter, on a case-by-case basis (FSM 1204; 1230).

1950.42 Limitations on Issuance of Directives

1950.42a Field Line Officers

Notwithstanding the delegation of authority in FSM 1104 to issue supplements to the Forest Service Manual and the Handbooks, Regional Foresters, Station Directors, the Area Director, and Forest Supervisors may issue supplements to FSM 1950 and FSH 1909.15 only as follows:

1. Supplements to FSM 1950 may be issued only to delegate authority or responsibility.

2. Supplements to FSH 1909.15 may be issued only for the purposes of issuing internal procedures for preparing and processing environmental documents and records, assigning responsibilities, or adding reference materials.

1950.43 Director of Environmental Coordination, Washington Office

Director is the staff official responsible for developing and recommending national policy, procedures, coordination measures, technical administration, and training necessary to implement the National Environmental Policy Act (NEPA) within the Forest Service. The Director is also responsible for developing policy, procedures, and training for conducting social impact analysis (FSM 1973 and FSH 1909.17, ch. 30).

The Director is responsible for liaison with the Council on Environmental Quality and consults with the Council on possible referrals (40 CFR part 1504) and emergencies (40 CFR 1506.11). The Director also provides liaison with the

Environmental Protection Agency and, as needed, requests changes in the prescribed time periods for preparation and processing of environmental impact statements (40 CFR 1506.10).

When the Chief or the Secretary is the responsible official for a proposed action, it is the responsibility of the Director to advise and assist the appropriate field unit or Washington Office (WO) staff in preparing the necessary documents and to coordinate, review, and process the relevant documents.

The Director's signing authority includes:

(a) Correspondence with the Council on Environmental Quality, Environmental Protection Agency, and other departments and agencies, interpretations or implementation of NEPA, CEQ regulations and guidance, or Forest Service NEPA compliance policy and procedures regarding the National Environmental Policy Act.

(b) General correspondence regarding environmental and decision documents and environmental quality matters.

(c) Routine correspondence (FSM) 1237) to Members of Congress and routine referrals from the President and Secretary on environmental analysis and documentation matters.

Note: When issued in the Forest Service directive system the CEQ regulations quoted in the handbook will be set out in boldface type; however, **Federal Register** printing specifications do not permit that material to be set out in boldface here.

FSH 1909.15—Environmental Policy and Procedures Handbook WO Amendment 1909.15–92–1

Zero Code

This Handbook provides procedural guidance for implementing the National Environmental Policy Act (NEPA), the Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500–1508), USDA NEPA Policies and Procedures (7 CFR part 1b), and Forest Service Manual Chapter 1950.

Specifically, this Handbook provides direction and guidance for analyzing and documenting the environmental consequences of proposed actions. Chapter 10 sets forth guidelines on scoping and environmental analysis. Chapters 20, 30, and 40 contain the documentation and process requirements for environmental impact statements, categorical exclusions, and environmental assessments. Chapter 50 addresses implementing and monitoring requirements. Chapter 60 includes the text of pertinent laws, regulations, memoranda, and other reference materials which may be useful to carry out the procedures in this Handbook.

01 Authority

1. *The National Environmental Policy Act of 1969 (NEPA)*, as amended (42 U.S.C. 4321–4346; FSM 1950.1). The full text of the act is set out in chapter 60.

2. *Council on Environmental quality Regulations* (40 CFR parts 1500–1508). These regulations set forth specific requirements for implementing the provisions of the National Environmental Policy Act. For ease of reference and use, the portions of the CEQ regulations governing implementation of NEPA are incorporated throughout the text of this Handbook. The CEQ regulations are set out in boldface to distinguish them from Forest Service direction. The full text of these regulations is set out in chapter 60.

3. *U.S. Department of Agriculture NEPA Policies and Procedures* (7 CFR part 1b; FSM 1950). The text of these regulations is set out in chapter 60. Portions of these rules are set out in boldface type in this and other chapters to distinguish them from Forest Service direction.

02 Objectives

1. To incorporate environmental considerations into Forest Service planning and decisionmaking in a systematic and cost-effective manner.

2. To conduct and document environmental analyses and the related decisions associated with national forest resource management, cooperative forestry, and research activities in a consistent manner.

33 Policy

Procedures in this Handbook apply to the fullest extent practicable to analyses and documents. However, work completed under previous policy and guidelines need not be revised.

The procedures in the Handbook must be used in conjunction with other direction found throughout the Forest Service Manual and Handbooks. Specifically, use this Handbook in conjunction with FSM Chapter 1950, Environmental Policy and Procedures., which sets forth the broad Forest Service objectives, policy, and responsibilities for meeting the requirements of the National Environmental Policy Act. Also, integrate the requirements in this Handbook with the procedures set forth in FSM 1920 and FSH 1909.12 and the regulations implementing the National Forest Management Act (36 CFR part 219).

04 Responsibility

Line officers are responsible for ensuring that the procedures in this Handbook are understood and followed by all involved in NEPA compliance.

05 Definitions

The definitions in boldface are those taken directly from the CEQ regulations (40 CFR part 1508). The remaining terms and definitions are those devised by the Forest Service and used throughout this handbook.

Act. * * * the National Environmental Policy Act, as amended (42 U.S.C. 4321, *et. seq.*) which is also referred to as "NEPA." (40 CFR 1508.2)

Categorical Exclusion. * * * a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations (§ 1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. (40 CFR 1508.4)

Connected Actions. Actions are connected if they:

(i) Automatically trigger other actions which may require environmental impact statements.

(ii) Cannot or will not proceed unless other actions are taken previously or simultaneously.

(iii) Are interdependent parts of a larger action and depend on the larger action for their justification. (40 CFR 1508.25)

Cooperating Agency. * * * any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment. The selection and responsibilities of a cooperating agency are described in § 1501.6. A State or local agency of similar qualifications or, when the effects are on a reservation, an Indian Tribe, may by agreement with the lead agency become a cooperating agency. (40 CFR 1508.5)

Council. * * * the Council on Environmental Quality established by Title II of the Act. (40 CFR 1508.6)

Cumulative Action. * * * actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement. (40 CFR 1508.25)

Cumulative Impact. * * * the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. (40 CFR 1508.7)

Decision Document. A record of decision, memo, or decision notice.

Decision Memo. A concise written record of the responsible official's decision to implement an action that has been categorically excluded from documentation in an environmental impact statement or environmental assessment (sec. 30.5).

Decision Notice. A concise written record of the responsible official's decision based on an environmental assessment and a finding of no significant impact (sec. 43.2).

Effects. These include:

(a) Direct effects, which are caused by the action and occur at the same time and place.

(b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems. Effects and impacts as used in these regulations are synonymous. Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial. (40 CFR 1508.8).

See also, cumulative impact.

Environmental Analysis. An investigation of a proposed action and alternatives to that action and their direct, indirect, and cumulative environmental impacts; the process which provides the necessary information for reaching an informed decision and the information needed for determining whether a proposed action may have significant environmental effects and determining the type environmental document required (Ch. 10).

Environmental Assessment. (a) * * * a concise public document for which a Federal agency is responsible that serves to:

(1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.

(2) Aid an agency's compliance with the Act when no environmental impact statement is necessary.

(3) Facilitate preparation of a statement when one is necessary.

(b) Shall include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted. (40 CFR 1508.9)

Environmental Design Arts. Disciplines that integrate the design arts with natural and social sciences in planning and decisionmaking which may have an impact on the environment.

Environmental Document. * * * includes the documents specified in § 1508.9 (environmental assessment), § 1508.11 (environmental impact statement), § 1508.13 (finding of no significant impact), and § 1508.22 (notice of intent). (40 CFR 1508.10)

Environmental Impact Statement. * * * a detailed written statement as required by section 102(2)(C) of the Act. 940 CFR 1508.11)

Environmentally Preferable Alternative. An alternative that best meets the goals of section 101 of the National Environmental Policy Act and required by 40 CFR 1505.2(b) to be identified in a record of decision. Ordinarily, this is the alternative that causes the least damage to the biological and physical environment and best protects, preserves, and enhances historical, cultural, and natural resources. In some situations, there may be more than one environmentally preferable alternative.

Federal Agency. * * * all agencies of the Federal Government. It does not mean the Congress, the Judiciary, or the President, including the performance of staff functions for the President in his Executive Office. (40 CFR 1508.12)

Finding of No Significant Impact (FONSI). * * * a document by a Federal agency briefly presenting the reasons why an action, not otherwise excluded (§ 1508.4), will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it (§ 1501.7(a)(5)). (40 CFR 1508.13)

Floodplains. As defined by E.O. 11988, as amended, lowland and relatively flat areas adjoining inland and coastal waters including flood prone areas of offshore islands, including at a minimum, that area subject to a one percent or greater chance of flooding in any given year (sec. 66.3).

Human Environment. * * * shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment * * * This means that economic or social effects are not intended by themselves to require preparation of an environmental impact statement. When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment. (40 CFR 1508.14)

Irreversible. A term that describes the loss of future options. Applies primarily to the effects of use of nonrenewable resources, such as minerals or cultural resources, or to those factors, such as soil productivity that are renewable only over long periods of time.

Irretrievable. A term that applies to the loss of production, harvest, or use of natural resources. For example, some or all of the timber production from an area is lost irretrievably while an area is serving as a winter sports site. The production lost is irretrievable, but the action is not irreversible. If the use changes, it is possible to resume timber production.

Jurisdiction by Law. * * * agency authority to approve, veto, or finance all or part of the proposal. (40 CFR 1508.15)

Lead Agency. * * * the agency or agencies preparing or having taken primary responsibility for preparing the environmental impact statement. (40 CFR 1508.16)

This also applies to environmental assessments. See also, joint lead agencies (40 CFR 1506.2(4)(c)).

Legislation. * * * a bill or legislative proposal to Congress developed by or with the significant cooperation and support of a Federal agency, but does not include requests for appropriations. The test for significant cooperation is whether the proposal is in fact predominantly that of the agency rather than another source. Drafting does not by itself constitute significant cooperation. Proposals for legislation include requests for ratification of treaties. Only the agency which has primary responsibility for the subject

matter involved will prepare a legislative environmental impact statement. (40 CFR 1508.17)

Major Federal Action. * * * includes actions with effects that may be major and which are potentially subject to Federal control and responsibility. Major reinforces but does not have a meaning independent of significantly (§ 1508.27). Actions include the circumstance where the responsible officials fail to act and that failure to act is reviewable by courts or administrative tribunals under the Administrative Procedure Act or other applicable law as agency action.

(a) Actions include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals (§§ 1506.8, 1508.17). Actions do not include funding assistance solely in the form of general revenue sharing funds, distributed under the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. 1221 *et seq.*, with no Federal agency control over the subsequent use of such funds. Actions do not include bringing judicial or administrative civil or criminal enforcement actions.

(b) Federal actions tend to fall within one of the following categories:

(1) Adoption of official policy, such as rules, regulations, and interpretations adopted pursuant to the Administrative Procedure Act, 5 U.S.C. 551 et seq.; treaties and international conventions or agreements; formal documents establishing an agency's policies which will result in or substantially alter agency programs.

(2) Adoption of formal plans, such as official documents prepared or approved by federal agencies which guide or prescribe alternative uses of Federal resources, upon which future agency actions will be based.

(3) Adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive.

(4) Approval of specific projects, such as construction or management activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as Federal and federally assisted activities. (40 CFR 1508.18)

Matter. (a) With respect to the Environmental Protection Agency, any proposed legislation, project, action or regulation as those terms are used in section 309(a) of the Clean Air Act (42 U.S.C. 7609).

(b) With respect to all other agencies, any proposed major Federal action to which section 102(2)(C) of NEPA applies. (40 CFR 1508.19)

Mitigation. * * * (a) Avoiding the impact altogether by not taking a certain action or parts of an action.

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

(e) Compensating for the impact by replacing or providing substitute resources or environments. (40 CFR 1508.20)

NEPA Process. * * * all measures necessary for compliance with the requirements of section 2 and Title 1 of NEPA. (40 CFR 1508.21)

Notice of Intent. * * * a notice that an environmental impact statement will be prepared and considered. (40 CFR 1508.22)

Preferred Alternative. The alternative(s) which the agency believes would best fulfill its statuatory mission and responsibilities, giving consideration to environmental, social, economic, and other factors and disclosed in an environmental impact statement.

Prime Farmland, Rangeland, and Forest Land. (See Departmental Regulation 9500–3 in section 65.21 for a detailed definition.)

Proposed Action. A proposal made by the Forest Service to authorize, recommend, or implement an action to meet a specific purpose and need (see definition for proposal).

Proposal. * * * exists at that stage in the development of an action when an agency subject to the Act has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated * * * A proposal may exist in fact as well as by agency declaration that one exists. (40 CFR 1508.23)

Referring Agency. * * * the Federal agency which has referred any matter to the Council after a determination that the matter is unsatisfactory from the standpoint of public health or welfare or environmental quality. (40 CFR 1508.24)

Similar Actions. Actions which—

(3) * * * when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography. (49 CFR 1508.25)

Scope. * * * the range of actions, alternatives, and impacts to be considered in an environmental impact statement. (40 CFR 1508.25)

Scoping. The procedure by which the Forest Service identifies important issues and determines the extent of analysis necessary for an informed decision on a proposed action. Scoping is an integral part of environmental analysis. See sec. 10.3 for Forest Service policy on use of this term.

Significantly. This term includes both context and intensity:

(a) *Context.* This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.

(b) *Intensity.* This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:

(1) Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.

(2) The degree to which the proposed action affects public health or safety.

(3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

(4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.

(5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

(6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

(7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment.

Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

(8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

(9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

(10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment. (40 CFR 1508.27)

(11) *Special Expertise.* * * * statutory responsibility, agency mission, or related program experience. (40 CFR 1508.26)

Tiering. * * * the coverage of general matters in broader environmental impact statements (such as national program or policy statements) with subsequent narrower statements or environmental analyses (such as regional or basinwide program statements or ultimately site-specific statements) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared. Tiering is appropriate when the sequence of statements or analyses is:

(a) From a program, plan, or policy environmental impact statement to a program, plan, or policy statement or analysis of lesser scope or to a site-specific statement or analysis.

(b) From an environmental impact statement on a specific action at an early stage (such as need and site selection) to a supplement (which is preferred) or a subsequent statement or analysis at a later stage (such as environmental mitigation). Tiering in such cases is appropriate when it helps the lead agency to focus on the issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe. (40 CFR 1508.28)

Wetlands. As defined by E.O. 11990, areas that are inundated by surface or ground water with a frequency sufficient to support, and that under normal circumstances do or would support, a prevalence of vegetation or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction (sec. 66.4).

06 Overview of Process

Exhibit 01 illustrates the National Environmental Policy Act process and indicates the normal sequence of actions.

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06 - Exhibit 01

NEPA PROCESS OVERVIEW

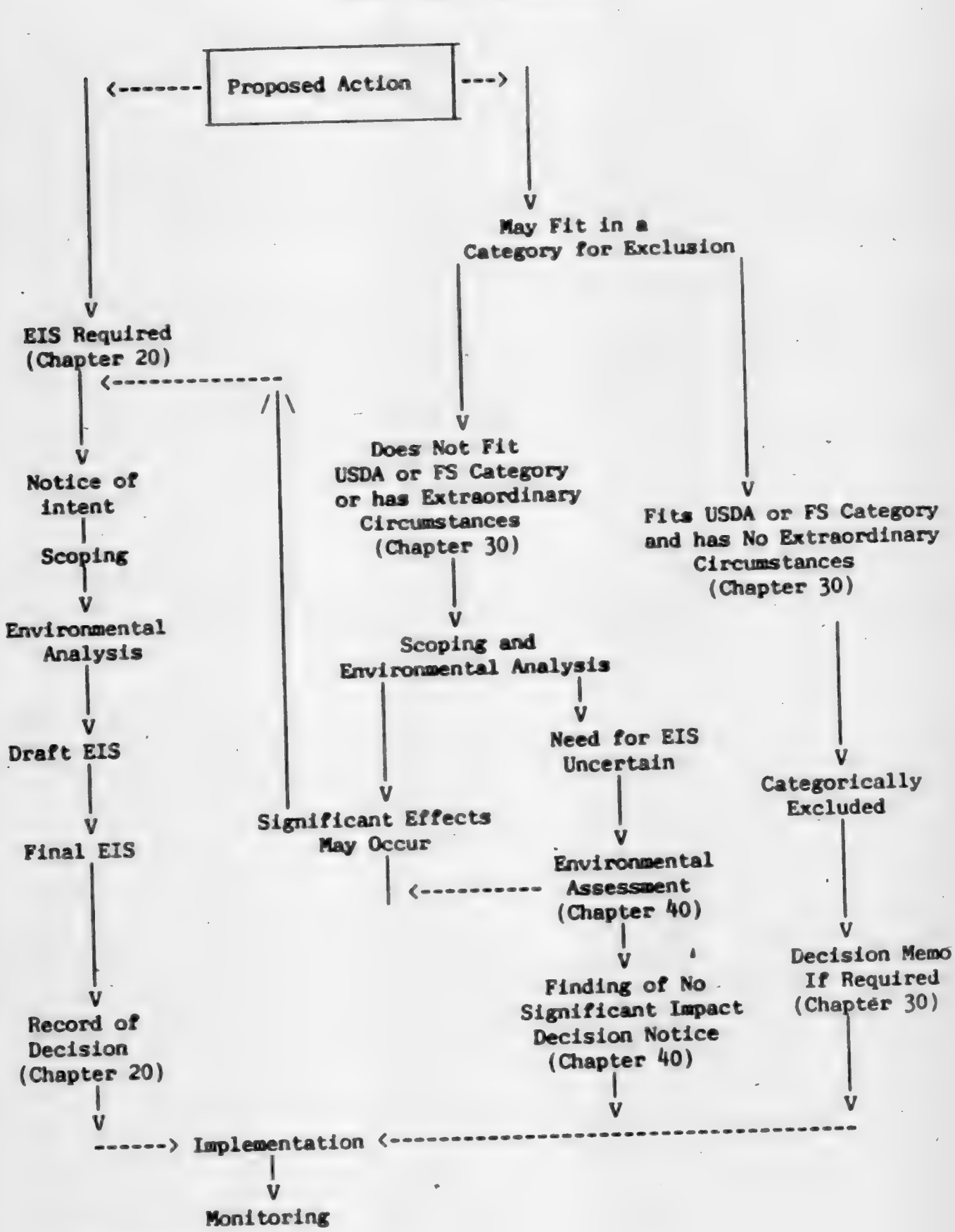

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07 Schedule of Proposed Actions

Provide notice of upcoming proposals which may undergo environmental analysis and documentation to interested and affected agencies, organizations, and persons through the use of a schedule of proposed actions. The propose of the schedule of proposed actions is to give early informal notice of proposals so the public can become aware of Forest Service activities and indicate their interest in specific proposals. It is not intended as a substitute for routine scoping described in Section 11 of this Handbook.

07.04 Responsibility

Each Forest Supervisor and District Ranger as designated by the Forest Supervisor is responsible for ensuring the preparation and distribution of a schedule of proposed actions in accordance with this section.

07.1 Frequency of Distribution

Prepare and distribute the schedule of proposed actions at least every three months to interested and affected agencies, organizations, and individuals. The schedule should include proposed actions which are anticipated to be categorically excluded from documentation in an environmental impact statement or an environmental assessment and for which a decision memo would be required (ch. 30). For those proposed actions which are planned and will undergo analysis after publication of the schedule, include notice of the action and the status in the next schedule.

07.2 Schedule Format and Content

Any format may be used; however, as a minimum, the schedule of proposed actions shall contain the following information:

1. Name of the administrative unit and time period covered by the schedule.
2. Description of the upcoming projects and/or activities which are expected to undergo environmental analysis in the time period specified.
3. Location of the proposed action including the State, county, and where appropriate, the Ranger District and the legal land description.
4. The estimated date when scoping may begin.
5. The estimated date of the decision.
6. A name, address, and telephone number of the person to contact for information and/or to be placed on the mailing list.
7. Status of the environmental analysis including dates of any **Federal Register** or other legal notices and dates of decision documents planned or previously published or issued, and the estimated implementation date(s).

08 Emergency and Classified Actions

1. *Emergency Actions.* * * * Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the provisions of these regulations, the Federal agency taking the action should consult with the Council about alternative arrangements. Agencies and the Council will limit such arrangements to actions necessary to control the immediate impacts of the emergency. Other actions remain subject to NEPA review. (40 CFR 1506.11)

For emergencies other than fire suppression, contact the Washington Office Director of Environmental Coordination regarding consultation with the Council on Environmental Quality (FSM 1950.41b and 1950.42).

2. *Classified Actions.* * * * (c) Agency procedures may include specific criteria for providing limited exceptions to the provisions of these regulations for classified proposals. They are proposed actions which are specifically authorized under criteria established by an Executive Order or statute to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order or statute. Environmental assessments and environmental impact statements which address classified proposals may be safeguarded and restricted from public dissemination in accordance with agencies' own regulations applicable to classified information. These documents may be organized so that classified portions can be included as annexes, in order that the unclassified portions can be made available to the public. (40 CFR 1507.3(c))

Among the exemptions to public disclosure requirements, the Freedom of Information Act contains an exemption for law enforcement purposes to the extent that production of investigatory records would "(A) interfere with enforcement proceedings, * * * (E) disclose investigative techniques and personnel." (5 U.S.C. 552(b)(7)(1977)). Cannabis eradication falls within the scope of this exemption. For this reason, environmental and decision documents which address cannabis eradication should be withheld from public disclosure until the cannabis has been eradicated from the site or until law enforcement needs no longer require that they be withheld.

Chapter 10—Environmental Analysis

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Chapter 10—Environmental Analysis

Environmental analysis assesses the nature and importance of the physical, biological, social, and economic effects of a proposed action and its reasonable alternatives. Exhibit 01 in sec. 06, Chapter Zero Code, shows how environmental analysis relates to other procedures required under the National Environmental Policy Act and its implementing regulations.

For ease of reference and use, portions of the relevant CEQ regulations are set out in boldface type throughout the text of this chapter.

10.2 Objectives

1. Conduct scoping (sec. 05) to:

a. Determine the nature and complexity of the proposed action.

b. Identify environmental issues related to the proposed action.

c. Determine the disciplines required to guide environmental analysis and documentation.

d. Determine how much analysis is necessary.

e. Achieve effective use of time and money in conducting environmental analysis.

f. Determine the type and level of public participation.

2. Conduct environmental analyses to assess the nature, characteristics, and significance of the effects of a proposed action and its alternatives on the human environment.

10.3 Policy

1. Environmental analysis, as the term is used in the Forest Service, includes scoping as well as subsequent analysis of the proposed action.

2. The use of scoping applies to all proposed actions which require environmental analysis; it is not limited to the preparation of an environmental impact statement (EIS).

a. Conduct the scoping actions set forth in this chapter commensurate with the nature and complexity of the proposed action.

b. Keep the public informed of the progress of environmental analyses and decisionmaking.

10.4 Responsibility

The official who is responsible for a decision on a proposed action (FSM 1950.4) also has the responsibility to:

1. Ensure that an appropriate level of scoping and environmental analysis and documentation occurs.

2. Determine whether an interdisciplinary (ID) team of specialists and a formal plan of work are needed.

3. Select the ID team and leader, where needed, and keep abreast of their work (sec. 12.1).

4. Ensure that the public is kept informed of the results of scoping and the progress of the environmental analysis commensurate with the public interest in the proposed action.

5. Approve the list of significant issues used to develop alternatives to the proposed action (sec. 12.3b).

6. Decide which alternatives to a proposed action merit detailed study and analysis (sec. 12.3c).

7. Identify the preferred alternative (sec. 16).

For actions where the Chief or the Secretary is the responsible official, it is the responsibility of the Washington Office (WO) Director, Environmental Coordination Staff, to participate in scoping and subsequent analysis, including identification of the preferred alternative(s), with the appropriate field or other WO staffs and to involve the appropriate Deputy Chief, the Chief, or the Assistant Secretary, as necessary (FSM 1950.41a).

11 Conduct Scoping

Although the Council on Environmental Quality (CEQ) Regulations require scoping only for EIS preparation, the Forest Service has broadened the concept to apply to all proposed actions.

Scoping is an integral part of environmental analysis. Scoping includes refining the proposed action, determining the responsible official and lead and cooperating agencies, identifying preliminary issues, and identifying interested and affected persons. The results of scoping are used to identify public involvement methods, refine issues, select an interdisciplinary team, establish analysis criteria, and explore possible alternatives and their probable environmental effects.

Because the nature and complexity of a proposed action determine the scope and intensity of the required analysis, no single technique is required or prescribed. Except where required by statute or regulations, the responsible official may adjust or combine the various steps of the process outlined in this chapter to aid in the understanding of the proposed action and identified issues.

The following direction on scoping from the CEQ regulations applies to all scoping conducted by the Forest Service without regard to whether or not the results of the analysis is to be documented in an EIS or an environmental assessment (EA).

There shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. This process shall be termed scoping * * *

(a) As part of the scoping process the lead agency shall:

(1) Invite the participation of affected Federal, State, and local agencies, and affected Indian tribe, the proponent of the action, and other interested persons (including those who might not be in accord with the action on environmental grounds), unless there is a limited exception under § 1507.3(c). An agency may give notice in accordance with § 1506.6.

(2) Determine the scope (§ 1508.25) and the significant issues to be analyzed in depth in the environmental impact statement.

(3) Identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review (§ 1506.3), narrowing the discussion of these issues in the statement to a brief presentation of why they will not have a significant effect on the human environment or providing a reference to their coverage elsewhere.

(4) Allocate assignments for preparation of the environmental impact statement among the lead and cooperating agencies, with the lead agency retaining responsibility for the statement.

(5) Indicate any public environmental assessments and other environmental impact statements which are being or will be prepared that are related to but are not part of the scope of the impact statement under consideration.

(6) Identify other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with, and integrated with, the environmental impact statement as provided in § 1502.25.

(7) Indicate the relationship between the timing of the preparation of environmental analyses and the agency's tentative planning and decisionmaking schedule. (40 CFR 1501.7)

For additional guidance on scoping, see sec. 65.13, "CEQ Scoping Guidance."

11.1 Organize Scoping Effort

The National Environmental Policy Act (NEPA) requires a systematic, interdisciplinary approach to ensure integrated application of the natural and social sciences and the environmental design arts in any planning and decisionmaking that affects the human environment (NEPA, sec. 102(2)(A)).

The responsible official may choose whether or not to establish an interdisciplinary (ID) team and designate a team leader to conduct scoping. However, the decision not to establish an ID team does not relieve the Forest Service of the responsibility to take an interdisciplinary approach to the scoping of the proposed action. In ensuring an interdisciplinary approach to the scoping process, responsible officials shall be guided by the direction

on interdisciplinary analysis in section 12 of this chapter.

11.2 Identify the Characteristics of the Proposed Action and Nature of the Decision to be Made

The most important element of the scoping process is to correctly identify and describe the proposed action. Elements of the proposed action include the nature, characteristics, and scope of the proposed action, the purpose and need for the proposed action, and the decision to be made.

The following concepts from the CEQ regulations also apply to gathering preliminary information for all proposals which may undergo environmental analyses:

(a) Agencies shall make sure the proposal which is the subject of an environmental impact statement is properly defined. Agencies shall use the criteria for scope (§ 1508.25) to determine which proposal(s) shall be the subject of a particular statement. Proposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement.

(b) Environmental impact statements may be prepared, and are sometimes required, for broad Federal actions such as the adoption of new agency programs or regulations (§ 1508.18). Agencies shall prepare statements on broad actions so that they are relevant to policy and are timed to coincide with meaningful points in agency planning and decisionmaking.

(c) When preparing statements on broad actions (including proposals by more than one agency), agencies may find it useful to evaluate the proposal(s) in one of the following ways:

(1) Geographically, including actions occurring in the same general location, such as body of water, region, or metropolitan area.

(2) Generically, including actions which have relevant similarities, such as common timing, impacts, alternatives, methods of implementation, media, or subject matter.

(3) By stage of technological development including federal or federally assisted research, development or demonstration programs for new technologies which, if applied, could significantly affect the quality of the human environment. Statements shall be prepared on such programs and shall be available before the program has reached a stage of investment or commitment to implementation likely to determine subsequent development or restrict later alternatives.

(d) Agencies shall as appropriate employ scoping (§ 1501.7), tiering (§ 1502.20) and other methods listed in § 1500.4 and 1500.5 to relate broad and narrow actions and to avoid duplication and delay. (40 CFR 1502.4).

11.3 Identify Responsible Official(s) and Agencies Involved

The agency employee who has the delegated authority to make and implement a decision on a proposed action (FSM 1230; 1950) is the responsible official for NEPA compliance. When an action is proposed, the responsible official must identify and contact other Federal, State, or local agencies with an interest in the action.

11.31 Determine Lead and Cooperating Agencies

The CEQ regulations address the role of the lead and cooperating agencies' responsibilities as follows:

The purpose of this section is to emphasize agency cooperation early in the NEPA process. Upon request of the lead agency, any other Federal agency which has jurisdiction by law shall be a cooperating agency. In addition any other Federal agency which has special expertise with respect to any environmental issue, which should be addressed in the statement may be a cooperating agency upon request of the lead agency. An agency may request the lead agency to designate it a cooperating agency.

(a) The lead agency shall:

(1) Request the participation of each cooperating agency in the NEPA process at the earliest possible time.

(2) Use the environmental analysis and proposals of cooperating agencies with jurisdiction by law or special expertise, to the maximum extent possible consistent with its responsibility as lead agency.

(3) Meet with a cooperating agency at the latter's request.

(b) Each cooperating agency shall:

(1) Participate in the NEPA process at the earliest possible time.

(2) Participate in the scoping process (described below in § 1501.7).

(3) Assume on request of the lead agency responsibility for developing information and preparing environmental analyses including portions of the environmental impact statement concerning which the cooperating agency has special expertise.

(4) Make available staff support at the lead agency's request to enhance the latter's interdisciplinary capability.

(5) Normally use its own funds. The lead agency shall, to the extent available funds permit, fund those major activities or analyses it requests from cooperating agencies. Potential lead agencies shall include such funding requirements in their budget requests. (c) A cooperating agency may in response to a lead agency's request for assistance in preparing the environmental impact statement (described in paragraph (b) (3), (4), or (5) of this section) reply that other program commitments preclude any involvement or the degree of involvement requested in the action that is the subject of the environmental impact statement. A copy of this reply shall be submitted to the Council. (40 CFR 1501.6)

Refer to definitions of lead and cooperating agency in Chapter Zero Code, Section 05. For additional guidance on lead and cooperating agencies, see Sec. 65.12, "CEQ's 40 Most Asked Questions," questions 14a, 14b, 14c, and 30.

11.31a Lead Agency

When the proposed action will occur on National Forest System lands, the Forest Service is usually the lead agency. The Forest Service may also be a lead or cooperating agency when State and private forest lands are involved.

The CEQ regulations address the determination and role of the lead agency as follows:

(a) A lead agency shall supervise the preparation of an environmental impact statement if more than one Federal agency either:

(1) Proposes or is involved in the same action; or

(2) Is involved in a group of actions directly related to each other because of their functional interdependence or geographical proximity.

(b) Federal, State, or local agencies, including at least one Federal agency, may act as joint lead agencies to prepare an environmental impact statement (§ 1506.2).

(c) If an action falls within the provisions of paragraph (a) of this section the potential lead agencies shall determine by letter or memorandum which agency shall be the lead agency and which shall be cooperating agencies. The agencies shall resolve the lead agency question so as not to cause delay. If there is disagreement among the agencies, the following factors (which are listed in order of descending importance) shall determine lead agency designation:

(1) Magnitude of agency's involvement.

(2) Project approval/disapproval authority.

(3) Expertise concerning the action's environmental effects.

(4) Duration of agency's involvement.

(5) Sequence of agency's involvement.

(d) Any Federal agency, or any State or local agency or private person substantially affected by the absence of lead agency designation, may make a written request to the potential lead agencies that a lead agency be designated.

(e) If Federal agencies are unable to agree on which agency will be the lead agency or if the procedure described in paragraph (c) of this section has not resulted within 45 days in a lead agency designation, any of the agencies or persons concerned may file a request with the Council asking it to determine which Federal agency shall be the lead agency. A copy of the request shall be transmitted to each potential lead agency. The request shall consist of:

(1) A precise description of the nature and extent of the proposed action.

(2) A detailed statement of why each potential lead agency should or should not be the lead agency under the criteria specified in paragraph (c) of this section.

(f) A response may be filed by any potential lead agency concerned within 20 days after a request is filed with the Council. The Council shall determine as soon as possible but not later than 20 days after receiving the request and all responses to it which Federal agency shall be the lead

agency and which other Federal agencies shall be cooperating agencies. (40 CFR 1501.5)

If a responsible Forest Service official wishes to ask the Council on Environmental Quality to determine which Federal agency shall be the lead agency, send the request to the Washington Office Director of Environmental Coordination for processing.

11.31b Cooperating With Other Agencies

Where National Forest System lands are involved, the Forest Service shall play a strong role in the preparation of environmental documents. If the Forest Service is the lead agency, promptly request in writing that all other Federal agencies with jurisdiction by law or special expertise (sec. 05) become cooperating agencies. Also, promptly request in writing the cooperation of potentially affected State and local government agencies.

When National Forest System lands are involved and the Forest Service is not the lead agency, the responsible Forest Service official shall make a written request to participate as a cooperating agency in scoping, environmental analysis, and documentation.

If the Forest Service is asked to be a cooperating agency and other program commitments preclude being able to become involved, the responsible official shall consult with the Washington Official Director of Environmental Coordination prior to preparing a reply to this effect to the requesting agency. Send two copies of this reply to the Director of Environmental Coordination in Washington, DC, for transmittal to the Council on Environmental Quality.

11.4 Determine if Existing Documents Address the Proposed Action

During scoping, determine if there are existing documents pertinent to the environmental analysis. Existing environmental documents, higher level plans such as Land and Resource Management Plans or Regional Vegetation Management Plans, and other pertinent documents, including State and local land use plans or data sources, may provide useful information to:

1. Help define the proposed action.
2. Narrow the scope of analysis.
3. Estimate potential environmental effects.
4. Reduce the bulk of the documentation.

In such cases, all or parts of these existing documents may be tiered to, adopted, or incorporated by reference in documenting the site-specific environmental analysis (secs. 05, 22.32, 25.1, and 25.2).

11.5 Look for Preliminary Issues and Identify Public Participation Needs

11.51 Identify Preliminary Issues

Identify and evaluate preliminary issues for possible significance, based on review of similar actions, knowledge of the area or areas involved, discussions with interested and affected persons, community leaders, organizations, and State and local governments, and/or consultations with experts and other agencies familiar with such actions and their direct, indirect, and cumulative effects. This review provides an early look at potential issues, sharpens the focus of the environmental analysis, and provides a means for:

(d) Identifying at an early stage the significant environmental issues deserving of study and deemphasizing insignificant issues, narrowing the scope of the environmental impact statement accordingly. (40 CFR 1501.1(d))

11.52 Identify Public Participation Needs

Review and consider comments and suggestions offered by interested and affected agencies, organizations, and individuals in response to listing of the action in the schedule of proposed actions (sec. 07). Consider options for involving potentially interested and affected agencies, organizations, and persons in the analysis process.

The CEQ regulations provide the following direction on public notice and participation:

Agencies shall: * * *

(b) Provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected.

(1) In all cases the agency shall mail notice to those who have requested it on an individual action.

(2) In the case of an action with effects of national concern notice shall include publication in the **Federal Register** and notice by mail to national organizations reasonably expected to be interested in the matter * * * An agency engaged in rulemaking may provide notice by mail to national organizations who have requested that notice regularly be provided. Agencies shall maintain a list of such organizations.

(3) In the case of an action with effects primarily of local concern the notice may include:

(i) Notice to State and areawide clearinghouses * * *

(ii) Notice to Indian tribes when effects may occur on reservations.

(iii) Following the affected State's public notice procedures for comparable actions.

(iv) Publication in local newspapers (in papers of general circulation rather than legal papers).

(v) Notice through other local media.

(vi) Notice to potentially interested community organizations including small business associations.

(vii) Publication in newsletters that may be expected to reach potentially interested persons.

(viii) Direct mailing to owners and occupants of nearby or affected property.

(ix) Posting of notice on and off site in the area where the action is to be located.

(c) Hold or sponsor public hearings or public meetings whenever appropriate or in accordance with statutory requirements applicable to the agency. Criteria shall include whether there is:

(1) Substantial environmental controversy concerning the proposed action or substantial interest in holding the hearing.

(2) A request for a hearing by another agency with jurisdiction over the action supported by reasons why a hearing will be helpful. If a draft environmental impact statement is to be considered at a public hearing, the agency should make the statement available to the public at least 15 days in advance (unless the purpose of the hearing is to provide information for the draft environmental impact statement).

(d) Solicit appropriate information from the public. (40 CFR 1506.6)

(See FSH 1609.13, Public Participation Handbook, for information on techniques to involve the public in Forest Service planning and decisionmaking.)

11.6 Determine If Proposal Can Be Categorically Excluded from Documentation in an Environmental Impact Statement or an Environmental Assessment

After determining the nature of the proposed action; identifying preliminary issues; identifying the interested and affected agencies, organizations, and individuals; and the extent of existing documentation, the responsible official should have sufficient data to determine if the proposed action can be categorically excluded from documentation in an EIS or an EA or, alternatively, to determine the type of document that should be prepared.

If the proposed action is within one of the categories in the Department of Agriculture policies and procedures (7 CFR 1b.3) or one of the categories listed in sections 31.1b or 31.2, and if the proposed action does not involve any extraordinary circumstances (sec. 30.3), the action may be categorically excluded from documentation in an EIS or EA. If the proposed action is not within a listed category, it may not be categorically excluded from documentation on an EIS or EA.

If required by Chapter 30, document a decision to categorically exclude a proposed action from documentation in an EIS or EA in a decision memo.

At this point, it may be possible to determine if an EIS should be prepared. If the proposed action falls within one of the classes of actions which require preparation of an EIS in section 20.6, or if preliminary analysis indicates that there may be significant effects on the environment, prepare a notice of intent to prepare an EIS for publication in the Federal Register.

11.7 Information Participants and the Public of Results of Scoping and the Progress of the Analysis

Consistent with the importance of the proposed action, inform participants of the results of scoping and keep the public informed of the progress of the environmental analysis through appropriate means. This may include, but is not limited to: personal contacts with individuals, organizations, and State and local government officials; use of local media; and newsletters.

Enter the status of the environmental analysis, the decision memo, or the notice of intent to prepare an EIS on the schedule of proposed actions.

12 Use Interdisciplinary Analysis

12.01 Authority

Section 102(2)(A) of the National Environmental Policy Act requires all agencies to use an interdisciplinary approach to analysis which will ensure the integrated use of the natural and social sciences and the environmental design arts in planning and decisionmaking which may have an impact on the human environment. The CEQ regulations require that:

> The disciplines of the preparers shall be appropriate to the scope and issues identified in the scoping process (§ 1501.7). (40 CFR 1502.6)

12.03 Policy

Establish interdisciplinary teams to analyze proposed actions with the potential for significant environmental effects, especially if an EIS may be needed.

Proposals for less complex actions may not require the selection of an interdisciplinary team. In such cases, a knowledgeable individual may perform the analysis, which must consider all of the physical, biological, social, and economic factors pertinent to the decision.

Interdisciplinary review of the analysis also may satisfy the requirement for use of the interdisciplinary approach.

12.1 Interdisciplinary Team Selection

The disciplines and skills of this group must be appropriate to the scope of the action and the issues identified. The team will consist of whatever combination of Forest Service staff and other Federal Government personnel is necessary to provide the necessary analytical skills. Limit the team to a manageable number of persons.

Others may aid or support the interdisciplinary team as determined to be necessary by the responsible official. This participation must be consistent with the Federal Advisory Committee Act of 1972 (5 U.S.C. App. USDA Departmental Regulation 1041–1, 11/13/89).

Also, the team must have the expertise to identify and to evaluate the potential direct, indirect, and cumulative social, economic, physical, and biological effects of the proposed action and its alternatives.

12.1a Team Leader

To ensure selection of an effective team leader, the responsible official should consider such factors as the individual's:

1. Degree of working knowledge of the National Environmental Policy Act process and its interrelationship with other applicable laws and regulations.
2. Ability to lead others, including the ability to communicate effectively with team members and the responsible official and to facilitate interaction among team members.
3. Ability to organize, analyze, and interpret information.
4. Past performance in meeting assigned deadlines.

12.1b Other Team Members

In selecting other team members, consider the variety of disciplines needed as well as such factors as an individual's:

1. Ability to work as part of a team.
2. Ability to communicate to others information about the field or specialty that a member represents.
3. Knowledge of and degree of experience in the subject discipline and the environmental analysis process.
4. Ability to conceptualize and solve problems.

12.2 Selection of Interdisciplinary Analyst(s) in Lieu of a Team

The responsible official may select one or more persons rather than a full team to conduct the required interdisciplinary analysis. The analyst(s) must have a working knowledge of the National Environmental Policy Act process, applicable statutes and regulations, and natural resource interactions.

12.3 Role of the Interdisciplinary Team or Analyst(s)

It is the responsibility of the team or assigned analyst(s) to identify the environmental issues related to the proposed action, develop alternatives to be analyzed in the subsequent environmental analysis, and prepare environmental documents. A team integrates its collective knowledge of the physical, biological, economic, social sciences and the environmental design arts into the analysis process.

Interaction among team members often provides insight that otherwise would not be apparent. Section 12.3a through 12.3d provide minimum direction that an ID team or analyst(s) shall follow.

When extensive public involvement is necessary, prepare a formal public participation plan (FSM 1626). The Public Participation Handbook, FSH 1609.13, provides guidance in identifying and involving the public, preparing public involvement plans, and using public responses in the analysis process.

12.3a Formulate Analysis and Evaluation Criteria

Development of criteria or standards may be necessary to guide the analysis process. Analysis and evaluation criteria or standards may be needed to:

1. Identify and select data sources, analysis methods, and set standards of accuracy.
2. Determine the depth or detail of the analysis.
3. Develop a suitable range of alternatives.
4. Evaluate alternatives.
5. Estimates the significance of environmental effects (sec. 05).

When formulating analysis and evaluation criteria or standards, be sure to consider Forest Service objectives identified in legislation, policies, and plans, as well as issues raised by the public in the scoping process. Refine these criteria and standards, as necessary, during the course of the analysis.

12.3b Identify Significant Issues

Recommend to the responsible official the significant issues to be addressed, taking interested and affected agency, organization, and public comments into account. The responsible official, not the ID team or the analyst(s), approves the list of significant issues used to develop alternatives and may adjust and refine the issues as new insights and information emerge during analysis.

12.3c Explore Possible Alternatives

Consider a full range of reasonable alternatives to the proposed action that address the significant issues and meet the purpose and need for the proposed action.

During scoping and the subsequent pubic participation activities, discuss the feasibility and possible effects of these alternatives with potentially interested and affected agencies, organizations, and persons. If the proposed action is on National Forest System lands, discuss the consistency of each alternative with the forest's Land and Resource Management Plan. The ID team recommends and the responsible official decides which alternatives merit further study and which do not require detailed analysis.

12.3d Expand Public Involvement as Appropriate

1. *Identify target groups.* Identify potentially affected groups and the nature of their concerns (FSH 1609.13). Establish, maintain and use mailing lists as appropriate.

2. *Determine the methods of public participation.* Establish the level of needed public participation. Ensure that the level of effort to inform and to involve the public is consistent with the scale and importance of the proposed action and the degree of public interest.

13 Collect and Interpret Data

13.01 Authority

If, when evaluating significant adverse effects on the human environment, information essential to a reasoned choice among alternatives is either missing or incomplete, the CEQ regulations provide the following guidance:

When an agency is evaluating reasonably foreseeable significant adverse effects on the human environment in an environmental impact statement and there is incomplete or unavailable information, the agency shall always make clear that such information is lacking.

(a) If the incomplete information relevant to reasonable foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement.

(b) If the information relevant to reasonable foreseeable significant adverse impacts cannot be obtained because the overall costs of obtaining it are exorbitant or the means to obtain it are not known, the agency shall include within the environmental impact statement:

(1) A statement that such information is incomplete or unavailable; (2) a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment; (3) a summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment, and (4) the agency's evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community.

For the purposes of this section, "reasonably foreseeable" includes impacts which have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason. (40 CFR 1502.22)

13.03 Policy

The type and amount of data to collect depend on the nature of the action, agency objectives, issues, and the scope, context, and intensity of anticipated effects. Focus data collection on the current and expected physical, biological, economic, and social conditions affecting or affected by the proposed action. Document the assumptions, methods, and data sources.

When evaluating reasonably foreseeable adverse impacts for which essential information is incomplete or unavailable, consider a range of possible scenarios. These should include a scenario that would most likely occur and ones that would be less likely but have the most severe impacts that could reasonably be expected. When possible, include a discussion of relative probabilities of occurrence for each scenario.

14 Develop Alternatives

Based on the results of scoping and the determination of issues to be analyzed in detail, develop and consider all reasonable alternatives to the proposed action. As established in case law interpreting the National Environmental Policy Act, the phrase "all reasonable alternatives" has not been interpreted to require that an infinite or unreasonable number of alternatives be analyzed, but does require a range of reasonable alternatives be analyzed whether or not they are within Forest Service jurisdiction to implement. See questions 1, 2, and 3 of CEQ's 40 Most Asked Questions in section 65.12.

14.1 No-Action Alternative

The no-action alternative provides a baseline for estimating the effects of other alternatives; therefore, consider the no-action alternative in detail in each environmental analysis.

Two distinct interpretations of no-action are often possible. The first interpretation involves an action such as the amendment or revision of a Forest Land and Resource Management Plan where ongoing programs described within the existing plan continue, even as new plans are being developed. In these cases, the no-action alternative means no change from current management direction. Consequently, the responsible official would compare the projected impacts of alternative management schemes to those impacts projected for the existing plans.

The second interpretation of no-action is that no action or activity would take place, such as when a proposed road construction project would be cancelled. The nature and scope of the proposed action will aid the responsible official in determining which interpretation is appropriate to the analysis.

For further guidance see question 3 in section 65.12 of CEQ's 40 Most Asked Questions.

14.2 Other Alternatives

Develop other alternatives fully and impartially. Ensure that the range of alternatives does not prematurely foreclose options that might protect, restore, and enhance the environment. Consider reasonable alternatives even if outside the jurisdiction of the Forest Service. Alternatives must meet the purpose and need of the proposed action and specify any activities that may produce important environmental changes. When appropriate, descriptions of alternatives should include mitigation measures and relevant management requirements such as State water quality standards. Modify alternatives or develop new alternatives as the analysis proceeds.

14.3 Alternatives Not Considered in Detail

Briefly describe the alternatives not considered in detail, discuss the reasons for their being eliminated, and include this information in the project or case file. If an EIS is required, this information must be disclosed in the chapter on alternatives (sec. 22.3,5).

15 Estimate Effects of Each Alternative

For each alternative, estimate the direct, indirect, and cumulative environmental effects, including the effectiveness of the mitigation measures, that would result from implementing each of the alternatives, including the no-action alternative. Also, identify any

additional mitigation measures that may be required, such as measures common to all alternatives.

Express the effects in terms of changes that would occur in the physical (land, water, air), biological (plants and animals), economic (money passing through society), and social (the way people live) components of the human environment. Consider the magnitude, duration, and significance of the changes. See section 61 for a more specific list of environmental factors.

When analysis and disclosure of social and/or economic impacts are important to a reasoned decision, follow the direction in FSM 1970 and FSH 1909.17. Also consider unquantifiable environmental amenities and values. For all alternatives, be sure to consider the environmental effects on the following:

1. Consumers, civil rights, minority groups, and women (FSM 1730).
2. Prime farmland, rangeland and forest land (Department Regulation 9500–3, sec. 65.2).
3. Flood plains (sec. 66.3) and Wetlands (sec. 66.4).
4. Threatened and endangered species (FSM 2670).
5. Cultural resources (FSM 2360).

15.1 Cumulative Effects (sec. 05)

Individual actions when considered alone may not have a significant impact on the quality of the human environment. Groups of actions, when added together, may have collective or cumulative impacts which are significant. Cumulative effects which occur must be considered and analyzed without regard to land ownership boundaries. Consideration must be given to the incremental effects of past, present, and reasonably foreseeable related future actions of the Forest Service, as well as those of other agencies and individuals.

16 Evaluate Alternatives and Identify Preferred Alternative(s)

Compare alternatives on the basis of their effects on the human (physical, biological, social, and economic) environment. Although the ID Team or analyst(s) may make a recommendation based on the results of the interdisciplinary analysis, the responsible official identifies the preferred alternative(s) for an EIS.

17 Determine Type of Environmental Document Needed

The significance of environmental effects of a proposed action determines whether an EIS (sec. 05) must be prepared.

If the proposed action may have significant environmental effects, prepare an EIS in accordance with direction in chapter 20.

The CEQ regulations provide the following direction on whether to prepare an EIS:

In determining whether to prepare an environmental impact statement the Federal agency shall:

(a) Determine under its procedures supplementing these regulations * * * whether the proposal is one which:

(1) Normally requires an environmental impact statement, or

(2) Normally does not require either an environmental impact statement or an environmental assessment (categorical exclusion).

(b) If the proposed action is not covered by paragraph (a) of this section prepare an environmental assessment (§ 1508.9). The agency shall involve environmental agencies, applicants, and the public, to the extent practicable, in preparing assessments required by § 1508.9(a)(1).

(c) Based on the environmental assessment make its determination whether to prepare an environmental impact statement.

(d) Commence the scoping process (§ 1501.7), if the agency will prepare an environmental impact statement. (40 CFR 1501.4)

18 Correction, Supplementation, or Revision of Environmental Documents and Reconsideration of Decisions to Take Action

18.03 Policy

Review the environmental documentation of actions that are awaiting implementation and those of ongoing programs or projects at least every 3 to 5 years to determine if the environmental analysis and documentation should be corrected, supplemented, or revised.

After a decision to implement a proposed action has been made and when the consideration of new information leads to the supplementation or revision of environmental documents, a new decision based on the supplemented or revised environmental documents must be consistent with the scope of the new environmental analysis.

18.1 Review and Documentation of New Information Received After a Decision Has Been Made

If new information or changed circumstances relating to the environmental impacts of a proposed action come to the attention of the responsible official after a decision has been made and prior to completion of the approved program or project, the responsible official must review the information carefully to determine its importance.

If, after an interdisciplinary review and consideration of new information within the context of the overall program or project, the responsible official determines that a correction, supplement, or revision to an environmental document is not necessary, implementation should continue. Document the results of the interdisciplinary review in the appropriate program or project file.

If the responsible official determines that a correction, supplement, or revision to an environmental document is necessary, follow the relevant direction in section 18.2–4.

18.2 Reconsideration of Decisions Based on an Environmental Impact Statement

1. *Correction.* Use errata sheets to make simple corrections.

2. *Supplement.* (c) Agencies:

(1) Shall prepare supplements to either draft or final environmental impact statements if:

(i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or

(ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

(2) May also prepare supplements when the agency determines that the purposes of the Act will be furthered by doing so.

(3) Shall adopt procedures for introducing a supplement into its formal administrative record, if such a record exists.

(4) Shall prepare, circulate, and file a supplement to a statement in the same fashion (exclusive of scoping) as a draft and final statement unless alternative procedures are approved by the Council. (40 CFR 1502.9(c))

3. *Revision.* (a) * * * If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft of the appropriate portion * * * (40 CFR 1502.9(a))

If the responsible official determines, based on evaluations described in section 18.1, that a supplement to or revision of an EIS is appropriate, issue a notice of intent to supplement or revise an EIS.

Distribute any corrections, supplements, and revisions to all holders of the subject EIS.

After completion of the final supplement or final EIS, issue a new record of decision consistent with the scope of the supplement or revision. Follow the instructions in Chapter 20.

18.3 Reconsideration of Decisions Categorically Excluded from Environmental Documentation

Take no further action if an interdisciplinary review of the new information shows that the proposed action still fits within the identified category in section 31 and no extraordinary circumstances exist. For decisions for which a project or case file and decision memo have been prepared, document the review in the project or case file. For decisions for which a decision memo was not prepared, no documentation of the review is necessary.

If the new information or changed circumstances require a new or changed decision that can be categorically excluded from documentation, follow the instructions in Chapter 30.

If the new information indicates that extraordinary circumstances are now present and the proposed action may have a significant impact on the human environment, file a notice of intent to prepare an EIS. Follow the instructions in Chapter 20.

If the new information indicates that extraordinary circumstances are now present but the significance of the impacts on the human environment are uncertain, prepare an EA. Follow the instructions in Chapter 40.

18.4 Reconsideration of Decisions Based on an Environmental Assessment and Finding of No Significant Impact

Revise an EA if the interdisciplinary review of new information or changed circumstances indicates that changes in the EA are needed to address environmental concerns that have a bearing on the action or its impacts.

Upon completion of the revised EA, prepare a new finding of no significant impact (FONSI) which addresses the effects of the action. Reconsider the original decision; and, based upon the EA and FONSI, issue a new decision notice or document that the original decision is to remain in effect and unchanged. A new decision notice may address all or a portion of the original decision. Follow the instructions in Chapter 40.

If, based on the revised EA, the proposed action may have a significant effect, issue a notice of intent to prepare an EIS. Follow the instructions in Chapter 20.

Chapter 20—Environmental Impact Statements and Related Documents

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Chapter 20—Environmental Impact Statements and Related Documents

For ease of reference and use, portions of the relevant CEQ regulations are set out in boldface type throughout the text of this chapter.

20.6 Classes of Actions requiring Environmental Impact Statements

Classes of actions that require preparation of environmental impact statements are listed below.

The requirements for classes 2, 3, and 4 may be met by the appropriate use of program environmental impact statements and tiered site-specific environmental documents or by the preparation of site-specific environmental impact statements.

1. *Class 1: Proposed actions for which an environmental impact statement is required by law or regulation.* Examples include:

a. Revising a land and resource management plan required by the National Forest Management Act (36 CFR 219.10).

b. Proposing that Congress enact legislation to designate a wilderness or a wild and scenic river (40 CFR 1506.8).

2. *Class 2: Proposed to carry out or to approve aerial application of chemical pesticides on an operational basis.* Examples include:

a. Applying chemical insecticides by helicopter on an area infested with spruce budworm to prevent serious resource loss.

b. Authorizing the application of herbicides by helicopter on a major utility corridor to control unwanted vegetation.

c. Applying herbicides by fixed-wing aircraft on an area to release trees from competing vegetation.

3. *Class 3: Proposals that would substantially alter the undeveloped character of an inventoried roadless area of 5,000 acres or more (FSH 1909.12).* Examples include:

a. Constructing roads and harvesting timber in a 56,000-acre inventoried roadless area where the proposed road and harvest units impact 3,000 acres in only one part of the roadless area.

b. Constructing or reconstructing water reservoir facilities in a 5,000-acre unroaded area where flow regimens may be substantially altered.

c. Approving a plan of operations for a mine which would cause considerable surface disturbance over 700 acres in a 10,000 acre roadless area.

4. *Class 4: Other proposals to take major Federal actions that may significantly affect the quality of the human environment.* Examples include:

a. Approving the use of 1,500 acres of National Forest System land to construct and operate an all-season recreation resort complex.

b. Authorizing the Bureau of Land Management to offer the sale of leases for oil and natural gas resources from

beneath 400,000 acres of National Forest System lands that have historically demonstrated a relatively high potential for discovery and development of oil and natural gas.

c. Approving the construction and operation of an international gas pipeline beneath a previously undeveloped 30-mile long, 1000-foot wide corridor within an ecologically sensitive area of National Forest System land.

21 Notices of Intent

21.1 Preparation and Distribution of Notices of intent

Prepare and publish a notice of intent in the **Federal Register** as soon as practicable after deciding that an environmental impact statement (EIS) will be prepared. The purpose of a notice of intent to prepare an environmental impact statement is to begin the scoping process for the EIS.

CEQ regulations require that:

* * * The notice shall briefly:

(a) Describe the proposed action and possible alternatives.

(b) Describe the agency's proposed scoping process including whether, when, and where any scoping meetings will be held.

(c) State the name and address of a person within the agency who can answer questions about the proposed action and the environmental impact statement. (40 CFR 1508.22)

In addition, the notice of intent must include the following information:

a. Name and address of the responsible official(s);

b. A description of the nature and scope of the proposed action and the decision to be made;

c. Tentative or preliminary issues and alternatives which have been identified;

d. Identification of permits or licenses required to implement the proposed action and the issuing authority;

e. The lead, joint lead, or cooperating agencies (sec. 05);

f. The estimated dates (month and year) for filing the draft and final EIS;

g. An address to which comments may be mailed; and

h. The reviewer's obligation to comment during the review period rather than after completion of the final EIS. Use the standard paragraphs in exhibit 01.

Follow the **Federal Register** document preparation requirements and mailing instructions in section 67. Send one copy of the signed notice of intent to the Washington Office Director of Environmental Coordination (hard copy: Chief (1950); DG address: EC:WO1c). When the Chief or the Secretary is the responsible official, the appropriate field unit or WO staff shall prepare the notice of intent and send it to the Washington Office Director of Environmental Coordination for review, processing, and submission to the Office of the Federal Register.

Once the title of the EIS under preparation has been identified in the notice of intent, use the same title on the cover of the draft and final EIS.

21.1 Exhibit 01—Standard Paragraphs Required in Notices by Intent

The comment period on the draft environmental impact statement will be [enter correct time period (45-day minimum)] from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the (enter correct time period) comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

21.2 Revision of Notices of Intent

The official responsible for preparation of an EIS must notify the appropriate Regional, Station, or Area Environmental Coordinator and the Washington Office Director of Environmental Coordination whenever there is a major change in the information shown in the notice of intent. Major changes require publishing a revised notice of intent in the **Federal Register** (sec. 21.1).

Examples of major changes which require a revised notice of intent are:

1. A delay of more than six months in filing either the draft or final EIS;

2. A change in the proposed action or the decision to be made; or

3. Designation of a different responsible official by title.

A revised notice of intent shall refer to the date and page number of all prior notices relevant to the proposed action which were published in the **Federal Register**. Prepare and distribute a revised notice of intent in the same manner as the original (sec. 21.1 and 67).

21.3 Cancellation of a Notice of Intent

Publish a cancellation notice in the **Federal Register** to terminate the environmental analysis process if, after publication of a notice of intent or distribution of a draft EIS, a decision on a proposed action is no longer necessary. A cancellation notice must refer to the date(s) and page number(s) of previously published notice(s) of intent or the notice of availability of an EIS which were published in the **Federal Register**. Prepare and distribute a cancellation notice in the same manner as the notice of intent (sec. 21.1 and 67). In addition, send a copy of the cancellation notice to the Environmental Protection Agency's Office of Federal Activities (sec. 22.4).

When the Chief or the Secretary is the responsible official, the appropriate field unit or WO staff prepares the cancellation notice as soon as there is a decision to terminate the process and sends the notice to the Director of Environmental Coordination for review, processing, and submission to the Office of the Federal Register and Environmental Protection Agency's Office of Federal Activities.

22 Uniform Requirements for Environmental Impact Statements (Sec. 05)

The CEQ regulations require EIS's as follows:

As required by sec. 102(2)(C) of NEPA environmental impact statements ({1508.11) are to be included in every recommendation or report. On proposals ({1508.23).

For legislation and ({1508.17).

Other major Federal actions ({1508.18).

Significantly ({1508.27).

Affecting ({{1508.3, 1508.8).

The quality of the human environment ({1508.14). (40 CFR 1502.3)

22.1 Page Limits

The text of final environmental impact statements * * * shall normally be less than 150 pages and for proposals of unusual scope or complexity shall normally be less than 300 pages. (40 CFR 1502.7)

22.2 Writing

Environmental impact statements shall be written in plain language and may use appropriate graphics so that decisionmakers and the public can readily understand them. (40 CFR 1502.8)

22.3 Content and Format

An EIS must contain the following:

Agencies shall use a format for environmental impact statements which will encourage good analysis and clear presentation of the alternatives including the proposed action. The following standard format for environmental impact statements should be followed unless the agency determines that there is a compelling reason to do otherwise:

(a) Cover sheet.

(b) Summary.

(c) Table of contents.

(d) Purpose of and need for action.

(e) Alternatives including proposed action (sections 102(2)(C)(iii) and 102(2)(E) of the Act).

(f) Affected environment.

(g) Environmental consequences (especially sections 102(2)(C) (i), (ii), (iv), and (v) of the Act).

(h) List of preparers.

(i) List of Agencies, Organizations, and persons to whom copies of the statement are sent.

(j) Index.

(k) Appendices (if any). If a different format is used, it shall include paragraphs (a), (b), (c), (h), (i), and (j), of this section and shall include the substance of paragraphs (d), (e), (f), (g), and (k) of this section, * * * (40 CFR 1502.10)

1. *Cover Sheet.* The cover sheet shall not exceed one page. It shall include:

(a) A list of the responsible agencies including the lead agency and any cooperating agencies.

(b) The title of the proposed action that is the subject of the statement (and if appropriate the titles of related cooperating agency actions), together with the State(s) and county(ies) (or other jurisdiction if applicable) where the action is located.

(c) The name, address, and telephone number of the person at the agency who can supply further information.

(d) A designation of the statement as a draft, final, or draft or final supplement.

(e) A one paragraph abstract of the statement. (40 CFR 1502.11)

Also include the name, title, and address of the responsible official.

The abstract of the EIS should include the alternatives considered and identification of the preferred alternative(s) if one or more exists.

If the EIS is a draft, the cover sheet must include the date by which comments must be received. The cover sheet for a draft EIS must also contain a standard statement as set out in exhibit 01 about the reviewer's obligation to comment during the review period. It may be necessary to reduce the type size to accommodate this information.

22.3 Exhibit 01—Standard Paragraph for Draft EIS Cover Sheet

Reviewers should provide the Forest Service with their comments during the review period of the draft environmental impact statement. This will enable the Forest Service to analyze and respond to the comments at one time and to use information acquired in the preparation of the final environmental impact statement, thus avoiding undue delay in the decisionmaking process. Reviewers have an obligation to structure their participation in the National Environmental Policy Act process so that it is meaningful and alerts the agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v *Hodel* (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Comments on the draft environmental impact statement should be specific and should address the adequacy of the statement and the merits of the alternatives discussed (40 CFR 1503.3).

2. *Summary.* Each environmental impact statement shall contain a summary which adequately and accurately summarizes the statement. The summary shall stress the major conclusions, areas of controversy (including issues raised by agencies and the public), and the issues to be resolved (including the choice among alternatives). The summary will normally not exceed 15 pages. (40 CFR 1502.12)

3. *Table of Contents.* List the major sections as well as a list of tables and exhibits.

4. *Purpose and Need.* The statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action. (40 CFR 1502.13)

5. *Alternatives Including the Proposed Action.* This section is the heart of the environmental impact statement. Based on the information and analysis presented in the sections on the Affected Environment ({1502.15) and the Environmental Consequences ({1502.16), it should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public. In this section agencies shall:

(a) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.

(b) Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits.

(c) Include reasonable alternatives not within the jurisdiction of the lead agency.

(d) Include the alternative of no action.

(e) Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.

(f) Include appropriate mitigation measures not already included in the proposed action or alternatives. (40 CFR 1502.14).

Additionally, for proposed actions on National Forest System lands, the description of each alternative must state whether or not it is consistent with the Forest Land and Resource Management Plan (36 CFR 219.10(c)).

6. *Affected Environment.* The environment impact statement shall succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration. The descriptions shall be no longer than is necessary to understand the effects of the alternatives. Data and analyses in a statement shall be commensurate with the importance of the impact, with less important material summarized, consolidated, or simply referenced.

Agencies shall avoid useless bulk in statements and shall concentrate effort and attention on important issues. Verbose descriptions of the affected environment are themselves no measure of the adequacy of an environmental impact statement. (40 CFR 1502.15).

7. *Environmental Consequences.* This section forms the scientific and analytic basis for the comparisons under (1502.14. It shall consolidate the discussions of those elements required by sections 102(2)(C) (i), (ii), (iv), and (v) of NEPA which are within the scope of the statement and as much of section 102(2)(C)(iii) as is necessary to support the comparisons. The discussion will include the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of

man's environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented. This section should not duplicate discussions in (1502.14. It shall include discussions of:

(a) Direct effects and their significance (1508.8).

(b) Indirect effects and their significance ((1508.8).

(c) Possible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned. (See (1506.2(d).)

(d) The environmental effects of alternatives including the proposed action. The comparisons under (1502.14 will be based on this discussion.

(e) Energy requirements and conservation potential of various alternatives and mitigation measures.

(f) Natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures.

(g) Urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures.

(h) Means to mitigate adverse environmental impacts (if not fully covered under (1502.14(f)). (40 CFR 1502.16)

8. *List of Prepares.* The environmental impact statement shall list the names, together with their qualifications (expertise, experience, professional disciplines), of the persons who were primarily responsible for preparing the environmental impact statement or significant background papers, including basic components of the statement ((1502.6 and 1502.8). Where possible the persons who are responsible for a particular analysis, including analyses in background papers, shall be identifies * * * (40 CFR 1502.17)

9. *List of Agencies, Organizations, and Persons to Whom Copies of the Statement Are Sent.* The list should include names only and not addresses.

10. *Index.* All EIS's must include indexes. The purpose of an index is to make the information in the EIS fully available to the reader without delay. See section 62 for preparation of indexes.

11. *Appendix.* If an agency prepares an appendix to an environmental impact statement the appendix shall:

(a) Consist of material prepared in connection with an environmental impact statement (as distinct from material which is not so prepared and which is incorporated by reference (1502.21)).

(b) Normally consist of material which substantiates any analysis fundamental to the impact statement.

(c) Normally be analytic and relevant to the decision to be made.

(d) Be circulated with the environmental impact statement or be readily available on request. (40 CFR 1502.18)

22.31 Tiering

Agencies are encouraged to tier their environmental impact statements to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review (1508.28). Whenever a broad environmental impact statement has been prepared (such as a program or policy statement) and a subsequent statement or environmental assessment is then prepared on an action included within the entire program or policy (such as a site specific action) the subsequent statement or environmental assessment need only summarize the issues discussed in the broader statement and incorporate discussions from the broader statement by reference and shall concentrate on the issues specific to the subsequent action. The subsequent document shall state where the earlier document is available. Tiering may also be appropriate for different stages of actions. (40 CFR 1502.20)

The EIS which accompanies a land and resource management plan is an example of a "broad" EIS prepared for a program or policy statement.

22.32 Adoption

(a) An agency may adopt a Federal draft or final environmental impact statement or portion thereof provided that the statement or portion there of meets the standards for an adequate statement under these regulations.

(b) If the actions covered by the original environmental impact statement and the proposed action are substantially the same, the agency adopting another agency's statement is not required to recirculate it except as a final statement. Otherwise the adopting agency shall treat the statement as a draft and recirculate it (except as provided in paragraph (c) of this section.

(c) A cooperating agency may adopt without recirculating the environmental impact statement of a lead agency when, after an independent review of the statement, the cooperating agency concludes that its comments and suggestions have been satisfied.

(d) When an agency adopts a statement which is not final within the agency that prepared it, or when the action it assesses is the subject of a referral under part 1504, or when the statement's adequacy is the subject of a judicial action which is not final, the agency shall so specify. (40 CFR 1506.3)

22.33 Incorporation by Reference

Agencies shall incorporate material into an environmental impact statement by reference when the effect will be to cut down on bulk without impeding agency and public review of the action. The incorporated material shall be cited in the statement and its content briefly described. No material may be incorporated by reference unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment. Material based on proprietary data which is itself not available for review and comment shall not be incorporated by reference. (40 CFR 1502.21)

22.34 Incomplete or Unavailable Information

Refer to section 13 of this handbook for guidance on addressing incomplete or unavailable information.

22.35 Documentation of Cost-Benefit Analysis

If a cost-benefit analysis relevant to the choice among environmentally different alternatives is being considered for the proposed action, it shall be incorporated by reference or appended to the statement as an aid in evaluating the environmental consequences. To assess the adequacy of compliance with section 102(2)(B) of the Act the statement shall, when a cost-benefit analysis is prepared, discuss the relationship between that analysis and any analyses of unquantified environmental impacts, values, and amenities. For purposes of complying with the Act, the weighing of the merits and drawbacks of the various alternatives need not be displayed in a monetary cost-benefit analysis and should not be when there are important qualitative considerations. In any event, an environmental impact statement should at least indicate those considerations, including factors not related to environmental quality, which are likely to be relevant and important to a decision. (40 CFR 1502.23)

22.36 Identification of Methodology and Scientific Accuracy

Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement. An agency may place discussion of methodology in an appendix. (40 CFR 1502.24)

22.4 Filing, Circulation, and Availability of Environmental Impact Statements

Environmental impact statements together with comments and responses shall be filed with the Environmental Protection Agency, attention Office of Federal Activities (A–104), 401 M Street SW., Washington, DC 20460. Statements shall be filed with EPA no earlier than they are also transmitted to commenting agencies and made available to the public. (40 CFR 1506.9)

* * * * *

Agencies shall circulate the entire draft and final environmental impact statements except for certain appendices as provided in (1502.18(d) and unchanged statements as provided in (1503.4(c). However, if the statement is unusually long, the agency may circulate the summary instead, except that the entire statement shall be furnished to:

(a) Any Federal agency which has jurisdiction by law or special expertise with respect to any environmental

impact involved and any appropriate Federal, State or local agency authorized to develop and enforce environmental standards.

(b) The applicant, if any.

(c) Any person, organization, or agency requesting the entire environmental impact statement.

(d) In the case of a final environmental impact statement any person, organization, or agency which submitted substantive comments on the draft.

If the agency circulates the summary and thereafter receives a timely request for the entire statement and for additional time to comment, the time for that requestor only shall be extended by at least 15 days beyond the minimum period. (40 CFR 1502.10)

A summary of the EIS distributed as a separate document must:

a. State how the full EIS can be obtained, and

b. Have a cover sheet attached.

23 Requirements Specific to Draft Environmental Impact Statements

23.1 Identification in Draft Environmental Impact Statements of Permits Necessary to Implement Proposal

(b) The draft environmental impact statement shall list all Federal permits, licenses, and other entitlements which must be obtained in implementing the proposal. If it is uncertain whether a Federal permit, license, or other entitlement is necessary, the draft environmental impact statement shall so indicate. (40 CFR 1502.25(b))

23.2 Circulating and Filing a Draft Environmental Impact Statement

1. Circulate a draft environmental impact statement (EIS) to agencies and to the public prior to or at the same time of transmittal to the Environmental Protection Agency (EPA) in Washington, DC. If the statement is unusually long, a summary may be circulated instead (40 CFR 1502.19). However, the responsible unit must file the entire document with EAP and furnish it to other agencies that have jurisdiction by law or special expertise. The entire EIS must also be furnished to the project proponent and other individuals and groups who have requested it.

2. File five copies of a draft EIS with the Environmental Protection Agency at the following address:

Management Information Unit, Office of Federal Activities (A-104), Environmental Protection Agency, Room 2119 Mall, 401 M Street, SW., Washington, DC 20460.

EPA will then publish the Notice of Availability in the **Federal Register**.

3. The following are the mandatory mailings for all EIS's prepared by the Forest Service.

Environmental Protection Agency Regional Office (Regions, addresses, and number of copies are listed in Chapter 60)

	DEIS	FEIS
Director, Environmental Coordination, (Chief, 1950), Forest Service—USDA, Box 96090, Washington, DC 20090-6090	3	3
Head, Acquisitions and Serials Branch, USDA-National Agricultural Library, 10301 Baltimore Blvd., Beltsville, MD 20705	3	3
Office of Environmental Affairs, Department of the Interior, MS 2340, Washington, DC 20240:		
Projects east of the Mississippi River	12	7
Projects west of the Mississippi River	18	12

Always send copies of EIS's to these agencies by expeditious methods of delivery. These methods also may be desirable for other key recipients. Base any other distribution to Federal agencies on agency expertise and legal jurisdiction as indicated in section 63. The addresses and number of copies required by each agency are shown in section 63.1.

4. Calculate the review period from the day after EPA's notice of availability appears in the **Federal Register**

(a) The Environmental Protection Agency shall publish a notice in the **Federal Register** each week of the environmental impact statements filed during the preceding week. The minimum time periods set forth in this section shall be calculated from the date of publication of this notice.

* * * * *

(d) The lead agency may extend prescribed periods. The Environmental Protection Agency may upon a showing by the lead agency of compelling reasons of national policy reduce the prescribed periods and may upon a showing by any other Federal agency of compelling reasons of national policy also extend prescribed periods, but only after consultation with the lead agency * * * Failure to file timely comments shall not be a sufficient reason for extending a period. If the lead agency does not concur with the extension of time, EPA may not extend it for more than 30 days * * * (40 CFR 1506.10)

Allow a minimum of 45 days for comments on an EIS unless a different time period is required by law or regulation. If the prescribed period must be reduced for compelling reasons of national policy, contact the Washington Office Director of Environmental Coordination prior to issuing a draft EIS. Contact the Washington Office Environmental Coordination Staff regarding questions on the date of publication in the **Federal Register**.

23.3 Solicit Comments on a Draft Environmental Impact Statement

The CEQ regulations require the following:

Inviting comments. (a) After preparing a draft environmental impact statement and before preparing a final environmental impact statement the agency shall:

(1) Obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved or which is authorized to develop and enforce environmental standards.

(2) Request the comments of:

(i) Appropriate State and local agencies which are authorized to develop and enforce environmental standards;

(ii) Indian tribes, when the effects may be on a reservation; and

(iii) Any agency which has requested that it receive statements on actions of the kind proposed * * *

(3) Request comments from the applicant, if any.

(4) Request comments from the public, affirmatively soliciting comments from those persons or organizations who may be interested or affected. (40 CFR 1503.1)

Conduct public participation sessions, if appropriate. See FSH 1609.13 for suggestions on methods to involve the public in Forest Service planning and decisionmaking activities.

23.4 Extending The Comment Period on a Draft Environmental Impact Statement

The responsible official determines that an extension of the review period on the draft EIS is appropriate, notify interested and affected agencies, organizations, or persons in an appropriate manner (ch. 10). Forward one copy of the notice to EPA's Management Information Unit, Office of Federal Activities at the address listed in section 23.2 and one copy to the Washington Office Director of Environmental Coordination. EPA will publish the notice of the extension of the comment period in the **Federal Register** on the Friday following the week the notice is received.

24 Requirements Specific to a Final Environmental Impact Statement

24.1 Use of Comments on a Draft Environmental Impact Statement in a Final Environmental Impact Statement

1. Review, analyze, evaluate, and respond to substantive comments on the draft EIS.

(a) An agency preparing a final environmental impact statement shall assess and consider comments both individually and collectively, and shall respond by one or more of the means listed below, stating its response in the final statement. Possible responses are to:

(1) Modify alternatives including the proposed action.

(2) Develop and evaluate alternatives not previously given serious consideration by the agency.

(3) Supplement, improve, or modify its analyses.

(4) Make factual corrections.

(5) Explain why the comments do not warrant further agency response, citing the sources, authorities, or reasons which support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response.

(b) All substantive comments received on the draft statement (or summaries thereof where the response has been exceptionally voluminous), should be attached to the final statement whether or not the comment is thought to merit individual discussion by the agency in the text of the statement.

(c) If changes in response to comments are minor and are confined to the responses described in paragraphs (a) (4) and (5) of this section, agencies may write them on errata sheets and attach them to the statement instead of rewriting the draft statement. In such cases only the comments, the responses, and the changes and not the final statement need be circulated ({1502.19).

The entire document with a new cover sheet shall be filed as the final statement ({1506.9). (40 CFR 1503.4)

2. When the responsible official determines that a summary of responses is appropriate, the summary must reflect accurately all substantive comments received on the draft EIS. Comments that are pertinent to the same subject may be aggregated by categories.

3. As a minimum, include in an appendix of a final EIS copies of all comments received on the draft EIS from Federal, State, and local agencies and elected officials.

24.2 Filing and Distributing a Final Environmental Impact Statement

1. File a final environmental EIS with the Environmental Protection Agency (EPA) as shown in section 23.2, along with all substantive comments or a summary of the comments on the draft EIS. The official filing date is the date that the EPA receives the EIS, not the date that EPA's notice of availability appears in the Federal Register. The Washington Office Director of Environmental Coordination files with EPA the statements for which the Chief or the Secretary is the responsible official.

2. Distribute a final EIS to other agencies and to the public prior to or at the same time of filing it with EPA (40 CFR 1506.9). If the statement is unusually long, a summary may be circulated instead (40 CFR 1502.19). However, the responsible official must file the entire document including appendices, with EPA and furnish it to other persons or agencies specified in sections 23.2.

If changes resulting from comments to a draft EIS are minor, they may be written on an errata sheet and attached to the draft EIS. In this case only the comments, the responses, and the changes need to be circulated. File the entire document with a new cover sheet as the final EIS (40 CFR 1503.4(c)).

3. After filing an EIS with the EPA, ensure that a reasonable number of copies of the statement are available free of charge.

4. Calculate the implementation date from the date the legal notice of the decision is published as required by 36 CFR part 217.

24.3 Review of Other Agency Environmental Impact Statements

Because of special agency expertise or jurisdiction by law, the Forest Service may be asked to review and comment on EIS's prepared by other agencies.

Duty to comment. Federal agencies with jurisdiction by law or special expertise with respect to any environmental impact involved and agencies which are authorized to develop and enforce environmental standards shall comment on statements within their jurisdiction, expertise, or authority. Agencies shall comment within the time period specified for comment in (1506.10). A Federal agency may reply that it has no comment. If a cooperating agency is satisfied that its views are adequately reflected in the environmental impact statement, it should reply that it has no comment. (40 CFR 1503.2)

Specificity of comments. (a) Comments on an environmental impact statement or on a proposed action shall be as specific as possible and may address either the adequacy of the statement or the merits of the alternatives discussed or both.

(b) When a commenting agency criticizes a lead agency's predictive methodology, the commenting agency should describe the alternative methodology which it prefers and why.

(c) A cooperating agency shall specify in its comments whether it needs additional information to fulfill other applicable environmental reviews or consultation requirements and what information it needs. In particular, it shall specify any additional information it needs to comment adequately on the draft statement's analysis of significant site-specific effects associated with the granting or approving by that cooperating agency of necessary Federal permits, licenses, or entitlements.

(d) When a cooperating agency with jurisdiction by law objects to or expresses reservations about the proposal on grounds of environmental impacts, the agency expressing the objection or reservation shall specify the mitigation measures it considers necessary to allow the agency to grant or approve applicable permit, license, or related requirements or concurrences. (40 CFR 1503.3)

24.31 Referrals to Council on Environmental Quality

Part 1540 of the CEQ regulations provide the following:

(a) This part establishes procedures for referring to the Council Federal interagency disagreements concerning proposed major Federal actions that might cause unsatisfactory environmental effects. It provides means for early resolution of such disagreements.

(b) Under section 309 of the Clean Air Act (42 U.S.C. 7609), the Administrator of the Environmental Protection Agency is directed to review and comment publicly on the environmental impacts of Federal activities, including actions for which environmental impact statements are prepared. If after this review the Administrator determines that the matter is "unsatisfactory from the standpoint of public health or welfare or environmental quality," section 309 directs that the matter be referred to the Council (hereafter "environmental referrals").

(c) Under section 102(2)(C) of the Act other Federal agencies may make similar review of environmental impact statements, including judgments on the acceptability of anticipated environmental impacts. These reviews must be made available to the President, the Council and the public. (40 CFR 1504.1)

When Forest Service field review of another agency's draft EIS concludes that the proposed action is environmentally unacceptable, the affected field unit shall immediately contact the Washington Office Director of Environmental Coordination who will coordinate the referral procedure.

The 25-day time period allowed the review is extremely short; therefore, begin referral immediately after determining that the proposal is environmentally unacceptable.

24.4 Review of Forest Service Legislative or Service-Wide Environmental Impact Statements

Unless otherwise assigned by the Chief, officials in the Washington Office shall review and comment on EIS's prepared on Forest Service legislative proposals, Service-wide policies and regulations, or national program

proposals. The Director of Environmental Coordination shall coordinate these reviews and responses.

25 Other Planning and Preparation Requirements for Environmental Impact Statements

25.1 Consultation Requirements

Refer to FSM 23600 for consultation requirements on archaeological and cultural resources and FSM 2670 for consultation requirements with the Fish and Wildlife Service on threatened and endangered species.

Environmental review and consultation requirements. (a) To the fullest extent possible, agencies shall prepare draft environmental impact statements concurrently with and integrated with environmental impact analyses and related surveys and studies required by the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*), the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*), the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), and other environmental review laws and executive orders. (40 CFR 1502.25(a))

25.2 Elimination of Duplication With State and Local Procedures

(a) Agencies authorized by law to cooperate with State agencies of statewide jurisdiction pursuant to section 102(2)(D) of the Act may do so.

(b) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and State and local requirements, unless the agencies are specifically barred from doing so by some other law.

Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include:

(1) Joint planning processes.

(2) Joint environmental research and studies.

(3) Joint public hearings (except where otherwise provided by statute).

(4) Joint environmental assessments.

(c) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and comparable State and local requirements, unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include joint environmental impact statements. In such cases one or more Federal agencies and one or more State or local agencies shall be joint lead agencies. Where State laws or local ordinances have environmental impact statement requirements in addition to but not in conflict with those in NEPA, Federal agencies shall cooperate in fulfilling these requirements as well as those of Federal laws so that one document will comply with all applicable laws.

(d) To better integrate environmental impact statements into State or local planning processes, statements shall discuss any inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law. (40 CFR 1506.2)

25.3 Combining Documents To Eliminate Duplication

Any environmental document in compliance with NEPA may be combined with any other agency document to reduce duplication and paperwork. (40 CFR 1506.4)

Examples include Wilderness Study Reports and Wild and Scenic River Study Reports which may be combined with a supporting EIS.

25.4 Federal Agencies With Legal Jurisdiction or Special Expertise

See section 63 for the Council on Environmental Quality's list of agencies with jurisdiction by law or special expertise. See section 63.1 for addresses and recommended document distribution when an agency is determined to have special expertise.

26 Responsibilities When Applicants and Contractors Are Involved

The responsible official my require project proponents to conduct studies and provide data and documentation for consideration and use in preparing an EIS. However, the Forest Service does not have authority to require a proponent to prepare or fund the preparation of an EIS.

Agency responsibility. (a) Information. If an agency requires an applicant to submit environmental information for possible use by the agency in preparing an environmental impact statement, then the agency should assist the applicant by outlining the types of information required. The agency shall independently evaluate the information submitted and shall be responsible for its accuracy. If the agency chooses to use the information submitted by the applicant in the environmental impact statement, either directly or by reference, then the names of the persons responsible for the independent evaluation shall be included in the list of preparers (1502.17. It is the intent of this paragraph that acceptable work not be redone, but that it be verified by the agency.

* * * * *

(c) *Environmental impact statements.* Except as provided in ((1506.2 and 1506.3 any environmental impact statement prepared pursuant to the requirements of NEPA shall be prepared directly by a contractor selected by the lead agency or where appropriate under (1501.6(b), a cooperating agency. It is the intent of these regulations that the contractor be chosen solely by the lead agency, or by the lead agency in cooperation with cooperating agencies, or where appropriate by a cooperating agency to avoid any conflict of interest. Contractors shall execute a disclosure statement prepared by the lead agency, or where appropriate the cooperating agency, specifying that they have no financial or other interest in the outcome of the project. If the document is prepared by contract, the responsible Federal official shall furnish guidance and participate in the preparation and shall independently evaluate the statement prior to its approval and take responsibility for its scope and contents * * * (40 CFR 1506.5 (a) and (c)).

27 Documentation of Decisions

27.1 Timing of a Decision

The following time limits apply to decisions supported by an EIS:

Timing of agency action. (a) The Environmental Protection Agency shall publish a notice in the Federal Register each week of the environmental impact statements filed during the preceding week. The minimum time periods set forth in this section shall be calculated from the date of publication of this notice.

(b) No decision on the proposed action shall be made or recorded under (1505.2 by a Federal agency until the later of the following dates:

(1) Ninety (90) days after publication of the notice described above in paragraph (a) of this section for a draft environmental impact statement.

(2) Thirty (30) days after publication of the notice described above in paragraphs (1) of this section for a final environmental impact statement. (40 CFR 1506.10)

27.2 Record of Decision

If an EIS has been prepared, the responsible official shall document the decision in a record of decision. Prior to signing a record of decision, the responsible official shall read and understand the environmental effects displayed in an EIS. CEQ requirements for a record of decision are as follows:

At the time of its decision ((1506.10) or, if appropriate, its recommendation to Congress, each agency shall prepare a concise public record of decision. The record, which may be integrated into any other record prepared by the agency, * * * shall:

(a) State what the decision was.

(b) Identify all alternatives considered by the agency in reaching its decision, specifying the alternatives or alternatives which were considered to be environmentally preferable. An agency may discuss preferences among alternatives based on relevant factors including economic and technical considerations and agency statutory missions. An agency shall identify and discuss all such factors including any essential considerations of national policy which were balanced by the agency in making its decision and state how those considerations entered into its decision.

(c) State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not. A monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation. (40 CFR 1505.2)

The record of decision must also include consistency and conformance findings which are required by laws and regulations relevant to the decision being made. A record of decision for a National Forest System proposed action must display consistency with the relevant forest plan.

27.21 Format and Content

Records of decision should generally conform to the following format and must meet the following content requirements. Sections of the format may be combined or rearranged in the interest of clarity and brevity. Records of decision should reflect the analysis documented in the EIS and contain the following elements.

1. *Heading.* The heading must identify:

(a) Agency.

(b) Type of decision document, that is, record of decision.

(c) The title of the proposed action.

(d) The location of the proposed action, including administrative unit, county, and state.

2. *Decision and Reasons for the Decision.* Describe the decision being made, including the permits, licenses, grants, or authorizations needed to implement the decision. Identify the specific location of the alternative selected, including the legal land subdivision if pertinent. Refer to or include any mitigation and monitoring program related to the decision.

This section also identifies:

(a) Applicable laws, regulations, and policies.

(b) How environmental issues were considered and addressed.

(c) Factors other than environmental consequences considered in making the decision.

(d) Identification of environmental document(s) considered in making the decision.

3. *Public involvement conducted.* Identify the issues which determined the scope of the analysis. Provide a brief summary of the public participation that relates to the decision. Agencies, organizations, or persons raising issues or asserting opposing viewpoints may be identified and their positions discussed.

4. *Alternatives considered.* All alternatives considered (including the no-action) should be briefly discussed with specific references to the EIS. Mitigation measures, management requirements, and monitoring provisions that are pertinent to environmental concerns should be discussed with specific citations to pages of the EIS.

5. *Findings required by other laws.* Include any findings required by any other laws. For example, findings of consistency with the forest plan, suitability, and vegetation management required by the National Forest Management Act.

6. *Identify the Environmentally Preferable Alternative.* Based on the definition in section 05, state which alternative(s) is environmentally preferable.

7. *Implementation date.* Identify the date when the responsible official intends to implement the decision (sec. 51).

8. *Administrative review or appeal opportunities.* Clearly state whether the decision is subject to review or appeal (citing the applicable regulations), and identify when and where to file a request for review or appeal.

9. *Contact Person.* Identify the name, address, and phone number of a contact person who can supply further information.

10. *Signature and Date.* The responsible official signs and dates the record of decision on the date the decision is made.

(a) For decisions subject to review under the Forest Service appeal regulations (36 CFR part 217), the responsible official may sign and date the record of decision on the date that it is transmitted with the final EIS to the Environmental Protection Agency and made available to the public.

(b) For decisions not subject to review, the responsible official may not sign and date the record of decision sooner than 30 days after EPA's notice of availability of the final EIS is published in the **Federal Register** (sec. 27.1).

(c) For legislative proposals, the record of decision may be signed up to 30 days prior to filing and distributing the legislative EIS.

When an EIS identifies joint lead agencies (sec. 11.31a) or cooperating agencies with jurisdiction by law, the responsible official from each agency shall sign and date a record of decision for those actions within the authority of each agency.

When the Chief or Secretary is the responsible official, the appropriate field unit or WO staff prepares the record of decision with assistance from the WO Environmental Coordination staff. The Washington Office Director of Environmental Coordination coordinates the review and signing of the record of decision, involving the appropriate WO staff(s), Deputy Chief, Chief, or Secretary, as necessary. The signed original is then filed in WO Environmental Coordination Staff office files and the WO Environmental Coordination Staff forwards a copy to the appropriate field unit or WO staff for necessary distribution.

28—Notice and Distribution of the Record of Decision

Distribute the record of decision as soon as it is signed to agencies, organizations, and persons interested in or affected by the proposed action.

1. The responsible official shall promptly mail the record of decision to those who have requested it in writing and to those who are known to have participated in the decisionmaking process.

2. For decisions subject to appeal under 36 CFR part 217, in addition to the notice required by paragraph 1, the responsible official shall publish a notice of the availability of the record of decision in the legal section of a newspaper(s) with general circulation in the area where the proposed action will take place as required by 36 CFR part 217. The responsible official may also elect to publish a summary of the decision or the complete text of the record of decision.

3. The responsible official will provide other form of notice appropriate to the importance of the decision.

4. The responsible official shall enter the date of the record of decision on the schedule of proposed actions.

When required by E.O. 12372, Intergovernmental Review of Federal Programs, send copies to the State Single Point of Contact or, in cases where a State has elected not to establish a Single Point of Contact, the State official(s) involved.

Chapter 30—Categorical Exclusion From Documentation

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Chapter 30—Categorical Exclusion From Documentation

For reference, USDA regulations for NEPA are set out in boldface type.

30.3 Policy

1. A proposed action may be categorically excluded from documentation in an environmental impact statement (EIS) or environmental assessment (EA) only if the proposed action:

a. Is within one of the categories in the Department of Agriculture (USDA) NEPA policies and procedures in 7 CFR part lb.

b. Is within a category listed in sec. 31.1b or 31.2; and there are no extraordinary circumstances related to the proposed action.

2. Extraordinary circumstances include, but are not limited to, the presence of the following:

a. Steep slopes or highly erosive soils.

b. Threatened and endangered species or their critical habitat.

c. Flood plains, wetlands, or municipal watersheds.

d. Congressionally designated areas, such as wilderness, wilderness study areas, or National Recreation Areas.

e. Inventoried roadless areas.

f. Research Natural Areas.

g. Native American religious or cultural sites, archaeological sites, or historic properties or areas.

3. Scoping is required on all proposed actions, including those that would appear to be categorically excluded. If scoping indicate that extraordinary circumstances are present and it is uncertain that the proposed action may have a significant effect on the environment, prepare an EA (ch. 40). If scoping indicates that the proposed action may have a significant environmental effect, prepare an EIS (ch. 20).

4. If an action has been sufficiently analyzed in a completed EIS or an (EA), but not approved in the appropriate decision document, issue a record of decision of a decision notice and finding of no significant impact without considering the categories in this chapter (ch. 30). If an action has been sufficiently analyzed in a completed EIS or EA and approved in the appropriate decision document, it can be implemented without considering the categories in this chapter (ch. 30).

30.5 Definitions

Categorical Exclusion. (sec. 05).

Decision Memo. (sec. 05).

Extraordinary Circumstances. Conditions associated with a normally excluded action that are identified during scoping as potentially having effects which may significantly affect the environment (sec. 05).

31 Categories of Actions Excluded from Documentation

31.3 Categories for Which a Project or Case File and Decision Memo Are Not Required

At the discretion of the responsible official, a project or case file and a decision memo are not required but may be prepared for the categories of actions set forth in sections 31.1a and 31.1b.

31.1a Categories Established by the Secretary

The rules at 7 CFR 1b.3 exclude from documentation in an EIS or an EA the following categories:

(a) * * *

(1) Policy development, planning and implementation which relate to routine activities, such as personnel, organizational changes, or similar administrative functions;

(2) Activities which deal solely with the funding of programs, such as program budget proposals, disbursements, and transfer or reprogramming of funds;

(3) Inventories, research activities, and studies, such as resource inventories and routine data collection when such actions are clearly limited in context and intensity;

(4) Educational and informational programs and activities;

(5) Civil and criminal law enforcement and investigative activities;

(6) Activities which are advisory and consultative to other agencies and public and private entities, such as legal counseling and representation;

(7) Activities related to trade representation and market development activities abroad. (7 CFR 1b.3)

31.1b Categories Established by the Chief

The following categories of routine administrative, maintenance, and other actions normally do not individually or cumulatively have a significant effect on the quality of the human environment (sec. 05) and, therefore, may be categorically excluded from documentation in an EIS or an EA unless scoping indicates extraordinary circumstances (sec. 30.5) exist:

1. *Orders issued pursuant to 36 CFR part 261—Prohibitions to provide short-term resource protection or to protect public health and safety.* Examples include but are not limited to:

a. Closing a road to protect bighorn sheep during lambing season.

b. Closing an area during a period of extreme fire danger.

2. *Rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.* Examples include but are not limited to:

a. Adjusting special use or recreation fees using an existing formula.

b. Proposing a technical or scientific methodology or procedure for screening effects of emissions on air quality related values in Class I wilderness.

c. Proposing a policy to defer payments on certain permits or contracts to reduce the risk of default.

d. Proposing changes in contract terms and conditions or terms and conditions of special use authorizations.

e. Establishing a Service-wide process for responding to offers to exchange land and agreeing on land values.

f. Establishing procedures for amending or revising Forest Land and Resource Management Plans.

3. *Repair and maintenance of administrative sites.* Examples include but are not limited to:

a. Mowing lawns at a District office.

b. Replacing a roof or storage shed.

c. Painting a building.

d. Applying registered pesticides for rodent or vegetation control.

4. *Repair and maintenance of roads, trails, and landline boundaries.* Examples include but are not limited to:

a. Authorizing a user to grade, resurface, and clean the culverts of an established National Forest System road.

b. Grading a road and clearing the roadside of brush without the use of herbicides.

c. Resurfacing a road to its original condition.

d. Pruning vegetation and cleaning culverts along a trail and grooming the surface of the trail.

e. Surveying, painting, and posting landline boundaries.

5. *Repair and maintenance of recreation sites and facilities.* Examples include but are not limited to:

a. Applying registered herbicides to control poison ivy on infested sites in a campground.

b. Applying registered insecticides by compressed air sprayer to control insects at a recreation site complex.

c. Repaving a parking lot.

d. Applying registered pesticides for rodent or vegetation control.

6. *Acquisition of land or interest in land.* Examples include but are not limited to:

a. Accepting the donation of lands or interests in land to the National Forest System.

b. Purchasing fee, conservation easement, reserved interest deed, or other interests in lands.

7. *Sale or exchange of land or interest in land and resources where resulting*

land uses remain essentially the same. Examples include but are not limited to:

a. Selling or exchanging land pursuant to the Small Tracts Act.

b. Exchanging National Forest System lands or interests with a State agency, local government, or other non-Federal party (individual or organization)— with similar resource management objectives and practices.

c. Authorizing the Bureau of Land Management to issue leases on producing wells when mineral rights revert to the United States from private ownership and there is no change in activity.

d. Exchange of administrative sites involving other than National Forest System lands.

8. *Approval, modification, or continuation of minor, short-term (one year or less) special uses of National Forest System lands. Examples include but are not limited to:*

a. Approving, on an annual basis, the intermittent use and occupancy by a State-licensed outfitter or guide.

b. Approving the use of National Forest System land for apiaries.

c. Approving the gathering of forest products for personal use.

31.2 Categories of Actions for Which a Project or Case File and Decision Memo Are Required

Routine, proposed actions within any of the following categories may be excluded from documentation in an EIS or an EA; however, a project or case file is required and the decision to proceed must be documented in a decision memo (sec. 32). As a minimum, the project or case file should include any records prepared, such as: (1) The names of interested and affected people, groups, and agencies contacted; (2) the determination that no extraordinary circumstances exist; (3) a copy of the decision memo (sec. 30.5 (2); (4) a list of the people notified of the decision; (5) a copy of the notice required 36 CFR Part 217, or any other notice used to inform interested and affected persons of the decision to proceed with or to implement an action that has been categorically excluded. Maintain a project or case file and prepare a decision memo for routine, proposed actions within any of the following categories.

1. *Construction and reconstruction of trails.* Examples include but are not limited to:

a. Constructing or reconstructing a trail to a scenic overlook.

b. Reconstructing an existing trail to allow use by handicapped individuals.

2. *Additional construction or reconstruction of existing telephone or utility lines in a designated corridor.* Examples include but are not limited to:

a. Replacing an underground cable trunk and adding additional phone lines.

b. Reconstructing a power line by replacing poles and wires.

3. *Approval, modification, or continuation of minor special uses of National Forest System lands that require less than five contiguous acres of land.* Examples include but are not limited to:

a. Approving the construction of a meteorological sampling site.

b. Approving the use of land for a one-time group event.

c. Approving the construction of temporary facilities for filming of staged or natural events or studies of natural or cultural history.

d. Approving the use of land for a 40-foot utility corridor that crosses one mile of a National Forest.

e. Approving the installation of a driveway, mailbox, or other facilities incidental to use of residence.

f. Approving an additional telecommunication use at a site already used for such purposes.

g. Approving the removal of mineral materials from an existing community pit or common-use area.

h. Approving the continued use of land where such use has not changed since authorized and no change in the physical environment of facilities are proposed.

4. *Tiber harvest which removes 250,000 board feet or less of merchantable wood products or salvage which removes 1,000,000 board feet or less of merchantable wood products; which requires one mile or less of low standard road construction (Service level D, FSH 7709.56); and assures regeneration of harvested or salvaged areas, where required.* Examples includes but are not limited to:

a. Harvesting (FSM 2401.1 and 2401.2) 60,000 board feet of merchantable timber from 100 acres, including the construction of one-half mile of additional roads.

b. Salvaging (FSM 2435 and 2470.5) an estimated volume of 750,000 board feet of merchantable wood products timber from dead or dying trees, including the construction of one mile of access road, from an area that is generally flat with good drainage.

c. Thinning (FSM 2431 and 2470.5) an estimated 200,000 board feet of timber from over-stocked timber stands, which requires construction of one-quarter mile of additional access road.

5. *Regeneration of an area to native tree species, including site preparation which does not involve the use of herbicides or result in vegetation type conversion.* Examples include but are not limited to:

a. Planting seedlings of superior trees in a progeny test site to evaluate genetic worth.

b. Planting trees or mechanical seed dispersal of native tree species following a fire, flood, or landslide.

6. *Timber stand and/or wildlife habitat improvement activities which do not include the use of herbicides or do not require more than one mile of low standard road construction (Service Level D, FSH 7709.56).* Examples include but are not limited to:

a. Girdling trees to create snags.

b. Thinning or brush control to improve growth or to reduce fire hazard including the opening of an existing road to a dense timber stand.

c. Prescribed burning to control understory hardwoods in stands of southern pine.

d. Prescribed burning to reduce natural fuel build-up and improve plant vigor.

7. *Modification or maintenance of stream or lake aquatic habitat improvement structures using native materials or normal practices.* Examples include but are not limited to:

a. Reconstructing a gabion with stone from a nearby source.

b. Adding brush to lake fish beds.

c. Cleaning and resurfacing a fish ladder at a hydroelectric dam.

8. *Short-term (one year or less) mineral, energy, or geophysical investigations and their incidental support activities that may require cross-country travel by vehicles and equipment, construction of less than one mile of low standard road (Service Level D, FSH 7709.56), or use and minor repair of existing roads.* Examples include but are not limited to:

a. Authorizing geophysical investigations which use existing roads that may require incidental repair to reach sites for drilling core holes, temperature gradient holes, or seismic shortholes.

b. Gathering geophysical data using shorthole, vibroseis, or surface charge methods.

c. Trenching to obtain evidence of mineralization.

d. Clearing vegetation for sight paths or from areas used for investigation or support facilities.

e. Redesigning or rearranging surface facilities within an approved site.

f. Approving interim and final site restoration measures.

g. Approving a plan for exploration which authorizes repair of an existing road and the construction of one-third mile of temporary road; clearing

vegetation from an acre of land for trenches, drill pads, or support facilities.

9. *Implementation or modification of minor management practices to improve allotment condition or animal distribution when an Allotment Management Plan is not yet in place.* Examples include but are not limited to:

a. Rebuilding a fence to improve animal distribution.

b. Adding a stock watering facility to an existing water line.

c. Spot seeding native species of grass or applying lime to maintain forage condition.

32 Documentation of Decisions

32.1 Decision Memo Not Required

If a proposed action has been categorically excluded from documentation in an EIS or an EA under USDA categories (7 CFR 1b.3) or the categories listed in section 31.1b, a Decision Memo is not required; however, interested and affected persons must be informed in an appropriate manner of the decision to proceed with the proposed action (sec. 11.7).

32.2 Decision Memo Required

If the proposed action has been categorically excluded from documentation in an EIS or an EA under the categories listed in section 31.2, document the decision to proceed with the proposed action in a decision memo. Section 32.3 sets forth the format and content of a decision memo.

When the Chief or Secretary is the responsible official, the appropriate field unit prepares the decision memo with assistance from the Washington Office (WO) Environmental Coordination Staff. The WO Environmental Coordination Staff coordinates the review and signing of the decision memo, involving the appropriate WO staff(s), Deputy Chief, Chief, or Secretary, as necessary. The signed original will be filed in WO Environmental Coordination Staff office files. The WO Environmental Coordination Staff will forward a copy to the appropriate field unit or WO staff for necessary distribution.

32.3 Format and Content of a Decision Memo

The format of a decision memo is not intended to replicate the format of a correspondence memorandum (FSH 6209.17). Generally, decision memos should conform to the following format and content, although sections may be combined or rearranged in the interest of clarity and brevity.

1. *Heading.* The heading will identify:

a. Title of document, that is decision memo.

b. Agency.

c. The title of the proposed action.

d. The location of the proposed action (including administrative unit, county, and state). If appropriate, include the legal land description.

2. *Decision.* Describe the decision to be implemented and the reasons for categorically excluding the proposed action. Include:

a. The category (sec. 31.2) of the proposed action.

b. A finding that no extraordinary circumstances exist (sec. 30.5).

3. *Public Involvement.* List any interested and affected agencies, organizations, and persons contacted.

4. *Findings required by other laws.* Include any findings required by any other laws. For example, findings of consistency with the Forest Land and Resource Management Plan as required by the National Forest Management Act (FSM 1922.41 and FSH 1909.12); or a public interest determination (36 254.3(c) and FSM 5430.3).

5. *Implementation date.* Include the date when the responsible official intends to implement the decision, and identify any conditions related to implementation (sec. 50.3).

6. *Administrative review or appeal opportunities.* State whether the decision is subject to review or appeal, cite the applicable regulations, and identify when and where to file a request for review of appeal.

7. *Contact Person.* Include the name, address, and phone number of a contact person who can supply further information about the decision.

8. *Signature and Date.* The responsible official must sign and date the decision memo on the date the decision is made.

33 Notice and Distribution of Decision Memo

Distribute a decision memo as soon as it is signed to agencies, organizations, and persons interested in or affected by the proposed action.

1. The responsible official shall promptly mail the decision memo to those who requested it.

2. As a minimum, for a decision subject to appeal under 36 CFR part 217, in addition to the notice required by paragraph 1, the responsible official shall publish a notice of the availability of the decision memo and a summary of the decision as required by 36 CFR part 217. The responsible official may elect to publish the complete text of the decision memo.

3. The responsible official may provide other forms of notice appropriate to the importance of the decision.

4. The responsible official shall enter the date of the decision memo on the schedule of proposed actions (sec. 07).

5. When required by E.O. 12372, Intergovernmental Review of Federal Programs, send copies to the State Single Point of Contract or, in cases where a State has elected not to establish a Single Point of Contact, the State official(s) involved.

Chapter 40—Environmental Assessments and Related Documents

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Chapter 40—Environmental Assessments and Related Documents

For ease of reference and use, portions of the relevant CEQ regulations are set out in boldface type throughout the text of this chapter.

41 Environmental Assessments

Prepare environmental assessments (EA's) to document the results of environmental analyses and to disclose the environmental consequences for proposed actions that are not categorically excluded from documentation and for which the need for an environmental impact statement has not been determined.

The CEQ Regulations provide that an environmental assessment is not necessary if the agency had decided to prepare an environmental impact statement (40 CFR 1501.3(a)). Therefore, if, prior to completion of the environmental assessment, the responsible official determines an environmental impact statement should be prepared, discontinue the environmental assessment documentation, prepare a notice of intent (sec. 21), and proceed with the preparation of an environmental impact statement (ch. 20).

41.1 Purpose of Environmental Assessments

The purpose of an environmental assessment is to:

(1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.

(2) Aid an agency's compliance with the Act when no environmental impact statement is necessary.

(3) Facilitate preparation of a statement when one is necessary. (40 CFR 1508.9(a))

41.2 Content

An environmental assessment may be prepared in any format useful to facilitate planning, decisionmaking, and public disclosure as long as the requirements of this chapter are met. The length and detail of an environmental assessment may vary according to the complexity of the issues involved in the analysis. An environmental assessment:

(b) Shall include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted. (40 CFR 1508.9(b))

42 Other Considerations in Preparing Environmental Assessments

42.1 Tiering

Tier EA's to other environmental documents of broader scope to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision. See sections 05, 22.31, and 25.3 for additional information about tiering.

42.2 Adoption

Adopt other existing EA's or portions thereof to eliminate duplication and reduce excessive paperwork if the document meets Forest Service standards and requirements. Sections 22.32 and 25.2(c) contain additional guidance on adoption.

42.3 Incorporation by Reference

Incorporate material into EA's by reference when the result will be to cut down on bulk without impeding agency and public review of the proposed action and alternatives. Include a brief summary of the material being incorporated by reference. See section 22.33 for additional guidance on incorporation by reference.

43 Documentation of Decisions

43.1 Finding of No Significant Impact (FONSI)

When an environmental assessment has been prepared, the responsible official shall review the document and determine whether the proposed action may have significant effect on the quality of the human environment. The CEQ Regulations define a finding of no significant impact (FONSI) as:

* * * a document by a Federal agency briefly presenting the reasons why an action, not otherwise excluded ({1508.4), will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it ({1501.7(a)(5)). If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference. (40 CFR 1508.13)

If the responsible official determines that the proposed action may have a significant effect on the quality of the human environment, publish a notice of intent to prepare an environmental impact statement (ch. 20) in the **Federal Register**. Otherwise, prepare a FONSI. A FONSI may be separate document or included as part of a decision notice (sec. 43.2).

Use the criteria in the definition for "significantly," section 05, for determining whether the action will have a significant effect on the human environment.

In some situations, a FONSI must be available for a minimum of 30 days before a decision to implement a proposed action can be made (sec. 44).

For additional guidance on FONSI's, see sec. 65.12 CEQ 40 Most Asked Questions, questions 37a, 37b, 38, 39, and 40.

43.2 Decision Notice

If an environmental assessment and a FONSI have been prepared, document the decision to proceed with an action or activity in a decision notice. The responsible official shall read and concur in the environmental assessment and finding of no significant impact prior to signing a decision notice.

If a FONSI cannot be prepared because the proposed action may have a significant effect on the environment, a decision notice is not required. If this is the case, prepare and issue a notice of intent to prepare an environmental impact statement. Note the status of the environmental analysis on the schedule of proposed actions (sec. 07.1).

When the Chief or Secretary is the responsible official, the appropriate field unit or Washington Office (WO) staff(s) prepares the decision notice with assistance from the WO Environmental Coordination Staff. The WO Environmental Coordination Staff coordinates the review and signing of the decision notice, involving the appropriate WO staff(s), Deputy Chief, Chief, or Secretary as necessary. The signed original is retained in WO Environmental Coordination files.

The WO Environmental Coordination Staff then forwards a copy to the appropriate field unit or WO staff for necessary distribution.

43.21 Format and Content

Decision notices should reflect the conclusions drawn and the decision(s) made from the analysis documented in the environmental assessment. Generally, they should conform to the following format and content suggestions. Sections may be combined or rearranged in the interest of clarity and brevity.

1. *Heading.* The heading must identify:

a. Title of document (Decision Notice or Decision Notice and Finding of No Significant Impact).

b. Agency.

c. The title of the proposed action.

d. The location of the proposed action, including administrative unit, county, State. In some cases, it may be appropriate to include the legal land description.

2. *Decision and Reasons for the Decision.* Describe the selected alternative and the nature of the decision. In addition, this section identifies:

a. Applicable laws, regulations, and policies.

b. How issues were considered.

c. Factors other than environmental effects considered in making the decision.

d. Identification of environmental document(s) considered in making the decision.

e. How considerations in the preceding paragraphs a–d were weighed and balanced in arriving at the decision.

3. *Alternatives considered.* All alternatives considered, including the no-action alternative, should be briefly discussed with specific citations to relevant information in the environmental assessment.

Relevant mitigation measures, management requirements, and monitoring provisions should be discussed with specific citations to pages of the environmental assessment.

4. *Public involvement.* Provide a brief summary of how the public was involved in the analysis.

Persons or groups raising issues or asserting opposing viewpoints may be identified and their views discussed in light of the decision.

5. *Finding of No Significant Impact (FONSI).* The decision notice must either contain or refer to a finding of no significant impact (sec. 43.1).

6. *Findings required by other laws and regulations.* Include any findings required by any other laws which apply to the decision being made. For example, findings regarding consistency

with the forest plan, suitability for timber production, and vegetation management criteria required by the National Forest Management Act and 36 CFR part 219.

7. *Implementation date.* Identify the date when the responsible official intends to implement the decision (sec. 52).

8. *Administrative review or appeal opportunities.* State whether the decision is subject to administrative review or appeal, cite the applicable regulations, and indicate when and where to file a request for review or appeal.

9. *Contact person.* Identify the name, address, and phone number of a contact person who can supply additional information.

10. *Signature and Date.* The responsible official must sign and date the decision notice on the date the decision is made.

44 Notice and Distribution of Fonsi and Decision Notice

Distribute EA's, decision notices, and FONSI's to agencies, organizations, and persons interested in or affected by the proposed action.

Under certain circumstances, the responsible official may issue a FONSI and decision notice separately.

The circumstances are:

(i) The proposed action is, or is closely similar to, one which normally requires the preparation of an environmental impact statement under the procedures adopted by the agency pursuant to § 1507.3, or

(ii) The nature of the proposed action is one without precedent. (40 CFR 1501.4(e)(2))

In such cases the FONSI must be issued first in accordance with the following CEO rule:

* * * the agency shall make the finding of no significant impact available for public review (including State and areawide clearinghouses) for 30 days before the agency makes its final determination whether to prepare an environmental impact statement and before the action may begin. (40 CFR 1501.4(2))

The responsible official shall promptly mail the FONSI and decision notice to those who, in writing, have requested it and to those who are known to have participated in the decisionmaking process.

As a minimum, for a decision subject to appeal under 36 CFR part 217, in addition to the notice required by paragraph 1, the responsible official shall publish a notice of the availability of the decision notice and a summary of the decision as required by 36 CFR part 217. The responsible official may elect to publish the complete text of the decision notice.

The responsible official may provide other forms of notice appropriate to the nature and scope of the decision.

The responsible official shall enter the date of the FONSI and the decision notice on the schedule of proposed actions (sec. 07).

When required by E.O. 12372, Intergovernmental Review of Federal Programs, send copies to the State Single Point of Contact or, in cases where a State has elected not to establish a Single Point of Contact, the State official(s) involved.

Chapter 50—Implementation and Monitoring

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Chapter 50—Implementation and Monitoring

For ease of reference and use, portions of the relevant CEQ regulations are set out in boldface type in the text of this chapter.

50.3 Policy

Commitments for mitigation and monitoring included in the final environmental impact statement (EIS) and record of decision, a finding of no significant impact (FONSI) and decision notice, or a decision memo must be met.

51 Implementing Decisions Documented in a Record of Decision

A decision documented in a record of decision can be implemented no sooner than 30 days following the date the Environmental Protection Agency publishes the Notice of Availability of the related final EIS in the **Federal Register** (40 CFR 1506.10).

52 Implementing Decisions Documented in a Decision Notice

When a proposed action is similar to one that normally requires an EIS or when the nature of a proposed action is without precedent, do not implement the decision until after the decision notice and a FONSI have been available for public review for 30 days (40 CFR 1501.4(e)(2)).

At the end of the 30-day period, consider public comment and implement the decision, or publish a notice of intent to prepare an EIS.

53 Monitoring

Agencies may provide for monitoring to assure that their decisions are carried out and should do so in important cases. Mitigation (§ 1505.2(c)) and other conditions established in the environmental impact statement or during its review and committed as part of the decision shall be implemented by the lead agency or other appropriate consenting agency. The lead agency shall:

(a) Include appropriate conditions in grants, permits or other approvals.

(b) Condition funding of actions on mitigation.

(c) Upon request, inform cooperating or commenting agencies on progress in carrying out mitigation measures which they have proposed and which were adopted by the agency making the decision.

(d) Upon request, make available to the public the results of relevant monitoring. (40 CFR 1505.3)

In addition to complying with relevant monitoring requirements of an existing Forest Land and Resource Management Plan (FSH 1909.12, Ch. 6), monitor actions to ensure that:

1. Mitigation measures and terms and conditions of permits or other land use authorizations are met.

2. Anticipated results are achieved.

3. Necessary adjustments are made to achieve desired results.

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[FR Doc. 92-22569 Filed 9-17-92; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Chicopa Creek Watershed a Part of Black Creek Watershed, Mississippi; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (7 CFR part 650); U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for Black Creek Watershed, Carroll and Holmes Counties, Mississippi to cover work in the Chicopa Creek Watershed.

FOR FURTHER INFORMATION CONTACT: L. Pete Heard, State Conservationist, Soil Conservation Service, Suite 1321, A.H. McCoy Federal Building, 100 West Capitol Street, Jackson, Mississippi 39269, telephone (601) 965-5205.

SUPPLEMENTARY INFORMATION: An environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, L. Pete Heard, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project. The Project Plan provides structural measures to cropland and county roads in the watershed. The planned works of improvement consists of 2.8 miles of dikes, one bridge replacement, 1200 linear feet of riprap bank protection and gully and road bank erosion control structures.

The notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address.

The Watershed Plan/Environmental Assessment, is on file and may be reviewed by contacting L. Pete Heard at the location shown herein.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Dated: September 2, 1992.

L. Pete Heard,

State Conservationist SCS, Jackson, Mississippi.

[FR Doc. 92-22629 Filed 9-17-92; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket No. 920934-2234]

Voting Rights Act Amendments of 1992, Determinations Under Section 203

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice.

SUMMARY: The purpose of this notice is to publish the determinations of the Director of the Bureau of the Census as to which political jurisdictions are subject to the minority language assistance provisions of section 203 of the Voting Rights Act.

EFFECTIVE DATE: September 18, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Kominski, Chief, Education and Social Stratification Branch, Population Division, Bureau of the Census, U.S. Department of Commerce, Federal Building 3, room 2353, (301) 763-1154.

SUPPLEMENTARY INFORMATION: In August 1992, Congress amended the Voting Rights Act of 1965, 42 U.S.C. 1973 et seq. (See Public Law 102-344.) Among other changes, the minority language assistance provision set forth in Section 203 of the Act was extended to August 6, 2007. Section 203 mandates that a political subdivision must provide language assistance to voters if (1) more than 5 percent or 10,000 of the voting age citizens are members of a single language minority who do not "speak or understand English adequately enough to participate in the electoral process" and (2) if the rate of citizens in the language minority group who have not completed the fifth grade is higher than the national rate of persons who have not completed the fifth grade.

If an Indian reservation meets the above criteria, a political subdivision that contains all or any part of that Indian reservation is covered by the minority language assistance provision set forth in section 203. Indian reservation is defined as any area that is an American Indian or Alaska Native area identified for the purposes of the 1990 decennial census. For the 1990 census, these areas were identified by the Bureau of Indian Affairs, state governments, and the Bureau of the Census. The statistical area identification involved American Indian tribes and nonprofit Alaska Native regional corporations.

The Director of the Bureau of the Census has the responsibility to determine which political jurisdictions are subject to the minority language assistance provisions of section 203. The political subdivisions obligated to comply with the requirements of section 203 of the Act, as amended, are listed in the attachment.

Section 203 also provides that "determinations of the Director of the Census under this subsection shall be effective upon publication in the **Federal Register** and shall not be subject to review in any court." Therefore, as of this date, those jurisdictions that are listed as covered by section 203 have a legal obligation to provide the minority language assistance prescribed by section 203 of the Act. Those jurisdictions subject to section 203 of the Act previously, but not included on the list below, are no longer obligated to comply with section 203. However, some jurisdictions that are not on this list are still subject to the minority language requirement of section 4(f)(4) of the Act. (See 28 CFR part 55 Appendix.)

Dated: September 15, 1992.

Barbara Everitt Bryant,

Director, Bureau of the Census.

State	Political jurisdiction	Group
Alaska	Aleutians East Borough	Eskimo.
Alaska	Aleutians West Census Area	Aleut.
Alaska	Bethel Census Area	American Indian (Athapascan).
Alaska	Bethel Census Area	American Indian (Tanaina).
Alaska	Bethel Census Area	Eskimo.
Alaska	Bristol Bay Borough	Eskimo.
Alaska	Dillingham Census Area	Eskimo.
Alaska	Kenai Peninsula Borough	Eskimo.
Alaska	Kodiak Island Borough	Aleut.
Alaska	Kodiak Island Borough	Eskimo.
Alaska	Lake and Peninsula Borough	Aleut.
Alaska	Lake and Peninsula Borough	American Indian (Athapascan).
Alaska	Lake and Peninsula Borough	Eskimo.
Alaska	Nome Census Area	Eskimo.
Alaska	North Slope Borough	Eskimo.
Alaska	Northwest Arctic Borough	Eskimo.
Alaska	Skagway-Yakutat-Angoon Census Area	American Indian (Tlingit).
Alaska	Southeast Fairbanks Census Area	American Indian (Athapascan).
Alaska	Valdez-Cordova Census Area	American Indian (Athapascan).
Alaska	Wade Hampton Census Area	Eskimo.
Alaska	Yukon-Koyukuk Census Area	American Indian (Athapascan).
Alaska	Yukon-Koyukuk Census Area	American Indian (Kuchin).
Alaska	Yukon-Koyukuk Census Area	Eskimo.
Arizona	Apache County	American Indian (Apache).
Arizona	Apache County	American Indian (Navaho).
Arizona	Apache County	American Indian (Zuni).
Arizona	Coconino County	American Indian (Havasupai).
Arizona	Coconino County	American Indian (Hopi).
Arizona	Coconino County	American Indian (Navaho).
Arizona	Gila County	American Indian (Apache).
Arizona	Graham County	Amelcan Indian (Apache).
Arizona	Greenlee County	Hispanic.
Arizona	Maricopa County	American Indian (Pima).
Arizona	Maricopa County	American Indian (Yavapai).
Arizona	Maricopa County	Hispanic.
Arizona	Navajo County	American Indian (Apache).
Arizona	Navajo County	American Indian (Hopi).
Arizona	Navajo County	American Indian (Navaho).
Arizona	Pima County	Amencan Indian (Pima).
Arizona	Pima County	Hispanic.
Arizona	Pinal County	American Indian (Apache).
Arizona	Pinal County	American Indian (Pima).
Arizona	Santa Cruz County	Hispanic.
Arizona	Yuma County	American Indian (Delta River Yuma).
Arizona	Yuma County	American Indian (Yuma).
Arizona	Yuma County	Hispanic.
California	Alameda County	Chinese.
California	Alameda County	Hispanic.
California	Colusa County	American Indian (Wintun).
California	Fresno County	Hispanic.
California	Imperial County	Hispanic.
California	Inyo County	American Indian (Spanish).
California	Kern County	Hispanic.
California	Kings County	Hispanic.
California	Lake County	American Indian (Spanish).
California	Los Angeles County	Chinese.
California	Los Angeles County	Filipino.
California	Los Angeles County	Hispanic.
California	Los Angeles County	Japanese.
California	Los Angeles County	Vietnamese.
California	Monterey County	Hispanic.
California	Orange County	Hispanic.
California	Orange County	Vietnamese.
California	Riverside County	Hispanic.
California	San Benito County	Hispanic.
California	San Bernardino County	Hispanic.
California	San Diego County	Hispanic.
California	San Francisco County	Chinese.
California	Santa Clara County	Hispanic.
California	Tulare County	Hispanic.
California	Ventura County	Hispanic.
Colorado	Alamosa County	Hispanic.
Colorado	Archuleta County	Hispanic.
Colorado	Bent County	Hispanic.
Colorado	Conejos County	Hispanic.
Colorado	Costilla County	Hispanic.
Colorado	La Plata County	American Indian (Ute).
Colorado	Las Animas County	Hispanic.
Colorado	Montezuma County	American Indian (Ute).
Colorado	Otero County	Hispanic.

State	Political jurisdiction	Group
Colorado	Rio Grande County	Hispanic.
Colorado	Saguache County	Hispanic.
Connecticut	Bridgeport Town (Fairfield County)	Hispanic.
Connecticut	Hartford Town (Hartford County)	Hispanic.
Connecticut	New Britain Town (Hartford County)	Hispanic.
Connecticut	Windham Town (Windham County)	Hispanic.
Florida	Broward County	American Indian (Mikasuki).
Florida	Broward County	American Indian (Muskogee).
Florida	Broward County	Hispanic.
Florida	Collier County	American Indian (Mikasuki).
Florida	Dade County	American Indian (Mikasuki).
Florida	Dade County	Hispanic.
Florida	Glades County	American Indian (Muskogee).
Florida	Hardee County	Hispanic.
Florida	Hendry County	American Indian (Mikasuki).
Florida	Hendry County	American Indian (Muskogee).
Florida	Hillsborough County	Hispanic.
Florida	Orange County	Hispanic.
Hawaii	Honolulu County	Filipino.
Hawaii	Honolulu County	Japanese.
Hawaii	Kauai County	Filipino.
Hawaii	Maui County	Filipino.
Idaho	Bannock County	American Indian (Shoshoni).
Idaho	Bingham County	American Indian (Shoshoni).
Idaho	Owyhee County	American Indian (Shoshoni).
Idaho	Power County	American Indian (Shoshoni).
Illinois	Cook County	Hispanic.
Iowa	Tama County	American Indian (Fox).
Louisiana	Avoyelles Parish	American Indian (French).
Massachusetts	Boston City (Suffolk County)	Hispanic.
Massachusetts	Chelsea City (Suffolk County)	Hispanic.
Massachusetts	Holyoke City (Hampden County)	Hispanic.
Massachusetts	Lawrence City (Essex County)	Hispanic.
Massachusetts	Springfield City (Hampden County)	Hispanic.
Michigan	Clyde Township (Allegan County)	Hispanic.
Michigan	Colfax Township (Oceana County)	Hispanic.
Michigan	Zilwaukee Township (Saginaw County)	Hispanic.
Mississippi	Jones County	American Indian (Choctaw).
Mississippi	Kemper County	American Indian (Choctaw).
Mississippi	Leake County	American Indian (Choctaw).
Mississippi	Neshoba County	American Indian (Choctaw).
Mississippi	Newton County	American Indian (Choctaw).
Mississippi	Winston County	American Indian (Choctaw).
Nevada	Elko County	American Indian (Shoshoni).
Nevada	Humboldt County	American Indian (Paiute).
New Jersey	Essex County	Hispanic.
New Jersey	Hudson County	Hispanic
New Jersey	Middlesex County	Hispanic.
New Jersey	Passaic County	Hispanic.
New Jersey	Union County	Hispanic.
New Mexico	Bernalillo County	American Indian (Keres).
New Mexico	Bernalillo County	American Indian (Navaho).
New Mexico	Bernalillo County	American Indian (Tiwa).
New Mexico	Bernalillo County	Hispanic.
New Mexico	Chaves County	Hispanic.
New Mexico	Cibola County	American Indian (Keres).
New Mexico	Cibola County	American Indian (Navaho).
New Mexico	Cibola County	American Indian (Zuni).
New Mexico	Cibola County	Hispanic.
New Mexico	Colfax County	Hispanic.
New Mexico	Dona Ana County	Hispanic.
New Mexico	Eddy County	Hispanic.
New Mexico	Grant County	Hispanic.
New Mexico	Guadalupe County	Hispanic.
New Mexico	Harding County	Hispanic.
New Mexico	Hidalgo County	Hispanic.
New Mexico	Lea County	Hispanic.
New Mexico	Luna County	Hispanic.
New Mexico	McKinley County	American Indian (Navaho).
New Mexico	McKinley County	American Indian (Zuni).
New Mexico	Mora County	Hispanic.
New Mexico	Quay County	Hispanic.
New Mexico	Rio Arriba County	American Indian (Jicarilla).
New Mexico	Rio Arriba County	American Indian (Navaho).
New Mexico	Rio Arriba County	Hispanic.
New Mexico	Roosevelt County	Hispanic.
New Mexico	San Juan County	American Indian (Navaho).
New Mexico	San Miguel County	Hispanic.
New Mexico	Sandoval County	American Indian (Jicarilla).
New Mexico	Sandoval County	American Indian (Keres).

State	Political jurisdiction	Group
New Mexico	Sandoval County	American Indian (Navaho).
New Mexico	Sandoval County	American Indian (Towa).
New Mexico	Santa Fe County	Hispanic.
New Mexico	Socorro County	American Indian (Navaho).
New Mexico	Socorro County	Hispanic.
New Mexico	Taos County	American Indian (Tiwa).
New Mexico	Taos County	Hispanic.
New Mexico	Torrance County	Hispanic.
New Mexico	Union County	Hispanic.
New Mexico	Valencia County	American Indian (Keres).
New Mexico	Valencia County	American Indian (Tiwa).
New Mexico	Valencia County	Hispanic.
New York	Bronx County	Hispanic.
New York	Franklin County	American Indian (Mohawk).
New York	Kings County	Chinese.
New York	Kings County	Hispanic.
New York	New York County	Chinese.
New York	New York County	Hispanic.
New York	Queens County	Chinese.
New York	Queens County	Hispanic.
New York	Suffolk County	Hispanic.
New York	Westchester County	Hispanic.
North Dakota	Benson County	American Indian (Dakota).
North Dakota	Eddy County	American Indian (Dakota).
North Dakota	Ramsey County	American Indian (Dakota).
Oklahoma	Adair County	American Indian (Cherokee).
Oregon	Malheur County	American Indian (Paiute).
Pennsylvania	Philadelphia County	Hispanic.
Rhode Island	Central Falls City (Providence County)	Hispanic.
South Dakota	Dewey County	American Indian (Dakota).
South Dakota	Gregory County	American Indian (Dakota).
South Dakota	Lyman County	American Indian (Dakota).
South Dakota	Mellette County	American Indian (Dakota).
South Dakota	Todd County	American Indian (Dakota).
South Dakota	Tripp County	American Indian (Dakota).
South Dakota	Ziebach County	American Indian (Dakota).
Texas	Andrews County	Hispanic.
Texas	Atascosa County	Hispanic.
Texas	Bailey County	Hispanic.
Texas	Bee County	Hispanic.
Texas	Bexar County	Hispanic.
Texas	Brewster County	Hispanic.
Texas	Brooks County	Hispanic.
Texas	Caldwell County	Hispanic.
Texas	Calhoun County	Hispanic.
Texas	Cameron County	Hispanic.
Texas	Castro County	Hispanic.
Texas	Cochran County	Hispanic.
Texas	Comal County	Hispanic.
Texas	Concho County	Hispanic.
Texas	Crockett County	Hispanic.
Texas	Crosby County	Hispanic.
Texas	Culberson County	Hispanic.
Texas	Dallas County	Hispanic.
Texas	Dawson County	Hispanic.
Texas	Deaf Smith County	Hispanic.
Texas	Dewitt County	Hispanic.
Texas	Dickens County	Hispanic.
Texas	Dimmit County	Hispanic.
Texas	Duval County	Hispanic.
Texas	Ector County	Hispanic.
Texas	Edwards County	Hispanic.
Texas	El Paso County	American Indian (Spanish).
Texas	El Paso County	Hispanic.
Texas	Floyd County	Hispanic.
Texas	Frio County	Hispanic.
Texas	Gaines County	Hispanic.
Texas	Garza County	Hispanic.
Texas	Glasscock County	Hispanic.
Texas	Goliad County	Hispanic.
Texas	Gonzales County	Hispanic.
Texas	Guadalupe County	Hispanic.
Texas	Hale County	Hispanic.
Texas	Harris County	Hispanic.
Texas	Hays County	Hispanic.
Texas	Hidalgo County	Hispanic.
Texas	Hockley County	Hispanic.
Texas	Howard County	Hispanic.
Texas	Hudspeth County	Hispanic.
Texas	Irion County	Hispanic.

State	Political jurisdiction	Group
Texas	Jeff Davis County	Hispanic.
Texas	Jim Hogg County	Hispanic.
Texas	Jim Wells County	Hispanic.
Texas	Karnes County	Hispanic.
Texas	Kenedy County	Hispanic.
Texas	Kent County	Hispanic.
Texas	Kinney County	Hispanic.
Texas	Kleberg County	Hispanic.
Texas	La Salle County	Hispanic.
Texas	Lamb County	Hispanic.
Texas	Live Oak County	Hispanic.
Texas	Lubbock County	Hispanic.
Texas	Lynn County	Hispanic.
Texas	Martin County	Hispanic.
Texas	Maverick County	Hispanic.
Texas	McCulloch County	Hispanic.
Texas	McMullen County	Hispanic.
Texas	Medina County	Hispanic.
Texas	Menard County	Hispanic.
Texas	Midland County	Hispanic.
Texas	Mitchell County	Hispanic.
Texas	Moore County	Hispanic.
Texas	Nolan County	Hispanic.
Texas	Nueces County	Hispanic.
Texas	Parmer County	Hispanic.
Texas	Pecos County	Hispanic.
Texas	Polk County	American Indian (Alabama).
Texas	Presidio County	Hispanic.
Texas	Reagan County	Hispanic.
Texas	Reeves County	Hispanic.
Texas	Refugio County	Hispanic.
Texas	Runnels County	Hispanic.
Texas	San Patricio County	Hispanic.
Texas	Schleicher County	Hispanic.
Texas	Scurry County	Hispanic.
Texas	Starr County	Hispanic.
Texas	Sutton County	Hispanic.
Texas	Swisher County	Hispanic.
Texas	Tarrant County	Hispanic.
Texas	Terrell County	Hispanic.
Texas	Terry County	Hispanic.
Texas	Tom Green County	Hispanic.
Texas	Travis County	Hispanic.
Texas	Upton County	Hispanic.
Texas	Uvalde County	Hispanic.
Texas	Val Verde County	Hispanic.
Texas	Victoria County	Hispanic.
Texas	Ward County	Hispanic.
Texas	Webb County	Hispanic.
Texas	Wharton County	Hispanic.
Texas	Willacy County	Hispanic.
Texas	Wilson County	Hispanic.
Texas	Winkler County	Hispanic.
Texas	Yoakum County	Hispanic.
Texas	Zapata County	Hispanic.
Texas	Zavala County	Hispanic.
Utah	San Juan County	American Indian (Navaho).
Utah	San Juan County	American Indian (Ute).
Wisconsin	Curtiss Village (Clark County)	Hispanic.

[FR Doc. 92-22699 Filed 9-15-92; 4:14 pm]

BILLING CODE 3510-07-M

Bureau of Export Administration

Iran Air; Two Week Stay of Final Order

ACTION: Notice.

On August 21, 1992, the Acting Under Secretary for Export Administration, United States Department of Commerce, issued a Final Order in an administrative enforcement proceeding against Iran Air, Mehrabad Airport, Tehran, Iran. 57 FR 39178, August 28, 1992. The Order finds that Iran Air committed a violation of the Export Administration Regulations and imposes as sanctions against Iran Air a civil penalty of $100,000 and a denial of Iran Air's U.S. export privileges for a period of 24 months, 21 months of which will be suspended if the civil penalty is paid within 30 days and provided Iran Air commits no further violations.

Iran Air filed an emergency motion for stay of the Final Order with the U.S. Court of Appeals for the District of Columbia Circuit (Docket No. 92-1389), which entered an order on September 11, 1992, as follows:

Order

Upon consideration of the renewed emergency motion for stay of agency order and the opposition thereto, it is

Ordered that the final order of the Acting Under Secretary for the Bureau of Export Administration dated August 21, 1992 be stayed for a period of two weeks from the date of this order. Within two weeks from the date of this order, Iran Air shall file with the

court affidavits from Iran Air's corporate officers and/or employees addressing the harm to Iran Air and the absence of a stay. The purpose of this administrative stay is to give the court sufficient opportunity to consider the merits of the renewed emergency motion for stay and should not be construed in any way as ruling on the merits of the motion. *See D.C. Circuit Handbook of Practice and Internal Procedures* 39 (1987).

Per Curiam

Accordingly, by order of the court, the August 21, 1992, Final Order is stayed until September 25, 1992.

During the time this stay is in effect, the Bureau of Export Administration will continue to consider and act upon proposals that it authorize exceptions from the August 21, 1992, denial order, so that any authorized exceptions will be immediately available upon termination of the stay.

Dated: September 15, 1992.

Joan M. McEntee,

Acting Under Secretary for Export Administration, Bureau of Export Administration, Department of Commerce.

[FR Doc. 92-22727 Filed 9-16-92; 10:36 am]

BILLING CODE 3510-DT-M

International Trade Administration

[A-475-703]

Granular Polytetrafluoroethylene Resin From Italy; Preliminary Affirmative Determination of Circumvention of Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary affirmative determination of circumvention of antidumping duty order.

SUMMARY: On November 21, 1991, the Department of Commerce initiated an inquiry into the possible circumvention of the antidumping duty order on granular polytetrafluoroethylene resin from Italy. This anti-circumvention inquiry covers one manufacturer/exporter of this product and a related party in the United States. The period of this inquiry is July 1, 1990 through October 31, 1991.

We preliminarily determine that the companies investigated are circumventing the antidumping duty order on granular polytetrafluoroethylene resin from Italy. Interested parties are invited to comment on this preliminary determination.

EFFECTIVE DATE: August 31, 1992.

FOR FURTHER INFORMATION CONTACT: David S. Levy or Melissa G. Skinner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-4851.

SUPPLEMENTARY INFORMATION:

Background

On August 30, 1988, the Department of Commerce (the Department) published in the **Federal Register** (53 FR 33163) an antidumping duty order on granular polytetrafluoroethylene (PTFE) resin from Italy. On October 15, 1991, the petitioner, E.I. Du Pont de Nemours & Company, Inc. (Du Pont), alleged that certain parties were circumventing the antidumping duty order on granular PTFE resin, and requested that the Department investigate the matter.

The petitioner alleges that Montefluos, S.p.A. (Montefluos), an Italian manufacturer of granular PTFE resin, is circumventing, within the meaning of section 781(a) of the Tariff Act of 1930, as amended (the Tariff Act), the antidumping duty order on granular PTFE resin. According to the petitioner, Montefluos is exporting PTFE wet raw polymer, which is currently not subject to antidumping duties, from Italy to a related party in the United States, Ausimont, U.S.A. (Ausimont), which processes the PTFE wet raw polymer into granular PTFE resin.

The petitioner requested that the Department conduct this anti-circumvention inquiry in accordance with section 781(a) of the Tariff Act. See also 19 CFR 353.29(e). On November 21, 1991, pursuant to petitioner's allegations and in accordance with 19 CFR 353.29(c), the Department initiated an inquiry into the possible circumvention of the antidumping duty order on granular PTFE resin from Italy (56 FR 64588, December 11, 1991).

On December 2, 1991, the Department issued an initial request for information to Montefluos and Ausimont. We received timely responses to this initial request for information on December 16, 1992. Subsequently, we requested and received additional information from these companies.

Scope of the Antidumping Duty Order

Products covered by the antidumping duty order are granular PTFE resins, filled or unfilled. The antidumping duty order explicitly excludes PTFE dispersions in water and PTFE fine powders. During the period of this anti-circumvention inquiry, such merchandise was classified under item number 3904.61.90 of the Harmonized Tariff Schedule (HTS). We are providing this HTS number for convenience and customs purposes only. The written description of scope remains dispositive.

Scope of the Anti-Circumvention Inquiry

The product subject to this anti-circumvention inquiry is PTFE wet raw polymer, manufactured in and exported from Italy by Montefluos. PTFE wet raw polymer is the intermediate product from which Ausimont manufactures granular PTFE resin in the United States. Our period of inquiry was July 1, 1990, through October 31, 1991. However, as explained below, our examination of qualitative factors and the pattern of imports of the finished and intermediate products subject to this inquiry is based, in part, on data and events from outside this period.

Nature of the Anti-Circumvention Inquiry

Section 781(a)(1) of the Tariff Act provides that if:

(A) Merchandise of the same class or kind as that covered by an existing antidumping or countervailing duty order is being sold in the United States;

(B) Such merchandise sold in the United States is completed or assembled in the United States from parts or components which were produced in the country with respect to which the order or finding applies; and

(C) The difference between the value of the completed merchandise sold in the United States and the value of the imported parts or components from the country with respect to which the antidumping order or finding applies is small,

the Department, after taking into consideration any advice which the U.S. International Trade Commission provides, may include those parts or components within the scope of that antidumping duty order or finding.

In reaching a determination of whether to include parts or components within the scope of a finding or order, section 781(a)(2) of the Tariff Act directs the Department to consider such factors as (1) The pattern of trade, (2) whether the manufacturer or exporter of the parts or components is related to the entity that assembled or completed the merchandise sold in the United States, and (3) whether imports of the parts or components from the country with respect to which the antidumping duty order or finding applies have increased after issuance of that order or finding.

While we have considered each of the three factors stipulated in the statute, we have not limited our analysis to those factors. Our review of the legislative history of this provision indicates that we may properly consider

other factors before rendering an anti-circumvention determination. See S. Rep. No. 71, 100th Cong., 1st Sess. 100 (1987). Therefore, as in previous determinations, we have considered the nature of the processing performed in the United States, the extent of respondents' U.S. production facilities, and the level of respondent' U.S. investment. (See Portable Electric Typewriters from Japan; Negative Preliminary Determination of Circumvention of Antidumping Duty Order, 56 FR 46594 (1991) (PETs Prelimiary); Certain Internal-Combustion Industrial Forklift Trucks From Japan; Negative Preliminary Determination of Circumvention of Antidumping Duty Order, 54 FR 50260, 50261 (1989) (Forklifts Preliminary).)

I. Statutory Criteria

As stated above, the statute sets forth three criteria that must be met in order for the Department to make an affirmative determination of circumvention pursuant to section 781(a) of the Tariff Act. Therefore, we have examined the class or kind of merchandise manufactured and sold in the United States by Ausimont, whether Ausimont fabricates granular PTFE resin in the United States from material produced in the country to which the antidumping duty order applies, and the difference in value between the PTFE wet raw polymer imported from Italy by Ausimont and the granular PTFE resin produced and sold in the United States by Ausimont.

Class or Kind

The granular PTFE resin sold in the United States is the same class or kind of merchandise as the granular PTFE resin covered by the antidumping duty order. Ausimont and Montefluos state that the only difference between imported granular PTFE resin and that finished in the United States is that the product produced in the United States is whiter and purer than the imported product as a result of the more sophisticated production process employed in the United States. The imported product and that produced in the United States are the same in all other respects. Ausimont and Montefluos do not argue that the granular PTFE resin finished in the United States is marketed or distributed differently from granular PTFE resin imported from Italy. Further, Ausimont and Montefluos do not argue that the granular PTFE resin produced in the United States is offered to different customers than those that purchase the imported product. Indeed, in noting that its U.S. customers typically prefer the granular PTFE resin manufactured in the United States to that imported from Italy, Ausimont implies that both products are offered for sale to the same customers. Thus, we determine that the product sold in the United States is the same class or kind of merchandise as the product subject to the antidumping duty order.

U.S. Assembly From Imported Components

Ausimont produces granular PTFE resin in the United States from imported PTFE wet raw polymer. The PTFE wet raw polymer is produced entirely in Italy and exported to the United States by Montefluos. Therefore, we determine that the merchandise sold in the United States is completed from components that were produced in the country with respect to which the antidumping duty order applies.

Difference in Value

In this anti-circumvention inquiry, we based our analysis of the difference in value on both a quantitative analysis of the differences between the finished merchandise and the imported merchandise, and a qualitative analysis of the nature of the processing performed by respondent's, the extent of respondents' U.S. production facilities, and the level of respondents' U.S. investment. Such an analysis is consistent with our analysis in previous anti-circumvention inquiries. (See, *e.g.*, PETs Preliminary 56 FR at 46596; Forklifts Preliminary, 54 FR at 50262.)

Preliminary Calculation of Difference in Value

We calculated the difference in value between the granular PTFE resin completed and sold in the United States and the value of PTFE wet raw polymer, manufactured in and imported from Italy, that is used in the production of the subject merchandise. To compute the absolute difference in value, we deducted the value of the imported article from the value of the completed merchandise. We than calculated the percantage difference in value by dividing the absolute difference in value by the value of the completed merchandise.

Value of Completed Merchandise

We used the weighted-average, monthly, ex-factory selling price of the finished granular PTFE resin on a grade-specific basis to represent the value of granular PTFE resin. Where applicable, we deducted U.S. inland freight from the reported selling prices to derive the ex-factory price of the finished granular PTFE resin.

Value of Imported Material

Montefluos did not sell PTFE wet raw polymer to, or purchase it from, unrelated parties. Furthermore, because there is virtually no market for PTFE wet raw polymer, we have no other source of observed market prices for PTFE wet raw polymer. Therefore, for purposes of determining the value of the imported PTFE wet raw polymer, we conducted a market price validity test to determine whether Montefluos' transfer prices to Ausimont provided an appropriate basis for determining the value of the imported PTFE wet raw polymer. We compared Montefluos' cost of production to the reported transfer prices to test the validity of the reported transfer prices. Based on these comparisons, we used Montefluos' cost of production as the basis for determining the value of the PTFE wet raw polymer because, on average, it was higher than the transfer prices that Montefluos charged Ausimont for the PTFE wet raw polymer. We included in our calculation of the value of the PTFE wet raw polymer all movement charges not captured in the reported production costs because Ausimont incurred such charges. Finally, we allocated a portion of Ausimont's general expenses and profit to the value of the PTFE wet raw polymer using the ratio of the cost of production of the PTFE wet raw polymer to the total cost of the finished granular PTFE resin. Using this method of calculating the values of the imported and finished products, we found that the difference in value was between 38 and 55 percent. (Since the precise figure is business proprietary information, the stated percentage is approximated within a range of plus or minus 10 percent).

However, we believe that the method described above significantly overstates the actual difference in value in this case because Ausimont incurred losses during the period of inquiry. Ausimont incurred these losses, at least in part, due to the fact that its U.S. production facility, which began operation in December 1990, did not operate at full capacity during the period of inquiry. (See Affirmative Preliminary Determination of Circumvention of Antidumping Duty Order on Granular PTFE Resin From Italy—Preliminary Difference in Value Analysis, Memorandum for the File From Case Analyst, August 31, 1992.) In this instance, given our method of calculating the difference in value, the allocation of those losses appears to reduce the value of PTFE wet raw polymer. We note that the calculated

difference in value decreases significantly if Ausimont's losses are not allocated to the value of PTFE wet raw polymer. (*Id.*) Because we know that the calculated difference in value is significantly inflated by the fact that Ausimont's U.S. facility was not operating at full capacity during the period of inquiry, we determine that, under these circumstances, the calculation does not provide a realistic measure of the true difference in value between PTFE wet raw polymer and granular PTFE resin. Therefore, we determine that it is both necessary and appropriate to place greater emphasis on our examination of the nature of Ausimont's U.S. processing, the extent of Ausimont's U.S. production facilities, and the level of Ausimont's U.S. investment in making our determination regarding the difference in value.

Nature of Processing

According to the description of the production process provided by the International Trade Commission (ITC), PTFE wet raw polymer is (1) Wet cut to achieve desired particle size, and (2) pelletized and dried to produce granular PTFE resin. Additionally, the ITC states that the pelletized resin can be ground to produce fine-cut granular PTFE resins, or ground and heated to just below the melting point to produce presintered granular PTFE resins (see ITC Final Determination, USITC Pub. 2042, August 1988 at A–5). Ausimont's U.S. production process for manufacturing various types of granular PTFE resin from PTFE wet raw polymer is, in general, the same as that described by the ITC.

In attempting to assess the value added by Ausimont's U.S. production process, we have analyzed that process in the context of the complete integrated production process for granular PTFE resin. The process begins with the production of tetrafluoroethylene (TFE) monomer. Production of TFE monomer involves the production of hydrogen fluoride and chloroform, which are combined and then converted to TFE monomer through a procedure known as pyrolysis. Because pyrolysis yields by-products that adversely affect TFE monomer polymerization, the TFE monomer must be purified using an extremely complex refinement process (Kirk-Othmer, Encyclopedia of Chemical Technology, 1980, Vol. 11 at 3).

After purification, the TFE monomer, which is stored in liquid form, is subject to a process known as suspension polymerization, which is also fairly complex. During this process, the TFE monomer is combined with an initiator and vigorously agitated to produce the solid raw polymer, which is the product being imported by Ausimont (see *id.* at 6). After polymerization, the product enters the post-treatment stage, in which the polymer is cut and dried. As described above, it is only this post-treatment stage that Ausimont performs in the United States.

The PTFE wet raw polymer that is produced by suspension polymerization has the fundamental chemical characteristics of granular PTFE resin. It is the suspension polymerization process itself that distinguishes granular PTFE resin from such other forms of PTFE resin as aqueous dispersions or fine powders. After suspension polymerization, the product has assumed a solid form that has the exact same chemical composition as granular PTFE resin. Ausimont does not add any additional materials to PTFE wet raw polymer, nor does it alter in any way the chemical composition of PTFE wet raw polymer. Rather, Ausimont performs the post-treatment operations described by the ITC.

In previous anti-circumvention inquiries involving production of a finished product in the United States from imported components, we have found that the difference in value is not small in part because respondents performed a variety of complex operations and added numerous materials to the imported components that fundamentally altered the nature of the imported components. (See PETs Preliminary, 56 FR at 46596; Forklifts Preliminary, 54 FR at 50262). However, in this instance, Ausimont has not added to the material composition of the imported product within the United States, and has not fundamentally altered the nature of the imported product. Based on the descriptions of the various stages of the production process, and in light of the fact that Ausimont does not add to or fundamentally alter the product in the United States, we determine that Ausimont's U.S. production process is not complex relative to the production and suspension polymerization of TFE monomer.

Extent of Production Facilities and Level of Investment

After closing an existing PTFE production facility in 1988, Ausimont began construction in 1989 of a new facility for the production of PTFE products from imported PTFE wet raw polymer. As discussed above, Ausimont performs only the post-treatment phase of granular PTFE resin production at its current U.S. facility. Ausimont contends that it invested a substantial amount of money not only in the construction of a new factory building, but also in the purchase of the sophisticated machinery required to produce granular PTFE resin from PTFE wet raw polymer. (The actual amount of Ausimont's investment is business proprietary information.) However, Ausimont did not indicate the extent of the production facility that it closed in 1988. Therefore, we lack a basis for determining the degree to which the extent of Ausimont's U.S. operations has changed, and the relative size of Ausimont's investment in its current U.S. facility. Further, we have no evidence regarding the level of investment that would be required to build an integrated facility in the United States for the production of granular PTFE resin. Thus, we have insufficient information to conclude that Ausimont's current U.S. production facility is extensive, or that it constitutes a significant investment in the United States.

In previous anti-circumvention inquiries involving production of a finished product in the United States from imported components, we have determined that the difference in value is not small in part because the extent of respondents' U.S. facilities was similar to that of their home market facilities, and because respondents made a significant investment in U.S. production facilities comparable in scale to production facilities in the home market. (*Id.*) However, we have insufficient information to determine whether respondents have made a significant investment in the United States.

In sum, we determine that the nominal, calculated difference in value presented above is inflated because Ausimont's U.S. facility is not operating at full capacity, and, therefore, does not provide a realistic measure of the true difference in value between PTFE wet raw polymer and granular PTFE resin. We further determine that the nature of Ausimont's U.S. processing is not complex relative to the processing performed in Italy. Finally, we determine that we lack sufficient evidence regarding the extent of Ausimont's U.S. facility and the level of its U.S. investment to conclude that Ausimont has established substantial production facilities in the United States. Therefore, we preliminarily determine that Ausimont's U.S. operations are mere finishing operations, and that Ausimont has made only a "slight change in [its] method of production or shipment." (S. Rep. No. 71, 100th Cong., 1st Sess. 101 (1987)). Thus, based on our analysis of the quantitative and qualitative factors discussed above, we preliminarily

determine that the difference in value is small in this instance. However, we intend to request additional information from respondents regarding the overall production process and the extent of Ausimont's investment in the United States subsequent to our issuance of this preliminary determination.

II. Factors

Having preliminarily determined that (1) The merchandise sold in the United States is of the same class or kind of merchandise as that subject to the antidumping duty, (2) the merchandise sold in the United States is completed in the United States from components imported from the country to which the antidumping duty order applies, and (3) the difference in value between the imported product and that sold in the United States is small, we have also examined the factors contained in the statute in making our preliminary determination in this inquiry. Thus, we have examined the pattern of trade, relationship between the parties, and the level of imports.

Pattern of Trade

In analyzing the pattern of trade, we examined the quantity of granular PTFE resin and PTFE wet raw polymer that Montefluos shipped to the United States between the issuance of the antidumping duty order in August 1988 and October 1991. After reaching peak levels in 1989, Montefluos' shipments of granular PTFE resin began to decline. By 1991, Montegluos' shipments of granular PTFE resin fell to less than half their 1989 level. Concurrently, Montefluos began shipping PTFE wet raw polymer to the United States in 1990. In 1991, Montefluos shipped nearly four times as much PTFE wet raw polymer to the United States as it did in 1990. Furthermore, Montefluos' shipments of PTFE wet raw polymer to the United States exceeded its shipments of granular PTFE resin to the United States in 1991.

The shift in Montefluos' pattern of trade away from shipments of granular PTFE resin toward shipments of PTFE wet raw polymer coincides with the commencement of operations, in December 1990, at Ausimont's new U.S. production facility, which produces granular PTFE resin from imported PTFE wet raw polymer. Neither Montefluos nor Ausimont sold PTFE wet raw polymer to unrelated parties in the United States during the period of inquiry; all of Montefluos' shipments of PTFE wet raw polymer went to Ausimont for production of granular PTFE resin (and small amounts of related products) at Ausimont's U.S. facility. Thus, the decline in Montefluos' shipments of granular PTFE resin and the increase in shipments of PTFE wet raw polymer, used solely by Ausimont for the production of granular PTFE resin in the United States, indicate that Montefluos and Ausimont are supplanting sales of imported granular PTFE resin with sales of granular PTFE resin processed in the United States from imported PTFE wet raw polymer.

Relationship

We typically consider circumvention to be more likely when the manufacturer/exporter of the parts or components is related to the party completing or assembling merchandise in the United States using the imported components. In this instance, the manufacturer of PTFE wet raw polymer, Montefluos, is related to Ausimont, the company that produced and sold finished granular PTFE resin in the United States.

Increase in Imports

Imports of PTFE wet raw polymer from Montefluos did not begin until after the issuance of the antidumping duty order. As stated above in our analysis of the pattern of trade, such imports increased nearly fourfold during the period of inquiry. Montefluos is the only known exporter of this merchandise from Italy.

Preliminary Affirmative Determination of Circumvention

We preliminarily determine that respondent is circumventing the antidumping duty order within the meaning of section 781(a) of the Tariff Act. Based on our analysis of the facts and circumstances present in this inquiry, we find that the difference between the value of granular PTFE resin sold in the United States and the value of imported PTFE wet raw polymer is small for this industry. Further, we find that the pattern of trade, the relationship between the parties, and the volume of imports are consistent with a finding of circumvention of the antidumping duty order. We note that our determination of "small" in this case is not necessarily synonymous with the determination of "small" that the Department will formulate in future anti-circumvention inquiries, because Congress has directed us to make such determinations on a case-by-case basis.

Because we have preliminarily determined that Ausimont and Montefluos are circumventing the antidumping duty order on granular PTFE resin from Italy, we have preliminarily determined to include PTFE wet raw polymer within the scope of this order. We are notifying Customs of this decision, and requesting that Customs suspend liquidation of imports of PTFE wet raw polymer from Italy at the current cash deposit rate for Montefluos.

Interested parties may request disclosure within five days of publication of this determination, and may request a hearing within ten days of publication. If requested, we will hold a public hearing one week after receipt of rebuttal briefs. Case briefs and/or written comments from interested parties may be submitted not later than two weeks after publication of this preliminary determination. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than one week after submission of case briefs. The Department will publish its final determination in this anti-circumvention inquiry, including the results of its analysis of any written or oral comments. Because we have preliminarily determined that Montefluos and Ausimont are circumventing the antidumping duty order on granular PTFE resin, we have notified the ITC in accordance with section 781(e) of the Tariff Act. We will issue our final determination on the latter of either (1) 15 days after receiving advice from the ITC, (2) three weeks after receipt of rebuttal briefs, or (3) if we hold a public hearing, three weeks after that hearing.

This preliminary affirmative determination of circumvention is in accordance with section 781(a) of the Tariff Act (19 U.S.C. 1677j(a)).

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-22661 Filed 9-17-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-831-803, A-832-803, A-822-803, A-447-803, A-833-803, A-834-803, A-835-803, A-449-803, A-451-803, A-841-803, A-821-803, A-842-803, A-843-803, A-823-803, A-844-803]

Titanium Sponge From the Baltic States and the Former Republics of the Soviet Union; Determination not to Revoke the Antidumping Findings on Titanium Sponge From the Baltic States and the Former Republics of the Soviet Union

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Determination not to revoke antidumping findings.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping findings on titanium sponge from the Baltic states and the former republics of the Soviet Union.

EFFECTIVE DATE: September 18, 1992.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC; telephone (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On August 3, 1992, the Department of Commerce (the Department) published in the **Federal Register** (57 FR 34117) its intent to revoke the antidumping finding on titanium sponge from the U.S.S.R. (33 FR 12138; August 28, 1968). The Department may revoke a finding if the Department concludes that the finding is no longer of interest to parties. We had not received a request for an administrative review of this finding for the last four consecutive anniversary months, and therefore published a notice of intent to revoke pursuant to 353.25(d)(4) of the Department's regulations (19 CFR 353.25(d)(4)).

On August 12, 1992, the Department transferred the finding to each of the Baltic states and the former republics of the Soviet Union (57 FR 36070).

On August 26, 1992, the Oregon Metallurgical Corporation, an interested party, objected to our intent to revoke the finding on titanium sponge from the U.S.S.R. Also on August 26, 1992, the Titanium Metals Corporation, an interested party, objected to our intent to revoke the findings on any of the Baltic states or former republics of the Soviet Union. Therefore, we no longer intend to revoke the findings.

Dated: September 10, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92-22659 Filed 9-17-92; 8:45 am]

BILLING CODE 3510-DS-M

[C-307-808]

Alignment of the Final Countervailing Duty Determination With the Final Antidumping Duty Determination: Ferrosilicon From Venezuela

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 18, 1992.

FOR FURTHER INFORMATION CONTACT: Paulo Mendes, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-5050.

Alignment of Antidumping and Countervailing Duty Cases

On August 25, 1992, we published a preliminary affirmative countervailing duty determination pertaining to ferrosilicon from Venezuela (57 FR 38482). The notice stated that we would make our final countervailing duty determination by October 29, 1992.

On August 24, 1992, in accordance with section 705 (a)(1) of the Tariff Act of 1930, as amended (the "Act"), we received a request from petitioner to align the due date for the final countervailing duty determination with the date of the final determination in the antidumping duty investigation of ferrosilicon from Venezuela. Accordingly, we are extending the final determination in this countervailing duty investigation to not later than January 12, 1993.

In accordance with section 705 of the Act, and 19 CFR 355.20(c)(ii), the Department will direct the U.S. Customs Service to terminate the suspension of liquidation in the countervailing duty proceeding as of December 24, 1992. No cash deposits or bonds for potential countervailing duties will be required for merchandise which enters the United States on or after December 24, 1992. This suspension of liquidation will not be resumed unless and until the Department publishes a countervailing duty order. We will also direct the U.S. Customs Service to maintain the suspension of any entries suspended between August 24, 1992 and December 23, 1992, until the conclusion of this investigation.

The U.S. International Trade Commission is being advised of this postponement. This notice is published pursuant to section 705(d) of the Act.

Dated: September 10, 1992.

Rolf Th. Lundberg, Jr.,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-22660 Filed 9-17-92; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce. The Caribbean Fishery Management Council (Council) and the Council's Administrative Committee will hold public meetings on September 22-25, 1992, in the Conference Room, Hotel on the Cay, Christiansted, St. Croix, U.S. Virgin Islands. Fishermen and other interested persons are invited to attend the meetings, which will be conducted in English. The public may submit oral or written statements regarding the agenda items.

Council—The Council will hold its 76th regular public meeting on September 23 at 9 a.m. and adjourn at 5 p.m. to discuss the Queen Conch, Shallow-Water Reef Fish, and Coral Fishery Management Plans. On September 24 the Council will reconvene at 9 a.m. and adjourn at 3:30 p.m. and meet on September 25 at 9:00 a.m. with adjournment at 12:00 noon.

Administrative Committee—The Committee will begin its public meeting on September 22 at 2 p.m. to discuss matters pertaining to the Council's administrative operations, and adjourn at 5 p.m.

For more information contact Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, Banco de Ponce Building, Suite 1108, Hato Rey, Puerto Rico 00918-2577, telephone: (809) 766-5926.

Dated: September 14, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-22666 Filed 9-17-92; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Add Agenda Item and Change Meeting Date

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The agenda and date of a public meeting of the North Pacific Fishery Management Council (Council), originally published in the **Federal Register** at 57 FR 39671, on September 1, 1992, are changed as follows. The changes are noted below; all other information originally published at 57 FR 39671, remains unchanged.

Add agenda item: Review of a request submitted by Terra Marine Research & Education for an experimental fishing permit.

Change executive session meeting date from: September 22, 1992, at 12 noon to September 23, 1992, at 12 noon.

For more information contact the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510, telephone: (907) 271-2809.

Dated: September 14, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-22665 Filed 9-17-92; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council will hold a joint public meeting of its shrimp committee (SC) and shrimp advisory panel (SAP) on September 28–29, 1992, at the Town and Country Inn, 2008 Savannah Highway, Charleston, SC (803–571–1000). the joint meeting will convene on September 28 at 1:30 p.m. and adjourn at 5:30 p.m. On September 29 the meeting will reconvene at 8:30 a.m. and adjourn at noon.

The SC and SAP will review the results of input solicited from fishermen at the rock shrimp public scoping meetings to determine if management of the fishery is needed. After reviewing public comments, the SC and SAP will decide if they will recommend amendment of the shrimp fishery management plan to address problems in the rock shrimp fishery.

For more information contact Carrie Knight, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699, telephone: (803) 571–4366.

Dated: September 14, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-22667 Filed 9-17-92; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council (Council) will hold meetings of the Snapper-Grouper Plan Development Team (Team) and Snapper-Grouper Advisory Panel (Panel) on September 29 through October 1, 1992, at the Town and Country Inn, 2008 Savannah Highway, Charleston, SC. The Panel will meet on September 29, from 1:30 p.m. to 5:30 p.m. The Snapper-Grouper Panel will meet jointly with the Team on September 30, from 9 a.m. to 12 p.m. The Team will meet from 1:30 p.m. to 5:30 p.m. on September 30, and from 9 a.m. to 12 p.m on October 1.

The agenda will include developing additional items for the next amendment to the snapper-grouper fishery management plan and to recommend levels of total allowable catch for the deep-water complex of snapper, grouper, and amberjacks. The 1992 snapper-grouper stock assessment will be reviewed.

For further information contact Carrie Knight, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, suite 306, Charleston, SC 29407–4699, telephone: (803) 571–4366.

Dated: September 14, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-22668 Filed 9-17-92; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List Additions and Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to and Deletion from Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have severe disabilities, and deletes from the Procurement List a service previously furnished by such agencies.

EFFECTIVE DATE: October 19, 1992.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On May 29, June 12, 19, July 10, 17, 24 and 31, 1992, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (57 FR 22728, 25023, 27440, 30727, 31699, 32976 and 33943) of proposed additions to and deletion from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Clamp, Loop—5340-01-143-8255, 5340-01-105-2735

Bandage, Gauze—6510-00-582-7993

(50% of the Government Requirement)

Bag, Dental Prosthesis—6520-00-926-9041

Plate, Paper—7350-00-899-3054, 7350-00-899-3055, 7350-00-899-3056

Services

Commissary Shelf Stocking & Custodial, Fort Rucker, Alabama.

Commissary Shelf Stocking & Custodial, Fort Devens, Massachusetts.

Commissary Shelf Stocking & Custodial, Fort Hamilton, New York.

Commissary Shelf Stocking & Custodial, Seneca Army Depot, Seneca, New York.

Commissary Shelf Stocking, Custodial & Warehousing, Keesler Air Force Base, Mississippi.

Commissary Shelf Stocking, Custodial & Warehousing, Seymour-Johnson Air Force Base, North Carolina.

Food Service Attendant, Naval Station and Deperming Station, Norfolk, Virginia.

Grounds Maintenance, Naval Station, Mobile, Alabama.

Janitorial/Custodial, U.S. Department of Agriculture Forest Service, Humboldt Nursery, 4886 Cottage Grove Avenue, McKinleyville, California.

Janitorial/Custodial, (except buildings 3722, 4235, 4510 and 4543), Barksdale Air Force Base, Louisiana.

Janitorial/Custodial, Mifflin County USARC, Lewistown, Pennsylvania.

Janitorial/Custodial, Naval Station Commissary, Charleston, South Carolina.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Deletion

After consideration of the relevant matter presented, the Committee has determined that the service listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following service is hereby deleted from the Procurement List:

Janitorial/Custodial, U.S. Army Corps of Engineers, Raystown Lake, Raystown, Pennsylvania.

Beverly L. Milkman,

Exeuctive Director.

[FR Doc. 92–22663 filed 9–17–92; 8:45 am]

BILLING CODE 6820-33-M

Procurement List Proposed Additions

AGENCY: Committee for Purchase from the Blind an Other Severely Handicapped.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: October 19, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION:

This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approve the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodities and services to the Procurement List

Commodities

Bag, Polyethylene—8105–LL–S05–0146, 8105–LL–S05–0147, 8105–LL–S05–0148

(Requirements for the Naval Supply Center, Bremerton, WA only)

Nonprofit Agency: Open Door Center, Valley City, North Dakota

Line, Tent—8340–00–252–2270

Nonprofit Agency: Brown County Association for Retarded Citizens, Inc., Green Bay, Wisconsin

Hood, Sleeping Bag—8465–00–518–2769

Nonprofit Agency: North Bay Rehabilitation Services, Inc., San Rafael, California at its facility in Rohnert Park, California

Services

Food Service Attendant—Air National Guard Base, Building 600, Lincoln, Nebraska

Nonprofit Agency: Lincoln Goodwill Industries, Lincoln, Nebraska

Janitorial/Custodial—Marine Corps Reserve Training Center, 3506 South Memorial Parkway, Huntsville, Alabama

Nonprofit Agency: Huntsville Rehabilitation Foundation, Huntsville, Alabama

Janitorial/Custodial—Basewide, Scott Air Fore Base, Illinois

Nonprofit Agency: Specialized Services, Inc. Granite City, Illinois

Janitorial/Custodial—Defense Logistics Agency, DNSZ Curtis Bay Depot, Baltimore, Maryland

Nonprofit Agency: Baltimore Association for Retarded Citizens, Inc., Baltimore, Maryland

Janitorial/Custodial—Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, Minnesota

Nonprofit Agency: Tasks Unlimited, Inc., Minneapolis, Minnesota

Janitorial/Custodial—Federal Office Building, 909 First Avenue Seattle, Washington

Nonprofit Agency: Northwest Center for the Retarded Seattle, Washington

Beverly L. Milkman,

Executive Director.

[FR Doc. 92–22664 Filed 9–17–92; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10455–000—Arkansas]

JDJ Energy Company; Intention To Prepare an Environmental Impact Statement and Conduct Public Scoping Meetings

September 14, 1992.

JDJ Energy Company (applicant) filed on November 30, 1990, an application for license to construct and operate the River Mountain Pumped Storage Hydroelectric Project, to be located on the Arkansas River in Logan County, Arkansas, approximately 10 miles west of the City of Russellville.

The project's lower reservoir would be the existing 34,300-acre Lake Dardanelle, a Corps of Engineers (Corps) reservoir formed by Dardanelle Lock and Dam. The project's upper reservoir would be located at the crest of River Mountain and would be formed by constructing an elliptical rockfill embankment that is approximately 10,700 feet long, 20 feet wide, and ranging from 25 to 120 feet high. The upper reservoir at normal maximum surface elevation would have an area of 183 acres.

The proposed underground powerhouse would be an excavation, 292 feet long, 81 feet wide, and 162 feet high. It would contain three 200-megawatt (MW) pump-turbine units, for a total installed capacity of 600 MW.

Electricity both generated by the project and used for pumping would be transmitted by a single 500-kilvolt (kV) circuit that extends 2,700 feet through the project's access tunnel to the surface of River Mountain and then along a 1.8-mile-long, surface transmission line to an existing 500-kV transmission line owned by Arkansas Power & Light.

The applicant's proposal would include: (1) The construction of three miles of access roads; (2) the upgrading and paving of the existing, unpaved

River Mountain Road; and (3) the construction and operation of day-use recreation facilities on the Lake Dardenelle shoreline near the project's intake/outlet structure.

The FERC staff has determined that licensing the proposed project would constitute a major federal action significantly affecting the quality of the human environment. Therefore, the staff intends to prepare an environmental impact statement (EIS) on the River Mountain Project in accordance with the National Environmental Policy Act.

The staff's EIS will consider both site specific and cumulative environmental impacts of the proposed project and reasonable alternatives, and will include an economic, financial and engineering analysis.

A draft EIS will be issued and circulated for review by all interested parties. All comments filed on the draft EIS will be analyzed by the FERC staff and considered in a final EIS.

Scoping Meetings

The FERC staff will conduct two scoping meetings: The afternoon meeting will focus on resource agency concerns; the evening meeting is designed to obtain input from the general public. All interested individuals, organizations, and agencies are invited to attend and assist the staff in identifying the scope of environmental issues that should be analyzed in the EIS.

To help focus discussions, a preliminary EIS scoping document outlining subject areas to be addressed at the meeting will be distributed by mail to persons and entities on the FERC mailing list. Copies of the preliminary scoping document will also be made available at the scoping meetings.

The resource agency meeting will be held from 1.30 p.m. to 4:30 p.m. on Wednesday, October 21, 1992, at the Arkansas Soil & Water Conservation Commission Meeting Room, Suite 350 (third floor), 101 East Capitol, in Little Rock, Arkansas 72201.

The evening public meeting will be held at the Subiaco Roundhouse in Subiaco, Arkansas on Thursday, October 22, 1992, from 7:30 p.m. to 10:30 p.m. (or later). The Roundhouse is located at St. Benedict's Parish on Highway 197 North (off Route 22) in Subiaco, Arkansas 72865.

Objectives

At the scoping meetings, the Commission staff will: (1) Summarize the environmental issues tentatively identified for analysis in the planned EIS; (2) solicit from the meeting participants all available information, especially quantified data, on the resources at issue, and (3) encourage statements from experts and the public on issues that should be analyzed in the EIS.

Individuals, organizations, and agencies with environmental expertise and concerns are encourage to attend the meetings and to assist the staff in defining and clarifying the issues to be addressed in the EIS.

Meeting Procedures

The meetings will be recorded by a stenographer and, thereby, will become a part of the formal record of the Commission proceeding on the River Mountain Project. Individuals presenting statements at the meetings will be asked to identify themselves for the record.

Persons choosing not to speak at the meetings, but who have views on the issues or information relevant to the issues, may submit written statements for inclusion in the public record. In addition, written scoping comments may be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, until October 30, 1992.

All correspondence should clearly show the following caption on the first page: River Mountain Pumped Storage Project, No. 10455-000, Arkansas.

For further information, please contact Jim Haimes at (202) 219-2780.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22596 Filed 9-17-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-72-000]

Ozark Gas Transmission System; Prefiling Conference

September 14, 1992.

Take notice that a prefiling conference will be convened in the above-captioned proceeding on October 2, 1992, at 10 a.m. at the offices of the Federal Energy Regulatory Commission, 810 First Street, Hearing Room 1, NE., Washington, DC. If it becomes necessary to change the location of the conference, a future notice will state a new location.

The purpose of this conference is to address Ozark Gas Transmission System's proposed restructuring plan as summarized in its revised proposal dated September 4, 1992.

All interested persons are invited to attend. However, attendance at the conference will not confer party status.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22598 Filed 9-17-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-162-000]

Superior Offshore Pipeline Company; Informal Settlement Conference

September 14, 1992.

Take notice that an informal settlement conference will be convened in the above-captioned proceeding at 10 a.m., on October 1, 1992, at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, (Room 3400-C), for the purpose of exploring the possibility of settlement.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214) (1992).

For additional information please contact John J. Keating (202) 208-0762 or Anja M. Clark (202) 208-2034.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22597 Filed 9-17-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER92-244-000]

Wisconsin Electric Power Company; Filing

September 11, 1992.

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on September 4, 1992, tendered for filing revised Page D-3 of Service Schedule D to the Interchange Agreement between itself and Madison Gas and Electric Company (MG&E). The revision caps the price of Daily Short Term Power and Energy at the rate for weekly service.

Wisconsin Electric and MG&E respectfully requests an effective date of September 1, 1992.

Copies of the filing have been served on MG&E, and the Public Service Commission of Wisconsin.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 25, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22600 Filed 9-17-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 92-81-NG]

Amoco Energy Trading Corporation; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Amoco Energy Trading Corporation (Amoco), blanket authorization to import up to 300 Bcf of natural gas from Canada over a two-year term, beginning on the date of first delivery after September 22, 1992, the day Amoco's current two-year blanket authorization expires.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 11, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-22654 Filed 9-17-92; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 92-76-NG]

Anadarko Trading Company; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Anadarko Trading Company blanket authorization to import up to 30 Bcf of natural gas from Canada over a two-year term, beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs docket room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

Issued in Washington, DC, September 11, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-22655 Filed 9-17-92; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 92-74-NG]

J. Aron & Company; Order Granting Blanket Authorization To Import and Export Natural Gas, Including Liquefield Natural Gas, From Canada, Mexico, and Other Countries

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting J. Aron & Company authorization to import or export up to 350 Bcf of natural gas, including liquefied natural gas, from and to Canada, Mexico, and other countries over a two-year term beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 11, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-22656 Filed 9-17-92; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 92-73-NG]

OXY USA Inc.; Order Granting Blanket Authorization To Import and Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting OXY USA INC. blanket authorization to import from Canada and to export to Mexico a combined total of up to 29.2 Bcf of natural gas, over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs docket room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

Issued in Washington, DC, September 11, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-22653 Filed 9-17-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-4506-5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260-5076 or (202) 260-5075. Availability of Environmental Impact Statements Filed September 7, 1992 through September 11, 1992 pursuant to 40 CFR 1506.9.

EIS No. 920363, Draft EIS, BLM, NM, Dark Canyon Special Management Area, Oil and Gas Leasing, Permit for Approval to Drill near Carlsbad Caverns National Park, Eddy County, NM, Due: November 20, 1992, Contact: Don Boyer (505) 438-7439.

EIS No. 920364, Final EIS, AFS, CA, Duncan/Sunflower Timber Sales, Implementation, Duncan Canyon, Tahoe National Forest, Foresthill Ranger District, Placer County, CA, Due: October 19, 1992, Contact: Phil Tuma (916) 367-2225.

EIS No. 920365, Final EIS AFS, MT, Stillwater Valley Platinum-Palladium Mining and Milling Project, Amendment to Plan of Operations and Approval of Permit, Stillwater River Valley Custer National Forest, Stillwater County, MT, Due: October 19, 1992, Contact: Grey Visconty (406) 444-2074.

EIS No. 920366, Draft EIS, COE, CA, Bolsa Chica Project, Construction/Road Construction, Restoration and Flood Control Improvement, section 10/404 Permits and Land Use Plan, City of Huntington Beach, Orange County, CA, Due: December 17, 1992, Contact: Frank Piccola (213) 894-0244.

EIS No. 920367, Draft EIS AFS, AR, Mount Magazine State Park,

Construction, Operation and Maintenance, Special Use Permit, Ozark National Forest, Logan County, AR, Due: November 2, 1992, Contact: Rob Kopack (501) 963-3076.

EIS No. 920368, Final EIS, BPA, WA, Adoption—South Fork Tolt River Hydroelectric Project, FERC No. 2959, Power Acquisition through the Granting of a Billing Credit to Seattle City Light and Possible Section 404 Permit, King County, WA, Due: October 19, 1992, Contact: Charles Alton (503) 230-5878.

The US Department of Energy, Bonneville Power Administration has adopted portions of the US Federal Energy Regulatory Commission's FEIS for the Snohomish River Basin Hydroelectric Project, WA which was filed with the US Environmental Protection Agency on 6-28-87.

EIS No. 920369, Draft EIS, DNA, NM, WI, WA, NM, TX, WA, Superconducting Magnetic Energy Storage—Engineering Test Model Program, Construction, Testing, Operation, Conceptual Designs and Selection Site, Otero and Lincoln Counties, NM; Ward Co., TX; Sauk Co; WI and Benton and Franklin Counties, WA, Due: November 6, 1992, Contact: Mike Eubanks (205) 694-3861.

EIS No. 920370, Final Supplement, COE, NM, Rio Grande Floodway Flood Protection Plan, San Acacia to Bosque del Apache Unit, Implementation, Section 404 Permit, Updated Information, Elephant Butte Reservoir, Socorro County, NM, Due: October 19, 1992, Contact: Mark Sifuentes (505) 766-3577.

EIS No. 920371, Final Supplement, UMT, CA, Los Angeles Metro Rail Rapid Transit Project, Updated Information and Change in the Designation of the Locally Preferred Alternative to the Pico/San Vicente Alternative, Stations at Olympic/Crenshaw and Pico/San Vicente, Funding, Los Angeles County, CA, Due: October 19, 1992, Contact: A. Joseph Ossi (202) 366-0096.

EIS No. 920372, Final Supplement, UMT, DC, Metropolitan Washington Regional Rapid Rail Transit System, Updated Information, Green Line E Route Mid City Segment (Sections E-2c, E4), from 14th and V Streets, Northwest to Fort Totten Drive Northeast, Funding, District of Columbia, Due: October 19, 1992, Contact: A. Joseph Ossi (202) 366-0096.

Amended Notices

EIS No. 920215, Draft EIS, BLM, NV, Stateline Resource Area, Land and Resource Management Plan, Implementation, Clark and Nye Counties, NV, Due: December 31, 1992, Contact: Jerry C. Wickstrom (702) 647-5000. Published FR-06-19-92—Review period extended.

Dated: September 15, 1992.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 92-2266 Filed 9-17-92; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-4506-6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared August 31, 1992 through September 4, 1992 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1992 (57 FR 12499).

Draft EISs

ERP No. D-SCS-K39033-NV Rating EO2, Moapa Valley Unit, Irrigation Systems, Irrigation Water Management Delivery System Improvements, Colorado River Salinity Control Program, Funding and Possible Section 404 Permit, Clark and Lincoln Counties, NV.

Summary: EPA had environmental objections to the project as proposed because there is no clear plan to mitigate for adverse wetland impacts. Without a detailed wetlands mitigation plan and a strong commitment from SCS to mitigate losses of up to 258 acres of wetlands, EPA believed that the project could adversely affect Moapa Valley wetlands.

ERP No. DR-UMT-K54020-CA Rating LO, Tasman Corridor Mass Transit System Improvements, between Milpitas and Northern San Jose and Mountain View/Sunnyvale, Additional Information and Locally Preferred Alternative, Funding, Santa Clara County, CA.

Summary: EPA expressed a lack of objections with the proposed action, as modified.

ERP No. DS-COE-E30032-FL Rating EC2, Palm Beach County Beach Erosion Control Project, Protective Beach Construction along the Mid-Town Segment, Implementation, Palm Beach County, FL.

Summary: EPA had environmental concerns about how extensively the beach replenishment project would affect adjacent hard bottom communities. A monitoring plan should be implemented to identify and respond to any significant adverse, long-term environmental impacts.

ERP No. DS-TVA-A82062-00 Rating EC2, Vector Control Program, Integrated Pest Management and Recreational and Interpretive Facilities Construction, Land Acquisition, Funding and COE Section 10 and 404 Permits, Bedford, Roanoke and Franklin Counties, VA.

Summary: EPA had no objection to the proposed project.

ERP No. F-UMT-K54019-HI Honolulu Rapid Transit System Improvements, Waiawa through Downtown Honolulu to Waikiki and the University of Hawaii, Funding, Possible COE, Coast Guard Bridge and EPA Permits, Honolulu County, HI.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. FS-USA-B11010-00 Fort Huachuca Base Realignment and Cancellation of Transfer of Missions and Functions, Cochise County, AZ.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F1-BLM-L70001-WA Spokane District Resource Management Plan Amendment (RMP), Fluid Mineral Leasing, Approval, Yakima River Canyon and Upper Crab Creek Plan, Updated Information.

Summary: EPA is concerned about the use of insecticides in aquatic areas and the effects of highly toxic compounds on species and any human health effects. Additional information is requested in areas such as cumulative impacts.

Final EISs

ERP No. F-AFS-L65131-WA Leola Sullivan Timber Sale, Implementation, Colville National Forest, Sullivan Lake Ranger District, Pend Oreille County, WA.

Summary: Review of the Final EIS has been completed and the project found to be satisfactory. No formal comment letter was sent to the preparing agency.

ERP No. F-COE-E36170-MS Hickahala-Senatobia Creeks Watershed, Channel Modification Project and Demonstration Erosion Control, Implementation, Arkabutla Lake, Yazoo Basin, Tate County, MS.

Summary: EPA no longer had environmental objections to the proposal, on the basis of the Vicksburg District's mitigation plan and project design modification.

ERP No. F-NPS-D60004-VA Roanoke River/Blue Ridge Parkway Extension, Roanoke/Vinton City Limits to Smith Mountain Lake Management Areas, Several Counties, WA.

Summary: Review of the Final EIS has been completed and the project found to be satisfactory. No formal comment letter was sent to the preparing agency.

Dated: September 15, 1992.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 92-22670 Filed 9-17-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-961-DR]

Hawaii; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

EFFECTIVE DATE: September 12, 1992.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Hawaii (FEMA-961-DR), dated September 12, 1992, and related determinations.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 12, 1992, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Hawaii, resulting from Hurricane Iniki on September 11, 1992, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Hawaii.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs, except that for the first 10 days, you are authorized to provide funds for debris removal and emergency protective measures under section 403(a) at 90 percent of the total eligible costs, if warranted.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. A. Roy Kite of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Hawaii to have been affected adversely by this declared major disaster:

The islands of Oahu, Maui, Hawaii, Kauai, Niihau, Lanai, and Kahoolawe for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Wallace E. Stickney,

Director.

[FR Doc. 92-22637 Filed 9-17-92; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-956-DR]

Louisiana; Amendment to a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

EFFECTIVE DATE: August 30, 1992.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA-956-DR), dated August 26, 1992, and related determinations.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective August 30, 1992.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

[FR Doc. 92-22635 Filed 9-17-92; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-960-DR]

Texas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

EFFECTIVE DATE: September 9, 1992.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Texas (FEMA-960-DR), dated September 9, 1992, and related determinations.

FOR FURTHER INFORMATION CONTACT: Pauline Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 9, 1992, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Texas resulting from excessive rain and hail on May 1, 1992 through July 30, 1992, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Texas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Disaster Unemployment Assistance and administrative expenses in the designated areas.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Al Hahn of the Federal

Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Texas to have been affected adversely by this declared major disaster:

The counties of Bailey, Briscoe, Castro, Cochran, Crosby, Floyd, Hale, Hockley, Lamb, Lubbock, Parmer, and Swisher for Disaster Unemployment Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Wallace E. Stickney,

Director.

[FR Doc. 92-22636 Filed 9-17-92; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89-777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Seaspirit Cruise Line, Inc. and RSVP Travel Productions, Inc., 2800 University Avenue Southeast, Minneapolis, MN 55414-3293.

Dated: September 14, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 92-22611 Filed 9-17-92; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

BB&T Financial Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 9, 1992.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. BB&T Financial Corporation, Wilson, North Carolina; to acquire First Fincorp, Inc., Kinston, North Carolina, and thereby engage in operating a savings and loan association pursuant to § 225.25(b)(9); and operating a consumer loan company pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 14, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-22624 Filed 9-17-92; 8:45 am]

BILLING CODE 6210-01-F

Chemical Banking Corporation, et al.; Applications to Engage in Asset Management Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the applications have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposals can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 2, 1992.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Chemical Banking Corporation, New York, New York; to engage *de novo* in asset management activities through its indirect subsidiary, The CIT Group/Asset Management Inc., New York, New York. The Board has previously approved bank holding companies to engage in asset management activities. *See, e.g., Michigan National Corporation*, 78 Federal Reserve Bulletin 65 (1992); *NCNB Corporation*, 77 Federal Reserve Bulletin 124 (1991). Chemical Banking Corporation also seeks to provide asset management services with respect to loans and leases which may not necessarily have been originated by a bank or savings institution, or an affiliate of a bank or savings institution.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. The Dai-Ichi Kangyo Bank, Limited, Tokyo, Japan; to engage *de novo* in asset management activities through its indirect subsidiary, The CIT Group/Asset Management Inc., New York, New

York. The Board has previously approved bank holding companies to engage in asset management activities. *See, e.g., Michigan National Corporation*, 78 Federal Reserve Bulletin 65 (1992); *NCNB Corporation*, 77 Federal Reserve Bulletin 124 (1991). The Dai-Ichi Kangyo Bank, Limited, also seeks to provide asset management services with respect to loans and leases which may not necesarily have been originated by a bank or savings institution, or an affiliate of a bank or savings institution.

Board of Governors of the Federal Reserve System, September 14, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-22623 Filed 9-17-92; 8:45 am]

BILLING CODE 6210-01-F

FC Banc Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 9, 1992.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. FC Banc Corp., Bucyrus, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The Farmers Citizens Bank, Bucyrus, Ohio.

2. First Financial Bancorp, Hamilton, Ohio; to merge with Jennings Union Bankcorp., North Vernon, Indiana, and thereby indirectly acquire Union Bank & Trust Company, North Vernon, Indiana.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Bellwood Community Holding Co., Bellwood, Nebraska; to become a bank holding company by acquiring at least 80 percent of the voting shares of Bank of the Valley, Bellwood, Nebraska.

2. Commerce Bancshares, Inc., Kansas City, Missouri; to acquire Union Financial Corporation, Manhattan, Kansas, and thereby indirectly acquire Union National Bank and Trust Company, Manhattan, Kansas. Union Financial Corporation will merge with a wholly-owned subsidiary of Commerce Bancshares, CBI Central Kansas, Inc., Kansas City, Missouri, which will thereby become a bank holding company.

Board of Governors of the Federal Reserve System, September 14, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-22625 Filed 9-17-92; 8:45 am]

BILLING CODE 6210-01-F

North Cascades Bancshares, Inc.; Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 9, 1992.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. North Cascades Bancshares, Inc., Chelan, Washington; to engage *de novo* on a nationwide basis, through its subsidiary, North Cascades Financial Services, Inc., Chelan, Washington, in full service brokerage activities pursuant to § 225.25(b)(15)(ii) and investment advisory services pursuant to § 225.25(b)(4); and insurance agency activities in Chelan and Omak, Washington, pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 14, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-22626 Filed 9-17-92; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BPO-112-GNC]

Medicare Program; Criteria and Standards for Evaluating Intermediary and Carrier Performance During FY 1993

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: General notice with comment period.

SUMMARY: This notice describes the criteria and standards to be used for evaluating the performance of fiscal intermediaries and carriers in the administration of the Medicare program beginning October 1, 1992. The results of these evaluations are considered whenever HCFA enters into, renews, or terminates an intermediary agreement or carrier contract or takes other contract actions (e.g., assigning or

reassigning providers of services to an intermediary, designating regional or national intermediaries, etc.).

This notice is published in accordance with sections 1816(f) and 1842(b)(2) of the Social Security Act. We are publishing for public comment in the **Federal Register** those criteria and standards against which we evaluate intermediaries and carriers.

DATES: Effective Date: The criteria and standards are effective October 1, 1992. Comments: We will consider revising the criteria and standards based on public comments. Comments will be considered if we receive them at the appropriate address as provided below no later than 5 p.m. (EDT) on October 19, 1992.

ADDRESSES: Mail written comments to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: BPO-112-GNC, P.O. Box 26676, Baltimore, MD 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey, Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

In commenting, please refer to file code BPO-112-GNC. Written comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309-G of the Department's office at 200 Independence Avenue, SW., Washington, D.C. 20201, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 245-7890). Due to staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

FOR FURTHER INFORMATION CONTACT: Larry Pratt (301) 966-7403.

SUPPLEMENTARY INFORMATION:

A. Background

Under section 1816 of the Social Security Act (the Act), public or private organizations and agencies participate in the administration of Part A (Hospital Insurance) of the Medicare program under agreements with the Secretary of Health and Human Services. These agencies or organizations, known as fiscal intermediaries, determine whether medical services are covered under Medicare and determine correct payment amounts. The intermediaries then make payments to the health care providers on behalf of the beneficiaries.

Section 1816(f) of the Act requires us to develop criteria, standards, and procedures to evaluate an intermediary's performance of its functions under its agreement. We evaluate intermediary performance through the Contractor Performance Evaluation Program (CPEP).

Under section 1842 of the Act, we are authorized to enter into contracts with carriers to fulfill various functions in the administration of Part B (Supplementary Medical Insurance) of the Medicare program. Beneficiaries, physicians, and suppliers of services submit claims to these carriers. The carriers determine whether the services are covered under Medicare and the payable amount for the services or supplies and then make payment to the appropriate party. Under section 1842(b)(2) of the Act, we are required to develop criteria, standards, and procedures to evaluate a carrier's performance of its functions under its contract.

We are publishing the criteria and standards in the **Federal Register** in order to allow the public an opportunity to comment before implementation. In addition to the statutory requirement, our regulations at 42 CFR 421.120 and 421.122 provide for publication of a **Federal Register** notice to announce criteria and standards for intermediaries prior to implementation. The current criteria and standards were published in the **Federal Register** on September 20, 1991 (56 FR 47758).

To the extent possible, we make every effort to publish the criteria and standards prior to the beginning of the Federal fiscal year; i.e., October 1st. In general, the evaluation period which the criteria and standards measure is the Federal fiscal year.

If we do not publish a **Federal Register** notice before the new fiscal year begins, readers may presume that until and unless notified otherwise, the criteria and standards which were in effect for the previous fiscal year remain in effect.

In those instances where we are unable to meet our goal of publishing the subject **Federal Register** notice before the beginning of the fiscal year, we may publish the criteria and standards notice at any subsequent time during the year. If we choose to publish a notice in this manner, the evaluation period for any such criteria and standards which are the subject of the notice will be revised to be effective on the first day of the first month following publication. Hence, any revised criteria and standards will measure performance prospectively; that is, we will not apply new measurements to assess performance on a retroactive basis.

Also, it is not our intention to revise the criteria and standards which will be used during the evaluation period once this information has been published in a **Federal Register** notice. However, on occasion, either because of Administrative mandate or Congressional action, there may be a need for changes which have direct impact upon the criteria and standards previously published, or which require the addition of new criteria or standards, or that cause the deletion of previously published criteria and standards. Should such changes be necessitated, we will issue a **Federal Register** notice prior to implementation of the changes.

In all instances, necessary manual issuances will be published each year to ensure that the criteria and standards are implemented uniformly and accurately. Also, as in previous years, the **Federal Register** notice will be republished and the effective date revised if changes are warranted as a result of the public comments received on the criteria and standards.

B. Incentive Payments to Carriers

In accordance with section 1842(c)(1)(B) of the Act, this notice also describes the current methodology that will be used to award incentive payments to carriers that successfully increase the proportion of physicians in the Carrier's service area who are participating physicians, or the proportion of payments to participating physicians. We have requested a legislative change to end the incentive payments to carriers effective October 1, 1992. Currently, we issued carrier incentive payments by September 30 following each annual enrollment period. The amount of these payments will be included in line 10 of the carrier's Notice of Budget Approval, Form HCFA-1524. Section 1842(h) of the Act sets forth the Medicare participating physician program. "Participating" means accepting assignment on all Medicare claims. "Accepting assignment" means physicians accept Medicare's approved charge as full payment, with the beneficiary responsible for only the Medicare deductible and coinsurance amounts. The main goal of the program is to reduce the financial impact of medical costs upon beneficiaries by establishing incentives for physicians to accept assignment on all Medicare claims. The provisions give all physicians an opportunity annually to enroll or disenroll as a Medicare participating physician.

Section 1842(b)(3)(H) of the Act requires Medicare carriers to implement programs to recruit and retain physicians as participating physicians. These programs include educational and outreach activities and the use of professional relations personnel to handle billing and other problems relating to payment of claims of participating physicians. These programs are also designed to familiarize beneficiaries with the participating physician program and to assist the beneficiaries in locating participating physicians.

We intend to pay incentive bonuses to any carrier that achieved an increase of at least one-tenth of one percent in the participating physicians' rate or proportion of payments for participating physicians' services in the carrier's total service area. Carriers that achieve an increase in physician's participation or payments for participating physician services of less than 2 percentage points will be paid a partial incentive payment. Carriers that achieve an increase of at least 2 percentage points will be paid the full incentive payment. Carriers that achieve an increase of more than 2 percentage points will be paid a bonus for each additional 2 percentage point increase.

As required by section 1842(c) of the Act, the amount of the total incentive payable to carriers is one percent of the total payments to carriers for claims processing costs for the fiscal year. The total incentive pool is calculated by summing the total claims processing costs reported by each carrier in the fiscal year and multiplying the total by one percent.

For the purpose of determining each carrier's eligibility for an incentive payment, we make two comparisons. We compare the carrier's physician participation rate after the latest enrollment period with the physician participation rate after the prior enrollment date. We make a similar comparison of the proportion of covered charges for services by participating physicians during the quarter following the enrollment period with those of the quarter following the prior enrollment period. We intend to use whichever difference yields the higher percentage increase to determine eligibility for award of the incentive payment.

C. Criteria and Standards—General

The basic tenet of the Medicare program is to pay claims promptly and accurately and to foster good beneficiary and provider relations. Keeping this key concept in mind, we have developed a CPEP (one for intermediaries and one for carriers) that will measure contractor performance; improve contractor performance; promote contractor initiative to improve Medicare program quality, service, and efficiency; and serve as a basis of information for contract management activities (such as those described in the law). We have restructured CPEP into two parts, designed to meet these objectives. This restructuring effort considered comments from HCFA components as well as the Medicare contractor community and beneficiary and provider groups which have commented on past CPEP **Federal Register** notifications. Part I of CPEP, titled Program Requirements, follows the format of the FY 1992 CPEP and measures contractor performance against program requirements. Standards continue to be allotted a determined number of points out of a total of 100. Standards have been structured on a pass/fail basis. An intermediary or carrier will pass a standard if they meet the minimum requirements of the appropriate operational instructions. It is believed that this concept will continue to promote satisfactory performance in all areas measured by CPEP and, at the same time, provide contractors with flexibility to effectively manage and administer the Medicare program in areas not part of CPEP.

In the Program Requirements criteria, we have combined several standards where such an evaluation will yield a more efficient outcome and added a new standard, as required by section 1816(f)(2) of the Act, to measure target reimbursement rate adjustments. The Part A evaluation criteria are Bill Processing and Service, Payment Safeguards, and Administrative Management. The Part B evaluation criteria are Claims Processing, Payment Safeguards, Service, and Administrative Management. Within each evaluation criterion we have identified those performance standards, which when measured, will evidence how well each contractor is performing program requirements. Part II, titled Program Improvements, evaluates contractor efforts to improve performance; achieve program efficiencies; and develop and implement ideas for improving program quality, service and efficiency. Part II complements Part I which looks at meeting manual requirements. However, no numerical scoring will be undertaken in Part II. Thus, it encourages contractor ideas for improvement without the threat or risk of penalty. Prior to the start of the fiscal year (or early thereafter), HCFA will develop core ideas and measures for improving program performance. Contractors will have the option to present additional ideas for improving the program. Part II will also acknowledge contractor performance improvements in Part I of the FY 1993 CPEP as compared to the same measure for FY 1992. The results of HCFA developed ideas (i.e., "core ideas"), contractor developed successful ideas (i.e., successful in meeting the idea's objective), and contractor improvements in performance in FY 1993 (compared to FY 1992) will be considered in contract management activities along with the results from Part I of CPEP. Successful program improvement ideas will be shared within the contractor community to help improve the administration of the Medicare program. For both Part A and B, the evaluation criteria for Part II are Quality, Service and Efficiency.

We have also developed separate (i.e., separate and apart from the "traditional" CPEP) criteria and standards which measure only the activities of Regional Home Health Intermediaries (RHHIs) and Common Working File (CWF) Hosts.

Section 1816(e)(4) of the Act requires the Secretary to designate regional agencies or organizations, which are already Medicare intermediaries under section 1816, to perform bill processing functions with respect to freestanding home health agency (HHA) bills. The law requires that we limit the number of such regional intermediaries (i.e., RHHIs) to not more than ten; there are currently nine (see 42 CFR 421.117 and the **Federal Register** published on May 19, 1988 (53 FR 17936) for more details about the RHHIs).

In addition, section 1816(e)(4) of the Act requires the Secretary to develop criteria and standards in order to determine whether to designate an agency or organization to perform services with respect to hospital affiliated HHAs. We have developed criteria and standards for RHHIs in order to measure the distinct RHHI functions. These functions include the processing of freestanding HHA, hospital affiliated HHA, and Hospice bills. Through the evaluation of these criteria and standards we will determine whether the RHHI functions should be moved from one intermediary to another in order to ensure effective and efficient administration of the program benefit.

At this time, CWF Hosts are selected from existing Medicare contractors under the authority of section 1842 of the Act which allows the Secretary to enter into or amend carrier contracts. The CWF Hosts perform functions of making available to Medicare contractors (intermediaries and carriers) and their

providers within the CWF territory, or "sector," Medicare beneficiary entitlement and utilization data; and providing intermediaries and carriers with prepayment approval of Part A bills and Part B claims of all types. These functions are distinctly different than those of the traditional Medicare carrier in that the CWF Host does not adjudicate claims and determine the amount of payment. For this reason, it is necessary to evaluate CWF Host performance with a separate set of criteria and standards.

Action Based on Performance Evaluations

We may initiate administrative actions as a result of the evaluation of contractor performance based on these performance criteria and standards. Under sections 1816 and 1842 of the Act, we consider the results of the evaluation in our determinations on:

- Entering into, renewing, or terminating agreements or contracts with contractors; and
- Decisions concerning other contract actions for intermediaries and carriers (such as deletion of an automatic renewal clause). These decisions are made on a case-by-case basis and depend primarily on the nature and degree of performance. More specifically, they depend on:
  + Relative overall performance compared to other contractors;
  + Number of standards in which deficient performance occurs;
  + Extent of each deficiency;
  + Relative significance of the standards for which deficient performance occurs within the overall CPEP; and
  + Efforts to improve program quality, service, and efficiency.
- Decisions concerning the assignment or reassignment of providers and designation of regional or national intermediaries for classes of providers. We make individual contract action decisions after considering these factors in terms of their relative significance and impact on the effective and efficient administration of the Medicare program.

D. Scoring System

For both intermediaries and carriers under Part I, Program Requirements, the maximum score attainable is 100 points. Each of the CPEP's Program Requirement standards is assigned a given portion of the 100 points available based on the measured activity's relative importance to all other measured activities.

For CWF Hosts and RHHIs, the maximum score attainable is 30 points each. The CWF Host and RHHI criteria and standards will be scored separately from the traditional CPEP for intermediaries and carriers. Each of the CWF Host and RHHI CPEPs' performance standards is assigned a given portion of the 30 points available based on the measured activity's relative importance to all other measured activities.

A contractor's performance is evaluated against each applicable standard. If a contractor meets the level of performance required by operational instructions, it achieves all of the points allocated to that standard. Any rating below basic operational expectations constitutes a deficiency. In most instances, there are varying degrees of deficiency which allow contractors to receive a portion of the total points available. The contractor may be required to develop and implement a corrective action plan when performance problems are identified. The contractor will be monitored to assure effective and efficient compliance with the corrective action plan and improved performance where criteria and/or standards are not met.

Part II, Program Improvement, will not be scored. However, like Part I, the results will, in general, be used for contract management activities. Also like Part I, the results will, in general, be published in the contractor's annual performance report, the Annual Contractor Evaluation Report, which is available to the public.

E. Criteria and Standards for Intermediaries

Part I Program Requirements

As stated previously, we will use 3 criteria to evaluate the overall performance of an intermediary in Part I. They are: (1) Bill Processing and Service; (2) Payment Safeguards; and (3) Administrative Management.

The 3 criteria contain a total of 21 standards. There are 7 for Bill Processing and Service, 10 for Payment Safeguards, and 4 for Administrative Management.

1. Bill Processing and Service Criterion (Total Points = 28)

Bills are processed timely and accurately and providers and beneficiaries are served in accordance with program laws, regulations, and general instructions.

Standard 1 95% of clean non-Periodic Interim Payment (PIP) bills paid within mandated timeframes. (4 points)

Standard 2 95% of all bills processed within 60 days. (3 points)

Standard 3 Intermediary system processing accuracy rate of 95%. (4 points)

Standard 4 95% of reconsideration are accurately processed and 75% are processed within 60 days and 90% processed within 90 days. (5 points)

Standard 5 95% of inquiries are accurately and timely answered. (4 points)

Written inquiries are to be answered in 30 days and telephone calls are to be answered in 120 seconds.

Standard 6 95% of appeal reversals reflect accurate intermediary determinations. (2 points)

Standard 7 Achieve Electronic Media Claims (EMC) goals. (6 points)

Contractors are advised of their specific EMC goals through program instructions prior to the evaluation period. In determining the contractor-specific goal, HCFA considers such factors as the contractor's provider mix and historical performance.

2. Payment Safeguards Criterion (Total Points = 50)

The Medicare program is safeguarded against inappropriate program expenditures.

Standard 1 97.5% of Medical Review (MR) coverage decisions, including decisions on SNF demand bills, are accurate. (6 points)

Standard 2 Focused MR program is effective. (6 points)

Detailed requirements for measuring MR effectiveness under this standard are contained in Part II of the Medicare Intermediary Manual (MIM), Section 2901.2.

Standard 3 Administer the Medicare Secondary Payer (MSP) Program accurately. (6 points)

Detailed requirements for measuring the MSP Program accuracy under this standard are contained in Part II of the MIM, Section 2901.2.

Standard 4 Identify and recover mistaken Medicare payments. (6 points)

Detailed requirements for identifying and recovering mistaken Medicare payments under this standard are contained in Part II of the MIM, Section 2901.2.

Standard 5 Interim provider payments approximate actual reimbursable costs. (4 points)

Detailed requirements for measuring the accuracy of interim provider payments under this standard are contained in Part II of the MIM, section 2901.2.

Standard 6 Process TEFRA target rate adjustments, exceptions, and exemptions within mandated timeframes. (2 points)

TEFRA target rate adjustments, exceptions, and exemptions must be processed within 75 days if the application is complete. If the application is incomplete, the intermediary has 60 days to provide instructions for accurate completion.

Standard 7 Cost reports/statements are 93% accurate. (6 points)

Standard 8 90% of provider cost reports are timely settled. (4 points)

Standard 9 Provider overpayments collected within 24 days. (4 points)

Standard 10 Fraud and abuse cases are detected and properly developed. (6 points)

Detailed requirements for detection and development of fraud and abuse cases are contained in Part II of the MIM, section 3950ff.

3. Administrative Management Criterion (Total Points = 22)

Medicare program instructions and workloads are effectively managed within negotiated budget.

Standard 1 Priority I critical tasks are accurately and timely implemented. (5 points)

Accuracy and timeliness requirements under this standard are contained in Part II of the MIM, Section 2901.3.

Standard 2 Regional Office requests and instructions are accurately and timely implemented. (5 points)

Accuracy and timeliness requirements under this standard are contained in Part II of the MIM, section 2901.3.

Standard 3 Budget and Performance Requirements are met. (6 points)

Budget and Performance Requirements, sent to each contractor prior to the fiscal year, set forth the comprehensive level of work to be completed by contractors.

Standard 4 Total actual expenditures are at or below budget authority and administrative funds drawn are in line with monthly expenditures. (6 points)

Part II Program Improvements

We will use 3 criterias to evaluate each intermediary's efforts to achieve the goals of the Program Improvements portion of CPEP. They are (1) Quality; (2) Service; and (3) Efficiency. There are no specific standards under the Part II criteria. Specific HCFA core and intermediary developed ideas will be looked at in each criterion to determine an intermediary's success in improving performance and achieving program efficiencies. In addition, performance improvements in FY 1993 as compared to FY 1992 will be recognized.

1. Quality Criterion

We will review specific plans developed both by HCFA and the intermediary to improve quality and determine the degree of success achieved. We will also determine the degree of improvement in Part I of the FY 1993 CPEP as compared to FY 1992 CPEP performance for the same measures.

2. Service Criterion

We will review the intermediary's efforts to enhance customer satisfaction. Public relations activities, educational programs, publications, customer satisfaction surveys, along with all other intermediary initiatives will be reviewed to ascertain the success of each effort.

3. Efficiency Criterion

We will review the intermediary's efforts to reduce cost, increase EMC beyond established goals, operate in a shared processing environment, and implement efficiency plans.

F. Criteria and Standards for Carriers

Part I Program Requirements

We will use 4 criteria to evaluate overall carrier performance in Part I. They are: (1) Claims Processing; (2) Payment Safeguards; (3) Service; and (4) Administrative Management. The 4 criteria contain a total of 24 standards. There are 9 for Claims Processing, 7 for Payment Safeguards, 4 for Service, and 4 for Administrative Management.

1. Claims Processing Criterion (Total Points=36)

Claims are processed timely and accurately and providers and beneficiaries are served in accordance with program laws, regulations, and general instructions.

Standard 1 95% of clean participation physician claims processed within mandated timeframes. (4 points)

Standard 2 95% of other clean claims processed within mandated timeframes. (3 points)

Standard 3 95% of all claims processed within 60 days. (3 points)

Standard 4 Claims processed with an accuracy of 98.5%. (6 points)

Standard 5 97.5% of HCFA Common Procedure Coding System codes and related pricing are properly installed. (4 points)

Standard 6 Properly calculate and install all fee schedules and reasonable charge updates. (5 points)

Standard 7 95% of reviews are accurate and clear and completed within 45 days. (3 points)

Standard 8 90% of carrier hearings are accurate and completed within 120 days. (2 points)

Standard 9 Achieve Electronic Media Claims (EMC) goals. (6 points)

Contractors are advised of their specific EMC goals through program instructions prior to the evaluation period. In determining the contractor-specific goal, HCFA considers such factors as the contractor's claim mix and historical performance.

2. Payment Safeguards Criterion (Total Points=29)

The Medicare program is safeguarded against inappropriate program expenditures.

Standard 1 97.5% of MR coverage decisions are accurate. (4 points)

Standard 2 Focused MR is effective. (4 points)

Detailed requirements for measuring MR effectiveness under this standard are contained in Part II of the Medicare Carriers Manual (MCM), Section 5261.2.

Standard 3 Postpayment MR program is effective. (4 points)

Detailed requirements for measuring MR effectiveness under this standard are contained in Part II of the MCM, Section 5261.2.

Standard 4 Administer the Medicare Secondary Payer (MSP) Program accurately. (4 points)

Detailed requirements for measuring MSP Program accuracy under this standard are contained in Part II of the MCM, section 5261.2.

Standard 5 Identify and recover mistaken Medicare payments. (4 points)

Detailed requirements for identifying and recovering mistaken Medicare payments under this standard are contained in Part II of the MCM, section 5261.2.

Standard 6 Fraud and abuse cases are detected and properly developed. (6 points)

Detailed requirements for detection and development of fraud and abuse cases are contained in Part II of the MCM, section 14000ff.

Standard 7 90% of overpayment cases are properly handled. (3 points)

3. Service Criterion (Total Points = 13)

Beneficiaries and providers are treated in accordance with all applicable laws, regulations, and general instructions.

Standard 1 97.5% of telephone inquiries are responded to accurately and timely. (4 points)

Telephone calls are to be answered within 120 seconds and callers are not to get a busy signal more than 20% of the time.

Standard 2 95% of correspondence is accurate and clear and answered within 30 days. (4 points)

Standard 3 Requirements of the participating physician program are met. (2 points)

Detailed requirements for measuring the participating physician program under this standard are contained in Part II of the MCM, section 5261.3.

Standard 4 98% of Explanations of Medicare Benefits (EOMBs) are properly generated. (3 points)

4. Administrative Management Criterion (Total Points = 22)

Medicare program instructions and workloads are effectively managed within negotiated budget.

Standard 1 Priority I critical tasks are accurately and timely implemented. (5 points)

Accuracy and timeliness requirements under this standard are contained in Part II of the MCM, section 5261.4.

Standard 2 Regional Office requests and instructions are accurately and timely implemented. (5 points)

Accuracy and timeliness requirements under this standard are contained in Part II of the MCM, section 5261.4.

Standard 3 Budget Performance Requirements are met. (6 points)

Budget Performance Requirements, sent to each contractor prior to the fiscal year, set forth the comprehensive level of work to be completed by contractors.

Standard 4 Total actual expenditures at or below budget authority and administrative funds drawn are in line with monthly expenditures. (6 points)

Part II Program Improvements

We will use 3 criteria to evaluate each carrier's efforts to achieve the goals of the Program Improvements portion of CPEP. They are (1) Quality; (2) Service; and (3) Efficiency. There are no specific standards under the Part II criteria.

Specific HCFA core and carrier developed ideas will be looked at in each criterion to determine a carrier's success in improving performance and achieving program efficiencies.

1. Quality Criterion

We will review specific plans developed both by HCFA and the carrier to improve quality and determine the degree of success achieved. We will also determine the degree of improvement in Part I of the FY 1993 CPEP as compared to FY 1992 CPEP performance for the same measures.

2. Service Criterion

We will review the carrier's efforts to enhance customer satisfaction. Public relations activities, educational programs, publications, customer satisfaction surveys, along with all other carrier initiatives will be reviewed to ascertain the success of each effort.

3. Efficiency Criterion

We will review the carrier's efforts to reduce cost, increase EMC beyond established goals, operate in a shared processing environment, and implement efficiency plans.

G. Criterion and Standards for Common Working File (CWF) Hosts

CWF Host Criterion (Total Points = 30)

The CWF Host must process transactions for satellites (i.e., intermediaries and carriers) within and out of its sector and maintain complete beneficiary entitlement and claims history records; provide services to its satellite sites, including operational and maintenance support; and take all necessary measures to ensure compliance with HCFA directives. We will use this criterion containing 6 standards to evaluate CWF Host performance.

Standard 1 Provide on-line access to CWF records for at least 98% of the required available hours. (6 points)

Available hours are specified in section 3.4 of the currently applicable Proposal Submission Requirements (PSR).

Standard 2 Meet the twenty-four hour turnaround requirement for all satellites for at least 98% of files. (6 points)

Standard 3 Notify satellites within 15 minutes of discovery of major downtime and report occurrences to HCFA within two hours of discovery. (3 points)

Standard 4 Accurately install, test and implement CWF software by due date. (6 points)

Accuracy requirements and due dates are published in each CWF software release.

Standard 5 Submit accurate Schedule II and IIA reports by the 30th day following the period covered by the reports. (3 points)

Standard 6 Maintain and update beneficiary entitlement and claims history records with an accuracy rate of 98.5% (6 points)

CWF hosts transmit to HCFA beneficiary entitlement and claims history data. The data are evaluated and validated by the CWF Data Quality Assurance Program (QAP). Output reports from the CWF Data QAP will be used to measure the host's performance.

H. Criterion and Standards for Regional Home Health Intermediaries (RHHIs)

RHHI Criterion (Total Points = 30)

We will use this criterion containing 8 standards to review a RHHI's performance with respect to handling the HHA/Hospice workload. This includes processing HHA/Hospice bills timely and accurately, properly paying and settling HHA cost reports, and processing reconsideration from beneficiaries, HHAs, and Hospices timely and accurately.

Standard 1 95% of clean non-PIP HHA/Hospice bills paid within mandated timeframes. (4 points)

Standard 2 95% of all HHA/Hospice bills processed within 60 days. (3 points)

Standard 3 HHA cost reports are 93% accurate. (5 points)

Standard 4 90% of freestanding HHA cost reports timely settled. (4 points)

Standard 5 Interim payments for freestanding HHAs approximate actual reimbursement. (4 points)

Detailed requirements for measuring the accuracy of interim provider payments under this standard are contained in the Part II of MIM, Section 2903.1.

Standard 6 97.5% of HHA/Hospice MR coverage decisions are accurate. (3 points)

Standard 7 95% of HHA/Hospice reconsideration are accurately processed, and 75% of HHA/Hospice reconsideration are processed within 60 days and 90% within 90 days. (3 points)

Standard 8 Achieve Electronic Media Claims (EMC) goals. (4 points)

Contractors are advised of their specific EMC goals through program instructions prior to the evaluation period. In determining the contractor-specific goal, HCFA considers such factors as the contractor's provider mix and historical performance.

I. Contractor Replacement Under Section 2326(a) of the Deficit Reduction Act of 1984 (DEFRA)

The Omnibus Budget Reconciliation Act of 1989 (OBRA 89), Public Law 101-239, extended through FY 1993 the authority of section 2326(a) of DEFRA, Public Law 99-369, whereby each year up to two intermediaries and up to two carriers, which over a period of time have been in the lowest 20th percentile of contractors, may be replaced. OBRA 89 also redefined "over a period of time" to be "over a 2-year period of time." Consequently, the methodology for separately identifying intermediaries and carriers for potential replacement under section 2326(a) of DEFRA, as amended, will be as follows:

• Performance, as measured by the Secretary's criteria and standards, will be considered for the most recent 2 evaluation periods.

• Each evaluation period's overall performance will be captured in the form of an unweighted performance rating—points earned as a percentage of points available, as determined by the performance criteria and standards. For example, FY 1993 performance ratings will be calculated based upon the CPEP's Part I criteria and standards used for the October 1992—September 1993 review period.

• Each period's performance rating will be weighted to provide extra emphasis for the most recent performance. The weights, to be multiplied by each period's performance rating, are:

	Weight
Most recent period	3
Prior period	2

• For each contractor, the weighted performance rating for each of the two periods will be summed.

• The contractors will be ranked from highest points to lowest points.

• Careful study of the bottom 20th percentile of contractors will be undertaken to fully assess considerations such as performance that is improving/deteriorating, factors beyond the contractor's control, and other factors pertinent to a particular territory.

The methodology will be applied separately to intermediaries and carriers.

J. Response to Public Comments

Because of the large number of items of correspondence we normally receive on a proposed notice, we are unable to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "DATES" section of this preamble and, if we proceed with a revised notice, we will respond to the comments in the preamble of that notice.

K. Regulatory Impact Statement

This notice merely announces contracting criteria through a medium of general circulation. This notice is not a proposed rule and does not alter any regulation or policy. Therefore, we have determined, and the Secretary certifies, that no analyses are required under Executive Order 12291, the Regulatory Flexibility Act, or section 1102(b) of the Act (concerning impact on small rural hospitals).

Authority: (Secs. 1102, 1816, 1842, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395h, 1395u, and 1395hh)).

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare Hospital Insurance and Program No. 13.774, Medicare Supplementary Medical Insurance.)

Dated: June 18, 1992.

William Toby, Jr.,

Acting Deputy Administrator, Health Care Financing Administration.

[FR Doc. 92-22581 Filed 9-17-92; 8:45 am]

BILLING CODE 4120-01-M

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Meeting of the Deafness and Other Communication Disorders Programs Advisory Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Deafness and Other Communication Disorders Programs Advisory Committee on October 9, 1992. The meeting will take place from 8:30 a.m. to 5 p.m. in Conference Room 8, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting, which will be open to the public, consists of a report from the Director, NIDCD, and discussion of the Extramural Research and Training Support programs. Attendance by the public will be limited to space available.

Further information concerning the Committee meeting may be obtained from Dr. Ralph F. Naunton, Executive Secretary, NDCD Programs Advisory Committee, National Institute on Deafness and Other Communication Disorders, Executive Plaza South, room 400B, National Institutes of Health, Bethesda, Maryland 20892, 301-496-1804. A summary of the meeting and roster of the members may also be obtained from his office.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Other Communicative Disorders)

Dated: September 14, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-22658 Filed 9-17-92; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on September 4, 1992.

(Call PHS Reports Clearance Officer on 202-690-7100 for copies of package).

1. National Surveillance of Dialysis-Associated Diseases—0920-0033—this annual survey of hemodialysis facilities is conducted to determine the incidence and trends in hemodialysis-associated diseases so that appropriate control measures can be devised. *Respondents*: Businesses or other for-profit; *Number of Respondents*: 2,250; *Number of Responses per Respondent*: 1; *Average Burden per Response*: .5835 hours; *Estimated Annual Burden*: 1,313 hours.

2. National Sexually Transmitted Disease Morbidity Surveillance System—0920-0011—The national sexually transmitted disease (STD) morbidity surveillance system monitors STD disease burden and trends. Data from the system are used to support and evaluate the progress of STD control efforts; to assist State and local STD program managers in standardizing data collection procedures; and to provide baseline data for the development of new intervention strategies. *Respondents*: State or local governments; *Number of Respondents*: 60; *Number of Responses per Respondent*: 22; *Average Burden per Response*: .945 hours; *Estimated Annual Burden*: 1,248 hours.

3. Pulmonary Function Testing Course—0920-0138—The National Institute of Occupational Safety and Health (NIOSH) maintains a pulmonary function testing course approval program for certifying courses for training technicians in pulmonary function testing. Course sponsors must apply to NIOSH for course approval. *Respondents*: State or local governments; Businesses or other for-profit; *Number of Respondents*: 78; *Number of Responses Per Respondent*: 1; *Average Burden per Response*: .5306 hours; *Estimated Annual Burden*: 52 hours.

4. Surveillance Core Questionnaire and Supplemental Modules—New—The Agency for Toxic substances and Disease Registry will develop, implement, and monitor a health surveillance program on hazardous waste workers, private citizens living near a hazardous waste site, and private citizens being permanently relocated from a hazardous waste site in order to investigate and determine if these sets

of defined populations are experiencing an elevated occurrence of morbidity and/or mortality. *Respondents*: Individuals or households; Businesses or other for-profit.

Title	No. of respondents	No. of responses per respondent	Average burden per response
Individuals	5,000	1	.94 hrs.
Medical Providers	1,000	1	.25 hrs.

Estimated Annual Burden: 4,938 hours.

Desk Officer: Shannah Koss.

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated above at the following address: Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: September 14, 1992.

Phyllis M. Zucker,

Acting Director, Office of Health Planning and Evaluation.

[FR Doc. 92-22628 filed 9-17-92; 8:45 am]

BILLING CODE 4160-17-M

Indian Health Service; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HG (Indian Health Service) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services, Public Health Service (PHS), Chapter HG, Indian Health Service (IHS), 52 FR 47053-67, December 11, 1987, as most recently amended at 57 FR 34300-34301, August 4, 1992, is amended to reflect the following changes in the organization and functions of the IHS: (1) The establishment of an organizational substructure for the Office of Human Resources; (2) the revision of the organizational substructure for the Office of Administration and Management; and (3) the revision of the organizational substructure for the Office of Health Programs to more accurately reflect current activities.

Indian Health Service

Under Chapter HG, Section HG-20, Functions, after the statement for the Office of Human Resources (HGAB), insert the following:

Planning and Development Staff (HGAB-2)

(1) Develops and maintains strategic and long-range human resources master plans to ensure a knowledgeable, skilled, and capable work force to meet the current and future IHS management, program delivery, and administrative support needs; (2) assesses senior executives and managers training and development requirements and advises on opportunities; (3) develops and maintains standards and methodologies for the review and evaluation of IHS human resource recruitment, training, development and retention activities; (4) prepares reports and studies to agency management and others on the status, activities, and plans in human resources recruitment, management, and retention; and (5) conducts special projects on a variety of human resources requirements, utilization, and related matters.

Division of Personnel Management (HGAB2)

(1) Provides personnel management advice and assistance on matters affecting the IHS as a whole or on matters arising from the field requiring Headquarters action; (2) develops personnel management policies, programs, and reports; (3) within the Headquarters servicing area, provides the full range of personnel management and personnel administrative services including manpower planning and utilization, staffing, recruitment, compensation and classification, training, career development and upward mobility, and labor and employee relations; (4) provides advice, consultation, and assistance to IHS management and tribal officials on personnel policy issues associated with the implementation of Public Law (Pub. L.) 93-638; (5) coordinates commissioned officer orders, billets, efficiency reports and promotions; (6) provides liaison for commissioned corps activities IHS-wide with Division of Commissioned Personnel, Office of the Assistant Secretary for Health; (7) develops and/or provides training and career development programs, and manages nominations for executive level training programs IHS-wide; (8) assures implementation of the Indian Preference policy in all personnel practices; and (9) represents IHS in personnel management matters within and outside the Department of Health and Human Services.

Division of Data and Management Analysis (HGAB3)

(1) Serves as the IHS focal point for human resource data policy analysis, coordination and development of work force data collection and analytical activities, and related data and information systems management; (2) provides policy guidance, technical support, and advice to the Office of the Associate Director in the conduct of a comprehensive work force analytical program; (3) retrieves, establishes, and manages information and data on the IHS work force; (4) conducts work force data analyses, including trends and projections, identifying work force needs by major personnel systems, categories, and disciplines; (5) prepares technical reviews and data policy impact analysis of human resources studies, reports and activities performed by other IHS components; (6) monitors the allocation, expenditure, and utilization of IHS resources for staffing, training, development, and retention; and (7) provides technical and expert assistance to other IHS components to modify, refine, update, and develop forecasting models in the preparation of forecasts and reports on management, program support, and health care professions.

Division of Health Professions Recruitment and Training (HGAB4)

(1) Develops the IHS program to recruit, select, assign, and retain health care professionals in accordance with policies and guidance provided by the Division of Personnel Management; (2) assesses IHS professional staffing needs; (3) provides research and analysis functions for Chief Medical Officers, Clinical Directors, and senior clinicians; (4) manages continuing medical and scholarship education programs; and (5) coordinates activities and provides support for IHS clinical programs.

Under Chapter HG, Section HG-20, Functions, after the statement for, Division of Resources Management (HGA23), delete the statement for the

Division of Personnel Management (HGA24) in its entirety.

Under Chapter HG, Section HG-20, Functions, after the statement for, Division of Health Care Administration and Contract Health Services (HGA53), delete the statement for the Division of Health Professions Recruitment and Training (HGA54) in its entirety.

Under Section HG.40, Delegations of Authority insert: All delegations and redelegations of authority made to IHS officials that were in effect immediately prior to this reorganization and that are consistent with the reorganization effective July 24, 1992, shall continue in effect pending further redelegation.

September 11, 1992.

Everett R. Rhoades,

Assistant Surgeon General Director.

[FR Doc. 92-22822 Filed 9-17-92; 8:45 am]

BILLING CODE 4160-16-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-92-1917; FR-2934-N-96]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free title V information line at 1-800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88-2503-OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll-free information line at 1-800-927-7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Army: Robert Conte, Dept. of Army, Military Facilities, DAEN-ZCI-P; rm. 1E671, Pentagon, Washington, DC 20310-2600; (703) 693-4583; Dept. of Agriculture: Marsha Pruitt, Realty Officer, USDA, South Bldg. rm. 1566, 14th and Independence Ave. SW., Washington, DC 20250; (202) 447-3338; Dept. of Transportation: Ronald D. Keefer, Director, Administrative Services & Property Management, DOT, 400 Seventh St. SW., room 10319, Washington, DC 20590; (202) 366-4246; Dept. of Interior: Lola D. Knight, Property Management Specialist, Dept. of Interior, 1849 C St. NW., Mailstop 5512-MIB, Washington, DC 20240; (202) 208-4080; (These are not toll-free numbers).

Dated: September 11, 1992.

Randall H. Erben,

Acting Assistant Secretary for Community Planning and Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 09/18/92

Suitable/Available Properties

Buildings (by State)

Arkansas

Bldg. 294, M. Willis Residence
201 Avenue Street
Hot Springs Co: Garland AR 71901-
Landholding Agency: Interior
Property Number: 619230001
Status: Unutilized
Comment: 936 sq. ft., one story metal frame, most recent use—residence, off-site use only.

California

Yunker House (07-108)
Redwood National Park
Hiouchi Co: Del Norte CA 95531-
Landholding Agency: Interior
Property Number: 619140004
Status: Unutilized
Comment: 900 sq. ft., 1 story frame residence, off-site use only.

Idaho

Bldg. 705, Ditchrider House

Boise Project
Notus Co: Cayon ID 83656–
Location: T5N, R3W, Sec 2, SE¼, SW¼, SW¼
Landholding Agency: Interior
Property Number: 619120010
Status: Unutilized
Comment: 586 sq. ft., 1 story residence, needs major rehab, off-site use only.

Bldg. 508–Warehouse
Black Canyon Dam
Emmett Co: Gem ID 83611–
Landholding Agency: Interior
Property Number: 619120011
Status: Unutilized
Comment: 4625 sq. ft., needs major rehab, most recent use—storage, off-site use only.

Bldg. 510–Carpenter Shop
Black Canyon Dam
Emmett Co: Gem ID 83611–
Landholding Agency: Interior
Property Number: 619120012
Status: Unutilized
Comment: 4625 sq. ft., needs major rehab, most recent use—storage, off-site use only.

Kentucky

Bldg. 0238, Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219230306
Status: Underutilized
Comment: 3032 sq ft., 1-story, needs rehab, most recent use—maintenance shop, off-site use only

Bldg. 0655, Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219230307
Status: Underutilized
Comment: 1500 sq. ft., 1-story, needs rehab, most recent use—storehouse, off-site use only

Bldg. 1063, Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219230308
Status: Underutilized
Comment: 1600 sq. ft., 1-story, needs rehab, most recent use—instruction bldg., off-site use only

Bldg. 1373, Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219230309
Status: Underutilized
Comment: 2034 sq. ft., 1-story, needs rehab, most recent use—admin, off-site use only

Bldg. 2415, Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219230310
Status: Underutilized
Comment: 7525 sq. ft., 2-story, needs rehab, most recent use—admin, off-site use only

Bldg. 2417, Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219230311
Status: Underutilized
Comment: 7540 sq. ft., 2-story, needs rehab, most recent use—admin, off-site use only

Bldg. 2707, Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219230312
Status: Underutilized
Comment: 4598 sq. ft., 2-story, needs rehab, most recent use—admin, off-site use only

Bldg. 2708, Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219230313
Status: Underutilized
Comment: 3560 sq. ft., 2-story, needs rehab, most recent use—offices, off-site use only

Bldg. 2711, Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219230314
Status: Underutilized
Comment: 1275 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only

Bldg. 7001, Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219230315
Status: Underutilized
Comment: 962 sq. ft., 1-story, needs rehab, most recent use—admin., off-site use only

Bldg. 7002, Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219230316
Status: Undecutilized
Comment: 3085 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only

Missouri

Bldg. T142
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219230222
Status: Underutilized
Comment: 733 sq. ft., 1-story, presence of asbestos, most recent use—snack bar, needs rehab, off-site use only

Bldg. T1594
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219230223
Status: Unutilized
Comment: 3762 sq. ft., 1-story, presence of asbestos, most recent use—general purpose facility, off-site use only

Bldg. T1595
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219230224
Status: Underutilized
Comment: 3536 sq. ft., 1-story, presence of asbestos, most recent use—support facility, off-site use only

Bldg. T1654
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219230225
Status: Underutilized
Comment: 820 sq. ft., 1-story, presence of asbestos, most recent use—general purpose facility, off-site use only

Bldg. T1801
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219230226
Status: Underutilized
Comment: 1600 sq. ft., 1-story, presence of asbestos, most recent use—general purpose facility, off-site use only

Bldg. T1911
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219230227
Status: Underutilized
Comment: 1600 sq. ft., 1-story, presence of asbestos, most recent use—support facility, off-site use only

Bldg. T2383
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219230228
Status: Underutilized
Comment: 9287 sq. ft., 1-story, presence of asbestos, most recent use—general purpose facility, off-site use only

Bldg. T3051
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473—5000
Landholding Agency: Army
Property Number: 219230229
Status: Underutilized
Comment: 1475 sq. ft., 1-story, presence of asbestos, most recent use—support bldg., off-site use only

Bldg. T3052
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219230230
Status: Underutilized
Comment: 2850 sq. ft., 1-story, presence of asbestos, most recent use—support bldg., off-site use only

Bldg. T2353
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219230231
Status: Underutilized
Comment: 4720 sq. ft., 2-story, presence of asbestos, most recent use—clinic, off-site use only

Bldg. T2177
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219230232
Status: Underutilized
Comment: 3663 sq. ft., 1-story, presence of asbestos, most recent use—gymnasium, off-site use only

Bldg. T2137
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219230233
Status: Underutilized
Comment: 3783 sq. ft., 1-story, presence of asbestos, most recent use—exchange branch, off-site use only

Bldg. T1378
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219230234
Status: Underutilized

Comment: 4720 sq. ft., 2-story, presence of asbestos, most recent use—personnel bldg., off-site use only

Bldg. T414
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219230235
Status: Underutilized
Comment: 4720 sq. ft., 2-story, presence of asbestos, most recent use—Hqts. bldg., off-site use only

Bldg. T1307
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219230236
Status: Underutilized
Comment: 2284 sq. ft., 1-story, presence of asbestos, most recent use—Hqts. bldg., off-site use only

Bldg. T1376
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219230237
Status: Underutilized
Comment: 1296 sq. ft., 1-story, presence of asbestos, most recent use—Hqts. bldg., off-site use only

Bldg. T1327
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219230238
Status: Underutilized
Comment: 1296 sq. ft., 1-story, presence of asbestos, most recent use—Hqts. bldg., off-site use only

Bldg. T1352
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219230239
Status: Underutilized
Comment: 1144 sq. ft., 1-story, presence of asbestos, most recent use—Hqts. bldg., off-site use only

Bldg. T1652
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219230240
Status: Underutilized
Comment: 4588 sq. ft., 1-story, presence of asbestos, most recent use—Hqts. bldg., off-site use only

Bldg. T1683
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219230241
Status: Underutilized
Comment: 1296 sq. ft., 1-story, presence of asbestos, most recent use—Hqts. bldg., off-site use only

Bldg. T2356
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219230242
Status: Underutilized
Comment: 1296 sq. ft., 1-story, presence of asbestos, most recent use—Hqts. bldg., off-site use only

Bldg. T1330
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219230243
Status: Underutilized
Comment: 4720 sq. ft., 2-story, presence of asbestos, most recent use—instruction bldg., off-site use only

Bldgs. T1479, T1480
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219230244
Status: Underutilized
Comment: 1144 sq. ft., 1-story, presence of asbestos, most recent use—instruction bldg., off-site use only

Bldgs. T5132, T5133, T5134
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219230245
Status: Underutilized
Comment: 360 sq. ft., 1-story, presence of asbestos, most recent use—instruction bldg., off-site use only

Bldgs. T419, T2358
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219230246
Status: Underutilized
Comment: approximately 2300 sq. ft., 1-story, presence of asbestos, most recent use—admin., off-site use only

Bldgs. T2102, T2103
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219230247
Status: Underutilized
Comment: 4720 sq. ft., 2-story, presence of asbestos, most recent use—admin., off-site use only

Bldg. T2333
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219230248
Status: Underutilized
Comment: 14362 sq. ft., 2-story, presence of asbestos, most recent use—admin., off-site use only

Bldg. T457
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219230249
Status: Underutilized
Comment: 6136 sq. ft., 2-story, presence of asbestos, most recent use—education facility, off-site use only

Bldgs. T458, T462
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219230250
Status: Underutilized
Comment: 5310 sq. ft., 2-story, presence of asbestos, most recent use—education facility, off-site use only

Bldgs. T1325, T1326, T1331
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219230251
Status: Underutilized
Comment: 4720 sq. ft., 2-story, presence of asbestos, most recent use—barracks, off-site use only

Bldgs. T1346, T1355, T1356, T1360, T1361, T1379
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219230252
Status: Underutilized
Comment: 4720 sq. ft. each, 2-story, presence of asbestos, most recent use—barracks, off-site use only

Bldg. T1487
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219230253
Status: Underutilized
Comment: 2366 sq. ft., 2-story, presence of asbestos, most recent use—barracks, off-site use only

Bldg. T1493
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219230254
Status: Underutilized
Comment: 4720 sq. ft., 2-story, presence of asbestos, most recent use—barracks, off-site use only

Bldg. T3088
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219230255
Status: Underutilized
Comment: 5310 sq. ft., 2-story, presence of asbestos, most recent use—barracks, off-site use only

Bldg. T1328
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219230256
Status: Underutilized
Comment: 2360 sq. ft., 1-story, presence of asbestos, most recent use—mess, off-site use only

Bldgs. T1339, T1373
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219230257
Status: Underutilized
Comment: 2360 sq. ft., 1-story, presence of asbestos, most recent use—dining facility, off-site use only

Bldg. T2160
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219230258
Status: Underutilized
Comment: 2892 sq. ft., 1-story, presence of asbestos, most recent use—mess, off-site use only

Bldgs. T2355, T2371
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000

Landholding Agency: Army
Property Number: 219230259
Status: Underutilized
Comment: 2360 sq. ft., 1-story, presence of asbestos, most recent use—mess, off-site use only

Bldg. T599
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219230260
Status: Underutilized
Comment: 18270 sq. ft., 1-story, presence of asbestos, most recent use—storehouse, off-site use only

Bldg. T1311
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219230261
Status: Underutilized
Comment: 2740 sq. ft., 1-story, presence of asbestos, most recent use—storehouse, off-site use only

Bldg. T1337
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219230262
Status: Underutilized
Comment: 1296 sq. ft., 1-story, presence of asbestos, most recent use—storehouse, off-site use only

Bldg. T1333
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219230263
Status: Underutilized
Comment: 1144 sq. ft., 1-story, presence of asbestos, most recent use—storehouse, off-site use only

Bldg. T1345
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219230264
Status: Underutilized
Comment: 1144 sq. ft., 1-story, presence of asbestos, most recent use—storehouse, off-site use only

Bldg. T3073
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219230265
Status: Underutilized
Comment: 2750 sq. ft., 1-story, presence of asbestos, most recent use—storehouse, off-site use only

Bldg. T416
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219230266
Status: Underutilized
Comment: 2084 sq. ft., 1-story, presence of asbestos, most recent use—guard house, off-site use only

Bldg. T466
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219230267
Status: Underutilized
Comment: 5310 sq. ft., 2-story, presence of asbestos, most recent use—guard house, off-site use only

Bldg. T3003
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219230268
Status: Underutilized
Comment: 6440 sq. ft., 1-story, presence of asbestos, most recent use—shed, off-site use only

Bldg. T1175
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219230269
Status: Underutilized
Comment: 3108 sq. ft., 1-story, presence of asbestos, most recent use—motor repair shop, off-site use only

Bldg. T3009
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219230270
Status: Underutilized
Comment: 4667 sq. ft., 1-story, presence of asbestos, most recent use—motor repair shop, off-site use only

Bldg. T3291
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219230271
Status: Underutilized
Comment: 3108 sq. ft., 1-story, presence of asbestos, most recent use—motor repair shop, off-site use only

Bldg. T1593
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219230272
Status: Underutilized
Comment: 144 sq. ft., 1-story, presence of asbestos, most recent use—gas station, off-site use only

Bldg. T3000
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219230273
Status: Underutilized
Comment: 158 sq. ft., 1-story, presence of asbestos, most recent use—gas station, off-site use only

Bldg. T2367
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219230274
Status: Underutilized
Comment: 166 sq. ft., 1-story, presence of asbestos, most recent use—pump station bldg., off-site use only

New Mexico

Old Helium Plant
Gallup Co: McKinley NM 87301–
Location: ¼ mile north of Gallup, adjacent to Old US Highway 666.
Landholding Agency: Interior
Property Number: 619010002
Status: Excess
Comment: 7653 sq. ft., 1 story office and warehouse space, possible asbestos, on 4.65 acres, secured area with alternate access

North Carolina

Bldg. A–3347, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219230276
Status: Unutilized
Comment: 800 sq. ft., 1-story wood, most recent use—storage, off-site use only

Bldg. M–2637, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219230277
Status: Unutilized
Comment: 4720 sq. ft., 2-story wood, most recent use—storage, needs rehab, off-site use only

Ohio

Safreit, Josephine A–6939
Sec. 25 & Sec. 24.30 Co: Monroe OH
Landholding Agency: Agriculture
Property Number: 159220002
Status: Excess
Comment: 2948 sq. ft., 1½ floors, frame residence, utilities disconnected, needs rehab, off-site removal only

Dye, Franklin A–6720
T4N, R6W, Sec. 7
Co: Monroe OH
Landholding Agency: Agriculture
Property Number: 159220003
Status: Excess
Comment: 2724 sq. ft., 1½ floors, frame residence, utilities disconnected, needs rehab, off-site removal only

15 Units
Military Family Housing
Ravenna Army Ammunition Plant
Ravenna Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219230354
Status: Unutilized
Number of Units: 15
Comment: 3 bedroom (7 units)—1,824 sq. ft. each, 4 bedroom 8 units)—2,430 sq. ft. each, 2-story wood frame, presence of asbestos, off-site use only

7 Units
Military Family Housing Garages
Ravenna Army Ammunition Plant
Ravenna Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219230355
Status: Unutilized
Number of Units: 7
Comment: 1–4 stall garage and 6–3 stall garages, presence of asbestos, off-site use only

Oklahoma

Bldg. T–3660, Fort Sill
3660 Tary Street
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219230275
Status: Unutilized
Comment: 4659 sq. ft., 1-story wood frame, off-site use only

Oregon

Bldg. #3 (Ranger Residence)
1900 Caves Highway
Cave Junction Co: Josephine OR 97523–
Landholding Agency: Interior
Property Number: 619130004
Status: Excess
Comment: 732 sq. ft., one story cabin, off-site use only

Texas

Bldg. 239, Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 219230282
Status: Unutilized
Comment: 1575 sq. ft., 1-story, most recent use—storage, needs rehab, off-site use only

Bldg. 810, Fort Hood
Ft. Hood Co: Bell TX 76544—
Landholding Agency: Army
Property Number: 219230283
Status: Unutilized
Comment: 4779 sq. ft., 2-story, most recent use—storage, needs rehab, off-site use only

Bldg. 822, Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 219230284
Status: Unutilized
Comment: 1350 sq. ft., 1-story, most recent use—storage, needs rehab, off-site use only

Bldg. 823, Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 219230285
Status: Unutilized
Comment: 1350 sq. ft., 1-story, most recent use—storage, needs rehab, off-site use only

Bldg. 2235, Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 219230286
Status: Unutilized
Comment: 2025 sq. ft., 1-story, most recent use—storage, off-site use only

Bldg. 2817, Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 219230287
Status: Unutilized
Comment: 1998 sq. ft., 1-story, most recent use—storage, needs rehab, off-site use only

Bldg. 3473, Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 219230288
Status: Unutilized
Comment: 6903 sq. ft., 2-story, most recent use—storage, needs rehab, off-site use only

Bldg. 3475, Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 219230289
Status: Unutilized
Comment: 7239 sq. ft., 2-story, most recent use—storage, needs rehab, presence of asbestos, off-site use only

Bldg. 3476, Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 219230290
Status: Unutilized
Comment: 7239 sq. ft., 2-story, most recent use—storage, needs rehab, presence of asbestos, off-site use only

Bldg. 3477, Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 219230291
Status: Unutilized
Comment: 7239 sq. ft., 2-story, most recent use—storage, needs rehab, presence of asbestos, off-site use only

Bldg. 3478, Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 219230292
Status: Unutilized
Comment: 7239 sq. ft., 2-story, most recent use—admin., needs rehab, presence of asbestos, off-site use only

Bldg. 4101, Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 219230293
Status: Unutilized
Comment: 1453 sq. ft., 2-story, most recent use—storage, needs rehab, off-site use only

Bldg. 4102, Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 219230294
Status: Unutilized
Comment: 727 sq. ft., 1-story, most recent use—storage, off-site use only

Bldg. 50616, Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 219230295
Status: Unutilized
Comment: 1883 sq. ft., 1-story, most recent use—storage, needs rehab, off-site use only

Bldg. 866, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219230317
Status: Unutilized
Comment: 972 sq. ft., 1-story wood frame, most recent use—storehouse, off-site use only

Bldg. 878, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219230318
Status: Unutilized
Comment: 1770 sq. ft., 1-story wood frame, most recent use—storehouse, off-site use only

Bldg. 880, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219230319
Status: Unutilized
Comment: 978 sq. ft., 1-story wood frame, most recent use—storehouse, off-site use only

Bldg. 883, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219230320
Status: Unutilized
Comment: 972 sq. ft., 1-story wood frame, most recent use—storehouse, off-site use only

Bldgs. 895, 896 Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219230321
Status: Unutilized
Comment: 1332 sq. ft., 1-story wood frame, most recent use—storehouse, off-site use only

Bldg. 1343 Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219230322
Status: Unutilized
Comment: 2469 sq. ft., 1-story wood frame, most recent use—storehouse, off-site use only

Bldg. 5314 Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219230323
Status: Unutilized
Comment: 1086 sq. ft., 1-story wood frame, most recent use—storehouse, off-site use only

Bldg. 5315 Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219230324
Status: Unutilized
Comment: 347 sq. ft., 1-story metal structure, most recent use—storehouse, needs repair, off-site use only

Bldg. 5323 Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219230325
Status: Unutilized
Comment: 113 sq. ft., 1-story metal structure, most recent use—storehouse, needs repair, off-site use only

Bldg. 5337 Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219230326
Status: Unutilized
Comment: 186 sq. ft., 1-story metal structure, most recent use—storehouse, needs repair, off-site use only

Bldg. 11215, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219230327
Status: Unutilized
Comment: 738 sq. ft., 1-story wood frame, most recent use—storehouse, off-site use only

Bldg. 4201, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219230328
Status: Unutilized
Comment: 10157 sq. ft., 2-story theater, needs repair, off-site use only

Bldg. 4746, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219230329
Status: Unutilized
Comment: 873 sq. ft., 1-story wood, most recent use—day room, presence of asbestos, off-site use only

Bldg. 5312, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219230330

Status: Unutilized
Comment: 2809 sq. ft., 1-story wood frame chapel, off-site use only

Bldg. S11287, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219230331
Status: Unutilized
Comment: 2804 sq. ft., 2-story chapel, off-site use only

Bldg. 5342, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219230332
Status: Unutilized
Comment: 2747 sq. ft., 1-story wood frame gymnasium, off-site use only

Bldg. 5429, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219230333
Status: Unutilized
Comment: 873 sq. ft., 1-story wood, most recent use—NCO Club, off-site use only

Bldg. 7089, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219230334
Status: Unutilized
Comment: 6684 sq. ft., 1-story wood, most recent use—YMCA bldg., needs rehab, off-site use only

Bldg. 11169, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219230335
Status: Unutilized
Comment: 2889 sq. ft., 1-story wood frame, most recent use—skill development center, needs rehab, off-site use only

Bldgs. 869–870, 872, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219230336
Status: Unutilized
Comment: 3540 sq. ft., 2-story wood frame, most recent use—classrooms, off-site use only

Bldgs. 5327, 5331, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219230337
Status: Unutilized
Comment: 1770 sq. ft. each, 1-story wood frame, most recent use—classrooms, off-site use only

Bldgs. 5338, 5339, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219230338
Status: Unutilized
Comment: 1770 sq. ft., 1-story wood frame, most recent use—classrooms, off-site use only

Bldg. 5347, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219230339
Status: Unutilized
Comment: 1362 sq. ft., 1-story wood, most recent use—classroom, off-site use only

Bldg. 5417, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219230340
Status: Unutilized
Comment: 1770 sq. ft., 1-story wood, most recent use—classroom, off-site use only

Bldg. 11224, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219230341
Status: Unutilized
Comment: 2173 sq. ft., 1-story wood frame, most recent use—classroom, off-site use only

Bldg. 873, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219230342
Status: Unutilized
Comment: 1200 sq. ft., 1-story wood frame, most recent use—admin., off-site use only

Bldgs. 876, 879, 882 Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219230343
Status: Unutilized
Comment: 858 sq. ft., 1-story wood frame, most recent use—admin., off-site use only

Bldg. 4745, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219230344
Status: Unutilized
Comment: 673 sq. ft., 1-story wood, most recent use—admin., presence of asbestos, off-site use only

Bldg. 5313, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219230345
Status: Unutilized
Comment: 1690 sq. ft., 1-story wood frame, most recent use—admin., off-site use only

Bldg. 5336, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219230346
Status: Unutilized
Comment: 1770 sq. ft., 1-story wood frame, most recent use—admin., off-site use only

Bldg. 11178, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219230347
Status: Unutilized
Comment: 9381 sq. ft., 1-story wood frame, most recent use—admin., needs rehab, off-site use only

Bldg. 11322, Fort Bliss
Biggs Army Airfield
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219230348
Status: Unutilized
Comment: 432 sq. ft., metal structure, most recent use—admin., off-site use only

Bldg. 2644, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219230349
Status: Unutilized
Comment 108 sq. ft., 1-story, most recent use—chlorinator bldg., off-site use only

Bldg. 7142, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219230350
Status: Unutilized
Comment: 222 sq. ft., most recent use—chlorinator bldg., needs rehab, off-site use only

Bldgs. 2645, 2646, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219230351
Status: Unutilized
Comment: 270 sq. ft. each, 1-story concrete structures, most recent use—bath houses, off-site use only

Bldg. 7134, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219230352
Status: Unutilized
Comment 897 sq. ft., bath house, off-site use only

Bandstand & Pavillon
Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219230353
Status: Unutilized
Comment: concrete and flag stone, off-site use only

Administration Bldg.
Guadalupe Mountains National Park
Pine Springs Co: Culberson TX 79847–
Landholding Agency: Interior
Property Number: 619130005
Status: Excess
Comment: 2016 sq. ft., one story frame structure, most recent use—office, off-site use only.

Virginia

Bldg. 626, Fort Story
626 Manus Road
Ft. Story Co: Princess Ann VA 23459–5000
Landholding Agency: Army
Property Number: 219230278
Status: Unutilized
Comment: 4800 sq. ft., 1-story wood frame, needs rehab, most recent use—barracks w/o dining, off-site use only

Bldg. 624, Fort Story
624 Manus Road
Ft. Story Co: Princess Ann VA 23459–5000
Landholding Agency: Army
Property Number: 219230279
Status: Unutilized
Comment: 4800 sq. ft., 1-story wood frame, needs rehab, most recent use—barracks w/o dining, off-site use only

Bldg. 512, Fort Eustis
512 Sternberg Avenue
Newport News VA 23604–
Landholding Agency: Army
Property Number: 219230280
Status: Unutilized
Comment: 2000 sq. ft., 1-story wood frame, needs rehab, possible asbestos, most recent use—storehouse, off-site use only

Bldg. 513, Fort Eustis
513 Sternberg Avenue
Newport News VA 23604–
Landholding Agency: Army
Property Number: 219230281
Status: Unutilized

Comment: 2000 sq. ft., 1-story wood frame, needs rehab, possible asbestos, most recent use—storehouse, off-site use only

Bldg. 615, Fort Belvoir
Fort Belvoir Co: Fairfax VA 22060–
Landholding Agency: Army
Property Number: 219230296
Status: Unutilized
Comment: 2926 sq. ft., 1-story, most recent use—vet clinic, presence of asbestos, off-site use only

Bldg. 621, Fort Belvoir
Fort Belvoir Co: Fairfax VA 22060–
Landholding Agency: Army
Property Number: 219230297
Status: Unutilized
Comment: 1309 sq. ft., 1-story, most recent use—vet clinic, presence of asbestos, off-site use only

Bldg. T1816, Fort Belvoir
Fort Belvoir Co: Fairfax VA 22060–
Landholding Agency: Army
Property Number: 219230298
Status: Unutilized
Comment: 4720 sq. ft., 2-story, most recent use—operations bldg., needs rehab, presence of asbestos, off-site use only

Bldg. T1817, Fort Belvoir
Fort Belvoir Co: Fairfax VA 22060–
Landholding Agency: Army
Property Number: 219230299
Status: Unutilized
Comment: 4720 sq. ft., 2-story, most recent use—admin., needs rehab, presence of asbestos, off-site use only

Bldg. T2205, Fort Belvoir
Fort Belvoir Co: Fairfax VA 22060–
Landholding Agency: Army
Property Number: 219230300
Status: Unutilized
Comment: 4820 sq. ft., 2-story, most recent use—admin., needs rehab, presence of asbestos, off-site use only

Bldg. T2252, Fort Belvoir
Fort Belvoir Co: Fairfax VA 22060–
Landholding Agency: Army
Property Number: 219230301
Status: Unutilized
Comment: 4830 sq. ft., 2-story, most recent use—billets, needs rehab, presence of asbestos, off-site use only

Bldg. T2253, Fort Belvoir
Fort Belvoir Co: Fairfax VA 22060–
Landholding Agency: Army
Property Number: 219230302
Status: Unutilized
Comment: 4830 sq. ft., 2-story, most recent use—billets, needs rehab, presence of asbestos, off-site use only

Bldg. T2259, Fort Belvoir
Fort Belvoir Co: Fairfax VA 22060–
Landholding Agency: Army
Property Number: 219230303
Status: Unutilized
Comment: 4830 sq. ft., 2-story, most recent use—billets, needs rehab, presence of asbestos, off-site use only

Bldg. T2268, Fort Belvoir
Fort Belvoir Co: Fairfax VA 22060–
Landholding Agency: Army
Property Number: 219230304
Status: Unutilized
Comment: 4830 sq. ft., 2-story, most recent use—billets, needs rehab, presence of asbestos, off-site use only

Bldg. T2271, Fort Belvoir
Fort Belvoir Co: Fairfax VA 22060–
Landholding Agency: Army
Property Number: 219230305
Status: Unutilized
Comment: 4830 sq. ft., 2-story, most recent use—billets, needs rehab, presence of asbestos, off-site use only

Washington

Thompson Boathouse
Lake Crescent Ranger Station
HC 62, Box 10
Port Angeles WA 98362–
Landholding Agency: Interior
Property Number: 619030011
Status: Unutilized
Comment: 693 sq. ft., 1 story boathouse, no utilities, needs rehab, off-site use only.

Spracklen Utility Shed
Quinault Ranger Station
Route 2, Box 76
Amanda Park WA 98526–
Landholding Agency: Interior
Property Number: 619030012
Status: Unutilized
Comment: 150 sq. ft., frame utility shed, limited utilities, off-site use only.

Suitable/Unavailable Properties

Buildings (by State)

Utah

Bryce Canyon Admin. Site
Near Bryce Canyon National Park
Bryce Canyon Co: Garfield UT 84717–
Landholding Agency: Interior
Property Number: 619140005
Status: Underutilized
Comment: 7 houses and other bldgs. on 66 acre site, seasonal use, one story wood frame structures, 48 thru 1400 sq. ft., environmentally protected.

Washington

Thompson Main Residence
Lake Crescent Ranger Station
HC 62, Box 10
Port Angeles WA 98362–
Landholding Agency: Interior
Property Number: 619030001
Status: Unutilized
Comment: 2 story residence, no utilities, needs rehab, off-site use only.

Thompson Older Residence
Lake Crescent Ranger Station
HC 62, Box 10
Port Angeles WA 98362–
Landholding Agency: Interior
Property Number: 619030002
Status: Unutilized
Comment: 888 sq. ft., 1 story residence, no utilities, needs rehab, off-site use only.

Thompson Garage
Lake Crescent Ranger Station
HC 62, Box 10
Port Angeles WA 98362–
Landholding Agency: Interior
Property Number: 619030003
Status: Unutilized
Comment: 240 sq. ft., 1 story garage, no utilities, needs rehab, off-site use only.

Thompson Shop
Lake Crescent Ranger Station
HC 62, Box 10
Port Angeles WA 98362–
Landholding Agency: Interior
Property Number: 619030009
Status: Unutilized
Comment: 300 sq. ft., 1 story shop, no utilities, needs rehab, off-site use only.

Thompson Powerhouse
Lake Crescent Ranger Station
HC 62, Box 10
Port Angeles WA 98362–
Landholding Agency: Interior
Property Number: 619030010
Status: Unutilized
Comment: 160 sq. ft., 1 story powerhouse, no utilities, needs rehab, off-site use only.

Dahinden Storage Building
Quinault Ranger Station
Route 2, Box 76
Amanda Park WA 98526–
Landholding Agency: Interior
Property Number: 619030013
Status: Unutilized
Comment: 240 sq. ft., frame storage building, no utilities, needs rehab, off-site use only.

Bldg. 1185
Lake Crescent Ranger Station HC 62, Box 10
Carter Storage Building
Port Angeles WA 98362–
Landholding Agency: Interior
Property Number: 619030016
Status: Unutilized
Comment: 92 sq. ft., 1 story storage building, no utilities, off-site use only.

Haas Barn
c/o Quinault Ranger Station
Route 2, Box 76
Amanda Park Co: Grays Harbor WA 98526–
Landholding Agency: Interior
Property Number: 619040001
Status: Excess
Comment: 1408 sq. ft., 1 story wood frame barn, potential utilities, poor condition, off-site use only.

Haas Barn
c/o Quinault Ranger Station
Route 2, Box 76
Amanda Park Co: Grays Harbor WA 98526–
Landholding Agency: Interior
Property Number: 619040002
Status: Excess
Comment: 480 sq. ft., 1 story wood frame shed, poor condition, off-site use only.

Haas Shed
c/o Quinault Ranger Station
Route 2, Box 76
Amanda Park Co: Grays Harbor WA 98526–
Landholding Agency: Interior
Property Number: 619040003
Status: Excess
Comment: 64 sq. ft., wood frame shed, poor condition, off-site use only.

Haas Residence
c/o Quinault Ranger Station
Route 2, Box 76
Amanda Park Co: Grays Harbor WA 98526–
Landholding Agency: Interior
Property Number: 619040006
Status: Excess
Comment: 624 sq. ft., 1 story wood frame residence, potential utilities, poor condition, off-site use only.

Bldg. 1323
Jensen Barn
% Quinault Ranger Station, Route 2, Box 76
Amanda Park Co: Grays Harbor WA 98526–

Landholding Agency: Interior
Property Number: 619040007
Status: Excess
Comment: 4200 sq. ft., wood frame barn, most recent use—storage, no utilities, off-site use only.

Wyoming

Administration Bldg.
Fontenelle Camp
Fontenelle Co: Lincoln WY
Location: Approximately 24 miles southeast of Labarge, off State Road 372 and on County Road 316.
Landholding Agency: Interior
Property Number: 619030017
Status: Excess
Comment: 4464 sq. ft., 2 story brick structure with a 2880 sq. ft. wood frame addition, needs rehab, possible asbestos, off-site use only.

Land (by State)

Arizona

Tract No. APO–HR–12–GSA–001
Central Arizona Project
Scottsdale Co: Maricopa AZ 85251–
Landholding Agency: Interior
Property Number: 619230002
Status: Excess
Comment: 16.22 acres, powerline and road easements, access subject to a private road, land near a historic landmark

Unsuitable Properties

Buildings (by State)

Alabama

Bldg. 8359, Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–5000
Landholding Agency: Army
Property Number: 219230189
Status: Unutilized
Reason: Secured Area

Bldg. 8942, Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–5000
Landholding Agency: Army
Property Number: 219230190
Status: Unutilized
Reason: Secured Area

Bldg. 8418, Fort Rucker
Ft. Rucker Co: Dale AL 36362–
Landholding Agency: Army
Property Number: 219230191
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 8421, Fort Rucker
Ft. Rucker Co: Dale AL 36362–
Landholding Agency: Army
Property Number: 219230192
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Alaska

Bldg. 1126, Fort Wainwright
Ft. Wainwright Co: Fairbanks AK 99505–
Landholding Agency: Army
Property Number: 219230183
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 1578, Fort Wainwright
Ft. Wainwright Co: Fairbanks AK 99505–
Landholding Agency: Army
Property Number: 219230184
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 962, Fort Richardson
Ft. Richardson Co: Anchorage AK 99505–
Landholding Agency: Army
Property Number: 219230185
Status: Unutilized
Reason: Within airport runway clear zone, Other
Comment: Extensive deterioration

Bldg. 968, Fort Richardson
Ft. Richardson Co: Anchorage AK 99505–
Landholding Agency: Army
Property Number: 219230186
Status: Unutilized
Reason: Within airport runway clear zone, Other
Comment: Extensive deterioration

Bldg. 67700, Fort Richardson
Ft. Richardson Co: Anchorage AK 99505–
Landholding Agency: Army
Property Number: 219230187
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Arkansas

Bldg. 240
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219230147
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. 3727
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219230148
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. 3728
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219230149
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. 3729
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219230150
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. 3730
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219230151
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. 3731
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219230152
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. 3732
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219230153
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. 3733
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219230154
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. 3734
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219230155
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. 3735
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219230156
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. 3737
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219230157
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. 3738
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219230158
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. 3739
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219230159
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. 3740
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219230160
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. 3741
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219230161

Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. 3742
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905-5000
Landholding Agency: Army
Property Number: 219230162
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. 3743
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905-5000
Landholding Agency: Army
Property Number: 219230163
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. 3744
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905-5000
Landholding Agency: Army
Property Number: 219230164
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. 3745
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905-5000
Landholding Agency: Army
Property Number: 219230165
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. 3746
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905-5000
Landholding Agency: Army
Property Number: 219230166
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. 3747
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905-5000
Landholding Agency: Army
Property Number: 219230167
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. 3748
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905-5000
Landholding Agency: Army
Property Number: 219230168
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. 3749
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905-5000
Landholding Agency: Army
Property Number: 219230169
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. 4465
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905-5000
Landholding Agency: Army
Property Number: 219230170
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 4550
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905-5000
Landholding Agency: Army
Property Number: 219230171
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 4667
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905-5000
Landholding Agency: Army
Property Number: 219230172
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 5169
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905-5000
Landholding Agency: Army
Property Number: 219230173
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 289, L Parrish Residence
1702-D West Grand
Hot Springs Co: Garland AR 71901-
Landholding Agency: Interior
Property Number: 619220003
Status: Excess
Reason: Other
Comment: Extensive deterioration

Bldg. 290 L Parrish Rent House
1702-C West Grand
Hot Springs Co: Garland AR 71901-
Landholding Agency: Interior
Property Number: 619220004
Status: Excess
Reason: Other
Comment: Extensive deterioration

Bldg. 291 L Parrish Rent House
1702-A&B West Grand
Hot Springs Co: Garland AR 71901-
Landholding Agency: Interior
Property Number: 619220005
Status: Excess
Reason: Other
Comment: Extensive deterioration

Bldg. 292 M Mashburn Residence
26 Conway Terrace
Hot Springs Co: Garland AR 71901-
Landholding Agency: Interior
Property Number: 619220006
Status: Excess
Reason: Other
Comment: Extensive deterioration

Bldg. 293, B. Riley Residence
106 Akin
Hot Springs Co: Garland AR 71901-
Landholding Agency: Interior
Property Number: 619220007
Status: Excess
Reason: Other
Comment: Extensive deterioration

Bldg. 295, S. Guinn Residence
Crabtree Cemetary Road
Hot Springs Co: Garland AR 71901-
Landholding Agency: Interior
Property Number: 619220008
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

California

Bldg. S-20, Sharpe Site
Lathrop Co: San Joaquin CA 95331-
Landholding Agency: Army
Property Number: 219230178
Status: Underutilized
Reason: Secured area

Bldg. S-290, Sharpe Site
Lathrop Co: San Joaquin CA 95331-
Landholding Agency: Army
Property Number: 219230179
Status: Underutilized
Reason: Secured area

Bldg. S-367, Sierra Army Depot
Herlong Co: Lassen CA 96113-
Landholding Agency: Army
Property Number: 219230180
Status: Unutilized
Reason: Secured area

Bldg. S-1202A
Sierra Army Depot
Herlong Co: Lassen CA 96113-
Landholding Agency: Army
Property Number: 219230181
Status: Underutilized
Reason: Secured Area

Bldg. T-1212
Sierra Army Depot
Herlong Co: Lassen CA 96113-
Landholding Agency: Army
Property Number: 219230182
Status: Underutilized
Reason: Secured Area

Hawaii

Bldg. T-506
Fort Shafter
Honolulu Co: Honolulu HI 96819-
Landholding Agency: Army
Property Number: 219230128
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. T-1514
Fort Shafter
Honolulu Co: Honolulu HI 96819-
Landholding Agency: Army
Property Number: 219230129
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. T-1515A
Fort Shafter
Honolulu Co: Honolulu HI 96819-
Landholding Agency: Army
Property Number: 219230130
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. T-1516
Fort Shafter
Honolulu Co: Honolulu HI 96819-
Landholding Agency: Army
Property Number: 219230131
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. T-1529
Fort Shafter
Honolulu Co: Honolulu HI 96819-
Landholding Agency: Army
Property Number: 219230132
Status: Unutilized

Reason: Other
Comment: Extensive Deterioration

Bldg. T-1534
Fort Shafter
Honolulu Co: Honolulu HI 96819-
Landholding Agency: Army
Property Number: 219230133
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. T-1606
Fort Shafter
Honolulu Co: Honolulu HI 96819-
Landholding Agency: Army
Property Number: 219230134
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. T-1180A
Schofield Barracks
Wahiawa Co: Wahiawa HI 96786-
Landholding Agency: Army
Property Number: 219230135
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. T-2214
Schofield Barracks
Wahiawa Co: Wahiawa HI 96786-
Landholding Agency: Army
Property Number: 219230136
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. T-2261
Schofield Barracks
Wahiawa Co: Wahiawa HI 96786-
Landholding Agency: Army
Property Number: 219230137
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. T-2263
Schofield Barracks
Wahiawa Co: Wahiawa HI 96786-
Landholding Agency: Army
Property Number: 219230138
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. T-2264
Schofield Barracks
Wahiawa Co: Wahiawa HI 96786-
Landholding Agency: Army
Property Number: 219230139
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. T-2265
Schofield Barracks
Wahiawa Co: Wahiawa HI 96786-
Landholding Agency: Army
Property Number: 219230140
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. T-2267
Schofield Barracks
Wahiawa Co: Wahiawa HI 96786-
Landholding Agency: Army
Property Number: 219230141
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. T-2268
Schofield Barracks
Wahiawa Co: Wahiawa HI 96786-
Landholding Agency: Army
Property Number: 219230142
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. T-2269
Schofield Barracks
Wahiawa Co: Wahiawa HI 96786-
Landholding Agency: Army
Property Number: 219230143
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. T-2270
Schofield Barracks
Wahiawa Co: Wahiawa HI 96786-
Landholding Agency: Army
Property Number: 219230144
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. T-2275
Schofield Barracks
Wahiawa Co: Wahiawa HI 96786-
Landholding Agency: Army
Property Number: 219230145
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. T-2276
Schofield Barracks
Wahiawa Co: Wahiawa HI 96786-
Landholding Agency: Army
Property Number: 219230146
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Illinois

Bldg. 250
Savanna Army Depot Activity
Savanna Co: Carroll IL 61074-
Landholding Agency: Army
Property Number: 219230126
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. 253
Savanna Army Depot Activity
Savanna Co: Carroll IL 61074-
Landholding Agency: Army
Property Number: 219230127
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Indiana

Fuel Station
Atterbury Reserve Forces Training Area
Edinburgh Co: Johnson IN 46124-1096
Landholding Agency: Army
Property Number: 219230030
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Post Exchange
Atterbury Reserve Forces Training Area
Edinburgh Co: Johnson IN 46124-1096
Landholding Agency: Army
Property Number: 219230031
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 701
Newport Army Ammunition Plant
Newport Co: Vermillion IN 47966-
Landholding Agency: Army
Property Number: 219230032
Status: Unutilized
Reason: Secured Area

Bldg. 711
Newport Army Ammunition Plant
Newport Co: Vermillion IN 47966-
Landholding Agency: Army
Property Number: 219230033
Status: Unutilized
Reason: Secured Area

Bldg. 2501
Indiana Army Ammunition Plant
Charlestown Co: Clark IN 47111-
Landholding Agency: Army
Property Number: 219230034
Status: Unutilized
Reason: Secured Area

Bldg. 2522
Indiana Army Ammunition Plant
Charlestown Co: Clark IN 47111-
Landholding Agency: Army
Property Number: 219230035
Status: Unutilized
Reason: Secured Area

Bldg. 2619
Indiana Army Ammunition Plant
Charlestown Co: Clark IN 47111-
Landholding Agency: Army
Property Number: 219230036
Status: Unutilized
Reason: Secured Area

Bldg. 2628
Indiana Army Ammunition Plant
Charlestown Co: Clark IN 47111-
Landholding Agency: Army
Property Number: 219230037
Status: Unutilized
Reason: Secured Area

Iowa

Bldg. 257
Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638-
Landholding Agency: Army
Property Number: 219230005
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 268
Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638-
Landholding Agency: Army
Property Number: 219230006
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 269
Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638-
Landholding Agency: Army
Property Number: 219230007
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 270
Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638-
Landholding Agency: Army
Property Number: 219230008

Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 271
Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638–
Landholding Agency: Army
Property Number: 219230009
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 272
Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638–
Landholding Agency: Army
Property Number: 219230010
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 273
Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638–
Landholding Agency: Army
Property Number: 219230011
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 274
Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638–
Landholding Agency: Army
Property Number: 219230012
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 275
Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638–
Landholding Agency: Army
Property Number: 219230013
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 277
Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638–
Landholding Agency: Army
Property Number: 219230014
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 278
Iowa Army Ammunition Plant
Middletown Co Des Moines IA 52638–
Landholding Agency: Army
Property Number: 219230015
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 279
Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638–
Landholding Agency: Army
Property Number: 219230016
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 314
Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638–
Landholding Agency: Army
Property Number: 219230017
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 500–72–1
Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638–
Landholding Agency: Army
Property Number: 219230018
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. A0274
Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638–
Landholding Agency: Army
Property Number: 219230019
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. A0278
Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638–
Landholding Agency: Army
Property Number: 219230020
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. A0280
Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638–
Landholding Agency: Army
Property Number: 219230021
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 1019
Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638–
Landholding Agency: Army
Property Number: 219230022
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 1020
Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638–
Landholding Agency: Army
Property Number: 219230023
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 1021
Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638–
Landholding Agency: Army
Property Number: 219230024
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 1022
Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638–
Landholding Agency: Army
Property Number: 219230025
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 1023
Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638–
Landholding Agency: Army
Property Number: 219230026
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 1024
Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638–
Landholding Agency: Army
Property Number: 219230027
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 1027
Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638–
Landholding Agency: Army
Property Number: 219230028
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 1034
Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638–
Landholding Agency: Army
Property Number: 219230029
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Kentucky

Bldg. T00122 KA2
Fort Campbell
Old Hospital Complex
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219230038
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. T00129 KA
Fort Campbell
Old Hospital Complex
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219230039
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. T00129 KC
Fort Campbell
Old Hospital Complex
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219230040
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. T00129 KD
Fort Campbell
Old Hospital Complex
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219230041
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. T00143 KD
Fort Campbell
Old Hospital Complex
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219230042
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. T00145 KD
Fort Campbell
Old Hospital Complex
Ft. Campbell Co: Christian KY 42223–

Landholding Agency: Army
Property Number: 219230043
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. T00161 KC
Fort Campbell
Old Hospital Complex
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219230044
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. T00161 KD
Fort Campbell
Old Hospital Complex
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219230045
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. T00167 KC
Fort Campbell
Old Hospital Complex
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219230046
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. T0069 KC
Fort Campbell
Old Hospital Complex
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219230047
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. T02266 T
Fort Campbell
Old Hospital Complex
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219230048
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. 0164
Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219230049
Status: Underutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. 0230
Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219230050
Status: Underutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. 0702
Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219230051
Status: Underutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. 2414
Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219230052
Status: Underutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. 2712
Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219230053
Status: Underutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. 2716
Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219230054
Status: Underutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. 2792
Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219230055
Status: Underutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. 2833
Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219230056
Status: Underutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. 2834
Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219230057
Status: Underutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. 2835
Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219230058
Status: Underutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. 6649
Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219230059
Status: Underutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. 7309
Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219230060
Status: Underutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. 7311
Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219230061
Status: Underutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. 9215
Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219230062
Status: Underutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. 9616
Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219230063
Status: Underutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. 9617
Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219230064
Status: Underutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. 9618
Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219230065
Status: Underutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. 9619
Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219230066
Status: Underutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. 9620
Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219230067
Status: Underutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. 9709
Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219230068
Status: Underutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. 9711
Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219230069
Status: Underutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. 9714
Fort Knox
Ft. Knox Co: Hardin KY 40121–

Landholding Agency: Army
Property Number: 219230070
Status: Underutilized
Reason: Other
Comment: Extensive Deterioration

Louisiana

Bldg. 715
Fort Polk
715 Colorado Avenue
Ft. Polk Co: Vernon Parish LA 71459–7100
Landholding Agency: Army
Property Number: 219230081
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. 716
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–7100
Landholding Agency: Army
Property Number: 219230082
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. 7469
Fort Polk
7469 F Avenue
Ft. Polk Co: Vernon Parish LA 71459–7100
Landholding Agency: Army
Property Number: 219230083
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. 7470
Fort Polk
7470 F Avenue
Ft. Polk Co: Vernon Parish LA 71459–7100
Landholding Agency: Army
Property Number: 219230085
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. 8603
Fort Polk
8603 Ordinance Road
Ft. Polk Co: Vernon Parish LA 71459–7100
Landholding Agency: Army
Property Number: 219230086
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. A–102
Louisiana Army Ammunition Plant
Doyline Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219230087
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Maryland

Bldg. 128
Fort Ritchie
Ft. Ritchie Co: Washington MD 21719–5010
Landholding Agency: Army
Property Number: 219230088
Status: Underutilized
Reason: Secured Area

Bldg. 4900
Aberdeen Proving Ground
Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219230089
Status: Unutilized
Reason: Within airport runway clear zone

Bldg. 361
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219230193
Status: Unutilized
Reason: Secured Area

Bldg. 375
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219230194
Status: Unutilized
Reason: Secured Area

Bldg. 8497
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219230195
Status: Unutilized
Reason: Secured Area

Bldg. 288
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219230196
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 362
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219230197
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 363
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219230198
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 365
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219230199
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 366
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219230200
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 367
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219230201
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 368
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219230202
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 383
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219230203
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 384
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219230204
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 385
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219230205
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 386
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219230206
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 387
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219230207
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 388
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219230208
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 1990
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219230209
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 2221
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219230210
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 2223
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219230211
Status: Unutilized

Reason: Other
Comment: Extensive deterioration

Bldg. 2225
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219230212
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 2226
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219230213
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 2227
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219230214
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 2822
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219230215
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 2823
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219230216
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 2824
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219230217
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 2825
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219230218
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 2826
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219230219
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 2841
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219230220
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 2842
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219230221
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Massachusetts

Bldg. 3462, Camp Edwards
Massachusetts Military Reservation
Bourne Co: Barnstable MA 02462–5003
Landholding Agency: Army
Property Number: 219230095
Status: Unutilized
Reason: Secured Area, Other
Comment: Extensive deterioration

Bldg. 3596, Camp Edwards
Massachusetts Military Reservation
Bourne Co: Barnstable MA 02462–5003
Landholding Agency: Army
Property Number: 219230096
Status: Unutilized
Reason: Secured Area

Montana

Lolo Work Cntr. Messhall #1001
Highway 12—Approx. Mile Marker 15
Co: Missoula MT 59801–
Landholding Agency: Agriculture
Property Number: 159220004
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, other
Comment: Extensive deterioration

Lolo Work Cntr Bunkhouse #2001
Highway 12—Approx. Mile Marker 15
Co: Missoula MT 59801–
Landholding Agency: Agriculture
Property Number: 159220005
Status: Unutilized
Reason: Floodway, Other
Comment: Extensive deterioration

Nebraska

Bldg. 1L–19
Cornhusker Army Ammunition Plant
Grand Island Co: Hall NE 68803–
Landholding Agency: Army
Property Number: 219230092
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 1CH19
Cornhusker Army Ammunition Plant
Grand Island Co: Hall NE 68803–
Landholding Agency: Army
Property Number: 219230093
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 1P019
Cornhusker Army Ammunition Plant
Grand Island Co: Hall NE 68803–
Landholding Agency: Army
Property Number: 219230094
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Nevada

Bldg. OA11C
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Landholding Agency: Army
Property Number: 219230090
Status: Unutilized
Reason: Secured Area

New Jersey

Bldg. 65A
Armament Research Dev. & Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219230118
Status: Unutilized
Reason: Secured Area

Bldg. 80D
Armament Research Dev. & Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219230119
Status: Unutilized
Reason: Secured Area

Bldg. 90
Armament Research Dev. & Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219230120
Status: Unutilized
Reason: Secured Area

Bldg. 603F
Armament Research Dev. & Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219230121
Status: Unutilized
Reason: Secured Area

Bldg. 1036B
Armament Research Dev. & Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219230122
Status: Unutilized
Reason: Secured Area

Bldg. 1304
Armament Research Dev. & Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219230123
Status: Unutilized
Reason: Secured Area

Bldg. 1414
Armament Research Dev. & Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219230124
Status: Unutilized
Reason: Secured Area

Bldg. 1414A
Armament Research Dev. & Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219230125
Status: Unutilized
Reason: Secured Area

Bldg. 76, Main Post
Fort Monmouth
Ft. Monmouth Co: Monmouth NJ 07703–
Landholding Agency: Army
Property Number: 219230174
Status: Unutilized

Reason: Floodway

Bldg. 80, Main Post
Fort Monmouth
Ft. Monmouth Co: Monmouth NJ 07703–
Landholding Agency: Army
Property Number: 219230175
Status: Unutilized
Reason: Secured Area

Bldg. 692, Main Post
Fort Monmouth
Ft. Monmouth Co: Monmouth NJ 00073–
Landholding Agency: Army
Property Number: 219230176
Status: Unutilized
Reason: Secured Area

Bldg. 701, Main Post
Fort Monmouth
Ft. Monmouth Co: Monmouth NJ 07703–
Landholding Agency: Army
Property Number: 219230177
Status: Unutilized
Reason: Secured Area

New Mexico

Farmington Office and Yard
900 La Plata Highway
Farmington Co: San Juan NM 87499–
Landholding Agency: Interior
Property Number: 619010001
Status: Unutilized
Reason: Within airport runway clear zone

New York

Bldg. 110
Senaca Army Depot
Romulus Co: Senaca NY 14541–5001
Landholding Agency: Army
Property Number: 219230091
Status: Unutilized
Reason: Secured Area

2 Buildings
Ant Saugerties
Saugerties Co: Ulster NY 12477–
Landholding Agency: DOT
Property Number: 879230005
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

North Carolina

Bldg. A–5228
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219230097
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. 4–2133
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219230098
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. 8–3315
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219230099
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Oregon

Eugene District Office Site
751 South Danebo
Eugene Co: Lane OR 97402–
Landholding Agency: Interior
Property Number: 619010003
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material

Texas

Bldg. 5340
Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219230107
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Swimming Pools
Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219230108
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. 265
Red River Army Depot
Texarkana Co: Bowie TX 75507–5000
Location: 18 miles west of Texarkana, U.S. Hwy. 82
Landholding Agency: Army
Property Number: 219230109
Status: Unutilized
Reason: Secured Area

Bldg. 331
Red River Army Depot
Texarkana Co: Bowie TX 75507–5000
Location: 18 miles west of Texarkana, U.S. Hwy. 82
Landholding Agency: Army
Property Number: 219230110
Status: Unutilized
Reason: Secured Area

Bldg. 1449
Red River Army Depot
Texarkana Co: Bowie TX 75507–5000
Location: 18 miles west of Texarkana, U.S. Hwy. 82
Landholding Agency: Army
Property Number: 219230111
Status: Unutilized
Reason: Secured Area

Bldg. 1545
Red River Army Depot
Texarkana Co: Bowie TX 75507–5000
Location: 18 miles west of Texarkana, U.S. Hwy. 82
Landholding Agency: Army
Property Number: 219230112
Status: Unutilized
Reason: Secured Area

Bldg. 1546
Red River Army Depot
Texarkana Co: Bowie TX 75507–5000
Location: 18 miles west of Texarkana, U.S. Hwy. 82
Landholding Agency: Army
Property Number: 219230113
Status: Unutilized
Reason: Secured Area

Bldg. 1548
Red River Army Depot
Texarkana Co: Bowie TX 75507–5000
Location: 18 miles west of Texarkana, U.S. Hwy. 82
Landholding Agency: Army
Property Number: 219230114
Status: Unutilized
Reason: Secured Area

Bldg. 1549
Red River Army Depot
Texarkana Co: Bowie TX 75507–5000
Location: 18 miles west of Texarkana, U.S. Hwy. 82
Landholding Agency: Army
Property Number: 219230115
Status: Unutilized
Reason: Secured Area

Bldg. 56116
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 219230116
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. 56167
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 219230117
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Alaniz House (Tract #105–11)
Immed. adjacent to Mission San Juan
San Antonio Co: Bexar TX 78214–
Landholding Agency: Interior
Property Number: 619220001
Status: Excess
Reason: Other
Comment: Extensive deterioration

Garcia House (Tract #105–03)
Immed. adjacent to Mission San Juan
San Antonio Co: Bexar TX 78214–
Landholding Agency: Interior
Property Number: 619220002
Status: Excess
Reason: Other
Comment: Extensive deterioration

Virginia

Bldg. US 100–02
Radford Army Ammunition Plant
Radford VA 24141–
Landing Agency: Army
Property Number: 219230100
Status: Unutilized
Reason: Secured Area

Bldg. 6208
Radford Army Ammunition Plant
Radford VA 24141–
Landholding Agency: Army
Property Number: 219230101
Status: Unutilized
Reason: Secured Area

Bldg. 9477–5
Radford Army Ammunition Plant
Radford VA 24141–
Landholding Agency: Army
Property Number: 291230102
Status; Unutilized
Reason: Secured Area

Bldg. 9481
Radford Army Ammunition Plant
Radford Va 24141–
Landholding Agency: Army
Property Number: 219230103
Status: Unutilized

Reason: Secured Area

Bldg. T-551
Fort Monroe
Ft. Monroe VA 23651-
Landholding Agency: Army
Property Number: 219230104
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Bldg. T-1625
U.S. Army Combined Arms Support Command
Ft. Lee Co: Prince George VA 23801-
Landholding Agency: Army
Property Number: 219230105
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Bldgt. T-11613
U.S. Army Combined Arms Support Command
Ft. Lee Co: Prince George VA 23801-
Landholding Agency: Army
Property Number: 219230106
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Washington

Bldg. 1302
Fort Lewis
Ft. Lewis Co: Pierce WA 98433-5500
Landholding Agency: Army
Property Number: 219230071
Status: Unutilized
Reason: Secured Area

Bldg. 1303
Fort Lewis
Ft. Lewis Co: Pierce WA 98433-5000
Landholding Agency: Army
Property Number: 219230072
Status: Unutilized
Reason: Secured Area

Bldg. 1304
Fort Lewis
Ft. Lewis Co: Pierce WA 98433-5000
Landholding Agency: Army
Property Number: 219230073
Status: Unutilized
Reason: Secured Area

Bldg. 1305
Fort Lewis
Ft. Lewis Co: Pierce WA 98433-5000
Landholding Agency: Army
Property Number: 219230074
Status: Unutilized
Reason: Secured Area

Bldg. T02257
Fort Lewis
Ft. Lewis Co: Pierce WA 98433-5000
Landholding Agency: Army
Property Number: 219230075
Status: Unutilized
Reason: Secured Area

Bldg. T03200
Fort Lewis
Ft. Lewis Co: Pierce WA 98433-5000
Landholding Agency: Army
Property Number: 219230076
Status: Unutilized
Reason: Secured Area

Bldg. T04427
Fort Lewis
Ft. Lewis Co: Pierce WA 98433-5000
Landholding Agency: Army
Property Number: 219230077
Status: Unutilized
Reason: Secured Area

Bldg. T04429
Fort Lewis
Ft. Lewis Co: Pierce WA 98433-5000
Landholding Agency: Army
Property Number: 219230078
Status: Unutilized
Reason: Secured Area

Bldg. T04430
Fort Lewis
Ft. Lewis Co: Pierce WA 98433-5000
Landholding Agency: Army
Property Number: 219230079
Status: Unutilized
Reason: Secured Area

Bldg. T04431
Fort Lewis
Ft. Lewis Co: Pierce WA 98433-5000
Landholding Agency: Army
Property Number: 219230080
Status: Unutilized
Reason: Secured Area

Dahinden Chicken Coop
Quinault Ranger Station
Route 2, Box 76
Amanda Park WA 98526-
Landholding Agency: Interior
Property Number: 619030014
Status: Unutilized
Reason: Other
Comment: Chicken coop

Dahinden Outhouse
Quinault Ranger Station
Route 2, Box 76
Amanda Park WA 98526-
Landholding Agency: Interior
Property Number: 619030015
Status: Unutilized
Reason: Other
Comment: Detached latrine

Haas Chicken Coop
% Quinault Ranger Station
Route 2, Box 76
Amanda Park Co: Grays Harbor WA 98526-
Landholding Agency: Interior
Property Number: 619040004
Status: Excess
Reason: Other
Comment: Chicken coop

Haas Lean-to
% Quinault Ranger Station
Route 2, Box 76
Amanda Park Co: Grays Harbor WA 98526-
Landholding Agency: Interior
Property Number: 619040005
Status: Excess
Reason: Other
Comment: Lean-to

Bldg. #36—Stehekin District
Company Creek Road
Stehekin Co: Chelen WA 98852-
Landholding Agency: Interior
Property Number: 619130001
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 689—Comfort Station
Olympic Hot Springs Wilderness Backcountry
Port Angeles Co: Clallam WA 98362-6796
Landholding Agency: Interior
Property Number: 619130002
Status: Excess
Reason: Other
Comment: Extensive deterioration

Bldg. 252—Storage Shed
Olympic Hot Springs Wilderness Backcountry
Port Angeles Co: Clallam WA 98362-6796
Landholding Agency: Interior
Property Number: 619130003
Status: Excess
Reason: Other
Comment: Extensive deterioration

Bldg. L-103
Mount Rainier National Park
Longmire Maintenance Complex
Longmire Co: Pierce WA 98397-
Landholding Agency: Interior
Property Number: 619130007
Status: Excess
Reason: Other
Comment: Extensive deterioration

Bldg. L-234
Mount Rainier National Park
Longmire Maintenance Complex
Longmire Co: Pierce WA 98397-
Landholding Agency: Interior
Property Number: 619130008
Status: Excess
Reason: Other
Comment: Extensive deterioration

Wisconsin

Kapsey Property #3961
Co: Taylor WI
Location: Sec. 2, T31N, R3W from junction of State Hwy. 64 & 73, go north on Hwy. 73 1¾ miles—turn right on Co. Hwy. G—go 2¾ miles, turn right on FR 121, turn left on 1st road past Yellow River
Landholding Agency: Agriculture
Property Number: 159220001
Status: Unutilized
Reason: Floodway

Land (by State)

Alaska

Campbell Creek Range
Fort Richardson
Anchorage Co: Greater Anchora AK 99507-
Landholding Agency: Army
Property Number: 219230188
Status: Unutilized
Reason: Other
Comment: Inaccessible

Arizona

Elliott Homes—Canal
West of 77th Ave. and South of Cholla Street
Peoria Co: Maricopa AZ 85345—
Landholding Agency: Interior
Property Number: 619130006
Status: Surplus
Reason: Other
Comment: Lateral canal

Puerto Rico

119.3 acres
Culebra Island PR 00775—
Landholding Agency: Interior
Property Number: 619210001
Status: Excess
Reason: Floodway

[FR Doc. 92-22416 Filed 9-17-92; 8:45 am]

BILLING CODE 4210-01-M

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-92-3362; FR 3190-N-06]

HOPE for Public and Indian Housing Homeownership Program (HOPE 1); Announcement of Funding Awards

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Anouncement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the HOPE for Public and Indian Housing Homeownership program (HOPE 1). The announcement contains the names and addresses of the award winners and the amounts of the awards for planning grants.

DATES: September 17, 1992.

FOR FURTHER INFORMATION CONTACT: Gary Van Buskirk, Office of Resident Initiatives, Department of Housing and Urban Development, room 4112, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4233. The TDD number for the hearing impaired is (202) 708-9300. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The purpose of the competition was to award planning grants to assist eligible applicants in developing a homeownership program, including the development of resident organizations, feasibility studies, counseling and training of residents and homebuyers, activities necessary for the development of a homeownership program, and preparation of an application for an implementation grant.

The 1992 awards announced in this Notice were selected for funding in a competition announced in a **Federal Register** Notice published on January 14, 1992 (57 FR 1550). Applications were scored and selected for funding on the basis of selection criteria contained in that Notice.

A total of $24 million was awarded for 184 planning grants. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235, approved December 15, 1989), the names, addresses, and amounts of those awards appears at the end of this Notice.

Dated: September 10, 1992.

Joseph G. Schiff,

Assistant Secretary for Public and Indian Housing.

FY 1992 Third Quarter Funding Decisions Homeownership and Opportunity for People Everywhere (Hope 1)
Recipients of Final Funding Decisions for Planning Grant Awards

Region	Funding recipient	Housing authority and development site	Dollar amount approved
4	The Housing Authority of the City of Auburn 931 Booker St. Auburn, AL 36830.	City of Auburn Housing Authority, East Park/AL-50-1	$5,600
4	The Housing Authority of the City of Auburn, 931 Booker St., Auburn, AL 36830.	City of Auburn Housing Authority, East Park/AL-50-3	6,400
4	The Housing Authority of the City of Auburn, 931 Booker St, Auburn, AL 36830.	City of Auburn Housing Authority, Redgecrest	40,400
4	The Housing Authority of the City of Auburn, 931 Booker St, Auburn, AL 36830.	City of Auburn Housing Authority, Sparkman Park	12,400
4	The Housing Authority of the City of Auburn, 931 Booker St, Auburn, AL 36830.	City of Auburn Housing Authority, East Park/AL-50-5A	7,200
4	Housing Authority of Greene County, P.O. Box 389, S. Prairie Ave, Eutaw, AL 35462.	The Greene County Housing Authority, William McKinley Branch Heights.	96,400
6	North Little Rock Housing Authority, P.O. Box 516, NLR, AR 72115, North Little Rock, AR 72114.	City of North Little Rock Housing Authority, Windemere Hills	56,400
6	Housing Authority of the City of Little Rock, 1000 Wolfe St., Little Rock, AR 72202.	City of Little Rock Housing Authority, Amelia B. Ives Homes	54,700
6	Pine Bluff Housing Authority, 2503 Belle Meade Drive, Pine Bluff, AR 71601.	City of Pine Bluff Housing Authority, Cottonwood Park Development	106,000
6	Pine Bluff Housing Authority, 2503 Belle Meade Drive, Pine Bluff, AR 71601.	City of Pine Bluff Housing Authority, Hallmark Manor	107,150
9	Housing Department of Maricopa County, 1510 S. 19th Drive, Phoenix, AZ 85009.	The Maricopa County Housing Authority, John Hammond Homes	100,000
9	San Francisco Housing Authority, 440 Turk St., San Francisco, CA 94102.	City of San Francisco Housing Authority, Potrero Terrace/Potrero Annex.	222,500
9	San Francisco Housing Authority, 440 Turk St., San Francisco, CA 94102.	City of San Francisco Housing Authority, Alemany	171,000
9	Housing Authority of the City of Los Angeles, 515 Columbia Ave., Los Angeles, CA 90017.	City of Los Angeles Housing Authority, Avalon Gardens	109,293
9	Estrada Courts Resident Management Corporation, 1305 S. Concord St. ;18, Los Angeles, CA 90023.	City of Los Angeles Housing Authority, Estrada Courts	121,250
9	Housing Authority of the City of Los Angeles, 515 Columbia Ave., Los Angeles, CA 90017.	City of Los Angeles Housing Authority, Dana Strand Village	252,407
9	Housing Authority of the City of Los Angeles, 515 Columbia Ave., Los Angeles, CA 90017.	City of Los Angeles Housing Authority, Mar Vista Gardens	401,683
9	Concerned Citizens of South Central L.A., 4111 S. Central Ave., Los Angeles, CA 90011.	City of Los Angeles Housing Authority, Pueblo del Rio, Pueblo Del Rio Extension.	200,000
9	Housing Authority of the City of Los Angeles, 515 Columbia Ave., Los Angeles, CA 90017.	City of Los Angeles Housing Authority, Rancho San Pedro	318,304
9	Housing Authority of the City of Los Angeles, 515 Columbia Ave., Los Angeles, CA 90017.	City of Los Angeles Housing Authority, Romona Gardens	330,794
9	Housing Authority of the County of Kern, 525 Roberts Lane, Bakersfield, CA 93308.	The Kern County Housing Authority, Oro Vista	194,000
9	Housing Authority of the County of Kern, 525 Roberts Lane, Bakersfield, CA 93308.	The Kern County Housing Authority, Valle Vista	154,100

FY 1992 THIRD QUARTER FUNDING DECISIONS HOMEOWNERSHIP AND OPPORTUNITY FOR PEOPLE EVERYWHERE (HOPE 1)
RECIPIENTS OF FINAL FUNDING DECISIONS FOR PLANNING GRANT AWARDS—Continued

Region	Funding recipient	Housing authority and development site	Dollar amount approved
9	Housing Authority of the County of Kern, 525 Roberts Lane, Bakersfield, CA 93308.	The Kern County Housing Authority, John W. Sams Park	194,000
9	Housing Authority of the County of Kern, 525 Roberts Lane, Bakersfield, CA 93308.	The Kern County Housing Authority, Rosa Vista	117,600
9	Housing Authority of the County of Kern, 525 Roberts Lane, Bakersfield, CA 93308.	The Kern County Housing Authority, Adelante Vista	114,700
9	Housing Authority of the City of Richmond, 330-24th. St./P.O. Box 515, Sta. A, Richmond, CA 94808.	City of Richmond Housing Authority, Easter Hill Village	67,800
9	Housing Authority of the County of Riverside, 5555 Arlington Ave., Riverside, CA 92504.	The Riverside County Housing Authority, Fort Drive	13,600
9	Housing Authority of the County of Riverside, 5555 Arlington Ave., Riverside, CA 92504.	The Riverside County Housing Authority, Gloria Street	11,200
9	Housing Authority of the County of Riverside, 5555 Arlington Ave., Riverside, CA 92504.	The Riverside County Housing Authority, Gloria Street	16,000
9	Housing Authority of the City of Calexico, 1006 E. Fifth St., Calexico, CA 92231.	City of Calexico Housing Authority, Casas Del Sol	158,600
9	Benicia Housing Authority, 28 Riverhill Drive/P.O. Box 275, Benicia, CA 94510.	Benicia Housing Authority, Capitol Heights	92,100
9	Marin City Tenant's Council, 105 Drake Avenue, Marin City, CA 94965	The Marin County Housing Authority, Marin City	300,000
9	Area Housing Authority of the County of Ventura, 99 S. Glenn Dr., Camarillo, CA 93010.	County Area-Wide Housing Authority, The Roth Apartments	15,352
9	Area Housing Authority of the County of Ventura, 99 S. Glenn Dr., Camarillo, CA 93010.	Ventura County Area-Wide Housing Authority, Leggett Court	20,352
9	Area Housing Authority of the County of Ventura, 99 S. Glenn Dr., Camarillo, CA 93010.	Ventura County Area-Wide Housing Authority, Ellis Terrace	41,082
8	Housing Authority of the City of Pueblo, 1414 N. Santa Fe Ave. F1 10, Pueblo, CO 81003-3795.	City of Pueblo Housing Authority C0002004/C0002006/C0002009	116,500
8	Jefferson County Housing Authority, 1445 Holland St., Lakewood CO 80215.	The Jefferson County Housing Authority, Jefferson County Public Housing.	88,000
1	Housing Authority of the City of Hartford, 475 Flatbush Ave., Hartford, CT 06106.	City of Hartford Housing Authority, Scattered Sites I, II, III	100,000
1	Housing Authority of the City of Hartford, 475 Flatbush Ave., Hartford, CT 06106.	City of Hartford Housing Authority, Nelton Court	100,000
1	Waterbury Housing Authority, 70 Lakewood Rd., Waterbury, CT 06704	City of Waterbury Housing Authority, Austin Roads Apartments	100,000
1	Housing Authority, City of Danbury, 2 Mill Ridge Rd., Danbury, CT 06811.	City of Danbury Housing Authority, Eden Drive	97,000
3	Washington Innercity Self Help, 1419 V St., NW., Washington, DC 20009.	City of Washington DC Housing Authority, Capitol View Plaza	158,200
4	Blodgett, 605 Court E, Unit 325, Jacksonville, FL 32209	City of Jacksonville Housing Authority, Blodgett	73,119
4	Forest Meadows East RMC, 1935 Forest Blvd., suite 18, 19, Jacksonville, FL 32216.	City of Jacksonville Housing Authority, Forest Meadows East	90,000
4	Hogans Creek, 1320 Broad St., ;1004, Jacksonville, FL 32209	City of Jacksonville Housing Authority, Hogans Creek	73,119
4	Jacksonville Urban League, Inc., 233 West Duval St., 14th floor, Jacksonville, FL 32202.	City of Jacksonville Housing Authority, Anders Park	200,000
4	City of Jacksonville Dept. of Hsg. & Urban Dev., 1300 Broad St., Jacksonville, FL 32260.	City of Jacksonville Housing Authority, Brentwood Resident Development Corp., Inc.	150,000
4	Centennial Towers, 1300 Broad St., Jacksonville, FL 32206	City of Jacksonville Housing Authority, Centennial Towers	85,300
4	Golfbrook, 5339 Golfbrook Dr., ;10, Jacksonville, FL 32208	City of Jacksonville Housing Authority, Golfbrook	73,119
4	Jacksonville Beach, 925 5th Ave., South, Jacksonville Beach, FL 32216.	City of Jacksonville Housing Authority, Jacksonville Beach	73,119
4	City of Jacksonville Dept. of Hsg. & Urban Dev., 1300 Broad St., Jacksonville, FL 32260.	City of Jacksonville Housing Authority, Pottsburg Park Housing Development.	148,000
4	Durkeeville, 1711 Eaverson St., Jacksonville, FL 32209	City of Jacksonville Housing Authority, Durkeeville	73,119
4	Twin Towers, 617 W. 44th St, ;176, Jacksonville, FL 32208	City of Jacksonville Housing Authority, Twin Towers	73,119
4	The Housing Authority of the City of Tampa, 1514 Union St., Tampa, FL 33607.	City of Tampa Housing Authority, Ponce De Leon Courts	285,000
4	Dade County Department of Housing & Urban Devel., 1401 NW 7th St., Miami, FL 33125.	The Dade County Housing Authority, Venetian Gardens	127,300
4	Dade County Dept. of Housing & Urban Development, 1401 NW. 7th Street, Miami, FL 33125.	The Dade County Housing Authority, Richmond Homes	88,000
4	The Hsg. Auth. of the City of Daytona Beach, FL, 118 Cedar Street, Daytona Beach, FL 32114.	City of Daytona Beach Housing Authority, Walnut Oak Apartments	174,000
4	Ocala Housing Authority, 1415 NE. 32 Terrace, Ocala, FL 32670	City of Ocala Housing Authority, N.H. Jones	100,000
4	Hialeah Housing Authority, 70 E. 7th St., Hialeah, FL 33010	City of Hialeah Housing Authority, Seminola Villas	97,000
4	Tallahassee Housing Authority, 2940 Grady Road, Tallahassee, FL 32312.	City of Tallahassee Housing Authority, Orange Avenue Apartments	183,000
4	Housing Authority of Savannah, 200 E. Broad St., Savannah, GA 31401.	City of Savannah Housing Authority, Fred Wessels Homes	114,800
4	The Housing Authority of Columbus Georgia, 1000 Wynnton Road, Columbus, GA 31906.	City of Columbus Housing Authority, Resident Homeownership Program.	18,000
4	University Community Development Corporation, 736 Beckwith St., SW, Atlanta, GA 30314.	City of Atlanta Housing Authority, University/John Hope Homes	400,000
4	Valdosta Housing Authority, P.O. Box 907, Valdosta, GA 31603	City of Valdosta Housing Authority, Hudson Dockett Homes	12,848
4	Housing Authority of the City of Alamo, P.O. Box 478, Alamo, GA 30411.	Housing Authority of the City of Alamo	20,000

FY 1992 THIRD QUARTER FUNDING DECISIONS HOMEOWNERSHIP AND OPPORTUNITY FOR PEOPLE EVERYWHERE (HOPE 1)
RECIPIENTS OF FINAL FUNDING DECISIONS FOR PLANNING GRANT AWARDS—Continued

Region	Funding recipient	Housing authority and development site	Dollar amount approved
4	Housing Authority of the City of Glenwood, GA, 1 Project St., Glenwood, GA 30428.	Housing Authority of the City of Glenwood, GA	60,000
9	Nanakuli Neighborhood Housing Services, Inc., 87-2070 Farrington Hwy Suite 13, Nanakuli, HI 96792.	City of Hawaii Housing Authority, Nanakuli Homes	120,205
7	City of Clinton, Iowa Housing Authority, 611 S. Third St., P.O. Box 2958, Clinton, IA 52733-2958.	City of Clinton Housing Authority, Southside Development	70,350
7	Knoxville Low Rent Housing Agency, 305 S. 3rd, Knoxville, IA 50138	Knoxville Low Rent Housing Agency, Valley View Apartments	20,557
5	Chicago Housing Authority, 22 W. Madison, Chicago, IL 60602	City of Chicago Housing Authority, Wentworth Gardens Annex	200,000
5	LeClaire Courts Resident Management Corporation, 4373 S. Lamon Ave., Chicago, IL 60638.	City of Chicago Housing Authority, LeClaire Courts Extension	200,000
5	The Housing Authority of the City of Kokomo, 210 E. Taylor Box 1207, Kokomo, IN 46903-1207.	City of Kokomo Housing Authority, Gateway Gardens	94,220
4	Housing Authority of Louisville, 420 South 8th Street, Louisville, KY 40203.	City of Louisville Housing Authority, LaSalle Place	98,700
6	Desire Area Resident Council, 3373 Desire Pkwy, New Orleans, LA 70126.	City of New Orleans Housing Authority, Desire	338,500
6	Christopher Park Homebuyers Association, 2000 Murl St., New Orleans, LA 70114.	City of New Orleans Housing Authority, Christopher Park Homes	199,700
6	Shreveport Housing Authority, 623 Jordan St., Shreveport, LA 71101	City of Shreveport Housing Authority, Wilkinson Terrace	139,300
1	Boston Housing Authority, 52 Chauncy St., Boston, MA 02111	City of Boston Housing Authority, Heath Street	125,200
1	Boston Housing Authority, 52 Chauncy St., Boston, MA 02111	City of Boston Housing Authority, Bromley Park	333,500
1	Holyoke Housing Authority, 475 Maple St., Holyoke, MA 01040	City of Holyoke Housing Authority, Jackson Parkway	200,000
1	Fall River Housing Authority, 85 Morgan St., Fall River, MA 02721	City of Fall River Housing Authority, George E. Riley Plaza	60,000
1	New Bedford Housing Authority, 134 S. Second St., New Bedford, MA 02740.	City of New Bedford Housing Authority, Evergreen Park/Replacement Housing.	58,400
1	Lawrence Housing Authority, 353 Elm St., Lawrence, MA 01850	City of Lawrence Housing Authority, Market & Lorings Sts. (Beshara & Alpers).	100,000
1	Springfield Massachusetts Housing Authority, 25 Saab Court/P.O. Box 1609, Springfield, MA 01101.	City of Springfield Housing Authority, Pendleton Apts/Marble Apts/Pine-Renee Apts.	100,000
1	Bangor Housing Authority, 161 Davis Rd., Bangor, ME 04401	City of Bangor Housing Authority, Capehart	75,000
1	Westbrook Housing Authority, P.O. Box 349, Westbrook, ME 04098	City of Westbrook Housing Authority, Pine Knoll Terrace	110,400
1	South Portland Housing Authority, 51 Landry Circle, P.O. Box 2128, South Portland, ME 04116-0128.	City of South Portland Housing Authority, Scattered Site Family Housing Developments.	100,000
5	Iron Mountain Housing Commission, 1010 1st St., South, Hopkins, MN 55343.	City of Iron Mountain Housing Commission, Iron Mountain Housing Commission.	7,500
5	Boyne City Housing Commission, 829 S. Park St., Boyne City, MI 49712.	Boyne City Housing Commission, Conkle Development and Conkle Development Annex.	85,500
5	Glendale Resident Management Corp., 90 St. Mary's Ave. SE., Minneapolis, MN 55414.	City of Minneapolis Housing Authority, Glendale Townhome	99,720
5	Hopkins Housing and Redevelopment Authority, 1010 First St., South, Hopkins, MN 55343.	Housing and Redevelopment Authority of Hopkins, Dow Towers	100,000
7	St. Louis Housing Authority, 4100 Lindell Blvd., St. Louis, MO 63108	City of St. Louis Housing Authority, South Broadway Apartments	100,000
7	Cochran Tenant Management Corporation, 112 North 9th St., St. Louis, MO 63101.	City of St. Louis Housing Authority, Cochran Plaza Apartments	200,000
7	Carr Square Tenant Corporation, 1521 Carr Drive, St. Louis, MO 63106	City of St. Louis Housing Authority, Carr Square Village	242,370
7	Housing Authority of St. Louis County, 8865 Natural Bridge Rd., St. Louis, MO 63121.	The St. Louis County Housing Authority, Springwood	131,000
4	Housing Authority of the City of Laurel, 701 Beacon St., Laurel, MS 39440.	City of Laurel Housing Authority, Beacon Homes	100,000
4	Housing Authority of the City of Laurel, 701 Beacon St., Laurel, MS 39440.	City of Laurel Housing Authority, West Beacon Homes	60,000
4	Housing Authority of the City of Laurel, 701 Beacon St., Laurel, MS 39440.	City of Laurel Housing Authority, Windsor Court	95,000
4	Housing Authority of the City of Laurel, 701 Beacon Street, Laurel, MS 39440.	City of Laurel Housing Authority, Brown Circle Homes	95,000
4	Housing Authority of the City of Biloxi, MS, 300 Bencahi Ave., Biloxi, MS 39530.	City of Biloxi Housing Authority, Pinecrest Apartments	100,000
4	Housing Authority of the City of Biloxi, MS, 330 Benachi Ave., Biloxi, MS 39530.	City of Biloxi Housing Authority, Covenant Square Apartments	181,500
4	Housing Authority of the City of Biloxi, MS, 330 Benachi Ave., Biloxi, MS 39530.	City of Biloxi Housing Authority, Beauvoir Beach Apartments	191,100
4	Housing Authority of the City of Biloxi, MS, 330 Benachi Ave., Biloxi, MS 39530.	City of Biloxi Housing Authority, Pinecrest Apartments	169,500
4	Housing Authority of the City of Vicksburg, 131 Elizabeth Circle, Vicksburg, MS 39180.	City of Vicksburg Housing Authority, Rolling Acres	142,426
4	Housing Authority of the City of Jackson, MS, Bldg. B, 3430 Albermarle Rd., Jackson, MS 39213-6596.	City of Jackson Housing Authority, White Rock Homes	117,000
4	Housing Authority of the City of Charlotte, NC, 1301 S. Blvd., P.O. Box 36795, Charlotte, NC 28236-6795.	City of Charlotte Housing Authority, Earle Village	133,815
4	New Bern Housing Authority, 837 Tryon Palace Dr., New Bern, NC 28563.	City of New Bern Housing Authority, Trent Court	92,300
4	Housing Authority of the City of High Point, 500 E. Russell Avenue, High Point, NC 27260.	City of High Point Housing Authority, Springfield Townhouses	110,600
4	Housing Authority of the City of Winston-Salem, 901 Cleveland Ave., Winston-Salem, NC 27101.	City of Winston-Salem Housing Authority, Old Winston Apartments	30,000

FY 1992 THIRD QUARTER FUNDING DECISIONS HOMEOWNERSHIP AND OPPORTUNITY FOR PEOPLE EVERYWHERE (HOPE 1)
RECIPIENTS OF FINAL FUNDING DECISIONS FOR PLANNING GRANT AWARDS—Continued

Region	Funding recipient	Housing authority and development site	Dollar amount approved
4	Housing Authority of the City of Durham, 300 E. Main St., Durham, NC 27702.	City of Durham Housing Authority, Club Boulevard	143,350
4	Housing Authority of the City of Salisbury, 200 S. Boundary St., P.O. Box 159, Salisbury, NC 28145-0159.	City of Salisbury Housing Authority, NC19P016009	194,000
4	Housing Authority of The City of Greenville, 1103 Broad St., Greenville, NC 27858.	City of Greenville Housing Authority, Newtown	200,000
4	Town of Chapel Hill Dept of Housing & Comm. Dev., 317 Caldwell St. Ext., Chapel Hill, NC 27516.	City of Chapel Hill Housing Authority, Airport Gardens	50,000
7	Hall County Housing Authority, 911 Baumann Drive, Grand Island, NE 68803.	Hall County Housing Authority, Western Apartments	100,000
1	Dover Housing Authority, 62 Whittier St., Dover, NH 03820-2994	City of Dover Housing Authority, Mineral and Whittier Park	76,700
2	Housing Authority of the City of Trenton, 875 New Willow St., Trenton, NJ 08636.	City of Trenton Housing Authority, Charles J. Miller Homes	190,000
2	Housing Authority of the City of Atlantic City, 227 N. Vermont Ave., Atlantic City, NJ 08401.	The Atlantic City Housing Authority, Scattered sites	100,000
2	Civic League of Greater New Brunswick, 47-49 Throop Ave., New Brunswick, NJ 08901.	City of New Brunswick Housing Authority, New Brunswick Homes Project 22-31.	76,727
2	Challenge Unlimited, Inc., 45 Clyde Potts Drive, Morristown, NJ 07960	City of Morristown Housing Authority, Manahan Village	200,000
6	Santa Fe Civic Housing Authority, P.O. Box (664 Alta Vista St.), Santa Fe, NM 87502.	City of Santa Fe Housing Authority, Villa Verde (Gallegos Lane)	168,900
9	Housing Authority of The City of Las Vegas, 420 N. 10th Street, Las Vegas, NV 89101.	City of Las Vegas Housing Authority, Ernie Cragin Annex No. 3	85,720
9	Housing Authority of The City of Las Vegas, 420 N. 10th St., Las Vegas, NV 89101.	City of Las Vegas Housing Authority, Marble Manor	141,850
9	Housing Authority of The City of Las Vegas, 420 N. 10th St., Las Vegas, NV 89101.	City of Las Vegas Housing Authority, Weeks Plaza	164,873
9	Housing Authority of the City of Las Vegas, North J St. and Monroe St., Las Vegas, NV 89106.	City of Las Vegas Housing Authority, Evergreen Arms	74,575
2	Buffalo Municipal Housing Authority, 300 Perry St., Buffalo, NY 14204	The City of Buffalo Municipal Housing Authority, Langfield Homes	176,000
2	New York City Housing Authority, 250 Broadway, New York, NY 10007	City of New York Housing Authority, Madison	320,062
2	New York City Housing Authority, 250 Broadway, New York, NY 10007	City of New York Housing Authority, Franklin	553,392
2	Albany Housing Authority, 4 Lincoln Square, Albany, NY 12202-1698	City of Albany Housing Authority, Lincoln Park Square, Bldg. 4	200,000
2	Binghamton Housing Authority, 35 Exchange St., P.O. Box 1906, Binghamton, NY 13902.	City of Binghamton Housing Authority, Saratoga Heights, Bldgs 6, 7, 10, 11, 12, 13, 14, 15.	200,000
2	Freeport Housing Authority, Three Buffalo Ave., Freeport, NY 11520	City of Freeport Housing Authority, Moxey A. Rigby Apartments	200,000
2	Schenectady Municipal Housing Authority, 375 Broadway, Schenectady, NY 12305.	City of Schenectady Housing Authority, Steinmetz Homes	100,000
2	Lackawanna Municipal Housing Authority, 135 Odell St., Lackawanna, NY 14218.	The City of Lackawanna Municipal Housing Authority, Baker Homes	200,000
2	The Dunkirk Housing Authority, 15 N. Main St., Dunkirk, NY 14048	City of Dunkirk Housing Authority, Court Apartments	45,460
5	Lakeview Terrace Resident Management Firm, Inc., 2700 Washington Ave., Cleveland, OH 44113.	The Cuyahoga Metropolitan Housing Authority, Lakeview Terrace Resident Management Firm, Inc.	453,300
5	Butler Metropolitan Housing Authority, 4110 Hamilton-Middletown Rd., Hamilton, OH 45011.	The Butler Metropolitan Housing Authority, Middletown Estates	127,000
5	Pickaway Metropolitan Housing Authority, 176 Rustic Drive, Circleville, OH 43113.	Pickaway Metropolitan Housing Authority, Circleville/Asheville Public Housing.	100,000
5	Logan County Metropolitan Housing Authority, 116 N. Everett St., Bellefontaine, OH 43311.	Logan County Metropolitan Housing Authority, LC Estates	100,000
6	Tulsa Housing Authority, 415 E. Independence, Tulsa, OK 74106	City of Tulsa Housing Authority, South Haven Manor	200,000
6	Housing Authority of The City of Shawnee, 1002 W. 7th St.—P.O. Box 3427, Shawnee, OK 74801.	City of Shawnee Housing Authority, Shawnee Public Housing	100,000
3	Friends Neighborhood Guild, Inc., 703 N. 8th St., Philadelphia, PA 19123.	City of Philadelphia Housing Authority, Spring Garden Apartments and Ludlow Homes.	200,000
3	Greater Germantown Housing Development Corporation, 48 E. Penn St., Philadelphia, PA 19144.	City of Philadelphia Housing Authority, Morton Homes Public Housing Complex.	200,000
3	Housing Association of Delaware Valley, 1314 Chestnut St., Philadelphia, PA 19107.	City of Philadelphia Housing Authority, Queen Lane I and III (I & II?)	200,000
3	Abbottsford Homes Tenant Management Corporation, 3210 B. McMichael St., Philadelphia, PA 19129.	Philadelphia Housing Authority, Abbottsford Homes	318,000
3	Housing Authority of The City of McKeesport, Ohio & Brownlee Sts., McKeesport, PA 15132.	City of McKeesport Housing Authority, E.R. Crawford Village	200,000
3	Housing Association of Delaware Valley, 1314 Chestnut St., Philadelphia, PA 19107.	The Chester City Housing Authority, Ruth L. Bennett Homes	200,000
3	Housing Association of Delaware Valley, 1314 Chestnut St., Philadelphia, PA 19107.	The Chester City Housing Authority, Lamokin Village	200,000
3	Interfaith Community Development Corp. Inc., 503 King St., Pottstown, PA 19464.	The Montgomery County Housing Authority, Penn Village and William Penn Homes.	136,691
3	Fayette County Community Action Agency, Inc., 137 N Beeson Avenue, Uniontown, PA 15401.	The Fayette County Housing Authority, Lemonwood Acres	138,570
3	Housing Authority of Chester County, 222 N. Church St., West Chester, PA 19380.	The Chester County Housing Authority, Coatesville—Hillcrest/Broadview.	97,700
1	The Providence Housing Authority, 100 Broad St., Providence, RI 02903.	City of Providence Housing Authority, Scattered Site Development	100,000
1	Church Community Housing Corporation, 50 Washington Square, Newport, RI 02840.	City of Newport Housing Authority, Chapel Terrace	100,000

FY 1992 THIRD QUARTER FUNDING DECISIONS HOMEOWNERSHIP AND OPPORTUNITY FOR PEOPLE EVERYWHERE (HOPE 1)
RECIPIENTS OF FINAL FUNDING DECISIONS FOR PLANNING GRANT AWARDS—Continued

Region	Funding recipient	Housing authority and development site	Dollar amount approved
1	Town of Johnston Housing Authority, 6 Forland Circle, Johnston, RI 02919.	City of Johnston Housing Authority, New Start Homes	36,000
1	Town of North Providence Housing Authority, 701 Beacon St., Laurel, MS 39440.	City of North Providence Housing Authority, 71 Eliot Street	56,000
4	Public Housing Administration of Puerto Rico, 427 Barbosa Ave., Malco Bldg., San Juan, PR 00936.	Yaguez & Marini Farm	200,000
4	Municipality of Villalba, Munoz Rivera St., P.O. Box 1506, Villalba, PR 00766.	The Puerto Rico Public Housing Administration, Residencial Maximino Miranda.	57,000
4	Public Housing Administration of Puerto Rico, 427 Barbosa Ave., Malco Bldg., San Juan, PR 00936.	The Puerto Rico Public Housing Administration, Las Delicias & Padre Nazario.	200,000
4	Public Housing Administration of Puerto Rico, 427 Barbosa Ave., Malco Bldg., San Juan, PR 00936.	The Puerto Rico Public Housing Administration, Villas de los Santos I & II.	165,000
4	Public Housing Administration of Puerto Rico, 427 Barbosa Ave., Malco Bldg., San Juan, PR 00936.	The Puerto Rico Public Housing Administration, La Rosa & Antigua Via Housing Developments.	182,000
4	Palmetto Legal Services, 2109 Bull St., Columbia, SC 29201	City of Columbia Housing Authority, Jaggers Terrace	128,020
4	North Charleston Housing Authority, 3817 Goodman Blvd., North Charleston, SC 29405.	City of North Charleston Housing Authority, North Park Village	83,943
4	Division of Housing and Community Development, 701 N. Main St., Memphis, TN 38107.	City of Memphis Public Housing Authority, Ford Road Subdivision	160,000
4	Metropolitan Development and Housing Agency, 701 South 6th Street, Nashville, TN 37206.	The Metropolitan Development & Housing Agency, Parkway Terrace	35,000
4	Kingsport, Tenn. Housing Authority, 906 E. Sevier St., Kingsport, TX 37662.	City of Kingsport Housing Authority, Holly Hills	40,200
4	Jackson Housing Authority, 175 Preston St., Jackson, TN 37303-0188	City of Jackson Housing Authority, Kingfield	106,000
4	Regional Education & Community Health Srvcas, Inc., 100 Main St., P.O. Box 209, Jacksboro, TN 37757.	City of Lafollette Housing Authority, Oneida	68,420
4	Regional Education & Community Health Srvces, Inc., 100 Main Street, Jacksboro, TN 37757.	City of Lafollette Housing Authority, Pleasant Ridge Apartments	140,673
4	Morristown Housing Authority, 600 Sulphur Springs Rd., Morriston, TN 37814.	City of Morriston Housing Authority, Julia Bales Callaway Homes	42,000
4	Newport Housing Authority, 1226 Buda Street, Newport, TN 37821	City of Newport Housing Authority, Dr. Branch Homes: Jaybird Section	84,450
4	Elizabethton Housing and Development Agency, Inc., 901 Pine Ridge Circle, Elizabethton, TN 37643.	The Elizabethton Housing and Development Agency, South Hills Estates.	64,710
6	Housing Authority of the City of Galveston, 920 53rd Street, Galveston, TX 77550.	City of Galveston Housing Authority, Palm Terrace and Palm Terrace Addition.	263,600
6	Cameron County Housing Authority, PO Box 5806, Brownsville, TX 78520.	Housing Authority of Cameron County, Las Palmas Housing Development.	171,250
3	P.E.A.R.L. Inc., 610 16th St., Newport News, VA 23607-0753	The Newport News Redevelopment Housing Authority, Lassiter Courts	200,000
3	Richmond Redevelopment and Housing Authority, 901 Chamberlayne Pkwy., Richmond, VA 23220.	City of Richmond Housing Authority, Overlook & Mimosa Neighborhood.	71,825
3	Richmond Redevelopment and Housing Authority, 901 Chamberlayne Pkwy., Richmond, VA 23220.	City of Richmond Housing Authority, Randolph Neighborhood	198,900
3	Lynchburg Redevelopment and Housing Authority, 1101 Court Street, Lynchburg, VA 24504.	The Lynchburg Redevelopment and Housing Authority	23,600
3	Petersburg Redevelopment and Housing Authority, 128 S. Sycamore St., P.O. Box 811, Petersburg, VA 23803.	City of Petersburg Housing Authority, Pecan Acres Estate	119,540
3	Petersburg Redevelopment and Housing Authority, 128 S. Sycamore St., P.O. Box 811, Petersburg, VA 23803.	City of Petersburg Housing Authority, Cedar Lawn Estates	39,918
3	Wise County Redevelopment and Housing Authority, North Route 72, P.O. Box 630, Coeburn, VA 24230.	Litchfield Manor	195,850
3	Cumberland Plateau Regional Housing Authority, P.O. Box 1328, Lebanon, VA 24266-1328.	The Cumberland Plateau Regional Housing Authority, Seven Oaks	200,000
10	Housing Authority of Grant County, 1139 Larson Blvd., Moses Lake, WA 98837.	The Grant County Housing Authority	11,600
10	Lummi Indian Business Council, 2616 Kwina Rd., Bellingham, WA 98226.	Lummi Tribal IHA, Balch Road and McKenzie	70,300
5	Housing Authority of the City of Milwaukee, 809 N. Broadway, Milwaukee, WI 53202.	City of Milwaukee Housing Authority, Scattered Sites	100,000
5	Menominee Tribal Housing Authority, P.O. Box 459, Keshena, WI 54135.	Menominee Tribal IHA, To be determined	46,800
3	Charleston Human Rights Commission, 115 Lee Street, W., Charleston, WV 25302.	City of Charleston Housing Authority, Littlepage Terrace	100,000

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BILLING CODE 4210-33-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-110-6310-257A; G2-446]

Medford District Advisory Council; Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meetings.

SUMMARY: This notice announces a series of meeting dates for the Medford District Advisory Council—October 23, November 6, November 20 and December 11. The meetings will be held in the Medford District Office, 3040 Biddle Road, Medford, Oregon. This notice is given in accordance with Public Law 990463.

FOR FURTHER INFORMATION CONTACT: Kurt Austermann, Medford District Office, 3040 Biddle Road, Medford, Oregon, 97504; telephone 503-770-2424.

SUPPLEMENTARY INFORMATION: The meetings will begin at 8:30 a.m., October 23, November 6 and December 11. The meeting November 20 will begin at 2 p.m. All meetings will be held in the Oregon Room of the Bureau of Land Management office at 3040 Biddle Road, Medford, Oregon. The agenda for the Advisory Council is to review the Medford District's Resource Management Plan Preferred Alternative and prepare for the District Manager a recommendation on the Preferred Alternative. Persons interested in making oral statements during any Council meeting may do so following conclusion of the Council's agenda, or written statements may be submitted for the Council's consideration. Anyone wishing to make an oral statement at any Council meeting must notify the District Manager, Bureau of Land Management, 3040 Biddle Road, Medford, Oregon 97504, by close of business October 22, November 5, November 19, and December 10. Depending on the number of persons wishing to make oral statements, a per-person time limit may be established by the District Manager.

Summary minutes of the Council meeting will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Dated: September 11, 1992.

David A. Jones,

District Manager.

[FR Doc. 92-22601 Filed 9-17-92; 8:45 am]

BILLING CODE 4310-33-M

[UT-942-4214-11; U-011167]

Proposed Continuation of Withdrawal; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that a 40-acre withdrawal for the Central Utah Project continue for an additional 88 years. The land would remain closed to surface entry and mining, but has been and would remain open to mineral leasing.

DATES: Comments should be received by December 17, 1992.

ADDRESSES: Comments should be sent to State Director, Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145-0155.

FOR FURTHER INFORMATION CONTACT: Randy Massey, BLM State Office, (801) 539-4119.

SUPPLEMENTARY INFORMATION: The Bureau of Reclamation proposes that the existing land withdrawal made by the Commissioner Order of November 14, 1955, be continued for a period of 88 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

Salt Lake Meridian

T. 3 S., R. 21 E.,
Sec. 27, SE¼SE¼

The area described contains 40 acres in Uintah County.

The purpose of the withdrawal is to protect Steinaker Dam and Reservoir, near Vernal, Utah. The withdrawal segregates the land from settlement, sale, location, and entry, including location and entry under the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Lands and Minerals Operations, Utah State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued, and, if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

JoAn C. Robbins,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 92-22675 Filed 9-17-92; 8:45 am]

BILLING CODE 4310-DQ-M

National Park Service

Civil War Sites Advisory Commission Meeting

AGENCY: National Park Service, U.S. Department of the Interior.

ACTION: Notice of Meeting of the Civil War Sites Advisory Commission.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. appendix (1988), that a meeting of the Civil War Sites Advisory Commission will be held on Friday, October 9, 1992, at the U.S. Department of Interior, Large Buffet Room, 1849 C Street, NW., Washington, DC 20240. The meeting will begin at 9 a.m. and conclude before 3:30 p.m.

This meeting constitutes the tenth meeting of the Commission. The primary focus of the meeting will be on the subject of evaluating and preserving Civil War sites and preparing the Commission's draft report. The Commission will welcome input from the public on the subject of Civil War site evaluation and preservation, especially as it relates to Civil War sites in Washington, DC and surrounding states.

Space and facilities to accommodate members of the public may be limited and persons will be accommodated on a first-come, first-served basis. Anyone may file a written statement with the Commission concerning matters to be discussed.

Persons wishing further information concerning the meeting or who wish to submit written statements, may contact Ms. Jan Townsend, Interagency Resources Division, P.O. Box 37127, Washington, DC 20013-7127 (telephone 202-343-3936). Draft summary minutes of the meeting will be available for public inspection about 8 weeks after the meeting, in Suite 250, 800 N. Capitol St., NW., Washington, DC 20002.

Dated: September 14, 1992.

Lawrence E. Aten,

Acting Executive Director and Chief, Interagency Resources Division.

[FR Doc. 92-22577 Filed 9-17-92; 8:45 am]

BILLING CODE 4210-70-M

INTERNATIONAL TRADE COMMISSION

[332-334]

United States-Canada Free-Trade Agreement: Probable Economic Effect on U.S. Industries and Consumers of Immediate Elimination of U.S. Tariffs on Certain Articles from Canada (Third Report)

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

SUMMARY: Following receipt on August 28, 1992, of a request from the U.S. Trade Representative (USTR) pursuant to authority delegated by the President, the Commission instituted investigation No. 332-334 under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) to advise the President, with respect to each dutiable article listed in Annex I of the USTR's notice published in the **Federal Register** of September 4, 1992 (57 FR 40720), of its judgment as to the probable economic effect of the immediate elimination of the U.S. tariff, under the United States-Canada Free-Trade Agreement, on domestic industries producing like or directly competitive articles, and on consumers.

The USTR asked that the Commission provide its advise not later than 90 days after the Commission received the request, or in this case by November 27, 1992.

EFFECTIVE DATE: September 11, 1992.

FOR FURTHER INFORMATION CONTACT: The Project Leader, Ms. Gail Burns (202-205-2501), General Manufactures Division, Office of Industries, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. For information on legal aspects of the investigation contact William Gearhart of the Commission's Office of the General Counsel (202-205-3091). The media should contact Edward Carroll, Acting Director, Office of Public Affairs (202-205-1819). For information on a product basis, contact the appropriate member of the Commission's Office of Industries, as follows:

(1) Agricultural products, Ms. Joan Gallagher (202-205-3317)

(2) Textiles and apparel, Ms. Mary Elizabeth Sweet (202-205-3455)

(3) Chemical products, Mr. Larry Johnson (202-205-3351)

(4) Minerals and metals, Ms. Deb. McNay (202-205-3425)

(5) Machinery and equipment, Mr. Dave Slingerland (202-205-3400)

(6) General manufactures, Mr. Dennis Luther (202-205-3497)

(7) Services and electronic technology, Mr. Thomas Sherman (202-205-3389)

Hearing-impaired persons can obtain information on this study by contacting our TDD terminal on 202-205-1810.

BACKGROUND: The United States-Canada Free-Trade Agreement (CFTA), which entered into force on January 1, 1989, provides that all products of Canada imported into the United States and all products of the United States imported into Canada shall be free of duty by January 1, 1998. In the United States, it was approved and implemented by the United States-Canada Free-Trade Agreement Implementation Act of 1988.

Article 401(5) of the CFTA provides that, at the request of either government, the two governments are to undertake consultation to consider agreeing to accelerate the elimination of the duties on specific products in the schedule of each government. Section 201(b) of the Implementation Act grants the President, subject to certain requirements, the authority to proclaim any such agreed acceleration of the elimination of a U.S. duty. One of the requirements of section 103 of the Implementation Act is that the President obtain advice from the Commission.

PUBLIC HEARING: A public hearing in connection with the investigation will be held in the Commission Hearing Room, 500 E Street SW., Washington, DC, beginning at 9:30 a.m. on October 26, 1992, and continuing, as required, on October 27 and 28. All persons will have the right to appear by counsel or in person, to present information, and to be heard. Persons wishing to appear at the public hearing should file requests to appear not later than October 19, 1992. Prehearing briefs (original and 14 copies) should also be filed with the Acting Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436, not later than 5 p.m., October 21, 1992. Any post-hearing briefs must be filed by November 4, 1992.

WRITTEN SUBMISSIONS: In lieu of or in addition to appearances at the public hearing, interested persons are invited to submit written statements concerning the investigation. Written statements should be received by the close of business on November 4, 1992. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Acting Secretary at the Commission's office in Washington, DC.

Issued: September 14, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-22613 Filed 9-17-92; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative; Commission of Intent to Perform Interstate Transportation for Certain Nonmembers

September 15, 1992.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meeting each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

(1) Western Co-Op Transport Association, Box 794; (2) Montevideo, MN 56265; (3) Western Co-Op Transport Association Office, East Highway 212,

Montevideo, MN 56265; (4) Gerald L. Morrow, Manager, Box 794 Montevideo, MN 56265.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-22645 Filed 9-17-92; 8:45 am]

BILLING CODE 7035-01-M

Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)91) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Larson Metal Manufacturing, Inc., South County Industrial Park, Route #6, Jamestown, New York 14701.

2. Wholly-owned subsidiary which will participate in the operations and State of incorporation: R.W. Trucking, Inc., New York State corporation.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-22646 Filed 9-17-92; 8:45 am]

BILLING CODE 7035-01-M

Privacy Act Records; Fee Billing and Collection System

AGENCY: Interstate Commerce Commission.

ACTION: Notice of additional Privacy Act system of records.

SUMMARY: Pursuant to 5 USC 552a(e)(4), the Commission publishes a notice pertaining to the existence and character of an additional Privacy Act System of Records. The category of individuals covered by the system is the holders of fee billing accounts with the Commission. The categories of records in the system are developed from information which is supplied by individuals or entities that apply for accounts and financial information which may be obtained from credit bureaus or the Commission field staff. The information obtained will be available to the Commission and its staff and may be made available to government agencies such as the Internal Revenue Service, the Department of Justice, the General Accounting Office and credit bureaus and debt collection contractors for the purposes of collecting debt owed to the Commission.

EFFECTIVE DATE: November 17, 1992.

ADDRESSES: The System is located at the Interstate Commerce Commission Headquarters in Washington, DC. The System Manager and address are as follows: Chief, Budget and Fiscal Office, Interstate Commerce Commission, Room 1330, 12th and Constitution Avenue, NW., Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Kathleen M. King 202-927-5493, [TDD for hearing impaired: 202-927-5712]

SUPPLEMENTARY INFORMATION: The above described System is called Fee Billing and Collection System (32-20-0014). The policies and practices for storing, retrieving, accessing, retaining, and disposing of the records in the System are as follows: The records are maintained on magnetic discs and kept in a locked file cabinet under direct control of the responsible official. The record source categories for the System are the individuals and entities who request fee billing accounts, credit bureaus, and ICC field staff. Access to these files will be made upon request and presentation of proper identification. Notification and contesting record procedures are the same as for all other Privacy Act files. No exemption in the Privacy Act applies to this system of record. The authority for maintenance of this System is found at 49 USC 10321, and 31 USC 3711 *et seq.* and 9701.

By the Commission, S. Arnold Smith, Privacy Officer.

Sidney L. Strickland, Jr.,

Secretary.

Pursuant to 5 USC 552a(e)(4), the Interstate Commerce Commission publishes this notice pertaining to the existence and character, of an additional system of records.

32-20-0014

SYSTEM NAME:

Fee Billing and Collection System.

SYSTEM LOCATION:

Interstate Commerce Commission, Budget and Fiscal Office, Room 1330, 12th and Constitution Avenue, NW., Washington, DC 20423.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals or entities that hold fee billing accounts.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual or entities submit Form ICC-1032 to request establishment of an account for fee billing purposes. Files contain a record of charges, including applicable interest, penalties and administrative charges and payments for fee billing accounts. Files include correspondence and other documentation relating to collection activities of the ICC. The files may include financial information obtained from credit bureaus or developed by ICC field staff.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The authority for maintenance of the system is found in 49 USC 10321, 31 USC 3711 *et seq.* and 9701.

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Maintaining a recordkeeping and accounting system to record charges, including applicable interest, penalties and administrative charges, and payments for fee billing accounts.

The information in the system of records may be provided to other federal agencies and entities including but not limited to the Internal Revenue Service, the General Accounting Office, and the Department of Justice. The information also may be provided to credit bureaus and debt collection contractors, as authorized by the Debt Collection Act of 1982, 31 USC 3711, *et seq.* The information also may be used to publish a list of delinquent account holders.

POLICIES AND PRACTICES FOR STORING, RETRIEVING ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The Budget and Fiscal files consist of paper records maintained in folders, and on automated data storage devices and magnetic computer discs Files are secured at all times.

RETRIEVABILITY:

Indexed in data base by account number and name of account holder. Paper records filed by account number.

SAFEGUARDS:

Access to the records is limited to authorized staff in the Budget and Fiscal Office and to other authorized officials or employees of the ICC on a need-to-know basis as determined by the Budget and Fiscal Office. All records are kept in limited access areas during duty hours and in locked files at all other times.

RETENTION AND DISPOSAL:

To be retained for 5 years.

SYSTEM MANAGER AND ADDRESS:

Interstate Commerce Commission, Chief, Budget and Fiscal Office, Room 1330, 12th and Constitution Avenue, NW., Washington, DC 20423.

NOTIFICATION PROCEDURES:

See 49 CFR part 1007.

RECORD ACCESS PROCEDURES:

See 49 CFR part 1007.

CONTESTING RECORD PROCEDURES:

See 49 CFR part 1007.

RECORD SOURCE CATEGORIES:

Account holders, credit bureaus, ICC field staff.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 92-22647 Filed - -92; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 425X)]

CSX Transportation, Inc.—Abandonment Exemption—In Mineral County, WV

Applicant CSX Transportation, Inc., has filed a notice of exemption under 49 CFR 1152 subpart F—Exempt Abandonment to abandon its 0.69-mile rail line between milepost BWL-0.00 and milepost BWL-0.69 (the end of the track), at Harrison, in Mineral County, WV.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period, and (4) that the requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to government agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 39 U.S.C. 10505(d) must be filed.

This exemption will be effective on October 18, 1992, unless stayed or a formal expression of intent to file an offer of financial assistance (OFA) is filed. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 [3] must be filed by September 29, 1992. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 8, 1992, with: Officer of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, 500 Water Street J150, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEE will issue an environmental assessment (EA) by September 23, 1992. Interested persons may obtain a copy of the EA by writing to SEE (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927-6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: September 11, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-22644 Filed 9-17-92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30186 (Sub No. 2)]

Tongue River Railroad Co.—Construction and Operation of Additional Rail Line From Ashland to Decker, in Rosebud and Big Horn Counties, MT

AGENCY: Interstate Commerce Commission.

ACTION: Extension of comment period.

SUMMARY: We are responding to a petition from the Northern Plains Resource Council, and other requests, seeking a 30-day extension of time for the comment period on the Draft Environmental Impact Statement (DEIS) in the above-referenced proceeding. Comments were originally due September 21, 1992. The request to extend the comment period is reasonable.

DATES: The comment period on the DEIS will be extended to October 21, 1992, 30 days from the original comment due date.

ADDRESSES: Send an original and 10 copies of comments referring to Finance Docket 30186 (Sub No. 2) to: Dana White, Section of Energy and Environment, room 3214, Interstate Commerce Commission, Washington, DC 20423.

Send one copy of the railroad's representative: Mr. Thomas Ebzery, Village Center I, suite 165, 1500 Poly Drive, Billings, MT 59102.

FOR FURTHER INFORMATION CONTACT: Dana White (202) 927-6214 or Elaine Kaiser, Chief, Section of Energy and Environment (202) 927-6248. TDD for hearing impaired: (202) 927-5721.

SUPPLEMENTARY INFORMATION: Reasons for the requested 30-day extension include the need for additional time to: gather substantive data; analyze the lengthy transcripts generated by the recent hearings in this case; investigate issues addressed in the DEIS, and address possible discrepancies between the DEIS and the environmental documentation on the already-approved 89-mile line between Miles City and Ashland.

Dated: September 14, 1992.

By the Commission, Elaine K. Kaiser, Chief, Section of Energy and Environment.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-22639 Filed 9-17-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background:

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will

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[1] A stay will be issued routinely where an informed decision on environmental issues, whether raised by a party or by the Commission's Section of Energy and Environment (SEE), cannot be made before the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C. 2d 377 (1989). Any entity seeking a stay on environmental grounds is encouraged to file promptly so the Commission may act on the request before the effective date.

[2] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and/or Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills ((202) 523-5095).

Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for the Office of Labor-Management Standards, Office of Management and Budget, room 3208, Washington DC 20503 ((202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirements which has been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

Revision

Office of Labor-Management Standards.

Labor Organization Annual Financial Reports (Proposed Rule), 1214-0001, LM-4.

Annually

Non-profit institutions.

14,000 respondents; 1 hour per response; 1 form; 14,000 total burden hours.

The Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) requires each covered labor organization to file annual financial reports. The proposed abbreviated annual financial report (Form LM-4) provides adequate information to ensure proper disclosure of union finances while reducing the reporting burden on small unions with annual receipts of less than $10,000.

In addition, on April 17, 1992, a notice of proposed rulemaking was published (57 FR 14244) which proposes to revise the regulations pertaining to the filing of forms LM-2 and LM-3.

This proposed rule modifies these reporting forms to require that certain disbursements be attributed and reported by function classification. The proposed rule additionally modifies the reporting forms by changing the methods of accounting from a cash basis to an accrual basis in conformity with generally accepted accounting principles. The proposed rule also increases the ceiling for filing the simplified annual report form LM-3 from $100,000 to $200,000 in total annual receipts. The proposed burden for the LM-2: 5,096 respondents, 111.25 average hours per respondent, 566,930 total burden hours; the LM-3, 16,275 respondents, 77.31 average hours per respondent, 1,258,275 total burden hours.

Signed at Washington, DC this 11th day of September, 1992.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 92-22679 Filed 9-17-92; 8:45 am]

BILLING CODE 4510-26-M

Labor Advisory Committee for Trade Negotiations and Trade Policy

Meeting notice

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463 as amended), notice is hereby given of a meeting of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: October 14, 1992, 10 am-12 noon, Rm. N-3437 C&D, Department of Labor Building, 200 Constitution Ave., NW, Washington, DC 20210.

Purpose: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. section 552(c)(1). The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

FOR FURTHER INFORMATION, CONTACT: Fernand Lavallee, Director, Trade Advisory Group, Phone: (202) 523-2752.

Signed at Washington, DC this 14th day of September 1992

Shellyn G. McCaffrey,

Deputy Under Secretary, International Affairs.

[FR Doc. 92-22680 filed 9-17-92; 8:45 am]

BILLING CODE 4510-28-M

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage

determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

Withdrawn General Wage Determination Decision

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, General Wage Determination No. CO91-14, dated May 29, 1992.

Agencies with construction pending projects, to which this wage decision would have been applicable, should utilize the project determination procedure by submitting a SF-308. (See Regulations, 29 CFR part 1, § 1.5.) Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is within ten (10) days of this notice, the contract specifications need not be affected.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page number(s).

Volume I

Delaware:
DE91-6 (Sept. 18, 1992) ..... p. all.
Florida:
FL91-50 (Sept. 18, 1992) ..... p. all.
FL91-51 (Sept. 18, 1992) ..... p. all.
FL91-52 (Sept. 18, 1992) ..... p. all.
Maryland:
MD91-37 (Sept. 18, 1992) ..... p. all.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut:
CT91-1 (Feb. 22, 1991) ..... p. 63, p. 64
District of Col.:
DC91-1 (Feb. 22, 1991) ..... p. all.
Delaware:
DE91-1 (Feb. 22, 1991) ..... p. all.
Georgia:
GA91-31 (Feb. 22, 1991) ..... p. all.
Kentucky:
KY91-29 (Feb. 22, 1991) ..... p. 403, pp. 404-409, pp. 416-417, 419.
Maryland:
MD91-1 (Feb. 22, 1991) ..... p. all.
MD91-8 (Feb. 22, 1991) ..... p. all.
New York:
NY91-9 (Feb. 22, 1991) ..... p. 869, p. 870.
NY91-10 (Feb. 22, 1991) ..... p. 873, p. 874
Virginia:
VA91-5 (Feb. 22, 1991) ..... p. all.
VA91-73 (Feb. 22, 1991) ..... p. all.
West Virginia:
WV91-3 (Feb. 22, 1991) ..... p. 1445, pp. 1446-1449, p. 1456.

Volume II

Illinois:
IL91-12 (Feb. 22, 1991) ..... p. 171, p. 172.
IL91-14 (Feb. 22, 1991) ..... p. 195, p. 196.
Indiana:
IN91-1 (Feb. 22, 1991) ..... p. 243, pp. 244-248, pp. 250-258.
Michigan:
MI91-7 (Feb. 22, 1991) ..... p. all.
Ohio:
OH91-2 (Feb. 22, 1991) ..... p. 821, p. 826.
OH91-29 (Feb. 22, 1991) ..... p. 903, p. 912.

Volume III

Colorado:
CO91-5 (Feb. 22, 1991) ..... p. all.
Washington:
WA91-6 (Feb. 22, 1991) ..... p. all.
WA91-10 (Feb. 22, 1991) ..... p. all.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC., this 11th day of September 1992.

Alan L. Moss,

Director, Division of Wage Determinations

[FR Doc. 92-22371 Filed 9-17-92; 8:45 am]

BILLING CODE 4510-27-01

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements Office of Management and Budget (OMB) Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to the OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

1. Type of submission, new revision, or extension: Revision.

2. The title of the information collection: Reactor Operator and Senior Reactor Operator Licensing Training and Requalification Programs.

3. The form number if applicable: N/A.

4. How often the collection is required: Annually.

5. Who will be required or asked to report: All reactor licensees and applicants for an operating license at power and non-power reactors.

6. An estimate of the number of responses: 132 for power reactors and 30 for non-power reactors annually.

7. An estimate of the total number of hours needed to complete the requirement or request: 1,760 hours annually for power reactors (approximately 13.3 hours per response) and 120 hours annually for non-power reactors (approximately 4 hours per response).

8. An indication of whether section 3504(h), Pub. L. 96-511 applies: Not applicable.

9. Abstract: NRC requests copies of training and requalification material from reactor licensees/applicants. This training material will be used by appropriate NRC staff to develop operator and senior operator licensing and requalification examinations.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer:

Ronald Minsk, Office of Information and Regulatory Affairs (3150-0101), NEOB-3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395-3084.

NRC Clearance officer is Brenda Jo. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this 10th day of September 1992.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 92-22617 Filed 9-17-92; 8:45 am]

BILLING CODE 7590-01-M

Pathfinder Mines Corporation, Lucky MC Mine; Fremont County, WY

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Intent to Amend Source Material License SUA-672 for the Lucky MC Mine Mill to Incorporate Reclamation Schedules.

SUMMARY: The Nuclear Regulatory Commission is preparing to amend Source Material License SUA-672 to incorporate a revised reclamation schedule and to add a new license condition.

DATES: The comment period expires November 2, 1992.

ADDRESSES: Copies of the response from Pathfinder Mines Corporation and the staff evaluation of the licensee's request are available for inspection at the Uranium Recovery Field Office, 730 Simms Street, suite 100, Golden CO, and the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Comments should be mailed to David L. Meyer, Chief, Rules and Directives Review Branch, Office of Administration, P-223, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy to the Director, Uranium Recovery Field Office, P.O. Box 25325, Denver, CO 80225.

Comments may be hand-delivered to Room P-223, 7920 Norfolk Avenue, Bethesda, MD, between 7:30 a.m. and 4:15 p.m., Federal workdays.

FOR FURTHER INFORMATION CONTACT: Ramon E. Hall, Director, Uranium Recovery Field Office, Region IV, U.S. Nuclear Regulatory Commission, Box 25325, Denver, CO. Telephone: 303-231-5800.

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (NRC) and the Environmental Protection Agency (EPA) entered into a Memorandum of Understanding (MOU) which was published in the **Federal Register** on October 25, 1991 (56 FR 55434). The MOU requires that the NRC incorporate enforceable reclamation schedules for specific uranium mill sites into the corresponding licenses. The MOU also listed expected dates for completion of placement of a final earthen cover for each site.

The NRC requested by letter dated October 22, 1991, that the licensee submit a proposed schedule for reclamation milestones for NRC review and incorporation into the license. The licensee provided a response on July 31, 1992.

The proposed schedule calls for placement of the final cover by September 30, 1998, which is the same date as in the MOU for this mill. The NRC staff reviewed the reclamation milestone schedule and concluded that it is reasonable, and adherence to the schedule should assure satisfactory progress toward placement of the final cover by the specified date.

The NRC intends to amend Source Material License SUA-672 to incorporate the schedules proposed by the licensee by adding License Condition No. 61 as follows:

61. The licensee shall complete site reclamation in accordance with the approved reclamation plan and ground-water corrective action plan, as authorized by License Condition Nos. 54 and 60, respectively, in accordance with the following schedules.

A. To ensure timely compliance with target completion dates established in the Memorandum of Understanding with the Environmental Protection Agency (56 FR 55432, October 25, 1991), the licensee shall complete reclamation to control radon emissions as expeditiously as practicable, considering technological feasibility, in accordance with the following schedule:

(1) Windblown tailings retrieval and placement on the pile—September 30, 1996.

(2) Placement of the interim cover to decrease the potential for tailings dispersal and erosion—April 30, 1993.

(3) Placement of final radon barrier designed and constructed to limit radon emissions to an average flux of no more than 20 pCi/ m^2/s above background—September 30, 1998.

B. Reclamation, to ensure required longevity of the covered tailings and ground-water protection, shall be completed as expeditiously as is reasonably achievable, in accordance with the following target dates for completion:

(1) Placement of erosion protection as part of reclamation to comply with Criterion 6 of appendix A of 10 CFR part 40—September 30, 1999.

(2) Projected completion of ground-water corrective actions to meet performance objectives specified in the ground-water corrective action plan—September 30, 2004.

C. Any license amendment request to revise the completion dates specified in Section A must demonstrate that compliance was not technologically feasible (including inclement weather, litigation which compels delay to reclamation, or other factors beyond the control of the licensee).

D. Any license amendment request to change the target dates in Section B above, must address added risk to the

public health and safety and the environment, with due consideration to the economic costs involved and other factors justifying the request such as delays caused by inclement weather, regulatory delays, litigation, and other factors beyond the control of the licensee.

Dated at Denver, Colorado, this 8th day of September 1992.

For the Nuclear Regulatory Commission.

Ramon E. Hall,

Director, Uranium Recovery Field Office.

[FR Doc. 92-22543 Filed 9-17-92; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer—Kenneth Fogash, (202) 272-2142.

Upon written request copy available from: Securities and Exchange Commission, Office of Filings, Information and Consumer Services, Washington, DC 20549.

Extension: Form 15, File No. 270-170.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission ("Commission") has submitted Form 15 for extension of OMB approval. Form 15 is filed by issuers to certify termination of registration of a class of security registered under section 12 of the Securities Exchange Act of 1934 ("Exchange Act") or to provide notice that its duty to file reports pursuant to sections 13 and 15(d) of the Exchange Act has been suspended. Each of the estimated 1096 respondents filing Form 15 annually incurs an average 1.2 burden hours to comply with form requirements. The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules or forms.

General comments regarding the estimated burden hours should be directed to Gary Waxman at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman (PRA Project No. 3235-0167), Clearance Officer, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 31, 1992.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-22594 Filed 9-17-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31175; File No. SR-OCC-92-14]

Self-Regulatory Organizations; The Options Clearing Corp.; Proposed Rule Change Relating to Clearing-Level Spread Margin Treatment for Positions Carried in a Clearing Member's Customers' Account

September 11, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), [1] notice is hereby given that on May 5, 1992, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would eliminate the requirement of OCC Rule 611 that spreads between long and short positions carried for the same customer be on a contract-for-contract basis. Accordingly, OCC would give clearing-level spread margin treatment to such pairs of positions provided that the customer's margin requirement has been reduced in accordance with applicable exchange margin rules.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1) (1988).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to minimize the possibility that a Clearing Member will find itself financially "squeezed" between, on the one hand, a requirement in OCC's rules to deposit clearing-level margin to cover a customer's short option position and, on the other hand, the Member's inability to collect margin from the customer on the short position because the customer is entitled, under applicable exchange margin rules, to receive spread margin treatment (i.e., to offset the value of a long option position against the margin requirement for the short position). This change would be accomplished by amending OCC Rule 611. Rule 611 currently states that a Clearing Member may instruct OCC to release a customer's long position from segregation [2] only if (1) the Member is simultaneously carrying for the same customer a short position for "an equal number of option contracts of the same type of options relating to the same underlying security (or, in the case of index options, the same index group)," and (2) the margin on the short position required to be deposited by the customer with the customer's broker has been reduced as a result of the long position. As revised, OCC Rule 611 would state that a Clearing Member may instruct OCC to release a customer's long position from segregation if the Clearing Member is simultaneously carrying for the same customer a short position, and the margin on the short position required to be deposited by the customer with the customer's broker has been reduced as a result of the long position. The effect of the revised language would be to permit OCC to give clearing-level spread margin treatment to any spread consisting of a long position and a short position carried for a customer that receives customer-level spread margin treatment, and not just to a customer's spread in which each position is for "an equal number of option contracts of the same type of option relating to the same underlying security (or, in the case of index options, the same index group)."

The purpose of Rule 611 is, and has been since it was originally enacted in

[2] A long position is "segregated" for purposes of OCC's rules if it is not subject to OCC's lien. Conversely, a long position is "unsegregated" if it is subject to OCC's lien. Unsegregated long positions are available to the extent specified in OCC's rules, to reduce OCC's margin requirement with respect to short positions in the same account.

1975, to limit the use of clearing-level spread margin treatment to those customer spreads for which the customer's broker was providing spread margin treatment at the customer-level. The need for Rule 611 arose in 1975 when The Chicago Board Options Exchange ("CBOE"), American Stock Exchange ("AMEX"), and the New York Stock Exchange ("NYSE") adopted new customer margin rules. These rules provided, in effect, that where an option is carried in a short position in a customer's account and the account is also long an option on the same underlying security (or, in the case of an index option, on the same underlying index) that expires at the same time as or after the expiration date for the short position, the customer's margin requirement need not exceed the amount, if any, by which the exercise price of the long option exceeds the exercise price of the short option.[3] Before enactment of OCC Rule 611, OCC's margin rules prohibited Clearing Members from offsetting any portion of the value of the long positions in a customers' account against the margin required for short positions in that account. A Clearing Member that had customers with hedged long and short positions, as a result, found itself "squeezed" between a requirement to deposit clearing-level margin to cover a customer's short positions and its inability as a practical matter [4] to collect margin from the customer under applicable exchange rules.

Rule 611 was adopted, therefore, to permit OCC to provide clearing-level spread margin treatment to the hedged short and long positions of a customer, but only if the customer were subject to a reduced margin requirement for the short position as a result of the long position. The staff of the Commission expressed its view that provision by OCC of clearing-level spread margin treatment of customer positions was consistent with Exchange Act Rules 15c3–3, 15c2–1 and 8c–1, so long as such treatment was limited in this manner.[5]

As amended, Rule 611 would preserve the prohibition against clearing-level spread margin treatment for any customer spread unless the customer were receiving spread margin treatment from the customer's broker, and the rule therefore would continue to be consistent with Rules 15c3–3, 15c2–1 and 8c–1 as interpreted by the Commission staff. However, the proposed rule change would minimize [6] the potential that the rule has for the unintended future creation of a "squeeze" on the finances of Clearing Members each time that an exchange introduces a new product that is entitled to customer-level spread margin treatment under exchange rules but not a clearing-level spread margin treatment under OCC rules.

The most immediate effect of approval of the proposal rule change would be with respect to pairs of positions in which one position consists of standard-sized index options and the other position consists of "reduced-value" index options listed by CBOE, AMEX, and the Philadelphia Stock Exchange, and approved to be listed by the NYSE. Each reduced-value option has a value equal to one-tenth of the value of a standard-sized index option.[7] Thus, ten reduced-value index option contracts equal one standard-sized index option contract in value, and spread margin treatment should be given only to positions in which ten reduced-value index options are paired against each standard-sized option contract. However, because the current language in Rule 611 requires that the long position and short position consist of an "equal number of option contracts," Rule 611 would prohibit OCC from giving clearing-level spread margin to such pairs. Thus, if a broker were to give spread margin treatment to a customer carrying such a pair of positions pursuant to exchange rules, the Clearing Member could find itself squeezed between its inability to collect customer-level margin and its obligation to deposit clearing-level margin.[8]

The proposed rule change is consistent with section 17A of the Act because it reduces the possibility that Clearing Members will be subject to inconsistent requirements under exchange rules and OCC's rules, without diminishing OCC's ability to safeguard securities and funds in its custody or control or for which it is responsible.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

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[3] See, e.g., CBOE Rules 12.3(b)(1)(C)(1) and 24.11(c)(1) (parallel provision for index options).

[4] The Clearing Member would have had the right to call for additional margin under most margin agreements. However, it would have been contrary to the expectations of both the broker and the customer for the Clearing Member to do so in view of the availability of spread treatment under applicable exchange rules, and accordingly difficult for the Clearing Member to do on a regular basis.

[5] Letter from Lee A. Pickard, Director, Division of Market Regulation, Commission, to Burton R. Rissman, Schiff Hardin & Waite (April 18, 1975).

[6] The proposal would minimize the potential for a financial squeeze on Clearing Members, but would not eliminate it because OCC will continue to use its own margin system to determine whether, and to what extent, particular spreads may be given spread margin treatment consistent with preserving the level of safety OCC requires. It therefore will remain possible, at least theoretically, that an OCC clearing-level margin requirement for a spread will be greater than the requirement imposed on a customer by the customer's broker.

[7] In terms of OCC's rules, a reduced-value index option is an index option for which the exchange on which the option is traded has specified a fraction that is to be multiplied times the value of the underlying index in determining "current index values." See OCC By-Law, Article XVII, section 1(f) (the term "current index value" means the level of a particular index at the close of trading or another time of day specified by the Exchange, "or any multiple or fraction thereof specified by [the] Exchange"). All the exchanges have specified that the respective reduced-value index options are to have current index values equal to one-tenth of the value of their respective underlying indexes, and index multipliers equal in value to the index multipliers of their counterpart respective standard-sized index options. Each "aggregate current value" of a reduced-value index option (i.e., the product of the current index value and the index multiplier) is therefore one-tenth the aggregate current index value of its counterpart standard-sized index option for the same day.

[8] OCC recently changed Rule 611 (File No. SR-OCC-91-14) to accommodate capped index options, a new product recently approved for trading on CBOE and AMEX. Securities Exchange Act Release No. 29876 (October 28, 1991), 56 FR 56435. Without that change to Rule 611, short positions in capped index options, when paired against long positions in American-style and European-style index options, would not have been entitled to clearing-level spread margin treatment even though such pairs could be entitled to customer-level spread margin treatment under applicable exchange rules. File No. SR-OCC-91-14 amended Rule 611 only to the extent necessary to accommodate capped index options. This proposed rule change would amend Rule 611 on a more generalized basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the file number SR-OCC-92-14 and should be submitted by October 9, 1992.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-22593 Filed 9-17-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31176; File No. SR-PTC-92-10]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Participants Trust Company Relating to the Relocation of Its Primary Processing Site from New York to New Jersey

September 11, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 18, 1992, Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would allow PTC to transfer its primary data processing site from 40 Rector Street, New York, to One Evertrust Plaza, Jersey City, New Jersey.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(a) The proposed rule change would allow PTC to transfer its primary data processing site from 40 Rector Street, New York, New York, to One Evertrust Plaza, Jersey City, New Jersey. The New York facility will then become PTC's backup site.

Currently, the New Jersey site serves the dual purpose of providing backup capacity in a separate power grid in case of an environmental disfunction (e.g. a power failure) at PTC's primary facility in New York and it provides additional capacity for testing system software upgrades and the like. The New Jersey facility is operated by PT Services, Inc. ("PTS"), a wholly-owned subsidiary corporation of PTC which was formed in 1990. The performance of all operations at PTC is under the exclusive direction and control of PTC, pursuant to the terms of an intercompany contract between PTC and PTS (See SR-PTC-90-02) and SEC Release No. 34-30296 dated January 27, 1992).

As the Commission was advised, PTS was formed to be the lessee of the New Jersey premises to provide a vehicle for an entity other than PTC to be present in New Jersey. However, in 1991, the New Jersey statutes were amended to permit a foreign bank to maintain a service facility in New Jersey to perform back-office operations. PTC has applied for and has been granted registration in New Jersey as such a service facility. Accordingly, all operations at PTC's New Jersey facility, which have been under the exclusive direction and control of PTC, will now be conducted directly by PTC. Therefore, the intercompany contract is no longer necessary and has been terminated effective July 1, 1992.

The determination to make New Jersey the primary processing site is based on the more desirable environmental aspects of that facility for data processing purposes, including primary and backup electrical systems, air conditioning systems, physical security, and fire protection systems. The New Jersey facility's systems are more modern than those of the New York facility, hence the New Jersey facility is expected to be less vulnerable to environmental failure.

Because the New Jersey facility currently has the capability to perform all processing on a contingency basis, only minimum modifications need to be made for that facility to act as the primary site. Those modifications will be installed and tested in New Jersey before the primary site capabilities of the New York site are disturbed in any way. Only after the New Jersey site is fully tested as the primary processing site will the New York site be reconfigured to the contingency site.

The switch to New Jersey will be transparent to Participants and will not require them to make any systems or operational changes, in large part because of PTC's recent installation of a new Participant communications network. All Participants have access to PTC's system through dedicated communication lines. These lines will be re-routed to New Jersey via a simple transfer. PTC will continue, however, to make hard copy and tape output available to Participants at the New York facility. In all other respects, the New York site will perform the backup functions that the New Jersey site performed.

PTC believes that the use of the more modern environment at its New Jersey facility is a prudent use of existing resources and will minimize the risk of system failure from environmental causes.

(b) Since the proposed rule change is designed to assure the safeguarding of securities and funds which are in the custody or control of PTC or for which it is responsible, it is consistent with section 17A(b)(3)(F) of the Act and the rules and regulations thereunder applicable to PTC.

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[9] 17 CFR 200.30-3(a)(12) (1991).

[1] 15 U.S.C. 78s(b)(1) (1988).

B. Self-Regulatory Organization's Statement on Burden on Competition

PTC does not believe that the proposed rule change imposes any burden on competition not necessary or appropriate in furtherance of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

PTC has not solicited, and does not intend to solicit, comments on this proposed rule change. PTC has not received any unsolicited written comments from Participants or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder because it is concerned solely with the administration of PTC. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act

IV. Solicitation of Comments

Interested parties are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of PTC. All submissions should refer to file number SR–PTC–92–10 and should be submitted by October 9, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–22591 Filed 9–17–92; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 18945; International Series Release No. 455; 812–8030]

Dean Witter American Value Fund, et al., Application

September 11, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: Dean Witter American Value Fund, Dean Witter California Tax-Free Income Fund, Dean Witter Convertible Securities Trust, Dean Witter Developing Growth Securities Trust, Dean Witter Dividend Growth Securities, Inc., Dean Witter Government Securities Plus, Dean Witter High Yield Securities Inc., Dean Witter Intermediate Income Securities, Dean Witter Managed Assets Trust, Dean Witter Natural Resource Development Securities Inc., Dean Witter New York Tax-Free Income Fund, Dean Witter Strategist Fund, Dean Witter Tax-Exempt Securities Trust, Dean Witter U.S. Government Securities Trust, Dean Witter Utilities Fund, Dean Witter World Wide Income Trust, Dean Witter World Wide Investment Trust, Dean Witter Value-Added Market Series, Active Assets Money Trust, Active Assets Tax-Free Trust, Active Assets California Tax-Free Trust, Active Assets Government Securities Trust, Dean Witter/Sears New York Municipal Money Market Trust, Dean Witter Capital Growth Securities, Dean Witter European Growth Fund Inc., Dean Witter Global Short-Term Income Fund Inc., Dean Witter Precious Metals and Minerals Trust, Dean Witter Pacific Growth Fund Inc., Dean Witter Multi-State Municipal Series Trust, Dean Witter Variable Investment Series, Sears Tax-Exempt Reinvestment Fund, Dean Witter Premier Income Trust, Dean Witter Short-Term U.S. Treasury Trust, Dean Witter Diversified Income Trust, Dean Witter Equity Income Trust, Dean Witter/Sears California Tax-Free Daily Income Trust, Dean Witter/Sears Liquid Asset Fund Inc., Dean Witter/Sears Tax-Free Daily Income Trust, Dean Witter/Sears U.S. Government Money Market Trust (the "DWR Funds"), Intercapital Income Securities Inc., Intercapital Insured Municipal Trust, Intercapital Insured Municipal Bond Trust, Intercapital Quality Municipal Investment Trust, High Income Advantage Trust, High Income Advantage Trust II, High Income Advantage Trust III, Dean Witter Government Income Trust, Allstate Municipal Income Trust, Allstate Municipal Income Trust II, Allstate Municipal Income Trust III, Allstate Municipal Premium Income Trust, Allstate Municipal Income Opportunities Trust, Allstate Municipal Income Opportunities Trust II, Allstate Municipal Income Opportunities Trust III, Allstate Prime Income Trust (the "Closed-End Funds"), TCW/DW Core Equity Trust, TCW/DW North American Government Income Trust, TCW/DW Latin American Growth Fund, TCW/DW Small Cap Growth Fund (collectively with the DWR Funds and the Closed-End Funds, the "Funds"), and Dean Witter Reynolds Inc. ("DWR").

RELEVANT ACT SECTION: Exemption requested under section 6(c) from the provisions of section 12(d)(3) and rule 12d3–1.

SUMMARY OF APPLICATION: Applicants seek a conditional order permitting them to acquire equity or convertible securities of foreign issuers that, in each of their most recent fiscal years, derived more than 15% of their gross revenue from their activities as a broker, dealer, underwriter, or investment adviser ("foreign securities companies"), provided such investments meet the conditions described in proposed amended rule 12d3–1.

FILING DATE: The application was filed on August 3, 1992

HEARING OF NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 6, 1992, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, Two World Trade Center, New York, New York 10048.

FOR FURTHER INFORMATION CONTACT: Maura A. Murphy, Staff Attorney, at (202) 272-7779 or Nancy M. Rappa, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Each of the Funds is a registered management investment company under the Act.

2. DWR is a broker-dealer registered under the Securities Exchange Act of 1934 and an investment adviser registered under the Investment Advisers Act of 1940. DWR serves as investment adviser of the DWR Funds. Through its InterCapital Division, DWR provides services to the Funds. DWR is also the principal underwriter for each of the Funds other than the Closed-End Funds and five DWR Funds that are self-distributed. DWR is a wholly owned subsidiary of Dean Witter Financial Services, which in turn is a wholly owned subsidiary of Sears, Roebuck and Co.

3. Applicants also request that any order granted in response to this application apply to any other management investment company for which DWR or any affiliated person of DWR, within the meaning of section 2(a)(3) of the Act may in the future serve as investment adviser or principal underwriter, and any affiliated person of DWR that may serve in the future as investment adviser or principal underwriter to such other open-end investment companies or the Funds.[1]

4. Applicants seek relief from section 12(d)(3) of the Act and rule 12d3-1 thereunder to invest in equity or convertible securities of foreign issuers that, in their most recent fiscal year, derived more than 15% of their gross revenues from their activities as a broker, dealer, underwriter, or investment adviser.

Applicants' Legal Conclusions

1. Section 12(d)(3) of the Act prohibits an investment company from acquiring any securities issued by any person who is a broker, dealer, underwriter, or investment adviser. Rule 12d3-1 provides an exemption from section 12(d)(3) for investment companies acquiring securities of an issuer that derived more than 15% of its gross revenue in its most recent fiscal year from securities-related activities, provided the acquisitions satisfy certain conditions set forth in the rule.

2. Under subparagraph (b)(4) of rule 12d3-1, any equity security to be acquired must be a "margin security" as defined in Regulation T promulgated by the Board of Governors of the Federal Reserve System. However, "margin security" status is generally available only to securities that trade in United States markets.

3. Under proposed amendments to rule 12d3-1, the "margin security" requirement need not be met if the acquiring company purchases equity securities of foreign securities companies that meet standards comparable to those applicable to equity securities of United States securities-related businesses. These standards, as set forth in the proposed amendment, "are based particularly on the policies that underlie the requirements for inclusion on the list of over-the-counter margin stocks." Investment Company Act Release No. 17096 (Aug. 3, 1989).

Applicants' Condition

Applicants agree to the following condition in connection with the relief requested:

> Applicants will comply with the provisions of the proposed amendments to Rule 12d3-1, [Investment Company Act Release No. 17096 (Aug. 3, 1989); 54 FR 33027 (Aug. 11, 1989)], and as such amendments may be reproposed, adopted, or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-22682 Filed 9-17-92; 8:45 am]

BILLING CODE 8010-01-M

[1] By letter dated August 31, 1992, applicants' counsel represents that all investment companies for which DWR or any affiliated person of DWR currently serves as investment adviser or principal underwriter, and all affiliated persons of DWR that currently serve as investment adviser to principal underwriter to the Funds have been named as applicants in the application.

[File No. 22-22492]

Application and Opportunity for Hearing; Public Service Electric and Gas Co.

September 14, 1992.

Notice is hereby given that Public Service Electric and Gas Company ("Company"), a New Jersey corporation, has filed an application pursuant to section 304(c)(1) of the Trust Indenture Act of 1939 ("Act") for the Securities and Exchange Commission ("Commission") to order an exemption from the provisions of section 316(a)(1) of the Act for certain First and Refunding Mortgage Bonds ("Bonds") under an indenture dated as of August 1, 1924, as amended by the Supplemental Indenture dated as of March 1, 1942 between the Company and Fidelity Union Trust Company (now First Fidelity Bank, National Association, New Jersey) as Trustee ("Indenture"), which will be supplemented by a separate supplemental indenture providing for each series of Bonds to be dated the first day of the month in which each such series of Bonds is issued.

Section 304(c)(1) of the Act provides in part that the Commission shall exempt from one or more provisions of the Act any security issued or proposed to be issued under an indenture under which securities (as defined in that section) are outstanding if and to the extent the Commission finds that compliance with such provisions, through the execution of a supplemental indenture or otherwise would require by reason of the provisions of such indenture or of any other indenture or agreement made prior to enactment of the Act, or the provisions of any applicable law, the consent of holders of securities outstanding under such indenture or agreement.

The Company alleges:

(1) One or more series of Bonds are proposed to be issued under the Indenture pursuant to a registration statement under the Securities Act of 1933 ("1933 Act"). The Bonds will be registered under the 1933 Act and the Indenture, as supplemented, will be qualified under the Act.

(2) The Indenture provides that upon an Event of Default (as defined therein) holders of 25 percent of the outstanding Bonds may require the Trustee to (a) Accelerate the maturity of the Bonds, and (b) take other action for the protection of the holders. The Indenture also permits 10 percent of the holders of the outstanding Bonds to require the Trustee to investigate compliance by the Company with conditions precedent in connection with authentication of Bonds or withdrawal of cash, or in connection with the release of mortgaged property. The holders of Bonds have vested rights in these provisions under the Indenture, and such rights cannot be abrogated or changed without their consent.

(3) Pursuant to Rule 4C-4 under the Act, the Company has waived a hearing and requested that the Commission decide this application without a formal hearing on the basis of such application and other information and documents as the Commission shall designate as part of the record.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application

which is on file in the Offices of the Commission's Public Reference Section, File Number 22-22492, 450 Fifth Street, NW., Washington, District of Columbia 20549.

Notice is further given that any interested persons may, not later than October 9, 1992 request in writing that a hearing be held on such matter stating the nature of his interest, the reasons for such request and the issues of law or fact raised by such application which he desires to controvert, or he may request a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, District of Columbia 20549. At any time after said date, the Commission may issue an order granting the application, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-22592 Filed 9-17-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-25629]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

September 11, 1992.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by October 5, 1992 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Appalachian Power Company (70-6171)

Appalachian Power Company ("Appalachian"), 40 Franklin Road, Roanoke, Virginia 24022, an electric public-utility subsidiary company of American Electric Power Company, Inc., a registered holding company, has filed a post-effective amendment to its application-declaration under sections 9(a), 10 and 12(d) of the ("Act").

By order dated June 30, 1978 (HCAR No. 20610) ("Order"), Appalachian was authorized to enter into an agreement of sale ("Agreement") with Mason County, West Virginia ("County") concerning the construction, installation, financing and sale of pollution control facilities ("Facilities") at Appalachian's Philip Sporn and Mountaineer Plants. Under the Agreement, the County may issue and sell its pollution control revenue bonds ("Revenue Bonds") or pollution control refunding bonds ("Refunding Bonds"), in one or more series, and deposit the proceeds with the trustee ("Trustee") under an indenture ("Indenture") entered into between the County and the Trustee. The proceeds are applied by the Trustee to the payment of the costs of construction of the Facilities, or in the case of proceeds from the sale of Refunding Bonds, to the payment of the principal, premium (if any) and/or interest on Revenue Bonds to be refunded.

The Order also authorized Appalachian to convey an undivided interest in a portion of the Facilities to the County, and to reacquire that interest under an installment sales arrangement requiring Appalachian to pay as the purchase price semi-annual installments in such an amount, together with other monies held by the Trustee under the Indenture for that purpose, as to enable the County to pay, when due, the interest and principal on the Revenue Bonds. The County has issued and sold nine series of bonds in connection with the financing of the Facilities.

It is now proposed that, under the terms of Agreement, Appalachian will cause the County to issue and sell, no later than December 31, 1993, its Series J Refunding Bonds in the aggregate principal amount of up to $50 million, the proceeds of which will be used to provide for the early redemption, at a rate no greater than 101½% of the aggregate principal amount of the entire $50 million aggregate principal amount, of outstanding Series B Revenue Bonds, 7½%, June 1, 2009. The Series J Refunding Bonds will be issued under and secured by the Indenture and a ninth supplemental indenture ("Supplemental Indenture"), will bear interest semi-annually at a rate of interest not exceeding 7¼% per annum and will mature at a date not more than thirty years from the date of issuance. Any discount from the initial public offering price of the Series J Refunding Bonds shall not exceed 5% of their principal amount and the initial public offering price shall not be less than 95% of such amount.

The Series J Bonds may be subject to mandatory redemption under the circumstances and terms specified in the Supplemental Indenture. In addition, the Series J Bonds may not be redeemable at the option of the County in whole or in part at any time for a period of up to thirty years.

Appalachian will not cause the Series J Refunding Bonds to be issued and sold by the County or enter into the proposed refunding transactions unless the estimated present value savings derived from the net difference between interest payments on a new issue of comparable securities and on the securities to be refunded is, on an after-tax basis, greater than the present value of all redemption and issuing costs, assuming an appropriate discount rate. The discount rate used shall be the estimated after-tax interest rate on the Series J Refunding Bonds to be issued.

UNITIL Corporation (70-8042)

UNITIL Corporation ("UNITIL"), 216 Epping Road, Exeter, New Hampshire 03833, a registered holding company, has filed a declaration pursuant to Sections 6(a) and 7 of the Act.

UNITIL proposes to double the number of its shares of outstanding common stock, no par value, through a two-for-one stock split ("Stock Split"). UNITIL will effect the Stock Split by declaring and distributing one share of common stock for each common share outstanding on the record date for such distribution.

At August 26, 1992, UNITIL had 8 million authorized shares of common stock of which 2,068,552 shares were issued and outstanding. UNITIL has no shares of treasury stock.

Included in the number of shares outstanding are: 77,722 options and dividend equivalents of a total 150,000 shares initially authorized for UNITIL's Key Employee Stock Option Plan; 16,921 shares of the 135,000 shares initially authorized for UNITIL's two Tax-Deferred Savings and Investment Plans; and 23,173 shares of a total 100,000

shares authorized for UNITIL's Dividend Reinvestment Plan.

Central and South West Corporation, et al. (70-8051)

Central and South West Corporation ("CSW"), 1616 Woodall Rodgers Freeway, P.O. Box 660164, Dallas, Texas, 75202, a registered holding company, and its non-utility subsidiaries, CSW Energy, Inc. ("CSW Energy"), 1616 Woodall Rodgers Freeway, P.O. Box 660164, Dallas, Texas, 75202, CSW Development-I, Inc. ("CSW Development"), 1616 Woodall Rodgers Freeway, P.O. Box 660164, Dallas, Texas, 75202, and ARK/CSW Development Partnership ("ARK/CSW"), 23293 South Pointe Drive, suite 100, Laguna Hills, California, 92653, have filed an application-declaration pursuant to Sections 6, 7, 9(a), 10 and 12(b) of the Act and Rules 45, 50(a)(5) and 51 thereunder.

CSW, CSW Energy, CSW Development, and ARK/CSW request authorization to invest in and develop the Lowville Cogeneration Project ("Project"), a 49.9-MW gas-fired cogeneration facility to be constructed near Lowville, New York. The Project will be a qualifying facility under the Public Utility Regulatory Policies Act of 1978 ("PURPA") and the rules and regulations adopted thereunder by the Federal Energy Regulatory Commission ("FERC").

By orders dated September 28, 1990 (HCAR No. 25162) and November 2, 1992 (HCAR No. 25414) ("Orders"), CSW and CSW Energy were authorized to (1) spend up to $75 million to engage in initial studies of, and research and development on, qualifying cogeneration facilities, qualifying small power production facilities and independent power facilities; (2) finance those activities through capital contributions and open account advances and loans; (3) form CSW Development and ARK/CSW; and (4) spend up to $25 million of the $75 million to finance ARK/CSW through capital contributions and loans. Under the Orders, the actual investment in or development of qualifying facilities would require separate SEC approval.

CSW, CSW Energy, CSW Development and ARK/CSW now propose to invest in and develop the Project. The companies will invest in the Project through Lowville Cogeneration Partners, L.P. ("Partnership"), a special-purpose limited partnership organized in Delaware. The initial general partner of the Partnership will be Lowville G.P., Inc. ("Lowville"), a wholly-owned subsidiary of ARK/CSW that will be incorporated in Delaware. Lowville will be capitalized with the sale of 1,000 shares of common stock, no par value, at $1.00 per share to ARK/CSW. The initial limited partners of the Partnership will be CSW Development and ARK Energy, Inc. ("ARK Energy"), a non-associate company and the other partner in ARK/CSW. Lowville will own a 1% interest in the Partnership and the two limited partners will each own a 49.5% interest. In addition, CSW Development and ARK Energy will each contribute up to $8 million ("Equity Contribution") to the Partnership. Lowville will contribute work product and management services of sufficient value to maintain the partners' respective interests.

The Partnership will finance the cost of construction and development of the Project, which is not expected to exceed $80 million, through a loan from a third-party lender ("Lender") of up to $80 million ("Construction Loan"). The Equity Contribution and the Construction Loan, in the aggregate, will not exceed $80 million. To the extent that the Construction Loan approaches $80 million and 100% of the total cost of the Project, the Equity Contribution will approach $0 and 0% of that cost.

It is expected that the interest rate on the Construction Loan will not exceed 12%.[1] The Construction Loan would be for a period not to exceed twenty-four months before it is replaced by the refinancing discussed below. It is estimated that the fees associated with the closing of the Construction Loan will not exceed $1.2 million.

In the alternative, and in the absence of the Construction Loan prior to commencement of construction, the Partnership will finance the cost of construction and development of the Project, until the Construction Loan is obtained, through loans or open account advances from CSW Energy to the Partnership in an aggregate amount not to exceed $20 million ("Advances"). The per-annum interest rate of the Advances would not exceed the prime commercial lending rate plus 3% and would mature within twenty years. The Advances will be repaid prior to commencement of Project operations, either through the Construction Loan or the refinancing discussed below.

In addition, and in accordance with the Orders, CSW Development, ARK Energy, or ARK/CSW, prior to receipt of the Construction Loan, might advance to the Partnership certain developmental expenses. However, after receipt of the Construction Loan, those advances will be reimbursed by the Partnership.

Upon completion of Project construction and the start of commercial operations, the Construction Loan and the Advances, as appropriate, would be converted to and refinanced by either (1) a term loan ("Term Loan") from the Lender or a new third party, or (2) an approximately twenty-year lease ("Base Term Lease"). The Term Loan would mature within twenty years and would bear an interest rate not to exceed 12% per annum.[2] The Base Term Lease would be effected through (1) the transfer of the Project to the Lender or other third-party transferee ("Lessor" in either case) and (2) the lease-back of the Project to the Partnership from the Lessor for a term of approximately twenty years. At the completion of that term, the Partnership would have the option either to extend the lease-back for an additional term of up to ten years or to purchase the Project.

Both the Term Loan and the Base Term Lease would be paid out of Project cash flow. In either instance, the only recourse of the party that refinances the Construction Loan would be the assets of the Project.

In order to acquire the above-described financial transactions, CSW might be required to provide an assurance ("Support Agreement") that CSW Development will provide its Equity Contribution to the Project. It is anticipated that the Support Agreement would be either (1) a guarantee or other commitment entered into directly between CSW and the third party that finances the Project or (2) a letter of credit, a cash deposit or some other similar arrangement. The obligation of CSW to contribute capital to the Partnership pursuant to the Support Agreement will not exceed $8 million.

CSW, CSW Energy, CSW Development and ARK/CSW request, pursuant to Rule 50(a)(5), that all financial transactions entered into to finance the Project be excepted from the competitive bidding requirements of Rule 50.

West Texas Utilities Company (70-8057)

West Texas Utilities Company ("WTU"), 301 Cypress Street, Abilene, Texas 79601-5820, an electric public-utility subsidiary company of Central and South West Corporation, a registered holding company, has filed an

[1] The 12% figure accounts for any interest rate swap ("Swap") into which the Partnership may enter. Under a Swap, the notional amount thereof and the maturity date thereof would not exceed the amount and the maturity date of the Construction Loan.

[2] The 12% figure accounts for any Swap into which the Partnership may enter. Under a Swap, the notional amount thereof and the maturity date thereof would not exceed the amount and the maturity date of the Term Loan.

application-declaration under Sections 6(a), 7, 9(a), 10 and 12(c) of the Act and Rules 42, 50 and 50(a)(5) thereunder.

WTU proposes to issue and sell up to an aggregate principal amount of $150 million of First Mortgage Bonds ("New Bonds"), in one or more series, from time to time through December 31, 1994. The New Bonds will have maturities of not less than five years nor more than thirty years. The New Bonds will be issued under WTU's indenture dated August 1, 1943, as amended and supplemented, ("Indenture") and secured by a first lien on substantially all of the properties now owned and hereafter acquired by WTU, except for properties specifically excepted from such liens.

WTU proposes to deviate from the Commission's Statement of Policy Regarding First Mortgage Bonds Subject to the Public Utility Holding Company Act of 1935 (HCAR No. 13105, February 16, 1956, as amended by HCAR No. 16369, May 8, 1969). WTU requests authority to include in the terms of the New Bonds provisions that they will either: (1) Not be redeemable at WTU's option for a period of up to a maximum of fifteen years; or (2) be issued with the restriction that WTU would not be permitted to refund the New bonds with lower cost debt securities for a specified period not exceeding fifteen years. The exact terms of any redemption or refunding restrictions would be determined at or about the time of sale of the New Bonds. WTU further proposes to issue the New bonds with or without a sinking or retirement fund and requests a waiver from the requirement of a limitation on dividends.

WTU requests authority to sell the New bonds either: (1) under competitive bidding pursuant to Rule 50 or, in the case of a delayed or continuous offering and sale pursuant to Rule 415 under the Securities Act of 1933, as amended, the alternative competitive bidding procedures as modified by the Commission's Statement of Policy dated September 2, 1982 (HCAR No. 22623); or (2) in a negotiated transaction with underwriters or agents under an exception from the requirements of competitive bidding under Rule 50(a)(5). Therefore, WTU requests authority to enter into negotiations with potential underwriters with respect to the interest rate, redemption provisions and other terms and conditions applicable to the New Bonds. It may do so.

The proceeds from the sale of the New Bonds will be used principally to redeem all or a portion of WTU's outstanding $75 million, 8⅞% First Mortgage Bonds, Series N, due May 1, 2016 ("Series N Bonds"), at the then current general redemption price (currently, 106.25% of the principal amount of the Series N Bonds), plus accrued and unpaid interest to the redemption date. The proceeds may also be used to purchase, through a tender offer, all or a portion of WTU's outstanding $65 million, 9¼% First Mortgage Bonds, Series O, due December 1, 2019 (Series O Bonds"). The Series N Bonds and the Series O Bonds are collectively referred to as the "Old Bonds." The Series N Bonds were issued in May 1986, under the Indenture and became refundable pursuant to their terms on May 1, 1991. The Series O Bonds were issued under the Indenture in December 1989 and will not be refundable by their terms until December 1, 1994.

Any net proceeds not used for the redemption or repurchase of the Old Bonds will be used to repay outstanding short-term borrowings or for other general corporate purposes. In the event the proceeds from the issuance of the New Bonds are less than the amount required to redeem all of any series of WTU's Old Bonds being redeemed or purchased, WTU will pay a portion of the redemption or tender price from internally generated funds or available short-term borrowings.

WTU will not issue the New Bonds unless the estimated present value savings derived from the net difference between interest payments on any New Bonds to be issued for refunding purposes and the Old Bonds is, on an after-tax basis, greater than the present value of all redemption and issuance costs, assuming an appropriate discount rate. Such dicount rate would be based on the estimated after-tax interest rate on the New Bonds issued for refunding purposes.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-22681 Filed 9-17-92; 8:45 am]

BILLING CODE 8015-10-M

[Rel. No. IC-18946; International Series Release No. 456; 812-7896]

United States Trust Company of New York; Notice of Application

September 11, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: United States Trust Company of New York.

RELEVANT ACT SECTIONS: Conditional order requested under section 6(c) for an exemption from the provisions of section 26(a)(2)(D).

SUMMARY OF APPLICATION: Applicant seeks a conditional order that would permit it to deposit foreign securities, held by unit investment trusts for which it serves as trustee, with the securities clearance and depository facilities operated by Morgan Guaranty Trust Company of New York ("Morgan Guaranty") in Brussels, Belgium in its capacity as operator of the Euroclear System ("Euroclear"), or with Central de Livraison de Valeurs Mobilieres, S.A. ("CEDEL"). Euroclear and CEDEL are sometimes referred to as the "Transnational Agencies."

FILING DATE: The application was filed on March 30, 1992, and amended on June 28, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 6, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 114 West 47th Street, New York, New York 10036.

FOR FURTHER INFORMATION CONTACT: Robert A. Robertson, Staff Attorney, at (202) 504-2283, or C. David Messman, Branch Chief, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a trust company, incorporated and doing business under the laws of the State of New York, that meets the qualifications under the Act for a trustee or custodian of a unit investment trust. Applicant currently

serves as a trustee of trusts sponsored by, among other, John Nuveen & Co. Incorporated, Nike Securities L.P., Dean Witter Reynolds Inc., Smith Barney, Harris Upham & Co. Incorporated, Prudential-Bache Securities Inc., Bear, Stearns & Co. Inc. and Unison Investment Trusts Ltd., and it may in the future act as trustee of trusts sponsored by these and other sponsors. Under each trust indenture, and as required by the Act, applicant is responsible for the custody of the securities that it holds in trust.

2. Various trust sponsors for which applicant serves as trustee have created, or have expressed an interest in creating, trusts with investment objectives that contemplate investments in foreign securities. Because of the increased importance of using a book-entry system with foreign securities, especially securities issued in the European market, applicant desires to use Euroclear and CEDEL to hold certain foreign securities of trusts for which it serves as trustee.

3. Euroclear and CEDEL are the largest clearance and custody systems of internationally traded securities in the world. They were organized principally to provide a simple, economic and automated means of settling secondary market transactions in internationally traded securities regardless of the geographical location of the parties to the transaction. The branch of Morgan Guaranty in Brussels, Belgium operates Euroclear. This branch is regulated by the New York and federal banking authorities and the Belgian Banking Commission. Belgian law governs Morgan Guaranty's liability as custodian and operator of Euroclear under the contract between Euroclear and each participating entity that has an account with Euroclear. CEDEL was founded as a limited company under the laws of the Grand Duchy of Luxembourg. CEDEL is headquartered in Luxembourg and has representative offices in London, New York, Tokyo and Hong Kong. CEDEL operates under the supervision of the Institute Monetaire Luxembourgeois, the Luxembourg Monetary Authority, which also is the banking control authority.

4. Applicant believes that securities deposited in Euroclear or CEDEL are at least as effectively protected as the same securities would be if directly deposited with a foreign branch of a United States bank, or shipped to the United States for custody, for several reasons, including:

(a) the insurance coverage for Euroclear and CEDEL depositaries and their outstanding loss record;

(b) the expertise and experience of the banks holding securities for Euroclear or CEDEL;

(c) the efficiencies resulting from handling large quantities of the same issue;

(d) the excellent track records of Euroclear and CEDEL;

(e) the close scrutiny of Euroclear and CEDEL services resulting from the market's dependence upon (and hence concern for) these services and the oversight of the depositaries; and

(f) the depositary agreements pursuant to which securities are held by Euroclear and CEDEL depositaries, which impose high standards of care on the depositaries.

5. Applicant maintains that the exposure to certain custodial risks is reduced when securities are held through Euroclear or CEDEL rather than directly by a United States bank branch since securities held in Euroclear or CEDEL do not have to be transported for deposit outside these systems or to effect sale. Furthermore, holding foreign securities outside of Euroclear and CEDEL would give rise to substantially higher costs for holding and transferring securities and for settling transactions.

Applicant's Legal Analysis

1. Section 26(a)(1) of the Act provides that a unit investment trust must be governed by a trust indenture that designates "one or more trustees or custodians, each of which is a bank," and section 26(a)(2)(D) of the Act requires that the trust indenture provide "that the trustee or custodian shall have possession of all securities and other property in which the funds of the trust are invested."

2. Euroclear and CEDEL do not qualify under the Act as custodians for unit investment trust assets. The term "bank" is defined in section 2(a) of the Act as "(A) a banking institution organized under the laws of the United States, (B) a member bank of the Federal Reserve System, [and] (C) any other banking institution or trust company, whether incorporated or not, doing business under the laws of any State or the United States * * *." The SEC has stated that an overseas branch of a domestic bank is the only facility located outside the United States that qualifies as a custodian under section 26. *See* Exemption for Custody of Investment Company Assets Outside the United States, Investment Company Act Release No. 13724 (Jan. 17, 1984). The SEC also has indicated that a foreign incorporated subsidiary does not meet this definition. *See* International Resources Funds, Inc., Investment Company Act Release No. 2874 (May 4, 1975). Accordingly, neither Euroclear nor CEDEL meets the definition of a bank under the Act, and, as a result, neither qualifies as a custodian.

3. While applicant does qualify as a custodian, its use of Euroclear and CEDEL to hold foreign securities would not constitute it having "possession" of these securities within the meaning of section 26(a)(2)(D). Accordingly, applicant requests relief under section 6(c) of the Act from the provisions of section 26(a)(2)(D) to permit it to deposit foreign securities, held by unit investment trusts for which it serves as trustee, with Euroclear and CEDEL.

4. Section 6(c) provides in relevant part that the SEC, by order upon application, may exempt any transactions from any provisions of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant believes that the requested relief satisfies the section 6(c) standard.

5. Rule 17f–5 under the Act provides an exemption from the custody requirements of section 17(f) concerning assets held outside the United States for registered "management investment companies." Rule 17f–5 permits investment companies to place and maintain foreign securities, as defined in the rule, with certain foreign custodians, provided that a majority of the board of directors (i) determines that maintaining the company's assets in a particular country is consistent with the best interests of the company and its shareholders, (ii) determines that maintaining the company's assets with a particular foreign custodian is consistent with the best interests of the company and its shareholders, and (iii) approves, as consistent with the best interests of the company and its shareholders, a written contract that will govern the manner in which such custodian will maintain the company's assets. The directors also must establish a system to monitor these arrangements, and annually review and approve the continuance of these arrangements. Both Euroclear and CEDEL qualify as foreign custodians under rule 17f–5. There, however, is no rule analogous to rule 17f–5 applicable to the safekeeping of the assets of a unit investment trust when those assets are held outside of the United States.

6. Applicant proposes to provide to a trust custody services that would permit the foreign securities of the trust to be held abroad in the custody of Euroclear or CEDEL. These arrangements will be

in total agreement with those applicable to registered management investment companies as contemplated by rule 17f-5, except that (a) certain duties and responsibilities of the directors of such companies will be performed by applicant as trustee, (b) applicant will provide indemnification to the unit holders, and (c) only Euroclear and CEDEL will qualify as foreign custodians for the trusts.

7. Applicant views the deposit of trust assets with Euroclear and CEDEL to be consistent with the purposes of section 26. Euroclear and CEDEL are the largest clearance and custody systems of internationally traded securities. Their insurance coverage, governing terms and conditions, and the high calibre of their depositories provide a trust and unit holders with a great degree of security.

Applicant's Conditions

Applicant agrees that the exemptive order requested herein will be subject to the following conditions:

a. Applicant will comply with the provisions of rule 17f-5 under the Act as if each trust was a registered investment company and applicant was its board of directors; except that Euroclear and CEDEL shall be the only qualified "eligible foreign custodians" for the trusts.

b. Applicant will indemnify and hold each of the trusts harmless from and against any loss that shall occur as the result of the failure of a Transnational Agency holding the foreign securities of a trust to exercise reasonable care with respect to the safekeeping of such foreign securities to the same extent that applicant would be required to indemnify and hold a trust harmless if applicant were holding such foreign securities in the jurisdiction of the United States whose laws govern the relevant trust indenture; provided, however, that applicant shall not be liable for loss except by reason of the gross negligence, bad faith or willful misconduct of applicant or a Transnational Agency.

c. Applicant will assure that the sponsors of each of the trusts agree that the potential exposure of loss to unit holders resulting from the use of a Transnational Agency will be disclosed, if material, in the prospectus relating to the relevant trust.

d. Applicant will maintain and keep current written records regarding the basis for choice or continued use of a particular Transnational Agency, and such records will be available for inspection at applicant's offices at all reasonable times during its usual business hours by unit holders and the SEC.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-22672 Filed 9-17-92; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Action Subject to Intergovernmental Review

AGENCY: Small Business Administration.

ACTION: Notice of Action Subject to Intergovernmental Review Under Executive Order 12372.

SUMMARY: This notice provides for public awareness of SBA's intention to refund thirty-three presently existent Small Business Development Centers (SBDCs) on January 1, 1993. Currently there are 57 SBDCs operating in the SBDC program. The following SBDCs are intended to be refunded, subject to the availability of funds: Arizona, Arkansas, California, Colorado, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Maine, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Virginia, Washington, and Wisconsin. This notice also provides a description of the SBDC program by setting forth a condensed version of the program announcement which has been furnished to each of the SBDCs to be refunded. This publication is being made to provide the State single points of contact, designated pursuant to Executive Order 12372, and other interested State and local entities, the opportunity to comment on the proposed refunding in accordance with the Executive Order and SBA's regulations found at 13 CFR part 135.

EFFECTIVE DATE: December 17, 1992.

ADDRESSES: Comments should be addressed to Ms. Monika Edwards Harrison, Associate Administrator for SBDC Program, U.S. Small Business Administration, 409 Third Street, SW., Fifth Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Ms. Monika Edwards Harrison, same address as above, (202) 205-6766.

Notice of Action Subject to Intergovernmental Review

SBA is bound by the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." SBA has promulgated regulations spelling out its obligations under that Executive Order. See 13 CFR part 135, effective September 30, 1983.

In accordance with these regulations, specifically 135.4, SBA is publishing this notice to provide public awareness of the pending application of thirty-three presently existent Small Business Development Centers (SBDCs) for refunding. Also, published herewith is an annotated program announcement describing the SBDC program in detail.

This notice is being published four months in advance of the expected date of refunding these SBDCs. Relevant information identifying these SBDCs and providing their mailing address is provided below. In addition to this publication, a copy of this notice is being simultaneously furnished to the affected State single point of contact which has been established under the Executive Order.

The State single points of contact and other interested State and local entities are expected to advise the relevant SBDC of their comments regarding the proposed refunding in writing as soon as possible. The SBDC proposal cannot be inconsistent with any area-wide plan providing assistance to small business, if there is one, which has been adopted by an agency recognized by the State government as authorized to do so. Copies of such written comments should also be furnished to Ms. Monika Edwards Harrison, Associate Administrator for SBDC Program, U.S. Small Business Administration, 409 Third Street, SW., Fifth Floor, Washington, DC 20416. Comments will be accepted by the relevant SBDC and SBA for a period of 90 days from the date of publication of this notice. The relevant SBDC will make every effort to accommodate these comments during the 90-day period. If the comments cannot be accommodated by the relevant SBDC, SBA will, prior to refunding the SBDC, either attain accommodation of any comments or furnish an explanation of why accommodation cannot be attained to the commentor prior to refunding the SBDC.

Description of the SBDC Program

The SBDC operates under the general management and oversight of SBA, but with recognition that a partnership exists between the Agency and the

SBDC for the delivery of assistance to the small business community. SBDC services shall be provided pursuant to a negotiated Cooperative Agreement with full participation of both parties.

SBDCs operate on the basis of a state plan to provide assistance within a state or designated geographical area. The initial plan must have the written approval of the Governor. As a condition to any financial award made to an applicant, non-Federal funds must be provided from sources other than the Federal Government. SBDCs operate under the provisions of Public Law 96–302, as amended by Public Law 98–395, a Notice of Award (Cooperative Agreement) issued by SBA, and the provisions of this Program Announcement.

Purpose and Scope

The SBDC Program is designed to provide quality assistance to small businesses in order to promote growth, expansion, innovation, increased productivity and management improvement. To accomplish these objectives, SBDCs link resources of the Federal, State, and local governments with the resources of the educational system and the private sector to meet the specialized and complex needs of the small business community. SBDCs also coordinate with other SBA programs of business development and utilize the expertise of these affiliated resources to expand services and avoid duplication of effort.

Program Objectives

The overall objective of the SBDC Program is to leverage Federal dollars and resources with those of the state, academic community and private sector to:

(a) Strengthen the small business community:

(b) Contribute to the economic growth of the communities served;

(c) Make assistance available to more small businesses than is now possible with present Federal resources;

(d) Create a broader based delivery system to the small business community.

SBDC Program Organization

SBDCs are organized to provide maximum services to the local small business community. The lead SBDC receives financial assistance from the SBA to operate a statewide SBDC Program. In states where more than one organization receives SBA financial assistance to operate an SBDC, each lead SBDC is responsible for Program operations throughout a specific regional area to be served by the SBDC. The lead SBDC is responsible for establishing a network of SBDC subcenters to offer service coverage to the small business community. The SBDC network is managed and directed by a full-time Director. SBDCs must ensure that at least 80 percent of Federal funds provided are used to provide services to small businesses. To the extent possible, SBDCs provide services by enlisting volunteer and other low cost resources on a statewide basis.

SBDC Services

The specific types of services to be offered are developed in coordination with the SBA district office which has jurisdiction over a given SBDC. SBDCs emphasize the provision of indepth, high-quality assistance to small business owners or prospective small business owners in complex areas that require specialized expertise. These areas may include, but are not limited to: management, marketing, financing, accounting, strategic planning, regulation and taxation, capital formation, procurement assistance, human resource management, production, operations, economic and business data analysis, engineering, technology transfer, innovation and research, new product development, product analysis, plant layout and design, agri-business, computer application, business law information, and referral (any legal services beyond basic legal information, and referral require the endorsement of the State Bar Association,) exporting, office automation, site selection, or any other areas of assistance required to promote small business growth, expansion, and productivity within the State. The SBDC shall also ensure that a full range of business development and technical assistance services are made available to small businesses located in rural areas.

The degree to which SBDC resources are directed towards specific areas of assistance is determined by local community needs, SBA priorities and SBDC Program objectives, and agreed upon by the SBA district office and the SBDC.

The SBDC must offer quality training to improve the skills and knowledge of existing and prospective small business owners. As a general guideline, SBDCs should emphasize the provision of training in specialized areas other than basic small business management subjects. SBDCs should also emphasize training designed to reach particular audiences such as members of SBA priority and special emphasis groups.

SBDC Program Requirements

The SBDC is responsible to the SBA for ensuring that all programmatic and financial requirements imposed upon them by statute or agreement are met. The SBDC must assure that quality assistance and training in management and technical areas are provided to the State small business community through the State SBDC network. As a condition of this agreement, the SBDC must perform, but not be limited to, the following activities:

(a) The SBDC ensures that services are provided as close as possible to small business population centers. This is accomplished through the establishment of SBDC subcenters.

(b) The SBDC ensures that lists of local and regional private consultants are maintained at the lead SBDC and each SBDC subcenter. The SBDC utilizes and provides compensation to qualified small business vendors such as private management consultants, private consulting engineers, and private testing laboratories.

(c) The SBDC is responsible for the development and expansion of resources within the State, particularly the development of new resources to assist small business that are not presently associated with the SBA district office.

(d) The SBDC ensures that working relationships and open communications exist within the financial and investment communities, and with legal associations, private consultants, as well as small business groups and associations to help address the needs of the small business community.

(e) The SBDC ensures that assistance is provided to SBA special emphasis groups throughout the SBDC network. This assistance shall be provided to veterans, women, exporters, the handicapped, and minorities as well as any other groups designated a priority by SBA. Services provided to special emphasis groups shall be performed as part of the Cooperative Agreement.

Advance Understandings

The Lead SBDC and all SBDC subcenters shall operate on a forty (40) hour week basis, or during the normal business hours of the State or Host Organization, throughout the calendar year. The amount of time allowed the Lead SBDC and subcenters for staff vacations and holidays shall conform to the policy of the Host organization.

Dated: July 29, 1992.

Patricia Saiki,

Administrator.

Addresses of Relevant SBDC State Directors

Mr. Dave Smith, State Director, Western Int'l University, 9215 North Black Canyon Highway, Phoenix, AZ 85021, (602) 943-2311

Mr. Patrick Valenzuela, Acting State Director, Department of Commerce, 801 K Street, 17th Floor, Sacramento, CA 95814, (916) 324-5068

Ms. Nancy Flake, Director, Howard University, 6th & Fairmount Street, NW., Washington, D.C. 2059, (202) 806-1550

Mr. Hank Logan, State Director, University of Georgia, Chicopee Complex, Athens, GA 30602, (404) 542-5760

Mr. Ronald Hall, State Director, Boise State University, College of Business, 1910 University Drive, Boise, ID 83725, (208) 385-1640

Mr. Steve Thrash, State Director, Economic Development Council, One North Capitol, Suite 420, Indianapolis, IN 46204, (317) 264-6871

Mr. Charles Davis, State Director, University of Southern Maine, 96 Falmouth Street, Portland, ME 04103, (207) 780-4420

Mr. Paul McGinnis, State Director, University of Arkansas, 100 South Main, Suite 401, Little Rock, AR 72201, (510) 324-9043

Mr. Rick Garcia, State Director, Office of Business Development, 1625 Broadway, Suite 1710, Denver, CO 80202, (303) 892-3809

Mr. Jerry Cartwright, State Director, University of West Florida, Building 76, Room 231, Pensacola, FL 32514, (904) 474-3016

Ms. Janet Nye, State Director, University of Hawaii/Hilo, 523 West Lanikaula Street, Hilo, HI 96720, (808) 933-3515

Mr. Jeffrey Mitchell, State Director, Department of Commerce and Community Affairs, 620 East Adams Street, Springfield, IL 62701, (217) 524-5856

Mr. Tom Hull, State Director, Wichita State University, 1845 Fairmont, Campus Box 148, Wichita, KS 67208, (316) 689-3193

Mr. Randall Olson, State Director, Dept. of Trade and Economic Dev., 150 East Kellogg Boulevard, St. Paul, MN 55101-1421, (612) 297-5770

Mr. Evan McKinney, State Director, Department of Commerce, 1424 Ninth Avenue, Helena, MT 59620, (406) 444-4780

Mr. Sam Males, State Director, University of Nevada/Reno, College of Busines Admin., Room 411, Reno, NV 89557-0100, (702) 784-1717

Ms. Brenda B. Hopper, State Director, Rutgers University, 180 University Street, Newark, NJ 07102, (201) 648-5950

Mr. Scott Daugherty, State Director, University of North Carolina, 4509 Creedmoor Road, Suite 201, Raleigh, NC 27612, (919) 571-4154

Dr. Grady Pennington, State Director, SE Oklahoma State University, 517 West University, Durant, OK 74701, (405) 924-0277

Mr. Greg Higgins, State Director, University of Pennsylvania, The Wharton School, 444 Vance Hall, Philadelphia, PA 19104, (215) 898-1219

Mr. John Lenti, State Director, University of South Carolina, College of Business Admin., 1710 College Street, Columbia, SC 29208, (803) 777-4907

Mr. Robert Bernier, State Director, University of Nebraska/Omaha, 60th & Dodge Sts., CBA Room 407, Omaha, NE 68182, (402) 554-2521

Ms. Helen Goodman, State Director, University of New Hampshire, 108 McConnel Hall, Durham, NJ 03824, (603) 862-2200

Mr. Randy Grissom, State Director, Santa Fe Community College, P.O. Box 4187, Santa Fe, NM 87502-4187 (505) 438-1362

Mr. Wally Kearns, State Director, Universtiy of North Dakota, Gamble Hall, University Station, Grand Forks, ND 58202-7308, (701) 777-3700

Mr. Sandy Cutler, State Director, Lane Community College, 99 West 10th Avenue, Suite 216, Eugene, OR 97401 (503) 726-2250

Mr. Douglas Jobling, State Director, Bryant College, 1150 Douglas Pike, Smithfield, RI 02917 (401) 232-6111

Mr. Donald Greenfield, State Director, University of South Dakota, School of Business, 414 East Clark, Vermillion, SD 57069, (605) 677-5272

Dr. Kenneth J. Burns, State Director, Memphis State University, Memphis, TN 38152, (901) 678-2500

Dr. Robert Smith, State Director, Department of Economic Development, 1021 East Cary Street, Richmond, VA 23206, (804) 371-8258

Mr. William Pinkovitz, State Director, University of Wisconsin, 432 North Lake Street, Room 423, Madison, WI 53706, (608) 262-3878

Mr. David Nimkin, State Director, University of Utah, 102 West 500 South, Salt Lake City, UT 84101, (801) 581-7905

Mr. Lyle Anderson, State Director, Washington State University, College of Business and Economics, Pullman, WA 99164-4727, (509) 335-1576

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BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice 92-15.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

DATES: September 11, 1992.

ADDRESSES: Written comments on the DOT information collection requests should be forwarded, as quickly as possible, to Edward Clarke, Office of Management and Budget, New Executive Office Building, room 3228, Washington, DC 20503, (202) 395-7340. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB official of your intent immediately.

FOR FURTHER INFORMATION CONTACT: Copies of the DOT information collection requests submitted to OMB may be obtained from John Chandler, Annette Wilson or Susan Pickrel, Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-4735.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to OMB for initial, approval, or for renewal under the Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB on September 11, 1992:

DOT No: 3664.

OMB No: 2133-0505.

Administration: Maritime Administration.

Title: Revised Standby Voluntary Agreement Under Public Law 774, 81st Congress, as amended "Constitution of Tanker Capacity for National Defense Requirements" (Short Title: Voluntary Tanker Agreement)

Need for Information: For planning purposes and for use prior to convening Tanker Requirements Committee.

Proposed Use of Information: To evaluate tanker capability and to make plans for use of this capability to meet national emergency requirements.

Frequency: On occasion.

Burden Estimate: 19 hours.

Respondents: Tanker companies.

Form(s): None.

Average Burden Hours Per Response: 30 minutes.

DOT No: 3665.

OMB No: 2115–0113.

Administration: U.S. Coast Guard.

Title: Self-Propelled Liquefied Gas Vessels.

Need for Information: This information collection is needed by the Coast Guard to ensure that U.S. and foreign flag vessels that carry liquefied gas in bulk are in compliance with U.S. regulations in the design, construction, equipment, personnel safety and operation of their vessels.

Proposed Use of Information: Coast Guard will use this information to: (1) Indicate compliance with the standards of 46 CFR part 154; (2) transmit specific information on special designs not covered by the regulations; and (3) obtain information necessary to schedule a Certificate of Compliance examination.

Frequency: On occasion.

Burden Estimate: 3,914 hours.

Respondents: Owners and operators of liquefied gas carriers

Form(s): None.

Average Burden Hours Per Response: 1 hour and 52½ minutes for reporting; and 17 hours and 4 minutes for recordkeeping.

DOT No: 3666.

OMB No: 2132–0543.

Administration: Federal Transit Administration.

Title: Charter Service Operations.

Need for Information: FTA needs to require applicants to submit an agreement that the applicant and its recipients will provide charter service only if there is no willing and able private operator or if one of the exceptions to 49 CFR 604.9 is applicable.

Proposed Use of Information: The information will be used to determine compliance with regulations.

Frequency: Annually; with each application; trip-by-trip.

Burden Estimate: 1,996 hours.

Respondents: State or local governments, business or other for-profit businesses or organizations.

Form(s): None.

Average Burden Hours Per Response: 1 hour and 12 minutes.

DOT No: 3667.

OMB No: 2115–0554

Administration: U.S. Coast Guard.

Title: Intervals for Drydocking and Tailshaft Examinations on Inspected Vessels.

Need for Information: This information collection is needed by the U.S. Coast Guard to ensure that inspected vessels meet the requirements of the Marine Inspection Program mandated by 46 U.S.C. 3305 and 3306.

Proposed Use of Information: This information will be used by the Coast Guard to ensure that: (1) Drydock examinations are conducted to determine the seaworthiness of a vessel; (2) underwater surveys are made to determine the condition of the vessel's underwater hull; and (3) plans are onboard to show the vessel's scantling; this will determine the extent of deterioration of a vessel's hull by comparing its present condition with the "as built" condition shown on the plan.

Frequency: On occasion.

Burden Estimate: 977 hours.

Respondents: Boat owners/operators.

Form(s): None.

Average Burden Hours Per Response: 4 hours for reporting and 15 minutes for recordkeeping.

DOT No. 3668.

OMB No. 2115–0585.

Administraton: U.S. Coast Guard.

Title: Marine Portable Tanks; Alteration Non-Specification Portable Tanks; Approval.

Need for Information: This information collection is needed by the U.S. Coast Guard to enforce laws and regulations promoting the safety of life and property in marine transportation.

Proposed Use of Information: This information collection will be used by the Coast Guard to approve alterations to marine portable tanks. This approval will ensure that an altered tank retains the level of safety for which it was originally designed.

Frequency: On occasion.

Burden Estimate: 53 hours.

Respondents: Owners and manufacturers of marine portable tanks.

Form(s): None.

Average Burden Hours Per Response: 53 hours.

DOT No. 3669.

OMB No: 2115–0076.

Administration: U.S Coast Guard.

Title: Security Zones, Regulated Navigation Areas and Safety Zones.

Need for Information: This information collection is needed by the U.S. Coast Guard to access the need to: (1) Establish security zones for the purpose of safeguarding ports, harbors, vessels and waterfront facilities from destruction, loss or injury due to subversive activities; (2) regulate navigation areas to control vessel traffic in areas that are determined hazardous; and (3) establish safety zones to prohibit entry of unauthorized persons, vehicles or vessels.

Proposed Use of Information: Coast Guard will use this information to identify waterways or waterfront areas which for security for safety reasons, require specific precautions to ensure the safety of the pubic.

Frequency: On occasion.

Burden Estimate: 928 hours.

Respondents: Waterway users.

Form(s): None.

Average Burden Hours Per Response: 1 hour and 15 minutes.

DOT No: 3670.

OMB No: 2120–0040.

Administration: Federal Aviation Administration.

Title: Aviation Maintenance Technician School, FAR–147.

Need for Information: The collection of information is necessary to ensure that Aviation Maintenance Technician Schools meet the minimum requirements for procedures and curriculum set forth by the FAA in FAR 147.

Proposed Use of Information: The information is used to certify Aviation Maintenance Technician Schools. If the information were not collected, there would be no means of maintaining a standardized level of proficiency.

Frequency: On occasion.

Burden Estimate: 61,515 hours.

Respondents: Owners/operators of Aviation Maintenance Technician Schools.

Form(s): FAA Form 8310–6.

Average Burden Hours Per Response: 40 hours per application for original certificates; 2 hours and 30 minutes for additional ratings; 5 hours and 12 minutes for recordkeeping; and 1 hour per application change.

DOT No: 3671.

OMB No. 2130–0502.

Administration: Federal Railroad Administration.

Title: Filing of Dedicated Cars.

Need for Information: Regulations require that freight cars assigned to dedicated service be so stencilled. To assure compliance FRA must be notified by written description.

Proposed Use of Information: FRA uses the information to determine that the equipment is safe to operate and qualifies for dedicated service.

Frequncy: On occasion.

Burden Estimate: 6 hours.

Respondents: Railroads.

Form(s): None.

Average Burden Hours Per Response: 1 hour.

DOT No: 3672.

OMB No: 2130–0529.

Administration: Federal Railroad Administration.

Title: Disqualification Proceedings.

Need for Information: To assure compliance with the Rail Safety Improvement Act and prevent individuals from violating the terms of a disqualification order.

Propoed Use of Information: To prevent an individual who is serving under a disqualification order from obtaining employment in a safety sensitive position with another railroad.

Frequency: Recordkeeping.

Burden Estimate: 8 hours.

Respondents: Individuals.

Form(s): None.

Average Burden Hours Per Response: 30 minutes.

DOT No: 3673.

OMB No: 2127–0006.

Administraiton: National Highway Traffic Safety Administration.

Title: Fatal Accident Reporting System (FARS).

Need for Information: The data is needed to support NHTSA's Motor Vehicle Safety Standards evaluation.

Proposed Use of Information: The Fatal Accident Reporting System is a census of all fatal motor vehicle accidents in the United States. Data is extracted from existing state records and automated for the agency's use in high-way and motor vehicle safety problem identification, travel analyses and program evaluation.

Frequency: Monthly/on occasion.

Burden Estimate: 86,156 hours.

Respondents: State and Local Governments.

Form(s): HS–214, 214A, 214B, 214C, and HS–151.

Average Burden Hours Per Response: 2 hours and 9 minutes.

DOT No: 3674.

OMB No: 2106–0005.

Administration: Office of the Secretary of Transportation.

Title: Title 14 CFR 380—Public Charters.

Need for Information: Regulatory Compliance.

Proposed Use of Information: Financial protection for traveling public and registration information for U.S. and foreign charter operators.

Frequency: Annual.

Burden Estimate: 600 hours.

Respondents: U.S. and Foreign Charter Operators.

Form(s): None.

Average Burden Hours Per Response: 1 hour and 49½ minutes.

DOT No: 3675.

OMB No: 2115–0504.

Administration: U.S. Coast Guard.

Title: Tank Vessel Examination Letter (CG–8406–1 and 2), Certificate of Compliance, Boiler/Pressure Vessel Repairs, Cargo Gear Records, and Shipping Papers.

Need for Information: This information collection is needed to enable the Coast Guard to fulfill its responsibilities for maritime safety under title 46, U.S. Code.

Proposed Use of Information: This information will be used to determine that repair work done on Coast Guard's certified devices have been properly accomplished. It will also ensure the availability of a vessel's unique information to boarding personnel.

Frequency: On occasion.

Respondents: Owners and operators of large merchant vessels and foreign flag tankers.

Burden Estimate: 22,202 hours.

Form(s): CG–840S–1 and CG–840S–2.

Average Burden Hours Per Response: 16 minutes for reporting and 3 hours and 43 minutes for recordkeeping.

DOT No: 3676.

OMB No: 2115–0559.

Administration: U.S. Coast Guard.

Title: Plan Approval and Records for Subchapter S, Subdivision and Stability Regulations.

Need for Information: This information collection requirement is needed to ensure that plans, technical information or operating manuals for vessels, submitted by builders, owners or operators meet the standards for vessel stability requirements. This requirement enforces the laws and regulations promoting the safety of life and property in marine transportation.

Proposed Use of Information: Coast Guard will use this information to ensure that vessels put into service are in full compliance with U.S. and the Safety of Life at Sea Convention stability standards.

Frequency: On occasion.

Burden Estimate: 19,158 hours.

Respondents: Vessel Builders, Owners, Operators.

Form(s): None.

Average Burden Hours Per Response: 3 hours for reporting and 4 hours and 30 minutes for recordkeeping.

DOT No: 3677.

OMB No: 2115–0043.

Administration: U.S. Coast Guard.

Title: Plan Approval and Records for Load Lines (46 CFR part 42, 44, 45 and 46).

Need for Information: This information collection is needed to ensure that vessels over 150 gross tons or 79 feet long engaged in commerce on international or coastwise voyages are in compliance with the International Convention on Load Lines (ICLL), 1966. Load line certificates will be issued to vessels that meet the requirements of ICLL, 1966.

Proposed Use of Information: Coast Guard will use this information to ensure that: (1) owners or agents have a means to make officially known their intent to load line a vessel; (2) vessels are in compliance with load line regulations before they are assigned a load line certificate; and (3) periodic and annual surveys are performed on vessels once a load line certificate is received.

Frequency: On occasion.

Burden Estimate: 2,133 hours.

Respondents: Owners of merchant vessels over 150 gross tons or 79 feet long.

Form(s): LL 8–A, LL 9–A, LL 10–A, LL 14–A, LL 16–E, LL 40–A, LL 101–A.

Average Burden Hours Per Response: 10 hours and 15 minutes for reporting; 19 hours and 6 minutes for recordkeeping.

DOT No: 3678.

OMB No: 2127–0501.

Administration: National Highway Traffic Safety Administration.

Title: Incentive Grant Criteria for Drunk Driving Programs, 23 CFR part 1313.

Need for Information: To promote effective programs to reduce drunk driving problems.

Proposed Use of Information: This alcohol incentive program is established to promote expedited driver's license suspension for DWI; self-sufficient community DWI programs; enforcement of underage drinking laws; and lower illegal per se laws.

Frequency: Annually.

Burden Estimate: 2,340 hours.

Respondents: State/Local Governments.

Form(s): HS–62.

Average Burden Hours Per Response: 1 hour and 20 minutes.

DOT No: 3679.

OMB No: 2127–0503.

Administration: National Highway Traffic Safety Administration.

Title: Consolidated Labeling Requirements for Motor Vehicle Tires and Rims (FMVSS 571.109, 110, 117, 119, 120 and Parts 569 and 574).

Need for Information: To identify tires and rims for safe operation of a vehicle.

Proposed Use of Information: All persons driving or riding in a motor vehicle need to have proper labeling on the tires and rims provided with the vehicle for safe operation.

Frequency: On occasion.

Burden Estimate: 264,669 hours.

Respondents: Individuals/Governments.

Form(s): None.

Average Burden Hours Per Response: 1 hour and 55 minutes.

DOT No: 3680.

OMB No: 2130–0530.

Administration: Federal Railroad Administration.

Title: Locomotive Engineers' Activities Diary.

Need for Information: To assess the significance of various fatigue factors in human-error railroad accidents.

Proposed Use of Information: To understand how scheduling practices affect sleep, circadian rhythms, and fatigue levels of locomotive crews and to recommend improvements in crew management procedures.

Frequency: One-time.

Burden Estimate: 1,177 hours.

Respondents: Locomotive Engineers.

Form(s): None.

Average Burden Hours Per Response: 2 hours and 21 minutes.

DOT No: 3681.

OMB No: 2125–0522.

Administration: Federal Highway Administration.

Title: Utility Use and Occupancy Agreements.

Need for Information: For the Federal Highway Administration to fulfill its statutory obligation regarding controls on utility use of right-of-way of a Federal-aid highway.

Proposed Use of Information: Serves to document the arrangement made between the State highway agency and a utility to allow the utility to use public right-of-way under the control of the highway agency.

Frequency: Recordkeeping requirements/no retention period specified.

Burden Estimate: 552,000 hours.

Respondents: Utility companies and State highway agencies.

Form(s): None.

Average Burden Hours Per Response: 8 hours.

DOT No: 3682.

OMB No: 2120–0101.

Administration: Federal Aviation Administration.

Title: Physiological Training, AC form 3150–7.

Need for Information: The collection of information is necessary to determine if the applicants meet the qualifications for training under the FAA/USAF/USN/NASA Training Agreements.

Proposed Use of Information: The information will be used by the Airman Education Programs Branch, AAM–420, to determine if the applicant is qualified to receive physiological training.

Frequency: On occasion.

Burden Estimate: 458 hours.

Respondents: Individuals.

Form(s): AC Form 3150–7.

Average Burden Hours Per Response: 5 minutes.

DOT No: 3683

OMB No: 2120–0508.

Administration: Federal Aviation Administration.

Title: Fuel Venting and Exhaust Emission Requirements for Turbine Engine Powered Airplanes.

Need for Information: The FAA needs the information to permit rapid determination by FAA inspectors, owners, and operators on whether an engine can legally be installed and operated on an aircraft in the United States.

Proposed Use of Information: The information is to be used by FAA inspectors, purchasers, owners and operators to confirm that the engines meet U.S. EPA pollution requirements in lieu of searching through extensive paper records.

Frequency: Labeling requirement.

Burden Estimate: 100 hours.

Respondents: Businesses.

Form(s): None.

Average Burden Hours Per Response: 5 minutes.

DOT No: 3684.

OMB No: New.

Administration: Federal Aviation Administration.

Title: FAA Flight Standards District Office Customer Survey.

Need for Information: The FAA has initiated Total Quality Management throughout the agency, requiring that all elements have contact with their customers to assure that customers' needs are being met and that service is improved.

Proposed Use of Information: This information will be used by Flight Standards personnel to solve problems that are brought to their attention and to generally improve service to the public.

Frequency: One-time survey.

Burden Estimate: 1,833 hours.

Respondents: Customers serviced by FAA Flight Standards personnel.

Form(s): Questionnaire.

Average Burden Hours Per Response: 10 minutes.

Issued in Washington, DC on September 11, 1992.

Cynthia C. Rand,

Director of Information, Resource Management.

[FR Doc. 92–22678 Filed 9–17–92; 8:45 am]

BILLING CODE 4910–62–M

Fitness Determination of Express Airlines II, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 92–9–27 Order to Show Cause.

SUMMARY: The Department of Transportation is proposing to find that Express Airlines II, Inc. d/b/a Northwest Airlink is fit, willing, and able to provide commuter air service under section 419(e) of the Federal Aviation Act.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P–56, room 6401, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than September 24, 1992.

FOR FURTHER INFORMATION CONTACT: Mrs. Barbara P. Dunnigan, Air Carrier Fitness Division, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2342.

Dated: September 14, 1992.

Patrick V. Murphy,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 92–22676 Filed 9–17–92; 8:45 am]

BILLING CODE 4910–62–M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended September 11, 1992

The Following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 48343.

Date filed: September 10, 1992.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 8, 1992.

Description: Application of American Airlines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations, applies for renewal and realignment of its certificate of public convenience and necessity for Route 369 (U.S.-South America) and for renewal of associated frequency allocations.

Docket Number: 41516.

Date filed: September 8, 1992.

Due Date for Answer, Conforming Applications, or Motion to Modify Scope: October 6, 1992.

Description: Amendment No. 1 to the Application of Jamaica Air Freighters Ltd., pursuant to section 402 of the Act and subpart Q of the Regulations, requests a foreign air carrier permit, to operate non scheduled services between Miami and Kingston/Montego Bay pursuant to the US/Jamaica Air Transport Agreement. The purpose of this filing is to update several of the exhibits.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 92-22677 Filed 9-17-92; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Transport Airplane and Engine Subcommittee of the Aviation Rulemaking Advisory Committee: Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Transport Airplane and Engine Subcommittee of the Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on September 29, 1992, at 8:30 a.m. Arrange for oral presentations by September 22, 1992.

ADDRESSES: The meeting will be held at the Pittsburgh Hilton, Gateway Center, Pittsburgh, PA.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Ball, Aircraft Certification Service (AIR-1), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-8235.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Transport Airplane and Engine Subcommittee to be held on September 29, 1992, at the Pittsburgh Hilton, Gateway Center, Pittsburgh, PA. The agenda for this meeting will include:

- Status reports of established working groups (Airworthiness Assurance and Small Transport/Commenter Airplane Airworthiness Assurance).
- Status of harmonization activities.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by September 22, 1992, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading **"FOR FURTHER INFORMATION CONTACT."**

Issued in Washington, DC, on September 10, 1992.

William J. Sullivan,

Executive Director, Transport Airplane and Engine Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 92-22602 Filed 9-17-92; 8:45 am]

BILLING CODE 4910-13-M

Intent to Rule on Application To Use the Revenue from a Passenger Facility Charge (PFC) at Charlottesville-Albemarle Airport, Charlottesville, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Charlottesville-Albermarle Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before October 19, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Washington Airports District Office, 101 West Broad Street, suite 300, Falls Church, Virginia 22046.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bryan O. Elliott, Director of Aviation, Charlottesville-Albemarle Airport Authority at the following address: 201 Bowen Loop, Charlottesville, Virginia 22901.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Charlottesville-Albemarle Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Robert B. Mendez, Manager, Washington Airports District Office, 101 West Broad Street, suite 300, Falls Church, Virginia 22046, (703) 285-2570. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose a PFC at Charlottesville-Albemarle Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On August 21, 1992, the FAA determined that the application to use the revenue from a PFC submitted by Charlottesville-Albemarle Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 9, 1992.

The following is a brief overview of the application.

Level of the proposed PFC: $2.00.

Proposed charge effective date: September 1, 1992.

Proposed charge expiration date: November 1, 1993.

Total estimated PFC revenue: $255,559.00.

Brief description of proposed project: Relocate Parallel Taxiway "A" (1450'×50'), including the realignment of State Route 606 and the acquisition of approximately 1.0 acre of land.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators filing FAA Form 1800-31 and foreign air carriers.

Any person may inspect the application in person at the FAA office listed above under **"FOR FURTHER INFORMATION CONTACT"** and at the FAA Regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Charlottesville-Albemarle Airport Authority.

Issued in Jamaica, New York, on September 1, 1992.

Peter A. Nelson,

Assistant Manager, Airports Division, Eastern Region.

[FR Doc. 92-22606 Filed 9-17-92; 8:45 am]

BILLING CODE 4910-13-M

Notice of Intent To Rule on Application To Impose and Use the Revenue from a Passenger Facility Charge (PFC) at Grand Forks Mark Andrews International Airport, Grand Forks, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Grand Forks Mark Andrews International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before October 19, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Field Office, 200 University Drive, Bismarck, ND 58504.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Robert F. Selig, Executive Director of the Grand Forks Regional Airport Authority at the following address: Grand Forks Regional Airport Authority, 2787 Airport Drive, Grand Forks, ND 58203.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Grand Forks Regional Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Franklin D. Benson, Manager, Minneapolis Airports District Office, 6020 28th Avenue South, room 102, Minneapolis, Minnesota 55450, Telephone (612) 725–4221.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Grand Forks Mark Andrews International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On August 28, 1992, the FAA determined that the application to impose and use the revenue from a PFC submitted by Grand Forks Regional Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 26, 1992.

The following is a brief overview of the application:

Level of the proposed PFC: $3.00.
Proposed charge effective date: December 1, 1992.
Proposed charge expiration date: November 30, 1996.
Total estimated PFC revenue: $1,082,880.
Brief description of proposed project(s):

Projects to Impose and Use PFC

1. Terminal Building Expansion.
2. Runway 8/26 and Parallel Taxiway Reconstruction.
3. Runway 17R/35L Porous Friction Course Rehabilitation.
4. Snow Removal Equipment Acquisition—Runway Sweeper.
5. T-Hangar Taxiway Construction.
6. GA Apron Construction.

Projects Only to Impose a PFC

7. Reconstruct and Widen Taxiway A.
8. Snow Removal Equipment Acquisition—Snowplow.
9. GA Apron Expansion.
10. Cargo Apron Expansion.
11. High Speed Exit Taxiway Construction—Runway 8/26 & 17L/35R.

Class or clases of air carriers which the public agency has requested not be required to collect PFCs: Operators providing unscheduled passenger/charter services; operating aircraft with a passenger capacity of 30 seats or less; and having enplanements of less than 1% of the airport's annual enplanements.

Any person may inspect the application in person at the FAA office listed above under "ADDRESSES".

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Grand Forks Regional Airport Authority.

Issued in Des Plaines, Illinois, on September 11, 1992.

W. Robert Billingsley,
Manager, Airports Division Great Lakes Region.

[FR Doc. 92–22808 Filed 9–17–92; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use as Well as To Impose Only the Revenue From a Passenger Facility Charge (PFC) at Inyokern Airport, Inyokern, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use as well as impose only the revenue from a PFC at Inyokern Airport, under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before October 16, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, Standards Section, AWP–621, P.O. Box 92007, WWPC, Los Angeles, CA 90009.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Nancy Bass, General Manager of the Inyokern Airport at the following address: Indian Wells Valley Airport District, P.O. Box 634, Inyokern, CA 93527.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Indian Wells Valley Airport District under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Milligan, Supervisor, Standards Section, AWP–621, Federal Aviation Administration, P.O. Box 92007, WWPC, Los Angeles, CA 9009, (310) 297–1029.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use as well as to impose only the revenue from a PFC at Inyokern Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On September 4, 1992, the FAA determined that the application to impose and use and impose only the revenue from a PFC submitted by Indian Wells Valley Airport District was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 4, 1992.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.
Proposed charge effective date: December, 1992.
Proposed charge expiration date: December, 1997.
Total estimated PFC revenue: $285,000.00.
Brief description of proposed project(s): Clear Zone Land Acquisition; Pave Airport Access Road; Overlay Runway 15/33; Construct Helicopter Pad; Overlay Runway 10/28; Construct Access Taxiway; Construct Run-up Pad; Terminal Alternation; Overlay Taxiway.
Class or classes or air carriers which the

public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT**" and at the FAA regional Airports office located at: Federal Aviation Administration, Western-Pacific Region, Airports Division, room 3E23, Hawthorne, California 90261.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Indian Wells Valley Airport District.

Issued in Hawthorne, California, on September 4, 1992.

Herman C. Bliss,

Manager, Airports Division, Western Pacific Region.

[FR Doc. 92-22603 Filed 9-17-92; 8:45 am]

BILLING CODE 4910-13-M

San Luis Obispo County-McChesney Field, CA; Notice of Intent To Rule

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent to rule on application to impose and use the revenue from a Passenger Facility Charge (PFC) at San Luis Obispo County-McChesney Field, San Luis Obispo, California.

SUMMARY: The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at San Luis Obispo County-McChesney Field under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508) and 14 CFR part 158.

On September 3, 1992, the FAA determined that the application to impose and use the revenue from a PFC submitted by the County of San Luis Obispo was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 4, 1992.

DATES: Comments must be received on or before October 19, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Airports Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA. 90009 or San Francisco Airports District Office, 831 Mitten Road, room 210, Burlingame, CA. 94010-1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Paul A. Gimer, Airport Manager of the San Luis Obispo County-McChesney Field at the following address: County of San Luis Obispo, County Government Center, room 460, San Luis Obispo, California 93408. Comments from air carriers and foreign air carriers may be in the same form as provided to the San Luis Obispo County-McChesney Field under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph R. Rodriguez, Supervisor, Planning and Programming Section, Airports District Office, 831 Mitten Road, room 210, Burlingame, CA. 94010-1303, telephone: (415) 876-2805. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The following is a brief overview of the application.

Level of proposed PFC: $3.00.

Proposed charge effective date: January 1, 1993.

Proposed charge expiration date: December 31, 1994.

Total estimated PFC revenue: $502,487.00.

Brief description of proposed project: Land Acquisition; Master Plan Update; Ramp & Apron Improvements; Segmented Circle & Rotating Beacon Replacement; Terminal Expansion-Phase I; Perimeter Fencing. Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Unscheduled Part 135 Air Taxi Operators.

Availability of Application: Any person may inspect the application in person at the FAA office listed above. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the County of San Luis Obispo, County Government Center, San Luis Obispo, California.

Issued in Hawthorne, California, on September 3, 1992.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 92-22607 Filed 9-17-92; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Blue Earth County, MN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Blue Earth County, Minnesota.

FOR FURTHER INFORMATION CONTACT: James P. McCarthy, Design Engineer, Federal Highway Administration, suite 490 Metro Square Building, 7th Place and Robert Street, St. Paul, Minnesota 55101, telephone: (612)290-3241.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Minnesota Department of Transportation and the Blue Earth County Highway Department, will prepare an environmental impact statement (EIS) on a proposal to build C.S.A.H. 90 (Mankato South Route) in Blue Earth County, Minnesota. The proposed project would involve construction of a new two-lane rural highway between T.H. 169/60 and T.H. 83, south of Mankato, Minnesota. The project length is approximately ten miles.

A new roadway is needed south of Mankato, Minnesota, to improve system continuity and mobility, and support planned development. Included in this proposal are new river crossings over the LeSueur River and Blue Earth River.

Alternatives under consideration include (1) taking no action; (2) constructing a two-lane rural roadway within one of three alternative corridors. Staging of construction will be addressed for the preferred alternative.

Public information meetings were held in 1988, 1989 and 1990. Scoping documentation was published and distributed in 1990. The Draft EIS will be available for public and agency review prior to a public hearing, which will be held to receive testimony on the proposed project. Public notice will be given of the time and place of the hearing.

To ensure that the full range of issues related to this proposed action are addressed, and all significant issues are identified, interested parties are invited to submit comments and suggestions. Comments or questions concerning this project should be submitted to the FHWA at the provided address.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities applies to this program)

Issued on: September 11, 1992.

Alan J. Friesen,

Program Operations Engineer, St. Paul, Minnesota.

[FR Doc. 92-22616 Filed 9-17-92; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; Rochester, MN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Rochester, Minnesota.

FOR FURTHER INFORMATION CONTACT: James McCarthy, Design Engineer, Federal Highway Administration, suite 490, Metro Square Building, St. Paul, Minnesota 55101-2333, telephone: (612) 290-3241; or Kaye Bieniek, Mn/DOT Project Manager, Minnesota Department of Transportation, District 6, P.O. Box 6177, Rochester, Minnesota 55903, telephone: (507) 285-7124.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Minnesota Department, will prepare an environmental impact statement (EIS) on a proposal to improve T. H. 14/52 between Olmsted County State Aid Highway 14 (75th Street) and T. H. 63 (Broadway Avenue) for a distance of approximately ten miles.

Improvements to this corridor are considered necessary to improve safety and provide for projected traffic demand. The existing pavement is in need of replacement and the highway has a number of geometric and traffic operation deficiencies that require correction. Some of the deficiencies include very close spacing between entrance and exit ramps, mixture of one-way and two-way frontage roads, narrow roadway cross-section, and substandard mainline and ramp geometry.

The proposed project would involve reconstruction of the existing four-lane highway to provide two through lanes in each direction and room in the median for future transportation use. The proposed project would also involve the reconstruction of the interchange between T. H. 14 West and T. H. 52, the interchange of 2nd Street S. W. and T. H. 14/52, the reconstruction of several other exit and entrance ramps on T. H. 14/52, and the reconstruction of some of the existing frontage road system.

Alternatives under consideration include: (1) Taking no action (No-Build); (2) increased management of the system and use of alternative travel modes; (3) construction of a four-lane limited access highway on a new location; and (4) reconstruction of the existing highway as proposed (Build). Incorporated into the various build alternatives will be design variations for the frontage road system and interchanges on the existing highway.

The Minnesota Department of Transportation is using a formal scoping process to help narrow the alternatives and issues that will be studied in the EIS. A public hearing will also be held on the draft EIS. The draft EIS will be available for public agency review and comment prior to the public hearing. Public notice will be given of the time and place of any public hearings on the project.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments, or questions, concerning this proposed action should be directed to the FHWA at the address provided above, or to the Mn/DOT contact person at the address provided above.

Issued on: September 9, 1992.

Alan J. Friesen,

Program Operations Engineer, St. Paul, Minnesota.

[FR Doc. 92-22615 Filed 9-17-92; 8:45 am]

BILLING CODE 4910-22-M

Maritime Administration

Status of Circular Letters to Subsidized Operators

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: The Maritime Administration (MARAD) has reviewed all Circular Letters (CLs) that have been issued to subsidized operators. As a result of this review, MARAD has made certain determinations in connection with those CLs. The purpose of this Notice is to inform interested parties about these determinations.

FOR FURTHER INFORMATION CONTACT: Edmond J. Fitzgerald, Director, Office of Trade Analysis and Insurance, Maritime Administration, Washington, DC 20590, telephone (202) 366-2400.

SUPPLEMENTARY INFORMATION: A CL is an identical letter sent to all subsidized operators providing guidance and instructions on matters related to the administration of the subsidy program. During the course of its review of all previously issued and outstanding CLs, MARAD found that many CLs were out of date and were no longer applicable to the Agency's programs. In addition, MARAD found that other CLs had been replaced by MARAD regulations or had been incorporated in the Operating-Differential Subsidy Contract. As a result of the review, MARAD concluded that it would be appropriate to terminate those CLs which are either no longer applicable to current programs or not necessary to implement those programs. On August 31, 1992, MARAD made the following determinations and took the following actions with respect to CLs that had been issued to subsidized operators:

(1) Noted those CLs which had expired by their own terms or were superseded or cancelled by subsequent CLs.

(2) Terminated those CLs which were no longer applicable to current MARAD programs or which were no longer needed to implement those programs.

(3) Noted those CLs which are to be retained, which are being reviewed to determine if any revisions are necessary.

(4) Confirmed that all CLs to subsidized operators engaged in the United States-Union of Soviet Socialist Republics Grain Trade have been determined to have expired by their own terms on December 31, 1981.

Individuals wishing to review the various lists of CLs to subsidized operators which were involved in the Agency's determinations and actions of August 31, 1992, may do so in the Office of the Secretary, Maritime Administration, room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC.

Dated: September 15, 1992.

By order of the Maritime Administration.

James E. Saari,

Secretary.

[FR Doc. 92-22643 Filed 9-17-92; 8:45 am]

BILLING CODE 4910-81-M

National Highway Traffic Safety Administration

[Docket No. 92-44; Notice 1]

Receipt of Petition for Determination That Nonconforming 1990 Mercedes-Benz 190E Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1990 Mercedes-Benz 190E passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a determination that a 1990 Mercedes-Benz 190E that was not originally manufactured to comply with all applicable Federal motor vehicle

safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is October 19, 1992.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. (Docket hours are from 9:30 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that:

> (I) the motor vehicle is * * * substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 [of the Act], and of the same model year * * * as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards * * *.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

Liphardt & Associates of Ronkonkoma, New York (Registered Importer No. R–90–004) has petitioned NHTSA to determine whether 1990 Mercedes-Benz 190E (Model ID 201.024) passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States. The vehicle which Liphardt believes is substantially similar is the 1990 Mercedes-Benz 190E (Model ID 201.028) that was manufactured for importation into and sale in the United States and that was certified by its manufacturer, Daimler Benz A.G., as complying with all applicable safety standards.

Liphardt stated that the non-U.S.-certified version of the 1990 model 190E has a smaller engine than its U.S.-certified counterpart, but that the two vehicles have an identical frame and structure. It also submitted information with its petition intended to demonstrate that the non-U.S.-certified 1990 model 190E, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S.-certified counterpart, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the two models are identical with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence* * * *, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 111 *Rearview Mirrors*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 118 *Power-Operated Window Systems*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Mounting*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that the non-U.S.-certified 1990 model 190E complies with the Bumper Standard found in 49 CFR part 581.

The petitioner also contends that the non-U.S.-certified 1990 model 190E is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:*

(a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp;

(b) Installation of a seat belt warning lamp that displays the seat belt symbol;

(c) Recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:*

(a) Installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps and front sidemarkers;

(b) Installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers;

(c) Installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims: Installation of a tire information placard.*

Standard No. 114 *Theft Protection:* Installation of a warning buzzer in the steering lock electrical circuit.

Standard No. 115 *Vehicle Identification Number:* Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the drive.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a seat belt warning buzzer; (b) installation of a knee bolster with mounting hardware. The petitioner claims that the non-U.S.-certified 1990 model 190E is equipped with airbags that comply with the standard.

Standard No. 214 *Side Impact Protection:* Installation of reinforcing beams.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: October 19, 1992.

Authority: 15 U.S.C. 1397(c)(3) (A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: September 14, 1992.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 92–22579 Filed 9–17–92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Forms Standardization Project; Meetings

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of town meeting.

SUMMARY: Announcement of a Town Meeting by the Tax Forms Standardization Project Office, scheduled for October 9, 1992. The meeting will be held in the Auditorium of the IRS Building, at 1111 Constitution Avenue, NW., Washington, DC and will begin at 9 a.m. It should last no more than three hours. The purpose of the meeting is to inform and update the public of Tax Forms Standardization Project activities and to solicit input from the public of which direction they feel we should concentrate our efforts to standardize/simplify tax returns to further reduce taxpayer burden.

Note: Last minute changes to the date or location of the meeting are possible and could prevent advance notice.

DATES: The meeting will be open to the public. Notification of intent to attend the meeting is requested in order to have a sufficient number of handouts printed. Please contact Faye Bruce at 202-786-7573 (not toll free), to confirm attendance or for additional information. If you wish to communicate by FAX, the number is 202-786-8489, to Faye Bruce's attention.

Dated: September 11, 1992.

Beverly A. Stowell,

Director, Returns Processing and Accounting Division R:R.

[FR Doc. 92-22683 Filed 9-17-92; 8:45 am]

BILLING CODE 4830-01-M

[Delegation Order No. 159 (Rev. 4)]

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: The authority to waive accumulated funding deficiencies under section 418B of the Internal Revenue Code in accordance with subsection (f) thereof and to perform the corresponding duties of the Secretary of the Treasury under section 4243(f) of the Employee Retirement Income Security Act of 1974 is delegated by the Commissioner of Internal Revenue to the Director, Employee Plans Technical and Actuarial Division. The authority may be redelegated to Branch Chiefs under the Director's supervision and control for waivers that are not substantial (that is, waivers that do not exceed one million dollars on a noncumulative basis), with authority to redelegate to reviewers not below Grade GS-13 for waivers not exceeding $100,000. The text of the delegation order appears below.

EFFECTIVE DATE: September 3, 1992.

FOR FURTHER INFORMATION CONTACT: John H. Turner, E:EP:P:1, room 6702, 1111 Constitution Avenue NW., Washington, DC 20224, telephone (202) 566-3662 (not a toll-free call).

Order No. 159 (Rev. 4)

Effective date: 9-3-92.

Requests for Variance from Minimum Funding Standards (IRC 412(d)) or for Waiver of Accumulated Funding Deficiency (IRC 418B(f))

1. Pursuant to authority vested in the Commissioner of Internal Revenue by Treasury Order 150-10, there is hereby delegated to the Director, Employee Plans Technical and Actuarial Division, the authority to:

a. Waive the minimum funding standards under IRC 412 in accordance with subsection (d) thereof,

b. Waive any accumulated funding deficiency under IRC 418B in accordance with subsection (f) thereof, and

c. Perform the corresponding duties of the Secretary of the Treasury under sections 303 and 4243(f) of the Employee Retirement Income Security Act of 1974 (ERISA) concerning, respectively, the minimum funding standards under ERISA section 302 and any accumulated funding deficiency under ERISA 4243(a).

2. The authority contained in section 1 of this Order may be redelegated to Branch Chiefs, Employee Plans Technical and Actuarial Division, for waivers that are not substantial as defined in section 3, with authority to further redelegate to reviewers not below grade GS-13 for waivers not exceeding $100,000.

3. For purposes of this Order, a substantial waiver is a waiver with respect to a plan's minimum funding requirements for a plan year, or a waiver of any accumulated funding deficiency under IRC 418B(f), which, based on information reported to the Internal Revenue Service, exceeds one million dollars on a noncumulative basis (that is, exclusive of any amount of one million dollars or less with respect to which a waiver was requested for a prior plan year or years).

4. Delegation Order No. 159 (Rev. 3), effective September 17, 1990, is superseded.

Dated: September 3, 1992.

David G. Blattner,

Chief Operations Officer.

[FR Doc. 92-22684 Filed 9-17-92; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information:

(1) The title of the information collection, and the Department form number(s), if applicable;

(2) A description of the need and its use;

(3) Who will be required or asked to respond;

(4) An estimate of the total annual reporting hours, and recordkeeping burden, if applicable;

(5) The estimated average burden hours per respondent;

(6) The frequency of response; and

(7) An estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before October 18, 1992.

Dated: September 10, 1992.

By direction of the Secretary.

Frank E. Lalley,

Associate Deputy, Assistant Secretary for Information Resources Policies and Oversight.

Extension

1. Appointment of Veterans Service Organization as Claimant's Representative, VA Form 21–22.
2. The use of this form will allow VA to recognize representatives of service organizations in assisting beneficiaries in the prosecution of VA claims.
3. Individuals or households.
4. 54,166 hours.
5. 10 minutes.
6. On occasion.
7. 325,000 respondents.

[FR Doc. 92–22583 Filed 9–17–92; 8:45 am]

BILLING CODE 8320-01-M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information:

(1) The title of the information collection, and the Department form number(s), if applicable;

(2) A description of the need and its use;

(3) Who will be required or asked to respond;

(4) An estimate of the total annual reporting hours, and recordkeeping burden, if applicable;

(5) The estimated average burden hours per respondent;

(6) The frequency of response; and

(7) An estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before October 18, 1992.

Dated: September 10, 1992.

By direction of the Secretary.

Frank E. Lalley,

Associate Deputy Assistant Secretary for Information Resources Policies and Oversight.

Reinstatement

1. Authorization and Certification of Entrance or Reentrance into Rehabilitation and Certification of Status, VA Form 28–1905.
2. The form is used to define the enrollment conditions and to certify pursuit and attendance for any chapter 31 rehabilitation or chapter 35 special restorative or specialized vocational training program.
3. Individuals or households; Farms; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations.
4. 2,917 hours.
5. 5 minutes.
6. On occasion.
7. 35,000 respondents.

[FR Doc. 92–22584 Filed 9–17–92; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 182
Friday, September 18, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, October 2, 1992.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 92–22760 Filed 9–16–92; 11:21 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, October 9, 1992.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314. 6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 92–22761 Filed 9–16–92; 11:21 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, October 16, 1992.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 92–22762 Filed 9–16–92; 11:21 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, October 23, 1992.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 92–22763 Filed 9–16–92; 11:21 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, October 30, 1992.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 92–22764 Filed 9–16–92; 11:21 am]

BILLING CODE 6351-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Change in Subject Matter of Agency Meeting

Purusant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b (e)(2)), notice is hereby given that at its open meeting held at 10:00 a.m. on Tuesday, September 15, 1992, the Corporation's Board of Directors determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), concurred in by Director Stephen R. Steinbrink (Acting Comptroller of the Currency) and Acting Chairman Andrew C. Hove, Jr., that Corporation business required the withdrawal from the agenda for consideration at the meeting on less than seven days' notice to the public, of a memorandum and resolution regarding proposed amendments to Part 330 of the Corporation's rules and regulations, entitled "Deposit Insurance Coverage."

By the same majority vote, the Board further determined that no earlier notice of the change in the subject matter of the meeting was practicable.

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, N.W., Washington, DC.

Dated: September 15, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,
Deputy Executive Secretary.

[FR Doc. 92–22719 Filed 9–15–92; 5:01 pm]

BILLING CODE 6714-0-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 11:15 a.m. on Tuesday, September 15, 1992, the Corporation's Board of Directors determined, on motion of Director C. C. Hope, Jr., (Appointive), seconded by Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), concurred in by Director Stephen R. Steinbrink (Acting Comptroller of the Currency) and Acting Chairman Andrew C. Hove, Jr. that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Application of Liberty Bank and Trust Company, New Orleans, Louisiana, an insured State nonmember bank, for consent to purchase certain assets of and assume the liability to pay deposits made in Corpus Christi Federal Credit Union, New Orleans, Louisiana, and for consent to establish the two offices of Corpus Christi Federal Credit Union as branches of the resultant bank.

The Board further determined, by the same majority vote, that no earlier notice of the change in the subject matter of the meeting was practicable:

that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Dated: September 15, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Execuitve Secretary.

[FR Doc. 92-22720 Filed 9-15-92; 5:01 pm]

BILLING CODE 6714-0-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, September 23, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed acquisition of computer software within the Federal Reserve System.
2. Proposed acquisition of computer equipment within the Federal Reserve System.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 15, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-22742 Filed 9-16-92; 11:20 am]

BILLING CODE 6210-01-M

NATIONAL SCIENCE BOARD

DATE AND TIME:

October 8, 1992
2:00 p.m. Open Session
October 9, 1992
8:30 a.m. Closed Session
October 9, 1992
9:00 a.m. Open Session

PLACE: National Science Foundation, 1800 G Street NW, Rm. 540, Washington, DC 20550.

STATUS: Part of this meeting will be open to the public. Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Thursday, October 8, 1992

Open Session (2:00 p.m.—3:30 p.m.)

National Science Board Commission

Friday, October 9, 1992

Closed Session (8:30 a.m.—9:00 a.m.)

1. Minutes—August 1992 Meeting.
2. Grants and Contracts.

Friday, October 9, 1992

Open Session (9:00 a.m.—10:30 a.m.)

3. Chairman's Report.
4. Minutes—August 1992 Meeting.
5. Proposed 1993 Award Review Exemptions.
6. Director's Report.
7. Preview of NSF Film.
8. Other Business.

Marta Cehelsky,

Executive Officer.

[FR Doc. 92-22765 Filed 9-16-92; 11:22 am]

BILLING CODE 7555-01-M

UNITED STATES INSTITUTE OF PEACE

DATE/TIME: Thursday, September 24, 1992; 9:00 a.m. to 5:30 p.m.

LOCATION: 1550 M Street, NW. (Conference Room, First Floor) Washington, DC.

STATUS: (Open Session)—portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Pub Law. 98-525.

AGENDA: Approval of minutes of the Forty-Fourth Meeting of the Board of Directors; Chairmans Report; Presidents Report; Program Reports.

CONTACT: Mr. Gregory McCarthy, Director, Public Affairs and Information, Telephone: 202/457-1700.

Dated: September 14, 1992.

Bernice J. Carney,

Director, Office of the Administration, United States Institute of Peace.

[FR Doc. 92-22737 Filed 9-16-92; 11:19 am]

BILLING CODE 3155-01-M

Corrections

Federal Register
Vol. 57, No. 182
Friday, September 18, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 685

[Docket No. 920538-2138]

Pelagic Fisheries of the Western Pacific Region

Correction

In proposed rule document 92-18128 beginning on page 33926 in the issue of Friday, July 31, 1992, make the following corrections:

1. On page 33926, in the second column, in **FOR FURTHER INFORMATION CONTACT:**, in the last line, "808-541-1954" should read "808-541-1974".

§ 685.2 [Corrected]

2. On page 33928, in the third column, in § 685.2, in the definition for "*Longline fishing prohibited area*", in the third line, "specific" should read "specified".

§ 685.24 [Corrected]

3. On page 33929, in the second column, in § 685.24(c), in the table entry for "W", in the third column under "Longitude", "161°55′ W." should read "161°00′ W.".

BILLING CODE 1505-01-D

FARM CREDIT ADMINISTRATION

12 CFR Parts 614 and 619

RIN 3052-AB13

Loan Policies and Operations; Definitions; Lending Authorities and Purchase and Sale of Interests in Loans

Correction

In rule document 92-20153 beginning on page 38237 in the issue of Monday, August 24, 1992, make the following corrections:

1. On page 38238, in the first column, in the second full paragraph, in the eighth line "purchase" should read "purchases".

2. On page 38239, in the first column, in the fourth line, "loan" should read "loans".

3. On the same page, in the same column, in the first full paragraph, in the fourth line, remove the comma after "originate".

4. On the same page, in the second column, in the fourth paragraph, in the first line, "non" should read "now".

5. On the same page, in the third column, in the first paragraph, in the fifth line, "it" should read "its".

6. On page 38241, in the 2d column, in the 1st full paragraph, in the 11th line, after "sells" insert "a".

7. On page 38244, in the first column, in the second line, "rights" should read "right".

8. On page 38246, in the second column, insert a period at the end of the **AUTHORITY** citation paragraph.

§ 614.4000 [Corrected]

9. On page 38246, in the same column, in § 614.4000(e)(1), in the first line, "subjects" should read "subject".

§ 614.4010 [Corrected]

10. On page 38247, in the first column, in § 614.4010(g)(3), in the fourth line, "not" should read "no".

BILLING CODE 1505-01-D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 73

[MM Docket No. 87-267, FCC 91-303]

Radio Broadcast Service, AM Technical Assignment Criteria

Correction

In rule document 91-28451 beginning on page 64842 in the issue of Thursday, December 12, 1991, make the following corrections:

§ 2.106 [Corrected]

1. On page 64855, in the third column, in amendatory instruction 2., in the second line, "535-1605" should read "535-1705".

§ 73.37 [Corrected]

2. On page 64859, in the second column, in § 73.37(f)(2), in Note 3, in the sixth line, "an" should read "as".

§ 73.53 [Corrected]

3. On the same, in the same column, in § 73.53(b)(1), in the Note, in the sixth line, "bank" should read "band". And in the same section, in the third column, in the fourth line "is" should read "its".

§ 73.99 [Corrected]

4. On page 64860, in the 1st column, in § 73.99(a), in the 11th line, after "hours" insert "power".

§ 73.150 [Corrected]

5. On page 64862, in the first column, in § 73.150(b)(1)(i), in the first paragraph, in the fourth line, after "P_{kw}", delete "f" and insert "=1.

(ii)***

(2) All pattterns shall be computed for integral multiples of".

6. On the same page, in the same column, in § 73.150(b)(3), in the second line, after "in" insert "the".

§ 73.182 [Corrected]

7. On page 64865, in § 73.182(q), in the table, in the third column under "SC 100" insert "AC 500" and in the fourth column, in the sixth line, "persc." should read "presc".

§ 73.183 [Corrected]

8. On page 64866, in the second column, in § 73.183(c), in the second line "kWz" should read "kHz", in the ninth line "V/m" should read "mV/m"and in the tenth line "of" should be removed. Also, in the formula appearing at the end of the paragraph, the "-" should read "=".

9. On the same page, in the same column, in § 73.183(e), in the 11th line, "15 mSm/m" should read "15 mS/m".

§ 73.184 [Corrected]

10. On page 64867, in the 1st column, in § 73.184(c), in the 26th line, "on" should read "of".

11. On the same page, in the second column, in § 73.184(c), the first formula should read as follows:

$$x = \frac{\pi}{p} \cdot \left(\frac{R}{\lambda}\right)_1 \cdot \cos b \qquad \text{(Eq. 1)}$$

$(R/\lambda)_1$ = Number of wavelengths in 1 kilometer,

§ 73.189 [Corrected]

12. On page 64868, in the third column, in the amendatory instruction, in the first line, "(b)(2)(ii)" should read "(b)(2)(iii)".

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INTERSTATE COMMERCE COMMISSION

49 CFR Part 1313

[Ex Parte No. 387(Sub-No. 964)]

Railroad Transportation Contracts

Correction

In rule document 92-21375 beginning on page 40620 in the issue of September 4, 1992, make the following corrections:

§ 1313.3 [Corrected]

1. On page 40621, in the third column, under § 1313.3(a), in the third line "being" should read "begin".

2. On the same page, in the same column, under § 1313(b), in the fourth line "on" should read "an".

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-NM-116-AD; Amendment 39-8324; AD92-16-15]

Airworthiness Directives; Scott Aviation Oxygen Mask Plug-In Connectors

Correction

In rule document 92-19486 beginning on page 36898 in the issue of Monday, August 17, 1992, make the following correction:

§ 39.13 [Corrected]

On page 36899, in § 39.13, in the first column, in the third line of the **NOTE:**, insert "not" following "but are".

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federal register

Friday
September 18, 1992

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 107 and 108
Unescorted Access Privilege; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 107 and 108

[Docket No. 26763; Notice No. 92-3C]

RIN 2120-AE14

Unescorted Access Privilege

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: The FAA proposes to establish regulations requiring airport operators and air carriers to conduct an employment investigation and disqualify individuals convicted of certain enumerated crimes from having, or being able to authorize others to have, unescorted access privileges to a security identification display area (SIDA) of a U.S. airport. This notice is proposed in lieu of the FAA's original Notice of Proposed Rulemaking (NPRM), as a means to implement Section 105 of the Aviation Security Improvement Act of 1990, and resulted from consideration of the comments received on that NPRM. The major changes from the NPRM are: individuals currently holding unescorted access authority are exempted; and an FBI criminal history records check would be required only when the employment investigation triggers a need for one. The proposed regulations are intended to enhance the effectiveness of the U.S. civil aviation security system by ensuring that individuals applying for unescorted access privilege do not constitute an unreasonable risk to the security of the aviation system.

DATES: Comments must be received on or before December 17, 1992. However, late filed comments will be considered to the extent practicable.

ADDRESSES: Comments on this notice should be mailed, in triplicate, to: Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. 26763, 800 Independence Avenue SW., Washington, DC 20591. All comments must be marked: "Docket No. 26763." Comments may be examined in Room 915G on weekdays except on Federal holidays between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Andrew V. Cebula, Office of Civil Aviation Security Policy and Planning, Policy and Standards Division, (ACP-110), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-8293.

SUPPLEMENTARY INFORMATION:

Comments Invited

Because the proposals in this SNPRM differ in many respects from the NPRM (Notice No. 92-3), the FAA encourages interested persons to file comments in response to this Notice even if they have already commented on the NPRM. The SNPRM is intended to supersede the NPRM. In instances where the proposed rule has been changed based on comments to the NPRM, comments filed in response to the SNPRM will be the primary focus of attention in developing the final rule. However, comments filed in response to the NPRM will be considered to the extent they provide information relevant to the development of the final rule.

Interested persons are invited to comment on the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or international trade impacts that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and be submitted in triplicate to the Rules Docket at the address specified above. All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

All comments received on or before the closing date will be considered by the Administrator before taking action on this proposed rulemaking. Late-filed comments will be considered to the extent practicable. The proposals contained in this notice may be changed in light of comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include with their comments a pre-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 26763." When the comment is received, the postcard will be dated, time stamped and mailed to the commenter.

Availability of SNPRM

Any person may obtain a copy of this SNPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-200, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice or docket number 92-3C.

Persons interested in being placed on a mailing list for future proposed rules should request from the above office a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

While the FAA has not scheduled public meetings on this notice, if significant issues arise during the comment period, the FAA will schedule one or more meetings in a future notice.

History

Section 105(a) of the Aviation Security Improvement Act of 1990, Public Law 101-604 (the Aviation Security Improvement Act or the Act) amends section 316 of the Federal Aviation Act of 1958 (FA Act) by adding a new subsection "(g)," captioned "Air Carrier and Airport Security Personnel." This subsection directs the FAA Administrator to promulgate regulations that subject individuals with unescorted access to U.S. or foreign air carrier aircraft, or to secured areas of U.S. airports served by air carriers, to employment investigations, including a criminal history records check as the Administrator determines necessary to ensure air transportation security.

On February 13, 1992, the FAA published a notice of proposed rulemaking (Notice No. 92-3, 57 FR 5352) to require a criminal history records check using the Federal Bureau of Investigation's (FBI) fingerprint-based national criminal history record filing system for all individuals with unescorted access to the SIDA at U.S. airports. In that proposal, the FAA used the broad authority delegated to the FAA Administrator in the Act to require an employment investigation, including a criminal history records check. The proposal was consistent with the previous efforts of the FAA to obtain the legislative authority to require a criminal history records check, as well as recommendations made by the President's Commission on Aviation Security and Terrorism in May 1990. It also incorporated many of the recommendations made by the aviation industry through the Aviation Security Advisory Committee (ASAC) in March 1991.

Responding to requests from airport operators and air carriers, the FAA extended the comment period for that proposal from March 16 until May 15, 1992 (57 FR 8834), and announced that one or more public meetings would be scheduled. The notice outlining the details of the public meetings was

published on April 9, 1992 (57 FR 12396). Public meetings were held in Los Angeles, California, on April 28; Ft. Worth, Texas, on April 30; and Washington, DC on May 12, 1992. The FAA received over 270 written comments to the docket and 66 commenters made oral presentations at the public meetings.

The overwhelming majority of commenters opposed FAA's proposal to require a criminal history records check for all individuals having unescorted access to the SIDA, and the proposal to require escorts for anyone inside the SIDA who did not have such a records check. Specifically, commenters argued that individuals with existing unescorted access privileges should be excluded from the criminal history records check requirement, and that the proposed escorting requirements were neither practical nor cost-effective. Some commenters questioned whether any benefit would result from requiring a criminal history check. Because of these concerns, commenters strongly recommended that the FAA exercise more flexibility in implementing the employment investigation requirements required by the Act. We have determined that the Act does provide flexibility in requiring a criminal history records check. The Senate Transportation Appropriation Committee's report on the Department of Transportation Fiscal Year 1993 Appropriations legislation also addressed this issue by adding the following language to its proposal: "While continuing to believe that the authority to require criminal background checks is important, the Committee does believe that FAA could exercise greater discretion in the use of that authority."

Based on the comments, the FAA has re-evaluated Notice No. 92-3 and is proposing a revised approach. The FAA again proposes that airport operators and air carriers conduct an employment investigation of individuals applying for unescorted access privilege. The revised proposal incorporates an investigation which would consist of an enhanced employment history verification and, only where appropriate, a criminal history records check. Under this approach, a criminal history records check would only be required when an air carrier or airport operator wants to hire an individual for a position requiring unescorted access if one or more of the criteria proposed for the employment investigation in the SNPRM is met. The proposed fingerprint-based criminal history records check process is similar to that proposed in the NPRM, Notice No. 92-3 and takes into account comments made by the FBI.

The FAA proposes to amend 14 CFR parts 107 and 108 (Parts 107 and 108 of the Federal Aviation Regulations (FAR)). The proposed rule would codify into regulatory requirement the pre-existing airport and air carrier security program requirements for an investigation into the background of individuals with unescorted access to the SIDA of U.S. airports. The SIDA is defined as "any area identified in the airport security program as requiring each person to continuously display on their outermost garment, an airport-approved identification medium unless under airport-approved escort" [14 CFR 107.25(a)].

Discussion of Proposed Rule

General

14 CFR part 107 (Part 107 of the FAR) contains security requirements for airport operators. Part 107 addresses access control, law enforcement support, and submission of airport security programs for FAA approval. Part 108 prescribes security rules for U.S. air carriers.

The purpose of the FAA's security requirements is to protect persons and property in air transportation against acts of criminal violence, air piracy and terrorism. These acts are neither simple nor uniform, and are certainly not limited to sophisticated acts of international terrorists with political motives or the acts of deranged individuals. The FAA is also concerned about individuals deliberately committing or assisting in the commission of criminal acts against aviation for financial gain. A trust is placed on individuals authorized to have unescorted access and it is presumed that they will not present a security risk to civil aviation. Because many of the crimes listed in the Act relate to acts of criminal violence, there is a logical link between the future actions the FAA is attempting to prevent and the past convictions for the disqualifying crimes. Also, the Act affirmatively prohibits individuals convicted of disqualifying crimes during the previous 10 years from having unescorted access privileges.

The FAA is therefore proposing a regulatory requirement that would screen the background of individuals applying for unescorted access to identify those who might knowingly be involved in an act against civil aviation or participate in criminal activity that affects the airport operating environment. While not specifically prohibiting the employment of disqualified individuals, the Act does prohibit individuals who have been convicted of certain enumerated crimes in the past 10 years from having unescorted access to secured areas of a U.S. airport or to U.S. and foreign air carrier aircraft. The Act directs the Administrator to issue regulations requiring employment investigations for individuals with unescorted access.

Employment investigations are one of the three core requirements of that part of the civil aviation domestic security program designed to control access at airports and ensure the security of aircraft used in scheduled or public chartered transportation. Consequently, in 1985, the requirement for an employment history verification was implemented to include, at a minimum, references and prior employment histories to the extent necessary to verify representations made by the individual for the preceding 5 years. The access controls required by 14 CFR 107.13 and 107.14, along with the identification display, training, and challenge requirements of § 107.25, are the other core elements.

Since the existing 5-year employment history verification was first required by FAA in 1985 through amendments to airport and air carrier security programs, the aviation industry has implemented procedures to meet that requirement. However, in many cases these procedures have been open to interpretation because the FAA has not issued specific guidelines on what constitutes an acceptable employment history verification. While this often entails checking references and prior employment histories to the extent necessary to verify representations made by the individual, the FAA has left it to the employer's discretion to determine the method for reviewing the background of prospective employees.

The FAA recognizes the need for a regulatory requirement for employment history verifications of individuals applying for unescorted access privileges to provide a minimum standard and specify triggers for a criminal history records check. Accordingly, the FAA proposes to amend parts 107 and 108 to supersede the current security program language for individuals with SIDA access privileges. However, for individuals applying for positions that do not require unescorted access privileges to the SIDA (and thus are not covered by the Act or this rulemaking), e.g., security screening personnel and individuals with access to areas of the air operations area outside of the SIDA, the existing airport and air carrier security program language requiring the 5-year

employment history verification would continue to apply.

This SNPRM proposes to: (1) Establish minimum requirements for information that would be included on the employment application; (2) specify the information that must be verified; (3) establish the criteria that would "trigger" the requirement for a criminal history records check; and (4) prohibit unescorted access privileges for individuals convicted of the enumerated disqualifying crimes. The proposal would also specify the process for performing the records check.

The first three requirements would be used to determine whether an individual may have unescorted access to the SIDA. In accordance with section 105 of the Act, this proposal would also apply to individuals directly responsible for authorizing unescorted access, including individuals performing the required investigations and those issuing the credentials for unescorted access privilege.

In Notice No. 92-3, the FAA proposed to apply the criminal history records check requirement comprehensively to all individuals with unescorted SIDA access. However, as stated above, commenters to the NPRM argued that requiring the check comprehensively was not necessary in order to identify individuals who might pose a threat to aviation security. Instead, commenters recommended enhancing the existing 5-year employment history verification requirement.

The FAA considered increasing the employment history verification portion of the investigation process from 5 years to 10, but determined that to do so would increase the costs and time spent on the verification without appreciably enhancing aviation security. Consultation with entities that perform background investigations indicated that a 5-year employment history verification is usually sufficient to expose a questionable background and that an additional 5 years would not be cost effective. Furthermore, the great majority of commenters at the public meetings on the NPRM were satisfied with the current 5-year requirement, and did not suggest that a 10-year check was necessary.

If the employment history verification were to cover 10 years, employers could find it difficult to verify the less recent part of an individual's employment history. This is because former employers may no longer be in business, or, if they are still in business, supervisors familiar with the individual may have left the company, or records destroyed as part of normal business practice. Unnecessary criminal checks could be triggered simply because less recent information would be harder to verify.

The FAA has structured the SNPRM to cover the 10-year period stated in the Act in a number of ways. The application form for employment would require the applicant to list convictions for any disqualifying crime in the last 10 years. The form would also put the applicant on notice that he or she may be subject to an FBI criminal history records check, which should discourage applicants from attempting to conceal a disqualifying conviction from the prospective employer. Finally, if a criminal history records check is triggered during the employment investigation, the criminal record would be obtained from the FBI and the individual would be disqualified if his or her record discloses a conviction for any of the disqualifying crimes in the previous 10-years.

The FAA seeks comment on whether the information obtained through the 5-year employment history verification is sufficient or whether it is advisable to expand the employment history verification portion of the proposal to 10 years. Commenters should provide cost information, and explain what benefits they would expect from the extended verification period. Of course, employers could expand the scope of the employment history verification to a longer period if they so choose.

The FAA proposes that the airport operator have the overall responsibility for ensuring that employment investigations are performed for all individuals applying to have, or to authorize others to have, unescorted SIDA access. This does not mean that the airport operator must perform the investigations in all cases. Flexibility has been provided to avoid duplicative cost and administrative burden.

In lieu of performing such investigations, § 107.31(f) of the proposed rule would permit the airport operator to accept a certification from an air carrier that it has performed the required employment history verification and criminal history records check, where appropriate, for air carrier employees. Similar to the process currently used for employment history verifications, the airport operator would be required to have a certification on file indicating that the air carrier has performed the investigation. The FAA would consider the airport operator's acceptance of this certification as compliance with its regulatory obligation. The air carrier could be subject to FAA enforcement action if it falsely certifies that it has performed the employment investigation.

There are two situations where an air carrier would certify to an airport operator that it has performed the relevant employment investigations. In the first case, the carrier must perform the investigation for employees (such as flight crewmembers) to whom it issues air carrier identification that have been approved by the airport operator as acceptable for SIDA access. The air carrier would certify to each airport operator that accepts the identification that the employment investigation had been performed as a part of its program for issuing such identification. One certification would cover the entire program and would not have to include individual names.

In the second case, for individual air carrier employees issued identification by an airport operator, the air carrier would certify to the airport operator that the employment investigation had been performed for named individuals. Those individuals could then receive airport-issued identification authorizing SIDA access at that airport. However, the proposed rule would permit the air carrier and the airport operator to determine which of them would perform the employment investigations for air carrier employees needing airport identification. The entity that performs the employment investigation would be responsible for ensuring that it is done in accordance with the proposed rule.

The proposal would not alter the process allowing an airport operator to accept certification from non-air carrier airport tenants that the employment history verification component of the employment investigation had been performed. However, in instances where a criminal history records check would be required, the airport operator would have to perform the check of the FBI's criminal history record index. The authority to request the FBI check is limited by the Act to airport operators and air carriers.

Individuals With Current Access Authority

Many of the commenters to Notice No. 92-3 argued that individuals with existing unescorted access authority could be exempted from the employment investigation without compromising the security of the U.S. civil aviation system. As required by the FAA, individuals authorized to have unescorted access privilege since November 26, 1985 have been subjected to the 5-year employment history verification. Since hiring these individuals, employers have had the opportunity to observe their conduct. The benefits, if any, of subjecting current employees to the

proposed employment investigation would not justify the disruption and cost that such a requirement would place on the air carriers and airport operators. Further, because of the turnover rates for employees, all but the most long term individuals will be subjected to the proposed employment investigation within a short period of time.

Thus, numerous commenters believed the FAA should instead follow the ASAC recommendation to exempt all individuals with current unescorted access authority from the proposed employment investigation. The FAA is proposing to adopt this recommendation by exempting from the employment investigation all individuals with current unescorted access authority on the effective date of the final rule.

Although the FAA is excluding these individuals from the proposed employment investigation requirement, additional rulemaking could be initiated if the FAA determines that there is a security need to review further the background of individuals exempted under the proposal.

Escorting

A number of commenters to Notice No. 92–3 objected to the requirement to escort an individual while the criminal history records check, which could take from 30 to 90 days, is being performed. The FAA is proposing to use the employment history verification as the primary means of determining an individual's eligibility for unescorted access. Most individuals would not need to be escorted because the applicants would not be employed in a position requiring unescorted access until the employment history verification is completed. In statements made at the public meetings to Notice No. 92–3, commenters indicated that the current 5-year employment history verification is completed in 5–10 days.

An individual would have to be escorted only when a criminal history records check is required or "triggered" by the employment history verification. The FAA's proposed "triggers" for the criminal history records check are based on information supplied by the aviation industry on the criteria used by some air carriers to screen job applicants. The use of these triggers will significantly reduce the number of criminal history records checks required, in comparison to that proposed in Notice No. 92–3. Considering the additional requirements associated with performing a criminal history records check, it is likely that airport operators and air carriers will decide to subject only a limited number of individuals to a criminal history records check. This will drastically reduce the number of individuals requiring escorting. While the actual number of criminal checks performed may be few, the deterrent aspect of potentially being subjected to the check is an important component of the proposal. In that regard, the FAA proposes to require that all applicants for covered positions be notified in advance of the possibility that they may be subject to a criminal history records check.

Section-by-Section Analysis

Section 107.1 Applicability and Definitions

The FAA proposes to add a definition of the term "escort" to this section of the regulation. Under the proposal, escort would have to be conducted by an individual who is authorized by the airport operator to have access to areas controlled for security purposes. This person is required to take action, in accordance with local airport procedures, if the individual under escort engages in activities other than those for which the escorted access is granted.

Section 107.31 Unescorted Access Privilege

107.31(a)—Applicability

The FAA is proposing that after the effective date of the rule, any individual applying for the authority to have, or to authorize others to have, unescorted access to the SIDA be subject to the employment investigation process. The FAA invites comments on the length of time between the date a final rule is published in the **Federal Register** and the date it would become effective. During that time period, the industry would prepare the administrative processes necessary to comply with the requirements of the rule. The FAA is planning that 90 days after the final rule is published it would become effective.

For airports that are not required to define a SIDA, the investigation requirement would apply to areas identified in the airport security program that are controlled for security purposes. Prior to the effective date of this proposal, the existing 5-year employment history verification would remain in effect and all individuals authorized for unescorted access prior to the effective date of the final rule would not be subjected to the rule being proposed.

In Notice No. 92–3, the FAA proposed using the term "SIDA," an area which the airport operator is required to define in its security program. The SIDA includes the secured area of an airport as defined under § 107.14 and the portions of an airport where U.S. and foreign air carrier aircraft operate as specified by the Act. The essential requirement under § 107.25 for unescorted access to the SIDA is the continuous display of airport approved identification and specified training.

Notice No. 92–3 also requested comments on the use of the SIDA as the appropriate area to be covered by the employment investigation process. The majority of commenters addressing this issue expressed concern about the areas and activities that are included in the SIDA by airport operators, rather than the appropriateness of using SIDA access authority. The FAA has subsequently issued policy guidance to the FAA field offices and to airport operators clarifying the application of SIDAs at airports. While not issued as a result of Notice No. 92–3, these actions have further defined the areas and types of operations that should be included within the SIDA and specifically address the concerns of commenters in this proceeding regarding the application of SIDA to general aviation areas. During this rulemaking, FAA will continue to evaluate industry's concerns about the areas and activities to be included in the SIDA by airport operators.

Currently, the 5-year employment history verification is required for the issuance of an identification credential or badge to determine an individual's suitability for unescorted access authority. The employment investigation requirements of this proposal would supersede the 5-year employment history verification in the security program for individuals subject to the final rule. The issuance or denial of an identification credential required for SIDA access would serve as the vehicle for the implementation of the requirement from a practical and enforcement standpoint.

Section 107.31(b)—Types of Employment Investigation Required

Under this section and the Act, if the results of the employment investigation disclose that an individual was convicted of a disqualifying crime in the previous 10 years from the date the verification is initiated, the individual may not be granted unescorted access authority. The Act does now allow the FAA to consider the rehabilitation of an individual, but places a blanket prohibition on unescorted access for individuals with a statutorily disqualifying conviction.

The FAA is proposing that arson be added to the mandatory disqualifying convictions listed in the Act. The Act

does not permit the FAA to exclude any of the crimes listed. The disqualifying crimes identified in the Act include specific violations of section 902 of the FA Act, 49 U.S.C. App. 1472 (not state law equivalents, as suggested by some of the commenters) to include: Forgery of certificates, false marking of aircraft, and other aircraft registration violations; interference with air navigation; improper shipment of a hazardous material; aircraft piracy; interference with flight crewmembers or flight attendants; commission of certain crimes aboard aircraft in flight; carrying weapons or explosives aboard aircraft; conveying false information and threats; aircraft piracy outside the special aircraft jurisdiction of the United States; lighting violations in connection with transportation of controlled substances; unlawful entry into an aircraft or airport area that serves air carriers or foreign air carriers contrary to established security requirements; and destruction of an aircraft or aircraft facility.

Other crimes enumerated in the Act and in this proposal are: Murder; assault with intent to murder; espionage; sedition; kidnapping; treason; rape; unlawful possession, sale, distribution, or manufacture of an explosive or weapon; extortion; armed robbery; distribution of, or intent to distribute, a controlled substance; and conspiracy to commit any of these criminal acts.

In Notice No. 92-3, the FAA sought comments on whether additional crimes should be listed. The comments on expanding the list of disqualifying crimes ranged from suggestions that all felony convictions be considered disqualifying to not adding any crimes to the list. However, arson was a specific crime that many of the commenters believed should be added to the list of disqualifying convictions, due to the deliberate nature of the offense and the safety and the practical considerations of fueling aircraft. The FAA proposes to add arson to the list and again invites comments on the possible expansion of the list of disqualifying crimes in the Act that may be relevant in authorizing unescorted access privilege. Additionally, the FAA again seeks comments on whether a person found not guilty by reason of insanity for any of the disqualifying crimes should be disqualified from unescorted SIDA access.

Section 107.31(c)—Employment Investigation Requirements

The proposal would establish the standards for the employment investigation. The standards would specify information required on the application, require proof of the individual's identity, and verification of representations made by the individual. The investigation includes a 5-year employment history verification that would confirm the statements made by an individual regarding their previous employment. Where appropriate, a criminal history records check would be required.

The airport operator would be required to have the individual complete an application form that includes: (1) The individual's full name, as well as any aliases or nicknames; (2) the dates, names, phone numbers and addresses of the individual's previous employers for the last 5 years, with explanations for any gaps in employment of more than 12 months; (3) the notice that the individual will be subject to an employment history verification and possibly a criminal history records check; and (4) the question asking if the individual has been convicted of any of the disqualifying crimes during the previous 10 years. The purpose of requiring this information is to help the airport operator identify any applicants who may have disqualifying convictions. For example, an unexplainable gap in employment may have occurred due to incarceration for a conviction of a disqualifying crime.

The FAA anticipates that the additional application information can be gathered at little additional cost to the employer or applicant. For example, an existing application form could be supplemented with the notice (3 above) and the list of disqualifying crimes (4 above) along with a question on the use of aliases and any additional information needed on the 5-year employment history that does not already appear on the employer's existing employment application.

The airport operator would verify the information required on the employment application to the extent necessary to validate representations made regarding the previous 5-year period. This process would be similar to that used for the existing 5-year employment verification and could be conducted by telephone calls, in writing or in a personal visit. In cases where a previous employer has gone out of business, a reasonable attempt to verify the period of prior employment should be made. As defined in § 107.31(n), documentation to record the method and the results obtained would be required. The FAA would also specify that records must be maintained of information provided, persons providing the information and the dates the contact was made. The FAA solicits comments on additional means of verifying an individual's employment that should be acceptable in the verification process. This could include accepting documentation in lieu of an employer making the verification by telephone calls, in writing, or in a personal visit.

The FAA proposal establishes a baseline requirement for the employment history verification. The airport operator may want to expand the scope of the employment history verification to cover areas not required by the proposal.

Under the proposal, if one or more of the following "triggers" established for the employment history verification is activated, the employment investigation would have to include a fingerprint-based check of the criminal records maintained by the Federal Bureau of Investigation (FBI) should the employer choose to proceed with the hiring process for that applicant.

First, an individual who is not able to adequately account for any period of unemployment of 12 months or more over the past 5 years in a manner that substantiates that he or she was not incarcerated for a disqualifying crime would be subject to a check. Unemployment for a 12-month period or more would not automatically trigger a criminal history records check. Rather, the criminal check would be required when the period of unemployment cannot be verified through the checking of appropriate documentation or references. For example, a gap could be satisfactorily explained by receipts for unemployment compensation, travel records or other information that would sufficiently provide evidence of an individual's whereabouts. In instances where an individual was self-employed, tax records, billing records, work orders, or other means could be used to support the claims made on the application.

Second, a criminal history records check would be triggered if there is an inability to substantiate statements made, or if there are significant inconsistencies between information required by the proposal that is provided by the applicant and that which is obtained during the employment verification. This has been intentionally defined using broad terms to allow the judgment of the airport operator and employers to determine what is acceptable. However, if an individual's employment cannot be verified, this would be considered as an inability to substantiate statements made.

Third, if information becomes available to the airport operator during the course of the investigation indicating a possible conviction for one of the

disqualifying crimes, a criminal records check would be required.

The 10-year criminal history records check is authorized by the Act. Individuals whose record shows a conviction during the previous 10 years for a crime listed in the proposed regulations would not be permitted to have, or authorize others to have, unescorted access to the SIDA. The 10-year period covered by the criminal history records check would be measured from the date the employment investigation process was initiated, i.e., the date the employment history verification began. As contemplated in section 105 of the Act, the FAA's proposal would limit the criminal history records check to the FBI's national criminal history record filing system.

As indicated in Notice No. 92–3, the FAA does not propose to require that the criminal history records received from the FBI be screened to delete information other than convictions for the enumerated crimes. Several of the commenters to the Notice No. 92–3 indicated that they already receive criminal history records from state or local sources for their prospective employees. Thus, the FAA's proposed rule would not limit the ability of airport operators and air carriers to review an individual's complete FBI criminal history record. However, any decision to deny unescorted access may be attributed to this rule only if it is based on the individual's conviction within the previous 10 years of an enumerated crime. Any other adverse information contained in the criminal record would not result in disqualification under the proposed rule.

Section 107.31(d)—Escorted Access

The proposal would require individuals who have not been authorized to have unescorted access authority to be under escort while in the SIDA. The FAA proposes to define "escort" in § 107.1(b)(3).

While escort requirements arise for a variety of reasons, the proposed rule is not expected to have a significant impact on the number of persons currently needing to be escorted. As mentioned earlier, the proposed screening of persons would result in very few individuals needing to be escorted pending completion of their criminal history records check. Escorting would be discretionary because the airport operator has the option of completing the check prior to hiring an employee to perform a duty requiring unescorted access privilege.

Section 107.31(e)—Exceptions to the Investigation Requirements

Government Employees

The FAA proposes that no additional employment investigation be required for Federal, state, and local government employees who have been subject to an employment investigation. Typically, the government employer subjects applicants to an employment investigation that is at least equivalent to that proposed in this notice. For example, Federal applicants are required on Standard Form 171 to disclose convictions, and the Office of Personnel Management, where appropriate, conducts a criminal history records check.

However, the FAA is sensitive to airport operator concerns over any exclusions to the employment investigation requirements. The FAA proposes to include state and local governments in this exception and invites comments on whether their hiring practices are comparable to that of the Federal Government.

Foreign Air Carrier Employees

The FAA is proposing to treat foreign air carrier employees similarly to that proposed in Notice No. 92–3. Many of the commenters to Notice No. 92–3 felt the threat to security exists primarily at foreign airports. Other commenters raised the complexity associated with trying to unilaterally apply U.S. laws in other countries. This could result in retribution by foreign countries who could require similar investigations for U.S. air carrier personnel. The Act, and hence this proposal implementing the Act, apply only at U.S. airports. Under this proposed rule, foreign nationals and U.S. citizens working in the United States for a foreign air carrier would be subject to an employment investigation prior to receiving airport-issued identification for SIDA unescorted access. While the airport operator would be responsible for the investigation, the foreign air carrier could perform the employment history verification, as it currently does at most airports.

The FAA proposes to implement an alternate security arrangement for foreign air carrier flight crewmembers (i.e., captain, second-in-command, flight engineer, or company check pilot) who are not based in the United States and are not otherwise issued airport identification. Alternate security arrangements are permitted by section 105 of the Act. The proposed alternate system for foreign flight crewmembers requires operational limitations to ensure an equivalent level of security. In addition, there is a very low probability of detecting disqualifying convictions for a foreign national based outside the United States through an investigation of FBI records, because those records normally include only arrests and convictions entered in the United States.

Under an alternate system, foreign air carrier flight crewmembers would be excluded from the employment investigation requirements of the proposed rule, provided that their access is restricted under an approved airport security program. An acceptable alternate system under an approved airport security program could be to permit a foreign air carrier flight crewmember to have unescorted access limited to the footprint of their aircraft (i.e., the aircraft and the immediate surrounding ramp area). To access any other aircraft or areas of the airport, the foreign air carrier flight crewmember would require an escort.

Transfer of Privilege

Under this proposal, an individual who has unescorted access privilege may transfer that privilege to another airport. This can be accomplished by the airport operator obtaining certification from the previous airport operator that the employment history verification has been completed. The individual must have been continuously employed in a position requiring unescorted access since being authorized for unescorted SIDA access. This addresses flight crewmembers or other employees of airport tenants with unescorted access privilege who change their duty station and may transfer their unescorted access privilege.

Individuals Subject To Investigation By Customs

The FAA proposes to accept the background check performed by the U.S. Customs Service (Customs) for access to the Customs security area of a U.S. airport as a substitute for the proposed employment investigation. Since 1985, Customs has required a background investigation of individuals with access to the Customs security areas of U.S. airports [19 CFR 122.181–188]. This investigation includes an FBI criminal history records check and further background investigation by Customs to determine whether the individual should be issued a seal allowing access to the Customs security area. Customs denies access authority to any individual convicted of a felony or convicted of a misdemeanor involving theft, smuggling or any theft-related crime, or evidence of a pending or past investigation which establishes criminal or dishonest

conduct, or a verified record of such conduct. In addition, when the Customs District Director believes an individual would endanger the revenue or security of the Customs security area, the individual will be denied access authority.

Accepting the background investigation by Customs for the purposes of this proposal would avoid a redundant check, while providing an equivalent level of security for individuals with unescorted access. Failure to obtain access authority to the Customs area would not preclude an individual from obtaining unescorted access to the SIDA under this proposed rule, but would require the individual to be subjected to an employment investigation.

Section 107.31(f)—Investigations by Air Carriers and Airport Tenants

The FAA is proposing that an airport operator may accept written certification from an air carrier that the employment investigation was performed for its employees. Receipt of certification would satisfy the airport operator's obligation under the proposed rule. The airport operator may accept a general certification that the employment history verification and, where appropriate, the criminal history records check were performed as part of the process of an air carrier issuing identification credentials to its employees. When a specific air carrier employee or its contractor employee is subject to an employment investigation by the carrier for receipt of an airport-issued identification credential, the airport operator must receive certification for each employee prior to issuing an identification credential.

The proposal also includes a provision permitting an airport operator to accept written certification from airport tenants that the 5-year employment history verification has been performed. In many cases, these airport tenants currently perform the 5-year employment history verification for their employees. The FAA proposes that tenants would be permitted to perform the 5-year employment history verification. However, the criminal history records check would be the responsibility of the airport operator for all airport tenants other than U.S. air carriers. (Tenants other than U.S. air carriers may include airline food service companies, fixed base operators, and foreign air carriers whose employees receive airport identification.)

Section 107.31(g)—Appointing Contact

The proposal would require the airport operator to appoint a person responsible for reviewing the results of the employment investigation and determining an individual's eligibility for unescorted access privilege. The designated person would also serve as the liaison in situations where the individual disputes the results of the criminal history records check that revealed information that would disqualify the person from unescorted access. The FAA seeks comments on whether the rule should specifically assign this responsibility to the Airport Security Coordinator (ASC) required under § 107.29. If this responsibility were assigned to the ASC, the ASC could delegate the duties while continuing to serve as the FAA's point of contact with the airport for purposes of monitoring compliance with this section.

Section 107.31(h)—Designating an Entity and Individual Notification

The FAA proposes to allow the airport operator to designate an outside entity to process the criminal history records check required by the rule. In Notice No. 92–3, three methods for processing the criminal history records check requests were discussed. The options for processing include: (1) Fully centralized processing, (2) partially centralized processing, and (3) decentralized processing.

An entity providing full central processing would receive requests from airports and air carriers for background checks. The entity would verify the quality of the fingerprints and batch those requests, and route the fingerprint cards to the FBI. After the FBI completed the search of its index system, the results would be returned to the entity providing the central processing, which, in turn, would forward the results to the airport operator or air carrier. Under a fully-centralized system, an entity providing the service may also follow-up on arrests for disqualifying convictions for which there is no disposition, and possibly screen the results. This is generally the type of system used by the nuclear industry for determining unescorted access to nuclear powerplants.

Under a partially-centralized system, one or more entities could provide partially-centralized processing and would verify the quality of the fingerprints and batch the requests for FBI criminal history record checks. The FBI would send the results of the record check to the airport operator or air carrier. The banking industry utilizes a similar method for processing records checks for individuals in that industry.

In a decentralized system, each airport operator and air carrier would mail requests directly to the FBI and the FBI would send the results of the criminal history record check to the airport operator or air carrier.

As noted in Notice No. 92–3B, after the enactment of the Act, but prior to issuance of the NPRM, several organizations indicated a willingness to channel record requests to the FBI. The FBI, in discussions with the FAA, has indicated its preference that the number of entities be limited in order to facilitate FBI processing procedures. The FAA would again like to know if any organizations have an interest in channeling the records to the FBI. Prior to issuing a final rule, the FAA will resolve the issue of acceptable procedures for requesting and receiving the criminal history records check information, in consultation with the FBI. Although the method for requesting the records checks and receiving them from the FBI has not been established, the basic process outlined in the proposal would not be affected by the outcome of that issue.

This proposed section would require that individuals covered by the proposed rule be notified of the need for a criminal history records check prior to commencing the check.

Section 107.31(i)—Fingerprint Processing

Similar to Notice No. 92–3, this proposal includes procedures for collecting fingerprints and requires that one set of legible fingerprints be taken on a card acceptable to the FBI. The airport operator or its designee could choose to have the airport law enforcement officers take the fingerprints or have another entity perform the function. The FAA also proposed to require that the identity of the individual be verified at the time the fingerprints are taken. The individual would be required to present two forms of identification, one of which must bear the photograph of the individual. A current driver's license, military identification, or passport are examples of acceptable identification. The FAA also proposes that the fingerprint cards be handled and shipped in a manner that would protect the privacy of the individual.

Section 107.31(j)—Making the Access Determination

The FBI has indicated that 60 percent of records in its system show an arrest for which there has been no disposition (e.g., the case is pending). The FAA is proposing that the airport operator or its designee, investigate arrests for any of the enumerated offenses when no

disposition has been recorded in the FBI's records. This investigation would be conducted with the affected individual and the jurisdiction where the arrest took place in order to determine whether a disposition has been recorded in that jurisdiction but not forwarded to the FBI.

In determining whether to grant unescorted access to an individual with an arrest for one of the disqualifying crimes but no disposition, the airport operator should weigh all relevant information available on the individual, including the results of the employment investigation. However, the proposal requires that unescorted access be denied only for convictions of the disqualifying crimes.

Section 107.31(k)—Availability and Correction of FBI Records and Notification of Disqualification

Similar to the process proposed in Notice No. 92-3, this proposal requires the airport operator or its designee to notify an individual at the time the fingerprints are taken that he or she would be provided, upon written request, a copy of his or her results from the FBI criminal history records check, prior to rendering the access decision. All individuals subject to an unescorted access determination have the option of receiving a copy of the results from the criminal history records check.

In instances where an individual's criminal history records check reveals information that would disqualify him or her from unescorted access, the FAA is proposing that the airport operator or its designee be required to advise the affected individual of disqualifying information. The airport operator or its designee would also be required to provide the individual with a copy of the criminal history records check results.

The individual would have the right to challenge the accuracy of the record. Because the FBI maintains the records and has established procedures to address possible inaccuracies, it would be appropriate to forward a copy of any requests for correction to the FBI. However, the actual request would be made by the individual directly to the agency (i.e., state or local jurisdiction) which contributed the questioned information contained in the criminal history record to the FBI.

The proposed rule would require the individual to notify the airport operator or its designee within 30 days of receipt of the record of his or her intent to correct any information believed to be inaccurate. If the airport operator or its designee is not notified by the individual within the 30-day period, the airport operator may make the final access decision. The airport operator is under no obligation to hire the individual and provide an escort before the correction (if any) is made, nor is there an obligation to hire the applicant after the record is corrected. However, if the airport operator wanted to hire an individual after being informed that the disqualifying information has been corrected, the airport operator would have to obtain a copy of the revised record from the FBI.

If an individual is disqualified for unescorted access privilege based on the findings of the criminal history records check, the FAA is proposing that the individual be notified that such a determination has been made.

Section 107.31(l)—Individual Accountability

The FAA solicited comments on the need, utility, and expense associated with a recurrent employment investigation requirement. While the FAA received mixed comments on this proposal, the majority argued a recurrent employment investigation was not necessary. The FAA now proposes to require that each affected individual report to the issuer of the identification credential convictions for any disqualifying crimes that may occur after the completion of the employment investigation and surrender the identification media. Many commenters pointed out that even if an employee fails to report a conviction for one or more of the disqualifying crimes, such a conviction would become known to the employer due to lapses in employment or through other means.

The proposal would also subject any individual failing to report a disqualifying conviction or to surrender his/her SIDA identification credential under this section to possible FAA enforcement action, including civil penalty liability.

Section 107.31(m)—Limits on Dissemination of Results

Consistent with the Act, the criminal history records check could only be used to determine whether to grant unescorted access privilege to the SIDA, not whether or not to hire an individual for non-SIDA access positions. As required by the Act, the proposed rule also includes limits on the dissemination of the criminal history information. The FAA proposes to limit distribution of such information to: (1) The individual to whom the record pertains or someone authorized by that person; (2) the airport operator or entity designated by the airport operator; and (3) the individuals designated by the Administrator (e.g., FAA special agents).

Section 107.31(n)—Recordkeeping

Two types of recordkeeping requirements are being proposed: (1) A record indicating that the 5-year employment history verification was performed, and (2) for those subject to a criminal history records check, a copy of the results of the record check received from the FBI.

The airport operator would be required to maintain a written record for all individuals permitted unescorted access. The FAA proposes that this record would be retained for 180 days after termination of that individual's authority. The purpose of this record is to illustrate that an individual was subject to an employment history verification, either by the airport operator, air carrier, or airport tenant. The record must include a record of calls made, plus a record of correspondence or any other documents received. (However, the documents themselves need not be retained.) In the case of air carrier employees, the record can be a certification from the carrier that the employment investigation was performed.

For individuals subject to a criminal history records check, the FAA is proposing that the record received from the FBI be maintained in a manner that prevents the unauthorized dissemination of the content of the results. While Notice No. 92-3 proposed to require the airport operator to destroy the criminal history records check after the determination has been made, many of the commenters expressed concerns over destruction of a record that was used to make the unescorted access determination and its future availability.

Section 108.33 Unescorted Access Privilege (Air Carrier Employees)

The FAA is proposing that air carriers be authorized to perform the background investigations for their employees and contractors as required of airport operators under proposed 107.31. The air carrier may provide a general certification to an airport operator under proposed § 107.31(f) that the employment investigations were performed as part of issuing identification credentials to its employees. When an individual air carrier employee or its contractor employee is investigated by the carrier for receipt of airport-issued identification media, the air carrier must provide the airport operator with certification for each employee. For identification issued to an air carrier or its contractor employee by the airport operator, the investigation may be

performed by either the air carrier or airport operator.

The proposed requirements for an air carrier performing the employment investigations are identical to those required of an airport operator.

Initial Regulatory Evaluation Summary

This section summarizes the regulatory evaluation prepared by the FAA. The regulatory evaluation provides more detailed information on estimates of the potential economic consequences of this proposal. This summary and the evaluation quantify, to the extent practicable, estimated costs of the rule to the private sector, consumers, and Federal, State, and local governments, and also the anticipated benefits.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is likely to result in an annual effect on the economy of $100 million or more, a major increase in consumer costs, or a significant adverse affect on competition.

The FAA has determined that this proposal is not "major" as defined in the executive order. Therefore, a full regulatory impact analysis, which includes the identification and evaluation of cost-reducing alternatives to the proposal, has not been prepared. Instead, the agency has prepared a more concise document termed a "regulatory evaluation," which analyzes only this proposal, without identifying alternatives. In addition to a summary of the regulatory evaluation, this section also contains an initial regulatory flexibility determination required by the 1980 Regulatory Flexibility Act (Public Law 96–354) and an international trade impact assessment. If the reader desires more detailed economic information than this summary contains, then he or she should consult the regulatory evaluation contained in the docket.

Costs of the Proposed Amendment

Airport operators, air carriers, and other airport tenants with employees who require unescorted SIDA access would incur some costs under the proposed rule. These costs consist of two components: (1) The cost of enhancing the employment history verification process; and (2) the cost of conducting a criminal history records check on applicants whose employment verification reveals information that would trigger such a check. Employers may avoid the latter cost by simply choosing to terminate the employment process for the individual.

The proposed rule establishes standards and a regulatory requirement for an employment history verification. Currently, the broad requirement for an employment reference verification exists in airport and air carrier security programs. The FAA estimates that non-air carrier airport tenants would incur most of the cost because their current employment history verification processes differ from the industry standard used by the air carriers and that proposed in the notice. The FAA estimates that this proposal would add to the employment process about 15 to 30 minutes of staff time per applicant for non-air carrier airport tenants. One hour of a personnel specialist's time (including benefits) is approximated at $21.62. Hence, the additional per applicant cost to airport tenants other than air carriers, such as caterers and fixed based operators with personnel requiring unescorted SIDA access, would range from $5.41 to $10.81. The FAA estimates that these employees make up approximately one-third of all individuals with SIDA access.

The costs associated with changes in application forms as a result of the proposal are considered negligible and have not been factored into the cost estimates. The cost estimates for the proposal also exclude the costs related to the time spent by former employers of an individual applying for unescorted access privilege who are requested to verify an individual's previous employment. The proposed rule would not affect the latter cost, because previous employers are already consulted under the current program requirements. The FAA solicits comments on whether these two cost items should be included in the analysis. Commenters should provide any supporting data.

Other costs that would be imposed by the proposal are associated with carrying out an FBI criminal records check for some candidates. The FAA estimates that about 1 out of every 100 applicants will meet the criteria established in the proposal that would trigger the requirement for a criminal history records check. The cost of a criminal history records check includes the FBI record search, the airport or air carrier administrative costs, and the cost of escorting the individual pending completion of the FBI records check. The latter cost may be avoided if the employer waits for the completion of the FBI criminal history records check before hiring an individual for a position requiring unescorted access. The FAA estimates the total cost for processing a criminal record check at $51 and the escorting costs to be $953 per individual escorted.

The FAA estimates that in 1991, the 443 part 107 airports employed 475,000 individuals having unescorted SIDA access. This evaluation assumes a 4 percent growth rate in employees receiving unescorted access (reflecting the forecasted growth in passengers) and an annual turnover rate of those with unescorted access to the SIDA of 35 percent. In the first year of implementation of the proposal, 1993, the FAA estimates the number of individuals with SIDA access will be 514,000. Based on these estimates, the FAA calculates the number of individuals receiving new authority for SIDA unescorted access in 1993 as 180,000. In 10 years, the annual turnover rate for individuals with SIDA unescorted access is expected to be 256,000. Over the decade, the average annual number of individuals receiving new authority for SIDA access that will be subjected to the employment investigation proposed in the SNPRM will therefore be 216,000.

The FAA estimated a range of costs for the proposal. The lower estimate assumes that a 5-year employment history verification for airport tenants other than air carriers would require an additional 15 minutes to complete and require no additional time for airport operators and air carriers. The lower estimate also assumes that airports, air carriers, and other airport tenants would choose to terminate the employment process for at least 75 percent of those applicants whose employment history verification triggers the requirement for a criminal history records check (only 1 percent of total applicants are expected to meet the requirement for such a check). Under the lower estimate, 20 percent of the remaining 25 percent whose employment verification indicated a need for a criminal history records check would be escorted during the period while the FBI criminal history records check was being performed (companies would not hire for an unescorted access position the other 80 percent until completion of the FBI records check).

The higher cost estimate assumes that the 5-year employment history verification for airport tenants other than air carriers would require an additional 30 minutes to complete and no additional time for airport operators

and air carriers. The higher estimate also assumes that airports, air carriers, and other airport tenants would choose to terminate the employment process for at least 50 percent of those applicants whose employment history verification triggers the requirement for a criminal history records check (only 1 percent of total applicants are expected to meet the requirement for such a check). Under the higher estimate, 50 percent of the remaining 50 percent whose employment verification indicated a need for a criminal history records check would be escorted during the period while the FBI criminal history records check was being performed (companies would not hire for an unescorted access position the other 50 percent until the FBI records check is completed).

Based on these estimates, first year costs for the industry would range from $0.4 to $1.1 million. These costs would be incurred by airports, air carriers and other airport tenants. In 1993, the FAA estimates that 180,000 employees will apply for unescorted SIDA access privilege. The cost of the proposal is associated with the added time to complete 60,000 employment history verifications by non-air carrier airport tenants, and the cost for performing between 100 and 500 criminal history records checks by airport operators and air carriers. Between 1993 and 2002, $5.1 to $13.6 million. The present value of these costs ranges from $3.1 to $8.5 million.

Benefits of the Proposed Amendment

The proposed rule augments other recent FAA security regulations by establishing regulatory requirements for employment investigation of individuals applying for unescorted access to airport SIDAs. Each enhancement of the U.S. civil aviation security system reduces the possibility of a criminal or terrorist acts against civil aviation.

The FAA estimates that about one out of every 5,000 applications would be excluded from unescorted access as a result of a conviction for one of the enumerated disqualifying crimes. This estimate suggests that 40 to 50 applicants for SIDA access privilege would be turned away each year over the next ten years. Preventing such persons from having access to airport SIDAs would be an important benefit under the proposed rule and provide an enhancement of airport security.

United States registered air carrier operators have experienced 235 terrorist or other criminal events over the past 30 years, resulting in a loss of 403 lives. The potential value of avoiding a loss from a terrorist act is measured by the value of avoided fatalities and aircraft replacement costs. The FAA currently uses a value of $1.5 million to represent statistically a human fatality avoided. This procedure and value is used in accordance with guidelines issued by The Office of the Secretary of Transportation, June, 1990. The benefits of preventing one terrorist accident over the next decade range from $92 million for the loss of a Boeing 727 aircraft to $198 million for the loss of a DC-10 aircraft.

Comparison of Cost and Benefits

At the 443 airports in the U.S. aviation security network, nearly a half million persons have unescorted access to airport SIDAs. The proposal would require airports, air carriers, and other airport tenants to perform a consistent and standardized employment history verification for all applicants, and a criminal history records check for applicants who meet certain criteria. The total cost for ten years of requiring a consistent and standardized employment history verification process and a criminal history records check on certain applicants ranges from $3.1 to $8.5 million (discounted over the next decade). The benefits ascribed to these regulations are based on preventing the destruction by a terrorist or a criminal act of one air carrier aircraft. At a minimum economic value of $1.5 million per fatality avoided, the cost of this proposal is easily covered by a small fraction of the value derived from preventing the destruction of a small air carrier aircraft (B-727).

International Trade Impact Assessment

The proposed rule would exempt foreign air carrier flight crewmembers from the employment investigation requirements provided they are covered by an alternate system. However, foreign nationals or U.S. citizens working for foreign air carriers that are issued U.S. airport identification would be subject to the proposed rule. Thus, the proposal could impose a slight trade disadvantage on domestic air carriers because they would have to incur the cost of the proposed rule for flight crewmembers, while foreign air carrier flight crewmembers would not be subject to the requirements if they are not issued identification credentials by an airport operator. The FAA contends that this extra cost is negligible. The additional cost would be less than two-one hundredth of a cent per enplanement. Hence, domestic firms would not incur a discernible competitive trade advantage or disadvantage in the sale of United States aviation products or services.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities (small businesses, nonprofit organizations, and small cities) are not overly burdened by Federal regulations. The RFA requires regulatory agencies to review rules which may have "a significant economic impact on a substantial number of small entities." A substantial number of small entities, as defined in FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, is a number not less than 11 or more than one-third of the small entities subject to the proposed or existing rule. To determine if the proposed rule would impose a significant cost impact on these small entities, the annualized cost imposed on them must not exceed the annualized cost threshold established in FAA Order 2100.14A for each of these entity types.

In order to estimate the impact of the proposed rule on small entities, the FAA has determined that the average cost of an employee verification for non-air carrier airport tenants to be $11.20. This estimate also incorporates the cost of a criminal history records check and a four percent growth rate in SIDA employment.

The small entities potentially affected by the proposed rule are small airports, air carriers, fixed-base operators, and catering companies. However, most of the requirements of the rule are already standard procedure for these entities; and the cost of a criminal history records check is minimal because so few employers are expected to utilize the criminal check.

Aircraft Repair Facilities: FAA Order 2100.14A defines small aircraft repair facilities as those with 200 employees or less. The FAA has estimated the cost threshold for small operators to be $4,025 in 1991 dollars. To exceed this threshold, a facility would have to hire 360 employees ($4,025/11.20) per year. This means that the facility would have to employ on a regular basis 1,028 people (assuming a 35 percent turnover rate: 360/.35). If a firm employed that many people, it would not be a small entity since it is over the size threshold of 200 employees.

Caterers: Small caterers are not defined in FAA Order 2100.14A. Thus, this evaluation will use the size and cost thresholds for small aircraft repair facilities to represent small catering businesses. These criteria are 200 employees or less for the size threshold and $4,025 for the cost threshold. Because they have the small threshold

criteria, small catering firms would also have to employ on a regular basis 1,028 people, which is over the size threshold of 200 employees.

In conclusion, the proposed rule would not impose a significant impact on a substantial number of small entities.

Federalism Implications

The proposed rule would not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Most airports covered by the NPRM are public entities (state and local governments). However, relatively few of the covered individuals are actually employed by the airport operator, and it is anticipated that most of the costs for the required investigations would be borne by the airport tenants and air carriers. Thus, the overall impact is not substantial within the meaning of Executive Order 12612. Therefore, in accordance with that Executive Order, it is determined that this proposal would not have sufficient Federal implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

The reporting and recordkeeping requirement associated with this rule is being submitted to the Office of Management and Budget for approval in accordance with 44 U.S.C. 35 under *OMB NO:* 2120-0564; *Title:* Unescorted Access Privilege; *Need for Information:* To record employment investigations as required by Public Law 101-604; *Proposed Use of Information:* To determine eligibility for unescorted access; *Frequency:* Recordkeeping; *Burden Estimate:* 36,720 hours annually; *Respondents:* Airport operators and air carriers; *Form(s):* None; *Average Burden Hours per Respondent:* 64—The annual hours per recordkeeper depends on the number of employees in each operation. The estimate is 10 minutes per employee; *For Further Information Contact:* The Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-4735.

Comments on these information collection requirements should be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, *Attention:* Desk Officer for FAA. Comments submitted to OMB should also be submitted to the FAA docket.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Initial Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not major under Executive Order 12291. In addition, this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities under the criteria of the Initial Regulatory Flexibility Act. This proposal is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). An initial regulatory evaluation of this proposal, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Parts 107 and 108

Air Carriers, Air transportation, Airlines, Airplane operator security, Aviation safety, Security measures, Transportation, Weapons.

The Proposed Amendments

In consideration of the foregoing, the Federal Aviation Administration proposes to amend parts 107 and 108 of the Federal Aviation Regulations (14 CFR parts 107 and 108) as follows:

PART 107—AIRPORT SECURITY

1. The authority citation for part 107 is revised to read as follows:

Authority: 49 U.S.C. App. 1354, 1356, 1357, 1358 and 1421; 49 U.S.C. 106(g).

2. In part 107, § 107.1 paragraphs (b)(3) through (b)(5) are redesignated as paragraphs (b)(4) through (b)(6), and new paragraph (b)(3) is added to read as follows:

§ 107.1 Applicability and definitions.

* * * * *

(b) * * *

(3) *Escort* means to accompany or supervise an individual who does not have access authority to areas restricted for security purposes as identified in the airport security program in a manner sufficient to take action should the individual engage in activities other than those for which the escorted access is granted.

* * * * *

3. Part 107 is amended by adding a new § 107.31 to read as follows:

§ 107.31 Unescorted access privilege.

(a) This section applies to all individuals seeking authorization for, or seeking authority to authorize others to have, unescorted access privilege to the following areas:

(1) The security identification display area (SIDA) that is identified in the airport security program as required by § 107.25; or

(2) At airports that are not required to identify a SIDA under § 107.25, that portion of the airport where access is controlled for security purposes in accordance with the airport security program.

(b) Except as provided in paragraph (e) of this section, each airport operator shall ensure that no individual is granted authorization for, or is granted authority to authorize others to have, unescorted access to the areas identified in paragraph (a) of this section unless:

(1) The individual has satisfactorily undergone a verification of employment history for the 5 years preceding the date the verification is initiated as provided in paragraph (c) of this section; and

(2) The results of the employment investigation do not disclose that the individual has been convicted in the 10 years ending on the date of such investigation of arson or any of the following crimes enumerated in section 316(g)(3)(A)(ii) of the Federal Aviation Act of 1958, 49 U.S.C. App. 1357(g)(3)(A)(ii):

(i) Forgery of certificates, false marking of aircraft, and other aircraft registration violations;

(ii) Interference with air navigation;

(iii) Improper shipment of a hazardous material;

(iv) Aircraft piracy;

(v) Interference with flight crew members or flight attendants;

(vi) Commission of certain crimes aboard aircraft in flight;

(vii) Carrying weapons or explosives aboard aircraft;

(viii) Conveying false information and threats;

(ix) Aircraft piracy outside the special aircraft jurisdiction of the United States;

(x) Lighting violations in connection with transportation of controlled substances;

(xi) Unlawful entry into an aircraft or airport area that serves air carriers or foreign air carriers contrary to established security requirements;

(xii) Destruction of an aircraft or aircraft facility;

(xiii) Murder;

(xiv) Assault with intent to murder;

(xv) Espionage;

(xvi) Sedition;

(xvii) Kidnapping;
(xviii) Treason;
(xix) Rape;
(xx) Unlawful possession, sale, distribution, or manufacture of an explosive or weapon;
(xxi) Extortion;
(xxii) Armed robbery;
(xxiii) Distribution of, or intent to distribute, a controlled substance; or
(xxiv) Conspiracy to commit any of the aforementioned criminal acts.

(c) The employment history verification shall include the following steps:

(1) The individual must complete an application form that includes:

(i) The individual's full name, including any aliases or nicknames;

(ii) The dates, names, phone numbers and addresses of previous employers, with explanations for any gaps in employment of more than 12 months, during the previous 5-year period;

(iii) Notification that the individual will be subject to an employment history verification and possibly a criminal history records check; and

(iv) Any convictions during the previous 10-year period of the crimes listed in paragraph (b)(2) of this section.

(2) The identity of the individual must be verified through the presentation of two forms of identification, one of which must bear the individual's photograph.

(3) The information on the employment application required under paragraph (c)(1)(ii) of this section must be verified in writing, by telephone, or in person.

(4) If one or more of the following conditions exists, the employment investigation shall not be considered complete unless it includes a check of the individual's fingerprint based criminal history record maintained by the Federal Bureau of Investigation (FBI):

(i) The individual cannot satisfactorily account for a period of unemployment of 12 months or more;

(ii) The individual is unable to support statements made or there are significant inconsistencies between information provided on the application in response to questions required by paragraph (c)(1)(ii) of this section and that which is obtained through the verification process; or

(iii) Information becomes available to the airport operator during the employment history verification indicating a possible conviction for one of the disqualifying crimes.

(d) An airport operator may permit an individual to be under escort as defined in § 107.1 in accordance with the airport security program to the areas identified in paragraph (a) of this section.

(e) Notwithstanding the requirements of this section, an airport operator may authorize the following individuals to have unescorted access to the areas identified in paragraph (a) of this section:

(1) Employees of the Federal government or a State or local government (including law enforcement officers) who, as a condition of employment, have been subject to an employment investigation;

(2) Flight crewmembers of foreign air carriers covered by an alternate security arrangement in the approved airport operator security program;

(3) An individual who has been continuously employed in a position requiring unescorted access by another airport operator, airport tenant or air carrier; or

(4) An individual who has been authorized for access authority to the U.S. Customs Service security area of a U.S. airport.

(f) An airport operator will be deemed to be in compliance with its obligations under paragraphs (b)(1) and (b)(2) of this section, as applicable, when it accepts certification from:

(1) An air carrier subject to § 108.33 of this chapter that the air carrier has complied with paragraphs 108.33(a)(1) and (a)(2) for its employees and contractors; and

(2) An airport tenant other than a U.S. air carrier that the tenant has complied with paragraph (b)(1) of this section for its employees.

(g) The airport operator shall designate an individual to:

(1) Review the results of the employment investigation; and

(2) Serve as the contact to receive notification from an individual applying for unescorted access of his or her intent to seek correction of his or her criminal history record with the FBI.

(h) The airport operator may designate an entity to process the records check required by paragraph (c)(4) of this section. Prior to commencing the records check, the airport operator or its designee shall notify the affected individuals.

(i) The airport operator or its designee shall collect and process fingerprints in the following manner:

(1) One set of legible and classifiable fingerprints shall be recorded on fingerprint cards approved by the FBI;

(2) The fingerprints shall be obtained from the individual under direct observation by the airport operator or its designee;

(3) The identity of the individual must be verified at the time fingerprints are obtained. The individual must present two forms of identification media, one of which must bear his or her photograph; and

(4) The fingerprint cards shall be forwarded to the Identification Division of the FBI in a manner that protects the confidentiality of the individual's record.

(j) In conducting the criminal history records check required by this section, the airport operator or its designee shall investigate arrest information for the crimes listed in paragraph (b)(2) of this section for which no disposition has been recorded to make a determination of the outcome of the arrest.

(k) The airport operator or its designee shall:

(1) At the time the fingerprints are taken, notify the individual that a copy of the criminal history record received from the FBI will be made available if requested in writing.

(2) Prior to making a final decision to deny authorization for unescorted access, advise the individual that the criminal history record received from the FBI discloses information that would disqualify him or her from unescorted access authorization and provide each affected individual with a copy of his or her record received from the FBI. The individual may contact the FBI to complete or correct the information contained in the record before any final access decision is made, subject to the following conditions:

(i) Within 30 days after being advised that the criminal history record received from the FBI discloses disqualifying information, the individual must notify the airport operator or its designee, in writing, of his or her intent to correct any information believed to be inaccurate. If no notification is received within 30 days, the airport operator may make a final access decision.

(ii) Upon notification by the individual that the record has been corrected, the airport operator or its designee must obtain a copy of the revised record from the FBI prior to making a final access decision.

(3) Notify an individual that a final decision has been made to deny authorization for unescorted access.

(l) Any individual authorized to have unescorted access privilege to the areas identified in paragraph (a) of this section who is subsequently convicted of any of the crimes listed in paragraph (b)(2) of this section shall report the conviction and surrender the SIDA identification medium within 24 hours to the issuer.

(m) Criminal history record information provided by the FBI shall be used solely for the purposes of this section, and no person shall disseminate the results of a criminal history records check to anyone other than:

(1) The individual to whom the record pertains or that individual's authorized representative;

(2) The airport operator or its authorized representative; or

(3) Others designated by the Administrator.

(n) The airport shall maintain a written record for the individual until 180 days after the termination of the individual's authority for unescorted access. For individuals subject to:

(1) The employment history verification required by paragraph (b) of this section, the record shall include information provided, persons providing the information, the dates the contact was made, and any other information as required by the Assistant Administrator for Civil Aviation Security, and

(2) An investigation required under paragraph (c)(4) of this section, the record shall include the results of the FBI criminal history records check information in a manner protecting the confidentiality of the individual acceptable to the Assistant Administrator for Civil Aviation Security.

PART 108—[AMENDED]

4. The authority citation for part 108 is revised to read as follows:

Authority: 49 U.S.C. 1354, 1356, 1357, 1421, 1424, and 1511; 49 U.S.C. 108(g).

5. Part 108 is amended by adding a new § 108.33 to read as follows:

§ 108.33 Unescorted access privilege.

(a) For each employee or contractor employee covered under a certification made to an airport operator pursuant to § 107.31(f) of this chapter, the certificate holder shall ensure that:

(1) The individual has satisfactorily undergone a verification of employment history for the 5 years preceding the date the verification is initiated as provided in paragraph (b) of this section; and

(2) The results of the employment investigation do not disclose that the individual has been convicted in the 10 years ending on the date of such investigation of arson or any of the following crimes enumerated in section 316(g)(3)(A)(ii) of the Federal Aviation Act of 1958, 49 U.S.C. App. 1357(g)(3)(A)(ii):

(i) Forgery of certificates, false marking of aircraft, and other aircraft registration violations;

(ii) Interference with air navigation;

(iii) Improper shipment of a hazardous material;

(iv) Aircraft piracy;

(v) Interference with flight crew members or flight attendants;

(vi) Commission of certain crimes aboard aircraft in flight;

(vii) Carrying weapons or explosives aboard aircraft;

(viii) Conveying false information and threats;

(ix) Aircraft piracy outside the special aircraft jurisdiction of the United States;

(x) Lighting violations in connection with transportation of controlled substances;

(xi) Unlawful entry into an aircraft or airport area that serves air carriers or foreign air carriers contrary to established security requirements;

(xii) Destruction of an aircraft or aircraft facility;

(xiii) Murder;

(xiv) Assault with intent to murder;

(xv) Espionage;

(xvi) Sedition;

(xvii) Kidnaping;

(xviii) Treason;

(xix) Rape;

(xx) Unlawful possession, sale, distribution, or manufacture of an explosive or weapon;

(xxi) Extortion;

(xxii) Armed robbery;

(xxiii) Distribution of, or intent to distribute, a controlled substance; or

(xxiv) Conspiracy to commit any of the aforementioned criminal acts.

(b) The employment history verification shall include the following steps:

(1) The individual must complete an application form that includes:

(i) The individual's full name, including any aliases or nicknames;

(ii) The dates, names, phone numbers and addresses of previous employers, with explanations for any gaps in employment of more than 12 months, during the previous 5-year period;

(iii) Notification that the individual will be subject to an employment history verification and possibly a criminal history records check; and

(iv) Any convictions during the previous 10-year period of the crimes listed in paragraph (a)(2) of this section.

(2) The identity of the individual must be verified through the presentation of two forms of identification, one of which must bear the individual's photograph.

(3) The information on the employment application required under paragraph (b)(1)(ii) of this section must be verified in writing, by telephone, or in person.

(4) If one or more of the following conditions exists, the employment investigation shall not be considered complete unless it includes a check of the individual's fingerprint based criminal history record maintained by the Federal Bureau of Investigation (FBI):

(i) The individual cannot satisfactorily account for a period of unemployment of 12 months or more;

(ii) The individual is unable to support statements made or there are significant inconsistencies between information provided on the application in response to questions required by paragraph (b)(1)(ii) of this section and that which is obtained through the verification process; or

(iii) Information becomes available to the certificate holder during the employment history verification indicating a possible conviction for one of the disqualifying crimes.

(c) The certificate holder shall designate an individual to:

(1) Review the results of the employment investigation; and

(2) Serve as the contact to receive notification from an individual applying for unescorted access of his or her intent to seek correction of his or her criminal history record with the FBI.

(d) The certificate holder may designate an entity to process the records check required by paragraph (b)(4) of this section. Prior to commencing the records check, the certificate holder or its designee shall notify the affected individuals.

(e) The certificate holder or its designee shall collect and process fingerprints in the following manner:

(1) One set of legible and classifiable fingerprints shall be recorded on fingerprint cards approved by the FBI;

(2) The fingerprints shall be obtained from the individual under direct observation by the certificate holder or its designee;

(3) The identity of the individual must be verified at the time fingerprints are obtained. The individual must present two forms of identification media, one of which must bear his or her photograph; and

(4) The fingerprint cards shall be forwarded to the Identification Division of the FBI in a manner that protects the confidentiality of the individual's record

(f) In conducting the criminal history records check required by this section, the certificate holder or its designee shall investigate arrest information for the crimes listed in paragraph (a)(2) of this section for which no disposition has been recorded to make a determination of the outcome of the arrest.

(g) The certificate holder or its designee shall:

(1) At the time the fingerprints are taken, notify the individual that a copy of the criminal history record received from the FBI will be made available if requested in writing.

(2) Prior to making a final decision to deny authorization for unescorted access, advise the individual that the criminal history record received from the FBI discloses information that would disqualify him or her from unescorted access authorization and provide each affected individual with a copy of his or her record received from the FBI. The individual may contact the FBI to complete or correct the information contained in the record before any final access decision is made, subject to the following conditions:

(i) Within 30 days after being advised that the criminal history record received from the FBI discloses disqualifying information, the individual must notify the certificate holder or its designee, in writing, of his or her intent to correct any information believed to be inaccurate. If no notification is received within 30 days, the certificate holder may make a final access decision.

(ii) Upon notification by the individual that the record has been corrected, the certificate holder or its designee must obtain a copy of the revised record from the FBI prior to making a final access decision.

(3) Notify an individual that a final decision has been made to deny authority for unescorted access.

(h) Any individual authorized to have unescorted access privilege as identified in paragraph (a) of this section, who is subsequently convicted of any of the crimes listed in paragraph (a)(2) of this section, shall report the conviction and surrender the SIDA identification medium within 24 hours to the issuer.

(i) Criminal history record information provided by the FBI shall be used solely for the purposes of this section, and no person shall disseminate the results of a criminal history records check to anyone other than:

(1) The individual to whom the record pertains or that individual's authorized representative;

(2) The certificate holder or its authorized representative; or

(3) Others designated by the Administrator.

(j) The certificate holder shall maintain a written record that the investigation was conducted for the individual until 180 days after the termination of the individual's authority for unescorted access. For individuals subject to:

(1) The employment history verification required by paragraph (a)(1) of this section, the record shall include information provided, persons providing the information, the dates the contact was made, and any other information as required by the Assistant Administrator for Civil Aviation Security, and

(2) An investigation required under paragraph (c)(4) of this section, the record shall include the results of the FBI criminal history records check information in a manner protecting the confidentiality of the individual acceptable to the Assistant Administrator for Civil Aviation Security.

Issued in Washington, DC on September 14, 1992.

Bruce R. Butterworth,

Director, Office of Civil Aviation Security Policy and Planning, ACP-1.

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Friday
September 18, 1992

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Chapter IX, Subchapters A and B and Part 944

Monterey Bay National Marine Sanctuary Regulations; Final Rule

DEPARTMENT OF COMMERCE

15 CFR Chapter IX, Subchapter A and B and Part 944

[Docket No. 900122-2020]

RIN 0648-AC63

Monterey Bay National Marine Sanctuary Regulations

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; National Marine Sanctuary Designation; final rule; and summary of final management plan.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA), by the Designation Document contained in this document, and as required by section 205(a)(3) of Public Law 100-627, designates an approximately 4,024 square nautical mile area of coastal and ocean waters, and the submerged lands thereunder, in and surrounding Monterey Bay off the coast of central California as the Monterey Bay National Marine Sanctuary. This document publishes the Designation Document for the Sanctuary and summarizes the final management plan for it. The final management plan details the goals and objectives, management responsibilities, research activities, interpretive and educational programs, and enforcement, including surveillance, activities for the Sanctuary.

Further, NOAA issues final regulations to implement the designation by regulating activities affecting the Sanctuary consistent with the provisions of the Designation Document. The intended effect of these regulations is to protect the conservation, recreational, ecological, historical, research, educational and esthetic resources and qualities of the Monterey Bay National Marine Sanctuary.

EFFECTIVE DATES: Pursuant to section 304(b) of the Marine Protection, Research, and Sanctuaries Act, Congress and the Governor of the State of California have forty-five days of continuous session of Congress beginning on the day on which this document is published to review the designation and regulations before they take effect. After forty-five days, the designation (and any of its terms not disapproved by Congress through enactment of a joint resolution) and regulations automatically become final and take effect. Further, if the Governor of the State of California certifies within the forty-five-day period to the Secretary of Commerce that the designation or any of its terms is unacceptable, the designation or the unacceptable terms cannot take effect in the area of the Sanctuary lying within the seaward boundary of the State. If the Secretary considers that any disapproval will affect the designation in a manner that the goals and objectives of the Sanctuary cannot be fulfilled, the Secretary may withdraw the entire designation. A document announcing the effective date will be published in the **Federal Register**.

ADDRESSES: Copies of the Final Environmental Impact Statement/Management Plan (FEIS/MP) prepared for the designation are available upon request to the Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, NW., suite 714, Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: Mark Murray-Brown, 202/606-4126.

SUPPLEMENTARY INFORMATION:

I. Background

Title III of the Marine Protection, Research, and Sanctuaries Act, as amended (the "Act" or "MPRSA"), 16 U.S.C. 1431 *et seq.*, authorizes the Secretary of Commerce to designate discrete areas of the marine environment as national marine sanctuaries if, as required by section 303 of the Act (16 U.S.C. 1433), the Secretary finds, in consultation with Congress, a variety of specified officials, and other interested persons, that the designation will fulfill the purposes and policies of the Act (set forth in section 301(b) (16 U.S.C. 1431(b)) and:

(1) The area proposed for designation is of special national significance due to its resource or human-use values;

(2) Existing state and Federal authorities are inadequate to ensure coordinated and comprehensive conservation and management of the area, including resource protection, scientific research and public education;

(3) Designation of the area as a national marine sanctuary will facilitate the coordinated and comprehensive conservation and management of the area; and

(4) The area is of a size and nature that will permit comprehensive and coordinated conservation and management.

Before the Secretary may designate an area as a national marine sanctuary, section 303 (16 U.S.C. 1433) requires him or her to make the above described findings and section 304 (16 U.S.C. 1434), setting forth the procedures for designation, requires him or her to publish in the **Federal Register** regulations implementing the designation and to advise the public of the availability of the FEIS/MP.

The authority of the Secretary to designate national marine sanctuaries and administer the other provisions of the Act has been delegated to the Under Secretary of Commerce for Oceans and Atmosphere by DOC Organization Order 10-15, section 3.01(z), January 11, 1988. The authority to administer the other provisions of the Act has been redelegated to the Assistant Administrator for Ocean Services and Coastal Zone Management of NOAA by NOAA Circular 83-38, Directive 05-50, September 21, 1983, as amended.

The State of California nominated the Monterey Bay area in 1977, along with nine other offshore marine areas, for consideration for designation as national marine sanctuaries. In response to these nominations, NOAA selected the Channel Islands, the Point Reyes-Farallon Islands, and the Monterey Bay areas for further consideration. In December 1978, NOAA released an issue paper on these three sites, presenting several boundary and regulatory options for each site. Public hearings were held and, based on the responses, NOAA, on August 10, 1979, declared all three sites as active candidates for designation as national marine sanctuaries.

On September 21, 1980, the Channel Islands National Marine Sanctuary was designated and on January 16, 1981, the Point Reyes-Farallon Islands National Marine Sanctuary (later renamed the Gulf of the Farallones National Marine Sanctuary) was designated. On December 14, 1983 (see 48 FR 56253), NOAA removed the Monterey Bay area from the list of active candidates.

On November 7, 1988, Public Law 100-627, which amends and authorizes appropriations for title III of the Act, was signed into law. Section 205(a)(3) of Public Law 100-627 directs that the Secretary of Commerce designate the Monterey Bay National Marine Sanctuary.

On January 6, 1989, NOAA announced (54 FR 448) that the Monterey Bay area had again become an active candidate for designation as a national marine sanctuary. On January 25 and 26, 1989, NOAA sponsored two public scoping meetings in Monterey and Santa Cruz to solicit public comment on the scope and significance of issues involved in designating the Sanctuary. The public response was extremely favorable to proceeding with the evaluation.

On August 3, 1990 NOAA published a proposed Designation Document and proposed implementing regulations and announced the availability of the Draft Environmental Impact Statement/Management Plan (DEIS/MP) (55 FR 31786). Public hearings to receive comments on the proposed designation, proposed regulations, and DEIS/MP were held on September 12, 1990 in Monterey; on September 13, 1990 in Santa Cruz; and on September 14, 1990 in Half Moon Bay, California. All comments received by NOAA in response to the **Federal Register** notice and at the public hearings were considered and, where appropriate, were incorporated. A summary of the significant comments on the proposed regulations and the regulatory elements of the DEIS/MP and NOAA's responses to them follow. The comments are both presented and responded to in greater detail in appendix F of the FEIS/MP.

(1) *Comment:* NOAA should extend its preferred Boundary Alternative 2 both north and south and choose Boundary Alternative 5. Boundary Alternative 5 would protect critical nesting and migratory paths between Monterey and San Mateo County coasts, create a continuous protected management regime between the Gulf of the Farallones National Marine Sanctuary and the proposed Monterey Bay National Marine Sanctuary, provide a greater buffer to sensitive areas such as Año Nuevo and the Fitzgerald Marine Reserve, and protect a greater area of the southern California sea otter range and habitat.

Response: NOAA agrees. The FEIS/MP-preferred Boundary Alternative 5 incorporates a north and south extension of the DEIS/MP-preferred Boundary Alternative 2. Boundary Alternative 5 received the vast majority of support from the public during the public comment period. Boundary Alternative 5 has been chosen as preferred because it integrates important coastal, nearshore and deep-ocean canyon resource zones under one management regime. These zones include the Monterey submarine canyon—the focal point of the Sanctuary; Monterey Bay itself; the Big Sur and San Mateo coastal area, including Año Nuevo and the Fitzgerald Marine Reserve; the adjacent continental shelf, slope and rise; certain highly productive shoreline and intertidal areas, such as Pescadero Marsh and Elkhorn Slough; and the deep ocean environments of the Ascension, Monterey Bay, Big Sur and Partington Canyon complexes.

The boundary expansion excludes a small area of approximately 71 square nautical miles off the north coast of San Mateo County and the City and County of San Francisco. The excluded area encompasses the anticipated discharge plume of the combined sewer overflow component of the City and County of San Francisco's sewage treatment program, the shipping channel providing access to and from San Francisco Bay, and the Golden Gate dredged material disposal site associated with this channel. NOAA has determined that the nature and level of these activities are not appropriate for inclusion within a national marine sanctuary. By excluding this small area from the Sanctuary, NOAA will be able to focus Sanctuary management on the long-term protection of other areas that contain nationally significant resources and qualities and are less heavily impacted by human activity. By excluding the anticipated discharge plume of the combined sewer overflow from the Sanctuary, a buffer zone has been created protecting Sanctuary resources and qualities from the discharge.

The boundary expansion not only encompasses additional resources but also will provide enhanced protection from potential human threats to the north and south. For example, to the north, off of the San Mateo coast, potential new dredged material disposal and oil and gas development activities are under consideration within the Sanctuary boundary. To the south, the pristine area of the Big Sur coast and sea otter habitat would be encompassed and protected by the Sanctuary regime.

(2) *Comment:* Oil and gas development within the Sanctuary should either be prohibited or regulated. Concerns range from impacts of potential toxic wastes released from oil-drilling platforms, reduced tourism due to diminished scenic views, lack of adequate emergency oil response capabilities, to catastrophic blow outs.

Response: NOAA agrees. The regulations prohibit exploring for, developing or producing oil or gas throughout the entire Sanctuary. Such economic development and construction of man-made structures would severely disrupt the natural and aesthetic qualities of the area and be inconsistent with the purposes of the Sanctuary. Although certain man-made structures may be permissible in the future for limited purposes such as research or natural resource protection, the threats from oil and gas activities to Sanctuary resources and qualities warrant prohibition. Threats include not only catastrophic events such as oil spills associated with blow-outs, rupture of pipelines or loading of tankers but also long-term chronic events such as discharge of drilling fluids, cuttings and air emissions. Offshore oil and gas activities have never been conducted in the Monterey Bay area. The area would suffer aesthetic disturbance ranging from the presence of offshore rig structures to building of shore facilities and the necessary transportation of personnel and equipment to and from the offshore rigs.

(3) *Comment:* NOAA should either regulate or prohibit vessel traffic within the Sanctuary area. Specifically:

(1) Traffic should be prohibited unless vessels are bound for a destination within the Sanctuary;

(2) Size of vessels to be regulated or prohibited from the Sanctuary area should be clarified;

(3) Vessels should either be routed offshore and avoid the Sanctuary area completely, or traffic lanes should be developed along the Sanctuary edges; and

(4) Vessels traveling along the Sanctuary boundary should be limited to specific port access routes and shipping lanes established by the United States Coast Guard (USCG) and NOAA.

Response: The Designation Document lists vessel operations as being subject to Sanctuary regulation. However, upon designation only the operation of personal water craft is being regulated as part of the Sanctuary regime (see comment responses 18 and 19). There are no Sanctuary regulations planned at this time for the traffic regulation of other vessels. NOAA is currently working with the USCG, the primary source of vessel traffic regulation, to determine the need for additional measures to ensure protection of Sanctuary resources and qualities from vessel traffic. These consultations aim to determine which resources are most at risk, which vessel traffic practices are most threatening and which regulations or restrictions would be most appropriate to alleviate potential threats, including those, if any, from foreign vessels. Because the disposal of dredged material outside the Sanctuary (see Comment/Response (9) below) will necessitate the transport of these materials through the Sanctuary, NOAA will also work closely with the U.S. Army Corps of Engineers (COE) and U.S. Environmental Protection Agency (EPA) on such transport activities.

These ongoing consultations build upon recent Federal and State legislation (since publication of the DEIS/MP in August 1990) that further protects Sanctuary resources and

qualities from vessel traffic. Specifically, the National Oil Pollution Act of 1990 establishes double hull requirements for tank vessels. Most tank vessels over 5,000 gross tons will be required to have double hulls by 2010, while vessels under 5,000 gross tons will be required to have a double hull or a double containment system by 2015. All newly constructed tankers must contain a double hull (or double containment system if under 5,000 gross tons), while existing vessels are phased out over a period of years. In addition, SB 2040, California's Oil Spill Prevention and Response Act, requires numerous prevention as well as mitigation measures aimed at protecting marine resources from oil spills particularly from tankers.

Vessel traffic separation zones off of San Francisco, implemented by the USCG, also help protect Sanctuary resources and qualities.

If it appears that regulation of vessel traffic as part of the Sanctuary regime may be necessary, NOAA will make such determination in consultation with the USCG, COE, EPA, other affected Federal and State agencies and the International Maritime Organization (IMO) through the USCG. If it is determined that such regulation is necessary, NOAA will develop the necessary regulations, also in coordination with those agencies. Coordination among agencies is intended to focus ongoing efforts to provide adequate protection to the Sanctuary and to emphasize the sensitivity of Sanctuary resources and qualities.

(4) *Comment:* If spills cannot be prevented entirely, a contingency plan should exist for emergency response and cleanup. To facilitate response action, NOAA should work with, and build upon, the efforts of other organizations and agencies already developing plans for the area.

Response: NOAA agrees and will work with, and build upon, the efforts of others. The FEIS/MP identifies existing oil spill contingency plans and efforts in the Monterey Bay area. The Monterey Bay National Marine Sanctuary requires its own contingency plan to ensure that resources are protected during events that threaten the environment. A prototype sanctuary contingency plan is almost complete, and will be tested at the Channel Islands National Marine Sanctuary. Once implementation experience has been gained, the plan will be adapted to other sanctuary sites, including Monterey Bay.

(5) *Comment:* Agreements should be established between various local, regional, State, and Federal agencies to ensure adequate cleanup response.

Response: Under the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, the USCG serves as the Federal on-scene coordinator to organize all containment, removal and disposal efforts, and resources during a spill event. If a spill occurs, NOAA will take an active role, to the extent allowable, to participate, coordinate, and actively protect natural resources. During the planning phase, NOAA will work with the existing response mechanism, and will cooperate with local government, industry, organizations and interested individuals to implement a comprehensive contingency plan. A top priority for the Sanctuary Manager will be to meet with those involved with contingency planning to coordinate Sanctuary roles and responsibilities during an emergency response situation.

(6) *Comment:* Depositing or discharging from any location within the boundary of the Sanctuary or from beyond the boundary of the Sanctuary should be prohibited. The regulation of discharges to improve water quality is a significant concern.

Response: The regulations prohibit depositing or discharging most material and other matter from any location within the boundary of the Sanctuary, and from beyond the boundary of the Sanctuary if such matter subsequently enters the Sanctuary and injures resources or qualities.

NOAA has entered into a Memorandum of Agreement (MOA) with the State of California, EPA and the Association of Monterey Bay Area Governments regarding the Sanctuary regulations relating to water quality within State waters within the Sanctuary. With regard to permits, the MOA encompasses (i) National Pollutant Discharge Elimination System (NPDES) permits issued by the State of California under section 13377 of the California Water Code and (ii) Waste Discharge Requirements issued by the State of California under section 13263 of the California Water Code. The MOA specifies how the Sanctuary certification process for existing permits and review process for new or revised (including renewal) permits will be administered within State waters within the Sanctuary in coordination with the State permit program. The MOA also addresses integration and coordination of research and monitoring efforts and the development of a comprehensive water quality protection program for the Sanctuary.

(7) *Comment:* NOAA should clarify in the FEIS/MP what harbors will be excluded and why.

Response: The FEIS/MP includes a specific section on harbors. Pillar Point, Santa Cruz, Moss Landing (except waters, and submerged lands thereunder, of Elkhorn Slough east of the U.S. Highway One bridge to the boundary of the Elkhorn Slough National Estuarine Research Reserve), and Monterey harbors shoreward from their respective International Collision at Sea regulation (Colreg.) demarcation lines are not part of the Sanctuary. NOAA excluded these harbor areas from the Sanctuary because they do not possess resources and qualities warranting Sanctuary protection.

(8) *Comment:* Dredging is essential to maintaining viable working harbors. However, because of potential degradation to the environment, dredging should be prohibited within the Sanctuary. NOAA should clearly state how regulations will affect current dredging activities in the Sanctuary.

Response: Most harbor areas do not lie within the Sanctuary (see Comment/Response (7) above) and therefore are not affected by the Sanctuary dredging prohibitions. In addition, existing activities relating to the maintenance of the harbors have been exempted from Sanctuary regulation. NOAA will work closely with COE and EPA to ensure that Sanctuary resources and qualities are protected, while allowing essential dredging activities to be conducted.

(9) *Comment:* Ocean dumping is a threat to the marine environment and should be entirely prohibited within the Sanctuary area. NOAA should also specify whether Federally authorized dredged material disposal sites SF-12 and SF-14 will remain available for future dredging projects that would otherwise qualify for State and Federal permits.

Response: The Sanctuary regulations prohibit the designation and use of any new ocean dredged material disposal sites within the Sanctuary. The ocean disposal of dredged material is subject to stringent regulation under title I of the MPRSA. NOAA will work closely with COE and EPA to ensure Sanctuary resources and qualities are protected from future dredged material disposal activities.

With regard to the COE dredged material disposal activities: (a) Those activities located within the Sanctuary boundary will continue to be regulated under section 103 of the MPRSA and section 404 of the Clean Water Act. These activities have previously undergone intense public scrutiny and

environmental oversight by EPA. Any proposed new activities at existing sites, *i.e.*, activities not pursuant to and in compliance with an existing permit or approval, will be subject to the review process of § 944.11.

(b) Those activities located at existing sites outside the Sanctuary boundary and at the authorized disposal site that will result from the disposal site study underway on the effective date of Sanctuary designation will be regulated primarily under section 103 of the MPRSA and section 404 of the Clean Water Act and will not be regulated under the Sanctuary regulatory regime. Because of the intensive environmental evaluation of disposal sites and disposal activities by COE and EPA, NOAA does not anticipate that any site designated for disposal of dredged material will impact Sanctuary resources. Therefore, the Sanctuary regulatory prohibition on discharges does not apply to dredged material deposited outside the Sanctuary at existing disposal sites off of the Golden Gate (see appendix IV to the regulations) and will not apply to dredged material deposited outside the Sanctuary at the authorized disposal site that will result from the disposal site study underway on the effective date of Sanctuary designation, provided that the activity is pursuant to, and complies with the terms and conditions of, a valid Federal permit or approval. The future disposal site will be located within one of the Long-Term Management Strategy Ocean Study Areas described in appendix IV. When that site is authorized, appendix IV will be updated to incorporate its precise location. COE will coordinate closely with NOAA concerning the management of dredged material disposal activities at the new site.

(10) *Comment:* The regulatory regime for aquaculture and kelp harvesting activities within the Sanctuary remains unclear. Currently, aquaculture development is the responsibility of the California Department of Fish and Game (CDF&G), and because of this, aquaculture operations requiring seabed alterations should be excluded from Sanctuary regulations, and allowed to continue.

Response: Neither kelp harvesting nor aquaculture is being regulated as part of the Sanctuary regime upon designation. Both activities are included in the Designation Document as activities subject to future regulation should be need arise. NOAA will coordinate with the CDF&G, which is responsible for managing kelp harvesting and aquaculture operations.

(11) *Comment:* The Sanctuary should include all waters in the Elkhorn Slough National Estuarine Research Reserve (ESNERR), and this relationship should be formalized. It is important to create a link between the Monterey Bay Sanctuary and the Reserve, even if this means exempting Moss Landing Harbor. An agreement should be developed between NOAA and the Moss Landing Harbor District to ensure the success of the two programs as well as coordinating the management plans and objectives of both sites.

Response: NOAA agrees it is important to coordinate closely with the ESNERR to ensure the success of both sites. The Sanctuary includes all waters, and submerged lands thereunder, in the Slough up to the ESNERR boundary. NOAA agrees that links should be fostered since missions and goals are similar. NOAA supports the exchange of information, research, education and staff expertise between the two programs. Meeting the objectives for both sites, as well as implementing the management plans, can be coordinated through the Sanctuary Advisory Committee and the ESNERR Advisory Committee. NOAA encourages Sanctuary and ESNERR staff to participate actively in this process.

However, regardless of their similarities, the two programs must remain separate because the National Estuarine Reserve Research System Program regulations prohibit the inclusion of reserves within sanctuaries (15 CFR 921.4(c)).

After consultation with the Moss Landing Harbor District, NOAA has determined the most appropriate method of linking the two sites is to exclude from the Sanctuary Moss Landing Harbor east of the Colregs. line and west of the Highway One bridge, and to include the waters of Elkhorn Slough east of the Highway One bridge to the boundary of the ESNERR with overlapping jurisdiction with the Moss Landing Harbor District over the Moss Landing Harbor.

(12) *Comment:* There is a need for landward protection and controls on nearshore development. Adequate protection of the ocean environment must include management of the adjacent coastal and upland zones. NOAA should extend its jurisdiction to include beaches, dunes, uplands, and wetland habitats adjacent to the proposed Sanctuary.

Response: NOAA agrees that protection and management of the land portion of the coastal zone is necessary for adequate protection of the ocean environment. NOAA will coordinate with existing coastal management authorities, such as COE, EPA, the California Coastal Commission, State Water Resources and Regional Water Quality Control Boards and State Lands Commission, regarding potential land- and water-based threats and impacts to the Sanctuary. The physical boundary of this sanctuary encompasses ocean and coastal waters up to the mean high-water line. NOAA intends to protect the Sanctuary from the impacts of coastal development via its regulation of discharges or deposits from beyond the boundary of the Sanctuary that subsequently enter the Sanctuary and injure a Sanctuary resource or quality.

(13) *Comment:* NOAA should clarify whether it will limit the amount of silt in the sand used for beach nourishment. Even though the sand may be placed above the high tide mark, erosion may move silt into the Bay.

Response: NOAA will work with COE, EPA and other appropriate authorities to determine the impacts of beach nourishment programs. If it should appear that a particular project would injure Sanctuary resources or qualities, NOAA may impose terms and conditions pursuant to 15 CFR 944.10 and 944.11.

(14) *Comment:* Protection of historical and cultural resources within the Sanctuary is a significant concern. NOAA should prohibit moving, injuring, or possessing historical resources within the Sanctuary. However, Sanctuary regulations should not apply to activities permitted by the State within State waters under the Shipwreck and Historic Maritime Resources Program.

Response: NOAA agrees that it is necessary to protect and manage historical and cultural resources within the Sanctuary boundary. The regulations include a prohibition on moving, removing, possessing or injuring, or attempting to move, remove or injure these resources.

The Abandoned Shipwreck Act of 1987 gives States the title to certain abandoned shipwrecks in State waters. Under the MPRSA, the Sanctuaries and Reserves Division, NOAA, has managerial responsibilities for abandoned shipwrecks within National Marine Sanctuaries, including those located in State waters, for the purpose of protecting them. NOAA will coordinate with State agencies to ensure that historical and cultural resources, as well as living marine resources, within the Sanctuary are protected.

(15) *Comment:* The prohibition on the taking of marine mammals and seabirds within the Sanctuary is redundant with the Endangered Species Act (ESA), the Marine Mammal Protection Act (MMPA) and the Migratory Bird Treaty Act (MBTA).

Response: While marine mammals, migratory seabirds and endangered species are protected under these acts, NOAA believes that the higher penalties afforded under the MPRSA will provide a stronger deterrent.

The MBTA sets maximum criminal fines at either $500 or $2,000 per violation, depending on the violation. The MMPA sets maximum civil penalties at $10,000 and maximum criminal fines at $20,000. The ESA sets maximum civil penalties at $500, $12,000 or $25,000 per violation, depending on the violation; maximum criminal fines are set at $50,000. (All three statutes also provide for imprisonment for criminal violations.)

The MPRSA (under section 307) allows NOAA to assess civil penalties as high as $50,000 for each violation. In addition, monies collected under the MPRSA are available to enhance the National Marine Sanctuary Program.

(16) *Comment:* Many commenters stated fishing should not be prohibited within the Sanctuary. Instead, fisheries resource regulation should remain under the jurisdiction of the State of California, the National Marine Fisheries Service (NMFS) and the Pacific Fisheries Management Council (PFMC). Other commenters requested NOAA to regulate harmful fishing activities such as gill-netting and shark finning. NOAA's position should be clarified in the FEIS/MP.

Response: Fishing is not being regulated as part of the Sanctuary regime and is not included in the Designation Document as an activity subject to future regulation. Fisheries management will remain under the existing jurisdiction of the State of California, NMFS and PFMC. Sanctuary prohibitions that may indirectly affect fishing activities have been written to explicitly exempt aquaculture, kelp harvesting and traditional fishing activities.

Existing fishery management agencies are primarily concerned with the regulation and management of fish stocks for a healthy fishery. In contrast, the sanctuary program has a different and broader mandate under the MPRSA to protect all sanctuary resources on an ecosystem wide basis. Thus, while fishery agencies may be concerned about certain fishing efforts and techniques in relation to fish stock abundance and distribution the Sanctuary program is also concerned about the potential incidental impacts of specific fishery technique on all sanctuary resources including benthic habitats or marine mammals as well as the role the target species plays in the health of the ecosystem. In the case of the Monterey Bay area fish resources are already extensively managed by existing authorities.

Should problems arise in the future NOAA would consult with the State, PFMC and NMFS as well as the industry to determine an appropriate course of action.

(17) *Comment:* Many commenters requested NOAA to prohibit motorized aircraft from flying over the Sanctuary. Other commenters stated Federal Aviation Regulations (FARs) already adequately protect Sanctuary resources from aircraft impacts, making additional regulations unnecessary. In addition, new regulations may hinder cooperative emergency response plans, routine helicopter operations, and rescue attempts.

Response: The regulations prohibit flying motorized aircraft at less than 1,000 feet above the Sanctuary within four zones. Generally, these zones are from Point Santa Cruz north, Carmel Bay south (overlapping the California Sea Otter Game Refuge), and around Moss Landing and Elkhorn Slough (see appendix II for specific zones).

NOAA recognizes that overflights are regulated under the FARs. Unlike the FARs, however, Sanctuary overflight regulations are intended to protect the living marine resources of the Sanctuary from disturbance by low-flying aircraft and in this case require flying at higher altitudes than normally required by the FARs. The prohibition does not apply to overflights that:

(1) Are necessary to respond to an emergency threatening life, property or the environment;

(2) Are necessary for valid law enforcement purposes; or

(3) Conducted by the Department of Defense and specifically exempted by NOAA after consultation with that Department.

(18) *Comment:* A more precise definition of "thrill craft" is needed.

Response: NOAA has changed the term "thrill craft" in the proposed regulations to "motorized personal water craft" (MPWC) in the final regulations and revised the definition to include vessels up to fifteen feet. This category of vessel was selected because of the threat posed to Sanctuary resources by their operation.

(19) *Comment:* Thrill craft should be prohibited throughout the Sanctuary. The danger these craft pose to the biological resources of the area, such as marine mammals and kelp beds, as well as other users of the area such as divers and surfers necessitates a prohibition or regulation of personal water craft. In addition, MPWC should be prohibited in "areas of biological significance," including those with high human-use levels such as beaches; diving, swimming and surfing areas; state parks; and reserves. Besides the potential danger to recreationists, MPWC disrupt low-intensity area uses. In addition, many commenters found the operation of MPWC to be incompatible with the existence of the Sanctuary for reasons unquantifiable.

Response: NOAA recognizes the threat posed by MPWC operation to the conservational, recreational, ecological and esthetic resources and qualities of the Sanctuary. As a result, the regulations have been revised to prohibit the operation of MPWC within the Sanctuary, except within four zones and access routes (15 CFR 944.5(a)(8)). Generally, these areas are located off the harbors of Pillar Point, Santa Cruz, Moss Landing, and Monterey. They were chosen to avoid injury to kelp beds, sea otters and other marine mammals, seabirds and other marine life and to minimize conflicts with other recreational users and because these areas are accessible from launch areas and encompass areas traditionally used by MPWC. Restriction of MPWC operation to these areas of the Sanctuary will also reduce esthetic disturbance.

A prohibition of MPWC operation in the Sanctuary except in the four areas is designed to increase resource protection while still allowing opportunities for this form of recreation in the Sanctuary. There has been at least one reported collision in the Monterey Bay area between a jet ski and sea otters. Collisions with and other disturbance of marine mammals elsewhere from MPWC have also occurred. The small size, maneuverability and high speed of these craft is what causes these craft to pose a threat to resources. Resources such as sea otters and seabirds are either unable to avoid these craft or are frequently alarmed enough to significantly modify their behavior such as cessation of feeding or abandonment of young. Also other, more benign, uses of the Sanctuary such as sailing, kayaking, surfing and diving are interfered with during the operation of MPWC. Further, as indicated above, restriction of operation of MPWC to the specified zones and access routes will reduce esthetic disturbance. The zones and access routes where the MPWC can still operate allow the MPWC operators to continue this form of recreation albeit in areas away from those other forms of recreation and beyond those areas inhabited by marine mammals and seabirds and other sensitive marine life. By establishing defined MPWC

operating areas, this approach provides for more effective enforcement to protect sensitive marine life and for less confusion to MPWC operators and other recreationists than would the establishment of minimum approach distances governing approaches by MPWC to sensitive marine life or other recreational uses. NOAA intends to install buoys to mark the boundaries of the MPWC operating areas.

(20) *Comment:* NOAA should choose DEIS/MP management plan alternative 2, which proposes that full-time staffing be implemented immediately after designation. The Sanctuary is important, and the commitment of a full-time and immediate staff is necessary to initiate Sanctuary programs.

Response: NOAA's preferred management plan is a variation of alternative 2. This plan would establish the Sanctuary headquarters soon after designation and immediately provide full-time staffing of approximately five personnel to ensure that the Sanctuary program is implemented quickly and efficiently. NOAA's preferred management plan will build upon public support from the designation process and will increase opportunities for interpretation and research programs soon after designation. Additional staff and satellite facilities will be phased in after designation.

(21) *Comment:* NOAA should clearly identify how the Sanctuary Advisory Committee (SAC) will be set up, who will be on it, and how it will function.

Response: One of the Sanctuary Manager's first priorities will be to create the SAC according to the process and guidelines of the Federal Advisory Committee Act (FACA). See appendix A of the FEIS/MP. It is NOAA's goal to have wide representation on the SAC, and the Manager will consider the comments of all interested parties. NOAA will draft a charter, make membership recommendations, which will include appropriate governmental and non-governmental representatives, to the Secretary of Commerce, and coordinate with the General Services Administration's review of the SAC formation and accomplishments. The SAC will function strictly in an advisory capacity. Once the Sanctuary Manger is selected, terms of office, committee composition and function will be defined in accordance with FACA.

(22) *Comment:* NOAA should clarify the relationship between Department of Defense (DOD) national defense exemptions from prohibited activities and oil and gas activities.

Response: The Minerals Management Service (MMS) in the Department of the Interior (DOI) is responsible for hydrocarbon development lease sales in Federal waters, not DOD. While the Sanctuary regulations allow DOD to conduct certain prohibited activities, they do not allow DOD to conduct any oil, gas or mineral activity in the Sanctuary.

II. Designation Document

Section 304(a)(4) of the Act requires that the terms of designation set forth the geographic area included within the Sanctuary; the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational or esthetic value; and the types of activities that will be subject to regulation by the Secretary to protect those characteristics. This section also specifies that the terms of designation may be modified only by the same procedures by which the original designation was made. Thus the terms of designation serve as a constitution for the Sanctuary.

The Designation Document for the Monterey Bay National Marine Sanctuary follows:

Designation Document for the Monterey Bay National Marine Sanctuary

Under the authority of title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended (the "Act"), 16 U.S.C. 1431 *et seq.*, Monterey Bay and its surrounding waters offshore central California, and the submerged lands under Monterey Bay and its surrounding waters, as described in Article II, are hereby designated as the Monterey Bay National Marine Sanctuary for the purposes of protecting and managing the conservation, ecological, recreational, research, educational, historical and esthetic resources and qualities of the area.

Article I. Effect of Designation

The Act authorizes the issuance of such final regulations as are necessary and reasonable to implement the designation, including managing and protecting the conservation, recreational, ecological, historical, research, educational and esthetic resources and qualities of the Monterey Bay National Marine Sanctuary. Section 1 of Article IV of this Designation Document lists activities of the types that either are to be regulated on the effective date of designation or may have to be regulated at some later date in order to protect Sanctuary resources and qualities. Listing does not necessarily mean that a type of activity will be regulated; however, if a type of activity is not listed it may not be regulated, except on an emergency basis, unless section 1 of Article IV is amended to include the type of activity by the same procedures by which the original designation was made.

Article II. Description of the Area

The Monterey Bay National Marine Sanctuary (the "Sanctuary") boundary encompass a total of approximately 4,024 square nautical miles (approximately 13,800 square kilometers) of coastal and ocean waters, and the submerged lands thereunder, in and surrounding Monterey Bay, off the central coast of California. The northern terminus of the boundary is located along the southern boundary of the Gulf of Farallones National Marine Sanctuary and runs westward to approximately 123°07'W. The boundary then extends south in an arc which generally follows the 500 fathom isobath. At approximately 37°03'N, the boundary arcs south to 122°25'W, 36°10'N, due west of Partington Point. The boundary again follows the 500 fathom isobath south to 121°41'W, 35°33'N, due west of Cambria. The boundary then extends shoreward towards the mean high-water line. The landward boundary is defined by the mean high-water line between the Gulf of Farallones National Marine Sanctuary and Cambria, exclusive of a small area off the north coast of San Mateo County and the City and County of San Francisco between Point Bonita and Point San Pedro. Pillar Point, Santa Cruz, Moss Landing, and Monterey harbors are all excluded from the Sanctuary boundary shoreward from their respective International Collision at Sea regulation (Colreg.) demarcation lines except for Moss Landing Harbor, where all of the Elkhorn Slough east of the Highway One bridge is included within the Sanctuary boundary. Appendix I to this Designation Document sets forth the precise Sanctuary boundary.

Article III. Characteristics of the Area That Give It Particular Value

The Monterey Bay area is characterized by a combination of oceanic conditions and undersea topography that provides for a highly productive ecosystem and a wide variety of marine habitat. The area is characterized by a narrow continental shelf fringed by a variety of coastal types. The Monterey Submarine Canyon is unique in its size, configuration, and proximity to shore. This canyon system provides habitat for pelagic communities and, along with other distinct bathymetric features, may modify currents and act to enrich local waters

through strong seasonal upwelling. Monterey Bay itself is a rare geological feature, as it is one of the few large embayments along the Pacific coast.

The Monterey Bay area has a highly diverse floral and faunal component. Algal diversity is extremely high and the concentrations of pinnipeds, whales, otters, and some seabird species is outstanding. The fish stocks, particularly in Monterey Bay, are abundant and the variety of crustaceans and other invertebrates is high.

In addition there are many direct and indirect human uses of the area. The most important economic activity directly dependent on the resources is commercial fishing, which has played an important role in the history of Monterey Bay and continues to be of great economic value.

The diverse resources of the Monterey Bay area are enjoyed by the residents of this area as well as the numerous visitors. The population of Monterey and Santa Cruz counties is rapidly expanding and is based in large part on the attractiveness of the area's natural beauty. The high water quality and the resulting variety of biota and their proximity to shore is one of the prime reasons for the international renown of the area as a prime tourist location. The quality and abundance of the natural resources has attracted man from the earliest prehistoric times to the present and as a result the area contains significant historical, *e.g.*, archaeological and paleontological, resources, such as Costanoan Indian midden deposits, aboriginal remains and sunken ships and aircraft.

The biological and physical characteristics of the Monterey Bay area combine to provide outstanding opportunities for scientific research on many aspects of marine ecosystems. The diverse habitats are readily accessible to researchers. Thirteen major research and education facilities are found within the Monterey Bay area. These institutions are exceptional resources with a long history of research and large databases possessing a considerable amount of baseline information on the Bay and its resources. Extensive marine and coastal education and interpretive efforts complement Monterey Bay's many research activities. For example, the Monterey Bay Aquarium has attracted millions of visitors who have experienced the interpretive exhibits of the marine environment. Point Lobos Ecological Reserve, Elkhorn Slough National Estuarine Research Reserve, Long Marine Laboratory and Año Nuevo State Reserve all have excellent docent programs serving the public, and marine related programs for school groups and teachers.

The Final Environmental Impact Statement/Management Plan provides more detail on the characteristics of the Monterey Bay area that give it particular value.

Article IV. Scope of Regulations

Section 1. Activities subject to regulation

The following activities are subject to regulation, including prohibition, to the extent necessary and reasonable to ensure the protection and management of the conservation, ecological, recreational, research, educational, historical and esthetic resources and qualities of the area:

a. Exploring for, developing or producing oil, gas or minerals (*e.g.*, clay, stone, sand, metalliferous ores, gravel, non-metalliferous ores or any other solid material or other matter of commercial value) within the Sanctuary;

b. Discharging or depositing, from within the boundary of the Sanctuary, any material or other matter, except dredged material deposited at disposal sites authorized prior to the effective date of Sanctuary designation, provided that the activity is pursuant to, and complies with the terms and conditions of, a valid Federal permit or approval existing on the effective date of Sanctuary designation;

c. Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter, except dredged material deposited at the authorized disposal sites described in appendix II of this Designation Document, provided that the activity is pursuant to, and complies with the terms and conditions of, a valid Federal permit or approval;

d. Taking, removing, moving, catching, collecting, harvesting, feeding, injuring, destroying or causing the loss of, or attempting to take, remove, move, catch, collect, harvest, feed, injure, destroy or cause the loss of, a marine mammal, sea turtle, seabird, historical resource or other Sanctuary resource;

e. Drilling into, dredging or otherwise altering the seabed of the Sanctuary; or constructing, placing or abandoning any structure, material or other matter on the seabed of the Sanctuary;

f. Possessing within the Sanctuary a Sanctuary resource or any other resource, regardless of where taken, removed, moved, caught, collected or harvested, that, if it had been found with the Sanctuary, would be a Sanctuary resource;

g. Flying a motorized aircraft above the Sanctuary;

h. Operating a vessel (*i.e.*, water craft of any description) in the Sanctuary;

i. Aquaculture or kelp harvesting within the Sanctuary; and

j. Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the Act or any regulation or permit issued under the Act.

Section 2. Emergencies

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss or injury, any and all activities, including those not listed in section 1 of this Article, are subject to immediate temporary regulation, including prohibition.

Article V. Effect on Leases, Permits, Licenses and Rights

Pursuant to section 304(c)(1) of the Act, 16 U.S.C. 1434(c)(1), no valid lease, permit, license, approval or other authorization issued by any Federal, State or local authority of competent jurisdiction, or any right of subsistence use or access, may be terminated by the Secretary of Commerce or designee as a result of this designation or as a result of any Sanctuary regulation if such authorization or right was in existence on the effective date of this designation. The Secretary of Commerce or designee, however, may regulate the exercise (including, but not limited to, the imposition of terms and conditions) of such authorization or right consistent with the purposes for which the Sanctuary is designated.

In no event may the Secretary or designee issue a permit authorizing, or otherwise approve: (1) The exploration for, development of or production of oil, gas or minerals within the Sanctuary; (2) the discharge of primary-treated sewage (except for regulation, pursuant to section 304(c)(1) of the Act, of the exercise of valid authorizations in existence on the effective date of Sanctuary designation and issued by other authorities of competent jurisdiction); or (3) the disposal of dredged material within the Sanctuary other than at sites authorized by the U.S. Environmental Protection Agency (in consultation with the U.S. Army Corps of Engineers) prior to the effective date of designation. Any purported authorizations issued by other authorities after the effective date of Sanctuary designation for any of these activities within the Sanctuary shall be invalid.

Article VI. Alteration of this Designation

The terms of designation, as defined under section 304(a) of the Act, may be modified only by the same procedures by which the original designation is made, including public hearings, consultation with interested Federal, State and local agencies, review by the appropriate Congressional committees and Governor of the State of California, and approval by the Secretary of Commerce or designee.

Appendix I. Monterey Bay National Marine Sanctuary Boundary Coordinates

(Appendix based on North American Datum of 1983.)

APPROXIMATELY 4,024 SQUARE NAUTICAL MILES

Point	Latitude	Longitude
1	37 52 56.09055	122 37 39.12554
2	37 39 59.06176	122 45 3.79307
3	37 36 58.39164	122 46 9.73671
4	37 34 17.30224	122 48 14.38141
5	37 31 47.55649	122 51 35.56769
6	37 30 34.11030	122 54 22.12170
7	37 29 39.05866	123 00 27.70792
8	37 30 29.47803	123 05 46.22767
9	37 31 17.66945	123 07 47.63363
10	37 27 10.93594	123 08 24.32210
11	37 20 35.37491	123 06 54.12763
12	37 13 50.21805	123 08 15.50800
13	37 07 48.76810	123 01 43.10994
14	37 03 46.60999	122 54 45.39513
15	37 02 06.30955	122 46 35.02125
16	36 55 17.56782	122 48 21.41121
17	36 48 22.74244	122 48 56.29007
18	36 41 30.91516	122 46 19.40739
19	36 34 45.76070	122 46 26.86722
20	36 28 24.19076	122 43 32.43527
21	36 22 20.70312	122 39 28.42026
22	36 16 43.93586	122 34 26.77256
23	36 11 44.53836	122 28 37.16141
24	36 07 26.88968	122 21 54.97541
25	36 04 07.08898	122 14 39.75924
26	36 01 26.22233	122 07 00.19068
27	35 59 45.46381	121 58 56.36189
28	35 58 59.12170	121 50 26.47931
29	35 58 53.63866	121 45 22.82363
30	35 55 45.60623	121 42 40.28540
31	35 50 15.84256	121 43 09.20193
32	35 43 14.26890	121 42 43.79121
33	35 35 41.88635	121 41 25.07414
34	35 33 11.75999	121 37 49.74192
35	35 33 17.45869	121 05 52.69891
36	37 35 39.73180	122 31 14.96033
37	37 36 49.21739	122 37 00.22577
38	37 46 00.98963	122 39 00.40466
39	37 49 05.69060	122 31 46.30542

Appendix II. Dredged Material Disposal Sites Adjacent to the Monterey Bay National Marine Sanctuary

(Appendix based on North American Datum of 1983.)

As of the effective date of Sanctuary designation, the U.S. Army Corps of Engineers operates the following dredged material disposal sites adjacent to the Sanctuary off of the Golden Gate:

Point	Latitude	Longitude
1	37 45.875	122 34.140
2	37 44.976	122 37.369
3	37 44.491	122 37.159
4	37 45.406	122 33.889
5	37 45.875	122 34.140

In addition, the U.S. Environmental Protection Agency, as of the effective date of Sanctuary designation, is (in consultation with the U.S. Army Corps of Engineers) in the process of establishing a dredged material disposal site outside the northern boundary of the Monterey Bay National Marine Sanctuary. When that disposal site is authorized, this appendix will be updated to incorporate its precise location. The site will be located outside the Monterey Bay National Marine Sanctuary and any other existing national marine sanctuary and within one of the following Long-Term Management Strategy ocean study areas:

Study Area 3

The area described by the following points and a five-nautical-mile-wide zone west of the western boundary of that area:

Point	Latitude	Longitude
1	37 25.850	123 21.926
2	37 25.793	123 21.928
3	37 25.733	123 21.919
4	37 25.688	123 21.910
5	37 25.630	123 21.896
6	37 25.566	123 21.875
7	37 25.513	123 21.859
8	37 25.451	123 21.820
9	37 25.394	123 21.779
10	37 25.334	123 21.698
11	37 25.268	123 21.596
12	37 25.180	123 21.456
13	37 25.139	123 21.358
14	37 25.057	123 21.240
15	37 24.992	123 21.167
16	37 24.878	123 21.093
17	37 24.765	123 21.034
18	37 24.700	123 20.975
19	37 24.602	123 20.872
20	37 24.521	123 20.783
21	37 24.449	123 20.682
22	37 24.391	123 20.599
23	37 24.342	123 20.503
24	37 24.298	123 20.421
25	37 24.245	123 20.340
26	37 24.193	123 20.238
27	37 24.147	123 20.134
28	37 24.103	123 20.031
29	37 24.062	123 19.934
30	37 24.017	123 19.839
31	37 23.952	123 19.662
32	37 23.906	123 19.517
33	37 23.855	123 19.396
34	37 23.790	123 19.278
35	37 23.728	123 19.125
36	37 23.644	123 18.968
37	37 23.562	123 18.836
38	37 23.482	123 18.707
39	37 23.367	123 18.556
40	37 23.254	123 18.437
41	37 23.123	123 18.319
42	37 22.977	123 18.231
43	37 22.820	123 18.142
44	37 22.685	123 18.113
45	37 22.555	123 18.060
46	37 22.392	123 18.058
47	37 22.229	123 18.054
48	37 22.051	123 18.039
49	37 21.868	123 18.029
50	37 21.687	123 18.023
51	37 21.547	123 18.010
52	37 21.401	123 17.995
53	37 21.173	123 17.980
54	37 20.978	123 17.965
55	37 20.767	123 17.950
56	37 20.588	123 17.936
57	37 20.458	123 17.921
58	37 20.265	123 17.894
59	37 20.179	123 17.876
60	37 20.084	123 17.876
61	37 19.968	123 17.882
62	37 19.877	123 17.894
63	37 19.792	123 17.921
64	37 19.694	123 17.950
65	37 19.592	123 17.999
66	37 19.489	123 18.056
67	37 19.352	123 18.134
68	37 19.223	123 18.231
69	37 19.129	123 18.305
70	37 19.028	123 18.375
71	37 18.914	123 18.482
72	37 18.803	123 18.556
73	37 18.719	123 18.658
74	37 18.615	123 18.764
75	37 18.492	123 18.880
76	37 18.378	123 18.998
77	37 18.265	123 19.101
78	37 18.151	123 19.190
79	37 18.070	123 19.264
80	37 18.004	123 19.328
81	37 17.951	123 19.393
82	37 17.884	123 19.454
83	37 17.805	123 19.526
84	37 17.735	123 19.567
85	37 17.641	123 19.600
86	37 17.565	123 19.617
87	37 17.489	123 19.622
88	37 17.401	123 19.617
89	37 17.352	123 19.606
90	37 17.305	123 19.583
91	37 17.272	123 19.558
92	37 17.248	123 19.514
93	37 25.802	123 0.617
94	37 25.850	123 21.926

The portion of the area described by the above points that lies within the Monterey Bay National Marine Sanctuary as described in Appendix I is excluded.

Study Area 4

The area described by the following points and a five-nautical-mile-wide zone west of the western boundary of that area:

Point	Latitude	Longitude
1	37 17.496	123 7.528
2	37 17.499	123 14.071
3	37 17.383	123 14.265
4	37 17.279	123 14.412
5	37 17.176	123 14.537
6	37 17.047	123 14.651
7	37 16.949	123 14.754
8	37 16.814	123 14.879
9	37 16.664	123 15.026

Point	Latitude	Longitude
10	37 16.568	123 15.118
11	37 16.451	123 15.219
12	37 16.348	123 15.308
13	37 16.206	123 15.383
14	37 16.090	123 15.446
15	37 15.999	123 15.484
16	37 15.818	123 15.547
17	37 15.637	123 15.585
18	37 15.482	123 15.585
19	37 15.314	123 15.596
20	37 15.184	123 15.610
21	37 15.055	123 15.635
22	37 14.912	123 15.673
23	37 14.783	123 15.698
24	37 14.667	123 15.712
25	37 14.551	123 15.724
26	37 14.421	123 15.749
27	37 14.292	123 15.799
28	37 14.188	123 15.850
29	37 14.072	123 15.887
30	37 13.956	123 15.938
31	37 13.801	123 16.001
32	37 13.672	123 16.064
33	37 13.568	123 16.102
34	37 13.451	123 16.178
35	37 13.322	123 16.229
36	37 13.193	123 16.266
37	37 13.063	123 16.279
38	37 12.973	123 16.304
39	37 12.830	123 16.330
40	37 12.650	123 16.355
41	37 12.456	123 16.367
42	37 12.275	123 16.367
43	37 12.122	123 16.349
44	37 11.987	123 16.312
45	37 11.853	123 16.269
46	37 11.754	123 16.216
47	37 11.631	123 16.142
48	37 11.537	123 16.067
49	37 11.473	123 15.994
50	37 11.420	123 15.930
51	37 11.380	123 15.872
52	37 11.344	123 15.825
53	37 11.279	123 15.698
54	37 11.227	123 15.547
55	37 11.188	123 15.421
56	37 11.150	123 15.269
57	37 11.116	123 15.124
58	37 11.098	123 14.980
59	37 11.085	123 14.828
60	37 11.072	123 14.626
61	37 11.059	123 14.437
62	37 11.052	123 14.359
63	37 11.033	123 14.259
64	37 11.004	123 14.158
65	37 10.976	123 14.078
66	37 10.942	123 13.978
67	37 10.890	123 13.877
68	37 10.847	123 13.802
69	37 10.804	123 13.727
70	37 10.712	123 13.614
71	37 10.648	123 13.531
72	37 10.564	123 13.439
73	37 10.508	123 13.370
74	37 10.502	123 7.508
75	37 17.496	123 7.528

Study Area 5

The area described by the following points and a five-nautical-mile-wide zone west of the western boundary of that area:

Point	Latitude	Longitude
1	37 43.444	123 23.515
2	37 43.436	123 30.053
3	37 34.568	123 30.053
4	37 34.574	123 20.234
5	37 34.661	123 19.507
6	37 34.725	123 19.376
7	37 34.725	123 19.376
8	37 35.031	123 19.452
9	37 35.935	123 19.061
10	37 36.769	123 18.542
11	37 37.698	123 17.788
12	37 37.765	123 17.743
13	37 37.789	123 17.827
14	37 37.838	123 17.911
15	37 37.867	123 17.996
16	37 37.937	123 18.105
17	37 37.998	123 18.202
18	37 38.085	123 18.359
19	37 38.183	123 18.529
20	37 38.270	123 18.674
21	37 38.356	123 18.832
22	37 38.455	123 18.977
23	37 38.554	123 19.134
24	37 38.640	123 19.255
25	37 38.726	123 19.364
26	37 38.825	123 19.497
27	37 38.911	123 19.606
28	37 38.985	123 19.703
29	37 39.071	123 19.811
30	37 39.195	123 19.961
31	37 39.318	123 20.138
32	37 39.404	123 20.272
33	37 39.478	123 20.356
34	37 39.565	123 20.465
35	37 39.664	123 20.574
36	37 39.762	123 20.695
37	37 39.840	123 20.791
38	37 39.992	123 20.889
39	37 39.997	123 20.986
40	37 40.095	123 21.095
41	37 40.181	123 21.192
42	37 40.268	123 21.268
43	37 40.330	123 21.373
44	37 40.416	123 21.470
45	37 40.516	123 21.583
46	37 40.616	123 21.667
47	37 40.736	123 21.785
48	37 40.860	123 21.906
49	37 40.983	123 22.027
50	37 41.107	123 22.148
51	37 41.230	123 22.269
52	37 41.378	123 22.390
53	37 41.515	123 22.499
54	37 41.669	123 22.607
55	37 41.803	123 22.704
56	37 41.920	123 22.768
57	37 42.036	123 22.825
58	37 42.174	123 22.889
59	37 42.295	123 22.957
60	37 42.421	123 23.012
61	37 42.583	123 23.105
62	37 42.704	123 23.165
63	37 42.826	123 23.225
64	37 43.005	123 23.310
65	37 43.086	123 23.358
66	37 43.205	123 23.410
67	37 43.327	123 23.467
68	37 43.376	123 23.482
69	37 43.444	123 23.515

End of Designation Document

III. Summary of Final Management Plan

The FEIS/MP for the Monterey Bay National Marine Sanctuary sets forth the Sanctuary's location and provides details on the most important resources and uses of the Sanctuary. The FEIS/MP describes the resource protection, research, education and interpretive programs, and details the specific activities to be taken in each program. The FEIS/MP includes a detailed discussion, by program area, of agency roles and responsibilities. The goals and objectives for the Sanctuary are:

Resource Protection

The highest priority management goal is to protect the marine environment, resources and qualities of the Sanctuary. The specific objectives of protection efforts are to:

(1) Coordinate policies and procedures among agencies sharing responsibility for protection and management of resources;

(2) Encourage participation by interested agencies and organizations in the development of procedures to address specific management concerns (*e.g.*, monitoring and emergency-response programs);

(3) Develop an effective and coordinated program for the enforcement of Sanctuary regulations;

(4) Enforce Sanctuary regulations in addition to other regulations already in place;

(5) Promote public awareness of, and voluntary compliance with, Sanctuary regulations and objectives, through an educational/interpretive program stressing resource sensitivity and wise use;

(6) Ensure that the water quality of Monterey Bay is maintained at a level consonant with Sanctuary designation;

(7) Establish mechanisms for coordination among all the agencies participating in Sanctuary management;

(8) Ensure that the appropriate management agencies incorporates research results and scientific data into effective resource protection strategies; and

(9) Reduce threats to Sanctuary resources and qualities.

Research Program

Effective management of the Sanctuary requires the initiation of a Sanctuary research program. The purpose of Sanctuary research activities is to improve understanding of the Monterey Bay area environment, resources and qualities, and to resolve specific management problems, some of which may involve resources common to both the Bay and nearby State parks, refuges, and reserves. Research results will be used in interpretive programs for visitors and others interested in the Sanctuary, as well as for protection and management of resources and qualities.

Specific objectives for the research program are to:

(1) Establish a framework and procedures for administering research to ensure that research projects are

responsive to management concerns and that results contribute to improve management of the Sanctuary;

(2) Incorporate research results into the interpretive/education program in a format useful for the general public;

(3) Focus and coordinate data collection efforts on the physical, chemical, geological and biological oceanography of the Sanctuary;

(4) Encourage studies that integrate research from the variety of coastal habitats with nearshore and open ocean processes;

(5) Initiate a monitoring program to assess environmental changes as they occur due to natural and human processes;

(6) Identify the range of effects on the environment that would result from predicted changes in human activity or natural phenomena; and

(7) Encourage information exchange among all the organizations and agencies undertaking management-related research in the Sanctuary to promote more informed management.

Education Program

The goal for education programs is to improve public awareness and understanding of the significance of the Sanctuary and the need to protect its resources and qualities.

The management objectives designed to meet this goal are to:

(1) Provide the public with information on the Sanctuary and its goals and objectives, with an emphasis on the need to use Sanctuary resources and qualities wisely to ensure their long-term viability;

(2) Broaden support for the Sanctuary management by offering programs suited to visitors with a range of diverse interests;

(3) Provide for public involvement by encouraging feedback on the effectiveness of education programs, collaboration with Sanctuary management staff in extension and outreach programs, and participation in other volunteer programs; and

(4) Collaborate with other organizations to provide educational services complementary to the Sanctuary program.

Visitor Use

The Sanctuary goal for visitor management is to facilitate, to the extent compatible with the primary objective of resource protection, public and private uses of the resources of the Sanctuary not prohibited pursuant to other authorities.

Specific management objectives are to:

(1) Provide relevant information about Sanctuary regulations, use policies and standards;

(2) Collaborate with public and private organizations in promoting compatible uses of the Sanctuary;

(3) Encourage the public who use the Sanctuary to respect sensitive Sanctuary resources and qualities and

(4) Monitor and assess the levels of use to identify and control potential degradation of resources and qualities and minimize potential user conflicts.

The Sanctuary will be managed from a headquarters located in the Monterey Bay region.

IV. Summary of Regulations

The regulations set forth the boundary of the Sanctuary; prohibit a relatively narrow range of activities; establish procedures for applying for national marine sanctuary permits to conduct prohibited activities; establish certification procedures for existing leases, licenses, permits, approvals, other authorizations or rights authorizing the conduct of a prohibited activity; establish notification and review procedures for applications for leases, licenses, permits, approvals or other authorizations to conduct a prohibited activity; set forth the maximum per-day penalties for violating Sanctuary regulations; and establish procedures for administrative appeals.

Specifically, the regulations add a new part 944 to title 15, Code of Federal Regulations.

Section 944.1 sets forth as the purpose of the regulations to implement the designation of the Monterey Bay National Marine Sanctuary by regulating activities affecting the Sanctuary consistent with the terms of that designation in order to protect and manage the conservation, ecological, recreational, research, educational, historical and esthetic resources and qualities of the area.

Section 944.2 and appendix I following § 944.12 set forth the boundary of the Sanctuary.

Section 944.3 defines various terms used in the regulations. Other terms appearing in the regulations are defined at 15 CFR 922.2 and/or in the MPRSA.

Section 944.4 allows all activities except those prohibited by § 944.5 to be undertaken subject to the requirements of any emergency regulation promulgated pursuant to § 944.6, subject to all prohibitions, restrictions and conditions validly imposed by any other authority of competent jurisdiction, and subject to the liability established by section 312 of the Act.

Section 944.5 prohibits a variety of activities and thus makes it unlawful for any person to conduct them or cause them to be conducted. However, any of the prohibited activities except for: (1) The exploration for, development of or production of oil, gas or minerals in the Sanctuary, (2) the discharge of primary-treated sewage within the Sanctuary (except for certification, pursuant to § 944.10, of valid authorizations in existence on the effective date of Sanctuary designation and issued by other authorities of competent jurisdiction), or (3) the disposal of dredged material within the Sanctuary other than at sites authorized by EPA (in consultation with COE) prior to the effective date of designation could be conducted lawfully if one of the following four situations applies:

(1) The activity is necessary to respond to an emergency threatening life, property or the environment; authorized by a National Marine Sanctuary permit issued under section 944.9; or authorized by a Special Use permit issued under Section 310 of the Act.

(2) With regard to Department of Defense activities: The activity is an existing military activity; or the activity is a new activity and exempted by the Director of the Office of Ocean and Coastal Resource Management or designee after consultation between the Director or designee and the Department of Defense. The regulations require that the Department of Defense carry out its activities in a manner that avoids to the maximum extent practicable any adverse impact on Sanctuary resources and qualities and that it, in the event of threatened or actual destruction of, loss of, or injury to a Sanctuary resource or quality resulting from an untoward incident, including but not limited to spills and groundings, caused by it, promptly coordinate with the Director or designee for the purpose of taking appropriate actions to respond to and mitigate the harm and, if possible, restore or replace the Sanctuary resource or quality. The final regulation regarding Department of Defense activities differs from the proposed regulation principally by:

(i) Making all military activities (as specifically identified in FEIS/MP) currently being carried out by the Department of Defense exempt from the Sanctuary regulatory prohibitions, not just those determined necessary for the national defense;

(ii) Adding the requirement to avoid to the maximum extent practicable any adverse impacts; and

(iii) Adding the requirement of prompt coordination, in the event of an

untoward incident, for the purpose of taking appropriate actions.

(3) The activity is authorized by a certification by the Director of the Office of Ocean and Coastal Resource Management or designee under § 944.10 of a valid lease, permit, license or other authorization issued by any Federal, State or local authority of competent jurisdiction and in existence on (or conducted pursuant to any valid right of subsistence use or access in existence on) the effective date of this designation, subject to complying with any terms and conditions imposed by the Director or designee as he or she deems necessary to achieve the purposes for which the Sanctuary was designated.

(4) The activity is authorized by a valid lease, permit, license, approval or other authorization issued by any Federal, State or local authority of competent jurisdiction after the effective date of Sanctuary designation, provided that the Director of the Office of Ocean and Coastal Resource Management or designee was notified of the application in accordance with the requirements of § 944.11, the applicant complies with the requirements of § 944.11, the Director or designee notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director deems necessary to protect Sanctuary resources and qualities.

The first activity prohibited is exploring for, developing or producing oil, gas or minerals within the Sanctuary. The resources and qualities of the Monterey Bay area, particularly sea otters, sea birds, and pinnipeds that use the haul-out sites, kelp forests and rocks along the Monterey Bay coast, and the high water quality of the area, are especially vulnerable to oil and gas activities in the area. A prohibition on oil and gas activities within the Sanctuary boundary will provide partial protection from oil and gas activities for the resources and qualities within the boundary. Only partial protection would be provided due to the remaining threat from oil and gas activities outside of the Sanctuary boundary and from vessel traffic, particularly oil tankers, transiting through and near the Sanctuary. A prohibition on mineral activities within the Sanctuary is consistent with the prohibition on alteration of or construction on the seabed as discussed below. "Mineral" is defined to mean clay, stone, sand, gravel, metalliferous ore, nonmetalliferous ore or any other solid material or other matter of commercial value.

The second activity prohibited is depositing or discharging from any location within the boundary of the Sanctuary materials or other substances except: (1) Fish, fish parts, chumming materials or bait used in or resulting from traditional fishing operations in the Sanctuary; (2) biodegradable effluent incidental to vessel use and generated by marine sanitation devices approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended, (FWPCA), 33 U.S.C. 1322 *et seq.*; (3) water generated by routine vessel operations (*e.g.*, cooling water, deck wash down and graywater as defined by section 312 of the FWPCA) excluding oily wastes from bilge pumping; (4) engine exhaust, and (5) dredged materials deposited at disposal sites authorized by COE or EPA prior to the effective date of Sanctuary designation, provided that the activity is pursuant to, and complies with the terms and conditions of, a valid Federal permit or approval existing on the effective date of Sanctuary designation.

This prohibition is necessary in order to protect Sanctuary resources and qualities from the effects of pollutants deposited or discharged into the Sanctuary.

Disposal activities at the existing sites within the Sanctuary are allowed provided such disposal is pursuant to, and complies with the terms and conditions of, a valid Federal permit or approval existing on the effective date of Sanctuary designation. Once existing permits expire, additional disposal at such previously approved or permitted sites must be approved by NOAA in accordance with § 944.11. All other disposal of dredged material within the Sanctuary is prohibited. Point source discharges, including, but not limited to, desalination plants, are allowed provided such discharge is certified by NOAA in accordance with § 944.10 or approved by NOAA in accordance with § 944.11. After expiration of current permits, discharges from municipal treatment plants will be subject to the review process of § 944.11. At a minimum, secondary treatment will be required. Depending on the risk to Sanctuary resources and qualities, greater treatment may be required.

The third activity prohibited is depositing or discharging, from beyond the boundary of the Sanctuary, materials or other matter that subsequently enter the Sanctuary and injure a Sanctuary resource or quality, except for the first four exclusions discussed above for the second prohibited activity, dredged material deposited outside the Sanctuary at disposal sites off of the Golden Gate authorized prior to the effective date of Sanctuary designation, and dredged material deposited outside the Sanctuary at the duly authorized disposal site that will result from the disposal site study underway on the effective date of Sanctuary designation, provided that the dredged material disposal is pursuant to, and complies with the terms and conditions of, a valid Federal permit or approval. The future disposal site will be located within one of the Long-Term Management Strategy Ocean Study Areas described in appendix IV. When that disposal site is authorized, appendix IV will be updated to incorporate its precise location. The intent of this prohibition is to protect the Sanctuary resources and qualities from the harmful effects of land and sea-generated non-point and point source pollution.

The fourth activity prohibited is moving, removing or injuring or attempting to move, remove or injure a Sanctuary historical resource. Historical resources in the marine environment are fragile, finite and non-renewable. This prohibition is designed to protect these resources so that they may be researched and information about their contents and type made available for the benefit of the public. This prohibition does not apply to moving, removing or injury resulting incidentally from kelp harvesting, aquaculture or traditional fishing operations.

The fifth activity prohibited is drilling into, dredging or otherwise altering the seabed of the Sanctuary; or constructing, placing or abandoning any structure, material or other matter on the seabed of the Sanctuary, except if any of the above results incidentally from: (1) Anchoring vessels; (2) kelp harvesting, aquaculture or traditional fishing operations; (3) installation of navigation aids; (4) harbor maintenance in the areas necessarily associated with Federal Projects in existence on the effective date of Sanctuary designation, including dredging of entrance channels and repair, replacement or rehabilitation of breakwaters and jetties; or (5) construction, repair, replacement or rehabilitation of docks or piers. Federal Projects are any water resources development projects conducted by COE or operating under a permit or other authorization issued by COE and authorized by Federal law.

The intent of this prohibition is to protect the resources and qualities of the Sanctuary from the harmful effects of activities such as, but not limited to, archaeological excavations, drilling into the seabed, strip mining, laying of pipelines and outfalls, and offshore commercial development, which may disrupt and/or destroy sensitive marine

benthic habitats, such as kelp beds, invertebrate populations, fish habitats, and estuaries and sloughs.

The sixth activity prohibited is taking marine mammals, sea turtles or seabirds in or above the Sanctuary, except as permitted by regulations, as amended, promulgated under the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 *et seq.*, the Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 *et seq.*, and the Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 *et seq.* The term "taking" includes all forms of harassment. The MMPA, ESA and MBTA prohibit the taking of species protected under those Acts. The prohibition overlaps with the MMPA, ESA, and MBTA but also extends protection for Sanctuary resources on an environmentally holistic basic and provides a greater deterrent with civil penalties of up to $50,000 per taking. The prohibition covers all marine mammals, sea turtles and seabirds in or above the Sanctuary.

The seventh activity prohibited is flying motorized aircraft at less than 1,000 feet (305 m) above the Sanctuary within four specified zones (See appendix II for the zones). This area-specific prohibition on overflights below 1,000 feet (305 m) is designed to limit potential noise impacts, particularly those that might startle hauled-out seals and sea lions, sea otters or birds nesting along the shoreline margins of the Sanctuary.

The eighth activity prohibited is the operation of motorized personal water craft within the Sanctuary except in four specified zones and access routes to and from these zones (see appendix III for the zones and routes). This regulation is intended to provide enhanced resource protection by prohibiting operation of motorized personal water craft in areas of high marine mammal and seabird concentrations, kelp forest areas, river mouths, estuaries, lagoons and other similar areas where sensitive marine resources are concentrated and most vulnerable to disturbance and other injury from personal water craft. The regulation is also intended to allow the continuation of this form of recreation while minimizing conflicts with other recreational users, as well as reducing esthetic disturbance.

Both the ninth and tenth prohibitions serve to facilitate enforcement actions for violations of Sanctuary regulations. The ninth prohibition is the possession within the Sanctuary of any historical resource or marine mammal, sea turtle or seabird, regardless of where the resource was taken, except in compliance with the ESA, MMPA and MBTA and the tenth prohibition is interfering with, obstructing, delaying or preventing investigations, searches, seizures of disposition of seized property in connection with enforcement of the Act or any regulation or permit issued under the Act.

Section 944.6 authorizes the regulation, including prohibition, on a temporary basis of any activity where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss or injury.

Section 944.7 sets forth the maximum statutory civil penalty for violating a regulation—$50,000. Each day of a continuing violation constitutes a separate violation. Section 944.8 repeats the provision in section 312 of the Act that any person who destroys, causes the loss of, or injures any sanctuary resource is liable to the United States for response costs and damages resulting from such destruction, loss or injury, and any vessel used to destroy, cause the loss of, or injure any sanctuary resource is liable in rem to the United States for response costs and damages resulting from such destruction, loss or injury. The purpose of these sections is to notify the public of the liability for violating a Sanctuary regulation or the Act.

Regulations setting forth the procedures governing administrative proceedings for assessment of civil penalties, permit sanctions and denials for enforcement reasons, issuance and use of written warnings, and release or forfeiture of seized property appear at 15 CFR part 904.

Section 944.9 sets forth the procedures for applying for a National Marine Sanctuary permit to conduct a prohibited activity and the criteria governing the issuance, denial, amendment, suspension and revocation of such permits. A permit may be granted by the Director of the Office for Ocean and Coastal Resource Management or designee if he or she finds that the activity will have only negligible short-term adverse effects on Sanctuary resources and qualities and will: Further research related to Sanctuary resources; further the educational, natural or historical resource value of the Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; assist in the management of the Sanctuary; or further salvage or recovery operations in connection with an abandoned shipwreck in the Sanctuary title to which is held by the State of California. In deciding whether to issue a permit, the Director or designee is required to consider such factors as the professional qualifications and financial ability of the applicant as related to the proposed activity, the duration of the activity and the duration of its effects, the appropriateness of the methods and procedures proposed by the applicant for the conduct of the activity, the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities, the cumulative effects of the activity, and the end value of the activity. In addition, the Director or designee is authorized to consider any other factors she or he deems appropriate.

Section 944.10 sets forth procedures for requesting certification of leases, licenses, permits, approvals, other authorizations or rights in existence on the date of Sanctuary designation authorizing the conduct of an activity prohibited under paragraphs (a) (2)–(9) of § 944.5. Pursuant to paragraph (f) of § 944.5, the prohibitions in paragraphs (a) (2)–(9) of § 944.5 do not apply to any activity authorized by a valid lease, permit, license, approval or other authorization in existence on the effective date of Sanctuary designation and issued by any Federal, State or local authority of competent jurisdiction, or by any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, provided that the holder of such authorization or right complies with the requirements of § 944.10 (*e.g.*, notifies the Director or designee of the existence of, requests certification of, and provides requested information regarding such authorization or right) and complies with any terms and conditions on the exercise of such authorization or right imposed as a condition of certification by the Director or designee as she or he deems necessary to achieve the purposes for which the Sanctuary was designated.

Section 944.10 allows the holder 90 days from the effective date of Sanctuary designation to request certification. The holder is allowed to conduct the activity without being in violation of paragraphs (a) (2)–(9) of § 944.5 pending final agency action on his or her certification request, provided the holder has complied with all requirements of § 944.10.

Section 944.10 also allows the Director or designee to request additional information from the holder and to seek the views of other persons.

As a condition of certification, the Director or designee will impose such terms and conditions on the exercise of such lease, permit, license, approval, other authorization or right as she or he

deems necessary to achieve the purposes for which the Sanctuary was designated. This is consistent with the Secretary's authority under section 304(c)(2) of the Act. (Section 944.10 has no application to oil, gas or mineral activities as there is no existing lease, permit, license, approval, other authorization or right for any of these activities within the Sanctuary.)

The MOA entered into by NOAA, the State of California, EPA and the Association of Monterey Bay Area Governments regarding the Sanctuary regulations relating to water quality within State waters within the Sanctuary (discussed under Comment/Response (6) under section I. Background of this notice) specifies how the process of § 944.10 will be administered within State waters within the Sanctuary in coordination with the State permit program.

The holder may appeal any action conditioning, amending, suspending or revoking any certification in accordance with the procedures set forth in § 944.12.

Any amendment, renewal or extension not in existence as of the date of Sanctuary designation of a lease, permit, license, approval, other authorization or right is subject to the provisions of § 944.11.

Section 944.11 states that consistent with paragraph (g) of § 944.5, the prohibitions of paragraphs (a)(2)–(9) of § 944.5 do not apply to any activity authorized by any valid lease, permit, license, approval or other authorization issued after the effective date of Sanctuary designation by any Federal, State or local authority of competent jurisdiction, provided that the applicant notifies the Director or designee of the application for such authorization within 15 days of the date of filing of the application or of the effective date of Sanctuary designation, whichever is later, that the applicant is in compliance with the other provisions of § 944.11, that the Director or designee notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and that the applicant complies with any terms and conditions the Director deems necessary to protect Sanctuary resources and qualities. In order to ensure maintenance of program-wide consistency regarding these activities, which may address issues or uses of a highly sensitive nature on the local level, the authority granted the Director under § 944.11 to object to or impose terms or conditions on the exercise of any valid lease, permit, license, approval or other authorization issued after the effective date of Sanctuary designation will not be delegated or otherwise assigned to other Federal officials below the Director's level.

Section 944.11 allows the Director or designee to request additional information from the applicant and to seek the views of other persons.

An application for an amendment to, an extension of, or a renewal of an authorization is also subject to the provisions of § 944.11.

The MOA entered into by NOAA, the State of California, EPA and the Association of Monterey Bay Area Governments regarding the Sanctuary regulations relating to water quality within State waters within the Sanctuary specifies how the process of § 944.11 will be administered within State waters within the Sanctuary in coordination with the State permit program.

The applicant may appeal any objection by, or terms or conditions imposed by, the Director to the Assistant Administrator or designee in accordance with the procedures set forth in § 944.12.

Section 944.12 sets forth the procedures for appealing to the Assistant Administrator or designee actions of the Director or designee with respect to: (1) The granting, conditioning, amendment, denial, suspension or revocation of a National Marine Sanctuary permit under § 944.9 or a Special Use permit under section 310 of the Act; (2) the granting, denial, conditioning, amendment, suspension or revocation of a certification under § 944.10; or (3) the objection to issuance or the imposition of terms and conditions under § 944.11.

Prior to conditioning the exercise of existing leases, permits, licenses, approvals, other authorizations or rights or conditioning or objecting to proposed authorizations NOAA intends to consult with relevant issuing agencies as well as owners, holders or applicants. NOAA's policy is to encourage best available management practices to minimize non-point source pollution entering the Sanctuary and, for municipal sewage discharge, to require, at a minimum, secondary treatment and sometimes tertiary treatment or more, depending on predicted effects on Sanctuary resources and qualities.

v. Miscellaneous Rulemaking Requirements

Executive Order 12291

Under Executive Order 12291, the Department must judge whether the regulations in this notice are "major" within the meaning of section 1 of the Order, and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. The Administrator of NOAA has determined that the regulations in this motive are not major because they are not likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The regulations in this motive allow all activities to be conducted in the Sanctuary other than a relatively narrow range of prohibited activities. The procedures in these regulations for applying for National Marine Sanctuary permits to conduct prohibited activities, for requesting certifications for pre-existing leases, licenses, permits, approvals, other authorizations or rights authorizing the conduct of a prohibited activity, and for notifying NOAA of applications for leases, licenses, permits, approvals or other authorizations to conduct a prohibited activity will all act to lessen any adverse economic effect on small entities. The regulations, in total, will not have a significant economic impact on a substantial number of small entities, and when they were proposed the General Counsel of the Department of Commerce so certified to the Chief Counsel for Advocacy of the Small Business Administration. As a result, neither an initial nor final Regulatory Flexibility Analysis was prepared.

Paperwork Reductions Act

This rule contains collection of information requirements subject to the requirements of the Paperwork Reduction Act (Pub. L. 96–511). The collection of information requirements contained in the rule have been reviewed by the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act and have been approved under OMB Control No. 0648–0141. Comments from the public on the collection of information requirements contained in this rule are invited and should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (attn: Desk Officer for NOAA) and to Richard Roberts, room 305, 6010 Executive Boulevard, Rockville, MD 20852.

Executive Order 12612

A Federalism Assessment (FA) was prepared for the proposed designation, draft management plan and proposed implementing regulations. The FA concluded that all were fully consistent with the principles, criteria and requirements set forth in sections 2 through 5 of Executive Order 12612, Federalism Considerations in Policy Formulation and Implementation (52 FR 41685, Oct. 26, 1987). Copies of the FA are available upon request to the Office of Ocean and Coastal Resource Management at the address listed above.

National Environmental Policy Act

In accordance with Section 304(a)(2) of the Act (16 U.S.C. 1434(a)(2)) and the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370(a)), a DEIS/MP was prepared for the designation and the proposed regulations. As required by section 304(a)(2) of the Act, the DEIS/MP included the resource assessment report required by section 303(b)(3) of the Act (16 U.S.C. 1433(b)(3)), maps depicting the boundary of the area proposed to be designated, and the existing and potential uses and resources of the area. Copies of the DEIS/MP were made available for public review on August 3, 1990, with comments due on October 3, 1990. Public hearings were held in Monterey, Santa Cruz and Half Moon Bay, California from September 12 to 14, 1990. All comments were reviewed and, where appropriate, incorporated into the FEIS/MP and these regulations. Copies of the FEIS/MP are available upon request (see address section).

Executive Order 12630

This rule does not have takings implications within the meaning of Executive Order 12630 sufficient to require preparation of a Takings Implications Assessment under that order. It would not appear to have an effect on private property sufficiently severe as effectively to deny economically viable use of any distinct legally potential property interest to its owner or to have the effect of, or result in, a permanent or temporary physical occupation, invasion, or deprivation. While the prohibition on the exploration, development and production of oil, gas and minerals from the Sanctuary might have a takings implication if it abrogated an existing lease for OCS tracts within the Sanctuary or an approval of an exploration or development and production plan, no OCS leases have been sold for tracts within the Sanctuary and no exploration or production and development plans have been filed or approved.

List of Subjects in 15 CFR Part 944

Administrative practice and procedure, Coastal zone, Education, Environmental protection, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: September 15, 1992.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, for the reason set forth above, 15 CFR chapter IX is amended as follows:

SUBCHAPTER B—OCEAN AND COASTAL RESOURCE MANAGEMENT

Parts 921–943 [Transferred to Subchapter B]

1. Subchapter B heading is added to read as set forth above.

2. Parts 921 through 943 are transferred from subchapter A to subchapter B.

3. Part 944—is added to subchapter B to read as follows:

PART 944—MONTEREY BAY NATIONAL MARINE SANCTUARY

Sec.

944.1 Purpose.
944.2 Boundary.
944.3 Definitions.
944.4 Allowed activities.
944.5 Prohibited activities.
944.6 Emergency regulations.
944.7 Penalties for violations of regulations.
944.8 Response costs and damages.
944.9 National Marine Sanctuary permits—application procedures and issuance criteria.
944.10 Certification of pre-existing leases, licenses, permits, approvals, other authorizations or rights to conduct a prohibited activity.
944.11 Notification and review of applications for leases, licenses, permits, approvals or other authorizations to conduct a prohibited activity.
944.12 Appeals of administrative action.

Appendix I to Part 944—Monterey Bay National Marine Sanctuary Boundary Coordinates

Appendix II to Part 944—Zones Within the Sanctuary Where Overflights Below 1000 Feet Are Prohibited

Appendix III to part 944—Zones and Access Routes Within the Sanctuary Where the Operation of Personal Water Craft Is Allowed

Appendix IV to Part 944—Dredged Material Disposal Sites Adjacent to the Monterey Bay National Marine Sanctuary

Authority: Sections 302, 303, 304, 305, 307, 310 and 312 of title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended (16 U.S.C. 1431 *et seq.*).

§ 944.1 Purpose.

The purpose of the regulations in this part is to implement the designation of the Monterey Bay National Marine Sanctuary by regulating activities affecting the Sanctuary consistent with the terms of that designation in order to protect and manage the conservation, ecological, recreational, research, educational, historical and esthetic resources and qualities of the area.

§ 944.2 Boundary.

(a) The Monterey Bay National Marine Sanctuary consists of an area of approximately 4,024 square nautical miles of coastal and ocean waters, and the submerged lands thereunder, in and surrounding Monterey Bay, off the central coast of California.

(b) The northern terminus of the boundary is located along the southern boundary of the Gulf of Farallones National Marine Sanctuary and runs westward to approximately 123°07′W. The boundary then extends south in an arc which generally follows the 500 fathom isobath. At approximately 37°03′N, the boundary arcs south to 122°25′W, 36°10′N, due west of Partington Point. The boundary again follows the 500 fathom isobath south to 121°41′W, 35°33′N, due west of Cambria. The boundary then extends shoreward towards the mean high-water line. The landward boundary is defined by the mean high-water line between the Gulf of Farallones National Marine Sanctuary and Cambria, exclusive of a small area off the north coast of San Mateo County and the City and County of San Francisco between Point Bonita and Point San Pedro. Pillar Point, Santa Cruz, Moss Landing and Monterey harbors are excluded from the Sanctuary boundary shoreward from their respective International Collision at Sea regulation (Colreg.) demarcation lines except for Moss Landing Harbor, where all of Elkhorn Slough east of the Highway One bridge is included within

the Sanctuary boundary. The precise boundary of the Sanctuary appears in appendix I to this part.

§ 944.3 Definitions.

(a) The following definitions apply to this part:

Act means Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended (16 U.S.C. 1431 *et seq.*).

Administrator or *Under Secretary* means the Administrator of the National Oceanic and Atmospheric Administration/Under Secretary of Commerce for Oceans and Atmosphere.

Assistant Administrator means the Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

Director means the Director of the Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration.

Effective date of Sanctuary designation means the date the regulations in this part implementing the designation of the Sanctuary become effective.

Federal Project means any water resources development project conducted by the U.S. Army Corps of Engineers or operating under a permit or other authorization issued by the Corps of Engineers and authorized by Federal law.

Historical resource means any resource possessing historical, cultural, archaeological or paleontological significance, including sites, structures, districts and objects significantly associated with or representative of earlier people, cultures and human activities and events. Historical resources include historical properties as defined in the National Historic Preservation Act, as amended, and implementing regulations, as amended.

Injure means to change adversely, either in the long or short term, a chemical, biological or physical attribute of, or the viability of. To "injure" therefore includes, but is not limited to, to cause the loss of and to destroy.

Mineral means clay, stone, sand, gravel, metalliferous ore, nonmetalliferous ore or any other solid material or other matter of commercial value.

Motorized personal water craft means any motorized vessel that is less than fifteen feet in length as manufactured, is capable of exceeding a speed of fifteen knots, and has the capacity to carry not more than the operator and one other person while in operation. The term includes, but is not limited to, jet skis, wet bikes, surf jets, miniature speed boats, air boats and hovercraft.

Person means any private individual, partnership, corporation or other entity; or any officer, employee, agent, department, agency or instrumentality of the Federal Government, of any State or local unit of government, or of any foreign government.

Sanctuary means the Monterey Bay National Marine Sanctuary.

Sanctuary quality means any particular and essential characteristic of the Sanctuary, including, but not limited to, water quality, sediment quality and air quality.

Sanctuary resource means any living or non-living resource of the Sanctuary that contributes to its conservation, recreational, ecological, historical, research, educational or esthetic value, including, but not limited to, the substratum of the Monterey Bay area, bottom formations, coralline algae, marine plants and algae, invertebrates, plankton, fish, birds, sea turtles, marine mammals and historical resources.

Take or *taking* means the following:

(1)(i) For any sea turtle, marine mammal or seabird listed as either endangered or threatened pursuant to the Endangered Species Act, the term means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect or injure, or to attempt to engage in any such conduct;

(ii) For any other sea turtle, marine mammal or seabird, the term means to harass, hunt, capture, kill, collect or injure, or to attempt to engage in any such conduct.

(2) For the purpose of both paragraphs (1) (i) and (ii), of this definition the term includes, but is not limited to, any of the following activities: Collecting any dead or injured sea turtle, marine mammal or seabird, or any part thereof; restraining or detaining any sea turtle, marine mammal or seabird, or any part thereof, no matter how temporarily; tagging any sea turtle, marine mammal or seabird; operating a vessel or aircraft or doing any other act that results in the disturbing or molesting of any sea turtle, marine mammal or seabird.

Vessel means a watercraft of any description capable of being used as a means of transportation in/on the waters of the Sanctuary.

(b) Other terms appearing in the regulations in this part are defined at 15 CFR 922.2 and/or in the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* and 16 U.S.C. 1431 *et seq.*

§ 944.4 Allowed activities.

All activities except those prohibited by § 944.5 may be undertaken subject to any emergency regulations promulgated pursuant to § 944.6, subject to all prohibitions, restrictions and conditions validly imposed by any other authority of competent jurisdiction, and subject to the liability established by section 312 of the Act (see § 944.8).

§ 944.5 Prohibited activities.

(a) Except as specified in paragraphs (c) through (h) of this § 944.5, the following activities are prohibited and thus unlawful for any person to conduct or cause to be conducted:

(1) Exploring for, developing or producing oil, gas or minerals within the Sanctuary.

(2) Discharging or depositing, from within the boundary of the Sanctuary, any material or other matter except:

(i) Fish, fish parts, chumming materials or bait used in or resulting from traditional fishing operations in the Sanctuary;

(ii) Biodegradable effluent incidental to vessel use and generated by marine sanitation devices approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended, (FWPCA), 33 U.S.C. 1322 *et seq.*;

(iii) Water generated by routine vessel operations (*e.g.*, cooling water, deck wash down and graywater as defined by section 312 of the FWPCA) excluding oily wastes from bilge pumping;

(iv) Engine exhaust; or

(v) Dredged material deposited at disposal sites authorized by the U.S. Environmental Protection Agency (EPA) (in consultation with the U.S. Army Corps of Engineers (COE)) prior to the effective date of Sanctuary designation, provided that the activity is pursuant to, and complies with the terms and conditions of, a valid Federal permit or approval existing on the effective date of Sanctuary designation.

(3) Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter that subsequently enters the Sanctuary and injuries a Sanctuary resource or quality, except those listed in paragraphs (a)(2) (i) through (iv) of this § 944.5 and dredged material deposited at the authorized disposal sites described in appendix IV to this part, provided that the dredged material disposal is pursuant to, and complies with the terms and conditions of, a valid Federal permit or approval.

(4) Moving, removing or injuring, or attempting to move, remove or injure, a Sanctuary historical resource. This prohibition does not apply to moving, removing or injury resulting incidentally

from kelp harvesting, aquaculture or traditional fishing operations.

(5) Drilling into, dredging or otherwise altering the seabed of the Sanctuary; or constructing, placing or abandoning any structure, material or other matter on the seabed of the Sanctuary, except as an incidental result of:

(i) Anchoring vessels;

(ii) Aquaculture, kelp harvesting or traditional fishing operations;

(iii) Installation of navigation aids;

(iv) Harbor maintenance in the areas necessarily associated with Federal Projects in existence on the effective date of Sanctuary designation, including dredging of entrance channels and repair, replacement or rehabilitation of breakwaters and jetties; or

(v) Construction, repair, replacement or rehabilitation of docks or piers.

(6) Taking any marine mammal, sea turtle or seabird in or above the Sanctuary, except as permitted by regulations, as amended, promulgated under the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 *et seq.*, the Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 *et seq.*, and the Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 *et seq.*

(7) Flying motorized aircraft, except as necessary for valid law enforcement purposes, at less than 1000 feet above any of the four zones within the Sanctuary described in Appendix II to this Part.

(8) Operating motorized personal water craft within the Sanctuary except within the four designated zones and access routes within the Sanctuary described in appendix III to this part.

(9) Possessing within the Sanctuary (regardless of where taken, moved or removed from), except as necessary for valid law enforcement purposes, any historical resource, or any marine mammal, sea turtle or seabird taken in violation of regulations, as amended, promulgated under the MMPA, ESA or MBTA.

(10) Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the Act or any regulation or permit issued under the Act.

(b) The regulations in this part shall be applied to foreign persons and foreign vessels in accordance with generally recognized principles of international law, and in accordance with treaties, conventions and other international agreements to which the United States is a party.

(c) The prohibitions in paragraphs (a)(2) through (10) of this § 944.5 do not apply to activities necessary to respond to emergencies threatening life, property or the environment.

(d)(1) All Department of Defense activities shall be carried out in a manner that avoids to the maximum extent practicable any adverse impacts on Sanctuary resources and qualities. The prohibitions in paragraphs (a)(2) through (9) of this § 944.5 do not apply to existing military activities carried out by the Department of Defense, as specifically identified in the Final Environmental Impact Statement and Management Plan for the Proposed Monterey Bay National Marine Sanctuary (NOAA, 1992). (Copies of the FEIS/MP are available from the Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, NW., suite 714, Washington, DC 20235.) New activities may be exempted from the prohibitions in paragraphs (a)(2) through (9) of this § 944.5 by the Director or designee after consultation between the Director or designee and the Department of Defense.

(2) In the event of threatened or actual destruction of, loss of, or injury to a Sanctuary resource or quality resulting from an untoward incident, including but not limited to spills and groundings, caused by the Department of Defense, the cognizant component shall promptly coordinate with the Director or designee for the purpose of taking appropriate actions to respond to and mitigate the harm and, if possible, restore or replace the Sanctuary resource or quality.

(e) The prohibitions in paragraphs (a)(2) through (9) of this § 944.5 do not apply to any activity executed in accordance with the scope, purpose, terms and conditions of a National Marine Sanctuary permit issed pursuant to § 944.9 or a Special Use permit issued pursuant to section 310 of the Act.

(f) The prohibitions in paragraphs (a)(2) through (9) of this § 944.5 do not apply to any activity authorized by a valid lease, permit, license, approval or other authorization in existence on the effective date of Sanctuary designation and issued by any Federal, State or local authority of competent jurisdiction, or by any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, provided that the holder of such authorization or right complies with § 944.10 and with any terms and conditions on the exercise of such authorization or right imposed by the Director or designee as a condition of certification as he or she deems necessary to achieve the purposes for which the Sanctuary was designated.

(g) The prohibitions in paragraphs (a)(2) through (9) of this § 944.5 do not apply to any activity authorized by any lease, permit, license, approval or other authorization issued after the effective date of Sanctuary designation and issued by any Federal, State or local authority of competent jurisdiction, provided that the applicant complies with § 944.11, the Director or designee notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director or designee deems necessary to protect Sanctuary resources and qualities. Amendments, renewals and extensions of authorizations in existence on the effective date of designation constitute authorizations issued after the effective date.

(h) Notwithstanding paragraphs (e) and (g) of this § 944.5, in no event may the Director or designee issue a National Marine Sanctuary permit under § 944.9 or a Special Use permit under section 310 of the Act authorizing, or otherwise approve: The exploration for, development or production of oil, gas or minerals within the Sanctuary; the discharge of primary-treated sewage within the Sanctuary (except by certification, pursuant to § 944.10, of valid authorizations in existence on the effective date of Sanctuary designation and issued by other authorities of competent jurisdiction); or the disposal of dredged material within the Sanctuary other than at sites authorized by EPA (in consultation with COE) prior to the effective date of Sanctuary designation. Any purported authorizations issued by other authorities after the effective date of Sanctuary designation for any of these activities within the Sanctuary shall be invalid.

§ 944.6 Emergency regulations.

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss or injury, any and all activities are subject to immediate temporary regulation, including prohibition.

§ 944.7 Penalties for violations of regulations.

(a) Each violation of the Act, any regulation in this part, or any permit issued pursuant thereto, is subject to a civil penalty of not more than $50,000. Each day of a continuing violation constitutes a separate violation.

(b) Regulations setting forth the procedures governing administrative proceedings for assessment of civil penalties, permit sanctions and denials for enforcement reasons, issuance and use of written warnings, and release or forfeiture of seized property appear at 15 CFR part 904.

§ 944.8 Response costs and damages.

Under section 312 of the Act, any person who destroys, causes the loss of, or injures any Sanctuary resource is liable to the United States for response costs and damages resulting from such destruction, loss or injury, and any vessel used to destroy, cause the loss of, or injure any Sanctuary resource is liable in rem to the United States for response costs and damages resulting from such destruction, loss or injury.

§ 944.9 National Marine Sanctuary permits—application procedures and issuance criteria.

(a) A person may conduct an activity prohibited by § 944.5 (a)(2) through (9) if conducted in accordance with the scope, purpose, terms and conditions of a permit issued under this § 944.9.

(b) Applications for such permits should be addressed to the Director of the Office of Ocean and Coastal Resource Management; Attn: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, NW., Washington, DC 20235. An application must include a detailed description of the proposed activity including a timetable for completion of the activity and the equipment, personnel and methodology to be employed. The qualifications and experience of all personnel must be set forth in the application. The application must set forth the potential effects of the activity, if any, on Sanctuary resources and qualities. Copies of all other required licenses, permits, approvals or other authorizations must be attached.

(c) Upon receipt of an application, the Director or designee may request such additional information from the applicant as he or she deems necessary to act on the application and may seek the views of any persons.

(d) The Director or designee, at his or her discretion, may issue a permit, subject to such terms and conditions as he or she deems appropriate, to conduct an activity prohibited by § 944.5(a)(2) through (9) if the Director or designee finds that the activity will have only negligible short-term adverse effects on Sanctuary resources and qualities and will: Further research related to Sanctuary resources and qualities; further the educational, natural or historical resource value of the Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; assist in managing the Sanctuary; or further salvage or recovery operations in connection with an abandoned shipwreck in the Sanctuary title to which is held by the State of California. In deciding whether to issue a permit, the Director or designee shall consider such factors as: The professional qualifications and financial ability of the applicant as related to the proposed activity; the duration of the activity and the duration of its effects; the appropriateness of the methods and procedures proposed by the applicant for the conduct of the activity; the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities; the cumulative effects of the activity; and the end value of the activity. In addition, the Director or designee may consider such other factors as he or she deems appropriate.

(e) A permit issued pursuant to this § 944.9 is nontransferable.

(f) The Director or designee may amend, suspend or revoke a permit issued pursuant to this § 944.9 for good cause. The Director or designee may deny a permit application pursuant to this § 944.9, in whole or in part, if it is determined that the permittee or applicant has acted in violation of the terms or conditions of a permit or of the regulations in this part or for other good cause. Any such action shall be communicated in writing to the permittee or applicant by certified mail and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions and denials for enforcement reasons are set forth in subpart D of 15 CFR part 904.

(g) It shall be a condition of any permit issued that the permit or a copy thereof be displayed on board all vessels or aircraft used in the conduct of the activity.

(h) The Director or designee may, *inter alia*, make it a condition of any permit issued that any data or information obtained under the permit be made available to the public.

(i) The Director or designee may, *inter alia*, make it a condition of any permit issued that a NOAA official be allowed to observe any activity conducted under the permit and/or that the permit holder submit one or more reports on the status, progress or results of any activity authorized by the permit.

(j) The applicant for or holder of a National Marine Sanctuary permit may appeal the denial, conditioning, amendment, suspension or revocation of the permit in accordance with the procedures set forth in § 944.12.

§ 944.10 Certification of pre-existing leases, licenses, permits, approvals, other authorizations or rights to conduct a prohibited activity.

(a) The prohibitions set forth in § 944.5(a)(2) through (9) do not apply to any activity authorized by a valid lease, permit, license, approval or other authorization in existence on the effective date of Sanctuary designation and issued by any Federal, State or local authority of competent jurisdiction, or by any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, provided that:

(1) The holder of such authorization or right notifies the Director or designee, in writing, within 90 days of the effective date of Sanctuary designation, of the existence of such authorization or right and requests certification of such authorization or right;

(2) The holder complies with the other provisions of this § 944.10; and

(3) The holder complies with any terms and conditions on the exercise of such authorization or right imposed as a condition of certification, by the Director or designee, to achieve the purposes for which the Sanctuary was designated.

(b) The holder of a valid lease, permit, license, approval or other authorization in existence on the effective date of Sanctuary designation and issued by any Federal, State or local authority of competent jurisdiction, or of any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, authorizing an activity prohibited by § 944.5(a) (2) through (9) may conduct the activity without being in violation of § 944.5, pending final agency action on his or her certification request, provided the holder is in compliance with this § 944.10.

(c) Any holder of a valid lease, permit, license, approval or other authorization in existence on the effective date of Sanctuary designation and issued by any Federal, State or local authority of competent jurisdiction, or any holder of a valid right of subsistence use or access in existence on the effective date of Sanctuary designation, may request the Director or designee to issue a finding as to whether the activity for which the authorization has been issued, or the right given, is prohibited under § 944.5(a) (2) through (9).

(d) Requests for findings or certifications should be addressed to the

Director, Office of Ocean and Coastal Resource Management; Attn: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, NW., Washington, DC 20235. A copy of the lease, permit, license, approval or other authorization must accompany the request.

(e) The Director or designee may request additional information from the certification requester as or he deems necessary to condition appropriately the exercise of the certified authorization or right to achieve the purposes for which the Sanctuary was designated. The information requested must be received by the Director or designee within 45 days of the postmark date of the request. The Director or designee may seek the views of any persons on the certification request.

(f) The Director or designee may amend any certification made under this § 944.10 whenever additional information becomes available justifying such an amendment.

(g) The Director or designee shall communicate any decision on a certification request or any action taken with respect to any certification made under this § 944.10, in writing, to both the holder of the certified lease, permit, license, approval, other authorization or right, and the issuing agency, and shall set forth the reason(s) for the decision or action taken.

(h) Any time limit prescribed in or established under this § 944.10 may be extended by the Director or designee for good cause.

(i) The holder may appeal any action conditioning, amending, suspending or revoking any certification in accordance with the procedures set forth in § 944.12.

(j) Any amendment, renewal or extension not in existence on the effective date of Sanctuary designation of a lease, permit, license, approval, other authorization or right is subject to the provisions of § 944.11.

(k)(1) The National Oceanic and Atmospheric Administration (NOAA) has entered into a Memorandum of Agreement (MOA) with the State of California, EPA and the Association of Monterey Bay Area Governments regarding the Sanctuary regulations relating to water quality within State waters within the Sanctuary. With regard to permits, the MOA encompasses:

(i) National Pollutant Discharge Elimination System (NPDES) permits issued by the State of California under section 13377 of the California Water Code; and

(ii) Waste Discharge Requirements issued by the State of California under section 13263 of the California Water Code.

(2) The MOA specifies how the certification process of this § 944.10 will be administered within State waters within the Sanctuary in coordination with the State permit program.

(3) The MOA may be obtained from the Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, NW., suite 714, Washington, DC 20235.

§ 944.11 Notification and review of applications for leases, licenses, permits, approvals or other authorizations to conduct a prohibited activity.

(a)(1) The prohibitions set forth in § 944.5(a)(2) through (9) do not apply to any activity authorized by any valid lease, permit, license, approval or other authorization issued after the effective date of Sanctuary designation by any Federal, State or local authority of competent jurisdiction, provided that:

(i) The applicant notifies the Director or designee, in writing, of the application for such authorization (and of any application for an amendment, renewal or extension of such authorization) within fifteen (15) days of the date of application or of the effective date of Sanctuary designation, whichever is later;

(ii) The applicant complies with the other provisions of this § 944.11;

(iii) The Director or designee notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization (or amendment, renewal or extension); and

(iv) The applicant complies with any terms and conditions the Director deems necessary to protect Sanctuary resources and qualities.

(2) The authority granted the Director under this § 944.11 to object to or impose terms or conditions on the exercise of any valid lease, permit, license, approval or other authorization issued after the effective date of Sanctuary designation may not be delegated or otherwise assigned to other Federal officials below the Director's level.

(b) Any potential applicant for a lease, permit, license, approval or other authorization from any Federal, State or local authority (or for an amendment, renewal or extension of such authorization) may request the Director or designee to issue a finding as to whether the activity for which an application is intended to be made is prohibited by § 944.5(a)(2) through (9).

(c) Notifications of filings of applications and requests for findings should be addressed to the Director, Office of Ocean and Coastal Resource Management; Attn: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, NW., Washington, DC 20235. A copy of the application must accompany the notification.

(d) The Director or designee may request additional information from the applicant as he or she deems necessary to determine whether to object to issuance of such lease, license, permit, approval or other authorization (or to issuance of an amendment, extension or renewal of such authorization), or what terms and conditions are necessary to protect Sanctuary resources and qualities. The information requested must be received by the Director or designee within 45 days of the postmark date of the request. The Director or designee may seek the views of any persons on the application.

(e) The Director, or designee if there are no objections, terms or conditions, shall notify, in writing, the agency to which application has been made of his or her review of the application and possible objection to issuance. After review of the application and information received with respect thereto, the Director, or designee if there are no objections, terms or conditions, shall notify both the agency and applicant, in writing, whether he or she has an objection to issuance and what terms and conditions he or she deems necessary to protect Sanctuary resources and qualities. The Director shall state the reason(s) for any objection or the reason(s) that any terms and conditions are deemed necessary to protect Sanctuary resources and qualities.

(f) The Director may amend the terms and conditions deemed necessary to protect Sanctuary resources and qualities whenever additional information becomes available justifying such an amendment.

(g) Any time limit prescribed in or established under this § 944.11 may be extended by the Director or designee for good cause.

(h) The applicant may appeal any objection by, or terms or conditions imposed by, the Director to the Assistant Administrator or designee in accordance with the procedures set forth in § 944.12.

(i)(1) NOAA has entered into a Memorandum of Agreement (MOA) with

the State of California, EPA and the Association of Monterey Bay Area Governments regarding the Sanctuary regulations relating to water quality within State waters within the Sanctuary. With regard to permits, the MOA encompasses:

(i) National Pollutant Discharge Elimination System (NPDES) permits issued by the State of California under section 13377 of the California Water Code; and

(ii) Waste Discharge Requirements issued by the State of California under section 13263 of the California Water Code.

(2) The MOA specifies how the process of this § 944.11 will be administered within State waters within the Sanctuary in coordination with the State permit program.

§ 944.12 Appeals of administrative action.

(a) Except for permit actions taken for enforcement reasons (see subpart D of 15 CFR part 904 for applicable procedures), an applicant for, or a holder of, a § 944.9 National Marine Sanctuary permit, an applicant for, or a holder of, a section 310 of the Act Special Use permit, a § 944.10 certification requester or a § 944.11 applicant (hereinafter appellant) may appeal to the Assistant Administrator or designee:

(1) The grant, denial, conditioning, amendment, suspension or revocation by the Director or designee of a National Marine Sanctuary or Special Use permit;

(2) The conditioning, amendment, suspension or revocation of a certification under § 944.10; or

(3) The objection to issuance or the imposition of terms and conditions under § 944.11

(b) An appeal under paragraph (a) of this § 944.12 must be in writing, state the action(s) by the Director or designee appealed and the reason(s) for the appeal, and be received within 30 days of receipt of notice of the action by the Director or designee. Appeals should be addressed to the Assistant Administrator, Office of Ocean and Coastal Resource Management, Attn: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, NW., Washington, DC 20235.

(c) While the appeal is pending, appellants requesting certification pursuant to § 944.10 who are in compliance with such section may continue to conduct their activities without being in violation of the prohibitions in § 944.5 (a)(2) through (9). All other appellants may not conduct their activities without being subject to the prohibitions in § 944.5 (a)(1) through (10).

(d) The Assistant Administrator or designee may request the appellant to submit such information as the Assistant Administrator or designee deems necessary in order for him or her to decide the appeal. The information requested must be received by the Assistant Administrator or designee within 45 days of the postmark date of the request. The Assistant Administrator may seek the views of any other persons. The Assistant Administrator or designee may hold an informal hearing on the appeal. If the Assistant Administrator or designee determines that an informal hearing should be held, the Assistant Administrator or designee may designate an officer before whom the hearing shall be held. The hearing officer shall give notice in the **Federal Register** of the time, place and subject matter of the hearing. The appellant and the Director or designee may appear personally or by counsel at the hearing and submit such material and present such arguments as deemed appropriate by the hearing officer. Within 60 days after the record for the hearing closes, the hearing officer shall recommend a decision in writing to the Assistant Administrator or designee.

(e) The Assistant Administrator or designee shall decide the appeal using the same regulatory criteria as for the initial decision and shall base the appeal decision on the record before the Director or designee and any information submitted regarding the appeal, and, if a hearing has been held, on the record before the hearing officer and the hearing officer's recommended decision. The Assistant Administrator or designee shall notify the appellant of the final decision and the reason(s) therefor in writing. The Assistant Administrator or designee's decision shall constitute final agency action for the purposes of the Administrative Procedure Act.

(f) Any time limit prescribed in or established under this § 944.12 other than the 30 day limit for filing an appeal may be extended by the Assistant Administrator, designee or hearing officer for good cause.

Appendix I to Part 944—Monterey Bay National Marine Sanctuary Boundary Coordinates

(Appendix Based on North American Datum of 1983.)

APPROXIMATELY 4,024 SQUARE NAUTICAL MILES

Point	Latitude	Longitude
1	37 52 56.09055	122 37 39.12564
2	37 39 59.06176	122 45 3.79307
3	37 36 58.39164	122 46 9.73871
4	37 34 17.30224	122 48 14.38141
5	37 31 47.55649	122 51 35.56769
36	37 30 34.11030	122 54 22.12170
7	37 29 39.05866	123 00 27.70792
8	37 30 29.47603	123 05 46.22767
9	37 31 17.66945	123 07 47.63363
10	37 27 10.93594	123 08 24.32210
11	37 20 35.37491	123 07 54.12763
12	37 13 50.21805	123 06 15.50600
13	37 07 48.76810	123 01 43.10994
14	37 03 46.60999	122 54 45.39513
15	37 02 06.30955	122 46 35.02125
16	36 55 17.56782	122 48 21.41121
17	36 48 22.74244	122 48 56.29007
18	36 41 30.91516	122 48 19.40739
19	36 34 45.76070	122 46 26.96772
20	36 28 24.18076	122 43 32.43527
21	36 22 20.70312	122 39 28.42026
22	36 16 43.93588	122 34 26.77255
23	36 11 44.53838	122 28 37.16141
24	36 07 26.88988	122 21 54.97541
25	36 04 07.08898	122 14 39.75924
26	36 01 28.22233	122 07 00.19068
27	35 59 45.46381	121 58 56.36189
28	35 58 59.12170	121 50 26.47931
29	35 58 53.63866	121 45 22.82363
30	35 55 45.60623	121 42 40.28540
31	35 50 15.84256	121 43 09.20193
32	35 43 14.26690	121 42 43.79121
33	35 35 41.88635	121 41 25.07414
34	35 33 11.75999	121 37 49.74192
35	35 33 17.45869	121 05 52.89891
36	37 35 39.73180	122 31 14.96033
37	37 36 49.21739	122 37 00.22577
38	37 48 00.98983	122 39 00.40466
39	37 49 05.69080	122 31 46.30542

Appendix II to Part 944—Zones Within the Sanctuary Where Overflights Below 1000 Feet Are Prohibited

The four zones are:

(1) From mean high water out to three nautical miles between a line extending from Point Santa Cruz on a southwesterly heading of 220° and a line extending from 2.0 nautical miles north of Pescadero Point on a southwesterly heading of 240°;

(2) From mean high water out to three nautical miles between a line extending from the Carmel River mouth on a westerly heading of 270° and a line extending due west along latitude 35° 33′ 17.5612 off of Cambria;

(3) From mean high water and within a five nautical mile arc drawn from a center point at the end of Moss Landing Pier; and

(4) Over the waters of Elkhorn Slough east of the Highway One bridge to Elkhorn Road.

Appendix III to Part 944—Zones and Access Routes Within the Sanctuary Where the Operation of Motorized Personal Water Craft Is Allowed

The four zones and access routes are:

(1) The approximately one [1.0] square nautical mile area off Pillar Point Harbor from launch ramp (37°30′ N, 122°29′ W) through harbor entrance to the northern

boundary of Zone One bounded by (a) 37°29.6′ N (breakwater buoy), 122°29′ W; (b) 37°28.8′ N (bell buoy), 122°28.9′ W; (c) 37°28.8′ N, 122°28′ W; and (d) 37°29.6′ N, 122°28′ W.

(2) The approximately three [3.0] square nautical mile area off of Santa Cruz Small Craft Harbor ramp from 36°57.4′ N along a 100 yard wide access route due south along 122° W to the northern boundary of Zone Two (marked by the whistle buoy at 10 fathom curve) bounded by (a) 36°55′ N, 122°02′ W; (b) 36°55′ N, 121°58′ W; (c) 36°56.5′ N, 121°58′ W; and (d) 36°56.5′ N, 122°02′ W;

(3) The approximately five [5.0] square nautical mile area off of Moss Landing Harbor/Elkhorn Yacht Club Launch Ramp from 36°48.5′ N along a 100 yeard wide access route due west along harbor entrance to the eastern boundary of Zone Three bounded by (a) 36°50′ N, 121°49.3′ W; (b) 36°50′ N, 121°50.8′ W; (c) 36°46.7′ N, 121°50.8′ W; (d) 36°46.7′ N, 121°49′ W; (e) 36°47.8′ N, 121°48.2′ W; and (f) 36°48.9′ N, 121°48.2′ W; and

(4) The approximately five [5.0] square nautical mile area off of the U.S. Coast Guard Pier (Monterey Harbor) Launch Ramp from 36°38.5′ N, 121°53.5′ W along a 100 yard wide access route due north to the southern boundary of Zone Four bounded by (a) 36°38.7′ N, 121°55.4′ W; (b) 36°36.9′ N, 121°52.5′ W; (c) 36°38.3′ N, 121°51.3′ W; and (d) 36°40′ N, 121°54.4′ W.

Appendix IV to Part 944—Dredged Material Disposal Sites Adjacent to the Monterey Bay National Marine Sanctuary

(Appendix based on North American Datum of 1983.)

As of the effective date of Sanctuary designation, the U.S. Army Corps of Engineers operates the following dredged material disposal sites adjacent to the Sanctuary off of the Golden Gate:

Point	Latitude	Longitude
1	37 45.875	122 34.140
2	37 44.978	122 37.369
3	37 44.491	122 37.159
4	37 45.406	122 33.889
5	37 45.875	122 34.140

In addition, the U.S. Environmental Protection Agency, as of the effective date of Sanctuary designation, is (in consultation with the U.S. Army Corps of Engineers) in the process of establishing a dredged material disposal site outside the northern boundary of the Monterey Bay National Marine Sanctuary. When that disposal site is authorized, this appendix will be updated to incorporate its precise location. The site will be located outside the Monterey Bay National Marine Sanctuary and any other existing national marine sanctuary and within one of the following Long-Term Management Strategy ocean study areas:

Study Area 3

The area described by the following points and a five-nautical-mile-wide zone west of the western boundary of that area:

Point	Latitude	Longitude
1	37 25.850	123 21.926
2	37 25.783	123 21.928
3	37 25.733	123 21.919
4	37 25.688	123 21.910
5	37 25.630	123 21.895
6	37 25.566	123 21.875
7	37 25.513	123 21.859
8	37 25.451	123 21.820
9	37 25.394	123 21.779
10	37 25.334	123 21.698
11	37 25.268	123 21.595
12	37 25.180	123 21.458
13	37 25.139	123 21.358
14	37 25.057	123 21.240
15	37 25.992	123 21.167
16	37 24.878	123 21.093
17	37 24.785	123 21.034
18	37 24.700	123 20.975
19	37 24.602	123 20.872
20	37 24.521	123 20.783
21	37 24.449	123 20.682
22	37 24.391	123 20.589
23	37 24.342	123 20.503
24	37 24.298	123 20.421
25	37 24.245	123 20.340
26	37 24.193	123 20.236
27	37 24.147	123 20.134
28	37 24.103	123 20.031
29	37 24.062	123 19.934
30	37 24.017	123 19.839
31	37 23.952	123 19.662
32	37 23.906	123 19.517
33	37 23.855	123 19.396
34	37 23.790	123 19.278
35	37 23.728	123 19.125
36	37 23.644	123 18.968
37	37 23.582	123 18.836
38	37 23.482	123 18.707
39	37 23.367	123 18.556
40	37 23.254	123 18.437
41	37 23.123	123 18.319
42	37 22.977	123 18.231
43	37 22.820	123 18.142
44	37 22.685	123 18.113
45	37 22.555	123 18.083
46	37 22.392	123 18.068
47	37 22.229	123 18.054
48	37 22.051	123 18.039
49	37 21.868	123 18.023
50	37 21.697	123 18.023
51	37 21.547	123 18.010
52	37 21.401	123 17.995
53	37 21.173	123 17.980
54	37 20.978	123 17.965
55	37 20.767	123 17.950
56	37 20.588	123 17.936
57	37 20.458	123 17.921
58	37 20.285	123 17.894
59	37 20.179	123 17.876
60	37 20.084	123 17.876
61	37 19.966	123 17.882
62	37 19.877	123 17.894
63	37 19.792	123 17.921
64	37 19.694	123 17.950
65	37 19.592	123 17.999
66	37 19.489	123 18.056
67	37 19.352	123 18.134
68	37 19.223	123 18.231
69	37 19.126	123 18.305
70	37 19.026	123 18.378
71	37 18.914	123 18.482
72	37 18.833	123 18.556
73	37 18.719	123 18.658
74	37 18.615	123 18.764
75	37 18.492	123 18.880
76	37 18.378	123 18.998
77	37 18.265	123 19.101
78	37 18.151	123 19.190
79	37 18.070	123 19.264
80	37 18.004	123 19.328
81	37 17.951	123 19.393
82	37 17.884	123 19.454
83	37 17.805	123 19.525
84	37 17.735	123 19.567
85	37 17.641	123 19.600
86	37 17.565	123 19.617
87	37 17.489	123 19.622
88	37 17.401	123 19.617
89	37 17.352	123 19.606
90	37 17.305	123 19.583
91	37 17.273	123 19.558
92	37 17.248	123 19.514
93	37 25.802	123 0.617
94	37 25.850	123 21.926

The portion of the area described by the above points that lies within the Monterey Bay National Marine Sanctuary as described in Appendix I is excluded.

Study Area 4

The area described by the following points and a five-nautical-mile-wide zone west of the western boundary that area: Table follows

Point	Latitude	Longitude
1	37 17.496	123 7.528
2	37 17.499	123 14.071
3	37 17.383	123 14.285
4	37 17.279	123 14.412
5	37 17.176	123 14.537
6	37 17.047	123 14.651
7	37 16.949	123 14.754
8	37 16.814	123 14.879
9	37 16.664	123 15.026
10	37 16.568	123 15.118
11	37 16.451	123 15.219
12	37 16.348	123 15.308
13	37 16.206	123 15.383
14	37 16.090	123 15.446
15	37 15.999	123 15.484
16	37 15.818	123 15.547
17	37 15.637	123 15.585
18	37 15.482	123 15.585
19	37 15.314	123 15.598
20	37 15.184	123 15.610
21	37 15.055	123 15.635
22	37 14.912	123 15.673
23	37 14.783	123 15.696
24	37 14.667	123 15.712
25	37 14.551	123 15.724
26	37 14.421	123 15.749
27	37 14.292	123 15.799
28	37 14.188	123 15.850
29	37 14.072	123 15.887
30	37 13.956	123 15.938
31	37 13.801	123 16.001
32	37 13.672	123 16.064
33	37 13.568	123 16.102
34	37 13.451	123 16.178
35	37 13.322	123 16.229
36	37 13.193	123 16.266
37	37 13.063	123 16.279
38	37 12.973	123 16.304
39	37 12.830	123 16.330
40	37 12.650	123 16.355
41	37 12.456	123 16.367
42	37 12.275	123 16.367
43	37 12.122	123 16.349
44	37 11.987	123 16.312
45	37 11.853	123 16.269
46	37 11.754	123 16.216
47	37 11.631	123 16.142
48	37 11.537	123 16.067
49	37 11.473	123 15.994
50	37 11.420	123 15.930
51	37 11.380	123 15.872
52	37 11.344	123 15.825
53	37 11.279	123 15.696

Point	Latitude	Longitude
54	37 11.227	123 15.547
55	37 11.188	123 15.421
56	37 11.150	123 15.269
57	37 11.116	123 15.124
58	37 11.098	123 14.980
59	37 11.085	123 14.828
60	37 11.072	123 14.626
61	37 11.059	123 14.437
62	37 11.052	123 14.359
63	37 11.033	123 14.259
64	37 11.004	123 14.158
65	37 10.978	123 14.078
66	37 10.942	123 13.978
67	37 10.890	123 13.877
68	37 10.847	123 13.802
69	37 10.804	123 13.727
70	37 10.712	123 13.614
71	37 10.648	123 13.531
72	37 10.564	123 13.439
73	37 10.508	123 13.370
74	37 10.502	123 7.508
75	37 17.496	123 7.528

Study Area 5

The area described by the following points and a five-nautical-mile-wide zone west of the western boundary that area:

Point	Latitude	Longitude
1	37 43.444	123 23.515
2	37 43.436	123 30.053
3	37 34.568	123 30.053
4	37 34.574	123 20.234
5	37 34.661	123 19.507
6	37 34.725	123 19.376
7	37 34.725	123 19.376
8	37 35.031	123 19.452
9	37 35.935	123 19.081
10	37 36.769	123 18.542
11	37 37.698	123 17.788
12	37 37.765	123 17.743
13	37 37.789	123 17.827
14	37 37.838	123 17.911
15	37 37.887	123 17.996
16	37 37.937	123 18.105
17	37 37.986	123 18.202
18	37 38.085	123 18.359
19	37 38.183	123 18.529
20	37 38.270	123 18.674
21	37 38.356	123 18.832
22	37 38.455	123 18.977
23	37 38.554	123 19.134
24	37 38.640	123 19.255
25	37 38.726	123 19.364
26	37 38.825	123 19.497
27	37 38.911	123 19.606
28	37 38.985	123 19.703
29	37 39.071	123 19.811
30	37 39.195	123 19.981
31	37 39.318	123 20.138
32	37 39.404	123 20.272
33	37 39.478	123 20.356
34	37 39.565	123 20.465
35	37 39.684	123 20.574
36	37 39.762	123 20.695
37	37 39.840	123 20.791
38	37 39.922	123 20.869
39	37 39.997	123 20.066
40	37 40.095	123 21.095
41	37 40.181	123 21.192
42	37 40.268	123 21.288
43	37 40.330	123 21.373
44	37 40.416	123 21.470
45	37 40.516	123 21.563
46	37 40.616	123 21.667
47	37 40.736	123 21.785
48	37 40.860	123 21.906
49	37 40.983	123 22.027
50	37 41.107	123 22.148
51	37 41.230	123 22.269
52	37 41.378	123 22.390
53	37 41.515	123 22.499
54	37 41.669	123 22.607
55	37 41.803	123 22.704
56	37 41.920	123 22.768
57	37 42.036	123 22.825
58	37 42.174	123 22.889
59	37 42.295	123 22.957
60	37 42.421	123 23.012
61	37 42.583	123 23.105
62	37 42.704	123 23.165
63	37 42.826	123 23.225
64	37 43.005	123 23.310
65	37 43.088	123 23.358
66	37 43.205	123 23.410
67	37 43.327	123 23.467
68	37 43.376	123 23.482
69	37 43.444	123 23.515

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federal register

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September 18, 1992

Part IV

The President

Proclamation 6474—National POW/MIA Recognition Day, 1992

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Title 3—

The President

Proclamation 6474 of September 16, 1992

National POW/MIA Recognition Day, 1992

By the President of the United States of America

A Proclamation

As we Americans celebrate the collapse of imperial communism and the expansion of democracy around the world, we are especially grateful to the courageous United States military personnel who defended the cause of freedom in war. Yet, while we welcome improved prospects for international cooperation and peace, we also remember our fellow Americans who continue to suffer the uncertainties of wartime: the families of American service members and civilians who are still listed as missing and for whom the fullest possible accounting has not yet been made.

As a sign of our Nation's commitment to obtaining the answers that these families seek, on September 18, 1992, the flag of the National League of POW/MIA Families will be flown over the White House, the U.S. Departments of State, Defense, and Veterans Affairs, the Selective Service System headquarters, and the Vietnam Veterans Memorial. This black and white emblem will continue to symbolize America's clear, unequivocal resolve to keep faith with those who so faithfully served and defended us.

Through the eyewitness testimony of former American prisoners of war, we know that many were subjected to extreme deprivation and torture, in violation of fundamental standards of morality and in stark contravention of international agreements governing treatment of war prisoners. Their experiences have not only underscored our debt to those who risked their lives and liberty for our sake but also strengthened our resolve to secure the return of any Americans who may still be held against their will. Doing so remains a matter of highest national priority, as do our efforts to obtain the fullest possible accounting for the missing and the repatriation of all recoverable remains of those who died as a result of their service to our Nation. On this occasion, we renew our pledge to obtain the answers that the families of these Americans deserve, in order that they may gain the peace of certainty and share more fully in the celebration of freedom's expansion around the globe.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim September 18, 1992, as National POW/MIA Recognition Day. I urge all Americans to join in honoring former American POWs as well as those service members and civilians who are still missing and unaccounted for as a result of serving our Nation. I also encourage all Americans to join in saluting the families of these individuals for their dedication to the truth and for their perseverance in seeking answers. Finally, I call on State and local government officials, as well as private organizations, to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of September, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and seventeenth.

George Bush

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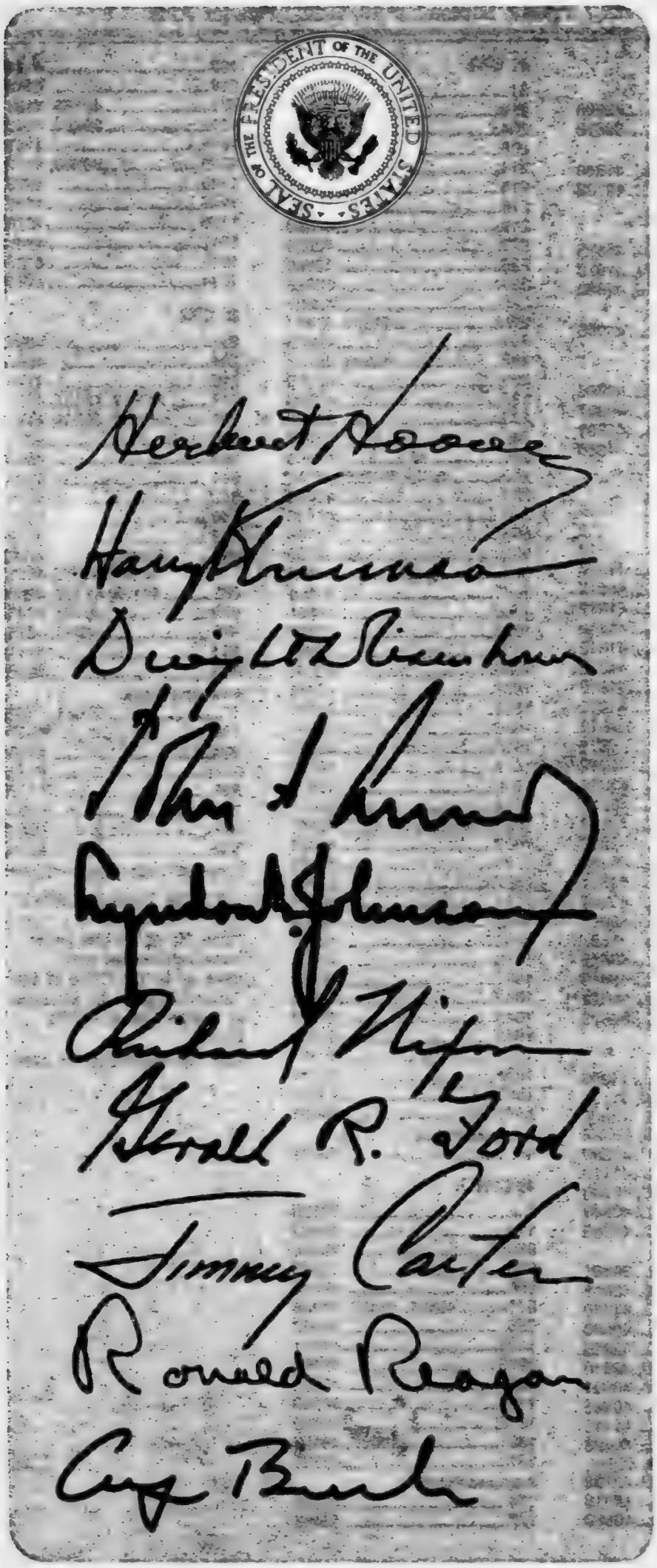

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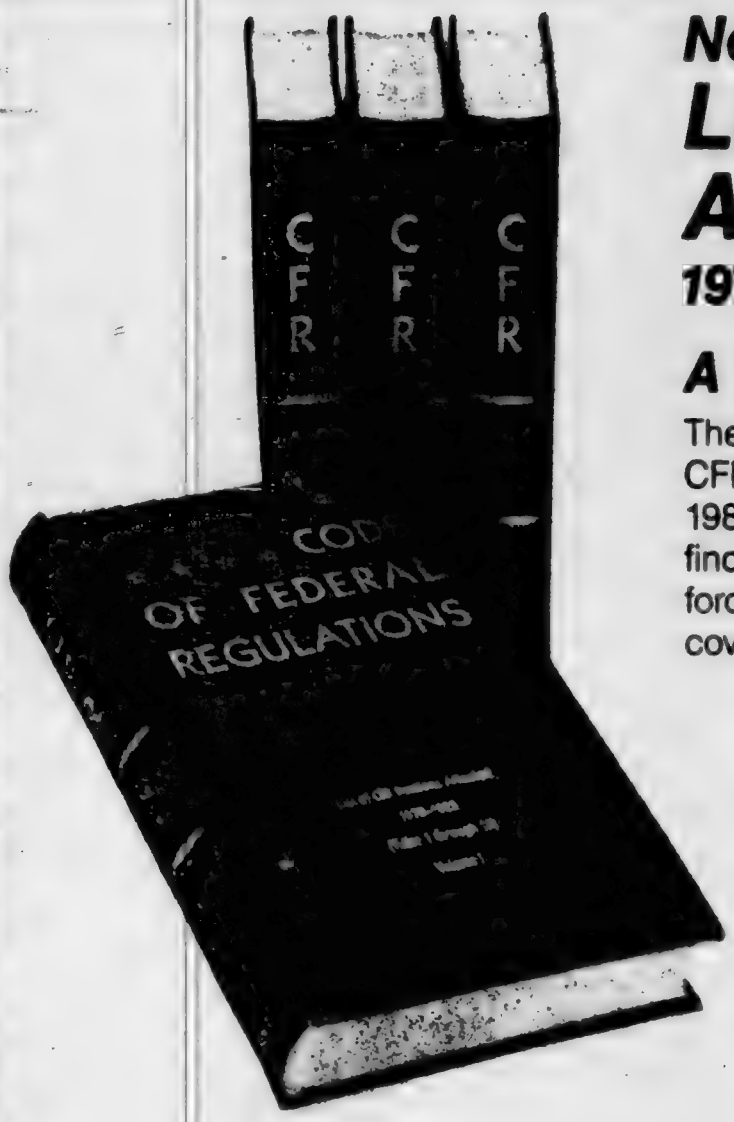

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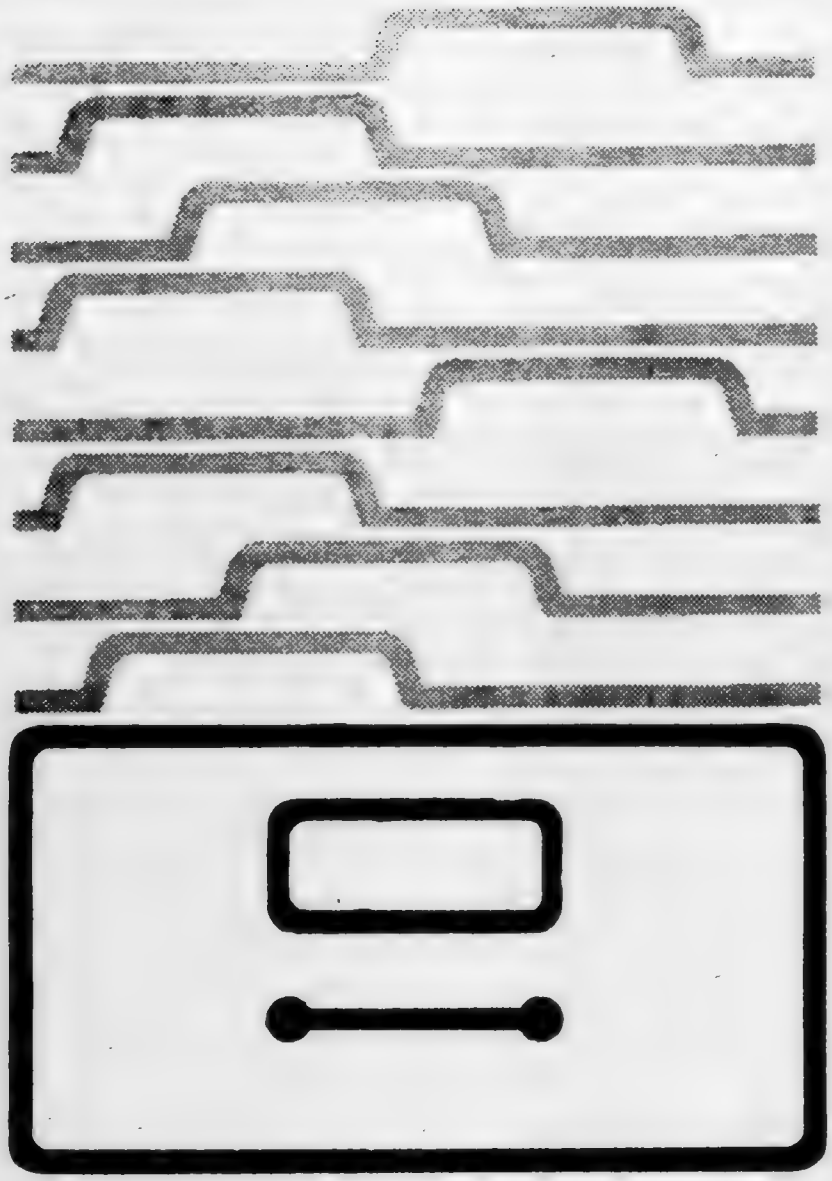

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Rules and Regulations

Federal Register
Vol. 57, No. 183
Monday, September 21, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 987

[Docket No. FV-92-073]

Domestic Dates Produced or Packed in Riverside County, California; Increase in Expenses for 1991-92 Fiscal Period

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes an increase in expenses for the California Date Administrative Committee (Committee), established under Marketing Order 987, for the 1991-92 crop year (October 1, 1991, through September 30, 1992). The expenses are increased from $479,400 to $634,400. The $155,000 increase is needed to cover advertising and promotion expenditures in excess of those authorized in the Committee's 1991-92 budget.

EFFECTIVE DATE: October 1, 1991, through September 30, 1992.

FOR FURTHER INFORMATION CONTACT: Kellee Hopper, Marketing Specialist, Marketing Order Administration Branch, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (209) 487-5901, or Valerie L. Emmer, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 205-2829.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 987 (7 CFR part 987) regulating the handling of domestic dates produced or packed in Riverside County, California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act".

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. An annual budget of expenses is prepared by the Committee and submitted to the Department for approval. This rule authorizes an increase in expenditures for the Committee for the remainder of the 1991-92 fiscal period. This rule will not preempt any State or local laws, regulations or policies unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 25 handlers of California dates regulated under this marketing order each season, and approximately 135 date producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

A final rule establishing expenses in the amount of $479,400 for the Committee for the fiscal year ending September 30, 1992, was published in the **Federal Register** on October 8, 1991 (56 FR 50647). That action also fixed the assessment rate to be levied on date handlers during the 1991-92 fiscal period.

At its April 23, 1992, meeting, the Committee unanimously recommended that its 1991-92 budget be increased by $155,000, to cover additional expenses in the Committee's market promotion and advertising program. These expenditures are in excess of those approved by the Department. Therefore, authorized expenses for the 1991-92 crop year are increased from $479,400 to $634,400. Adequate funds are available to cover the additional expenses. Hence, no increase in the assessment rate was recommended by the Committee.

The Administrator of the AMS has determined that this action will not have significant economic impact on a substantial number of small entities.

Notice of this action was published in the **Federal Register** on July 17, 1992 [57 FR 31670] and interested persons were invited to comment through July 27, 1992. No comments were received.

After consideration of the information and recommendation submitted by the Committee and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because the 1991-92 fiscal year for California dates ends September 30, 1992, and the Committee needs authority

to cover the additional expenses during the remainder of the 1991–92 fiscal year.

List of Subjects in 7 CFR Part 987

Dates, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, § 987.336 is amended as follows:

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

1. The authority citation for 7 CFR part 987 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 987.336 [Amended]

2. Section 987.336 is amended by changing "$479,400" to "$634,400."

Note: This section will not appear in the Code of Federal Regulations.

Dated: September 18, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–22777 Filed 9–18–92; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL RESERVE SYSTEM

12 CFR Part 217

[Regulation Q; Docket No. R–0775]

Prohibition Against the Payment of Interest on Demand Deposits

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is retitling and amending Regulation Q in conjunction with its adoption of Regulation DD, which implements the Truth in Savings Act. Since Regulation DD provides for rules relating to advertisements and other disclosures for deposit accounts, similar provisions in Regulation Q are deleted. Regulation Q retains provisions prohibiting the payment of interest on demand deposits.

EFFECTIVE DATE: March 21, 1993.

FOR FURTHER INFORMATION CONTACT: Patrick J. McDivitt, Staff Attorney, Legal Division, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–3818; for the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

(1) Background

Section 19(i) of the Federal Reserve Act (FRA) (12 U.S.C. 371(a)) prohibits member banks from paying interest on demand deposits, and section 19(a) of the FRA (12 U.S.C. 461(a)) authorizes the Board to define terms and prescribe regulations to effectuate the purposes of the section. Section 19(j) of the FRA authorizes the Board to prescribe rules governing the advertisement of interest on deposits by member banks on time and savings deposits. Currently, Regulation Q prohibits the payment of interest on demand deposits and sets forth disclosure and advertising requirements for interest on deposits by member banks and certain other institutions.

The Truth in Savings Act (12 U.S.C. 4301) directs the Board to issue an implementing regulation, which shall apply six months after the final regulation is issued. The purpose of the regulation is to assist consumers in comparing deposit accounts offered by depository institutions, principally through the disclosure of account terms, including the annual percentage yield and the interest rate, whenever a consumer requests the information and before an account is opened. The regulation also provides for rules regarding advertisements of deposit accounts. On April 13, 1992, the Board published a proposed rule, 57 FR 12735 (correction notice at 57 FR 22021, May 26, 1992).

The Board requested comment on whether certain provisions in the Board's Regulation Q dealing with advertising and other disclosure rules should be included in Regulation DD and removed from Regulation Q. Commenters strongly endorsed the idea of consolidating the requirements of these two regulations. Based on comments received to proposed Regulation DD and upon further analysis, the Board is amending Regulation Q to eliminate its advertising provisions, effective on March 21, 1993, the mandatory compliance date for Regulation DD. (See Docket R–0753 published elsewhere in this issue of the **Federal Register**, which sets forth Regulation DD.) Institutions that begin compliance with Regulation DD prior to the mandatory compliance date may comply solely with the advertising provisions of Regulation DD, and not the advertising and disclosure provisions in Regulation Q.

All rules relating to disclosures and the advertisement of deposit accounts are deleted from Regulation Q. Rules relating to the prohibition of interest on demand deposits remain in the regulation, which is retitled, "Prohibition Against the Payment of Interest on Demand Deposits," to reflect the subject it addresses. All interpretations to 12 CFR part 217 are deleted, with the exception of § 217.302 (premiums on deposits). This interpretation relates to the payment of interest on demand deposits, and is redesignated as § 217.101.

List of Subjects in 12 CFR Part 217

Federal Reserve System.

For the reasons set forth in the preamble, the Board is amending 12 CFR part 217 as follows:

PART 217—PROHIBITION AGAINST THE PAYMENT OF INTEREST ON DEMAND DEPOSITS

1. The authority citation for part 217 is revised to read as follows:

Authority: 12 U.S.C. 248, 371a, 461, 505, 1818, and 3105.

2. The heading of part 217 is revised to read as set forth above.

3. In § 217.1, paragraphs (a) and (b) are revised to read as follows:

§ 217.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued under the authority of section 19 of the Federal Reserve Act (12 U.S.C. 371a, 461, 505), section 7 of the International Banking Act of 1978 (12 U.S.C. 3105), section 11 of the Federal Reserve Act (12 U.S.C. 248), and section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), unless otherwise noted.

(b) *Purpose.* This part prohibits the payment of interest on demand deposits by member banks and other depository institutions within the scope of this part.

* * * * *

§§ 217.4, 217.6, 217.201; 217.301, 217.601, 217.602, and 217.603 [Removed]

4. Sections 217.4, 217.6, 217.201, 217.301, 217.601, 217.602, and 217.603 are removed.

§ 217.302 [Redesignated as § 217.101]

5. Section 217.302 is redesignated as § 217.101.

By order of the Board of Governors of the Federal Reserve System, September 11, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92–22479 Filed 9–18–92; 8:45 am]

BILLING CODE 6210-01-M

12 CFR Part 230

[Reg. DD; Docket No. R-0753]

Truth in Savings

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is adopting a new regulation, Regulation DD, to implement the Truth in Savings Act. The act and regulation require depository institutions to disclose fees, interest rates and other terms concerning deposit accounts to consumers before they open accounts. The act requires depository institutions that provide periodic statements to consumers to include information about fees imposed, interest earned and the annual percentage yield earned on those statements. The act and regulation impose substantive limitations on the methods by which institutions determine the balance on which interest is calculated. Rules dealing with advertisements for deposit accounts are also included in the new regulation.

DATES: This final rule is effective September 21, 1992, but compliance is optional until March 21, 1993.

FOR FURTHER INFORMATION CONTACT: Leonard Chanin, Senior Attorney, or Jane Ahrens, Kurt Schumacher, or Mary Jane Seebach, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 736-5500; for the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452-3544. For information about the Board's action concerning the recordkeeping and disclosure requirements under the Paperwork Reduction Act only, contact Mary McLaughlin, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452-3829, or Gary Waxman, OMB Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503, at (202) 395-7340.

SUPPLEMENTARY INFORMATION:

(1) Background

The Truth in Savings Act (the act) (12 U.S.C. 4301 et seq., contained in the Federal Deposit Insurance Corporation Improvement Act of 1991, Public Law 102-242, 105 Stat. 2236) was enacted in December 1991. The act directs the Board to issue final regulations by September 1992, and provides that the statutory provisions and rules adopted by the Board shall apply six months after that. On April 13, 1992, the Board published a proposed rule to implement the act, 57 FR 12735 (correction notice at 57 FR 22021, May 26, 1992).

The purpose of the regulation is to assist consumers in comparing deposit accounts offered by depository institutions, principally through the disclosure of fees, the annual percentage yield, the interest rate, and other account terms whenever a consumer requests the information and before an account is opened. The regulation also requires that fees and other information be provided on any periodic statement the institution sends to the consumer. Rules are set forth for advertisements of deposit accounts and advance notices to account holders of adverse changes in terms. The regulation places one substantive restriction on institutions' practices: How institutions determine the account balance on which interest is calculated.

The Board is publishing sample disclosure forms and model clauses to assist institutions in preparing their account disclosures. They appear in appendix B to the proposed regulation.

(2) Regulatory Provisions

The act is quite detailed and, for the most part, the regulation mirrors the statutory requirements. The act recognizes that implementation of a comprehensive scheme such as this may require some adjustments and, in section 269(a)(3), it authorizes the Board to make such classifications, differentiations, adjustments and exceptions as, in the judgment of the Board, are necessary or proper to carry out the purposes of this Act, to prevent circumvention or evasion of the requirements of this Act, or to facilitate compliance with the requirements of this Act. In addition, section 265 of the act authorizes the Board to vary the requirements relating to the annual percentage yield for several particular types of accounts. In several circumstances, as discussed in the information that follows, the Board has used these grants of authority.

The section-by-section description which follows points out those provisions that differ in any significant way from the act—for example, creating an exception to a statutory provision, adding a disclosure, or departing significantly from the language of the act—and explains why the differences exist. In those cases where the act is not specific and parallel rules would be beneficial, the Board has frequently used definitions and provisions from its other consumer regulations (for example, Regulation Z (12 CFR part 226), which implements the Truth in Lending Act, and Regulation E (12 CFR part 205), which implements the Electronic Fund Transfer Act).

The section-by-section description indicates any significant differences between the proposal and the final regulation. The supplementary information addresses concerns raised by commenters, and provides guidance on many questions raised. The Board expects that much of the discussion below will be included in the Official Staff Commentary to the regulation. Since the Board does not plan to issue a proposed commentary until the fall of 1993, the section-by-section description was drafted with the purpose of providing institutions the necessary guidance until the commentary is published. One consequence of providing such guidance is that the supplementary information section is lengthy. The Board believes it will more fully assist institutions in complying with the new regulation.

The Board received over 1400 comment letters on the proposal, with all but about 100 from institutions that would be covered by the regulation or their trade associations. A number of commenters questioned the need for the act and raised concerns about the burden and costs the new requirements would impose. Many of the commenters, however, provided information that has been useful to the Board in preparing a final rule. A significant number of commenters raised specific questions about various provisions in the proposal, and the Board has responded to many of those concerns by adopting both substantive and technical changes to the proposal.

In examining the proposal and the issues raised by the commenters, the Board used several principles in fashioning the final regulation. First, the Board has closely followed the provisions set forth by the Congress in the act. In a few cases, where statutory provisions simply elaborate on one basic requirement, the regulation contains only the basic requirement, and the supplementary information reflects the elaboration of that requirement. The Board believes this approach provides a more concise regulation without losing the additional information the Congress wanted.

Second, the Board has attempted to write precise, simple rules to help ensure that institutions understand the requirements of the act. The Board believes this will minimize the

possibility of errors and the potential for civil liability due to complicated or vague requirements. Exceptions to rules have been carefully considered and in several cases adopted in the final regulation. However, the Board is mindful that special rules add to the length, detail and complexity of the regulation. It has taken this into account, especially when considering suggestions for minor exceptions that would add significant complexity to the rules.

Third, the Board has sought to ensure that the disclosures provided to consumers are clear and meaningful. The Board believes providing overly complicated or technical disclosures to consumers provides little value in shopping for accounts and may diminish the value of information given.

Fourth, the Board has sought to provide institutions with flexibility to minimize compliance costs. It has also tried to minimize the possibility that institutions will unnecessarily reduce the variety of existing product choices offered to consumers. Similarly, the Board has tried to ensure that the compliance requirements do not have the effect of limiting the development of new products for consumers.

Fifth, the Board has used its "exception" authority judiciously. The Board has made adjustments and exceptions to the act when essential to assist consumers in comparing accounts and to minimize significant compliance problems for institutions.

In conjunction with the implementation of the act, the Board also is amending its Regulation Q (12 CFR part 217). (See Docket R-0775 published elsewhere in this issue of the **Federal Register**.) Currently, Regulation Q prohibits the payment of interest on demand deposits and sets forth disclosure and advertising requirements for interest on deposits by member banks and certain other institutions. (Other federal financial regulatory agencies have similar advertising rules, such as 12 CFR 329.3, issued by the Federal Deposit Insurance Corporation (FDIC).) Given this regulation's comprehensive disclosure and advertising rules for deposit accounts, the Board is deleting advertising and other disclosure rules in Regulation Q. The Board has consulted with the other agencies to try to ensure that all depository institutions are governed by the same rules, and expects that the agencies will eliminate any inconsistent rules in light of the new act.

The amendments to Regulation Q become effective on March 21, 1993, the mandatory compliance date for Regulation DD. Institutions that begin compliance with Regulation DD prior to the mandatory compliance date may comply solely with the advertising provisions of Regulation DD.

Section 230.1—Authority, Purpose, Coverage, and Effect on State Laws

Paragraph (c)—Coverage

This paragraph has been revised from the proposal. First, the final rule reflects the fact that a definition of deposit broker has been added to the regulation. Although many commenters requested that securities brokers and dealers be fully covered by the regulation, neither is included in the definition of a "depository institution" under the act and regulation. As discussed in §§ 230.2(a) and 230.8, however, the advertising rules apply to deposit brokers who advertise deposit accounts.

The proposal stated that the regulation applies to all depository institutions except credit unions. A number of commenters also urged that the Board's final regulation cover credit unions. The act explicitly states that credit unions are to be covered by rules issued by the National Credit Union Administration (NCUA), not the regulation issued by the Board.

Paragraph (d)—Effect on State Laws

Section 273 of the act provides a narrow standard for preemption of state laws (only if they are inconsistent), and refers only to state disclosure laws. The Board solicited comment on whether the same preemption standard should apply to all provisions in the act, including § 230.7, dealing with the payment of interest. Many commenters urged the Board to adopt a rule that applied the same standard to such provisions as well as to the disclosure rules, thus enabling the Board to make preemption determinations on such issues. The Board believes that under general preemption standards a state law could not require what federal law prohibits. (For example, a state law could not permit use of a low balance method of calculating interest since the act and regulation prohibit such a practice.) The Board also believes the Congress intended for the Board to make determinations of preemption for all aspects of the act, not just disclosures. To read the Board's ability to make preemption determinations more narrowly could provide uncertainty as to the status of state laws, and create potential civil liability and compliance concerns that the Congress sought to avoid. The Board's Regulation Z (Truth in Lending) takes this broader approach of dealing with both disclosures and substantive requirements. (See 12 CFR 226.28.)

The Board has therefore changed the wording of the final rule. The proposed rule provided that state "disclosure" law requirements are preempted if they are inconsistent with the requirements of the regulation. The word "disclosure" has been deleted from the regulation to make clear that the standard applies to all requirements of the act and regulation, including the requirement to pay interest on the full balance in the account.

Section 230.2—Definitions

Paragraph (a)—Account

Section 274(1) of the act defines an account as any account offered to 1 or more individuals or an unincorporated nonbusiness association of individuals by a depository institution into which a customer deposits funds. The Board is generally defining the term as any deposit account held by, or offered to, a consumer. The regulation covers interest-bearing as well as noninterest-bearing accounts.

Covered accounts. The Board solicited comment on whether uninsured accounts offered by depository institutions should be covered. Based on a review of the comments and on the statutory language, the Board has defined an "account" to include all deposit accounts offered to consumers by depository institutions, whether the account is insured or uninsured. For example, even though federal deposit insurance limits are exceeded, a time account in excess of $100,000 would be covered.

Deposit accounts denominated in a foreign currency are accounts under this regulation, if offered to or held by consumers. These accounts are typically offered as money market accounts or through certificates of deposit that may be designated as foreign currency accounts. Such accounts are eligible for deposit insurance, but are not insured for losses resulting from exchange rate fluctuations. The Board believes it is important that such accounts receive the same disclosure and other protections of the regulation as consumer accounts denominated in United States dollars. However, as discussed in the supplementary information to §§ 230.4(b) and 230.8(a), the Board has not adopted special disclosures for these types of accounts, as had been proposed.

Several commenters pointed out that the proposed definition of a consumer could be interpreted to include non-residents of the United States. The Board believes the act is intended to provide protections only to those

persons who are residents of the United States (including resident aliens). The Board also believes the regulation applies to accounts at or offered by depository institutions located in the United States. Thus, if a depository institution is located in the United States and an account is held by or offered to a U.S. resident, the regulation applies. The regulation does not apply to accounts opened by non-resident aliens or to accounts of residents of a state opened at institutions located outside the United States.

Accounts held by deposit brokers. The act specifies that, in addition to depository institutions, "deposit brokers" are subject to its advertising provisions. In the proposed regulation, the Board solicited comment on whether third parities (including deposit brokers) who place advertisements that refer to deposit accounts at depository institutions should be covered by the advertising rules of the regulation. Many commenters urged the Board to apply the advertising provisions to all parties who offer accounts at depository institutions or interests in such accounts. Otherwise, they noted, consumers being offered interests in accounts at depository institutions through deposit brokers would not have the benefit of uniform advertising disclosures. Further, they argued, the regulation would create an "unequal playing field" which would place depository institutions offering the same type of account as those being offered by deposit brokers at a competitive disadvantage.

Based on the comments received and upon further analysis, the final rule provides that the advertising provisions cover interests in accounts at depository institutions that are offered by deposit brokers to consumers (even if the account at the depository institution is held in the name of the deposit broker, its agent or custodian). The Board believes that by using the broad definition of "deposit broker" to cover advertisers of accounts that are not themselves depository institutions, the Congress intended for consumers to have uniform disclosures to comparison shop whether the advertised account is offered by institution directly or through an independent entity. (See section 29(g) of the Federal Deposit Insurance Act (FDIA), which defines deposit broker as any person in the business of placing or facilitating the placement of deposits in an institution.) Thus, for purposes of the advertising rules, the Board is defining the term "account" to include an account at a depository institution that is held by or on behalf of a deposit broker, if any interest in the account is held by or offered to a consumer. For example, if a deposit broker purchases for its customers a time account at an institution in its own name, or in the name of its agent or custodian, the interests held by consumers are accounts that are covered by the advertising provisions of the regulation. Where an account offered to consumers through a deposit broker is advertised, it is the sole responsibility of the broker (and not the depository institution where the underlying account is located) to comply with the advertising rules. While brokers must comply with § 230.8, they are not required to provide other disclosures or comply with the other portions of the act or regulation.

Existing accounts held by unincorporated nonbusiness associations. An addition has been made to the paragraph to deal with accounts existing on the mandatory compliance date of the regulation that are held by associations such as book clubs or softball leagues. The act and regulation cover accounts held by "consumers," which includes "unincorporated nonbusiness associations of natural persons." (See § 230.2(h).) Many commenters noted that operational difficulty of identifying those existing "consumer" account holders that are not individuals. For example, some larger institutions commented that the ownership status of literally millions of existing accounts held by organizations and associations might have to be manually reviewed to determine whether accounts are covered or exempt.

All existing consumer accounts are covered by the regulation. However, the Board recognizes that the regulation's rules may cover accounts using criteria that differ from distinctions currently made by institutions between accounts of individuals and accounts of organizations. The Board is authorized under section 269(a)(3) to create exceptions for classes of accounts to facilitate compliance with the act. To ease the significant burden of reevaluating the ownership status of existing nonindividual consumer accounts, the Board is exercising its exception authority under section 269(a)(3) to exclude a limited class of existing accounts from coverage. Thus, the final rule excepts from all aspects of coverage those existing accounts held by unincorporated nonbusiness associations of natural persons opened prior to the mandatory compliance date of the regulation. If the institution is notified by an unincorporated nonbusiness association that an existing account is held by such an entity, the exception will cease to apply and the account must thereafter be considered a consumer account which is covered by the regulation. Institutions that are so notified must begin complying with the regulation within a reasonable time. For example, if the institution is notified during a statement cycle or a compounding period that the account holder fits the "consumer" definition, commencing coverage at the beginning of the following statement cycle or compounding period would be acting within a reasonable time.

For purposes of determining coverage under this provision, institutions may initially assume that existing accounts covered are those identified for tax purposes by an individual's social security number. Of course, even accounts identified with a social security number are not covered if they are for a business purpose, for example, an account held by a sole proprietor.

Institutions must have procedures in place so that unincorporated nonbusiness associations that open new accounts on or after the mandatory compliance date (or existing customers that inform the institution of their "consumer" status) receive all applicable disclosures required to be provided (1) at account opening and upon request, (2) on periodic statements sent on the account, and (3) if terms are changed. They will also be covered by all other provisions of the regulation (such as the interest payment requirements).

Other investments. As stated in the proposal, the term "account" does not include every financial relationship a consumer might have with an institution. For example, the purchase of a government security or an annuity through a depository institution is not an "account" subject to the regulation. Also, a consumer's interest in the securities or obligations of a depository institution that are being held by the institution on the consumer's behalf, or offered by the institution to the consumer is not an "account." Similarly, the term "account" does not include other contractual relationships a consumer may have with a depository institution such as repurchase agreements, interest rate swaps and banker's acceptances.

As stated in the proposal, the Board believes the Congress did not intend to cover certain other investments that may be offered through (as opposed to offered by) depository institutions, such as mutual funds. Often these investments are offered by affiliates of the depository institution, such as by a

non-depository subsidiary of a bank holding company. These investments are not deposit accounts of the depository institution, and are thus not covered by the final regulation.

Many commenters urged the Board to expand the definition of "account" to cover accounts held by consumers with non-depository affiliates or other non-depository financial service providers. Since the scope of the act is clearly limited to accounts at depository institutions and, to a limited extent, those offered by deposit brokers, the Board believes that the Congress did not intend to cover accounts for mutual funds and other investments offered by such non-depositories.

Paragraph (b)—Advertisement

The regulation retains the proposed definition of an advertisement. Thus, an advertisement is any commercial message appearing in any medium (for example, newspaper, television, lobby boards and telephone response machines) if it directly or indirectly promotes the availability of an account. Similarly, a message promoting a savings account that is sent to consumers on their NOW account periodic statement is an advertisement. As discussed more fully in the supplementary information accompanying § 230.8(e), the regulation contains a limited exception from some of the advertising provisions for advertisements such as lobby boards, telephone response machines, broadcast and electronic media, and outdoor advertising.

The act covers advertisements "initiated by a depository institution or deposit broker." The Board has defined "advertisement" without regard to the party initiating it, but, by virtue of the definition of "account" in paragraph (a) of this section, both depository institutions and deposit brokers are subject to the advertising provisions of the final regulation.

Rate sheets. The Board requested comment on whether the savings "rate sheets" published in newspapers, periodicals, or trade journals should be considered as advertisements. These rate sheets typically list certain limited information about the deposit account rates of selected depository institutions. Often, these rate sheets are independent third-party compilations of information on the rates of many of an area's depository institutions, with no payment made by the institutions to the third party nor any duty by the third party to include information about a specific institution.

Many commenters argued that rate sheets should not be classified as advertisements under the regulation. They believed that most of the rate sheets being published provide consumers with valuable information on the current savings rate environment, and that the regulation would reduce the availability of such information if all of the advertising rules applied to rate sheets.

It is the Board's position that rate sheets published in newspapers, periodicals, or trade journals are not advertisements as long as the depository institution does not pay a fee to have the information included and does not have control over whether the information will be published. The Board believes these types of rate sheets are not "commercial" messages of the type contemplated by the term "advertisement."

Paragraph (c)—Annual Percentage Yield

The regulation incorporates a definition of the annual percentage yield that is substantially similar to the act's definition. The act defines annual percentage yield by referencing the total amount of interest that would be received on a $100 deposit. As proposed and adopted, the definition does not incorporate the reference to a $100 deposit, since the annual percentage yield calculation can be performed with any amount of principal, and the Board believes reference to $100 could be confusing. The language of the final rule varies slightly from the proposed text for clarity, but the meaning is unchanged.

Paragraph (d)—Average Daily Balance Method

The proposed regulation did not have a definition of the "average daily balance method." An explanation of the daily balance and average daily balance methods were contained in footnote 1 to § 230.7(a) in the proposed regulation, however, and the present definition is taken from that footnote.

Several commenters asked how the average daily balance should be calculated if a "negative collected balance" occurs. This takes place if a consumer "overdraws" an account and thus produces a negative balance. In such circumstances, institutions should treat the balance in the account for that day (or days) as $0 and not average a negative sum into the calculation. If a fee is assessed in such circumstances (and is not part of a credit transaction), it should be disclosed as a fee—in the initial disclosures—and should not be treated as "negative" interest.

Paragraph (f)—Bonus

The act does not use or define the term "bonus." However, the definition of a "bonus" has significance under the regulation because a bonus is excluded from interest, must be disclosed under § 230.4(b)(7), and because mention of a bonus in an advertisement "triggers" or requires other disclosures to be made.

The Board's proposal defined the term "bonus" very broadly. Under the proposal, it would have encompassed any cash, premium, gift, award, or other consideration regardless of the form the payment takes. Commenters were concerned that with such a broad definition, inexpensive "promotional" items such as pens or coffee mugs would be bonuses, and would trigger additional disclosures. Based on these comments and upon further analysis, the Board has modified the definition of a bonus. The final rule excludes premiums (or any other consideration) of *de minimis* amounts. The *de minimis* amount the Board has adopted is $10 or less given during any consecutive 12-month period. This is the same amount used under current Official Staff Interpretation § 217.302 of the Board's Regulation Q (see Docket R-0775 published elsewhere in this issue of the **Federal Register**, where the interpretation is redesignated as § 217.101) and under section 6049 of the Internal Revenue Code for excluding amounts from being considered as interest and for reporting interest for tax purposes, respectively.

While Regulation Q contains a two-tier *de minimis* rule ($10 for deposits under $5,000 and $20 for deposits of $5,000 or more), the Board feels that providing a flat $10 *de minimis* amount is the best approach. Adding a tiered bonus rule would add complexity that is unnecessary to address the commenters' concerns.

The $10 *de minimis* exception is the same amount used by the Internal Revenue Service (IRS). The Board believes it is appropriate to mirror IRS rules for determining the value of any bonus. As a result, once the duty is triggered under IRS provisions for a depository institution and a consumer to report a bonus as interest for tax purposes, the bonus will be covered by the account disclosure and advertising rules (See paragraph (n) of this section for further discussion of the valuation of bonuses for tax purposes.)

Based on comments received, the regulation has been revised to clarify that a bonus does not include the payment of interest on an account. Also, some commenters suggested that the waiver or reduction of a fee or the absorption of expenses by a depository institution should not be considered a bonus. The Board agrees with this

position. Thus, under the final rule, an offer of certain "fringe benefits" by an institution to a consumer is not considered a bonus.

Finally, the supplementary information to the proposed rule stated that an item could be a bonus if given or offered to a third party, rather than to the consumer. Commenters suggested that the definition include only items given or offered to the consumer holding the account. They suggested compliance would be eased by such a rule and that the disclosures applicable to bonuses are most important where the consumer, and not some third party, is the recipient of the financial benefit from the payment of a bonus. The Board agrees that a concise rule regarding the disclosure of information concerning bonuses is desired. It has thus modified its position. Under the final regulation, an item of any value given or offered directly to a third party by a depository institution in exchange for a consumer opening or renewing an account with the institution is not a bonus.

Paragraph (g)—Business Day

The regulation tracks the definition of business day used in Regulation CC (Expedited Funds Availability). (See 12 CFR 229.2(g).) This definition differs from that in the proposed rule, which referred to days when an institution "carries on substantially all business functions." The change is in response to commenters' concerns that the proposal could present difficulty in determining whether an institution is open "for substantially all business functions," since certain banking services might be performed on weekends while others might not. Additionally, the change responds to commenters' requests that uniformity be provided between the Board's Regulation CC and Regulation DD. Thus, the final rule defines business day as any calendar day other than a Saturday, a Sunday, or any of the legal public holidays specified in 5 U.S.C. 6103(a). If New Year's Day, Independence Day, Veterans Day or Christmas Day falls on a Sunday, the next Monday is not a business day. While Regulation CC contains the previous sentence in the regulation itself, the Board believes it is unnecessary for purposes of this regulation. This rule follows the general Federal Reserve check collection and payment schedule in Regulation CC, and provides uniformity for institutions regarding when interest must begin to accrue on deposits. (See § 230.7(c).)

Business days are used for timing rules regarding the delivery of account disclosures to consumers who are not present at the institution when an account is opened and when a request is made for account disclosures. In all other circumstances, timing rules use calendar days.

Paragraph (h)—Consumer

The act does not define the term "consumer," although it is clear from the act and legislative history that the protections were intended to apply only to consumer purpose—and not business purpose—accounts.

The final regulation, as proposed, defines the term "consumer" by using the term "natural person" rather than "individual," and by adding the phrase "primarily for personal, family, or household purposes" to the definition. A similar definition has worked well in Regulation Z (Truth in Lending) in determining whether credit is for a consumer purpose, and the Board believes it will be equally helpful in determining coverage for deposit products. Although the proposal also included the phrase "or other nonbusiness purpose," the Board has deleted the phrase as unnecessary.

Sole proprietorships. The act does not expressly exclude from coverage accounts held by, or offered to, individuals operating businesses in the form of a sole proprietorship. The proposed regulation excluded such accounts. Commenters agreed with the Board's proposed position not to cover such accounts, and this position has been adopted in the final rule. Thus, because sole proprietorship accounts are for a business purpose, they are not subject to the act or regulation.

Unincorporated associations. An account held by or offered to an unincorporated association of natural persons (such as a softball team or a book club) is a consumer account covered by the regulation if that account is primarily for nonbusiness purposes. An account held by an incorporated, not-for-profit organization is not covered by the act, since the act limits its protection to unincorporated associations.

Commenters expressed concern regarding an institution's ability to determine the "consumer" status of existing accounts held by organizations. The supplementary information to paragraph (a) of this section provides guidance to depository institutions for these accounts in existence prior to the mandatory compliance date of the regulation. Thereafter, depository institutions must determine whether associations opening new accounts are covered by the regulation. Institutions may rely on the assertions of the association's representatives in making those determinations.

Custodial accounts. The Board solicited comment on whether custodial accounts, in which a natural person is a beneficial owner but where the legal holder (the custodian) is not a consumer should be subject to the act and regulation. Commenters felt it would be extremely burdensome and difficult for institutions in many cases to determine the identity of the person for whom an account is held. Commenters also questioned the value of requiring disclosures to be given to the custodian, since beneficiaries often cannot control the investment decisions of the custodian, and cannot comparison shop for accounts, one of the main purposes of the act. Moreover, they argued, custodians for such accounts—often large institutional investors—are in the business of acting as professional custodians, and are not the type of account holder the Congress intended to protect. The Board agrees that it would be burdensome to depository institutions to treat such custodial accounts as accounts held by consumers, and that disclosures generally could not be used by individuals in the way the Congress intended. Thus, the final definition of "consumer" excludes natural persons who, in their professional capacity, hold an account for another.

Several commenters asked whether Individual Retirement Accounts (IRAs) at depository institutions are covered by the regulation. The Board believes such accounts are covered to the extent funds are invested in an "account," as defined by the regulation. While IRAs technically are custodial accounts, they differ from typical custodial accounts. Unlike other custodial accounts, the consumer (beneficiary) usually controls the investment decisions for an IRA. Furthermore, the depository institution itself is the "custodian" rather than a third party acting on behalf of the consumer. The Board believes consumers would benefit and be better able to comparison shop if disclosures were received for such accounts. Of course, the regulation does not apply to all products in which a consumer may invest IRA funds. For example, if a consumer invests funds in a product such as government securities, the regulation would not apply.

Some commenters expressed concern about whether the proposed regulation would cover accounts such as landlord-tenant security accounts and attorney-client trust accounts where both the legal holder and the beneficial owner of an account may be natural persons. These accounts are established by the landlord or the attorney for a business

purpose, though the funds may represent a personal or household purpose for the tenant or the attorney's client. Such accounts are not primarily for personal, family, or household purposes, and thus are not consumer accounts covered by the regulation. Likewise, accounts held by a natural person for the benefit of a non-natural person or persons (for example, a charity) also would not be a covered consumer account if the holder is acting in a professional capacity.

However, where a natural person holds an account in a non-professional capacity for the benefit of another and the account is not for business purposes, the act and regulation apply. Thus, an account opened by a parent for a child under the Uniform Gifts to Minors Act would be covered by the regulation.

Commenters also requested guidance on the coverage of escrow accounts. To the extent that a general "escrow" or dispute-resolution account is opened by a consumer primarily for personal, family or household purposes, it would be covered by the final regulation. For example, an account established by an individual for lease payments pending resolution of a dispute with a landlord would be a consumer account for the purposes of the regulation. However, a typical escrow account established for the payment of funds (such as for taxes and property insurance) in connection with a real estate transaction is not a consumer account. Such escrow accounts are normally opened primarily as a mechanism for the safe-keeping of funds pending a future event, and not as an independent investment decision allowing the consumer to shop for an account. For example, mortgagors typically do not determine the particular depository institution where the mortgage escrow account is established.

Some commenters requested that the Board modify its proposal to exclude accounts—even if held by natural persons for nonbusiness purposes—where such accounts are typically designed for, but not limited to, businesses or sophisticated individual investors. Similarly, others requested a dollar threshold, for example, $100,000, above which an account would be deemed not to be a consumer account. While the Board believes there may be some consumers holding such accounts who arguably do not need the protections of the act and regulation, others would certainly find these protections beneficial. In addition, neither the act nor the legislative history suggests any Congressional intent to exempt any consumers from the scope of the act's provisions based on the amount deposited. Therefore, the Board does not believe it is appropriate to modify the regulation to provide exceptions from coverage based on the size of the account or the target group intended for a particular account. A depository institution must determine in each case whether a consumer will hold an account primarily for personal, family or household purposes (or if an association meets the "consumer" definition).

Paragraph (i)—Daily Balance Method

As with the term "average daily balance method," there was no definition for the term "daily balance" in the proposed regulation. The Board has moved the material from footnote 1 to § 230.7(a) in the proposal to the definition of this term.

Paragraph (j)—Depository Institution and Institution

Section 274(6) of the act defines a "depository institution" as that term is defined in clauses (i) through (vi) of section 19(b)(1)(A) of the Federal Reserve Act. The Federal Reserve Act includes in its definition any insured bank, savings bank, mutual savings bank, or savings association, and any institution eligible to make application to become an "insured" institution under the FDIA. The FDIA definition of an insured institution includes any state of federally chartered bank, any insured branch of a foreign bank, as well as industrial banks and other state incorporated banking institutions that are engaged in the business of receiving deposits (other than trust funds). (See section 3 of the FDIA.) Based on these definitions, the act's coverage is very broad, and covers both state and federally chartered institutions if the institution is insured, or is uninsured but is eligible to make application to become insured. Branches of foreign banks that meet this definition are covered.

The final regulation adopts the definition of depository institution as it was proposed. Many commenters believed credit unions should be subject to the Board's regulation. As discussed in the proposal and in § 230.1(c) of the final rule, the act specifically provides that the Board's regulation shall not apply to credit unions; instead, the NCUA is required to issue substantially similar Truth in Savings regulations for credit unions within 90 days of the effective date of this regulation.

Paragraph (k)—Deposit Broker

The act defines "deposit broker" by reference to section 29(f)(1) of the FDIA. The act also includes any person who solicits any amount from any other person for deposit in an insured depository institution in its definition.

The proposal did not specifically define "deposit broker," although § 230.1(c) referred to the FDIA definition. However, the Board solicited comment on whether third parties (including deposit brokers) who place advertisements that refer to deposit accounts at depository institutions should be covered by the advertising rules of the regulation. Given the Board's position that deposit brokers are covered by the advertising rules, the term has been defined in the final regulation. To facilitate compliance, the Board is defining deposit broker by reference to the FDIA. The Board believes that the FDIA, which covers any person in the business of placing or facilitating the placement of deposits in an institution, essentially captures Congressional intent. If the Act's exact language were used, persons such as employees of depository institutions or pension plan administrators—and others expressly excluded from the FDIA definition—could arguably become subject to rules governing deposit brokers, creating confusing and potentially conflicting coverage standards.

Paragraph (l)—Fixed-Rate Account

The Board has added a definition for fixed-rate accounts since the final regulation uses the term in § 230.4(b)(1)(i). The term includes those accounts in which the institution, by contract, gives at least 30 calendar days advance written notice of decreases in the interest rate. Thus, institutions offering fixed-rate accounts may change rates from time to time, but only if they provide advance notice of rate decreases. (An increase in the rate would not require any notice.)

Paragraph (m)—Grace Period

The proposal did not define "grace period," though comment was requested on whether a grace period should be disclosed. The final regulation incorporates a definition because, if a grace period is provided for an automatically renewable time account, it must be disclosed under § 230.4(b)(6)(iv). In addition, a grace period may be important for purposes of § 230.5(b), dealing with the timing of disclosures for rollover time accounts. A grace period is defined as a period after maturity of an automatically renewing time account during which the consumer may withdraw funds without being assessed a penalty. An institution is free to provide a grace period or not. (See footnote 1 to the Board's Regulation D,

12 CFR 204.2(c)(1) and footnote 1 to Regulation Q, 12 CFR 217.3, however, dealing with the payment of interest during any grace period, and similar rules of other federal financial regulatory agencies.)

Paragraph (n)—Interest

This definition, which is adopted substantially unchanged from the proposal, states that bonuses and similar offers do not constitute interest for purposes of the regulation. This differs from the rule in Regulation Q, 12 CFR 217.2(d), which does include bonuses as part of its definition of interest, due to the prohibition on paying interest on demand accounts, and the fact that in that context a bonus is the equivalent of interest. (See also the rules of other federal financial regulatory agencies.) This rule also differs from the position of the IRS. In 26 CFR 1.6049-5(a)(2), the IRS states that the fair market value of property received as interest or in lieu of a cash payment of interest is "interest" for reporting purposes.

Though commenters were divided in their views on the issue, many agreed with the Board's proposal to not include the payment of a bonus as interest. As discussed in the proposal, the Board believes that the benefit of including bonuses as interest is outweighed by the burden such a requirement would impose upon depository institutions and the confusion that would be caused to consumers.

The definition has been revised by an additional reference to the fact that interest is calculated by applying a periodic rate to the balance in the account. The final regulation makes clear that an institution's absorption of expenses or its forbearance from charging a fee in connection with a service is not considered to be payment of interest. A depository institution's practice of charging higher fees to non-account holders than to account holders does not make the differential "interest."

Paragraph (o)—Interest Rate

Section 274(3) of the act defines the "annual rate of simple interest" as the annualized rate of interest paid with respect to each compounding period, expressed as a percentage. In the proposal, the Board simplified the phrase to "simple interest rate" and reworded the definition to clarify that the "interest rate" is the rate of interest paid without regard to compounding, shown as an annual figure and expressed as a percentage.

The Board has revised the proposed definition by further abbreviating the term to "interest rate." Several commenters remarked that the word "simple" in conjunction with "interest rate" has no standard meaning in the industry and does not assist consumers in understanding the figure disclosed. The Board agrees with this position, and has deleted the word "simple" from the term.

Section 274(3) of the act provides that the interest rate may be referred to as the "annual percentage rate." The Board proposed to use its exception authority to limit use of the term "annual percentage rate" so that it may be used only in conjunction with the term "interest rate," and only for purposes of account disclosures (that is, not in advertisements). The Board pointed out the importance of standardized terminology in advertising in order to assist consumers in comparing accounts, and requested comment on this issue.

With very few exceptions, commenters opposed allowing any use of "annual percentage rate" under the regulation because the term is associated with credit, not deposits. Commenters recognized that the term "annual percentage rate," as required to be disclosed under Regulation Z, is commonly understood by consumers to encompass the total cost of credit—including both interest and other finance charges. Most commenters believed strongly that confusion could arise if that term were used to designate an interest rate for the consumer's deposit account at a depository institution, while the same terminology would be used to designate a rate that includes both interest and, for example, "points" charged for a mortgage loan from the same institution. In addition, most commenters believed that it would be confusing for prospective account holders to see the same figure labeled as the "interest rate" in some advertisements and disclosures and as the "annual percentage rate" in others.

The Board agrees with these commenters. For these reasons the Board is using its exception authority under section 269(a)(3) of the act, and is adopting the rule regarding use of the term "annual percentage rate" as it was proposed. Some commenters urged the Board to prohibit the use of the term "annual percentage rate" in disclosures as well as in advertisements. In the light of the statutory provision, however, the Board is taking a more limited approach. The Board believes that the potential for confusion is greatest in advertisements and so is prohibiting it only in advertisements. Thus, institutions are permitted (but not required) to use the term "annual percentage rate" only in the account disclosures and only in addition to the term "interest rate."

Paragraph (p)—Passbook Savings Account

The final rule adds a definition of passbook savings account because the Board excludes from the definition of periodic statement any statements for passbook savings accounts. (See paragraph (q) of this section.) The regulation defines passbook savings account as a savings account in which the consumer retains a book or other document in which the institution records transactions on the account

Paragraph (q)—Periodic Statement

Neither the act nor the regulation requires institutions to provide periodic statements (though a large number of commenters misunderstood this point). Disclosures are required to be included if the institution sends such statements. Further, the act does not define "periodic statement," although the term, or a similar term "account statement," is used in two provisions (sections 266 and 268). Section 266(e) of the act (which requires a notice to be given to existing account holders) refers to account statements provided on a quarterly basis. The Board looked to this provision and to requirements in other regulations in proposing to define a periodic statement as one sent on a quarterly or more frequent basis. The majority of commenters agreed with the Board's proposed definition. Thus, the general definition of a periodic statement in the final rule is one that sets forth account information and is provided to a consumer on a regular basis four or more times a year. An example of a periodic statement is a monthly statement for a NOW account, listing transactions and balance information.

In response to comments and upon further analysis, the Board has exercised its exception authority under section 269(a)(3) of the act to exclude specific types of accounts from the periodic statement requirements of the final rule. The regulation excludes from the definition any statement about either time accounts or passbook savings accounts.

Under the proposal, if an institution included information about any account on a statement, all of the disclosures of § 230.6 would be required for each type of account listed on the statement. A number of commenters noted that institutions often provide "combined statements." These combined statements contain detailed information about one or two accounts (typically, a

checking account or a checking and savings account), but also contain a limited mention of other accounts (typically, just the balance or interest earned on a certificate of deposit) held by the consumer at the same institution. Institutions that currently provide such status information for the accounts urged the Board to exempt those accounts from the periodic statement requirements.

Commenters noted that institutions may stop providing information about time accounts on combined statements without such an exception, due to the burden of calculating rates on multiple accounts and concerns about potential civil liability. In addition, commenters noted that space and printing limitations might prompt institutions to stop sending periodic statements that are presently provided voluntarily. Commenters also noted that, for time accounts, the required disclosures may be of limited value to the consumer. For example, disclosure of the number of days in the statement cycle is not particularly useful since these accounts have a set maturity. In addition, since most time accounts have no transactions and are fixed rate, the annual percentage yield earned would likely remain the same throughout the term of the account. The Board believes that exempting statements on time accounts from the definition of periodic statement, and thus from the disclosure requirements in § 230.6, is appropriate as it will encourage institutions to continue providing account information on the regular statements provided to consumers, without a significant sacrifice of useful information to consumers. Thus, regardless of their frequency, statements providing information to consumers about time accounts, whether sent separately or in combination with statements for other accounts, are not covered by this paragraph.

The Board is also using its exception authority to exclude information provided about passbook savings accounts from the definition of a periodic statement. Consumers who maintain such accounts generally understand that account information will only be made available when the passbook is presented for updating a transaction. Consumers do not expect periodic statements for their passbook savings accounts. A consumer may receive a periodic statement for other accounts, on which the institution elects to provide brief status information about the passbook account. As with the exception from the disclosure requirements for statements on time accounts, the Board believes it is important that institutions not be discouraged from providing this type of useful information to consumers.

The Board believes that certain other types of communication are not "periodic statements." For example, additional statements provided solely upon request and information provided by computer through home banking services are not periodic statements. In addition, general service information sent to customers which does not discuss specific transaction activity or other aspects of a particular consumer's account (for example, a quarterly newsletter or other correspondence that describes available services and products) is not a periodic statement.

If an institution provides a periodic statement to meet other legal requirements (for example, if an account involves electronic fund transfers and is covered by Regulation E (12 CFR part 205)), such a statement would be a periodic statement for purposes of this regulation. Also, if an institution provides a combined statement containing both credit and deposit account activity, such a statement would be covered by the periodic statement rules. In both cases, of course, if the statement is for a time account or passbook savings account it is exempt from this regulation.

Paragraph (s)—Stepped-Rate Account

The act defines "multiple rate" accounts, and authorizes the Board to adjust its general annual percentage yield disclosure rules to ensure that meaningful disclosures are provided for such accounts. The Board has separately defined "stepped-rate" and "tiered-rate" accounts, both of which are "multiplied rate" accounts under the act.

The final regulation defines stepped-rate accounts as that term appeared in the proposed rule: those in which two or more interest rates that are known at the time the account is opened will take effect in succeeding periods. An example of a stepped-rate account is a one-year certificate of deposit in which a 5.00% interest rate is paid for the first six months, and 5.50% for the second six months.

Paragraph (t)—Tiered-Rate Account

The Board's proposal defined tiered-rate accounts as those in which two or more interest rates paid on the account "are determined by reference to a specified balance level." One commenter suggested that this definition be revised to read "an account that has two or more interest rates that are applicable to specified balance levels." The Board agrees that this suggestion more accurately describes tiered-rate accounts, and has adopted a revised definition based on this suggestion.

An example of a tiered-rate account is one in which an institution pays, for example, a 5.00% interest rate on balances below $1,000, and 5.50% on balances $1,000 and above. There are two types of tiered accounts which are described more completely in appendix A, part I, paragraph D.

If interest is not paid on amounts below a specified balance level, the account has a minimum balance requirement (required to be disclosed under § 230.4(b)(3)(i)), but the account does not thereby constitute a tiered-rate account. For example, an account that does not pay any interest on account balances of less than $1,000, but pays a 5.50% interest rate on account balances of $1,000 or more is not a tiered-rate account, but rather is a single rate account with a minimum balance of $1,000 required to earn the specified annual percentage yield.

Paragraph (u)—Time Account

The proposed regulation did not include a definition of a "time account." However, because the final regulation provides special rules for certain time accounts (such as automatically renewable and non-automatically renewable certificates of deposit) and since time accounts are exempt from the periodic statement rules, the Board has adopted a definition. The term is based on the term "time deposit" under the Board's Regulation D (12 CFR 204.2(c)(1)). However, the regulation uses the phrase "time account" rather than "time deposit" to avoid confusion since time deposit, as used in Regulation D, has a broader meaning than that in this regulation. For example, a "time deposit" in Regulation D includes savings deposits, which do not fit the definition of "time account" in this regulation.

A time account is defined as an account with a definite maturity of at least seven days where a consumer generally does not have a right to make full or partial withdrawals from the account for six days after the account is opened, unless the deposit is subject to an early withdrawal penalty of at least seven days' interest on amounts withdrawn.

The most common time accounts are certificates of deposit; but certificate accounts and notice accounts issued by savings and loan associations are also included. Time accounts also may include some types of "club" accounts (such as "holiday club" and "vacation club" accounts)—where consumers

agree by written contract not to withdraw funds until a certain number of periodic deposits are made—even though deposits may be made within six days before the end of the period.

The Board recognizes that Regulation D permits withdrawals without penalty during the first six days after a time deposit is opened under limited circumstances, such as upon the death of any owner of the deposited funds or within a "grace period" for automatically renewable certificates of deposit. Accounts that permit withdrawals of funds in accordance with those provisions of Regulation D remain time accounts for purposes of this regulation.

Paragraph (v)—Variable-Rate Account

The act does not define variable-rate accounts, but section 265 of the act authorizes the Board to adjust its annual percentage yield disclosure rules for such accounts. The legislative history accompanying the act also indicates that modifications to the act's advance notice requirement for changes in terms were contemplated for variable-rate accounts. (See discussion of § 230.5(a)(2)(i) below.) The Board requested comment on how variable-rate accounts should best be defined to further the purposes of the act. Two alternative definitions were proposed: A narrow one that tied rate changes to an index, and a broad one that encompassed any account agreement allowing rate changes where the institution did not commit itself to giving at least 30 days advance notice of the change.

The classification of an account as a "variable-rate account" affects institutions in three ways:

(1) Additional account disclosures are required in § 230.4(b)(1)(ii);

(2) Rate decreases are exempted from the change in terms requirements in § 230.5(a)(2)(i); and

(3) A notice is required in advertisements under § 230.8(c)(1).

Many commenters expressed their views on the proposal. A few commenters supported the narrow definition linking rate changes on an account to changes in an index. They preferred a standard that paralleled Regulation Z's definition of variable rates for open-end credit to an expansive definition which they believed to be too broad.

The overwhelming majority of commenters, however, preferred a broader definition, based on both competitive and safety and soundness concerns. Some stated that without a broad definition consumers would be hurt since institutions would keep rates lower than they otherwise might offer, either to avoid the cost of sending advance notices if the rate had to be lowered or to guard against having to send notices because of unanticipated fluctuations in the financial marketplace. Many were concerned that advance notice requirements would restrict their ability to deal with competitive factors and other investment options available to consumers such as money market mutual funds, which are not covered by the act and regulation. Some were concerned that tying changes to an index—internal or external—would inhibit an institution's ability to respond appropriately to volatility in obtaining funds and to manage the liability side of the institution's balance sheet. Others were concerned about the cost of sending notices on accounts that may change rates as frequently as daily or weekly and the annoyance to consumers of receiving a constant deluge of notices about changes they already know can occur on their accounts.

In the proposal, the Board discussed its concern that if institutions reserve the right to change rates on accounts but seldom do, consumers would view these accounts essentially as fixed-rate accounts. Many commenters pointed out that account disclosures for variable-rate features required by § 230.4(b)(1)(ii) will alert consumers to the fact that the rates may change and the circumstances for such changes. They also pointed out that consumers can always contact the institution to get current rate information. (See §§ 230.3(e) and 230.4(a)(2) regarding responses to oral inquiries and providing disclosure of account terms upon request.)

The Board believes that a narrow definition of "variable-rate account" would require a substantial change in how depository institutions price their accounts, a change that was unintended by the disclosure provisions of the act. Also, consumers would be harmed if institutions offered artificially low rates to avoid repeated and expensive mailings. Thus, the regulation broadly defines a variable-rate account as one in which the interest rate may change after the account is opened, unless the institution contracts to give at least 30 calendar days advance written notice of rate decreases. An account meets this definition whether the change is determined by reference to an index, by use of a formula, or merely at the discretion of the institution. A certificate of deposit that permits one or more rate adjustments at the consumer's option is a variable-rate time account.

For institutions that prefer to offer—and consumers who prefer to hold—fixed-rate accounts, the regulation excludes from the definition of variable-rate those accounts where the institution agrees to provide at least a 30-day advance written notice of rate decreases. (See paragraph (l) of this section.)

Section 230.3—General Disclosure Requirements

Paragraph (a)—Form

Section 264(e) of the act requires disclosures to be written in "clear and plain language." The Board proposed that information be presented "clearly and conspicuously," a standard used in other regulations adopted by the Board, such as Regulation Z. This standard was supported by commenters, and is used in the final rule for all disclosures provided to consumers, including account opening disclosures, change in terms notices and information given on periodic statements. (The same standard applies to advertisements by virtue of § 230.8.)

Design requirements. The proposal provided depository institutions with flexibility in designing the account disclosures, as long as the information is presented in a format that allows consumers to readily understand the terms of their own accounts. The final regulation provides even more flexibility regarding the order of disclosures, the use of multiple documents for accounts, the use of documents that describe more than one account, and the combination of disclosures with contract terms and with disclosures required by other regulations (such as Regulation E and Regulation CC).

The regulation does not require the disclosures to be provided in any particular order or segregated from other disclosures or account terms. Disclosures may be made on more than one page and may appear on front and reverse sides. For example, periodic statements may consist of several pages, depending on the consumer's account activity. Institutions may also use inserts to a document or fill in blanks to show current rates or fees in account opening disclosures. Whereas the proposal suggested that disclosures had to be part of "one document," the final regulation permits use of more than one document. However, if more than one document is used for a single account (or if more than one account is described in an institution's brochure), consumers must be able to understand from the several documents (or multiple account disclosures) which terms apply to their particular account. See, for

example, the approach taken in Sample Form B–4 in appendix B.

Depository institutions could comply with the regulation by providing consumers with disclosures contained in one or more of the following documents: a signature card, a rate sheet, a fee schedule and a brochure that described other terms of the account. However, if the disclosures consist of more than one document, all relevant documents must be provided at the same time, and it must be clear to which account each document relates. For example, the regulation would not permit a customer service representative to hand a consumer a brochure that describes some terms of the account when an account is opened and mail a rate sheet and fee schedule at a later time. Disclosures must be in a form the consumer may retain. Thus, for example, disclosures could not be made on a signature card if the consumer is not given a copy to keep.

Institutions may choose to prepare a single document or brochure that contains disclosures for all accounts offered, or prepare different documents for different types of accounts. For example, an institution may provide one brochure for all of its transaction accounts, such as NOW and demand deposit accounts. An institution may provide disclosures for each type of account, such as a document that describes all time accounts offered. If the institution chooses to provide one document for several accounts, the consumer must be able to understand clearly which disclosures apply to the consumer's account. Thus, if an institution offers two NOW accounts ("A" and "B") with some fees applicable to both accounts, certain fees and rates unique to the "A" account, and other fees and rates unique to the "B" account, the disclosures must make clear (by the use of headings or some other means) which fees and rates apply to which account. Finally, the regulation permits institutions to provide individual disclosures describing a single account product; for example, an institution offering three different NOW accounts may provide a separate document for each account.

Disclosures need be made only as applicable. For example, disclosures for noninterest-bearing accounts need not include disclosure of an annual percentage yield, interest rate, or any other disclosures required under the regulation that pertain to interest calculations.

Format requirements. Adopted as proposed, the regulation does not require any particular type size or typeface, nor does it require any term to be stated more conspicuously than any other term in the account disclosures. Sections 230.4(b) and 230.8(b) of the regulation require the "annual percentage yield" (and, in some cases, the "interest rate") to be so labeled in account disclosures and advertisements, and § 230.6(a) requires the "annual percentage yield earned" to be so labeled on periodic statements. Apart from this, there is no required terminology. Institutions must be consistent, however, in the use of a term whenever the term is required to be disclosed. For example, if an institution identifies a monthly fee imposed regardless of a consumer's balance or activity in the account disclosures as a "service" fee, a "maintenance" fee, or a "monthly" fee, it must use the same term in its periodic statements and change in term notices.

Several commenters requested guidance on the use of abbreviations. Use of the abbreviation "APY" for the annual percentage yield is discussed in § 230.8(b) (dealing with advertisements).

Paragraph (b)—General

The proposal stated that disclosures should reflect the legal obligation between the parties. This standard is used in Regulation Z and was proposed to provide guidance about the basis for disclosures. Some commenters expressed concerns about whether inclusion of this provision in the regulation implied the existence of some new requirement for institutions to enter into account contracts with their consumers. This requirement does not impose any contract terms or supplant state or other laws that define how the legal obligation between a consumer and a depository institution is determined (for example, whether a written contract is required or whether disclosures may act as the basis for the obligation). The regulation requires the disclosures to reflect the terms of the legal obligation that exist once the consumer opens an account.

Institutions offering automatically renewable time accounts must base their disclosures on the terms in effect for the initial term of the account, and not on terms that may apply if the account is renewed. Thus, if an institution offers a six-month certificate of deposit at an initial annual percentage yield of 4.00% with a guaranteed renewal at an annual percentage yield of 5.00%, the institution would not disclose the account as a one-year stepped-rate account. Similarly, the fact that the rate may change on a fixed-rate time account at renewal does not make it a variable-rate account.

The Board sought comment on the use of estimates in making disclosures. Some commenters requested that estimates be permitted for charges imposed by third parties such as check vendors as an alternative to the use of a range of check printing charges. But many opposed the use of estimates under any circumstance; they viewed the imprecision of estimates as being more confusing than helpful to consumers. The Board believes that, on balance, a rule on estimates is not needed because virtually all information required to be disclosed is within the total control of the institution (with the special rules provided in §§ 230.4(b)(4) and 230.5(a)(2)(ii), to deal with the issue of check printing charges). Furthermore, the introduction of estimates complicates the disclosure scheme without providing attendant benefits to consumers. Thus, the regulation does not permit the use of estimates in making disclosures.

The act does not contain any special requirements regarding whether disclosures may be made in a foreign language rather than in English. The Board sought comment on incorporating a rule similar to that in Regulation Z, which allows creditors in Puerto Rico the option of providing credit disclosures in Spanish, as long as those that do so furnish disclosures in English upon request. Most commenters endorsed the alternative of providing disclosures in languages other than English. Some institutions currently reach out to the communities they serve by offering disclosures in languages other than English, where appropriate, and asked for express authority to do so. A few commenters were concerned that the proposed regulation could be interpreted to impose a duty upon institutions to provide disclosures in languages other than English. Based on comments received and upon further analysis, the final regulation permits (but does not require) institutions to provide disclosures in languages other than English, as long as disclosures in English are available upon request. This rules applies to institutions in every state, not just in Puerto Rico. The Board believes that the rule will promote delivery of more useful information to consumers.

Paragraph (c)—Relation to Regulation E

The final regulation expressly allows institutions to fulfill their requirements under this regulation with disclosures that also satisfy the requirements of Regulation E. Thus, if an institution is required to provide information pursuant to Regulation E, such as a fee

related to an electronic fund transfer, disclosures given pursuant to that regulation will be deemed to comply with this regulation as long as they are given at the same time as other Regulation DD disclosures. Similarly, if an institution changes a term that triggers a change in term notice under Regulation E (as well as under this regulation), the institution may use the timing rules set forth in Regulation E for sending the notice to affected consumers. (See the discussion in §§ 230.4(b)(4) and 230.4(b)(5) regarding disclosures of fees and transaction limitations.)

Paragraph (d)—Multiple Consumers

The regulation retains without change the proposed rule that in the case of an account held or to be held by more than one consumer, institutions may provide the account disclosures to any consumer who holds or will hold the account. Similarly, if the account is held by a group or organization, depository institutions may provide the disclosures to any one individual who represents or acts on behalf of the group. Some commenters requested that the Board consider identifying a "primary account owner," such as the consumer whose tax identification number is assigned to the account. The Board believes that requiring institutions to provide disclosures to a "primary account owner" adds an unnecessary compliance burden; thus, it has not added such a requirement to the regulation. Some commenters were concerned that accounts "held" by multiple consumers implied that only account holders with ownership interests in the account could receive disclosures. The Board believes that where there are multiple consumer account holders, delivery to any account holder or an agent authorized by the account holder satisfies this paragraph.

Paragraph (e)—Oral Response to Inquiries

Although not required by the act, the Board proposed to standardize rate information that is given by institutions in response to an oral inquiry regarding rates. This requirement does not impose a duty on institutions to provide responses to oral inquiries, nor would a response trigger the advertising disclosures of the regulation. The proposal would have required institutions to use the terms "annual percentage yield" and "simple interest rate." The final regulation merely requires that institutions that provide oral responses for requests for rate information state the annual percentage yield figure. The interest rate figure may also be provided. (This would also permit a statement of the corresponding periodic rate.)

The regulation differs from the proposal in two respects. First, in response to comments, the regulation has been clarified to state the interest rate may be quoted in addition to (not in lieu of) the annual percentage yield. Second, the regulation has deleted the requirement that the annual percentage yield or interest rate be stated using those terms. While the Board expects that institutions will use those terms to describe the figures quoted to consumers, the regulation does not require this terminology. The requirement was deleted due to the Board's concern about the potential for civil liability if an employee of an institution inadvertently failed to use the specified term.

Paragraph (f)—Rounding and Accuracy Rules for Rates and Yields

In the proposal, rules relating to the calculation and accuracy of the annual percentage yield were contained in appendix A. In response to suggestions made by commenters, a new paragraph that contains rules regarding rounding and accuracy of the annual percentage yield, the annual percentage yield earned, and interest rate has been added to this section of the regulation. Regulation Z has a similar provision, and the Board believes a single section setting forth the accuracy standards for rates and yields will ease compliance.

Paragraph (f)(1)—Rounding

As proposed, the final rule provides that annual percentage yields are to be shown to two decimal places and rounded to the nearest one-hundredth of one percent (.01%). If an institution calculated an annual percentage yield to be 5.644%, it would be rounded down and shown as 5.64%; 5.645% would be rounded up and disclosed as 5.65%. The Board believes that expressing all yields to two decimal places will assist consumers in comparing the rates of competing depository institutions. The same rule applies to the annual percentage yield and the annual percentage yield earned.

In response to comments received, the final rule adds rounding rules for the interest rate. For advertisements, the interest rate must also be rounded to the nearest one-hundredth of one percentage point (.01%) and expressed to two decimal places. For example, if an institution's interest rate is 5.344%, that figure would be rounded down and shown in an advertisement as 5.34%; 5.345% would be rounded up and disclosed as 5.35%. This parallels the rule adopted for the annual percentage yield. The Board believes that figures shown to two decimal places in advertisements will assist consumers in successfully comparing the rates of competing depository institutions. Without such a rule an institution with an interest rate of 5.45% could advertise and disclose a rate of 5.5%, the same rate advertised and disclosed by another institution with an interest rate of 5.50%. The Board believes this would hinder consumers' ability to compare accounts. The interest rate also must be shown to two decimal places in account disclosures. At the depository institution's option, however, the interest rate may be shown with greater specificity (more than two decimal places) in account disclosures, in order to allow the use of the exact contract rate.

Paragraph (f)(2)—Accuracy

As proposed, the final rule provides a tolerance of 1/20 of one percentage point (.05%) for the accuracy of the annual percentage yield. While some commenters believed that technology makes a tolerance unnecessary, many commenters supported a calculation tolerance and felt that 1/20 of one percentage point was appropriate. If the annual percentage yield disclosed is not more than one-twentieth of one percentage point (.05%) above or below the actual annual percentage yield as determined in accordance with appendix A, no violation of the act or regulation has occurred. The same rule applies to the annual percentage yield and the annual percentage yield earned. The tolerance is designed to take account of inadvertent errors. By adopting the tolerance, the Board does not intend to sanction intentional misstatements of the annual percentage yield. Institutions may not purposefully incorporate the tolerance as part of their calculations. Thus, the amount of the tolerance could not be routinely added in when calculating the annual percentage yield to be disclosed.

Although the regulation allows a tolerance in the accuracy for annual percentage yields, there is no corresponding tolerance for the accuracy of the interest rate. The interest rate offered on accounts is chosen by, and therefore known to, institutions and involves minimal risk of calculation error. Further, the Board believes the Congress intended consumers to receive a disclosure of the precise interest rate paid on the account. The Board believes adopting a tolerance for the interest rate therefore is not appropriate.

Section 230.4—Account Disclosure

The Board proposed and retains in the regulation its use of "account disclosures" (rather than the term "account schedule" used in the act) in connection with the information required to be provided to consumers. Similarly, the regulation does not impose an independent duty on institutions to "maintain" disclosures but merely to deliver them in the necessary circumstances. These positions were supported by the commenters.

Paragraph(a)—Delivery of Account Disclosures

The regulation is organized differently from the proposal. The proposal outlined subsequent disclosure duties for maturing time accounts in both §§ 230.4(a)(3) and 230.5(b). For ease of compliance, all requirements for providing information to consumers after an account is opened (other than ongoing disclosure duties for accounts that receive periodic statements) are now located in § 230.5. Thus, rules regarding subsequent notices for maturing time accounts are found in § 230.5(b), 230.5(c), and 230.5(d) of the regulation.

Paragraph (a)(1)—Account Opening

The proposal and the final regulation parallel the act, and require institutions to provide account disclosures to consumers before an account is opened or a service is provided, whichever is earlier.

Service fees. The Board is retaining the proposed provision requiring disclosures to be given before a fee (required to be disclosed under paragraph (b) of this section) for a service is imposed. The Board believes this disclosure covers the unusual circumstance where a fee is assessed for a service prior to the opening of an account. This provision, however, does not require institutions to give disclosures to existing account holders prior to imposing a service fee connected with the account, such as for stopping payment on a check.

Consumer absent when account is opened. Section 266(b) of the act allows the disclosures to be sent within 10 days of "the initial deposit" if the consumer is not physically present when the deposit is accepted and the disclosures have not been provided previously. The proposed regulation applied the 10-day rule to the provision of services as well as to opening accounts, and defined the period as 10 business days rather than calendar days. The final regulation reflects the same position. Thus, if an account is opened by mail, the account disclosures must be mailed or delivered within 10 business days of the time the account is opened. Institutions comply with the provision if the account disclosures are mailed or delivered to the consumer at the address shown on the records of the depository institution.

The Board solicited comment on whether business days or calendar days should be used in setting forth the timing rules for opening accounts and providing services, as well as for responding to requests for disclosures. The majority of commenters favored use of business days, and that is retained in the final rule for providing disclosures when an account is not opened in person. The Board believes that using 10 business days as the timing measure for the account opening rule is appropriate to allow institutions adequate time to provide disclosures (especially since the disclosures cannot be used for comparison shopping in any event since they come after the deposit decision has been made). However, the timing rules for other provisions (for example, the subsequent disclosures required in § 230.5) are measured by calendar days.

The act states that disclosures need not be provided to the absent consumer if the disclosures were previously provided. The Board requested comment on whether it would be desirable to specify a time limit, for example, 60 days, beyond which prior disclosures would be deemed not to be current—even if they have not changed. Commenters strongly opposed a rule with a specified time limit. Based on comments received, the Board is not adopting the reference to 60 days. However, the Board believes that the Congress intended to permit institutions to rely on this provision only if the disclosures previously provided remain the same (including the annual percentage yield and interest rate). As a practical matter, the Board believes this provision of the regulation is of limited benefit, as institutions that rely on it must know both that their customers previously received the disclosures and that the account terms remain the same.

New accounts. Section 230.4(a)(3)(i) (cited as § 230.4(a)(3)(A) in the April 13 **Federal Register** notice) of the proposal provided that renewals of all time accounts were new accounts. Commenters argued that an automatically renewed time account is *not* a new account, but acknowledged that a nonautomatically renewable time account that is "renewed" at the consumer's request *is* a new account. In light of these comments, the Board has modified the final regulation by deleting proposed § 230.4(a)(3)(i). Renewals of "rollover" time accounts are dealt with in §§ 230.5(b) and 230.5(c). A "renewal" of a time account that does not automatically renew is a new account requiring account disclosures delivered according to the usual rules for account opening.

Some commenters asked whether a new account would be considered to be opened when an institution acquires an existing account through merger with or acquisition of another institution. Acquiring accounts through acquisition or merger does not trigger the disclosure rules under this section. Of course, if terms required to be disclosed are changed, the acquiring institution must follow the rules in § 230.5(a) regarding advance notice.

Paragraph (a)(2)—Requests

Paragraph (a)(2)(i). The act requires that account disclosures be made available to any person upon request. The proposal required depository institutions to mail or deliver the disclosures no later than three business days following receipt of a consumer's oral or written request.

Several commenters requested clarification about customer actions that trigger the rule. A mere inquiry about rates for an account does not trigger an institution's duty to provide account disclosures. For example, common telephone inquiries about rates and yields on certificates of deposit or about fees and charges for an account do not trigger an institution's duty to send disclosures to the caller. However, the duty is triggered if, in the course of inquiring about an account, a consumer asks for written information to be provided. This section also governs requests for account disclosures by existing consumer account holders. (See the discussion in § 230.4(c) below.)

Some commenters were concerned how the rule might apply to repeat callers who make numerous requests for disclosures for the same account. If an institution has already sent disclosures to a consumer who is repeating requests for the same account, and institution need not respond to the repeated requests, if the disclosures previously provided remain accurate.

An institution must provide disclosures to consumers for each account for which the consumer requests information. If the consumer makes the request in person, disclosures must be provided at that time. If a consumer expresses a general interest in a type of account (NOW accounts, for example) of which an institution offers several versions, an institution may comply by sending disclosures for any

one of the products. Institutions are not required to provide disclosures for accounts that are no longer available to the public. For example, an institution that no longer opens passbook savings accounts (but continues to service existing passbook accounts) is not required to provide account disclosures for the passbook savings account upon request.

Some commenters objected to the proposed duty to "mail or deliver" disclosures; instead, they urged that the regulation use the statutory phrase to "make available" disclosures upon request and allow institutions to merely keep disclosures in their offices or branches for consumers to pick up in person. The Board believes that the purposes of the act would not be furthered if consumers were required to visit branches to obtain information about an account. Convenient access to account disclosures is essential to comparison shopping and in-person visits are not always possible. The Board believes that the Congress contemplated that institutions would have the duty to actually get account information to consumers who request it. Thus, the regulation requires institutions to mail or deliver account disclosures upon request if the requester is not at the institution when the request is made.

Timing requirements. The Board proposed a three-business-day rule—a timing rule used in Regulation Z for certain transactions—for responding to requests from consumers. The Board solicited comment on whether it was necessary to establish a specific time period in which institutions must respond to requests for disclosures, and whether the appropriate period should be three business days or longer, such as 10 business days. Many commenters opposed a specific time limit, stating that competition and customary business practices ensure institutions will respond in a timely manner. If a time limit were imposed, however, commenters requested that timing rules be consistent throughout the regulation and that a period longer than three business days be permitted.

The Board is persuaded that competitive demands require institutions to respond promptly to potential and current account holders. Thus, the final rule requires institutions to respond to requests for disclosures within a reasonable time. Ten business days, consistent with the timing rule for opening accounts, would be considered a reasonable time to respond. Of course, when the consumer is present at the institution and requests information about an account, the disclosures must be given at that time.

Paragraph (a)(2)(ii). Commenters requested clarification about the content of disclosures sent in response to a consumer request for information. Disclosures must be accurate when sent to the consumer, and the regulation has been modified to explain how institutions may comply with that standard in the case of the annual percentage yield, interest rate and a time account's maturity date. An institution must specify an interest rate and annual percentage yield that were offered within the most recent seven calendar days; state that the rate and yield are accurate as of an identified date; and give a telephone number consumers may call to obtain current rate information. The regulation also permits institutions to describe a time account's maturity as a term such as "1 year" or "6 months," rather than a specific date, such as "January 10, 1994," since the actual date will not be known.

Paragraph (b)—Content of Account Disclosures

This paragraph is rearranged from the proposal. For ease of compliance, requirements relating solely to time accounts (listed individually in the proposal as § 230.4(b)(2), (b)(7), and (b)(8)) have been combined in § 230.4(b)(6) in the final rule. Remaining paragraphs have been renumbered accordingly.

A disclosure regarding bonuses has been added, as described in paragraph (b)(7) of this section.

In response to comments received and upon further analysis, the Board has not adopted the proposed requirement that institutions inform consumers if an account involves the risk of a loss of principal (see § 230.4(b)(9) of the proposal). Adopting the rule, which is not mandated by the act, would have added complexity to the regulation. For example, although the provision was aimed at foreign currency denominated accounts, commenters raised concerns about its applicability to losses of principal due to deposit insurance limitations, right of offset and the operation of escheat laws. Although the Board believes that it is important for institutions to disclose to consumers when an account involves a potential loss of principal—particularly in accounts denominated in a foreign currency—information indicates that the industry currently alerts consumers to the risks associated with such accounts. Thus, on balance, the Board believes an additional disclosure in the regulation is not needed at this time.

Paragraph (b)(1)—Rate Information

Paragraph (b)(1)(i)—Annual percentage yield and interest rate. Institutions are required to disclose the "annual percentage yield," using that term, computed in accordance with appendix A, part I. Institutions also are required to disclose the "interest rate," using that term. Aside from the corresponding periodic rate, no other term regarding rates (for example, an "average" rate) is permitted to be used. If the interest rate and the annual percentage yield are the same, institutions must use both terms but may disclose a single figure.

Institutions must also disclose the period of time the interest rate will be in effect after a fixed-rate account is opened. (This does not require institutions to state how long the rate will be offered to consumers who open accounts. However, see the discussion to § 230.8(c)(2), which requires advertisements to state how long the advertised annual percentage yield will be offered.) The final rule clarifies that this requirement applies only to fixed-rate accounts. (The Board believes that disclosures required under paragraph (b)(1)(ii) of this section adequately convey the same information for variable-rate accounts.) If an institution agrees to pay a rate until maturity of a fixed-rate time account, disclosure of the maturity date satisfies this requirement. Fixed-rate accounts other than time accounts could disclose a date, a period, or include a statement that the rate will be in effect for at least 30 days. (See § 230.2(l), which defines fixed-rate accounts as those in which an institution agrees to provide at least 30 days' advance notice of a rate decrease, and § 230.5(a), which discusses change in term requirements for rate decreases for these accounts.) Even if an institution retains the ability to increase a rate without giving prior notice, it should disclose that the initial rate will be in effect for at least 30 days. Any rate increase following delivery of disclosures is not an event that would make the account disclosure incorrect.

Commenters asked for clarification of several issues relating to the disclosure of the interest rate and annual percentage yield. Some institutions asked for guidance about how accurate their disclosures must be when their agreements permit changes as frequently as daily in the rate and yield paid. Some suggested that institutions be permitted to provide a recently available rate, along with a telephone number the consumer could call for current rates. The Board believes that

the most current rate and yield information must be provided to consumers who are opening new accounts. (See paragraph (a)(1) of this section.) The Board believes the Congress did not intend for institutions to disclose, for example, a recent interest rate of 5.00%, if in fact the institution is offering a 4.75% interest rate on the day the consumer opens the account. However, recent rates and yields that are updated at least weekly may be provided to consumers who have merely requested information on an account. (See paragraph (a)(2) of this section.) As mentioned previously, institutions may use inserts or rate sheets in combination with their other disclosures to state current interest rates and annual percentage yields, but institutions must make clear in the account disclosures which rates and yields apply to the account for which disclosures are being given. (See discussion of design requirements in the supplementary information to § 230.3(a), above.)

A number of commenters requested guidance about how minimum balance requirements affect the disclosure of rates. If an institution sets a minimum daily balance to earn interest, it need not disclose that "0%" annual percentage yield applies on those days when the balance in the account drops below the minimum balance. (Similarly, a disclosure of "0%" is not required for institutions that use the average daily balance method, if the consumer fails to meet the minimum balance required for the period.) The Board believes that, in light of the disclosures about minimum balance requirements, consumers will readily understand that interest is not paid if a minimum balance is not maintained, and the rule simplifies disclosures for both consumers and institutions.

Section 230.4(b)(1)(i) of the proposal (cited as § 230.4(b)(1)(A) in the April 13 **Federal Register** notice) included a sentence stating that for stepped- and tiered-rate accounts all interest rates and annual percentage yields must be stated. The final rule does not include this provision in the regulation itself. This requirement is simply an elaboration on the general requirement to state the interest rate and annual percentage yield, and the Board believes it is unnecessary for the regulation itself to contain this rule. This provision does require that, for stepped-rate and tiered-rate accounts, institutions must state all annual percentage yields and interest rates.

A single annual percentage yield must be disclosed for stepped-rate accounts. (See appendix A, part I, paragraph B.) However, each interest rate and the period of time each will be in effect must be provided in the disclosures. For example, if an institution offers a 1-year certificate of deposit with daily compounding and an interest rate of 5.00% for the first 180 days and 5.50% for the remaining 185 days, it might say something like the following: "The interest rate on your account is 5.00% for the first 180 days and 5.50% for the remaining 185 days, with an annual percentage yield of 5.39%." (See Model Clause B-1(a)(iii) in appendix B.)

An institution offering tiered-rate accounts must disclose each interest rate along with the corresponding annual percentage yield (or range of annual percentage yields if appropriate) for that specified balance level. For example, if an institution pays a 5.00% interest rate for balances below $5,000 and a 5.50% interest rate for balances $5,000 or above, both rates must be provided, as well as the annual percentage yields that would apply to the two tiers in the account. (See appendix A, part I for the calculation of the annual percentage yields for stepped-rate and tiered-rate accounts.)

Commenters asked for guidance when the initial rate offered on a variable-rate account is higher than the rate that would otherwise be paid on the account. For example, an institution may promote a particular account by offering to pay a premium rate to new customers for a given period such as 90 days. Such accounts would be considered stepped-rate accounts and the annual percentage yield would be figured according to the rules in Appendix A. (See the supplementary information to appendix A, discussing variable rates.)

In addition, as with any other stepped-rate account, an institution would state the initial interest rate and the time that rate is in effect, as well as the rate that otherwise would apply if the initial rate were not in effect. For example, an institution might state: "You will be paid an interest rate of 6.00% for the first 90 days. The current rate being paid on the account is 4.50%." (The disclosures for variable-rate accounts will alert consumers that the rate may change after 90 days.)

Paragraph (b)(1)(ii)—Variable rates. The act does not expressly require specific additional disclosures for variable-rate accounts. Sections 264(d) and 265(2) of the act, however, recognize that the Board may wish to prescribe specific disclosures for variable-rate accounts. The Board proposed that account disclosures include information similar to the variable-rate disclosures for open-end credit found in Regulation Z.

Commenters agreed that the purposes of the act would be well served if consumers were alerted to the basic features of a variable-rate account, but many commenters expressed concern that lengthy and complicated disclosures would confuse rather than help consumers. The proposal required institutions to provide four pieces of information about variable-rate accounts, and the Board believes it is appropriate for each to be retained in the final rule. The Board believes it is important for consumers to receive basic information about a variable-rate account initially, particularly since consumers will not receive change in terms notices if the rate is later decreased. (See § 230.5(a)(2)(i).)

First, institutions must state that the interest rate and annual percentage yield may change. Second, they must explain how the interest rate is determined. For example, if the interest rate is tied an index (for example, the 1-year Treasury bill) plus or minus a specified margin, the index must be clearly identified and the specific margin stated. If an institution reserves the right to change rates and does not tie changes to an index, the fact that rate changes are solely within the institution's discretion must be stated. Third, depository institutions must explain the frequency—such as weekly or monthly—with which the interest rate may change. Institutions that reserve the right to change rates at any time must state that fact.

Finally, if the deposit contract places any limits on the amount the interest rate will change at any one time or for any period, the limitation must be explained. For example, if the institution places a floor or ceiling on rates or provides that a rate may not decrease or increase more than a specified amount during any time period, that must be disclosed. An institution may describe a floor or ceiling as a specific rate (for example, "your interest rate will always be at least 3%") or by explaining how the limitation operates (for example, "your interest rate will never drop lower than 2% below the interest rate initially disclosed to you"). If there are no limitations placed on rate changes, institutions may, but need not, disclose that fact.

Paragraph (b)(2)—Compounding and Crediting

Paragraph (b)(2)(i)—Frequency. The act requires institutions to disclose the frequency with which interest is compounded and credited, and any

changes in either frequency if a time requirement is not met. The supplementary information in the proposal tracked the act, but stated that institutions would have to disclose if changes in the compounding or crediting frequency would occur "under any other circumstance." The final regulation retains the basic disclosure regarding an institution's compounding and crediting practices. (See the supplementary information accompanying § 230.7(b) for a discussion of crediting practices.) The supplementary information accompanying § 230.4(b)(6)(ii) retains the substance of the statutory disclosure concerning changes in compounding and crediting frequencies, but simplifies the regulation by locating this provision in the paragraph dealing with early withdrawal penalties for time accounts. There it more plainly states that, if the institution changes compounding and crediting frequencies if a time requirement is not met, the institution must describe such changes and the conditions under which they will occur. The Board believes this event will rarely occur, but is retaining the requirement in light of the statutory provision.

Commenters asked about the degree of precision required to describe crediting and compounding practices. Descriptions such as "quarterly" or "monthly" adequately disclose the institution's practices. Also, institutions need not disclose irregular crediting and compounding periods such as if a cycle is cut short at year end for tax reporting purposes.

Paragraph (b)(2)(ii)—Effect of closing an account. Section 264(c)(9) of the act requires institutions to provide a statement, if applicable, that interest that has accrued but not been credited to the account at the time of a withdrawal will not be paid (or credited) due to the withdrawal. Section 267 of the act requires institutions to calculate interest on the full amount of principal in the account each day and prohibits calculating interest using methods such as the "low balance" method. In the proposal, the Board stated its belief that the Congress did not intend the disclosure provisions of section 264 to be interpreted as overriding the general rule regarding payment of interest. Thus, the Board proposed (in § 230.4(b)(7)) that institutions could not fail to pay interest on amounts withdrawn, and the statement required by section 264(c)(9) would be inapplicable.

Many comments were received on this provision. As discussed in § 230.7(b) below, commenters urged the Board to reconsider its interpretation of the act, particularly regarding accounts that are closed between crediting periods. For the reasons set forth in § 230.7, the Board believes that institutions may provide that if an account is closed before interest is credited, the institution need not pay interest that has accrued but not been credited on the account. Thus, the regulation has been revised to add a disclosure of this policy if it is relevant. If an institution has contracted to withhold interest that has accrued but not been credited on an account that is closed, that fact must be disclosed. (See Model Clause B-1(b)(ii).)

This issue was raised in the supplementary information to the proposed disclosure requirements for early withdrawal penalties. However, if an institution discloses an early withdrawal penalty for a time account (see paragraph (b)(6)(ii) of this section) that encompasses that amount of accrued but uncredited interest when all funds are withdrawn before maturity, such a disclosure will satisfy the requirements of this paragraph.

Paragraph (b)(3)—Balance Information

Paragraph (b)(3)(i)—Minimum balance requirements. The regulation requires institutions to disclose any minimum balance required to open the account, to avoid the imposition of fees, or to obtain the annual percentage yield. Institutions must also describe how they determine any minimum balance. A minor revision to the proposal (changing "fees" to "a fee") clarifies that the minimum balance disclosure requirement is triggered by the imposition of a single fee (for example, a $3 fee imposed if the average daily balance in the account drops below $500).

Commenters asked how to make this disclosure if fees on one account are tied to the balance in another account. Such a provision must be explained. For example, if an institution ties fees payable on a NOW account to a minimum balance maintained in a savings account (or a combination of the savings and the NOW account), the NOW account disclosures must explain that fact and how the balance in the savings account (or in both accounts) is determined. The fee need not be disclosed in the savings account disclosures if the fee is not imposed on that account.

Commenters requested guidance on describing the method used to determine a minimum balance. Institutions may combine their explanations of balance computation methods required under paragraphs (b)(3)(i) and (ii) if the methods are the same. Some institutions, however, use different cycles for determining minimum balance requirements for purposes of assessing fees and for paying interest. For example, an account's statement cycle may begin on the 15th of the month and that period is used for interest calculations. However, the institution may assess fees based on the balance in the account for the preceding calendar month. In such cases, institutions must disclose the specific cycle or time period used for each purpose. Institutions may assess fees by using any method they choose.

Paragraph (b)(3)(ii)—Balance computation method. The regulation requires institutions to describe the balance computation method the institution uses to calculate interest on the account. Sections 230.2(d) and 230.2(i) of the final regulation contain definitions of the two balance computation methods permitted under § 230.7(a).

Paragraph (b)(3)(iii)—When interest begins to accrue. The Board solicited comment on whether a disclosure of when interest on noncash items begins to accrue should be required. The Board received many comments on the issue. Section 230.7(c) requires institutions to begin paying interest no later than the business day specified in section 606 of the Expedited Funds Availability Act (EFAA) and its implementing Regulation CC. However, institutions may begin to pay interest earlier, such as the day a noncash deposit (typically, a check) is received by the institution. Commenters generally considered the information to be important for consumers and supported the disclosure. However, many were unsure that the information could be conveyed in a simple and effective way that consumers would readily understand. For example, the procedures that institutions follow to determine when interest must begin to accrue under EFAA are very complex. (See 12 CFR 229.14 and its accompanying staff commentary.) Commenters were concerned that considerable detail would be required and that the information would be more confusing than helpful. Others stated that consumers might not understand general industry terms to describe the balances on which interest begins to accrue, such as "ledger" balance to indicate that interest begins to accrue the day a noncase deposit is received by the institution and "collected" balance to indicate that interest begins to accrue no later than the business day required by EFAA and Regulation CC. Further, the term "collected balance" does not have a uniform meaning within the financial services industry.

The Board believes that comparison shopping by consumers will be enhanced if account disclosures reveal basic differences regarding when interest begins to accrue for noncash deposits. Thus, the regulation requires institutions to briefly state when interest begins to accrue. For example, institutions that begin to accrue interest pursuant to EFAA could explain that interest begins to accrue no later than the business day when the institution receives credit for the deposit. Institutions that begin to accrue interest the day a noncash deposit is received by the institution could state that fact. (See Model Clause B-1(e) in appendix B.)

Finally, some commenters requested that descriptions of balance methods under paragraphs (b)(3)(i) and (ii) of this section distinguish balances that include deposits from the day the deposit is made (described as a "ledger balance") from those that delay inclusion (described as a "collected balance"). Given the additional disclosures required by this subparagraph (3)(iii), the regulation does not require institutions to define balance computation methods as being a ledger or collected balance method.

Paragraph (b)(4)—Fees

The act requires disclosure of fees that may be assessed against the "account holder" as well as against the account. The regulation requires the disclosure of all fees that may be assessed "in connection with" the account which, as explained in the proposal, the Board believes captures the act's intent.

The act requires the Board to specify, in the regulation, which fees must be disclosed. The proposal, however, did not list every fee that might be imposed, nor did it mandate terminology for fees. The proposal provided guidance on types of fees that would and would not be considered to be assessed in connection with an account, and the Board solicited comments on the proposed approach for implementing the act.

Many comments were received on this provision. Some suggested that the scope of the fee disclosure be narrowed. However, the regulation retains a broad requirement to disclose all fees that may be assessed in connection with the account. The Board believes a broader definition more closely implements the statutory requirement and Congressional intent. This broader definition differs from the approach taken for advertising rules discussed in § 230.8(a) in conjunction with "free" or "no-cost" accounts. There, fees that trigger the rule are limited to "maintenance or activity fees." To illustrate, institutions must disclose fees to stop payment on a check under this paragraph, even though the fees would not be deemed an "activity" or "maintenance" fee for purposes of § 230.8(a).

Commenters asked for specific examples of fees that must or need not be disclosed. The Board believes that identifying all fees by name is not possible, as new fees may arise and names may differ among institutions. Types of fees that may be assessed in connection with an account would include, for example, maintenance fees (such as service fees and dormant account fees); fees related to deposits or withdrawals, whether by check or electronic transfer (such as per check fees, fees for use of the institution's automated teller machines (ATMs), fees to stop payment on a check previously issued, and fees associated with checks returned due to insufficient funds); fees for special account services (such as fees for balance inquiries and fees to certify checks); and fees to open or to close accounts (other than early withdrawal penalties for time accounts, which are addressed in paragraph (b)(6)(iii) of this section).

The proposal also required check printing fees to be disclosed. Many commenters opposed the disclosure of this fee, mainly due to the difficulty in describing the amount of the charges (which vary depending on the consumer's choice and which are in the control of a third party vendor). Commenters also stated it would be difficult to comply with an advance change in terms notice, given that the timing of price increases are controlled by the vendor. The Board believes that the concerns about disclosing costs for check printing are valid and therefore permits a variety of ways to make this disclosure. Institutions may disclose the lowest price at which checks could be purchased and indicate that higher prices may apply for the initial order and when checks are reordered; they may give a range of prices; or they may state that prices vary. (See, for example, Sample Forms B-4 and B-5 in appendix B.) Furthermore, the Board has provided an exception in § 230.5(a)(2) from the requirement to send an advance notice of change in terms for check printing fees assessed by third parties.

Fees that may be charged to a consumer for services unrelated to the account are not required to be disclosed. This includes fees that would be assessed to nonaccount holders, even if the amount of the fees differs for account and nonaccount holders. Examples are fees to purchase cashier's or traveler's checks, fees to lease a safe deposit box, fees for handling bond coupon redemption, and wire transfer fees. Although the proposal had included wire transfer fees as a fee assessed in connection with an account, many commenters argued that the service is provided to nonaccount holders as well as account holders and should be considered unrelated to the account. The Board has determined that wire transfer fees are not assessed "in connection with an account." (Of course, as with other fees not required to be disclosed under this paragraph, wire transfer fees may be included with the required disclosures.) Finally, the following fees need not be disclosed: fees for photocopying a statement of interest earned for tax purposes (IRS Form 1099), fees for name changes on an account, fees for a midcycle periodic statement, and fees for wrapping loose coins.

The regulation does not mandate terminology for fees. Thus, different institutions may describe the same type of fee by different names. For example, a monthly fee imposed regardless of the consumer's balance or activity might be identified as a "monthly service" fee, a "monthly maintenance" fee, or simply "monthly" fee, or other term, as long as the term is used consistently throughout the institution's disclosures.

The regulation requires institutions to state the amount of the fee and the "conditions" under which the fee may be imposed. The Board believes that typically the name and description of the fee will satisfy this requirement. For example, if an institution charges a $5.00 monthly service fee, and describes it in that manner, no further information need be provided.

Under the rule stated in § 230.3(c), if fees required to be disclosed under this section are also required to be disclosed under Regulation E (12 CFR 205.7), compliance with the disclosure requirements of Regulation E will be deemed to be in compliance with this section. For example, under Regulation E an institution issuing access devices must disclose fees assessed for transactions at its own ATMs, but is not required to disclose charges assessed by another institution for the use of an ATM owned by the other institution. That will also suffice for this regulation.

However, this regulation covers situations that are not covered by Regulation E. A fee assessed for an electronic fund transfer that is not covered by Regulation E (for example, a transfer of funds between accounts held at an institution) must be disclosed under this section.

Paragraph (b)(5)—Transaction Limitations

The act requires institutions to disclose the terms and conditions and account restrictions applicable to accounts. Adopted as proposed, the regulation requires institutions to state any limitations on the number or dollar amount of deposits to, withdrawals from, or checks written on an account for any time period. If withdrawals or deposits are not permitted on a time account, that fact must be disclosed.

Commenters asked for clarification regarding the disclosure of limitations addressed by Regulation E. Regulation E requires disclosure of limitations on the frequency and amount of electronic fund transfers except where confidentiality is essential to maintain the security of the electronic fund transfer system. (See 12 CFR 205.7(a)(4).) Institutions may rely on Regulation E's disclosure rules regarding limitations on the frequency and amount of electronic fund transfers, including security-related exceptions in complying with this regulation. If, however, disclosures are required under this paragraph, such as if an institution limited the number of transfers from other accounts at the institution each month, the fact that Regulation E exempts "intra-institutional transfers" from its coverage would not relieve the institution from making the Regulation DD disclosure.

Paragraph (b)(6)—Features of Time Accounts

Paragraph (b)(6)(i)—Time requirements. The proposal (in paragraph (b)(2) of this section) required institutions to state any time requirement that must be met to obtain the annual percentage yield on a time account. Commenters requested clarification whether institutions may disclose either a date ("March 3, 1993") or a term ("six months" or "182 days"). The Board believes that the actual maturity date must be given to consumers who open new accounts to ensure consumers know the exact date the account matures. However, institutions may state a term (for example, "six months" or "182 days") rather than a specific date when providing disclosures in response to requests by consumers. (See paragraph (a)(2) of this section.) If the agreement provides that the time account may be redeemed at the institution's option (a "callable" certificate of deposit), the disclosure must state the date or the circumstances under which the institution may redeem the deposit. (See Model Clause B-1(h)(i) in appendix B.) Commenters also asked whether the maturity date stated on the time account certificate would satisfy this disclosure requirement. As stated earlier in connection with § 230.3(a), the Board believes that account disclosures—including those for time accounts—may consist of more than one document, so the certificate could be used. However, all documents containing the required disclosures must be provided to the consumer at the same time and must be in a form the consumer can retain. Thus, if a disclosure is made on a certificate of deposit that must be returned to the institution at maturity, the disclosure must also be provided to the consumer in a form the consumer may retain permanently.

Paragraph (b)(6)(ii)—Early withdrawal penalties. Section 264(c)(10) of the act requires institutions to disclose any requirement relating to the nonpayment of interest, including any early withdrawal penalty. The Board proposed (in § 230.4(b)(7)) to limit this requirement to time accounts, although the act does not explicitly do so, since an early withdrawal contemplates a maturity date, which exist only in time accounts. Commenters supported this limitation and the final regulation reflects this position. The act and regulation place no limitations on how early withdrawal penalties are calculated.

Commenters asked for clarification of whether existing rules and contract rights are affected. Rules relating to the imposition of early withdrawal penalties found in regulations such as the Board's Regulation D are not affected by this provision. This paragraph does not confer upon consumers a right to withdraw funds from a time account, even if they are willing to accept the penalty described in their account disclosures. It does not impair an institution's right to refuse to permit a withdrawal prior to the maturity of a time account. For institutions that choose to permit withdrawals, this disclosure provision also does not regulate under what circumstances the institution may impose an early withdrawal penalty.

The regulation requires institutions to disclose the conditions under which an early withdrawal penalty will be assessed. Some commenters asked whether bonuses that may be "reclaimed" must be disclosed under this provision. The Board believes that institutions that offer bonuses for time accounts must disclose if the bonus may or will be reclaimed and the circumstances under which the reclamation will occur, since this is a type of early withdrawal penalty.

The language of the regulation differs from the proposal in three respects. In response to comments from institutions that impose early withdrawal penalties on a case-by-case basis, the regulation permits institutions to disclose the possibility—rather than the certainty—of such a penalty. Thus, institutions may state they "may" impose a penalty if that more accurately describes their agreement with the consumer. Also, the regulation clarifies that institutions must state how the penalty is calculated. For example, institutions may disclose a specific dollar amount or describe the penalty, such as "seven days' interest." (If accrued but uncredited interest is withheld as a part of, or in addition to, the early withdrawal penalty, this must also be disclosed.) Model Clause B-1(h)(ii) in appendix B provides examples of how early withdrawal penalties may be disclosed.

Also, many commenters were concerned that the proposal seemed to require institutions to calculate an interest rate and an annual percentage yield assuming that an early withdrawal penalty will be imposed during the term of the time account. The regulation does *not* require institutions to make such calculations, and the sentence has been deleted from the regulation. However, if a withdrawal of some funds triggers a change in the interest rate and annual percentage yield that is paid on funds remaining on deposit, or a change in the compounding or crediting frequency, those terms must be disclosed as an early withdrawal penalty.

Commenters requested guidance on the disclosure of penalties associated with withdrawals of funds from club accounts such as "holiday club" accounts that are time accounts. (See discussion in § 230.2(u).) If these accounts meet the definition of a time account, they must disclose any early withdrawal policy.

Paragraph (b)(6)(iii)—Withdrawal of interest prior to maturity. The proposal has been revised to add a disclosure to alert consumers to the effect of withdrawing accrued interest before additional interest begins to accrue on that account, since the annual percentage yield for time accounts generally is based on the assumption that interest remains in the account until maturity. Institutions commonly offer certificates of deposit that compound interest monthly (or quarterly) and may permit consumers to withdraw (or transfer) accrued interest periodically or to leave the interest in the account until maturity. For example, assume an institution offers the same interest rate with monthly compounding to two

consumers. Under the proposal, if one withdrew interest monthly and the other withdrew interest only at maturity, both would have received identical annual percentage yield information even though their actual earnings would differ. Some commenters recognized this problem and suggested the act's purposes would be better served if the Board revised its method of calculating annual percentage yields to require specific calculations based on the consumer's choice when the account is opened about whether to withdraw interest or leave it in the account until maturity. The Board believes, however, that such a rule requiring different annual percentage yields would significantly complicate the regulation, and possibly confuse consumers shopping for such accounts.

Upon further analysis, the Board believes the requirement adopted in the final regulation will better assist consumers. If, on a time account that compounds interest during the term, a consumer elects to withdraw accrued interest, the institution must disclose that the annual percentage yield assumes that interest remains on deposit until maturity and that a withdrawal reduces the earnings on the account. To ease compliance, this disclosure may be provided any time this option to withdraw interest is given, regardless of whether the consumer actually exercises the option or indicates any preference about withdrawals.

The Board believes it is appropriate to limit the statement to time accounts, where consumers may have a greater expectation about the effect of compounding on amounts deposited. In the unusual event an institution requires such interest withdrawals, the disclosure would not be required since the annual percentage yield would reflect the effect of the interest withdrawals. This disclosure is not required when interest may only be withdrawn on a time account due to rare circumstances, such as due to the death or incapacity of an account holder.

Paragraph (b)(6)(iv)—Renewal policies. The act requires institutions to disclose the "terms and conditions" applicable to accounts generally, but does not expressly mandate disclosure of an institution's policies about renewal of time accounts. Section 264(d) of the act, however, recognizes that the Board may wish to require information to be given regarding renewal policies for time accounts. Thus, the proposal required institutions to include a statement of whether or not the time account will automatically renew at maturity and, if the account will not automatically renew, to state whether interest will be paid on funds not withdrawn from the institution.

The Board believes it is important for consumers to be informed whether a time account will automatically renew, since time accounts limit the consumer's access to his or her funds in a way other accounts do not. The Board also believes it is important for consumers to know that the consumer must contact the institution at a later time to renew an account and whether interest will be paid on funds after maturity if the consumer does not renew the account, in the case of "non-rollover" time accounts. Thus, the regulation requires both of these disclosures. For example, an institution might disclose for a non-rollover time account that "this account will not automatically renew at maturity and the funds will be placed in a noninterest-bearing account." If funds are placed in an interest-bearing account, this disclosure does not require institutions to state the rate that may be paid. However, if interest is paid for only a limited period of time, the time period must be disclosed. (See Model Clause B-1(h)(iv)(2) in appendix B.)

Additionally, the Board solicited comment on whether institutions should be required to disclose whether an automatically renewable account has a "grace period" and the length of such a period. (See § 230.2(m), defining grace period as a period following the maturity of an automatically renewing time account during which the consumer may withdraw funds without being assessed a penalty.) Most commenters supported a disclosure of grace periods as important information for consumers.

Thus, the regulation requires institutions to inform consumers with automatically renewable time accounts whether or not a grace period exists and the length of such a period. For example, an institution might disclose, "you may withdraw the deposited funds without penalty for 10 calendar days after the maturity date of this account." This disclosure does not require institutions to state whether or not interest will be paid for the grace period if the funds are withdrawn. (Rules found in the Board's Regulation Q and other federal financial regulatory agencies' regulations relating to the payment of interest following maturity of a time account are not affected by this regulation. See 12 CFR 217.3, footnote 1, permitting institutions to pay interest for up to 10 days after maturity of a "time deposit," as that term is defined in Regulation Q, if the deposit is not renewed.)

Paragraph (b)(7)—Bonuses

The final regulation adds a new disclosure requirement relating to bonuses. (See § 230.2(f) for the definition of "bonus.") The Board believes that the language in section 262(a) of the act regarding disclosures about the terms and conditions of accounts encompasses bonuses, and that the act's purposes are furthered when consumers receive essential information about bonuses offered on an account. Thus, the regulation requires that institutions offering bonuses state the amount and type of bonus, and disclose any minimum balance or time requirement to obtain the bonus and when the bonus will be provided. If the minimum balance or time requirement is otherwise required to be disclosed, institutions need not duplicate the disclosure for purposes of this paragraph. The Board believes the additional disclosure will provide consumers with important information without significantly increasing compliance burdens.

Paragraph (c)—Notice to Existing Account Holders

Paragraph (c)(1)—Notice of availability of disclosures. Section 266(e) of the act requires institutions to include a notice on or with any regularly scheduled periodic statement sent to existing account holders "within" 180 days of issuance of the regulation. Account holders who receive periodic statements must receive the notice. Institutions are not required to provide any notice to account holders who do not receive periodic statements. (This parallels the approach taken in § 230.6, in that *if* an institution sends a periodic statement on an account, the disclosure requirements of § 230.6 are triggered.)

The act requires that the notice state both that the account holder has a right to request disclosures and that the consumer may wish to make such a request. In the proposal, and in the final regulation, the Board simply requires a statement that the account holder may wish to request the disclosures. The Board believes this adequately alerts consumers to the availability of disclosures for their account. However, some commenters were concerned that consumers might misinterpret the notice as implying that account terms had changed. Institutions may include additional information with the notice to alleviate any such concerns, or to indicate (if applicable) that the consumer has already received similar disclosures as required by state law. The notice must, however, make clear

that the consumer may request a copy of the disclosures. The notice required by this paragraph need only be provided once.

Comments received on the proposal requested guidance on: (1) The identification of consumer accounts from the existing records of the institution, (2) the need to create disclosures for accounts no longer offered to the public; and (3) the timing and format of the notice.

Existing consumer accounts. The proposal required that notice be provided to existing account holders. All individual consumer accounts are covered by this provision. However, as discussed earlier in § 230.2(a), accounts held by an unincorporated nonbusiness association of natural persons prior to March 21, 1993, are not covered by the regulation unless the association notifies the institution that it fits the "consumer" definition. If the institution is so notified, the institution must implement the requirements of the regulation (for example, beginning to accrue interest no later than required by § 230.7(c)) within a reasonable time after the notice is received. If an institution is notified before the mandatory compliance date, institutions are not required to send the notice required by this paragraph, but must treat the account as a consumer account within a reasonable time after the notification.

Currently offered accounts. The final rule requires that institutions provide disclosures only for accounts that are currently available as of March 21, 1993. (See discussion of paragraph (a)(2) of this section.) Commenters noted that many institutions continue to carry accounts that are no longer offered to the general public. For example, if an institution acquires accounts during an acquisition, it may maintain the accounts as a courtesy to customers of the acquired institution, even though the account type will not be offered thereafter. The Board does not believe it was the intent of the Congress to require tailored disclosures for each and every existing account, regardless of whether the account is still offered to customers. The Board recognizes the significant cost burden associated with designing separate disclosures for existing accounts that are no longer offered, and the limited use of such disclosures in the future (as consumers would not be able to open such an account). The Board also believes if disclosures for such accounts were required, institutions might simply change the terms of existing accounts to conform them to accounts currently offered. Thus, the regulation limits the duty to provide the notice (and disclosures) to accounts available to the public as of the mandatory compliance date of the regulation.

Timing and format requirements. In the proposal, the Board noted that if the statutory requirements were interpreted literally, institutions would have to include a notice to existing account holders prior to the mandatory compliance date of the regulation. The Board solicited comment on whether it would be preferable for all compliance duties to begin six months after the Board has adopted final regulations (when compliance becomes mandatory). Virtually all of the commenters supported a single timing rule for initiating compliance with the regulation, noting the difficulty of providing a notice and having disclosures ready prior to the mandatory compliance date of the regulation. Institutions commented on the act's relatively short time frame to implement operational changes based on the new regulatory requirements (for example, balance calculation methods), and expressed concern that the changes may not be in place until the mandatory compliance date. The final rule reflects the fact that compliance is not required until six months after the Board adopts final regulations.

Many commenters sought guidance on which periodic statement must include the notice. The final regulation clarifies that the notice required by this section may accompany either the first periodic statement sent after the mandatory compliance date or the periodic statement for the first cycle beginning after that date. The rule applies regardless of the interval between periodic statements. For example, assume an institution's statement cycle begins March 15, 1993, ends April 14, and the statement is sent April 15; the next statement cycle begins April 15, and ends May 14, and the statement is sent May 15. The institution may provide the notice on either the April 15 statement, since it is the first one mailed after the mandatory compliance date, or the May 15 statement, since it covers the first cycle beginning after the mandatory compliance date.

A number of commenters expressed interest in providing the notice before the mandatory compliance date. As a general matter, institutions may begin complying with the regulation any time after its adoption and before the mandatory compliance date. Therefore, institutions may provide the notice on a periodic statement before March 21, 1993, but only if the institution is prepared to provide account disclosures upon request as of the date the notice is sent. This will ensure that the Congressional intent regarding availability of disclosures for existing customers is met. If the institution does comply before the mandatory compliance date, it must establish procedures to ensure that consumers opening new accounts before that date, but after the notice is provided to existing customers, receive account disclosures.

The final rule tracks the statutory language by requiring that the notice be included "on or with" the periodic statement. The notice can be on an insert included with the statement, but it cannot be sent out as a separate mailing. The notice must state that consumers may request account disclosures containing terms, fees, and rate information for their account, or words of similar meaning.

If the institution provides the notice of availability to existing account holders and the consumer requests disclosures, the act does not prescribe how institutions must respond. The proposal stated that if the institution received a request, it would have to provide the account disclosures described in § 230.4, including the current interest rate and annual percentage yield for the consumer's account. The Board recognizes that it may be difficult to distinguish a request for disclosures by an existing account holder from a request by a potential customer. Thus, the final regulation allows institutions to treat an existing account holder's request under this paragraph as it would treat any consumer's request for disclosures under paragraph (a)(2) of this section.

Institutions may, but are not required to, provide a phone number or address for existing consumers to use to make the request for disclosures. If, however, the request is received in a manner other than the notice directed, the institution is still required to provide the disclosures as specified in paragraph (a)(2) of this section. The Board believes that this uniform approach to requests for disclosures will ease compliance for institutions and assure consumers of convenient access to information about their accounts whether they are existing or potential customers.

Paragraph (c)(2)—Alternative to notice. As an alternative to providing the notice of availability, the final rule permits institutions to send the account disclosures themselves, either with the periodic statement or in a separate mailing. While the proposal required the disclosures to be provided with a periodic statement, many commenters

noted operational difficulties in including a full set of account disclosures with the statement mailing. Therefore, a revision has been made to allow a separate mailing. If disclosures are provided separately from the periodic statement, however, they must be sent out no later than when the notice of availability is required to be sent after the mandatory compliance date. Further, institutions that send multiple account disclosures in lieu of sending the notice of availability need not identify which account the consumer holds, and may send account disclosures that comply with paragraph (a)(2) of this section. The Board believes this rule will ease compliance for those institutions that go beyond the strict requirements of the regulation to provide consumers with the actual disclosures about their accounts.

Section 230.5—Subsequent Disclosures

The heading for § 230.5 has been revised from the proposal. As discussed below, the Board believes that combining rules relating to disclosures required subsequent to the account opening will aid compliance. Thus, the heading is changed to identify more accurately the section's content.

Paragraph (a)—Change in Terms

The proposal contained the requirements for, and the exceptions from, the advance notice of change in terms in a single paragraph. For ease of compliance, the final regulation separately discusses when notices are and are not required.

Paragraph (a)(1)—Advance notice required. Section 266(c) of the act requires institutions to send a 30-day advance notice to the consumer of any change in the items required to be disclosed in the account disclosures if the change might reduce the annual percentage yield or adversely affect the consumer. The proposal required a written notice describing the change and its effective date to be sent 30 days before the effective date of the change. The final regulation follows the act and proposal, but establishes certain exceptions to the advance notice requirement, as discussed below.

The notice provision governs changes in terms in accounts existing when compliance with the regulation becomes mandatory, not solely accounts opened after that date. The regulation does not, however, require a 30-day advance notice for a change in terms if this would require an institution to send a notice prior to the mandatory compliance date. For example, an institution is not required to send an advance notice for a change that becomes effective March 31, 1993, since that is less than 30 days after the mandatory compliance date.

Content. The notice requirement applies only to items of the type required to be included with the account disclosures. For example, if an institution increases the minimum balance required to earn interest or to avoid imposition of a fee or increases the fee it charges for stop payment orders, an advance notice must be provided. Similarly, if the interest rate on a fixed-rate account decreases, the institution must send a notice in advance of the scheduled rate change. (An advance notice of an increase in the interest rate is not required by the regulation.) Increases in an institution's charge for services not related to an account, such as for purchasing traveler's checks, does not trigger the notice requirement, since it is not required to be disclosed under § 230.4(b). If a single document containing disclosures for two types of accounts was initially provided, and the institution later changes a term relevant to only one of the accounts, the change in terms notice need only be given to consumers holding that type of account, and not to the holders of the second type of account.

Commenters requested guidance on several issues relating to the notice requirement. Regarding the format for the disclosure, the general rules in § 230.3(a) apply. Institutions may include the change in terms disclosure on a regular periodic statement or in a special mailing, and may combine information concerning the changed term with other information on the same or separate pages. Institutions that wish to provide an entire updated account disclosure may do so as long as the changes are specifically brought to the consumer's attention. For example, institutions may state that "X" fee has been changed (including, of course, the amount of the new fee), or use an accompanying letter that alerts the customer to the new fee, or highlight the changed term in some way. To ensure that consumers understand when the change may affect their accounts, institutions must disclose the effective date, for example, "as of July 15, 1993." Words similar to "in 30 days" cannot be used unless the notice clearly indicates the starting date.

A change in terms notice is not triggered if changes are specifically identified in the account disclosures given initially. For example, if a NOW account disclosure states that the monthly service fee of $5.00 is waived for employee account holders during their employment, but will be assessed if the account holder is no longer employed at the institution, no advance notice is required to begin assessing the monthly service account fee when the consumer leaves the employment of the institution. Similarly, if an account is opened after an institution has sent a change in terms notice to its existing account holders but prior to the effective date of the change, the institution is in compliance if the change in terms notice is provided to the new customers along with the account disclosures before the account is opened.

If a change will apply during the subsequent term of a renewing rollover time account, it is not a "change in terms" requiring a notice under this paragraph. (See paragraph (b) of this section, below, for disclosure requirements for maturing time accounts.) For time deposits longer than one month, however, if terms change during the term of a time account, the 30-day notice would have to be provided.

Pursuant to § 230.3(c), if the term requiring a notice to be sent is a term that triggers a change in terms notice under Regulation E, compliance with the disclosure and timing requirements of Regulation E will satisfy the requirements of this section. (See 12 CFR 205.8, which requires change in terms notices to be sent at least 21 days before the scheduled change.)

Paragraph (a)(2)—No notice required—Paragraph (a)(2)(i)—Variable-rate changes. The Board solicited comment on whether an exception to the change in terms notice requirements should be made for rate changes that occur in variable-rate accounts. Sections 265 and 269(a)(3) of the act authorize the Board to make exceptions to the act's requirements for variable-rate accounts, and the Committee report accompanying H.R. 2654 of the House Committee on Banking, Finance and Urban Affairs, September 12, 1991, indicates the change in terms requirement was not intended to apply to changes in the interest rate (and corresponding changes in the annual percentage yield) for variable-rate accounts. (See discussion of this issue in connection with § 230.2(v), above.) In the proposal, the Board expressed concerns about the possibly burdensome nature of an advance notice requirement for variable-rate accounts, and solicited comment on the advantages and disadvantages of creating an exception to the rule for such accounts.

The Board received many responses to its request for comment and virtually all of them supported the proposed

exception. Many commenters echoed concerns raised by the Board in the proposal. Commenters stated that an advance notice requirement for changes to the interest rate in variable-rate accounts would be very burdensome to administer. They suggested that if institutions were required to send advance notices for rate changes in a declining rate environment, many institutions would lower the rate more than they otherwise might to avoid the cost of sending frequent notices. Thus, lower rates would be paid to consumers than would otherwise be the case. Others stated that such a restraint on an institution's ability to make timely adjustments to its balance sheet raised safety and soundness concerns. Commenters also contended that the regulation's disclosure requirements (see § 230.4(b)(1)(ii)) alert consumers to the potential for rate changes and their possible frequency. And for those accounts for which periodic statements are sent (such as NOW or money market accounts), information about the annual percentage yield earned that is required under § 230.6(a)(1) will reflect rate changes that have occurred.

Thus, the Board is relying on its exception authority in section 265(2) of the act to further the purposes of the act. For the reasons expressed in the proposal and discussed above, the Board finds it necessary to exempt rate changes for variable-rate accounts from the advance notice requirements of the regulation.

In the proposal the Board expressed its concern that for variable-rate accounts where periodic statements are not sent—such as passbook savings accounts—considerable time may pass before consumers learn about rate changes on their accounts. The Board solicited comment on whether institutions should be required to send a notice after the rate is decreased on a variable-rate account if periodic statements are not furnished.

Comments were divided, with some supporting and others opposing after-the-fact notices. Those who favored a notice argued that a decrease in rates is important information for consumers, and that institutions should be required to provide the information to consumers within a reasonable period after the change occurs. Those who opposed it were apprehensive about the costs and burdens involved, and suggested that institutions would pay lower rates to mitigate such costs. They also pointed out that consumers were on notice of the possibility of rate decreases and could always contact the institution for current rates.

Based on comments received and upon further analysis, the regulation does *not* require institutions to provide an after-the-fact notice of a decrease in rates for variable-rate accounts for which no periodic statements are sent. The Board believes that account disclosure adequately alert consumers to potential rate changes and that they have easy access to current rate information. Also, the Board recognizes that the cost of sending notices may cause institutions to delay or not implement rate increases in a volatile rate environment that otherwise might be passed on to consumers.

Paragraphs (a)(2)(ii)—Check printing fees. The Board is creating a limited exception to the change in terms notice requirements for one type of fee involved in accounts but assessed by third parties. The Board received many comments regarding its proposal that check printing fees be included in the account disclosures, which would cause later changes in those fees to trigger the notice requirements of this section. Commenters objected to the proposal, stating that institutions could not assure compliance with the change in terms notice provision because vendors control when price changes become effective and consumers control when the fee is imposed (that is, when the checks are ordered). In light of these problems the Board believes that, pursuant to section 269(a)(3) of the act, an exception to the advance notice requirement is necessary for fees assessed by third parties for printing checks. The exception is narrowly drawn and is created to facilitate compliance with the act. Unlike other fees strictly within the control of institutions, the amount of check printing fees is in the control of vendors, who determine the effective date of price changes, and consumers, who decide whether or not to purchase checks from the vendor associated with the institution and, if so, what style of checks will be chosen and when the checks will be ordered.

Paragraph (a)(2)(iii)—Short-term time accounts. The Board is creating an exception to the advance notice requirement for changes in terms for short-term time accounts, defined as those with maturities of one month (a period up to 31 days) or less. As discussed in paragraph (c) of this section, the Board is creating an exception to the advance notice requirements for rollover time accounts with maturities of one month or less. The Board finds a similar exception to be appropriate for the advance notice requirement for changes that occur after an account is opened and prior to the next scheduled maturity date for both rollover and nonrollover time accounts with maturities of one month or less. Requiring institutions to send a 30-day advance change in terms notice for such time accounts is impossible. It would be burdensome for institutions without providing meaningful benefits to consumers holding the time accounts. (As discussed in paragraph (c) of this section, however, institutions are required to send after maturity a disclosure of any difference in the terms of the new account as compared to the terms for the existing account.)

Paragraph (b)—Notice Before Maturity for Time Accounts Longer Than One Month That Renew Automatically

Disclosure requirements for time accounts that automatically renew without the consumer's request (for example, "rollover" certificates of deposit) were outlined in § 230.4(a)(3) of the proposal. For ease of compliance, all rules governing disclosures of pending maturities and other terms for such time accounts are contained in paragraphs (b) and (c) of this section.

For existing rollover time accounts that mature after the mandatory compliance date, institutions must start providing notices after that date, but need not send notices prior to that time. For example, if a rollover certificate of deposit opened in 1992 matures five days after the mandatory compliance date, an institution is not required to send a notice since this would require an institution to send a notice prior to the mandatory compliance date of the regulation. However, an advance notice would be required if the same account matured on April 21, 1993, a date more than 30 days after the mandatory compliance date.

The act requires account disclosures to be provided to consumers at least 30 days prior to the maturity of a time account that is renewable without notice from the consumer. The proposal required institutions to mail or deliver the account disclosures described in § 230.4(b) to such consumers at least 30 days and not more than 60 days prior to maturity. The proposal provided an exception from the advance notice requirement for rollover time accounts with maturities of three months or less (though it required disclosures to be sent after renewal in such cases). The Board requested comment on an exception from the statutory requirements based on a tiered approach: disclosures would be sent 30 days prior to maturity for time accounts with maturities over six months, 15 days for time accounts with

maturities between one and six months, and no advance disclosures for time accounts with maturities less than one month. The Board also asked for comment on an alternative approach to disclosing rate information since rates typically are not known at the time the act requires disclosures to be made.

Most comments received by the Board on the proposed regulation discussed the implementation of the statutory requirement to provide disclosures for automatically renewable time accounts in advance of maturity and expressed considerable concern about the proposed rule. In particular, comments focused on (1) an exemption for short-term time accounts, (2) an alternative timing rule that allows institutions to provide the information closer to the scheduled maturity date, and (3) the content of disclosures, and how to disclose the annual percentage yield and interest rate if these rates are not known when the account disclosures are sent.

With regard to short-term accounts, commenters said it was impossible to send notices 30 days in advance of the first renewal of time accounts with maturities under 30 days. Further, they argued that the burden to institutions of complying exceeded whatever benefit consumers might receive from a notice received after the terms had become obsolete. Others remarked that consumers who hold such time accounts are often sophisticated investors who would find frequent reminders unnecessary.

Several hundreds of commenters urged the Board to shorten the timing of the advance notice for all time accounts. Based on their institutions' experiences, commenters stated that a lead time of 30 days was too long for an effective notice of maturity, and reported that consumers preferred to receive reminders closer to maturity so they would be less likely to forget when the time account automatically renewed.

Commenters also questioned whether consumers benefited from receiving all of the disclosures prior to maturity even if none of the terms (other than rates) had changed. Commenters expressed concern about the cost and value to consumers of sending all the disclosures, especially for short-term time accounts.

The Board finds that creating three exceptions to the statutory requirement to provide account disclosures for automatically renewable time accounts 30 days in advance of maturity is necessary to facilitate compliance, benefit consumers and carry out the purposes of the act. The final rule provides that: (1) Disclosures may be given closer to maturity rather than a full 30 days in advance as long as at least a five-day grace period is provided; (2) maturity notices for time accounts with maturities of one year or less need not provide all the information contained in an account disclosure, but only the key information and any changed terms; and (3) no advance notice is required for time accounts with maturities of one month or less. The rule adopted by the Board differs from the proposal. It addresses many of the concerns voiced in the comments and provides flexibility to institutions in designing their prematurity notices. For automatically renewable time accounts with maturities of more than one year, institutions must provide full account disclosures as the act requires. If the scheduled maturity date is one year or less but more than one month, institutions must provide key information and any terms (other than rates) that may be different on the renewing account compared to those on the existing account. If the maturity date is one month or less (a period up to 31 days), advance disclosures are impracticable to deliver, but institutions must provide a notice of any changed terms (other than rates) applicable to a renewed account within a reasonable time after renewal.

Alternative timing rule. Many commenters urged the Board to create an alternative timing rule to the act's 30-day advance notice requirement that would allow institutions to provide advance disclosures closer in time to the maturity date. Most commenters believed their existing practice of sending notices 10 to 15 days in advance of the scheduled maturity date was more beneficial to consumers than the proposed 30-day advance notice. A number of institutions reported having changed their practices from 30 days to a shorter time period in response to consumer preferences. They suggested that notices sent far in advance of maturity are ineffective as reminders and do not change consumers' tendency to begin comparison shopping much closer to the actual maturity date (or during the grace period where one is given) when the renewal rate is known. The Board agrees. Thus, the regulation provides a timing rule for advance disclosures as an alternative to the 30-day rule—one that involves a consumer advantage.

The alternative rule provides a "sliding scale" of 20 calendar days advance notice, provided at least a five calendar day grace period is given. If an institution provides a grace period of at least five days on rollover time accounts, the regulation permits institutions to provide the required disclosures 20 days before the end of the grace period. Thus, if a five-day grace period were offered, an institution must send the required disclosures at least 15 days before the maturity date. If an institution offers a 10-day grace period, the advance disclosures must be sent at least 10 days before the scheduled maturity date. (Of course, the institution could send the notice more than 10 days in advance of maturity.)

This alternative provides institutions with great flexibility in sending notices closer to maturity. Also, the rule may encourage institutions who do not offer grace periods to do so. Most important, the alternative timing rule benefits consumers, who will be able to contact the institution within the grace period and learn the actual annual percentage yield and interest rate being offered on the renewing time account before they are committed to the renewal. The alternative may be used by institutions that provide a grace period of at least five days. Institutions that do not wish to offer grace periods of at least five days must provide the 30-calendar-day advance notice.

The Board believes this alternative benefits consumers by providing them with notices that will be effective reminders of the upcoming maturity of their time accounts and useful tools for comparison shopping at a time when competing rates and yields are more likely to be known. Commenters frequently reported that they offered grace periods of 7 to 10 days following maturity and gave advance notices of 7 to 15 days before maturity. Thus, the alternative rule also provides great flexibility to many depository institutions to maintain their existing advance notice and grace period schedules. For example, institutions that currently provide notices 14 days in advance of maturity and offer a 10-day grace period could avail themselves of the alternative timing rule, without changing their practice.

Paragraph (b)(1)—Maturities of longer than one year. If an automatically renewable time account has a maturity longer than one year (more than 365 days, or more than 366 days in a leap year), the regulation tracks the statutory requirement that institutions provide consumers with all applicable account disclosures required for new accounts (see § 230.4(a)(1)), and adds a disclosure of the date the existing account matures. The Board believes consumers need to be informed of the exact date the account matures to make timely decisions about the account. Although the proposal required full account disclosures to be given to all consumers with rollover time accounts with

maturities of more than three months, many commenters urged that a cut-off of one year was more appropriate and that is used in the final regulation.

The regulation addresses the problem presented when advance disclosures are required to be sent before the interest rate and the annual percentage yield for the renewed time account are known. The Board does not believe the act requires institutions to "lock in" or guarantee the rates for an account at the time of the advance notice. In its proposal, the Board raised concerns about a consumer's ability to comparison shop effectively and the confusion that might result if consumers were given the annual percentage yield and interest rate that were in effect at the time the notice was sent, but which would not necessarily apply at maturity. Commenters shared the Board's concerns, and supported the proposal of an alternative disclosure concerning rate information. The regulation requires those institutions to state that the interest rate and the annual percentage yield for the account have not yet been determined, the date when they will be determined, and a telephone number the consumer can call to obtain the interest rate and the annual percentage yield that will be paid if the account renews. The Board believes consumers are better served by receiving the actual annual percentage yield that will apply to the renewed time account, even if they must contact the institution to do so. Furthermore, if institutions were required to provide rates as of the date of the notice, consumers would have to call the institution to determine the actual annual percentage yield at the time of renewal anyway. Therefore, the alternative of including the most recent annual percentage yield appears to be of little benefit to consumers.

Paragraph (b)(2)—Maturities of one year or less but longer than one month. Many commenters agreed that, other than for automatically renewable time accounts with very short maturities, advance notices provided consumers with a useful reminder about the upcoming maturity. However, many questioned the value of repeating full account disclosures in advance, given that the key terms of the account—the annual percentage yield and the interest rate—were likely to be unknown at the time the disclosures were given. Similarly, commenters were skeptical about the value of providing terms that remain unchanged, such as the balance computation method, and pointed out that terms of time accounts seldom change except for the rate. They argued that too much information may not be helpful to consumers, and urged the Board to consider alternative disclosures for automatically renewable time accounts with maturities that were not very long.

The regulation therefore provides an alternative to institutions offering rollover time accounts bearing maturities of one year (365 days, or 366 days in a leap year) or less but longer than one month (31 days). Institutions may give full account disclosures for these time accounts as they do for automatically renewable time accounts of longer than one year. For example, if they found it simpler to have a single procedure, institutions could provide all account disclosures plus the existing account's maturity date for all their time accounts with maturities greater than one month.

Alternatively, institutions may provide an abbreviated notice for these intermediate-length time accounts that tells the consumer the date the existing account matures and the maturity date if the account is renewed, the interest rate and the annual percentage yield if they are known (or, if they are not known, the fact that they have not yet been determined, the date when they will be determined, and a telephone number the consumer can call to obtain that information), and any change to the terms required to be disclosed under § 230.4(b) when the account was opened. (Of course, if a change occurred that would apply to the time account prior to its scheduled maturity, the change in terms rules in paragraph (a) of this section would apply.)

Thus, institutions have great flexibility in providing disclosures for rollover time accounts with maturities of longer than one month and up to one year. And, whether full or abbreviated disclosures are provided, the information may be sent either 30 calendar days before maturity, or 20 calendar days before the end of a grace period (of at least five days). Thus, if an institution wishes to offer a five-day grace period on some automatically renewable time accounts and a 10-day grace period on others, this rule permits the institution to send all notices 15 days prior to maturity, or to establish separate mailing schedules for each category.

Paragraph (c)—Notice for Time Accounts One Month or Less That Renew Automatically

The legislative history of the act recognizes that the Board may wish to establish special rules for short-term accounts. (See the Committee Report accompanying H.R. 2654, of the House Committee on Banking, Finance and Urban Affairs, September 12, 1991.) The Board finds that for automatically renewable time accounts bearing maturities of one month or less, the purposes of the legislation are not served by requiring advance disclosures to be provided for renewing accounts. In the case of very short-term time accounts such as seven-day certificates of deposit, any advance timing requirement in excess of seven days is impossible. Also, the Board is concerned that the cost of sending notices for short-term rollover time accounts might discourage institutions from continuing to offer such accounts and this could eliminate a useful investment vehicle for consumers. Finally, the Board is not persuaded that consumers benefit by constantly receiving account disclosures, particularly of terms that have not changed. Thus, the regulation does not require institutions to provide advance disclosures relating to the renewal of automatically renewable time accounts bearing maturities of one month (31 days) or less.

As proposed, institutions were required to provide full disclosures at or after maturity of short-term time accounts—no later than 10 business days after such accounts were renewed. Commenters opposed the proposal for a variety of reasons. They argued that disclosures sent after maturity do not serve as a reminder of the pending maturity nor do they aid comparison shopping since consumers likely would not receive the rates applicable to the account until after the account was renewed. Further, commenters suggested that, for automatically renewable time accounts with very short maturities such as seven days or 30 days, the delivery and receipt of 52—or even a dozen—account disclosures each year were burdensome to institutions and not useful to consumers. Many commenters suggested that an exception be created from any renewal notice requirements for automatically renewable time accounts with very short maturities. The Board agrees that full disclosures may not be necessary for these short-term accounts. However, the Board believes that consumers should be notified if terms other than rates have changed since the last renewal. If this were not required, an institution could change a feature such as compounding frequency or the length of a grace period and the consumer might never receive notice.

The final regulation therefore requires institutions to provide limited information to consumers with rollover time accounts with maturities of one month (31 days) or less. Institutions are not required to send notices in advance

of maturity. However, if a term disclosed when the account was opened (other than the interest rate and annual percentage yield) changes at renewal, institutions must send a brief notice describing the change within a reasonable time after the renewal of the new account. While this notice may rarely be sent for short-term time accounts since non-rate terms seldom change, the Board believes the provision reflects Congressional intent to provide consumers with key information while accommodating the operational concerns expressed by commenters.

Paragraph (d)—Notice Before Maturity for Time Accounts Longer Than One Year That Do Not Renew Automatically

The act requires that account disclosures be provided to consumers prior to the maturity of an automatically renewable time account, but does not address whether any notice or disclosures should be provided to consumers prior to the maturity of a time account that renews only upon the consumer's request. The proposal required that consumers holding such accounts with maturities of longer than three months receive a brief advance notice that identifies the maturity date of the time account and explains what happens to the funds after maturity if the consumer chooses not to renew the account. Consumers holding nonrenewable time accounts with maturities of three months or less would not have received advance notices under the proposal. (If they chose to reinvest the funds in another time account, however, they would receive a complete set of disclosures for a new account.) The Board solicited comment on three issues:

(1) Should an advance notice be required for any nonrollover time account:

(2) If so, should there be an exception for short-term time accounts; and

(3) If so, what is the appropriate cut-off?

The Board believes it is important for consumers with time accounts with long maturities to receive a notice of pending maturity, especially since a periodic statement or other reminder may not be provided. This view was supported by many commenters, although some objected to the proposed notice. Most commenters urged that any notice requirements for nonrollover time accounts be consistent with the notice requirements for automatically renewable time accounts so that a single procedure could be adopted for both categories of accounts. Thus, the rules adopted are based on the rules governing automatically renewable time accounts.

The regulation requires that for nonrollover time accounts with maturities of longer than one year (more than 365 days, or more than 366 in a leap year), institutions must provide a notice that states the maturity date of the time account and whether interest will be paid on the funds after maturity. The notice must be mailed at least 10 calendar days before maturity. The timing rule thus will accommodate whatever notice procedures an institution adopts for rollover time accounts. An institution, for example, that has a 10-day grace period for its rollover time accounts and sends advance disclosures 10 days before maturity can provide the notice for nonrollover time accounts using the same period. Of course, if the institution sends advance disclosures a full 30 days before a rollover time account matures, it may also send this notice 30 days in advance of maturity for nonrollover time accounts.

The proposed regulation did not require any advance notice for nonautomatically renewable time accounts bearing maturities of three months or less. In response to comments received and upon further analysis, the Board has increased the cut-off to maturities of one year or less. First, the notice is not mandated by the act. Second, consumers are informed at the time the account is opened when it matures and whether interest will be paid on their funds after maturity, and can be expected to remember this information for short- and intermediate-term time accounts. Third, the risk to the consumer who may forget a scheduled maturity date is not as great as it is for rollover time accounts; funds from a matured nonrollover time account will not be locked in for another term if the consumer does not act promptly after maturity. Finally, many commenters argued that an exemption for shorter-term accounts was desirable, but that three months was too short a time period. Thus, the regulation does not require any advance notice for nonautomatically renewable time accounts bearing maturities of one year or less. If consumers chose to reinvest the funds in another time account, however, they would receive a complete set of disclosures for the new account under the normal timing rules. (See discussion of § 230.4(a)(1).)

Institutions with existing nonrollover time accounts with maturities of longer than one year that mature after the mandatory compliance date must start providing notices after that date, but need not send notices prior to that time. (This rule parallels the transition rules for rollover time accounts.) For example, if an 18-month nonrollover certificate of deposit matures five days after the mandatory compliance date, an institution is not required to send a notice since this would require an institution to send a notice prior to the mandatory compliance date of the regulation. To ease compliance for institutions that wish to use a uniform timing rule of 30 days advance notice for maturing time accounts, the transition rule for nonrollover time account parallels the transition rule for rollover time accounts with maturities of more than one year. Thus, institutions need not send notices under this paragraph for accounts that mature before April 21, 1993. Nonrollover time accounts that mature after April 21, 1993, must receive notice at least 10 days in advance of the scheduled maturity date.

Section 230.6—Periodic Statement Disclosures

Paragraph (a)—General Rule

Section 268 of the act requires depository institutions to include specific information on or with each periodic statement provided to consumers. The act does not require periodic statements to be sent by an institution, but requires that *if* an institution sends a periodic statement certain information must be included. (See the definition of "periodic statement" in § 230.2(q) above.)

This requirement applies to periodic statements for existing consumer accounts as of the mandatory compliance date of the regulation, as well as to those for new accounts opened on or after that date. The disclosures required by this section must appear on either the first periodic statement sent on or after March 21, 1993, or the periodic statement sent for the first cycle that begins on or after that date. (See discussion under § 230.4(c).) This reflects the Board's recognition that some institutions may need to alter current practices to comply with requirements of the regulation (changing balance calculation methods, for example, from low balance to either daily balance or average daily balance) and such changes may not be in place until the mandatory compliance date of the regulation.

The disclosures in this section need be furnished only to the extent applicable; for example, a periodic statement for a noninterest-bearing account need not include either an interest figure or an annual percentage yield earned figure. Nor is an annual

percentage yield earned required to be disclosed on the periodic statement for an interest-bearing account when no interest is earned during the cycle.

This section has been revised from the proposal. A new paragraph (b) has been added to address how disclosures should be made on periodic statements where institutions use the average daily balance method and calculate interest on a period other than the statement period (for example, if a statement cycle is from the 16th of September to the 15th of October, but interest is calculated on a calendar month basis).

Paragraph (a)(1)—Annual percentage yield earned. The act requires that the annual percentage yield earned be included on the periodic statement. The annual percentage yield for advertising and opening account disclosures is calculated as an annualized rate that reflects the frequency of compounding. In the proposal, the Board presented and solicited comments on several options to determine what would be the most appropriate way of calculating the annual percentage yield for the periodic statement. Based on comments received and further analysis, the final rule requires that the annual percentage yield earned reflect the relation between the actual interest accrued during the statement period and the average daily balance for the same period.

The annual percentage yield earned incorporates all rate changes that occurred during the period. It also produces a single composite figure for tiered-rate accounts, demonstrating the effect of the institution's tiering method on total earnings. Thus, institutions that pay a lower interest rate on deposits up to a certain level and a higher rate only on amounts above the cut-off figure would show a lower annual percentage yield earned for a given balance above the cut-off than would institutions that pay the same higher rate for the entire balance in the account. (See appendix A's description of the two methods of tiering.) The annual percentage yield earned will not reflect any fees imposed or bonuses earned.

Some commenters favored other options discussed in the proposal. For example, several commenters supported use of a calculation method that would utilize the same general annual percentage yield calculation for the periodic statement as is used for advertising and initial disclosures (the third option described in the proposal). Commenters noted that this figure allowed consumers to compare the rate applied to the balance for the period with currently advertised rates. In addition, some commenters were concerned that consumers would be confused if annual percentage yields were calculated using different methods for periodic statements and for advertisements and account disclosures.

A small number of commenters favored requiring an annual percentage yield earned to represent a net earnings figure including the total interest paid during the period, adding cash bonuses paid, subtracting all fees imposed during the period and dividing the difference by the average daily balance for the period to obtain a percentage figure (the second option in the proposal). These commenters believed that this figure provided the most authentic yield figure.

The Board recognizes that the method chosen for the final rule will not provide a figure the consumer can use to directly verify earnings for the period if multiple interest rates are applied during the period. (The third option in the proposal would not have allowed such direct verification either unless additional detail regarding balances and accrual policies were also required.) The single figure will not show the actual rate fluctuations during the period, though any changes would be captured by the figure. The Board believes, however, that this method will most effectively communicate to consumers the appropriate information on earnings for the statement period. It will show in a single figure how well the consumer's account performed during the statement period, reflecting the true rate earned on tiered accounts, the impact of rate changes, and the effect of minimum balance requirements, while avoiding the difficulties that could be produced if fees and bonuses were factored in.

Some commenters stated they would like to include additional information about rates on the periodic statement. For example, some institutions may want to include a listing of the interest rates paid during the period, as well as other information the consumer could use to verify interest earnings for the period, such as the periodic interest rate and daily balances. Neither the act nor the final rule prohibits including additional information on or with the periodic statement. For example, the interest rates and the periodic interest rates applied during the period may be stated.

The Board solicited comment on whether the rate on the periodic statement should be identified as the "annual percentage yield earned" rather than the "annual percentage yield." Most commenters favored use of a distinct term to differentiate the figure from the "annual percentage yield" used for both advertisements and opening account disclosures, although some commenters argued for consistent terminology. The Board believes consumers benefit from a term that alerts them to the fact the figure on the periodic statement differs from an annual percentage yield shown in other disclosures. Thus, the final rule requires use of the term "annual percentage yield earned" on periodic statements.

Paragraph (a)(2)—Amount of interest. The act requires that the periodic statement disclose the amount of interest "earned" during the period. The proposed regulation would have required the periodic statement to include a dollar figure for the amount of interest that had been *paid* during the statement period. That figure would not have included accrued interest that had *not* been credited to the account during the period. Many commenters were concerned that the proposed disclosure would confuse consumers holding accounts where the statement cycle is shorter than the crediting cycle. For example, where consumers receive monthly statements on accounts that credit interest quarterly, the first two monthly statements in a quarter would not reflect either an interest amount or an annual percentage yield earned as no interest would yet be credited. The third statement would show interest earned for the three month period, artificially inflating the annual percentage yield earned. Commenters argued this approach would not provide useful information to consumers, as the yield figure would bear little resemblance to rates advertised or what is actually being earned during the period. The Board agrees with this view. Thus, the final rule requires institutions to show interest earned during the statement period, without regard to whether such interest has been credited to the account. (See the special rule in paragraph (b), however, dealing with institutions that use the average daily balance method and calculate interest on a period other than the statement period.)

The Board solicited comment on whether cash bonuses paid to the consumer during the statement period should be included in the total interest figure. The majority of commenters supported the proposed exclusion of bonuses from the interest figure, given that the definition of "interest" (§ 230.2(n)) specifically excludes bonuses. The final rule maintains this position. The value of a bonus (or of any *de minimis* consideration of $10 or less that is excluded from the definition of a bonus) can be shown separately on the statement as additional information, but it cannot be included in the total interest figure.

The Board solicited comment on whether the regulation should require use of the term "interest" for purposes of this disclosure. Based on comments received and upon further analysis, the final rule does not mandate use of the word "interest." The Board believes that the term is widely used in the industry; thus, requiring the term seems an unnecessary addition to the regulation. Also, the Board believes it may be desirable for institutions to describe more specifically the treatment of interest during the period. For example, if an institution credits interest at the end of the statement cycle, it could disclose the figure as the "interest earned," "interest paid," or "interest credited." If an institution shows interest that was earned during the statement cycle but which has not yet been credited (for instance, where it sends monthly statements credits quarterly), it may wish to alert the consumers to this fact so they do not believe they can access those funds.

Paragraph (a)(3)—Fees imposed. Section 268(3) of the act requires that the periodic statement disclose the amount of any fees or charges imposed on the account. The proposal would have required the periodic statement to include all fees of the type required to be disclosed under § 230.4(b)(4) that were imposed during the statement period. Many commenters noted the difficulty of including fees for services which the consumer paid for in cash at the time of the transaction. The final rule therefore requires that the institution disclose fees (of the type required to be disclosed under § 230.4(b)(4)) that have actually been debited from the account during the period. At the institution's option, fees that are not imposed in connection with the account, for example, fees paid for a cashier's check or for the lease of a safe deposit box, be included in the periodic statement as additional information.

The act does not specify whether the fees should be totaled or itemized. The Board discussed different methods for disclosing fees in the proposal, and proposed requiring an itemization of fees. Many commenters supported a flexible rule which would allow institutions to choose the method of disclosure. They pointed out, for example, that Regulation E permits institutions to disclose fees on the periodic statement as either a total dollar figure or by itemizing them in part or in full, at the institution's option. A number of commenters noted, however, that providing only a total dollar figure for fees imposed during the period without any explanation would provide little useful information to consumers.

The final regulation requires institutions to provide an itemization of fees by type. The Board believes that a single figure for all fees would not be as helpful to consumers as a listing of the types and amounts of fees imposed during the cycle. The more summary approach taken in Regulation E is not appropriate here where fees cover a much wider array of services than those solely relating to electronic funds transfers.

The regulation does not mandate a particular format for this disclosure. Institutions may group together fees of the same type that were imposed more than once in the period. For example, all fees imposed for writing checks during the period could be stated either as a single figure, or shown as separate items. An institution could not, however, group fees together that are not the same type—for example providing a single figure to represent monthly maintenance fees and excess activity fees. If fees are grouped, the description must make clear that the dollar figure represents more than a single fee, for example, "total of per-check fees this period." Institutions may continue to comply with the requirements of Regulation E for fees related to electronic fund transfers (for example, totaling all electronic funds transfer fees in a single figure), but must follow the provisions of this section with regard to disclosure of all other account fees.

There is no requirement to segregate the itemization of fees from the statement of account activity. Thus, institutions may integrate the fee disclosure with other account activity information reflected on the statement. The statement must provide sufficient detail to enable the consumer to identify the fee. Institutions may use a code to identify a particular fee on the periodic statement, if codes are explained either on the periodic statement or in documents accompanying the statement. At its option, the institution may also include the date the fee was debited from the account.

Many commenters requested guidance regarding disclosure of fees associated with "tied" or "bundled" accounts. For example, an institution may require the consumer to maintain a certain balance in Account A to avoid the imposition of a minimum balance fee on Account B (which, if imposed, is debited from Account B). Institutions should disclose the fees on the periodic statement for the account against which the fees are actually debited (Account B in this case).

The Board solicited comment on whether the regulation should also require the periodic statement to include a total fees figure or a net earnings figure—that is, the total interest earned less any fees imposed. Most commenters indicated these additional disclosures added little to the information provided to consumers, and presented an unnecessary burden to institutions. The final rule does not require either a total fees figure or a net earnings figure.

Paragraph(a)(4)—Length of period. The proposal closely tracked the statutory language and required that the total number of days in the statement period be given on the periodic statement. The Board solicited comment on whether providing the beginning and ending dates for the period would provide adequate information to consumers (assuming it is clear whether or not both of these days are included as part of the period).

Most commenters supported the flexibility of being able to choose the method of disclosing the days in the period. Many commenters noted that consumers need to know the beginning and ending dates for the period to determine whether a transaction occurred during the period, possibly making it a better disclosure than merely providing the number of days.

The final rule allows institutions to provide either the total number of days in the period, or the beginning and ending dates of the cycle, as long as it is clear whether or not both of these days are included in the period. For example, stating "April 1 through April 30" would clearly indicate that both April 30 are included in the period. Several commenters noted their current procedure is to provide the ending dates for both the current and the preceding cycle (for example, if a statement period begins May 1 and ends May 31, the disclosure would be that the preceding statement ended April 30 and the current statement ends May 31). This method would also be acceptable, since the consumer could readily determine the number of days in the period.

Paragraph (b)—Special Rule for Average Daily Balance Method

In response to requests for guidance, the final regulation contains a new paragraph addressing how the disclosures should be made on periodic statements if interest is determined by using the average daily balance method and is calculated based on a period other than the statement period. Commenters noted that in most cases interest is calculated and credited for a period that exactly coincides with the

period covered by the statement; in such cases, the calculation and disclosures are straightforward. In some cases, however, interest is calculated for a period that differs from the period covered by the statement. For example, interest may be calculated for a calendar month, whereas the statement may cover a period from the 16th of one month to the 15th of the next month. A similar case exists where the statement is provided covering a calendar month but interest is calculated on a quarterly basis. If an institution uses the daily balance method, the Board believes disclosures must be made for the statement period, since interest is earned for each day of the period, even though it may be credited on a date beyond the last day of the statement period. However, commenters that use the average daily balance method to compute interest asked how to disclose the amount of interest earned and the annual percentage yield earned if, for example, a statement period covers April 16th to May 15th, but interest is calculated on a calendar month basis.

This paragraph (and appendix A, part II) provides a special rule in these cases: the amount of interest earned for the interest calculation period and the annual percentage yield earned based on the average daily balance for that period shall be disclosed on the statement for the period in which the interest calculation period ends. For example, assume an institution uses the average daily balance method based on a calendar month period, and that $5.25 interest was earned during April, $6.00 interest was earned during May, and the institution sends a statement for the period April 16 through May 15. That statement would disclose $5.25 as the interest earned and an annual percentage yield earned based on that interest and the average daily balance in the account during the month of April. If an institution uses this alternate rule, the length of the interest calculation period must be disclosed in addition to the length of the statement period. For example, a statement could disclose the statement period of April 16 through May 15 and further state that "the interest earned and the annual percentage yield earned are based on your average daily balance for the period April 1 through April 30."

This special rule applies only if the average daily balance on which the interest is calculated is known by the end of the statement cycle. For example, an institution that sends a statement each calendar month for an account and calculates interest based on the average daily balance method for a calendar month, but credits interest quarterly, would use the rule in this paragraph. In such a case, interest earned in each of the three months would be shown on three succeeding monthly statements (since an average daily balance figure is used to calculate interest each monthly statement period); the statement for the third month of the quarter may, but is not required to, indicate the interest credited for the quarter, in addition to the interest earned during the third month. If an institution calculates interest on an average daily balance for the quarter, however, an interest figure cannot be stated on the monthly statements for either of the first two months of the period since no average daily balance is used to calculate interest for those times. Consequently, no annual percentage yield earned and no interest earned figures would be disclosed on the statements for the first two months of the quarter. In such a case, the interest earned and the annual percentage yield earned provided on the third monthly statement would be based on the entire quarterly period. (Examples have been added to appendix A, part II demonstrating these rules.)

Section 230.7—Payment of Interest

Paragraph (a)—Permissible Methods

Paragraph (a)(1)—Balance on which interest is calculated. Section 267(a) of the act provides that interest on interest-bearing accounts shall be calculated by institutions "on the *full amount of principal in the account for each day* of the stated calculation period" at the rate disclosed (emphasis added). The legislative history states that the provision is intended to prohibit institutions from using certain balance computation methods, such as the "low balance" or "investable balance" method of computing interest. Although a literal reading of this language might appear to require institutions to calculate interest by using the daily balance calculation method (also known as the day-in-day-out method or day-of-deposit-to-day-of-withdrawal method), the legislative history confirms that the Congress considered the average daily balance method an acceptable alternative to the daily balance method. The Board proposed to allow both methods, and, based on further analysis and review of the comment letters, is adopting this approach in the final rule.

The overwhelming majority of commenters urged the Board to permit institutions to use the average daily balance method as an alternative to the daily balance method. The Board believes permitting institutions to use either the daily balance method or the average daily balance method is consistent with the purpose of the legislation, which is to require that consumers be paid interest on the full amount of principal in the account each day. In addition, the act requires disclosure of the balance computation method, which would be unnecessary if only one method were allowed.

Both methods require institutions to compute interest by applying a periodic rate to the full amount of principal in the account each day. Assuming the same compounding and crediting frequency, interest calculated under either method would be identical in an account with little or no account activity in the period. As explained in detail in the supplementary information to proposed § 230.7(a), in most cases, even where there is significant account activity, both methods will produce the same or substantially the same amount of interest. In some instances the daily balance method produces a slightly higher return, and in other situations the average daily balance method produces a slightly higher return. As described in the proposal, in tiered-rate accounts, the two methods can produce more significant differences in interest, depending on account activity—in particular, depending on whether the average daily balance falls above or below the break point in the tiers. In all cases, however, under the annual percentage yield earned calculation for a periodic statement, any differences in these methods would be captured.

The final regulation permits institutions to use either the daily balance or the average daily balance method, for several reasons. First, in most cases the two methods produce the same or a substantially similar return. Second, where the results differ, neither one consistently produces a higher return. Third, the annual percentage yield earned calculation for the periodic statement will capture any differences between these methods. Fourth, institutions will be required to disclose the method they use under § 230.4(b) so that consumers who prefer one method over the other will have the necessary information on which to base their choices. Fifth, the legislative history accompanying the legislation contemplates the use of either method. Finally, requiring institutions to use the daily balance method could impose significant costs on institutions that would have to change from their current use of the average daily balance method without producing any real benefit to consumers.

"Collected" and "ledger" balances. Many commenters asked whether the

regulation would permit institutions to accrue interest (whichever balance method is used) by using a "collected" balance method, or whether a "ledger" balance method must be used. The Board believes the act does not prohibit use of a "collected" balance method of accruing interest. (Section 267(c) of the act provides that institutions must begin to accrue interest on deposits no later than the business day set forth in section 606 of the EFAA.) Thus, institutions may begin accruing interest when the funds are deposited into the account or a later date as provided by the EFAA and Regulation CC. (See § 230.4(b)(3)(iii) which requires a disclosure of this policy.)

Use of 365-day basis and leap year. In the proposal the Board stated that the act requires institutions to pay interest calculated on each day funds remain on deposit. For example, for a one-year time account, interest must be paid on a 365-day basis. Since interest must be paid each day funds remain on deposit, the Board believes a daily rate of at least 1/365 of the interest rate must be applied to the balance. A footnote has been added to this section to reflect this. Institutions may, however, apply a daily periodic rate that is greater than 1/365 of the interest rate. For example, an institution may use a daily periodic rate of 1/360 of the interest rate, as long as it is applied 365 days a year.

Some commenters inquired whether they could continue to compute interest using a "360/360" basis (that is, using a periodic rate of 1/360th of the interest rate and applying that figure to only 360 days in a one-year account). They stated that currently they use this technique to enable them to send out uniform monthly interest payments on some accounts, such as certificates of deposit. The Board believes this practice, which pays interest for only 360 days in a year and not 365 days, is not permissible because it fails to apply the disclosed rate each day of the year.

The Board solicited comment on whether institutions should be permitted to use a periodic rate of 1/365 of the annual rate and a 365-day basis in leap years that have 366 days. Numerous commenters urged the Board to adopt this approach. They argued that requiring institutions to change their systems to 1/366 of the annual rate for those accounts in which February 29 will occur would require significant modification at great expense for very little practical difference. Other commenters urged the Board to permit institutions to use a 366-day basis when appropriate. The footnote to this section clarifies that institutions are permitted to apply 1/365 of the interest rate for 365 days in a leap year, in light of the concerns raised. In addition, institutions are permitted to apply a periodic rate of 1/366 (or 1/365) of the interest rate for 366 days in a leap year, when an "extra" day of interest will be paid for the account.

Commenters raised several questions about the scope of § 230.7(a). A number of commenters asked whether § 230.7 requires institutions to pay interest during any grace period offered by an institution for an automatically renewable time account if the consumer decides during the grace period not to roll over the funds. Commenters also asked whether, for nonrollover time accounts, institutions must pay interest after the account has matured.

Institutions are not required to pay interest in either of these circumstances. The Board believes that the act does not require institutions to pay interest after the existing account relationship has ended. Thus, if a consumer with an automatically renewable time account chooses *not* to renew the deposit, the institution may pay interest for a period of time after maturity even though the time account is not renewed, or the institution may consider the account to be noninterest-bearing following maturity. Similarly, institutions may, but are not required to, pay interest following the maturity of a time account that does not automatically renew. (See footnote 1 of § 217.3 in the Board's Regulation Q which permits institutions to pay interest for up to 10 calendar days past the maturity of a time deposit if the time deposit is renewed within 10 calendar days of maturity.)

The Board also believes that institutions are not required to pay interest on any principal or interest left in an account after an account is closed. Several commenters noted that consumers may "close out" an account by mail but unintentionally leave in a small amount of funds. The Board does not believe institutions must continue to pay interest on any such amount if the account relationship has ended. Commenters also requested that the Board state that institutions are not required to send any such remaining balance to the consumer. Whether the institution must do so is a question that must be determined by reference to state or other law. This regulation does not address that issue.

Paragraph (a)(2)—Determination of minimum balance to earn interest. The Board believes the Congress did not intend for institutions to be barred from establishing minimum balance requirements that must be met for the consumer to earn interest, or to earn a specified rate for tiered balance accounts. The act expressly requires a disclosure of any minimum balance required to earn interest. This provision would be unnecessary if institutions were not permitted to establish minimum balance levels to earn interest.

Under the final regulation, an institution using a daily balance method may choose to pay interest on an account for only those days a minimum balance is maintained. (Similarly, an institution using an average daily balance method may choose to pay interest for the period only if a specified average daily balance for the period is met.) If this practice were not permitted, the Board believes significant and fundamental pricing changes would be made to accounts, many of which could be adverse to the interests of consumers. For example, tiered-rate and high minimum balance accounts that typically pay a higher rate of interest might not be as available to consumers. Therefore, the regulation permits an institution that uses a daily balance method to provide that it will not pay interest on the account for those days the balance drops below the required daily minimum balance. (Similarly, a minimum average daily balance may be established for institutions using that method.)

On the other hand, the Board does not believe that the act permits an institution to provide that the consumer does not earn any interest for a given period unless the consumer maintains a minimum balance each day of the entire period. Most, though not all, commenters agreed with this position. The Board believes section 267(a) of the act prohibits use of this "low balance" type of method to determine if a consumer has met a minimum balance requirement to earn interest.[1] For example, an institution may not provide that a consumer will earn a 5.00% interest rate only if the consumer maintains a minimum balance of $500 for each day of a specified period or cycle. Such a practice, in effect, uses a low balance computation method to calculate whether interest is earned on an account at all for the whole period. Permitting such a practice would enable an institution to refuse to pay interest even if a consumer maintained a $10,000 balance for 29 days in a cycle, but

[1] The discussion of this provision addresses only the payment of interest as it relates to the minimum balance requirement. The supplementary information accompanying § 230.4(b)(4) discusses the fact that institutions are not so limited regarding the assessment of fees and minimum balance requirements.

permitted the balance to drop below $500 for one day in the same cycle.

Similarly, institutions may not refuse to pay interest on a portion of a balance once a consumer has met any required minimum balance. If an institution sets its minimum daily balance requirement to earn interest, for example, at $300 and a consumer deposits $500, the institution must pay the stated interest rate on the full $500, and may not pay interest only on $200 of that deposit. The Board believes this practice is contrary to the statutory requirement and the intent of the Congress to require payment of interest at the disclosed rate on the *full amount* of principal in the account each day.

A related issue arises regarding tiered-rate accounts that use a daily balance method to determine whether a minimum balance requirement has been met. For example, assume an institution pays and discloses a 5.00% interest rate on balances below $5,000, and a 6.00% interest rate on balances of $5,000 and above. The institution may not pay only 5.00% for the entire cycle if the balance dropped below $5,000 for a few days during the cycle—for example, if a consumer maintained a $10,000 balance for 29 days in a cycle, but permitted the balance to drop to $4,999 for two days. The Board does not believe the act permits the institution to pay only 5.00% on $10,000 for 29 days, since the full amount of principal in the account for 29 days was actually $10,000 and should earn the stated 6.00% rate.

The Board solicited comment on a number of technical points. The Board asked whether institutions should be required to use a daily balance method to determine whether a minimum balance requirement to earn interest has been met, or may an average daily balance method be used instead. Comment also was requested on whether institutions should be permitted to use both a daily balance and an average daily balance measurement in determining whether a consumer has met the minimum balance requirement to earn interest. For example, the Board asked whether an institution should be permitted to apply both a $500 daily balance and a $700 average daily balance requirement to determine whether interest is paid on an account for a particular day. The Board also asked whether institutions should be permitted to determine the balance on which they calculate interest using one method and establish the minimum balance using a different method. For example, comment was requested on whether an institution should be permitted to use the daily balance method to compute interest but to require a consumer to meet a minimum balance by averaging a month's daily balances.

Commenters expressed a wide variety of views on these questions. Many commenters urged the Board to adopt a simple, standardized rule. For example, a number of commenters requested that the Board require institutions that calculate interest using the daily balance method to use the same method to determine the minimum balance needed to earn interest. Commenters felt such an approach would provide simple and clear rules, and consumers would be able to better understand such an approach.

Other commenters urged the Board to permit greater flexibility in the final regulation, and permit any combination of methods. Commenters stated that this was beneficial to institutions and fair to consumers since the methods used would be disclosed. These commenters were concerned with the ability of institutions to structure accounts with the greatest flexibility possible.

The Board believes that the act places limits on the use of certain minimum balance methods. As noted in the proposal, the Board does not believe an institution that uses an average daily balance method to determine the balance needed to earn interest is permitted to refuse to pay interest on the average balance if the consumer fails to maintain a daily balance of, for example, $500 for each day of the cycle. This is similar to using a low balance method of computing interest.

The Board believes there are significant benefits to requiring institutions to use the same balance method to calculate interest and to determine the balance that must be met to earn interest. Consumers would find the disclosures easier to understand, and institutions would have a clear and simple rule that minimizes potential compliance errors and civil liability concerns.

On the other hand, the Board recognizes the advantages of permitting institutions to use combinations of the two methods when the combination benefits consumers. This would provide more choices to consumers and more flexibility to institutions in structuring accounts. Many commenters requested that the final regulation permit institutions to provide that interest is earned on an account if the consumer meets either a daily balance or average daily balance requirement. For example, institutions that use a daily balance method for interest calculation asked to be permitted to offer accounts that pay interest if the consumer maintains a $500 daily balance or maintains a $400 (or $600) average daily balance amount for a specified time period. They argued such an approach would always benefit the consumer. While this approach adds an additional level of complexity to the regulation, the Board believes this approach provides benefits to consumers and greater flexibility to institutions and should be adopted.

Thus, this section of the final regulation provides that an institution must use the same method to determine any minimum balance required to earn interest as it uses to determine the balance on which interest is calculated. The regulation also provides that an institution may use an additional method to determine the minimum balance to earn interest, as long as that second method is unequivocally beneficial to the consumer. This means an institution that uses a daily balance method to compute interest could require a consumer to meet either a specific daily minimum balance to earn interest or a specific average daily balance requirement to earn interest. (Similarly, an institution that uses an average daily balance method could require the consumer to meet a specific average daily balance requirement or a specific daily balance requirement.) Thus, an institution using a daily balance method could choose to pay interest only for those days the daily balance was $500 or more. In addition, the institution could agree to pay interest to the consumer for those days a consumer did not maintain a $500 daily balance, but, for example, maintained an average daily balance for a month of $400 (or $600).

However, institutions are not permitted under the regulation to require consumers to maintain both a daily minimum balance and an average daily balance to earn interest. For example, the regulation does not permit institutions to pay interest (whether they compute it using a daily balance or average daily balance method of accruing interest) only if the consumer, for example, maintains a $500 daily balance and a $400 (or $600) average daily balance. The Board believes requiring consumers to meet both requirements to earn interest is contrary to the requirement to pay interest on the full balance in the account, since an institution, in effect, would be using a low balance method to determine if interest is paid.

Paragraph (b)—Compounding and Crediting Policies

The substance of this paragraph of the regulation is unchanged from the proposal, though the Board has revised one interpretation about crediting policies, as discussed below. This section does not mandate the frequency of any compounding. Thus institutions may compound bi-annually, annually, quarterly, monthly, daily, continuously, or on any other basis. The compounding frequency is required to be disclosed under § 230.4(b)(2) and is factored into the computation of the annual percentage yield. (See the discussion of the annual percentage yield in the supplementary information accompanying appendix A.)

Section 230.7 also does not mandate a specific crediting policy. Thus, institutions may credit interest earned on the account on an annual, semi-annual, quarterly, monthly, daily or other basis. The institution's crediting policy must be disclosed under § 230.4(b)(2). An institution may credit or post interest to the account at any frequency, thus establishing the intervals at which the consumer can withdraw such interest.

In the proposal, the Board stated that establishing crediting policies does not permit an institution to treat accrued but uncredited interest as unearned. The proposal stated that because the act and proposed regulation require that interest accrue based on the full balance in the account each day, the consumer's underlying right to such interest cannot be altered. A number of commenters expressed concerns about this interpretation, and asked the Board to reconsider its interpretation, particularly for accounts that are closed by the consumer prior to a date accrued interest is credited to an account. They believed the Board was interpreting the statutory provision too broadly and stated the Board should give effect to section 264(c)(9) of the act.

Based on comments received and upon further analysis, the Board believes the duty to pay interest on the full balance in the account does not require institutions to pay interest that has accrued but not been credited if the account is closed by the consumer between crediting dates. (See paragraph (a)(1) of this section.) Further, as discussed in § 23.4(b)(2)(ii), the Board believes that section 264(c)(9) of the act (requiring institutions to state if accrued but uncredited interest will not be paid in the event funds are withdrawn from the account), if applied narrowly, is consistent with the duty to pay interest on the full balance of the account. Thus, the Board is revising its position, and believes that institutions may reserve the right not to pay accrued but uncredited interest for an account if a consumer closes the account prior to the time accrued interest is credited to the account. However, the Board believes that institutions must pay all accrued interest to consumers even if some funds are withdrawn prior to the crediting date, as long as the consumer does not close the account. Otherwise, the effect would be substantially the same as permitting institutions to pay interest based on the low balance method, a result clearly unintended by the Congress. Although institutions may not fail to pay accrued interest on withdrawn funds if the account remains open, institutions need not post or credit the accrued interest until the established posting or crediting date, nor must they permit the consumer to withdraw interest that is earned but not yet credited. If the consumer withdraws funds before interest is credited (but does not close the account), the institution may delay payment of the accrued interest until the crediting date, but may not refuse to pay the consumer the accrued interest. This provision, of course, does not require an institution to pay interest for those days the consumer fails to meet a minimum balance requirement.

Paragraph (c)—Date Interest Begins to Accrue

Section 267(c) of the act requires that institutions must begin to accrue interest for all accounts no later than the business day specified in section 606 of the EFAA (12 U.S.C. 4005), subject to subsections 606(b) and 606(c). Thus, the Truth in Savings Act provides that the accrual of interest rules in the EFAA apply to nontransaction accounts, such as certificates of deposit, as well as to transaction accounts covered by the EFAA. The EFAA and the Board's implementing Regulation CC (12 CFR part 229) generally require an institution to begin accruing interest when the institution receives credit. The Board believes a consistent rule is essential for determining the principal balance on which interest accrues. The final rule, as did the proposal, therefore requires institutions to use the methods set forth in Regulation CC for determining the principal balance. In addition, institutions should rely on Regulation CC for determining when a deposit (for example, at an ATM) is received. If an institution accrues interest on funds represented by a deposited check that is later returned due to insufficient funds on deposit, or for another reason, the institution would not be required to pay interest for the time period the check was outstanding.

While the EFAA establishes the time institutions must begin to accrue interest, because of the general rule in section 267(a) of the act that interest must be computed on the full amount of principal in the account for each day, paragraph (c) of this section also provides that institutions must accrue interest on funds until funds are withdrawn from the account. Thus, if a check written by the consumer on an account is debited from the account by the account-holding institution on a Wednesday, the institution must accrue interest on those funds on deposit through Tuesday. (Because the check is debited on Wednesday, the balance in the account that day has been reduced. Thus, the institution need not pay interest for Wednesday.)

Section 230.8—Advertising

This section of the regulation incorporates the advertising provisions of section 263 of the act. While the act's disclosure rules apply to accounts of *all* depository institutions, section 263(a) of the act's advertising provisions dealing with general disclosure rules is phrased in terms of accounts offered by insured depository institutions. (Section 263(b) and (c) of the advertising provisions, which address special rules for broadcast media and misleading advertisements, are not limited to insured depository institutions.) The Board's final rule applies the advertising provisions to all depository institutions, whether insured or not. The Board believes that the act's purposes are furthered if advertisements for deposit accounts at all depository institutions are covered by the same rules.

As addressed in §§ 230.2(a) and 230.2(k), the advertising rules apply to deposit brokers, in addition to depository institutions. Thus, if a broker places an advertisement that offers to consumers an interest in an account at an institution, the advertisement is covered by this section, even if the account is held by or on behalf of the broker. Of course, this section also covers any advertisement placed by a broker in which the account at the institution will be held directly by the consumer.

The Board requested comment on whether certain provisions in the Board's Regulation Q (12 CFR part 217) dealing with advertising rules should be included in this regulation and removed from Regulation Q. Commenters strongly endorsed the idea of consolidating the requirements of these two regulations. Based on comments received and upon

further analysis, the Board is amending Regulation Q to eliminate its advertising provisions, effective on the mandatory compliance date of this regulation. (See Docket R-0775 elsewhere in today's **Federal Register**.) Institutions that begin compliance with this regulation prior to the mandatory compliance date may rely solely on compliance with the advertising rules of this regulation.

Paragraph (a)—Misleading or Inaccurate Advertisements

The act prohibits institutions from making misleading or inaccurate advertisements. The proposal solicited comment on whether examples of what constitute "misleading or inaccurate statements" in an advertisement should be provided with the final rule. Some commenters felt examples would be helpful, some felt otherwise, but few offered any specific examples. As discussed below, the Board is providing one example of a misleading advertisement—stating the term "profit" in conjunction with a deposit account.

Use of the term "profit" prohibited. Section 217.6(f) of the Board's Regulation Q and the deposit account advertising rules of the other federal financial regulatory agencies for some time have prohibited use of the term "profit" when advertisements refer to interest paid on deposit accounts. The Board requested comment in the proposed regulation on whether institutions should be permitted to refer to interest paid on an account as "profit," or if the use of the term in advertisements could mislead customers. The overwhelming majority of commenters agreed that the use of this term would mislead consumers, since the term implies a return on an investment—something typically associated with nondepository investments. Commenters recommended that the Board's final rule retain the prohibition. The final rule retains this prohibition, as the Board believes such a reference would be misleading.

Advertising "free" accounts. Section 263(c) of the act prohibits an institution from advertising an account as a "free" or "no-cost" account if: (1) A regular service or transaction fee may be imposed; (2) a fee may be imposed if any minimum balance requirement is not met; or (3) a fee is imposed if the consumer exceeds a specified number of transactions. The final regulation reflects these rules, though it provides a different organizational approach from that in the act.

Under the final rule, institutions are not permitted to refer to or describe any account as "free" or "no cost" (or contain a similar term) if any "maintenance or activity" fee might be imposed on the account. In response to commenters who pointed out that the act limits the prohibition to "regular" transaction or service fees, the final rule limits the scope of a maintenance or activity fee to such charges as, for example, periodic service charges and fees imposed to deposit, withdraw or transfer funds (including per check charges and fees to use the institution's ATMs). A maintenance fee also includes fees imposed if a minimum balance requirement is not met or if a transaction limit is exceeded. A maintenance or activity fee does not include fees imposed by a third party to print checks for an account; stop payment fees; fees for copies of checks; fees for checks returned for insufficient funds; or fees unrelated to the account such as a fee for purchasing a cashier's check or traveler's checks.

Many commenters expressed concerns that the Board's rule, as proposed, would unduly restrict the ability of depository institutions to advertise useful cost information to consumers because some maintenance or activity fees could be imposed. The Board is providing greater flexibility in response to concerns raised. The act prohibits a reference to an "account" as free. Under the final regulation, institutions may refer to a specific service as "free" or "no cost" (or use words of similar meaning). For example, institutions that offer free transactions at their ATMs could advertise that fact. If an account or an account service is free only for a limited time—for example, for the first year that an account is open—this limitation must be stated. The Board believes this approach reflects the requirement of the act, yet allows institutions to provide accurate and useful cost information to consumers about account features or services.

Potential loss of principal. Although the issue is not addressed in the act, the Board's proposed rule contained disclosure requirements for advertisements regarding deposits that involve the risk of loss of principal, such as those denominated in a foreign currency. As discussed in the supplementary information for § 230.4(b), the Board believes that such information is important, but that it appears the industry currently alerts consumers to the risks associated with such accounts. Thus, the final rule does not require the additional advertising disclosure.

Paragraph (b)—Permissible Rates

Section 283(a) of the act provides that a reference to a specific interest rate, yield, or rate of earnings in an advertisement triggers a duty to state certain additional information, including the annual percentage yield. The final rule, like the proposed regulation, requires that if any rate or yield is stated it must be the "annual percentage yield," using that term.

Except for the interest rate, no other rate or yield (such as an "average" or "aggregate" percentage yield) may be included in an advertisement. The Board believes that allowing institutions to state such other rates or yields would conflict with the act's stated purpose of providing uniform disclosures to enable consumers to compare accounts. Also, the Board is concerned that permitting other rates to be stated would result in advertisements with a confusing array of terms and numbers.

The Board's final rule allows the "interest rate," using that term, to appear in conjunction with (but not more conspicuously than) the annual percentage yield. In a minor change to the proposal (addition of the words "to which it relates"), the final rule makes clear that if an interest rate is stated it must be the one that corresponds to the particular annual percentage yield provided.

Special rules for tiered-rate accounts. If an institution states an annual percentage yield in an advertisement for a tiered-rate account, it must state all of the annual percentage yields for each tier, including those required to be shown as a range, as well as the corresponding minimum balance requirements. (See appendix A for annual percentage yield calculations for tiered-rate accounts.) If interest rates are stated, each interest rate must appear in conjunction with the applicable annual percentage yield.

For example, assume an institution pays a stated interest rate only on that portion of the balance within the following specified balance levels (that is, Tiering Method B described in appendix A), and compounds interest daily:

Interest rate (percent)	Deposit balance required to earn rate
5.25	Up to but not exceeding $2,500.
5.50	Above $2,500 but not exceeding $15,000.
5.75	Above $15,000 but not exceeding $100,000.

Computing the figures in accordance with appendix A, the institution would have to state the following annual percentage yields in the advertisements:

Annual percentage yield (percent)	Balance required
5.39	Up to but not exceeding $2,500.
5.39 to 5.61	Above $2,500 but not exceeding $15,000.
5.61 to 5.87	Above $15,000 but not exceeding $100,000.

Abbreviations. The Board solicited comment on whether institutions should be permitted to use the abbreviation "APY" in advertisements—especially given the space and time constraints typically involved in advertisements. Many commenters felt that abbreviations of both the annual percentage yield and the interest rate should be allowed.

The Board does not believe consumers will be familiar with the abbreviation "APY" in advertisements, without additional explanation. The Board recognizes, however, that printing or stating the full term "annual percentage yield" every time such a rate is provided in an advertisement could restrict the use of certain types of media or impose significant costs, particularly when advertising multiple accounts.

The regulation as adopted permits institutions to abbreviate the annual percentage yield as "APY" *if* the term is printed out or stated in full at least once in an advertisement. For example, if an advertisement states "we offer a 5.25%Annual Percentage Yield (APY)," it may refer to that rate as the "APY" elsewhere in the advertisement.

The final rule does not permit an abbreviation of "interest rate." Since institutions are not required to provide this rate in advertisements, the Board does not believe special rules for use of abbreviations are needed. In addition, the terminology has been shortened from "simple interest rate," as proposed, to "interest rate," which the Board believes will diminish concerns about using the full term.

Paragraph (c)—When Additional Disclosures Are Required

Section 263(a) of the act requires additional information to be provided if the advertisement refers to a specific rate of interest, yield, or rate of earnings. The act also imposes special format rules for tiered-rate accounts. As in the proposed rule, the final regulation organizes the rules in a different manner than contained in the act.

There is no requirement that deposit account advertisements state an annual percentage yield figure (unless a bonus is stated). However, the regulation provides that a reference to an annual percentage yield (or a bonus) "triggers" certain additional advertising disclosures. If a trigger term is stated, the advertisement must provide the disclosures listed in paragraph (c) of this section in a clear and conspicuous manner. The Board solicited comment on whether an institution stating other information in advertisements—such as "one, three, and five year CDs available" or "high rates available"—should trigger the duty to state the other terms of the account. Commenters stated that these types of statements should not be considered to be triggering terms, due to the lack of specific information regarding applicable rates. The Board agrees. The Board also requested comment on whether a reference to a rate such as "we pay the rate available for 90-day U.S. Treasury bills" is so closely akin to stating a specific rate that the advertising disclosures should be triggered. Commenters were nearly equally divided. Based on comments received and upon further analysis, the Board believes the better approach treats such a statement as a trigger term only when a specific margin also is stated. Thus, a reference to a specific index which is easily determinable and the margin is so closely akin to stating a rate that advertising disclosures are required.

Paragraph (c)(1)—Variable rates. The final regulation requires institutions that advertise variable-rate accounts to state that the rate may change after the account is opened. Although the act does not expressly require the statement, section 265(2) authorizes the Board to prescribe modifications for advertising rules relating to the annual percentage yield on variable-rate accounts. Thus, the Board proposed that a statement be required for variable-rate accounts advising consumers that the rate may change after the account is opened. Commenters generally agreed that such a statement would be appropriate and it is incorporated in the final regulation.

Paragraph (c)(2)—Time annual percentage yield is offered. The act and final regulation require that advertisements that state the annual percentage yield also state the period during which accounts with that annual percentage yield will be offered. For example, if an institution only guarantees a rate for a week, its advertisement might state "this annual percentage yield is available for accounts opened from June 1 through June 7." If an advertisement does not indicate a date through which the institution guarantees a specific rate, it must state that the rate is currently offered "as of" a specified recent date.

Paragraph (c)(3)—Minimum balance. The act requires that advertisements contain a statement of the applicable minimum account balance requirements to obtain the advertised annual percentage yields. Further, in the case of tiered-rate accounts, the regulation tracks the specific statutory requirement that each annual percentage yield and the associated minimum balance must be in close proximity and have equal prominence. The final rule follows the act, but in response to comments received, is revised slightly from the proposal for clarity, without any change in substance.

Paragraph (c)(4)—Minimum opening deposit. For clarity, the heading of the paragraph has been revised slightly (adding the word "opening") without any change in substance of the paragraph itself.

Paragraph (c)(5)—Effect of fees. The heading of the paragraph has been revised slightly (adding the words "effect of") to better reflect its content. The act requires deposit account advertisements to contain a statement that "fees or other conditions" could reduce the "yield" on the account. As in the proposed rule, the final regulation uses the term "earnings" rather than yield. The Board believes the term "earnings" more accurately conveys the impact of fees on the account, since the annual percentage yield does not include fees. Virtually no comments were received on the Board's proposal to limit the scope of the disclosure requirement to the imposition of maintenance and activity fees, so it is adopted as proposed. (See paragraph (a) of this section discussing "free" accounts.) Thus, for example, the statement would appear on advertisements for interest-bearing transaction accounts that impose a monthly service charge, a per-check charge, or a fee if a minimum balance is not maintained. However, if the only fees imposed on the account were fees other than a maintenance or activity fee (for example, a stop payment fee or a fee for a check returned for insufficient funds), the statement would not be required.

In response to comments solicited on the issue, the Board has determined that the phrase "or other conditions" should not be retained as part of this notice, since it appears that the "other conditions" that affect earnings are already covered by other parts of the advertising rules (for example, minimum balance and time requirements).

Paragraph (c)(6)—Features of time accounts. Paragraph (c)(6) has been revised from the proposal to group

together the rules dealing with time accounts. The final rule reflects the deletion of one proposed requirement, which dealt with time accounts with stated maturities of less than one year. The proposal required such advertisements to include a statement that the disclosed annual percentage yield assumes all funds will be on deposit for a full year at the initial interest rate. Many commenters felt that this statement is unnecessary. They argued that the assumption is implicit in the concept of an *annual* percentage yield. They also pointed out that providing such a statement for a time account but not, for example, a NOW account, could raise questions about the basis of the annual percentage yield on the latter. Given these concerns and the fact that the statement is not expressly required by the act, the Board is not adopting the proposed rule.

Paragraph (c)(6)(i)—Time requirements. The act requires that advertisements state any time requirement necessary to earn the advertised yield. Commenters agreed with the Board's proposal to limit this provision to time accounts—since time requirements to obtain a specific annual percentage yield are typical only of such accounts. The wording has been revised and simplified from the proposal to state that this provision requires a disclosure of the term of the time account. Thus, if an institution states an annual percentage yield in an advertisement for a one-year certificate of deposit, it must state that time period.

The proposal also required advertisements to state any lower annual percentage yield that would have been earned if funds are withdrawn prior to meeting the minimum time requirement. This provision is currently required by the Board's Regulation Q. Many commenters noted that the requirement would add greater complexity to the advertising rules required by the act, and urged the Board not to incorporate this rule. The Board has not added this provision to the regulation.

The Board also solicited comment on whether to incorporate the current rule contained in Regulation Q (12 CFR 217.6(d)) that addresses deposits with time requirements greater than one year. That rule requires that an advertisement must state such a time requirement in equal prominence to the interest rate, along with any lower interest rate that will apply if funds are withdrawn prior to maturity. The Board has not incorporated this requirement in the regulation. The Board believes that consumers are adequately protected when institutions clearly and conspicuously state any time requirement for an annual percentage yield; thus, drawing special attention to a time requirement in such cases is unnecessary.

Paragraph (c)(6)(ii)—Early withdrawal penalties. The act requires that advertisements include a statement that an interest penalty will be imposed for early withdrawal. The act is not limited to time accounts, and the Board requested comment on whether this statement should be required only for time accounts. Most commenters felt it should be limited to time accounts. However, some commenters felt that consumers should be alerted to the possibility of penalties for an early withdrawal from a non-time account, such as when a bonus is "reclaimed" if funds are withdrawn before an agreed-upon date, or a fee is assessed if an account is closed within 30 days of account opening. On balance, the Board believes that the early withdrawal penalty provisions should be limited to time accounts. Information on bonuses and fees is already provided pursuant to other advertising provisions; furthermore, consumers will get additional, more detailed information about bonuses and fees when they open accounts.

The regulation has been revised to refer to whether a penalty "may or will" be imposed for early withdrawal. The change responds to comments from institutions that impose early withdrawal penalties on a case-by-case basis, and permits institutions to disclose the possibility—rather than the certainty—of such a penalty. Thus, institutions may state they "may" impose a penalty if that more accurately describes the account they are offering.

The terminology referring to an early withdrawal penalty is similar to that found in the act, but does not include the word "interest" or the word "substantial." Although both terms are required in § 217.6(e) of the Board's Regulation Q, commenters pointed out that, due to recent changes in the Board's Regulation D (12 CFR part 204), penalties no longer need be "substantial." Likewise, commenters were generally in agreement that the term "interest" should not be used, given the possibility of a forfeiture of principal (for example, if funds are withdrawn a few days after an account is opened.)

Paragraph (d)—Bonuses

Although the act does not expressly require the bonus disclosures found in the regulation, the Board believes the additional information is consistent with the act's purpose to provide uniform disclosures to assist in comparing accounts, particularly when "earnings" are being advertised. Commenters were divided on the issue of whether the statement of a bonus should trigger the annual percentage yield and the other disclosures indicated. Many felt, as the Board does, that consumers may be misled if full information is included in advertisements about interest earnings while bonus "earnings" are not explained.

As in the proposal, the final regulation treats bonuses as a trigger term. However, because the definition of bonus has been revised in the final rule (see § 230.2(f)), the advertising disclosures are not "triggered" unless the consumer receives something worth over $10 for a year. This will permit institutions to offer and advertise merchandise of a nominal value without triggering the duty to state other information.

If a bonus is advertised, institutions must state any minimum balance that must be deposited initially or maintained to obtain the bonus, any time requirement and when the bonus will be paid or provided to the consumer, so that an accurate sense of the feature is conveyed. Additionally, the advertisement must state the annual percentage yield and other applicable disclosures required by paragraph (c) of this section. If no interest is paid on the account, no rate information need be stated in the advertisement. If minimum balance and time requirements for the bonus are the same as those otherwise required to be stated, the disclosures may be combined.

Paragraph (e)—Exemption for Certain Advertisements

Section 263(b) of the act authorizes the Board, if it finds the disclosures to be unnecessarily burdensome, to exempt "broadcast and electronic media and outdoor advertising" from stating any initial deposit requirement or stating that fees or other conditions could reduce the return. The Board solicited comment on whether such an exemption should be made, and, if so, whether these disclosures would place an unnecessary burden on depository institutions. The Board also solicited comment on whether there were comparable situations (such as "lobby boards" within depository institutions) that should be exempted from some of the advertising provisions and whether other disclosures could be omitted.

Virtually all commenters expressed concern that the act's exemptions were too limited. Commenters stated that

without a further relaxation of the advertising rules, institutions would be discouraged from advertising products via broadcast and electronic media, outdoor advertising, telephone response machines, and lobby boards, a result they argued was unintended by the Congress and detrimental to consumers. Many commenters noted that presenting all the required terms on broadcast media, for example, would involve significant costs that, in addition to the potential for civil liability to account holders for violations of the advertising rules, imposed a substantial burden institutions might choose to avoid. Further, commenters argued that advertisements that convey so much detail in a limited time or space are difficult to comprehend, and, thus, do not further the Congressional purpose of helping consumers use information in advertisements.

Similarly, commenters felt additional exemptions were appropriate for "lobby boards"—boards located in the lobby of an institution which state the current rates and other key terms for various deposit accounts. Commenters noted that abbreviated disclosures would not harm consumers because their presence in the lobby ensured that staff were available to answer any questions about the details of an account, and to provide written disclosures upon request. For the same reasons, commenters also requested that an exemption be made for telephone response machines, which are often used to provide up-to-date recorded rate information to customers who initiate a call for that specific purpose or who are waiting to speak with staff on unrelated matters.

Based on issues raised by the commenters and upon further analysis, the Board is exercising its exception authority under section 269(a)(3) of the act to establish a limited exemption from several of the advertising provisions for broadcast or electronic media, such as television or radio; outdoor media, such as billboards; telephone response machines; and lobby boards facing inside an institution or the offices of a deposit broker. The Board recognizes the inherent limitations of time or space in certain media, and believes the purposes of the act would be frustrated if burdensome disclosure requirements caused institutions to place fewer advertisements that consumers may use to comparison shop.

The final rule provides that advertisements made by the use of these media will remain subject to the prohibition regarding misleading or inaccurate advertisements. Rate information must be disclosed as an annual percentage yield. In addition, if an annual percentage yield is stated, these advertisements must state any minimum balances required to earn that yield. For time accounts, the term must also be stated. Although space constraints may limit the likelihood that bonuses are mentioned, any advertisement in these media that states a bonus triggers the disclosures required by this paragraph, as well as a statement regarding the conditions under which the bonus will be paid and the time it will be paid. With these rules, consumers will have the key information about accounts in all advertisements.

Finally, in the case of lobby boards inside a depository institution or a deposit broker's office, a notice must also appear on the board advising consumers that they can obtain further information about those accounts. For example, the statement could read "ask us for further information about these accounts," or words of similar meaning. Lobby boards placed primarily for viewing by the general public rather than consumers inside the institution or deposit broker's office are not exempt from the advertising provisions of this section, since consumers are less likely to receive details about the account from customer service representatives.

Section 230.9—Enforcement and Record Retention

Paragraph (c)—Record Retention

The Board has left unchanged from the proposal the language in the regulation dealing with record retention, but is clarifying a number of issues raised by commenters. The regulation requires institutions to retain records regarding compliance with their responsibilities for a minimum of two years after disclosures are required to be made or actions are required to be taken. While the act does not specify a time period, two years is the period commonly used under the Board's other consumer regulations (for example, Regulations Z and E). Furthermore, given the frequency of examinations by the enforcement agencies, a record retention requirement of this length should allow examiners adequate review of pertinent documentation during periodic examinations. The record retention requirements apply to all aspects of compliance, including advertising provisions. In light of the fact that institutions are subject to civil liability for violations of the advertising rules the Board believes it is essential for the agencies to be able to examine advertisements as well as disclosures for compliance.

A number of commenters requested additional guidance on the record retention requirements. Institutions must keep evidence that disclosures were provided. They may meet this duty by demonstrating that they have established and maintained procedures for providing disclosures to every consumer entitled to them under the timing rules set forth in the regulation; in such cases, they must retain sample disclosures for each account offered to consumers. (And, of course, a sample notice of any change to the terms of an account would have to be retained.) Institutions following these procedures are not required to keep a copy of each disclosure provided to every consumer. The Board believes that evidence that an institution has established procedures for providing disclosures, has followed them, and has retained sample disclosures will establish compliance with this section.

A number of commenters asked whether institutions were required to keep a list of consumer requests for information. The Board is not requiring institutions to keep a "log" of each consumer request made for disclosures to comply with the recordkeeping rules Again, maintenance of procedures for providing disclosures upon request and retention of copies of sample disclosures will be sufficient.

Institutions must keep copies of printed advertisements and of the text of advertisements that are conveyed by electronic or broadcast media.

Institutions need not retain a copy of each periodic statement, as long as the specific information on each statement (such as the fees, interest and annual percentage yield earned) can be retrieved. Sufficient rate and balance information must be retained to enable examiners to verify the interest paid on an account. For periodic statements and other disclosures, records may be stored by use of microfiche, microfilm, magnetic tape, or other methods capable of accurately retaining and reproducing information (for example, from a computer file). The institution need not retain disclosures in hard copy, as long as it retains enough information to reconstruct the required disclosures or other records.

Appendix A—Annual Percentage Yield Calculation

Appendix A establishes the rules that institutions must use to calculate the annual percentage yield. The appendix contains two main parts: Part I discusses the calculations for account disclosures and advertisements, and Part II deals with periodic statement

calculations. Part I contains only two annual percentage yield formulas: A "general" formula that can be used for all types of accounts and a "simple" formula that can be used for those accounts that have a maturity of one year, or that have an unstated maturity. The appendix provides several examples to illustrate how these formulas work. The appendix explains the general rules and describes how they should be applied in more complicated accounts, such as stepped-rate and tiered-rate accounts. If an account has two types of features, such as variable and tiered rates, all applicable rules must be followed. Part II contains a single formula for calculating the annual percentage yield earned on periodic statements, with no special rules for multiple rate accounts.

The formulas that appeared in the proposed appendix provided that the annual percentage yield reflected only interest, and did not include the value of any bonuses. The majority of commenters supported the proposal, particularly the exclusion of bonuses from the formulas. Many commenters felt that adding bonuses to the formulas would significantly increase the complexity of the annual percentage yield calculation. They were concerned about determining the value of bonuses to be used in the calculation, and the potential for liability if the value was later disputed.

However, some commenters felt bonuses should be included in the calculation of the annual percentage yield. They believed an annual percentage yield that included bonuses would help consumers compare accounts offering bonuses and those that do not. They felt institutions offering bonuses as part of their marketing strategy would be placed at a competitive disadvantage if the annual percentage yield could not be used to distinguish the institution from an institution that does not offer bonuses.

Based on comments received and upon further analysis, the Board is adopting the position reflected in the proposal. The Board believes that excluding the value of any bonuses from the calculation of the annual percentage yield and the annual percentage yield earned is the better approach. The Board believes the difficulty of determining the value of bonuses for calculating the yields, especially in light of the potential liability for violations of the regulation, would significantly complicate compliance with the regulation.

As in the proposal, footnote 1 of the appendix excludes from the calculation of the annual percentage yield any amounts that are determined by circumstances that may or may not occur. For example, if an institution chooses to pay .01% additional interest for each point scored in a future sporting event, that potential is not reflected in the annual percentage yield in advertisements and account disclosures. (Of course, if the higher rate is in fact later paid that would be taken into account in the annual percentage yield earned on a periodic statement.) Similarly, earnings on an account based on changes in a stock market indicator (from the date an account is opened to the date it matures or is closed, for example) or in foreign currency exchange rates would not be reflected in the annual percentage yield.

The Board proposed that the annual percentage yield would be calculated by rounding the figure to the nearest one-hundredth of one percentage point, and showing it to two decimal places. The Board solicited comment on whether a tolerance should be provided for calculating the annual percentage yield. These provisions were supported by commenters and have been moved to a new section. (See § 230.3(f) and its accompanying explanation.)

Part I. Annual Percentage Yield for Account Disclosures and Advertising Purposes

A. *General rules.* Commenters who addressed this part of the proposed appendix generally agreed with the approach taken, and the final version is adopted very much as proposed, with revisions as noted below. A few special cases were described by commenters and guidance was requested on how they should be handled.

Many institutions permit consumers to withdraw accrued interest from time accounts, for example, on a monthly basis. The Board believes that requiring different annual percentage yield calculations based on specific consumer decisions about whether to withdraw interest or leave it in the account until maturity would significantly complicate compliance with the regulation. Thus, if consumers are permitted but not required to withdraw accrued interest from time accounts, institutions must calculate the annual percentage yield assuming the interest is *not* withdrawn from the account. (See § 230.4(b)(6)(iii) for a disclosure of this policy.) If accrued interest *must* be withdrawn from an account that compounds interest (that is, if an institution does not permit a consumer to leave accrued interest in the account) the annual percentage yield calculation must reflect such a requirement. This is reflected in new footnote 3.

As proposed, the final version provides an accommodation for annual percentage yield calculations for time accounts that are offered in multiples of months. Institutions may base the number of days on either the actual numbers of days during the applicable period, or the number that would occur in any actual sequence of that many calendar months. For example, if an institution offers a six-month certificate of deposit, the institution may calculate the annual percentage yield based on the number of days in a particular six-month period, or in any six-month period. This rule is intended to minimize the need of institutions to recalculate the annual percentage yield on an ongoing basis. The regulation requires institutions that choose to use this permissive rule to use the same number of days to calculate the dollar amount of interest that will be earned on the account in the annual percentage yield formula (where "Interest" is divided by "Principal"). Thus, the institution with the six-month certificate of deposit above may base the annual percentage yield calculation on any number of days from 181 to 184, since various six-month periods could contain that range of days. If the institution chose to use 181 days as the "Days in term," it must also use 181 days to compute the "Interest" figure used in the formula. An institution may not use 181 as the "Days in Term" and use an "Interest" figure based on 183 days. (The amount of interest paid by the institution must be based on the actual number of days in the account due to the requirement to pay interest on the principal in the account each day. (See § 230.7(a) of the regulation.))

B. *Stepped-rate accounts (different rates apply in succeeding periods).* Several commenters suggested that the rules regarding stepped-rate accounts should apply only to time accounts. For example, they questioned whether the rules should apply to an interest rate on a transaction account opened by a consumer but will decrease at some definite future date. While a stepped-rate feature typically is offered for time accounts, the Board believes a consistent rule should apply to any account with a stepped-rate feature.

C. *Variable-rate accounts.* The Board proposed that variable-rate accounts with an introductory premium or discount rate must be treated like stepped-rate accounts. This is, the calculation of the annual percentage yield must reflect the introductory interest rate for the length of time provided for in the deposit contract, and the variable interest rate that (but for the introductory rate) would have been

in effect when the account was opened or advertised for the remainder of the 365-day year.

Several commenters asked for guidance on how to compute the annual percentage yield for an introductory premium or discount rate where the variable interest rate "that would have been in effect" but for the premium or discount is not tied to an index, or is not otherwise known by the institution at the time the account is advertised or offered to a consumer.

The final rule addressed this situation. If, after the introductory rate ends, the succeeding variable rate will be tied to an index, the index-based rate in effect at the time the disclosure is made must be used for the remainder of the year. If the succeeding rate is not tied to an index, the rate currently in effect for existing consumers holding the same account who are not receiving the introductory interest rate must be used as the assumed rate for the remainder of the year. If the succeeding rate is not tied to an index and the "introductory" rate is offered to both new and existing consumer account holders with the same account, the account is simply a variable-rate account, and the stepped-rate rules would not apply.

D. *Tiered-rate accounts (different rates apply to specified balance levels).* As in the proposal, the final rule contains special rules for tiered-rate accounts (in which two or more interest rates are applicable to specified balance levels) to enable consumers to compare annual percentage yields for such accounts. The appendix sets out the two basic methods of tiering used by institutions to calculate the interest they will pay on such accounts.

Tiering Method A. In the first method (shown in the appendix as "Tiering Method A"), an institution pays the applicable "tiered" interest rate on the entire amount of the deposit. For accounts of this type, institutions must state the annual percentage yield that applies to each balance tier. In the example given in the appendix, this results in disclosure of three separate annual percentage yields—one for each tier. Although multiple annual percentage yields must be stated for these types of accounts, each annual percentage yield is calculated according to the general rule in the appendix.

When annual percentage yields are computed on this type of tiered-rate account, only one annual percentage yield figure will apply to any single tier. Several commenters requested clarification regarding the amount of the account balance that institutions should assume in computing the annual percentage yield on these types of accounts. As stated in the final regulation, within each tier, the annual percentage yield will not vary within the amount of principal assumed to have been deposited. Therefore, for these types of tiered-rate accounts, institutions may use any balance amount within a particular tier in order to determine the interest amount that would be paid on balances within that tier.

Tiering Method B In the second method of calculating interest on tiered-rate accounts (shown in the appendix as "Tiering Method B"), institutions pay the applicable tiered interest rate only on the portion of the deposit balance that falls within each specified tier, rather than on the entire amount of the deposit. For institutions that compute interest in this manner, a range of annual percentage yields must be provided for each tier, other than for the first tier—to accurately reflect how interest is paid. The low end of each range is figured on the lowest balance in the tier and the high end is figured on the highest balance in the tier.

This approach requires an institution to use a maximum balance amount that would apply in order to figure the high end of the annual percentage yield range for the highest tier. If the account has no maximum balance amount, an assumed balance is required.

The proposed appendix was written with an assumed high balance of $100,000 for accounts not otherwise having a maximum balance amount. The Board solicited comment on the best approach for determining the maximum balance amount of the highest tier, and suggested the following alternatives:

(1) $100,000, which is the current amount for which accounts are federally insured;

(2) Any amount, unless the account agreement sets a maximum limit; or

(3) Any maximum limit set forth in the account agreement.

Many commenters favored a uniform rule assuming $100,000 as the maximum balance. Some commenters expressed concern that in the absence of a uniform standard, comparisons of accounts among institutions would be more difficult and consumers could be misled by annual percentage yields for the highest tier that assume a very high maximum balance that consumers are unlikely to maintain. However, others felt that an artificial ceiling placed institutions allowing higher maximum balances at a competitive disadvantage, since the higher annual percentage yield based on the higher maximum balance could not be disclosed.

Based on the comments received and upon further analysis, the final regulation provides that if an institution limits the maximum balance on an account, that figure should be used as the highest balance in the highest tier. Thus, if the maximum balance that can be on deposit in a tiered-rate account is $100,000, institutions would use that number to figure the annual percentage yield for the high end of the top tier. If the tiered account has no maximum balance, however, the institution may assume any amount as the maximum balance amount. The Board believes that, while there may be some value in uniformity for the maximum balance figure of a tiered-rate account, limiting the maximum balance to a single figure might not be helpful to consumers. Since an institution may choose not to limit the amount of a deposit, requiring the use of a single figure could be misleading.

Part II. Annual Percentage Yield Earned for Periodic Statements

The calculation for the annual percentage yield earned that appears on a periodic statement is similar to the calculation for the annual percentage yield that appears in advertisements and account disclosures. The difference between the two formulas in that the annual percentage yield earned is tied directly to the interest and account balance for the period reflected on the statement; the annual percentage yield in account disclosures and advertisements is not tied to the consumer's exact account balance.

In the Board's proposal, the annual percentage yield earned reflected "the relationship between the interest actually paid and credited to the consumer's account during the period and the average daily balance in the account for the period" (emphasis added). Commenters urged the Board to modify this language. They were concerned that such a rule would confuse consumers whose accounts provide periodic statements more frequently than they credit interest (for example, monthly statements with interest credited quarterly). (See the discussion accompanying § 230.6.) They believed that the Congress did not intend for consumers with such accounts to receive two monthly statements during the quarter showing no interest earnings, and a final monthly statement showing the interest for all three months, and an annual percentage yield earned that reflects three months' worth of interest paid during the month.

In light of these concerns, the Board has modified the language in this part of the appendix (as well as that in § 230.6). Under the final rule, the annual

percentage yield earned is an annualized rate that reflects the relationship between the amount of interest earned on the consumer's account during the statement period and the average balance in the account for the statement period.

Several commenters requested clarification regarding the proposal's requirement that the annual percentage yield earned relates the amount of interest earned on a consumer's account during the statement period to the "*average daily balance* in the account for the period" (emphasis added). Commenters were concerned that, despite the choice of calculation methods offered in § 230.7(a), the regulation required the use of the average daily balance method to comply with § 230.6. The calculation required by Part II does not impair an institution's choice of balance calculation methods for the payment of interest. The interest figure used in the calculation may be derived from the daily balance method or the average daily balance method. The balance used in the annual percentage yield earned formula is the sum of the balances for each day in the period divided by the number of days in the period.

A number of commenters raised the problems presented when the statement period does not coincide exactly with the interest accrual period. Several commenters stated that they calculate interest using a calendar month rather than the period covered by the statement cycle. This poses a particular problem when the average daily balance method is used. For example, a periodic statement might cover the period from June 16 through July 15, and reflect transactions that occurred during that period. The institution, however, accrues interest based on the average daily balance in the account during the month of June. The final rule provides that institutions that use an average daily balance method and calculate interest for a period other than the statement period must reflect on the statement (for the period during which the interest calculation period ends) the interest earned on the account during that other period (and not during the statement period). Furthermore, they must base the annual percentage yield earned on the balance information that corresponds to the interest earned. For example, if a 3.50% interest rate (with daily compounding) is paid on an average daily balance of $500 in June, interest of $1.44 is earned in June. The annual percentage yield earned would be 3.56%, based on the average daily balance in the account during June ($500). If the periodic statement covers June 16 through July 15, the institution would show the interest earned and the annual percentage yield earned in June on that periodic statement. (See discussion of § 230.6(b).)

Commenters also asked the Board to address the situation in which a monthly statement is issued, but interest is calculated on a quarterly basis. For institutions that use the daily balance method, the final regulation requires institutions to calculate the annual percentage yield earned based on interest earned for the monthly period, even if the interest is calculated or credited in a different period. If, however, an institution calculates interest on the average daily balance for the quarter, the average daily balance cannot be determined when statements are prepared for the first two months of the quarter. Therefore, no interest earned or annual percentage yield earned would be disclosed on the first or second monthly statements. The interest earned for the quarter would be shown on the statement for the third month and the annual percentage yield earned would be figured on the basis of the quarter. The third example in Part II of the appendix shows this annual percentage yield earned calculation.

Appendix B—Model Clauses and Sample Forms.

The model clauses and sample forms in appendix B are intended for optional use by depository institutions to aid compliance with the disclosure requirements of §§ 230.4 (account disclosures), 230.5 (subsequent disclosures), and 230.8 (advertisements). Section 269(b) of the act provides that institutions that use these clauses will be in compliance with the disclosure provisions of the act. In addition, use of any modified version of a model clause will also be considered in compliance as long as the institution does not delete information required by the act or rearrange the format so as to affect the substance, clarity, or meaningful sequence of the disclosure.

As discussed in the supplementary information to § 230.3(a), the final rule provides for flexibility in designing the format of the disclosures. Institutions can choose to prepare a single document or brochure that incorporates disclosures for all accounts offered, or prepare different documents for each type of account. Institutions may also use inserts to a document (see Sample Form B–4) or fill in blanks (see Sample Forms B–5, B–6 and B–7 which use double underlining to indicate terms that have been filled in) to show current rates, fees or other terms.

The sample forms included in appendix B illustrate the information that must be provided to a consumer when an account is opened under § 230.4(a)(1). Institutions are given even greater flexibility in disclosing the annual percentage yield, the interest rate, and the maturity of a time account in responding to a consumer's request under § 230.4(a)(2). For disclosures sent in response to a request, the disclosure may identify the date when the rate and yield were accurate and provide a telephone number for consumers to call to obtain current rate information. In addition, the maturity of a time account can be stated as a term, rather than a date. (See Model Clause B–1 (h)(i).)

The regulation allows institutions to satisfy their requirements under Regulation DD with disclosures that meet the requirements of Regulation E (see § 230.3(c)). The model clauses and sample forms do not include examples of disclosures which would be covered by both this regulation and Regulation E (for example, disclosing the amount of a fee for ATM usage). Depository institutions should consult appendix A to Regulation E for appropriate model clauses.

The Board requested comment on what additional model clauses and sample forms should be included in appendix B. Although a number of commenters requested that the Board provide a model periodic statement, the majority of commenters did not believe including a statement was either necessary or desirable. Most commenters encouraged the Board to allow institutions to independently develop a periodic statement that meets the needs of their customers, so long as it also meets the requirements of the regulation. The final rule does not contain model clauses for a periodic statement.

The Board also requested comment on whether sample advertisements should be included in the final rule and whether the samples provided in the proposal were useful. Commenters were divided on whether sample advertisements should be included. Some supported including the samples to provide guidance to institutions on exactly how to comply with the advertising requirements of the regulation. These commenters believed including the sample advertisements would help to insulate institutions from civil liability. Other commenters urged the Board to delete the sample advertisements. They believed that providing advertisements would open institutions up to challenge by both regulators and consumers when

an advertisement does not match the sample form.

The Board believes that since civil liability may occur due to violations of the advertising requirements, many institutions will benefit from including the samples in the final rule. Other sample advertisements have not been added, however.

In the model clauses, italicized words indicate the type of disclosure an institution should insert in the space provided (for example, an institution might insert "March 25, 1993" in the blank for a "(date)" disclosure). Brackets and "/" indicate an institution must choose the alternative that describes its practice (for example, [daily balance/average daily balance]).

1. B–1 Model Clauses

Clause (a)(i) contains the model clause describing fixed-rate accounts. While the proposal required institutions to disclose the period of time the interest rate would be in effect for both fixed- and variable-rate accounts, the final rule clarifies such a disclosure is only necessary for fixed-rate accounts. (See § 230.4(b)(1)(i).)

Clause (a)(ii) contains models for disclosing a variable-rate account. The proposal included a model clause that described changing rates based on "market or other factors." Many commenters questioned the usefulness of such a model as many institutions determine rate changes internally. Accordingly, the final rule includes language describing rate changes made at the institution's discretion.

Clause (a)(iii) provides a model clause to describe a stepped-rate account. If a stepped-rate account is also a variable-rate account, the institution must provide the variable-rate disclosures, as applicable. (See Clause (a)(ii).)

Clause (a)(iv) contains alternative language for describing tiered-rate accounts. As explained in appendix A, there are two types of tiered-rate accounts. The first type (Tiering Method A) pays the stated interest rate that corresponds to the applicable deposit tier on the full balance in the account. The second type of tiered-rate account (Tiering Method B) pays the stated interest rate only on that portion of the balance within the specified tier. An institution must provide the disclosure that describes its method of calculating interest.

Institutions must also disclose whether a tiered-rate account is a fixed-rate or variable-rate account. For example, if it is a fixed-rate account, the disclosure must include the time period the rates will be in effect. (See Clause (a)(i).) If the tiered-rate account is a variable-rate account, the institution must also provide the variable-rate disclosures. (See Clause (a)(ii).)

Clause (b)(ii) has been added to address the situation where the institution will not pay accrued interest when the consumer closes the account before that interest has been credited to the account.

Clauses (c) (i)–(iii) contain models for disclosing any minimum balance requirements associated with the account. The regulation requires that the disclosures state any minimum balance that is required to open the account, avoid the imposition of fees or obtain the annual percentage yield disclosed. If a fee is incurred for not maintaining a minimum balance, it may be stated either with this disclosure or with other fees (or both). The clauses related to the minimum balance to avoid the imposition of a fee provide examples based on the daily balance and the average daily balance methods. Institutions are not limited, however, to those two methods when determining the minimum balance for imposing a fee.

The disclosure describing the minimum balance to avoid the imposition of a fee should specify the frequency with which the fee may be assessed. For example, a minimum balance fee might be assessed monthly, even if the institution looks at whether the consumer maintained a certain balance each day of the month. In such a case, the disclosure must state the fee is imposed on a monthly basis.

Clauses (d) (i) and (ii) track the definitions for daily balance method (§ 230.2(i)) and average daily balance method (§ 230.2(d)), respectively.

Clause (e) contains models for disclosing when interest begins to accrue on noncash deposits. Section 230.7(c) requires institutions to accrue interest no later than the business day specified for interest-bearing accounts in the EFAA and Regulation CC. Institutions may, however, begin to accrue interest on the day an item is deposited (or at some time before being required to by Regulation CC). The institution may also disclose additional information, for example, that deposits received after 2 p.m. will be credited on the next business day.

Clause (f) contains a model format for use in disclosing fees. Section 230.4(b)(4) requires institutions to disclose either the amount of any fee that may be imposed in connection with the account or provide an explanation of how the fee will be determined. In addition, the disclosure must state the conditions under which the fee may be imposed if that is not clear from the name and description of the fee. (See discussion of § 230.4(b)(4) regarding examples of fees that may be assessed in connection with the account.)

Clause (h) contains model language for the additional disclosures required by § 230.4(b)(6) for time accounts. Clause (h)(i) contains alternative disclosures for describing the maturity date of a time account. The first alternative (stating a specific date) is appropriate for a disclosure when an account is opened. The second can be used only when providing disclosures in response to a consumer's request.

The model disclosure in clause (h)(iii) may be used if an institution compounds interest and allows consumers to withdraw interest during the term of the time account. As discussed in § 230.4(b)(6)(iii), this disclosure alerts consumers that the annual percentage yield assumes interest remains on deposit until maturity and that if interest is withdrawn, earnings will be reduced.

The proposal did not require disclosures for bonuses paid on accounts. The final rule requires that institutions offering bonuses state the bonus and disclose any minimum balance or time requirement to obtain the bonus and when the bonus will be paid. Clause (i) contains the model clauses for the disclosure requirements relating to bonuses. The clauses may be used for both cash and merchandise bonuses.

2. B–2 Model Clauses

Model clauses for change in terms notices are found in B–2. The second clause, describing a future decrease in the interest rate and annual percentage yield, is only applicable to fixed-rate accounts.

3. B–3 Model Clauses

Commenters requested that model clauses for the pre-maturity notices for time accounts be added to the final rule. The model clauses illustrate the requirements in § 230.5(b)(2) and 230.5(d). Institutions should refer to model clauses in B–1 and B–2 for other applicable disclosures.

4. B–4 Sample Form

This sample form illustrates use of a disclosure form for multiple accounts. The form has been marked with an "X" to indicate it is for a NOW account. The sample form includes both a fee schedule insert and a rate sheet insert. The sample thus shows that institutions may provide current rates on an insert sheet when the disclosure is given to the consumer.

The fees shown in this sample (as well as in B–5 and B–6) where chosen at

random and are not intended to represent any required pricing standards.

In the rate sheet insert, the calculations of the annual percentage yield for the 3-month and 6-month certificates are based on 92 days and 181 days, respectively.

5. B–6 Sample Form

The proposal did not contain a sample form for a tiered-rate account. Sample Form B–6 illustrates a tiered-rate account which uses Tiering Method A (discussed in appendix A and Clause (a)(iv)) to calculate interest. The form uses a narrative description of a tiered-rate account. Institutions can use a different format (for example, a chart similar to the one in B–4), so long as all of the necessary information for each tier is clearly presented. The form does not contain a separate disclosure of the minimum balance required to obtain the annual percentage yield, as the tiered-rate disclosure itself provides that information.

6. Sample Forms B–8 and B–9

These samples illustrate the requirements for advertisements found in § 230.8(c) of the regulation. Specifically, the samples demonstrate how certificates of deposit and money market accounts could be advertised in compliance with the regulation. The advertisement for the money market account (B–9) is for a tiered-rate account that uses Tiering Method A. This advertisement does not contain the disclosure related to a minimum deposit to open the account (§ 230.8(c)(4)). This indicates the opening deposit is not greater than the minimum balance necessary to obtain the advertised annual percentage yield.

The final rule does not require as many advertising disclosures as the proposal did and the sample advertisements reflect such changes (see § 230.8(c)). In addition, the final rule allows institutions to use the abbreviation "APY" if the term is printed out or stated in full at least once in an advertisement (see § 230.8(b)). Finally, while the proposal required that an advertisement state the period of time the annual percentage yield is in effect, the final rule allows the institution the alternative of providing a statement that the annual percentage yield is accurate as of a specified date. (See § 230.8(c)(2) and Sample Form B–9.)

Appendix C—Effect on State Laws

This appendix outlines the standards and process used for state law determinations. It has been revised to reflect the fact that the final regulation applies the inconsistency standard to state laws requiring actions (for example, use of particular balance calculation methods) as well as to state disclosure laws. (See discussion in § 230.1(d).)

Appendix D—Issuance of Staff Interpretations

The regulation retains the same method of providing official staff interpretations to the regulation as is used for Regulations B, E, and Z—that is, through a commentary. The Board proposed to follow the schedule established for updating several of its consumer regulation commentaries: publish changes for public comment in the autumn, with final rules effective the following spring, but compliance optional until the next October. The Board solicited comment on whether this approach would be helpful, or whether issuance of so many proposals at the same time would be difficult to deal with, so as to make a different schedule for this regulation preferable. Few comments were received on the issue. The Board therefore plans to follow its established pattern for other staff commentaries. An official staff commentary is expected to be issued in proposed form in the fall of 1993, and adopted in final form in the spring of 1994, after an opportunity for public comment. Thereafter, yearly updates of the commentary, as needed, would be contemplated.

Transition Rules

The effective date of the regulation is September 21, 1992, and the mandatory compliance date is March 21, 1993. Institutions will have to provide disclosures to any consumer who opens an account on or after March 21, 1993. Institutions also will have to provide disclosures for time accounts renewed thereafter, including automatically-renewable accounts that were opened prior to that date. Similarly, periodic statement disclosures and change in term notices would have to be provided thereafter, as applicable, for consumer accounts—including those accounts opened prior to the mandatory compliance date. Finally, the substantive provisions regarding the payment of interest will apply to consumer accounts existing as of the mandatory compliance date; they are not limited to new account holders.

Commenters raised a number of concerns about the mandatory compliance date of the regulation, and particularly about the need for transition rules for certain existing accounts. To ensure an orderly introduction of the protections intended by the Congress without undue disruption of existing relationships, the Board is providing a number of special rules.

Commenters raised concerns about time accounts opened prior to the mandatory compliance date. A number of commenters stated that their existing practice is to calculate interest based on a 360-day year (1/360 of the annual rate paid for 360 days a year). For time accounts opened prior to the mandatory compliance date, institutions are not required to change to a 365-day year during the remaining term of the account. Of course, if an account is renewed on or after the mandatory compliance date (including automatically renewable time accounts), all aspects of the regulation will apply at that point.

Sections 230.5(b), 230.5(c) and 230.5(d) require institutions to send notices prior to maturity for rollover and nonrollover time accounts, but institutions need not send any notice prior to the mandatory compliance date. Thus, institutions do not have to send the prematurity notice for any existing time account (rollover or nonrollover) that will automatically renew within 30 days after the mandatory compliance date.

Section 230.4(c) requires a notice about the availability of disclosures to be given to existing consumer account holders who receive periodic statements. Special transition rules dealing with this section are set forth in the supplementary information accompanying that section.

Special transition rules dealing with accounts held by unincorporated nonbusiness associations on the mandatory compliance date and the duty to provide information on periodic statements are discussed in the supplementary information accompanying §§ 230.2(a) and 230.6, respectively.

(3) Economic impact statement

The Board's Division of Research and Statistics has prepared an economic impact statement on the proposed regulation. A copy of the analysis may be obtained from Publications Services, Board of Governors of the Federal Reserve System, Washington, DC, 20551, or by telephone at (202) 452–3245.

(4) Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 35; 5 CFR 1320.13), the information collection was reviewed by the Board under the authority delegated to the Board by the Office of Management and Budget after

considering comments received during the public comment period.

A number of commenters believed that complying with Regulation DD would place significant paperwork burdens on institutions, particularly small institutions. They questioned whether consumers wanted to receive such detailed information and stated that the expense of providing the disclosures would be passed on to consumers through decreased interest rates.

A few commenters reacted to the specific burden estimates that appeared in the **Federal Register** notice for proposed Regulation DD. They generally believed that the estimates under-reported the burden, particularly the time associated with providing complete disclosures to consumers who are opening new accounts, and explaining those disclosures.

The Board recognizes that Regulation DD will require institutions to perform annual percentage yield calculations for the various products offered, calculations that the institutions otherwise may not make. In addition, institutions will have to prepare updated disclosures as frequently as needed to incorporate any movement of interest rates. To more fully reflect these responsibilities, the Board has increased the burden estimates for providing complete disclosures, whether as part of opening a new account or in response to a consumer request.

A detailed description of the disclosure and recordkeeping requirements (including the reasons for them, the institutions that would be subject to them, and how frequently disclosures my be required) is contained elsewhere in this notice.

The information collection is mandatory (105 Stat. 2236, 2334). The requirements will apply to both large and small institutions. The impact on small institutions will depend on the extent and variety of their product offerings and their choice of the various compliance options offered by the regulations. Model disclosure forms in the regulation should somewhat ease compliance burdens on these institutions.

The following information about paperwork burden relates only to the effect of the regulation on state member banks. Institutions that will be subject to Regulation DD other than state member banks are supervised by other federal agencies: the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision. For purposes of the Paperwork Reduction Act, these agencies will report their own estimates of the paperwork burden imposed by the Truth in Savings requirements.

The Board estimates that the disclosure requirement will result in a one-time reporting burden of approximately 200,000 hours and an annual reporting burden of approximately 1.7 million hours for state member banks.

Information Collection

Report title: Recordkeeping and Disclosure Requirements in Connection with Regulation DD (Truth in Savings)
Report number: n/a
OMB docket number: 7100–0255
Frequency: As needed (or on occasion)
Reporters: State member banks

	No. of records subject to requirement	× Estimated time per response	= Estimated total No. of hours of annual reporting burden
Notice to existing account holders (one-time burden)	8,240,000	1.5 min.	206,000
Complete disclosures (Upon request and new accounts)	3,657,000	5 min.	304,750
Rollover CDs	800,000	1 min.	13,334
Notice for nonrollover CDs	267,000	1 min.	4,450
Change in terms	1,100,000	1 min.	18,334
Periodic statements	82,500,000	1 min.	1,375,000
Advertising	12,000	60 min.	12,000

List of Subjects in 12 CFR Part 230

Advertising, Banks, banking, Consumer protection, Federal Reserve System, Reporting and recordkeeping requirements, Truth in savings.

For the reasons set forth in the preamble and pursuant to authority granted in section 269 of the Truth in Savings Act (12 U.S.C. 4301 et seq.; Public Law 102–242; 105 Stat. 2236), the Board is amending 12 CFR chapter II by adding part 230 to read as follows:

PART 230—TRUTH IN SAVINGS (REGULATION DD)

Sec.
230.1 Authority, purpose, coverage, and effect on state laws.
230.2 Definitions.
230.3 General disclosure requirements.
230.4 Account disclosures.
230.5 Subsequent disclosures.
230.6 Periodic statement disclosures.
230.7 Payment of interest.
230.8 Advertising.
230.9 Enforcement and record retention.

Appendix A to Part 230—Annual Percentage Yield Calculation

Appendix B to Part 230—Model Clauses and Sample Forms

Appendix C to Part 230—Effect on State Laws

Appendix D to Part 230—Issuance of Staff Interpretations

Authority: 12 U.S.C. 4301 *et seq.*

§ 230.1 Authority, purpose, coverage, and effect on state laws.

(a) *Authority.* This part, known as Regulation DD, is issued by the Board of Governors of the Federal Reserve System to implement the Truth in Savings Act of 1991 (the act), contained in the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4301 et seq., Pub. L. 102–242, 105 Stat. 2236). Information collection requirements contained in this part have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. 3501 et seq. and have been assigned OMB No. 7100–0255.

(b) *Purpose.* The purpose of this part is to enable consumers to make informed decisions about accounts at depository institutions. This part requires depository institutions to provide disclosures so that consumers can make meaningful comparisons among depository institutions.

(c) *Coverage.* This part applies to depository institutions except for credit unions. In addition, the advertising rules in § 230.8 of this part apply to any person who advertises an account offered by a depository institution, including deposit brokers.

(d) *Effect on state laws.* State law requirements that are inconsistent with the requirements of the act and this part are preempted to the extent of the inconsistency. Additional information on inconsistent state laws and the procedures for requesting a preemption determination from the Board are set forth in appendix C of this part.

§ 230.2 Definitions.

For purposes of this part, the following definitions apply:

(a) *Account* means a deposit account at a depository institution that is held by or offered to a consumer. It includes time, demand, savings, and negotiable order of withdrawal accounts. For purposes of the advertising requirements in § 230.8 of this part, the term also includes an account at a depository institution that is held by or on behalf of a deposit broker, if any interest in the account is held by or offered to a consumer. The term does not include an existing account held by an unincorporated nonbusiness association of natural persons prior to March 21, 1993, unless the association notifies the institution that it meets the definition of "consumer."

(b) *Advertisement* means a commercial message, appearing in any medium, that promotes directly or indirectly the availability of, or a deposit in, an account.

(c) *Annual percentage yield* means a percentage rate reflecting the total amount of interest paid on an account, based on the interest rate and the frequency of compounding for a 365-day period and calculated according to the rules in appendix A of this part.

(d) *Average daily balance method* means the application of a periodic rate to the average daily balance in the account for the period. The average daily balance is determined by adding the full amount of principal in the account for each day of the period and dividing that figure by the number of days in the period.

(e) *Board* means the Board of Governors of the Federal Reserve System.

(f) *Bonus* means a premium, gift, award, or other consideration worth more than $10 (whether in the form of cash, credit, merchandise, or any equivalent) given or offered to a consumer during a year in exchange for opening, maintaining, renewing, or increasing an account balance. The term does not include interest, other consideration worth $10 or less given during a year, the waiver or reduction of a fee, or the absorption of expenses.

(g) *Business day* means a calendar day other than a Saturday, a Sunday, or any of the legal public holidays specified in 5 U.S.C. 6103(a).

(h) *Consumer* means a natural person who holds an account primarily for personal, family, or household purposes, or to whom such an account is offered. The term also includes an unincorporated nonbusiness association of natural persons. The term does not include a natural person who holds an account for another in a professional capacity.

(i) *Daily balance method* means the application of a daily periodic rate to the full amount of principal in the account each day.

(j) *Depository institution* and *institution* mean an institution defined in section 19(b)(1)(A)(i)-(vi) of the Federal Reserve Act (12 U.S.C. 461), except credit unions defined in section 19(b)(1)(A)(iv).

(k) *Deposit broker* means any person who is a deposit broker as defined in section 29(g) of the Federal Deposit Insurance Act (12 U.S.C. 1831f(g)).

(l) *Fixed-rate account* means an account for which the institution contracts to give at least 30 calendar days advance written notice of decreases in the interest rate.

(m) *Grace period* means a period following the maturity of an automatically renewing time account during which the consumer may withdraw funds without being assessed a penalty.

(n) *Interest* means any payment to a consumer or to an account for the use of funds in an account, calculated by application of a periodic rate to the balance. The term does not include the payment of a bonus or other consideration worth $10 or less given during a year, the waiver or reduction of a fee, or the absorption of expenses.

(o) *Interest rate* means the annual rate of interest paid on an account which does not reflect compounding. For the purposes of the account disclosures in § 230.4(b)(1)(i) of this part, the interest rate may, but need not, be referred to as the "annual percentage rate" in addition to being referred to as the "interest rate."

(p) *Passbook savings account* means a savings account in which the consumer retains a book or other document in which the institution records transactions on the account.

(q) *Periodic statement* means a statement setting forth information about an account (other than a time account or passbook savings account) that is provided to a consumer on a regular basis four or more times a year.

(r) *State* means a state, the District of Columbia, the commonwealth of Puerto Rico, and any territory or possession of the United States.

(s) *Stepped-rate account* means an account that has two or more interest rates that take effect in succeeding periods and are known when the account is opened.

(t) *Tiered-rate account* means an account that has two or more interest rates that are applicable to specified balance levels.

(u) *Time account* means an account with a maturity of at least seven days in which the consumer generally does not have a right to make withdrawals for six days after the account is opened, unless the deposit is subject to an early withdrawal penalty of at least seven days' interest on amounts withdrawn.

(v) *Variable-rate account* means an account in which the interest rate may change after the account is opened, unless the institution contracts to give at least 30 calendar days advance written notice of rate decreases.

§ 230.3 General disclosure requirements.

(a) *Form.* Depository institutions shall make the disclosures required by §§ 230.4 through 230.6 of this part, as applicable, clearly and conspicuously in writing and in a form the consumer may keep. Disclosures for each account offered by an institution may be presented separately or combined with disclosures for the institution's other accounts, as long as it is clear which disclosures are applicable to the consumer's account.

(b) *General.* The disclosures shall reflect the terms of the legal obligation of the account agreement between the consumer and the depository institution. Disclosures may be made in languages other than English, provided the disclosures are available in English upon request.

(c) *Relation to Regulation E (12 CFR part 205).* Disclosures required by and provided in accordance with the Electronic Fund Transfer Act (15 U.S.C. 1601) and its implementing Regulation E (12 CFR part 205) that are also required by this part may be substituted for the disclosures required by this part.

(d) *Multiple consumers.* If an account is held by more than one consumer, disclosures may be made to any one of the consumers.

(e) *Oral response to inquiries.* In an oral response to a consumer's inquiry about interest rates payable on its accounts, the depository institution shall state the annual percentage yield. The interest rate may be stated in addition to the annual percentage yield. No other rate may be stated.

(f) *Rounding and accuracy rules for rates and yields*—(1) *Rounding.* The annual percentage yield, the annual percentage yield earned, and the interest rate shall be rounded to the nearest one-hundredth of one percentage point (.01%) and expressed to two decimal places. For account disclosures, the interest rate may be expressed to more than two decimal places.

(2) *Accuracy.* The annual percentage yield (and the annual percentage yield earned) will be considered accurate if not more that one-twentieth of one percentage point (.05%) above or below the annual percentage yield (and the annual percentage yield earned) determined in accordance with the rules in appendix A of this part.

§ 230.4 Account disclosures.

(a) *Delivery of account disclosures*—(1) *Account opening.* A depository institution shall provide account disclosures to a consumer before an account is opened or a service is provided, whichever is earlier. An institution is deemed to have provided a service when a fee required to be disclosed is assessed. If the consumer is not present at the institution when the account is opened or the service is provided and has not already received the disclosures, the institution shall mail or deliver the disclosures no later than 10 business days after the account is opened or the service is provided, whichever is earlier.

(2) *Requests.* (i) A depository institution shall provide account disclosures to a consumer upon request. If the consumer is not present at the institution when a request is made, the institution shall mail or deliver the disclosures within a reasonable time after it receives the request.

(ii) In providing disclosures upon request, the institution may:

(A) Specify an interest rate and annual percentage yield that were offered within the most recent seven calendar days; state that the rate and yield are accurate as of an identified date; and provide a telephone number consumers may call to obtain current rate information.

(B) State the maturity of a time account as a term rather than a date.

(b) *Content of account disclosures.* Account disclosures shall include the following, as applicable:

(1) *Rate information*—(i) *Annual percentage yield and interest rate.* The "annual percentage yield" and the "interest rate," using those terms, and for fixed-rate accounts the period of time the interest rate will be in effect.

(ii) *Variable rates.* For variable-rate accounts:

(A) The fact that the interest rate and annual percentage yield may change;

(B) How the interest rate is determined;

(C) The frequency with which the interest rate may change; and

(D) Any limitation on the amount the interest rate may change.

(2) *Compounding and crediting*—(i) *Frequency.* The frequency with which interest is compounded and credited.

(ii) *Effect of closing an account.* If consumers will forfeit interest if they close the account before accrued interest is credited, a statement that interest will not be paid in such cases.

(3) *Balance information*—(i) *Minimum balance requirements.* Any minimum balance required to:

(A) Open the account;

(B) Avoid the imposition of a fee; or

(C) Obtain the annual percentage yield disclosed.

Except for the balance to open the account, the disclosure shall state how the balance is determined for these purposes.

(ii) *Balance computation method.* An explanation of the balance computation method specified in § 230.7 of this part used to calculate interest on the account.

(iii) *When interest begins to accrue.* A statement of when interest begins to accrue on noncash deposits.

(4) *Fees.* The amount of any fee that may be imposed in connection with the account (or an explanation of how the fee will be determined) and the conditions under which the fee may be imposed.

(5) *Transaction limitations.* Any limitations on the number or dollar amount of withdrawals or deposits.

(6) *Features of time accounts.* For time accounts:

(i) *Time requirements.* The maturity date.

(ii) *Early withdrawal penalties.* A statement that a penalty will or may be imposed for early withdrawal, how it is calculated, and the conditions for its assessment.

(iii) *Withdrawal of interest prior to maturity.* If compounding occurs during the term and interest may be withdrawn prior to maturity, a statement that the annual percentage yield assumes interest remains on deposit until maturity and that a withdrawal will reduce earnings.

(iv) *Renewal policies.* A statement of whether or not the account will renew automatically at maturity. If it will, a statement of whether or not a grace period will be provided and, if so, the length of that period must be stated. If the account will not renew automatically, a statement of whether interest will be paid after maturity if the consumer does not renew the account must be stated.

(7) *Bonuses.* The amount or type of any bonus, when the bonus will be provided, and any minimum balance and time requirements to obtain the bonus.

(c) *Notice to existing account holders*—(1) *Notice of availability of disclosures.* Depository institutions shall provide a notice to consumers who receive periodic statements and who hold existing accounts of the type offered by the institution on March 21, 1993. The notice shall be included on or with the first periodic statement sent on or after March 21, 1993 (or on or with the first periodic statement for a statement cycle beginning on or after that date). The notice shall state that consumers may request account disclosures containing terms, fees, and rate information for their account. In responding to such a request, institutions shall provide disclosures in accordance with paragraph (a)(2) of this section.

(2) *Alternative to notice.* As an alternative to the notice described in paragraph (c)(1) of this section, institutions may provide account disclosures to consumers. The disclosures may be provided either with a periodic statement or separately, but must be sent no later than when the periodic statement described in paragraph (c)(1) is sent.

§ 230.5 Subsequent disclosures.

(a) *Change in terms*—(1) *Advance notice required.* A depository institution shall give advance notice to affected consumers of any change in a term required to be disclosed under § 230.4(b) of this part if the change may reduce the annual percentage yield or adversely affect the consumer. The notice shall include the effective date of the change. The notice shall be mailed or delivered at least 30 calendar days before the effective date of the change.

(2) *No notice required.* No notice under this section is required for:

(i) *Variable-rate changes.* Changes in the interest rate and corresponding changes in the annual percentage yield in variable-rate accounts.

(ii) *Check printing fees.* Changes in fees assessed by third parties for check printing.

(iii) *Short-term time accounts.* Changes in any term for time accounts with maturities of one month or less.

(b) *Notice before maturity for time accounts longer than one month that renew automatically.* For time accounts

with a maturity longer than one month that renew automatically at maturity, institutions shall provide the disclosures described below before maturity. The disclosures shall be mailed or delivered at least 30 calendar days before maturity of the existing account. Alternatively, the disclosures may be mailed or delivered at least 20 calendar days before the end of the grace period on the existing account, provided a grace period of at least five calendar days is allowed.

(1) *Maturities of longer than one year.* If the maturity is longer than one year, the institution shall provide account disclosures set forth in § 230.4(b) of this part for the new account, along with the date the existing account matures. If the interest rate and annual percentage yield that will be paid for the new account are unknown when disclosures are provided, the institution shall state that those rates have not yet been determined, the date when they will be determined, and a telephone number consumers may call to obtain the interest rate and the annual percentage yield that will be paid for the new account.

(2) *Maturities of one year or less but longer than one month.* If the maturity is one year or less but longer than one month, the institution shall either:

(i) Provide disclosures as set forth in paragraph (b)(1) of this section; or

(ii) Disclose to the consumer:

(A) The date the existing account matures and the new maturity date if the account is renewed;

(B) The interest rate and the annual percentage yield for the new account if they are known (or that those rates have not yet been determined, the date when they will be determined, and a telephone number the consumer may call to obtain the interest rate and the annual percentage yield that will be paid for the new account); and

(C) Any difference in the terms of the new account as compared to the terms required to be disclosed under § 230.4(b) of this part for the existing account.

(c) *Notice for time accounts one month or less that renew automatically.* For time accounts with a maturity one month or less that renew automatically at maturity, institutions shall disclose any difference in the terms of the new account as compared to the terms required to be disclosed under § 230.4(b) of this part for the existing account, other than a change in the interest rate and corresponding change in the annual percentage yield. The notice shall be mailed or delivered within a reasonable time after the renewal.

(d) *Notice before maturity for time accounts longer than one year that do not renew automatically.* For time accounts with a maturity longer than one year that do not renew automatically at maturity, institutions shall disclose to consumers the maturity date and whether interest will be paid after maturity. The disclosures shall be mailed or delivered at least 10 calendar days before maturity of the existing account.

§ 230.6 Periodic statement disclosures.

(a) *General rule.* If a depository institution mails or delivers a periodic statement, the statement shall include the following disclosures:

(1) *Annual percentage yield earned.* The "annual percentage yield earned" during the statement period, using that term, calculated according to the rules in Appendix A of this part.

(2) *Amount of interest.* The dollar amount of interest earned during the statement period.

(3) *Fees imposed.* Fees required to be disclosed under § 230.4(b)(4) of this part that were debited to the account during the statement period. The dollar amounts of the fees shall be itemized by type and dollar amounts.

(4) *Length of period.* The total number of days in the statement period, or the beginning and ending dates of the period.

(b) *Special rule for average daily balance method.* In making the disclosures described in paragraph (a) of this section, institutions that use the average daily balance method and that calculate interest for a period other than the statement period shall calculate and disclose the annual percentage yield earned and amount of interest earned based on that period rather than the statement period. The information in paragraph (a)(4) of this section shall be stated for that period as well as for the statement period.

§ 230.7 Payment of interest.

(a) *Permissible methods*—(1) *Balance on which interest is calculated.* Institutions shall calculate interest on the full amount of principal in an account for each day by use of either the daily balance method or the average daily balance method.[1]

(2) *Determination of minimum balance to earn interest.* An institution shall use the same method to determine any minimum balance required to earn interest as it uses to determine the balance on which interest is calculated. An institution may use an additional method that is unequivocally beneficial to the consumer.

(b) *Compounding and crediting policies.* This section does not require institutions to compound or credit interest at any particular frequency.

(c) *Date interest begins to accrue.* Interest shall begin to accrue not later than the business day specified for interest-bearing accounts in section 606 of the Expedited Funds Availability Act (12 U.S.C. 4005 *et seq.*) and implementing Regulation CC (12 CFR part 229). Interest shall accrue until the day funds are withdrawn.

§ 230.8 Advertising.

(a) *Misleading or inaccurate advertisements.* An advertisement shall not be misleading or inaccurate and shall not misrepresent a depository institution's deposit contract. An advertisement shall not refer to or describe an account as "free" or "no cost" (or contain a similar term) if any maintenance or activity fee may be imposed on the account. The word "profit" shall not be used in referring to interest paid on an account.

(b) *Permissible rates.* If an advertisement states a rate of return, it shall state the rate as an "annual percentage yield" using that term. (The abbreviation "APY" may be used provided the term "annual percentage yield" is stated at least once in the advertisement.) The advertisement shall not state any other rate, except that the "interest rate," using that term, may be stated in conjunction with, but not more conspicuously than, the annual percentage yield to which it relates.

(c) *When additional disclosures are required.* Except as provided in paragraph (e) of this section, if the annual percentage yield is stated in an advertisement, the advertisement shall state the following information, to the extent applicable, clearly and conspicuously:

(1) *Variable rates.* For variable-rate accounts, a statement that the rate may change after the account is opened.

(2) *Time annual percentage yield is offered.* The period of time the annual percentage yield will be offered, or a statement that the annual percentage yield is accurate as of a specified date.

(3) *Minimum balance.* The minimum balance required to obtain the advertised annual percentage yield. For tiered-rate accounts, the minimum balance required for each tier shall be stated in close proximity and with equal prominence to the applicable annual percentage yield.

(4) *Minimum opening deposit.* The minimum deposit required to open the

[1] Institutions shall calculate interest by use of a daily rate of at least 1/365 of the interest rate. In a leap year a daily rate of 1/366 of the interest rate may be used.

account, if it is greater than the minimum balance necessary to obtain the advertised annual percentage yield.

(5) *Effect of fees.* A statement that fees could reduce the earnings on the account.

(6) *Features of time accounts.* For time accounts:

(i) *Time requirements.* The term of the account.

(ii) *Early withdrawal penalties:* A statement that a penalty will or may be imposed for early withdrawal.

(d) *Bonuses.* Except as provided in paragraph (e) of this section, if a bonus is stated in an advertisement, the advertisement shall state the following information, to the extent applicable, clearly and conspicuously:

(1) The "annual percentage yield," using that term;

(2) The time requirement to obtain the bonus;

(3) The minimum balance required to obtain the bonus;

(4) The minimum balance required to open the account, if it is greater than the minimum balance necessary to obtain the bonus; and

(5) When the bonus will be provided.

(e) *Exemption for certain advertisements.* If an advertisement is made through one of the following media, it need not contain the information in paragraphs (c)(1), (c)(2), (c)(4), (c)(5), (c)(6)(ii), (d)(4), and (d)(5) of this section:

(1) Broadcast or electronic media, such as television or radio;

(2) Outdoor media, such as billboards;

(3) Telephone response machines; or

(4) Lobby boards inside a depository institution or deposit broker (provided they contain a notice advising consumers to contact an employee for further information).

§ 230.9 Enforcement and record retention.

(a) *Administrative enforcement.* Section 270 of the act contains the provisions relating to administrative sanctions for failure to comply with the requirements of the act and this part. Compliance is enforced by the agencies listed in that section.

(b) *Civil liability.* Section 271 of the act contains the provisions relating to civil liability for failure to comply with the requirements of the act and this part.

(c) *Record retention.* A depository institution shall retain evidence of compliance with this part for a minimum of two years after the date disclosures are required to be made or action is required to be taken. The administrative agencies responsible for enforcing this part may require depository institutions under their jurisdiction to retain records for a longer period if necessary to carry out their enforcement responsibilities under section 270 of the act.

Appendix A to Part 230—Annual Percentage Yield Calculation

The annual percentage yield measures the total amount of interest paid on an account based on the interest rate and the frequency of compounding.[1] The annual percentage yield is expressed as an annualized rate, based on a 365-day year.[2] Part I of this appendix discusses the annual percentage yield calculations for account disclosures and advertisements, while Part II discusses annual percentages yield earned calculations for periodic statements.

Part I. Annual Percentage Yield for Account Disclosures and Advertising Purposes

In general, the annual percentage yield for account disclosures under §§ 230.4 and 230.5 and for advertising under § 230.8 is an annualized rate that reflects the relationship between the amount of interest that would be earned by the consumer for the term of the account and the amount of principal used to calculate that interest. Special rules apply to accounts with tiered and stepped interest rates.

A. General Rules

The annual percentage yield shall be calculated by the formula shown below. Institutions shall calculate the annual percentage yield based on the actual number of days in the term of the account. For accounts without a stated maturity date (such as a typical savings or transaction account), the calculation shall be based on an assumed term of 365 days. In determining the total interest figure to be used in the formula, institutions shall assume that all principal and interest remain on deposit for the entire term and that no other transactions (deposits or withdrawals) occur during the term.[3] For time accounts that are offered in multiples of months, institutions may base the number of days on either the actual number of days during the applicable period, or the number of days that would occur for any actual sequence of that many calendar months. If institutions choose to use the latter rule, they must use the same number of days to calculate the dollar amount of interest earned on the account that is used in the annual percentage yield formula (where "Interest" is divided by "Principal").

The annual percentage yield is calculated by use of the following general formula ("APY" is used for convenience in the formulas):

$$APY = 100\,[(1 + Interest/Principal)^{(365/\text{Days in term})} - 1]$$

"Principal" is the amount of funds assumed to have been deposited at the beginning of the account.

"Interest" is the total dollar amount of interest earned on the Principal for the term of the account.

"Days in term" is the actual number of days in the term of the account. When the "days in term" is 365 (that is, where the stated maturity is 365 days or where the account does not have a stated maturity), the annual percentage yield can be calculated by use of the following simple formula:

$$APY = 100\,(Interest/Principal)$$

Examples

(1) If an institution pays $61.68 in interest for a 365-day year on $1,000 deposited into a NOW account, using the general formula above, the annual percentage yield is 6.17%:

$$APY = 100[(1 + 61.68/1{,}000)^{(365/365)} - 1]$$
$$APY = 6.17\%$$

Or, using the simple formula above (since, as an account without a stated term, the term is deemed to be 365 days):

$$APY = 100(61.68/1{,}000)$$
$$APY = 6.17\%$$

(2) If an institution pays $30.37 in interest on a $1,000 six-month certificate of deposit (where the six-month period used by the institution contains 182 days), using the general formula above, the annual percentage yield is 6.18%:

$$APY = 100[(1 + 30.37/1{,}000)^{(365/182)} - 1]$$
$$APY = 6.18\%$$

B. Stepped-Rate Accounts (Different Rates Apply in Succeeding Periods)

For accounts with two or more interest rates applied in succeeding periods (where the rates are known at the time the account is opened), an institution shall assume each interest rate is in effect for the length of time provided for in the deposit contract.

Examples

(1) If an institution offers a $1,000 6-month certificate of deposit on which it pays a 5% interest rate, compounded daily, for the first three months (which contain 91 days), and a 5.5% interest rate, compounded daily, for the next three months (which contain 92 days), the total interest for six months is $26.68 and, using the general formula above, the annual percentage yield is 5.39%:

$$APY = 100[(1 + 26.68/1{,}000)^{(365/183)} - 1]$$
$$APY = 5.39\%$$

(2) If an institution offers a $1,000 two-year certificate of deposit on which it pays a 6% interest rate, compounded daily, for the first year, and a 6.5% interest rate, compounded daily, for the next year, the total interest for two years is $133.13, and, using the general formula above, the annual percentage yield is 6.45%:

$$APY = 100[(1 + 133.13/1{,}000)^{(365/730)} - 1]$$
$$APY = 6.45\%$$

[1] The annual percentage yield reflects only interest and does not include the value of any bonus (or other consideration worth $10 or less) that may be provided to the consumer to open, maintain, increase or renew an account. Interest or other earnings are not to be included in the annual percentage yield if such amounts are determined by circumstances that may or may not occur in the future.

[2] Institutions may calculate the annual percentage yield based on a 365-day or a 366-day year in a leap year.

[3] This assumption shall not be used if an institution requires, as a condition of the account, that consumers withdraw interest during the term. In such a case, the interest (and annual percentage yield calculation) shall reflect that requirement.

C. Variable-Rate Accounts

For variable-rate accounts without an introductory premium or discounted rate, an institution must base the calculation only on the initial interest rate in effect when the account is opened (or advertised), and assume that this rate will not change during the year.

Variable-rate accounts with an introductory premium (or discount) rate must be calculated like a stepped-rate account. Thus, an institution shall assume that: (1) The introductory interest rate is in effect for the length of time provided for in the deposit contract; and (2) the variable interest rate that would have been in effect when the account is opened or advertised (but for the introductory rate) is in effect for the remainder of the year. If the variable rate is tied to an index, the index-based rate in effect at the time of disclosure must be used for the remainder of the year. If the rate is not tied to an index, the rate in effect for existing consumers holding the same account (who are not receiving the introductory interest rate) must be used for the remainder of the year.

For example, if an institution offers an account on which it pays a 7% interest rate, compounded daily, for the first three months (which, for example, contain 91 days), while the variable interest rate that would have been in effect when the account was opened was 5%, the total interest for a 365-day year for a $1,000 deposit is $56.52 (based on 91 days at 7% followed by 274 days at 5%). Using the simple formula, the annual percentage yield is 5.65%:

APY = 100(56.52/1,000)
APY = 5.65%

D. Tiered-Rate Accounts (Different Rates Apply to Specified Balance Levels)

For accounts in which two or more interest rates paid on the account are applicable to specified balance levels, the institution must calculate the annual percentage yield in accordance with the method described below that it uses to calculate interest. In all cases, an annual percentage yield (or a range of annual percentage yields, if appropriate) must be disclosed for each balance tier.

For purposes of the examples discussed below, assume the following:

Interest rate (percent)	Deposit balance required to earn rate
5.25	Up to but not exceeding $2,500.
5.50	Above $2,500 but not exceeding $15,000.
5.75	Above $15,000.

Tiering Method A. Under this method, an institution pays on the full balance in the account the stated interest rate that corresponds to the applicable deposit tier. For example, if a consumer deposits $8,000, the institution pays the 5.50% interest rate on the entire $8,000.

When this method is used to determine interest, only one annual percentage yield will apply to each tier. Within each tier, the annual percentage yield will not vary with the amount of principal assumed to have been deposited.

For the interest rates and deposit balances assumed above, the institution will state three annual percentage yields—one corresponding to each balance tier. Calculation of each annual percentage yield is similar for this type of account as for accounts with a single interest rate. Thus, the calculation is based on the total amount of interest that would be received by the consumer for each tier of the account for a year and the principal assumed to have been deposited to earn that amount of interest.

First tier. Assuming daily compounding, the institution will pay $53.90 in interest on a $1,000 deposit. Using the general formula, for the first tier, the annual percentage yield is 5.39%:

$APY = 100[(1 + 53.90/1,000)^{(365/365)} - 1]$
APY = 5.39%

Using the simple formula:

APY = 100(53.90/1,000)
APY = 5.39%

Second tier. The institution will pay $452.29 in interest on an $8,000 deposit. Thus, using the simple formula, the annual percentage yield for the second tier is 5.65%:

APY = 100(452.29/8,000)
APY = 5.65%

Third tier. The institution will pay $1,183.61 in interest on a $20,000 deposit. Thus, using the simple formula, the annual percentage yield for the third tier is 5.92%:

APY = 100(1,183.61/20,000)
APY = 5.92%

Tiering Method B. Under this method, an institution pays the stated interest rate only on that portion of the balance within the specified tier. For example, if a consumer deposits $8,000, the institution pays 5.25% on $2,500 and 5.50% on $5,500 (the difference between $8,000 and the first tier cut-off of $2,500).

The institution that computes interest in this manner must provide a range that shows the lowest and the highest annual percentage yields for each tier (other than for the first tier, which, like the tiers in Method A, has the same annual percentage yield throughout). The low figure for an annual percentage yield range is calculated based on the total amount of interest earned for a year assuming the minimum principal required to earn the interest rate for that tier. The high figure for an annual percentage yield range is based on the amount of interest the institution would pay on the highest principal that could be deposited to earn that same interest rate. If the account does not have a limit on the maximum amount that can be deposited, the institution may assume any amount.

For the tiering structure assumed above, the institution would state a total of five annual percentage yields—one figure for the first tier and two figures stated as a range for the other two tiers.

First tier. Assuming daily compounding, the institution would pay $53.90 in interest on a $1,000 deposit. For this first tier, using the simple formula, the annual percentage yield is 5.39%:

APY = 100(53.90/1,000)
APY = 5.39%

Second tier. For the second tier, the institution would pay between $134.75 and $841.45 in interest, based on assumed balances of $2,500.01 and $15,000, respectively. For $2,500.01, interest would be figured on $2,500 at 5.25% interest rate plus interest on $.01 at 5.50%. For the low end of the second tier, therefore, the annual percentage yield is 5.39%, using the simple formula:

APY = 100(134.75/2,500)
APY = 5.39%

For $15,000, interest is figured on $2,500 at 5.25% interest rate plus interest on $12,500 at 5.50% interest rate. For the high end of the second tier, the annual percentage yield, using the simple formula, is 5.61%:

APY = 100(841.45/15,000)
APY = 5.61%

Thus, the annual percentage yield range for the second tier is 5.39% to 5.61%.

Third tier. For the third tier, the institution would pay $841.45 in interest on the low end of the third tier (a balance of $15,000.01). For $15,000.01, interest would be figured on $2,500 at 5.25% interest rate, plus interest on $12,500 at 5.50% interest rate, plus interest on $.01 at 5.75% interest rate. For the low end of the third tier, therefore, the annual percentage yield (using the simple formula) is 5.61%:

APY = 100 (841.45/15,000)
APY = 5.61%

Since the institution does not limit the account balance, it may assume any maximum amount for the purposes of computing the annual percentage yield for the high end of the third tier. For an assumed maximum balance amount of $100,000, interest would be figured on $2,500 at 5.25% interest rate, plus interest on $12,500 at 5.50% interest rate, plus interest on $85,000 at 5.75% interest rate. For the high end of the third tier, therefore, the annual percentage yield, using the simple formula, is 5.87%.

APY = 100 (5,871.79/100,000)
APY = 5.87%

Thus, the annual percentage yield range that would be stated for the third tier is 5.61% to 5.87%.

If the assumed maximum balance amount is $1,000,000 instead of $100,000, the institution would use $985,000 rather than $85,000 in the last calculation. In that case, for the high end of the third tier the annual percentage yield, using the simple formula, is 5.91%:

APY = 100 (59134.22/1,000,000)
APY = 5.91%

Thus, the annual percentage yield range that would be stated for the third tier is 5.61% to 5.91%.

Part II. Annual Percentage Yield Earned for Periodic Statements

The annual percentage yield earned for periodic statements under § 230.6(a) is an annualized rate that reflects the relationship between the amount of interest actually earned on the consumer's account during the statement period and the average daily balance in the account for the statement period. Pursuant to § 230.6(b), however, if an institution uses the average daily balance

method and calculates interest for a period other than the statement period, the annual percentage yield earned shall reflect the relationship between the amount of interest earned and the average daily balance in the account for that other period.

The annual percentage yield earned shall be calculated by using the following formula ("APY Earned" is used for convenience in the formulas):

$$\text{APY Earned} = 100\ [(1 + \text{Interest earned}/\text{Balance})^{(365/\text{Days in period})} - 1]$$

"Balance" is the average daily balance in the account for the period.

"Interest earned" is the actual amount of interest earned on the account for the period.

"Days in period" is the actual number of days for the period.

Examples

(1) Assume an institution calculates interest for the statement period (and uses either the daily balance or the average daily balance method), and the account has a balance of $1,500 for 15 days and a balance of $500 for the remaining 15 days of a 30-day statement period. The average daily balance for the period is $1,000. The interest earned (under either balance computation method) is $5.25 during the period. The annual percentage yield earned (using the formula above) is 6.58%:

$$\text{APY Earned} = 100\ [(1 + 5.25/1{,}000)^{(365/30)} - 1]$$
$$\text{APY Earned} = 6.58\%$$

(2) Assume an institution calculates interest on the average daily balance for the calendar month and provides periodic statements that cover the period from the 16th of one month to the 15th of the next month. The account has a balance of $2,000 September 1 through September 15 and a balance of $1,000 for the remaining 15 days of September. The average daily balance for the month of September is $1,500, which results in $6.50 in interest earned for the month.The annual percentage yield earned for the month of September would be shown on the periodic statement covering September 16 through October 15. The annual percentage yield earned (using the formula above) is 6.69%:

$$\text{APY Earned} = 100\ [(6.50/1{,}500)^{(365/30)} - 1]$$
$$\text{APY Earned} = 6.69\%$$

(3) Assume an institution calculates interest on the average daily balance for a quarter (for example, the calendar months of September through November), and provides monthly periodic statements covering calendar months. The account has a balance of $1,000 throughout the 30 days of September, a balance of $2,000 throughout the 31 days of October, and a balance of $3,000 throughout the 30 days of November. The average daily balance for the quarter is $2,000, which results in $21 in interest earned for the quarter. The annual percentage yield earned would be shown on the periodic statement for November. The annual percentage yield earned (using the formula above) is 4.28%:

$$\text{APY Earned} = 100\ [(1 + 21/2{,}000)^{(365/91)} - 1]$$
$$\text{APY Earned} = 4.28\%$$

Appendix B to Part 230—Model Clauses and Sample Forms

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B-1—Model Clauses for Account Disclosures (Section 230.4(b))
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B-3—Model Clauses for Pre-Maturity Notices for Time Accounts (Section 230.5(b)(2) and 230.5(d))
B-4—Sample Form (Multiple Accounts)
B-5—Sample Form (Now Account)
B-6—Sample Form (Tiered Rate Money Market Account)
B-7—Sample Form (Certificate of Deposit)
B-8—Sample Form (Certificate of Deposit Advertisement)
B-9—Sample Form (Money Market Account Advertisement)

B-1—Model Clauses for Account Disclosures

(a) Rate information

(i) Fixed-rate accounts

The interest rate on your account is ____% with an annual percentage yield of ____%. You will be paid this rate [for (time period)/until (date)/ for at least 30 calendar days].

(ii) Variable-rate accounts

The interest rate on your account is ____% with an annual percentage yield of ____%.

Your interest rate and annual percentage yield may change.

Determination of Rate

The interest rate on your account is based on (name of index) [plus/minus a margin of _____].

or

At our discretion, we may change the interest rate on your account.

Frequency of Rate Changes

We may change the interest rate on your account [every (time period)/at any time].

Limitations on Rate Changes

The interest rate for your account will never change by more than ____% each (time period).

The interest rate will never by [less/more] than ____%.

or

The interest rate will never [exceed____% above/drop more than ____% below] the interest rate initially disclosed to you.

(iii) Stepped-rate accounts

The initial interest rate for your account is ____%. You will be paid this rate [for (time period)/until (date)]. After that time, the interest rate for your account will be ____%, and you will be paid this rate [for (time period)/until (date)]. The annual percentage yield for your account is ____%.

(iv) *Tiered-rate accounts*

Tiering Method A

- If your [daily balance/average daily balance] is $____ or more, the interest rate paid on the entire balance in your account will be ____% with an annual percentage yield of ____%.
- If your [daily balance/average daily balance] is more than $____, but less than $____, the interest rate paid on the entire balance in your account will be ____% with an annual percentage yield of ____%.
- If your [daily balance/average daily balance] is $____ or less, the interest rate paid on the entire balance will be ____% with an annual percentage yield of ____%.

Tiering Method B

- An interest rate of ____% will be paid only for that portion of your [daily balance/average daily balance] that is greater than $____. The annual percentage yield for this tier will range from ____% to ____%, depending on the balance in the account.
- An interest rate of ____% will be paid only for that portion of your [daily balance/average daily balance] that is greater than $____, but less than $____. The annual percentage yield for this tier will range from ____% to ____%, depending on the balance in the account.
- If your [daily balance/average daily balance] is $____ or less, the interest rate paid on the entire balance will be ____% with an annual percentage yield of ____%.

(b) Compounding and crediting

(i) Frequency

Interest will be compounded [on a ____ basis/every (time period)]. Interest will be credited to your account [on a ____ basis/every (time period)].

(ii) Effect of closing an account

If you close your account before interest is credited, you will not receive the accrued interest.

(c) Minimum balance requirements

(i) To open the account

You must deposit $_____ to open this account.

(ii) To avoid imposition of fees

A minimum balance fee of $_____ will be imposed every (time period) if the balance in the account falls below $_____ any day of the (time period).

A minimum balance fee of $_____ will be imposed every (time period) if the average daily balance for the (time period) falls below $_____. The average daily balance is calculated by adding the principal in the account for each day of the period and dividing that figure by the number of days in the period.

(iii) To obtain the annual percentage yield disclosed

You must maintain a minimum balance of $_____ in the account each day to obtain the disclosed annual percentage yield.

You must maintain a minimum average daily balance of $_____ to obtain the disclosed annual percentage yield. The average daily balance is calculated by adding the principal in the account for each day of the period and dividing that figure by the number of days in the period.

(d) Balance computation method

(i) Daily balance method

We use the daily balance method to calculate the interest on your account. This method applies a daily periodic rate to the principal in the account each day.

(ii) Average daily balance method

We use the average daily balance method to calculate interest on your account. This method applies a periodic rate to the average daily balance in the account for the period.

The average daily balance is calculated by adding the principal in the account for each day of the period and dividing that figure by the number of days in the period.

(e) Accrual of interest on noncash deposits

Interest begins to accrue no later than the business day we receive credit for the deposit of noncash items (for example, checks).

or

Interest begins to accrue on the business day you deposit noncash items (for example, checks).

(f) Fees

The following fees may be assessed against your account:

_____

$ _____

_____

$ _____

_____

$ _____

_____

(conditions for imposing fee)

$ _____

_____

____% of _____

(g) Transaction limitations

The minimum amount you may [withdraw/write a check for] is $_____.

You may make _____ [deposits into/withdrawals from] your account each (time period).

You may not make [deposits into/withdrawals from] your account until the maturity date.

(h) Disclosures relating to time accounts

(i) Time requirements

Your account will mature on (date).

Your account will mature in (time period).

(ii) Early withdrawal penalties

We [will/may] impose a penalty if you withdraw [any/all] of the [deposited funds/principal] before the maturity date. The fee imposed will equal _____ days/week[s]/month[s] of interest.

or

We [will/may] impose a penalty of $_____ if you withdraw [any/all] of the [deposited funds/principal] before the maturity date.

If you withdraw some of your funds before maturity, the interest rate for the remaining funds in your account will be _____% with an annual percentage yield of _____%.

(iii) Withdrawal of interest prior to maturity

The annual percentage yield assumes interest will remain on deposit until maturity. A withdrawal will reduce earnings.

(iv) Renewal policies

(1) Automatically renewable time accounts

This account will automatically renew at maturity.

You will have [_____ calendar/business] days after the maturity date to withdraw funds without penalty.

or

There is no grace period following the maturity of this account to withdraw funds without penalty.

(2) Non-automatically renewable time accounts

This account will not renew automatically at maturity. If you do not renew the account, your deposit will be placed in [an interest-bearing/a noninterest-bearing] account.

(i) Bonuses

You will [be paid/receive] [$_____ / (description of item)] as a bonus [when you open the account/on (date) _____].

You must maintain a minimum [daily balance/average daily balance] of $_____ to obtain the bonus.

To earn the bonus, [$_____ /your entire principal] must remain on deposit [for (time period)/until (date)_____].

B-2—Model Clauses for Change in Terms

On (date), the cost of (type of fee) will increase to $_____.

On (date), the interest rate on your account will decrease to _____% with an annual percentage yield of _____%.

On (date), the minimum [daily balance/average daily balance] required to avoid imposition of a fee will increase to $_____.

B-3—Model Clauses for Pre-Maturity Notices for Time Accounts

(a) Automatically renewable time accounts with maturities of one year or less but longer than one month

Your account will mature on (date).

If the account renews, the new maturity date will be (date).

The interest rate for the renewed account will be _____% with an annual percentage yield of _____%.

or

The interest rate and annual percentage yield have not yet been determined. They will be available on (date). Please call (phone number) to learn the interest rate and annual percentage yield for your new account.

(b) Non-automatically renewable time accounts with maturities longer than one year

Your account will mature on (date).

If you do not renew the account, interest [will/will not] be paid after maturity.

BILLING CODE 6210-01-M

B-4 – SAMPLE FORM (MULTIPLE ACCOUNTS)

BANK ABC

DISCLOSURE OF ACCOUNT TERMS

This disclosure contains information about your:

X NOW Account

- Your interest rate and annual percentage yield may change. At our discretion, we may change the interest rate on your account daily. The interest rate for your account will never be less than 2.00%.
- Interest begins to accrue on the business day you deposit noncash items (for example, checks).
- Interest is compounded daily and credited on the last day of each month. If you close your account before interest is credited, you will not receive the accrued interest.
- We use the daily balance method to calculate the interest on your account. This method applies a daily periodic rate to the principal in the account each day.

___ Passbook Savings Account

- The interest rate on your account will be paid for at least 30 days.
- Interest begins to accrue on the business day you deposit noncash items (for example, checks).
- Interest is compounded daily and credited on the last day of each month. If you close your account before interest is credited, you will not receive the accrued interest.
- We use the daily balance method to calculate the interest on your account. This method applies a daily periodic rate to the principal in the account each day.

Additional disclosures for your account are included on the attached sheets.

__ Money Market Account

- Your interest rate and annual percentage yield may change. At our discretion, we may change the interest rate on your account daily. The interest rate on your account will never be less than 3.00%.
- You may make six (6) transfers from your account, but only three (3) may be payments by check to third parties.
- Interest begins to accrue on the business day you deposit noncash items (for example, checks).
- Interest is compounded daily and credited on the last day of each month. If you close your account before interest is credited, you will not receive the accrued interest.
- We use the daily balance method to calculate the interest on your account. This method applies a daily periodic rate to the principal in the account each day.

___ Certificates of Deposit

- The interest rate for your account will be paid until the maturity date of your certificate (_____).
- Interest is compounded daily and will be credited to your account monthly.
- Interest begins to accrue on the business day you deposit noncash items (for example, checks).
- This account will automatically renew at maturity. You will have ten (10) calendar days from the maturity date to withdraw your funds without being charged a penalty.
- After the account is opened, you may not make deposits into or withdrawals from this account until the maturity date.
- We use the daily balance method to calculate the interest on your account. This method applies a daily periodic rate to the principal in the account each day.
- If any of the deposit is withdrawn before the maturity date, a penalty as shown below will be imposed:

Term	Early Withdrawal Penalty
3-month CD	30 days interest
6-month CD	90 days interest
1-year CD	120 days interest
2-year CD	180 days interest

Additional disclosures for your account are included on the attached sheets.

(Fee Schedule Insert)

BANK ABC
FEE SCHEDULE

NOW Account

- Monthly minimum balance fee if the daily balance drops below $ 500 any day of the month . . . . . $ 7.50

Passbook Savings Account

- Monthly minimum balance fee if the daily balance drops below $ 100 any day of the month . . . . . $ 6.00
- You may make three (3) withdrawals per quarter
  Each subsequent withdrawal . . . . . $ 2.00

Money Market Account

- Monthly minimum balance fee if the daily balance drops below $ 1,000 any day of the month . . . . . $ 5.00

Other Account Fees

- Deposited checks returned . . . . . $ 5.00
- Balance inquiries (at a branch or at an ATM) . . . . . $ 1.00
- Check printing ♦ . . . . . (Fee depends on style of check ordered)
- Your check returned for insufficient funds (per check) ♦ . . . . . $ 16.00
- Stop payment request (per request) ♦ . . . . . $ 12.50
- Certified check (per check) ♦ . . . . . $ 10.00

♦ Fee does not apply to Passbook Savings Accounts or Certificates of Deposit.

Additional disclosures for your account are included on the attached sheet.

(Rate Sheet Insert)

BANK ABC
RATE SHEET

ACCOUNT TYPE	MINIMUM DEPOSIT TO OPEN ACCOUNT	MINIMUM BALANCE* TO OBTAIN ANNUAL PERCENTAGE YIELD	INTEREST RATE	ANNUAL PERCENTAGE YIELD
NOW	$ 500	$ 2,500	4.00%	4.08%
PASSBOOK SAVINGS	$ 100	$ 500	3.50%	3.56%
MONEY MARKET	$ 1,000	$ 1,000	4.15%	4.24%
3-MONTH CD	$ 1,000	$ 1,000	4.20%	4.29%
6-MONTH CD	$ 1,000	$ 1,000	4.25%	4.34%
1-YEAR CD	$ 1,000	$ 1,000	5.20%	5.34%
2-YEAR CD	$ 1,000	$ 1,000	5.80%	5.97%

* Daily balance (the amount of principal in the account each day)

B-5 – SAMPLE FORM (NOW ACCOUNT)

BANK XYZ

DISCLOSURE OF INTEREST, FEES AND ACCOUNT TERMS

NOW ACCOUNT

Fee schedule

- **Monthly minimum balance fee if the daily balance drops below $1,000 any day of the month . . . . . $ 7.00**
- **Fee to stop payment of a check . . . . . $ 12.50**
- **Fee for check returns (insufficient funds – per check) . . . . . $ 16.00**
- **Certified check (per check) . . . . . $ 10.00**
- **Fee for initial check printing (per 200) . . . . . $ 12.00**
  (Cost for check printing varies depending on the style of checks ordered.)

Rate information

- The interest rate for your account is 4.00 % with an annual percentage yield of 4.08 %. Your interest rate and annual percentage yield may change. At our discretion, we may change the interest rate for your account at any time. The interest rate for your account will never be less than 2% each year.

Minimum balance requirements

- You must deposit $500 to open this account.
- You must maintain a minimum balance of $2,500 in the account each day to obtain the annual percentage yield listed above.

Balance computation method

- We use the daily balance method to calculate the interest on your account. This method applies a daily periodic rate to the principal in the account each day.

Compounding and crediting

- Interest for your account will be compounded daily and credited to your account on the last day of each month.

Accrual of interest on deposits other than cash

- Interest begins to accrue on the business day you deposit noncash items (for example, checks).

B-6 – SAMPLE FORM (TIERED-RATE MONEY MARKET ACCOUNT)

BANK ABC

DISCLOSURE OF INTEREST, FEES AND ACCOUNT TERMS

MONEY MARKET ACCOUNT

Fee schedule

- Check returned for insufficient funds (per check) $16.00
- Stop payment request (per request) $12.50
- Certified check (per check) $10.00
- Check printing . . . . . (Fee depends on style of checks ordered)

Rate information

- If your daily balance is $15,000 or more, the interest rate paid on the entire balance in your account will be 5.75 % with an annual percentage yield of 5.92 %.
- If your daily balance is more than $2,500, but less than $15,000, the interest rate paid on the entire balance in your account will be 5.50 % with an annual percentage yield of 5.65 %.
- If your daily balance is $2,500 or less, the interest rate paid on the entire balance will be 5.25 % with an annual percentage yield of 5.39 %.
- Your interest rate and annual percentage yield may change. At our discretion, we may change the interest rate for your account at any time. The interest rate for your account will never be less than 2.00%.
- Interest begins to accrue on the business day you deposit noncash items (for example, checks).
- Interest is compounded daily and credited on the last day of each month.

Minimum balance requirements

- You must deposit $1,000 to open this account.
- A minimum balance fee of $5.00 will be imposed every month if the balance in your account falls below $1,000 any day of the month.

Balance computation method

- We use the daily balance method to calculate the interest on your account. This method applies a daily periodic rate to the principal in the account each day.

Transaction limitations

- You may make six (6) transfers from your account, but only three (3) may be payments by check to third parties.

B-7 -- SAMPLE FORM (CERTIFICATE OF DEPOSIT)

XYZ SAVINGS BANK
1 YEAR CERTIFICATE OF DEPOSIT

Rate information

The interest rate for your account is 5.20 % with an annual percentage yield of 5.34 %. You will be paid this rate until the maturity date of the certificate. Your certificate will mature on September 30, 1993. The annual percentage yield assumes interest remains on deposit until maturity. A withdrawal will reduce earnings.

Interest for your account will be compounded daily and credited to your account on the last day of each month.

Interest begins to accrue on the business day you deposit any noncash item (for example, checks).

Minimum balance requirements

You must deposit $1,000 to open this account.

You must maintain a minimum balance of $1,000 in your account every day to obtain the annual percentage yield listed above.

Balance computation method

We use the daily balance method to calculate the interest on your account. This method applies a daily periodic rate to the principal in the account each day.

Transaction limitations

After the account is opened, you may not make deposits into or withdrawals from the account until the maturity date.

Early withdrawal penalty

If you withdraw any principal before the maturity date, a penalty equal to three months interest will be charged to your account.

Renewal policy

This account will be automatically renewed at maturity. You have a grace period of ten (10) calendar days after the maturity date to withdraw the funds without being charged a penalty.

B-8 – SAMPLE FORM (CERTIFICATE OF DEPOSIT ADVERTISEMENT)

BANK XYZ

ALWAYS OFFERS YOU COMPETITIVE CD RATES!!

CERTIFICATES OF DEPOSIT	ANNUAL PERCENTAGE YIELD (APY)
5 YEAR	6.31%
4 YEAR	6.07%
3 YEAR	5.72%
2 YEAR	5.52%
1 YEAR	4.54%
6 MONTH	4.34%
90 DAY	4.21%
	APYs are offered on accounts opened from 5/9/93 through 5/18/93.

The minimum balance to open an account and obtain the APY is $1,000.
A penalty may be imposed for early withdrawal.

For more information call:

202-123-1234

B-9 -- SAMPLE FORM (MONEY MARKET ACCOUNT ADVERTISEMENT)

BANK XYZ

ALWAYS OFFERS YOU COMPETITIVE RATES!!

MONEY MARKET ACCOUNTS	ANNUAL PERCENTAGE YIELD (APY)
Accounts with a balance of $5,000 or less	5.07%*
Accounts with a balance over $5,000	5.57%*
APYs are accurate as of April 30, 1993	*The rates may change after the account is opened.

Fees could reduce the earnings on the account.

For more information call:

202-123-1234

BILLING CODE 6210-01-C

Appendix C to Part 230—Effect on State Laws

(a) Inconsistent Requirements

State law requirements that are inconsistent with the requirements of the act and this part are preempted to the extent of the inconsistency. A state law is inconsistent if it requires a depository institution to make disclosures or take actions that contradict the requirements of the federal law. A state law is also contradictory if it requires the use of the same term to represent a different amount or a different meaning than the federal law, requires the use of a term different from that required in the federal law to describe the same item, or permits a method of calculating interest on an account different from that required in the federal law.

(b) Preemption Determinations

A depository institution, state, or other interested party may request the Board to determine whether a state law requirement is inconsistent with the federal requirements. A request for a determination shall be in writing and addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. Notice that the Board intends to make a determination (either on request or on its own motion) will be published in the **Federal Register**, with an opportunity for public comment unless the Board finds that notice and opportunity for comment would be impracticable, unnecessary, or contrary to the public interest and publishes its reasons for such decision. Notice of a final determination will be published in the **Federal Register** and furnished to the party who made the request and to the appropriate state official.

(c) Effect of Preemption Determinations

After the Board determines that a state law is inconsistent, a depository institution may not make disclosures using the inconsistent term or take actions relying on the inconsistent law.

(d) Reversal of Determination

The Board reserves the right to reverse a determination for any reason bearing on the coverage or effect of state or federal law. Notice of reversal of a determination will be published in the **Federal Register** and a copy furnished to the appropriate state official.

Appendix D to Part 230—Issuance of Staff Interpretations

Officials in the Board's Division of Consumer and Community Affairs are authorized to issue official staff interpretations of this part. These interpretations provide the protections afforded under section 271(f) of the act. Except in unusual circumstances, interpretations will not be issued separately but will be incorporated in an official commentary to this part, which will be amended periodically. No staff interpretations will be issued approving depository institutions' forms, statements, or calculation tools or methods.

By order of the Board of Governors of the Federal Reserve System, September 11, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-22478 Filed 9-18-92; 8:45 am]

BILLING CODE 6210-01-M

FARM CREDIT ADMINISTRATION

12 CFR Part 611

RIN 3052-AA09

Organization; Director Compensation

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA) by the Farm Credit Administration Board (Board) adopts a final rule amending 12 CFR part 611 in order to reflect amendments to the Farm Credit Act of 1971 (1971 Act) made by the Agricultural Credit Technical Corrections Act of 1988 (1988 Act).[1] The proposed rule was published for comment on June 16, 1992 (57 FR 26786). The amendment to § 611.400 authorizes Farm Credit System (FCS or System) banks to pay their directors fair and reasonable compensation that does not exceed the amount set forth in section 4.21 of the 1971 Act, as amended. The regulation, as amended, also requires FCS banks to disclose the amount of reimbursement that directors receive for travel, subsistence, and other related expenses separately from cash compensation in annual disclosures to shareholders and reports to the FCA.

EFFECTIVE DATE: The regulation shall become effective upon the expiration of 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session. Notice of the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Linda C. Sherman, Policy Analyst, Regulation Development Division, Office of Examination, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4498, TDD (703) 883-4444,

or

Richard A. Katz, Senior Attorney, Regulatory and Legislative Law Division, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: The 1988 Act amended the 1971 Act by: (1) Limiting compensation for each bank director to $15,000 per annum [2]; and (2) abolishing the district boards [3]. On June 16, 1992, the FCA proposed to amend § 611.400 to reflect amendments to the 1971 Act. More specifically, the FCA proposed to delete the provision of § 611.400(b)(2) that prohibits FCS banks from paying their directors more than $200 per day, and replace it with a new provision that authorizes FCS banks to pay their directors fair and reasonable compensation that does not exceed any limit set by the 1971 Act, as it may be amended from time to time. Other proposed amendments to § 611.400 included: (1) Replacing the terms "district boards" and "district directors" with "bank boards" and "bank directors" in paragraph (b) introductory paragraph, paragraph (b)(2), and the introductory paragraph of paragraph (c); and (2) changing the references to the 1971 Act in § 611.400 from "section 5.5" to "section 4.21."

The FCA also proposed to add a new paragraph (c)(6) to § 611.400 that would require each bank to disclose reimbursements of travel, subsistence, and other related expenses incurred by a director, both in disclosures to shareholders pursuant to § 620.5(i)(1) of this chapter, and in reports to the FCA. As explained in the preamble to the proposed regulation, reimbursable expenses are not considered compensation for the purposes of section 4.21 of the 1971 Act, which limits the amount of compensation for bank directors to $15,000 per year. However, FCS banks currently report compensation and reimbursable expenses paid to their directors as a lump sum on their call reports to FCA. Proposed § 611.400(c)(6) would enable both the FCA and the shareholders to identify director compensation distinctly from reimbursable expenses. The FCA also noted in the preamble to the proposed regulation that this amendment would allow the shareholders to determine whether the bank's reimbursement of travel, subsistence, and other related expenses is reasonable.

The only comment FCA received about the proposed regulations pertained to proposed paragraph (c)(6). The Farm Credit Council (FCC), with the endorsement of two Farm Credit Banks (FCBs), expressed strong objections to proposed § 611.400(c)(6), which requires disclosure of bank directors' reimbursable expenses. The commenter

[1] Public Law No. 100-399, 102 Stat. 989 (1988).

[2] Section 414 of the 1988 Act added section 4.21 to the 1971 Act.

[3] Section 409 of the 1988 Act repealed sections 5.1 through 5.6 of the 1971 Act.

asserts that commercial banks, savings associations, and credit unions are not required by their Federal regulators to disclose the amount of reimbursable expenses that they pay to their directors. The commenter also claims that the premise underlying § 611.400(c)(1) is not well founded because existing regulations and the FCA's enforcement powers are sufficient to prevent abuses. The FCC argues that the disclosure requirement in proposed § 611.400(c)(6) is "both unwarranted and an example of regulatory overkill."

The FCA disagrees with the commenter's arguments that § 611.400(c)(1) is regulatory overkill. Although the FCA often takes the approaches of other Federal bank regulatory agencies into consideration when it develops regulations, the FCA's obligation is to address particular issues in the context of statutory provisions that establish the characteristics of, and constraints on the FCS. Section 4.21 of the 1971 Act specifically limits the amount of compensation that FCS banks are authorized to pay their directors, while director compensation at other federally regulated financial institutions is not subject to similar statutory restrictions. The disclosure requirement is consistent with congressional concern over the impact of director costs on the borrower.

Reimbursable expenses are often a significant component of overall director costs. Past experience indicates that expenses may exceed compensation for some directors in the FCS. FCA believes that shareholders of FCS banks should be afforded the opportunity to review the reimbursement of expenses incurred by bank directors and to guard against excessive expenditures by their directors. Such a disclosure requirement is consistent with the shareholders' common law right to inspect the corporation's books and records, and emphasizes self-discipline, which may obviate the need for enforcement action.

The approach advocated by the FCA is consistent with the initiative for economic growth that the President of the United States unveiled on January 30, 1992. The President's initiative requires Federal agencies to review their regulations in order to: (1) Identify those regulations that impede economic growth; and (2) accelerate action on those regulations that promote growth. The President's initiative establishes five criteria for evaluating the impact of a regulation on economic growth. The FCA concludes that this regulation promotes economic growth by complying with two of these criteria. This regulation reduces reliance on command-and-control regulatory requirements and relies on market mechanisms by enhancing shareholder ability to contain costs at FCS banks.

As stated in the preamble to the proposed rule, the FCA withdrew its proposed rule published at 52 FR 43081 (November 9, 1987) because the proposed disclosure requirements are now covered by § 620.5(i)(1) of this chapter.

List of Subjects in 12 CFR Part 611

Agriculture, Banks, banking, Rural areas.

For the reasons stated in the preamble, part 611 of chapter VI, title 12 of the Code of Federal Regulations is amended as follows:

PART 611—ORGANIZATION

1. The authority citation for part 611 is revised to read as follows:

Authority: Secs. 1.3, 1.13, 2.0, 2.10, 3.0, 3.21, 4.12, 4.15, 5.9, 5.10, 5.17, 7.0–7.13, 8.5(e) of the Farm Credit Act; 12 U.S.C. 2011, 2021, 2071, 2091, 2121, 2142, 2183, 2203, 2243, 2244, 2252, 2279a–2279f–1, 2279aa–5(e); secs. 411 and 412 of Pub. L. 100–233; 101 Stat. 1568, 1638; secs. 409 and 414 of Pub. L. 100–399, 102 Stat. 989, 1003 and 1004.

Subpart D—Rules for Compensation of Board Members

2. Section 611.400 is amended by removing the words, "district directors" and adding in their place, "bank directors" in paragraph (b) introductory text and paragraph (b)(2); by removing the words, "$200 per day" and adding in their place, "limits established by the Farm Credit Act of 1971, as amended" in paragraph (b)(2); by adding the words "travel, subsistence, and other related" after the word "for" in paragraph (b)(3); by removing the words "and subsistence" and adding in their place, the words ", subsistence, and other related" in paragraph (b)(5); by removing the words "district board" and adding in their place, the words "bank board" each place it appears in paragraphs (b) introductory text and (c) introductory text; by revising paragraph (a); and by adding a new paragraph (c)(6) to read as follows:

§ 611.400 Compensation of Bank Board members.

(a) Farm Credit System banks are authorized to pay, in accordance with section 4.21 of the Farm Credit Act of 1971, as amended, fair and reasonable compensation to directors for services performed in an official capacity. No Farm Credit System bank shall compensate any director for rendering services on behalf of any other Farm Credit System institution or a cooperative of which the director is a member, or for performing other assignments of a nonofficial nature.

* * * * *

(c) * * *

(6) Such compensation and the aggregate amount of any reimbursement for expenses shall be disclosed to shareholders on an annual basis, in compliance with § 620.5(i)(1) of this chapter. Such disclosure, and any requisite reporting to the Farm Credit Administration, shall identify cash compensation paid to directors separately from the reimbursement of travel, subsistence, and other related expenses paid to each director.

Dated: September 14, 1992.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 92–22642 Filed 9–18–92; 8:45 am]

BILLING CODE 6705–01–M

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12 CFR Part 612

RIN 3052–AB08

Personnel Administration; Human Resources Policies, Retirement Plans

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA) by the Farm Credit Administration Board (Board) adopts a final rule repealing the regulations in subpart A of part 612 relating to the human resources management practices, and retirement and thrift savings plans at all Farm Credit System (FCS or System) institutions. The proposed rule was published for comment on June 16, 1992, (57 FR 26787). The effect of this rule is to require System institutions to assume greater responsibility for developing human resources management policies consistent with safe and sound operation. The final regulation also makes a technical correction to § 612.2150(b)(5).

EFFECTIVE DATE: The regulation shall become effective upon the expiration of 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session. Notice of the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT:

Linda C. Sherman, Policy Analyst, Regulation Development Division, Office of Examination, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444,

or

Richard A. Katz, Senior Attorney, Regulatory and Legislative Law Division, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: On June 16, 1992, the FCA proposed to repeal the regulations in subpart A of part 612 governing human resources management practices at all FCS institutions, including § 612.2110, which currently requires the FCA to give prior approval to the retirement and thrift savings plans in each Farm Credit System district. The FCA also proposed to make a technical correction to § 612.2150(b)(5).

Repeal of these regulations is in response to amendments in 1985 and 1990 to the Farm Credit Act of 1971 (Act). The Farm Credit Amendments Act of 1985 [1] (1985 Act) established a more arms-length relationship between the System and its regulator. The FCA believes that FCS institutions should assume a more active role in formulating the human resources policies that affect their employees, because the appropriate role of the FCA as a safety and soundness regulator is to exercise regulatory and examination authority rather than operational control. Because the Food, Agricultural, Conservation, and Trade Act of 1990 [2] (1990 Farm Bill) repealed provisions in the Act that required the FCA to approve the compensation and benefits for certain classes of System employees, agency prior approval of FCS district retirement and thrift savings plans is no longer necessary.

The FCA did not receive any comments about its proposal to repeal the regulations in subpart A of part 612. Accordingly, the FCA adopts its proposal, without change, as a final rule. Once the repeal of these regulations becomes effective, the FCA will rely upon its examination and enforcement powers under the Act to detect and prevent unsafe and unsound human resources management practices.

As noted in the preamble to the proposed regulations, FCS district retirement and thrift savings plans qualify as government pension plans under the Budget and Accounting Procedures Act of 1950, 31 U.S.C. 9502(1)(B)(iv), and section 414(d) of the Internal Revenue Code (IRC), 26 U.S.C. 424(d). Government pension plans are exempt from provisions in the Employee Retirement Income Security Act of 1974 (ERISA) that establish participation, vesting, and funding standards for private sector pension plans (See 29 U.S.C. 1001 *et seq.*, and the IRC, 26 U.S.C. 420(c)(1), 411(e)(1) and 412(h)). As a result, Federal agencies that regulate pension plans have minimal supervisory and regulatory authority over FCS district retirement and thrift savings plans. Since FCS districts will no longer submit their retirement and thrift savings plans to the agency for prior approval, it is possible that actions taken contrary to reasonable practice are not likely to be discovered until after contractual obligations have been created. The FCA emphasizes the responsibilities of FCS institutions to continue to act in a manner that promotes the best interests of the System, its employees, and its shareholders.

The repeal of this regulation is consistent with the initiative for economic growth that the President of the United States unveiled on January 30, 1992. The President's initiative requires Federal agencies to review their regulations in order to: (1) Identify those regulations that impede economic growth; and (2) accelerate action on those regulations that promote growth. The President's initiative establishes five criteria for evaluating the impact of a regulation on economic growth. The FCA concludes that this regulation promotes economic growth by removing a command-and-control requirement and relying on market mechanisms to address human resources management practices at System institutions. In particular, removal of the prior approval requirement saves time and money and allows the banks more control over internal management decisions.

The FCA received no comment about its proposal to make a technical correction to § 612.2150(b)(5), and therefore, this revision is now adopted as a final regulation.

List of Subjects in 12 CFR Part 612

Agriculture, Banks, banking, Conflict of interests, Rural areas.

For the reasons stated in the preamble, part 612 of chapter VI, title 12 of the Code of Federal Regulations is amended to read as follows:

PART 612—PERSONNEL ADMINISTRATION

1. The authority citation for part 612 is revised to read as follows:

Authority: Secs. 5.9, 5.17, 5.19 of the Farm Credit Act; 12 U.S.C. 2243, 2252, 2254.

Subpart A—[Removed]

2. Subpart A, consisting of §§ 612.2000 through 612.2110 and the subpart heading are removed in their entirety.

Subpart B—[Amended]

3. The heading of subpart B is removed.

§ 612.2150 [Amended]

4. Section 612.2150 is amended by removing the word "of" the third place it appears, and adding in its place, the word "or" in the first sentence of paragraph (b)(5).

Dated: September 14, 1992.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 92-22841 Filed 9-18-92; 8:45 am]

BILLING CODE 6705-01-M

[1] Public Law No. 99-305, 99 Stat. 1678 (1985).

[2] Public Law No. 101-624, 104 Stat. 3359 (1990).

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 122

[T.D. 92-90]

RIN 1515-AA95

International, Landing Rights and User Fee Airports

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to set forth the circumstances in which permission to land at a landing rights airport may be denied or withdrawn and to set forth the circumstances in which status as a user fee airport may be terminated. The document also updates the list of designated user fee airports, and makes certain organizational or editorial changes to improve the layout of the regulations insofar as they deal specifically with international airports, landing rights airports and user fee airports.

EFFECTIVE DATE: November 20, 1992.

FOR FURTHER INFORMATION CONTACT: George Pruchniewski, Office of Inspection and Control (202-927-1312).

SUPPLEMENTARY INFORMATION:

Background

Part 122 of the Customs Regulations (19 CFR part 122), dealing with the entry and clearance of aircraft and their use in the transportation of persons and cargo, references three types or classes of airports at which such aircraft could land upon duly arriving from points outside the United States: international airports, landing rights airports, and user fee airports.

International airports, the majority of which are small or regional in nature,

are open to all aircraft for entry and clearance without charge by Customs (however, certain arrival and related user fees must be paid pursuant to part 24, Customs Regulations (19 CFR part 24)). Customs presence at such airports is required, and all aircraft arriving from foreign points have a right to land there without first obtaining Customs permission.

At landing rights airports, on the other hand, Customs must specifically give a party permission to land, which may be done either on a one-time basis, such as for a private aircraft, a charter, or other unscheduled flight, or on a recurring basis according to a fixed schedule approved by Customs, such as for a scheduled airline or a charter operator. Thus, a landing rights airport exists for the purpose of handling international traffic only to the extent that permission is specifically granted for one or more international flights to land there. Most of the major U.S. airports handling international traffic are, in fact, landing rights airports. In the case of an arrival at a landing rights airport located outside the limits of a port of entry, the owner, operator or person in charge of the aircraft given landing rights must pay any added charges incurred by Customs for inspecting the aircraft, passengers, employees and merchandise, except in the case of scheduled aircraft of a scheduled airline where a charge may be made only for the overtime expenses of Customs officers.

Unlike international airports, there is no specific requirement that landing rights airports provide office and other space, facilities and equipment, without cost, to Customs and other Federal agencies. Yet this has, nevertheless, traditionally been done on the basis (1) that the presence of Customs and other Federal officers at the airports operates as a convenience both to the airports and aircraft, as well as to the surrounding community, and (2) that Customs could deny or revoke landing rights if the facilities for clearance and inspection were adequate to ensure compliance with Federal law.

User fee airports are individually designated as such under a separate Memorandum of Agreement which is worked out between Customs and the concerned airport authority with the approval of the state governor. The Regulations contain a list of designated user fee airports. Such airports have the same landing procedures as those for landing rights airports. For a flat fee (user fee) paid by the airport to cover the salary and benefits of one full-time inspector, plus certain related costs, Customs agrees to provide 8 hours of service every weekday, totaling 40 hours; however, any party requesting Customs overtime services is responsible for paying the full costs thereof as determined by statute. Under each Memorandum of Agreement, among other things, the user fee airport agrees to provide, at no cost to Customs, sufficient office space, utilities, office furniture and equipment, including costs for the installation and maintenance thereof.

To further improve the Regulations in part 122 regarding international, landing rights and user fee airports, Customs published a notice in the **Federal Register** (56 FR 66814) on December 26, 1991, soliciting public comment on proposed amendments which would (1) spell out the circumstances in which landing rights could be denied or withdrawn, (2) update the list of designated user fee airports and set forth the conditions under which such designation could be withdrawn, and (3) make a number of organizational and editorial changes in this overall connection. By notice published in the **Federal Register** on January 21, 1992 (57 FR 2319), a typographical error appearing in the original notice was corrected.

Discussion of Comments

Seven commenters responded to the notice of proposed rulemaking, focusing on proposed § 122.14(d) which set forth certain reasons for denying or withdrawing landing rights at a landing rights airport. All the commenters took exception to the inclusion of these criteria in the regulations, contending that proposed paragraph (d) contravened the Department of Transportation's "Cities Program", whereby new international service was promoted both to unserved as well as underserved communities by foreign carriers under specified conditions. It was generally inferred that Customs might unilaterally deny or withdraw service to a landing rights airport based on reasons that were perceived to be vague and unsubstantiated. A majority of the commenters were also concerned that after building new facilities to accommodate international travelers, as well as installing special equipment in conformance with Customs needs, the proposed section could effectively eliminate their sites as landing rights airports.

Determination

Customs has concluded that the reasons for denying or withdrawing landing rights at a landing rights airport should be included in the Regulations, but that these reasons should be revised and restated for greater clarification and specificity, and that a right of appeal should be provided in the event landing rights are denied or withdrawn. Section 122.14 is thus changed accordingly. The inclusion of these reasons together with a right of appeal will ensure that denials or withdrawals of landing rights will not be handled in an arbitrary manner. Customs has therefore determined that the proposed amendments, with the above modifications, should be adopted. In addition, the following changes have been made: in § 122.1(f), inserting "are given permission by Customs" in place of "may be allowed"; rephrasing § 122.1(m) to make clear that a listing of designated user fee airports is published in the Regulations for informational purposes; in § 122.14(c), adding a cross reference to §§ 24.17 and 24.22(e), Customs Regulations; revising § 122.15(b) to state that the list of designated user fee airports is subject to change without notice. In this latter connection, the list of designated user fee airports appearing in § 122.15(b) is further changed by removing the Santa Teresa Airport in Santa Teresa, New Mexico, and adding Alliance Airport in Ft. Worth, Texas, and Grant County Airport in Moses Lake, Washington.

Regulatory Flexibility Act

Because this document merely clarifies existing provisions of law and regulations, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the proposed amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Drafting Information

The principal author of this document was Russell Berger, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 122

Customs duties and inspections, Imports, Air carriers, Air transportation, Aircraft, Airports.

Amendments to the Regulations

For the reasons set forth in the preamble, part 122, Customs Regulations

(19 CFR part 122) is amended as set forth below.

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for part 122 is revised to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 58b, 66, 1433, 1436, 1459, 1590, 1594, 1624, 1644, 49 U.S.C. App. 1509.

2. Section 122.1 is amended by revising paragraphs (f) and (m) to read as follows:

§ 122.1 General definitions.

* * * * *

(f) *Landing rights airport.* A "landing rights airport" is any airport, other than an international airport or user fee airport, at which flights from a foreign area are given permission by Customs to land.

* * * * *

(m) *User fee airport.* A "user fee airport" is an airport so designated by Customs. Flights from a foreign area may be granted permission to land at a user fee airport rather than at an international airport or a landing rights airport. An informational listing of user fee airports is contained in § 122.15.

3. The heading of Subpart B is revised to read as follows:

Subpart B—Classes of Airports

§§ 122.34 and 122.39 [Redesignated as §§ 122.14 and 122.15]

4. Sections 122.34 and 122.39 are redesignated as §§ 122.14 and 122.15 respectively in Subpart B.

5. In newly redesignated § 122.14, paragraph (c) is revised and paragraphs (d) and (e) are added to read as follows:

§ 122.14 Landing rights airports.

* * * * *

(c) *Payment of expenses.* In the case of an arrival at a location outside the limits of a port of entry, the owner, operator or person in charge of the aircraft shall pay any added charges for inspecting the aircraft, passengers, employees and merchandise when landing rights are given (see §§ 24.17 and 24.22(e) of this chapter).

(d) *Denial or withdrawal of landing rights.* Permission to land at a landing rights airport may be denied or withdrawn for any of the following reasons:

(1) Appropriate and/or sufficient Federal Government personnel are not available;

(2) Proper inspectional facilities or equipment are not available at, or maintained by, the requested airport;

(3) The entity requesting services has failed to abide by appropriate instructions of a Customs officer;

(4) Reasonable grounds exist to believe that Federal rules and regulations pertaining to safety, Customs, or other inspectional activities have not been followed; or,

(5) The granting of the requested landing rights would not be in the best interests of the Government.

(e) *Appeal of denial or withdrawal.* In the event landing rights are denied or withdrawn by the district director, a written appeal of the decision may be made to the appropriate regional commissioner. If this appeal is denied, a final written appeal may be made to the Commissioner of Customs.

6. Newly redesignated § 122.15 is revised to read as follows:

§ 122.15 User fee airports.

(a) *Permission to land.* The procedures for obtaining permission to land at a user fee airport are the same procedures as those set forth in § 122.14 for landing rights airports.

(b) *List of user fee airports.* The following is a list of user fee airports designated by the Commissioner of Customs in accordance with 19 U.S.C. 58b. The list is subject to change without notice. Information concerning service at any user fee airport can be obtained by calling the airport or its authority directly.

Location	Name
Casper, Wyoming	Natrona County International Airport.
Columbus, Ohio	Rickenbacker Airport.
Fargo, North Dakota	Hector International Airport.
Fort Myers, Florida	Southwest Florida Regional Airport.
Lebanon, New Hampshire.	Lebanon Municipal Airport.
Lehigh Valley, Pennsylvania.	Allentown-Bethlehem-Easton Airport.
Midland, Texas	Midland International Airport.
Wilmington, Ohio	Airborne Air Park.
Fort Wayne, Indiana	Fort Wayne-Allen County Airport.
Morristown, New Jersey	Morristown Municipal Airport.
Jackson, Mississippi	Jackson Municipal Airport.
Rockford, Illinois	Greater Rockford Airport.
Waukegan, Illinois	Waukegan Regional Airport.
Klamath Falls, Oregon	Kingsley Field.
St. Paul, Alaska	St. Paul Airport.
Lexington, Kentucky	Bluegrass Airport.
Oakland, Michigan	Oakland-Pontiac Airport.
Yakima, Washington	Yakima Air Terminal.
Sanford, Florida	Sanford Regional Airport.
Ft. Worth, Texas	Alliance Airport.
Moses Lake, Washington	Grant County Airport.

(c) *Withdrawal of designation.* The designation as a user fee airport shall be withdrawn under either of the following circumstances:

(1) If either Customs or the airport authority gives 120 days written notice of termination to the other party; or

(2) If any amounts due to be paid to Customs are not paid on a timely basis.

7. Section 122.33 is revised to read as follows:

§ 122.33 Place of first landing.

(a) The first landing of an aircraft entering the U.S. from a foreign area shall be:

(1) At a designated international airport (see § 122.13);

(2) At a landing rights airport if permission to land has been granted (see § 122.14); or

(3) At a designated user fee airport if permission to land has been granted (see § 122.15).

(b) Permission to land at a landing rights airport or user fee airport is not required for an emergency or forced landing (see § 122.35).

Michael H. Lane,

Acting Commissioner of Customs.

Approved: September 14, 1992.

Peter K. Nunez,

Assistant Secretary of the Treasury.

[FR Doc. 92-22698 Filed 9-18-92; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Center for Food Safety and Applied Nutrition

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority relating to general redelegations of authority from the Commissioner of Food and Drugs to certain officers of FDA, to redelegate the Commissioner's authorities under sections 1322(b) and (c) of the Food, Agriculture, Conservation, and Trade Act of 1990 (the National Laboratory Accreditation Program) (7 U.S.C. 138a), as amended hereafter, to the Director and Deputy Director, Center for Food Safety and Applied Nutrition (CFSAN).

EFFECTIVE DATE: September 21, 1992.

FOR FURTHER INFORMATION CONTACT: Ellen Rawlings, Division of Management Systems and Policy (HFA-340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4976.

SUPPLEMENTARY INFORMATION: FDA is amending the delegations of authority by adding new § 5.64 *Establishing standards and approving Accrediting Bodies under the National Laboratory Accreditation Program.* The delegated authorities are under sections 1322(b) and (c) of the Food, Agriculture, Conservation, and Trade Act of 1990 (the National Laboratory Accreditation Program) (7 U.S.C. 138a), as amended hereafter. The authorities relate to establishing standards, after consultation with the Secretary of Agriculture and the Administrator of the Environmental Protection Agency, for a National Laboratory Accreditation Program and approving State agencies or private, nonprofit entities as accrediting bodies in implementing certification and quality assurance programs. The delegation excludes the authority to submit reports to Congress.

New § 5.64 redelegates the Commissioner's authorities under § 5.10(a)(34) to the Director and Deputy Director, CFSAN, because these authorities are directly related to current CFSAN operations and programs.

Further redelegation of the authorities delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261-1282, 3701-3711a; secs. 2-12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451-1461); 21 U.S.C. 41-50, 61-63, 141-149, 467f, 679(b), 801-886, 1031-1309; secs. 201-903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321-394); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 361, 362, 1701-1706, 2101 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 264, 265, 300u-300u-5, 300aa-1); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007-10008; E.O. 11490, 11921, and 12591.

2. New § 5.64 is added to subpart B to read as follows:

§ 5.64 Establishing standards and approving accrediting bodies under the National Laboratory Accreditation Program.

The Director and Deputy Director, Center for Food Safety and Applied Nutrition, are authorized to perform all the functions of the Commissioner of Food and Drugs under sections 1322(b) and (c) of the Food, Agriculture, Conservation, and Trade Act of 1990 (the National Laboratory Accreditation Program) (7 U.S.C. 138a), as amended hereafter; which relate to setting standards for the National Laboratory Accreditation Program and approving State agencies or private, nonprofit entities as accrediting bodies to implement certification and quality assurance programs in accordance with the requirements of these sections. The delegation excludes the authority to submit reports to the Congress.

Dated: September 15, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-22748 Filed 9-18-92; 8:45 a.m.]

BILLING CODE 4160-01-F

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21 CFR Part 177

[Docket No. 88F-0404]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of ethylene/1,3-phenylene oxyethylene isophthalate/terephthalate copolymer as the nonfood contact layer of laminated packaging intended for use in contact with food. This action responds to a petition filed by Mitsui Petrochemical Industries, Ltd.

DATES: Effective September 21, 1992; written objections and requests for a hearing by October 21, 1992. The Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of certain publications in 21 CFR 177.1345, effective September 21, 1992.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard H. White, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9511.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of January 6, 1989 (54 FR 483), FDA announced that a food additive petition (FAP 8B4107) had been filed by Mitsui Petrochemical Industries, Ltd., Kasumigaseki Bldg., P.O. Box 90, 2-5 Kasumigaseki 3-chrome, Chiyoda-Ku, Tokyo 100, Japan, proposing that § 177.1395 *Laminate structures for use at temperatures between 120 °F and 250 °F* (21 CFR 177.1395) be amended to provide for the safe use of ethylene/1,3-phenylene oxyethylene isophthalate/terephthalate copolymer as a nonfood contact layer of food packaging laminates intended for use in contact with food.

FDA has evaluated data in the petition and other relevant material and concludes that the proposed use of ethylene/1,3-phenylene oxyethylene isophthalate/terephthalate copolymer is safe. The agency further concludes that new § 177.1345 should be added to 21 CFR part 177 to set forth the identity of this additive and that § 177.1395 should be amended to prescribe the conditions for its safe use in laminated structures as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before October 21, 1992 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with

particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: Secs. 201, 402, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 376).

2. New § 177.1345 is added to subpart B to read as follows:

§ 177.1345 Ethylene/1,3-phenylene oxyethylene isophthalate/ terephthalate copolymer.

Ethylene/1,3-phenylene oxyethylene isophthalate/ terephthalate copolymer (CAS Reg. No. 87365-98-6) may be safely used as the nonfood contact layer of laminated structures subject to the provisions of § 177.1395 and this section:

(a) *Identity.* For the purpose of this section, ethylene/1,3-phenylene oxyethylene isophthalate/terephthalate copolymer consists of the basic copolymer produced by the catalytic polycondensation of isophthalic acid and terephthalic acid with ethylene glycol and 1,3-bis(2-hydroxyethoxy)benzene such that the finished resin contains between 42 and 48 mole-percent of isophthalic moieties, between 2 and 8 mole-percent of terephthalic moieties, and not more than 10 mole-percent of 1,3-bis(2-hydroxyethoxy)benzene moieties.

(b) *Specifications*—(1) *Density.* Ethylene/1,3-phenylene oxyethylene isophthalate/terephthalate copolymer identified in paragraph (a) of this section has a density of 1.33 ± 0.02 grams per cubic centimeter measured by ASTM Method D 1505-85 (Reapproved 1990), "Standard Test Method for Density of Plastics by the Density-Gradient Technique," which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Society for Testing and Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Division of Food and Color Additives, Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, and the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(2) *Softening point.* Ethylene/1,3-phenylene oxyethylene isophthalate/ terephthalate copolymer identified in paragraph (a) of this section has a softening point of 63 ± 5 °C as measured by ASTM Method D 1525-87, "Standard Test Method for VICAT Softening Temperature of Plastics," which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this material is provided in paragraph (b)(1) of this section.

(c) *Optional adjuvant substances.* Ethylene/1,3-phenylene oxyethylene isophthalate/terephthalate copolymer, identified in paragraph (a) of this section, may contain optional adjuvant substances required in their production. The optional adjuvants may include substances used in accordance with § 174.5 of this chapter.

3. Section 177.1395 is amended in the table in paragraph (b)(4) by alphabetically adding a new entry under the headings "Substances" and "Limitations" to read as follows:

§ 177.1395 Laminate structures for use at temperatures between 120 °F and 250 °F.

* * * * *

(b) * * *

(4) * * *

Substances	Limitations
Ethylene/1,3-phenylene oxyethylene isophthalate/ terephthalate copolymer (CAS Reg. No. 87365-98-6) complying with § 177.1345.	For use only with polyethylene terephthalate as the food-contact layer, complying with § 177.1630 under conditions of use C through G described in Table 2 of § 176.170(c) of this chapter. Laminate structures, when extracted with 8 percent ethanol at 150 °F for 2 hours shall not yield *m*-phenylenedioxy-O,O'-diethyl isophthalate or cyclic bis(ethylene isophthalate) in excess of 7.8 micrograms/ square decimeter (0.5 microgram/square inch) of food-contact surface.

* * * * *

Dated: September 1, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-22474 Filed 9-18-92; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances Temporary Placement of Aminorex into Schedule I

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule.

SUMMARY: This final rule is issued by the Administrator of the Drug Enforcement Administration (DEA) to temporarily place aminorex into Schedule I of the Controlled Substances Act (CSA) pursuant to the emergency scheduling provisions of the CSA. This action is based on a finding by the DEA Administrator that the scheduling of aminorex, at least on a temporary basis, is necessary to avoid an imminent hazard to the public safety. As a result of this rule, the regulatory controls and criminal sanctions imposed on Schedule I substances under the CSA will be applicable to the manufacture, distribution and possession of aminorex.

EFFECTIVE DATE: September 21, 1992.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307-7183.

SUPPLEMENTARY INFORMATION: The Comprehensive Crime Control Act of 1984 amended section 201 of the CSA (21 U.S.C. 811 et seq.) to give the Attorney General the authority to temporarily place a substance into Schedule I of the CSA if it is found that such action is necessary to avoid an imminent hazard to the public safety. The Attorney General has delegated this authority under 21 U.S.C. 811 to the Administrator of the DEA (28 CFR 0.100). A substance may be temporarily scheduled pursuant to the emergency scheduling provisions of the CSA if that substance is not listed in any schedule under Section 202 of the CSA (21 U.S.C. 812) or if there is no approval or exemption in effect under 21 U.S.C. 355 of the Food, Drug and Cosmetic Act of the substance.

A notice of intent to temporarily place aminorex into Schedule I of the CSA was published in the **Federal Register** on July 24, 1991 (57 FR 32937). The Administrator transmitted notice of his intention to temporarily place aminorex into Schedule I of the CSA to the Assistant Secretary for Health of the Department of Health and Human Services. In response to this notification, the Food and Drug Administration, by letter, has advised DEA that there are no exemptions or approvals in effect under 21 U.S.C. 355 of the Food, Drug and Cosmetic Act for aminorex. The letter further stated that the Department of Health and Human Services has no objections to DEA's intention to temporarily place aminorex into Schedule I of the CSA. No other comments were received regarding this matter.

Aminorex is a central nervous system stimulant and is an analogue of cis-4-methylaminorex, which is a Schedule I stimulant with a high potential for abuse. Aminorex, also called aminoxaphen, 2-amino-5-phenyl-2-oxazoline, or 4,5-dihydro-5-phenyl-2-oxazolamine is a phenylethylamine in which the side-chain has been cyclized into a substituted oxazoline. Its chemical structure is substantially similar to that of cis-4-methylaminorex. Available pharmacological data indicate that aminorex produces amphetamine-like, psychomotor stimulant effects in laboratory animals.

In accordance with 21 U.S.C. 811(h)(3), the Administrator has considered the following factors regarding aminorex: (1) Its history and current pattern of abuse; (2) the scope, duration and significance of abuse; and (3) what, if any, risk there is to the public health.

Illicit trafficking with aminorex was first reported in 1990 by law enforcement personnel in Missouri. Subsequently it has been sold as methamphetamine in Minnesota, Michigan, Wisconsin, Florida, South Carolina and Pennsylvania. In 1991 a clandestine laboratory engaged in the production of aminorex was encountered in the state of Florida. Its operators were successfully prosecuted for the manufacture of a controlled substance analogue pursuant to 21 U.S.C. 813.

There has been one report of a death in 1990 linked to the abuse of aminorex in the United States. However, the scientific literature contains reports of deaths in Europe attributed to pulmonary hypertension in patients who were taking aminorex as an anorectic. Aminorex was sold in Europe as an approved anorectic for a short period in the mid-sixties. The similarity of aminorex to amphetamine and 4-methylaminorex, especially its central nervous system stimulant activity, strongly suggests that abuse of this substance will lead to health and safety risks similar to those produced by amphetamine, methamphetamine, and 4-methylaminorex. Since aminorex is prepared only in clandestine laboratories, there are additional risks inherently associated with clandestine manufacture.

Based on aminorex's structural similarity to cis-4-methylaminorex, its amphetamine-like central nervous system stimulant properties in animals and its clandestine production, distribution and abuse, the Administrator, pursuant to 21 U.S.C. 811(h) of the CSA and 28 CFR 0.100, finds that temporary placement of aminorex into Schedule I of the CSA is necessary to avoid an imminent hazard to the public safety.

The following regulations are effective with respect to aminorex on September 21, 1992, except that individuals registered with DEA in accordance with part 1301 or part 1311 of title 21 of the Code of Federal Regulations, who currently possess aminorex may continue to do so pending DEA's receipt of an application for amended registration no later than October 21, 1992:

1. Registration. Any person who manufactures, distributes, engages in research, imports or exports aminorex or who proposes to engage in the manufacture, distribution, importation or exportation of aminorex or conduct research with aminorex must be registered to conduct such activities in accordance with parts 1301 and 1311 of title 21 of the Code of Federal Regulations.

2. Security. Aminorex must be manufactured, distributed and stored in accordance with §§ 1301.71–1301.76 of title 21 of the Code of Federal Regulations.

3. Labeling and Packaging. All labels and labeling for commercial containers of aminorex must comply with the requirements of §§ 1302.03–1302.05, 1302.07 and 1302.08 of title 21 of the Code of Federal Regulations.

4. Quotas. All persons required to obtain quotas for aminorex must submit applications pursuant to §§ 1303.12 and 1303.22 of title 21 of the Code of Federal Regulations.

5. Inventory. Registrants in possession of aminorex are required to take inventories of all stocks of this substance on hand pursuant to §§ 1304.11–1304.19 of title 21 of the Code of Federal Regulations.

6. Records. All registrants required to keep records pursuant to §§ 1304.21–1304.27 of title 21 of the Code of Federal Regulations must do so regarding aminorex.

7. Reports. All registrants engaged in the manufacture, packaging, labeling or distribution of aminorex are required to submit reports in accordance with §§ 1304.35–1304.37 of Title 21 of the Code of Federal Regulations.

8. Order Forms. Each distribution of aminorex requires the use of an order form pursuant to §§ 1305.01–1305.16 of Title 21 of the Code of Federal Regulations.

9. Importation and Exportation. All importation and exportation of aminorex must be in compliance with part 1312 of title 21 of the Code of Federal Regulations.

10. Criminal Liability. Any activity with aminorex not authorized by or in violation of the CSA or the Controlled Substances Import and Export Act occurring on or after September 21, 1992 is unlawful.

The Administrator of the DEA hereby certifies that the temporary placement of aminorex into Schedule I of the CSA will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This action involves the temporary control of a substance with no currently approved medical use or manufacture in the United States.

This final rule is not a major rule for the purposes of Executive Order (E.O.) 12291 (46 FR 13193) of February 17, 1981. It has been determined that drug scheduling matters are not subject to review by the Office of Management and Budget (OMB) pursuant to the provisions of E.O. 12291. Accordingly, this emergency scheduling action is not subject to the provisions of E.O. 12778 which are contingent upon review by OMB. This regulation both responds to an emergency situation posing an imminent danger to the public health and safety, and is essential to a criminal law enforcement function of the United States. Accordingly, it is not subject to the 90-day moratorium on regulations ordered by the President of the United States in his memorandum of January 28, 1992.

This action has been analyzed in accordance with the principles and criteria in E.O. 12612, and it has been determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by Section 201(h) of the CSA (21 U.S.C. 811(h)), and delegated to the Administrator of DEA by Department of Justice regulations (28 CFR 0.100), the Administrator hereby amends 21 CFR part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLLED SUBSTANCES

1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871b, unless otherwise noted.

2. Paragraph (g)(4) is added to section 1308.11 to read as follows:

§ 1308.11 Schedule I.

* * * * *

(g) * * *

(4) Aminorex (Some other names: aminoxaphen, 2-amino-5-phenyl-2-oxazoline, or 4,5-dihydro-5-phenyl-2-oxazolamine, its salts, optical isomers, and salts of optical isomers—1585.

Dated: September 10, 1992.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 92-22595 Filed 9-18-92; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 64

[CGD 91-031]

RIN 2115-AD83

Hazards to Navigation

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Recent statutory amendments mandate the establishment of standards for what constitutes a hazard to navigation. The Coast Guard is amending 33 CFR part 64 to include a definition for such a hazard and a list of factors which are to be considered when determining whether any obstruction constitutes a hazard to navigation. Providing a list of factors and a definition will assist the owners of obstructions when evaluating whether an obstruction is a hazard to navigation which requires marking.

EFFECTIVE DATE: October 21, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Parker, Navigation Rules and Information Branch, U.S. Coast Guard (202) 267-0357.

SUPPLEMENTAL INFORMATION:

Drafting Information

The principle persons involved in drafting this document are Mr. Frank Parker, Project Manager, and Lieutenant Ralph L. Hetzel, Project Counsel, Office of Chief Counsel.

Regulatory History

On September 23, 1991, the Coast Guard published a notice of proposed rulemaking entitled "Hazards to Navigation" in the **Federal Register** (53 FR 47930). The Coast Guard received 13 letters commenting on the proposal. A public hearing was not requested and one was not held.

Background and Purpose

On two separate occasions, fishing vessels operating in the shallow near-shore waters of the Gulf of Mexico have struck submerged pipelines. In each of the accidents, the product in the pipeline was released and ignited, resulting in an explosion and the deaths of several of the crewmembers. Investigations into the accidents found the previously buried pipelines to be exposed above the ocean bottom.

Congressional concern for offshore pipeline safety culminated on October 27, 1990, with the passage of H.R. 4888 amending the Natural Gas Pipeline Act of 1968, the Hazardous Liquid Pipeline Act of 1979, and the Ports and Waterways Safety Act of 1972. These amendments were signed into law on November 16, 1990 (Pub. L. 101-599).

Title 33 CFR part 64 establishes the requirements for marking and reporting structures, sunken vessels, and other obstructions. However, part 64 does not include a definition of a hazard to navigation even though proposed § 64.10-1 states that sunken vessels or other obstructions should be marked whenever they constitute a hazard to navigation. Public Law 101-599 mandated the establishment of standards for the purposes of each subsection of the Natural Gas Pipeline Act of 1968, the Hazardous Liquid Pipeline Act of 1979, and the Ports and Waterways Safety Act of 1972, as amended, for what constitutes a hazard to navigation. The Coast Guard is satisfying part of this congressional mandate by revising 33 CFR part 64 to include a definition of hazard to navigation and a list of factors which are to be considered when determining whether any obstruction constitutes a hazard to navigation, in general.

Discussion of Comments and Changes

All comments received supported the Coast Guard's proposed action, with respect to defining an "obstruction" and a "hazard to navigation."

Four comments recommended the Coast Guard revise the existing § 64.10-1(d) to require owners of marine pipelines that are determined to be hazards to navigation to report and mark the hazardous portion of those pipelines in accordance with 49 CFR parts 192 or 195. The Coast Guard agrees with these recommendations. The revisions to 49 CFR parts 192 and 195 had not been published when the Coast Guard was preparing the notice of proposed rulemaking. A reference to 49 CFR parts 192 and 195 has been added to § 64.11(d) in part 64.

One comment was received concerning the referencing of OCS Order No. 1, paragraph 4, in existing § 64.10-1. OCS Order No. 1, paragraph 4, was rescinded in 53 FR 10596 and therefore, the Coast Guard is revising § 64.10-1 in this rulemaking to eliminate the reference.

Three comments were received recommending the Coast Guard exempt any pipeline that was designed, constructed, operated, and maintained in accordance with all existing Federal or state permitting and operating regulations from being considered a hazard to navigation under this rule. The Coast Guard does not agree with these recommendations. The pipelines

involved with the accidents had, from all indications, been designed, constructed, operated, and maintained in accordance with Federal State permitting and operating regulations. Because of the changing conditions of the seabed, these previously buried pipelines became exposed, creating a hazard to navigation. The discovery of the exposed pipelines, after they contributed to accidents, created a need for amendments to 49 CFR parts 192 and 195, and 33 CFR part 64.

Two comments were received requesting the District Commander be required to document, for public review, the factors considered in reaching a decision on whether an obstruction constituted a hazard to navigation. Factors considered by the District Commander in the determination that an obstruction requires marking are already provided to the owner of the obstruction, therefore no further action on this issue is required.

Four comments urged the Coast Guard to consider amending the commercial fishing vessel regulations to prohibit vessels from operating in depths of water equal to or less than the draft of the vessel. These recommendations will be forwarded to the appropriate program office at Coast Guard Headquarters for further consideration.

Because 33 CFR part 64 does not conform to the current section and subpart designation scheme for the CFR, the Coast Guard is taking this opportunity to redesignate the sections, subparts, and table of contents.

Regulatory Evaluation

This rulemaking is not major under Executive Order 12291 and nonsignificant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). Because this rule merely provides a definition and criteria to consider in deciding to mark a hazard to navigation, the Coast Guard expects the economic impact of this rulemaking to be so minimal that a full Regulatory Evaluation is unnecessary.

The addition to the proposed rule requiring owners of marine pipelines determined to be hazards to navigation to report and mark these hazards in accordance with 49 CFR parts 192 or 195 provides reference to a more specific standard in those cases. The removal of the reference in existing § 64.10–1 to OCS Order No. 1, paragraph 4 merely removes reference to a rescinded order.

Small Entities

The changes resulting from this rulemaking are merely providing amplifying information for determining whether an object is a hazard to navigation. No new equipment or training expense is required. Therefore, the Coast Guard certifies under 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed the final rule in terms of the comments received and the revisions made in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Because regulation of aids to navigation is committed to the Coast Guard by statute, it expects no preemption issue with regard to State regulation on the same subject matter.

Environment

The Coast Guard considered the environmental impact of this rulemaking and concluded that under section 2.b.2.1. of Commandant Instruction M16475.1B, this rulemaking is categorically excluded from further environmental documentation as an administrative action under the Coast Guard's statutory authority to establish and regulate minor aids to navigation. This action clearly has no environmental impact. A Categorical Exclusion Determination is available in the docket.

List of Subjects in 33 CFR Part 64

Navigation (water), Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 64 as follows:

PART 64—MARKING OF STRUCTURES, SUNKEN VESSELS, AND OTHER OBSTRUCTIONS

1. The Authority citation for part 64 is revised to read as follows:

Authority: 14 U.S.C. 633; 33 U.S.C. 409, 1231; 42 U.S.C. 9118; 43 U.S.C. 1333; 49 CFR 1.46.

2. Part 64 is amended by redesignating the following as set forth in the tables below:

TABLE A

Old subpart designation	New subpart designation
64.01	A
64.10	B
64.20	C
64.30	D

TABLE B

Old section	New section
64.01–1	64.01
64.01–3	64.03
64.01–6	64.06
64.10–1	64.11
64.10–3	64.13
64.10–6	64.16
64.20–1	64.21
64.20–3	64.23
64.30–1	64.31
64.30–3	64.33

3. Section 64.06 is amended by adding the following definitions in alphabetical order to read as follows:

§ 64.06 Definition of terms.

* * * * *

Hazard to navigation means an obstruction, usually sunken, that presents sufficient danger to navigation so as to require expeditious, affirmative action such as marking, removal, or redefinition of a designated waterway to provide for navigational safety.

* * * * *

Obstruction means anything that restricts, endangers, or interferes with navigation.

* * * * *

4. Section 64.11 is amended by revising paragraph (a) and adding a new paragraph (d) before the note to read as follows:

§ 64.11 Marking and notification requirements.

(a) The owner of a vessel, raft, or other craft wrecked and sunk in a navigable channel shall mark it immediately with a buoy or daymark during the day and with a light at night. The owner of a sunken vessel, raft, or other obstruction that otherwise constitutes a hazard to navigation shall mark it in accordance with this subchapter.

* * * * *

(d) Owners of marine pipelines that are determined to be hazards to navigation shall report and mark the hazardous portion of those pipelines in accordance with 49 CFR parts 192 or 195, as applicable.

5. Section 64.31 is revised to read as follows:

§ 64.31 Determination of hazard to navigation.

In determining whether an obstruction is a hazard to navigation for the purposes of marking, the District Commander considers, but is not limited to, the following factors:

(a) Location of the obstruction in relation to the navigable channel and other navigational traffic patterns;

(b) Navigational difficulty in the vicinity of the obstruction;

(c) Depth of water over the obstruction, fluctuation of the water level, and other hydrologic characteristics in the area;

(d) Draft, type, and density of vessel traffic or other marine activity in the vicinity of the obstruction;

(e) Physical characteristics of the obstruction;

(f) Possible movement of the obstruction;

(g) Location of the obstruction in relation to other obstructions or aids to navigation;

(h) Prevailing and historical weather conditions;

(i) Length of time that the obstruction has been in existence;

(j) History of vessel incidents involving the obstruction; and

(k) Whether the obstruction is defined as a hazard to navigation under other statutes or regulations.

Dated: August 26, 1992.

W.J. Ecker,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 92-22631 Filed 9-18-92; 8:45 am]

BILLING CODE 4910-14-M

POSTAL SERVICE

39 CFR Part 111

Mailability of Sharps and Other Medical Devices

AGENCY: Postal Service.

ACTION: Amendment to final rule.

SUMMARY: In response to further comments, and to ensure that parcels covered by this rule will be in complete compliance with Department of Transportation regulations on shipping papers and marking of hazardous materials, and to preclude parcels of this type from being rejected by the airlines, we are amending the final rule titled Mailability of Sharps and Other Medical Devices, dated June 30, 1992 (57 FR 29028).

EFFECTIVE DATE: December 28, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Earl Hohbein, (202) 268-5309.

SUPPLEMENTARY INFORMATION: This amendment, effective December 28, 1992, requires that each package be marked with the proper shipping name and identification number (preceded by "UN" or "NA" as appropriate). Additionally, the amended final rule will require that every piece must carry a shipper's declaration for dangerous goods (in addition to the required manifest) showing the proper shipping name (49 CFR 172.202(a)(1)), the hazard class or division (49 CFR 172.202(a)(2)), and the identification number for the material (49 CFR 172.202(a)(3)). Although exempt from the notice and comment requirements of the Administrative Procedures Act (5 U.S.C. 553 (b) and (c)) regarding the proposed rule, the Postal Service invited comments. In view of these new requirements, we are also amending content requirements for the four part manifest described in new DMM section 124.384h.

After careful consideration of the comments received after publishing the final rule, the Postal Service adopts the following amendments to part 124 of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR part 111.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001-3011, 3201-3219, 3403-3406, 3621, 5001.

2. Section 124.384 is amended by adding sections 124.384k(1) and 124.384k(2). Exhibit 124.384k1 is also added to this amendment as referenced in new section 124.384k(1).

124 NONMAILABLE MATTER—ARTICLES AND SUBSTANCES; SPECIAL MAILING RULES

* * * * *

h. All mailed packages continuing used sharps must be accompanied by a four-part manifest or mail disposal service shipping record. The manifest must be placed in an envelope which is affixed to the outside of the shipping container, and must comply with any applicable requirements imposed by the laws of the State from which the package is mailed.

At a minimum, the following information must appear on the manifest:

1. Generator (Mailer)

a. Name
b. Complete address (NOT A P.O. BOX)
c. Telephone number
d. Description of contents—"Infectious Substances-Sharps".
e. Date the shipping container was mailed, and
f. State permit number of the approved facility in which the contents will be disposed.

* * * * *

124.384k Required markings on packages.

(1) Each package must have a shipper's declaration for dangerous goods in one original and two copies. The shipper's declaration must be completed by the mailer showing the proper shipping name of the material, the classification of the material, and the identification number (or "UN number "). For the mailing of sharps there are two distinct possibilities: "Infectious Substances, affecting animals only", classification "6.2" and "UN 2900" or "Infectious Substances, affecting humans", classification "6.2", and "UN 2814." The shipper's declaration must bear the same basic wording and appear in the exact format (including the red parallelograms printed along the total length of the right and left margins) as Exhibit 124.384k(1) and show a 24-hour emergency telephone number (including the area code) for use in the event of an emergency involving the shipment. This emergency telephone number must be printed, marked, or affixed on the form and preceded by the words "Emergency Contact: * * *", preferably located in the "Additional Handling Information" box.

(2) Each package must also be endorsed showing the appropriate "UN" number followed by the proper shipping name. These endorsements should appear next to the Infectious Substance label.

A transmittal letter making these changes in the Domestic Mail Manual will be published and transmitted automatically to subscribers. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided by 39 CFR 111.3.

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

BILLING CODE 7710-12-M

Exhibit 124.394k1

SHIPPER'S DECLARATION FOR DANGEROUS GOODS (Provide at least two copies to the airline.)

Shipper	Air Waybill No. Page of Pages Shipper's Reference Number (optional)
Consignee	
Two completed and signed copies of this Declaration must be handed to the operator	**WARNING** **Failure to comply in all respects with the applicable Dangerous Goods Regulations may be in breach of the applicable law, subject to legal penalties. This Declaration must not, in any circumstances, be completed and/or signed by a consolidator, a forwarder or an IATA cargo agent.**

TRANSPORT DETAILS

This shipment is within the limitations prescribed for: *(delete non-applicable)*

PASSENGER AND CARGO AIRCRAFT | CARGO AIRCRAFT ONLY

Airport of Departure

Airport of Destination:

Shipment type: *(delete non-applicable)* NON-RADIOACTIVE | RADIOACTIVE

NATURE AND QUANTITY OF DANGEROUS GOODS *(See Sub-Section 8.1 of IATA Dangerous Goods Regulations)*

Dangerous Goods Identification				Quantity and type of packing	Packing Inst.	Authorization
Proper Shipping Name	Class or Division	UN or ID No.	Subsidiary Risk			

Additional Handling Information

I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked and labelled, and are in all respects in the proper condition for transport by air according to the applicable International and National Government Regulations.

Name/Title of Signatory

Place and Date

Signature *(see warning above)*

STYLE F83 LABELMASTER Div of AMERICAN LABELMARK CO CHICAGO, IL 60646

[FR Doc. 92-21869 Filed 9-18-92; 8:45 am]

BILLING CODE 7710-12-C

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[FRL 4507-9]

Negative Declaration for Municipal Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On August 1, 1991, the State of Mississippi certified that there were no municipal waste combustors in the State subject to the requirements of section 111(d) of the Clean Air Act. In this action EPA is approving this negative declaration.

EFFECTIVE DATE: This action will be effective November 20, 1992 unless notice is received within 30 days that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the material submitted by the State of Mississippi may be examined during normal business hours at the following locations:

Region IV Air Programs Branch, Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia 30365

Air Division, Department of Environmental Quality, Bureau of Pollution Control, Post Office Box 10385, Jackson, Mississippi 30289-0385.

FOR FURTHER INFORMATION CONTACT: Scott Miller of the EPA Region IV Air Programs Branch at 404-347-2864 and at the above address.

SUPPLEMENTARY INFORMATION: Under section 111(d) of the Clean Air Act, the Administrator is required to publish a list of categories of stationary sources which cause, or contribute significantly to, "air pollution which may reasonably be anticipated to endanger public health or welfare." For each category the Administrator must publish regulations which establish Federal standards of performance for new stationary sources (NSPS) within that category.

Section 111(d) provides for regulation of existing sources which are in a category for which an NSPS has been promulgated for new sources. EPA publishes guideline documents for control of these existing sources which give suggested emission limitations and control techniques. These are usually less stringent than the NSPS and factors such as: cost of control equipment, economic health of the source, age of the source, etc., may be taken into consideration. Each state must then either submit a plan for control of these sources, or a negative declaration stating that there are no sources located in the State subject to that regulation.

Pursuant to these requirements, the State of Mississippi, on August 6, 1991, certified that there were no municipal waste combustors in the State subject to the requirements of section 111(d) of the Clean Air Act. EPA concurs with the State's negative declaration.

Final Action

Based on the foregoing, EPA hereby approves the negative declaration made by the State of Mississippi. EPA is publishing this notice without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 20, 1992. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action may not be challenged later in proceedings to enforce its requirements.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and Table 3 111(d) plan revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291.

Nothing in this action shall be construed as permitting, allowing or establishing a precedent for any future request for a revision to any 111(d) plan. Each request for revision to the 111(d) plan will be considered in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), I certify that these revisions will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

List of Subjects in 40 CFR Part 62

Administrative practice and procedure, Air pollution control, Intergovernmental relations, and Reporting and recordkeeping requirements.

Dated: June 8, 1992.

Patrick M. Tobin,

Acting Regional Administrator.

Part 62 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401-7462.

2. Section 62.6123 and an undesignated heading are added to subpart 2 to read as follows:

Subpart Z—Mississippi

Municipal Waste Combustors

§ 62.6123 Identification of sources—Negative declaration.

The Mississippi Bureau of Pollution Control submitted on August 6, 1991, a letter certifying that there are no municipal waste combustors in the State subject to part 60, subpart B of this chapter.

[FR Doc. 92-22788 Filed 9-18-92, 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6945

[CA-940-4214-10; CAS 052887]

Partial Revocation of Public Land Order No. 2460; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a public land order insofar as it affects 640 acres of public land withdrawn for the Temblor National Cooperative Land and Wildlife Management Area. The land is no longer needed for this purpose, and the revocation is needed to permit

disposal of the land through land exchange under section 206 of the Federal Land Policy and Management Act of 1976. This action will open the land to the non-mineral public land laws unless closed by overlapping withdrawals or temporary segregations of record. The land has been and will remain open to mining and mineral leasing.

EFFECTIVE DATE: October 21, 1992.

FOR FURTHER INFORMATION CONTACT: Judy Bowers, BLM California State Office, 2800 Cottage Way, Sacramento, California 95825, 916-978-4820.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Public Land Order No. 2460, which withdrew public land for the Temblor National Cooperative Land and Wildlife Management Area, is hereby revoked insofar as it affects the following described land:

Mount Diablo Meridian

T. 32 S., R. 23 E.,
Sec. 28, all.

The area described contains 640 acres in Kern County.

2. At 10 a.m. on October 21, 1992, the land will be opened to the operation of the non-mineral public land laws subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on October 21, 1992, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: September 8, 1992.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 92-22694 Filed 9-18-92; 8:45 am]

BILLING CODE 4310-40-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

Reevaluation of the Depreciated-Original-Cost Standard in Setting Prices for Conveyances of Capital Interests in Overseas Communications Facilities Between or Among U.S. Carriers; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final rule [FCC 92-286], which was published Tuesday, July 28, 1992, [57 FR 33,275] concerning reevaluation of the Depreciated-Original-Cost Standard in setting prices for conveyances of capital interests in overseas communications facilities between or among U.S. Carriers.

EFFECTIVE DATE: August 27, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Suzan Balk Friedman, attorney/advisor, International Policy Division, Common Carrier Bureau (202) 632-7265.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published, the final rule inadvertently omitted the Final Regulatory Flexibility Act Analysis.

Correction of Publication

The publication on July 28, 1992 of the final rule [FCC 92-286] is corrected to include the Final Regulatory Flexibility Analysis. Paragraphs 6 through 10 are redesignated 10 through 14 accordingly. The Final Regulatory Analysis is added on page 33276 in column 1. The Final Regulatory Flexibility Analysis is as follows:

Final Regulatory Flexibility Analysis

6. Pursuant to the Regulatory Flexibility Act of 1980 [Pub. L. 96-354], see U.S.C. 604, our final analysis is as follows:

Need and Purpose of this Action

7. This Report and Order adopts the proposal made in the NPRM to replace the current net-book-cost standard for pricing conveyances of capital interests in overseas communications facilities between or among U.S. carriers. Under the policy adopted herein, prices are set pursuant to negotiations between the owners and prospective purchasers of the facilities. The net-book-standard was adopted twenty-five years ago. Since that time, the telecommunications facilities market has undergone dramatic changes and the current pricing policy is no longer appropriate in a highly competitive market. The new policy reflects our recognition of these changes.

Summary of the Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis

8. There were no comments submitted in response to the Initial Regulatory Flexibility Analysis.

Significant Alternatives Considered

9. The NPRM offered three alternatives to negotiated, market-based pricing. They are pooling arrangements, net-book-cost plus carrying charges or some fraction of carrying charges and the setting of maximum and minimum price levels. None of the commenters supported these proposals except as an alternative to market-based pricing. The Commission concluded that the alternatives it had proposed in the NPRM would not remedy the problems associated with the net-book-cost standard.

Federal Communications Commission.

Diane Cornell,

Chief, International Policy Division, Common Carrier Bureau.

[FR Doc. 92-22471 Filed 9-18-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 80

[PR Docket No. 91-293; FCC 92-355]

Data Emissions on Marine Public Correspondence Channels in the 156-162 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Report and Order amends Part 80 of the Commission's rules to permit the use of facsimile and data communications nationwide on all marine 156-162 band (marine VHF) public correspondence channels for communications between public coast stations and ship stations. This action is in response to a request from WJG Maritel Corporation (WJG) to permit such use. The intent of this action is to provide VHF public coast stations and the commercial as well as noncommercial vessels they serve with a wider range of communications options such as facsimile, teleprinter and data communications while promoting more efficient use of the radio spectrum.

EFFECTIVE DATE: October 21, 1992.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Roger S. Noel, Aviation and Marine Branch, Private Radio Bureau, Federal Communications Commission, 2025 M Street NW., 1700C2, Washington, DC 20554; or telephone (202) 632-7175.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, PR Docket No. 91-293, adopted July 31, 1992, and released August 31, 1992. The complete text of the Report and Order, including appendices, is available for inspection and copying

during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The full text also may be purchased from the Commission's copy contractor: Downtown Copy Center, (202) 452-1422, 1990 M Street NW., suite 640, Washington, DC 20036. DCC's FAX number is (202) 296-3780.

Summary of Report and Order

1. Since 1986, an integrated system of public coast stations operating on the marine VHF public correspondence channels in the Great Lakes region has been permitted to provide facsimile and data communication services to ship stations. Individual public coast stations operating on the same channels in other parts of the United States, however, have been limited to voice operations. This action will permit the use of facsimile and data communications, in addition to voice communications, on public correspondence channels in the frequency band 156-162 MHz (marine VHF) by all public coast stations.

2. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520, and found to contain no new or modified form, information collection and/or record retention requirements, and will not increase or decrease burden hours imposed on the public.

3. The amended rules are set forth at the end of this document.

4. The amended rules are issued under the authority of sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), part 80 of the Commission's rules, 47 CFR part 80.

List of Subjects in 47 CFR Part 80

Coast stations, Communications equipment, Facsimile, Maritime Stations, VHF public correspondence channels.

Federal Communications Commission.

William Caton,

Acting Secretary.

Amended Rules

Part 80 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

2. Section 80.122 is revised to read as follows:

§ 80.122 Public coast stations using facsimile and data.

Facsimile operations are a form of telegraphy for the transmission and receipt of fixed images between authorized coast and ship stations. Facsimile and data techniques may be implemented in accordance with the following paragraphs.

(a) *Supplemental Eligibility Requirements.* Public coast stations are eligible to use facsimile and data techniques with ship stations.

(b) *Assignment and use of frequencies.* (1) Frequencies in the 2000-27500 kHz bands in part 2 of the Commission's rules as available for shared use by the maritime mobile service and other radio services are assignable to public coast stations for providing facsimile communications with ship stations. Additionally, frequencies in the 156-162 MHz band available for assignment to public coast stations for radiotelephone communications that are contained in subpart H of this part are also available for facsimile and data communications.

(2) Equipment used for facsimile and data operations is subject to the applicable provisions of subpart E of this part.

(3) The use of voice on frequencies authorized for facsimile operations in the bands 2000-27500 kHz listed in subpart H of this part is limited to setup and confirmation of receipt of facsimile transmissions.

3. Section 80.205 is amended by revising Footnotes 6 and 12 to the table in paragraph (a) to read as follows:

§ 80.205 Bandwidths.

(a) * * *

* * * * *

[6] Applicable only to radioprinter and data in the 156-162 MHz band and radioprinter in the 216-220 MHz band.

* * * * *

[12] Applicable to radiolocation and associated telecommand ship stations operating on 154.585 MHz, 159.480 MHz, 160.725 MHz, 160.785 MHz, 454.000 MHz, and 459.000 MHz; emergency position indicating radiobeacons operating in the 406.000-406.1000 MHz frequency bank; and data transmissions in the 156-162 MHz band.

* * * * *

4. In Section 80.207, paragraph (d) is amended by revising the entry for 156-220 MHz under the heading "Ship Stations" and 156-162 MHz[2] under the heading "Land Stations" and by revising footnote 2 to read as follows:

§ 80.207 Classes of emission.

* * * * *

(d) * * *

Ship Stations [1]

* * * * *

156-162 MHz[2].....F1B,F2B,F2C,F3C,F1D,F2D

* * * * *

Land Stations [1]

* * * * *

156-162 MHz[2].....F1B,F2B,F2C,F3C,F1D,F2D

* * * * *

[2] Frequencies used for public correspondence. See §§ 80.371(c) and 80.385(b). Transmitters type accepted before January 1, 1994, for G3E emissions will be authorized indefinitely for F2C, F3C, F1D and F2D emissions. Transmitters type accepted after January 1, 1994, will be authorized for F2C, F3C, F1D or F2D emissions only if they are type accepted specifically for each emission designator.

* * * * *

5. Section 80.213 is amended by revising paragraph (d) to read as follows:

§ 80.213 Modulation requirements.

* * * * *

(d) Ship and coast station transmitters operating in the 156-162 MHz and 216-220 MHz bands must be capable of proper operation with a frequency deviation of ±5 kHz when using any emission authorized by § 80.207.

* * * * *

6. Section 80.361 is amended by revising its heading and adding a new paragraph (d) to read as follows:

§ 80.361 Frequencies for narrow-band direct-printing (NBDP), radioprinter, and data transmissions.

* * * * *

(d) The frequencies in the 156-162 MHz band available for assignment to public coast stations that are contained in § 80.371(c) of this part are also available for radioprinter and data communications between ship and coast stations using F1B, F2B, F1D, or F2D emission.

* * * * *

7. Section 80.363 is amended by redesignating the introductory paragraph as paragraph (a), redesignating existing paragraph (a) and (b) as (a)(1) and (a)(2) respectively, and adding a new paragraph (b) to read as follows:

§ 80.363 Frequencies for facsimile.

* * * * *

(b) The frequencies in the 156-162 MHz band available for assignment to public coast stations that are contained in § 80.371(c) of this part are also available for facsimile communications

between ship and coast stations using F2C or F3C emission.

[FR Doc. 92-22745 Filed 9-18-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 90

[PR Docket No. 90-34; FCC No. 92-363]

Short-Spacing of Specialized Mobile Radio Systems Upon Concurrence From Co-Channel Licensees

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Memorandum Opinion and Order affirms the actions taken in a Report and Order (Order) adopted in this proceeding permitting applicants to locate co-channel transmitters closer than current mileage separations, without seeking a waiver, by either obtaining the consent of affected licensees or filing in accordance with a short-spacing "Table" specifying reduced power and antenna heights according to the actual distance between co-channels facilities. The National Association of Business and Educational Radio, Inc., the American Mobile Telecommunications Association, Inc., Commercial Engineering Corporation, and Francis J. Dirico sought reconsideration of several aspects of the Order. The Commission affirmed all aspects of the Order, except that it extended the period for co-channel licensees to evaluate waiver requests from 10 days to 30 days, adopted a directional method for calculating antenna height above average terrain when using the short-spacing Table, and expanded the short-spacing Table to include columns for 300 and 500 watts. The effect of these changes will be more spectrum efficient licensing of SMR stations.

EFFECTIVE DATE: October 21, 1992.

FOR FURTHER INFORMATION CONTACT: Steve Sharkey, Private Radio Bureau, (202) 634-2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, PR Docket No. 90-34, FCC 92-363, adopted August 4, 1992 and released September 4, 1992. The full text of this Memorandum Opinion and Order is available for inspection during normal business hours in the FCC Dockets Branch, room 230, 1919 M Street NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street NW., Washington, DC 20026, telephone (202) 452-1422.

Summary of Memorandum Opinion and Order

The Report and Order in PR Docket No. 90-34 adopted rules to enable applicants for Specialized Mobile Radio (SMR) stations to locate facilities closer than the current minimum co-channel separation without requesting a waiver. SMR stations that are licensed closer to co-channel facilities than § 90.621(b) provides are commonly referred to as short-spaced facilities. Specifically, the Order authorized applicants to short-space without a waiver under two scenarios. The first of these is referred to as "consensual short-spacing" and enables an applicant to short-space by submitting written consent from all affected co-channel licensees evidencing their willingness to accept any interference that results from the reduced mileage separation. The second scenario is referred to as "technical short-spacing" and allows an applicant to short-space in accordance with the mileage separations identified in our short-spacing "Table."

The National Association of Business and Educational Radio, Inc., the American Mobile Telecommunications Association, Inc., Commercial Engineering Corporation, and Francis J. Dirico seek reconsideration of a number of decisions in the Order specifically, (1) the criteria used to evaluate a waiver of § 90.621(b) of the rules; (2) the appropriateness of operational parameters to be considered in evaluating short-spacing requests using the Table; (3) whether the short-spacing parameters adopted for certain areas of the country are appropriate; (4) the adequacy of procedural aspects of short-spacing requests; and (5) whether a two-year moratorium should be imposed on short-spaced facilities while the real-world effects of previously authorized short-spaced systems are studied. In the Memorandum Opinion and Order the Commission affirms all aspects of the Report and Order, except that it extended the period for co-channel licensees to evaluate waiver requests from 10 to 30 days, adopted a directional method for calculating antenna height above average terrain when using the short-spacing Table, and expanded the short-spacing Table to include columns for 300 and 500 watts.

List of Subjects in 47 CFR Part 90

Business and industry, Communications equipment; Radio.

Amendatory Text

Chapter I of title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 90 continues to read:

Authority: Secs. 4, 303, 331, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303 and 332 unless otherwise noted.

2. Section 90.621 is amended by revising paragraph (b)(1), revising the first sentence of paragraph (b)(3), revising paragraph (b)(4), and adding new paragraph (b)(6) to read as follows:

§ 90.621 Selection and assignment of frequencies

(b) * * *

(1) Except as indicated in paragraph (b)(4) of this section, no trunked system will be less than 169 km (105 miles) distant from co-channel trunked systems authorized 1 kW ERP on any of the following mountain top sites: Santiago Peak, Sierra Peak, Mount Lukens, Mount Wilson (California).

* * * * *

(3) Except as indicated in paragraph (b)(4) of this section, SMR trunked systems located in the State of Washington at the following locations shall be separated from co-channel systems by a minimum of 169 km (105 miles). * * *

(4) The following Table indicates permissible distances between co-channel systems separated by less than 113 km (70 miles). Applicants seeking to be licensed for systems located at distances less than those prescribed in the table are required to secure a waiver and to file with their license application a certificate of service indicating that, concurrent with the filing of the application with the Commission, all co-channel licensees within the applicable area were served with a copy of the application and all attachments thereto. Such licensees served with a copy of the application may file an opposition to the application within 30 days from the date the application is filed.

DISTANCE (KM) OF PROPOSED FACILITY FROM EXISTING FACILITY [1] [2]

Proposed facility*										
DHAAT**		ERP (watts)								
(m)	(feet)	1000	800	600	500	400	300	200	100	50
30.5	100	108	105	101	98	95	92	87	80	75
61	200	113	112	107	105	102	99	95	88	83
91.5	300	113	113	113	111	108	105	101	95	89
122	400	113	113	113	113	112	109	105	99	93
152.5	500	113	113	113	113	113	112	108	102	97
183	600	113	113	113	113	113	113	110	104	99
213.5	700	113	113	113	113	113	113	113	107	101
244	800	113	113	113	113	113	113	113	109	103
274.5	900	113	113	113	113	113	113	113	112	105
305	1000	113	113	113	113	113	113	113	113	108

* Applicants whose exact ERP and DHAAT are not reflected in the table must use the next higher figure shown. Distances are shown in kilometers.

** The DHAAT is defined as the average of the antenna heights above average terrain from 3 to 16 kilometers (2 to 10 miles) from the proposed site along a radial extending in the direction of the existing station and the radials 15 degrees to either side of that radial.

[1] Separations for trunked systems on Santiago Peak, Sierra Peak, Mount Lukens, and Mount Wilson (California) and the locations in the State of Washington listed in 47 CFR 90.621(b)(3) are 56 km (35 miles) greater than those indicated in the table above. In the event of a conflict between this table and 47 CFR 90.621(b)(2)(ii), the latter will control.

[2] The distances shown are based on a non-overlap of the 22 dBu interference contour of the proposed station with the 40 dBu service contour of the existing station(s). No consideration has been given between the 40 dBu service contour of the proposed station and the 22 dBu interference contour of the existing station(s).

* * * * *

(6) A station located closer than the distances provided in paragraphs (b)(1) and (b)(3) of this section to a co-channel station that was authorized as short-spaced under paragraph (b)(4) of this section shall be permitted to modify its facilities as long as the station does not extend its 30 dBu contour beyond its maximum 30 dBu contour (i.e., the 30 dBu contour calculated using the station's maximum power and antenna height at its original location) in the direction of the short-spaced station.

* * * * *

Federal Communications Commission.

William Caton,

Acting Secretary.

[FR Doc. 92-22743 Filed 9-18-92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 30 and 52

[FAC 90-12; FAR Case 92-18]

Federal Acquisition Regulation; Cost Accounting Standards; Correction

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Correction to interim rule.

SUMMARY: This document corrects Federal Acquisition Circular (FAC) 90-12, Cost Accounting Standards, published in the **Federal Register** on Monday, August 31, 1992 (57 FR 39586).

EFFECTIVE DATE: August 31, 1992.

SUPPLEMENTARY INFORMATION: In FR Doc. 92-20667, beginning on page 39586 in the issue of Monday, August 31, 1992, make the following corrections:

§ 30.201-4 [Corrected]

1. At 57 FR 39587, August 31, 1992, at section 30.201-4(b)(1), in the 13th line, "paragraph (d)" should read "paragraph (c)".

2. On page 39588 at section 30.201-4(d)(1), in the last line, "paragraph (c)" should read "paragraph (b)".

§ 30.602-2 [Corrected]

3. On page 39590, at section 30.602-2(d)(3), in the 6th line, the word "shall" should read "should".

§ 52.230-1 [Corrected]

4. On page 39591, in the last column at section 52.230-1, in paragraph I(c)(4) of the clause, in the 14th line, the word "review" should read "revised".

Dated: September 11, 1992.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 92-22721 Filed 9-18-92; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 920407-2519]

Atlantic Tuna Fisheries; Atlantic Bluefin Tuna

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure of the school Atlantic bluefin tuna component of the Angling category in waters off New Jersey and states north.

SUMMARY: NMFS closes the fishery for school Atlantic bluefin tuna conducted by Angling category fishermen in the waters off New Jersey and states north. Closure of this fishery is necessary because the annual quota of 53 metric tons (mt) of school Atlantic bluefin tuna allocated for this category in waters off New Jersey and states north has been attained. The intent of this action is to prevent overharvest of the quota established for this fishery.

EFFECTIVE DATE: The closure is effective from 0001 hours local time September 23 through December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Richard B. Stone or Aaron E. King, 301-713-2347.

SUPPLEMENTARY INFORMATION: Regulations promulgated under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*)

regulating the harvest of Atlantic bluefin tuna by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285.

Section 285.22(d)(2) of the regulations provides for an annual quota of 53 mt of school Atlantic bluefin tuna to be harvested from waters off New Jersey and states north by individuals in the Angling category. The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), is authorized under § 285.20(b)(1) to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the catch of Atlantic bluefin tuna will equal any quota under § 285.22. The Assistant Administrator is further authorized under § 285.20(b)(1) to prohibit fishing for, or retention of, Atlantic bluefin tuna by those fishing in the category subject to the quota when the catch of tuna equals the quota established under § 285.22. The Assistant Administrator has determined, based on the reported catch, that the annual quota of school Atlantic bluefin tuna for those fishing in waters off New Jersey and states north will be attained by September 22, 1992. Fishing for, and retention of, any school Atlantic bluefin tuna harvested under § 285.22(d)(2) must cease at 0001 local time on September 23, 1992.

Classification

This action is required by 50 CFR 285.20(b)(1) and complies with E.O. 12291.

Authority: 16 U.S.C. 971 *et seq.*

List of Subjects in 50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: September 15, 1992.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-22798 Filed 9-18-92; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 183
Monday, September 21, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE INTERIOR

Geological Survey

30 CFR Part 400

RIN 1028-AA04

Regulations for Obtaining Federal Assistance in Financing Explorations for Mineral Reserves, Excluding Organic Fuels, in the United States, Its Territories and Possessions

AGENCY: U.S. Geological Survey, Interior.

ACTION: Proposed Removal of Rule.

SUMMARY: The U.S. Geological Survey (USGS) has reviewed its regulations for currency, adequacy, and continued need. Consequently, the USGS is proposing to remove the Regulations for Obtaining Federal Assistance in Financing Explorations for Mineral Reserves, Excluding Organic Fuels, in the United States, its Territories and Possessions because the program has had no funding authority since 1979, and it is doubtful that funding will be authorized in the foreseeable future.

DATES: Comments must be received on or before October 21, 1992.

ADDRESSES: Comments should be addressed to the Chief Geologist, U.S. Geological Survey, 911 National Center, Reston, Virginia 22092.

FOR FURTHER INFORMATION CONTACT: Gary C. Curtin, 703-648-4242.

SUPPLEMENTARY INFORMATION:

Required Analyses: The Department of the Interior has determined this document is not a major rule under E.O. 12291 and certifies this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because the program has not been funded since 1979, removal of the regulations will not adversely affect the Nation's economy or any small entities in industry or Government.

This action will have no potential for significant environmental impact and is categorically excluded from the requirements for compliance with the National Environmental Policy Act of 1969, as amended (P.L. 91-190, 83 Stat. 852).

Paperwork Reduction Act: No information collection or recordkeeping has been required under the regulations since 1989.

Executive Order No. 12778: The Department has certified to the Office of Management and Budget that this proposed regulation meets the applicable standards provided in Sections 2(a) and 2(b) of Executive Order No. 12778.

Author: The principal author of this proposed rule is Gary Curtin, Geologic Division, U.S. Geological Survey.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed removal to the location identified in the Addresses section of this preamble. Comments must be received on or before (insert date 30 days after date of publication in the **Federal Register**).

List of Subjects in 30 CFR Part 400: Government contracts, Grant programs-natural resources, Mineral resources, Mineral royalties.

Under the authority of 30 U.S.C. 642(e) and for the reasons stated above, it is proposed to remove 30 CFR Part 400.

Dated: August 17, 1992.

Harlan L. Watson,

Principal Deputy Assistant Secretary—Water and Science.

[FR Doc. 92-22724 Filed 9-18-92; 8:45 am]

BILLING CODE 4310-31-M

Bureau of Mines

30 CFR Part 609

RIN 1032-AA02

Payments Required for Owners of Private Lands Upon Which the Bureau of Mines Performs Exploration or Development Work To Investigate Known Coal Deposits

AGENCY: Bureau of Mines, Interior.

ACTION: Proposed rescission.

SUMMARY: This part sets forth the Federal Government's stipulation that a "reasonable percentage" of the value of coal produced by a private owner be paid to the Federal Government as compensation for the exploration and development efforts of the Bureau of Mines. Rescission of this rule is proposed as this regulation no longer has application to Bureau programs, since the Bureau of Mines no longer conducts exploration and development work on known coal deposits.

DATES: Comments must be received on or before October 21, 1992.

ADDRESSES: Comments should be sent to: Michael L. Kaas, U.S. Department of the Interior, Chief, Division of Resource Evaluation, U.S. Bureau of Mines, 810 7th Street NW., Washington, DC 20241.

FOR FURTHER INFORMATION CONTACT: John D. Ford, U.S. Department of the Interior, U.S. Bureau of Mines, Branch of Management Analysis, 810 7th Street NW., Washington, DC 20241, Tel: 202-501-9253.

SUPPLEMENTARY INFORMATION: The current 30 CFR part 609, Payments Required from Owners of Private Lands Upon Which the Bureau of Mines Performs Exploration or Development Work to Investigate Known Coal Deposits is a result of a directive established in fiscal year 1947 by the Interior Department Appropriation Act. At that time, the Bureau investigated known coal deposits on Federal, State, and private lands. When on private lands, the Federal Government required a "reasonable percentage" of the value of coals produced by the private owner as compensation for the exploration and development efforts. This regulation, as described above, no longer has application to Bureau programs, since the Bureau no longer conducts exploration and development work on known coal deposits. Under the authority of the President's memorandum of January 28, 1992, regarding reducing the burden of Government regulation, it is recommended, this regulation be rescinded.

The Department of the Interior has determined this document is not a major rule under Executive Order 12291 and certifies this document will not have a significant economic effect on a substantial number of small entities

under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*).

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Bureau of Mines certifies that this rule will not have a significant economic effect on a substantial number of small entities.

The proposed rule to rescind 30 CFR part 609, is determined not to have Federalism effects under Executive Order 12612 as it has no direct causal effect on the relative roles of Federal and State Government.

This rule does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The Department of the Interior has determined that this document does not constitute a major Federal action significantly affecting the quality of the human environment under The National Environmental Policy Act of 1969.

Author

Michael L. Kaas, Chief, Division of Resource Evaluation, Bureau of Mines.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections regarding the proposed rule to the location identified in the Addresses section of this preamble. Comments must be received no later than October 21, 1992.

The Department has certified to the Office of Management and Budget that these proposed regulations meet the applicable standards provided in sections 2(a) and 2(b) of Executive Order 12778.

Dated: August 26, 1992.

John M. Sayre,

Assistant Secretary—Water and Science.

[FR Doc. 92-22570 Filed 9-18-92; 8:45 am]

BILLING CODE 4310-53-M

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30 CFR Part 651

RIN 1032-AA03

Rules and Regulations for the Administration of Grants

AGENCY: Bureau of Mines, Interior.

ACTION: Proposed Rescission.

SUMMARY: The current 30 CFR part 651, requires innovation in the submission of research and development proposals to further Bureau programs as authorized by statute. These requirements are also contained in 48 CFR chapter 15, part 1515, subpart 1515.5. Since there is no need that these requirements be contained in both locations, this part is proposed for rescission.

DATES: Comments must be received on or before October 21, 1992.

ADDRESSES: Comments should be sent to: Doyne W. Teets, Chief Division of Procurement, U.S. Department of the Interior, U.S. Bureau of Mines, 810 7th Street NW., Washington, DC 20241.

FOR FURTHER INFORMATION CONTACT: John D. Ford, U.S. Department of the Interior, U.S. Bureau of Mines, Branch of Management Analysis, 810 7th Street NW., Washington, DC 20241, Tel: 202-501-9253.

SUPPLEMENTARY INFORMATION: Under the Authority of the President's Memorandum of January 28, 1992, regarding reducing the burden of Government regulations, it is recommended, this regulation be rescinded. The Department of the Interior has determined this document is not a major rule under Executive Order 12291 and certifies this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Bureau of Mines certifies that this rule will not have a significant economic effect on a substantial number of small entities.

The proposed rule to rescind 30 CFR part 651 is determined not to have Federalism effects under Executive Order 12612 as it has no direct causal effect on the relative roles of Federal and State Government.

This rule does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The Department of the Interior has determined that this document does not constitute a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969.

Author: Doyne W. Teets, Chief, Division of Procurement, U.S. Bureau of Mines.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections regarding the proposed rule to the location identified in the **ADDRESSES** section of this preamble. Comments must be received no later than October 21, 1992.

The Department has certified to the Office of Management and Budget that these proposed regulations meet the applicable standards provided in sections 2(a) and 2(b) of Executive Order 12778.

Dated: August 26, 1992.

John M. Sayre,

Assistant Secretary—Water and Science.

[FR Doc. 92-22571 Filed 9-18-92; 8:45 am]

BILLING CODE 4310-53-M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1, 5 and 10

[Docket No. 920779-2179]

RIN 0651-AA34

Miscellaneous Changes in Patent Practice

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Patent and Trademark Office (Office) is proposing to amend the rules of practice in patent cases to: Expand the authority to sign a terminal disclaimer in a patent application or a disclaimer in a patent; allow an appellant appearing without counsel to file an appeal brief which is not in compliance with current 37 CFR 1.192(c); prohibit fee extensions of time to file: Corrected drawings after allowance, reply briefs, and requests for oral hearing; clarify the requirements for claiming foreign priority; require that the specification of a design application describe the nature and intended use of the article being claimed; specify the manner in which additional fees are computed when applicants incorrectly claim small entity status; and correct errors in published regulations.

DATES: Written comments must be received on or before November 5, 1992 to ensure consideration. A public hearing will not be conducted.

ADDRESSES: Address written comments to the Office of the Assistant Commissioner for Patents, Box DAC, Washington, DC 20231, marked to the attention of Abraham Hershkovitz. Correspondence may be sent by FAX to the attention of Abraham Hershkovitz at (703) 305-8825.

FOR FURTHER INFORMATION CONTACT: Abraham Hershkovitz by telephone at (703) 305-9282 or by mail marked to his attention and addressed to Office of the Assistant Commissioner for Patents, Box DAC, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The specific revisions proposed are discussed below:

(1) Copies of Papers (Section 1.13)

The proposed change to § 1.13(a) clarifies that the paragraph pertains to non-certified copies and that copies of patents, trademark registrations and other papers belonging to the Office may be obtained, provided those papers are located in the Office, as opposed to being located in another agency.

The purpose of the proposed amendment to § 1.13(b) is to clarify that certified copies of papers belonging to the Office may be obtained upon payment of the fee for a certified copy.

(2) Patent Applications Preserved in Secrecy (Section 1.14)

Section 1.14(b) is proposed to be amended to correct a typographical error in that the second paragraph of this section was inadvertently deleted during one of the earlier revisions of this section. See 50 FR at 9378 (March 7, 1985). The absence of the second paragraph went unnoticed until recently. It is proposed that § 1.14(b) be amended by including the previous language of the second paragraph and by changing in the first paragraph the plural "applicants" to the singular "applicant".

(3) Effect on Fees of Failure to Establish Status, or Change Status, as a Small Entity (Section 1.28)

Section 1.28(c) is proposed to be modified to reflect Office practice in calculating fee deficiencies when fees have been improperly paid as a small entity. The Office receives deficiency payments that differ based on the submitter's interpretation of § 1.28(c): Some simply double the small entity fee in effect when the fee was originally paid in error, while others compute the difference between the fee already paid and the large entity fee level in effect at the time the deficiency is paid. The Office requires payments to be based on fee levels in effect at the time of the deficiency payment.

Since 1989, fee levels have been adjusted annually. In view of these adjustments, there are frequently situations where the fee amount has changed since it was originally erroneously paid. Calculation of deficiency amounts based on fee levels in effect at the time the deficiency is paid conforms with the general concept that fees to be paid are those in effect at the time of receipt of the fees. For example:

—Where an application is filed under § 1.53(b) without the filing fees that could have been paid at the time of filing the application, any increase in the filing fees prior to payment of the filing fees requires that the filing fees be paid at the higher fee level;

—Where an amendment is filed outside the shortened statutory period set for response and an extension of time under § 1.136(a) is requested prior to a fee increase, the extension fee is the fee required under the old fee schedule. On the other hand, if the extension of time is requested after a fee increase, the extension of time fee necessary is the fee in effect at the time of payment of the fee, which in this case is the fee under a new fee schedule, rather than the one in effect at the time of expiration of the shortened statutory period for response.

Section 1.28(c) is proposed to be modified to more clearly reflect this practice of basing deficiency payments on the fee level in effect at the time of deficiency payment.

(4) Claim for Foreign Priority

The purpose of the proposed amendment to § 1.55(a) is to incorporate the limitations of 35 U.S.C. 119, which provides that the claim for priority and the appropriate copy of the foreign application must be filed before the patent is granted. Some applicants did not realize that submission of priority papers after payment of the issue fee required the filing of a petition to accept late submission of priority papers before issuance of the patent. After a patent is granted, applicants may still be able to establish priority benefits by filing a reissue application to correct the failure to perfect the claim for priority. *Brenner v. State of Israel*, 400 F.2d 789, 158 USPQ 584 (D.C. Cir. 1968). The proposed changes in § 1.55(a) list separately the instances when priority documents must be filed to receive the benefit of the filing date of a prior foreign application. Furthermore, § 1.55(a) is proposed to be amended to clarify when a verified English translation of a priority application not in the English language must be filed and to require a statement from the translator indicating that the translation of the priority document is accurate.

(5) Claiming Benefit of Earlier Filing Date and Cross References to Other Applications (Section 1.78)

Section 1.78(a) is proposed to be amended to correct a typographical error. In the reference to § 1.21(l), the numeral (1) appears instead of the letter (l).

(6) Corrections to Drawings (Section 1.85)

Section 1.85(c) is proposed to be amended to indicate that the time for filing formal and corrected drawings required in the Notice of Allowability may no longer be extended under § 1.136(a). The delays in filing corrected drawings resulting from fee extensions of time create an inefficient operation in that issuance of patents is delayed. Furthermore, applicants' ability to transmit proposed drawings (as opposed to formal drawings intended to comply with §§ 1.81 and 1.83 through 1.85) by facsimile transmission, coupled with the fact that examiners will notify applicants at an early stage of any objection to the drawings, will diminish the need for obtaining fee extensions of time. Under the proposed practice, examiners will advise applicants of the need to file formal or corrected drawings at the earliest opportunity, usually in the first Office action. Applicants may postpone the filing of formal or corrected drawings until after the application is allowed by the examiner. The deadline for filing the formal or corrected drawings will be set at the time of mailing the Notice of Allowability. An extension of time may be requested under § 1.136(b) before the period set for response expires, provided applicants are able to show sufficient cause why the extension should be granted. The Office will continue to set a one-month time limit under § 1.135(c) for drawing corrections where the formal and corrected drawings submitted constitute a *bona fide*, but not completely acceptable, response to an Office requirement.

(7) Prohibition of Fee Extensions of Time to File:

(1) Corrected drawings in allowed applications, § 1.85(c);

(2) Reply briefs, § 1.193(b); and (3) requests for oral hearing, § 1.194(b). (Section 1.136(a))

Section 1.136(a) is proposed to be amended by adding three additional situations in which applicants would no longer be able to use fee extensions under § 1.136(a). Rearrangement of § 1.136(a) is proposed so that referenced sections appear in numerical order. The new prohibitions would apply to situations where the request to extend the time is: (1) to permit filing of corrected drawings in allowed applications in accordance with § 1.85(c), (2) to permit filing reply briefs under § 1.193(b), and (3) to permit filing requests for oral hearing under § 1.194(b) before the Board of Patent

Appeals and Interferences. Fee extensions of time to file reply briefs or requests for oral hearing delay final disposition of the appeal, and in the case of a corrected drawing requirement, final disposition of the application.

The Office has considered changing the practice to require payment of the fee and filing the request for an extension of time before the period set for response expires in the situations addressed in this proposed rulemaking, but did not adopt that approach because of the complexity that it would introduce into the system.

Corrected drawings can presently be filed up to six months from an examiner's requirement (with a maximum three-month extension of time). It is proposed that this period be reduced to three months. A three-month period is deemed ample time to file corrected drawings. Since the Office no longer releases drawings for purposes of correction, see § 1.85(b), applicants no longer need time to allow bonded drafting companies to pick up, check out, correct, and return corrected drawings. Applicants have been encouraged to keep the master copy of the drawings for use in making corrections or copies. If the master copy was not kept, one option available to applicants is to inspect the Office application file, make copies of any drawings in the file and make any desired corrections on these copies before submission to the Office. Situations which present a hardship to applicants may be accommodated by filing a petition under § 1.182 to request transfer of drawings from an original application to a new related application or by filing a petition under § 1.183 to request that the provisions of § 1.85(b) be waived so that the drawings may be loaned out for the purpose of making drawing corrections.

Applicants may submit corrected drawings at any time, except where a specific deadline is set by the examiner. Consideration of proposed drawing corrections may be expedited by having informal drawings transmitted by FAX to the examiner. Further, corrected or formal drawings will be required by the examiner at the earliest opportunity, usually in the first Office action. Applicants may postpone filing formal or corrected drawings until after the examiner sets a deadline for such filing, usually in the Notice of Allowability. However, in doing so, applicants assume the risk of not having sufficient time to make the required corrections to overcome objections to the drawings. Therefore, an applicant should file corrected drawings as soon as possible.

Extensions of time for sufficient cause under § 1.136(b) will continue to be available in situations where extensions of time under § 1.136(a) are not available. Extensions of time under § 1.136(b) will be granted only if the request is filed before expiration of the period set for response and only upon a showing of sufficient cause why corrected drawings cannot be timely filed. A request made on the basis of preoccupation with meeting other deadlines, or that the applicant lives overseas, or other similar reasons may not be granted. Similarly, extensions of time may be available under § 1.550(c) in reexamination proceedings.

Under current rules, applicants may file reply briefs or request oral hearings up to six months after an examiner's answer (with a maximum four-month extension of time under § 1.136(a)). Since the backlog of cases awaiting a decision by the Board of Patent Appeals and Interferences has been reduced, these extension requests have resulted in diminished efficiency by prolonging the pendency of applications. The periods specified in §§ 1.193(b) and 1.194(b) are considered sufficient to file a reply brief or request an oral hearing. Therefore, § 1.136(a) is proposed to be amended to prohibit fee extensions of time to file a reply brief or request an oral hearing.

(8) Title, Description and Claim, Oath or Declaration (Section 1.153)

Section 1.153(a) is proposed to be amended to include a requirement that the specification of a design patent application include a clear description of the nature and intended use of the article. A description has not been required in most design applications because the title has been relied on to identify the article in which the design is embodied. However, the nature and intended use of many articles are not readily apparent from the title and the drawing. For example, a design application may be directed to a self-locking insert. Often it is not clear, even from the drawing, how the insert is used or where it should be classified for search and documentation purposes.

This problem is currently being addressed, in Patent Examining Group 290, by mailing a request for information to an applicant prior to the first Office action where the nature or intended use of the article is not evident. About 3,000 such requests were mailed in fiscal year 1991, covering more than 90% of the design applications that were screened for a useful description.

(9) Arrangement of Specification (Section 1.154)

Section 1.154 is proposed to be amended to be consistent with the proposed changes to § 1.153 by including a reference to the requirement for a description of the nature and intended use of the article claimed.

(10) Appeal to the Board of Patent Appeals and Interferences (Section 1.191)

Section 1.191(d) is proposed to be amended to be consistent with the proposed changes to § 1.136.

(11) Appellant's Brief (Section 1.192)

Sections 1.192 (a) and (d) are proposed to be amended by moving the last sentence of current § 1.192(d) to § 1.192(a) to highlight that the Board may refuse consideration of any arguments or authorities not included in the brief.

Section 1.192(c) is proposed to be amended to provide that in a case of a pro se appellant, an appellant appearing without counsel, a brief may be acceptable even though it does not comply with all the requirements of current paragraph (c). An appellant appearing without counsel means there is no attorney or agent of record in the application, the brief was not prepared by a registered practitioner, and the brief was not signed by a registered practitioner. It is proposed to amend paragraph (c) to allow a pro se appellant's brief to be accepted provided it is at least in substantial compliance with the requirements of subparagraphs (1), (2), (6), and (7) of current paragraph (c). If a pro se appellant's brief is accepted, it will be presumed that a rejected group of claims stand or fall together unless an argument is included in the brief that presents reasons as to why appellant considers the rejected group of claims to be separately patentable.

(12) Examiner's Answer (Section 1.193)

Section 1.193(b) is proposed to be amended to clarify the consequence of failure to file a reply brief in response to a new ground of rejection made in an examiner's answer. The failure to file a reply brief will result in dismissal of the appeal as to the claims made subject to the new ground of rejection. If the dismissal of the appeal applies to all claims in the application, the application will be abandoned. Additionally, this section is proposed to be amended to be consistent with the proposed changes to § 1.136.

(13) Oral Hearing (Section 1.194)

Section 1.194(b) is proposed to be amended to be consistent with the proposed changes to § 1.136. Under the current rule, if new grounds of rejection are first made in an examiner's answer, two months are permitted for filing a reply brief and, if a reply brief is filed, an applicant is permitted three months after the date of filing a reply brief to file a request for an oral hearing. In order to provide a more consistent approach vis-a-vis time periods for filing reply briefs and requests for oral hearing and to permit earlier decisions of issues on appeal, it is proposed that the three-month period specified in § 1.194(b) for filing a request for oral hearing be changed to the later of (1) one month from the date of an examiner's answer, or (2) the date of filing a timely reply brief. This period should be sufficient to request an oral hearing. It is further proposed that § 1.194(b) be revised to correct the spelling of the word "reply".

(14) Decision by the Board of Patent Appeals and Interferences (Section 1.196)

Section 1.196(f) is proposed to be amended to refer to § 1.550(c) for extensions of time in reexamination proceedings.

(15) Action Following Decision (Section 1.197)

Section 1.197(b) is proposed to be amended to refer to § 1.550(c) for extensions of time in reexamination proceedings.

(16) Amendments After Allowance (Section 1.312)

The purpose of the proposed amendment to § 1.312(b) is to clarify that the fee required for a petition under this section is that specified in § 1.17(i)(1).

(17) Persons Other Than the Owner Permitted to Sign a Disclaimer as Specified in § 1.321

Section 253 of Title 35 of the United States Codes states that disclaimer of any complete claim in a patent may be made by the patentee. Furthermore, any terminal part of the patent granted or to be granted may be disclaimed by the patentee, or applicant, respectively. It is the current policy of the Office to accept disclaimers only if signed by the owner of record. This policy is too restrictive in that it precludes authorized patent practitioners from signing disclaimers. Furthermore, it is often difficult to ascertain whether the person signing is in fact an officer of the entity owning rights to the application.

The rules allow authorized persons other than the applicant to sign most papers filed in an application. See § 1.33(a)(2)–(5). The requirement that a disclaimer be signed by the owner of record of an application or patent is a departure from the general practice of permitting a registered attorney or agent to sign a wide variety of papers filed in applications and patents, such as amendments, a notice of appeal to the Board of Patent Appeals and Interferences or the Court of Appeals for the Federal Circuit, and amendments and papers in reexamination proceedings.

It is proposed that persons permitted to sign a disclaimer in a patent be the patentee, or an attorney or agent of record, whereas, persons permitted to sign a disclaimer in a patent application by any person specified in § 1.33(a)(1)–(4). The person signing the disclaimer must state the present extent of the disclaiming party's (i.e., patentee's or assignee's) interest in the patent or patent application. Naturally, a disclaimer signed on behalf of a party who no longer has an ownership interest in the patent or patent application cannot be accepted since 35 U.S.C. 253 requires a disclaimer to be signed by the owner of the whole or any sectional interest in the patent or patent application.

If the patent or patent application is assigned to an organization, such as a corporation, partnership, university, Government agency, or similar entity, the disclaimer may be signed by an officer of the organization empowered to act on behalf of the organization. If the person signing is not an officer of the organization, a statement will be required indicating that the person signing was authorized to sign on behalf of the organization. The statement must be a verified statement if made by a person not registered to practice before the Office. Verification may be made by way of a declaration in accordance with § 1.68.

Paragraph (a) of this section is further proposed to be amended to deal only with disclaimers filed in patents. The Office does not record a disclaimer of part of a claim or claims. Hence, paragraph (a) of this section is proposed to be amended to indicate that a disclaimer which does not disclaim a complete claim or claims will be refused recordation, rather than "may be refused recordation" as the rule currently reads.

Paragraph (b) of this section, as proposed, deals only with terminal disclaimers filed in a patent application. Section 1.321(b) is also proposed to be amended to include a reminder that the disclaimer is binding upon the grantee and its successors or assigns.

Proposed new paragraph (c) of this section would incorporate the language of current paragraph (b) of this section dealing with terminal disclaimers to obviate a double patenting rejection and also include reference to terminal disclaimers filed in reexamination proceedings for the same purpose.

(18) Publication of Notices of Proposed Amendments (Section 1.352(a))

The purpose of the amendment to § 1.352(a) is to delete the language "and in the other cases whenever practicable" so that the Office may engage in expedited rulemaking when publication of notice of proposed amendments to regulations is not required by law.

(19) Time for Payment of Maintenance Fees (Section 1.362)

The purpose of the amendment to § 1.362 is to clarify applicability and due dates for payment of maintenance fees. Paragraph (c)(3) of § 1.362 indicates that the actual filing date of a continuing application determines applicability of maintenance fees, while paragraph (c)(4) indicates that in the case of a reissue application, the filing date of the original non-reissue application determines applicability of maintenance fees. Some patentees and patent practitioners expressed confusion with respect to applicability of maintenance fees in the case of a continuing reissue application of a reissue application. Uncertainty has been expressed as to whether this type of application would fall within paragraph (c)(3) or (c)(4). The amendment to § 1.362(c)(4) is proposed in order to clarify that a continuing application of a reissue application is subject to maintenance fees only if the original (non-reissue) patent would be subject to such fees. These amendments also remove any confusion that may have existed with regard to the due dates for payment of maintenance fees in reissued patents by adding § 1.362(h) to specify that the due dates for payment of maintenance fees in such reissued patents are computed from the date of grant of the original (non-reissue) patent.

In a notice published on December 13, 1991, in the **Federal Register** at 56 FR 65142, the Office announced an amendment to its rules of practice. Included in that notice, was a change to paragraph (e) of § 1.362 which was not intended. See 56 FR at 65146. It is proposed that the portion of paragraph (e) which was not intended to be

amended, be changed back to its earlier version.

(20) International Preliminary Examination Fees (Section 1.482)

Section 1.482(a) is proposed to be amended to correct a typographical error in the spelling of the word "under".

(21) Request by Applicant for Interference With Patent (Section 1.607)

Section 1.607(a)(5)(i) is proposed to be amended to correct a typographical error in the spelling of the word "count".

(22) Export of Technical Data (Section 5.19)

Section 5.19(a) is proposed to be amended to correct the citations set forth in the rule and to update the name of the office in the Department of Commerce that established 15 CFR 770.10(j).

(23) Sharing Legal Fees (Section 10.48)

Section 10.48(b) is proposed to be amended to correct a typographical error in the spelling of the word "deceased".

Other Considerations

The proposed rule changes are in conformity with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), Executive Orders 12291 and 12612 and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that these proposed rule changes will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The principal impact of these proposed changes is to permit persons other than the assignee of a patent application or patent to sign certain disclaimers, incorporate existing Office policy into the regulations and eliminate the opportunity to pay for extensions of time in certain situations where the extensions substantially interfere with the efficient operation of the Office.

The Office has determined that this proposed rule change is not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increase in costs or prices for consumers; individuals; industries; Federal, state or local government agencies; or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Office has also determined that this notice has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

These proposed rule changes, except as noted below, contain a collection of information requirements subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, which has previously been approved by the Office of Management and Budget under Control No. 0651-0011. Proposed § 1.153 would require a design specification to present a clear description of the nature and use of the article. Public reporting burden for this collection of information is estimated to average two (2) minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Abraham Hershkovitz by mail marked to his attention and addressed to Office of the Assistant Commissioner for Patents, Box DAC, Washington, DC 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Project No. 0651-0011.

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Freedom of information Inventions and patents, Reporting and recordkeeping requirements.

37 CFR Part 5

Classified information, Exports, Foreign relations, Inventions and patents.

37 CFR Part 10

Administrative practice and procedure, Conflicts of interest, Courts, Inventions and patents, Lawyers.

For the reasons set out in the preamble and pursuant to the authority granted to the Commissioner of Patents and Trademarks by 35 U.S.C. 6, it is proposed to amend 37 CFR parts 1, 5, and 10 as follows, wherein deletions are indicated by brackets ([ ]) and additions by arrows (> <):

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR part 1 would continue to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. Section 1.13 is proposed to be revised to read as follows:

§ 1.13 Copies and certified copies.

(a) [Copies] >Non-certified copies< of patents and trademark registrations and of any records, books, papers, or drawings belonging to >and located in< the Patent and Trademark Office and open to the public, will be furnished by the Patent and Trademark Office to any person, and copies of other records or papers will be furnished to persons entitled thereto, upon payment of the fee therefor.

(b) [Such] >Certified< copies will be authenticated by the seal of the Patent and Trademark Office and certified by the Commissioner, or in his name attested by an officer of the Patent and Trademark Office authorized by the Commissioner, upon payment of the fee for the >certified copy< [authentication certificate in addition to the fee for the copies].

3. Section 1.14, paragraph (b) is proposed to be revised as follows:

§ 1.14 Patent applications preserved in secrecy.

* * * * *

(b) Except as provided in § 1.11(b) abandoned applications are likewise not open to public inspection, except that if an application referred to in a U.S. patent, or in an application in which the [applicants] >applicant< has filed an authorization to open the complete application to the public, is abandoned and is available, it may be inspected or copies obtained by any person on written request, without notice to the applicant. >Complete applications (§ 1.51(a)) which are abandoned may be destroyed after 20 years from their filing date, except those to which particular attention has been called and which have been marked for preservation. Abandoned applications will not be returned.<

* * * * *

4. Section 1.28, paragraph (c) is proposed to be revised as follows:

§ 1.28 Effect on fees of failure to establish status, or change status, as a small entity.

* * * * *

(c) If status as a small entity is establish in good faith, and fees as a small entity are paid in good faith, in

any application or patent, and it is later discovered that such status as a small entity was established in error or that through error the >Patent and Trademark< office was not notified of a change in status as required by paragraph (b) of this section, the error will be excused:

(1) If any deficiency between the amount paid and the amount due is paid within three months after the date the error occurred or

(2) if any deficiency between the amount paid and the amount due is paid more than three months after the date the error occurred and the payment is accompanied by a [verified] statement explaining how the error in good faith occurred and how and when [it] >the error< was discovered. >The statement must be a verified statement if made by a person not registered to practice before the Patent and Trademark Office. The deficiency is based on the amount due at the time the deficiency is paid in full.<

* * * * *

5. Section 1.55, paragraph (a) is proposed to be revised to read as follows:

§ 1.55 Claim for foreign priority.

(a) An applicant may claim the benefit of the filing date of a prior foreign application under the conditions specified in 35 U.S.C. 119 and 172. The claim to priority need be in no special form and may be made by the attorney or agent if the foreign application is referred to in the oath or declaration as required by § 1.63. The claim for priority and the certified copy of the foreign application specified in the second paragraph of 35 U.S.C. 119 must be file>:

(1)< In the case of an interference (§ 1.630);

>(2)< When necessary to overcome the date of a reference relied upon by the examiner; or

>(3)< When specifically required by the examiner; and

>(4)< In all other cases>.< [they must be filed] not later than the date the issue fee is paid.

>If the claim for priority or the certified copy of the foreign application is filed after the date the issue fee is paid, it must be filed before the patent is granted and must be accompanied by a petition requesting entry of late priority papers and the fee set forth in § 1.17(i)(1).< If the papers filed are not in the English language, a translation need not be filed except in the [three particular instances specified in the preceding sentence] >case of an interference; or when necessary to overcome the date of a reference relied upon by the examiner; or when specifically required by the examiner<, in which event [a sworn] >an English< translation [or a translation certified as accurate by a sworn or official translator] must be filed >together with a statement that the translation of the priority papers is accurate. The statement must be a verified statement if make by a person not registered to practice before the Patent and Trademark Office.< [If the priority papers are submitted after the date the issue fee is paid, they must be accompanied by a petition requesting their entry and the fee set forth in § 1.17(i)(1).]

* * * * *

6. Section 1.78, paragraph (a) is proposed to be revised to read as follows:

§ 1.78 Claiming benefit of earlier filing date and cross references to other applications.

(a) An application may claim an invention disclosed in a prior filed copending national application or international application designating the United States of America. In order for an application to claim the benefit of a prior filed copending national application, the prior application must name as an inventor at least one inventor named in the later filed application and disclose the named inventor's invention claimed in at least one claim of the later filed application in the manner provided by the first paragraph of 35 U.S.C. 112. In addition, the prior application must be

(1) Complete as set forth in § 1.51 [.] >;< or

(2) Entitled to a filing date as set forth in § 1.53(b) and include the basic filing fee set forth in § 1.16; or

(3) Entitled to a filing date as set forth in § 1.53(b) and have paid therein the processing and retention fee set forth in § 1.21 [(1)] >(1)< within the time period set forth in § 1.53(d).

Any application claiming the benefit of a prior filed copending national or international application must contain or be amended to contain in the first sentence of the specification following the title a reference to such prior application, identifying it by serial number and filing date or international application number and international filing date and indicating the relationship of the applications. Cross-references to other related applications may be made when appropriate. (See § 1.14(b)).

* * * * *

7. Section 1.85, paragraph (c) is proposed to be revised to read as follows:

§ 1.85 Corrections to drawings.

* * * * *

(c) When corrected drawings are required to be submitted at the time of allowance, the applicant is required to submit acceptable drawings within three months from the mailing of [the] >a< "Notice of Allowability." [Within that three-month period, two weeks should be allowed for review of the drawings by the Drafting Branch.] If the Office finds that correction is necessary, the applicant must submit a new corrected drawing to the Office within the original three-month period to avoid >abandonment of the application< [the necessity of obtaining an extension of time and paying the extension fee.] Therefore, the applicant should file corrected drawings as soon as possible following the receipt of the >"< Notice of Allowability.>"< The provisions with respect to obtaining an extension of time >under§ 1.136(b) relate< [relates] only to the late filing of corrected drawings. The time limit for payment of the issue fee is a fixed three-month period which cannot be extended as set forth in 35 U.S.C. 151.

8. Section 1.136, paragraph (a) is proposed to be revised to read as follows:

§ 1.136 Filing of timely responses with petition and fee for extension of time and extensions of time for cause.

(a) If an applicant is required to respond within a nonstatutory or shortened statutory time period, applicant may respond up to four months after the time period set if a petition for an extension of time and the fee set in § 1.17 are filed prior to or with the response, unless

(1) Applicant is notified otherwise in an Office action,

(2) >The response is a submission of corrected drawings required in the "Notice of Allowability" (see § 1.85(c)),

(3) The response is a reply brief submitted pursuant to § 1.193(b),

(4) The response is a request for an oral hearing submitted pursuant to § 1.194(b),

(5) The response is to a decision by the Board of Patent Appeals and Interferences pursuant to §§ 1.196, 1.197 or 1.304, or

(6)< The application is involved in an interference declared pursuant to § 1.611 [or (3) the response is to a decision by the Board of Patent Appeals and Interferences pursuant to §§ 1.196, 1.197 or 1.304].

The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for purposes of determining the period of extension and the corresponding amount of the fee. The expiration of the time period is determined by the amount of the fee paid. In no case may an applicant respond later than the maximum time period set by statute, or be granted an extension of time under paragraph (b) of this section when the provisions of this paragraph are available. See § 1.136(b) >for extensions of time to file corrected drawings under § 1.85(c) and< for >extensions of time relating to proceedings pursuant to § >§ 1.193(b), >1.194,< 1.196 or [§] 1.197 [,] >. See< § 1.304 for extension of time to appeal to the U.S. Court of Appeals for the Federal Circuit or to commence a civil action [.] >. See< § 1.645 for extension of time in interference proceedings and § 1.550(c) for extension of time in reexamination proceedings.

* * * * *

9. Section 1.153, paragraph (a) is proposed to be revised to read as follows:

§ 1.153 Title, description and claim, oath or declaration.

(a) The title of the design must designate the particular article. [No description, other than a reference to the drawing, is ordinarily required.] >The specification must present a clear description of the nature and intended use of the article.< The claim shall be in formal terms to the ornamental design for the article (specifying name) as shown, or as shown and described. More than one claim is neither required nor permitted.

* * * * *

10. Section 1.154, paragraph (c) is proposed to be revised to read as follows:

§ 1.154 Arrangement of specification.

* * * * *

(c) Description, [if any] >including the nature and intended use of the article (see § 1.1539a))<.

* * * * *

11. Section 1.191, paragraph (d) is proposed to be revised to read as follows:

§ 1.191 Appeal to Board of Patent Appeals and Interferences.

* * * * *

(d) >The time periods set forth in §§ 1.191 and 1.192 are subject to the provisions of § 1.136 for patent applications and § 1.550(c) for reexamination proceedings.< The time periods set forth in §§ [1.191 through] 1.193 >, 1.194, 1.196 and 1.197< are subject to the provisions of § 1.136 >(b)< for patent applications or § 1.550(c) for reexamination proceedings. See § 1.304(a) for extensions of time for filing a notice of appeal to the U.S. Court of Appeals for the Federal Circuit or for commencing a civil action.

* * * * *

12. Section 1.192, paragraphs (a), (c), and (d) are proposed to be revised to read as follows:

§ 1.192 Appellant's brief.

(a) The appellant shall, within 2 months from the date of the notice of appeal under § 1.191 in an application, reissue application, or patent under reexamination, or within the time allowed for response to the action appealed from, if such time is later, file a brief in triplicate. The brief must be accompanied by the requisite fee set forth in § 1.17(f) and must set forth the authorities and arguments on which the appellant will rely to maintain the appeal.>Any arguments or authorities not included in the brief may be refused consideration by the Board of Patent Appeals and Interferences.<

* * * * *

(c) The brief shall contain the following items under appropriate headings and in the order here indicated >unless the brief is filed by an appellant appearing without counsel wherein the brief will be accepted as complying with this paragraph provided it is at least in substantial compliance with the requirements of paragraphs (c)(1), (2), (6), and (7)<:

(1) *Status of claims.* A statement of the status of all the claims, pending or cancelled, and identifying the claims appealed.

(2) *Status of amendments.* A statement of the status of any amendment filed subsequent to final rejection.

(3) *Summary of invention.* A concise explanation of the invention defined in the claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters.

(4) *Issues.* A concise statement of the issues presented for review.

(5) *Grouping of claims.* For each ground of rejection which appellant contests and which applies to more than one claim, it will be presumed that the rejected claims stand or fall together unless a statement is included that the rejected claims do not stand or fall together, and in the appropriate part or parts of the argument under paragraph (c)(6) of this section appellant presents reasons as to why appellant considers the rejected claims to be separately patentable.

(6) *Argument.* The contentions of the appellant with respect to each of the issues presented for review in paragraph (c)(4) of this section, and the basis therefor, with citations of the authorities, statutes, and parts of the record relied on. Each issue should be treated under a separate heading.

(i) For each rejection under 35 U.S.C. 112, first paragraph, the argument shall specify the errors in the rejection and how the first paragraph of 35 U.S.C. 112 is complied with, including, as appropriate, how the specification and drawings, if any,

(A) Describe the subject matter defined by each of the rejected claims,

(B) Enable any person skilled in the art to make and use the subject matter defined by each of the rejected claims, and

(C) Set forth the best mode contemplated by the inventor of carrying out his or her invention.

(ii) For each rejection under 35 U.S.C. 112, second paragraph, the argument shall specify the errors in the rejection and how the claims particularly point out and distinctly claim the subject matter which applicant regards as the invention.

(iii) For each rejection under 35 U.S.C. 102, the argument shall specify the errors in the rejection and why the rejected claims are patentable under 35 U.S.C. 102, including any specific limitations in the rejected claims which are not described in the prior art relied upon in the rejection.

(iv) For each rejection under 35 U.S.C. 103, the argument shall specify the errors in the rejection and, if appropriate, the specific limitations in the rejected claims which are not described in the prior art relied on in the rejection, and shall explain how such limitations render the claimed subject matter unobvious over the prior art. If the rejection is based upon a combination of references, the argument shall explain why the references, taken as a whole, do not suggest the claimed subject matter, and shall include, as may be appropriate, an explanation of why features disclosed in one reference may not properly be combined with features disclosed in another reference. A general argument that all the limitations are not described in a single reference does not satisfy the requirements of this paragraph.

(v) For any rejection other than those referred to in paragraphs (c)(6) (i) to (iv) of this section, the argument shall specify the errors in the rejection and

the specific limitations in the rejected claims, if appropriate, or other reasons, which cause the rejection to be in error.

(7) *Appendix.* An appendix containing a copy of the claims involved in the appeal.

(d) If a brief is filed which does not comply with [all] the requirements of paragraph (c) of this section, the appellant will be notified of the reasons for non-compliance and provided with a period of one month within which to file an amended brief. If the appellant does not file an amended brief during the one-month period, or files an amended brief which does not overcome all the reasons for non-compliance stated in the notification, the appeal will be dismissed. [Any arguments or authorities not included in the brief may be refused consideration by the Board of Patent Appeals and Interferences.]

13. Section 1.193, paragraph (b) is proposed to be revised to read as follows:

§ 1.193 Examiner's answer.

* * * * *

(b) The appellant may file a reply brief directed only to such new points of argument as may be raised in the examiner's answer, within one month from the date of such answer. The new points of argument shall be specifically identified in the reply brief. If the examiner determines that the reply brief is not directed only to new points of argument raised in the examiner's answer, the examiner may refuse entry of the reply brief and will so notify the appellant. If the examiner's answer states a new ground of rejection >,< appellant [may] >must< file a reply thereto within two months from the date of such answer >to avoid dismissal of the appeal as to the claims subjected to the new ground of rejection<; such reply may be accompanied by any amendment or material appropriate to the new ground. >See § 1.136(b) for extensions of time for filing a reply brief in a patent application and § 1.550(c) for extensions of time in a reexamination proceeding.<

* * * * *

14. Section 1.194, paragraph (b) is proposed to be revised to read as follows:

§ 1.194 Oral hearing.

* * * * *

(b) If appellant desires an oral hearing, appellant must file a written request for such hearing accompanied by the fee set forth in § 1.17(g) within one month after the date of the examiner's answer. If the examiner's answer states a new ground of rejection and if appellant files a reply as provided for by § 1.193(b), then the written request must be made [within three months after the date of the filing of the replay] >at the time of filing the reply provided for by § 1.193(b), or within one month from the date of an examiner's answer<. If appellant requests an oral hearing and submits therewith the fee set forth in § 1.17(g), an oral argument may be presented by, or on behalf of, the primary examiner if considered desirable by either the primary examiner or the Board. >See § 1.136(b) for extensions of time for requesting an oral hearing in a patent application and § 1.550(c) for extensions of time in a reexamination proceeding.<

* * * * *

15. Section 1.196, paragraph (f) is proposed to be revised to read as follows:

§ 1.196 Decision by the Board of Patent Appeals and Interferences.

* * * * *

(f) See § 1.136(b) for extensions of time to take action under this section >in a patent application and § 1.550(c) for extensions of time in a reexamination proceeding<.

16. Section 1.197, paragraph (b) is proposed to be revised to read as follows:

§ 1.197 Action following decision.

* * * * *

(b) A single request for reconsideration or modification of the decision may be made if filed within one month from the date of the original decision, unless the original decision is so modified by the decision on reconsideration as to become, in effect, a new decision, and the Board of Patent Appeals and Interferences so states. The request for reconsideration shall state with particularity the points believed to have been misapprehended or overlooked in rendering the decision and also state all other grounds upon which reconsideration is sought. See [37 CFR] >§< 1.136(b) for extensions of time for seeking reconsideration >in a patent application and § 1.550(c) for extensions of time in a reexamination proceeding<.

* * * * *

17. Section 1.312, paragraph (b) is proposed to be revised to read as follows:

§ 1.312 Amendments after allowance.

* * * * *

(b) Any amendment pursuant to paragraph (a) of this section filed after the date the issue fee is paid must be accompanied by a petition including the fee set forth in § 1.17(i) >(1)< and a showing of good and sufficient reasons why the amendment is necessary and was not earlier presented.

18. Section 1.321 is proposed to be revised to read as follows:

§ 1.321 Statutory disclaimer.

(a) >A patentee owning the whole or any sectional interest in a patent may disclaim any complete claim or claims in a patent. Such disclaimer is binding upon the grantee and its successors or assigns. The disclaimer, to be recorded in the Patent and Trademark Office, must:

(1) Be signed by the patentee, or an attorney or agent of record;

(2) Identify the patent and complete claim or claims being disclaimed;

(3) State the present extent of patentee's ownership interest in the patent; and

(4) Be accompanied by the fee set forth in § 1.20(d).< [A disclaimer under 35 U.S.C. 253 must be accompanied by the fee set forth in § 1.20(d) and identify the patent and the claim or claims which are disclaimed, and be signed by the person making the disclaimer, who shall state therein the extent of his or her interest in the patent.] A disclaimer which is not a disclaimer of a complete claim or claims [may] >will< be refused recordation. A notice of the disclaimer is published in the *Official Gazette* and attached to the printed copies of the specification. In like manner any patentee [or applicant] may disclaim or dedicate to the public the entire term, or any terminal part of the term, of the patent granted [or to be granted].

(b) >An applicant or assignee may disclaim or dedicate to the public the entire term, or any terminal part of the term, of a patent to be granted. Such terminal disclaimer is binding upon the grantee and its successors or assigns. The terminal disclaimer, to be recorded in the Patent and Trademark Office, must:

(1) Be signed as provided in § 1.33(a)(1)–(4);

(2) Specify the portion of the term of the patent being disclaimed;

(3) State the present extent of applicant's or assignee's ownership interest in the patent to be granted; and

(4) Be accompanied by the fee set forth in § 1.20(d).

(c)< A terminal disclaimer, when filed [in an application] to obviate a double patenting rejection >in a patent application or in a reexamination proceeding<, must [be accompanied by the fee set forth in § 1.20(d) and] >comply with the provisions of paragraph (b) of this section and also< include a provision that any patent

granted on the application >or any patent subject to that reexamination proceeding< shall be enforceable only for and during such period that said patent is commonly owned with the application or patent which formed the basis for the rejection.

19. Section 1.352 is proposed to be amended by revising paragraph (a) to read as follows:

§ 1.352 Publication of notice of proposed amendments.

(a) Whenever required by law, [and in other cases whenever practicable,] notice of proposed amendments to the regulations in this part will be published in the *Official Gazette* and in the **Federal Register**. If not published with the notice, copies of the text will be furnished to any person requesting the same. All comments, suggestions, and briefs, received within a time specified in the notice will be considered before adoption of the proposed amendments which may be modified in the light thereof.

* * * * *

20. Section 1.362 is proposed to be amended by revising paragraphs (c)(4) and (e) and adding paragraph (h) to read as follows:

§ 1.362 Time for payment of maintenance fees.

* * * * *

(c) * * *

(4) For a reissue application, >including a continuing application claiming the benefit of a reissue application under 35 USC 120,< the United States filing date of the original nonreissue application on which the patent reissued is based.

* * * * *

(e) Maintenance fees may be paid with the surcharge set forth in § 1.20(h) during the respective grace periods after:

>(1) 3 years and 6 months and through the day of the 4th anniversary of the grant for the first maintenance fee.

(2) 7 years and 6 months and through the day of the 8th anniversary of the grant for the second maintenance fee, and

(3) 11 years and 6 months and through the day of the 12th anniversary of the grant for the third maintenance fee.<

[(1) 3 years through 3 years and 6 months after grant for the first maintenance fee,

(2) 7 years through 7 years and 6 months after grant for the second maintenance fee, and

(3) 11 years through 11 years and 6 months after grant for the third maintenance fee.]

* * * * *

>(h) The periods specified in §§ 1.362(d) and (e) with respect to a reissue application, including a continuing application thereof, are counted from the date of grant of the original non-reissue application on which the reissued patent is based.<

21. Section 1.482, paragraph (a) introductory text is proposed to be revised to read as follows:

§ 1.482 International preliminary examination fees.

(a) The following fees and charges for international preliminary examination are established by the Commissioner [under] >under< the authority of 35 U.S.C. 376:

* * * * *

22. Section 1.607, paragraph (a)(5)(i) is proposed to be revised to read as follows:

§ 1.607 Request by applicant for interference with patent.

(a) * * *

(5) * * *

(i) Identified as corresponding to the [court] >count<, and

* * * * *

PART 5—CLASSIFIED INFORMATION, EXPORTS, FOREIGN RELATIONS, INVENTIONS AND PATENTS

23. The authority citation for 37 CFR part 5 would continue to read as follows:

Authority: 35 U.S.C. 6, 41, 181–188, as amended by the Patent Law Foreign Filing Amendments Act of 1988, Pub. L. 100–418, 102 Stat. 1567; the Arms Export Control Act, as amended, 22 U.S.C. 2751 *et seq.*, the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.*, and the Nuclear Non-Proliferation Act of 1978, 22 U.S.C. 3201 *et seq.*, and the delegations in the regulations under these acts to the Commissioner (15 CFR 370.10(j), 22 CFR 125.04, and 10 CFR 810.7).

24. Section 5.19, paragraph (a) is proposed to be revised to read as follows:

§ 5.19 Export of technical data.

(a) Under regulations [(15 CFR 370.10(j))] >(15 CFR 770.10(j))< established by the U.S. Department of Commerce, [International Trade] >Bureau of Export< Administration, Office of Export [Administration] >Licensing<, a validated export license is not required in any case to file a patent application or part thereof in a foreign country if the foreign filing is in accordance with the regulations (37 CFR 5.11 through [5.23] >5.33<) of the Patent and Trademark Office.

* * * * *

PART 10—REPRESENTATION OF OTHERS BEFORE THE PATENT AND TRADEMARK OFFICE

25. The authority citation for 37 CFR part 10 would continue to read as follows:

Authority: 5 U.S.C. 500; 15 U.S.C. 1123; 35 U.S.C. 6, 31, 32, 41.

26. Section 10.48, paragraph (b) is proposed to be revised to read as follows:

§ 10.48 Sharing legal fees.

* * * * *

(b) A practitioner who undertakes to complete unfinished legal business of a [decreased] >deceased< practitioner may pay to the estate of the deceased practitioner that proportion of the total compensation which fairly represents the services rendered by the deceased practitioner.

* * * * *

Dated: September 14, 1992.

Douglas B. Comer,

Acting Assistant Secretary and Acting Commissioner of Patents and Trademarks.

[FR Doc. 92–22662 Filed 9–18–92; 8:45 am]

BILLING CODE 3510–16–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52
[CA 13–7–5462; FRL–4508–4]

Approval and Promulgation of Implementation Plans (California State Implementation Plan Revision); By Area Air Quality Management District (San Joaquin Valley Unified Air Pollution Control District)

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the California State implementation plan (SIP) adopted by the Bay Area Air Quality Management District (BAAQMD) and the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) on December 5, 1990 and April 11, 1991 respectively. The California State Air Resources Board (ARB) submitted the BAAQMD rule on May 13, 1991 and the SJVUAPCD rule on May 30, 1991. The revisions concern BAAQMD Regulation 8, Rule 50, Polyester Resin Operations which limits volatile compound (VOC) emissions from the manufacturing of products using polyester resins and SJVUAPCD Rule 466.1, Graphic Arts which regulates

VOC emissions from the graphic arts industry, EPA has evaluated BAAQMD Regulation 8, Rule 50, and the revisions to SJVUAPCD Rule 466.1 and is proposing a limited approval of these rules under sections 110(k)(3) and 301(a) of the Clean Air Act as amended in 1990 (CAA or the Act) because these rules strengthen the SIP. At the same time, EPA is proposing a limited disapproval under section 110(k)(3) of the CAA because the rules do not meet the Part D, section 182(a)(2)(A) requirement of the CAA.

DATES: Comments must be received on or before October 21, 1992.

ADDRESSES: Comments may be mailed to: Esther Hill, Northern California, Nevada, and Hawaii Rulemaking Section (A-5-4), Air and Toxics Division, Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1219 "K" Street, Sacramento, CA 95814.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

San Joaquin Valley Unified, Air Pollution Control District, 2314 Mariposa Street, Fresno, CA 93721.

FOR FURTHER INFORMATION CONTACT: Daves Hodges, Southern California and Arizona Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1188, FAX (415) 744-1076..

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 CAA or the 1977 Act) that included the BAAQMD and the following eight air pollution control districts (APCDs): Fresno County APCD, Kern County APCD [1], Kings County APCD, Madera County APCD, Merced County APCD, San Joaquin County APCD, Stanislaus County APCD, and the Tulare County APCD. 43 FR 8964; 40 CFR 81.305. Because the BAAQMD and the eight air pollution control districts of the San Joaquin Valley Air Basin were unable to reach attainment by the statutory attainment date of December 31, 1982, California requested under pre-amended 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987 [2] 40 CFR 52.238. The districts did not attain the ozone standard by the approved attainment date. On May 26, 1988, EPA notified the Governor of California that the BAAQMD and the eight districts of the San Joaquin Valley Air Basin portions of the SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, amendments to the 1977 CAA were enacted. Public Law 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

On March 20, 1991, the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) was formed. The SJVUAPCD has authority over the San Joaquin Valley Air Basin which includes all of the above eight counties except for the Southeast Desert Air Basin portion of Kern County.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[3] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. BAAQMD is classified as moderate and the SJVUAPCD is classified as serious [4]; therefore, these areas are subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules to EPA for incorporation into its SIP on May 13, 1991 and May 30, 1991, including the rules being acted on in this notice. This notice addresses EPA's proposed action for BAAQMD Regulation 8, Rule 50, Polyester Resin Operations and SJVUAPCD Rule 466.1, Graphic Arts. These submitted rules were found to be complete on July 10, 1991 pursuant to EPA's completeness criteria adopted on February 16, 1990 (55 FR 5830) and set forth in 40 CFR part 51, appendix V [5] and are being proposed for limited approval an limited disapproval.

BAAQMD Regulation 8, Rule 50, which is a new rule, controls the emission of VOCs from the manufacturing or products using polyester resins. VOCs contribute to the production of ground level ozone and smog. SJVUAPCD Rule 466.1 was originally adopted as part of SJVUAPCD's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and has been revised in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for BAAQMD Regulation 8, Rule 50 and SJVUAPCD Rule 466.1.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 3. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for major

[1] At that time, Kern County included portions of two air basins: the San Joaquin Valley Air Basin and the Southeast Desert Air Basin. The San Joaquin Valley portion of Kern County was designated as nonattainment, and the Southeast Desert Air Basin portion of Kern County was designated as unclassified. See 40 CFR 81.305 (1990).

[2] This extension was not requested for Kern County. Thus, Kern County's attainment date remained December 31, 1982.

[3] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[4] The BAAQMD and the SJVUAPCD retained their nonattainment designations and were classified, respectively, as moderate and serious operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

[5] EPA has since adopted completeness criteria pursuant to section 110(k)(1)(A) of the Act. See 56 FR 42216 (August 26, 1991).

stationary sources of VOC emissions in ozone nonattainment areas. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the Act, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTG applicable to Rule 466.1 is entitled, "Control of Volatile Organic Emissions from Existing Stationary Sources Volume VII: Graphic Arts—Rotogravure and Flexography," EPA document # EPA-450/2-78-033. Further interpretations of EPA policy are found in the Blue Book. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP. For some emission categories, such as polyester resin operations, EPA did not publish a CTG. In cases such as this, the determination of what controls are RACT is based on a site specific review of the circumstances at the individual facility, considering the technological and economic feasibility of proposed controls.

BAAQMD Regulation 8, Rule 50, Polyester Resin Operations

This rule limits the emission of VOCs from polyester resin operations by setting standards which affect the application and curing of resin, gel coat application and curing, and clean-up solvents. Standards for resins and gel coats are not applicable to polyester resin operations that choose to install and operate emission control equipment. To aid in further reduction of VOC emissions, the rule sets storage requirements for surface preparation and cleanup solvents. Recordkeeping and test methods are also specified in the rule.

SJVUAPCD Rule 466.1 Graphic Arts replaces the existing graphic arts rules within the SJVUAPCD and includes the following revisions from the current SIP rules:

—Letterpress and lithographic operations are now subject to regulation under these rules;
—The exemption cutoff has been reduced from 15 tons of VOC per year to 75 pounds of VOC per day;
—The VOC definition has been revised for consistency with EPA requirements; [6]
—The emission control equipment requirement for publication gravure printing must achieve 95% efficiency;
—Emissions reductions of 85% from a printing line must be based on daily emissions for publication gravure printing;
—The emission control equipment efficiency requirement for screen printing, flexographic printing, offset lithography, letterpress or related coating or laminating process, printing or coating on porous or nonporous substrate has been increased from 90% to 95%;
—Emissions reductions of 75% from a printing line must be based on daily emissions for screen printing, flexographic printing, offset lithography, letterpress or related coating or laminating process, printing or coating on porous or non porous substrate;
—A requirement that fountain solutions will contain no more than 15% VOC (by volume) as applied has been added;
—The emission collection system must have a capture efficiency of at least 90%;
—Surface cleanup materials must not be stored in open containers;
—Inclusion of recordkeeping, test method and compliance provisions;
—The years to be used for calculation of baseline emissions are given.

EPA has evaluated BAAQMD Regulation 8, Rule 50 and SJVUAPCD Rule 466.1 for consistency with the CAA, EPA regulations, and EPA policy. EPA has found that the SJVUAPCD rule revisions address and correct many deficiencies previously identified by EPA. These corrected deficiencies have resulted in clearer, more enforceable rules. The SJVUAPCD Rule 466.1 contains changes which should lead to emission reductions and include: A more stringent exemption cutoff; increased efficiency for emission control systems used with screen printing; flexographic printing; offset lithography; letterpress or related printing operations; and a VOC limit for fountain solutions. The SJVUAPCD rule contains recordkeeping and test method provisions for coatings, inks, and cleanup solvents which will improve the enforceability of the rule. The addition of the new BAAQMD Regulation 8, Rule 50 should lead to emission reductions as there is currently not a BAAQMD rule regulating this source in the SIP.

Although BAAQMD Regulation 8, Rule 50, KCAPCD Rule 410.7 and SJVUAPCD Rule 466.1 will strengthen the SIP, these rules still contain deficiencies which were required to be corrected pursuant to the section 182(a)(2)(A) requirement of Part D of the CAA.

BAAQMD Regulation 8, Rule 50 permits compliance through the use of emission control equipment that achieves an 85% control device efficiency, but it fails to specify a capture efficiency requirement for collection of emissions to be delivered to the control device. The rule also proposes to use a test method (Manual of Procedures, Volume IV, ST-7) that has been found unacceptable by EPA for measuring VOC emissions controlled by an incinerator or other combustion device. In addition, the rule also proposes the use of several BAAQMD test methods that are currently undergoing review by EPA. Should EPA find the BAAQMD test methods inappropriate for their intended use, this will be considered a deficiency, and the BAAQMD must correct the rule to cite the appropriate test methods. A detailed discussion of rule deficiencies can be found in the Technical Support Document for Regulation 8, Rule 50, which is available from the U.S. EPA, Region 9 office.

SJVUAPCD Rule 466.1 contains three deficiencies. These deficiencies include: (1) Failure to specify recordkeeping requirements for fountain solutions and adhesives; (2) failure to specify a test method to determine compliance with VOC limits set for fountain solutions and adhesives; and (3) a requirement that measurement of VOC content in non-heatset inks be performed with a test method found unacceptable by EPA. The rule also proposes the use of an ARB test method that is currently undergoing review by EPA. Should EPA find the ARB test method inappropriate for its intended use, this will be considered a deficiency, and the BAAQMD must correct the rule to cite the appropriate test method. A detailed discussion of these rule deficiencies can be found in the Technical Support Document for Rule 466.1, which is available from the U.S. EPA, Region 9 office. Because of these deficiencies, the rules are not approvable pursuant to section 182(a)(2)(A) of the CAA because

[6] On February 2, 1992, EPA published a final rule establishing the definition of volatile organic compound (VOC) and withdrew its policy document that previously provided that definition. In its rule EPA exempted several compounds from the definition of VOC that were not exempt under EPA's previous policy. For purposes of federal enforceability, EPA is only approving the SJVUAPCD Rule 466.1 definition to the extent that it is consistent with EPA amended definition.

they are not consistent with the interpretation of section 172 of the 1977 CAA as found in the Blue Book and may lead to rule enforceability problems.

Because of the above deficiencies, EPA cannot grant full approval of these rules under section 110(k)(3) and Part D. Also, because the submitted rules are not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rules under section 110(k)(3). However, EPA may grant a limited approval of the submitted rules under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is proposing a limited approval of BAAQMD Regulation 8, Rule 50 and SJVUAPCD Rule 466.1.

At the same time, EPA is also proposing a limited disapproval of these rules because they contain deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAA, and, as such, the rules do not fully meet the requirements of Part D of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: Highway funding and offsets. The 18 month period referred to in section 179(a) will begin at the time EPA publishes final notice of this disapproval. At the end of that period, if EPA has not approved these rules as meeting the applicable requirements of section 182(a)(2)(A), EPA will impose one of these two sanctions. Moreover, the final disapproval triggers the federal implementation plan (FIP) requirement under section 110(c).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Limited approvals under sections 110 and 301 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids the EPA to base its actions concerning SIPS on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

EPA's limited disapproval of the State request under sections 110 and 301 and subchapter I, Part D of the CAA does not affect any existing requirements applicable to small entities. Federal disapproval of the State submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose any new federal requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it impose any new federal requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 11, 1992.

John Wise,

Acting Regional Administrator.

[FR Doc. 92–22789 Filed 9–18–92; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[CA–12–16–5590; FRL–4508–5]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision (Bay Area Air Quality Management District)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing a limited approval and limited disapproval of the revisions to the California State Implementation Plan (SIP) adopted by the Bay Area Air Quality Management District (Bay Area AQMD) on June 20, 1990. The California Air Resources Board submitted these revisions to EPA on April 5, 1991. The revisions concern Bay Area AQMD's, Rule 8–14, Surface Coating of Large Appliances and Metal Furniture and Rule 8–19, Surface Coating of Miscellaneous Metal Parts and Products. These rules control the emissions of volatile organic compounds (VOC) from surface coating of large appliances, metal furniture, and miscellaneous metal parts. EPA has evaluated the revisions to Rules 8–14 and 8–19 and is proposing a limited approval under sections 110 (k)(3) and 301 (a) of the Clean Air Act, as amended in 1990 (CAA or the Act) because these revisions strengthen the SIP. At the same time, EPA is proposing a limited disapproval under section 110 (k)(3) and 301 (a) of the CAA because the rules do not meet the Part D, section 182 (2)(A) requirement of the CAA.

DATES: Comments must be received on or before October 21, 1992.

ADDRESSES: Comments may be mailed to: Esther J. Hill, Northern California, Nevada and Hawaii Rulemaking Section (A–5–4), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street San Francisco, CA 94105.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region IX office during normal business

hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1219 "K" Street, Sacramento, CA 95814.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Southern California and Arizona Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, telephone: (415) 744-1195, Fax: (415) 744-1076.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the 1977 Clean Air Act (1977 CAA or pre-amended Act), that included the San Francisco-Bay Area (Bay Area). 43 FR 8964, 40 CFR 81.305. Because the Bay Area was unable to reach attainment by the statutory attainment date of December 31, 1982, California requested under pre-amended section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. 40 CFR 52.222. On May 26, 1988, EPA notified the Governor of California that the Bay Area AQMD's portion of the SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, amendments to the 1977 CAA were enacted. Public law 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in EPA's pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The Bay Area AQMD is classified as moderate;[2] therefore, this area is subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules to EPA for incorporation into its SIP on April 5, 1991, including the rule being acted on in this notice. This notice addresses EPA's proposed action for Rules 8-14, Surface Coating of Large Appliances and 8-19, Surface Coating of Miscellaneous Metal Parts and Products. These submitted rules were found to be complete on May 21, 1991 pursuant to EPA's completeness criteria adopted on February 16, 1990 (55 FR 5830) and set forth in 40 CFR part 51, appendix V [3] and are being proposed for limited approval and limited disapproval.

Rule 8-14 limits emissions of volatile organic compounds (VOC) from operations at large appliances and metal furniture facilities and Rule 8-19 limits emissions of VOC from operations at miscellaneous metal parts and products facilities. VOCs contribute to the production of ground level ozone and smog. Bay Area AQMD's Rules 8-14 and 8-19 were orginally adopted as part of Bay Area AQMD's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and have been revised in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for Bay Area AQMD Rules 8-14 and 8-19.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rules for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among the provisions of the CAA is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTGs applicable to Rule 8-14 are entitled, "Control of Volatile Organic Emissions from Existing Stationary Sources, (Volume V: Surface Coating of Large Appliances), EPA document #EPA-450/2-77-034 and (Vol III: Surface Coating of Metal Furniture), EPA documents #EPA-450/2-77-032". The CTG applicable to Rule 8-19 is entitled, "Control of Volatile Organic Emissions from Existing Stationary Sources—(Volume VI: Surface Coating of Miscellaneous Metal Parts and Products), EPA-450/2-78-015". Further interpretations of EPA policy are found in the Blue Book. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

Both Bay Area AQMD submitted Rule 8-14, Surface Coating of Large Appliances and Metal Furniture and Rule 8-19, Surface Coating of Miscellaneous Metal Parts and Products includes the following revisions from the current SIP rules:

- Exemptions for Adhesives, Aerosol Cans, and Powder Coatings
- Deletion and Addition of Definitions to update and clarify the rules
- Deletion of Interim Standards
- Addition of several sections under standards: (1) Prohibition of Specifications; (2) Compliance Statement Requirement: (3) Specialty Coating Limitations; and (4) Surface Preparation and Cleanup Solvent
- Expired Compliance Schedules were deleted and the new Compliance Dates are included in the Standards Section
- A Monitoring and Records section was added to comply with recordkeeping requirements.

EPA has evaluated Bay Area AQMD's submitted Rules 8-14 and 8-19 for consistency with the CAA, EPA regulations, and EPA policy and has found that the revisions address and correct many deficiencies previously identified by EPA. These corrected

[1] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] The Bay Area AQMD was redesignated nonattainment and classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

[3] EPA has since adopted completeness criteria pursuant to section 110(k)(1)(A) of the amended Act to be codified at CFR part 51, appendix V. See 56 FR 42216 (August 26, 1991).

deficiencies have resulted in clearer, more enforceable rules.

Although the approval of Bay Area AQMD's Rules 8–14 and 8–19 will strengthen the SIP, these rules still contain deficiencies which were required to be corrected pursuant to the section 182(a)(2)(A) requirement of Part D of the CAA. The rules contain a low usage coating exemption that exceeds EPA's policy limit, specialty coating limits that exceed the limits of the applicable CTG and a test method that has not been fully approved by EPA. A detailed discussion of the rule deficiencies can be found in the Technical Support Documents for Rules 8–14 and 8–19, which are available from the U.S. EPA, Region IX office. Because of these deficiencies, the rules are not approvable pursuant to the section 182(a)(2)(A) of the CAA because they are not consistent with the interpretation of section 172 of the 1977 CAA as found in the Blue Book and may lead to rule enforceability problems.

Because of the above deficiencies, EPA cannot grant full approval of these rules under section 110(k)(3) and Part D. Also, because the submitted rules are not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rules under section 110(k)(3). However, EPA may grant a limited approval of the submitted rules under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval, due to the fact that the rules do not meet the section 182(a)(2)(A) requirement of Part D because of the noted deficiencies. Thus, in order to strengthen the SIP, EPA is proposing a limited approval of Bay Area AQMD's submitted Rules 8–14 and 8–19 under sections 110(k)(3) and 301(a) of the CAA.

At the same time, EPA is also proposing a limited disapproval of these rules because they contain deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAA, and, as such, the rules do not fully meet the requirements of Part D of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiencies have been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: highway funding and offsets. The 18 month period referred to in section 179(a) will begin at the time EPA publishes final notice of this disapproval. Moreover, the final disapproval triggers the federal implementation plan (FIP) requirement under section 110(c).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Limited approvals under sections 110 and 301, and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

EPA's limited disapproval of the State request under sections 110 and 301, and subchapter I, Part D of the CAA does not affect any existing requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose any new federal requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it impose any new federal requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as its rules on EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Intergovernmental relations, Reporting and Recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 11, 1992.

John Wise,

Acting Regional Administrator.

[FR Doc. 92–22790 Filed 9–18–92; 8:45 am]

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40 CFR Part 52

[VA4-1-5618 A-1-FRL-4508-6]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Virginia; Issuance of Federally Enforceable Operating Permits Under the State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision would add subsection 120–08–04, entitled, Permits—Operating, Part VIII—Permits for Stationary Sources, Commonwealth of Virginia Regulations for the Control and Abatement of Air Pollution to the Virginia SIP. The intended effect of this action is to propose approval of a SIP revision request by the Commonwealth of Virginia to approve and incorporate regulations for the issuance of federally enforceable operating permits.

DATES: Comments must be received on or before October 21, 1992. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

ADDRESSES: Comments may be mailed to Thomas J. Maslany, Director, Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107; and the Virginia Department of Air Pollution Control, P.O. Box 10089, Richmond, Virginia 23240.

FOR FURTHER INFORMATION CONTACT: Marcia L. Spink, (215) 597-4713.

SUPPLEMENTARY INFORMATION: On July 18, 1991, the Virginia Department of Air Pollution Control (VDAPC) submitted a revision to the Commonwealth of Virginia's State Implementation Plan (SIP) for the approval and incorporation of regulations for the issuance of federally enforceable operating permits. The revision consists of the addition of subsection 120-08-04, entitled, Permits—Operating, Paragraphs A.-S., Part VIII—Permits for Stationary Sources, Commonwealth of Virginia Regulations for the Control and Abatement of Air Pollution.

The Commonwealth of Virginia adopted these regulations in order to have the authority to issue federally enforceable operating permits under its SIP. It must be clearly noted that the Commonwealth of Virginia did not adopt the operating permit regulations of subsection 120-08-04 or submit them as a SIP revision to satisfy the requirements of title V of the Clean Air Act Amendments of 1990 (CAAA). The Commonwealth commenced the adoption of subsection 120-08-04 in July of 1990, prior to the passage of the CAAA on November 15, 1990. The formal letter dated July 18, 1991, officially submitting the Commonwealth's SIP revision request, clearly indicates that the Subsection 120-08-04 operating permit regulations were not submitted to meet the title V requirements of the CAAA. Other administrative portions of the Commonwealth's July 18, 1991 submittal recognize that subsection 120-08-04 will have to be amended to meet the requirements of title V promulgated by EPA. **Note:** EPA has promulgated these requirements for State Operating Permit Programs on July 21, 1992 at 40 CFR part 70 (57 FR 32250). The Commonwealth's July 18, 1991 submittal correctly states that the operating permit program required by title V of the CAA is not due to EPA until November 15, 1993, and that EPA has a year to take action on that title V operating permit program submittal.

The Commonwealth's principal purpose for adopting the operating permit regulations of subsection 120-08-04 is to have a federally enforceable means of expeditiously reducing allowable emissions and/or mitigating the air quality impacts from existing sources to protect the national ambient air quality standards (NAAQS) while allowing for the construction, and operation of new and modified industrial sources in the Commonwealth.

The modeling analyses required by the permitting process for new and modified sources reveals, at times, that the allowable emissions (although not necessarily the actual emissions) of existing sources cause or significantly contribute to violations of the NAAQS. Until this is remedied by federally enforceable measures, a new source or modification which would significantly impact the same area may not be allowed to operate. Unless the SIP expressly provides for the issuance of federally enforceable operating permits, the only mechanism available to impose federally enforceable requirements on an existing source is by a source-specific SIP revision. The Commonwealth adopted the regulations of subsection 120-08-04 for incorporation into its SIP to have a more expeditious means to impose federally enforceable requirements on an existing source is by a source-specific SIP revision. The Commonwealth adopted the regulations of subsection 120-08-04 for incorporation into its SIP to have a more expeditious means to impose federally enforceable requirements on existing sources for protection of the NAAQS, and to manage its air quality resources by providing for the construction and operation of new sources in Virginia.

Background

On June 28, 1989 (54 FR 27285), EPA promulgated amendments to 40 CFR part 51, § 51.165(a)(1)(xiv), the definition of the term "federally enforceable" to include all limitations and conditions of regulations approved pursuant to 40 CFR part 51, including operating permits issued under a EPA-approved program that is incorporated into the State Implementation Plan and expressly requires adherence to any permit issued under that program. In the same **Federal Register**, cited above, EPA provides its rationale for allowing States to incorporate regulatory programs in their SIPs for the issuance of federally enforceable operating permits. That notice also lists five criteria for approval of State operating permit programs (54 FR 27282), clearly stating that EPA considers operating permits as federally enforceable if they are issued pursuant to permitting programs (approved into the SIP) that meet the five criteria.

Summary of the SIP Revision and Criteria for Approval

The formal letter dated July 18, 1991 submitting the Commonwealth's SIP revision request specifically states that the revisions are being made to make the limitations, terms, and conditions of state issued operating permits federally enforceable as provided in 40 CFR part 51, § 51.165(a)(1)(xiv). Each of the five criteria for approval of a state's program for the issuance of federally enforceable operating permits under its SIP and how the Commonwealth's submittal satisfies those criteria are presented below:

Criterion 1. The state's operating permit program (i.e. the regulations or other administrative framework describing how such permits are issued) must be submitted to and approved by EPA as a SIP revision: On July 18, 1991, the Commonwealth of Virginia submitted an administratively and technically complete SIP revision request to EPA consisting of subsection 120-08-04, Paragraphs A.-S. of Part VIII—Permits for Stationary Sources of the Commonwealth of Virginia Regulations for the Control and Abatement of Air Pollution. That SIP revision is the subject of this rulemaking action.

Criterion 2. The SIP revision must impose a legal obligation that operating permit holders adhere to the terms and limitations of such permits (or subsequent revisions of the permit made in accordance with the approved operating permit program) and provide that permits which do not conform to the operating permit program requirements and the requirements of EPA's underlying regulations may be deemed not "federally enforceable;" by EPA: Subsection 120-08-04 contains legally binding regulatory provisions which satisfy this criterion including the provisions of Paragraphs A. Applicability; B. Definitions, particularly of the term "federally enforceable;" C. General [Requirements]; F. Standards and Conditions for Granting Permits, particularly subparagraph 1.a. which requires that sources operate in accordance with the provisions of the operating permits regulations; Q. Amendments to Permits; and R. Enforcement.

Criterion 3. The state operating permit program must require that all emission

limitations, controls, and other requirements imposed by such permits will be at least as stringent as any applicable limitations and requirements contained in the SIP, or enforceable under the SIP, and that the program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the SIP, or that are otherwise "federally enforceable" (e.g. standards established under sections 111 and 112 of the Clean Air Act): Subsection 120–08–04 contains regulatory provisions which satisfy this criterion including the provisions of Paragraphs B. Definitions, particularly of the term "federally enforceable;" and F. Standards and Conditions for Granting Permits, particularly subparagraph 1.d. which requires that the SIP be met.

Criterion 4. The limitations, controls, and requirements of the state's operating permits must be permanent, quantifiable, and otherwise enforceable as a practical matter: Subsection 120–08–04 contains regulatory provisions which satisfy this criterion including the provisions of Paragraphs E. Information Required; F. Standards and Conditions for Granting Permits; H. Application Review and Analysis; I. Compliance Determination and Verification by Testing; J. Monitoring Requirements; K. Reporting Requirements; and R. Enforcement. In particular, subparagraphs E. 1.a. and b. require that sources' applications provide information specifically for the calculations of emissions, and the validity of those calculations for compliance purposes.

Criterion 5. The state operating permits must be issued subject to public participation. This means that the state agrees, as part of its program, to provide EPA and the public with timely notice of the proposal and issuance of such permits, and to provide to EPA, on a timely basis, with a copy of each proposed (or draft) and final permit intended to be "federally enforceable." This process must also provide for an opportunity for public comment on the permit applications prior to issuance of the final permits: Subsection 120–08–04 contains regulatory provisions which satisfy this criterion at Paragraph S. Public Participation. Furthermore, the VDAPC has agreed to provide EPA with proposed and final permits.

EPA's review of this SIP revision indicates that the criteria for approval as provided in the **Federal Register** on June 28, 1989 (54 FR 27282) have been satisfied. EPA is proposing to approve the Commonwealth of Virginia's SIP revision for the issuance of federally enforceable permits under the Virginia SIP, which was submitted on July 18, 1989. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the ADDRESSES section of this notice.

Proposed Action

EPA is proposing to approve the July 18, 1989 request by the Commonwealth of Virginia to amend its SIP to add subsection 120–08–04, entitled, Permits—Operating, Part VIII, Permits for Stationary Sources, Commonwealth of Virginia Regulations for the Control and Abatement of Air Pollution.

The Agency has reviewed this request for revision of the federally-approved State implementation plan for conformance with the provisions of the 1990 amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the Clean Air Act, preparation of a flexibility analysis would constitute federal inquiry into the economic reasonableness of a state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (S. Ct 1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

The Regional Administrator's decision to approve or disapprove the Commonwealth of Virginia's SIP revision request to add regulations for issuing federally enforceable state operating permits will be based on whether it meets the requirements of section 110(a)(2)(A)–(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401–7671.

Dated: September 11, 1992.

W. Wisniewski,

Acting Regional Administrator, Region III.

[FR Doc. 92–22791 Filed 9–18–92; 8:45 am]

BILLING CODE 3560–50–M

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40 CFR Part 228

[FRL–4506–4]

Ocean Dumping; Proposed Expansion of Designated Sites

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to temporarily expand the boundaries of three of four designated ocean dredged material disposal sites (ODMDS) located offshore of the mouth of the Columbia River, to restrict site use to maintenance dredging material from the Columbia River federal navigation

project, in the States of Washington and Oregon, and to alter conditions of site use. The specific sites to be expanded are Site A, Site B, and Site F; the fourth site, Site E, will not be expanded but use and management also will be altered. This action is an interim response to prevent the development of a hazard to navigation and to continue to allow maintenance of the federal project while Region 10, EPA, and Portland District, Corps of Engineers (Corps), scope and conduct the necessary studies to develop a long-term management plan. This proposed expansion of sites is for a period of time not to exceed five years. Use of the expanded sites will be subject to continued monitoring to insure that unacceptable, adverse environmental impacts do not occur.

DATES: Comments must be received on or before November 5, 1992.

ADDRESSES: Comments on this proposed rule should be sent to: John Malek, Ocean Dumping Coordinator, EPA, Region X, WD-128, 1200 Sixth Avenue, Seattle, Washington 98101.

The file supporting this proposed designation is available for public inspection at the following locations:

EPA Public Information Reference Unit (PIRU), room 2904 (rear), 401 M Street Southwest, Washington, DC

EPA Region 10, 1200 Sixth Avenue, Seattle, Washington

U.S. Army Corps of Engineers, North Pacific Division, U.S. Custom House, 220 Northwest Eighth, Portland, Oregon

U.S. Army Corps of Engineers, Portland District, 333 Southwest First, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: John Malek, 206/553-1286.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("the Act"), gives the Administrator the authority to designate sites where ocean dumping may be permitted. On October 1, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. Management of ocean dumping sites is also delegated to the Regional Administrator. This designation of expanded sites is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR chapter I, subchapter H, § 228.4) state that ocean dumping sites will be designated by publication in part 228. A list of "Approved and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 *et seq.*) and was last updated on February 2, 1990 (55 FR 3688 *et seq.*).

The four, existing sites off the mouth of the Columbia River were designated by EPA in a final rule published in the **Federal Register** (51 FR 29923-29927) on August 21, 1986. The designations became effective on September 22, 1986. Since that time, the sites have received an average annual volume of 5 million cubic yards of maintenance dredged material principally from the Corps' mouth of the Columbia River (MCR) channel of the Columbia River project. Other volumes of suitable material have been disposed, particularly at Site F, under section 103 permit issued by the Corps. Although not considered "dispersive" sites, in that large percentages of the discharge sediments were predicted to remain within the sites; erosion and redistribution were expected to occur that would prevent the development of mounds. Dispersal rates have been low and Corps bathymetric surveys are showing significant mounding at sites A, B, and F. Site E, located adjacent to the entrance channel, is not experiencing mounding. The developing mounds at sites, A, B, and F threaten to create a hazardous condition for large and small craft due to waves refracting from and breaking over and around the mounds. Commercial shippers, crabbers, and the U.S. Coast Guard have expressed concern over this situation. While the current situation does not constitute an imminent hazard to life and property which would warrant an emergency response, EPA and the Corps are in agreement that prudent management action is required now in order to prevent such a situation from developing.

In initial meetings during Summer 1992, EPA and the Corps concluded that an interim solution was required that would allow the Columbia River federal channel to remain open while studies were conducted to ascertain the extent of the problem, to develop and evaluate alternative solutions, and to prepare a longer term response. The interim response, which includes the temporary expansion and change in site management, is conditioned on the initiation of necessary studies and development of a long-term response. Some studies have already been initiated by Portland District and Region 10.

It is expected that the long-term response could include designation of new ODMDS, permanent expansion of some or all of the existing ODMDS, de-designation of at least one existing ODMDS, and development of a comprehensive management plan to guide disposal of dredged material from the federal project and other suitable material from the Columbia River estuary. This joint study is anticipated to began in late 1992 in coordination with a proposed Columbia River deepening feasibility study being conducted by the Corps. It is anticipated that this joint study for long-term disposal will be completed in no more than 4 years. Scoping of studies and development of a long-term management plan would require coordination with other federal agencies and the states of Oregon and Washington. EPA would complete the final site designation process using their authority under section 102 of the MPRSA.

This temporary expansion of the three sites is being published as proposed rulemaking in accordance with § 228.4(e) of the Ocean Dumping Regulations. Interested persons may participate in this proposed rulemaking by submitting written comments within 45 days of the date of this publication to the address given above.

B. EIS Development

Section 102(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq. (NEPA), requires that Federal agencies prepare an Environmental Impact Statement (EIS) on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment.

The object of NEPA is to build into agency decision-making processes careful consideration of all environmental aspects of proposed actions. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EIS's in connection with ocean dumping site designations. 39 FR 16186 (May 7, 1974).

The EPA's national Office of Water prepared and circulated the Final EIS for the *Mouth of Columbia River Dredged Material Disposal Site Designation* in February 1983. That EIS evaluated five potential ocean dumping sites. The existing four sites were designated by EPA in a final rule published in the **Federal Register** on August 21, 1986 and the designations became effective on September 22, 1986.

The Corps and EPA have prepared an environmental assessment (EA) to address administrative action of both agencies. A copy of the EA may be obtained from Region 10 or Portland District. The proposed action is the temporary expansion of EPA-designated ODMDSs A, B, and F, and changing site management at these sites and site E

which will more specifically direct the disposal of dredged material at the expanded sites. A critical condition of this temporary measure will be the initiation of a dredged material management study by EPA and the Corps. The temporary expansion will allow needed maintenance dredging of the MCR project to continue without exacerbating the mounding problem while studies are conducted to develop a long-term management plan for disposal of material from the mouth of the Columbia River and the estuary. The EA supports two administrative actions related to the proposed action:

(1) A Public Notice (dated August 7, 1992) by the Corps to identify the expanded ODMDS A, B, and F under the provisions of section 103 of the MPRSA in accordance with Corps regulations 33 CFR parts 335–338 for Corps use to place maintenance dredged material from the Mouth of the Columbia River (MCR) federal navigation project.

(2) Publication of proposed and final rule in the **Federal Register** by EPA to temporarily expand EPA-designated ODMDSs A, B, and F, and change site management at these sites and site E which will more specifically direct the disposal of dredged material at the expanded sites. The temporary expansion and continued use of these ODMDSs will be conditioned on (a) initiation of joint Corps/EPA studies and development of a long term solution to disposal of dredged material from the Mouth of the Columbia River and Columbia River estuary; and (b) restriction of disposal at these sites during the estimated 4–5 year "interim" period to maintenance-dredged material from the Columbia River navigation project.

It is the joint determination of the Portland District Corps and Region 10 EPA that the proposed expansion will not result in any significant effect on the aquatic or human environment and that preparation of an environmental impact statement (EIS) for this temporary expansion and adjustment of disposal management practices is not required.

At this time it is uncertain whether implementation of a long-term management plan for disposal of dredged material at the mouth of the Columbia River would result in significant impacts that would necessarily trigger preparation of an EIS pursuant to the requirement of the National Environmental Policy Act (NEPA). Nevertheless, EPA has a voluntary policy to prepare EISs to support designation of ODMDS. Additionally, an EIS has been determined to be necessary to support the feasibility studies and perhaps subsequent actions in conjunction with the proposed Columbia River channel deepening study. EPA will be a cooperating agency under NEPA on that deepening EIS. It is the intention of EPA and the Corps that appropriate NEPA documentation and coordination occur. This may involve preparation of a separate EIS for implementation of the selected long term solution or incorporation of that evaluation as part of the Corps' project EIS. Initiation of scoping for the feasibility study and the long-term management plan will occur concurrently early in fiscal year 1993. A decision by the EPA and Corps on how NEPA compliance will be achieved will be made sometime after that. To the extent that studies and administrative processes can be coordinated and cost-savings realized, joint meetings will be held, single documents useful to both actions will be prepared, and studies conducted.

C. Proposed Site Description

The four existing sites are described in the final rule designation (51 FR 29923–29927) which appeared in the **Federal Register** on August 21, 1986. The proposed expansion of the existing ODMDSs, including location descriptions and coordinates for each site (North American Datum 1983), are listed below:

Site A

This ODMDS will double in size to approximately 6,000 by 4,000 feet for a surface area of 0.86 square miles (2.23 square kilometers). The site would have an average depth of 70 feet (21.3 m). The four corner coordinates (NAD 1983) of the expanded site are:

46°13'02" N	124°06'21" W
46°12'36" N	124°05'39" W
46°11'52" N	124°06'36" W
46°12'18" N	124°07'18" W

Use of the existing Site A has been discontinued until existing mounding has dissipated. Monitoring will determine when material can again be placed within the boundaries of the existing Site A. In any event, any future disposal likely will be restricted to the outer third of an expanded Site A and will occur in a fashion to minimize accumulation.

Site B: This ODMDS will double in size to approximately 6,000 by 4,000 feet for a surface area of 0.86 square miles (2.23 square kilometers). The site would have an average depth of 125 feet (38.1 m). The four corner coordinates (NAD 1983) of the expanded site are:

46°14'45" N	124°10'44" W
46°13'52" N	124°10'05" W
46°13'34" N	124°10'55" W
46°14'26" N	124°11'35" W

Site F: This ODMDS will expand to approximately 10,000 by 10,000 feet for a surface area of 3.59 square miles (9.29 square kilometers). The site would have an average depth of 125 feet (38.1 m). The four corner coordinates (NAD 1983) of the expanded site are:

46°13'09" N	124°09'07" W
46°12'00" N	124°07'24" W
46°10'49" N	124°09'03" W
46°11'58" N	124°10'45" W

If at any time disposal operations at any of the ODMDS sites cause unacceptable adverse impacts, further use will be restricted or terminated. Monitoring will occur as part of the joint EPA/Corps studies.

D. Regulatory Requirements

Five general criteria are used in the selection and approval of ODMDS sites for continuing use. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf are chosen. If at any time disposal operations at a site cause unacceptable adverse impacts, the use of that site will be restricted or terminated. The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations, and § 228.6 lists eleven specific factors used in evaluating a proposed ODMDS site to assure that the general criteria are met.

The existing ODMDS sites were evaluated and found to be acceptable under the five general criteria, except for the preference for sites located off the Continental Shelf, and for the eleven specific factors. Monitoring of site use by the Corps and EPA identified the current mounding situation. The Corps and EPA have determined that while the current situation does not constitute an imminent hazard to life and property which would warrant an emergency response, prudent management action is required now in order to prevent such a situation from developing. Based on the information presented in the final EIS, the final Rule, and an EA prepared for this interim action, the Corps and EPA have determined that this proposed expansion would not result in significant and unacceptable environmental effect.

Approximately five million cubic yards of dredged material is removed annually from the MCR segment of the Columbia River Federal navigation channel. This material is principally clean sand. Dredging of the channel is necessary to maintain the authorized depth of 55 feet over the approximately

five mile entrance channel to allow safe passage of large commercial navigation craft to upriver ports. The dredging has traditionally been, and is expected to continue to be, accomplished by hopper dredges.

Expansion of Sites A and B would approximately double the area of each existing site by moving the offshore boundary approximately 2000 feet to the West. This expanded portion of each disposal area has not directly received discharges of dredged material, although sediments placed within the boundaries of the existing sites have moved into this expanded area as a result of down slope movement and currents. Accordingly, these expanded portions of site A and B have been influenced by dredged material disposal. Site F would be expanded significantly over its existing size, from 1800 feet by 1800 feet to 10,000 feet by 10,000 feet. This expanded portion also has not received direct discharges of dredged material in the past, however, like the expanded areas of sites A and B, this area too has been influenced by the redistribution of sediments discharged at the existing designated site.

The majority of material discharged at the ODMDS sites has come from the MCR segment of the federal navigation project. New construction material from the Tongue Point project, a section 107 and permit action, was discharged at site F. Any maintenance dredged material from this project would also have gone to site F. Although no maintenance material from the Columbia and Lower Willamette Rivers navigation project has been disposed of at any of the ODMDS sites, draft plans developed during phase 2 of the Corps' Long-Term Management Strategy (LTMS) predicted that greater reliance on ocean dumping of estuary material would be necessary. During this interim period, only maintenance material from the Columbia River project (principally the MCR channel) may be discharged at any of the expanded ODMDS sites or site E.

In the past, disposal management has allowed discharge of material to occur anywhere within the site boundaries. Over the years, hopper dredge design and navigational positioning accuracy have improved to the point where the dredges are essentially pin-point dumping rather than dispersing the material. Given these changes in technology, plus an improved understanding of sediment resuspension and dispersion patterns, the Corps and EPA have concluded that disposal practices must be changes as well as site sized reevaluated. Accordingly, dredgers will be required to more broadly disperse the sediment. This change will minimize the thickness of deposition on the bottom, although it will necessarily increase the area of deposition. This practice will be most applicable to disposal events at sites A, B, and E. While this same practice normally will be employed at site F also, because of its greater size, some experimentation with point dumping may occur during the interim period. Additionally, discharge locations will be rotated throughout site F. For example, one year's dredging may be disposed in the northwestern quadrant and the following year's dredging discharged intro the southeastern quadrant. Such rotation will occur at the other sites as practical.

The consequences of the proposed expansions are reviewed below in terms of the eleven factors.

1. *Geographical position, depth of water, bottom topography, and distance from coast.* 40 CFR 228.6(a)(1). Expansion of Sites A and B would approximately double the area of each existing site by moving the offshore boundary approximately 2000 feet to the West. Site F would be expanded over thirty times its existing size, from 1800 feet by 1800 feet to 10,000 feet by 10,000 feet. Expansion of the sites and altering disposal paractices to promote dispersion should prevent additional mounding.

2. *Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult and juvenile phases.* 40 CFR 228.6(a)(2). Unchanged from original designation.

3. *Location in relation to beaches and other amenity areas.* 40 CFR 228.6(a)(3). Unchanged from original designation.

4. *Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the waste, if any.* 40 CFR 228.6(a)(4). The majority of material (average annual of 5 million cubic yards) discharged at the existing ODMDS sites has come from the MCR channel. Material from other reaches of the lower Columbia River channel have infrequently been disposed in the ocean. Less than one million cubic yards of new construction material from the Tongue Point project, a Corps Continuing Authorities project and section 103 permit action, was discharged at site F. Any maintenance dredged material from this project would have required section 103 permitting and also would have gone to site F. Although no maintenance material from the Columbia and Willamette Rivers navigation project has been disposed of at any of the ODMDS sites, draft plans developed during phase 2 of the Corps' Long-Term Management Strategy (LTMS) predicted that greater reliance on ocean dumping of estuary material would be necessary. During the five year interim period, only maintenance material from the Columbia River project (and primarily from the MCR channel) will be disposed at any of the expanded ODMDS sites or site E.

In the past, disposal management has allowed discharge of material to occur anywhere within the site boundaries. Over the years, hopper dredge design and navigational positioning accuracy have improved to the point where the dredges are essentially pin-point dumping rather than dispersing the material. Given these changes in technology, plus an improved understanding of sediment resuspension and dispersion patterns, the Corps and EPA have concluded that disposal practices must change as well as site size. Accordingly, dredgers will be required to more broadly disperse the sediment. This change will minimize the thickness of deposition on the bottom, although it will necessarily increase the area of deposition. This practice will be most applicable to disposal events at sites A, B, and E. While this same practice normally will be employed at site F also, because of its greater size, some experimentation with point dumping may occur during the interim period. Additionally, discharge locations will be rotated throughout the sites. For example, one year's dredging may be disposed in the northwestern quadrant and the following year's dredging discharged into the southeastern quadrant.

5. *Feasibility of surveillance and monitoring.* 40 CFR 228.6(a)(5). Unchanged from original designation. Level of monitoring activity is expected to increase as part of planned studies to develop a long-term solution.

6. *Dispersal, horizontal transport and vertical mixing characteristics of the area, including prevailing current direction, and velocity.* 40 CFR 228.6(a)(6). Unchanged from original designation, although dispersion of placed sediments is less than anticipated.

7. *Existence and effects of current and previous discharges and dumping in the area (including cumulative effects).* 40 CFR 228.6(a)(7). The four ODMDS have been used continuously since designation. Monitoring has indicated no significant adverse effects on ocean resources. As previously stated, it was anticipated that large percentages of

discharged sediments would remain within the sites. However, erosion and redistribution were expected to prevent the development of mounds. Mounds are developing at sites A, B, and F. While the expanded portions of these sites have not directly received dredged material disposal, all of the expanded areas have been influenced by the redistribution of dredged material discharged at the designated sites.

8. *Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance, and other legitimate uses of the ocean.* 40 CFR 228.6(a)(8). Development of mounds has been noted and comments of concern have been received from commercial shippers, crabbers, and the U.S. Coast Guard. No other conflicts have been noted.

9. *The existing water quality and ecology of the site as determined by available data or by trend assessment of baseline surveys.* 40 CFR 228.6(a)(9). Essentially unchanged from the original designation. Additional baseline information will be gathered as part of EPA/Corps investigations.

10. *Potentiality for the development or recruitment of nuisance species in the disposal site.* 40 CFR 228.6(a)10). Unchanged from the original designation.

11. *Existence at or in close proximity to the site of any significant natural or cultural features of historical importance.* 40 CFR 228.6(a)(11). Unchanged from the original designation.

E. Proposed Action

The EPA and Corps conclude that expansion of the three EPA-designated ODMDS sites (sites A, B, and F), restriction of site use to suitable maintenance material from the Columbia River federal project (includes also site E), and adjustment of site management as an interim response while a long-term solution is sought is appropriate and necessary. These actions are compatible with the general criteria and specific factors.

These expansions and site use restrictions are being published as proposed rulemaking. Management of these sites has been delegated to the Regional Administrator of EPA Region 10.

It should be emphasized that, even if a designated ODMDS exists, the designation does not constitute or imply EPA's approval of actual disposal of material at sea. Before ocean dumping of dredged material may commence, the Corps of Engineers must evaluate the action applying EPA's ocean dumping criteria. EPA makes an independent evaluation and has the right to disapprove the actual dumping, if it determines that environmental concerns under the Act have not been met.

F. Regulatory Assessments.

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since (1) small entities have not used the ODMDSs in the past, and (2) the expansions will only have the effect of continuing to provide a disposal option for dredged material. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy for $100 million or more or cause any other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This proposed rule does not contain any information collection requirements subject to the Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Water Pollution control.

Dated: September 3, 1992.

Gerald A. Emison,

Acting Regional Administrator for Region 10.

In consideration of the foregoing, subchapter H of chapter I of Title 40 is amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. sections 1412 and 1418,

2. Section 228.12 is amended by revising paragraphs (b)(15), (16), (17), and (18) to read as follows:

§ 228.12 Delegation of management authority for interim ocean dumping sites.

(b) * * *

(15) Mouth of Columbia River Dredged Material Site A— Region X. Location: 46°13'02" N, 124°06'21" W; 46°12'36" N, 124°05'39" W, 46°11'52" N, 124°06'36" W, 46°12'18" N, 124°07'18" W.

Size: 0.86 square miles (2.23 square kilometers).

Depth: 70 feet (21.3 m).

Primary Use: Dredged material.

Period of Use: Not to exceed five years from date of publication of final rule.

Restrictions: Disposal shall be limited to suitable dredged material from the Columbia River federal navigation project. During this time the Corps and EPA will conduct studies and investigations with the intent of developing a long-term dredged material management plan for the vicinity.

(16) Mouth of Columbia River Dredged Material Site B—Region X. Location: 46°14'45" N. 124°10'44" W, 46°13'52" N, 124°10'05" W; 46°13'34" N, 124°10'55" W, 46°14'26" N, 124°11'35" W.

Size: 0.86 square miles (2.23 square kilometers).

Depth: 125 feet (28.1 m).

Primary Use: Dredged material.

Period of Use: Not to exceed five years from date of publication of final rule.

Restrictions: Disposal shall be limited to suitable dredged material from the Columbia River federal navigation project. During this time the Corps and EPA will conduct studies and investigations with the intent of developing a long-term dredged material management plan for the vicinity.

(17) Mouth of Columbia River Dredged Material Site E—Region X. Location: 46°15'42" N, 124°05'26" W, 46°15'37" N, 124°05'16" W; 46°15'10" N, 124°05'58" W, 46°15'17" N, 124°06'08" W.

Size: 0.86 square miles (2.23 square kilometers).

Depth: 125 feet (38.1 m).

Primary Use: Dredged material.

Period of Use: Not to exceed five years from date of publication of final rule.

Restrictions: Disposal shall be limited to suitable dredged material from the Columbia River federal navigation project. During this time the Corps and EPA will conduct studies and investigations with the intent of developing a long-term dredged material management plan for the vicinity.

(18) Mouth of Columbia River Dredged Material Site F—Region X. Location: 46°13'09" N, 124°09'07" W, 46°12'00" N, 124°07'24" W, 46°10'49" N, 124°09'03" W, 46°11'58" N, 124°10'45" W.

Size: 3.59 square miles (9.29 square kilometers).

Depth: 125 feet (38.1 m).

Primary Use: Dredged material.

Period of Use: Not to exceed five years from date of publication of final rule.

Restrictions: Disposal shall be limited to suitable dredged material from the Columbia River federal navigation project. During this time the Corps and EPA will conduct studies and investigations with the intent of developing a long-term dredged material management plan for the vicinity.

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[FR Doc. 92-22519 Field 9-18-92; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 67

[CGD 88-031a]

RIN 2115-AE25

Documentation of Vessels; Controlling Interest

AGENCY: Coast Guard, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Coast Guard is publishing this advance notice of proposed rulemaking to solicit information concerning implementation of the ownership grandfather or savings provision of the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987. The Coast Guard's current rules for the citizenship savings provision, published at 46 CFR 67.03-15, have been the subject of litigation: *Southeast Shipyard Assn.* v. *United States*, No. 90-1142 (D.D.C.). On April 30, 1991, the District Court decided that the Coast Guard's interpretation of the citizenship savings provision of the Act was incorrect. The court did not provide the Coast Guard with a new interpretation, but rather directed the Coast Guard to develop a new interpretation. Although the decision of the District Court is being appealed, the Coast Guard is seeking additional information for use in developing a new interpretation.

DATES: Comments must be received on or before December 21, 1992.

ADDRESSES: Comments must be in writing and may be mailed to the Executive Secretary, Marine Safety Council (G-LRA/3406)(CGD 88-031a), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. For information concerning comments, the telephone number is (202) 267-1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Don M. Wrye, Staff Attorney, Vessel Documentation and Tonnage Survey Branch, Merchant Vessel Inspection and Documentation Division, Office of Marine Safety, Security and Environmental Protection, (202) 267-1492.

Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 88-031a) and the specific section of the advance notice to which each comment applies, and give a reason for each comment or suggestion. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of their comment should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during this period and may develop a notice of proposed rulemaking in response to those comments. Direct responses to individual comments concerning this advance notice of proposed rulemaking will not be made. All significant comments will be addressed in any further rulemaking initiated pursuant to this advance notice.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under "**ADDRESSES**." If it determines that the opportunity for oral presentations will aid in this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Mr. Thomas L. Willis, Project Manager, and Lieutenant Commander Don M. Wrye, Project Counsel, Office of Chief Counsel.

Background and Purpose

Documentation of vessels under federal law is a type of national registration which, among other things, serves to establish a vessel's eligibility to engage in a specified trade. This is done through an endorsement on the vessel's Certificate of Documentation. The Coast Guard is the agency which (a) accepts applications for documentation of vessels; (b) determines whether a vessel which is the subject of an application is eligible for documentation generally and eligible for the endorsement or endorsements requested; and (c) issues Certificates of Documentation for eligible vessels.

Eligibility requirements for documentation are set out at 46 U.S.C. 12102, as amended. One of the eligibility requirements for documentation is United States citizenship. In the case of corporations, partnerships, and associations, citizenship requirements include provisions which require that American citizens exercise control over the entity. The earliest of these American control provisions applied to corporations, partnerships, and associations seeking to document vessels for the coastwise trade.

It was not until 1988, however, that a controlling interest test applicable to corporations or partnerships seeking to document vessels for employment in the U.S. fisheries was enacted. That law, the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987 (Pub. L. 100-239, 101 Stat. 1778 (1988)) (the "Act") was signed by the President on January 11, 1988. Among other things, the act amended 46 U.S.C. 12102 by imposing a controlling interest test on vessels owned by corporations. Although that change was retroactive to July 28, 1987, the Act included a grandfather or savings provision exempting vessels already operating, or under contract for purchase, as fishing industry vessels before that date.

To implement the American control provisions of the Act, the Coast Guard published a notice of proposed rulemaking (NPRM) on October 20, 1988 (53 FR 41221). That NPRM did not address the grandfather or savings clause. In response to comments, however, the Coast Guard published a supplemental notice of proposed rulemaking which included language to implement the Coast Guard's understanding of the savings clause. The Coast Guard's final rule implementing the grandfather or savings provision regarding citizenship requirements for fishing industry vessels, based upon the plain language of the statute, was

published on December 12, 1990 (55 FR 51244) at section 67.03–15.

In light of the decision of the District Court in *Southeast Shipyard* v. *U.S.*, the Coast Guard is drafting regulations to implement the grandfather or savings provision regarding citizenship requirements for fishing industry vessels. This advance notice of proposed rulemaking solicits information that will assist the Coast Guard in appropriately implementing both the statute and the order of the District Court.

Regulation Under Consideration

The Coast Guard is currently seeking comments to guide it in making appropriate amendments to 46 CFR 67.03–15, which currently reads as follows:

§ 67.03–15 Citizenship savings provision for fishing vessels.

A corporation that meets the requirements of paragraph (d)(1) of § 67.03–9 of this subpart but does not meet the requirements of paragraph (d)(2) of that section, or a partnership that meets the requirements of paragraph (a)(1) of § 67.03–5 of this subpart but does not meet the requirements of paragraph (a)(3) of that section, may nonetheless be eligible to obtain a fisheries endorsement for a vessel if the Secretary of Transportation, or the Secretary's delegate, determines that, prior to July 28, 1987, the vessel:

(a) Was documented under 46 U.S.C. chapter 121 and operating as a fishing, fish processing, or fish tender vessel in the navigable waters or the Exclusive Economic Zone of the United States, as defined by 46 U.S.C. 2101(10a); or

(b) Was contracted for purchase for use as a fishing, fish processing, or fish tender vessel in the navigable waters or the Exclusive Economic Zone of the United States, as defined by 46 U.S.C. 2101(10a), if the purchase is shown by the contract or similarly reliable evidence to have been made for the purpose of using the vessel in the fisheries.

Questions

To address adequately the order of the District Court, additional information is needed. Responses to the following questions may be useful in developing a future NPRM.

1. When, if ever, does the sale of stock in a corporation owning a vessel constitute a "sale" of the vessel?

2. If the sale of stock in a corporation owning a vessel is deemed to constitute a sale of the vessel itself, how much stock must be sold or transferred? For example, must the sale of a single share of stock be treated as a vessel sale?

3. What is the responsibility of a publicly-traded corporation to monitor sales of stock if that corporation owns fishing industry vessels?

4. Should the sale of stock in an alien controlled corporation to U.S. citizens terminate the fishing privileges of those vessels if the sale does not result in a controlling interest being held by U.S. citizens?

5. Should the sale of voting stock be treated differently from the sale of non-voting stock? If so, how?

6. What consideration should be given to the economic impact on the value of the vessel if any sale or transfer results in the loss of fishery privileges?

7. What is the effect of transfers of stock that are not "sales", e.g., bequests of stock, stock ordered transferred pursuant to a divorce judgment, token gifts of stock to relatives?

8. What is the effect of transfer of an interest in a vessel upon death of a joint tenant?

9. What impact will vessel devaluation have on existing security interests or other liens on the affected vessels?

10. What constitutes a "change in operational control" sufficient in character or quantity to invalidate the savings clause?

Regulatory Evaluation

This advance notice of proposed rulemaking is not major under E.O. 12291 and is nonsignificant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). At this early stage it is anticipated, but by no means certain, that any resulting NPRM or final rule will not be major under E.O. 23391. Similarly, the Coast Guard anticipates, but cannot state with certitude that any resulting rule will not be significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979).

Collection of Information

The Coast Guard cannot yet estimate the paperwork burden which may result from any further rulemaking on this issue. However, if as a result of future rulemaking, small stock transfers are treated as changes in vessel ownership, publicly traded corporations will be tasked with significant recordkeeping and reporting responsibilities. The Coast Guard expects that comments received on this advance notice of proposed rulemaking will assist it in estimating the potential paperwork burden, as required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). If new recordkeeping requirements result from future proposed rulemaking, the Coast Guard will submit those recordkeeping requirements to the Office of Management and Budget for review.

Small Entities

Prior to commencing further rulemaking, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the Coast Guard to consider whether its proposals will have a significant impact on a number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

Any regulations developed pursuant to this advance notice of proposed rulemaking may reasonable be expected to affect the following small entities: small businesses and individual U.S. citizens currently owning documented fishing industry vessels; individuals and small businesses seeking to sell or mortgage documented fishing industry vessels; small businesses seeking to document fishing industry vessels in the future; and lending institutions engaging in fishing industry vessel financing.

At the present time, the Coast Guard cannot state that any further rulemaking in this area will not have a significant economic impact on a substantial number of small entities. If you think that your business qualifies as a small entity, and that further rulemaking will have a significant economic impact on your business, please submit a comment (see "**ADDRESSES**") explaining why you think your business qualifies and in what way and to what degree this proposal will economically affect your business.

Environment

The Coast Guard has considered the environmental impact of any rulemaking which may result from this advance notice, and has concluded that under section 2.B.2 of Commandant Instruction M16475.1B, such rulemaking will be categorically excluded from further environmental documentation. Future rules will deal only with procedural regulations including reporting recordkeeping and reporting requirements to obtain or maintain privileges to document vessels for use in the U.S. fisheries. Future regulations resulting from this advance notice will be administrative in nature and will clearly have no environmental impact. When appropriate regulations are proposed, a Categorical Exclusion Determination will be available in the docket for inspection or copying where indicated under "**ADDRESSES**."

Federalism

This advance notice of proposed rulemaking has been analyzed in

accordance with the principles and criteria contained in Executive Order 12612. Based on the information available to it at this time, the Coast Guard has determined that this advance notice does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Dated: September 10, 1992.

R.C. North,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 92-22898 Filed 9-18-92; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[ET Docket No. 92-28; FCC 92-358]

Low-Earth Orbit Satellites Above 1 GHz

AGENCY: Federal Communications Commission.

ACTION: Tentative decision with request for comments.

SUMMARY: This Tentative Decision sought comment on the Commission's decision to deny the requests for pioneer's preference filed by Constellation, Ellipsat, Loral, Motorola, and TRW. This action responded to five requests for pioneer's preference in licensing the mobile-satellite service for low-Earth orbit (MSS-LEO) satellites in the 1610-1626.5 and 2483.5-2500 MHz bands. The result of this decision, if finalized in the Report and Order, is that none of the five LEO-MSS proponents will receive a preference in the license proceeding.

DATES: Comments due December 4, 1992; Replies January 6, 1993.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Ray LaForge, Office of Engineering and Technology, telephone (202) 653-8117.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Tentative Decision in ET Docket No. 92-28, which was adopted on August 5, 1992, and released on September 4, 1992. The complete text of this Tentative Decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room, 230), 1919 M Street NW., Washington, DC. The complete text of this Tentative Decision also may be purchased from the Commission's duplication contractor, Downtown Copy Center, at (202) 452-1422, 1114 21st Street, NW., Washington, DC 20036.

Summary of Notice of Tentative Decision

1. The Commission found that generally the LEO mobile-satellite service is a lower-cost alternative to geostationary MSS and a new, viable means of providing global mobile voice and data services. However, based on the record, it is unclear who the pioneer is or what technology is best. Further, no applicant has succeeded in demonstrating overall technical system feasibility.

2. This proceeding is a restricted proceeding. No *ex parte* presentations are permitted until final Commission decisions regarding the preference requests are made and no longer subject to reconsideration by the Commission or review by any court. In addition, no presentation, *ex parte* or otherwise, is permitted during the Sunshine Agenda period. See *generally* 47 CFR 1.1202, 1.1203, and 1.1208.

3. Pursuant to applicable procedures set forth at 47 CFR 1.415 and 1.419, of the Commission's rules, interested parties may file comments on or before December 4, 1992 and reply comments on or before January 6, 1993. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed.

Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

List of Subjects

47 CFR Part 1

Administrative practice and procedure.

47 CFR Part 2

Frequency allocations, General rules and regulations, Radio.

47 CFR Part 25

Radio, Satellite communications.

Federal Communications Commission.

William Caton,

Acting Secretary.

[FR Doc. 92-22744 Filed 9-18-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 2

[ET Docket No. 92-28; FCC 92-358]

Low-Earth Orbit Satellites Above 1 GHz

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: By this action the Commission proposed to amend part 2 of its Rules to allocate spectrum in the 1610-1626.5 and 2483.5-2500 MHz bands for a mobile-satellite service, including non-geostationary satellites. The Commission sought comment on allocating these bands for mobile-satellite services that could be used to provide voice, data messaging, and position determination services.

DATES: Comments due December 4, 1992; Replies January 6, 1993.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Ray LaForge, Office of Engineering and Technology, telephone (202) 653-8117.

SUPPLEMENTARY INFORMATION: This is a summary of the Communication's Notice of Proposed Rule Making adopted on August 5, 1992 and released on September 4, 1992. The complete text of this NPRM is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this NPRM also may be purchased from the Commission's duplication contractor, Downtown Copy Center, at (202) 452-1422, 1114 21st Street NW., Washington, DC 20036.

Summary of Proposed Rule

1. This notice, proposed to allocate the 1610-1626.5 and 2483.5-2500 MHz bands for the mobile-satellite service (MSS), including the use of non-geostationary satellite systems such as low-Earth orbit (LEO) satellites. The Commission also proposed related allocations for the inter-satellite service above 20 GHz to accommodate crosslinks that may be required by such MSS systems. Such non-geostationary satellite systems are expected to offer a wide-range of new and low-cost services such as voice, facsimile and data messaging, fleet

surveillance and control, with a potentially worldwide scope of service.

2. These proposed allocations are consistent with decisions made at the 1992 World Administrative Radio Conference (WARC-92) that allocated these bands internationally. This action also responds to petitions for rule making filed by Constellation Communications, Inc. (Constellation), Ellipsat Corporation (Ellipsat), Loral Qualcomm Satellite Services, Inc. (Loral), Motorola Satellite Communications, Inc. (Motorola), TRW, Inc. (TRW), American Mobile Satellite Corporation (AMSC) and CELSAT, Inc. (CELSAT).

3. Based upon the need demonstrated by the record for voice, data transmission, and RDSS position determination services, we tentatively concluded that there is a viable market for this service and that providing for these needs would be in the public interest. We expect that it would make available to the American public additional communication services at significantly less cost than currently available.

4. However, we did not propose the 1515–1525 MHz band, as proposed by AMSC, because the AMSC proposal is incompatible with existing users in this band and because it does not conform to the WARC-92 allocation. Further, we did not propose a hybrid geostationary satellite and terrestrial cellular communications satellite system as suggested by CELSAT. Such an allocation would be inconsistent with the international allocation decisions made at WARC-92 for the United States because ground links were not provided in the 1610–1626.5 MHz bands.

5. This is a non-restricted notice and comment rule making proceeding, and as such members of the public are advised that *ex parte* presentations are permitted except during the Sunshine Agenda period, provided, they are disclosed as provided in Commission rules. *See generally* 47 CFR 1.1202, 1.1203, and 1.1206(a).

6. This action is taken pursuant to sections 4(i), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 303(c), 303(f), 303(g), and 303(r).

7. Pursuant to applicable procedures set forth at 47 CFR 1.415 and 1.419, of the Commission's rules, interested parties may file comments on or before December 4, 1992 and reply comments on or before January 6, 1993. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed.

Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

List of Subjects

47 CFR Part 1

Administrative practice and procedure.

47 CFR Part 2

Frequency allocations, General rules and regulations, Radio.

47 CFR Part 25

Radio, Satellite communications.

Proposed Rule Change

Part 2 of chapter I of title 47 of the Code of Federal Regulations are proposed to be amended as follows:

1. The authority citation in part 2 continues to read:

Authority: Secs. 4, 302, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 302, 303, and 307, unless otherwise noted.

§ 2.106 Table of Frequency Allocations.

2. Section 2.106, the Talbe of Frequency Allocations is amended as follows:

a. In the band 1610–1626.5 MHz revise columns (1), (2), (3), (4), and (5) with the new charts that now depict three bands: 1610–1610.6, 1610.6–1613.8, and 1613.8–1626.5 Mhz.

b. In the band 2483.5–2500 MHz revise columns (1), (2), (3), (4), and (5) with the new chart.

c. Add a reference to a primary allocation for INTER-SATELLITE SERVICE in column (2) of the 25.25.5 GHz, 25.5–27 GHz, and 32–32.3; in columns (1) and (2) OF THE 27–27.5 GHz band; and in columns (1), (2), and (3) of and 24.45–24.65 GHz and 24.65–24.75 GHz bands.

d. In the international footnotes at the end of § 2.106 make the following modifications: remove footnotes 731A, 731B, 731C, 731D, 753E, 877, and 878; revise footnotes 733E, and 734 and add new footnotes 731X, 731Y, 753X, 881A, 881B, and 882X.

§ 2.106 Table of Frequency Allocations

* * * * *

International table			United States table		FCC use designators	
Region 1 allocation MHz	Region 2 allocation MHz	Region 3 allocation MHz	Government allocation MHz	Non-government allocation MHz	Rule part (s)	Special-use frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
*	*	*	*	*	*	*
1610–1610.6 ..... Aeronautical radionavigation. Mobile-Satellite (Earth-to-space). 722, 727, 730, 731, 731X, 732, 733, 733A, 733B, 733E, 733F.	1610–1610.6 ..... Aeronautical radionavigation. Radiodetermination-Satellite (Earth-to-space). 733A. Mobile-Satellite (Earth-to-space).. 722, 731X, 732, 733, 733C, 733D, 733E.	1610–1610.6 ..... Aeronautical radionavigation. Mobile-Satellite (Earth-to-space).. Radiodetermination-Satellite (Earth-to-space). 733A. 722, 727, 730, 731X, 732, 733, 733B, 733E.	1610–1610.6 ..... Aeronautical radionavigation. 722, 732, 733, US208, US260.	1610–1610.6 Aeronautical radionavigation. Radiodetermination-Satellite (Earth-to-space). 733A. Mobile-Satellite (Earth-to-space). 722, 731X, 732, 733, 733E, US208, US260.	Aviation (87). Satellite communication (25)	
*	*	*	*	*	*	*

International table			United States table		FCC use designators	
Region 1 allocation MHz	Region 2 allocation MHz	Region 3 allocation MHz	Government allocation MHz	Non-government allocation MHz	Rule part (a)	Special-use frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1610.6–1613.8 Aeronautical radionavigation. Mobile-Satellite (Earth-to-space). Radio astronomy	1610.6–1613.8 Aeronautical radionavigation. Radiodetermination-Satellite (Earth-to-space). 733A. Mobile-Satellite (Earth-to-space). Radio astronomy	1610.6–1613.8 Aeronautical radionavigation. Mobile-Satellite (Earth-to-space). Radio astronomy radiodetermination-satellite (Earth-to-space). 733A.	1610.6–1613.8 Aeronautical radionavigation. Radio astronomy	1610.6–1613.8 Aeronautical radionavigation. Radiodetermination-Satellite (Earth-to-space). Mobile-Satellite (Earth-to-space). Radio astronomy.		
722, 727, 730, 731, 731X, 732, 733, 733A, 733B, 733E, 733F, 734.	722, 731X, 732, 733, 733C, 733D, 733E, 734.	722, 727, 730, 731X, 732, 733, 733B, 733E, 734.	722, 732, 733, US208, US260.	722, 731X, 732, 733, 733E, 734, US208, US260		
•	•	•	•	•	•	•
1613.8–1626.5 Aeronautical radionavigation. Mobile-satellite (Earth-to-space). Mobile-satellite (space-to-Earth).	1613.8–1626.5 Aeronautical radionavigation. Radiodetermination satellite (Earth-to-space). 733A. Mobile-satellite (Earth-to-space). Mobile-satellite (space-to-Earth).	1613.8–1626.5 Aeronautical radionavigation. Mobile-satellite (Earth-to-space). Radiodetermination-satellite (Earth-to-space). Mobile-satellite (space-to-Earth).	1613.8–1626.5 Aeronautical radionavigation.	1613.8–1626.5 Aeronautical radionavigation. Radiodetermination-satellite (Earth-to-space). Mobile-satellite (Earth-to-space). Mobile-satellite (space-to-Earth).		
722, 728, 730, 731, 731X, 731Y, 732, 733, 733A, 733B, 733E, 733F.	722, 731X, 731Y, 732, 733, 733C, 733D, 733E.	722, 727, 730, 731X, 731Y, 732, 733, 733B, 733E.	722, 732, 733, US208, US260.	722, 731X, 731Y, 732, 733, 733E, US208, US260.		
•	•	•	•	•	•	•
2483.5–2500 Fixed Mobile Mobile-satellite (space-to-Earth). Radiolocation	2483.5–2500 Fixed Mobile Radiodetermination-satellite (space-to-Earth). 753A. Radiolocation Mobile-satellite (space-to-Earth).	2483.5–2500 Fixed Mobile Radiolocation Mobile-satellite (space-to-Earth) Radiodetermination-satellite (space-to-Earth). 753A	2483.5–2500	2483.5–2500 Radiodetermination-satellite (space-to-Earth). Mobile-satellite (space-to-Earth).	Satellite communication (25)	
733F, 752, 753, 753A, 753B, 753C, 753X.	752, 753D, 753X	752, 753C, 753X	752, US41	752, 753X, US41, NG147.		
•	•	•	•	•	•	•
24.25–24.45			24.25–24.45 Radionavigation		Aviation (87)	
	Radionavigation					
24.45–24.65 Fixed Inter-satellite	24.45–24.65 Radionavigation Inter-satellite	24.45–24.65 Radionavigation Fixed Inter-satellite Mobile	24.45–24.65 Inter-satellite.		Satellite (25)	
	882X	882X	882X			
24.65–24.75 Fixed Inter-satellite	24.65–24.75 Inter-satellite Radiolocation-Satellite. (Earth-to-space)	24.65–24.75 Fixed Inter-satellite Mobile	24.65–24.75 Inter-satellite. Radiolocation-Satellite. (Earth-to-space).		Satellite (25)	
		882X, 882Y				
•	•	•	•	•	•	•
24.75–25.25 Fixed	24.75–25.25 Fixed-Satellite (Earth-to-space). 882Z.	24.75–25.25 Fixed Fixed-satellite (Earth-to-space) Mobile 882Y	24.75–25.25 Fixed-satellite. (Earth-to-space). 882Z.		Satellite (25)	

25.25–25.5	Fixed Mobile Inter-satellite. 881A Standard Frequency and Time Signal-Satellite (Earth-to-space).	25.25–25.5 Fixed. Mobile Inter-satellite. 881A Standard Frequency and Time Signal-Satellite (Earth-to-space).		Satellite (25)
•	•	•	•	•
25.5–27	Fixed Mobile Inter-satellite. 881A Earth exploration-satellite (space-to-Earth). Standard frequency and time signal-satellite (Earth-to-space).	25.5–27 Fixed. Mobile. Inter-satellite. 881A. Earth exploration-satellite (space-to-Earth). Standard freqency and time signal-satellite (Earth-to-space).		Satellite (25)
27.27.5	Fixed Mobile Inter-satellite.	Fixed Fixed-satellite (Earth-to-space). Mobile Inter-satellite. 881A 881B.	27–27.5 Fixed. Fixed-satellite (Earth-to-space). Mobile. Inter-satellite. 881A 881B.	Satellite (25)
881A				
•	•	•	•	•

INTERNATIONAL FOOTNOTES

• • • • • • •

731X—The use of the band 1610–1626.5 MHz by the mobile-satellite service (Earth-to-space) and by the radiodetermination-satellite service (Earth-to-space) is subject to the application of the coordination and notification procedures set forth in Resolution COM5/8. A mobile earth station operating in either of the services in this band shall not produce an e.i.r.p. density in excess of −15 dBW/4kHz in the part of the band used by systems operating in accordance with the provisions of No. 732, unless otherwise agreed by the affected administrations. In the part of the band where such systems are not operating, a value of −3 dBW/4 kHz is applicable. Stations of mobile-satellite service shall not cause harmful interference to, or claim protection from, stations in the aeronautical radionavigation service, stations operating in accordance with the provisions of No. 732 and stations in the fixed service operating in accordance with the provisions of No. 730

731Y—The use of the band 1613.8–1626.5 MHz by the mobile-satellite service (space-to-Earth) is subject to the application of the coordination and notification procedures set forth in Resolution COM5/8.

• • • • • • •

733E—Modified—Harmful interference shall not be caused to stations of the radio astronomy service using the band 1610.6–1613.8 MHz by stations of the radiodetermination-satellite and mobile-satellite services (No. 2904 applies).

• • • • • • •

734—Modified—In making assignments to stations of other services, administrations are urged to take all practicable steps to protect the radio astronomy service in the band 1610.6–1613.8 MHz from harmful interference. Emissions from space or air-borne stations can be particularly serious sources of interference to the radio astronomy service (see Nos. 343 and 344 and Article 36).

• • • • • • •

753X—The use of the band 2483.5–2500 MHz by the mobile-satellite and the radiodetermination-satellite services is subject to the application of the coordination and notification procedures set forth in Resolution COM5/8. Coordination of space stations of the mobile-satellite and radiodetermination-satellite services with respect to terrestrial services is required only if the power flux-density produced at the Earth's surface exceeds the limits in No. 2566. In respect of assignments operating in this band, the provisions of Section II, paragraph 2.2 of Resolution COM5/8 shall also be applied to geostationary transmitting space stations with respect to terrestrial stations.

• • • • • • •

881A—Use of the 25.25–27.5 GHz band by the inter-satellite service is limited to space research and Earth exploration applications and also transmissions of data originating from industrial and medical activities in space.

881B—Space services using non-geostationary satellites operating in the inter-satellite service in the band 27–27.5 GHz are exempt form the provisions of No 2613.

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882X—The inter-satellite service shall not claim protection from harmful interference from airport surface detection equipment stations of the radionavigation service.

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Federal Communications Commission.

William Caton,

Acting Secretary.

[FR Doc. 92–22746 Filed 9–18–92; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 57, No. 183
Monday, September 21, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Grand Island Advisory Commission; Meeting

AGENCY: Forest Service, USDA.

ACTION: Grand Island Advisory Commission meeting.

SUMMARY: The Grand Island Advisory Commission will meet on October 2, 1992 at 8 a.m. at the Comfort Inn on M-28 East in Munising, Michigan. An agenda for the half day meeting will consist of a review of the DEIS Summary; Public Involvement Plan and relationship of the Forest Service/Commission.

Interested members of the public are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions about this meeting to Art Easterbrook, Staff Officer, Hiawatha National Forest, 2727 N. Lincoln Road, Escanaba, MI 49829, (906) 786-4062.

Dated: September 15, 1992.

William F. Spinner,

Forest Supervisor.

[FR Doc. 92-22750 Filed 9-18-92; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Membership of the USCCR Performance Review Board

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of membership of the USCCR Performance Review Board.

SUMMARY: This notice announces the appointment of the Performance Review Board (PRB) of the United States Commission on Civil Rights. Publication of PRB membership is required by 5 U.S.C. 4314(c)(4).

The PRB provides fair and impartial review of the U.S. Commission on Civil Rights Senior Executive Service performance appraisals and makes recommendations regarding performance ratings and performance awards to the Staff Director, U.S. Commission on Civil Rights for the FY 1992 rating year.

FOR FURTHER INFORMATION CONTACT: Ms. Marcia Tyler, Personnel Division, U.S. Commission on Civil Rights, 1121 Vermont Avenue, NW., Washington, DC 20425 (202) 376-8364.

Members

Richard L. Osbourn, Chairman of PRB, Director of Personnel, Small Business Administration
Godfrey D. Dudley, Director, Field Management Programs-East, Equal Employment Opportunity Commission
Myra Shiplett, Deputy Director of Human Resources, Administrative Office of the U.S. Courts
Carlos Esparza, Assistant Director for Financial Control and Management, Retirement and Insurance Group, Office of Personnel Management

Dated: September 16, 1992.

Emma Gonzalez-Joy,

Solicitor.

[FR Doc. 92-22797 Filed 9-18-92; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committee (CAC) of the American Economic Association (AEA), the CAC of the American Marketing Association (AMA), the CAC of the American Statistical Association (ASA), and the CAC on Population Statistics; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463 as amended by Pub. L. 94-409), we are giving notice of a joint meeting followed by separate and jointly held (described below) meeting of the CAC of the AEA, CAC of the AMA, CAC of the ASA, and CAC on Population Statistics. The joint meeting will convene on October 22-23, 1992 at the Bureau of the Census, Room 1630, Federal Building 3, Suitland, Maryland.

The CAC of the AEA is composed of nine members appointed by the president of the AEA. It advises the Director, Bureau of the Census, on technical matters, accuracy levels, and conceptual problems concerning economic surveys and censuses; reviews major aspects of the Census Bureau's programs; and advises on the role of analysis within the Census Bureau.

The CAC of the AMA is composed of nine members appointed by the chairman of the board of the AMA. It advises the Director, Bureau of the Census, regarding the statistics that will help in marketing the Nation's products and services and on ways to make the statistics the most useful to users.

The CAC of the ASA is composed of 12 members appointed by the president of the ASA. It advises the Director, Bureau of the Census, on the Census Bureau's programs as a whole and on their various parts; considers priority issues in the planning of censuses and surveys; examines guiding principles; advises on questions of policy and procedures; and responds to Census Bureau requests for opinions concerning its operations.

The CAC on Population Statistics is composed of four members appointed by the Secretary of Commerce and five members appointed by the president of the Population Association of America from the membership of that Association. The CAC on Population Statistics advises the Director, Bureau of the Census, on current programs and on plans for the decennial census of population.

The agenda for the October 22 combined meeting that will begin at 9 a.m. and end at 10:40 a.m. is: (1) Introductory remarks by the Director, Bureau of the Census; (2) economic and agriculture censuses update; and (3) "A Changing United States" slide presentation.

The agendas for the four committees in their separate and jointly held meetings that will begin at 11 a.m. and adjourn at 5:15 p.m. on October 22 are as follows:

The CAC of the AEA: (1) Census Bureau responses to recommendations and activities of special interest to the CAC of the AEA, (2) Center for Economic Studies annual report, (3) response rate improvement initiatives by Business Division (joint with the CAC of the AMA), (4) proposals for revisions to the R & D survey (joint with the CAC of the AMA), and (5) potential joint projects between the economic and demographic areas (joint with the CAC

of the AMA and the CAC on Population Statistics).

The CAC of the AMA: (1) Census Bureau responses to recommendations and activities of special interest to the CAC of the AMA, (2) conversational interviewing (joint with the CAC of the ASA), (3) response rate improvement initiatives by Business Division (joint with the CAC of the AEA), (4) proposals for revisions to the R & D survey (joint with the CAC of the AEA), and (4) potential joint projects between the economic and demographic areas (joint with the CAC of the AEA and the CAC on Population Statistics).

The CAC of the ASA: (1) Census Bureau responses to recommendations and activities of special interest to the CAC of the ASA, (2) conversational interviewing (joint with the CAC of the AMA), (3) coverage in household surveys (joint with the CAC on Population Statistics), (4) Survey of Income and Program Participation redesign issues (joint with the CAC on Population Statistics), and (5) respondent initiated reporting activities.

The CAC on Population Statistics: (1) Census Bureau responses to recommendations and activities of special interest to the CAC on Population Statistics, (2) immigration and emigration: estimates and projections, (3) coverage in household surveys (joint with the CAC of the ASA), (4) Survey of Income and Program Participation redesign issues (joint with the CAC of the ASA), and (5) potential joint projects between the economic and demographic areas (joint with the CACs of the AEA and the AMA).

The agendas for the October 23 meeting that will begin at 9 a.m. and adjourn at 1 p.m. are:

The CAC of the AEA: (1) Exporter data base (joint with the CAC of the AMA), (2) Economic Statistical Methods Division and research agenda, (3) development and discussion of recommendations, and (4) closing session including (a) continued committee and staff discussions, (b) plans and suggested agenda for next meeting, and c) comments by outside observers.

The CAC of the AMA: (1) Exporter data base (joint with the CAC of the AEA), (2) overall public relations plans for the Census Bureau, (3) development and discussion of recommendations, and (4) closing session including (a) continued committee and staff discussions, (b) plans and suggested agenda for next meeting, and (c) comments by outside observers.

The CAC of the ASA: (1) 2000 research and development (joint with the CAC on Population Statistics, (2) development and discussion of recommendations, and (3) closing session including (a) continued committee and staff discussions, (b) plans and suggested agenda for next meeting, and (c) comments by outside observers.

The CAC on Population Statistics: (1) 2000 research and development (joint with the CAC of the ASA), (2) development and discussion of recommendations, and (3) closing session including (a) continued committee and staff discussions, (b) plans and suggested agenda for next meeting, and (c) comments by outside observers.

All meetings are open to the public, and a brief period is set aside on October 23 for public comment and questions. Those persons with extensive questions or statements must submit them in writing to the Census Bureau Committee Liaison Officer at least 3 days before the meeting.

Persons wishing additional information regarding these meetings or who wish to submit written statements may contact the Committee Liaison Officer, Mrs. Phyllis Van Tassel, room 2419, Federal Building 3, Suitland, Maryland. (Mailing address: Washington, DC 20233). Telephone: (301) 763-5410.

Dated: September 15, 1992.

Barbara Everitt Bryant,

Director, Bureau of the Census.

[FR Doc. 92-22703 Filed 9-18-92; 8:45 am]

BILLING CODE 3510-07-M

National Oceanic and Atmospheric Administration

Coastal Zone Management: Federal Consistency Appeal by Davis Heniford From an Objection by the South Carolina Coastal Council

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of decision.

On May 21, 1992, the Secretary of Commerce (Secretary) issued a decision in the consistency appeal of Davis Heniford (Appellant). The Appellant had applied to the U.S. Army Corps of Engineers (Corps) for a permit to fill 2.5 acres of wetlands for the purpose of constructing a shopping center in Loris, South Carolina. In conjunction with the Federal permit application, the Appellant submitted to the Corps for review by the South Carolina Coastal Council (State), the State of South Carolina's coastal management agency, under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, as amended (CZMA), 16 U.S.C. 1456(c)(3)(A), a certification that the proposed activity is consistent with the State's federally-approved Coastal Management Program.

On August 21, 1990, the State objected to the Appellant's consistency certification for the proposed project on the ground that the proposed pier is not in accordance with the State's Coastal Management Program policies that discourage filling of freshwater wetlands for commercial development when reasonable alternative uses are available. Under CZMA section 307(c)(3)(A) and 15 CFR 930.131, the State's consistency objection precludes the Corps from issuing a permit for the activity unless the Secretary finds that the activity is either consistent with the objectives or purposes of the CZMA (Ground I) or necessary in the interest of national security (Ground II). The Appellant based his appeal on Ground I and did not plead Ground II.

Upon consideration of the information submitted by the Appellant, the State and interested Federal agencies, the Secretary made the following findings pursuant to 15 CFR 930.121 (b) and (d): The proposed project will cause adverse effects on the resources of the coastal zone, when performed separately or in conjunction with other activities, substantial enough to outweigh its contribution to the national interest. Additionally, the Appellant failed to controvert the State's determination of the existence of a reasonable alternative to the proposed project. Accordingly, the proposed project is not consistent with the objectives or purposes of the CZMA. Because the Appellant's proposed project failed to satisfy all of the requirements of Ground I, the Secretary did not override the State's objection to the Appellant's consistency certification, and consequently, the proposed project may not be permitted by Federal agencies. Copies of the decision may be obtained from the contact person listed below.

FOR ADDITIONAL INFORMATION CONTACT: Brett Joseph, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S.

Department of Commerce, 1825 Connecticut Avenue, NW., suite 603, Washington, DC 20235, (202) 606-4200.

Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance

Dated: September 15, 1992.

Thomas A. Campbell,

General Counsel.

[FR Doc. 92-22770 Filed 9-18-92; 8:45 am]

BILLING CODE 3510-08-M

National Marine Fisheries Service; Marine Fisheries Advisory Committee; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), NOAA.

TIME AND DATE: Meeting will convene at 8:45 a.m., September 29, and adjourn at 3:30 p.m., September 30, 1992.

PLACE: The Sheraton Premiere at Tysons Corner, 8611 Leesburg Pike, Vienna, Virginia.

STATUS: As required by Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1982), notice is hereby given of a meeting of the Marine Fisheries Advisory Committee (MAFAC). MAFAC was established by the Secretary of Commerce on February 17, 1971, to advise the Secretary on all living marine resource matters which are the responsibility of the Department of Commerce. This Committee ensures that the living marine resource policies and programs of this Nation are adequate to meet the needs of commercial and recreational fishermen, and environmental, state, consumer, academic, and other national interests.

MATTERS TO BE CONSIDERED: September 29, 1992, 8:45 a.m.-5:30 p.m., (1) Magnuson Act, (2) marine recreational fisheries, and (3) protected resources.

September 30, 1992, 9 a.m.-3:30 p.m., (1) international cooperation, (2) by-catch program planning, and (3) budget and program planning.

FOR FURTHER INFORMATION CONTACT: Ann Smith, Executive Secretary, Marine Fisheries Advisory Committee, Policy and Coordination Office, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910. Telephone: (301) 713-2252.

Dated: September 15, 1992.

Samuel W. McKeen,

Program Management Officer, National Marine Fisheries Service, NOAA.

[FR Doc. 92-22717 Filed 9-18-92; 8:45 am]

BILLING CODE 3510-08-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of an Import Restraint Limit for Certain Wool Textile Products Produced or Manufactured in Myanmar; Correction

September 15, 1992.

On page 31357, volume 57, published in the **Federal Register** on July 15, 1992, make the following changes:

1. First column, under the heading "Supplementary Information," second paragraph, nineth line: change "began on June 30, 1992 and extends through June 29, 1993" to "began on July 1, 1992 and extends through June 30, 1993."

2. Third column, first paragraph, 12th line in the letter to the Commissioner of Customs: change "beginning on June 30, 1992 and extending through June 29, 1993" to "beginning on July 1, 1992 and extending through June 30, 1993."

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-22828 Filed 9-18-92; 8:45 am]

BILLING CODE 3510-DR-F

Denial of Participation in the Special Access and Special Regime Programs

September 15, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs denying the right to participate in the Special Access and Special Regime Programs.

EFFECTIVE DATE: November 1, 1992.

FOR FURTHER INFORMATION CONTACT: Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-3400.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Committee for the Implementation of Textile Agreements (CITA) has determined that Fashion Enterprises is in violation of the requirements set forth for participation in the Special Access and Special Regime Programs.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs, effective on November 1, 1992, to deny Fashion Enterprises the right to participate in the Special Access and Special Regime Programs, for a period of three years, from November 1, 1992 through October 31, 1995.

Requirements for participation in the Special Access Program are available in **Federal Register** notices 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; and 54 FR 50425, published on December 6, 1989.

Requirements for participation in the Special Regime Program are available in **Federal Register** notices 53 FR 15724, published on May 3, 1988; 53 FR 32421, published on August 25, 1988; 53 FR 49346, published on December 7, 1988; and 54 FR 50425, published on December 6, 1989.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 15, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: The purpose of this directive is to notify you that the Committee for the Implementation of Textile Agreements has determined that Fashion Enterprises is in violation of the requirements for participation in the Special Access and Special Regime Programs.

Effective on November 1, 1992, you are directed to prohibit Fashion Enterprises from further participation in the Special Access and Special Regime Programs, for a period of three years, from November 1, 1992 through October 31, 1995. Goods accompanied by Form ITA-370P which are presented to U.S. Customs for entry under the Special Access and Special Regime Programs will no longer be accepted. In addition, for the period November 1, 1992 through October 31, 1995, you are directed not to sign ITA-370P forms for export of U.S.-formed and cut fabric for Fashion Enterprises.

Sincerely,

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-22829 Filed 9-18-92; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Defense FAR Supplement (DFARS), part 227, Patents, Data and Copyrights; OMB Control Number 0704–0240.

Type of Request: Reinstatement.

Average Burden Hours/Minutes Per Response: 80 hours.

Responses Per Respondent: 1.

Number of Respondents: 16,560.

Annual Responses: 16,560.

Annual Burden Hours (Including Recordkeeping): 2,307,240.

Needs and Uses: This requirement concerns information collecting and recordkeeping related to technical data, software, copyrights, and contracts.

Affected Public: Businesses or other for-profit, Non-profit institutions, and Small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Peter N. Weiss. Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302.

Dated: September 15, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–22689 Filed 9–18–92; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: The 1993 Survey of High School Youth.

Type of Request: New Collection.

Average Burden Hours/Minutes Per Response: 31.8 minutes.

Responses Per Respondent: 1.

Number of Respondents: 10,000.

Annual Burden Hours: 5,300.

Annual Responses: 10,000.

Needs and Uses: The Army and Navy are facing a challenge to meet their accession goals given the current climate of limited internal resources and increased external volatility. They need up-to-date information on the opinions of youth regarding these issues and how they affect their propensity to enlist. Further, these Services require information on the goals and motivations of eligible youth to recruit efficiently.

Affected Public: Individuals or households.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302.

Dated: September 15, 1992.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–22690 Filed 9–18–92; 8:45 am]

BILLING CODE 3810–01–M

Office of the Secretary

Defense Science Board Task Force on Submarine Service Life; Meeting

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Task Force on Submarine Service Life will meet in closed session on October 5 and 6, 1992, at the MITRE Corporation, McLean, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, The Task Force will receive classified briefings on technical factors affecting submarine lifespan.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. app. II, (1988)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: September 15, 1992.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–22688 Filed 9–18–92; 8:45 am]

BILLING CODE 3810–01–M

Meeting of the Advisory Council on Dependents' Education

AGENCY: Department of Defense Dependents Schools (DoDDS), Office of the Secretary of Defense.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Dependents' Education (ACDE). It also describes the functions of the Council. Notice of this meeting is required under the National Advisory Committee Act. Although the meeting is open to the public, because of space constraints, anyone wishing to attend the meeting should contact the point of contact listed below.

DATES: October 30, 1992, 9 a.m. to 4:30 p.m. and October 31, 1992, 9 a.m. to 12 noon.

ADDRESSES: The conference room of the Oranian Hotel, Platterstrasse 2, Wiesbaden, Germany, D6200. Telephone number 49–611–525025.

FOR FURTHER INFORMATION CONTACT: Ms. Marilyn Witcher, Public Affairs Officer, DoD Dependents Schools, 1225 Jefferson Davis Highway, Crystal Gateway #2, suite 1500, Arlington, Virginia 22202; telephone number: (703) 746–7846.

SUPPLEMENTARY INFORMATION: The Advisory Council on Dependents' Education is established under title XIV, section 1411, of Public Law 95–561, Defense Dependents' Education Act of 1978, as amended by title XII, section 1204(b)(3)–(5), of Public Law 99–145, Department of Defense Authorization Act of 1986 (20 U.S.C., chapter 25A, section 929, Advisory Council on Dependents' Education). The Council is cochaired by designees of the Secretary of Defense and the Secretary of Education. In addition to a representative of each of the Secretaries, 12 members are appointed jointly by the Secretaries. Members include representatives of educational institutions and agencies, professional employee organizations, unified military commands, school administrators, parents of DoDDS students, and one DoDDS student. The Director, DoDDS, serves as the Executive Secretary of the Council. The purpose of the Council is to

advise the Secretary of Defense and the DoDDS Director about effective educational programs and practices that should be considered by DoDDS and to perform other tasks as may be required by the Secretary of Defense. The agenda includes discussions about the national goals for education, AMERICA 2000, high expectations for student achievement, education of handicapped dependents, communications throughout the system, increased parental involvement, an update on drawdown planning, and responses to the recommendations made by the Council during its January meeting.

Dated: September 15, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-22691 Filed 9-18-92; 8:45 am]

BILLING CODE 3810-01-M

Privacy Act of 1974; Addition of a Record System

AGENCY: Office of the Secretary of Defense (OSD).

ACTION: Addition of a record system.

SUMMARY: The Office of the Secretary of Defense proposes to add a new record system to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C 552a), as amended.

DATES: The proposed action will be effective without further notice on October 21, 1992, unless comments are received that would result in a contrary determination.

ADDRESSES: The OSD Privacy Act Officer, OSD Records Management and Privacy Act Branch, Room 5C315, Pentagon, Washington, DC 20301-1155.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Cragg at (703) 695-0970

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense record system notices subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a) have been published in the **Federal Register** as follows:

50 FR 22090, May 29,1985 (DoD Compilation, changes follow)
50 FR 47087, November 14, 1985
51 FR 11803, April 7, 1986
51 FR 17508, May 13, 1986
51 FR 44672, December 11, 1986
52 FR 22837, June 16, 1987
53 FR 15868, May 4, 1988
53 FR 27894, July 25, 1988
54 FR 33756, August 16, 1989
54 FR 44314, October 24, 1989
55 FR 17655, April 26, 1990
55 FR 20180, May 15, 1990
55 FR 21429, May 24, 1990
55 FR 35448, August 30, 1990
55 FR 49405, November 28, 1990
56 FR 4603, February 5, 1991
56 FR 7016, February 21, 1991
56 FR 9200, March 5, 1991
56 FR 9348, March 6, 1991
56 FR 10545, March 13, 1991
56 FR 57620, November 13, 1991
56 FR 61409, December 3, 1991

The new system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted on September 9, 1992 to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB), pursuant to paragraph 4b of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985 (50 FR 52738, December 24, 1985).

Dated: September 11, 1992.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DOSIA 01

SYSTEM NAME:

OSIA Treaty Inspection Manpower Management System.

SYSTEM LOCATION:

Records in the system are located at the On-Site Inspection Agency, 300 West Service Road, Dulles International Airport, Washington, DC 20041-0498.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals affiliated with the On-Site Inspection Agency, either by military assignment, civilian employment, or contractual support agreement. Individuals are weapons inspectors, linguists, mission schedulers/planners, personnel assistants/specialists, portal rotation specialists, operation technicians, passport managers, clerical staff, and database management specialists.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information includes individual's name, Social Security Number, date of birth, city/state/country of birth, education, marital status, gender, race, civilian or military member, rank (if military), security clearance, years of federal service, occupational category, job organization and location, and emergency locator information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 125 and Executive Order 9397.

PURPOSES:

To manage OSIA manpower resources, including security clearance processing and verification, special access certification, passport status, mission scheduling and planning, inspection team composition, inspector and transport list management, and inspector training.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDINGCATEGORIES OF USERS AND THE PURPOSES OF SUCH USES.

The "Blanket Routine Uses" set forth at the beginning of the OSD's compilation of records system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on computer and computer output products.

RETRIEVABILITY:

Records may be retrieved by name or Social Security Number.

SAFEGUARDS:

Records are stored in a computer system with extensive intrusion safeguards.

RETENTION AND DISPOSAL:

Records are maintained for as long as the individual isassigned to OSIA. Upon departure from OSIA, records concerning that individual are removed from the active file and retained in an inactive file for ten years. Information that has been held in the inactive file for ten years is deleted.

SYSTEM MANAGER AND ADDRESS:

On-Site Inspection Agency Database Administrator, 300 West Service Road, Dulles International Airport, Washington, DC 20041-0498.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to Director for Operations, On-Site Inspection Agency, 300 West Service Road, Dulles International Airport, Washington, DC 20041-0498.

The inquiry should include full name and Social SecurityNumber.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address a written request to Director for Operations, On-Site Inspection Agency, 300 West Service Road, Dulles International Airport, Washington, DC 20041-0498.

The inquiry must include full name and Social SecurityNumber.

CONTESTING RECORDS PROCEDURES:

The Office of the Secretary of Defense rules for accessing records and for contesting contents and appealing initial OSD determinations are published in OSD Administrative Instruction No. 81, "OSD Privacy Program"; 32 CFR part 286b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is provided by the individual, obtained from other personnel record sources, and from the individual's superiors and assignment personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 92-22687 Filed 09-18-92; 8:45 am]

BILLING CODE 3810-01-F

Department of the Army

Directorate of Personnel Property Performance

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice, Directorate of Personnel Property Performance Bond Policy.

SUMMARY: This is to announce effective October 1, 1991, the Military Traffic Management Command (MTMC) will implement the method of releasing performance bonds announced in the **Federal Register** on April 8, 1992 (FR 11941).

The Military Traffic Command's qualification standard for carriers to participate in the international movement of household goods and unaccompanied baggage shipment services includes a requirement that a carrier place a continuous performance bond on file with MTMC. The minimum amount of the bond is currently $100,000 or 2.5 percent of the carrier's gross annual revenue derived from the preceding year's Department of Defense (DOD) international shipments, whichever is more. The purpose of the performance bond requirement is to protect the DOD's interests against shipments becoming frustrated or delayed prior to delivery to the member. The bond requirement is set forth in DOD 4500.34-R, dated October 19, 1991, appendix A, paragraph I.B.11.

Recently, requests have been received from carriers to release performance bonds on file with MTMC. Therefore, MTMC intends to implement the following procedures for releasing a carrier's performance bond. Carriers wishing to have their performance bond released by MTMC must conform to the conditions and policies prescribed below.

1. Release of Performance Bond Policy—General

a. Carriers must submit a written request to Headquarters, Military Traffic Management Command (HQMTMC), Directorate of Personnel Property, Rate Acquisition Division (MTPP-CA), for the return of either performance bond type listed below. The request must provide a reason why the bond needs to be returned and be accompanied by a listing of shipments which are in the carrier's possession or control. Any shipment not delivered to the member or member's designated agent is considered to be in the carrier's possession or control. If no shipments are in the carrier's possession or control, the request must so state.

b. It is MTMC's policy performance bonds will not be released until all shipment services and final delivery to the member have been completed. This constitutes final performance by the carrier. Shipments in storage-in-transit (SIT) at destination are considered in-transit and do not meet the final delivery or complete performance standard stated above. The following policies apply for the release of bonds based on the type of bond the carrier has on file.

c. This policy applies to active carriers (DOD-approved) and inactive carriers (carriers in a nonuse status, disqualified, but retaining DOD approval; and carriers voluntarily withdrawn from the program, but who have agreed to onward movement of shipments to final destination).

2. Annual Performance Bond Release Procedures

a. *Active Carriers:*

(1) Carriers wishing return of the last Annual Performance Bond may have the bond returned to them (or their surety company, at their request) only if all shipments have been delivered to the member. Shipments in the pipeline and/or in SIT will remain subject to coverage under the bond until delivery is complete.

(2) If there are still undelivered shipments or shipments in SIT, the carrier may obtain a rider from its surety company to apply those shipments to the continuous performance bond on file with MTMC, changing the effective date of the continuous bond to the pickup date of the oldest undelivered shipment. After the rider is attached to the continuous bond, the Annual Performance Bond may be returned to the carrier (or surety company).

(3) For shipments in the pipeline or SIT, the carrier must submit a list of all shipments to include Government bill of lading number, member's name, rank, Social Security Number, pickup date of shipment, responsible destination personal property shipping office, and status.

b. *Inactive Carriers:*

(1) Paragraphs a. (1)–(3) apply.

(2) If the carrier does not have a continuous bond on file, the value of the Annual Performance Bond may be reduced to cover the costs of delivering outstanding shipments. A reduction in the bond's value must be agreed to by the carrier and surety. Based on the listing of outstanding shipments, MTMC will determine a dollar value of the new bond. In this case, a rider from the surety company must be affixed to the bond. The bond will remain a part of the carrier's file until all shipments are delivered.

3. Continuous Performance Bond Release Procedures

a. *Active Carrier (DOD-approved carriers):*

Carriers wishing return of the continuous performance bond may have the bond returned to them (or their surety company, at their request) only if all shipments have been delivered to the service members. Shipments in the pipeline and/or in SIT will remain subject to coverage under the bond until delivery is complete.

b. Inactive Carriers (DOD-approved carriers in nonuse status; disqualified, but retain DOD approval; voluntarily withdrawn from program, but agreed to onward movement of shipments to final destination):

MTMC will consider reducing the value of the bond to cover the costs of delivering outstanding shipments. A reduction in the bond's value must be agreed to by the carrier and surety. In this case, a rider from the surety company must be affixed to the bond.

For shipments in the pipeline or SIT, the carrier must submit a list of all shipments to include Government bill of lading number, member's name, rank, Social Security Number, pickup date of shipment, responsible destination personal property shipping office, and status.

The bond will remain a part of the carrier's file until all shipments are delivered.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92-22726 Filed 9-8-92; 8:45 am]

BILLING CODE 3710-08-M

Defense Mapping Agency

Sale of Products

AGENCY: Defense Mapping Agency (DMA), Department of Defense (DoD).

ACTION: Notice.

SUMMARY: The public sales of Defense Mapping Agency (DMA) nautical, aeronautical, and Flight Information Publications (FLIP) products will no longer be performed by DMA. The public sales of these products will now be handled by the National Ocean Service (NOS). The NOS is an office of the National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

EFFECTIVE DATE: 1 October 1992.

FOR FURTHER INFORMATION CONTACT: Harold W. Madison, Acting Deputy Director, Programs and Distribution, DMA Combat Support Center, 6001 MacArthur Boulevard, Bethesda, MD, 20816-5001, Tel. (301) 227-3115.

SUPPLEMENTARY INFORMATION: Persons, organizations, and sales agents in the United States and foreign countries requiring the above domestic and international DMA products should contact NOS at: National Ocean Service, Distribution Branch, 6501 Lafayette Avenue, Riverdale, MD 20737-1199, tel. (301) 436-6990 (General Information), (301) 436-6993 (FLIP Information), (301) 436-6726 (Sales Agents Information).

Dated: September 15, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-22692 Filed 9-18-92; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.024]

Early Education Program for Children With Disabilities; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1993

Purpose of Program: To provide Federal support for a variety of activities designed to address the special problems of infants, toddlers, and preschool aged children with disabilities, and to assist State and local entities in expanding and improving programs and services for those children and their families. Activities include demonstration, outreach, experimental, research, and training projects, and research institutes.

These priorities support AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals, by assisting those with disabilities through improved services and better trained service providers.

Eligible Applicants: Public agencies and nonprofit private organizations may apply for an award under either of the priorities.

Note: The Department is not bound by any estimates in this notice.

Applications Available: October 5, 1992.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 309.

EARLY EDUCATION PROGRAM FOR CHILDREN WITH DISABILITIES

Title and CFDA No.	Deadline for transmittal of applications	Deadline for intergovernmental review	Available funds	Estimated range of awards	Estimated size of awards	Estimated number of awards	Project period in months
Early Childhood Demonstration Project (CFDA 84.024B).	11-23-92	1-22-93	$1,000,000	$120,000-140,000	$130,000	8	Up to 60.
Outreach Projects (CFDA 84.024D)	12-11-92	2-11-93	2,000,000	120,000-140,000	130,000	15	Up to 36.

Priorities: The final priorities for Early Childhood Model Demonstration Projects and Outreach Projects were published in the **Federal Register** on April 8, 1992 at 57 FR 12080.

For Application or Information Contact: Joseph Clair, U.S. Department of Education, 400 Maryland Avenue, SW., room 4622, Switzer Building, Washington, DC 20202-2644. Telephone (202) 205-9503. Deaf and hearing impaired individuals may call (202) 205-6170 for TDD services.

Program Authority: 20 U.S.C. 1423.

Dated: September 15, 1992.

Michael E. Vader,

Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 92-22731 Filed 9-18-92; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No.: 84.026R]

Educational Media Research, Production, Distribution, and Training Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1993

Purpose of Program: The purposes of this program are to promote the general welfare of the deaf, hard-of-hearing, and visually impaired individuals, and the educational advancement of individuals with disabilities.

This priority supports AMERICA 2000, the President's strategy for moving the Nation toward the National Educational Goals, by assisting those with disabilities through improved services and better trained service providers.

Eligible Applicants: Profit and nonprofit public and private agencies, organizations, and institutions are eligible to apply for a grant.

Note: The Department is not bound by any estimates in this notice.

Deadline for Transmittal of Applications: 4/27/93.

Deadline for Intergovernmental Review: 6/28/93.

Applications Available: 10/30/92.

Available Funds: $375,000.

Estimated Range of Awards: $75,000-100,000.

Estimated Size of Awards: $94,000.

Estimated Number of Awards: 4.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General

Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 332, as amended on October 22, 1991 at 56 FR 54702–54703.

Priority: The final priority for Special Research, Development, and Evaluation Projects as published in the **Federal Register** on April 8, 1992 at 57 FR 12080, (Priority #3, at page 12083).

For Application or Information Contact: Joseph Clair, U.S. Department of Education, 400 Maryland Avenue, SW., room 4622, Switzer Building, Washington, DC 20202–2644. Telephone (202) 205–9503. Deaf and hearing impaired individuals may call (202) 205–6170.

Program Authority: 20 U.S.C. 1451, 1452.

Dated: September 15, 1992.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 92–22730 Filed 9–18–92; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Noncompetitive Financial Assistance Award

AGENCY: Albuquerque Field Office (AL), Department of Energy (DOE).

ACTION: Notice of noncompetitive financial assistance application for a grant to the Eastern New Mexico University.

SUMMARY: Based upon a determination pursuant to 10 CFR 600.7(b)(2)(i)(A), which authorizes a financial assistance award to be made if the activity to be funded is necessary to the satisfactory completion of, or is a continuation or renewal of, an activity presently being funded by DOE or another federal agency, and for which competition for support would have a significant adverse effect on continuity or completion of the activity; AL gives notice of its plans to award a one-time grant to Eastern New Mexico University, Portales, New Mexico, for the enhancement of math and science teacher education. The total estimated cost of the project is $10,000. No cost sharing is anticipated. The distribution and availability of funds is subject to budget limitations. The public purpose to be served by this award is to assist in the critical need for the development of human resources to meet the needs of the Department's environmental challenges by aggressively pursuing environmental management educational initiatives through college and university curriculum development. AL is providing this assistance under the auspices of the Department's Environmental Restoration and Waste Management Five-Year Plan. Specific authority is Public Law 101–510, section 3161, DOE Science Education Enhancement Act of 1990. The particular significance of the activity to be funded is the enhancement of math and science teacher training required for the satisfactory completion of AL's existing Extended Education Programs in economically disadvantaged secondary school districts selected by the New Mexico State Department of Education.

FOR FURTHER INFORMATION CONTACT: William L. McCullough, Department of Energy Albuquerque Field Office, Contracts and Procurement Division, P.O. Box 5400, Albuquerque, NM 87185–5400, Telephone: (505) 845–6442.

Issued in Albuquerque, New Mexico on September 8, 1992.

Richard A. Marquez,

Assistant Manager for Management and Administration.

[FR Doc. 92–22816 Filed 9–18–92; 8:45 am]

BILLING CODE 6450–01–M

Noncompetitive Financial Assistance Award

AGENCY: Albuquerque Field Office (AL), Department of Energy (DOE).

ACTION: Notice of noncompetitive financial assistance application for a grant to the New Mexico Highlands University.

SUMMARY: Based upon a determination pursuant to 10 CFR 600.7(b)(2)(i)(A), which authorizes a financial assistance award to be made if the activity to be funded is necessary to the satisfactory completion of, or is a continuation or renewal of, an activity presently being funded by DOE or another federal agency, and for which competition for support would have a significant adverse effect on continuity or completion of the activity; AL gives notice of its plans to award a one-time grant to New Mexico Highlands University, Las Vegas, New Mexico, for the enhancement of math and science teacher education. The total estimated cost of the project is $10,000. No cost sharing is anticipated. The distribution and availability of funds is subject to budget limitations. The public purpose to be served by this award is to assist in the critical need for the development of human resources to meet the needs of the Department's environmental challenges by aggressively pursuing environmental management education initiatives through college and university curriculum development. AL is providing this assistance under the auspices of the Department's Environmental Restoration and Waste Management Five-Year Plan. Specific authority is Public Law 101–510, section 3161, DOE Science Education Enhancement Act of 1990. The particular significance of the activity to be funded is the enhancement of math and science teacher training required for the satisfactory completion of AL's existing Extended Education Programs in economically disadvantaged secondary school districts selected by the New Mexico State Department of Education.

FOR FURTHER INFORMATION CONTACT: William L. McCullough, Department of Energy Albuquerque Field Office, Contracts and Procurement Division, P.O. Box 5400, Albuquerque, NM 87185–5400, Telephone: (505) 845–6442.

Issued in Albuquerque, New Mexico on September 8, 1992.

Richard A. Marquez,

Assistant Manager for Management and Administration.

[FR Doc. 92–22815 Filed 9–18–92; 8:45 am]

BILLING CODE 6450–01–M

Noncompetitive Financial Assistance Award

AGENCY: Albuquerque Field Office (AL), Department of Energy (DOE).

ACTION: Notice of noncompetitive financial assistance application for a grant to the New Mexico State University.

SUMMARY: Based upon a determination pursuant to 10 CFR § 600.7(b)(2)(i)(A), which authorizes a financial assistance award to be made if the activity to be funded is necessary to the satisfactory completion of, or is a continuation or renewal of, an activity presently being funded by DOE or another federal agency, and for which competition for support would have a significant adverse effect on continuity or completion of the activity; AL gives notice of its plans to award a one-time grant to New Mexico State University, Las Cruces, New Mexico, for the enhancement of math and science teacher education. The total estimated cost of the project is $10,000. No cost sharing is anticipated. The distribution and availability of funds is subject to

budget limitations. The public purpose to be served by this award is to assist in the critical need for the development of human resources to meet the needs of the Department's environmental challenges by aggressively pursuing environmental management educational initiatives through college and university curriculum development. AL is providing this assistance under the auspices of the Department's Environmental Restoration and Waste Management Five-Year Plan. Specific authority is Public Law 101–510, section 3161, DOE Science Education Enhancement Act of 1990. The particular significance of the activity to be funded is the enhancement of math and science teacher training required for the satisfactory completion of AL's existing Extended Education Programs in economically disadvantaged secondary school districts selected by the New Mexico State Department of Education.

FOR FURTHER INFORMATION CONTACT: William L. McCullough, Department of Energy Albuquerque Field Office, Contracts and Procurement Division, P.O. Box 5400, Albuquerque, NM 87185–5400, Telephone: (505) 845–6442.

Issued in Albuquerque, New Mexico on September 8, 1992.

Richard A. Marquez,

Assistant Manager for Management and Administration.

[FR Doc. 92–22817 Filed 9–18–92; 8:45 am]

BILLING CODE 6450–01–M

Noncompetitive Financial Assistance Award

AGENCY: Albuquerque Field Office (AL), Department of Energy (DOE).

ACTION: Notice of noncompetitive financial assistance application for a grant to the University of New Mexico.

SUMMARY: Based upon a determination pursuant to 10 CFR 600.7(b)(2)(i)(A), which authorizes a financial assistance award to be made if the activity to be funded is necessary to the satisfactory completion of, or is a continuation or renewal of, an activity presently being funded by DOE or another federal agency, and for which competition for support would have a significant adverse effect on continuity or completion of the activity; AL gives notice of its plans to award a one-time grant to the University of New Mexico, Albuquerque, New Mexico, for the enhancement of math and science teacher education. The total estimated cost of the project is $10,000. No cost sharing is anticipated. The distribution and availability of funds is subject to budget limitations. The public purpose to be served by this award is to assist in the critical need for the development of human resources to meet the needs of the Department's environmental challenges by aggressively pursuing environmental management educational initiatives through college and university curriculum development. AL is providing this assistance under the auspices of the Department's Environmental Restoration and Waste Management Five-Year Plan. Specific authority is Public Law 101–510, section 3161, DOE Science Education Enhancement Act of 1990. The particular significance of the activity to be funded is the enhancement of math and science teacher training required for the satisfactory completion of AL's existing Extended Education Programs in economically disadvantaged secondary school districts selected by the New Mexico State Department of Education.

FOR FURTHER INFORMATION CONTACT: William L. McCullough, Department of Energy Albuquerque Field Office, Contracts and Procurement Division, P.O. Box 5400, Albuquerque, NM 87185–5400, Telephone: (505) 845–6442.

Issued in Albuquerque, New Mexico on September 8, 1992.

Richard A. Marquez,

Assistant Manager for Management and Administration.

[FR Doc. 92–22819 Filed 9–18–92; 8:45 am]

BILLING CODE 6450–01–M

Chicago Support Office; Award Based on Acceptance of an Unsolicited Application; National Industrial Competitiveness Through Environment, Energy and Economics (NICE ³)

AGENCY: Department of Energy.

ACTION: Notice of Noncompetitive Financial Assistance Award.

SUMMARY: The Department of Energy (DOE), Chicago Field Office, through the Chicago Support Office, announces that, pursuant to the DOE Financial Assistance Rules 10 CFR 600.14(f), DOE intends to award a grant to the Ohio Department of Development for the promotion of the National Industrial Competitiveness through Environment, Energy and Economics (NICE ³). The anticipated overall objective is to improve energy efficiency and reduce environmental emissions of industry.

SUPPLEMENTARY INFORMATION: The National Industrial Competitiveness through Environment, Energy and Economics (NICE ³) project is a joint effort program between DOE and the Environmental Protection Agency (EPA) to award matching grants to large industrial States where industry is both energy-intensive and generates substantial amounts of waste.

Three Ohio industries were selected by a review committee comprised of representatives from DOE, EPA, and the Department of Commerce to participate in this program. Funding will be funneled through the Ohio Department of Development to the three industries.

The three industries projects are as follows: AAP St. Marys Corporation will introduce a new, more efficient technology for remelting cast aluminum chips produced during the production of aluminum wheels. Fasson Films Division, Avery Dennison Division, will modify a production process by substituting an ultra-violet curing system for an existing solvent-based system. Western Reserve Manufacturing Company, Inc. will eliminate corrosive, polluting waste gases while improving the quality of casting barstock, employed in the manufacturing of bearings, bushings and other critical machinery parts.

Therefore, the grant application is being accepted because DOE knows of no other organization that is conducting or planning to conduct this type of effort in promoting these improved technologies that will result in improved energy efficiency and reduced environmental emissions of industry.

The project period for the grant award is 12-months, and is expected to begin October 1, 1992. DOE plans to provide funding in the amount of $681,000 for this project period.

FOR FURTHER INFORMATION CONTACT: Sharon M. Gill, U.S. Department of Energy, Chicago Support Office, 9800 South Cass Avenue, Argonne, IL 60439, (708) 252–2049.

Issued in Chicago, Illinois on September 11, 1992

Johnnie D. Greenwood,

Director, Contracts Division.

[FR Doc. 92–22823 Filed 9–18–92; 8:45 am]

BILLING CODE 6450–01–M

Research Consortium on Fractured Petroleum Reservoirs

AGENCY: U.S. Department of Energy, Bartlesville Project Office.

ACTION: Notice of non-competitive financial assistance (renewal grant) award with the Reservoir Engineering Research Institute.

SUMMARY: The Department of Energy (DOE), Bartlesville Project Office (BPO) announces that pursuant to 10 CFR 600.7(b)(2)(i) criteria (B) and (D), it

intends to make a non-competitive Financial Assistance (Grant) award through the Pittsburgh Energy Technology Center to Reservoir Engineering Research Institute.

SUPPLEMENTARY INFORMATION:

Awardee: Reservoir Engineering Research Institute.

Grant Number: DE–FG22–91BC14835.

Grant Value: $310,000.00 with the DOE funding of $50,000.00.

SCOPE: Based upon the authority of 10 CFR 600.7(b)(2)(i) criteria (b) and (d), the objective of this proposed project is to provide financial assistance which will permit the DOE, Bartlesville Project Office, to become a member in a Consortium Agreement, conducted by the Reservoir Engineering Research Institute, for a research consortium to carry out in-depth studies of experimental, theoretical, and computational aspects of multipase flow in fractured porous media.

The purpose of this project is to develop a full understanding of the role of capillary, gravity, diffusive, and viscous forces in the flow of fluids in fractured porous media. The research will be subdivided into two tasks. Task I, Experimental research, will examine the reinfiltration process which is a reflection of capillary, gravity, and viscous forces in flow through fractured porous media, Task II, Experiments, will quantify mainly diffusive forces infractured porous media. A plan will be presented to conduct experiments to quantify the physics of multiphase flow in fractured porous media. Increased research activities in 1992 will include (1) new experiments to study viscous-cross flow in fractured porous media, (2) miscible displacement experiments to include both gas-gas, and gas-liquid systems, and (3) two-phase oil-water flow in the fractures.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–118, Pittsburgh, PA 15236, Attn: Dona G. Sheehan, Telephone: AC 412/892–5918.

Dated: September 11, 1992.

Carroll A. Lambton,

Director, Acquisition and Assistance Division, Pittsburgh Energy Technology Center.

[FR Doc. 92–22822 Filed 9–18–92; 8:45 am]

BILLING CODE 6450–01–M

Noncompetitive Financial Assistance Award

AGENCY: Albuquerque Field Office (AL), Department of Energy (DOE).

ACTION: Notice of noncompetitive financial assistance application for a grant to the college of Santa Fe.

SUMMARY: Based upon a determination pursuant to 10 CFR 600.7(b)(2)(i)(A), which authorizes a financial assistance award to be made if the activity to be funded is necessary to the satisfactory completion of, or is a continuation or renewal of, an activity presently being funded by DOE or another federal agency, and for which competition for support would have a significant adverse effect on continuity or completion of the activity; AL gives notice of its plans to award a one-time grant to the College of Santa Fe, Santa Fe, New Mexico, for the enhancement of math and science teacher education. The total estimated cost of the project is $10,000. No cost sharing is anticipated. The distribution and availability of funds is subject to budget limitations. The public purpose to be served by this award is to assist in the critical need for the development of human resources to meet the needs of the Department's environmental challenges by aggressively pursuing environmental management educational initiatives through college and university curriculum development. AL is providing this assistance under the auspices of the Department's Environmental Restoration and Waste Management Five-Year Plan. Specific authority is Public Law 101–510, section 3161, DOE Science Education Enhancement Act of 1990. The particular significance of the activity to be funded is the enhancement of math and science teacher training required for the satisfactory completion of AL's existing Extended Education Programs in economically disadvantaged secondary school districts selected by the New Mexico State Department of Education.

FOR FURTHER INFORMATION CONTACT: William L. McCullough, Department of Energy Albuquerque Field Office, Contracts and Procurement Division, P.O. Box 5400, Albuquerque, NM 87185–5400, Telephone: (505) 845–6442.

Issued in Albuquerque, New Mexico on September 8, 1992.

Richard A. Marquez,

Assistant Manager for Management and Administration.

[FR Doc. 92–22818 Filed 9–18–92; 8:45 am]

BILLING CODE 6450–01–M

Nevada Field Office; Issuance of a Financial Assistant Solicitation; Restricted Eligibility

AGENCY: Nevada Field Office (DOE/NV), Department of Energy.

ACTION: Notice of issuance of a financial assistance solicitation; restricted eligibility.

SUMMARY: A notice was previously published in the **Federal Register** dated July 20, 1992, (57 FR 32006) of the availability of Financial Assistance Solicitation Number DE–PS08–92NV11194 for the Science and Technology Education Program. The purpose of this notice is to amend the July 20, 1992, notice to include the following: (1) Geographic restriction to include educational institutions, 26 U.S.C. 501(c)(3), tax-exempt organizations, and not-for-profit entities (including professional and/or technical associations) located in the State of Nevada, Counties of Beaver, Iron, and Washington in the State of Utah and Inyo County in the State of California; (2) to emphasize that the Department of Energy is particularly interested in those programs and activities that increase student and teacher interest in environmental science, technology, and environment issues; (3) that a cost sharing requirement of 10 percent by applicants is mandatory; (4) to revise the release date of the solicitation from "July 13, 1992" to "on or about September 9, 1992"; (5) to include that proposals will be due on or about October 23, 1992; and (6) to revise the beginning date of the project period for grants from "September 15, 1992" to "November 15, 1992."

Applicants located in the above geographic locations who have previously requested a copy of the solicitation are currently on a mailing list and need not respond to this notice.

Issued in Las Vegas, Nevada, on September 1, 1992.

Nick C. Aquilina,

Manager, DOE Nevada Field Office.

[FR Doc. 92–22814 Filed 9–18–92; 8:45 am]

BILLING CODE 6450–01–M

Field Office—Oak Ridge; Determination of Noncompetitive Financial Assistance

AGENCY: Department of Energy (DOE).

ACTION: Notice.

SUMMARY: DOE announces that pursuant to 10 CFR 600.7(b)(2)(i), it intends to issue on a noncompetitive basis a renewal to Vanderbilt University, Nashville, TN, to continue providing academic training and sufficient on-the-job training to interns to enable them to function as professionals in the management of waste resulting from the

decontamination and decommissioning of nuclear facilities. The period of performance for the renewal will be one year. The estimated cost is $345,000.

PROCUREMENT REQUEST NO.: 05-920R21479.001.

PROJECT SCOPE: The grant, awarded August 1, 1984, was as a result of an unsolicited application. Vanderbilt University's July 17, 1992 application is for renewal of the existing grant. This internship program provides six people a year with the proper academic training and sufficient on-the-job training to enable them to function as professionals in the management of waste resulting from the decontamination and decommissioning of nuclear facilities. The grant, which funds a Radioactive Waste Management Internship Program, plays a major role in meeting the objective of providing young, trained personnel to enter the fields of environmental restoration and radioactive waste management. At the end of two years of academic work, the students are assigned for three months to a DOE-owned contractor-operated facility or to a DOE prime contractor to gain first-hand experience in the field. To date, most of the graduating students have chosen to work in the areas for which they have trained, thereby meeting the primary objective of the program. In view of the nation's environmental consciousness related to cleanup of Department of Energy facilities, it is clear that the increase in the number of skilled personnel trained in radioactive waste management as a result of the Vanderbilt University Internship Program will aid in strengthening the Department's position of assuring that contaminated sites are properly decontaminated and decommissioned in an efficient and timely manner. In order to maintain continuity of a long-range program that has entered its eighth year, eligibility for renewal of this award is restricted to Vanderbilt University.

FOR FURTHER INFORMATION CONTACT: Rick Korynta, USDOE, Oak Ridge Field Office, P.O. Box 2001, Oak Ridge, TN 37831-8622, (615) 576-0951.

Issued in Oak Ridge, TN on September 10, 1992.

Peter D. Dayton,

Director, Procurement and Contracts Division, Oak Ridge Operations Office.

[FR Doc. 92-22821 Filed 9-18-92; 8:45 am]

BILLING CODE 6450-01-M

Noncompetitive Financial Assistance Award

AGENCY: Department of Energy (DOE) Albuquerque Field Office (AL).

ACTION: Notice of noncompetitive financial assistance application for a grant to the Western New Mexico University.

SUMMARY: Based upon a determination pursuant to 10 CFR 600.7(b)(2)(i)(A), which authorizes a financial assistance award to be made if the activity to be funded is necessary to the satisfactory completion of, or is a continuation or renewal of, an activity presently being funded by DOE or another federal agency, and for which competition for support would have a significant adverse effect on continuity or completion of the activity; AL gives notice of its plans to award a one-time grant to Western New Mexico University, Silver City, New Mexico, for the enhancement of math and science teacher education. The total estimated cost of the project is $10,000. No cost sharing is anticipated. The distribution and availability of funds is subject to budget limitations. The public purposes to be served by this award is to assist in the critical need for the development of human resources to meet the needs of the Department's environmental challenges by aggressively pursuing environmental management educational initiatives through college and university curriculum development. AL is providing this assistance under the auspices of the Department's Environmental Restoration and Waste Management Five-Year Plan. Specific authority is Public Law 101-510, section 3161, DOE Science Education Enhancement Act of 1990. The particular significance of the activity to be funded is the enhancement of math and science teacher training required for the satisfactory completion of AL's existing Extended Education Programs in economically disadvantaged secondary school districts selected by the New Mexico State Department of Education.

FOR FURTHER INFORMATION CONTACT: William L. McCullough, Department of Energy Albuquerque Field Office, Contracts and Procurement Division, P.O. Box 5400, Albuquerque, NM 87185-5400, Telephone: (505) 845-6442.

Issued in Albuquerque, New Mexico on September 8, 1992.

Richard A. Marquez,

Assistant Manager for Management and Administration.

[FR Doc. 92-22820 Filed 9-18-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. TM93-1-20-001]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

September 15, 1992.

Take notice that Algonquin Gas Transmission Company ("Algonquin"), on September 3, 1992, tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 and Original Volume No. 2, substitute tariff sheets listed in Attachment A to the filing, and proposed to be effective October 1, 1992.

Algonquin states that pursuant to Section 32 of the General Terms and Conditions of Algonquin's FERC Gas Tariff, Algonquin is filing the tariff sheets listed in Attachment A to track the decrease in the Commission's Annual Charge Adjustment Surcharge for the Fiscal Year 1993.

Algonquin states that the net effect of the instant filing is to decrease the commodity charge by 0.01¢ per MMBtu for Rate Schedules F-1, F-2, F-3, F-4, WS-1, I-1, E-1, I-2, T-1, T-LG, T-X, AFT-1, AFT-3, AFT-4, AIT-1, PSS-T, FTP, X-33, X-35 and X-37 and to increase the third party injection rate in Rate Schedules STB and SS-III by the same amount.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before September 22, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22707 Filed 9-18-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ93-1-4-000 and TM93-1-4-000]

Granite State Gas Transmission, Inc; Proposed Changes in Rates

September 15, 1992.

Take notice that on September 9, 1992, Granite State Gas Transmission, Inc.

(Granite State), 300 Friberg Parkway, Westborough, Massachusetts 01581-5039, tendered for filing with the Commission the revised tariff sheets listed below in its FERC Gas Tariff, Second Revised Volume No. 1 and First Revised Volume No. 2, containing changes in rates for effectiveness on October 1, 1992.

Second Revised Volume No. 1

Eighteenth Revised Sheet No. 21
Seventh Revised Sheet No. 22
Seventeenth Revised Sheet No. 25

First Revised Volume No. 2

Second Revised Sheet No. 8
Third Revised Sheet No. 18
First Revised Sheet No. 18-A
Fifth Revised Sheet No. 28
Fourth Revised Sheet No. 29
Third Revised Sheet No. 39
First Revised Sheet No. 39A
Second Revised Sheet No. 63
Second Revised Sheet No. 73

According to Granite State, the proposed rate changes reflect its projected purchase gas costs and sales for the fourth quarter of 1992 and other adjustments to sales, storage and transportation services to reflect the effect of the Annual Charges Adjustment for the fiscal year beginning October 1, 1992.

It is stated that the proposed rate changes are applicable to Granite State's jurisdictional services rendered to Bay State Gas Company and Northern Utilities, Inc. Granite State further states that copies of its filing were served upon its customers and the regulatory commissions of the States of the Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 22, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22714 Filed 9-18-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP92-684-000]

Mississippi River Transmission Corp.; Request Under Blanket Authorization

September 11, 1992.

Take notice that on September 1, 1992, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP92-684-000 a request pursuant to § 157.205 of the Commission's Regulations for permission and approval to abandon a lateral line and sales tap used to serve St. Louis Steel Products, Inc. (St. Louis Steel), a direct industrial customer, and to abandon the related firm sales service to St. Louis Steel located in St. Louis, Missouri under MRT's blanket certificate issued in Docket No. CP82-489-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

MRT proposes to abandon a lateral line, sales tap and sales service to St. Louis Steel at its manufacturing complex located in St. Louis, Missouri. MRT states that, in the past, it provided firm sales service to St. Louis Steel through an existing four inch diameter service line (Line A-51) and sales tap. MRT states that St. Louis Steel has completely and permanently ceased its operations and demolished its St. Louis manufacturing complex. No other customers are served by this lateral and sales tap, it is indicated. MRT states that St. Louis Steel has consented, in writing, to MRT's abandonment of its sales service obligation. MRT has already abandoned the Line A-51 in place and removed the meter used to serve St. Louis Steel as part of a miscellaneous rearrangement of facilities occasioned by the relocation of a railroad track, it is stated.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22706 Filed 9-18-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-1281-022 and CP92-0367-001]

Natural Gas Pipeline Company of America; Changes in FERC Gas Tariff

September 15, 1992.

Take notice that on September 9, 1992, Natural Gas Pipeline Company of America (Natural) submitted for filing tariff sheets to be part of its FERC Gas Tariff, Third Revised Volume No. 1, to be effective on the dates indicated in the filing.

Natural states that a portion of the tariff sheets were submitted in compliance with the Commission's order issued November 19, 1990 in Docket No. CP89-1281-000, *et al.*

Natural states that the proposed tariff sheets supersede the sheets filed in Docket No. RP92-23-000 in compliance with that order which were based on incomplete information concerning service agreement dates and their related termination dates.

Natural further states that another portion of the tariff sheets submitted were submitted in compliance with Ordering Paragraph (A) of the Commission's order issued August 5, 992 in Docket No. CP92-367-000.

Natural states that it has submitted the present tariff sheets to reflect the appropriate cancellations of its Rate Schedule MS-2 storage services and specifically the abandonments authorized for certain of its customers.

Natural further states that the tariff sheets submitted also reflect the continuation of storage services provided by Natural for the remaining ten (10) customers under Natural's Rate Schedule MS-2 via the renewal of these customers' service agreements within previously certificated levels.

Natural requests waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets submitted to become effective as indicated by the November 19th order and the August 5th order as well as dates previously authorized by the Commission in earlier of Natural's proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance

with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before September 22, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22716 Filed 9-18-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-111-006]

North Penn Gas Co.; Tariff Change

September 15, 1992.

Take notice that on September 4, 1992 North Penn Gas Company (North Penn) tendered for filing the following tariff sheets with the requested effective dates:

	Effective Date
Fifth Revised Sheet No. 1	August 5, 1992.
First Revised Sheet No. 2	August 5, 1992.
First Revised Sheet No. 3	August 5, 1992.
Thirteenth Revised Sheet No. 3A	October 1, 1992.
Forth-first Revised Sheet No. 4	August 5, 1992.
Third Revised Sheet No. 10	August 5, 1992.
First Revised Sheet No. 11	August 5, 1992.
Third Revised Sheet No. 15H	October 1, 1992.
Fourth Revised Sheet No. 15H1	October 1, 1992.
Second Revised Sheet No. 15H1a	October 1, 1992.
Original Sheet No. 15H1b	June 3, 1992.
First Revised Sheet No. 15H(6)	August 5, 1992.

According to North Penn, the above-listed sheets are submitted in compliance with orders issued in Docket Nos. RP91-111, et al., which approved a settlement filed in such dockets on March 13, 1992. Specifically, North Penn states, in those orders the Commission directed North Penn to file tariff sheets that are necessary in light of its new status as a Hinshaw pipeline; to implement the take-or-pay surcharge set forth in the settlement; and to close out North Penn's Account 191.

The specific take-or-pay surcharge, which is proposed to take effect October 1, 1992, is 2.39¢ per Mcf. North Penn also includes in the filing documents entitled appendix B and appendix D which, North Penn states, are revised workpapers underlying its proposed take-or-pay surcharge.

In the filing North Penn requests waiver of any regulations as may be required to permit the tariff sheets to become effective as requested.

North Penn states that copies of the filing are being mailed to each of the persons listed on the service list in Docket Nos. RP91-111, et al.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before September 22, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22715 Filed 9-18-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-166-012]

Northwest Pipeline Corp.; Change in FERC Gas Tariff

September 15, 1992.

Take notice that on September 8, 1992, Northwest Pipeline Corporation (Northwest) tendered the following for filing and acceptance to be a part of its FERC Gas Tariff.

Second Revised Volume No. 1

Pro Forma Sheet No. 10
Pro Forma Sheet No. 11

Northwest states that the purpose of the filing is to file revised pro forma tariff sheets and rates to reflect the removal of costs from sales rates associated with gathering and production facilities to be abandoned pursuant to permission granted in Docket No. CP91-2392-000. This filing is being made in compliance with Commission order issued August 24, 1992 in Docket No. RP91-166-010.

Northwest states that copies of the filing is being served on all parties of record in Docket No. CP91-2392 and RP91-166 and to all affected customers and regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before September 22, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22713 Filed 9-18-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA92-1-55-004]

Questar Pipeline Co.; Tariff Filing

September 15, 1992.

Take notice that on August 28, 1992, Questar Pipeline Company tendered for filing and acceptance First Revised Sheet No. 50 and Original Sheet No. 50A to its FERC Gas Tariff, Original Volume No. 1, to be effective October 1, 1992.

Questar states that the purpose of this filing is to comply with the Commission letter order issued May 29, 1992, in Docket No. TA92-1-55-000 which directed Questar to revise its PGA tariff provision to reflect that its PGA sales rates, both its current adjustment and surcharge rate components, will not reflect costs associated with non-sales service fuel use and lost and unaccounted-for gas.

Questar states that a hard copy of this filing has been served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before September 22, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22711 Filed 9-18-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP92-695-000]

Texas Gas Transmission Corp.; Application

September 14, 1992.

Take notice that on September 8, 1992, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No.

CP92-695-000 an application pursuant to section 7(b) of the Natural Gas Act for authorization to abandon by removal a meter station used to perform transportation service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Gas states that the meter station proposed to be abandoned is a three-inch meter station known as the Morringsport-Cedar Grove Meter Station located on Texas Gas' Sharon-Carthage 20-inch pipeline in Caddo Parish, Louisiana. It is stated that the meter station was originally placed into service on October 23, 1990, as an interconnection between Texas Gas and Mooringsport Energy Transmission Corporation (Mooringsport), a producer, to transport gas for various shippers. Texas Gas states that Mooringsport's production behind this meter station is now depleted and the Mooringsport has plugged and abandoned the well associated with this production. It is indicated that Mooringsport has informed Texas Gas that it would no longer deliver gas to Texas Gas at that point.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 5, 1992, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practices and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Texas Gas to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22705 Filed 9-18-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-137-006]

Transcontinental Gas Pipe Line Corp. Tariff Filing

September 15, 1992.

Take notice that Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing on August 31, 1992 certain revised tariff sheets to Third Revised Volume No. 1 and Original Volume No. 2 of its FERC Gas Tariff, which tariff sheets are listed in Appendix A attached to the filing. The proposed effective date of the revised tariff sheets is September 1, 1992.

TGPL states that the purpose of the instant filing is to place into effect on September 1, 1992 upon the conclusion of the suspension period in this proceeding, the rates filed herein on March 2, 1992, as adjusted (1) to eliminate the costs associated with facilities not in service as of July 31, 1992 and (2) to incorporate intervening filings which have been approved by, or are pending before the Commission to become effective subsequent to the March 2, 1992 filing in this docket. TGPL states that it is resubmitting the filed language contained in section 5.8 of Rate Schedules FT and IT (Procedures for Resolution of Historical Imbalances) as pro forma tariff language. Also, TGPL states it is proposing to reserve section 3.6 of Rate Schedule IT and eliminate § 28.2(g) from the General Terms and Conditions of its Third Revised Volume No. 1 Tariff in recognition of the expiration on September 1, 1992 of TGPL's authority to broker its firm transportation rights on consenting upstream pipelines.

TGPL states that copies of the filing are being mailed to customers, state commissions and other interested parties to Docket No. RP92-137.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before September 22, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22708 Filed 9-18-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-230-000]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

September 15, 1992.

Take notice that Trunkline Gas Company (Trunkline) on September 4, 1992 tendered for filing the revised tariff sheets to its FERC Gas Tariff, Original Volume No. 2:

First Revised Fourth Revised Sheet No. 2496.1
First Revised Fourth Revised Sheet No. 2553.1

Trunkline proposes that these sheets become effective April 1, 1992.

Trunkline states that these revised tariff sheets are being filed to amend Rate Schedules T-61 and T-62 for the transportation of natural gas provided jointly by Trunkline and Panhandle Eastern Pipe Line Company (Panhandle) on behalf of United Cities Gas Company (United Cities) and Columbia Gas Transmission Corporation (Columbia Gas), respectively, to reflect Panhandle's current transportation rates as approved in Panhandle's Docket Nos. RP91-229-003, 004 and 005 by the Commission's Order On Report Filed Pursuant to Opinion No. 369 And Motion Rate And Compliance Filing issued June 1, 1992. In these joint transportation arrangements, Panhandle, acting as an accounting conduit, provides the billing on behalf of Trunkline.

Trunkline respectfully requests waiver of § 154.22 of the Commission's Regulations and, to the extent required, that the Commission grant any other waivers as may be necessary for the acceptance of the revised tariff sheets.

Trunkline states that copies of the filing is being served on Panhandle, United Cities, Columbia Gas and the applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before

September 22, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22709 Filed 9-18-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-48-006]

Viking Gas Transmission Co.; Compliance Filing

September 15, 1992.

Take notice that on September 3, 1992, Viking Gas Transmission Company ("Viking") filed Third Substitute Second Revised Sheet No. 65 to be effective June 1, 1992.

Viking states that the purpose of this filing is to further comply with the order issued by the Commission on July 2, 1992 in the above-referenced docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before September 22, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22712 Filed 9-18-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA93-1-35-000]

West Texas Gas, Inc.; Filing

September 15, 1992.

Take notice that on September 2, 1992, West Texas Gas, Inc. ("WTG") filed Third Revised Sheet No. 4 to its FERC Gas Tariff, First Revised Volume No. 1, proposed to be effective October 1, 1992. Third Revised Sheet No. 4 and the accompanying explanatory schedules constitute WTG's annual PGA filing submitted in accordance with the Commission's purchased gas adjustments regulations.

WTG states copies of the filing were served upon WTG's customers and interested state commissions.

On September 3, 1992, WTG supplemented its filing with a request pursuant to § 154.306 of the Commission's regulations for specific Commission approval for surcharge recovery of certain actual gas costs that exceeded its forecasted gas costs during the last of the four test intervals during the deferral period. WTG states that the amount for which approval is requested is $86,487.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such motions or protests should be filed on or before September 30, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22710 Filed 9-18-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

Basic Energy Sciences Advisory Committee; Meeting

Pursuant to the provision of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Basic Energy Sciences Advisory Committee (BESAC)

Date and Time: October 1, 1992) 9 a.m.-5 p.m.

Place: The Potomac Inn, 3 Research Court, I-270 & Shady Grove Road, Rockville, Maryland 20850.

Contact: Louis C. Ianniello, Department of Energy, Office of Basic Energy Sciences (ER-10), Office of Energy Research, Washington, DC 20585, Telephone: 301-903-3081.

Purpose of the Committee: To provide advice on a continuing basis to the Department of Energy (DOE) on the many complex scientific and technical issues that arise in the planning, management, and implementation of the research program for the Office of Basic Energy Sciences (BES).

Tentative Agenda: Briefings and discussions of: *October 1, 1992:*

- Draft 1992 BESAC Report.
- BES Program Management.
- Office of Program Analysis (OPA) Peer Review of BES Projects.
- Brookhaven Response to BESAC Questions.
- Public Comment (10 Minute Rule).

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact: Louis C. Ianniello at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonble provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, IE-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on September 15, 1992.

J. Rover Franklin,

Acting Advisory Committee Management Officer.

[FR Doc. 92-22824 Filed 9-18-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[Docket No. 92-113-NG, et al.]

Applications for Blanket Authorization to Import and Export Natural Gas; International Resource Management Corp., et al.

In the matter of International Resource Management Corp., Docket No. 92-113-NG; Libra Marketing Co., Docket No. 92-114-NG; Selkirk Cogen Partners, L.P., Docket No. 92-115-NG; Tristar Gas Marketing Co., Docket No. 92-116-NG; Union Pacific Fuels, Inc., Docket No. 92-117-NG; Vector Energy (U.S.A.) Inc., Docket No. 92-118-NG.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of applications.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that the applications identified in the attached appendix were filed pursuant to section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. The applicants request blanket authorization to import and/or export natural gas from and to Canada and/or Mexico on a short-term or spot market basis over a period of two years beginning on the date of the first delivery. The proposed imports and exports would take place at any point on the borders of the United

States where existing natural gas pipeline facilities are located.

Copies of these applications are available for inspection and copying in the Office of Fuels Programs docket room, 3F-056, at the below address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. You are invited to submit protests, motions to intervene, notices of intervention, and written comments with respect to any docket listed above.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed in the specific docket at the address listed below no later than 4:30 p.m., eastern time, October 21, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: P.J. Fleming, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4819.

SUPPLEMENTARY INFORMATION: Notice of these applications is consolidated for administrative reasons, but DOE is conducting separate proceedings and will issue individual decisions on each application. Any protestor, intervenor, commenter, or other respondent who wishes to participate in more than one docket must submit a separate filing in each docket. DOE's decision on applications for import authority will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the market served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications DOE considers domestic need for the gas and any other issue determined to be appropriate, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose any of these applications, should comment on these issues as they relate to the requested import/export authorizations. The applicants assert that their proposals are in the public interest. Parties opposing any of these applications bear the burden of overcoming these assertions.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in these proceedings until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to a proceeding and to have written comments considered as the basis for any decision on an application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to an application will not serve to make the protestant a party to that proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on an application. The filing of an intervention with respect to a particular docket will not serve to make the person a party in any other docket. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed to the specific docket with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on an application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

Issued in Washington, DC, on September 11, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

APPENDIX

Filing date	Applicant name and docket number	Two-year maximum			Comments
		Import volume (Bcf)	Export volume (Bcf)	Import/export volume * (Bcf)	
8/27/92	International Resource Management Corp. (92-113-NG).	50.0	50.0		Imports/Exports from/to Canada and Mexico.
9/02/92	Libra Marketing Company (92-114-NG)		36.5		Exports to Mexico.
9/03/92	Selkirk Cogen Partners, L.P. (92-115-NG)			57.0	Imports/Exports from/to Canada.
9/04/92	Tristar Gas Marketing (92-116-NG)	73.0	73.0		Imports from Canada and Exports to Mexico.
9/08/92	Union Pacific Fuels, Inc. (92-117-NG)		146.0		Exports to Mexico.
9/11/92	Vector Energy (U.S.A.) Inc. (92-118-NG)	30.0			Imports from Canada.

* Represents combined total of imports and exports.

[FR Doc. 92-22827 Filed 9-18-92; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. FE C&E 92-15; Certification Notice—107]

Filing Certification of Compliance; Coal Capability of New Electric Powerplant; Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Nissequogue Cogen Partners has submitted a coal capability self-certification pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of the self-certification filing are available for public inspection upon request in the Office of Fuels Programs, Fossil Energy, room 3F-056, FE-52, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russel at (202) 586-9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) on the day it is filed with the Secretary. The Secretary is required to publish a notice in the Federal Register that a certification has been filed. The following owner/operator of a proposed new baseload powerplant has filed a self-certification in accordance with section 201(d).

Owner: Nissequogue Cogen Partners, c/o CEA Stony Brook, Inc., Ridgewood, New Jersey.

Operator: CEA Stony Brook, Inc.

Location: The State University of New York at Stony Brook, Stony Brook, New York.

Plant Configuration: Open Cycle cogeneration facility.

Capacity: 43 megawatts.

Fuel: Natural gas.

Purchasing Utility: Long Island Lighting Company.

Expected In-Service Date: April 30, 1994.

Issued in Washington, DC on September 10, 1992.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-22828 Filed 9-18-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Cases Filed; week of August 21 Through August 28, 1992

During the week of August 21 through August 28, 1992, the appeals and applications for exception or other relief listed in the appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: September 15, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of August 21 through August 28, 1992]

Date	Name and location of applicant	Case No.	Type of submission
Aug. 24, 1992	CIC Research, Inc., San Diego, CA	LFA-0234	Appeal of an information request denial. *If granted:* The July 31, 1992 Freedom of Information Request Denial issued by the Bonneville Power Administration would be rescinded, and CIC Research, Inc. would receive access to information related to their proposal and the award of a contract resulting from BPA's Request for Proposal No. DE-RP79-92BP25174.
Aug. 24, 1992	Citronelle-Mobile Gathering/Globe Manufacturing Co. *et al.*, Mobile, AL	RR336-1	Request of modification/rescission in the Citronelle-Mobile Gathering Refund proceeding. *If granted:* The Decision and Order (Case No. RF336-1 *et al.*) issued to Globe Manufacturing Co. *et al.* would be modified regarding the firm's application for refund submitted in the Citronelle-Mobile Gathering Refund proceeding.
Aug. 24, 1992	Gallup-Silkworth Petroleum Products, Ann Arbor, MI.	LEE-0044	Exception to the reporting requirements. *If granted:* Gallup-Silkworth Petroleum Products would not be required to file Form EIA-782-B, "Resellers'/Retailers' Petroleum Products Sales Report."
Aug. 26, 1992	U.S. News & World Report, Washington, DC	LFA-0235	Appeal of an information request denial. *If granted:* The July 23, 1992 Freedom of Information Request Denial issued by the Oak Ridge Field Office would be rescinded, and U.S. News & World Report would receive access to DOE information.
Aug. 27, 1992	McGraw-Hill Nuclear Publications, New York, NY	LFA-0236	Appeal of an information request denial. *If granted:* McGraw-Hill Nuclear Publications would receive access to correspondence between former Secretary of Energy Donald Hodel and persons, agencies, companies or organizations outside the Department of Energy from January 1993 through February 1985 regarding DOE's view on whether it has a legal responsibility to accept spent nuclear fuel by January 31, 1998.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of August 21 through August 28, 1992]

Date	Name and location of applicant	Case No.	Type of submission
Aug. 27, 1992	McGraw-Hill Nuclear Publications, New York, NY	LFA-0237	Appeal of an information request denial. *If granted:* McGraw-Hill Nuclear Publications would receive access to correspondence between former Secretary of Energy John Herrington and person, agencies, companies or organizations outside the Department of Energy from February 1985 through December 1988 regarding DOE's view on whether it has a legal responsibility to accept spent nuclear fuel by January 31, 1998.
Aug. 24, 1992	Texaco/Village of LaGrange, Washington, DC	RR321-115	Request for modification/rescission in the Texaco Refund Proceeding. *If granted:* The December 6, 1990 Decision and Order (Case No. RF321-4829) issued to Village of LaGrange would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.

REFUND APPLICATIONS RECEIVED

[Week of August 21 through August 28, 1992]

Date received	Name of refund proceeding/name of refund applicant	Case No.
8/24/92	NGL Supply, Inc	RF342-305.
8/24/92	Bootheel Petroleum Co., Inc	RF304-13256.
8/24/92	Fun Time, Inc	RF304-13257.
8/25/92	Ed & Marty Fuel Oil	RF304-13258.
8/25/92	Ed Edmistor	RF304-13259.
8/25/92	Boston Edison Company	RF326-326.
8/25/92	Herman Grand & Merlyn Smith	RF304-13260.
8/25/92	Sunset East Car Wash	RF304-13261.
8/25/92	Jack Goodrich Distributing	RF304-13262.
8/25/92	Herman Grand & Merlyn Smith	RF304-13263.
8/27/92	Cenex/Land O'Lakes	RF342-306.
8/28/92	Foster Gas & Appliance Co	RF304-13264.
8/21/92 thru 8/28/92	Texaco Refund, applications received	RF321-19148 thru FR321-19199.
8/28/92 thru 8/28/92	Gulf Oil Refund, applications received	RF300-20476 thru RF300-20501.
8/21/92 thru 8/28/92	Crude Oil, applications received	RF272-93819 thru RF272-93833.

[FR Doc. 92-22825 Filed 9-18-92; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Irrigation Efficiency Program, Notice of Proposed Cooperative Agreement

AGENCY: Western Area Power Administration, DOE.

ACTION: Irrigation Efficiency Program, Notice of Proposed Cooperative Agreement.

SUMMARY: The Department of Energy announces their intent, pursuant to 10 Code of Federal Regulations 600.7(b), to renew the cooperative agreement with the Colorado State Soil Conservation Board (CSSCB) to manage the irrigation efficiency testing program for the State of Colorado. This noncompetitive agreement will continue the testing and promotion of energy efficient irrigation practices. This program now is partially self-sustaining.

ADDRESSES: Requests for further information should be submitted to: Ms. Ruth Adams, Contract Specialist, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401, (303) 231-7709, Purchase Requisition Number: JJ-PR-17979.

SUPPLEMENTARY INFORMATION: In 1981, the Western Area Power Administration (Western) initiated a Conservation and Renewable Energy (C&RE) Program. Among the various program activities is an Irrigation Pump Testing and Equipment Loan Program with Western customers. The Loveland Area Office has been working with CSSCB to mutually benefit the State and the Federal Government by improving end-users' pump efficiencies and agricultural practices. Western's goals include the efficient utilization of energy resources and support programs such as this through its C&RE Program. CSSCB is committed to the economic success of agriculture in its State and is in the best position to manage this program. CSSCB and the United States Department of Agriculture's Soil Conservation Service have worked with local soil conservation districts in irrigation and water efficiency programs and will provide expertise and training to CSSCB personnel hired to fulfill the objectives of this program.

Solicitation Number: DE-FC65-92WJ05725.

Scope of Project

The Irrigation Efficiency Program is designed to develop and implement an efficiency testing activity within the State of Colorado. The program will include an appropriate management plan for the continuation of the program data collection and reporting responsibilities and coordination of those activities with other agencies involved in energy conservation such as local utilities and statewide organizations.

Issued at Golden, Colorado, August 25, 1992.

William H. Clagett,

Administrator.

[FR Doc. 92-22813 Filed 9-18-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4204-4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before October 21, 1992.

To obtain a copy of this ICR contact Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: National Estuary Program (ICR No. 1500.02).

Abstract: ICR 1500.02 requests a renewal of OMB clearance for the information collection requirements associated with the National Estuary Program. The National Estuary Program (NEP) is designed to support the long-term management of nationally significant estuaries by protecting and restoring them. Estuaries are designated as nationally significant following their nomination by the governor of a State or by the EPA Administrator. If EPA accepts an estuary into the NEP, the Agency convenes a Management Conference, to which Federal, State, and other interested parties are invited.

The Management Conferences assess the condition of the estuaries and summarize problems to be addressed, setting goals for the restoration or preservation of the estuaries. Each Management Conference produces a Comprehensive Conservation and Management Plan (CCMP) and oversees its implementation.

States and other applicants may apply for Federal funding to administer the Management Conferences and to study the problems of an estuary. Applicants must prepare an Annual Work Plan (AWP) before funding will be granted. The AWP must present the primary goals to be pursued as well as the general activities that are planned for a particular estuary. The AWP must also discuss funding for the projects.

Burden Statement: The average burden associated with the National Estuary Program is 175 hours per response. This total includes time for searching existing data sources, gathering the data needed, and completing and reviewing the collection of information.

Respondents: States.

Estimated Number of Respondents: 21.

Estimated Total Annual Burden on Respondents: 3675 hours.

Frequency of Collection: Annual.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street, SW.,Washington, DC 20460.

and

Matt Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW.,Washington, DC, 20503.

Dated: September 3, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92-22652 Filed 9-18-92; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4508-2]

Ambient Air Monitoring Reference and Equivalent Methods; Receipt of Application for Two Equivalent Method Determinations

Notice is hereby given that on August 14 and August 21, 1992, the Environmental Protection Agency received applications from Lear Siegler Measurement Controls Corporation, 74 Inverness Drive East, Englewood, Colorado 80112-5189, to determine if their Monitor Labs Models 9850 Sulfur Dioxide Analyzer and 9810 Ozone Analyzer should be designated by the Administrator of the EPA as equivalent methods under 40 CFR part 53. If, after appropriate technical study, the Administrator determines that either of these methods should be so designated, notice thereof will be given in a subsequent issue of the **Federal Register**.

John H. Skinner,

Acting Assistant Administrator for Research and Development.

[FR Doc. 92-22786 Filed 9-18-92; 8:45 am]

BILLING CODE 6560-50-M

[OPPTS-00124; FRL-4164-8]

Toxic Release Inventory Environmental Indicator; Notice of Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: EPA will hold a 1-day public meeting to discuss the development of the Toxic Release Inventory Environmental Indicator. This meeting will be held following the National Workshop on Environmental Indicators and Goal Setting hosted by the Council of State Governments' Center for the Environment and U.S. EPA's Office of Strategic Planning and Environmental Data. In connection with the public meeting the Agency has prepared a methodology paper that will be available at no charge through the address or telephone number given under FOR FURTHER INFORMATION CONTACT.

DATES: The meeting will take place on Wednesday, September 30, 1992, from 1 p.m. to 5 p.m. The National Workshop on Environmental Indicators and Goal Setting will be held on September 28, 29, and 30, 1992.

ADDRESSES: The meeting will be held at: The Holiday Inn - Chicago City Centre, 300 East Ohio St., Chicago, Illinois.

FOR FURTHER INFORMATION CONTACT: Nicolaas Bouwes, Economics and Technology Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, Mail Stop TS-779, 401 M St., SW., Washington, DC 20460. Telephone: 202-260-1567. For information on The National Workshop on Environmental Indicators and Goal Setting meeting call Darlene Cockfield at 202-260-4907.

SUPPLEMENTARY INFORMATION: In 1989, EPA Administrator William Reilly outlined the goals and processes for establishing a strategic planning and accountability process at the Agency. Underlying this approach is the Agency's desire to set priorities and shift resources to areas with the greatest opportunity to achieve reductions in health and environmental risks. As part of this initiative, the Administrator set forth a plan to state goals and develop indicators of environmental progress for achieving these goals. Tracking this progress will allow the Agency to measure its successes in implementing environmental protection and pollution prevention programs, and to formulate strategic plans for improving the course of future environmental progress.

In general terms, the indicators envisaged will allow EPA to track national and regional changes in human health and environmental well-being over time. The indicator will utilize existing Agency data bases and models. The indicator will be calculated on an annual basis as a function of chemical release volumes, as represented by reported emissions on the Toxic Release Inventory, chemical toxicity, exposure potential, and exposed population. Changes in the annual calculation will provide a measure of increase or

decrease in human health and ecological well-being.

EPA has developed a draft final methodology paper that provides an in-depth discussion of the health-based indicator. Copies of this methodology paper will be available to the public after September 14, 1992. Requests for copies can be made by calling or writing the contact person listed under FOR FURTHER INFORMATION CONTACT.

Dated: September 10, 1992.

Mark A. Greenwood,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 92-22778 Filed 9-18-92; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4506-1]

Lynn Pierce Property Site; Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency (EPA) has agreed to settle claims for response costs at the Lynn Pierce Property Site, Apex, North Carolina, with H. Michael Fincher. EPA will consider public comments on proposed settlement for thirty (30) days. EPA may withdraw or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Carolyn McCall, Cost Recovery Section, Waste Management Division, EPA, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, 404-347-5059.

Written comments may be submitted to the person above within thirty days from the date of publication.

Dated: September 2, 1992.

Joseph R. Franzmathes,

Director, Waste Management Division.

[FR Doc. 92-22787 Filed 9-18-92; 8:45 am]

BILLING CODE 6560-50-M

[OPPTS-59950; FRL 4164-4]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 3 such PMN(s) and provides a summary of each.

DATES: Close of review periods:

Y 92-192, September 13, 1992.

Y 92-193, 92-194, September 14, 1992.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC, 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office, NE-G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

Y 92-192

Importer. Vetrotex Certainteed Corporation.

Chemical. (G) Water emulsion at different concentration of polypropylene modified with a carboxilic groups insertion and emulsionated with surfactants not ionic, such as etho-nonyls phenols.

Use/Import. (G) Coating. Import range: Confidential.

Y 92-193

Importer. Confidential.

Chemical. (G) Vinyl acetate-ethylene-acrylate copolymer.

Use/Import. (G) Coating. Import range: Confidential.

Y 92-194

Importer. Confidential.

Chemical. (G) Polyester polymer.

Use/Import. (S) Xerographic toner use. Import range: Confidential.

Dated: September 4, 1992.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92-22783 Filed 9-18-92; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

License Number: 3112
Name: Aimi Cargo Forwarding, Inc.
Address: 4767 N.W. 77nd Ave., Miami, FL 33166
Date Revoked: June 22, 1992
Reason: Failed to furnish a valid surety bond

License Number: 3462
Name: C & F International, Inc.
Address: 12900 Hall Rd., Suite 370, Sterling Heights, MI 48078
Date Revoked: July 18, 1992
Reason: Failed to furnish a valid surety bond

License Number: 31
Name: P.F. Hoxter
Address: 1205 St. Charles Ave., Apt. 910 New Orleans, LA 70130
Date Revoked: July 21, 1992
Reason: Surrendered license voluntarily

License Number: 3351
Name: Omega International, Inc.
Address: 10050 N.W. 116th Way, Suite 17, Miami, FL 33178
Date Revoked: July 29, 1992
Reason: Failed to furnish a valid surety bond

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 92-22729 Filed 9-18-92; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Foreign Commerce, Inc., 4544 SW., 75th Avenue, Miami, FL 33155, Officers: Patricia A. Wilson, President/Director/Treasurer, Harry R. Wheeler, III, Vice President/Director, Charles S. Wilson, Secretary/Director

KNL International, Inc., 497 10th St., NW., Atlanta, GA 30318, Officers: George Liu, President, Dolan L. Suggs, Treasurer

Anthony Scoppetta, 21 Shadow Stone Drive, Blackwood, NJ 08012, Sole Proprietor

Geotrans International, Inc., 5532 Woodruff Ave., suite 350, Lakewood, CA 90714, Officers: Michael Paul Courtemanche, President, Lionel Wong Achuck, Jr., Secretary/Director/Stockholder, Wilfrido C. Tiongson, Treasurer

Transzip International Corp., c/o Ada Lu, 20 Haskel Drive, Lawrence, NJ 08648, Officer: Ada Lu, President/Director

Vialoma Trading Corporation dba Singen Shipping, 3400 McIntosh Road, Bldg. E Bay 6, Ft. Lauderdale, FL 33316, Officers: Catalina Ramirez, President, Alessio Vasquez Ramirez, Vice President, Marisol Vasquez Ramirez, Treasurer, Ovidio Vasquez Ramirez, Secretary

Mark VII Transportation Co. Inc. dba Mark VII International, 965 Ridge Lake Blvd., Suite 103, Memphis, TN 38120, Officers: R.C. Matney, President, David H. Wedaman, Exec. Vice President, Janet Pullen, Secretary

Golden Trust Forwarding, 2-14 Lawrence Park, Piermont, NY 10968, Dina Karabachi, Sole Proprietor

Kelly's Freight Forwarders, Inc., 1416 NW., 82nd Ave., Miami, FL 33126, Officers: Luis E. Colindres, President/Director, Angelina Colindres, Vice President

By the Federal Maritime Commission.

Dated: September 15, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 92-22749 Filed 9-18-92; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

City Holding Company, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 9, 1992.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. City Holding Company, Charleston, West Virginia; to engage *de novo* in providing back-up data processing services to non-affiliated financial institutions pursuant to § 225.25(b)(7) of the Board's Regulation Y. These activities will be conducted in West Virginia, Ohio, Kentucky, and Virginia.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Fidelity Southern Corporation, Decatur, Georgia; to engage *de novo* through its subsidiary, Fidelity National Capital Investors, Inc., Decatur, Georgia, in providing investment or financial advice pursuant to § 225.25(b)(4); providing full service securities brokerage services pursuant to § 225.25(b)(15); and underwriting and dealing in government obligations and money market interests pursuant to § 225.25(b)(16) of the Board's Regulation Y.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. CBT Corporation, Paducah, Kentucky; to engage *de novo* through its subsidiary, Fidelity Credit Corporation, Paducah, Kentucky, in the sale of property insurance to its clients pursuant to § 225.25(b)(8)(ii) of the Board's Regulation Y.

D. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Continental Bancorporation, Las Vegas, Nevada; to engage *de novo* through its subsidiary, Continental Trust Company, Las Vegas, Nevada, in performing trust company functions pursuant to § 225.25(b)(3) of the Board's Regulation Y. These activities will be conducted in the State of Nevada.

Board of Governors of the Federal Reserve System, September 15, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-22755 Filed 9-18-92; 8:45 am]

BILLING CODE 6210-01-F

First Community Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute

and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 9, 1992.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. First Community Bancorp, Inc., Shelbyville, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of First Community Bank of Bedford County, Shelbyville, Tennessee.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Heritage Financial Services, Inc., Blue Island, Illinois; to acquire 100 percent of the voting shares of Alsip Bancorporation, Inc., Alsip, Illinois, and thereby indirectly acquire Alsip Bank and Trust, Alsip, Illinois.

2. Seaway Bancshares, Inc., Chicago, Illinois; to merge with Highland Community Co., Chicago, Illinois, and thereby indirectly acquire Highland Community Bank, Chicago, Illinois.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. First Commercial Corporation, Little Rock, Arkansas; to acquire at least 80 percent of the voting shares of First City, Inc., Memphis, Tennessee, Memphis, Tennessee, and thereby indirectly acquire First City National Bank, Memphis, Tennessee.

2. UniSouth Capital Corporation, Columbus, Mississippi; to become a bank holding company by acquiring 100 percent of the voting shares of UniSouth Banking Corporation, Columbus, Mississippi.

D. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Dairyland Bank Holding Corp., La Crosse, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of La Farge State Bank, La Farge, Wisconsin, and Bank of Alma, Alma, Wisconsin.

2. Norwest Corporation, Minneapolis, Minnesota, to acquire and Norwest Colorado, Inc., Denver, Colorado, to merge with Rocky Mountain Bankshares, Inc., Aspen, Colorado, and thereby indirectly acquire The Bank of Aspen, Aspen, Colorado.

E. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. First Independence Bancshares, Inc., Independence, Kansas; to become a bank holding company by acquiring at least 80 percent of the voting shares of First National Bank, Independence, Kansas.

2. Liberty Bancorp, Inc., Oklahoma City, Oklahoma; to acquire 100 percent of the voting shares of Mid-City Bank, N.A., Midwest City, Oklahoma.

Board of Governors of the Federal Reserve System, September 15, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-22756 Filed 9-18-92; 8:45 am]

BILLING CODE 6210-01F

Meade C. Hopkins, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 5, 1992.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Meade C. Hopkins, Pulaski, Tennessee; to retain 23.6 percent of the voting shares of Frankewing Bancshares, Inc., Frankewing, Tennessee, as the result of a stock redemption, and thereby indirectly acquire Bank of Frankewing, Frankewing, Tennessee.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Jerome N. Heim, Hoxie, Kansas; to acquire an additional 2.54 percent for a total of 27.50 percent; Jon W. Pope, Hoxie, Kansas, to acquire an additional 20.55 percent for a total of 20.97; and Lois A. Madison, Hoxie, Kansas, to acquire 20.97 percent of the voting shares of Northwest Bancshares Inc., Colby, Kansas, and thereby indirectly acquire Peoples State Bank, Colby, Kansas

2. John D. Mapes, Norton, Kansas; to acquire 42.79 percent; John D. Mapes Individual Retirement Account, Norton, Kansas, to acquire 4.99 percent; Lee D. Mapes Individual Retirement Account, Norton, Kansas, to acquire 2.23 percent; Robert J. Mapes, Jr. Individual Retirement Account, Norton, Kansas, to acquire 41.99 percent; and Joyce A. Mapes Individual Retirement Account, Norton, Kansas, to acquire 8.01 percent of the voting shares of Consolidated Insurance, Inc., Hill City, Kansas, and thereby indirectly acquire Consolidated State Bank, Hill City, Kansas.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222.

1. John T. Cannon, Caldwell, Texas, to acquire 7.8 percent for a total of 12.8 percent; Kenneth B. Clark, Caldwell, Texas, to acquire 7.8 percent for a total of 13.8 percent; Switzer L. Deason, Bryan, Texas, to acquire 7.8 percent for a total of 12.8 percent; Jarvis H. Porter, Caldwell, Texas, to acquire 2.8 percent for a total of 12.8 percent; M. Frank Thurmand, Bryan, Texas, to acquire 7.8 percent for a total of 12.8 percent; and William R. Vance, Bryan, Texas, to acquire 7.8 percent for total of 12.8 percent of the voting shares of Caldwell Capital Corporation, Caldwell, Texas, and thereby indirectly acquire First State Bank in Caldwell, Caldwell, Texas.

Board of Governors of the Federal Reserve System, September 15, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-22757 Filed 9-18-92; 8:45 am]

BILLING CODE 6210-01-F

Key Corp, et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking

activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 9, 1992.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Key Corp, Albany, New York; Key Pacific Bancorp, Anchorage, Alaska; and Key Bancshares of Washington, Inc., Seattle, Washington; to acquire 100 percent of the voting shares of Puget Sound Bancorp, Tacoma, Washington, and thereby indirectly acquire Northwestern National Bank, Port Angeles, Washington; Puget Sound National Bank, Tacoma, Washington; Puget Sound Savings Bank, Seattle, Washington; Bellingham National Bank, Bellingham, Washington; and San Juan County Bank, Friday Harbor, Washington.

In connection with this application, Applicants also propose to acquire Puget Sound Life Insurance Company, Phoenix, Arizona, and thereby engage in underwriting, as reinsurer, of credit life insurance directly related to extensions of credit by PSB's banking subsidiaryies pursuant to § 225.25(b)(8)(i); Washington Mortgage Corporation, Seattle, Washington, and thereby engage in lending activities, in twelve western states, including large income property loans, including industrial, commercial retail, multi-family, hotel and Federal Housing Authority-insured project mortgages, and providing real estate equity financing services pursuant to § 225.25(b)(1)(iii); and The Tacoma Partnership, Federal Way, Washington, and thereby engage in owning and operating an apartment building for very low income families pursuant to § 225.25(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 15, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-22758 Filed 9-18-92; 8:45 am]

BILLING CODE 6210-01-F

Prairieland Bancorp, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than October 9, 1992.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Prairieland Bancorp, Inc., Bushnell, Illinois; to engage in tax planning and preparation including accounting and recordkeeping necessary to provide information for tax planning and preparation pursuant to § 225.25(b)(21) of the Board's Regulation Y. **Comments on this application must be received by October 2, 1992.**

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Union Planters Corporation, Memphis, Tennessee; to acquire SaveTrust Federal Savings Bank, Dyersburg, Tennessee, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

2. Union Planters Corporation, Memphis, Tennessee; to acquire Security Trust Federal Savings and Loan Association, Knoxville, Tennessee, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 15, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-22759 Filed 9-18-92; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Reestablishment—Prevention Centers Grant Review Committee

Pursuant to Federal Advisory Committee Act, 5 U.S.C. appendix 2, the Centers for Disease Control announces the reestablishment of the following Federal advisory committee by the Secretary of Health and Human Services:

Designation: Prevention Centers Grant Review Committee.

Purpose: The Committee shall provide advice and guidance to the Secretary, the Assistant Secretary for Health, and the Director, Centers for Disease Control, regarding the scientific merit of

grant applications received from Schools of Public Health, Schools of Medicine, and Schools of Osteopathy relating to the establishment, maintenance, and operation of centers for research and demonstration with respect to health promotion and disease prevention.

Authority for this committee will expire July 25, 1994, unless the Secretary of Health and Human Services, with the concurrence of the Committee Management Secretariat, General Services Administration, formally determines that continuance is in the public interest.

Dated: September 14, 1992.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 92-22752 Filed 9-18-92; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

Psychopharmacologic Drugs Advisory Committee

Date, time, and place. October 5, 1992, 8 a.m., Conference rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 5 p.m.; Michael A. Bernstein, Center for Drug Evaluation and Research (HFD-120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4020.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the practice of psychiatry and related fields.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before September 28, 1992, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss the safety and effectiveness of PAXIL (paroxetine hydrochloric acid (HCl)), new drug application (NDA) 20-031, SmithKline Beecham, for use in the treatment of depression.

Anti-infective Drugs Advisory Committee Subcommittee on Ophthalmic Drugs

Date, time, and place. October 26 and 27, 1992, 8:30 a.m., Conference rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, October 26, 1992, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 4:30 p.m.; open committee discussion, October 27, 1992, 8:30 a.m to 11:30 a.m.; Adele S. Seifried, Center for Drug Evaluation and Research (HFD-9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4695.

General function of the committee. The committee reviews and evaluates available data relating to the safety and effectiveness of marketed and investigational human drugs for use in infectious and ophthalmic disorders.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 19, 1992, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On October 26, 1992, the committee will discuss: (1) Elevation in intraocular pressure due to steroids and possible labeling changes for fluoromethalone drug products and (2) NDA 20-258 (Iopidine® (apraclonidine HCl, Alcon Laboratories, Inc.)) for short term treatment of glaucoma. On October 27, 1992, the committee will discuss an efficacy supplement for NDA 19-404 (Ocufen® (flurbiprofen sodium, Allergan Laboratories)) for cystoid macular edema.

Date, time, and place. October 27, 1992, 1 p.m.; and October 28, 1992, 8 a.m., Conference rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, October 27, 1992, 1 p.m. to 1:30 p.m., unless public participation does not last that long; open committee discussion, 1:30 p.m. to 4:30 p.m.; open committee discussion, October 28, 1992, 8 a.m. to 1 p.m.; open public hearing, 1 p.m. to 1:30 p.m., unless public participation does not last that long; open committee discussion, 1:30 p.m. to 4 p.m. Adele S. Seifried, Center for Drug Evaluation and Research (HFD-9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4695. Copies of the revised divisional "points to consider" document will be available at the meeting.

General function of the committee. The committee reviews and evaluates available data relating to the safety and effectiveness of marketed and investigational human drugs for use in infectious and ophthalmic disorders.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 19, 1992, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On October 27, 1992, the Committee will discuss a draft Division of Anti-Infective Drug Products divisional "points to consider" document concerning the need for "two adequate and well-controlled studies" in the clinical development of antimicrobial drug products (agency presentation). This presentation will be a followup to the discussion of this document made during the committee's October 31 and November 1, 1991, meeting. On October 28, 1992, the committee will discuss the need for a specific immunodeficiency (human immunodeficiency virus (HIV)) warning on the carton and package insert for over-the-counter drug products used to treat recurrent vaginal yeast infections.

Fertility and Maternal Health Drugs Advisory Committee

Date, time, and place. October 29, 1992, 8:30 a.m., Conference rms. D & E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; Philip A. Corfman, Center for Drug Evaluation and Research (HFD-510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3510.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the practice of obstetrics and gynecology.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 13, 1992, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss the use of beta-mimetic drugs for tocolysis.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: September 15, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-22747 Filed 9-18-92; 8:45 a.m.]

BILLING CODE 4160-01-F

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget for Clearance

AGENCY: Health Care Financing Administration, HHS.

The Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Pub. L. 96-511).

1. *Type of Request:* Revision; *Title of Information Collection:* Information Collection Requirements for Sole Community Home Health Agencies (HHA) at 42 CFR 424.22(b)(2)(f) and (g); *Form Number:* HCFA-R-85; *Use:* These regulations implement the rules for participation of HHAs in Medicare and the establishment and review of plans of treatment for home health services. The regulations also make it easier for certain HHAs to meet certification and plan of treatment requirements; *Frequency:* On occasion; *Respondents:* Individuals/households and small businesses/organizations; *Estimated Number of Responses:* 20; *Average Hours per Response:* 2; *Total Estimated Burden Hours:* 40.

2. *Type of Request:* Reinstatement; *Title of Information Collection:* Physician/Supplier Overpayment Report, Medicare; *Form Number:* HCFA-496; *Use:* This report is used to obtain physician/supplier overpayment information from Medicare carriers to verify that they are taking prompt and aggressive action to recover such overpayments in accordance with applicable law and regulations; *Frequency:* On occasion; *Respondents:* Non-profit institutions and businesses/other for profit; *Estimated Number of Responses:* 33,060; *Average Hours per Response:* .025; *Total Estimated Burden Hours:* 827.

3. *Type of Request:* Reinstatement; *Title of Information Collection:* Medicare Physician or Supplier Agreement; *Form Numbers:* HCFA-460 and 463; *Use:* These forms require all physicians and suppliers to select or decline participation in Medicare. These two groupings are the basis for updating fee schedules and an annual publication of a directory of participating physicians and suppliers. Those physicians/suppliers choosing to participate in Medicare agree to accept reimbursement on a fee basis. The forms are completed

only by new physicians and suppliers; *Frequency:* On occasion; *Respondents:* State/local governments; *Estimated Number of Responses:* 47,854; *Average Hours per Response:* .17; *Total Estimated Burden Hours:* 8,135.

4. *Type of Request:* Revision; *Title of Information Collection:* medicare Conditions of Participation for Rural Health Clinics; *Form Number:* HCFA-R-38; *Use:* These information collection requirements are necessary to determine the rural health clinics' compliance with health and safety provisions. Respondents are rural health clinics participating in the Medicare program; *Frequency:* Not applicable; *Respondents:* Businesses/other for profit and non-profit institutions; *Estimated Number of Responses:* Not applicable; *Average Hours per Response:* Not applicable; *Total Estimated Burden Hours:* 2,082 (recordkeeping).

5. *Type of Request:* Reinstatement; *Title of Information Collection:* Information on Medicare Provider Refunds; *Form Number:* HCFA-9049; *Use:* When a Medicare claim is denied and then paid as a result of a reconsideration, there is a possibility that the provider has already been paid by the beneficiary. These questions on provider refunds will be used on the intermediary forms to verify that the provider has refunded the beneficiary's money; *Frequency:* On occasion; *Respondents:* Businesses/other for profit and small businesses or organizations; *Estimated Number of Responses:* 3,851; *Average Hours per Response:* .25; *Total Estimated Burden Hours:* 963.

6. *Type of Request:* Reinstatement; *Title of Information Collection:* Information Collection Requirements in 42 CFR 485.56, 485.58, 485.60, 485.64, 485.66, and 405.252—Conditions of Participation for Comprehensive Outpatient Rehabilitation Facilities (CORFs); *Form Number:* HCFA-R-55; *Use:* These information collection requirements are needed to determine compliance with Federal conditions of participation in order for a CORF to participate in the Medicare/Medicaid programs; *Frequency:* On occasion; *Respondents:* State/local governments; *Estimated Number of Responses:* 506; *Average Hours per Response:* 1.625; *Total Estimated Burden Hours:* 822 (reporting) and 119,966 (recordkeeping) for a total of 120,788.

7. *Type of Request:* Reinstatement; *Title of Information Collection:* Information Collection Requirements in 42 CFR 435.940—435.965, Medicaid Income and Eligibility Verification System (IEVS); *Form Number:* HCFA-R-74; *Use:* Medicaid State Agencies and other Federally-funded welfare agencies are required to request income and resource data from certain Federal agencies, State wage information collection agencies, and State unemployment compensation agencies through an IEVS. This system helps to ensure that only eligible individuals receive benefits; *Frequency:* Annually; *Respondents:* State/local governments; *Estimated Number of Responses:* 54; *Average Hours per Response:* 80; *Total Estimated Burden Hours:* 4,320 (reporting) and 102,990 (recordkeeping) for a total of 107,310 hours.

8. *Type of Request:* Revision; *Title of Information Collection:* Integrated Review Schedule—medicaid; *Form Number:* HCFA-301; *Use:* State Agencies are required to perform quality control reviews for the Medicaid program. The review schedule serves as the comprehensive data entry form for all quality control reviews in the Aid for Families with Dependent Children (AFDC) Food Stamps, and Medicaid programs; *Frequency:* Daily; *Respondents:* State/local government agencies; *Estimated Number of Responses:* 102,192; *Average Hours per Response:* .65 (MAO) and .15 (AFDC); *Total Estimated Burden Hours:* 30,569 (reporting) and 20,374 (recordkeeping) for a total of 50,943.

9. *Type of Request:* Reinstatement; *Title of Information Collection:* Provider Overpayment Report, medicare; *Form Number:* HCFA-481; *Use:* This report is completed daily by Medicare intermediaries and submitted to HCFA. It lists provider overpayment information and shows whether or not an intermediary is taking prompt and aggressive action to recover such overpayments in accordance with applicable law and regulations; *Frequency:* Daily; *Respondents:* Non-profit institutions; *Estimated Number of Responses:* 33,000; *Average Hours per Response:* .1; *Total Estimated Burden Hours:* 3,300.

10. *Type of Request:* Reinstatement; *Title of Information Collection:* Financial Statement of Debtor—Medicare; *Form Number:* HCFA-379; *Use:* This form collects financial information which is needed to evaluate requests from physicians/suppliers to pay indebtedness under an extended repayment schedule, or to compromise a debt for less than the full amount; *Frequency:* On occasion; *Respondents:* Individuals/households, businesses/other for profit, and small businesses/organizations; *Estimated Number of Responses:* 500; *Average Hours per Response:* 2; *Total Estimated Burden Hours:* 1,000.

11. *Type of Request:* Extension; *Title of Information Collection:* Negative Case Action (NCA) Review Schedule/Action Summary Tables (Medicaid Eligibility Quality Control); *Form Number:* HCFA-6401; *Use:* HCFA uses the NCA review information to establish error rates by States and the Nation. The error rates are analyzed to detect trends and causes of high or low error rates. Results of NCA reviews are used by States to plan corrective actions to assure accurate determinations and timely and adequate notice of denials; *Frequency:* Semi-annually; *Respondents:* State/local governments; *Estimated Number of Responses:* 8,600; *Average Hours per Response:* .755; *Total Estimated Burden Hours:* 6,493 (reporting) and 860 (recordkeeping) for a total of 7,353 hours.

12. *Type of Request:* New; *Title of Information Collection:* Outpatient Resource Costing Study, Data Collection of Providers of Outpatient Services; *Form Number:* HCFA-R-17; *Use:* The proposed collection is to provide data on the resource use and cost for a range of outpatient services provided across settings, i.e., hospital outpatient departments, ambulatory surgery centers and physician offices; *Frequency:* One-time; *Respondents:* Business/other for profit, non-profit institutions, and small businesses or organizations; *Estimated Number of Responses:* 144; *Average Hours per Response:* 10.667; *Total Estimated Burden Hours:* 1,536.

13. *Type of Request:* Reinstatement; *Title of Information Collection:* Medicaid—Intermediate Care Facility for the Mentally Retarded (ICF/MR) or Persons with Related Conditions Survey Report Form; *Form Number:* HCFA-3070G, H, I; *Use:* In order to participate in the Medicaid program as an ICF/MR, providers must meet Federal standards. The survey report form is used to record providers' compliance with the individual standards and report it to the Federal government; *Frequency:* Annually; *Respondents:* State/local governments; *Estimated Number of Responses:* 6,318; *Average Hours per Response:* 3; *Total Estimated Burden Hours:* 18,954.

14. *Type of Request:* Revision; *Title of Information Collection:* Installment Agreement of Beneficiary Refund of Overpayment HCFA-Pub. 13-3, Section 3711.9 and HCFA Pub. 14-3, Section 7120—Medicare; *Form Number:* HCFA-9005; *Use:* When a beneficiary is overpaid the carrier advises the beneficiary of the error and requests a refund. If the beneficiary is unable to refund the full amount, information is collected for an installment agreement; *Frequency:* On occasion; *Respondents:*

Individuals/households and non-profit institutions; *Estimated Number of Responses:* 3,990; *Average Hours per Response:* .16; *Total Estimated Burden Hours:* 638.

15. *Type of Request:* Reinstatement; *Title of Information Collection:* Information Collection Requirements in HSQ-108-F. PRO Assumption of Responsibilities; *Form Number:* HCFA-R-71; *Use;* These requirements are intended to ensure a smooth and efficient start to PRO review. This rule establishes the review functions to be performed by the PRO and outlines the relationships among PROs, Medicare fiscal intermediaries and carriers, providers, practitioners, and beneficiaries; *Frequency:* On occasion; *Respondents:* Businesses/others for profit and small businesses/organizations; *Estimated Number of Responses:* 214,091; *Average Hours per Response:* 2; *Total Estimated Burden Hours:* 428,182 (reporting) and 53 (recordkeeping) for a total of 428,235.

16. *Type of Request:* Reinstatement; *Title of Information Collection:* Medicare Contractor Administrative Budget and Cost Reporting System Forms; *Form Numbers:* HCFA-1523, 1523A-E, 1524, 1524A-E, 2580, 3258, 3259; *Use:* These forms are multi-use financial management forms completed by Medicare intermediaries and carriers. HCFA uses the information to reimburse the intermediaries and carriers for administrative costs and to prepare the budget for the upcoming year; *Frequency:* Annually/Quarterly/Monthly; *Respondents:* Businesses/other for profit and non-profit institutions; *Estimated Number of Responses:* 1,462; *Average Hours per Response:* 48.14; *Total Estimated Burden Hours:* 70,384.

17. *Type of Request:* Reinstatement; *Title of Information Collection:* Fire Safety Survey Report Forms; *Form Numbers:* HCFA-2786A-D, F-H, J-M, P, Q; *Use:* These survey forms are used by the State agency to record data collected in order to determine compliance with individual conditions during fire safety surveys and report it to the Federal government; *Frequency:* Annually; *Respondents:* State/local governments; *Estimated Number of Responses:* 20,637; *Average Hours per Response:* 1; *Total Estimated Burden Hours:* 20,637.

18. *Type of Request:* Reinstatement; *Title of Information Collection:* Medical Records Review Under Prospective Payment System (PPS); *Form Number:* HCFA-R-50; *Use:* Peer Review Organizations are authorized to conduct medical review under the PPS. In order to conduct medical review activities we depend upon the hospitals to make available specific records. The sole use of the records is for purpose of meeting the medical review requirements of Medicare program legislation; *Frequency:* On occasion; *Respondents:* Businesses/others for profit and small business/organizations; *Estimated Number of Responses:* 1,239,514; *Average Hours per Response:* .03; *Total Estimated Burden Hours:* 37,186.

19. *Type of Request:* New; *Title of Information Collection:* Qualified Medicare Beneficiary (QMB) Supplement to the Medicare Current Beneficiary Survey (MCBS), Round 5; *Form Number:* HCFA-R-19; *Use:* The QMB supplement will collect information on the QMB program experience, general sources of information of the low-income elderly, sources of information about Medicare, and level of social isolation. The sample population will be noninstitutionalized elderly for purposes of meeting the medical review requirements of Medicare program legislation; *Frequency:* One-time; *Respondents:* Individuals/households; *Estimated Number of Responses:* 1,400; *Average Hours per Response:* .25; *Total Estimated Burden Hours:* 350.

Additional Information or Comments: Call the Reports Clearance Office on 410-966-6312 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent directly to the following address: OMB Reports Management Branch, Attention: Allison Eydt, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: September 14, 1992.

William Toby, Jr.,

Acting Deputy Administrator, Health Care Financing Administration.

[FR Doc. 92-22771 Filed 9-18-92; 8:45 am]

BILLING CODE 4120-03-M

Health Resources and Services Administration

Program Announcement and Proposed Funding Priorities and Special Consideration for Grants for Residency Training in General Internal Medicine and General Pediatrics

The Health Resources and Services Administration (HRSA) announces that applications for Fiscal Year (FY) 1993 Grants for Residency Training in General Internal Medicine and General Pediatrics are being accepted under the authority of section 784, title VII of the Public Health Service (PHS) Act, as amended by the Health Professions Reauthorization Act of 1988, title VI of Public Law 100-607. Comments are invited on the proposed funding priorities and special consideration.

This program announcement is subject to reauthorization of this legislative authority and to the appropriation of funds. The Administration's budget request for FY 1993 does not include funding for this program. Applicants are advised that this program announcement is a contingency action being taken to assure that should authority and funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

Previous Funding Experience

Previous funding experience is provided to assist potential applicants to make better informed decisions regarding submission of an application for this program. In FY 1991, HRSA reviewed 61 applications for Grants for Residency Training in General Internal Medicine and General Pediatrics. Of those applications, 64 percent were approved and 36 percent were not recommended for further consideration. Thirty-one projects or 51 percent of the applications, were funded.

In FY 1990, HRSA reviewed 81 applications. Of those applications, 70 percent were approved and 30 percent were not recommended for further consideration. Fifty-two projects, or 64 percent of the applications, were funded.

Purpose

Section 784 authorizes the award of grants for planning, developing and operating approved residency training programs which emphasize the training of residents for the practice of general internal medicine or general pediatrics. In addition, section 784 authorizes assistance in meeting the cost of supporting residents who are participants in any such program, and who plan to specialize or work in the practice of general internal medicine or general pediatrics. A separate grant program is in effect for the faculty development component of this provision.

Eligible applicants are accredited schools of medicine and osteopathic medicine, public and private nonprofit hospitals, or other public or private nonprofit entities.

To receive support, programs must meet the requirements of the final

regulations as specified in 42 CFR part 57, subpart FF.

The period of Federal support will not exceed 5 years.

National Health Objectives for the Year 2000

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The grant program for Residency Training in General Internal Medicine and General Pediatrics is related to the priority area of "Clinical Preventive Services."

Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report; Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone (202) 783-3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service education programs and programs which provide comprehensive primary care services to the underserved.

Review Criteria

The review of applications will take into consideration the following criteria:

(1) The degree to which the proposed project adequately provides for the project requirements set forth in the regulations;

(2) The administrative and management capability of the applicant to carry out the proposed project in a cost-effective manner;

(3) The qualifications of the proposed staff and faculty; and

(4) The potential of the project to continue on a self-sustaining basis.

Other Considerations

In addition, the following funding factors may be applied in determining the funding of approved applications:

1. Funding preferences—funding of a specific category or group of approved applications ahead of other categories or groups of applications.

2. Funding priorities—favorable adjustment of aggregate review scores when applications meet specified objective criteria.

3. Special considerations—enhancement of priority scores by merit reviewers based on the extent to which applicants address special areas of concern.

It is not required that applicants request consideration for a funding factor. Applications which do not request consideration for funding factors will be reviewed and given full consideration for funding.

Established Funding Preference

Part I of the following funding preference was established in FY 1990 dated January 30, 1990, (55 FR 3108) after public comment and is being continued in FY 1993. Part (2) is new. It is being added to focus support to programs with good records of graduates choosing generalist careers. Part (3) is also new and is being added to emphasize the importance of providing primary care residents with training in the care of patients with common health problems associated with other specialties and subspecialties.

Funding Preference will be awarded to applicants that:

(1) Demonstrate continuity of care experiences that meet the following criteria: Each resident must serve a panel of patients and/or families who recognize him or her as their provider of longitudinal and comprehensive (including preventive and psychosocial) health care. This continuity experience must be scheduled principally in ambulatory care settings described in Project Requirement #9 in the Program Guide. A resident's time in these settings must: (a) Comprise at least 10 percent of his or her total training time (excluding vacation time) during each year of the program (i.e., at least one half-day per week); (b) comprise at least 20 percent of his or her training time (excluding vacation time) for the entire residency training period; *and* (c) be scheduled in at least 9 months of each year of training; AND

(2)(a) For the previous 3 year period (academic years 1989-90-1991-92), have an average of 20 percent or less of their primary care (general internal medicine/general pediatrics) residency track graduates (PGY3), or 30 percent or less of their total graduates (including primary care track graduates) electing fourth-year (PGY4) subspecialty training; OR

(b) In the most recently completed academic year (1991-92), have 40 percent or less of their total graduates (including primary care track graduates) electing subspecialty training AND have a decrease since academic year 1988-89 in the percentage of total graduates electing fourth-year subspecialty training of at least 15 percentage points; AND

(3) Demonstrate goals, learning objectives and curricular elements to provide residents with primary care training in the management of common problems in the fields of dermatology, orthopedics, gynecology, otolaryngology, ophthalmology, preventive medicine, occupational medicine, (general internal medicine only), psychiatry, emergency medicine and epidemiology.

Applicants that have not received a grant award from this program during the last two years and therefore, could not reasonably meet the outcome criteria, can receive this funding preference by proposing a program in which all internal medicine or pediatrics residents are trained in accordance with the continuity of care and other curricular provisions cited in the preference.

Established Funding Priority

The following funding priority was established in FY 1992 dated April 30, 1992 (57 FR 18520) after public comment and is being continued in FY 1993.

Community—Oriented Primary Care Educational Activities

A funding priority will be given to applications that demonstrate that curricular time and educational offerings will be devoted to demonstrating and achieving better preventive/primary care services for underserved communities, areas or populations.

Proposed Funding Priorities for FY 1993

In fiscal year 1993, the following funding priorities are proposed:

1. Educational Linkages to Medically Underserved Communities

A funding priority will be given to:

Applications that propose to provide educational experiences to demonstrate to residents the provision of primary care services to underserved populations. These experiences must include substantial training involving one or more of the following entities:

(A) Underserved Geographical Area

Inpatient or outpatient health care facilities located in a Health Professional Shortage Area (HPSA), PHS Act, section 332, or in a Medically Underserved Area (MUA) designated under provisions of PHS Act, section 330(b)(3);

(B) Facilities Whose Purpose is Care of Underserved

Community Health Centers currently supported under PHS Act, section 330, Medically Underserved Population, defined under PHS Act, section 330 (a)(3), Migrant Health Centers currently supported under PHS Act, section 329, Homeless Health Centers supported

under PHS Act, section 340, facilities that have formal arrangements to provide primary health services to public housing communities, hospitals or other health care facilities of the Indian Health Service and/or facilities operated by State or local health departments;

(C) Underserved Patient Populations

Facilities which do not qualify under (A) and (B) above can quality for up to a full priority score based on the percentage of their patient visits/hospital admissions that are uncompensated or are compensated under the State Medicaid Program or local programs designed to reimburse health providers for services to indigent populations.

This priority is designed to continue HRSA's overall strategy to direct services to those most in need.

2. Minorities/Low Income Populations

Programs which demonstrate either substantial progress over the last 3 years or a significant experience of 10 or more years in enrolling and graduating residents from those minority or low-income populations identified as at risk of poor health outcomes.

This priority is consistent with a HRSA strategy to increase the number of health professionals from minority and other at risk populations, to assure equal access to health professions education for all population groups, and ultimately, to provide a greater volume of health care in underserved areas.

3. HIV/AIDS/Substance Abuse Activities

Applications that: (1) Document collaboration with a Regional HIV/AIDS Educational Training Center and have implemented, or plan to implement no later than academic year 1993–94, a comprehensive training experience for all residents which includes counseling in the prevention of HIV infection, direct patient care and clinical management of HIV-infected individuals; and (2) provide all residents with an organized clinical experience in the diagnosis, counseling, treatment and referral of substance abuser patients/families or present plans for the implementation of such a curriculum no later than academic year 1993–94.

Health professionals are required to provide a wide range of services for HIV related diseases. This priority is designed to emphasize community coordination and service integration.

4. Clinical Preventive Services

Applications that demonstrate sufficient curricular time and offerings devoted to teaching all residents about the screening, counseling and immunization services recommended by the U.S. Preventive Services Task Force.

This primary care training focus is important for physicians who will serve in underserved areas.

Proposed Special Consideration

Special consideration will be given to the extent to which applicants enroll and graduate trainees from underserved areas.

This special consideration is intended to recognize programs that enroll and graduate trainees from underserved areas because health professionals who come from underserved areas are more likely to return there upon completion of training to provide needed health services.

Additional Information

Interested persons are invited to comment on the proposed funding priorities and special consideration. All comments received on or after October 21, 1992 will be considered before the final funding priorities and special consideration are established. No funds will be allocated or final selections made until a final notice is published stating whether the final priorities and special consideration will be applied.

Written comments should be addressed to:

Marc L. Rivo, M.D., M.P.H., Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Parklawn Building, room 4C–25, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Medicine, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

Application Requests

Requests for application materials and questions regarding grants policy and business management issues should be directed to:

Mrs. Donna Nash, Grants Management Specialist (D–28), Residency and Advanced Grants Section, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Parklawn Building, room 8C–26, Rockville, Maryland 20857, Telephone (301) 443–6960.

Completed applications should be returned to the Grants Management Office at the above address.

If additional programmatic information is needed, please contact:

Ms. Sara Kearney, Residency Training Section, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Parklawn Building, room 4C–04, Rockville, Maryland 20857, Telephone (301) 443–6820.

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0060.

Public Law 100–607, section 633(a), requires that for grants issued under sections 780, 784, 785 and 786 for FY 1990 or subsequent fiscal years, the Secretary of Health and Human Services shall, not less than twice each fiscal year, issue solicitations for applications for such grants if amounts appropriated for such grants and remaining unobligated at the end of the first solicitation period, are sufficient with respect to issuing a second solicitation. Should a second cycle be necessary, the application deadline date will be approximately 6 months from the first deadline.

The deadline date for receipt of applications is October 23, 1992. Applications shall be considered as meeting the deadline if they are either:

(1) Received on or before the deadline date, or

(2) Postmarked on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late applications not accepted for processing will be returned to the applicant.

This program is listed at 93.884 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: August 11, 1992.

Robert G. Harmon,

Administrator.

[FR Doc. 92–22697 Filed 9–18–92; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

National Library of Medicine; Notice of a Special Meeting of the Biomedical Library Review Committee

Pursuant to Public Law 92-463, notice is hereby given of a special meeting of the Biomedical Library Review Committee on November 12-13, 1992, convening at 8:30 a.m. in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting on November 12 will be open to the public from 8:30 a.m. to approximately 11 a.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C., and section 10(d) of Public Law 92-463, the meeting on November 11 will be closed to the public for the review, discussion, and evaluation of individual grant applications from 11 a.m. to approximately 5 p.m. and on November 12 from 8:30 a.m. to adjournment. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Roger W. Dahlen, Scientific Review Administrator, and Chief, Biomedical Information Support Branch, Extramural Programs, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301-496-4221, will provide summaries of the meeting, rosters of the committee members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.879—Medical Library Assistance, National Institutes of Health)

Dated: September 16, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-22831 Filed 9-18-92; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

President's Council on Physical Fitness and Sports

AGENCY: Office of the Assistant Secretary for Health.

ACTION: Notice of Meeting—Change in Date.

This notice sets forth the change in date of the forthcoming meeting of the President's Council on Physical Fitness and Sports.

NEW DATE: September 26, 1992—8:30 a.m.-4 p.m.

ADDRESS: Ritz Carlton Buckhead, 3434 Peachtree Rd., NE, Atlanta, Georgia 30326.

FOR FURTHER INFORMATION CONTACT: John A. Butterfield, Executive Director, President's Council on Physical Fitness and Sports, 701 Pennsylvania Ave., NW. Suite 250, Washington, D.C. 20004, (202) 272-3421.

Dated: September 16, 1992

John A. Butterfield,

Executive Director, President's Council on Physical Fitness and Sports.

[FR Doc. 92-22775 Filed 9-18-92; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Withdrawal of Unilateral Determination of Eligibility; Battle of Brandy Station

AGENCY: Office of the Secretary, DOD.

ACTION: Notice of withdrawal.

SUMMARY: The Department of the Interior is issuing this notice to advise the public that the unilateral determination of eligibility for the National Register of Historic Places for a certain area of Culpeper County, Virginia, related to the Battle of Brandy Station, initially issued on February 28, 1991, is hereby withdrawn.

FOR FURTHER INFORMATION CONTACT: Knute Knudson, Deputy Chief of Staff, 1849 C Street, NW., Washington, DC 20240, 202-208-7356.

SUPPLEMENTARY INFORMATION: The Department of the Interior is issuing this notice to advise the public that the unilateral determination of eligibility for the National Register of Historic Places for a certain area of Culpeper County, Virginia, related to the Battle of Brandy Station, initially issued on February 28, 1991, is hereby withdrawn. Pursuant to 36 CFR 63.4(c), a determination was made that an area of land located in Culpeper County, Virginia, considered to be related to the Battle of Brandy Station, is eligible for listing in the National Register of Historic Places pursuant to criteria contained in 36 CFR part 60. This determination was a discretionary action made in order to assist in the planning of potential Federal and other undertakings which may affect historically significant property in the area. The determination was not made in the course of planning for a particular Federal undertaking, the usual process through which determinations of eligibility for the National Register are made in such circumstances.

Although the purpose of the unilateral determination was to foster advance consideration in the planning of potential Federal and other undertakings, the determination has been perceived by many as an unnecessary and untimely action which affects local planning processes in the absence of a specific Federal need. In consideration of these concerns and in order to permit a National Register determination of eligibility for property related to the Battle of Brandy Station to be made in the usual course of Federal planning under 36 CFR part 800, 36 CFR part 60, and related authorities, the February 28, 1991, unilateral determination of eligibility for property related to the Battle of Brandy Station is withdrawn. This action, however, does not necessarily indicate that all or part of the area previously determined eligible does not meet applicable criteria for property eligible for listing in the National Register, only that such a determination will now be made in the course of the planning of a particular Federal undertaking or through other usual procedures. In this connection, it is noted that the Commonwealth of Virginia is presently reviewing the matter of property of historic significance related to the Battle of Brandy Station. The results of such review should be available for consideration by appropriate authorities when a further determination of eligibility in this regard is required.

Dated: September 15, 1992.

Manuel Lujan, Jr.

Secretary of the Interior.

[FR Doc. 92-22696 Filed 9-18-92; 8:45 am]

BILLING CODE 4310-70-M

Bureau of Land Management Alaska

[AK-964-4230-15; F-14954-A]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Olgoonik Corporation, Inc. for 6007.00 acres. The lands involved are in the vicinity of Wainwright, Alaska,

within T. 15 N., R. 30 W., Umiat Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Barrow Sun. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until October 21, 1992, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Carolyn A. Bailey,

Lead Land Law Examiner, Branch of Doyon/ Northwest Adjudication.

[FR Doc. 92-22695 Filed 9-18-92; 8:45 am]

BILLING CODE 4310-JA-M

[CA 5440-10-ZBAF, CA-30582]

California; Realty Action

ACTION: Proposed Noncompetitive Sale of Lands.

SUMMARY: The following land in San Bernardino County, California is being considered for disposal by direct sale under sections 203 and 209 of the Federal Land Policy and Management Act of October 21, 1976, (90 Stat. 2750, 43 U.S.C. 1713 and 1719). The parcels are proposed for direct sale to the State of California for siting a low level radioactive waste disposal facility.

ADDRESSES: Bureau of Land Management, California Desert District Office, 6221 Box Springs Blvd., Riverside, CA 92507.

FOR FURTHER INFORMATION CONTACT: Doug Romoli, California Desert District Office, (714) 697-5237.

SUPPLEMENTARY INFORMATION: The lands will be sold at no less than the appraised fair market value. The sale is contingent upon all requirements of sections 203 and 209 of FLPMA being met.

T. 9 N., R 19 E., SBM
Sec. 26: SW1/4SW1/4
Sec. 27: S1/2S1/2
Sec. 34: All
Sec. 35: W1/2W1/2

containing 1,000.00 acres.

All mineral interests will be conveyed with the surface estate. The United States mineral interests offered for conveyance have no known value. At the time of the sale, the State of California will be required to deposit a $50.00 nonrefundable application fee for conveyance of the mineral estate.

The public land when conveyed, will be subject to the following terms and conditions:

A. Reservation to the United States for a right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

B. Third Party Rights. Public land conveyed will be subject to all valid existing rights including the following:

A right-of-way granted to Metropolitan Water District of Southern California for a power transmission line and road pursuant to the Act of December 21, 1928; Serial No. LA-052052.

As provided in 43 CFR 2711.1-2, the publication of this notice in the **Federal Register** shall segregate, subject to valid existing rights, the public land described herein from all other forms of appropriation under the public land laws, including the mining laws and the mineral leasing laws. The segregative effect will terminate upon issuance of patent, upon publication in the **Federal Register** of a termination of the segregation, or 270 days from the date of this publication, whichever occurs first.

Additional information concerning these lands and the proposed direct sale to the State of California may be obtained from the address given above. For a period of 45 days from the date of publication of this notice in the **Federal Register**, all persons who wish to submit comments, suggestions, or objections in connection with the proposed direct sale may present their views in writing to the District Manager at the above address.

Dated: September 14, 1992.

Jean Rivers-Council,

Acting District Manager.

[FR Doc. 92-22619 Filed 9-18-92; 8:45 am]

BILLING CODE 4310-40-M

[NV-930-4214-10; N-37171]

Amendment to Withdrawal Application and Opportunity for Public Meeting; Nevada

September 8, 1992.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Navy filed an application to amend its Master Land withdrawal proposal for 181,323 acres to include an additional 7,750 acres. The additional lands are being proposed for withdrawal for public safety purposes because the 7,750 acres contain unexploded ordnance. Approximately one-half of the 7,750 acres (3,040 acres) is covered by an overlapping Bureau of Reclamation withdrawal. This notice provides an opportunity for a public meeting and public comment on the amended potion of the application.

DATES: Comments or requests for a public meeting should be received on or before December 21, 1992.

ADDRESSES: Comments and meeting requests should be sent to the Nevada State Director, BLM, P.O. Box 12000, Reno, Nevada.

FOR FURTHER INFORMATION CONTACT: Vienna Welder, BLM Nevada State Office, 702-785-6526.

SUPPLEMENTARY INFORMATION: On July 31, 1992, the Department of the Navy filed an application to amend its existing Master Land withdrawal application (N-37171) to include and withdraw the following described 7,750 acres from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

Mount Diablo Meridian

T. 16 N., R. 28 E.,
Sec. 3, NW¼ and W½NE¼;
Sec. 4, N½.
T. 17 N., R. 28 E.,
Sec. 22, W½, SE¼ and W½NE¼;
Sec. 27, 33, and 34.
T. 16 N., R. 30 E.,
Sec. 32, SE¼;
Sec. 33, S½;
Sec. 34, S½;
Sec. 35, S½;
T. 16 N., R. 33 E.,
Sec. 2, Lot 2, SW¼NE¼, and S½NW¼, those portions south of U.S. Highway 50;
Sec. 3, S½NE¼, that portion south of U.S. Highway 50.
T. 15 N., R. 34 E.,
Sec. 4, W½W½;
Sec. 9, W½W½;
Sec. 16, W½W½;
Sec. 21, W½NW¼ and NW¼SW¼.
T. 16 N., R. 34 E.,
Sec. 4, W½, that portion south of U.S. Highway 50;
Sec. 5, that portion south of U.S. Highway 50;
Sec. 8, E½, E½W½, and E½E½W½W½, excepting therefrom any patented mining claims;
Sec. 9, W½, excepting therefrom any patented mining claims;
Sec. 16, W½, excepting therefrom any patented mining claims;

Sec. 17, E½NE¼, NW¼NW¼, N½NW¼, NE¼SW¼, S½SW¼, and N½SE¼, excepting therefrom any previously withdrawn Navy lands and any patented mining claims.

Sec. 21, E½W½ and W½SW¼, excepting therefrom any patented mining claims;

Sec. 33, W½;

The area described contains 7,750 acres in Churchill County.

The additional lands are being proposed for withdrawal from settlement, sale, location, and entry under the general land laws, including the mining laws, subject to valid existing rights, for public safety purposes because the area contains unexploded ordnance.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed amendment may present their views in writing to the Nevada State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed amendment.

All interested persons who desire a public meeting for the purpose of being heard on the proposed amendment must submit a written request to the Nevada State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The amendment will be processed as part of the original application in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the 7,750 acres will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. No temporary uses will be permitted during this segregative period since the land contains unexploded ordnance.

The temporary segregation of the land shall not effect administrative jurisdiction over the land, and the segregation shall not have the effect of authorizing any use of the land by the Department of the Navy.

Robert G. Steele,

Deputy State Director, Operations.

[FR Doc. 92-22693 Filed 9-18-92; 8:45 am]

BILLING CODE 4310-HC-M

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service Clearance Officer and the Office of Management and Budget, Paperwork Reduction Project (1018-0066), Washington, DC 20503, telephone 202-395-7340.

Title: Marketing, Tagging and Reporting Regulations for Walrus, Polar Bear and Sea Otter.

OMB Approval Number: 1018-0066.

Abstract: The Marine Mammal Protection Act allows Alaska natives living along the coast to harvest polar bear, sea otter, and walrus for subsistence and handicraft purposes. Mandatory marking, tagging and reporting regulations provide information on the level of harvest and the health of these populations, thus assisting the Service in making management decisions related to these species.

Service Form Number(s): R7-50, R7-51 and R7-52.

Frequency: On Occasion.

Description of Respondents: Individuals and households and Federal personnel.

Estimated Completion Time: 15 minutes (0.25 hours).

Annual Responses: 2,000×1.2375 responses per respondent.

Annual Burden Hours: 619.

Service Clearance Officer: James E. Pinkerton, 703-358-1943 Mail Stop—224 Arlington Square, U.S. Fish and Wildlife Service, Washington, DC 20240.

Dated: August 28, 1992.

Gary Edwards,

Assistant Director, Fisheries.

[FR Doc. 92-22725 Filed 9-18-92; 8:45 am]

BILLING CODE 4310-55-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-33 (Sub-No. 72)]

Union Pacific Railroad Company—Abandonment—In Gilliam County, OR (Condon Branch); Findings

The Commission has found that the public convenience and necessity permit Union Pacific Railroad Company to abandon its 33.824-mile Condon Branch extending from milepost 11.00 near Shutler to the end of the line at milepost 44.824 near Condon, in Gilliam County, OR.

A certificate will be issued authorizing abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Section of Legal Counsel, AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Decided: September 3, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and McDonald. Commissioner Simmons concurred in the result.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-22799 Filed 9-18-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Cambridge Isotope Lab

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on July 24, 1992, Cambridge Isotope Lab, 20 Commerce Way, Woburn, Massachusetts 01801, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of

the basic classes of controlled substances listed below:

Drug	Schedule
Amphetamine (1100)	II
Methamphetamine (1105)	II
Phencyclidine (7471)	II
Codeine (9041)	II
Acetyldihydrocodeine (9050)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Morphine (9300)	II

The firm plans to manufacture small quantities of the above listed substances for research and biochemical purposes only.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47. Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than 30 days from publication.

Dated: September 11, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92-22796 Filed 9-18-92; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on August 7, 1992, Celgene Corporation, 7 Powder Horn Drive, Warren, New Jersey 07059, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule I controlled substance 2,5-Dimethoxyamphetamine (7396).

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than 30 days from publication.

Dated: September 11, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92-22794 Filed 9-18-92; 8:45 am]

BILLING CODE 4410-09-M

Importation of Controlled Substances; Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a registration under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with §§ 1311.42 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on June 2, 1992, Diagnostic Products Corporation, 5700 W. 96th Street, Los Angeles, California 90045, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Methaqualone (2565)	I
Tetrahydrocannabinols (7370)	I
Amphetamine (1100)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Codeine (9050)	II
Methadone (9250)	II
Morphine (9300)	II

The firm plans to import small quantities of the above substances for diagnostic or analytical purposes.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than 30 days from publication.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745-46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: September 11, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92-22792 Filed 9-18-92; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on August 7, 1992, Eli Lilly Industries, Inc., Chemical Plant, Kilometer 146-7, State Road 2, Mayaguez, Puerto Rico 00708, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance Dextropropoxyphene, bulk (non-dosage forms) (9273).

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR),

and must be filed no later than 30 days from publication.

Dated: September 11, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92-22793 Filed 9-18-92; 8:45 am]

BILLING CODE 4410-09-M

Importer of Controlled Substances; Minn-Dak Growers Ltd.

Notice dated April 27, 1992, and published in the **Federal Register** on May 1, 1992, (57 FR 18909), Minn-Dak Growers, Limited, Highway 81 North, P.O. Box 1276, Grand Forks, North Dakota 58208-1276, made application to the Drug Enforcement Administration to be registered as an importer of marijuana (7360), a basic class of controlled substance listed in Schedule I.

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with title 21 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: September 11, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92-22795 Filed 9-18-92; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act: Indian and Native American Employment and Training Programs; Final Designation Procedures for Grantees for Program Years 1993-94

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Notice of final designation procedures for grantees.

SUMMARY: This document contains final procedures by which the Department of Labor (DOL) will designate potential grantees for Indian and Native American Employment and Training Programs under the Job Training Partnership Act (JTPA). The designations will be for JTPA Program Years (PYs) 1993 and 1994 (July 1, 1993 through June 30, 1995). This notice provides necessary information to prospective grant applicants to enable them to submit appropriate requests for designation.

DATES: Optional Advance Notices of Intent must be postmarked no later than October 6, 1992. Final Notices of Intent must be postmarked no later than January 1, 1993.

ADDRESSES: Send an original and two copies of the Advance and Final Notices of Intent to Mr. Herbert Fellman, Chief, Division of Indian and Native American Programs, U.S. Department of Labor, room N-4641, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: ANOI/NOI Desk.

SUPPLEMENTARY INFORMATION: Proposed designation procedures of Indian and Native American Employment and Training Programs under Section 401 of the Job Training Partnership Act (JTPA) were published in the **Federal Register** on July 28, 1992 (57 FR 33368), for the purpose of soliciting public comment. No comments were received from the general public. However, two organizations which have representation on the Indian and Native American Programs' Advisory Committee were provided an advance copy of the proposed designation procedures on June 2, 1992, in San Diego, California, and did submit comments.

Both comments related to section I, General Designation Principles, in particular subsections 5 and 6.

One commenter pointed out that subsection 5 was misleading and thought it included tribal organizations applying for reservation areas. The Department of Labor (DOL or Department) has restructured this section to clarify that tribes applying for their own reservations do not have to provide letters of support from Native American-controlled organizations. However, tribal entities applying for off-reservation areas, both incumbent and non-incumbent applicants, must comply with this requirement.

Both organizations stated that the amount of documentation required for this section was an unnecessary burden on applicants. The Department has restructured the Notice to make a minimal amount of documentation mandatory and provides for optional submittal of some supporting documentation.

One commenter expressed concern that this process would allow organizations with no real Indian and Native American support to have undue influence on the designation process. The commenter also felt that letters of support from former program participants and individuals from the Indian and Native American community would be better indicators of community support.

The Department acknowledges that individual support is an indicator of community support, but it is difficult to verify. Since local support is a significant factor in the competitive selection of grantees, the Department will continue to require letters of community support from Indian and Native American-controlled organizations. The Department has revised the language to place the burden of proof for community support on the applicant organization.

Job Training Partnership Act: Indian and Native American Programs; Final Designation Procedures for Program Years 1993-94

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Introduction: Scope and Purpose of Notice

Section 401 of the Job Training Partnership Act (JTPA) authorizes programs to serve the employment and training needs of Indians and Native Americans.

Requirements for these programs are set forth in the JTPA and in the regulations at 20 CFR part 632. The specific organization eligibility and application requirements for designation are set forth at 20 CFR 632.10 and 632.11. Pursuant to these requirements, the Department of Labor (DOL) selects entities for funding under section 401. It designates such entities as potential Native American grantees which will be awarded grant funds contingent upon all other grant award requirements being met. This notice describes how DOL will designate potential grantees who may apply for grants for Program Years 1993 and 1994. A designated entity may apply for a grant for PY 1993 and for a grant for PY 1994 without further competition.

The designation process has two parts. The Advance Notice of Intent (see part II, below) is optional although strongly recommended. The final Notice of Intent (see part III, below) is mandatory for all applicants. Any organization interested in being designated as a Native American

grantee should be aware of and comply with the procedures in these parts.

The amount of JTPA section 401 funds to be awarded to designated Native American grantees is determined under procedures described at 20 CFR 632.171 and not through this designation process. The grant application process is described at 20 CFR 632.18 and 632.20.

I. General Designation Principles

Based on JTPA and applicable regulations, the following general principles are intrinsic to the designation process:

(1) All applicants for designation shall comply with the requirements found at 20 CFR part 632, Subpart B, regardless of their apparent standing in the preferential hierarchy (see part IV, Preferential Hierarchy For Determining Designations, below). The basic eligibility, application and designation requirements are found in 20 CFR part 632, Subpart B.

(2) The nature of this program is such that Indians and Native Americans in an area are entitled to program services and are best served by a responsible organization directly representing them and designated pursuant to the applicable regulations. The JTPA and the governing regulations give clear preference to Native American-controlled organizations. That preference is the basis for the steps which will be followed in designating grantees.

(3) A State or federally recognized tribe, band or group on its reservation is given absolute preference over any other organization if it has the capability to administer the program and meets all regulatory requirements. This preference applies only to the area within the reservation boundaries. Such "reservation" organization which may have its service area given to another organization will be given a future opportunity to reestablish itself as the "preference" grantee.

In the event that such a tribe, band or group (including an Alaskan Native entity) is not designated to serve its reservation or geographic service area, the DOL will consult with the governing body of such entities when designating alternative service deliverers, as provided at 20 CFR 632.10(e). Such consultation may be accomplished in writing, in person or by telephone, as time and circumstances permit. When it is necessary to select alternative service deliverers, the Grant Officer will continue to utilize input and recommendations from the Division of Indian and Native American Programs (DINAP).

(4) In designating Native American grantees for off-reservation areas, DOL will provide preference to Indian and Native American-controlled organizations as described in 20 CFR 632.10(f) and as further clarified in part VIII (1) Indian or Native American-Controlled Organization of this notice. As noted in (3) above, when vacancies occur, the Grant Officer will continue to utilize input and recommendations from DINAP when designating alternative service deliverers.

(5) Incumbent and non-incumbent applicants must submit evidence of significant support from other Native American-controlled organizations within the communities (geographic service areas) which they are currently serving or requesting to serve. The required evidence is an attestation from the Native American-controlled organization(s) that it supports the applicant and considers it to be an organization that is representative of and can provide a high quality of section 401 JTPA services to eligible persons residing in the requested geographic service area. Incumbent and non-incumbent State and Federally recognized tribes need not submit such evidence regarding their own reservations. However, such entities are required to provide such evidence for any area which they wish to serve beyond their reservation boundaries.

In addition to the above required evidence of support, all such applicants are encouraged, but not required, to submit verifiable evidence of support from other Native American-controlled organizations (see definition in part VIII (1) of this notice) which should include information about the supporting organization such as:

(a) Evidence of organizational type, e.g., copy of articles of incorporation or charter, etc.
(b) Evidence of Indian and Native American control.
(c) Current Indian and Native American membership.
(d) Number of members served in the requested service area.

(6) The Grant Officer will make the designations using a two-part process: (a) Those applicants described in part IV (1) of the Preferential Hierarchy For Determining Designations will be designated on a noncompetitive basis if all preaward clearances, responsibility reviews, and regulatory requirements are met. (b) All applicants described in part IV, (2), (3) and (4) of the Preferential Hierarchy For Determining Designations will be considered on a competitive basis for such areas, and only information submitted with the Notice of Intent, as well as preaward clearances, responsibility reviews, and all regulatory requirements will be considered.

(7) Special employment and training services for Indian and Native American people have been provided through an established service delivery network for the past 18 years under the authority of JTPA Section 401 and its predecessor, section 302 of the repealed Comprehensive Employment and Training Act (CETA). The DOL intends to exercise its designation authority to preserve the continuity of such services and to prevent the undue fragmentation of existing geographic service areas. Consistent with present regulations and other provisions of this notice, this will include preference for those Native American organizations with an existing capability to delivery employment and training services within an established geographic service area. Such preference will be determined through input and recommendations from the Chief of DOL's Division of Indian and Native American Programs (DINAP) and the Director of DOL's Office of Special Targeted Programs (OSTP), and through the use of the rating system described in this Notice. Unless a non-incumbent applicant in the same preferential hierarchy as an incumbent applicant grantee can demonstrate that it is significantly superior overall to the incumbent, the incumbent will be designated, if it otherwise meets all of the requirements for redesignation.

(8) In preparing applications for designation, applicants should bear in mind that the purpose of JTPA, as amended, is "to establish programs to prepare youth and adults facing serious barriers to employment for participation in the labor force by providing job training and other services that will result in increased employment and earnings, increased education and occupational skills, and decreased welfare dependency, thereby improving the quality of the work force and enhancing the productivity and competitiveness of the Nation."

II. Advance Notice of Intent

The purpose of the Advance Notice of Intent process is to provide section 401 applicants, prior to the submission of a final Notice of Intent, with information relative to potential competition. While DOL encourages the resolution of competitive requests at the local level prior to final submission, the Advance Notice of Intent process also serves to alert those whose differences cannot be resolved of the need to submit a complete final Notice of Intent.

Although the Advance Notice of Intent process is not mandated by the regulations, participation in the advance process by prospective section 401 applicants is strongly recommended. The Advance Notice of Intent process allows the applicant to identify potential incumbent and non-incumbent competitors, to resolve conflicts if possible and to prepare a final Notice of Intent with advance knowledge of potential competing requests.

It should be emphasized, however, that the Advance Notice of Intent process does not ensure that all potential competitors have been identified. Some applicants may opt not to submit an Advance Notice of Intent; others may change geographic service area requests in the final Notice of Intent. Therefore, as noted above, final submissions should be prepared with these possibilities in mind. Although the regulations permit incumbents to submit no more than a Standard Form 424 Federal Assistance (SF 424) for their existing geographic service areas, this choice may not be in the incumbent's best interests in the event of unanticipated competition.

The SF 424 is not to be used for the advance notification process. As in the PY 1991-1992 designation process, DOL will utilize the Advance Notice of Intent to expedite the identification of potentially competitive applicants.

All organizations interested in being designated as Section 401 grantees should submit an original and two copies of an Advance Notice of Intent. The Advance Notice is to be postmarked no later than 15 days after the date of publication of this **Federal Register** Notice. An organization may submit only one Advance Notice of Intent for any and all areas for which it wants to be considered. The Advance Notice of Intent is to be sent to the Chief, Division of Indian and Native American Programs, at the address cited above.

Complete instructions for the Advance Notice of Intent process will be mailed to all current grantees on or about September 21, 1992. Incumbents will also received a description of their present geographic service area at this time. New applicants may request copies of the Advance Notice of Intent instructions by writing to the Chief, Division of Indian and Native American Programs, at the address cited above.

DOL's first step in the designation process is to determine which areas have more than one potential applicant for designation. For those areas for which more than one organization submits an Advance Notice of Intent, each such organization will be notified of the situation, and will be apprised of the identity of the other organization(s) applying for that area. Such notification will consist of providing affected applicants (including incumbents who have not submitted Advance Notices of Intent) with copies of all Advance Notices of Intent submitted for their requested areas. The notification will occur on or about November 30, 1992. The notification will state that organizations are encouraged to work out any conflicting requests among themselves, and that a final Notice of Intent should be submitted by the required postmark of January 1, 1993, deadline (see part III, Notice of Intent, below).

Under the Advance Notice of Intent process, it is DOL policy that, to the extent possible within the regulations, a geographic service area and the applicant that will operate a section 401 program in that area are to be determined by the Native American community to be served by the program. In the event the Native American community cannot resolve differences, applicants should take special care with their final Notices of Intent to ensure that they are complete and fully responsive to all matters covered by the preferential hierarchy and rating systems discussed in this notice.

Information provided in the Advance Notice of Intent process shall not be considered as a final submission as referenced at 20 CFR 632.11. The Advance Notice of Intent is a procedural mechanism to facilitate the designation process. The regulations do not provide for formal application for designation through the Advance Notice of Intent.

III. Notice of Intent

All applicants must submit an original and two copies of a final Notice of Intent, postmarked no later than January 1, 1993, consistent with the regulations at 20 CFR 632.11. Final Notices of Intent may also be delivered in person not later than the close of business on the first business day of the designation year. Exclusive of charts or graphs and letters of support, the Notice of Intent should not exceed 75 pages of double-space unreduced type.

Final Notices of Intent are to be sent to the Chief, Division of Indian and Native American Programs, (DINAP) at the address cited above.

The regulations permit current grantees requesting their existing geographic service areas to submit an SF 424 in lieu of a complete application. As noted earlier in this notice, current grantees, other than tribes, bands or groups (including Alaskan Native entities) requesting their existing areas, are encouraged to consider submitting a full Notice of Intent even if their geographic service area request has not changed in the event that competition occurs. Tribes, bands and groups (including Alaskan Native entities) should consider submitting a full Notice of Intent if they currently serve areas beyond their reservation boundaries.

Applicants are encouraged to modify the geographic service area requests identified in their Advance Notices of Intent to avoid competition with other applicants. Applicants should not add territory to the geographic service area requests identified in the Advance Notice of Intent. Any organization applying by January 1, 1993, for non-contiguous geographic service areas shall prepare a separate, complete Notice of Intent for each such area unless currently designated for such areas.

It is the DOL's policy that no information affecting the panel review process will be solicited or accepted past the regulatory postmarked or hand delivered deadlines (see part V, Use of Panel Review Procedure, below). All information provided before the deadline must be in writing.

The policy does not preclude the Grant Officer from requesting additional information independent of the panel review process.

IV. Preferential Hierarchy for Determining Designations

In cases in which only one organization is applying for a clearly identified geographic service area and the organization meets the requirements at 20 CFR 632.10(b) and 632.11(d), DOL shall designate the applying organization as the grantee for the area. In cases in which two or more organizations apply for the same area (in whole or in part), DOL will utilize the order of designation preference described in the hierarchy below. The organization which falls into the highest category of preference will be designated, assuming all other requirements are met. The preferential hierarchy is:

(1) Indian tribes, bands of groups on Federal or State reservations for their reservation; Oklahoma Indians only as specified in part VII, Special Designation Situations, below; and Alaskan Native entities only as specified in part VII, Special Designation Situations, below.

(2) Native American-controlled, community-based organizations as defined in part VIII (1) of the glossary in this notice, with significant support from other Native American-controlled

organizations within the service community. This includes tribes applying for geographic service areas other than their own reservations.

When a non-incumbent can demonstrate in its application, by verifiable information, that it is potentially significantly superior overall to the incumbent, a formal competitive process will be utilized which may include a panel review. Such potential will be determined by the consideration of such factors as the following: Completeness of the application and quality of the contents; documentation of past experience; Native American-controlled organizational support; understanding of area training and employment needs and approach to addressing such needs; and the capability of the incumbent. If there is no incumbent, new applicants qualified for this category would compete against each other.

(3) Organizations (private nonprofit or units of State or local government) having a significant Native American advisory process, such as a governing body chaired by a Native American and having a majority membership of Native Americans.

(4) Non-Native American-controlled organizations without a Native American advisory process. In the event such an organization is designated, it must develop a Native American advisory process as a condition for the award of a grant.

The Chief, DINAP, will make determinations regarding hierarchy, geographic service areas, eligibility of new applicants and the timeliness of submissions. He may convene a task force to assist in making such determinations. The role of the task force is that of a technical advisory body.

The Chief, DINAP, will ultimately advise the Grant Officer in reference to which position an organization holds in the hierarchy. Within the regulatory time constraints of the designation process, the Chief, DINAP, will utilize whatever information is available.

The applying organization must supply sufficient information to permit the determination to be made. Organizations must indicate the category which they assume is appropriate and must adequately support that assertion.

V. Use of Panel Review Procedure

A formal competitive process may be utilized under the following circumstances:

(1) The Chief, DINAP, advises that a new applicant qualified for the second category of the hierarchy appears to be potentially significantly superior overall to an incumbent Native American-controlled, community-based organization with significant local Native American community support.

(2) The Chief, DINAP, advises that more than one new applicant is qualified for the second category of the hierarchy, and the incumbent grantee has not reapplied for designation.

(3) The Chief, DINAP, advises that two or more organizations have equal status in the third or fourth categories of the hierarchy, when there are no applicants qualified for the first and second categories.

When competition occurs, the Grant Officer may convene a review panel of Federal Officials to score the information submitted with the Notice of Intent. The purpose of the panel is to evaluate an organization's capability, based on its application, to serve the area in question. The panel will be provided only the information described at 20 CFR 632.11 and submitted with the final Notice of Intent. The panel will not give weight to simple assertions. Any information must be supported by adequate and verifiable documentation, *e.g.*, supporting references must contain the name of the contact person, an address and telephone number.

The factors listed below will be considered in evaluating the capability of the applicant. In developing the Notice of Intent, the applicant should organize his documentation of capability to correspond with these factors.

(1) Operational Capability—40 points. (20 CFR 632.10 and 632.11)

(a) Previous experience in successfully operating an employment and training program serving Indians and Native Americans of a scope comparable to that which the organization would operate if designated—20 points.

(b) Previous experience in operating other human resources development programs serving Indians or Native Americans or coordinating employment and training services with such programs—10 points.

(c) Ability to maintain continuity of services to Indian or Native American participants with those previously provided under JTPA—10 points.

(2) Identification of the training and employment problems and needs in the requested area and approach to addressing such problems and needs—20 points. (20 CFR 632.2)

(3) Planning Process—20 points. (20 CFR 632.11)

(a) Private sector involvement—10 points.

(b) Community support as defined in part VIII (1), Designation Process Glossary, and documentation as provided in part I (5), General Designation Principles—10 points.

(4) Administrative Capability—20 points. (20 CFR 632.11)

(a) Previous experience in administering public funds under DOL or similar administrative requirements—15 points.

(b) Experience of senior management staff to be responsible for DOL grant, if designated—5 points.

VI. Notification of Designation/ Nondesignation

The Grant Officer will make the final designation decision giving consideration to the following factors: the review panel's recommendation, in those instances where a panel is convened; input from DINAP, the Office of Special Targeted Programs, the DOL Employment and Training Administration's Office of Grants and Contracts Management and Office of Management Services, and the DOL Office of the Inspector General; and any other available information regarding the organization's financial and operational capability, and responsibility. The Grant Officer's decisions will be provided to all applicants by March 1, 1993, as follows:

(1) Designation Letter

The designation letter signed by the Grant Officer will serve as official notice of an organization's designation. The letter will include the geographic service area for which the designation is made. It should be noted that the Grant Officer is not required to adhere to the geographic service area requested in the final Notice of Intent. The Grant Officer may make the designation applicable to all of the area requested, a portion of the area requested, or if acceptable to the designee, more than the area requested.

(2) Conditional Designation Letter

Conditional designations will include the nature of the conditions, the actions required to be finally designated and the time frame for such actions to be accomplished.

(3) Nondesignation Letter

Any organization not designated, in whole or in part, for a geographic service area requested will be notified formally of the nondesignation and given the basic reasons for the determination. An applicant for designation that is refused such designation, in whole or in part, may file a Petition for Reconsideration in accordance with 20 CFR 632.13, and subsequently, may appeal the

nondesignation to an administrative law judge under the provisions of 20 CFR part 636.

If an area is not designated for service through the foregoing process, alternative arrangements for service will be made in accordance with 20 CFR 632.12.

VII. Special Designation Situation

(1) Alaskan Native Entities

DOL has established geographic service areas for Alaskan Native employment and training programs based on the following: (a) The boundaries of the regions defined in the Alaska Native Claims Settlement Act (ANCSA); (b) the boundaries of major subregional areas where the primary provider of human resource development and related services is an Indian Reorganization Act (IRA)-recognized tribal council; and (c) the boundaries of the one Federal reservation in the State. Within these established geographic service areas, DOL will designate the primary Alaskan Native-controlled human resource development services provider or an entity formally designated by such provider. In the past, these entities have been regional nonprofit corporations, associated corporations established by the regional nonprofit corporation, IRA-recognized tribal councils and the tribal government of the Metlakatla Indian Community. DOL intends to follow these principles in designating Native American grantees in Alaska for Program Years 1993 and 1994.

(2) Oklahoma Indians

DOL has established a service delivery system for Indian employment and training programs in Oklahoma based on a preference for Oklahoma Indians to serve portions of the State. Generally, geographic service areas have been designated geographically as countywide areas. In cases in which a significant portion of the land area of an individual county lies within the traditional jurisdiction of more than one tribal government, the service area has been subdivided to a certain extent on the basis of tribal identification information in the most recent Federal Decennial Census of Population. Wherever possible, arrangements mutually satisfactory to grantees in adjoining or overlapping geographic service areas have been honored by DOL. DOL intends to follow these principles in designating Native American grantees in Oklahoma for Program Years 1993 and 1994 to preserve continuity and prevent unnecessary fragmentation.

VIII. Designation Process Glossary

In order to ensure that all interested parties have the same understanding of the process, the following definitions are provided:

(1) Indian or Native American-Controlled Organization

This is defined as any organization with a governing board, more than 50 percent of whose members are Indians or Native Americans. Such an organization can be a tribal government, Native Alaskan or Native Hawaiian entity, consortium, or public or private nonprofit agency. For the purpose of hierarchy determinations, the governing board must have decision making authority for the section 401 program.

(2) Service Area

This is defined as the geographic area described as States, counties, and/or reservations for which a designation is made. In some cases, it will also show the specific population to be served. The service area is defined by the Grant Officer in the formal designation letter. Grantees must ensure that all eligible population members have equitable access to employment and training services within the service area.

(3) Community Support

This is evidence of active participation and/or endorsement from Indian or Native American-controlled organizations within the geographic service area for which designation is requested.

While applications are not precluded from submitting attestations of support from individuals, the business community, State and local government offices, and community organizations that are not Indian or Native American-controlled, they should be aware that such endorsements do not meet DOL's definitional criteria for community support.

Signed at Washington, D.C., this 16th day of September 1992.

Paul A. Mayrand,

Director, Office of Special Targeted Programs.

Herman E. Narcho,

Acting Chief, Division of Indian and Native American Programs.

James C. DeLuca,

Grant Officer, Office of Grants and Contracts Management, Division of Acquisition and Assistance.

Roberts T. Jones,

Assistant Secretary for Employment and Training.

[FR Doc. 92-22805 Filed 9-18-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-26,663]

Compaq Computer Corporation; Houston, TX; Notice of Revised Determination on Reconsideration

On May 1, 1992, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of Compaq Computer Corporation in Houston, Texas. The notice was published in the **Federal Register** on May 11, 1992 (57 FR 20130).

The Department's denial was based on the fact that company imports of printed circuit boards had not yet commenced. Petitioners were urged to reapply when the subject firm's imports of printed circuit boards occurred.

On reconsideration, the Department noted that the petition was for personal computers produced at Houston.

Findings on reconsideration show that the workers produce desktop, laptop and notebook computers as well as printed circuit boards which are used internally on personal computers produced at Houston. Workers are not separately identifiable by product.

Other findings show that sales and production of personal computers at Houston declined in 1991 compared to 1990 and in the first half of 1992 compared to the same period in 1991. Significant worker separations at Houston occurred in 1991.

Other findings on reconsideration show that company imports of personal computers (desktop, laptop and portables) increased in 1991 and the first half of 1992 compared to the earlier respective corresponding period while desktop, laptop and portable production decreased at Houston.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that workers at Compaq Computer Corporation in Houston, Texas were adversely affected by increased imports of articles like or directly competitive with the personal computers and printed circuit boards produced at the Compaq Computer Corporation in Houston, Texas. In accordance with the provisions of the Act, I make the following revised determination for workers of the Compaq Computer Corporation in Houston, Texas.

All workers of Compaq Computer Corporation in Houston, Texas who became totally or partially separated from employment on or after January 1, 1991 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 9th day of September 1992.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service Unemployment Insurance Service.

[FR Doc. 92-22803 Filed 9-18-92; 8:45 am]

BILLING CODE 4510-35-M

[TA-W-27,006, et al.]

Global Marine Drilling Co.; Houston, TX, et al., Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

Operating Offshore in the Following States

TA-W-27,006A Texas,
TA-W-27,006B Louisiana,
TA-W-27,006C Mississippi,
TA-W-27,006D Alabama and,
TA-W-27,006E Alaska.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 18, 1992 applicable to all workers of Global Marine Drilling Company, Houston, Texas. The certification notice was published in the **Federal Register** on June 12, 1992 (57 FR 25081).

At the request of the State Agency, the Department reviewed the subject certification. The findings show that worker separations occurred from drilling rigs in the Gulf of Mexico and off the coast of Alaska. Therefore, the Department is amending the certification to include all offshore locations in the States of Texas, Louisiana, Mississippi, Alabama and Alaska.

The intent of the Department's certification is to include all workers of Global Marine Drilling Company who were adversely affected by increased imports.

The amended notice applicable to TA-W-27,006 is hereby issued as follows:

All workers of Global Marine Drilling Company, Houston, Texas and operating offshore in the States of Texas, Louisiana, Mississippi, and Alabama and Alaska, who became totally or partially separated from employment on or after March 5, 1991, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 10th day of September 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-22802 Filed 9-18-92; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Zeigler Coal Company

[Docket No. M-92-96-C]

Zeigler Coal Company, 50 Jerome Lane, Fairview Heights, Illinois 62208 has filed a petition to modify the application of 30 CFR 75.352 (aircourses and belt haulage entries) to its Spartan Mine (I.D. No. 11-00612) located in Randolph County, Illinois. Section 75.352 is not scheduled to be effective until November 16, 1992 (57 FR 34683). The petitioner proposes to ventilate the belt haulage slope with return air and monitor the belt slope with an automatic fire sensor and warning device system. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

2. Costain Coal, Inc.

[Docket No. M-92-97-C]

Costain Coal, Inc., P.O. Box 289, Sturgis, Kentucky 42459-0289 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Baker Mine (I.D. No.15-14492) and its Pyro No. 9 Wheatcroft Mine (I.D. No. 15-13920) both located in Webster County, Kentucky. The petitioner proposes to install a low-level carbon monoxide detection system in all belt entries where a sensor location is identified instead of a monitoring system which identifies each belt flight. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

3. Costain Coal, Inc.

[Docket No. M-92-98-C]

Costain Coal, Inc., P.O. Box 289, Sturgis, Kentucky 42459-0289 has filed a petition to modify the application of 30 CFR 75.901(a) (protection of low- and medium-voltage three-phase circuits used underground) to its Baker No. 13 Mine (I.D. No. 15-14492) and its Wheatcroft No. 9 Mine (I.D. No. 15-13920) both located in Webster County, Kentucky. The petitioner proposes to operate a diesel-powered generator without an earth-referenced ground to supply electrical power mobile mining equipment when such mining equipment is being moved from one area of the mine to another. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

4. U.S. Steel Mining Company, Inc.

[Docket No. M-92-99-C]

U.S. Steel Mining Company, Inc., 600 Grant Street, Pittsburgh, Pennsylvania 15219 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Cumberland Mine (I.D. No. 36-05018) located in Greene County, Pennsylvania. The petitioner requests relief from the location of high-voltage cables within 150 feet of pillar workings and proposes to use 4160 volt cables and equipment to power permissible longwall equipment. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

5. Southern Ohio Coal Company

[Docket No. M-92-100-C]

Southern Ohio Coal Company, 41 South High Street, Columbus, Ohio 43215-6194 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops and permanent pumps) to its Meigs No. 2 Mine (I.D. No. 33-01173) and its Meigs No. 31 Mine (I.D. No. 33-01172) both located in Meigs, County, Ohio. The petitioner proposes to enclose electrical equipment in a monitored fireproof structure and install an audible and visual signal activated by a carbon monoxide sensor that can be heard at all times by a responsible person. The petitioner asserts that the proposed alternate method would provide the same measure of protection as would the mandatory standard.

6. Peabody Coal Company

[Docket No. M-92-101-C]

Peabody Coal Company, P.O. Box 1990, Henderson, Kentucky 42420-1990 has filed a petition to modify the application of 30 CFR 75.1700 (oil and gas wells) to its Camp No. 1 Mine (I.D. No. 15-02709) located in Union County, Kentucky. The petitioner proposes to seal and mine through oil and gas wells. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

7. Magma Cooper Company

[Docket No. M-92-10-M]

Magma Cooper Company, P.O. Box 37, Superior, Arizona 85273-0037 has filed a

petition to modify the application of 30 CFR 57.6204(a)(2) (hoists) to its Magma Mine (I.D. No. 02-00152) located in Gila County, Arizona. The Petitioner proposes to hoist muck and explosive simultaneously in adjacent compartments. The petitioner asserts that the proposed alternate method would provide the same measure of protection as would the mandatory standard.

8. Magma Cooper Company

[Docket No. M-92-11-M]

Magma Cooper Company, P.O. Box 37, Superior, Arizona 85273-0037 has filed petition to modify the application of 30 CFR 57.11059 (respirable atmosphere for hoist operators underground) to its Magma Mine (I.D. No. 02-00152) located in Gila County, Arizona. The petitioner proposes to use an independent ventilation system that converts to a one-hour self-contained breathing apparatus instead of a two-hour breathing apparatus. The petitioner states that the two-hour device cannot be found in the marketplace.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 21, 1992.

Copies of these petitions are available for inspection at that address.

Dated: September 15, 1992.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 92-22804 Filed 9-18-92; 8:45 am]

BILLING CODE 4510-43-M

Pension and Welfare Benefits Administration

Extension of Grace Period for Assessment of Civil Penalties for Failure to File Timely Annual Return/Reports; Top Hat Plans and Pre-Grace Period Late Filers

The U.S. Department of Labor's Pension and Welfare Benefits Administration (PWBA) has announced it is extending until December 31, 1992 the Grace Period for plan administrators who voluntarily file overdue annual reports for 1988 and subsequent plan years. The Grace Period, which began March 23, 1992 and was scheduled to end on September 30, 1992, gives pension and welfare plan administrators the opportunity to file overdue annual reports without incurring the full civil penalty allowed under section 502(c)(2) of the Employee Retirement Income Security Act of 1974 (ERISA). For additional information on the filing requirements see PWBA's two previous **Federal Register** notices published on April 20, 1992 (57 FR 14436) and July 24, 1992 (57 FR 33019).

PWBA cities several factors in its decision to extend the Grace Period. Most notably the extension serves to further PWBA's policy goal of bringing plans into compliance with the reporting requirements of ERISA. In addition, the eligibility of certain plans, such as "top hat" plans and plans that had filed overdue annual reports before the start of the Grace Period, was not clarified until the second notice was published on July 24, 1992. This decision also was made in part to extend relief to those individuals affected by Hurricanes Andrew and Iniki, following the example of the Internal Revenue Service (IRS) which granted filing and payment extensions to certain taxpayers and tax practitioners affected by Hurricane Andrew. (Notice 92-40, 1992-38 I.R.B. 1) Lastly, the Department has become aware that a significant number of people seeking to take advantage of the Grace Period have encountered some difficulty in concluding the necessary audits and other takes associated with filing complete annual reports.

Where to File

Copies of statements, annual return/reports with original signatures and checks for the penalty amount, made payable to the U.S. Department of Labor, must be sent to: Pension and Welfare Benefits Administration, P.O. Box 75212, Washington, DC 20013-5212. For complete filing instructions see the two previous PWBA **Federal Register** notices cited above at 57 FR 14436 and 57 FR 33019.

FOR FURTHER INFORMATION CONTACT: Janet Powell, Division of Reporting Compliance, Office of the Chief Accountant. Telephone (202) 523-8776. After September 28, 1992 phone (202) 219-8776. (These are not toll-free numbers).

Signed at Washington, DC, this 16th day of September, 1992.

David George Ball,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 92-22801 Filed 9-18-92; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 92-48]

NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC); Meeting on Communications and Information

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a NAC, Space Systems and Technology Advisory Committee meeting on communications and information.

DATES: October 14, 1992, 8:30 a.m. to 5 p.m.; October 15, 1992, 8:30 a.m. to 5 p.m.; and October 16, 1992, 8:30 a.m. to noon.

ADDRESSES: National Aeronautics and Space Administration, Jet Propulsion Laboratory, room 102, Building 198, 4800 Oak Grove Drive, Pasadena, CA 91109.

FOR FURTHER INFORMATION CONTACT: Dr. Henry Plotkin, National Aeronautics and Space Administration, Goddard Space Flight Center, Greenbelt Road, Greenbelt, MD 20771, 301/286-6185.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Space Research & Technology Program
—Base Research & Technology
—Space Science Thrust
—Operations Thrust
—Communications Program
—Sensing Systems
—Data Systems and Information Management

Dated: September 11, 1992.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 92-22701 Filed 9-18-92; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting two notices of information collections that will affect the public. Interested persons are invited to submit comments

by October 21, 1992. Comments may be submitted to:

(A) *Agency Clearance Officer:* Herman G. Fleming, Division of Personnel and Management, National Science Foundation, Washington, DC 20550, or by telephone (202) 325–7335. and to:

(B) *OMB Desk Officer:* Office of Information and Regulatory Affairs, ATTN: Dan Chenok, Desk Officer, OMB, 722 Jackson Place, room 3208, NEOB, Washington, DC 20503.

Title: 1992 Joint NSF/NIH Survey of Public Understanding of Science.

Affected Public: Individuals.

Respondents/Reporting Burden: 5,200 respondents; 20 minutes per response.

Abstract: This telephone survey of 5,200 adults measures attitudes toward, and understanding of, S&T. The data will be used in the National Science Board's Congressionally-mandated report, Science & Engineering Indicators. Other users will include: the NIGH; policy makers; researchers; and sponsors of survey abroad, with which this survey is closely coordinated.

Dated: September 15, 1992.

Herman G. Fleming,

Reports Clearance Officer.

[FR Doc. 92–22768 Filed 9–18–92; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Chemical and Thermal Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: September 30, 1992; 8:30 a.m. to 5 p.m.

Place: Room 500C, 1110 Vermont Ave, NW., Washington, DC 20005.

Type of Meeting: Closed.

Contact Person: Drs. Merrill King and Michael Chen, Program Directors, Room 1115, National Science Foundation, 1800 G St., NW., Washington, DC 20550. Telephone: (202) 357–9606.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Small Business Innovation Research (SBIR) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c),(4) and (6) of the Government in the Sunshine Act.

Reason for Late Notice: Difficulty arranging an appropriate time when all members could meet.

Dated: September 16, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–22767 Filed 9–18–92; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee on Advanced Boiling Water Reactors; Cancellation

A meeting of the ACRS Subcommittee on Advanced Boiling Water Reactors scheduled to be held on September 23–24, 1992, room P–110, 7920 Norfolk Avenue, Bethesda, MD has been cancelled at the request of the NRC staff. Notice of this meeting was published in the **Federal Register** on Wednesday, September 2, 1992 (57 FR 40204).

For further information contact: Mr. Elpidio Igne, cognizant ACRS staff engineer, (telephone 301/492–8192) between 7:30 a.m. and 4:15 p.m. (EST).

Dated: September 14, 1992.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 92–22753 Filed 9–18–92; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Subcommittee on Improved Light Water Reactors; Meeting

The ACRS Subcommittee on Improved Light Water Reactors will hold a meeting on September 23, 1992, in room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance. The agenda for the subject meeting shall be as follows:

Wednesday, September 23, 1992—8:30 a.m. until the conclusion of business.

The Subcommittee will review SECY–92–287, "Form and Content for a Design Certification Rule."

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Mr. Elipidio G. Igne (telephone 301/492–8192) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: September 14, 1992.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 92–22754 Filed 9–18–92; 8:45 am]

BILLING CODE 7590–01–M

POSTAL SERVICE

Adjustment of Preferred Rates

AGENCY: Postal Service.

ACTION: Notice of adjustment of preferred rates.

As contemplated in the Postal Service Appropriations Act for Fiscal Year 1992, enacted on October 21, 1991, the Postal Service has determined that, pursuant to Resolution 92–4 of the Governors of the United States Postal Service, 57 FR 41793 (September 11, 1992), the following adjustments to the preferred rates for non-letter size bulk third-class nonprofit mail shall take effect at 12:01 a.m. on Sunday, October 4, 1992.

Notes 3, 4, and 5 of Rate Schedule 302 are not referenced in this **Federal Register** document but are republished for the information of the user.

RATE SCHEDULE 302 THIRD-CLASS MAIL NONPROFIT BULK [1]

	Piece rate(cents)	Pound rate (cents)
Non-Letters Size:		
Piece Rate [3]	16.4	
Discounts (Per Piece):		
Destination Entry:		
BMC	1.2	
SCF	1.7	
Delivery Office [2]	2.2	
Presort Level:		
3- and 5-Digit	1.4	
Carrier Route	4.5	
125-Piece Walk-Sequence	4.7	
Saturation	5.2	
Pound Rate [6]:		
Pound Rates Plus Per Piece Rate	7.1	44.6
Discounts:		
Destination Entry (Per Pound):		
BMC		5.8
SCF		8.1
Delivery Office [2]		10.4
Presort Level (Per Piece):		
3- and 5-Digit	1.4	
Carrier Route	4.5	
125-Piece Walk-Sequence	4.7	
Saturation	5.2	

[1] A fee of $75.00 must be paid once each 12-month period for each bulk mailing permit.
[2] Applies only to carrier route presort, 125-piece walk-sequence and saturation mail.
[3] For letter size pieces meeting applicable Postal Service regulations.
[4] Among ZIP+4 and barcode discounts, only one discount may be applied.
[5] Deducted from otherwise applicable 3- and 5-digit rate.
[6] Mailer pays either the piece or the pound rate, whichever is higher.

A commensurate change will be made in the special bulk third-class rate charts in section 611 of the domestic Mail Manual, incorporated by reference in the Code of Federal Regulations by 39 CFR 111.1, and a transmittal letter making these changes in the Domestic Mail Manual will be published and will be transmitted automatically to subscribers. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided by 39 CFR 111.3.

Stanley F. Mires,

Assistant General Counsel Legislative Division.

[FR Doc. 92-22630 Filed 9-18-92; 8:45 am]

BILLING CODE 7710-12-M

DEPARTMENT OF STATE

[Public Notice 1698]

Defense Trade Advisory Group; Meeting

AGENCY: U.S. Department of State, Office of Defense Trade Policy, Bureau of Politico-Military Affairs.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(1) of the Federal Advisory Committee Act, notice is hereby given of a meeting of the Defense Trade Advisory Group (DTAG). The DTAG, established in February 1992 pursuant to the Federal Advisory Committee Act (Public Law 92-463; 5 U.S.C. app. I), provides a formal mechanism for U.S. government officials, U.S. defense contractors, and other defense trade specialists to consult regularly on issues related to commercial arms sales. These include broad policy and technology transfer issues, as well as regulations and licensing procedures governing U.S. commercial munitions exports.

DATES: The open session will take place on Wednesday, October 14, 1992, from 2 p.m. to 5 p.m..

ADDRESSES: The meeting will be held in room 155-B Marshall Hall of the National Defense University (NDU). NDU main entrance is at 4th and P Streets, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Linda L. Lum, DTGA Secretariat, U.S. Department of State, PM/DTP—room 7815 Main State, Washington, DC 20520-7815. Phone (202) 647-4231, Fax (202) 647-4232/1348.

SUPPLEMENTARY INFORMATION: Attendance is open to the general public, but will be limited to the space available. As entry into the National Defense University is controlled, persons wishing to attend must notify the DTAG Executive Secretariat by Monday, September 28, 1992. Attendees should provide their date of birth, company or organization affiliation, and social security number to the DTAG Secretariat (Attention: Eva Chesteen). Attendees must carry a valid photo ID with them to the open session. Entrance to NDU will be through its main entrance at 4th and P Streets, SW., Marshall Hall is a 10-15 minute walk from the main gate. Parking spaces at NDU are limited.

Dated: September 10, 1992.

Rand Beers,

Director, Center for Defense Trade, Bureau of Politico-Military Affairs.

[FR Doc. 92-22723 Filed 9-18-92; 8:45 am]

BILLING CODE 4710-25-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 92-033]

Special Service Great Lakes Limited Domestic Load Line

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: This notice advises the affected public of the availability of a special service limited domestic load line for unmanned dry cargo barges carrying nonhazardous cargoes, operating between Calumet Harbor, Illinois and Milwaukee, Wisconsin.

EFFECTIVE DATE: This notice is effective on September 21, 1992.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Keith Dabney, Office of Marine Safety, Security, and Environmental Protection, U.S. Coast Guard (G-MTH-3) room 1308, 2100 Second Street SW., Washington DC 20593-0001. Telephone (202) 267-2988.

SUPPLEMENTARY INFORMATION:

Background

On May 29, 1992, the Coast Guard published a notice of exemption and request for comments (57 FR 22663) concerning the Coast Guard's determination that a Special Service Limited Domestic Voyage Load Line Certificate would be available, on a case-by-case basis, for certain unmanned river barges operating between Calumet Harbor, Illinois and Milwaukee, Wisconsin. Interested persons were given until June 29, 1992, to comment on this determination.

For many years, the Coast Guard has sought to maintain a reasonable comparability between domestic load line regulations and the provisions of the International Convention of Load Lines, 1966. Many of the domestic load line regulations derive from the Coastwise Load Line Act, 1935 (46 U.S.C. app. 88a-88h, 46 U.S.C. 5102 *et seq.*). A regulatory project, docket number CGD 86-013, is in progress to update the load line regulations.

One anomaly in the regulations that has been identified is the lack of uniformity in the geographic areas where load line requirements are applied. Great Lakes load line regulations require a "full service" load line certificate for certain vessels over 79 feet in length operating in any location on the Great Lakes. However, almost all other geographic areas have "boundary lines" delineating where load line requirements apply. For instance, in

the Gulf of Mexico, the boundary line roughly follows a 12-nautical-mile contour of the shore. In other cases, inland vessels operating on Long Island Sound, Chesapeake Bay, Puget Sound, Cook Inlet, and Norton Sound, Alaska (all which have wind and wave conditions similar to Lake Michigan) do not need a load line certificate because they are inside the boundary line. Historically, the Coast Guard has used special service domestic load lines in addition to special exemptions as a means to offset this disparity and reduce the burden of the regulations on the public. It is within this context that an in-depth analysis and evaluation of the Port of Milwaukee's request was made.

Discussion of Comments

Forty-eight organizations and individuals commented on the notice. Thirty-one supported the Coast Guard's action. Four requested additional explanatory information (contained in this notice) before implementation of the approval. Eleven disagreed with the action. The comments are discussed below. Similar general comments are discussed within a subject category. Other more specific comments are addressed individually.

A. Harbors of Safe Refuge

Two comments stated that the distance between Chicago, Illinois and Milwaukee, Wisconsin is too great for river barges since there is an inadequate and/or unsuitable number of harbors of safe refuge along the route. The number of times that such ports are used should be minimal. Requirements specified for this special service limited domestic load line provide that a voyage may not be undertaken until likely weather conditions are assessed and are determined to be within specified parameters. Therefore, only when lake conditions change to such an extent that continued travel endangers the tow would a harbor of safe refuge be necessary. According to the United States Coast Pilot, Volume 6, there are at least two ports where a tow could seek shelter: Waukegan, Illinois and Kenosha, Wisconsin. Both Waukegan and Kenosha can accommodate a tow which meets the requirements of this notice. The maximum distance between harbors of safe refuge is 36 nautical miles (Kenosha to Milwaukee). Therefore, a maximum distance of only 18 nautical miles would have to be traveled under conditions where safe refuge would be needed.

B. Storm, Wind, Wave, and Ice Conditions

Two comments stated that storm, wind, and ice conditions are too severe to allow river barges on the proposed route. Specifically, one said "[s]torms often come up suddenly. River barges could not survive a cyclonic storm on the Great Lakes." The comment continues by stating that river barges cannot survive the wind-generated waves found on the route. The specific purpose of the imposed wind and wave restrictions is to minimize exposure to extreme hull stresses. In addition, it cannot be assumed that even if the barges were to receive a normal Great Lakes load line, the vessels could withstand all storm and sea conditions which might occur on the Great Lakes. Five comments stated that the imposed restrictions are sufficient to ensure safe movement even when severe conditions exist.

Regarding the 4-foot wave height restriction, one comment questioned the accuracy of the 4-foot wave height statistics listed in the previous notice and suggests that they be reexamined based on advice from tug and tow operators. The comment presented considerable data which was intended to show that the percentage of time in which average wave heights exceeded 4 feet was greater than that listed in the notice. The purpose of listing the wave height percentages in the prior notice, as determined by the National Oceanic and Atmospheric Administration (NOAA) in its report, was to provide individuals and organizations with an estimate of how often operation along this route would most likely be possible, given the 4-foot wave height operating limitations. The wave height limitation of 4 feet was chosen based on input from several operators, and was validated in most of the comments received, as providing a benchmark for when travel along the route would be reasonable. The Coast Guard considers the NOAA data accurate. But even if they are not, the only effect will be that the number of days that operation is allowed will be less than anticipated.

One comment also expressed concern over the lack of any operational limits on the barges for use in ice conditions and that no analysis was made to conclude that river service barges can be towed safely in an ice environment. The comment recommends that some type of restriction be made for operations between January and March. The Coast Guard agrees that this is a reasonable precaution and has adjusted the operating conditions to address ice conditions.

Finally, it is axiomatic that the owners and operators of unmanned dry cargo river barges must exercise good judgment and common sense. The operating restrictions set forth in this notice are not being established for the purpose of guaranteeing safe passage, either expressly or implicitly. That is neither appropriate nor possible. The operating and other requirements set forth in this notice are meant to provide some guidance for operation. Safe operation of a vessel is the duty of the owner and/or operator. The establishment of more restrictive operating limitations by an owner or operator may be appropriate or even advisable under certain circumstances. Before undertaking a voyage along any route, all relevant factors which might affect the safety of the voyage must be considered collectively: the particular vessel involved, the cargo, the time of year, and the length of the transit, to name a few. By establishing minimum conditions for operation, the Coast Guard is not attempting to eliminate the need for good seamanship, reasonable judgment, and common sense on the part of owners and operators of the barges.

C. Five-Nautical-Mile Limitation

One comment suggested that the Coast Guard was implicitly creating a 5-nautical-mile corridor inside all the Great Lakes and thus making all such waters "inland water." This is not the Coast Guard's intention. As noted earlier, inland vessels not operating beyond the boundary lines for inland waters are excluded from load line requirements. The 5-nautical-mile limitation was set in an effort to minimize adverse conditions affecting the towing operation by limiting fetch actions and thus reducing the likelihood of high wind and sea states. A blanket approval for all non-load line operation within a 5-nautical-mile corridor along all of the Great Lakes is not being contemplated. Future requests for special service limited domestic load lines will be considered only after extensive review and evaluation.

D. Structural Adequacy of River Barges

Two comments expressed concern about the structural adequacy of river barges on the Great Lakes. Six comments, primarily from towboat owners and operators on the Great Lakes, stated that the operational and conditional restrictions were such as to provide an appropriate level of safety. One organization, with extensive towing experience in gulf and coastal operations, also commented favorably

in this regard. The Coast Guard fully recognizes that barges built to river service scantlings may not be suitable for unrestricted service on the Great Lakes. However, unrestricted service is not the intent of this notice. In addition, river barges are not fragile structures. They operate in a severe work environment in which they are subjected to a greater than average number of impact loadings and groundings. As a result, they are designed to withstand heavy use, and should be adequate for the planned service when the original scantlings are maintained.

E. Adequate Stability

This subject was addressed by one comment in three respects: the use of a uniformly assigned freeboard, the absence of watertight hatch coves, and concerns over shifting cargo.

One comment recommended that the assigned freeboard be set specific to each barge. However, the previous notice set *minimum* freeboard values, not uniform values, which is consistent with freeboard requirements for similar vessels found in 46 CFR 44.05–25(e).

One comment suggested requiring weathertight hatch covers on hopper barges to reduce the chances of taking on water. The requirement to operate in fair weather is intended to minimize the need for covers unless the cargo is such that protection from the environment is essential. It is reasonable to assume that, in this case, the owner or operator would use covers, acting in his or her own interest. In addition, imposing such a requirement would be contrary to existing policy for fair weather voyage load line assignments. There are several fair weather voyage services which do not require hatch covers which have been in effect for some time without reports of problems.

Provisions to minimize shifting cargoes are an owner/operator responsibility. However, a precaution to this effect has been added to the minimum operating conditions as a reminder.

G. Requirements for Towing Vessels

One comment felt that the Coast Guard should clarify that the minimum tug horsepower, regardless of number of barges towed, is 1,000. The wording of the 1,000 horsepower requirement has been modified as suggested.

Another comment from a large towing operator on the Great Lakes, agreed with the horsepower restriction but felt that some details of a towing operation must be left to operator discreation. For example, based on weather conditions a tow might push ahead or tow alongside. In rougher waters, towing on a hawser might be necessary. The Coast Guard agrees. It is very difficult, and certainly beyond the scope of this notice, to address every possible factor which could effect a towing operating and such efforts could conceivably be overly restrictive at times.

H. Legal Considerations

One comment suggested that this action be done as a rulemaking activity. The Coast Guard's position is that existing regulations in 46 CFR parts 42, 44, and 45 provide sufficient authority for the action taken. Given the sheltered nature of the voyages and the recommendations of the American Bureau of Shipping (ABS), the determination is well within the discretion permitted by the regulations. ABS has taken no action to implement the special service limited domestic load line for unmanned dry cargo barges carrying nonhazardous cargoes, operating between Calumet Harbor, Illinois and Milwaukee, Wisconsin prior to public comment and publication of this second notice.

Along the same lines, one comment said that the Coast Guard's action was contrary to 46 U.S.C. 5104(e), which allows for regulations, not policy, to identify areas of less severe weather. However, 46 CFR part 45 is based upon 46 U.S.C. 5108, special exemptions, not 46 U.S.C. 5104(e). Existing regulations, 46 CFR 45.15(a), permit the Coast Guard to allow partial exemption of load line requirements based on reroute or service. This is especially noteworthy since the route lies wholly within United States territorial waters. This same comment also pointed out that, under 46 CFR part 45, the Coast Guard is obliged to have agreement from the Canadian government regarding any special exemptions. Although not addressed in the previous notice, the Canadian Coast Guard (Ship Safety Branch) is aware of and agrees with the Coast Guard's position on the use of special service load lines.

One comment stated that a partial load line exemption should not be done at the request of an organization that is neither an owner nor an operator of barges, because the "applicant * * * does not have standing to make request for rule change". This commenter is seeking to apply "standing" requirements that the courts have established in order to assure that judicial review or relief sought in court involves addressing an injury to a legally protected right belonging to the litigant. Standing concepts do not apply here. The Port of Milwaukee worked closely with several towing companies in developing its request and, although not an owner or operator of barges, it clearly has a right to make such a request. The Port of Milwaukee presented its request, with supporting documentation, to the load line assigning authority, the ABS. The ABS reviewed the material and formally presented it, with its positive recommendation, to the Coast Guard for review and consideration.

H. Oversight Provision

One comment suggested that some form of oversight provision be implemented by the Coast Guard. Within its general authority to conduct boardings (14 U.S.C. 89), the Coast Guard will make spot checks for compliance with the operating requirements. In addition, there is already an existing oversight program in place to review actions taken by the ABS on behalf of the Coast Guard.

I. Other Comments

One comment objected to the absence of any requirement for a drydock examination. However, the original notice stated that an initial load line survey, and subsequent yearly inspections, are required. The Coast Guard's intention was that the applicable provisions of 46 CFR subpart 42.09, made applicable to special service limited domestic voyage load lines by § 44.01–5(a), including a drydock examination, would be enforced by the load line assigning authority. Because the load line certificate will be for a full term, i.e., 5 years, the barge must undergo all the annual surveys required for any vessel receiving a load line.

One comment offered that the exemption would constitute a significant Federal action and thus, under the National Environmental Policy Act of 1969, an Environmental Impact Statement must be prepared. The Coast Guard has considered the environmental impact of this notice, and does not agree that such a conclusion is warranted. The load line is to be assigned by the ABS on a case-by-case basis. Each barge must meet certain structural and operating conditions, and is subject to inspection to determine suitability for assignment of the load line. Fair weather and 5-nautical-mile limit operating conditions are imposed on these vessels. Finally, and most significantly, only dry, nonhazardous cargo may be transported under this special service limited domestic load line. Given these factors, this policy would not significantly affect the quality of the human environment, as suggested, and therefore, an Environmental Impact Statement is not required. In fact, the Coast Guard has

concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this action is categorically excluded from further environmental documentation.

Operating Restrictions

The requirements for the granting of a Special Service Limited Domestic Voyage Load Line Certificate are set forth in this notice. They consist of essentially all of the requirements for unmanned river service dry cargo barges contained in 46 CFR part 45, subpart E (Calumet Harbor-Burns Harbor route), in addition to certain operating restrictions. The certificate requirements, and additional operation and certification restrictions, which will appear on the load line certificates, are:

1. The certificates shall be valid only for unmanned river dry cargo barges.

2. Vessel operation is limited to voyages between Calumet Harbor, Chicago, Illinois, and Milwaukee, Wisconsin. Vessels may make stops along any ports of call along this route.

3. No hazardous materials, as defined in 46 CFR part 146 or 49 CFR subchapter C, will be carried as cargo. Cargoes to be carried are limited to dry commodities, such as steel products, heavy machinery, dry bulk fertilizer, grain, bulk cement, scrap materials, and forest products.

4. The towing vessel shall have adequate horsepower to handle the size of the tow, with a minimum of 1,000 horsepower. The tow shall be limited to a maximum of three barges.

5. Before commencement of any voyage, the towing vessel operator shall ensure the following:

(a) Deck and side shell plating must be free of visible holes, fractures, or serious indentations as well as damage that would be considered in excess of normal wear and tear.

(b) Cargo box side and end coamings must be watertight.

(c) All manholes must remain covered and secured watertight.

6. The towing vessel shall maintain radio contact with the local weather radio network.

7. Prior to getting underway for a voyage between Calumet Harbor, Chicago and Milwaukee, the towing vessel operator must determine the weather expected along the proposed route. When environmental conditions are expected to exceed the following wind speed and wave height limits at any time during the course of the planned voyage, the towing vessel is not authorized to leave harbor.

Wind direction	Continuous velocity	Wave height
SE, E, NE	15 knots	4 feet.
SW, W, NW	20 knots	4 feet.
N, S	20 knots	4 feet.

While underway between Calumet Harbor, Chicago and Milwaukee, if environmental conditions exceed the above limits, the towing vessel must proceed immediately to a harbor of safe refuge.

8. The distance from shore during the course of the voyage shall not exceed 5 nautical miles.

9. Towing is permitted only if ice conditions are such that operation of the vessel is not imperiled.

10. Precautions shall be taken to prevent shifting of cargo.

11. Nothing in this permit shall be construed as lessening or waiving any other regulatory requirements applicable to operation on the Great Lakes.

Barge Conditions

In determining a vessel's suitability for assignment of a load line, the following variances to conditions apply:

1. The barge length to depth ratio shall not exceed 22.

2. Evidence must be provided to ABS that demonstrates that the barge was built, and has been maintained, to the minimum scantlings of the ABS River Rules that were in effect at the time of construction.

3. The assigned freeboard shall be at least 24 inches. For open hopper barges, the combined operating freeboard plus the height of cargo box coamings shall be at least 54 inches.

A vessel that meets all of the foregoing requirements will be eligible for a Special Service Limited Domestic Voyage Load Line Certificate. An initial load line survey meeting the requirements of 46 CFR 42.09–25 with subsequent annual surveys meeting the requirements of 46 CFR 42.09–40 will be required to determine compliance with the above requirements as well as the condition of all watertight openings and closures and the structural integrity of the vessel.

The ABS has been authorized to issue load line certificates on behalf of the Coast Guard in accordance with the requirements set forth in this notice.

Dated: August 28, 1992.

A.E. Henn,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 92–22633 Filed 9–18–92; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Receipt of Noise Compatibility Program and Request for Review Decatur Airport, Decatur, IL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed Noise Compatibility Program (NCP) that was submitted for Decatur Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) (hereinafter referred to as "the Act") and 14 CFR part 150 by the Decatur Airport Authority. This program was submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR part 150 for Decatur Airport were in compliance with applicable requirements effective April 15, 1991. The proposed Noise Compatibility Program will be approved or disapproved on or before March 8, 1993

EFFECTIVE DATE: The effective date of the FAA's start of its review of the associated noise compatibility program is September 9, 1992. The public comment period ends November 9, 1992.

FOR FURTHER INFORMATION CONTACT: Jerry R. Mork, Federal Aviation Administration, Great Lakes Region, Chicago Airports District Office, CHI–ADO–630.5, 2300 East Devon Avenue, room 258, Des Plaines, Illinois 60018, (312) 694–7522. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program for Decatur Airport. The program will be approved or disapproved on or before March 8, 1993. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the Noise Compatibility Program for the

Decatur Airport, effective September 9, 1992, after reviewing and accepting the errata and revised exhibits submitted on April 22, 1992, and June 30, 1992. These errata and revised exhibits were submitted in response to our April 3, 1992, and June 3, 1992 reviews, based on the sponsor's original submittal of August 30, 1991. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before March 8, 1993.

The FAA's detailed evaluation will be conducted under the provision of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., room 617, Washington, DC 20591

Federal Aviation Administration, Great Lakes Region, Airports Division, 2300 East Devon Avenue, room 269, Des Plaines, Illinois 60018

Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, room 258, Des Plaines, Illinois 60018

Decatur Airport, Airport Director's Office, 910 Airport Road, Decatur, Illinois 62521

Division of Aeronautics, Illinois Department of Transportation, Capital Airport, One Langhorne Bond Drive, Springfield, Illinois 62706

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Des Plaines, Illinois, September 9, 1992.

Louis H. Yates,

Manager, Chicago Airports District Office, Great Lakes Region.

[FR Doc. 92-22738 Filed 9-18-92; 8:45 am]

BILLING CODE 4910-13-M

Air Traffic Procedures Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held from October 13 through October 15, 1992, from 8:30 a.m. to 5 p.m. each day.

ADDRESSES: The meeting will be held at the Federal Aviation Administration, 800 Independence Avenue, SW. Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Theodore H. Davies, Executive Director, ATPAC, Air Traffic Rules and Procedures Service, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-3725.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the ATPAC to be held from October 13 through October 16, 1992, at the Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC. The meeting will be held in the MacCracken Room on October 13 and 16 and in Conference Room 8ABC on October 14 and 15.

The agenda for this meeting will cover: A continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of minutes.
2. Discussion of agenda items.
3. Discussion of urgent priority items.
4. Report from Executive Director.
5. Old Business.
6. New Business.
7. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above not later than October 9, 1992. The next quarterly meeting of the FAA ATPAC is planned to be held from January 4-8, 1993, in San Juan, PR. Any member of the public may present a written statement to the Committee at any time at the address given above.

Issued in Washington, DC, on September 10, 1992.

Theodore H. Davies,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 92-22741 Filed 9-18-92; 8:45 am]

BILLING CODE 4910-13-M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at the Key West International Airport, Key West, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Key West International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before October 21, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827-5397.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Peter Horton, Director of Community Services, Monroe County, at the following address: Public Service Building, 5100 College Road, Key West, Florida 33040-4399.

Air carriers and foreign air carriers may submit copies of written comments

previously provided to Monroe County, Florida under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mrs. Ilia A. Quinones, Airports Plans & Programs Manager, FAA, Orlando Airports District Office, 9677 Tradeport Drive, Suite 130, Orlando, FL 32827–5397, telephone (407) 648–6583. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Key West International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On September 9, 1992, the FAA determined that the application to impose and use the revenue from a PFC submitted by Monroe County, Florida was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 25, 1992.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: March 1, 1993.

Proposed charge expiration date: January 1, 1996.

Total estimated PFC revenue: $1,006,000.

Brief description of proposed projects:

Key West International Airport: 1. Master Stormwater Study.

2. Development of Regional Impact/ Major Conditional Use Study.

3. Master Plan Update.

4. Environmental Assessment Study.

5. Terminal Expansion Project.

6. Renovation of FIS Facility.

7. Airfield Signage Project.

Marathon Airport: 1. Terminal Complex Construction

Class or classes or air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT.**"

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the County of Monroe, Public Service Building, 5100 College Road, Key West, Florida.

Issued in Atlanta, Georgia, on September 9, 1992.

Stephen A. Brill,

Manager, Airports Division Southern Region.

[FR Doc. 92–22739 Filed 9–18–92; 8:45 am]

BILLING CODE 4910–13–M

Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at the Marathon Airport, Marathon, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Marathon Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before October 21, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 9677 Tradeport Drive, suite 130, Orlando, Florida 32827–5397.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Peter Horton, Director of Community Services, Monroe County, at the following address: Public Service Building, 5100 College Road, Key West, Florida 33040–4399.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of Monroe, Florida under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mrs. Ilia A. Quinones, Airports Plans & Programs Manager, FAA, Orlando Airports District Office, 9677 Tradeport Drive, suite 130, Orlando, FL 32827–5397, telephone (407) 648–6583. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Marathon Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On September 9, 1992, the FAA determined that the application to impose a PFC submitted by Monroe County, Florida was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 25, 1992.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: March 1, 1993.

Proposed charge expiration date: January 1, 1996.

Total estimated PFC revenue: $203,000.

Brief description of proposed projects:

1. Master Stormwater Study.

2. Development of Regional Impact/ Major Conditional Use Study.

3. Master Plan Update.

4. Terminal Complex Construction.

5. Airfield Signage.

6. Clear Runway 7–25 Safety Area.

7. Install Obstruction Lights Adjacent to Runway 7–25.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT.**"

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Monroe County, Public Service Building, 5100 College Road, Key West, Florida.

Issued in Atlanta, Georgia, on September 9, 1992.

Stephen A. Brill,

Manager, Airports Division, Southern Region.

[FR Doc. 92–22740 Filed 9–18–92; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: September 14, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department

Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0904.

Regulation ID Number: INTL–45–86 Final.

Type of Review: Extension.

Title: T.D. 8125 Foreign Management and Foreign Economic Processes Requirements of Foreign Sales Corporation.

Description: The regulations provide rules for complying with foreign management and foreign economic process requirements to enable Foreign Sales Corporations to produce foreign trading gross receipts and qualify for reduced tax rates. Rules are included for maintaining records to substantiate compliance. Affected public is limited to large corporations that export goods or services.

Respondents: Businesses or other for-profit.

Estimated Number of Recordkeepers: 11,001.

Estimated Burden Hours Per Recordkeeper: 2 Hours.

Frequency of Response: Recordkeeping.

Estimated Total Reporting Burden: 22,001 Hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 92–22702 Filed 9–18–92; 8:45 am]

BILLING CODE 4830–01–M

Departmental Offices

Privacy Act of 1974; Publication of an Existing System of Records

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of an existing Privacy Act system of records.

SUMMARY: The Department of the Treasury gives notice of an existing system of records which is to be added to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a). Public Transportation Incentive Program Records—Treasury/Do .203 was established to collect and maintain records pertaining to Treasury Department employees who have applied for and those who have been accepted as participants in the Public Transportation Incentive Program (PTI Program).

DATES: Comments must be received no later than October 21, 1992. The notice for this system of records will be effective on that date unless comments are received which result in a contrary determination.

ADDRESSES: Please submit comments to Departmental Disclosure Officer, Disclosure Services, Department of the Treasury, Room 1054–MT, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Dale Underwood, Privacy Act Officer, Disclosure Services, Department of the Treasury, Room 1054–MT, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

SUPPLEMENTARY INFORMATION: The Public Transportation Incentive Program Records system was established by the Department of the Treasury to: (1) Maintain information on the applicants and participants in the PTI Program; (2) ensure only one fare incentive per month is available to eligible employees; (3) research applicants' eligibility for the Program; and (4) report on changes in existing employees' commuting methods.

As a rule, the Federal Government does not subsidize an employee's cost of commuting to or from work. However, Section 629 of the Treasury, Postal Service and General Government Appropriations Act of 1991 (Pub. L. 101–509, 104 Stat. 1389, 1475) contains a specific statutory exception to this general rule. It provides that Federal agencies may participate in any program established by a State or local government that encourages employees to increase ridership on public transportation vehicles. General Services Administration (GSA) guidance states that appropriated funds may be used for transit incentives. The Internal Revenue Service permits a $21 per month de minimis exclusion from fringe benefit taxation for public transit passes provided to employees who commute via public transportation, effective July 1, 1991. The Department of the Treasury intends to provide its employees, to the extent practicable, with the maximum tax-free allowance permitted by law. The Program would include those State and local programs in which Federal agencies are permitted to purchase tickets, fare cards, tokens, passes, or other instruments at a discount for distribution to agency personnel. By statute, the provisions of the incentive program will be effective through December 31, 1993.

The system report, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Government Operations in the House of Representatives, the Committee on Governmental Affairs in the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4.b. of Appendix I to OMB Circular A–130, "Federal Responsibilities for Maintaining Records About Individuals," dated December 12, 1985 (50 FR 52730, dated December 24, 1985). The Privacy Act system of records notice is published in its entirety below.

Treasury/DO .203

SYSTEM NAME:

Public Transportation Incentive Program Records—Treasury/DO.

SYSTEM LOCATION:

(1) Departmental Offices, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

(2) Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228.

(3) United States Mint, Judiciary Square Building, 633 Third Street, NW., Washington, DC 20220; United States Mint, 5th and Arch Streets, Philadelphia, PA 19106; United States Mint, 320 West Colfax Avenue, Denver, CO 80204; United States Mint, Old Mint Building, 88 Fifth Street, San Francisco, CA 94103.

(4) Bureau of the Public Debt, 13th and C Streets, SW., and 999 E Street NW., Washington, DC 20239; 200 Third Street, Parkersburg, WV 26106.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees who have applied to participate in the Public Transportation Incentive Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Public Transportation Incentive Program application form containing the participant's name, social security number, place of residence, office address, office telephone, grade level, duty hours, previous method of transportation, and the type of fare incentive requested. (2) Reports submitted to the Department of the Treasury in accordance with Treasury Director 74–10.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and Public Law 101–509.

PURPOSE(S):

The records are collected and maintained to provide written

documentation pertaining to applicants and participants in the Public Transportation Incentive Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used to disclose information to: (1) Appropriate Federal, state, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order or license; (2) a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or in connection with criminal law proceedings; (3) a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (4) unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114; (5) agencies, contractors, and others to administer Federal personnel and payroll systems, and for debt collection and employment or security investigations; and (6) other Federal agencies for matching to ensure that employees receiving PTI Program benefits are not listed as a carpool or vanpool participant or the holder of a parking permit.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, file folders and magnetic media.

RETRIEVABILITY:

Alphabetically by individual and by office.

SAFEGUARDS:

Access is limited to authorized employees. Files are maintained in locked safes and/or file cabinets. Records on magnetic media are password-protected. During non-work hours, records are stored in locked safes and/or cabinets in a locked room.

RETENTION AND DISPOSAL:

Active records are retained indefinitely. Inactive records are held for three years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

(1) Departmental Offices: Director, Administrative Operations Division, Department of the Treasury, Room 1212 MT, 1500 Pennsylvania Avenue, NW, Washington, DC 20220.

(2) Bureau of Engraving and Printing: Chief, Office of Management Services, Bureau of Engraving and Printing, 14th and C Streets, SW, Washington, DC 20228.

(3) United States Mint: Executive Secretariat, United States Mint, Judiciary Square Building, 633 Third Street, NW, Washington, DC 20220; Property Management Officer, Management Analysis and Property Management Staff, United States Mint, 5th and Arch Streets, Philadelphia, PA 19106; Chief, Administrative Services Division, United States Mint, 320 West Colfax Avenue, Denver, CO 80204; Human Resources Division and Budget and Accounting Division, United States Mint, Old Mint Building, 88 Fifth Street, San Francisco, CA 94103.

(4) Bureau of the Public Debt: Assistant Commissioner, Office of Administration, 200 Third Street, Parkersburg, WV 26106

NOTIFICATION PROCEDURE:

Individuals seeking access to any record contained in the system of records, or seeking to contest its content, may inquire in accordance with instructions given in the appendix for each Treasury component appearing at 31 CFR part 1, subpart C. Inquiries should be sent to the agency official identified below:

(1) Departmental Offices: Inquiries should be addressed to Assistant Director, Disclosure Services, Departmental Offices, Room 1054 MT, 1500 Pennsylvania Avenue, NW, Washington, DC 20220.

(2) Bureau of Engraving and Printing: Inquiries should be addressed to Disclosure Officer, Bureau of Engraving and Printing, 14th and C Streets, SW, Washington, DC 20228.

(3) United States Mint: Inquiries should be addressed to Executive Secretariat, United States Mint, Judiciary Square Building, 633 Third Street, NW, Washington, DC 20220; Property Management Officer, Management Analysis and Property Management Staff, United States Mint, 5th and Arch Streets, Philadelphia, PA 19106; Chief, Administrative Services Division, United States Mint, 320 West Colfax Avenue, Denver, CO 80204; Human Resources Division and Budget and Accounting Division, United States Mint, Old Mint Building, 88 Fifth Street, San Francisco, CA 94103.

(4) Bureau of the Public Debt: Assistant Commissioner, Office of Administration, 200 Third Street, Parkersburg, WV 26106

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

The source of the data are employees who have applied for the transportation incentive, the system managers, and appropriate agency officials.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Dated: September 11, 1992.

Deborah M. Witchey,

Deputy Assistant Secretary (Administration).

[FR Doc. 92-22718 Filed 9-18-92; 8:45 am]

BILLING CODE 4810-25-M

Office of the Secretary

[Dept. Cir.—Public Debt Series—No. 30-92]

Treasury Notes of September 30, 1994, Series AE-1994 (CUSIP No. 912827 G8 9)

Washington, September 16, 1992.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for United States securities, as described above and in the offering announcement, hereafter referred to as Notes. The Notes will be sold at auction, and bidding will be on a yield basis. Payment will be required at the price equivalent to the highest yield bid at which bids were accepted. The interest rate on the Notes and the price equivalent to the highest yield at which bids were accepted will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued to Federal Reserve Banks as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The issue date and maturity date of the Notes are stated in the offering announcement. The Notes will accrue interest from the issue date. Interest will be payable on a semiannual basis as described in the offering announcement through the date that the principal becomes payable. The Notes will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes will be issued only in book-entry form in the minimum and multiple amounts stated in the offering announcement. They will not be issued in registered definitive or in bearer form.

2.3. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the Treasury Direct Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2–86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500. The closing times for the receipt of noncompetitive and competitive tenders are specified in the offering announcement. Noncompetitive tenders will be considered timely if postmarked (U.S. Postal Service cancellation date) no later than the day prior to the auction and received no later than close of business on the issue day.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is stated in the offering announcement, and larger bids must be in multiples of that amount.

3.3. Competitive bids must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. A single bidder, as defined in Treasury's single bidder guidelines contained in Attachment A to this circular, may submit bids at more than one yield. However, at any one yield, the Treasury will not recognize any amount tendered by a single bidder in excess of 35 percent of the public offering amount. A competitive bid by a single bidder at any one yield in excess of 35 percent of the public offering will be reduced to that amount.

3.4. Noncompetitive tenders do not specify a yield. A single bidder should not submit a noncompetitive tender for more than $5,000,000. A noncompetitive bid by a single bidder in excess of $5,000,000 will be reduced to that amount. A bidder, whether bidding directly or through a depository institution or a government securities broker/dealer, may not submit a noncompetitive bid for its own account in the same auction in which it is submitting a competitive bid for its own account. A bidder may not submit a noncompetitive bid if the bidder holds a position, in the Notes being auctioned, in "when-issued" trading, or in futures or forward contracts. A noncompetitive bidder may not enter into any agreement to purchase or sell or otherwise dispose of the security being auctioned, nor may it commit to sell the security prior to the designated closing time for receipt of competitive bids.

3.5. The following institutions may submit tenders for accounts of customers: Depository institutions, as described in section 19(b)(1)(A), excluding those institutions described in subparagraph (vii), of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)); and government securities broker/dealers that are registered with the Securities and Exchange Commission or noticed as government securities broker/dealers pursuant to section 15C(a)(1) of the Securities Exchange Act of 1934. Others are permitted to submit tenders only for their own account. A submitter, if bidding competitively for customers, must include a customer list with the tender giving, for each customer, the name of the customer and the amount bid. A separate tender and customer list should be submitted for each competitive yield. For noncompetitive bids, the customer list must provide, for each customer, the name of the customer and the amount bid. For mailed tenders, the customer list must be submitted with the tender. For other than mailed tenders, the customer list should accompany the tender. If the customer list is not submitted with the tender, information for the list must be complete and available for review by the deadline for submission of noncompetitive tenders. The customer list should be received by the Federal Reserve Bank on auction day. All competitive and noncompetitive bids submitted on behalf of trust estates must provide, for each trust estate, the name or title of the trustee(s), a reference to the document creating the trust with the date of execution, and the employer identification number of the trust. Customer bids may not be aggregated on the customer list. The customer list must include customers and customers of those customers, where applicable.

3.6. A competitive single bidder must report its net long position if the total of all its bids for the security being offered and its net position in the security equals or exceeds $2 billion, with the position to be determined as of one half-hour prior to the closing time for the receipt of competitive tenders. A net long position include positions, in the security being auctioned, in "when-issued" trading, and in futures and forward contracts. Bidders who meet this reporting requirement and are customers of a depository institution or a government securities broker/dealer must report their positions through the institution submitting the bid on their behalf.

3.7. Tenders from bidders who are making payment by charge to a funds account at a Federal Reserve Bank and tenders from bidders who have an approved autocharge agreement on file at a Federal Reserve Bank will be received without deposit. In addition, tenders from States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks will be received without deposit. Tenders from all others, including tenders submitted for Notes to be maintained on the book-entry records of the Department of the Treasury, must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.8. After the deadline for receipt of competitive tenders, there will be a public announcement of the amounts of bids received and accepted, the highest yield accepted, and the interest rate on the notes. Subject to the reservations expressed in Section 4, noncompetitive bids will be accepted in full, and then competitive bids will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Bids at the highest yield at which bids were accepted will be prorated if necessary. All successful competitive bidders, regardless of the yields they each bid, will be awarded securities at the highest yield at which bids were accepted. After the determination is made as to which bids are accepted, an interest rate will generally be established, at a 1/8 of one percent increment, which produces a price equivalent to the highest yield at which bids were accepted and is closest to, but not above, par. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price equivalent to the highest yield at which bids were accepted will be determined, and each noncompetitive bidder and each successful competitive bidder will be required to pay such price for their securities. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g.,

99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive bids received would absorb most or all of the public offering, competitive bids would be accepted in an amount determined by the Department to be sufficient to provide a fair determination of the highest yield for the securities being auctioned. Bids received from Federal Reserve Banks for their own account or for foreign and international monetary authorities will be accepted at the price equivalent to the highest yield at which bids were accepted.

3.9. No single bidder will be awarded securities in an amount exceeding 35 percent of the public offering. The determination of the maximum award to a single bidder will take into account the bidder's net long position, if the bidder has been obliged to report its position per the requirements outlined in Section 3.6.

3.10. Notice of awards will be provided by a Federal Reserve Bank or Branch or the Bureau of the Public Debt to bidders who have submitted accepted competitive bids, whether for their own account or for the account of customers. Those submitting non-competitive bids will be notified only if the bid is not accepted in full, or when the price at the highest yield at which bids were accepted is over par. No later than 12 noon local time on the day following the auction, the appropriation Federal Reserve Bank will notify each depository institution that has entered into an autocharge agreement with a bidder as to the amount to be charged to the institution's funds account at the Federal Reserve Bank on the issue date. Any customer that is awarded $500 million or more of securities must furnish, no later than 10 a.m. local time on the day following the auction, written confirmation of its bid to the Federal Reserve Bank or Branch where the bid was submitted. A depository institution or government securities broker/dealer submitting a bid for a customer is responsible for notifying its customer of this requirement if the customer is awarded $500 million or more of securities as a result of bids submitted by the depository institution or government securities broker/dealer.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all bids in whole or in part, to allot more or less than the amount of Notes specified in the offering announcement, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made timely at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted will be made by a charge to a funds account or pursuant to an approved autocharge agreement, as provided in section 3.7. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.7. must be made or completed on or before the issue date. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors by the time stated in the offering announcement. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted may, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Note being purchased. In any such case, the tender form used to place the Notes allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

6.4. Attachment A and the offering announcement are incorporated as part of this circular.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

Attachment A—Treasury's Single Bidder Guidelines for Noncompetitive Bidding in all Treasury Security Auctions

The investor categories listed below define what constitutes a single noncompetitive bidder.

(1) *Bank Holding Companies and Subsidiaries*—A bank holding company (includes the company and/or one or more of its subsidiaries, whether or not organized as separate entities under applicable law).

(2) *Banks and Brnaches*—A parent bank (includes the parent and/or one or more of its branches, whether or not organized as separate entities under applicable law).

(3) *Thrift Institutions and Branches*—A thrift institution, such as a savings and loan association, credit union, savings banks, or other similar entity (includes the principal or parent office and/or one or more of its branches, whether or not organized as separate entities under applicable law).

(4) *Corporations and Subsidiaries*—A corporation (includes the corporation and/or one or more of its majority-owned subsidiaries, i.e., any subsidiary more than 50 percent of whose stock is owned by the parent corporation or by any other of its majority-owned subsidiaries).

(5) *Families*—A married person (includes his or her spouse, and any unmarried adult children, having a common address and/or household).

Note: A minor child, as defined by the law of domicile, is *not* permitted to submit tenders individually, or jointly with an adult bidder. (A minor's parent acting as natural guardian is *not* recognized as a separate bidder.)

(6) *Partnerships*—Each partnership (includes a partnership or individual

partner(s), acting together or separately, who own the majority or controlling interest in other partnerships, corporations, or associations).

(7) *Guardians, Custodians, or other Fiduciaries*—A guardian, custodian, or similar fiduciary, identified by (a) the name or title of the fiduciary, (b) reference to the document, court order, or other authority under which the fiduciary is acting, and (c) the taxpayer identifying number assigned to the estate.

(8) *Trusts*—A trust estate, which is identified by (a) the name or title of the trustee, (b) a reference to the document creating the trust, e.g., a trust indenture, with date of execution, or a will (c) the IRS employer identification number (not social security account number).

(9) *Political Subsidivisions*—(a) A state government (any of the 50 states and the District of Columbia).

(b) A unit of local government (any country, city, municipality, or township, or other unit of general government, as defined by the Bureau of the Census for statistical purposes, and includes any trust, investment, or other funds thereof).

(c) A commonwealth, territory, or possession.

(10) *Mutual Funds*—A mutual fund (includes all funds that comprise it, whether or not separately administered).

(11) *Money Market Funds*—A money market fund (includes all funds that have a common management).

(12) *Investment Agents/Money Managers*—An individual, firm, or association that undertakes to service, invest, and/or manage funds for others.

(13) *Pension Funds*—A pension fund (includes all funds that comprise it, whether or not separately administered).

Notes: The definitions do not reflect all bidder situations. "Single bidder" is not necessarily synonymous with "single entity".

Questions concerning the guidelines should be directed to the Office of Financing, Bureau of the Public Debt, Washington, DC 20239 (telephone 202/219–3350).

Auction of 2-Year and 5-Year Notes Totaling $25,000 Million

The Treasury will auction $14,500 million of 2-year notes and $10,500 million of 5-year notes to refund $19,000 million of securities maturing September 30, 1992, and to raise about $6,000 million new cash. The $19,000 million of maturing securities are those held by the public, including $1,400 million currently held by Federal Reserve Banks as agents for foreign and international monetary authorities.

As the Treasury announced on September 3, 1992, the 2- and 5-year note auctions in September will be the first ones in the year-long Treasury experiment with the single-price auction format. All competitive and noncompetitive awards will be at the highest yield of accepted competitive tenders.

The $25,000 million is being offered to the public, and any amounts tendered by Federal Reserve Banks as agents for foreign and international monetary authorities will be added to that amount.

In addition to the public holdings, Federal Reserve Banks, for their own accounts, hold $1,905 million of the maturing securities that may be refunded by issuing additional amounts of the new securities.

Details about each of the new securities are given in the attached highlights of the offerings and in the official offering circulars.

Attachment

HIGHLIGHTS OF TREASURY OFFERINGS TO THE PUBLIC OF 2-YEAR AND 5-YEAR NOTES TO BE ISSUED SEPTEMBER 30, 1992

[September 16, 1992]

Amount Offered to the Public	$14,500 million	$10,500 million.
Description of Security:		
Term and type of security	2-year notes	5-year notes.
Series and CUSIP designation	Series AE–1994, (CUSIP No. 912827 G8 9)	Series R–1997 (CUSIP No. 912827 G9 7).
Maturity date	September 30, 1994	September 30, 1997.
Interest rate	To be determined based on the highest accepted bid	To be determined based on the highest accepted bid.
Investment yield	To be determined at auction	To be determined at auction.
Premium or discount	To be determined after auction	To be determined after auction.
Interest payment dates	March 31 and September 30	March 31 and September 30.
Minimum denomination available	$5,000	$1,000.
Terms of Sale:		
Method of sale	Yield auction	Yield auction.
Competitive tenders	Must be expressed as an annual yield, with two decimals, e.g., 7.10%.	Must be expressed as an annual yield, with two decimals, e.g., 7.10%.
Noncompetitive tenders	Accepted in full up to $5,000,000	Accepted in full up to $5,000,000.
Accrued interest payable by investors	None	None.
Key Dates:		
Receipt of tenders	Tuesday, September 22, 1992	Wednesday, September 23, 1992.
(a) Noncompetitive	Prior to 12 noon, EDST	Prior to 12 noon, EDST.
(b) Competitive	Prior to 1 p.m., EDST	Prior to 1 p.m., EDST.
Settlement (final payment due from institutions):		
(a) Funds immediately available to the Treasury	Wednesday, September 30, 1992	Wednesday, September 30, 1992.
(b) Readily-collectible check	Monday, September 28, 1992	Monday, September 28, 1992.

[FR Doc. 92–22896 Filed 9–17–92; 11:52 am]

BILLING CODE 4810–40–M

[Dept. Cir.—Public Debt Series—No. 31–92]

Treasury Notes of September 30, 1997, Series R–1997 (CUSIP No. 912827 G9 7)

Washington, September 16, 1992.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of title 31, United States Code, invites tenders for United States securities, as described above and in the offering announcement, hereafter referred to as Notes. The Notes will be sold at auction, and bidding will be on a yield basis. Payment will be required at the price equivalent to the highest yield bid at which bids were accepted. The interest rate on the Notes and the price equivalent to the highest yield at which bids were accepted will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued to Federal Reserve Banks as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The issue date and maturity date of the Notes are stated in the offering announcement. The Notes will accrue interest from the issue date. Interest will be payable on a semiannual basis as described in the offering announcement through the date that the principal becomes payable. The Notes will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes will be issued only in book-entry form in the minimum and multiple amounts stated in the offering announcement. They will not be issued in registered definitive or in bearer form.

2.3. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2–86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sales Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500. The closing times for the receipt of noncompetitive and competitive tenders are specified in the offering announcement. Noncompetitive tenders will be considered timely if postmarked (U.S. Postal Service cancellation date) no later than the day prior to the auction and received no later than close of business on the issue day.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is stated in the offering announcement, and larger bids must be in multiples of that amount.

3.3. Competitive bids must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. A single bidder, as defined in Treasury's single bidder guidelines contained in Attachment A to this circular, may submit bids at more than one yield. However, at any one yield, the Treasury will not recognize any amount tendered by a single bidder in excess of 35 percent of the public offering amount. A competitive bid by a single bidder at any one yield in excess of 35 percent of the public offering will be reduced to that amount.

3.4. Noncompetitive tenders do not specify a yield. A single bidder should not submit a noncompetitive tender for more than $5,000,000. A noncompetitive bid by a single bidder in excess of $5,000,000 will be reduced to that amount. A bidder, whether bidding directly or through a depository institution or a government securities broker/dealer, may not submit a noncompetitive bid for its own account in the same auction in which it is submitting a competitive bid for its own account. A bidder may not submit a noncompetitive bid if the bidder holds a position, in the Notes being auctioned, in "when-issued" trading, or in futures or forward contracts. A noncompetitive bidder may not enter into any agreement to purchase or sell or otherwise dispose of the security being auctioned, nor may it commit to sell the security prior to the designated closing time for receipt of competitive bids.

3.5. The following institutions may submit tenders for accounts of customers: Depository institutions, as described in section 19(b)(1)(A), excluding those institutions described in subparagraph (vii), of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)); and government securities broker/dealers that are registered with the Securities and Exchange Commission or noticed as government securities broker/dealers pursuant to section 15C(a)(1) of the Securities Exchange Act of 1934. Others are permitted to submit tenders only for their own account. A submitter, if bidding competitively for customers, must include a customer list with the tender giving, for each customer, the name of the customer and the amount bid. A separate tender and customer list should be submitted for each competitive yield. For noncompetitive bids, the customer list must provide, for each customer, the name of the customer and the amount bid. For mailed tenders, the customer list must be submitted with the tender. For other than mailed tenders, the customer list should accompany the tender. If the customer list is not submitted with the tender, information for the list must be complete and available for review by the deadline for submission of noncompetitive tenders. The customer list should be received by the Federal Reserve Bank on auction day. All competitive and noncompetitive bids submitted on behalf of trust estates must provide, for each trust estate, the name or title of the trustee(s), a reference to the document creating the trust with the date of execution, and the employer identification number of the trust. Customer bids may not be aggregated on the customer list. The customer list must include customers and customers of those customers, where applicable.

3.6. A competitive single bidder must report its net long position if the total of all its bids for the security being offered and its net position in the security equals or exceeds $2 billion, with the position to be determined as of one half-hour prior to the closing time for the receipt of competitive tenders. A net long position includes positions, in the security being auctioned, in "when-issued" trading, and in futures and forward contracts. Bidders who meet this reporting requirement and are customers of a depository institution or a government securities broker/dealer must report their positions through the institution submitting the bid on their behalf.

3.7. Tenders from bidders who are making payment by charge to a funds account at a Federal Reserve Bank and tenders from bidders who have an approved autocharge agreement on file at a Federal Reserve Bank will be received without deposit. In addition, tenders from States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks will be received without deposit. Tenders from all others, including tenders submitted for Notes to be maintained on the book-entry records of the Department of the Treasury, must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.8. After the deadline for receipt of competitive tenders, there will be a public announcement of the amounts of bids received and accepted, the highest yield accepted, and the interest rate on the notes. Subject to the reservations expressed in Section 4, noncompetitive bids will be accepted in full, and then

competitive bids will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Bids at the highest yield at which bids were accepted will be prorated if necessary. All successful competitive bidders, regardless of the yields they each bid, will be awarded securities at the highest yield at which bids were accepted. After the determination is made as to which bids are accepted, an interest rate will generally be established, at a 1/8 of one percent increment, which produces a price equivalent to the highest yield at which bids were accepted and is closest to, but not above, par. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price equivalent to the highest yield at which bids were accepted will be determined, and each noncompetitive bidder and each successful competitive bidder will be required to pay such price for their securities. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive bids received would absorb most or all of the public offering, competitive bids would be accepted in an amount determined by the Department to be sufficient to provide a fair determination of the highest yield for the securities being auctioned. Bids received from Federal Reserve Banks for their own account or for foreign and international monetary authorities will be accepted at the price equivalent to the highest yield at which bids were accepted.

3.9. No single bidder will be awarded securities in an amount exceeding 35 percent of the public offering. The determination of the maximum award to a single bidder will take into account the bidder's net long position, if the bidder has been obliged to report its position per the requirements outlined in Section 3.6.

3.10. Notice of awards will be provided by a Federal Reserve Bank or Branch or the Bureau of the Public Debt to bidders who have submitted accepted competitive bids, whether for their own account or for the account of customers. Those submitting non-competitive bids will be notified only if the bid is not accepted in full, or when the price at the highest yield at which bids were accepted is over par. No later than 12 noon local time on the day following the auction, the appropriate Federal Reserve Bank will notify each depository institution that has entered into an autocharge agreement with a bidder as to the amount to be charged to the institution's funds account at the Federal Reserve Bank on the issue date. Any customer that is awarded $500 million or more of securities must furnish, no later than 10 a.m. local time on the day following the auction, written confirmation of its bid to the Federal Reserve Bank or Branch where the bid was submitted. A depository institution or government securities broker/dealer submitting a bid for a customer is responsible for notifying its customer of this requirement if the customer is awarded $500 million or more of securities as a result of bids submitted by the depository institution or government securities broker/dealer.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all bids in whole or in part, to allot more or less than the amount of Notes specified in the offering announcement, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made timely at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted will be made by a charge to a funds account or pursuant to an approved autocharge agreement, as provided in section 3.7. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.7. must be made or completed on or before the issue date. Payment in full must accompany tenders submitted by all other investors. Payments must be in cash; in other funds immediately available to the Treasury; in Treasury notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors by the time stated in the offering announcement. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted may, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Note being purchased. In any such case, the tender form used to place the Notes allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the notes.

6.4. Attachment A and the offering announcement are incorporated as part of this circular.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

Attachment A—Treasury's Single Bidder Guidelines for Noncompetitive Bidding in all Treasury Security Auctions

The investor categories listed below define what constitutes a single noncompetitive bidder.

(1) *Bank Holding Companies and Subsidiaries*—A bank holding company (includes the company and/or one or more of its subsidiaries, whether or not organized as separate entities under applicable law).

(2) *Banks and Branches*—A parent bank (includes the parent and/or one or more of its branches, whether or not organized as separate entities under applicable law).

(3) *Thrift Institutions and Branches*—A thrift institution, such as a savings and loan association, credit union, savings banks, or other similar entity (includes the principal or parent office and/or one or more of its branches, whether or not organized as separate entities under applicable law).

(4) *Corporations and Subsidiaries*—A corporation (includes the corporation and/or one or more of its majority-owned subsidiaries, i.e., any subsidiary more than 50 percent of whose stock is owned by the parent corporation or by any other of its majority-owned subsidiaries).

(5) *Families*—A married person (includes his or her spouse, and any unmarried adult children, having a common address and/or household).

Note: A minor child, as defined by the law of domicile, is *not* permitted to submit tenders individually, or jointly with an adult bidder. (A minor's parent acting as natural guardian is *not* recognized as a separate bidder.)

(6) *Partnerships*—Each partnership (includes a partnership or individual partner(s), acting together or separately, who own the majority or controlling interest in other partnerships, corporations, or associations).

(7) *Guardians, Custodians, or other Fiduciaries*—A guardian, custodian, or similar fiduciary, identified by (a) the name or title of the fiduciary, (b) reference to the document, court order, or other authority under which the fiduciary is acting, and (c) the taxpayer identifying number assigned to the estate.

(8) *Trusts*—A trust estate, which is identified by (a) the name or title of the trustee, (b) a reference to the document creating the trust, e.g., a trust indenture, with date of execution, or a will, (c) the IRS employer identification number (not social security account number).

(9) *Political Subdivisions*—(a) A state government (any of the 50 states and the District of Columbia).

(b) A unit of local government (any county, city, municipality, or township, or other unit of general government, as defined by the Bureau of the Census for statistical purposes, and includes any trust, investment, or other funds thereof).

(c) A commonwealth, territory, or possession.

(10) *Mutual Funds*—A mutual fund (includes all funds that comprise it, whether or not separately administered).

(11) *Money Market Funds*—A money market fund (includes all funds that have a common management).

(12) *Investment Agents/Money Managers*—An individual, firm, or association that undertakes to service, invest, and/or manage funds for others.

(13) *Pension Funds*—A pension fund (includes all funds that comprise it, whether or not separately administered).

Notes: The definitions do not reflect all bidder situations. "Single bidder" is not necessarily synonymous with "single entity".

Questions concerning the guidelines should be directed to the Office of Financing, Bureau of the Public Debt, Washington, DC 20239 (telephone 202/219-3350).

Auction of 2-Year and 5-Year Notes Totaling $25,000 Million

The Treasury will auction $14,500 million of 2-year notes and $10,500 million of 5-year notes to refund $19,000 million of securities maturing September 30, 1992, and to raise about $6,000 million new cash. The $19,000 million of maturing securities are those held by the public, including $1,400 million currently held by Federal Reserve Banks as agents for foreign and international monetary authorities.

As the Treasury announced on September 3, 1992, the 2- and 5-year note auctions in September will be the first ones in the year-long Treasury experiment with the single-price auction format. All competitive and noncompetitive awards will be at the highest yield of accepted competitive tenders.

The $25,000 million is being offered to the public, and any amounts tendered by Federal Reserve Banks as agents for foreign and international monetary authorities will be added to that amount.

In addition to the public holdings, Federal Reserve Banks, for their own accounts, hold $1,905 million of the maturing securities that may be refunded by issuing additional amounts of the new securities.

Details about each of the new securities are given in the attached highlights of the offerings and in the official offering circulars.

Attachment

HIGHLIGHTS OF TREASURY OFFERINGS TO THE PUBLIC OF 2-YEAR AND 5-YEAR NOTES TO BE ISSUED SEPTEMBER 30, 1992

[September 16, 1992]

Amount Offered to the Public	$14,500 million	$10,500 million
Description of Security:		
Description and type of security	2-year notes	5-year notes.
Series and CUSIP designation	Series AE-1994 (CUSIP No. 912827 G8 9)	Series R-1997 (CUSIP No. 912827 G9 7).
Maturity date	September 30, 1994	September 30, 1997.
Interest rate	To be determined based on the highest accepted bid	To be determined based on the highest accepted bid.
Investment yield	To be determined at auction	To be determined at auction.
Premium or discount	To be determined after auction	To be determined after auction.
Interest payment dates	March 31 and September 30	March 31 and September 30.
Minimum denomination available	$5,000	$1,000.
Terms of Sale:		
Method of sale	Yield auction	Yield auction.
Competitive tenders	Must be expressed as an annual yield, with two decimals, e.g., 7.10%.	Must be expressed as an annual yield, with two decimals, e.g., 7.10%.
Noncompetitive tenders	Accepted in full up to $5,000,000	Accepted in full up to $5,000,000.
Accrued interest payable by investor	None	None.
Key Dates:		
Receipt of tenders	Tuesday, September 22, 1992	Wednesday, September 23, 1992.
(a) Noncompetitive	Prior to 12 noon, EDST	Prior to 12 noon, EDST.
(b) Competitive	Prior to 1 p.m. EDST	Prior to 1 p.m. EDST.
Settlement (final payment due from institutions):		
(a) Funds immediately available to the Treasury	Wednesday, September 30, 1992	Wednesday, September 30, 1992.
(b) Readily-collectible check	Monday, September 28, 1992	Monday, September 28, 1992.

[FR Doc. 92-22897 Filed 9-17-92; 11:51 am]

BILLING CODE 4810-40-M

Customs Service

[T.D. 92-91]

Revocation of Commercial Gauger Approval of Sabine Surveyors, Inc. of Port Arthur, Texas

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Revocation of the Customs Approval of a Commercial Gauger.

SUMMARY: Sabine Surveyors, Inc. of Port Arthur, Texas has notified the U.S. Customs Service that they no longer have a need to operate as a Customs approved commercial gauger and have requested that Customs revoke its approval. Therefore, pursuant to § 151.13 of the Customs Regulations (19 CFR 151.13), the Customs approval granted to Sabine Surveyors, Inc. to gauge petroleum and petroleum products, organic chemicals in bulk and liquid form and vegetable oils has been revoked in full, without prejudice.

EFFECTIVE DATE: September 10, 1992.

FOR FURTHER INFORMATION CONTACT: Ira S. Reese, Special Assistant for Commercial and Tariff Affairs, Office of Laboratories and Scientific Services, U.S. Customs Service, room 7113, 1301 Constitution Avenue NW., Washington, DC 20229 (202) 927-1060.

Dated: September 16, 1992.

John B. O'Loughlin,

Director, Office of Laboratories and Scientific Services.

[FR Doc. 92-22769 Filed 9-18-92; 8:45 am]

BILLING CODE 4820-02-M

UNITED STATES INFORMATION AGENCY

Cultural Property Bequest; Mali

AGENCY: United States Information Agency.

ACTION: Notification of cultural property request made to the United States by the Government of Mali.

Convention on Cultural Property Implementation Act (Pub. L. 97-446); Cultural Property Request from the Government of Mali. Pursuant to the authority vested in me under Executive Order 12555, and pursuant to the requirement of section 303(f)(1) of the Act, 19 U.S.C. 2603(f)(1), I hereby give public notice of the receipt, on September 4, 1992, of a request made by the Government of Mali to the United States seeking U.S. import restrictions on certain categories of archaeological and ethnological material alleging that its pillage places in jeopardy the cultural patrimony of Mali.

Dated: September 14, 1992.

Eugene P. Kopp,

Acting Director, United States Information Agency.

[FR Doc. 92-22766 Filed 9-18-92; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 183
Monday, September 21, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

POSTAL RATE COMMISSION

TIME AND DATE: 10:00 a.m., September 18, 1992.

PLACE: Conference Room, 1333 H. Street, NW, Suite 300, Washington, DC 20268.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Personnel Matters.

The Commission determined that no earlier notice could be given.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street, NW, Washington, DC 20268-0001, Telephone (303) 789-6840.

Charles L. Clapp,
Secretary.

[FR Doc. 92-22882 Filed 9-17-92; 2:32 pm]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of September 21, 1992.

Closed meetings will be held on Tuesday, September 22, 1992, at 2:30 p.m. and on Thursday, September 24, 1992, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Beese, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, September 22, 1992, at 2:30 p.m., will be:

Settlement of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Institution of injunctive actions.

The subject matter of the closed meeting scheduled for Thursday, September 24, 1992, at 10:00 a.m., will be:

Litigation matter.
Institution of injunctive actions.
Settlement of injunctive actions.
Institution of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Steve Luparello at (202) 272-2100.

Dated: September 16, 1992.

Jonathan G. Katz,
Secretary.

[FR Doc. 92-22902 Filed 9-17-92; 2:33 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 57, No. 183
Monday, September 21, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 30 and 52

[FAC 90-12; FAR Case 92-18]

Federal Acquisition Regulation; Cost Accounting Standards

Correction

In rule document 92-20667 beginning on page 39586 in the issue of Monday, August 31, 1992, make the following corrections:

1. On page 39587, in the first column, in the table of contents, "Subpart 30-2" should read "Subpart 30.2".

30.201-1 [Corrected]

2. On page 39587, in the third column, in 30.201-1, in the second line, "loose-lead" should read "loose-leaf".

30.201-2 [Corrected]

3. On the same page, in the same column, in 30.201-2, in the second line, "loose-lead" should read "loose-leaf".

30.201-3 [Corrected]

4. On the same page, in the same column, in 30.201-3, in the sixth line, "loose-lead" should read "loose-leaf".

30.201-4 [Corrected]

5. On the same page, in the same column, in 30.201-4(a)(1), in the seventh line and in the tenth line and in paragraph (b)(2), in the third line, "loose-lead" should read "loose-leaf".

30.201-5 [Corrected]

6. On page 39588, in the first column, in 30.201-5, in the last line, "loose-lead" should read "loose-leaf".

30.202-2 [Corrected]

7. On the same page, in the same column, in 30.202-2, in the second line, "loose-lead" should read "loose-leaf".

30.202-3 [Corrected]

8. On the same page, in the same column, in 30.202-3, in the second line, "loose-lead" should read "loose-leaf".

30.602-1 [Corrected]

9. On page 39590, in the first column, in 30.602-1(d)(3), in the sixth line, "shall" should read "should".

30.603 [Corrected]

10. On the same page, in the third column, in 30.603, in the seventh line, "of" should read "or".

52.230-1 [Corrected]

11. On page 39591, in the first column, in amendatory instruction 8., in the second line, "52.203-6" should read "52.230-6".

12. On the same page, in the third column, in 52.230-1, in paragraph (c)(3) of the contract clause, in the second line, after "offeror" insert a comma.

52.230-3 [Corrected]

13. On page 39593, in the first column, in 52.230-3, in paragraph (a)(3)(i) of the contract clause, in the fourth line, "Government" was misspelled.

52.230-5 [Corrected]

14. On the same page, in the third column, in 52.230-5, in paragraph (a)(2), in the fourth line, "Standard" should read "Standards".

BILLING CODE 1505-01-D

FEDERAL MARITIME COMMISSION

Tampa Port Authority/Harborside Refrigerated Services, Inc.; Agreements Filed

Correction

In notice document 92-18599 appearing on page 34779 in the issue of Thursday, August 6, 1992, make the following correction:

In the second column, in the first line, "244-" should read "224-".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-060-02-4212-13; CA-29832]

Realty Action; Exchange of Public and Private Lands in Riverside and San Diego Counties, CA

Correction

In notice document 92-9800 beginning on page 17925 in the issue of Tuesday, April 28, 1992, make the following correction:

On the same page, in the third column, in the land description for. Sec. 27, in the first line, "NW¼, NE¼," should read "NW¼NE¼,".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

RIN 1205-AA90

Wage and Hour Division

29 CFR Part 506

RIN 1215-AA70

Attestations by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports

Correction

In rule document 92-21386 beginning on page 40966 in the issue of Tuesday, September 8, 1992, make the following corrections:

1. On page 40974, in the second column, in the second full paragraph, in the tenth line, "or" should read "of".

§ ——.510 [Corrected]

2. On page 40980, in the third column, in § ——.510(g)(2)(viii), in the fifth line, "fainal" should read "final".

§ ——.615 [Corrected]

3. On page 40985, in the third column, in § ——.615(b)(4)(v), in the third line "a" should read "as".

4. On page 40992, insert at the end of the document, "[FR Doc. 92-21386 Filed 9-4-92; 8:45 am]".

BILLING CODE 1505-01-D

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federal register

Monday
September 21, 1992

Part II

Department of Education

Direct Grant Programs and Fellowship Programs; Notice Inviting Applications for New Awards for fiscal Year 1993

DEPARTMENT OF EDUCATION

Direct Grant Programs and Fellowship Programs

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year 1993.

SUMMARY: The Secretary invites applications for new awards for fiscal year (FY) 1993 under many of the Department's direct grant and fellowship programs and announces deadline dates for the transmittal of applications under these programs. This combined application notice contains fiscal and programmatic information for potential applicants under the Department's programs announced in this issue of the **Federal Register**. This notice also lists all FY 1993 programs previously announced in the **Federal Register**, as well as FY 1993 programs to be announced at a later date.

DATES: The actual or estimated deadline dates for transmitting applications under these programs are listed in Chart 1. For programs announced in this issue of the **Federal Register**, these deadline dates are repeated in Charts 2 through 7. If a program will be announced at a later date, the actual deadline date will appear in the application notice published in the **Federal Register**.

For programs announced in this issue of the **Federal Register** that are subject to Executive Order (EO) 12372 (Intergovernmental Review of Federal Programs), the deadline dates for the transmittal of State Process Recommendations by State Single Points of Contact (SPOCs) and comments by other interested parties are listed in Charts 2 through 7.

For previously announced programs that are subject to EO 12372, the deadline dates for the transmittal of State Process Recommendations by SPOCs and comments by other interested parties are listed in the application notices for those programs (see column three of Chart 1 for the respective publication dates of—and **Federal Register** volume and page references to—those notices).

For programs yet to be announced that are subject to EO 12372, the deadline date for the transmittal of State Process Recommendations and other comments will appear in the respective application notices for those programs (see column three of Chart 1 for the estimated publication dates of those notices).

For programs announced in this issue of the **Federal Register**, the charts also list the dates on which applications will be available.

For previously announced programs or for programs yet to be announced, the date on which applications will be available for any given program is in the application notice for that program.

ADDRESSES: The address and telephone number for obtaining applications for, or further information about, a program announced in this issue of the **Federal Register** are in the respective notice for that program following the appropriate chart in part II of this notice.

Individuals who are hearing-impaired or other persons who use a telephone device for the deaf (TDD) may call the TDD number, if any, listed in the individual application notices. If a TDD number is not listed for a given program, individuals who are hearing-impaired or others who use a TDD may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

The address for transmitting recommendations and comments under intergovernmental review is in the appendix to this notice. The appendix also contains the addresses of individual SPOCs.

SUPPLEMENTARY INFORMATION: The Secretary believes that placing as many application notices as possible in a single notice will assist potential applicants in planning projects and activities. Further, this notice offers a complete picture of virtually all the Department's direct grant and fellowship competitions available for FY 1993. If additional competitions are carried out in FY 1993 because of new legislation or other events not known at this time, the Secretary will announce those competitions in future issues of the **Federal Register**. Some of the additional programs or competitions are expected to result from the Higher Education Amendments of 1992 (Pub. L. 102-325; 106 Stat. 448), enacted July 23, 1992.

Organization of Notice

This notice is organized in two parts.

Part I lists in Chart 1 all direct grant programs and certain fellowship programs under which the Secretary is making, or plans to make, new awards in FY 1993. The listings are organized under the principal program offices of the Department. For each principal office the listing includes three categories of application notices: those already published, those published in this issue of the **Federal Register**, and those to be published at a later date. The programs are listed in order of their Catalog of Federal Domestic Assistance (CFDA) numbers irrespective of category. The listing for each office contains the following information:

- The CFDA number of each program.
- The name of that program.
- A reference to the application notice.
- The deadline date or estimated deadline date for the transmission of applications.

Application Notices

If the application notice for a particular program already has been published, the date of publication is listed, together with a reference to the issue of the **Federal Register** in which the application notice appeared. If the application notice is included in this combined application notice, it is designated by the words "In this issue." The chart also identifies any application notices published elsewhere in this issue of the **Federal Register**. If the application notice is to be published later, it is designated by an estimated date followed by the abbreviation "(est.)."

Application Deadline Dates

All deadline dates announced in this notice or previously announced are listed in Chart 1. Each deadline date announced in this notice is repeated in the appropriate program chart (Charts 2 through 7). Estimated deadline dates for transmitting applications under notices to be published later are also listed in Chart 1 followed by the abbreviation "(est.)." The actual deadline dates for those programs will appear in the respective application notices to be published in the **Federal Register**.

Part II contains fiscal and programmatic information for all programs announced in this notice.

Each principal program office is assigned a separate chart as follows:

Chart 2—Office of Bilingual Education and Minority Languages Affairs.

Chart 3—Office of Educational Research and Improvement.

Chart 4—Office of Elementary and Secondary Education.

Chart 5—Office of Postsecondary Education.

Chart 6—Office of Special Education and Rehabilitative Services.

Chart 7—Office of Vocational and Adult Education.

Each of the charts contains the following information:

- The CFDA number and the name of each affected program.
- The date of availability of applications.
- The deadline date for transmitting applications.
- For any program subject to the requirements of EO 12372 and the

regulations in 34 CFR part 79, the deadline date for transmitting comments under intergovernmental review.

- The estimated range of awards.
- The estimated average size of awards.
- The estimated number of awards

Following the chart for each principal program office are additional details for each affected program, including—

- A brief statement of the purpose of the program;
- A list of eligible applicants;
- A list of regulations applicable to the program;
- Information regarding priorities, if any;
- Supplemental information, if necessary, regarding selection criteria or other matters;
- The project period in months;
- The name, address, and telephone number of the person or office at the Department to contact for applications or information; and
- A citation of the statutory or other legal authority for the program.

These announcements also specify if a program is affected by a notice of priorities, either previously published or published elsewhere in this issue of the **Federal Register**, and inform readers where that notice may be found.

Programs To Be Announced at a Future Date

It is the Secretary's goal to announce as many programs as possible by the date of publication of the combined application notice each year. However, for FY 1993 a number of programs will be governed by new regulations or funding priorities. Some of these programs may be affected by recently enacted legislation. For example, among the programs requiring new regulations as a result of the Higher Education Amendments of 1992 (Pub. L. 102-325, enacted July 23, 1992, 106 Stat. 448) are these: Cooperative Education Program, Patricia Roberts Harris Fellowship Program, Jacob K. Javits Fellowship Program, Strengthening Institutions Program, and Graduate Assistance in Areas of National Need. Other programs may be affected by legislation currently pending in the Congress and may require regulations if that legislation is enacted.

- Since it is the Secretary's general policy not to announce programs on the basis of proposed regulations or funding priorities, the combined application notice references some of these programs with estimated dates (est.) for publication of application notices and deadlines for the submission of applications. Application notices for these programs will be published when final regulations or priorities are completed. Programs expected to be affected by new regulations or funding priorities are marked in the third column of Chart 1 with an asterisk (*) following the abbreviation "est." For further information regarding many of these programs, readers are referred to the following notices of proposed rulemaking and notices of proposed funding priorities that have been published in the **Federal Register**:

National Institute on Disability and Rehabilitation Research—Notice of Proposed Funding Priorities for Fiscal Years 1993–94 for Certain Research and Demonstration Projects	57 FR 25025 (6/12/92)
Library Literacy Program—Notice of Proposed Rulemaking	57 FR 26750 (6/15/92)
Chapter 1 Migrant Education coordination Program for State Educational Agencies—Notice of Proposed Priority for Fiscal Year 1992	57 FR 26832 (6/16/92)
Bilingual Education: Educational Personnel Training Program—Notice of Proposed Priority for Fiscal Year 1993	57 FR 27036 (6/17/92)
National Institute on Disability and Rehabilitation Research—Notice of Proposed Funding Priorities for Fiscal Years 1993–94 for Certain Rehabilitation Research and Training Centers	57 FR 29766 (7/6/92)
Rehabilitation Short-Term Training—Notice of Proposed Priorities for Fiscal Year 1993	57 FR 33240 (7/27/92)
National Institute on Disability and Rehabilitation Research—Notice of Proposed Funding Priorities for Fiscal Years 1993 and 1994 for Rehabilitation Research and Training Centers	57 FR 34024 (7/31/92)
Educational Research Grant Program: Improved Assessments of K-12 Student Performance—Notice of Proposed Priority for Fiscal Years 1993 and 1994	57 FR 34170 (8/3/92)
Special Projects and Demonstrations for Providing Vocational Rehabilitation services to Individuals with Severe Handicaps—Notice of Proposed Priorities for Fiscal Year 1993	57 FR 34472 (8/4/92)
Dwight D. Eisenhower National Program for Mathematics and Science Education—Model Professional Development Program in Mathematics or Science for Elementary and Middle School Teachers—Notice of Proposed Priority for Fiscal Years 1993 and 1994	57 FR 34476 (8/4/92)
Rehabilitation Engineering Centers—Notice of Proposed Funding Priorities for Fiscal Year 1993–94	57 FR 34460 (8/4/92)
Training Personnel for the Education of Individuals with Disabilities—Grants for Personnel Training, Parent Training, and Information Centers, and Grants to State Educational Agencies and Institutions of Higher Education—Notice of Proposed Rulemaking	57 FR 34620 (8/5/92)
Fund for Innovation in Education Program: State Curriculum Frameworks for English, History, Geography, Civics and Arts Education—Notice of Proposed Priorities for Fiscal Years 1993 and 1994	57 FR 34919 (8/7/92)
Educational Research Grant Program—State Systemic Educational Reforms—Notice of Proposed Priorities for Fiscal Years 1993 and 1994	57 FR 35956 (8/11/92)
Research in Education of Individuals with Disabilities Program; Technology, Educational Media, and Materials for Individuals with Disabilities Program—Notice of Proposed Funding Priorities for Fiscal Years 1993 and 1994	57 FR 40994 (9/8/92)

Available Funds

The Congress has not yet enacted a fiscal year 1993 appropriation for the Department of Education. However, the Department is publishing this notice in order to give potential applicants adequate time to prepare applications. Estimates of the amount of funds available for these programs are based in part on the President's 1993 budget request and in part on the level of funding available for fiscal year 1992. The Department of Education is not bound by any of the estimates in this notice.

National Education Goals and AMERICA 2000

In 1989 the President and the Nation's Governors convened an education summit to set performance goals for educational achievement in America. The summit resulted in the setting of six National Education Goals for the year 2000:

Goal 1: All children in America will start school ready to learn.

Goal 2: The high school graduation rate will increase to at least 90 percent.

Goal 3: American students will leave grades 4, 8, and 12 having demonstrated competency in challenging subject matter, including English, mathematics, science, history, and geography; and every school in America will ensure that

all students learn to use their minds well, so they may be prepared for responsible citizenship, further learning, and productive employment in our modern economy.

Goal 4: U.S. students will be first in the world in science and mathematics achievement.

Goal 5: Every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Goal 6: Every school in America will be free of drugs and violence and will offer a disciplined environment conducive to learning.

To further the Nation's efforts to achieve the National Education Goals, the President announced AMERICA 2000 on April 18, 1991. AMERICA 2000 is a comprehensive strategy for transforming American education and helping communities create world-class schools for their children.

AMERICA 2000 calls for the Nation to launch—all at once—four revolutions to create schools that meet the needs of children the way children are growing up today:

- Creating a new generation of break-the-mold, New American Schools.
- Developing world-class standards and a voluntary national examination system.
- Eliminating Federal and State red tape and giving America's teachers and principals the flexibility they need to most effectively operate schools and raise achievement levels.
- Giving families more choice of all schools.

In developing this combined application notice the Department has sought to ensure that programs awarding grants during FY 1993 will further achievement of the Goals, as adopted by the President and the Governors, as well as AMERICA 2000. The Secretary encourages applicants under these programs to review the National Education Goals and AMERICA 2000 in developing their applications.

Applicability of Section 5301 of the Anti-Drug Abuse Act of 1988

A number of programs covered by this combined application notice and listed in Chart 1 provide that a grant, fellowship, traineeship, or other monetary benefit may be awarded to an individual. This award may be made to the individual either directly by the Department or by a grantee that receives Federal funds for the purpose of providing, for example, fellowships, traineeships, or other awards to individuals.

Section 5301 of the Anti-Drug Abuse Act of 1988 (Pub. L. 100-690; redesignated as section 421 of the Controlled Substances Act, 21 U.S.C. 862) provides that a sentencing court may deny eligibility for certain Federal benefits to an individual convicted of drug trafficking or possession. Thus, an individual who applies for a grant, fellowship, or other monetary benefit under a program covered by this notice should understand that, if convicted of drug trafficking or possession, he or she is subject to denial of eligibility for that benefit if the sentencing court imposes such a sanction.

This denial applies whether the Federal benefit is provided to the individual directly by the Department or is provided through a grant, fellowship, traineeship, or other award made available with Federal funds by a grantee.

Any persons determined to be ineligible for Federal benefits under the provisions of section 5301 are listed in the General Services Administration's "Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs."

Applicability of the Federal Debt Collection Procedures Act of 1990

The programs announced in this notice make discretionary awards subject to the eligibility requirements of the Federal Debt Collection Procedures Act of 1990 (Pub. L. 101-647; 28 U.S.C. 3201). The Act provides that if there is a judgment lien against a debtor's property for a debt to the United States, the debtor is not eligible to receive a Federal grant or loan, except direct payments to which the debtor is entitled as beneficiary, until the judgment is paid in full or otherwise satisfied.

Intergovernmental Review of Federal Programs

Certain programs in this notice are subject to the requirements of EO 12372 and the regulations in 34 CFR part 79. These programs are identified in charts 2 through 7 with a date in the column headed "Deadline for intergovernmental review." For further information, an applicant under a program subject to the Executive order—and other parties interested in that program—are directed to the appendix to this notice.

PART I

CHART 1—LIST OF APPLICATION NOTICES

CFDA No.	Name of program	Application notice	Application deadline date
Office of Bilingual Education and Minority Languages Affairs			
84.003D	Transitional Bilingual Education Program	In this issue	1/15/93
84.003G	Academic Excellence Program	In this issue	1/22/93
84.003J	Family English Literacy Program	In this issue	11/16/92
84.003K	Special Alternative Instructional Program	In this issue	1/15/93
84.003L	Special Populations Program	In this issue	11/13/92
84.194Q	State Educational Agency Program	In this issue	1/22/93
84.195P	Educational Personnel Training Program	10/2/92 (est.)*	1/27/93 (est.)
84.195T	Fellowship Program	In this issue	1/15/93
84.195V	Short-Term Training Program	In this issue	11/13/92
Office of Educational Research and Improvement			
Library Programs			
84.036B	Library Career Training Program—Fellowship Awards	7/28/92 (57 FR 33410)	10/8/92
84.091A	Strengthening Research Library Resources Program	7/28/92 (57 FR 33410)	[1] 10/9/92 [2] 11/20/92
84.163A	Library Services to Indian Tribes and Hawaiian Natives—Basic Grants.	7/28/92 (57 FR 33410)	10/5/92

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CFDA No.	Name of program	Application notice	Application deadline date
84.163B	Library Services to Indian Tribes and Hawaiian Natives—Special Projects.	7/28/92 (57 FR 33410)	4/5/93
84.167A	Library Literacy Program	10/13/92 (est)*	1/8/93 (est.)
84.197A-D	College Library Technology and Cooperation Grants Program	7/28/92 (57 FR 33410)	1/15/93
84.239A	Foreign Language Materials Acquisition Program	7/28/92 (57 FR 33410)	2/19/93
	Fund for the Improvement and Reform of Schools and Teaching (FIRST)		
84.117S	Educational Research Grant Program—State Systemic Educational Reforms.	12/15/92 (est.)*	2/26/93 (est.)
84.168A	Dwight D. Eisenhower National Program for Mathematics and Science—State Curriculum Frameworks for Mathematics and Science.	12/1/92 (est.)*	2/19/93 (est.)
84.168C	Dwight D. Eisenhower National Program for Mathematics and Science—Professional Development for Teachers.	12/1/92 (est.)*	2/19/93 (est.)
84.211B	FIRST—Schools and Teachers Program—School-Level Projects.	3/8/93 (est.)*	5/14/93 (est.)
84.212A	FIRST—Family-School Partnership Program	In this issue	12/7/92
84.215	Secretary's Fund for Innovation in Education (FIE)		
84.215B	FIE—Comprehensive School Health Education Program	In this issue	12/4/92
84.215G	FIE—Innovation in Education Program—State Curriculum Frameworks for English, History, Geography, Civics and Arts Education.	12/15/92 (est.)*	2/26/93 (est.)
	Office of Research		
84.117B	Educational Research Grant Program—Improved Assessments of K-12 Student Performance.	11/16/92 (est.)*	1/19/93 (est.)
84.117E	Educational Research Grant Program—Field-Initiated Studies	In this issue	1/8/93
84.117J	Office of Educational Research and Improvement Fellows Program.	In this issue	12/7/92
	Programs for the Improvement of Practice		
84.073A	National Diffusion Network Program—New Developer Demonstrator Projects.	In this issue	4/9/93
84.073C	National Diffusion Network Program—New State Facilitator Projects.	In this issue	3/8/93
84.073E	National Diffusion Network Program—New Dissemination Process Projects.	In this issue	5/21/93
84.206A	Javits Gifted and Talented Students Education Grant Program	In this issue	2/5/93
	National Center for Education Statistics		
84.999F	National Assessment of Educational Progress (NAEP) Program—1994 Data Collection.	10/16/92 (est.)	12/4/92 (est.)
84.999G	National Assessment of Educational Progress (NAEP) Program—1994 Analysis.	10/16/92 (est.)	12/11/92 (est.)
	Office of Elementary and Secondary Education		
84.004C	Desegregation of Public Education—State Educational Agency Desegregation Program.	In this issue	11/6/92
84.004D	Desegregation of Public Education—Desegregation Assistance Center Program Cooperative Agreement.	7/27/92 (57 FR 33190)	9/22/92
84.061A	Educational Services for Indian Children	In this issue	2/26/93
84.061C	Planning, Pilot, and Demonstration Projects for Indian Children (Planning Projects).	In this issue	2/26/93
84.061D	Planning, Pilot, and Demonstration Projects for Indian Children (Pilot Projects).	In this issue	2/26/93
84.061E	Planning, Pilot, and Demonstration Projects for Indian Children (Demonstration Projects).	In this issue	2/26/93
84.061F	Indian Education—Educational Personnel Development	In this issue	2/26/93
84.062A	Educational Services for Indian Adults	In this issue	2/26/93
84.072A	Indian-Controlled Schools—Enrichment Projects	In this issue	[illegible]
84.083A	Women's Educational Equity Act Program—General Significance Grants.	In this issue	3/12/93
84.083B	Women's Educational Equity Act Program—Challenge Grants	In this issue	3/12/93
84.087A	Indian Fellowship Program	9/14/92 (57 FR 41928)	1/22/93
84.123A	Law-Related Education Program	In this issue	2/5/93
84.141A	High School Equivalency Program	In this issue	2/12/93
84.144A	Chapter 1 Migrant Education Coordination Program	10/30/92 (est.)*	12/15/92 (est.)
84.149A	College Assistance Migrant Program	In this issue	2/12/93
84.165A	Magnet Schools Assistance Program	11/16/92 (est.)*	1/15/93 (est.)
84.184B	Drug-Free Schools and Communities Federal Activities Grants Program.	In this issue	12/9/92
84.207A	Drug-Free Schools and Communities School Personnel Training Grants Program.	In this issue	2/8/93
84.214A	Migrant Education Even Start Program	In this issue	4/20/93

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CFDA No.	Name of program	Application notice	Application deadline date
84.233A	Drug-Free Schools and Communities Emergency Grants Program.	In this issue	1/12/93
84.241A	Drug-Free Schools and Communities Counselor Training Grants Program.	In this issue	2/19/93
84.214A	Migrant Education Even Start Program	In this issue	4/20/93
84.233A	Drug-Free Schools and Communities Emergency Grants Program.	In this issue	1/12/93
84.241A	Drug-Free Schools and Communities Counselor Training Grants Program.	In this issue	2/19/93
84.256A	Territories and Freely Associated States Educational Grants Program.	3/18/93 (est.)*	6/30/93 (est.)
84.258A	Even Start Program—Indian Tribes and Tribal Organizations	In this issue	3/19/93
	Office of Postsecondary Education		
84.016A	Undergraduate International Studies and Foreign Language	8/18/92 (57 FR 37152)	11/2/92
84.017A	International Research and Studies	8/26/92 (57 FR 38678)	11/2/92
84.019A	Fulbright-Hays Faculty Research Abroad	7/24/92 (57 FR 32970)	10/30/92
84.021A	Fulbright-Hays Group Projects Abroad	8/18/92 (57 FR 37151)	10/23/92
84.022A	Fulbright-Hays Doctoral Dissertation Research Abroad	7/24/92 (57 FR 32979)	10/30/92
84.031G	Endowment Challenge Grant Program	In this issue	6/14/93
84.031H	Strengthening Institutions Program and Endowment Challenge Grant Program—Designation as an Eligible Institution.	9/23/92 (est.)	11/18/92 (est.)
84.042A	Student Support Services	9/15/92 (57 FR 42559)	11/13/92
84.097A	Law School Clinical Experience Program	10/19/92 (est.)	1/22/93 (est.)
84.120	Minority Science Improvement Program—Institutional, Design, Special, and Cooperative Projects.	In this issue	12/4/92
84.153A	Business and International Education	8/18/92 (57 FR 37152)	11/9/92
84.202A	Women and Minority Participation in Graduate Education	9/30/92 (est.)	11/16/92 (est.)
84.219A	Student Literacy and Mentoring Corps Program	1/4/93 (est.)	3/19/93 (est.)
84.220A	Centers for International Business Education	In this issue	2/19/93
84.229A	Language Resource Centers Program	In this issue	3/1/93
	Fund for the Improvement of Postsecondary Education (FIPSE)		
84.116A	Comprehensive Program (Preapplications)	9/11/92 (57 FR 41736)	10/27/92
84.116B	Comprehensive Program (Applications) [2]	9/11/92 (57 FR 41736)	3/5/93
84.116F	Fund for the Improvement of Postsecondary Education—Innovative Projects for Student Community Service.	2/10/93 (est.)*	4/7/93 (est.)
84.116J	Fund for the Improvement of Postsecondary Education—Special Focus Competition (Invitational Priority: Higher Education Cooperation and Exchange between the United States and the European Community).	2/3/93 (est.)	6/1/93 (est.)
84.183A	Drug Prevention Programs in Higher Education—Institution-Wide Program.	In this issue	1/19/93
84.183B	Drug Prevention Programs in Higher Education—Special Focus Program Competition: National College Student Organizational Network Program.	In this issue	4/5/93
84.183D	Drug Prevention Programs in Higher Education—Special Focus Program Competition: Specific Approaches to Prevention Projects (Invitational Priority: Higher Education Consortia for Drug Prevention).	In this issue	2/17/93
84.183E	Drug Prevention Programs in Higher Education—Analysis and Dissemination Program Competitions: Dissemination of Successful Projects.	In this issue	1/19/93
84.183F	Drug Prevention Programs in Higher Education—Analysis and Dissemination Program Competitions: Analysis Projects.	In this issue	1/19/93
	Office of Special Education and Rehabilitative Services *Office of Special Education Programs*		
84.023A	Advancing and Improving the Research Knowledge Base	9/15/92 (57 FR 42560)	2/12/93
84.023B	Student-Initiated Research Projects	9/15/92 (57 FR 42560)	11/13/93
84.023C	Field-Initiated Research Projects	9/15/92 (57 FR 42560)	11/13/93
84.023N	Initial Career Awards	9/15/92 (57 FR 42561)	1/8/93
84.023P	Increasing Participation in General Education Development Programs among Youth with Disabilities.	1/15/93 (est.)*	3/26/93 (est.)
84.023R	Including Children with Disabilities as Part of Systemic Efforts to Restructure Schools.	9/15/92 (57 FR 42561)	12/11/92
84.023T	Enhancing Language Acquisition among Students Who Are Deaf or Hard of Hearing.	1/15/93 (est.)*	3/25/93 (est.)
84.024B	Early Childhood Model Demonstration	In this issue	11/16/92
84.024D	Outreach Projects	In this issue	12/11/92
84.024J	State Data Systems	9/17/92	3/8/93
84.024P	Training of Early Intervention Services Providers through Training Faculty from Institutions of Higher Education.	10/15/92 (est.)*	1/11/93 (est.)
84.025C	Technical Assistance to State and Multi-State Deaf-Blind Projects.	8/25/92 (57 FR 38488)	2/8/93
84.025D	Model Demonstration Projects	3/12/93 (est.)	5/28/93 (est.)
84.026F	Closed-Captioned Movies, Mini-Series, and Special Programs Broadcast during Prime-Time.	In this issue	3/3/93
84.026J	Close-Captioned Syndicated Television Programming	In this issue	5/5/93
84.026M	Symposium on Educational Media Technology Relating to Persons with Sensory Disabilities.	In this issue	1/19/93

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CFDA No.	Name of program	Application notice	Application deadline date
84.026P	Closed-Captioned National News and Public Information Programs.	In this issue	2/10/93
84.026R	Special Research, Development, and Evaluation Projects	In this issue	4/27/93
84.026T	Cultural Experiences for Deaf and Hard of Hearing Individuals	In this issue	2/1/93
84.026V	Closed-Captioned Children's Programs	In this issue	4/21/93
84.028A	Regional Resource Centers	10/30/92 (est.)	1/22/93 (est.)
84.029A	Training Personnel to Serve Low-Incidence Disabilities	12/11/92 (est.)*	2/16/93 (est.)
84.029B	Preparation of Personnel for Careers in Special Education	7/24/92 (57 FR 33068)	10/19/92
84.029C1	Personnel Development Partnerships	12/11/92 (est.)*	2/16/93 (est.)
84.029D	Preparation of Leadership Personnel	7/24/92 (57 FR 33068)	10/19/92
84.029E	Preparation of Minority Personnel	12/11/92 (est.)*	2/16/93 (est.)
84.029F	Preparation of Related Services Personnel	7/24/92 (57 FR 33068)	9/18/92
84.029K	Special Projects	7/24/92 (57 FR 33068)	11/30/92
84.029M	Parent Training and Information Centers	7/24/92 (57 FR 33068)	9/15/92
84.029Q	Training Early Intervention and Preschool Personnel	7/24/92 (57 FR 33068)	9/18/92
84.029V	State Educational Agency Programs	12/11/92 (est.)*	2/16/93 (est.)
84.030A	National Information Center for Children and Youth with Disabilities.	8/18/92 (57 FR 37360)	1/15/93
84.030C	National Clearinghouse on Postsecondary Education of Disabled Individuals.	8/18/92 (57 FR 37360)	1/15/93
84.030E	National Clearinghouse on Careers and Employment in Special Education.	8/18/92 (57 FR 37360)	1/15/93
84.078C	Career Placement Opportunities for Students with Disabilities in Postsecondary Programs.	8/25/92 (57 FR 38489)	5/3/93
84.086D	Developing Innovations for Education—Children with Severe Disabilities Full-Time in General Education Classrooms.	8/25/92 (57 FR 38488)	12/4/92
84.086J	Statewide Systems Change	8/25/92 (57 FR 38488)	12/11/92
84.086R	Model Inservice Training Projects	8/25/92 (57 FR 38488)	12/11/92
84.086U	Outreach Serving Students with Severe Disabilities in Integrated Environments.	8/25/92 (57 FR 38488)	1/29/93
84.158D	Model Demonstration Projects to Identify, Recruit, Train and Place Youth with Disabilities Who Have Dropped Out of School.	8/25/92 (57 FR 38489)	4/9/93
84.158K	Model Demonstration Projects to Identify and Teach Skills Necessary for Self Determination.	8/25/92 (57 FR 38489)	1/22/93
84.158P	Research Projects on the Transition of Special Populations to Integrated Postsecondary Environments.	8/25/92 (57 FR 38489)	12/11/92
84.159A	State Agency-Federal Evaluation Studies Projects	9/15/92 (57 FR 42562)	1/15/93
84.159F	State Agency-Federal Evaluation Studies Projects—Feasibility	9/15/92 (57 FR 42562)	1/15/93
84.180E	Demonstrating and Evaluating the Benefits of Educational Innovations Using Technology.	9/17/92	11/30/92
84.180G	Technology, Educational Media, and Materials Research Projects that Promote Literacy.	9/17/92	11/30/92
84.180J	Application of Assistive Technology for Students Who Are Deaf or Hard of Hearing.	12/21/92 (est.)*	3/12/93 (est.)
84.237D	Development and Support for Enhancing Professional Knowledge, Skills, and Strategies.	9/17/92	3/19/93
	National Institute on Disability and Rehabilitation Research		
84.133A-2	Research and Demonstration Projects	12/18/92 (est.)*	3/31/93 (est.)
84.133A-3	Research and Demonstration Projects	In this issue	5/28/93
84.133B	Rehabilitation Research and Training Centers	9/30/92 (est.)*	11/25/92
84.133B	Rehabilitation Research and Training Centers	11/16/92 (est.)*	1/15/93 (est.)
84.133B	Rehabilitation Research and Training Centers	12/15/92 (est.)*	2/16/93 (est.)
84.133D	Knowledge Dissemination and Utilization Program	8/18/92 (57 FR 37338)	2/23/93
84.133E	Rehabilitation Engineering Centers	11/13/92 (est.)*	1/15/93 (est.)
84.133F	Rehabilitation Research Fellowships Program	8/18/92 (57 FR 37338)	10/5/92
84.133G	Field-Initiated Research	8/18/92 (57 FR 37338)	10/5/92
84.133P	Research Training and Career Development Program	8/18/92 (57 FR 37338)	10/5/92
84.224A	State Grants for Technology-Related Assistance for Individuals with Disabilities.	In this issue	4/16/93
	Rehabilitation Services Administration		
84.128A	Special Projects and Demonstrations for Providing Supported Employment Services to Individuals with Severe Handicaps—Community-Based Projects.	6/12/92 (57 FR 25025)	9/1/92
84.128G	Vocational Rehabilitation Service Projects for Migratory Agricultural and Seasonal Farmworkers with Handicaps.	In this issue	11/30/92
84.128J	Projects for Initiating Special Recreation Programs for Individuals with Handicaps.	4/15/93 (est.)*	6/1/93 (est.)
84.129A-1	Rehabilitation Long-Term Training—Rehabilitation Medicine	In this issue	11/30/92
84.129A-5	Rehabilitation Long-Term Training—Prosthetics and Orthotics	In this issue	11/30/92
84.129B	Rehabilitation Long-Term Training—Rehabilitation Counseling	In this issue	2/3/93
84.129C-1	Rehabilitation Long-Term Training—Rehabilitation Facility Administration.	In this issue	11/30/92
84.129C-3	Rehabilitation Long-Term Training—Rehabilitation Administration.	In this issue	11/30/92

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CFDA No.	Name of program	Application notice	Application deadline date
84.129D	Rehabilitation Long-Term Training—Occupational Therapy	In this issue	11/30/92
84.129E	Rehabilitation Long-Term Training—Rehabilitation Engineering	In this issue	11/30/92
84.129F	Rehabilitation Long-Term Training—Vocational Evaluation and Work Adjustment.	In this issue	11/30/92
84.129G	Rehabilitation Long-Term Training—Rehabilitation Workshop and Facility Personnel.	In this issue	11/30/92
84.129H	Rehabilitation Long-Term Training—Rehabilitation of the Mentally Ill.	In this issue	11/30/92
84.129K	Rehabilitation Long-Term Training—Specialized Personnel for Supported Employment.	In this issue	11/30/92
84.129L	Rehabilitation Long-Term Training—Undergraduate Education in Rehabilitation Services.	In this issue	11/30/92
84.129M	Rehabilitation Long-Term Training—Independent Living	In this issue	11/30/92
84.129P	Rehabilitation Long-Term Training—Rehabilitation of the Blind	In this issue	11/30/92
84.129Q	Rehabilitation Long-Term Training—Rehabilitation of the Deaf	In this issue	11/30/92
84.129R	Rehabilitation Long-Term Training—Rehabilitation Job Development and Placement.	In this issue	11/30/92
84.129T	Rehabilitation Training—Experimental and Innovative Training	In this issue	11/23/92
84.129U	Rehabilitation Training—Rehabilitation Continuing Education Programs.	8/6/92 (57 FR 34766)	10/1/92
84.129V	Rehabilitation Training—State Vocational Rehabilitation Unit In-service Training.	In this issue	4/1/93
84.132A	Centers for Independent Living	12/14/92 (est.)	6/25/93 (est.)
84.234K	Projects with Industry	In this issue	11/30/92
84.235C	Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals with Severe Handicaps—Non-Priority.	In this issue	11/30/92 (est.)
84.235F	Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals with Severe Handicaps—Low Functioning Adults Who Are Deaf or Hard of Hearing.	10/28/92 (est.)*	1/11/93 (est.)
84.235M	Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals with Severe Handicaps—Model Systems of Collaboration to Assist in the Training and Employment of Individuals Who Are Disabled Due to the Abuse of Drugs Other than Alcohol.	10/28/92 (est.)*	1/11/93 (est.)
84.235N	Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals with Severe Handicaps—Functional Assessment of Individuals with Cognitive Disabilities.	10/28/92 (est.)*	1/11/93 (est.)
84.235P	Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals with Severe Handicaps—Linkages between State Vocational Rehabilitation Agencies and Consumer-Run Programs for Individuals with Severe Mental Illness.	10/28/92 (est.)*	1/11/93 (est.)
84.235Q	Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals with Severe Handicaps—Transition Rehabilitation Services for Handicapped Youth with Special Needs.	In this issue	11/30/92
84.246D	Rehabilitation Short-Term Training—Functional Assessment of Individuals with Cognitive Disabilities.	10/28/92 (est.)*	12/30/92 (est.)
84.246E	Rehabilitation Short-Term Training—Training Rehabilitation Practitioners and Educators on Provisions of the Individuals with Disabilities Education Act (IDEA).	10/28/92 (est.)*	12/30/92 (est.)
84.250C	Vocational Rehabilitation Service Projects for American Indians with Handicaps.	In this issue	11/30/92
	Office of Vocational and Adult Education		
84.051	National Center or Centers for Research in Vocational Education.	7/10/92 (57 FR 30836)	9/4/92
84.077	Bilingual Vocational Training Program	In this issue	12/11/92
84.099	Bilingual Vocational Instructor Training Program	In this issue	12/11/92
84.101A	Indian Vocational Education Program	6/16/92 (57 FR 26904)	7/30/92
84.101C	Native Hawaiian Vocational Education Program	In this issue	4/16/93
84.192	Adult Education for the Homeless Program	3/24/92 (57 FR 10159)	6/5/92
84.198	National Workplace Literacy Program	6/5/92 (57 FR 24130)	7/10/92
84.244	Business and Education Standards Program	9/30/92 (est.)	11/30/92 (est.)
84.255	Functional Literacy for State and Local Prisoners Program	6/5/92 (57 FR 24112)	7/21/92

[1] For institutions needing to establish eligibility (Part I only).
[2] For all project descriptions (Part II).
[3] Applicants for 84.116B must submit preapplications under 84.116A by 10/14.92.

PART II

The following Charts 2 through 7 contain fiscal and programmatic information about each of the programs announced in this notice. Each chart is followed by additional information regarding these programs.

CHART 2.—OFFICE OF BILINGUAL EDUCATION AND MINORITY LANGUAGES AFFAIRS

CFDA No. and name	Applications available	Application deadline date	Deadline for intergovernmental review	Estimated range of awards	Estimated avg. size of awards	Estimated number of awards
84.003D Transitional Bilingual Education Program	10/5/92	1/15/93	3/16/93	$75,000–300,000	$175,000	57
84.003G Academic Excellence Program	10/21/92	1/22/93	3/23/93	100,000–200,000	150,000	10
84.003J Family English Literacy Program	9/28/92	11/16/92	1/15/93	50,000–150,000	125,000	4
84.003K Special Alternative Instructional Program	10/5/92	1/15/93	3/16/93	75,000–300,000	175,000	57
84.003L Special Populations Program	9/28/92	11/13/92	1/12/93	45,000–180,000	135,000	19
84.194Q State Educational Agency Program	10/30/92	1/22/93	3/23/93	N/A	75,000	10
84.195T Fellowship Program	10/16/92	1/15/93	N/A	2,000–26,000 (per indiv. fellow)	12,000 (per indiv. fellow)	375 (indiv. fellowships)
84.195V Short-Term Training Program	9/28/92	11/13/92	1/12/93	40,000–120,000	100,000	5

84.003D Transitional Bilingual Education Program

Purpose of Program: To provide assistance to establish, operate, or improve programs of transitional bilingual education for limited English proficient (LEP) children.

Eligible Applicants: Local educational agencies (LEAs); and institutions of higher education, including junior or community colleges, that apply jointly with one or more LEAs.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 500 and 501.

Priority: The priority in the notice of final priority for this program, published in the **Federal Register** on September 2, 1992 (57 FR 40300), applies to this competition.

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the selection criteria in 34 CFR 501.31.

In addition to the maximum of 100 points awarded under 34 CFR 501.31, the program regulations in 34 CFR 501.32(b) provide that the Secretary distributes 15 additional points among the factors listed in 34 CFR 501.32(a). For this competition the Secretary distributes the 15 additional points as follows:

(1) The need to assist LEP children who have been historically underserved by programs for limited English proficient persons (34 CFR 501.32(a)(1))—4 points.

(2) The relative need of the particular LEA(s) for the proposed program (34 CFR 501.32(a)(2))—4 points.

(3) The geographical distribution of LEP children. The Secretary considers the need to provide assistance in proportion to the distribution of LEP children throughout the Nation and within each of the States (34 CFR 501.32(a)(3))—3 points.

(4) The number and proportion of children from low-income families to be benefited by the program (34 CFR 501.32(a)(4))—4 points.

Project Period: 36 months.

For Applications or Information Contact: Luis A. Catarineau, U.S. Department of Education, 400 Maryland Avenue, SW., room 5086, Switzer Building, Washington, DC 20202–6641. Telephone: (202) 205–9700.

Program Authority: 20 U.S.C. 3291.

84.003G Academic Excellence Program

Purpose of Program: To provide assistance to identify and disseminate effective bilingual education practices for limited English proficient (LEP) students.

Eligible Applicants: Local educational agencies; institutions of higher education, including junior or community colleges; and nonprofit private organizations applying separately or jointly.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 500 and 524.

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the selection criteria in 34 CFR 524.31.

In addition to the maximum of 100 points awarded under 34 CFR 524.31, the program regulations in 34 CFR 524.32(b) provide that the Secretary distributes 15 additional points among the factors listed in 34 CFR 524.32(a). For this competition the Secretary distributes the 15 additional points as follows:

(1) How dissemination and adoption of the model program would relate to—

(i) The need to assist LEP children who have been historically underserved by programs for limited English proficient persons (34 CFR 524.32(a)(1)(i))—4 points.

(ii) The need to provide funding according to the distribution of LEP children throughout the Nation and within each of the States (34 CFR 524.32(a)(1)(ii))—10 points.

(2) The relative numbers of children from low-income families likely to be benefited by the project (34 CFR 524.32(a)(2))—1 point.

Project Period: 36 months.

For Applications or Information Contact: Dr. Mary T. Mahony, U.S. Department of Education, 400 Maryland Avenue, SW., room 5086, Switzer Building, Washington, DC 20202–6642. Telephone: (202) 205–8722.

Program Authority: 20 U.S.C. 3291.

84.003J Family English Literacy Program

Purpose of Program: To provide assistance to establish, operate, and improve family English literacy programs for limited English proficient (LEP) persons and their families.

Eligible Applicants: Local educational agencies; institutions of higher education, including junior or community colleges; and nonprofit private organizations, applying separately or jointly.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 500 and 525.

Priority: Under 34 CFR 75.105(c)(1) the Secretary is particularly interested in applications that meet the following invitational priority. However, an application that meets this invitational priority does not receive competitive or absolute preference over other applications:

Facilitating Achievement of LEP Children in Grades 4–6. Instruction in methods by which parents and family members can facilitate the educational achievement of LEP children in one or more grade levels from grade 4 through grade 6.

This priority focuses on facilitating the educational achievement of LEP children in grades 4–6 because most past projects under this program have focused on facilitating the educational achievement of LEP children in lower grade levels.

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the selection criteria in 34 CFR 525.31.

In addition to the maximum of 100 points awarded under 34 CFR 525.31, the program regulations in 34 CFR 525.32(b) provide that the Secretary distributes 15 additional points among the factors listed in 34 CFR 525.32(a). For this competition that Secretary distributes the 15 additional points as follows:

(1) The need to assist LEP children who have been historically underserved by programs for limited English proficient persons (34 CFR 525.32(a)(1))—4 points.

(2) The need to provide assistance in proportion to the distribution of LEP children throughout the Nation and within each of the States (34 CFR 525.32(a)(2))—6 points.

(3) The need for financial assistance to establish, operate, or improve programs for limited English proficient persons (34 CFR 525.32(a)(3))—3 points.

(4) The relative numbers of children from low-income families sought to be benefited by the program (34 CFR 525.32(a)(4))—2 points.

Project Period: 36 months.

For Applications or Information Contact: Dr. Mary T. Mahony, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5086, Switzer Building, Washington, DC 20202–6642. Telephone: (202) 205–8722.

Program Authority: 20 U.S.C. 3291.

84.003K Special Alternative Instructional Program

Purpose of Program: To provide assistance to establish, operate, or improve special alternative instructional programs for limited English proficient (LEP) children.

Eligible Applicants: Local educational agencies (LEAs); and institutions of higher education, including junior or community colleges, that apply jointly with one or more LEAs.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 500 and 501.

Priority: The priority in the notice of final priority for this program, published in the **Federal Register** on September 2, 1992 (57 FR 40300), applies to this competition.

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the selection criteria in 34 CFR 501.31.

In addition to the maximum of 100 points awarded under 34 CFR 501.31, the program regulations in 34 CFR 501.32(b) provide that the Secretary distributes 15 additional points among the factors listed in 34 CFR 501.32(a). For this competition the Secretary distributes the 15 additional points as follows:

(1) The need to assist LEP children who have been historically underserved by programs for limited English proficient persons (34 CFR 501.32(a)(1))—4 points.

(2) The relative need of the particular LEA(s) for the proposed program (34 CFR 501.32(a)(2))—4 points.

(3) The geographical distribution of LEP children. The Secretary considers the need to provide assistance in proportion to the distribution of LEP children throughout the Nation and within each of the States (34 CFR 501.32(a)(3))—3 points.

(4) The number and proportion of children from low-income families to be benefited by the program (34 CFR 501.32(a)(4))—4 points.

In addition to the 15 points distributed among the factors listed in 34 CFR 501.32(a), the program regulations in 34 CFR 501.33(b) provide that the Secretary may distribute 5 additional points among the factors listed in 34 CFR 501.33(a). For this competition the Secretary distributes the 5 additional points as follows:

(1) The administrative impracticability of establishing a bilingual education program due to the presence of a small number of students of a particular native language (34 CFR 501.33(a)(1))—2 points.

(2) The unavailability of personnel qualified to provide bilingual instructional services (34 CFR 501.33(a)(2))—2 points.

(3) The presence of a small number of LEP students in the LEA's schools and the LEA's inability to obtain native language teachers because of isolation or regional location (34 CFR 501.33(a)(3))—1 point.

Project Period: 36 months.

For Applications or Information Contact: Robert M. Trifiletti, U.S. Department of Education, 400 Maryland Avenue, SW., room 5086, Switzer Building, Washington, DC 20202–6641. Telephone: (202) 205–9700.

Program Authority: 20 U.S.C. 3291.

84.003L Special Populations Program

Purpose of Program: To provide assistance to preschool, special education, and gifted and talented programs for limited English proficient (LEP) children that are preparatory or supplementary to programs such as those assisted under the Bilingual Education Act.

Eligible Applicants: Local educational agencies; institutions of higher education, including junior or community colleges; and nonprofit private organizations.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 500 and 526.

Priority: Under 34 CFR 75.105(c)(2) and 34 CFR 526.30(a) the Secretary gives preference to applications that meet the following competitive priority. The Secretary may select an application that meets this competitive priority over applications of comparable merit that do not meet the priority:

Preschool Projects for LEP Children. Projects that establish, operate, and improve preparatory or supplementary programs for LEP children who have not reached elementary school age.

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the selection criteria in 34 CFR 526.32.

In addition to the maximum of 100 points awarded under 34 CFR 526.32, the program regulations in 34 CFR 526.31(b) and 34 CFR 525.32(b) provide that the Secretary distributes 15 additional points among the factors listed in 34 CFR 525.32(a). For this competition the Secretary distributes the 15 additional points as follows:

(1) The need to assist LEP children who have been historically underserved by programs for limited English proficient persons (34 CFR 525.32(a)(1))—5 points.

(2) The need to provide assistance in proportion to the distribution of LEP children throughout the Nation and within each of the States (34 CFR 525.32(a)(2))—6 points.

(3) The need for financial assistance to establish, operate, or improve programs for limited English proficient persons (34 CFR 525.32(a)(3))—1 point.

(4) The relative numbers of children from low-income families sought to be benefited by the program (34 CFR 525.32(a)(4))—3 points.

Project Period: 36 months.

For Applications or Information Contact: Barbara J. Wells, U.S. Department of Education, 400 Maryland Avenue, SW., room 5627, Switzer Building, Washington, DC 20202–6642. Telephone: (202) 205–8840.

Program Authority: 20 U.S.C. 3291.

84.194Q State Educational Agency Program

Purpose of Program: To provide assistance to collect, aggregate, analyze, and publish data and information on limited English proficient persons and to improve the effectiveness of bilingual education programs.

Eligible Applicants: State educational agencies.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 500 and 548.

Project Period: Up to 36 months.

For Applications or Information Contact: Harpreet K. Sandhu, U.S. Department of Education, 400 Maryland Avenue, SW., room 5086, Switzer Building, Washington, DC 20202-6641. Telephone: (202) 205-9808.

Program Authority: 20 U.S.C. 3302.

84.195T Fellowship Program

Purpose of Program: To provide assistance, through approved institutions of higher education, to full-time students pursuing a graduate degree in areas related to programs for limited English proficient persons.

Eligible Applicants: Institutions of higher education (IHEs). Any individual wishing to obtain a fellowship must apply to an IHE approved for participation in this program, not to the U.S. Department of Education.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 500 and 562.

Priority: Under 34 CFR 75.105(c)(1) the Secretary is particularly interested in applications that meet the following invitational priority. However, an application that meets this invitational priority does not receive competitive or absolute preference over other applications:

Doctoral Programs of Study. Applications proposing programs of study that lead to a doctoral degree.

Project Period: Up to 36 months.

For Applications or Information Contact: Joyce M. Brown, U.S. Department of Education, 400 Maryland Avenue, SW., room 5086, Switzer Building, Washington, DC 20202-6642. Telephone: (202) 205-9727 or (202) 205-9729.

Program Authority: 20 U.S.C. 3323.

84.195V Short-Term Training Program

Purpose of Program: To provide assistance to improve the skills of educational personnel and parents participating in programs for limited English proficient (LEP) persons.

Eligible Applicants: Local educational agencies (LEAs); State educational agencies (SEAs); and institutions of higher education, including junior or community colleges, and for-profit or nonprofit private organizations that apply (1) after consultation with one or more LEAs or SEAs or (2) jointly with one or more LEAs or SEAs.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 500 and 574.

Priorities:

Competitive Priority. Under 34 CFR 75.105(c) and 34 CFR 574.30(a) the Secretary gives preference to applications that meet the following competitive priority. An application that meets this competitive priority is selected by the Secretary over applications of comparable merit that do not meet the priority:

Instructional Competence of Teachers. Training designed to improve the instructional competence of teachers in carrying out their responsibilities in programs for LEP persons (34 CFR 574.10(a)).

Invitational Priorities: Within the competitive priority specified in this notice, the Secretary is particularly interested in applications that meet one of the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets one of these invitational priorities does not receive competitive or absolute preference over other applications:

Invitational Priority 1—Regular Elementary Classroom Teachers. Training designed to improve the competence of teachers in regular classrooms in providing instruction to LEP students at elementary grade levels.

Invitational Priority 2—Teachers of Secondary Core Subjects. Training designed to improve the competence of teachers in providing instruction in mathematics, science, English, history, and geography to LEP students at secondary grade levels.

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the selection criteria in 34 CFR 574.32.

In addition to the maximum of 100 points awarded under 34 CFR 574.32, the program regulations in 34 CFR 574.33(b) provide that the Secretary distributes 10 additional points among the factors listed in 34 CFR 574.33(a). For this competition the Secretary distributes the 10 additional points as follows:

(1) Evidence of prior participants' success in serving LEP children in accordance with needs identified in the prior project (34 CFR 574.33(a)(1))—1 point.

(2) Evidence of demonstrated capacity and cost effectiveness as provided in 34 CFR 574.32(d) and (f) (34 CFR 574.33(a)(2))—9 points.

Project Period: Up to 36 months.

For Applications or Information Contact: Petraine A. Johnson, U.S. Department of Education, 400 Maryland Avenue, SW., room 5086, Switzer Building, Washington, DC 20202-6642. Telephone: (202) 205-8722.

Program Authority: 20 U.S.C. 3321.

CHART 3.—OFFICE OF EDUCATIONAL RESEARCH AND IMPROVEMENT

CFDA No. and Name	Applications available	Application deadline date	Deadline for intergovernmental review	Estimated range of awards	Estimated avg. size of awards	Estimated number of awards
Library Programs						
All programs have been announced or are to be announced at a later date (see Chart 1).						
Fund for the Improvement and Reform of Schools and Teaching (FIRST)						
84.212A FIRST—Family-School Partnership Program	10/23/92	12/7/92	2/5/93	$50,000-150,000	$100,000	15
84.215B FIE—Comprehensive School Health Education Program	10/19/92	12/4/92	2/4/93	50,000-150,000	100,000	12

CHART 3.—OFFICE OF EDUCATIONAL RESEARCH AND IMPROVEMENT—Continued

CFDA No. and Name	Applications available	Application deadline date	Deadline for intergovernmental review	Estimated range of awards	Estimated avg. size of awards	Estimated number of awards
Office of Research						
84.117E Educational Research Grant Program—Field-Initiated Studies	10/19/92	1/8/93	N/A	50,000–90,000	80,000	25
84.117J Office of Educational Research and Improvement Fellows Program	N/A	12/7/92	N/A	25,000–45,000 (per indiv. fellow)	35,000 (per indiv. fellow)	3 (indiv. fellowships)
Programs for the Improvement of Practice						
84.073A National Diffusion Network—New Developer Demonstrator Projects	2/19/93	4/9/93	6/8/93	$60,000–100,000	$75,000	27
84.073C National Diffusion Network—New State Facilitator Projects	1/15/93	3/8/93	5/7/93	65,000–125,000	118,000	4
84.073E National Diffusion Network—New Dissemination Process Projects	3/15/93	5/21/93	7/20/93	90,000–120,000	105,000	2
84.206A Javits Gifted and Talented Students Education Grant Program	11/6/92	2/5/93	4/6/93	100,000–250,000	200,000	13
National Center for Education Statistics						

All programs are to be announced at a later date (see Chart 1).

84.212A Fund for the Improvement and Reform of Schools and Teaching (FIRST)—Family-School Partnership Program

Purpose of Program: To increase the involvement of families in improving the educational achievement of their children at the preschool, elementary, and secondary education levels.

Eligible Applicants: Local educational agencies (LEAs) eligible to receive a grant under Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended.

Note: This program is conducting a two-phase application process for FY 1993. The preapplication phase is open to all eligible applicants. A preapplication, not exceeding eight pages, should describe the proposed project. The Secretary evaluates the preapplication on the basis of the selection criteria in 34 CFR 758.21.

LEAs whose preapplications are ranked highest will be asked to submit full applications (25 pages plus appendices) to ensure that projects selected for grants are of high quality. The number of full applications to be requested will be approximately three times the number of planned awards. The time allowed for preparation of a full application will be at least 45 days from the date a request for a full application is mailed to an applicant.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 758.

Priorities:

Absolute Priority. Under 34 CFR 75.105(c)(3), 758.4(d), and 758.5(a) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Innovative family-school partnership activities designed to provide training for families on the family's educational responsibilities.

Invitational Priorities. Within the absolute priority specified in this notice, the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, under 34 CFR 75.105(c)(1), an application that meets one or more of the following invitational priorities does not receive competitive or absolute preference over other applications:

Invitational Priority 1—Projects designed to address the unique needs of families in improving the educational achievement of at-risk children.

Invitational Priority 2—Projects designed to develop materials and strategies to reinforce learning at home and assist in implementing other home-based educational activities that extend classroom instruction.

Supplementary Information: The Secretary is interested in projects that also have the potential to be disseminated by the National Diffusion Network (NDN). NDN is a dissemination system through which proven exemplary educational programs and processes are made available to interested school systems or other educational institutions around the country. To become eligible for dissemination by NDN, a project must be proven to be effective. A grantee interested in having its project disseminated must collect evidence of project effectiveness and present the evidence to the Department's Program Effectiveness Panel (PEP). Projects that are judged effective by PEP become eligible to compete for dissemination funds from NDN.

Therefore, the Secretary encourages applicants who are interested in having their projects disseminated by NDN to include an evaluation plan that would assess the effectiveness and impact of project activities with emphasis on changes in school practices and student performance.

Project Period: Up to 36 months.

For Applications or Information Contact: Diane Hill, U.S. Department of Education, 555 New Jersey Avenue, NW., room 522, Washington, DC 20208-5524. Telephone: (202) 219-1496.

Program Authority: 20 U.S.C. 4821-4823.

84.215B Fund for Innovation in Education (FIE)—Comprehensive School Health Education Program

Purpose of Program: To encourage the provision of comprehensive school health education for elementary and secondary students.

Eligible Applicants: State educational agencies (SEAs); local educational agencies (LEAs); and SEAs or LEAs in collaboration with other entities of their choice, such as institutions of higher education, private schools, and other public and private agencies, organizations, and institutions.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for

Student Rights in Research, Experimental Programs, and Testing in 34 CFR part 98.

Priority: Under 34 CFR 75.105(c)(1) the Secretary is particularly interested in applications that meet the following invitational priority. However, an application that meets this invitational priority does not receive competitive or absolute preference over other applications:

Projects in which schools work in partnerships with families and the community on comprehensive school health education for grades K–8.

Within this invitational priority the Secretary invites applications that address the following two areas:

(a) Applications for demonstration or teacher professional development programs that include new approaches to curriculum, instruction, and assessment in elementary schools (K–8).

(b) Applications for projects in elementary schools (K–8) to provide teachers and administrators with inservice professional development to assist in the implementation of new comprehensive school health education programs.

Supplementary Information: The Comprehensive School Health Education Program supports projects in comprehensive school health education that are broad in scope and cover a wide range of health topics. Topics may include: personal health and fitness, nutrition, mental and emotional health, prevention of chronic disease, substance use and abuse, accident prevention and safety, community and environmental health, prevention and control of communicable diseases, effective use of health services delivery systems, and development and aging.

The Secretary is interested in projects that also have the potential to be disseminated by the National Diffusion Network (NDN). NDN is a dissemination system through which proven exemplary educational programs and processes are made available to interested school systems or other educational institutions around the country. To become eligible for dissemination by NDN, a project must be proven to be effective. A grantee interested in having its project disseminated must collect evidence of project effectiveness and present the evidence to the Department's Program Effectiveness Panel (PEP). Projects that are judged effective by PEP become eligible to compete for dissemination funds from NDN.

Therefore, the Secretary encourages applicants who are interested in having their projects disseminated by NDN to include an evaluation plan that would assess the effectiveness and impact of project activities with emphasis on changes in school practices and student behavior.

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the selection criteria in EDGAR, 34 CFR 75.210.

The regulations in 34 CFR 75.210(c) provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition the Secretary distributes these 15 points as follows:

Evaluation Plan (34 CFR 75.210(b)(6)). Fifteen points are added to this criterion for a possible total of 20 points.

Project Period: Up to 36 months.

For Applications or Information Contact: Shirley Jackson, U.S. Department of Education, 555 New Jersey Avenue, NW., room 300–Q, Washington, DC 20208–5524. Telephone (202) 219–1556.

Program Authority: 20 U.S.C. 3151, 3155.

84.117E Educational Research Grant Program—Field-Initiated Studies

Purpose of Program: To support field-initiated studies designed to advance educational theory and practice.

Eligible Applicants: Institutions of higher education; public and private organizations, institutions, and agencies; and individuals.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 700.

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the selection criteria in 34 CFR 700.22.

The program regulations in 34 CFR 700.20(b)(2) provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 25 points. For this competition the Secretary distributes the 25 points as follows:

Significance (34 CFR 700.22(f)). Fifteen points are added to this criterion for a possible total of 30 points.

Technical soundness (34 CFR 700.22(g)). Ten points are added to this criterion for a possible total of 25 points.

Supplementary Information: Under 34 CFR 700.23(b) the Secretary is required to determine whether the field-initiated applications propose activities that address educational problems of national importance. The following paragraphs contain examples of educational topics that address problems that the Secretary considers to be of national importance. Note, however, that (1) these topics are examples only; (2) the Secretary also considers many other educational topics to be of national importance; and (3) the Secretary does not give competitive preference to applications that propose research activities based on these examples.

The following are some examples of educational topics:

1. Helping parents support the learning of their young children.

2. Improving the education of children whose circumstances put them at a disadvantage.

3. Identifying factors that will lead to greater student learning, at any stage from birth through post-secondary and graduate education.

4. Identifying how school organization affects student achievement.

5. Determining the impact of high standards and rigorous curriculum on student achievement.

Project Period: Up to 18 months.

For Applications or Information Contact: Delores Monroe, U.S. Department of Education, 555 New Jersey Avenue, NW., room 620, Washington, DC 20208–5646. Telephone: (202) 219–2223.

Program Authority: 20 U.S.C. 1221e.

84.117J Office of Educational Research and Improvement Fellows Program

Purpose of Program: To provide Federal financial assistance enabling individuals to make contributions to the improvement of education by engaging in educational research at the Office of Educational Research and Improvement (OERI) in Washington, DC.

Eligible Applicants: Individuals who have training and experience indicating that they have the potential to conduct educational research. An individual must be a citizen of the United States to be eligible for a fellowship.

Applicable Regulations: The regulations for this program in 34 CFR part 762.

Selection Criteria: In selecting fellows under this program, the Secretary rates applications using the criteria in 34 CFR 762.21 and then determines the order in which the applications will be selected. The Secretary uses the following criteria in evaluating each applicant for a fellowship:

(a) *Quality of the plan for the proposed activity* (40 points). The Secretary reviews the quality of each proposed project to ensure that—

(1) The design of the project is of high quality;

(2) The applicant's project relates to the purposes of the fellowship program; and

(3) The applicant's project is feasible.

(b) *Significance of the proposed project* (20 points). The Secretary assesses the significance of each proposed project to ensure that—

(1) The project addresses important issues in American education;

(2) Project results will benefit American education; and

(3) The project will enhance educational practice.

(c) *Qualifications of the applicant* (40 points). The Secretary reviews the qualifications of each applicant to ensure—

(1) The appropriateness and quality of the education and experience of the applicant as they may be related to the proposed project; and

(2) Demonstrated ability to produce a final product that is comprehensive and useful.

Application Forms: The Department has no application forms or prescribed format for applications under the Fellows Program. To be considered for a fellowship, an individual must submit a written request. Each applicant is encouraged to submit sufficient information to allow the Secretary to determine the merits of the proposed activities under the criteria in 34 CFR 762.21. The applicant is encouraged to submit his or her curriculum vitae, a detailed project description containing the design of the research proposal and specific activities he or she will undertake while in Washington, DC, and a proposed budget for the project.

Supplementary Information: Under 34 CFR 762.21(b)(1) the Secretary assesses the significance of each proposed project to ensure that the project addresses important issues in American education. The following paragraphs contain examples of educational topics that address issues the Secretary considers to be important in American education. Note, however, that (1) these topics are examples only; (2) the Secretary also considers many other educational topics to be important issues in American education; and (3) the Secretary does not give competitive preference to applications that propose research activities based on these examples.

The following are some examples of educational topics:

1. Helping parents support the learning of their young children.

2. Improving the education of children and youth whose circumstances put them at a disadvantage.

3. Identifying factors that will lead to greater student learning at any stage from birth through postsecondary and graduate education.

4. Identifying how school or college organization and environment affect student achievement.

Project Period: Each project is for a period of no fewer than four months and not more than 12 months of full-time activity or the equivalent if less than full-time participation.

Note: The amount of a fellowship includes a stipend based on the fellow's current annual salary prorated for the length of the fellowship. If a fellow has no current salary, the amount of the fellowship includes a stipend based on the fellow's education and experience. In addition, the fellowship includes a subsistence allowance and necessary travel expenses related to the fellowship.

Instructions for Transmittal of Applications: (a) An individual who wants to apply for an award shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: CFDA #84.117J, 400 Maryland Avenue, SW., Washington, DC 20202–4725; or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC, time) to: U.S. Department of Education, Application Control Center, Attention: CFDA #84.117J, room 3633, Regional Office Building #3, Seventh and D Streets, SW., Washington, D.C.

(b) An application must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with his or her local post office.

(2) The Application Control Center will mail an Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the closing date, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9494.

(3) The applicant must indicate on the envelope the CFDA number and letter of this competition.

For Information Contact: Dr. Jeffrey Gilmore, U.S. Department of Education, 555 New Jersey Avenue, NW., room 615, Washington, DC 20208–5647. Telephone: (202) 219–2243.

Program Authority: 20 U.S.C. 1221e.

84.073A National Diffusion Network Program—New Developer Demonstrator Projects

Purpose of Program: To provide grants to disseminate, to new sites nationwide, exemplary education programs that have been previously approved by the Department of Education's Program Effectiveness Panel (PEP).

Eligible Applicants: Public or nonprofit private agencies, organizations, or institutions that have developed programs, products, or practices that (a) have approval by PEP or the Joint Dissemination Review Panel and (b) are in use in sites that can be visited.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85 and 86; and (b) The regulations for this program in 34 CFR parts 785 and 786.

Priorities: Under 34 CFR 75.105(c)(3) and 786.3(b) the Secretary gives an absolute preference to applications that meet the following priorities:

Applications proposing projects in English, mathematics, science, history, and geography. The Secretary intends to reserve $1,000,000 to fund applications that meet these priorities. The Secretary may adjust this amount if the Secretary does not receive sufficient high-quality applications addressing these priorities to use the funds reserved. The Secretary uses the remainder of the funds to support applications in any other subject areas listed in 34 CFR 786.3(b).

Project Period: Up to 48 months.

For Applications or Information Contact: Carolyn S. Lee, U.S. Department of Education, 555 New Jersey Avenue, NW., room 510, Washington, DC 20208–5645. Telephone: (202) 219–2156.

Program Authority: 20 U.S.C. 2962.

84.073C National Diffusion Network Program—New State Facilitator Projects

Purpose of Program: To provide grants to disseminate exemplary educational programs within the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

Eligible Applicants: Public or nonprofit private agencies, organizations, or institutions located in the territory to be served.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85

and 86; (b) The regulations for Student Rights in Research, Experimental Activities, and Testing in 34 CFR part 98; and (c) The regulations for this program in 34 CFR parts 785 and 788.

Project Period: Up to 36 months.

For Applications or Information Contact: Thomas Wikstrom, U.S. Department of Education, 555 New Jersey Avenue, NW., room 510, Washington, DC 20208-5645. Telephone: (202) 219-1599.

Program Authority: 20 U.S.C. 2962.

84.073E National Diffusion Network Program—New Dissemination Process Projects

Purpose of Program: To provide grants to disseminate, to new sites nationwide, information, instructional materials, and services concerning specific content areas, bodies of research, or fields of professional development that have been previously approved by the Department of Education's Program Effectiveness Panel (PEP).

Eligible Applicants: Public or nonprofit private agencies, organizations, or institutions that have in operation a dissemination process that has current approval by PEP.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85 and 86; and (b) The regulations for this program in 34 CFR parts 785, 786, and 787.

Project Period: Up to 48 months.

For Applications or Information Contact: Helen O'Leary, U.S. Department of Education, 555 New Jersey Avenue, NW., room 510, Washington, DC 20208-5645. Telephone: (202) 219-2139.

Program Authority: 20 U.S.C. 2962.

84.206A Javits Gifted and Talented Students Education Grant Program

Purpose of Program: To provide grants to help build a nationwide capability in elementary and secondary schools to identify and meet the special education needs of gifted and talented elementary and secondary school students.

Eligible Applicants: State educational agencies; local educational agencies; institutions of higher education; other public and private agencies and organizations, including Indian tribes and organizations—as defined by the Indian Self-Determination and Education Assistance Act—and Hawaiian native organizations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 791.

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the selection criteria in 34 CFR 791.21.

The program regulations in 34 CFR 791.20 provide that the Secretary may award up to 115 points for the selection criteria, including a reserved 15 points. For this competition the Secretary distributes the 15 points as follows:

Plan of Operation (34 CFR 791.21(c)). Ten points are added to this criterion for a possible total of 40 points.

Evaluation Plan (34 CFR 791.21(f)). Five points are added to this criterion for a possible total of 20 points.

Project Period: Up to 36 months.

For Applications or Information Contact: Beverly E. Coleman, U.S. Department of Education, 555 New Jersey Avenue, NW., room 504, Washington, DC 20208-5644. Telephone: (202) 219-2187.

Program Authority: 20 U.S.C. 3061-3068.

Chart 4.—Office of Elementary and Secondary Education

CFDA No. and Name	Applications available	Application deadline date	Deadline for intergovernmental review	Estimated range of awards	Estimated avg. size of awards	Estimated number of awards
84.004C Desegregation of Public Education—State Educational Agency Desegregation Program	10/2/92	11/6/92	1/5/93	$80,000-700,000	$275,000	53
84.061A Educational Services for Indian Children	12/28/92	2/26/93	4/27/93	46,000-253,000	150,000	15
84.061C Planning, Pilot, and Demonstration Projects for Indian Children (Planning Projects)	12/2/92	2/26/93	4/27/93	49,000-100,000	74,500	1
84.061D Planning, Pilot, and Demonstration Projects for Indian Children (Pilot Projects)	12/28/92	2/26/93	4/27/93	79,000-168,000	130,000	2
84.061E Planning, Pilot, and Demonstration Projects for Indian Children (Demonstration Projects)	12/28/92	2/26/93	4/27/93	79,000-168,000	145,000	2
84.061F Indian Education—Educational Personnel Development	12/28/92	2/26/93	4/27/93	46,215-279,500	162,500	5
84.062A Educational Services for Indian Adults	12/28/92	2/26/93	4/27/93	50,000-277,000	164,000	14
84.072A Indian-Controlled Schools—Enrichment Projects	12/28/92	2/26/93	4/27/93	77,000-344,000	187,000	11
84.083A Women's Educational Equity Act Program—General Significance Grants	1/8/93	3/12/93	5/11/93	50,000-150,000	75,000	8
84.083B Women's Educational Equity Act Program—Challenge Grants	1/8/93	3/12/93	5/11/93	30,000-40,000	35,000	5
84.123A Law-Related Education Program	12/14/92	2/5/93	4/6/93	10,000-100,000	80,000	10
84.141A High School Equivalency Program	11/16/92	2/12/93	4/13/93	150,000-450,000	360,000	25
84.149A College Assistance Migrant Program	11/16/92	2/12/93	4/13/93	150,000-450,000	325,000	7
84.184B Drug-Free Schools and Communities Federal Activities Grants Program	10/21/92	12/9/92	2/7/93	100,000-400,000	200,000	65
84.207A Drug-Free Schools and Communities School Personnel Training Grants Program	12/10/92	2/5/93	4/9/93	100,000-300,000	137,000	35
84.214 Migrant Education Even Start Program	2/19/93	4/20/93	6/19/93	99,000-187,000	180,000	3
84.233A Drug-Free Schools and Communities Emergency Grants Program	11/12/92	1/12/93	3/13/93	100,000-1,000,000	770,000	46
84.241A Drug-Free Schools and Communities Counselor Training Grants Program	1/6/93	2/19/93	4/20/93	50,000-150,000	80,000	45

Chart 4.—Office of Elementary and Secondary Education—Continued

CFDA No. and Name	Applications available	Application deadline date	Deadline for intergovernmental review	Estimated range of awards	Estimated avg. size of awards	Estimated number of awards
84.258A Even Start Program—Indian Tribes and Tribal Organizations	1/29/93	3/19/93	N/A	75,000-200,000	150,000	2

84.004C Desegregation of Public Education—State Educational Agency Desegregation Program

Purpose of Program: To enable State educational agencies (SEAs) to provide technical assistance and training, at the request of school boards and other responsible governmental agencies, on issues related to race, sex, and national origin desegregation of public schools.

Eligible Applicants: SEAs that will provide services in at least one of the following desegregation assistance areas: race, sex, or national origin desegregation.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, and 86, except that 34 CFR 75.200 through 75.217 (relating to the evaluation and competitive review of grants) do not apply to grants awarded under 34 CFR part 271; and (b) The regulations for this program in 34 CFR parts 270 and 271.

Project Period: Up to 36 months.

For Applications or Information Contact: Adell Washington, U.S. Department of Education, 400 Maryland Avenue, SW., room 2059, Washington, DC 20202-6426. Telephone: (202) 401-0358.

Program Authority: 42 U.S.C. 2000c-2000c-2, 2000c-5.

84.061A Educational Services for Indian Children

Purpose of Program: (1) To provide grants for educational services for Indian children; and (2) to provide grants to encourage Indian students to acquire a higher education and to reduce the incidence of dropouts among Indian elementary and secondary school students.

Eligible Applicants: (a) For grants under purpose No. 1: State educational agencies; local educational agencies; Indian tribes; Indian organizations; and Indian institutions.

(b) For grants under purpose No. 2: consortia of Indian tribes or tribal organizations, local educational agencies, and institutions of higher education.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 250 and 253.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Project Period: Up to 36 months.

For Applications or Information Contact: Cathie Martin, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2177, Washington, D.C. 20202-6335. Telephone: (202) 401-1902.

Program Authority: 25 U.S.C. 2621(a), (c).

84.061C Planning, Pilot, and Demonstration Projects for Indian Children (Planning Projects)

Purpose of Program: To provide grants for projects designed to plan effective educational approaches for Indian children.

Eligible Applicants: State educational agencies; local educational agencies; Indian tribes; Indian organizations; Indian institutions; and federally supported elementary and secondary schools for Indian children.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 250 and 254.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Project Period: Up to 12 months.

For Applications or Information Contact: Cathie Martin, U.S. Department of Education, 400 Maryland Avenue, SW., room 2177, Washington, DC 20202-6335. Telephone: (202) 401-1902.

Program Authority: 25 U.S.C. 2621(a)(1), (b).

84.061D Planning, Pilot, and Demonstration Projects for Indian Children (Pilot Projects)

Purpose of Program: To provide grants for projects designed to test the effectiveness of educational approaches for Indian children.

Eligible Applicants: State educational agencies; local educational agencies; Indian tribes; Indian organizations; Indian institutions; and federally supported elementary and secondary schools for Indian children.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 250 and 254.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Project Period: Up to 36 months.

For Applications or Information Contact: Cathie Martin, U.S. Department of Education, 400 Maryland Avenue, SW., room 2177, Washington, DC 20202-6335. Telephone: (202) 401-1902.

Program Authority: 25 U.S.C. 2621(a)(1), (b).

84.061E Planning, Pilot, and Demonstration Projects for Indian Children (Demonstration Projects)

Purpose of Program: To provide grants for projects designed to demonstrate effective educational activities for Indian children.

Eligible Applicants: State educational agencies; local educational agencies; Indian tribes; Indian organizations; Indian institutions; and federally supported elementary and secondary schools for Indian children.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 250 and 254.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Project Period: Up to 36 months.

For Applications or Information Contact: Cathie Martin, U.S. Department of Education, 400 Maryland Avenue, SW., room 2177, Washington, DC 20202-6335. Telephone: (202) 401-1902.

Program Authority: 25 U.S.C. 2621(a)(1), (b).

84.061F Indian Education—Educational Personnel Development

Purpose of Program: Educational Personnel Development consists of two programs (under section 5321(d) of the Indian Educational Act and under section 5322 of the Act) that provide grants to prepare or improve the

qualifications of persons serving Indian students as educational personnel or ancillary educational personnel.

Eligible Applicants: (a) Under the section 5321(d) program: institutions of higher education (IHEs); local educational agencies in combination with IHEs; and State educational agencies in combination with IHEs. (b) Under the section 5322 program: IHEs; Indian tribes; and Indian organizations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 250 and 256.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Fiscal Information: The Secretary expects to set the stipend maximum at $600 per month for graduate students and $375 per month for undergraduate students. An estimated maximum allowance of $90 per month will be paid for each dependent.

Project Period: Up to 36 months.

For Applications or Information Contact: Cathie Martin, U.S. Department of Education, 400 Maryland Avenue, SW., room 2177, Washington, DC 20202-6335. Telephone: (202) 401-1902.

Program Authority: 25 U.S.C. 2621(d), 2622.

84.062A Educational Services for Indian Adults

Purpose of Program: To provide grants for educational service projects designed to improve educational opportunities for Indian adults.

Eligible Applicants: Indian tribes; Indian organizations; and Indian institutions.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 250 and 257.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Project Period: Up to 36 months.

For Applications or Information Contact: Cathie Martin, U.S. Department of Education, 400 Maryland Avenue, SW., room 2177, Washington, DC 20202-6335. Telephone: (202) 401-1902.

Program Authority: 25 U.S.C. 2631.

84.072A Indian-Controlled Schools—Enrichment Projects

Purpose of Program: To provide grants for educational enrichment projects designed to meet the special educational and culturally related academic needs of Indian children in those Indian-controlled elementary and secondary schools or local educational agencies eligible under the statute and regulations.

Eligible Applicants: Indian tribes; Indian organizations; and local educational agencies that have been in existence not more than three years.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 250 and 252.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Project Period: Up to 36 months.

For Applications or Information Contact: Cathie Martin, U.S. Department of Education, 400 Maryland Avenue, SW., room 2177, Washington, DC 20202-6335. Telephone: (202) 401-1902.

Program Authority: 25 U.S.C. 2602(c).

84.083 A and B Women's Educational Equity Act Program—General Significance Grants and Challenge Grants

Purpose of Program: (a) To promote educational equity for women and girls at all levels of education, particularly those who suffer multiple discrimination, bias, or stereotyping based on sex and on race, national origin, disability or age; and (b) to provide financial assistance to help educational agencies and institutions meet the requirements of title IX of the Education Amendments of 1972.

Eligible Applicants: Public agencies, institutions, and organizations, nonprofit private agencies, institutions, and organizations, including student and community groups; and individuals. A consortium of these entities is also eligible to receive a challenge grant.

Available Funds: The Administration's budget request for FY 1993 does not include funds for this program. However, applications are being invited to allow sufficient time to complete the grant process before the end of the fiscal year should the Congress appropriate funds for this program.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85 and 86; and (b) The regulations for this program in 34 CFR parts 245 and 246.

Priority: Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet the following priority listed in 34 CFR 245.12. The Secretary first funds under general significance and challenge grants applications that meet this absolute priority:

Projects to develop new educational programs, training programs, counseling programs, or other programs designed to increase the interest and participation of women in instructional courses in mathematics, science, and computer science.

Note: An applicant must indicate if it is submitting its application under this priority. Applications under this priority compete against other applications submitted under this priority for funds allocated to this priority.

Supplementary Information: Under 34 CFR 75.105(c)(3) the Secretary may adjust the amount reserved for the priority after determining the number of high-quality applications received. An applicant may propose a project that is not under the priority but is within the scope of other authorized activities described in 34 CFR 245.11. These applications will compete for the remaining funds not allocated to the priority. If an applicant fails to indicate that its proposed project is under the priority, the application will compete with other applications not evaluated under this priority.

Fiscal Information: Challenge grants may not exceed $40,000 each.

Project Period: Up to 24 months.

For Applications or Information Call: Carrolyn N. Andrews, U.S. Department of Education, 400 Maryland Avenue, SW., room 2049, Washington, DC 20202-6239. Telephone: (202) 401-1342.

Program Authority: 20 U.S.C. 3041-3047.

84.123A Law-Related Education

Purpose of Program: To provide persons with knowledge and skills pertaining to the law, the legal process, the legal system, and the fundamental principles and values on which these are based.

Eligible Applicants: State educational agencies (SEAs); local educational agencies (LEAs); and public or nonprofit private agencies, organizations, and institutions.

Available Funds: The Administration's budget request for FY 1993 does not include funds for this program. However, applications are being invited to allow sufficient time to complete the grant process before the end of the fiscal year should the Congress appropriate funds for this program.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85,

and 86; and (b) The regulations for this program in 34 CFR part 241.

Priorities:

Absolute Priorities. Under 34 CFR 75.105(c)(3) and 34 CFR 241.11(a) the Secretary gives an absolute preference to applications that meet one or more of the following priorities. The Secretary funds under this competition only applications that meet one or more of these absolute priorities:

Absolute Priority 1—Projects that support the institutionalization of existing model law-related education programs in elementary and secondary school classrooms.

Absolute Priority 2—Projects that provide assistance from established law-related education programs to enable other SEAs and LEAs to institutionalize successful law-related education programs.

Absolute Priority 3—Projects that support the development, testing, demonstration, and dissemination of new approaches or techniques in law-related education that can be used or adapted and eventually institutionalized by other agencies and institutions.

Competitive Preference Priority. Within the absolute priorities specified in this notice, the Secretary, under 34 CFR 75.105(c)(2)(i) and 34 CFR 241.11(b) and in accordance with the Education Council Act of 1991 (Pub. L. 101–62, enacted June 27, 1991), gives preference to applications that meet the following competitive priority. The Secretary awards up to 5 points to an application that meets this competitive priority in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for the program:

Projects to operate statewide programs in law-related education.

Project Period: Up to 36 months.

For Applications or Information Contact: Alice T. Ford, U.S. Department of Education, 400 Maryland Avenue, SW., room 2049, Washington, DC 20202–6245. Telephone: (202) 401–1342.

Program Authority: 20 U.S.C. 2965, as amended by Pub. L. 102–62, 105 Stat. 305 (1991).

84.141A High School Equivalency Program (HEP)

Purpose of Program: To assist students—who are engaged, or whose families are engaged, in migrant and other seasonal farmwork—to obtain the equivalent of a secondary school diploma and subsequently to gain employment or be placed in an institution of higher education or other postsecondary education or training.

Eligible Applicants: Institutions of higher education; and nonprofit private organizations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 81, 82, 85, and 86; and (b) the regulations for this program in 34 CFR part 206.

Project Period: Up to 60 months.

For Applications or Information Contact: Cleveland Haynes, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–6135. Telephone: (202) 401–0740.

Program Authority: 20 U.S.C. 1070d–2.

84.149A College Assistance Migrant Program (CAMP)

Purpose of Program: To assist students—who are engaged, or whose families are engaged, in migrant and other seasonal farmwork—who are enrolled or admitted for enrollment on a full-time basis in the first academic year at an institution of higher education.

Eligible Applicants: Institutions of higher education; and nonprofit private organizations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 206.

Project Period: Up to 60 months.

For Applications or Information Contact: Cleveland Haynes, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–6135. Telephone: (202) 401–0740.

Program Authority: 20 U.S.C. 1070d–2.

84.184B Drug-Free Schools and Communities Federal Activities Grants Program

Purpose of Program: To award grants to support drug and alcohol abuse education and prevention activities.

Eligible Applicants: State educational agencies; local educational agencies; institutions of higher education; and other nonprofit agencies, organizations, and institutions.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; (b) The regulations in 34 CFR parts 98 and 99; and (c) The regulations for this program in 34 CFR parts 231 and 235.

Priority: Under 34 CFR 75.105(c)(3) and 34 CFR 235.5 the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Implementation of projects that are designed exclusively to intervene with and prevent the use of alcohol or tobacco (nicotine) or both, by youth in one or more grades, kindergarten through grade 12 (K–12).

Supplementary Information: Recent survey results of eighth and tenth grade students indicate that alcohol and tobacco use rates are high among this population (Johnston, O'Malley and Bachman, "Monitoring the Future," Institute for Social Research, University of Michigan, January 27, 1992). In 1991, 8 percent of eighth graders, 21 percent of tenth graders, and 32 percent of high school seniors said they had been drunk at least once during the previous 30 days. Tobacco use was also quite high, with smoking in the past 30 days reported by 14 percent of eighth graders, 21 percent of tenth graders and 28 percent of twelfth graders. Research suggests that prevention of the onset of alcohol and tobacco use in the middle grades should begin at the elementary level.

While it is important for drug abuse education and prevention programs to encompass activities to prevent the use of all types of drugs—and many programs across the country are currently doing so—data reflecting continuing high rates of alcohol and tobacco use by early adolescents indicate that additional attention needs to be devoted to prevention of use of these harmful substances.

To encourage increased efforts that focus on the prevention of alcohol and tobacco use, the Secretary funds only projects that focus exclusively on education about and prevention of the use of alcohol or tobacco or both. Applications proposing projects that focus on all drugs, or on any drugs other than alcohol or tobacco (nicotine) or both, will not meet the absolute priority and will not be considered for funding.

Selection Criteria: In evaluating applications for grants under this competition, the Secretary uses the selection criteria in 34 CFR 231.22.

The program regulations in 34 CFR 231.20 provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition, the Secretary distributes the 15 points as follows:

Concept design and contribution to improving the quality of drug and alcohol abuse education and prevention activities (34 CFR 231.22(a)). Ten points are added to this criterion for a possible total of 30 points.

Quality of key personnel (34 CFR 231.22(d)). Five points are added to this criterion for a possible total of 15 points.

Project Period: Up to 24 months, in 12-month increments.

For Applications or Information Contact: Division of Drug-Free Schools and Communities, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 2123, Washington, DC 20202-6439. Telephone: (202) 401-1258.

Program Authority: 20 U.S.C. 3212.

84.207A Drug-Free Schools and Communities School Personnel Training Grants Program

Purpose of Program: To award grants to establish, expand, or enhance programs and activities to train elementary and secondary school teachers and administrators and other elementary and secondary school personnel concerning drug and alcohol abuse education and prevention.

Eligible Applicants: State educational agencies; local educational agencies; institutions of higher education; and consortia of these organizations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; (b) The regulations in 34 CFR parts 98 and 99; and (c) The regulations for this program in 34 CFR parts 231 and 233.

Priorities: Under 34 CFR 75.105(c)(1) and 34 CFR 233.5 the Secretary is particularly interested in applications that meet the following invitational priorities. However, an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

Invitational Priority 1—Establish, expand, or enhance programs and activities for the training of elementary school personnel working at grade 4 or below concerning education about and prevention of the use of alcohol or tobacco or both.

Invitational Priority 2—Enhance existing programs and activities for the training of school personnel by providing training of school personnel who have not yet received training concerning drug and alcohol abuse education and prevention.

Invitational Priority 3—Train teachers, administrators, guidance counselors, social workers, psychologists, nurses, librarians, and other support staff who work with high-risk youth in one or more of the following drug education and prevention strategies:

(1) The identification and referral of high-risk youth.

(2) The implementation of student support and assistance groups for high-risk youth.

(3) The implementation of peer helper and adult mentoring services for high-risk youth.

(4) The implementation of strategies to provide opportunities for high-risk youth to develop drug-free lifestyles.

Selection Criteria: In evaluating applications for grants under this competition, the Secretary uses the selection criteria in 34 CFR 231.22.

The program regulations in 34 CFR 231.20 provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition the Secretary distributes the 15 points as follows:

Concept design and contribution to improving the quality of drug and alcohol abuse education and prevention activities (34 CFR 231.22(a)). Ten points are added to this criterion for a possible total of 30 points.

Applicant's commitment and capacity (34 CFR 231.22(f)). Five points are added to this criterion for a possible total of 15 points.

Project Period: Up to 24 months, in 12-month increments.

For Applications or Information Contact: Division of Drug-Free Schools and Communities, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 2123, Washington, DC 20202-6439. Telephone: (202) 401-1258.

Program Authority: 24 U.S.C. 3201.

84.214A Migrant Education Even Start Program

Purpose of Program: To support family-centered education projects to help parents of currently migratory children become full partners in the education of their children, to assist currently migratory children in reaching their full potential as learners, and to provide literacy training for their parents.

Eligible Applicants: State educational agencies (SEAs); and consortia of SEAs.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85 and 86; and (b) The regulations for this program in 34 CFR part 212.

Project Period: Up to 48 months.

For Applications or Information Contact: Regina Kinnard, U.S. Department of Education, 400 Maryland Avenue, SW., room 2145, Washington, DC 20202-6135. Telephone: (202) 401-0742.

Program Authority: 20 U.S.C. 2743(a).

84.233A Drug-Free Schools and Communities Emergency Grants Program

Purpose of Program: To award grants to eligible applicants that demonstrate significant need for additional assistance for purposes of combatting drug and alcohol abuse by students served by those applicants.

Eligible Applicants: Local educational agencies (LEAs) that (a) receive assistance under section 1006 of Chapter 1, Title I of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2712), or meet the criteria of section 1006(a)(1)(A)(i) and (ii) of the Act; and (b) serve an area (1) in which there is a large number or high percentage of (i) arrests for, or while under the influence of, drugs or alcohol; or (ii) convictions of youths for drug or alcohol-related crimes; (2) in which there is a large number or high percentage of referrals of youths to drug and alcohol abuse treatment and rehabilitation programs; and (3) that has a significant drug and alcohol abuse problem, as indicated by other appropriate data.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; (b) The regulations in 34 CFR parts 98 and 99; and (c) The regulations for this program in 34 CFR parts 231 and 232.

Priorities:

Absolute Priority. Under 34 CFR 75.105(c)(3) and 34 CFR 232.6, the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Projects that support the development and implementation of comprehensive, community-wide drug and alcohol abuse education and prevention programs for students that must involve, at a minimum, (1) families, (2) school personnel, and (3) representatives of community or social service organizations. To be eligible for funding, applications must propose projects that include all three of these components.

Invitational Priority. Within the absolute priority specified in this notice, the Secretary is particularly interested in applications that meet the following invitational priority. However, under 34 CFR 75.105(c)(1), an application that meets the invitational priority does not receive competitive or absolute preference over other applications:

Projects that use innovative approaches to create or improve

integrated service models that coordinate the existing or proposed efforts, or both, of school and community officials and service providers to plan, implement, and assess activities to reduce drug and alcohol use by students.

Supplementary Information: For more than five years, the Drug-Free Schools and Communities programs have been providing funding to school districts, colleges, and community organizations for the development and implementation of drug and alcohol abuse prevention and education programs. The grants have provided needed support and assistance to schools and communities in reducing or eliminating drug and alcohol use by school-age children and youth. During this same period schools have begun to employ a comprehensive and coordinated network of school and community resources as an approach to improving students' academic performance, health, and well-being.

The Department of Education is interested in funding Emergency Grants for eligible LEAs to develop and implement projects using this type of integrated services approach in providing a comprehensive, community-wide program of drug and alcohol prevention and education in schools.

Two examples of an integrated services model follow, one that could be funded entirely with Emergency Grant funds, and one that combines Emergency Grant funding with other Federal, State, or local funding. Several Federal programs—including Chapter 2, Title I of the Elementary and Secondary Education Act of 1965, as amended (Chapter 2) and Assistance to Local Educational Agencies in Areas Affected by Federal Activities (Impact Aid)—offer flexibility in that these funds generally can be used to support a variety of activities in an integrated services project. Applicants are encouraged to propose combining Emergency Grants funding with funding from (1) other Federal education programs, including Drug-Free Schools and Communities Act (DFSCA) Part B State Grants; (2) other Federal agencies (e.g., the Departments of Housing and Urban Development, Justice, and Health and Human Services); (3) State and local governments; and (4) the private sector.

Integrated Services Model A—Funding Source: Emergency Grants

An LEA that uses this model will target students who meet one or more of the characteristics of high-risk youth, as defined by section 5122(b)(2) of the DFSCA. For example, the LEA might target pregnant teens (under section 5122(b)(2)(C) of the Act), youths affiliated with gangs who have committed violent or delinquent acts (under section 5122(b)(2)(G)), or economically disadvantaged youths (under section 5122(b)(2)(D)).

This model will provide a comprehensive, community-wide drug and alcohol abuse education and prevention program for the targeted high-risk students. In addition to involving families, school personnel, and representatives of community or social service organizations, this model will include—

(1) A broad needs assessment of the high-risk student participants to determine the types of services, both educational and community-based, needed to reduce the risk of alcohol and other drug use; and

(2) One or more coordinators, full- or part-time, who will be responsible for integrating the services of school and community providers by establishing a network of available alcohol and other drug prevention resources and arranging for the direct provision of needed services. For example, the coordinator might arrange for an after-school or weekend program in which students receive the services of counselors, social workers, and others who are trained to provide guidance and assistance in alcohol and other drug prevention.

In this model, costs charged to the DFSCA must be limited to activities that are directly related to drug and alcohol abuse education and prevention, such as the activities noted in the preceding paragraphs.

Integrated Services Model B—Funding Sources: Emergency Grants and Other Federal, State, or Local Funds

An LEA that uses this model may target all students served by the LEA, or may target any subset of students, such as students who are in age groups or communities particularly vulnerable to alcohol and other drug use.

This model will provide comprehensive services to the targeted population. These services must include, but are not limited to, community-wide drug and alcohol abuse education and prevention activities involving families, school personnel, and representatives of community or social service organizations. For example, this model may provide, in addition to alcohol and other drug prevention activities funded under a DFSCA Emergency Grant and DFSCA Part B State Grant, integrated services that are designed to meet the needs of children, such as one or more of the following:

(1) *Comprehensive health education* (funding source: State funding; local funding; Federal funding under Chapter 2, Title I of the Elementary and Secondary Education Act of 1965, as amended (Chapter 2)—provided the activities are consistent with the statutory and regulatory requirements of Chapter 2; or a combination of any of these funding sources).

(2) *After-school remedial reading and mathematics instruction* (funding source: LEA Program for services for eligible children under Chapter 1, Title I of the Elementary and Secondary Education Act of 1965, as amended, provided the activities are consistent with the statutory and regulatory requirements of Chapter 1).

(3) *Training in and instructional use of computers, video, and other technologies as part of a mathematics and science program* (funding source: Eisenhower National Program for Mathematics and Science, provided the activities are consistent with the statutory and regulatory requirements of this mathematics and science program).

(4) *After-school or weekend instructional activities in the performing and creative arts* (funding source: Chapter 2, provided the activities are consistent with the statutory and regulatory requirements of Chapter 2).

(5) *Literacy training for parents* (funding source: Adult Education Act, provided the activities are consistent with the statutory and regulatory requirements of the Adult Education Act).

(6) *Transportation services* (funding source: Assistance for Local Educational Agencies in Areas Affected by Federal Activities (Impact Aid), provided the activities are consistent with state law and the statutory and regulatory requirements of the Impact Aid program).

(7) *Vocational skills training* (funding source: the Governor's Program in Part B of DFSCA, provided the activities are consistent with the statutory requirements of DFSCA).

(8) *Vocational education and services for parents or vocational education students; or use of vocational education equipment for other instructional purposes; or both* (funding source: Carl D. Perkins Vocational and Applied Technology Act, provided the population served, the activities conducted, and the use of equipment are consistent with the statutory and regulatory requirements of the Perkins Act).

In this model the costs of administering a needs assessment to participating students and the salary costs of one or more coordinators will be shared by all funding sources. As in Model A, costs charged to the DFSCA must be limited to activities that are

directly related to drug and alcohol abuse education and prevention, and costs charged to other programs must be allowable under the applicable program statutes and regulations.

Applications for Emergency Grant funding may propose funding for security personnel or the purchase of metal detectors or other security-related assets as part of a comprehensive, community-wide drug and alcohol abuse education and prevention program. Applications that propose these types of security-related activities must demonstrate a direct relationship between these activities and alcohol and other drug use prevention and education.

Selection Criteria: In evaluating applications for grants under this competition, the Secretary uses the selection criteria in 34 CFR 231.22.

The program regulations in 34 CFR 231.20 provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition the Secretary distributes the 15 points as follows:

Concept design and contribution to improving the quality of drug and alcohol abuse education and prevention activities (34 CFR 231.22(a)). Fifteen points are added to this criterion for a possible total of 35 points.

Project Period: Up to 36 months, in 12-month increments.

For Applications or Information Contact: Division of Drug-Free Schools and Communities, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 2123, Washington, DC 20202–6439. Telephone: (202) 401–1258.

Program Authority: 20 U.S.C. 3216.

84.241A Drug-Free Schools and Communities Counselor Training Grants Program

Purpose of Program: To award grants to establish, expand, or enhance programs and activities for the training of counselors, social workers, psychologists, or nurses who are providing or will provide drug abuse prevention, counseling, or referral services in elementary and secondary schools.

Note: Funds under this program may not be used for treatment services.

Eligible Applicants: State educational agencies; local educational agencies (LEAs); institutions of higher education; consortia of those agencies or institutions; and any nonprofit private agency that has an agreement with an LEA to provide training in drug abuse counseling for individuals who will provide counseling in the schools of that LEA.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations in 34 CFR parts 98 and 99.

Selection Criteria: In evaluating applications for grants under this competition, the Secretary uses the selection criteria in EDGAR, 34 CFR 75.210.

EDGAR in 34 CFR 75.210(a)(2) provides that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points [34 CFR 75.210(c)]. For this competition the Secretary distributes the 15 points as follows:

Extent of Need for the Project (34 CFR 75.210(b)(2)). Eight points are added to this criterion for a possible total of 28 points.

Plan of Operation: (34 CFR 75.210(b)(3)). Seven points are added to this criterion for a possible total of 22 points.

Project Period: Up to 18 months.

For Applications or Information Contact: Division of Drug-Free Schools and Communities, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 2123, Washington, DC 20202–6439. Telephone: (202) 401–1258.

Program Authority: 20 U.S.C. 3202, 3203.

84.258A Even Start Program—Indian Tribes and Tribal Organizations

Purpose of Program: To provide Federal financial assistance for the Federal share of providing family-centered education projects to (a) help parents become full partners in the education of their children, (b) assist these children in reaching their full potential as learners, and (c) provide literacy training for their parents.

Eligible Applicants: Federally recognized Indian tribes and tribal organizations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 80, 81, 82, and 85; and (b) The regulations for this program in 34 CFR part 212.

Project Period: Up to 48 months.

For Applications or Information Contact: Patricia McKee, Compensatory Education Programs, U.S. Department of Education, 400 Maryland Avenue SW., Room 2017, Washington, DC 20202–6132. Telephone: (202) 401–1692.

Program Authority: 20 U.S.C. 2741–2749.

CHART 5.—OFFICE OF POSTSECONDARY EDUCATION

CFDA No. and Name	Applications available	Application deadline date	Deadline for intergovernmental review	Estimated range of awards	Estimated avg. size of awards	Estimated number of awards
84.031G Endowment Challenge Grant Program	4/15/93	6/14/93	N/A	$50,000—500,000	$350,000	[illegible]
84.120 Minority Science Improvement Program—Institutional, Design, Special, and Cooperative Projects	10/21/92	12/24/92	2/21/93	25,000–250,000	150,000	40
84.220A Centers for International Business Education	12/2/92	2/19/93	4/20/93	175,000–300,000	286,666	[illegible]
84.229A Language Resource Centers Program	1/11/93	3/1/93	N/A	200,000–400,000	300,000	4
Fund for the Improvement of Postsecondary Education (FIPSE)						
84.183A Drug Prevention Programs in Higher Education—Institution-Wide Program	10/19/92	1/19/93	3/20/93	10,000–250,000	103,000	100
84.183B Drug Prevention Programs in Higher Education—Special Focus Program Competition: National College Student Organizational Network Program	12/4/92	4/5/93	6/4/93	100,000–250,000	200,000	4
84.183D Drug Prevention Programs in Higher Education—Special Focus Program Competition: Specific Approaches to Prevention Projects (Invitational Priority: Higher Education Consortia for Drug Prevention)	11/20/92	2/17/93	4/18/93	5,000–40,000	34,000	47

CHART 5.—OFFICE OF POSTSECONDARY EDUCATION—Continued

CFDA No. and Name	Applications available	Application deadline date	Deadline for intergovernmental review	Estimated range of awards	Estimated avg. size of awards	Estimated number of awards
84.183E Drug Prevention Programs in Higher Education—Analysis and Dissemination Program Competitions: Dissemination of Successful Projects	11/13/92	1/19/93	3/20/93	35,000–150,000	133,000	6
84.183F Drug Prevention Programs in Higher Education—Analysis and Dissemination Program Competitions: Analysis Projects	11/13/92	1/19/93	3/20/93	Up to 150,000	133,000	6

84.031G Endowment Challenge Grant Program

Purpose of Program: To provide matching grants to eligible institutions of higher education to establish or increase their endowment funds.

Eligible Applicants: Institutions of higher education that are designated as eligible. The Secretary is publishing separately in the **Federal Register** a notice informing interested parties how to be designated as eligible to apply for Endowment Challenge Grant funds.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR 74.61(h) or 74.62, as applicable, 74.80 through 74.85, 75.100 through 75.102, and 75.217(d) and (e); and in 34 CFR parts 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 628.

Project Period: 240 months (20 years).

Fundraising Period: 18 months (September 1993–March 1995).

For Applications: Applications will be sent to those institutions designated as eligible under the Title III Programs.

For Information Contact: Anne Price-Collins, U.S. Department of Education, 400 Maryland Avenue SW., room 3042, ROB–3, Washington, DC 20202–5337. Telephone: (202) 708–8866.

Program Authority: 20 U.S.C. 1065a.

84.120 Minority Science Improvement Program—Institutional, Design, Special, and Cooperative Projects

Purpose of Program: To (a) effect long-range improvement in science education at predominantly minority institutions and (b) increase the flow of underrepresented ethnic minorities, particularly minority women, into scientific careers.

Eligible Applicants:

(a) For institutional, design, and special projects: public and nonprofit private minority institutions; that is, accredited colleges and universities whose enrollment of a single minority group or combination of minority groups, as defined in 34 CFR 637.4(b), exceeds 50 percent of the total enrollment.

(b) For institutional, design, and special projects described in 34 CFR 637.14 (b) and (c)): nonprofit science-oriented organizations; professional scientific societies; and nonprofit accredited colleges and universities that render a needed service to a group of eligible minority institutions—as defined in paragraph (a) of this section—or that provide inservice training of project directors, scientists, and engineers from eligible minority institutions.

(c) For cooperative projects: groups of nonprofit accredited colleges and universities whose primary fiscal agent is a minority institution as defined in 34 CFR 637.4(b).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 parts 74, 75, 77, 79, 81, 82, 85, and 86; and (b) the regulations for this program in 34 CFR part 637.

Project Period: Up to 36 months.

For Applications or Information Contact: Dr. Argelia Velez-Rodriguez, U.S. Department of Education, 400 Maryland Avenue SW., room 3022, ROB–3, Washington, DC 20202–5251. Telephone: (202) 708–4662.

Program Authority: 20 U.S.C. 1135b–1135b–3, 1135d–1135d–6.

84.220A Centers for International Business Education

Purpose of Program: To provide Federal financial assistance for planning, establishing, and operating centers for international business.

Eligible Applicants: Institutions of higher education (IHEs); and combinations of IHEs.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, and 86.

Note: Because there are no program—specific regulations for this program, applicants are encouraged to read the authorizing statute for the Centers for International Business Education Program, codified under title VI, part B, section 612 of the Higher Education Act of 1965, as amended by section 6261 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418).

Project Period: 36 months.

For Applications or Information Contact: Susanna C. Easton, U.S. Department of Education, 400 Maryland Avenue, SW., room 3053, ROB–3, Washington, DC 20202–5332. Telephone: (202) 708–8764.

Program Authority: 20 U.S.C. 1130–1.

84.229A Language Resource Centers Program

Purpose of Program: To provide assistance to centers that serve as resources for improving the Nation's capacity for teaching and learning foreign languages.

Eligible Applicants: Institutions of higher education (IHEs); and combinations of IHEs.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) is 34 CFR parts 74, 75, 77, 80, 82, 85, and 86; and (b) The Regulations of this program in 34 CFR parts 655 and 669.

Priorities:

Competitive Preference Priority. Under 34 CFR 75.105(c)(2)(ii), 669.22(a), and 669.3(d) the Secretary gives preference to applications that meet the following competitive priority. An application that meets this competitive priority is selected by the Secretary over applications of comparable merit that do not meet the priority:

Training of teachers in the administration and interpretation of foreign language performance tests, the use of effective teaching strategies, and the use of new technologies.

Invitational Priority. Within the competitive priority specified in this notice, the Secretary is particularly interested in applications that meet the following invitational priority. However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over other applications:

The training of elementary and secondary teachers in the administration and interpretation of foreign language performance tests, the use of effective teaching strategies, and

the use of new technologies in Chinese, German, Japanese, and Russian.

Project Period: 36 months.

For Applications or Information Contact: Jose L. Martinez, U.S. Department of Education, 400 Maryland Avenue SW., room 3053, ROB-3, Washington, DC 20202-5331. Telephone: (202) 708-9297.

Program Authority: 20 U.S.C. 1123.

84.183A Drug Prevention Programs in Higher Education—Institution-Wide Program

Purpose of Program: To provide grants to develop, implement, operate, and improve drug abuse education and prevention programs for students enrolled in institutions of higher education (IHEs). Grants under the Institution-Wide Program competitions support comprehensive, institution-wide programs designed to prevent or eliminate students' use of illegal drugs and abuse of other drugs and alcohol, including activities whose direct or indirect purpose is to train students, faculty, and staff in drug abuse education and prevention.

Eligible Applicants: IHEs; and consortia of IHEs.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 612.

Selection Criteria: In evaluating applications for grants under this program competition, the Secretary uses the selection criteria in 34 CFR 612.23(c)(1).

The program regulations in 34 CFR 612.22(b) provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition the Secretary distributes the 15 points as follows:

Methods and management plan (34 CFR 612.23 (c)(1)(iii)). Five points are added to this criterion for a possible total of 20 points.

Evaluation (34 CFR 612.23(c)(1)(v)). Five points are added to this criterion for a possible total of 15 points.

Organizational commitment (34 CFR 612.23(c)(1)(vii)). Five points are added to this criterion for a possible total of 20 points.

Project Period: 24 months.

For Applications or Information Contact: FIPSE, FY 1993-A Competition, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202-5175. Telephone: (202) 205-0082 to order applications; or (202) 708-5750 for information.

Program Authority: 20 U.S.C. 3211.

84.183B Drug Prevention Programs in Higher Education—Special Focus Program Competition: National College Student Organizational Network Program

Purpose of Program: To provide grants to develop, implement operate, and improve drug abuse education and prevention programs for students enrolled in institutions of higher education (IHEs).

Eligible Applicants: IHEs; and consortia of IHEs.

Note: Because only IHEs and consortia of IHEs are eligible to receive awards under this competition, an interested national college student network or organization must be sponsored by an IHE. The IHE will serve as both the applicant and grantee.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 612.

Priority: Under 34 CFR 75.105(c)(3), 34 CFR 612.21(c)(1), and 34 CFR 612.21(c)(2)(ii) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority.

Applications proposing the development and implementation of projects (a) conducted in conjunction with national college student networks or organizations and (b) addressing one or more specific approaches or problem areas related to drug abuse education and prevention for students enrolled in IHEs.

Selection Criteria:

In evaluating applications for grants under this program competition, the Secretary uses the selection criteria in 34 CFR 612.32(c)(2)(ii).

The program regulations in 34 CFR 612.22(b) provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition the Secretary distributes the 15 points as follows:

Design (34 CFR 612.23(c)(2)(ii)(A)). Five points are added to this criterion for a possible total of 25 points.

Organizational commitment (34 CFR 612.23(c)(2)(ii)(F)). Ten points are added to this criterion for a possible total of 20 points.

Project Period: Up to 36 months.

For Applications or Information Contact: FIPSE, FY 1993-B Competition, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202-5175. Telephone: (202) 205-0082 to order applications; or (202) 708-5750 for information.

Program Authority: 20 U.S.C. 3211.

84.183D Drug Prevention Programs in Higher Education—Special Focus Program Competition: Specific Approaches to Prevention Projects (Invitational Priority: Higher Education Consortia for Drug Prevention)

Purpose of Program: To provide grants to develop, implement, operate, and improve drug abuse education and prevention programs for students enrolled in institutions of higher education (IHEs).

Eligible Applicants: IHEs; and consortia of IHEs.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 612.

Priorities:

Absolute Priority. Under 34 CFR 75.105(c)(3) and 34 CFR 612.21(c)(2)(iii)(B) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Projects designed to develop, implement, operate, or improve programs that concentrate on specific approaches to the prevention of drug use or alcohol abuse.

Invitational Priority. Within the absolute priority in this notice, the Secretary is particularly interested in applications that meet the following invitational priority. However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over other applications:

Applications proposing to develop, implement, operate, or improve higher education consortia for drug prevention.

Applicants are invited to propose consortia arrangements to assist either (a) local IHE alcohol and other drug prevention professionals, or (b) IHE chief executive officers and other senior administrators. In these types of arrangements, participants would be expected to meet monthly to work toward the development, improvement, and implementation of their own comprehensive, institution-wide programs of drug education and prevention activities and services.

Selection Criteria: In evaluating applications for Specific Approaches to Prevention grants, the Secretary uses the selection criteria in 34 CFR 612.23(c)(2)(iii).

The program regulations in 34 CFR 612.22(b) provide that the Secretary may

award up to 100 points for the selection criteria, including a reserved 15 points. For this competition the Secretary distributes the 15 points as follows:

Need (34 CFR 612.23(c)(2)(iii)(A)). Five points are added to this criterion for a possible total of 20 points.

Methods and management plan (34 CFR 612.23(c)(2)(iii)(C)). Five points are added to this criterion for a possible total of 20 points.

Evaluation (34 CFR 612.23(c)(2)(iii)(E)). Five points are added to this criterion for a possible total of 15 points.

Project Period: 24 months.

For Applications or Information Contact: FIPSE, FY 1993-D Competition, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202-5175. Telephone: (202) 205-0082 to order applications; or (202) 708-5750 for information.

Program Authority: 20 U.S.C. 3211.

84.183E Drug Prevention Programs in Higher Education—Analysis and Dissemination Program Competitions: Dissemination of Successful Projects

Purpose of Program: To provide grants to develop, implement, operate, and improve drug abuse education and prevention programs for students enrolled in institutions of higher education (IHEs). Grants under Analysis and Dissemination Program competitions support projects to analyze and disseminate successful project designs, policies, and results of projects supported under Institution-Wide Program competitions and Special Focus Program competitions.

Eligible Applicants: IHEs; and consortia of IHEs.

Note: Under 34 CFR 612.2(d) eligibility under this Analysis and Dissemination Program competition is limited to current or former recipients of awards under an Institution-Wide Program competition or a Special Focus Program competition.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 612.

Priorities:

Absolute Priority. Under 34 CFR 75.105(c)(3) and 34 CFR 612.21(d) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Projects designed to disseminate successful project designs, policies, and results of projects supported under Institution-Wide Program competitions or Special Focus Program competitions.

Note: Because Institution-Wide and Special Focus projects are diverse, the Department has not adopted a single operational definition of a "successful project." Instead, the Secretary expects applicants to make their most persuasive case for the success of their respective projects and to provide convincing evidence that the projects are effective and worth disseminating to other campuses. What constitutes convincing evidence may differ among projects.

Applicants may wish to strengthen their case by providing data on several project outcomes associated with the use of alcohol and other drugs. Examples of these outcomes include, but are not limited to, the following:

(a) Changes in students' knowledge, social skills, intentions, attitudes, and perceptions of risk.

(b) Changes in institutional policies and their enforcement.

(c) Changes in the campus social environment.

(d) Changes in rates of students' use of alcohol and other drugs.

(e) Changes in the incidence of student-related campus crime and other violations of law or campus policies.

(f) Changes in the incidence of student-related injury or death.

(g) Changes in student attrition rates, graduation rates, and academic achievement.

Invitational Priorities. Within the absolute priority in this notice, the Secretary is particularly interested in applications that meet one or both of the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets one or both of these invitational priorities does not receive competitive or absolute preference over other applications:

Invitational Priority 1—Applications to assist other IHEs in the implementation of a successful Institution-Wide project. The project to be disseminated is based on the applicant's own successful Institution-Wide project for which departmental assistance has ended.

Invitational Priority 2—Applications to disseminate information on a specific successful project component, approach, or type of activity. The component, approach, or type of activity to be disseminated is based on the applicant's own successful Institution-Wide project and a number of other Institution-Wide projects for which departmental assistance has ended. The applicant would disseminate information to (a) IHEs, (b) one or more higher education associations or other national associations, or (c) both (a) and (b).

Selection Criteria: In evaluating applications for grants under the Analysis and Dissemination Program, the Secretary uses the selection criteria in 34 CFR 612.23(c)(3).

The program regulations in 34 CFR 612.22(b) provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition the Secretary distributes the 15 points as follows:

Design (34 CFR 612.23(c)(3)(i)). Five points are added to this criterion for a possible total of 35 points.

Key personnel (34 CFR 612.23(c)(3)(iii)). Five points are added to this criterion for a possible total of 20 points.

Evaluation (34 CFR 612.23(c)(3)(iv)). Five points are added to this criterion for a possible total of 15 points.

Project Period: 24 months.

For Applications or Information Contact: FIPSE, FY 1993–E Competition, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202-5175. Telephone: (202) 205-0082 to order applications; or (202) 708-5750 for information.

Program Authority: 20 U.S.C. 3211.

84.183F Drug Prevention Programs in Higher Education—Analysis and Dissemination Program Competitions: Analysis Projects

Purpose of Program: To provide grants to develop, implement, operate, and improve drug abuse education and prevention programs for students enrolled in institutions of higher education (IHEs). Grants under Analysis and Dissemination Program competitions support projects to analyze and disseminate successful project designs, policies, and results of projects supported under Institution-Wide Program competitions and Special Focus Program competitions.

Eligible Applicants: IHEs; and consortia of IHEs.

Note: Under 34 CFR 612.2(d) eligibility under this Analysis and Dissemination Program competition is limited to current or former recipients of awards under an Institution-Wide Program competition or a Special Focus Program competition.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 612.

Priorities:

Absolute Priority. Under 34 CFR 75.105(c)(3) and 34 CFR 612.21(d) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Projects designed to analyze successful project designs, policies, and

results of projects supported under Institution-Wide Program competitions.

Invitational Priorities. Within the absolute priority in this notice, the Secretary is particularly interested in applications that meet one or both of the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets one or both of these invitational priorities does not receive competitive or absolute preference over other applications:

Invitational Priority 1—Applications by current or former recipients of grants under Institution-Wide Program competitions proposing to analyze the direct and indirect impacts of all FY 1989 Institution-Wide projects for which departmental assistance has ended.

Invitational Priority 2—Applications by current or former recipients of grants under Institution-Wide Program competitions proposing to analyze special topics or issues related to the effectiveness of Institution-Wide projects, examples of which have been selected from Institution-Wide projects for which Departmental assistance has ended.

Selection Criteria: In evaluating applications for grants under the Analysis and Dissemination Program, the Secretary uses the selection criteria in 34 CFR 612.23(c)(3).

The program regulations in 34 CFR 612.22(b) provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition the Secretary distributes the 15 points as follows:

Key personnel (34 CFR 612.23(c)(3)(iii)). Ten points are added to this criterion for a possible total of 25 points.

Evaluation (34 CFR 612.23(c)(3)(iv)). Five points are added to this criterion for a possible total of 15 points.

Project Period: Up to 24 months.

For Applications or Information Contact: FIPSE, FY 1993–F Competition, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202–5175. Telephone: (202) 205–0082 to order applications; or (202) 708–5750 for information.

Program Authority: 20 U.S.C. 3211.

CHART 6. OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

CFDA No. and Name	Applications available	Application deadline date	Deadline for intergovernmental review	Estimated range of awards	Estimated avg. size of awards	Estimated number of awards
Office of Special Education Programs						
84.024B Early Childhood Model Demonstration [1]						
84.024D Outreach Projects [1]						
84.026F Closed-Captioned Movies, Mini-Series, and Special Programs Broadcast during Prime-Time [1]						
84.026J Closed-Captioned Syndicated Television Programming [1]						
84.026M Symposium on Educational Media Technology Relating to Persons with Sensory Disabilities [1]						
84.026P Closed-Captioned National News and Public Information Programs [1]						
84.026R Special Research, Development, and Evaluation Projects [1]						
84.026T Cultural Experiences for Deaf and Hard of Hearing Individuals [1]						
84.026V Closed-Captioned Children's Programs [1]						
National Institute on Disability and Rehabilitation Research						
84.133A-3 Research and Demonstration Projects	10/30/93	5/26/93	N/A	$150,000–200,000	$175,000	4
84.224A State Grants for Technology-Related Assistance for Individuals with Disabilities	1/15/93	4/16/93	6/15/93	150,000–550,000	520,000	10
Rehabilitation Services Administration						
84.128G Vocational Rehabilitation Service Projects for Migratory Agricultural and Seasonal Farmworkers with Handicaps	10/16/92	11/30/92	1/29/93	75,000–120,000	98,000	7
84.129A-1 Rehabilitation Long-Term Training—Rehabilitation Medicine	10/16/92	11/30/92	1/29/93	90,000–110,000	100,000	4
84.129A-5 Rehabilitation Long-Term Training—Prosthetics and Orthotics	10/16/92	11/30/92	1/29/93	165,000–185,000	175,000	1
84.129B Rehabilitation Long-Term Training—Rehabilitation Counseling	12/18/92	2/3/93	4/5/93	90,000–110,000	100,000	15
84.129C-1 Rehabilitation Long-Term Training—Rehabilitation Facility Administration	10/16/92	11/30/92	1/29/93	115,000–135,000	125,000	4
84.129C-3 Rehabilitation Long-Term Training—Rehabilitation Administration	10/16/92	11/30/92	1/29/93	115,000–135,000	125,000	2
84.129D Rehabilitation Long-Term Training—Occupational Therapy	10/16/92	11/30/92	1/29/93	90,000–110,000	100,000	3
84.129E Rehabilitation Long-Term Training—Rehabilitation Engineering	10/16/92	11/30/92	1/29/93	115,000–135,000	125,000	3
84.129F Rehabilitation Long-Term Training—Vocational Evaluation and Work Adjustment	10/16/92	11/30/92	1/29/93	90,000–110,000	100,000	4
84.129G Rehabilitation Long-Term Training—Rehabilitation Workshop and Facility Personnel	10/16/92	11/30/92	1/29/93	90,000–110,000	100,000	2
84.129H Rehabilitation Long-Term Training—Rehabilitation of the Mentally Ill	10/16/92	11/30/92	1/29/93	90,000–110,000	100,000	4
84.129K Rehabilitation Long-Term Training—Specialized Personnel for Supported Employment	10/16/92	11/30/92	1/29/93	90,000–110,000	100,000	2

CHART 6. OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES—Continued

CFDA No. and Name	Applications available	Application deadline date	Deadline for intergovernmental review	Estimated range of awards	Estimated avg. size of awards	Estimated number of awards
84.129L Rehabilitation Long-Term Training—Undergraduate Education in Rehabilitation Services	10/16/92	11/30/92	1/29/93	60,000–80,000	70,000	3
84.129M Rehabilitation Long-Term Training—Independent Living	10/16/92	11/30/92	1/29/93	90,000–110,000	100,000	1
84.129P Rehabilitation Long-Term Training—Rehabilitation of the Blind	10/16/92	11/30/92	1/29/93	90,000–110,000	100,000	4
84.129Q Rehabilitation Long-Term Training—Rehabilitation of the Deaf	10/16/92	11/30/92	1/29/93	90,000–110,000	100,000	6
84.129R Rehabilitation Long-Term Training—Rehabilitation Job Development and Placement	10/16/92	11/30/92	1/29/93	65,000–85,000	75,000	2
84.129T Rehabilitation Training—Experimental and Innovative Training	10/6/92	11/23/93	1/22/93	90,000–110,000	100,000	3
84.129V Rehabilitation Training—State Vocational Rehabilitation Unit In-Service Training	2/12/93	4/1/93	6/1/93	3,300–123,000	52,700	37
84.234K Projects with Industry	10/16/92	11/30/92	1/29/93	140,000–175,000	150,000	7
84.235C Special Projects and Demonstrations Providing Vocational Rehabilitation Services to Individuals with Severe Handicaps—Non-Priority	10/16/92	11/30/92	1/29/93	125,000–200,000	150,000	21
84.235Q Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals with Severe Handicaps—Transition Rehabilitation Services for Handicapped Youth with Special Needs	10/16/92	11/30/92	1/29/93	115,000–165,000	150,000	7
84.250C Vocational Rehabilitation Service Projects for American Indians with Handicaps	10/16/92	11/30/92	N/A	175,000–300,000	230,000	5

[1] Announcement for these programs appear in separate notices in this issue of the FEDERAL REGISTER.

84.133A Research and Demonstration Projects

Purpose of Program: To support research and demonstrations projects on issues related to disabilities. These projects may conduct research into the nature of disability, techniques for rehabilitation, studies and analysis of factors affecting rehabilitation, and research on problems encountered by persons with disabilities in their daily activities.

Eligible Applicants: Public and private agencies and organizations, including institutions of higher education; Indian tribes; and tribal organizations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 350 and 351.

Priorities: Under 34 CFR 75.105(c)(1) the Secretary is particularly interested in applications that meet one of the following invitational priorities. However, an application that meets one of these invitational priorities does not receive competitive or absolute preference over other applications:

Interfaces. The design of new, state-of-the-art grahpic user interfaces (GUIs) for use with currently available computer graphic user interfaces (GUIs) for use hardware and software to enable persons with blindness or vision impairments to use the interfaces.

Invitational Priority 2—External Incontinence Devices. Design and testing of external incontinence devices to collect and dispose of urine and feces to enable individuals with disabilities involving serious incontinence problems to manage their lives better and achieve greater integration into the community and workplace.

Invitational Priority 3—Emergency Warning and Evacuation Systems. Development of emergency warning and evacuation systems to alert individuals with vision, hearing, mobility, and cognitive impairments to dangers in the home, workplace, and community, thereby promoting the safety of these individuals and enabling them to maintain or increase their level of integration into the community.

Invitational Priority 4—Assurance of Quality in Assistive Technology Delivery. Developing systems and tools to assure quality in assistive technology delivery. This includes—

(a) Methods of measurement and standards (1) to determine the most appropriate technology for an individual user and (2) to evaluate better the effectiveness of any specific application of technology as used by an individual for specific purposes; and

(b) Tools to provide evaluators with the capacity to make objective appraisals of assistive technology and technology delivery systems.

Project Period: Up to 36 months.

For Further Information or Applications Contact: William Whalen, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202. Telephone: (202) 205–9141. Individuals who are hearing-impaired and other persons who use a telephone device for the deaf (TDD) may call (202) 205–8198 for TDD services.

Program Authority: 29 U.S.C. 750–762.

84.224A State Grants for Technology-Related Assistance for Individuals With Disabilities

Purpose of Program: To assist States financially in developing and implementing consumer-responsive, comprehensive statewide programs of technology-related assistance for individuals with disabilities.

Eligible Applicants: State entities designated by Governors as the lead agencies under 34 CFR 345.4.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR), in 34 CFR parts 74, 75 (except 75.618), 77, 79, 80 (except §§ 80.32(a) and 80.33(a)), 81, 82, 85, 86; and (b) The regulations for this program is 34 CFR part 345.

Project Period: Up to 36 months, with the possibility of a 24-month extension.

For Applications or Information Contact: William Whalen, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202–2601. Attention: Peer Review Unit. Telephone: (202) 205–9141. Individuals who are hearing-impaired and other persons who use a telephone device for

the deaf (TDD) may call (202) 205–8198 for TDD services.

Program Authority: 29 U.S.C. 2201–2271.

84.128G Vocational Rehabilitation Service Projects for Migratory Agricultural and Seasonal Farmworkers With Handicaps

Purpose of Program: To provide grants for vocational rehabilitation services for migratory agricultural workers or seasonal farmworkers with handicaps.

Eligible Applicants: State vocational rehabilitation agencies; local agencies administering vocational rehabilitation programs under written agreements with State vocational rehabilitation agencies; and State vocational rehabilitation agencies that enter into agreements with the State vocational rehabilitation agencies of one or more other States to develop cooperative programs for the provision of vocational rehabilitation services.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85 and 86; and (b) The regulations for this program in 34 CFR parts 369 and 375.

Project Period: Up to 36 months.

For Applications: Telephone: (202) 205–9343.

For Information Contact: Ed Hofler, U.S. Department of Education, 400 Maryland Avenue SW., room 3318, Switzer Building, Washington, DC 20202–2650, Telephone (202) 205–9432.

Program Authority: 29 U.S.C. 777b.

84.129 A–R Rehabilitation Training—Rehabilitation Long-Term Training

Purpose of Program: To provide grants (a) to increase the supply of qualified personnel available for employment in public and private agencies and institutions involved in the vocational rehabilitation and independent living rehabilitation of individuals with handicaps, especially those individuals with the most severe handicaps; and (b) to maintain and upgrade the skills and knowledge of personnel employed as providers of vocational, social, or psychological rehabilitation services.

Eligible Applicants: State agencies, and other public or nonprofit private agencies and organizations, including institutions of higher education.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 385 and 386.

Priorities:

Absolute Priorities. Under 34 CFR 75.105(c)(3) and 34 CFR 386.1 the Secretary gives an absolute preference to applications that meet one of the following priorities. The Secretary funds under this competition only applications that meet one of these absolute priorities:

Projects that propose to provide training in one of the following areas of personnel shortages:

Rehabilitation medicine (CFDA No. 84.129A–1)

Prosthetics and orthotics (CFDA No. 84.129A–5)

Rehabilitation counseling (CFDA No. 84.129B)

Rehabilitation facility administration (CFDA No. 84.129C–1)

Rehabilitation administration (CFDA No. 84.129C–3)

Occupational therapy (CFDA No. 84.129D)

Rehabilitation engineering (CFDA No. 129E)

Vocational evaluation and work adjustment (CFDA No. 84.129F)

Rehabilitation workshop and facility personnel (CFDA No. 84.129G)

Rehabilitation of the mentally ill (CFDA No. 84.129H)

Specialized personnel for supported employment (CFDA No. 84.129K)

Undergraduate education in rehabilitation services (CFDA No. 84.129L)

Independent living (CFDA No. 84.129M)

Rehabilitation of the blind (CFDA No. 84.129P)

Rehabilitation of the deaf (CFDA No. 84.129Q)

Rehabilitation job development and placement (CFDA No. 84.129R)

Invitational Priorities. Under 34 CFR 75.105(c)(1) the Secretary is particularly interested in applications that meet one of the following invitational priorities. However, an application that meets one of these invitational priorities does not receive competitive or absolute preference over other applications:

Invitational Prioritiy 1—Within the absolute priorities specified in this notice, projects designed to provide financial assistance to individuals for long-term academic training in certificate- or degree-granting courses of study.

Invitational Priority 2—Within the absolute priority of Rehabilitation Counseling, projects that provide academic training to individuals at both the master's degree level and the doctoral degree level.

Invitational Priority 3—Within the absolute priority of Independent Living, projects of national scope to develop and provide training that prepares community-based independent living specialists to serve individuals who are deaf/blind.

Project Period: The project period varies according to the particular competition, as follows:

Competition area/CFDA No.	Project period
Rehab. Medicine (84.129A–1)	Up to 60 months.
Pros. & Orthotics (84.129A–5)	Up to 36 months.
Rehab. Counseling (84.129B)	Up to 60 months.
Rehab. Fac. Admin. (84.129C–1).	Up to 36 months.
Rehab. Admin. (84.129C–3)	Up to 36 months.
Occup. Therapy (84.129D)	Up to 36 months.
Rehab. Engin. (84.129E)	Up to 36 months.
Voc. Eval. Wk. Adj. (84.129F)	Up to 60 months.
Rehab. Wkshp./Fac. Pers. (84.129G).	Up to 36 months.
Rehab. of the Ment. Ill. (84.129H).	Up to 36 months.
Spec. Pers./Sup. Employ. (84.129L).	Up to 36 months.
Undergrad. Education (84.129L).	Up to 36 months.
Independent Living (84.129M)	Up to 36 months.
Rehab. of the Blind (84.129P)	Up to 36 months.
Rehab. of the Deaf (84.129Q)	Up to 36 months.
Job Dev./Job Place. (84.129R)	Up to 36 months.

For Applications: Telephone (202) 205–9343.

For Information Contact: Richard Melia, U.S. Department of Education, 400 Maryland Avenue, SW., room 3324, Switzer Building, Washington, DC 20202–2649. Telephone: (202) 205–9400.

Program Authority: 29 U.S.C. 774.

84.129T Rehabilitation Training—Experimental and Innovative Training

Purpose of Program: To support pilot projects that develop new types of training programs for rehabilitation personnel or that develop new and improved methods of training rehabilitation personnel.

Eligible Applicants: State agencies; and other public or nonprofit private agencies and organizations, including institutions of higher education.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 385 and 387.

Priority: Under 34 CFR 75.105(c)(1) the Secretary is particularly interested in applications that meet the following invitational priority. However, an application that meets this invitational priority does not receive competitive or absolute preference over other applications:

Projects designed to advance the use of new or improved methods of learning and apply existing technology to rehabilitation education.

Project Period: Up to 36 months.

For Applications: Telephone: (202) 205–9343.

For Information Contact: Bob Werner, U.S. Department of Education, 400 Maryland Avenue, SW., room 3322, Switzer Building, Washington, DC 20202–2649. Telephone: (202) 205–8291.

Program Authority: 29 U.S.C. 774.

84.129V Rehabilitation Training—State Vocational Rehabilitation Unit In-Service Training

Purpose of Program: To provide grants for in-service training to State vocational rehabilitation unit personnel in areas essential to effective management or in skill areas to improve the provision of vocational rehabilitation services.

Eligible Applicants: State agencies; and other public or nonprofit private agencies and organizations, including institutions of higher education.

Note: Funds are available under this program for the support of new projects in Regions IV, V, and IX only.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 385 and 388.

Project Period: Up to 36 months.

For Applications: Telephone: (202) 205–9343.

For Information Contact: Bob Werner, U.S. Department of Education, 400 Maryland Avenue, SW., room 3322, Switzer Building, Washington, DC 20202–2649. Telephone: (202) 205–8291.

Program Authority: 29 U.S.C. 774.

84.234K Projects With Industry

Purpose of Program: To promote opportunities for competitive employment of individuals with handicaps by engaging private industry as partners in training and placement.

Eligible Applicants: Designated State units; industrial, business or commercial enterprises; labor organizations; employers; industrial or community trade associations; rehabilitation facilities; and other agencies or organizations with the capacity to arrange, coordinate, or conduct training and other employment programs and provide supportive services and assistance for individuals with handicaps in a realistic work setting.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85 and 86; and (b) The regulations for this program in 34 CFR parts 369 and 379.

Priority: Under 34 CFR 75.105(c)(2)(i) and section 621(i) of the Rehabilitation Act the Secretary gives preference to applications that meet the following competitive priority. The Secretary awards up to 10 points to an application that meets this competitive priority in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for the program:

Applications that propose to provide services in geographic areas among the States that are currently unserved or underserved.

Project Period: Up to 60 months.

For Applications: Telephone: (202) 205–9343.

For Information Contact: Barbara Sweeney, U.S. Department of Education, 400 Maryland Avenue, SW., room 3330, Switzer Building, Washington, DC 20202–2650. Telephone: (202) 205–9544.

Program Authority: 29 U.S.C. 795g.

84.235C Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals With Severe Handicaps—Non-Priority

Purpose of Program: To provide support for projects to expand or otherwise improve vocational rehabilitation services and other rehabilitation services for individuals with severe handicaps who can benefit from innovative and comprehensive services.

Examples of these innovative and comprehensive service projects leading to employment or increased independence include but are not limited to: the use of generic technology adapted to meet special needs, natural support systems, patterns of services that lead to opportunities for new careers, and services to meet the needs of isolated or special populations of individuals with handicaps.

Note: Under this competition the Secretary considers applications that do not address one of the absolute priorities under other Special Projects and Demonstrations competitions in this combined application notice for fiscal year 1993.

Eligible Applications: States; and other public and nonprofit private agencies and organizations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 369 and 373.

Project Period: Up to 36 months.

For Applications: Telephone: (202) 205–9343.

For Information Contact: Thomas Finch, U.S. Department of Education, 400 Maryland Avenue, SW., room 3315, Switzer Building, Washington, DC 20202–2650. Telephone: (202) 205–9796.

Program Authority: 29 U.S.C. 711a(a)(1).

84.235Q Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals With Severe Handicaps—Transitional Rehabilitation Services for Handicapped Youth With Special Needs

Purpose of Program: To assist projects that provide job training to prepare handicapped youth for entry into the labor market, including competitive or supported employment.

Eligible Applicants: States; and other public and nonprofit private agencies and organizations.

Applicable Regulations: (a) The Education Department general Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts and 369 and 376.

Priority: Under 34 CFR 75.105(c)(3) and 34 CFR 376.30(c) the Secretary gives absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Transitional Rehabilitation Services for Handicapped Youth With Special Needs. Projects that offer transitional rehabilitation services focused on meeting the special job training and placement needs of one or more groups of individuals with physical or mental disabilities that present unusual and difficult rehabilitation problems. These disabilities include, but are not limited to, blindness, cerebral palsy, deafness, epilepsy, mental illness, mental retardation, and learning disability.

Project Period: Up to 36 months.

For Applications: Telephone: (202) 205–9343.

For Information Contact: Thomas Finch, U.S. Department of Education, 400 Maryland Avenue, SW., room 3315, Switzer Building, Washington, DC 20202. Telephone: (202) 205–9796.

Program Authority: 29 U.S.C. 777a(c).

84.250C Vocational Rehabilitation Services Projects for American Indians With Handicaps

Purpose of Program: To provide grants for vocational rehabilitation services to American Indians with handicaps who reside on Federal or State reservations.

Eligible Applicants: Governing bodies of Indian tribes; and consortia of these governing bodies located on Federal and State reservations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in

34 CFR parts 75, 77, 80, 81, 82, and 85; and (b) The regulations for this program in 34 CFR parts 369 and 371.

Project Period: Up to 36 months.

For Applications: Telephone: (202) 205–9343.

For Information Contact: Ed Hofler, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3318, Switzer Building, Washington, DC 20202–2650. Telephone: (202) 205–9432.

Program Authority: 29 U.S.C. 750.

CHART 7—OFFICE OF VOCATIONAL AND ADULT EDUCATION

CFDA No. and name	Applications available	Application deadline date	Deadline for intergovernmental review	Estimated range of awards	Estimated avg. size of awards	Estimated number of awards
84.101 Native Hawaiian Vocational Education Program	1/4/93	4/16/93	6/15/93	N/A	$2,469,732	1
84.077 Bilingual Vocational Training Program [1]						
84.099 Bilingual Vocational Instructor Training Program [1]						

[1] Announcements for these programs appear in separate notices in this issue of the FEDERAL REGISTER.

84.101C Native Hawaiian Vocational Education Program

Purpose of Program: To provide Federal financial assistance for projects that offer vocational education for the benefit of native Hawaiians.

Eligible Applicants: Organizations that (a) primarily serve and represent native Hawaiians and (b) are recognized by the Governor of the State of Hawaii.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; (b) The regulations in 34 CFR part 400; and (c) The regulations for this program in 34 CFR part 402.

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the selection criteria in 34 CFR 402.21.

The program regulations in 34 CFR 402.20(b) provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition the Secretary distributes the 15 points as follows:

Management Plan (34 CFR 402.21(b)). Fifteen points are added to this criterion for a possible total of 40 points.

Project Period: Up to 12 months.

For Applications or Information Contact: Kate Holmberg, U.S. Department of Education, 400 Maryland Avenue, SW., room 4519, Switzer Building, Washington, DC 20202–7242. Telephone: (202) 205–5563.

Program Authority: 20 U.S.C. 2313(c).

Invitation to Comment

The Secretary welcomes comments and suggestions for improving the annual combined application notice.

Please direct any comments and suggestions to Steven N. Schatken, Assistant General Counsel for Regulations, U.S. Department of Education, 400 Maryland Avenue, SW. (room 4091, FOB–6), Washington, DC 20202–2110.

Dated: September 15, 1992.

Lamar Alexander,

Secretary of Education.

Appendix—Intergovernmental Review of Federal Programs

This appendix applies to each program that is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each of those States under the Executive order. A listing containing the Single Point of Contact for each State is included in this appendix.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, EO 12372—CFDA # (commenter must insert number—including suffix letter, if any), U.S. Department of Education, room 4161, 400 Maryland Avenue SW., Washington, DC 20202–0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. Do not send applications to the above address.

State Single Points of Contact

Arizona

Ms. Janice Dunn, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone (602) 280–1315.

Arkansas

Mr. Joseph Gillespie, Manager, State Clearinghouse, Office of Intergovernmental Service, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 682–1074.

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323–7480.

Colorado

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 520, Denver, Colorado 80203 Telephone (303) 866–2156.

Connecticut

Mr. William T. Quigg, Intergovernmental Review Coordinator, State Single Point of Contact, Office of Policy and Management, Intergovernmental Policy Division, 80 Washington, Street, Hartford, Connecticut 06106–4459, Telephone (203) 566–3410.

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903,Telephone (302) 739–3326.

District of Columbia

Patricia Savannah Jones, State Single Point of Contact, Executive Office of the Mayor, Office of Intergovernmental Relations, Room 416, District Building, 1350 Pennsylvania Avenue, N.W., Washington, D. C. 20004 Telephone (202) 727–9111.

Florida

Janice L. Alcott, Director, Florida State Clearinghouse, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399–0001, Telephone (904) 488–8114.

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street, S.W., Atlanta, Georgia 30334, Telephone (404) 656-3855.

Hawaii

Mary Lou Kobayashi, Planning Program Manager, Office of State Planning, Office of the Governor, P.O. Box 3540, Honolulu, Hawaii 96811, Telephone (808) 587-2802, FAX (808) 548-8172.

Illinois

Tom Berkshire, State Single Point of Contact, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Telephone (217) 782-8639.

Indiana

Frank Sullivan, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232-5610.

Iowa

Steven R. McCann, Division for Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309 Telephone (515) 281-3725.

Kentucky

Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfurt, Kentucky 40601, Telephone (502) 564-2382

Maine

State Single Point of Contact Attn: Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289-3261.

Maryland

Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201, Telephone (301) 225-4490.

Massachusetts

State Clearinghouse, Executive Office of Communities and Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727-7001.

Michigan

Milton Waters, Director of Operations, Michigan Department of Commerce, Michigan Neighborhood Alliance.

Please direct correspondence to: Manager, Federal Project Review, Michigan Department of Commerce, Michigan Neighborhood Builders Alliance, P.O. Box 30242, Lansing, Michigan 48909, Telephone (517) 373-6223.

Mississippi

Cathy Mallette, Clearinghouse Officer, Office of Policy Development, Department of Finance and Administration, 455 N. Lamar Street, Suite 120, Jackson, Mississippi 39202, Telephone (601) 359-6765.

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102 Telephone (314) 751-4834.

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, ATTN: Ron Sparks, Clearinghouse Coordinator, Telephone (702) 687-4065.

New Hampshire

Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, ATTN: Intergovernmental Review Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271-2155.

New Jersey

Richard J. Porth, Director, Division of Community Resources

Please direct all correspondence and questions about intergovernmental review to: Andrew Jaskolka, State Review Process, Division of Community Resources, CN 814, Room 609, Trenton, New Jersey 08625-0814, Telephone (609) 292-9025.

New Mexico

George Elliott, Deputy Director, State Budget Division, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827-3640, FAX (505) 827-3006.

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474-1605.

North Carolina

Mrs. Chrys Baggett, Director, Intergovernmental Relations, N.C. Department of Administration, 116 W. Jones Street, Raleigh, North Carolina 27611, Telephone (919) 733-0499.

North Dakota

North Dakota Single Point of Contact, Office of Intergovernmental Assistance, Office of Management and Budget, 600 East Boulevard Avenue, Bismarck, North Dakota 58505-0170, Telephone (701) 224-2094.

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266-0411, Telephone (614) 466-0698.

Rhode Island

Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277-2656.

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning.

South Carolina

State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734-0494.

South Dakota

Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Telephone (605) 773-3212.

Tennessee

Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741-1676.

Texas

Tom Adams, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463-1778.

Utah

Utah State Clearinghouse, Office of Planning and Budget, ATTN: Carolyn Wright, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone (801) 538-1535.

Vermont

Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828-3326.

West Virginia

Fred Cutlip, Director, Community Development Divisions, Governor's Office of Community and Industrial Development, Building #6, Room 553, Charleston, West Virginia 25305, Telephone (304) 348-4010.

Wisconsin

William C. Carey, Federal/State Relations, Wisconsin Department of Administration, 101 South Webster Street, P.O. Box 7864, Madison, Wisconsin 53707.

Please direct correspondence and questions to: William C. Carey, Section Chief, Federal/State Relations Office, Wisconsin Department of Administration, Telephone (608) 266-0267.

Wyoming

Ann Redman, State Single Point of Contact, Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Telephone (307) 777-7574.

Territories

Guam

Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone (671) 472-2285.

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950.

Puerto Rico

Patria Custodio/Israel Soto Marrero, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940-9985, Telephone (809) 727-4444.

Virgin Islands

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federal register

Monday
September 21, 1992

Part III

Department of Education

Educational Media Research, Production, Distribution, and Training Program and Inviting Applications for New Awards for Fiscal Year 1993; Notices

DEPARTMENT OF EDUCATION

Educational Media Research, Production, Distribution, and Training Program

AGENCY: Department of Education.

ACTION: Notice of final priorities for Fiscal Year 1993.

SUMMARY: The Secretary announces final priorities for fiscal year (FY) 1993 under the Educational Media Research, Production, Distribution, and Training Program. The Secretary takes this action to focus Federal financial assistance on those areas of greatest need. These priorities are intended to ensure the continued availability of closed-captioned television, to expand the cultural experiences available to children who are deaf and hard of hearing, and to disseminate information about new technologies for persons with sensory disabilities.

EFFECTIVE DATE: These priorities take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these priorities, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Joseph Clair, U.S. Department of Education, 400 Maryland Avenue, SW., room 4622, Switzer Building, Washington, DC 20202-2466. Telephone: (202) 205-9503. Deaf and hearing impaired individuals may call (202) 205-8170.

SUPPLEMENTARY INFORMATION: This notice contains final priorities under the Educational Media Research, Production, Distribution, and Training Program. On June 15, 1992, the Secretary published a notice of proposed priorities for this program in the **Federal Register** (57 FR 26760).

Note: This notice of final priorities does not solicit applications. A notice inviting applications under these competitions is published in a separate notice in this issue of the **Federal Register**.

This program supports AMERICA 2000, the President's strategy for moving the Nation toward the National Educational Goals, by assisting those with disabilities in meeting Goal 1, school readiness, and Goal 5, adult literacy.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priorities, eight parties submitted comments. An analysis of the comments and of the changes in the priorities since publication of the notice of proposed priorities follows. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

General Comments

Comment: Several commenters suggested particular numbers of awards and increased funding levels for projects under several priorities. Specifically, some commenters suggested a single award under some priorities to facilitate coordination of captioning activities. Other commenters expressed concerns that a single award favored particular captioning organizations.

Discussion: In announcing proposed priorities, the Secretary does not establish numbers of awards or funding levels for the projects. Information about the anticipated number of awards and about funding levels will be provided when the Secretary invites applications for specific competitions.

Changes: None.

Comment: Several commenters expressed concerns about limiting the funds provided under priorities 1 and 4 to supporting no more than two-thirds of the captioning costs for each program hour of each program captioned. One commenter felt that this should be a goal, but not an absolute requirement; one commenter felt that this limit would restrict the possibilities for expanding captioning to include programs not previously captioned; one commenter felt that six months was too short a time to identify private sector support for programs; and one commenter stated that the two-thirds limit should apply to the total hours captioned under the grant rather than each program hour.

Discussion: It has always been the goal of the Department of Education that the costs of captioning be considered part of the routine costs of providing television services to the viewing public. Since 1980 the portion of captioning paid for through nonfederal support has grown significantly, particularly in prime-time, news, and sports programming on major broadcast networks. As the implementation of the Decoder Circuitry Act increases the number of homes with decoders, this trend is likely to accelerate. The Secretary views the two-thirds limit for some types of television programming as reasonable, particularly for programs that previously have been captioned. At the same time, the Secretary acknowledges that it may be difficult to locate the requisite funds for programs that never have been captioned.

The Secretary agrees that the two-thirds limit generally should be applied to the total program hours captioned under the grant, rather than to each program hour.

Changes: Priority 1 has been changed to indicate that funds under this program may be used to support no more than two-thirds of the captioning costs of news and public information programs that have been captioned previously. Priority 4 has been changed to indicate that funds under this program may be used to support no more than two-thirds of the captioning costs of movies, miniseries, and special programs broadcast during prime-time on major national commercial broadcast networks. The references to each program hour and each program have been deleted.

Comment: One commenter stated that under the captioning priorities applicants should not be required to provide multiple letters of support to demonstrate willingness of major networks or providers of programs to permit captioning of their programs unless programs from multiple sources are included in the application.

Discussion: The Secretary agrees that it is only necessary to demonstrate the willingness of providers of programs covered by the particular project to permit captioning of their programs.

Changes: Priorities 1-4 have been changed to clarify that projects must demonstrate only the willingness of those networks or other providers of programs whose programs will be captioned under the project.

Comment: One commenter expressed concern regarding the difficulty of monitoring the actual delivery of captioned programs to individual viewers.

Discussion: The Secretary does not intend that projects monitor the delivery of captioned television to individual viewers. The monitoring referred to in priorities 1-4 focuses on the accurate, timely production and delivery of captions to relevant broadcast networks, cablecasters, and distributors of syndicated programs.

Changes: None.

Comment: Several commenters focused on ensuring that programs currently captioned remain captioned or that a greater number of captioned programs become available.

Discussion: As proposed, priorities 1, 3, and 4 address both expanding the number of programs captioned and ensuring that programs currently captioned remain captioned. The Secretary is aware of the interest in captioning a broader range of programs available on a variety of commercial, public, and cable networks or through

syndication. At the same time, the Secretary is committed to keeping programs currently captioned available to viewers who are hearing impaired. Thus, while priorities 1, 3, and 4 allow projects to include programs not previously captioned, these priorities also indicate that maintaining current captioning efforts will be an important factor in making awards.

Changes: None.

Comment: Three commenters suggested additional priority topics. One suggested a priority related to understanding and preparing for the effects of the Decoder Circuitry Act. One suggested a priority for captioning basic cable programs. A third suggested a priority for captioning educational programs for distance learning.

Discussion: The Secretary considers promoting understanding and preparation for the implementation of the Decoder Circuitry Act to be important and believes the proposed priorities address the most critical areas.The captioning of basic cable or distance learning programs may be pursued in future years.

Changes: None.

Priority 1—Closed-Captioned National News and Public Information

Comment: Two commenters urged that funds be set aside for emergency related programming and that full funding for captioning both emergency related programs and emergency announcements be available under these projects.

Discussion: The Secretary intends that emergency announcements and emergency related programs be captioned using funds from this program to cover all captioning costs, if necessary. It is anticipated that applicants under this program will provide for some emergency programming and that the Department of Education will work with projects to make additional adjustments, as necessary, during the course of the project period.

Changes: The term "emergency announcements" has been changed to "emergency programming" to clarify that full costs for captioning emergency related programming may be covered under these projects.

Comment: One commenter expressed concern about focusing a single priority on both maintaining and expanding news and information programs. This commenter suggested alternative ways to structure the priority to make smaller captioning companies more competitive.

Discussion: Though the priority focuses on both maintaining and expanding captioned news and public information programming, individual applicants may propose to caption only programs that are currently captioned, only programs that are not currently captioned, or both. Thus, the structure of this priority should not limit any potential applicant.

Changes: None.

Comment: One commenter expressed confusion as to whether captioning of cable or syndicate (including the Fox Broadcasting Company) programs shown nationally was permitted under this priority because these types of programs were not discussed in the background. Further, syndicated programs were not included under requirement (6).

Discussion: Captioned cable and syndicated news and public information programs were not mentioned in the background section because no programs of this type are currently captioned with funds from this program. Syndicated and cable news and public information programs shown nationally could be included in new projects as could programs shown nationally by other broadcast companies.

Changes: A reference to broadcast companies and providers of syndicated programs available nationally has been added to requirement (6).

Priority 2—Closed Syndicated Television Programming

Comment: One commenter suggested that the Secretary consider the extent to which syndicated programs, particularly "live" syndicated programs, currently captioned continue to be captioned.

Discussion: The Secretary recognizes that many syndicated programs have developed a large following of viewers who are hearing impaired and in making awards will consider the extent to which captioning is maintained on programs currently captioned.

Changes: The following sentence has been added to the background section: "In making awards the Secretary considers the extent to which syndicated programs currently captioned continue to be captioned."

Comment: One commenter requested clarification as to whether the term "individual stations" in the last sentence of the background section includes cable stations.

Discussion: Cable stations showing syndicated programming may be included as well as broadcast stations.

Changes: None.

Priority 3—Closed-Captioned Children's Programs

Comment: One commenter suggested expanding this priority to include programs released in the home video marketplace.

Discussion: Though access to home video is important for children who are hearing impaired, this particular priority is deliberately focused on making as many hours of television programming targeted for children as possible available to children who are hearing impaired.

Changes: None.

Comment: One commenter noted that some syndicated programs for children are currently captioned, yet this type of program was not included in the final sentence of the background section.

Discussion: The Secretary is aware that some syndicated programs for children are currently captioned and did not intend to exclude these programs from the final sentence of the background section.

Changes: The phrase "or currently captioned syndicated programs" has been added to the final sentence of the background section.

Comment: One commenter suggested that priority be placed on captioning programs such as "3-2-1 Contact" that encourage girls and children from minority backgrounds to enter fields of science.

Discussion: The program specifically referenced by the commenter is currently captioned under this program. As with other programs that are currently captioned, the Secretary will consider the extent to which this program will continue to be captioned in making awards. The Secretary is aware of no other, similar programs that are not captioned.

Changes: None.

Priority 4—Closed-Captioned Movies, Mini-Series, and Special Programs Broadcast or Shown During Prime-Time

Comment: Three commenters requested clarification as to whether funds under these projects could be used to caption one prime-time series per network as allowed under the current contract supporting captioning of prime-time movies, mini-series, and special programs.

Discussion: The priority as proposed allows projects to support up to two-thirds of the captioning costs for prime-time programs, other than movies, mini-series or special programs, on each major broadcast network for up to six months while private or other public sector support is sought. This can include prime-time series. This is to ensure that all prime-time programs on major broadcast networks are captioned. With the implementation of the Decoder Circuitry Act, the Secretary

does not anticipate that additional provisions for prime-time series will be required.

Changes: None.

Comment: One commenter recommended that major cable networks be included in the priority; another assumed that other companies broadcasting nationally such as the Fox Broadcasting Company were included.

Discussion: In making awards the Secretary will first consider the extent to which prime-time movies, mini-series, special programs, and other programs on each major national commercial broadcast network continue to be captioned. This is critical if prime-time programming on the major commercial broadcast networks is to remain captioned. However, in expanding the availability of closed-captioned movies, mini-series, and special programs, projects also may include these programs on cable or broadcast companies available nationally.

Changes: The first sentence has been changed to include prime-time movies, mini-series, and special programs on cable or broadcast companies available nationally. Requirement 7 also has been changed to indicate that projects must demonstrate the willingness of each network or broadcast company included in the application to permit captioning of their programs.

Priority 5—Symposium on Educational Media Technology Relating to Persons With Sensory Disabilities

Comment: One commenter recommended that the Secretary emphasize hands-on demonstrations for attenders of the symposium. Another commenter recommended that two additional objectives be added: 1) to provide a forum to exchange ideas regarding ways to deliver and improve instruction through educational media and technology and 2) to acquaint participants with the role of media and technology in improving opportunities for individuals with sensory disorders in adjusting to on-going changes in the workplace and society at large. The same commenter suggested that the initial symposium focus on educational applications of technology and a second one focus on a rehabilitative component. The commenter suggested a variety of other possible topics to be included and recommended that future symposia be held every two years.

Discussion: The Secretary recognizes the potential benefits of a symposium offering hands-on experience, as well as serving as a forum for exchanging ideas, and for acquainting participants with the role of media technology in adjusting to changes in the workplace and in society. The priority, as written, allows applicants to introduce creatively these and other objectives and topics in their applications. Since this priority was intended as a single symposium, it is premature to address this activity in terms of multiple years.

Changes: None.

Priority 6—Cultural Experiences for Deaf and Hard of Hearing Children and Youth

Comment: One commenter recommended that this activity be implemented in educational settings serving hearing and deaf students.

Discussion: This activity may be implemented in educational settings, but the Secretary sees no reason to restrict the settings in which this activity may be implemented, as long as program regulations are followed.

Changes: None.

Priorities: Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet the following priorities. The Secretary funds under this program only applications that meet these absolute priorities.

Absolute Priority 1—Closed-Captioned National News and Public Information

Background: This priority supports cooperative agreements to continue and expand closed-captioned national news, public information programs, and emergency programming, so that persons with hearing impairments can have access to up-to-date national morning, evening, and weekend news, as well as information concerning current events and other significant public information. In making awards, the Secretary will consider the extent to which programs on each major national commercial and public broadcast network continue to be captioned.

For news and public information programs that have previously been captioned, funds provided under this priority may be used to support no more than two-thirds of the captioning costs, except for short periods of time—up to six months—while private sector support is sought. Funds provided under this priority also may be used to support the costs for captioning additional news and public information programs or for emergency programming.

Priority: Projects must—(1) Include procedures and criteria for selecting programs for captioning that take into account the preference of consumers for particular programs, the diversity of programming available, and the contribution of programs to the general educational, and cultural experiences of individuals with hearing impairments;

(2) Determine the total number of hours and the projected cost per hour for programs to be captioned;

(3) Identify for each proposed program to be captioned the source of private or other public support and the projected dollar amount of that support;

(4) Identify the methods of captioning to be used for each hour—indicating whether captioning is provided in real-time or offline—and the projected cost per hour for each method used;

(5) Provide and maintain back-up systems that will ensure successful, timely captioning service, despite possible national or regional emergency situations;

(6) Demonstrate the willingness of each major national commercial or public broadcast network, or each cable network, broadcast company, or provider of syndicated programs available nationally that is included in the project to permit captioning of its program by the project; and

(7) Implement procedures for monitoring the extent to which full and accurate captioning is provided, and use this information to make refinements in captioning operations.

Absolute Priority 2—Closed-Captioned Syndicated Television Programming

Background: This priority supports cooperative agreements for closed-captioning syndicated television programs, thereby making a variety of program available at different times, depending on the local broadcast or cable station. Syndicated programming includes both previously broadcast programs or series, as well as new programs distributed for showing on individual stations. In making awards the Secretary considers the extent to which programs currently captioned continue to be captioned.

Priority: Projects must—(1) Include procedures and criteria for selecting programs for captioning that take into account the preference of consumers for particular programs, the diversity of programming available, and the contribution of programs to the general educational, and cultural experiences of individuals with hearing impairments;

(2) Determine the total number of hours and the projected cost per hour for programs to be captioned;

(3) Identify for each proposed program to be captioned the source of private or other public support and the projected dollar amount of that support;

(4) Identify the methods of captioning to be used for each hour—indicating whether captioning is to be provided in real-time, using live display, offline, or

reformatted—and the cost per hour for each method used;

(5) Provide and maintain back-up systems that will ensure successful, timely captioning service;

(6) Demonstrate the willingness of providers of syndicated programs included in the project to permit captioning of their programs; and

(7) Implement procedures for monitoring the extent to which full and accurate captioning is provided and use this information to make refinements in captioning operations.

Absolute Priority 3—Closed-Captioned Children's Programs

Background: This priority supports cooperative agreements for closed-captioning children's programs shown on national commercial and public broadcast networks, as well as syndicated and cable programs shown nationally, so that children who are deaf or hard of hearing will have access to popular children's programs. In making awards the Secretary will consider the extent to which programs on each major national commercial and public broadcast network and cable network targeting children's audiences or currently captioned syndicated programs continue to be captioned.

Priority: Projects must—(1) Include procedures and criteria for selecting programs for captioning that take into account the preference of consumers for particular programs, the diversity of programming available, and the contribution of programs to the general educational, and cultural experiences of individuals with hearing impairments;

(2) Determine the total number of hours and the projected cost per hour for programs to be captioned;

(3) Identify for each proposed program to be captioned the source of private or other public support and the projected dollar amount of that support;

(4) Identify the methods of captioning to be used for each hour—indicating whether captioning is provided in real-time, live display, offline, or reformatted—and the projected cost per hour for each method used;

(5) Provide and maintain back-up systems that will ensure successful, timely captioning service;

(6) Demonstrate the willingness of each major network or providers of syndicated programs included in the project to permit captioning of their programs; and

(7) Implement procedures for monitoring the extent to which full and accurate captioning is provided and use this information to make refinements in captioning operations.

Absolute Priority 4—Closed-Captioned Movies, Mini-Series, and Special Programs Broadcast during Prime-Time

Background: This priority supports cooperative agreements to continue and expand the closed-captioning of movies, mini-series, special programs, and other programs broadcast during prime-time on major national commercial broadcast networks and to expand the closed-captioning of movies, mini-series, and special programs broadcast or shown during prime-time on cable or broadcast companies available nationally. In making awards the Secretary will consider the extent to which prime-time movies and other programs on each major national commercial broadcast network continue to be closed-captioned.

Funds provided under this priority may be used to support no more than two-thirds of the captioning costs for movies, mini-series, and special programs captioned on major national commercial broadcast networks. Funds also may be used to support no more than two-thirds of the captioning costs for other prime-time programs on each major national commercial broadcast network for short periods of time—up to six months—while private of other public sector support is sought. Finally, funds provided under this priority may be used to support the costs for captioning prime-time movies, mini-series, and special programs on cable or broadcast companies available nationally.

Priority: Projects must—(1) Include procedures and criteria for selecting programs for captioning that take into account the preference of consumers for particular programs, the diversity of programming available, and the contribution of programs to the general educational and cultural experiences of individuals with hearing impairments;

(2) Provide a flexible plan to assure closed-captioning of television programs without interruption, while accommodating last-minute program substitutions and new programs;

(3) Determine the total number of hours and the projected cost per hour for programs to be captioned;

(4) Identify for each proposed program to be captioned, the source of private or other public support and the projected dollar amount of that support;

(5) Identify the methods of captioning to be used for each hour—indicating whether captioning is provided in real-time, live display, offline, or reformatted—and include the projected cost per hour for each method used;

(6) Provide and maintain back-up systems that will ensure successful, timely captioning service;

(7) Demonstrate the willingness of each major national commercial broadcast network, or each cable or broadcast company available nationally that is included in the project to permit captioning of its programs; and

(8) Implement procedures for monitoring the extent to which full and accurate captioning is provided and use this information to make refinements in captioning operations.

Absolute Priority 5—Symposium on Educational Media Technology Relating to Persons with Sensory Disabilities

Background: This priority supports one cooperative agreement for a three-day symposium to (1) disseminate information related to current and future research and advances in the field of media technology for individuals with sensory impairments, and (2) provide recommendations for additional educational applications of this media technology. This technology includes, but is not limited to, speech recognition systems, video teleconferencing, telecommunications devices and system access, braille devices, descriptive video, and visible light spectrum. Findings from recent research in captioning technology also must be one of the focuses of the symposium. This symposium is consistent with the recommendations of the Commission on the Education of the Deaf, which studied the status of, and needed improvements in, education for individuals with hearing impairments.

Priority: This project must conduct a symposium that offers at least six commissioned presentations by professionals or experts in their respective areas, including, but not limited to, educational media and technology, advanced technology, media access, and rehabilitation engineering. The project must make arrangements for discussions and responses at the symposium by participants and for developing suggestions for implementing research findings and practical implications for new and advanced technology.

Following the symposium, the commissioned presenters must refine their papers, reflecting discussions at the symposium. The project must publish a proceedings document and distribute this document to symposium participants and relevant clearinghouses.

Absolute Priority 6—Cultural Experiences for Deaf and Hard of Hearing Children and Youth

Background: This priority supports cooperative agreements that will provide cultural experiences to enrich the lives of deaf and hard of hearing children and youth.

During FY 1992 the Department expects to fund projects that will (1) provide for the presentation of theatrical experiences for deaf and hard of hearing individuals, and (2) use an integrated approach by having among cast members a mixture of deaf, hard of hearing and hearing performers. This priority for FY 1993 is intended to extend these experiences to younger people with hearing impairments. Projects must actively involve children and youth with and without hearing impairments in cultural activities such as the production of a play or creation of a work of art. A grantee may not use funds under this priority for passive activities such as viewing a play or video produced by adults.

Priority: Projects must—(1) Use an integrated approach that mixes children and youth who are deaf, hard of hearing, and hearing in conducting theatrical or cultural activities or both; and

(2) Develop and implement strategies that will increase public awareness and understanding of deafness and of the artistic and intellectual achievements of deaf and hard of hearing individuals, including children, youth, and adults.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Program Authority: 20 U.S.C. 1451, 1452.

(Catalogue of Federal Domestic Assistance Number: 84.026, Educational Media Research, Production, Distribution, and Training Program)

Dated: September 1, 1992.

Lamar Alexander,

Secretary of Education.

[FR Doc. 92-22733 Filed 9-18-92; 8:45 am]

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DEPARTMENT OF EDUCATION

[CFDA No.: 84.026]

Educational Media Research, Production, Distribution, and Training Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1993

Purpose of Program: The purposes of this program are to promote the general welfare of the deaf, hard-of-hearing, and visually impaired individuals, and the educational advancement of individuals with disabilities.

These priorities support AMERICA 2000, the President's strategy for moving the Nation toward the National Educational Goals, by assisting those with disabilities in meeting Goal 1, school readiness, and Goal 5, adult literacy.

Eligible Applicants: Profit and nonprofit public and private agencies, organizations, and institutions are eligible to apply for a grant.

Note: The Department is not bound by any estimates in this notice.

Applications Available: October 30, 1992.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 332, as amended on October 22, 1991 at 56 FR 54702–54703.

EDUCATIONAL MEDIA RESEARCH, PRODUCTION, DISTRIBUTION, AND TRAINING

	Deadline for transmittal of applications	Deadline for intergovernmental review	Available funds	Estimated range of awards	Estimated size of awards	Estimated number of awards	Project period in months
Closed-Captioned Movies, Mini-Series, and Special Programs Broadcast During Prime-Time (CFDA 84.026F).	3/03/93	5/03/93	$1,000,000	$250,000–1,000,000	$500,000	1 to 4	Up to 36.
Closed-Captioned Syndicated Television Programming (CFDA 84.026J).	5/05/93	7/06/93	1,200,000	500,000–700,000	600,000	2	Up to 36.
Symposium on Educational Media Technology Relating to Persons with Sensory Disabilities (CFDA 84.026M).	1/19/93	3/22/93	150,000	150,000	150,000	1	12.
Closed-Captioned National News and Public Information (CFDA 84.026P).	2/10/93	4/12/93	2,500,000	625,000–1,000,000	1,250,000	1 to 4	Up to 36.
Cultural Experiences for Deaf and Hard of Hearing Children and Youth (CFDA 84.026T).	2/01/93	4/05/93	300,000	75,000–100,000	100,000	3	Up to 36.
Closed-Captioned Children's Program (CFDA 84.026V).	4/21/93	6/21/93	1,000,000	250,000–1,000,000	500,000	1 to 4	Up to 36.

Priorities: The priorities in the notice of final priorities for this program, as published elsewhere in this issue of the **Federal Register**, apply to these competitions.

For Application or Information Contact: Joseph Clair, U.S. Department of Education, 400 Maryland Avenue, SW., room 4622, Switzer Building, Washington, DC 20202–2644. Telephone (202) 205–9503. Deaf and hearing impaired individuals may call (202) 205–6170.

Program Authority: 20 U.S.C. 1451, 1452.

Dated: September 15, 1992.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 92-22732 Filed 9-18-92; 8:45 am]

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federal register

Monday
September 21, 1992

Part IV

Department of Education

Bilingual Vocational Instructor Training Program; Notice Inviting Applications for New Awards for Fiscal Year 1993

DEPARTMENT OF EDUCATION

[CFDA No.: 84.099]

Bilingual Vocational Instructor Training Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1993

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), this notice contains information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: The Bilingual Vocational Instructor Training Program provides financial assistance for preservice and inservice training for personnel participating in or preparing to participate in bilingual vocational education and training programs for limited English proficient individuals.

This program supports America 2000, the President's strategy for moving the Nation toward the National Education Goals, by helping to improve vocational education and training for limited English proficient adults. National Education Goal 5 calls for adult Americans to be literate and to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Eligible Applicants: State agencies or public and private non-profit educational institutions.

Deadline for Transmittal of Applications: December 11, 1992.

Deadline for Intergovernmental Review: February 9, 1993.

Available Funds: $450,000.

Estimated Range of Awards: $150,000–$300,000.

Estimated Average Size of Awards: $225,000.

Estimated Number of Awards: 2.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 18 months.

Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals and Nonprofit Organizations).

(2) 34 CFR Part 75 (Direct Grant Programs).

(3) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR Part 81 (General Education Provisions Act—Enforcement).

(7) 34 CFR Part 82 (New Restrictions on Lobbying).

(8) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(9) 34 CFR Part 86 (Drug-Free Schools and Campuses).

(b) The regulations for this program in 34 CFR Part 428.

Invitational Priority

Under 34 FR Part 105(c)(1), The Secretary is particularly interested in applications that meet the following invitational priority:

Applications that address a national, regional, or statewide need for inservice training, rather than a purely local need for inservice training, for personnel in bilingual vocational education and training programs for individuals with limited English proficiency.

However, an application that meets this invitational priority does not receive competitive or absolute preference over other applications.

Content of the Application

An application must—

(a) Provide an assurance that the activities and services for which assistance is sought will be administered by or under the supervision of the applicant;

(b) Propose a project of a size, scope, and design that will make a substantial contribution toward carrying out the purpose of the Bilingual Vocational Instructor Training Program;

(c) Describe the capabilities of the applicant, including vocational training or education courses offered by the applicant, accreditation, and any certification of courses by appropriate State agencies;

(d) Describe the qualifications of principal staff to be used in the bilingual vocational instructor training project;

(e) Describe the number of participants to be served, the minimum qualifications for project participants, and the selection process for project participants;

(f) Include the projected amount of the fellowships or traineeships, if any;

(g) Contain sufficient information for the Secretary to determine that the applicant has an ongoing vocational education program in the field in which participants will be trained, and can provide instructors with adequate language capabilities in the language other than English to be used in the bilingual vocational training project; and

(h) Provide an assurance that preservice training will be provided to individuals who have indicated their intent to engage as personnel in a vocational education program that serves limited English proficient individuals.

Selection Criteria

The Secretary uses the following selection criteria to evaluate applications for new grants under this competition. The maximum score for all of these criteria is 100 points. The maximum score for each criterion is indicated in parentheses. The Secretary assigns the 15 points reserved in 34 CFR 428.20(b), as follows: 5 points to selection criterion (b)—Program design—in 34 CFR 428.21, for a total of 25 points for that criterion; and 10 points to selection criterion (g)—Dissemination plan—in 34 CFR 428.21, for a total of 20 points for that criterion.

(a) *Need.* (15 points)

(1) The Secretary reviews each application to determine the need for the proposed bilingual vocational instructor training project, including—

(i) The need for the project in the specific geographic area or areas to be served by the proposed project;

(ii) The training needs of program participants to be served by the proposed project;

(iii) How these needs will be met through the proposed project; and

(iv) The relationship of the proposed project to other ongoing personnel development programs in the geographic area or areas to be served by the proposed project.

(2) The Secretary reviews each application to determine the extent to which, upon completion of their training, program participants will work with programs that provide vocational education to limited English proficient individuals.

(b) *Program design.* (25 points) The Secretary reviews each application to determine the quality of the program design and the potential of the project to have a lasting impact on the geographic area or areas to be served by the proposed project, including—

(1) Potential to increase the skill level of program participants, with particular regard to the following areas:

(i) Knowledge of the needs of limited English proficient individuals enrolled in vocational education programs, and how

those needs should influence teaching strategies and program design.

(ii) Understanding of bilingual vocational training methodologies.

(iii) Techniques for preparing limited English proficient individuals for employment; and

(2) Potential to increase access to vocational education for limited English proficient individuals.

(c) *Plan of operation.* (15 points) The Secretary reviews each application for an effective plan of management that ensures proper and efficient administration of the project, including—

(1) Clearly defined project objectives that relate to the purpose of the Bilingual Vocational Instructor Training Program;

(2) For each objective, the specific tasks to be performed in order to achieve the specified project objective; and

(3) How the applicant plans to use its resources and personnel to achieve each objective.

(d) *Key personnel.* (10 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the director and other key personnel to be used in the project;

(ii) The appropriateness of the time that each person referred to in paragraph (d)(1)(i) of this section will commit to the project; and

(iii) How the applicant, as part of its nondiscriminatory employment practices, will ensure that personnel will be selected without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraph (d)(1)(i) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience and training in project management; and

(iii) Any other qualifications that pertain to the quality of the project.

(e) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is sufficient to support the proposed project, and that it represents a cost effective use of Bilingual Vocational Instructor Training Program funds;

(2) Costs are necessary and reasonable in relation to the objectives of the proposed project; and

(3) The facilities that the applicant plans to use are adequate for the proposed project;

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and appropriate for the bilingual vocational instructor training project;

(2) To the extent possible, is objective and will produce data that are quantifiable;

(3) Identifies outcomes of the project in terms of enrollment, completion and after-training work commitments of participants by sex, racial or ethnic group, and by level and kinds of language proficiency;

(4) Identifies expected learning and skills outcomes for participants and how those outcomes will be measured; and

(5) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results.

(g) *Dissemination plan.* (20 points) The Secretary reviews each application to determine the effectiveness and efficiency of the plan to disseminate information about the project and demonstrate project activities and results, including—

(1) High quality in its design and procedures for evaluating the effectiveness of the dissemination plan; and

(2) A description of the types of materials the applicant plans to develop and make available to help others replicate project activities, and the methods to be used to make the materials available.

Additional Factors

(a) After evaluating the applications according to the selection criteria, and consulting with the appropriate State board established under section 111 of the Carl D. Perkins Vocational and Applied Technology Education Act, the Secretary determines whether the most highly rated applications are equitably distributed among populations of individuals with limited English proficiency within the affected State.

(b) The Secretary may select other applications for funding if doing so would improve the—

(1) Equitable distribution of assistance among populations of individuals with limited English proficiency within the affected State; or

(2) Geographical distribution of projects funded under this program.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the appendix to the Department's combined application notice, published elsewhere in this issue of the **Federal Register**.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372–CFDA# 84.099, U.S. Department of Education, room 4161, 400 Maryland Avenue, SW., Washington, DC 20202–0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. Do not send applications to the above address.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and six copies of the application on or before the deadline date to:

U.S. Department of Education,
Application Control Center, Attention: (CFDA# 84.099), Washington, DC 20202–4725).

or

(2) Hand deliver the original and six copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to:

U.S. Department of Education,
Application Control Center, Attention: (CFDA# 84.099), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC 20202–4725.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgement to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 732–2495.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application is divided into five parts, plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)).

Part II: Budget Information.

Part III: Budget Narrative.

Part IV: Program Narrative.

Part V: Additional Assurances and Certifications:

a. Assurances—Non-Construction Programs (Standard Form 424B).

b. Certification regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and Instructions.

c. Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and Instructions. (NOTE: The grantee should keep this form on file. It should not be transmitted to the Department.)

d. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and Instructions, and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A.)

All forms and instructions are included as Appendix A of this notice. Questions and answers pertaining to this program are included, as Appendix B, to assist potential applicants.

All applicants must submit ONE original signed application, including ink signatures on all forms and assurances and SIX copies of the application. Please mark each application as original or copy. Local or State agencies may choose to submit two copies with the original. No grant may be awarded unless a complete application form has been received.

FOR FURTHER INFORMATION CONTACT: Laura Karl Messenger, Special Programs Branch, Division of National Programs, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 4512, Mary E. Switzer Building), Washington, DC 20202–7242. Telephone (202) 205–5565. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 2441(b)

Dated: September 10, 1992.

Betsy Brand,

Assistant Secretary Office of Vocational and Adult Education.

BILLING CODE 4000–01–M

APPENDIX A

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☒ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:
☒ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

9. NAME OF FEDERAL AGENCY:
U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 84.099
TITLE: Bilingual Vocational Instructor Training Program

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date | Ending Date

14. CONGRESSIONAL DISTRICTS OF: a. Applicant | b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:
DATE _____
b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

		A	B	C
1.	Personnel			
2.	Fringe Benefits (Rate %)			
3.	Travel			
4.	Equipment			
5.	Supplies			
6.	Contractual			
7.	Other			
8.	Total, Direct Cost (lines 1 through 7)			
9.	Indirect Cost (Rate %)			
10.	Training Costs/Stipends			
11.	TOTAL, Federal Funds Requested (lines 8 through 10)			

SECTION B - Cost Sharing Summary (if appropriate)

		A	B	C
1.	Cash Contribution			
2.	In-Kind Contribution (only costs specifically for this project)			
3.	TOTAL, Cost Sharing (Rate %)			

NOTE: For FULLY-FUNDED PROJECTS use Column A to record the first 12-month budget period; Column B to record the remaining months of the project; and Column C to record the total.

For MULTI-YEAR PROJECTS use Column A to record the first 12-month budget period; Column B to record the second 12-month budget period; and Column C to record the third 12-month budget period.

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. Personnel: Show salaries to be paid to project personnel.

2. Fringe Benefits: Indicate the rate and amount of fringe benefits.

3. Travel: Indicate the amount requested for both inter- and intra-State travel of project staff. Include funds for at least one trip for two people to attend a project director's meeting in Washington, D.C.

4. Equipment: Indicate the cost of non-expendable personnel property that has a useful life of more than one year and a cost of $300 or more per unit ($5,000 or more if State, Local, or Tribal Government).

5. Supplies: Include the cost of consumable supplies and materials to be used during the project.

6. Contractual: Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts.

7. Other: Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.

8. Total, Direct Cost: Show the total for lines 1 through 7.

9. Indirect Costs: Indicate the rate and amount of indirect costs. NOTE: For training grants, the indirect cost rate cannot exceed 8%.

10. Training/Stipend Cost: (if allowable)

11. TOTAL, Federal Funds Requested: Show total for lines 8 through 10.

SECTION B - Cost Sharing Summary

Indicate the actual rate and amount of cost sharing when there is a cost sharing requirement. If cost sharing is required by program regulations, the local share required refers to a percentage of TOTAL PROJECT COST, not of Federal funds.

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Instructions for Part III—Budget Narrative

The budget narrative should explain, justify, and, if needed, clarify your budget summary. For each line item (personnel, fringe benefits, travel, etc.) in your budget, explain why it is there and how you computed the costs.

Please limit this section to no more than five pages. Be sure that each page of your application is numbered consecutively.

Instructions for Part IV—Program Narrative

The program narrative will comprise the largest portion of your application. This part is where you spell out the who, what, when, where, why, and how of your proposed project.

Although you will not have a form to fill out for your narrative, there is a format. This format is the selection criteria. Because your application will be reviewed and rated by a review panel on the basis of the selection criteria, your narrative should follow the order and format of the criteria.

Before preparing your application, you should carefully read the legislation and regulations of the program, eligibility requirements, information on any priority set by the Secretary, and the selection criteria for this competition.

Your program narrative should be clear, concise, and to the point. Begin the narrative with a one page abstract or summary of your proposed project. Then describe the project in detail, addressing each selection criterion in order.

The Secretary strongly suggests that the applicant limit the program narrative to no more than 40 double-spaced, typed pages (on one side only), although the Secretary will consider applications of greater length. Be sure to number consecutively *ALL* pages in your application.

You may include supporting documentation as appendices. Be sure that this material is concise and pertinent to this program competition.

Applicants are advised that: (a) The Department considers only information contained in the application in ranking applications for funding consideration. Letters of support sent separately from the formal application package are not considered in the review by the technical review panels. (34 CFR 75.217)

(b) The technical review panel evaluates each application solely on the basis of the established technical review criteria. Letters of support contained in the application will strengthen the application only insofar as they contain commitments that pertain to the established technical review criteria, such as commitment and resources.

Additional Materials

Instructions for Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 90 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project, OMB 1830–0013, Washington, DC 20503. (Information collection approved under OMB control number 1830–0013. Expiration date: 2/28/95.)

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OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 --

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about--

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will--

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐ a. initial filing
b. material change
For Material Change Only:
year _____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier _____, *if known:*
Congressional District, *if known:*

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
Congressional District, *if known:*

6. Federal Department/Agency:

7. Federal Program Name/Description:
CFDA Number, *if applicable:* _____

8. Federal Action Number, *if known:*

9. Award Amount, *if known:*
$

10. a. Name and Address of Lobbying Entity
(if individual, last name, first name, MI):

b. Individuals Performing Services *(including address if different from No. 10a)*
(last name, first name, MI):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*
$ _____ ☐ actual ☐ planned

12. Form of Payment *(check all that apply):*
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

13. Type of Payment *(check all that apply):*
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ **Date:** _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

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Standard Form - LLL-A

BILLING CODE 4000-01-C

Appendix B

Potential applicants frequently direct questions to officials of the Department regarding application notices and programmatic and administrative regulations governing various direct grant programs. To assist potential applicants the Department has assembled the following most commonly asked questions.

Q. Can we get an extension of the deadline?

A. No. A closing date may be changed only under extraordinary circumstances. Any change must be announced in the Federal Register and apply to all applications. Waivers for individual applications cannot be granted regardless of the circumstances.

Q. How many copies of the application should I submit and must they be bound?

A. Our new policy calls for an original and six copies to be submitted. The binding of applications is optional.

Q. May we use this same application to compete for funds under a different grant program?

A. Yes, however, the likelihood of success is not good. A properly prepared application must meet the specifications of the grant program to which it is submitted.

Q. I'm not sure which grant program is most appropriate for my project. What should I do?

A. We are happy to discuss any questions with you and provide clarification on the unique elements of the various grant programs.

Q. Will you help us prepare our application?

A. We are happy to provide general program information. Clearly, it would not be appropriate for staff to participate in the actual writing of an application, but we can respond to specific questions about application requirements, evaluation criteria, and the priorities. Applicants should understand that this previous contact is not required, nor will it in any way influence the success of an application.

Q. When will I find out if I'm going to be funded?

A. You can expect to receive notification within 3 to 4 months of the application closing date, depending on the number of applications received and the number of grant programs with closing dates at about the same time.

Q. Once my application has been reviewed by the review panel, can you tell me the outcome?

A. No. Every year we are called by a number of applicants who have legitimate reasons for needing to know the outcome of the review prior to official notification. Some applicants need to make job decisions, some need to notify a local school district, etc. Regardless of the reason, because final funding decisions have not been made at that point, we cannot share information about the review with anyone.

Q. Will my application be returned if I am not funded?

A. We no longer return unsuccessful applications. Thus, applicants should retain at least one copy of the application.

Q. Can I obtain copies of reviewers' comments?

A. Upon written request, reviewers' comments will be mailed to unsuccessful applicants.

Q. Is travel allowed under these projects?

A. Travel associated with carrying out the project is allowed. Because we may request the project director of funded projects to attend an annual project directors meeting, you may also wish to include a trip or two to Washington, D.C. in the travel budget. Travel to conferences is sometimes allowed when it is for purposes of dissemination.

Q. If my application receives high scores from the reviewers, does that mean that I will receive funding?

A. Not necessarily. It is often the case that the number of applications scored highly by the reviewers exceeds the dollars available for funding projects under a particular competition. The order of selection, which is based on the scores of all the applications and other relevant factors, determines the applications that can be funded.

Q. What happens during negotiations?

A. During negotiations technical and budget issues may be raised. These are issues that have been identified during the panel and staff reviews that require clarification. Sometimes issues are stated as "conditions." These are issues that have been identified as so critical that the award cannot be made unless those conditions are met. Questions may also be raised about the proposed budget. Generally, these issues are raised because there is inadequate justification or explanation of a particular budget item, or because the budget item seems unimportant to the successful completion of the project. If you are asked to make changes that you feel could seriously affect the project's success, you may provide reasons for not making the changes or provide alternative suggestions. Similarly, if proposed budget reductions will, in your opinion, seriously affect the project activities, you may explain why and provide additional justification for the proposed expenses. An award cannot be made until all negotiation issues have been resolved.

Q. How do I provide an assurance?

A. Except for SF–424B, "Assurances—Non-Construction Programs," which must be completed, simply state in writing that you are meeting a proscribed requirement.

Q. Where can copies of the **Federal Register**, program regulations, and Federal statutes be obtained?

A. Copies of these materials can usually be found at your local library. If not, most can be obtained from the Government Printing Office by writing to: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Telephone: (202) 783–3238. When requesting copies of regulations or statutes, it is helpful to use the specific name, public law number, or part number. The material referenced in this notice should be referred to as follows:

Carl D. Perkins Vocational and Applied Technology Education Act (Public Law 101–392).

[FR Doc. 92–22734 Filed 9–18–92; 8:45 am]

BILLING CODE 4000–01–M

federal register

Monday
September 21, 1992

Part V

Department of Education

Bilingual Vocational Training Program; Inviting Applications for New Awards for Fiscal Year 1993; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.077]

Bilingual Vocational Training Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1993

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), this notice contains information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: The Bilingual Vocational Training Program provides financial assistance for bilingual vocational education and training for limited English proficient out-of-school youth and adults, to prepare these individuals for jobs in recognized occupations and new and emerging occupations.

This program supports AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals, by helping to improve vocational education and training for limited English proficient out-of-school youth and adults. National Education Goal 5 calls for adult Americans to be literate and to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Eligible Applicants: State agencies, local educational agencies, postsecondary educational institutions, private nonprofit vocational training institutions, other nonprofit organizations specially created to serve or currently serving individuals who normally use a language other than English.

Deadline for Transmittal of Applications: December 11, 1992.

Deadline for Intergovernmental Review: February 9, 1993.

Available Funds: $2,250,000.

Estimated Range of Awards: $150,000–$250,000.

Estimated Average Size of Awards: $187,500.

Estimated Number of Awards: 12.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months.

Applicable Regulations:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals and Nonprofit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(7) 34 CFR part 82 (New Restrictions on Lobbying).

(8) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(9) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The regulations for this program in 34 CFR part 427.

Invitational Priorities: The Secretary is particularly interested in applications that meet the following invitational priorities. However, under 34 CFR 75.105(c)(1), an application that meets these invitational priorities does not receive competitive or absolute preference over other applications:

Invitational Priority 1—Instructional Staff

Applications that propose to use instructional staff currently employed by the applicant agency or institution(s), rather than request Federal funding for new instructional staff.

Invitational Priority 2—Support Services Funding

Applications that propose to use Federal funds available under Title II of the Carl D. Perkins Vocational and Applied Technology Education Act (the Act) to provide bilingual vocational training support services, such as bilingual aides, native language curriculum materials, and vocational English-as-a-Second-Language (VESL) learning center resources.

Invitational Priority 3—Coordinated Service Delivery

Applications that propose to operate a bilingual vocational training program by coordinating service delivery among providers and sharing existing resources, facilities, and staff.

Content of the Application: (a) An application must—

(1) Provide an assurance that the activities and services for which assistance is sought will be administered by or under the supervision of the applicant;

(2) Propose a project of a size, scope, and design that will make a substantial contribution toward carrying out the purpose of the Bilingual Vocational Training Program;

(3) Contain measurable goals for the enrollment, completion, and placement of program participants;

(4) Include a comparison of how the applicant's goals take into consideration any related standards and measures in the geographic area for the Job Opportunities and Basic Skills Training (JOBS) program (42 U.S.C. 681 *et seq.*) and any Job Training Partnership Act (JTPA) programs (29 U.S.C. 1501 *et seq.*) and any standards set by the State Board for Vocational Education for the occupational and geographic area;

(5) Describe, for each occupation for which training is to be provided, how successful program completion will be determined and reported to the Secretary in terms of the academic and vocational competencies to be demonstrated by enrollees prior to successful completion and any academic or work credentials expected to be acquired upon completion; and

(6) Be submitted to the State board for vocational education (State board) established under section 111 of the Act for review and comment, including comment on the relationship of the proposed project to the State's vocational education program.

(b) An applicant shall include any comments received under paragraph (a)(6) of this section with the application.

Selection Criteria: The Secretary uses the following selection criteria to evaluate applications for new grants under this competition. The maximum score for all of these criteria is 100 points. The maximum score for each criterion is indicated in parentheses. The Secretary assigns the fifteen points, reserved in 34 CFR 427.20(b), as follows: 5 points to selection criterion (b)—Plan of operation—in 34 CFR 427.21(b) for a total of 20 points for that criterion; and 10 points to selection criterion (c)—Program factors—in 34 CFR 427.21(c) for a total of 30 points for that criterion.

(a) *Need.* (15 points) The Secretary reviews each application for specific information that shows the need for the proposed bilingual vocational training project in the local geographic area, including—

(1) The employment training need of limited English proficient individuals to be met;

(2) The labor market need to be met; and

(3) The relationship of the proposed project to other employment training programs in the community.

(b) *Plan of operation.* (20 points)

(1) The Secretary reviews each application to determine the extent to which the project proposes measurable goals for student enrollment, completion, and placement and describes how the applicant sets the goals taking into consideration the standards and measures for JOBS programs and JTPA programs and any standards set by the State Board established under section 111 of the Act for the occupation and geographic area.

(2) The Secretary reviews each application to determine the extent to which the project defines successful program completion (or describes how successful program completion will be defined and reported to the Secretary) in a way consistent with the goals of the program for each occupation for which training is to be provided.

(3)(i) The Secretary reviews each application for specific information that, upon completion of their training, more than 65 percent of the trainees will be employed in jobs (including military specialties) related to their training, or will be enrolled for further training related to their training under this program. This information must correspond to the information described in paragraph (a) of this section.

(ii) The estimated job placement rate must be supported by past records, actual employer job commitments, anticipated job openings, or other pertinent information.

(4) The Secretary reviews each application for an effective plan of management that ensures proper and efficient administration of the project, including—

(i) Clearly defined project objectives that relate to the purpose of the Bilingual Vocational Training Program;

(ii) For each objective, the specific tasks to be performed in order to achieve the specified project objective;

(iii) How the applicant plans to use its resources and personnel to achieve each objective; and

(iv) If the applicant plans to use a project advisory committee, a clear plan for using a project advisory committee to assist in project development, to review curriculum materials, and to make recommendations about job placements.

(c) *Program factors.* (30 points)

(1) The Secretary reviews each application to determine the quality of training to be provided, including—

(i) Provision of vocational skills instruction in English and the trainees' native languages;

(ii) Provision of job-related English-as-a-second language instruction;

(iii) Coordination of the job-related English-as-a-second language instruction with the vocational skills instruction;

(iv) Recruitment procedures that are targeted towards limited English proficient out-of-school youth and adults who have the greatest need for bilingual vocational training;

(v) Assessment procedures that evaluate the language and vocational training needs of the trainees;

(vi) Provision of counseling activities and employability skills instruction that prepare trainees for employment in an English language environment; and

(vii) Job development and job placement procedures that provide opportunities for career advancement or entrepreneurship.

(2) The Secretary reviews each application to determine the project's potential to have a lasting impact in the local geographic area, including the potential impact of the project on—

(i) Program participants;

(ii) The agency or agencies responsible for administering the bilingual vocational training program;

(iii) Other employment training services in the local area; and

(iv) The community.

(d) *Key personnel.* (10 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the director and other key personnel to be used in the project;

(ii) The appropriateness of the time that each person referred to in paragraph (d)(1)(i) of this section will commit to the project; and

(iii) How the applicant, as part of its nondiscriminatory employment practices, will ensure that personnel will be selected without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraph (d)(1)(i) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience and training in project management; and

(iii) Any other qualifications that pertain to the quality of the project.

(e) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is sufficient to support the proposed project, and that it represents a cost effective use of Bilingual Vocational Training Program funds;

(2) Costs are necessary and reasonable in relation to the objectives of the proposed project; and

(3) The facilities, equipment, and supplies that the applicant plans to use are adequate for the proposed project.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and appropriate for the project;

(2) Identifies at a minimum, types of data to be collected and reported with respect to the English-language competencies and academic and vocational competencies demonstrated by participants and the number and kinds of academic and work credentials acquired by individuals who complete the training;

(3) Identifies at a minimum, types of data to be collected and reported with respect to enrollment, completion, and placement of participants by sex, racial or ethnic group, socio-economic status, and if appropriate, by level of English proficiency, for each occupation for which training is provided;

(4) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results; and

(5) Makes use of an external evaluator.

(g) *Demonstration and dissemination.* (10 points) The Secretary reviews each application for information to determine the effectiveness and efficiency of the plan for demonstrating and disseminating information about project activities and results throughout the project period, including—

(1) High quality in the design of the demonstration and dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Provisions for making available the methods and techniques used by the project to others interested in replicating these methods and techniques, such as by inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make

available to help others replicate project activities and the methods for making the materials available; and

(5) Provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project.

Additional Factors: (a) After evaluating the applications according to the selection criteria and consulting with the appropriate State board established under section 111 of the Act, the Secretary determines whether the most highly rated applications are equitably distributed among populations of individuals with limited English proficiency within the affected State.

(b) The Secretary may select other applications for funding if doing so would improve the—

(1) Equitable distribution of assistance among populations of individuals with limited English proficiency within a State; or

(2) Geographical distribution of projects funded under this program.

Intergovernmental Review of Federal Programs: This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the appendix to the Department's combined application notice, published elsewhere in this issue of the **Federal Register**.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA 84.077, U.S. Department of Education, room 4161, 400 Maryland Avenue SW., Washington, DC 20202–0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. Do not send applications to the above address.

Instructions for Transmittal of Applications: (a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and six copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.077), Washington, DC 20202–4725.

or

(2) Hand deliver the original and six copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.077), room 3633, Regional Office Building 3, 7th and D Streets, SW., Washington, DC 20202–4725.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgement to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 732–2495.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number of the competition under which the application is being submitted.

Application Instructions and Forms: The appendix to this application is divided into five parts, plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information.

Part III: Budget Narrative.

Part IV: Program Narrative.

Part V: Additional Assurances and Certifications:

a. Assurances—Non-Construction Programs (Standard Form 424B).

b. Certification regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and Instructions.

c. Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and Instructions. (NOTE: The grantee should keep this form on file. It should not be transmitted to the Department.)

d. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions, and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A.)

All forms and instructions are included as Appendix A of this notice. Questions and answers pertaining to this program are included, as appendix B, to assist potential applicants.

All applicants must submit ONE original signed application, including ink signatures on all forms and assurances and SIX copies of the application. Please mark each application as original or copy. Local or State agencies may choose to submit two copies with the original. No grant may be awarded unless a complete application form has been received.

For Further Information Contact: Laura Karl Messenger, Special Programs Branch, Division of National Programs, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue, SW., (room 4512, Mary E. Switzer Building), Washington, DC 20202–7242. Telephone (202) 205–5565. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 2441(a).

Dated: September 10, 1992.

Betsy Brand,

Assistant Secretary, Office of Vocational and Adult Education.

BILLING CODE 4000-01-M

APPENDIX A

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☒ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

9. NAME OF FEDERAL AGENCY:

U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 0 7 7

TITLE: Bilingual Vocational Training Program

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV. 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	A	B	C
1. Personnel			
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Costs/Stipends			
11. TOTAL, Federal Funds Requested (lines 8 through 10)			

SECTION B - Cost Sharing Summary (if appropriate)

	A	B	C
1. Cash Contribution			
2. In-Kind Contribution (only costs specifically for this project)			
3. TOTAL, Cost Sharing (Rate %)			

NOTE: For FULLY-FUNDED PROJECTS use Column A to record the first 12-month budget period; Column B to record the remaining months of the project; and Column C to record the total.

For MULTI-YEAR PROJECTS use Column A to record the first 12-month budget period; Column B to record the second 12-month budget period; and Column C to record the third 12-month budget period.

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. Personnel: Show salaries to be paid to project personnel.

2. Fringe Benefits: Indicate the rate and amount of fringe benefits.

3. Travel: Indicate the amount requested for both inter- and intra-State travel of project staff. Include funds for at least one trip for two people to attend a project director's meeting in Washington, D.C.

4. Equipment: Indicate the cost of non-expendable personnel property that has a useful life of more than one year and a cost of $300 or more per unit ($5,000 or more if State, Local, or Tribal Government).

5. Supplies: Include the cost of consumable supplies and materials to be used during the project.

6. Contractual: Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts.

7. Other: Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.

8. Total, Direct Cost: Show the total for lines 1 through 7.

9. Indirect Costs: Indicate the rate and amount of indirect costs. NOTE: For training grants, the indirect cost rate cannot exceed 8%.

10. Training/Stipend Cost: (if allowable)

11. TOTAL, Federal Funds Requested: Show total for lines 8 through 10.

SECTION B - Cost Sharing Summary

Indicate the actual rate and amount of cost sharing when there is a cost sharing requirement. If cost sharing is required by program regulations, the local share required refers to a percentage of TOTAL PROJECT COST, not of Federal funds.

BILLING CODE 4000-01-C

Instructions for Part III—Budget Narrative

The budget narrative should explain, justify, and, if needed, clarify your budget summary. For each line item (personnel, fringe benefits, travel, etc.) in your budget, explain why it is there and how you computed the costs.

Please limit this section to no more than five pages. Be sure that each page of your application is numbered consecutively.

Instructions for Part IV—Program Narrative

The program narrative will comprise the largest portion of your application. This part is where you spell out the who, what, when, where, why, and how of your proposed project.

Although you will not have a form to fill out for your narrative, there is a format. This format is the selection criteria. Because your application will be reviewed and rated by a review panel on the basis of the selection criteria, your narrative should follow the order and format of the criteria.

Before preparing your application, you should carefully read the legislation and regulations of the program, eligibility requirements, information on any priority set by the Secretary, and the selection criteria for this competition.

Your program narrative should be clear, concise, and to the point. Begin the narrative with a one page abstract or summary of your proposed project. Then describe the project in detail, addressing each selection criterion in order.

The Secretary strongly suggests that the applicant limit the program narrative to no more than 40 double-spaced, typed pages (on one side only), although the Secretary will consider applications of greater length. Be sure to number consecutively all pages in your application.

You may include supporting documentation as appendices. Be sure that this material is concise and pertinent to this program competition.

Applicants are advised that:

(a) The Department considers only information contained in the application in ranking applications for funding consideration. Letters of support sent separately from the formal application package are not considered in the review by the technical review panels. (34 CFR 75.217)

(b) The technical review panel evaluates each application solely on the basis of the established technical review criteria. Letters of support contained in the application will strengthen the application only insofar as they contain commitments that pertain to the established technical review criteria, such as commitment and resources.

Additional Materials

Instructions for Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 90 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project, OMB 1830–0013, Washington, DC 20503. (Information collection approved under OMB control number 1830–0013. Expiration date: 2/28/95.)

BILLING CODE 4000-01-M

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐ a. initial filing
b. material change
For Material Change Only:
year _____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier _____, *if known:*
Congressional District, *if known:*

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
Congressional District, *if known:*

6. Federal Department/Agency:

7. Federal Program Name/Description:
CFDA Number, *if applicable:* _____

8. Federal Action Number, *if known:*

9. Award Amount, *if known:*
$

10. a. Name and Address of Lobbying Entity
(if individual, last name, first name, MI):

b. Individuals Performing Services *(including address if different from No. 10a)*
(last name, first name, MI):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*
$ _____ ☐ actual ☐ planned

12. Form of Payment *(check all that apply):*
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

13. Type of Payment *(check all that apply):*
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ **Date:** _____

Federal Use Only:

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Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

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Standard Form - LLL-A

BILLING CODE 4000-01-C

Appendix B

Potential applicants frequently direct questions to officials of the Department regarding application notices and programmatic and administrative regulations governing various direct grant programs. To assist potential applicants the Department has assembled the following most commonly asked questions.

Q. Can we get an extension of the deadline?

A. No. A closing date may be changed only under extraordinary circumstances. Any change must be announced in the **Federal Register** and apply to all applications. Waivers for individual applications cannot be granted regardless of the circumstances.

Q. How many copies of the application should I submit and must they be bound?

A. Our new policy calls for an original and six copies to be submitted. The binding of applications is optional.

Q. May we use this same application to compete for funds under a different grant program?

A. Yes, however, the likelihood of success is not good. A properly prepared application must meet the specifications of the grant program to which it is submitted.

Q. I'm not sure which grant program is most appropriate for my project. What should I do?

A. We are happy to discuss any questions with you and provide clarification on the unique elements of the various grant programs.

Q. Will you help us prepare our application?

A. We are happy to provide general program information. Clearly, it would not be appropriate for staff to participate in the actual writing of an application, but we can respond to specific questions about application requirements, evaluation criteria, and the priorities. Applicants should understand that this previous contact is not required, nor will it in any way influence the success of an application.

Q. When will I find out if I'm going to be funded?

A. You can expect to receive notification within 3 to 4 months of the application closing date, depending on the number of applications received and the number of grant programs with closing dates at about the same time.

Q. Once my application has been reviewed by the review panel, can you tell me the outcome?

A. No. Every year we are called by a number of applicants who have legitimate reasons for needing to know the outcome of the review prior to official notification. Some applicants need to make job decisions, some need to notify a local school district, etc. Regardless of the reason, because final funding decisions have not been made at that point, we cannot share information about the review with anyone.

Q. Will my application be returned if I am not funded?

A. We no longer return unsuccessful applications. Thus, applicants should retain at least one copy of the application.

Q. Can I obtain copies of reviewers' comments?

A. Upon written request, reviewers' comments will be mailed to unsuccessful applicants.

Q. Is travel allowed under these projects?

A. Travel associated with carrying out the project is allowed. Because we may request the project director of funded projects to attend an annual project directors meeting, you may also wish to include a trip or two to Washington, DC in the travel budget. Travel to conferences is sometimes allowed when it is for purposes of dissemination.

Q. If my application receives high scores from the reviewers, does that mean that I will receive funding?

A. Not necessarily. It is often the case that the number of applications scored highly by the reviewers exceeds the dollars available for funding projects under a particular competition. The order of selection, which is based on the scores of all the applications and other relevant factors, determines the applications that can be funded.

Q. What happens during negotiations?

A. During negotiations technical and budget issues may be raised. These are issues that have been identified during the panel and staff reviews that require clarification. Sometimes issues are stated as "conditions." These are issues that have been identified as so critical that the award cannot be made unless those conditions are met. Questions may also be raised about the proposed budget. Generally, these issues are raised because there is inadequate justification or explanation of a particular budget item, or because the budget item seems unimportant to the successful completion of the project. If you are asked to make changes that you feel could seriously affect the project's success, you may provide reasons for not making the changes or provide alternative suggestions. Similarly, if proposed budget reductions will, in your opinion, seriously affect the project activities, you may explain why and provide additional justification for the proposed expenses. An award cannot be made until all negotiation issues have been resolved.

Q. How do I provide an assurance?

A. Except for SF–424B, "Assurances—Non-Construction Programs," which must be completed, simply state in writing that you are meeting a proscribed requirement.

Q. Where can copies of the **Federal Register**, program regulations, and Federal statutes be obtained?

A. Copies of these materials can usually be found at your local library. If not, most can be obtained from the Government Printing Office by writing to: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Telephone: (202) 783–3238. When requesting copies of regulations or statutes, it is helpful to use the specific name, public law number, or part number. The material referenced in this notice should be referred to as follows:

Carl D. Perkins Vocational and Applied Technology Education Act (Public Law 101–392).

[FR Doc. 92–22735 Filed 9–18–92; 8:45 am]

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federal register

Monday
September 21, 1992

Part VI

Department of Education

34 CFR Part 305

Regional Resource and Federal Centers; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 305

RIN 1820-AB00

Regional Resource and Federal Centers

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations implementing the Regional Resource and Federal Centers program authorized by section 621 of the Individuals with Disabilities Education Act (IDEA). These proposed regulatory changes are needed to implement the guidelines and criteria developed by the Secretary based on recommendations from a panel convened in accordance with section 621(f)(1) of the Act. These proposed regulations would add requirements for the Regional Resource and Federal Centers related to the identification of and the provision of technical assistance on emerging issues and trends; clarify responsibilities related to linking and coordinating with other technical assistance providers as well as certain other entities; and assure that Regional Resource Center (RRC) evaluation measures include State capacity for improving services for students with disabilities.

This program supports AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals, by improving services for infants, toddlers, children, and youth with disabilities and, by so doing, helping them reach the high levels of academic achievement called for by the National Education Goals.

DATES: Comments must be received on or before October 21, 1992.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Ms. Marie Roane, Department of Education, 400 Maryland Avenue, SW., room 4627, Switzer Building, Washington, DC 20202-2644.

A copy of any comments that concern information collection requirements should be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Ms. Marie Roane, Telephone (202) 202-8451. Deaf and hearing impaired individuals may call (202) 205-6170 for TDD services.

SUPPLEMENTARY INFORMATION: The Regional Resource and Federal Centers program provides assistance for projects designed to assist State educational agencies, and through those State educational agencies, local educational agencies and other appropriate public agencies providing special education, related services, and early intervention services to infants, toddlers, children, and youth with disabilities and their families. Public Law 101-476, amending the Individuals with Disabilities Education Act (IDEA), required that the Secretary convene a panel to develop, and publish in the **Federal Register** for review and comment, guidelines and criteria that include—

(1) A description of how the Regional Resource and Federal Centers program will be administered by the Secretary; (2) a description of the geographic region each Center is expected to serve; (3) a description of the role of a Center in terms of expected leadership and dissemination efforts; (4) a description of expected relationships with State agencies, research and demonstration centers, and other entities deemed necessary; (5) a description of how a Center will be evaluated; and (6) other guidelines and criteria deemed necessary.

In response to this directive, the Secretary convened a preliminary panel that included State special education directors from three States, State and local special education staff from the same three States, representatives of disability advocates, representatives of related technical assistance projects, Office of Special Education Programs (OSEP) staff, and Regional Resource and Federal Centers' directors. In a one-day meeting this group discussed the operation of the Regional Resource and Federal Centers program, the range of technical assistance needs within and among States and the specific issues described above. At the suggestion of the preliminary panel, these discussions were shared with a larger group of State special education directors for additional input as well as with a group of representatives of disability advocates. Finally, following the October 22, 1991, publication of regulations incorporating other changes to Section 621 of the IDEA, as amended by Public Law 101-476, several members of the preliminary panel, supplemented by additional representatives of disability advocates, convened by teleconference as the Regional Resource and Federal Centers' panel to propose criteria and guidelines based on the discussions during the various input meetings. The discussions related to each issue as well as any proposed guidelines or criteria are summarized below.

Summary of Discussions and Proposed Guidelines or Criteria

A Description of How the Regional Resource and Federal Centers Program Will be Administered by the Secretary

Discussion: There was little discussion related to this issue. The statute and the regulations allow the Secretary to provide assistance through grants, cooperative agreements, or contracts. The six RRCs are currently administered through cooperative agreements, while the Federal Center operates under a contract. None of the participants proposed changing the Secretary's use of this arrangement. Most felt that whatever mechanism was used should allow maximum flexibility for adjusting the activities of the Center to emerging issues and needs of States. Since the current options for administering the program provide this flexibility, the panel recommended that no change be made.

Proposed Changes: None. The Secretary will select the most appropriate arrangement for providing assistance, taking into account the need for flexibility in the operation of the Centers.

A Description of the Geographic Region Each Center Is Expected To Serve

Discussion: Currently the Secretary has established six regions in § 305.11. There was little discussion related to changes in the current regional structure. One person suggested reconfiguring the regions based on particular features of States, such as size, to facilitate the provision of technical assistance that meets the common needs of States in the region. Others suggested that a particular State might have needs similar to one group of States for one type of issue but significantly different needs on other types of issues. In general, the panel felt strategic linkages and collaboration across regions would allow States to flexibly focus on common issues, changing the mix of States as appropriate. After considering the issue, the panel recommended that no changes be made, but that linkage and collaboration across regions be encouraged.

Proposed Changes: None. However, the Secretary encourages linkages and collaboration across regions to better meet the needs of States with common issues.

A Description of the Role of a Center in Terms of Expected Leadership and Dissemination Efforts

Discussion: The preliminary panel emphasized the importance of the RRCs assuming a proactive leadership role, particularly related to assisting States in identifying emerging issues and trends and in shaping a vision to guide change efforts. The representatives of disability advocates stressed the importance of ensuring that the identification of emerging issues and needs was based on broad-based input that included a range of groups within a State. The Federal Center was identified as an important mechanism for synthesizing information about needs, issues, and trends across States and regions and providing a national perspective that RRCs can in turn share with States.

Change facilitation was also identified as an important role for RRCs. Specifically, it was felt that RRC assistance in problem identification, monitoring change efforts and providing feedback, was as important as the training, consultation, and other activities RRCs carry out to support changes in service systems for students with disabilities.

Dissemination was primarily addressed as a part of RRC efforts to keep States apprised of emerging issues and trends in special education and related fields. Issue briefs and topically focused syntheses of key research and practice information were viewed as more helpful than dissemination of long reports or collections of articles.

In considering these issues, the panel felt the RRCs should have the ability to perform a more active role in bringing about state-of-the-art practice while still taking into account differences among States and the need to respond to individual State issues. They recommended that the Federal Center periodically gather and summarize information from the field on emerging issues and trends. The panel felt that through the assistance of a panel established by the Federal Center, this information could be interpreted and provide a national picture that could be used to establish technical assistance activities that ensured that emerging and proactive needs as well as individual State-identified needs are addressed by the Regional Resource and Federal Centers program. The panel convened by the Federal Center would be broadly representative of the special education constituency including State educational agencies (SEAs), local educational agencies (LEAs), parents, professional organizations, and consumers. The panel particularly emphasized the importance of including individuals from minority backgrounds in this activity. Key issues and trends identified by the panel would lead to potential technical assistance through the mechanism of multi-regional activities developed through collaboration among the RRCs. Thus, the panel recommended that the regulations be amended to ensure that the FC gathers, summarizes, and, through use of a broadly based panel, interprets information on emerging issues and trends. They further recommended that the regulations provide for assistance by the RRCs related to both persistent problems and emerging issues and trends, to provide sufficient flexibility to meet the different needs of States.

Proposed Changes: The Secretary is proposing to amend § 305.10(b) to include assistance in identifying emerging issues and trends. Further, § 305.11 would be redesignated as § 305.12, and a new § 305.11 added describing the services required of the Federal Center. These would include identifying and synthesizing information on emerging issues and trends and establishing a broadly based panel to interpret this information and provide a national picture for establishing a technical assistance agenda within and across regions. The heading for § 305.31 and the first two paragraphs under § 305.31(a) are revised to insert selection criteria related to these activities. Dissemination activities are already required, and all of the other leadership and change facilitation activities are consistent with the current regulations.

A Description of Expected Relationships With State Agencies, Research and Demonstration Centers, and Other Entities Deemed Necessary

Discussion: The preliminary panel stated that clearly defined linkages among RRCs, SEAs, and other organizations were necessary to alleviate some of the conflicting and confusing expectations that currently occur as well as the potential for duplication. Establishing links with regular education and non-education entities was also viewed as important in strengthening the resources and networks of the RRCs. The importance of establishing linkages with health-related entities was stressed by the representatives of disability advocates as a way of providing information on complex, multifaceted service delivery issues.

The expected role and linkages of the Federal Center were specifically addressed in relation to this issue. The preliminary panel felt the FC provided a mechanism for linking with particular networks and entities on issues of national interest, and then sharing information with the RRCs. It was also noted that the expected linkages among federally funded projects needed to be clarified in the workscopes or agreements of the other entities as well as in those of the RRCs if they are to work. The efforts OSEP made to bring staff from all technical assistance and dissemination projects together on an annual basis and to facilitate networking were viewed as an important step in this process.

The panel also saw the Federal Center as key in linking and coordinating the RRCs with other technical assistance providers including health-related entities, organizations representing persons with disabilities, and parent projects. Information from these activities would be shared with the RRCs as well as with States.

Proposed Changes: The Secretary is proposing to include specific responsibilities for the Federal Center to link and coordinate the RRCs with each other and other technical assistance providers as well as organizations representing persons with disabilities and parent projects under the new § 305.11.

A Description of How a Center Will Be Evaluated

Discussion: The discussions related to evaluation centered around two major issues—the extent to which evaluation designs should focus on the impact of RRC activities at the State and local level, and other ways of measuring and reporting RRC effectiveness. Though the preliminary panel agreed that the ultimate impact of RRCs activities would be found at the local level, they also felt that local impact would result from changes in State capacity for improving services, and that measures of these changes was a more appropriate focus for evaluation. There was also general consensus from all groups that impact at the local level was difficult to measure because of the existence of so many other variables. Several State directors suggested that consumer satisfaction might be one measure of RRC effectiveness. Another suggested that annual accounting of State needs and technical assistance provided would serve as a good accountability tool.

The panel agreed that a primary focus of RRC evaluation should be changes in the State's capacity to work with LEAs in improving services for students with disabilities. Thus, they recommended that the evaluation activities required of RRCs focus on this dimension. They also

agreed that an annual accounting of the technical assistance provided by RRCs was useful, but determined that disseminating the annual performance reports required of projects under the Education Department General Administrative Regulations would easily suffice.

Proposed Changes: The Secretary is proposing to amend § 305.31(f)(2) to include evaluation information related to changes in State capacity to work with LEAs to improve services to students with disabilities in the target areas identified by the State and the RRC.

Other Guidelines and Criteria Deemed Necessary

Discussion: All of the participants in this process stressed the need for flexibility in the guidelines for the Centers, and the dangers of being overly prescriptive in developing the guidelines. At the same time, it was noted that current regulations for this program more specifically address the RRCs than the Federal Center.

Proposed Changes: In addition to the changes described above, changes are also proposed for the heading and introductory text to § 305.40 to clarify that the Federal Center is to perform the activities specified in this section.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by these proposed regulations are small public agencies, institutions of higher education, and private nonprofit organizations receiving Federal funds under this program. However, the regulations would not have a significant economic impact on the small LEAs affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1980

Sections 305.31 and 305.40 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

Information described at § 305.31 and § 305.40 is required to be provided by applicants seeking support to conduct activities authorized under section 621 of the Individuals with Disabilities Education Act. This information will be used to determine grant eligibility, acceptability of proposals, and awards. Respondents eligible to submit applications are institutions of higher education, private nonprofit organizations, SEAs, public agencies, or combinations of these agencies and institutions.

Annual public reporting burden for this collection of information is estimated to average 32 hours per response for 15 respondents, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with this order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 4627, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

List of Subjects in 34 CFR Part 305

Grant programs—education, State, State educational agencies, Infants, toddlers, children, and youth with disabilities, Early intervention, Special education and related services, Local educational agencies.

(Catalog of Federal Domestic Assistance Number 84.028, Regional Resource and Federal Centers)

Dated: June 1, 1992.

Lamar Alexander,

Secretary of Education.

The Secretary proposes to amend part 305 of title 34 of the Code of Federal Regulations as follows:

PART 305—REGIONAL RESOURCE AND FEDERAL CENTERS

1. The authority citation for Part 305 continues to read as follows:

Authority: 20 U.S.C. 1421, unless otherwise noted.

2. Section 305.10 is amended by revising the heading to read as follows:

§ 305.10 What kinds of services are provided by Regional Resource Centers under this part?

* * * * *

3. Section 305.10(b) is amended by adding after the words "identifying and solving persistent problems" a comma and the words "and in identifying emerging issues and trends".

4. Section 305.11 is redesignated as § 305.12, and a new § 305.11 is added to read as follows:

§ 305.11 What kinds of services are provided by the Federal Center under this part?

The Federal Center shall—

(a) Provide a national perspective for establishing technical assistance activities within and across regions by identifying and synthesizing emerging issues and trends and establishing a panel to interpret this information. This panel must be broadly representative of the special education constituency, including representatives of State and local educational agencies, parent organizations, consumer and advocacy organizations, professional organizations, consumers, with particular attention being given to individuals from minority backgrounds. This information must be shared with Regional Resource Centers and State

educational agencies and may serve as a basis for multi-State and multi-regional technical assistance activities;

(b) Assist in linking and coordinating the Regional Resource Centers with each other and with other technical assistance providers, including health-related entities as well as organizations representing persons with disabilities, professional organizations, and parent projects. Information from these activities must be shared with the Regional Resource Centers as well as the States;

(c) Provide information to, and training for, agencies, institutions, and organizations regarding techniques and approaches for submitting applications for grants, contracts, and cooperative agreements under Parts C through G of the Act, and make that information available to the Regional Resource Centers on request;

(d) Give priority to providing technical assistance concerning the education of children with disabilities from minority backgrounds and exchanging information with and, if appropriate, cooperating with other centers addressing the needs of these children; and

(e) Provide assistance to State educational agencies, through Regional Resource Centers, for the training of hearing officers.

(Authority: 20 U.S.C. 1421)

§ 305.30 [Amended]

5. Section 305.30 is amended by adding the words "and § 305.11" after "in § 305.10".

6. Section 305.31 is amended by revising the heading, paragraphs (a) (1) and (2), and paragraph (f)(2) to read as follows:

§ 305.31 What are the selection criteria for evaluating applications under this program?

* * * * *

(a) * * *

(1) The Secretary reviews each application for a Regional Resource Center for information that shows the needs of the States in the region and support for the applicant's project by the agencies to be served by the project.

(2) The Secretary reviews each application for a Federal Center for information that identifies potential issues and trends of national concern and procedures for obtaining broad based input in validating, interpreting, synthesizing, and updating information on emerging issues and trends on a regular basis.

(f) * * *

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project, and, to the extent possible, are objective and produce data that are quantifiable. For Regional Resource Centers, evaluation methods must include evaluation of changes in State capacity to work with local educational agencies to improve services for students with disabilities.

* * * * *

7. In § 305.40 the heading and introductory text are revised to read as follows:

§ 305.40 What additional activities must each Center perform?

Each Regional Resource or Federal Center shall—

* * * * *

[FR Doc. 92-22704 Filed 9-18-92; 8:45 am]

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federal register

Monday
September 21, 1992

Part VII

Department of the Interior

Bureau of Indian Affairs

Availability of Final Environmental Impact Statement (FEIS) for the Interstate 5/88th Street Northeast Interchange Project; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Availability of Final Environmental Impact Statement (FEIS) for the Interstate 5/88th Street Northeast Interchange Project Serving the Tulalip Indian Reservation, Snohomish County WA

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that a Final Environmental Impact Statement (FEIS) was filed with the EPA on February 3, 1992 and is available for public review regarding the proposed construction of a full-diamond interchange as added access to Interstate 5 (I–5) and an expanded road network at 88th Street Northeast in Snohomish County, Washington to improve traffic circulation on the Tulalip Reservation and throughout the nearby City of Marysville and surrounding Snohomish County, and to facilitate the Tulalip Tribes' economic development by providing direct freeway access to industrial and commercial properties located on the Reservation. This notice is furnished as required by the National Environmental Policy Act (NEPA) Regulations (40 CFR part 1503).

SUPPLEMENTARY INFORMATION: The Bureau of Indian Affairs, Department of the Interior, in cooperation with the Tulalip Tribes of Washington, the Washington State Department of Transportation, the Federal Highways Administration, the Snohomish County Department of Public Works, the City of Marysville Department of Public Works, and the Snohomish County Public Transportation Benefit Area Corporation (Community Transit) has prepared the Final EIS which includes minor modifications to the proposed action based on public comment, new regulations, and further analysis. Responses to all public comments and statements given at public hearings are also included.

The EIS describes and analyzes four alternatives for the proposed project. Under the Preferred Action Alternative a full-diamond interchange with east-west access would be constructed on I–5 at 88th Street northeast (Milepost 200.7), access to 35th Avenue (an I–5 frontage road northeast of the interchange) would be relocated, improvements would be made to 88th Street Northeast to the east and west of the interchange ramps, and a new bridge would be constructed over Quilceda Creek east of the interchange. The environmental information developed for a possible park-and-ride lot on 88th Street Northeast will be used as baseline data in a future site selection process. The park-and-ride site is not a part of the proposed project.

ADDRESSES: Copies of the Final EIS are available for review at the following locations:

Marysville Public Library, 4822 72nd Street NE., Marysville, WA 98270

Everett Main Library, 2702 Hoyt Avenue, Everett, WA 98201

Puget South Agency, Bureau of Indian Affairs, Federal Building, 3006 Colby Avenue, Everett, WA 98201

Tulalip Tribes Planning Department, 6700 Totem Beach Road, Marysville, WA 98271

Marysville Department of Public Works, 80 Columbia Avenue, Marysville, WA 98270

Snohomish County Public Works Department, 2829 Rucker Avenue, Everett, WA 98201

Comments on the environmental documents or the project will be accepted by the Bureau of Indian Affairs (BIA) for a 30-day period ending October 2, 1992 after which time the BIA will prepare and issue a Record of Decision. Your comments will be considered in arriving at BIA's decision on the interchange project. Please send your comments to: Mr. Ronald Eggers, Area Environmental Officer, Portland Area Office, Bureau of Indian Affairs, 911 Northeast 11th Avenue, Portland, OR 97232–4169.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald J. Eggers, Area Environmental Officer, Portland Area Office, Bureau of Indian Affairs, 911 Northeast 11th Avenue, Portland, Oregon 97232–4169. Telephone (503) 231–2208 or FTS 429–2208.

Dated: September 15, 1992.

William D. Bettenberg,

Acting Assistant Secretary, Indian Affairs.

[FR Doc. 92–22812 Filed 9–18–92; 8:45 am]

BILLING CODE 4310-02-M

federal register

Monday
September 21, 1992

Part VIII

Department of Agriculture

Agricultural Stabilization and Conservation Service
Commodity Credit Corporation

7 CFR Parts 723 and 1464
Tobacco; Final Rule

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 723

Commodity Credit Corporation

7 CFR Part 1464

RIN 0560-AC78

Tobacco

AGENCY: Agricultural Stabilization and Conservation Service, and Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule adopts, with technical changes, a proposed rule which was published in the **Federal Register** on June 29, 1992 (57 FR 28801). The proposed rule proposed several changes to enhance the enforcement of the federal price support program for tobacco. The rule proposed: (1) Adding new letter of credit requirements for dealers; (2) adding new provisions to deal with carryover credit for damaged tobacco; (3) providing for new enforcement measures for liens and for holding related persons liable for tobacco penalties; and (4) adding new provisions for suspension of dealer cards and penalty assessments, and (5) to provide rules for determining when a producer, by cash advance or other preauction arrangement, will be determined to have sold the tobacco preauction so as to make use of the producer's marketing card thereafter for that tobacco improper. The proposed changes were described in detail in the June 29 rule.

EFFECTIVE DATE: September 21, 1992.

FOR FURTHER INFORMATION CONTACT: (1) With respect to part 723: Mike Thompson, Agriculture Program Specialist; and (2) With respect to part 1464: Gary W. Wheeler, Tobacco Marketing Specialist. Their address is: Tobacco and Peanuts Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, DC 20013-2415, telephone: (Wheeler) 202-720-7562; (Thompson) 202-720-4281.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Department Regulation No. 1512-1 and has been classified as "not major."

It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the Agricultural Stabilization and Conservation Service (ASCS) and Commodity Credit Corporation (CCC) are not required by 5 U.S.C. 553 or any other provision of law to publish a notice of final rulemaking with respect to the subject matter of this rule.

The title and number of the Federal Assistance Program, as found in the catalog of Federal Domestic Assistance, to which this rule applies are Commodity Loans and Purchases—10.051.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

This final rule has been reviewed in accordance with Executive Order 12778. The provisions of this final rule are not retroactive and preempts State laws to the extent that such laws are inconsistent with the provisions of this final rule. Before any legal action is brought regarding determinations made under the provisions of 7 CFR parts 723 and 1464, the administrative appeal provisions set forth at 7 CFR part 780 must be exhausted.

This final rule imposes a new information collection requirement in § 723.401, effective beginning with the 1992 burley tobacco marketing year. The contents of and justification for this reporting requirement have been approved through August 31, 1995, by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980, as amended, and assigned OMB No. 0560-0058. Public reporting burden is estimated to average 45 minutes per response.

Background

The federal marketing quota and price support programs for tobacco are provided for in the Agricultural Adjustment Act of 1938 and the Agricultural Act of 1949. Rules for the programs appear at 7 CFR parts 723 and 1464. In the proposed rule published on June 29, 1992, a number of new enforcement measures were proposed due to recent activities indicating a need for stronger regulatory provisions and for other changes to increase the certainty of adherence to the program rules and to improve program operation. These measures included covering the following:

(1) Liens for penalties;

(2) Producer advances;

(3) The liability for penalties for persons related to or affiliated with the violator;

(4) Letter of credit requirements for dealers to insure program performance;

(5) Accounting for damaged tobacco;

(6) Suspending dealer identification cards; and

(7) Delegations for penalty assessments.

Comments

The comment period closed on July 14, 1992. Four comments were received, the commenters being a producer-owned tobacco association, two tobacco trade organizations, and a state farm organization. All four comments supported the rule. After reviewing the rule it was determined, accordingly, that the proposal should be adopted as set out in the June 29 rule with technical corrections to improve clarity or correct grammatical errors. Additional revisions will be proposed or adopted over time as may appear to be needed or appropriate to accomplish the goals of the program and to protect the interest of tobacco producers and the public.

List of Subjects

7 CFR Part 723

Acreage allotments, Marketing quotas, Penalties, Reporting and recordkeeping requirements, Tobacco.

7 CFR Part 1464

Loan programs/agriculture, Price support programs, Tobacco, Warehouses.

Accordingly, 7 CFR parts 723 and 1464 are amended as follows:

PART 723—TOBACCO

1. The authority citation for part 723 is revised to read as follows:

Authority: 7 U.S.C. 1301, 1311-1314, 1314-1, 1314c, 1314d, 1314f, 1314h, 1315, 1316, 1363, 1372-75, 1377-79, 1421, 1445-1, and 1445-2.

2. Section 723.104(b) is amended by revising the terms "damaged tobacco" and "nonauction sale" to read as follows:

§ 723.104 Definitions.

* * * * *

(b) *Terms.* * * *

* * * * *

Damaged tobacco. Any tobacco that has suffered a loss of value due to deterioration resulting from a cause such as rot, separation of leaves from stems, fire, smoke, water, or other conditions that would cause such tobacco to be distinguishably different from that normally marketed in trade channels.

* * * * *

Nonauction sale. Any marketing of tobacco other than at an auction sale.

* * * * *

3. Section 723.311 is revised to read as follows:

§ 723.311 Lien for penalty; liability of persons who are affiliated with indebted person or who permit the indebted person to use their identification card.

(a) *Lien on tobacco.* Until the amount of any marketing quota penalty imposed under this part is paid, a lien shall exist in favor of the United States for the amount of the penalty on:

(1) The tobacco with respect to which such penalty is incurred; and

(2) Any other tobacco subject to marketing quotas in which the person liable for payment of the penalty has an interest and which is marketed in the same or a subsequent marketing year.

(b) *Lien precedence.* The lien, described in paragraph (a) of this section, attaches at the time that the penalty is assessed. As to third parties, in the event of a lack of actual notice of the lien, then notice shall be deemed to occur when:

(1) In the case of indebted producers, the debt is entered on the debt record maintained by the county ASCS office of the county in which the tobacco was grown;

(2) In the case of an indebted warehouse operator, the debt is entered on the debt record of the State ASCS office for the State in which the warehouse is located; and

(3) In the case of an indebted dealer, the debt is entered on the debt record of the State ASCS office for the State in which the dealer is required to file reports.

(c) *Availability of list of marketing quota penalty debts.* Each county and State ASCS office shall maintain a list of tobacco marketing penalty debts which have been entered on the debt record in their office. The list shall be available for examination upon request by any interested person.

(d) *Liability for penalty owed by another person.* (1) When a penalty in excess of $10,000 is incurred under this part by an entity, all persons who have a substantial ownership interest in the entity shall be jointly and severally liable with the entity for the payment of such penalty, unless it is demonstrated to the satisfaction of the Deputy Administrator that the violation was inadvertent. Substantial ownership interest shall be deemed to be any ownership interest greater than ten percent.

(2) A dealer or warehouse operator who permits an indebted person to use such dealer's or warehouse operator's identification card to market tobacco shall be liable for the amounts due by the indebted person to the United States under this part up to the amount of the value of the tobacco so marketed. In addition, unless the Deputy Administrator determines otherwise, any persons or person, who as a warehouse operator or dealer becomes affiliated with any person who at the time of affiliation is indebted under this part to the United States, shall be liable for the amount of the debt owed to the United States by the person with whom such person or persons become affiliated up to the amount of the value of any tobacco which is marketed by such affiliated warehouse operator or dealer during the time of the affiliation with the indebted person. Affiliation may include any relationship in which the parties have a common interest in tobacco, or in an enterprise or entity involved in the marketing, processing, or handling of tobacco, or where the parties both hold a position of responsibility or ownership in such an enterprise or entity, or where there is common ownership of a business involved in the transaction. A warehouse operator or dealer may also be considered to be affiliated with an indebted person when such warehouse operator or dealer is associated with a person who is both:

(i) An employee or otherwise authorized to buy and sell tobacco for such warehouse operator or dealer; and

(ii) An indebted person or at the time of indebtedness incurred by an entity was a substantial owner or an officer of the indebted entity.

Affiliation may also be deemed to occur where parties have traded in tobacco under circumstances which indicate that there may be a lack of arm's length trading between the parties such as where the parties engage in casual or undocumented transactions in significant quantities of tobacco, or where the parties have traded in tobacco with each other without a movement of the tobacco, or where there is a trading in tobacco without documentation of a significant exchange of money, or other circumstances which indicate an affiliation. Where questions of affiliation arise, it shall be the burden on the parties involved to show that trading in such tobacco was conducted in accordance with normal trade practices and was not part of a scheme or device to avoid payments of sums due the United States or the CCC.

(e) *TMQ lien notation.* Upon notification that a TMQ lien has been established, the producer marketing card (MQ–76) or dealer identification card (MQ–79–2) shall be returned immediately to the issuing office for recording the TMQ lien. Failure to immediately return the applicable card will result in ASCS notifying all registered warehouse operators and dealers of the TMQ lien information and of their responsibilities for collecting the TMQ lien. The card shall be promptly returned to the producer or dealer after it is annotated with the TMQ lien.

4. Section 723.401 is amended by revising the section heading, revising paragraphs (b) and (c), and by adding paragraphs (d) and (e) as follows:

§ 723.401 Registration of burley and flue-cured tobacco warehouse operators and dealers.

* * * * *

(b) *Dealer registration.* Each person who expects to deal in burley or flue-cured tobacco during a marketing year shall complete a Dealer Application and Agreement (MQ–79–2–A) annually, except dealers who are exempt from maintaining or filing records and reports as provided in § 723.405. The application must be filed after March 1 of the calendar year in which the marketing year begins, and shall be filed with the State ASCS office or, if designated by the State Executive Director, the county ASCS office for the county where the dealer resides or where the dealer's principal business is located. The applicant shall provide the names, and such other information as required by the Deputy Administrator, of all other persons who will be authorized to use the dealer identification card (MQ–79–2). A dealer entity is limited to one dealer registration number. Persons affiliated with another dealer of the same household shall not be eligible for a dealer registration number unless the Deputy Administrator determines that the entities or individuals are separate and independent.

(c) *Approval of application and agreement.* The State Executive Director of the State ASCS office shall, under the direction of the Deputy Administrator, be the approving official for the Dealer Application and Agreement. If the approving official has reason to doubt that the applicant is a bona fide dealer or intends to become a bona fide dealer, the application may be disapproved until such time as the applicant furnishes information satisfactory to the State ASC committee that the application is bona fide. An application shall also be disapproved for any person who has failed to file reports or permit inspections required in § 723.404(d)(9). A person whose application is disapproved shall be provided with the opportunity to appeal the disapproval and to furnish information to substantiate the application or to comply with other requirements in § 723.404.

(d) *Letter of credit or bond*—(1) *General requirements.* Effective with the beginning of the 1992 marketing year for burley tobacco and with the 1993 marketing year for flue-cured tobacco, in order to secure the payment of penalties as may be incurred by a dealer during the marketing year for which approval as a dealer is sought, each dealer, as a condition for final approval to handle tobacco, must present a letter of credit or bond which is determined by the Deputy Administrator to be acceptable security and which meets the dollar requirements of this section. The letter of credit or bond shall be submitted to the State ASCS office where the dealer is registered. A letter of credit must have been issued by a commercial bank insured by the Federal Deposit Insurance Corporation. A bond must be a surety bond insured by a bonding company or agent licensed in the State where the dealer is registered. The letter of credit or bond must be in the form and have the content specified by the Deputy Administrator. A letter of credit or bond shall be furnished annually after initial approval of the dealer's application and notification of the amount required. The dealer identification card shall not be issued until it is determined that acceptable security has been presented.

(2) *Amount Required.* The base amount of the letter of credit or bond shall be the larger of:

(i) $25,000 or

(ii) the sum of the amounts determined by multiplying the respective pounds of burley and flue-cured tobacco purchased by the dealer during the preceding marketing year by 10 percent of the marketing year penalty rate for the respective kind of tobacco involved for the relevant year with the resulting amount not to exceed $100,000.

A dealer shall submit the letter of credit or bond for the base amount plus an amount equal to the amount of any unpaid tobacco marketing quota penalty owed by such dealer. The amount shall also be increased by $5,000 for each 10,000 pounds of tobacco for which the dealer has failed to file reports or filed false reports in violation of § 723.404 for the 3 previous marketing years. The Deputy Administrator may reduce the amount of security required in order to avoid undue hardship and shall make provision for release of the letter of credit or bond at the appropriate time.

(e) *Suspension and surrender of dealer card.* The dealer identification card shall be surrendered upon demand of the ASCS. Failure to comply with the provisions of §§ 723.404 or 723.414 or with other material provisions of this part shall be cause for suspension of the dealer identification card and the dealer shall be given 15 days to complete all necessary compliance measures or to show cause why the card should not remain suspended.

5. Section 723.403 is amended by revising paragraph (k)(3)(i) and adding paragraph (k)(5)(iv) to read as follows:

§ 723.403 Auction warehouse operators' records and reports.

* * * * *

(k) * * *

(3) * * *

(i) Report on the final MQ–80 for the season the quantity of leaf account tobacco and floor sweepings, if any, on hand and its location, provided further that if on inspection it is determined that there is damaged tobacco in the warehouse or otherwise on hand, no carryover credit for the next marketing year shall be allowed for the damaged tobacco and the amount of pounds of damaged tobacco shall be deducted from the operator's purchase credit for the current year.

* * * * *

(5) * * *

(iv) If upon reinspection by a representative of ASCS, there is an amount of tobacco determined to be damaged tobacco, the pounds of damaged tobacco shall be deducted from the purchase credit, if not done so previously, and no carryover credit shall be allowed for such damaged tobacco for the next marketing year.

* * * * *

6. Section 723.404 is amended by adding paragraph (d)(5)(v) and a sentence at the end of paragraph (d)(7) as follows:

§ 723.404 Dealer's records and reports, excluding cigar tobacco buyers.

* * * * *

(d) * * *

(5) * * *

(v) If upon inspection by a representative of ASCS, there is an amount of tobacco determined to be damaged tobacco according to § 723.104, such amount of pounds shall be deducted from the purchase credit and no carryover credit shall be allowed for such damaged tobacco for the next marketing year.

* * * * *

(7) * * * If upon reinspection by a representative of ASCS, there is an amount of tobacco determined to be damaged tobacco under § 723.104, such amount of pounds shall be deducted from the purchase credit and no carryover credit shall be allowed for such damaged tobacco for the next marketing year.

* * * * *

7. Section 723.406 is amended by revising paragraph (a) to read as follows:

§ 723.406 Provisions applicable to damaged tobacco and to purchases of tobacco from processors or manufacturers.

(a) *Damaged tobacco.* Any dealer, warehouse operator, or other person who intends to purchase damaged tobacco shall notify the State ASCS office where the warehouse operator or dealer is registered or should be registered. Such report must be made at least 2 business days in advance of the purchase so as to allow for inspection arrangements to be made. The inspection shall be conducted by an ASCS representative and no purchase credit shall be allowed the buyer for the quantity determined to be damaged tobacco. Damaged tobacco may be disposed of without incurring a penalty only if the tobacco is destroyed and the destruction is witnessed by an ASCS representative or the tobacco is sold directly to a processor or manufacturer and such sale is reported to the same State ASCS office. Any tobacco not disposed of in that manner shall be deemed to have been a marketing of excess tobacco and will be subject to a penalty at the full penalty rate for the quantity of tobacco involved.

* * * * *

8. Section 723.408 is amended by adding a new paragraph (a)(3) to read as follows:

§ 723.408 Producer's records and reports.

(a) * * *

(3) Any report of a marketing of tobacco by a producer or any use of

producer's marketing card to sell the tobacco or the pledge the tobacco for a price support loan shall be considered the filing of a false report by the producer and, in addition to other remedies as may apply, the remedies provided in paragraph (a)(1) of this section shall apply, if, under the provisions of part 1464 of this title, the producer was not considered to have been an "eligible producer" with respect to such marketing or other disposition of tobacco.

* * * * *

9. Section 723.409 is amended by revising the heading for paragraph (b), adding a new paragraph (b)(4) to read as follows, and amending paragraph (f) by inserting after the words "current marketing" the word "year".

§ 723.409 Producer penalties; false identification and related issues.

* * * * *

(b) *Penalties for false identification or failure to account.*

* * * * *

(4) In addition to any other circumstances in which a penalty may be assessed under this part, the marketing or pledging for a price support loan of any tobacco by using the producer's marketing card, when the producer is not considered to have been an "eligible producer" under the provision of part 1464 of this title, shall be considered to be a false identification of tobacco. This remedy shall be in addition to all other as may apply.

* * * * *

10. Section 723.410 is amended by revising the section heading and adding a new paragraph (n) to read as follows:

§ 723.410 Penalties considered to be due from warehouse operators, dealers, buyers, and other excluding the producer.

* * * * *

(n) *Advances and other cases in which the producer's marketing card is used improperly.* For tobacco of any kind to which this part applies, if tobacco is marketed by a person by using the producer's marketing card or the tobacco is pledged for a price support loan by using that card, but under the provisions of part 1464 of this title, the producer is deemed to have not been an "eligible producer" with respect to the disposition of that tobacco at the time because of an advance or other preauction arrangement, such disposition of the tobacco shall be considered a false identification of the tobacco and may be considered to be a marketing of excess tobacco. In such cases, the person who paid the advance, took possession of the tobacco, or made the agreement with the producer which made the producer no longer an "eligible producer" with respect to the tobacco, shall be jointly and severally liable with the producer for any penalty with respect to such disposition which is levied against the producer under the provisions of this part and additionally, if such disposition is determined to be a marketing of excess tobacco, shall be liable for a penalty calculated by using the penalty rate for the tobacco involved multiplied by the pounds of tobacco involved. These remedies shall be in addition to any other remedies which may apply, including but not limited to, any liability for a refund of any price support loan advances which were paid in the name of, or for the account of, the producer of the tobacco.

PART 1464—TOBACCO

11. The authority citation for part 1464 continues to read as follows:

Authority: 7 U.S.C. 1308, 1441, 1445, 1445–1, 1421, and 1423; 15 U.S.C. 714b, 714c.

12. Section 1464.7 is amended by adding paragraph (e) to read as follows:

§ 1464.7 Eligible producer.

* * * * *

(e) With respect to any tobacco which is presented for price support, must have retained beneficial interest in the tobacco prior to presenting the tobacco for such loan.

(1) For purposes of this section, the producer will be considered to have retained beneficial interest in the tobacco only if such producer has complete control of and title to such tobacco, including the right to tender such tobacco to CCC for a price support loan on the date such tobacco is tendered to CCC for a price support loan, and has maintained this right and that interest in the tobacco at all times prior to presenting the tobacco for the loan.

(2) If a producer receives a monetary advance or other consideration in connection with or for such tobacco, the producer will be deemed for purposes of this section to have lost beneficial interest in such tobacco unless the producer has a written agreement with the person who provides the advance payment or consideration and such agreement accurately and fully:

(i) Sets forth the amount, nature and date of the advance or consideration;

(ii) Sets forth the poundage on which the advance or consideration was made;

(iii) Provides that the tobacco will be sold at a producer auction through an auction warehouse at which price support is provided, or will be presented for a price support loan;

(iv) Provides that as a full and final settlement on the tobacco, the full sales price at the producer auction or the full loan proceeds will be paid to the producer minus only the following:

(A) Any advance set out in the agreement; and

(B) Standard published assessments or charges for services rendered at standard published rates that apply to all tobacco of all producers, including tobacco for which no advance has been paid;

(v) Sets forth the date of final settlement to be made on the tobacco which date can be no later than the date applicable to tobacco on which no advance has been made.

(vi) States that the full profit and beneficial interest in the tobacco, and full control of the tobacco, remains with the producer and provides that the full profit and beneficial interest will remain with the producer at all times prior to any disposition of the tobacco as producer tobacco, or at a producer auction, or presenting for a price support loan.

(3) A producer will be considered to have lost beneficial interest in tobacco and thereby not be an "eligible producer" for such tobacco as of the date any advance or other preauction arrangement was made if CCC determines for that tobacco that:

(i) The advance per pound equalled or exceeded the producer's final net proceeds per pound on all tobacco marketed from the farm for that marketing year at producer auctions, including any tobacco on which an advance is made or the pledging of tobacco for price support loans;

(ii) A written agreement was required by paragraph (e)(2) of this section, but none has been executed; or

(iii) A written agreement was executed but did not meet the requirements of paragraph (e)(2) of this section.

(4) If tobacco is pledged for a price support loan and the producer is not then or thereafter deemed to be or to have been an eligible producer for that tobacco for purposes of placing the tobacco under such loan, then the tobacco shall be considered to have a loan value of zero. The producer and the person that took possession of the tobacco from the producer, or paid an advance, or marketed the tobacco, or disposed of the tobacco as producer tobacco, shall be jointly and severally liable with the producer for returning any loan proceeds previously paid in the name of, or for the account of, the producer. Further, the disposition of any tobacco as producer tobacco where the

producer is not then or thereafter considered to have been an eligible producer with respect to such tobacco may be the subject of penalties on the grounds of false identification, excess marketings, or otherwise as provided in part 723 of this title. These remedies are in addition to any others as may apply.

13. Section 1464.8 is amended by adding paragraph (i) to read as follows:

§ 1464.8 Eligible tobacco.

* * * * *

(i) Any tobacco with respect to which the producer is not an eligible producer under the provisions of § 1464.7 shall not be eligible for a price support loan and in any case in which the producer is deemed to have ceased to have retained the status of an eligible producer due to an advance or other preauction arrangement, the producer's marketing card shall not be used to market such tobacco except to reflect a nonauction marketing to the person who paid an advance to the producer or took possession of the tobacco from the producer.

§ 1464.10 [Amended]

14. In section 1464.10, paragraph (j)(4) is amended by inserting after the words "Deputy Administrator" the words ", or the Deputy Administrator's designee,".

Signed at Washington, DC, on September 11, 1992.

John A. Stevenson,

Acting Administrator, Agricultural Stabilization and Conservation Service, and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 92-22648 Filed 9-18-92; 8:45 am]

BILLING CODE 3410-05-M

federal register

Monday
September 21, 1992

Part IX

Department of the Interior

Bureau of Indian Affairs

Intent To Prepare an Environmental Impact Statement, Crow Creek Indian Reservation, SD; Notice

DEPARTMENT OF THE INTERIOR

Notice of Intent to Prepare An Environmental Impact Statement on the Renovation of Crow Creek Dam on Crow Creek Indian Reservation in South Dakota

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of intent and public scoping meeting.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs intends to gather information necessary for the preparation of an Environmental Impact Statement (EIS) for the renovation of Crow Creek Dam. Public meetings regarding this proposal will also be held. A description of the proposed project, location and environmental considerations to be addressed in the EIS is provided below (see Supplemental Information). In addition, two public scoping meetings regarding the proposal and the preparation of the EIS will be held (additional details are provided below). This notice is being furnished as required by the National Environmental Policy Act (NEPA) Regulations (40 CFR 1501.7) to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in this scoping process are solicited.

DATES: Written comments should be received by November 30, 1992. Scoping meetings to identify issues and alternatives to be evaluated in the EIS will be held on September 30, 1992, at the Tribal Headquarters, Fort Thompson, South Dakota, at 1 p.m.; and on September 30, 1992, at Al's Oasis Restaurant meeting room, Oacoma, South Dakota, at 7 p.m. Comments and participation in the scoping process are solicited and should be directed to the Bureau of Indian Affairs at the address provided below.

ADDRESSES: Comments should be addressed to Dr. Jerry L. Jaeger, Area Director, Bureau of Indian Affairs, 115 4th Ave., SE, Aberdeen, South Dakota 57401. Scoping meetings will be held on September 30, 1992, at the Tribal Headquarters, Fort Thompson, South Dakota, at 1 p.m.; and on September 30, 1992, at Al's Oasis Restaurant meeting room, Oacoma, South Dakota, at 7 p.m.

FOR FURTHER INFORMATION CONTACT: Ken Salo, Morrison-Maierle/CSSA, P.O. Box 6147, Helena, Montana 59604, telephone (406) 442-3050.

SUPPLEMENTARY INFORMATION: Crow Creek dam is in need of major repairs in order to minimize potential safety hazards. Repair to spillway and outlet structures will not change previously established lake levels. Crow Creek has been rated as high hazard in accordance with dam safety standards.

Environmental issues to be addressed in the EIS are expected to include topography, geology, hydrology, water quality, biological resources, land use, noise, and health and safety. Alternatives being considered are: renovating which would leave the dam similar to original design; lowering of lake level and reservoir function change; and permanent breaching of the dam.

The reservoir has trapped a great deal of sediment of which a significant portion will eventually be lost to Lake Francis Case on the Missouri River. A detailed study will be focused on the effects of this sediment movement.

Potential reservoir use and the resulting cultural and environmental effects will be among the main issues covered during the scoping and planning process.

The environmental review of this project will be conducted in accordance with the requirement of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 et seq.), Council on Environmental Quality Regulations (40 CFR, Parts 1500–1508), and Department of the Interior procedures (516 DM 1–6) for compliance with those regulations.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: September 9, 1992.

David J. Matheson,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 92–22830 Filed 9–18–92; 8:45 am]

BILLING CODE 4310-02-M

federal register

Monday
September 21, 1992

Part X

Department of Agriculture

Food Safety and Inspection Service

9 CFR Part 381
Irradiation of Poultry Products; Final Rule

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 381

[Docket 90-011F]

RIN 0583-AB27

Irradiation of Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the poultry products inspection regulations to permit the use of ionizing radiation sources, as prescribed by the Food and Drug Administration's (FDA) regulations, to treat fresh or frozen, uncooked whole poultry carcasses or parts known as "ready to cook poultry," which includes such poultry products as fresh or frozen, uncooked ground, hand-boned, and skinless poultry and mechanically separated poultry product, which is a finely comminuted ingredient produced by the mechanical deboning of poultry carcasses or parts of carcasses. Ionizing radiation will be applied for the purpose of controlling and reducing foodborne pathogens, such as *Salmonella, Campylobacter,* and *Listeria moncytogenes,* that may be present in raw poultry, in order to reduce the potential for foodborne illness.

EFFECTIVE DATE: October 21, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Donald Derr, Deputy Director for Scientific Support, Science and Technology, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, Area Code (202) 205-0675.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator has determined in accordance with Executive Order 12291 that this proposed rule is not a "major rule." It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have a significant adverse effect on competition, employment, investment, productivity, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. States and local jurisdictions are preempted under the Poultry Products Inspection Act (PPIA) from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected poultry products that are in addition to, or different than those imposed under the PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over poultry products that are outside official establishments for the purpose of preventing the distribution of poultry products that are misbranded or adulterated under the PPIA, or, in the case of imported articles, which are not at such an establishment, after their entry into the United States. Under the PPIA, States that maintain poultry inspection programs must impose requirements on State inspected products and establishments that are at least equal to those required under PPIA. These States may, however, impose more stringent requirements on such State inspected products and establishments.

This rule is not intended to have retroactive effect. There are no applicable administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule. However, the administrative procedures specified in 9 CFR 381.35 must be exhausted prior to any judicial challenge of the application of the provisions of this rule, if the challenge involves any decision of an inspector relating to inspection services provided under the PPIA. The administrative procedures specified in 9 CFR Part 381, Subpart W, must be exhausted prior to any judicial challenge of the application of the provisions of this rule with respect to labeling decisions.

Effect on Small Entities

The Administrator has determined that this final rule will not have a significant economic impact upon a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). Facilities wishing to irradiate poultry will incur costs associated with implementing an adequate quality control system. Any other costs should be attributable to the normal costs of starting production of a new product.

Paperwork

Before an establishment may irradiate poultry, the operator must apply to and obtain approval from FSIS for a Grant of Inspection. Facilities whose only poultry processing activities consist of irradiation of pre-packaged raw poultry will be required to submit and obtain approval of a quality control system in lieu of more detailed drawings and specifications required by applicants for inspection who handle exposed poultry products. Facilities which conduct both irradiation processing and other poultry processing will also submit, in addition to information required under 9 CFR 381.19, a description of their quality control system. FSIS will receive, evaluate, and either approve or disapprove requests for such quality control systems. The quality control system will be placed on file in the establishment and be available to any duly authorized representative of the Secretary. The information collection requirements contained in this rule have been approved by the Office of Management and Budget under control number 0583-0078.

Background

Over the last few years, the public has become more aware of the threat of foodborne illnesses caused by pathogens, disease-causing microorganisms. Pathogens of concern include *Listeria monocytogenes, Campylobacter jejuni,* and *Salmonella.* These bacteria cannot be detected by sight, smell or taste.

Salmonella, Campylobacter, and *Listeria monocytogenes* are present in raw poultry and their presence leads to public health costs, reductions in work productivity, and other intangible costs. Children, the elderly, and immuno-compromised individuals are particularly vulnerable.

Therefore, in an attempt to lower levels of contamination from *Listeria monocytogenes, Campylobacter, Salmonella,* and other disease-causing microorganisms, on May 6, 1992, FSIS proposed to amend the poultry products inspection regulations to permit the use of ionizing radiation sources, as prescribed by FDA regulation (21 CFR 179.26), to treat (1) Fresh or frozen, uncooked whole poultry carcasses or parts known as "ready to cook poultry" within the meaning of 9 CFR 381.1(b)(44), which includes such poultry products as fresh or frozen, uncooked ground, hand-boned, and skinless poultry and (2) mechanically separated poultry product, which is a finely comminuted ingredient produced by the mechanical deboning of poultry carcasses or parts of carcasses and ground poultry. (57 FR 19460-19469) Additionally, the proposed rule included regulations regarding packaging, labeling, application for inspection, and a quality control system. The comment period for the proposed rule ended on July 6, 1992.

Analysis of Comments

The Agency received 1062 comments on the irradiation of poultry products regulation. Approximately half of the comments favored the proposal and half did not. The majority of the comments addressed the concept of poultry irradiation, and not the specifics of FSIS's proposed regulations. Both proponents and opponents of poultry irradiation engaged in form letter writing campaigns.

Commenters favoring the irradiation of poultry generally stated that irradiation is a safe process that has been sufficiently tested and should be permitted so that people choosing to buy irradiated poultry can. Physicians were the largest group of proponents for the irradiation of poultry followed by consumers and radiation technology representatives. A significant number of academic institutions and associations, representing those involved with radiation technology and poultry production, submitted comments recommending that the Agency adopt the irradiation regulations. Several international organizations and government agencies from other countries commented favorably. A significant number of comments were received from the U.S. Army supporting the safety and recommending the use of irradiated poultry.

Commenters not in favor of poultry irradiation generally stated that irradiation has not been adequately tested, may cause cancer, lead to environmental hazards, and endanger irradiation facility workers. Consumers were the majority of those opposing irradiation followed by consumer advocacy groups.

The following is an analysis of the comments. General issues regarding food safety and irradiation efficacy including toxicological, microbiological, and nutritional safety are covered first. Secondly, issues raised about environmental safety, purpose of irradiation, consumer education, and review of the cost and benefits analysis are discussed. Lastly, the specific comments regarding the scope of the regulation, worker safety, labeling, and the quality control system, are addressed.

Food Safety and Efficacy

Before addressing the comments related to safety of irradiated foods, the Agency wishes to restate its position on the safety of irradiated poultry. Sources of radiation are defined as food additives in section 201(s) of the Federal Food, Drug and Cosmetic Act (FFDCA) (21 U.S.C. 321(s)). Therefore, the Food and Drug Administration (FDA) has the primary responsibility to establish the safety of uses of irradiation.

On May 2, 1990, FDA published a final rule (55 FR 18538–18544) establishing the safe use of sources of ionizing radiation for control of foodborne pathogens in fresh or frozen raw poultry. In the preamble to that rule, FDA summarized their evaluation of: (1) Toxicity studies on irradiated chicken; (2) reports on the efficacy of the process and on the microbiological safety of the product and (3) nutritional adequacy of the product. In addition to their review published in the May 2, 1990 rule, FDA addressed all the major issues related to toxicological and microbiological safety in their April 18, 1986, final rule, Irradiation in the Production, Processing, and Handling of Food (51 FR 13376–13399) and in their December 30, 1988, Denial of Requests for Hearing and Response to Objections to the 1986 final rule (53 FR 53176–53209). Although FSIS reviewed the major areas addressed in the FDA rules in its proposed rule, it was not intended to reopen the issue of safety or question the toxicological or microbiological safety of irradiation that was thoroughly established by the FDA rules.

Toxicological Safety

Many commenters opposed to poultry irradiation expressed concerns about the toxicological safety of irradiated poultry. However, none of the areas of concern raised were different from those already reviewed by FDA in the final rules discussed above.

Concerns from consumers and a few physicians were general in nature expressing fear of cancer or chromosome mutations from irradiated foods. Several commenters stated that there was insufficient testing or that long term health would be affected. Comments about the incompatibility of radioactivity and the human body and the dangers of free radicals were also raised.

The comments provided by organizations opposed to the rule were more pointed. They expressed concerns about the difficulty of determining the safety of irradiated foods and unresolved questions about the safety of unique radiolytic products. Some raised the issue of flawed studies that formed the basis of FDA's conclusion of safety and commented that they were unconvinced by FDA's assessment.

Most commenters that opposed the proposed rule offered no information to support their concerns, and the remainder offered only the arguments already addressed by FDA. When those arguments were refuted by FDA in their December 30, 1988, denial of requests for hearing, no further supporting evidence was forthcoming.

Commenters in favor of the proposed rule representing academia, the medical profession, other industries familiar with radiation processing, and the food industry expressed confidence in the toxicological safety of irradiated foods. Some alluded to the conclusions reached by the Joint Expert Committee on Food Irradiation (JECFI). In 1980, JECFI concluded that food irradiation to doses not exceeding 10 kilogray (kGy) is wholesome and safe for human consumption.[1]

Other commenters agreeing with the proposal mentioned the recent conclusion reached by the World Health Organization (WHO). In a May 1992, press release, WHO announced that, after a comprehensive review of published and unpublished data, the conclusion was reached that irradiation carried out under good manufacturing practices presents no toxicological hazard and introduces no special or microbiological problems.[2]

Many physicians stating their support for the rule also expressed confidence in the safety of the process based on years of experience with safe use of radiation. Commenters from other industries that irradiate products such as cosmetics and medical supplies expressed confidence in the proven safety of radiation processing.

Microbiological Safety and Efficacy

Commenters from all groups favoring the proposed rule affirmed the Agency's position that irradiation of poultry is safe and effective. They agreed that consumers need safer foods and that, while irradiation will not eliminate food safety problems in the poultry supply, it is one way of reducing the risk of foodborne disease. Most favorable comments were general in nature, but some universities made reference to specific research that has been done to support the efficacy of irradiation.

Comments received from the U.S. Army noted the possible benefits to the military of the proposed rule. They

[1] "Wholesomeness of Irradiated Food", Report of a Joint FAO/IAEA/WHO Expert Committee, Technical Report Series No. 659 World Health Organization, Geneva (1981). A copy of this article is on display in the FSIS Hearing Clerk Office, room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

[2] "Food Irradiation: Added Value Not Risk", WHO Press, Press Release WHO/35, May 27, 1992. A copy of this article is on display in the FSIS Hearing Clerk Office, room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

stated that irradiation of poultry has the potential to ensure a safer, more wholesome source of poultry, to provide cost savings through waste reduction, and to provide Armed Forces personnel more opportunity to enjoy poultry products in the field, thereby enhancing morale.

Comments from three consumer organizations that oppose the proposed rule included concern about the microbiological safety of irradiated foods. Two commenters expressed concern that irradiation may kill bacteria, yeast and molds that compete with *Clostridium botulinum* at the minimum dose of 1.5 kGy.

FDA reviewed four studies on the effects of irradiation on *clostridium botulinum* in its May 2, 1990, final rule (55 FR 18541). FDA wrote that the studies they reviewed showed that, with chicken irradiated at 3 kGy (300 krad), natural surviving microflora grew faster than *clostridium botulinum*, that enough normal flora survived in poultry irradiated at 3 kGy so that spoilage occurred before toxin was detected, and that irradiation of chicken at a dose of 3 kGy or less will not result in any additional health hazard for *clostridium botulinum* Types A, B, or E.

One commenter stated that, at the present time, "there is no epidemiological evidence available that even remotely suggests exposing poultry to ionizing radiation might achieve a possible reduction in the incidence and frequency of consumers acquiring a foodborne infectious disease!"

It is true that currently no epidemiological evidence exists in the United States concerning the reduction of foodborne illness as a result of consumption of irradiated poultry. It will not be possible to gather the epidemiological information necessary to address these issues until this technology is in use and irradiated poultry is commercially available to consumers. FSIS would support plans to gather epidemiological data in this area. An appropriate group to perform long term epidemiological studies would be the Centers for Disease Control (CDC).

Two commenters listed similar concerns that irradiation may result in the development of radiation-resistant strains of salmonella and that irradiation may have a mutagenic effect on the bacteria and viruses that survive the radiation treatment because ionizing radiation can cause genetic mutations.

In FDA's April 18, 1986, final rule and in the December 30, 1986, denial of requests for hearing, FDA dealt with the issue of irradiation creating or producing potentially harmful radiation-resistant bacteria, new mutant bacteria, or viral mutants. Based upon reviewed reference material, FDA reported that the only real difference between mutants produced during the irradiation of food and mutants that occur naturally was in the rate of mutation occurrence. In its 1988 denial of requests for hearing, FDA referenced a 1982 report that stated that there would be no qualitative difference between the kind of mutation induced by ionizing radiation and that induced by any other pasteurization methods such as heat treatment or vacuum drying. FDA stated that the vast majority of mutations of bacteria would tend to be detrimental for the microorganisms, and there is no reason to expect that resulting mutants would be different or more virulent than those created in nature. Additionally, FDA does not believe that radiation-resistant bacteria or viruses, if produced, would be more resistant to other antibacterial agents.

One commenter stressed that cooking poultry is even more effective than 300,000 rads (3 kGy) of ionizing radiation in preventing the possibility of contaminated poultry causing human disease.

FSIS agrees that proper cooking of raw poultry will destroy foodborne pathogens; but disagrees that cooking, by itself, will prevent human foodborne illness. According to a 1990 CDC publication,[3] for each year during the five year period that was studied, 1983 through 1987, the least commonly reported factor contributing to foodborne disease was food obtained from an unsafe source. Factors commonly reported contributing to foodborne disease were food-preparation practices. Improper storage or holding temperature was the most common contributing factor followed by inadequate cooking, poor personal hygiene of the food handler, and contaminated equipment.

FSIS does not intend for irradiation of poultry to replace cooking, but rather to reduce the potential for cross-contamination. In fact, irradiation complements cooking. This concept is buttressed by a study performed by scientists at the Eastern Regional Research Center of the Agricultural Research Service, USDA, and published in 1991.[4] They studied the effects of heat and ionizing radiation on *S. typhimurium* in mechanically deboned chicken meat and concluded that "irradiated poultry will be much safer for the consumer than expected because the irradiation treatment will have made any surviving cells of *Salmonella* more sensitive to heat."

One commenter expressed uncertainty about the extent of reduction in foodborne pathogens in irradiated poultry, especially at the minimum dose of 1.5 kGy.

In the May 2, 1990, final rule permitting ionizing radiation of poultry (55 FR 18538 at 18541), FDA stated that a number of reports submitted point out that the radiation dose necessary to reduce the initial population of *Salmonella* by 90 percent ranges from "less than 0.5 kGy to approximately 1 kGy." Additionally, FDA reported that other microorganisms such as *Yersinia* and *Campylobacter* are even more radiation sensitive than *Salmonella*.

Another issue raised was that once the normal bacteria flora are eliminated by the radiation treatment, an important barrier will be removed allowing pathogens to grow if they are not killed by the radiation treatment or if they recontaminate the product after it is treated.

The problems of contamination of raw poultry and temperature abuse and the potential for foodborne illness are not unique or limited to irradiated poultry. If irradiated raw poultry were temperature abused, both pathogens and spoilage organisms would grow and the product would become organoleptically objectionable. The same would be true if non-irradiated raw poultry were temperature abused. To help prevent recontamination, FSIS specifies that poultry be packaged for point of purchase at the time of irradiation.

One commenter added that because irradiated chicken can be stored longer at low temperatures, cold-tolerant *Listeria monocytogenes* could grow to infective numbers before spoilage would be evident. Several studies examining the residual microbial flora on poultry parts and mechanically deboned chicken meat irradiated and then stored at temperatures ranging from 1° C to 5° C refute this concern. In 1986, Klinger reported that after irradiation food spoilage bacteria were isolated after 4

[3] Bean, N.H., P.M. Griffin, J.S. Goulding and C.B. Ivey. "Foodborne Disease Outbreaks, 5-Year Summary, 1983–1987." Journal of Food Protection. 1990. Vol:53(8). Pgs 711–728. A copy of this article is on display in the FSIS Hearing Clerk Office, room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

[4] Thayer, D.W., S. Songpraertchai, and G. Boyd. "Effects of Heat and Ionizing Radiation on *Salmonella typhimurium* in Mechanically Deboned Chicken Meat." Journal of Food Protection. Vol:54(9). Pgs 718–724, 723. A copy of this article is on display in the FSIS Hearing Clerk Office, room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

weeks in storage at 1–2° C.[5] In 1991, it was observed that the indigenous bacterial population, after irradiation at 1.25 kGy and 2.50 kGy, increased at 5° C during storage.[6]

Additionally, in 1988, Margaret Patterson of the Food and Agricultural Microbiology Research Division, Department of Agriculture for Northern Ireland, published the results of her work on the sensitivity of several bacterial species to irradiation on minced fresh deboned poultry under various atmospheres.[7] The D-values for the genus *Lactobacillus*, spoilage bacteria, are comparable to those reported by Patterson in 1989 for four different strains of *Listeria monocytogenes* irradiated in minced fresh deboned chicken meat.[8] Therefore, lactobacilli and *Listeria monocytogenes* should be present in the same proportion both before and after radiation pasteurization. The lactobacilli produce lactic acid and bacteriocin which are inhibitory to various *Listeria* species including *Listeria monocytogenes*.

Nutritional Considerations

As previously stated, in making its decision on the approval of irradiation for poultry, FDA reviewed data on the effect of irradiation on the nutritional value of food. Based on the review of nutritional studies reported by the Agricultural Research Service of USDA and other sources, FDA concluded that "irradiation at the doses used does not have a deleterious effect on the levels or bioavailability of the nutrients in chicken." (55 FR 18538 at 18542) Based on concerns expressed about the cumulative loss of nutrients, including losses from irradiation, cooking, and refrigerated storage, the FDA reviewed further studies addressing that concern and they further concluded that "irradiation of poultry at doses of up to 3 kilogray will not have an adverse impact on the nutritional value of a person's diet." (55 FR 18538 at 18542) These findings were also reported in FSIS's proposed rule. (57 FR 19460 at 19463)

Despite this thorough review of nutritional considerations, several commenters expressed views on this issue. Commenters for and against the proposed rule agreed with FDA and FSIS that there are nutritional changes associated with irradiation. However, commenters differed in their opinions on whether those changes were significant. One negative commenter called the evidence against irradiation "overwhelming" but failed to cite any evidence to refute the conclusions reached by FDA. Another commenter concluded that food irradiation will have a detrimental effect both on the nutritional value of our food supply and on the long term health of the public, but again provided no evidence to support that conclusion. Still another commented that irradiated food is not palatable.

Conversely, commenters in favor of the rule characterized the effect on nutrients as not significantly impaired or as having no impact on the nutritional quality of food. Two universities provided information based on their research that indicates that irradiation produces no off-flavors and insignificant changes in physical attributes like water-holding capacity, changes in proteins, amino acids, fats, and rancidity indices. Comments from the U.S. Army also supported the low impact of irradiation on the nutritional value and organoleptic aspects of foods. They concluded that the 3 kGy dose conserves the nutritional quality and does not produce a detectable off-flavor in irradiated poultry.

In conclusion, FSIS believes that the comments received on toxicological safety, microbiological safety and efficacy, or nutritional considerations provide no information that would require a change in the proposed rule or a decision not to go forward with the final rule.

Need for Irradiation of Poultry

The proposed rule included a section that addressed the reasons for the Agency's intended approval for poultry irradiation. (57 FR 19460 at 19461) Among the reasons stated were the wide distribution of bacterial pathogens in the environment, public health costs associated with foodborne illness, and the difficulty of eliminating foodborne pathogens by even the most stringent prevention practices. One commenter observed that the need has already been recognized in many other countries. Another reminded the Agency of the success of irradiation of mechanically deboned poultry in France.

Some commenters disagreed with the need for poultry irradiation. They believe that foodborne disease can be eliminated through normal handwashing and proper cooking and handling of poultry products. Conversely, a university researcher observed that, while cooking indeed destroys foodborne pathogens, the "serious safety aspect is that which arises from the potential for cross contamination, which is an area not well understood by the general public and even if understood would not necessarily be easily avoided."

Other commenters observed that a better job of cleaning the chicken or better procedures in the processing plant are adequate to handle the problem. One physician informed the Agency of a method of dipping poultry in a solution of trisodium phosphate (a safe food additive) as a means of killing most *Salmonella* and other disease-causing bacteria at a cost of less than one cent for a four pound bird.

FSIS is aware of that method and others for controlling foodborne pathogens and is involved in their testing. However, it is unrealistic to assume that any one method, including the proposed use of irradiation, will be successful in eliminating all foodborne illnesses.

A food trade organization stated that "all viable technologies should be made available, thus allowing free enterprise decisions to be made in supplying consumers with the most wholesome and safe products possible." Several other commenters echoed this comment.

Environmental Safety

While those favoring poultry irradiation believed the process to be safe, many commenters opposing irradiation raised questions regarding environmental hazards. Consumers and consumer advocacy groups commented that transportation of radioactive material could lead to accidental spills, that more radioactivity will be released into the environment, and that radioactive waste disposal problems will arise.

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[5] Klinger, L., V. Fuchs, D. Basker, B.J. Juven, M. Lapidot and E. Eisenberg. "Irradiation of Broiler Chicken Meat." Israel Journal of Veterinary Medicine. 1986. Vol:42(3). Pgs 181–192. A copy of this article is on display in the FSIS Hearing Clerk Office, room 3171, South Agriculture Building, Food Safety and Inspection Service. U.S. Department of Agriculture. Washington, DC 20250.

[6] Szczawinska, M.E., D.W. Thayer, and J.G. Phillips. "Fate of Unirradiated *Salmonella* in Irradiated Mechanically Deboned Chicken Meat." International Journal of Food Microbiology. 1991. Vol:14. Pgs. 313–324. A copy of this article is on display in the FSIS Hearing Clerk Office, room 3171, South Agriculture Building. Food Safety and Inspection Service. U.S. Department of Agriculture. Washington, DC 20250.

[7] Patterson, M. "Sensitivity of bacteria to irradiation on Poultry Meat Under Various Atmospheres.", Letters in Applied Microbiology, 1988, Vol:7, Pgs 55–58. A copy of this article is on display in the FSIS Hearing Clerk Office, room 3171, South Agriculture Building. Food Safety and Inspection Service. U.S. Department of Agriculture. Washington, DC 20250.

[8] Patterson, M. "Sensitivity of *Listeria monocytogenes* to Irradiation on Poultry Meat and in Phosphate-buffered Saline." Letters in Applied Microbiology. 1989. Vol:8. Pgs. 181–184. A copy of this article is on display in the FSIS Hearing Clerk Office, room 3171, South Agriculture Building. Food Safety and Inspection Service. U.S. Department of Agriculture. Washington, DC 20250.

The movement of radioactive materials is not a new undertaking in the United States. There are over 50 facilities currently using radioactive materials to process cosmetics, hospital supplies and medical products, and many plastics used for packaging and consumer products. FDA addressed that issue in its 1986 final rule. (51 FR 13376 at 13395) They observed that both the Department of Transportation (DOT) and the Nuclear Regulatory Commission (NRC) have regulatory requirements that govern all aspects of transportation. Additionally, they summarized an NRC report which concluded that the total risk from all transportation of such materials was acceptably low and that the existing regulations are adequate to protect the public against unreasonable risks from the transport of radioactive materials. Food irradiation sources are shipped in lead-shielded steel casks. There has never been a release of radioactive materials from one of these casks in the United States as a result of a transportation accident and there is no reason to believe that shipment of food irradiation sources would make such a release more likely.

In regard to environmental hazards, irradiation facilities do not release radioactivity into the environment. The level of radiant energy used at irradiation facilities cannot produce neutrons, substances which can make materials radioactive. The walls of the irradiation cell through which the food passes, the machinery inside the cell, and the product being processed cannot become radioactive. Radioactive sources are sealed in double-walled capsules made from corrosion resistant alloys. They are stored in a deep water pool when not in use. The water in the pool is continuously deionized to further deter corrosion of the capsules. If corrosion were to occur in spite of these precautions, there are radiation sensors in the pool that would detect the presence of any radioactive material. Under those circumstances, the failed capsule could be safely removed from the pool, be placed in a transportation cask, and be returned to the supplier for proper repackaging or safe storage.

FDA also addressed the issue of radioactive wastes in the 1986 final rule. (51 FR 13376 at 13396) They stated that, under NRC regulations, sealed sources used in an irradiator may be disposed of by transfer to an authorized recipient—the original supplier, another licensee authorized to possess the source, or a facility licensed to receive and dispose of radioactive wastes. In practice, cobalt-60 sealed sources are usually returned to the supplier at the end of their useful life (15–20 years). FSIS believes that these methods are adequate to protect the environment.

Purpose of Technology

Some commenters stated that irradiation would be used as an alternative to good hygienic practice in processing plants or be used to clean up contaminated poultry. This is not the case nor is it feasible. All poultry prepared for irradiation will be processed and packaged in accordance with the Poultry Products Inspection Act and the poultry products inspection regulations. Therefore, all poultry entering into or in official establishments is inspected and passed for wholesomeness. Poultry could not be packaged at one official establishment and shipped to another for irradiation if the poultry was not wholesome.

Further, the rulemaking requires that the temperature and time requirements of 9 CFR 381.66 be maintained during shipping of poultry from one official establishment to the irradiation facility. The temperature and time requirements are effective in reducing the growth of most spoilage microorganisms.

Additionally, using irradiation to "clean up" a product—that is to reverse spoilage or make a bad product appear good—is not possible. If a product already exhibits signs of spoilage (i.e. bad appearance, odor, or taste), before irradiation, it cannot be restored to apparent good quality by any treatment, including irradiation. The bad appearance, smell, or taste will remain or be made worse by the irradiation process.

Another group of commenters expressed concern that irradiation of poultry has been conceived as a means of disposal for cesium-137 or other so-called waste products of the nuclear weapons or nuclear power industry. All industrial uses of cesium-137 have been terminated by the Department of Energy so the only radionuclide source available for irradiation of poultry is cobalt-60. Cobalt-60 is produced for the specific purpose of radiation processing rather than as a byproduct of other industries. Other sources that may be used for irradiation of poultry, machines that produce electrons or X-rays, use no radioactive source material and thus could not contribute to nuclear waste disposal.

There were no hidden agendas associated with the proposed rule. The purpose of irradiation is in no way intended to replace or relax current poultry processing regulations or to dispose of unwanted nuclear waste materials. The Agency's decision to amend its regulations to permit the irradiation of fresh or frozen raw poultry products is intended to provide industry with an additional means to control and reduce foodborne pathogens that may be present on raw poultry.

Consumer Education

A significant number of commenters favoring poultry irradiation believed that a lack of information regarding food irradiation led to opponents concerns and such product should be made available to consumers.

The Agency agrees that many consumers do not have a good understanding about irradiated foods. Many commenters stated that the process is too new and has not been tested; this, however, is not the case. The process and testing of irradiation has been in existence for over 30 years. Additionally, cosmetics, wine bottle corks, hospital supplies, medical products, and some types of food packaging have been irradiated for a number of years.

Some commenters opposing the proposed rule believed that irradiating food makes it radioactive. Radioactivity in foods can occur by two means; contamination of foods with radioactive substances, or induction of radioactivity by penetration of energy into the nuclei of the atoms that make up the food.

The irradiation process involves passing food through an irradiation field; however, the food itself never contacts a radioactive substance. The radioactive source material is contained within specially made capsules that are protected from corrosion or other damage that could result in the release of the sources. If a capsule should fail in spite of the precautions taken, there are sensors that would detect the radioactive materials and immediately halt the process before food could be contaminated.

FDA addressed the issue of induced radioactivity in irradiated foods in their denial of requests for hearing. (53 FR 53176) FDA found no merit in an objection, unsupported by data, that pork becomes radioactive for 24 hours after irradiation based on induced radioactivity in sodium present in the pork. Quoting their 1981 advance notice of proposed rulemaking (46 FR 18992), FDA stated that "the use of ionizing radiation of appropriate source energy [levels] does not induce any detectable radioactivity in foods when measured by methods that can easily detect the presence of radioisotopes that occur naturally in foods." (53 FR 53176 at 53201)

A significant number of commenters stated that irradiation is banned in all of

Europe, but this is not true. About 10,000 tons of food per year are irradiated in both Belgium and France. A wide variety of irradiated foods has been approved in the Netherlands, and plants there have been irradiating about 20,000 tons per year. Thirty seven countries throughout the world have approved applications of irradiation, and foods have an unconditional clearance in 28 countries. Spices and onions are irradiated commercially in Hungary, and spices are also processed in small quantities in France, Israel, Czechoslovakia, and other countries, including the United States.

A few commenters stated that they want the right to buy non-irradiated poultry. They will have it. The decision to irradiate poultry is voluntary. The Agency has never attempted to mandate poultry irradiation, but supports the availability of alternative processes that help provide consumers with safer foods. Labeling of irradiated poultry will provide the means for consumers to choose between non-irradiated and irradiated poultry as they wish.

FSIS recognizes that many of the misconceptions held by consumers are the result of the absence of factual information about the irradiation process. Several commenters suggested that the Agency engage in consumer education programs to address concerns regarding the process. The Agency agrees and is planning such an effort through publications, the Meat and Poultry Hotline, and cooperation with other agencies with similar missions and interests.

Cost and Benefit Analysis

The Agency, based on a 1991 Economic Research Service (ERS) study, estimated that the cost of irradiating poultry would range from 0.86 to 1.3 cents per pound. Additionally, the net public health benefits of irradiation was estimated to range from 35 to 50 million dollars.

Several comments, both in favor of and opposed to the proposed rule, addressed the cost and benefit analysis. Those in favor of the rule agreed with the analysis, but suggested the benefits may be higher.

Alternately, a consumer group opposed to irradiation disagreed with the analysis. In fact, that group believed the cost of irradiating poultry is much higher and that the cost will be passed on to consumers in such a way that the proposed rule should be considered as a "major rule" under Executive Order 12291.

The Agency agrees that the benefits may vary, but believes that the cost and benefits analysis is an accurate estimation. However, the Agency does not believe this could in any way change the status of the rule from a non-major rule. Most importantly, poultry irradiation is voluntary. The poultry industry will not be required to have their products irradiated nor will consumers be forced to purchase irradiated poultry. Therefore, the Agency does not believe the non-major rule status of the regulation should be changed nor does the Agency believe that its cost and benefits analysis should change.

Other General Topics

Two consumer groups suggested that the comment period be extended and hearings be held on the safety of irradiation. Additionally, a labor union suggested that an advisory committee be formed to oversee the implementation of the rule. Such a committee would include industry, labor, environmental and consumer representation.

In regard to the extension of the comment period, the Agency received no evidence that significant comments would be forthcoming. Therefore, the request was not granted. Additionally, there is no reason to believe a public hearing would provide the Agency with any more pertinent information.

The Agency does not believe an advisory committee should be formed. The Agency, in its proposed rule, established means for the implementation of poultry irradiation and received relatively few comments related to implementation. Therefore, the Agency does not believe that an advisory committee would provide any significant assistance.

Scope of Regulation

Several commenters suggested that the scope of the rulemaking be expanded to allow packages sized for food service, wholesale, and mass catering operations to be irradiated.

FSIS agrees that irradiated poultry should be made available to food service, wholesale, and mass catering operations. The rulemaking does not disallow any of these options.

One commenter suggested that the scope of the rulemaking be expanded to allow poultry products with added ingredients, including flavorings and uncured solutions such as basting mixtures, to be irradiated. The commenter further stated that fresh poultry can have added flavorings and uncured solutions and still be labelled as "fresh."

The Agency would favorably entertain allowing poultry with added flavorings and uncured solutions to be irradiated. FSIS will grant approval on a case-by-case basis consistent within the intent of FDA's approvals.

A commenter suggested that cooked poultry be irradiated. The Agency does not agree that cooked poultry should be irradiated. Cooked, uncured poultry is required to be fully cooked to 160 degrees Fahrenheit which is sufficient to destroy viable pathogenic organisms. Thus, since the purpose of irradiation for poultry is to control food-borne pathogens, there should be no need for the irradiation of cooked poultry. The Agency has not identified any problems other than mishandling that result in pathogen survival in fully cooked poultry.

A commenter was concerned that it may not be possible to irradiate frozen poultry between 1.5 kGy and 3.0 kGy. The commenter suggested that the upper limit for frozen poultry be raised to 4.5 kGy. The commenter did not expect there to be any problem with irradiating fresh poultry between 1.5 kGy and 3.0 kGy.

Other than the commenter's statement, the Agency does not have any documentation to support the contention that frozen poultry could not be irradiated as proposed. Since the poultry will be packaged, the product units can be arranged at the irradiation facility to receive the proper absorbed dose. The Agency does realize that the radiation source affects the configuration size of the product unit.

One commenter suggested that packaging films that provide an oxygen barrier should be allowed since the poultry industry currently uses such materials. FSIS has determined that there are insufficient data to establish the safety of using oxygen impermeable films to hold poultry during the irradiation process and therefore such films will not be acceptable. Further, FDA in its rulemaking (55 FR 18538 at 18542) allowing poultry to be irradiated specifically stated that oxygen impermeable packaging materials could not be used.

One commenter suggested that FSIS should take the lead in requiring FDA to evaluate the effects of irradiation on existing and new types of polymeric packaging materials, in accordance with 21 CFR 179.45.

FSIS does not agree with the commenter that FSIS should take the lead on this issue. FDA will consider the effects of irradiation on new packaging materials when petitioned. FSIS suggests that the poultry industry, the irradiation industry, and the packaging industry contact and petition, if necessary, FDA to determine whether

existing or new packaging materials are acceptable.

One commenter suggested that the rulemaking should be expanded to include monitoring for radiation injured cells within the poultry product.

FSIS does not agree with the commenter that such monitoring is necessary. FSIS accepts the determination made by FDA that poultry products irradiated up to 3 kGy are safe.

One commenter suggested that the rulemaking be modified to require poultry suppliers to the irradiation facilities to have a Hazard Analysis Critical Control Program (HACCP) to assure that unwholesome poultry is not irradiated. The commenter further stated that irradiation would otherwise be used to cover-up spoilage and unwholesome conditions on the poultry.

Poultry products entering into any official establishment, including an irradiation facility, must be inspected and passed (9 CFR 381.145). Unwholesome product would not be acceptable for shipment from one official establishment to another, or for receipt for processing from another official establishment.

Further, it is expected that poultry shipped from an official establishment to an irradiation facility for radiation treatment will be produced under a quality control program for labeling and other quality controls related to the irradiation quality control procedure.

The Agency does not mandate HACCP. The Agency would favorably support the voluntary development of a HACCP program for the poultry supplier, as well as the irradiation facility, to assure that the official establishments are specifically monitoring the wholesomeness of the poultry for irradiation. If the poultry supplier is processing poultry to specifically meet requirements identified by the irradiation facility—for example, prior labeling of packaged poultry, weight of individual packaged product or specific types of product—a quality control program may be required for the supplier. The supplier's quality control program could also address wholesomeness specifications. FSIS would have to approve all quality control programs.

One commenter expressed concern with the importation of irradiated poultry. The commenter stated that there would be additional health risks resulting from imported, irradiated poultry since foreign facilities are typically poorly regulated. In addition, the commenter stated that inspection of foreign facilities by United States inspectors would be ineffective since foreign facilities typically have advanced notice of the U.S. inspections.

The Agency does not agree that there would be additional health risks associated with imported irradiated poultry. Foreign countries exporting irradiated poultry to the United States must have an inspection system equivalent to the U.S. poultry inspection system and have a quality control system for irradiation facilities prior-approved by FSIS. Knowing when U.S. inspections are to occur is not significant.

A commenter expressed concern that, since no analytical method yet exists to determine if poultry has been irradiated, foreign irradiated poultry would enter into the United States without identification.

All irradiated poultry, including imported irradiated poultry, is to be prominently labeled and bear the logo as specified in 9 CFR 381.135. In addition, in accordance with 9 CFR 381.197, poultry entering into the United States must be accompanied by an export certificate from the exporting country, identifying where and how the poultry was processed.

Worker Safety

Several commenters expressed concern that the rulemaking does not adequately address worker safety in the irradiation facilities. The commenters cited past worker safety violations of the NRC and Occupational Safety and Health Administration (OSHA) regulations by irradiation facilities, as well as minimal monitoring of the irradiation facilities by the regulatory agencies since the facilities are small compared to larger nuclear facilities.

FSIS does not agree that the rulemaking inadequately addresses worker safety, including FSIS employees safety. FSIS has clarified 9 CFR 381.149(c)(1)(ii), to more specifically state that the quality control system must demonstrate that a worker safety program addressing OSHA regulations is in place. Further, 9 CFR 381.149(c)(2)(ii) requires the irradiation facility to assure that the facility personnel have been trained in radiation health and safety. In addition, OSHA has specific regulations regarding worker exposure limits and tolerances for ionizing radiation. Pursuant to OSHA regulations, facility personnel are required to wear personnel dosimetry devices that records the cumulative amount of ionizing radiation that a facility employee is exposed to while in the facility.

FSIS employees also will receive training from FSIS in radiation health and safety and be required to wear dosimetry devices. The Agricultural Research Service, (ARS), USDA administers a Radiological Safety program for all employees of USDA agencies. The personnel dosimetry devices will be issued through ARS to FSIS. Radiation exposure records for FSIS employees will be maintained and monitored by ARS. The records will be kept indefinitely.

The Agency does not currently have a mutual agreement with NRC or OSHA to be made aware of safety violations by the irradiation facilities. However, the Agency does recognize the benefits of knowing whether safety violations have occurred at the irradiation facility and will pursue establishment of such agreements.

The monitoring of irradiation facilities by other Federal or state agencies is not determined by FSIS. FSIS will assure that the irradiation facilities are properly implementing their quality control systems. In addition, FSIS will pursue closer working relationships with other agencies, including NRC and OSHA.

Several commenters expressed concern about worker safety related to radioactive "spills" at the irradiation facilities.

The Agency will rely upon the safety regulations administered by NRC, OSHA, FDA, and the Environmental Protection Agency in cases of radioactive contamination,as well as the guidance provided by ARS/USDA.

One commenter further expressed concern with the lack of environmental safeguards in the FSIS rulemaking specifically related to poultry workers and the surrounding communities. The commenter stated that the poultry industry had a bad safety record.

The Agency will rely upon the safety regulations administered by NRC, OSHA, FDA, and particularly the Environmental Protection Agency in cases of environmental contamination.

One commenter suggested that the rulemaking be modified to require the safety and health plans of the irradiation facilities to be made available for public review and comment in the **Federal Register**.

The Agency does not agree with the commenter that the FSIS rulemaking should require such modification. The commenter could petition other regulatory agencies specifically responsible for worker safety and health to include such requirements in appropriate regulations.

Labeling

Several commenters, particularly consumer interest groups, stated that

labeling requirements need to be more extensive to cover processed poultry products containing irradiated poultry ingredients—second generation products.

FSIS's proposed regulations did not provide for labeling provisions for poultry products containing irradiated poultry ingredients, and the Agency agrees that such provisions are needed. Therefore, the Agency is undertaking policy initiatives to establish labeling provisions of poultry products containing irradiated poultry ingredients.

A comment from a consumer interest group stated that irradiated poultry should be fully labeled in supermarkets and restaurants.

The FSIS rulemaking would require all irradiated poultry be fully labeled when it leaves a Federal establishment. Product sold at retail, including supermarkets, would be fully labeled, and could not be removed from its labeled container, and repackaged. Product must be sold intact, as received from a Federally inspected establishment.

FSIS does not impose labeling requirements for irradiated foods prepared in restaurants, including poultry. Additionally, FDA, in 21 CFR 179.26(c)(2), does not require foods containing an irradiated ingredient to be labeled when prepared in restaurants.

A commenter suggested that labeling be more expansive to facilitate a quick recall if a problem was found with a particular lot of irradiated poultry.

FSIS agrees that provisions for a product recall are necessary and identified this need in the rulemaking, 9 CFR 381.149(c)(3)(x). The rulemaking requires irradiated product within each production lot to be identified to permit product recall.

A commenter suggested that the label for irradiated poultry be modified to require a warning statement, stating that the radiation treatment does not assure that harmful microorganisms have been eliminated and that consumers must properly handle the poultry.

FSIS does not agree that such a statement is necessary or appropriate. The Agency has prepared educational materials for the safe handling of poultry, irradiated or not, and will continue to provide information on proper handling of raw poultry. Furthermore, the product label must bear a handling statement, "Keep Refrigerated" or "Keep Frozen." Either statement is intended to provide the purveyors and consumers with information about safe handling procedures.

A commenter suggested that irradiated poultry not be considered as "fresh" product, as referred to in 9 CFR 381.147(f)(4), since the poultry is further processed. The commenter felt that the consumer would interpret the term "fresh" as meaning "as harvested" or "not processed."

FSIS does not agree that the term "fresh" would be misleading to the consumer. The Agency has had a long-standing policy of allowing the term "fresh" on poultry which has not been cured, canned or chemically preserved, or frozen to zero degrees Fahrenheit, all of which are processes that alter the appearance of the product. Irradiated poultry does not have an altered appearance. Irradiated poultry is a raw product requiring the same special handling as all fresh poultry. If poultry is frozen after the irradiation process, it cannot be labeled "fresh".

Two commenters suggested that optional labeling statements regarding the purpose of irradiation should not be allowed. One commenter felt that such statements would be perceived as a health claim. The second commenter stated that such a statement would be a license for purveyors and purchasers to abuse the product's holding temperature and time.

FSIS does not agree that the optional labeling statement should be removed. The statement is intended to provide additional information to the consumer regarding the purpose of the irradiation process. 9 CFR 381.135(c) specifies that the statement must not be false or misleading.

The optional statement is not a health claim, as one commenter suggested. The Agency recognizes that pathogenic organisms may be present on poultry. However, because of the irradiation process, the level of organisms, including those that are pathogenic, would be reduced and the potential for foodborne illness would also be reduced.

Regarding the potential for increased handling abuse, the Agency agrees that this is a possibility. However, through educational efforts, the Agency expects that purveyors and purchasers would not mishandle irradiated poultry. The rulemaking does provide that proper temperature and time requirements be maintained through storage and shipping to the point of purchase (9 CFR 381.(c)(6)). In addition, the rulemaking requires a "Keep Refrigerated" handling statement on the packaged product. The Agency does not control handling practices beyond the Federal irradiation facility. Handling statements are intended to provide guidance beyond the FSIS inspected facilities.

A commenter suggested that the logo should not be included as part of the labeling of irradiated poultry.

The Agency disagrees with the commenter. The Agency believes that irradiated poultry should be adequately and prominently labeled. The logo provides an additional identification of the irradiation process and is also consistent with FDA requirements. (21 CFR 179)

Several commenters suggested that the optional labeling statement "Irradiated to control food-borne pathogens" is vague and should be modified as follows: "Irradiated to control *Salmonella;* (B) "Irradiated to control foodborne vegetative pathogenic bacteria;" (C) "Irradiated to reduce bacterial spoilage;" (D) "Pasteurized by irradiation to control bacteria and to extend shelf-life;" (E) "Pasteurized by irradiation to reduce bacteria and to improve shelf-life;" or (F) "Contains no radioactive additions."

The Agency does not require the optional labeling statement referred to by the commenters—"Irradiated to control food-borne pathogens." However, the statement is truthful and accurate and would be acceptable on irradiated poultry, as provided in 9 CFR 381.135(c). Such optional labeling statements must not be false or misleading. The Agency would evaluate each of the above mentioned proposed optional statements on a case-by-case basis, as well as the supporting documentation, to detemine if the statements are false or misleading. Truthful informational statements are supported by the Agency.

Quality Control System

Licensing

One commenter asked for clarification of the licensing requirements of 9 CFR 381.149(c)(1) (i) and (ii). Specifically, the commenter asked if section (i) was specific for facilities with a gamma radiation source and if section (ii) was specific for facilities with a machine radiation source.

The intent of both sections is basically as the commenter stated. Section (i) is specific for registering the gamma radiation source with the Nuclear Regulatory Commission (NRC). However, section (ii) is for registering the machine radiation source with the Occupational Safety and Health Administration (OSHA), as well as providing evidence that an OSHA worker safety program for both types of radiation source facilities is in place. Worker safety regulations administered by OSHA are addressed, in part, in 29

CFR 1910.96. FSIS has amended the rulemaking to clarify the intent of 9 CFR 381.149(c)(1) (i) and (ii).

Training

A commenter felt that the rulemaking only scantily addressed worker occupational health and safety training. The commenter provided several recommendations: FSIS employees should be trained, not just irradiation facility personnel; records of worker exposure levels to radiation should be kept for extended periods of time; and food irradiation facilities should be required to establish comprehensive health and safety plans as comprehensive as the larger commercial (non-food) facilities.

The Agency fully agrees with the commenter's suggestions. However, the rulemaking adequately addresses them. FSIS employees will be provided training on radiation health and safety. Records of FSIS employees' levels of exposure to radiation will be maintained indefinitely by the Agricultural Research Service's Radiological Safety Staff; OSHA is responsible for establishing and monitoring the radiation exposure level of irradiation facility personnel, including FSIS personnel. OSHA has established record maintenance requirements to which the plant must adhere. Commercial irradiation facilities could apply for a grant of inspection to irradiate poultry and would be required to establish health and safety programs acceptable to OSHA.

A commenter suggested that the training specified in 9 CFR 381.149(c)(2)(i) should be modified to say "* * * under supervision of a person who has proficiency on the safe handling of food products." The commenter was concerned that the course of instruction described in the preamble, the Food Irradiation Process Control School (FIPCOS), was applicable to international processing.

The Agency does not agree that the rulemaking should be modified as specified by the commenter. The FIPCOS course, or any other course of similar content, provides a well-rounded curriculum regarding safe handling of perishable products, as well as quality control related to dosimetry and safe handling procedures.

One commenter suggested that since only packaged poultry would be irradiated, workers (including "fork lift" operators) should not be required to be trained in "food technology." (9 CFR 381.149(c)(2)(ii) The commenter felt that food technology was too complex a field of study.

The Agency does not agree that food technology should not be a required area of training. Packaging does not assure that the product will be safe. Temperature and time for handling and storage are extremely important for preventing serious safety hazards in packaged irradiated poultry. However, the Agency does agree that the wording could be clarified to state that the key facility quality control personnel are required to be trained. This clarification will assure that the personnel responsible for the operation of the quality control system are informed of the safety hazards associated with poultry. In addition, this modification will clarify that "fork lift" operators are not required to be trained. The rule has been modified to reflect this.

Dosimetry

Two commenters clarified that the reference to the American Society of Testing and Materials (ASTM) 6-month calibration of the dosimetry system was erroneous. The suggested calibration frequency should be at least once each 12 months.

FSIS agrees that the frequency reference was erroneous. In addition, FSIS agrees that the dosimetry system calibration frequency should be at least once each 12 months, as recommended by ASTM. FSIS has amended the rulemaking to correct the intended calibration frequency to be at least once each 12 months.

A commenter suggested that 9 CFR 381.149(c)(4)(vi) be modified to delete the reference to the dosimeter positioning on at least the first, middle, and last product unit. The commenter felt that the first, middle, and last product units in some batch and continuous irradiators could not be easily determined. In addition, the commenter suggested that the wording be modified to state that "a sufficient number of dosimeters must be placed as specified by the procedures and approved by FSIS."

FSIS does not agree with the commenter that the first, middle, and last product unit cannot be identified in batch and continuous operations. A production lot, as defined in the rulemaking, must first be designated by the irradiation processor. Within the production lot, the first, middle, and last product units should be easily identified or estimated. For clarification, 9 CFR 381.149(c)(4)(vi) does not require the first, middle, and last product units within the irradiator cell at any given time to be identified.

Regarding the suggested modification by the commenter, the rulemaking clearly states the minimum requirements for dosimetry, whereas the suggested modification is too ambiguous. Further, the rulemaking mirrors the guidance of the ASTM standards.

One commenter, an irradiation processor, suggested that the rulemaking be modified to require at least one dosimeter in the irradiation cell at all times during a production lot. The commenter stated that this provision could provide added documentation of the estimated absorbed dose received by product units during a processing interruption.

The Agency agrees that additional dosimeters could be valuable for documenting the estimated absorbed dose received by a product, particularly during an unexpected interruption in processing. Although this would be a positive, objective method for documenting the absorbed dose in product in the cell, the Agency has determined that such a mandatory requirement is not necessary. The irradiation facility will have in place methods for documenting the actual absorbed dose of product, including the amount of time the product is exposed to the radiation source. However, a quality control system could have the "one dosimeter in the cell at all times" control.

Several commenters suggested that the reference to "only one product type," 9 CFR 381.149(c)(3)(iv) was vague. The commenters felt that there was no reason to not allow two dissimilar products (e.g., thighs and wings) to be irradiated at the same time.

FSIS agrees that it would be acceptable to irradiate dissimilar product at the same time, provided the product(s) is uniform throughout the production lot and the dose mapping (9 CFR 381.149(c)(4)(iv)) has been conducted on the product(s) within the production lot. Although unclear, this was the intention of the rulemaking. FSIS has amended the rulemaking to clarify 9 CFR 381.149(c)(3)(iv).

One commenter suggested that the definition of dose mapping, 9 CFR 381.149(a)(3), be modified to add that dose mapping could "be used to determine the proper irradiation time."

The Agency agrees that through dose mapping the irradiation time could also be established. However, the Agency does not agree that the suggested definition change enhances the definition of dose mapping. Further, the definition contained in the rulemaking is based upon the definition contained in the ASTM standards.

General Quality Control Issues

A commenter suggested that the term "production" be removed from 9 CFR 381.149(c)(3)(i) since additional

paperwork, (i.e., a certificate documenting the acceptability of the packaging material) would be required for each production lot irradiated, rather than each "lot."

FSIS does not agree that additional certificates would be required just because each production lot must be identified. However, the Agency agrees that the wording could be more clear, by stating that certification, in the form of a statement of fact which is traceable to a certificate, be made. The rulemaking would require the irradiator to have in place provisions to assure that all product irradiated is packaged in proper material regardless of how many production lots are created from any given lot. The documented tracing of all product from a larger lot to a smaller production lot, using only one certificate, would be acceptable and would not require additional paperwork.

One commenter suggested that there would not likely be any problem with commingling irradiated and non-irradiated poultry, as long as there is no cross-contamination. The commenter felt the rulemaking (9 CFR 381.149(c)(3)(ix)) could be interpreted to cause there to be separate storage and shipping containers for irradiated and non-irradiated poultry. The commenter implied that if complete separation was required, this would be an unnecessary burden.

Since packaged product is involved, cross-contamination is not the driving force behind the prevention of commingling non-irradiated and irradiated poultry. Poultry will likely be labeled "irradiated" at the poultry supplier and then shipped to the irradiation facility. Therefore, the "irradiated" product must be tightly controlled to assure that it is actually irradiated. However, the poultry supplier and the irradiation facility can use any number of acceptable practices to assure that the non-irradiated product is properly processed, including, but not limited to, separate storage facilities or use of special indicator labels which turn a different color when exposed to radiation. The Agency believes that, although it is necessary to establish methods to prevent commingling of irradiated and non-irradiated poultry, establishments have flexibility as how this can be achieved. Therefore, FSIS does not believe an undue burden is being placed on establishments.

A commenter suggested that food irradiation, and particularly the irradiation of poultry, is over-regulated. The commenter felt that these extensive regulations discourage judgement, creativity, and implementation of new technology. The commenter did not provide examples of excessive regulation.

The Agency does not agree that poultry irradiation is over-regulated. The rulemaking addresses the minimal safety, labeling, and processing controls that would assure that the poultry is properly irradiated.

Several commenters stated that there needed to be better monitoring of food irradiation facilities and processes. Specifically, the commenters expressed the following: Neither FDA nor USDA has reliable information on what food products are irradiated or who is irradiating food; neither the FDA nor the USDA has programs to inspect food irradiation facilities; there needs to be special attention to measures that prevent re-irradiation; there needs to be strict compliance monitoring for processing, transporting, and disposing of radioactive materials; there is no way after-the-fact to determine if poultry is properly irradiated; and there are no provisions for monitoring radiosensitive essential and non-essential nutrients, particularly Vitamin E.

Both FDA and USDA issue regulations that specify which foods can be irradiated (21 CFR part 179 for FDA; 9 CFR parts 318 and 381 for FSIS/USDA; 7 CFR for APHIS/USDA). FDA and APHIS should be contacted for information related to what products under their jurisdiction are irradiated. However, FSIS would know precisely which products are irradiated because labels and quality control programs must be prior-approved.

Both FDA and USDA require irradiation facilities to have prior-approved programs for irradiation processing. Both Departments have inspection programs for monitoring irradiation facilities to ensure the proper and safe irradiation of products.

FSIS specifically does not allow poultry to be re-irradiated. Irradiation facilities must have procedures for assuring that this does not occur. Further, if irradiated poultry were to leave an official establishment and re-enter another official establishment for processing and possible re-irradiation, the label would indicate that the product has already been irradiated. If the label and packaging is removed, the poultry would be refused entry into the official establishment.

FSIS is not the Agency responsible for monitoring the transport and handling of radioactive materials. Other agencies, such as DOT and EPA are more directly involved.

The Agency will rely on the documentation records to assure that poultry has been properly irradiated. If there is sufficient reason to believe that the poultry has been improperly irradiated, the irradiation quality control system requires that a recall procedure be provided.

The Agency has determined that there are no significant nutrient losses in irradiated poultry. Poultry is not a significant source of Vitamin E.

In addition to the changes addressed above, there are a few non-substantive corrections to the rule because of some printing errors made by the **Federal Register** at the time of publication.

Final Rule

The following regulatory changes will be made for poultry product irradiation procedures in part 381 of the Federal poultry products inspection regulations:

List of Subjects in 9 CFR Part 381

Poultry and poultry products, Irradiation.

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

1. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 450; 21 U.S.C. 451–470; 7 CFR 2.17, 2.55.

2. Section 381.19 is amended by adding a new paragraph (g) to read as follows:

§ 381.19 Application for inspection; required facilities.

* * * * *

(g) *Irradiation facilities.* Applicants for inspection whose processing is limited to irradiation of packaged poultry product while in the custody of the establishment need not submit information required by this section, provided the applicant has submitted to the Administrator a proposed quality control system as specified in § 381.149 of this part. All applicants for inspection whose operations include irradiation and other processing would submit, to the Administrator, a proposed quality control system as specified in § 381.149 of this part, in addition to information required in this section.

3. The "Reserved" designation of § 381.135 is removed and the following text is added:

§ 381.135 Irradiated poultry product.

(a) The labeling of packages of poultry product irradiated in conformance with § 381.147(f)(4) of this part must bear the following logo along with a statement such as, "Treated with radiation" or "Treated by irradiation," in addition to all other labeling requirements of this subpart. The logo must be placed prominently and conspicuously in

conjunction with the required statement and be colored green. The statement must appear as a qualifier contiguous to the product name and in letters of the same style, color, and type as the product name. Letters used for the qualifying statement shall be no less than one-third the size of the largest letter in the product name. Any labeling bearing the logo and any wording of explanation with respect to this logo must be approved as required by subparts M and N of this part.

(b) The product label must bear the handling statement "Keep Refrigerated" or "Keep Frozen," as appropriate, in conformance with § 381.125 of this Subpart.

(c) Optional labeling statements about the purpose for radiation processing may be included on the product label in addition to the above stated requirements. Such statements must not be false or misleading.

4. Section 381.147(f)(4) is amended by adding a new class of substance "Radiation Sources," in alphabetical order, to read as follows:

§ 381.147 Restrictions on the use of substances in poultry products.

* * * * *

(f) * * *

(4) * * *

Class of substances	Substance	Purpose	Products	Amount
*	*	*	*	*
Radiation Sources...	Ionizing radiation sources as approved in 21 CFR 179.26(a)	For control of food-borne pathogens	Fresh or frozen, uncooked, packaged poultry products that are: (1) Whole carcasses or disjointed portions of such carcasses that are "ready-to-cook," which includes such poultry products as fresh or frozen, uncooked ground, hand-boned, and skinless poultry, (2) mechanically separated poultry—a finely comminuted ingredient produced by the mechanical deboning of poultry carcasses or parts of carcasses	Minimum absorbed dose of 1.5 kiloGray (150 kilorads) to a maximum absorbed dose of 3.0 kiloGray (300 kilorads).
*	*	*	*	*

5. The heading of paragraph (e) and paragraphs (e)(1) and (e)(3) of § 381.145 are revised to read as follows:

§ 381.145 Poultry products and other articles entering or at official establishments; examination and other requirements.

* * * * *

(e) Evaluation and Approval of Quality Control Programs or Systems. (1) The Administrator shall evaluate the material presented in accordance with the provisions of paragraph (c) or (d) of this section or § 381.149 of this subpart. If it is determined by the Administrator, on the basis of the evaluation, that the total quality control system, partial quality control program, or quality control system for irradiation facilities will result in finished products controlled in this manner being in full compliance with the requirements of the Act and regulation thereunder, the total quality control system, partial quality control program, or quality control system for irradiation facilities will be approved and plans will be made for implementation under departmental supervision.

* * * * *

(3) The establishment owner or operator shall be responsible for the effective operation of the approved total plant quality control system, partial quality control program, or quality control system for irradiation facilities to assure compliance with the requirements of the Act and regulations thereunder. With the exception of a quality control system for irradiation facilities, as specified in § 381.149 of this Subpart, the Secretary shall continue to provide the Federal inspection necessary to carry out the responsibilities of the Act.

6. The heading of paragraph (g) and paragraph (g)(2) are revised, and a new paragraph (g)(4) is added to § 381.145 to read as follows:

§ 381.145 Poultry products and other articles entering or at official establishments; examination and other requirements.

* * * * *

(g) Termination of Quality Control Programs or Systems. * * *

(2) The approval of a total plant quality control system, partial quality control program, or a quality control system for irradiation facilities may be terminated upon the establishment's receipt of a written notice from the Administrator under the following conditions:

* * * * *

(4) If approval of a quality control system for irradiation facilities, as specified in section 381.149 of this Subpart, has been terminated in accordance with the provisions of this section, a request for approval of the same or a modified quality control system will be evaluated by the Administrator upon receipt.

* * * * *

7. The "Reserved" designation of § 381.149 is removed and the following text is added:

§ 381.149 Irradiation of poultry product to control foodborne pathogens.

(a) Definitions of food irradiation terms:

(1) *Absorbed dose* is the amount of energy imparted by ionizing radiation to a quantity of product.

(2) *Bulk density* is the mass (weight) of a product unit divided by its total volume.

(3) *Dose mapping* is the identification of the regions of minimum and maximum absorbed dose in a product unit.

(4) A *dosimeter* is the device for measuring absorbed dose.

(5) *Dosimetry* is the process of measuring absorbed dose.

(6) *Ionizing radiation* is radiation with sufficient energy to cause the removal of electrons from atoms or molecules, thereby creating ions.

(7) *Irradiate* means to expose a material to ionizing radiation.

(8) A *product unit* is the volume of product, made up of one or more packages of product, which is collectively transported past the radiation source (e.g., in boxes or totes or on pallets or carriers).

(9) A *production lot* is the quantity of like product units designated as such by the operator of the irradiation facility or their agent to be processed in no more than one continuous shift of up to 8 hours.

(10) *Radiation source* is the radioactive material (e.g., cobalt-60) or machine that emits ionizing radiation.

(11) *Source activity decay* is the decrease in the radioactivity of radionuclide source material (e.g., cobalt-60) with the passing of time.

(12) *Traceability* is the capacity, through documentation, to relate an end-point measurement to recognized standards.

(b) Poultry product may be treated to reduce foodborne pathogens by the use of ionizing radiation as identified in § 381.147(f)(4) of this subpart. Only irradiation facilities operating under a FSIS-approved quality control system, in accordance with paragraph (c) of this section, may irradiate poultry product for food uses.

(c) A description of the quality control system must be sent to the Administrator identifying the responsible official for quality control and stating that all data and information generated by the system will be maintained to enable the Department to monitor compliance. The quality control system will be evaluated and approved in accordance with § 381.145(e) of this Subpart. A copy of the description will be placed on file in the irradiation facility and be available to any duly authorized representative of the Secretary. At a minimum, the operator of the irradiation facility must establish and comply with a quality control system which provides for the following:

(1) Licensing, Sanitation, and Facility. (i) Documentation showing that the irradiation facility is licensed and/or possesses gamma radiation sources registered with the Nuclear Regulatory Commission (NRC) or the appropriate State government acting under authority granted by the NRC, and that a worker safety program addressing regulations of the Occupational Safety and Health Administration (OSHA) is in place.

(ii) Documentation showing that the machine radiation source irradiation facility is registered with the Occupational Safety and Health Administration (OSHA) or the appropriate State government acting under authority granted by OSHA, and that a worker safety program addressing OSHA regulations is in place.

(iii) Procedures to ensure that the irradiation facility complies with the applicable provisions of Subpart H of this Part, as determined by the Administrator.

(iv) Procedures to ensure that, if the facility has no refrigerated storage capacity, adequate numbers of refrigerated units (such as trucks or carriers) will be made available during the radiation processing of poultry.

(2) Training. (i) A statement by the operator certifying that the irradiation facility personnel would operate under supervision of a person who has successfully completed a course of instruction for operators of food irradiation facilities.

(ii) A statement by the operator certifying that the key facility quality control personnel have been trained in quality control, food technology, irradiation processing, and radiation health and safety.

(3) Poultry Product; Packaging, handling. (i) Procedures to ensure that each production lot of packaged poultry is accompanied by a certificate or traceable certification that states that the food-contact packaging material is guaranteed by the supplier as complying with the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*) and regulations in 21 CFR 179.45 for food irradiation processing and that the food-contact packaging material is air-permeable, but does exclude moisture and microorganisms from penetrating the package barrier.

(ii) Procedures to ensure that product units throughout each production lot are uniform in size, weight, thickness, and orientation to the radiation source.

(iii) Procedures to ensure that packages are distributed throughout each production lot uniformly with respect to package stacking arrangements, bulk density, and orientation of the packages to the radiation source.

(iv) Procedures to ensure that the product(s) is uniform throughout the production lot (e.g., all wings, all breasts, all combination packages of breasts and wings).

(v) Procedures to ensure that product temperature is kept uniform within a production lot, such that fresh refrigerated product is processed separately from frozen product.

(vi) Procedures to ensure that product unit bulk density is uniform throughout a production lot.

(vii) Procedures to ensure that product is kept intact and in sealed packages.

(viii) Procedures to ensure that product is not reirradiated.

(ix) Procedures to ensure that non-irradiated product is not commingled with irradiated product.

(x) Procedures to ensure that irradiated product within each production lot is identified to permit product recall.

(xi) Procedures to dispose of poultry with damaged packaging or poultry which has been improperly irradiated.

(4) Dosimetry.

(i) Laboratory operation procedures for determining the absorbed dose value from the dosimeter.

(ii) Calibration criteria for verifying the accuracy and consistency of any means of measurement (e.g., time clocks and weight scales).

(iii) Calibration and accountability criteria for verifying the traceability and accuracy of dosimeters for the intended purpose, and the verification of calibration at least every 12 months.

(iv) Procedures for assuring the product unit is dose mapped to identify the regions of minimum and maximum absorbed dose and such regions are consistent from one product unit to another of like product.

(v) Procedures for accounting for the total absorbed dose received by the product unit (e.g., partial applications of the absorbed dose within one production lot).

(vi) Procedures for verifying routine dosimetry (i.e., assuring each production lot receives the total absorbed dose). Each production lot must have at least one dosimeter positioned at the regions of minimum and maximum absorbed dose (or at one region verified to represent such) on at least the first, middle, and last product unit.

(vii) Procedures for verifying the relationship of absorbed dose as measured by the dosimeter to time exposure of the product unit to the radiation source.

(viii) Procedures for verifying the integrity of the radiation source and processing procedure. Aside from expected and verified radiation source activity decay for radionuclide sources, the radiation source or processing procedure must not be altered, modified, replenished, or adjusted without repeating dose mapping of product units to redefine the regions of minimum and maximum absorbed dose.

(5) Labeling. Procedures for verifying that the product is accurately and appropriately labeled in accordance with § 381.135.

(6) Transportation, Storage, and Handling. Procedures for assuring that temperature and time requirements of subpart I, § 381.66 are maintained during shipping of the poultry product to the irradiation facility, radiation processing, storage, and shipping of poultry product to the point of purchase.

(7) Corrective Action. (i) Procedures for corrective action for failure to adhere to any of the above procedures.

(ii) Procedures to dispose of product affected during the failure to adhere to any of the above procedures.

(iii) Procedures to prevent reocurrence of any failures to adhere to any of the above procedures.

(d) The quality control system shall be subject to periodic review, and the approval of such system may be terminated in accordance with § 381.145(g) of this subpart.

8. Section 381.175 is amended by adding a new paragraph (b)(4) to read as follows:

§ 381.175 Records required to be kept.

* * * * *

(b) * * *

(4) Records of irradiation as required by sections 381.149 of this Part.

* * * * *

Done at Washington, DC, on: September 14, 1992.

H. Russell Cross,

Administrator, Food Safety and Inspection Service.

[FR Doc. 92-22728 Filed 9-18-92; 8:45 am]

BILLING CODE 3410-DM-M

federal register

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Part XI

The President

Notice of September 18—Intention To Enter Into a North American Free Trade Agreement With Canada and Mexico

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Title 3—

The President

Notice of September 18, 1992

Intention To Enter Into a North American Free Trade Agreement With Canada and Mexico

On September 18, 1992, under section 1103(a)(1)(A) of the Omnibus Trade and Competitiveness Act of 1988, I notified the House of Representatives and the Senate of my intention to enter into a North American Free Trade Agreement with the Government of Canada and the Government of Mexico.

Pursuant to section 1103(a)(1)(A) of that Act, this notice shall be published in the **Federal Register**.

George Bush

THE WHITE HOUSE,
Washington, September 18, 1992.

[FR Doc. 92-23103
Filed 9-18-92; 2:26 pm]
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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1991. The CFR volume issued January 1, 1987, should be retained.

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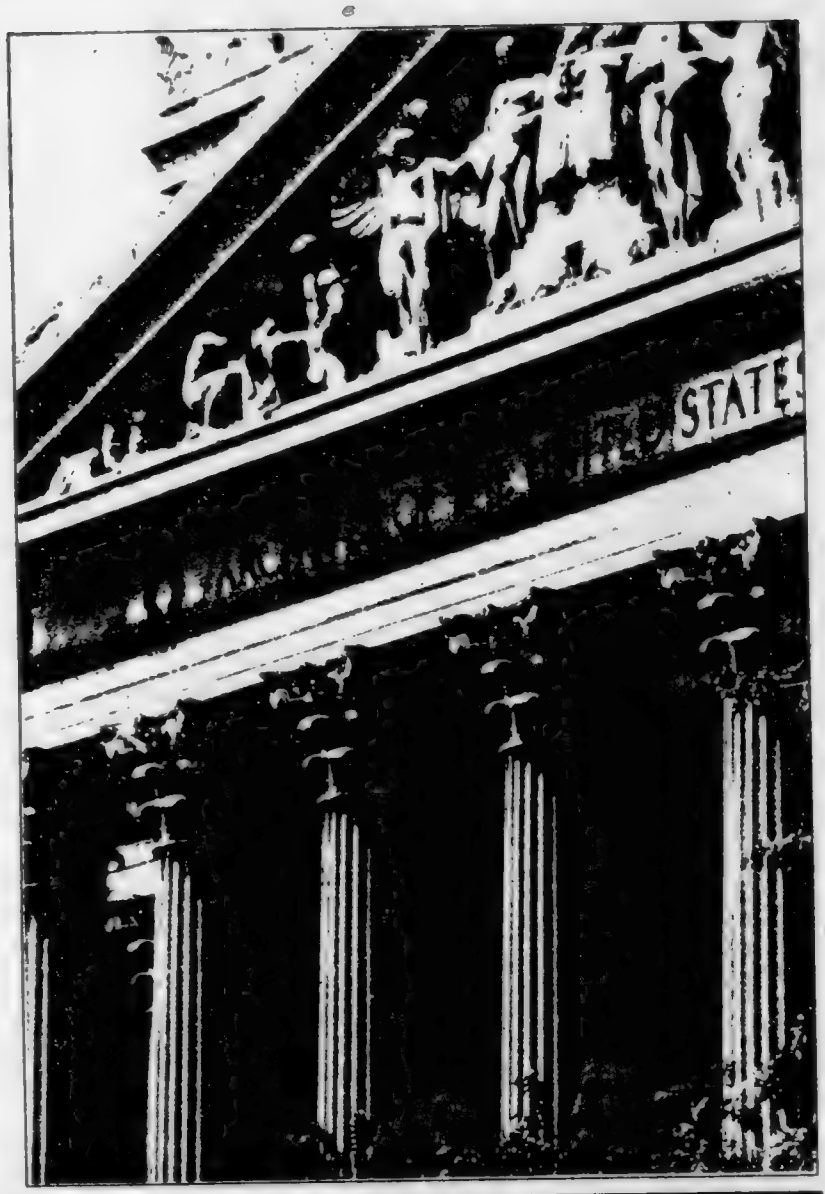

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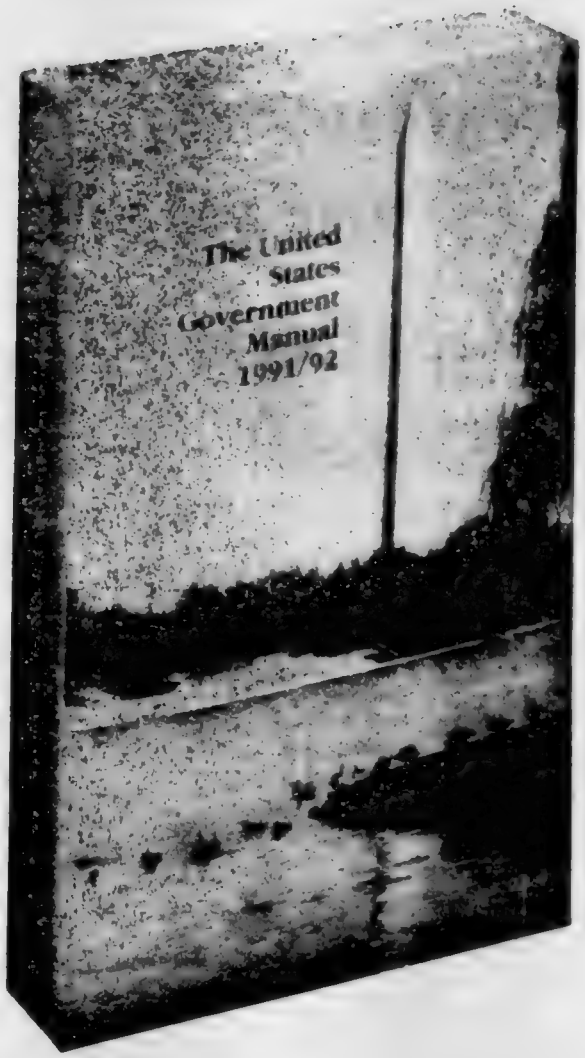

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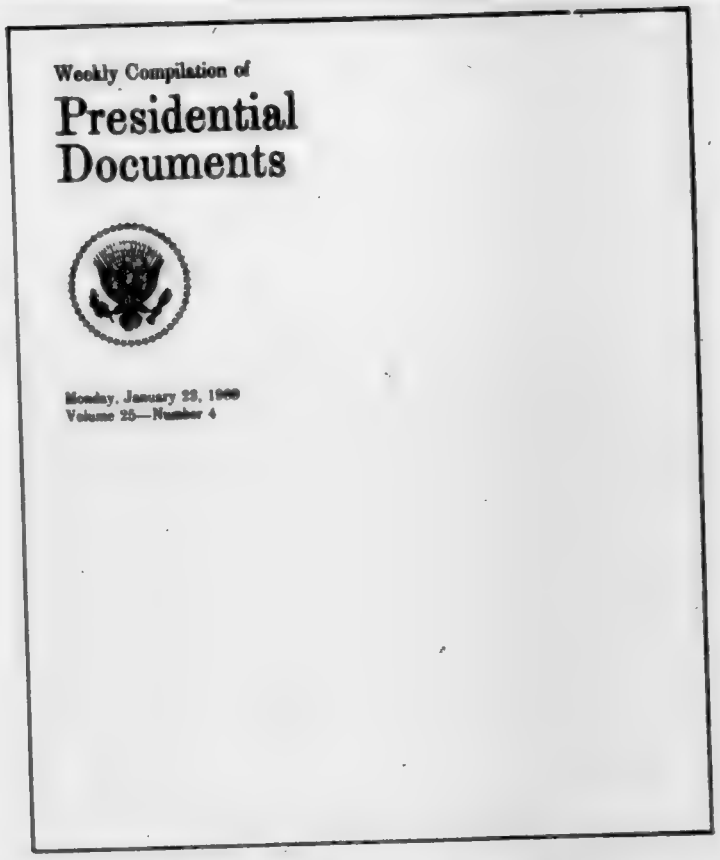

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Vol. 57 No. 184

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Tuesday
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Tuesday
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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 75

[Docket No. 92-055-2]

Dourine in Horses and Asses

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are removing the "Dourine in Horses and Asses" regulations, which restrict movement of horses and asses from areas quarantined for dourine and provide for the payment of compensation to the owners of animals destroyed because of dourine. We are taking this action because the United States has been free of dourine since 1946 and import requirements have proven adequate to prevent the reintroduction of the disease into this country. This action eliminates unnecessary regulations and removes the implication that dourine has not yet been eradicated in the United States.

EFFECTIVE DATE: October 22, 1992.

FOR FURTHER INFORMATION CONTACT: Dr. Manuel A. Thomas, Jr., Senior Staff Veterinarian, Sheep, Goat, Equine, Poultry, and Miscellaneous Diseases Staff, VS, APHIS, USDA, room 769, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-6954.

SUPPLEMENTARY INFORMATION:

Background

The "Dourine in Horses and Asses" regulations, which are contained in 9 CFR 75.1 through 75.3 (referred to below as the regulations), require that all horses and asses be inspected by a Veterinary Servicer inspector and certified as dourine-free before they may be moved interstate from an area quarantined for dourine. The regulations further require that all horses and asses pass the complement-fixation test for dourine before they may be moved interstate from a quarantined area if, within the preceding 18 months, stallions or jacks were allowed to roam at large in that quarantined area or if there has been any breeding in a herd in the quarantined area in which there is a horse or ass that has been exposed to dourine.

Section 75.3 of the regulations provides for the payment of compensation to the owners of animals destroyed because of dourine in accordance with the dourine indemnity regulations. Those indemnity regulations, which had been located at 9 CFR part 52, were removed by a final rule published in the **Federal Register** on December 31, 1981 (46 FR 63206).

In a document published in the **Federal Register** on June 24, 1992 (57 FR 28134-28135, Docket No. 92-055-1), we proposed to remove the "Dourine in Horses and Asses" regulations. We based our proposal on the fact that the United States has been free of dourine since 1946 and that the quarantine requirements contained in 9 CFR 92.308(a)(3) help ensure that dourine is not reintroduced into the United States by imported horses.

We solicited comments on the proposed rule for a 30-day period ending on July 24, 1992. We received one comment, from a veterinary medical association. The commenter supported our proposal, with the understanding that we will continue to enforce the import restrictions mentioned above in order to prevent the reintroduction of dourine into the United States.

Therefore, based on the rationale set forth in the proposed rule, we are adopting, without change, the provisions of the proposal as a final rule. This action will remove the implication that dourine has not yet been eradicated in the United States and will eliminate from the CFR an inaccurate reference to a compensation program for animals destroyed because of dourine. Executive Order 12291 and Regulatory Flexibility Act.

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Removing the "Dourine in Horses and Asses" regulations will not result in any change in the number or horses or asses moved interstate, or in any regulatory activities necessary to qualify horses or asses for interstate movement, because there are no longer any areas in the United States that are quarantined because of dourine. Therefore, there is no reason to expect any economic consequences related to our action.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Does not preempt any State and local laws; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging its provisions.

Paperwork Reduction Act

This final rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 75

Animal diseases, Horses, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 75 is amended as follows:

PART 75—COMMUNICABLE DISEASES IN HORSES, ASSES, PONIES, MULES, AND ZEBRAS

1. The authority citation for part 75 continues to read as follows:

Authority: 21 U.S.C. 111–113, 115, 117, 120, 121, 123–126, 134–134b; 7 CFR 2.17, 2.51, and 371.2(d).

§§ 75.1 through 75.3 [Removed]

2. Sections 75.1 through 75.3 are removed.

Done in Washington, DC, the 16th day of September 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–22947 Filed 9–21–92; 8:45 am]

BILLING CODE 3410–34–M

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9 CFR Part 94

[Docket No. 92–141–1]

Importation of Animal Products and Byproducts From Countries Where BSE Exists; Addition of Denmark

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending our regulations by adding Denmark to the list of countries where bovine spongiform encephalopathy (BSE) exists, because the disease has been diagnosed in cattle in that country. The effect of this action is to prohibit or restrict the importation of certain fresh, chilled, and frozen meat, and certain other animal products and animal byproducts from ruminants which have been in Denmark. This action is necessary to reduce the risk that BSE could be introduced into the United States.

DATES: This interim rule is effective September 22, 1992. Consideration will be given only to comments received on or before November 23, 1992.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92–141–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. John Gray, Senior Staff Veterinarian, Import-Export Products Staff, VS, APHIS, USDA, room 756, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7885.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR parts 94 and 95 (referred to below as the regulations) govern the importation of meat, animal products, animal byproducts, hay, and straw into the United States in order to prevent the introduction of various animal diseases, including bovine spongiform encephalopathy (BSE).

Bovine spongiform encephalopathy is a neurological disease of bovine animals and other ruminants. At the present time, BSE is not know to exist in the United States. Prior to this action, BSE was known to exist in France, Great Britain, Northern Ireland, the Republic of Ireland, Oman, and Switzerland.

The major means of spread of BSE appears to be through the use of ruminant feed containing protein and other products from ruminants infected with BSE. Therefore, BSE could become established in the United States if materials carrying the BSE agent, such as certain meat, animal products, and animal byproducts from ruminants in countries in which BSE exists, are imported into the United States and are fed to ruminants in the United States.

Section 94.18 and 95.4 of the regulations prohibit and restrict the importation of certain meat, animal products, and animal byproducts from ruminants which have been in countries in which BSE exists. These countries are listed in § 94.18 of the regulations.

The Chief Veterinary Officer of the Danish Ministry of Agriculture reported that BSE has been detected in cattle imported into Denmark from Great Britain. In order to reduce the risk of introducing BSE into the United States, we are, therefore, adding Denmark to the list of countries where BSE is known to exist in § 94.18 of the regulations. Thus, we are prohibiting or restricting the importation of certain fresh, chilled, and frozen meat, and certain other animal products and animal byproducts from ruminants which have been in Denmark.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment.

BSE is a serious animal disease that has caused great loss to the cattle industry of Great Britain, and the introduction of this disease into the United States would cause great harm to the U.S. cattle industry. BSE has been diagnosed in cattle in Denmark. The restrictions contained in this interim rule must be implemented immediately to reduce the risk that BSE could be introduced into the United States through importation of certain meat, animal products, and animal byproducts from ruminants from Denmark.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 for making it effective upon publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

As an alternative to the provisions of this rule, we have considered taking no action, and enforcing the current import regulations. This alternative was rejected because it would allow meat, animal products, and animal byproducts that might spread BSE to be imported into the United States.

The provisions of this rule will not have a significant economic impact. The only businesses affected will be a small number of importers of meat, animal products, and animal byproducts of ruminants which have been in a country in which BSE exists. Alternative sources for these products are available in the United States and from certain countries where BSE has not been reported.

Placing Denmark on the list of countries in which BSE is known to exist restricts the importation of some of these products, and prohibits the importation of others. These restrictions and prohibitions will have a minor negative economic impact on U.S. importers. Denmark is not a major export source of ruminant meat. It exported 123,000 metric tons in 1991, less than 3 percent of the world total. The United States imported only 180 tons, or $345,000 worth, of ruminant meat from Denmark in 1991, representing less than three hundredths of one percent of the total U.S. import source of ruminant meat. There does not appear to be a significant amount of ruminant products or byproducts, other than meat, imported from Denmark.

At present, there are fourteen U.S. importers who import meat from Denmark. Thirteen of these would be considered small entities. Even if imports from Denmark were totally unavailable, importers could easily substitute other sources to supply their total requirement. The proportion of meat imported from Denmark is so small that there would be very little or no impact on U.S. producers and consumers. Additionally, price and competition in the United States would not be affected.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws, regulations, and policies that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging its provisions.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, the regulations in 9 CFR part 94 are amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), NEWCASTLE DISEASE (AVIAN PNEUMOENCEPHALITIS), AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, and 134f; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 94.18, paragraph (a) is revised to read as follows:

§ 94.18 Ruminant meat and edible products from ruminants that have been in countries where bovine spongiform encephalopathy exists.

(a) Bovine spongiform encephalopathy exists in the following countries: Denmark, France, Great Britain, Northern Ireland, and the Republic of Ireland, Oman, and Switzerland.

* * * * *

Done in Washington, DC, this 16th day of September 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-22946 Filed 9-21-92; 8:45 am]

BILLING CODE 3410-34-M

RESOLUTION TRUST CORPORATION

12 CFR Part 1616

RIN 3205-AA14

Privacy Act Regulations

AGENCY: Resolution Trust Corporation.

ACTION: Interim rule with request for comments.

SUMMARY: The Resolution Trust Corporation (RTC or Corporation) is adopting an interim rule for the processing of requests for access to or amendment of records, other than the records of the RTC Inspector General, pursuant to the Privacy Act of 1974 (5 U.S.C. 552a). The rule also establishes administrative appeals procedures, conditions for disclosure of information from a system of records outside the Corporation and exempts certain systems of records from certain sections of the Privacy Act. Since its creation, the RTC has conducted its Privacy Act Program under the auspices of the Federal Deposit Insurance Corporation's (FDIC) Privacy Act regulations. Because the organizational and operational structure of the RTC has come to differ so greatly from that of the FDIC, this interim rule is necessary to assist the public with respect to requests submitted under the Privacy Act.

DATES: This interim rule is effective September 22, 1992, except for § 1616.12 which is effective December 21, 1992. Comments must be received by November 23, 1992.

ADDRESSES: Comments must be sent to: John M. Buckley, Jr., Secretary, Resolution Trust Corporation, Office of the Secretary, 801 17th Street, NW., Washington, DC 20434-0001. Comments may be hand delivered to room 314 on business days between 9 am and 5 pm. Comments may also be inspected in the Public Reading Room, 801 17th Street, NW., Washington, DC between 9 am and 5 pm. (The Public Reading Room's telephone number is (toll free) 1-800-842-2970 ext. 6-6940 or (202) 416-6940; and the FAX number is (202) 416-4753.)

FOR FURTHER INFORMATION CONTACT: Richard White, Privacy Act Program Officer, Office of the Secretary, FOIA/PA Branch, (703) 908-6137. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Discussion of Interim Rule

A. Scope

This rule governs release of all Corporate records, with the exception of the Office of Inspector General of the RTC, pursuant to the Privacy Act of 1974, as amended.

This rule sets forth the procedures to be used in requesting records from the RTC, appealing the decision to deny, in whole or in part, access to Corporate records, the procedures for contesting the content of Corporate records, and the identification of systems of records that are exempt from the access, amendment, and disclosure accounting provisions of the Privacy Act. It also establishes a fee schedule for the duplication of Corporate records, and establishes a minimum amount under which fees will not be charged.

B. Requests for Information in Records

The rule provides that all written requests for Corporate records, with the exception of records created by the RTC Office of Inspector General, should be sent to the Office of the Secretary in Washington, DC. It further permits individuals, and/or their authorized representatives, to appear in person at Corporation Headquarters of field offices to inspect Corporate records pertaining to themselves which are covered by the Privacy Act. Requests for Corporate records must reasonably

describe the records desired. The rule also provides for adequate identification to be submitted for both written and personal appearance requests. Records held by financial institutions in RTC's conservatorship or receivership programs are not considered to be Corporate records; therefore, they are not subject to the provisions of the Privacy Act.

C. Initial and Final Decisions

The rule delegates to the Secretary of the RTC (or designee) authority to make initial determinations concerning requests for access to or amendment of Corporate records. Final decisions on an appeal of an initial denial of access or a determination not to amend will be made by the General Counsel (or designee) of the RTC.

D. Exemption from Disclosure

The rule recites the statutory bases for exemption from disclosure, amendment, and disclosure accounting as provided by the Privacy Act.

E. Fees

The rule provides that copies of records will be provided at $.20 per page. It also provides that fees may be waived if the total cost of complying with the request for records is less than $25.00.

Request for Public Comment

The RTC is seeking comments on all aspects of this interim rule. Comments will be carefully reviewed for the purpose of developing final regulations.

Administrative Procedure Act

The RTC is adopting this regulation as an interim final rule effective upon publication in the **Federal Register** without the usual notice-and-comment period or delayed effective date as provided for in the Administrative Procedure Act, 5 U.S.C. 553. These requirements may be waived for "good cause."

The RTC was created in August 1989 by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (5 U.S.C. 1441a). Since that time, the RTC has used regulations promulgated by the Federal Deposit Insurance Corporation to process requests it received under the Privacy Act. With the passage of time and establishment of separate RTC offices and files, there is a need for the RTC to have its own regulations implementing the Privacy Act.

The substance of much of the rule, including those portions concerning method and timing of release of records and exemption of records, are largely mandated by the Privacy Act, 5 U.S.C. 552a, or by the Office of Management and Budget regulations promulgated pursuant to statute and already subject to public comment. In the case of those portions of the rule the need for public comment is reduced since the RTC has little discretion in adopting those provisions. Therefore, the benefits to the public in adopting the interim regulations outweigh any harm from the delay in seeking public comment.

Regulatory Flexibility Act

The undersigned hereby certifies that the interim regulations, and any final regulations that may be adopted following comment on the interim regulations, are not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

List of Subjects in 12 CFR Part 1616

Privacy.

For the reasons set out in the preamble, the Resolution Trust Corporation adds part 1616 to title 12, chapter XVI, of the Code of Federal Regulations to read as follows:

PART 1616—PRIVACY ACT REGULATIONS

Sec.

1616.1 Purpose and scope.
1616.2 Definitions.
1616.3 Procedures for requests pertaining to individual records in a system of records.
1616.4 Times, places and requirements for identification of individuals making requests.
1616.5 Disclosure of requested information to individuals.
1616.6 Special procedures for medical records.
1616.7 Requests for amendment of records.
1616.8 Agency reviews of requests for amendment of records.
1616.9 Appeals of adverse initial agency determinations of access or amendment of records and Statements of Disagreement.
1616.10 Preservation of records.
1616.11 Disclosure of a record to a person other than the individual to whom the record pertains.
1616.12 Fees.
1616.13 Penalties.
1616.14 Exemptions.

Appendix A—RTC Field Offices

Authority: 5 U.S.C. 552a.

§ 1616.1 Purpose and scope.

This regulation sets forth the basic policies of the Resolution Trust Corporation (RTC or Corporation), with the exception of the Office of Inspector General of the RTC, that implement the provisions of the Privacy Act of 1974 (5 U.S.C. 552a) regarding the protection of the privacy of individuals on whom the Corporation maintains information which is retrieved by reference to an individual's name or an identifying particular assigned to the individual. This regulation also sets forth the procedures by which an individual may seek access under the Privacy Act to records pertaining to him/her, may request amendment of such records, or may seek an accounting of disclosures of such records maintained by the Corporation.

§ 1616.2 Definitions.

For the purposes of this part:

(a) *Corporation* means the Resolution Trust Corporation operating in its Corporate capacity.

(b) *Individual* means a natural person who is either a citizen of the United States of America or an alien lawfully admitted for permanent residence.

(c) *Maintain* includes maintain, collect, use, disseminate, or control.

(d) *Record* means any item, collection or grouping of information about an individual that is maintained by the RTC in its corporate capacity and contains his/her name, or an identifying number, symbol, or other identifying particular assigned to the individual.

(e) *System of records* means a group of any records under the control of the Corporation from which information is retrieved by the name of the individual or some identifying number, symbol or other identifying particular assigned to the individual.

(f) *Designated system of records* means a system of records which has been listed and summarized in the **Federal Register** pursuant to the requirements of 5 U.S.C. 552a(e).

(g) *Routine use* means, with respect to disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was created.

(h) *Amend* and *amendment* mean any correction of, addition to or deletion from a record.

(i) *System manager* means the agency official responsible for a designated system of records, as denominated in the **Federal Register** publication of "Systems of Records Maintained by the Resolution Trust Corporation."

§ 1616.3 Procedures for requests pertaining to individual records in a system of records.

(a) Any present or former employee of the Federal Deposit Insurance Corporation (FDIC) who is working for or has worked for the RTC and who is seeking access to his/her official

personnel folder, or other U.S. Office of Personnel Management government-wide personnel-type record, including compensation, training, medical information, time and attendance and performance, maintained by the RTC in Corporation offices should submit his/her request in such a manner as prescribed by the U.S. Office of Personnel Management in part 297 of its rules and regulations (5 CFR 297.101–501). Such requests should be submitted to the Office of the Secretary, RTC, FOIA/PA Branch, International Place, 1735 North Lynn Street, Rosslyn, VA 22209. An FDIC employee who is presently working for the RTC may also gain access to his/her unofficial personnel folder, and other personnel-type record, by visiting, either in person or with an authorized representative, the RTC Corporate office in which the folder is maintained.

(b) Written requests by individuals for access to records pertaining to them, other than official personnel folders, and maintained within one of the Corporation's designated system of records should be submitted to the Office of the Secretary, FOIA/PA Branch, RTC, International Place, 1735 North Lynn Street, Rosslyn, VA 22209. Each such request should contain a reasonable description of the record(s) sought, identify the system or systems in which such records may be contained, and any additional identifying information, as specified in the Corporation's **Federal Register** "Notice of Systems of Records" for that particular system, copies of which are available upon request for the FOIA/PA Branch, Office of the Secretary.

§ 1614.4 Times, places and requirements for identification of individuals making requests.

(a) Individuals may request access to records pertaining to themselves as provided in § 1616.3 of this part by submitting a written request by mail or in person to the office in which the records are maintained or the Office of the Secretary, FOIA/PA Branch, RTC, International Place, 1735 North Lynn Street, Rosslyn, VA 22209. Before access to records is granted, pursuant to this part, reasonable identification, as specified in § 1616.4(b), of the person making the request is required to ensure that information is given and records are disclosed only to the proper individual.

(b) Employees appearing in person at RTC offices seeking access to or amendment of personnel records pertaining to themselves shall present two forms of reasonable identification, such as employment identification cards, driver's licenses, passports, or credit cards. One piece of identification shall contain the individual's photograph and signature.

(c) Individuals submitting written requests seeking access to or amendment of records pertaining to themselves shall include copies of two forms of identification which contain the signatures of the individuals. Except for records that must be publicly disclosed pursuant to the Freedom of Information Act (5 U.S.C. 552), where the Corporation determines it to be necessary for the individual's protection, a certification of a duly commissioned notary public, of any state or territory, attesting to the requesting individual's identity may be required before a written request seeking access to or amendment of a record will be honored. Identification, as described above, will be required of any individuals visiting RTC offices to inspect records after submission of written requests.

§ 1616.5 Disclosure of requested information to individuals.

(a) Except to the extent that Corporation records in a system of records pertaining to an individual:

(1) Are exempt from disclosure under § 1616.14 of this part; or

(2) May require special procedures for medical records under § 1616.6 of this part; or

(3) Were compiled in reasonable anticipation of a civil action or proceeding, the Corporation will make such records available upon request for purposes of inspection and copying by the individual about whom the information is maintained or, upon the individual's request and written authorization, by another person of the individual's own choosing (after proper identity verification as provided in § 1616.4 of this part).

(b) The Secretary, or designee, will acknowledge receipt of a request submitted under this rule within ten (10) working days, and notify, in writing, the individual making a request, whenever practicable within ten business days following receipt of the request, whether any specified, designated system of records maintained by the Corporation contains a record pertaining to the individual. Where such a record does exist, the Secretary, or designee, with the advice of the System Manager, will inform the individual of the decision whether to grant or deny, in whole or in part, the request for access. In the event existing records are determined not to be disclosable, the notification will inform the individual of the reason(s) for which disclosure will not be made and will provide a description of the individual's right to appeal the denial, as more fully set forth in § 1616.9 of this part.

(c) Individuals will be granted access to records disclosable under this part 1616 as is practicable. The Secretary, or designee, will give written notification of a reasonable period within which individuals may inspect disclosable records pertaining to themselves at the Office of the Secretary (FOIA/PA Branch) or the appropriate Headquarters, or field offices during normal business hours. Alternatively, the Corporation may mail copies of requested records to the individual. Fees for copying such records will be assessed as provided in § 1616.12 of this part.

§ 1616.6 Special procedures for medical records.

Medical records in a system of records shall be disclosed on request to individuals to whom they pertain; except, if in the judgment of the Corporation, the transmission of the medical information directly to the requesting individual could have an adverse effect upon such individual. In the event medical information is withheld from a requesting individual because of any possible adverse affect such information may have upon the individual, the Corporation shall transmit such information to a licensed medical doctor named by the requesting individual.

§ 1616.7 Requests for amendment of records.

The Corporation will maintain all records is uses in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination. An individual may request that the Corporation amend any portion of a record pertaining to that individual which the Corporation maintains in a designated system of records. Such a request should be submitted in writing to the Office of the Secretary, FOIA/PA Branch, RTC, International Place, 1735 North Lynn Street, Rosslyn, VA 22209, and should contain the individual's reason for requesting the amendment and a description of the record (including the name of the appropriate designated system of records) sufficient to enable the Corporation to identify the particular record or portion thereof with respect to which amendment is sought. If an individual has a copy of the record he/she wishes to have amended, it should be attached to the request for amendment and the specific portion of

the record sought to be amended should be clearly identified. The individual making the request may be required to provide the information specified in § 1616.4 of this part to permit verification of the identity of the individual making the request for amendment.

§ 1616.8 Agency reviews of requests for amendment of records.

(a) Requests by individuals for the amendment of records will be acknowledged by the Secretary, or designee, within ten (10) business days following receipt of such requests and referred to the System Manager of the system of records in which the record is contained for an analysis of the request to amend. Promptly thereafter, the Secretary, or designee, with the advice of the System manger, will notify the individual of the decision to grant or deny the request to amend. If the request to amend is granted in whole or in part, the Secretary, or designee, will effect the appropriate amendment.

(b) If the Secretary, or designee, denies a request to amend a record, the notification of such denial shall contain the reason(s) for the denial, a description of the individual's right to appeal the denial as more fully set forth in § 1616.9 of this part, and the address of the Corporation officer to whom the appeal should be sent.

§ 1616.9 Appeals of adverse initial agency determinations of access or amendment of records and Statements of Disagreement.

(a) For RTC records contained within a system of records, the initial denial of an individual's request for access to or amendment of a record pertaining to him/her may be appealed to the RTC's General Counsel within 30 business days following receipt of notification of the denial. Such appeals should be mailed to the Office of the Secretary, FOIA/PA Branch, RTC, International Place, 1735 North Lynn Street, Rosslyn, VA 22209, and contain all the information specified for requests for access in § 1616.3 of this part or for initial requests to amend in § 1616.7 of this part, as well as any other additional information the individual deems relevant for the consideration by the General Counsel, or designee, of the appeal. Both the envelope and the appeal letter should have written on them "Privacy Act Appeal." The appeal letter should also enclose a copy of the initial denial letter.

(b) The General Counsel, or designee, will normally make a final determination with respect to an appeal made under this part within 30 business days following receipt of the appeal by the Office of the Secretary. The General Counsel, or designee may, however, extend this 30-day time period for good cause shown. When such an extension is required, the individual making the appeal will be notified of the reason for the extension and the expected date upon which a final decision will be given.

(c) If the General Counsel, or designee, affirms the initial denial of a request for access or amendment, he/she will inform the individual affected by the decision, the reason(s) therefore and the right of judicial review of the decision. With respect to a decision to sustain the initial refusal to amend a record, the General Counsel, or designee, will also inform the individual of the right to submit a Statement of Disagreement under paragraph (d) of this section.

(d) Upon receipt of a determination to affirm the initial denial of a request to amend a record, the individual may submit to the Corporation a concise statement (Statement of Disagreement) setting forth his or her reasons for disagreeing with the Corporation's determination not to amend. Such a Statement of Disagreement will be attached to the record which was the subject of the request to amend. The General Counsel, or designee may, if deemed appropriate, prepare a concise statement (Statement of Explanation) of the reason(s) why the requested amendment was not made. Any RTC Statement of Explanation will be included in the system of records in the same manner as the Statement of Disagreement. A copy of the Statement of Explanation and the notation of the dispute as marked on the original record will be provided to the individual who requested an amendment of the record.

(e) When a record has been amended or when a Statement of Disagreement has been filed, the Secretary, or designee, will provide all prior recipients of the affected record, whose identities may be determined pursuant to the disclosure accountings required by the Privacy Act (5 U.S.C. 552a(c)) or any other accounting previously made, a copy of the amended or corrected record or the Statement of Disagreement. Any disclosure of disputed information occurring after a Statement of Disagreement has been filed will clearly identify the specific information disputed and be accompanied by a copy of the Statement of Disagreement and a copy of any RTC Statement of Explanation.

§ 1616.10 Preservation of records.

The Corporation will preserve all correspondence relating to the written requests it receives under this part, and all records processed pursuant to such requests, in accordance with the records retention provisions of General Records Schedule 14, Informational Services Records. Under no circumstances will records be destroyed while they are subject to a pending request for access, amendment, appeal, or lawsuit pursuant to the Privacy Act.

1616.11 Disclosure of a record to a person other than the individual to whom the record pertains.

(a) Except as provided in paragraph (b) of this section, the Corporation will not disclose any record contained in a designated system of records to any person or agency except without the prior written consent of the individual to whom the record pertains.

(b) The restrictions on disclosure in paragraph (a) of this section do not apply to any disclosures:

(1) To those officers and employees of the Corporation who have a need for the record in the performance of their duties;

(2) Required under the Freedom of Information Act (5 U.S.C. 552);

(3) For a routine use, as defined in § 1616.2(g) of this part, listed with respect to a designated system of records and described in **Federal Register** notice of the system;

(4) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13 of the United States Code;

(5) To a recipient who has provided the Corporation with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) To the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States, or designee, to determine whether the record has such value;

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Corporation specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if, upon such disclosure, notification is transmitted to the last known address of the individual to whom the record pertains;

(9) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(10) To the Comptroller General, or any of his/her authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(11) Pursuant to the order of a court of competent jurisdiction; or

(12) To a consumer reporting agency in accordance with 31 U.S.C. 3711(f).

(c) Any Statement of Disagreement with the Corporation's determination not to amend a record, filed with the Corporation by an individual pursuant to § 1616.9(d) of this part, will be included in the disclosure of the record under authority of paragraph (b) of this section. The Corporation may, in its discretion, also include a copy of the Corporation's Statement of Explanation.

(d) The Corporation, with respect to each system of records under its control shall:

(1) Except for disclosures made under paragraphs (b)(1) or (b)(2) of this section, keep an accurate accounting of:

(i) The date, nature, and purpose of each disclosure of a record to any person or to another agency made under paragraph (b) of this section; and

(ii) The name and address of the person or agency to whom the disclosure is made; and

(2) retain the accounting made under paragraph (d)(1) of this section for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made;

(3) except for disclosures made under paragraph (b)(7) of this section, make the accounting made under paragraph (d)(1) of this section available to the individual named in the record at his/her request; and

(4) inform any person or other agency about any correction or Statement of Dispute made by an individual in accordance with § 1616.9(d) of this part, of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

§ 1616.12 Fees.

The Corporation, upon a request for records disclosable pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), shall charge a fee of $0.20 per page for duplicating, except as follows:

(a) If the Corporation determines that it can grant access to a record only by providing a copy of the record, no fee will be charged for providing the first copy of the record or any portion thereof; and

(b) Whenever the aggregate fees computed under this section do not exceed $25.00 for any one request, the fee will be deemed waived by the Corporation.

§ 1616.13 Penalties.

Any person who knowingly and willfully requests or obtains any record concerning an individual from the RTC under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000.

§ 1616.14 Exemptions.

The following information is exempt from disclosure: (a) Investigatory material compiled for law enforcement purposes is exempt from §§ 1616.3 through 1616.9 and § 1616.11(d)(3) of this part, *provided, however*, that if any individual is denied any right, privilege, or benefit to which he/she would otherwise be entitled under Federal law, or for which he/she would otherwise be eligible, as a result of the maintenance of such material, such material shall be disclosed to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence;

(b) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Corporation employment to the extent that disclosure of such material would reveal the identity of a source who furnished information to the Corporation under an express promise that the identity of the source would be held in confidence, is exempt from §§ 1616.3 through 1616.9 and § 1616.11(d)(3) of this part; and

(c) Testing or examination material used solely to determine or assess individual qualifications for appointment or promotion in the Corporation's service, the disclosure of which would compromise the objectivity or fairness of the testing, evaluation, or examination process is exempt from §§ 1616.3 through 1616.9 and § 1616.11(d)(3) of this part.

Appendix A—RTC Field Offices

1. Atlanta Office, 100 Colony Square Building 100, suite 2300, Atlanta, GA. 30361, 1-800-628-4362; (404) 881-4840.

2. California Office, 4000 MacArthur Boulevard, Newport Beach, CA. 92660, 1-800-283-9288; (714) 631-0582.

3. Dallas Office, 3500 Maple Avenue, Dallas, TX. 75219, (214) 443-2300.

4. Denver Office, 1515 Arapahoe Street, Tower 3, suite 800, Denver, CO. 80202, 1-800-542-6135; (303) 556-6500.

5. Kansas Office, Board of Trade Building II, 4900 Main Street, Kansas City, MO. 64112, 1-800-365-3342; (816) 531-2212.

6. Valley Forge Office, 1000 Adams Avenue, Norristown, PA. 19403, (215) 650-5500.

7. Minneapolis Office, 3400 Yankee Drive, 4th Floor, Eagan, MN. 55122, 1-800-873-5815; (612) 683-4400.

8. Phoenix Office, 2910 North 44th Street, Phoenix, AZ. 85018, 1-800-937-7782; (602) 224-1796.

9. San Antonio, 10100 Reunion Place, Suite 25, San Antonio, TX. 78216, (512) 524-4700.

10. Baton Rouge Office, 100 St. James Street, Suite H, Baton Rouge, LA. 70802, (504) 339-1000.

11. Chicago Office, 25 Northwest Point Boulevard, Elk Grove Village, IL. 60007, 1-800-284-6197; (708) 806-7750.

12. Houston Office, 2223 West Loop South, Houston, TX. 77027, (713) 888-2700.

13. Somerset Office, 300 Davidson Avenue, Somerset, NJ. 08873, 1-800-542-0435; (908) 805-4000.

14. Tampa Office, 4200 West Cypress Street, Tampa, FL. 33607, 1-800-283-1241; (813) 870-7000.

15. Tulsa Office, 321 South Boston, Tulsa, OK. 74103, 1-800-456-5382; (918) 587-7600.

By order of the Chief Executive Officer.

Dated at Washington, DC, this 16th day of September 1992.

John M. Buckley, Jr.,

Secretary, Resolution Trust Corporation.

[FR Doc. 92-22867 Filed 9-21-92; 8:45 am]

BILLING CODE 6714-01

FEDERAL TRADE COMMISSION

16 CFR Part 305

[RIN 3084-AA26]

Rules for Using Energy Cost and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act; Ranges of Comparability for Dishwashers

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission amends its Appliance Labeling Rule by revising the ranges of comparability used on required labels for dishwashers.

Under the rule, each required label on a covered appliance must show a range, or scale, indicating the range of energy costs or efficiencies for all models of a

size or capacity comparable to the labeled model. This notice publishes the new range figures, which, under § § 305.10, 305.11 and 305.14 of the rule, must be used on labels on dishwashers manufactured on and after December 21, 1992 and in advertising of dishwashers beginning December 21, 1992. Properly labeled dishwashers manufactured prior to the effective date need not be relabeled. Catalogs printed prior to the effective date in accordance with 16 CFR 305.14 need not be revised.

EFFECTIVE DATE: December 21, 1992.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, 202-326-3035, Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Section 324 of the Energy Policy and Conservation Act of 1975 (EPCA) [1] required the Federal Trade Commission to consider labeling rules for the disclosure of estimated annual energy cost or alternative energy consumption information for at least thirteen categories of appliances. Dishwashers are included as one of the categories. Before these labeling requirements may be prescribed, the statute requires the Department of Energy ("DOE") to develop test procedures that measure how much energy the appliances use. In addition, DOE is required to determine the representative average cost a consumer pays for the different types of energy available.

On November 19, 1979, the Commission issued a final rule [2] covering seven of the thirteen appliance categories, including dishwashers. The rule requires that energy costs and related information be disclosed on labels and in retail sales catalogs for all dishwashers presently manufactured. Certain point-of-sale promotional materials must disclose the availability of energy usage information. If a dishwasher is advertised in a catalog from which it may be purchased by cash, charge account or credit terms, then on each page of the catalog that lists the product shall be included the range of estimated annual energy costs for the product. The required disclosures and all claims concerning energy consumption made in writing or in broadcast advertisements must be based on the results of the DOE test procedures.

Section 305.8(b) of the rule requires manufacturers, after filing an initial report, to report annually by specified dates for each product type.[3] The data submitted by manufacturers are based, in part, on the representative average unit cost of the type of energy used to run the appliances tested. According to Section 305.9 of the rule, these average energy costs, which are provided by DOE, will be periodically revised by the Commission, but not more often than annually. Because the costs for the various types of energy change yearly, and because manufacturers regularly add new models to their lines, improve existing models and drop others, the data base from which the ranges of comparability are calculated is constantly changing. To keep the required information in line with these changes, the Commission is empowered, under § 305.10 of the rule, to publish new ranges (but not more often than annually) if an analysis of the new data indicates that the upper or lower limits of the ranges have changed by more than 15%.

The new figures for the estimated annual costs of operation for dishwashers, which were calculated using the 1992 representative average energy costs published by DOE on January 14, 1992,[4] have been submitted and have been analyzed by the Commission. New ranges based upon them are herewith published.

In consideration of the foregoing, the Commission amends appendix C of its Appliance Labeling Rule by publishing the following ranges of comparability for use in the labeling and advertising of dishwashers beginning December 21, 1992.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling Reporting and recordkeeping requirements.

Accordingly, 16 CFR part 305 is amended as follows:

PART 305—[AMENDED]

1. The authority citation for part 305 continues to read as follows:

Authority: Sec. 324 of the Energy Policy and Conservation Act (Pub. L. 94-163) (1975), as amended by the National Energy Conservation Policy Act, (Pub. L. 95-619) (1978), the National Appliance Energy Conservation Act, (Pub. L. 100-12) (1987), and the National Appliance Energy Conservation Amendments of 1988, (Pub. L. 100-357) (1988), 42 U.S.C. 6294; sec. 553 of the Administrative Procedure Act, 5 U.S.C. 553.

2. In appendix C, paragraph 1 and the introductory text in paragraph 2 are revised to read as follows:

Appendices

* * * * *

Appendix C to Part 305—Dishwashers

1. Range Information: "Compact" includes countertop dishwasher models with a capacity of fewer that eight (8) place settings.

"Standard" includes portable or built-in dishwasher models with a capacity of eight (8) or more place settings.

Place settings shall conform to AHAM Specification DW-1 for chinaware, flatware and serving pieces. Load patterns shall conform to the operating normal for the model being tested.

[1] Public Law 94-163, 89 Stat. 871 (Dec. 22, 1975).

[2] 44 FR 66466. On December 10, 1987 (52 FR 46888), the Commission amended the Appliance Labeling Rule by extending coverage to include central air conditioners and heat pumps.

[3] Reports for dishwashers are due by June 1.

[4] 57 FR 1461. The cost for electricity was published as 8.25 cents per kilowatt-hour; for natural gas: 58 cents per therm; for propane: 74 cents per gallon; for no. 2 heating oil: $1.03 per gallon.

Ranges of comparability	Ranges of estimated yearly energy costs			
	Electrically heated water		National gas heated water	
	Low	High	Low	High
Compact	(1)	(1)	(1)	(1)
Standard	$52.00	$82.00	$29.00	$46.00

[1] No data submitted.

2. Yearly Cost Information: Estimates on the scales are based on a national average electric rate of 8.25¢ per kilowatt hour, a national average natural gas rate of 58¢ per therm, and eight loads of dishes per week.

* * * * *

Donald S. Clark,

Secretary.

[FR Doc. 92-22895 Filed 9-21-92; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 89F-0394]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of *n*-alkyl(C_{12}-C_{16})benzyldimethylammonium chloride; ammonium chloride; calcium stearate; sodium bicarbonate; starch or dextrin, or both; and methylene blue as a colorant, as components of a sanitizing solution to be used on food-processing equipment and utensils, including food-contact surfaces in public eating places. This action responds to a petition filed by Edwards-Councilor Co., Inc.

DATES: Effective September 22, 1992; written objections and requests for a hearing by October 22, 1992.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Sandra L. Varner, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9511.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of October 27, 1989 (54 FR 43861), FDA announced that a food additive petition (FAP 9B4159) had been filed by Edwards-Councilor Co., Inc., 1427 Baker Rd., Airport Industrial Park, Virginia Beach, VA 23455, proposing that § 178.1010 *Sanitizing solutions* (21 CFR 178.1010) be amended to provide for the safe use of a sanitizing solution containing *n*-alkyl(C_{12}-C_{16})benzyldimethylammonium chloride; calcium stearate; sodium bicarbonate; starch or dextrin, or both; and methylene blue as a colorant for use on food-processing equipment, utensils, and other food-contact articles. In a notice published in the **Federal Register** of September 11, 1991 (56 FR 46324), the filing notice was amended to also include ammonium chloride as a component of the sanitizing solution.

I. Safety and Functional Effect of Petitioned Use of the Additives

Sanitizing solutions are mixtures of chemicals that function together to sanitize food-contact surfaces and are regulated as mixtures. Each listed component in a sanitizing solution has a functional effect. Section 178.1010(b) permits the addition to a sanitizing solution of any component that is generally recognized as safe (GRAS). The subject sanitizing solution contains containing *n*-alkyl(C_{12}-C_{16})benzyldimethylammonium chloride; calcium stearate; sodium bicarbonate; starch or dextrin, or both; and methylene blue. The function of each component in the subject sanitizer and the basis for the agency's determination of each component's safety are described below.

A. N-Alkyl(C_{12}-C_{16})benzyldimethylammonium chloride

The component *n*-alkyl(C_{12}-C_{16})benzyldimethylammonium chloride functions as the antimicrobial agent in the subject sanitizing solution. It is listed as a component in several regulated sanitizing solutions under § 178.1010. On the basis of the data submitted in support of these regulated uses and the data contained in the food additive petition submitted in support of listing this sanitizing solution, FDA finds that the use of *n*-alkyl(C_{12}-C_{16})benzyldimethylammonium chloride is safe in the subject sanitizing solution.

B. Ammonium Chloride

Ammonium chloride functions as a solubilizing agent in the subject sanitizing solution. Ammonium chloride is listed as GRAS under 21 CFR 184.1138. On the basis of the data contained in the food additive petition submitted in support of listing this sanitizing solution and other available data, FDA finds that the use of ammonium chloride in the subject sanitizing solution is safe.

C. Calcium Stearate

Calcium stearate functions as a formulation aid for the formation of the tablet form of the components. Calcium stearate is listed as GRAS under 21 CFR 184.1229. On the basis of the data contained in the food additive petition submitted in support of listing this sanitizing solution and other available data, FDA finds that the use of calcium stearate in the subject sanitizing solution is safe.

D. Sodium Bicarbonate

Sodium bicarbonate functions as a solubilizing agent in the subject sanitizing solution. Sodium bicarbonate is listed as GRAS under 21 CFR 184.1736. On the basis of data contained in the food additive petition submitted in support of listing this sanitizing solution and other available data, FDA finds that the use of sodium bicarbonate in the subject sanitizing solution is safe.

E. Starch or Dextrin

Starch and dextrin function as tablet disintegrators, and may be used individually or in combination in the subject sanitizing solution. Starch is GRAS, and dextrin is listed as GRAS under 21 CFR 184.1277. On the basis of the data contained in the food additive petition submitted in support of listing this sanitizing solution and other available data, FDA finds that the use of starch and dextrin in the subject sanitizing solution, either individually or in combination, is safe.

F. Methylene Blue

Methylene blue functions as a colorant in the subject sanitizer. Methylene blue is not currently regulated for this use. On the basis of the data contained in this food additive petition submitted in support of listing this sanitizing solution, FDA finds the use of methylene blue in the subject sanitizing solution is safe.

FDA has evaluated data in the petition and other relevant information. The agency concludes that the data and information establish the safety of the level of use and the effectiveness of the additive as a sanitizing solution and that the regulations should be amended in § 178.1010 as set forth below. The agency also finds that the data in this petition support the use of the subject sanitizing solution on food-contact surfaces in public eating places as well as other food-processing equipment and utensils.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the

petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

II. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

III. Filing of Objections

Any person who will be adversely affected by this regulation may at any time on or before October 22, 1992, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 376).

2. Section 178.1010 is amended by adding new paragraphs (b)(41) and (c)(36) to read as follows:

§ 178.1010 Sanitizing solutions.

* * * * *

(b) * * *

(41) An aqueous solution containing *n*-alkyl(C_{12}-C_{16})benzyldimethylammonium chloride, having average molecular weights ranging from 351 to 380 wherein the alkyl groups contain principally 12 to 16 carbons and not more than 1 percent each of the groups with 8 and 10 carbon atoms; ammonium chloride (CAS Reg. No. 12125-02-9); calcium stearate (CAS Reg. No. 1529-23-0); sodium bicarbonate (CAS Reg. No. 144-55-9); starch or dextrin, or both starch and dextrin (CAS Reg. No. 9004-53-9); and the optional ingredient methylene blue (CAS Reg. No. 61-73-4). In addition to use on food-processing equipment and utensils, this solution may be used on food-contact surfaces in public eating places.

(c) * * *

(36) Solutions identified in paragraph (b)(41) of this section shall provide, when ready for use, not less than 150 parts per million and not more than 200 parts per million of *n*-alkyl(C_{12}-C_{16}) benzyldimethylammonium chloride; and not more than 0.4 part per million of the colorant methylene blue. Components shall be present in the product used to prepare the solution in the following proportions: 1 part *n*-alkyl(C_{12}-C_{16})benzyldimethylammonium chloride to 0.24 part ammonium chloride to 0.08 part calcium stearate to 0.60 part sodium bicarbonate to 0.08 part starch or dextrin, or a combination of starch and dextrin.

* * * * *

Dated: September 10, 1992.

Douglas L. Archer,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-22950 Filed 9-21-92; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1310 and 1313

Records, Reports, and Exports of Listed Chemicals

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations implementing the Chemical Diversion and Trafficking Act of 1988 (CDTA) by including hydrochloric acid and sulfuric acid as listed essential chemicals for the purpose of imposing controls on exports to cocaine producing areas. The inclusion of these chemicals into the CDTA requires any exporter of these chemicals to targeted countries to comply with the regulated export transaction requirements specified in 21 CFR parts 1310 and 1313.

EFFECTIVE DATE: October 22, 1992.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307-7183.

SUPPLEMENTARY INFORMATION:

Introduction

On December 11, 1991, a notice of proposed rulemaking was published by the Administrator of the Drug Enforcement Administration (DEA) in the **Federal Register** (56 FR 64582-64584) to include hydrochloric acid and sulfuric acid as listed essential chemicals under the Chemical Diversion and Trafficking Act (CDTA) of 1988. The proposed rule provided the opportunity for interested parties to submit comments on or before January 10, 1992.

Two interested parties filed comments. A section by section analysis of the comments and the DEA's consideration of them are set forth below.

Substances Covered (1310.02)

One respondent suggested that the proposal, as written, did not clearly specify the forms of the acids to be regulated. It is the intent of the DEA to regulate both concentrated and diluted solutions of hydrochloric acid and sulfuric acid and anhydrous hydrochloric acid, also known as hydrogen chloride gas. The DEA does not consider aqueous solutions of regulated chemicals, including hydrochloric acid and sulfuric acid, to

be mixtures as defined under 21 U.S.C. 802(40).

Another respondent presented the viewpoint that the proposed regulation of hydrochloric acid and sulfuric acid would unfairly discriminate against U.S. exporters since other countries have not, as yet, imposed export controls on these acids to targeted areas. This proposed regulation is in agreement with the recommendations of the Chemical Action Task Force (CATF) which were endorsed by the G-7 nations and the Commission of the European Communities. In addition, hydrochloric and sulfuric acids were proposed for inclusion under Article 12 of the 1988 Vienna Convention. The Commission on Narcotic Drugs (CND), at its thirty-fifth session on April 9, 1992, voted to place sulfuric acid (excluding its salts) and hydrochloric acid (excluding its salts) into Table II of the 1988 Convention. Control under Article 12 requires all parties to the 1988 Convention to apply export control measures to hydrochloric and sulfuric acids.

Maintenance of Records (1310.04)

One respondent requested a clarification of the basis on which the acid threshold quantities were to be calculated. The reason for this comment was the proposal, as written, did not specify the acid forms to be regulated. Since the DEA is regulating all aqueous concentrations of the two acids, the threshold limit parameters for aqueous forms were revised and are based solely on volume measurements. The threshold limit for anhydrous hydrochloric acid, which was omitted from the December 11, 1991 proposal, is based solely on a weight measurement.

One respondent stated that thresholds should be increased to recognize the legitimate high volume use of both acids by the regulated community. The DEA agrees with this comment and has increased the thresholds for both acids.

This rule is necessary to comply with treaty obligations of the United States, and therefore, the countries to which export restrictions apply have been minimized. While exports to listed countries are regulated transactions requiring full application of the controls of the CDTA and its regulations, it is recognized that traffickers may attempt to place orders through third party countries to subsequently be diverted to illegal activities in listed countries. Persons exporting these chemicals should be aware of this potential and exercise due diligence to guard against becoming a party to manipulation. Even though the exports to unlisted countries are not regulated transactions, criminal penalties exist for knowingly and intentionally distributing or exporting so as to evade the provisions of the CDTA.

The Administrator hereby certifies that this action will have no significant impact on entities whose interests must be considered under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This amendment to the list of essential chemicals is limited to exports to specified Latin American countries. Most exports of this nature are handled by major chemical manufacturers and distributors who are not small entities as defined in 5 U.S.C. 601(6).

This is not a major rule for purposes of Executive Order (E.O.) 12291. Pursuant to E.O. 12291, this final rule has been submitted for review by the Office of Management and Budget (OMB). The Administrator certifies that these amendments to the DEA's chemical diversion regulations meet the applicable standards set forth in sections 2(a) and 2(b)(2) of E.O. 12778. These regulations, implementing the Chemical Diversion and Trafficking Act, are essential to a criminal law enforcement function of the United States.

This action has been analyzed in accordance with the principles and criteria contained in E.O. 12612, and it has been determined that this rule has no implications which would warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1310

Drug traffic control, Reporting and record keeping requirements.

For reasons set out above, 21 CFR, part 1310, is amended as follows:

PART 1310—[AMENDED]

1. The authority citation for part 1310 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 871(b).

2. Section 1310.02 is amended by adding paragraphs (b)(8) and (b)(9) to read as follows:

§ 1310.02 Substances covered.

* * * * *

(b) * * *

(8) Hydrochloric acid

(9) Sulfuric acid

* * * * *

3. Section 1310.04 is amended by adding paragraph (f)(2)(iv) to read as follows:

§ 1310.04 Maintenance of records.

* * * * *

(f) * * *

(2) * * *

(iv) Exports to Designated Countries

Chemical	Threshold by volume	Threshold by weight
(A) Hydrochloric acid.	50 gallons	
(1) Anhydrous hydrochloric acid.		27 kilograms.
(B) Sulfuric acid.	50 gallons	

4. A new § 1310.08 is added to read as follows:

§ 1310.08 Excluded transactions.

Pursuant to 21 U.S.C. 802(39)(A)(iii), regulation of the following transactions has been determined to be unnecessary for the enforcement of the Chemical Diversion and Trafficking Act and, therefore, they have been excluded from the definitions of regulated transactions contained in 21 CFR 1310.01(f) and 1313.02(d):

(a) Domestic and import transactions of hydrochloric and sulfuric acids.

(b) Export transactions of hydrochloric and sulfuric acids, except for exports to the following countries:

(1) Argentina
(2) Bolivia
(3) Brazil
(4) Chile
(5) Colombia
(6) Ecuador
(7) French Guiana
(8) Guyana
(9) Panama
(10) Paraguay
(11) Peru
(12) Surinam
(13) Uruguay
(14) Venezuela

Dated: June 30, 1992.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 92-22933 Filed 9-21-92; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR PART 165

[COTP Paducah, KY, Regulation 92-23]

Safety Zone Regulations: Cumberland River, Mile 0.0 to 10.0 and From Mile 24.0 to 30.6

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Cumberland River from mile 0.0 to 10.0 and from mile 24.0 to 30.6. The safety

zones are needed to protect larger vessels from a safety hazard associated with narrow channel conditions. Within the safety zones, vessels greater than 40 feet in length will be restricted to one way passage.

EFFECTIVE DATES: This regulation becomes effective at 6 a.m. on September 1, 1992. It terminates at 6 p.m. on September 22, 1992.

FOR FURTHER INFORMATION CONTACT: ENS Robert Coller, c/o Commanding Officer, U.S. Coast Guard, Marine Safety Office, P.O. Box 7509, Paducah, KY 42002–7509, (502) 442–1621.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to control the potential hazards to the vessels involved.

Drafting Information

The drafter of this regulation is ENS Robert Coller, project officer for the Captain of the Port, Paducah, KY.

Discussion of Regulation

The event requiring this regulation will begin on September 1, 1992. As a result of the closure of Kentucky Dam, an increase of traffic on the Cumberland River is expected. This increase of traffic, through narrow channels, necessitates the following restrictions. Vessels up to 40 feet in length will be permitted to transit the zones without restriction but must be prepared to give way to larger vessels. All vessels greater than 40 feet in length will be restricted to one way passage through the zones with no meeting, passing or overtaking permitted other than situations involving small vessels. Large vessels will be required to coordinate transits of the zones via marine radio or other electronic communications. Upbound large vessels preparing to enter either zone will be expected to give way to downbound large vessels preparing to enter the same zone.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new temporary § 165.T02045 is added to read as follows:

§ 165.T02045 Safety Zone: Cumberland River.

(a) *Location.* The following area is a safety zone: Cumberland River, Mile 0.0 to 10.0 and from mile 24.0 to 30.6.

(b) *Effective date.* This regulation becomes effective at 6 a.m. on September 1, 1992. It terminates at 6 p.m. on September 22, 1992.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

Dated: August 28, 1992.

Robert M. Segovis,

Commander, U.S. Coast Guard, Captain of the Port, Paducah, Ky.

[FR Doc. 92–22900 Filed 9–21–92; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 21 and 36

RIN 2900–AF95

Nomenclature Changes; Correction

AGENCY: Department of Veterans Affairs.

ACTION: Correction to technical amendments.

SUMMARY: This document contains additions to the Nomenclature Changes; Correction which was published Wednesday, August 26, 1992 (57 FR 38609–38611). The August 26, 1992, document made corrections to a nomenclature rule published Monday, July 13, 1992 (57 FR 31006–31033). The changes made were to conform the statutory citations found throughout title 38 of the Code of Federal Regulations to the redesignation of sections of title 38, United States Code effected by Public Law No. 102–40, the "Department of Veterans Affairs Health-Care Personnel Act of 1991," and Public Law No. 102–83, the "Department of Veterans Affairs Codification Act."

EFFECTIVE DATE: August 6, 1991.

FOR FURTHER INFORMATION CONTACT: Frederic Conway, Deputy Assistant General Counsel, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 523–3911).

SUPPLEMENTARY INFORMATION: The additions in this document will complete the corrections to nomenclature changes throughout title 38 of the Code of Federal Regulations.

Approved: September 16, 1992.

B. Michael Berger,

Director Records Management Service.

Accordingly, the publication on August 26, 1992 (57 FR 38609–38611, is corrected as follows:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart F—Education Loans

1. Page 31026, column 1, change number 5 is corrected by removing "38 U.S.C." and adding in its place "section".

Subpart G—Post-Vietnam ERA Veterans' Educational Assistance Under 38 U.S.C. Chapter 32

1. Page 31027, column 1, change number 54 is corrected by removing all that appears and adding in its place "Remove the citation "38 U.S.C. 1780(d)(4)(B)" and add in its place "38 U.S.C. 3680(d)(4)(B)", wherever it appears.

2. Page 31027, column 2 is corrected by adding to the list of changes: "81. Remove the citation "38 U.S.C. 1641, 1676" and adding in its place "38 U.S.C. 3241, 3476", wherever it appears.

Subpart K—All Volunteer Force Educational Assistance Program (New GI Bill)

1. Page 31028, column 2, change number 17 is corrected by removing the citation "38 U.S.C. 1434, 1780(c)" and adding in its place "38 U.S.C. 1434, 1788(c)".

2. Page 31028, column 2, change number 17 is corrected by removing the citation "38 U.S.C. 3034, 3680(c)" and adding in its place "38 U.S.C. 3034, 3688(c)".

3. Page 31028, column 3, change number 40 is corrected by adding "(b)" after "38 U.S.C. 3012".

4. Page 31028, column 3, change number 44 is corrected by removing "3031(d)" the first time it appears and adding in its place "1431(d)".

5. Page 31029, column 2, change number 82 is corrected by adding ",

1790" after "1772(a)" and by adding ", 3690" after "3672(a)".

6. Page 31029, column 2, change number 83 is corrected by adding ", 1790" after "1772(a)" and by adding ", 3690" after "3672(a)".

7. Page 31030, column 1 is corrected by adding to the list of changes: "122. Remove the citation "38 U.S.C. 1434, 1652" and add in its place "38 U.S.C. 3034, 3452", wherever it appears."

"123. Remove the citation "38 U.S.C. 1402(2)" and add in its place "38 U.S.C. 3002(2)", wherever it appears."

"124. Remove the citation "38 U.S.C. 3001, 3013" and add in its place "38 U.S.C. 5101, 5113", wherever it appears."

"125. Remove the citation "38 U.S.C. 3003(a)" and add in its place "38 U.S.C. 5103(a)", wherever it appears."

"126. Remove the citation "38 U.S.C. 3504, 3505" and add in its place "38 U.S.C. 6104, 6105", wherever it appears."

"127. Remove the citation "38 U.S.C. 3012, 3013" and add in its place "38 U.S.C. 5112, 5113", wherever it appears."

"128. Remove the citation "38 U.S.C. 3012(a), 3013" and add in its place "38 U.S.C. 5112(a), 5113", wherever it appears."

"129. Remove the citation "38 U.S.C. 1434, 1784" and add in its place "38 U.S.C. 3034, 3684", wherever it appears."

"130. Remove the citation "38 U.S.C. 1417(a)" and add in its place "38 U.S.C. 3017(a)", wherever it appears."

"131. Remove the citation "38 U.S.C. 1434; 1788(c)" and add in its place "38 U.S.C. 3034, 3688(c)", wherever it appears."

Subpart L—Educational Assistance for Members of the Selected Reserve

1. Page 31030, column 2, change number 15 is corrected by removing "38 U.S.C. 3967(a)" and adding in its place "38 U.S.C. 3697(a)".

2. Page 31030, column 2, change number 16 is corrected by removing "38 U.S.C. 3467(a)" and adding in its place "38 U.S.C. 3697(a)".

3. Page 31030, column 2, change number 21 is corrected by removing all that appears and adding in its place "Remove the citation "38 U.S.C. 2131" and add in its place "10 U.S.C. 2131", wherever it appears."

4. Page 31031, column 1, change number 49 is corrected by removing all that appears and adding in its place "Remove the citation "10 U.S.C. 1788(b)" and add in its place "10 U.S.C. 2136(b), 38 U.S.C. 3688(b)", wherever it appears."

5. Page 31031, column 1, change number 54 is corrected by adding ", 1789, 1789(c), 4004(e)" after "1779" and by adding ", 3689, 3689(c), 7104(e)" after "3679".

6. Page 31031, column 1 is corrected by adding to the list of changes "58. "Remove the citation "38 U.S.C. 2131(b)" and add in its place "10 U.S.C. 2131(b)", wherever it appears."

"59. Remove the citation "38 U.S.C. 3012, 3013" and add in its place "38 U.S.C. 5112, 5113", wherever it appears."

"60. Remove the citation "38 U.S.C. 212(a); 1796" and add in its place "38 U.S.C. 512(a); 3696", wherever it appears."

PART 36—LOAN GUARANTY

1. Page 31031, column 2, change number 20 is corrected by removing the citation "38 U.S.C. 1812(9)(f)" and adding in its place "38 U.S.C. 18129(f)".

2. Page 31032, column 2, change number 84 is corrected by removing "(d)" wherever it appears.

3. Page 31032, column 3 is corrected by adding to the list of changes: "98. Remove the citation "38 U.S.C. 1812 (f) and (g)" and add in its place "38 U.S.C. 3712 (f) and (g)", wherever it appears."

"99. Remove the citation "section 1801(b)(2)" and add in its place "section 3701(b)(2)", wherever it appears."

"100. Remove the citation "38 U.S.C. Secs." and add in its place "38 U.S.C." wherever it appears."

"101. Remove the citation "38 U.S.C. 1803(d)" and add in its place "38 U.S.C. 3703(d)" wherever it appears."

"102. Remove the citation "38 U.S.C. 1803(c)(1) and 1810(c)" and add in its place "38 U.S.C. 3703(c)(1) and 3710(c)" wherever it appears."

"103. Remove the citation "38 U.S.C. 1810(a) (4) or (7)" and add in its place "38 U.S.C. 3710(a) (4) or (7)" wherever it appears."

"104. Remove the citation "38 U.S.C. 1814, 1829(d)" and add in its place "38 U.S.C. 3714, 3729(d)", wherever it appears."

"105. Remove the citation "section 1801(b)" and add in its place "section 3701(b)", wherever it appears."

"106. Remove the citation "38 U.S.C. 1820(a)(3)" and add in its place "38 U.S.C. 3720(a)(3)", wherever it appears."

"107. Remove the citation "38 U.S.C. 1812(g), 1820(a)(3)" and add in its place "38 U.S.C. 3712(g), 3720(a)(3)", wherever it appears."

"108. Remove the citation "38 U.S.C. 1813" and add in its place "38 U.S.C. 3713", wherever it appears."

"109. Remove the citation "38 U.S.C. 1803(d)(2)" and add in its place "38 U.S.C. 3703(d)(2)" wherever it appears."

"110. Remove the citation "38 U.S.C. 1804" and add in its place "38 U.S.C. 3704", wherever it appears."

"111. Remove the citation "38 U.S.C. 210(c) or 1803(a)(2)" and add in its place "38 U.S.C. 501 or 3703(a)(2)", wherever it appears."

"112. Remove the citation "38 U.S.C. 1831(d)" and add in its place "38 U.S.C. 3731(d)", wherever it appears."

"113. Remove the citation "38 U.S.C. 1804(a)" and add in its place "38 U.S.C. 3704(a)", wherever it appears."

"114. Remove the citation "38 U.S.C. 1831" and add in its place "38 U.S.C. 3731", wherever it appears."

"115. Remove the citation "38 U.S.C. 210(c), 1803(c), 1812(g)" and add in its place "38 U.S.C. 501, 3703(c), 3712(g)", wherever it appears."

"116. Remove the citation "38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6)" and add in its place "38 U.S.C. 501, 3703(c)(1), 3710(a)(6)", wherever it appears."

"117. Remove the citation "38 U.S.C. 210(c)(1), 1810(a)(6)" and add in its place "38 U.S.C. 501, 3710(a)(6)", wherever it appears."

"118. Remove the citation "38 U.S.C. 210(c)(1), 1803(c)(1), (d)(3), 1810(a)(6)" and add in its place "38 U.S.C. 501, 3703(c)(1) and (d)(3), 3710(a)(6)", wherever it appears."

"119. Remove the citation "38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6), (b)(5)" and add in its place "38 U.S.C. 501, 3703(c)(1), 3710(a)(6) and (b)(5)", wherever it appears."

"120. Remove the citation "38 U.S.C. 210(c)(1), 1803(c)(1)" and add in its place "38 U.S.C. 501, 3703(c)(1)", wherever it appears."

"121. Remove the citation "38 U.S.C. 210, 801" and add in its place "38 U.S.C. 501, 2101", wherever it appears."

"122. Remove the citation "38 U.S.C. 801(b)" and add in its place "38 U.S.C. 2101(b)", wherever it appears."

"123. Remove the citation "section 612(a)" and add in its place "section 1712(a)", wherever it appears."

"124. Remove the citation "38 U.S.C. 801(b), 804" and add in its place "38 U.S.C. 2101(b), 2104", wherever it appears."

"125. Remove the citation "section 801(a)" and add in its place "section 2101(a)", wherever it appears."

"126. Remove the citation "section 801(b)" and add in its place "section 2101(b)", wherever it appears."

"127. Remove the citation "38 U.S.C. 802(b)" and add in its place "38 U.S.C. 2102(b)", wherever it appears."

"128. Remove the citation "38 U.S.C. 210(c), 801 (a) and (b)" and add in its place "38 U.S.C. 501, 2101 (a) and (b)", wherever it appears."

"129. Remove the citation "38 U.S.C. 1811" and add in its place "38 U.S.C. 3711", wherever it appears."

"130. Remove the citation "sections 1807 and 1818" and add in its place

"sections 3707 and 3718", wherever it appears."

"131. Remove the citation "38 U.S.C. 1811(d)(2)(A)" and add in its place "38 U.S.C. 3711(d)(2)(A)", wherever it appears."

"132. Remove the citation "38 U.S.C. 1810" and add in its place "38 U.S.C. 3710", wherever it appears."

"133. Remove the citation "38 U.S.C. 210(c), 1803(c)(1), 1811(d)(1), 1812 (f) and (g)" and add in its place "38 U.S.C. 501, 3703(c)(1), 3711(d)(1), 3712 (f) and (g)", wherever it appears."

"134. Remove the citation "section 1801(b)(2)" and add in its place "section 3701(b)(2)", wherever it appears."

"135. Remove the citation "38 U.S.C. 1829(d)" and add in its place "38 U.S.C. 3729(d)", wherever it appears."

"136. Remove the citation "38 U.S.C. 210(c), 1824 and 1829" and add in its place "38 U.S.C. 501, 3724 and 3729", wherever it appears."

"137. Remove the citation "38 U.S.C. 1803(c)(1), (d)(1)" and add in its place "38 U.S.C. 3703(c)(1) and (d)(1)", wherever it appears."

"138. Remove the citation "38 U.S.C. 1820(f)" and add in its place "38 U.S.C. 3720(f)", wherever it appears."

"139. Remove the citation "38 U.S.C. 1810(c)" and add in its place "38 U.S.C. 3710(c)", wherever it appears."

"140. Remove the citation "38 U.S.C. 1811(d)(1)" and add in its place "38 U.S.C. 3711(d)(1)", wherever it appears."

"141. Remove the citation 38 U.S.C. 1810(a)(8)" and add in its place "38 U.S.C. 3710(a)(8)", wherever it appears."

"142. Remove the citation "38 U.S.C. 1811(b)" and add in its place "38 U.S.C. 3711(b)", wherever it appears."

"143. Remove the citation "38 U.S.C. 210(c) or 1803(a)(2)" and add in its place "38 U.S.C. 501 or 3703(a)(2)", wherever it appears."

"144. Remove the citation "38 U.S.C. 210(c)(1), 1820(a)(5)" and add in its place "38 U.S.C. 501, 3720(a)(5)", wherever it appears."

"145. Remove the citation "38 U.S.C. 1811(g)" and add in its place "38 U.S.C. 3711(g)", wherever it appears."

"146. Remove the citation "38 U.S.C. 210(c), 1820" and add in its place "38 U.S.C. 501, 3720", wherever it appears."

"147. Remove the citation 38 U.S.C. 1820" and add in its place "38 U.S.C. 3720", wherever it appears."

"148. Remove the citation "38 U.S.C. 1803(c)(1) and 1820" and add in its place "38 U.S.C. 3703(c)(1) and 3720", wherever it appears."

"149. Remove the citation "38 U.S.C. 1814 and 1820" and add in its place "38 U.S.C. 3714 and 3720", wherever it appears."

"150. Remove the citation "38 U.S.C. 1810(a)" and add in its place "38 U.S.C. 3710(a)", wherever it appears."

"151. Remove the citation "38 U.S.C. 1810(b)(3)" and add in its place "38 U.S.C. 3710(b)(3)", wherever it appears."

[FR Doc. 92-22784 Filed 9-21-92; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6947

[OR-943-4214-10; GP2-231; OR-47267]

Withdrawal of National Forest System Land for Thunder Egg Lake Agate Beds; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 150.00 acres of National Forest System land in the Fremont National Forest from mining for a period of 20 years for protection of the Thunder Egg Lake Agate Beds. The land has been and will remain open to such forms of disposition as may by law be made of National Forest System land and to mineral leasing.

EFFECTIVE DATE: September 22, 1992.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208-2965, 503-280-7171.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System land is hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect a Forest Service recreational rock hounding area:

Willamette Meridian

Fremont National Forest

T. 40 S., R. 21 E.,
Sec. 8, S½SE¼SW¼;
Sec. 17, W½NE¼, NE¼NW¼, and NE¼SE¼NW¼.

The area described contains 150.00 acres in Lake County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of National Forest System land under lease, license, or permit, or governing the disposal of its mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), the Secretary determines that the withdrawal shall be extended.

Dated: September 10, 1992.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 92-22843 Filed 9-21-92; 8:45 am]

BILLING CODE 4310-33-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA-7550]

Suspension of Community Eligibility

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: if you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, 500 C Street SW., room 417, Washington DC 20472, (202) 646-2717.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management

aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 et seq., unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 et seq. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having floodprone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, Federal Regulation, February 17, 1981, 3 CFR, 1981 Comp., p 127. No regulatory impact analysis has been prepared.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et. seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Rorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follow:

State and location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Regular Conversions				
Connecticut: Killingworth, Town of Middlesex County.	090174	July 15, 1975, Emergency; March 15, 1982, Regular; September 30, 1992, Suspension.	September 30, 1992	September 30, 1992.
Massachusetts: Grafton, Town of Worcester County.	250306	July 29, 1975, Emergency; May 2, 1983, Regular; September 30, 1992, Suspension.	September 30, 1992	Do.
Vermont: Concord, Town of Essex County.	500207	October 28, 1975, Emergency; September 27, 1985, Regular; September 30, 1992, Suspension.	September 30, 1992	Do.
Region II				
New York:				
Greece, Town of Monroe County	360417	March 9, 1973, Emergency; March 18, 1980, Regular; September 30, 1992, Suspension.	September 30, 1992	Do.
Mamakating, Town of Sullivan County.	360825	October 6, 1976, Emergency; September 24, 1984, Regular; September 30, 1992, Suspension.	September 30, 1992	Do.
West Seneca, Town of Erie County.	360262	March 31, 1972, Emergency; February 2, 1977, Regular; September 30, 1992, Suspension.	September 30, 1992	Do.

State and location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region III				
West Virginia: Charles Town, City of Jefferson County.	540066	April 24, 1975, Emergency; December 4, 1979, Regular; September 30, 1992, Suspension.	September 30, 1992	Do.
Pennsylvania: Lower Chichester, Town of Delaware County.	421604	October 9, 1974, Emergency; September 22, 1978, Regular; September 30, 1992, Suspension.	September 30, 1992	Do.
Pennsylvania: State College, Borough of Centre County.	420270	May 25, 1973, Emergency; June 30, 1976, Regular; September 30, 1992, Suspension.	September 30, 1992	September 30, 1992.
Region IV				
Tennessee: Jellico, City of Campbell County.	475431	November 27, 1970, Emergency; June 18, 1971, Regular; September 30, 1992, Suspension.	September 30, 1992	Do.
Region V				
Michigan: Kalamazoo, City of Kalamazoo County.	260315	December 26, 1974, Emergency; May 1, 1985, Regular; September 30, 1992, Suspension.	September 30, 1992	Do.
Minnesota: Independence, City of Hennepin County.	270167	January 28, 1975, Emergency; January 6, 1983, Regular; September 30, 1992, Suspension.	September 30, 1992	Do.
Illinois: Elwood, Village of Will County.	170849	December 23, 1982, Emergency; December 23, 1982, Regular; September 30, 1992, Suspension.	November 3, 1982	Do.
Region VI				
Texas: Pleak, Village of Fort Bend County.	481615	May 31, 1988, Emergency; May 31, 1988, Regular; September 30, 1992, Suspension.	September 30, 1992	Do.
Region VIII				
Colorado: Telluride, Town of San Miguel County.	080188	May 27, 1975, Emergency; September 15, 1978, Regular; September 30, 1992, Suspension.	September 30, 1992	Do.
Region VII				
Iowa:				
Clive, City of Polk and Dallas Counties.	190488	August 25, 1977, Emergency; November 1, 1979, Regular; October 16, 1992, Suspension.	October 16, 1992	October 16, 1992.
Windsor Heights, City of Polk County.	190687	October 7, 1977, Emergency; June 15, 1979, Regular; October 16, 1992, Suspension.	October 16, 1992	Do.
Nebraska: Fairbury, City of Jefferson County.	310120	August 28, 1974, Emergency; September 3, 1980, Regular; October 16, 1992, Suspension.	October 16, 1992	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance."

Issued: September 15, 1992.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administrtion.

[FR Doc. 92-22894 Filed 9-21-92; 8:45 am]

BILLING CODE 6718-21-M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Part 9903

Cost Accounting Standards Board; Recodification of Cost Accounting Standards Board Rules and Regulations

AGENCY: Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.

ACTION: Correction to final rule.

SUMMARY: On April 17, 1992, the Office of Federal Procurement Policy (OFPP), Cost Accounting Standards Board, recodified at 48 CRF chapter 99 (57 FR 14148), the Cost Accounting Standards Rules and Regulations previously codified as both 48 CFR part 30, and 4 CFR parts 331 through 420. On August 3, 1992, the OFPP published corrections to the final rule (57 FR 34078). This document contains a correction to the August 3, 1992 notice .

EFFECTIVE DATE: April 17, 1992.

FOR FURTHER INFORMATION CONTACT: Richard C. Loeb, Executive Secretary, Cost Accounting Standards Board (telephone: 202-395-3254).

SUPPLEMENTARY INFORMATION:

Background

Section 5 of Public Law 100-679, the Office of Federal Procurement Policy Act Amendments of 1988, 41 U.S.C. 422, established a Cost Accounting Standards Board (CASB) within the Office of Federal Procurement Policy. On April 17, 1992, the CASB recodified, into a single set of uniform regulations, those Cost Accounting Standards that are applicable to covered Government contracts and subcontracts. See 57 FR 14148 (4/17/92) and 57 FR 34078 (8/3/92).

Need for Correction

As published, the final regulation contains an error which may prove to be misleading.

Correction of Publication

Accordingly, the publication of corrections to the final rule on August 3 1992 (57 FR 34078) is corrected as follows:

PART 9900—[AMENDED]

9903.202-9 [Corrected]

1. On page 34079, in the third column, in 9903.202-9, the entry should read as follows:

"6. On page 14159, in 9903.202-9, a new index page for CASB DS-1 is illustrated below:"

Dated: September 15, 1992.

Allan V. Burman,

Administrator for Federal Procurement Policy and Chairman, Cost Accounting Standards Board.

[FR Doc. 92-22673 Filed 9-21-92; 8:45 am]

BILLING CODE 3110-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 920412-2112]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS announces the closure of the recreational salmon fisheries in the exclusive economic zone from Cape Falcon to Humbug Mountain, Oregon, at midnight, September 10, 1992. The Director, Northwest Region, Northwest Region, NMFS (Regional Director), has determined that the overall recreational quota of 172,000 coho salmon south of Cape Falcon, Oregon, has been reached. This action is necessary to conform to the preseason announcement of the 1992 management measures and is intended to ensure conservation of coho salmon.

DATES: Effective at 2400 hours local time, September 10, 1992. Comments will be accepted through October 1, 1992.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE., BIN C15700-Bldg. 1, Seattle, WA 98115-0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at (206) 526-6140.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR 661.21(a)(1) state that "When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by notice issued under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

In its emergency interim rule and notice of 1992 management measures (57 FR 19388, May 6, 1992), NMFS announced that the overall recreational catch from Cape Falcon, Oregon, to the U.S.-Mexico border will be limited to a catch quota of 172,000 coho salmon. When this coho salmon quota is reached, all recreational fisheries between Cape Falcon and Humbug Mountain, Oregon, will close.

The recreational fisheries between Cape Falcon and Humbug Mountain opened on May 3 through June 11, then reopened on June 14 and were scheduled to continue through the earlier of September 20 or attainment of the overall coho salmon quota. The recreational fishery in the subarea from Florence South Jetty to Humbug Mountain was also subject to a subarea quota for chinook salmon; this quota was projected to be reached and the possession and landing of chinook salmon in the recreational fishery in the revised subarea from Heceta Head to Humbug Mountain was prohibited as of midnight, July 2, 1992 (57 FR 31666, July 17, 1992).

Based on the best available information on September 8, 1992, the recreational fishery catch south of Cape Falcon was projected to reach the overall recreational quota of 172,000 coho salmon and the recreational fishery for all salmon species between Cape Falcon and Humbug Mountain should be closed at midnight, September 10.

The Regional director consulted with representatives of the Pacific Fishery Management Council and the Oregon Department of Fish and Wildlife regarding this closure. Actual notice to affected fishermen was given prior to that time through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.23. Because of the need for immediate action, the Secretary of Commerce (Secretary) has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. This notice does not apply to other fisheries that may be operating in other areas.

Classification

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 16, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-22864 Filed 9-16-92; 5:01 pm]

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50 CFR Parts 672 and 675

[Docket No. 920939-2239]

Groundfish of the Gulf of Alaska, and Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Interpretive rule; technical amendment.

SUMMARY: NMFS publishes this interpretive rule and technical amendment to clarify the definitions of vessel "length overall" that are published in regulations implementing the Fishery Management Plan (FMP) for Groundfish of the Gulf of Alaska (GOA), and the FMP for the Goundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI). This rule provides guidance for applying the definitions to determine the length overall (LOA) of vessels participating in the groundfish fisheries of the GOA and the BSAI, and amends 50 CFR parts 672 and 675 by adding illustrative figures to those regulations. This action is intended to clarify existing regulations to further the goals and objectives contained in the fishery management plans that govern these fisheries.

EFFECTIVE DATE: September 22, 1992.

FOR FURTHER INFORMATION CONTACT: Ellen Varosi, Fishery Biologist, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

Domestic and foreign groundfish fisheries in the exclusive economic zone off Alaska are managed in accordance with the GOA and BSAI FMPs. Both FMPs were prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The GOA FMP is

implemented by regulations codified at 50 CFR part 672 for the U.S. fishery. The BSAI FMP is implemented by regulations codified at 50 CFR part 675 for the U.S. fishery. General regulations that also apply to domestic fisheries are codified at 50 CFR part 620.

On February 12, 1990, NMFS published regulations implementing the groundfish fisheries Observer Plan developed by the Secretary of Commerce pursuant to Amendment 13 to the BSAI FMP and Amendment 18 to the GOA FMP (55 FR 4839). The Observer Plan was implemented to collect fisheries data necessary and appropriate for research, management, and compliance monitoring of the groundfish fisheries of the GOA and BSAI.

Mandatory minimum observer coverage levels for catcher vessels and catcher/processor vessels vary with the LOA of the vessel. Regulated catcher vessels and catcher/processor vessels 125 feet (38.1 m) LOA or longer must carry a NMFS-certified observer at all times while fishing for groundfish. Operators of catcher vessels and catcher/processor vessels from 60 through 124 feet (18.3–37.8 m) LOA must carry a NMFS-certified observer during 30 percent of their days during fishing trips in each calendar quarter of the year in which the vessels fish more than 10 days in the groundfish fisheries.

The term "length overall" of a vessel is defined at §§ 672.2 and 675.2 as "the horizontal distance, rounded to the nearest foot, between the foremost part of the stem and the aftermost part of the stern, excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments."

NMFS publishes this interpretive rule to clarify the usage of "stem" and "stern" in the definition of "length overall". "Stem" is the foremost position of the vessel, a section of timber or cast, forged, or rolled metal to which the sides of a vessel are united at the fore end, with the lower end scarfed to the keel and the bowsprit, if one is present, resting on the upper end. "Stern" is simply the aftermost part of the vessel. In order to provide additional guidance, NMFS amends the regulations at 50 CFR parts 672 and 675 by revising definitions in §§ 672.2 and 675.2 and by revising figures to the parts.

NMFS also has become aware that some owners and operators of catcher vessels and catcher/processor vessels may be using registered length rather than LOA to determine mandatory minimum observer coverage levels. When NMFS implemented the Observer Plan, NMFS expressly rejected the use of registered length for determining mandatory minimum observer coverage levels. LOA was considered a superior method of vessel measurement (55 FR 4345, February 12, 1990). Consequently, registered length is immaterial in determining LOA and required observer coverage levels.

NMFS advises owners and operators of catcher vessels and catcher/processor vessels to measure LOA consistent with the regulatory definition, without reference to registered length, for purposes of determining mandatory minimum observer coverage levels. NMFS also reminds vessel owners and operators that the same definition of LOA described above is used in the definition of "inshore component" implemented under Amendment 18 to the BSAI FMP and Amendment 23 to the GOA FMP (57 FR 23344, June 3, 1992).

In 50 CFR part 672, Figure 1 is revised to illustrate LOA and Figures 2, 3, and 4 are redesignated for clarity. In § 672.2 and § 675.2, the definitions of "pelagic trawl" are revised to properly reference figures, and metric conversions are added to the definitions in accordance with Department of Commerce policy. Section 672.24(d)(1) and (2) are also revised to properly reference figures. No substantive changes are made to these sections.

Classification

This interpretive rule is consistent with the Magnuson Act and other applicable law.

This interpretive rule is exempt from the requirement to publish general notice of proposed rulemaking and to delay its effective date under section 553(b) and (d) of the Administrative Procedure Act.

This rule is exempt from the procedures of the Regulatory Flexibility Act because it is issued without opportunity for prior public comment.

The Assistant Administrator for Fisheries, NOAA, determined that this rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291.

This action is categorically excluded from the requirement to prepare an environmental assessment by NOAA Administrative Order 216–6.

This rule does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

Because the interpretive rule will have no direct regulatory effect upon the public, NMFS has determined that this rule does not affect the coastal zone of any state with an approved coastal management program.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Recordkeeping and reporting requirements.

Dated: September 16, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 672.2, the definitions of "length overall" and "pelagic trawl" are revised to read as follows:

§ 672.2 Definitions.

* * * * *

Length overall of a vessel means the horizontal distance, rounded to the nearest foot, between the foremost part of the stem and the aftermost part of the stern, excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments (Figure 1).

* * * * *

Pelagic trawl means a trawl that does not have discs, bobbins, rollers, or other chafe protection gear attached to the foot rope, but that may have weights on the wing tips, and:

(1) That has stretched mesh sizes of at least 64 inches (1.6 m), as measured between knots, starting at all points on the fishing line, head rope, and breast lines and extending aft for a distance of at least ten meshes from the fishing line, head rope, and breast lines and going around the entire circumference of the trawl, and which webbing is tied to the fishing line with no less than 20 inches (50.8 cm) between knots around the circumference of the net (Figure 2) and that contains no inserts or collars or other configurations intended to reduce the mesh size of the forward section; or

(2) That has parallel lines spaced no closer than 64 inches (1.6 m), or a combination of parallel lines and meshes with stretched mesh sizes of at least 64 inches (1.6 m), measured as described in paragraph (1) of this definition, for a distance of at least 33 feet (10.1 m), and starting at all points on the fishing line, head rope, and breast

lines and going around the entire circumference of the trawl (Figure 3).

* * * * *

3. In § 672.24, paragraph (d)(1) introductory text and paragraph (d)(2) introductory text are revised to read as follows:

§ 672.24 Gear limitations.

* * * * *

(d) * * *

(1) No person may trawl in waters of the EEZ within the following areas in the vicinity of Kodiak Island (see Figure 4, Area Type I) from a vessel having any trawl other than a pelagic trawl either attached or on board:

* * * * *

(2) From February 15 to June 15, no person may trawl in waters of the EEZ within the following areas in the vicinity of Kodiak Island (see Figure 4, Area Type II) from a vessel having any trawl other than a pelagic trawl either attached or on board:

* * * * *

4. Figure 1 to part 672 is revised and Figures 2, 3, and 4 to part 672 are redesignated as Figures 4, 2, and 3, respectively, to appear as follows:

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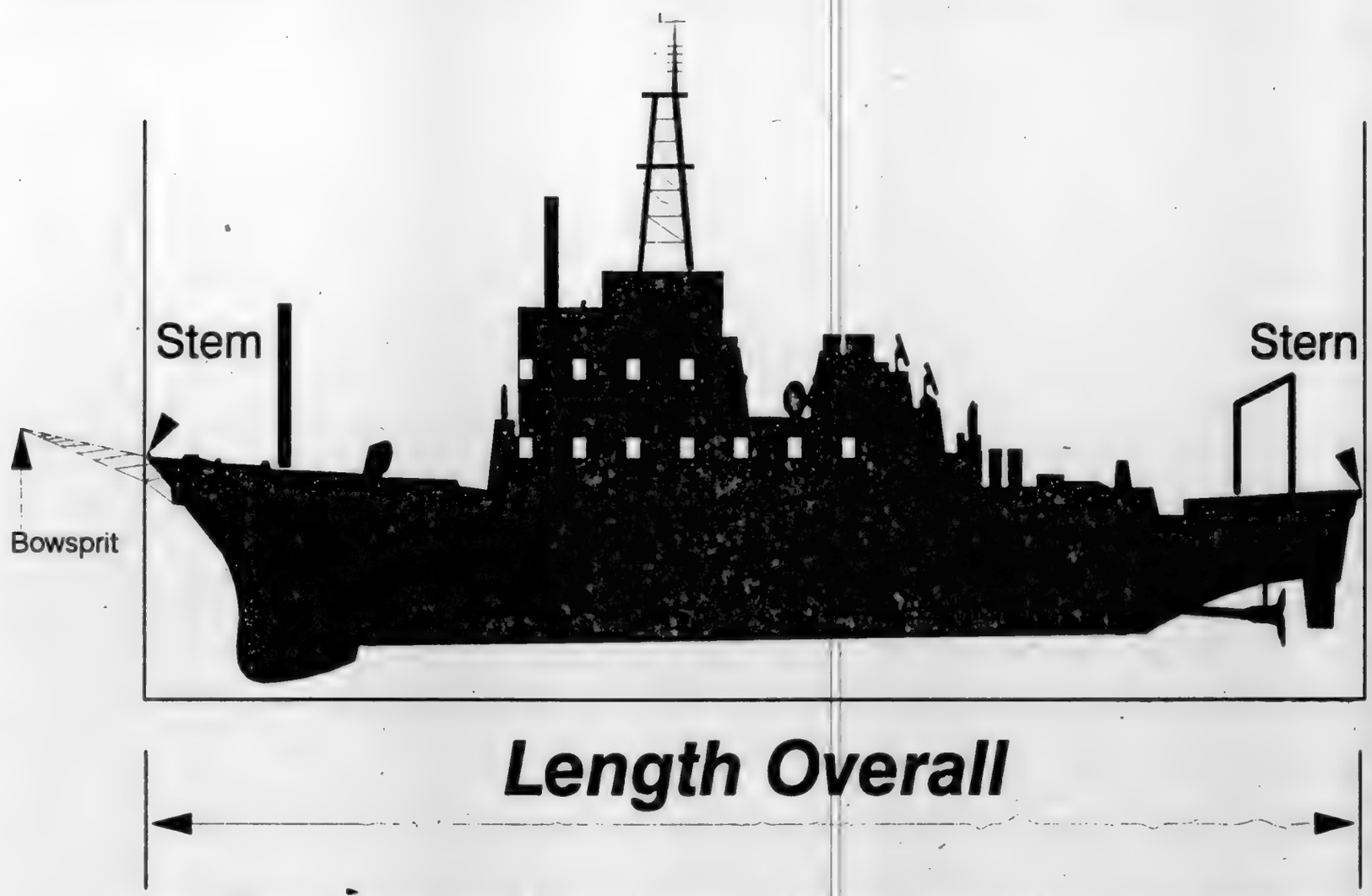

Length Overall - the horizontal distance between the foremost part of the stem and the aftermost part of the stern, excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments. Rounded to the nearest foot.

Stem - the foremost position of a vessel; a section of timber or cast, forged or rolled metal to which the sides of a vessel are united at the fore end with the lower end scarfed to the keel and the bowsprit, if one is present, resting on the upper end.

Stern - the aftermost part of the vessel.

Figure 1.

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PART 675—GROUNDFISH FISHERY OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

5. The authority citation for part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq*

6. In § 675.2, the definitions of "length overall" and "pelagic trawl" are revised to read as follows:

§ 675.2 Definitions.

* * * * *

Length overall of a vessel means the horizontal distance, rounded to the nearest foot, between the foremost part of the stem and the aftermost part of the stern, excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments (Figure 1).

* * * * *

Pelagic trawl means a trawl that does not have discs, bobbins, rollers, or other chafe protection gear attached to the foot rope, but that may have weights on the wing tips, and:

(1) that has stretched mesh sizes of at least 64 inches (1.6 m), as measured between knots, starting at all points on the fishing line, head rope, and breast lines and extending aft for a distance of at least ten meshes from the fishing line, head rope, and breast lines and going around the entire circumference of the trawl, and which webbing is tied to the fishing line with no less than 20 inches (50.8 cm) between knots around the circumference of the net (Figure 4) and that contains no inserts or collars or other configurations intended to reduce the mesh size of the forward section; or

(2) That has parallel lines spaced no closer than 64 inches (1.6 m), or a combination of parallel lines and meshes with stretched mesh sizes of at least 64 inches (1.6 m), measured as described in paragraph (1) of this definition, for a distance of at least 33 feet (10.1 m), and starting at all points on the fishing line, head rope, and breast lines and going around the entire circumference of the trawl (Figure 5).

* * * * *

7. Figure 3 to part 675 is revised to appear as follows:

BILLING CODE 3510-22-M

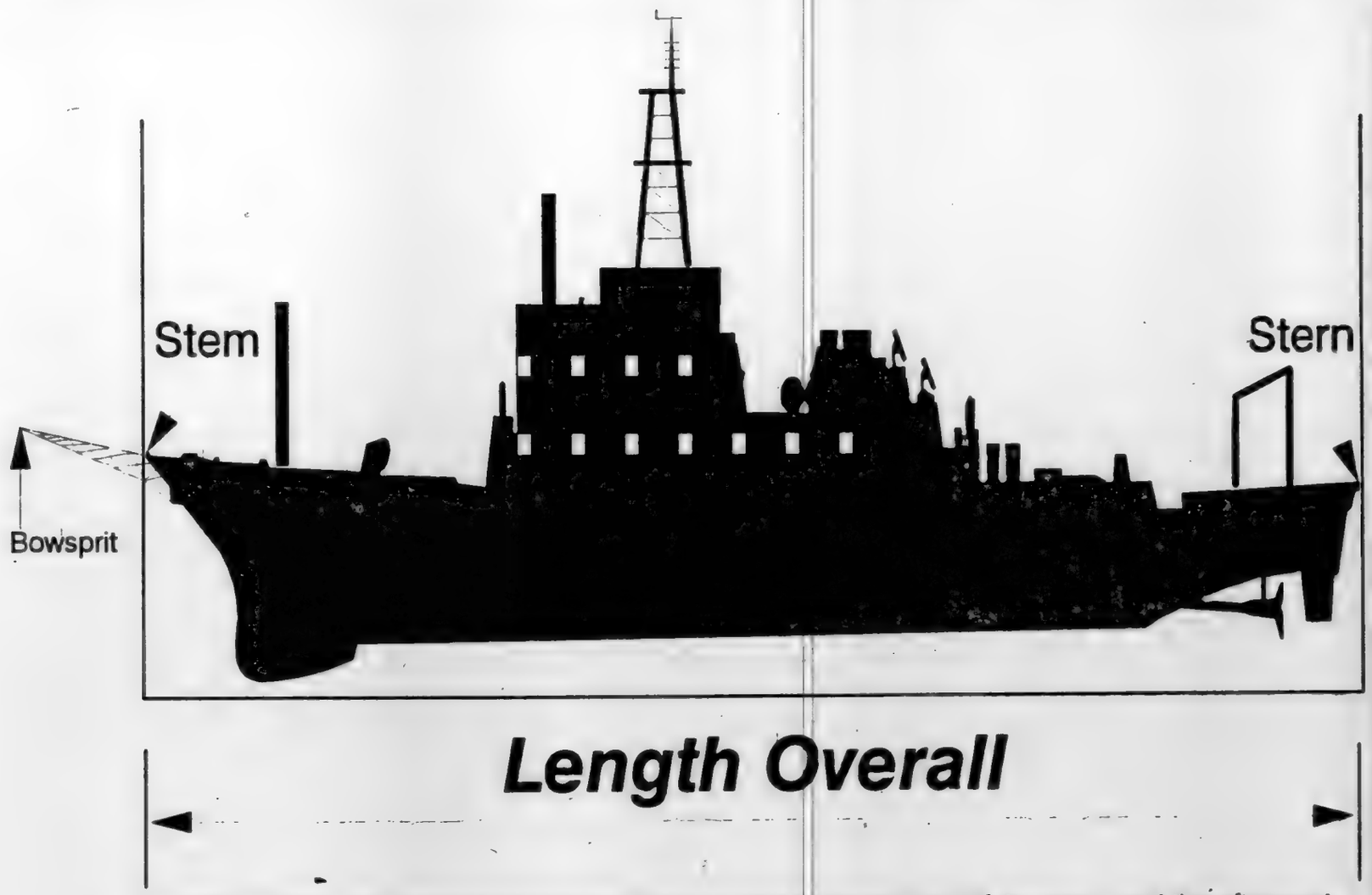

Length Overall - the horizontal distance between the foremost part of the stem and the aftermost part of the stern, excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments. Rounded to the nearest foot.

Stem - the foremost position of a vessel; a section of timber or cast, forged or rolled metal to which the sides of a vessel are united at the fore end with the lower end scarfed to the keel and the bowsprit, if one is present, resting on the upper end.

Stern - the aftermost part of the vessel.

Figure 3.

[FR Doc. 92-22973 Filed 9-21-92; 8:45 am]
BILLING CODE 3510-22-C

50 CFR Part 675

[Docket No. 920940-2240]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule; technical amendment.

SUMMARY: NMFS announces a technical amendment to a final rule to clarify that nautical miles are used to measure nautical distances referred to in regulations implementing the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands (BSAI) Area. This technical amendment revises NMFS' definition of the term "mile" in the regulatory text relating to time and area closures by inserting the word "nautical" in front of the word "mile". The purpose of this revision is to clarify the meaning of this term. Clarification is consistent with the goals and objectives of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

EFFECTIVE DATE: September 22, 1992.

FOR FURTHER INFORMATION CONTACT: Ellen R. Varosi, Fisheries Management Division, Alaska Region, NMFS, 907-586-7229.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the exclusive economic zone off Alaska are managed by the Secretary of Commerce in accordance with the BSAI FMP prepared by the North Pacific Fishery Management Council under the authority of the Magnuson Act. The FMP is implemented by regulations governing the U.S. groundfish fishery at 50 CFR part 675. General regulations that also pertain to U.S. fisheries are implemented at 50 CFR part 620.

Because nautical distances are measured in nautical miles, the terms mile and nautical mile have been used interchangeably. Specifically, § 675.22(f) refers to NOAA Survey Chart 16315, which uses nautical miles and shows the 3 nautical mile boundary and the 12 nautical mile boundary of the territorial sea. Latitude and longitude, as they appear on NOAA survey Charts and that are measured in degrees and minutes, are used to measure navigational distances. A nautical mile is defined as the arc length intercepted on the surface angle of the earth by a central angle of measure 1 minute. The radius of the earth is 2.09×10^7 feet, thus yielding 6,076.1 feet (1,852 meters) in a nautical mile. To avoid potential confusion in interpreting the regulations, they are amended as indicated below where the term "mile" will be preceded by the word "nautical."

Classification

Because these technical amendments make only minor, non-substantive corrections to existing rules, notice and public procedure thereon and a delay in effective date would serve no purpose. Accordingly, under 5 U.S.C. 553(b)(B) and (d), notice and public procedure thereon and a delay in effective date are unnecessary.

Because this rule is being issued without prior comment, it is not subject to the Regulatory Flexibility Act requirement for a regulatory flexibility analysis and none has been prepared.

This rule makes minor technical changes to a rule that has been determined not to be a major rule under E.O. 12291, does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612, and does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act. No changes in the regulatory impacts previously reviewed and analyzed will result from implementation of the technical amendment.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Dated: September 16, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 675 is amended as follows:

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

1. The authority citation for part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 675.22, paragraph (f) is revised to read as follows:

§ 675.22 Time and area closures.

* * * * *

(f) From April 1 through September 30 of any fishing year, vessels permitted under § 675.4 are prohibited in that part of the Bering Sea subarea between 3 and 12 nautical miles seaward of the baseline used to measure the territorial sea around islands named Round Island and The Twins, as shown on National Ocean Survey Chart 16315, and around Cape Peirce (58° 33' N. latitude, 161° 43' W. longitude).

* * * * *

[FR Doc. 92-22886 Filed 9-21-92; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 184
Tuesday, September 22, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 13

RIN 0560-AC23

Excessive Manufacturing (Make) Allowance in State Marketing Orders for Milk

AGENCY: Office of the Secretary, USDA.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This document announces a 31-day extension of the time for submitting comments on the proposed rule, published in the **Federal Register** on June 19, 1992, (57 FR 27371), for implementing section 102 of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended. The proposed rule relates to excessive manufacturing allowances in state marketing orders for milk.

DATES: All comments on the proposed rule must be received on or before October 19, 1992, in order to be assured of consideration.

ADDRESSES: Comments should be submitted to Dr. Charles N. Shaw, Director, Dairy Analysis Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, DC 20013-2415.

FOR FURTHER INFORMATION CONTACT: Dr. Charles N. Shaw, Director, Dairy Analysis Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, DC 20013-2415, 202-720-7601.

SUPPLEMENTARY INFORMATION: Section 102 of the Food, Agriculture, Conservation, and Trade Act of 1990 (1990 Act) provides that no State shall provide for (an no person shall collect, directly or indirectly) a greater allowance for the processing of milk ("make allowance") than is permitted under a Federal program to establish a Grade A price for manufacturing butter, nonfat dry milk, or cheese.

On June 19, 1992, a proposed rule was published to implement section 102, specifying that comments had to be received by July 20, 1992, in order to be assured of consideration. In response to requests from interested parties who indicated that they needed additional time to prepare an analysis of the proposed rule, the comment period was extended to September 18, 1992, by notice published in the **Federal Register** on July 17, 1992 (57 FR 31668).

The state of California, citing a potential significant impact that the proposed rule would have on the State, a need for additional analysis of recently gathered information and delays due to a recent budget crisis, has requested that additional time be granted to comment on the proposed regulation. Based upon our review of that request, the unusual nature of the issue involved, and the particular significance of that issue for the state of California, it has been determined that an additional 31 days will be allowed for comment. Accordingly, comments on the proposed rule must now be received by October 19, 1992, in order to be assured of consideration.

Notice

Notice is hereby given that the period of time for submitting comments on the proposed rule published on June 19, 1992 (57 FR 27371), is extended to October 19, 1992.

Signed this 16th day of September 1992 in Washington, DC.

Edward Madigan,

Secretary of Agriculture.

[FR Doc. 92-22869 Filed 9-17-92; 2:39 pm]

BILLING CODE 3410-05-M

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 91-074-2]

Importation of Logs, Lumber, and Certain Other Wood Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: We are considering regulating the importation of certain types of unmanufactured wood, such as logs, lumber, wood chips, bark, and pulp wood. We believe it is necessary to regulate importation of these articles because there are a variety of exotic plant pests and diseases associated with them, and there has recently been increased interest in importing large quantities of these articles into the United States. This notice solicits public comment on this issue.

DATES: Consideration will be given only to comments received on or before November 23, 1992.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 91-074-2. Comments received may be inspected at USDA, room 1141, South Building, 14th and Independence Avenue SW, Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Richard L. Orr, Entomologist, Planning and Design, PPQ, APHIS, USDA, room 810, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8939.

SUPPLEMENTARY INFORMATION:

Background

Trees produced in many foreign locations are attacked by a wide variety of exotic plant pests and diseases which do not occur in this country. Logs and other unmanufactured wood imported into the United States could pose a significant hazard of introducing pests and diseases detrimental to forest production, recreation and urban forest resources.

For the purpose of this document, "unmanufactured wood" means wood products that have not been manufactured in a manner that would remove or kill pests associated with the trees from which the wood was derived. One issue this document addresses is the need for precise standards for what types of manufacturing processes accomplish this. Logs, lumber, tree parts, bark, and wood chips are examples of unmanufactured wood, because no

process has been applied to them that would remove or kill pests associated with the trees from which the wood was derived. Plywood, particle-board, and wooden furniture are examples of articles that are not unmanufactured wood, because processes have been applied to them that would remove or kill the pests.

Unitl recently the quantity of unmanufactured wood imported into the United States was very small, and consequently no regulations were developed specifically to address such imports. The Animal and Plant Health Inspection Service (APHIS) has been dealing with such imports by detaining shipments at ports of entry for inspection and further action if warranted as an emergency measure. In addition, APHIS has prohibited logs from the Soviet Far East and Siberia, because we have found dangerous plant pests in such logs. Pest risk assessments performed to date on Siberian wood have not identified pest mitigation techniques that are both effective in controlling the pests and diseases and economically feasible for importers of Siberian wood. The prohibition of Siberian wood imports has been taken under the authority of sections 105 and 107 of the Federal Plant Pest Act, which state:

> * * * the Secretary may, whenever he deems it necessary as an emergency measure in order to prevent the dissemination of any plant pest new to or not theretofore known to be widely prevalent or distributed within and throughout the United States, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of, in such manner as he deems appropriate, any product or article of any character whatsoever, or means of conveyance, which is moving into or through the United States, or interstate, and which he has reason to believe is infested or infected by or contains any such plant pests * * *. (7 U.S.C. 150dd(a))
>
> Any properly identified employee of the Department of Agriculture shall have authority to stop and inspect, without a warrant, any persons or means of conveyance moving into the United States, and any plant pests and any products and articles of any character whatsoever carried thereby, to determine whether such persons or means of conveyance are carrying any plant pest contrary to this chapter * * *. (7 U.S.C. 150ff)

Inspection at the port of entry under this authority is not adequate to prevent introduction of plant pests through unmanufactured wood imports. Some pests such as nematodes are not readily detectable by visual inspection. Also, interest in importing logs and other unmanufactured wood from various countries is increasing rapidly toward a point where inspection and control activities solely at the port of entry will not be feasible. There is currently an intense commercial interest in developing a long-term industry in the Pacific Northwest for importing and processing logs from foreign countries. There is also potential for increased log and other unmanufactured wood imports into other areas of the United States.

Representatives of domestic timber industries, State governments, and environmental organizations have requested that we propose to add regulations to 7 CFR part 319 to establish an organized system for importing unmanufactured wood under conditions adequate to prevent the introduction of plant pests and diseases. These groups have suggested that the current practice of allowing unmanufactured wood to enter the United States based primarily on inspection at the port of entry (or prohibiting imports in the case of unmanufactured wood from the Soviet Far East and Siberia) is not sufficient for dealing with large-volume imports of unmanufactured wood from many sources. Importation of any of this wood may present a significant pest risk. Little is known about the pest risk levels presented by importation of wood from many areas.

We believe that developing more comprehensive procedures for importing logs and other unmanufactured wood would result in a greater level of pest protection, and would also allow importers to plan their transactions in an orderly way, to meet known regulatory requirements. Therefore, at this time we are soliciting comments on approaches, discussed below, for regulating the importation of logs and other unmanufactured wood.

To develop an approach to regulating unmanufactured wood imports, APHIS is working with Federal and State regulatory and forestry professionals from California, Oregon, and Washington, and representatives from Agriculture Canada, the Forest Service of the United States Department of Agriculture, and key industries with an immediate interest or involvement in potential importations. The objective of this effort is to define the conditions under which logs and other unmanufactured wood could be imported. This team effort has helped define the issues that must be addressed to develop the processes that will be required to safely import logs and other unmanufactured wood. Of key importance is defining the specific hazards involved with various classes of imports and the available means to manage each.

The Forest Service has completed a scientific assessment of pests and diseases of Soviet timber proposed for importation and their pest risk significance, and APHIS has prepared a summary of the Forest Service findings.[1] APHIS also is working with the Forest Service and other agencies to assess the pest risk associated with various other potential wood imports, identified through requests by potential importers. At the present time, we are trying to determine whether the following articles may be safely imported, and if so, under what conditions:

Dry bamboo canes from all sources
Pinus radiata from Chile and New Zealand
Douglas-fir from New Zealand
Tropical hardwoods

Based on the results of ongoing pest risk assessment and pest mitigation studies, we may propose to allow the importation of logs and other unmanufactured wood of some or all of the above types, only if they meet some combination of the following conditions:

- Debarking
- Heat treatment prior to export that brings the center of the logs to a temperature of 160° F for 75 minutes, documented by certification.
- Fumigation under APHIS supervision at the port of export
- Treatment with an APHIS-approved fungicide/insecticide prior to export, with retreatment every 30 days until exported, documented by certification.
- Inspection upon arrival in the United States for compliance with the requirements of the regulation and freedom from apparent exotic pests and soil
- Consignment in the U.S. only to sawmills or other users operating under compliance agreements detailing how the articles will be processed (e.g., kiln drying) and how waste will be disposed of

While we hope to develop a proposed rule containing specific import requirements for the articles listed above and possibly for other articles, the potential variety of logs and other unmanufactured wood that may be offered for import is of much greater scope. We want to establish regulations that deal with not only the wood which importers currently wish to import, but also the wide variety of articles that may be of commercial interest in the future. We hope to make the regulations inclusive and flexible enough to allow us to assign appropriate import conditions to wood articles importers

[1] "An Efficacy Review of Control Measures for Potential Pests of Imported Soviet Timber," United States Department of Agriculture Miscellaneous Publication No. 1496, September 1991. Available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-9325.

may wish to import in the future, without requiring lengthy additional reulemaking to address the specific articles and conditions before their import can be allowed. One of the alternatives discussed below, Alternative B, specifically addresses this goal. Both of the alternatives discussed below would allow import of regulated logs, lumber, and other unmanufactured wood only in accordance with the regulations, and only after a permit is issued by APHIS.

Alternative A—Universal Entry Alternative, With Lesser Requirements for Specific Articles

Under this alternative, we would design entry requirements that include treatment or processing conditions that would destroy any pests and diseases associated with wood articles. Any article from any source could be imported after meeting this universal entry alternative. We could also establish entry requirements less restrictive than the universal entry alternative for certain specific articles that we determine may be safely imported under lesser restrictions. However, the number of articles the regulations list as allowed import under specified lesser restrictions would be small, due to the large amount of time and resources APHIS devotes to researching the pest risk associated with each article and designing effective restrictions to counteract that pest risk. It would not be possible to develop regulations that individually address a wide variety of wood articles in the near future.

As an example of application of the universal entry alternative, we could require that unless an alternative procedure is specified in the regulations for the particular type of log, any log to be imported must first be debarked, heat treated, fumigated, and sprayed or soaked with an approved fungicide/insecticide. For other wood, we could require kiln drying prior to import. These requirements would effectively address pest risk, but would not distinguish between high-risk and low-risk articles. While this approach might be established quickly, and would allow importers to commence operations, it would also require that most imports undergo costly processing and treatment that may not be necessary, in individual cases, to control pest risks.

Lesser restrictions could be included in the regulations for articles that pest risk assessments indicate can be safely imported without undergoing all the requirements of the universal entry alternative. For example, it is possible that some logs from some sources could be safely imported with only debarking and fumigation, if they are consigned to a sawmill in the United States for further processing under controlled conditions.

One problem with this approach is that articles with lesser import restrictions must be specified in the regulations. We cannot feasibly study and develop regulations for all the types of wood articles that could conceivably justify lesser restrictions, based on pest risk. Therefore, if at some time in the future an importer presents evidence that a particular article could be safely imported with lesser restrictions, under this alternative we could not allow its import until after we have determined that the lesser restrictions adequately address pest risk, and have used notice-and-comment rulemaking to add the article and its lesser conditions to the regulations.

Alternative B—Universal Entry Alternative, With Lesser Requirements Established Through Case-by-Case Risk Assessment

Under this approach, the universal entry alternative would still be available, and any article from any source could be imported after meeting it. With regard to establishing lesser requirements for articles that justify them, the regulations could list detailed requirements for the entry of some articles, but the regulations would not attempt to list all such articles and their entry conditions. Instead, the regulations would specify the type of information that would have to be submitted with each request to import wood under lesser requirements, and would describe how APHIS would evaluate each request, on a case-by-case basis, to determine whether lesser requirements are appropriate.

If this approach were adopted, persons wanting to import unlisted logs or wood under lesser requirements would have to apply to APHIS for a permit well before the expected time of importation. The permit application would have to include detailed information regarding the geographical source of the trees, identification of pests and diseases that might be present in those areas, and any efforts to mitigate the risks associated with these pests and diseases (including methods for harvesting, treatment, storage, and movement) that the applicant proposes to use before, during, or after their importation.

Under this alternative, the regulations would also specify the standards for a pest risk assessment APHIS would conduct on the requested importation, using information provided by the requestor and other data collected by APHIS. The pest risk assessment standards in the regulations could indicate:

—How significant pests and diseases associated with the host commodity would be identified by APHIS;
—How the entry potential for each pest and disease associated with the commodity would be evaluated;
—How the colonization potential and spread potential for each pest and disease would be evaluated;
—How the economic and non-economic damage potential of the pest's introduction would be evaluated, and
—How any opportunity to mitigate the entry, colonization, or spread potential of the pest or disease would be identified.

After conducting pest risk assessments for each new import request, APHIS would determine, based on the assessment results and decisionmaking criteria contained in the regulations, whether to allow the importation under lesser requirements than the universal entry alternative. If the answer is yes, APHIS would also determine, based on the assessment results, what specific pest mitigation, treatment, and other requirements are necessary for the requested importation The specific requirements would become permit conditions for the requested importation.

A potential benefit of this approach is that it would decrease the time required to obtain a permit to import articles under lesser requirements than the universal entry alternative. Under Alternative A, even after APHIS determines through pest risk assessment that an article may be safely imported under lesser requirements, no permits to do so may be granted until after notice-and-comment rulemaking has added the article and its specific entry requirements to the regulations. Under Alternative B, permits may be issued soon after APHIS completes and evaluates the pest risk assessments.

Alternative A uses notice-and-comment rulemaking to give the public an opportunity to comment on the specific entry conditions for each article that APHIS proposes to admit under lesser requirements. Alternative B uses notice-and-comment rulemaking to allow the public to comment on the pest risk assessment standards and decisionmaking criteria that APHIS would use to develop the specific entry conditions for articles, but does not give the public an opportunity to comment on the specific entry conditions.

The lack of notice-and-comment rulemaking for specific entry conditions under Alternative B is a potential

drawback. The Alternative A approach of giving public notice of specific entry conditions is valuable for two reasons. First, public comment may raise valid challenges to the effectiveness of some of the entry conditions in preventing the entry of pests and diseases. Second, public notice of specific entry conditions is valuable for commercial interests who may be interested in importing the articles for which permits are issued, or similar articles.

This approach, with roles for both individual import permit decisions and general rulemaking, could both minimize rulemaking delays and ensure that notice-and-comment rulemaking is used appropriately.

Comments are invited on Alternatives A and B, and on the issue of regulating wood imports in general. In particular, we are soliciting comments addressing the following questions:

1. Should imports of logs and other unmanufactured wood be restricted from all source countries, or should exceptions exist (e.g., for Canada or Mexico)?

2. Apart from logs and lumber, what wood products should be subject to the regulations? Should there be exemptions, or specific lessor requirements, for any of the following: Cork bark, decorative or ornamental tree parts, sawdust, shingles, tree parts used for drug manufacturer or chemical extracts, wood chips? If so, why? What lesser requirements should apply to these articles?

3. Should any genera of trees be exempted from the requirements of the regulations? If so, why?

4. In addition to the pest risk assessment standards discussed above, what factors should be considered in determining whether to allow importation of logs or other unmanufactured wood under specific entry conditions?

5. We currently believe that heat treatment to an internal temperature of 160 °F, kiln drying, and fumigation with methyl bromide are effective treatments for a wide variety of pests in wood. Are they any problems with requiring these treatments, and are there any alternative treatments or processing methods that have similar effectiveness?

6. What volume and value of logs an other unmanufactured wood are currently being imported? What are the names of the source trees, countries of origin, frequency, port of entry, and point of final utilization for these shipments?

7. How important are imports of logs and other unmanufactured wood, in terms of their use in current or foreseeable United States production processes?

8. Should a person requesting an import permit be required to provide an inventory of plant pests and diseases associated with the permit articles in the country of origin, for evaluation by APHIS? Or, should APHIS develop a list of plant pests and diseases associated with the articles based solely on its own research and data collection?

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 7 CFR 2.17, 2.51, and 371.2(c), unless otherwise noted.

Done in Washington, DC, this 16th day of September 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-22945 Filed 9-21-92; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Chapter II

[Release Nos. 33-6957, 34-31183, 35-25831, 39-2292, IC-18953, IA-1336; File No. S7-31-92]

Periodic Review of Rules Under the Regulatory Flexibility Act

AGENCY: Securities and Exchange Commission.

ACTION: Publication of rules scheduled for review.

SUMMARY: The Securities and Exchange Commission is today publishing a list of rules scheduled for review pursuant to the Regulatory Flexibility Act. The schedule is published to provide the public with notice that these rules are scheduled for review by the agency and to invite public comment on individual rules listed in the schedule.

DATES: Public comments are due by December 31, 1992.

ADDRESSES: Persons wishing to submit written views should file three copies with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., room 6184, Stop 6-9, Washington, DC 20549. All submissions should refer to File No. S7-31-92, and will be available for public inspection and copying at the Commission's Public Reference Room, room 1026, at the same address.

FOR FURTHER INFORMATION CONTACT: The name of the individual to contact concerning a particular rule is given at the end of each rule grouping.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (the "Act" or "RFA") (Pub. L. 96-354, 94 Stat. 1165 (September 19, 1980)), required each federal agency to review by 1991 all rules in effect at the time of the Act's passage which had "a significant economic impact upon a substantial number of small entities." [1] The Act further requires that rules adopted after September 19, 1980, should be reviewed within ten years of their publication as final rules. The Commission published a schedule designating which rules would be reviewed in each of the following ten years which expired in 1991.[2]

The Commission's schedule went beyond the requirements of the statute in that it included many rules that did not meet the RFA's significant impact criterion. Additional rules were included because the Commission had already determined to review many existing regulations and wished to "conduct a broader review, with a view to identifying those rules in need of modification or even rescission." [3]

Since the publication of the 1981 schedule, the Commission has reviewed each rule on that schedule in accordance with the purpose stated in the RFA: "to determine whether such rules should be continued without change, or should be amended or rescinded * * * to minimize any significant economic impact of the rules upon a substantial number of such small entities." [4] The Act requires that the following criteria be considered in the rule review:

- The continued need for the rule;
- The nature of complaints or comments received concerning the rule from the public;
- The complexity of the rule;
- The extent to which the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and
- The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.[5]

The Act also requires that each agency publish annually in the **Federal Register** a list of the rules which the agency will review during the following twelve months. The Commission's 1981 master schedule has not been amended to include new rules adopted since its publication. Instead, the Commission

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[1] 5 U.S.C. 610(a).

[2] Securities Act Release No. 6323, 22 SEC Docket 1319 (July 8, 1981).

[3] Securities Act Release No. 6323, 22 SEC Docket 1319 (June 24, 1981).

[4] 5 U.S.C. 610(a).

[5] 5 U.S.C. 610(c).

has given the public notice of rules which are scheduled for review in the semiannual regulatory agenda, published every year in April and October. This year, the Commission is for the first time publishing its schedule of rules for review separately from the semiannual regulatory agenda. The Commission is, however, continuing its tradition of reviewing a much broader class of its rules than those which meet the significant impact criterion of the Act.

The Commission's plan for the review of its rules in 1992 is as follows:

Rules Administered by the Division of Corporation Finance

Title: Regulation A and Related Forms (general exemption from registration)
Citation: 17 CFR 230.251 to 230.263; 17 CFR 239.90 to 239.96
Authority: 15 U.S.C. 77c; 15 U.S.C. 77s

Title: Rule 15d–2 (special financial report)
Citation: 17 CFR 240.15d–2
Authority: 15 U.S.C. 78*l*; 15 U.S.C. 78m; 15 U.S.C. 78o

Title: Rule 3a12–3 (exemption from Exchange Act subsections 14(a), (b), (c), and (f) and section 16)
Citation: 17 CFR 240.3a12–3
Authority: 15 U.S.C. 78c; 78*l*; 78m; 78o; 78w

Title: Rule 3b–4 (definitions for foreign issues)
Citation: 17 CFR 240.3b–4
Authority: 15 U.S.C. 77f; 77g; 77h; 77j; 77s; 78*l*; 78m; 78o; 78w

Title: Rule 12h–3 (suspension of duty of file reports)
Citation: 17 CFR 240.12h–3
Authority: 15 U.S.C. 78*l*; 78m; 78o; 78w

Title: Rules 13a–16 and 15d–16 (reports of foreign private issuers on Form 6–K)
Citation: 17 CFR 240.13a–16 and 240.15d–16
Authority: 15 U.S.C. 78c; 78*l*; 78m; 78o; 78w

Title: 16e–1 (arbitrage transactions under section 16)
Citation: 17 CFR 240.16e–1
Authority: 15 U.S.C. 77d; 77s; 78*l*; 78m; 78o; 78p; 78x

Title: Form 20F (registration of securities of foreign private issuers and annual and transition reports)
Citation: 17 CFR 249.220f
Authority: 15 U.S.C. 78a *et seq.*

Title: Rule 24 of the Commission's Rules of Practice (incorporation by reference)
Citation: 17 CFR 201.24
Authority: 15 U.S.C. 77f; 77g; 77h; 77j; 77s; 78c; 78*l*; 78m; 78n; 78o; 78w; 79t; 77sss; 80a–37

Title: Rule 25 of the Commission's Rules of Practice (confidential treatment of certain matters)
Citation: 17 CFR 201.25
Authority: 15 U.S.C. 77f; 77g; 77h; 77j; 77s; 78c; 78*l*; 78m; 78n; 78o; 78w; 79t; 77sss; 80a–37

Title: Securities Act Industry Guide 2 and Exchange Act Industry Guide 2 (disclosure of oil and gas operations)
Citation: 17 CFR 229.801(b) and .802(b)
Authority: 15 U.S.C. 77f; 77g; 77h; 77j; 77s; 77aa (25) and (26); 78*l*; 78m; 78n; 78o; 78w

Title: Rule 134 (communications not deemed a prospectus)
Citation: 17 CFR 230.134
Authority: 15 U.S.C. 77f; 77g; 77h; 77j; 77s; 78*l*; 78m; 78n; 78o; 78w

Title: Rule 134a (options materials not deemed a prospectus)
Citation: 17 CFR 230.134a
Authority: 15 U.S.C. 77a. *et seq.*

Title: Rule 1353 (notice of certain offerings)
Citation: 17 CFR 230.135
Authority: 15 U.S.C. 77f; 77g; 77h; 77j; 77s; 78c; 78*l*; 78m; 78n; 78o; 78w; 79t; 77sss; 80a–37

Title: Rule 135b (materials not deemed an offer to sell or offer to buy)
Citation: 17 CFR 230.135b
Authority: 15 U.S.C. 77a *et seq.*

Title: Rule 138 (definition of "offer for sale" and "offer to sell")
Citation: 17 CFR 230.138
Authority: 15 U.S.C. 77f; 77g; 77j; 77s

Title: Rule 144 (persons deemed not to be engaged in a distribution and therefore not underwriters)
Citation: 17 CFR 230.144
Authority: 15 U.S.C. 77b; 77c; 77d; 77s

Title: Rule 145 (reclassification of securities, mergers, consolidations and acquisitions)
Citation: 17 CFR 230.145
Authority: 15 U.S.C. 77b; 77d; 77s

Title: Rule 147 ("part of an issue," "person resident," and "doing business within")
Citation: 17 CFR 230.147
Authority: 15 U.S.C. 77b; 77f; 77g; 77h; 77j; 77s; 77sss; 78c; 78*l*; 78m; 78n; 78o; 78w

Title: Rule 148 (persons deemed not to be underwriters of securities issued or sold in connection with bankruptcy proceedings)
Citation: 17 CFR 230.148
Authority: 15 U.S.C. 77b; 77d; 77s

Title: Rule 153b (definition of "preceded by a prospectus")
Citation: 17 CFR 230.153b
Authority: 15 U.S.C. 77a *et seq.*

Title: Rule 175 (liability for certain statements by issuers)
Citation: 17 CFR 230.175
Authority: 15 U.S.C. 77f; 77g; 77h; 77j; 77s; 78*l*; 78m; 78n; 78o; 78w

Title: Rule 176 (circumstances affecting the determination of what constitutes reasonable investigation and reasonable grounds for belief under Section 11 of the Securities Act)
Citation: 17 CFR 230.176
Authority: 15 U.S.C. 77f; 77g; 77h; 77j; 77s; 78c; 78*l*; 78m; 78n; 78o; 78w; 77sss; 79t; 80a–37

Title: Rule 236 (exemption of shares offered in connection with certain transactions)
Citation: 17 CFR 230.236
Authority: 15 U.S.C. 77c; 77d; 77s; 78*l*; 78p; 78w

Title: Regulation B (exemption relating to fractional undivided interests in oil and gas rights) and related forms and schedules
Citation: 17 CFR 230.300 to 230.346 and 239.101
Authority: 15 U.S.C. 77a *et seq.*; 78c; 78*l*; 78m; 78n; 78o; 78w

Title: Regulation D (rules governing the limited offer and sale of securities without registration) and Form D
Citation: 17 CFR 230.501 to 230.508 and 239.500
Authority: 15 U.S.C. 77b; 77c; 77d; 77s

Title: Form S–1 (registration statement)
Citation: 27 CFR 239.11
Authority: 15 U.S.C. 77g; 77j; 77s; 78*l*; 78m; 78o

Title: Form S–2 (registration of securities of certain issuers)
Citation: 17 CFR 239.12
Authority: 15 U.S.C. 77f; 77g; 77h; 77j; 77s; 78c; 78*l*; 78m; 78n; 78o; 78w; 79t; 77sss; 80a–37

Title: Form S–3 (registration of securities of certain issuers offered pursuant to certain types of transactions)
Citation: 17 CFR 239.13
Authority: 15 U.S.C. 77f; 77g; 77h; 77j; 77s; 78c; 78*l*; 78m; 78n; 78o; 78w; 79t; 77sss; 80a–37

Title: Form S–11 (registration of securities of certain real estate companies)
Citation: 17 CFR 239.18
Authority: 15 U.S.C. 77g; 77j; 77s; 78*l*; 78m; 78n; 78o; 78w

Title: Form F–1 (registration statement for securities of certain foreign private issuers)
Citation: 17 CFR 239.31
Authority: 15 U.S.C. 77f; 77g; 77h; 77j; 77s; 78*l*; 78m; 78o; 78w; 80a–8; 80a–29; 80a–30; 80a–37

Title: Form F-2 (registration of certain foreign private issuers)
Citation: 17 CFR 239.32

Authority: 15 U.S.C. 77f; 77g; 77h; 77j; 77s; 78*l*; 78m; 78o; 78w; 80a–8; 80a–29; 80a–30; 80a–37

Title: Form F–3 (registration for securities of certain foreign private issuers offered pursuant to certain types of transactions)

Citation: 17 CFR 239.32

Authority: 15 U.S.C. 77f; 77g; 77h; 77j; 77s; 78*l*; 78m; 78o; 78w; 80a–8; 80a–29; 80a–30; 80a–37

Title: Form SR (report of sales of securities and use of proceeds therefrom)

Citation: 17 CFR 239.61

Authority: 15 U.S.C. 77f; 77g; 77h; 77i; 77s; 78*l*; 78m; 78o; 78w

Contact person: James R. Budge, Attorney, Office of Disclosure Policy, Securities and Exchange Commission, Division of Corporation Finance, 450 Fifth Street, NW., Washington, DC 20549, (202) 272–2589.

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Rules Administered by the Division of Investment Management

Title: Title of securities (Regulation C)

Citation: 17 CFR 230.480

Authority: 15 U.S.C. 77f to 77h; 77j; 77s; 78c; 78d–1 and d–2; 78*l*; 78o; 78w; 79t; 77sss; 80a–8; 80a(37)

Title: Information required in prospectus (Regulation C)

Citation: 17 CFR 230.481

Authority: 15 U.S.C. 77f to 77h; 77j; 77s; 78c; 78d–1 and d–2; 78*l*; 78o; 78w; 79t; 77sss; 80a–8; 80a(37)

Title: Advertising by an investment company as satisfying requirements of section 10 (Regulation C)

Citation: 17 CFR 230.482

Authority: 15 U.S.C. 77f to 77h; 77j; 77s; 78c; 78d–1 and d–2; 78*l*; 78o; 78w; 79t; 77sss; 80a–8; 80a(37)

Title: Exhibits for certain registration statements (Regulation C)

Citation: 17 CFR 230.483

Authority: 15 U.S.C. 77f to 77h; 77j; 77s; 78c; 78d–1 and d–2; 78*l*; 78o; 78w; 79t; 77sss; 80a–8; 80a(37)

Title: Undertaking required in certain registration statements (Regulation C)

Citation: 17 CFR 230.484

Authority: 15 U.S.C. 77f to 77h; 77j; 77s; 78c; 78d–1 and d–2; 78*l*; 78o; 78w; 79t; 77sss; 80a–8; 80a(37)

Title: Effective date of post-effective amendments filed by certain registered investment companies (Regulation C)

Citation: 17 CFR 230.485

Authority: 15 U.S.C. 77f to 77h; 77j; 77s; 78c; 78d–1 and d–2; 78*l*; 78o; 78w; 79t; 77sss; 80a–8; 80a(37)

Title: Effective date of post-effective amendments filed by registered separate accounts of insurance companies (Regulation C)

Citation: 17 CFR 230.486

Authority: 15 U.S.C. 77f to 77h; 77j; 77s; 78c; 78d–1 and d–2; 78*l*; 78o; 78w; 79t; 77sss; 80a–8; 80a(37)

Title: Registration statements filed by certain unit investment trusts (Regulation C)

Citation: 17 CFR 230.487

Authority: 15 U.S.C. 77f to 77h; 77j; 77s; 78c; 78d–1 and d–2; 78*l*; 78o; 78w; 79t; 77sss; 80a–8; 80a(37)

Title: Registration statements relating to securities to be issued in certain business combination transactions (Regulation C)

Citation: 17 CFR 230.488

Authority: 15 U.S.C. 77f to 77h; 77j; 77s; 78c; 78d–1 and d–2; 78*l*; 78o; 78w; 79t; 77sss; 80a–8; 80a(37)

Title: Liability for certain statements by issuers 17 CFR 270.0–9

Citation: 17 CFR 270.0–9

Authority: 15 U.S.C. 77f to 77h; 77j; 77s; 78*l*; 78m; 78o; 78w; 79t; 77sss; 80a–8; 80a–(37)(a)

Title: Rule 0–10 (small entities for purposes of the Regulatory Flexibility Act)

Citation: 17 CFR 270.0–10

Authority: 5 U.S.C. 601 *et seq.*

Title: Rule 5b–1 (definition of "total assets")

Citation: 17 CFR 270.5b–1

Authority: 15 U.S.C. 80a–5; 80a–12

Title: Rule 5b–2 (exclusion of certain guarantees as securities of the guarantor)

Citation: 17 CFR 270.5b–2

Authority: 15 U.S.C. 80a–5

Title: Rule 6b–1 (exemption of employees' securities company pending determination of application)

Citation: 17 CFR 270.6b–1

Authority: 15 U.S.C. 80a–6

Title: Exemption from stockholders' approval of certain small investment advisory contracts

Citation: 17 CFR 270.15a–1

Authority: 15 U.S.C. 80a–6; 15 U.S.C. 80a–37

Title: Rule 15a–2 (annual continuance of contracts)

Citation: 17 CFR 270.15a–2

Authority: 15 U.S.C. 80a–37

Title: Rule 15a–4 (temporary exemption for certain investment advisers)

Citation: 17 CFR 270.15a–4

Authority: 15 U.S.C. 80a–6;(c) 80a–(a)

Title: Rule 17g–1 (bonding of officers and employees of registered management investment companies)

Citation: 17 CFR 270.17g–1

Authority: 15 U.S.C. 80a–6(c); 80a–17(d); 80a17(g); 80a–37(a)

Title: Exemption from section 22(d) to permit sales of redeemable securities at prices which reflect sales loads set pursuant to a schedule.

Citation: 17 CFR 270.22d–1

Authority: 15 U.S.C. 80a–6(c); 80a–37(a)

Title: Consent to service or process to be furnished by non-resident investment advisers and by non-resident investment general partners or managing agents of investment advisers

Citation: 17 CFR 275.0–2

Authority: 15 U.S.C. 77s; 78w; 77ss; 80a–37; 79c; 79t; 77eee; 77ggg; 77nnn; 77sss; 80b–3; 80b–4; 80b–11

Title: References to rules and regulations

Citation: 17 CFR 275.0–3

Authority: 15 U.S.C. 77s; 78w; 77ss; 80a–37; 79c; 79t; 77eee; 77ggg; 77nnn; 77sss; 80b–3; 80b–4; 80b–11

Title: General requirements of paper and applications

Citation: 17 CFR 275.0–4

Authority: 15 U.S.C. 77s; 78w; 77ss; 80a–37; 79c; 79t; 77eee; 77ggg; 77nnn; 77sss; 80b–3; 80b–4; 80b–11

Title: Procedures with respect to applications and other matters

Citation: 17 CFR 275.0–5

Authority: 15 U.S.C. 77s; 78w; 77ss; 80a–37; 79c; 79t; 77eee; 77ggg; 77nnn; 77sss; 80b–3; 80b–4; 80b–11

Title: Incorporation by reference in applications

Citation: 17 CFR 275.0–6

Authority: 15 U.S.C. 77s; 78w; 77ss; 80a–37; 79c; 79t; 77eee; 77ggg; 77nnn; 77sss; 80b–3; 80b–4; 80b–11

Title: Small entities for purposes of the Regulatory Flexibility Act

Citation: 17 CFR 275.0–7

Authority: 15 U.S.C. 77s; 78w; 77ss; 80a–37; 79c; 79t; 77eee; 77ggg; 77nnn; 77sss; 80b–3; 80b–4; 80b–11

Title: Withdrawal from registration

Citation: 17 CFR 275.203–2

Authority: 15 U.S.C. 80b–11

Title: Fees for registrants and applicants

Citation: 17 CFR 275.203–3

Authority: 15 U.S.C. 77f(b); 77f(c); 78ee

Title: Books and records to be maintained by investment advisers

Citation: 17 CFR 275.204–2

Authority: 15 U.S.C. 80b–6; 80b–4; 80b–11(a)

Title: Written disclosure statements

Citation: 17 CFR 275.204–3

Authority: 15 U.S.C. 80b–4; 80b–11(a)

Title: Definition of "investment performance" of an investment company and "investment record" of an appropriate index of securities prices

Citation: 17 CFR 275.205–1

Authority: 15 U.S.C. 80b–5; 80b–6a; 80b–11

Title: Definition of "specified period" over which the asset value of the company or fund under management is averaged

Citation: 17 CFR 275.205–2

Authority: 15 U.S.C. 80b–5; 80b–6a; 80b–11

Title: Exemption of investment advisers registered as broker-dealer in connection with the provision of certain investment advisory services

Citation: 17 CFR 275.206(3)–1

Authority: 15 U.S.C. 80b–6a; 80b–11(a)

Title: Agency cross transactions for advisory clients

Citation: 17 CFR 275.206(3)–2

Authority: 15 U.S.C. 80b–11(a)

Title: Advertisements by investment advisers

Citation: 17 CFR 275.206(4)–1

Authority: 15 U.S.C. 80b–6

Title: Custody or possession of funds or securities of clients

Citation: 17 CFR 275.206(4)–2

Authority: 15 U.S.C. 80b–6

Title: Cash payments for client solicitations

Citation: 17 CFR 275.206(4)–3

Authority: 15 U.S.C. 80b–4; 80b–6; 80b–11(a)

Title: Form N–8A (notification of registration)

Citation: 17 CFR 274.10

Authority: 15 U.S.C. 80a–1 *et seq.*

Title: Form N–2 (registration statement of closed end management investment companies)

Citation: 17 CFR 274.11a–1; 17 CFR 239.14

Authority: 15 U.S.C. 80a–1 *et seq.*; 77a *et seq.*

Title: Form N–8B–2 (registration statement of unit investment trusts which are currently issuing securities)

Citation: 17 CFR 274.12

Authority: 15 U.S.C. 80a–1 *et seq.*

Title: Form N–8B–3 (registration statement of unincorporated management investment companies currently issuing periodic payment plan certificates)

Citation: 17 CFR 274.13

Authority: 15 U.S.C. 80a–1 *et seq.*

Title: Form N–8B–4 (registration statements of face-amount certificate companies)

Citation: 17 CFR 274.14

Authority: 15 U.S.C. 80a–1 *et seq.*

Title: Form N–5 (registration statement of small business investment company under the Securities Act of 1933 and the Investment Company Act of 1940)

Citation: 17 CFR 274.5; 17 CFR 239.24

Authority: 15 U.S.C. 77a *et seq.*; 15 U.S.C. 80a–1 *et seq.*

Contact person: Carolyn A. Miller, Senior Financial Analyst, Securities and Exchange Commission, Division of Investment Management, 450 Fifth Street, NW., Washington, DC 20549, (202) 272–2762.

Rules Administered by the Division of Market Regulation

Title: Recordkeeping rule for national securities exchanges, national securities associations, registered clearing agencies and the Municipal Securities Rulemaking Board

Citation: 17 CFR 240.17a–1

Authority: 15 U.S.C. 78q(a)(1)

Title: Records to be made by certain exchange members, brokers, and dealers

Citation: 17 CFR 240.17a–3; .17a–4

Authority: 15 U.S.C. 78q(a)(1)

Title: Right of national securities exchange, national securities association, registered clearing agency or the Municipal Securities Rulemaking Board to destroy or dispose of documents

Citation: 17 CFR 240.17a–6

Authority: 15 U.S.C. 78q(a)(1)

Title: Reports of Municipal Securities Rulemaking Board

Citation: 17 CFR 240.17a–21

Authority: 15 U.S.C. 78q(a)(1)

Title: Form MSD (application for registration as a municipal securities dealer pursuant to Rule 15Ba2–1)

Citation: 17 CFR 249.1100

Authority: 15 U.S.C. 78o–4(a)(2)

Title: Form MSDW (notice of withdrawal from registration as a municipal securities dealer)

Citation: 17 CFR 249.1110

Authority: 15 U.S.C. 78o–4(a)(2)

Title: Forms X–15Aa–1, X–15Aj–1, and X–15Aj–2

Citation: 17 CFR 240.15A1–1; .15Aj–1

Authority: 15 U.S.C. 78o–3(a)

Contact person: Dirk Peterson, Attorney, Division of Market Regulation, Securities and Exchange Commission, Washington, DC 20549, (202) 504–2418.

* * * * *

Rules Administered by the Office of the Chief Accountant

Title: Article 3A of Regulation S–X (presentation of consolidated and combined financial statements in filings with the Commission)

Citation: 17 CFR 210.3A

Authority: 15 U.S.C. 77f; 77g; 77s(a); 77aa(25) to (26); 78l; 78m; 78o(d); 78w(a); 79e(b); 79n; 79t(a); 80a–8; 80a–29

Title: Article 7 of Regulation S–X (form and content of financial statements filed with the Commission by insurance companies)

Citation: 17 CFR 210.7

Authority: 15 U.S.C. 77f; 77g; 77h; 77j; 77s(a); 77aa(25) to (26); 78l; 78m; 78o(d); 78w(a); 79e(b); 79n; 79t(a); 80a-8; 80a-29

Title: Article 9 of Regulation S–X (concerning the form and content of financial statements filed by banks and consolidated financial statements filed by bank holding companies with the Commission)

Citation: 17 CFR 210.9

Authority: 15 U.S.C. 77f; 77g; 77h; 77j; 77s(a); 77aa(25) to (26); 78l; 78m; 78o(d); 78w(a); 79e(b); 79n; 79t(a); 80a–8; 80a–29

Contact person: Robert Burns, Chief Counsel, Office of the Chief Accountant, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, (202) 272–2130.

* * * * *

The Commission invites public comment regarding the regulatory flexibility analysis of the rules scheduled for review.

By the Commission.

Dated: September 16, 1992.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–22929 Filed 9–21–92; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 166

[Docket No. 82P–0186]

Margarine; Amendment of the Standard of Identity; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Tentative final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a tentative final rule to amend the standard of identity for margarine that appeared in the **Federal Register** of July 31, 1992 (57 FR 33916). The document was published with an inadvertent typographical error. Also, the telephone number of the contact person has been changed since the publication of the tentative final rule. This document corrects the typographical error and updates the telephone number.

DATES: Written comments by August 31, 1992. The agency proposes that any final rule that may be issued based upon this tentative final rule shall become

effective 60 days after date of publication in the **Federal Register**.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Shellee A. Davis, Center for Food Safety and Applied Nutrition (HFF-414), 200 C St. SW., Washington, DC 20204, 202-205-5112.

In FR Doc. 92-18109, appearing on page 33916, in the **Federal Register** of Friday, July 31, 1992, the following corrections are made:

1. On page 33916, in the 3d column, under the heading **"FOR FURTHER INFORMATION CONTACT:"**, in the 4th line, the telephone number "202-485-0112" is corrected to read "202-205-5112".

2. On page 33917, in the 3d column, in the 5th full paragraph, in the 4th line, the word "now" is corrected to read "no".

Dated: September 11, 1992.

Douglas L. Archer,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-22951 Filed 9-21-92; 8:45 am]

BILLING CODE 4160-01-F

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 103

Union Dues Regulations

AGENCY: National Labor Relations Board.

ACTION: Notice of proposed rulemaking and notice of oral argument.

SUMMARY: this first Notice of Proposed Rulemaking provides rules and procedures for the implementation of the United States Supreme Court decision in *Communications Workers* v. *Beck*, 487 U.S. 735 (1988). The supreme Court there held that Section 8(a)(3), like its statutory equivalent, Section 2, Eleventh of the Railway Labor Act (45 U.S.C. 152, Eleventh), does not authorize a union, over the objection of dues-paying nonmember employees, to expend funds collected under a union-security agreement on activities unrelated to collective bargaining, contract administration, or grievance adjustment. The Board has determined that the articulation of certain of labor organizations' statutory duties under the *Beck* decision may best be achieved through the use of Section 553 ("informal") rulemaking under the Administrative Procedure Act (APA).

We emphasize, however, that in our effort to address by rule what is legally required of a union to fulfill its duty of fair representation, the rules proposed are offered to invite debate and generate discussion of the practical impact of the rules on the workplace. indeed, we are not ourselves unanimous on several issues. The Board hopes to have a full range of opinion on all aspects of the proposed rules before we make a determination on what provisions to include in the final rules.

DATES: Comments must be received on or before [October 22, 1992.] The Board plans to hold oral argument on November 5, 1992, to consider certain legal issues that are likely to be addressed in the public comments. Further details will be announced at a later date.

ADDRESSES: Comments should be submitted in eight copies to: Office of the Executive Secretary, 1717 Pennsylvania Avenue, NW., room 701, Washington, DC 20570, Telephone: (202) 254-9430.

Persons wishing to be heard at the oral argument should notify the Office of the Executive Secretary, 1717 Pennsylvania Avenue, NW., Washington, DC 20570, Telephone: (202) 254-9430.

FOR FURTHER INFORMATION CONTACT: John C. Truesdale, Executive Secretary, Telephone: (202) 254-9430.

SUPPLEMENTARY INFORMATION: The following is an outline of the contents of this Notice:

I. Background
II. Validity and Desirability of Rulemaking; Impact Upon Pending Cases
III. Purpose
IV. Definitions
V. Coverage
VI. Notice, Information, and Challenge Requirements
VII. Challenge Procedures, including Board and Arbitral Procedures
VIII. Chargeable and Nonchargeable Expenses
IX. Union-Security Clauses and *Beck*
X. Effective Date
XI. Docket
XII. Regulatory Flexibility Act
XIII. Regulatory Text
XIV. Appendix to § 103.42

I. Background

In its Advance Notice of Proposed Rulemaking at 57 FR 7897 dated February 27, 1992, the Board announced a desire to receive public comment on questions involving rulemaking to articulate certain of labor organizations' duties under the Beck decision. The comment period ended on April 30, 1992, and the Board received twelve comments representing a diversity of viewpoints.

On May 4, 1992, the Board held a public meeting at which it was briefed on and considered these comments. Following the briefing, the Board elected to pursue the rulemaking initiative and directed its staff to produce a preliminary draft of a set of rules and associated comment. The Board decided that during the rulemaking process the Agency should continue adjudicating *Beck*-related cases. The Board additionally determined that it would, at a future time, hold oral argument on the proposed rules.

In crafting the proposed rule, the Board took note of the recommendations in several of the comments. Comment No. 3 (Management Association of Illinois), Comment No. 9 (Citizens for a Sound Economy Foundation) and Comment No. 10 (National Right to Work Foundation) suggested that a good beginning point would be the General Counsel's Guideline Memorandum 88-14, which was issued approximately five months after the Supreme Court's decision in Beck. That Memorandum was designed as a guide for the NLRB's Regional, sub-Regional and Resident Offices in the handling of Beck-related issues. Since its issuance, many cases have been investigated and complaints issued in some cases pursuant to its directives.

The Board recognizes that this Memorandum has, over the last three and one-half years, been an important element in this Agency's handling of Beck-type cases. Accordingly, while the proposed rules are not to be understood as adopting the provisions of the Memorandum in any legal sense, it has provided an initial frame of reference for identifying the relevant issues and the pertinent legal interests.

II. Validity and Desirability of Rulemaking; Impact upon Pending Cases

Section 6 of the National Labor Relations Act expressly grants the Board authority to engage in rulemaking:

> The Board shall have authority from time to time, to make, amend, and rescind, in the manner prescribed by the Administrative Procedure Act, such rules and regulations as may be necessary to carry out the provisions of this Act.

In *American Hospital Association* v. *NLRB*, _____, U.S. _____ 111 S. Ct. 1239 (1991), the Supreme Court upheld the Board's authority to make and promulgate substantive rules. Further, in its comments approving the Board's first use of substantive rulemaking in the area of health care bargaining units and

encouraging the Board to remain open to rulemaking in other appropriate areas, the Administrative Conference of the United States (ACUS) stated that rulemaking offers "broader opportunity for public participation and more meaningful notice to affected parties of potential changes in regulatory standards." The Board finds that ACUS's characterization of the advantages of rulemaking is especially apt in the circumstances here. The Supreme Court's decision in Beck affects thousands of bargaining units and collective-bargaining agreements, and labor organizations already have begun to set up procedures to deal with the Court's new interpretation of the duty of fair representation articulated in Beck. Because of the variety of issues and questions that arise under the application of Beck, the Board finds that engaging in rulemaking and continuing to decide the cases coming before it at the same time serves the dual purposes of increasing access to the process of changing regulatory standards while preventing unnecessary delay in processing cases.

Further, the Board has examined the changes in the law brought about by the Beck decision in light of ACUS's suggested factors for identifying appropriate areas for future rulemaking and finds that each of those factors is present here. Thus, the Board finds that its efforts to arrive at rules of law that best embody Congressional intent in section 8(a)(3) and 8(b)(1)(A), as interpreted by the Supreme Court in Beck, would be aided by: (i) submissions and information, including empirical data, beyond that normally available through adjudication; (ii) participation by affected persons beyond the parties; (iii) the desirability of establishing new policies promptly in this area; (iv) the desirability of stabilizing the law quickly; (v) the possibility of lessening the cost in all future litigation and enforcement actions through readily applicable rules; and (v) the achievement of control over policy review and development. See ACUS, 305.91-5, "Facilitating the Use of Rulemaking by the National Labor Relations Board" (Recommendation No. 91-5), I CFR Ch. 3 (1/1/92 edition).

Comments received by the Board in answer to its February 27, 1992, Advance Notice of Proposed Rulemaking was generally favorable to the rulemaking concept with certain exceptions and caveats. Ken Harrison and Peter C. McConarty, Sr., writing as individuals, (Comments 1 and 2) pronounced themselves pleased at the prospect of rulemaking. Mr. Harrison (Comment 1) recommended that the procedure be kept "simple." The Management Association of Illinois (Comment 3) and Associated General Contractors of America (Comment 5) favored rulemaking and presented numerous suggestions for the specific content of the rules. The ranking minority members of the Senate Committee on Labor and Human Resources and the House Committee on Education and Labor—Senator Orrin G. Hatch (R-Utah) and Congressman William F. Goodling (R-Pennsylvania)—both favored rulemaking (Comment 6) as did the Labor Policy Association (Comment 7). The AFL-CIO, through its counsel Lawrence Gold (Comment 8), stated that "there is no clearly right choice between proceeding through rulemaking or proceeding through litigation." The National Right to Work Foundation (Comment 10) and Associated Builders and Contractors, Inc. (Comment 12) opposed rulemaking. Nothing that several Beck cases were pending before the Board, the Right to Work Foundation concluded that "[I]t seems to us that employees' Beck rights can be more promptly and completely protected through the Board's expeditious decisions in these cases, and that rulemaking is, at best, unnecessary." The Right to Work Foundation also noted that cases soon to come before the Board would "present the full range of Beck issues." Associated Builders and Contractors, Inc. stated that it was "most concerned that the present rulemaking proposal not delay resolution of numerous Beck-related issues which are already in the process of adjudication. If not abandoned altogether, this rulemaking proceeding must be expedited so as to avoid the appearance of unwarranted delay."

At the May 4 public meeting, the Board took note of the concern expressed by the foregoing public comments that a rulemaking proceeding would unduly delay the disposition of the cases proceeding through the adjudicatory pipeline. The Board thus concluded that, to the extent feasible, case processing should continue despite the pendency of rulemaking. Ten cases now have been brought before the Board on exceptions from decisions of the Agency's administrative law judges, and deliberations on those cases are presently underway. In the event that the Board does promulgate final administrative rules and applies them to pending cases (an issue on which the Board has proposed alternatives), it is obvious that the administrative rules will probably have a bearing on the outcome of some of those cases. Accordingly, the Board is weighing whether to give notice to the parties in those cases pending before the Board, suggesting that they consider submitting comments for the rulemaking record.

III. Purpose

Section 103.40(a) sets forth statements of purpose and intent, in order to provide, first, an explanation of the legal foundation of the proposed rules and, secondly, a guideline for interpreting the proposed rules in the broader context of the Board's jurisprudence.

The statutory predicate giving rise to the Beck decision is section 8(a)(3), which authorizes an employer and a labor organization to enter into a union-security agreement, thus imposing the legal duty upon a unit employee to provide a degree of financial support for the union's activities. However, the statute does not by its express terms either define such significant terms as "membership" or lay out in detail the limitations that Congress intended to be imposed on a labor organization's right to exact monetary support from unit employees. The Court in Beck construed the statute as providing that employees enjoying the benefits of union representation should contribute a fair financial share to the cost of the services provided by the bargaining agent, but that the statute authorized collection of only those fees and dues necessary to support collective-bargaining activities. The expenditure of dues and fees on activities outside the union's role as a collective-bargaining representative, the Court held, violated the union's duty of fair representation to employees who objected to such expenditures.

The Supreme Court has defined the component parts of the duty of fair representation to include (1) serving the interests of all members without hostility or discrimination toward any, (2) exercising its discretion with complete good faith and honesty, and (3) avoiding arbitrary conduct. *Vaca* v. *Sipes*, 386 U.S. 171, 177 (1967). It is a doctrine which originated not as a Board rule but as a judicially-fashioned one of specific focus—to combat racial discrimination by unions against African-American workers. *Steele* v. *Louisville & N.R.R.*, 323 U.S. 1192 (1942). However, the duty of fair representation has not been static. Over the last half-century, the doctrine has exhibited an evolving character, the principles of which have been applied in ever-widening contexts, including contract negotiations (*Ford Motor Co.* v. *Huffman*, 345 U.S. 330 (1953)), the

grievance/arbitration process (*Vaca* v. *Sipes, supra*), and the administration of the hiring halls (*Breininger* v. *Sheet Metal Workers*, 493 U.S. 67 (1989)). Significantly, the duty of fair representation found new application in the Beck decision, which focused on the responsibilities which a union owes to its employees on the matter of compulsory union dues and fees.

Just as the doctrine has been applied to various aspects of the relationship between unions and the bargaining unit employees, it also has undergone refinement as a legal concept. For purposes of supporting the proposed rule, it is especially noteworthy that the Supreme Court has recently described the duty as "akin to the duty owed by other fiduciaries to their beneficiaries * * * [such as] the duty a trustee owes to trust beneficiaries." *Air Line Pilots Association* v. *O'Neill*, 113 L.Ed.2d 51, 62 (1991), citing *Teamsters* v. *Terry*, 108 L.Ed.2d 519 (1990). In relying upon the trustee analogy, the Court has equated a union's duty to act in good faith with a trustee's duty to act in the best interests of the beneficiaries. *Teamsters* v. *Terry, supra*. With respect to the handling of grievances, the Court in Terry noted the similarities between the authority of a union as exclusive representative and the authority of a trustee, citing various sections of the Restatement (Second) of Trusts.

The fiduciary analogy in the judicial doctrine of fair representation is not a surprising or aberrant development, but in a sense was foreshadowed in Board law. Although the Board did not recognize the duty of fair representation as an enforceable obligation under the Act until 1962 in Miranda Fuel Co., 140 NLRB 181, enforcement denied, 326 F.2d 172 (2d Cir. 1963), several circuits have described the duty in fiduciary terms. *NLRB* v. *Teamsters Local 282*, 740 F.2d 141 (2d Cir. 1984); *NLRB* v. *Teamsters Local 182*, 401 F.2d 509 (2d Cir. 1968; *NLRB* v. *Hotel, Motel & Club Employees' Union, Local 586*, 320 F.2d 254 (3d Cir. 1963).

Applying the "trustee" analogy found useful by the courts in defining the judicial doctrine of the duty of fair representation to financial obligations under union-security agreements,[1] the Board believes that it is appropriate to define the duty of fair representation under section 8(b)(1)(A) as entailing an obligation to provide unit employees with pertinent information regarding their relationship with the union under such agreements, including the right of employees to decline to become full union members, the right to object to the use of dues for nonrepresentational purposes, and the right, once an appropriate objection has been made, to be charged only for activities germane to the labor organization's function as a bargaining representative. The Board finds that such a duty is appropriate on a practical level, so that employees covered by such agreements will possess the information necessary to exercise their rights, and that such a duty also properly flows from a union's status as the exclusive bargaining representative and the concomitant obligation to accord fair representation to all unit employees. Moreover, the Board's imposition of a duty to inform employees of their rights in this area is not incompatible with the Supreme Court's observation in *Machinists* v. *Street*, 367 U.S. 740, 774 (1960), that dissent is not presumed. Under the rules proposed here employees will retain the burden of making their objections known to the bargaining representative; however, employees will now generally be provided with the knowledge necessary to choose whether to object or not.

In addition, a duty to disclose is directly linked to the protection of the section 7 rights of employees to refrain from concerted activities. The failure to inform employees of their rights under *NLRB* v. *General Motors Corp.* 373 U.S. 734 (1963) and Beck, and, where warranted, of certain financial information regarding a labor organization's expenditure of fees and dues can result in employees' unwitting financial support of activities from which they have a statutory right to refrain. Thus, under the prescriptions of Section 8(b)(1)(A), a breach of this duty of disclosure constitutes a restraint on the employees' section 7 rights. See *NLRB* v. *Teamsters Local 282, supra*, 740 F.2d at 145–46.

In addition, the Board has held that a union violates its duty of fair representation if it seeks to enforce a union-security clause without giving the affected employee full information as to the amount owed and a reasonable opportunity to pay it. See *CWA Local 11509 (Pacific Bell)*, 283 NLRB 1143 (1987); *Teamsters Local 291 (Kaiser Industries)*, 263 NLRB 1100 (1978).

The requirements associated with explicit, open notice are also consistent with the position which the Board recently took in favor of candid language in *IBEW Local No. 2088, AFL-CIO (Lockhead Space Operations Co.)*, 302 NLRB No. 49 (May 29, 1991) (In dues checkoff situation explicit language within checkoff authorization clearly setting forth an obligation to pay dues even in absence of union membership will be required to establish that the employee bound himself or herself to pay the dues even after resignation of membership.) In another context—the exclusive hiring hall—the Board has stated that unions are obligated to inform employees and applicants who use a hiring hall of procedures and changes in procedures used in the operation of the hiring hall. This obligation has been described as "statutory." Electrical Workers IBEW Local 11 (Los Angeles NECA), 270 NLRB 424, 426 (1984), enfd. 772 F.2d 571 (9th Cir. 1985).

Finally, a requirement to notify employees of *Beck* rights is consistent with decisions of the United States Supreme Court in the public sector and the Railway Labor Act (RLA). Thus, in *Chicago Teachers Union Local 1* v. *Hudson*, 475 U.S. 292, 306 (1986), the Court stated:

> Basic considerations of fairness, as well as concern for the First Amendment rights at stake, also dictate that the potential objectors be given sufficient information to gauge the propriety of the Union's fee. Leaving the nonunion employee in the dark about the source of the figure for the agency fee—and requiring [him] to object in order to receive information—does not adequately protect the careful distinctions drawn in Abood.

In addition to providing doctrinal support for the proposed rules, these decisions are relevant from a practical standpoint. A number of unions must operate not only under the National Labor Relations Act but also under one or the order statutory/constitutional framework. It is appropriate as a matter of administrative efficiency that the Board tailor the requirements under the Act so as to lessen the burdens and expenses which a union might incur by virtue of inconsistencies in the overlapping regulatory schemes.

It is true that the Board over three decades ago attempted to exercise its Section 10(c) remedial powers to require certain prophylactic safeguards in hiring hall agreements to protect against discrimination. These included the posting of notices to employees and job applicants of all the provisions relating to the functioning of the hiring hall arrangement. The Supreme Court

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[1] Cf. *Restatement(Second) of Trusts* section 173. Duty to Furnish Information, & Comment C ("* * * the beneficiary is always entitled to such information as is reasonably necessary to enable him to enforce his rights under the trust or to prevent or redress a breach of trust.")

Our discussion here is not intended to announce any change in the Board's analysis of a labor organization's duty of fair representation under section 8(b)(1)(A) with respect to allegations of unfair labor practices unrelated to the arbitrary union conduct discussed in Beck.

refused enforcement of the Board's order in *Local 357, Teamsters* v. *NLRB*, 365 U.S. 667 (1961). Noting that Congress had not outlawed the hiring hall, the Court determined that there was no warrant for inferring as a general manner that unions would operate hiring halls in an unlawfully discriminatory manner. "Where * * * Congress has aimed its sanctions only at specific discriminatory practices, the Board cannot go farther and establish a broader, more pervasive regulatory scheme." Local 357, Teamsters, supra at p. 676. *Breininger* v. *Sheet Metal Workers Local 6*, 493 U.S. 67, 89 n.12 (1989) affirmed that reading of Local 357, Teamsters, stating "that the Board's approach * * * exceeded the mandate of the NLRA."

The Board's rulemaking with respect to the Supreme Court's interpretation of a union's duty of fair representation in Beck, however, stands on a fundamentally different footing than its judicial prescriptions in Local 357, Teamsters. In the first place, Local 357 was not a duty of fair representation case. Indeed, the Board rule under review in that case had its origins in the 1958 opinion in Mountain Pacific Chapter, 119 NLRB 883, 893, which antedated the incorporation of the fair representation duty into the Board's unfair labor practice jurisprudence in Miranda Fuel by four years. Given the evolutionary nature in the courts of the duty of fair representation, whose hallmark features are "flexibility and adaptability," Breininger, *supra*, 493 U.S. at 86, the Board is not prepared to say that Local 357 forecloses adoption of the rules proposed in this Notice. Since, after Beck, a union violates section 8(b)(1)(A) and its duty of fair representation by expending dues collected from objectors for nonrepresentational purposes, a consideration of what other obligations are essential to a union's fulfillment of that duty is appropriate. Secondly, in the hiring hall context such as that in Local 357, employees were not required to initiate any communication with the union to perfect their statutory rights to be free from unlawfully discriminatory treatment by the union. In contrast, employees who desire to opt for "proportionate share payer" status are required to affirmatively communicate their objections to the union, as well as any challenges which they wish to make as to the expense allocations. Likewise, as a matter of practical experience employees who wish to hold only "financial core" status in the union, as opposed to full membership, must so inform the union. In either case, employees will have to be knowledgeable enough as to their rights in order to make an informed decision over the extent to which they wish to engage in, or refrain from, concerted activity.

IV. Definitions

A definitional section is included in the proposed rules. The purpose of this section is to make clear distinctions among employees who have variously opted for different forms of relationship with a union that is party to a contract containing a traditional union-security clause. Three such relationships are identified: (1) Full members of the union; (2) "financial core employees" who are not full members but pay the equivalent of initiation fees and uniform periodic dues within the meaning of General Motors Corporation, 373 U.S. 734 (1963); and (3) the Beck category of employee who is designated as a "proportionate share payer." This latter employee is neither a full member of the union nor a General Motors-type "financial core employee" in that such an employee has elected to pay only that part of union periodic dues and fees which pay for those union activities germane to the performance of the duties of an exclusive bargaining representative. The definition of "labor organization" draws on section 2(5) of the National Labor Relations Act and that of "full member" of such an organization from section 3(o) of the Labor-Management Reporting & Disclosure Act. 29 U.S.C. 402(o).

While we have included in the definitional section the terms "representational activities" and "nonrepresentational activities," the actual definitions are, for purposes of convenience, set forth in §§ 103.41(a) and 103.41(b) of the rules. These latter deal with the question of which expenditures a union may or may not charge to "financial core employees" who have made an appropriate objection to them under § 103.40(d)(2).

V. Coverage; Obligations of a Labor Organization Regarding Membership, and Dues and Initiation Fees

Section 103.40 (c) and (d) simply track the established legal requirements of the Supreme Court's decisions in Beck and General Motors with respect to a labor organization's statutory obligations under a union-security agreement entered into pursuant to the proviso to section 8(a)(3) and section 8(f). The rule prohibits a labor organization from requiring any employee to become a full member of the union as a condition of employment. However, consistent with the Supreme Court's recognition in Beck of the union's status as exclusive representative of all bargaining unit employees regardless of membership, and the union's duty of fair representation to all bargaining unit employees, the rule permits a labor organization to require financial core employees to pay the equivalent of initiation fees and uniform periodic dues charged to members, unless the financial core employee objects to the use of his dues for nonrepresentational purposes. In the event a financial core employee lodges an appropriate objection, the rule permits a labor organization to charge the objecting employee only the percentage of fees and dues which reflects the percentage spent for appropriate representational activities.

VI. Notice Requirements

Sections 103.40 (e) and (f) of the proposed rule impose notice and disclosure obligations upon labor organizations.

The purpose of these notice and disclosure requirements is to ensure that all unit employees are advised of their options with respect to the financial obligations arising out of applicable union-security agreements. The legal justification for these requirements is spelled out in part III, *supra*. In addition, it is noted that some comments received following publication of the Advance Notice of Proposed Rulemaking favored notice requirements of the type set forth in our proposed rule. Comment No. 9, filed by Citizens for a Sound Economy Foundation, at p. 3, followed General Counsel Memorandum 88–14 in calling for a notice requirement. Comment No. 10 from the National Right to Work Foundation also called for a notice requirement.

In particular, the rule requires that the labor organization inform all employees of their Beck rights, the right to join or refrain from joining a union, and the financial obligations incident to each status. In addition, consistent with the guidelines set forth in GC Memorandum 88–14, the rule requires that a labor organization notify all financial core employees of their right to object to expenditures for activities unrelated to representational activities, and the procedure to register such objections.

As provided under subsection (e), the notice of legal rights must be given annually to all employees. New employees, however, must be provided the notice within 30 days of notice to the labor organization of hire or transfer into the unit.

The proposed rule provides alternatives with respect to the method of providing the required notice to employees. Alternative A of

§ 103.40(e)(2) and Alternative A of § 103.40(f)(2) provide that notice to all unit employees and to financial core employees shall be given by mail. Alternative B of § 103.40(e)(2) and Alternative B of § 103.40(f)(2) provide for posting of the requisite notices to all unit members and to all financial core employees in an accessible place customarily used for such purposes or for publication in a union publication received by all bargaining unit employees. With respect to the information that labor organizations are required to provide only to objecting financial core employees, the Rules require that notice shall be by mail to the last known address.

As provided in subsection (f), notices of a more detailed nature, including both information of a legal nature and financial information, must be given to "financial core employees" and to "proportionate share payers." The subsection also provides that once an employee lodges an objection and becomes a proportionate share payer, a labor organization must begin charging the proportionate share payer only the percentage of dues and fees corresponding to the percentage of monies expended for representational activities.

The time periods prescribed in the Notice, Objection and Challenge provisions of § 103.40 (e) and (f) were chosen for apparent reasonableness and a perceived need for expedition in handling Beck-type disputes. The 90-day period following the end of the labor organization's fiscal year, prescribed in § 103.40(f)(4), was selected to match the similar 90-day period for the filing of LM–2 and LM–3 forms with the Department of Labor.

The proposed rule sets forth alternative rules under § 103.40(f)(4). Alternative A calls for an independent audit of the financial information a labor organization is required to supply to objecting financial core employees. See § 103.40(f)(4)(ii). The reported cases indicate that the issue of an independent audit usually entails two questions: (1) Should an auditor, if employed, verify the nature of a particular expenditure as being representational or nonrepresentational? and (2) should the auditor, if employed, verify only that a particular expenditure was made? The proposed rule at § 103.40(f)(4)(ii) provides that the accountant will not verify the representational or nonrepresentational nature of expenditures. The Board is not persuaded that it is proper for an accountant to be called upon to deliver what is, in essence, a legal opinion. Courts of appeal which have considered the issue appear to agree. See, e.g., *Andrews* v. *Education Association of Cheshire*, 829 F.2d 335, 340 (2d Cir. 1987) and *Dashiell* v. *Montgomery County*, 925 F.2d 750, 754–57 (4th Cir. 1991). Under the proposed rule, then, a union will be required to show only that the auditor has verified the actual financial information.

There is, of course, the underlying question of whether any type of independent audit should be required. The Supreme Court's comment in *Chicago Teachers Union Local 1* v. *Hudson*, 575 U.S. 292, 306 n.18 (1986), is persuasive authority that such a requirement should be included in the proposed rule:

> The Union need not provide nonmembers with an exhaustive and detailed list of all its expenditures, but adequate disclosure surely would include the major categories of expenses, *as well as verification by an independent auditor* (emphasis supplied).

Yet, the AFL–CIO in Comment No. 8 suggests that there are limits beyond which cases such as Hudson, arising in the public sector and relying upon constitutional considerations, should not apply to the Act. It is with this uncertainty in mind, and the Board's concern over the pragmatic consequences, in terms of expense and time, of imposing a requirement for an independent audit of unions' financial statements, that the Board proposes Alternative B. Under this alternative, the Department of Labor forms LM–2 and LM–3, which do not require independent audit, may be submitted to objecting financial care employees in satisfaction of notice required in § 103.40(f)(4).

VII. Challenge Procedures, Including Board and Arbitral Procedures

Subsection (g) addresses what is to occur in the event a proportionate share payer decides to challenge the allocation which the labor organization has made between representational and nonrepresentational activities. A step-by-step procedure is prescribed, with time limits included.

Section 103.40(g)(4) of the proposed rules permit a union to institute arbitral procedures to handle disputes arising out of Beck questions. Section 103.40(g)(3) permits an employee who disagrees with a union's reply to a challenge regarding expenditures to file a charge with the National Labor Relations Board. An employee may pursue both these courses of action. The arbitral procedures under these proposed rules accord with the Supreme Court's holding in *Chicago Teachers Union Local 1* v. *Hudson*, supra, that a union has the responsibility, in the public employment sector, to provide procedures that enable employees to exercise statutory (and First Amendment) rights.

To obviate the possibility that a person challenging the allocation may be forced to make what is tantamount to an involuntary loan during the pendency of the challenge, Section 103.40(g)(6) provides that amounts in dispute be placed in an escrow account and paid, with interest, should the employee prevail in the dispute. A similar procedure was approved in *Price* v. *Automobile Workers*, 927 F.2d 88 (2d Cir. 1991).

Section 103.40(g)(5) provides that where an employee's Board charge concerns only the accuracy of supplied financial data, the Board's General Counsel may defer processing of such charge pending the outcome of an arbitral procedure. Following the decision in the arbitral process, the decision will be reviewed under the standards set forth in Olin Corp., 268 NLRB 573 (1984). No deferral is permitted if the employee's charge concerns matters other than the accuracy of financial data, e.g. whether a given expenditure is representational or nonrepresentational.

Consideration was given to the possibility of a broader form of deferral to arbitration, i.e., one which might have deferred to arbitral awards involving the nature of particular expenditures. We have decided, in these proposed rules, not to propose this broader deferral policy. Such questions, in the current state of Beck litigation, are better left to this Board in its capacity as maker of national labor policy. There are currently no extant Board decisions on the whole range of Beck issues. While deferral to arbitration has played an important role in board law at least since the decision in Spielberg Manufacturing Company, 112 NLRB 1080 (1955), some 37 years ago, we would not feel it prudent to provide for deferral on a whole range of issues which the Board itself has not as yet considered. Such deferral would leave both the labor-management community and arbitrators without guidance in a situation in which the Board is designed to give such guidance.

VIII. Chargeable and Nonchargeable Expenditures

Section 103.41 of the proposed rules lists certain types of union activities and classifies them as either representational or nonrepresentational. The types of activities listed in the proposed rule substantially track those

listed in General Counsel's Memorandum 88–14. The Board has not attempted to set forth an exhaustive list of such activities. There are three reasons for its reluctance to do so. First, it would seem almost impossible to conjure up every activity, representational and nonrepresentational, that a labor organization might conceivably undertake. Second, even if the Board could compile an exhaustive list of activities, the law has not developed to the point where we could authoritatively categorize all, or even most, of the activities on such a list. Third, most of the law that does exist at this juncture pertains to the public sector and the railway labor sector. In the Board's view, it remains an open question whether a classification of activities in either the public or the railway labor areas necessarily applies to activities by labor organizations under the NLRA.

The Board anticipates that categorization of other labor organization activities as "representational" or "nonrepresentational" will be accomplished through adjudication, further rulemaking, or both.

The Board recognizes that certain categorizations of chargeable and nonchargeable expenses are controversial and unsettled by case law. In the interest of speedy promulgation of the rule, therefore, the Board has offered three alternatives to § 103.41.

The Board notes that while it has presented, *infra*, three Alternative Rules outlining the chargeability or nonchargeability of a limited number of expense categories, there exists case law which impacts on this issue. The Board notes initially that the Supreme Court in *Ellis* v. *Railway Clerks*, 466 U.S. 435 (1984) decided that, under an analogous provision in the Railway Labor Act, [2] "organizing expenses [spent] on employees outside the collective bargaining unit already represented" afford only the most attenuated benefits to collective bargaining on behalf of the dues payers, and thus, such expenses are not chargeable to objecting employees. The Board has also taken note, however, of the Supreme Court's recent statement in *Lehnert* v. *Ferris Faculty Association*, 111 S. Ct. 1950 (1991). Lehnert is silent with respect to the chargeability of organizing expenses to objecting employees in the public sector. The Court nevertheless prescribed a case-by-case analysis following guidelines set forth in *Machinists* v. *Street*, 367 U.S. 740 (1961) and *Chicago Teachers Union Local No. 1* v. *Hudson*, 475 U.S. 292 (1986). Alternative Rule B provides for organizing expenses in the same industry to be chargeable.

We have provided an Alternative Rule relating to whether a labor organization may charge objecting employees for activities, viz. litigation, not undertaken directly on behalf of an objecting employee's bargaining unit. In doing so, the Board is mindful of Supreme Court's decision in Lehnert, supra, declining to require such a direct relationship. In that case the Court stated:

> "[w]hile we consistently have looked to whether non-ideological expenses are germane to collective bargaining . . . we have never interpreted that test to require a direct relationship between the expense at issue and some tangible benefit to the dissenters' bargaining unit.
>
> * * * * *
>
> We therefore conclude that a local bargaining representative may charge objecting employees for their pro rata share of the costs associated with otherwise chargeable activities of its state and national affiliates, even if those activities were not performed for the direct benefit of the objecting employee's bargaining unit. (emphasis supplied)

Lehnert, 137 LRRM at 2327. See *Crawford* v. *Air Line Pilots Ass'n Intern.*, 870 F.2d 155 (4th Cir. 1989), rehg. en banc granted; *Cumero* v. *Public Employment Relations Board*, 49 Cal. 3d 575, 778 P.2d 174 (1989).

Similarly, we have provided Alternative Rules categorizing activities undertaken on behalf of employees in units other than the one in which union security payments are being exacted. Again, there is Supreme Court precedent impacting on this question. See *Lehnert* v. *Ferris Faculty Association*, supra.

The Board invites comment on all three of the Alternative Rules and on whether these enumerated activities should be treated as representational or nonrepresentational.

IX. Union-Security Clauses and Beck

Several comments received by us in answer to the Advance Notice of Proposed Rulemaking proposed that the Board modify the model union-security clause set forth in *Keystone Coat, Apron & Towel Supply Co.*, 121 NLRB 880 (1958). Comment No. 3 (Management Association of Illinois) and Comment No. 10 (National Right to Work Foundation) both proposed that Keystone be modified to explicate the differences between (1) employees who choose full membership in a labor organization, (2) those who choose financial core status under *NLRB* v. *General Motors Corp.*, 373 U.S. 734 (1963) and (3) those who elect to pay only that portion of dues and fees used to pay expenses germane to collective bargaining.

The model clause in Keystone, adopted before either General Motors or Beck, spoke only in terms of "membership in good standing." It did not define the phrase and it did not describe the various ways in which employees can satisfy their obligations under the clause.

Consistent with the comments that we have received, and in harmony with the other provisions of these rules, we have proposed a model union-security clause which sets forth the obligations of each of the three groups named above. Since the union-security clause is the source of employee obligations, it would seem appropriate that the clause clearly state the obligations of each of the three groups. In addition, such a clause, together with the notices proposed in these rules, will clearly apprise employees of the choices available to them and the obligations attendant to each choice.

However, we have not overruled *Paragon Products Corp.*, 134 NLRB 662 (1961). Thus, the mere fact that a union-security clause does not conform to the model clause would not remove the contract as a bar to a representation petition. Rather, we shall continue to apply the following holding of Paragon:

> [W]e now hold that only those contracts containing a union-security provision which is clearly unlawful on its face, or which has been found to be unlawful in an unfair labor practice proceeding, may not bar a representation petition. A clearly unlawful union-security provision for this purpose is one which by its express terms clearly and unequivocally goes beyond the limited form of union-security permitted by section 8(a)(3) of the Act, and is therefore incapable of a lawful interpretation.

The model clause will function as a "safe harbor" for negotiators but other, differently-worded clauses would not be found illegal unless they violate the Paragon standard.

Finally, Comment No. 3 (Management Association of Illinois) suggests combining checkoff provisions with the model clause. We have not done so in our proposed rule. Checkoff is a method for employees to make their payments under a union-security clause. Thus, the principles concerning checkoff do not deal with the extent of the obligation; they deal only with the payment mechanism for satisfying the obligation. See generally IBEW Local 2088 (Lockheed Space Operations Co.), 302 NLRB No. 49 (March 29, 1991). In short, the subject of checkoff is beyond the

[2] Section 2, Eleventh.

purview of these rules. In addition, any effort to handle the innumerable combination of pay intervals, timing of payroll deductions and provisions for forwarding deductions to the union could easily lead to confusion and attendant litigation. Accordingly, the Board declines to be drawn into this unrelated subject.

X. Effective Date

Generally, rules promulgated pursuant to Section 553 ("informal") rulemaking under the Administrative Procedure Act (APA) are applied prospectively. 5 U.S.C. 551 (4). However, the Board may not be foreclosed from applying proposed rules retroactively to pending cases. Compare *SEC* v. *Chenery Corp.*, 332 U.S. 194 (1947); *Laidlaw Corp.* v. *NLRB*, 414 F. 2d 99 (7th Cir. 1969), with *Retail, Wholesale & Dept. Store Union* v. *NLRB*, 466 F.2d 380 (D.C. Cir 1972). As a general matter, in other contexts, where retroactive effect would not be "manifestly unjust" (see e.g., *Greene* v. *U.S.*, 376 U.S. 149, 160 (1964); *Coe* v. *Secretary of HEW*, 502 F.2d 1337, 1339 (4th Cir. 1974)) or where a balance of factors favors it (see e.g., *Maxcell Telecom Plus, Inc.* v. *FCC*, 815 F.2d 1551, 1554–55 (D.C. Cir. 1987), retroactive application has been approved. Recent cases also suggest that a retroactive effective date of a rule may be invalid if precluded by statue (*Bowen* v. *Georgetown University Hospital*, 448 U.S. 204 (1988)) or if it "unreasonably impacts" on past activities (*Chemical Waste Management, Inc.* v. *EPA*, 869 F. 2d 1526, 1535–37 (D.C. Cir. 1989).

The fact that cases are beginning to come before the Board for review which present many of the issues being addressed in the proposed rules suggests the appropriateness of applying the administrative rules to the pending cases. However, the Board desires to develop an administrative record on which to make a final determination, and thus, the Board seeks comment on whether to give retroactive effect to the proposed rule. Section 103.43, therefore, is presented as an alternative form. Alternative A provides for retroactive application of the rule to pending cases; Alternative B provides that the rule shall apply prospectively.

XI. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by the NLRB in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties to identify and locate documents so they can participate effectively in the rulemaking process; and (2) to serve as the record in case of judicial review. The docket, including a verbatim transcript of any hearings, the exhibits, the written statements, and all comments submitted to the Board, is available for public inspection during normal working hours at the Office of the Executive Secretary in Washington, DC.

XII. Regulatory Flexibility Act

As required by the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., the Board certifies that the proposed rule will not have significant economic impact on small entities. Prior to this rule, parties were compelled to litigate before the Board questions of fair representation and a union's fiduciary responsibilities in the collection of initiation fees and dues under union-security contract clauses. The proposed rule resolves many of these questions and thus the necessity for litigation will be correspondingly reduced. Although the rule requires labor organizations to send notices to employees concerning their rights under *General Motors* and *Beck*, this requirement is consistent with the fundamental Congressional aim of insuring employees a free and informed choice in the exercise of their statutory rights.

XIII. Regulatory Text

List of Subjects in 29 CFR Part 103

Administrative practice and procedure, Labor-management relations.

For the reasons set forth in the prior pages, it is proposed to amend 29 CFR part 103 as follows:

PART 103—OTHER RULES

Subpart D, consisting of §§ 103.40, 103.41, 103.42, and 103.43 is added to read as follows:

Subpart D—Union Dues Regulations

Sec.
103.40 Labor organization dues and fees regulations
103.41 Categorization of representational and nonrepresentational activities
103.42 Model union security clause
103.43 Effective Date

Subpart D—Union Dues Regulations

§ 103.40 Labor organization dues and fees regulations.

(a) *Purpose.* (1) The purpose of this regulation is to articulate certain obligations that a labor organization must fulfill in connection with the negotiation and administration of union-security agreements authorized under section 8(a)(3) and 8(f) of the National Labor Relations Act (the Act). Those obligations are grounded in the duty of fair representation, which a labor organization owes to employees as their exclusive bargaining representative. The duty of fair representation imposes an obligation on a labor organization to represent each employee fairly and in good faith, without arbitrary or discriminatory treatment. *Vaca* v. *Sipes*, 375 U.S. 335 (1964); Miranda Fuels, 140 NLRB 181 (1962), enf. denied 326 F.2d 172 (2d Cir. 1963). Further, the Supreme Court, in *Chicago Teachers Union Local No. 1* v. *Hudson*, 475 U.S. 292 (1986), found that *"[b]asic considerations of fairness* * * * dictate that the potential objectors be given sufficient information to gauge the propriety of the Union's fee." 475 U.S. 292, 306 (emphasis added). The Board finds that the "basic considerations of fairness" the Court found operative in the context of public sector employment also underlie a union's duty of fair representation. Further, it believes that it best effectuates the policies of the National Labor Relations Act if all employees covered by contractual union-security clauses, whether union members or nonmembers, are informed of their rights under *NLRB* v. *General Motors Corp.*, 373 U.S. 734 (1963), *CWA* v. *Beck*, 487 U.S. 735 (1988), and related cases. Thus, the Board will find that a labor organization seeking the discharge of an employee for failure to tender dues and fees has violated section 8(b)(1)(A) and 8(b)(2) if the labor organization has failed to notify employees of their rights, as described herein, or to reduce the dues and fees charged if such is warranted under these rules. The Board also will find that a labor organization has failed to notify employees of their rights, as described herein, or to reduce the dues and fees charged if such is warranted under these rules. The Board also will find that a labor organization has violated section 8(b)(1)(A) of the Act if it fails to abide by any of the provisions of these rules.

(2) It is not intended that this regulation be a comprehensive or exclusive statement of the obligations on this subject. Rather, the intention is to state requirements that have not been announced previously by the Board and to address other requirements which have been announced previously through adjudication. The Board contemplates that it may in the future refine the details of the obligations set out here and define additional obligations either through case-by-case adjudication on complaints issued by the General Counsel or through further administrative rulemaking, or both.

(b) *Definitions.* For purposes of this section, § 103.41, and § 103.42—

(1) The term *employee* means an employee as defined in section 2(3) of the Act who is included in a bargaining unit for which a labor organization is the exclusive bargaining representative.

(2) The term *full member* means an employee who has fulfilled the requirements for membership in a labor organization has voluntarily joined the labor organization, and who neither has voluntarily resigned from membership nor has been expelled or suspended from membership.

(3) The term *fees and dues* means the periodic dues and initiation fees uniformly required by a labor organization as a condition of acquiring or retaining membership.

(4) The term *financial core employee* means an employee who is not a full member of the Union, but who is required to pay the equivalent of fees and dues to retain his employment under a contractual union security provision.

(5) The term *proportionate share payer* means a financial core employee who has elected to pay only that part of the union fees and dues charged for activities germane to the Union's performance of the duties of an exclusive bargaining representative of employees in dealing with labor-management issues.

(6) The term *proportionate share payment* means that percentage of fees and dues which reflects the percentage spent by the labor organization for representational activities.

(7) The term *labor organization* means a labor organization as defined in section 2(5) of the Act which acts as the exclusive bargaining representative of employees covered under the Act.

(8) The term *representational activities* means the activities of an exclusive bargaining representative as set forth in § 103.41(a).

(9) The term *nonrepresentational activities* means the activities of an exclusive bargaining representative as set forth in § 103.41(b).

(c) *Coverage.* The rules set forth in this Section and §§ 103.41 and 103.42 apply in circumstances where a labor organization is party to a union-security agreement entered into pursuant to the proviso of section 8(a)(3) of the National Labor Relations Act (the Act) or section 8(f) of the Act.

(d) *Obligations of a labor organization regarding membership and dues and initiation fees.* (1) A labor organization may not require, as a condition of employment, that an employee become or remain a full member. A labor organization may require, as a condition of employment, that an employee become a financial core employee or, upon appropriate employee objection, a proportionate share payment.

(e) *Obligations of a labor organization to provide certain information to all employees.* (1) Each year, a labor organization must inform all bargaining unit employees, both members and nonmembers, of the following rights:

(i) All employees have a right to become or remain full members of the Union;

(ii) All employees have a right to refuse to become or remain full members of the union. All employees have a right to become or remain financial core employees (thereby obligated to pay the equivalent of fees and dues to retain their employment under a contractual union security provision);

(iii) All financial core employees, upon appropriate objection, have a right to become or remain proportionate share payers (thereby obligated to pay only that part of the union fees and dues charged for activities germane to the Union's performance of the duties of an exclusive bargaining representative of employees in dealing with labor-management issues).

[Alternative A

(2) A labor organization shall give the employee the notification specified above by mailing it to each employee at his/her last known address.]

[Alternative B

(2) A labor organization will be deemed to have fulfilled its obligation to notify employees who are full members of these rights by posting a notice containing the above information in an accessible place where such notices are customarily posted or by publishing it in a union publication received by all members. A labor organization will be deemed to have fulfilled its obligation to notify employees who are financial core employees and proportionate share payers if it posts a notice on a bulletin board or other agreed-upon place in the workplace where such notices are customarily posted or if it publishes the information in a newsletter or other publication that it mailed to all unit employees, full members, financial core employees, and proportionate share payers alike.]

(3) A labor organization shall provide the notice specified in paragraph (e)(1) of this section, within 30 days after notice of their entry into the unit, to all employees hired or transferred into the unit.

(f) *Obligations of a labor organization to provide certain information to financial core employees and proportionate share payers.* (1) Each year, a labor organization must provide a notice to all financial core employees giving them the following information:

(i) They have a right to object to labor organization expenditures for activities unrelated to representational activities.

(ii) If they exercise their right to object, they will be charged only that percentage of dues and fees which reflects the percentage spent by the labor organization for representational activities. The notice shall set forth the percentages spent for representational and nonrepresentational activities during the most recent fiscal year.

(iii) A financial core employee who has filed an objection shall be deemed to remain a proportionate share payer until the employee informs the labor organization that the employee wishes to change status.

[Alternative A

(2) The notice set forth in paragraph (f)(1) of this section shall be mailed to each financial core employee at his/her last known address and must be sent no later than 60 calendar days after the end of the labor organization's fiscal year. A labor organization may require that an objection be filed within a specified period after receipt of the notice described in paragraph (f)(1) and (2) of this section but in no event shall that period be less than 15 days from receipt of the notice.]

[Alternative B

(2) The notice set forth in paragraph (f)(1) of this section shall be provided no later than 90 calendar days after the end of the labor organization's fiscal year. A labor organization will be deemed to have fulfilled this requirement by posting or publication as set forth in paragraph (e)(2) of this section. A labor organization may require than an objection be filed within a specified period after receipt of the notice described in paragraph f(1) and (2) of this section but in no event shall that period be less than 15 calendar days from receipt of notice.]

(3) After receiving an objection, the labor organization will immediately begin to charge only the percentage amount set forth in paragraph (f)(1)(ii) of this section.

(4) As soon as practicable after the end of the labor organization's fiscal year, but in no event more than 90 days after the end of such year, the labor organization must supply certain financial information to those financial core employees who have filed appropriate objections as referred to in paragraph (f)(1) of this section. Notice of

such information shall be mailed to each financial core employee at his/her last known address. The information shall be provided as follows.

(i) It will include:

(A) The percentage figure set forth in paragraph (f)(1)(ii) of this section;

(B) A description of the activities deemed representational and those deemed nonrepresentational, and the amount of money spent on each;

[Alternative A

Provided: If the labor organization is the local of a national or international labor organization and the national or international labor organization receives a portion of the amounts derived from dues and fees under the union-security agreement, the financial report must include relevant information regarding both the local and the national or international organizations.]

[Alternative B

Provided: If the labor organization is the local of a national or international labor organization and the national or international labor organization receives a portion of the amounts derived from dues and fees under the union-security agreement, the financial report must include relevant information regarding both the local and the national or international organizations.

Provided further that, if part of the dues collected under union-security agreements by a local labor organization is forwarded to a national or international labor organization with which the local is affiliated, the allocation between chargeable and nonchargeable expenses for the national or international labor organization may be considered equivalent to the allocation for the local union.]

[Alternative A

(ii) This information must be audited and verified by an independent accountant. The accountant need not verify the representational or nonrepresentational nature of a given expenditure but only that the particular expenditure was made.]

[Alternative B

(ii) The labor organization may satisfy the obligations specified above by mailing Department of Labor forms LM-2 and LM-3, as revised, to those financial core employees who have filed appropriate objections, provided that those forms contain the information required in this paragraph (f) of this section.]

(5) With respect to the computation and exaction of proportionate share payments, a labor organization may deem the "dues year" to commence when notice of the amount to be charged is sent to employees, provided that date is no more than 90 days after the close of the labor organization's fiscal year and the labor organization charges that amount for the following twelve months.

(6) The information described in paragraph (f)(4) of this section may be sent together with the notice described in paragraph (f)(1) of this section.

(g) *Obligations of a labor organization to proportionate share payers who challenge the calculation of the proportionate share payment; right to resort to remedies of the Act.* (1) The labor organization shall permit employees who are proportionate share payers to challenge the data supplied by it. The labor organization may require that the challenge be made in writing within a specified period but in no event shall that period be less than 15 calendar days after receipt of the information set forth in paragraph (f)(3) of this section. The labor organization also may require that the challenge specifically set forth the disagreement with the labor organization's data. If the last day of any prescribed period falls on Sunday or legal holiday, the deadline shall be the next business day. Deposit in the United States mail shall suffice to meet this deadline.

(2) If the labor organization disagrees with the employee's challenge, it shall notify the employee in writing. If the labor organization does not respond within 30 days (deposit in the mails to suffice to meet this deadline), it shall be deemed to have agreed to the employee's challenge.

(3) An employee aggrieved by a labor organization's disagreement with his challenge may file a charge with the General Counsel of the National Labor Relations Board at any Regional, sub-Regional or Resident Office or at the Board's office in Washington, DC.

(4) A labor organization may establish arbitral procedures for the handling of disputes arising from the employee challenge. Such an arbitral procedure shall not grant sole discretion to the labor organization in the selection of an arbitrator. In any given case, arbitration may be invoked only upon agreement of both the labor organization and the challenging employee. The arbitrator shall be paid by the labor organization: Provided, that the labor organization may require that each party bear its own costs of arbitration, including travel costs and attorney fees.

(5) If the employee's charge before the Board concerns only the accuracy of the financial data, and if the employee has resorted to an appropriate arbitral mechanism established under paragraph (g)(4) of this section, the General Counsel of the NLRB may defer processing of the charge, pending the outcome of that procedure. After the rendering of an arbitral award, such award shall be reviewed under the standards of *Olin Corp.*, 268 NLRB 573 (1984). If the employee's charge concerns other matters (e.g., the classification of an expenditure as representational), the charge shall not be deferrable.

(6) Pending resolution of the employee's challenge, the labor organization may charge the employee the percentage amount reflected by the labor organization's data. However, the difference between this amount and the amount asserted by the employee shall be placed into an escrow account and paid, with interest, to the employee if he or she prevails. Such interest shall be computed at the rate and in the manner provided for in unfair labor practice cases before the Board.

[Alternative A

§ 103.41 Categorization of representational and nonrepresentational activities.

(a) The term *representational activities* means those activities germane to the Union's performance of the duties of an exclusive bargaining representative of employees in dealing with labor-management issues. Examples of such activities include:

(1) Collective bargaining, contract administration, and grievance-arbitration

(2) National conventions

(3) Social events open to full members, financial core members, and proportionate share payers and business meetings.

(4) Labor organization publications to the extent that they report on the representational activities of the labor organization

(5) Benefit programs that are available on an equal basis to full members, financial core employees, and proportionate share payers

(6) Litigation activities incident to negotiating a collective bargaining agreement, settling grievances and disputes, fulfilling the duty of fair representation, handling jurisdictional disputes with other labor organizations, and conducting other litigation before administrative agencies or courts.

(7) Organizing activities.

(b) The term *nonrepresentational activities* means those activities not germane to the Union's performance of the duties of an exclusive bargaining representative of employees in dealing with labor-management issues.

Examples of such nonrepresentational activities include:

(1) Labor organization publications to the extent that they report on activities other than representational activities.

(2) Benefit programs that are not available on an equal basis to full members, financial core employees, and proportionate share payers

(3) A labor organization building fund

(4) Lobbying activities

(5) Activities to promote or defeat legislation

(6) Political campaign activities

(7) Advertising unrelated to representational activities.

(c) The examples enumerated in paragraphs (a) and (b) of this section are not intended to be exhaustive. It is intended that activities not falling within specified examples shall be evaluated in accordance with the standards stated in such paragraphs and shall be subject to further articulation or clarification in accordance with paragraph (a) of § 103.40.]

[Alternative B

§ 103.41 Categorization of representational and nonrepresentational activities.

(a) *Representational activities* means those activities germane to the Union's performance of the duties of an exclusive bargaining representative of employees in dealing with labor-management issues. Examples of such activities include:

(1) Collective bargaining, contract administration, and grievance-arbitration concerning employees in the bargaining unit

(2) National conventions

(3) Social events open to full members, financial core members, and proportionate share payers and business meetings related to the bargaining unit

(4) Labor organization publications to the extent that they report on the representational activities or organizing activities in the same industry of the labor organization

(5) Benefit programs that are available on an equal basis to full members, financial core employees, and proportionate share payers in the bargaining unit

(6) Litigation activities incident to negotiating a collective bargaining agreement or settling grievances and disputes concerning employees in the bargaining unit, fulfilling the duty of fair representation to the unit, handling jurisdictional disputes with other labor organizations concerning bargaining unit work, and conducting litigation before administrative agencies or courts concerning bargaining unit employees

(7) Union organizing activity confined to the industry of the bargaining unit.

(b) *Nonrepresentational activities* means those activities not germane to the Union's performance of the duties of an exclusive bargaining representative of employees in dealing with labor-management issues. Examples of such nonrepresentational activities include:

(1) Labor organization publications to the extent that they report on activities other than representational activities or organizing activities outside the same industry

(2) Benefit programs that are not available on an equal basis to all bargaining unit employees

(3) A labor organization building fund

(4) Lobbying activities

(5) Activities to promote or defeat legislation

(6) Political campaign activities

(7) Advertising unrelated to representational activities

(8) Union organizing activities beyond the industry of the bargaining unit

(c) The examples enumerated in paragraphs (a) and (b) of this section are not intended to be exhaustive lists. It is intended that activities not falling within specified examples shall be evaluated in accordance with the standards stated in such subsection and shall be subject to further articulation or clarification in accordance with paragraph (a) of § 103.40.]

[Alternative C

§ 103.41 Categorization of representational and nonrepresentational activities.

(a) The term *representational activities* means those activities, within the particular bargaining unit, which relate to the union's performance of its duties as the exclusive bargaining representative of that unit. Examples of such activities include:

(1) Collective bargaining, contract administration and grievance-arbitration

(2) National conventions

(3) Union business meetings and social activities open to member and nonmember unit employees

(4) Labor organization publications to the extent they report on the labor organization's representational activities

(5) Costs of benefits available to all bargaining unit employees alike

(6) Litigation expenses incident to negotiating and administering the contract, settling grievances and disputes, fulfilling the duty of fair representation, handling jurisdictional disputes with other labor organizations and conducting other litigation before administrative agencies or courts.

(b) The term *nonrepresentational activities* means those activities which do not relate to the union's performance of its duties as the exclusive bargaining representative of the particular bargaining unit. Examples of such activities include:

(1) Labor organization publications to the extent they report on nonrepresentational activities

(2) Costs of benefits not available to all bargaining unit employees

(3) Costs of labor organization building fund

(4) Lobbying activities

(5) Promotion or defeat of legislation

(6) Political campaigns

(7) Advertising related to nonchargeable matters

(8) Organizing activities]

§ 103.42 Model union security clause.

Purpose. The Board determines, in accordance with § 103.40(a), that the promulgation of a model union security clause would facilitate the ability of a labor organization to fulfill its duty of fair representation to employees by clarifying for such employees the requirements of the Act as interpreted by the Supreme Court in *NLRB* v. *General Motors Corp.*, 373 U.S. 734 (1963), *CWA* v. *Beck*, 487 U.S. 735 (1988), and related cases. The model union security clause set forth in the Appendix to this section supersedes all previous such model clauses announced by the Board, including that promulgated in Keystone Coat, Apron, and Towel Supply Co., 121 NLRB 880 (1958). This announcement does not affect Paragon Products Corp., 134 NLRB 662 (1961).

Appendix to § 103.42

Model Union Security Clause

Union security and financial obligations of employees to the bargaining representative.

[EMPLOYER] and [UNION] herein exercise their right, under Section 8(a)(3) [or 8(f)] of the National Labor Relations Act and the laws of [STATE], to agree to the following union security provision:

(1) Every employee covered by this Agreement must, for the life of this Agreement after the grace period described in Section 2 below, satisfy an obligation to the Union as the unit's exclusive bargaining representative. Under this Agreement, employees must choose one of the three ways of satisfying this obligation, as described below. Every employee has the right to make this choice free of interference, restraint or coercion:

(a) Full union membership: The employee chooses to join the Union as a full member, is subject to all rights and duties accorded members, and, as a condition of employment, must pay the full initiation fee (if applicable) and uniform periodic dues charged by the Union;

(b) Financial core employee: The employee does not become a member of the Union; thus, he/she is not entitled to the full range of rights and duties of membership. This employee does not object to the Union's spending part of the dues and fees collected under this Agreement for activities not germane to its role as the unit's exclusive bargaining representative. This employee must pay, as a condition of employment, the full initiation fee (if applicable) and the uniform periodic dues charged by the Union. The Union must provide this employee with information to enable him/her to decide whether to object to the use of his/her dues for nonrepresentation expenditures.

(c) Proportionate share payer: The employee does not become a full member of the Union, and thus is not entitled to the full range of rights and duties of union membership; further, the employee informs the Union that he/she objects to the Union's spending part of the dues and fees collected under this Agreement for activities not germane to its role as the exclusive bargaining representative; this employee must, as a condition of continued employment, pay the percentage of fees and uniform, periodic dues used for activities germane to the Union's status as the unit's exclusive bargaining representative. The Union must provide this employee with information about its expenditures and this employee may challenge the Union's information.

(2) Each employee covered by this Agreement who is not a full member of the Union on the effective date of this Agreement (or hire date, if applicable), has the right to a "grace period" of twenty-nine [or seven, if 8(f)] days in which to choose his/her status. Thus:

(a) For all employees who are in the unit and are not full Union members on the effective date of this Agreement [or the Agreement's date of execution, whichever is later], their chosen status, and their obligation to pay dues and fees, shall begin on the thirtieth [eighth, if 8(f)] day after the effective date of this Agreement [or the Agreement's date of execution, whichever is later].

(b) For all new employees who are hired into the unit during this Agreement's life and are not full Union members on the date of hire, their chosen status, and their obligation to pay dues and fees, shall also begin on the thirtieth day [eighth, if 8(f)] after their date of hire [or the Agreement's date of execution, whichever is later].

(3) Employees in the unit who are full Union members on this Agreement's effective date or, if hired during this agreement's life, on their date of hire, do not receive the grace period. For these full Union members, their obligation to the Union is continuous and is not affected by this Agreement, although they are free to change their status.

(4) Employees may elect to change their chosen status upon appropriate written notice to the Union.

[Alternative A

§ 103.43 Effective Date.

Sections 103.40, 103.41, and 103.42 shall apply to all pending cases in whatever stage.]

[Alternative B

§ 103.43 Effective Date.

Sections 103.40, 103.41, and 103.42 shall have prospective effect only.]

Dated, Washington, DC, September 17, 1992.

By direction of the Board.

National Labor Relations Board.

John C. Truesdale,

Executive Secretary.

[FR Doc. 92-22919 Filed 9-21-92; 8:45 am]

BILLING CODE 7545-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 202

Eligibility Criteria for News Media Membership in the DoD National Media Pool

AGENCY: Department of Defense.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This notice is issued to inform the news media and the public of a contemplated Department of Defense (DoD) rule to cover National Media Pool operations. While the Department of Defense is not of the view that this possible rule must be published, the Department believes that this advance notice should be useful in obtaining public comments, which will enhance the deliberative process.

The rule would establish uniform criteria by which to determine media organizations' eligibility for membership in the DoD National Media Pool.

In situations where pool coverage provides the only feasible means of media access to United States military operations, DoD will activate the National Media Pool to deploy a representative group of journalists to cover the operation, unless national security considerations require otherwise. By participating in the pool, each media organization must agree to observe basic ground rules designed to allow pool representatives the greatest permissible freedom and access in battlefield coverage while protecting operational security. However, because the operational requirements of any particular mission are difficult to predict, the ground rules are subject to change based on situational factors such as space limitations, remote locations, or the need to maintain operational security and to protect the safety of U.S. troops during the nearly phases of an operation.

By participating in the pool, member organizations also agree to provide personnel and equipment on standby to be deployed anywhere in the world on four hours notice to cover a particular operation. The pool members rotate this obligation every three months among themselves. The composition of any pool to be deployed will be tailored to meet the operational requirements and limitations of the DoD activity to be covered.

DATES: Written comments must be received by November 12, 1992.

ADDRESSES: Comments should be addressed to Pete Williams, Assistant Secretary of Defense (Public Affairs), The Pentagon, room 2E800, Washington, DC 20301-1400.

FOR FURTHER INFORMATION CONTACT: Robert Taylor, Principal Deputy Assistant Secretary of Defense (Public Affairs), telephone (703) 697-0713.

SUPPLEMENTARY INFORMATION: The DoD National Media Pool was established in 1985 to provide a means to allow journalists to accompany U.S. forces and report on military operations while still maintaining operational security and troop safety. There have been twelve media pool deployments since the pool was created, including the earliest stages of Operation Desert Shield in August, 1990. Currently, more than forty Washington-based media organizations are members of the DoD National Media Pool.

The Assistant Secretary of Defense for Public Affairs held discussions with a representative group of news media organizations on ways to improve combat coverage. On May 21, 1992, the Department of Defense officially adopted and incorporated the principles for news media coverage of DoD operations into DoD Directive 5122.5, Assistant Secretary of Defense (Public Affairs), on May 21, 1992.

Administrative Notices

A. Executive Order 12291

This rule, as proposed, does not meet the criteria for a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The regulations are not likely to result in (1) an annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions or (3) a significant adverse effect

on competition, employment, investment, productivity, innovation, or on the ability of U.S. based enterprises to compete with foreign-based enterprises in domestic or export markets.

B. Paperwork Reduction Act

The requirements for information collection contained in this advance notice of proposed rulemaking, as it is currently drafted, would be covered by the Paperwork Reduction Act of 1980. In accordance with 44 U.S.C. 3504(h), the information collection requirement will be submitted to the Office of Management and Budget (OMB) for review if and when this advance notice of proposed rulemaking becomes a proposed rule.

C. Regulatory Flexibility Act

This advance notice of proposed rulemaking has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and, as it is currently drafted, it has been determined that this action will not have a significant adverse economic impact on a substantial number of small entities as defined by that act.

List of Subjects in 32 CFR Part 202

Administrative practice and procedures, Federal buildings and facilities, News media.

Accordingly, 32 CFR, chapter I, subchapter M, is proposed to be amended to add part 202 to read as follows:

PART 202—ELIGIBILITY CRITERIA FOR NEWS MEDIA MEMBERSHIP IN THE NATIONAL MEDIA POOL

Sec.
202.1 Purpose.
202.2 Applicability.
202.3 Definitions.
202.4 Policy.
202.5 Membership criteria.
202.6 Ground rules.
202.7 Procedures.

Authority: 10 U.S.C. 113; 10 U.S.C. 133, 10 U.S.C. 136.

§ 202.1 Purpose.

This part establishes DoD policy and procedures for membership in the DoD National Media Pool for news media coverage of U.S. military operations.

§ 202.2 Applicability.

This part applies to the Office of the Assistant Secretary of Defense (Public Affairs), and to the extent directed by the Office of the Assistant Secretary of Defense (Public Affairs), to the Office of the Secretary of Defense, the Military Departments, the Joint Chiefs of Staff, the Joint Staff, the Unified and Specified Commands, the Defense Agencies, and the DoD Field Activities (hereafter referred collectively as "DoD Components").

§ 202.3 Definitions.

(a) Contingency. An emergency involving military forces caused by natural disasters, terrorists, subversives, or by required military operations. Due to the uncertainty of the situation, contingencies require plans, rapid response, and special procedures to ensure the safety and readiness of personnel, installations and equipment.

(b) Operational security. A process of analyzing friendly actions attendant to military operations and other activities to:

(1) Identify those actions that can be observed by adversary intelligence systems.

(2) Determine indicators hostile intelligence systems might obtain that could be interpreted or pieced together to derive critical information in time to be useful to adversaries.

(3) Select and execute measures that eliminate or reduce to an acceptable level the vulnerabilities of friendly actions to adversary exploitation.

(c) Pool. A representative or representatives of the news media selected to accompany U.S. forces on an operation or mission and report to the American public when open, independent coverage is not possible.

§ 202.4 Policy.

It is DoD policy that while open and independent reporting shall be the principal means of coverage of U.S. military operations, under some conditions and with due regard for mission requirements, pools may provide the only feasible means of early access to a military operation. In such situations, unless national security considerations require otherwise, the DoD will activate the National Media Pool to allow a representative group of journalists access to DoD activities.

§ 202.5 Membership criteria.

(a) Eligibility for membership in the National Media Pool shall be limited to those news media organizations which satisfy the following general membership criteria:

(1) All news organizations in the pool must demonstrate a familiarity with the U.S. military and military operations by maintaining a correspondent who regularly covers military affairs, visits military operational units, attends Pentagon press conferences, and interviews senior military and civilian DoD officials.

(2) The news media organization is required to maintain a Washington, DC staff of sufficient size to preclude compromising operational security when the pool is activated.

(3) The representatives designated by the organization to participate in the National Media Pool on standby must be able to deploy with all requisite equipment in a minimum of four hours.

(4) By participating in the National Media Pool, media organizations and their representatives agree to adhere to the ground rules as listed in § 202.6, and any additional ground rules or procedures established by the Assistant Secretary of Defense (Public Affairs) or the appropriate military commander to meet the operational security requirements of a given mission.

(5) All media organizations represented in the National Media Pool must be U.S. owned and operated.

(b) In addition to meeting the general membership criteria, pool members must also meet the following criteria established for each media category:

(1) Television networks: Must produce and transmit finished daily, general news broadcasts under national editorial direction to a nationwide audience and have the capability to deploy a satellite earth station with the pool.

(2) Newspapers: Must be general coverage newspaper, published at least five times a week.

(3) Newsmagazine: Must be general circulation, general coverage, news weeklies with national distribution and a photographic capability.

(4) Wire Services: Must have both a news and a photo capability, providing breaking news and photos on an immediate basis to a large multi-media, nationwide audience, as well as the capability to deploy portable developing and photo transmitting equipment with the pool.

(5) Radio participants must represent a network which provides breaking news on an immediate basis to a large, nationwide audience.

§ 202.6 Ground rules.

(a) News organizations participating in the National Media Pool agree to the following ground rules.

(1) Activating the DoD National Media Pool should protect the security of the operation and the safety of the troops involved, while allowing pool members the greatest permissible freedom and access in covering the story as representatives of all U.S. media. Accordingly, all members agree to maintain operational security when the pool is deployed by not disclosing that it

has been activated or revealing any information about its deployment.

(2) Once activated, representatives of member organizations must remain with the media escort officers at all times, until formally released, and follow their instructions regarding pool activities. These instructions are not intended to hinder reporting and are given only to facilitate movement of the pool and ensure troop safety.

(3) Members further agree to provide fully equipped personnel to serve on standby for the pool, ready to be deployed world-wide on four hours notice.

(4) Members will reimburse the U.S. government, as required, for travel, food, lodging, medical expenses, equipment and other support.

(b) When activated:

(1) It is DoD policy that media pools are to be non-competitive. Pool members should seek the widest possible coverage of the military operation, allocating assignments appropriately among themselves, if needed.

(2) Participants in the National Media Pool will share fully all media products with other pool members within their respective medium, on a timely basis, at pool member meetings during or immediately following the operation. Correspondents will share their pooled information at the scene of the operation, and photographers will make their film available by turning it over to wire service participants. The wire services should undertake to transmit the newspaper pool's news report.

(3) Pool members will be expected to brief each other concerning their experiences. All information, from videotape, sound bites, photo cutlines, etc., will be pooled with other National Media Pool members before journalists file stories or otherwise attempt to communicate with any individual about the operation.

(4) Detailed instructions on filing will be provided by the military escorts at an appropriate time.

(c) Participation in the National Media Pool indicates an understanding of these guidelines, of the need to maintain operational security, and all National Media Pool members' willingness to adhere to the requirements of this rule. Failure to follow the ground rules may result in the expulsion of a pool member.

§ 202.7 Procedures.

(a) General news organizations wishing to join the DoD National Media Pool should submit written requests to the Office of the Assistant Secretary of Defense (Public Affairs), Attention: Directorate for Plans, room 2D757, The Pentagon, Washington, DC 20301. Requests must indicate a description of the organization's news gathering and dissemination operations, the number of its outlets or subscribers, its general circulation or viewing audience, and include other information identified in § 202.5 of this Part, setting forth membership criteria. Applications for membership will be evaluated against the pool membership criteria, and the final decision on granting pool membership will be made by the Assistant Secretary of Defense (Public Affairs.)

(b) When activated, individual media pools will be formed by contacting those representatives of the media designated as being "on standby," in accordance with the media's own rotation system.

(c) In the event that operational restrictions limit the size of the media pool to be activated, the spaces available normally will be allocated in the following order. When space constraints permit one pool representative, that space will normally be filled by an Associated Press reporter, in recognition of its unique role in the U.S. news industry. The remaining pool positions will normally be filled, in turn, by a still photographer, a TV camera person, a TV reporter, a newspaper reporter, a radio reporter, a TV crew member, a news magazine reporter, a news magazine photographer, a wire reporter, two newspaper reporters, and a still photographer.

Dated: September 18, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-23087 Filed 9-18-92; 2:15 pm]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7-92-89]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, From St. Marys River to Key Largo

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the Mayor of Sea Ranch Lakes, the Coast Guard proposes to modify the regulations governing the operation of the Commercial Boulevard Drawbridge (Northeast 50th Street/State Road 870), mile 1059.0, at Lauderdale-by-the-Sea, Broward County, Florida. This proposal is being made as a result of complaints about the highway traffic delays. This action should accommodate current needs of highway traffic while still meeting the reasonable needs of navigation. Public vessels of the United States, tugs with tows, and vessels in a situation where a delay would endanger life or property would continue to be passed at any time.

DATES: Comments must be received on or before November 6, 1992.

ADDRESSES: Comments may be mailed to Commander (oan), Seventh Coast Guard District, 909 SE. 1st Avenue, Miami Florida 33131-3050, or may be delivered to Room 406 at the above address between 7:30 a.m. and 4 p.m., Monday through Friday, except federal holidays. For information concerning comments the telephone number is (305) 536-4103.

The Commander, Seventh Coast Guard District maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Brodie E. Rich, Project Manager, Bridge Section, (305) 536-4103.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking [CGD7-92-89] and the specific section of this proposal to which each comment applies, and give the reason for each comment. Each person wanting acknowledgement of receipt of comments should enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Mr. Brodie Rich at the address under "**ADDRESSES**". If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Mr. Brodie E. Rich, Project Manager, and LT. J.M. Losego, Project Counsel.

Background and Purpose

The draw presently opens on signal except that, from November 1 through May 15 from 8 a.m. to 6 p.m., the draw need open only on the hour, quarter-hour, half-hour and three-quarter hour. The Mayor of Sea Ranch Lakes has requested the bridge be opened only on the hour and half-hour to reduce highway traffic congestion.

The Coast Guard analysis of bridge openings, highway traffic levels of service, and waterway holding conditions has determined this bridge averages only 2 openings per hour on weekdays with no apparent increases in commuter traffic levels during morning and afternoon rush hours. On weekends, there is a reduction in highway traffic levels, however, during the winter season the number of drawbridge openings increases due to heavy boating activities on the Intracoastal Waterway. In order to reduce highway traffic delays, the Coast Guard is proposing to implement a 20-minute opening schedule on weekends during the seasonal period.

Discussion of Proposed Amendments

The Coast Guard's analysis determined that the change to a 20-minute opening schedule on weekends from November 1 through May 15th, would improve the highway traffic flow by allowing an approximate 16-minute uninterrupted period for vehicular transit after each opening without causing a significant impact on navigation. This rule changes only the regulated period on weekends and only applies to nonexempt vessels. Public vessels of the United States, tugs with tows, and vessels in a situation where a delay would endanger life or property would be passed through the draw at any time.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary. We conclude this because the rule exempts tugs with tows.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities.

"Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Since tugs with tows are exempt from this proposal, the economic impact is expected to be minimal on all entities. Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.b.2.g.(5) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.261 is amended by revising paragraph (ee) to read as follows:

§ 117.261 Atlantic Intracoastal Waterway, from St. Marys River to Key Largo.

* * * * *

(ee) *Commercial Boulevard bridge (SR 870), mile 1059.0, at Lauderdale-by-the-Sea.* The draws shall open on signal; except that, from 8 a.m. to 6 p.m., Monday through Friday from November 1 through May 15, the draw need open only on the hour, quarter-hour, half-hour, and three-quarter hour, and on Saturdays, Sundays, and federal holidays from 8 a.m. to 6 p.m., the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour.

* * * * *

Dated: September 8, 1992.

William P. Leahy,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 92–22899 Filed 9–21–92; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 52

[CA15–2–5433; FRL–4509–1]

Approval and Promulgation of Implementation Plans, California State Implementation Plan Revision; Bay Area Air Quality Management District and South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) adopted by the Bay Area Air Quality Management District (BAAQMD) on November 23, 1988 and the South Coast Air Quality Management District (SCAQMD) on December 7, 1990. the California Air Resources Board (ARB) submitted the BAAQMD and SCAQMD rule revisions to EPA on March 26, 1990 and May 13, 1991, respectively. These revisions concern the following: BAAQMD Regulation 8, Rule 30 and SCAQMD Rule 1164, Semiconductor Manufacturing Operations, both of which control volatile organic compound (VOC) emissions from the semiconductor manufacturing industry. EPA has evaluated the revisions to BAAQMD Regulation 8, Rule 30 and new SCAQMD Rule 1164 and is proposing a limited approval under sections 110(k)(3) and 301(a) of the Clean Air Act, as amended in 1990 (CAA or the Act) because these revisions strengthen the SIP. At the same time, EPA is proposing a limited disapproval under section 110(k)(3) of the CAA because the rules do not meet the part D, section 182(a)(A) requirement of the CAA.

DATES: Comments must be received on or before October 22, 1992.

ADDRESSES: Comments may be mailed to: Dan Meer, Southern CA and AZ Rulemaking Section (A-5-3), Air and Toxics Division, Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rules are also available for inspection at the following appropriate locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1219 "K" Street, Sacramento, CA 95814.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

South Coast Air Quality Management District, Planning & Rules Division, P.O. Box 4939, Diamond Bar, CA 91765-0939.

FOR FURTHER INFORMATION CONTACT: Wendy Colombo, Northern CA, NV, and HI Rulemaking Section (A-5-4), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1190.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the 1977 Clean Air Act (1977 CAA or pre-amended Act) that included the Bay Area and the South Coast Air Basin. 43 FR 8964; 40 CFR 81.305. Because the Bay Area and the South Coast Air Basin were unable to reach attainment by the statutory attainment date of December 31, 1982, California requested under section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. 40 CFR 52.238. On May 26, 1988, EPA notified the Governor of California that the BAAQMD and SCAQMD portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, amendments to the 1977 CAA were enacted. Public Law 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for VOCs and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies. VOCs contribute to the production of ground level ozone and smog.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in EPA's pre-amended guidance.[1] EPA's SIP-CALL used that guidance to indicate the necessary corrections for specific nonattainment areas. Since the Bay Area and the South Coast Air Basin are classified as moderate and extreme ozone nonattainment areas [2], respectively, these two areas are subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules to EPA for incorporation into its SIP. The two rules being acted on in this notice were submitted on March 26, 1990 for the BAAQMD Regulation 8, Rule 30 and May 13, 1991 for SCAQMD Rule 1164. This notice addresses EPA's proposed action for BAAQMD Regulation 8, Rule 30 and SCAQMD Rule 1164. These submitted rules were found to be complete on June 20, 1990 and July 10, 1991, respectively, pursuant to EPA's completeness criteria adopted on February 16, 1990 (55 FR 5830) and set forth in 40 CFR part 51, Appendix V [3] and are being proposed for limited approval and limited disapproval.

BAAQMD Regulation 8, Rule 30 and SCAQMD Rule 1164 control the emissions of VOCs from semiconductor manufacturing operations. The Bay Area's Regulation 8, Rule 30 and the South Coast's Rule 1164 were originally adopted as part of the effort of these Districts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone. Bay Area's Regulation 8, Rule 30 has been revised in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. South Coast's Rule 1164 is a new rule which has been adopted to meet EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for BAAQMD's Regulation 8, Rule 30 and SCAQMD's Rule 1164.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and in 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guidance (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). For some emission categories, such as semiconductor manufacturing, EPA did not publish a CTG. In such cases, the District will make a determination of what controls are required to satisfy the RACT requirement by reviewing the operations of facilities within the affected source category. Additionally, for both CTG and non-CTG rules, the District may rely on EPA policy documents, such as the Blue Book, to ensure that the adopted VOC rules are fully enforceable and strengthen or maintain the SIP.

BAAQMD Regulation 8, Rule 30, Semiconductor Manufacturing Operations

The following are revisions from the current SIP approved rule:

- changes the small semiconductor exemption definition;
- adds an exemption for vapor degreasers and/or cold cleaners;
- adds an exemption for compounds with low volatility;

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[1] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] Bay Area Air Quality Management District and South Coast Air Quality Management District retained their designation of nonattainment and were classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

[3] EPA has since adopted completeness criteria pursuant to section 110(k)(1)(A) of the amended Act. See 56 FR 42216 (August 26, 1991).

• adds to the specificity of the semiconductor manufacturer; and the solvent cleaning station definitions;

• adds the definition of a liquid solvent leak;

• distinguishes between a container and a reservoir;

• adds an interim solvent cleaning station provision;

• adds an entire section of provisions for final solvent; cleaning stations to include requirements for covers, freeboard ratios, markings, storage and disposal, and repairs;

• adds recordkeeping requirements for the small semiconductor exemption;

• adds a source test requirement for negative photoresist operations; and

• adds a reference to a test method for determining abatement efficiency.

SCAQMD Rule 1164, Semiconductor Manufacturing Operations

This is a new rule which was adopted to control VOC emissions from semiconductor manufacturing operations and, as such, it strengthens the SIP. The rule accomplishes this by specifying equipment requirements for solvent cleaning stations, by requiring the use of low-vapor-pressure or low-VOC solvents, by requiring add-on controls for positive and negative photoresist operations, and by requiring improved equipment cleanup procedures for handling solvents.

EPA has evaluated BAAQMD's submitted Regulation 8, Rule 30 and SCAQMD's submitted Rule 1164 for consistency with the CAA, EPA regulations, and EPA policy and has found that the revisions address and correct many deficiencies previously identified by EPA. These corrected deficiencies have resulted in clearer, more enforceable rules.

Although the approval of BAAQMD's Regulation 8, Rule 30 and SCAQMD's Rule 1164 will strengthen the SIP, these rules still contain deficiencies which were required to be corrected pursuant to the section 182(a)(2)(A) requirement of part D of the CAA. BAAQMD's rule is still deficient because of the following:

• director's discretion for the approval and implementation of alternative emission control plans without EPA approval; director's discretion to allow equivalent emission control devices without applicable test methods and EPA approval; and

• reference to a test method that has been found unacceptable by EPA for measuring VOC emissions controlled by an incinerator or other combustion devices.

SCAQMD's rule is deficient because of the following:

• lack of reference to specific test methods for determining the VOC concentration of materials, the emission concentrations of the VOC-containing vapors, and vapor pressure of the solvent; and

• lack of methodology for determining equivalent and approvable alternative emission control devices.

A detailed discussion of rule deficiencies can be found in the appropriate technical support documents for Regulation 8, Rule 30 (2/92) and Rule 1164 (2/92) which are available from the EPA, Region 9 office.

Because of these deficiencies, the rules are not approvable pursuant to section 182(a)(2)(A) of the CAA because they are not consistent with the interpretation of section 172 of the 1977 CAA as found in the Blue Book and other pre-amendment guidance and may lead to rule enforceability problems.

Also because of the above deficiencies, EPA cannot grant full approval of these rules under section 110(k)(3) and part D. Also, because the submitted rules are not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rules under section 110(k)(3). However, EPA may grant a limited approval of the submitted rules under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is proposing a limited approval of BAAQMD's submitted Regulation 8, Rule 30 and SCAQMD's submitted Rule 1164 under section 110(k)(3) and 301(a) of the CAA.

At the same time, EPA is also proposing a limited disapproval of these rules because they contain deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAA,and, as such, the rules do not fully meet the requirements of part D of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: Highway funding restrictions and revised offsets. The 18 month period referred to in section 179(a) will begin at the time EPA publishes final notice of this disapproval. Moreover, final disapproval will trigger the federal implementation plan (FIP) requirement under section 110(c)..

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Limited approvals under sections 110 and 301 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

EPA's limited disapproval of the State request under sections 110 and 301 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Federal disapproval of the State submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose any new federal requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it impose any new federal requirements

This action has been classified as a Table 2 action by the Regional

Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 11, 1992.

John Wise,

Regional Administrator.

[FR Doc. 92–22939 Filed 9–21–92; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[MA-9-3-5385; A-1-FRL-4509-1]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Revised Regulations Controlling Volatile Organic Compound Emissions for the Solvent Metal Degreasing, Surface Coating of Miscellaneous Metal Parts and Products, and Organic Material Storage and Distribution

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve portions of a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts which amend the Massachusetts solvent metal degreasing, surface coating of miscellaneous metal parts and products, and organic material storage and distribution regulations. These revisions consist of revised volatile organic compound (VOC) emission regulations applicable in the entire Commonwealth of Massachusetts. The intended effect of this action is to propose approval of corrections for several deficiencies in Massachusetts' Ozone Attainment Plan.

DATES: Comments must be received on or before October 22, 1992. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

ADDRESSES: Comments may be mailed to Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA and the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 7th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Emanuel Souza, Jr., (617) 565–3246; FTS 835–3246.

SUPPLEMENTARY INFORMATION: On June 7, 1991, Massachusetts' DEP submitted revisions to its SIP for its Ozone Attainment Plan in response to EPA's notices of proposed rulemakings (NPRs) published in the **Federal Register** on May 29, 1990 (55 FR 21755) and October 12, 1990 (55 FR 41553). These revisions consist of revised VOC emissions regulations.

Background

On May 25, 1988, EPA sent a letter to Michael Dukakis, then Governor of Massachusetts, indicating that the Massachusetts SIP was substantially inadequate to attain the ozone standard. EPA requested that the state respond in two phases—the first in the near future and the second following EPA's issuance of a final policy on how the states should correct their SIPs. The first phase included (1) correcting deficiencies and inconsistencies in existing regulations, (2) adopting regulations previously required or committed to but never adopted and (3) updating the base emission inventory for those areas identified as nonattainment.

On June 16, 1988, EPA sent a letter to the acting director of the Massachusetts Department of the Environmental Quality Engineering's (now Massachusetts Department of Environmental Protection (DEP)) Division of Air Quality Control and identified the corrections that needed to be made in the existing regulations for the control of VOC emissions. These corrections were necessary to make Massachusetts' SIP consistent with the CAA as interpreted in EPA's guidance.

The Commonwealth of Massachusetts made changes to its VOC regulations as required by EPA's May 25 and June 16, 1988 letters, and submitted revised adopted VOC regulations as a formal SIP revision on August 17, 1989.

EPA proposed approval of the August 17, 1989 submittal in two notices. A notice proposing partial approval and partial disapproval of the automobile surface coating regulation was published in the **Federal Register** on October 12, 1990 (55 FR 41553). EPA proposed approval of the remaining VOC regulations submitted on August 17, 1989 in the May 29, 1990 NPR.

On November 15, 1990, the Clean Air Act Amendments of 1990 (CAAA) were enacted. In section 182(a)(2)(A) of the amended Act, Congress codified the requirement that states revise their SIPs for ozone nonattainment areas so that they conform with section 172 of the pre-amended Act as interpreted in EPA's pre-amendment guidance. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A), Congress statutorily adopted the requirement that ozone nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone. Areas designated nonattainment before enactment of the Amendments and which retained that designation and were classified as marginal or above as of enactment are required to meet the RACT fix-up requirement. Under section 182(a)(2)(A), those areas were required by May 15, 1991, to correct RACT as it was required under pre-amended section 172(b) as that requirement was interpreted in pre-amendment guidance.[1] The SIP call letters interpreted that guidance and indicated corrections necessary for specific nonattainment areas. The Commonwealth of Massachusetts is designated as a nonattainment area and all areas within the state are classified are serious.[2] Therefore, the entire state was subject to the RACT fix-up requirement and the May 15, 1991 deadline.

On June 7, 1991, Massachusetts submitted revisions to its VOC regulations pursuant to the changes requested in the NPRs published in the **Federal Register** on May 29, 1990 and October 12, 1990. Today's action proposes approval of those revisions made by Massachusetts and submitted on June 7, 1991 which were never before

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[1] Among other things, the pre-amendment guidance consists of the Post–87 policy, 52 FR 45044 (November 24, 1987); the Bluebook, "Issues Relating to VOC Regulations Cutpoints, Deficiencies and Deviations, Clarification to appendix D of the November 24, 1987 **Federal Register** Notice" (of which notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines.

[2] All nonattainment areas in Massachusetts retained their designation of nonattainment and were classified by operation of law pursuant to section 107(d) and 181(a) upon enactment of the Amendments. 56 FR 56694.

proposed by EPA in the **Federal Register**.

The May 29, 1990 NPR listed several corrections Massachusetts needed to make to 310 CMR 7.24, "Organic Material Storage and Distribution," 310 CMR 7.18(8), "Solvent Metal Degreasing" and 310 CMR 7.18(11), "Miscellaneous Metal Parts and Products" regulations. Massachusetts made changes to these regulations and submitted them on June 7, 1991. Because the changes to regulations 310 CMR 7.24, portions of 310 CMR 7.18(8) and portions of 310 CMR 7.18(11) were more extensive than EPA requested in the **Federal Register** on May 29, 1990, EPA is proposing approval of these revisions today.

Content of Revised Regulations

The Massachusetts DEP made the following changes to the VOC regulations:

1. Changes were made to the definitions of "bulk plant" and "vapor balance system" in 310 CMR 7.00 to improve the clarity of the definitions.

2. Massachusetts made changes to three rules: (1) 310 CMR 7.18(8)(a), "Cold Cleaning Degreasing"; (2) 310 CMR 7.18(8)(b), "Vapor Degreasing" and (3) 310 CMR 7.18(8)(c), "Conveyorized Degreasing" consistent with EPA's guidance document: *Regulatory Guidance and Control of Volatile Organic Compound Emissions from 15 Categories of Stationary Sources* (EPA-905/2-78-001). The applicability of 310 CMR 7.18(8)(b) was changed so that any vapor degreaser is subject to the requirements of 310 CMR 7.18(9)(b). Although Massachusetts subsequently has stated that they intend to change this applicability to exempt open top vapor degreasers with an open area smaller than 1 square meter (10.8 square feet) from having to be equipped with a refrigerated chiller as listed in 310 CMR 7.18(9)(b)4.b. or from installing a carbon adsorption system as listed in 310 CMR 7.18(8)(b)4.d., EPA proposes to approve the existing provisions of 310 CMR 7.18(8)(b).

3. A typographical change to 310 CMR 7.20(10)(c)2.

4. 310 CMR 7.18(11), "Miscellaneous Metal Parts and Products," was amended to lower the applicability level. The following changes were made in the regulation:

a. The applicability cutoff was lowered to include sources which have the potential to emit equal to or greater than 10 tons per year of VOCs.

b. Massachusetts added a section exempting coatings used in small amounts. A facility may use up to 55 gallons of exempt coatings per year.

c. Massachusetts has also exempted from the emission limitations of 310 CMR 7.18(11)(b), sources which actually emit less than one ton of VOC per month and less than 10 tons of VOCs per year prior to the application of air pollution control equipment.

d. Section 310 CMR 7.18(11)(a)3. requires sources subject to the regulation to come into compliance by July 1, 1992.

5. Massachusetts amended 310 CMR 7.24(1), "Organic Material Storage Tanks," to include specific inspection requirements for seals in organic material storage tanks. Massachusetts also defined a 95% control efficiency for vapor recovery systems and required that records be kept. This regulation also lists miscellaneous requirements that are consistent with EPA guidance.

6. 310 CMR 7.24(2), "Bulk Terminals and Bulk Plants," details the specific requirements for bulk plants and bulk terminals. The most substantive change is the provision requiring facilities in Berkshire, Dukes and Nantucket counties to install vapor balance systems by April 1, 1993.

Other changes include specifying that bulk terminals may emit no more than 80 milligrams per liter of liquid loaded or unloaded over a six hour period and specifying that the organic material may only be transferred into leak tight tank trucks.

7. 310 CMR 7.24(3), "Distribution of Motor Vehicle Fuel," consolidates all the requirements for Stage I controls at motor vehicle fuel dispensing facilities into one section. The applicability of Stage I is also lowered to 250 gallons for storage tanks constructed after July 1, 1991. Additionally, Stage I controls are not required in Berkshire county. Changes in the Stage I vapor recovery regulations include: requiring that transfers take place through submerged filling; requiring tanks with a capacity of 250 gallons or more and installed after July 1, 1991 to have a vapor balance system; specifying that the vapor-laden delivery vessels can only refill at bulk gasoline terminals and plants which are in compliance with 310 CMR 7.24(2); and recordkeeping requirements.

8. Changes to 310 CMR 7.24(4), "Motor Vehicle Fuel Tank Trucks," consist of deleting the existing section and renumbering 310 CMR 7.24(3) to 7.24(4), correcting internal references, and clarifying some language in this regulation.

Aor additional details on the approvability of each portion of Massachusetts' regulations, see the Technical Support Document prepared on the revision available at the locations listed in the **ADDRESSES** section of this notice. EPA soliciting public comments on the issues discussed in this notice or on other relevant matters.

These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this notice.

PROPOSED ACTION: The additions made to the Massachusetts VOC regulations which were submitted on June 7, 1991 and proposed in this notice meet the RACT requirement of section 182(a)(2)(A) of the CAA and are consistent with EPA's guidance. For the reasons described here and in the Technical Support Document, EPA is proposing to approve the additions made to the Massachusetts VOC regulations on June 7, 1991. These revisions amend Massachusetts' VOC regulations which are part of Massachusetts' Ozone Attainment Plan.

Although EPA is proposing to approve the Massachusetts submittal, EPA would like to note the following issues. (1) 310 CMR 7.18(8), "solvent metal degreasing," does not exempt small open top vapor degreasers as provided by EPA guidance. Massachusetts has stated that it is going to revise 310 CMR 7.18(8)(b) of this regulation to exempt those sources from having to be equipped with a refrigerated chiller or from installing a carbon adsorption system. However, the provision proposed for incorporation in the SIP does not exempt small open top vapor degreasers. EPA believes such an amendment would be approvable. (2) EPA is suggesting that the state amend regulation 310 CMR 7.24(1)(d) to require seals applicable to 310 CMR 7.24(1)(b)(3 or 310 CMR 7.24(1)(c) to meet the requirements listed in 310 CMR 7.24(1)(d). Also, the typographical errors in 310 CMR 7.24(1)(d)3. should be corrected to "21.2 cm^2" and 1.0 in^2". (3) 310 CMR 7.24(4) does not include any reference to the EPA test method pertinent to the annual testing of tank trucks. However, Massachusetts has stated that they would include and submit to EPA, a reference to the test method before EPA takes final approval of these revisions. These changes should be submitted to EPA for approval when Massachusetts makes the corrections outlined above. EPA's final approval of the revisions proposed in this notice, however, will only be contingent upon Massachusetts addressing the third issue outlined above.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a

substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225).

On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Nothing in this section should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of sections 110(a)(2)(A)–(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 14, 1992.

Julie Belaga,

Regional Administrator, Region I.

[FR Doc. 92–22940 Filed 9–21–92; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NM-1-1-5112; FRL-4509-2]

Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Albuquerque/Bernalillo County Regulation 32 for Nonattainment Area Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes approval of a revision to the Bernalillo County, State of New Mexico Implementation Plan (SIP) which includes: Albuquerque/Bernalillo County Air Quality Control Regulation (AQCR) 32, Construction Permits for Nonattainment Areas, as filed with the State Records & Archives Center on March 16, 1989; the July 12, 1989, Supplement for Albuquerque/Bernalillo County Areas Designated Nonattainment, and a July 16, 1989, letter regarding a stack height commitment and a New Source Performance Standard (NSPS)/National Emission Standard for Hazardous Air Pollutants (NESHAPS) performance testing commitment. This proposed SIP revision was submitted by the Governor to EPA on April 14, 1989, and on August 7, 1989, and is intended to establish a program under which new and modified sources may be constructed in areas of Bernalillo County where a National Ambient Air Quality Standard (NAAQS) is being exceeded, without interfering with the continuing progress toward attainment of that standard. AQCR 32 is comparable to the New Mexico Environmental Improvement Board's Air Quality Control Regulation 709, Permits for Nonattainment Areas, as adopted by the State on July 26,1985, and with four revisions as adopted on July 8, 1988. EPA approved this Regulation 709 version on June 4, 1990 (55 FR 22794).

DATES: Comments must be received on or before October 22, 1992.

ADDRESSES: Comments may be mailed to Mr. Thomas Diggs, at the EPA Region 6 Air Programs Branch (Address below). Copies of the documents relevant to this proposed action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least twenty-four hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–AP), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Albuquerque Environmental Health Department, The City of Albuquerque, One Civic Plaza Northwest, P.O. Box 1293, Albuquerque, New Mexico 87103.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Sather or Dr. John Crocker, Planning Section (6T–AP), Air Programs Branch, U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, Telephone (214) 655–7214.

SUPPLEMENTARY INFORMATION:

1. New Source Review Nonattainment Program

The Clean Air Act requires States to implement a preconstruction permit program for new or modified stationary sources that wish to locate in a nonattainment area. See sections 172(c)(5) and 173. In accordance with section 74–2–4 of the State of New Mexico Air Quality Control Act, Bernalillo County is authorized to provide for the local administration and enforcement of the preconstruction permitting requirements of the Clean Air Act as well as the State Act. Bernalillo County and the City of Albuquerque, through a joint Air Quality Control Board (Board), have the sole authority to issue new and modified source permits within the geographical limits of Bernalillo County. The Albuquerque Environmental Health Department (AEHD) implements the Board's requirements. The submitted new source review (NSR) regulation, AQCR 32, would allow the EHD to issue permits to sources in Bernalillo County to construct or modify processes in areas where a NAAQS is being exceeded, without interfering with the continuing progress toward attaining the standard. The EPA first approved the New Mexico Nonattainment Area (part D) SIP, pertaining to review of new sources and modifications, on April 10, 1980 (45 FR 24460), with a condition that revisions to permit regulations be submitted to EPA. The Governor of New Mexico (The Governor), in a May 20, 1980, letter to EPA, committed to continue (in the meantime) the policy of not issuing permits to new or modified stationary sources in New Mexico, including Bernalillo County, nonattainment areas.

EPA has adopted regulations specifying the State new source review provisions that must be adopted by a State to satisfy the requirements of sections 172 and 173. These regulations are found in 40 CFR part 51, subpart I, Review of New Sources and Modifications. A SIP satisfying sections 172(b)(6) and 173 of the Act is required to meet the conditions as set forth in 40 CFR 51.165.

At this time, § 51.165 does not reflect the new major source size, offset ratios, and other nonattainment NSR provisions added by the Clean Air Act Amendments (CAAA) of 1990. Nonetheless, these new provisions add additional requirements for State NSR programs which must be reflected in the applicable SIPs. State SIP revisions incorporating the changes mandated by the CAAA of 1990 are subject to specific pollutant by pollutant deadlines. For

instances, SIP revisions incorporating the changes mandated for carbon monoxide (CO) and ozone nonattainment areas are due by November 15, 1992. EPA is currently in the process of revising its regulations in accordance with the CAAA of 1990 and expects to propose an amended § 51.165 within the near future. Since the SIP revisions proposed for Bernalillo County were submitted prior to passage of the CAAA of 1990 and represent a substantial strengthening of the County's nonattainment preconstruction permitting program, EPA is proposing that the revisions be approved. However, this proposed action does not excuse the County from making the additional changes required by the CAAA of 1990. Indeed, even with the promulgation of the County rules under review in this proceeding, EPA may use its powers under section 113(a)(5) of the Act to challenge any permits issued by the County which are not in substantial compliance with the additional permitting requirements imposed by the CAAA of 1990. See 57 FR 13498, 13555 (April 16, 1992).

The sources to which AQCR 32 apply are new and modified sources that: (1) Are in a nonattainment area and would emit the nonattainment pollutant in a specific amount (100 tons per year), or (2) Are located within an attainment area, but their emissions would have a significant impact on a neighboring nonattainment area. By operation of the law under the CAAA of 1990, Bernalillo County has been designated nonattainment for CO. The nonattainment CO boundaries for Bernalillo County are the Albuquerque Metropolitan Statistical Area (MSA). EPA has also initiated a process to designate the County nonattainment for PM-10. See 56 FR 16274 (April 22, 1991).

EPA reviewed AQCR 32 for compliance with the requirements of title 40 of the Code of Federal Regulations (40 CFR), part 51, and for compliance with part D of title I of the Clean Air Act. Pertinent details of EPA's review are found in the "Evaluation Report for Albuquerque/Bernalillo County Regulation 32—Construction Permits in Nonattainment Areas," January 1991. This evaluation report is available for inspection by interested parties during normal business hours at the EPA Region 6 address listed above. The highlights of the report are given below.

The baseline in AQCR 32 for calculating emission reduction credit for offsets is the most stringent emission limitation applicable to the source, whether Federal or State, including a Federally enforceable permit which is applicable and in effect at the time the application to construct is filed. Where there is no emission limitation for the particular source of offsets in either a City/County AQCR or Federally enforceable permit, actual emissions from which offset credit is obtained will form the baseline. Where the allowable emissions from the offsetting source are greater than its potential to emit, the potential to emit forms the baseline. Shutdown credits for offsetting are also allowed by AQCR 32 with the same restrictions currently found at 40 CFR 51.165(a)(3)(ii)(C). The regulation requires, as a general rule, an emission reduction (offset) that is at least 20 percent greater than the proposed new allowable emissions, allowing the requirement of EPA regulations for a net air quality benefit to be achieved. Provision is made for the excess to be either greater or less than 20 percent, but greater than one-for-one, if in certain limited circumstances another amount is more appropriate. Also, once a source becomes subject to AQCR 32, the source must meet all applicable requirements; i.e. a source could not use required emissions reductions in order to "net out" from further requirements.

It is important to note that the CAAA of 1990, in section 173(c), now require all offset emission reductions to be in actual emissions. Specifically, it must be assured that the total tonnage of increased emissions of an air pollutant from a new or modified source shall be offset by an equal or greater reduction in the actual emissions of such air pollutant from the same or other sources in the area. Albuquerque/Bernalillo County will be required to revise Regulation 32 to address this new requirement. Unlike the pollutant-specific NSR changes (such as the drop in source size in ozone nonattainment areas), the changes Congress made to the general nonattainment permitting provisions in section 173 by the CAAA of 1990 were not tied to any specific SIP-submission deadlines. For this reason, EPA views the changes to section 173 as being immediately applicable to this and all SIP amendments EPA reviews.

Major new sources and major modifications are required by AQCR 32 to meet and maintain the Lowest Achievable Emission Rate (LAER). Additionally, all major stationary sources owned or operated in the State must be in compliance with, or on a compliance schedule for, all applicable emission limitations.

Section L of AQCR 32 contains a provision for banking of emission reductions that will be used as offset credits. The regulation contains requirements to ensure the reductions are surplus, permanent, enforceable, and quantifiable.

The State of New Mexico contains only one area, Bernalillo County, which was granted an extension until December 31, 1987, for attainment of the NAAQS for CO. Former section 172(b)(11)(A) of the Clean Air Act required preconstruction permitting regulations for extension areas to contain a provision requiring proposed new major sources or major modifications to perform alternate siting analysis. Section 173(a)(5) of the CAAA of 1990 provides that as a condition for issuing a permit to construct a major stationary source or major modification in a nonattainment area, "an analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed source demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification." Alternate siting requirements for CO are found in section E.2 of AQCR 32. Albuquerque/Bernalillo County will now be required to revise Regulation 32 to address alternate siting requirements for all regulated pollutants in accordance with the new requirements of the CAAA of 1990.

The definitions in AQCR 32 all either exactly or substantially correlate with the Federal definitions found in the CFR and the Clean Air Act. The Evaluation Report reviews all definitions in AQCR 32.

2. Visibility New Source Review

AQCR 32 requires the County to ensure that proposed new major stationary sources or major modifications which would locate in a nonattainment area and which could potentially degrade visibility in Mandatory Class I Federal areas demonstrate that the sources' emissions will be consistent with making reasonable progress toward the national visibility goal. The national visibility goal is the prevention of any future, and the remedying of any existing, manmade impairment of visibility in certain national wilderness areas, and national and international parks. See section 169A(a)(1) and 40 CFR 51.300(a). Mandatory Class I Federal areas are any areas identified in 40 CFR part 81, subpart D. There are nine Mandatory Class I Federal areas in New Mexico. See 40 CFR 81.421. Two examples of Mandatory Class I Federal areas near Bernalillo County include Bandelier

Wilderness Area (40 kilometers), and Bosque del Apache Wilderness Area (80 kilometers). For the purpose of determining the affected sources' consistency with reasonable progress toward the national visibility goal, AQCR 32 provides that the County may take into account costs and time necessary for compliance, the energy and nonair quality environmental impacts of compliance, and the useful life of the source. See 40 CFR 51.307(c).

On October 23, 1984 (49 FR 42670), EPA proposed Federal regulations for visibility NSR and monitoring and proposed to disapprove the SIPs for 34 States, including New Mexico, and to incorporate the new Federal regulations into those SIPs. To avoid Federal promulgation of these rules, EPA required those States that had not yet done so (including New Mexico) to submit SIP revisions by May 6, 1985, containing a visibility monitoring strategy and visibility NSR regulations in compliance with the provisions of 40 CFR 51.305 (visibility monitoring) and § 51.307 (visibility NSR). EPA promulgated Federal regulations for visibility NSR and visibility monitoring for those States (including New Mexico) which did not adopt necessary SIP revisions by the deadline. See 50 FR 28544, 51 FR 5504 and 51 FR 22937.

The Governor of New Mexico subsequently submitted the Albuquerque/Bernalillo County visibility NSR plan to EPA on April 14, 1988, and August 7, 1989. The NSR plan includes Albuquerque/Bernalillo County Regulation 29—"Prevention of Significant Deterioration," applicable to attainment and unclassified areas, and Regulation 32—"Albuquerque/Bernalillo County Areas Designated Non-Attainment," applicable to non-attainment areas. EPA has reviewed the County's submittal and developed a report entitled "Evaluation Report for the Albuquerque/Bernalillo County Visibility Protection Plan," November 1990. This evaluation report is available for inspection by interested parties during normal business hours at the EPA Region 6 address listed above. As indicated in the evaluation report, Regulation 32 contains all of the visibility NSR requirements specified in 40 CFR 51.307 for nonattainment areas. Since there are no Mandatory Class I Federal areas in Bernalillo County, the County plan was only required to contain visibility NSR regulations. Regulation 29, concerning attainment and unclassified areas, will be addressed in a separate Federal Register notice.

In addition to the provisions described previously, AQCR 32 contains provisions requiring written notification of the affected Federal Land Managers of any proposed new major stationary source or major modification that may affect visibility in any Federal Class I area, and provisions for modeling of the environmental effects of the source or modification and associated growth. The evaluation report referenced above contains a more detailed analysis of AQCR 32's compliance with the requirements set out in 40 CFR 51.307. The visibility protection regulations contained in AQCR 32 pertain to nonattainment area sources and are one element of a comprehensive visibility protection plan. Therefore, the EPA is proposing to approve the Albuquerque/Bernalillo County Regulation 32 as meeting the "nonattainment area" portion for protection of visibility in Mandatory Class I Federal areas under the NSR program, and to revoke the Federal visibility NSR regulations for nonattainment areas promulgated by EPA for Albuquerque/Bernalillo County on February 13, 1986. Thus, if today's proposed action is approved in final form, then it would supplant or displace the Federal visibility rules issued for the State of New Mexico, but only to the extent that those rules implement visibility NSR requirements applicable to nonattainment areas in Bernalillo County.

3. Stack Height Regulations

It is necessary that Regulation 32 be in compliance with the Federal Stack Height and Dispersion Technique Regulations. The Governor of New Mexico submitted to EPA, concurrent with Regulation 32, a SIP revision for Stack Height and Dispersion Technique Regulations (Regulation 33). Regulation 33 was approved by EPA on March 5, 1991. See 56 FR 9173.

The EPA's stack height regulations were challenged in *NRDC* v. *Thomas*, 838 F. 2d 1224 (D.C. Cir. 1988). On January 22, 1988, the U.S. Court of Appeals for the D.C. Circuit issued its decision affirming the regulations in large part, but remanding three provisions to the EPA for reconsideration. These are:

1. Grandfathering pre-October 11, 1983, within-formula stack height increases from demonstration requirements (40 CFR 51.100(kk)(2));
2. Dispersion credit for sources originally designed and constructed with merged or multiflue stacks (40 CFR 51.100(hh)(2)(ii)(A)); and
3. Grandfathering pre-1979 use of the refined H + 1.5L formula (40 CFR 51.100(ii)(2)).

Under this program, AEHD will be issuing permits and establishing emission limitations that may be affected by the court ordered reconsideration of the stack height regulations promulgated on July 8, 1985 (50 FR 27892). For this reason, the EPA requires that the AEHD include the following caveat in all potentially affected permit approvals until the EPA completes its reconsideration of remanded portions of the regulations and promulgates any necessary revisions:

> In approving this permit, the Albuquerque Environmental Health Department has determined that the application complies with the applicable provisions of the stack height regulations as revised by the EPA on July 8, 1985 (50 FR 27892). Portions of the regulations have been remanded by a panel of the U.S. Court of Appeals for the D.C. Circuit in *NRDC* v. *Thomas*, 838 F. 2d 1224 (D.C. Cir. 1988). Consequently, this permit may be subject to modification if and when the EPA revises the regulation in response to the court decision. This may result in revised emission limitations or may affect other actions taken by the source owners or operators.

The AEHD made an enforceable commitment to include this caveat in all affected permits in a letter from the Director, Environmental Health Department, to the EPA Region 6 Regional Administrator dated July 18, 1989. This letter will be approved as part of the SIP if final approval action is taken on the SIP revision.

4. Required Amendments to AQCR 32

Before EPA can finally approve the NSR regulation, AQCR 32 must be amended to address four issues:

(A) AQCR 32 has provisions for offset exemptions in section I (Exemptions to D.4. and D.5). The exemption for resource recovery facilities, for temporary emission sources, and for sources which must switch fuels, must be deleted from the regulation. Neither 40 CFR 51.165 nor the CAAA of 1990 allow offset exemptions for these or any other types of sources.

(B) AQCR 32 must also have Section A (Applicability) revised. Specifically, section A.3 should be deleted, and sections A.1 and A.5(a) must be revised to read as follows:

> A. Applicability
>
> 1. Any person constructing any new major stationary source or major modification, shall obtain a permit from the department in accordance with the requirements of this regulation prior to the start of construction or modification if either of the following conditions apply:
>
> a. The major stationary source or major modification will be located within a

nonattainment area so designated pursuant to section 107 of the Clean Air Act and will emit a regulated pollutant for which it is major and for which the area is designated nonattainment; or

b. The major stationary source or major modification will be located within an area designated attainment or unclassifiable pursuant to section 107 of the Clean Air Act and will emit a regulated pollutant for which it is major and the ambient impact of such pollutant would exceed any of the significance levels in Table 1 at any location that does not meet any national ambient air quality standard for the same pollutant.(See section A.5).

5. A new major stationary source or major modification which meets the criteria of section A.1.(b) shall demonstrate that the source or modification will not cause or contribute to a violation of any National Ambient Air Quality Standard by meeting the following requirements and no others of this regulation:

(i) Section D.4(b) regarding emission offsets;

(ii) Section D.5 regarding a net air quality benefit;

(iii) Section F—Emission Offset Baseline;

(iv) Section G—Emission Offset; and

(v) Section H—Air Quality Benefit.

(C) Albuquerque/Bernalillo County will now be required to revise Regulation 32 to address alternate siting requirements for all regulated pollutants in accordance with section 173(a)(5) of the CAAA of 1990. Specifically, section E.2 must be revised to require the owner or operator of proposed major stationary sources or major modifications to conduct an analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed sources which demonstrate that benefits of the proposed sources significantly outweigh the environmental and social costs imposed as a result of their location, construction, or modification.

(D) As noted earlier, the CAAA of 1990, in section 173(c), now require all offset emission reductions to be in actual emissions. Specifically, it must be assured that the total tonnage of increased emissions of an air pollutant from a new or modified source shall be offset by an equal or greater reduction in the actual emissions of such air pollutant from the same or other sources in the area. Albuquerque/Bernalillio County will be required to revised Regulation 32 to adequately address this new requirement by revising section D.4.a.

5. Discussion on "Plantwide Definition" of Stationary Source

With regard to Section K, Definition number 17, "Major Stationary Source," The Albuquerque/Bernalillo County Air Quality Control Board (Board) has selected the "plantwide definition." On October 14, 1981, the EPA revised the NSR regulations in 40 CFR part 51 to give States the option of adopting the "plantwide" definition of stationary source in nonattainment areas (see 46 FR 50766). This definition provides that only physical or operational changes that result in a net increase in emissions at the entire plant require an NSR permit. In 1984, in *Chevron, U.S.A., Inc.* v. *NRDC, Inc.*, 104 S. Ct. 2778, the Supreme Court agreed that the plantwide definition is fully consistent with the Act's goal of maximizing State flexibility and allowing reasonable economic growth. Likewise, the Court recognized that EPA had advanced a reasonable explanation for its conclusion that the plantwide definition serves the Act's environmental objectives as well (see 104 S. Ct. at 2792).

On April 14, 1989, and August 7, 1989, the Governor of New Mexico submitted a SIP revision for Albuquerque/Bernalillo County that would add an NSR program for nonattainment areas to the SIP. This program uses a plantwide definition of source and requires an additional 20% emissions offset when sources are subject to major NSR requirements. Therefore, EPA here proposes to approve the adoption of a plantwide definition in accordance with its 1981 action.

Proposed Action: EPA is proposing to approve the Albuquerque/Bernalillo County Nonattainment Area permit SIP revision. Specifically, EPA is proposing to approve (1) AQCR 32, as filed with the State Records and Archives Center on March 16, 1989; (2) the Supplement to AQCR 32 as adopted by the Board on July 12, 1989, and (3) the July 18, 1989, committal letter agreeing not to waive or amend NSPS or NESHAPS mandated performance testing, and agreeing to comply with the terms of the Stack Height Regulation (Regulation 33) prior to the issuance of any permit. Final approval action on this pending SIP revision submittal is contingent upon incorporation of the previously discussed amendments into AQCR 32. The AEHD has agreed to incorporate these amendments into AQCR 32. EPA is also proposing to approve the SIP revision submittal as meeting the "nonattainment area" portion of the NSR requirements (40 CFR 51.307) for protection of visibility in Mandatory Class I Federal areas.

Finally, EPA is also proposing to revise the condition found at 40 CFR 52.1628(b), which prohibits the issuance of permits to new or modified stationary sources, as specified in the Governor's letter of May 20, 1980. A construction ban will still be in effect for all major stationary sources or major modifications in Bernalillo County, if the emissions from such facilities will cause or contribute to concentrations of CO in Bernalillo County (40 CFR 52.1627(a)(1)). This construction ban will remain in effect until a complete CO SIP revision for Bernalillo County is submitted by the State of New Mexico and approved by EPA. This complete SIP revision must include a commitment to correcting deficiencies in the vehicle inspection/maintenance (I/M) program, a comprehensive CO emission inventory, and incorporation of an oxygenated fuels program in order to assure attainment and maintenance of the NAAQS for CO by December 31, 1995.

Based on the above evaluation, EPA is proposing approval of this SIP revision which will result in a strengthening of the Albuquerque/Bernalillo County SIP. As discussed, future revisions to this plan regarding Nonattainment Area Permitting must be made in accordance with the requirements of the CAAA of 1990.

Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the Clean Air Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. § 7410(a)(2).

Executive Order 12291

The Office of Management and Budget has exempted this rule from the

requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 8, 1992.

Joe D. Winkle,

Acting Regional Administrator (6A).

[FR Doc. 92–22938 Filed 9–21–92; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NM–3–1–5119 FRL–4509–3]

Approval and Promulgation of Air Quality Plans; New Mexico; Albuquerque/Bernalillo County Prevention of Significant Deterioration Program, Including Nitrogen Dioxide Increment Provisions and a Continuous Emission Monitoring Negative Declaration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes approval of a revision to the State of New Mexico Implementation Plan (SIP) which includes: Albuquerque/Bernalillo County Air Quality Control Regulation (AQCR) 29, Prevention of Significant Deterioration (PSD), as filed with the State Records and Archives Center on March 16, 1989, and all of the revisions to AQCR 29 filed on April 24, 1990; and the July 12, 1989, PSD Supplement and the April 11, 1990, revisions to the PSD Supplement and § § 2.31, 2.32, 2.33, 2.34 and 2.51 of AQCR 2, Definitions, as filed with the State Records and Archives Center on March 16, 1989. This proposed SIP revision was first submitted by the Governor to EPA on April 14, 1989, and on August 7, 1989, and is intended to establish a program under which major stationary sources or major modifications can be constructed in attainment areas and unclassified areas without causing significant deterioration of the air quality in those areas. In addition, this action also proposes approval of revisions to AQCR 29 to include nitrogen dioxide (NO_2) increment provisions, and a continuous emission monitoring (CEM) negative declaration (in the Supplement). These additional revisions were submitted by the Governor to EPA by letter dated May 1, 1990.

DATES: Comments must be received on or before October 22, 1992.

ADDRESSES: Comments may be mailed to Mr. Thomas Diggs, at the EPA Region 6 Air Programs Branch (address below). Copies of the documents relevant to this proposed action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least twenty-four hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–AP) 1445 Ross Avenue, Dallas, Texas 75202–2733.

Albuquerque Environmental Health Department, The City of Albuquerque, One Civic Plaza Northwest, P.O. Box 1293, Albuquerque, New Mexico 87103.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Sather of Dr. John Crocker, Planning Section (6T–AP), Air Programs Branch, U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 655–7214.

SUPPLEMENTARY INFORMATION:

1. Prevention of Significant Deterioration (PSD) Program

The Clean Air Act (CAA) (as amended) sets forth requirements for plans for attainment and unclassified areas in part C. EPA is required to develop regulations to fulfill the requirements of the CAA. The regulations that fulfill this requirement regarding PSD are found in 40 CFR 51.166. The Albuquerque/Bernalillo County PSD program has been reviewed against the requirements found in 40 CFR 51.166 and in the Clean Air Act Amendments (CAAA) of 1990. When the PSD program for Albuquerque/Bernalillo County is approved in the SIP, the City/County will be authorized to issue permits to allow major sources to construct or modify processes in attainment or unclassified areas in Bernalillo County. The Governor of New Mexico submitted the proposed PSD SIP revision for Albuquerque/Bernalillo County to EPA on April 14, 1989, and August 7, 1989, and on May 1, 1990. The SIP revision contained AQCR 29 and the supplement to AQCR 29. AQCR 29 and the Supplement apply to all of Bernalillo County, which, in accordance with section 74–2–4 of the State of New Mexico Air Quality Control Act, is authorized to provide for the local administration and enforcement of the Act. This PSD SIP revision meets the Federal requirements including those for best available control technology (BACT) and modeling. The details of EPA's evaluation and our determination that the PSD program in Albuquerque/Bernalillo County meets the Federal requirements are addressed in EPA's Technical Support Document dated January 1991.

The Federal regulations in 40 CFR 51.166(j) require applicants for PSD permits to consider and install the BACT in construction of new major sources or modification of existing major stationary sources. AQCR 29 and the Supplement meet the Federal requirements concerning BACT in sections E and P.10 of AQCR 29 ("Control Technology Requirements"), and in section 8.b of the Supplement.

Section 40 CFR 51.166(l) of the Federal PSD regulations requires the applicants to use the EPA approved models for all PSD permitting purposes. AQCR 29 and the Supplement meet the Federal requirements concerning ambient air quality modeling in section H of AQCR 29 and in section 5 of the Supplement by requiring the use of EPA approved models.

2. Nitrogen Dioxide Increment Provisions

To prevent significant deterioration of air quality due to emissions of nitrogen oxides, NO_2 increment provisions have been incorporated into AQCR 29. The provisions follow the requirements set forth in 40 CFR 51.166 and the final rule pertaining to the Prevention of Significant Deterioration for Nitrogen Oxides (53 FR 40656). The NO_2 increment provisions establish the maximum increase in ambient nitrogen dioxide concentrations allowed in an area above the baseline concentration as defined in section P.8. of AQCR 29.

3. Continuous Emission Monitoring Negative Declaration

The April 11, 1990, revisions to the Supplement added a negative declaration regarding continuous emissions monitoring (CEM). This revision specifically addresses 40 CFR part 51, appendix P, § 1.1 (Minimum Emission Monitoring Requirements—Applicability). There is an allowance recognized by the Environmental Protection Agency (EPA) for negative declarations regarding Federal CEM requirements if there are no existing sources such as would be required by 40 CFR 51.214 and 40 CFR part 51, appendix P, to have continuous emission monitoring. The narrative explains that as of April 11, 1990, there were no

existing sources in Bernalillo County such as would be required by 40 CFR 51, Appendix P, to have continuous emissions monitoring.

4. Visibility New Source Review

AQCR 29 requires the County to ensure that proposed new major stationary sources or major modifications which would locate in an attainment or unclassified area and which could potentially degrade visibility in Mandatory Class I Federal areas demonstrate that the sources' emissions will be consistent with making reasonable progress toward the national visibility goal. The National visibility goal is the prevention of any future, and the remedying of any existing, manmade impairment of visibility in certain national wilderness areas, and national and international parks. See section 169A(a)(1) and 40 CFR 51.300(a). Mandatory Class I Federal areas are any areas identified in 40 CFR part 81, subpart D. There are nine Mandatory Class I Federal areas in New Mexico. See 40 CFR 81.421. Two examples of Mandatory Class I Federal areas near Bernalillo County include Bandelier Wilderness Area (40 kilometers) and Bosque del Apache Wilderness Area (80 kilometers). For the purpose of determining the affected sources' consistency with reasonable progress toward the national visibility goal, AQCR 29 provides that the County may take into account costs and time necessary for compliance, the energy and nonair quality environmental impacts of compliance, and the useful life of the source. See section 169A(g)(1) of the Clean Air Act (CAA).

The CAAA of 1990 revised sections 162(a) and 164(a) of the CAA to specify that the boundaries of areas designated as Class I must conform to all boundary changes at such parks and wilderness areas made since August 7, 1977, and any changes that may occur in the future. EPA interprets the current regulations at 40 CFR 52.21 as being able to accommodate these statutory changes, and no regulatory revisions are necessary at this time in order to implement these changes. For a discussion of EPA's policy regarding the implementation of the boundary change, please consult the memorandum entitled "New Source Review Program Transitional Guidance," from John S. Seitz, Director, Office of Air Quality Planning and Standards, March 11, 1991. See 57 FR at 18075 (April 28, 1992). In addition, by letter dated April 20, 1992, the City of Albuquerque has committed to interpreting the PSD regulations in a manner consistent with the changes in sections 162(a) and 164(a) of the Act as interpreted by EPA.

On October 23, 1984 (49 FR 42670), EPA proposed Federal regulations for visibility new source review and monitoring and proposed to disapprove the State Implementation Plans (SIPs) for 34 States, including New Mexico, and to incorporate the new Federal regulations into those SIPs. To avoid Federal promulgation of these rules, EPA required those States that had not yet done so (including New Mexico) to submit SIP revisions by May 6, 1985, containing a visibility monitoring strategy and visibility new source review (NSR) regulations in compliance with the provisions of 40 CFR 51.305 (visibility monitoring) and 51.307 (visibility NSR). EPA promulgated Federal regulations for visibility NSR and visibility monitoring for those States (including New Mexico) which did not timely adopt necessary SIP revisions. See 50 FR 28544, 51 FR 5504 and 51 FR 22937.

The Governor of New Mexico subsequently submitted the Albuquerque/Bernalillo County visibility NSR plan to EPA on April 14, 1989, and August 7, 1989. The NSR plan includes Albuquerque/Bernalillo County Regulation 29—"Prevention of Significant Deterioration," applicable to attainment and unclassified areas, and Regulation 32—"Albuquerque/Bernalillo County Areas Designated Nonattainment," applicable to nonattainment areas. EPA has reviewed the County's submittal and developed a report entitled "Evaluation Report for the Albuquerque/Bernalillo County Visibility Protection Plan," November, 1990. This evaluation report is available for inspection by interested parties during normal business hours at the EPA Region 6 address listed above. As indicated in the evaluation report, Regulation 29 contains all of the visibility NSR requirements specified in 40 CFR 51.307 for attainment or unclassified areas. Since there are no Mandatory Class I Federal areas in Bernalillo County, the County plan was only required to contain visibility NSR regulations. Regulation 32, concerning nonattainment areas, will be addressed in a separate FR notice.

In addition to the provisions described previously, AQCR 29 contains provisions requiring written notification of the affected Federal Land Managers of any proposed new major stationary source or major modification that may affect visibility in any Federal Class I area, and provisions for modeling of the environmental effects of the source or modification and associated growth. The evaluation report referenced above contains a more detailed analysis of AQCR 29's compliance with the requirements set out in 40 CFR 51.307. The visibility protection regulations contained in AQCR 29 pertain to attainment and unclassified area sources and are one element of a comprehensive visibility protection plan. Therefore, the EPA is also proposing to approve the Albuquerque/Bernalillo County Regulation 29 as meeting the "attainment area" portion for protection of visibility in Mandatory Class I Federal areas under the NSR program. Thus, if today' proposed action is approved in final form, then it would supplant or displace the Federal visibility rules issued for the State of New Mexico, but only to the extent that those rules implement visibility new source review requirements applicable to attainment and unclassifiable areas in Bernalillo County.

5. Concluding Remarks and Administrative Details

EPA reviewed AQCR 29 and the Supplement for compliance with the requirements of title 40 of the Code of Federal Regulations (40 CFR), part 51.166 pertaining to PSD requirements including NO_2 increment provisions, 40 CFR part 51, appendix P, pertaining to CEM requirements, and part C of Title I of the CAA, as amended. This review is available at the EPA Region 6 address listed above in the technical support document.

There are four administrative corrections that need to be made in subsequent adoptions of this regulation. They do not prevent the approval of this regulation at this time.

A. In section P. 7, Table 2, Table 4, and Table 6, "mgm/m³" needs to be changed to "μgm/m³."

B. In the Regulation Section E.3., the phrase, "* * * appropriate at the *latest* reasonable time * * *" should read, "appropriate at the *least* reasonable time* * *", in accordance with 51.166(j)(4).

C. Under definitions, section P. 11, "Building, structure, facility, or installation," the U.S. Government stock number is incorrectly listed as 041–001–00066–6. It should read 4101–0066 in accordance with 40 CFR 51.166(b)(6).

D. The Clean Air Act Amendments of 1990 amended section 169(1) to expand the list of major emitting facilities subject to PSD requirements to include municipal incinerators (municipal waste combustors) capable of charging more than 50 tons of refuse per day with a potential to emit more than 100 tons per year of any regulated pollutant. Under

prior law, only municipal incinerators capable of charging more than 250 tons of refuse per day were subject to the 100 tons per year major source threshold for PSD applicability. EPA interprets this statutory change as being immediately effective. The City of Albuquerque, by their updated NSPS/NESHAP delegation agreement, has the authority to issue PSD permits to this new class of PSD major sources. In addition, the City will formally add this new class of PSD major sources to AQCR 29 at the next adoption of the regulation.

Proposed Action

EPA is proposing to approve (1) Albuquerque Environmental Health Department (AEHD) Air Quality Control Regulation 29 as filed with the State Records and Archives Center on March 16, 1989, and revisions to AQCR 29 as filed on April 24, 1990; (2) The July 12, 1989, Supplement for AQCR 29, and as amended on April 11, 1990, and (3) Sections 2.31, 2.32, 2.33, 2.34, and 2.51 of AQCR 2, Definitions, as filed with the State Records and Archives Center on March 16, 1989. The administrative corrections referenced above will need to be made during the next adoption of revisions to Regulation 29 and the Supplement, but the need for these corrections will not prevent the approval of the PSD SIP at this time. EPA is also proposing to approve the SIP revision submittal as meeting the "attainment area" portion of the NSR requirements (40 CFR 51.307) for protection of visibility in Mandatory Class I Federal areas.

The 1990 Amendments added a new section 302(z) of the Act defining the term "stationary source" as generally any source of an air pollutant except those emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in section 216. EPA's initial view is that the definition of stationary source in the PSD regulations is flexible enough to accommodate new section 302(z) without requiring regulatory revisions. By letter dated April 20, 1992, the City of Albuquerque has committed to interpreting the regulations in a manner consistent with this statutory addition.

The 1990 Amendments also revised section 169(3) of the Act to specify that "clean fuels" should be considered in a BACT analysis, and to provide that a source utilizing clean fuels, or any other means, to comply with the BACT requirement shall not be allowed to increase above levels that would have been required under section 169(3) prior to the 1990 CAAA. EPA has interpreted the new statutory language regarding clean fuels as merely codifying present practice under this Act, under which clean fuels are an available means of reducing emissions to be considered along with other approaches in identifying BACT-level controls. Please reference the letter from Will G. Rosenberg, Assistant Administrator, to Henry Waxman, Chairman, Subcommittee on Health and the Environment, U.S. House of Representatives, October 17, 1990. Accordingly, EPA believes that no regulatory revisions are necessary in order to implement these statutory changes. By letter dated April 20, 1992, the City of Albuquerque has committed to interpreting the revised language in section 169(3) in a manner consistent with EPA's interpretation.

The EPA has reviewed and evaluated the Albuquerque/Bernalillo County PSD program, including nitrogen dioxide increment provisions and a continuous emission monitoring negative declaration. The EPA's preliminary determination is that the Albuquerque/Bernalillo County PSD program is adequate for authorizing the AEHD to issue and enforce the PSD permits in most areas of Bernalillo County. The EPA will retain authority for reviewing, issuing, and enforcing the PSD permits on Indian lands in Bernalillo County, in accordance with 40 CFR 52.21 and other applicable regulatory provisions. The EPA has reviewed this request for revision of the Federally-approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment. With respect to all of the statutory changes discussed in today's notice, EPA plans to undertake national rulemaking in the near future to adopt clarifying changes to its regulations. Upon final adoption of those regulations, EPA will call upon States with approved PSD programs, including Albuquerque, to make corresponding changes in their SIPs. Based on the above evaluation, the EPA proposes to approve the Albuquerque/Bernalillo County PSD program.

The Albuquerque/Bernalillo County PSD SIP revision does not apply to sources located or wanting to locate on Indian lands. This PSD SIP revision is proposed to be approved under the statutory requirements of sections 110 and 160–169A of the Clean Air Act (the Act), 42 U.S.C. 7410 and 7470–7491.

Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the Clean Air Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671Q

Dated: September 8, 1992.

Joe D. Winkle,

Acting Regional Administrator (6A).

[FR Doc. 92–22944 Filed 9–21–92; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 413

[BPD–585–P]

RIN 0938–AE79

Medicare Program; Payment for Nursing and Allied Health Education

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would set forth in regulations our policy on Medicare payment for the costs of approved nursing and allied health education programs, an action directed by section 6205(b)(2) of the Omnibus Budget Reconciliation Act of 1989. In addition, it would implement the provisions of sections 4004(b) (1) and (2) and 4159(b) (1) and (2) of the Omnibus Budget Reconciliation Act of 1990. In general, except for the changes required by the latter statute, the provisions set forth in this proposed rule restate or clarify our current policies governing these costs, which have been previously set forth in the Provider Reimbursement Manual and other documents but have not been included in the regulations. We also are proposing to amend the list of approved nursing and allied health education programs and to clarify the payment methodology for certified registered nurse anesthetist education programs.

DATES: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on November 23, 1992.

ADDRESSES: Mail written comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–685–P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Due to staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. If comments concern information collection or recordkeeping requirements, please address a copy of comments to: Office of Management and Budget, Office of Information and Regulatory Affairs, room 3001, New Executive Office Building, Washington, DC 20503, Attention: Allison Herron Eydt.

In commenting, please refer to file code BPD–685–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202–245–7890).

FOR FURTHER INFORMATION CONTACT: Barbara Wynn, (410) 966–4529.

SUPPLEMENTARY INFORMATION:

I. Background

Medicare has historically paid providers for its share of the costs they incur in connection with approved educational activities. The activities may be broken down into the following three general categories to which different payment policies apply:

- Approved graduate medical education (GME) programs in medicine, osteopathy, dentistry, and podiatry. Current policy on Medicare payment for GME costs is found at 42 CFR 413.86, which was added by a final rule published in the **Federal Register** on September 29, 1989 (54 FR 40286). In general, for each hospital cost reporting period beginning on or after July 1, 1985, GME costs are paid on the basis of a hospital-specific per resident amount multiplied by the hospital's weighted number of full-time equivalent (FTE) residents for that cost reporting period.
- Approved nursing and allied health (paramedical) education programs operated by the provider. The costs of these programs are excluded from the definition of inpatient operating costs and are not included in the calculation of payment rates under the prospective payment system or in the calculation of the target amount subject to the rate of increase ceiling for hospitals and hospital units excluded from the prospective payment system. These costs are separately identified and "passed through" (that is, paid on a reasonable cost basis).
- Other educational programs and activities.

All other costs that can be categorized as educational programs and activities are considered to be part of normal operating costs and have been covered by the per case payments made under the inpatient hospital prospective payment system for hospitals subject to that system or on the basis of reasonable cost subject to the rate-of-increase limits for hospitals and hospital units excluded from that system.

This proposed rule discusses the history of Medicare and the costs associated with approved nursing and allied health education programs and sets forth our proposed policy on payment for these costs.

A. The Social Security Amendments of 1965 (Pub. L. 89–97)

The subject of Medicare payment for a provider's costs of educational activities arose during the committee hearings prior to the establishment of the Medicare program with the enactment of Public Law 89–97. In January and February 1965, a representative from the American Hospital Association (AHA) testified before the House Committee on Ways and Means. The representative testified that the AHA advocated that third parties pay a reasonable amount for education within the hospitals, not only for nurses but also for interns, residents, technicians, and the other allied health fields (H.R. Rep. No. 213, 89th Cong., 1st Sess. 33 (1965)). At the same hearing, the Commissioner of the Social Security Administration testified that, on the matter of educational costs, the principles of the AHA would be followed.

Thus, in complying with the reports of the committee, the drafters of the regulations implementing title XVIII of the Act were guided by the "Principles of Payment for Hospital Care" first published by the AHA in 1953, with slight modification in 1961 and 1963. The AHA's Reimbursement Principle No. 2.302 stated that, "In determining reimbursable cost, a reasonable amount for medical, nursing and other education not reimbursed through tuition, or through scholarships, grants, and other community sources is a legitimate inclusion in the interest of continuing to upgrade quality of service to the community." The publication went on to comment that—

> Ideally, the cost of educating and training the technical and professional health services personnel needed for community service, for industry, or for other health activities should be financed by the whole community through a combination of public resources and private contributions, rather than by the sick patient representing a small percentage of the community who is usually in the poorest position to meet such cost. It will be necessary, however, that the cost of such programs be considered as a factor in determining reimbursable cost of hospital service until the community is prepared to assume this educational responsibility. Hospitals and third-party purchasers must seek methods for transferring this cost to the whole community through concerted joint effort. It must be borne in mind that nursing education traditionally has been supported by hospital income and by the service rendered by student nurses in hospitals. While financing from other methods must be developed, nothing must be done to discourage the education of increasing numbers of nurses prior to the time that such cost can be transferred to other sources.

Title XVIII of the Act created a 16-member body to provide advice in the formulation of Medicare regulations. This group, the Health Insurance Benefits Advisory Council, met in December 1965 and included the costs of educational activities in its discussion of Medicare reimbursable costs. The minutes of this meeting show that the Council considered the following principle: "A part of the net cost of educational activities shall be included as an element of reimbursable cost." The Council accepted the principle, subject to the inclusion of the word "approved" before the words "educational activities." It asked the staff to study further the problem of differentiating between teaching related to patient care and teaching unrelated to patient care. In January 1966, when the Council met again, comment was made that the resolutions comprise only a basic statement of policy and that the Administration would have to refine the policies to adapt them to various situations, formulate and publish regulations, and establish guidelines and procedures, both to implement the policy recommended by the Council and to prevent abuses. This position was consistent with the definition of "reasonable cost" in the original section 1861(v)(1)(A) of the Act, which authorizes the Secretary to define "reasonable costs" in various circumstances by issuing implementing regulations. The Council confirmed by formal voting procedures that "the net cost of approved educational activities should be included as an element of reimbursable cost."

There was no statutory requirement in Public Law 89–97 nor in any subsequent amendment to title XVIII of the Act specifying the types of nursing and allied health education programs for which Medicare should pay its share of the costs. However, both the House and Senate Committee reports accompanying Public Law 89–97 indicate that Congress favored including a part of educational expenses as allowable costs:

> Many hospitals engage in substantial educational activities, including the training of medical students, internship and residency programs, the training of nurses and the training of various paramedical personnel. Educational activities enhance the quality of care in an institution and it is intended, until the community undertakes to bear such education costs in some other way, that a part of the net cost of such activities (including stipends of trainees as well as compensation of teachers and other costs) should be considered as an element in the cost of patient care, to be borne to an appropriate extent by the hospital insurance program.

(S. Rep. No. 404, 89th Cong., 1st Sess. 36 (1965); H.R. Rep. No. 213, 89th Cong., 1st Sess. 32 (1965))

(In this document, we have substituted the term "allied health" for "paramedical," since Medicare currently allows the costs of approved training programs for medical records librarians, medical technologists, and other disciplines for which the term "allied health" is more appropriate, and this is the term most commonly used to refer to this category of health care professions.)

B. Net Cost of Approved Educational Activities

The regulation that evolved from this legislation, 20 CFR 405.421 (redesignated as 42 CFR 405.421 on September 30, 1977 and as 42 CFR 413.85 on September 30, 1986), was first published in the **Federal Register** on November 22, 1966 (31 FR 14814). In the original regulation (20 CFR 405.421(b)(2)), net cost was defined as "the cost of approved educational activities (including stipends of trainees, compensation of teachers, and other costs), less any reimbursements from grants, tuition, and specific donations." The regulations also defined approved educational activities as "formally organized or planned programs of study usually engaged in by providers in order to enhance the quality of patient care in an institution." (20 CFR 405.421(b)(1).)

The types of costs that were allowable as costs of approved educational activities early in the Medicare program were set forth in both the applicable regulation and in Chapter 4 of the Provider Reimbursement Manual (HCFA–Pub. 15–1). The original regulation specifically excluded "orientation" and "on-the-job training" from the definition of approved educational activities (20 CFR 405.421(d)). Further, as early as 1971, Chapter 4 of the Provider Reimbursement Manual stated that "any costs of usual patient care" are also excluded from that definition (§ 404.2). The Provider Reimbursement Manual specified that the costs of usual patient care were allowable, but only as normal operating costs and not as educational costs. On the other hand, during this time, the Provider Reimbursement Manual did include within the scope of allowable educational activities, under certain conditions, such other educational expenses as costs associated with refresher and postgraduate programs, part-time education for bona fide employees of the provider, travel expenses for educational workshops, and training in the use of medical appliances for patients or their care-givers.

Both the regulation and the Provider Reimbursement Manual repeated the congressional committee report language from 1965 that Medicare would share in the costs of educational activities until communities bore them in some other way. Neither of these sources, however, included any criteria to use in determining whether responsibility for a program had been assumed by a community. Nonetheless, it was clearly stated in both the regulation and the Provider Reimbursement Manual that it was not intended that Medicare should pay for increased costs resulting from a redistribution of costs from educational institutions to providers (20 CFR 405.421(c) and § 404.2 of the Provider Reimbursement Manual).

C. The Social Security Amendments of 1972

A significant change to Medicare reasonable cost reimbursement rules occurred with the enactment of section 223 of the Social Security Amendments of 1972 (Pub. L. 92–603), which authorized the Secretary to set prospective limits on the costs reimbursed by Medicare. Under that authority, limits on hospital general inpatient routine service costs were published in the **Federal Register** on June 6, 1974 (39 FR 20164). The costs of approved educational activities were not, at this time, excluded from costs subject to the limits. Instead, the regulations allowed a provider to apply for an exception to the limits for costs attributable to the operation of an approved medical education program (20 CFR 405.460(f)(2)).

D. The November 1975 Provider Reimbursement Manual Revision

In the early 1970's, it became apparent that Medicare's liability for the costs of nursing and allied health education activities was expanding to programs that were actually college or university programs to which the providers furnished some degree of support. In November 1975, § 404.2 of the Provider Reimbursement Manual was revised to specify that an approved nursing or allied health education program had to be operated by a provider for its costs to be allowable as the costs of approved educational activities. Further, the revision attempted, for the first time, to give guidance to intermediaries in determining when the community had undertaken the financing of an educational program. The pertinent part of the revision reads as follows:

> However, it is not intended that Medicare should be responsible for expenditures by a

provider in subsidizing such programs that are operated by other organizations. Under Medicare principles of reimbursement, an approved nursing or paramedical education program must be operated by a provider (or jointly by a group of providers) for Medicare to recognize the costs of the program as allowable costs of the provider(s).

Where a provider furnishes financial or other support (e.g., donated classroom or clinical space) to an approved nursing or paramedical education program of which it is not the legal operator, expenses attributable to the provider's support of the program are considered to be a contribution to a community effort, and may not be included in the hospital's allowable costs for Medicare reimbursement purposes.

Example: A hospital furnishes support to approved RN and Licensed Practical Nursing education programs, but is not the legal operator of these programs. The RN program is operated by a local university and the LPN program is operated by the county public school system. The students in both programs are enrolled as students of these organizations rather than of the hospital. The facilities and financial support needed to operate the programs come from various sources. The hospital allows its facilities to be used for the clinical training of students in both programs and, in addition, makes an annual cash contribution to the RN program. The remaining costs of the programs are met through the use of county and State tax revenues and other funds received by the programs' operators. Therefore, operational responsibility for the RN and LPN programs is considered to be borne by the community, and the hospital's financial support of the programs, including both its cash contribution and costs attributable to the donated clinical facilities and supplies, is considered to be a contribution to a community effort which may not be included in the hospital's allowable costs for Medicare reimbursement purposes.

Since the students in the nursing education programs receive their clinical training on location at the hospital, however, costs the hospital incurs for patient care services furnished by the students during this part of their training are includable in the hospital's allowable costs.

Over the next several years, attempts by intermediaries to apply this policy were consistently overruled by the Provider Reimbursement Review Board (PRRB). These PRRB decisions were consistently reversed by the Administrator of HCFA. Several of these cases were then litigated in the Federal courts, and in each case that went to a decision on the merits, the courts upheld the PRRB.

E. The St. John's Hickey Memorial Hospital Decision

The most significant of these decisions is generally considered to have been *St. John's Hickey Memorial Hospital, Inc.* v. *Califano*, 559 F.2d 803 (7th Cir. 1979). In that case, the U.S. Court of Appeals for the Seventh Circuit sustained the decision of the PRRB that § 405.421(c) (now § 413.85(c)) does not require the provider to be the operator of the associate degree nursing program, but only requires the provider to engage in such activity. The court gave little deference to the policy issuance set forth in the Provider Reimbursement Manual, considering it a policy guide that was neither published in the **Federal Register** nor part of the regulations.

HCFA policy was amended to correspond with the ruling of the court on October 1, 1979, in the HCFA Administrator's decision on PRRB Decision No. 79–D50. In that Administrator's decision, the Deputy Administrator stated that he "* * * believes in the continued validity of Medicare reimbursement policy on nursing education costs. However, in light of the Hickey decision the Board's decision is affirmed." The Provider Reimbursement Manual was subsequently revised to reflect the new policy (see section I.H. of this preamble, below).

F. The Exclusion of Costs of Approved Educational Activities From the Cost Limits

In 1979, a significant change in routine cost limits policy was made that affected the costs of approved educational activities. In the final notice establishing the schedule of limits on hospital inpatient general routine operating costs, effective for cost reporting periods beginning on or after July 1, 1979, which was published in the **Federal Register** on June 1, 1979 (44 FR 31806), the costs of "approved medical education programs" were excluded from the costs subject to the limits. Thus, for cost reporting periods subject to these limits, it was to the advantage of providers to properly classify educational costs to avoid the effects of the limits.

G. The Tax Equity and Fiscal Responsibility Act of 1982 Limits

Section 101 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248) replaced the existing cost limits with an expanded overall limit on hospital inpatient operating costs and a limit on the rate of increase of these costs for cost reporting periods beginning on or after October 1, 1982. Section 101 of Public Law 97–248 added section 1886(a)(2)(A) of the Act, which requires the Secretary to provide for such exemptions from, and exceptions and adjustments to, the hospital cost limits as he deems appropriate to take into account "medical and paramedical education costs" in implementing these limits. This expression of Congressional intent was reflected in the interim final notice with comment period, published in the **Federal Register** on September 30, 1982 (47 FR 43298), which implemented section 101 of Public Law 97–248. In that document, the "costs a hospital allocates to the interns and residents (in approved programs) or nursing school cost centers on its Medicare cost report" were excluded from the hospital cost limits (47 FR 43298). Correspondingly, the interim final rule with comment period implementing the rate of increase ceiling in the same **Federal Register** issue excluded these costs from the costs subject to the ceiling (47 FR 43292).

H. The January 1983 Provider Reimbursement Manual Revision

The portions of Chapter 4 of the Provider Reimbursement Manual that deal with the costs of approved nursing and allied health education programs were extensively revised in January 1983. The revisions followed several Federal court decisions (see sections I.D. and I.E. of this preamble, above) on the allowability of costs of nursing and allied health education programs operated by entities other than Medicare providers (usually colleges and universities) that received support for the program from the provider. (See section I.E. of this preamble, above.) The revisions were issued to distinguish between those costs that would and would not be allowed as costs of approved educational activities and served to clarify the change in policy that was effective with the HCFA Administrator's decision of October 1, 1979.

Section 404.2 of the Provider Reimbursement Manual, as revised in January 1983, specified that provider costs incurred for clinical training associated with an approved program operated by an entity other than a provider could be allowable. Further, it specified that costs incurred by a provider that were associated with the classroom portion of the program could be allowable if the following three criteria were met:

- The provider's support does not constitute a redistribution of nonprovider costs to the provider. The support must be in addition to the costs already being incurred by the nonprovider-operated program. If the nonprovider entity reduced its costs due to receiving provider support, this reduction constitutes a redistribution of costs from an educational institution to a patient care institution and is a nonallowable provider cost.
- The provider receives a benefit for the support it furnishes.

• The cost of the provider's support is less than the cost the provider would incur were it to operate the program.

These criteria adopted in January 1983 addressed the allowability of costs incurred by a provider in support of a nonprovider-operated educational program. Since the revision to Chapter 4 of the Provider Reimbursement Manual predated the Medicare prospective payment system for inpatient hospital services, it did not address the issue of whether such costs were to be considered part of normal operating costs or treated as a "pass-through cost."

I. The September 1, 1983 Interim Final Rule

The Social Security Amendments of 1983 (Pub. L. 98–21), enacted on April 20, 1983, added section 1886(d) of the Act to provide for Medicare payment for the operating costs of hospital inpatient services under a prospective payment system rather than on a reasonable cost basis. Generally, under that system, payment is made for each hospital discharge at a predetermined, specific rate.

Section 601(a)(2) of Public Law 98–21 amended section 1886(a)(4) of the Act to specify that the costs of approved educational activities were excluded from the definition of inpatient hospital operating costs that applies under the prospective payment system. Therefore, these costs were not included in the calculation of the prospective payment rates or in the calculation of the target amount for hospitals not subject to the prospective payment system. Instead, these costs were to be separately identified and "passed-through", that is, paid on the basis of reasonable cost. This approach was similar to the treatment that these costs had received since July 1, 1979 for purposes of the cost limits, although the term "direct medical education pass-through" was used to describe the method of payment under the prospective payment system.

However, the interim final rule (48 FR 39752, September 1, 1983) that implemented the prospective payment system amended § 405.421(d) (now § 413.85(d)) to provide that costs relating to six types of educational activities were outside the scope of the pass-through provisions. Included among these costs were those related to "other activities which do not involve the actual operation or support (except through tuition or similar payments) of an approved education program." Hence, effective October 1, 1983, only the costs of programs operated directly by a hospital were excluded from the prospective payment system and paid on the basis of reasonable cost.

J. The January 3, 1984 Final Rule

In responding to comments on the September 1, 1983 interim final rule, the final rule (49 FR 234, January 3, 1984) further clarified the circumstances under which the costs of approved educational activities would be eligible for pass-through and payment on a reasonable cost basis. In response to questions concerning whether a hospital had to actually operate an approved training program for the program's costs to qualify for pass-through, we stated:

> We believe that only the costs of those approved medical education programs operated directly by a hospital [should] be excluded from the prospective payment system. If a program is operated by another institution, such as a nearby college or university, if [it] must be noted that by far the majority of the costs of that program are borne by that other institution, and not by the hospital. While it is true that the hospital may incur some costs associated with its provision of clinical training to students enrolled in a nearby institution, the hospital also gains in return: For example, it obtains the services of the trainee (often at no direct cost to itself). We do not believe that this type of relationship was what Congress intended when it provided for a pass-through of the costs of approved medical education programs. Rather, we believe that Congress was concerned with those programs that a hospital operates itself, and for which it incurs substantial direct costs.
>
> We are revising § 405.421(d)(6) to clarify that the costs of clinical training for students enrolled in programs, other than at the hospital, are normal operating costs. (49 FR 267)

An issue that has arisen with regard to this classification concerns the assumption that a hospital either operates the program, incurring substantial costs, or does not operate the program, incurring minimal costs. There are many instances in which the hospital functions only as a site for students to gain clinical experience and, in fact, incurs minimal expenses. However, there are hospitals, particularly those that have moved from diploma programs to associate and baccalaureate nursing programs, that have become, under agreement with a college or university, a partner in a dual or sequential operation of an approved program.

K. The Omnibus Budget Reconciliation Act of 1989

Section 6205 of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239), enacted on December 19, 1989, contained three provisions on nursing and allied health education. Section 6205(a) created a temporary category of "hospital-based nursing schools." Costs incurred by hospitals for training nursing students in these schools are to be paid on the basis of reasonable cost as though the hospital met the criteria at § 413.85. This provision is effective only for cost reporting periods beginning on or after December 19, 1989 and before the issuance of the final regulations required by section 6205(b)(2) of Public Law 101–239 (discussed in detail below). We implemented this provision in a final rule with comment period published in the **Federal Register** on April 20, 1990 (55 FR 15159) and made further revisions in the final rule that implemented changes to the inpatient hospital prospective payment system for FY 1991, which was published on September 4, 1990 (55 FR 35998). In summary, under this provision, a hospital may claim the costs incurred in training students from a nursing school as pass-through costs if all of the following criteria are met:

• The hospital incurs at least 50 percent of the net costs, that is, the costs after deduction of tuition revenues incurred for classroom and clinical training provided to students enrolled in an approved nursing education program at the hospital-based nursing school.

• At least 50 percent of the board of directors with the fewer members (either the hospital or the nursing school) or 4 members, whichever results in a smaller number, are also members of the board of the other entity

• All instruction is provided at, or on the immediate grounds of, the hospital.

• The preceding three criteria were met on June 15, 1989, and have been met continuously since that date.

Section 6205(b)(1) of Public Law 101–239 imposed a moratorium for the period on or after December 19, 1989 and before October 1, 1990 on the recoupment of overpayments attributable to a determination by a provider's intermediary that costs claimed by a provider for the operation of a school of nursing or allied health are not eligible for payment on a reasonable cost basis. The basis for such a determination is generally that a neighboring or related college or university, not the hospital, is the operator of the program. We announced the provisions of the moratorium in a program memorandum issued to our fiscal intermediaries (Transmittal No. A–90–9; June 1990).

Section 6205(b)(2) of Public Law 101–239 directs the Secretary to publish proposed regulations clarifying the rules governing which costs of approved educational activities are allowable and when those costs are eligible for pass-through under the prospective payment system. More specifically, the statute requires the regulations to specify—

- The relationship required between an approved nursing or allied health education program and a hospital for the program's costs to be attributed to the hospital;
- The types of costs related to nursing or allied health education programs that are allowable by Medicare;
- The distinction between costs of approved educational activities as recognized under section 1886(a)(4) of the Act and educational costs treated as operating costs of inpatient hospital services; and
- The treatment of other funding sources for the program.

L. The Omnibus Budget Reconciliation Act of 1990

On November 5, 1990, prior to issuance of the proposed regulations required by section 6205(b)(2) of Pub. L. 101-239, Congress enacted the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508). Section 4004(b) of Public Law 101-508 contains several provisions affecting Medicare policy for payment of a reasonable cost basis under Medicare Part A for nursing and allied health education costs. Section 4159(b) of Public Law 101-508 sets forth a parallel provision concerning payment on a reasonable cost basis under Medicare Part B for these costs. The language in section 4159(b) is identical to the language in section 4004, except that section 4004(b) applies to Part A and section 4159(b) applies to Part B. For ease of reference in this document, we refer only to the provisions of section 4004(b); however, each of these references is deemed to be a reference to the corresponding provision of section 4159.

Section 4004(b)(1) provides that, effective with cost reporting periods beginning on or after October 1, 1990, if certain conditions are met, the costs incurred by a hospital (or by an educational institution related to the hospital by common ownership or control) for clinical training (as defined by the Secretary) conducted on the premises of the hospital under an approved nursing or allied health education program that is not operated by the hospital are treated as pass-through costs and paid on the basis of reasonable cost. Section 4004(b)(2) of Public Law 101-508 sets forth the following conditions that a hospital must meet to receive payment on a reasonable cost basis:

- The hospital must have claimed and have been paid for clinical training costs as described in section 4004(b)(1) during its latest cost reporting period that ended on or before October 1, 1989.
- The proportion of the hospital's total allowable costs that is attributable to the clinical training costs of the approved program and allowable under section 4004(b)(1) during a cost reporting period does not exceed the proportion of total allowable costs that were attributable to the clinical training costs during the hospital's latest cost reporting period that ended on or before October 1, 1989.
- The hospital receives a benefit for the support it furnishes to the education program through the provision of clinical services by nursing and allied health students participating in the program.
- The costs incurred by the hospital for the program do not exceed the costs that would have been incurred by the hospital if it had operated the program.

This proposed rule includes provisions to implement the payment provision of section 6205(b)(2) of Public Law 101-239, as well as the changes mandated by sections 4004(b) (1) and (2) of Public Law 101-508.

In addition to the new payment provision under sections 4004(b) (1) and (2) of Public Law 101-508, section 4004(b)(3) indefinitely prohibits the recoupment of Medicare overpayments made to hospitals for pass-through costs related to approved nursing and allied health education programs for cost reporting periods beginning on or after October 1, 1983 and before October 1, 1990. This section also requires us to refund previously recouped overpayments for these costs. We have issued two program memoranda (Transmittal No. A-91-3, May 1991 and No. A-92-____, _____ 1992) to our fiscal intermediaries providing instructions on implementing the provisions of section 4004(b)(3) of Public Law 101-508. These program memoranda also explained specifically how we understand section 4004(b)(3) to apply, as discussed below.

Section 4004(b)(3) of Public Law 101-508 does not provide for recognition of costs for nursing and allied health education programs unless those costs would be allowable under the principles of reasonable cost reimbursement if the provider had been the operator of the program and had incurred the cost. That is, to be payable under section 4004(b)(3) of Public Law 101-508, the costs must have been directly incurred by the hospital (or a related organization) for a nonhospital-operated approved program and must be costs that would have been allowable if directly incurred by a hospital in connection with a hospital-operated program. In addition, revised cost reports submitted after the date of enactment of Public Law 101-508 (November 5, 1990) containing costs for nursing and allied health education that were not included in the originally submitted cost report for that fiscal year are not to be accepted for purposes of this provision.

We relied on the statute and the accompanying conference report (H.R. Rep. No. 964, 101st Cong., 2d Sess. (1990)) to determine the circumstances under which refunds are to be made of amounts recouped because of overpayments for nursing and allied health education costs under section 4004(b)(3). Section 4004(b)(3(B) requires refunding of payment amounts that were previously recouped from hospitals because of overpayments described in section 4004(b)(3)(A). Section 4004(b)(3)(A) provides that the Secretary "may not recoup from (or otherwise reduce or adjust payments * * * to) a hospital because of alleged overpayments to such hospital" that relate to a determination that costs of approved nursing and allied health education programs are not payable on a reasonable cost basis as pass-through costs. We note that the conference report (p. 719) states that section 4004 is a further modification of section 6205 of Public Law 101-239. We considered that closely related legislation in construing section 4004(b)(3).

As we stated in the program memoranda, we have concluded that the overpayments referred to in the statute relate to those instances in which a hospital has received interim payments throughout its cost reporting period for nursing and allied health education costs that subsequently were determined during the cost report settlement process (or on reopening) to be unallowable as pass-through costs because the hospital was not the operator of the program. In these cases, the hospital actually received the interim payment for the costs throughout its fiscal year and had reason to expect that the costs were allowable and the monies were due the hospital. In addition, most of these hospitals generally received reimbursement for these costs for several years prior to the year in which the costs were determined to be unallowable. Therefore, disallowance of these costs results in the hospital being burdened with an unanticipated overpayment.

We believe that it was Congressional intent that these hospitals be protected from paying back amounts they actually received for nursing and allied health education costs. The use of the terms "recoup" and "refund" in the statutory language supports this interpretation. On the other hand, nursing and allied health education costs that were not included in interim payments during the year and that were disallowed when included on the hospital's cost report are not representative of payment amounts that would be considered overpayments under section 4004(b)(3). These claimed but disallowed amounts are not

overpayments in the commonly understood meaning of the term because the hospital never actually received payments for these costs during the cost reporting period. For payment oversight purposes, we sometimes loosely refer to costs that were claimed on the cost report but disallowed as "overpayments" because they are considered to represent program savings by fiscal intermediaries. The disallowed amounts are amounts that would have been paid out but for the adjustments made by the intermediaries. However, although these amounts may be termed overpayments for this limited program purpose, they do not come within the common definition of overpayment. We do not believe that the language of the statute supports the inclusion of these disallowances in the amounts to be refunded to hospitals.

Similarly, a hospital will not be considered to have incurred an overpayment for purposes of the refund provision merely because it received excess interim payments during a cost reporting period. The controlling consideration is whether those interim payments included an amount for nursing and allied health education costs.

Therefore, a hospital will be considered to have incurred an overpayment for purposes of the refund provision only if the hospital received interim payments throughout the cost reporting period that included an amount for nursing and allied health education costs and the costs were subsequently disallowed. If a hospital received no amount for these costs in any of its interim payments for the cost reporting period, the hospital is not due any refund on amounts that were included on the cost report and disallowed in the final notice of program reimbursement (NPR), regardless of costs included in any tentative settlements prior to issuance of the NPR.

In some situations, a hospital may have received interim payments that included an amount for nursing and allied health education costs only for a portion of its cost reporting period. In determining the amount of the refund, it will be assumed that the costs claimed on the cost report were incurred uniformly throughout the period. Thus, in making any refund, the intermediary was instructed to prorate the amount based on the period of time before the interim payments were reduced because the costs were not allowable. That is, if the hospital received 10 of the 26 interim payments, then only 10/26 of the costs claimed in the cost report that would be payable under this provision are to be refunded (if already recouped) or to be forgiven (if not recouped). The remaining 16/26 of these costs represent an amount that was not payable to the provider and therefore did not give rise to an overpayment that could be recouped. If a hospital can provide documentation to its intermediary that costs were not incurred on a uniform basis, then the intermediary is to refund (or not recoup) the amounts actually incurred during the period of time the interim payments for nursing and allied health education costs were received.

In order to implement the provisions of section 4004(b)(3)(B) of Public Law 101–508, intermediaries were instructed to notify all hospitals they service of the provisions of section 4004(B)(3) of Public Law 101–508. Hospitals were to be advised that, if they believe that they qualify for a refund for the costs of nursing and allied health education for cost reporting periods beginning on or after October 1, 1983 and before October 1, 1990, each hospital must notify its intermediary of the fiscal year or years affected and the costs for which additional payment is requested. This was necessary to assist intermediaries in identifying amounts to be refunded under this provision. Upon receipt of hospitals' requests, intermediaries were instructed to reopen cost reports as necessary and issue revised NPRs.

II. Proposed Revisions

A. Initial Consideration

In response to the mandate of section 6205(b)(2) of Public Law 101–239 and in light of the enactment of Public Law 101–508, we reviewed our current policy on payment for the costs of approved nursing and allied health education programs. We considered allowing as a pass-through the costs incurred by all providers for the clinical training of students in an approved program whether or not the program is operated by the provider. As noted above, prior to the enactments of Public Law 101–239 and Public Law 101–508, we considered clinical training costs associated with nonprovider-operated programs, to the extent allowable, to be part of normal operating costs. As such, they are covered by the usual per discharge payment under the prospective payment system. However, this means that all hospitals realize some benefit for the costs incurred by only a portion of these hospitals.

The recent legislation provides for recognition of clinical training costs for certain classes of nonprovider-operated programs. First, hospitals that meet the requirements for reasonable cost payment under the "hospital-based nursing school" provision set forth in section 6205(b) of Public Law 101–239 are to be paid for the costs incurred in training nursing students, including the clinical training costs, until the issuance of the final regulations required by section 6205(b)(2) of Public Law 101–239. Second, effective with cost reporting periods beginning on or after October 1, 1990, sections 4004(b) (1) and (2) of Public Law 101–508 mandate payment on a reasonable cost basis for clinical training costs of nonprovider-operated programs for providers that meet certain criteria.

Payment on a reasonable cost basis for the clinical training costs of all nonprovider-operated programs would have two advantages. First, it would allow us to target the payments to those hospitals that actually incur costs for nonprovider-operated programs. Secondly, it would establish a uniform payment policy for the allowable clinical training costs of all nonprovider-operated programs. However, if we were to pay for the clinical training costs of nonprovider-operated programs on a reasonable cost basis, we would need to reduce the standardized amounts in order to avoid paying twice for the same costs. Since hospitals that do not incur clinical training costs for nonprovider-operated programs would be disadvantaged by the reduction in the standardized amounts, we believe it would be inappropriate to implement such a substantial policy change by regulation. Therefore, except with respect to the clinical training costs of programs that meet the requirements of section 4004(b)(2) of Public Law 101–508, we are proposing to continue our current policies with respect to payment for clinical training costs.

Since some "hospital-based nursing school" programs may not meet the criteria set forth in section 4004(b)(2) of Public Law 101–508, we considered continuing reasonable cost reimbursement for the clinical training costs of hospital-based programs that meet the criteria for payment on a pass-through basis set forth in section 6205(a) of Public Law 101–239. (That section's requirement that payment for these costs be made on the same basis as provider-operated programs expires with cost reporting periods beginning on or after the date the final rule setting forth our payment policies for nursing and allied health education is published.) However, we rejected this approach because we believe that, except when the statute expressly provides otherwise, our payment policy should be consistent for all nonprovider-operated programs. Moreover, in the

absence of a reduction in the standardized amounts, we would be continuing to pay twice for the costs of the hospital-based programs.

We also considered discontinuing payment on a pass-through basis for classroom costs for providers that operate their own programs. We would favor such a policy for two reasons. First, we believe that these are costs that are not directly related to patient care and should be borne by the community. Nursing and allied health education programs are the only undergraduate programs subsidized from the Medicare trust fund. Diploma programs now produce only about 15 percent of all nursing graduates. Nursing education takes place increasingly in university or college degree programs, which do not receive Medicare subsidies. Furthermore, the major nursing interest groups endorse this trend away from diploma programs. Secondly, as a general principle, we believe it would be appropriate to have a consistent payment policy for provider-operated and nonprovider-operated programs. However, discontinuing payment for classroom costs would be a fundamental change to our current policy and would result in a large reduction in revenues for providers that currently operate their own approved education programs. We concluded that it would be inappropriate to implement this change through regulation. Therefore, at this time, we are proposing to continue our current policy of paying on a reasonable cost basis for classroom costs incurred for provider-operated programs.

In summary, we believe that the best course would be to pay for clinical training costs of all nonprovider-operated programs on a reasonable cost basis, with an appropriate reduction in the standardized amounts, and to discontinue payment for classroom costs of provider-operated programs. Taken together, these changes would establish consistent payment policies for provider and nonprovider-operated programs. However, since our payment policies must conform to the current statute, we propose to continue our current policies with respect to payment for nursing and allied health education, except for certain costs that meet the requirements of section 4004(b) of Public Law 101–508. That section requires changes with respect to the clinical training costs of certain nonprovider-operated programs, and we would revise our payment rules accordingly. With respect to payment for other nursing and allied health education costs, we propose to codify in the regulations the policy interpretations that we have previously set forth in the Provider Reimbursement Manual and other documents.

B. General Payment Policy

We are proposing to revise § 413.85 to set forth our policies on paying providers for the costs they incur for education activities. In addition, we are proposing to make several other changes to § 413.85.

The current § 413.85 states that, except for payment for graduate medical education costs, a provider's allowable cost may include its net cost of approved educational activities and that the net cost is subject to apportionment based on Medicare utilization as described in § 413.50. Net cost is determined by deducting from a provider's total costs of these activities the revenues it receives for tuition. Total costs include trainee stipends, compensation of teachers, and other direct and indirect costs. We are proposing to set forth in a new § 413.85(a) the general rule that payment for a provider's net cost of approved educational activities is made on a reasonable cost basis.

We would set forth the exceptions to the general rule in § 413.85(b). We would retain the current exception which states that, for cost reporting periods beginning on or after July 1, 1985, payment to hospitals for approved residency programs in medicine, osteopathy, dentistry, and podiatry is determined as provided in § 413.86. In addition, we would add two other exceptions:

- We would codify our current policy for nonprovider-operated programs. Section 413.85(b)(2) would state that, effective for cost reporting periods beginning on or after October 1, 1983, any costs incurred by a provider associated with the clinical training of students in an approved program not operated by that provider are allowable as normal operating costs rather than as costs of approved educational activities, unless the provider meets the conditions for payment on a reasonable cost basis for clinical training costs as set forth in sections 4004(b) (1) and (2) of Public Law 101–508. (This policy also applies to clinical training or clerkships of undergraduate medical school students that take place in providers.) In addition, any costs claimed by a provider for the classroom portion of a nonprovider-operated program that meet the criteria currently set forth in § 404.2 of the Provider Reimbursement Manual also would be allowable as normal operating costs.
- In § 413.85(b)(3), we would include an exception for certified registered nurse anesthetist programs. On January 26, 1989, HCFA published a proposed rule (54 FR 3803) to implement section 9320 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509). That rule proposed to change the classification of patient care services of certified registered nurse anesthetists (CRNAs) to permit payment on a Part B reasonable charge basis for such services furnished on or after January 1, 1989. This change has implications for Medicare payment for the costs of approved CRNA educational activities similar to those that have existed over the years with respect to payment for the services of provider-compensated teaching physicians. Specifically, there would be difficulties involved in distinguishing between the training and patient care activities of teaching CRNAs. As such, the potential exists for duplicate payments with respect to activities that could be classified as both patient care activities payable on a reasonable charge basis and teaching activities payable as provider services. For example, a CRNA may be paid a salary by a provider for all of his or her activities in connection with an approved CRNA training program. The Part A intermediary would pay the provider for its share of those costs. The CRNA may also bill the Part B carrier for patient care services furnished during the clinical training of students conducted during surgical procedures. The carrier would have no way of knowing that the services of the CRNA were also subject to payment by the intermediary on a cost-basis as costs of approved educational activities.

To minimize the possibility of duplicate payments, we are proposing to modify § 413.85(a) to recognize the special circumstances that exist with regard to the costs of approved CRNA training programs. While, for the most part, the costs of these programs would continue to be paid under the generally applicable rules at § 413.85, we are proposing to exclude from allowable costs the costs providers incur in connection with compensating teaching CRNAs for the time spent with student anesthetists in clinical training during surgical procedures. These activities involve the provision of patient care services that are payable on a Part B reasonable charge basis.

In order to implement this proposal, we considered a requirement that all teaching CRNAs complete allocation agreements, similar to those completed for provider compensated physicians, detailing the way the CRNAs spend their time at the provider. In the interest of administrative simplicity and reducing provider recordkeeping burden, we are proposing that it is sufficient that providers present audible documentation to intermediaries justifying CRNA faculty compensation costs related to hours spent in classroom instruction or in administrative activities related to the approved program. No other compensation costs for CRNA faculty members would be allowable. Compensation costs for faculty members who are not CRNAs

would continue to be allowable since the duplicate payment potential would not exist for these personnel. We are specifically seeking comments on whether this proposal is an equitable way to deal with the problems arising from the change in the payment method for the services of CRNAs.

The exception relating to CRNAs would state that the net costs of approved CRNA programs are allowable except that allowable compensation costs for faculty members who are CRNAs are limited to the compensation costs directly related to hours spent in classroom instruction or administrative activities related to the educational programs. No compensation costs are allowable for the time CRNAs spend in the clinical training of student anesthetists in operating rooms. Payment for the activities of CRNAs in connection with the clinical training of student anesthetists during surgical procedures in approved training programs is determined as provided in § 405.553 ("Reasonable charges for anesthesiology services").

C. Proposed Provisions Resulting from Public Law 101–508

In implementing the provisions of sections 4004(b) (1) and (2) of Public Law 101–508, we would provide that the net costs incurred by a provider, or by an educational institution that is related to the provider by common ownership or control (that is, a related organization as defined in § 413.17(b)), for the clinical training of students enrolled in an approved nursing or allied health program that is not operated by the provider are paid on a reasonable cost basis if certain conditions are met. The proposed regulations state that, in order for these costs to be paid as a pass-through, the following conditions would have to be met:

- The clinical training must occur on the premises of the provider.
- The provider must have claimed and been paid for clinical training costs on a reasonable cost basis during its most recent cost reporting period that ended on or before October 1, 1989. As described in § 413.64 of the regulations, under reasonable cost reimbursement, actual costs reimbursable to a provider cannot be determined until the cost reports are filed and the costs are verified by the intermediary. Providers receive interim payments approximating as closely as possible the actual costs of the provider throughout the cost reporting period. A retroactive adjustment based on actual allowable cost is made at the end of the cost reporting period. To properly pay the provider as quickly as possible, the intermediary makes an initial retroactive adjustment, or tentative settlement, when the cost report is initially filed to bring the interim payments made to the provider during the cost reporting period into agreement with the final reimbursable amount payable to the provider for the services furnished to Medicare beneficiaries during that period. For this purpose, the intermediary accepts the costs as reported, unless there are obvious errors or inconsistencies, subject to further review and audit. When the final determination of the amount of Medicare reimbursement for the cost reporting period is made, the intermediary makes a final retroactive adjustment and issues an NPR.

In establishing criteria for determining if the provider was "paid" for the clinical training costs, we considered the three junctures in determining provider payments. It is clear that if the provider has been issued an NPR for its most recent cost reporting period ending on or before October 1, 1989 that includes the clinical training costs as an allowable cost payable on a pass-through basis under section 1861(v)(1)(A) of the Act, the provider has been "paid" for the clinical training costs. In other situations, it is more arguable whether the provider was or was not paid for the clinical training costs. For example, the intermediary may have included the clinical training costs in the interim payments and on the tentative settlement, but determined that the costs were not allowable when the NPR was issued, or an initial NPR that allowed the clinical training costs may have been subsequently revised to exclude the costs from pass-through costs payable on a reasonable cost basis.

We believe that if an NPR had been issued by November 5, 1990 for the most recent cost reporting period ending on or before October 1, 1989, and the intermediary included the clinical training costs as pass-through costs, then we would consider the provider to have been paid for those costs. In this case, it is clear that, as of the date of enactment of Public Law 101–508, the provider had been paid for the costs.

In determining an appropriate policy for all other providers, that is, those who did not receive an NPR by November 5, 1990 for their most recent cost reporting period ending on or before October 1, 1989, or those that received an NPR but the clinical training costs were not allowed in the pass-through costs, we are relying on the language of the conference committee report that accompanied Public Law 101–508. That report stated that payment to a provider for the clinical training of students enrolled in an approved nursing or allied health education program that is not operated by the provider is "limited to those programs for which a hospital claimed costs and was paid, *at least on an interim basis,* * * * on its most recent cost reporting period ending on or before October 1, 1989," [Emphasis added.] (H.R. Rep. No. 964, 101st Cong., 2d Sess. 719 (1990).)

Thus, we are proposing that we would consider a provider to be "paid" for clinical training costs if, for its most recent cost reporting period ending on or before October 1, 1989, the provider's intermediary included the clinical training costs in the allowable costs used to determine the interim payment rate for that cost reporting period and the provider subsequently claimed the clinical training costs as a pass-through cost on its submitted cost report for that period. We note that this policy is consistent with the policy set forth in our instructions implementing the prohibition on recoupment of overpayments from providers for nursing and allied health costs under section 4004(c) of Public Law 101–508. (See the detailed discussion of those instructions above in section I.L. of this preamble.)

- In any cost reporting period, the percentage of total allowable provider cost attributable to allowable clinical training cost cannot exceed the percentage of total allowable cost attributable to clinical training in the provider's most recent cost reporting period ending on or before October 1, 1989.
- The students in the educational program must provide a benefit to the provider through the provision of clinical services to patients of the provider.
- The clinical training costs must be incurred by the provider or by an educational institution related to the provider by common control on ownership as defined in paragraph (b) of § 413.17 ("Cost to related organizations"). Costs incurred by a third party, regardless of its relationship to either the provider or the educational institution, would not be allowed.
- The costs incurred by a provider do not exceed the costs the provider would incur if it operated the program itself.

Section 4004(b)(1) of Public Law 101–508 also requires that we define the clinical training costs that would be allowable. We are proposing to define these costs as incremental costs that, in the absence of the students, would not be incurred by the provider. These incremental costs would include the costs of clinical instructors and administrative and clerical support staff whose function is to coordinate rotations with a nursing school and to schedule clinical rotation for each student nurse. They would not, however, include the costs of a charge or floor supervisor nurse who may spend a portion of his or her time supervising student nurses but who, in the absence of the students, would still have to be employed by the provider. In general, these costs are payroll and related

salary costs. Although some provider-incurred overhead costs directly related to the cost of the students would be allowable, overhead costs incurred by the related organization generally would not be considered allowable. We also are proposing separate specific definitions of clinical training and classroom instruction to allow providers and intermediaries to differentiate between the two. These definitions are as follows:

• Clinical training. Clinical training involves the acquisition and usé of the skills of a nursing or allied health profession or trade in the actual environment in which these skills will be used by the student upon graduation. While it may involve occasional or periodic meetings to discuss or analyze cases, critique performance, or discuss specific skills or techniques, it involves no classroom (didactic) instruction.

Classroom costs. Classroom costs are those costs associated with formal, didactic instruction on a specific topic or subject in a class that meets at regular, scheduled intervals over a specific time period (for example, semester or quarter), and for which a student receives a grade.

We note that costs incurred by providers for classroom instruction are not paid on a reasonable cost basis unless the provider is the operator of the program. That is, those providers being paid on a reasonable cost basis for clinical training services under the provisions of section 4004(b) (1) and (2) of Public Law 101–508 are not paid on that basis for classroom costs.

If, after implementation of the provisions of sections 4004(b) (1) and (2) of Public Law 101–508, we find that there is a wide variation in the clinical cost per student among different hospitals' nursing and allied health programs, we will consider methods to narrow that variation under the definition of reasonable cost as set forth in section 1861(v)(1) of the Act. In anticipation of this action, we are interested in receiving public comment on how we could best evaluate the reasonable cost of these programs.

D. Definition of Net Costs

We are proposing to revise the current definition of net costs. The definition currently states "net costs of approved educational activities are determined by deducting, from a provider's total costs of these activities, revenues it receives from tuition."

When the regulations were revised, it was assumed that the tuition paid by students enrolled in approved educational programs was intended to cover all facilities and services for which a provider would incur costs. It was not our intention to imply that costs for which a provider charges a separate fee, in addition to tuition, were not to be considered as part of the cost of the approved educational activity. Two examples of such costs are the purchase of textbooks for resale to students and the provision of housing or room and board in exchange for an additional fee. We are proposing to clarify in the regulations that the term "tuition" was intended to include these additional charges and fees.

We also are clarifying the definition of net costs in the proposed regulations to indicate that "total costs" was intended to include only direct and indirect costs incurred by a provider that are directly attributable to the operation of an approved educational activity. Such costs do not include usual patient care costs that would be incurred in the absence of the educational activity, such as the salary costs for nursing supervisors who oversee the floor nurses and student nurses. Moreover, we believe that such costs do not include costs incurred by a related organization. The current regulation concerning related organizations at § 413.17 was established to avoid program recognition of artificially inflated costs that might be generated from less than arm's length bargaining. This policy was not intended to expand the range of items and services for which a provider could claim payment. With respect to educational costs (with the limited exception for certain graduate medical education costs incurred by a related medical school as provided in Intermediary Letter 78–7), our policy has been that the provider, rather than the related organization, must directly incur the costs on its books and records before the costs will be recognized for Medicare payment purposes. Otherwise, the principle that Medicare payment for medical education costs should not result in a redistribution of costs from the educational institution to the provider would be violated.

We note that, in the case of those providers that are receiving reasonable cost payment under the provision of section 4004(b) of Public Law 101–508 for clinical training of students in an approved education program that is not operated by the provider, the law specifically provides that total costs include costs of the educational institution related to the provider. We realize that this results in inequitable treatment of these costs; however, we believe that the language included in the committee report that accompanied Public Law 101–508 supports such a policy. In that report, the conferees noted that—

in the case of hospital-operated nursing and allied health education programs, the Secretary does not recognize costs incurred by a related educational organization as allowable educational costs since such costs are a redistribution of costs from the educational institution to the hospital. Although [section 4004 of Public Law 101–508] provides for recognition of the costs incurred by a related educational organization for clinical training on the hospital's premises in the case of a hospital-supported program, the conferees intend that nothing in [section 4004 of Public Law 101–508] should be construed as requiring the Secretary to modify his current policy in regard to the determination of reasonable costs for a hospital-operated program. (H.R. Rep. No. 964, 101st Cong., 2nd Sess. 719 (1990))

We believe that this clear statement of congressional intent allows us to continue our policy of not recognizing the costs of related organizations in determining a provider's total costs of approved educational programs.

In the final rule of January 3, 1984 (49 FR 234), the definition of net costs in paragraph (g) of § 405.421 (now § 413.85(g)) was revised by eliminating grants and donations from revenues that were to be offset against the cost of approved educational activities. This revision was made in response to a public comment to ensure that the policy on net cost of educational activity would be consistent with the policy that deals with the treatment of grants, gifts, and income from endowments under reasonable cost payment under § 413.5(c)(3). However, we are reconsidering our position on this issue. As a result, we are requesting public comment on whether the net costs of approved educational activities should be defined as the costs determined by deducting the revenues that a provider receives from tuition, student fees, and the allocable amounts from any donations, grants, and non-Medicare public funding from the provider's total allowable costs that are directly related to approved educational activities.

E. Proposed Revisions to the List of Approved Programs

As part of this document, we are proposing to revise the list of approved educational programs. We would expand the current list of approved programs to include approved perfusionist training programs. We would recognize the Committee on Allied Health, Education, and Accreditation in collaboration with the American Board of Cardiovascular Perfusion as the national approving body for perfusionist programs.

In addition, although not currently included on the list of approved

programs, we have approved pastoral care education programs on a case-by-case basis over the years. We are proposing to formally include these programs in the regulations. The Association for Clinical Pastoral Education would be recognized as the national approving organization. We would, however, be interested in receiving public comment on the advisability of paying for the education costs of these types of programs.

We considered including Emergency Medical Technician-Paramedics (EMT-P) programs on the list of approved programs. Our decision not to include these programs on the list was based primarily on our policy that the program must enhance the quality of care in an institution. More specifically, we approve programs for inclusion on the list only if the services that will eventually be provided by the individual being trained are services that are recognized under Medicare policy as related to patient care in the institution. We find that there is, at the very best, a tenuous relationship between the services of EMT-Ps and the quality of patient care in a hospital because, in general, the services provided by EMT-Ps are furnished outside the hospital setting before the patient is admitted. However, we are particularly interested in receiving comments on this issue.

We are also proposing that only those nursing and allied health education programs listed in the regulations may be paid as approved educational activities. We are proposing to add a new provision to the regulations that would state that national approving bodies or State licensing authorities for other types of programs may apply to HCFA for inclusion on our list of approved programs. Such requests must contain a justification for the recognition of the educational activity. In line with this change, we are proposing to revise the list of approved programs to include the specific title or titles used by the appropriate accrediting organization. The Committee on Allied Health Education and Accreditation (CAHEA) of the American Medical Association cooperates with 19 committees and collaborates with 52 academies, associations, boards, and societies in its accreditation process. In the interest of brevity, and for the convenience of those entities seeking approval for those programs accredited by CAHEA in collaboration with other organizations, we have listed only CAHEA. Although we are proposing to retain the list of accrediting organizations in the regulations, we would be interested in receiving comments from the public on the usefulness of this practice.

Since the provisions of section 4004(b) of Public Law 101-508 require that Medicare pay for the clinical costs incurred by providers of nursing and allied health education programs other than those operated by the provider, we would like to clearly state that we will continue to approve only those programs that are operated by providers as well as by educational institutions. That is, even though the statute requires that we pay some of the costs of programs that are nonprovider operated on a reasonable cost basis, we would not expand the list of approved programs to include those programs that are operated only by nonprovider institutions. We believe that it is important to clearly state this policy because, before the enactment of Public Law 101-239 and 101-508, we were only concerned with provider-operated programs receiving the reasonable cost pass-through and have not had to make this distinction. That is, the only programs we were required to consider for inclusion on the list were provider-operated programs. Therefore, before submitting a new program for our approval, entities should ascertain that it is the type of program that is or can be operated by a provider. This would eliminate any degree programs that must be provided by an educational institution in order for the graduates to be recognized as qualified or licensed health care providers.

F. Determining Provider-Operated Programs

We would set forth in a new § 413.85(e) of the regulations the criteria that have been used to identify programs operated by a provider, since this requirement was established in January 1984. The regulations would reflect that, except as provided in section 4004(b) of Public Law 101-508, the key factor to be considered in determining whether the classroom and clinical costs of approved nursing and allied health educational programs are eligible to be passed-through is the degree to which the provider controls all aspects of the program. For example, where there is a clear separation of function, such as when a college or university directs and operates the classroom portion of the program and the provider furnishes only the setting for clinical training, the educational program costs are not eligible to be paid on a pass-through basis. In such cases, clinical instruction flows from the part of the program conducted by the institution other than the provider. Thus, the majority of the training costs are borne by the college or university and not by the provider. While the provider may incur some costs associated with its provision of clinical training to students enrolled in a nearby institution, the provider also gains in return. For example, it obtains the services of the trainee, often at no direct cost to itself. The provider may also receive payments from the educational institution to defray the additional costs it incurs.

In addition to the value of the services of students in an approved program, providers receive a number of other benefits from participation in an approved educational program operated by another entity. One benefit is the fact that a significant percentage of the graduates of these programs become employees of the provider at which they trained. This allows the provider to avoid costs it would otherwise have to incur for nursing recruitment. It also avoids the even more significant cost of using agency nurses to meet staffing deficiencies.

For purposes of determining the operator of an approved nursing or allied health education program, the fact that a provider and a college or university are considered related organizations under § 413.17 ("Cost to Related Organizations") is not considered. As explained above, our policy concerning related organizations was established to avoid program recognition of costs of a provider for goods or services furnished by a related organization in excess of the costs incurred by the related organization. This policy does not permit an interpretation that would allow a provider to be considered the operator of an educational program that is operated by a related organization.

We are proposing that to be considered the operator of a nursing or allied health education program, all of the following criteria must be met:

- The provider must incur the costs associated with the training, for example, the costs for books, supplies, and faculty salaries.
- The provider must directly control the curriculum, that is, the provider must determine the requirements to be met for graduation. In meeting this requirement, a provider may enter into an agreement with a college or university to provide the basic academic course requirements leading to a degree, diploma, or other certificate, while the provider is directly responsible for providing the courses relating to the theory and practice of the nursing or allied health profession that are required for the degree, diploma, or certificate awarded at completion of the program.
- The provider must control the administrative duties relating to the program. These duties include the collection of tuition,

maintaining payroll records for the teaching staff, and being responsible for the day-to-day operation of the entire training program.

- The provider must employ the faculty.
- The provider must provide and control both classroom and clinical instruction.

In order to determine the operator of a program, the first consideration is State licensure of the program and accreditation certificates conferred by the appropriate approving bodies. An entity that is licensed or accredited to operate the program and to issue degrees, diplomas, or certificates to its students upon graduation is assumed, absent evidence to the contrary, to meet the criteria listed above and to be the operator of the program.

In certain situations, providers are entering into agreements with colleges and universities that, in many cases, have involved provider representation on a joint committee with certain oversight responsibilities. However, these provider/college educational agreements have not given the providers direct responsibility for the curriculum and control of day-to-day operation of the training programs. We are proposing that unless the provider can demonstrate that it meets the requirements enumerated above, the costs incurred by the provider in connection with such joint programs would not be paid as a separate pass-through cost.

There are other situations, however, that involve sequential operation of a program by an educational institution and a provider. These situations frequently involve providers that are changing from offering a certificate or diploma program to offering an associate or baccalaureate degree. The provider may enter into an agreement with a college or university in which instruction in general academic requirements leading to a degree is provided by the educational institution, and subsequent specialized didactic and clinical training is given by the provider. While the provider establishes and controls the curriculum and requirements for graduation, the college or university grants the degree upon graduation. To the extent that the provider meets all the criteria for the operator of a program given above (except for granting the degree), the provider is the operator of that portion of the program that it directly provides. However, no costs incurred by the college may be claimed as provider costs.

G. Costs of Educational Activities Considered To Be Normal Operating Costs

As discussed above, the final rule published January 3, 1984 attempted to clarify the Medicare policy for the classification of training costs incurred by providers as costs of approved educational activities paid on a reasonable cost basis. Since that time, questions have arisen about some types of training programs that are neither listed as approved programs in the current § 413.85(e) nor readily identifiable as the types of programs discussed in the current § 413.85(d) as activities not within the scope of approved educational activities.

The programs included in our list of approved programs are generally programs of long duration that are designed to develop trained practitioners in a nursing or allied health discipline, such as professional nursing or occupational therapy. This is contrasted with a continuing education program of a month to a year in duration in which a practitioner such as a registered nurse receives training in a specialized skill such as enterostomal therapy. While such training is undoubtedly valuable in enabling the nurse to treat patients with special needs and in improving the level of patient care in a provider, the nurse, upon completion of the program, continues to function as a registered nurse, albeit one with special skills. Further distinction can be drawn between such a situation and one in which a registered nurse undergoes years of training to become a CRNA.

We believe that the costs of continuing education training programs should not be classified as costs of approved educational activities that are passed-through and paid on a reasonable cost basis. Rather, they should be classified as normal operating costs covered by the prospective payment rate or, for providers excluded from the prospective payment system, as costs subject to the target rate-of-increase limits. Accordingly, in the proposed § 413.85(e)(3), we would modify the current language at § 405.85(d)(3) to include continuing educational programs in the same category as "educational seminars and workshops that increase the quality of medical care or operating efficiency of the provider."

The proposed § 413.85(g) would, like the current § 413.85(d), provide that the costs of certain activities are not within the scope of the principle on approved programs enunciated by these regulations, but would be recognized as normal operating costs and be paid in accordance with applicable principles. These activities are the following:

- Orientation and on-the-job training.
- Part-time education for bona fide full-time employees at properly accredited academic or technical institutions (including other providers) devoted to undergraduate or graduate work.
- Costs, including associated travel expense, of sending employees to educational seminars, workshops, and continuing education programs (the current § 413.85(d) does not specifically include continuing education programs) that increase the quality of medical care or operating efficiency of the provider.
- Maintenance of a medical library.
- Training of a patient or patient's family in the use of medical appliances.
- Except for those providers that meet the special conditions in section 4004(b) of Public Law 101-508, clinical training of students enrolled in an approved educational program that is not operated by the provider.
- Classroom instruction of students enrolled in an approved educational program that is not operated by the provider.
- Other activities that do not involve the actual operation of an approved educational program. (The current § 413.85(d) specifically includes the costs of interns and residents in anesthesiology who are employed to replace anesthetists.)

III. Regulatory Impact Analyses

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any proposed rule that meets one of the E.O. 12291 criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all providers are treated as small entities. The provisions set forth in this proposed rule conform the regulations to the statute and to our current policy as set forth in the Provider Reimbursement Manual and other instructions. In general, these provisions would have no impact on those providers that operate their own

programs. However, a large number of hospitals that do not operate their own programs would be affected by this proposed rule.

As discussed in detail above, the provisions of sections 4004(b)(1) and (2) require that we make payment on a reasonable cost basis for clinical training costs of nonprovider-operated programs for providers that meet certain criteria. We are prevented from making a reasonable estimate of the impact of these provisions for two reasons. Of the more than 2,000 hospitals that are associated with nursing and allied health education programs that they do not operate, we do not know how many of these hospitals would meet the criteria set forth in the law and this proposed rule that would permit them to receive payment of clinical costs as a pass-through. In addition, since these costs are currently considered to be operating costs that are paid through the prospective payment rate, we are unable to determine the amount any hospital would be due under reasonable cost payment. Therefore, we are unable to complete any meaningful analyses.

We note that the hospitals that would benefit under the provisions of sections 4004(b)(1) and (2) of Public Law 101-508 have previously claimed reasonable cost payment for clinical and, in many cases, classroom costs for education programs they do not operate. Some have incurred overpayments because of a finding by the hospitals' intermediaries that these costs do not meet the definition of allowable costs for purposes of the pass-through. Section 6205(b)(1) of Public Law 101-239 imposed a moratorium on the collection of these overpayments before October 1, 1990. Subsequently, section 4004(b)(3) of Public Law 101-508 permanently prohibited the recoupment of these overpayments and required us to refund previously collected overpayments. Because the provisions of sections 4004(b)(1) and (2) of Public Law 101-508 limit a hospital's payment for pass-through costs to only clinical costs and also set a limit on the amount a hospital can claim in any cost reporting period beginning on or after October 1, 1990, the amount of trust fund monies that would be paid to these hospitals under the provisions of this proposed rule would be less than the amounts these hospitals have received for cost reporting periods beginning before October 1, 1990.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed rule would have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area (MSA) and has fewer than 50 beds.

We are not preparing a rural impact statement, since we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on the operations of a substantial number of small rural hospitals.

IV. Information Collection Requirements

Regulations at § 413.85(b)(3) and (d) contain information collection requirements that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). The information collection requirements concern the need to identify the compensation costs of CRNA faculty members for administrative activities related to the educational program and the compensation costs directly related to hours spent in classroom instruction, and the requests by national approving bodies or State licensing authorities not on the list of approved programs to be included under § 413.85(d). The first requirement necessitates that providers maintain audible records that may be accessed and verified by HCFA's fiscal intermediaries. We believe that this information is already maintained and no additional time will be required to satisfy this requirement. The second requires that approving bodies seeking inclusion on the list of approved programs submit an application to HCFA that contains a justification for recognizing the educational activity. The public reporting burden for this collection is estimated to be no more than two hours per request. We anticipate receiving no more than one request per year. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the OMB official whose name appears in the "ADDRESS" section of this preamble.

V. Response to Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "Date" section of this preamble, and, if we proceed with a final rule, we will respond to the comments in the preamble of that rule.

List of Subjects in 42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

We are proposing to amend 42 CFR part 413, subpart F as set forth below:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

Subpart F—Specific Categories of Care

1. The authority citation for part 413 continues to read as follows:

Authority: Sec. 1102, 1814(b), 1815, 1833(a), 1861(v), 1871, 1881, 1883, and 1886 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395g, 13951(a), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww.

2. Section 413.85 is revised as follows:

§ 413.85 Cost of approved educational activities.

(a) *General payment rule.* Except as provided in paragraph (b) of this section, payment for a provider's net cost of approved educational programs is determined on a reasonable cost basis.

(b) *Payment on other than a reasonable cost basis.* (1) *Graduate medical education programs.* For cost reporting periods beginning on or after July 1, 1985, payment to hospitals and hospital-based providers for approved residency programs in medicine, osteopathy, dentistry, and podiatry is determined as provided in § 413.86.

(2) *Nonprovider-operated programs.* Except as provided in paragraph (f) of this section, effective for cost reporting periods beginning on or after October 1, 1983, allowable costs incurred by a provider that are attributable to an approved program not operated by that provider are allowable as normal operating costs rather than as costs of approved educational activities in accordance with paragraph (g)(6) of this section.

(3) *Certified registered nurse anesthetist programs.* The net costs of approved certified registered nurse anesthetist (CRNA) educational programs are determined as set forth in paragraph (a) of this section, except that allowable compensation costs for faculty members who are CRNAs are limited to the compensation costs for administrative activities related to the educational program and the compensation costs directly related to hours spent in classroom instruction. No compensation costs are allowable for the time CRNAs spend in the clinical

training during surgical procedures of student anesthetists in operating rooms. The activities of CRNAs in connection with the clinical training during surgical procedures of student anesthetists in approved training programs are paid for as patient care activities in accordance with § 405.553 ("Reasonable charges for anesthesiology services").

(c) *Definitions.* (1) *Net costs.* Net costs of approved educational activities means the costs determined by deducting the revenues that a provider receives from tuition and student fees from the provider's total allowable costs that are directly related to approved educational activities. For this purpose, a provider's total allowable costs include costs incurred by the provider for trainee stipends, compensation of teachers, and other direct and indirect costs of the activities as determined under the Medicare cost-finding principles in § 413.24. Except as provided in paragraph (f) of this section, total allowable educational costs do not include usual patient care costs, costs incurred by a related organization, or costs that constitute a redistribution of costs from an educational institution to a provider. Net cost is subject to apportionment for Medicare utilization as described in § 413.50.

(2) *Redistribution of costs.* Redistribution of costs is defined as an attempt by a provider to increase the amount, or to expand the types, of the costs of educational activities that are allowed for Medicare payment purposes by claiming costs that previously were not claimed by the provider and were considered costs of an educational institution. For example, costs for a school of nursing or allied health education that were incurred by an educational institution rather than the provider in its prospective payment or rate-of-increase limit base year cost report are not allowable costs in subsequent fiscal years.

(3) *Clinical training.* Clinical training involves the acquisition and use of the skills of a nursing or allied health profession or trade in the actual environment in which these skills will be used by the student upon graduation. While it may involve occasional or periodic meetings to discuss or analyze cases, critique performance, or discuss specific skills or techniques, it involves no classroom instruction.

(4) *Classroom costs.* Classroom costs are those costs associated with formal, didactic instruction on a specific topic or subject in a class that meets at regular, scheduled intervals over a specific time period (for example, semester or quarter), and for which a student receives a grade.

(5) *Approved educational activities.* Approved educational activities means formally organized or planned programs of study operated by providers in order to enhance the quality of inpatient care in an institution. These activities must be licensed if required by State law. If licensing is not required, the institution must receive approval from the recognized national professional organization for the particular activity. Only accredited programs for the following nursing and allied health occupations are included as approved educational activities:

Training program	Approving body
Cytotechnologist	Committee on Allied Health Education and Accreditation (CAHEA).
Cardiovascular perfusionist.	CAHEA.
Clinical pastoral counselor.	Association for Clinical Pastoral Education.
Dietetic intern	The American Dietetic Association.
Health Services administrator.	Accrediting Commission on Education for Health Services Administration.
Histologic technician/technologist.	CAHEA.
Medical laboratory technician (Associate degree and certificate).	CAHEA.
Medical record administrator and technician.	CAHEA.
Medical technologist	CAHEA.
Nuclear medicine technologist.	CAHEA.
Nurse anesthetist	Council on Accreditation of Nurse Anesthesia Educational Programs.
Occupational therapist	CAHEA.
Pharmacy resident	American Society of Hospital Pharmacists.
Physical therapist	Commission on Accreditation in Physical Therapy Education.
Practical nurse	Approved by the respective State approving authorities. Reported for the United States by the National League for Nursing.
Professional nurse	Approved by the respective State approving authorities. Reported for the United States by the National League for Nursing.
Radiation therapy technologist.	CAHEA.
Radiographer	CAHEA.
Respiratory therapist and therapy technician.	CAHEA.

(d) *Request for recognition of other educational programs.* The programs listed in paragraph (c)(5) of this section constitute all programs recognized as approved educational activities, other than graduate medical education programs payable as set forth in § 413.86. National approving bodies or State licensing authorities for other types of programs or for additional subspecialties within the approved programs, may apply to HCFA for inclusion of those programs or subspecialties in paragraph (c)(5) of this section.

(e) *Criteria for identifying programs operated by a provider for cost reporting periods beginning on or after October 1, 1983.* (1) *General rule.* Except as provided in paragraph (e)(2) of this section, to be considered the operator of an approved nursing or allied health program, a provider must meet all of the following requirements:

(i) Directly incur the training costs.

(ii) Have direct control of the curriculum. (A provider may enter into an agreement with an educational institution to furnish some academic courses required for completion of the program, but the provider must provide the courses relating to the theory and practice of the nursing or allied health profession involved that are required for the degree, diploma, or certificate awarded at the completion of the program.)

(iii) Control the administration of the program including collection of tuition, maintenance of payroll records for the teaching staff, and responsibility for the day-to-day operation of the program. (A provider may contract with another entity to perform some administrative functions, but the provider must maintain control over all aspects of the contracted functions.)

(iv) Employ the teaching staff.

(v) Provide and control both classroom and clinical instruction.

(2) *Special rule when provider issues degree.* Absent evidence to the contrary, a provider that issues the degree, diploma, or other certificate upon successful completion of an approved educational program is assumed to meet all of the criteria set forth in paragraph (e)(1) of this section and to be the operator of the program.

(f) *Payment on a reasonable cost basis for certain nonprovider-operated programs.* Costs incurred by a provider, or by an educational institution that is related to the provider by common ownership or control (that is, a related organization as defined in § 413.17(b)), for the clinical training of students enrolled in an approved nursing or allied health program that is not operated by the provider, are paid on a reasonable cost basis if all of the following conditions are met:

(1) The clinical training must occur on the premises of the provider.

(2) The provider must have claimed and been paid for clinical training costs on a reasonable cost basis during its most recent cost reporting period that ended on or before October 1, 1989. This condition is met if a notice of program reimbursement (NPR) was issued for that cost reporting period by November 5, 1990 and the clinical training costs were included as pass-through costs. If an NPR was not issued by that date or an NPR was issued but did not treat the clinical training costs as a pass-through, then this condition is met if both of the following criteria are met:

(i) The intermediary included the clinical training costs in the allowable costs used to determine the interim rate for the most recent cost reporting period ending on or before October 1, 1989.

(ii) The provider claimed the clinical training costs as a pass-through cost when the cost report for the most recent cost reporting period ending on or before October 1, 1989 was initially submitted.

(3) In any cost reporting period, the percentage of total allowable provider cost attributable to allowable clinical training cost cannot exceed the percentage of total cost for clinical training in the provider's most recent cost reporting period ending on or before October 1, 1989.

(4) The students in the educational program must provide a benefit to the provider through the provision of clinical services to patients of the provider.

(5) The clinical training costs must be incurred by the provider or by an educational institution related to the provider by common control on ownership as defined in paragraph (b) of § 413.17 ("Cost to related organizations."). Costs incurred by a third party, regardless of its relationship to either the provider or the educational institution, are not allowed.

(6) The costs incurred by a provider do not exceed the costs the provider would incur if it operated the program itself.

(g) *Costs of educational activities considered normal operating expenses.* The costs of the following activities are recognized as normal operating expenses and are paid in accordance with applicable principles:

(1) Orientation and on-the-job training.

(2) Part-time education for bona fide full-time employees at properly accredited academic or technical institutions (including other providers) devoted to undergraduate or graduate work.

(3) Sending employees to educational seminars, workshops, and continuing education programs that increase the quality of medical care or operating efficiency of the provider.

(4) Maintenance of a medical library.

(5) Training of a patient or patient's family in the use of medical appliances.

(6) Except as provided in paragraph (f) of this section, clinical training and classroom instruction of students enrolled in an approved educational program that is not operated by the provider. Allowable costs are the following:

(i) Costs incurred in the clinical training of students, including the clinical training or clerkships of undergraduate medical school students that takes place in providers.

(ii) Classroom costs incurred by the provider that meet the following criteria:

(A) The provider's support does not constitute a redistribution of nonprovider costs to the provider. The support must be in addition to the costs already being incurred by the nonprovider-operated program. If the nonprovider entity reduces its costs due to receiving provider support, this reduction constitutes a redistribution of costs from an educational institution to a patient care institution and is a nonallowable provider cost.

(B) The provider receives a benefit for the support it furnishes.

(C) The cost of the provider's support is less than the cost the provider would incur were it to operate the program.

(7) Other activities that do not involve the actual operation of an approved educational program.

Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance

Dated: September 9, 1992.

William Toby, Jr.,

Acting Deputy Administrator, Health Care Financing Administration.

Approved: September 14, 1992.

Louis W. Sullivan,

Secretary.

[FR Doc. 92-22627 Filed 9-21-92; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB83

Endangered and Threatened Wildlife and Plants; Proposed Rule To Delist the Plant Hedeoma apiculatum

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to remove the plant *Hedeoma apiculatum* (McKittrick pennyroyal) and its critical habitat from the Federal List of Endangered and Threatened Plants (50 CFR 17.12 and 17.96). The species is endemic to the Guadalupe Mountains in Culberson County, Texas and Eddy County, New Mexico. Because of the range, the number of known populations, and the remote and inaccessible nature of the habitat, the Service believes that McKittrick pennyroyal is not in danger of becoming extinct throughout all or a significant portion of its range now or in the foreseeable future. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by November 23, 1992. Public hearing requests must be received by November 6, 1992.

ADDRESSES: Comments, requests for public hearing, and materials concerning this proposal should be sent to the Field Supervisor, Ecological Services Field Office, U.S. Fish and Wildlife Service, 3530 Pan American, NE., suite D, Albuquerque, New Mexico 87107. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Anne Cully, at the above address (505/883-7877).

SUPPLEMENTARY INFORMATION:

Background

Hedeoma apiculatum (McKittrick pennyroyal) was first collected in 1882, but remained undescribed until 1939 (Epling and Stewart 1939). The plant is a perennial herb, 10-15 cm (4-6 in) tall, with dense tufts of leaves growing from woody rootstocks. The showy pink flowers are about 2 cm (0.8 in) long, solitary or in clusters, and emerge from among the leaves towards the apex of stems (Irving 1980).

McKittrick pennyroyal is endemic to the Guadalupe Mountains in Eddy County, New Mexico and Culberson County, Texas. It is found in fissures and weathered pockets in open limestone rock outcrops at elevations above 1,660 m (5,400 ft). The species prefers north facing cliffs and slopes, but can occur on any aspect of sheltered relatively moist outcrops (Irving 1980, Knight and Cully 1988, Sivinski and Lightfoot 1992).

McKittrick pennyroyal was listed July 13, 1982 (47 FR 30440) as a threatened species under the authority of the Endangered Species Act of 1973 (Act),

as amended (16 U.S.C. 1531 *et. seq.*). Threats to the species at the time of listing were described as limited distribution, low numbers, and low reproductive potential, which made the species vulnerable to habitat disturbance. Since the listing, additional surveys in the Guadalupe Mountains in New Mexico and Texas have shown the plant to be more widespread and abundant than previously known.

Irving (1980) reported seven locations of McKittrick pennyroyal, from near Hunter Peak in Guadalupe Mountains National Park (GMNP), Texas, to Big Canyon, Guadalupe Mountains, New Mexico. Since 1980, the range has been extended north to Double Canyon, Guadalupe Mountains, New Mexico, with many new locations being discovered. New populations were reported by the National Park Service (NPS) in 1986 (Richard B. Smith, GMNP, *in litt.* 1986), New Mexico Energy, Minerals and Natural Resources Department (Knight and Cully 1988), U.S. Forest Service (Hayes 1988), Bureau of Land Management (BLM) (Dunmire 1990), and other sources. This information is summarized in Sivinski and Lightfoot (1992). A total of 13 Texas and 23 New Mexico locations are known at this time in an area approximately 21 km (13 mi) north to south by 8 km (5 mi) east to west in the Guadalupe Mountains of New Mexico and Texas. At the time of listing in 1982, plant numbers were estimated at 1,100. Although accurate counts and estimates are difficult to make, about 5,000 counted plants now comprise the 36 known locations.

Approximately 5–10 percent of an estimated 5,668 ha (14,000 ac) of potential habitat has been surveyed for the McKittrick pennyroyal, mostly along trails and canyon bottoms. Potential habitat is abundant, but very difficult to survey because of the steep broken terrain and the remoteness of the areas. It is likely that numerous groups of plants remain undiscovered throughout the suitable habitat and that additional surveys will continue to result in the discovery of new locations for the species (Sivinski and Lightfoot 1992).

At the time of listing, threats to the known locations, in addition to perceived vulnerability because of low numbers and limited distribution, included trail development and impacts from hikers. Management for the species in GMNP has included the designation of special management areas with limited public use, banning the use of horses on particular trails, and reducing levels of camping in certain sensitive areas (William P. Dunmire, Carlsbad Caverns and Guadalupe Mountains National Parks, *in litt.* 1984; Robin Wobbenhorst, GMNP pers. comm. 1992). These management activities have reduced the human threats to McKittrick pennyroyal. The additional locations found since listing are in areas remote from human impacts, which provides a measure of security for the species.

Section 12 of the Act directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, which included McKittrick pennyroyal in the threatened category, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27832) accepting the Smithsonian Institution report as a petition within the context of section 4(b)(3) of the Act, and its intention thereby to review the status of the plant taxa named therein. McKittrick pennyroyal was proposed for listing as a threatened species with critical habitat on August 15, 1980 (45 FR 54682). The final rule listing McKittrick pennyroyal as a threatened species and designating its critical habitat was published July 13, 1982 (47 FR 30440). The McKittrick Pennyroyal Recovery Plan was completed in 1985 (U.S. Fish and Wildlife Service 1985).

Federal involvement with McKittrick pennyroyal subsequent to listing has included surveys for new locations, monitoring of known populations, protection from human impacts through limiting use in sensitive areas, and inclusion in the development of the U.S. Environmental Protection Agency's (EPA) pesticide labeling program for protection of endangered species. The species has been included in all section 7 consultations over Federal projects occurring in suitable habitat in Eddy County, New Mexico and Culberson County, Texas. Except for consultations with EPA on pesticide labeling, there have been no other formal section 7 consultations involving this species.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists of threatened and endangered species. The same procedures apply to reclassifying a species or removing it from these lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Hedeoma apiculatum* W.S. Stewart (McKittrick pennyroyal) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

McKittrick pennyroyal populations are scattered throughout a 166 square km (65 square mi) range. Surveys since listing have increased the known distribution and abundance of the species. At the time of listing, most of the few known populations were located adjacent to hiking trails. Management actions to protect the species and the discovery of a significant number of populations that are remote from human activity have significantly reduced the threat from recreational activities.

Potential threats to this species from modification or destruction of habitat included exploratory drilling for natural gas or other resources, and wildfire. Exploratory drilling is excluded from most McKittrick pennyroyal habitat because of the steepness of the outcrops upon which the species occurs. Little was known about the response of McKittrick pennyroyal to fire until 1990, when a fire burned 13,000 ha (33,000 ac) on the Lincoln National Forest, including much of the McKittrick pennyroyal habitat. In 1991, these areas were surveyed and numerous healthy plants were observed on canyon walls. Lack of fuel in these locations had apparently protected the McKittrick pennyroyal and associated plant species. Thus, it appears that wildfire is not a serious threat to the long-term survival of the species (Sivinski and Lightfoot 1992).

B. Overutilization for Commercial, Recreational, Scientific or Educational Purposes

The final rule listing McKittrick pennyroyal identified collection for cultivation in gardens as a potential threat. No evidence for this kind of activity has come to light since the species was listed. Because of the increase in distribution and numbers of plants that are now known, the potential threat from this activity has been reduced.

C. Disease or Predation

In the final listing rule, grazing was noted to have occurred at a single location. However, livestock are excluded from most of the habitat because of the steepness of the slopes. No other predators or disease organisms are known at this time.

D. The Inadequacy of Existing Regulatory Mechanisms

McKittrick pennyroyal is on the New Mexico State Endangered Species list (9-10-10 NMSA 1978; NMFRCD Rule No. 91-1) and the Texas list of Endangered, Threatened or Protected Native Plants (chapter 88, Texas Parks and Wildlife Code). It is considered a sensitive species by the U.S. Forest Service, and has received special management consideration by the NPS. All States and agencies will have the option of retaining this species on their various lists should it be removed from the Federal List of Endangered and Threatened Plants. The Forest Service will monitor the populations on Lincoln National Forest for at least the 5-year period required by the Endangered Species Act. The BLM is committed to monitoring the status of the species on their lands for at least the 5-year period required by the Act. Management actions taken by the NPS to protect the species will be left in place in Guadalupe Mountains National Park, and the status of the populations there will be monitored as required.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Long-term climate change from the more mesic Pleistocene to the present-day dry conditions may have caused the McKittrick pennyroyal to retreat from a more widespread distribution to the moist protected habitats of canyon walls and cliff faces. Further drying trends may pose a serious threat to the relictual habitats of this species. However, the rate of climatic change is sufficiently slow (and uncertain) that this threat is not expected to occur in the foreseeable future (Sivinski and Lightfoot 1992).

The regulations in 50 CFR 424.11(d) state that a species may be delisted if (1) it becomes extinct, (2) it recovers, or (3) the original classification data were in error. The Service believes that the data supporting the original classification were incomplete, and new data show that removing *Hedeoma apiculatum* from the List of Endangered and Threatened Plants is warranted.

The Service believes the species is not in danger of extinction throughout all or a significant portion of its range, nor is it likely to become an endangered or threatened species within the foreseeable future throughout all or significant portion of its range. Given the expanded range, increase in numbers of known locations and individuals, remote habitat, and the protection provided by that remoteness and difficulty of access, the Service believes that *Hedeoma apiculatum* does not warrant the protection of the Act.

Effect of Rules

The proposed action would result in removal of this species from the List of Endangered and Threatened Plants. Federal agencies would no longer be required to consult with the Service to insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of McKittrick pennyroyal. Federal prohibitions under section 9 of the Act would no longer apply.

The 1988 Amendments to the Act require monitoring for at least 5 years after the determination that a species no longer needs the protection of the Act and its subsequent removal from the List of Threatened and Endangered Species (section 4(g)(1)). The Service and other federal agencies with responsibility for this species are committed to monitoring the status of the species and to determine the effect, if any, of removing the species from the protection provided by the Act. Monitoring standards and guidelines will be developed by the Service, NPS, BLM, Forest Service, and the States of Mew Mexico and Texas prior to delisting.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments pertaining to possible monitoring standards and guidelines to address the 5-year post-delisting are also requested. The Service particularly requests any information that would support retaining McKittrick pennyroyal as a threatened species. Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor (See **ADDRESSES**).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 26, 1983 (48 FR 49244).

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Author

The primary author of this proposed rule is Anne Cully (See **ADDRESSES**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

§ 17.12 [Amended]

2. It is proposed to amend § 17.12(h) by removing the entry "*Hedeoma apiculatum*" under LAMIACEAE, from the List of Endangered and Threatened Plants.

§ 17.96 [Amended]

3. It is further proposed to amend § 17.96(a) by removing the entry of "*Hedeoma apiculatum*" under LAMIACEAE in the designation of critical habitat.

Dated: September 4, 1992.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92-22618 Filed 9-21-92; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants: Finding on Petition to List the Paddlefish

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-Month petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 12-month finding for a petition to amend the List of Endangered and Threatened Wildlife and Plants. The Service has found that listing of the paddlefish (*Polyodon spathula*) as "threatened" is not warranted. Because of the uncertainty of the species' status in several portions of its range, the Service intends to reclassify the paddlefish from a category 3C to a category 2 species under the authority of the Endangered Species Act of 1973, as amended. The Service believes that this classification change will encourage further investigation and biological research of the species' status throughout its range.

Paddlefish occur in 22 States and are primarily inhabitants of large rivers like the Missouri, Mississippi, and Ohio, but they are also found in several of the large river tributaries and in several Gulf Coast streams. Threats to the species include habitat modification, an apparent lack of natural reproduction in some areas, and overexploitation of their eggs as a source of caviar in national and international markets. Although the status review is complete and the period for receiving official comments has expired, the Service remains interested in receiving comments, suggestions, and current scientific information applicable to the status of these species as it becomes available.

DATES: Comments my be submitted until further notice.

ADDRESSES: Questions or comments and materials concerning this notice should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Fish and Wildlife Enhancement, 1500 Capitol Avenue, Bismarck, North Dakota 58501.

The petition, finding, and supporting documents are available for public inspection, by appointment, during normal business hours at the above address and at the Service's Denver Regional Office, 134 Union Boulevard, Lakewood, Colorado.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Allardyce, U.S. Fish and Wildlife Service, Fish and Wildlife Enhancement, 420 South Garfield Avenue, suite 400, Pierre, South Dakota 57501-5408, telephone (605) 224-8693.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 et seq.), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If the finding is positive, the Service is also required to promptly commence a status review of the species.

Petition: The Service has received and made a 90-day finding on the following petition:

A petition dated June 29, 1989, was received from Mr. Steven G. Moore on July 6, 1989. The petition requested that the Service add the paddlefish to the List of Threatened and Endangered Species under provisions of the Endangered Species Act of 1973, as amended. A 90-day finding published in the April 25, 1990, **Federal Register** indicated that the petitioner had provided sufficient and substantial information indicating that listing of the species may be warranted over portions of its range. The petitioner indicated that there is a significant loss of historic range of the paddlefish, inadequate control of commercial harvest, inadequate State programs for protection, and continual habitat loss and degradation. Wild populations are being supplemented with hatchery raised fish. Concurrent with publishing the 90-day finding in the **Federal Register**, the Service initiated a status review.

The period of the Service's status review was extended because of the complexities of determining the status of the paddlefish. The range of the paddlefish currently spans 22 States and overlaps 5 of the Service's Regions which has complicated coordination and response time. In addition, initial response to the Service's 90-day finding and request for specific status information was limited. In most cases, additional requests were required for clarification of current status information on paddlefish from Federal and State agencies, necessitating a further extension of the review period. The proposed action in this notice and the following supporting information constitute the 1-year finding on the petition to list the paddlefish.

In 1792, Walbaum described the American paddlefish as a new shark species, and in 1820, Rafinesque wrote an extensive description of it as an "entirely new shark genus." Sharks, however, are cartilaginous fish (Chondrichthyes), while the paddlefish belongs to that group of fish known as the bony fish (Osteichthyes). The paddlefish is a smooth-skinned, bizarre-looking creature with a long paddle-like snout and a tail with an elongated dorsal lobe. Only one other species is known from this family: The Chinese sturgeon, *Psephurus gladius*, which inhabits the Yangtze-Kiang River in the Chinese lowlands and feeds on other fish, whereas the American paddlefish feeds on plankton (Becker 1983). Paddlefish are one of the largest freshwater fish, attaining lengths of more than 1.8 m (6 ft) and weights of more than 45 kg (100 lbs). They may attain an age of over 30 years.

Paddlefish were historically abundant in most of the large rivers of the Mississippi River drainage; specifically noted were such rivers as the Missouri, Ohio, Tennessee, Cumberland, White, Arkansas, Red, and the Mississippi itself. They also were considered abundant in many of the Gulf Coast river drainages in Texas, Louisiana, Mississippi, and Alabama. Before the turn of the century, relict populations occurred in some of the Great Lakes and in Ontario, Canada. They have been extirpated from the Great Lakes and Canada and from some of the peripheral range States such as Pennsylvania, New York, Maryland, and North Carolina.

Paddlefish are known as filter feeders, are generally associated with large river systems, and frequently occur in large groups. They can be found in a variety of habitats but prefer to spend much of their time feeding in quiet backwater areas or other slow-moving water sites,

such as the downstream end of large sandbars. The natural, unaltered, free-flowing conditions that existed on the big rivers in the late 1800's and early 1900's (with their braided channels, extensive backwater areas, and oxbow lakes) provided ideal habitat and supported large paddlefish populations (Russell 1986). Populations or segments of populations have developed in some large, man-made impoundments which provided greatly improved and expanded feeding areas, but paddlefish must have access to free-flowing rivers to spawn.

The following information is a summary and discussion of the five factors or listing criteria as set forth in section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 et seq.) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act and their applicability to the current status of the paddlefish and threats to their habitat.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range.

Thomas W. Gengerke (1986) noted that paddlefish still occur over most of their historic range and, in some instances, appear to be reinvading previously lost habitat. He also noted that, with few exceptions, the reduction in range has been confined to peripheral reaches of the historical distribution. Generally, the same analysis on range can be made today. However, interpretation of the available biological information (empirical, commercial, and statistical) applicable to the assessment of the viability of those paddlefish remaining within this historical range raises very serious questions about the future ability of these big-river inhabitants to maintain viable populations throughout a significant portion of the species' range. North Dakota, South Dakota, Nebraska, Missouri, Kentucky, and Tennessee rely to some degree on supplemental stocking efforts to maintain either sport and/or commercial fisheries within their boundaries. Texas has proposed a restoration plan that will be entirely dependent on a stocking program.

Initial declines in paddlefish populations after the turn of the century were a result of the impact of water resource projects, primarily reservoir construction, on paddlefish habitat. Dam and reservoir construction has altered most of the original paddlefish habitat in the United States by modifying temperature and flow regimes, eliminating spawning sites, disrupting spawning behavior and migration, and eliminating feeding and nursery areas (Sparrowe 1986). This problem has not been resolved. It continues to be a serious factor directly impacting the status and overall viability of paddlefish populations throughout all the major river habitats of the species. Several snag fisheries that had developed in the tailwaters of reservoirs after initial closure of dams on the upper Missouri River in North Dakota and South Dakota and in other major rivers in Missouri, Texas, Kansas, and Oklahoma and along the Tennessee River System have disappeared in the last 10 to 12 years because of a lack of recruitment (Pasch and Alexander 1986 and Unkenholz 1986). The very specific spawning requirements needed at critical times to ensure successful spawning and fry dispersal are no longer available above or below many major dams.

Several newly authorized dam construction sites both in Texas and Oklahoma will be located on waterways within the historic range of the paddlefish and can be expected to cause problems for proposed restoration plans by the State of Texas. Paddlefish were listed by Texas as "endangered" prior to 1983. Paddlefish populations in four major Gulf Coast drainages in Texas have been so reduced because of reservoir construction that they are seldom seen by biologists or commercial and sport fishermen. Paddlefish are believed to be extirpated from the Texas' San Jacinto drainage. Oklahoma's paddlefish populations have been so decimated by the impounding of its waterways by 46 major reservoirs since the early 1950's that the anticipated construction of 8 new reservoirs in the State (7 of which will be on historic paddlefish waters) is now expected to have minor impacts on this species, according to biologists in that Region.

The Service's recent status review also revealed that a number of additional threats may also pose serious problems for paddlefish habitat and range. Some of these threats may be more regional in nature, and others, like declining water quality, appear to be more ubiquitous. Proposed irrigation projects for the Arkansas River and future water allocation issues are presently a significant concern in Arkansas. Also, future expansion of navigation projects that will involve significant dredging and channelization activities can be expected to further degrade paddlefish habitat in Texas, Arkansas, and possibly other southern States.

Sand and gravel mining operations in Oklahoma waters and along certain sections of the Mississippi River are a concern, as these activities undoubtedly have impact not only on spawning and nursery activities but also on water quality. The significance of these activities on paddlefish reproductive success is presently unknown, as few States have been able to either positively identify specific spawning sites for protection or have been unable to commit resources for adequate management programs necessary to more accurately verify population status and trends.

Contaminants appear to be an increasing concern for many States. Kentucky has indicated, for example, that they believe paddlefish populations may be increasing in the Ohio River because of a general improvement in water quality in recent years. However, they are now considering closing commercial fishing for paddlefish in their portion of the Ohio River because of high levels of chlordane and polychorinated biphenols (PCB) that exceed the Environmental Protection Agency's (Agency) standards for human consumption (Ted Crowell, Kentucky Department of Fish and Wildlife Resources, 1990, personal communication). Missouri has issued consumption advisories for paddlefish from Table Rock Lake Reservoir (upper White River) because chlordane levels in both eggs and fillets from paddlefish were also found to exceed the Agency's standards. Similarly, Arkansas has issued consumption advisories for portions of several major rivers because of high levels of dioxin and chlordane, and closures are also currently being considered. Texas has also indicated concern about the presence of dioxin, PCB, heavy metal, and a number of other pollutants in former paddlefish waters like the Trinity, the Neches, and the Sabine Rivers now proposed for restoration. Many of the contaminants of concern are highly persistent organochlorines that are known to cause severe problems for fish and invertebrate organisms making up the aquatic food chain.

Despite the ubiquitous habitat destruction and modification problems associated with hydropower, irrigation, navigation, contaminants, and other industrial activities discussed above, there is a cause for some optimism. Researchers and field biologists from several States have reported the presence of what are believed to be stable and self-sustaining paddlefish populations; or, in some cases, paddlefish are now being seen or collected in rivers where they have been seen for several years.

In a 64 km (40 mi) stretch of the Tallapoosa River below Thurlow Dam in Alabama, researchers at Auburn University were able to collect "large numbers" of subadult paddlefish during a 1989 electrofishing survey. Paddlefish had not been taken in this area for several seasons. Paddlefish larval collections also have been made in the Tallapossa River above Montgomery, Alabama, in recent years. On the lower Alabama/Mobile River system, a District State biologist has described paddlefish as being "very abundant" in oxbows. A Missouri biologist reported taking paddlefish larve from the Lamine River (tributary of the Missouri River just below Omaha, Nebraska) and from two or three other locations on the Missouri River near the Osage River during 1986 and 1987 larval studies. Arkansas Game and Fish Commission research biologist, Steve Filipek (1990 personnel communication), reported that, despite growing problems, paddlefish populations in the major river systems are regarded as self-sustaining.

In Louisiana, there are uncertainties about the status of populations in some of the western drainages, but populations in Lake Pontchartrain and in other lakes and drainages in eastern Louisiana are regarded as being stable. There is no further indication of habitat destruction or modification activities occurring in Mississippi, and biologists in that State regard paddlefish populations in the upper Pearl River as being abundant in oxbows. Also, recent larval and young-of-the-year collection of paddlefish from the Homochitto, Big Black, and Mississippi Rivers are indications of the existence of reproducing populations within the State of Mississippi. Even in Oklahoma, where populations have been severely impacted by reservoir construction, there are recent reports by biologists of paddlefish snag fisheries that recently have developed on tributaries of the Eufaula Reservoir where no fish have been collected for several years.

Illinois biologists believe that their paddlefish populations are stable based on the fact that the reported commercial harvest (primarily from the Mississippi River) between 1980 and 1987 remained at 24,000 to 29,500 kg (53,000 to 65,000 lbs per year). The paddlefish is fully protected in Wisconsin, but the State has reported the existence of what is believed to be a fairly stable population of 3,000 to 4,000 fish in the Wisconsin River below Prairie du Sac Dam. Also, more paddlefish are being seen (both live and dead as a consequence of boat strikes) in Lake Pepin (Mississippi River) in recent years. Both Ohio and Kentucky believe they are seeing more paddlefish, in relative terms, in the Ohio River in recent years as a consequence of improved water quality in that river. Paddlefish larval stages recently have been collected during lock and dam studies in those two States, and Ohio has recovered subadult paddlefish from a tributary in south central Ohio in 1989 or 1990. Montana has reported that all its paddlefish populations in the upper Missouri River and the lower Missouri/Yellowstone River segments are considered to be in good condition. This assessment was based on several years of data collection in research from 1973 through 1989.

B. Overutilization for Commercial, Recreational, Scientific, or Education Purposes

Commercial exploitation has been and continues to be a major factor affecting the viability of paddlefish populations throughout their range, but it has been particularly prevalent in southern reservoirs since the 1970's when the price of roe increased to over $44 a kg ($20 a lb) (Pasch and Alexander 1986). The incentive for illegal harvest has increased tremendously in recent years. Demand and price for paddlefish roe have continued to increase through the 1980's, and Federal law enforcement agents have indicated that it is not unusual for premium quality eggs within the United States to now retail at $110 to $154 per kg ($50 to $70 per lb). Demand for caviar in the United States has increased from about 5,450 kg (12,000 lbs) to 10,000 kg (22,000 lbs) per year. On the international market, processed paddlefish caviar is now selling for $1,100 per kg ($500 per lb) (Terry L. Grosz, Fish and Wildlife Service, 1990, personal communication). Another indication of the demand for paddlefish caviar in this country was recently noted by Service agents at the San Francisco airport where 28 g (1 oz) tins of paddlefish caviar were selling for $56 plus tax. This amounts to about $1,990 per kg ($900 per lb).

The vulnerability of paddlefish to commercial (legal and illegal) operations because of certain behavioral characteristics and their low recruitment rate (slow maturation) is well documented in Pasch and Alexander (1986). They noted that, during their studies in the early 1980's on southern reservoirs, it was possible to decimate adult paddlefish stocks in three seasons. Even when mature fish are abundant, paddlefish reproductive success can be highly variable and dependent on river discharge and temperature during the spawning season (Alexander and McDonough 1983). When a population is depleted, adverse environmental conditions can increase both the time required for recovery and the probability that the remaining stock will die without successfully reproducing.

The Service regards the illegal harvest of paddlefish and their eggs as a serious threat to the survival and recovery of this species across most of its range. Fortunately, the majority of the States have also begun to recognize the magnitude and seriousness of the problem and have made a number of classification and/or regulatory changes since 1983.

Six of the seven States sharing management responsibilities on the Missouri River no longer have a commercial season on paddlefish. North Dakota, Iowa, Missouri, and Kansas closed their commercial seasons after 1983. South Dakota and Nebraska have not had a commercial season on paddlefish. Only Montana, where paddlefish populations are believed to be maintaining good age class structure and growth, has allowed commercial handling of roe.

Commercial markets for the handling of paddlefish roe and meat exist in several southern States. Within the last 3 years, two additional States (Louisiana and Alabama) have moved to fully protect the paddlefish because of indications of overexploitation. Minnesota, Wisconsin, Texas, and Ohio (hook and line fishing only) also classify the paddlefish as "protected." Commercial fishing had been unrestricted in Arkansas and Mississippi. Both of these States, within the past 2 to 3 years, have placed seasonal restrictions on commercial paddlefish fishing; they have closed their border waters (Mississippi River) in a cooperative effort with adjacent States where the paddlefish is fully protected. Iowa closed its commercial season for paddlefish on the Mississippi River in 1987. Kentucky and Tennessee still maintain a commercial paddlefish season on the Mississippi River, but it is a small percentage of the States' overall harvest (Tennessee—3 percent in 1989). Both of these States have implemented gear restrictions, and Tennessee has indicated that a higher priority on enforcement has been initiated on commercial activities. West Virginia classifies the species as "threatened" but also lists the paddlefish as a "sport" fish; only hook and line fishing is allowed. Virginia does not regulate the paddlefish but is now considering classifying the species as "endangered." Oklahoma has been considering additional protection of its only remaining viable paddlefish population

in the Grand River (Neosho River in Kansas), but no action has been taken.

The Service believes that the classification and regulatory changes discussed above have decreased overutilization of the paddlefish. To further decrease the possibility of overutilization of the species, the paddlefish was added to Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES; see discussion under Factor D) in March 1992. This will help to eliminate any illegal international trade.

C. Disease or Predation

Diseases and parasites of wild paddlefish populations have not been studied to any great extent. Within the past couple of years, Dr. Harry Halloway, Jr., of the University of North Dakota has identified the presence of various external and internal parasites in paddlefish taken from the Yellowstone River in Montana (a population shared with North Dakota). He is presently trying to determine the significance of the occurrence of these parasites on the overall condition and well-being of the species.

Dr. Halloway's studies showed heavy infestation of the gills by a monogenetic trematode and heavy infestation of the intestinal tract with a nematode encysted in the walls and free in the intestinal tract. Also of interest was a discovery that the egg masses of paddlefish examined were parasitized by a coelenterate, *Polypodium hydriforme*. This parasite was found to diminish the number of viable eggs; however, further examination and counts indicated that only about 1 percent of the eggs were affected.

The conclusion by Dr. Halloway and the Service is that parasite infestations in wild populations are a normal occurrence and by themselves do not constitute a significant threat to the paddlefish. Various types of stress factors, such as poor water quality, rapid temperature changes, contaminants, poor condition factors (from an inadequate food supply), or overcrowding in a hatchery situation, are known to predispose fish to a variety of parasites, diseases, and secondary infections. The significance of parasitic infestations may be dependent upon the presence or interaction of the paddlefish with other environmental factors.

D. The Inadequacy of Existing Regulatory Mechanisms

There is a significant need for a coordinated, joint Federal/State interagency management plan across the range of the paddlefish because of the complexity of the issues and the difficulty in obtaining specific population status information on the species due to its mobility, large size, and tendency to live in large rivers. Management problems are compounded along the Missouri, Mississippi, and Ohio Rivers where many States often share a paddlefish population. Within the last 3 to 5 years, several States along the Missouri and Mississippi Rivers have attempted to coordinate regulatory actions by eliminating or restricting legal commercial fishing for paddlefish. For example, Louisiana and Alabama have closed all commercial and sport fishing for paddlefish until additional information can be collected to verify status and trends.

There is evidence that, as a consequence of the very high demand for paddlefish caviar both on the national and international market and the current price per pound being received for processed eggs, the threat of overexploitation of paddlefish for their roe has increased and will likely continue to increase in the future.

The Service is encouraged by the fact that many States, within the past 3 to 5 years, have responded to this threat and have developed needed regulatory actions that should help to reduce illegal harvest impacts. Despite the best of intentions, the combination of legal marketing operations within the United States and the demands for premium caviar by the international trade market will continue to exert tremendous pressure on Federal and State law enforcement authorities to be able to distinguish illegally taken paddlefish roe from legal sources. It is too soon to tell whether these more recent regulatory changes have had any impact on quelling the illegal trade issue. In the judgment of the Service, it is unrealistic to expect that regulatory actions within the United States alone will be able to adequately protect the paddlefish from this type of pressure. The history of the illegal harvest problem has been that highly organized, illegal operations have been at least 2 to 3 years ahead of law enforcement authorities and have decimated paddlefish populations well before a problem was detected.

To help stop the illegal harvest, the Service recommended that the paddlefish be added to appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora at the Conference of Parties meeting held in Kyoto, Japan, on March 2–3, 1992. The addition of the paddlefish to appendix II was approved at that meeting. As an appendix II species, it will be necessary that an export permit be issued for any export of paddlefish, their parts, or derivatives (which includes eggs). A reexport certificate will have to accompany any subsequent shipment from the importing country. Export permits will only be issued when the action is not detrimental to the survival of the species. This control of exports will make it easier to curtail the illegal aspects of the caviar market.

E. Other Natural or Man-Made Factors Affecting Its Continued Existence

The paddlefish is vulnerable to illegal harvest because of certain behavioral characteristics. Predictable spawning runs and schooling tendencies during the spring and winter months at readily identifiable deep water locations within reservoirs make paddlefish fairly easy to locate and capture and have contributed to the depletion of many commercially exploited populations (Pasch and Alexander 1986).

Also, the relatively low reproductive potential of the paddlefish in combination with the narrow range of conditions necessary to ensure a successful spawn, extremely low numbers of naturally reproducing populations, and relatively small numbers of individuals comprising some populations reduces the species' ability to maintain viable populations (without supplemental stocking).

When these factors are combined with the cumulative impact of the other factors affecting paddlefish range and viability (discussed under factor A), the probability that remaining, segmented populations will recover is greatly reduced. Nevertheless, if overharvest can be controlled and other environmental problems mitigated or resolved, the information received from the individual States during the status review indicates that the viability of some paddlefish populations can be recovered. Missouri's reservoir stocking program has proven to be successful, and several other States (as discussed above under factor A) like Alabama, Oklahoma, Ohio, Kentucky, Arkansas, and Mississippi have reported either increased sightings or catches of either larval stages, young-of-the-year, or subadult fish from waters where populations have been considered to be greatly reduced.

The petitioner referred to seven States where the status of the paddlefish was listed as declining in the 1983 Gengerke report. These States are Alabama, Illinois, Kansas, Ohio, South Dakota, Texas, and West Virginia. The status of paddlefish in one State, Oklahoma, was listed as unknown. Since 1983, there have been some important changes.

These States, including several others bordering the upper Missouri and upper Mississippi River drainages, have taken regulatory actions on their own to protect populations. Based on primarily empirical information from these States and/or our Service Regions, there is an apparent improvement in the status of seven of the above eight States. These States believe their populations to be stable or expanding, except for Texas where there is an apparent continued decline despite full protection.

Alabama has closed both commercial and sport fishing. State biologists are now reporting large numbers of paddlefish in the lower Alabama River/Mobile River delta complex and increased numbers of subadults below Thurlow Dam in the Tallapoosa River, including paddlefish larval collections near the Tombigbee River. The States of Ohio, Kentucky, and West Virginia believe that paddlefish may be increasing in the Ohio River and some of its tributaries because of a general improvement in water quality and the fact that more paddlefish juveniles and young-of-the-year are being taken on the Ohio River during lock and dam studies. In 1989, Ohio biologists captured 30 subadult paddlefish from a tributary of the Scioto River several miles above the Ohio River. Kentucky considers some of its most significant populations to be in the Ohio River below Louisville, Kentucky. West Virginia also believes that paddlefish numbers are increasing on the upper Ohio and Kanawha Rivers based on increased captures, improving water quality, and an indication that some spawning may be occurring within 80 km (50 mi) of its border on the Ohio River.

Both the States of South Dakota and Nebraska share management responsibilities for the Missouri River population below Gavins Point Dam and its reservoir, Lewis and Clark Lake. Paddlefish larvae have been collected in Lewis and Clark Lake (from the free-flowing section below Fort Randall Dam) nearly every year for the past several years and appear to be increasing. The paddlefish population below Gavins Point Dam is regarded as having stabilized at approximately 8,000 fish, and the current annual harvest quota of 1,600 fish may be further reduced. A prohibition against snagging immediately below Gavins Point Dam, where most fish are taken, was initiated in October 1991. Population segments in South Dakota's remaining Missouri River reservoirs are regarded as having declined since 1983. Adequate spawning habitat in tributaries of these reservoirs is not available.

Kansas, which closed its portion of the Missouri River to commercial paddlefish operations in January 1991, shares its populations with Oklahoma (Grand River/Meosho River) and Missouri (the Marais des Cygnes/Osage River in Missouri), and paddlefish were recently discovered in the Marmaton River (Little Osage River in Missouri). The State believes that these populations are "healthy and sustainable." Kansas also made an attempt in September 1991 to reestablish paddlefish in the upper Arkansas River by stocking Kaw Reservoir in a cooperative agreement with Oklahoma. Adequate spawning habitat is available on the Walnut and Arkansas Rivers above this reservoir.

Illinois has assessed the status of its populations as stable based on the fact that commercial harvest has consistently been between 24,000 and 29,500 kg (53,000 and 65,000 lbs) between 1980 and 1987, although the 1986 harvest was slightly higher at 35,200 kg (77,500 lbs). The majority of this harvest is reported to be from the lock and dams on the Mississippi River, but paddlefish are also reported in other major rivers, like the Illinois, Little Wabash, Sangamon, Kaskaskia, and the Big Muddy.

Oklahoma believes that its populations are stable. The major fishery is in the Grand River system where commercial harvest is allowed only from Grand Lake. The State believes that downstream areas of the Grand River at Fort Gibson and Markham Ferry could sustain some commercial harvest if illegal fishing could be eliminated. Young-of-the-year paddlefish have been collected from the Grand River and on the Arkansas River below Keystone Reservoir. There is now evidence that populations are present and increasing in Keystone Reservoir as a snag fishery was observed to have developed upstream of the reservoir during the spring high water period in 1990.

Paddlefish populations in Texas, although protected, are apparently still in decline. Restoration efforts were initiated in 1989 above B.A. Steinhagen Reservoir (Neches River), and additional restoration reservoir construction and multipurpose navigation projects in the State could jeopardize future restoration plans, however.

The petitioner also identified the use of hatchery raised fish as a potential threat to the genetic diversity of the species. Unless a management and propagation program for a particular species is closely monitored, there is always the potential threat that weakening of the gene pool and loss of identity from original stocks could become a problem. However, genetic information on the paddlefish is presently quite limited, and the propagation program technology is still developing on a national basis. Consequently, the availability of hatchery raised paddlefish fingerling to those States that use this source to supplement existing stocks is quite limited.

Although several States currently utilize a stocking program as a management tool, it would be inaccurate to characterize these programs as being overreliant on hatchery produced fingerling. Generally, the degree of stocking occurring on a national basis is not at a level that could be expected to maintain population segments at viable levels. Nearly all States that utilize supplemental stocking receive fingerlings that have originated from wild broodstock taken from river systems geographically common to that State. The only known exception to this would be the Texas program. Also, the Food and Drug Administration has recently cancelled the restricted Investigational New Animal Drug (INAD) permit at selected Federal and State hatcheries. A number of chemicals essential to the success of hatchery production programs may no longer be available. This will have a major impact on the paddlefish production programs and the availability of fingerlings in the immediate future.

The Act requires the Service to make its determinations regarding listing solely on the basis of the best scientific and commercial data available after conducting a review of the status of the species and after taking into account those efforts being made by States or others to protect the species. It is the opinion of the Service that, although the empirical information reviewed suggests an apparent decline for some population segments of the paddlefish, scientific and commercial evidence to list the species as threatened throughout its range is not available.

The primary difficulty encountered by the Service in attempting to assess the current status and/or trends was a nearly complete absence of any population data addressing population size, age structure, growth data, or harvest rates across the range of the paddlefish. This was particularly true for those States bordering the upper Mississippi and Ohio Rivers where the only significant information available was commercial data from Illinois, Iowa, and Missouri. Also, a paucity of current population data exists from most

of the States bordering the Missouri River and the Gulf Coast States. In many cases, States have had to make assessments based primarily on empirical data, sightings by biologists incidental to other fishery activities, and general information from commercial or sport fishermen. Generally, the biological and statistical evidence was not available to conclusively verify specific trends or to verify that the status of paddlefish populations is indeed stable or viable. Of concern is the fact that since the 1983 status survey was completed by Gengerke (1986), 19 of 22 States where paddlefish still occur have recognized indications of overharvest and continued habitat degradation problems; however, they have made changes in either the classification, status, and/or regulatory status of their sport and/or commercial paddlefish fishery to overcome these problems.

The Service has concluded that, because of the apparent viability of some populations or population segments and apparent increases in the species' numbers in parts of its range, listing the species across its range is not warranted. In attempting to assess the species-wide threats or impacts on the paddlefish, the Service considered both the limited amounts of empirical and biological data and relied very heavily on personal interviews with many State and Federal field biologists who work closely with the resource. The overwhelming opinion of these professionals is that, while they recognize that severe threats have caused significant population declines in parts of the species' range, their observations, limited surveys, and conversations with commercial and sport fishermen also indicate that some paddlefish populations appear to be holding their own (also based on collections of both paddlefish larvae and fry from several systems) and may be increasing.

Most of the southeastern States also believe that regulatory changes made within the last 3 to 5 years along with increased enforcement activities may allow recovery of paddlefish populations in river systems where adequate habitat conditions still exist. Some field biologists also indicated that, if adequate funding and manpower were available to expand survey efforts to some of the more complex river systems and bayous where paddlefish have been seen on a regular basis, a more accurate and possibly a more favorable accounting of the species' status would be possible.

The Service also had difficulty in attempting to define a distinct population segment for listing purposes. The Service has the authority to list a distinct population segment for any vertebrate fish or wildlife species which interbreeds when mature. However, congressional language indicates that the Service is "to use the ability to list populations sparingly and only when the biological evidence indicates that such action is warranted" (Senate Report No. 96–151, 96th Congress, 1st Session 7, 1979).

Genetic information available on the paddlefish is also extremely limited. Only two studies are known to have been done on the species, one by Carlson (1982) using electrophoretic (protein analysis) techniques, and the other study by the Illinois Natural History Survey (Epifanio, Nedbal, and Philipp 1989) which used both protein electrophoresis and restriction endonuclease fragment analysis of mitochondrial DNA (mtDNA analysis).

Carlson (1982) was the first assessment of the genetic structure of paddlefish populations, and the study found that the species exhibited a lower genetic variability (seen only in a few other animal groups) than that reported for other vertebrates and other Osteichthyes. Possible explanations for this low genetic variability described by the study were that the environmental stability of the Mississippi River system through geologic time may have led to the fixation of a highly adaptive genotype. Also, the paddlefish, which is regarded as a primitive and genetically conservative organism and is a rather large, long-lived species with the capacity to travel great distances, may be responding to its environment in a much less fine-grained fashion than smaller, short-lived, less mobile species. The lack of electrophoretic differences does not necessarily imply a lack of genetic differences, but it does suggest that any such genetic differences that might be present would be present at only low levels. One paddlefish taken from the Alabama River drainage was noted as being genetically distinct because it was homozygous for one allele not found in the Mississippi River drainage paddlefish.

The study by Epifanio, Nedbal, and Philipp (1989) showed slightly more genetic variability during protein electrophoresis work but indicated that this variability was still low compared to other fishes "and that stock structure of the paddlefish is not exactly clear." The qualitative mtDNA analysis, which is described as being more useful than protein electrophoresis for monitoring paddlefish population genetic dynamics, reflects a clonal mode of inheritance. This work identified a north-south distribution of three clone types. The "C" clones were observed primarily north of the mid-Missouri River; the "B" clones were observed in the southern portion of the range; and the "A" clone was observed uniformly throughout the range and probably indicates that multiple stocks were sampled over the species' range. Additional work is necessary to determine if paddlefish in some areas are genetically distinct from paddlefish in other areas.

In many portions of the species' range, there is an apparent isolation (as a result of dams, reservoirs, and different drainage basins) from neighboring members of the same taxon. The question remains unanswered as to whether these isolation factors have been significant enough to produce genetically distinct populations. However, the most recent population studies done by Reed (undated) did show that Louisiana paddlefish populations exhibited both morphological differences and significantly different fecundity estimates from other paddlefish populations found throughout river systems of the Mississippi River drainage. Many of the paddlefish collected by Reed were taken from Gulf Coast streams or other water bodies which either have no apparent connection with the Mississippi River or perhaps only seasonal ties during flood events. Sexual dimorphism between sexes in Louisiana paddlefish was considerably less pronounced (females and males being equally slender at sexual maturity), and fecundity estimates (number of eggs produced per kilogram of body weight) for Lake Pontchartrain paddlefish were found to be considerably lower than fecundities reported in the literature. Also, there is some evidence (based on conversations with field biologists in several southeastern States) that paddlefish in the southern portion of their range may mature slightly earlier and are generally smaller (in weight) than their counterparts in more northern ranges.

The scientific evidence is not conclusive that morphological, behavioral, and biochemical characteristics of the "population segments" are distinctly different from other members of the taxon. Genetic variability of the species is regarded as low, and there is some documentation and evidence of population segment exchanges between reservoir and lock and dam systems across the species' range. On a national basis, the reliance

of the States on a stocking program constitutes a very small portion of the species' reproductive potential. Therefore, the Service does not believe that either the current stocking program or future programs, given the production program constraints and considering the above discussion, are likely to jeopardize the genetic variability of the species.

Studies by Tennessee Valley Authority biologists in the late 1970's and early 1980's documented an exchange of paddlefish larval stages between some Tennessee Valley Authority reservoirs. Oklahoma biologists believe that there is a strong possibility that paddlefish now occurring below Keystone Reservoir on the Arkansas River originated from the Grand River/Grand Lake stock. A similar exchange of paddlefish larval stages and fry may be taking place within some upper Missouri River basin reservoirs. Biologists are presently engaged in studies to confirm the possibility or extent of this exchange, particularly below Gavins Point Dam on Lewis and Clark Lake, South Dakota. Similarly, the apparent isolation of paddlefish populations endemic to several Gulf Coast streams in Texas, Louisiana, and Alabama from the Mississippi River drainage is not conclusive and can be questioned. There is the possibility of exchange between the Tennessee River system and the Alabama River via the newly completed Tombigbee River Canal. Some biologists believe that there is a strong possibility that there has been an exchange of several other Gulf Coast river paddlefish populations with the Mississippi River drainage via the Intercoastal Waterway, specifically in Louisiana.

Although paddlefish have very specific spawning requirements, the Service does not believe that the information and data available demonstrates that habitat utilized by several apparently isolated paddlefish populations is "unique." In fact, the literature shows that paddlefish have been able to adapt from the free-flowing river environment to a reservoir situation (at least for feeding purposes) and still be able to maintain population viability if provided access to the riverine environment, if adequate spawning conditions are maintained, and if harvest is adequately controlled.

The Service, after fully evaluating all of the above information, has concluded that there is not sufficient scientific evidence to conclusively demonstrate that any population segments are in fact "distinct" from other members of their taxon. Listing of the paddlefish by "population" is, therefore, not possible.

The status review revealed that there is a severe lack of population data and scientific information on the species which hinders an accurate assessment of the status of the species. Therefore, the Service intends to reclassify the paddlefish from a category 3C to a category 2. This classification change should encourage further investigation and biological research of the species' status.

The reclassification from a category 3C to a category 2 species and the recent addition of the paddlefish to Appendix II of the convention on International Trade in Endangered Species of Wild Fauna and Flora is an acknowledgment of the Service's concern for the future status of the paddlefish across its range. The status review has revealed that there is a severe lack of population data and scientific information on the species, without which an accurate assessment of the magnitude and future implications of the many threats discussed above cannot be accurately determined. The Service believes that its findings are appropriate at this time, and we will continue to monitor the species' status. If appropriate data becomes available in the future which indicate that the species may qualify as a threatened or endangered species, or that distinct populations as defined in the Act can be distinguished, the Service will reassess the status and propose listing as necessary.

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Author

This notice was prepared by David A. Allardyce (see **FOR FURTHER INFORMATION CONTACT**).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: September 2, 1992.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92-22418 Filed 9-21-92; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 17

RIN 1018-AB65

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Plant Ipomopsis Sanctispiritus (Holy Ghost Ipomopsis), Without Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to list the plant *Ipomopsis Sancti-spiritus* (Holy Ghost ipomopsis) as an endangered species under the authority of the Endangered Species Act of 1973, as amended (Act). This plant occurs in low numbers at only one location in the Sangre de Cristo Mountains in New Mexico. Its survival is threatened by limited distribution, low population numbers, the proximity of development, and intensity of human activity in the area. Potential threats include road maintenance, chemical herbicide and pesticide use, biological pest controls, and any natural or man-made factors that would reduce the already low numbers or significantly alter the habitat. This proposal, if made final, would implement Federal protection under the Act for the Holy Ghost ipomopsis. Critical habitat is not being proposed. The Service seeks data and comments from the public on the proposed rule.

DATES: Comments from all interested parties must be received by November 23, 1992. Public hearing requests must be received by November 6, 1992.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, New Mexico Ecological Services Office, 3530 Pan American Highway, NE., Suite D Albuquerque, New Mexico, 87107. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Anne Cully, at the above address (Telephone: 505/883-7877).

SUPPLEMENTARY INFORMATION:

Background

Ipomopsis sancti-spiritus is an erect, biennial to short-lived perennial, known only from the Pecos Mountains of San Miguel County, in north-central New Mexico. It was first collected by Dr. Edward F. Castetter in 1929. Mr. Reggie Fletcher, U.S.D.A. Forest Service, collected the species in 1977. Wilken and Fletcher (1988) later described the plant as a species distinct from the closely related *Ipomopsis aggregate*.

The Holy Ghost ipomopsis is a member of the phlox family (Polemoniaceae). It is 30–80 cm (12–31 in) tall, with mostly solitary stems, occasionally branched from the base. The leaves are oval in outline, 3–6 cm (1–2.4 in) long, with 9–15 linear divisions. The basal leaves form a loose to compact rosette that dies back at flowering. The leaves are gradually reduced in size up the length of the stem. The flowers are pink, tubular, and about 2–2.5 cm (0.8–1 in) long. The stamens are included within the corolla tube.

The Holy Ghost ipomopsis occurs at elevations of approximately 2,440 m (8,000 ft). The species is found only from a 3.2 km (2 mi) segment of a canyon in the Sangre de Cristo Mountains. The plants are restricted to steep, south or southwest facing slopes primarily in openings under *Pinus ponderosa* (ponderosa pine), *Pseudotsuga menziesii* (Douglas fir), *Quercus gambellii* (Gambel oak), and *Populus tremuloides* (quaking aspen). The substrate is a sandy to pebbly limestone conglomerate derived from the Terrero and Espritu Santo formations (Wilken and Fletcher 1988). The plant grows in small openings or clearings on the forested slopes, and it is likely that fire may have played a role in the past in maintaining open habitat for this species. Plants have colonized the cut-and-fill slopes of a Forest Service road indicating some preference for open disturbed areas.

The entire known population of the Holy Ghost ipomopsis consists of approximately 1,200–2,500 individual plants, located on Forest Service and private lands within the boundaries of the Santa Fe National Forest. Approximately 80 percent of the population occupies the cut-and-fill slopes along a Forest Service road; the remaining 20 percent of the population occurs on the natural, dry, and open habitat higher up on the canyon slopes. Most of the occupied habitat is along a Forest Service road which provides access to summer homes and Forest Service campgrounds. In this location, the plants and their habitat are vulnerable to harm from road maintenance, wildfire and fire management, and pesticide spraying. Surveys conducted by Forest Service personnel and New Mexico Energy, Minerals and Natural Resources Department botanists within a 24 km (15 mi) radius of the known population have failed to locate any additional populations of the species (Sivinski and Lightfoot 1991).

The Holy Ghost ipomopsis was included as a Category 2 species in a February 21, 1990, notice (55 FR 6184) of plants under review for classification as threatened or endangered species. Category 2 includes those taxa for which there is some evidence of vulnerability, but for which there is not enough date to support listing proposals at that time. A status report was completed on the Holy Ghost ipomopsis in 1991 (Sivinski and Lightfoot 1991). This report along with other available data provided sufficient biological information to support the appropriateness of proposing the Holy Ghost ipomopsis for listing as endangered.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act, set forth the procedure for adding species to the Federal lists of threatened and endangered species. A species may be determined to be endangered or threatened based on the best scientific and commercial data available regarding one or more of the five factors described in section 4(a)(1). These factors and their application to *Ipomopsis sancti-spiritus* Wilken and Fletcher (Holy Ghost ipomopsis) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

The Holy Ghost ipomopsis occurs in an area that has been heavily used for recreation for at least the last 50 years. This includes approximately 36 recreation cabins and a Forest Service campground. A nearby trout stream receives significant use by anglers. These high-use recreational values have been protected by the almost complete exclusion of timber harvest and forest fire. As the forest has become more mature and natural openings less frequent, the majority of the known population of the Holy Ghost ipomopsis has become associated with the man-made disturbance associated with the forest road.

Road maintenance poses a potential threat to the species. An example is a nearby Forest Service road that was graveled using crushed waste rock from an abandoned mine. The sulfides in this mine waste created highly acid road runoff that killed the surrounding vegetation. If this or other toxic materials had been used for the Forest Service road occupied by Holy Ghost ipomopsis, approximately 10 percent of the now occupied roadside habitat would have been rendered useless for this rare species. Although the Forest Service road is not presently sprayed with herbicides, this type of weed control could be a future maintenance threat.

The Forest Service road occupied by Holy Ghost ipomopsis was straightened and paved in 1989. The 111 plants that would have been destroyed by the activity were moved in mid-June of that

year to a similar habitat at Elk Mountain. All of the transplants quickly died.

The control of spruce budworm is a potential pest management threat to the Holy Ghost ipomopsis. The spruce budworm is a moth larva that can defoliate large areas of spruce and douglas fir. When infestations occur in residential areas, the State of New Mexico receives numerous requests for large area aerial broadcast of *Bacillus thuringiensis* as a pesticide. This pesticide kills not only the spruce budworm moth, but all other Lepidopterans that serve as pollinators for the Holy Ghost ipomopsis. If this treatment were repeated for more than one year, it might have a serious impact on seed production and population recruitment for the short-lived Holy Ghost ipomopsis.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

No economic uses for the Holy Ghost ipomopsis are known. However, the low population numbers make the species vulnerable to harm from both scientific and nonscientific collecting. The species produces a very attractive flower which may make the plants more likely to be picked by visitors to the canyon, and if the plants become well known, there may be interest in propagating the species for commercial purposes.

C. Disease or Predation

No significant disease or predation has been observed for this species.

D. The Inadequacy of Existing Regulatory Mechanisms

There is no Federal law presently protecting the Holy Ghost ipomopsis. The plant is protected by the New Mexico Plant Protection Act. This act prohibits the collection of the species unless a permit is granted by the New Mexico Energy, Minerals and Natural Resources Department. The Forest Service has included the Holy Ghost ipomopsis on its Sensitive Species List. The species is considered in Forest Service environmental assessments and planning. The Act would provide additional protection for this species through section 7 (interagency cooperation) requirements and through section 9 which prohibits malicious damage, destruction, or removal and reduction to possession of plants occurring on areas under Federal jurisdiction.

E. Other Natural or Man-Made Factors Affecting its Continued Existence

Low numbers and limited distribution make this species vulnerable to extinction from natural and man-made threats. Reduction in plant numbers could reduce the reproductive capabilities and genetic potential of the species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Ipomopsis sancti-spiritus* as endangered without critical habitat. The status of endangered is appropriate because of the species' limited distribution, low population numbers, proximity of human development, and intensity of human use of the area. Potential threats include road maintenance, wildfire and fire management policy, habitat alteration, and pesticide applications. Critical habitat is not being proposed for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for this species. As discussed under Factor B in the Summary of Factors Affecting the Species, *Ipomopsis sancti-spiritus* is threatened by taking, an activity difficult to enforce against and only regulated by the Act with respect to plants in cases of (1) removal and reduction to possession of listed plants from lands under Federal jurisdiction, or their malicious damage or destruction on such lands; and (2) removal, cutting, digging up, or damaging or destroying in knowing violation of any State law or regulation, including State criminal trespass law. Such provisions are difficult to enforce, and publication of critical habitat descriptions and maps would make *Ipomopsis sancti-spiritus* more vulnerable and increase enforcement problems. Therefore, it would not now be prudent to determine critical habitat for *Ipomopsis sancti-spiritus*.

Available Conservation Measures

Conservation measures provided to those species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages conservation actions by Federal, state, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the states and authorizes recovery plans for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or to result in the destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorized, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Act and its implementing regulations found in 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for listed plants, the 1988 amendments (Pub. L. 100-478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying endangered plants in knowing violation of any state law or regulation, including state criminal trespass law. Certain exceptions apply to agents of the Service and state conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to

carry out otherwise prohibited activities involving endangered species under certain circumstances.

It is anticipated that few trade permits would ever be sought or issued because the species is not common in cultivation or in the wild. However, because of its beauty, local demands for the species for garden cultivation may increase as the species becomes better known. Requests for copies of the regulations on listed plants and inquires regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 432, Arlington, Virginia, 22203 (703/358-2104).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species.

(2) The location of any additional populations of this species and reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act.

(3) Additional information concerning the range, distribution, and population size of this species.

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulations on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to Jennifer Fowler-Propst, Field Supervisor, U.S. Fish and Wildlife Service, New Mexico Ecological Service (see **ADDRESSES** section).

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Sivinski, R., and K. Lightfoot. 1991. Status report on *Ipomopsis sancti-spiritus*. U.S. Fish and Wildlife Service, Albuquerque, New Mexico. 17 pp.

Wilken, D.H., and R. Fletcher. 1988. *Ipomopsis sancti-spiritus* (Polemoniaceae), a new species from northern New Mexico. Brittonia 40(1):48-51.

Author

The primary author of this proposed rule is Anne Cully (see **ADDRESSES**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulations Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.12(h) for plants by adding the following entry in alphabetical order under the family Polemoniaceae-Phlox, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common Name					
*	*	*	*	*	*	
Polemoniaceae—Phlox family:						
*	*	*	*	*	*	
Ipomopsis sancti-spiritus	Holy Ghost Ipomopsis	U.S.A. (NM)	E		NA	NA
*	*	*	*	*	*	

Dated: September 3, 1992.

Richard N. Smith,

Director, Fish and Wildlife Service.

[FR Doc. 92-22417 Filed 9-21-92; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

RIN 1018-AA95

Endangered and Threatened Wildlife and Plants; Notice of Public Hearings on Revised Proposal to Designate Critical Habitat for the Least Bell's Vireo

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Revised proposed rule; notice of public hearings.

SUMMARY: The U.S. Fish and Wildlife Service (Service), under the Endangered Species Act of 1973, as amended (Act), gives notice that two public hearings will be held on the revised proposal to designate critical habitat for the least Bell's vireo (*Vireo bellii pusillus*). The hearings will allow all interested parties to submit oral or written comments on the proposal.

DATES: Two public hearings will be held, each from 1 to 4 p.m. and from 6 to 8 p.m. Hearings will be held on Tuesday, October 20, 1992, in Anaheim, California, and on Thursday, October 22, 1992, in San Diego, California. Comments from all interested parties must be received by November 5, 1992.

ADDRESSES: The hearing on Tuesday, October 20, 1992, will be held at the Hyatt Regency Alicante, 100 Plaza Alicante at Harbor and Chatman, Garden Grove (Anaheim), California. The Thursday, October 22, 1992, hearing will be held at the San Diego Concourse, 3d Avenue and B Street, San Diego, California. Written comments and materials may be submitted at the hearing or may be sent directly to Mr. Jeffrey Opdycke, Field Supervisor, U.S. Fish and Wildlife Service, Southern California Field Office, 2730 Loker Avenue West, Carlsbad, California 92008. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the above address.

FOR FURTHER INFORMATION CONTACT: Jeffrey Opdycke, Field Supervisor, at the address listed above (Telephone: 619/431-9440).

SUPPLEMENTARY INFORMATION:

Background

The least Bell's vireo (*Vireo bellii pusillus*) is a small, migratory songbird that breeds in riparian woodlands at a few localities in southern California and northwestern Baja California, Mexico. This subspecies has experienced a significant population decline and reduction of range in the United States that has been attributed largely to widespread destruction of its habitat and high rates of nest parasitism by the brown-headed cowbird (*Molothrus ater*). The current breeding population of the least Bell's vireo in California consists of about 500 pairs. Several hundred pairs are estimated to occur in Mexico.

On May 2, 1986, the least Bell's vireo was listed as endangered (51 FR 16483). A final decision on designation of critical habitat was deferred at that time and a revised proposal was published in the **Federal Register** on August 7, 1992 (57 FR 34892). Public comments on the revised proposed rule to designate critical habitat for the vireo will be accepted until November 5, 1992. Subsection 4(b)(5)(E) of the Act requires that a public hearing be held if it is requested within 45 days of publication of a proposed rule.

Because of the level of interest in this proposed action, and in anticipation of requests for a hearing on the revised proposal, the Service has scheduled public hearings at the following locations:

Tuesday, October 20, 1992: Hyatt Regency Alicante, 100 Plaza Alicante at Harbor and Chatman, Garden Grove (Anaheim), California (1 to 4 p.m. and 6 to 8 p.m.)

Thursday, October 22, 1992: San Diego Concourse, 3rd Avenue and B Street, San Diego, California (1 to 4 p.m. and 6 to 8 p.m.)

Those parties wishing to make statements for the record should bring a copy of their statements to present to the Service at the start of the hearing. Oral statements may be limited in length, if the number of parties present at the hearing necessitates such a limitation. There are, however, no limits to the length of written comments or materials presented at the hearing or mailed to the Service. Written comments will be given the same weight as oral comments. Written comments may be submitted at the hearing or mailed to the address given in the ADDRESSES section of this notice. The comment period closes on November 5, 1992.

Author

The primary author of this notice is Larry Salata, U.S. Fish and Wildlife Service, Southern California Field Office, 2730 Loker Avenue West, Carlsbad, California 92008.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: September 8, 1992.

Marvin L. Plenert,

Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 92-22972 Filed 9-21-92; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 17

RIN 1018-AB56

Endangered and Threatened Wildlife and Plants; Notice of 6-month Extension and Reopening of Public Comment Period on the Proposed Rule to List the Coastal California Gnatcatcher as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of extension and reopening of comment period on proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) extends for not more than 6 months the time to make a decision on its proposal to list the coastal California gnatcatcher (*Polioptila californica californica*) as an endangered species. The Service proposed endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for the coastal California gnatcatcher on September 17, 1991 (56 FR 47053). The Service will use the 6-month extension provided in the Act to obtain and review information regarding the taxonomy of the coastal California gnatcatcher. The comment period is reopened for a period of 30 days.

ADDRESSES: Data, information, comments, or questions concerning this species should be submitted to the Field Supervisor, Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad, California 92008. The complete file for this action is available for public inspection, by appointment, during normal business hours at the above address.

DATES: Data and comments must be submitted by October 22, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey Opdycke, Field Supervisor, Carlsbad Field Office, at the above address (619) 431-9440.

SUPPLEMENTARY INFORMATION:

Background

On September 17, 1991, the Service proposed endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for the coastal California gnatcatcher throughout its range in southern California and northern Baja California, Mexico. The coastal California gnatcatcher is a resident of the coastal sage scrub plant community. The primary reason for proposing this action was habitat loss and fragmentation from urban and agricultural development. About 85 percent of the historical coastal sage scrub has been lost in southern California.

The coastal California gnatcatcher is a small long-tailed member of the thrush family. It is dark blue-gray above, and grayish white below. Its tail is mostly black, as is the male's cap during the spring and summer. The coastal California gnatcatcher's call consists of three mew notes similar to those of a kitten.

The California gnatcatcher was originally described by Brewster (1881) as a distinct species. Thereafter it was regarded as a subspecies of the black-tailed gnatcatcher (*Polioptila melanura*) (Grinnell 1928). However, in his review of the black-tailed gnatcatchers, Atwood (1988) concluded that the California gnatcatcher (*P. californica*) was distinct

from the black-tailed gnatcatcher (*P. melanura*). The fact that the two are reproductively isolated where they overlap in distribution coupled with pronounced vocal differences and subtle contrasts in morphology and ecology formed the basis of this conclusion. This taxonomic treatment was formally accepted by the American Ornithologists' Union (1989).

The American Ornithologists' Union, however, has not formally reviewed the subspecific taxonomy of the California gnatcatcher. Two other subspecies of the California gnatcatcher, *P. c. pontilis* and *P. c. margaritae* occur in the central or southern portions of Baja California (Atwood 1991). In response to its proposed rule, the Service received comments from scientists questioning the scientific validity of the taxonomy of the subspecies of the California gnatcatcher. In a letter dated August 19, 1992, the Service formally asked the American Ornithologists' Union Committee on Classification and Nomenclature to review the validity of the taxon *Polioptila californica californica*.

The Act requires the Service to make a final decision within 1 year of the date of the proposal. If the Service finds that there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination or revision concerned, the Service may extend the 1-year period for not more than 6 months for purposes of soliciting additional data.

In part because of comments questioning the scientific validity of the subspecies, the Service is extending for not more than 6 months the time to make the final decision on the proposed listing of the coastal California gnatcatcher. The Service seeks comments and data from the scientific community and public regarding the subspecific taxonomy of the coastal California gnatcatcher.

References Cited

American Ornithologists' Union. 1989. Thirty-seventh supplement to the American Ornithologists' Union Check-list of North American birds. Auk 106: 532–538.

Atwood, J.L. 1988. Speciation and geographic variation in black-tailed gnatcatchers. Ornithol. Monogr. No. 42.

Atwood, J.L. 1991. Subspecies limits and geographic pattern of morphological variation in California gnatcatchers (*Polioptila californica*). Bull. S. Calif. Acad. Sci. 90: 116–133.

Brewster, W. 1881. On the affinities of certain Polioptilae, with a description a new species. Bull. Nuttall Ornithol. Club 6: 101–107.

Grinnell, J. 1926. A critical inspection of the gnatcatchers of the Californias. Proc. Cal. Acad. Sciences. 15(16):493–500.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Authority

The Authority for this action is: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

Dated: September 17, 1992.

Acting Director, U.S. Fish and Wildlife Service.

Jay L. Gerst,

[FR Doc. 92–23035 Filed 9–21–92; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 57, No. 184
Tuesday, September 22, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Determination of Total Amount and Quota Period for Tariff-Rate Quota for Certain Imported Sugars, Syrups, and Molasses

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This notice affirms the Secretary of Agriculture's announcement of August 27, 1992 establishing the total amount of 1,231,000 metric tons, raw value, of sugars, syrups, and molasses that may be entered under subheadings, 1701.11.01, 1701.12.01, 1701.91.21, 1701.99.01, 1702.90.31, 1806.10.41, and 2106.90.11 of the Harmonized Tariff Schedule of the United States (HTS) during the period of October 1, 1992 through September 30, 1993.

EFFECTIVE DATE: August 27, 1992.

ADDRESSES: Inquires may be mailed or delivered to Carol Harvey, Director, International Trade Policy, Import Policies and Trade Analysis Division (ITP/IPTAD), Foreign Agricultural Service, room 5531, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Carol Harvey, ITP/IPTAD 202-720-2916.

SUPPLEMENTARY INFORMATION: Paragraph (a)(i) of additional U.S. note 3 to chapter 17 of the HTS provides as follows:

The total amount of sugars, syrups and molasses entered, or withdrawn from warehouse for consumption, under subheadings 1701.11.01, 1701.12.01, 1701.91.21, 1701.99.01, 1702.90.31, 1806.10.41, and 2106.90.11, during such period as shall be established by the Secretary of Agriculture (hereinafter referred to as "the Secretary"), shall not exceed in the aggregate an amount (expressed in terms of raw value) as shall be established by the Secretary. The Secretary shall determine such total amount as will give due consideration to the interests in the U.S. sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade. Such total amount shall consist of: (1) a base quota amount, (2) a quota adjustment amount, and (3) an amount reserved for the importation of specialty sugars as defined by the United States Trade Representative, to be allocated by the United States Trade Representative.

These provisions of paragraph (a)(i) of additional U.S. note 3 to chapter 17 of the HTS authorize the Secretary of Agriculture to establish a total amount (expressed in terms of raw value) for imports of sugars, syrups, and molasses that may be entered under the subheadings of the HTS subject to the lower tier of duties [1] of the tariff-rate quota and to establish the time period for entry of such total amount.

The Secretary is required to determine such total amount as will give due consideration to the interests in the U.S. sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade (GATT). The total amount, including a base quota amount, a quota adjustment amount, and an amount reserved for the importation of specialty sugars, is to be allocated by the United States Trade Representative (USTR), in accordance with paragraph (b) of additional U.S. note 3 to chapter 17 of the HTS.

On August 27, 1992, I determined and announced by press release that the total amount of sugars, syrups, and molasses that may be entered under subheadings 1701.11.01, 1701.12.01, 1701.91.21, 1701.99.01, 1702.90.31, 1806.10.41, and 2106.90.11 of the Harmonized Tariff Schedule of the United States (HTS) during the period of October 1, 1992 through September 30, 1993, is 1,231,000 metric tons, raw value. The purpose of this notice is to affirm that determination.

[1] Pursuant to paragraph (a) of additional U.S. note 4 to chapter 17 of the HTS the duty-free treatment accorded to the importation of sugars, syrups and molasses from the beneficiary countries of the Generalized System of Preferences (GSP) and Caribbean Basin Economic Recovery Act (CBERA), entered under the subheadings of the HTS subject to the lower tier of the tariff-rate quota, is limited to the quantities as established by the Secretary and allocated by the United States Trade Representative pursuant to paragraphs (a) and (b), respectively, of additional U.S. note 3 to chapter 17. Currently, imports of sugars, syrups, and molasses from all beneficiary countries for purposes of the GSP and CBERA, except Brazil, are eligible for duty free entry in amounts not exceeding those allocated by the United States Trade Representative pursuant to paragraph (b) of additional U.S. note 3 to chapter 17 of the HTS.

Notice

This notice affirms my determination that in accordance with paragraph (a) of additional U.S. note 3 to chapter 17 of the HTS, a total amount of up to 1,231,000 metric tons, raw value, of sugars, syrups, and molasses described in subheadings 1701.11.01, 1701.12.01, 1701.91.21, 1701.99.01, 1702.90.31, 1806.10.41, and 2106.90.11 of the HTS may be entered or withdrawn from warehouse for consumption during the period from October 1, 1992 through September 30, 1993. I have further determined that the base amount is 1,166,000 metric tons, raw value; 92 metric tons, raw value, are reserved as a quota adjustment amount; and the amount reserved for the importation of specialty sugars is 1,656 metric tons, raw value. The minimum quota allocation is set at 72,580 metric tons, raw value. These amounts will be allocated among supplying countries and areas by the United States Representative.

I have also determined that such total amount will give due consideration to the interests in the U.S. sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade.

Signed at Washington, DC, on September 18, 1992.

Edward Madigan,
Secretary of Agriculture.

[FR Doc. 92-23161 Filed 9-18-92; 5:02 pm]

BILLING CODE 3410-10-M

Farmers Home Administration

Redelegation of Authority to Approve Debt Settlements and Releases of Liability in Connection with Voluntary Liquidations

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice of redelegation of authority.

SUMMARY: On October 17, 1991, the Farmers Home Administration (FmHA) Administrator redelegated certain authorities to all State Directors dealing with the settlement of and/or the release of liability on FmHA debts owed

by borrowers who made application to settle their FmHA debts or request of liability. Notice of this redelegation was published in 56 FR 55886 (October 30, 1991). The redelegation authority, granted on October 17, 1991, expires on September 30, 1992, and the Administrator now gives notice to extend that redelegation until September 30, 1993. All debt settlement/release of liability cases in excess of $1,000,000 (including principal, interest and other charges) must be submitted to the National Office for approval by the Administrator. This action is taken to expedite the processing of debt settlement applications/requests of borrowers who are unable to repay all of their FmHA debts.

The effect of the extension of the redelegation of the Administrator's authority is to continue to expedite the administrative review process for debt settlements and releases of liability, permitting more timely debt relief to FmHA borrowers, and to consequently reduce the Agency's portfolio of inactive uncollectible accounts.

EFFECTIVE DATE: October 1, 1992, through September 30, 1993.

FOR FURTHER INFORMATION CONTACT: Phillip D. Elder, Loan Officer, Farmer Programs Loan Servicing and Property Management Division, Farmers Home Administration, USDA, room 5444, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250, telephone (202) 690-4020.

SUPPLEMENTARY INFORMATION:

Programs Affected

This action affects the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.404 Emergency Loans.
10.406 Farm Operating Loans.
10.407 Farm Ownership Loans.
10.410 Low-Income Housing Loans.
10.416 Soil and Water Loans.
10.417 Very Low-Income Housing Repair Loans and Grants.
10.428 Economic Emergency Loans.

The notice of the delegation of authority for approving debt settlement/release of liability cases reads as follows:

This extends the authority given under the unnumbered memorandum dated October 17, 1991, entitled "Extension of the Delegation of Authority for Approving Debt Settlement/Release of Liability Cases."

Pursuant to authority delegated to me as Administrator of the Farmers Home Administration, I hereby redelegate to State Directors authority to approve the following:

1. Debt settlement cases in accordance with § 1956.58(a) of subpart B of part 1956 of title 7 of the Code of Federal Regulations, entitled "Debt Settlement-Farmer Programs and Housing."

2. Releases of liability in accordance with §§ 1955.10(f)(2) and 1955.20(b)(2) of subpart A of part 1955 of title 7 of the Code of Federal Regulations, entitled "Liquidation of Loans Secured By Real Estate and Acquisition of Real and Chattel Property."

3. Releases of liability in accordance with § 1962.34(h) of subpart A of part 1962 of title 7 of the Code of Federal Regulations, entitled "Servicing and Liquidation of Chattel Security," and §§ 1965.26(f)(5)(ii) and 1965.27(f) of subpart A of part 1965 of title 7 of the Code of Federal Regulations, entitled "Servicing of Real Estate Security for Farmer Programs Loans and Certain Note Only Cases."

This authority Does Not extend to debt settlement of Nonprogram loans, Economic Opportunity loans, and claims against third party convertefs. Cases where the borrower's total indebtedness, including principal, interest, and other charges, exceeds $1,000,000 must be submitted to the National Office for approval by the Administrator.

This extension of the redelegation shall be effective through September 30, 1993, unless revoked or otherwise modified in writing. The authority delegated to the State Director cannot be further delegated.

Dated: September 11, 1992.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 92-22859 Filed 9-21-92; 8:45 am]

BILLING CODE 3410-07-M

Forest Service

Exemption of Flat Salvage Timber Sale From Appeal, Gifford Pinchot National Forest, Lewis County, WA

AGENCY: Forest Service, USDA.

ACTION: Notice to exempt decisions from administrative appeal.

SUMMARY: This is a notification that the decision to implement the Flat Salvage Timber Sale in the area of the Cispus River on the Gifford Pinchot National Forest is exempted from appeal. This is in conformance with provisions of 36 CFR 217.4(a)(11) as published January 23, 1989, at Vol. 54, No. 13, pages 3342-3370.

EFFECTIVE DATE: September 22, 1992.

FOR FURTHER INFORMATION CONTACT: Ted C. Stubblefield, Forest Supervisor, Gifford Pinchot National Forest, 6926 E. 4th Plain Blvd., Vancouver, WA 98661.

SUPPLEMENTARY INFORMATION: In January 1990, a severe windstorm occurred within the Randle Ranger District of the Gifford Pinchot National Forest and haphazardly leveled patches of timber in various locations throughout the District. Consideration for harvest in many of these areas was deferred during the remainder of 1990 due to the difficulty in adding to or altering the list of timber sales to be sold. All proposed timber sales during this period had to be reviewed by the Forest Advisory Board as mandated by the Section 318 Budget Amendment process of 1989-1990.

In the fall of 1990, an interdisciplinary team (IDT) was assigned to assess the affected areas within the vicinity of the Cispus River and to conduct initial scooping to determine the depth of analysis needed for an informed decision. At this time, the Randle Ranger District sent out a scoping letter that briefly described the proposed Flat Salvage project, its location, approximate volume of timber to be removed, estimated acres, and general goals for the project. The letter, which requested public involvement, was sent to all individuals and organizations on the District's environmental assessment mailing list.

Based on the scoping for this proposal and considering input received from the public, the following was identified as the driving issue for this project: The effect of the project on water quality and fisheries.

Current analysis for this proposed project indicates that considerable insect and fungus infestation of the dead and down timber has taken place. The resulting decay has reduced the original merchantable sawtimber volume by approximately 55 percent. Delay of harvest of this material beyond 1992 will likely result in further deterioration to the extent that virtually none of the original merchantable sawtimber volume will remain.

The IDT developed three alternatives for analysis, including the No Action Alternative. The effects of these alternatives are disclosed in an environmental assessment which was prepared for the proposal. The Proposed Action (Alternative 3) would harvest about 182 acres of down, dead, and dying timber with a harvest volume of approximately 330 thousand board feet (MBF). No new permanent roads will be constructed for this project, and the landings and one short temporary road

that need to be constructed will be obliterated following their use for this project.

The U.S. Fish and Wildlife Service (USFWS) was consulted in January 1991 about the effects of this proposal on the northern spotted owl and northern bald eagle. This consultation and the Biological Evaluation produced by the District Wildlife Biologist in conjunction with the environmental analysis for this project has indicated the project would have no effect on northern spotted owl and northern bald eagle populations or habitat.

This proposal is consistent with the March 3, 1992, Record of Decision and Final Environmental Impact Statement on Management for the Northern Spotted Owl in the National Forests. The project is not within a Habitat Conservation Area, critical habitat area, and does not harvest suitable spotted owl habitat. This project is not affected by the current injunction by Judge Dwyer on the harvest of spotted owl habitat within the National Forests.

The Flat Salvage Timber Sale and accompanying work is designed to accomplish the timber salvage objectives as quickly as possible and minimize the loss of additional merchantable timber volume. To expedite this timber sale project and the accompanying work this project is exempt from appeal (36 CFR part 217). Under this Regulation, and following is exempt from appeal:

> Decisions related to rehabilitation of National Forest system lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as wildfires * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decision from review under this part.

Upon publication of this notice, the Decision Notice for the Flat Salvage Timber Sale will be signed by the Forest Supervisor. This project will not be subject to review under 36 CFR part 217.

Dated: September 16, 1992.

Richard A. Ferraro,

Deputy Regional Forester.

[FR Doc. 92-22889 Filed 9-21-92; 8:45 am]

BILLING CODE 3410-11-M

Exemption of Jackpot Salvage Timber Sale From Appeal, Gifford Pinchot National Forest, Lewis County, WA

AGENCY: Forest Service, USDA.

ACTION: Notice to exempt decisions from administrative appeal.

SUMMARY: This is a notification that the decision to implement the Jackpot Salvage Timber Sale in the area of the North Fork Cispus River on the Gifford Pinchot National Forest is exempted from appeal. This is in conformance with provisions of 36 CFR 217.4 (a) (11) as published January 23, 1989, at Vol. 54, No. 13, pages 3342-3370.

EFFECTIVE DATE: September 22, 1992.

FOR FURTHER INFORMATION CONTACT: Ted C. Stubblefield, Forest Supervisor, Gifford Pinchot National Forest, 6926 E. 4th Plain Blvd., Vancouver, WA 98661.

SUPPLEMENTARY INFORMATION: In January, 1990, a severe windstorm occurred within the Randle Ranger District of the Gifford Pinchot National Forest and haphazardly leveled patches of timber in various locations throughout the District. Consideration for harvest in many of these areas was deferred during the remainder of 1990 due to the difficulty in adding to or altering the list of timber sales to be sold. All proposed timber sales during this period had to be reviewed by the Forest Advisory Board as mandated by the Section 318 Budget Amendment process of 1989-1990. Consequently, it was not until the summer of 1991 that all of the impacted areas were identified and surveyed to determine the extent of the blowdown and damaged timber.

In July, 1991, an interdisciplinary team (IDT) was assigned to assess the affected areas within the North Fork Cispus River drainage and to conduct initial scoping to determine the depth of analysis needed for an informed decision. On October 15, 1991, the Randle Ranger District sent out a scoping letter that briefly described the proposed Jackpot Salvage project, its location, approximate volume of timber to be removed, estimated acres, and general goals for the project. The letter, which requested public involvement, was sent to all individuals and organizations on the District's environmental assessment mailing list.

Based on the scoping for this proposal and considering input received from the public, four major issues were identified for this project. These were: (1) The effect of the project on northern spotted owl habitat; (2) the effect of the project on riparian areas and fisheries; (3) the effect of the project on deer and elk winter range; and (4) the economic cost versus benefit for the project.

The analysis for this proposed project indicates that considerable insect and fungus infestation of the dead and down timber has already taken place. The resulting decay has reduced the original merchantable sawtimber volume by approximately 20 percent. An additional 15 percent of the merchantable sawtimber volume could be lost if salvage of this timber is delayed until 1993. In addition, bark beetles which originated in the down timber have begun to attack live standing timber nearby. Standing trees adjacent or near to the areas of blowdown show evidence of bark beetle attacks or have died as a result. If this condition is allowed to continue, the insect population could reach epidemic levels, resulting in the death of a significant number of live, healthy trees.

The IDT developed three alternatives for analysis, including the No Action Alternative. The effects of these alternatives are disclosed in an environmental assessment which was prepared for the proposal. The Proposed Action (Alternative 3) would harvest about 46 acres of down, dead and dying timber with a harvest volume of approximately 1.1 million board feet. No new permanent roads will be constructed for this project, and the few temporary roads and landings that need to be constructed will be obliterated following their use for this project.

The U.S. Fish and Wildlife Service (USFWS) has been consulted about the effects of this proposal on the Northern spotted owl. The biological opinion of the USFWS concerning this project is pending. the Biological Evaluation produced by the District wildlife biologist in conjunction with the environmental analysis for this project indicates that the proposed action is not likely to adversely affect spotted owls or their habitat.

This proposal is consistent with the March 3, 1992, Record of Decision and Final Environmental Impact Statement on Management for the Northern Spotted Owl in the National Forests. The project is not within a Habitat Conservation Area, critical habitat area, and does not harvest suitable spotted owl habitat. This project is not affected by the current injunction by Judge Dwyer on the harvest of spotted owl habitat within the National Forests. The timber sale and accompanying work is designed to accomplish the timber salvage objectives as quickly as possible and minimize the amount of merchantable timber volume lost. To expedite this timber sale project and the accompanying work, this project is exempt from appeal (36 CFR part 217). Under this Regulation the following is exempt from appeal:

> Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as wildfires * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to

exempt such decisions from review under this part.

Upon publication of this notice, The Decision Notice for the Jackpot Salvage Timber Sale will be signed by the Forest Supervisor. This project will not be subject to review under 36 CFR part 217.

Dated: September 16, 1992.

Richard A. Ferraro,

Deputy Regional Forester.

[FR Doc. 92-20888 Filed 9-21-92; 8:45 am]

BILLING CODE 3410-11-M

Exemption of Flatiron Salvage and Rehabilitation Project Umatilla National Forest, Wheeler County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice to exempt decisions from administrative appeal.

SUMMARY: This is a notification that the decision to implement the Flatiron Salvage and Rehabilitation Project, located on the Heppner Ranger District, Umatilla National Forest is exempted from appeal. This is in conformance with provisions of 36 CFR 217.4 (a)(11) as published January 23, 1989, at Vol. 54, No. 13, pages 3342-3370.

EFFECTIVE DATE: September 22, 1992.

FOR FURTHER INFORMATION CONTACT: Jeff Blackwood, Forest Supervisor, Umatilla National Forest; 2517 SW. Hailey Avenue; Pendleton, Oregon 97801, or Delanne Ferguson, District Ranger, Heppner Ranger District; P.O. Box 7; Heppner, Oregon 97836.

SUPPLEMENTARY INFORMATION: From the early 1980's to the present, an infestation of western spruce budworm and other insects has been affecting major forested portions of the Umatilla National Forest. Much of the heaviest infestation has been on the Heppner Ranger District. The infestation level has dramatically increased in the Flatiron area in the last 3 years. In the Fall of 1990, a District interdisciplinary team (IDT) surveyed much of the infested area to assess the damage to the resources that had occurred. Insect damage included defoliation and mortality among host species (Douglas-fir and white fir), loss of wildlife habitat and cover, loss of riparian and instream habitat, and increased risk of catastrophic fire.

The IDT identified the need to salvage the insect-killed trees in as short a time as possible while the logs are still merchantable. Rapid deterioration of insect-killed trees, especially those of the smaller diameter, will quickly reduce their merchantability and economic value. The IDT also identified the need and desirability to complete the logging quickly so that establishment of new forest stands and other restoration measures can take place promptly.

An environmental analysis of these actions for the Flatiron area began in early 1991. After public meetings and contacts with individuals, groups, state and federal agencies, and the Confederated Tribes of the Umatilla Indian Reservation, the following major issues were identified: Stand health, timber salvage, big game habitat and wildlife travelways, and riparian rehabilitation.

The IDT developed three alternatives, including a no-action, to meet the identified needs and address the issues. The effects of these alternatives are disclosed in an environmental assessment (EA) prepared for the proposal. A working copy of the EA was released for a 30 day review and comment period, to give the public an avenue for input on the proposal. The final EA incorporates information resulting from comment on the working copy.

The proposed action (Alternative B), as modified, will salvage harvest approximately 502 acres of high priority, insect damaged stands. Stands selected for harvest exhibited high to extreme levels of defoliation and mortality by western spruce budworm and other insects identified in a 1991 Forest Service survey. Within the stands, only dead and dying host species, Douglas-fir, and white fir will be selected for harvest. The proposed action would produce about 4 million board feet of timber. To access the damaged stands, approximately one-half mile of temporary road will be constructed and 2.1 miles of road will be reconstructed. Logging systems will include tractor yarding on 491 acres and cable pull on 11 acres. Reforestation with seral species will occur on 423 acres. Rehabilitation activites include: Planting hardwoods on 9 acres of riparian habitat; subsoiling to relieve soil compaction on 111 acres; fertilizing to promote a faster return of big game cover values; and developing three upland water sources to expedite the rehabilitation of three riparian water sources. Other proposed activities include: Installing protective tubing around seedlings; implanting select Doublas-fir seed trees with acephate (a systemic insecticide); precommercial thinning; underburning for site preparation; and applying porcupine and gopher damage control measures to protect tree regeneration.

Biological evaluations have been completed for all plant, wildlife, and fish Proposed, Endangered, Threatened and Sensitive species within the project area. All biological evaluations indicated that projects could proceed as planned.

The salvage sale and accompanying work are designed to accomplish the objectives as quickly as possible and minimize the amount of salvage volume lost. To expedite this sale project and the accompanying work, and to prevent delays by appeals, the process according to 36 CFR part 217 is being followed. Under this regulation the following is exempt from appeal:

> Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as wildfires * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

This project will not be subject to review under 36 CFR part 217. Upon publication of this notice in the **Federal Register**, the Decision Notice for the Flatiron Salvage and Rehabilitation Project will be signed by the Forest Supervisor.

Dated: September 16, 1992.

Richard A. Ferraro,

Deputy Regional Forester.

[FR Doc. 92-22890 Filed 9-21-92; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Agenda and Public Meeting of the North Carolina Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the North Carolina Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 5 p.m. on Thursday, October 8, 1992, and reconvene at 9 a.m. and adjourn at 2 p.m. on Friday, October 9, 1992 at the Federal Building Courthouse, 2nd Floor, room 209, 310 New Bern Avenue, in Raleigh. The purpose of these meetings are: (1) To discuss the status of the Commission; (2) to hear reports on civil rights progress and/or problems in the State; and (3) to discuss the current project on racial tensions in North Carolina with mayors from several key NC cities; and, (4) to discuss racial tensions in Raleigh with community leaders.

Persons desiring additional information, or planning a presentation to the Committee should contact North Carolina Chairperson, Joseph DiBona at 919/684-3924 or Bobby D. Doctor, Regional Director, Southern Regional

Office of the U.S. Commission on Civil Rights at (404/730-2476, TDD 404/730-2481). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Southern Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington DC, September 14, 1992.

Carol-Lee Hurley,

Chief Regional Programs Coordination Unit.

[FR Doc. 92-22852 Filed 9-21-92; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Increase in the Prohibition on Exports of Unprocessed Timber Harvested From Public Lands in Washington State

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: On December 29, 1991, the Secretary of Commerce, pursuant to section 491 of the Forest Resources Conservation and Shortage Relief Act of 1990 (the Act) (16 U.S.C. 620 *et seq.*), issued an order prohibiting for the period beginning January 1, 1992, and ending December 31, 1993 the export of 75 percent of the unprocessed timber originating from non-Federal public lands located in states with annual timber sales volumes greater than 400 million board feet. The Secretary is also authorized by the Act to increase the amount prohibited from export provided certain determinations are made. In light of the current timber supply situation, the Secretary is considering an increase in the prohibition to 100 percent. This notice solicits comments on such an increase.

DATES: Comments must be received by October 22, 1992.

ADDRESSES: Written comments (three copies) should be sent to Bernard Kritzer, Senior Industry Analyst, Office of Foreign Availability, room H-1087, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Bernard Kritzer, Senior Industry Analyst, Office of Foreign Availability, room H-1087, U.S. Department of Commerce, Washington, DC 20230, (202) 377-8074.

SUPPLEMENTARY INFORMATION:

I. Background

Section 491 of the Forest Resources Conservation and Shortages Relief Act of 1991 (the Act), contains prohibitions on the export of unprocessed timber harvested from state or other non-Federal public lands ("public lands") in the contiguous states located west of the 100th meridian. The Act requires the Secretary of Commerce to issue orders prohibiting the export of all unprocessed timber originating from public lands in states with annual timber sales volumes of 400 million board feet (MMBF) or less; and to restrict the export of 75 percent of the annual sales volume of unprocessed timber from public lands in any states with annual timber sales volumes exceeding 400 MMBF. The State of Washington is the only state that qualifies under the 75 percent standard.

On December 29, 1991, the Secretary of Commerce, pursuant to section 491 of the Forest Resources Conservation and Shortage Relief Act of 1990 (the Act) (16 U.S.C. 620 *et seq.*), issued an order prohibiting for the period beginning January 1, 1992, and ending December 31, 1993 the export of 75 percent of the unprocessed timber originating from public lands located in states with annual timber sales volumes greater than 400 million board feet.

Since that Order was issued, the Department has been monitoring the timber supply situation in Washington State. Available information indicates that there has been a substantial drop in the supply of timber due principally to the reduction of the Federal timber supply in Washington State. Because this is adversely affecting the availability of forest resources and products, the Secretary is considering increasing the prohibition on exports from 75 to 100 percent.

Section 491(c) permits the Secretary of Commerce to increase the amount of unprocessed Washington State timber prohibited from export above the 75 percent minimum amount required by the Act, based on a determination that: (1) The purposes of the Act have not been adequately met; and (2) such an increase would further the purposes of the Act. In pertinent part, the statutory purposes that would be related to an increase are those that: (1) Promote the conservation of forest resources in conjunction with State and Federal resources management plans, and other actions or decisions, affecting the use of forest resources; and (2) take action essential for the acquisition and distribution of forest resources or products in short supply in the western United States.

II. Scope/Definitions/Species Coverage

A. Scope

The Department invites written comments from interested parties that may assist the Secretary in making the determinations whether to increase the quantity of unprocessed timber subject to the prohibition. Specifically, we solicit information concerning the following:

(1) Actions or decisions taken, for the purpose of conserving or protecting exhaustible natural resources in the United States, which have affected the use or availability of forest products;

(2) Whether the volume of timber from public lands that is under contract has increased or decreased by an amount greater than 20 percent within the previous 12 months;

(3) The probable effects of unprocessed timber exports on the ability of timber mills to acquire unprocessed timber;

(4) Whether the purposes of the Act are being adequately met; and

(5) Whether an increase in the prohibition on export to 100 percent would further the purposes of the Act.

B. Definitions.

For purposes of this notice, the Department is using the following definitions:

(1) *Unprocessed timber* means trees or portions of trees or other roundwood not processed to standards and specifications suitable for end-product use. The term *unprocessed timber* does not include timber processed into any one of the following:

(a) Lumber or construction timbers, meeting current American Lumber Standard Grades, sawn on 4 sides not intended for remanufacture;

(b) Lumber, construction timbers, or cants for remanufacture, meeting current American Standard Grades, sawn on four sides, not to exceed twelve inches in thickness;

(c) Lumber, construction timbers, or cants for remanufacture that do not meet the grades referred to in paragraph (b) above, and are sawn on four sides, with wane less than one-quarter of any face, not exceeding eight and three-quarters inches in thickness;

(d) Chips, pulp, or pulp products;

(e) Veneer or plywood;

(f) Poles, posts, or piling cut or treated with preservatives for use as such;

(g) Shakes or shingles;

(h) Aspen or other pulpwood bolts, not exceeding 100 inches in length, exported for processing into pulp;

(i) Pulp logs or cull logs processed at domestic pulpmills, domestic chip plants, or other domestic operations for the purpose of conversion of the logs into chips.

(2) The term *public lands* means lands located west of the 100th meridian in the contiguous 48 states, that are held or owned by a State or political subdivision thereof, or any other public agency. Such term does not include any lands the title to which is:

(a) Held by the United States;

(b) Held in trust by the United States for the benefit of any Indian tribe or individual; or

(c) Held by any Indian tribe or individual subject to a restriction by the United States against alienation.

c. Species Coverage

This notice only pertains to unprocessed timber harvested from public lands in Washington State. The timber is described in Schedule B (Statistical Classification of Domestic and Foreign Commodities Exported from the United States) as wood in the rough whether or not stripped of bark or sapwood, or roughly squared, which includes:

4403.20.0025/2—Ponderosa Pine (Pinus ponderosa);
4403.20.0030/5—Pine Other;
4403.20.0035/0—Spruce (Picea spp.);
4403.20.0040/3—Douglas-fir (Psuedotsuga menziesii);
4403.20.0050/0—Western Hemlock (Tsuga metero-phylla);
4403.20.0080/8—Logs & Timber Other; and
4403.99.0050/6—Western Red Alder (Alnus rubra).

This notice does not pertain to unprocessed western red cedar timber harvested from Washington State public lands. (Under the Export Administration Regulations the Department maintains other quantitative restrictions on the export of unprocessed western red cedar logs harvested from Federal and state lands).

III. Procedure

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that the statutorily-mandated limitation on the export of unprocessed timber, which would be continued or possibly be increased following consideration of the public comments on this notice, will not have a significant economic impact on a substantial number of small entities. This is because the range of possible limitations amounts to a small expansion of a preexisting export prohibition, and would affect only a small number of exporters.

This notice is intended to provide all interested parties, especially those in the forest products industry, consumer groups, environmental groups, the maritime industry, and all other industries, groups, or individuals likely to be affected by an increase in export restrictions on unprocessed timber harvested from public lands in the State of Washington with an opportunity to submit written comments.

The following procedures will apply for any comments submitted pursuant to this notice:

(1) Interested parties are invited to submit written comments (3 copies), opinions, data, information, or advice with respect to this notice to the address above by the dates specified above.

(2) All comments received before the close of the comment period will be considered by the Department in completing the review. While comments received after the end of the comment period will be considered if possible, this cannot be assured. All public comments, whenever received, will be a matter of public inspection and copying. (Communications from agencies of the United States Government or foreign governments will not be made available for public inspection).

(3) If oral comments are received during a meeting or telephone conversation, a written summary will be prepared. This summary will also be a matter of public record and will be available for public review and copying.

(4) Anyone submitting business confidential information should clearly identify the business confidential portion of the submission and also provide a nonconfidential submission that can be placed in the file. If this procedure is not followed, the comments and materials that appear to be business confidential will be returned to the submitter and will not be considered.

(5) The comments received in response to this notice will be maintained in the Bureau of Export Administration's Freedom of Information Records Inspection Facility, Bureau of Export Administration, U.S. Department of Commerce, room H-4505, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Records held there, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations. Information pertaining to the inspection and copying of records may be obtained from Ms. Margaret Cornejo, Freedom of Information Officer, Bureau of Export Administration, at the above address or by calling (202) 377-5653.

Dated: September 18, 1992.

William L. Clements,

Acting Deputy Assistant Secretary for Export Administration.

[FR Doc. 92-23092 Filed 9-18-92; 3:26 pm]

BILLING CODE 3510-DT-M

Economics and Statistics Administration

Performance Review Board; Membership

Below is a listing of individuals who are eligible to serve on the Performance Review Board in accordance with the Economics and Statistics Administration Senior Executive Service (SES) Performance Appraisal System:

Susanne H. Howard—Chair
Barbara E. Bryant
O. Bryant Benton
William P. Butz
Charles D. Jones
Robert D. Tortora
Charles A. Waite
Carol S. Carson
Allan H. Young
John E. Cremeans
Frederick T. Knickerbocker
Johnathan C. Menes
Henry P. Misisco
Katherine K. Wallman
Harry A. Scarr

James W. Moses,

Executive Secretary, Economics and Statistics Administration, Performance Review Board.

[FR Doc. 92-22853 Filed 9-21-92; 8:45 am]

BILLING CODE 3510-SS-M

Foreign-Trade Zones Board

[Docket 53-91]

Foreign-Trade Zone 22, Chicago, IL; Application for Expansion Amendment

The pending application of the Illinois International Port District (IIPD), grantee of FTZ 22, requesting authority to expand its zone in the Chicago, Illinois, area (Docket 53-91, filed 9/16/91, 56 FR 48157, 9/24/91), has been amended to include an additional site.

The application originally requested authority to expand the zone to include a proposed warehouse facility (8 acres) located at Gerry Drive and Hansen Court in Wood Dale, Illinois, which would be operated by Meiko America, Inc. The amendment requests authority to extend temporary zone status to

December, 1994 for an existing warehouse facility (1 acre) located at 1351 Mark Street, Elk Grove Village, at which Meiko is conducting general-purpose zone warehousing activity. The extension will allow Meiko to continue offering zone services at the Elk Grove Village site until construction is completed on a warehouse at the Wood Dale site.

The comment period is reopened until November 6, 1992.

The application and amendment material are available for public inspection at the following locations:

U.S. Department of Commerce District Office, Room 1406, Mid-Continental Plaza Building, 55 E. Monroe Street, Chicago, Illinois 60603.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., Room 3716, Washington, DC 20230.

Dated: September 14, 1992.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 92-22982 Filed 9-21-92; 8:45 am]

BILLING CODE 3510-DS-M

[Docket 29-92]

Foreign-Trade Zone 40, Cleveland, OH; Application for Subzone; Lincoln Electric Co.; Euclid and Mentor (Cleveland area), Ohio (Arc Welding Equipment, Rods and Other Supplies)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Cleveland-Cuyahoga County Port Authority, grantee of FTZ 40, requesting special-purpose subzone status for the arc welding equipment/supplies manufacturing facilities of the Lincoln Electric Company (Lincoln) in Euclid and Mentor, Ohio, within the Cleveland Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on September 8, 1992.

Lincoln's Cleveland area facilities are located at 2 sites (227 acres): *Site 1* (120 acres)—world headquarters and manufacturing facility, 22801 St. Clair Avenue, Euclid, Cuyahoga County; *Site 2* (107 acres)—manufacturing facility, 6500 Heisley Road, Mentor, Lake County.

The facilities (2,500 employees) are used to produce arc welding equipment, steel and steel alloy welding electrodes (rod and wire) and other welding consumables, such as flux. While Lincoln also produces industrial electric motors at these facilities, authority to manufacture the motors under zone procedures is not requested at this time. Up to 25 percent of the components used in the production of welding electrodes are sourced abroad, including nickel, iron, and steel bars (carbon, alloy, and stainless), stainless steel wire, mineral ores, metal powders, and welding rods and wire. Also, some 15 percent of the components incorporated into welding equipment are foreign-sourced, including diesel engines, industrial robots, ball bearings, and welder parts. Exports account for 15-20 percent of production.

Zone procedures would exempt Lincoln from Customs duty payments on foreign parts that are used in its export production. On its domestic sales, it would be be able to choose the duty rate that applies to the finished product (welding equipment—2%, welding rod—duty free). The duty rates on foreign components range from duty-free to 11 percent. The application indicates that zone savings will help improve the plant's competitiveness and increase exports.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is November 23, 1992. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to December 7, 1992).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Office of the District Director, U.S. Department of Commerce, Room 600, 668 Euclid Avenue, Cleveland, Ohio 44114.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: September 11, 1992.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92-22980 Filed 9-21-92; 8:45 am]

BILLING CODE 3510-DS-M

[Docket 30-92]

Foreign-Trade Zone 53, Tulsa, OK; Application for Expansion and Request for Manufacturing Authority Mercury Marine (Marine Engines)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Tulsa-Rogers County Port Authority, grantee of FTZ 53, requesting authority to expand its zone in the northeastern Oklahoma area, and requesting authority on behalf of the Mercury Marine Division of the Brunswick Corporation (Mercury), to manufacture marine engines and drives under zone procedures within the expanded zone. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on September 9, 1992.

FTZ 53 was approved on December 7, 1979 (Board Order 151, 44 FR 76382, 12/26/79), and currently consists of 57 acres within the 2,000-acre port terminal and industrial park of the Tulsa Port of Catoosa in Rogers County, on the Arkansas River Navigation system, some 15 miles east of the City of Tulsa.

The applicant is now requesting authority to expand the general-purpose zone by adding 4 new sites (3,100 acres) in the northeast Oklahoma area: *Site 1* (1,731 acres)—within the eastern portion of the 3,500-acre Tulas International Airport, owned by the City and operated by the Tulsa Airport Improvement Trust; *Site 2* (750 acres)—within the 9,000-acre MidAmerica Industrial Park in Mayes County, owned by the Oklahoma Ordnance Works Authority; *Site 3* (160 acres)—the Bartlesville Industrial Park on U.S. Highway 60 and Bison road, Bartlesville (Washington County), owned by the City of Bartlesville; *Site 4* (500 acres)—within the 1,500-acre Stillwater Industrial Park, east of U.S. Highway 177 in Stillwater (Payne County), to be operated by the Stillwater Industrial Foundation.

The Mercury plant is located at 3003 North Perkins Road, within the Stillwater Industrial Park. The facility is used for the manufacture of marine engines and stern drive units. Among the foreign components used by the company are: carburetors, diesel engines, trim cylinders, coil, alternators, bevel gear, transmissions, steering gear and pulleys. Some of the finished units are exported.

Zone procedures will exempt Mercury from Customs duty payments on foreign components used in production for export. On its domestic sales, the company would be able to choose the finished product duty rate (duty free). The duty rates on the foreign components range from 2 to 4 percent. The company also produces a limited number of customized auto engines, but does not request authority to use zone procedures for these engines.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is November 23, 1992. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to December 7, 1992).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Port Director, U.S. Customs Service, Tulsa International Airport, Tulsa, Oklahoma 74115.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: September 11, 1992.

John J. Da Ponte, Jr.

Executive Secretary.

[FR Doc. 92–22981 Filed 9–21–92; 8:45am]

BILLING CODE 3510–DS–M

[Docket 63–91]

Foreign-Trade Zone 61, San Juan, Puerto Rico; Application for Subzone Searle Pharmaceutical Plant, Caguas, Puerto Rico; Amendment

Notice was recently given (57 FR 38667, 8/26/92) that the Application submitted by the Puerto Rico Commercial and Farm Credit and Development Corporation, grantee of FTZ 61, requesting special-purpose subzone status for the pharmaceutical products manufacturing facilities of Searle & Co. (Searle) (subsidiary of G.D. Searle & Co.) in Caguas, Puerto Rico (FTZ Doc. 63–91, filed 10/22/91, 56 FR 56187, 11/1/91), was amended to include additional end products and foreign-sourced materials used at the Caguas facility.

The original application and notice listed a number of specific end products and ingredients used in the production process. The amendment expanded the scope of end products and ingredients to be considered.

The first notice of the amendment referred to certain new end products. This further notice is being given to provide information on certain materials that could be sourced from abroad to be used in making products at the plant: protein concentrates, chlorides, bromides, amine-, carboxyamide-, and nitrile-function compounds, organo-sulfur and heterocyclic compounds, carboxylic acids, hormones, ketones, antibiotics, derivatives of hydrocarbons, vegetable alkaloids, natural polymers, certain medicaments and pharmaceutical products, and other related chemical products. Duty rates range from duty free to 23.5 percent.

The amended application remains otherwise unchanged.

The comment period is reopened until October 20, 1992.

The amendment is available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: September 14, 1992.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 92–22983 Filed 9–21–92; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[A–563–023]

Clear Sheet Glass From Taiwan; Recission of Notice of Intent To Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Recission of notice of intent to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public that it will not revoke the antidumping finding on clear sheet glass from Taiwan.

EFFECTIVE DATE: September 22, 1992.

FOR FURTHER INFORMATION CONTACT: Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377–5255.

SUPPLEMENTARY INFORMATION:

Background

In accordance with § 353.25(d)(4) of the Department of Commerce's (the Department) regulations, if for four annual anniversary months no interested party has requested an administrative review of a finding, under § 353.22(a) of the regulations, not later than the first day of the fifth consecutive annual anniversary month the Secretary will publish in the **Federal Register** a notice of "Intent to Revoke Finding." On August 3, 1992, the Department published a notice of intent to revoke the antidumping finding on clear sheet glass from Taiwan (36 FR 16508, August 21, 1971).

Because we conducted an administrative review of the antidumping finding on clear sheet glass from Taiwan for the period August 1, 1989 through July 31, 1990, and published the final results in the **Federal Register** on September 6, 1991 (56 FR 44075) this finding does not qualify for revocation pursuant to 19 CFR 353.25(d)(4), and we hereby rescind our intent to revoke the finding.

This notice is in accordance with 19 CFR 353.25(d).

Dated: September 14, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92–22984 Filed 9–21–92; 8:45 am]

BILLING CODE 3510–DS–M

[A–570–003]

Cotton Shop Towels From the People's Republic of China; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On May 19, 1992, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on cotton shop towels from the People's Republic of China (PRC) (57 FR 21229). We have now completed the review and determine the dumping margins to be 72.14 percent for Tianjin Arts & Crafts Import and Export Corporation (TAC), and 122.81 percent for Chinatex and China National Arts and Crafts Import and Export Corporation (CNART), based on best information available, during the period October 1, 1990 through September 30, 1991.

EFFECTIVE DATE: September 22, 1992.

FOR FURTHER INFORMATION CONTACT: Cameron Cardozo, Elizabeth Levy or Maria MacKay, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On May 19, 1992, the Department of Commerce (the Department) published in the **Federal Register** (57 FR 21229) the preliminary results of its administrative review of the antidumping duty order on

cotton shop towels from the PRC (48 FR 45277, October 4, 1983) covering the period October 1, 1990 through September 30, 1991. The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

On January 27, 1992, questionnaires were issued to the producers/resellers listed above. TAC, which until January 1, 1989, was named China National Arts and Crafts Import and Export Corporation, Tianjin Branch, was the only company that responded to the Department's questionnaire. In its response, TAC stated that it had made no sales or shipments of subject merchandise that entered the United States during the period of review. TAC has previously met the qualifications necessary for receiving a separate rate. Because there has been no indication that this status has changed, we have continued to apply a separate rate to TAC during the present administrative review.

See Cotton Shop Towels from the PRC: Final Results of Antidumping Duty Administrative Review (57 FR 30466, July 9, 1992).

Use of Best Information Available

We have assigned to all other PRC firms, for which a review was requested, a deposit rate based on the best information available (BIA), in accordance with section 776(c) of the Act, because no other named PRC exporter responded to our questionnaire. In deciding what to use as BIA, 19 CFR 353.37(b) provides that the Department may take into account whether a party refused to provide requested information. Thus, the Department determines on a case-by-case basis what is BIA. When a company refuses to provide the information requested in a timely manner, or otherwise significantly impedes the Department's review, the Department will assign to that company the highest margin calculated for any company in this review, any previous review or the original investigation. See, e.g., AntiFriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany: Final Results of Antidumping Duty Administrative Review (56 FR 31692, 31704, July 11, 1991). In this case, the highest margin is from a previous review.

Scope of the Review

The products covered by this review are cotton shop towels from the PRC. This merchandise is classifiable under item number 6307.10.2005 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and customs purposes. The written description remains dispositive.

The review covers three producer/resellers of cotton shop towels to the United States and the period October 1, 1990 through September 30, 1991. TAC reported no shipments during the period of review. The Department requested all entry documentation for subject merchandise during the period of review from the United States Customs Service. Based on the information provided, we have confirmed that there were no entries of the subject merchandise into the United States by TAC during the review period. Therefore, for this review period, the Department is assigning TAC the deposit rate from the most recent final results of the review in which TAC had shipments. This was for the fifth administrative review covering the period October 1, 1989 through September 30, 1990 (57 FR 30466, July 9, 1992).

The Department is assigned all other exporters of cotton shop towels located within the PRC a single country-wide rate based on best information available. See Iron Construction Castings from the PRC; Final Results of Antidumping Duty Administrative Review (56 FR 2742, January 24, 1991); Shop Towels of Cotton from the PRC; Final Results of Antidumping Duty Administrative Review (56 FR 4040, February 1, 1991). The only company eligible to receive a separate rate, TAC, is also the only company to respond to the Department's questionnaire. Since the other two companies for which a review was requested, Chinatex and CNART, did not respond, the Department must rely on best information available as the basis for the country-wide rate.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received no comments.

Final Results of the Review

As a result of this review, we determine the dumping margins to be:

Producer/exporter	Margin (percent)
TAC	72.14
All other companies without specific rates	122.81

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act; (1) The cash deposit rate(s) for the reviewed company(ies) and any other company without a company-specific rate will be as listed above; (2) for previously reviewed or investigated companies with company-specific rates not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; and (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: September 15, 1992.

Rolf Th. Lundberg,

Acing Assistant Secretary for Import Administration.

[FR Doc. 92-22986 Filed 9-21-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-028]

Roller Chain, Other than Bicycle, From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On January 31, 1992, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on roller chain, other than bicycle, from Japan. The review covers one firm, Sugiyama Chain Co., Ltd. (Sugiyama), and various Japanese exporters of Sugiyama products to the United States for the periods April 1, 1981 through March 31, 1987, and April 1, 1989 through March 31, 1990.

We gave interested parties the opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have changed some of the margins from those presented in our preliminary results.

EFFECTIVE DATE: September 22, 1992.

FOR FURTHER INFORMATION CONTACT: Robert Marenick or Michael J. Heaney, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On January 31, 1992, the Department of Commerce (the Department) published in the **Federal Register** (57 FR 3745) the preliminary results of its administrative review of the antidumping finding on roller chain, other than bicycle, from Japan (38 FR 9226, April 12, 1973). The Department has now completed that administrative review with respect to Sugiyama Chain Co., Ltd. in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

The Department attempted to verify the information submitted by Sugiyama for the period April 1, 1985 through March 31, 1986, but was unable to do so. Therefore, for the 1985-1986 review period, we have used the best information available (BIA). As BIA we used 43.29 percent, the highest rate for any firm in a prior review period. (See Roller Chain, Other Than Bicycle, From Japan; Final Results of Administrative Review of Antidumping Finding (46 FR 44488, September 4, 1981).)

During the conduct of these reviews, we determined that Sugiyama and its primary home market customer are related parties pursuant to the antidumping law. On July 19, 1991, we issued a deficiency letter requesting that Sugiyama report its prices to its first unrelated customers in the home market for all review periods, since most of its reported home market sales were to related customers. We advised Sugiyama that since this was a deficiency letter, we would not be requesting further information or additions, and we would use what it submitted, to the extent such information was usable. On August 21, 1991, we received Sugiyama's response to our deficiency letter, accompanied by replacement computer tapes and printouts.

As a result of our review of Sugiyama's response to our deficiency letters, we have concluded that Sugiyama's new tapes, containing home market sales of unrelated customers, were inadequate and that we were unable to use them in our dumping calculations for each of the periods covered by this review. Sugiyama's August 21, 1991 submission did not identify quantities for each transaction and provided merely list prices rather than actual selling prices. Further, that submission provided on actual sales dates. Instead of providing a date of sale for each transaction, Sugiyama only listed the entire review period in question, e.g., April 1, 1989-March 31, 1990. Therefore, we were unable to use this submission and we resorted to BIA for the unmatched U.S. sales. Our source for BIA is discussed in our response to *Comment 20* of this notice.

Scope of the Review

Imports covered by these reviews are shipments of roller chain, other than bicycle. The term "roller chain, other than bicycle," as used in these reviews, included chain, with or without attachments, whether or not plated or coated, and whether or not manufactured to American or British standards, which is used for power transmission and/or conveyance. Such chain consists of a series of alternately-assembled roller links and pin links in which the pins articulate inside the bushings and the rollers are free to turn on the bushings. Pins and Bushings are press fit in their respective link plates. Chain may be single strand, having one row of roller links, or multiple strand, having more than one row of roller links. The center plates are located between the strands of roller links. Such chain may be either single or double pitch and may be used as power transmission or conveyor chain.

These reviews also cover leaf chain, which consists of a series of link plates alternatively assembled with pins in such a way that the joint is free to articulate between adjoining pitches. These reviews further cover chain model numbers 25 and 35. Roller chain is currently classified under the Harmonized Tariff Schedule (HTS) item numbers 7315.11.00 through 7616.90.00. During some of the review periods the merchandise was classified under various provisions of the Tariff Schedules of the United States Annotated (TSUSA) from item numbers 652.1400 through 652.3800. HTS and TSUSA numbers are provided for convenience and Customs purposes. The written description remains dispositive.

These reviews cover one manufacturer/exporter of roller chain, other than bicycle, from Japan, Sugiyama Chain Co., Ltd., and various Japanese exporters of Sugiyama products to the United States for the periods April 1, 1981 through March 31, 1987, and April 1, 1989 through March 31, 1990.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received comments from Sugiyama and the petitioner, the American Chain Association (the ACA).

Comment 1

Sugiyama claims that it has been denied due process by incomplete disclosure of our preliminary results. Specifically, Sugiyama asserts that our calculation of total value and total dumping duties for the 1981-1982 period may be erroneous. Sugiyama asserts, however, that without a complete set of printouts, there is no way for it to determine whether our calculations are indeed erroneous.

Department's Position

We disagree with Sugiyama. We conducted a disclosure conference with Sugiyama on February 10, 1992. At that conference we released each of the computer programs used to calculate our preliminary results for the 1981-1982, 1982-1983, 1983-1984, 1984-1985, 1986-1987, and 1989-1990 reviews for Sugiyama. These computer programs include every calculation used to produce our preliminary results.

In addition to providing Sugiyama with the relevant computer programs, we released to Sugiyama sample pages of each of the calculations used in deriving our preliminary results. These printouts, together with the computer programs and analysis memoranda, provided Sugiyama with adequate opportunity to examine the results of our calculations, and to comment meaningfully and completely upon our preliminary results. Finally, because we used Sugiyama's own data to derive our preliminary results, Sugiyama could have replicated each of our calculations using its own data base, had it so desired.

Comment 2

Sugiyama argues that we have unduly prejudiced the company in these reviews. Specifically, Sugiyama argues that we (1) have vitiated its opportunity to obtain an early revocation, (2) created an environment where certain information requested in our July 19, 1991 deficiency letter is no longer available, and (3) retroactively applied rules and methodological changes in our margin calculations.

Department's Position

In these reviews we have tried to accommodate the needs of each of the interested parties while being mindful of our statutory obligation to complete these delayed reviews as promptly as possible. Section 353.25(a) of our regulations stipulates that a firm must have three consecutive years of no dumping to qualify for revocation. Because our analysis of Sugiyama's data reveals dumping margins, Sugiyama does not qualify for revocation. Sugiyama's dumping margins resulted from its pricing practices not from any improper or unfair action by the Department.

Our July 19, 1991 request for information was made necessary by our conclusion on July 16, 1991, that Sugiyama and its primary home market customer must be viewed as related parties. The information requested was needed, among other reasons, to enable us to determine whether sales to two of Sugiyama's home market customers were at arm's length. Sugiyama and its related companies are responsible for preserving relevant data for periods for which reviews have not been completed. A failure to do so does not justify an incomplete response, even when completion of a review is significantly delayed. *See Koyo Seiko Co., Ltd.* v. *United States,* (CIT Slip Op. 92-72, May 15, 1992). Finally, we note that our administration of the antidumping law is not subject to the Administrative Procedures Act. Thus, there is no requirement that we limit our changes in calculation methodology to "prospective" changes. (See our response to *Comment 1* in *Color Television Receivers from Korea: Final Determination of Sales at Less Than Fair Value (49 FR 7640, March 1, 1984).)*

Comment 3

Sugiyama claims that the 1985-1986 review was not requested by the ACA but rather by the ACA's attorney acting in concert with one of its members. Sugiyama argues that the request was not filed "on behalf of the ACA" because a majority of its members allegedly had not approved of the request. Sugiyama asserts that the ACA attorney does not qualify as an interested party pursuant to section 771(9) of the Tariff Act. Thus, Sugiyama concludes that we should not have initiated a review of Sugiyama for the 1985-1986 review period.

Department's Position

The request for the 1985-1986 review of Sugiyama was valid because it was timely filed by the ACA's counsel, who is the duly authorized representative for the ACA in this proceeding, and the ACA is an interested party pursuant to section 771(9) of the Tariff Act.

Comment 4

Sugiyama disputes the conclusion of the verification report for the 1985-1986 review period that it was impossible to determine the total value of sales of covered products in the United States and Japan. Sugiyama notes that the Department verified total sales of products within and outside the scope of the roller chain finding.

Sugiyama contends that it prepared its antidumping response by manually reviewing approximately 23,000 sales and consolidating the results of this review into worksheets. Sugiyama contends that these worksheets constitute the source documents that it used to prepare its U.S. and home market computer tapes. Sugiyama concludes that it was impossible for it to furnish an internal sales report breaking down covered and uncovered products because such a document does not exist.

Sugiyama contends, however, that it provided "internal sales reports" which showed the total sales values by customer for September 1985 and March 1986. Sugiyama claims that it could have tied these total value worksheets to specific invoices had the verifying officer asked Sugiyama to do so. Sugiyama argues that this exercise would have constituted verification of the completeness of its home market and U.S. sales listings.

Department's Position

Sugiyama's contention that we verified total sales of products within and outside the scope of the roller chain finding is without merit. Throughout verification, Sugiyama claimed that it was not possible to provide the volume and value of sales of covered products by market (DOC Verification Report of December 13, 1989 at page 6). We noted that Sugiyama did not report the total value and volume of sales of covered products in its questionnaire response or in any of its supplemental submissions (Verification Report at page 5). In addition, we determined that the figures reported in the questionnaire response were, in fact, the total volume and value of sales of all products, covered and uncovered, to all markets (Verification Report at page 3).

Nevertheless, in an attempt to work within the limits of the reported data and to verify the total volume and value of covered products, we requested that Sugiyama provide any or all of the following documents: A sales journal, purchase order ledger, or other listing of total sales for the months of June 1985 and March 1986; a chronological list of the bills of lading, packing tickets, shipping vouchers, and invoices for the months of June 1985 and March 1986; a sales listing for those two months or a complete set of the company's invoices for all sales made in June 1985 and March 1986. Sugiyama failed to produce any of these documents by the end of verification.

In addition, we requested Sugiyama to provide all of its invoices for June 1985 in order to tie the total value of Sugiyama's June 1985 invoices to its total value worksheets and to reconcile the appropriate invoices to the purchase price or home market sales tape, thereby simultaneously verifying sales within and outside the scope of the finding. In response, Sugiyama provided the invoices for a single customer for one month, but it ultimately failed to provide a set of all invoices for all customers by the end of verification (Verification Report at page 6).

Rather than providing the requested invoices at verification, Sugiyama offered to prepare a list of June 1985 sales "that would reconcile" to the sales value reported on its income statement after verification. This document was submitted more than a month later, and even then failed to quantify sales of covered products in the home or U.S. markets (Verification Report at page 6).

Sugiyama maintained a series of internal sales reports for management purposes which list the total value of sales by customer for each month, and which tie to the worksheets that Sugiyama prepared to reconcile its monthly figures to its income statement. However, because Sugiyama failed to provide the universe of invoices for the month of June 1985, we were unable to validate the figures reported in Sugiyama's internal sales reports or the worksheets used to reconcile Sugiyama's monthly data to the income statements. Furthermore, because these sales reports did not identify covered products and were not available for the period prior to July 1985, they could not be used to confirm the volume and value of sales of covered products for each market.

We disagree with Sugiyama's contention that tying total value worksheets back to specific invoices constitutes verification, because the completeness test requires both the tracing back from the questionnaire response to primary source documents such as invoices, and the tracing forward from the universe of primary source documents to the questionnaire response.

Therefore, despite numerous attempts to determine how Sugiyama prepared the questionnaire response and to confirm the total volume and value of sales of covered products, by the end of verification we were unable to determine, much less verify, the total volume and value of sales of covered products in the U.S. or home markets.

Because we were unable to verify the completeness of Sugiyama's reported home market and U.S. sales listing, we did not use Sugiyama's questionnaire response in these final results of review.

Comment 5

Sugiyama claims that, contrary to statements in the verification report, it did provide audited copies of its financial statements. Sugiyama asserts that Japanese law permits companies like itself to be audited by licensed tax accountants instead of by a certified public accountant. Sugiyama contends that while the balance sheets, income statements, and statements of changes in financial position lacked the official seal of an auditor, they were authenticated by the written statement of a licensed tax accountant.

Department's Position

At verification, Sugiyama provided the Department with unsigned photocopies of financial statements without identifying the source of the records. It failed to make available original, signed copies of financial statements containing the company's official seal or the seals of the officials responsible for their preparation. There was no evidence that the documents presented were audited by anyone. In addition, Sugiyama obtained its "authenticating" statement by sending the documents away from the verification site to a person whose identify and relationship to the corporation was unknown. Furthermore, the "authenticating" statement noted that the photocopied documents were the annual reports submitted to the regional tax office, and did not claim that the documents were the official financial statements of the corporation. Therefore, we cannot use these financial statements as the basis for determining the completeness of the questionnaire response.

Comment 6

Sugiyama contends that the verification report incorrectly stated that the licensed tax accountant who audited its financial statements was a part-time employee of Sugiyama. Sugiyama asserts that its payments to this tax accountant were similar to the payments that it made to other independent contractors.

Department's Position

The name and salary of the individual who signed Sugiyama's "authenticating statement" appear in verification exhibit SY–52, salaries payable. His status at Sugiyama as an auditor, employee, or independent contractor is immaterial except that, at verification, Sugiyama first represented him as someone "at the tax office" for the purpose of "authenticating" its financial statements, then later represented him as an auditor or independent contractor when his salary was discovered in the salaries payable ledger. The ambiguity concerning this individual's standing with the company cast doubt upon the degree to which Sugiyama's financial statements were audited.

Comment 7

Sugiyama asserts that the verification report incorrectly stated that Sugiyama kept two contradictory payroll ledgers for the month of October 1985. Sugiyama claims that it maintains only one payroll ledger. Sugiyama contends that exhibit SY–43 shows wages paid to full-time employees while exhibit SY–52 shows something which includes payments to subcontractors or independent contractors.

Sugiyama asserts that the verification report makes several contradictory characterizations of exhibit SY–43. On page 17 of the verification report there is a table showing payroll expense derived from exhibit SY–43. Sugiyama contends that in one place the verification report claims that these expenses were for the month of October 1985, and in another place, for December 1985. Sugiyama asserts that exhibit SY–43 is characterized as both a "payroll ledger" and as a general ledger for the months of September 1985 and October 1985. Sugiyama concludes that exhibit SY–43 is obviously not a general ledger, an accounts payable ledger, and a payroll ledger simultaneously.

Sugiyama also asserts that the verification report's claim that Sugiyama presented a second payroll ledger is false. According to Sugiyama, the verifier apparently confused the trial balance sheet or the general ledger (probably exhibit SY–43) with the payroll ledger (probably exhibit SY–52).

Department's Position

Sugiyama's attempt to identify exhibits SY–43 and SY–52 and to resolve the discrepancy between them is inadequate. Despite typographical errors in the summary of findings (exhibit SY–43 identified as an accounts payable ledger rather than payroll ledger (page 32), and the assertion in the list of exhibits that exhibit SY–43 covers the month of December rather than October (page 39)), the Department has no evidence that the account concerning payroll and wages drawn from the narrative on pages 16 and 17 of the verification report is erroneous.

Exhibit SY–43 is a detailed payroll ledger for the fiscal months of September and October 1985, showing the wages and compensation paid to each one of Sugiyama's employees. Sugiyama presented this document as confirmation of the value of wages and salaries reported in exhibits SY–1 through SY–4, which are total value worksheets tying monthly expenses to its financial statements. The figures presented in exhibit SY–43 did not match the amounts recorded in exhibits SY–1 through SY–4. Therefore, we requested that Sugiyama explain the discrepancy and provide documentation for its explanation.

In response, Sugiyama presented exhibit SY–52. The first page of exhibit SY–52 is the final, summary page of exhibit SY–43 and indicates the total value of wages and salaries paid in October 1985. The second page, which was translated at verification as salaries payable, shows a single line item for production workers' wages plus three additional line items for the wages of part-time workers. The third page,

whose title was not translated at verification, shows a line item for administrative salaries plus two additional line items for two separate individuals, one of whom is the tax accountant who provided the authenticating statement. The sum of the production workers' wages and administrative salaries recorded in the last two pages of exhibit SY-52 equals the total figure recorded in exhibit SY-43. The additional amounts reported for part-time workers in exhibit SY-52, when added to the amount reported for full time workers recorded in both exhibits SY-43 and SY-52, reconcile to exhibits SY-1 through SY-4.

Therefore, we do not understand Sugiyama's contention that exhibit SY-52 shows payments to subcontractors or independent contractors, when it clearly shows the sum of payments to full-time and part-time workers. Therefore, we conclude that Sugiyama presented contradictory payroll amounts for October 1985. Consequently, we cannot accept the integrity of the financial statements Sugiyama presented at verification.

Comment 8

Sugiyama contends that the Department incorrectly characterized some of its purchase price sales as "off the books" transactions. (Sugiyama included these transactions in its claims for ocean freight, brokerage, handling, and marine insurance.) Sugiyama claims that since it reported these sales to the Department, they were clearly not "off-the books." According to Sugiyama, confusion arose because the verifier failed to recognize that Sugiyama hired a third party to handle all the export-related functions, including customs brokerage and handling, on such sales. Finally, Sugiyama alleges that the verification report is contradictory because the report concludes in one section that a sale was "off the books", yet elsewhere states "the rest of the payment for that sale was credited to accounts receivable."

Department's Position

Sugiyama did not document the flow of goods or money for certain of its transactions which we characterized as "off-the-books" in our summary of findings on page 32 of the verification report. As noted on pages 20 and 21 of the verification report with reference to preselected purchase price sale number 2 (PP sale 2), Sugiyama received a payment from an unrelated third party and deposited this amount in an expense account. One week later, Sugiyama remitted a portion of this payment to the third party, and credited the rest to accounts receivable for the U.S. dollar amount of the U.S. customer's invoice.

Sugiyama did not provide records of payments to or from the expense account. In addition, it claims that the remittance to the third party was a "commission" for brokerage, handling, and ocean freight for PP sale 2, although no documents on the record identify the payment as such. Furthermore, Sugiyama failed to document the relationship between the U.S. customer and the third party who allegedly paid for the merchandise, and Sugiyama failed to demonstrate that receipts from the third party referred to PP sales made by the U.S. customer. Therefore, Sugiyama failed to provide proof of payment for certain of its sales to the United States, and also failed to document the relationship between its claims for brokerage, handling, and ocean freight adjustments and these payments.

Because we could not trace payments from the U.S. customer to Sugiyama's books and records, and could not confirm Sugiyama's claimed adjustments for commissions, brokerage, handling, and ocean freight, we determine that PP sale 2, and others like it, remain unverified.

Comment 9

Sugiyama contends that, contrary to the conclusion in the verification report, the firm did explain the basis for its revised ESP offset claim. Sugiyama asserts that quantification of its revised claim was made two months before the verification in Sugiyama's December 15, 1987 submission.

Department's Position

The above-referenced December 15, 1987 submission is, in fact, Sugiyama's original questionnaire response and was provided more than one year prior to the February 1989 verification. As noted on page 14 of the verification report, Sugiyama and Hokoku Chain, Sugiyama's related selling arm in Japan, each revised their respective ESP offset claims at verification. As noted on page 15 of the report, Sugiyama increased its claimed ESP offset by 65.39 percent. As noted on page 18 of the verification report, we were unable to establish the basis for the allocation ratios used to calculate the offset. In addition, we were unable to verify that the claimed depreciation and fuel expenses applied to sales rather than factory production. Therefore, we were unable to verify Sugiyama's claimed ESP offset adjustment.

Comment 10

Sugiyama argues that the Department erred in concluding that Sugiyama was unable to be verified for the 1985-1986 review period.

Department's Position

We conducted a verification of Sugiyama's home market and purchase price sales in February 1989. Because Sugiyama could not substantiate the total volume and value of sales of covered products to the United States, we were unable to verify Sugiyama's 1985-1986 response. Other serious deficiencies in Sugiyama's 1985-1986 response included its failure to provide its official financial statements, discrepancies in the firm's wage reports, and its inability to document proof of payment for certain sales to the United States.

Comment 11

Sugiyama contends that the Department's verification report contains numerous gaps, misstatements, and inconsistencies. Sugiyama contends that these misunderstandings were exacerbated by the poor health of the verifying officer and the verifying officer's decision to commute from Tokyo to Sugiyama's factory during the verification. Finally, Sugiyama asserts that the ten months it took the Department to complete the report further dulled the verifier's recollection of verification events.

Department's Position

The verification report was based on the information contained in the questionnaire response and provided at verification, and accurately detailed all verification events. Sugiyama has provided no evidence in support of its assertion that the verifying officer's health, the length of the commute, and the pace at which the verification report was written influenced the analysis of the information on the record. (See, DOC memorandum of January 7, 1992.)

Comment 12

Sugiyama contends that the Department should not have conducted a review of Sugiyama/Hokoku for the 1981-1983 review periods, and for Sugiyama for the 1986-1987 review period. Sugiyama notes that on September 17, 1987, the ACA withdrew its request for a review of the 1986-1987 period, and that on October 2, 1990 the ACA withdrew its request for a review of Sugiyama/Hokoku for the 1981-1983 review periods. Sugiyama argues that the Department's established practice is to terminate reviews following the

withdrawal of the review request. Sugiyama notes that, under the regulations in effect in 1987, no limits were in force regarding withdrawal requests. Sugiyama further argues that the Department's revised regulations (which normally establish a 90-day deadline for the withdrawal of review requests) are not absolute and allow considerable discretion in determining whether to accept to request to discontinue a review.

Sugiyama asserts that the Department cited no "statute, regulation, legislative history, judicial precedent or administrative precedent" for continuing the review. Sugiyama argues that the Department's decision to proceed with the 1981–1983, and 1986–1987 administrative reviews contradicts the purpose of the 1984 Act to eliminate administrative reviews for which there is no industry interest. Finally, Sugiyama asserts that, in citing to past margins as a reason for continuing its review of Sugiyama, the Department has contradicted its stated practice of regarding each review proceeding as independent from past proceedings.

Department's Position

We have broad discretion in determining whether to honor withdrawals of review requests. Our primary reason for continuing with these reviews was record evidence of a relationship between Sugiyama and one of its largest home market customers which was unreported by Sugiyama in its questionnaire responses. This relationship had potentially significant consequences on these reviews because it goes to the very heart of how we calculate foreign market value. Although other factors were considered (including the extensive difficulties that we encountered verifying the submissions that Sugiyama submitted in the 1985–1986 administrative review, and the margins that we found for the 1987–1988 and 1988–1989 reviews), it was that unreported relationship which convinced us to continue with the 1981–1983 and 1986–1987 reviews.

Comment 13

Sugiyama contends that the Department inappropriately used BIA for the 1985–1986 administrative period and for unmatched U.S. sales for the 1981–1982, 1982–1983, 1983–1984, 1984–1985, 1986–1987, and 1989–1990 periods.

Department's Position

We used BIA for the 1985–1986 period because we were unable to verify Sugiyama's submissions for that period. (See the Department's responses to *Comments 4–11*.) We used BIA for Sugiyama's unmatched sales for the 1981–1982, 1982–1983, 1983–1984, 1984–1985, 1986–1987, and 1989–1990 review periods because Sugiyama failed to demonstrate that its home market sales to two of its related customers were at arm's length, and because Sugiyama failed to indicate which models sold to unrelated customers in Japan qualified as most similar to Sugiyama's unmatched U.S. sales. Additionally, Sugiyama failed to provide differences in the physical characteristics of the merchandise (difmer) information for these unmatched U.S. sales. Our source of BIA for the 1981–1982, 1982–1983, 1983–1984, 1984–1985, 1986–1987, and 1989–1990 review periods is discussed in our response to *Comment 20* of this notice.

Comment 14

Sugiyama argues that the Department erroneously concluded that Sugiyama is related to one of its customers. Sugiyama asserts that the Department's failure to use its sales to this customer resulted in unmatched U.S. sales, and in the unwarranted use of BIA.

Department's Position

During the 1981–1982, 1982–1983, 1983–1984, 1984–1985, 1986–1987, and 1989–1990 review periods two of Sugiyama's officials were members of that customer's board of directors. The Department considers shared directorship to be evidence of a relationship between these two organizations. (See Polyethylene Terephthalate Film, Sheet, and Strip from Korea: Final Determination of Sales at Less Than Fair Value (56 FR 16305, April 22, 1991).) Additionally, that customer indicated that Sugiyama contributed about 60 percent of the capital necessary for the start up of that customer's business. Based on these facts, we concluded that Sugiyama and that customer are related within the meaning of the antidumping law.

Comment 15

Sugiyama contends that, upon determining that two of its customers were related to Sugiyama, the Department gave those two customers an insufficient amount of time (15 days) to gather information concerning the resale of that merchandise to their customers.

Department's Position

We did not accept Sugiyama's August 21, 1991 submission it was based upon price list data. We generally do not accept price list data unless the respondent can demonstrate that it adhered to the terms specified in the price list. Sugiyama failed to meet this burden of proof. Regarding its sales to one of its customers, Sugiyama submitted price list data for the 1981–1982, 1982–1983, 1983–1984, and 1984–1985 review periods. Because the actual prices (net of discounts, rebates, and commissions) to the customer could have differed significantly from the terms shown on the price list, such data fail to constitute proof that Sugiyama's sales to that customer were comparable to Sugiyama's sales to unrelated customers. Similarly, the gross price data that Sugiyama offered to support its assertion that its prices to another one of its home market customers were at arm's length were inadequate because Sugiyama failed to demonstrate that it did indeed adhere to the terms offered in the price list. Therefore, we excluded Sugiyama's sales to these two customers from our calculation of FMV.

In response to a request from Sugiyama, we granted Sugiyama a 17-day extension in which to respond to our request for additional information. Any further extensions of time would have unduly delayed the completion of this review. Further, because Sugiyama has insisted that much of this information no longer exists, no additional time for response would have made a usable response possible.

Comment 16

Sugiyama asserts that we should not have expected one of its customers to maintain resale data that are up to 10 years old. Sugiyama contends that the 32 days given to that customer was insufficient time to prepare and computerize seven years of sales transaction-specific data.

Department's Position

Because these reviews were the first reviews in which we were aware of Sugiyama's relationship with this customer, Sugiyama's suggestion that we should have notified Sugiyama of our need for such information prior to conducting these reviews is unreasonable. We were unaware in past proceedings and in earlier stages of the present proceeding that Sugiyama was related to this home market customer. Thus, until we learned of this relationship, there was no need to consider whether sales to that customer were at arm's length, or to request information concerning the resale of roller chain to that customer's customers.

Upon receiving information that Sugiyama and that home market customer were related, however, the Department was obligated to consider

whether Sugiyama's sales to that customer were at arm's length. On determining that these sales were not at arm's length, the Department was then obligated to request information from that customer concerning the resale of roller chain to its customers. Finally, as explained in response to *Comment 15*, 32 days was an adequate period of time for Sugiyama to provide this information.

Comment 17

Sugiyama argues that, assuming Sugiyama and one of its home market customers are related parties, the Department failed to consider whether these related party prices for the 1981–1987 periods could be used in calculating FMV. Sugiyama notes that in other cases (See Portable Typewriters from Japan (53 FR 40926, October 14, 1988)) the Department has used related-party prices when it has determined that this relationship did not constitute control. Sugiyama contends that it exercised less control over that customer than Olivetti did over Tokyo Juki in the Portable Electric Typewriters case, and, therefore, concludes that the Department should have used Sugiyama's sales to that customer in the calculation of FMV. Sugiyama argues that its prices to that customer, as well as its prices to another home market customer, who we also determined to be related to Sugiyama, are comparable to those to unrelated parties. Sugiyama submitted a comparison of its 1981–1987 prices to these two customers and its unrelated purchasers. Sugiyama contends that this information demonstrates that its prices to these two customers were comparable to those offered to unrelated customers.

Department's Position

Ordinarily we do not use transactions between related parties to calculate FMV. (See the Department's response to *Comment 4* in Certain Small Business Telephones From Japan: Final Results of Antidumping Duty Administrative Review (57 FR 4949, February 11, 1992).) The Department uses related-party sales only if it is satisfied that such sales prices are comparable to prices to unrelated parties. The burden of proof rests upon the respondent to demonstrate that sales to related parties are indeed comparable to sales to unrelated parties. For the reasons noted in our response to *Comment 15*, the price list and gross price data submitted by Sugiyama failed to meet this burden of proof.

Comment 18

Sugiyama contends that the Department incorrectly concluded in its preliminary results that the firm provided only list prices rather than actual selling prices for two of its home market customers. Sugiyama acknowledges that it provided list prices for one of those customers but contends that it provided actual selling prices for the other customer. Moreover, Sugiyama notes that in other cases the Department has allowed certain respondents to submit abbreviated questionnaire responses if these respondents sold exclusively from published price lists and provided certification that they adhered to these price lists. Sugiyama further asserts that the strict time constraints which it faced in the 1981–1987 proceedings justify the use of price list information for the 1981–1987 Sugiyama reviews.

Department's Position

Sugiyama failed to provide transaction-specific sales data for either of these two customers. As noted in our response to *Comment 15*, we generally will accept price lists (in lieu of sale-specific data) only in cases where the respondent shows that it adheres to the terms specified in the price list. Because Sugiyama failed to make such a demonstration, we did not use the price list data that Sugiyama provided. Similarly, we did not accept Sugiyama's gross price data because Sugiyama failed to show that the gross price represented the actual price (net of adjustments) received by the customer.

Comment 19

Sugiyama argues that, assuming Sugiyama and one of its home market customers are related parties and that the prices between Sugiyama and its unrelated customers, the Department should have used Hokoku's prices to unrelated customers in its PP calculations to determine FMV. Sugiyama asserts that use of these sales, coupled with an adjustment for the different level of trade at which these sales were made, and for differences-in-merchandise adjustments between these sales and the merchandise sold by Sugiyama in the United States, would have constituted a proper method of matching Sugiyama's PP sales.

Depatment's Position

We used Hokoku's sales to unrelated customers as the basis of our FMV calculations. Because Sugiyama did not indicate which models sold by Hokoku were most similar to the unmatched merchandise sold by Sugiyama in the United States, we were unable to use Hokoku's sales as the basis of FMV for these unmatched U.S. sales. Moreover, Sugiyama failed to provide difmer information for these sales. (See the Department's response to *Comment 13*.)

Comment 20

Sugiyama argues that use of a 43.29 percent BIA figure is punitive, unjustified, and inconsistent with the Department's established practice. Sugiyama argues that it cooperated in the administrative review and that the 43.29 percent rate used in this review is inconsistent with the BIA rate used in other roller chain reviews. Sugiyama further suggests that the 43.29 rate was never finalized because the Department stated that liquidation of entries for eleven of the firms receiving that 43.29 percent rate would be suspended until the Department made a decision as to whether it was appropriate to liquidate entries at that rate. (See Roller Chain, Other than Bicycle, from Japan: Final Results of Antidumping Duty Administrative Review, 46 FR 44488, September 4, 1981.) Sugiyama asserts that, since subsequent **Federal Register** notices make no comment about this matter, use of the 43.29 rate has never been finalized.

Department's Position

In the final results of this review we followed our normal policy concerning BIA:

1. When a company refused to cooperate with the Department or otherwise significantly impeded the proceeding, we used as BIA the higher of (1) The highest of the rates found for any firm for the same class or kind of merchandise in the same country of origin in the less-then-fair-value investigation (LTFV) or prior administrative reviews; or (2) the highest rate found in this review for any firm for the same class or kind of merchandise in the same country of origin.

2. When a company substantially cooperated with our requests for information, including, in some cases, verification, but failed to provide the information requested in a timely manner or in the form required, we used as BIA the higher of (1) the highest rate, (including the "all others" rate) ever applicable to the firm for the same class or kind of merchandise; or (2) the highest calculated rate in this review for the same class or kind of merchandise for any firm from the same country of origin.

See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.; Final Results of Antidumping Duty Administrative Reviews (57 FR 28360, June 24, 1992).

Because Sugiyama failed verification for the 1985–1986 review period, we have used a rate of 43.29 percent rate for that period. Moreover, since the 43.29 percent rate was published in a notice of final results of review, that rate was "finalized".

(See Roller Chain, Other than Bicycle from Japan: Final Results of Antidumping Duty Administrative Review, 52 FR 18004, May 13, 1987.) However, because Sugiyama substantially cooperated for all the other reviews, we have limited our use of BIA to Sugiyama's unmatched sales for those periods. For the 1981–1985 review periods, we used a rate of 15.92 percent as BIA for the unmatched sales. This was the highest calculated rate for a reviewed firm for the 1981–1982 review period. For the 1982–1983, and 1983–1984 periods, we continued to use the 15.92 percent rate, since that rate was the highest rate ever applicable for Sugiyama for those periods. For the 1986–1987 and the 1989–1990 review periods, we used a 43.29 percent rate for Sugiyama's unmatched sales, since the 43.29 percent rate (used during the 1985–1986 review) was the highest rate ever applicable to Sugiyama.

Comment 21

Sugiyama asserts that there should not have been any unmatched ESP sales, but that, without a complete printout of our calculations, it cannot comment further as to why certain ESP sales were unmatched. Finally, Sugiyama objects to the use of the 43.29% rate in our ESP calculations for the same reasons that it objects to use of that rate in the PP calculations.

Department's Position

We provided Sugiyama with an adequate disclosure. (See our response to *Comment 1.*) In our ESP calculations, we followed Sugiyama's model-match instructions. Sugiyama's failure to provide complete model-match instructions was the reason for certain unmatched ESP sales.

Final Results of the Review

As a result of our analysis of the comments received, we determine that the following weighted-average margins exist:

Manufacturer/exporter	Review period	Margin (percent)
Sugiyama/I&OC	4/1/81–3/31/82	5.22
Sugiyama Harima Enterprises/San Fernando	4/1/81–3/31/82	*0
Sugiyama/Hokoku	4/1/81–3/31/82	0.72
Sugiyama/I&OC	4/1/82–3/31/83	5.45
Sugiyama Harima Enterprises/San Fernando	4/1/82–3/31/83	*0
Sugiyama/Hokoku	4/1/82–3/31/83	1.55
Sugiyama/I&OC	4/1/83–3/31/84	16.62
Sugiyama Harima Enterprises/San Fernando	4/1/83–3/31/84	*0
Sugiyama/Hokoku	4/1/83–3/31/84	0
Sugiyama/I&OC	4/1/84–3/31/85	11.05
Sugiyama Harima Enterprises/San Fernando	4/1/84–3/31/85	*0
Sugiyama/Hokoku	4/1/84–3/31/85	0
Sugiyama	4/1/85–3/31/86	43.29
Sugiyama/I&OC	4/1/85–3/31/86	43.29
Sugiyama/San Fernando (Japan)	4/1/85–3/31/86	43.29
Sugiyama/Hokoku	4/1/85–3/31/86	43.29
Sugiyama/Fuji Lumber	4/1/85–3/31/86	43.29
Sugiyama	4/1/86–3/31/87	18.16
Sugiyama/I&OC	4/1/89–3/31/90	43.29
Sugiyama Harima Enterprises/San Fernando	4/1/89–3/31/90	*0
Sugiyama/Hokoku	4/1/89–3/31/90	0.53

*No shipments during the period; rate is from the last period in which there were shipments.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions for all companies directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit for the reviewed companies will be the rate published for the most recently reviewed period; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original fair value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers will be 0.53 percent. This rate represents the highest rate for any firm with shipments in this the latest administrative review period, other than those firms receiving a rate based entirely on BIA.

These deposit requirements, when imposed, shall remain in effect until publication of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These administrative reviews and this notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: September 15, 1992.

Rolf Th. Lundberg,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92–22977 Filed 9–21–92; 8:45 am]

BILLING CODE 3510–DS–M

[A-201-806]

Preliminary Determination of Sales at Less Than Fair Value; Steel Wire Rope From Mexico

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

EFFECTIVE DATE: September 22, 1992.

FOR FURTHER INFORMATION CONTACT: Gerry Zapiain or Robin Gray, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-3793 or telefax (202) 377-1388.

PRELIMINARY DETERMINATION: We preliminarily determine that steel wire rope from Mexico is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the publication of the notice of initiation in the **Federal Register** (57 FR 19280) the following events have occurred.

On May 26, 1992, the International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that the steel wire rope industry in the United States is materially injured, or threatened with material injury, by reason of imports of steel wire rope from Mexico. On June 7, 1992, the Department presented sections A, B and C of its antidumping questionnaire to Grupo Industrial Camesa (Camesa), the sales of which account for more than 60 percent of imports of steel wire rope during the period of the investigation (POI). The deadline set to respond to section A was June 19, and the due date to respond to sections B and C was July 6.

On June 16, Camesa requested a two-week extension for filing its response to section A. On June 19, the Department of Commerce (the Department) granted the full extension, thus making the due date for sections A, B & C July 6. No other extension was requested or granted.

On July 6, Camesa submitted its response to section A. Responses to sections B and C were also due on that day, but were not submitted.

On July 10, Camesa stated that it committed an oversight by not requesting an extension for sections B and C and requested an extension of its July 6 deadline to August 24 to respond to sections B and C.

On July 13, petitioner urged the Department to deny Camesa's request for an extension, stating that the request was "untimely, unwarranted, and would place an undue burden on the Department and petitioner to analyze the responses in an unnecessarily restricted time frame."

Because the Department did not receive a request for extension for sections B and C before the time limit expired, we denied the respondent's July 10 extension request on July 15, 1992.

Scope of the Investigation

This investigation covers imports of steel wire rope from Mexico. Steel wire rope encompasses ropes, cable, and cordage of iron or carbon steel other than stranded wire, not fitted with fittings or made up into articles, and not made up of brass plated wire. Excluded from these investigations is stainless steel wire rope, i.e., ropes, cables and cordage other than stranded wire of stainless steel, not fitted with fittings or made up into articles, which is classifiable under Harmonized Tariff Schedule (HTS) subheading 7312.10.6000.

Imports of these products are currently classifiable under the following HTS subheadings: 7312.10.9030, 7312.10.9060 and 7312.10.9090. Although the HTS subheadings are provided for convenience and Customs purposes, our written description of the scope of these proceedings remains dispositive.

This investigation covers sales of the subject merchandise by Camesa during the period from November 1, 1991 through April 30, 1992.

Use of Best Information Available

As stated above, because we did not receive a request for extension for sections B and C before the time limit expired, we denied the respondent's July 10 extension request. Thus, the Department received no response to sections B and C of its questionnaire and, in accordance with section 776(c) of the Act, had to use the best information available (BIA) for Camesa. Section 353.37(b) of the Department's regulations provides that the Department may take into account whether a party fails to provide requested information, or otherwise significantly impeded the Department's investigation in determining what is the best information available. Because Camesa failed to respond adequately to the questionnaire, consistent with Department practice, we used as BIA for Camesa petitioner's highest adjusted margin of 133.83 percent. (See, e.g., Heavy-forged Hand Tools from the People's Republic of China 56 FR 244, January 1, 1991)

Verification

Since the Department did not receive a response to sections B and C of its questionnaire in this investigation, no verification will be necessary for making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act (19 U.S.C. 1673b(d)(1)), we are directing the U.S. Customs Service to suspend liquidation of all entries of steel wire rope from Mexico, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin as shown below. The suspension of liquidation will remain in effect until further notice. The average dumping margins are as follows:

Manufacturer/producer/exporter	Margin (percent)
Camesa, S.A. de C.V.	133.83
All others	133.83

ITC Notification

In accordance with section 733(f) of the Act (19 U.S.C. 1673b(f)), we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Compliance, Import Administration.

If our final determination is affirmative, the ITC will determine whether these imports are materially injuring or threatening material injury to the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary of Import Administration no later than November

10, 1992, and rebuttal briefs no later than November 16, 1992. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. The hearing will be held on November 18, 1992, at 10 a.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Interested parties who wish to participate in the hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-099, within ten days of the publication of this notice in the **Federal Register**. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act 19 U.S.C. 1673b(f)) and (19 CFR 353.15(a)(4)).

September 15, 1992.

Rolf Th. Lundberg,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-22978 Filed 9-21-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-808]

Sweaters Wholly or in Chief Weight of Man-Made Fiber From Taiwan; Initiation of Changed Circumstances Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of initiation of changed circumstances antidumping duty administrative review.

EFFECTIVE DATE: September 22, 1992.

FOR FURTHER INFORMATION CONTACT: David Mason Jr. or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2923.

INITIATION OF REVIEW: In accordance with section 751(b) of the Tariff Act of 1930, as amended, we are initiating a changed circumstances review of the antidumping duty order on sweaters wholly or in chief weight of man-made fiber from Taiwan.

In this changed circumstances review, the Department will determine whether Jia Farn Manufacturing Company (Jia Farn), a Taiwan company, acted as a reseller or transshipper of subject merchandise produced by other manufacturers. The Department will review information pertaining to the period beginning April 27, 1990, the date on which the department instructed the U.S. Customs Service to suspend liquidation of entries of subject merchandise from all Taiwan companies except Jia Farn, and ending on August 31, 1992.

Pursuant to 19 CFR 353.22(f), the Department believes that there are changed circumstances sufficient to warrant review of Jia Farn's status as the manufacturer of record for the merchandise entering the United States during the period of this changed circumstances review.

In the original investigation, the Department determined Jia Farn was a manufacturer that was not dumping man-made fiber sweaters from Taiwan in the United States. Accordingly, the Department excluded Jia Farn as a manufacturer from the antidumping duty order on man-made fiber sweaters from Taiwan. (See Antidumping Duty Order and Amendment to the Final Determination of Sales at Less than Fair Value: Sweaters Wholly or In Chief Weight of Man-Made Fiber from Taiwan, 55 FR 39033, September 24, 1990.) Jia Farn was the only Taiwan company excluded from the Department's antidumping duty order on man-made fiber sweaters from Taiwan.

At that time, the Department treated Jia Farn as a manufacturer of the subject merchandise in accordance with the company's certified statement of record and the Department's subsequent verification of the information submitted to the Department by Jia Farn. However, in Spring 1991, a team of U.S. government officials from the U.S. Customs Service, the U.S. Trade Representative's Office, the U.S. Department of State, and the Department of Commerce's International Trade Administration visited Jia Farn's facility in Taiwan. Based upon this visit, the U.S. Customs Service reported that "other [Taiwan] exporters are shipping their sweaters through the exempt exporter so that they will not have to pay dumping duties." (See U.S. Customs Service Activity Report, May 17, 1991, at 1.)

In addition, an official from the International Trade Administration recently reported that during the visit to Jia Farn's facility, a Jia Farn company official, reported to be the owner of the company, indicated that producers and exporters, other than Jia Farn, were manufacturing and then shipping completed sweaters through Jia Farn in order to avoid payment of antidumping duties. (See September 2, 1992 "Summary of Information" Memorandum from Deputy Inspector General Michael Zimmerman to Assistant Secretary Alan Dunn.) In a State Department cable, Customs reported that this scheme permitted other firms to avoid antidumping duties by using Jia Farn's name and export quota for sweaters. (See May 17, 1991 Cable from Department of State to Department of Commerce, at section 7, page 1.)

This information alone provides a sufficient basis for the Department to conduct a changed circumstances review of Jia Farn's status as a manufacturer. In addition, the U.S. Customs Service Activity report also indicates that Jia Farn's imports to one U.S. port of entry for the month of April, 1991 alone exceeded Jia Farn's production capacity. This additional information further supports the department's determination that changed circumstances exist sufficient to warrant a changed circumstances review of Jia Farn's status as a manufacturer.

Finally, in accordance with 19 CFR 353.22(f)(3), the Department has determined that the reported activities of Jia Farn demonstrate that good cause exists for initiating a changed circumstances review of Jia Farn before the end of the second annual anniversary month of the antidumping duty order.

This notice is published in accordance with 19 CFR 353.22(f)(1)(i).

Dated: September 14, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-22979 Filed 9-21-92; 8:45 am]

BILLING CODE 3510-DS-M

[C-796-601]

Carbon Steel Wire Rod From Zimbabwe Determination Not To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the countervailing duty order on carbon steel wire rod from Zimbabwe.

EFFECTIVE DATE: September 22, 1992.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup, Cameron Cardozo, or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-0963 or 377-1767.

SUPPLEMENTARY INFORMATION:

Background

On August 14, 1992, the Department of Commerce ("the Department") published in the **Federal Register** (57 FR 36634) its intent to revoke the countervailing duty order on carbon steel wire rod from Zimbabwe (51 FR 29292; August 15, 1986). Under 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. We had not received a request for an administrative review of the order for more than four consecutive anniversary months.

On August 28, 1992, Atlantic Steel Co., Armco Inc., Georgetown Steel Corp., North Star Steel Texas, Inc., and Raritan River Steel Co, interested parties and the petitioners in the original investigation, objected to our intent to revoke the order. Because the requirements of 19 CFR 355.25(d)(4)(iii) have not been met, we will not revoke the order.

This notice is in accordance with 19 CFR 355.25(d).

Dated: September 10, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92-22985 Filed 9-21-92; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Statement of Organization, Practices and Procedures

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of revision to statement of organization, practices and procedures.

SUMMARY: Pursuant to section 302(f)(6) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), 16 U.S.C. 1801 et seq., each Regional Fishery Management Council (Council) is responsible for carrying out its functions under the Magnuson Act, in accordance with such uniform standards as are prescribed by the Secretary of Commerce (Secretary). Further, each Council must make available to the public a statement of its organization, practices and procedures (SOPP).

Secretarial guidelines for the organization, practices, procedures, and operations of the Councils established by the Magnuson Act are set forth in 50 CFR parts 601 and 605. Section 605.25(g)(2)(i) addresses how unused sick leave is treated at retirement and places it under the provisions of the Social Security Act. Section 601.22(c) allows Councils to deviate from the guidelines, where lawful, with appropriate supporting rationale. Secretarial approval of each SOPP would constitute approval of any such deviation for that particular Council.

The North Pacific Fishery Management Council (North Pacific Council) voted to revise the definition of retirement in the sick leave section of their SOPP by deleting reference to the Social Security Act. Council employees are currently under the State of Alaska Public Employee Retirement System. That system allows a vested member to retire at age 55 and apply unused sick leave time to years of service. However, the Social Security Act does not allow a vested member to retire until age 62. Reference to the Social Security Act to define retirement in the sick leave section of the North Pacific Council SOPP is inconsistent with the retirement plan for Council employees and is therefore deleted.

In accordance with the above-mentioned guidelines, the North Pacific Council has revised its SOPP, which was originally published in the **Federal Register** on March 1, 1977 (42 FR 11858). Interested parties may obtain a copy of the North Pacific Council's revised SOPP by contacting Clarence G. Pautzke, Executive Director, North Pacific Fishery Management Council, P.O. Box 103136, 605 West 4th Avenue, Anchorage, AK 99501; telephone (907) 271-2809.

Dated: September 17, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-22974 Filed 9-21-92; 8:45 am]

BILLING CODE 3510-22-M

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of receipt of application for scientific research permit (P507B).

Notice is hereby given that the Washington Department of Fisheries, 115 General Administration Building, Olympia, WA 98504-3135, has applied in due form for a permit to take endangered species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR part 217-222).

This application was received prior to the regulatory deadline of May 22, 1992 (50 CFR part 227), and has thus been subject to the regulatory exemption which allows for the continuation of scientific research/enhancement activities as requested in the application until NMFS has had adequate time in which to review the applications and to determine their sufficiency, or until issuance or denial of a permit, or until December 31, 1992, whichever comes first. This application has now been determined to contain enough information for complete review, and thus a public comment will be opened to determine whether this work, as requested in the application, should continue.

The applicant requests authorization to conduct the following research on adult listed wild Snake River fall chinook salmon (*Onchorhynchus tshawytscha*) at Ice Harbor and Lower Granite Dams: (1) Radio tag up to 48 wild chinook in order to determine inter-dam losses and to identify spawning ground distribution. (2) sacrifice up to 18 wild chinook in order to conduct stock identification studies. These fish would be those that have completed spawning and are near death. Take numbers requested are per year over a two-year period.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7324, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available

for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., suite 7324, Silver Spring, MD 20910 (301/713-2289); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., room 620, Portland, OR 97232 (503/230-5400).

Dated September 10, 1992.

Charles Karnella,

Deputy Director, Office of Protected Resources.

[FR Doc. 92-22840 Filed 9-21-92; 8:45 am]

BILLING CODE 3510-22-M

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of receipt of application for scientific research permit (P516).

Notice is hereby given that the Salmon National Forest, P.O. Box 729, Salmon, Idaho, 83467, has applied in due form for a Permit to take endangered species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR part 217-222).

This application was received prior to the regulatory deadline of May 22, 1992 (50 CFR part 227), and has thus been subject to the regulatory exemption which allows for the continuation of scientific research/enhancement activities as requested in the applications until NMFS has had adequate time in which to review the applications and to determine their sufficiency, or until issuance or denial of a permit, or until December 31, 1992, whichever comes first. This application has now been determined to contain enough information for complete review, and thus a public comment period will be opened to determine whether this work, as requested in the application, should continue.

The applicant requests authorization to incidentally harass up to 40 adult listed wild Snake River spring/summer chinook salmon (*Onchorhynchus tshawytscha*) during the course of conducting spawning habitat surveys and to capture, examine for size, number, condition, etc. and subsequently release up to 50 listed spring/summer chinook salmon smolts near their collection site in the Salmon River and its tributaries. These numbers are requested for each year over a three-year period.

Written data or views, or requests for a public hearings on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7324, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following officers by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., suite 7324, Silver Spring, MD 20910 (301/713-2289); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., room 620, Portland, OR 97232 (503/230-5400).

Dated: September 9, 1992.

Charles Karnella,

Deputy Director, Officer of Protected Resources.

[FR Doc. 92-22841 Filed 9-21-92; 8:45 am]

BILLING CODE 3510-22-M

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of receipt of application for scientific research permit (P514).

Notice is hereby given that the Idaho Power Company, 1221 West Idaho Street, Boise, Idaho 83702, has applied in due form for a Permit to take endangered species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR part 217-222).

This application was received prior to the regulatory deadline of May 22, 1992 (50 CFR part 227), and has thus been subject to the regulatory exemption which allows for the continuation of scientific research/enhancement activities as requested in the applications until NMFS has had adequate time in which to review the applications and to determine their sufficiency, or until issuance or denial of a permit, or until December 31, 1992, whichever comes first. This application has now been determined to contain enough information for complete review, and thus a public comment period will be opened to determine whether this work, as requested in the application, should continue.

The applicant requests authorization to incidentally harass up to 50 adult listed wild Snake River fall chinook salmon (*Onchorhynchus tshawytscha*) during the course of conducting spawning habitat surveys in the Snake river, each year over a three-year period.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7324, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., suite 7324, Silver Spring, MD 20910 (301/713-2289); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., room 620, Portland, OR 97232 (503/230-5400).

Dated: September 9, 1992.

Charles Karnella,

Deputy Director, Office of Protected Resources.

[FR Doc. 92-22842 Filed 9-21-92; 8:45 am]

BILLING CODE 3510-22-M

National Telecommunications and Information Administration

Performance Review Board; Membership

Below is a listing of individuals who are eligible to serve on the Performance Review Board in accordance with the National Telecommunications and Information Administration Senior

Executive Service (SES) Performance Appraisal System:

Alden Abbott
David Farber
William D. Gamble
Harold G. Kimball
William F. Maher, Jr.
Richard D. Parlow
Jean M. Prewitt
Charles M. Rush
Neil B. Seitz
Arlen K. van Doorn

James W. Moses,

Executive Secretary, National Telecommunications and Information Administration, Performance Review Board.

[FR Doc. 92-22858 Filed 9-21-92; 8:45 am]

BILLING CODE 3510-RS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in India

September 16, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 21, 1992.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6705. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted variously for swing, carryforward, and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 57 FR 1905, published on January 16, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 16, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 13, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on September 21, 1992, you are directed to amend further the directive dated January 13, 1992 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and India:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
218	10,002,026 square meters.
219	39,736,047 square meters.
313	25,618,057 square meters.
314	3,401,196 square meters.
315	10,371,879 square meters.
340/640	1,496,735 dozen.
341	3,741,185 dozen.
363	26,157,027 numbers.
369-O [2]	7,810,682 kilograms.
369-S [3]	486,456 kilograms.
369-D [4]	941,600 kilograms.
641	957,668 dozen.
647/648	350,988 dozen.
Group II	121,000,000 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1991.

[2] Category 369-O: all HTS numbers except 5702.10.9020, 5702.49.1010, 5702.99.1010, 6302.60.0010, 6302.91.0005, 6302.91.0045, and 6307.10.2005.

[3] Category 369-S: only HTS number 6307.10.2005.

[4] Category 369-D: only HTS numbers 6302.60.0010, 6302.91.0005, and 6302.91.0045.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-22867 Filed 9-21-92; 8:45 am]

BILLING CODE 3510-DR-F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Thailand

September 16, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 18, 1992.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6717. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for category 338/339 is being increased by the application of special shift. Category 638/639 is being decreased to account for the increase.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 56 FR 58559, published on November 20, 1991.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 16, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 15, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on September 18, 1992, you are directed to amend further the directive dated November 15, 1991 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Thailand:

Category	Adjusted twelve-month limit [1]
Sublevels in Group II	
338/339	1,655,556 dozen.
638/639	1,634,784 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1991.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-22988 Filed 9-21-92; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Office of the Secretary

Environmental Assessment (EA) for Navy Lightweight Exoatmospheric Projectile (LEAP) Technology Demonstration

AGENCY: Strategic Defense Initiative Organization (SDIO).

ACTION: Notice.

SUMMARY: SDIO has prepared a Finding of No Significant Impact based on an assessment of the potential environmental consequences of testing and demonstrating Navy LEAP technologies over open ocean on a U.S. Navy Terrier ship. Navy LEAP activities involve integration and testing Navy missile and LEAP interceptor technologies, including the LEAP Launch Vehicle (STANDARD Missile), LEAP projectile, and Advanced Solid Axial Stage motor. Component/vehicle fabrication, assembly, ground tests, preflight activities, and flight tests were evaluated with respect to the environment at the relevant engineering contractor and government facilities involved with the demonstration. Overall, no significant impacts would result from the Navy LEAP Technology Demonstration.

Background

The EA was prepared according to Council on Environmental Quality Regulations (40 CFR parts 1500–1508) for implementing the procedural provisions of the National Environmental Policy Act (42 U.S.C. 4321 et seq), and DoD Directives (DoD 6050.1) on environmental effects of DoD actions. SDIO has conducted an assessment of the potential environmental consequences of launching a STANDARD Missile modified with LEAP technologies from a U.S. Navy Terrier ship, and related preflight and postflight activities.

The purpose of the Navy LEAP Technology Demonstration is to identify and address key technology integration issues involved with incorporating miniature, Kinetic Energy interceptors into a tactical weapon system. This will demonstrate the feasibility of performing exoatmospheric ballistic missile defense from a Navy platform. Navy LEAP activities involve integration and testing Navy missile and LEAP interceptor technologies, including the LEAP Launch Vehicle (STANDARD Missile (SM)), LEAP projectile, and Advanced Solid Axial Stage (ASAS) motor.

The Navy LEAP Technology Demonstration will consist of component/vehicle fabrication, assembly, and ground tests followed by preflight integration, testing, and fueling activities of the STANDARD Missile and LEAP technologies. These preflight activities will be followed by a series of flight tests. There will be four flight tests using a STANDARD Missile within the jurisdiction of AFWTF, U.S. Naval Station Roosevelt Roads, Puerto Rico. A fifth flight test will involve an intercept, using a STANDARD Missile as the LEAP Launch Vehicle and an ARIES Launch Vehicle as the Target Launch Vehicle, within the jurisdiction of CCAFS, Florida.

Test activities for the proposed action will be conducted in accordance with applicable Federal, State, and local environmental regulations at the following locations:

Location and Activities

General Dynamics Pomona, California
  Component Assembly/Ground Tests (STANDARD Missile)
Boeing Aerospace and Electronics Kent, Washington
  Component Assembly/Ground Tests (LEAP Projectile)
Hughes Aircraft Corporation Missile Systems Group Canoga Park, California
  Component Assembly/Ground Tests (LEAP Projectile)
Rockwell International Rocketdyne Division Canoga Park, California
  Component Assembly/Ground Tests (LEAP Projectile)
Thiokol Corporation Tactical Operations Elkton, Maryland
  Component Assembly/Ground Tests (ASAS)
General Dynamics Pomona, California
  Preflight Activities (STANDARD Missile & LEAP ASAS)
WSMR New Mexico
  Preflight Activities (STANDARD Missile & LEAP/ASAS)
East Coast Navy Weapons Station Charleston, South Carolina
  Preflight Activities (STANDARD Missile & LEAP/ASAS)
AFWTF U.S. Naval Station Roosevelt Roads, Puerto Rico
  Preflight Activities (STANDARD Missile & LEAP/ASAS)
Terrier Ship
  Preflight Activities (STANDARD Missile & LEAP/ASAS)
AFWTF U.S. Naval Station Roosevelt Roads, Puerto Rico
  Flight Test/Postflight Activities (Flight Tests 1–5, STANDARD Missile)
CCAFS Florida,
  Flight Test/Postflight Activities (Flight Test 5, STANDARD Missile & ARIES Target Vehicle)

No construction will be required at any of these facilities to accommodate Navy LEAP activities, except for minor modifications (i.e., electrical upgrades on the interior of Building 380) at U.S. Naval Station Roosevelt Roads.

Alternatives to the proposed action include: transporting the STANDARD Missile to East Coast Navy Weapons Station, Charleston, SC or Yorktown, VA prior to LEAP fueling at U.S. Naval Station Roosevelt Roads for flights 3–5; and using a solid propellant instead of liquid hypergolic propellants for the LEAP projectile.

The No Action Alternative for the proposed action would be not proceeding with the Navy LEAP Technology Demonstration, and not developing and testing a STANDARD Missile modified with LEAP technologies. This would preclude the flight tests needed to demonstrate the feasibility of using existing Navy shipboard weapon systems with LEAP technologies for exoatmospheric intercepts. The No Action Alternative would not support SDIO's mission requirements.

The potential for significant was determined through an ar the activities that would be conducted at the proposed locations, compared to current activities and existing conditions at those locations. The impacts of the proposed action were assessed relative to the following environmental resources: Physical setting and land use; water resources; geology and soils; biological resources; threatened and endangered species; cultural resources; air quality; noise; and hazardous materials and wastes. Infrastructure and human health and safety were also assessed. The methodological approach consisted of identification of potential environmental issues and a determination of potential significance. For any impacts from the proposed action that could potentially be significant, it was determined whether mitigation measures could be implemented to reduce the impacts to less than significant levels.

Findings

All potentially significant impacts from Navy LEAP ground, preflight, and flight test activities are precluded by implementing planned safety measures. These measures have been incorporated into the Navy LEAP Technology Demonstration as an integral part of operations at WSMR, U.S. Naval Station Roosevelt Roads, AFWTF, and CCAFS. The analysis concluded no significant impacts would result from Navy LEAP activities at the engineering contractor facilities. The analysis also concluded no significant impacts for the physical setting and land use; water resources; geology and soils; biological resources; threatened and endangered species; air quality; hazardous materials and wastes; or infrastructure at WSMR, U.S. Naval Station Roosevelt Roads, or CCAFS.

Personnel will remain inside noise-insulated areas on the Terrier ship or buildings at CCAFS during flight tests (outside the flight hazard areas). Hearing protection will be worn during launches to ensure short-term noise exposure does not exceed the OSHA criterion of 115 dBA for 15 minutes.

Navy LEAP procedures will follow the same System Safety Operating Procedures (SSOPs) for fueling and transportation developed by Phillips Laboratory and used successfully at WSMR under the LEAP test program. Flight safety will be ensured by proper selection of launch azimuth and use of a range-approved flight termination system. Hazard zones will be established for the LEAP liquid bipropellants. The Phillips Laboratory standard operations and equipment will be followed for fueling, fuel handling, operation, and storage at Roosevelt Roads. Liquid fueling will be performed in accordance with SSOP that must be approved by the ground safety officer prior to commencement of activities. For worker safety, OSHA Level B protection will be worn by operations personnel. These measures will preclude impacts to human health and safety during the demonstration.

Overall, no significant impact would result from conducting the Navy LEAP Technology Demonstration at WSMR, East Coast Navy Weapons Station, U.S. Naval Station Roosevelt Roads, AFWTF, CCAFS, or the engineering contractor locations. Therefore, an environmental impact statement will not be prepared for the proposed action. In addition, the analysis concluded no significant impacts would result from implementing any of the alternatives.

FOR FURTHER INFORMATION CONTACT: An environmental assessment that supports a "Finding of No Significant Impact" is available for public reading. All are invited to submit written comments for consideration, within 30 days of this notice. Address all correspondence in reference to this notice to: Mr. Crate J. Spears, SDIO Environmental Coordinator, SDIO/TNE, The Pentagon, Room 1E180, Washington, DC 20301-7100, (703) 693-1575.

Dated: September 18, 1992.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-23126 Filed 9-18-92; 3:36 pm]

BILLING CODE 3810-01-M

Department of the Army

Proposed Modification of Procedures in DOD Regulation 4500.34-R

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice.

SUMMARY: This is an advance notice of proposed modification of procedures concerning appendix A, Tender of Service, part B. International, subpart 33. Overseas shipments. The Directorate of Personal Property, Military Traffic Management Command (MTMC) proposes to modify the procedures established in DOD Regulation 4500.34-R, Personal Property Traffic Management Regulation dated October, 1991, by which carriers prepare their shipment and billing documents. This modification will hold carriers responsible for ensuring that all carrier prepared documents are annotated with the term "DOD Sponsored * * * ". This action will assist MTMC to effectively monitor and track U.S. and foreign flag vessel and aircraft use.

The purpose of this change is to ensure compliance with the DOD Tender of Service requirements concerning the use of U.S. and foreign flag vessels and aircraft for the movement of DOD sponsored personal property shipments.

Upon implementation of this modification, corresponding changes will be made to the International Personal Property Rate Solicitation.

DATES: Comments must be received on or before November 6, 1992.

ADDRESSES: Headquarters, Military Traffic Management Command, Attn: MTPP-CI (Mr. Borum), 5611 Columbia Pike, Falls Church, VA 22041-5050. Mail comments to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Borum (703) 756-2383.

SUPPLEMENTARY INFORMATION:

Propose Tender of Service Change.

Appendix A, Tender of Service,

Personal Property Household Goods and Unaccompanied Baggage

II. Mutual Agreement/Understanding

B. International

33. Overseas Shipments.

Add new paragraph f. Ensure all shipping and billing documentation, including agent/port agent/NVOCC freight bills, ocean bills of landing, rated bills of lading, and billing documentation, identify DOD sponsored personal property shipments with the following description, as appropriate: DOD Sponsored Household Goods; DOD Sponsored Unaccompanied Baggage; DOD Personal Effects; or DOD Sponsored Mobile Home with personal effects as indicated on the inventory. The PPGBL issued by a PPSO is for the movement of DOD Sponsored personal property shipments, therefore, the description "DOD Sponsored" is to be included on all carrier documentation. For POVs, show the property classification, NMFC/UFC number, and DOD Sponsored POV.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92-22857 Filed 9-21-92; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0022]

OMB Clearance Request for Customs and Duties

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (900-0022).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Customs and Duties.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

United States laws impose duties on foreign supplies imported into the customs territory of the United States. Certain exemptions from these duties are available to Government agencies. These exemptions are used whenever the anticipated savings outweigh the administrative costs associated with processing required documentation. When a Government contractor purchases foreign supplies, it must notify the contracting officer to determine whether the supplies should be duty-free. In addition, all shipping documents and containers must specify certain information to assure the duty-free entry of the supplies.

The contracting officer analyzes the information submitted by the contractor to determine whether or not supplies should enter the country duty-free. The information, the contracting officer's determination, and the U.S. Customs forms are placed in the contract file.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: *Respondents*, 1,330; *responses per respondent*, 10; *total annual responses*, 13,300; *response burden hours*, 6,650.

Obtaining Copies of Proposals

Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0022, Customs and Duties, in all correspondence.

Dated: September 10, 1992.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 92-22844 Filed 9-21-92; 8:45 am]

BILLING CODE 6820-34-M

[OMB Control No. 9000-0025]

OMB Clearance Request for Buy American Act-Trade Agreements Act-Balance of Payments Program Certificate

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000-0025).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Buy American Act-Trade Agreements Act-Balance of Payments Program Certificate.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

Under the Trade Agreements Act of 1979, unless specifically exempted by statute or regulation, agencies are required to evaluate offers over a certain dollar limitation not to supply an eligible product without regard to the restrictions of the Buy American Act or the Balance of Payments program. Offerors identify excluded end products on this certificate.

The contracting officer uses the information to identify the offered items which are domestic end products. Items having components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a designated country of the Act.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: *Respondents*, 1,140; *responses per respondent*, 10; *total annual responses*, 11,400; and *total response burden hours*, 1,904.

Obtaining Copies of Proposals

Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0025, Buy American Act-Trade Agreements Act-Balance of Payments Program Certificate, in all correspondence.

Dated: September 10, 1992.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 92-22846 Filed 9-21-92; 8:45 am]

BILLING CODE 6820-34-M

[OMB Control No. 9000-0024]

OMB Clearance Request for Buy American Certificate

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000-0024).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved

information collection requirement concerning Buy American Certificate.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Buy American Act requires that only domestic end products be acquired for public use unless specifically authorized by statute or regulation, provided that the cost of the domestic products is reasonable.

The Buy American Certificate provides the contracting office with the information necessary to identify which products offered are domestic end products and which are of foreign origin. Components of unknown origin are considered to have been supplied from outside the United States.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: *Respondents*, 2663; *responses per respondent*, 20; *total annual responses*, 53,260; *response burden hours*, 8,894.

Obtaining Copies of Proposals

Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0024, Buy American Certificate, in all correspondence.

Dated: September 10, 1992.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 92–22865 Filed 9–21–92; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF ENERGY

Floodplain Statement of Findings Environmental Restoration Program Kansas City Plant

AGENCY: U.S. Department of Energy (DOE).

ACTION: Flood statement of findings.

SUMMARY: This is a Statement of Findings prepared pursuant to Executive Order 11988 and 10 CFR part 1022, Compliance with Floodplain/Wetlands Environmental Review Requirements. Proposed activities associated with the Kansas City Plant Environmental Restoration Program would occur within the 100-year floodplain of the Blue River and Indian Creek. On the basis of the Floodplain Assessment, prepared for the Environmental Restoration activities pursuant to 10 CFR part 1022, DOE has determined that there will be no adverse impacts on the floodplain, that there is no practicable alternative to these activities, and that the activities have been or will be designed to avoid or minimize impacts to the floodplain.

FURTHER INFORMATION: Copies of the Floodplain Assessment and maps showing the locations of the proposed actions are available from: Mr. Patrick T. Hoopes, Chief, ES&H Branch, U.S. Department of Energy, Kansas City Area Office, Post Office Box 410202, Kansas City, Missouri 64141–0202, (816) 997–7003.

For further information on floodplain environmental review requirements contact: Carol M. Borgstrom, Director, Office of NEPA Oversight, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: The proposed activities, required to meet the terms and conditions of a resource Conservation and Recovery Act (RCRA) section 3008(h) Corrective Action Administrative Order on Consent (Environmental Protection Agency (EPA) I.D. M09890010 524 issued June 23, 1989) between the EPA and DOE, include the following:

1. Department 27 (D/27) Interim Measure/Removal Action would involve excavation of shallow polychlorinated biophenyl (PCB) contaminated soil. An area of approximately 290 square feet would be excavated to a depth of 4 feet.

2. RCRA Facility Investigations would be conducted on the Trichloroethene (TCE) Still Area, Northeast Area, Miscellaneous Contaminated Sites, Plating Building, Department 26 (D/26), Outfall 001, Abandoned Indian Creek Outfall (AICO), D/27 Inside, and Truck Shop and Department 71 Area.

3. The ongoing ground-water treatment interim actions include ground-water recovery wells in the TCE Still Area, Northeast Area, and Underground Tank Farm. These wells are connected to an Ultraviolet Radiation/Ozone/Hydrogen Peroxide advanced oxidation treatment system. A total of 15 wells would pump Volotile Organic Compound contaminated ground water to the treatment system through a network of underground piping.

4. The AICO project would include excavation of PCB-contaminated soil from an abandoned outfall in front of the Bannister Federal Complex. An estimated 13,500 cubic yards of soil would be excavated and hauled to a Toxic Substance Control Act permitted, out-of-State landfill. The excavated are would then be backfilled with clean soil.

The specific activities proposed to occur within the 100-year floodplain include geophysical surveys, installing ground-water wells, drilling soil borings, sediment sampling, ground-water pumping and treatment, and soil excavation. The following briefly describes these activities:

- Geophysical Surveys—These surveys would be conducted to determine the presence or absence of potential waste burial locations. The methods to be used may include ground penetrating radar, electromagnetic induction, and acoustic refraction techniques. Soil boring may be involved in some locations due to other obstructions.
- Installing Ground-Water Wells—Ground-water monitoring and production wells would need to be installed for the purpose of defining the extent of ground-water contamination, monitoring ground-water elevations and flow, and recovering contaminated ground water for treatment. The wells would be installed as single, double, or triple completions in a single boring and would be installed over most of the complex. Wells would be completed at various depths ranging to bedrock (45 feet).
- Drilling Soil Borings—Soil borings would be taken over most of the complex for the purpose of determining the presence or absence of contamination and defining the extent of contamination. The borings may be drilled to bedrock (45 feet) or may be shallow (5 feet).
- Sediment Sampling—Sediment samples may be collected for the purpose of characterizing the potential impacts of contamination on surface drainage. Samples may be collected in any surface drainage area but would be surface samples only.
- Ground-Water Pumping and Treatment—Ground-Water recovery wells would be installed in ground-water plumes to capture and recover contaminated ground water. These wells may be installed to bedrock (45 feet) and would be used to pump ground water to a treatment system.
- Soil Excavation—Soil would be excavated in the D/27 area and AICO for the purpose of removing contamination. The excavations would range to a depth of bedrock (45 feet) and would involve an area of 16,500 square feet. Contaminated soil would be hauled off-site to a permitted landfill.

The goal of these activities would be to determine the presence (or absence) of contamination, define the vertical and

horizontal extent of known contamination, and remediate contamination which may threaten human health or the environment. All activities would be conducted pursuant to EPA and State-approved plans, and proposed major remediation efforts would be submitted for public comment prior to EPA and State approval. None of these activities would require permanent disturbances of the floodplain or destruction of characteristics unique to floodplains. Most of the beneficial characteristics of the floodplain have been eliminated by previous construction activities associated with the construction of the plant, roads, parking lots, and a partial flood levee.

Alternatives to the proposed activities are limited by the need to adequately characterize the extent of contamination and to protect the public health and environment. Following is a listing of alternatives considered:

- No action alternatives have been found to be unacceptable to DOE, EPA, and the State. These alternatives are not consistent with the RCRA section 3008(h) Corrective Action Administrative Order on Consent.
- Relocation of activities is not feasible because the contamination must be investigated and remediated where it is identified.
- In-site stabilization for AICO has been found unacceptable to EPA and the State.

These activities have been and would be designed to be consistent with all applicable Federal and State requirements. Permits required to comply with other applicable regulations would be obtained for these activities. DOE's prime objective in these activities is to protect human health and the environment.

The following steps have been taken or would be taken to minimize the impacts from these activities:

- Geophysical methods would be used to avoid unnecessary drilling activities and to minimize the waste generated from these activities.
- Temporary wells have been utilized to prevent additional monitoring wells from being permanently installed.
- Excavation projects (such as D/27 and AICO would utilize run-on and run-off controls to minimize the sediment and soils washed away by rain events. Although these controls are not sufficient to protect against flooding, they are beneficial.
- The AICO project would be scheduled for the dry season if possible to minimize the potential for flooding during remediation.

Prior to implementation of the proposed activities, DOE will allow 15 days of public review after publication of the Statement of Finding.

Paul D. Grimm,

Principal Deputy Assistant Secretary for Environmental Restoration and Waste Management.

[FR Doc. 92-22956 Filed 9-21-92; 8:45 am]

BILLING CODE 6450-01-M

Chicago Field Office, San Francisco Support Office; Intent To Make an Award Based on Unsolicited Application

AGENCY: Department of Energy.

ACTION: Notice of intent to make an award based on an unsolicited application.

SUMMARY: The Department of Energy (DOE), Chicago Field Office, through the San Francisco Support Office (SFSO), announces, pursuant to the DOE Financial Assistance Rules 10 CFR 600.14(f), that DOE intends to award a grant to Mr. Cosby M. Newsom, Bondline Products, by assisting him in providing more educational-type activities to transfer a superior manufacturing technology to the composite industry. The anticipated overall objective is to increase the nation's productivity.

SUPPLEMENTARY INFORMATION: The Department of Energy announces further that pursuant to 10 CFR 600.6(a)(2), this discretionary financial assistance award to Mr. Cosby M. Newsom, Bondline Products, would be based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1). Advantages over current technology are that this new process for vacuum-bag molding of laminated composites saves half the labor and materials of conventional-composite manufacturing in a one billion dollar per year industry. The proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current, or planned solicitation. The invention is using a technique for which two patents have been issued. The savings could easily amount to 200- to 250-million dollars per year in: scrapped film, tape, and other elastomeric-type materials, based on a one billion dollar size of the industrial market and on cost reductions possible of from 40- to 50-percent.

The project period for the grant award is 18-months, expected to begin in September 1992. DOE plans to provide funding in the amount of $78,230.

FOR FURTHER INFORMATION CONTACT: Ms. Martha Dixon, Director, San Francisco Support Office, U.S. Department of Energy, 1333 Broadway, Oakland, California 94612.

Issued in Chicago, Illinois on September 10, 1992.

Johnnie D. Greenwood,

Director, Contracts Division.

[FR Doc. 92-22964 Filed 9-21-92; 8:45 am]

BILLING CODE 6450-01-M

Chicago Field Office and San Francisco Support Office

AGENCY: Department of Energy.

ACTION: Notice of intent to make an award based on an unsolicited application.

SUMMARY: The Department of Energy (DOE), Chicago Field Office, through the San Francisco Support Office (SFSO), announces, pursuant to the DOE Financial Assistance Rules 10 CFR 600.14(f), that DOE intends to award a grant to Dr. John F. Clauser to develop the design specifications for a new gravity sensor to allow the use of his invention in a hostile borehole environment, thereby to map by tomography the surrounding earth density. The anticipated overall objective is to position Dr. Clauser so that the necessary additional funding he needs (around $1 million) to construct and field demonstrate the device can be sought elsewhere.

SUPPLEMENTARY INFORMATION: The Department of Energy announces further that pursuant to 10 CFR 600.6(a)(2), this discretionary financial assistance award to Dr. John F. Clauser, would be based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1). Advantages over current technology are that it is about 10-fold more sensitive, enabling it to identify the presence and locations of petroleum and/or other valuable natural resources that would not otherwise be discovered. The proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current, or planned solicitation. The invention is using a technique for which two patents have issued. The extent of the energy recovery would be largely determined by the definitive design and specification that will be developed and funded by this grant.

The project period for the grant award is 18-months, expected to begin in September 1992. DOE plans to provide funding in the amount of $70,240.

FOR FURTHER INFORMATION CONTACT: Ms. Martha Dixon, Director, San Francisco Support Office, U.S.

Department of Energy, 1333 Broadway, Oakland, California 94612.

Issued in Chicago, Illinois on September 10, 1992.

Johnnie D. Greenwood,

Director, Contracts Division.

[FR Doc. 92-22960 Filed 9-21-92; 8:45 am]

BILLING CODE 6450-01-M

Chicago Field Office, Dallas Support Office; Intent To Make an Award Based on an Unsolicited Application

AGENCY: Department of Energy.

ACTION: Notice of intent to make an award based on an unsolicited application.

SUMMARY: The Department of Energy (DOE), Chicago Field Office, through the Dallas Support Office (DSO), announces, pursuant to the DOE Financial Assistance Rules 10 CFR 14(f), that DOE intends to award a grant to Mr. John Robinson, Drying Technology, Inc., for designing, building, and installing his drying technology in one plant of four different industries, and training plant operating personnel in its use. The receiving companies will allow the technology to be viewed by others in their industry. The anticipated overall objective is to use these demonstration installations to prove to each industry that large energy savings and plant operating rate improvements will result if this technology is used.

SUPPLEMENTARY INFORMATION: The Department of Energy announces further that pursuant to 10 CFR 600.6(a)(2), this discretionary financial assistance award to Mr. John Robinson, Drying Technology, Inc., will be based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1). Advantages over current technology are that wet products with variable moisture can be dried more uniformly since the rate at which they pass through the dryer can be varied to compensate for the variation in moisture. The proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current, or planned solicitation. The invention is using a technique for which a patent has been issued. The extent of the energy savings will depend upon the number of units which can replace dryers currently in use.

The project period for the grant award is 24-months, expected to begin in September 1992. DOE plans to provide funding in the amount of $83,323.

FOR FURTHER INFORMATION CONTACT: Linda K. Carter, Dallas Support Office, 1420 West Mockingbird Lane, suite 400, Dallas, Texas 75247.

Issued in Chicago, Illinois on September 10, 1992.

Johnnie D. Greenwood,

Director, Contracts Division.

[FR Doc. 92-22958 Filed 9-21-92; 8:45 am]

BILLING CODE 6450-01-M

Intent To Award Grant to Electric Power Research Institute (EPRI)

AGENCY: Idaho Field Office, Department of Energy.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy, Idaho Field Office, announces that pursuant to the DOE Financial Assistance Rules 10 CFR 600.7 it intends to award a grant to Electric Power Research Institute (EPRI). The objective of the work to be performed under this grant is to develop an improved model(s) to predict instream flow needs for maintaining fish populations downstream from hydropower projects.

FOR FURTHER INFORMATION CONTACT: Joe Lee, U.S. Department of Energy, Idaho Field Office, 785 DOE Place, MS 1221, Idaho Falls, ID 83401-1562, 208-526-1912.

SUPPLEMENTARY INFORMATION: The Statutory authority for the proposed award is Public Law 93-577, the "Federal Non-nuclear Energy Research and Development Act of 1974". The unsolicited proposal meets the criteria for "non-competitive financial assistance," as set forth in 10 CFR 600.7(b)(2). The objective of the project is to develop individual-based models for fish populations of representative fish species that include the influences of physical, chemical and biological parameters on fish responses to flow changes. The proposed grant will have a duration of approximately three years. The total project costs are estimated to be $647,000, with DOE funding $100,000.

Dolores J. Ferri,

Director, Contracts Management Division.

[FR Doc. 92-22968 Filed 9-21-92; 8:45 am]

BILLING CODE 6450-01-M

Chicago Field Office and San Francisco Support Office

AGENCY: Department of Energy.

ACTION: Notice of intent to make an award based on an unsolicited application.

SUMMARY: The Department of Energy (DOE), Chicago Field Office, through the San Francisco Support Office (SFSO), announces, pursuant to the DOE Financial Assistance Rules 10 CFR 600.14(f), that DOE intends to award a grant to Miguel V. Franco for the purpose of developing an improved method for producing carpet.

SUPPLEMENTARY INFORMATION: The Department of Energy announces further that pursuant to 10 CFR 600.6(a)(2), this discretionary financial assistance award to Mr. Miguel V. Franco would be based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1). The patented technology is a new design of a circular loom producing, with greater productivity a wider variety of carpeting than conventional looms.

The proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current, or planned solicitation.

The project period for the grant award is 18-months, expected to begin in September 1992. DOE plans to provide funding in the amount of $90,000.

FOR FURTHER INFORMATION CONTACT: Ms. Martha Dixon, Director, San Francisco Support Office, U.S. Department of Energy, 1333 Broadway, Oakland, California 94612.

Issued in Chicago, Illinois on September 10, 1992.

Johnnie D. Greenwood,

Director, Contracts Division.

[FR Doc. 92-22957 Filed 9-21-92; 8:45 am]

BILLING CODE 6450-01-M

Chicago Field Office and Atlanta Support Office

AGENCY: Department of Energy.

ACTION: Notice of intent to make an award based on an unsolicited application.

SUMMARY: The Department of Energy (DOE), Chicago Field Office, through the Atlanta Support Office (ASO), announces, pursuant to the DOE Financial Assistance Rules 10 CFR 600.14(f), that DOE intends to award a grant to Mr. Robert D. Rutland, In-Place Asphalt Resurfacing Company, to obtain the assistance necessary to generate the required basic engineering design and drafting services to build a production prototype machine.

SUPPLEMENTARY INFORMATION: The Department of Energy announces further that pursuant to 10 CFR 600.6(a)(2), this discretionary financial assistance award to Mr. Robert D. Rutland, In-Place Asphalt Resurfacing Company, would be based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1). Advantage over the most efficient current technology, which is the in-place

hot milling process, is that this process saves two-thirds the heating energy. The proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current, or planned solicitation. The invention is using a technique for which a patent has been issued. The extent of the energy recovery would depend upon the grantee's ability to impact the marketplace, and the subject grant assistance should increase his ability to market the technology five-fold.

The project period for the grant award is 18-months, expected to begin in September 1992. DOE plans to provide funding in the amount of $98,646.

FOR FURTHER INFORMATION CONTACT: Buddy L. Jackson, U.S. Department of Energy, Atlanta Support Office, 730 Peachtree Street, Suite 876, Atlanta, Georgia 30309 TX.

Issued in Chicago, Illinois on September 10, 1992.

Johnnie D. Greenwood,

Director, Contracts Division.

[FR Doc. 92-22962 Filed 9-21-92; 8:45 am]

BILLING CODE 6450-01-M

Denver Support Office; Financial Assistance Award to Industrial Screen and Maintenance Corp.

AGENCY: U.S. Department of Energy.

ACTION: Notice of acceptance of an unsolicited application for award of a financial assistance instrument.

SUMMARY: The Department of Energy (DOE) announces that, pursuant to the DOE Financial Assistance Rules 10 CFR 600.6(a)(2), it intends making a discretionary financial assistance award based on acceptance of an unsolicited application, meeting the criteria of 10 CFR 600.14(e)(1), to Industrial Screen and Maintenance Corporation, under Grant Number DE-FG48-92R810486. Industrial Screen and Maintenance Corporation has a patent on an improved pin shear mixer that requires less energy in mixing "mud" for drilling oil wells. The proposed grant will provide funding in the estimated amount of $88,960 to the subject proposed grantee to redesign the invention to improve its operating efficiencies, to conduct independent laboratory testing, and to field test this process, which is a highly promising new technology that requires less energy in mixing, and one especially suitable for mixing the "mud" required for drilling oil wells. As a direct result, it saves valuable rig time. Advantages over current technology are that by being able to save mud cost and rig time by as much as one-third, the search for new oil will be expedited at no additional cost in time and effort. Other potential applications will ensure wider markets since mixing is a widely employed unit operation throughout the chemical industry.

The DOE has determined in accordance with 10 CFR 600.14(f) that the application submitted by Industrial Screen and Maintenance Corporation is meritorious based on the general evaluation required by 10 CFR 600.14(d). The proposed project is not eligible for financial assistance under a recent, current or planned solicitation because the funding program, the Energy-Related Inventions Program (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations since the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation. The anticipated term of the proposed grant is 18 months from the date of the award.

FOR FURTHER INFORMATION CONTACT: Dennis D. Maez, U.S. Department of Energy, Denver Support Office, 1075 South Yukon, Lakewood, CO, 80226 (303) 969-7000 Extension 224.

Issued in Chicago, Illinois on September 10, 1992.

Johnnie D. Greenwood,

Director, Contracts Division.

[FR Doc. 92-22963 Filed 9-21-92; 8:45 am]

BILLING CODE 6450-01-M

DOE Field Office, Chicago, Noncompetitive Award of Financial Assistance; Michigan Department of Commerce, Public Service Commission, Lansing Housing Commission Conservation Partnership Grant

AGENCY: Department of Energy.

ACTION: Notice of Noncompetitive Financial Assistance Award.

SUMMARY: The Department of Energy (DOE), Field Office, Chicago, through the DOE Chicago Support Office (CSO), announces that, pursuant to the DOE Financial Assistance Rules 10 CFR 600.7(B)(2) DOE intends to award a grant to the Michigan Department of Commerce, Public Service Commission to demonstrate the integration of performance contracting with utility incentives and assistance in implementing cost-effective conservation in multifamily public housing, and to field test new DOE guidelines and model documents for such projects.

SUPPLEMENTARY INFORMATION: The Michigan Department of Commerce Public Service Commission (MPSC) is the designated State Energy Office (SEO), conducting activities under the Energy Extension Service and State Energy Conservation Programs. The MPSC has been extensively involved in efforts to improve the building efficiency of private and public-sector housing and commercial property. Additionally, this award will further the aim of improving the energy efficiency of public housing that is currently being conducted by DOE and the U.S. Department of Housing and Urban Development (HUD); specifically, by implementing a DOE-HUD published guide for energy performance contracting for public housing. Therefore, the grant application is being accepted because DOE knows of no other organization that is conducting or planning to conduct this type of effort in using the abovementioned document. The project period for the grant award is 18-months, expected to begin September, 1992. DOE plans to provide funding in the amount of $40,000 for this project period.

FOR FURTHER INFORMATION CONTACT: Mark Burger, U.S. Department of Energy, Chicago Support Office, 9800 South Cass Avenue, Argonne, IL 60439, (708) 252-2193.

Issued in Chicago, Illinois on September 10, 1992.

Johnnie D. Greenwood,

Director, Contracts Division.

[FR Doc. 92-22965 Filed 9-21-92; 8:45 am]

BILLING CODE 6450-01-M

Chicago Field Office, Dallas Support Office; Intent To Make an Award Based on an Unsolicited Application

AGENCY: Department of Energy.

ACTION: Notice of intent to make an award based on an unsolicitated application.

SUMMARY: The Department of Energy (DOE), Chicago Field Office through the Dallas Support Office (DSO), announces pursuant to the DOE Financial Assistance Rules 10 CFR 600.14(f), that DOE intends to award a grant to Mr. Jack W. McIntyre, for assistance to obtain a feasibility study on the recovery of natural gas from coal bed and/or shale formations, using a patented tool. The anticipated general objective is to define a general geologic and hydrologic feasibility study of the potential applicability of the patented tool to the recovery of natural gas from coal bed and/or shale formations.

SUPPLEMENTARY INFORMATION: The Department of Energy announces further that pursuant to 10 CFR 600.6(a)(2), this discretionary financial assistance award to Mr. Jack W. McIntyre, would be based on acceptance of an unsolicated application meeting the criteria of 10 CFR 600.14(e)(1). Advantages over current technology are that, the invention injects the water into an absorbing formation, without first pumping it to the surface, as is required in current practice. The project represents a unique idea that would not be eligible for financial assistance under recent, current, or planned solicitation. The invention is using a technique for which a patent is issued.

The extent of the energy recovery, in the form of enhanced gas production from water-logged, now abandoned wells, and the feasibility of the tool and the extent of the reserves would be determined from the results of this grant.

The project period for the grant award is 18-months, expected to begin in September 1992. DOE plans to provide funding in the amount of $84,000.

FOR FURTHER INFORMATION CONTACT: Linda K. Carter, U.S. Department of Energy, 1420 West Mockingbird Lane, suite 400, Dallas, TX 75247.

Issued in Chicago, Illinois on September 10, 1992.

Johnnie D. Greenwood,

Director, Contracts Division.

[FR Doc. 92-22959 Filed 9-21-92; 8:45 am]

BILLING CODE 6450-01-M

Chicago Field Office and Dallas Support Office

AGENCY: Department of Energy.

ACTION: Notice of intent to make an award based on an unsolicited application.

SUMMARY: The Department of Energy (DOE), Chicago Field Office through the Dallas Support Office (DSO), announces pursuant to the DOE Financial Assistance Rules 10 CFR 600.14(f), that DOE intends to award a grant to Mr. M. Glenn Osterhoudt, III, MGO Oilfield Services, for developing and field testing under varying conditions a low-cost, new method and apparatus for reviving dead gas wells. The anticipated overall objective is to develop the technology and to generate support data sufficient to field test the method and apparatus and determine the capabilities of the subject technology under varying conditions.

SUPPLEMENTARY INFORMATION: The Department of Energy announces further that pursuant to 10 CFR 600.6(a)(2), this discretionary financial assistance award to Mr. M. Glenn Osterhoudt, III, MGO Oilfield Services, would be based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1). Advantages over current technology are that, except for the relatively high cost air lift method, none work on a completely dead well. The proposed project represents a unique idea that would not be eligible for financial assistance under recent, current, or planned solicitation. The invention is using a technique for which a patent is issued. The extent of the energy recovery, in the form of gas retrieved from completely dead wells, would depend upon the number of gas wells which otherwise would have to be abandoned. The project period for the grant award is 18-months, expected to begin in September 1992. DOE plans to provide funding in the amount of $70,240.

FOR FURTHER INFORMATION CONTACT: Linda K. Carter, U.S. Department of Energy, 1420 West Mockingbird Lane, Suite 400, Dallas, TX 75247.

Issued in Chicago, Illinois on September 10, 1992.

Johnnie D. Greenwood,

Director, Contracts Division.

[FR Doc. 92-22961 Filed 9-21-92; 8:45 am]

BILLING CODE 6450-01-M

Chicago Field Office, NREL Area Office; Solicitation for Cooperative Agreement Applications; Superconductivity Partnership Initiative

AGENCY: Department of Energy.

ACTION: Solicitation for Cooperative Agreement Applications Number DE-PS02-92CH10514.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR part 600 announces the availability of a solicitation for financial assistance applications to develop the U.S. industrial technology base needed for commercial development of High-Temperature Superconductivity (HTS) electric power equipment. The Catalog of Federal Domestic Assistance (CFDA) Number for this action is 81.087, Renewable Energy Research and Development.

DATES: The solicitation will be issued on or about September 11, 1992 and will contain complete information on funding, eligibility, application preparation, and evaluation. Applications will be due approximately 90 days after the solicitation is issued.

ADDRESSES: To obtain a copy of the solicitation, write to the U.S. Department of Energy's Area Office for the National Renewable Energy Laboratory (NREL Area Office), 1617 Cole Blvd, Golden, CO, 80401, Attn: Mr. John Meeker, Contract Specialist.

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy (DOE), Office of Energy Management intends to cost share research and development of High-Temperature Superconductivity (HTS) technology for use in electric power applications. This developmental program will be called the Superconductivity Partnership Initiative (SPI). The objective of SPI is to encourage the development of HTS components and equipment for electric power systems to be used by electric utilities and/or their customers. Potential applications and their products include, but are not limited to: 1. Generation Applications such as generators, superconducting magnetic energy storage [SMES], or flywheel storage with superconducting bearings; 2. Transmission and Distribution Applications such as underground cables, SMES, or fault current limiters and; 3. Customer Applications such as electric motors or small SMES.

Research and development of HTS technology for other than electric power applications is not considered to be a part of SPI and will not be considered for Cooperative Agreement award under the solicitation.

Subject to availability, DOE funding is anticipated to be $4.5 million. It is anticipated that at least two awards will be made. A minimum of 20% cost sharing by applicants is required.

The solicitation is intended to develop enabling HTS components (wires, coils, bearings, or similar HTS structures suitable for equipment components) in parallel with product-related development. The parallel product-related development will include: energy and economic benefit analysis of product introduction, product design and performance information, and development or specification of non-HTS components. Deliverables are expected to include: Demonstration of HTS component progress (for example, longer length, higher performance wires; higher field, larger diameter coils; higher lift, larger bearings), and demonstration of product-related development progress (for example, energy and economic benefit analysis report, design and performance information report, and non-HTS component progress).

The establishment of teams with the knowledge and capability to pursue the

development of HTS technology from the research stage through development and into commercialization is a key element for achieving the goals of the program. The proposed team must be comprised and coordinated such that continuing pursuit of the technology by the teams up to and including actual commercialization without further DOE support can be expected to take place.

The SPI teams are expected to include a product manufacturer, an HTS component manufacturer, and a user having test site capability. The product manufacturer must express a business interest in commercializing the proposed product and exhibit the capability to proceed with commercialization activities following SPI completion. The HTS component manufacturer must exhibit the capability to successfully perform the proposed work. The user must have the capability to test prototype equipment for the proposed product and participate in defining particular application requirements. The team may also include universities with specialized expertise or engineering firms accustomed to electric utility work, as necessary for the successful completion of the project. However, DOE National Laboratories cannot be team members.

All responsible sources may submit an application which will be considered.

Dated: Issued in Chicago, Illinois, on August 28, 1992.

Johnnie D. Greenwood,

Director, Contracts Division.

[FR Doc. 92-22966 Filed 9-21-92; 8:45 am]

BILLING CODE 6450-01-M

Chicago Field Office; Noncompetitive Award of Financial Assistance

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The Department of Energy (DOE), Chicago Field Office, through the Dallas Support Office, announces that it intends to award a grant to Texas A&M University. The proposed award meets the criteria in 10 CFR 600.7(b)(2)(i)(B) in addition to the type of factors listed in 10 CFR 600.14(d). The financial assistance is for support of the Fifteenth National Industrial Energy Technology Conference, March 24-25, 1993, in Houston, Texas. Texas A&M University is the conference host.

SUPPLEMENTARY INFORMATION: The Industrial Energy Technology Conference is the most significant annual national conference concentrating on industrial energy efficiency applications and related environmental concerns. Agenda include: Environmental issues impacting industry, impact of air quality regulations on energy, industry/utility interface, heat and power systems, energy-related equipment, process design for energy conservation, and alternate fuels. The conference is attended by senior energy managers, plant engineers, utility representatives, suppliers, and industry consultants. DOE's mission of increasing industrial energy efficiency will be advanced through participation in the conference. Results of the conference will impact favorably on industrial energy decision-making in both the public and private sectors. Academic research will be stimulated

FOR FURTHER INFORMATION CONTACT: Robert A. Gabour, U.S. Department of Energy, Dallas Support Office, 1420 West Mockingbird Lane, Suite 400, Dallas, Texas 75247, (214) 767-7232.

Issued in Chicago, Illinois, on September 4, 1992.

Timothy S. Crawford,

Assistant Manager for Administration.

[FR Doc. 92-22967 Filed 9-21-92; 8:45 am]

BILLING CODE 6450-01-M

International Energy Agency; Meetings

AGENCY: Department of Energy.

ACTION: Notice of meetings.

FOR FURTHER INFORMATION CONTACT: Samuel M. Bradley, Office of General Counsel, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202-586-2900.

SUPPLEMENTARY INFORMATION: In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following notice of meetings is provided:

I. A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on Monday, September 28, 1992, at the offices of the Organization for Economic Cooperation and Development (OECD), 2, rue Andre Pascal, Paris, France, beginning at 3 p.m. The agenda for the meeting is as follows:

1. Preparation for the IEA's Seventh Allocation Systems Test ("AST-7"), including training sessions and operational phase.

2. Future work program, including AST-7 appraisal.

3. IAB organization and chairmanship.

II. A meeting of the IEA's Group of Reporting Companies will be held on September 29, September 30, and October 1, 1992, at the OECD, beginning at 9:15 a.m. on September 29, at the OECD. The purpose of this meeting is to permit attendance by representatives of U.S. Reporting Companies at the European session of the IEA's Training Program for National Emergency Sharing Organizations ("NESOs") and Reporting Companies in relation to AST-7, which training session is scheduled to be held at the OECD on the dates indicated above. The agenda for the meeting is under the control of the IEA Secretariat. It is expected that the following draft agenda will be followed:

September 29, 1992

9:15-10:00 Introduction Review of the Agenda Overview of training objectives
10:00-10:50 The IEA Emergency Sharing System, activation procedures and responsibilities
10:50-11:10 Coffee break
11:10-13:00 National emergency procedures; NESO and Reporting Company organization; national fair sharing and Non-Reporting Company operations
13:00-14:30 Lunch
14:30-15:45 IEA data bases
—Questionnaires A and B ("QA/QB") data
—Use of QA/QB data in AST-7
—AST-7 test assumptions and their impact on the data base
15:45-16:00 Coffee break
16:00-17:45 Key aggregates in the Emergency Sharing System
—Trigger calculations (Base Period Final Consumption, available supplies, Emergency Reserve Drawdown Obligation, and Allocation Rights and Allocation Obligations)
—The balancing job in AST-7

September 30, 1992

9:15-10:30 Market response to oil supply disruptions
10:30-10:45 Coffee break
10:45-12:15 IEA and NESO response to the AST-7 disruption assumptions
—Supply and operational considerations
—National response, including stockdraw and demand restraint
12:15-13:30 Lunch
13:30-15:00 IEA and industry response to the AST-7 disruption assumptions
—Type 1 and Type 2 activity
—Transport and refining operations
15:00-16:15 Industry Supply Advisory Group ("ISAG") and Emergency Operations Team ("EOT") activities
16:15-16:30 Coffee break
16:30-17:45 Information processing and transmission in AST-7
—The Voluntary Offer format and codes
—Preparation, transmission and processing
—The allocation screen—tracking countries' Allocation Rights and Obligations

October 1, 1992

9:15-10:15 Voluntary Offers
—Conditional offers, short fuse offers, split cargoes
—Voyage time problems, port restrictions, vessel size, product and crude oil offers

10:15–10:45 Shipping considerations in AST-7
10:45–11:15 Legal considerations in AST-7
11:15–11:30 Coffee break
11:30–12:45 AST-7 calendar
—Discussion among participants of value of training program
—Appraisal reports
—Relations with the media
—Closing remarks; end of session
12:45–14:00 Lunch
14:00–16:00 Optional revision of Training Program elements with ISAG and the IEA Secretariat

As permitted by 10 CFR 209.32, the usual 7-day period for publication of the notice of these meetings in the **Federal Register** has been shortened because unanticipated circumstances pertaining to the IEA's scheduling of these meetings delayed the issuance of this notice.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, these meetings are open only to representatives of members of the IAB and their counsel, representatives of IEA Reporting Companies and their counsel, representatives of NESOs, representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of the Congress, the IEA, the Commission of the European Communities, and invitees of the IAB, or the IEA.

Issued in Washington, DC, September 15, 1992.

Eric J. Fygi,

Acting General Counsel.

[FR Doc. 92-22989 Filed 9-21-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER92-809-000, et al.]

Illinois Power Company et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Illinois Power Company

[Docket No. ER92-809-000]

September 10, 1992.

Take notice that on August 31, 1992, Illinois Power Company (Illinois) tendered for a Power Coordination Agreement (PCA) between Illinois and the Illinois Municipal Electric Agency (IMEA). Illinois states that the Power Coordination Agreement is intended to supersede the currently effective Power Coordination Agreement between Illinois and IMEA.

Comment date: September 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Detroit Edison Company

[Docket Nos. ER92-180-003 and EL92-17-002]

September 10, 1992.

Take notice that on August 17, 1992, Detroit Edison Company tendered for filing its refund report in the above-referenced dockets.

Comment date: September 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. New Hampshire Public Service Company

[Docket No. ER92-797-000]

September 10, 1992.

Take notice that on August 27, 1992, New Hampshire Public Service Company (PSNH) tendered for filing a Notice of Cancellation of Rate Schedule No. 143 with Fitchburg Gas & Electric Light Company.

Comment date: September 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. New Hampshire Public Service Company

[Docket No. ER92-796-000]

September 10, 1992.

Take notice that on August 27, 1992, New Hampshire Public Service Company (PSNH) tendered for filing a Notice of Cancellation of Rate Schedule No. 144 with Unitil Power Corporation.

Comment date: September 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. Minnesota Power & Light Company

[Docket No. ER92-795-000]

September 10, 1992.

Take notice that Minnesota Power & Light Company (Minnesota Power) on August 26, 1992, tendered for filing an Amendment to the Interchange Service Agreement between Minnesota Power and Superior Water, Light and Power Company (Superior). The Amendment changes the service provided by Minnesota Power to Superior from partial requirements service to full requirements service.

Minnesota Power requests an effective date of November 1, 1992.

Copies of the filing have been served on Superior, the Minnesota Public Utilities Commission and the Wisconsin Public Service Commission.

Comment date: September 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. Montaup Electric Company

[Docket No. ER92-810-000]

September 10, 1992.

Take notice that on August 31, 1992, Montaup Electric Company (Montaup) tendered for filing a Notice of Cancellation of its Rate Schedule FERC No. 95. The Notice of Cancellation provides that the effective date of cancellation of the rate schedule is October 31, 1992.

Rate Schedule FERC No. 95 is an Agreement under which Montaup agreed to sell to Bangor Hydro-Electric Company (Bangor) capacity and associated energy from Canal No. 2 Unit. The initial Agreement was accepted and designated as Montaup Rate Schedule No. 95 on January 13, 1992. An amendment to this Agreement was submitted for filing under Docket No. ER92-629-000 and June 8, 1992. The amendment provides Bangor with additional capacity and associated energy beginning June 1, 1992 through October 31, 1992. The Commission accepted the amendment by letter order issued July 21, 1992 and designated it Supplement No. 1 to Montaup Rate Schedule No. 95. Rate Schedule FERC No. 95 expires by its own terms on October 31, 1992.

Delmarva states that a copy of this filing has been sent to PE and will be furnished to the Pennsylvania Public Utility Commission, the Delaware Public Service Commission, the Maryland Public Service Commission, and the Virginia State Corporation Commission.

Comment date: September 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Delmarva Power & Light Company

[Docket No. ER92-823-000]

September 10, 1992.

Take notice that on September 3, 1992, Delmarva Power & Light Company (Delmarva) tendered for filing as an initial rate under Section 205 of the Federal Power Act and part 35 of the regulations issued thereunder, an Agreement between Delmarva and Philadelphia Electric Company (PE) dated September 3, 1992.

Delmarva states that the Agreements sets forth the terms and conditions for the sale of short-term energy which it expects to have available for sale from time to time and the purchase of which will be economically advantageous to PE. In order to optimize the economic advantages to both Delmarva and PE, Delmarva requests that the Commission waive its customary notice period and allow this Agreement to become effective on September 14, 1992.

Delmarva states that a copy of this filing has been sent to PE and will be furnished to the Pennsylvania Public Utility Commission, the Delaware Public Service Commission, the Maryland Public Service Commission, and the Virginia State Corporation Commission.

Comment date: September 24, 1992, in accordance with Standard Paragraph e at the end of this notice.

8. Washington Water Power Company

[Docket No. ER92-824-000]

September 10, 1992.

Take notice that on September 3, 1992, The Washington Water Power Company (WWP) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.11 Service Agreements under WWP's FERC Electric Tariff Volume No. 4.

A copy of the filing was mailed to the parties of the new Service Agreements.

Comment date: September 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. Kansas Gas and Electric Company

[Docket No. ER92-828-000]

September 11, 1992.

Take notice that on September 8, 1992, Kansas Gas and Electric Company (KG&E) tendered for filing a proposed change to its Federal Energy Regulatory Commission Electric Service Schedule No. 182. KG&E states the purpose of the change is to extend the term of the existing Generating Municipal Electric Service Agreement between KG&E and the The City of Girard, Kansas. The change is proposed to become effective November 13, 1992.

Copies of the filing were served upon the City of Girard and the Kansas Corporation Commission.

Comment date: September 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. Connecticut Light and Power Company

[Docket No. ER92-820-000]

September 11, 1992.

Take notice that on August 31, 1992, Connecticut Light and Power Company (CL&P) tendered for filing a letter agreement that extend the term of a previously filed and accepted exchange agreement dated June 1, 1985 with its amending letters dated October 23, 1986, November 26, 1991, and June 2, 1992 between CL&P and the United Illuminating Company (UI).

CL&P states that a copy of this filing has been mailed to UI.

CL&P requests that the Commission waive its regulations to the extent necessary to permit the rate schedule filed to become effective November 1, 1992.

Comment date: September 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

11. Nevada Power Company

Docket No. ER92-825-000]

September 11, 1992.

Take notice that on September 4, 1992, Nevada Power Company (NPC),tendered for filing a request for a waiver of section 35.14 of the Federal Energy Regulatory Commission's Regulations for all tariffed service provided by NPC to the City of Needles (Needles) under Rate Schedule FERC No. 41. The Primary purpose of the filing is to allow NPC to exclude the purchase power costs and energy of the Boulder Canyon Project Schedule B (Hoover B) power from the calculation of the fuel adjustment clause for power sold to Needles. The request asks that the waiver be for all service rendered since March 1990.

NPC states that copies of the filing were served upon Needles.

Comment date: September 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

12. Pacific Gas and Electric Company

[Docket No. ER92-457-000]

September 11, 1992.

Take notice that on September 4, 1992, Pacific Gas and Electric Company (PG&E) tendered for filing a second amended filing under FERC Docket No. ER92-457-000. This docket was initiated on April 11, 1992, when PG&E tendered for filing a February 7, 1992 letter agreement between PG&E and the Western Area Power Administration (Western) which amends the parties' Sale, Interchange and Transmission Contract No. 14-06-200-2948A (Contract 2948A), Rate Schedule FERC No. 79 (Letter Agreement).

The proposed amended filing submits Amendment No. 1 to the Letter Agreement (Amendment No. 1). The proposed amendment incorporates FERC Staff's suggestions regarding the equity portion of the rate of return component used in rate formulas in the Letter Agreement.

Comment date: September 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

13. West Texas Utilities Company

Docket No. ER91-586-000]

September 11, 1992.

Take notice that on September 4, 1992, West Texas Utilities Company (WTU) tendered for filing an amendment to the Interconnection and Interchange Agreement (Agreement) between WTU and Lower Colorado River Authority (LCRA) and a related letter agreement.

WTU requests an effective date of July 1, 1990 for the Agreement as amended and, accordingly, seeks waiver of the Commission's notice requirements. WTU requests an effective date of November 3, 1992 for the Letter Agreement. Copies of the filing were served upon LCRA and the Public utility Commission of Texas.

Comment date: September 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

14. Central Illinois Public Service Company

[Docket No. ER92-827-000]

September 11, 1992.

Take notice that on September 4, 1992, Central Illinois Public Service Company (CIPS) tendered for filing a revision to its Rate Schedule W-2 for Wholesale Electric Service to the municipalities of Newton and Greenup, in Illinois. Under the revision, proposed to be effective November 3, 1992, CIPS will increase slightly the energy and demand charges for service to each municipality.

Copies of the filing were served on Newton, Greenup, and the Illinois Commerce Commission.

Comment date: September 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

15. Northern States Power Company

[Docket No. ER92-78-000]

September 11, 1992.

Take notice that on September 4, 1992, Northern States Power Company (NSP) tendered for filing an amendment in the above captioned docket. The amendment provides additional information supporting acceptance for filing by the Commission of the Crooked Lake Substation Transformation Service Agreement dated August 28, 1989 between NSP and United Power Association (UPA).

The Crooked Lake Substation Transformation Service Agreement essentially provides that NSP owns a 115-12.5 kV substation known as the Crooked Lake Substation (Substation) from which NSP provides facilities and service for itself and, under contract, for the municipal utility of the City of Anoka, MN (City). NSP provides UPA 115-12.5 transformation service from certain existing facilities, and installed certain other facilities in its Substation, all of which would benefit Anoka Electric Cooperative (AEC), a UPA member distribution cooperative. UPA is willing to contribute to NSP's cost of installing certain additional facilities in the Substation to provide service for UPA, as an alternative to UPA having to build a new 115 to 12.5 kV substation in the same area to provide similar service to AEC.

NSP again requests the Crooked Lake Substation Transformation Service Agreement be accepted for filing effective August 28, 1989, and requests waiver of Commission's notice requirements in order for the Agreement to be accepted for filing on that date.

Comment date: September 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

16. Hartwell Energy Limited Partnership

[Docket Nos. ER92-39-000 and ER92-22-000]

September 11, 1992.

Take notice that on September 4, 1992, Hartwell Energy Limited Partnership (Hartwell) filed a Petition seeking that the Commission grant authorization under Section 203 of the Federal Power Act, 16 U.S.C. § 824b, and waive Part 33 of the Commission's regulations, 18 CFR, Part 33, with respect to a proposed change in Hartwell's ownership structure. Hartwell has further sought a declaratory order that there is no need for the Commission to re-examine Hartwell's rates or the waivers previously granted by the Commission as a result of the proposed ownership changes. Hartwell requests that the Commission act on an expedited basis.

Comment date: September 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

17. Appalachian Power Company

[Docket No. ER92-830-000]

September 11, 1992.

Take notice that Appalachian Power Company (APCo), on September 8, 1992, tendered for filing with the Commission a new electric service agreement that was executed by APCo and West Virginia Power, a division on UtiliCorp United, Inc. (WV Power), on December 30, 1991. The agreement is intended to replace the existing service agreement between APCo and WV Power, the initial term of which expired on March 31, 1992.

APCo proposes an effective date of November 9, 1992, and states that a copy of its filing was served on the affected customer.

Comment date: September 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

18. Union Electric Company

[Docket No. ER92-537-000]

September 11, 1992.

Take notice that Union Electric Company, on September 8, 1992, tendered for filing Amendments to the 60 Hertz Wholesale Power Agreement and the Interchange Agreement between Union Electric Company (UE) and Iowa Electric Light and Power Company (IELP).

UE states that the purpose of the Amendment to the 60 Hertz Agreement is to specify a cap in the rates based on the maximum demand and energy charges for UE's Callaway Plant. The purpose of the Amendment to the Interchange Agreement is to modify the rates which may be charged by UE and IELP based on current cost justification, and to specify caps on such rates.

Comment date: September 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

19. Midwest Power Systems Inc.

[Docket No. ER92-784-000]

September 11, 1992.

Take notice that on September 8, 1992, Midwest Power Systems Inc., 666 Grand Avenue, Des Moines, Iowa 50309, a wholly owned subsidiary of Midwest Resources Inc., tendered an amended filing of its notice that it is the successor to Iowa Power Inc. (IPR) and Iowa Public Service Company (IPS). This amendment, filed in response to Staff request, contains a list of the various rate and service schedule numbers in effect.

Copies of the filing were served upon Midwest Power Systems Inc.'s jurisdictional customers and the Iowa Utilities Commission and the South Dakota Utilities Commission.

Comment date: September 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

20. Montaup Electric Company

[Docket No. ER92-91-000]

September 11, 1992.

Take notice that on September 8, 1992, Montaup Electric Company (Montaup), in compliance with a request by Staff, filed supplemental information in the above-referenced docket. The requested information provides (1) Montaup's maximum justifiable ceiling charge for system energy sales for each year 1984 through 1990; (2) the carrying costs per kW-day per kWh for the capacity value of the exchange unit and (3) a summary for each year comparing Montaup's net maximum justifiable compensation for energy sales on a per kWh basis to its actual charges.

Comment date: September 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

21. Public Service Company of Colorado

[Docket No. ER92-831-000]

September 11, 1992.

Take notice that on September 8, 1992, Public Service Company of Colorado tendered for filing, in accordance with 18 CFR 35.13(a)(2)(i) of the Commission's Rules of Practice and Regulations, a proposed amended nonfirm transmission tariff for service to the Inland Power Pool Agreement of which it is a party. Public Service Company of Colorado currently provides Inland Power Pool parties nonfirm transmission service under its FERC Electric Tariff No. 41. The proposed amended nonfirm transmission tariff would increase revenue from jurisdictional service by approximately $11,300 based on the twelve month period ended June 30, 1992.

The amended nonfirm transmission tariff proposed reflects updated costs consistent with Public Service Company of Colorado's Colorado-Ute Acquisition Section 205 filing, dated February 6, 1992, which has been accepted by the Commission and the cost of the required Commission filing fee.

Copies of the filing were served upon Public Service Company of Colorado jurisdictional customers, all parties to the Inland Power Pool Agreement, and to state jurisdictional regulators which include the Public Utilities Commission of the State of Colorado and the State of Colorado's Office of Consumer Counsel.

Comment date: September 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

22. Bangor Hydro-Electric Company

[Docket No. ER92-697-000]

September 11, 1992.

Take notice that Bangor Hydro-Electric Company (Bangor) on September 4, 1992, tendered for filing an Amendment to Filing. The Rate Schedule included in this Amendment provides for the sale by Bangor to other utilities which enter into Service Agreements with Bangor, capacity and associated energy at negotiated rates not to exceed Bangor's cost of service.

Bangor requests that the Commission waive its notice requirement in order to allow the Rate Schedule to become effective as soon as review can be completed, in no event later than November 1, 1992.

Comment date: September 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

23. New England Power Company

[Docket No. ER92-817-000]

September 11, 1992.

Take notice that New England Power Company, on September 1, 1992, tendered for filing proposed service agreements, amendments to service agreements and terminations of services

under its FERC Electric Tariff, Original Volume Nos. 3 and 4.

Comment date: September 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

24. New England Power Company

[Docket Nos. ER91-566-002 and ER90-526-004]

September 11, 1992.

Take notice that on September 3, 1992, New England Power Company (NEP) tendered for filing its compliance filing in the above-referenced dockets.

Comment date: September 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

25. New England Power Company

[Docket No. ER92-819-000]

September 11, 1992.

Take notice that New England Power Company (NEP), on September 2, 1992, tendered for filing an agreement to provide service to Braintree (Massachusetts) Electric Light Department under NEP's FERC Electric Tariff, Volume No. 5.

The proposed service agreement would permit Braintree to make short-term energy purchases from NEP when such purchases would mutually benefit both parties.

Comment date: September 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

26. Blue Ridge Power Agency Central Virginia Electric Cooperative, Inc., and Craig-Botetourt Electric Cooperative, Inc. v. Appalachian Power Company

[Docket Nos. EL89-53-004, ER90-132-004 and ER90-133-004]

September 11, 1992.

Take notice that on September 8, 1992, Appalachian Power Company (APCo) tendered its amended compliance filing in the above-referenced dockets, in accordance with the August 6, 1992 deficiency letter issued by the Director, Division of Applications.

Copies of the amended filing were served upon APCo's jurisdictional customers, the Virginia State Corporation Commission, the Public Service Commission of West Virginia, the Tennessee Public Service Commission and all parties of record.

Comment date: September 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

27. Pacific Gas and Electric Company

[Docket No. ER92-829-000]

September 11, 1992.

Take notice that on September 8, 1992, Pacific Gas and Electric Company (PG&E) tendered for filing, pursuant to Section 205 of the Federal Power Act and Section 35.12 of the Federal Regulatory Commission's regulations (18 CFR 35.12), in settlement of the above complaint, an exchange of transmission services which: (1) gives the City transmission service over PG&E's entitlement of the DC Line and (2) gives PG&E transmission service over the city's entitlement in the California-Oregon Transmission Project. No revenues are paid or received by either Party as a result of this exchange.

Copies of this filing have been served upon the City, the California Public Utilities Commission and the parties to the service list in the above referenced docket.

Comment date: September 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

28. Wisconsin Electric Power Company

[Docket No. ER92-812-000]

September 11, 1992.

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on September 1, 1992, tendered for filing proposed changes in its FERC Electric Service Tariff Volume 1 and in its Power Sales Agreement with The Wisconsin Public Power Inc. SYSTEM (FERC Rate Schedule No. 65). The proposed changes would increase revenues from jurisdictional service by $8,524,468 (15.1%), based on the twelve month period ending December 31, 1992. Wisconsin Electric cites increased operation and maintenance expenses as well as increased investment in plant facilities as justification for its proposed rates.

Wisconsin Electric requests that the rates be made effective on November 1, 1992, sixty days after filing. Wisconsin Electric requests cancellation of its Replacement Coal Recovery Provision, effective January 1, 1993. Cancellation of the RCRP will decrease revenues from jurisdictional service by approximately $400,000 annually. The Company also requests acceptance of a Conditional Reclamation Cost Surcharge in the event that the Company is ordered to refund amounts passed through the wholesale fuel cost adjustment at the conclusion of FERC Docket No. FA88-62-000. The surcharge would be prospectively applied to recover the refunded amounts, plus interest.

Copies of the filing have been served in Wisconsin Electric's eleven affected wholesale customers, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: September 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

29. EEA III, L.P.

[Docket No. QF91-24-001]

September 14, 1992.

On September 8, 1992, EEA III, L.P., of 1700 North Moore Street, Suite 1850, Arlington, Virginia 22209, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in the City of Bayonne, Hudson County, New Jersey, and will consist of a combustion turbine generator, an extraction/condensing steam turbine generator (STG), a non-supplementary fired heat recovery boiler (HRB), and approximately 6.7 miles of 138 kV underground transmission line. Steam recovered from the STG and HRB will be supplied to two unaffiliated hosts for thermal applications. The average net electric power production capacity of the facility will be approximately 152.6 MW. The primary energy source will be natural gas. Construction of the facility is expected to commence in March of 1993.

Comment date: October 22, 1992, in accordance with Standard Paragraph E at the end of this notice.

30. GEO East Mesa Limited Partnership—GEM 1

[Docket No. QF88-202-005]

September 14, 1992.

On September 8, 1992, GEO East Mesa Limited Partnership (Applicant) tendered for filing an amendment to its filing in this docket.

The amendment clarifies certain technical information. No determination has been made that the submittal constitutes a complete filing.

Comment date: September 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

31. GEO East Mesa Limited Partnership—GEM 2

[Docket No. QF88-203-005]

September 14, 1992.

On September 8, 1992, GEO East Mesa Limited Partnership (Applicant) tendered for filing an amendment to its filing in this docket.

The amendment clarifies certain technical information. No determination has been made that the submittal constitutes a complete filing.

Comment date: September 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

32. Arroyo Energy, Limited Partnership

[Docket No. QF92-179-000]

September 14, 1992.

On August 28, 1992, Arroyo Energy, Limited Partnership (Applicant) tendered for filing a supplement to its filing in this docket.

The amendment provides additional ownership and technical information pertaining to its cogeneration facility. No determination has been made that the submittal constitutes a complete filing.

Comment date: October 1, 1992, in accordance with Standard Paragraph E at the end of this notice.

33. American Bituminous Power Partners, L.P.

[Docket No. QF87-494-005]

September 14, 1992.

On September 10, 1992, American Bituminous Power Partners, L.P., tendered for filing a supplement to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The supplement provides additional information pertaining to the ownership structure of the facility.

Comment date: October 5, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22905 Filed 9-21-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-09370T, New Mexico-35]

United States Department of the Interior, Bureau of Land Management; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

September 16, 1992.

Take notice that on September 14, 1992, the United States Department of the Interior's Bureau of Land Management (BLM) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that a portion of the Wolfcamp Formation (Vaca Draw/Pitchfolk Ranch Area) in Lea County, New Mexico, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The area of application is described on the attached appendix.

The notice of determination also contains BLM and the New Mexico Department of Energy, Minerals and Natural Resources' findings that the referenced portion of the Wolfcamp Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

Appendix

Township 24 South, Range 33 East
Sections 25-36: All
Township 24 South, Range 34 East
Sections 25-33: All
Section 34: W/2
Sections 35-36: All
Township 25 South, Range 33 East
Sections 1-24: All
Township 25 South, Range 34 East
Sections 1-24: All

The area of application contains 45,760 acres, more or less, of Federal (69%), State (23%) and Fee (8%) lands.

[FR Doc. 92-22924 Filed 9-21-92; 8:45 am]

BILLING CODE 6717-01-M

Regarding Remote Public Access to Commission Systems

September 15, 1992.

Take notice that on October 15, 1992, the Federal Energy Regulatory Commission (FERC) will make available its Remote Public Access (RPA) program to anyone who would like to use it. The RPA will allow public access to the Commission Issuance System (CIS) and the Automated Docket Sheet System (ADSS). The CIS contains the official service list for each proceeding before FERC; the ADSS contains the docket sheet listing all filings made and documents issued for each proceeding before FERC.

RPA originally started as a pilot project on May 11, 1992 and to date, 50 participants are actively using the systems. Because the pilot project has been very successful, the Chairman has decided to make it available to anyone desiring access.

If you are already participating in the pilot project or have already written a letter requesting access, you will automatically receive information about use of the system. If you are not already participating or have not written a letter and you wish access to RPA, please submit a request to the Office of the Secretary (OSEC), Federal Energy Regulatory Commission, room 3110, 825 North Capitol St., NE., Washington, DC 20426. The request should include the entity's name, address, phone number, and a contact person. Upon receiving this information, the OSEC will mail you access information.

If additional information is required, please call the Office of the Secretary at 202-208-0400.

Lois D. Cashell,

Secretary

[FR Doc. 92-22926 Filed 9-21-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-1-000]

Alabama-Tennessee Natural Gas Co.; Proposed Change in FERC Gas Tariff

September 16, 1992.

Take notice that on September 11, 1992, Alabama-Tennessee Natural Gas Company ("Alabama-Tennessee"), Post Office Box 918, Florence, Alabama 35631, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet with a proposed effective date of October 1, 1992:

Sub. 34th Rev. Sheet No. 4

Alabama-Tennessee states that the purpose of this filing is to reflect a $0.0001 per dekatherm decrease in Alabama-Tennessee's rates under its Annual Charge Adjustment ("ACA") clause that results from a corresponding decrease in the annual charge assessed Alabama-Tennessee by the Commission.

Alabama-Tennessee requests a waiver of Section 154.22 of the Commission's Regulations so that this tariff sheet might be made effective on less than 30 days notice and requests any other waiver that may be required in order to accept and approve this filing as submitted.

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional sales and transportation customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure 18 CFR 385.211 and 385.214. All such motions or protests should be filed on or before September 23, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22980 Filed 9-21-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-231-000]

ANR Pipeline Company; Request for Waiver

September 16, 1992.

Take notice that on September 11, 1992, ANR Pipeline Company (ANR) tendered for filing its emergency request for waiver of the three-year filing requirement to establish a new base tariff rate.

ANR states that in view of the Commission's August 5, 1992 order approving ANR's pending settlement proposal in Docket Nos. RP89-161-021, *et al.*, which eliminates ANR's requirement to file a new rate case by November 1, 1992, ANR should not be required to prepare and file a new rate case at this time.

ANR states that on August 28, 1992, ANR resubmitted pertinent provisions of its FERC Gas Tariff incorporating the modifications required by the August 5 order, to be effective November 1, 1992, and notified the Commission that it will accept the settlement, as modified, for the interim period as ordered, subject to expeditious approval of the August 28, filing. ANR has requested that the Commission approve its filing by no later than September 30, 1992.

ANR states that if the Commission does not waive the three-year filing requirement at this time, ANR, its customers, the Commission, interested state commissions, and producers will be forced to expend valuable resources preparing, reviewing and responding to an extensive rate filing, which will distract the parties' attention from ANR's Order No. 636 compliance filing and the issues addressed therein.

ANR requests that the Commission grant waiver of the three-year filing requirement until 30 days after the Commission acts on the August 28 filing.

ANR states that copy of the filing have been served upon each of ANR's customers, and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 23, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22923 Filed 9-21-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-4-22-001]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

September 16, 1992.

Take notice that CNG Transmission Corporation ("CNG") on September 11, 1992, filed the following revised tariff sheet to First Revised Volume No. 1 of CNG's FERC Gas Tariff:

Substitute First Revised Sixteenth Revised Sheet No. 34

CNG requests that the Commission allow the proposed tariff revisions to become effective on August 1, 1992, in accordance with the Commission's August 28, 1992 order.

CNG states that the filing would change CNG's "Excess Deliveries From Buyer's Balance" and "Not From Buyer's Balance" rates for Rate Schedule GSS-II service.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before September 23, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22909 Filed 9-21-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-33-000]

East Tennessee Natural Gas Company; Conference

September 16, 1992.

Take notice that on October 9, 1992, a pre-filing conference will be convened in this restructuring docket. The purpose of the conference is to address a revised summary of the proposal to comply with Order No. 636 prepared by East Tennessee Natural Gas Company. The pipeline intends to serve all parties in the proceeding with the revised summary by September 24, 1992.

The conference will be held at 9 a.m. on October 9, 1992, in the offices of the Federal Energy Regulatory Commission at 810 First Street, NE., Washington, DC 20426. All interested parties are invited to attend. However, attendance at the conference will not confer party status.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22904 Filed 9-21-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-1-2-001 and TM93-1-2-000]

East Tennessee Natural Gas Co.; Proposed Changes in FERC Gas Tariff

September 16, 1992.

Take notice that on September 10, 1992, East Tennessee Natural Gas Company ("East Tennessee"), submitted for filing ten copies each of Sub Twenty Seventh Revised Nos. 4 and 5 to first Volume No. 1 of its FERC Gas Tariff to be effective October 1, 1992.

East Tennessee states that the purpose of the filing is to reflect the new

Annual Charge Adjustment (ACA), pursuant to Article 19 of the General Terms and Conditions of East Tennessee's FERC Gas Tariff. The New ACA rate is $0.0022 compared to $0.0023, a decrease of $0.0001.

Because the reflected change is only to the ACA Surcharge, East Tennessee respectfully requests waiver of the Commission's regulations to the extent necessary to enable the proffered sheets to take effect on October 1, 1992.

East Tennessee states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest such filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20425, in accordance with rules 211 and 214 of the Commission's Rules or Practice and Procedures. All such petitions or protests should be filed on or before September 23, 1992. Protests will be considered by the Commission in determining appropriate action but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene; provided, however, that any person who had previously filed a petition to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22910 Filed 9-21-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-60-000]

El Paso Natural Gas Co.; Pre-Filing Conference

September 15, 1992.

Take notice that on Wednesday, September 30, 1992, a pre-filing conference will be convened in the captioned docket to discuss the proposed restructuring plan of El Paso Natural Gas Company. The conference will be held in a hearing or conference room of the Federal Energy Regulatory Commission, at 810 First Street, NE., Washington, DC. The conference will begin at 10 a.m. All interested persons are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested parties can call Lisa T. Long at (202) 208-2105.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22918 Filed 9-21-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA92-1-24-003 and TQ92-7-24-002]

Equitrans, Inc.; Proposed Changes in FERC Gas Tariff

September 16, 1992.

Take notice that Equitrans, Inc. (Equitrans), on September 10, 1992, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Third Substitute Thirty-Seventh Revised Sheet No. 10, to be effective September 1, 1992.

Equitrans states that this filing is intended to comply with the Commission's August 31, 1992 order in this proceeding requiring Equitrans to remove from its demand charge Texas Eastern Transmission Corporation Gas Supply Inventory Reservation Charge (TETCO GIC) costs. Equitrans states that this filing reflects TETCO GIC costs in the commodity component of Equitrans' Rate Schedule PLS.

Equitrans states that the commodity surcharge, which is amortized over a twelve month period, beginning September 1, 1992, is $0.0405 per dekatherm. Equitrans also states that the surcharge is designed to recover only the $1,183,345 in TETCO GIC costs expected to be incurred by Equitrans in the months of September and October of 1992, since TETCO's tariff authorization to implement its GIC has been rescinded, effective November 1, 1992.

Equitrans states that a copy of its filing has been served upon its purchasers, interested state commissions, and all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before September 23, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22911 Filed 9-21-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-24-001]

Equitrans, Inc.; Proposed Changes in FERC Gas Tariff

September 16, 1992.

Take notice that Equitrans, Inc. (Equitrans), on September 10, 1992, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Substitute Thirty-Eighth Revised Sheet No. 10 to replace the tariff sheets previously filed herein on August 28, 1992.

Equitrans states that the proposed tariff sheet is designed to reflect the Commission's 1992 Annual Charge Adjustment of $0.0023 per Mcf applicable to interstate natural gas pipelines pursuant to Order No. 472. Equitrans states that it has converted this Mcf rate to a dekatherm (Dth) rate of $0.0022 per Dth.

Equitrans states that the substitute sheet reflects a change in its commodity surcharge under Rate Schedule PLS for flowthrough of Texas Eastern Transmission Corporation's Gas Supply Inventory Reservation Charge (TETCO GIC) costs. Equitrans states that on September 10, 1992 it filed proposed tariff sheets in Docket Nos. TA92-1-24-003 and TQ92-7-24-002 to reflect TETCO GIC costs as a commodity surcharge rather than as a demand charge in compliance with the Commission's August 31, 1992 order in that docket.

Equitrans requests that the Commission grant any waivers necessary to permit the tariff sheet contained in the filing to become effective October 1, 1992.

Equitrans states that a copy of its filing has been served upon its purchasers, interested state commissions, and all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before September 23, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22912 Filed 9-21-92, 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-164-007]

Granite State Gas Transmission, Inc.; Notice of Filing of Revised Tariff Sheets

September 16, 1992.

Take notice that on September 10, 1992, Granite State Gas Transmission, Inc., (Granite State), 300 Friberg Parkway, Westborough, Massachusetts 01581-5039, tendered for filing with the Commission the revised tariff sheets listed below in its FERC Gas Tariff, First Revised Volume No. 2, containing changes in tariff provisions for effectiveness on July 1, 1992:

First Revised Sheet No. 61
First Revised Sheet No. 72

Revised to Granite State, the above identified revised tariff sheets are part of its Rate Schedules T-5 and T-6 pursuant to which it renders firm transportation services for its affiliated distribution company customers, Bay State Gas Company and Northern Utilities, Inc. It is further stated that on July 2, 1992, Granite State filed a compliance filing to implement the terms of a settlement approved by the Commission in Docket No. RP91-164-000 and the above tariff sheets were inadvertently omitted from the compliance filing. Granite State further states that the revised tariff sheets restore to Rate Schedules T-5 and T-6 certain lines in these rate schedules as originally filed with the Commission that were displaced in making room for certain new language in the rate schedules to comply with the terms of the settlement in Docket No. RP91-164-000.

Granite State further states that copies of its filing were served upon its customers, the regulatory commissions of the States of the Maine, Massachusetts and New Hampshire and the intervenors in Docket No. RP91-164-000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 of the Commission's Rules of Practice and Procedures (18 CFR 385.211). All such protests should be filed on or before September 23, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 92-22921 Filed 9-21-92; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TM93-1-65-001]

Jupiter Energy Corp.; Proposed Revision to Tariff Filing

September 16, 1992.

Take notice that Jupiter Energy Corporation ("Jupiter Energy" or the "Company") on September 11, 1992 tendered for filing the following sheets of its FERC Gas Tariff, Original Volume No. 1:

Substitute Sixth Revised Sheet No. 4A
Substitute Sixth Revised Sheet No. 5A
Substitute Sixth Revised Sheet No. 6A

Jupiter Energy states that on August 31, 1992 it submitted tariff sheets in the instant docket. According to Jupiter Energy, the reason for the September 10, 1992 filing is to reflect that it received on September 4, 1992 a corrected bill from the Commission that revised the annual billing charge that Jupiter energy must pay for Fiscal Year 1992. The proposed revised surcharge of the September 10, 1992 filing, which reflects the corrected Commission bill, is 0.23¢ per Mcf.

Jupiter Energy proposes an effective date of October 1, 1992.

Jupiter Energy states that copies of the filing have been served on the Company's jurisdictional customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before September 23, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 92-22925 Filed 9-21-92; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP92-53-002]

Kern River Gas Transmission Co.; Compliance Filing

September 16, 1992.

Take notice that Kern River Gas Transmission Company on September 3, 1992, tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Substitute Original Sheet No. 98
Substitute Original Sheet No. 100
Substitute Original Sheet No. 404
Substitute Original Sheet No. 407
Second Substitute Original Sheet No. 810
Original Sheet No. 810A

Kern River states that the proposed changes are being filed in compliance with the Commission's "Order Accepting Compliance Filing, Subject to Conditions, Granting Clarification, Granting Rehearing in Part, and Denying Rehearing in Part", issued August 4, 1992 in Docket Nos. RP92-53-001, and RP92-53-002. Kern River states that it is adding to Rate Schedule SH-1 a new § 5.2(a), which is identical to existing §§ 15.1(a) of the General Terms and Conditions of its tariff concerning assignments by interstate pipeline shippers. Kern River states that it also has modified the initial sentence of section 15 of the General Terms and Conditions to clarify that section 15 applies to service provided under all firm rate schedules except Rate Schedule SH-1. Kern River states that it also has revised its Transportation Service Request Form to include as part of the information solicited the total contract volumes of gas requested over the life of the contract, and the amount of take-or-pay relief to which the gas being transported is subject. Kern River also states that it has modified § 16.1 of the General Terms and Conditions to include capacity availability for transportation service as information which prospective shippers may obtain pursuant to § 16.1.

Kern River states that it has requested any waivers of the Commission's Regulations necessary to allow these proposed tariff sheets to become effective January 31, 1992.

Kern River states that copies of its filing have been sent to its jurisdictional customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should filed on

or before September 22, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22906 Filed 9-21-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-1-16-001]

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

September 16, 1992.

Take notice that on September 2, 1992, National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to be effective October 1, 1992:

Sub Twenty-Third Revised Sheet No. 5
Sub Alt Twenty-Third Revised Sheet No. 5

National Fuel states that on August 31, 1992, it filed its Quarterly Purchased Gas Cost Adjustment Filing (PGA) and discovered that the tariff sheets reflected an incorrect entry for "Estimated Average Cost of Gas in Last Scheduled PGA" reported on the bottom of the originally filed tariff sheets. In accordance with the Commission's order issued August 28, 1992, in Docket No. RQ92-7-16-000, the entry should be the same as that reported for "Current Estimated Average Cost of Gas in Latest PGA".

National Fuel states that the above-referenced tariff sheets are being submitted in substitution for the tariff sheets filed in its PGA filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before September 23, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22913 Filed 9-21-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT92-32-000]

Northwest Alaskan Pipeline Co.; Proposed Changes in FERC Gas Tariff

September 16, 1992.

Take notice that on September 1, 1992, Northwest Alaskan Pipeline Company (Northwest Alaskan) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets with a proposed effective date of September 1, 1992:

Original Volume No. 2
Original Sheet No. 213J
Second Revised Sheet No. 275B
Original Sheet No. 275C

Northwest Alaskan states that Pan-Alberta Gas Ltd., and Panhandle Eastern Pipe Line Company, parties to Northwest Alaskan have entered into a letter agreement to which Northwest Alaskan is also a party to suspend the operation of the purchase and sales contracts and tariff provisions related to the annual redetermination provided for in such contracts and tariff.

Northwest Alaskan states that the referenced tariff has been amended to reflect the terms and conditions of the letter agreement referenced above.

Northwest Alaskan states that a copy of the filing has been served on its customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 21, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22914 Filed 9-21-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-229-000]

Northwest Pipeline Corp.; Proposed Changes in FERC Gas Tariff

September 16, 1992.

Take notice that on September 9, 1992, Northwest Pipeline Corporation (Northwest) tendered for filing its methodology for allocation of take-or-pay buyout and buydown costs previously allocated pursuant to a purchase deficiency direct bill methodology. In addition to its primary methodology, Northwest also tenders for the Commission's consideration five alternative methodologies for allocation of the take-or-pay buyout and buydown costs.

Northwest has also tendered for filing tariff sheets to implement the primary methodology and each alternative, as well as a series of schedules and workpapers to support the primary methodology and alternatives. A list of tariff sheets is attached to Exhibit A to the filing, to be effective November 1, 1992.

Northwest states that the purpose of the filing are to obtain Commission approval of the appropriate methodology to allocate a share of Northwest's fixed Supplier Settlement Payment costs to Northwest's customers in compliance with order Nos. 500, 528 and 528-A.

Northwest requests that the Commission review its primary proposal and alternatives,and order the implementation of an appropriate allocation mechanism to be effective on November 1, 1992.

Northwest states that copies of the filing are being served on all parties of record in Docket No. RP89-137-000 *et. al.*

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 23, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22915 Filed 9-21-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-75-000]

Paiute Pipeline Co.; Pre-Filing Conference

September 15, 1992.

Take notice that on Thursday, October 1, 1992 a pre-filing conference

will be convened in the captioned docket to discuss the proposed restructuring plan of Paiute Pipeline Company. The conference will be held in a hearing or conference room of the Federal Energy Regulatory Commission, at 810 First Street, NE., Washington, DC. The conference will begin at 10 a.m. All interested persons are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested parties can call Lisa T. Long at (202) 208-2105.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22917 Filed 9-21-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-232-000]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

September 16, 1992.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on September 8, 1992 tendered for filing the tariff sheets to its FERC Gas Tariff, Original Volume No. 2 listed on the appendix attached to the filing.

These revised tariff sheets reflect changes to Rate Schedules TS-4 and TS-5 of Panhandle's FERC Gas Tariff, Original Volume No. 2 to reflect (1) the abandonment of Michigan Consolidated Gas Company Interstate Storage Division's (ISD) ACA surcharge in Docket Nos. GP92-2-000 and 001, (2) Panhandle's, ANR Storage Company's (ANR Storage) and ANR Pipeline Company's (ANR) approved ACA Surcharges effective October 1, 1991 in Docket Nos. TM92-1-28-000, TM92-1-91 and TM92-1-48, respectively, and Panhandle's ANR Storage and ANR's proposed ACA Surcharge to be effective October 1, 1992 in Docket Nos. TM93-1-28-000, TM93-1-91 and TM93-1-48, respectively, (3) ANR's general rate change under Section 4 of the Natural Gas Act in Docket Nos. RP86-169-021, RP86-105-000 and RP87-25-000, (4) changes in ANR's take-or-pay surcharges and adjustments applicable to Rate Schedules X-92 and X-93 in Docket Nos. RP91-35-000, TM91-3-48-000, RP91-33-003 and 004, RP91-192-000, RP92-4-000, TM92-3-48-000, TM92-7-48-000 and RP92-199-000, respectively.

Panhandle proposes that the tariff sheets listed on the attached Appendix become effective December 30, 1990, February 1, 1991, May 1, 1991, August 1, 1991, August 5, 1991, October 1, 1991, November 1, 1991, February 1, 1992, May 1, 1992; August 2, 1992 and October 1, 1992, respectively.

Panhandle requests waiver of § 154.22 of the Commission's Regulations.

Panhandle states that copies of this filing have been sent to ANR Storage and ANR, to the various Panhandle storage customers under Rate Schedules TS-4 and TS-5, and to the respective state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 23, 1992. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22916 Filed 9-21-92; 8:45am]

BILLING CODE 6717-01-M

[Docket Nos. RP91-203-021 and RP-132-006]

Tennessee Gas Pipeline Co.; Compliance Filing

September 16, 1992.

Take notice that on September 11, 1992, Tennessee Gas Pipeline Company (Tennessee) tendered for filing cost of service data in connection with rate changes proposed by Tennessee on February 28, 1992 affecting transportation Rate Schedules NET-EU and T-180. Tennessee states that filed data complies with Commission orders dated March 30, 1992 and August 12, 1992, as well as the provisions of 18 CFR 154.63(e)(2)(i).

Tennessee further states that, as provided in Section 154.63(e)(2), it has elected to support the NET-EU and T-180 rates using base period actuals, adjusted for annualization and normalization. In addition, to mitigate Commission and intervenor concerns regarding use of end-of-base-period (and potentially inflated) data for gross plant, depreciation, depletion, amortization and abandonment and deferred income taxes, Tennessee states that it has updated these cost of service components through August 31, 1992. This supporting data, states Tennessee, yields a $1.6 million decrease in the cost of service reflected in Tennessee's February 28, 1992 filing in Docket No. RP92-132-000.

Accordingly, subject to grant of necessary waivers, Tennessee states that it will retroactively implement the lower rates resulting from the use of base period actuals, in lieu of those rates reflected in the February 28, 1992 filing and which, by the terms of the Commission's March 30, 1992 order, 58 FERC ¶ 61,343 (1992), became effective (subject to refund) September 1, 1992.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before September 23, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22922 Filed 9-21-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-115-006]

Williston Basin Interstate Pipeline Co.; Compliance Filing

September 16, 1992.

Take notice that on September 4, 1992, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing certain revised tariff sheets to First Revised Volume No. 1 and Original Volumes Nos. 1-A and 2 of its FERC Gas Tariff.

Williston Basin states that the revised tariff sheets are being filed in compliance with the Commission's "Order Affirming in Part and Reversing in Part Initial Decision" issued July 23, 1991 in Docket No. RP87-115-000, and "Order Granting in Part and Denying in Part Requests for Rehearing and Granting Clarification" issued August 7, 1992 in the above referenced proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protestants should be filed on or before September 23, 1992. Protests will be considered by the

Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary

[FR Doc. 92-22907 Filed 9-21-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 92-93-LNG]

Distrigas Corp.; Application for Long Term Authorization To Import Liquefied Natural Gas From Nigeria

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt of an application filed on July 17, 1992, by Distrigas Corporation (Distrigas) to import liquefied natural gas (LNG) from Nigeria. Distrigas requests authorization to import up to 10 cargoes of LNG annually (125,000 cubic meters per ship) over a period of 20 years. Distrigas states that the gas will be purchased from Nigeria LNG Limited (NLNG), under a gas purchase contract dated June 15, 1992. The LNG will be sold to Distrigas' affiliate, Distrigas of Massachusetts (DOMAC), and will be received at DOMAC's existing LNG terminal facilities at Everett, Massachusetts. DOMAC plans to resell the LNG to a variety of residential and industrial customers pursuant to rate schedules approved by the Federal Energy Regulatory Commission (FERC). The proposed imports will provide additional supplies to DOMAC's customers during the winter peaking season.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, October 22, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

Susan K. Gregersen, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-070, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-0063.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION:

Background

Distrigas is a Delaware corporation with its principal place of business in Boston, Massachusetts, and is an indirect wholly-owned subsidiary of Cabot Corporation. NLNG is a Nigerian company formed and controlled by subsidiaries of the Nigerian state energy company, the Royal Dutch/Shell Group, the French energy company Elf Aquitaine and the Italian company Agip. The LNG will be produced by NLNG at a gas liquefaction plant to be constructed, owned and operated by NLNG on Bonny Island, Rivers State, Nigeria. Distrigas will be the only United States buyer of NLNG's project production. NLNG expects to begin delivery of LNG to Distrigas via ocean transport vessels sometime in 1997.

Contract Quantity and Pricing Provisions

Quantities

The initial term of the June 15, 1992, LNG purchase agreement (the contract) between Distrigas and NLNG is 20 years, following a build-up period of deliveries of approximately 18 to 24 months, when the LNG plant is reaching full production. The contract can be extended by mutual agreement of the parties for further periods of five years. At the end of the 20-year basic term, the contract will be extended for an additional year to permit Distrigas to receive any make-up quantities. The annual contract quantity will be 28 million MMBtu's (77,000 MMBtu per day), plus or minus up to 5% at NLNG's option. These quantities will represent approximately 12% of NLNG's total project production. The contract specifies that quantities needed to round out the last cargo loaded in a contract year can be applied to Distrigas' base quantity obligations in the following year.

Additionally, quantities supplied to Distrigas in any contract year which are in excess of the annual contract quantities can be carried forward and applied to Distrigas' quantity obligations in the following year. If Distrigas does not take its required annual contract quantities, it must pay for the shortfall, at a price that varies from 65% to 95% of the then prevailing contract price. The shortfall quantity then becomes an entitlement to make up LNG. The contract specifies that NLNG cannot offer surplus LNG production to other buyers unless it also offers make-up quantities to Distrigas. The contract also provides that Distrigas will pay the difference between the amount previously paid and the applicable contract price at the time make-up LNG is taken. Distrigas asserts that these provisions, which are similar to U.S. natural gas purchase contract "take-or-pay" provisions, have been deemed necessary by NLNG to secure project financing.

Pricing

The contract's pricing structure is based on the principle of "net back" pricing, and provides that the price payable to NLNG is a percentage (between 64% and 68%) of the price arising from customer sales or of a market-oriented price (reference price). The reference price is a formula price reflecting the market in New England and the Northeast United States for certain oil products and pipeline gas services competing with LNG. From March through October, the reference price will equal the published spot gas price in the New England market; from November through February, the reference price will reflect a 50/50 mix of published prices for competing residual fuel and distillate oils and pipeline commodity gas, as reported in filings made to FERC. After the 12th contract year, the reference price will reflect only gas prices. Distrigas will pay NLNG a portion of the higher of the actual price payable by Distrigas' customers, or of the reference price. The contract does not provide for a minimum bill or fixed transfer price, which would be passed on to Distrigas' LNG customers. Distrigas asserts that DOMAC's sales will be established by contracts freely negotiated between DOMAC and its customers.

Additionally, the contract provides that Distrigas and NLNG may each request regular review and revision of the reference price, beginning during the year before initial deliveries occur, and thereafter every three years. Each party also has the right to three special price reviews, outside the normal three-year cycle, over the term of the contract. If a revision of the reference price cannot be negotiated, the matter will be arbitrated. Under this procedure, the arbitrators must determine a reference price which

reflects a market price prevailing at the time of arbitration.

In support of its application, Distrigas avers that Nigeria possesses approximately 87 Tcf of recoverable reserves, the largest in Africa after Algeria, and that the shareholders of NLNG are affiliates of large energy companies with substantial Nigerian and worldwide experience in oil and gas production, refining, and transportation. Additionally, Distrigas states that natural gas for NLNG's proposed liquefaction plant has been committed to the project under executed gas supply agreements between NLNG and its upstream suppliers.

The decision on this application for import authority will be made consistent with DOE's import policy guidelines, under which the competitiveness of an import arrangement in the market served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In a long-term arrangement such as this, other matters that will be considered in making a public interest determination include need for the gas and security of the long-term supply. Parties, especially those that may oppose this application, should comment in their responses on the issues of competitiveness, need for the gas, and security of supply as set forth in the policy guidelines and as they relate to the requested import authorization. The applicant asserts that imports made under the proposed arrangement will be competitive and otherwise consistent with DOE import policy. Parties opposing this arrangement bear the burden of overcoming these assertions.

NEPA Compliance

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Anyone who wants to become a party to this proceeding and to have their written comments considered as the basis for the decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a part to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Distrigas' application is available for inspection and copying in the Office of Fuels Programs docket room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on September 16, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-22971 Filed 9-21-92; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 92-70-NG]

Saranac Power Partners, L.P.; Application To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application to import natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt of an application filed on June 9, 1992, by Saranac Power Partners, L.P. (Saranac), as revised on July 13, 1992, requesting authorization to import from Canada up to 54,000 Mcf of natural gas per day for a period of sixteen years from the date of initial import. Saranac would use the gas to fuel a 240 megawatt gas-fired, topping-cycle cogeneration plant that Saranac plans to build in Plattsburgh, New York. The gas would enter the United States at the point on the international border near Chaplain, New York, where the pipeline facilities of TransCanada PipeLines Limited (TransCanada) would interconnect with the new transmission system to be constructed by North Country Gas Pipeline Corporation (North Country).

The application is filed under section 3 of the Natural Gas Act (NGA) and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, November 23, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Yvonne Gabbay, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, 1000 Independence Avenue, SW., Washington, DC. 20585, (202) 586-4587.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW., Washington, DC. 20585, (202) 586-0530.

SUPPLEMENTARY INFORMATION: Saranac is a Delaware limited partnership with its principal place of business in

Houston, Texas. Saranac's sole general partner is Saranac Energy Co., Inc. and the ultimate parent company of Saranac Energy Co., Inc. is Falcon Seaboard Resources, Inc., a Texas corporation. The proposed cogeneration facility is expected to be completed and in commercial operation by June 1, 1994. It will be operated as a "qualifying facility" under Section 201 of the Public Utility Regulatory Policies Act of 1978. See Federal Energy Regulatory Commission (FERC) certification granted December 16, 1991 (57 FERC ¶62,211). In addition, Saranac has filed a Certificate of Compliance (57 FR 24280, June 5, 1992) with the coal capability requirements for proposed new electric powerplants pursuant to the Powerplant and Industrial Fuel Use Act of 1978. Saranac would sell the electric power output from its cogeneration plant to New York State Electric & Gas Corporation and would sell the thermal output to Georgia-Pacific Corporation (Georgia-Pacific) for use at Georgia-Pacific's tissue paper mill in Plattsburgh.

Saranac would purchase the gas from Shell Canada Limited (Shell) pursuant to their May 20, 1992, purchase agreement. Shell's supplies are comprised of reserves in the Provinces of Alberta, British Columbia, and Saskatchewan. Shell would deliver gas on an interruptible basis as required by Saranac for testing the powerplant prior to the date of commercial operation and then continue to supply gas on a firm basis for a period of fifteen years from the date that the plant commences commercial operations. North Country would transport the gas from Champlain to the cogeneration plant.

The daily contract quantity (DCQ) that Shell is required to supply would be 51,000 Mcf. We note that on July 13, 1992, Saranac informed DOE that it exercised it right under the contract to permanently reduce the DCQ from 54,200 Mcf to 51,000 Mcf for the duration of the agreement. There is a provision in the contract whereby Shell is entitled to supply any requirements of the Saranac cogeneration facility above the DCQ provided that the terms are competitive. Thus, the volume for which import authorization is requested exceeds the DCQ.

The contract includes a two-part pricing structure consisting of a demand component, which is based on the charges for gas transportation in Canada on the pipeline systems of NOVA Corporation of Alberta (NOVA) and/or TransCanada, and a commodity component equal to the difference between the demand charge and the "Contract Price." Commencing with the start of firm deliveries through October 31, 1994, the Contract Price would be $2.97 (U.S.) per Mcf. On November 1, 1994, and on each November 1 thereafter, the Contract Price would increase at a rate of four percent over the Contract Price of the preceding year. The monthly demand charge paid by Saranac throughout the term of the agreement would be equal to the level of NOVA and TransCanada demand charges as they exist in 1994. If Saranac purchases the maximum volumes contracted for in a given month, the agreement stipulates that the total price that can be charged per Mcf would not exceed the Contract Price.

There is no minimum take provision for the first contract year. Commencing with the second contract year, Saranac would be required to make certain payments to the extent it takes less than 80 percent of the sum of the daily contract quantities in that year with the exception of certain circumstances. During contract years two through twelve, Saranac would be required to pay for gas up to the minimum annual quantity even if not taken. Saranac would be able to make up deficiency volumes in any of the three succeeding contract years. During contract years thirteen through fifteen, Saranac would be required to pay Shell for any failure to take the minimum annual quantity an amount equal to the product of (1) The amount by which the minimum annual quantity exceeds the amount actually taken and (2) eleven percent of the applicable contract price. These payments made in the thirteenth through fifteenth years would not be treated as prepayments. Saranac states that it may seek to sell some of the imported gas to others in order to minimize the impact of the demand charges and take-or-pay requirements in the gas purchase agreement.

The decision on the application for import authority will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the market served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In the case of a long-term arrangement such as this, other matters that will be considered in making a public interest determination include the need for the gas and security of long-term supply. Parties, especially those that may oppose this application, should comment in their responses on the issues of competitiveness, need for the gas, and security of supply as they relate to the requested import authorization. Saranac asserts that the terms of the sales contract with Shell are competitive and that the reserves from which this gas will be drawn are secure for the period of the requested import authorization. Furthermore, Saranac states that the authorization requested herein is in the public interest. Parties opposing Saranac's request for import authorization bear the burden of overcoming these assertions.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. On April 3, 1991, North Country received a Presidential Permit from FERC and authorization under section 3 of the NGA to construct and operate its proposed pipeline facilities at the U.S./Canada border near Champlain, New York which would be used to import the volumes proposed by Saranac. See 55 FERC ¶61,011. FERC was the lead Federal agency in preparing an environmental assessment (EA) for the North Country pipeline project. DOE was a cooperating agency in this environmental review process. FERC concluded that the North Country pipeline system, if constructed in accordance with the mitigative measures set forth in its final certificate order, "does not constitute a major federal action significantly affecting the human environment within the meaning of NEPA, and therefore, does not require preparation of an environmental impact statement (EIS)." North Country is expected to begin construction of its facilities by mid-1993.

DOE will independently examine the potential environmental impacts that were addressed in the North Country EA and the mitigative measures required in FERC's certificate order in the course of making its own environmental determination with respect to Saranac's request for import authorization. Furthermore, DOE intends to prepare an EA on the cogeneration powerplant proposed by Saranac. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or

notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Saranac's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on September 15, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-22954 Filed 9-21-92; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 92-94-NG]

City of Warroad, Minnesota, Northern Minnesota Utilities; Application To Allow Transfer of Long-Term Import Authorization From City Of Warroad, Minnesota to Northern Minnesota Utilities

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt of an application filed on July 20, 1992, by the City of Warroad, Minnesota (Warroad) and Northern Minnesota Utilities (NMU) requesting authorization to transfer to NMU the import authorization granted Warroad in DOE/FE Opinion and Order No. 472 issued January 31, 1991 (1 FE ¶ 70,405). Under the terms of this order, Warroad is authorized to import from Canada up to 550,000 Mcf of natural gas annually through October 31, 1995. This gas is resold to residential and commercial customers.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, October 22, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Yvonne Gabbay, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-4587. Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-0503.

SUPPLEMENTARY INFORMATION: Warroad is a municipal corporation of the State of Minnesota that owns and operates gas distribution facilities. NMU, an operating division of Utilicorp United, Inc., is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Cloquet, Minnesota. NMU distributes natural gas in 44 towns in the State of Minnesota and acts as agent for Warroad in all matters related to natural gas purchasing, transmission and distribution.

Warroad purchases gas from Western Gas Marketing Limited (WGML), a subsidiary of TransCanada PipeLines Limited. Such gas is transported pursuant to agreements with Centra Transmission, Inc. (Centra Transmission) and Centra Pipelines Minnesota, Inc. (Centra Pipelines). NMU has agreed to purchase Warroad's gas distribution facilities, effective July 21, 1992. Warroad will transfer, without modification, the supply agreement with WGML and the transportation agreements with Centra Transmission and Centra Pipelines. Warroad states that because the fundamental nature of the import would be unchanged by the proposed transfer, the long-term import authorization would remain consistent with the public interest.

The application to transfer Warroad's import authorization will be reviewed under section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204-111 and 0204-27. In Order No. 472, DOE found the Warroad import arrangement would provide long-term, secure supplies of gas at market responsive terms and thus would not be inconsistent with the public interest. Inasmuch as the proposed transfer does not change the contractual terms and conditions upon which the section 3 determinations in Order No. 472 were based, intervenors should limit their comments to the effect the transfer might have on the import arrangement.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written

comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of the application filed by Warroad and NMU is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC., on September 15, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-22955 Filed 9-21-92; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Mutual Assistance Program; Notice of Proposed Cooperative Agreement

AGENCY: Western Area Power Administration, DOE.

ACTION: The Western Area Power Administration (Western)/State Energy Office Conservation and Renewable Energy (C&RE) Mutual Assistance Program, Notice of proposed cooperative agreement.

SUMMARY: The Department of Energy announces that, pursuant to 10 Code of Federal Regulations 600.7(b), eligibility for a cooperative agreement to develop and implement cofunded C&RE activities for the State of Arizona has been restricted to the Arizona Energy Office, Department of Commerce.

ADDRESSES: Requests for further information should be submitted to the following address: Ms. Ruth Adams, Contract Specialist, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401, (303) 231-7709, Purchase Requisition Number: GG-PR-19035.

SUPPLEMENTARY INFORMATION: Western's C&RE program is designed to ensure wise stewardship of the Federal hydropower resources and to encourage energy conservation and the development of renewable energy resources. To meet these ends, Western offers a number of C&RE program activities to its customers, including educational workshops and seminars, equipment loan programs, and cost sharing of C&RE projects. Joint program sponsorship with State Energy Offices is one of the methods that Western uses to effectively deliver its C&RE activities to customers within the 15-State marketing area. Western's Phoenix Area Office has cosponsored joint C&RE activities with the Arizona Energy Office since 1990. Programs cosponsored to date include workshops on subjects such as pump efficiency, infrared thermography, irrigation principals, and trade related scheduling operations. Such joint participation mutually benefits the State and the Federal Government through the pooling of resources to provide cost-effective C&RE activities in Arizona.

The Arizona Energy Office is committed to promoting energy efficiency and renewable energy development in its State. Its resources, technical ability, and statewide credibility put it in the best position to manage this cooperative program.

Solicitation Number: DE-RP65-92WG19551.

Scope of Project

The Western/State Energy Office C&RE Mutual Assistance Program is designed to allow joint sponsorship of C&RE activities within the State of Arizona by Western and the Arizona Energy Office. The program will provide cost-shared funding for the development and implementation of C&RE activities in three general categories: (1) Technology development and transfer; (2) public information; and (3) economic analysis of C&RE projects. Activities funded under this program may include, but are not limited to: Educational workshops and seminars on energy efficiency and renewable energy; State, regional, and national C&RE conferences; energy efficiency tests and monitoring; C&RE publication development; energy efficiency demonstration and evaluation projects; and community energy management activities.

Issued at Golden, Colorado, September 4, 1992.

William H. Clagett,

Administrator.

[FR Doc. 92-22552 Filed 9-21-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4509-4]

Proposed Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act; A & J Enterprises, et al.

AGENCY: U.S. Environmental Protection Agency.

ACTION: Request for public comment.

SUMMARY: The U.S. Environmental Protection Agency is proposing to enter into a settlement under section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622. The proposed settlement is intended to resolve the liabilities under CERCLA of 64 parties for response costs

incurred at the Fort Wayne Reduction Site in Fort Wayne, Indiana.

DATES: Comments must be provided on or before November 23, 1992.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region V, 77 W. Jackson Avenue, Chicago, Illinois, 60604, and should refer to: In Re Fort Wayne Reduction Site in Fort Wayne, Indiana, U.S. EPA Docket No. V-W-92-C-159.

FOR FURTHER INFORMATION CONTACT: Karen L. Peaceman, U.S. Environmental Protection Agency, Office of Regional Counsel, 5CS-TUB-8, 77 W. Jackson Avenue, Chicago, Illinois, 60604, (312) 886-5323.

SUPPLEMENTARY INFORMATION: Notice of Administrative Settlement: In accordance with section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1984, as amended (CERCLA), notice is hereby given of a proposed administrative settlement concerning the Fort Wayne Reduction Site at 5225 Old Maumee Road, Allen County, Street in Fort Wayne, Indiana. Subject to review by the public pursuant to this Notice, the agreement has been approved by the United States Department of Justice. Below are listed the parties who have executed binding certifications of their consent to participate in the settlement: A & J Enterprises; Allen County Motors; ANR Freight Systems, Inc.; Don Ayres Pontiac, Inc.; Borg-Warner Corp.; Chalfant-Perry-Klaehn; Chrysler Corporation/Accustar, Inc.; Collins Oldsmobile; Continental Grain Co.; Cooper Tire & Rubber Co.; Custom Tube Co.; Dahm Brothers Roofing Co.; Dana Corp./Weatherhead; Dayton Hudson Corp./Target; Diana Corp./Lake End Sales; William A. Didier Printing Co.; Essex Group, Inc.; Fort Wayne Clutch; Fort Wayne Foundry Corp.; Fox & Fox Frame Service; Fruehauf Corporation; General Electric Co.; Gladieux Refinery; Glidden Paint Co.; Harris-Kayot, Inc.; Hoosier Solvents (Chemcentral Corporation); Indiana Michigan Power Co.; ITT Aerospace; Josyln Stainless Steel/Slater Steel; Jim/Tom Kelley Buick; Kelly Chevrolet; Knepper Cartage; Lydall Midwest, Inc./Corcap Midwest/Corcap, Inc.; Magnavox; Maremont Corp.; McKesson Corp. (for Inland Chemical); Means Auto Co.; Meyer Stamping; C. Miller and Sons; Mobile Aerial Towers, Inc.; Mungovan & Sons; Navajo Freight Lines (ABF Freight Systems); Navistar; NIPSCO; Norfolk & Western Railroad; North American Van Lines/Triangle Fleet; Superior Companies/Omni-Source Corp.; Phelps Dodge Corp.; Potlatch; Precision Litho, Inc.; Prentice Products; Protective Coatings Co.; Ream-Steckbeck Paint Co.; Rea Magnet Wire Co.; Ryder Truck/Saunders Truck; Scott Paper Co.; Sheller-Globe Corporation; Tokheim Corp.; Tri-State Automall, Inc./Bob Jackson/Delagrange Ford; Uniroyal Goodrich/B.F. Goodrich; Valspar Corp.; Van Wert, Ohio-Transfer Station; Whitley Products; and the United States Air Force and its component commands and units (including the National Guard Bureau and all operations and activities of the Indiana Air National Guard in the performance of its federal mission).

A Consent Decree was entered on July 18, 1989, whereby SCA Services of Indiana, Inc. ("SCA") agreed to perform the remedial action at the Fort Wayne Reduction Site and to pay 30 percent (but not to exceed $200,000) of the response costs, including costs of U.S. EPA and the State of Indiana, incurred after the entry of the Consent Decree, in overseeing implementation of the remedial action. Thereafter, EPA and the State of Indiana conducted negotiations with the remaining potentially responsible parties (more than 120 parties) at the Site to recover their unreimbursed response costs. This Administrative Order, which is also signed by the State of Indiana, is the result of those efforts.

The 64 parties named above have paid $1,599,145.96 in a settlement payment under the agreement, subject to the contingency that EPA may elect not to complete the settlement based on matters brought to its attention during the public comment period established by this Notice. This amount would reimburse EPA for 100 per cent of its past response costs, including interest accumulated thereon, which were incurred and paid with respect to the Fort Wayne Reduction Site up to and including October 31, 1989. The settling parties have also agreed to reimburse the State of Indiana $20,000 for its response costs incurred and paid prior to October 31, 1989. The Administrative Order does not settle any claims EPA or the State of Indiana may have for response costs incurred after October 31, 1989.

EPA is entering into this agreement under the authority of section 122(h) and 107 of CERCLA. Under this authority, the agreement proposes to settle with these parties for unreimbursed costs for response action taken at the Fort Wayne Reduction Site.

The Environmental Protection Agency will receive written comments relating to this agreement for 30 days from the date of publication of this notice.

A copy of the proposed administrative settlement agreement may be obtained in person or by mail from the EPA's Region V, Office of Regional counsel, 77 W. Jackson Avenue, Chicago, Illinois, 60604.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. sections 9601-9675.

Jodi Praub,

Acting Director, Waste Management Division.

[FR Doc. 92-22943 Filed 9-21-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4506-3]

Revision of the South Carolina National Pollutant Discharge Elimination System (NPDES) Program To Issue General Permits

AGENCY: Environmental Protection Agency.

ACTION: Notice of approval of the National Pollutant Discharge Elimination System Permits Program of the State of South Carolina.

SUMMARY: On September 3, 1992, the Regional Administrator for the Environmental Protection Agency (EPA), Region IV, approved the State of South Carolina National Pollutant Discharge Elimination System General Permits Program. This action authorizes the State of South Carolina to issue general permits in lieu of individual NPDES permits.

FOR FURTHER INFORMATION CONTACT: Jim Patrick, Chief, Permits Section, Water Permits & Enforcement Branch, U.S. EPA, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, 404/347-2913.

SUPPLEMENTARY INFORMATION:

I. Background

EPA regulations at 40 CFR 122.28 provide for the issuance of general permits to regulate the discharge of wastewater which result from substantially similar operations, are of the same type wastes, require the same effluent limitations or operating conditions, require similar monitoring, and are appropriately controlled under a general permit rather than by individual permits.

South Carolina was authorized to administer the NPDES program in June 1975. The State's program as previously approved, did not include provisions for the issuance of general permits. There are several categories of discharges in the State which could appropriately be

regulated by general permits. For those reasons, the South Carolina Department of Health and Environmental Control requested are vision of its NPDES program to provide for issuance of general permits. The categories which have been proposed for coverage under the general permits program include: storm water discharges, non-contact cooling water discharges of one million gallons or less, backwash from potable water treatment plants, small domestic waste discharges, ground water remediation discharges, concentrated aquatic animal production facilities, mines, car washes, laundry mats, and other appropriate discharges. At the present time, the State does not have authority to issue federal sludge permits under section 405 of the Clean Water Act. At such time as the sludge program is authorized in South Carolina, that category may also be included in the general permit program.

Each general permit will be subject to EPA review as provided by 40 CFR 123.44. Public notice and the opportunity to request a hearing also is provided for each general permit.

II. Discussion

The State of South Carolina submitted, in support of its request, copies of the relevant statues and regulations. The State also has submitted a statement by the Attorney General certifying, with appropriate citations to the statues and regulations, that the State has adequate legal authority to administer the general permits program consistent with 40 CFR 123.23. In addition, the State submitted a Program Description and Memorandum of Agreement detailing how the program will be administered. Based on South Carolina's Program Submission and its experience in administering an approved NPDES program, EPA has concluded that the State will have necessary procedures and resources to administer the general permits program.

Under 40 CFR 123.62, NPDES program revisions are either substantial (requiring publication of proposed program approval in the **Federal Register** for public comment) or non-substantial (where approval may be granted by letter from EPA to the state). EPA has determined that assumption by South Carolina of general permit authority is a non-substantial revision of its NPDES program. EPA has generally viewed approval of such authority as non-substantial because it does not alter the substantive obligations of any discharger under the State program, but merely simplifies the procedures by which permits are issued to a number of point sources. As well as the fact that South Carolina provided public notice of it's regulatory revisions.

Moreover, under the approved state program, the State retains authority to issue individual permits where appropriate, and any person may request the state to issue an individual permit to a discharger eligible for general permit coverage. While not required under § 123.62, EPA is publishing notice of this approval action to keep the public informed of the status of its general permits program approvals.

III. Federal Register Notice of Approval of State NPDES Program or Modifications

The following table provides the public with an up-to-date list of the status of NPDES permitting authority throughout the country. Today's Federal Register notice is to announce the approval of South Carolina's authority to issue general permits.

STATE NPDES PROGRAM STATUS

	Approved State NPDES permit program	Approved to regulate Federal facilities	Approved State pretreatment program	Approved State general permits program
Alabama	10/19/79	10/19/79	10/19/79	06/26/91
Arkansas	11/01/86	11/01/86	11/01/86	11/01/86
California	05/14/73	05/05/78	09/22/89	09/22/89
Colorado	03/27/75			03/04/83
Connecticut	09/26/73	01/09/89	06/03/81	03/10/92
Delaware	04/01/74			
Georgia	06/28/74	12/08/80	03/12/81	01/28/91
Hawaii	11/28/74	06/01/79	08/12/83	09/30/91
Illinois	10/23/77	09/20/79		01/04/84
Indiana	01/01/75	12/09/78		04/02/91
Iowa	08/10/78	08/10/78	06/03/81	08/12/92
Kansas	06/28/74	08/28/85		
Kentucky	09/30/83	09/30/83	09/30/83	09/30/91
Maryland	09/05/74	11/10/87	09/30/85	09/30/91
Michigan	10/17/73	12/09/78	06/07/83	
Minnesota	06/30/74	12/09/78	07/16/79	12/15/87
Mississippi	05/01/74	01/28/83	05/13/82	09/27/91
Missouri	10/30/74	06/26/79	06/03/81	12/12/85
Montana	06/10/74	06/23/81		04/29/83
Nebraska	06/12/74	11/02/79	09/07/84	07/20/89
Nevada	09/19/75	08/31/78		07/27/92
New Jersey	04/13/82	04/13/82	04/13/82	04/13/82
New York	10/28/75	06/13/80		
North Carolina	10/19/75	09/28/84	06/14/82	01/22/90
North Dakota	06/13/75	01/22/90		01/22/90
Ohio	03/11/74	01/28/83	07/27/83	08/17/92
Oregon	09/26/73	03/02/79	03/12/81	02/23/82
Pennsylvania	06/30/78	06/30/78		08/02/92
Rhode Island	09/17/84	09/17/84	09/17/84	
South Carolina	06/10/75	09/26/80	04/09/82	09/03/92
Tennessee	12/28/77	09/30/86	08/10/83	04/16/91
Utah	07/07/87	07/07/87	07/07/87	07/07/87
Vermont	03/11/74		03/16/82	
Virgin Islands	06/30/76			
Virginia	03/31/75	02/09/82	04/14/89	05/20/91
Washington	11/14/73		09/30/86	09/26/89

STATE NPDES PROGRAM STATUS—Continued

	Approved State NPDES permit program	Approved to regulate Federal facilities	Approved State pretreatment program	Approved State general permits program
West Virginia	05/10/82	05/10/82	05/10/82	05/10/82
Wisconsin	02/04/74	11/26/79	12/24/80	12/19/86
Wyoming	01/30/75	05/18/81		09/24/91
Totals	39	34	27	32

IV. Review Under Executive Order 12291 and the Regulatory Flexibility Act

The Office of Management and Budget has exempted this rule from the review requirements of Executive Order 12291 pursuant to section 8(b) of that Order.

Under the Regulatory Flexibility Act, EPA is required to prepare a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. Pursuant to section 605(d) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), I certify that this State General Permits Program will not have a significant impact on a substantial number small entities. Approval of the South Carolina NPDES State General Permits Program establishes no new substantive requirements, nor does it alter the regulatory control over any industrial category. Approval of the South Carolina NPDES State General Permits Program merely provides a simplified administrative process.

Dated: September 3, 1992.

Donald Guinyard,

Assistant Regional Administrator for Policy and Management.

[FR Doc. 92-22942 Filed 9-21-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-955-DR]

Florida; Amendment to Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

EFFECTIVE DATE: September 6, 1992.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida (FEMA-955-DR), dated August 24, 1992, and related determinations.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective August 25, 1992.

Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

[FR Doc. 92-22893 Filed 9-21-92; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-956-DR]

Louisiana; Amendment to Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

EFFECTIVE DATE: September 5, 1992.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA-956-DR), dated August 26, 1992, and related determinations.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 5, 1992, the President amended the cost-sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), in a letter to Wallace E. Stickney, Director of the Federal Emergency Management Agency, as follows:

I have determined that the damage in certain areas of the State of Louisiana, resulting from Hurricane Andrew on August 25, 1992, is of sufficient severity and magnitude that special conditions are warranted regarding the cost-sharing arrangements concerning Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act") for the Public Assistance program.

Therefore, I amend my previous declaration, which limited the Federal reimbursement share for certain categories of expenditures, and I hereby authorize an increase in Federal reimbursement to 100 percent of eligible public assistance costs exceeding $10 per capita, where allowed under the law for extreme disasters. This 100 percent reimbursement for costs above $10 per capita applies to all authorized public assistance costs, including debris removal to eliminate immediate threats to public health and safety, emergency work to save lives and protect public health and safety, and repair or reconstruction of uninsured public and private nonprofit facilities. Temporary housing assistance, mortgage/rental assistance, crises counseling assistance and disaster unemployment assistance will continue to be 100 percent federally funded, where allowed under the law. Funds for public assistance up to $10 per capita will be reimbursed pursuant to the conditions set forth in my previous declaration. However, if the eligible costs of responding to Hurricane Andrew in Louisiana do not reach the level of $10 per capita, then the cost sharing formula which I set forth in my original declaration letter of August 26, 1992, still applies.

This waiver of State and local cost-sharing requirements above $10 per capita applies to all public assistance costs eligible for such a waiver under the law. The law specifically prohibits a similar waiver for funds provided to States for the Individual and Family Grant program. These funds will continue to be reimbursed at 75 percent of total eligible costs.

This amended declaration is consistent with the request made to you by the Governor of the State of Louisiana.

Please notify the Governor of the State of Louisiana and the Federal Coordinating Officer of this amendment to my major disaster declaration.

Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.

Wallace E. Stickney,

Director.

[FR Doc. 92-22892 Filed 9-21-92; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

The Port of New Orleans et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal

Maritime Commission, 800 North Capitol Street NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200060-023, 224-200060-024, 224-200060-025.

Title: New Orleans/Coastal Cargo Company Terminal Agreement.

Parties:

The Port of New Orleans ("Port").
Coastal Cargo Company, Inc. ("CCC").

Synopsis: The amendments reflect CCC's exercise of options under the Agreement to extend its rental of space at the Port's Galvez Street Wharf and the adjustment of the rental rate as further specified in the Agreement.

Agreement No.: 217-010051-021.

Title: Mediterranean Space Charter Agreement.

Parties:

British Continental Shipping Line
Compagnie Generale Maritime
Compania Trasatlantica Espanola
Farrell Lines, Inc.
Italia di Navigazione, S.p.A.
Jugolinija
Lykes Bros. Steamship Co., Inc.
A.P. Moller-Maersk Line
Nedlloyd Lijnen B.V.
P&O Containers Limited
Sea-Land Service, Inc.
Zim Israel Navigation Company, Ltd.

Synopsis: The proposed amendment will delete Compagnie Generale Maritime as a party to the Agreement effective October 1, 1992.

Dated: September 16, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92-22875 Filed 9-21-92; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Centura Banks, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 16, 1992.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Centura Banks, Inc., Rocky Mount, North Carolina; to acquire, pursuant to § 225.25(b)(9) of the Board's Regulation Y, Brevard Federal Savings and Loan Association, Brevard, North Carolina, which will be converted into Centura Interim Bank, a bank for purposes of the Bank Holding Company Act.

Board of Governors of the Federal Reserve System, September 16, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-22883 Filed 9-21-92; 8:45 am]

BILLING CODE 6210-01-F

Citizens National Corporation; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than October 16, 1992.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Citizens National Corporation, Wisner, Nebraska; to acquire 100 percent of the voting shares of First National Bank of Belden, Belden, Nebraska.

Board of Governors of the Federal Reserve System, September 16, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-22885 Filed 9-21-92; 8:45 am]

BILLING CODE 6210-01-F

Eldorado Bancorp; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR

225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 16, 1992.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Eldorado Bancorp, Laguna Hills, California; to engage *de novo* through its subsidiary, Eldorado Bancorp Home Loans, Inc., Laguna Hills, California, in making, acquiring, or servicing loans or other extensions of credit, including issuing letters of credit and accepting drafts, for Applicant's account or for the account of others, such as would be made by a mortgage company pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y. These activities will be conducted in the State of California.

Board of Governors of the Federal Reserve System, September 16, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-22884 Filed 9-21-92; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Information Collection Under OMB Review

AGENCY: Administration for Children and Families, Office of Community Services, Division of Energy Assistance, HHS.

ACTION: Notice.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for continued use of a previously approved information collection entitled Annual Report on Households Assisted by the Low Income Home Energy Assistance Program administered by the Department of Health and Human Services' Division of Energy Assistance of the Office of Community Service within the Administration for Children and Families (ACF). This request was previously approved under OMB Control No. 0970-0060.

ADDRESSES: Copies of the Information Collection request may be obtained from Steve Smith, Office of Information Systems Management, by calling (202) 401-9235.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Kristina Emanuels, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395-7316.

Information on Document

Title: Annual Report on Households Assisted by the Low Income Home Energy Assistance (LIHEAP).

OMB No.: 0970-0060.

Description: Title XXVI, section 2610(a) of the Low Income Home Energy Assistance Act of 1981 et al. authorizes the Secretary to provide for the collection of specific data and any other information needed to carry out the provisions of this Act and requires the Secretary to submit an annual report to the Congress containing a detailed compilation of data with respect to the prior fiscal year on the number and income levels of households assisted by LIHEAP funds and the number of households assisted with elderly or handicapped members.

Annual Number of Respondents: 177.

Annual Frequency: 1.

Average Burden Hours Per Response: 45.

Total Burden Hours: 7,965.

Dated: September 4, 1992.

Naomi B. Marr,

Director, Office of Information Systems Management.

[FR Doc. 92-22849 Filed 9-21-92; 8:45 am]

BILLING CODE 4130-01-M

Agency Information Collection Under OMB Review

AGENCY: Administration for Children and Families, Office of Family Assistance, HHS.

ACTION: Notice.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for approval of an existing information collection entitled Monthly "Flash" Report of Selected AFDC Program Data, OMB Control Number 0970-0071.

ADDRESSES: Copies of the information collection request may be obtained from Steve Smith, Office of Information Systems Management, by calling (202) 401-9235.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Kristina Emanuels, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395-7316.

Information on Document

Title: Monthly "Flash" Report of Selected AFDC Program Data.

OMB Number: 0970-0071.

Description: Section 402(a)(6), Aid to Families with Dependent Children (AFDC) and section 1602 under title XVI, Aged, Blind and Disabled (AABD) of the Social Security Act set forth the authority for this collection of information. The instrument used to collect this information on the AFDC programs is report form ACF-3645.

This form is used to collect aggregated monthly information for aid and services to needed families with children, including numbers of AFDC families,

adults plus children, children, cash assistance to AFDC recipients, emergency assistance payments, statistics on unemployment among AFDC parents, and caseload statistics. Selected program information is also collected on the number of eligible families which receive emergency assistance, payments and temporary housing.

This report is basic to the administration and monitoring of the AFDC and Adult programs. The information is widely utilized by Congressional committees, State welfare departments, staff offices within DHHS and legislative and welfare reform task forces.

Annual Number of Respondents: 54.

Annual Frequency: 12.

Average Burden Hours Per Response: 2.

Total Burden Hours: 1,296.

Dated: September 4, 1992.

Naomi B. Marr,

Director, Office of Information Systems Management.

[FR Doc. 92-22848 Filed 9-21-92; 8:45 am]

BILLING CODE 4130-01-M

Alcohol, Drug Abuse, and Mental Health Administration

National Advisory Council for the Center for Substance Abuse Treatment; Request for Nominees

OFFICE: Office for Treatment Improvement, ADAMHA, DHHS.

ACTION: Request for nominees for the National Advisory Council for the Center for Substance Abuse Treatment.

SUMMARY: The Center for Substance Abuse Treatment (CSAT) is requesting nominations for nine representatives of the health disciplines and three public members to serve on its National Advisory Council.

DATES: Names of recommended nominees should be received on or before October 15, 1992.

ADDRESSES: All nominations for membership should be submitted to: Ms. Susanne Rohrer, Executive Secretary, CSAT National Advisory Council, Office of Policy Coordination, Center for Substance Abuse Treatment, Rockwall II, 10th Floor, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Ms. Susanne Rohrer, Executive Secretary, CSAT National Advisory Council, at (301) 443-5050.

SUPPLEMENTARY INFORMATION: The "ADAMHA Reorganization Act of 1992" (Pub. L. 102-321), which was signed by the President on July 10 and takes effect on October 1, creates the new Center for Substance Abuse Treatment as one of the three components of the Substance Abuse and Mental Health Services Administration (SAMHSA). The CSAT will include substance abuse services programs currently administered by the Office for Treatment Improvement and new programs established by Public Law 102-321. Section 505 of the Public Health Service Act (42 U.S.C. 290aa-3a), as amended by Public Law 102-321 and redesignated Section 502, authorizes the Secretary of Health and Human Services (HHS) to appoint a National Advisory Council for CSAT.

The Council will advise the Secretary, HHS; the Assistant Secretary for Health; the Administrator, SAMHSA; and the Director, CSAT, on the best means to provide national leadership that will ensure use of state of the art knowledge in the treatment of addictive disorders; and to improve access and reduce barriers to high quality, effective programs and services. Nine members appointed by the Secretary shall be selected from among the leading representatives of the health disciplines (including public health and behavioral and social sciences) relevant to the activities of the Center. Three members appointed by the Secretary shall be selected from the general public and shall include leaders in fields of public policy, public relations, law, health policy economics, or management.

HHS policy also provides that committee membership be fairly balanced in terms of points of view represented and the committee's function, and composed of as broad a representation as possible of geographic areas, sex, race, national origin, age, and handicapping conditions.

Candidates may be self-nominated or recommended by others. A curriculum vitae must be enclosed for each nominee. The nomination process is continuous, and members serve for overlapping 4-year terms. However, initial terms will be staggered to prevent all appointments from expiring at the same time. Nominations not received by October 15 may be held and considered for future vacancies based on the balance of types of expertise needed and an individual's qualifications.

Joseph R. Leone,

Associate Administrator for Management, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 92-22837 Filed 9-21-92; 8:45 am]

BILLING CODE 9195-20-M

Centers for Disease Control

[Announcement Number 274]

Cooperative Agreement for Hemophilia Chapter Support and Peer Support Activities; Availability of Funds for Fiscal Year 1992

Introduction

The Centers for Disease Control (CDC), the Nation's prevention agency, announces the availability of fiscal year (FY) 1992 funds for a cooperative agreement program with the National Hemophilia Foundation for Chapter support, other community-based support, and HIV prevention activities within the hemophilia community. CDC is interested in enhancing the national hemophilia HIV infection prevention program by supporting community-based HIV/AIDS risk reduction, counseling, outreach activities, and self-help support groups at the local, regional and national levels.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, and PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of human immunodeficiency virus (HIV) infection. (For ordering a copy of Healthy People 2000, see the section Where to Obtain Additional Information.)

Authority: This program is authorized under sections 301(a) and 317 of the Public Health Service Act, as amended (42 U.S.C. 241(a) and 247b).

Eligible Applicants

Assistance will be provided only to the National Hemophilia Foundation. No other applications will be solicited. The National Hemophilia Foundation (NHF) is the most appropriate organization to conduct the work under this cooperative agreement because:

1. The NHF is the only national-based organization for hemophilia with the majority of its board members, executive committee members, and directors at large being people with hemophilia or related family members. It is committed to the national goal of hemophilia and HIV/AIDS risk reduction programs, and has a unique role in supporting this national agenda through strong and effective lay-based programs.

2. The NHF has provided key leadership in all of the programs related to the national hemophilia HIV prevention agenda that are consumer-based, and has a commitment and

strong programs for HIV prevention through consumer-based, peer-led activities. Its most recent initiative is related to the development of the Men's Advocacy Network of NHF (MANN). This initiative grew from consumer interest to a strong national-based advocacy group that is a key component of CDC's national hemophilia HIV risk reduction strategies.

3. The NHF is dedicated to the treatment and the cure of hemophilia, related bleeding disorders and complications of those disorders or their treatment, including HIV infection, as well as to improving the quality of life for all those affected through the promotion and support of research, education and other services.

4. The NHF is the only national hemophilia organization that has an established network and ability to provide technical assistance to lay-level hemophilia groups such as local chapters and foundations, as well as national hemophilia consumer networking organizations. The congressional mandate for these funds is intended to support these peer-led consumer programs.

Therefore, the NHF is uniquely qualified to support hemophilia community-based activities as it is the only national hemophilia organization.

Availability of Funds

Approximately $900,000 is available in FY 1992 to fund this award. It is expected that the award will begin on or about September 30, 1992, for a 12-month budget period within a project period of up to 5 years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The purpose of this award is to assist the NHF in its efforts to provide HIV risk reduction, counseling and outreach activities. This is best accomplished by a national program that is designed to strengthen and utilize local, regional, and national consumer-organized activities.

It is the intent of this funding to support consumer-based, peer-led HIV risk reduction activities. The NHF has begun this work through the establishment in 1988 of ten Chapter Outreach Demonstration Projects (CODP) to develop innovative, culturally sensitive approaches for locating and serving minority persons with hemophilia; in 1989, NHF established the Hemophilia and AIDS/HIV Network for the Dissemination of Information (HANDI) to serve the hemophilia community with information on hemophilia and AIDS/HIV; in 1990, NHF organized and coordinated the Women's Outreach Network of NHF (WONN) to provide a national forum to develop women leaders to provide peer-based risk reduction education and support; and in 1991, NHF organized and began coordinating the Men's Advocacy Network of NHF (MANN) to provide a national forum for men with hemophilia to develop a peer-based HIV prevention and advocacy network.

The above activities have formed a basis on which to expand peer-based local and regional hemophilia HIV risk reduction activities. The CDC is looking to the NHF to develop a mechanism to build upon these national HIV risk reduction and support programs at a local level. The NHF could facilitate this expansion by providing technical and financial assistance to local chapters for the development and implementation of local peer-led services coordinated by NHF, including new programs for adolescents. For these local initiatives, it is anticipated that local chapters would be given technical assistance from the NHF and the NHF designated regional or national representatives of the MANN and WONN programs.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A., below, and the CDC shall be responsible for conducting activities under B., below:

A. Recipient Activities

1. Expand current peer-based HIV risk reduction and support activities by developing and coordinating a system to support these initiatives at the local lay-level community.

2. Design a fair and sound process to evaluate proposals to award funding to local hemophilia chapters in order to provide the services described in this solicitation. This grant review process will be conducted by NHF with input from the consumer community.

3. Coordinate outreach activities by peer organizations and provide technical assistance to the community to assist the chapters in their need with grant writing.

4. Provide ongoing technical assistance to these local chapters in planning new local risk reduction activities including information programs, support groups, and local networking activities so that they are consistent with overall national goals of risk reduction in the hemophilia community.

5. Plan and conduct site visits to evaluate the effectiveness of the local staff support in developing outreach, information system support groups, and networking activities; and, use the results of these findings to make recommendations about the strengths and weaknesses of the approach to the local and chapter groups.

B. CDC Activities

1. Provide consultation and technical assistance to NHF in planning and evaluation activities.

2. Provide input to the review of local grant applications.

3. Provide current scientific and public health information regarding risk reduction in the hemophilia community.

4. Collaborate in the presentation and dissemination of information resulting from these activities.

Evaluation Criteria

The application will be reviewed and evaluated according to the following criteria:

1. The applicant must have a working relationship with a majority of the current local hemophilia organizations, and the ability to provide technical assistance to the local chapters. (15 points)

2. Project personnel are well qualified by training and/or experience to manage coordinate, and evaluate a national program involving multiple local peer organizations. (15 points)

3. The applicant organization has adequate facilities and manpower. (15 points)

4. The proposed activities support and expand current peer-led risk reduction activities. (15 points)

5. The proposed activities will support the goals of the National Hemophilia Prevention Program as described in the Toal report (a copy is included in the application kit). (15 points)

6. The proposed criteria for establishing and conducting a grants management program including reviewing grant applications from local hemophilia chapters. (15 points)

7. The quality of the applicant's overall evaluation plan for the program as a whole. (10 points)

8. The estimated cost to the Government of the project is reasonable and consistent with the intended use of the cooperative agreement funds. (not scored)

Executive Order 12372 Review

The application is not subject to review as governed by Executive Order

12372, entitled "Intergovernmental Review of Federal Programs," (45 CFR part 100).

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.118, Acquired Immunodeficiency Syndrome (AIDS) activity.

Other Requirements

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services regulations (45 CFR part 46) regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

HIV/AIDS Requirements

The recipient must comply with the document entitled "Content of AIDS-Related Written materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educations Sessions." (June 15, 1992), a copy of which is included in the application kit. In complying with the requirements for a program review panel, recipients are encouraged to use an existing program review panel such as the one created by the state health department's HIV/AIDS prevention program. If the recipient forms its own program review panel, at least one member must be an employee (or a designated representative) of a government health department consistent with the Content guidelines. The names of the review panel members must be listed on the Assurance of Compliance Form CDC 0.113, which is also included in the application kit. The recipient must submit the program review panel's report that indicates all materials have been reviewed and approved, this includes conference agendas.

Application Submission and Deadline

The National Hemophilia Foundation must submit an original and two copies of the application PHS Form 5161-1 to Edward L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E-14, Atlanta, Georgia 30305.

Where to Obtain Additional Information

If you are interested in obtaining additional information regarding this program, please refer to Announcement Number 274 and contact Locke Thompson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E-14, Atlanta, Georgia 30305, (404) 842-6508 for business management technical assistance. Programmatic technical assistance may be obtained from Judy Hannan, Division of HIV/AIDS, National Center for Infectious Diseases, Centers for Disease Control, Atlanta, Georgia 30333, (404) 639-2017.

A copy of Healthy People 2000 (Full Report, Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report, Stock No. 017-001-00473-1) referenced in the Introduction may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325, (Telephone: 202-783-3238).

Dated: September 16, 1992.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control.

[FR Doc. 92-22891 Filed 9-21-92; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 92F-0327]

Arakawa Chemical Industries, Ltd.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Arakawa Chemical Industries, Ltd., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of an aromatic petroleum hydrocarbon resin, hydrogenated, as a component of polypropylene intended for food-contact use.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9500.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2B4338) has been filed by Arakawa Chemical Industries, Ltd., c/o 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposes to amend the food additive regulations to provide for the safe use of an aromatic petroleum hydrocarbon resin, hydrogenated, as a component of polypropylene intended for food-contact use.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: September 10, 1992.

Douglas L. Archer,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-22949 Filed 9-21-92; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 92F-0315]

Fina Oil and Chemical Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Fina Oil and Chemical Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of rubber-modified polystyrene and to permit the use of octadecyl 3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate as a stabilizer in the rubber-modified polystyrene intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9500.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2B4337) has been filed by Fina Oil and Chemical Co., c/o 1100 G St. NW., Washington, DC 20001. The petition proposes that the food additive regulations be amended in § 177.1640 *Polystyrene and rubber-modified polystyrene* (21 CFR 177.1640) to provide for the safe use of rubber-modified polystyrene resin containing not less than 71 weight percent of polymer units derived from styrene monomer and in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to permit the use of octadecyl

3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate as a stabilizer in the rubber-modified polystyrene intended for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: September 10, 1992.

Douglas L. Archer,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-22953 Filed 9-21-92; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 92F-0339]

Rio Linda Chemical Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Rio Linda Chemical Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of an aqueous solution of chlorine dioxide and related oxychloro species, generated by acidification of an aqueous solution of sodium chlorite with sodium gluconate, citric acid, phosphoric acid, and sodium alkylphenoxybenzenedisulfonate, as a sanitizing solution to be used on food-contact surfaces, food-processing equipment, and utensils.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9511.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2B4334) has been filed by Rio Linda Chemical Co., c/o 1414 Fenwick Lane, Silver Spring, MD 20910. The petition proposes to amend the food additive regulations in § 178.1010 *Sanitizing solutions* (21 CFR 178.1010) to provide for the safe use of an aqueous solution of chlorine dioxide and related oxychloro species, generated by acidification of an aqueous solution of sodium chlorite with sodium gluconate, citric acid, phosphoric acid, and sodium alkylphenoxybenzenedisulfonate, as a sanitizing solution to be used on food-contact surfaces, food-processing equipment, and utensils.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: September 11, 1992.

Douglas L. Archer,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-22952 Filed 9-21-92; 8:45 am]

BILLING CODE 4160-01-F

National Institutes of Health

National Cancer Institute; Cancellation of Meeting

Notice is hereby given that the meeting of the AIDS Subcommittee, National Cancer Advisory Board, National Cancer Institute, National Institutes of Health, scheduled for September 21, 1992 and published in the **Federal Register** (53 FR 41759) on September 11, 1992 is hereby canceled due to scheduling conflicts.

For further information, please contact Dr. Judith Karp, Executive Secretary, AIDS Subcommittee, National Cancer Institute, Building 31, 9000 Rockville Pike, room 11A23, Bethesda, Maryland 20892 (301) 496-3505.

Dated: September 16, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-22838 Filed 9-16-92; 3:09 pm]

BILLING CODE 4140-01-M

National Center for Research Resources; Meeting of the General Clinical Research Centers Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the General Clinical Research Centers (GCRC) Committee, National Center for Research Resources (NCRR), National Institutes of Health.

The meeting will be open to the public as indicated below during which time there will be comments by the Director, NCRR; and an update on the GCRC Program by Dr. Judith L. Vaitukaitis, Acting Director, GCRC Program, NCRR. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S. Code and section 10(d) of Public Law 92-463, the meeting will be closed to the public as indicated below for the review, discussion, and evaluation of individual grant applications. These applicants and the discussions could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Maureen Mylander, Information Officer, NCRR, National Institutes of Health, Westwood Building, room 10A15, Bethesda, Maryland 20892, (301) 496-5545, will provide a summary of the meeting, and a roster of the Committee members upon request. Other information pertaining to the meeting can be obtained from the Scientific Review Administrator.

Name of Committee: General Clinical Research Centers Committee.

Scientific Review Administrator: Dr. Bela J. Gulyas, National Center for Research Resources, National Institutes of Health, Westwood Building, room 10A18, 5333 Westbard Avenue, Bethesda, Maryland 20892, Telephone: (301) 402-0627.

Dates of Meeting: October 20-21, 1992.

Place of Meeting: Holiday Inn, Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814

Open: October 20, 8 a.m.-9:30 a.m.

Agenda: Report and review of administrative details.

Closed: October 20, 9:30 a.m.-until recess, October 21, 8 a.m.-adjournment.

Closure reason: To review grant applications.

(Catalog of Federal Domestic Assistance Program No. 93.333, Clinical Research, National Institutes of Health)

Dated: September 16, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-22833 Filed 9-21-92 8:45 am]

BILLING CODE 4140-01-M

National Center for Research Resources; Meeting of the Comparative Medicine Review Committee

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the Comparative Medicine Review Committee, National Center for Research Resources, National Institutes of Health.

The meeting will be open to the public as listed below for brief staff

presentation on the current status of the Comparative Medicine Program and the selection of future meeting dates. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public as indicated below for the review, discussion and evaluation of individual grant applications submitted to the Comparative Medicine Program. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Maureen Mylander, Information Officer, National Center for Research Resources, National Institutes of Health, Westwood Building, room 10A15, Bethesda, Maryland 20892, (301) 496–5545, will provide a summary of the meeting and a roster of the committee members upon request. Other information pertaining to the meeting can be obtained from the Scientific Review Administrator.

Name of Committee: Comparative Medicine Review Committee.

Scientific Review Administrator: Dr. Mary Ann Sestili, Director, Office of Review, National Center for Research Resources, National Institutes of Health, Westwood Building, room 10A16, 5333 Westbard Avenue, Bethesda, Maryland 20892, Telephone: (301) 496–4390.

Date of Meeting: October 25–27, 1992.

Open Session: October 25, 1992—7 p.m. until recess.

Place of Meeting: Embassy Suites Hotel 4300 Military Road, NW, Washington DC 20015.

Agenda: Report and review of administrative details.

Closed Session: October 26, 1992—8:30 a.m. until recess. October 27, 1992—8:30 a.m.–Adjournment.

Place of Meeting: National Institutes of Health, Building 31, Conference Room 8, 9000 Rockville Pike, Bethesda, MD 20892.

Closure Reason: To review grant applications.

(Catalog of Federal Domestic Assistance Programs No. 93.306, Laboratory Animal Sciences, National Institutes of Health)

Dated: September 16, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–22832 Filed 9–21–92; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Meeting of the Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee (AMS) of the National Institute of Arthritis and Musculoskeletal and Skin Diseases on October 8 and 9, 1992, Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland.

The meeting will be open to public on October 8, from 8:30 a.m. to 9:30 a.m. to discuss administrative details or other issues relating to the committee activities. Attendance by the public will be limited to space available.

The meeting will be closed to the public on October 8 from 9:30 a.m. to adjournment in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual research grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning this meeting may be obtained from Dr. Theresa Lo, Executive Secretary, Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee, NIAMS, Westwood Building, room 5A07, Bethesda, Maryland 20892, (301) 496–0754.

Ms. Suzanne Sangalan, Committee Management Officer, National Institute of Arthritis and Musculoskeletal and Skin Diseases, National Institutes of Health, Building 31, room 4C32, Bethesda, Maryland 20892, 301–496–0803, will provide summaries of the meeting and roster of the committee members upon request.

Catalog of Federal Domestic Assistance Program No. 93.846, project grants in arthritis, musculoskeletal and skin diseases research, National Institutes of Health

Dated: September 16, 1992.

Susan K. Feldman,

NIH Committee Management Officer.

[FR Doc. 92–22834 Filed 9–21–92; 8:45 am]

BILLING CODE 7170–01–M

National Heart, Lung, and Blood Institute; Meeting of Research Training Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Research Training Review Committee, National Heart, Lung, and Blood Institute, National Institutes of Health, on October 4–6, 1992, at the Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814.

This meeting will be open to the public on October 4, from 7:30 p.m. to approximately 8:30 p.m., to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public is limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C., and section 10(d) of Public Law 92–463, the meeting will be closed to the public on October 4, 1992, from 8:30 p.m. to 10 p.m., on October 5, from approximately 8 a.m. until 6 p.m. and October 6, from 8 a.m. to adjournment, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. Kathryn Ballard, Scientific Review Administrator, NHLBI, Westwood Building, room 550, Bethesda, Maryland 20892, (301) 496–7361, will furnish substantive program information.

Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health

Dated: September 16, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–22835 Filed 9–21–92; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health

National Institute on Aging; Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the Subcommittees A and B of the Biological and Clinical Aging Review Committee.

These meetings will be open to the public as indicated below to discuss administrative details and other issues relating to committee activities as indicated in the notice. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion, and evaluation of individual research grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June C. McCann, Committee Management Officer, National Institute on Aging, Gateway Building, room 2C218, National Institutes of Health, Bethesda, Maryland, 20892 (301/496–9322), will provide summaries of the meeting and a roster of the committee members upon request.

Other information pertaining to the meeting can be obtained from the Executive Secretary indicated below:

Name of Committee: Biological and Clinical Aging Review, Subcommittee A.
Executive Secretary: Dr. Daniel Eskinazi, Gateway Building, room 2C212, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–9666.
Date of Meetings: October 15–16, 1992.
Place of Meeting: Ramada Inn, 8400 Wisconsin Ave., Bethesda, Maryland 20814.
Open: October 15 from 9:45 to 10 a.m.
Closed: October 15 from 10 a.m. to adjournment on October 16, 1992.

Name of Committee: Biological and Clinical Aging Review, Subcommittee B.
Executive Secretary: Dr. James Harwood, Gateway Building, room 2C212, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–9666.
Dates of Meetings: October 26–27, 1992.
Place of Meeting: Marriott Residence Inn, 7335 Wisconsin Ave., Bethesda, Maryland 20814.
Open: October 26 from 7 to 10 p.m.
Closed: October 27—8:30 a.m. to adjournment.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health)

Dated: September 16, 1992.

Susan K. Feldman,
Committee Management Officer, NIH.

[FR Doc. 92–22836 Filed 9–21–92; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–92–3508]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, rein statement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 16, 1992.

David Cristy,
Acting Director, Information Resources, Policy and Management Division.

Proposal: Housing Discrimination Complaint Form. (English/Spanish Version).
Office: Fair Housing and Equal Opportunity.
Description of the Need for the Information and its Proposed Use: Pursuant to Public Law 90–284, any person who believes he/she has been or is about to be injured by a discriminatory housing practice on the basis of race, color, religion, sex, or national origin may file a complaint with the Secretary of HUD using these forms. HUD needs the information provided for the basis of an investigation of a housing discrimination complaint.
Form Number: HUD–903 and 903A.
Respondents: Individual or Households.
Frequency of Submission: On Occasion.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–903 and 903A	9,300		1		1		9,300

Total Estimated Burden Hours: 9,300.
Status: Reinstatement.
Contact: Roy J. Rodriguez, HUD, (202) 708–0836, Angela Antonelli, OMB, (202) 395–6880.

Dated: September 16, 1992.

Proposal: Evaluation of the Public Housing Drug Elimination Program.

Office: Policy Development and Research.

Description of the Need for the Information and Its Proposed Use: The study will provide descriptive information on the universe of Public Housing Drug Elimination Program (PHDEP) grantees and indepth analysis of a selected sample of intensive study sites. The description of the entire program will be drawn primarily from a database developed from the applications submitted by grantees and a subsequent mail survey to confirm the grantees' project characteristics.

Form Number: None.

Respondents: State or Local Governments.

Frequency of Submission: One-time.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information collection	617		1		.75		463

Total Estimated Burden Hours: 463.

Status: New.

Contact: Harold D. William, HUD, (202) 708–3061, Angela Antonelli, OMB, (202) 395–6880.

Dated: September 16, 1992.

Proposal: Shelter Plus Care.

Office: Community Planning and Development.

Description of the Need for the Information and Its Proposed Use: This program is designed to link supportive services to rental assistance for Homeless People with disabilities such as mental illness, chronic substance abuse (Alcohol or Drugs) or both, or AIDS and related diseases.

Form Number: SF–424.

Respondents: State or Local Governments.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Application	400		1		40		16,000
Environmental review	105		1		14		1,470

Total Estimated Burden Hours: 17,470.

Status: Reinstatement.

Contact: James No. Forsberg, HUD, (202) 708–4300, Angela Antonelli, OMB, (202) 395–6880.

Dated: September 16, 1992.

Proposal: LOCCS/VRS Payment Vouchers (Series).

Office: Public and Indian Housing.

Description of the Need for the Information and Its Proposed Use: Form HUD–50080 will be used by grant recipients to request funds from HUD through the LOCCS/VRS Voice Activated Payment System. The form will be used in lieu of SF–270, Request for Advance or Reimbursement. The information collected on the form will also be used as an internal control measure to ensure the lawful and appropriate disbursement of Federal funds, as well as to provide a service to program recipients.

Form Number: HUD–50080 Series.

Respondents: State or Local Governments.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information collection	4,581		18.767		.25		21,493

Total Estimated Burden Hours: 21,493.

Status: New.

Contact: John Comerford, HUD, (202) 708–1872, Angela Antonelli, OMB, (202) 395–6880.

Dated: September 16, 1992.

Proposal: Mortgagee's Applications for Insurance Benefits (Multifamily Mortgage).

Office: Housing.

Description of the Need for the Information and its Proposed Use: This report collects data required for cancellation of insurance contracts and payments of mortgage insurance premiums. It affects any lenders (mortgagees) filing a claim for Multifamily insurance benefits.

Form Number: HUD–2747.

Respondents: State or Local Governments, Business or Other For-Profit, and Federal Agencies or Employees.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hour per response	=	Burden hours
Application	433		1		.08		36

Total Estimated Burden Hours: 36.
Status: Extension.
Contact: Betty Belin, HUD, (202) 401-2168, Angela Antonelli, OMB, (202) 395-6880.

Dated: September 16, 1992.

Proposal: Form HUD-50060, Transmittal of Form HUD-50058.
Office: Public and Indian Housing.
Description of the Need for the Information and its Proposed Use: The updated form HUD-50060 allows the Department to establish appropriate management control procedures to assure complete and accurate reporting of information contained on form HUD-50058 submittals. The form provides a means for determining whether PHAs/IHAs are submitting data to the National Computer System (NCS), HUD's data processing contractor for the Multifamily Tenant Characteristics System (MTCS). It aggregates projects and provides a vehicle for geographically clustering projects within one PHA/IHA.
Form Number: HUD-50060.
Respondents: State or Local Governments.
Frequency of Submission: Monthly
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hour per response	=	Burden hours
Form HUD-50060	4,500		3.3		.05		1,867

Total Estimated Burden Hours: 1,867.
Status: Revision.
Contact: Earl Simons, HUD, (202) 708-0744, Angela Antonelli, OMB, (202) 395-6880.

Dated: September 16, 1992.

Proposal: Tenant/Homebuyer Data Summary.
Office: Public and Indian Housing.
Description of the Need for the Information and its Proposed Use: The consolidated form HUD-50058, Tenant/Homebuyer Data Summary, reflects an effort to upgrade and expand the quality of data received from PHAs, IHAs, and organizations administrating the Section 8 Certificate, Voucher and Moderate Rehabilitation Programs. Based on experience in obtaining tenant data summary information, the form has been reformatted and data element significantly modified to more accurately assess the demographic, ethnic and economic character of assisted housing residents.
Form Number: HUD-50058.
Respondents: State or Local Governments.
Frequency of Submission: Monthly.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per Response	=	Burden hours
Form HUD-50058	4,500		916.5		1		4,124,250

Total Estimated Burden Hours: 4,124,250
Status: Revision.
Contact: Earl Simons, HUD, (202) 708-0744, Angela Antonelli, OMB, (202) 395-6880.

Dated: September 16, 1992.

Proposal: Documentation of the Section 8 Operation Bootstrap Demonstration.
Office: Policy Development and Research.
Description of the Need for the Information and its Proposed Use: The purpose of Operation Bootstrap is to encourage local communities to develop and implement innovative programs to assist low-income families to become economically independent through cooperative efforts of the public and private sectors. All Operation Bootstrap projects are locally designed programs offering Section 8 housing assistance along with a range of employability development and support services to help low-income families achieve economic independence. HUD contributes a special allocation of Section 8 certificates and vouchers, including the associated administrative fees for the PHA, but local Bootstrap projects are responsible for providing the other services.
Form Number: None.
Respondents: Individuals or Households.
Frequency of Submission: One-time.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per Response	=	Burden hours
Telephone survey	1,200		1		.75		900

Total Estimated Burden Hours: 900
Status: New.
Contact: Garland E. Allen, HUD, (202) 708-3700, Angela Antonelli, OMB, (202) 395-6880.

Dated: September 16, 1992.

[FR Doc. 92-22880 Filed 9-21-92; 8:45 am]
BILLING CODE 4210-01-M

[Docket No. N-92-3509]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.
ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and

Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, rein statement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 16, 1992.

David Cristy,

Acting Director, Information Resources Policy and Management Division.

Proposal: Emergency Shelter Grants Program Indian Set-Aside Application (FR–3201).

Office: Community Planning and Development.

Description of the Need for the Information and Its Proposed Use: This program provides competitive grants to Indian tribes and Alaskan Native villages to help improve the quality of existing emergency shelters for the homeless, make available additional emergency shelters, meet the cost of operating emergency shelters, provide essential social services to homeless individuals, and help prevent homelessness.

Form Number: SF–424, HUD–2880 and HUD–40114.

Respondents: State or Local Governments (Indian Tribes).

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per Response	=	Burden hours
Application	40		1		32		1,280

Total Estimated Burden Hours: 1,280.

Status: New.

Contact: James N. Forsberg, HUD (202) 708–4300, Helen Guzzo, HUD, (202) 708–4300, Angela Antonelli, OMB, (202) 395–6880.

Dated: September 16, 1992.

[FR Doc. 92–22871 Filed 9–21–92; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-930-92-4212-14; N-53426]

Realty Action; Non-Competitive Sale of Public Lands in Clark County, NV

The following described public land in Las Vegas, Clark County, Nevada has been determined to be suitable for sale utilizing non-competitive procedures, at not less than the fair market value. Authority for the sale is section 203 of Public Law 94–579, the Federal Land Policy and Management Act of 1976 (FLPMA). The lands will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

Mount Diablo Meridian, Nevada

T. 20 S., R. 60 E.

Sec. 8: S½NW¼SW¼SW¼, N½SW¼SW¼SW¼

Aggregating 10.00 acres (gross).

This parcel of land, situated in Las Vegas, Nevada is being offered as a direct sale to Las Vegas Valley Water District. Proposed development is a zone reservoir.

This land is not required for any federal purposes. The sale is consistent with the Bureau's planning system. The sale of this parcel would be in the public interest.

In the event of a sale, conveyance of the available mineral interests will occur simultaneously with the sale of the land. The mineral interests being offered for conveyance have no known mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 nonreturnable filing fee for conveyance of the available mineral interests.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.
2. Oil, gas, sodium, potassium and saleable minerals.

and will be subject to:

1. An easement for streets, roads and public utilities in accordance with the transportation plan for Clark County to include 50.00 feet on the west for future Fort Appache Road and 30.00 feet on the east.
2. Those rights for a road and public utilities purposes which have been granted to Clark County by Permit No. N–55256 under the Act of October 21, 1976.

Upon publication of this notice in the **Federal Register** the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws. This segregation will terminate upon issuance of a patent or 270 days from the date of this publication, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the **Federal Register** interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any

adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with Public Law 94–579, or other applicable laws.

Dated: September 19, 1992.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 92–22856 Filed 9–21–92; 8:45 am]

BILLING CODE 4310-HC-M

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for the Extension With Amendments to 10(a)(1)(B) Permit PRT–739678 for the Riverside County Habitat Conservation Agency for Incidental Take of Stephens' Kangaroo Rat in Riverside County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Riverside County Habitat Conservation Agency (RCHCA) has applied to the U.S. Fish and Wildlife Service (Service) for an extension with amendments to 10(a)(1)(B) Permit PRT-739678 for Incidental take of Stephens' kangaroo rat (*Dipodomys stephensi*) (SKR) in Riverside County, California. An Environmental Assessment (EA) and Implementation Agreement have been prepared for the extension with amendments. This notice is provided pursuant to section 10(c) of the Endangered Species Act, as amended (Act) and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the permit application and EA should be received on or before October 22, 1992.

ADDRESSES: Persons wishing to review the EA may obtain a copy by writing the U.S. Fish and Wildlife Service, Carlsbad Field Office, Fish and Wildlife Enhancement, 2730 Loker Avenue West, Carlsbad, California, 92656. Documents will be available for review during normal business hours (8 a.m. to 4 p.m.). Written data or comments concerning the application and EA should be submitted to the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Zembal at the above Carlsbad Field Office.

SUPPLEMENTARY INFORMATION: The RCHCA seeks to extend the duration of short-term incidental take permit PRT-739678 until December 31, 1993, without increasing the current incidental take limit. They also propose to amend this permit by adding two provisions to the Implementation Agreement for the permit and clarify the language in the agreement regarding essential public utilities in reserve study areas. The two added provisions would: (1) Subject to case-by-case approval by the Service, allow as mitigation, lands that are not occupied by SKR but would benefit SKR if included in a permanent reserve; and (2) allow take authorized prior to the expiration date of the permit to occur anytime thereafter up to 15 years provided that the requisite mitigation fees have been paid, the replacement habitat has been acquired, and all other terms and conditions of the permit have been met. The clarification regarding essential public utilities changes the language but not the intent of the existing provision.

The EA considers the environmental consequences of the extension of the permit with amendments, extension of the permit without amendments, and a no action alternative. No individual or cumulative significant adverse impacts would result from the approval of the amendment.

(Notice of availability: Stephens' kangaroo rat-incidental take permit extension with amendments and Environmental Assessment)

Dated: August 31, 1992.

William E. Martin,

Acting Regional Director.

[FR Doc. 92–22975 Filed 9–21–92; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 12, 1992. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by October 7, 1992.

Patrick W. Andrus,

Acting Chief of Registration, National Register.

ARKANSAS

Benton County

Bentonville West Central Avenue Historic District (Benton County MPS), W. Central Ave. between SW. A and SW. G Sts., Bentonville, 92001349

Chicot County

American Legion Post No. 127 Building, Jct. of Cherry and Armstrong Sts., NE corner, Eudora, 92001350

Landi, A., General Merchandise Building (Ethnic and Racial Minority Settlement of the Arkansas Delta MPS), AR 8, Grand Lake, 92001347

Liberto, P. and J.—Rosa Portera Building (Ethnic and Racial Minority Settlement of the Arkansas Delta MPS), Main St., Eudora, 92001348

Franklin County

Center Cross School (Public Schools in the Ozarks MPS), Co. Rd. 95, W of Altus, Altus vicinity, 92001351

Jackson County

New Home School Building, Co. Rd. 69, NW of Swifton, Swifton vicinity, 92001357

Lawrence County

Hatcher, Dr. John Octavius, House, 210 Third St., Imboden, 92001358

Lincoln County

Crow, Oscar, House, 404 Washington St., Star City, 92001343

Mississippi County

Keiser School, Jct. of Main and School Sts., SE corner, Keiser, 92001342

Newton County

Dr. Hudson Sanitarium Agricultural Building Historic District, AR 327 S of jct. with AR 74, Jasper vicinity, 92001345

Pulaski County

Hillcrest Historic District (Boundary Increase), Roughly bounded by Evergreen, Harrison, Lee and Jackson Sts., Little Rock, 92001356

St. Francis County

Forrest City High School, Rosser St., Forrest City, 92001341

Stone, William, House, Jct. of AR 306 and Ellis Ln., SE corner, Colt, 92001346

Washington County

Smith, Tom, House, AR 74 W of jct. with AR 295, NE of Elkins, Elkins vicinity, 92001344

FLORIDA

Union County

Townsend Building, 410 W. Main St., Lake Butler, 92001359

KENTUCKY

Logan County

Brodnax—Conn House, 3288 Conn Rd., Adairville vicinity, 92001339

LOUISIANA

Lincoln Parish

Meadows House, 508 N. Bonner St., Ruston, 92001338
Ruston Central Fire Station, 200 E. Mississippi Ave., Ruston, 92001340
Ruston High School, 900 Bearcat Dr., Ruston, 92001335
Vicksburg, Shreveport and Pacific Depot, 101 E. Railroad Ave., Ruston, 92001337

Pointe Coupee Parish

North Bend
[Louisiana's French Creole Architecture MPS], LA 1 W of jct. with LA 416, E of Oscar, Oscar vicinity, 92001336

NORTH CAROLINA

New Hanover County

Masonboro Sound Historic District, E side Magnolia Dr. and 7301–7601, 7424 and 7506 Masonboro Sound Rd., Wilmington vicinity, 92001334

OHIO

Adams County

The Ridge, 503 E. 6th St., Manchester, 92001352

Cuyahoga County

Watterson School, 1422 W. 74th St., Cleveland, 92001354

Franklin County

Lincoln Theatre, 77 E. Long St., Columbus, 92001355

Jefferson County

Market Street Section, Retaining Wall and Water Trough, Old Market St. between Market St. off ramp and Lawson Ave., Steubenville, 92001353

OREGON

Curry County

Sixes Hotel, 93316 Sixes River Rd., Sixes, 92001325

Hood River County

Potter, Miles B. and Eleanor, House, 4085 Belmont Dr., Hood River vicinity, 92001326
Ries—Thompson House, 4993 Baseline Rd., Parkdale, 92001327

Jackson County

Peerless Rooms Building, 243–249 Fourth St. Ashland, 92001328
Sparta Building, 12 N. Riverside St., Medford, 92001329
Wagner Creek School, 8448 Wagner Creek Rd., Talent vicinity, 92001331

Linn County

Angell—Brewster House, 34191 Brewster Rd., Lebanon vicinity, 92001330

Marion County

Chemawa Indian School Site, 3700 Chemawa Rd., NE., Salem, 92001333

Multnomah County

Albee, H. Russell, House, 3380 SE. Ankeny St., Portland, 92001332

WASHINGTON

King County

Snoqualmie Falls Hydroelectric Power Plant Historic District [Hydroelectric Plants in Washington State MPS], WA 202, .5 mi. N of Snoqualmie, Snoqualmie vicinity, 92001324

Yakima County

Yakima Valley Transportation Company, Third Ave. and Pine St., Yakima, 84004012.

[FR Doc. 92–22874 Filed 9–21–92; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32147]

Hollis & Eastern Railroad Co.—Trackage Rights Exemption—Wichita, Tillman & Jackson Railway Co., Inc.

Wichita, Tillman & Jackson Railway Co., Inc. (WTJ), has agreed to grant approximately 4.6 miles of overhead trackage rights to Hollis & Eastern Railroad Company (H&E). The trackage rights extend from Milepost 74.0 to Milepost 78.6 in and adjacent to the city of Altus, OK.[1] The trackage rights will permit H&E to move and store locomotives and rolling stock and to interchange with the Burlington Northern Railroad Company and Texas & Oklahoma Railroad Company. The exemption became effective on September 10, 1992, and the parties intend to consummate the transaction on October 1, 1992.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: John D. Heffner, 1700 K Street, NW., suite 1107, Washington, DC 20006.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

Dated: September 15, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–22931 Filed 9–21–92; 8:45 am]

BILLING CODE 7035–01–M

[1] The line is owned by the State of Oklahoma; it is leased, operated, and maintained by WTJ. Oklahoma concurs with the trackage rights agreement.

[Docket No. AB–55 (Sub-No. 445X)]

CSX Transportation, Inc.—Discontinuance of Trackage Rights Exemption—In Stark and Wayne Counties, OH

Applicant (CSXT) has filed a notice of exemption under 49 CFR Part 1152 subpart F—Exempt Abandonments to discontinue its overhead trackage rights on approximately 24.7 miles of rail line belonging to Wheeling & Lake Erie Railway Company (W&LE), between milepost 133.0 at Brewster, OH, and milepost 108.3 at Creston, OH.[1]

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic will be rerouted over other lines; and (3) no formal complaint filed by user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate Stage agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on October 22, 1992 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues[2]

[1] CSXT was granted trackage rights over W&LE's line of railroad between milepost C1.0 at Connellsville, PA, and milepost 108.3 at Creston, OH, in Finance Docket No. 31831, served February 25, 1991. On August 31, 1992, W&LE filed a petition for exemption to abandon its line of railroad in Stark, Wayne, and Medina Countries, OH, in Docket No. AB–227 (Sub–No. 2X). CSXT seeks to discontinue trackage rights over a portion of the line that W&LE seeks to abandon.

[2] Ordinarily a stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether

Continued

formal expression of intent to file offers of financial assistance under 49 CFR 1152.27(c)(2)[8] must be filed by October 2, 1992. Petitions to reopen must be filed by October 13, 1992, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, 500 Water Street, J150, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Decided: September 15, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-22930 Filed 9-21-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Modification of Consent Decree in United States v. Louisiana-Pacific Corp.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a Modification of the Consent Decree in *United States* v. *Louisiana-Pacific Corporation*, No. C-78-0567 MHP, was lodged with the United States District Court for the Northern District of California on September 10, 1992.

The original Consent Decree in this action, lodged on September 9, 1991 and entered by the Court on March 11, 1992, required payment of a $2.9 million penalty by the defendant for violations of the defendant's National Pollutant Discharge Elimination System ("NPDES") permit, issued under sections 301(m) and 402 of the Clean Water Act, 33 U.S.C. 1311(m), 1342, and enjoined further violations of the Clean Water Act and the defendant's NPDES permit. The original Consent Decree also committed the defendants to install in-plant process changes and/or treatment technologies necessary to achieve compliance with the Clean Water Act, defendant's NPDES permit, and the Consent Decree. The Modification specifies that the steps the defendant will take to come into compliance will include the elimination of all chlorine-containing compounds from its bleaching process, the installation of steam stripping technology, and an outfall extension.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice written comments relating to the Modification of the Louisiana-Pacific Consent Decree. Comments should be addressed to Robert R. Klotz, Environmental Enforcement Section, Environment and Natural Resources Division, 301 Howard Street, Suite 870, San Francisco, California 94105 and should refer to *United States* v. *Louisiana-Pacific Corporation*, DOJ Ref. No. 62-11-90A.

The Consent Decree Modification may be examined at the Office of the United States Attorney, Northern District of California, 450 Golden Gate Avenue, San Francisco, California, at the Region IX Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California, and at the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004, Tel. (202) 347-2072. Copies of the Consent Decrees may be obtained in person or by mail from the Consent Decree Library. In requesting copies, please tender a check in the amount of $5.00 (25 cents per page reproduction charge) payable to the Consent Decree Library.

Roger Clegg,

Deputy Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92-22851 Filed 9-21-92; 8:45 am]

BILLING CODE 4410-01-M

[AAG/A Order No. 70-92]

Privacy Act of 1974; New System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Department of Justice, Immigration and Naturalization Service, proposes to establish a new system of records entitled, "Employee Assistance Program (EAP) Treatment and Referral Records, JUSTICE/INS-019."

Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be provided a 30-day period in which to comment on the routine uses of a new system; the Office of Management and Budget (OMB), which has oversight responsibilities under the Act, requires that it be given a 60-day period in which to review the system.

Therefore, please submit any comments by October 22, 1992. The public, OMB, and Congress are invited to send written comments to Patricia E. Neely, Staff Assistant, Systems Policy Staff, Information Resources Management, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1103, Chester Arthur Building).

In accordance with Privacy Act requirements, the Department of Justice has provided a report on the proposed system to OMB and the Congress.

Dated: September 4, 1992.

Harry H. Flickinger,

Assistant Attorney General for Administration.

JUSTICE/INS-019

SYSTEM NAME:

Employee Assistance Program (EAP) Treatment Referral Records.

SYSTEM LOCATION:

EAP Coordinator records are located at Immigration and Naturalization Service (INS) headquarters and in all INS regional offices. Headquarters and regional office addresses are provided in a published appendix to INS systems identified as Justice/INS-999. EAP contract facility/provider records are located in the offices of the providers throughout the Western Region and, in part, the Eastern Region (i.e., the city of Hartford, Connecticut and the States of Vermont and Maine). Addresses of these offices may be obtained by contacting the EAP Coordinators of the Western and Eastern Regional Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former INS employees who have sought counseling and/or have been referred to the INS EAP Coordinators or directly to INS EAP contract/facility provider for counseling and/or treatment. To the limited degree that counseling and treatment may be provided to family members of these employees, these individuals, too, may be covered by the system. With respect to records maintained by the EAP Coordinator (identified in item A. below), this system covers all INS employees (and family members); with respect to the clinical records (identified in item B below), it covers all INS employees (and family members) of the Western Region and, in part, the Eastern Region (i.e., the city of Hartford, Connecticut and the States of Vermont and Maine).

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raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C. 2d 377 (1989). Because trackage rights discontinuances are exempt from the Commission's environmental and historic reporting requirements, a stay would not be issued here for these reasons.

[8] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

CATEGORIES OF RECORDS IN THE SYSTEM:

Included are all EAP Coordinator records, i.e., those of INS headquarters employees and all INS regional offices; also included are the contract facility/provider records (i.e., clinical records) of only the Western Region and, in part, the Eastern Region (i.e., the city of Hartford, Connecticut and the States of Vermont and Maine).[1] EAP records include those maintained by the EAP Coordinators and by the EAP contract facility/providers as follows:

A. EAP Coordinator records include records which may assist in managing and monitoring the referral, attendance, and progress of the employee. Examples: Personal identification data, home addresses and/or phone numbers; insurance data; supervisors' phone numbers; notes on referrals to the contract facilities; addresses of treatment facilities or individuals providing treatment; notes regarding attendance and progress made; leave records; information on confirmed unjustified positive drug tests provided by the Drug Free Workplace Program and the Medical Review Officer under E.O. 12564; supervisory or personnel documents on workplace problems or performance; abeyance agreements (made to mitigate discipline based upon treatment); and written consent forms, together with any information which may be provided pursuant to written consent.

B. EAP contract facility records include, where appropriate, those which are maintained by the EAP Coordinator. In addition, they include any records which may assist in diagnosing, evaluating, counseling and/or treating the employee. Examples: Pertinent psychosocial, medical, and employment histories; medical tests or screenings, including EAP drug and alcohol tests and information on confirmed unjustified positive drug tests generated by the staff of the Drug Free Workplace Program and the Medical Review Officer and provided by the EAP Coordinator or the employee's supervisor; notes and documentation on counseling; treatment and rehabilitation plans as well as behavioral improvement plans; and records of referrals by the EAP contract facility to community treatment resources. For example, employees requesting legal, financial or other assistance not related to psychological or medical health may be referred to the appropriate community resources (or subcontract providers). Where such referrals have been made, records from the subcontractor also may include relevant information related to counseling, diagnosis, prognosis, treatment, and evaluation, together with follow-up data. These records also include written consent forms used to manage referrals and the flow of information. Finally, records include account information such as contractor billings and INS payments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 290dd, *et seq.*, and 290ee, *et seq.*; 42 CFR part 2; Executive Order 12564; 5 U.S.C. 3301 and 7901; 44 U.S.C. 3101 and Pub. L. No. 100–71, Sec. 503 (July 11, 1987).

PURPOSE:

The EAP is a voluntary program designed to assist the recovery of employees who are experiencing one or more of a variety of personal or behavioral problems (e.g., marital, financial, substance abuse). Records are maintained to document referral and participation in the EAP program; the nature and effects of the employee's personal or behavioral problem(s); efforts to counsel, treat, and rehabilitate the employee; and progress made in attaining his/her full recovery. Records may be used also to track compliance with agreements made to mitigate discipline based upon treatment (abeyance agreements).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures permitted by the Privacy Act itself,[2] 5 U.S.C. 552a(b), permissive disclosures without individual consent, are as follows:

1. Where an employee has volunteered to participate in the EAP, and to the extent that it is appropriate, relevant, and necessary to enable the contractor to perform his counseling, treatment, rehabilitation, and evaluation responsibilities, INS will provide those records (identified in A. above as INS EAP Coordinator records, and which are primarily administrative in nature) to the contract facilities/providers who, on behalf of INS, operate that part of this system of records which covers the clinical records (identified in B. above).

2. Contract facilities/providers may disclose:

a. To appropriate State or local authorities to report, under State law, incidents of suspected child abuse or neglect.

b. To any person or entity to the extent necessary to prevent an imminent and potential crime which directly threatens loss of life or serious bodily injury.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in locked file cabinets and a computerized environment.

RETRIEVABILITY:

Records are retrieved by a case number which is cross referenced to a name by the computer.

SAFEGUARDS:

In accordance with the requirements of 42 CFR 2.16, records are stored in a secure environment. Paper records of the EAP Coordinator are stored in a locked file cabinet in a locked room and in a personal computer which is password protected. Paper records of the EAP contract facility/provider are stored in locked files also and in computers which are password protected. In addition, all paper records, e.g., case files, billings and payment vouchers, are identified by case number only and cannot be identified by a name until they are cross-referenced by the computer system to a name.

Only the EAP Administrator, Coordinator or a designated staff member may access or disclose the records of the EAP Coordinator. Only a designated member of the EAP contract facility/provider may access and disclose records maintained by the facility/provider. Information maintained by the facility/provider will be disclosed to the EAP Administrator, Coordinator, the INS manager and/or supervisor only upon written consent of the individual. Further, no information in this system of records, whether maintained by the EAP Coordinator or by the EAP contract facility/provider, will be disclosed otherwise except with the written consent of the individual or as indicated under the routine use disclosures outlined in this notice.

RETENTION AND DISPOSAL:

Records are retained for three years after the individual ceases contact with

[1] Clinical records of INS employees at headquarters and in the Northern and Southern Regions, and in the Eastern Region for those areas other than Hartford, Connecticut, the Boston District, and the States of Vermont, and Maine, are maintained by the Department of Health and Human Services, Public Health Service. Clinical records of INS employees in the Boston District, Eastern Region, are maintained by the Office of Personnel Management.

[2] To the extent that release of alcohol and drug abuse records is more restricted than other records subject to the Privacy Act, INS will follow such restrictions. See 42 U.S.C. 290dd and 290ee.

the counselor unless a longer retention period is necessary because of pending administrative or judicial proceedings. In such cases, the records are retained for six months after the case is closed. Records are destroyed by shredding or burning (General Records Schedules 26 and 36).

SYSTEM MANAGER AND ADDRESS:

Assistant Commissioner, Personnel and Career Development, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536.

NOTIFICATION PROCEDURE:

Same as record access procedures.

RECORDS ACCESS PROCEDURES:

Address all requests for access to EAP coordinator records to the system manager identified above. Address all requests for records maintained by the facility/provider of contract counseling services to that facility/provider. Addresses of these offices may be obtained by contacting the EAP Coordinators of the Western and Eastern Regional Offices. Clearly mark the envelope and letter "Privacy Act Request." Provide the full name and notarized signature of the individual who is the subject of the record, the dates during which the individual was in counseling, any other information which may assist in identifying and locating the record, and a return address.

CONTESTING RECORDS PROCEDURES:

Direct all requests to contest or amend information in accordance with procedures outlined under Record Access Procedures. State clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment thereof. Clearly mark the envelope "Privacy Act Amendment Request."

RECORD SOURCE CATEGORIES:

Records are generated by the employee who is the subject of the record; EAP Coordinators and EAP contract facilities/providers; the personnel office; and the employee's supervisor. In the case of drug abuse counseling, records may also be generated by the staff of the Drug Free Workplace Program and the Medical Review Officer.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 92-22991 Filed 9-21-92; 8:45 am]

BILLING CODE 4410-10-M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984; UNIX International, Inc.

Notice is hereby given that, on August 5, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), UNIX International, Inc. ("UNIX"), filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following have become members of UNIX effective on July 22, 1992: Marben Produit of Suresnes, France; City Polytechnic of Hong Kong of Kowloon Tong, Hong Kong; ADHOC Systems Co., Ltd. of Tokyo, Japan; and Lotus Development Corp. of Cambridge, MA.

On January 30, 1989, UNIX filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 1, 1989 (54 FR 8608).

The last notification was filed with the Department on May 5, 1992. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on July 9, 1992 (57 FR 30511).

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and UNIX intends to file additional written notifications disclosing all changes in membership.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 92-22850 Filed 9-21-92; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Controlled Substances; Proposed Aggregate Production Quotas for 1993

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of Proposed Aggregate Production Quotas for 1993.

SUMMARY: This notice proposes initial 1993 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act.

DATES: Comments or objections should be received on or before October 22, 1992.

ADDRESSES: Send comment or objections to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attn: DEA Federal Register Representative (CCR).

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug & Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307-7183.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for all controlled substances listed in Schedules I and II. This responsibility has been delegated to the Administrator of the DEA by Section 0.100 of Title 28 of the Code of Federal Regulations.

The quotas are to provide adequate supplies of each substance for: (1) The estimated medical, scientific, research, and industrial needs of the United States; (2) lawful export requirements; and (3) the establishment and maintenance of reserve stocks.

In determining the below listed proposed 1993 aggregate production quotas, the Administrator considered the following factors: (1) Total actual 1991 and estimated 1992 and 1993 net disposals of each substance by all manufacturers; (2) estimates of 1992 year end inventories of each substance and of any substance manufactured from it and trends in accumulation of such inventories; and (3) projected demand as indicated by procurement quota applications filed pursuant to § 1303.12 of title 21 of the Code of Federal Regulations.

Pursuant to § 1303.23(c) of title 21 of the Code of Federal Regulations, the Administrator of the DEA will, in early 1993, adjust individual manufacturing quotas allocated for the year based upon 1992 year-end inventory and actual 1992 disposition data supplied by quota recipients for each basic class of Schedule I or II controlled substance.

Based upon consideration of the above factors, the Administrator of the DEA hereby proposes that aggregate production quotas for 1993 for the following controlled substances, expressed in grams of anhydrous acid or base, be established as follows:

Basic class	Proposed 1993 quotas
Schedule I:	
2,5-Dimethoxyamphetamine	12,100,000
Lysergic acid diethylamide	9
3,4-Methylenedioxyamphetamine	2
3,4-Methylenedioxymethamphetamine	2
Tetrahydrocannabinols	35,000
Psilocyn	5
Psilocybin	5
4-Methylaminorex	2
Methaqualone	2
Mescaline	2
Methcathinone	2
N-Hydroxy-3,4-methylenedioxyamphetamine	0
Dimethylamphetamine	2
levo-alpha-acetylmethadol	150,000
Schedule II:	
Alfentanil	7,400
Amobarbital	5
Amphetamine	144,000
Cocaine	566,000
Codeine (for sale)	63,613,000
Codeine (for conversion)	7,666,000
Desoxyephedrine	1,161,000
1,140,000 grams of levodesoxyephedrine for use in a noncontrolled, nonprescription product and 21,000 grams for methamphetamine.	
Dextropropoxyphene	107,296,000
Dihydrocodeine	579,000
Diphenoxylate	619,000
Ecgonine (for conversion)	650,000
Fentanyl	50,900
Glutethimide	0
Hydrocodone	5,066,000
Hydromorphone	261,000
Levorphanol	7,500
Meperidine	8,325,000
Methadone	2,604,000
Methadone Intermediate(4-Cyano-2-dimethylamino-4,4-diphenylbutane)	3,255,000
Methamphetamine (for conversion)	603,000
Methylphenidate	3,411,000
Mixed Alkaloids of Opium	800
Morphine (for sale)	6,578,000
Morphine (for conversion)	68,879,000
Opium (tinctures, extracts, etc. expressed in terms of USP powdered opium)	662,000
Oxycodone (for sale)	2,948,000
Oxycodone (for conversion)	6,300
Oxymorphone	2,500
Pentobarbital	12,912,000
Phencyclidine	15
Phenylacetone (for conversion)	320,000
Secobarbital	567,000
Sufentanil	620
Thebaine	7,155,000

All interested persons are invited to submit their comments and objections in writing regarding this proposal. A person may object to or comment on the proposal relating to any of the above-mentioned substances without filing comments or objections regarding the others. If a person believes that one or more of these issues warrant a hearing, the individual should so state and summarize the reasons for this belief.

In the event that comments or objections to this proposal raise one or more issues which the Administrator finds warrant a hearing, the Administrator shall order a public hearing by notice in the **Federal Register**, summarizing the issues to be heard and setting the time for the hearing.

Pursuant to sections (3)(c)(3) and 3(e)(2)(C) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that this matter does not have sufficient federalism implications to warrant the preparations of a Federalism Assessment.

The Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning of and intent of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by the international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Dated: August 7, 1992.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 92-22932 Filed 9-21-92; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-27,528]

Ansewn Shoe Co., Howland, ME; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on July 27, 1992 in response to a

worker petition which was filed on July 27, 1992 on behalf of workers at Ansewn Shoe Company, Howland, Maine.

All workers were separated from the subject firm in November of 1990, more than one year prior to the date of the petition (June 6, 1992). Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 14th day of September 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-22873 Filed 9-21-92; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 2, 1992.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 2, 1992.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 8th day of September 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Fujitsu Imaging Systems of America (Wkrs)	Waltham, MA	09/08/92	08/20/92	27,775	Facimile Equipment.
Halliburton Geophysical Services (Co)	Houston, TX	09/08/92	08/17/92	27,776	Oil, Gas Exploration.
General Electric, Aircraft Engine (Wkrs)	Rutland, VT	09/08/92	08/23/92	27,777	Parts for Jet Engines.
Three Star Fashions (Wkrs)	Shenandoah, PA	09/08/92	08/29/92	27,778	Ladies Dresses.
Hicks Construction, Inc. (Co)	Bakersfield, CA	09/08/92	08/23/92	27,779	Pipes & Oilfield Services.
DDC pertec (Co)	Tucson, AZ	09/08/92	08/07/92	27,780	Headquarters Office.
Bob Moe & Sons, Inc (Wkrs)	Port Angeles, WA	09/08/92	08/19/92	27,781	Wood Chips.
Auto-Comm Engineering Corp (Co)	Lafayette, LA	09/08/92	08/24/92	27,782	Custom Communications Equipment.
Texas Instruments (Wkrs)	Eden Prairie, MN	09/08/92	08/26/92	27,783	Sales Support Services.
Case-Pomeroy Oil Corp. (Co)	Houston, TX	09/08/92	07/31/92	27,784	Crude Oil, Natural Gas.
Design Associates, Inc (Wkrs)	New Orleans, LA	09/08/92	08/24/92	27,785	Naval Architecture.
Summit Distributing, Inc (Wkrs)	Buffalo, NY	09/08/92	08/23/92	27,786	Distribution of Electronic Components.
Praxair, Inc., Linde Div. (OCAW)	Tonawanda, NY	09/08/92	08/25/92	27,787	Air Separation Equipment.
Paper Converting Machine Co (UAW)	Green Bay, WI	09/08/92	08/23/92	27,788	Capital Equipment.
The Williams Carter Co (Wkrs)	Griffin, GA	09/08/92	08/24/92	27,789	Children's Clothing.
Charles Komar & Sons Seamprufe (Wkrs)	Holdenville, OK	09/08/92	08/24/92	27,790	Knitwear.
Sleep Robber, Inc (Wkrs)	North Bend, OR	09/08/92	08/27/92	27,791	Commercial Fish.
Exxon Co., USA/Central Prod. Div. (Wkrs)	Houston, TX	09/09/92	08/28/92	27,792	Oil and Gas.
Komatsu Dresser (Wkrs)	Libertyville, IL	09/08/92	08/05/92	27,793	Dresser Crawler Tractors.

[FR Doc. 92-22876 Filed 9-22-92; 8:45 am]

BILLING CODE 4510-30-M

Attestations Filed by Facilities Using Nonimmigrant Aliens As Registered Nurses

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is publishing, for public information, a list of the following health care facilities which plan on employing nonimmigrant alien nurses. These organizations have attestations on file with DOL for that purpose.

ADDRESSES: Anyone interested in inspecting or reviewing the employer's attestation may do so at the employer's place of business.

Attestations and short supporting explanatory statements are also available for inspection in the Immigration Nursing Relief Act Public Disclosure Room, U.S. Employment Service, Employment and Training Administration, Department of Labor, room N4456, 200 Constitution Avenue, NW., Washington, DC 20210.

Any complaints regarding a particular attestation or a facility's activities under that attestation, shall be filed with a local office of the Wage and Hour Division of the Employment Standards Administration, U.S. Department of Labor. The address of such offices are found in many local telephone directories, or may be obtained by writing to the Wage and Hour Division, Employment Standards Administration, Department of Labor, room S3502, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: *Regarding the Attestation Process:* Chief, Division of Foreign Labor Certifications, U.S. Employment Service.

Telephone: 202-535-0163 (this is not a toll-free number).

Regarding the Complaint Process: Questions regarding the complaint process for the H-1A nurse attestation program shall be made to the Chief, Farm Labor Program, Wage and Hour Division. Telephone: 202-523-7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Immigration and Nationality Act requires that a health care facility seeking to use nonimmigrant aliens as registered nurses first attest to the Department of Labor (DOL) that it is taking significant steps to develop, recruit and retain United States (U.S.) workers in the nursing profession. The law also requires that these foreign nurses will not adversely affect U.S. nurses and that the foreign nurses will be treated fairly. The facility's attestation must be on file with DOL before the Immigration and Naturalization Service will consider the facility's H-1A visa petitions for bringing nonimmigrant registered nurses to the United States. 26 U.S.C. 1101(a)(15)(H)(i)(a) and 1181(m). The regulations implementing the nursing attestation program are at 20 CFR part 655 and 29 CFR part 504, 55 FR 50500 (December 6, 1990). The Employment and Training Administration, pursuant to 20 CFR 655.310(c), is publishing the following list of facilities which have submitted attestations which have been accepted for filing.

The list of facilities is published so that U.S. registered nurses, and other persons and organizations can be aware of health care facilities that have requested foreign nurses for their staffs. If U.S. registered nurses or other persons which to examine the attestation (on Form ETA 9029) and the supporting documentation, the facility is required to make the attestation and documentation available. Telephone numbers of the facilities' chief executive officers also are listed, to aid public inquiries. In addition, attestations and supporting short explanatory statements (but not the full supporting documentation) are available for inspection at the address for the Employment and Training Administration set forth in the **ADDRESSES** section of this notice.

If a person wishes to file a complaint regarding a particular attestation or a facility's activities under that attestation, such complaint must be filed at the address for the Wage and Hour Division of the Employment Standards Administration set forth in the **ADDRESSES** section of this notice.

Signed at Washington, DC, this 11th day of September 1992.

Robert A. Schaerfl,

Director, United States Employment Service.

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS

[08/01/92 to 08/31/92]

CEO-name/facility name/address	State	Approval date
Mr. Robert Jay Rowen, Omni Medical Center, 615 E. 82nd Ave., Ste. 300, Anchorage, 99518, 907-344-7775	AK	08/27/92
Mr. Ross Hooper, Crittenden Memorial Hospital, 200 Tyler Avenue, West Memphis, 72301, 501-735-1500	AR	08/21/92
Mr. Mark Brenzel, Northwest Hospital, 6200 N. LaCholla Blvd., Tucson, 85741, 602-742-9000	AZ	08/21/92
Ms. Liliioara Sararu, International Med. Staffing Services, Hemet, 92543, 714-925-1489	CA	08/07/92
Mr. Bernard F. Hyatt, Bonnie Brae Convalescent Hosp., 420 South Bonnie Brae Street, Los Angeles, 90057, 213-483-8144	CA	08/07/92
Mr. Douglas Schultz, Mission Convalescent Hospital, 909 West Santa Anita Street, San Gabriel, 91776, 818-289-5365	CA	08/07/92
Mr. Gerald L. Price, Royal Care Skilled Nursing Facility, Long Beach, 90806, 310-427-7493	CA	08/12/92
Mr. Roger O. Sangalang, US Nurses Ltd., 1971 Cantamar Rd., San Diego, 92154, 619-429-9017	CA	08/14/92
Mr. Solomon Goldner, San Joaquin Care Center, Goldenstate Palms Inc. dba, Bakersfield, 93305, 805-872-2324	CA	08/21/92
Mr. Wilfredo Gabriel, Intercontinental Nursing Serv., 9580 Black Mountain Road, San Diego, 92126, 619-689-7352	CA	08/21/92
Mr. Solomon Goldner, Goldenstate Manor Conval. Ctr., 730 34th Street, Bakersfield, 93301, 805-327-7687	CA	08/21/92
Mr. Solomon Goldner, Parkview Real Conval. Hosp., Rosemead Sanitarium, Inc. dba, Bakersfield, 93309, 805-327-7107	CA	08/21/92
Mr. Sanford M. Shapero, City of Hope Nat'l Med. Ctr., 1500 East Duarte Road, Duarte, 91010 818-359-8111	CA	08/25/92
Ms. Anni Chung, Self-Help for the Elderly, 407 Sansome Street, Suite 300, San Francisco, 94111 415-982-9171	CA	08/25/92
Ms. Elsie J. Arca, Skilled Nurses Registry Corp., 3142 Wilshire Blvd., Suite 5, Los Angeles, 90010, 213-387-4941	CA	08/25/92
Mr. Herbert G. Needman, Temple Community Hospital, 235 North Hoover Street, Los Angeles, 90004, 213-382-7252	CA	08/25/92
Ms. Brenda Manke, Valley Palms Care Center, 13400 Sherman Way, North Hollywood, 91605, 818-983-0103	CA	08/25/92
Mr. Ray Webb, Los Banos Community Hospital, 520 West "I" St., Los Banos, 93635, 209-826-0591	CA	08/28/92
Constance U. Battle, M.D., the Hospital for Sick Children, 1731 Bunker Hill Road N.E., Washington, 20017, 202-832-4400	DC	08/21/92
Gregory Jablonski, Glades Health Care Center, 230 S. Barfield Highway, Pahokee, 33476, 407-924-5561	FL	08/07/92
Edward A. Dauer, M.D., Florida Med. Ctr. Hospital, 5000 W. Oakland Park Blvd., Ft. Lauderdale, 33313, 305-735-6000	FL	08/21/92
Mr. Phillip Pickrill, Shore Acres Nursing & Conval., 4500 Indianapolis Street, NE, St. Petersburg, 33703, 813-527-5801	FL	08/25/92
Ms. Joyce E. Plourde, Heartland Health Care Center, 5725 NW 186th St., Hialeah, 33015, 305-625-9857	FL	08/25/92
Mr. A. Jason Geisinger, Hillhaven Rehab. & Conval. Ct., 26 Tower Road, N.E., Marietta, 30090, 404-422-8913	GA	08/07/92
Mr. James L. McAlphin, Gold City Conval. Ctr., Inc., P.O. Box 96, Dahlonega, 30533, 706-864-3045	GA	08/07/92
Mr. A. Jason Geisinger, Savannah Convalescent Ctr., 815 East 63rd Street, Savannah, 31405, 912-352-8615	GA	08/07/92
Mr. A. Jawon Geisinger, Hillhaven Convalescent Center, First Health Care Corp., Savannah, 31499, 912-925-4402	GA	08/07/92
Mr. James L. McAlpin, Cedartown Health Care, 148 Cason Road, Cedartown, 30125, 706-748-3622	GA	08/07/92
Mr. James L. McAlpin, Floyd Health.Care, 1170 Chulio Road, S.E., Rome, 30161, 706-235-1132	GA	08/07/92
Mr. James L. McAlpin, Friendship Nursing Home, Inc., Route 2, Box 2006, Cleveland, 30528, 706-865-3131	GA	08/07/92
Mr. James L. McAlpin, Mountain View Conval. Ctr., P.O. Box 865 Warwoman Road, Clayton, 30525, 706-782-4276	GA	08/14/92
Mr. Sam Gorenstein, Metrop. Nursing Ctr. of Hazel Crest, Inc., Hazel Crest, 60435, 708-635-2400	IL	08/07/92
Mr. Michael H. Fritz, The Carle Foundation Hospital, 611 West Park, Urbana, 61801, 217-383-3311	IL	08/07/92
Peter Friedell, M.D., Jackson Park Hospital, 7531 South Stony Island, Chicago, 60649, 312-947-7500	IL	08/17/92
Ms. Violeta R. Lalicon, Lalicon & Associates, 28 East Jackson, Chicago, 60604, 312-939-7525	IL	08/21/92
Ms. Joanne T. Jurkovic, Mercy Health Care & Rehab. Ct., 19000 S. Halsted Street, Homewood, 60430, 708-957-9200	IL	08/21/92
Mr. Joseph F. Warner, Heritage Manor Nursing Home, 700 E. Walnut Street, Bloomington, 61701, 309-827-8004	IL	08/21/92
Mr. Sam Gorenstein, Metrop. Nursing Ctr., 8540 S. Harlem Avenue, Bridgeview, 60455, 708-598-2605	IL	08/21/92
Ms. Dolores C. Schroder, Lake Shore Nursing Centre, 7200 N. Sheridan Rd., Chicago, 60626, 312-973-7200	IL	08/25/92
Mr. Herman Katz, Balmoral Nursing Centre, Inc., 2055 West Balmoral Avenue, Chicago, 60625 312-561-8661	IL	08/25/92
Mr. John Samatas, Lexington Health Care Center, 1300 S. Main, Lombard, 60148, 708-495-1700	IL	08/26/92
Mr. Vasanth Pai, Hyde Park Hospital, 5800 S. Stony Island Avenue, Chicago, 60637, 312-643-9200	IL	08/26/92
Mr. John Samatas, Lexington Health Care Ctr. of Schaumburg, Schaumburg, 60193, 708-495-1700	IL	08/26/92
Mr. John Samatas, Lexington Health Care of Bloomingdale, Inc., Bloomingdale, 60108, 708-495-1700	IL	08/26/92
Mr. Joseph F. Warner, Heritage Manor Nursing Home, 555 E. Clay Street, El Paso, 61738, 309-527-6240	IL	08/28/92
Ms. Marie Becker, Sheridan Healthcare Ctr., 2534 Elm Avenue, Zion, 60099, 708-746-8435	IL	08/28/92

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS—Continued

[08/01/92 to 08/31/92]

CEO-name/facility name/address	State	Approval date
Mr. William B. Fuchs, Saint Joseph Hospital, One Saint Joseph Drive, Lexington, 40504, 606-278-3436	KY	08/25/92
Mr. Wayne Swinlarski, West Calcasieu Cameron, 701 East Cypress Street, Sulphur, 70664, 318-527-4280	LA	08/21/92
Mr. Allen Tuten, Lincoln General Hospital, P.O. Drawer 1368, Ruston, 71273, 318-254-2100	LA	08/25/92
Morton T. Rapoport, M.D., U of Maryland Med. System, 22 S. Greene Street, Baltimore, 21201, 410-328-2756	MD	08/07/92
Mr. Reynold Banks, Capitol View Care Center, 707 Armstrong, Lansing, 48911, 517-393-5680	MI	08/25/92
Mr. Morris Esformes, Cedars Health Care, 6400 The Cedars Court, Cedar Hills, 63016, 314-285-1777	MO	08/07/92
Mr. Thomas E. Ford, Brian Ctr. Nursing Care, 3000 Holston Lane, Raleigh, 27610, 919-231-6045	NC	08/07/92
Mr. Glenn B. Terry, Brian Ctr. Health & Retir., Statesville, Inc., Statesville, 28677, 704-873-0517	NC	08/07/92
Mr. Nolan G. Brown, Pinehurst Nursing Ctr., Inc., P.O. Box 5309, Pinehurst, 28374, 919-295-6158	NC	08/07/92
Mr. Paul T. Babinski, Brian Ctr. of Charlotte, Inc., 5939 Reddman Road, Charlotte, 20212, 704-563-6062	NC	08/07/92
Mr. Jack L. Russell, Brian Ctr. Nursing Care/Asheb, 230 E. Presnell Street, Asheboro, 27203, 919-629-1447	NC	08/07/92
Ms. Vickie L. Carroll, Maple Leaf Health Care, 2640 Davie Avenue, Statesville, 28677, 704-871-0701	NC	08/07/92
Mr. David R. Wilson, Brian Ctr. Health & Retir., 6000 Fayetteville Road, Durham, 27713, 919-544-9021	NC	08/07/92
Mr. Louis Milita, Brian Center Clayton, 2300 Diary Road, Clayton, 27520, 919-553-8232	NC	08/07/92
Ms. Frances Messer, Northwood Manor, 303 E. Carver St., Durham, 27704, 919-471-4558	NC	08/14/92
Mr. U. Birzenieks, New Hanover Reg'l Med. Ctr., 2131 So. 17th Street, Wilmington, 28402, 919-343-7000	NC	08/21/92
Mr. Nolan G. Brown, Yadkin Nursing Care Ctr., Inc., P.O. Box 879, Yadkinville, 27055, 919-679-8863	NC	08/25/92
Mr. Glennis L. Bolden, Emerald Health Care, 539 3rd Street Southwest, Taylorsville, 28681, 704-632-8148	NC	08/26/92
Mr. Lloyd R. Currier, Christ Hospital, 176 Palisade Avenue, Jersey City, 07306, 201-795-8355	NJ	08/07/92
Mr. Morris Wiesel, Cedar Oaks Care Center, 1311 Durham Avenue, South Plainfield, 07080, 908-287-9555	NJ	08/07/92
Mr. Douglas E. Kurtz, Regent Care Center, 50 Polifly Road, Hackensack, 07601, 201-646-1166	NJ	08/14/92
Mr. WJ. Van Ry, St. Mary's Reg'l Med. Ctr., 235 West Sixth Street, Reno, 89520, 702-323-2041	NV	08/14/92
Mr. Renate Wack, M.D., Kirby Forensic Psychiatric Ct., Ward's Island, New York, 10035, 212-427-9003	NY	08/28/92
Ms. Carol Raphael, VNS Home Care, 107 East 70th Street, New York, 10021, 212-794-9200	NY	08/28/92
Sister Gretchen Kunz, St. Joseph Hosp. & Health Ctr., 2801 Franciscan Drive, Bryan, 77802, 409-776-2515	TX	08/07/92
Ms. Brenda Chung, Nightingale Services, 5650 Kirby, Suite 251, Houston, 77005, 713-668-8901	TX	08/21/92
Mr. Charles V. Rice, IHS—I, Inc., 5160 Parkstone Dr., Chantilly, 22021, 703-222-3900	VA	08/07/92
Ms. Norma D. Glenn, St. Croix Hosp., 4007 Est. Diamond Ruby, St. Croix, 00820, 809-778-6311	VI	08/21/92
Mr. Roger Sievers, Lutheran Home for the Aging, 7500 West North Avenue, Wauwatosa, 53213, 414-258-6170	WI	08/21/92
Total Attestations: 75		

[FR Doc. 92-22877 Filed 9-21-92; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL FOUNDATION OF THE ARTS AND HUMANITIES

National Council on the Arts Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a Teleconference meeting of the National Council of the Arts will be held on September 25, 1992 from 3 p.m. to 4 p.m. in room 527 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topic will be discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended.

If in the course of application review it becomes necessary for the Council to discuss non-public financial information about individuals, such as salary information, submitted with grant applications, the council will go into closed session for that limited purpose pursuant to subsection (c)(4) of section 552b of title 5, United States Code. Such closure would be in accordance with the determination of the Chairman of November 20, 1991.

Any interested persons may attend, as observers, Council discussions and reviews which are open to the public.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5439.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92-23091 Filed 9-18-92; 3:26 pm]

BILLING CODE 7537-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Endowment Fund Discussion Group; Meeting

September 23, 1992 from 10 a.m.-3 p.m. has been designated for the Endowment Fund Discussion Group meeting. This meeting will take place in room M-07, Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC.

This meeting will be open to the public on a space available basis. The topics will include opening remarks and discussion of Endowment fund assets, grantee compliance with Challenge II conditions, and the current Challenge grant guide.

Any interested person may observe meetings, or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5439.

Dated: September 11, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92-23030 Filed 9-21-92; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-333]

Power Authority of the State of New York; Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of the Power Authority of the State of New York (the licensee) to withdraw its April 19, 1991, application for proposed amendment to Facility Operating License No. DPR-59 for the James A. FitzPatrick Nuclear Power Plant, located in Oswego County, New York.

The proposed amendment would have added new specifications regarding operability requirements for ventilation and air conditioning equipment associated with four environmental enclosures at the FitzPatrick plant.

The Commission has previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on May 29, 1991 (56 FR 24215). However, by letter dated September 9, 1992, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated April 19, 1991, and the licensee's letter dated September 9, 1992, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and the State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York.

Dated at Rockville, Maryland, this 16th day of September 1992.

For the Nuclear Regulatory Commission.

Brian C. McCabe,

Project Manager, Project Directorate I-1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92-22886 Filed 9-21-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-483]

Union Electric Co.; Callaway Plant, Unit 1; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-30, issued to Union Electric Company (UE, the licensee), for operation of the Callaway Plant, Unit 1, located in Callaway County, Missouri.

The amendment would revise Figure 3.9-1 of Technical Specification Section 3/4.9.12 to reflect a maximum initial enrichment of 4.45 w/o U-235 for fuel storage in Region 2 of the Callaway spent fuel pool.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By October 22, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the Local Public Document Room located at Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions that are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing.

The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to

present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John N. Hannon: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its intent to make a no significant hazards consideration finding in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated June 12, 1992, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the local public document room, Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Dated at Rockville, Maryland, this 14th day of September 1992.

For the Nuclear Regulatory Commission.

John N. Hannon,

Director, Project Directorate III-3, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-22887 Filed 9-21-92; 8:45 am]

BILLING CODE 7590-01-M

PENSION BENEFIT GUARANTY CORPORATION

Request for a Collection of Information Under the Paperwork Reduction Act; Customer Satisfaction Survey

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation has requested that the Office of Management and Budget approve a new collection of information under the Paperwork Reduction Act. The purpose of this information collection, which will be conducted through a Customer Satisfaction Survey, is to help the agency assess the efficiency and effectiveness of its programs and design actions to correct identified problems. The PBGC has requested expedited review by OMB pursuant to 5 CFR 1320.18 and, therefore, is publishing with this notice the survey questions it plans to use. The effect of this notice is to advise the public of the PBGC's request for OMB approval of, and to solicit public comment on, this collection of information.

DATES: Comments must be submitted on or before October 2, 1992.

ADDRESSES: All written comments (at least three copies) should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Pension Benefit Guaranty Corporation, 725 17th Street, NW., room 3208, Washington, DC 20503. The request for approval will be available for public inspection at the PBGC Communications and Public Affairs Department, suite 7100, 2020 K Street, NW., Washington, DC 20006, between the hours of 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Renae R. Hubbard, Special Counsel, Office of the General Counsel (Code 22000), 2020 K Street, NW., Washington, DC 20006, 202-778-8850 (202-778-1958 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) establishes policies and procedures for controlling the paperwork burdens imposed by Federal agencies on the public. The Act vests the Office of Management and Budget (OMB) with regulatory responsibility over these burdens, and OMB has promulgated rules on the clearance of collections of information by Federal agencies.

The Chief Financial Officers Act of 1990 (CFOs Act), 31 U.S.C. 501 et seq., requires the CFO of each agency covered by the Act to submit annual financial statements covering all revolving funds, trust funds, and activities involving substantial commercial functions. The Act also dictates that agency CFOs develop an integrated agency accounting and financial measurement system which provides for "the systematic measurement of performance."

To this end, OMB directed covered agencies to include in their financial statements information and data on program performance and established 14 teams, chaired by and composed of agency representatives, which are to identify and select key performance measures for the various commercial functions performed by the member agencies. While the sections of the CFOs Act requiring performance measures do not apply to the PBGC, PBGC voluntarily participated in the Pensions and Social Insurance Performance Measures Task Force (the "Task Force"). The Task Force members concluded that an overall Customer Satisfaction performance measure was common to all member agencies and that customer satisfaction could be measured by a survey of a statistically valid sample of people receiving the agencies' services. This data collection's purpose, therefore, is to meet PBGC's commitment to include Overall Customer Satisfaction data in its 1992 Annual Report. Because of this commitment, the PBGC is requesting expedited OMB review of this collection of information, pursuant to 5 CFR 1320.18(g). As part of the expedited review process, the PBGC is publishing for public comment the survey questions it plans to use.

This collection of information will put a slight burden on a small percentage of the public. A pilot Customer Satisfaction Survey will contact a random 200 participants and beneficiaries out of the 325,000 in PBGC-trusteed pension plans. While not statistically valid, the 200 responses will provide some evidence that can be used to meet our commitment to include Customer Satisfaction data in the 1992 Annual Report. In subsequent years' annual

Surveys, the data will be collected from approximately 4,000 respondents (a statistically valid number) in a combination phone and follow-up mail Survey (the latter only to be used if the selected participant or beneficiary cannot be reached by phone). The information collected will assist program managers in assessing the efficiency and effectiveness of their programs and in designing actions to correct identified problems. An average of 456 burden hours per year over the next three years (2,734 respondents at 10 minutes each) is expected to be incurred by the survey respondents, whether contacted by telephone or by alternative written survey.

Issued at Washington, DC, this 16th day of September, 1992.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

Pension Benefit Guaranty Corporation Participant Satisfaction Survey

Section A: Introduction

1. Are you aware that the Pension Benefit Guaranty Corporation (PBGC), a Federal agency, is responsible for your pension under (insert plan name)?

2. Do you understand what PBGC's responsibilities are with respect to your plan?

3. Think about any contact you have had with PBGC over the past year. On a scale from 1 to 6, where 1 is poor and 6 is excellent, how would you rate the overall quality of service you have received from PBGC so far?

Section B: Contact From PBGC

4. PBGC mails various materials to people to whom it owes benefits. On a scale from 1 to 6, where 1 is poor and 6 is excellent, please rate each of the following materials which you may have received from PBGC during the past year in terms of clarity and ease of use:

a. Notification letters.
b. Informational materials.
c. Forms.
d. Postcards.

5. Have you received information from PBGC during the past year explaining the amount PBGC will pay?

6. Did this information help you to understand the amount PBGC will pay?

7. Did this information help you understand your right to appeal the dollar amount?

Section C: Contact to PBGC

8. Have you contacted PBGC for any reason during the past year?

9. Was your contact primarily with a local Field Benefit Administration representative or the Washington, DC office?

10. Did you have any difficulty in finding out who you needed to contact?

Telephone Contact

11. Did you contact PBGC by telephone during the past year?

12. Why did you contact PBGC by telephone?

13. In general, during the past year, were you able to get the information you needed easily, or did you have some difficulty when you called PBGC?

14. What kind of difficulty did you have?

15. In general, during the past year, about how many times did you have to call each time to obtain the information you were you trying to get?

16. On a scale from 1 to 6, where 1 is poor and 6 is excellent, how would you rate the people you talked to on the telephone at PBGC during the past year with respect to:

a. Helpfulness?
b. Clarity?
c. Courtesy?
d. Their ability to provide correct information?

17. The Washington, DC office has an Automated Telephone System which uses recorded messages to guide you to the representative or information you need. Have you called the Automated Telephone System during the past year?

18. Did you mind having to use the Automated Telephone System?

19. On a scale from 1 to 6, where 1 is poor and 6 is excellent, how would you rate the Automated Telephone System with respect to:

a. Ease of use?
b. Providing the information you needed?

Mail Contact

20. Did you contact PBGC by mail during the past year?

21. Why did you contact PBGC by mail?

22. Did PBGC answer your letter?

23. Did you get a written response, or did someone call you on the telephone?

24. On a scale from 1 to 6, where 1 is poor and 6 is excellent, please rate the response you received from PBGC with respect to:

a. Helpfulness.
b. Clarity.
c. Courtesy.
d. Accuracy.
e. The degree to which it provided the information you needed.
f. Timeliness.

In Person Contact

25. Did you visit a PBGC office in person during the past year?

26. Why did you contact PBGC in person?

27. On a scale from 1 to 6, where 1 is poor and 6 is excellent, how would rate the PBGC representatives you have met with in person during the past year with respect to:

a. Helpfulness?
b. Clarity?
c. Courtesy?
d. Their ability to provide correct information?

Section D. Other Information

28. In dealing with PBGC during the past year, did you experience any problems that were due to having to speak or read English?

29. Do you have any other comments about the service you have received from PBGC during the past year?

[FR Doc. 92-22970 Filed 9-21-92; 8:45 am]

BILLING CODE 7708-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-31177; File No. SR-DTC-92-10]

Self-Regulatory Organizations; The Depository Trust Co.; Filing of a Proposed Rule Change Relating to DTC's Proposal To Add Valued Pledges and Releases to Its Next-Day Funds Settlement System

September 11, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 18, 1992, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will enable participants to instruct DTC to effect valued pledges and releases by book-entry in DTC's Next-Day Funds Settlement (NDFS) system.

[1] 15 U.S.C. 78s(b)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

DTC's existing rules enable participants to instruct DTC to effect unvalued or valued pledges and releases in the Same-Day Funds Settlement (SDFS) system and to effect unvalued pledges and releases in the NDFS system. The proposed rule change will enable Participants to instruct DTC to effect valued pledges and releases in the NDFS system.

For pledges in the NDFS system, DTC will not effect a valued pledge until the pledgee has seen and agreed to its value. For releases in the NDFS system, DTC will not effect the valued release unless the pledgor, by initiating the release, has seen and agreed to its value. These controls were built into the function so that the pledgee and pledgor, respectively, can exercise control over the buildup of cash debits in their accounts. It was necessary to introduce these controls in the NDFS system since the NDFS system does not have the kinds of controls on cash debits to a receiver that are pervasive in the SDFS system.

Under DTC's current rules, participants effecting pledges or releases in the NDFS system have to make arrangements outside DTC to move the related funds. For example, a broker who is effecting a pledge of collateral to secure a loan from a DTC bank participant may receive the funds by check or by Fedwire to its bank account, while the book-entry pledge is effected at DTC. Under the proposed rule change, the participant can accomplish everything with a single instruction to DTC.

The proposed rule change is consistent with the requirements of Act section 17A(b)(3)(F) and the rules and regulations thereunder because it is a more efficient procedure that allows both securities and funds to be moved with a single instruction.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

From time to time, participants have inquired whether DTC would make a valued pledge instruction available. Once valued pledges became available in the SDFS system, inquiries about introducing a similar instruction into the NDFS system increased. However, no written comments on the proposed rule change have been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, at the address above. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the file Number SR-DTC-92-10 and should be submitted by October 13, 1992.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-22927 Filed 9-21-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31181; File No. SR-ICC-92-3]

Self-Regulatory Organizations; The Intermarket Clearing Corporation; Proposed Rule Change to Modify the Short Option Adjustment

September 14, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 8, 1992, The Intermarket Clearing Corporation ("ICC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by ICC. ICC amended the filing on July 9, 1992, to add language that was inadvertently omitted.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would modify the short option adjustment included within ICC's margin system.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letter from Stuart C. Harvey, Jr., staff counsel, ICC, to Richard C. Strasser, attorney, Division of Market Regulation, Commission (July 9, 1992).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this proposed rule change is to modify the "short option adjustment" contained in ICC's margin system, the Theoretical Intermarket Margin System ("TIMS"), as reflected in paragraph 3a(2)(c)[1] of the ICC Margin Resolution.

Background

ICC requires its Clearing Members to adjust their margin deposits with ICC in the morning on every business day, pursuant to calculations performed by ICC overnight. ICC imposes a margin requirement on short positions in each Clearing Member account, and gives margin credit for unsegregated long positions.[3] Under TIMS, the margin requirement or credit for positions in a "class group" (a "class group" consists of all futures and all put and call options [4] relating to the same underlying interest) in a given Clearing Member account is equal to the liquidating value of those positions, based on premium levels at the close of trading on the preceding trading day, increased (in the case of a negative liquidating value) or decreased (in the case of a positive liquidating value) by the "additional margin" amount for that class group.

TIMS calculates additional margin amounts utilizing options price theory. TIMS first calculates the theoretical liquidating value for the positions in each class group assuming either an increase or decrease in the market value of the underlying asset in an amount equal to the applicable "margin interval," which is the maximum one-day price movement in the underlying asset that ICC desires to protect against.[5] Margin intervals are determined separately for each underlying interest and each margin interval is adjusted for volatility in the market for the underlying interest.

TIMS then selects the theoretical liquidating value that represents the greatest decrease (where the actual liquidating value is positive) or increase (where the actual liquidating value is negative) in liquidating value compared with the actual liquidating value based on the premium levels at the close of trading on the preceding day. The difference between that theoretical liquidating value and actual liquidating value is the additional margin amount for that class group, unless the class group is subject to the short option adjustment.

For net short positions [6] in deep out-of-the-money options, little or no change in value would be predicted given a change in value of the underlying interest equal to the applicable margin interval, and TIMS would calculate additional margin amounts of zero or close to zero. Volatile markets, however, may cause such positions to become in-the-money or nearly so, thereby creating increased risk to ICC. ICC protects against such risk by incorporating into the additional margin calculation of TIMS a margin cushion for such positions known as the short option adjustment. The short option adjustment is described in paragraph 3a(2) (c)[1] of the ICC Margin Resolution.

The short option adjustment currently calculates a minimum additional margin amount for all net short positions in deep out-of-the-money options. That additional margin amount is equal to 25% of the applicable margin interval for the class group, multiplied by the number of contracts and the applicable unit of trading. The short option adjustment component of additional margin is activated only if the calculated additional margin requirement for an option series is less than 25% of the applicable margin interval multiplied by the number of contracts and the applicable unit of trading.

Effect of the Short Option Adjustment

Following an analysis of its experience in the October 1987 market break and other internal reviews of TIMS, ICC has concluded that the current short option adjustment requires Clearing Members to deposit margin in excess of the risk presented by certain net short positions in deep out-of-the-money options. This over-collateralization occurs because the current short option adjustment does not account for spreads between net long and short positions on the same underlying interest. That is, it does not attempt to match net short positions with net long positions which substantially reduce, or eliminate, the risk of such net short positions. When paired, the positions offset one another, in that as the risk created by the net short positions increases the value of the long positions also increases. The paired positions therefore pose little or no risk to ICC. [7] Because the short option adjustment does not recognize these paired contracts, additional margin on the positions is calculated as if they were "unpaired" or "naked." Accordingly, the additional margin required of Clearing Members for these positions exceeds the amount required to secure ICC against the risk they create.

Modified Short Option Adjustment

To eliminate this over-collateralization, ICC proposes to revise the short option adjustment logic of TIMS so that it recognizes spreads between net long and short contracts on the same underlying security or interest. Accordingly, TIMS would be modified so that the short option adjustment would "pair" all net long contracts relating to an underlying interest against all net short contracts relating to the same underlying interest on a contract for contract basis. Should any net short positions remain after this process, the number of remaining net short option contracts would be subject to the short option adjustment. [8]

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[3] A long position is "unsegregated" for ICC's purposes if ICC has a lien on the position (*i.e.*, has recourse to the value of the position in the event that the Clearing Member does not perform an obligation to ICC).

[4] The term "option" is defined in the ICC Margin Resolution to include both commodity options and securities options cleared by ICC's affiliate The Options Clearing Corporation ("OCC"). ICC requires margin with respect to OCC securities options pursuant to its cross-margining program with OCC.

[5] TIMS also calculates the theoretical liquidating value for the options positions in each class group assuming an increase or decrease in the market value plus the margin interval and the market value minus the margin interval, since some combinations of positions that include options can present a greater net theoretical liquidating value at any of these intermediate values than at either of the endpoint values.

[6] A "net" position in an option series in an account is the position resulting from offsetting the gross unsegregated long position in that series against the gross short position in that series. After netting, an account will reflect a net short position or a net long position for each series of options held in the account.

[7] A short option position that is offset by a long position will pose no risk to ICC if the exercise price of the short position is higher (in the case of calls) or lower (in the case of puts) than the exercise price of the long position. Conversely, a pair consisting of a net short position and a net long position will pose a risk to ICC consisting of the difference between the exercise prices of the short position and long position if the exercise price of the short position is lower (in the case of calls) or higher (in the case of puts) than the exercise price of the long position. However, this risk is of a relatively small magnitude and not open-ended—*i.e.*, cannot be greater than the difference between the two exercise prices times the applicable unit of trading or index multiplier and the number of contracts. ICC is satisfied that its existing back-up system is capable of absorbing this relatively small risk without any short option adjustment. A similar analysis applies to a short call (put) option position that is offset by a long (short) futures contract.

[8] More specifically, the netting process for purposes of paragraph 3a(2)(c)[1] of the ICC Margin Resolution would involve netting long call options and long futures against short call options, and long

Continued

After determining the number of net short contracts in a class group, ICC would identify those short contracts in the class group for which TIMS (in the absence of the short option adjustment) would calculate the lowest amounts of additional margin, thereby assuring that the short-option adjustment is applied to those net short options which create the most risk to ICC.

As is currently the case, the modified short option adjustment would be applied only if the calculated additional margin requirement for a short option is less than 25% of the margin interval. The modified short option adjustment would continue to use the formula that is currently employed to determine the amount of the adjustment for those contracts that are subject to the adjustment.

The proposed rule change is consistent with Section 17A of the Act, as amended, because it furthers the public interest by eliminating the over-margaining of certain short positions in deep out-of-the-money options, where the risk of such positions is offset by long positions on the same underlying interest. Thereby, an impediment to market liquidity will be removed without reducing ICC's protection with respect to truly "naked" short positions in deep out-of-the-money options.

B. Self-Regulatory Organization's Statement on Burden on Competition

ICC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) as the Commission may designate up to 90 days of such date if it finds that such longer period is appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commissions will:

A. By order approve the proposed rule change; or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of ICC. All submissions should refer to the File Number SR-ICC-92-3 and should be submitted by October 13, 1992.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR DOC. 92-22920 Filed 9-21-92; 8:45 am]

BILLING CODE 8010-01-M

put options and short futures against short put options. Those net short options which remain after such netting would be subject to the short option adjustment.

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

September 16, 1992.

The above name national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Abitibi-Price, Inc.
Common Stock, No Par Value (File No. 7-9073)
ACM Managed Multi-Market Trust, Inc.
Common Stock, $.01 Par Value (File No. 7-9074)
Affiliated Publications, Inc.
Ser. A Common Stock, $.01 Par Value (File No. 7-9075)
A.L. Laboratories, Inc.
Class A Common Stock, $.20 Par Value (File No. 7-9076)
Alabama Power Co.
8.28% Pfd. $100 Par Value (File No. 7-9077)
Alabama Power Co.
8.16% Pfd. $100 Par Value (File No. 7-9078)
Alabama Power Co.
9.44% Pfd. $100 Par Value (File No. 7-9079)
Alabama Power Co.
9% Pfd. $100 Par Value (File No. 7-9080)
Alabama Power Co.
Depositary Receipts 8.72% Pfd. $100 Par Value (File No. 7-9081)
Allen Group, Inc.
$1.75 Conv. Exch. Pfd. Ser. Par Value (File No. 7-9082)
Allied Irish Banks, Plc
American Depositary Receipts, No Par Value (File No. 7-9083)
Amax, Inc.
Cov. Pfd., Ser. B, $1.00 Par Value (File No. 7-9084)
Ambase Corp.
Common Stock, $1.00 Par Value (File No. 7-9085)
American Capital Bond Fund, Inc.
Common Stock, $1.00 Par Value (File No. 7-9086)
American Capital Convertible Securities, Inc.
Comon Stock, $1.00 Par Value (File No. 7-9087)
American Heritage Life Investment Corp.
Common Stock, $1.00 Par Value (File No. 7-9088)
American Home Products Corp.
$2.00 conv. Pfd. $2.50 Par Value (File No. 7-9089)
American Ship Building Co.
Common Stock, $1.00 Par Value (File No. 7-9090)
American Water Work Co., Inc.
5% Cum. Pfd. $25.00 Par Value (File No. 7-9091)
Ameriscribe Corp.
Common Stock, $.01 Par Value (File No. 7-9092)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 7, 1992, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extension of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

[9] 17 CFR 200.30-3(a) (12) (1991).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-22935 Filed 9-21-92; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

September 16, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12 (f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Fred Meyer, Inc.
Common Stock, $.01 Par Value (File No. 7-9103)

Intermagnetics General Corporation
Common Stock, $.10 Par Value (File No. 7-9104)

Medical Care America, Inc.
Common Stock, $.01 Par Value (File No. 7-9105)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 7, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-22936 Filed 9-21-92; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

September 16, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Chase Manhattan Corporation
Pfd Stock, 8.32 PC Series, No Par Value (File No. 7-9093)

Fred Meyer, Inc.
Common Stock, $.01 Par Value (File No. 7-9094)

Intermagnetics General Corporation
Common Stock, $.01 Par Value (File No. 7-9095)

Sunrise Energy Services, Inc.
Common Stock, $1.00 Par Value (File No. 7-9096)

Equus Investments, Inc.
Common Stock, No Par Value (File No. 7-9097)

Equus II, Inc.
Common Stock, $.001 Par Value (File No. 7-9098)

Medical Care America, Inc.
Common Stock, $.01 Par Value (File No. 7-9099)

Long Island Lighting Company
7.66 PC Series C, $100 Par Value (File No. 7-9100)

Allied Research Corporation
Common Stock, $.10 Par Value (File No. 7-9101)

Williams Companies, Inc.
$2.21 Cumulative Preferred Stock (File No. 7-9102)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 7, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-22937 Filed 9-21-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18950; 812-7783]

Calvert Cash Reserves, et al.; Application

September 15, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: Calvert Cash Reserves (doing business as Money Management Plus), Calvert Tax-Free Reserves, First Variable Rate Fund for Government Income (doing business as Calvert First Government Money Market Fund), Calvert Social Investment Fund ("Trusts"), Calvert Asset Management Company, Inc., and Calvert Securities Corporation.

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from sections 18(f), 18(g), and 18(i).

SUMMARY OF APPLICATION: Applicants seek an order permitting the existing and future money market portfolios of certain investment companies to sell two classes of shares of each portfolio. Such classes will be identical in all respect except for differences relating to distribution plan expenses, if applicable, transfer agency fees, voting rights, and class expenses.

FILING DATE: The application was filed on September 6, 1991, and amended on February 14, 1992, July 21, 1992, September 1, 1992, and September 3, 1992. A supplemental letter was submitted by counsel on September 14, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may respect a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 13, 1992, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a

hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 4550 Montgomery Avenue, suite 1000N, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: Nicholas D. Thomas, Staff Attorney, at (202) 504–2283, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Trusts are organized as business trusts under the laws of the Commonwealth of Massachusetts and are open-end, diversified, management investment companies registered under the Act. Each Trust currently has one or more existing series of shares ("Funds") that hold themselves out as a money market fund. The requested relief will apply only to Funds that are money market funds. Calvert Asset Management Company, Inc. (the "Adviser") serves as the Trusts' investment adviser. Calvert Securities Corporation (the "Distributor") serves as the Trusts' principal underwriter.

2. Applicants request that any relief also supply to any future series of the Trusts and any future investment company, or series thereof, that is within the same "group of investment companies" as that term is defined in rule 11a–3 of the Act, that holds itself out as a money market fund for which two classes of shares may be issued and sold on a basis substantially similar to that described in the application.

3. The Funds' shares are sold to the general public through both retail and wholesale (third party broker-dealer) distribution channels. The Funds desire to offer their shares to institutional clients, including corporate cash managers, as well as individuals, who make a minimum investment, and maintain an average annual daily account balance, of a specified amount (currently, $1,000,000) ("Institutional Clients").[1] By creating a separate class of shares for Institutional Clients, the Funds will be able to allocate to the assets attributable to a particular class of shares the expenses directly identifiable to that class. Thus, the Funds will be able to offer Institutional Clients a lower expense ratio.

4. Certain of the Funds have a Distribution Plan pursuant to rule 12b–1 of the Act ("Distribution Plan") that permits Fund assets to be used to pay for qualifying distribution expenses, such as advertising and marketing materials, and trailing compensation to broker-dealers.[2]

5. The Trusts propose to divide each Fund into two classes of shares. The existing shares will be designated Class A. A new class will be offered to Institutional Clients and will be designated Class B. Class B will not be subject to a Distribution Plan.

6. The gross investment income of each Fund will be allocated on a *pro rata* basis based on the relative net asset value of the two classes.[3] All expenses incurred by such Fund, other than Distribution Plan expenses, if applicable, transfer agent fees, and Class Expenses (separately allocated postable and delivery, printing and stationary expenses), will be borne on a pro rata basis based on the relative net asset value of the two classes. Because of the difference in Distribution Plan expenses, if applicable, transfer agent fees, and Class Expenses, the net income of and dividends payable to the Class A shares will be somewhat lower than those paid on the Class B shares of the same Fund. Dividends and other distributions paid to each class of shares of a Fund will, however, be declared on the same days and at the same times and, except for the different expenses noted above, will be determined in the same manner and paid in the same amounts.

Applicants' Legal Analysis

1. Applicants request an exemption pursuant to section 6(c) of the Act to the extent the proposed issuance and sale of two classes of shares of each Fund, as described above, might be deemed (a) to result in the issuance of a "senior security" within the meaning of section 18(g) of the Act and thus to be prohibited by section 18(f)(1) of the Act, and (b) to violate the equal voting provisions of section 18(i) of the Act.

2. Applicants argue that the dual-class system will facilitate the distribution of the Funds' shares to all types of investors without assuming unnecessary distribution expenses for Class B. Under the proposed arrangement, Class A shareholders will continue to enjoy the benefits of personal distribution service from their brokers, as well as the additional investment safety and stability resulting from their ability to invest in established, sizable investment portfolios. Holders of both Class A and Class B shares may be relieved of a portion of their Fund's fixed costs because such costs will, potentially, be spread over a greater number of shares.

3. Applicants argue that the proposed allocation of the Distribution Plan expenses, if applicable, to a Fund's Class A shares is equitable and will not discriminate against any group of shareholders. While investors purchasing a Fund's Class A shares will bear the costs associated with the distribution assistance and shareholder services provided under the Distribution Plan, if applicable, such investors will also enjoy exclusive shareholder voting rights with respect to matters affecting the Distribution Plan relating to such Fund's Class A shares. Conversely, investors who qualify to own a Fund's Class B shares will not bear such expenses or enjoy such voting rights.

4. Applicants argue that the proposed arrangement will not raise any of the concerns that lead to the enactment of section 18 of the Act. Mutuality of risk will be preserved because shares of each class of a Fund will represent an equal, *pro rata* interest in the same investment portfolio and will be subject to the same investment risks. Further, nothing about the dual-class system will increase the speculative nature of a Fund's shares or increase the complexity of a Fund's capital structure to the point where insiders may be able to exercise control without equity or where investors may find it difficult to ascertain the value of their shares.

Applicants' Conditions

Applicants agree that the following conditions may be imposed in any order of the SEC granting the requested relief with respect to the issuance of two classes of shares of each Fund:

1. The Class A and Class B shares will represent interests in the same portfolio of investments of a Fund and will be identical in all respects, except as set forth below. The only differences between the classes of shares of the same Fund will relate solely to: (a) The

[1] Each Fund's board of directors may find it desirable in the future to raise or lower the minimum initial investment and minimum balance requirement, depending on inflation and industry practice.

[2] Those Funds that do not have a Distribution Plan have no current intention of adopting one, although they reserve the right to adopt one in the future, subject to the requisite board and shareholder approval.

[3] In a supplemental letter dated September 10, 1992, applicants' counsel corrected a typographical error related to the allocation of gross investment income. That change is reflected in this notice.

Distribution Plan expenses, if applicable, payable only by the Class A shares; (b) different transfer agency fees; (c) Class Expenses; (d) different dividend rates due solely to the effect of (a) through (c) above; (e) voting rights on matters which pertain to the Distribution Plan, and (f) any other expenses subsequently identified that should be properly allocated to one class that shall be approved by the SEC pursuant to an amended order.

2. The Trusts' Boards of Trustees, including a majority of the independent Trustees, will approve the offering of different classes of shares (the "Multi-Class System"). The minutes of the Trusts' Boards of Trustees meetings regarding their deliberations with respect to the approvals necessary to implement the Multi-Class System will reflect in detail the reasons for the Trustees' determination that the proposed Multi-Class System is in the best interests of both the Funds and their shareholders.

3. On an ongoing basis, the Trusts' Boards of Trustees, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflicts between the interests of its two classes of shares. The Trusts' Boards of Trustees, including a majority of independent Trustees, shall also take such action as is reasonably necessary to eliminate any such conflict that may develop. The Adviser and Distributor will be responsible for reporting any potential or existing conflicts to the Board. If a conflict arises, the Adviser and Distributor, each at its own cost, will remedy such conflict, up to and including establishing a new registered management investment company.

4. Any Distribution Plan adopted or amended to permit the assessment of a rule 12b–1 fee on any class of shares that has not had its Distribution Plan approved by the public shareholders of that class will be submitted to the public shareholders of such class for approval at the next meeting of shareholders after the initial issuance of the class of shares. If required by the SEC, such meeting is to be held within sixteen months of the date that the registration statement relating to such class first becomes effective or, if applicable, the date that the amendment to the registration statement necessary to offer such class of shares first becomes effective.

5. The Trusts' Boards of Trustees will receive quarterly and annual statements of the amounts received and expended under the Distribution Plan ("Statements") in compliance with the requirements of rule 12b–1, as it may be amended from time to time. In the Statements, only distribution expenditures properly attributable to the sale of a Fund's Class A shares will be used to justify the Distribution Plan expenses applicable to such class. Expenditures not related to the sale of a particular class will not be presented to the Trustees to justify any fee attributable to that class. The Statements, including the allocations upon which they are based, will be subject to the review and approval of the Trusts' independent Trustees in the exercise of their fiduciary duties under rule 12b–1, as it may be amended from time to time.

6. Dividends paid by each Fund with respect to its Class A and Class B shares will be calculated in the same manner, at the same time, on the same day, and will be in the same amount except for the effect of the Distribution Plan expenses, if applicable, transfer agent fees, and Class Expenses borne by the appropriate class.

7. The methodology and procedures for calculating the net asset value and dividend/distributions of each Fund's Class A shares and Class B shares and the proper allocation of expenses between the two classes have been reviewed by an expert (the "Expert"), and the Expert has rendered a report to the Trusts, which has been provided to the staff of the SEC, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert (or an appropriate substitute Expert) will monitor the manner in which the calculations and allocations are made and, based upon such review, will render a report to the Trusts' Boards of Trustees at least annually that the calculations and allocations are being made properly. The Expert's reports will be filed with the SEC with the periodic reports filed by the Trusts with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act and the Expert's work papers with respect to such reports, following the Trusts' request which the Trusts agree to provide, will be available for inspections by the SEC staff upon written request by a senior member of the Division of Investment Management or of a regional office of the SEC. Authorized staff members will be limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrator or Associate or Assistant Regional Administrator. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" and the ongoing reports will be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defined and described in the Statement of Auditing Standards No. 44 ("SAS No. 44") of the American Institute of Certified Public Accountants ("AICPA"), as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

8. The Trusts have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividend/distributions of each Fund's Class A shares and Class B shares and the proper allocation of expenses between the two classes of shares and this representation has been concurred with by the Expert in the initial report referred to in condition (7) above, and will be concurred with by the Expert (or an appropriate substitute Expert) on an ongoing basis at least annually in the ongoing reports referred to in condition (7) above. The Trusts will take immediate corrective action if the Expert (or appropriate substitute Expert) does not so concur in the ongoing reports.

9. The prospectus of a Fund will contain a statement to the effect that a salesperson or any other person entitled to receive compensation for selling Fund shares may receive different compensation with respect to one particular class of shares over another in the Fund.

10. The Distributor will adopt compliance standards as to when Class A and Class B shares may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Fund to agree to conform to such standards.

11. The conditions pursuant to which the exemptive order requested by the application is granted and the duties and responsibilities of the Trusts' Boards of Trustees with respect to the offering of dual classes of shares by the Trusts will be set forth in guidelines which will be furnished to each Trustee.

12. Each Fund will disclose the respective expenses, performance data, distribution arrangements, services, fees, and restrictions (minimum investment, etc.) applicable to its Class A and Class B shares in every prospectus, regardless of whether both classes of shares are offered through such prospectus. Each Fund will also disclose the respective expenses and performance data applicable to both classes of shares in every shareholder report. To the extent any advertisement or sales literature describes the

expenses or performance data applicable to either class of shares, it will also disclose the respective expenses and/or performance data applicable to the other class of shares. The information provided by applicants for publication in any newspaper or similar listing of a Fund's net asset value and public offering price will present each class of shares separately.

13. Applicants acknowledge that the grant of the exemptive order requested by this application will not imply SEC approval, authorization, or acquiescence in any particular level of payments that the Trusts may make under the Distribution Plan or otherwise in reliance on the exemptive order.

14. The initial determination of the Class Expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the board of trustees of the Fund including a majority of the trustees who are not interested persons of the Fund. Any person authorized to direct the allocation and disposition of monies paid or payable by a Fund to meet Class Expenses shall provide to the board of trustees, and the trustees shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-22854 Filed 9-21-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC—18949; 811-6396]

FX Currency Mutual Fund, Inc.; Application for Deregistration

September 14, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: FX Currency Mutual Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N-8F was filed on June 15, 1992, and amended on September 2, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 9, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 701 Lee Street, suite 740, Des Plaines, Illinois 60016.

FOR FURTHER INFORMATION CONTACT: Felicia H. Kung, Senior Attorney, at (202) 504-2803, or Elizabeth G. Osterman, Branch Chief, at (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a Colorado corporation registered under the Act as a closed-end non-diversified management investment company. On August 22, 1991, applicant filed a notification of registration under section 8(a) of the Act. Applicant has never filed a registration statement under the Act or under the Securities Act of 1933.

2. Applicant has never made, is not making, and does not presently propose to make a public offering of its securities. Applicant has ten shareholders, all of whom are natural persons.

3. With the unanimous approval of all of its shareholders, applicant has been reorganized to act as a management company for closed-end mutual funds rather than as an investment company. Upon deregistration, applicant plans to use a large portion of the balance of its assets to make a $100,000 standby investment in a mutual fund that will be registered with the Commission.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-22855 Filed 9-21-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18952; 812-7923]

Salomon Brothers Asset Management Inc., et al.

September 15, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of filing of reports pursuant to Temporary Order under section 9(c) of the Investment Company Act of 1940 (the "Act").

APPLICANTS: Salomon Brothers Asset Management Inc. ("SBAM") and Salomon Brothers Inc. ("SBI").

RELEVANT 1940 ACT SECTIONS: Permanent order requested under section 9(c) for an exemption from the provisions of section 9(a) of the Act.

SUMMARY OF APPLICATION: Applicants filed an application pursuant to section 9(c) of the Act on May 20, 1992 ("Application") for both temporary and permanent orders exempting them from the provisions of section 9(a) of the Act, operative as a result of the entry of a securities-related injunction against SBI and its ultimate parent, Salomon Inc. The filing of the Application was noticed and a conditional temporary order was issued on May 20, 1992, Investment Company Act Release No. 18717, granting the requested temporary exemption from section 9(a) ("Temporary Order"). The Temporary Order was conditioned upon, *inter alia*, applicants' undertaking to submit a report by independent consultants reviewing the policies and procedures used by applicants to prevent and detect violations of the Federal securities laws in connection with their investment company businesses and recommending, where appropriate, changes in policies and procedures to ensure that such policies and procedures, if complied with, will be reasonably adequate to prevent and detect such violations (the "Consultants' Report"). Applicants have filed the Consultants' Report, a supplement thereto, and their own report setting forth the action they have taken or propose to take concerning the implementation of the Consultants' recommendations (the "Applicants' Report"). The Commission is providing an opportunity for public review of the reports and for interested persons to comment on the Application for a permanent section 9(c) order based on the information contained in the reports.

FILING DATES: The Application was filed on May 20, 1992. The Consultants' Report was filed on July 24, 1992, the Applicants' Report was filed on August 10, 1992, and the supplement to the

Consultants' Report was filed on September 10, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 22, 1992, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, Seven World Trade Center, New York, New York 10048.

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, Staff Attorney, at (202) 272-7648, or Elizabeth G. Osterman, Branch Chief, at (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The complete Application may be obtained for a fee at the SEC's Public Reference Branch at its Headquarters Office in Washington, DC. Copies of the Consultants' Report, the supplement thereto, and the Applicants' Report also are available for public inspection in the SEC's Public Reference Branch. For further information, refer to the Temporary Order (Investment Company Act Release No. 18717, May 20, 1992).

Notice of Filing of Report

1. Notice is hereby given that applicants, pursuant to the terms of the Temporary Order, filed the Consultants' Report on July 24, 1992, the Applicants' Report to the Commission setting forth the actions they have taken or propose to take in response to the recommendations contained in the Consultants' Report on August 10, 1992, and a supplement to the Consultants' Report on September 10, 1992.

2. Interested persons wishing to comment on the Application based on information contained in the reports may do so. As noted above, such comments should be filed with the Secretary of the SEC by 5:30 p.m. on October 22, 1992.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-22934 Filed 9-21-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18951; 812-7946]

Smith Barney Equity Funds, Inc., et al.; Application

September 15, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Smith Barney Equity Funds, Inc., Smith Barney Funds, Inc., Smith Barney Variable Account Funds, The Inefficient-Market Fund, Inc. (the "Funds"), Smith, Barney Advisers, Inc., Smith Barney, Harris Upham & Co. Incorporated (the "Advisers"), and all future series of existing funds and future investment companies that are advised by the Advisers or a subsidiary or affiliate thereof.

RELEVANT ACT SECTIONS: Section 17(d) of the Act and rule 17d-1 thereunder.

SUMMARY OF APPLICATION: Applicants seek a conditional order to permit the Funds to participate in a joint trading account to be used to enter into repurchase agreements.

FILING DATE: The application was filed on June 22, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 13, 1992, and should be accompanied by proof of service on the applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o Smith Barney, Harris Upham & Co. Incorporated, 1345 Avenue of the Americas, New York, NY 10105.

FOR FURTHER INFORMATION CONTACT: James M. Curtis, Staff Attorney, at (202) 504-2406 or Barry D. Miller, Senior Special Counsel, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Smith Barney Equity Funds, Inc., Smith Barney Funds, Inc., and Smith Barney Variable Account Funds are open-end diversified management investment companies registered under the Act. The Inefficient-Market Fund, Inc. is a closed-end non-diversified management investment company registered under the Act. Smith Barney Equity Funds, Inc., Smith Barney Funds, Inc., and The Inefficient-Market Fund, Inc. are Maryland corporations. Smith Barney Variable Account Funds is a Massachusetts business trust.

2. The Advisers are the investment advisers for the Funds.

3. Applicants expect that the Funds will have uninvested cash balances in their accounts at the custodian bank that would not be otherwise invested in portfolio securities by the Advisers. Generally, such assets are, or would be, invested in short-term liquid assets, including repurchase agreements. Presently, the Advisers must purchase such instruments separately on behalf of each Fund and will have to continue to do so unless the requested relief is granted. Applicants believe that the separate purchasing of these instruments by each Fund results in certain inefficiencies, a limitation on the return which some or all of the Funds could otherwise achieve, and increased costs. Therefore, applicants seek an exemptive order permitting the Funds to deposit the uninvested cash balances remaining at the end of each trading day into one joint account, the daily balance of which would be used to enter into one or more short-term repurchase agreements in a total amount equal to the aggregate daily balance in the account.

4. The sole function of the joint account would be to provide a convenient means of aggregating what otherwise would be one or more daily transactions for which Fund necessary to manage their respective daily uninvested cash balances. The amount of cash invested in the joint account by each qualifying Fund likely would fluctuate daily based upon other portfolio transactions, applicable investment strategies and, for open-end Funds, daily share purchases and

redemptions. The joint account would not be distinguishable from any other account maintained by a Fund with the custodian bank except that monies from Each Fund could be deposited in the custodian bank on a commingled basis. The account would not have any separate existence which would have indicia of a separate legal entity.

5. The Advisers would be responsible for negotiating the terms of the repurchase agreements in accordance with the guidelines and policies established by the Funds. The Advisers would have no monetary participation in the joint account but would be responsible for investing Fund assets in the account, establishing accounting and control procedures, ensuring the equal treatment of each Fund, and ensuring that the assets of the Funds would continue to be held under proper bank custodial procedures.

6. Each Fund would participate in the joint account on the same basis as every other Fund in conformity with its fundamental investment objectives and policies. All Fund assets would continue to be held under proper bank custodial procedures. A Fund's decision to participate in the joint account would be solely at the option of the Fund. A Fund would not be required to maintain a minimum balance in the joint account and will be permitted to withdraw all or any portion of its investment in the joint account at any time. Therefore, in the opinion of applicants, any Fund's investment in the joint account would not be subject to the claims of creditors, whether brought in bankruptcy, insolvency or other legal proceeding, of any other participant Fund in the joint account. Moreover, each Fund's liability on any repurchase agreement purchased by the joint account will be limited to its interest in such repurchase agreement.

7. Applicants believe that if the proposed joint account were in place at the custodian bank during the 12 month period ending December 31, 1991, and the daily cash balances were invested in a repurchase agreement each business day, the estimated aggregate transaction cost savings would have been approximately $10,800. The joint account would save the Funds transaction fees, allow the Funds to negotiate higher rates of return, and reduce the possibility of errors by reducing the number of trade tickets.

8. In connection with the use of repurchase agreements, each of the Funds has established the same systems and standards. These include equality standards for issuers of the repurchase agreements and requirements that the repurchase agreements be at least 100% collateralized at all times. The systems and standards established by each Fund comply with requirements regarding repurchase agreements set forth by the Commission in its published releases, guidelines, and interpretations with respect to repurchase agreements, including, to the fullest extent of applicants' knowledge, all "no-action" letters. Any joint repurchase agreement transactions entered into through the proposed trading account will comply with the standards and guidelines set forth in Investment Company Act Release No. 13005 (February 2, 1983) and with any existing and future positions taken by the Commission or its staff by rule, release, letter or otherwise relating to repurchase agreement transactions.

9. Cash in the joint account will be invested only in repurchase agreements collateralized by suitable U.S. Government obligations, *i.e.*, obligations issued or guaranteed as to principal and interest by the government of the United States or by any of its agencies or instrumentalities, and satisfying the policies and guidelines of the Funds concerning repurchase agreements. Particular U.S. Government obligations to be held as collateral would be identified and the Funds' custodian bank would be notified. The securities would either be wired to the account of the custodian bank at the proper Federal Reserve Bank, transferred to a sub-custodian account of the Funds at another qualified bank or redesignated and segregated on the records of the custodian bank if the custodian bank is already the recorded holder of the collateral for the repurchase agreement. This procedure would occur on almost every trading day for each of the Funds that wish to enter into joint repurchase agreements. Applicants note that presently each Fund must separately pursue, secure, and implement such investments. This has resulted in certain inefficiencies, and may limit the return which some or all Funds achieve.

Applicants' Legal Analysis

1. Each Fund participating in the proposed joint account and each Adviser, by managing the proposed account, could be deemed to be "a joint participant" in a transaction within the meaning of section 17(d) of the Act. In addition, the proposed account could be deemed to be a "joint enterprise or other arrangement" within the meaning of rule 17d-1 under the Act.

2. The Board of Directors/Trustees of each Fund considered the proposed joint account and determined that the use of such account will be beneficial to each participating Fund for the reasons set forth herein.

3. The Board of Directors/Trustees of each Fund have determined that the proposed method of operating the joint account will not result in any conflicts of interests among the joint participants. They have further determined that there does not appear to be any basis on which to predicate greater benefit to one Fund than to another, because the daily uninvested cash balance in any one Fund on any given day is not solely a function of the Fund's asset level not of the particular securities in which it invests. Other relevant factors include portfolio management decisions, settlement of trades on days other than predicted and, for the open-end Funds, shareholder purchases and redemptions. The Boards considered the fact that although the Advisers can gain some benefit through administrative convenience and some possible reduction in clerical costs, the primary beneficiaries will be the Funds and their shareholders, because the joint account may earn higher returns for the Funds and would be a more efficient means of administering daily investment transactions.

4. On the basis of their considerations, the Boards of Directors/Trustees have determined that the operation of the joint account will be free of any inherent bias favoring one Fund over another, and the anticipated benefits flowing to each Fund will be fair. They further determined that the future participation in such joint trading account by one or more new series of the Funds and new investment companies that are advised by the Advisers or a subsidiary or affiliate thereof would not alter their conclusions with respect to participation by the present Funds, and that it would be desirable to permit such future participation without the necessity of applying for an amendment to the requested order.

Applicants' Conditions

The following procedures are hereby consented to as conditions to any order issued by the Commission if the Commission so requires:

1. A separate cash account will be established at the custodian bank into which each participating Fund would deposit its daily uninvested net cash balances. Each Fund that has a custodian a bank other than the bank at which the proposed joint account is maintained and that wishes to participate in the joint account will appoint the latter bank as sub-custodian for the limited purpose of receiving cash for deposit into the proposed joint account. All Funds that appoint as sub-custodian the bank at which the

proposed joint account will be maintained will have taken all actions necessary, including all actions required under the Act, to authorize such bank to act as their legal custodian.

2. Cash in the joint account will be invested only in repurchase agreements collateralized by suitable U.S. Government obligations, *i.e.*, obligations issued or guaranteed as to principal and interest by the government of the United States or by any of its agencies or instrumentalities, and satisfying the policies and guidelines of the Funds concerning repurchase agreements. Any such repurchase agreement will have, with rare exceptions, an overnight or over-the-weekend duration, and in no event will it have a duration of more than seven days.

3. All investments held by the joint account will be valued on an amortized cost basis. Each participating Fund subject to an exemptive order permitting valuation on the basis of amortized cost, or relying upon rule 2a-7 under the Act for that purpose, will use the average maturity of the joint account for the purpose of computing that Fund's average portfolio maturity with respect to the portion of its assets held in such account on that day.

4. In order to assure that there would be no opportunity for one Fund to use any part of a balance of the joint account credited to another Fund, no Fund shall be allowed to create a negative balance in the joint account for any reason, although it will be permitted to draw down its entire balance at any time. Each Fund's decision to invest in the joint account will be solely at its option; a Fund will not be required either to invest a minimum amount or to maintain a minimum balance. Each Fund will retain the sole ownership rights of any of its assets invested in the joint account, including any interest payable on the assets invested in the joint account. Each Fund's investment in the joint account will be documented daily on the books of the Fund as well as on the books of the custodian bank.

5. Each Fund would participate in the income earned or accrued in the joint account and all instruments held in the joint account (*i.e.*, cash and U.S. Government securities subject to repurchase agreements) on the basis of the percentage of the total amount in such account on any day represented by its share of the account. Expenses associated with the joint account arrangement will also be allocated to the participating Funds based upon the percentage of the total amount in the account on any day represented by its share of the account.

6. Under the general terms of each Fund's management or investment advisory agreement, the Advisers will administer the investment of the cash balances in and the operation of the joint account and will not collect any separate fees for the management of the joint account.

7. The Funds and the Advisers will enter into an agreement to govern the joint account arrangement in accordance with the foregoing principles.

8. The administration of the joint account will be within the fidelity bond coverage required by section 17(g) of the Act and rule 17g-1 thereunder. The Funds currently are insured under a joint fidelity bond.

9. The Board of Directors/Trustees of each of the Funds and any future Funds participating in the joint account will evaluate annually the joint account arrangement and will continue participating in the account only if they determine that there is a reasonable likelihood that the participating Fund and its shareholders would benefit from continued participation.

10. Any future series of existing Funds and new investment companies that are advised by the Advisers or a subsidiary or affiliate thereof will be permitted to participate in the joint account only on the same terms and conditions as the existing Funds have set forth herein.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-22928 Filed 9-21-92; 8:45 am]

BILLING CODE 8015-01-M

DEPARTMENT OF STATE

[Public Notice 1699]

Statutory Debarment Under the International Traffic in Arms Regulations

AGENCY: Department of State.

ACTION: Notice correction.

SUMMARY: A public notice was published in the **Federal Register** on Tuesday, August 18, 1992 (57 FR 37184) listing persons statutorily debarred under the International Traffic in Arms Regulations. The following are corrections to that notice.

FOR FURTHER INFORMATION CONTACT: Clyde G. Bryant, Jr., Chief, Compliance Analysis Division, Office of Defense Trade Controls, Department of State (703) 875-6650.

Accordingly, FR doc 92-19557, published at 57 FR 37184, Tuesday, August 18, 1992 is corrected on page 37185, second column, lines 12 through 33 to read as follows:

1. Dilligas Trading Co., Inc., 22 U.S.C. 2778, December 13, 1991, Eastern District of Virginia
2. George R. Mitchell, 22 U.S.C. 2778, January 17, 1992, District of Maryland
3. Novacom, Inc., 22 U.S.C. 2778, December 13, 1991, Eastern District of Virginia
4. Pan Aviation, Inc., 18 U.S.C. 371 (conspiracy to violate 22 U.S.C. 2778) and 22 U.S.C. 2778, January 23, 1992, Southern District of Florida
5. Sarkis G. Soghanalian, 18 U.S.C. 371 (conspiracy to violate 22 U.S.C. 2778) and 22 U.S.C. 2778, January 29, 1992, Southern District of Florida.

Dated: September 8, 1992.

William B. Robinson,

Director, Office of Defense Trade Controls, Bureau of Politico-Military Affairs, Department of State.

[FR Doc. 92-22722 Filed 9-21-92; 8:45 am]

BILLING CODE 4710-25-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Receipt of Revision to Noise Compatibility Program and Request for Review, McGhee Tyson Airport, Knoxville, TN

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed revision to the noise compatibility program that was submitted for McGhee Tyson Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96-193) hereinafter referred to as "the Act") and 14 CFR part 150 by Metropolitan Knoxville Airport Authority. The existing noise compatibility program was approved May 5, 1989. This program revision was submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR part 150 for McGhee Tyson were in compliance with applicable requirements effective November 9, 1988. The proposed revision to the noise compatibility program will be approved or disapproved on or before March 7, 1993.

EFFECTIVE DATE: The effective date of the start of FAA's review of the revision

to the noise compatibility program is September 8, 1992. The public commitment period ends November 7, 1992.

FOR FURTHER INFORMATION CONTACT: Peggy S. Kelley, Memphis Airports District Office, 2851 Directors Cove, suite 3, Memphis, Tennessee 38131–0301. Telephone 901–544–3495. Comments on the proposed revision to the noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed revision to the noise compatibility program for McGhee Tyson Airport which will be approved or disapproved on or before March 7, 1993. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposed for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the proposed revision to the noise compatibility program for McGhee Tyson Airport, effective September 8, 1992. It was requested that the FAA review this material and that the noise mitigation measures to be implemented by the airport be approved as additional measures to the noise compatibility program under section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days will be completed on or before March 7, 1993.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, the noise compatibility program, and the proposed revisions to the noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., room 617, Washington, DC 20591.

Federal Aviation Administration, Memphis Airports District Office, 2851 Directors Cove, suite 3, Memphis, Tennessee 38131–0301.

Administrative Offices, Metropolitan Knoxville Airport Authority, McGhee Tyson Airport, Alcoa, Tennessee 37701.

Questions may be directed to the individual named above under the heading, "For Further Information Contact".

Issued in Memphis, Tennessee, September 8, 1992.

Wayne Miles,

Assistant Manager, Memphis Airports District Office.

[FR Doc. 92–22880 Filed 9–21–92; 8:45 am]

BILLING CODE 4910–13–M

Noise Exposure Map Notice and Receipt of Noise Compatibility Program and Request for Review

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration. (FAA) announces its determination that the noise exposure maps submitted by Pueblo Municipal Airport (PUB) under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing proposed noise compatibility program that was submitted for Pueblo Municipal Airport under part 150 in conjunction with the noise exposure maps, and that this program will be approved or disapproved on or before March 9, 1993

EFFECTIVE DATE: The effective date of the FAA's determination on the Pueblo Municipal Airport noise exposure maps and the start of its review of the associated noise compatibility program is September 10, 1992. The public comment period ends October 16, 1992.

FOR FURTHER INFORMATION CONTACT: Dennis Ossenkop, FAA, Airports Division, ANM–611, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps for Pueblo Municipal Airport are in compliance with applicable requirements of part 150, effective September 10, 1992. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before March 9, 1993. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA a noise exposure map which meets applicable regulations and which depicts noncompatible land uses as of the date of submission of such map, a description of projected aircraft operations, and the ways in which such operations will affect such map. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An airport operator who has submitted a noise exposure map that has been found by FAA to be in compliance with the requirements of Federal Aviation Regulation (FAR) part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The Airport Director for Pueblo Municipal Airport submitted to the FAA noise exposure maps, descriptions and other documentation which were produced during an airport Noise Compatibility Study. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by PUB. The specific maps under consideration are Exhibits 5–4 and 5–6 in the submission. The FAA has determined that these maps for Pueblo Municipal Airport are in compliance with applicable

requirements. This determination is effective on September 10, 1992. FAA's determination on an airport operator's noise exposure maps is limited to the determination that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on noise exposure maps submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable for the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the maps depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of the FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for PUB, also effective on September 10, 1992. Preliminary review of the submitted material indicates that is conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before March 9, 1993.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to the local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Independence Avenue, SW., room 615, Washington, DC.

Federal Aviation Administration, Airports Division, ANM-600, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Pueblo Municipal Airport, Pueblo, Colorado.

Questions may be directed to the individual named above under the heading, For Further Information Contact.

Issued in Renton, Washington, September 10, 1992.

Edward G. Tatum,

Manager, Airports Division, ANM-600, Northwest Mountain Region.

[FR Doc. 92-22879 Filed 9-21-92; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-92-26]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before October 12, 1993.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Mr. C. Nick Spithas, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9704.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on September 15, 1992.

Denise D. Castaldo,

Manager, Program Management Staff.

Docket No.: 22706.

Petitioner: Bankair, Inc.

Sections of the FAR Affected: 14 CFR § 135.225(e)(1)

Description of Relief Sought: To extend and amend Exemption No. 5090, as amended, from § 135.225(e)(1) of the Federal Aviation Regulations (FAR). This exemption allows Bankair pilots to operate their aircraft from the following military bases using takeoff visibility minimums, subject to the approval of the appropriate military authority, which are less than 1 mile and are equal to or greater than the landing visibility minimum established for these airfields:

Seymour Johnson AFS	Sherman AAF
Norfolk NAS	Key West NAS
Pope AFB	Dobbins AFB
Pensacola NAS	Shaw AFB
Cairns AAF	Myrtle Beach AFB
Lawson AAF	Tyndal AFB
Campbell AAF	Eglin AFB
Hunter AAF	Keesler AFB
Simmons AAF	Maxwell AFB
MacDill AFB	New River MCAS
Davison AAF	Wright AAF
Langley AFB	Moore AAF
Oceana NAS	Godman AAF
Felker AAF	Polk AAF

Docket No.: 24605.

Petitioner: World Jet Corporation/Executive Jet.

1*Sections of the FAR Affected*: 14 CFR 91.511(a) and 135.165(b).

Description of Relief Sought: To extend Exemption No. 4961, as

amended, from §§ 91.511(a) and 135.165(b) of the Federal Aviation Regulations (FAR) which allows World Jet Corporation/Executive Jet to operate certain aircraft in extended overwater operations using one long-range navigation system and one high-frequency communications system. The petitioner requests the addition of a Cessna Citation CE-650 to the existing exemption.

Docket No.: 25345.

Petitioner: National Business Aircraft Association, Inc.

Sections of the FAR Affected: 14 CFR 91511(a)(2).

Description of Relief Sought: To amend Exemption No. 5127A which allows the National Business Aircraft Association, Inc. to operate in certain specified areas of the western Atlantic, Caribbean, and Gulf of Mexico with a single Long-Range Navigation device with only a single automatic direction finder (ADF) instead of the required minimum of two ADFs.

Docket No.: 26874.

Petitioner: Mr. Gordon E. Smith.

Sections of the FAR Affected: 14 CFR 61.155(d)(2).

Description of Relief Sought: To allow Mr. Gordon E. Smith to credit part of his military flight engineer time toward an airline transport pilot certificate without participating in a Federal Aviation Administration (FAA)-approved part 121 pilot training program.

Docket No.: 26905.

Petitioner: Federal Express Corporation.

Sections of the FAR Affected: 14 CFR 121.343(c).

Description of Relief Sought: To permit Federal Express Corporation to continue operation of aircraft, after May 26, 1994, that are not equipped with a digital flight data recorder which records 11, rather than 6, parameters of the aircraft operation.

Docket No.: 26943.

Petitioner: National Charter Network, Inc.

Sections of the FAR Affected: 14 CFR 43.3(g).

Description of Relief Sought: To allow pilots employed by National Charter Network, Inc., to change the configuration of its Lear 35 aircraft from Passenger to air ambulance configuration, and the converse, when no certificated mechanic is readily available.

Dispositions of Petitions

Docket No.: 076CE.

Petitioner: Raisback Engineering.

Sections of the FAR Affected: 14 CFR 3.242.

Description of Relief Sought/Disposition: To remove a condition in the grant of exemption from a portion of § 3.242(b) of the Civil Air Regulations. Raisback is seeking supplemental type certification of various Beech Aircraft Corporation Model 90 series airplanes having a landing weight less than 95 percent of the maximum takeoff weight without installing a fuel jettisoning system. Grant, August 21, 1992, Exemption No. 5146A.

Docket No.: 25974.

Petitioner: Air Transport Association of America.

Sections of the FAR Affected: 14 CFR 91.203 and 47.49.

Description of Relief Sought/Disposition: To amend Exemption No. 5318 which permits Air Transport Association of America member airlines to operate to the extent necessary certain registered aircraft in domestic airline operations without the registration and/or airworthiness certificates on board. Grant, August 25, 1992, Exemption No. 5318A.

Docket No.: 26599.

Petitioner: Regional Airline Association.

Sections of the FAR Affected: 14 CFR 91.203 and 47.49.

Description of Relief Sought/Disposition: To permit temporary operation of U.S.-registered aircraft in domestic airline operations without the registration of airworthiness certificates on board. Grant, August 25, 1992, Exemption No. 5515.

Docket No.: 26754.

Petitioner: Skydive City, Inc.

Sections of the FAR Affected: 14 CFR 105.43(d).

Description of Relief Sought/Disposition: To exempt Skydive City, Inc. from the regulation by amending the definition of "approved parachute" to permit nonstudent, foreign skydivers to use parachute equipment that has been approved or accepted in their respective countries while participating in activities at Skydive City, Inc.'s facilities in the United States. Denial, August 25, 1992, Exemption No. 5514.

Docket No.: 26764.

Petitioner: Florida West Airlines.

Sections of the FAR Affected: 14 CFR 121.583(a)(8).

Description of Relief Sought/Disposition: To permit Florida West Airlines to transport employee dependents on its all cargo flights without those dependents being on company business traveling to or from outlying stations not served by adequate regular passenger flights. Grant, September 1, 1992, Exemption No. 5516.

[FR Doc. 92-22881 Filed 9-21-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Notice of Intent To Rule on Application To Impose a Passenger Facility Charge (PFC) at Valdosta Regional Airport, Valdosta, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose a PFC at Valdosta Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before October 22, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: DOT/FAA/Atlanta Airports District Office, 1680 Phoenix Parkway, suite 101, Atlanta, Georgia 30349.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Richard R. Clark, Executive Director of the Valdosta-Lowndes County Airport Authority, at the following address: Valdosta Regional Airport, 2614 Madison Highway, Valdosta, Georgia 31601.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Valdosta-Lowndes County Airport Authority under § 158.23 of part 158

FOR FURTHER INFORMATION CONTACT: Catherine M. Nelmes, Program Manager, DOT/FAA/Atlantic Airports District Office, 1680 Phoenix Parkway, suite 101, Atlanta, Georgia 30349, telephone number (404) 994-5306. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose a PFC at Valdosta Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public law

101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On September 16, 1992, the FAA determined that the application to impose a PFC submitted by Valdosta-Lowndes County Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 23, 1992.

The following is a brief overview of the application.

Level of the proposed PFC: $3,000

Proposed charge effective data: March 1, 1993.

Proposed charge expiration date: September 30, 1997.

Total estimated PFC revenue: $260,526.

Brief description of proposed project: Passenger Terminal Building.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under "FOR FURTHER INFORMATION CONTACT."

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Valdosta Regional Airport, 2614 Madison Highway, Valdosta, Georgia.

Issued in Atlanta, Georgia on September 16, 1992.

Stephen A. Brill,

Manager, Airports Division Southern Region.

[FR Doc. 92–22990 Filed 9–21–92; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: September 16, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New

Form Number: None

Type of Review: New Collection

Title: Focus Groups on the Totally Integrated Examination System (TIES)

Description: These focus groups will be conducted as part of an effort to evaluate the Totally Integrated Examination System (TIES) as it applies to taxpayer burden, speed, accuracy, and clarity of reports and letters

Respondents: Small businesses or organizations

Estimated Number of Respondents: 18

Estimated Burden Hours Per Respondents: 3 hours, 37 minutes

Frequency of Response: Other (One-time Focus Groups)

Estimated Total Reporting Burden: 65 Hours

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503

Dale A. Morgan,

Department Reports, Management Officer.

[FR Doc. 92–22901 Filed 9–21–92; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

Date: September 16, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Comptroller of the Currency

OMB Number: 1557–0154

Form Number: None

Type of Review: Reinstatement

Title: Investment in Bank Premises or Stock of a Corporation Holding Premises (12 CFR 7.3100)

Description: This regulation prescribes procedures necessary for a national bank to comply with statutory restrictions on its investment in bank premises. National banks wishing to invest an amount greater than capital stock must obtain OCC approval under 12 U.S.C. 371d

Respondents: Businesses or other for-profit, Small businesses or organizations

Estimated Number of Respondents: 589

Estimated Burden Hours Per Response: 1 hour

Frequency of Response: On occasion

Estimated Total Reporting Burden: 589 hours

Clearance Officer: John Ference (202) 874–4697, Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

OMB Reviewer: Gary Waxman (202) 395–7340, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 92–22903 Filed 9–21–92; 8:45 am]

BILLING CODE 4810–33–M

UNITED STATES INFORMATION AGENCY

Meeting of the Cultural Property Advisory Committee

The Cultural Property Advisory Committee will meet on October 1 and 2, 1992 at USIA Headquarters, 301 Fourth Street SW., Washington, DC 20547. In order to gain admittance to the building, those wishing to attend the open portions of the Committee's meeting should contact Maude Keys at 619–6612 no later than 4 p.m. on Wednesday, September 30. The meeting's agenda is as follows:

Thursday, October 1

3–5 p.m.—*Open to the Public:* Meeting of Subcommittee which is assessing the effectiveness of U.S. import bans on certain artifacts of El Salvador, Bolivia, Peru and Guatemala.

Friday, October 2

9 a.m.–2:30 p.m.—*Closed to the Public:* Review of request for assistance from the Government of Mali.

2:30 p.m.–4:30 p.m.—*Open to the Public:* General Committee business.

Those portions of the meeting concerned with the Committee's review, findings and recommendations with respect to a request from the Government of Mali for assistance under Article 9 of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property will be closed to the public in accordance with 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h).

Dated: September 14, 1992.

Eugene P. Kopp,

Acting Director, United States Information Agency.

[FR Doc. 92-22878 Filed 9-21-92; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Patti Viers, Records Management Service (723), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 (202) 233-3172.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before October 22, 1992.

Dated: September 11, 1992.

By direction of the Secretary.

Donald R. Howell,

Chief, Information Management Division.

Extension

1. Application for Accreditation as Service Organization Representative, VA Form 21, and Appointment of Attorney or Agent as Claimant's Representative, VA Form 22a.

2. The forms are used to appoint a service organizations, attorney or agent as a representative in claims for VA benefits.

3. Individuals or households; State and local government; Non-profit institutions; Small businesses or organizations.

4. 1,650 hours.

5. 10 minutes.

6. On occasion.

7. 6,600 respondents.

[FR Doc. 92-22839 Filed 9-21-92; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 184
Tuesday, September 22, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 57 F.R. 41971.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., Tuesday, September 29, 1992.

CHANGES IN THE AGENDA:

The Commodity Futures Trading Commission has added to the agenda an open meeting to discuss Rule 1.55—Proposed Risk Disclosure Simplification Amendments. The meeting will be held in the lower level hearing room.

The Rule Enforcement Review previously scheduled for 10:00 a.m. will be held at 11:00 a.m.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 92–23063 Filed 9–18–92; 3:22 pm]

BILLING CODE 6351-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, September 24, 1992.

PLACE: Room 600, 1730 K Street, N.W., Washington, DC

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)]

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Southern Ohio Coal Company*, Docket No. LAKE 91–650–R, etc. (Issues include whether the judge erred in concluding that Southern Ohio Coal Company violated 30 CFR § 75.1704–2(a), which requires that escapeways follow the "safest direct practical route" out of the mine.

It was determined by a unanimous vote of Commissioners that this meeting be held in closed session.

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay 1–800–877–8339 for Toll Free.

Dated: September 17, 1992.

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 92–23125 Filed 9–18–92; 3:24 pm]

BILLING CODE 6735-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, September 28, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW, Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments. (This item was originally announced for a closed meeting on September 8, 1992.)
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 18, 1992.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 92–23127 Filed 9–18–92; 3:31 pm]

BILLING CODE 6210-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Monday, September 28, 1992.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: The first two items are open to the public. The last item is closed to the public under Exemption 10 of the Government in Sunshine Act.

MATTERS TO BE CONSIDERED:

5464A—Highway Accident Report: Multiple Vehicle Collisions and Fire During Limited Visibility (Fog) on I–75, new Calhoun, Tennessee, December 11, 1990

5840—Railroad Accident Summary Report: Head-on Collision and Derailment of Norfolk Southern Train with Train 277 and Release of hazardous Materials, Knox, Indiana, September 17, 1991

5845—Opinion and Order: Richard Pine and William Ter Keurst v. Administrator; Docket SE–8920 and 9080; disposition of applicants' appeal. (Calendared by Member Hart.)

NEWS MEDIA CONTRACT: Telephone (202) 382–0660.

FOR MORE INFORMATION CONTRACT: Bea Hardesty, (202) 382–6525.

Dated: September 17, 1992.

Bea Hardesty,
Federal Register Liaison Officer.

[FR Doc. 92–23027 Filed 9–18–92; 11:08 am]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

DATES: Weeks of September 21, 28, October 5, and 12, 1992.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of September 21

Thursday, September 24

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Final Rule, 10 CFR Part 20, "Disposal of Waste Oil by Incineration"—Response to Petition for Rulemaking from Edison Electric Institute and the Utility Nuclear Waste Management Group

Week of September 28—Tentative

Tuesday, September 29

2:00 p.m.
Briefing on AEOD Annual Report (NUREG–1272, Vol. 6, Nos. 1 and 2) (Public Meeting)

Wednesday, September 30

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of October 5—Tentative

Wednesday, October 7

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of October 12—Tentative

Wednesday, October 14

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meeting Call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504–1661.

Dated: September 17, 1992.

Andrew L. Bates,

Office of the Secretary.

[FR Doc. 92–23110 Filed 9–18–92; 3:23 pm]

BILLING CODE 7565-01-M

NATIONAL COUNCIL ON DISABILITY

Quarterly Meeting and Conference

AGENCY: National Council on Disability

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming hearings of the National Council on Disability on ADA Watch, and Minorities with Disabilities and the Implementation of the Americans with Disabilities Act. This notice also describes the functions of the National Council. Notice of this meeting is required under section 522(b)(10) of the "Government in Sunshine Act" (P.L. 94–409).

DATES:

ADA Watch Hearing

October 20, 1992, 8:30 a.m. to 5:00 p.m.

Minorities with Disabilities and the Implementation of the Americans with Disabilities Act Hearing

October 21, 1992, 8:30 a.m. to 5:00 p.m.

LOCATION: San Francisco Marriott Hotel, 55 Fourth Street, San Francisco, California, (415) 896–1600

FOR FURTHER INFORMATION CONTACT: National Council on Disability, 800 Independence Avenue, SW, Suite 814, Washington, D.C. 20591, (202) 267–3846, TDD: (202) 267–3232.

The National Council on Disability is an independent federal agency comprised of 15 members appointed by the President of the United States and confirmed by the Senate. Established by the 95th Congress in Title IV of the Rehabilitation Act of 1973 (as amended by Public Law No. 95–602 in 1978), the National Council was initially an advisory board within the Department of Education. In 1984, however, the National Council was transformed into an independent agency by the Rehabilitation Act Amendments of 1984 (Public Law 98–221).

The National Council is charged with reviewing all laws, programs, and policies of the Federal Government affecting individuals with disabilities and making such recommendations as it deems necessary to the President, the Congress, the Secretary of the Department of Education, the Commissioner of the Rehabilitation Services Administration, and the Director of the National Institute on Disability and Rehabilitation Research (NIDRR). In addition, the National Council is mandated to provide guidance to the President's Committee on Employment of People With Disabilities.

Both hearings of the National Council shall be open to the Public. The proposed agenda includes the following:

Day I

ADA Watch Hearing

Two Open microphone sessions will be held, one in the morning and one in the afternoon—any person is invited to present:

Overview panel—elected/appointed officials and consumers Public Sector panel—representatives of local government, transportation, consumers, police/fire department representatives

Private sector panel—employer/employee, small business owner, consumers

Non-Profit Sector panel—university/hospital/social service agency representatives, consumers

Closing Remarks

Day II

Minorities with Disabilities and the Implementation of the Americans with Disabilities Act Hearing

Two Open microphone sessions will be held, one in the morning and one in the afternoon—any person is invited to present:

Panel I—Title I, Employment

Panel II—Title II, Public Services

Panel III—Title III, Public Accommodations

Panel IV—Title IV, Telecommunications

Panel V—Title V, Miscellaneous Provisions

Wrap-up/Closing

Adjournment

Records shall be kept of all National Council proceedings and shall be available after the meeting for public inspection at the National Council on Disability.

Signed at Washington, DC on September 18, 1992.

Ethel D. Briggs,

Executive Director.

[FR Doc. 92–23167 Filed 9–18–92; 3:12 pm]

BILLING CODE 6820-BS-M

Corrections

Federal Register
Vol. 57, No. 184
Tuesday, September 22, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Western Area Power Administration

Mutual Assistance Program, Notice of Proposed Cooperative Agreement

Correction

FR Doc. 92–22552 appearing at 57 FR 42994, Sept. 17, 1992, was a duplicate printing of FR Doc. 92–22553 appearing on the same page. The correct text of FR Doc. 92–22552 appears in the "Notices" section of today's **Federal Register**.

BILLING CODE 1505–01–D

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

4 CFR Ch. III

48 CFR Parts 9903 and 9904

Cost Accounting Standards Board; Recodification of Cost Accounting Standards Board Rules and Regulations

Correction

In correction document 92–7992 beginning on page 34167 in the issue of Monday, August 3, 1992, make the following corrections:

9903.201–4 [Corrected]

1. On page 34167, in the second column, in 9903.201–4, in the fifth line, "Disclosed" should read "Disclosure".

9904.405–60 [Corrected]

2. On page 34167, in the second column, in 9904.405–60, in amendatory item 12., the last line should read "line, insert a closing parenthesis after 'allocations'".

9904.413–60 [Corrected]

3. On page 34167, in the third column, in 9904.413–60, in amendatory item 22., in the fourth line, "$7,650.00" should read "$7,650,000".

Appendix A to Section 9904.414 [Corrected]

1. On page 34167, in the third column, in amendatory item 24., in the last line "subject o" should read "subject to".

9904.416–50 [Corrected]

2. On page 34168, in the first column, in amendatory item 30., in the second line, "9904.415–50" should read "9904.416–50".

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. 23345; Amdt. Nos. 21–70, 36–19, 43–34, 91–230, 147–6]

RIN 2120–AB53

Primary Category

Correction

In rule document 92–21541 beginning on page 41360 in the issue of Wednesday, September 9, 1992, make the following corrections:

1. On page 41363, in the first column, in the first full paragraph, in the second and third lines, "in appropriate" should read "inappropriate".

2. On page 41364, in the 3rd column, in the 3rd full paragraph, in the 17th line, "FAA" should read "EAA".

3. On page 41365, in the 1st column, in the 2d full paragraph, in the 11th line, "FAA-requested" should read "EAA-requested".

§ 21.184 [Corrected]

4. On page 41368, in the third column, in § 21.184(b), in the second line from the bottom, after "§ 21.24(a)(1)" remove the ",".

5. On the same page, in the same column, in § 21.184(c), in the fourth line, between "certificate" and "primary" insert a "-".

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 135

[Docket No. 26142; Amendment Nos. 91–231, 121–230, 125–17, and 135–44]

RIN 2120–AB45

Miscellaneous Operational Amendments

Correction

In rule document 92–22084 beginning on page 42662 in the issue of Tuesday, September 15, 1992, make the following correction:

§ 135.117 [Corrected]

On page 42675, in the third column, in § 135.117(a)(1), in the second line, after "smoking" insert "in".

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI–159–84]

RIN 1545–AG63

Differential Earnings Rate and Recomputed Differential Earnings Rate of a Mutual Life Insurance Company

Correction

In proposed rule document 92–19360 beginning on page 37495 in the issue of Wednesday, August 19, 1992, make the following corrections:

1. On page 37495, in the 3d column, in the 4th full paragraph, in the 14th line, "(1984); S. Prt." should read "(1984); 1 S. Prt."

2. On page 37496, in the 1st column, in the 2d full paragraph, in the 21st line, after "the" remove "ten".

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[IA-55-90]

RIN 1545-AO79

Clarification of Period During Which Interest Is Allowed With Respect to Certain Overpayments

Correction

In proposed rule document 92-20256 beginning on page 38457 in the issue of Tuesday, August 25, 1992, make the following corrections:

1. On page 38457, in the second column, in **FOR FURTHER INFORMATION CONTACT:**, in the fifth line, "111" should read "1111" and in the sixth line "2204" should read "20224".

2. On the same page, in the third column, the heading appearing after the first full paragraph should read: *"Interest on Overpayments That Are Credited Against Certain Additions to the Tax"*.

BILLING CODE 1505-01-D

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federal register

Tuesday
September 22, 1992

Part II

Department of Transportation

Office of the Secretary

14 CFR Part 255

Computer Reservations System (CRS) Regulations; Final Rule

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 255

[Docket No. 46494, Amendment No. 255-9 and Docket No. 47762]

RIN 2105-AB47

Computer Reservations System (CRS) Regulations

AGENCY: Office of the Secretary, Transportation.

ACTION: Final rule and denial of American Airlines Petition for rulemaking.

SUMMARY: The Department is issuing a final rule governing computer reservations systems (CRSs). The Department initiated this proceeding because its existing CRS rules (14 CFR part 255) were originally scheduled to expire on December 31, 1990, unless extended (the Department has since changed the expiration date to December 11, 1992). The Department is adopting these rules because stronger rules appear necessary to enhance competition in the airline and CRS industries. These rules should enhance competition by eliminating various CRS vendor practices that may restrain competition.

The Department is denying a petition for rulemaking filed by American Airlines for a rule that would severely restrict the use of elapsed time as a factor for ranking flights in CRS displays. Many travellers consider elapsed time an important factor in choosing airline services. American's proposal would deny CRSs the ability to use that factor in ordering their displays.

EFFECTIVE DATE: This final rule is effective on December 7, 1992 and terminates December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas Ray or Gwyneth Radloff, Office of the General Counsel, 400 Seventh St. SW., Washington, DC 20590, (202) 366-4731 or 366-9307, respectively.

SUPPLEMENTARY INFORMATION:

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I. Introduction

The Department's rules governing the United States operations of airline-owned computer reservations systems (CRSs), 14 CFR part 255, were originally adopted by the Civil Aeronautics Board (the Board) in 1984. By their terms the rules would have expired on December 31, 1990, unless they were renewed. Section 255.10(b). We assumed most of the Board's remaining responsibilities at the time of its sunset, December 31, 1984, including its responsibility under section 411 of the Federal Aviation Act (the Act), 49 U.S.C. 1381, to prevent deceptive practices and unfair methods of competition in the airline industry, the principal bases for the Board's adoption of the rules.

In view of the scheduled expiration of the rules, we began this proceeding to determine whether we should readopt the rules and, if so, with what changes. We first issued an Advance Notice of Proposed Rulemaking, 54 FR 38870 (September 21, 1989), to obtain comments on CRS issues. After considering the parties' proposals we issued a Notice of Proposed Rulemaking requesting comments on our tentative decision to readopt the rules with substantial changes. Notice of Proposed Rulemaking, Computer Reservations Systems, 56 FR 12586 (March 26, 1991) (the NPRM).

In our NPRM we tentatively determined that CRS rules remain necessary to prevent the carriers controlling the systems (the vendors) from using the systems to prejudice airline competition and mislead consumers. We accordingly proposed to maintain the current rules and to strengthen them in several respects. On certain issues, however, we chose not to propose new rules, since the record suggested that such rules could create harm or impose burdens that could outweigh their benefits. On other issues, we requested further comment.

We received comments and reply comments from the Justice Department (Justice), Congressman James L. Oberstar, a group of 17 states and one territory (Pennsylvania, New York, Arizona, Connecticut, Florida, Hawaii, Idaho, Illinois, Michigan, Minnesota, North Carolina, North Dakota, Ohio, Texas, Vermont, Washington, and the Virgin Islands), individual comments from Michigan and Pennsylvania, the European Civil Aviation Conference (whose comments were prepared in cooperation with the European Community Commission), the CRS vendors and the carriers controlling the CRSs (American, Covia, United, Worldspan, Delta, Northwest, TWA, and jointly by System One and Continental), six other U.S. airlines (Alaska, America West, Midway, Pan American, Southwest, and USAir), 15 foreign airlines and airline groups (Aer Lingus, Air Canada, Air France, Alitalia, British Airways, KLM, LTU International, Lufthansa, the Orient Airlines Association, Sabena, SAS, Swissair, TAP, Varig, and Virgin Atlantic), the two major travel agency trade associations (the American Society of Travel Agents and the Association of Retail Travel Agents, referred to as ASTA and ARTA), the United States Tour Operators Association, a number of travel agency parties, a manufacturer of third-party software (TravelPro Technologies), the National Business Travel Association, the Dallas-Fort Worth Parties, several individuals (including Jonathan Parker, Richard Eastman, Andrew Kleit, and Donald Pevsner), and the Competitive Enterprise Institute (CEI), and advocacy/research group. In addition to ASTA and ARTA, the travel agency parties include All-Around Travel, the American Automobile Association, American Express Travel Related Services, an anonymous travel agency president, Bliss Travel, CUC Travel

Services, Hewins Travel Consultants, the Long Island Travel Agents Association, Overland Stage Travel, Pegasus Travel, Sunbelt Motivation & Travel, a group of fifteen major travel agencies, Thomas Cook Travel, Travel Facilitators, Travel Consultants, and Woodside Travel Management Corporation.

In their comments, Justice, all of the U.S. and foreign airline parties except American and United, the two smaller U.S. systems (System One and Worldspan), ECAC, the two travel agency trade associations, and several travel agencies argue that CRS rules are essential for preserving airline competition and that the current rules must be strengthened significantly to stop various alleged anti-competitive practices of the CRS vendors. The two largest vendors, American and United, and Covia, the CRS managed by United, oppose any significant strengthening of the rules and suggest that no CRS rules are necessary (we will refer to these three commentors as the major vendors). The major vendors' position receives support from CEI and Andrew Kleit. Several of the travel agency parties oppose all or some of our proposed rules.

We have amended the rules to maintain the current rules for an additional period to give us time to analyze the issues and prepare this final rule. 55 FR 53149 (December 27, 1990); 56 FR 60915 (November 29, 1991); 57 FR 22643 (May 29, 1992).

We are incorporating into this proceeding a rulemaking petition filed by American in Docket No. 47762, since it concerns a CRS display issue discussed in the NPRM. American seeks a proceeding for adopting a rule that would restrict the use of elapsed time in ranking flights shown in CRS displays.

II. Summary of Decision

We are readopting the current rules and strengthening them in several respects because of the need to prevent the vendors from using their control of the systems to substantially reduce airline competition and to deny travel agents (and thus the travelling public) complete, accurate, and impartial information on airline services. In considering the extent to which we will regulate CRS operations, we have examined both the benefits likely to be provided by proposed rules and the burdens and costs likely to be imposed by such rules. We are adopting only those rules that will produce public benefits significantly outweighing their costs. We are also avoiding regulations that would force us to engage in an unnecessarily detailed oversight of CRS operations.

We recognize that the systems enable agencies to operate more efficiently and provide better service for their customers, as shown by the almost universal use of CRSs by travel agencies. We also recognize that the systems make it easier for carriers to provide information and booking capabilities to travel agents. And we appreciate that the systems' owners have made large investments in developing the systems and are entitled to profit from their innovations. Despite these facts, we find it necessary to regulate some aspects of CRS operations because the systems' benefits can be offset by abuses that would reduce airline competition and undermine the ability of travelers to find the airline service that meets their needs.

We conclude that CRS rules remain essential because each of the carriers operating the four CRSs may have the power and incentive to use its system to prejudice the competitive position of other carriers in ways that will raise consumer costs and reduce the level of airline service. Because market forces may not effectively prevent such injuries, some regulations are necessary. Our conclusion is consistent with the analysis presented by Justice in this proceeding and with the earlier findings of the Board.

The vendors have the power to reduce airline competition and the ability of consumers to find the best airline service due to several features of the airline, travel agency, and CRS businesses. First, carriers rely heavily on travel agencies for the marketing of airline services—and travel agencies hold themselves out to the public as neutral providers of airline information and tickets. Because of the efficiencies of the travel agency distribution system, no carrier could practicably create an alternative distribution system. Secondly, travel agencies rely heavily on CRSs to find out what airline services are available and to book seats for customers—and most agencies use only one system to carry out these functions. Each vendor thus largely controls the information seen by its subscribers on airline services. If a carrier's services are not displayed and bookable through a system, that carrier will receive few bookings from the agencies subscribing to that system. Since the profitability of a carrier's service in any market can be radically changed by the addition or loss of a few passengers on its flights in that market, no carrier can afford to lose sales from any significant group of agencies, so each carrier must participate in each system.

Each vendor can injure its competitors by omitting or hiding information on their services, thereby depriving them of passengers, and by raising their operating costs by charging supracompetitive fees for participation in its CRS. The public loses, both because such practices will reduce airline competition and because travelers are unable to learn efficiently which airline services best meet their needs.

As a result, we find it necessary to maintain the current rules and to strengthen them in several respects. Rather than dictate in detail how the systems must operate, we have chosen to rely in large part on a rule that we expect will open up competition and promote innovation and efficiency. That rule will prevent vendors from denying their subscribers the option of using hardware and software acquired from independent firms in conjunction with CRS services and the option of using agency-owned CRS terminals to access other systems and databases. Third-party hardware and software will enable agencies to operate more efficiently and obtain better information and transaction capabilities for their customers. The rule also creates the opportunity for new firms to offer travel databases to agencies and thereby break each vendor's current control over the airline information seen by its subscribers. In particular, this rule will enable carriers to set up direct links between their internal reservations systems and travel agencies and thereby create an alternative means of obtaining bookings without paying booking fees. The carriers' use of such direct links should limit the vendors' ability to charge supracompetitive booking fees.

We have also determined that some other changes to the existing rules are needed. In our consideration of rule proposals, we have followed the principle that only regulations whose benefits outweigh their costs should be adopted. We are therefore not adopting such proposals as those requiring vendors to make large expenditures for eliminating architectural bias, nor are we allowing booking fees to be set through cumbersome ratemaking cases or trying to determine the best possible method for constructing CRS displays of airline services. Our rules will provide more room for carriers to compete on the basis of price and service without denying the vendors the legitimate benefits of their investments and without requiring detailed management of CRS operations.

III. History of CRS Regulations and Studies

Before providing our analysis of the CRS and airline industries, we will summarize the current regulations and past investigations of the CRS business. The Board adopted the rules currently in force. 14 CFR part 255, adopted by Regulation ER-1385, 49 FR 32540 (August 15, 1984), and the Notice of Proposed Rulemaking, EDR-466C, 49 FR 11644 (March 27, 1984) (these documents are cited as the "Board's Final Rule" and the "Board's NPRM"). The Board made some revisions to the rules by ER-1396, 49 FR 46347 (November 26, 1984).

The current rules prohibit vendors from biasing their primary displays and from charging discriminatory fees for CRS participation by other airlines, require vendors to make domestic marketing data generated from CRS transactions available to other carriers, and prohibit certain vendor practices that could deny travel agency subscribers an adequate opportunity to use additional systems or switch systems. To ensure that a reexamination of the rules occurred, the rules stated that they would expire on December 31, 1990. The Board's rules were affirmed on review, *United Air Lines* v. *CAB*, 766 F.2d 1107 (7th Cir. 1985), in an opinion written by Judge Posner.

Several years ago when we adopted rules on airline delay problems, we added rules requiring each system to display specified on-time arrival statistics for each domestic flight and prohibiting vendors from displaying any other delay information and from using the on-time arrival statistics as a factor for ranking flights. 14 CFR 255.3 and 255.4(e), adopted by 52 FR 34056 (September 9, 1987). Except for this change, the substantive CRS rules have remained the same since their adoption by the Board.

To help us reevaluate the CRS rules we undertook a study of the CRS business as part of our examination of domestic airline competition. Airline Marketing Practices: Travel Agencies, Frequent-Flyer Programs, and Computer Reservation Systems, prepared by the Secretary's Task Force on Competition in the Domestic Airline Industry (February 1990). We also conducted an earlier CRS investigation, the May 1988 Study of Airline Computer Reservation Systems (these two reports are cited hereinafter as the Marketing Report and the 1988 CRS Study).

The conclusions reached by these studies on the basic structure of the CRS business and its impact on airline competition were substantially the same as the conclusions reached by the Board in its rulemaking. The CRS and airline industries have changed in several respects since the Board adopted its rules, and the vendors have greatly expanded the technical capabilities of the systems. Nonetheless, the basic structure of the CRS business and its impact on airline competition have changed little since 1984. We have therefore relied on the Board's analysis, as well as our own two studies, in this proceeding. We have also relied heavily in this proceeding on Justice's competitive analysis, an analysis derived from several Justice investigations into CRS issues. 56 FR 12588, 12589.

As discussed in the NPRM, both the European Community and Canada adopted CRS rules after the Board acted. 56 FR 12588. The International Civil Aviation Organization has also adopted guidelines for CRS operations.

IV. Airline Marketing and the Need for CRS Rules

A. The Travel Agency Industry

CRSs used by travel agencies are so important because of the dominant role of travel agencies in the marketing of airline services. The great majority of all airline tickets—at least 70 percent—are sold by travel agencies. Travel agencies have become so dominant largely because they provide the most efficient means for travellers to find out what travel options are available. As a result of airline deregulation, airline fares are continuously changing, and airline routes are not as fixed as they were before deregulation because carriers now have the ability to enter and exit routes without regulatory review or delays. In addition, the increased importance of hub-and-spoke service has expanded the number of service options in many markets. All these factors have made it difficult for travellers to obtain complete information on airline services on their own. Marketing Report at 12–14.

The travel agency system represents an efficient means for airlines to market their services. 56 FR 12587–12588; Marketing Report at 7–8. Carriers appear to have no practicable substitute for it.

A large proportion of travellers—perhaps 50 percent of leisure travellers and 25 percent of business travellers—do not have a preference for a particular carrier when they buy airline services. Marketing Report at 8; Woodside Comments at 2. Travel agencies thus have a significant ability to shift customers from one carrier to another, although they must keep in mind the need to book services that meet the customer's travel needs. Marketing Report at 28–29.

In contrast to distributors in other industries, travel agencies typically represent all carriers, and they hold themselves out as neutral providers of information and advice on airline services. 56 FR 12587; NW Reply, Levine Affidavit.[1]

Although travel agencies are generally viewed as being neutral, each airline structures its commission payments with many agencies to encourage them to shift more of its bookings to that carrier. These incentive commissions are often override commissions enabling the agency to obtain a higher commission rate on all of its bookings with the carrier if the carrier gains a larger share of the agency's business. Marketing Report at 26–30. Parties disagree over the impact of such commission programs and other preferred-supplier relationships on airline competition and the impartiality of the advice given customers by travel agencies. The propriety of override commission arrangements is largely outside the scope of this rulemaking, but the existence of such business ties between agencies and airlines is relevant to several rule proposals discussed below.

B. The CRS Business

Each CRS consists of a central computer database and processor that can be accessed by travel agents and others through computer terminals, such as PCs. An agent using a CRS can find out what airline flights and fares are offered in a market and whether seats are available, book seats for customers, and issue tickets. CRSs also enable agents to perform similar tasks for hotels, rental cars, cruises, and other travel services. CRSs are much more efficient for these tasks than any alternative means. 56 FR 12587. As a result, travel agents rely heavily on CRSs. In 1987, for example, 95 percent of all U.S. agencies used CRSs, and agents made 92 percent of their domestic airline sales through CRSs. 56 FR 12587. Our concern in this proceeding is with CRSs used by travel agents, but the vendors also provide CRS services to corporate travel departments and to home computer users.

Four CRSs operate in the United States: Sabre, owned by American's

[1] Although Woodside asserts that most agency customers know that agencies typically have preferred carriers, that assertion, while probably true for large business clients, is not accurate for leisure travellers and many business travellers. Thus it does not offset the common perception that agencies are neutral. See Marketing Report at 10, 18, 21.

parent corporation; Apollo, operated by a United subsidiary and owned by Covia Partnership, a group composed of United, USAir, and several foreign airlines; Worldspan, owned by Delta, Northwest, TWA, and a partnership of Asian airlines; and System One, owned by an affiliate of Continental. Sabre is by far the largest system, while Apollo is the second largest. 56 FR 12587. Sabre competes in foreign markets, either directly, as in Europe and Canada, or through affiliates, as in much of Asia. Worldspan also competes directly in Europe, while its Asian partners provide CRS services in Asia. Covia is affiliated with one of the two large European systems, Galileo; several of the European carrier owners of Galileo are partners in Covia; and Covia and Galileo have announced plans to merge. July 1, 1992 Covia Comments at 9.

The owners of the CRSs obtain most of their compensation for providing CRS services from the booking fees paid by airlines and other firms whose services are booked through a system. While many travel agencies also pay fees for CRS services (usually monthly lease charges), many agencies—particularly large agencies whose use of a system will generate large streams of booking fees for the vendor—receive CRS services at little or no cost. Marketing Report at 23; Ten Major Agencies Comments at 14.

In addition to the fees paid by airlines, other travel suppliers, and travel agencies, each of the airlines controlling a system—a vendor—receives additional airline bookings from its system's subscribers that it would not receive if those agencies were using another system. These additional revenues—often called incremental revenues—stem from the travel agencies' tendency to give a disproportionately large share of their bookings to the carrier controlling the system used by the agency.

When choosing which CRS to use, agencies rarely consider the systems equally attractive. To obtain the best information and transactional capabilities on an airline that owns a CRS, the agent must use that carrier's system. In addition, agencies believe that they will receive more marketing support from a carrier if they subscribe to its system. These factors usually cause an agency to prefer a system offered by a carrier with a large airline market share in the agency's city, since a large proportion of the agency's business will be with that carrier. Marketing Report at 24–26; Woodside Comments at 7. Each system therefore tends to have a large share of the CRS market in cities where its principal airline owners are the major providers of airline service.

For example, according to American's figures for 1991, 87 percent of all CRS bookings in Dallas were made on Sabre, 50 percent of the bookings in Denver were made on Apollo, 56 percent of the bookings in Minneapolis-St. Paul were made on Worldspan, and 47 percent of the bookings in Houston were made on System One. These cities are, respectively, an American hub, a United hub, a Northwest hub, and a Continental hub. In Chicago, a hub for American and United, 86 percent of all bookings were made either on Sabre or Apollo. American Supplemental Comments, app. C.

For the most part, each travel agency office (or location) uses only one system. While some agency locations use more than one system, even those locations transact most of their business on just one system. Agencies infrequently use multiple systems for several reasons. Using more than one system increases training costs and can make it more difficult to keep track of records. The vendors, however, also discourage agencies from using multiple systems. All vendors prohibit U.S. subscribers from using a CRS terminal to access more than one system; having to obtain a second terminal for accessing a second system is too inconvenient and expensive for most agencies. In addition, the vendors' subscription contracts often contain terms (for example, minimum use clauses) that as a practical matter can impose substantial costs on an agency if it makes substantial use of a second system. 56 FR 12593–12594; Marketing Report at 87–88.

C. The Sources of the Vendors' Market Power

The carriers' dependence on agencies for marketing their services and the agencies' reliance on CFRs for choosing and booking airline services are among the factors that give each of the vendors market power over other carriers. Market power is the ability to raise prices above the economic cost of providing service (or to provide less service than would be provided in a competitive market). Justice ANPRM Comments at 10. The vendors' market power and their incentives to abuse it provide the primary basis for our finding that CRS rules remain necessary.

In the NPRM we explained in detail why each system had market power. 56 FR 12591–12600. Both because the issue is relevant to our discussion of the various rule proposals and because a few parties have challenged our competitive analysis, we will restate the analysis that leads us to conclude that each vendor could have the ability to cause harm to airline competition if CRS operations were unregulated.

Airlines sell a service that cannot be stored, and the high proportion of fixed costs involved in operating a flight means that the gain or loss of a few passengers on a flight can often determine whether it will be profitable. Justice Comments at 7. Airline operating margins, moreover, are usually thin. Because marginal revenues are so important to airline operations, each airline cannot afford to loss access to a significant source of traffic, because then it cannot operate successfully. 56 FR 12592.

If a carrier's services are neither displayed nor saleable in a CRS, it will lose access to a significant source of traffic: the travel agencies using that system as their primary CRS. Since agents depend so much on CRSs when advising customers on airline options and selling tickets, and because the great majority of agencies depend on one system for all their CRS transactions, a travel agency will have no easy way to obtain information on a carrier's services or to book seats on it unless that carrier participates in the CRS used by the agency. A carrier that drops out of a system will thus lose a large proportion of the bookings it would otherwise have received from the agencies using that system as their primary system. For example, Continental lost so many bookings when it stopped participating in PARS in 1984, even though PARS continued displaying many Continental flights, that the carrier was compelled to resume its participation in that system. 56 FR 12594.

Participation in each system is also important because, despite the low national market shares of the smaller systems, each system dominates some regional CRS markets. As shown by the figures stated above, for example, a carrier seeking travelers at Chicago will be severely handicapped if it does not participate in Apollo and Sabre, since their subscribers make over 80 percent of the CRS bookings in that area.

Vendors accordingly do not need to compete for airline participants in their systems. As Justice summed up this situation, Justice ANPRM Comments at 10–11 (footnotes omitted):

> [T]he different CRSs are not substitutes for one another from the perspective of air carriers. Travel agents subscribe to only one CRS, and therefore, for a carrier to have access to most of the travel agents in a region, it must participate in every CRS that controls a significant group of travel agents in

that region. Thus, from the perspective of an air carrier, each CRS constitutes a separate market—providing access to a discrete group of agents—for which there is no acceptable substitute. Each CRS constitutes a separate market for air carriers, and each is a monopolist with market power over carriers that want to sell airline tickets in areas where the CRS has a significant number of travel agents.

See also NW Reply, Fisher affidavit, para. 10–11; Woodside Comments at 2.

Even though travel agencies will probably remain the dominant means of distributing airline services, the current vendors would be less able to hold market power if entry into the CRS business were practicable. For a variety of reasons, however, entry is unlikely. Among other things, there are large economies of scale in CRS operations, so it would be difficult for a new entrant to obtain an adequate subscriber base for efficient operations. 56 FR 12594–12595. See also Justice ANPRM Comments at 31–32; NW Reply, Fisher affidavit at para. 4–5. No one in this proceeding has refuted our findings on the unlikelihood of new entry under current industry conditions. However, one of the goals of our rules is to create alternative means for carriers to make their services saleable by travel agencies and to create the possibility of entry for new databases on travel services. This should weaken each vendor's grip over the information on airline services obtained by its subscribers.

We recognize that one U.S. carrier—Southwest—has prospered without participating in any CRS. Southwest's ability to succeed without CRS participation stems from the unusual nature of its operations. 56 FR 12593 n.3. See also NW Reply, Fisher affidavit, n.3. No party in this proceeding claims that Southwest's ability to succeed without CRS participation could be duplicated by any other carrier. Because Southwest's experience is unique, we will ignore Southwest in the rest of our discussion of the airline competition issues.

In an effort to rebut our conclusions on the vendor's market power, American and CEI have submitted economics papers contending that vendors do not have such power (in addition, one of the paper's authors, Andrew Kleit, personally filed his article as a comment and also submitted a reply comment). Those papers are Kleit's "Computer Reservations Systems: Competition Misunderstood", included in the comments filed by American and CEI as well as his own comments; Donald J. Boudreaux and Jerome Ellig, "Why DOT's Proposed CRS Rules Would Injure Consumer Welfare," submitted in CEI's comments, and Boudreaux and Ellig, "Beneficent Bias: The Case against Regulating Airline Computerized Reservations System," submitted in American's supplemental comments. As explained below, we find that these papers rely on theories about the marketing of airline services that are contrary to the airline industry's experience and not as persuasive as the analyses provided by Justice and by Dr. Michael Levine and Dr. Franklin Fisher in Northwest's reply comments. Moreover, even though American submitted two of them, it has provided no factual information supporting the claims made in the articles (for example, one the factors influencing a vendor's choice of editing and ranking criteria in CRS displays).

Ellig and Boudreaux contend that airlines can avoid CRS participation through direct advertising. "Beneficent Bias" at 19; "DOT's Proposed Rules" at 8. We cannot agree. While that strategy apparently works for Southwest due to the unique nature of its operations, no other carrier can do without access to the subscribers of each of the CRSs. Advertising, for example, cannot tell a traveler (or an agent) whether a seat is available on a particular flight and what fares are offered. Airlines also cannot practicably use advertising to inform consumers of their flight schedules, except perhaps for certain unusually dense markets capable of supporting hourly service, *e.g.*, the Washington-New York and New York-Boston shuttle markets.

D. The Vendors' Incentives to Use Their Market Power

Since each vendor has market power over other carriers, it can increase prices for carrier participation above competitive levels and reduce the quality of service below competitive levels. That ability by itself would not necessarily mandate regulation against competitive abuses. After all, for many years the Official Airline Guide was the major source of airline information for U.S. travel agencies, yet its status as the monopoly source of information did not compel the regulation of its operations. *Cf. Official Airline Guides, Inc.* v. *FTC* 630 F.2d 920 (2d Cir. 1980). Even today the rental car firms and hotel companies have not complained that regulation is needed to prevent vendor conduct contrary to the antitrust laws. The difference between the airlines and the rental car and hotel companies is that the systems' owners compete with other airlines but not with hotel chains or rental car firms. We need to regulate the systems' treatment of airline services because each system is owned and operated by one or more airlines or airline affiliates that may have an incentive to use their control of the systems to disadvantage competing airlines.

In determining that CRS rules remain necessary, we are relying in part on the vendor's conduct before the current rules took effect. Since the Board's adoption of the current rules stopped the major abuses, some of the most telling examples of the vendor's potential power occurred before the Board acted. As we noted in the NPRM, for example, several smaller carriers tried to obtain more favorable treatment in Apollo by promising United that they would not compete aggressively with it. 56 FR 12593. These examples remain relevant, however, because neither the CRS rules nor economic and industry developments have changed the CRS industry's structure. The vendors accordingly would have substantially the same ability to engage in similar abuses if the rules were not readopted.

Of course, an identification of the ways in which vendors may prejudice airline competition does not automatically mean that rules should be adopted to block such conduct. One example of the vendors' power concerns their ability to charge discriminatory bookings to other carriers that are not based on the vendors' costs, as discussed next. While the current rule barring discriminatory fees seems to have worked well, adopting a rule directly regulating the level of fees would not be wise, as we explain below when we discuss the various rule proposals on this issue (we believe, however, that our rule authorizing agencies to use CRS terminals to access other databases, including internal airline reservations systems, will provide some discipline on fees).

E. Booking Fees

Before the Board prohibited discriminatory booking fees, vendors compelled the least-favored carriers to pay as much as $3 per booking while other carriers paid as little as thirty cents—and the disfavored carriers usually received the worst service, since their flights were subject to the most display bias. 56 FR 12593. The carriers paying the highest fees and suffering the most display bias in a system tended to be the vendor's major competitors. Board Rule, 49 FR 32543.

The parties' comments on whether we need to require vendors to provide adequate billing information additionally confirm the vendors' power. As discussed below in connection with

the rule proposals on this issue, participating carriers have demonstrated that they have been unable to obtain enough billing information from the vendors in a usable form to enable carriers to audit the accuracy of the bills. If the carriers had some ability to bargain with the vendors, they surely would have been able to obtain adequate billing information, since such information ordinarily would be supplied by suppliers in competitive industries.

In the NPRM we found that the fees charged participating carriers for CRS services are not subject to competitive discipline and do not appear to be based on the vendors' costs. 56 FR 12595–12596; Justice Comments at 5. See also NW Reply at 6–7; Alaska Reply at 7–8. In our 1988 study we calculated that the major vendors' booking fees substantially exceeded their costs, although the study's cost allocations were arbitrary in some respects. 56 FR 12595–12596. We have not estimated the vendors' costs and profits for more recent years, and the major vendors' profits from airline booking fees may well be lower now than shown by our study. However, there have been no developments in recent years which would have significantly reduced the vendors' ability to charge participating carriers discriminatory booking fees not based on costs.

Although Covia, American, and CEI challenge our conclusions that the vendors are able to charge discriminatory or high booking fees, we find their arguments unpersuasive. First, while Covia contends that the findings of our 1988 study are incorrect, Covia provides no cost analysis that would refute that study's findings. Instead, Covia claims that the study made a number of unreasonable assumptions that invalidate its conclusions. Covia also claims that the fee charged per CRS booking is reasonable compared to fees charged by similar businesses such as Ticketron. Covia Comments at 14, 18–19. We analyzed similar Covia claims in our NPRM and found them unconvincing. Among other things, Covia has not shown that the firms providing the analogous services have the same costs as CRS vendors. 56 FR 12595.

Equally unconvincing is Covia's assertion that it cannot afford to raise fees too high because carriers would then withdraw from the system and reduce its attractiveness to travel agencies. Covia Comments at 13. Our finding that vendors like Covia have market power does not mean that they have unlimited ability to raise fees above competitive levels; obviously at some point fees could become so high that participating carriers would lose money on the passengers booked through the system. Nonetheless, the vendors have some ability to raise fees above competitive levels. 56 FR 12595; Justice ANPRM Comments at 11–14. See also NW Reply, Fisher affidavit, para. 11,21. *Cf. Eastman Kodak Co.* v. *Image Technical Services*, 60 U.S.L.W. 4465, 4470 (June 9, 1992).

Covia also argues that its overall profits are low, an assertion supported by some very summary financial figures. Covia Comments at 15–18 and App. C, Exhibit 1. The figures are so summary that they do not establish Covia's actual profitability. Furthermore, Covia calculated its profits by treating its capital investments as expenses, an atypical method of calculating profitability. Air France Reply at 12–13.

Covia and American state that their overall CRS profitability has declined in recent years, but that decline would not disprove our conclusion that vendors have the ability to charge high booking fees. The systems have two sets of customers, participating carriers and travel agency subscribers. While vendors need not and do not compete for carrier participants, they compete to some extent for subscribers, especially large agencies whose business will produce large sums of booking fees. It may well be that the vendors' competition for subscription contracts from the larger agencies have reduced the total profitability of their systems, but their competition for travel agency subscriptions does not affect their power over participating carriers. See, *e.g.*, NW Reply, Fisher affidavit, para. 9, 24–25.

The papers submitted by American and CEI argue that a carrier can deter booking fee increases. They claim that a carrier can offset an increase in a system's booking fees by reducing the commissions paid travel agencies using that system by an amount equal to the fee increase. Assertedly this would make the system unattractive to agencies, thereby deterring the vendor from unreasonably increasing fees. Kleit Comments at 10–13; "DOT's Proposed Rules" at 3; "Beneficent Bias" at 28. This theory ignores the economic practicalities of airline marketing and is belied by industry experience, for no carrier has ever thought such a strategy worth trying. If a carrier reduced its commissions to those agencies using a system charging increased booking fees, those agencies would be likely to book their customers away from that carrier. The revenues lost through this decline in bookings would far exceed any future savings on booking fees. See, *e.g.*, NW Reply, Levine affidavit at 2–4. In addition, a vendor would lose few subscribers in the near term if carriers did reduce their commissions to its subscribers, since almost all agencies have contracts requiring them to keep their system for a five-year term. Thus, even if a carrier could encourage agencies to switch away from a system charging higher booking fees, the carrier's strategy would have little effect for several years. Justice Comments at 11–12. See also Alaska Reply at 12–13. In response to these points, Kleit only says that carriers are always interested in cutting their costs and consequently would adopt his strategy. Kleit Reply at 2–3. But a carrier's wish to control its costs does not give it the ability to do so when a supplier has market power, as do the vendors.

These papers similarly theorize that travel agencies allegedly know that participating carriers may react to fee increase by lowering their commission rates and so will protect themselves in their subscriber contracts by obtaining limits on a vendor's ability to increase its fees. See, *e.g.*, "DOT's Proposed Rules" at 3–4. This theory too finds no support in the evidence in this proceeding or in any analysis of the actual operation of the CRS and agency industries.

Even more untenable is Kleit's suggestion that vendors obtain most of their compensation from carriers rather than agencies because the vendors want to save transaction costs. Kleit Comments at 8. Kleit provides no factual support for this theory. The vendors' decision to obtain more compensation from participating airlines than from travel agencies presumably reflects the differences between the vendors' competition for airline participants and their competition for subscribers.

Kleit further errs in his claim that the varying booking fees charged by vendors before the rules took effect were not discriminatory. Kleit Comments at 12. The Board found that to a substantial extent the fee differences could not be explained by such factors as the size of the participating carrier and the date of its contract to participate in a system. Board Rule, 49 FR 32543; Board NPRM, 49 FR 11651.

F. The Use of Display Bias to Reduce Competition

Without CRS rules vendors could also use display bias to prejudice the competitive position of other carriers. A CRS can display a limited number of flights on its screen at a time; if more

flights are available in a market than can be displayed on a single screen, an agent using the CRS must ask to see additional screens to see more flights. Travel agents often work under significant time pressure, and as a result agents are more likely to book a flight that shows up on the first screen than flights appearing on later screens, even if the latter would better meet a customer's needs. 56 FR 12592. In addition, a CRS display for any market will not list all of the services that are available in the market, largely because many flights are relatively unattractive so that few travellers would book them (for example, connecting services requiring long layovers).

Before the rules took effect, each vendor gained a larger share of its subscribers' bookings by biasing its displays in favor of its own flights, even if other carriers offered better flights. In addition, our NPRM cited several instances drawn from the Board's record where a vendor used its control of CRS displays to prejudice airline competition. When New York Air entered one of America's major markets, American substantially increased the display bias against all New York Air services, an action that led to New York Air's withdrawal from the market. 56 FR 12593. When Continental began offering a set of new discount fares, American waited several months before adding Continental's new low fares to a Sabre display that purportedly included all airline fares. 56 FR 12593.

The vendor's display bias affected a significant amount of revenue. For example, when Frontier Airlines obtained a better status—cohost status—in Apollo's displays, its systemwide bookings increased by four percent. Board Rule, 49 FR 32545. Similarly, a United expert estimated that bias increased a vendor's revenues by 13 percent at agencies switching to its system, although other evidence indicated that his estimate was too low. Board Rule, 49 FR 32546. In view of the importance of marginal passengers in the airline business, that diversion of revenues could make a route unprofitable for a rival and eliminate competition for the vendor.

In light of this experience with bias, we cannot accept the argument presented in the papers submitted by Ellig, Boudreaux, and Kleit that display bias neither threatens airline competition nor deceives consumers. We consider in the next section the effect of bias on consumers requesting information on airline services. Here we will explain why bias undermines airline competition.

In their analysis of CRS bias, Ellig and Boudreaux begin by making the erroneous assumption that a vendor's strategy for marketing its CRS is the sole determinant of any decision to use bias. "Beneficent Bias" at 14,16. That assumption ignores each vendor's incentive and ability to gain additional airline bookings by biasing its system's displays to give its own flights a better display position than they deserve on the basis of neutral service criteria. The vendors' conduct before the prohibition of display bias demonstrated that they would operate the systems so as to increase their airline revenues. Board NPRM, 49 FR 11651. We agree with Ellig and Boudreaux that the vendors' competition for subscribers limits their ability to bias their displays, since travel agencies generally prefer neutral displays, but that competition for subscribers did not prevent vendors from biasing their displays before the rules took effect, in part because vendors could hide the extent of the bias. Board Rule, 49 FR 32547.

Boudreaux and Ellig err as well as in suggesting that agents would not book a flight merely because it is listed first in a CRS display. "Beneficent Bias" at 12–13. Here, again, experience demonstrates that their theoretical arguments do not accurately describe the CRS industry. While agents often will take the trouble to look for flights not listed first in a display, agents are often pressed for time and do book a flight more often if it receives a high display position. Internal American studies submitted by Justice, for example, show that a flight's display position significantly affects the number of bookings made on it by subscribers. Justice ANPRM Comments, App. 70,82.

Ellig and Boudreaux further argue that display bias in any event presumably reflects the preferences of travel agency subscribers, who would rather book customers on their vendor's airline services if possible. They have not shown that the display bias in fact was created or adjusted to meet travel agency demands. In fact, the record before the Board indicated that vendors were refining their bias so that it was both more effective and less easily detectable by agents. Board NPRM, 49 FR 11651. ASTA and ARTA have always opposed display bias, a position that indicates that many agencies, if not all, dislike display bias. Board Rule, 49 FR 32543. While Kleit notes that a number of agencies were willing to use the biased secondary displays offered by Apollo after the Board's rules took effect, Kleit Comments at 17, that does not prove that agency demands led to the systems' use of bias. Neither here nor in the Board's rulemaking have vendors shown that agency preferences led to the creation of display bias. The history of display bias thus indicates that bias was created to shift traffic to the vendor carrier, not to meet agency desires for displays favoring the vendor carrier.

On the ground that display preferences are commonly sold in other industries (*e.g.*, as shown by shelf positions in grocery stores and location of advertisements within newspapers), Kleit suggests that allowing vendors to sell display positions in CRSs could be procompetitive and result in the best display position being used for the carrier most interested in buying that position. Kliet Comments at 15–16.[2] The fundamental flaw in this argument is again its inconsistency with the CRS industry's experience before the Board adopted the CRS rules. At that time some vendors sold display preference (that is, cohost status), but usually only to carriers competing little with that vendor. Vendors did not, however, enable any participating carrier to obtain bias on a systemwide or market-by-market basis that was more favorable than the bias given the vendor's own services. Furthermore, Kleit wrongly assumes that the carriers receiving the worst display position did so because they chose not to pay for a better display position. Kleit Comments at 18–19. However, the carriers who paid the most for CRS access typically were the carriers subjected to the most display bias. Board Final Rule, 49 FR 32543.

Boudreaux, Ellig, and Kleit ignore the vendors' past use of display bias in constructing their theory about its possible beneficial effects. Ellig and Boudreaux recognize that a vendor might be unwilling to sell display bias to a competitor in some markets because no carrier would pay a price as great as the vendor's anticipated increase in airline profits if it keeps the advantage of bias. "Beneficent Bias" at 16–17. They fail to take into account the vendors' past practice, which suggests that the vendors believe they would obtain more airline profits from the additional traffic created by display bias than any participating carrier would be willing to

[2] The CRS industry's display of airline services is comparable to other cases where the same firm provides the display capability and competes with firms using that display space, the firm can use its control of the display space to prevent competition. See, *e.g.*, Home Placement Service v. *Providence Journal Co.*, 682 F.2d 274, 279–281 (1st Cir. 1982), holding that a newspaper could violate the antitrust laws by denying advertising space to a firm providing information on housing vacancies.

pay to obtain a preferential display position.

That the theories proposed by Boudreaux, Ellig and Kleit are inapplicable to the systems' use of display bias is additionally confirmed by other vendor uses of display bias. As shown by American's retaliation against New York Air and the offers United received by carriers to end their aggressive competition with United, vendors used display bias to deter airline competition. And Kleit, Boudreaux, and Eilig have never explained how American's delay in displaying Continental's discount fares benefited any travel agent or traveller.

G. Display Bias and Consumer Deception

Given the evidence that improving a flight's position in the display means that agents will book it more often, display bias contrary to customer preferences can keep a significant number of agency customers from using the flight best suited for their needs. Before display bias became unlawful, moreover, bias could take the form of hiding information from the public, as indicated by American's delay in displaying Continental's new discount fares. Another example concerned the vendors' omission of some hubs of their competitors from the display of connecting services, so that an agent would not know of all service options without undertaking the effort of constructing his or her own connections. Board ANPRM, 48 FR 41177; Civil Aeronautics Board, Report to Congress on Airline Computer Reservations Systems at 46–47.

As a result, our rules are necessary to prevent consumer deception. As we pointed out in the NPRM, in the absence of rules against bias, the vendors would be free to resume biasing their displays against other carriers with the result that travellers and their travel agents would have more difficulty in finding the best service for their needs. 56 FR 12601–12602. We note in that regard complaints by carriers in this proceeding that some vendors still arbitrarily limit the number of competitors' hubs used for constructing displays. For example, American claims that Apollo at times refuses to add new hubs in its display of connecting services on the ground that the display is full, whether or not the new hubs would provide better service for customers than some of the hubs already included. American Reply, App. F. Similarly, Sabre was using all of American's hubs in constructing displays of connecting services while using fewer of its competitors' hubs. 56 FR 12612.

Justice, several agency parties, such as ARTA, and almost all carriers agree that we should maintain the prohibition of display bias, because it threatens airline competition or denies the public accurate and complete information on airline services. See, *e.g.*, Justice ANPRM Comments at 5, 14.

While in theory travel agencies should be able to prevent display bias by refusing to purchase CRS services from vendors providing biased displays, in practice the vendors' competition for subscribers did not eliminate display bias when no rules prohibited it. In part the vendors could continue biasing their displays by hiding the bias. Board Rule, 49 FR 32547. To some extent, agencies may not insist on neutral displays because their customers have an imperfect ability to check the accuracy and completeness of an agent's advice. 56 FR 12601. Several of the travel agency parties assert that travel agencies cannot afford to give customers poor or biased advice because they will lose too much business as a result. Even so, travel agents seemingly have some ability to give customers flight recommendations that are not the best for a customer's needs because travellers cannot easily check the accuracy of agent advice on airline services. A traveller wanting to check the accuracy of an agent's recommendations would have to call all the airlines or some other agencies, a time-consuming task. In addition, because the availability of seats and fares often changes, a traveller cannot readily determine whether an agent's failure to choose the best flight and fare resulted from poor advice or from changes in the availability of seats and fares. Travellers also cannot easily determine whether one agency's advice is more accurate and impartial than another's, particularly since carriers now authorize some agencies but not others to sell discount fares free of some restrictions. If consumers had to check with several agencies to ensure the accuracy of the information they received, they would lose some of the efficiency advantage of using a travel agent in the first place. Moreover, given the travel agencies' reputation as neutral providers of travel advice, relatively few travellers would call several agencies before booking airline service. See, *e.g.*, NW Reply, Levine affidavit at 5–7.

In addition, if all systems contain some bias, as was true before the rules took effect, travellers will be unable to find an agency using a neutral system. In any event it is clear that vendors have some ability to bias their displays in the absence of regulation and that the bias will shift a significant number of travellers to a vendor's flights, even when another carrier's service would better meet a traveller's needs, because the vendor's service has received a better display position.

Only the papers submitted by American and CEI argue that display bias (which they prefer to call "display preference") is not a problem requiring government intervention. They assert that a CRS would lose subscribers (and its subscribers would lose customers) if its ranking of flights gave a preference to unattractive flights, that display bias does not cause unsuitable flights to be listed before flights meeting customer needs, and that allowing vendors to sell display preference would be pro-competitive. While we generally agree with theoretical principles underlying the arguments made by these parties, we find their arguments unpersuasive as to the airline industry because their theories about the benign and even beneficial effects of display bias are contrary to the industry's actual experience. Moreover, these parties have presented no evidence of changed conditions which would make that experience irrelevant to determining now whether display bias should remain prohibited.

H. International Aviation Obligations

We also found in the NPRM that CRS rules appeared to be necessary to carry out the United States' obligation under its bilateral aviation agreements to ensure that carriers from other countries had a fair and equal opportunity to compete. We noted, for example, that we have taken the position that foreign governments must ensure that CRSs operating in their countries fairly display the services of United States carriers. See *e.g.*, *American Airlines* v. *British Airways*, Order 88–7–42 (July 25, 1988). We accordingly determined that the prohibitions against display bias and discriminatory treatment seemed necessary for protecting the bilateral rights of foreign carriers. Moreover, readopting our rules will be consistent with the actions taken by Canada, the European Community, ECAC, and others to prevent vendor abuses that would deny carriers a fair opportunity to compete. 56 FR 12602.

No party has challenged that tentative determination that our bilateral obligations require the adoption of rules preventing vendors from discriminating against competitors.

I. Arguments Against Regulation

Despite our tentative finding that CRS operations should be regulated to

prevent abuses that would reduce competition or cause consumer deception, the major vendors argue for various reasons that CRS regulations would be unwise. We agree with them, of course, that regulating business conduct is not desirable unless clearly necessary. Regulation obviously imposes costs of its own, *e.g.*, by interfering with management decisions to respond to market forces (and, in this case, potentially frustrating technological change). However, while we recognize the disadvantages of regulation, we cannot accept the arguments made by the major vendors against having any CRS regulations (or stronger regulations).

American contends on the basis of a selective citation of authorities that the most recent economic and judicial analyses of the CRS business agree that there is no need for regulation, contention primarily based on the papers by Kleit, Ellig, and Boudreaux (American also relies on the recent Ninth Circuit decision in the private antitrust suit against American and United, a decision discussed by us in our examination of our statutory authority for adopting rules). As shown above, we find the analyses in those papers unpersuasive. Moreover, the recent report of the Transportation Research Board on airline deregulation, Winds of Change, examined the competitive effects of airline-owned CRSs and agrees with our analysis of the competitive effects of the systems. Another recent analysis of the CRS industry, "Computer Reservations Systems and Their Network Linkages to the Airline Industry" by Margaret E. Guerin-Calvert and Roger G. Noll, an article cited by Justice, generally reaches the same conclusions we do. Its authors base their conclusions on a thorough analysis of the history and current practices of CRS operations.

The major vendors also argue that their past willingness to invest large sums in the development of the systems has produced great benefits for consumers, travel agencies, and the airline industry. We recognize that the systems have enabled travel agents to obtain more information on airline services more efficiently and thereby provide their customers with a higher quality of service. We also recognize that the vendors have continued to invest large sums in the systems *e.g.*, by developing "look and book" direct access features, that have provided further benefits for the travel agencies and thus for the travelling public and other airlines. We have taken into consideration the vendors' improvements in their systems. As discussed in detail below, these improvements are a major reason for our decision not to adopt rules requiring the separation of the CRS computer from the host's internal reservations system or mandating equal functionality.

Obviously the efficiencies provided by CRSs benefit the non-vendor carriers as well. Nonetheless, as we explained in the NPRM, the efficiencies created by CRSs make participation in each of the systems essential for airlines, a factor that gives the vendors substantial market power. The vendors, moreover, can use that power to prejudice airline competition. 56 FR at 12601.

Covia claims that further regulation of the CRSs is unjustified because -Covia, at least, operates as a stand-alone system, not as an arm of the marketing department of any of its owners. Covia Comments at 21. Covia concedes that a United subsidiary is the managing general partner for the CRS, Covia Comments at 21, and United holds a majority of the partnership interests. Covia, moreover, appears in several respects to implement strategies benefiting United's airline sales rather than the common interests of all its owners. For example, Covia was providing United fare information from bookings on Covia without providing that information to its other U.S. carrier owner or to participating carriers, as discussed below. And, as noted in the NPRM, Covia has consistently argued that CRS regulations are unnecessary, a position shared by United but competely contrary to the position of the other six partners in Covia. 56 FR 12600.

American, on the other hand, seems to suggest that we should not worry about CRS problems because it offered Alaska and America West, the largest U.S. carriers without a CRS ownership interest, the opportunity to buy a share of Sabre, and neither carrier was interested. American Supp. Comments at 13. Since American did not describe the terms of its offer, we do not know whether those two carriers could afford to buy a large enough interest in Sabre to obtain any control over its operations or whether American offered to give up control, yet such an investment would be attractive only if the new investors obtained possession of some control. If the new carrier investors did not obtain control, moreover, Sabre's operations could continue to favor American's airline services. In any event, Alaska and American West would not be the only victims of the CRS abuses that could arise without regulations.

American and Covia complain that stronger rules would unduly hamper their ability to compete with foreign-owned systems not subject to the same restrictions. See, *e.g.*, Covia Reply at 23–24. This complaint has no merit. If any foreign-owned system wished to compete in the United States, it would be obligated to follow our rules. Furthermore, the two major foreign systems—Amadeus and Galileo—mainly operate in areas subject to the European Community rules, which are substantially more restrictive than our own. Sabre itself must comply with those rules in its operations within the European Community, and Covia's Canadian affiliate must comply with similar rules in Canada. Neither of the major vendors has submitted evidence in this proceeding showing that the European Community rules (or the Canadian rules) significantly interfere with a vendor's ability to operate profitably. Finally, Covia has agreed with its European affiliate, Galileo, that Galileo rather than Covia will market CRS services in all of Europe and Asia except Japan. American June 16, 1992 Comments, Att. B. We accordingly cannot agree that our rule changes will injure any U.S. vendor's ability to compete with foreign systems.

CEI has submitted a paper by Jerome Ellig arguing that any regulation reducing the vendors' profits could discourage technological innovation. His paper, "Computer Reservation Systems, Creative Destruction, and Consumer Welfare: Some Unsettled Issues", suggests that the vendors' opportunity to earn supracompetitive profits (*i.e.*, rents) has fostered innovation in the CRS industry. We agree with Ellig that our rules should encourage innovation and not penalize the vendors for the profits gained from their willingness to accept the risks of investing in the systems. However, our rules certainly will not keep the vendors from being profitable. We are not, for example, limiting the vendors' ability to charge fees. Our rules are designed to eliminate only anticompetitive practices, not legitimate uses of a carrier's control of a system. We also doubt that the vendors would have failed to create the systems if they had known that display bias and similar profit-reducing practices would be prohibited.

In large part, moreover, we intend to spur innovation through our rules. We believe that our rule allowing agencies the freedom to use hardware and software from third-party firms and to access different databases from a single terminal will promote innovation (but without stifling the vendors' technological developments). After all, in recent years much of the innovation

in the CRS industry has come from the efforts of the smaller vendors and firms like Megadata and TravelPro. See, *e.g.*, Hewins Reply at 6.

As stated above, we appreciate the need to limit our intervention in the CRS business so that we do not deny the vendors the legitimate benefits of their development of the systems. If a vendor has devised means of using its system to enable it to operate more efficiently, it is entitled to the rewards of its investment. For example, we are rejecting Air France's charge that American is unfairly using Sabre to obtain more detailed and current information on travel agency bookings than is available to other carriers. May 6, 1992 Air France Comments. Despite Air France's complaint, American is only gaining the benefits of its investment in creating a program for analyzing the marketing data provided by Sabre and the other systems. We see no reason for denying American the use of a program that it had the foresight to develop. Any other U.S. carrier can already acquire the same data, and our new rules will allow Air France and other foreign carriers the opportunity to acquire and use the same information.

V. Statutory Authority for the Rules

Given our findings on the potential for consumer deception and anticompetitive practices resulting from airline-owned CRSs, we have the authority under sections 204(a), 411, and 1102(a) of the Act, 49 U.S.C. 1324(a), 1381, and 1502(a), to adopt these rules. Section 411 authorizes us to define and prohibit unfair methods of competition and deceptive practices, while section 1102(a) requires us to act consistently with the United States' obligations under treaties and bilateral agreements. Section 204(a) gives us a broad rulemaking authority. We tentatively concluded in the NPRM that these sections authorized our adoption of the rules that were proposed there. 56 FR 12602–12603. We also pointed out that the Seventh Circuit had affirmed the Board's adoption of CRS rules based on the same section 411 analysis that we tentatively adopted. *United Air Lines* v. *CAB*, 766 F.2d 1107 (7th Cir. 1985).

In response, American argues that we cannot rely on antitrust principles as a basis for regulating CRS practices under section 411. American bases this argument in large part on the decision in favor of the major vendors in the antitrust suit filed by several non-vendor carriers against them, *Alaska Airlines* v. *United Air Lines*, 948 F.2d 536 (9th Cir. 1991), *cert. denied*, 60 U.S.L.W. 3668 (April 7, 1992), a decision that allegedly undermines our factual and legal findings.

The only other objection to our legal authority to adopt the proposed rules comes from CEI, which argues that the rules display bias would violate the First Amendment of the Constitution. These issues are discussed below.

A. Unfair Methods of Competition

1. Unfair Methods of Competition under Section 411

Under section 411 we may investigate and determine whether any air carrier or ticket agent has been or is engaged in unfair methods of competition in the sale of air transportation. That section, modelled on section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, does not confine unfair methods of competition to those practices constituting a violation of the antitrust laws. Instead, we have the authority to ban practices well before they become serious enough to violate the antitrust laws, as the Seventh Circuit held when it affirmed the Board's adoption of the CRS rules, *United Air Lines*, 766 F.2d at 1114:

> Although none of the airline owners of computerized reservation systems has a conventional monopoly position in the market for that service, and they are not accused of colluding, the Board found that some of them, anyway, had substantial power. This finding * * * would bring their competitive practices within the broad reach of section 411. We know from many decisions under both that section and its progenitor, section 5 of the Federal Trade Commission Act, that the Board can forbid anticompetitive practices before they become serious enough to violate the Sherman Act.

As a result, we may define a practice as an unfair method of competition and prohibit it without finding that it is in fact a violation of the antitrust laws. Nonetheless, we doubt that we could adopt rules on competitive grounds unless the practices being prohibited are comparable to practices that would violate the spirit or the letter of the antitrust laws. *See, e.g., E.I. Du Pont de Nemours & Co.* v. *FTC*, 729 F.2d 128 (2d Cir. 1984). Since the principal basis for our adoption of the new CRS rules is our decision to prevent vendor practices constituting unfair methods of competition, we must explain why antitrust principles justify that decision. However, as was true of the Board's proceeding, Board NPRM, 49 FR 11659, we are making no finding in this proceeding that any party has violated the antitrust laws.

In the NPRM we tentatively concluded that our proposed rules appeared necessary to prevent unfair methods of competition. We reasoned that the practices we proposed to prohibit were analogous to those proscribed by the antitrust laws. 56 FR 12602–12603.

Due to American's challenge to our antitrust reasoning and the Ninth Circuit's decision in the private antitrust suit, we have reexamined our tentative conclusions. We conclude again that the vendors have market power and that the rules are therefore needed to prevent practices similar to conduct prohibited by the antitrust laws. We also find that the Ninth Circuit's decision in its CRS case does not undermine our basis for adopting CRS rules.

2. Basic Findings on Market Power

As we said earlier, market power is the ability to raise prices above the economic cost of providing service (or to provide less service than would be provided in a competitive market). Justice ANPRM Comments at 10. The Supreme Court has defined it as the power "to force a purchaser to do something that he would not do in a competitive market," *Jefferson Parish Hospital* v. *Hyde*, 466 U.S. 2, 14 (1984).

For the reasons described earlier and in the NPRM, we find that each vendor has market power over other carriers. The best evidence of this is, as indicated, a vendor's ability to set prices for its CRS services without regard to costs, because vendors need not and do not compete for participating carriers. Their control over pricing was further demonstrated before the rules were adopted by their ability to set discriminatory prices. *Cf. United Airlines* v. *CAB*, *supra*, 766 F.2d at 1114.

As explained above, each vendor's market power arises because carriers have no adequate alternative to the travel agency system for efficiently distributing their services, because travel agents have no alternative to CRSs for quickly and efficiently obtaining information and bookings on airline services, because the great majority of agencies use only one system (or predominantly only one system) at each location, because entry into the CRS business under current conditions would be extremely difficult, and because the economics of the airline business make it impossible for a carrier to operate successfully if its services cannot be readily marketed by a significant group of distributors. As Justice points out, each system as a practical matter holds a monopoly over the carriers' access to its subscribers.

We recognize that our finding that each vendor has market power over other carriers at first sight appears to be inconsistent with most antitrust holdings, since there are four systems,

none of which has a monopoly share of the national market. However, like the courts, we must base our competitive analysis on the economic realities of the relevant market. *Eastman Kodak Co.* v. *Image Technical Services*, 60 U.S.L.W. 4465, 4469 (June 9, 1992). Our analysis of the economic realities of the CRS and airline industries, like the analyses of the Board and Justice, compels us to conclude that each vendor has market power.

3. CRSs as Essential Facilities

Under the essential facility doctrine, a firm that controls a facility essential for competition must give its competitors access to the facility on reasonable terms. The firm's denial of access will violate section 2 of the Sherman Act. A facility is essential if it cannot be feasibly duplicated by a competitor and if the competitor's inability to use it will severely handicap its ability to compete. *See, e.g., Aspen Skiing Co.* v. *Aspen Highlands Skiing Corp.*, 472 U.S. 585 (1985); *Hecht* v. *Pro-Football, Inc.*, 570 F.2d 982 (D.C. Cir. 1977), *cert. denied*, 436 U.S. 956; *Twin Laboratories* v. *Weider Health & Fitness*, 900 F.2d 566 (2d Cir. 1990); *Delaware & Hudson Ry.* v. *Consolidated Rail Corp.*, 902 F.2d 174 (2d Cir. 1990), *cert. denied*, 111 S.Ct. 2041.

The rationale of the essential facilities doctrine authorizes our adoption of rules that would prevent a vendor from unreasonably denying other carriers access to its CRS or from imposing unreasonable terms as a condition to access. Each system is comparable to an essential facility, for, as shown above, no one can feasibly duplicate a CRS and denial of access to a CRS will impose a substantial handicap on a carrier's ability to compete.

In this case the conduct proscribed by the rules—display bias, discriminatory booking fees, and denial to other carriers of access to the marketing data generated from a system's bookings—would severely prejudice the competitive position of carriers attempting to compete with a vendor in city-pair markets where the vendor dominates the CRS business at one or both endpoints. As a result, the vendor would obtain the power to raise prices above competitive levels and reduce service below competitive levels in such airline markets. American's successful retaliation against New York Air's entry into the New York-Detroit market shows that a vendor can use its system to eliminate competition in a city-pair market. Under section 411, that kind of threat to competition is sufficient to authorize our adoption of these rules.

American nonetheless argues that the essential facilities doctrine is inapplicable because each vendor's operation of its system cannot violate sections 1 or 2 of the Sherman Act. According to American, the essential facility cases were section 1 cases involving either the ownership of an essential facility by several competitors, *e.g., U.S.* v. *Terminal Railroad Ass'n*, 224 U.S. 383 (1912), or a contract denying use of an essential facility to one party's competitors, *e.g., Hecht* v. *Pro-Football, Inc.*, 570 F.2d 982 (D.C. Cir. 1977), *cert. denied*, 436 U.S. 956, or were section 2 cases where the denial of use of the facility resulted in monopolization or attempted monopolization of a relevant market, *e.g., Otter Tail Power Co.* v. *United States*, 410 U.S. 366 (1973). Since the vendor conduct at issue here involves single-firm conduct, the section 1 cases are inapplicable, and the asserted lack of any monopolization or attempted monopolization of an airline market by a vendor makes section 2 essential facility cases irrelevant as well, according to American.

We cannot agree. First, two of the systems—Apollo and Worldspan—are owned by several airline competitors, so they would be covered by the essential facilities doctrine even under American's narrow reading of it. But for our purposes American's reading is not controlling. Under section 411 we need not find that any vendor's conduct would be a violation of the antitrust laws under the essential facilities doctrine. We may adopt CRS rules if we find that the vendors' past or potential conduct would resemble the kind of conduct proscribed by the doctrine. A vendor's denial of the use of its system on reasonable terms to a competitor would present enough of a threat to competition in one or more city-pair airline markets to justify the adoption of the rules under section 411. Under that section we may act before a vendor's conduct threatens to create a monopoly in an airline market.

4. Monopoly Leveraging

The second basis for our determination that we may prohibit anticompetitive vendor conduct as an unfair method of competition is the monopoly leveraging theory, the principle that a firm may not illegitimately use its monopoly power in one industry to acquire an unfair competitive advantage in a second industry. Although this principle is controversial (and was rejected by the Ninth Circuit in *Alaska Airlines*), two courts have accepted it as a valid antitrust principle. *Berkey Photo, Inc.* v. *Eastman Kodak Co.*, 603 F.2d 263 (2d Cir. 1979), *cert. denied*, 444 U.S. 1093; *Kerasotes Michigan Theatres, Inc.* v. *National Amusements, Inc.*, 854 F.2d 135 (6th Cir. 1988), *cert. dismissed*, 490 U.S. 1087. The monopoly leveraging theory is also consistent with the Supreme Court's reasoning in *United States* v. *Griffith*, 334 U.S. 100 (1948). In our view, this principle can support a finding that certain conduct is an unfair method of competition under section 411, because it violates the spirit of the antitrust laws, even if the courts ultimately conclude that monopoly leveraging is not a violation of the Sherman Act.

The leveraging conduct barred by the rules—primarily display bias and discriminatory booking fees—is clearly exclusionary conduct that provides no benefits for consumers and that keeps airlines from competing on the merits of their fares and services. *Cf. Aspen Skiing Co., supra*, 472 U.S. at 605–611. That conduct constitutes an illegitimate use of the vendors' market power in the CRS industry to obtain a competitive advantage in the airline industry. If the vendors' conduct represented a legitimate use of their position in the CRS industry, we would not prohibit it, for firms with legitimately-acquired monopoly power may use the efficiency benefits of their size in a second industry without violating the antitrust laws. For example, American is entitled to take advantage of Sabre's ability to improve American's yield management program and its use of marketing data acquired from the CRSs. However, despite the theoretical arguments presented by the Kleit, Ellig, and Boudreaux articles, no one has shown that conduct as display bias and unreasonable terms for carrier participation actually benefits consumers or travel agencies, strengthens airline competition, or involves the use of the advantages of the vendors' size in the CRS business. We therefore find that the monopoly leveraging principle supports our conclusion that the vendor conduct we are proscribing constitutes unfair methods of competition.

Although American claims that the monopoly leveraging principle is invalid under the antitrust laws, as the Ninth Circuit held in *Alaska Airlines*, we disagree with American's conclusion that the principle cannot support a finding of unfair competitive practices under section 411. First, two other circuits have endorsed it. Secondly, as the Second Circuit pointed out in *Berkey*, the Supreme Court used similar reasoning in *United States* v. *Griffith*, 334 U.S. 100 (1948). There the Court held it a violation of the antitrust laws for

movie theater owners to use their monopoly power in some towns to gain an edge in obtaining films in towns where they did not have a monopoly. The Court, moreover, stated that "the use of monopoly power, however lawfully acquired, to foreclose competition, to gain a competitive advantage, or to destroy a competitor, is unlawful." 334 U.S. at 107.

We recognize that the Ninth Circuit has rejected the Second Circuit's reasoning and that other circuits have questioned (but not rejected) the validity of the monopoly leveraging theory when the monopolist's leveraging will not result in monopolization or attempted monopolization in the second industry. *Association for Intercollegiate Athletics for Women* v. *NCAA*, 735 F.2d 577, 586, n. 14 (D.C. Cir. 1984); *Consul. Ltd.* v. *Transco Energy Co.*, 805 F.2d 490, 494, n. 11 (4th Cir. 1986), *cert. denied*, 481 U.S. 1050. However, a holding that monopoly leveraging is not barred by the antitrust laws would seem to be inconsistent with *Griffith*. In addition, the *Alaska Airlines* decision—based on the dichotomy between sections 1 and 2 of the Sherman Act—may have exaggerated the difference between the two sections. The Ninth Circuit reasoned that monopoly leveraging was outside the scope of the antitrust laws on the basis of a distinction between the two sections, a distinction based on statements in *Copperwald Corp.* v. *Independence Tube Corp.*, 467 U.S. 752 (1984). The Ninth Circuit held that section 1, which prohibits contracts in restraint of trade, applies only to concerted conduct, while one firm's unilateral conduct can be unlawful only if it violates section 2's prohibition against monopolization or attempted monopolization. 948 F.2d at 542. We believe, at least for section 411 purposes, that the court's distinction is too rigid, since a single firm's conduct, albeit enforced through a contract, can be unlawful under section 1. As the Supreme Court recently held in *Eastman Kodak Co.* v. *Image Technical Services, supra*, 60 U.S.L.W. 4465, a single firm's use of its market power in one business to force customers to buy products or services from it in a second line of business can be an unlawful tying arrangement proscribed by section 1. Similarly, a firm's use of an exclusive contract to capture of all of another firm's purchases of a good or service can be unlawful under section 1. See, *e.g.*, *Jefferson Parish Hospital* v. *Hyde, supra*, 466 U.S. at 44–45 (O'Connor, J., concurring).

5. The Alaska Airlines Case

In challenging our antitrust analysis, American relies heavily on the Ninth Circuit's decision in *Alaska Airlines*, the private antitrust suit, holding that American and United had not violated the antitrust laws. As noted above, the court held that the essential facility principle was inapplicable to the operations of Sabre and Apollo and that the monopoly leveraging principle was contrary to the antitrust laws.

Although American argues that the Ninth Circuit decision should resolve the section 411 issues here, we cannot agree. First, our authority to proscribe unfair methods of competition under section 411 is broader than the courts' power to find antitrust law violations. Congress did not confine our authority to define and proscribe unfair methods of competition to conduct that violated the antitrust laws. By giving us broader authority, Congress intended that we should bar airline conduct that will lead to a substantial reduction in competition if the conduct is not the result of an exercise of efficiency advantages or innovation or other procompetitive practices.

Secondly, the Ninth Circuit based its decision on the record before it and on the parties' agreements in the case. For example, the court relied on the plaintiffs' apparent admission that the vendors did not have the power to eliminate competition in the air transportation industry. 948 F.2d at 545. Our decision, on the other hand, must necessarily be based on the record in this proceeding and our expertise in CRS matters. Our record indicates that a vendor, particularly one with Sabre's market share, could use its control of the system to eliminate competition in individual city-pair markets, although not in the national market. Furthermore, the court did not conclude that the major vendors did not have market power over other carriers due to their control of the CRSs, since that issue was not addressed by the trial court. 948 F.2d at 545, n. 12.

In addition, the Ninth Circuit's interpretation of the scope of the essential facilities doctrine is inconsistent with the holdings of other courts. The Ninth Circuit held that the essential facilities doctrine applies only if the denial of use of a facility to others would eliminate competition. Other courts have held the doctrine applicable if the denial of a facility would impose a severe handicap on would-be competitors. *See, e.g., Twin Laboratories* v. *Weider Health & Fitness*, 900 F.2d 566, 569–570 (2d Cir. 1990).

6. Tying Arrangements and Exclusive Dealing

Each vendor requires its subscribers to obtain the vendor's consent before using in conjunction with its CRS any equipment or software acquired from a third-party firm, and each vendor prohibits its U.S. subscribers from using their CRS terminals to access another system or database. These restrictions resemble tying arrangements and exclusive contracts barred by the Sherman Act. Since these issues relate to our decision to adopt rules banning those restrictions, we will discuss them as part of our explanation for adopting those rules.

B. Unfair and Deceptive Practices

Without a prohibition of display bias, vendors could resume their earlier practices of biasing their display against competitors, thereby preventing agents and travellers from obtaining complete information on airline services. Since section 411 authorizes us to prevent deceptive practices in the sale of air transportation, we may adopt rules prohibiting display bias on the ground that they are necessary to prevent consumer deception. The Board used the same rationale for prohibiting display bias, and the Seventh Circuit upheld it. *United Air Lines, supra*, 766 F.2d at 1112–1113.

No one has challenged our authority under section 411 to prohibit display bias.

C. Fair and Equal Opportunity to Compete

Section 1102(b) of the Act, 49 U.S.C. 1502(b), requires us to act consistently with the United States' obligations under treaties and bilateral agreements. Since many of the United States' bilateral aviation agreements with other countries assure the carriers of each party a fair and equal opportunity to compete, we must adopt rules to the extent necessary to ensure that foreign carriers have such an opportunity. As we stated in the NPRM, we have held in ruling on complaints filed under section 2(b) of the International Air Transportation Fair Competitive Practices Act ("IATFCPA"), 49 U.S.C. 1159b(b), and in negotiations with foreign countries that the right of U.S. carriers to a fair and equal opportunity to compete means that they are entitled to have their services displayed fairly in CRSs operated abroad by foreign carriers and to market their CRSs effectively in such countries. Foreign carriers accordingly are entitled to the same rights in the United States. To ensure that foreign carriers have that

opportunity, we determined to maintain the rules' prohibition of display bias and discriminatory treatment. 56 FR 12602. No one has objected to our determination that section 1102 supports in part our adoption of these CRS rules.

D. First Amendment Issues

Our new rules will maintain with some changes the current rules' standards for CRS displays. We will continue to prohibit vendors from offering biased primary displays and extend that prohibition to secondary displays, thereby incorporating in the rules the vendors' existing agreement that secondary displays will not be biased. We will also maintain the requirement that vendors must include the airline flight delay statistics in their primary displays and the bar against the use of on-time performance statistics in ranking flight displays (§ 255.4(e), adopted in our 1987 rulemaking on airline delays). On the other hand, we will end the prohibition against a vendor's display of any other delay information. With the exception of the rules on the use of the on-time performance statistics, the rules neither prohibit vendors from offering whatever information they wish in their CRS displays, as long as flights are ranked and edited without bias, nor prescribe the use of any specific factors in constructing such displays.

CEI nonetheless claims that our proposed regulation of CRSs would violate the First Amendment right of free speech. According to CEI, CRS displays are commercial speech entitled to First Amendment protection, and we have allegedly failed to show that a need exists for regulating the vendors' speech that would override their First Amendment rights. However, CEI does not explain how the rules would keep agents and travellers from receiving useful information. In addition, no vendor, airline, or travel agency party argues that the rules will violate its free speech rights. In our view, our rules on display bias do not violate anyone's First Amendment rights.

In light of our finding that the rules against display bias are necessary to prevent potentially misleading speech, our rules are consistent with the First Amendment. The prohibition of display bias prevents vendors from editing and organizing their displays in a manner that gives vendor flights an unwarranted display position, thereby causing travel agents to book flights that are not necessarily the best suited for their customers. Despite the arguments by CEI and others, we find that display bias does not provide travel agents or their customers with useful information.

The First Amendment allows governments to regulate deceptive or misleading speech. The Court thus stated in *Central Hudson Gas & Electric Co.* v. *Public Service Comm'n*, 477 U.S. 557, 563 (1980):

> [T]here can be no constitutional objection to the suppression of commercial messages that do not accurately inform the public about lawful activity. The government may ban forms of communication more likely to deceive the public than to inform it.

Accord, Zauderer v. *Office of Disciplinary Counsel*, 471 U.S. 626,638 (1985). Since our regulations of display bias are intended to prevent deceptive or misleading messages, they do not violate the First Amendment.

Even if our rules prohibit some communications which are not misleading or deceptive, they would still be permissible under the First Amendment. The federal government may constitutionally regulate speech in the course of regulating a field of economic activity; restrictions or prohibitions on certain types of speech imposed by the antitrust laws, securities laws, and labor relations laws are thus constitutional without requiring justification under the commercial speech standard. See, *e.g.*, *SEC* v. *Wall Street Publishing Institute*, 851 F.2d 365, 372 (D.C. Cir. 1988), *cert. denied*, 489 U.S. 1066, *citing, inter alia, NAACP* v. *Claiborne Hardware Co.*, 458 U.S. 886, 912 (1982). *See also NLRB* v. *Retail Store Employees*, 447 U.S. 607 (1980). Our restrictions on display bias come within the bounds of permissible economic regulation, for we are prohibiting display bias in part to prevent unfair methods of competition and to carry out the United States' obligations under bilateral aviation agreements with foreign governments.

Furthermore, the rules would pass muster under the usual test for determining whether a government regulation of commercial speech is permissible under the First Amendment, even if display bias were not deceptive or misleading. The Supreme Court held in *Central Hudson* that a government may restrict commercial speech that concerns lawful activity and is not misleading, if the government has a substantial interest and if the restrictions directly advance that interest and are no more extensive than necessary to serve that interest. *Central Hudson, supra*, 447 U.S. at 566. *See also Board of Trustees* v. *Fox*, 109 S. Ct. 3028 (1989).

We have a substantial interest in CRS displays, even aside from their potential for deceiving the public, because a vendor's use of a biased display would cause a substantial diversion of revenues that would significantly reduce the ability of non-vendor carriers to compete. The restrictions imposed by our rules directly advance our interest in preserving airline competition, for the rules prohibit bias. The restrictions are no greater than necessary to carry out that purpose because they merely prohibit bias without dictating to the vendors what criteria must be used (or may not be used) in ranking and editing flight information. While CEI complains that we failed to consider other alternatives to the rules against display bias, it cites only one possible alternative, a requirement that travel agents tell customers which CRS is being used. As explained below, no party in this proceeding sees any merit in such a proposal as a replacement for other CRS rules. Such a requirement would provide little useful information for most consumers and would not help travel agents, whose ability to find the best service for their customers is hindered by biased displays.

VI. Procedural Issues

We tentatively determined in the NPRM that we could use notice-and-comment rulemaking procedures to adopt final CRS rules. 56 FR 12603. As we pointed out, the Seventh Circuit affirmed the Board's use of such procedures in its CRS rulemaking. *United Air Lines* v. *CAB, supra*, 766 F.2d at 1119–1121. No party challenges that determination as to the rules we are adopting (some parties argued that a formal hearing would be required before we could adopt certain other rules, but that issue is moot).

Several parties filed requests for leave to file reply comments, supplemental comments, and comments out of time. We will grant all such motions. We are also treating as comments a number of other documents submitted for the record without motions for leave to file, including several travel agency letters.

Even though our basic choice of procedures is uncontested, several other procedural issues require discussion.

A. Adequacy of Record

We have given the parties ample opportunity to present their views on the issues of whether we should readopt CRS rules and, if so, which rules should be adopted. We issued an ANPRM in this proceeding, received comments on the ANPRM (and allowed several parties to file reply comments), issued an NPRM with our tentative findings, authorized parties to file comments and reply comments on our proposals, and

again allowed parties to file additional pleadings.

In addition to relying on the parties' comments, we have been relying for certain purposes on our past detailed studies of the CRS business and its impact on airline marketing, the *1988 CRS Study* and the *Marketing Report* (published in early 1990), as well as on the Board's findings and the evidence submitted by Justice in the Board's rulemaking. Since the basic structure of the CRS and airline businesses has not changed significantly since the board conducted its rulemaking, we have found the earlier studies and the Board's analysis helpful in analyzing the potential competitive and deception problems that could arise if we allowed the rules to expire. Obviously the Board's analyses and even our 1990 study are not particularly useful in considering other issues in this proceeding, such as the alleged need for stronger rules on equal functionality, in light of the continuing technological developments in the CRS business in recent years.

Nonetheless, despite the parties' ability to file several rounds of comments and our limited use of earlier CRS investigations, Covia, United, and KLM charge that the record in this proceeding is too out-of-date to allow us to adopt new rules

We disagree with the assertions that the record is too old to be useful in deciding what CRS rules are necessary. First, the CRS industry's essential features—for example, the agencies' reliance on CRSs, the need of every carrier to participate in each system, and the unlikelihood of new entry—have remained the same for the last eight years. Furthermore, the developments cited by KLM—for example, the European Community's adoption of CRS rules—were considered by us. See, *e.g.*, 56 FR 12588, 12600.

More importantly, we have been liberal about allowing parties to file comments after the end of the formal comment period, a number of parties have filed such comments, and indeed we specifically invited parties to submit material updating the record if they thought recent developments were relevant to the issues, 57 FR 22645 (May 29, 1992). The parties accordingly have been able to update any of the evidence and analyses used in this proceeding.

B. Confidentiality of Reliability Information

In order to obtain additional information on one of the major issues in this proceeding, the extent of architectural bias, we directed each of the vendors to file information on the reliability of its system's transactions and related issues. Order 91-8-63 (August 30, 1991). The vendors' submission of reliability information has generated several requests for confidential treatment of the filings. When Northwest initially asked us to obtain the information from all vendors, it submitted information on the reliability of PARS, the system owned in part by Northwest, for which it requested confidential treatment. Covia opposed the request. We stated that we would rule on the motion later. Order 91-8-63 at 6.

Covia and System One asked for confidential treatment of their responses to the question asking for the total number of airline bookings made, measured by the number of segments booked, for each CRS service during specified periods of time (question 4 in App. A to Order 91-8-63), and Worldspan requested confidential treatment for all of its responses. We will rule on the requests for confidential treatment by a separate order.

VII. Specific Rule Proposals

Our general findings on the need for CRS rules and our authority for adopting them do not resolve the issue of which rules should be adopted. In discussing why we are or are not adopting specific rules and proposed rules, we will follow the same order followed by the NPRM. As a result, the order of the major issues is as follows: (i) The scope of the rules' applicability, (ii) the use of third-party hardware and software by subscribers and their use of one terminal to access several systems, (iii) display bias, architectural bias, and related issues, (iv) booking fees, (v) marketing information, and (vi) subscriber contracts. Given the complexity and number of issues, we will not discuss the less important issues raised in the comments.

A. Readoption of the CRS Rules

Due to the expiration date set by the CRS regulations, a provision designed to force us to reexamine the need for the rules, the first issue here is whether there is any need for the current rules. Justice and the great majority of the other parties in this proceeding contend that those rules are still essential (and should be strengthened). Only CEI, American, Covia, United, Kleit, and some travel agencies contend that CRS rules are unnecessary. We find that CRS rules remain necessary to prevent deception and a substantial reduction in airline competition, as explained in our discussion of the competition and deception issues. The more difficult issues in this proceeding concern whether the additional or stronger rules are needed. Those issues are discussed below.

B. The Coverage of the Rules

The first rule at issue concerns the scope of the regulations. The current rules cover the operation within the United States of CRSs owned by airlines and used by travel agencies for obtaining information, making bookings, and issuing tickets on passenger air transportation. The rules do not cover computer systems that provide some but not all of these CRS functions, systems not affiliated with an airline, and systems not used by travel agencies (that is, systems used by corporate travel departments and home computer users). 56 FR 12604-12605.

The limited scope of the rules results from the Board's reasoning on the need for CRS rules. Airline-owned CRSs posed a threat to airline competition because their owners had the incentive and ability to use the systems to weaken the competitive position of other airlines. The efficiencies provided by CRSs—their ability to enable travel agents to obtain information quickly, make bookings, and issue tickets—caused travel agents to rely on them in selling airline services. The Board therefore had its rules apply only to airline-owned CRSs, not to all services providing airline information and booking capabilities to travel agencies, and excluded the one non-airline system then operating. Similarly, given the significance and nature of the travel agencies' role in the marketing of airline tickets to the public, the Board excluded CRS operations from the coverage of the rules if the systems were not being used by travel agencies. Board Rule, 49 FR 32548, 32549.

In the NPRM we tentatively determined to readopt these limits on the rules' coverage without change. 56 FR 12604-12605. ARTA, ECAC and several foreign airlines contend that the rules should govern systems without an airline affiliation, systems used by corporate travel departments and home computer users, and systems without all CRS functions (*e.g.*, systems that cannot issue tickets). Several parties state that the rules should cover new databases developed in the future, even if they do not have an airline affiliation. America West and Midway ask that systems used by corporations and home computers and systems offered by non-airlines should also be covered. Southwest contends that non-airline systems should be covered, while System One wants the rules to govern systems used by corporate travel

departments. KLM argues that we should prohibit bias in CRSs used by corporate travel departments and available through home computers. The American Automobile Association argues that non-agency CRS users should be regulated to avoid putting travel agencies at a competitive disadvantage.

Two parties argue against expanding the scope of the rules: Covia, which asserts that the rules should not apply to foreign systems accessible by U.S. subscribers through a U.S. system, and the National Business Travel Association (NBTA), which seems to suggest that the rules should not apply to corporate travel departments.

Finally, the United States Tour Operators Association (USTOA) contends that the rules should cover tours (packages of air transportation and land arrangements), not just passenger air transportation.

1. Coverage of Non-Airline Systems

We will again limit the rules' coverage to airline-affiliated CRSs used by travel agencies. This decision flows largely from our basis for readopting the rules. CRSs present potential competitive and deception problems because the systems are owned or affiliated with carriers who have the incentive (and the ability) to use their control to prejudice the competitive position of other airlines. As we explained in the NPRM, no non-airline system operates in the United States and none appears likely to enter the CRS business in the future, given the various barriers to entry that exist, including the agencies' reluctance to use any system not marketed by a major airline. 56 FR 12594. In addition, if a non-airline firm did not operate a CRS, it would not have an incentive to use the system to capture additional airline bookings. Such a firm would also have to market its system on the basis of its value as a stand-alone system. See, e.g., Marketing Report at 49.

Although several parties urge us to apply the rules to non-airline systems, none of them has shown that a non-airline system is likely to enter the CRS business in this country. Their concern that at some time a non-airline system might become viable is at this point theoretical and not an adequate basis for adopting rules. Some parties express concern that a vendor could circumvent the rules by selling its system to a non-airline firm subject to a condition that the latter firm bias the displays in favor of the former vendor. Such a transaction seems unlikely, particularly since we are amending the rules to make them applicable to systems marketed by a carrier or its affiliate.

2. Systems Without All CRS Functions

CRSs require regulation because their combination of capabilities—the provision of information on almost all airline services and the ability to quickly make bookings and issue tickets—causes travel agents to rely on them to determine what airline services are available and to book flights. Because the systems are so efficient, airlines cannot practicably provide these information and transaction capabilities to agencies through any alternative means.

Delta, several foreign carriers, ECAC, and ASTA urge us to apply our rules to systems and databases lacking one or more CRS functions. However, any system that does not provide both airline information and a booking and ticketing capability is not likely to be relied upon by any agency as either its primary information source or means of booking airline seats. Although admitting that such a system would be no more than a supplementary system, ASTA nevertheless asks that we regulate them. ASTA Reply at 20. We are unwilling to do so at this time, since such systems would not be used as an agent's primary information source. We note, moreover, that we do not now regulate other sources of airline information, such as the Official Airline Guide.

We recognize that our rules on third-party hardware and software will enable new firms to provide information on travel services to travel agencies. Indeed, our expectation that new databases will appear is a major reason for our adoption of those rules, as explained below. Although some parties urge us to regulate any new databases, we decline to do so for the reasons stated above. An agency will only subscribe to such a service if it is a useful addition to the CRS services already purchased by the agency, so the market should prevent abuses from occurring. On the other hand, our rules impose some detailed requirements on the display of airline services and on other system operations, and we prefer not to burden new entrants with those regulations unless there is a clear need for doing so.

We also expect that our rules on third-party hardware and software will enable carriers to create direct links between their internal reservations systems and travel agency CRS terminals. If an agent accessed a carrier's internal system through such a direct link and the internal system provided the information and functions of a CRS, it would become subject to the rules. SAS, a carrier that wishes to create such direct links, states its willingness to do so in accordance with the rules. SAS Comments at 19. If the internal system does not meet the definition of a "system", it would not be subject to the rules.

Under the definition of "system", the rules apply to a reservations system that provides information on carriers besides the owner or affiliate and that provides a booking and ticket issuance capability, even if only on the carrier that owns or markets the system. We think that applying the rules to direct links like that contemplated by SAS will be overly burdensome and unnecessary, since such a link is not likely to serve as an agency's primary tool for obtaining airline information and making bookings and since the rules would bar the carrier from paying travel agencies to use its direct link for bookings. We will therefore modify the current definition by adding the condition that a "system" charge carriers other than the owner for system services. If a carrier providing a direct link does not charge other carriers, it should be a type of service that need not be regulated, since the carrier owner would be unable to obtain the type of compensation relied upon by the existing systems for their profitability.

3. Systems Not Used by Travel Agencies

We also will not apply the rules to systems used by persons other than travel agencies. First, systems used by corporate travel departments should not require regulation, because corporations operating their own travel offices can choose which system they will use and control their employees' airline bookings. This being the case, there is no need to apply the bias rules to CRSs used at such locations, since the companies should be able to protect themselves. Similarly, other carriers should be able to compete with a vendor for a corporate travel department's airline business and thereby make the application of the rules unnecessary. The Board similarly saw no reason to extend the rules to systems used by corporate travel departments. Board Rule, 49 FR 32549. Although the American Automobile Association complains that applying the rules only to CRSs used by travel agencies will give other ticket sources a competitive advantage, AAA Comments at 3, it has not provided a factual basis for this assertion.

Although some vendors provide airline information and booking capabilities to home computer users, Marketing Report at 14, we will not make our rules applicable to systems

available to home computer users. In our competition study, we found that home computers accounted for a very small proportion of all airline bookings. Marketing Report at 14. Nothing in this record indicates that that proportion has increased significantly. More importantly, the record has no evidence on the manner in which CRS services are marketed to persons using home computers and no proof that vendors have used home-computer systems in a way prejudicial to airline competition. In view of these evidentiary gaps, we could not reasonably apply the rules to CRS services directly offered to consumers.

4. CRS Display of Tours

USTOA asks that we require the vendors to provide better information on tour packages. Tour operators package air travel with land arrangements and, according to USTOA, compete with the airlines (including the vendors) and travel agencies. USTOA alleges that the CRSs discriminate against the products of independent tour operators by giving preference to the vendors' in-house tour products. In addition, the systems' failure to provide adequate information and functionality for tour packages hampers the marketing of independent tours.

We will not expand the reach of our rules to cover tour products. USTOA has not shown in detail how the systems fall short in handling tour products, how they discriminate in favor of the carriers' own tour operations, or how the vendors' alleged practices affect competition in marketing tours. Without facts like these, we have no basis for regulating the CRS's handling of tour packages.

In addition, USTOA misunderstands our role when it argues that we should impose rules on the vendors because they assertedly have fallen behind the Europeans in developing CRS capabilities for tour products. Telling the vendors (or anyone else) how they should operate their business is outside our authority in this proceeding unless we find a specific competition or consumer deception problem requiring action under section 411. If there is a demand for better CRS information and functionality on tour packages, either the vendors or other firms will meet that demand.

5. Foreign CRSs Provided to U.S. Subscribers

Unlike most of the parties commenting on the scope of the rules, Covia contends that their scope is too broad, for assertedly the rules should not apply to foreign systems made available to U.S. subscribers. Covia alleges that it may wish to give U.S. subscribers access to its European affiliate, Galileo. Covia Reply at 19. Worldspan, on the other hand, supports applying the rules to foreign systems available to U.S. subscribers. Worldspan Comments at 34–35.

In our view, if a U.S. travel agency can gain access to a foreign CRS that is within our definition of a "system", that CRS should comply with our rules. Otherwise a vendor like Covia, for example, could evade the rules by allowing (or encouraging) its subscribers to access its foreign affiliate. Covia has shown no reason why applying the rules to foreign systems would be unfair or burdensome. Our rules would apply only to their operations within the United States. We note, moreover, that the major foreign systems—Amadeus and Galileo—operate under the more stringent European rules, so they should be able to comply with our rules without difficulty.

C. Definitions

The rules' proposed definitions drew little comment except for the proposed terms "system owners" and "system vendors" (and except for the definitions delineating the scope of the rules discussed above). Under our proposal, a "system owner" would be any carrier that held an equity interest in a system or that had an affiliate that owns such an equity interest, while a "system vendor" would be any carrier or its affiliate that controlled or operated a system. Under § 255.2 of the proposed rules, every carrier that owns, controls, operates or markets a system would be responsible for ensuring that the system complies with the rules. However, the rules make system vendors directly responsible for following the regulations. A system owner has an additional obligation: it must participate in the features of other systems, to the extent such participation is commercially reasonable, and provide other systems complete and accurate information on its fares and services under proposed § 255.7.

American, Covia, and USAir suggest that the definition of "system vendor" should be clarified, since the proposed rule's wording assumes that each system is controlled by a single airline or airline affiliate. They suggest that the applicability of the rules to Worldspan would be unclear, since that system has no majority owner. American is concerned that any reduction in the amount of United's ownership could raise a question about the applicability of the rules, since Covia would also have no majority owner. Wordspan and Aer Lingus, on the other hand, contend that the definition of "system owner" is too broad, since it would require mandatory participation in other systems by carriers with a very small share of a U.S. CRS (for example, the Asian carriers who are partners in Abacus). American and Covia, however, assert that all owners should be deemed system owners.

In view of the ambiguities noted by America, Covia, and USAir, we will modify the wording of the rules. As American suggests, we will make the entity directly responsible for carrying out the rules "the system," not the "system vendor." As a result of that change, we need not create the term "system vendor." We will leave in place the proposed obligation that every carrier owning, controlling, operating, or marketing a system must ensure that the system operates according to the rules.

The term "system owner" is primarily relevant to the requirement of mandatory participation in other systems but is used elsewhere in the rules as well (for example, in defining "participating carrier"). As a general matter, we agree with American that every owner should be considered as a system owner for most purposes. The only exception concerns the mandatory participation requirement. This rule is intended to prevent a carrier from limiting its participation in competing systems so that agencies at its hubs—agencies that usually need the best information and transaction capabilities on that carrier—will be forced to subscribe to its system. Given this intent, applying that definition to every carrier with an ownership interest in a CRS, no matter how small, is unnecessary. We will therefore adopt Aer Lingus' proposal that carriers owning less than five percent of the equity of a system will not be deemed system owners. A carrier with such a small ownership interest is unlikely to have the incentive or the ability (particularly if it is a foreign carrier) to limit its participation in competing systems in order to further the marketing of the system in which it holds an equity interest.

We will also adopt American's proposal that both direct and indirect ownership will be used in determining whether a carrier is a system owner, but not Covia's suggestion that one carrier's equity interest in another carrier with a CRS interest should be excluded in determining whether a carrier is a system owner. The latter proposal could enable a major carrier to evade compliance with the rules by transferring its CRS interest to an affiliated carrier.

D. Third-Party Hardware and Software; Access to other Databases

1. Introduction

In the NPRM we proposed rules allowing subscribers to use third-party hardware and software in conjunction with their CRSs, subject to the condition that the third-party products must be compatible with the system, and allowing subscribers to access more than one system and other databases from a single CRS terminal. We tentatively found these rules necessary and procompetitive, because the vendors restricted their subscribers' ability to use third-party hardware and software and denied U.S. subscribers the ability to access other databases from their CRS terminals, a denial that made it relatively impracticable for agencies to use more than one system. We also observed that the vendors' restrictions on the use of third-party products appeared to be tying restrictions that could be unlawful under the antitrust laws. 56 FR 12605–12608.

Most commentors urge us to adopt the rules. System One, Delta, Southwest, America West, Midway, Alaska, ASTA, ARTA, Woodside, Hewins Travel, Aer Lingus, Air France, Alitalia, Sabena, SAS, Varig, and Virgin Atlantic support the third-party hardware and software proposal, while Alaska, America West, Midway, ASTA, ARTA, Hewins Travel, Aer Lingus, Air France, Alitalia, Sabena, SAS, Varig, and Virgin Atlantic support the proposal allowing agencies to access different databases from a single terminal. Southwest takes no position on the latter proposal, since it assumes that the third-party product rule will allow agencies to run a link between their CRS terminals and other databases, such as internal airline reservations systems.

Several of these commentors strongly support the proposals. America West, for example, calls them "beyond question, the most important step the U.S. government has ever taken with respect to enhancing the competitive environment for computer reservations systems." America West Comments at 15. Equally importantly, Southwest and two foreign carriers state their eagerness to use the rules to set up direct links between their internal reservations systems and travel agency CRS terminals so that agents can book them without going through a CRS. Woodside suggests, moreover, that travel agencies are likely to use such direct links to internal carrier reservations systems, which would put downward pressure on booking fees. ARTA notes that the travel agencies' ability to use third-party hardware and software will make other regulations (for example, on the terms of subscriber contracts) less necessary.

However, not all parties endorsed the proposals. American, USAir, Air Canada, and TAP oppose the third-party hardware and software proposal, while Covia, United, Delta, USAir, Air Canada, and TAP oppose the proposal allowing agents to access different databases from a single terminal. To a large extent, however, their opposition stems from the mistaken assumption that the proposals would limit the vendors' freedom to operate their systems and even place an affirmative obligation on vendors to modify their CRSs to facilitate agency use of a single terminal to access different systems.

Although Justice had supported similar proposals in its comments on the ANPRM, 56 FR 12605–12606, its comments on the NPRM assert that the rules on third-party products and giving agencies the right to access several systems from a single terminal will not be effective and will not solve the major CRS problems, which Justice considers to be supracompetitive booking fees and architectural bias. Justice Comments at 10–17.

We have determined to adopt the proposals with one significant change. We find them necessary and desirable on competitive grounds. While we will give all agencies the right to use third-party software and hardware if they wish, we will not require vendors to allow subscribers to use vendor-owned equipment to access other databases and systems. If a subscriber is using terminals owned by the vendor, we think the vendor should have some ability to control the use of its equipment.

While we seek to give agencies the opportunity to use third-party hardware and software and to access multiple systems and databases, we will require vendors neither to modify their systems to facilitate the use of third-party products nor to provide support for such products. We will preserve the vendor's right to protect the integrity of its system against its subscriber usage of incompatible equipment and programs.

2. The Vendors' Restrictions on Third-Party Products

Because subscribers are increasingly using PCs as their CRS terminals, they have the technical ability to obtain and process information and access several systems and databases from a single terminal. The vendors, however, impose contractual restrictions on their subscribers which have thwarted the agencies' ability to use existing technology to exercise the full capability of their PC terminals.

We found in the NPRM that each vendor supplies the equipment used by agencies as CRS terminals, that each controls the use of that equipment and prohibits its subscribers from using that equipment to access other systems or databases, and that each restricts the ability of its subscribers to use third-party software and hardware in conjunction with its CRS terminals. 56 FR 12605–12606. We further found that the record indicated that vendors unreasonably denied agencies the ability to freely use third-party hardware and software in conjunction with their CRS equipment, as shown by comments filed by Justice and Megadata, and that vendors never allowed U.S. subscribers to access more than one system from a single terminal. 56 FR 12606.

No one has denied that vendors bar their U.S. subscribers from accessing more than one system from a single terminal. American and Covia nonetheless claim that they are willing to allow agencies to use third-party software, and American recently announced its creation of programs to help independent firms design third-party products for use in conjunction with Sabre. June 30, 1992, Letter of Richard J. Fahy, Jr. While American's new programs are welcome, they still assume that the independent firms should work with American in developing their products rather than doing so on their own.

Furthermore, the comments on the NPRM have provided additional evidence that vendors unreasonably restrict the use of third-party hardware and software by their subscribers, even though they allow subscribers to use some products produced by independent firms. For example, TravelPro, a firm that developed a program and communications capability allowing an agent to access any system from a single terminal, has shown that no vendor would allow its subscribers to use its product except as a back-office system (that is, a system performing recordkeeping and accounting functions). No vendor contended that TravelPro's product would damage the integrity of its system. Instead, Covia stated that it was declining to consider TravelPro's request for certification of its product as a front-office program for Apollo subscribers largely because "at this time we are not in a position to understand the advantage to our customers" of the product's use. TravelPro Reply, Attachment B. Similarly, Worldspan told TravelPro that it would consider certifying its product only if so requested by a

subscriber or potential subscriber, that it therefore would not act on TravelPro's request for certification, and that no supplier of third-party products certified by Worldspan was permitted to advertise the certification. TravelPro Reply, Attachment C.

Travel Facilitators, a Florida travel agency, charges that neither System One nor Worldspan will allow the agency to access its system unless the agency uses equipment purchased from the vendor. Jonathan Parker, a lawyer with computer expertise who recently negotiated a subscriber agreement for a Florida travel agency, alleges that Sabre arbitrarily refused to let the agency use certain equipment in conjunction with Sabre even though the equipment was clearly compatible.

These vendor practices have nothing to do with a vendor's legitimate interest in preventing the use of incompatible equipment and programs. Furthermore, travel agencies should have the right to determine for themselves whether a product like TravelPro's would be advantageous. Vendors should not be able to usurp a subscriber's right to determine what is in its best interest.

3. Benefits of Terminating the Restrictions

We find that eliminating the vendors' unreasonable restrictions on the use of third-party hardware and software and on using a CRS terminal to access other databases will promote competition in the CRS and airline industries, enable agents and travellers to obtain more accurate and complete information on airline services, enable travel agencies to operate more efficiently, and promote technological innovation. These benefits can be obtained, moreover, without imposing any obligations or costs on the vendors. And a rule establishing the agencies' right to use third-party hardware and software should reduce the need for detailed regulation of other CRS issues.

While the rules on third-party hardware and software (and on using one terminal to access different systems) will all be pro-competitive, their benefits are somewhat different. We will begin by discussing the third-party software rule.

In the NPRM we identified the primary benefit of giving agencies the freedom to use third-party software as the ability to use programs to reconfigure the display of information provided by a CRS in ways which may better reflect customer preferences than the display algorithms now used by vendors. If agencies could create better displays, they would be more likely to choose the best possible airline services for their customers. 56 FR 12605–12606. Third-party software can also enable agencies to automate various steps in selling air transportation and thereby increase their efficiency. Marketing Report at 22.

Enabling agencies to use third-party hardware would similarly improve agency efficiency, since agencies could obtain equipment that would perform CRS and related functions more efficiently than the equipment provided by the vendors. See, *e.g.*, Megadata ANPRM Comments. In addition, if agencies owned their own terminals, they could use them to access several different systems and databases, which would enable new travel information firms to arise. Carriers could also set up direct links between their internal reservations systems and travel agency terminals that would bypass the CRSs entirely.

In theory, of course, agencies can access several different systems now, and carriers could establish links between their internal reservations system and travel agencies. However, each vendor's refusal to allow any subscriber to use the same terminal to access its system and another system or database makes it uneconomical and impractical for most agencies to use more than one system, since the agency must then pay for additional equipment and its agents must continually switch between different terminals. See, *e.g.*, ASTA Comments at 18; Woodside Comments at 2. While there are other reasons deterring agencies from using multiple systems (for example, the expense of training agents to use different systems and additional recordkeeping costs), the vendors' insistence that a separate terminal must be acquired for each system accessed by the agent is a substantial impediment to the use of multiple systems. 56 FR 12607. No commentor has claimed the contrary.

If agents had easy access to different systems and databases, they could acquire more accurate and complete information on the airline services available for their customers. The agents' ability to switch between systems would encourage vendors to compete more on the quality and range of their information and system capabilities, 56 FR 12606–12607, a factor that should further reduce architectural bias. Furthermore, three carriers—Southwest, SAS, and Varig—contend that they would use a third-party hardware and software rule to establish direct links between their internal reservations system and agency CRS terminals. That would increase travel agency efficiency and save costs for the carriers, since they would pay no CRS fees on bookings made through such links. SW Reply at 3–4; SAS Comments at 19; Varig Comments at 23. The carriers' ability to enable agents to bypass CRSs for some bookings could also hold down booking fees, since fee increases could cause carriers to establish more direct links with more agencies. TravelPro Reply at 5, 11; Woodside Comments at 9. Finally, the agents' ability to use the same terminal to access different databases would enable new databases and systems to do business in this country, something that is otherwise unlikely to happen due to the existing vendors' hold on travel agencies. See, *e.g.*, ASTA Comments at 18.

We also believe that these rules will promote technological innovation. Independent firms have created a number of programs that benefit travel agency CRS users, and in some cases (TravelPro being only one example) the vendors have tried to stifle their use. See, *e.g.*, Hewins Reply Comments at 6; Megdata ANPRM Comments.

Moreover, these rules allowing agencies the ability to use third-party hardware and software and to access several databases from a single terminal would make CRS practices consistent with those in other information businesses. For example, computer information services like Compuserve and Prodigy do not restrict their subscribers' ability to buy equipment of their choosing, and we doubt that any such service tries to prohibit its subscribers from accessing competing services. ARTA Comments at 7. As we noted in the NPRM, our rules will be comparable to the FCC decisions barring telephone companies from arbitrarily denying their customers the ability to connect third-party equipment with the telephone system. 56 FR 12605.

The rules will additionally make our regulations on this subject consistent with the European rules, which specifically deny vendors the authority to impose unreasonable restrictions on the use of third-party hardware by their subscribers.

American points out that our authority under section 411 is limited to the marketing of airline transportation. American Comments at 17. While we are modifying our rule accordingly, we trust that vendors will not seek to deny subscribers the ability to use their equipment (unless the vendor owns the equipment) to access non-airline databases, given our findings on tying.

4. Antitrust Analysis

Because they hamper airline and CRS competition, the vendors' restrictions on

third-party hardware and software and on using one terminal to access different systems and databases are comparable to tying and exclusive contract practices prohibited by the antitrust laws. In the NPRM we stated, "Unreasonable denials of agency requests to use hardware and software supplied by independent firms could well be considered an unlawful tying of equipment sales or rentals to CRS services in violation of the antitrust laws," a statement supported by the citation of *Jefferson Parish Hospital* v. *Hyde*, 466 U.S. 2 (1984). No vendor has challenged our tentative finding that their practices could be unlawful tying arrangements. Given the effects of the vendors' practices, we think that the vendor restrictions are contrary to the principles of the antitrust laws. However, as is true of our other findings on unfair methods of competition, we are not finding that the vendors' conduct does violate the antitrust laws. No such finding is required for our adoption of the rules.

As the Court recently reaffirmed in *Eastman Kodak Co.* v. *Image Technical Services*, 60 U.S.L.W. 4465 (June 9, 1992), a tying arrangement—a seller's agreement to sell one product only on condition that the buyer purchase a second product from the seller (or promise not to buy the product from another seller)—is a per se violation of the Sherman Act if the seller has appreciable market power in the tying product and if the arrangement affects a substantial volume of commerce in the tied product. Tying arrangements are objectionable because they force buyers to accept conditions that they would not accept in a competitive market. See, e.g., *Jefferson Parish Hospital*, 466 U.S. at 12–15.

The vendor restrictions are comparable to illegal tying arrangements. First, each vendor is willing to provide CRS services to travel agents only on the condition that a subscriber either purchase equipment and software from the vendor or agree not to purchase such products from others without the vendor's consent. As Justice suggested in its comments on the ANPRM, the vendors appear to impose these restrictions in part to keep agencies from buying third-party programs that compete with programs offered by the vendors and in part to deny agencies the ability to offset the factors in their displays that make it harder to find better services offered by other carriers. 56 FR 12606. Secondly, CRS services and hardware and software are separate products that could be and would be sold separately if the vendors allowed it. Thirdly, the vendors have the market power in the tying product—CRS services—to compel agencies to accept the condition that no hardware or software can be acquired from other sources without the vendor's approval. In several cities, such as Dallas-Fort Worth, one airline's dominant position in the airline market makes its CRS the only attractive system for most agencies. In other markets, such as Chicago, only two systems will be attractive for most agencies, since only those systems are marketed by carriers with a major share of the local airline market. Fourthly, the tying arrangements affect a substantial volume of commerce, given the number of CRS terminals used in this country. For example, there were over 62,000 Sabre terminals in use at the end of 1988, 56 FR 12605.

In addition, the vendor restrictions at issue are similar to the kind of exclusive dealing contracts that violate the Sherman Act, given the market share of each vendor, the widespread use of the restrictions in U.S. subscriber contracts, and the lack of any apparent justification for them. *Cf. Tampa Electric Co.* v. *Nashville Coal Co.*, 365 U.S. 320 (1961); *Standard Oil Co.* v. *United States*, 337 U.S. 293 (1949); *see also Jefferson Parish Hospital, supra*, 466 U.S. at 44–45 (O'Connor, J., concurring).

Finally, the vendors' denial of the use of their terminals for access to other systems and databases could be viewed as comparable to monopolization and attempted monopolization practices prohibited under the Sherman Act. As discussed above, in several cities a vendor's market share of the CRS market exceeds 60 percent. By restricting their subscribers' ability to use alternative systems and databases, vendors with market power are protecting their market share against competition. Furthermore, each vendor's subscribers (with few exceptions) are unlikely to use other systems or means of information to learn what services are available and to book them. By unreasonably limiting its subscribers' ability to use their existing equipment to access other information sources, each vendor maintains its market power over access to the agencies using its system.

5. Lack of Justification for the Restrictions

According to the vendors, the proposals should not be adopted for several reasons. First, at least some claim that they are liberal about allowing agencies to use third-party hardware and software. However, as shown above, those claims are contrary to the record, and no vendor claims that its subscribers may use CRS terminals to access more than one system.

Vendors assert, with some merit, that restrictions are necessary to protect the integrity of their systems, since incompatible software could damage a system. In that regard USAir cites a problem caused by an agency's use of incompatible software in connection with its access to USAir's internal reservations system. USAir Comments at 2–3. We agree that vendors are entitled to some assurance that agencies will not use products that are likely to damage a system. We are accordingly adopting a condition allowing them to bar the use of third-party hardware and software unless its use is certified by the vendor.

We see no justification, however, for allowing vendors to exercise unlimited discretion over the use of third-party products. As shown, the record demonstrates that the vendors have denied permission for the use of third-party products on incompatibility grounds (or imposed onerous certification requirements) where there is no likely incompatibility. See, e.g., Parker Comment; TravelPro Reply. ARTA, moreover, points out that Compuserve and Prodigy do not impose compatibility restrictions on their subscribers, even though they operate similar computer information networks. ARTA Comments at 7.

Vendors also claim that the proposals will impose burdens on their operations, but these claims are largely based on a misunderstanding of our proposals and are overstated. Vendors, for example, claim that the use of third-party hardware and software by subscribers will increase the costs of servicing CRS equipment and can downgrade the quality of the CRS service received by a subscriber. Even if this claim is true (and no vendor cited evidence in support of it), that could not justify the broad restrictions placed by vendors on the use of those products. Moreover, vendors can charge agencies for increased service costs.

The vendors have expressed other concerns that require a clarification of the intent of the rules. American is concerned that it may no longer be free to upgrade its system, as it has been doing, because its improvements might make useless the third-party products used by its subscribers. Our rule will not have that effect. Subscribers must bear the risk that system improvements will make programs and equipment acquired from independent firms unusable.

Vendors also portray our proposal as a requirement that they become

responsible for creating the communications links and software needed for an agent to access more than one system from a single terminal. We never intended to make the vendors responsible for implementing the links, and we see no reason why any effort would be required on their part. TravelPro's product, for example, would give agents access to all systems from a single terminal without any need for additional work by the agent's original vendor. Furthermore, Southwest and others point out that a carrier or a database firm can easily make its services available to a travel agent by running a communications line into the agent's terminal. Any messages between the agent and the carrier or other firm would travel on that line and would never enter the CRS' network. SW Reply at 3–4. We are imposing no obligation on vendors to modify their systems or to provide communications links with other databases. We have reworded the rules in several respects to clarify this.

Moreover, we find that neither rule will significantly interfere with the economics of the CRS business. CRS vendors should be able to do business without compelling subscribers to acquire their equipment and software. In fact, we understand that some U.S. vendors provide CRS services to subscribers overseas through a terminal used for access to the national carrier's system. 56 FR 12607; SW Comments at 3–4. Similarly, the CRSs are likely to remain the only services providing agents with availability and other information on all airline services and the ability to make bookings, so other databases accessed by agents will only supplement the CRSs. Given the capabilities provided by the systems, we doubt that travel agents will stop making substantial use of them. Indeed the vendors claims that few agents will make use of the freedom to access other databases, a claim that is consistent with out findings that the rule should have little impact on the vendors' business.

We think that each vendor can preserve the efficiency of its operations by adopting pricing structures ensuring that it will receive compensation for making CRS services available to agencies that also use other systems and make some bookings directly with a carrier. While Southwest urges us to prohibit productivity pricing on the ground that it may discourage agencies from using direct links with the internal reservations systems of carriers like Southwest to make bookings, almost all commentors support productivity pricing, including many supporters of the third-party hardware and software rules. We will therefore not prohibit it (but we are prohibiting minimum-use clauses, which unreasonably interfere with agency usage of multiple systems). We are, moreover, revising the language of the rules to make it clear that vendors may charge subscribers on a transaction basis, as requested by American and Covia. American Comments at 11; Covia Comments at 41.

While Covia fears that the agencies' ability to switch between systems could cause great variability in the volume of a system's transactions, Covia Comments at 46–47, we find that unlikely, especially given the vendor's claims that few agencies will wish to use a switch capability. The systems, moreover should have devices that can protect them against a surge in usage. Covia Comments at 41; Travel Facilitators Comment.

Furthermore, while our rules will prevent an agency's current vendor from limiting the agency's use of non-vendor equipment to access other databases and systems, the agency will still have to obtain another vendor's consent before it can begin using that vendor's CRS services. ASTA Reply at 22, n.7; TravelPro Reply at 1. While our NPRM suggested the possibility of restricting a second vendor's ability to deny CRS services to an agency using another system, we have determined not to adopt any such rule. A vendor would violate the rule, however, if it refused to provide CRS services to an agency because the agency is using third-party products or is accessing other systems and databases from a single terminal.

According to American and others, travel agencies will use third-party software to create biased displays. We recognize that some agencies may choose to introduce bias into their CRS displays, but travel agencies will lose business if they give customers poor or incomplete advice. Therefore, as discussed below in connection with proposals to ban the use of biased displays by travel agencies, we do not expect many agencies to use third-party software in a way that would result in customers receiving inaccurate or biased information.

With respect to our proposals that agents should have the option of accessing other systems or databases from a single terminal, the vendors claim that we should not adopt it because most agencies will be uninterested in using that freedom. See *e.g.*, Covia Comments at 42–43. This argument is extraordinary—while the vendors elsewhere ask that we rely solely on market forces to resolve alleged CRS problems, here they argue that we should decide what travel agencies should want. We prefer to rely on market forces where we can. Travel agencies can then decide for themselves whether they want to use the ability to link their terminals with different systems. We believe that a number of them will want that freedom, as shown by the support of ASTA and ARTA for our proposals.

6. Conditions on Compatibility

In the NPRM we proposed to allow vendors to ensure the compatibility of third-party software and hardware used by travel agencies. However, given the complaints about past abuses of certification process, we proposed to limit the vendors' authority to disapprove the use of third-party hardware and software to those products whose use would damage the system and to bar unreasonable certification procedures. We also asked whether we should create a presumption that a product is compatible with a system's functioning unless shown otherwise. 56 FR 12606.

The commentors generally support limiting the vendor's ability to establish unreasonable and expensive certification requirements but dislike the presumption proposal. A number of parties suggest that the best solution for encouraging compliance with compatibility requirements would be the adoption of a rule requiring vendors to publish the specifications of their systems so that developers of third-party products can ensure that compatibility of their software and hardware. See *e.g.*, American Comments at 13; ASTA Comments at 20; ARTA Comments at 7; TravelPro Reply at 6.

We have determined to preserve the vendor's ability to disallow the use of incompatible third-party products, subject to the limits proposed in the NPRM, but with a rule requiring the publication of specifications rather than the creation of a presumption of compatibility. The vendors have not refuted our tentative conclusions that existing certification procedures can be unduly time-comsuming and expensive, and the TravelPro documents cited above demonstrate that the vendor's current procedures are burdensome and arbitrary.

In the NPRM we asked whether we should require vendors to publish a list of the products certified for use on each system. 56 FR 12606. We will not adopt such a requirement, since a firm whose products have been certified can advertise the fact (obviously Worldspan's prohibition against a

supplier's advertising a certification would violate our rule against unreasonable restrictions on the use of third-party products).

We will endorse the proposal that vendors be required to provide specifications to third-party vendors of hardware and software so they could develop products that would be compatible. This rule should be less burdensome than the creation of a presumption of compatibility and should facilitate the development of third-party hardware and software.

7. Vendor-Owned Equipment

We originally planned to grant travel agencies the freedom to access other systems and databases from any CRS terminals they used, whether the equipment was owned by the agency or the vendor. We have determined to limit the rule to equipment owned by the agencies. If an agency is using terminal equipment owned by the vendor, the vendor should have some control over its use, particularly since the vendor is entitled to compensation for the use of its property and since its charges for the property presumably assume the agency's use of the terminals for a certain level of bookings. Since an agency can obtain the ability to access other systems and databases from a terminal if it buys its own equipment, it can evade any vendor's restriction on the use of vendor-owned equipment. Thus our rule allowing agencies to use third-party hardware should eliminate the exclusionary effects of the vendors' current conditions on the use of their equipment.

8. Transition Period

We have determined to create no special transition period for the rules on third-party hardware and software. The restrictions against the use of third-party products are contrary to the spirit of the antitrust laws and to the Board's original findings that agencies should have the ability to use multiple systems if they wished. Moreover, vendors have been on notice since March 1991 that we were considering the adoption of these rules. They have had an opportunity to adjust to their likely impact. The record also indicates that relatively few agencies will take immediate advantage of the options created by these rules. See *e.g.*, ASTA Comments at 19.

Our decision to make these rules effective on the effectiveness of the entire rule will not, of course, excuse an agency from its obligations to pay for equipment currently being leased from a vendor.

9. Non-Vendor Payments to Agencies

The rules now prohibit each vendor from conditioning its payment of a commission to a travel agency on the agency's use of that carrier's system. Section 255.6(d). The rule neither covers non-vendor carriers nor would prevent a vendor or non-vendor carrier from paying an agency to use a direct link between the agency's CRS terminals and the carrier's internal reservations system. For now we will maintain this rule. If a carrier wants to cause travel agencies to use a direct link, it is likely to compensate them for doing so, a result which should make economic sense for the carrier, which then saves the CRS booking fee. However, until we see how the third-party product rules operate in practice, we do not wish to allow vendors to pay agencies to use one CRS rather than another.

E. Vendor Participation in Other Systems

In the NPRM we proposed a rule requiring each system owner to participate in other systems and their enhancements, to the extent that the price for such participation was commercially reasonable, if the system owner participated in such an enhancement in its own system. That requirement would include the obligation to provide other systems with complete, timely, and accurate information on all services and fares that it made generally available to the subscribers of its own system. We based this proposal on our concern that some vendors were handicapping the marketing efforts of other CRSs by refusing to participate in enhancements offered by the competing systems. 56 FR 12608.

Covia, Worldspan, America West, USAir, ARTA, and Swissair support the proposal, but ECAC, Air France, and Lufthansa oppose it. Delta supports the proposal that system owners provide complete information to other systems and supports in principle the mandatory participation proposal, but it asserts that the latter proposal should be drafted carefully to avoid denying vendors the ability to bargain over participation in enhancements offered by other systems.

We have determined to adopt the proposed rule. The rule is necessary, for some system owners do not participate in enhancements in other systems and do not provide complete information on their fares and services to competing CRSs, as we tentatively found in the NPRM. No one has argued that system owners never limit their participation in other systems as a weapon to obtain more subscribers at their hubs, and no one has denied the potential usefulness of such tactics. While a system owner will lose bookings from subscribers in another system when it reduces the level of its participation in that system, the loss in airline bookings can be outweighed by the gain in CRS subscriptions (and the likely increase in its airline revenues from the new subscribers). We conclude that this requirement is justified on competitive grounds, since it will keep a CRS owner from using its dominance of a regional airline market as a tool for obtaining dominance in the area's CRS market.

We do not believe that this rule will require us to review the reasonableness of vendor fees for participation in enhancements or of the quality of service provided by participation in an enhancement. We expect that the refusal of many carriers to use a particular enhancement should conclusively demonstrate that the terms for participation are not reasonable because the price and other expenses are too high. On the other hand, if every carrier but one system vendor participates in a particular enhancement, that would strongly suggest that the latter's refusal to participate is not based on a determination that the terms of participation are unreasonable.

Since, as discussed above, we have revised the definition of "system owner" to exclude carriers with a small equity interest in a system, few carriers will be subject to the requirements of this rule.

This rule will also be consistent with our decisions that U.S. airlines would be denied a fair and equal opportunity to compete in a foreign country if the dominant carrier in that country denied subscribers using the U.S. carrier's system the authority to use it to issue tickets. *American Airlines* v. *British Airways*, Order 88-7-11 (July 8, 1988). Having taken that position as to the obligation of a foreign carrier dominating its homeland market, we should require U.S. carriers holding a dominant market share in some areas to participate fully in competing U.S. CRSs.

For the same reasons, we will require system owners to provide complete and accurate information on their own services and fares to other systems. A system unable to obtain such information from a competing CRS owner will be unable to compete effectively for subscribers in that carrier's hub. See, *e.g.*, Delta Comments at 38; Long Island Travel Agents Ass'n Comments.

We do not intend to impose a rigid participation requirement on system owners. Nonetheless, Delta has stated a

concern that the rule could reduce a system owner's ability to negotiate for better terms and features in another system's enhancements. We believe that the rule would not have such an effect. It states that a system owner would not have to participate in another system's enhancement if the terms of participation were not commercially reasonable. Delta mistakenly assumes that the only relevant terms would be the fees charged by the other system. If, however, as Delta suggests, the enhancement or feature offered no significant benefits for the participating carrier or its travel agency distributors, then the terms of participation might well be unreasonable. If participation in the enhancement or feature required a significant investment in software or communications links by the system owner, that would also be relevant to determining whether the terms for participation were commercially reasonable. If the feature contains other flaws, participation would also not be required. Moreover, we find impracticable Delta's proposed solution, a rule that would require a system owner's participation in a particular enhancement or feature of another system only if the owner's unwillingness to participate resulted from its intent to handicap the marketing of the other system. We believe that our rule should be relatively easy to apply. Delta's proposal, on the other hand, could require the resolution of relatively difficult issues of intent.

Delta is additionally concerned over the possibility that a vendor's bundling of enhancements will, as a result of this rule, force owners in other systems to participate in enhancements against their will. Delta has not explained, however, why it would refuse to participate in an enhancement if the overall terms of the package of features was available on reasonable terms. If the inclusion of the objectionable enhancement made the terms for the whole package unreasonable, then Delta could legitimately decline to participate in the package.

As indicated, the rule will also require each system owner to provide complete, accurate, and current information on its services and fares. Delta and Worldspan urge us to broaden an owner's obligation by requiring each of them to provide competing systems with all of the information it provides its own system. According to Delta, a system owner can give its own system a competitive advantage by providing seat maps and frequent flyer information updates only to its own system. Delta Comments at 38–39. Despite Delta's reasoning, we will not extend the requirement so far. The requirement of system owner participation in enhancements on commercially reasonable terms should prevent such practices as a system owner's refusal to provide seat map information to other systems, since seat selection is an enhancement in CRSs. Requiring owners to provide all information, on the other hand, would create an open-ended obligation that we are unwilling to impose, particularly since carriers traditionally do not provide information on subjects like frequent flyer information to other systems.

A related matter involves complaints that some carriers offer corporations special discount fares that may be booked only through an agency using their CRS. American and Covia charge Northwest with using such a tactic to compel agencies to use Worldspan. American Comments at 36; Covia Comments at 90. On the other hand, System One and Aer Lingus claim American also offers fares that may be booked only through Sabre. System One Comments at 7; Aer Lingus Reply at 9–10. Hewins similarly complains that vendors are coercing travel agencies into taking a vendor's system by telling corporate clients that they can obtain corporate discounts only through an agency using the vendor's system. Hewins Final Comments at 2. Obviously a vendor's tactic of telling businesses that certain discount fares may be obtained only through its subscribers could be an effective means of using a dominant share of the local airline market as a tool for obtaining a larger share of the local CRS market. If the fare was widely available to corporations, this tactic would resemble an unlawful tying of discounted airline service and CRS usage. On the other hand, American has noted that an airline offering some corporations special discount fares typically will make them available only through its own system. American Reply, App. C, at 9. At this time we will not adopt a general prohibition against an airline's tying the availability of special corporate fares to use of its affiliated system for booking the fares. If, however, an airline widely offers a discount fare to businesses on the condition that they use its CRS for booking the fare, that would be a violation of the requirement that commonly available fares be made available to all systems.

Worldspan asks that the language of the rule be clarified so that a system owner's denial of certain information to some subscribers does not exempt it from providing that information to other systems. We are modifying the rule to require each system owner to provide other systems with the fare and service information that is "commonly available" to its own system's subscribers, that is, available to the majority of a system's subscribers. This reflects our intent that fare and service information available to a large proportion of a system's subscribers (*e.g.*, the majority of subscribers within the category of large agencies) must be made available to other systems as well. Information made available to a few subscribers—for example, discount fares that few agencies are authorized to sell—would not have to be disclosed to other systems.

F. Display Bias

Before the Board adopted the CRS rules, vendors biased their displays of airline services in favor of their own flights and against the flights of competitors. The bias took two forms: Whenever possible each vendor placed some of its own flights at or near the top of the first screen provided travel agents, even if competitors offered flights better suited for the customer's travel needs, and each vendor eliminated many flights of competing carriers, *e.g.*, by not using competitors' hubs as possible connecting points when constructing displays of connecting services. Board ANPRM, 48 FR 41177. These practices led to consumer deception, since agents were led to book customers on the vendor's flights when competing carriers offered better service. Board NPRM, 49 FR 11646; Board Rule 49 FR 32547.

The Board accordingly prohibited display bias in each system's primary display. This prohibition, contained in § 255.4, bars the use of criteria directly or indirectly related to carrier identity in ranking and editing flights and in choosing connecting points. Each system must also use at least nine points in constructing displays of connecting services, unless in a particular market fewer than nine points meet the carrier's editing criteria for displaying connecting services.

We have modified the display rules twice since the Board's sunset. First, because vendors began using secondary displays that resurrected the bias barred in primary displays by the Board's rules, we obtained each vendor's agreement that it would not offer biased secondary displays to its subscribers. Marketing Report at 82. Secondly, our rulemaking on flight delays and airline service quality imposed a requirement on the systems to display certain delay information and a prohibition against

the display of other delay information. 52 FR 34056 (September 9, 1987), adding § 255.4(e) to the CRS rules in part 255. Except for the requirements imposed by that rulemaking, the rules give the vendors the discretion to select criteria for ordering and editing flight displays, as long as they are not based on carrier identity.[3]

Our NPRM proposed to maintain the current rules with some changes. We proposed to increase the required number of connecting points and to make the rules applicable to secondary displays as well as each system's primary display. Since the accuracy of CRS displays depends on the quality of information provided by participating carriers, we tentatively decided to adopt a requirement that such carrier must provide complete and accurate information. In addition, we asked for comment on whether we should regulate the creation of biased displays by travel agencies. On the other hand, we chose not to adopt numerous suggestions for additional changes, including rules that would prohibit the use of various factors in ranking and editing displays. 56 FR 12608–12613. After considering the comments, we have determined to readopt the current rules with the changes proposed by the NPRM.

Before discussing the specific changes sought by parties to the general prohibition against display bias, we must address the need for keeping that rule. As explained earlier, display bias can mislead travel agencies and their customers and can substantially reduce airline competition. Justice and most other parties contend that display bias should remain prohibited. While a few argue that display bias should be allowed, we found their arguments unpersuasive, as discussed above. We accordingly find that the current rule against display bias should be readopted.

However, while most parties agree on the need for a prohibition against biased displays, they disagree on what constitutes bias. Various carriers, for example, urge us to outlaw the use of service features for ranking and editing flights in CRS displays that, according to other parties, give travel agents useful advice on available airline services. The display bias issue as a result involves a lengthy discussion of a number of specific ranking and editing criteria.

1. Secondary Displays

The current display bias rules apply to a primary display of schedule, fare, and availability information offered by each vendor but do not apply to other displays (secondary displays) of such information offered by the vendor. After the Board rules took effect, some vendors introduced secondary displays that were equivalent to their previous biased displays; vendors also provided travel agencies the ability to force their agents to use only the biased secondary displays. Because these biased displays became controversial, each vendor agreed with us that it would stop offering such secondary displays to its subscribers. Marketing Report at 82.

In the NPRM we proposed a rule ratifying this agreement, since biased integrated secondary displays created by a vendor could recreate the competitive and consumer harm that was to have been ended by the rule against biased primary displays. 56 FR 12611. Alaska, System One, Worldspan, and Air Canada support the proposal, although System One and Covia have concerns about its effects on access to internal reservations system displays and Covia claims the rule is unnecessary.

We see no reason not to adopt our proposal. While Covia suggests that a ban on biased primary displays should be sufficient to protect the public interest, experience has proven the contrary. Covia, moreover, does not claim that biased secondary displays benefit travel agents or consumers.

We intended that the rule would apply to all integrated displays of airline information, not just the basic availability display. As shown by Sabre's omission of Continental's new discount fares from its display of low fares, a vendor can prejudice competition and hide information from the public by creating misleading displays of fare information. Applying the prohibition against bias to such displays is consistent with our goal of ensuring participating carriers equal treatment in the systems when that can be done without imposing substantial costs on vendors.

Because we agree with System One and Covia that our rule should not prohibit subscribers from gaining access to a carrier's internal reservations display (for example, by using direct access), we will modify the rule to make this clear, as suggested by System One (Comments at 24). However, under our rule on enhancements, each vendor must make available to all participating carriers the ability to provide its subscribers with access to their internal systems. We will make this requirement explicit, as suggested by Air Canada. Air Canada Reply at 12–13.

2. Prescribed Algorithm

ECAC, British Airways, KLM, and Varig are dissatisfied with the discretion given vendors by the current rules to choose the criteria used in ranking flights, subject to the prohibition against the use of criteria directly or indirectly relating to carrier identity. In arguing that giving the vendors this discretion is unfair and injures competition, these parties seize upon our statement in the NPRM that vendors now may be choosing seemingly neutral display criteria that will improve the position of their flights in the display. 56 FR 12609. They argue that we must prescribe an algorithm for ranking services, preferably the European Community's algorithm (the algorithm is the set of rules for editing and ordering a system's displays). The European Community algorithm requires the display of all nonstop flights first, followed by all single-plane flights with stops, with all connecting flights being shown last. On the other hand, Worldspan and Delta oppose our creation of an algorithm to be followed by all vendors.

We see no reason to dictate how flights will be ranked in CRS displays. As we stated in the NPRM, when vendors choose criteria benefiting the display of their own services, those criteria will give the same advantage to similar services operated by other carriers. We reasoned that maintaining the vendors' current discretion seemed unlikely to create substantial competitive disadvantages for other carriers. In addition, we doubted that there was a single best way for displaying airline services. Justice also believed that any effort by us to create a standard algorithm would be unwise. 56 FR 12609.

The comments urging us to impose a standard algorithm on all systems have not persuaded us that this reasoning was wrong. Moreover, we do not believe it is appropriate or necessary to engage in a micromanagement of the systems, which would be the result of granting this and other requests by parties for additional and more detailed CRS display rules. For example, the required use of elapsed time in European systems gives a high ranking in displays of transatlantic connecting services to connections including a Concorde flight, even though relatively few travellers would be interested in such service due to the cost. This experience confirms our view that it would be difficult—and perhaps impossible—to construct an algorithm that always displays the best service first.

[3] The vendors, however, agreed they would not use elapsed time to rank nonstop flights, as noted in the NPRM. 56 FR 12610.

Furthermore, subscriber demands seem to be causing vendors to offer travel agents alternative displays using some algorithms similar to the European standards. For example, Covia states that it has added an ECAC display due to agency demands. Covia Comments at 59. American created a display ranking nonstop flights first, other single-plane flights second, and connecting flights last as part of a settlement of a CRS dispute with British Airways, Order 88-12-35 at 3 (December 15, 1988), and Varig points out that both System One and Worldspan offer subscribers the choice of a European-type display. Varig Comments at 20-21. These developments suggest that there is little need to prescribe an algorithm. More importantly, as Delta points out, "[A] prescribed algorithm would reduce the multiple algorithm choices available today from CRS vendors." Delta Comments at 19.

In addition, the parties requesting a standard algorithm have not refuted our tentative conclusion that a vendor's discretion to choose an algorithm was not causing significant competitive harm. They complain that certain ranking factors, primarily the on-line preference, downgrade the position of their flights in the displays, but they do not show that the vendors' discretion in general has caused competitive harm (the on-line preference issue is discussed below). While the Orient Airlines had submitted a series of examples purporting to show that vendors discriminated against their flights, we found the study to be unpersuasive for several reasons. 56 FR 12609, n.5. Although the Orient Airlines continue to argue that the study is compelling evidence, Orient Airlines Comments at 36-37, we disagree. The Orient Airlines have not provided enough information to convince us that the study demonstrates that the vendors' algorithms are badly biased. However, our rules should address some of the Asian carriers' concerns, such as the arbitrary exclusion of connect points used by non-vendor carriers.

On the ground that the vendors' algorithms prejudice foreign carriers by using ranking criteria that give an unwarranted preference to U.S. carrier services, several foreign carriers contend that we will deny their fair and equal opportunity to compete if we do not prescribe an algorithm or at least bar such U.S. CRS practices as the on-line preference. However, the right to a fair and equal opportunity to compete does not guarantee foreign carriers the exact same opportunities that U.S. carriers have. See, *e.g.*, *Visit USA Fare/Export Inland Contract Rate Investigation*, Order 84-8-55 (August 10, 1984) at 36-37, *aff'd*, *Japan Air Lines* v. *Dole*, 801 F.2d 483 (D.C. Cir. 1986). As pointed out there, for example, U.S. and foreign carriers must each contend with the practical advantages of route structure and market identity that competing carriers have within their own countries. As a result, we find unpersuasive the complaints of several foreign carriers that the United States will violate their bilateral rights if we do not adopt all their proposals.

As an alternative to a prescribed algorithm, the Orient airlines have proposed a requirement that each vendor demonstrate that its ranking and editing criteria meet consumer demands. Orient Airlines Comments at 49-51. While this proposal would avoid our dictation of an algorithm for all systems, it would still obligate us to review and second-guess carrier decisions about ranking and editing criteria, a task that would be burdensome for us and would be unlikely to lead to significant changes in the vendors' display algorithms. Since our rules require vendors to publish their display criteria (and since we are tightening that requirement), the Orient airlines can see what criteria are being used by each vendor, can complain to the vendor about objectionable criteria (and enlist subscriber support on criteria that make an agent's search for the best service more difficult), and can complain to us.

3. On-Line Preference

A number of foreign carriers have long complained about the preference given on-line connections over interline connections in the primary displays of all CRSs except Sabre and DATAS II. In the NPRM we tentatively concluded that we should not bar the use of such a preference, for it is consistent with the preference of most travellers for on-line service. We noted, however, that the vendors' use of the on-line preference had caused a series of disputes with foreign governments and that the preference had some troubling aspects. We accordingly invited parties to comment further on this issue. 56 FR 12609-12610.

Covia, United, TWA, and Alaska support our tentative decision on the on-line preference. On the other hand, Aer Lingus, Air France, British Airways, Lufthansa, the Orient airlines, Sabena, SAS, Varig, and Virgin Atlantic urge us to prohibit the use of the preference. They claim that the preference overstates the advantages of on-line connections, at least for international flights; that it gives U.S. carriers an unfair advantage over foreign carriers, since U.S. carriers can provide on-line connecting service to U.S. points beyond U.S. gateways while foreign carriers cannot; and that allowing the preference to continue would violate the United States' obligation under its bilateral aviation agreements to ensure that foreign carriers have a fair and equal opportunity to compete.

We have determined to make final our tentative decision to allow use of an on-line preference. Travellers usually do prefer on-line service, as conceded by several opponents of the preference. See, *e.g.*, ECAC Comments at 5; British Airways Comments at 7. See also United Reply at 13-14. The opponents' complaint involves whether the size of the display advantage accurately reflects the degree of consumer preference for on-line service. Adopting their proposals of allowing an on-line preference only when the on-line service is superior would require a detailed management of the systems that would be unwise and impracticable. We note, moreover, that these commentors have not proposed a guideline for determining when on-line service would or would not deserve a preferential display position.

Furthermore, the U.S. vendors no longer universally use displays that include an on-line preference. Sabre has no display with such a preference, and the other three systems make displays available to travel agents that do not give on-line connections better treatment than interline connections. Varig Comments at 20-21; Covia Comments at 59. Although Varig complains about the treatment of its interline connections on the Apollo display using an on-line preference, Varig notes that Apollo offers agents a display without an on-line preference. Varig Comments at 22, fn.

Even if the on-line preference gives U.S. carriers an advantage in obtaining international traffic from interior U.S. points, foreign carriers have similar opportunities in their homelands. Their services to the points beyond their homeland gateways receive a preference in U.S. systems and presumably thereby attract more passengers to those points due to the preference. In addition, code-sharing agreements between a U.S. carrier serving an interior U.S. point and a foreign carrier providing transoceanic transportation can obtain the benefits of on-line preferences. SAS, for example, notes that it has benefited from the preference as a result of its code-sharing agreement with Continental, SAS Comments at 4, although SAS opposes the on-line preference.

While we had been concerned that the on-line preference could prejudice the competitive position of smaller U.S. carriers, 56 FR 12610, we note that Alaska supports the preference, Alaska Comments at 34, and no U.S. carrier opposes it. This suggests that the preference does not create a significant competitive handicap for smaller U.S. carriers.

4. Change of Gauge Flights

Some carriers operate "change of gauge" flights—flights using a single flight number for the entire trip although passengers transfer from one aircraft to another at an intermediate stop. CRSs usually display change-of-gauge flights as direct flights involving one or more stops, not as connecting flights, and in the past did not always disclose the change in aircraft. In the NPRM we proposed to require CRS displays to give notice of the change in aircraft, a requirement that would be consistent with our existing enforcement policy on this issue of notice. At the same time, we declined to adopt proposals that change-of-gauge flights be listed as connecting flights rather than as direct flights. As we pointed out, change-of-gauge service differs from typical connecting service, because the airline will usually hold the second aircraft for the arrival of the first aircraft in change-of-gauge service. 56 FR 12610.

TWA supports our tentative decision to allow the display of change-of-gauge services as direct flights, subject to the notice requirement, and American and Alaska support the notice requirement. Aer Lingus, British Airways, SAS, Swissair, ARTA, and the Dallas-Fort Worth Parties assert, however, that change-of-gauge flights should be treated as connecting flights, not as direct flights with a stop.

We have determined to make our tentative decision final. Since no one questions the desirability of the proposed rule requiring notice of any change in aircraft, the only controversy concerns our view that we should not bar the display of change-of-gauge flights as direct flights. We are not convinced that additional regulation is needed. In particular, the proponents of additional regulation have not questioned our finding that change-of-gauge service is different from connecting service. See also SAS Comments at 15, fn.; TWA Comments at 7.

Of course, while we are not prohibiting the display of change-of-gauge flights as direct flights, we are not prescribing how such services should be treated. Any vendor can choose to treat them as connecting services in any or all of its display formats if it wishes. We also note that each U.S. system already offers a display that does treat them as connecting services in accordance with the European display rules. TWA Comments at 7.

British Airways contends that our notice requirement by itself will be inadequate, because vendors cannot always tell from the schedule information provided by participating carriers that particular flights involve a change of aircraft. British Airways Comments at 10. However, we are requiring participating carriers to provide sufficiently accurate and complete information to vendors to enable the systems to display flights in conformity with our rules. Our rule will therefore require carriers operating change-of-gauge service to mark those flights so that they can be displayed accurately.

5. Padded Displays

Because some parties believe that vendors unfairly list some flights several times (*e.g.*, twice if the flight is operated as a code-sharing flight, since then the flight is listed separately under the code of the carrier operating the flight and the code of its partner), they have urged us to adopt a rule prohibiting such "screen padding." We declined to take such action in the NPRM, largely because the vendors themselves should have enough interest in providing a useful display to travel agents that they would curb abuses in this area. 56 Fed. Reg. 12610.

In response to the NPRM, Alaska, America West, Aer Lingus, the Orient airlines, and ARTA request a prohibition against screen padding.

We will not adopt a prohibition or limitation on screen padding. Listing a flight several times may affect the display position of competing flights and make the display less useful for travel agents, but it also allows each participant in a code-sharing agreement to establish its own market presence. Those parties supporting a rule on screen padding typically seek to eliminate the perceived problem by prohibiting funnel flights, change-of-gauge services, and code-sharing flights. We do not find that the record supports a prohibition of screen padding on competitive grounds, especially since each provides some benefits (*e.g.*, code-sharing encourages the code-sharing partners to offer better service by coordinating their flight connections).

6. Funnel Flights

A related issue involves so-called funnel flights. A funnel flight is a flight (*e.g.*, a transatlantic flight) connecting with a number of other flights (*e.g.*, from the U.S. gateway to interior points in the United States) where a single flight is used for each connecting flight combination, with the result that the transatlantic flight is listed under a variety of flight numbers in different city-pair markets. Our NPRM did not address the issue of the display of funnel flights, but a number of parties—Delta, Northwest, Air France, Lufthansa, Sabena, Varig, Virgin Atlantic, and the Dallas-Fort Worth Parties—urge us here or in a docket created by American's petition for a rulemaking on this issue (docket 47546) to prohibit the display of funnel flights. In their view such services should be displayed as connecting flights.

We will not adopt a rule on the display of funnel flights in this proceeding. The issues raised by funnel flights can be better considered in the rulemaking requested by American, since the parties opposing funnel flights believe that the alleged deception problems created by the use of funnel flights are not limited to CRS displays. This broader issue cannot be considered in this rulemaking, which is limited to CRS issues, and the CRS aspect should not be decided separately from related funnel flight issues.

7. Code-Sharing Flights

CRS displays use a two-letter code to identify the airline holding out the service (for example, American's code is "AA"). For many years carriers have had cooperative service arrangements that include code-sharing whereby one carrier uses the other carrier's code in information sources like CRSs and the Official Airline Guide. Such arrangements began with substitute service agreements between USAir and the Allegheny Commuters. EDR-470, 49 FR 9430,9431 (March 13, 1984). Our rules prohibit a vendor from refusing to display a carrier's services on the ground that it is using another carrier's code, 14 CFR part 256, a provision not subject to the expiration date of part 255.

In order to ensure that travellers receive adequate notice on the identity of the carrier operating a flight under a code-sharing arrangement, seven years ago we adopted a policy statement, 14 CFR 399.88, that states that the sharing of a single airline designator code by two or more airlines would be considered a deceptive and unfair practice unless the airlines give reasonable notice of their code-sharing arrangement. Such notice must include, among other things, identifying flights operated by one carrier under another carrier's code in the carriers' written

schedules and in schedules given the Official Airline Guide and CRSs.

Although Varig and ARTA ask that the Department prohibit or more strictly regulate the display of code-sharing flights in CRS, we see no need to take such action. In our opinion our policy statement has taken care of the potential deception created by code-sharing arrangements. Furthermore, code-sharing arrangements often provide for a better linking of flights between the code-sharing partners and for better coordinated services that result in travellers receiving improved service. See *e.g.*, PSDR-85, 49 FR 43709, 43711 (October 31, 1984). Restricting the use of code-sharing arrangements could therefore lead to poorer rather than better service.

8. Use of Elapsed Time

Several parties ask us to adopt a rule on the use of elapsed time as a factor in ranking flights in CRS displays, but their positions are totally opposite. On the one hand, American asks that we cut back the use of elapsed time as a factor for ranking flights. On the other hand, ECAC, the Orient airlines, Sabena, and Virgin Atlantic argue that we should require the use of elapsed time as a ranking factor.

We find both positions unpersuasive and will adopt no rule either prohibiting or mandating the use of elapsed time in CRS algorithms.

In the NPRM we rejected American's argument that the use of elapsed time should be banned, because we saw no harm from it and because travellers and travel agents often use elapsed time as an important factor in determining which multistop flight or connecting flight is the best. We pointed out as well that an American document submitted by the Justice Department indicated that ending the use of elapsed time as a ranking factor would benefit American by improving the display position of its flights in other CRSs. 56 FR 12610–12611.

Despite our rejection of that request, American thereafter filed a separate rulemaking petition (docket 47762) asking for a rulemaking to outlaw the use of elapsed time as a criterion for ordering CRS displays (except to the extent that a flight is at least 90 minutes shorter than another flight). In its comments American contends that elapsed time should not be usable unless the difference in flight times is at least 30 minutes. American Comments, App. D at 6. American's petition claims that restrictions on the use of elapsed time are needed to discourage carriers from publishing unrealistic schedules. American, however, does not address our observation that its earlier proposed ban was self-serving, since it would improve the display position of American flights in those systems currently using elapsed time as a ranking factor. United, Worldspan, ECAC, and the Orient airlines filed answers opposing American's petition.

Since the issue presented by American's rulemaking petition in docket 47762 has already been considered in this proceeding and is closely related to the other issues in this proceeding, we will rule on that petition in this final rule.

American has again failed to justify its proposal that a factor of importance to consumers—elapsed time—should be substantially eliminated from the ranking of flights in CRS displays. Although American claims that a restriction on the use of elapsed time is important to keep carriers from providing false flight times in order to improve the display position of their services, American has not shown that carriers are engaging in such deceptive practices to any significant extent. Our rules on the disclosure of on-time performance data have discouraged the use of unrealistic schedules. Given American's repeated statements that we should allow market forces to operate in the CRS industry (including with respect to CRS displays) (see, *e.g.* American Supplemental Comments), we would be acting contrary to American's stated principles if we ordered the other vendors to reduce the importance of elapsed time in their algorithms.

Other parties, as noted, argued that we mandate the use of elapsed time as a crucial ranking factor. These parties—ECAC, the Orient airlines, Sabena, and Virgin Atlantic—say their services receive unfair treatment because their flights typically offer travellers a shorter elapsed time than those operated by other carriers and that the systems' failure to give adequate recognition to elapsed time also denies travellers an adequate opportunity to choose the best service.

However, we also see no need to require a greater use of elapsed time. While elapsed time is important to consumers, we are reluctant to specifically prescribe how vendors should rank flights without a showing that such action is essential. We do not believe such a showing has been made here.

9. On-Time Performance as a Ranking Factor

In our 1987 rulemaking on flight delays, we adopted several provisions in order to provide accurate on-time performance information to the public while avoiding both the release of misleading information and an over emphasis of on-time performance data that could encourage airlines to take undue chances with the safety of their operations. The rules adopted then require each carrier to report monthly to each vendor the percentage of time that each of its domestic flights arrived on-time. 14 CFR 234.4. Vendors must include that information on individual flights in their primary displays, 14 CFR 255.4(e), but they may not use the information to rank flights, 14 CFR 255.4(e)(2). The rules also prohibit vendors from displaying any information about on-time performance that is not based on data reported to us. 14 CFR 255.4(e)(3). When these rules were adopted as part of our rulemaking on flight delay issues, CEI sought judicial review of them, but the court refused to consider CEI's arguments since it did not have standing to challenge the rules. *Competitive Enterprise Institute* v. *U.S. Dept. of Transportation*, 856 F.2d 1563 (D.C. Cir. 1988).

CEI now demands that we delete the prohibition against the use of on-time performance standards as a basis for ranking individual flights. American urges us to require all vendors to include them in ranking flights. American Comments, Ex. D at 5. We will deny that request but we will end the current prohibition against the display of any on-time performance data other than the data whose display is required by the Department's rules.

In asking us to remove the prohibitions on the use of on-time performance data as a ranking factor and on the publication of other performance data, CEI wrongly contends that administrative convenience was the only reason for adopting them. Instead we took that action for two reasons: we did not want to encourage carriers to take chances in maintaining and flying their aircraft in order to avoid being stigmatized for having unreliable schedules, and we wished to reduce the vendors' ability to bias their displays against participating carriers by misusing on-time information, even though we also wished to provide accurate information to travellers on on-time performance.

We are reluctant to change here the rules adopted in the 1987 rulemaking. A number of parties commented on the issues in that proceeding while only two parties—American and CEI—have mentioned these rules here, and neither has provided any factual information on the issues. *See* American Comments, Ex. D at 4–6; CEI Comments at 4–6. Thus no other airline and no travel agency party

apparently sees any reason to loosen the restrictions on the display of on-time performance data. Nonetheless, we have determined that CEI is correct in contending that the rule's prohibitions may be broader than necessary, so we will reduce the scope of the rule. On the other hand, we do not believe that allowing algorithms to use on-time information would provide significant useful information to travel agents and their customers that would overcome our reasons for adopting the restrictions on algorithms. We will therefore maintain the prohibition against ranking flights on the basis of the on-time statistics.

American contends that on-time performance should be a factor used in ranking flights in CRS displays because it will reward carriers with dependable service and will provide more useful information to travel agents, who would like to recommend reliable flights to their customers. CEI agrees that vendors should be able to use important information like on-time performance in constructing CRS displays.

We cannot agree that allowing the use of on-time performance figures in CRS algorithms would provide additional information of significant value to travel agents and their customers. After all, the display itself must provide the actual statistics. Using those figures in ranking flights, on the other hand, would not convey that information to the agent, since other factors are used in ranking flights and the travel agent cannot tell the degree to which a flight's ranking reflects the reliability of its schedule rather than other factors. While allowing algorithms to use on-time arrival statistics to rank flights could benefit carriers with more reliable schedules, American has not shown that the former problem of unreliable schedules is still so prevalent that such action is necessary.

Furthermore, allowing vendors to use on-time performance figures for ranking flights would create a possibility that vendors would abuse their discretion and use the figures in a way that disproportionately benefited their own flights. A number of carriers submitted comments in the 1987 delay rulemaking that argued against giving vendors the discretion to use the figures because doing so would create new opportunities for biased displays. 52 FR 34065–34066, 34068 (September 9, 1987).

However, the current rules prohibit vendors from providing any on-time performance information in any display unless it is derived from on-time performance information filed with us. While no vendor has supported CEI's demand that this prohibition be terminated, we have decided that there appears to be no reason to maintain it. While our delay rule carefully considered whether on-time performance data could be used in CRS algorithms, the rule gave relatively little explanation for this prohibition against the use of other information. The prohibition is too broad because a vendor or other participating carrier should be able to use a system's bulletin board feature (the feature that enables carriers to provide information through the CRS to travel agents) to provide information in this area on its own flights, as CEI suggests. Any display of on-time performance information, however, will remain subject to the requirements of section 411 of the Act and to each vendor's obligation not to discriminate against other carriers in the display of information and provision of services.

10. Separate Algorithm for International Services

Our rules currently require each vendor to use the same algorithm in all markets, both domestic and international. However, we have granted limited exemptions from this requirement to allow Sabre and Worldspan to use somewhat different algorithms for the display of international services. See, *e.g.*, Orders 90–8–32 (August 14, 1990) and 90–7–34 (July 13, 1990). Nevertheless, when Worldspan requested open-ended exemption authority to establish a separate display algorithm for international services, we denied the request. Order 90–11–55 (November 28, 1990).

Several parties—American, USAir, ECAC, Aer Lingus, KLM, Swissair, and Varig—urge us to allow vendors to use one algorithm for domestic services and a different algorithm for international services, particularly if we do not accept foreign carrier proposals on such issues as the on-line preference and change of gauge service. Worldspan does not object to the request, but United opposes it.

We considered similar proposals in the NPRM, where we noted that the Board explained that it was requiring each vendor to use the same algorithm in all markets to keep vendors from varying "their display criteria market-by-market to maximize the sales on their flights and continue the very harm this rulemaking was meant to address." The Board declined to allow vendors to use different algorithms for domestic and international service, since the evidence did not justify such a departure from the general requirement. 56 FR 12610–12611. When we addressed this issue as a result of American's request for an exemption allowing Sabre to use a different algorithm for international markets, we held that American had not shown that a difference in treatment was warranted. Order 88–9–51 at 8–10 (September 23, 1988). See also Order 90–11–55, *supra*. In the NPRM we therefore tentatively declined to allow vendors to use one algorithm for domestic services and a different one for international services.

Giving vendors unlimited discretion to use different algorithms for domestic and international services continues to appear unwise. We are afraid that such a rule would give vendors some opportunity to vary their displays to give themselves an advantage over their competitors. Furthermore, as noted above, the vendors' practice of offering displays with different algorithms to their subscribers should alleviate the concerns of the foreign carriers. While we are not giving vendors blanket discretion to create a different algorithm for international services, we will continue to give careful consideration to requests by U.S. vendors for limited exemptions from the current rule so they can use somewhat different factors in ranking and editing international flights. Moreover, the adoption of these rules will not affect the validity of the existing exemptions granted Sabre and Worldspan.

11. Publication of Display Criteria

Under § 255.4(b)(2) of our current rules, each vendor on request must provide any person its current factors for ordering flights in the primary display and the weight given each factor. The Board adopted this rule to make the display bias prohibition more effective and enforceable. Board NPRM, 49 FR 11658. The comments on our ANPRM, however, indicated that vendors may not be complying with this requirement. Northwest and TWA thus asked that the rule be amended to require vendors to provide the instructions used by programmers to create the algorithm. We tentatively decided to modify the rule to include such a requirement in light of the apparent discontent with the lack of specificity in some vendors' publication of their display criteria. 56 FR 12611.

Covia, Worldspan, Northwest, America West, Aer Lingus, Air France, and Varig support this proposal; some argue that we should strengthen it, *e.g.*, by applying the requirement to fare displays. American supports the proposed rule in principal but contends that the better means of obtaining our goal would be a rule specifying the

information to be provided, not a rule requiring the delivery of programming instructions. No one opposes it.

We will make the proposal final. Despite American's suggestion (and the parties' apparent agreement that American in the past has provided adequate information to other carriers, unlike some vendors), we believe, as Northwest argues, that the proposal requiring the delivery of programming instructions is needed to ensure that other carriers obtain adequate information. We will modify the proposal, however, to make the obligation cover editing procedures, as Worldspan suggests, and expand the requirement to cover fare displays, as suggested by some, since fare displays affect competition. The requirement to provide programming instructions, however, does not obligate vendors to turn over proprietary information and trade secrets, except to the limited extent necessary to provide participating carriers and others with adequately detailed information on the construction of their displays.

12. Advance Notice of Algorithm Changes

While the rules require vendors on request to describe their algorithm, they do not require vendors to give advance notice of algorithm changes. Northwest and SAS contend that vendors should be required to give such advance notice. Northwest asserts that advance notice will give participating carriers an opportunity to adjust their own flight schedules so that the vendor's changes will not injure their display position. American contends that advance notice of algorithm changes is unnecessary but that vendors should be required to inform participating carriers within 30 days of any changes made to the algorithm.

The comments have not shown that requiring notice of algorithm changes is necessary. As we stated in the NPRM, we have no evidence that vendors routinely change their algorithms or that those changes put competitors at a significant disadvantage. 56 FR 12611. The commentors have not presented any evidence that algorithm changes are frequent or significant enough to undermine airline competition or that vendors conceal them.

13. Connecting Points

In view of the widespread use of hub-and-spoke systems, airlines cannot compete effectively for agency bookings and consumers cannot obtain adequate information if CRS displays provide inadequate or skewed information on connecting services. If a CRS does not use a carrier's hub as a connect point in constructing the display of connecting services in a particular market, it will not display any of the carrier's connections over that hub. Board ANPRM, 48 FR 41177. The Board accordingly imposed two requirements on the display of connecting services: vendors may not use factors related to carrier identity in editing or displaying connecting flights or in choosing connect points, and vendors must use at least nine connect points for each city pair in constructing connections for display. Section 255.4(c), adopted by ER-1395, 49 FR 44451 (November 7, 1984).

Despite these requirements, a number of carriers have complained that vendors choose connecting points under criteria that give a preference to their own hubs and deny participating carriers an equal opportunity to designate connecting points. Some vendors impose burdensome procedures on requests by other carriers to designate additional connecting points, as shown by documents submitted by the Justice Department. Justice Dept. ANPRM Comments, App. at 12. Northwest and TWA charged, moreover, that vendors had failed to comply with their obligation under § 255.4(c)(3) to provide detailed information on the display of connecting services. 56 FR 12612–12613.

The participating carrier complaints suggested a need for strengthening those rules. We accordingly proposed to increase the minimum number of connect points by requiring vendors to use fifteen single connect points and six double connect points in each city-pair market and to prohibit vendors from imposing unnecessary and burdensome procedures on requests for the inclusion of connect points. We also reaffirmed the vendors' existing duty to choose connect points without discrimination. We asked for further comments on the issue raised by Northwest and TWA regarding the vendors' alleged non-compliance with their obligation to provide detailed information on their choice of connecting points and display of connecting services. 56 FR 12612–12613.

In general the commentors support our proposals. Covia questions some details in the proposals but does not oppose them. American, Delta, Alaska, America West, USAir, Aer Lingus, Air Canada, Alitalia, the Orient Airlines, and Swissair support them. Some of these parties suggest that the rule should be further strengthened, and ECAC recommends a revision to the proposals.

We have determined to adopt our proposals with some revisions and clarification. We will require the use of at least 15 single connect points in constructing displays, subject to the application of reasonable editing criteria to eliminate points of little value as connecting points. Although the use of editing rules may reduce the number of connect points below 15 in some markets, the vendors' obligation to use nondiscriminatory editing rules should prevent a system from using editing to eliminate the hubs of competing carriers providing satisfactory connecting service in a market. This requirement should not impose any significant burden on vendors, particularly since the parties agree that each system can use more than the 15 single connect points proposed as a minimum by us. American states, for example, that each system can use 30 points. American Comments, App. D at 9–10.

We will also adopt the proposal requiring use of six double connect points in each market, again subject to a vendor's ability to use nondiscriminatory, reasonable editing criteria applied in all markets to eliminate unattractive airline service options. American states that Sabre is the only system currently incapable of using double connect points and will need 12 to 18 months to complete the programming needed for including double connect points (American represents that it was planning to include double connect points in its displays anyway). Am. Comments, App. D at 11–12. We will make this rule effective in one year, so American will have time for its programming.

The major connecting point controversy concerns the alleged limited willingness of vendors to accept carrier requests to include additional cities as connect points in individual city-pair markets. The vendors limit the number of connecting points a carrier may request for an individual city-pair market: Sabre allows five requests, System One four, Worldspan three, and Covia only one. Am. Comments, App. D at 11; Covia Comments, Blackney Affidavit, paragraph 1; USAir Comments at 6 (USAir believes that Covia accepts unlimited requests, however). American complains, moreover, that Covia will not accept carrier requests for the use of additional connecting points for a particular city-pair market if Apollo is unable to store any more points for that market, a practice that limits American's ability to have new hubs used as connecting points in Apollo displays. Am. Reply, App.F. Several commentors urge us to adopt a requirement that each vendor must accept all participating carrier requests for additional connecting points; if a system cannot accommodate all of the points requested

by the vendor and other participating carriers, the vendor must choose as many points as can be accommodated by its system on the basis of reasonable nondiscriminatory criteria.

We will require each vendor to allow each participating carrier to request five connect points in each city-pair market, as American suggests, but we will not require a vendor to use all points requested by participating carriers up to the limits of the system's storage capacity for connect points, as requested by several carriers. A vendor may eliminate points requested by other carriers only by using a nondiscriminatory editing standard that is applied to all markets. We expect these rules to alleviate concerns like those expressed by Air Canada, which fears that a vendor will abuse its discretion by devising editing standards for connect points that result in the inclusion of its hubs in its system's displays while excluding a disproportionate number of its competitors' hubs.

As is true of the current rules, a vendor need not use 15 connecting points in a particular city-pair market if fewer points satisfy the vendor's reasonable nondiscriminatory criteria for eliminating services of little or no value to travellers in a market (for example, in the Los Angeles-San Francisco market few, if any, intermediate points would offer connecting services of interest to travellers), as long as the vendor has used all points requested by participating carriers. A vendor using such criteria must apply the same criteria to all markets.

A vendor's standard for editing connect points must be reasonable. In that regard, we do not consider it reasonable for a vendor to reject new connect point requests because its system cannot accommodate any more connect points in a market, a practice followed by Apollo that Covia asked us to endorse. A practice of rejecting connect point requests merely because a system's storage capacity is already full does not represent a rational method of determining which connect points are the most useful for travel agents and consumers. A vendor may, however, eliminate connect points if travel agents have been making little or no use of them, a practice that Covia states is followed in its system, if this editing is done on a non-discriminatory basis.

Covia requested clarification of the NPRM's statement that a vendor must include all hubs of all carriers as connect points if it includes all of its own hubs. It assumes that a vendor would not violate the rules if it includes all of its hubs but not all of the hubs of all other carriers as connect points if this results from the application of its nondiscriminatory criteria for selecting hubs. Covia's interpretation is correct, although it seems unlikely that a vendor could develop reasonable nondiscriminatory editing criteria that would create this result.

Because participating carriers are entitled to request the use of connect points, and because a vendor's criteria for selecting connect points must be reasonable, nondiscriminatory, and applied in all markets, we are surprised by the Orient airlines' complaint that vendors rarely use foreign points as connect points. Orient Airlines Comment at 40. We would not consider the elimination of foreign points as hubs as a legitimate nondiscriminatory means of selecting connecting points. If the Orient carriers can demonstrate that vendors discriminate against foreign connecting points, we will consider taking enforcement action.

ECAC suggests that we prohibit vendors from displaying connecting services that are too circuitous. ECAC Comments at 10. While a system's display of excessively roundabout routings would reduce the usefulness of its displays, we are more concerned that such a rule would restrict the number of competitive services displayed in given city-pair markets. The consumer should be able to decide whether a particular routing is too circuitous.

Our rules now require each vendor to provide any person on request information on the connect points used in each market, the criteria used for selecting connect points and for editing connecting services, and the weight given each factor. Section 255.4(c)(3). Since the comments on the ANPRM filed by Northwest and TWA suggested that some vendors failed to provide the detailed information required by this rule, we invited parties to propose alternative rules that would be effective. 56 FR 12613. In response American states that Sabre, System One, and DATAS II (but not Apollo or PARS) provide an on-line display of the connecting points used in any market, and American contends that every vendor should have to provide such a display. American Comments, App. D at 12. Air Canada supports this proposal, since it would enable carriers to monitor a vendor's compliance with the rules. Air Canada Reply at 16. No other carrier commented on this issue.

While an on-line display of the connecting points used by a vendor for constructing the display of connecting services in market would be useful, such a display would not provide all of the information that participating carriers and others are entitled to obtain now under our rules. Moreover, few carriers have supported this proposal. We accordingly will not adopt American's proposal, but we remind vendors of their duty to provide the information on the display of connecting services required by the rules.

Finally, the Orient airlines complain that vendors use discriminatory editing criteria to eliminate the display of interline connections that provide better service than the on-line connections kept in displays. Orient Airlines Comments at 48. We doubt that we should adopt a rule on this issue, since the relative attractiveness of on-line services may make it reasonable for vendors to use somewhat stricter standards for editing interline connections.

14. Participating Carrier Obligations

In order to display the schedules, fares, and availability of other carriers, the vendors necessarily depend on those carriers to provide the necessary information. We pointed out in the NPRM that each vendor's ability to display information on airline services accurately and fairly depends on the accuracy and completeness of the information provided by participating carriers. We therefore proposed to require carriers to provide accurate and complete service information to vendors. The proposed rule would apply whether the information was provided directly or indirectly (*e.g.*, through the Official Airline Guide). 56 FR 12609.

We will adopt this proposal, which no one opposes. Although the current rules implicitly require vendors to display accurately the information provided by participating carriers (*e.g.*, § 255.4(d) in the Board's rules), we will make the vendor's obligation mandatory, as suggested by ECAC. ECAC Comments at 2–3. This rule does not authorize vendors to unilaterally determine that information submitted by participating carriers is inaccurate and will not be displayed; in such cases the vendor should seek corrective action from the participating carrier or enforcement action from us.

SAS suggests that the proposed rule should be strengthened, and the Orient airlines want us to prohibit each participating carrier from providing schedules to CRSs that are different from the schedules used for internal purposes. SAS' suggested strengthening primarily reflects its fear that carriers otherwise would not be obligated to provide the information necessary for the display of change-of-gauge and

code-sharing flights in accordance with these rules. SAS Comment at 16–17. Our final rule will incorporate its suggested language. The Orient airlines' request (Orient Airlines Comment at 47) is already included in the proposal, since a participating carrier would be in violation of the rule if it submitted schedules to CRSs that showed a shorter elapsed time than the schedules used internally by the carrier, unless the carrier could show that its internal schedules were inaccurate.

Since this rule applies to information provided vendors for use in constructing integrated displays, it does not cover information shown by a carrier in its internal reservations systems. If that information is inaccurate, the carrier would be subject to enforcement action under section 411.

15. Travel Agency Displays

Travel agencies hold themselves out to the public as providers of impartial advice on travel services. However, some airline parties fear that agencies prefer some carriers over other carriers, usually in order to obtain override commissions from the favored carriers, and that agencies accordingly give incomplete or biased advice to their customers. The travel agency parties, on the other hand, contend that an agency cannot afford to give its customers poor service because it will lose a lot of business as a result. See, *e.g.*, Woodside Comments at 6, n. 11; ASTA Reply at 4.

In the NPRM we stated our concern over the possibility that agencies might be creating biased displays to increase their commission revenues without giving notice to their customers of the use of the biased display. We proposed no rule on the issue, but we invited parties to comment on whether there was a problem with agency use of biased displays and whether we should adopt a rule on this subject. We also explained, however, that we were reluctant to generally regulate the manner in which agencies choose airline services for their customers. 56 FR 12611–12612.

System One and TWA ask us to prohibit the creation of biased displays by agencies but would support as an alternative a requirement that agents give customers notice if they use a biased display. Northwest, Alaska, Aer Lingus, British Airways, Sabena, Swissair, and Varig urge us to bar the use of agency-created biased displays. Delta and America West recommend the adoption of a notice requirement. The Orient airlines ask us to take some action on the problem. Since ARTA wishes to maintain the agencies' reputation for impartiality, it asks us to block agencies from using biased displays. Woodside thinks that a notice requirement would be unwise. ASTA asserts that agencies do not create biased displays but will accept a rule prohibiting the practice. Covia contents that agencies do not create biased displays.

We have determined not to adopt a regulation on this issue. We have no convincing evidence that many agencies are creating biased displays at this time.

ASTA, for example, alleges that the use of such displays by agencies is "very rare," ASTA Comments at 28, although Northwest claims some agencies do create biased displays, NW Comments at 5. We assume that agencies using biased displays now often do so because the customer has asked to fly on a specific carrier (or because the customer's employer has special fare arrangements with some carriers). American Automobile Ass'n Reply at 3. We also note that some systems at least provide agents with the ability to request displays showing the services of a single participating carrier. Covia Comments, Powers affidavit, para. 25; Covia Reply at 8–9. We know that United got some agencies to use biased secondary displays after the Board's rules took effect, Orient Airlines Comments at 26, but there is not enough evidence of a current problem with agency bias to demonstrate that a rule is necessary.

Moreover, travel agencies seem to have a limited ability to run the risk of losing business by giving customers incomplete or inaccurate information on airline options. Although there are only four CRSs in this country and a limited number of major airlines, there are many travel agencies, so customers dissatisfied with one agency's service can easily switch their business to another agency. Although it is not easy for customers to discover that an agency gave them poor advice, it is possible, and the risk of discovery should be great enough to deter most agencies from biasing their recommendations. See, *e.g.*, Woodside Comments at 12.

To the extent that agencies use biased displays when a customer has not requested a particular carrier, they are most likely doing so because of an incentive commission arrangement with a carrier. Woodside at least believes that preferred supplier arrangements including override commissions benefit agency customers. However, as we stated elsewhere, the subject of such commission arrangements is outside the scope of this proceeding. See also Covia Comments at 60. As we noted in the NPRM, moreover, carriers can compete to be a travel agency's preferred supplier. 56 FR 12612.

In any event, this record does not show that agents commonly provide biased information. The states submitted the results of a Pennsylvania investigation of travel agency responses to requests for information which purportedly shows that a number of the travel agents called by the state provided incomplete advice. We find the survey unpersuasive for several reasons. Among other things, the states did not tell us what questions were asked in the investigation, and the survey does not say whether some of the flights not mentioned in the agent responses may have had no available seats. The persons conducting the survey requested specific flight times, yet the survey does not indicate whether all of the carriers in the market even offered service at the requested times.

We also recognize that our rule allowing agencies to use third-party software will enable agencies who are so inclined to create biased displays. However, some agencies already have that ability now, and several systems give agents the option of obtaining a display limited to a single carrier's services. As explained above, agencies appear to be subject to enough competitive discipline to discourage most of them from using third-party software to create biased displays.

G. Travel Agency Notice to Customers

In the NPRM we requested comment on whether we should require travel agencies to give their customers notice that the agency was using a CRS affiliated with one or more air carriers and that that affiliation could affect the information being provided by the agencies. We asked whether such a notice might give consumers knowledge that could perhaps offset the effects of CRSs in influencing agent recommendations. 56 FR 12613.

No party suggests that such a notice would avoid the need for other CRS rules. America West supports such a requirement, along with certain other proposals on requiring travel agency notice of carrier ties, but urges us to adopt a number of rules as well. Covia states that it would not object to the proposal but that it disagrees with the premise that an agent's use of a system affiliated with one or more carriers will make the agent more likely to book those carriers. A number of parties, on the other hand, oppose any such notice requirement. They include Delta, Aer Lingus, Air Franco, American Express, ASTA, ARTA, Woodside, and the American Automobile Association.

These parties point out that such a requirement would impose significant costs on travel agencies and that the notice would not be helpful to agency customers. Delta, moreover, asserts that the problem of system bias should be dealt with directly, not through a notice requirement.

We agree with the opponents of the notice suggestion. If the notice requirement would not avoid the need for other CRS rules (and no party says that it would), the imposition of such a requirement would merely add another burden on travel agencies. Since notice would presumably be given on every customer inquiry, the total cost of such a notice requirement would be very large. That burden seems unlikely to produce significant competitive and informational benefits for travellers. Since travellers are unlikely to understand the effects of an agency's CRS affiliation, it is doubtful that they would ask the agent to check the services of carriers unaffiliated with the system and to make a booking on such a carrier if it provides the best service. The required notice would be time-consuming, since customers would presumably ask the agent what the notice meant. See, *e.g.*, ASTA Reply at 6. Finally, all systems except Sabre and System One are affiliated with several carriers, and explaining the affiliations of systems with multiple owners would probably be confusing and take more time.

H. Equal Functionality

1. Summary of Decision

The current rules require vendors to provide participating carriers with the basic CRS functions (displaying schedules, fares, and availability, making bookings, and issuing tickets) on non-discriminatory terms, but they do not require vendors to make other CRS services available to participating carriers or to provide the basic services in the same way that they are provided the vendor carrier, except that each vendor must apply the same standards of care and timeliness to the loading of each participating carrier's fare, schedule, and availability information that it applies to the loading of information on its own services. 56 FR 12613–12614. As we explained in the NPRM, the Board did not try to regulate CRS functionality in more detail because it sought to limit its intervention to areas where regulatory action was clearly required and because guaranteeing equal functionality was not technically feasible. 56 FR 12614.

Since the Board adopted the rules, each system has moved a long way toward providing equal functionality for the vendor and participating carriers. Nonetheless, each system treats its vendor differently than other participating carriers in some respects. See American Reply, app. A. As a result, bookings on the vendor are often more reliable and require less work from the agent. Architectural bias is the term commonly used for the differences in the quality and ease of functionality between transactions on the vendor carrier and transactions on other carriers.

As a result of architectural bias and other factors, each vendor continues to receive a disproportionate share of the bookings made by its subscribers, as shown by our past studies of CRSs and by the vendors' own internal studies. The additional revenues obtained by the vendors—usually called "incremental revenues"—are very large. 56 FR 12596.

Large revenue shifts from non-vendors to vendors impose a substantial competitive handicap on non-vendor carriers. We tentatively found that architectural bias creates a large share of the incremental revenues obtained by vendor carriers and that we should consider rule proposals that could eliminate the differences in functionality and thus a large part of the vendors' competitive advantages created by incremental revenues. We therefore invited parties to comment on two possible equal functionality rules. One proposal ("the dehosting proposal") would require each vendor to separate the CRS' computer system from the computer system used for the vendor's internal reservations system. Such a rule would require structural changes in only two of the four systems, since Worldspan is developing a "hostless" system and since Continental's internal computer system is separate from the System One computer system, which had grown out of Eastern's internal reservations system. The other proposal ("the equal functionality proposal") would require each vendor to provide the same level of functionality for itself and for participating carriers, at least for certain key functions. 56 FR 12614–12616. Since any proposal requiring radical changes in the functioning of the systems necessarily involves issues of feasibility and cost and require a judgment on whether its benefits would exceed its costs, we asked the parties to address a series of questions relevant to the dehosting and equal functionality proposals. 56 FR 12615–12616.

We also asked for comment on two other proposals that would not force radical changes in system operations: A rule requiring vendors to make all enhancements available to participating carriers and a rule directing vendors to provide participating carriers the ability to load their fares and schedules on the same basis as the vendor. 56 FR 12616–12617.

After reviewing the comments, we have determined to adopt the proposals requiring equal access to enhancements and equal loading of information, as well as a rule prohibiting systems from using defaults that favor the vendor carrier. We find, on the other hand, that the record in this proceeding does not justify a rule mandating either dehosting or equal functionality, since each would provide benefits of uncertain size while imposing substantial costs. In addition, the vendors have been moving toward providing more equal functionality without being required to do so. That movement toward equal functionality eliminates much of the need for a rule mandating radical changes in CRS operations in order to reduce architectural bias.

We note that our conclusion as to the lack of record support for the dehosting proposal is consistent with the determinations made by the GAO in their recent report on architectural bias Computer Reservation Systems: Action Needed to Better Monitor the CRS Industry and Eliminate CRS Biases (1992). The GAO concluded that there was not enough evidence for a conclusion that the benefits of dehosting would outweigh its costs.

The following discussion explains in detail the reasoning for our conclusions.

2. Incremental Revenues and Functionality Differences

It has long been apparent that each vendor captures a significantly larger share of an agency's bookings when the agency uses its CRS, 56 FR 12596–12597. Our study of airline competition concluded that there are two major causes of the incremental revenues received by the vendors: The on-going business relationship between the vendor and its subscribers that creates goodwill toward the vendor, and architectural bias. Marketing Study at 61. As we pointed out, however, there was no study demonstrating which was the primary cause of incremental revenues and no consensus in the industry on the relative importance of these two causes. *Id.* at 65.

Architectural bias primarily results when the same computer is used for both the CRS and a vendor carrier's internal reservations system (the vendor is then the "host" of the CRS). At this time, every system but System One has a host (System One's host had been

Eastern until that carrier ended its airline operations). The hosts in Sabre and Apollo are respectively American and United. Northwest and TWA are the hosts in PARS, and Delta in DATAS II. However, Worldspan is creating a hostless system that will replace PARS and DATAS II. A vendor's position as a host stemmed from the origins of the CRSs. Each system grew out of its original owner's internal reservations system.

Being the host gives a carrier significant advantages, since an agent using its CRS will obtain realtime access to the carrier's availability information since the CRS computer is the same computer used for handling the vendor's internal reservations system. In contrast, the CRS obtains availability information on other carriers for its primary display by means of communications links which create a risk of transmission errors and which involve delays that may make the information outdated when displayed in the CRS. Marketing Report at 65–67. The direct access features developed by the systems in recent years have eliminated much of this difference. "Look but not book" direct access enables an agent to gain access to the internal system of another carrier and obtain the same realtime information available for the host on the primary display. "Look and book" direct access allows an agent to make a booking in the participating carrier's internal system, thereby eliminating the delays inherent in making a booking off a system's primary display. Marketing Report at 67–69. However, while direct access features can eliminate or substantially reduce certain reliability problems in information-gathering and booking, using direct access requires somewhat more effort from travel agents. Marketing Report at 67–70. Nonetheless, Covia asserts that in 1990 over 80 percent of Covia bookings were made on United or through Inside Link, even though some U.S. carriers participate only partially or not at all in that direct access function. Covia Comments at 69.

Although architectural bias primarily stems from the advantages created when the vendor is the system's host, a vendor can intentionally structure its system's operations so that travel agents can obtain information and make bookings more easily and reliably on the owner carrier than they can on other carriers, even if the owner is not the host. See, *e.g.*, American Reply to Worldspan at 8–9. In particular, the record shows that in various respects vendors have created default mechanisms that make it easier for travel agents to book customers on the vendor carrier than on another carrier. For example, some fare information inquiries in System One default to Continental—not a host carrier in System One—unless the agent asks for a neutral display. American April 13, 1992 Comments at 9.

While the individual differences between a system's functionality for the host and participating carriers may be small, they seem to affect agent booking decisions. Agents generally work under substantial time pressure and may tend to prefer booking the host when doing so is quicker than booking another carrier, unless the customer wishes to fly on a carrier other than the host. Similarly, since errors irritate customers and cause more work, agents may often prefer to book the host because doing so is more reliable than booking another carrier, again assuming that the customer has no carrier preference.

The parties disagree on the extent to which architectural bias increases a vendor's share of its subscriber's bookings. American and United argue that the functionality differences are too insignificant to cause any shift in an agency's booking patterns. Woodside similarly contends that architectural bias has little, if any, effect on agent bookings. Woodside Comments at 4–6. On the other hand, Justice, the smaller vendors, and most U.S. and foreign carrier parties in this proceeding contend that architectural bias gives vendor carriers a major advantage in marketing their services. See, *e.g.*, Justice Reply at 2–7.

3. The NPRM's Findings

In the NPRM we tentatively found that architectural bias existed and that we should consider proposals to eliminate that seemingly unfair competitive advantage. We accordingly asked parties to comment on proposals made by Justice and Texas Air that assertedly would eliminate architectural bias, the dehosting proposal and the equal functionality proposal. 56 FR 12613–12616. At the same time, however, we noted that the proposals might be unnecessary or unwise, 56 FR 12616:

> [W]e are not yet certain that we should adopt a rule mandating the partial or complete elimination of architectural bias. It is possible that functionality factors are not as significant a cause of incremental revenues as we now believe, or that other changes * * * may * * * make a rule on architectural bias unnecessary or unduly burdensome * * *. Moreover, vendor competition for subscribers appears to be causing vendors to improve information-gathering and booking capabilities for participating carrier transactions, as shown by Sabre's recent announcement that it is upgrading its direct access feature * * *.

To help us judge whether either the dehosting or the equal functionality proposal should be adopted, we asked the parties to respond to a series of questions (some suggested by Justice). We asked, for example, how a vendor could comply with Texas Air's equal functionality proposal without dehosting its system and whether participating carriers would be willing to make the investments needed to take advantage of a rule requiring more equal functionality. 56 FR 12615.

The dehosting and equal functionality proposals drew many comments. While Justice, most carriers other than American and United (including every partner in Covia except United), and ARTA supported one or both of these proposals, the major vendors argued that neither proposal was necessary and that dehosting would be too expensive. ASTA stated that it would support the proposals only if they did not reduce the quality of the functionality on transactions involving the host, and Woodside alleged that architectural bias is insignificant and has no effect on travel agency bookings.

4. Submissions on CRS Reliability

The vendors' benefits from architectural bias assertedly result in large part because bookings made on the system's host are more likely to be accurately transmitted and recorded than are bookings on other carriers and because the communications links between a system and participating carriers at times do not function. At Northwest's suggestion, we directed the vendors to provide us additional information on the reliability of their systems. Order 91–8–63 (August 30, 1991). That order instructed each vendor to tell us, for its basic CRS service (*i.e.*, for information requests and bookings made from the primary display) and for each direct access service, the amount of time that the communications links were inoperable and the percentage of total transactions that could not be completed correctly due to communications failures and delays and other problems. Order 91–8–63 at 4 and app. A.

While the vendors were unable to provide all of the information we requested and while the information submitted to us may not fully measure the reliability problems faced by agents booking nonhost carriers, the vendors' information supports the position of Covia and American that the reliability of the booking process is substantially the same for vendor and non-vendor

carriers. The vendors generally reported that each direct access function operated correctly more than 99 percent of the time. We gave all parties in this proceeding an opportunity to comment on the information provided by the vendors. However, only Northwest and Worldspan chose to file comments questioning the reliability figures submitted by the vendors, and their comments do not show that the figures are inaccurate.

5. Potential Benefits of Dehosting and Equal Functionality Rules

To assess whether the dehosting and equal functionality proposals should be adopted, we must compare the probable costs of each proposal with its probable benefits. We will begin by measuring the likely benefits of those proposals, a question that involves estimating the amount of incremental revenues generated by architectural bias and the amount of architectural bias that will continue if we take no action.

On the basis of the record before us, we cannot determine with any exactness the benefits obtainable through the elimination of architectural bias. While, as indicated, vendors obtain incremental revenues from their systems, it is not clear what portion of those revenues is produced by architectural bias. Our past analyses indicate that other factors also produce incremental revenues, and nothing in the record of this proceeding (or in our earlier CRS studies) enables us to calculate the relative importance of these factors in producing incremental revenues.

A group of parties has submitted a study undertaken by Dr. Franklin Fisher which concluded that architectural bias imposes heavy expense on the public by causing travelers to take flights that they regard as inferior to other available services. "Architectural Bias in CRS: The Loss in Consumer Welfare," submitted by the July 14, 1992 letter of Raymond Rasenberger and Frank J. Costello. Dr. Fisher, however, failed to present all of the bases for his estimates, so we cannot fully evaluate his study. For example, he has not published the regression analysis on which he relies to derive demand elasticity. It appears, however, that his study incorporates both empirical and theoretical weaknesses that undermine its reliability.

On the other hand, as the major vendors point out, they have been improving the technological capabilities of their systems for bookings on other carriers, particularly by introducing "look and book" direct access features. Significantly, a growing number of carriers are participating in those features, which are relatively recent developments. For example, other carriers began participating in System One's "look and book" feature only recently. July 1, 1992 System One Comments, Lenza affidavit at 3. Because of these developments, the estimates in our earlier studies of the size of the vendors' incremental revenues almost certainly do not accurately measure the current impact of architectural bias, since those studies looked at CRS operations at a time when "look and book" features did not exist or perhaps were too cumbersome to use. See Marketing Report at 68–69 for a discussion of the flaws in "look but not book" direct access features. The travel agents' interest in ensuring the reliability of bookings is presumably a major factor affecting their booking patterns. *Cf.* Justice Reply at 4. CRS developments equalizing the reliability of bookings on the vendor and non-vendor carriers should therefore reduce the incremental revenues created by architectural bias. System One, for example, states that Continental gained a larger share of System One subscriber bookings during the period when it was the only carrier participating in that system's "look and book" feature. System One July 1, 1992 Comments, Lenza Affidavit at 3.

Furthermore, the vendors' competition for subscribers appears to be strong enough to encourage vendors to continue reducing functionality differences. While the Justice Department argues that the vendors' interest in obtaining incremental revenues will keep them from eliminating architectural bias, Justice Reply at 5–6, that argument seems to be contradicted by the record. If Justice were correct, we would not expect to see vendors develop features like "look and book" direct access. Presumably they have taken such steps because travel agencies have some desire for improved functionality on participating carriers and because enough competition for subscribers exists to encourage vendors to improve the information-gathering and booking capabilities of their systems for all carriers, not just the vendor. United Reply at 5–6; American Supplemental Comments at 7–9. The vendors' incentives and actions to reduce architectural bias would reduce the benefits realizable from a rule requiring dehosting or equal functionality, because the continuing technological improvements in the systems will lead to reductions in the level of unequal functionality even if we adopt no rule. In that regard we note American's statement that Sabre is developing a "seamless connectivity" capability that will virtually eliminate all functionality differences. American Supplemental Comments at 7–9. See also 56 FR 12616.

Congressman James L. Oberstar, the Chairman of the Subcommittee on Aviation of the House Committee on Public Works and Transportation, advises us in his July 2, 1992, letter that Covia and Sabre have represented to his Subcommittee and to other members of Congress that they are in the process of eliminating all functionality differences between the host carrier and other participating carriers. The Chairman's letter is consistent with our view that the vendors are working to equalize functionality.

While we recognize that functionality differences must influence agency booking patterns to some extent, the record does not convincingly demonstrate that non-vendor carriers are subject to serious disadvantages in functionality. Some of the differences cited by proponents of a rule involve matters that appear unlikely to shift a large number of bookings to the vendor and away from non-vendor carriers. And several of the differences in functionality (for example, the travel agent's ability to confirm the accuracy of frequent flyer program information for the vendor's members but not for members in non-vendor programs) result from the non-vendor carriers' unwillingness to share certain sensitive data with the vendor. Covia Comments, Blackney affidavit, para. 48, 54.

Moreover, while many of the parties urging us to adopt a rule eliminating architectural bias had argued that such action was required because of the alleged substantial differences in reliability between bookings on a vendor and bookings on a non-vendor carrier, the information submitted to us on this subject suggests that reliability is not a substantial problem, as explained above.

In addition, according to several parties' comments, some carriers (*e.g.*, United and Northwest) have declined to participate in certain enhancements offered by other systems, allegedly to encourage agencies in their hubs to subscribe to their systems. 56 FR 12608. Although any booking losses for those two CRS owners due to inferior functionality in other systems could be offset by greater CRS profits arising from a greater share of the CRS market, their alleged willingness to decline participation suggests that functionality differences may be less important than we thought earlier.

It is also not clear whether everybody would or could participate if we required vendors to provide more equal functionality. As noted, Northwest does not participate now in the look and book access functions offered by systems other than Worldspan, and Alaska and America West have not participated in all direct access functions. See, *e.g.*, Covia Comments at 61. The comments indicate that a carrier's participation in enhanced functionality could be quite expensive, a factor which could reduce the number of participants in any upgrading of functionality mandated by us.

Even if we adopted an equal functionality rule, it would produce no immediate benefits for participating carriers in view of the time needed for compliance with the rule. Northwest, for example, estimates that a vendor would need 30 months to achieve dehosting. NW Comments at 3.

Nonetheless, we believe that vendors continue to obtain additional airline bookings due to functional differences. We note in that regard Worldspan's estimates that United and American would each gain $200 million or more in additional airline revenues each year if architectural bias caused each carrier to get one more booking per week from each CRS terminal used by its system's subscribers. Worldspan Reply at 6–7, 17. However, as explained next, the costs of adopting either a dehosting or equal functionality rule would be so high that we could not justify such action without solid evidence that such a rule would provide substantial benefits. Worldspan's calculations of the possible impact of architectural bias are only theoretical.

6. The Costs of Dehosting

We will first assess the costs of requiring dehosting and in the next section discuss the costs of an equal functionality rule. As indicated, System One is a hostless system, and Worldspan is creating a hostless system to replace PARS and DATAS II. Thus any dehosting rule would impose costs only on Covia and Sabre. Although Sabre and Covia are the largest and most profitable systems, we would be reluctant to adopt a rule which significantly burdens them while not affecting their competitors unless there is good cause for such action.

Several parties have provided estimates of the costs required to separate a host carrier's internal system from a CRS computer. Worldspan, which supports the dehosting rule proposal, estimates that creating a new CRS processing system would cost between $44 million and $50 million; this estimate, based on Worldspan's own experience in creating a hostless system, includes the costs of programming, network development, computer processors for production and test systems, and planning, but not the costs of land and buildings or non-CRS production purposes, or the on-going expenses of operating two systems instead of one. Worldspan Comments at 22–23.

Northwest in conjunction with PARS developed an estimate of the costs of converting a system of PARS' size into a no-host system. Northwest estimates the task would cost perhaps $50 million spent over a period of thirty months. Northwest Comments at 20.

Covia alleges that dehosting would cost it tens of millions of dollars and require between one and two years. Covia Comments at 71.

American filed detailed estimates on the cost of dehosting. American initially estimated that a dehosting rule would force American to spend $65 million to build a new data center, $52 million to acquire additional hardware, and at least $5 million to develop new software. American Comments at 21–22. After considering the matter further, American concluded that its initial estimates were incomplete and too low. It now estimates "that separation of Sabre from its airline computer operation will cost over $215 million to accomplish, take three years to complete, and effectively stifle any Sabre innovation for that period" and will also increase ongoing CRS costs and require substantial increases in booking fees and subscriber charges. American Reply Comments, App. D at 3, 7.

The parties supporting a dehosting rule have not attacked the detailed analysis provided by American. Rather than argue that dehosting would not be an expensive requirement for the two major vendors, they argue that the costs of dehosting would be small compared to the major vendors' incremental revenues and overall revenues or if calculated as an amount per booking. See, *e.g.*, Worldspan Comments at 22–23. Such comparisons cannot justify our imposing large costs on the major systems unless we can expect to obtain comparable benefits. As shown, we have no evidence demonstrating that the benefits of a dehosting rule would offset its costs. The proponents of dehosting also concede that participating carriers would incur expenses as well to take advantage of the more equal functionality, Northwest Comments at 21, a fact which further reduces the attractiveness of that proposal.

In addition to the financial costs of dehosting, it would force Sabre and Apollo to have their programmers spend their time creating separate computer systems rather than developing improvements for their existing systems. See, *e.g.*, United Reply at 8–9.

Furthermore, a dehosting rule would necessarily impair the functionality of each system for transactions on its host for some period. Until the system was able to provide a level of functionality for all carriers equal to that provided now for the host, the functionality for the host could be no better than it is now for participating carriers. While this reduction in functionality might not be substantial, it would occur and would thus reduce the efficiency of agents using Sabre and Covia to book their hosts. As a result, while ASTA supports more equal functionality for participating carriers in principle, it opposes any rule that would impair the systems' current efficiency. ASTA Comments at 17–18.

7. The Costs of Equal Functionality

An equal functionality rule would apparently affect only Sabre and Covia, for System One represents that Continental receives no significant architectural advantages in its affiliated system. An equal functionality requirement, of course, would not be as expensive as a dehosting requirement, since its advocates assume that it would not require a vendor to create and operate a second computer system. Instead, they estimate that it would cost each vendor approximately $10 million to implement such a rule. 56 FR 13615, citing Texas Air's estimates. Despite that advantage, such a rule would have serious flaws.

First, as a practical matter, we do not see how an equal functionality requirement could be implemented without a separation of the computer operations for the CRS and the host carrier. The current differences in functionality result in large part from the inherent advantage created by the lack of any need for communications links when an agent requests information and engages in transactions on the host carrier. Similar tasks involving other carriers necessarily require communications links, and the existence of those links creates the potential for delays and errors that discourage agents from selling seats on participating carriers when the host carrier offers comparable service. Although an equal functionality requirement would eliminate other differences (*e.g.*, any difference between the host and other carriers in the number of keystrokes

required for transactions), such a rule could not eliminate the differences created when a vendor is hosted in its CRS. Justice accordingly argues that an equal functionality rule would not eliminate all architectural bias. Justice Reply at 9.

When we requested comment on this issue, we specifically asked parties to tell us how an equal functionality standard could be met by the hosted systems without creating separate computer systems for the host's internal system and the CRS. 56 FR 12615. No one answered that question.

Justice further points out that the inherent differences in the functioning of the systems for host and nonhost carriers "may make evasion of functional parity rules difficult to detect and prevent," Justice Reply at 9. Covia alleges that an equal functionality rule would inevitably force us to regulate technology. Covia Comments at 62. For this and other reasons (*e.g.*, the lack of objective performance criteria for determining whether a vendor was complying with the rule), enforcing such a rule would be difficult and costly. Justice Reply at 10.

The version of the equal functionality rule proposed by its original proponent, System One, would not cover every function. Instead, the rule would govern five key functions: Reservations and ticketing, creation of the passenger name record, seat selection and issuance of boarding passes, fare and schedule information, and frequent flyer program information. Limiting the rule in that way could create future problems. As other parties point out, the key functions for travel agents may change in the future. For example, the issuance of boarding passes is now a key function but did not exist as a function when the Board adopted the rules. While the rule would provide some protection for participating carriers at first, in the long term it could lose much of its effectiveness. See, *e.g.*, Justice Reply Comments at 9; Air Canada Comments at 34; Delta Reply Comments at 9.

We also must consider the costs that an equal functionality rule would impose on those participating carriers that wanted to take advantage of it. System One estimates that a carrier would have to spend $5 million to participate in the upgraded functionality required by an equal functionality rule. System One Comments, Heinzman Affidavit at 2. Covia suggests, however, that some carriers—Alaska and America West, for example—would not make the investment needed to take advantage of equal functionality. Covia Comments at 61. Moreover, a vendor would make it quite expensive for a participating carrier to take advantage of an equal functionality rule by designing the improved connections so as to place much of the cost burden on the participating carrier rather than the vendor (any improved access feature like direct access requires enhanced communications links between the CRS and the participating carrier's computer and the development of an interface, which require a substantial investment from the participating carrier). Orient Airlines Comments at 16; Aer Lingus Reply at 4; Air Canada Reply at 34. We could not stop such conduct without engaging in detailed technical regulation of the systems, something we are not equipped to do. While the Orient Airlines suggest that this problem could be cured by setting up a committee to establish technical standards, Orient Airlines Comments at 18–19, that suggestion confirms our view that a practicable equal functionality rule would require substantial intervention by us into CRS management.

Because we are reluctant to engage in a regulation of the technical operations of the systems, we will not adopt American's proposal that we require each system to provide "seamless connectivity," a capability that American represents is being developed for Sabre to provide equal functionality on information requests and booking transactions for American and the participating carriers. American, moreover, has provided no cost estimate for this development, and Covia contends that any requirement of seamless connectivity would be unduly expensive for both the other vendors and for participating carriers. Covia Reply at 13.

8. Defaults in Vendor's Favor

Although we have determined not to adopt the parties' major proposals for eliminating or reducing architectural bias—dehosting and equal functionality—we wish to adopt rules reducing architectural bias when doing so will impose little or no cost on the vendors. There are three such rules we will adopt. The first of these will eliminate default features that favor the vendor (the other two, discussed below, will require vendors to make enhancements available to all carriers and to give carriers the ability to load fare and schedule changes as quickly and efficiently as the vendor).

The systems now follow procedures for some functions that assume that an agent is seeking information (or wishes to perform a transaction) on the vendor's services and automatically provide a display or capability for the vendor. In order to perform the same function with respect to another carrier's services, the agent must tell the system that he or she wishes to carry out the task on that carrier, a step which requires more keystrokes from the agent. These defaults typically involve requests for carrier information like seat maps and information on the status of a particular flight. Worldspan Comments at 12–13; Delta Comments at 15. System One and Sabre automatically respond to certain types of fare information requests with information on the fares of Continental and American, respectively, unless the agent specifically requests a neutral response. Orient Airlines Comments at 14.

In addition, a number of parties complain that the systems have created an autovalidation procedure that favors the vendor unless the agent chooses to override it. The systems normally validate a ticket on the host carrier whenever it is included in the passenger's itinerary instead of following the traditional procedure of validating the ticket on the first carrier included in the itinerary. This particular default feature gives the vendors cash flow benefits, since the ticketing carrier holds the customer's payment for the trip until the carriers provide the transportation, which may be months after the customer pays for the ticket. See, *e.g.*, Worldspan Comments at 25; Alaska Reply at 30–31; USAir Comments at 7; ASTA Reply at 24, fn.

American recommends the adoption of a rule prohibiting such defaults rather than a dehosting or equal functionality rule. American also represented it would eliminate all defaults favoring itself in Sabre. American Reply at 4–5. Several other carriers support rules eliminating defaults favoring the host. System One both concedes that the default features in its system benefit Continental and states its willingness to give them up if the other vendor carriers do the same. System One July 1, 1992 Comments, Lenza Affidavit at 3. Worldspan, Delta, USAir, Alaska, Aer Lingus, Alitalia, and ASTA urge us to proscribe the vendor practice of making the host carrier the validating carrier whenever it appears in an itinerary.

We have determined to adopt American's proposal. It is consistent with our original wish to provide more equal functionality for participating carriers, since it will equalize system functionality in certain respects for the host and other participating carriers. On the other hand, this rule will impose no significant costs on the vendors, since it will require only a modest amount of programming. American Reply at 5.

American estimates that it can complete the removal of defaults favoring American by April 1993. April 13, 1992 American Comments at 8. No other vendor commented on the amount of time needed to eliminate defaults. We will make this rule effective on October 1, 1993, which should give all vendors adequate time to remove the defaults.

9. Enhancements

The second of the three rules we are adopting on equal functionality concerns access to enhancements. Under section 255.7 of the current rules, a vendor must make an enhancement—a service like the ability to issue boarding passes that is not one of the basic CRS functions—available to all participating carriers on a nondiscriminatory basis only if it is offered to any such carrier. The rule thus allows a vendor to reserve an enhancement for itself. Our NPRM proposed a rule requiring vendors to make all enhancements available to participating carriers, although we would not require that the ease and reliability of access for enhancements be equivalent for participants and hosts. 56 FR 12616. We tentatively concluded that such a rule would provide important benefits by keeping vendors from using enhancements to benefit the marketing of their own airline services at the expense of their competitors. At the same time, we concluded that it would not discourage innovation and would not impose unwarranted costs on participating carriers, for each carrier could choose which enhancements it would use. We also noted that one vendor—Covia—stated that it made all enhancements available to all participating carriers and that the Worldspan partners did not object to such rule. Finally, we pointed out that the current rule required modification in any event, since it did not take account of the ownership of two of the CRSs by more than one carrier. 56 FR 12616.

Worldspan, Delta, and Alaska support the proposal. No one opposes a requirement that all enhancements be made available to all participating carriers. American claims that Sabre makes all of its enhancements available to participating carriers and that it does not oppose the proposal. American Comments at 23. Air Canada points out that the Canadian government imposed a similar requirement on the major Canadian system after American had urged Canada to take such action. Air Canada Reply at 20.

We will therefore adopt the rule as proposed for the reasons given in the NPRM. However, as we explained there, 56 FR 12616, the rule will not require vendors to make enhancements immediately available to all carriers, for we recognize that a vendor may need time to develop and perfect an enhancement before making it generally available and that making an enhancement available to all participating carriers at once may often not be feasible. Since we are not adopting an equal functionality requirement, we will not add Alaska's proposed condition that the use of enhancements be as reliable and easy for participating carrier transactions as they are for vendors.

The term "enhancement" requires some clarification. As defined in the NPRM, it excludes the display of information on schedules, fares, rules, and availability and the ability to make reservations or issue tickets, yet we believe that the industry would view direct access as an enhancement, even though "look but not book" direct access involves the display of information and "look and book" direct access involves both the display of information and the ability to make reservations. Worldspan accordingly points out that the proposed definition would be too narrow. Worldspan Comments at 34. See also Delta Comments, Ex. A at 4. Other parties have cited features benefiting a vendor that are comparable to the issuance of boarding passes and that should therefore be covered by our rule. For example, British Airways complains that Sabre allows American to show nine fare classes on transatlantic flights in its display while limiting British Airways to eight classes. British Airways Comments at 18. System One similarly notes that Sabre gives a travel agent the ability to see whether a particular American fare is available on any flight within a 30-day period but does not allow agents the ability to conduct similar searches on fare availability for other carriers. System One Comments, Lenza Affidavit, para. 13. Each of these features should be covered by a rule requiring participating carrier access to enhancements, unless technical requirements make access impossible (*e.g.*, if participation in the feature is impossible for a non-hosted carrier). As a result, we will modify the definition of "system enhancement". Once again, since we are not requiring dehosting, our rule on enhancements cannot require vendors to provide participating carriers access to a feature used for the host carrier if that feature is an inherent element of being a host.

We will make the rule on enhancements effective on the same date that this rule becomes effective, but, as noted, vendors are not required to make enhancements immediately available to all participating carriers if that is technically impracticable. If our rule requires vendors to modify their systems, we would not expect them to provide participating carriers with access to all enhancements on the effective date.

10. Loading of Fares and Schedules

Section 255.4(d) of the current rules requires vendors to apply the same standards of care and timeliness in loading information from participating carriers as they apply to the loading of their own information. However, several comments on the ANPRM charged that Apollo and perhaps other systems vendors load their own information on a quicker schedule, because the vendor provides its information directly to its own system while forcing other carriers to send their fare and schedule information through intermediaries (Airline Tariff Publishing Company, "ATP," for tariffs and Official Airline Guide for schedules). Covia conceded that United's information is sometimes loaded on a faster schedule than is information from other carriers. Covia ANPRM Reply, Powers Affidavit at 10–12. In addition, some systems imposed procedures on participating carriers for providing information on fare and schedule changes that appeared to be unnecessarily burdensome and costly. 56 FR 12616–12617.

We therefore proposed a rule requiring each system's owner to use the same procedures for loading its fares and schedules that were available to participating carriers. We tentatively found that a vendor's use of faster procedures would give it an unfair competitive advantage, since the owner's changed fares and schedules would then be available in its system before its competitors could have their changes displayed. Moreover, since each vendor alleged it always or almost always loads the information on participating carrier services as quickly as information on its own services, such a rule would not significantly burden any vendor or delay the availability of information on a vendor carrier's services. 56 FR 12616–12617. We also note that some systems allow hotels and rental car companies to update their information electronically. Air Canada Reply at 19, n. 8.

Worldspan, Delta, Aer Lingus, Lufthansa, and the American Automobile Association support our proposal. American states that the proposal would be acceptable as long as American is not precluded from using a relatively quick procedure for loading information merely because other

carriers choose to use a slower procedure. Covia contends that no such rule is necessary, although it admits that United's fare and schedule changes are sometimes loaded more quickly than are changes for other carriers. Covia Comments, Blackney affidavit, para. 50. Covia also does not claim that such a requirement would be burdensome or costly.

We have determined to adopt our proposal, since it would provide significant competitive benefits while not placing any significant cost burden on the vendors, as we explained in the NPRM. While Covia states that current information on fares and schedules is always available through direct access for carriers participating in that function, the information should be available on the primary display as well, if the carrier chooses to use the same procedures as the vendor.

American, moreover, is mistaken in thinking that the rule will force a vendor to abandon a loading procedure if many participating carriers choose not to use it. The rule only requires vendors to make available the ability to use the loading procedure that it uses. As a result, for example, if the vendor updates its information electronically, it must provide that capability to participating carriers. If some participating carriers choose to use another loading procedure, that would not bar the vendor from using the better procedure. Of course, if a system's loading procedures for the vendor are somewhat slower than they are for participating carriers, as American claims is the case for Sabre, participating carriers would not be interested in using the inferior procedure. American Comments, Ex. F.

I. Booking Fees

1. Background

Each vendor charges participating carriers fees (usually called booking fees) for having its services displayed and sold through its system. While our rules now require all fees for participating carriers to be non-discriminatory, the rules do not limit the amount of the fees. 56 FR 12617. Vendors typically charge a specified fee per booking for each level of service. See Marketing Report at 56. If a carrier participates only in the basic CRS display and booking functions, it pays one fee, while a higher fee is charged carriers that participate in a direct access function. After the vendors' 1990 fee increases, Sabre, Worldspan, and System One charged carriers $2 per segment for each basic booking and $2.25 per segment for each booking made on carriers participating in direct access. 56 FR 12595. In 1991 Sabre increased the basic booking fee from $2 to $2.15 per segment booked (the direct access surcharge remained $.25). NW Reply Comments at 6–7. Presumably the other vendors matched Sabre's fee increases. While Apollo earlier charged fees per booking like the other vendors, it recently began charging carriers fees based on the type of transaction (for example, $1 per segment for each basic booking, $1.15 per segment for each booking made on direct access, and $.20 for each canceled booking).

In the NPRM we found that these booking fees are not subject to competitive discipline and that supracompetitive booking fees injure airline competition. 56 FR 12600. Nonetheless, we did not propose a rule limiting booking fee levels, although we proposed to maintain the rule requiring nondiscriminatory fees. As we explained, 56 FR 12617:

> [W]e are reluctant to begin regulating fee levels * * *. We believe any effort to regulate fee levels may well have more disadvantages than advantages. A rule limiting booking fees would be equivalent to rate regulation, and rate regulation usually creates inefficiencies.* * * In addition, the smaller systems have had the highest costs due to the economies of scale in the CRS business, so any rule limiting booking fees could substantially reduce the profitability of the smaller systems. Moreover, * * * each of [the] proposals [for limiting fees] seems to have flaws that outweigh its merits.

In addition, we noted that our other proposals could reduce the vendors' ability and incentive to charge supracompetitive booking fees. We suggested that giving travel agents the ability to access several systems from a single terminal might give carriers the ability to withdraw from some systems charging high fees, which would decrease the need for a rule limiting booking fees. We stated nonetheless that we were willing to consider the issue further if someone proposed a practicable rule relying on competition to restrain fee levels. 56 FR 12617.

2. Comments

Justice and most of the carriers except the vendors urge us to adopt a rule limiting booking fees. The three largest vendors and several travel agency parties argue that we should not regulate fee levels.

Justice argues that we should adopt a "zero fee" rule that would prohibit vendors from collecting booking fees from participating carriers. Justice contends that such a rule is economically justified, because travel agencies, unlike the airlines, have some ability to choose between systems and to regulate the amount of use of a CRS. Justice Comments at 17–18. A zero fee rule would force vendors to obtain all of their compensation from travel agencies, whereas now they obtain the largest share of their compensation from booking fees. Justice considers that change beneficial to some extent, since it would eliminate the monopoly rents now obtained by vendors. Consumers now pay for those rents in the form of higher airfares. Justice Comments at 19–21.

While many carriers assert that a rule limiting booking fees is essential, none supports a zero fee rule. Instead, they suggest other possible rules, particularly rules limiting vendors to charging fees found reasonably related to their costs by someone (usually an arbitrator). Alaska and America West propose as an alternative a rule limiting each vendor's total booking fee charges each year to an amount equal to the charges paid by its subscribers. ECAC and several foreign carriers assert that we should adopt a rule requiring fees to be reasonably related to costs.

Some carriers, such as TWA, claim that even if all of the proposals for regulating the fee levels have flaws, the need to limit the vendors' imposition of supracompetitive fees requires us to adopt some rule. Midway and America West, on the other hand, ask that we hold a supplemental proceeding to develop an adequate rule if we dislike the current proposals.

American, Covia, and Worldspan oppose any regulation of fee levels. ARTA not only opposes any limit on booking fees—it demands that all CRS costs be paid by participating carriers and none by travel agencies. ASTA, American Express, and AAA oppose the zero fee proposal or any rule that would substantially shift CRS costs from airlines to travel agencies.

System One took no position on this issue.

3. Decision

We will readopt the rule barring discriminatory fees, which no one opposes. However, we will not now adopt a rule regulating booking fee levels, since each of the proposals for regulating fee levels has serious flaws and since none of the parties proposing such a rule has addressed the concerns stated in our NPRM. As noted above, we stated in the NPRM that we would consider a rule proposal on booking fee levels that relied on market forces. No such proposal has been made. Instead, the proponents of rules limiting booking fees either contend that we (or an

arbitrator) should directly regulate fee levels or, in the case of Justice, argue that we should confine the vendors' power to charge fees to those areas where competition will discipline fee levels. As we explained in the NPRM, despite the harm inflicted by supracompetitive booking fees, each proposal contains disadvantages and costs that exceed its potential benefits.

Moreover, we believe—and several parties agree—that our rule allowing agencies to use third-party hardware and software (and to access several systems and databases from a single terminal if not owned by the vendor) will begin to discipline booking fees by giving airlines an alternative to CRS bookings. As we discussed in connection with that rule, each carrier will have the opportunity to establish direct links between its internal reservations system and PCs used by travel agencies as CRS terminals. Because an agency can use the same equipment for accessing the CRS and a carrier's internal system, a number of agents should be willing to use such direct links to make bookings, especially since our rules would allow the carrier to pay the agency to use the direct link (the booking fee savings generated by use of the direct link could enable the carrier to make a substantial payment to the agency). As a result, the rules on third-party hardware and software should create some market discipline on the level of booking fees and thereby reduce the need for more intrusive regulation.

Furthermore, several other factors suggest that the need for a rule limiting booking fees is not so urgent that we should ignore the serious flaws in the various proposals before us. First, while the vendors have not shown that their fees are restrained by competition, their fees are below monopoly levels, apparently due to political considerations. Justice Comments at 5, n. 3; NW Reply, Levine affidavit at 4. Presumably for the same reason, the vendors' fee increases since 1985 have been less than the rate of inflation in the economy. In addition, the average fee is equal to somewhat more than two percent of the average ticket price per segment; travel agency commissions, in contrast, on average equal nine to ten percent of airline fares sold through agencies. Marketing Report at 14. These factors, of course, do not eliminate the desirability of finding a practicable market-based means of holding down booking fees, but they do eliminate the need to simply adopt any rule on booking fees, however troublesome, in order to prevent fee increases.

4. The Zero Fee Proposal

Of the fee proposals presented by the parties, the most rational in terms of economic theory is Justice's zero fee proposal, as we stated in the NPRM. 56 FR 12630. While vendors do not compete for airline participants, they do compete to some extent for subscribers.

Such a rule would be very disruptive if adopted, however, since it would shift the burden of paying CRS charges from the airlines to travel agencies. In 1988 Sabre and Apollo drew more than 70 percent of their revenues from booking fees, while PARS and System One generated about 60 percent of their revenues from booking fees. Marketing Report at 52. The major systems now obtain an even greater share of their revenues from booking fees and an even smaller share from travel agency fees. Covia July 1, 1992 Supp. Comments at 5. Thus shifting the burden of CRS charges to the agencies would force a restructuring of the agency business, even if a substantial portion of the fees paid by airlines represent monopoly rents that could not be obtained by vendors from travel agencies. See also NW Reply Comments, Fisher Affidavit, par. 48.

While Justice believes that travel agencies could recover their increased CRS costs by obtaining higher commissions from the airlines, travel agency parties claim that the carriers are unlikely to be willing to pay higher commissions. See *e.g.*, ASTA Reply at 10. Even if travel agencies ultimately did obtain higher commissions, that process presumably would require some time. Moreover, different types of agencies might be affected differently by the increased CRS costs and the payment of higher commissions. See, *e.g.*, Worldspan Reply Comments at 19. And CRS costs per booking are larger compared to a typical agency's revenues than they are compared to an airline's revenues. ASTA Reply at 9–10. A zero fee rule accordingly would force substantial changes on the agencies' cost structures and methods of operations.

The zero fee rule also presents a practical problem, since such a rule would require a determination of which CRS services would be covered by the ban against booking fees. 56 FR 12617–12618. See also Worldspan Reply Comments at 21.

As a result, we will not adopt the zero fee rule.

5. Rules Requiring Reasonable Fees

A number of carriers urge us to adopt a rule requiring reasonable (or cost-based) fees. We recognize that these proposals for reasonable fees (that is, fees related to costs) are consistent with traditional practices in public utility industries. But even in traditionally regulated industries, like the electric industry, public utility ratemaking has significant flaws. Reasonable rate requirements typically do not encourage regulated companies to be efficient, and rate determinations are often time-consuming and burdensome for the regulated firm, the agency, and other parties. Furthermore, the characteristics of the CRS business make the setting of CRS fees through ratemaking proceedings particularly unattractive. A CRS has three sets of users—the host carrier, participating carriers, and travel agency subscribers—and allocating costs between those groups would be extremely difficult, if not impossible. In addition, the economies of scale in the CRS business would create an anomaly if fees were set administratively: The smaller systems would be able to charge higher fees than the larger systems. 56 FR 12617, 12618. Ratesetting may be relatively straightforward in traditional public utilities because there is little technological change in the industries. In the CRS business, in contrast, technology is continuously developing.

The parties urging the adoption of a reasonableness standard for CRS fees have not refuted these objections to such a rule. Although they contend that CRS ratemaking proceedings would not be as cumbersome and difficult as we found in the NPRM, they have provided no explanation for that position.

Several parties seemingly misconstrue our opposition to the reasonable fee proposals as an unwillingness on our part to determine what fees are reasonable but a willingness to allow someone else to make such a determination. Our basic objections to a reasonable fee requirement flow not from the identity of the decisionmaker but from the serious flaws in any such requirement. Having an arbitrator determine what the fees should be, however, would further worsen such a rule, particularly if the arbitrator's award were largely insulated from agency or judicial review, as a number of parties have proposed. The arbitrator would not necessarily have any expertise in the complex ratemaking issues that would be presented in determining the reasonableness of CRS fees, and insulating the arbitrator's decision from agency or judicial review would enable a single person to make judgments that would shift millions of dollars in revenue between different types of users of a system. Unless the same arbitrator heard every case, there

would be no guarantee that the decisions on the different vendors' fees would be consistent. No party has given any reason for believing that an arbitrator could decide the ratemaking issues better than we could.

While we plan to watch booking fee developments, we are unwilling to impose the rule suggested by Varig requiring vendors to publish their costs. Varig's proposal could provide new information, since no vendor has provided such information in this proceeding. However, we have found from experience that the vendors' figures on profit, loss, and expenses provide little, if any, guidance unless adjusted to reflect general accounting principles and to provide identical treatment for each system's financial results. Given the amount of work involved in that task, requiring vendors to provide cost information does not seem useful. We also prefer not to compel a private firm to publish detailed financial statistics unless there is a clear benefit from doing so, since such a disclosure requirement would help its competitors and be contrary to the usual rights of private firms to keep detailed financial information confidential.

6. The Parity Fee Proposal

Alaska and America West support another proposed limitation on booking fees. Under their proposal, the total payments received annually by a vendor from participating carriers could not exceed the total payments received from subscribers. While we recognized in the NPRM that this proposal had some attractive features (*e.g.*, it would not require ratemaking and would give vendors the discretion to vary their fees for different services), we concluded that such a rule would create an accounting nightmare. We noted, for example, that the vendors' receipts from agencies covered their subscribers' use of the systems to book non-airline services, such as hotels and rental cars, and that some system owners (*e.g.*, Northwest and TWA) partially subsidized the CRS payments made by their system's subscribers. We noted that system owners could also offset the rule's limits by increasing the commissions paid their subscribers. 56 FR 12618.

In addition, the proposal would shift a substantial share of CRS costs from participating airlines to travel agency subscribers.

The parties supporting this proposal claim that the difficulties identified by us are not serious enough to make the proposal unworkable, but the proposal would require us to closely examine each system's receipts to ensure that the systems were not evading the limitation on carrier fees. We think such an audit of each system's income and the sources of agency payments would be overly complex and time-consuming. We therefore think that this proposal is not practicable. In addition, the proposal that carriers pay no more than half of the total CRS costs is itself somewhat arbitrary. ASTA Reply at 14.

The Orient airlines make a similar proposal, which has similar flaws.

7. Air Canada's Proposal

Rather than regulate the amount of fees, Air Canada proposes that we bar any system owner from initiating a fee increase if it receives more booking fees than it pays out. As a practical matter, such a rule would restrict only Sabre, since American is the only carrier whose fee receipts exceed its payments. We are unwilling to adopt Air Canada's proposal, which was not raised until Air Canada filed its reply comments, since other parties have not had an opportunity to comment on it.

8. Transactions Covered by Fees

According to a number of carriers, the vendors have also abused their power by charging carriers for transactions for which no fee could be fairly charged. In general these carriers contend that a participating carrier should be charged only for transactions that produce new bookings for it. They argue, for example, that we should stop vendors from charging booking fees when a traveller who made a reservation directly with a carrier then has a travel agent issue the ticket through a CRS. Some carriers also object to Covia's new fee structure. Although Covia established a lower fee for each booking, it created fees for such transactions as cancellations and schedule changes. In response the vendors argue that the cited transactions—whether or not they produce new revenue for the carrier—require processing by the system and so are legitimately subject to booking fees. See, *e.g.*, Worldspan Reply at 26–27.

When this issue was raised before, we tentatively concluded that we should not try to define which transactions would be subject to fees. We recognized that the vendors' apparent arbitrary power to determine what types of transactions would incur a fee liability further demonstrated the vendors' ability to ignore the wishes of participating carriers. Nonetheless, we also noted that vendors might have legitimate reasons for charging fees for transactions other than new bookings. 56 FR 12619.

Although a number of carriers urge us to limit the kinds of transactions subject to fees, we remain unwilling to take such action. In essence, their proposal would require us to determine on some basis when fees could be legitimately charged by a vendor. The customary approach to such questions for public utility regulation would involve a complex and partly arbitrary synthesis of cost analysis, equity, and the ability of different parties to pay charges. Deciding which transactions should or should not incur fees would require a similar analysis, which we are unwilling to do.

9. Booking Fee Bills

A related issue concerns the alleged inadequacy of the booking fee bills delivered to participating carriers by the vendors. In their comments on our ANPRM, several carriers complained that the vendors refused to provide carriers with enough information in a readily usable form to enable carriers to verify the accuracy of the bills without undue expense. We proposed to require vendors to provide detailed billing information, and we asked whether the rule should specify the type of information to be required and the media on which bills should be sent. We noted that a vendor could evade the prohibition against discriminatory booking fees by imposing false charges on carriers, which would be feasible if carriers could not conveniently audit bills. 56 FR 12619.

Northwest, Alaska, America West, a number of foreign carriers, and ECAC support our proposal and generally contend that we should specify the information to be included in bills. Several carriers assert that the vendors' continuing refusal to provide billing information on magnetic media makes the auditing of the bills unduly expensive. See, *e.g.*, Alaska Comments at 29. Varig, for example, alleges that correcting a half million dollar set of billing errors cost it thousands of dollars because of the cost of enlarging the bills' microfiche information and copying it on paper. Varig Reply at 5. Northwest provided more detailed evidence on the inadequacy of current bills, which, among other things, makes it very difficult for a carrier to identify fictitious bookings made by an agency to satisfy a productivity pricing contract with its vendor. NW Comments, App. D at 1–2. In January 1991 Covia sent Northwest a bill for 1 million bookings and over 440,000 cancellations supported by 51 microfiche cards totalling over 24,000 pages that provided only summary data on each transaction. For example, the transactions are not listed by the agency making the booking or cancellation. NW

Comments, App. D at 2–3. While Sabre is now providing billing information in a machine-readable form (for which it imposes an additional fee), the information is still hard to audit. *Id.* at 3–5.

Justice did not comment specifically on the proposal on adequate billing information, but its position that market forces have no effect on the level of booking fees is consistent with the NPRM's conclusion that a rule is necessary to ensure that vendors provide adequate billing information.

Covia and Worldspan say no rule on booking fee bills is necessary. If a rule is adopted, Covia would not object to a specification of the information required in bills. Covia Reply at 17. American agrees that a rule on the issue should specify the data required in bills. American Comments at 27.

Whether the vendors should be allowed to charge for providing bills on magnetic media was discussed by several commentors. American and Covia assert that vendors should be able to charge more for providing bills on magnetic media, which allegedly costs more, but they have provided no evidence to support this claim. Air France notes that American has proposed a fee schedule for magnetic media billing that would require each interested carrier to make an upfront payment of $4,000 (the total payments to Sabre potentially could exceed $1 million) as well as annual payments thereafter of $1,800 per carrier. Air France Reply at 17. In a late filing, Air France asserts that a magnetic tape costs less to produce than microfiche and that a tape is usually needed to produce a microfiche bill. September 3, 1992 Air France Comments at 13, n. 20. Alaska is not ready to agree with American's claim that magnetic media costs more and that vendors should be able to charge for billing information provided on magnetic media. Alaska Reply at 34.

We have decided to adopt the proposed rule requiring vendors to provide adequate information in booking fee bills and on magnetic media so that participating carriers can readily audit the bills. As explained above in our analysis of the basic need for CRS rules, participating carriers have no ability to bargain over the terms of their participation in the systems and therefore cannot cause vendors to provide adequate billing information, the kind of information that a supplier in a competitive business would provide if it wished to keep its customers. Furthermore, as we noted in the NPRM, without adequate billing information vendors could evade the prohibition against discriminatory fees by imposing false charges. The rule requiring vendors to provide enough information to allow the auditing of bills for fees is accordingly essential to maintain the rule banning discriminatory fees.

As the parties suggest, we will specify the information that must be included in bills, since a rule requiring "adequate" information would lead to disputes over what information was adequate. The items to be required shall consist of the following for each segment: PNR record locator number, passenger name; booking status, agency ARC number, pseudo-city code, CRS transaction date, city-pair information, flight number, flight date, class of service, and type of CRS booking (*e.g.*, direct access). We have based this list on the list proposed in the NPRM, 56 FR 12619, and the comments of several parties, who generally agreed that these items should be included. NW Comments at D–1; Alaska Comments, Appendix; British Airways Comments at 29; Orient Airlines Comments at 32–33; Varig Comments at 30; Air Canada Reply at 46. This list is comparable to the information now being provided by American. American Comments, Ex. G.

At this time we will not bar vendors from charging carriers for providing bills complying with the rules. It may be that providing bills on magnetic media is more expensive, as claimed by American and Covia. However, we will monitor any vendor charges, given the importance of assuring that participating carriers receive adequate informahe accuracy of bills.

Finally, we have reworded the rule so it does not specifically authorize a participating carrier to withhold payment pending receipt of adequate information.

J. Other Terms of Carrier Participation

The rules currently bar any vendor from conditioning a carrier's participation in its system on the purchase of other goods or services. The Board adopted this rule as a result of its findings that vendors had coerced participating carriers into agreeing to buy non-CRS services on unfavorable terms by threatening to exclude them from the system. Board Rule, 49 FR 32554–32555. The NPRM's proposed rules maintained the Board's prohibition.

No party has objected to the continuation of that rule. However, Northwest, Aer Lingus, and Air Canada have raised a related issue, since they complain that Sabre is forcing carriers who wish to participate in Sabre in the United States to agree to participate in Sabre and its affiliated systems on a worldwide basis. These parties view American's conduct as particularly unfair because Sabre and its affiliates operate in a number of countries where there are no regulations protecting participating carriers against display bias and discriminatory treatment and because the booking fees charged by Sabre outside the United States are frequently higher than the fees charged for transactions inside the United States. NW Comments at App. B; Aer Lingus Reply at 12–13; Air Canada Reply at 5–6. SAS made a similar complaint against a U.S. vendor but did not identify the vendor.

We believe that Sabre's conduct may violate the current prohibition against tying U.S. CRS participation to the purchase of other goods and services, since participation in a CRS outside the United States, particularly a CRS not even operated in this country (for example, Fantasia, Sabre's affiliate in the Far East), appears to be a different service.

On the other hand, in several instances a foreign carrier has refused to participate in a U.S. system in its homeland in order to keep that system from competing effectively with its own system, and those situations can lead to serious international disputes. If Sabre uses its leverage from its U.S. operations to cause foreign carriers to participate in its international operations, such disputes can be avoided. Sabre may also be correct in alleging that Northwest's complaint on this issue is designed to help the marketing of Abacus.

Furthermore, the major complaint of the carriers opposing Sabre's practice seems to be Sabre's unwillingness to agree to comply with the non-discrimination requirements of our rules (or similar rules) in countries where CRS operations are now unregulated. We will accordingly modify our rule on tying so that a vendor may require a carrier to participate in its system overseas as a condition for participating in it in the United States only if the vendor promises to comply with the provisions in our rules requiring unbiased displays and nondiscriminatory terms for carrier participation in its foreign CRS operations to the extent they are not regulated by another government. We will not require compliance with the rules on subscriber contracts or marketing data.

The Orient airlines and Air Canada urge us to outlaw other allegedly unfair contract terms imposed by vendors on participating carriers, such as disclaimers of warranties by vendors. We will not grant this request. No other carrier has supported it. Moreover, the

record does not indicate that other contract terms are particularly unfair or have caused significant harm. We do not wish to become responsible for reviewing and rewriting CRS contracts unless there is a strong need for such intervention. The carriers requesting our intervention have not made out such a case.

Air Canada suggests that the terms of participating carrier contracts should be made public to help carriers enforce their rights. Since no other carrier has suggested that vendors discriminate among participating carriers on contract terms, we will not adopt this suggestion.

K. Domestic Marketing and Booking Data

Under section 255.8 of the current rules, if a vendor chooses to generate any marketing, booking, or sales data from the bookings made on its system for domestic travel, it must make that data available to all U.S. participating carriers on nondiscriminatory terms (as discussed in the next section of this rule, international booking data is treated differently under the rules). The Board found this requirement necessary because only the vendor had access to the data that could be derived from bookings made on its system. The data appeared to give each vendor a competitive advantage because it could learn how many bookings were made by each of its subscribers on each airline in each city-pair market. Rather than prohibit vendors from using the data, a prohibition which seemed unenforceable, the Board chose to require vendors to make the data available to all U.S. participating carriers. 56 FR 12619–12620.

We tentatively determined not to change this rule, although we did propose to change the rules on access to international booking data, as discussed below. The rule enables other carriers to obtain access to the data from domestic bookings and thereby ended one competitive advantage possessed by the vendors. While we recognized that the vendors' practice of charging for access to the data and their manner of providing the information made its use difficult, the only proposal for alleviating that situation—a proposal that third-party firms be able to reprocess and resell the data to interested airlines—would have allowed many carriers to obtain access to data without paying any fee to the vendor. 56 FR 12620.

Several participating carriers suspected that vendors use CRS-generated data for marketing purposes without making the data available to other carriers (or that vendors delay the availability of the data). We pointed out that we have little evidence that vendors are unfairly using information derived from CRS bookings on a routine basis or that the vendors' use of such data would substantially harm their competitors. We further observed that a rule prohibiting vendors from making realtime use of the data would be very hard to enforce. 56 FR 12620. However, we noted that we were investigating one vendor's apparent violation of the rule. That vendor was Covia, which provided fare information to United from Covia bookings without making that information available to other participating carriers, not even USAir. Covia later agreed to stop giving United exclusive access to the information at issue.

In their comments on our tentative decision to readopt the rule on domestic data without change, several carriers have asked us to strengthen the rule. ASTA and ARTA, in contrast, argue that the rule should be revoked since it harms travel agencies.

We have decided to readopt the rule as it stands. We will first discuss the comments from parties seeking to eliminate or weaken it and then the comments from parties seeking to strengthen it.

ASTA and ARTA remain concerned that our rule enables carriers to have access to data on the operations of each agency. We recognize that their concerns have some merit. 56 FR 12620. However, we agree with the Board that a rule denying vendors access to the data generated from their subscribers' bookings would be unworkable. ASTA predicts that such a prohibition would be effective, if we announced that we meant to enforce it and would impose severe penalties on violators. ASTA Comments at 14. We are not so confident about the deterrent effect of such a statement. Nor can we agree with ARTA's claim that even American has represented to travel agencies that Sabre and the airline are operated independently so that we should assume that Sabre would be unlikely to violate a prohibition against use of the marketing data. ARTA Comments at 16. The record shows that Sabre takes into account American's airline marketing interests, just as would be expected from the common ownership of the airline and the CRS. ARTA claims that violations of the rule would be detected by agencies, since they would know when a vendor was using the data to pressure its subscribers to give it a bigger share of their airline bookings. *Ibid.* We are not convinced, particularly since vendors could use the data in ways not visible to their subscribers and since subscribers might be unwilling or uninterested in telling us about vendor uses of the data.

ASTA charges that requiring vendors to disseminate the booking and marketing data generated from CRS bookings is a violation of antitrust principles. ASTA Comments at 13. When we addressed this argument before, we pointed out that ASTA had failed to explain how the rule would have anticompetitive results and that competition usually benefits when competitors have access to more information. 56 FR 12620. ASTA still has not provided a theory on how competition would suffer from the participating carriers' access to more data.

We are also unable to agree with the travel agency associations' premise that the data generated from agent bookings is clearly proprietary data belonging to the agency. Travel agencies, after all, operate as the airlines' agents, and they use CRSs owned by other firms for airline booking transactions. These facts suggest that travel agencies do not necessarily own the data.

We will not grant ASTA's request that we require vendors to give each subscriber access to the data generated from the agency's bookings through a system. ASTA Comments at 14–15. ASTA may well be correct when it asserts that agencies would be better able to bargain with airlines and vendors if they had the data. However, improving business opportunities for travel agencies is outside the scope of this proceeding, which is based on our responsibility under section 411 to prevent unfair methods of competition (that is, conduct violating antitrust laws and principles) and consumer deception. ASTA has not shown that its proposal would further the goals of this proceeding. We also do not have general authority to impose regulations on vendors (or carriers) in order to compel them to act in a manner which meets our standards of fairness. *Cf. Continental Air Lines* v. *American Airlines*, Order 85–12–69 (December 24, 1985) at 6. Moreover, ASTA concedes that an agency can compile its own data from its CRS bookings when it has an adequate backoffice system. ASTA Reply at 17.

NBTA, on the other hand, is concerned with the possible loss of confidentiality of corporate bookings, particularly bookings made by corporations' in-house travel offices. However, bookings made by those offices, unlike agency bookings, would not be subject to the rule requiring that data be made available to participating carriers. To the extent that corporations

book travel through travel agencies, any data generated from their bookings should be treated like other data generated from agency bookings.

Unlike NBTA, ASTA, and ARTA, several carriers contend that the rule should be revised to ensure greater access to CRS-generated data. Worldspan contends that we should require vendors to make the data available to other vendors as well as other airlines, since Worldspan—a system owned by several carriers, none of which has a majority interest—is at a disadvantage compared to a system like Sabre, owned entirely by American's parent corporation. Worldspan Comments at 25. Worldspan has not provided a detailed explanation of why its competitive ability is hurt by lack of access to data, and we note that some data on travel agency bookings is available from ARC. Accordingly we will not expand the rule's beneficiaries to include vendors.

America West again urges us to revise the rule to allow third-party firms to buy the data and process the information for resale to participating carriers. America West Comments at 25–26. While we are aware that the data tapes provided by vendors are often expensive and difficult for carriers to use, adopting a rule requiring vendors to resell the data to third-party firms would be inadvisable without a more detailed record on the issue. We note, moreover, that carriers currently can have the data tapes processed by a third-party firm after buying them from a vendor, so no change in the rule is needed to allow that.

According to Northwest, participating carriers will not have a fair chance to use the data in competition with the vendors unless vendors make the data available to participating carriers under the same standards of timeliness, accuracy, and completeness used for providing the data to themselves. Since the current rule requires each vendor to make available to participating carriers the same data used by the vendor, the rule implicitly requires the same standards of accuracy and completeness to be used. We will make the requirement explicit. On the other hand, we are unwilling now to require that the data be made available at the same time—such a requirement would be hard to enforce, as we said in the NPRM, and we have no information that participating carriers are being harmed because vendors have earlier access to the data.

L. International Marketing and Booking Data

While the Board determined that U.S. carriers should have access to marketing data generated from bookings for domestic travel, it found it unwise to impose a similar requirement on data generated from bookings for international travel. The Board did not want to give foreign carriers access to such data because there was no assurance that foreign carriers would make comparable data from their systems available to U.S. carriers. ER-1396, 49 FR at 46347 (November 26, 1984). The Board then determined that U.S. carriers should not have access to the data because that would give them an unfair advantage over foreign carriers. 49 FR 46348–46349. The current rule accordingly prohibits vendors from giving any participating carrier data generated from any carrier's bookings for international travel without the latter carrier's consent. The rule, however, does not bar a vendor from using data derived from the bookings for international travel.

We proposed in the NPRM to give both U.S. and foreign participating carriers access to data generated by a vendor from bookings for international travel, subject to the condition that a foreign carrier could obtain the data only if any foreign CRS affiliated with that carrier provided equivalent data to U.S. carriers. 56 FR 12620–12621. As we noted in the NPRM, we had already granted exemptions from the current prohibition so that American and Worldspan could provide data from bookings in certain international markets to foreign carriers who provided similar data to U.S. carriers. Orders 90-7-34 (July 13, 1990), 89-8-36 (August 21, 1989); 89-4-44 (April 19, 1989), and 88-12-35 (December 15, 1988). We asked parties to comment on whether foreign carriers should have access to data from all international bookings or whether, as in the Sabre and Worldspan exemption cases, each foreign carrier should have access only to data from bookings for travel between the United States and the carrier's homeland. 56 FR 12620–12621.

All of the parties commenting on the proposal—American, Covia, Delta, Northwest, Alaska, America West, USAir, Aer Lingus, Alitalia, British Airways, KLM, Lufthansa, Swissair, and ECAC—support a rule giving carriers access to international booking data. However, they disagree to some extent on whether reciprocity should be required of foreign carriers and how much data should be available to foreign carriers. Generally speaking, most parties view the reciprocity condition as reasonable and favor the widest availability of data.

We will adopt the proposal on providing U.S. carriers access to data drawn from bookings for international travel without further discussion, since no party has questioned our tentative finding that such a rule was desirable. The only issue concerns the conditions for foreign carrier access to data.

In response to our request for comments on the scope of data to be made available to foreign carriers, American, Covia, Delta, Northwest, Aer Lingus, British Airways, and ECAC assert that foreign carriers should be able to obtain data in all markets, not just in the markets between the United States and the carrier's homeland. Lufthansa, on the other hand, contends that carriers should have access only to data on markets served by the requesting carrier. We have determined to allow foreign carriers access to data on all international markets, subject to the reciprocity condition. Allowing them access to data on all markets should assist U.S. carriers in obtaining a broad range of data. Limiting a foreign carrier's access to data only for routes it serves would be too restrictive. A carrier operating between the United States and Germany, for example, is competing to a significant extent with carriers serving nearby European destinations from the United States. As noted, moreover, no U.S. carrier and no foreign carrier except Lufthansa has supported a rule that would limit the markets for which foreign carriers could obtain data.

As proposed, we will also condition a foreign carrier's ability to obtain data on bookings in the United States so that it may obtain the data only to the extent that any CRS affiliated with it provides comparable data to U.S. carriers. Without this requirement, a foreign carrier could obtain valuable marketing data from U.S. vendors without having to provide any data from systems operated by it in its homeland or other countries. Such a result would prejudice the competitive position of our carriers. We note that British Airways and ECAC consider a reciprocity condition reasonable. British Airways Comments at 27–28; ECAC Comments at 12. However, KLM believes that a reciprocity condition would lead to arguments between the United States and foreign governments, apparently because KLM views reciprocity as a United States dictation to foreign countries on CRS practices. Swissair considers reciprocity unfair, because it holds a small ownership interest in Galileo and so will be unable to cause

Galileo to provide data to U.S. carriers; Swissair is also concerned that Switzerland or the European Community may deny release of CRS-generated booking data, thereby preventing Swissair from obtaining any U.S. data.

We find the objections by Swissair and KLM unpersuasive. As indicated, no other foreign carrier or party objects to that proposal, and ECAC and British Airways consider it reasonable. We recognize that a carrier with a small ownership interest in a CRS cannot dictate the system's decisions on whether to release data to U.S. carriers, but it does have some ability to persuade its partners to agree to release data. The hypothetical difficulties cited by KLM and Swissair appear unlikely. KLM and Swissair are partners in Galileo with British Airways, and the latter does not seem to fear that Galileo will refuse to make data available. ECAC's acceptance of a reciprocity condition indicates that the European governments are unlikely to deny release of marketing data derived from CRS bookings, and neither KLM nor Swissair has cited any provision in the European Community rules which would require denying access to such data. Moreover, if an unusual case arises where a foreign carrier is denied access because of its affiliation with a foreign system that refuses to provide data, we can consider granting an exemption. Despite KLM's warnings, we doubt that a reciprocity condition will lead to any serious intergovernmental disputes, especially since we note that our rules and the European Community rules contain similar provisions authorizing vendors to discriminate against foreign carriers whose own systems do not provide nondiscriminatory treatment for other carriers.

Since some foreign systems like Galileo and Abacus operate in a number of countries, American asserts that the reciprocity condition should require affiliated carriers to provide data from bookings in all countries, not just bookings in the homeland of the particular carrier. American Comments, p. 29. We agree with American's condition, although that would require Sabre to make available to foreign carriers the data from its operations in all countries, not just the United States (and to make such data available to U.S. carriers participating in Sabre).

Covia suggests there is no need to require a vendor to provide notice to U.S. participating carriers when it begins providing data to a foreign carrier, a step which would entitle the U.S. participating carriers to obtain data from the foreign carrier. Covia alleges that most non-vendor carriers will have no interest in obtaining data from foreign carriers. We disagree. Providing notice to participating carriers should cost very little, and the cost will be worthwhile if a few carriers choose to obtain the information available from the foreign carriers.

American and USAir suggest that we allow carriers to provide a travel agency with information obtained from a vendor on the agency's own bookings. American Comments at 30; USAir Comments at 8–9. We are not prepared to incorporate such a provision in the rule, since we do not know the confidentiality restrictions placed by vendors on the use of data by participating carriers. The rule's purpose, however, is to give participating carriers the same ability to use the data for airline marketing that the vendors have—if a vendor discusses information with one of its subscribers drawn from that agency's bookings, the carriers participating in its system can do the same.

Finally, British Airways asks us to make it explicit that a vendor may not use any CRS-generated data that are not also made available to participating carriers. We think this limitation on the vendors' use of CRS data is already clear—it is the foundation of both the current rule and the revised rules on CRS-generated data.

M. Subscriber Contracts

1. Background

The Board found that travel agencies should have a realistic ability to switch or add systems in order to ensure that smaller or newer systems had an adequate opportunity to compete for subscribers. Unless the CRS rules limited vendor subscriber contract practices, the established vendors would impose contract provisions that would deny competing systems any opportunity to convert agencies that already had a CRS subscription. For example, some vendors were beginning to impose ten-year terms in their subscriber contracts. Board NPRM, 49 FR 11651–11652. The Board accordingly adopted rules prohibiting several types of restrictive contractual provisions: contract terms longer than five years, the tying of an agency's commissions to its use of a system, clauses mandating the use of the vendor's system for the sales of its tickets, prices for CRS services that varied according to which carrier was booked by the agency, and direct or indirect prohibitions by vendors on the acquisition or use of other systems by subscribers. 14 CFR 255.6.

The Board's expectation that these rules would give agencies substantial flexibility to change systems or to use more than one system has proven largely inaccurate. The vendors, particularly Sabre and Apollo, each adopted standard contract terms discouraging agencies from switching or adding systems. As we explained in the NPRM, the vendors created these various contract provisions in order to protect their subscriber base against the conversion efforts of other systems. 56 FR 12621.

Vendors rarely agree to a subscriber contract with a term of less than five years. They require subscribers to pay liquidated damages if an agency breaches its CRS contract (*e.g.*, by dropping a system in order to begin using another system), and the liquidated damages formula typically requires the agency to compensate the vendor for the booking fees that the vendor would have obtained if the contract had remained in effect until the end of its term. This liability for lost booking fees usually makes it economically impracticable for an agency to switch systems during the term of its CRS contract. Vendors also included "rollover" clauses in contracts that automatically renewed the contract for a new five-year term upon the happening of certain events (usually the subscriber's acquisition of more terminals or the opening of a new location). 56 FR 12621.

Other contract clauses deter subscribers from making substantial use of another system. In particular, under the vendors' "minimum use" clauses a subscriber who does not make a certain number of bookings on the system each month has breached its subscription agreement and become liable for liquidated damages including lost booking fees.

We therefore proposed to amend the existing subscriber contract rules to make effective their intent that agencies should have some ability to change systems and to use two or more systems. We proposed to fix the maximum contract term at three years instead of five years and to prohibit minimum use and rollover clauses (as discussed below, the proposed ban on minimum use clauses was so worded that it would have banned productivity pricing as well). Although a number of parties had asked us to prohibit the tying of an agency's CRS choice with its receipt of airline marketing benefits, we did not propose to expand the current prohibition against tying. 56 FR 12625–12626.

We recognized that these subscriber contract issues were complex, since the contract terms at issue could serve legitimate purposes and since the rule proposals could have untoward consequences. We therefore asked parties to address several questions involving this subject. 56 FR 12623.

2. The Parties' Comments

In general, the two major vendors oppose our tentative revisions of the rules on subscriber contracts. They contend that the contractual provisions at issue do not restrict the agencies' ability to switch systems (or add new systems) and that any restrictions are appropriate for protecting the legitimate economic interests of the vendors. Several large travel agencies assert that we should cut back the scope of the revisions and perhaps authorize the larger agencies to waive the protection of some rules. The two travel agency trade associations, on the other hand, support our proposed changes, as do some agencies, the smaller vendors, and several U.S. and foreign airlines. Almost all of the commenters, however, contend that productivity pricing must be allowed.

Justice believes that the vendors' restrictive contract provisions, including the five-year term almost invariably included in subscriber contracts, are designed to reduce competition, not to serve legitimate business goals. Nevertheless, Justice thinks that any effort to regulate such contract restrictions (other than the length of subscriber contracts) will be ineffective, primarily because the vendors have incentives to devise other contract terms that will prevent switching by agencies. Justice Comments at 4, n.2, and 13–15.

3. The Effects of the Contract Restrictions

We have determined to adopt our proposed changes with two substantial modifications: we will allow vendors to give travel agencies the option of a five-year contract term if they also offer a contract with a term no longer than three years, and we will allow productivity pricing. Before discussing the particular rule provisions at issue, however, we will explain in general why we have determined to adopt rules prohibiting certain restrictive contract provisions.

Promoting competition in the airline and CRS businesses requires us to eliminate vendor practices that unreasonably interfere with the ability of travel agencies to switch systems and use multiple systems, where taking such action is practicable. Not only do we wish to prevent the major vendors from foreclosing efforts by smaller systems to expand, but we want to give agencies an effective opportunity to use new databases and direct links with internal carrier reservations systems if they wish. However, we are unwilling to outlaw contract provisions that encourage efficiency and investment.

Obviously the contract terms at issue—five-year terms, "rollover clauses" that automatically extend the contract term, "minimum use clauses" that make an agency liable for damages for breach of contract if it fails to meet certain booking levels on the vendor's system, and liquidated damages clauses that impose substantial liabilities on agencies that breach their contract—restrict agency choices. Of course, any contract restricts the options of each party, since it must carry out its obligations or be liable for damages for breaching the contract. Usually such contract terms promote economic efficiency. However, as discussed below in connection with the specific rule proposals, we find that rollover clauses and minimum use clauses have no apparent purpose except to reduce competition for subscribers. Five-year contract terms, on the other hand, seem to provide some economic efficiency benefits.

The provisions at issue are of concern because of their widespread use. Very few subscriber contracts have a term of less than five years, and the major vendors at least impose minimum use and liquidated damages clauses as part of their contracts with the majority of their subscribers. ASTA Comments at 5;56 FR 12621. The record suggests that these contract terms are generally offered on a "take it or leave it" basis. Woodside Comments at 8; Parker Comments; see also NPRM, 56 FR 12622. American and Covia claim that travel agencies do not care about the restrictions and prefer to take the price benefits allegedly made possible by the restrictions. However, their reasoning is suspect in view of the opposition of the travel agency trade associations and the vendors' inclusion of restrictive terms in contracts where agencies pay undiscounted rates for CRS services. 56 FR 12623–12624.

The record indicates that the restrictive contracts do decrease CRS conversions and the use of multiple systems by agencies, a finding consistent with our conclusion that the restrictive contracts are designed to achieve that result. Justice ANPRM Comments at 29. Travel agencies, of course, would be reluctant to switch CRSs even if they had complete contractual freedom to do so, since changing from one system to another imposes costs for such things as retraining employees and transferring records. However, the contract provisions seem to make it much more difficult for agencies to switch systems.

While vendors initially competed vigorously for new subscribers, that competition occurred before the courts began upholding the liquidated damages clauses requiring subscribers to pay lost booking fees. Those decisions caused System One to substantially abandon its conversion efforts. 56 FR 12621, 12623. The record suggests that the number of conversions since then has declined significantly. Our NPRM invited commentors to provide more data on this issue in response to our tentative findings that competition had declined, 56 FR 12623, but only Covia of the parties opposing the proposed rules on contracts provided new data. Covia states that 300 Apollo locations switched to another system during a recent two-year period, Covia Comments at 11. Since Apollo had over 8,000 locations in 1988, Marketing Report at 51, in a two-year period less than four percent of Apollo's subscribers switched from Apollo to another system. This suggests that little switching now occurs, since in earlier years before System One's defeats in court more conversions took place.

We also find unpersuasive Covia's argument that the agencies already have the ability to use two or more systems, despite contract restrictions like minimum use clauses, since 20 percent of Apollo subscribers use at least one other system (Covia does not say whether this means 20 percent of the agency subscribers or 20 percent of Apollo locations). July 1, 1992 Covia Comments at 20. We noted in the NPRM that a significant number of agencies use two or more systems, but we pointed out that few make substantial use of more than one system. 56 FR 12593–12594. A minimum use clause may not prevent some agencies from using a second system, but the penalties for breaching the clause are severe enough that an agency will be unlikely to make substantial use of a second system.

American has provided no figures on the number of agency subscribers it has won or lost from other systems. Instead, American contends that in a number of markets there have been substantial changes in CRS market shares. March 2, 1992 American Comments at 12. However, significant market share changes in a few cities are consistent with the finding that the contract clauses reduce switching, since the cities where large market share changes have taken place have typically been

cities where a vendor established a hub or where the hubbing carrier acquired an interest in a CRS. NW Reply, Fisher affidavit. When a carrier has a large airline presence in a city, it can afford the expense of indemnifying agencies switching from other systems, since an increase in its CRS market share is likely to increase its airline revenues (and reduce its booking fee liability to other systems). See e.g., Delta Comments at 25; Justice ANPRM Comments at 29.

American and Covia also cite the decline in their net receipts from subscribers as proof that vendors still compete vigorously for subscribers. They claim that agencies are taking advantage of the vendors' competition for subscribers by demanding more CRS services for less money. While this argument seems plausible to some extent, it cannot substitute for more direct evidence on the number of agencies switching systems. Moreover, given the comments from the agency parties, we cannot accept the premise that most agencies have substantial ability to switch systems or use more than one system. See e.g., Woodside Comments at 8. We would prefer to have more data on the degree of switching, but given the modest scope of our rule changes—we are prohibiting only certain terms that seem to have no economic justification—the record on the number of CRS conversions is sufficient for our adoption of new rules.

We recognize that the travel agency industry includes large firms whose use of a CRS produces large amounts of booking fees and who are therefore very attractive CRS subscribers. As is apparent from the comments of several large agencies in this proceeding (*e.g.*, American Express and AAA), the largest agencies believe they have sufficient bargaining power not to need the protection of rules. However, large travel agencies do not produce most airline bookings. Large agency locations—those with annual revenues of $5 million or more—were responsible for 33 percent of the travel agencies' total revenues in 1987. Thus contract terms restricting only the CRS choices of medium-size and small agencies may still have a substantial impact on airline and CRS competition. Woodside's comments, moreover, suggest that vendors commonly refuse to waive restrictive contract provisions even when seeking large agencies as subscribers. Woodside Comments at 8.

As a result, we conclude that the restrictive contract terms significantly reduce the agencies' ability to change systems or to use multiple systems. That finding by itself cannot justify rules prohibiting the restrictions, since we must consider whether such rules would produce significant benefits.

Unduly restrictive contract terms are of concern to us because of their impact on competition in the airline and CRS businesses. We find that eliminating them would enhance airline and CRS competition. If subscribers are locked in to one system, other vendors will be denied the opportunity to compete for their business. As we explained in the NPRM, undue restrictions on the agencies' ability to change systems or use two or more systems injures airline competition in several ways. First, if agencies had a better opportunity to switch systems, that could enable a carrier with a CRS interest to enter a new city (or expand service at a city), because that carrier could expand its system's market share in that area and thereby support increased airline service. Secondly, the economies of scale in the CRS business place smaller systems at a competitive disadvantage. If the smaller systems had a greater ability to increase their market-share, that could strengthen CRS competition (and thereby promote airline competition). Thirdly, increased competition for subscribers should cause vendors to improve the information-gathering and transactional capabilities of their systems (and thereby reduce architectural bias). 56 FR 12622.

The benefits of increasing agency ability to switch systems or use additional systems seem unlikely to be obtained through market forces. While Worldspan competed for subscribers for some time by offering them less restrictive contract terms, Worldspan states that it has become unwilling to offer less restrictive contracts because doing so exposes its subscriber base to conversions to other systems. See 57 FR 22643, 22644 (May 29, 1992).

Despite the benefits of the proposed rules, we would not regulate the contract provisions if they served legitimate purposes. However, the record indicates that they do not (and our decision to allow productivity pricing will enable vendors to obtain adequate compensation if a subscriber chooses to make little use of a system). Our review of the evidence caused us to conclude in the NPRM that the contract provisions at issue were developed to foreclose competition for subscribers. 56 FR 12621. No party has submitted evidence contradicting that finding.

Furthermore, the contract restrictions do not appear to be essential for the efficient marketing of CRS services. In the European Community, subscribers are free to terminate a contract at the end of its first year. In Canada, the maximum permissible term for subscriber contracts is three years. 56 FR 12623. We asked parties to comment on the effect of these foreign rules on CRS operations. No party provided any evidence that the European and Canadian limits handicap CRS operations.

While long-term contracts usually promote economic efficiency, as we noted in the NPRM, the vendors' contracts do not provide the benefits typically provided by multi-year contracts. 56 FR 12622. While the contracts protect the vendors' interests, they do not assure stability in price and service for most subscribers. As ASTA has pointed out, most subscriber contracts allow vendors to raise charges and fees significantly during the term of the contract. ASTA Comments at 5. No vendor has disputed that statement, although some large agencies contend that long-term contracts can benefit agencies. Covia claims nonetheless that the contract provisions are ineffective, since its subscribers continually receive buy-out offers from other vendors, which forces Covia to renegotiate the contracts and to offer better terms in order to keep subscribers. July 1, 1992 Covia Comments at 5. Covia's claims do not match other evidence on this issue and are inconsistent with Covia's arguments that the restrictive contract terms are necessary. If, as Covia asserts, it must renegotiate contracts every few years to keep subscribers from switching to another system, the restrictive contracts would presumably be ineffective. Covia nonetheless insists that it must be able to obtain such restrictions.

Covia also claims that our proposed rules will drive up agency costs and that the agencies likely to suffer the most will be the smaller agencies. Covia Comments at 30. We disagree. The rules are designed to increase competition for subscribers, so they should restrain agency price increases. Other parties doubt that the rules would have the dire effects predicted by Covia. For example, the Board's adoption of similar rules did not affect the quality of the deals offered agencies by subscribers. Ten Major Agencies Comments at 21. And Worldspan and System One have been seeking subscriptions from small agencies even though those two vendors make little use of minimum use clauses and other restrictions. Hewins Comments at 4–5. In addition, the larger agencies, not the smaller ones, are the recipients of free or discounted CRS

services. If subscriber charges increase, the smaller agencies would not necessarily be the primary victims.

On the other hand, we recognize that increasing vendor competition for subscribers will not be free of costs. It may facilitate efforts by the owners of smaller systems to use their airline dominance at their hubs to obtain a dominant position in the local CRS markets, as we recognized in the NPRM. 56 FR 12623. However, no one has shown that this threat at some cities outweighs the potential gains elsewhere in the country. In addition, if vendors compete more for subscribers, their costs may increase and thus lead to increases in booking fees. *Ibid.* The record does not indicate that increased booking fees are likely.

Even if the proposed rules would be beneficial in theory, we must consider whether they would be effective. We find troublesome Justice's observations that the vendors are likely to create methods for evading any contract rule, just as they did with the current rules; that trying to enforce stronger rules on contracts will be costly and ineffective; and that we will end up micromanaging contracts. Justice Comments at 13–14. Justice's comments have considerable validity and have helped persuade us not to adopt some of the rule proposals advanced by parties (*e.g.*, proposals to limit the damages obtainable by vendors on a subscriber's breach of a contract). However, given the relatively modest scope of our amendments on subscriber contracts, we doubt that Justice's concerns outweigh the apparent value of those amendments.

Against this background, we will now discuss our resolution of the specific rule proposals made by the NPRM and the parties.

4. Maximum Contract Term

Under the current rules, no subscriber contract may have a term longer than five years. In the NPRM we proposed to make the maximum term three years. After reviewing the comments, we have decided to modify that proposal by giving vendors the option of offering subscribers contracts with a term of not more than five years as long as the vendors also offer the subscriber a contract with a term of not more than three years.

When we proposed a three-year maximum term for subscriber contracts, we noted that the five-year rule had been based on American's representation to the Board that a five-year term was necessary to preserve certain tax benefits then available. The tax provision cited by American was later repealed, so the original justification for a five-year term no longer exists. 56 FR 12622. We proposed a three-year term to provide agencies a greater opportunity to change systems, but we requested comment on what maximum term should be allowed, since parties had made various proposals on this issue. 56 FR 12624.

The smaller vendors, ASTA, and ARTA support a rule prohibiting a term longer than three years. Other parties assert, however, that agencies should be able to obtain a five-year contract if they wish. Woodside supports a rule requiring vendors to offer travel agencies a three-year contract but allowing them to offer a five-year contract as well. Thomas Cook similarly would like a rule giving agencies the option of signing a five-year contract with lower fees for CRS services reflecting the cost savings obtained by vendors due to the longer term of the contract. The American Automobile Association suggests that agencies should be able to agree to a five-year term in an initial contract for CRS services, since the agency's expenses for first using the system would be amortized over the longer term. It also suggests that a three-year maximum term for renewal contracts would be workable. American and Covia state that a rule allowing a vendor to offer a subscriber a five-year contract as an alternative to a three-year contract would be acceptable to them. American Comments at 33; Covia Comments at 84. Finally, while ARTA supports our three-year proposal, it states that some of its members would prefer having the option of taking a longer contract instead of a three-year contract. ARTA Comments at 19.

We have determined to give agencies the option requested by several of them of choosing between a three-year contract and a five-year contract. Judging by the comments filed by some agencies, a longer term contract can provide economic benefits for subscribers by potentially providing some assurance that they will continue to receive CRS services from the vendor for a stated period and the possibility of lower CRS charges based on vendor cost savings from the longer contract.

We recognize that permitting agencies to accept a five-year contract will not create as much flexibility for subscribers as several parties wish. However, we think that the required offer of a contract with a maximum term of three years will provide substantially more flexibility for agencies desiring a greater ability to consider changing systems.

Since we are permitting vendors to offer a five-year contract in part because it may be more economical, vendors necessarily must be allowed to offer subscribers different terms if they agree to a longer contract. We expect, however, that the difference in terms will largely reflect the efficiencies created by the agency's acceptance of the longer contract. If the terms for the shorter contract are unduly onerous, then the vendor would not be deemed to have made a good faith offer of a contract no longer than three years in length as required by the rule.

5. Addition of New Equipment

In the ANPRM we tentatively found that the restrictive effects of the standard five-year contract term were aggravated by the vendors' common practice of making subscribers who acquired additional equipment sign a separate five-year contract for the new equipment. This practice often leads to an agency's obtaining CRS services and equipment under several five-year contracts that never expire at the same time. We therefore proposed to require vendors to include additional CRS equipment obtained during the term of an agency's subscription agreement under that contract, so that at its expiration the agency would be in a position to replace all of its CRS services at that time. 56 FR 12624. The proposed rule, however, contained the proviso that "the bona fide offering of alternative lease periods for additional components at commercially reasonable rates" would be permissible.

ASTA supports this proposal. ASTA Comments at 6–7. Covia considers it acceptable as long as the vendors may calculate their charges for the additional equipment in a way which reflects the remaining term of the agency's subscription agreement. Covia Comments at 90.

While our proposal might provide some additional flexibility to agencies, requiring the inclusion of new equipment within the term of an agency's existing contract, despite the proviso, could interfere with the goal of economic efficiency.

If an agency requested additional equipment when its existing CRS contract was close to its expiration date, the vendor might understandably be reluctant to provide the additional equipment. The rules as a result might preclude a subscriber from obtaining additional equipment as its contract neared the end of its term. Alternatively the price charged for the additional equipment might be unduly high due to the short time left on the contract. In either event the rule could have untoward consequences. In addition, the rule would probably be difficult to

enforce. We have accordingly determined not to adopt it.

6. Rollover Contracts

After the current rules took effect, vendors began imposing rollover clauses—clauses that cause a contract to be automatically renewed for an additional five-year term whenever certain events happen (usually the agency's acquisition of additional CRS equipment or its opening of a new location)—in many subscriber contracts. The clauses became controversial, since they further restricted subscribers' ability to switch to another CRS. Because of the controversy, vendors agreed not to enforce the clauses, although they apparently remain in many subscriber contracts. Marketing Report at 86, 88; ASTA Comments at 5.

In the NPRM we proposed to proscribe rollover clauses. 56 FR 12624. Our proposed rule received the support of Worldspan (Comments at 31), Woodside (Comments at 8), and ASTA (Comments at 5). They agree that rollover clauses serve no legitimate purpose and should be prohibited. No one has tried to defend rollover clauses.

We will adopt our proposal. The use of rollover clauses nullifies the Board's determination that subscriber contracts should not have a term longer than five years, and the clauses are not needed to protect a vendor's legitimate interests. If an agency opens a new location or adds CRS equipment, the vendor can refuse to provide the new services and equipment desired by the agency unless the agency agrees to pay the vendor enough for the added equipment and services.

7. Minimum Use Clauses

Soon after the Board adopted the current rules, the three largest vendors began requiring subscribers to accept minimum use clauses in their contracts. Minimum use clauses make an agency's failure to meet certain minimum booking levels a breach of contract, thereby obligating the agency to pay damages calculated according to the liquidated damages provisions. Because the liquidated damages include lost booking fees, a breach will make the subscriber liable for a larger amount of damages. Minimum use clauses accordingly discourage agencies from making significant use of more than one system. The clauses, moreover, seem designed to protect the vendor's subscriber base from competition rather than to ensure that the vendor receives adequate compensation for the services and equipment provided the subscriber. 1988 CRS Study at 124–126; Marketing Report at 87–88.

We accordingly proposed to prohibit minimum use clauses. 56 FR 12624. We also doubted at that time the value of allowing vendors to increase the fees due from subscribers when the latter did not meet specified minimum booking levels (such pricing is called productivity pricing). The draft rule would have prohibited productivity pricing as well. *Ibid.*

While most commenters supported our proposal to eliminate minimum use clauses, almost all parties commenting on the issue defended productivity pricing and asserted that it should be allowed. Consequently, while we will adopt the proposal on minimum use clauses, the comments have persuaded us that productivity pricing is economically efficient and should be allowed to continue. In this section we will discuss our decision to finalize the proposed ban on minimum use clauses and in the next section our changed decision on productivity pricing.

While productivity pricing encourages efficiency, minimum use clauses are not reasonably tailored to encourage productive usage of a system. Instead, in view of the severe damages a subscriber will incur if it breaches the clause (and thus breaches its contract), these clauses operate as a penalty giving the agency little ability to limit its usage of a system. Worldspan, Delta, System One, ASTA, ARTA, Woodside, and Hewins support the proposed proscription of minimum use clauses. The American Automobile Association states that prohibiting minimum use clauses would be acceptable, and American does not oppose the proposal. Covia, on the other hand, defends them.

We cannot agree with Covia's defense of the clauses. First, Covia plainly errs in saying that its clause cannot operate as a deterrent to use of a second system. Covia bases this assertion on the form of its minimum use clause, which requires an agency to continue using Apollo at half the rate of the agency's level of usage during the first six months of the contract term. In Covia's view, the agency itself determines the minimum usage level under the contract. Covia Comments at 29. However, an agency using Apollo as its only system during that six month term has no control over its usage level, since all of its bookings will be made through Apollo. Worldspan Reply at 29; see also System One Comments, Lenza Affidavit at 19. Furthermore, Covia has never explained why its alleged need for assurance of booking fee revenues requires it to treat the agency's failure to meet the minimum use requirement as a beach of the contract. If, as Covia asserts, it must ensure that it receives adequate revenues from each subscriber, it can adopt contract terms requiring the subscriber to pay additional fees if certain booking levels are not maintained, as is done by other systems. Finally, as we noted in the NPRM, booking fees represent in part monopoly rents, and we do not see a public interest in guaranteeing a vendor's ability to obtain monopoly rents. 56 FR 12624.[4] Given the lack of any necessary economic value to minimum use clauses (and the vendor's ability to protect their legitimate interests through productivity pricing), as well as the clauses' effect in discouraging an agency from making substantial use of a second system, we will prohibit minimum use clauses. In doing so we are acting consistently with the general provision in the current rules which prohibits vendors from directly or indirectly prohibiting subscribers from using other systems. Section 255.6(b).

We also proposed to ban the parity clauses that require an agency to use a number of terminals from the vendor that are proportional to the number used on other systems. This kind of clause also restricts agencies from making effective use of more than one system. 56 FR 12624. No party has attempted to justify parity clauses, and several support our proposal. We will therefore adopt the proposed rule.

8. Productivity Pricing

Productivity pricing differs from minimum use clauses because a subscriber's failure to meet the minimum booking requirement does not constitute a breach of the agreement making the agency liable for substantial damages. Instead, the agency must pay a higher rate for having access to the system. Apollo, for example, typically gives a subscriber a discount of 60 to 100 percent from the standard "rack" rates, depending on the number of bookings per terminal in the previous year. 15 Agencies Comment at 8–9.

Thus this type of pricing encourages the agency to make efficient use of its CRS equipment (and to avoid obtaining more equipment than reasonably needed for its business). Even the parties otherwise urging us to eliminate restrictive contract provisions—the

[4] As Covia notes, our enforcement staff dismissed a complaint by System One against Covia based in part on claims that Covia's minimum use clauses violated the current rules and section 411 of the Act. Order 90–1–32 (January 17, 1990) at 17–18. However, the enforcement staff's decision not to institute an enforcement proceeding on the basis of the record there cannot preclude us from determining on the record here that minimum use clauses should be prohibited, as was noted in that order.

smaller vendors, the travel agency trade associations, and agencies like Hewins—represent that productivity pricing serves legitimate goals and does not make it impracticable for agencies to choose to switch many or most of their bookings to a second CRS. Since productivity pricing often promotes economic efficiency and received the overwhelming support from the commenters, we will not prohibit its use.

We recognize that several smaller agencies complain that productivity pricing can have irrational results and result in heavy charges. Stowe Travel Comments; Parker Comments; Travel Consultants Comments. In some cases, productivity pricing apparently can force an agency to stop using CRS terminals that it had previously bought. Without knowing the details of these agencies' CRS charges and usage, we cannot judge whether the implementation of the clauses in those cases was irrational.

Southwest, on the other hand, urges us to prohibit productivity pricing since vendors can use it to discourage agencies from using other systems or databases (or direct links to a carrier's internal reservations system). While productivity pricing may deter agencies from making full use of their opportunity to use other sources of travel information and other means of booking airline services, the advantages of productivity pricing outweigh that threat. We note again that a number of parties supporting rules to ensure more competition for subscribers support productivity pricing.

In line with our goal of encouraging economic efficiency, we also wish to reaffirm the reasonableness of subscriber price structures that include charges based on usage. A vendor may rationally determine to charge subscribers more as they make more use of the system. Worldspan Comments at 32; American Comments at 35. Such pricing schemes can benefit participating airlines as well. Alaska Comments at 31–33. Some parties misconstrued our proposals as an indication that we wished to discourage transaction charges. However, we recognize that pricing structures that base charges on the number of transactions may promote efficiency by encouraging agencies to use a system more efficiently and by causing the heaviest users to pay more. We do not intend to bar such pricing structures.

9. Liquidated Damages

To deter subscribers from breaching their CRS contracts by switching to another system before the end of the contract term, vendors impose contract provisions requiring agencies to pay heavy damages upon a breach of the contract. The contracts typically provide for the payment of liquidated damages, that is, damages calculated according to a fixed formula rather than on the basis of a calculation of the actual damages suffered by the vendor from the breach. Liquidated damages themselves are not controversial and are used in many contracts outside the CRS business. The vendors' liquidated damages provisions, however, are controversial because they require the subscriber to pay the amount of booking fees that the vendor would have received had the agency kept using its system for its airline bookings. The inclusion of lost booking fees in the calculation of damages greatly increases the amount owed by an agency on its breach of the contract—and thus greatly increases the agency's desire to avoid a breach. 56 FR 12625.

However, as an agency nears the end of its contract, the amount of liquidated damages due upon a breach shrinks, because the amount of booking fees lost by the vendor will decline. Some vendors have adopted a pricing structure that results in an increase in the amounts owed by an agency on its breach as the number of years left in the contract declines. These contracts treat the discounts given a subscriber from the standard CRS charges as a credit which must be repaid if the agency terminates the contract before the end of its term. 56 FR 12621. For example, Pegasus Travel submitted a copy of System One's claim for damages if Pegasus quit using System One 13 months before the agency's subscription contract would expire; of the $34,000 demanded by System One, $18,000 consisted of a refund of various subsidies including the credits allegedly paid the agency by the vendor during the first 47 months of the contract. Pegasus Comments, Encl. 2.

In the NPRM we tentatively found no need to specifically limit the vendors' ability to obtain liquidated damages. 56 FR 12625. We pointed out that vendors were entitled to recover damages if a subscriber breached a contract and that a better cure for complaints about liquidated damages would be a shortening of the maximum contract term. Insofar as the inclusion of lost booking fees was concerned, we reasoned that our proposed rules banning minimum use and parity clauses would deny a vendor any reasonable expectation that the agency would have used its system for all or most of the agency's bookings had the agency not terminated the contract before the end of its term. Without such an expectation, the vendor could not under contract law recover lost booking fees as an element of its liquidated damages, because liquidated damages cannot operate as a penalty and must reflect a reasonable estimate of what the injured party's actual damages would be. 56 FR 12625.

We also declined to propose rules banning such practices as the treatment of discounts as credits that must be repaid if the agency breaches its subscriber agreement before the end of its term. 56 FR 12625.

ASTA supports a ban on liquidated damages including lost booking fees, ASTA Comments at 17, while Worldspan and Delta would also ban the recovery of amounts like discounts and promotional support. Worldspan Comments at 31; Delta Comments at 30. American Express suggests that the liquidated damages clauses are the main reason why agencies do not switch systems. Am. Express Comments at 6, fn.

We are not convinced that adopting a rule in this area is necessary or wise. The vendors' use of contracts enabling them to demand the repayment of "credits" on an agency's breach indicates the difficulty of attempts to regulate contract terms in detail. Presumably the vendors devised such contract terms either to avoid the controversy over liquidated damages or to supplement liquidated damage claims when a contract is breached near the end of its term. In either event, this experience supports Justice's contention that efforts to regulate contract terms are likely to be ineffective. Justice has pointed out that vendors can adopt contract pricing terms that will deter early contract terminations as effectively or almost as effectively as the damages clauses that some parties ask us to outlaw.

However, while we are not adopting a rule, we repeat that our rules are designed to ensure that vendors will not have a legitimate expectation of obtaining all or most of an agency's CRS bookings. Our prohibition of minimum use clauses and our rules allowing agencies to use third-party hardware should ensure that agencies have the ability to use different systems, not just the system offered by their current vendor. As a result, a vendor may not legitimately include an element for lost booking fees in its liquidated damages formula, since the vendor cannot reasonably count on an agency using its system for its bookings. Since we are permitting productivity pricing, vendors have the ability to obtain adequate compensation for providing CRS services and equipment to their

subscribers and to obtain adequate damages in the event of a breach, even if they cannot recover lost booking fees.

10. Exemption for Large Agencies

The rules proposed by the NPRM, like the current rules, would apply to all subscribers. American Express and the Fifteen Major Agencies ask us to allow large agencies (or any interested agencies) the right to waive various parts of the rules on subscriber contracts. The Fifteen Major Agencies recognize the value of our proposals for small and medium-sized agencies but assert that agencies as large as themselves do not need the protection of the contract rules and so should be able to waive them. American Express advances similar arguments. System One and ASTA oppose the creation of any waiver for large agencies.

We will not create a special exemption for large agencies. As System One points out, we are not adopting the subscriber rules in order to give travel agencies more bargaining power in negotiating with vendors. System One Reply at 8–9. The rules instead are designed to keep vendors from using contract restrictions that impair CRS and airline competition. Moreover, we have abandoned the proposal that the larger agencies mainly dislike—the suggested ban on productivity pricing—and we are giving agencies the ability to accept five-year contracts if they wish. No one has shown that either the existing subscriber contract rules or the rules we are adopting will significantly interfere with the operations of any agency, so we see no need to create an exemption for any class of agencies.

11. Tying Practices

Under the current rules a vendor may not condition an agency's receipt of commissions on the agency's use of that vendor's CRS. However, despite the rule, a number of parties have alleged that some vendors tell agencies that they cannot obtain favorable commissions (*e.g.*, override commissions) without subscribing to the vendor's CRS. In addition, parties complain that some vendors tell agencies that they cannot obtain airline marketing benefits (*e.g.*, the ability to waive restrictions on discount fares or to book important customers on oversold flights) without choosing the vendor's CRS. Since the success of many agencies depends on override commissions and airline marketing benefits, a vendor's threat to deny such benefits to an agency can effectively coerce the agency into subscribing to the vendor's system if that vendor is a major carrier in the agency's city. 56 FR 12625.

Since the tying of airline commissions and marketing benefits to an agency's CRS subscription distorts competition in both the airline and CRS industries, Justice and other parties asked us to consider adopting a rule prohibiting such practices. We agreed that such tying practices represented a competitive abuse, but we agreed also with Justice that a rule barring the tying of marketing benefits and CRS choices appeared at best difficult to enforce. The enforcement difficulty stems from the unlikelihood that either the vendor or the agency would tell anyone about an unlawful tying arrangement. 56 FR 12625–12626. While we did not propose to ban the practice, we asked parties to suggest methods for making such a rule enforceable. We also proposed to clarify the existing rule on the tying of commissions so that it expressly covered both CRS usage and subscriptions. *Ibid.*

Several parties—American, Covia, System One, Delta, Alaska, Southwest, Woodside, and Hewins—urge us to broaden the prohibition against tying so that it prohibits the tying of airline marketing benefits. Moreover, American goes on to argue that we should repeal the current rule if we do not extend its coverage to airline marketing benefits. The only party opposing a wider rule is ASTA, which claims that no limits should be placed on an agency's ability to negotiate for benefits.

While we continue to believe that the tying of airline marketing benefits to the agency's CRS subscription is a competitive abuse, we have determined not to widen the current rule to cover marketing benefits. None of the parties advocating a stronger rule proposed an effective method for its enforcement. Moreover, the arrangements tying airline marketing benefits and CRS subscription are likely to be so informal and open-ended that it could be difficult to say whether a particular situation violated the rules. A vendor's threat to reduce or eliminate an agency's commission seems more likely to coerce the agency's choice of a system than would promises of marketing benefits. Thus, despite American's request to the contrary, we will maintain the current ban against the tying of commissions to CRS usage and subscriptions, with the clarification proposed by the NPRM. We will clarify the rule, moreover, as proposed in the NPRM, so that there will be no ambiguity in its language discouraging enforcement action.

12. Other Subscriber Contract Issues

On the ground that the vendors' discriminatory pricing of CRS services injures the ability of smaller agencies to compete with large agencies, ARTA asks that we require each vendor to charge the same amount to all its subscribers. We will not grant this request. ARTA has not shown that CRS pricing differences have any impact on airline competition or otherwise raise issues within our jurisdiction under section 411. ARTA's request could also interfere with the vendors' competition for subscribers; for example, a vendor may be able to compete for subscribers in markets where it has a relatively small airline presence only by offering discounted CRS prices.

ASTA proposes an analogous rule that would require the filing of all subscriber contracts (but with price terms omitted). Overland also suggests that all subscriber contracts should be public. We are not convinced that such rules would be beneficial, especially without the inclusion of price terms, while such requirements would impose a substantial paperwork burden on the vendors.

ASTA urges us to prohibit various other subscriber contract provisions, such as the vendors' denial of all warranties and requirements that any suits on the contract must be heard in the vendor's home state, that are assertedly unfair to travel agencies. Whether or not the terms are unfair, our authority under section 411 focuses on unfair methods of competition and deceptive practices, not on eliminating inequitable practices. See, *e.g.*, Order 92–5–60 (May 29, 1992) at 13–14.

KLM asks that we prevent vendors from providing CRS equipment to subscribers at less than cost. Here again there has been no adequate showing of harmful effects on airline competition—and no analysis of how such a rule would affect the economics of travel agency operations or CRS competition.

13. Grandfathering of Existing Contracts

A number of parties commented on whether the proposed new rules should apply to existing contracts. On the assumption that we would make final our proposal to bar productivity pricing, several parties argued that any such rule should not apply to existing contracts, because the subscribers had agreed to other terms in the contract in the belief that productivity pricing would be allowed. The major vendors argued, on the other hand, that we should not apply the new rules to current contracts, since each vendor had offered agencies various forms of bonuses and credits in the belief that it would obtain other benefits from the contract.

As discussed above, we are adopting only some of the subscriber contract

rules proposed in the NPRM. We are barring rollover clauses, minimum use clauses, and parity clauses, but we are not blocking subscribers from having productivity pricing clauses and the option of accepting a five-year contract.

We have determined to make the prohibition of rollover clauses, minimum use clauses, and parity clauses effective on the effective date of these rules. Those clauses do not serve legitimate purposes, and the vendors claim that they have not been enforcing rollover clauses anyway. Moreover, since we issued the NPRM well over a year ago, the parties have had substantial time to become ready to adjust their contract practices to the possibility that we would make our proposals final. On the other hand, we are allowing vendors to offer agencies a five-year contract as long as they also offer a contract with a term not longer than three years. Given our conclusion that five-year contracts may be beneficial in some respects, we have determined to apply the new rule on contract length only to contracts signed after the effective date of these rules.

N. CRS Contracts

We proposed in the NPRM to require contracts between vendors, on the one hand, and participating carriers and subscribers, on the other hand, to incorporate certain provisions of our rules that affect the parties' contractual obligations and expectations. If such provisions of the rules were incorporated in contracts, a party could obtain a judicial resolution of its rights and obligations, for example, if a dispute arose over the accuracy of a vendor's bill for booking fees. As we noted, these kinds of disputes involve issues typically resolved by the courts in contract cases and would neither require our expertise for decision nor raise significant policy issues. 56 FR 12626.

American, System One, Worldspan, Delta, Northwest, TWA, America West, Aer Lingus, Air France (albeit with qualifications), KLM, LTU, the Orient airlines, ASTA, and ARTA support the proposal. American represents that it already includes a similar provision in its contracts as a vendor. The only opponent is Covia, which argues that we do not have the authority to adopt the proposal.

We have decided not to make our proposal final, since it involves significant drawbacks. Contract suits can be expensive and time-consuming for all parties, so it is not clear that the proposal would provide an effective means for parties to enforce their rights. Furthermore, although many contract cases would not present policy questions requiring our expertise or judgment, some would. Finally, allowing the courts to interpret the rules could lead to inconsistent decisions.

O. Enforcement of the Rules

Under the current rules a vendor, participating carrier, or travel agency may obtain enforcement of the rules only if its filing of a third-party complaint under 14 CFR 302.200 *et seq.* causes us to institute an enforcement proceeding. In view of complaints that we have not adequately enforced the rules, we proposed to create an additional avenue of enforcement, an arbitration procedure subject to our supervision. We tentatively found that the creation of such a procedure would be within our statutory authority, as the Board had found when it was contemplating an arbitration procedure for resolving certain CRS issues. 56 FR 12626–12627.

The major vendors contend that the Department has no authority to require arbitration (American also claims that the availability of arbitration will lead to a lot of litigation). On the other hand, Worldspan, Northwest, Delta, TWA, System One, Alaska, America West, Southwest, ASTA, ARTA, and several foreign carriers urge us to adopt the arbitration proposal.

We have decided not to adopt the proposal. Despite the complaints about our failure to enforce the rules in the past, relatively few complaints about CRS violations were filed. In several cases civil penalties were assessed and cease and desist orders were issued. In several others, corrective action was taken by one or more vendors at the Department's request and enforcement action proved unnecessary. Still others were dismissed because the complaints did not show that an enforcement proceeding was warranted or because this rulemaking would be examining the issues raised by the complaints (*e.g.*, whether minimum use clauses should be prohibited). As a result, we have decided at this time not to adopt the arbitration proposal, which would be a significant departure from our past enforcement practices, albeit within our statutory authority.

We appreciate the importance of these rules for promotion competition in the airline and CRS businesses and the concern expressed by many parties that a failure to enforce the rules will frustrate their intent. If complaints alleging violations of the rules are filed, we will give them careful consideration and institute enforcement proceedings when appropriate.

P. International Issues

The current rules create an exception from the vendor's duty to comply with the rules because some foreign systems in the past have discriminated against U.S. carriers. Section 255.9(b) accordingly excuses a vendor from compliance insofar as a foreign carrier is concerned if that carrier or an affiliate operates a CRS that does not display the flights of all U.S. carriers equally with the foreign vendor's flights. We proposed to readopt this rule with two changes, one requiring the U.S. vendor to give 14 days notice to us and the foreign carrier before it could retaliate against that foreign carrier under this section, the other authorizing retaliation if a foreign carrier's system imposed discriminatory terms on U.S. carrier participation in its system. 56 FR 12627.

SAS, the only commentor on this proposal, asks that we allow retaliation only if the foreign system discriminates against U.S. carriers who have signed a participation agreement with the foreign system. We decline to make that change, since the U.S. carrier may choose not to sign an agreement because of the discriminatory terms for participation. As a result, we will adopt the rule as proposed.

Q. Effective Date

We have determined to make these rules effective 75 days after publication. As discussed above, several provisions in the new rules shall go into effect at a later date. For example, the rule requiring the elimination of default features favoring the vendor will not take effect for one year.

Covia argues that the new rules should not take effect for 120 days, but it provides no evidence supporting that claim. Covia Comments at 95. We doubt that so must time would be needed. After all, the Board made its rules effective 90 days after publication, and those rules required extensive changes in the CRS displays and contracts with participating carriers and travel agency subscribers. However, if a vendor or other party would be unable to comply with a provision in the new rules, they can request an exemption from the requirement at issue in order to have time to comply.

R. Sunset Date

When the Board adopted the existing rules, it included a sunset date (originally December 31, 1990) for the rules, so the need for the rules and their effectiveness would be reviewed after several years' experience. In the NPRM we proposed to establish a new sunset date for the new rules, a date

approximately five years after the adoption of the new rules. As we noted, however, the sunset date would not keep us from reviewing and modifying the rules at an earlier time if that appeared desirable. 56 FR. 12627.

Of the parties commenting on this proposal, none objected to a sunset date, although several argued that we should monitor CFR developments on a continuing basis during the term of the rules and that we should not wait until the sunset date to adopt additional rules that became necessary.

Since we believe that establishing a sunset date is wise, we will finalize our proposal, although we will have the rules terminate on December 31, 1977, rather than the earlier date proposed in the NPRM. Scheduling the next full-scale review of the rules for a date five years from now will not, of course, keep us from examining the impact of the new rules on a continuing basis after their adoption or from considering changes to the rules if experience suggests that they are necessary. In particular, the rule on third-party hardware and software may affect the CRS and airline businesses in ways that suggest that the rules should be modified.

Some parties asked that we formally designate staff members to monitor experience under the new rules. While we will not formally name someone, we suggest that anyone with comments on the new rules contact the two staff members most familiar with these rules and our past CRS studies, Laurence T. Phillips, Chief of the Industry Economics and Finance Division, Office of the Assistant Secretary for Policy and International Affairs, and Thomas L. Ray, Senior Trial Attorney, Office of the General Counsel.

S. Preemption

The group of sixteen states and one territory asks us to declare that our rules are not intended to preempt the states from enforcing their deceptive practices laws against travel agents. States Comments, p.9,n.8. ASTA, on the other hand, urges us to rule that the states are prohibited from enforcing their laws in areas where we have adopted regulations or determined not to adopt regulations. ASTA Reply at 18–20.

We are unwilling to issue any rules on preemption in this proceeding. We did not propose any rule on preemption. Without detailed comments on the issue, we could not develop an adequate standard for preemption, given the limited scope of our regulation of the travel agency business. We regulate travel agency operations only insofar as they involve the sale of air transportation; we do not license travel agencies or regulate their sale of other travel services, such as hotels, rental cars, and cruises.

However, the Act and established preemption principles limit the states' ability to regulate travel agencies. Under section 105 of the Act, 49 U.S.C. 1305, the states may not enforce any law relating to the rates, routes, or services of air carriers holding authority under the Act. *See Morales* v. *Trans World Airlines*, 112 S.CT 2031 (1992). The states also may not enforce laws conflicting with regulations adopted by us. *Cf. Fidelity Federal Savings & Loan Ass'n* v. *De La Cuesta*, 485 U.S. 141, 153–154 (1982). Given these principles, we see no immediate need to adopt a rule on preemption. The states, moreover, are not threatening to begin regulating CRS sales of airline services, so ASTA's members do not have an immediate need for a ruling on the exact scope of preemption.

T. Divestiture

Alaska and America West contend that the best solution for CRS problems would be divestiture, a prohibition against CRS being owned by airlines or airlines affiliates. ARTA also recommends taking a look at this remedy.

We are unwilling to consider divestiture in this proceeding. As we pointed out in the NPRM, no one had suggested in their comments on the ANPRM that we should propose a divestiture rule. While Alaska, America West, and Midway then considered divestiture a possible remedy for CRS problems, they considered divestiture desirable only if accompanied by a ban against the new owners' sale of bias and discriminatory treatment and doubted that we had the authority to adopt such rules. In the NPRM we specifically stated that we would not propose a divestiture rule. 56 FR 12627. Since we never proposed such a regulation or asked for further comment on the issue, we can not now adopt a rule requiring divestiture. In addition, the affiliation between airlines and CRSs may provide important efficiency benefits.

U. Notice of Override Commissions

Finally, some parties urge us to adopt rules preventing travel agencies from giving biased advice to their customers in the hope of increasing their override commissions. Travel agencies participating in override commission programs receive higher commission rates when they book more customers on the airlines offering them such incentive commissions. See Marketing Report at 26–30. ASTA, ARTA, and Woodside deny that travel agencies give biased advice, since they contend that an agency will lose too many customers if it provides poor advice in order to obtain more commissions. Other parties disagree and urge us to adopt a rule such as a requirement that travel agencies tell customers which carriers are offering them override commissions.

The effect of override commissions on airline competition and agency operations is outside the scope of this proceeding, which has not focused on the competitive and consumer deception issues raised by incentive commission programs. Furthermore, the record does not show that override commissions distort the advice provided customers by travel agencies. As we discussed above in connection with proposals to regulate CRS displays created by travel agencies, we are not convinced that agencies engage in a significant amount of deception. Thus there is no basis in this proceeding to adopt a rule on the subject of override commissions.

Regulatory Impact Analysis

A. Introduction

Executive Order 12291 requires every executive agency to prepare a regulatory impact analysis for each major rule. In the Order a major rule is defined as one that is likely to result in (1) an annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions, or (3) significant adverse impacts on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This regulatory impact analysis seeks to assess the economic and competitive consequences of our final rules on the computer reservations system, airline, and travel agency industries. Under the terms specified in the Executive Order, our regulations constitute a major rule, since they could conceivably have an annual impact on the economy of $100 million or more.

The Civil Aeronautics Board adopted rules to govern airline-owned CRSs that became effective on November 14, 1984. The Board decided the rules were necessary to preserve airline competition. In brief, the Board concluded that the CRS industry was characterized by high national and regional levels of market concentration; barriers to entry into the CRS business were high; CRSs are the travel agents' primary source of information on airline

services, so every major airline had to participate in each system; and several of the vendors' marketing and business practices demonstrated their market power and incentives to use this power to disadvantage their airline competitors. The structural and competitive conditions that compelled the Board to adopt rules remain largely in place today.

We are adopting additional rules. By encouraging competition among vendors and by reducing their ability to use their market power to impede airline competition, these rules will foster airline competition. Our rules will make it easier for smaller vendors to gain market share and for non-airline firms to enter the CRS industry or to provide products and services to travel agents. The rules will reduce the advantage enjoyed by CRS-owning airlines in securing bookings from subscribers, diminish the magnitude of the incremental airline revenues now being earned by vendor airlines, and make it easier for other airlines to enter air travel markets or to expand their market shares. The rules will encourage competition among vendors for travel agent subscribers, which will benefit the travelling public.

Unfortunately, we do not have information of the type and detail that would allow us to quantify with accuracy the benefits to air travellers or to estimate the costs to the CRS vendors of complying with our rules, although our proposed regulatory impact statement specifically asked the parties to provide such information. Thus, of necessity our analysis will rely on a qualitative assessment of the costs and benefits of the rules. We are also not able to estimate the long-term consequences of our rules on CRS competition, including incentives for technological innovation and improved productivity. The overriding benefit of greater competition and higher productivity in the air travel industry is, of course, its downward pressure on air fares and the benefits consumers enjoy as a result.

B. The CRS Industry: Sources of Market Power

Because airlines rely on travel agents to sell the majority of their tickets and because almost all travel agents rely on CRSs to sell airline services, CRSs have become essential to the marketing of virtually every airline's services.

Although there are four major CRSs operating in the United States, each CRS vendor has the power to impair airline competition. Practically every travel agency relies on a CRS, but there are costs associated with installing and operating more than one CRS in an agency, and these costs are augmented by restrictive contract terms and non-contractual means of influencing subscribers. Thus each CRS vendor has a large measure of control over the marketing of air transportation by its subscribers.

There are four financial benefits of owning a CRS for an airline: the booking fees received from other airlines, the fees received from travel agents and other subscribers, the value of the reservations services provided to the airline owner, and the increase in airline bookings, revenues, and profits generated because CRS subscribers book more passengers on the owning airlines.

The booking fees charged by the major vendors have been found to be substantially above their costs. Over time booking fees have averaged about two percent of the average airline fare per segment travelled.

Two factors provide the vendors with the ability to exercise market power in setting booking fees. First, because each agent relies almost exclusively on a single CRS to make airline bookings, airline managers doubt that agents subscribing to a CRS in which they refused to participate would be willing to book their flights. Threatened with the loss of substantial airline revenues, almost all airlines consider it necessary to participate in any CRS that is used by a large number of travel agents.

Second, the airlines' ability to influence fee levels indirectly by guiding bookings on their flights through CRSs that impose lower fees is very limited. Airlines have no way of inducing potential passengers to patronize travel agents who use CRSs that charge lower booking fees or of persuading agents to equip themselves with such systems. Thus while airlines pay booking fees, travel agents choose their CRS and the service features they will use to make a reservation.

Long ago the vendors recognized that by automating travel agents, they could gain additional airline bookings and revenues. Travel agent recommendations are often decisive in persuading travellers to choose an airline; some agents claim they can influence one-fourth of all business travellers and one-half of all leisure travellers.

Airlines that receive substantial incremental revenues should have higher average passenger loads on their flights and earn greater profits than air carriers that do not receive such revenues (all other factors remaining constant). Because an airline's profit margin is small in relation to its total revenues, and because its costs are not changed significantly by the gain or loss of a few passengers on each flight, a small diversion of traffic to a competitor is often sufficient to render service unprofitable. Moreover, since less frequent service will alienate even more passengers, attempting to raise load factors by reducing the number of flights may be self-defeating. Incremental revenues also enable CRS-owning airlines to offer additional financial incentives to agents that non-owner airlines cannot match, further increasing the vendors' shares of agency bookings.

It is extremely difficult to measure incremental revenues. Nevertheless, some internal vendor studies indicate that vendors believe that they earn substantial incremental revenues.

While one cause of incremental revenues is the friendly relationship that often develops between the subscriber and the vendor airline, another cause is architectural bias. Architectural bias denotes faster and more reliable computer procedures and communications links that result in agents obtaining more accurate information on vendor airline services or recording bookings on vendors with greater speed and certainty.

Through the display of flight information, CRSs can have a profound effect on airline competition. Travel agents often book passengers on the first flights shown on the computer display. The Vendors' conduct and their internal studies demonstrate that a flight's position on the CRS display continues to affect how often a system's subscribers will book it. Indeed, the vendors estimate that changes in CRS display algorithms can increase or decrease an air carrier's bookings by millions of dollars annually.

We cannot determine whether the decisive factor giving CRS vendors a competitive advantage in airline markets is greater ease of booking, better information, more prominent display, or their relationship with subscribers. Nevertheless, the ability of vendors to obtain a disproportionate share of their subscribers' bookings—a share that is unrelated to traveler preferences—has an adverse effect on airline competition. The size of this effect is not solely dependent on the amount of incremental revenues obtained by vendor airlines. The most harmful consequence of the vendors' power to influence travel agent booking patterns is that the potential substitutability of the services of different carriers is concealed from the typical airline traveler. As a result, the ability of airlines to capture traffic

through lower fares or better service is diminished.

C. Final Rules

The ultimate objective of our regulatory policy is to promote consumer welfare by reducing the cost of airline transportation. While our rules will result in more efficient and competitive airline, CRS, and travel agency industries, they will impose few, if any, additional costs on those industries. Several of our rules sanction existing industry practices. In some instances, moreover, we allow vendors to charge for additional services; accordingly, these market transactions will be entered into only if they benefit both parties. Finally, if our rules raise the vendors' cost slightly, we are convinced that they offer substantial benefits to the travelling public.

Display Bias

Prohibiting display bias will promote airline competition, since all air carriers will have to compete for passengers on the basis of fares and service. The final rules maintain the previous prohibition against using factors related to airline identity for editing and ranking flights and extends it to cover all integrated displays. The new rules make some other changes (for example, requiring notification when a flight involves a change in aircraft). Compared with either the original rules or an unregulated industry, the provisions are essentially costless, although the vendors may bear some slight additional programming costs.

Construction of Connections

The new rules increase the number of connecting points that must be used in each display of connecting service, subject to each vendor's ability to use fewer points when fewer satisfy its editing criteria. This rule should not impose additional costs on the vendors, since all CRSs (except Sabre) have adequate computer capacity and are programmed to accommodate our requirements; we are deferring the rule's effective date for one year to give Sabre time for reprogramming. This rule will promote airline competition by ensuring that passengers obtain information on more service options and by preventing the strategic manipulation of flight information.

Publication of Editing and Ranking Criteria

Our rules make specific the previous requirement that vendors supply on request detailed information on the criteria used for ranking and editing flight displays, including displays of connecting services. This may impose some slight costs on vendors but will give participating airlines an enhanced ability to monitor the vendors' compliance with our rules and to understand how their services are displayed.

Equal Functionality

Several of our rules will reduce the advantages vendor airlines have over their airline rivals because it is easier and more reliable to book flights on vendor airlines.

To eliminate some of the vendors' advantages, the rules prohibit procedures that default to entries favoring the vendor.

It is also frequently alleged that vendors introduce service enhancements that can only be used for making bookings on their airlines. Under the new rules, vendors must offer enhancements to all participating airlines. No party opposed this rule or suggested that it would impose significant costs on the vendors or retard technical innovation. Vendors, of course, are free to charge for participation in an enhancement, and participating airlines are free to forgo participation if it is judged too costly. Participating air carriers, travel agents, and air travellers should all benefit from access to enhancements that make the booking process more efficient.

A new rule requires vendors to make available to participating carriers the same method of loading schedule and fare information that they use for their own flights. This rule may impose some additional costs for vendors, although it should reduce expenses for participating carriers, as well as promote airline competition. This rule will ensure that CRSs have timely information on all airline services.

Vendor Contracts With Participating Air Carriers

The new rules readopt the current rules prohibiting vendors from charging discriminatory fees to participating carriers and from conditioning participation on the sale or purchase of other goods and services. Despite the arguments made by some, without these rules vendors would impose fees to weaken airline competition and punish other carriers for entering their markets.

Billing Information

A new rule requires vendors to provide enough information in their bills for booking fees to enable participating carriers to audit them for accuracy. This rule will not impose significant costs on vendors. They can charge reasonable fees for providing billing information on magnetic media. The associated benefits of the rule lie in preventing violation of the rule against discriminatory fees and eliminating "hidden" fee increases through the creation of false booking records.

Vendor Participation in Other CRSs

The new rules require CRS-owning airlines to participate in each feature offered by any other CRS unless they have valid commercial reasons for not doing so. The purpose of this rule is to prevent vendor airlines from using their dominance in a local airline market to handicap rival CRSs and to compel agents to subscribe to their own system. Since most vendor airlines already comply with this requirement and since additional participation must be undertaken only on mutually advantageous terms, the rule's cost should be negligible.

Vendor-Subscriber Contracts

The record demonstrates that vendors have imposed certain restrictions in their subscriber contracts in order to protect their subscriber base, not to promote economic efficiency. As a result, most travel agencies have a limited ability to switch CRSs or use more than one CRS. Given the economies of scope and scale in the CRS business, a vendor cannot compete effectively without a substantial number of subscribers. In addition, a CRS-owning airline that wishes to expand service at a city where another CRS-owning airline has a high CRS market share cannot easily obtain a significant number of subscribers for its own system due to the restrictive contracts. Airline competition has suffered. Making it easier for travel agents to switch systems or use multiple systems will promote technological innovation by forcing vendors to upgrade their systems to make them more attractive to subscribers.

A new rule requires vendors to offer travel agents a subscription contract with a term no longer than three years, although they can continue to offer as an alternative contracts with terms up to five years. We believe the costs of this proposal will be quite low, partly because few contracts seem to last as long as five years anyway and because vendor competition for agents should keep subscription fees from rising.

Another new rule says that vendors may not adopt contract provisions that automatically extend the term of a contract upon the happening of some stated event. This rule formalizes current industry practice. Since it should make it easier for agents to switch

systems, it should improve productivity in the travel agency industry and enhance airline competition.

Minimum use clauses require subscribers to use their CRSs for a minimum number of bookings each month; a subscriber who fails to meet the requirement will breach the agreement and be liable for damages including "lost" booking fees. Because the damages can be substantial, agents are reluctant to make extensive use of more than one CRS. A review of the permissibility of minimum use clauses is appropriate because new technology can make it easier for agents to switch between systems without incurring other costs and because the reduced competition for subscribers calls for restraining certain business practices that might have been considered justifiable or transitory before. We will prohibit minimum use clauses, which will carry out the Board's original intention that agents have the freedom to use multiple systems rather that be bound to a single system. We will continue, however, to allow so-called productivity pricing.

We intend to adopt a rule prohibiting vendors from requiring a travel agent to use or subscribe to its CRS as a condition for receipt of any commission. This rule eliminates the uncertainty on the meaning of the previous rule. This rule is intended to promote CRS and airline competition by barring a locally-dominant CRS-owning airline from compelling agencies in the region to use its CRS as a condition for receiving override commissions or other financial inducements.

Marketing Information

The new rules maintain the previous requirement that vendors make available to all U.S. carriers all marketing data generated from their CRSs on domestic travel and extends this provision to data on international travel and to foreign carriers that provide reciprocal access to their data. Any costs imposed on the vendors as a result of this rule may be recouped by charging air carriers an appropriate fee. This rule will promote competition by making more information available to all parties.

Third-Party Hardware and Software

Most travel agents today use personal computers to make airline reservations. Personal computers and software are provided by vendors for a fee, although large agencies pay little or nothing for computer hardware and software. Vendors restrict their subscribers' ability to use third-party hardware and software. Each vendor also prohibits its subscribers from using CRS terminals to access another system or database.

We are adopting a rule that gives subscribers greater access to travel information and computer technology. This rule prohibits vendors from unreasonably denying subscriber requests to use third-party hardware and software in conjunction with their CRSs. While nothing would prevent a vendor from offering subscribers hardware and software on attractive terms, subscribers would be free, for the first time, to purchase or lease third-party, CRS-compatible hardware and software.

We believe this rule will be particularly beneficial to smaller travel agencies, since they often do not have the in-house computer programming capability or the bargaining power to obtain their vendors' consent to use third-party products. Smaller travel agencies will be more productive.

Some airlines may welcome the opportunity to make their internal reservations systems available to important agents in key markets, since it would allow them to forgo paying booking fees. This could put downward pressure on booking fees.

Our rules would neither require vendors to provide CRS services to agencies nor restrict the pricing of vendors' services. The rule would not require vendors to modify their CRSs, to provide technical support for third-party hardware and software, or to limit technological improvements so as to maintain the value of third-party hardware and software being used by agencies. We do, however, plan to adopt rules that would prevent vendors from taking unreasonable actions to prevent subscribers from using third-party products.

D. Summary of the Rules' Costs and Benefits

Our rules will make the CRS and airline industries more competitive. Many of our rules, for example, will foster competition among vendors for subscribers. At the same time, participating airlines will find that travel agents have more accurate information about their flights and more confidence in making a booking on them. In this environment, all air carriers—vendors and nonvendors alike—will have to compete for customers in terms of the price, convenience, and reliability of their services. In sum, the travelling public will be the ultimate beneficiary of our rules.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act, Public Law 96–354, is designed to ensure that agencies consider flexible approaches to the regulation of small businesses and other small entities. It requires regulatory flexibility analyses for rules that, if adopted, would have a significant economic impact on a substantial number of small business entities.

The analysis is required to describe the need, objective, legal basis for, and flexible alternatives to the agency's action. These requirements have been met through the NPRM, this rule, and the initial and final regulatory impact analysis. In addition, an analysis must describe the small business entities to which the proposed rules would apply, the proposed rules' reporting, recordkeeping, or other compliance requirements, and any other federal rules that may duplicate, overlap, or conflict with the proposed rules.

Our rules will have a significant economic impact on a substantial number of small business entities. In particular, the rules will affect travel agencies and air carriers, including regional air carriers. The rule giving travel agencies the ability to use third-party hardware and software and to use a CRS terminal to access other databases will benefit small business entities.

The travel agency industry is relatively unconcentrated, although the larger agencies have been increasing their market share. The larger agency locations, those with annual revenues of at least $5 million, accounted for 33 percent of the industry's revenues in 1987. The industry, however, remains very competitive.

Our rules should increase the efficiency of the travel agency industry. For example, agencies will have a greater ability to use third-party hardware and software. Travel agencies can if they wish modify the display of CRS information to give them a better ability to find the best airline services for their customers. Agencies will be able to acquire equipment that may be more efficient and productive than the equipment supplied by vendors. Each vendor now prohibits its subscribers from using a CRS terminal to access any other system or database. If agencies can use their CRS terminals to access other systems and databases, they may be able to obtain better information and booking capabilities on carriers than is possible using a single system. New firms may enter the business of providing information and transaction capabilities on airline services.

Our rules will require vendors in certain respects to provide better information on participating carrier

services on a more timely basis. This will help agencies operate more efficiently.

Our rules eliminating certain restrictive subscriber contract provisions—rollover clauses and minimum use clauses—will benefit agencies by giving them more flexibility in switching systems and in using multiple systems. As a result, there should be increased competition among the vendors for agency subscribers. Since the travel agency industry is so competitive, most of the benefit of improved CRS pricing and services will be passed on to agency customers.

While an agency will incur additional expenses if it uses third-party hardware and software (for example, it must purchase any new software programs and bear the expense of subscribing to additional databases), agencies will make these expenditures only if doing so will improve the overall efficiency of their operations.

We have not adopted several proposals that could raise travel agency costs. If we had adopted a rule limiting the booking fees paid by airlines, the vendors would have increased subscriber charges in order to offset the lower revenues from air carriers. We are not limiting the level of booking fees, however. While we have barred certain subscriber contract provisions that would unduly restrict agency ability to switch or add systems, we also determined that agencies could benefit if we adopted a rule requiring vendors to offer subscribers a contract not longer than three years in length and a contract of up to five years in length.

Our rules should benefit most air carriers, especially non-vendor air carriers. Our rules barring defaults favoring vendor carriers, requiring vendors to make available to other carriers equally timely methods of loading fare and schedule changes, and requiring vendors to make all enhancements available to other carriers will make it easier for travel agents to book non-vendor carriers and should increase those carriers' CRS bookings. Non-vendor carriers will incur lower costs due to the rule barring vendors from imposing burdensome procedures on non-vendor carriers for the submission of fare and schedule changes. Our rule giving travel agencies the right to access other databases from agency-owned CRS terminals will enable carriers to establish direct links between their internal systems and agencies, thereby making it possible for them to obtain some bookings from agencies without paying booking fees.

Another group of beneficiaries of our rules will be firms producing hardware and software for use in conjunction with CRS services. Most such firms are small business entities. The vendors now limit their subscribers' ability to use software and hardware acquired from independent firms. Our rules will allow subscribers to use such products in connection with CRS equipment and services, thereby creating a bigger market for the firms that develop such products. In addition, our rule allowing subscribers to use their own equipment to access other databases will enable firms providing such information and transaction capabilities a much greater opportunity to market their services.

Our rules do not contain any direct reporting, recordkeeping, or other compliance requirements that would affect small business entities. There are no other federal rules that duplicate, overlap, or conflict with our rules.

Paperwork Reduction Act

This rule contains no collection-of-information requirements subject to the Paperwork Reduction Act, Public Law 96-511, 44 U.S.C. chapter 35.

Federalism Implications

The rules we are adopting here will not have substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12812, we have determined that these rules do not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects in 14 CFR part 255

Air carriers, Antitrust, Reporting, and recordkeeping requirements.

Accordingly, the Department of Transportation is revising 14 CFR part 255 to read as follows:

PART 255—CARRIER-OWNED COMPUTER RESERVATIONS SYSTEMS

255.1 Purpose.
255.2 Applicability.
255.3 Definitions.
255.4 Display of information.
255.5 Defaults and service enhancements.
255.6 Contracts with participating carriers.
255.7 System owner participation in other systems.
255.8 Contracts with subscribers.
255.9 Use of third-party hardware, software and databases.
255.10 Marketing and booking information.
255.11 Exceptions.
255.12 Termination.

Authority: 49 U.S.C. 1302, 1324, 1381, 1502.

§ 255.1 Purpose.

(a) The purpose of this part is to set forth requirements for the operation by air carriers and their affiliates of computer reservations systems used by travel agents so as to prevent unfair, deceptive, predatory, and anticompetitive practices in air transportation.

(b) Nothing in this part operates to exempt any person from the operation of the antitrust laws set forth in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12).

§ 255.2 Applicability.

This rule applies to air carriers and foreign air carriers that themselves or through an affiliate own, control, operate, or market computerized reservations systems for travel agents in the United States, and to the sale in the United States of interstate, overseas, and foreign air transportation and of other airline services through such systems. Each carrier that owns, controls, operates, or markets a system shall ensure that the system's operations comply with the requirements of this part.

§ 255.3 Definitions.

Affiliate means any person controlling, owned by, controlled by, or under common control with a carrier.

Availability means information provided in displays with respect to the seats carrier holds out as available for sale on a particular flight.

Carrier means any air carrier, any foreign air carrier, and any commuter air carrier, as defined in 49 U.S.C. 1301(3), 49 U.S.C. 1301(22), and 14 CFR 298.2(f), respectively, that is engaged directly in the operation of aircraft in passenger air transportation.

Discriminate, discrimination, and *discriminatory* mean, respectively, to discriminate unjustly, unjust discrimination, and unjustly discriminatory.

Display means that system's presentation of carrier schedules, fares, rules or availability to a subscriber by means of a computer terminal.

Integrated display means any display that includes the schedules, fares, rules, or availability of all or a significant proportion of the system's participating carriers.

On-time performance code means a single-character code supplied by a carrier to the vendor in accordance with the provisions of 14 CFR part 234 that reflects the monthly on-time performance history of a nonstop flight or one-stop or multi-stop single plane

operation held out by the carrier in a CRS.

Participating carrier means a carrier, including a system owner, that has an agreement with a system for display of its schedules, fares, or seat availability, or for the making of reservations or issuance of tickets through a system.

Service enhancement means any product or service offered to subscribers or participating carriers in conjunction with a system other than the basic display of information on schedules, fares, rules, and availability, and the basic ability to make reservations or issue tickets for air transportation.

Subscriber means a ticket agent, as defined in 49 U.S.C. 1301(40), that holds itself out as a neutral source of information about, or tickets for, the air transportation industry and that uses a system.

System means a computerized reservations system offered by a carrier or its affiliate to subscribers for use in the United States that contains information about schedules, fares, rules or availability of other carriers and provides subscribers with the ability to make reservations and to issue tickets, if it charges any other carrier a fee for system services.

System owner means a carrier that holds five percent or more of the equity of a system, that has one or more affiliates that hold such an equity interest, or that together with affiliates holds such an interest.

§ 255.4 Display of information.

(a) All systems shall provide an integrated display that includes the schedules, fares, rules and availability of all participating carriers in accordance with the provisions of this section. This display shall be at least useful for subscribers, in terms of functions or enhancements offered and the ease with which such functions or enhancements can be performed or implemented, as any other displays maintained by the system vendor. No system shall make available to subscribers any integrated display unless that display complies with the requirements of this section.

(b) In ordering the information contained in an integrated display, systems shall not use any factors directly or indirectly relating to carrier identity.

(1) Systems may order the display of information on the basis of any service criteria that do not reflect carrier identity and that are consistently applied to all carriers, including each system owner, and to all markets.

(2) When a flight involves a change of aircraft at a point before the final destination, the display shall indicate that passengers on the flight will change from one aircraft to another.

(3) Each system shall provide to any person upon request the current criteria used in editing and ordering flights for the integrated displays and the weight given to each criterion and the specifications used by the system's programmers in constructing the algorithm.

(c) Systems shall not use any factors directly or indirectly relating to carrier identity in constructing the display of connecting flights in an integrated display.

(1) Systems shall select the connecting points (and double connect points) to be used in the construction of connecting flights for each city pair on the basis of service criteria that do not reflect carrier identity and that are applied consistently to all carriers, including each system owner, and to all markets.

(2) Systems shall select connecting flights for inclusion ("edit") on the basis of service criteria that do not reflect carrier identity and that are applied consistently to all carriers, including each system owner.

(3) Systems shall provide to any person upon request current information on:

(i) All connecting points and double connect points used for each market;

(ii) All criteria used to select connecting points and double connect points;

(iii) All criteria used to "edit" connecting flights; and

(iv) The weight given to each criterion on paragraphs (c)(3) (ii) and (iii) of this section.

(4) Participating carriers shall be entitled to request that a system use up to five connect points (and double connect points) in constructing connecting flights for the display of service in a market. The system may require participating carriers to use specified procedures for such requests, but no such procedures may be unreasonably burdensome, and any procedures required of participating carriers also must be used by any system owner when it requests or causes its system to use specific points as connect points (or double connect points).

(5) When a system selects connecting points and double connect points for use in constructing connecting flights it shall use at least fifteen points and, after September 15, 1993, six double connect points, for each city-pair, except that a system may select fewer such connect or double connect points for a city-pair where:

(i) Fewer than fifteen connecting points and six double connect points meet the service criteria described in paragraph (c)(1) of this section; and

(ii) The system has used all the points that meet those criteria, along with all additional connecting points and double connect points requested by participating carriers.

(6) If a system selects connecting points and double connect points for use in constructing connecting flights it shall use every point requested by itself or a participating carrier up to the maximum number of points that the system can use. The system may use fewer than all the connect points requested by itself and participating carriers to the extent that:

(i) Points requested by the system and participating carriers do not meet the service criteria described in paragraph (c)(1) of this section; and

(ii) The system has used all the points that meet those criteria.

(d) Each system shall apply the same standards of care and timeliness to loading information concerning participating carriers as it applies to the loading of its own information or the information of a system owner. No system owner may use procedures for providing information on its own services to its system that are not available to participating carriers. Each system shall provide to any person upon request all current data base update procedures and data formats.

(e) Systems shall use or display information concerning on-time performance of flights as follows.

(1) Within 10 days after receiving the information from participating carriers or third parties, each system shall include in all integrated schedule and availability displays the on-time performance code for each nonstop flight segment and one-stop or multi-stop single plane flight, for which a participating carrier provides a code.

(2) A system shall not use on-time flight performance as a ranking factor in ordering information contained in an integrated display.

(f) Each participating carrier shall ensure that complete and accurate information is provided each system in a form such that the system is able to display its flights in accordance with this section.

(g) A system may make available to subscribers the internal reservations system display of a system owner or other participating carrier, provided that all participating carriers are offered the ability to make their internal reservations displays available to subscribers, and provided further that a

subscriber and its employees may see any such display only by requesting it for a specific transaction.

§ 255.5 Defaults and service enhancements.

(a) In the event that a system offers a service enhancement to a system owner or other participating carrier, it shall offer the enhancement to all participating carriers on nondiscriminatory terms, except to the extent that such service enhancement is still in the development stage or that participation is not immediately feasible for technical reasons, in which event the system shall make it available to all participating carriers as soon as possible.

(b) After October 1, 1993, no system may create or maintain a default in any system feature that automatically prefers one or more system owners over other participating carriers.

§ 255.6 Contracts with participating carriers.

(a) No system may discriminate among participating carriers in the fees for participation in its system, or for system-related services. Differing fees to participating carriers for the same or similar levels of service shall be presumed to be discriminatory.

(b) No system may condition participation in its system on the purchase or sale of any other goods or services.

(c) Notwithstanding paragraph (b) of this section, a system may condition participation in its system in the United States on a participating carrier's agreement to participate in the system or affiliated systems in other countries, if the system and such affiliates agree that:

(1) The display of services in such system and its affiliates will not use any factors related to carrier identity and

(2) Any fees charged the carrier shall not be discriminatory.

(d) A system shall provide upon request to carriers current information on its fee levels and fee arrangements with other participating carriers. A system's bill to a participating carrier for any fee must contain adequate information and be on magnetic media so that the participating carrier can determine whether the bill is accurate. At a minimum, booking fee bills must include the following information for each segment: PNR record locator number, passenger name, booking status, agency ARC number, pseudo-city code, CRS transaction date, city-pair information, flight number, flight date, class of service, and type of CRS booking.

§ 255.7 System owner participation in other systems.

(a) Each system owner shall participate in each other system and each of its enhancements (to the extent that such owner participates in such an enhancement in its own system) if the other system offers commercially reasonable terms for such participation. Fees shall be presumed commercially reasonable if:

(1) They do not exceed the fees charged by the system of such system owner in the United States or

(2) They do not exceed the fees being paid by such system owner to another system in the United States.

(b) Each system owner shall provide complete, timely, and accurate information on its airline schedules, fares, and seat availability to each other system in which it participates on the same basis and at the same time that it provides such information to the system that it owns, controls, markets, or is affiliated with. If a system owner offers a fare or service that is commonly available to subscribers to its own system, it must make that fare or service equally available for sale through each other system in which it participates.

§ 255.8 Contracts with subscribers.

(a) No subscriber contract may have a term in excess of five years. No system may offer a subscriber or potential subscriber a subscriber contract with a term in excess of three years unless the system simultaneously offers such subscriber or potential subscriber a subscriber contract with a term no longer than three years. No contract may contain any provision that automatically extends the contract beyond its stated date of termination, whether because of the addition or deletion of equipment or because of some other event.

(b) No system may directly or indirectly impede a subscriber from obtaining or using any other system. Among other things, no subscriber contract or contract offer may require the subscriber to use a system for a minimum volume of transactions, and no subscriber contract or contract offer may require the subscriber to lease a minimum number or ratio of system components based upon or related to:

(1) The number of system components leased from another system vendor or

(2) The volume of transactions conducted on any other system.

(c) No system owner may require use of its system by the subscriber in any sale of its air transportation services.

(d) No system owner may require that a travel agent use or subscribe to its system as a condition for the receipt of any commission for the sale of its air transportation services.

(e) No system may charge prices to subscribers conditioned in whole or in part on the identity of carriers whose flights are sold by the subscriber.

§ 255.9 Use of third-party hardware, software and databases.

(a) No system may prohibit or restrict, directly or indirectly, the use of:

(1) Third-party computer hardware or software in conjunction with CRS services, except as necessary to protect the integrity of the system, or

(2) A CRS terminal to access directly any other system or database providing information on airline services, unless the terminal is owned by the system.

(b) This section prohibits, among other things, a system's:

(1) Imposition of fees in excess of commercially reasonable levels to certify third-party equipment;

(2) Undue delays or redundant or unnecessary testing before certifying such equipment;

(3) Refusal to provide any services normally provided subscribers because of a subscriber's use of third-party equipment or because of the subscriber's using the same equipment (unless owned by the system) for access to both the system and to another system or database; and

(4) Termination of a subscriber contract because of the subscriber's use of third-party equipment or use of the same equipment for access to the system and to another system or database.

(c) A system shall make available to developers of third-party hardware and software on commercially reasonable terms the nonproprietary system architecture specifications and other nonproprietary technical information needed to enable such developers to create products that will be compatible with the system.

(d) Nothing in this section shall be construed to require any system or system owner to:

(1) Develop or supply any particular product, device, hardware or software to enable a subscriber to use another system, or

(2) Provide service or support with respect to any product, device, hardware, software, or service not provided to a subscriber by the system or system owner.

§ 255.10 Marketing and booking information.

(a) Each system shall make available to all U.S. participating carriers on nondiscriminatory terms all marketing,

booking, and sales data relating to carriers that it elects to generate from its system. The data made available shall be as complete and accurate as the data provided a system owner.

(b) Each system shall make available to all foreign participating carriers on nondiscriminatory terms all marketing, booking, and sales data relating to bookings on international services that it elects to generate from its system, provided that no system may provide such data to a foreign carrier if the foreign carrier or an affiliate owns, operates, or controls a system in a foreign country, unless such carrier or system provides comparable data to all U.S. carriers on nondiscriminatory terms. Before a system provides such data to a foreign carrier, it shall give written notice to each of the U.S. participating carriers in its system that it will provide such data to such foreign carrier. The data made available by a system shall be as complete and accurate as the data provided a system owner.

(c) Any U.S. or foreign carrier receiving data on international bookings from a system must ensure that no one has access to the data except its own personnel and the personnel of any outside firm used for processing the data on its behalf, except to the extent that the system or a system owner provides such access to other persons.

§ 255.11 Exceptions.

(a) The obligations of a system under § 255.4 shall not apply with respect to a carrier that refuses to enter into a contract that complies with this part or fails to pay a nondiscriminatory fee. A system shall apply its policy concerning treatment of non-paying carriers on a uniform basis to all such carriers, and shall not receive payment from any carrier for system-related services unless such payments are made pursuant to a contract complying with this part.

(b) The obligations of a system under this part shall not apply to any foreign carrier that operates or whose affiliate operates an airline computer reservations system for travel agents outside the United States, if that system discriminates against the display of flights of any United States carrier or imposes discriminatory terms for participation by any United States carrier in its computer reservations system, provided that a system must continue complying with its obligations under this part until 14 days after it has given the Department and such foreign carrier written notice of its intent to deny such foreign carrier any or all of the protections of this part.

§ 255.12 Termination.

Unless extended by a document published in the **Federal Register**, these rules shall terminate on December 31, 1997.

Issued in Washington, DC on September 15 1992.

Andrew H. Card, Jr.,

Secretary of Transportation.

[FR Doc. 92-22773 Filed 9-16-92; 4:03 pm]

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Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

Public Housing Drug Elimination Technical Assistance Program; Funding Availability (NOFA) for Fiscal Year 1992; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-92-3448; FR-3200-N-01]

Public Housing Drug Elimination Technical Assistance Program; Funding Availability, FY 1992

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability (NOFA) for Fiscal Year (FY) 1992.

SUMMARY: This NOFA announces the availability of approximately $600,000 in funds to provide short-term technical assistance to public housing agencies (PHAs), Indian housing authorities (IHAs), resident management corporations (RMCs), and incorporated resident councils (RCs) that are combating abuse of controlled substances in public housing communities. These funds reimburse consultants who provide expert advice and work with housing authorities or resident councils to assist them in gaining skills and training to eliminate drug abuse and related problems from public housing communities. In the body of this document is information concerning the purpose of the NOFA, applicant eligibility, selection criteria, eligible and ineligible activities, application processing, consultant eligibility, and consultant application processing.

DATES: This NOFA is effective upon publication. Technical assistance applications and consultant application kits may be immediately submitted to the address specified in the Application Kit. There is no application submission deadline for short-term technical assistance funds available under this NOFA. Technical assistance applications will be reviewed on a continuing basis, until funds available under this NOFA are expended.

ADDRESSES: (a) An application kit may be obtained from the local HUD Field Office with jurisdiction or by calling HUD's Resident Initiative Clearinghouse on 800-955-2232. The application kit contains information on all exhibits and requirements of this NOFA.

(b) An applicant must submit the application to the address specified in the application kit.

(c) In addition, applicants must simultaneously forward a copy of these documents to the HUD Field Office or Office of Indian Programs (OIP) with jurisdiction over the relevant housing authority. The HUD Field Office copy must be addressed to Director, Division of Public Housing or Office of Indian Programs.

FOR FURTHER INFORMATION CONTACT: Elizabeth Cocke or David Tyus, Drug Free Neighborhoods Division (DFND), Department of Housing and Urban Development, 451 Seventh Street, SW., room 4118, Washington, DC 20410, telephone (202) 708-1197. A telecommunications device for hearing or speech impaired persons (TDD) is available at (202) 708-0850. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The collection of information requirements contained in this NOFA have been approved by the OMB under the Paperwork Reduction Act of 1980 and have been assigned OMB control number 2577-0133.

I. Purpose and Substantive Description

(a) Authority

Funds for both training and this technical assistance (TA) program have been appropriated by the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1991 (Pub. L. 101-507, approved November 5, 1990) (91 App. Act), and the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1992, (Pub. L. 102-139, approved October 28, 1991) (92 App. Act).

The TA program is intended to provide immediate, short-term (90 days for completion) training, recommendations and assistance to assess needs, train staff and residents, identify and design appropriate anti-drug strategies, and generally prepare and educate public housing and resident organization staff and residents to address problems related to the abuse of controlled substances in public housing communities. Housing authorities and eligible resident organizations with or without a drug elimination grant in their communities are encouraged to use this resource. Technical assistance is not intended for program implementation or the financial support of existing programs.

(b) Allocation Amounts

The FY 1991 Appropriations Act made $575,000 available for TA in a NOFA (FY91 NOFA) published on April 11, 1991 (56 FR 14828). It is estimated that a sufficient number of applications have been received to obligate and expend all funds announced in the FY91 NOFA. Any unfunded applications received under the previous NOFA which also meet the requirements of the FY92 NOFA will be considered for funding under the FY92 NOFA. If instead there are any remaining FY91 funds they will be added to the $600,000 being announced under this NOFA.

(c) Eligibility

The following is a listing of eligible applicants, eligible consultants, eligible activities, ineligible activities, and general program requirements under this NOFA.

(1) Eligible Applicants

(i) Public housing authorities (PHAs), Indian housing authorities (IHAs), incorporated resident councils (RCs), resident organizations (ROs) in the case of IHAs, and resident management corporations (RMCs) are eligible to receive short-term technical assistance services under this NOFA.

(ii) An eligible RC or RO must be an incorporated nonprofit organization or association that meets each of the following requirements:

(A) It must be representative of the residents it purports to represent.

(B) It may represent residents in more than one development or in all of the developments of a PHA or IHA, but it must fairly represent residents from each development that it represents.

(C) It must adopt written procedures providing for the election of specific officers on a regular basis (but at least once every three years).

(D) It must have a democratically elected governing board. The voting membership of the board must consist of residents of the development or developments that the resident organization or resident council represent.

(iii) An eligible RMC must be an entity that proposes to enter into, or that enters into, a management contract with a PHA under 24 CFR part 964, or a management contract with an IHA. An RMC must have each of the following characteristics:

(A) It must be a nonprofit organization that is incorporated under the laws of the State or Indian tribe in which it is located.

(B) It may be established by more than one resident organization or resident council, so long as each such organization or council:

(1) Approves the establishment of the corporation; and

(2) Has representation on the Board of Directors of the corporation.

(C) It must have an elected Board of Directors.

(D) Its by-laws must require the Board of Directors to include representatives of each resident organization or resident council involved in establishing the corporation.

(E) Its voting members must be residents of the development or developments it manages.

(F) It must be approved by the resident council. If there is no council, a majority of the households of the development must approve the establishment of such an organization to determine the feasibility of establishing a corporation to manage the development.

(G) It may serve as both the resident management corporation and the resident council, so long as the corporation meets the requirements of 24 CFR part 964 for a resident council. (In the case of a resident management corporation for an Indian Housing Authority, it may serve as both the RMC and the RO, so long as the corporation meets the requirements of this NOFA for a resident organization.)

(iv) Applicants are eligible to apply to receive technical assistance if they are already receiving technical assistance under this program, as long as the request creates no scheduling conflict with other TA requests from the same applicant.

(v) Applicants are eligible to apply to receive technical assistance whether or not they are already receiving drug elimination funds under the Public Housing Drug Elimination Program.

(vi) In circumstances determined by HUD to be drug-related and to require emergency attention, eligible parties may receive technical assistance initiated and approved by HUD. These circumstances may include riots, disputes among tenants, and disputes between tenants and management. HUD will use the procedures of this NOFA to select a consultant in these cases.

(2) Eligible Consultants

Consultants who want to provide short-term technical assistance services under this NOFA must be listed in the Consultant Database approved by HUD's Drug Free Neighborhoods Division (DFND). To be included in that database, consultants must complete, in accordance with the requirements of section I.(c)(2)(ii), below, of this NOFA, a consultant application packet available from the Resident Initiatives Clearinghouse at 1-800-955-2232, and submit the packet to the address specified in the application kit. (This is a toll-free number.)

(i) Consultant eligibility. HUD is seeking individuals or entities who have experience working with public or Indian housing, or other low-income populations to provide short-term technical assistance under this NOFA. Consultants who have previously been deemed eligible and are part of the TA Consultant Database need not reapply. To qualify as eligible consultants, individuals or entities should have experience in one or more of the following general areas:

(A) PHA/IHA-related experience: Agency organization and management; facility operations; program development; experience working with residents and community organizations.

(B) Drug-related experience: Prevention/intervention programs; enforcement strategies; alternative programs.

(C) HUD especially encourages PHAs, IHAs, PHA/IHA employees, RMCs, incorporated resident councils and resident organizations, and public and Indian housing residents, with experience in the above areas, to submit a consultant application for eligibility under this NOFA. Eligible consultants will be entered into the Consultant Database for possible recommendation to Technical Assistant applicants.

(ii) Applying to be a consultant. Individuals or entities interested in being listed in the TA Consultant Database should prepare their applications and send them to the address specified in the application kit. Before they can be entered into the Consultant Database, consultants must submit an application that includes the following information:

(A) The Consultant Resource Inventory Questionnaire, including three references;

(B) A resume;

(C) A narrative statement regarding the consultant's experience in the specific skills identified on the Resource Inventory Questionnaire, and outlining the consultant's overall approach;

(D) Evidence submitted by the consultant to HUD that documents the standard daily fee previously paid to the consultant for technical assistance services similar to those requested under this NOFA. This evidence can include an accountant's statement, W-2 Wage Statements, or invoices, and should be supplemented with a statement or other evidence of days worked in the course of the particular project (for an invoice) or for a tax year in the case of a W-2 Statement.

(iii) Consultant payment. HUD will determine a specific fee to pay a consultant under this NOFA, subject to a maximum cap of the daily equivalent of the maximum rate paid for ES-IV of the Executive Schedule for Federal White-Collar Workers, based upon the evidence submitted in section I.(c)(2)(D), above, of this NOFA.

(3) Eligible Activities

To assist the eligible applicants identified in section I.(c)(1), above, of this NOFA, in responding immediately to drug-related problems in public and Indian housing developments, the U.S. Department of Housing and Urban Development (HUD) has supplemented the Public Housing Drug Elimination Program (PHDEP) and Youth Sports Program (YSP) with funds for short-term technical assistance (TA). Short-term technical assistance means that consultants shall only be reimbursed for a maximum of 30 days of work, which must be completed in less than 90 days from the date of the approved statement of work. The TA program is intended to provide short-term, immediate assistance to PHAs, IHAs, RMCs, RCs and ROs developing and/or implementing their drug elimination strategies. The program will fund the use of consultants who can provide the necessary consultation and/or training for the types of activities outlined below, or to fund the use of consultants who will assist the applicant in undertaking a task such as program planning and development for future drug elimination strategies, or conducting a needs assessment or survey. To assist housing authorities and resident councils, the TA program funds efforts in:

(i) Assessing drug problems in public or Indian housing development(s) and surrounding community(ies);

(ii) Designing and identifying appropriate anti-drug-related practices and programs in the following areas:

(A) Law enforcement strategies, including resident security patrols;

(B) Management techniques;

(C) Youth initiatives;

(D) Family management/parenting;

(E) Resident intervention and assistance programs;

(F) Community organization and leadership development; and

(G) Other areas that meet the drug elimination purposes of this NOFA, as determined by HUD.

(iii) Training for housing authority staff and residents in anti-drug practices, programs and management;

(iv) Improving overall agency management, operations and programming so that the applicant can more effectively respond to drug problems in the targeted public housing development(s).

(4) Ineligible Activities

(i) Funding is not permitted for any type of monetary compensation for residents unless they are listed in the TA Consultant Database and are working as consultants.

(ii) Funding is not permitted for any activity that is funded under any other HUD program.

(iii) Funding is not permitted for salary or fees to staff of the applicant, or former staff of the applicant within a year of his or her leaving the housing authority or resident organization.

(iv) Funding is not permitted for underwriting conferences.

(v) Funding is not permitted for conference speakers unless the speaker will also be providing additional TA as outlined in the eligible activities in sections (c)(3)(i–ii) of this NOFA.

(vi) Funding is not permitted for program implementation, proposal writing, the purchase of hardware or equipment, or any activities deemed ineligible in the Drug Elimination Program, excluding consultant's fees.

(5) General Program Requirements

(i) Applications for short-term technical assistance may be funded up to $10,000 per request, with HUD providing payment directly to the authorized consultant for the consultant's fee, travel, room and board, and other approved costs.

(ii) Applicants that have not previously received technical assistance under this program may submit only one application initially. After the applicant's initial technical assistance report has been received and reviewed by HUD or the contractor administering the program, as appropriate, the applicant may submit multiple applications.

(d) Selection Criteria/Ranking Factors

An application must include the minimum required elements listed at section III.(a) of this NOFA, and cannot request assistance for ineligible activities as listed in I.(c)(4)(iv), and will be scored according to the criteria outlined below:

(1) The extent to which the applicant needs short-term technical assistance. This will be measured by the applicant's discussion of the problems that triggered the request for assistance under this NOFA. (Maximum points: 10)

(2) The extent to which the applicant clearly describes the kind of technical assistance and skills needed to address the problems, and how well the technical assistance requested will address the problems. (Maximum points: 10)

(3) The likelihood that the requested technical assistance will assist the applicant's current drug elimination strategy, as described in the application; or, if the applicant does not currently have a strategy, the extent to which the technical assistance will help them develop a drug elimination strategy. (Maximum points: 10)

(e) Application Review, Awards, and Payment

(1) Application Review. Applications will be reviewed as they are received, and will be time- and date-stamped to determine their order of receipt. An application must include both the descriptive letter (or form provided in the application kit) and certification statement (or form provided in the application kit) to be eligible for funding. All applications that qualify on the basis of the minimum required elements will be scored on the basis of the selection criteria in section I.(d) of this NOFA. Applications that receive a total of 15 or more points, with no less than 3 points in any of the three selection criteria in section I.(d) of this NOFA will be eligible for funding. Eligible applications will be funded in the order in which negotiations for a statement of work are completed between the consultant and the program administrator until all funds are expended. The basis for each funding decision under this section will be documented.

(2) Application Awards.

(i) If the application includes the descriptive letter (or forms) requesting eligible activities, the certification statement (or form), and at least 15 points as described in section I.(e)(1) of this NOFA, it is eligible for funding. If sufficient funds are available to fund the technical assistance request, staff will confer with the applicant to confirm the work requirements. The TA Consultant Database will be searched to choose at least three consultants who (1) have a principal place of business or residence located within a reasonable distance from the applicant, as determined by HUD or its agent, or (2) appear to have the requisite knowledge and skills to assist the applicant in addressing its needs. The applicant's preference for a consultant will be taken into account. An HA employee may not serve as a consultant to his or her employer. An HA employee who serves as a consultant must be on annual leave to receive the consultant fee. A list of the suggested consultants will be forwarded to the applicant. From this list, the applicant will recommend the consultant to provide the requested TA. Instructions for consultants to be included in the TA Consultant Database are outlined above in section I.(b)(2) of this NOFA.

(ii) The applicant must contact each TA consultant from the list provided. After making contact with each consultant, the applicant must list the consultants in order of preference, indicating any that are unacceptable, and state the reasons for its preference. There is no guarantee that the applicant's first preference will be approved. Consultants will only be approved for the TA if the request is not in conflict with other requests for the consultant's services.

(iii) Staff designated by HUD will work with the consultant and applicant to develop a statement of work that includes a timeline and estimated budget. The statement of work should also include a discussion of the kind of technical assistance and skills needed to address the problem, and how the technical assistance requested will address these needs; a description of the current drug elimination strategy, and a discussion of how the requested technical assistance will assist that strategy. If the applicant does not currently have a strategy, there should be a statement of how the technical assistance will help them develop a drug elimination strategy. When the statement of work is approved, the consultant will be authorized to start work. The consultant must receive written authorization from HUD or its authorized agent before he or she can begin to provide technical assistance under this NOFA. The applicant and the relevant Field Office or OIP will also be notified. Because this program is for short-term technical assistance, consultants shall only be reimbursed for a maximum of 30 days of work, which must be completed in fewer than 90 days from the date of the approved statement of work.

(3) Payment for TA consultants. The consultant must submit a report of its activities, findings and recommendations, a fee invoice, and its expenses and receipts to the address specified in the application kit. A copy of the report must also be submitted to the applicant. Required elements of these reports are outlined in the application kit. After the report and expenses have been approved, and a verbal or written evaluation is received from the applicant, payment will be issued to the consultant. Evaluation forms are then sent to the applicant, to be completed and returned.

II. Application Process

(a) Application Kit. An application kit may be obtained from the local HUD FO

or OIP, or by calling HUD's Resident Initiatives Clearinghouse on 1-800-955-2232. The application kit contains information on all exhibits and requirements of this NOFA.

(b) Application Submission. This NOFA is effective upon publication. Short-term (90 days for completion) technical assistance applications and consultant application kits may be immediately submitted to the address specified in the application kit. There is no application submission deadline for the short-term technical assistance grants available under this NOFA. Technical assistance applications will be reviewed on a continuing first-come, first-serve basis, until funds under this NOFA are no longer available.

(1) An applicant must submit the application and the necessary assurances to the address specified in the Application Kit.

(2) In addition, applicants must simultaneously forward a copy of these documents to the HUD Field Office or Office of Indian Programs with jurisdiction over the relevant housing authority. The HUD Field Office copy must be addressed to Director, Division of Public Housing or Office of Indian Programs, as appropriate.

III. Checklist of Application Submission Requirements

Each application for a grant under this program must include the following:

(a) An application will not be considered for funding unless it includes, at a minimum, the following elements:

(1) An application letter, of no more than two pages, which responds to each of the selection criteria in section I.(d) of this NOFA, or the completed application forms available in the application kit, signed by the executive director of the housing authority or the authorized representative of the RMC or incorporated RC or RO, and;

(2) A certification statement, or the form provided in the application kit, signed by the executive director of the housing authority or the authorized representative of the RMC or incorporated RC or RO, certifying that any technical assistance received will be used in compliance with all requirements in the NOFA.

(b) HUD Form 2880 (Lobbying Disclosure Form).

(c) If the applicant has a particular consultant to recommend to provide the technical assistance, the response should identify the consultant and the basis for the recommendation. A consultant recommended by an applicant is not guaranteed to be approved to provide the requested technical assistance. If the consultant recommended by an applicant is not listed in the Consultant Database approved by HUD's Drug Free Neighborhoods Division (DFND), the consultant must apply as outlined in section I.(c)(2), above, of this NOFA. These consultant applications to be included in the TA Consultant Database will be given expedited review by the Department. However, a consultant must be listed to be eligible for funding under this NOFA.

IV. Corrections to Deficient Applications

(a) HUD will notify an applicant, in writing, or by telephone, of any curable technical deficiencies, such as a missing signature in the application. A log of telephone notifications will be maintained. The applicant must correct the deficiency in accordance with the information specified in HUD's notification. The application will not be given further consideration until the deficiency is corrected.

(b) Curable technical deficiencies relate to items that are not necessary to make a determination of an applicant's eligibility. The items necessary for this determination are listed at section III.(a) of this NOFA, although missing signatures on the application letter, certification or forms are curable.

V. Other Matters

(a) Nondiscrimination and equal opportunity. The following nondiscrimination and equal opportunity requirements apply:

(1) The requirements of title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3600-20 (Fair Housing Act) and implementing regulations issued at subchapter A of title 24 of the Code of Federal Regulations, as amended by 54 FR 3232 (published January 23, 1989); Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1;

(2) The Indian Civil Rights Act (ICRA) (Title II of the Civil Rights Act of 1968, 25 U.S.C. 1301-1303) provides, among other things, that "no Indian tribe in exercising powers of self-government shall * * * deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law." The Indian Civil Rights Act applies to any tribe, band, or other group of Indians subject to the jurisdiction of the United States in the exercise of recognized powers of self-government. The ICRA is applicable in all cases where an IHA has been established by exercise of tribal powers of self-government.

(3) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing regulations at 24 CFR part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8;

(4) The requirements of Executive Order 11246 (Equal Employment Opportunity) and the regulations issued under the Order at 41 CFR chapter 60;

(5) The requirements of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects); and

(6) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, recipients must make efforts to encourage the use of minority and women's business enterprises in connection with funded activities.

(b) Use of debarred, suspended or ineligible contractors. Applicants for short-term technical assistance under this NOFA are subject to the provisions of 24 CFR part 24 relating to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

(c) Conflicts of interest. In addition to the conflict of interest requirements in 24 CFR part 85, no person:

(1) Who is an employee, agent, consultant, officer, or elected or appointed official of the grantee, that receives assistance under the program and who exercises or has exercised any functions or responsibilities with respect to assisted activities; or

(2) Who is in a position to participate in a decision making process or gain inside information with regard to such activities; may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for him or herself or for those with whom he or she has family or business ties, during his or her tenure, or for one year thereafter.

(d) Drug-Free Workplace Act of 1988. The requirements of the Drug-Free Workplace Act of 1988 at 24 CFR part 24, subpart F.

(e) Environmental Impact. In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(b) of the HUD regulations, the policies and procedures proposed in this document are determined not to have the potential of having a significant impact on the quality of the human environment, and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act of 1969. Accordingly, a Finding of No Significant Impact is not required.

(f) Family Impact. The General Counsel, as the Designated Official for Executive Order 12606, the Family, has determined that the provisions of this NOFA have the potential for a positive, although indirect, impact on family formation, maintenance and general well-being within the meaning of the Order. The NOFA is designed to assist housing authorities and resident organizations in their public housing anti-drug-related efforts by providing short-term technical assistance. HUD expects that the provision of such assistance will better prepare and educate housing authority and resident organization officials to confront the widespread abuse of controlled substances in public housing communities. This, in turn, would, indirectly affect the quality of life for public housing residents.

(g) Federalism Impact. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the provisions of this NOFA do not have "federalism implications" within the meaning of the Order. The NOFA provides short-term technical assistance to housing authorities and resident organizations to assist them in their anti-drug efforts in public housing communities. The involvement of resident organizations should greatly increase the success of the anti-drug efforts under this technical assistance program and, therefore, should have positive effects on the target population. As such, the program helps housing authorities to combat serious drug problems in their communities.

(h) Documentation and Public Access Requirements; Applicant/Recipient Disclosures: HUD Reform Act.

Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period generally less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

Public notice. HUD will include recipients that receive assistance pursuant to this NOFA in its quarterly **Federal Register** notice of recipients of all HUD assistance awarded on a competitive basis. (See 24 CFR 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

(i) Section 112 HUD Reform Act. Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in appendix A of the rule.

Authority: The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1991 (Pub. L. 101-507, approved November 5, 1990), and the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act 1992, (Pub. L. 102-139, approved October 28, 1991).

Dated: September 15, 1992.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 92-22861 Filed 9-21-92; 8:45 am]

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federal register

Tuesday
September 22, 1992

Part IV

Environmental Protection Agency

40 CFR Part 81

Designation of Areas for Air Quality Planning Purposes; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[AD-FRL-4139-2]

Designation of Areas for Air Quality Planning Purposes

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: Pursuant to section 107(d)(3) of the Clean Air Act as amended (Act), EPA is authorized to redesignate areas (or portions thereof) as nonattainment for the PM-10 (particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers) and sulfur dioxide (SO_2) national ambient air quality standards (NAAQS).

In this action, EPA is proposing to revise the PM-10 and SO_2 designations for certain areas. Previously, consistent with section 107(d)(3)(A) of the Act, EPA has notified the Governors of those States containing the PM-10 and SO_2 areas addressed in this proposal that, based on available information, EPA believes the areas should be redesignated from unclassifiable or attainment to nonattainment. For PM-10, the redesignation is based upon recorded violations of the PM-10 NAAQS which occurred on or after January 1, 1989. For SO_2, the redesignation is based upon violations of the SO_2 NAAQS which were monitored, modeled, or determined from a combination of the two.

DATES: All written comments should be submitted by November 23, 1992.

ADDRESSES: Information supporting today's action can be found in Public Docket No. A-92-22. The docket is located at the U.S. EPA Air Docket, room M-1500, Waterside Mall, LE-131, 401 M Street, SW., Washington, DC 20460. The docket may be inspected from 8:30 a.m. to 12 noon and from 1:30 p.m. to 3:30 p.m. on weekdays, except for legal holidays. A reasonable fee may be charged for copying. In addition, the public may inspect that information pertaining to a particular area at the respective EPA Regional Office which serves the State where the affected area is located. A list of Regional Offices is in Supplementary Information.

Send comment to:

Larry Wallace (PM-10), SO_2/Particulate Matter Programs Branch, Air Quality Management Division (MD-15), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711

Andrew M. Smith, SO_2, SO_2/Particulate Matter Programs Branch, Air Quality Management Division (MD-15), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711

FOR FURTHER INFORMATION CONTACT: Larry Wallace (PM-10), (919) 541-09067 Andrew M. Smith (SO_2), (919) 541-5398.

SUPPLEMENTARY INFORMATION: The contacts and addresses of the Regional Offices are:

Regional offices	States
● William S. Baker, Chief, Air Program Branch, EPA Region II, 26 Federal Plaza, New York, NY 10278, (212) 264-2517.	New York.
● Marcia Spink, Chief, Air Programs Branch, EPA Region III, 841 Chestnut Building, Philadelphia, PA 19107, (215) 597-9075.	District of Columbia, Pennsylvania and West Virginia.
● Stephen H. Rothblatt, Chief, Air and Radiation Branch, EPA Region V, 77 West Jackson Street, Chicago, IL 60604, (312) 353-2211.	Illinois.
● Gerald Fontenot, Chief, Air Programs Branch, EPA Region VI, 1445 Ross Avenue, Dallas, TX 75202-2733, (214) 655-7204.	New Mexico, Oklahoma, Texas.
● Douglas M. Skie, Chief, Air Programs Branch, EPA Region VIII, 999 18th Street, Denver Place—Suite 500, Denver, CO 80202-2405, (303) 293-1750.	Colorado, Montana.
● David L. Calkins, Chief, Air Programs Branch, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744-1219.	Arizona, California.
● George Abel, Chief, Air Programs Branch, EPA Region X, 1200 Sixth Avenue, Seattle, WA 98101, (206) 442-1275.	Idaho, Oregon, and Washington.

I. General

The EPA is authorized to redesignate areas (or portions thereof) as nonattainment for PM-10 and SO_2 pursuant to section 107(d)(3) of the Act, on the basis of air quality data, planning and control considerations, or any other air quality-related considerations the Administrator deems appropriate.

Following the process outlined in section 107(d)(3), in January and February of 1991, EPA notified the Governors of the affected States that EPA believed certain areas should be redesignated as nonattainment for PM-10 and SO_2. The EPA identified those areas in a **Federal Register** notice published on April 22, 1991 (56 FR 16274). Under section 107(d)(3)(B) of the Act, the Governor of each affected State was required to submit to EPA the designation he or she considered appropriate for each area in question no later than 120 days after notification. However, for reasons of administrative efficiency, the EPA requested the States to submit the designations by March 15, 1991, (the date the lists of designations for all ozone and carbon monoxide areas were due from the Governor of each State pursuant to section 107(d)(4)(A) of the Act). The EPA received responses from the affected States for all of the areas addressed in today's proposal. Section 107(d)(3)(C) of the Act provides that EPA must promulgate the redesignation submitted by the State unless EPA determines that a modification is necessary. The EPA has reviewed the State submittals for the areas addressed in today's notice, and EPA is proposing redesignations which are consistent with those submitted by the affected States. However, EPA is requesting comments on today's proposal and will consider any relevant comments in taking final action on today's proposal. Section 107(d)(1)(A) of the Act sets out definitions of nonattainment, attainment, and unclassifiable. These definitions provide the controlling legal standard for any designations or redesignations to the relevant attainment status. The EPA is proposing that all of the SO_2 and PM-10 areas addressed in today's notice be redesignated nonattainment. A nonattainment area is defined as any area that does not meet, or that significantly contributes to ambient air quality in a nearby area that does not meet, the national primary or secondary ambient air quality standard for the relevant pollutant [1] (see section 107(d)(1)(A)(i)). Thus, in determining the appropriate boundaries for the nonattainment areas proposed today, EPA has considered not only areas where violations of the relevant NAAQS have been monitored and/or modeled, but nearby areas which significantly contribute to such violations.

[1] The EPA has construed the definition of nonattainment area to require some material or significant contribution to a violation in a nearby area. The Agency believes it is reasonable to conclude that something greater than a molecular impact is required.

The tables provided at the end of today's notice specify the complete boundaries and associated designation status that EPA is proposing for the areas addressed in today's action. Thus, the "designated area" and "designation type" identified in the tables indicate how EPA is proposing to amend the pertinent portions of 40 CFR part 81. Because of the significant cost involved, EPA has not put the designated areas and corresponding designation type in the identical format in which, if finalized, they will appear in EPA's final action modifying 40 CFR part 81. The final format will be consistent with the style of the revisions to 40 CFR part 81 made in the **Federal Register** notice published on November 6, 1991 at 56 FR 56694 and is intended simply to improve the readability of the tables in 40 CFR part 81 and to account for the pollutant classifications required by the 1990 Amendments to the Act.

Note also that in the November 6, 1991 **Federal Register** notice, EPA deferred reformatting the SO_2 tables in 40 CFR part 81 because no SO_2 designations were being revised in that action. The EPA indicated that it would reformat the SO_2 tables in the future as appropriate. The EPA anticipates that when it takes final action on the SO_2 redesignations proposed to today's action, it will revise the SO_2 tables generally consistent with the new format.

II. PM-10

A. Background for PM-10

On July 1, 1987, the EPA revised the NAAQS for particulate matter (52 FR 24634), replacing total suspended particulates as the indicator for particulate matter with a new indicator called PM-10 that includes only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers. At the same time, EPA set forth regulations for implementing the revised particulate matter standards and announced EPA's State implementation plan (SIP) development policy elaborating PM-10 control strategies necessary to assure attainment and maintenance of the PM-10 NAAQS (see generally 52 FR 24672). The EPA adopted a PM-10 SIP development policy dividing all areas of the country into three categories based upon their probability of violating the new NAAQS: (1) Areas with a strong likelihood of violating the new PM-10 NAAQS and requiring substantial SIP adjustment were placed in Group I; (2) areas that might well have been attaining the PM-10 NAAQS and whose existing SIP's most likely needed less adjustment were placed in Group II; (3) areas with a strong likelihood of attaining the PM-10 NAAQS and, therefore, needing adjustments only to their preconstruction review program and monitoring network were placed in Group III (52 FR 24672, 24679-24682).

Pursuant to section 107(d)(4)(B) of the Act, areas previously identified as Group I and other areas which had monitored violations of the PM-10 NAAQS prior to January 1, 1989 were, by operation of law upon enactment of the 1990 Amendments, designated nonattainment for PM-10. After EPA revised the PM-10 NAAQS, EPA identified and listed the Group I and Group II areas in a **Federal Register** notice published on August 7, 1987 (52 FR 29383). In that notice, EPA indicated that Group III areas consisted of that portion of a State not placed in Group I or II. Descriptions of the areas identified as Group I and II areas were later clarified in a **Federal Register** notice dated October 31, 1990 (55 FR 45799). That notice also identified Group II areas which violated the standards prior to January 1, 1989. The EPA announced all areas which were designated nonattainment by operation of law for PM-10 upon enactment of the 1990 Amendments in a **Federal Register** notice dated March 15, 1991 (56 FR 11101). In addition, EPA has published a follow-up notice correcting the boundaries and designations of some of the areas in light of comments received addressing the March 1991 notice (see 56 FR 37654 (August 8, 1991)). Formal codification in 40 CFR part 81 of those areas designated nonattainment for PM-10 by operation of law upon enactment was announced in a **Federal Register** notice dated November 6, 1991 (56 FR 56694).

B. Today's Action for PM-10

Those areas not designated nonattainment for PM-10 by operation of law upon enactment of the 1990 Amendments were designated unclassifiable (see section 107(d)(4)(B)(iii) of the Act). The EPA is authorized to redesignate these areas as nonattainment for PM-10 pursuant to section 107(d)(3) of the Act on the basis of air quality data, planning and control considerations, or any other air quality-related consideration that the Administrator deems appropriate (see also section 107(d)(1)(A)(i)).

There are two groups of PM-10 areas addressed in today's action. The first group consists of those areas listed in the **Federal Register** notice dated April 22, 1991 (56 FR 16274) which recorded violations of the PM-10 standard on or after January 1, 1989. In January and February of 1991, EPA notified the Governors of those States with areas which recorded violations of the PM-10 standards on or after January 1, 1989 and indicated that EPA believed those areas should be redesignated from unclassifiable to nonattainment for PM-10 based upon available information.[8] The Governor of each affected State was required to submit to EPA the designation which he or she considered to be appropriate for each area in question within 120 days after receiving notification (see section 107(d)(3)(B) of the Act). As noted, for reasons of administrative efficiency, the EPA requested the States to submit the designations by March 15, 1991. Section 107(d)(3)(C) of the Act provides that EPA must promulgate the redesignations submitted by the States unless EPA determines that a modification is necessary.

The second group of areas being addressed in today's proposal were submitted as unsolicited requests for redesignation by the Governors of the affected States. These unsolicited requests were submitted to EPA as comments to letters EPA sent to the Governors in January and February 1991 in which they were notified of PM-10 violations in their States. The EPA explained the manner in which it intended to address these requests in the corrections notice published on August 8, 1991 (56 FR 37654). The EPA is proposing these areas for redesignation to nonattainment, pursuant to section 107(d)(3)(D) of the Act. Section 107(d)(3)(D) provides that a Governor of a State may, on his or her own initiative, submit to the Administrator a revised designation of an area within the State. Within 18 months of receipt of a complete State redesignation submittal, the Administrator shall approve or deny the redesignation. The boundaries for the proposed nonattainment areas are provided in the revisions to 40 CFR part 81 at the end of this notice.

The following table lists in a general fashion the additional nonattainment designations for PM-10 that are being proposed in this notice.

State	PM-10 area description [8]
Arizona	Part of Gila County, Part of Mohave County.
California	Sacramento County, Part of San Bernardino County.
Colorado	Part of Routt County.
Idaho	Part of Kootenai County, Part of Shoshone County.[4]
Montana	Part of Sanders County.

[8] As noted, in a **Federal Register** notice published on April 22, 1991 (56 FR 16274), EPA identified those areas for which EPA had notified the Governors that an area's designation should be revised.

State	PM-10 area description [a]
New Mexico	Bernalillo County.
New York	New York County.
Oregon	Part of Lane County.
Washington [b]	Part of Benton, Franklin, and Walla Walla Counties.
West Virginia	Part of Hancock County.

[a] The more detailed boundaries being proposed today are provided in the proposed revisions to 40 CFR part 81 at the conclusion of this notice.

[b] This is an unsolicited PM-10 nonattainment area.

[c] In response to a submittal by Washington, EPA is proposing an increase in size of the area to be redesignated nonattainment. The area identified in the April 22, 1991 **Federal Register** notice was Benton County. The proposed area does not include the City of Wallula which has already been promulgated as a nonattainment area (see, e.g., 56 FR 56848, November 6, 1991).

As noted, EPA has reviewed the State submittals for all of these areas, and EPA is proposing PM-10 redesignations which are consistent with those submitted by the affected States.

1. The PM-10 areas listed in the April 22, 1991 **Federal Register** notice.

a. *The PM-10 areas EPA is proposing for redesignation.* As noted above, the EPA is authorized to initiate redesignation of additional areas as nonattainment for PM-10 pursuant to section 107(d)(3) of the Act on the basis of air quality data, planning and control considerations, or any other air quality-related considerations that the Administrator deems appropriate. Further, section 107(d)(1)(A)(i) provides that a nonattainment area shall consist of that area violating the PM-10 NAAQS or contributing significantly to violations in a nearby area. Generally, the PM-10 nonattainment area boundaries are presumed to be, as appropriate, the county, township, or other municipal subdivision in which the ambient particulate matter monitor recording the PM-10 violation(s) is located. The EPA has presumed that this would include both the area violating the PM-10 NAAQS and any area significantly contributing to the violations. However, a boundary other than the county perimeter or municipal boundary may be more appropriate. Affected States may submit information indicating that, consistent with section 107(d)(1)(A)(i), a boundary should be alternatively defined. Some guidance on this issue is provided in the PM-10 SIP Development Guideline (EPA-450/2-86-001). The EPA has received information on alternative boundaries from States in response to the notification provided under section 107(d)(3)(A). Thus, for many of the PM-10 areas addressed in today's proposal, EPA is proposing nonattainment boundaries which reflect the alternative boundaries suggested by the affected States. Copies of the technical information supporting the basis for the redesignation of these areas are available for review at the addresses indicated above. The EPA requests comments on today's proposal addressing the appropriateness of the proposed boundaries in light of the statutory definition for nonattainment area set out at section 107(d)(1)(A)(i) of the Act.

The EPA has received information indicating that Mohave County, Arizona, has petitioned the Nevada State Environmental Commission to delete the Nevada Administrative Code 445.724. As currently written, this code is a waiver for the Southern California Edison Mohave Generating Station, located in Laughlin, Nevada, of the requirement to meet a 20 percent opacity limit measured at 6-minute intervals at the stack. Mohave County has claimed, among other things, that emissions from the facility significantly contribute to elevated levels of PM-10 in Mohave County that adversely affect public health and contribute to its nonattainment problems. The State of Nevada held a public hearing on December 5, 1991. As an outcome, a study has been authorized to assess the impact of PM-10 emissions from the Mohave Power Plant on surrounding areas. The EPA requests public comment on this issue. For example, EPA requests any information indicating whether and to what extent the Mohave Power Plant contributes to the nonattainment problem in Mohave County. Further, EPA requests comments on the appropriateness of the nonattainment boundaries for Mohave County in light of any such information.

The EPA notified the Governor of New Mexico on January 23, 1991 that Bernalillo County (City of Albuquerque) violated the annual and 24-hour PM-10 NAAQS during 1989. The City of Albuquerque has provided additional information regarding those violations. With respect to the 24-hour standard, the city has provided information which suggests that the two exceedances measured in 1989 at monitoring site 35-001-1013 were the result of exceptional events, i.e., below normal rainfall and high winds in the Albuquerque area. In a similar manner, the city has suggested that additional exceedances at this site (one in 1990 and one in 1991) were also the result of exceptional events, i.e., high winds in the Albuquerque area. While EPA has not taken a final position regarding the City of Albuquerque submittals in light of the requirements of section 2.4 of 40 CFR part 50, appendix K, the influence of below normal rainfall and high winds makes it difficult to determine the associated frequency and nature of these exceedances. This results in uncertainty in how to treat these exceedance events and in determining whether the area is or is not meeting the 24-hour NAAQS (see section 107(d)(1)(a)(iii) of the Act). Because of the uncertainty, EPA feels that a determination that the City of Albuquerque has violated the 24-hour PM-10 NAAQS and should be redesignated nonattainment on that basis is inappropriate until additional data are collected. The City of Albuquerque is currently collecting every-other-day PM-10 samples at monitoring site 35-001-1013 and is planning to collect hourly PM-10 data. The EPA will continue to track the 24-hour PM-10 values in Albuquerque and take appropriate action should additional air quality data indicate that the area is not meeting the 24-hour NAAQS.[6]

With respect to the annual standard, the City of Albuquerque has provided information which demonstrates that the annual violation of 63 μg^{m^3} (micrograms per cubic meter) in 1989 (arithmetic mean) was reduced to 37 μg^{m^3} (arithmetic mean) in 1990 and 39 μg^{m^3} in 1991 (arithmetic mean). This reduction in the annual average was attributed to a number of actions or control measures which were taken in Albuquerque following this annual violation. The regulatory bases for these actions, however, are not included in the current federally-approved SIP for the City of Albuquerque and, thus, as a matter of Federal law, the reductions in emissions of PM-10 are not permanent or enforceable. Therefore, EPA is proposing to redesignate Bernalillo County (City of Albuquerque) as nonattainment for PM-10 on the basis of the violation of the annual standard in 1989. If the City of Albuquerque submits the rules requiring the subsequent reduction in PM-10 levels to EPA as part of the Albuquerque SIP before EPA takes final action on this redesignation, the Agency will further consider the appropriateness of taking final action on this proposal.

[6] As indicated in the discussion below, in today's notice, EPA is proposing to designate Albuquerque nonattainment based on a violation of the annual NAAQS. The EPA also notes that it is possible that Albuquerque has taken measures to address this air quality problem and that EPA would consider withdrawing the proposed redesignation if EPA has reason to believe that continued attainment and maintenance of the annual standard is assured. Neither the pending redesignation proposal based on the violation of the annual standard nor any conclusion EPA makes about the annual standard would in any manner preclude a future nonattainment determination by EPA if future air quality data indicate the area is not meeting the 24-hour standard.

b. *The PM-10 areas EPA has decided not to redesignate at this time.*

The EPA has determined that redesignation of four of the areas previously listed in the April 22, 1991 **Federal Register** notice is inappropriate at this time. The areas are a portion of LaSalle County, Illinois; a portion of Edgar County, Illinois; Bay County; Michigan; and St. Louis County, Missouri. The rationale for not redesignating these areas is as follows:

Illinois

LaSalle County: The Governor of Illinois requested that the portion of LaSalle County identified as an area EPA believed should be redesignated as nonattainment (see 56 FR 16274, April 22, 1991) be added to the initial nonattainment area of Oglesby, Illinois. In a corrections notice (56 FR 37654, August 8, 1991) to EPA's announcement of the initial nonattainment areas for PM-10 (those areas designated nonattainment by operation of law upon the enactment of the 1990 Amendments), EPA announced that the section in LaSalle identified by the Governor was added to the Oglesby PM-10 nonattainment area (see 56 FR 37662 (August 8, 1991)). Accordingly, the need to redesignate this area as a separate nonattainment area was rendered moot by that action.

Edgar County: The EPA has reviewed records pertaining to the Edgar County, Illinois, area and has determined that redesignation of the area is not appropriate. Air quality data associated with an existing coal mine in Indiana, which is in close proximity to the Edgar County mine, showed violations which were attributed to the surface coal mine operation. The EPA initially determined that violations were likely at the Illinois mine, due to the close proximity of the two mines. The operation in Edgar County has since been closed and the company has moved operations. Available air quality data have not showed any violations of the PM-10 standards.

Michigan

Bay County: Based upon further review of the air quality data for Bay County, Michigan, EPA has determined that redesignation of this area to nonattainment is not appropriate at his time. The EPA is uncertain, based on available information, whether the area meets or does not meet the PM-10 NAAQS. Therefore, EPA believes it is presently more appropriate to leave the area designated as unclassifiable and to collect additional air quality monitoring data for the area before deciding whether the area should be redesignated. The EPA plans to review the designation status of the area when the additional data are available.

Missouri

St. Louis County: Based upon further review of the air quality data for St. Louis County, Missouri, EPA has determined that redesignation of this area as nonattainment is not appropriate at this time. Similar to Bay County, Michigan, EPA is uncertain, on the basis of currently available information, whether St. Louis County meets or does not meet the PM-10 NAAQS. Therefore, EPA believes it is presently more appropriate to leave the area designated as unclassifiable and to perform additional air quality monitoring in this area before deciding whether the area should be redesignated.

2. Unsolicited PM-10 Areas

There are two areas for which EPA has received unsolicited designations (see section 107(d)(3)(D)). They were not listed in the April 22, 1991 **Federal Register** notice. Both of these involve an existing PM-10 nonattainment area for which the State has requested an expansion of the boundary. They are the cities of Butte (Silver Bow County), Montana, and Pinehurst (Shoshone County), Idaho (see 56 FR 37658 (Pinehurst discussion) and 56 FR 37659 (Butte discussion), August 8, 1991). In the August 1991 **Federal Register** notice referenced, the States were informed that the expanded areas would be treated as separate areas with statutory deadlines (e.g., SIP submittal and attainment dates) different from the existing nonattainment areas. However, EPA also noted that nothing in the Act prohibited the State from submitting an initial nonattainment area SIP covering both the initial and the proposed expansion area, i.e., to accelerate the SIP adoption, submittal and implementation schedule for the expansion area to match that of the initial nonattainment area.

The State of Montana has since rescinded its request for expanding the boundaries of Butte in a letter from the Governor to EPA dated October 2, 1991. Thus, this unsolicited redesignated request is no longer pending before EPA. The State of Idaho has not informed the EPA that they wish to rescind their request for designating part of Shoshone County as nonattainment. Accordingly, EPA is proposing in today's notice to redesignate this area as nonattainment.

C. Significance of Today's Action for PM-10

For those PM-10 areas redesignated nonattainment in the final action on today's proposal, States must submit implementation plans to EPA within 18 months after promulgation of the nonattainment redesignation (see section 189(a)(2)(B)), meeting the requirements of, among other things, section 189(a)(1) of the Act. For example, provisions to assure that reasonably available control measures (including reasonably available control technology) are implemented within 4 years of an area being redesignated nonattainment and classified as moderate must be submitted within 18 months after redesignation (see section 189(a)(1)(C)). A program meeting the requirements of section 173 governing the construction and operation of new and modified major stationary sources of PM-10 is required within 18 months (see section 189(a)(1)(A)). Further, the State's implementation plans must contain a demonstration (including air quality modeling) that the plan will provide for attainment of the PM-10 NAAQS as expeditiously as practicable, but no later than the end of the sixth calendar year after the area's designation as nonattainment, or a demonstration that attainment by such date is impracticable (see sections 188(c)(1) and 189(a)(1)(B) of the Act).

III. SO_2

A. Background for SO_2

Following the Clean Air Act Amendments of 1977, EPA published areas identified by the States as nonattainment, attainment, or unclassifiable for SO_2. The Clean Air Act, as amended by the 1990 Amendments, provided designations for SO_2 areas based on their status immediately before enactment of the 1990 Amendments. For example, any area designated as not attaining the primary or secondary SO_2 NAAQS as of the date of enactment of the 1990 Amendments was designated nonattainment for SO_2 by operation of law upon enactment, pursuant to section 107(d)(1)(C)(i) of the Act. In addition, any area designated as attainment or unclassifiable (or "cannot be classified") immediately before the enactment of the 1990 Amendments was also designated as such upon the enactment of the Amendments pursuant to section 107(d)(1)(C) (ii) and (iii) of the Act. For the current status of SO_2 areas, readers should refer to the codification tables currently set forth in 40 CFR part 81 (1991) and to any subsequent

modifications to these SO_2 tables that have been published in the **Federal Register** (see also 56 FR 56706 (November 6, 1991)).

As described above, EPA is authorized to initiate the redesignation of additional areas (or portions thereof) as nonattainment for SO_2, pursuant to section 107(d)(3) of the Act, on the basis of air quality data, planning and control considerations, or any other air quality-related considerations the Administrator deems appropriate. The EPA believes that monitoring and/or modeling information should be used in determining the attainment status of an area and in establishing SO_2 nonattainment boundaries that are consistent with section 107(d)(1)(A)(i) of the Act.[7] As indicated previously, nonattainment areas consist of any area that does not meet the relevant NAAQS and that significantly contributes to a violation of the relevant NAAQS in a nearby area. In January and February of 1991, EPA notified the Governors of the affected States that EPA believed that certain areas should be redesignated as nonattainment for SO_2. In a **Federal Register** notice published on April 22, 1991 (56 FR 16274), EPA identified those SO_2 areas for which EPA had notified the Governors of affected States that an area's SO_2 designation should be revised to nonattainment. After notification, the Governor of each affected State was required to submit to EPA the redesignation he or she considered appropriate for each area in question within 120 days. For reasons of administrative efficiency described above, the EPA requested the States to submit the designations by March 15, 1991 although EPA indicated that the States had up to 120 days. The EPA has reviewed the State submittals for SO_2 and, as with the PM–10 redesignations proposed in today's notice, EPA is proposing redesignations which are consistent with those submitted by the affected States. Section 107(d)(3)(c) provides that EPA must promulgate the redesignation submitted by the State unless EPA determines that a modification is necessary.

B. Today's Action for SO_2

In today's action, EPA is proposing to redesignate certain areas for SO_2 in accordance with the section 107(d)(3) redesignation process, described above. The EPA announced in a notice published on April 22, 1991 (see 56 FR 16274) that it believed that certain areas listed in that notice should be redesignated as nonattainment for SO_2. The EPA also announced in the April notice that it had notified the Governors of the affected States that certain SO_2 area designations should be revised. Where a change has been made, relative to the April 22, 1991 notice (56 FR 16274), the rationale for the proposed redesignation, including any changes, has been briefly stated below. Technical information supporting the redesignation for each area proposed for redesignation is available at the addresses indicated above.

District of Columbia

GSA Central: The EPA is proposing to redesignate an area within a 1 kilometer (km) radius of the General Services Administration's (GSA's) Central Heating Plant as nonattainment for SO_2. This boundary is based upon the results of EPA air quality modeling which revealed violations of the SO_2 NAAQS in the area.

GSA West: The EPA also is proposing to redesignate the area within a 1.5 km radius of the GSA's West Heating Plant as nonattainment for SO_2. This boundary is based upon the results of EPA air quality modeling which, similar to the area noted above, modeled violations of the SO_2 NAAQS in the area.

The District of Columbia, GSA, and EPA have entered into an enforceable compliance agreement. The District of Columbia intends to submit this agreement and technical analyses demonstrating that the emissions from GSA's two heating plants no longer cause violations of the NAAQS as a formal SIP revision to EPA. Because the SIP revision for the two areas in the District of Columbia have not yet been submitted and approved, EPA is proposing to redesignate these area as nonattainment for SO_2.

Illinois

Madison County: The EPA is proposing that the nonattainment area for this county consists of the townships of Alton, Granite City, and Nameoki. The size of the Madison County nonattainment area was reduced based upon air quality modeling information which was submitted by the State and reviewed by EPA. Major source areas and their impact areas are included in the proposed nonattainment area.

St. Clair County: The EPA is proposing that the nonattainment area for this county consists of the townships of Centreville and East St. Louis. The size of the St. Clair nonattainment area was reduced based upon air quality modeling which was submitted by the State and reviewed by EPA. Major source area and their impact areas are included in the proposed nonattainment area.

Iowa

Clinton County: The EPA does not intend to propose the redesignation of Clinton County at this time. The State has submitted a finally-adopted plan for Clinton County which contains provisions that are expected to assure attainment and maintenance of the SO_2 NAAQS. The EPA proposed to approve this plan on July 1, 1991 (56 FR 29918) and on November 1, 1991, EPA finally approved it (56 FR 56158). The SIP revisions became effective on December 2, 1991.

Oklahoma

Kay County: At this time, EPA will not propose redesignation as nonattainment for Kay County based upon EPA's evaluation of additional information submitted by the State. This information consisted of air modeling data which indicated no violations of the NAAQS, and a federally-enforceable construction permit which significantly reduces allowable and actual SO_2 emissions from a source in the area. In addition, the State has provided the EPA with 2 years of monitoring data (1989–1990) which indicate no violations of the NAAQS in Kay County.

Pennsylvania

Allegheny County: The EPA is proposing to redesignate part of Allegheny County as nonattainment for SO_2. Specifically, the proposed nonattainment area includes Lincoln, Liberty, Glassport, and Port Vue Boroughs and the City of Clairton. The basis of the redesignation is monitored violations of the 24-hour standard.

Warren County: The EPA is proposing to redesignate part of Warren County as nonattainment for SO_2. Specifically, the proposed nonattainment area includes Glade and Pleasant Townships and the City of Warren. The basis of the redesignation is modeling analyses predicting violations of the 3-hour and 24-hour standards.

Texas

Jefferson County: The EPA does not intend to propose the redesignation of Jefferson County based upon a review of the circumstances surrounding the monitored SO_2 violations near the site. Based upon this review, EPA and the State of Texas agree that the violations were produced by an exceptional event

[7] The EPA believes that those tools which are reasonably reliable can be used in determining, under section 107(d)(1)(A)(i) of the Act, whether an area "does not meet" or "contributes to ambient air quality in a nearby area that does not meet" the relevant NAAQS (see also 57 FR 13645 April 16, 1992).

which occurred in the area during the time in question (see, e.g., "Guideline on the Identification and Use of Air Quality Data Affected by Exceptional Events" (EPA-450/4-86-007) July 1986). An accidental fire occurred in the sulfur recovery unit at a petrochemical facility. Meteorological data clearly indicate a correlation between the fire, which lasted for 3 days, and the monitored SO_2 NAAQS exceedances in the area.

West Virginia

Hancock County: The EPA is proposing to redesignate the City of Weirton including the Butler and Clay Magisterial Districts as nonattainment for SO_2. This area was not listed in the April 22, 1991 **Federal Register** notice (56 FR 16274). However, by letter dated March 6, 1991, the Governor on his own initiative requested that the area be redesignated nonattainment based on historical monitored exceedances. This request was clarified by letter dated May 1, 1991 from the West Virginia Air Pollution Control Commission to EPA Region III. The EPA believes that sufficient evidence exists to propose the area as nonattainment for SO_2. The EPA is thus proposing to approve the Governor's request and is proposing to redesignate this area as nonattainment pursuant to section 107(d)(3)(D) of the Act. Additional parts of Hancock County were designated nonattainment on the date of enactment of the 1990 Amendments, pursuant to section 107(d)(1)(C)(i) of the Act.

The following is a summary of the revised nonattainment designations being proposed in today's action:

State	SO_2 area description
Illinois	Part of Madison County, Part of St. Clair County.
Pennsylvania	Part of Allegheny County, Part of Warren County.
West Virginia	Part of Hancock County.
District of Columbia	Part of the Dist. of Columbia (2 areas).

C. Significance of Today's Action for SO_2

For those SO_2 areas redesignated nonattainment in the final action on today's proposal, States must submit implementation plans to EPA within 18 months after promulgation of the nonattainment redesignation, meeting the requirements of Part D, Title I of the Act (see section 191(a) of the Act). The implementation plans must provide for attainment of the SO_2 NAAQS as expeditiously as practicable, but no later than 5 years from the date of the final nonattainment designation (see section 192(a) of the Act).

IV. Tables

The tables provided at the end of this section specify the complete boundaries and associated designation status that EPA is proposing for the areas addressed in today's action. Thus, the "designated area" and "designation type" identified in the tables indicate how EPA is proposing to amend the pertinent portions of 40 CFR part 81. Because of the significant cost involved, EPA has not put the designated areas and corresponding designation type in the identical format in which, if finalized, they will appear in EPA's final action modifying 40 CFR part 81. The final format will be consistent with the style of the revisions to 40 CFR part 81 made in the **Federal Register** notice published on November 6, 1991 at 56 FR 56694 and is intended simply to improve the readability of the tables in 40 CFR part 81 and to account for the pollutant classifications required by the 1990 Amendments to the Act. Note also that in the November 6, 1991 **Federal Register** notice, EPA deferred reformatting the SO_2 tables in 40 CFR part 81 because no SO_2 designations were being revised in that action. The EPA indicated that it would reformat the SO_2 tables in the future as appropriate. The EPA anticipates that when it takes final action on the SO_2 redesignations proposed in today's action, it will revise the SO_2 tables generally consistent with the new format.

PART 81—PM-10

Designated area	Designation date	Type
Arizona:		
Gila County (part)—Payson: T10N, Sections 1-3, 10-15, 22-27 and 34-36 of R9E; T11N, Sections 1-3, 10-15, 22-27 and 34-36 of R9E; T10-11N, R10E; T10N, Sections 4-9, 16-21, and 28-33 of R11E; T11N, Sections 4-9, 16-21, and 28-33 of R11E.	Proposing	Nonattainment.
Mohave County (part)—Bullhead City: T21N, R20-21W, excluding Lake Mead National Recreation Area; T20N, R20-22W; T19N, R21-22W excluding Fort Mohave Indian Reservation.	Proposing	Nonattainment.
California:		
Sacramento County	Proposing	Nonattainment.
San Bernardino County (part): Excluding that portion located in the Searles Valley planning area, and excluding that area in the South Coast Air Basin.	Proposing	Nonattainment.
Colorado: Routt County (part)—The City of Steamboat Springs	Proposing	Nonattainment.

PART 81—SO_2

Designated area	Designation date	Type
District of Columbia:		
Washington (part)—The area within a 1 km radius of the General Services Administration's Central Heating Plant.	Proposing	Nonattainment.
Washington (part)—The area within a 1.5 km radius of the General Services Administration's West Heating Plant.	Proposing	Nonattainment.

PART 81—PM-10

Designated area	Designation date	Type
Idaho:		
Kootenai County (part)—The City of Coeur d'Alene	Proposing	Nonattainment.
Shoshone County (part)—That portion of Shoshone County excluding the initial PM-10 nonattainment area of the City of Pinehurst in the Silver Valley area: Sections 22-27 and 34-36 of range 1 east and township 49 north; Sections 1-3 and 10-15 of range 1 east and township 48 north; Sections 13-36 of range 2 east and township 49 north; Sections 1-18 of range 2 east and township 48 north; Sections 19, 20, and 25-36 of range 3 east and township 49 north; Sections 1-25, and 36 of range 3 east and township 48 north; Section 1 of range 3 east and township 47 north; Section 31 of range 4 east and township 49 north; Sections 1-36 of range 4 east and township 48 north; Sections 1-6, and 8-15 of range 4 east and township 47 north.		

PART 81—SO_2

Designated area	Designation date	Type
Illinois:		
Madison County (part)—Alton, Granite City, and Nameoki Townships	Proposing	Nonattainment.
St. Clair County (part)—Centreville and East St. Louis Townships	Proposing	Nonattainment.

PART 81—PM-10

Designated area	Designation date	Type
Montana: Sanders County (part)—Thompson Falls and vicinity: Including the following Sections: R29W, T21N, Sections: 5, 6, 7, 8, 9, 10, 15, and 16.	Proposing	Nonattainment.
New Mexico: Bernalillo County	Proposing	Nonattainment.
New York: New York County	Proposing	Nonattainment.
Oregon: Lane County (part)—Oakridge: The Urban Growth boundary area	Proposing	Nonattainment.

PART 81—SO_2

Designated area	Designation date	Type
Pennsylvania:		
Allegheny County (part)—Liberty, Lincoln, Glassport, and Port Vue Boroughs, and the City of Clairton.	Proposing	Nonattainment.
Warren County (part)—Warren Borough, Pleasant and Glade Townships	Proposing	Nonattainment.

PART 81—PM-10

Designated area	Designation date	Type
Washington:		
Benton, Franklin, and Walla Walla/Tri Counties excluding the initial PM-10 nonattainment area of the City of Wallula (part): Beginning at the point on the Oregon/Washington border UTM zone 11, 370000mE heading north following UTM 370000mE to the intersection with UTM 5,135,000mN. The boundary then follows UTM 5,135,000mN in a Westerly direction to the southern border of the Hanford Works. The boundary then follows the southern Hanford Works boundary in a westerly direction to R27E. The boundary then follows the Yakima River (up-stream) in a southwesterly direction to the intersection with longitude 119 30'. The boundary follows south along 119 30' to the ridge which forms the northern geographic feature of the Horse Heaven Hills (approximately the 500-foot contour). The nonattainment boundary then follows in a westerly direction along the ridge crest to the Benton/Yakima County line. The boundary then follows a southerly direction on the Benton County line to the Oregon/Washington state line. The boundary then follows an easterly direction along the Oregon/Washington state line to the beginning.	Proposing	Nonattainment.
West Virginia: Hancock and Brooke Counties (part)—City of Weirton	Proposing	Nonattainment.

PART 81—SO_2

Designated area	Designation date	Type
West Virginia: City of Weirton, including Butler and Clay Magisterial Districts	Proposing	Nonattainment.

V. Request for Public Comments

The EPA is, by this notice, proposing that the PM-10 and SO_2 designations for certain areas be revised. The EPA is requesting public comments on all aspects of this proposal including the appropriateness of the proposed designations and the scope of the proposed boundaries. Public comments should be submitted to EPA at the addresses identified above by November 23, 1992.

VI. Other Regulatory Requirements

A. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, EPA must prepare for proposed rules subject to notice-and-comment rulemaking an initial regulatory flexibility analysis describing the impact of the proposed rule on small entities. The requirement of preparing such analysis is inapplicable, however, if the Administrator certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities (see 5 U.S.C. 605(b)).

The redesignations proposed for PM-10 and SO_2 will not alone directly impact or impose any significant requirements on a substantial number of small entities. Accordingly, I hereby certify that the actions proposed today will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7407, 7501–7515, 7601.

Dated: September 8, 1992.

F. Henry Habicht II,

Acting Administrator.

[FR Doc. 92–22785 Filed 9–21–92; 8:45 am]

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Tuesday
September 22, 1992

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Final Frameworks for Late-Season Hunting Regulations; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AA24

Migratory Bird Hunting; Final Frameworks for Late-Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes final late-season frameworks from which States may select season dates, limits, and other options for the 1992–93 migratory bird hunting season. These late seasons include most waterfowl seasons, the earliest of which generally commence on or about October 1, 1992. The effects of this final rule are to facilitate the selection of hunting seasons by the States to further the annual establishment of the late-season migratory bird hunting regulations. State selections will be published in the **Federal Register** as amendments to §§ 20.104 through 20.107 and § 20.109 of 50 CFR part 20.

EFFECTIVE DATE: September 22, 1992.

ADDRESSES: Season selections from States are to be mailed to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, room 634—Arlington Square, Washington, DC 20240. Comments received are available for public inspection during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Thomas J. Dwyer, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, room 634—Arlington Square, Washington, DC 20240, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 1992

On May 8, 1992, the Fish and Wildlife Service (hereinafter Service) published for public comment in the **Federal Register** (57 FR 19865) a proposal to amend 50 CFR part 20, with comment periods ending July 20, 1992, for early-season proposals and August 31, 1992, for late-season proposals. On June 19, 1992, the Service published for public comment a second document (57 FR 27672) which provided supplemental proposals for early- and late-season migratory bird hunting regulations frameworks. On June 25, 1992, a public hearing was held in Washington, DC, as announced in the May 8 and June 19 **Federal Registers** to review the status of migratory shore and upland game birds. Proposed hunting regulations were discussed for these species and for other early seasons. On July 10, 1992, the Service published in the **Federal Register** (57 FR 30884) a third document in the series of proposed, supplemental, and final rulemaking documents which dealt specifically with proposed early-season frameworks for the 1992–93 season. On August 6, 1992, a public hearing was held in Washington, DC, as announced in the **Federal Registers** of May 8, June 19, and July 10, 1992, to review the status of waterfowl and discuss proposed hunting regulations for late seasons. On August 21, 1992, the Service published a fourth document (57 FR 38202) containing final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico, and the Virgin Islands selected early-season hunting dates, hours, areas, and limits for 1992–93. The fifth document in the series, published August 21, 1992 (57 FR 38215), dealt specifically with proposed frameworks for the 1992–93 late-season migratory bird hunting regulations. On August 27, 1992, the Service published in the **Federal Register** (57 FR 39072) a sixth document consisting of a final rule amending subpart K of title 50 CFR part 20 to set hunting seasons, hours, areas, and limits for early seasons. This document, which establishes final frameworks for late-season migratory bird hunting regulations for the 1992–93 season, is the seventh in the series.

Special Assessment: Use of Framework Dates as a Regulatory Tool

Since 1947, framework dates (i.e., the earliest opening and latest closing dates that a State may select for duck hunting) have been part of the Federal annual regulations set for each flyway and they have been used in concert with season length, bag limits, and other regulations to manage the harvests of ducks. In 1990, the Central and Mississippi Flyway Councils recommended that the Service forego annual adjustments of framework dates for purposes of managing duck harvest. Based on these recommendations, the Service elected to review the role of framework dates as a management tool.

The Service recently completed a report on duck-hunting framework dates that has been reviewed by the Flyway Councils. The independent effects of framework-date changes on the harvest rates of ducks were impossible to isolate due to the confounding effects of changes in season length, bag limits, and other regulations. However, circumstantial evidence suggested that framework opening dates could be manipulated to affect the age, sex, and species composition of the harvest and that framework closing dates could be used to affect the age composition of the harvest. Adjustments to framework opening dates also could be used to manage the proportion of local and migrant ducks harvested. Therefore, the Service believes that the ability to manipulate framework dates annually is potentially useful for managing duck harvests.

Council Recommendations: In March, the Atlantic Flyway Council noted that framework opening dates may be useful for managing harvests of certain duck populations in the Atlantic Flyway. Under normal circumstances, the opening date in the Atlantic Flyway should be October 1. Framework closing dates should not be used as a tool for managing duck harvest and should be fixed indefinitely at no earlier than January 15 for the Atlantic Flyway.

In August, the Atlantic Flyway Council stated that they were opposed to the use of framework dates to regulate total duck harvest. They also believed that restrictions on framework dates that have been used in the Atlantic Flyway since 1988 may have benefited some eastern populations of waterfowl, but the need to further protect these populations has not been documented. They also noted that liberalizing framework dates while holding other regulations stable could increase our understanding of the effects of opening and closing dates.

In March, the Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the Service not use framework dates to adjust harvest, but if framework dates are used, the Service should develop a well-designed study to clarify the various impacts of framework dates. The Committee had previously recommended that framework dates should be the Saturday nearest October 1 through the Sunday nearest January 20. They stated that impacts of framework-date manipulations cannot be separated from other past regulatory changes and that the current framework application may not provide regulatory fairness throughout their flyway.

In March, the Lower-Region Regulations Committee of the Mississippi Flyway Council recommended that framework dates be fixed dates not subject to annual fluctuations and that these dates should be the Saturday nearest October 1

through January 20. They reaffirmed this position during their July meeting.

In March, the Central Flyway Council noted that the Service's review of framework dates had failed to provide evidence of measurable benefits from past use of framework dates to regulate harvests. The Council stated that the use of framework dates for harvest management is selective in its impact on northern and southern States. The Council believes that harvest management should focus on more equitable regulations, such as season length and daily bag limits. Framework dates should not be used to regulate annual harvests, but should be used to establish an appropriate biological framework for duck hunting.

In August, the Central Flyway Council stated that season length and bag limits should be the principal means of adjusting harvest and that framework dates should be used only under extraordinary circumstances. They disagreed with using fixed calendar dates for opening and closing duck seasons and recommended framework dates identical to those used during 1980–84. They also believe that framework dates need not necessarily be the same in all flyways and that opening and closing dates can be manipulated independently.

In March, the Pacific Flyway Council recommended that manipulation of framework dates should continue to be an option for regulating duck harvest. The Service should not eliminate any duck-harvest-management options, although the evaluation conducted by the Service to assess the impact of utilizing framework dates to regulate harvest was inconclusive.

In August, the Pacific Flyway Council recommended using the first Saturday in October through the second Sunday in January during periods of restrictive regulations. In periods of more liberal regulations, they recommended using the Saturday nearest October 1 through the Sunday nearest January 20. They preferred floating rather than fixed framework dates. They supported further evaluations of the effectiveness of framework dates as a regulatory tool.

Written Comments: The States of Arkansas, Colorado, Florida, Minnesota, Mississippi, North Carolina, North Dakota, South Dakota, and Texas opposed the use of framework dates as a tool to regulate total duck harvest. Colorado, Minnesota, Mississippi, North Carolina, North Dakota, and South Dakota believed that management of duck harvest rates should be accomplished principally by adjustments in season length and bag limits. South Dakota believed that framework dates should be standardized, while Arkansas, Florida, Massachusetts, and North Carolina believed that dates should generally be standardized, except that they may be manipulated to meet specific objectives or when populations are critically low. Florida, Maryland, and North Carolina believed that opening and closing dates should be treated as independent regulatory tools. Florida and Mississippi desired fixed calendar opening dates; while Arkansas, Colorado, Minnesota, North Dakota, and South Dakota desired floating opening dates. Fixed calendar closing dates were preferred by Arkansas, Florida, Minnesota, and Mississippi, while floating closing dates were preferred by Colorado.

Massachusetts, Mississippi, and North Carolina preferred that the framework open on October 1, while Arkansas, Colorado, Minnesota, North Dakota, and South Dakota preferred the Saturday nearest October 1. Massachusetts and Florida preferred that the framework close on January 15; North Carolina desired a closing date no earlier than January 15; Colorado preferred that the framework close on the Sunday nearest January 20; and Arkansas, Minnesota, Mississippi, the Mississippi Legislature, a U.S. Senator from Mississippi, a U.S. Congressman from Mississippi, and a Mississippi State Senator preferred that the framework close on January 20.

Texas, Minnesota, North Dakota, and Colorado noted that using framework dates to manage harvest can be unfair to northern and southern States. Colorado believed that framework dates can be a useful tool for managing the species composition of the harvest. Colorado and Maryland thought that delays in opening dates can result in greater harvest on certain species because of the loss of a buffering effect from early-migrating species. Massachusetts and Minnesota believed that delayed opening dates can reduce the harvest of some local populations of ducks, while Nebraska questioned this interpretation. Florida, Massachusetts, Maryland, and Nebraska thought that framework-date adjustments may geographically displace, but not reduce harvest.

Final Service Policy: The Service will retain the option of using framework dates as a regulatory tool. Guidelines for the use of framework dates will be considered, in cooperation with all flyways and other interested parties, during the development of stabilized regulations. Consideration will be given to: (1) the relative importance of framework dates, bag limits, season lengths, and other regulations for managing duck harvests; (2) the advantages and disadvantages of using fixed calendar dates versus floating dates; (3) allowing inter-flyway differences in framework dates for meeting specific harvest objectives; and (4) independently manipulating opening and closing dates to achieve specific harvest objectives.

Rationale: In the past, framework dates, bag limits, and season lengths have been adjusted concurrently, and these "packages" of regulations have been effective in managing the total harvest of ducks. Since framework dates have not been adjusted independently, their contribution to the effectiveness of a regulatory package is unknown. However, the degree to which the exclusion of framework dates would reduce the effectiveness of regulations in controlling duck harvests likewise is unknown. Thus, the Service believes that framework dates should continue as one of several regulations considered annually in managing duck harvests.

Review of Comments and the Service's Response

Public-hearing and written comments received through September 2, 1992, relating to proposed late-season frameworks are discussed and addressed here. Fourteen individuals presented statements at the August 6, 1992, public hearing. Organizations that they represented were: Mr. Paul Accomundo, a Massachusetts sportsmen's organization; Mr. Frank Anderson, Concerned Coastal Sportsmen's Association, and several Massachusetts sportsmen's organizations; Mr. John M. Anderson, National Audubon Society; Mr. Brad Bales, Pacific Flyway Council; Mr. Richard Bishop, Mississippi Flyway Council; Mr. Richard Elden, Michigan Department of Natural Resources; Ms. Susan Hagood, The Humane Society of the United States; Mr. Tom Hauge, Wisconsin Department of Natural Resources; Mr. Roger Holmes, Minnesota Department of Natural Resources; Mr. Lloyd A. Jones, Central Flyway Council and the North Dakota Game and Fish Department; Mr. Wayne Pacelle, The Fund for Animals; Mr. Jim Phillips, a writer residing in Maryland; Mr. Lloyd H. Piasse, Jr. and Mr. Gerald Woodmansee, several Massachusetts sportsmen's organizations. The Service received 259 written comments that specifically addressed late-season issues. These late-season comments are summarized and discussed in the order used in the May 8, 1992, **Federal Register**. Only the numbered items pertaining to late seasons for which comments were received are included.

General

Council Recommendations: The Pacific Flyway Council, Central Flyway Council, and the Upper-Region and Lower-Region Regulations Committees of the Mississippi Flyway Council concurred with the proposed regulations for waterfowl except where otherwise noted below.

Public-Hearing Comments: Mr. Roger Holmes commended the Service for the 1992 regulations overall. Mr. Wayne Pacelle claimed that decisions to allow hunting were not made on a biological basis, but simply to permit killing for sport. Consequently, many animals are crippled and suffer. He expressed his view that hunting seasons are too liberal and that the Service goes out of its way to exploit many populations of birds. He opposed presunrise hunting. Ms. Susan Hagood believed that seasons should open Wednesday at noon to reduce the high harvests typically associated with Saturday openings. Mr. Gerald Woodmansee requested shooting hours of from one-half hour before sunrise to sunset.

Written Comments: Waterfowl hunting regulations were endorsed by 24 individuals and the National Wildlife Federation. The Delta Waterfowl Foundation requested that shooting hours for ducks open at sunrise. The Humane Society requested that shooting hours begin one-half hour after sunrise and that all seasons should open at noon during mid-week. A local organization in Massachusetts requested a continuation of shooting hours from one-half hour before sunrise to sunset, while an individual in Georgia requested that shooting hours end at noon. The Wisconsin Department of Natural Resources requested an extension of the comment period.

Service Response: The Service recognizes the support for the proposed frameworks, including the proposed shooting hours. The Service believes that there is sufficient evidence to demonstrate that, for most seasons, shooting hours beginning at one-half hour before sunrise do not contribute significantly to the harvest of nontarget species or illegal kill. Consistent with the Service's long-term strategy for shooting hours, published in the September 21, 1990, Federal Register (55 FR 38898), the frameworks herein provide for shooting hours of one-half hour before sunrise to sunset, unless otherwise specified.

The long-term objectives of the Service include providing opportunities to harvest portions of certain migratory game bird populations and to limit harvest to levels compatible with each population's ability to maintain itself or recover from depressed levels. Annually, the status of populations are evaluated and the potential impacts of hunting are considered. The Service believes that hunting seasons are consistent with the current status of waterfowl populations and long-term population goals.

The late-season comment period (May 8 - August 31) provided ample time for comment. Constraints to the length of the comment period were discussed in the final early-season frameworks published in the August 21, 1992, Federal Register.

1. Ducks

A. Harvest Strategy

Public-Hearing Comments: Mr. John M. Anderson recommended continued use of conservative bag limits, season lengths, and other frameworks because duck populations remain at severely depressed levels and there was essentially no change in the fall flight forecast. He supported current harvest restrictions on black ducks and redheads. He stated that recruitment for duck populations is the single most important determinant of population levels. Tinkering with annual hunting regulations will result in a minimal amount of recovery of North American duck populations. Full recovery will not occur until wetlands receive adequate protection, the North American Waterfowl Management Plan is fully funded, the U.S. Department of Agriculture's Conservation Reserve Program and Swampbuster Program are renewed, and normal precipitation patterns return to the prairies.

Mr. Jim Phillips discussed what he perceived to be failure in managing waterfowl by the "establishment." He said that nobody cares anymore about either the status or management of ducks. He said that his efforts to analyze banding data had been thwarted by the Service but that he and an associate would soon publish evidence that would contradict certain assumptions regarding harvest and survival rates of ducks.

Written Comments: Five individuals from Minnesota and another from Iowa requested that the Service provide equitable frameworks in the North and the South. Similar feelings were expressed by the majority of comments received from Michigan requesting a bonus bag limit for teal.

Service Response: The Service concurs with the recommendations to continue the restrictive harvest strategies used in recent years. Because most duck populations remain at levels below both long-term averages and the population objectives in the North American Waterfowl Management Plan, the Service believes that restrictive regulations should be continued until a strong recovery is evident. Therefore, the frameworks contained herein do not differ substantially from those in effect during 1991-92.

The Service recognizes the importance of wetland and other habitats to waterfowl populations and encourages all efforts to protect these habitats.

A continuing concern for North American duck populations is demonstrated annually by the activities of over 1 million duck hunters; all State and Territorial conservation agencies; several Federal agencies in the U.S., Canada, and Mexico; various private organizations; and others. The Service has provided the requested information to Mr. Jim Phillips and regrets that he feels that the Service has hampered his efforts.

The Service sets flyway-wide frameworks for regular duck seasons. Differences in opportunity occur due to the distribution of habitat, patterns of migration, weather, and other natural and man-made factors. The Service considers special seasons to be an acceptable harvest-management strategy, if the seasons have been carefully designed, evaluated, and refined. The Service has also concluded that certain populations, or segments of populations, can provide additional harvest opportunities because of their unique biological circumstances, temporal or spatial distributions, and population status. The Service notes that although some special seasons are offered to southern States and not to some northern States, other special seasons (i.e., special Canada goose seasons) are offered to many of these northern States. The Service believes that additional opportunity should be provided only when and where it is appropriate and that the Service is not responsible for providing equity between diverse areas.

B. Framework Dates

Council Recommendations: The Atlantic Flyway Council opposed continuation of restrictive framework dates for regular duck seasons in the Atlantic Flyway. They recommended that framework dates for 1992–93 be October 1 through January 20. The Upper-Region and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended framework dates of the Saturday nearest October 1 through January 20. The Central Flyway Council

recommended floating framework dates of the Saturday nearest October 1 through the Sunday nearest January 20. The Pacific Flyway Council recommended using the Saturday nearest October 1 through the second Sunday in January.

Public-Hearing Comments: Mr. John M. Anderson supported the use of restrictive framework dates when adjustments in season length and bag limits are unable to produce the desired effect in harvest, and a complete season closure is undesirable. However, whenever possible, framework dates should allow equitable harvest opportunity at the northern and southern extremes of the flyways. Mr. Richard Bishop requested that framework dates for duck hunting be set for multiple years. He recommended that framework dates not be used as a regulatory tool in duck harvest management and that framework dates be the Saturday nearest October 1 through January 20. Mr. Roger Holmes opposed the use of framework dates in duck harvest management and requested that framework dates be stabilized at the Saturday nearest October 1 through the Sunday nearest January 20. Harvests should be managed by the use of season length and bag limit only, with other special regulations employed when needed. Mr. Tom Hauge stated that the proposed framework dates for duck seasons are satisfactory, but requested that consideration be given to changing to floating dates of the Saturday nearest October 1 through the Sunday nearest January 20. Mr. Richard Elden requested floating framework opening and closing dates for duck seasons in the Mississippi Flyway. Mr. Lloyd A. Jones indicated that the Central Flyway Council preferred the use of floating dates instead of the proposed fixed dates for framework opening and closing dates.

Written Comments: A U.S. Senator from Mississippi requested a closing date of January 20. A U.S. Congressman from Minnesota suggested that the duck season should begin as early as possible, while another U.S. Congressman from that State suggested that the season should not be delayed beyond October 3 and that the Service should consider other methods of managing the harvest.

The Mississippi Department of Wildlife, Fisheries, and Parks requested that framework dates be set at October 1 through January 20; the Rhode Island Division of Fish and Wildlife requested that framework dates be fixed at October 1 through January 20; the New York Department of Environmental Conservation requested framework dates of October 1 through January 20; the Florida Game and Fresh Water Fish Commission requested that framework dates remain fixed at October 1 through January 20 unless there is a compelling biological reason to change; the Minnesota Department of Natural Resources suggested that the season should begin on the Saturday nearest October 1; the Wisconsin Department of Natural Resources requested the Saturday nearest October 1 through January 20; the Alabama Department of Conservation and Natural Resources requested October 1 through the Sunday nearest January 20; and the Montana Department of Fish, Wildlife, and Parks requested an opening date no later than October 3, citing the increased likelihood that cold temperatures could shorten a delayed season.

The National Wildlife Federation requested that framework dates remain similar to last year's, October 5 through January 5. The Humane Society suggested that framework opening dates should be delayed by 2 weeks in breeding areas.

Requests for more liberal framework dates were also received from the Minnesota and Wisconsin Waterfowl Associations, a local sportsmen's association from Wisconsin, and 30 individuals. One of the individuals requesting an earlier opening date in the North opposed the January 20 closing date believing it is too late. A local organization in Massachusetts suggested that framework dates should be manipulated this year if necessary, rather than shortening the season length.

Service Response: Framework dates for the 1992–93 regular duck season are October 1 and January 20. Harvest from this season will be monitored to better understand the effects of liberalizing framework dates while maintaining restrictions on bag limits and season lengths. Regarding fixed versus floating dates, a State may choose to delay its opening date to correspond with a particular day of the week or to close earlier to maximize the number of weekends that hunting is allowed.

C. Season Lengths

Council Recommendations: The Atlantic Flyway Council, the Central Flyway Council, and the Upper-Region and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended no change in season length.

The Pacific Flyway Council recommended extending the season length from 59 to 60 days to accommodate States with split seasons that traditionally have opened seasons on Saturdays and closed on Sundays.

Public-Hearing Comments: Mr. Frank Anderson, Mr. Lloyd H. Piasse, Jr., and Mr. Gerald Woodmansee each requested a 35-day duck season.

Written Comments: The Florida Game and Fresh Water Fish Commission endorsed the 30-day season. An individual in New York requested a 33-day season for ducks, a local organization in Massachusetts requested a 35-day season, and 5 individuals from Massachusetts requested a 40-day season.

The Wisconsin Waterfowl Association endorsed the 30-day duck season; an individual in Michigan stated that he was frustrated with the shorter, 30-day seasons; an individual in Illinois requested a 35-day season; and one individual in Minnesota requested a 40-day season while another suggested shortening the season length in the southern portions of the U.S.

An individual in Nebraska expressed displeasure with the 51-day season and requested a 72-day season. Two individuals from Texas requested a 55-day season.

Service Response: The Service believes that longer seasons are not warranted in any flyway during 1992–93, because many duck populations remain below long-term averages. The Service concurs with recommendations for no change in season length and denies the Pacific Flyway Council's request for an increase in season length from 59 to 60 days to allow seasons to open on a Saturday and close on a Sunday. The Service notes that the additional day would allow Saturday openings and Sunday closings only in zones with two-way split seasons. In those zones having either continuous or 3-way split seasons there would still be mid-week openings or closures. Thus, the final frameworks provide for season lengths which remain unchanged from those of 1991–92.

D. Closed Season

Public-Hearing Comments: Ms. Susan Hagood was opposed to duck hunting. Mr. Wayne Pacelle called for a closed season on black ducks, in order to allow populations to recover to their former status. Mr. Jim Phillips suggested that the Service close the season on all ducks for 2 years and, after population recovery, resuming hunting seasons with the annual harvest per hunter being limited through a tag system.

Written Comments: The Humane Society requested closed seasons for mallards, black ducks, pintails, redheads, and canvasback. Two duck hunters from California indicated that

they would not be opposed to closing the waterfowl seasons for a few years in order to restore healthy waterfowl populations.

Service Response: The option of closing the duck season was considered at several points in the regulations-development process. One of the regulatory options in the Environmental Assessment, "Waterfowl Hunting Regulations for 1992," was a closed season on all duck hunting.

Due to any compensatory mortality that might occur and the extremely small proportion of the total mortality that occurred from hunting in 1991 and will likely occur from hunting in 1992, it is unlikely that further reductions in the harvest would measurably improve survival or lead to increased duck populations.

One of the Service's goals is to establish regulations that protect the breeding stock and yet provide recreational hunting opportunity to the hunting community, whose support for habitat conservation and other management efforts benefits a wide variety of wildlife species. A closed season would eliminate most of this support and significantly diminish cooperative management efforts. The Service will continue the restrictive regulations of recent years and believes that hunting seasons are consistent with the current status of waterfowl populations and long-term population goals. As further protection, the Service may institute specific closures if needed.

E. Bag Limits

Council Recommendations: The Atlantic Flyway Council recommended a 3-duck daily bag limit.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that States not offered a September teal season be offered a bag limit that includes a provision for 2 additional teal during the first 9 days of the regular duck season.

The Central Flyway Council recommended that the regular duck bag limit be increased from 3 to 4, that the mottled duck bag limit be increased from 1 to 3 in Texas, and that the bag limit for mallard drakes be increased from 2 to 3. The Council further recommended that a 25-point category be established in the point system for gadwall, green-winged teal, blue-winged teal, and northern shovelers.

The Pacific Flyway Council recommended no change in bag limits.

Public-Hearing Comments: Mr. Lloyd A. Jones requested that the bag limit for the Central Flyway be expanded to include an additional drake mallard. He cited data that indicated surplus drakes in the mallard population, differences in harvest between the Mississippi and Central Flyways, and disproportionate harvest restrictions for the Central Flyway since 1988.

Mr. John M. Anderson believed that the Central Flyway's request for an extra drake mallard appears unwarranted at this time. However, if mallard spring sex ratios highly favor males and if an additional drake mallard does not lead to increased hen mortality or increased mortality of other species, it could be justified.

Mr. Richard Bishop recommended that those States not eligible for a September teal season be allowed a 5-bird bag limit (2 of which must be teal) during the first 9 days of the regular duck season. Mr. Richard Elden and Mr. Tom Hauge also requested reinstatement of the teal bonus.

Written Comments: The Florida Game and Fresh Water Fish Commission and the Wisconsin Waterfowl Association endorsed the current 3-duck limit. Individuals from New York, Illinois, and Minnesota also supported the current bag limits. An individual in Michigan and another from Nebraska requested a larger bag limit. An individual in Montana requested a more liberal bag limit for the Central-Flyway portion of that State. The Governor of Wyoming, the Colorado Division of Wildlife, the Oklahoma Department of Wildlife Conservation, and an individual in Colorado requested that the daily bag limit be expanded to include an additional drake mallard in the Central Flyway. An individual in South Carolina requested a bag limit of 3 for wood ducks.

The Service received 132 comments regarding opportunity to harvest teal. The majority of these comments came from individuals in Michigan who were very concerned about the equity in regulations between the northern and southern States. Although many of these comments addressed the special season for which the comment period has been closed, these comments are included because they pertain to this late-season issue as well.

The Michigan Department of Natural Resources supported the recommendation of the Mississippi Flyway Council that production States, which are not being offered the September teal season, be permitted 2 extra teal in the bag limit during the first 9 days of the regular duck season. They also supported use of the September teal season in nonproduction States to obtain additional recreational benefits from the resource. They stated that it is important, however, that the 2 extra teal in the bag limit be permitted in production States to provide equitable opportunity for hunters.

The Wisconsin Department of Natural Resources remains concerned about reestablishment of the special teal seasons. Among their other concerns is the inequity of hunting opportunity between production and nonproduction States. They requested equality for the production States and asked that the Service consider making the special season part of the regular-season days. If not, they suggest offering production States additional days or 2 bonus teal for the first 9 days of the season.

The Wisconsin Waterfowl Association was also concerned about the inequity that would be perceived if production States were not offered a special teal season and asked that the Service consider the consequences of that action. The Michigan Duck Hunters Association, the Michigan United Conservation Clubs, the Drummond Island Chamber of Commerce, six local organizations from Michigan and one from Wisconsin, and 70 individuals requested 2 additional teal in the bag for the first 9 days of the season. One individual stated that if early teal seasons could not be offered, perhaps 2 extra teal could be allowed during the regular season.

The Izaak Walton League requested that the Service reconsider the bonus bag limit, but suggested that hunters are more informed today then when the experimental teal seasons were conducted in Michigan. Those experiments indicated that hunters could not distinguish teal from other species in production States.

Ten individuals requested special September seasons for production States. One of these commented that southern States received special seasons and bonus limits and suggested that restricting harvest in southern States made more sense than in northern States. Another of these individuals requested that the special September teal season could be held concurrently with the special September Canada goose season.

One individual supported the State of Wisconsin's position that production States should be given 9 more days of duck hunting or 9 days should be subtracted from seasons in nonproduction States. Another individual suggested that the Service offer all States without special seasons some opportunity equal to those States currently allowed a special season. Two individuals opposed special seasons suggesting that bonus bag limits should be used flyway-wide. One of these suggested allowing the bonus during the

entire regular season or allowing 2–4 bonus birds during the first 9 days. He also cited that southern States already harvest more teal than northern States.

Four individuals objected that Michigan is offered neither option. The use of bonus bag limits during a September season was requested by 15 individuals, while another individual wanted 2 bonus teal during the month of September because he believes teal are not being controlled adequately with present regulations. Four individuals requested both special seasons and bonus bag limits. Another individual requested that the current teal limits be increased from 2 to 4 per day during the regular season and that a special season be offered as well.

Two individuals expressed concern that the Service was withholding all opportunity to harvest teal in northern States. One individual believes bonus limits are offered to all other States except Michigan. One individual believes other States are offered both bonus limits and special seasons. Two individuals believed southern States received bonus bag limits and opposed this practice. An individual in Michigan opposed the use of bonus bag limits in the northern U.S. An individual in New York requested reinstatement of the bonus teal limits in that State.

The Wildlife Management Institute said that one of the problems with special seasons such as those for wood duck or blue-winged teal is that they will never be available to all States. If they are to work effectively and be defendable, "bonus birds" should not be added during other portions of the season.

A local organization and two individuals from Texas requested continuation of the point system, but with revised point values that would allow additional harvest on species which are abundant.

Service Response: The Service believes that because of the currently low population and recruitment levels of mallards and other prairie-nesting duck species, significant changes in bag limits that would increase harvests are not warranted at this time. Because the 1992 fall-flight index is similar to the 1991 index, the Service believes that continuation of the same bag limits as those in 1991 is appropriate.

With respect to the Central Flyway Council's recommendation to allow an additional drake mallard in the conventional and point-system bag limits, the Service believes that such an increase throughout the Flyway is not warranted. However, the Service will allow such an increase in the High Plains Mallard Management Unit this year, provided that the Central Flyway Council completes the requested review of the High Plains Mallard Management Unit for use during the 1993 regulations-development cycle. The Service believes that this report will provide an opportunity to cooperatively examine the recent biological information necessary to assess historical intra-flyway, bag-limit differences for drake mallards.

With respect to the Central Flyway Council's recommendation to increase the mottled duck limit from 1 to 3 in Texas, the Service believes that a cooperative harvest strategy should be developed for the Gulf Coast population shared by Texas and Louisiana. In the coming year, the Service proposes to work with these States to consider available biological information and cooperatively develop a harvest strategy for this population. For the 1992 seasons, the Service recommends no changes from the 1991 seasons.

Regarding wood ducks, because they do not lend themselves to be easily surveyed, the Service believes that it is prudent to maintain the restriction of 2 wood ducks per day until population monitoring and banding data can be used to demonstrate the effects of adding an additional bird in the daily bag limit.

With regard to requests for bonus teal, the Service published its strategy regarding bonus bag limits in the September 21, 1990, **Federal Register**. That strategy stated that the use of bonus bag limits would be discontinued. Bonus limits have not been adequately evaluated, offer limited potential for adequate evaluation, and can increase harvest of all species, not just the "bonus" species.

The Service notes that the current regular-season bag limit may include 3 teal. The Service further notes that even when bonus teal limits were used, States were not offered both special teal seasons and bonus teal limits. These options were mutually exclusive.

The Service considers special seasons to be an acceptable harvest-management strategy, if the seasons have been carefully designed, evaluated, and refined. The Service has also concluded that certain populations, or segments of populations, can provide additional harvest opportunities because of their unique biological circumstances, temporal or spatial distributions, and population status. Evaluations of experimental seasons conducted in the 1960's indicated that the proportion of non-target duck species shot during September teal seasons in production States was excessive. The Service notes that although some special seasons (i.e., special teal seasons) are offered to southern States and not to some northern States, other special seasons (i.e., special Canada goose seasons) are offered to many of these northern States. The Service believes that additional opportunity should be provided only when and where it is appropriate and that the Service is not responsible for providing equity between diverse areas.

In the same document, the Service published a strategy for the use of the point system. That strategy stated that the point system would be continued as an optional bag-limit system; however, it must be at least as restrictive as the conventional bag-limit system in terms of total bag and species/sex restrictions. Use of the point system may allow States to direct additional protection to high-point birds beyond that afforded by species restrictions under the conventional bag-limit system.

F. Zones and Splits

Council Recommendations: The Pacific Flyway Council recommended that the Southern San Joaquin Valley Zone in California, established on an emergency basis in 1991 due to drought, be retained during the 1992–93 season.

Public-Hearing Comments: Ms. Susan Hagood thought that splits, zones, and other regulatory options that encourage hunting should not be used. Mr. Wayne Pacelle also opposed duck zones. Mr. Gerald Woodmansee urged retention of three duck zones in Massachusetts.

Written Comments: The Humane Society indicated that the Service should discontinue split seasons or, as an alternative, establish a 10-day penalty for use of split seasons. An individual in New Jersey requested that split seasons be discontinued in that State. A local organization in Massachusetts requested that the zoning concept should be continued as currently established. An individual in Pennsylvania opposed the use of zones.

The California Department of Fish and Game, the California Waterfowlers Association, two local organizations, and seven individuals from California requested continuation of the emergency zone for the southern San Joaquin Valley.

Service Response: The Service remains committed to its strategy on use of zones and splits published in the September 21, 1990, **Federal Register**. All States may consider zone changes, consistent with the Service criteria, during the next "open season" in 1996.

A temporary exception to the duck-zoning criteria was allowed last year in the southern San Joaquin Valley of

California. This exception was granted based on severe drought conditions that prevailed in this area. Because the drought has not abated and California has complied with the conditions listed in the September 26, 1991, **Federal Register** (at 56 FR 49107), the Service will allow this temporary exception to the duck-zoning criteria to continue during the 1992–93 season only. However, the Service notes that much of the water used for wetland management in this area is derived by pumping groundwater, and not from surface sources. Groundwater is costly to pump but is not in short supply. This exception does allow seasons to coincide with times that are more economical for flooding fields. In the September 26, 1991, document, the Service indicated its hope that the increase in pumping efficiency would be translated into more habitat that would be available for a longer time period. The temporary zone for duck hunting will be continued during the 1992–93 season subject to the following conditions:

1. The temporary zone would be justified solely in recognition of the severe drought that has markedly reduced the availability of fall and winter wetland habitat for waterfowl in this portion of California.

2. The temporary zone would be established for the 1992–93 season only.

3. The State would be responsible for demonstrating that more habitat became available for a longer period of time as a result of this temporary zone.

4. The State would estimate hunter activity and harvest in the temporary zone and report these results to the Service by July 1, 1993.

G. Special/Species Management

i. Canvasback Harvest Management

Council Recommendations: In March, the Atlantic Flyway Council recommended that the Service develop an interim strategy for canvasback harvest to be used until the establishment of stabilized-regulations guidelines. This interim strategy should be based on current biological data, including information that indicates the east/west delineation of the canvasback population is no longer warranted. The Council stated that this interim strategy should be equitable among the four flyways.

In August, the Atlantic Flyway Council recommended that the Atlantic Flyway be allowed to initiate a season on canvasbacks when the continental breeding population index exceeds 450,000 (3-year running average) and the breeding habitat in the prairie-pothole portion of the U.S. and Canada exceeds 3 million ponds. They further recommended that this season continue until the revised breeding population index falls below 400,000 (3-year running average). In the Atlantic Flyway, regulations under a limited season would allow one canvasback daily under the conventional bag-limit system. The Council also recommended that all four flyways be given the opportunity to open a season on canvasbacks during the 1992–93 season.

In August, the Upper-Region and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended no change for canvasbacks during the 1992–93 season.

In March, the Central Flyway Council recommended that a season be initiated when the continental breeding population index exceeds 450,000 (3-year average) and the pond index exceeds 3 million. This season would continue until the continental breeding population index falls below 400,000 (3-year average). The Council stated that banding data indicated that the canvasback population is not comprised of two distinct subpopulations and that all flyways should be given an opportunity to conduct a season. The Council recommended that this interim strategy should be used until stabilized regulations become operational.

In August, the Central Flyway Council recommended that a canvasback season for drakes be offered and that the season on female canvasback should remain closed.

In March, the Pacific Flyway Council recommended that the Service continue to manage canvasback by subunits. They strongly believe that management actions are most effective when they recognize biological differences among and within populations. Although western and eastern canvasback populations are not completely distinct, biological differences do exist that should be recognized in management design. The Council recommended that the quality of the midwinter survey be improved with respect to canvasbacks in the western U.S., that the aggregate canvasback/redhead bag limit should be maintained, that the Service evaluate the cost of trapping and banding required to better determine distribution and derivation of canvasback harvests, and that harvest strategies be developed that distinguish between western and eastern populations, but remain sensitive to population overlap.

In August, the Pacific Flyway Council recommended continuation of a 2-duck aggregate bag limit of canvasbacks and redheads for their flyway.

Public-Hearing Comments: Mr. John M. Anderson supported the season closure on canvasbacks in three flyways. If the Service, after further review, determines that the species should be managed as a single unit and not as discrete eastern and western subpopulations, then equitable harvest opportunity should be provided across all four flyways.

Written Comments: The National Wildlife Federation and the Delta Waterfowl Foundation suggested continuation of restrictive frameworks for canvasback. The New York Department of Environmental Conservation requested that the Service develop a new harvest-management strategy for canvasbacks, based on continental population levels, to be implemented in 1993. They suggested that canvasback hunting be a part of the regular duck-season framework and that it be limited, such as a daily bag limit of 1 canvasback. The Humane Society preferred a closed season for canvasback.

Service Response: The Service acknowledges input from the Flyway Councils on criteria for canvasback seasons and, consequently, has begun to consider revisions to the management of canvasback harvest. However, the Service believes that additional study is needed to identify an appropriate harvest strategy before considering nationwide open seasons, because of the canvasback's need for protection when populations reach low levels. The Service intends to prepare a review of canvasback biology and management and make the review available to the Flyway Councils during their 1993 winter meetings. Until the Service and Flyway Councils can resolve this issue, existing criteria stated in the 1983 environmental assessment on canvasback hunting, including eastern and western population thresholds, will be used to develop harvest regulations for canvasbacks. Proposals for seasons during 1992–93 in the Atlantic and Central Flyways do not meet the existing guidelines.

ii. Pintail Harvest Management

Council Recommendations: In March, the Central Flyway Council recommended that the Service maintain the current harvest regulations unless a significant decline occurs in the breeding population index. If such a decline should occur, coordination should be initiated between the Service and the flyways to develop options for conservation of the pintail. The Council recognized the low population status of the pintail but indicated that sport harvest was not the cause of the decline, there is no biological justification for

closing the pintail season, and a closed season for pintails would complicate regulations and hamper habitat-management efforts.

In March, the Pacific Flyway Council recommended that harvest-management options short of season closures should be pursued. Total season closure seems inappropriate because of the lack of evidence that population levels have been or are now being affected by harvest. Closure also may negatively impact support for ongoing habitat-enhancement efforts.

In August, all Flyway Councils recommended that there be no change in regulations for pintails during the 1992–93 seasons.

Public-Hearing Comments: Mr. John M. Anderson supported current harvest restrictions on pintails. Ms. Susan Hagood supported a closed season on pintails and on all other ducks in areas where pintails are present and thus could be incidentally taken. Mr. Wayne Pacelle accused the Service of subverting the potential listing of the pintail as a candidate species under the Endangered Species Act because this might impact the hunting of other migratory game birds.

Written Comments: The Delta Waterfowl Foundation requested a closure of the pintail season with the exception of the State of California. The Humane Society requested a closed season for pintails and for all ducks in those areas where pintails concentrate. An individual in Michigan urged the Service to take serious action in light of the low population status of pintails.

The Wildlife Management Institute indicated that the status of pintails continues to be a reflection of major habitat changes, and there are no indications that hunting and harvest have any significant role under current conditions. The National Wildlife Federation supported restrictive frameworks for pintails. They also emphasized the importance of protecting the Nation's wetland resources.

Service Response: The Service concurs with recommendations for no changes in hunting regulations for pintails in the 1992–93 season. The Service recognizes that pintail numbers have been declining for most of the last two decades and that this population is at near-record-low levels. However, low recruitment rates likely have been the major factor contributing to this population decline. The number of duck broods (all species) have declined since surveys began in southern Alberta and since 1970 in southern Saskatchewan, historically the two survey areas with the highest densities of breeding pintails. These declines have continued regardless of pond counts in May, suggesting that agricultural practices, predators, and/or other factors are responsible. Banding information suggests that hunting is not limiting the recovery of the pintail population. Current harvest rates are less than 3% and current estimates of annual survival rates range from 60 to 81%, depending on area and age/sex class.

iii. Other Species/Special Seasons

Council Recommendations: The Pacific Flyway Council requested that the Service provide harvest-management guidelines for the 1993–94 season that would allow additional harvest opportunity on duck species that are near or above historic high levels (e.g., gadwall, shoveler, and green-winged teal).

Public-Hearing Comments: Mr. Frank Anderson requested that the Service evaluate the potential for a special scaup season. Mr. Gerald Woodmansee requested a special scaup season in Massachusetts.

Written Comments: The Humane Society opposed special seasons. A local organization in Massachusetts requested a special scaup season.

Service Response: With regard to the Pacific Flyway Council's request for harvest-management guidelines, the Service notes that strategies for use of bonus bag limits, special seasons, and the point system were summarized in the September 21, 1990, **Federal Register**. The Service would be willing to consider new approaches to harvest management but believes that any proposal for major changes in harvest management should be addressed as part of the development of stabilized regulations.

In the same document, the Service stated that special scaup seasons could not be evaluated with existing data. Any evaluation of these seasons should consider, among other factors, the species composition of the harvest. Until data-gathering abilities increase, an adequate evaluation plan is developed, and the status of target species improve, the season will remain suspended.

3. Mergansers

Council Recommendations: The Atlantic and Central Flyway Councils and both regulations committees of the Mississippi Flyway Council recommended that there be no change in regulations for mergansers during the 1992–93 season.

Public-Hearing Comments: Mr. Wayne Pacelle indicated that mergansers should not be hunted because he doubted that these species are consumed by hunters. Mr. Gerald Woodmansee urged changes in the Migratory Bird Treaty to allow the taking of mergansers, in part because of their impact on fisheries.

Written Comments: Many written comments addressing the length of duck seasons apply to mergansers because the seasons are concurrent.

Service Response: The Service is not aware of any documented problems with mergansers adversely impacting fisheries. If such problems exist, the problem areas should be delineated and the extent of the impacts determined before any corrective actions are considered. The Service doubts that liberalizing hunting regulations is likely to be a proper or effective means of addressing localized depredations on fisheries.

4. Canada Geese

Council Recommendations: In March, the Lower-Region Regulations Committee of the Mississippi Flyway Council recommended that the Service closely monitor existing regular and special seasons for the impacts on the Southern James Bay Population (SJBP) of Canada geese. They further recommend that the Service fully analyze data from existing seasons before expanding seasons that might cause excessive cumulative harvest on this population of geese. They emphasized that special seasons should adhere to the criteria established by the Service.

Service Response: The Service regularly monitors hunting seasons and analyzes data gathered during these seasons to assess impacts on SJBP Canada geese. All special Canada goose seasons are required to meet established criteria.

A. Special Seasons

Council Recommendations: As mentioned above, the Lower-Region Regulations Committee of the Mississippi Flyway Council emphasized that special seasons should adhere to the criteria established by the Service.

Written Comments: The Illinois Department of Conservation suggested that existing regulations do not fairly or adequately address the issue of impacts of special Canada goose seasons on nontarget populations exceeding population objectives. The North American Wildlife Foundation suggested that States experiencing nuisance goose problems, such as Illinois, should not be required to meet criteria for nonmigrant composition of the harvest. The Wisconsin Department of Natural Resources remained concerned about the special-season criteria and believe that some

modifications are appropriate. The Minnesota Department of Natural Resources requested that the Service provide assistance to States experiencing increasing problems with breeding Canada goose flocks. They noted that the Service obtains harvest and hunter-activity information for September teal seasons, yet States are required to obtain this information for seasons designed to control nuisance Canada geese.

Service Response: The Service regularly monitors hunting seasons and analyzes data gathered during these seasons to assess impacts on all Canada goose populations. All special Canada goose seasons are required to meet the established criteria.

The Service believes that goose harvests should be managed with existing regular-season mechanisms whenever possible; thus, in situations where harvests of both migrant and resident Canada geese can be increased, this should be accomplished by adjustments in regular seasons rather than using special seasons.

Presently, the only source of harvest and hunter-activity information for special Canada goose seasons is through data-gathering programs established by the States for these seasons. While it is true that estimates for September teal seasons are obtained through the existing Federal harvest survey, this survey cannot provide reliable data on the small scale required for the special Canada goose seasons. The Service hopes that the new Harvest Information Program will assist the States in conducting these monitoring programs. In the interim, however, the Service believes that the harvest and hunter-activity information should continue to be gathered by those States having the special seasons.

The Service is concerned about the protection of nontarget Canada goose populations during special seasons, and continues to believe that most Canada goose harvest-management objectives can be addressed through the regular Canada goose hunting-season frameworks in accordance with flyway management plans. However, the Service recognizes the need for special seasons in certain circumstances to control local breeding and/or nuisance populations of Canada geese. As indicated in the June 19, 1992, **Federal Register**, the Service became aware of the need to modify the special-season criteria previously published in the September 26, 1991, **Federal Register** (56 FR 49104). The modified guidelines are as follows:

Criteria for Special Canada Goose Seasons

1. States may hold special Canada goose seasons, in addition to their regular seasons, for the purpose of controlling local breeding populations or nuisance geese. These seasons are to be directed only at Canada goose populations that nest primarily in the conterminous United States and must target a specific population of Canada geese. The harvest of nontarget Canada geese must not exceed 10 percent of the special-season harvest during early seasons or 20 percent during late seasons. More restrictive proportions may apply in instances where a nontarget Canada goose population of special concern is involved.

2. Early seasons must be held prior to the regular season. In the Atlantic and Mississippi Flyways, where seasons are focused primarily on local breeding populations of giant Canada geese, seasons may not exceed 10 consecutive days and will generally be held between September 1 and September 10. In the Central and Pacific Flyways, seasons may not exceed 30 consecutive days, generally between September 1 and September 30, and must be directed at local breeding populations or nuisance situations that cannot be addressed through the regular-season frameworks.

3. Late seasons must be held after the regular season but no later than February 15.

4. The daily bag and possession limits may be no more than 5 and 10 Canada geese, respectively.

5. The area(s) open to hunting will be described in State regulations.

6. All seasons will be conducted under a specific Memorandum of Agreement. Provisions for discontinuing, extending, or modifying the season will be included in the Agreement.

7. Initially, all seasons will be considered experimental. The evaluation required of the State will be incorporated into the Memorandum of Agreement and will include at least the following:

A. Conduct neck-collar observations (where appropriate) and population surveys beginning at least 1 year prior to the requested season and continuing during the experiment. For early seasons to be held after September 10, data-gathering must begin at least 2 years prior to the requested season.

B. Determine derivation of neck-collar codes and/or leg-band recoveries from observations and harvested geese.

C. Collect morphological information from harvested geese, where appropriate, to ascertain probable source population(s) of the harvest.

D. Analyze relevant band-recovery data.

E. Estimate hunter activity and harvest.

F. Prepare annual and final reports of the experiment.

8. If the results of the evaluation warrant continuation of the season beyond the experimental period, the State will continue to estimate hunter activity and harvest and report these to the Service annually for all years the season is offered.

9. The season will be subject to periodic re-evaluations when circumstances or special situations warrant.

For early seasons held after September 10, the Service emphasizes that data gathered prior to and during the experiment must strongly indicate that the season will successfully meet all established criteria for special early Canada goose seasons.

i. Early Seasons

Comments and Service responses were included in the final early-season frameworks published in the **Federal Register** on August 21, 1992.

ii. Late Seasons

Council Recommendations: The Atlantic Flyway Council recommended that the closing date for Connecticut's late resident Canada goose season in the South Zone be extended to February 14. They also recommended that Georgia be permitted to conduct an experimental late resident Canada goose season in the northern and southwestern portions of the State during the 1993–1995 seasons, and that Pennsylvania be permitted to initiate an experimental late resident Canada goose season between January 20 and February 5 along portions of the Susquehanna and Juniata Rivers during the 1993–95 seasons.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the late seasons in the Twin Cities Metropolitan Goose Zone and Olmsted County could be discontinued if the regular seasons in these areas were extended by 10 days. The Committee further recommended that the special late season in the Southern Michigan Goose Management Unit begin as early as January 2.

Written Comments: The South Carolina Wildlife and Marine Resources Department requested that the bag limit during their special late Canada goose season be increased from 1 per season to 1 per day. The Wisconsin Department of Natural Resources requested permission to continue the special late season in the Brown County Subzone on an experimental basis, with the monitoring required by the special-season criteria to begin prior to the

1993–94 hunting season. They did not request continuation of the special late season in the Rock Prairie Subzone. A local organization in Massachusetts requested continuation of the late seasons in that State.

Service Response: The frameworks contained in this document provide for a daily bag limit of 1 Canada goose during the special season in South Carolina, the extended closing date for the special season in Connecticut, an expansion of the open areas for the special season in Georgia, initiation of a new special season in Pennsylvania, continuation of the special season in Massachusetts, and discontinuation of the late special seasons in the Twin Cities Metropolitan Goose Zone and Olmsted County of Minnesota and the Rock Prairie Subzone of Wisconsin. The Service will allow Wisconsin to continue the experimental late season in Brown County during the 1992–93 season provided that the State initiates the monitoring program required by the special-season criteria prior to the 1993–94 hunting season.

The Service believes that Michigan's late season should begin later than January 2. Available information suggests that where migrant and resident Canada goose populations are mixed in northern regions, late special seasons should be held as late as possible to help ensure that special-season harvests do not exceed the special-season criteria regarding proportion of migrants in the harvest. The frameworks provide for the late season in Michigan to begin no earlier than January 9.

B. Regular Seasons

Council Recommendations: The Atlantic Flyway Council recommended that the harvest of Atlantic Population Canada geese be reduced by 60 percent from 1985–87 levels to allow recovery of this population. The strategy to accomplish this reduction, which would begin in 1992 and continue for a minimum of 3 years, would be as follows:

In the Southern Region, the hunting of migrant geese would be suspended in North and South Carolina, Georgia, Florida, and the Back Bay area of Virginia whenever the estimate for this population falls below 30,000 geese. A limited harvest consistent with continued population growth would be considered when the population ranges between 30,000 and 60,000 birds.

In the Chesapeake Region (Maryland, Delaware, and most of Virginia), the Canada goose hunting season would be 60 days between November 16 and January 20. The bag limit would be 1 goose per day for at least the first 20 days, and no more than 2 geese per day thereafter.

In the Mid-Atlantic Region (New Jersey and the southern portions of New York and Pennsylvania), the Canada goose hunting season would be 70 days between October 15 and January 31, no more than 15 days of which could occur before November 16. The bag limit would be no more than 1 goose per day prior to November 16, 2 geese per day prior to January 1, and 3 geese per day from January 1 thereafter. Further, the bag limit would be no more than 1 goose per day for the first 8 days of the goose season, regardless of when the opening date occurs.

In the New England Region (including northern portions of New York and Pennsylvania), the season would be 70 days between October 1 and January 31. The bag limit would be no more than 1 goose per day prior to October 16, no more than 2 geese per day prior to January 1, and no more than 3 geese per day from January 1 thereafter. Further, the bag limit would be no more than 1 goose per day for the first 8 days of the goose season, regardless of when the opening date occurs.

In the Pennsylvania Counties of Erie, Mercer, and Butler, the season would be 70 days between October 1 and January 31. The bag limit would be no more than 1 goose per day prior to October 16, and 2 geese per day thereafter. Except that the bag limit would be no more than 1 goose per day for the first 8 days of the season, regardless of when the opening date occurs. In Crawford County, the season would be 70 days with a daily bag limit of 1 goose.

In March, the Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the Service establish a 3-year experimental season in Boone, Callaway, Cole, and Howard Counties of central Missouri. This season would be 9–15 days long and would be held prior to October 15. The daily bag limit would be 3 geese. All geese harvested would be checked at mandatory check stations and a special permit would be required for hunters to participate. The recommended season would be in addition to the regular Canada goose season.

The Committee also recommended that the Canada goose frameworks in Wisconsin be modified as follows: (1) eliminate the Pine Island and Theresa Zones and incorporate these areas into the Horicon Zone; (2) establish permit-issuance procedures for times when Wisconsin's Federally-assigned harvest quota for Canada geese exceeds 160,000; and (3) liberalize hunting authorizations for times when Wisconsin's harvest quota exceeds 200,000. When Wisconsin's quota exceeds 160,000 birds, tag-zone hunters will be authorized to harvest a limited number of birds (controlled by tags) in the Exterior Zone, and Exterior-Zone hunters will be allowed to harvest a limited number of birds (controlled by tags) in the Horicon Zone. When Wisconsin's quota exceeds 200,000 birds, all zone restrictions will be dropped and hunters will be permitted to hunt anywhere in the State if they first obtain a Canada goose hunting permit, as long as an acceptable harvest-monitoring system is in place.

In August, the Committee recommended that the framework opening date for all geese should be changed from the Saturday nearest October 1 to a fixed date of September 26, and that the restriction for Canada geese in the daily bag limit be changed from 3 to 2. They also recommended a number of changes in season length, bag limits, and/or harvest quotas in areas used by Mississippi Valley Population (MVP) Canada geese.

The Committee also recommended extending the season in 9 northeastern counties of Illinois by 9 days and by 10 days in those portions of the Southeast Goose Zone of Minnesota within the Twin Cities Metropolitan Zone and Olmsted County. The Committee recommended that management zones in Ohio be modified to better focus restrictions needed for SJBP Canada geese.

The Lower-Region Regulations Committee recommended that a new zone be created in northwest Arkansas, and that a 14-day season be offered. The Committee also recommended several restrictions in season length, bag limits, and/or harvest quotas in Kentucky, Tennessee, and portions of Mississippi in anticipation of low production and reduced fall flights of MVP Canada geese this year.

In March, the Central Flyway Council recommended that an interim harvest strategy be developed for dark geese in the Central Flyway. This strategy should endorse attempts to increase harvest of all dark geese in the Western Tier, and increase harvest on large Canada geese while maintaining harvest of small Canada geese and white-fronted geese in the Eastern Tier. During the interim period, management plans will be revised.

In August, the Central Flyway Council recommended that North Dakota's date for changing bag limits from 1 to 2 should be changed from a fixed date of October 19 to a floating date of the Saturday nearest October 20.

The Pacific Flyway Council recommended that in Idaho the Salmon River Valley no longer be the boundary between two areas, but that it be added to the Southeastern Area. They also recommended that in California the District 22 Canada goose harvest zone in the Southern Zone be eliminated, thereby allowing identical seasons and limits throughout the Southern Zone.

The Pacific Flyway Council also recommended adjustments to season length and bag limits in five Oregon counties. In Lake, Klamath, and Harney Counties; the season length would be increased from 93 days to 100 days, bag and possession limits for dark and white geese would be separate, and the daily bag limit for dark geese would be increased from 3 (including 3 white-fronted geese) to 4 (including no more than 2 white-fronted geese). In Baker County, the daily bag limit would be increased from 2 to 3 geese and the closing date would be extended from the first Sunday in January to the Sunday closest to January 20. In Malheur County, the bag limit would be increased from 2 to 3 Canada geese during that portion of the season preceding November 16. The daily bag limit would be 2 Canada geese beginning November 16.

Public-Hearing Comments: Mr. Richard Elden requested, on behalf of the MVP Canada Goose Committee and the Upper-Region Regulations Committee of the Mississippi Flyway Council, that the framework opening date for goose seasons be September 26. He commended the Service for working with Michigan during the past year on Canada goose management problems in the State. Mr. Tom Hauge requested that the framework opening date for geese in all harvest areas for MVP Canada geese be in September.

Mr. Lloyd H. Piasse, Jr. and Mr. Gerald Woodmansee requested a 70-day, 3-bird goose season for Massachusetts. Mr. Lloyd Jones complimented the Service for accepting goose-season recommendations from the Central Flyway.

Written Comments: The Maryland Department of Natural Resources requested that the framework closing date be extended from January 20 to January 22 to accommodate their desire to split the season during their State's deer firearm season. A local organization in Massachusetts requested that their State be able to maintain a 70-day season with the same limits as last year. An individual in Delaware supported the restrictions on Canada geese in the Atlantic Flyway.

The Michigan Department of Natural Resources corrected an error in the Mississippi Flyway Council's recommendation which contained a 50-day season with 1 Canada goose per day for the Muskegon Wastewater Goose Management Unit. They indicated that the recommendation should have specified a 52-day season with 2 Canada geese per day. The Wisconsin Department of Natural Resources requested an opening framework date for all goose seasons of September 20. An individual in Minnesota requested that goose seasons open a week earlier than duck seasons, while another individual in Minnesota requested that a northern zone for geese be established with seasons that open earlier in September to allow greater harvest of migrant geese.

An individual in Nebraska requested a 90-day, 2-bird season for dark geese. An individual in California requested that the bag limit be expanded to include 3 Canada geese per day.

Service Response: The Service concurs with most of the Flyway Councils' recommendations for changes in zones, seasons, and limits on geese. In addition, the Service applauds the Atlantic Flyway Council's efforts to reduce Canada goose harvest.

The Service does not concur with the recommendation to endorse conditional modifications to Canada goose frameworks for Wisconsin. Regulations for Canada geese are developed annually based on current information about the status and trends of the various management populations in the respective flyways. Since the appropriateness of the proposed modifications, even in the situations described, cannot be predicted in advance, the Service will continue to consider framework proposals for Canada goose seasons on an annual basis.

The Service does not concur with requests for a September 26 framework opening date for all geese in the Mississippi Flyway. The two recent exceptions that allowed earlier opening dates for geese in portions of the Mississippi Flyway (Wisconsin and the northern zone of Michigan) are being continued this year. However, the Service views the request to establish earlier framework opening dates for all geese throughout the Flyway as having the potential to adversely impact some goose populations by increasing harvest on all or portions of specific populations. Evidence from the Atlantic Flyway has suggested that Canada geese wintering in southern areas of the Flyway are subjected to significant harvest in northern States, and the Atlantic-Flyway States have taken steps to reduce early-season harvests as a means of providing additional protection for those Canada geese that retain migratory traditions to winter in the more southerly portions of the Flyway. The Service believes that the potential for similar impacts exists in the Mississippi Flyway as well, and therefore believes that earlier framework opening dates flyway-wide for all geese are not warranted.

In regard to the request for an extension of the framework closing date in Maryland, the Service does not concur with this request because the proposal was not reviewed by the Atlantic Flyway Council, the framework closing date recommended by the Atlantic Flyway Council applies to more than one State, and the accommodation of season dates relative to resident-game seasons is a matter for State resolution.

5. White-fronted Geese

Council Recommendations: The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the framework opening date for all geese should be changed from the Saturday nearest October 1 to a fixed date of September 26.

The Central Flyway Council recommendation regarding an interim harvest strategy for dark geese in the Central Flyway involves white-fronted geese. See item **4. Canada Geese.**

The Pacific Flyway Council recommended that in Lake, Klamath, and Harney Counties of Oregon, the season length should be increased from 93 days to 100 days, bag and possession limits for dark and white geese should be separate, and the daily bag limit for dark geese should be increased from 3 (including 3 white-fronted geese) to 4 (including no more than 2 white-fronted geese). The season on white-fronted geese should not open before October 24 (previously November 1). In Baker County, Oregon, the closing date should be extended from the first Sunday in January to the Sunday closest to January 20. The Council further recommended that for the Northeastern Zone of California, the daily bag limit should be increased from 1 to 2 white-fronted geese per day, and the season length should remain at 24 days.

Written Comments: The Wisconsin Department of Natural Resources requested a framework opening date of September 26 for all goose seasons. They also believed that season lengths for all geese in a given State should be the same length, unless an individual State has the potential and opportunity to significantly affect a given goose

population. For example, the season length for all geese in Wisconsin should be 60 days, including the white-fronted goose season. An individual in Minnesota requested that goose seasons open a week earlier than duck seasons. An individual in Nebraska requested a 90-day goose season with 2 geese per day.

Service Response: The Service does not concur with the request for a fixed framework date of September 26 for the entire Mississippi Flyway. However, the earlier opening dates in Wisconsin and the northern zone of Michigan will be continued. See item **4. Canada Geese**, Service Response. The Service does not believe longer seasons for white-fronted geese in the Mississippi Flyway are warranted at this time. The frameworks contained in this document provide for the changes recommended by the Pacific Flyway Council.

6. Brant

Council Recommendations: The Atlantic Flyway Council recommended no change from the 50-day season with a 2-brant daily bag limit. The Pacific Flyway Council recommended no change from the past frameworks which provided for 16-day seasons in Washington and Oregon and a 30-consecutive-day season in California. The daily bag limit is 2 brant per day.

Public-Hearing Comments: Mr. Frank Anderson requested a 50-day, 2-bird brant season. Mr. Lloyd H. Piasse, Jr. and Mr. Gerald Woodmansee requested a 50-day, 4-bird brant season.

Written Comments: A local organization in Massachusetts requested a 50-day season with a 4-bird limit.

Service Response: The Service does not believe a liberalization is warranted in the Atlantic Flyway, considering the likelihood of poor recruitment this year. The frameworks contained herein remain unchanged from those in effect during the 1991–92 season.

7. Snow and Ross's Geese

Council Recommendations: The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the framework opening date for all geese should be changed from the Saturday nearest October 1 to a fixed date of September 26.

The Central Flyway Council recommended that the season length and bag limit in the eastern-tier States should be expanded to 107 days with a bag limit of 10. In addition, the bag limit for the Middle Rio Grande Valley of New Mexico should be increased to 10 per day.

The Pacific Flyway Council recommended that in Lake, Klamath, and Harney Counties of Oregon, the season length should be increased from 93 days to 100 days, and bag and possession limits for dark and white geese should be separate. In Baker County, Oregon, the closing date should be extended from the first Sunday in January to the Sunday closest to January 20.

Written Comments: The Wisconsin Department of Natural Resources requested a framework opening date of September 26 for all goose seasons. An individual in Minnesota requested that goose seasons open a week earlier than duck seasons.

Service Response: The Service does not concur with the request for a fixed framework date of September 26 for the entire Mississippi Flyway. However, the earlier opening dates in Wisconsin and the northern zone of Michigan will be continued. See item **4. Canada Geese**, Service Response.

The Service agrees with the Central Flyway Council's recommendation to allow a daily bag limit of 10 and a 107-day season for snow geese in the eastern-tier States and for the Middle Rio Grande Valley Zone of New Mexico. The Service acknowledges that currently the Mid-continent Population of Snow Geese is substantially above population objectives and that past efforts to increase harvest of light geese in the Middle Rio Grande Valley Zone of New Mexico in order to reduce depredations have been unsuccessful. However, the Service believes that the Central Flyway Council should investigate whether this change in bag limit is effective in increasing harvest levels. The frameworks contained in this document provide for the changes recommended by the Pacific Flyway Council.

8. Tundra Swans

Council Recommendations: The Central Flyway Council recommended that an additional 500 tundra swan hunting permits be allocated to South Dakota. This change would result in a total allocation of 1,500 permits for South Dakota.

Public-Hearing Comments: Mr. Lloyd Jones complimented the Service for accepting past swan-season recommendations from the Central Flyway Council. Mr. Wayne Pacelle thought the hunting of tundra swans for sport was repulsive and could not be defended with biological reasons.

Service Response: The Service agrees with the Central Flyway Council's recommendation to re-allocate an additional 500 tundra swan permits to South Dakota. However, the Service reminds North and South Dakota that the Hunt Plan for the Eastern Population of Tundra Swans requires an assessment of harvest and other survey information for the experimental 3-year periods that began in 1991 for North Dakota and will begin in 1992 for South Dakota.

The Service recognizes the importance of sound data to manage tundra swans. Presently, management plans provide population goals and establish criteria to guide harvest. Data from Midwinter Waterfowl Surveys suggest that both the eastern and western populations of Tundra Swans are stable or increasing. Current harvest estimates, including unretrieved losses, account for less than 5 percent of the preseason winter population index. The Service believes that these controlled hunts do not adversely affect swan populations and that they can be conducted while maintaining swan populations sufficiently large to satisfy the desires of hunters and nonhunters.

10. Coots

Public-Hearing Comments: Ms. Susan Hagood believed that limits on coots are excessive in view of the lack of data on coots. Mr. Wayne Pacelle indicated that coots should not be hunted because he doubted that these species are consumed by hunters.

Written Comments: Many written comments addressing the season length for duck seasons in the Atlantic, Mississippi, and Central Flyways apply to coots because the seasons are concurrent.

Service Response: The Service monitors population and harvest trends of coots and this information suggests that current harvest levels are appropriate.

23. Other

A. Compensatory Days

Council Recommendations: The Atlantic Flyway Council recommended that the Service allow for compensatory days for days lost during the duck season (not to exceed 30 days), on a day-for-day basis, in Atlantic Flyway States where Sunday hunting is prohibited statewide by State law, on an experimental basis in 1992–93 and 1993–94. The Atlantic Flyway Council later requested compensatory days for years when duck seasons are less than 40 days long.

Public-Hearing Comments: Mr. Frank Anderson sought compensatory days for those lost because of State-dictated Sunday closures. He acknowledged that

this was a State problem, but noted that all four Flyway Councils supported compensation. He referred to a recently completed report that detailed the economic benefits that would accrue from additional days should they be granted. He proposed that the additional days be given on an experimental basis; hunting would be by special permit so that the resulting hunter participation and harvest could be evaluated. He contended that use of calendar days in determining a season's length is unfair; whereas, using the number of days open to hunting would be fair.

Mr. Paul Accomundo asked the Service to consider giving compensatory days to those States of the Atlantic Flyway which prohibit Sunday hunting. He claimed that the Service has not responded well to this request in the past. Mr. Lloyd H. Piasse, Jr. and Mr. Gerald Woodmansee also requested compensatory days for those days lost to Sunday closures.

Written comments: A U.S. Senator from North Carolina, a U.S. Congressman from New Jersey, and the State wildlife agencies of Connecticut, Massachusetts, and North Carolina supported the Atlantic Flyway Council recommendation for compensatory days. New York requested a 33-day duck season, New Jersey requested 4 compensatory days, and West Virginia requested compensatory days when migratory bird seasons are less than 40 days long. The New Jersey Waterfowlers Association also requested compensatory days. A local organization in Massachusetts requested a 35-day duck season plus compensatory days. Five individuals from Massachusetts requested 40-day duck seasons and 5 compensatory days. An individual in Virginia requested 7 compensatory days for those days lost due to Sunday-hunting prohibitions and supported the use of Sunday closures as rest days. He indicated that the average hunter would only get 1 more day to hunt because he works 5–6 days per week. A local organization in New Jersey requested that the Service establish a policy on this issue so New Jersey could have a true 30-day season. They indicated that some States permit hunting on Sunday and other States, not currently permitting Sunday hunting, are considering it. The Humane Society supported Sunday closures.

The Wildlife Management Institute said that Sunday hunting and compensatory days have been an issue for decades in the Atlantic Flyway. They urged that this problem continue to be left where it belongs, with the States, for resolution. Ohio was fairly recently able to overturn their blue laws for migratory bird hunting. The precedent of granting compensatory days in the Atlantic Flyway could extend to other seasons such as geese, sea ducks, coots, and others. They question where it would end. Compensatory days would upset the whole basic approach of setting frameworks within which the States select their seasons. Compensatory days would not help the common person who wants to hunt, because it would add extra days during the week when they are not able to use them. The Institute believes granting compensatory days would be a bad precedent and recommended against it.

Service Response: The Atlantic Flyway Council's initial proposal for compensatory days in those States prohibiting hunting on Sundays specifically requested that compensation be given only for duck-hunting days and only when seasons are restricted to 30 days. However, the Service continues to have concerns that the terms of this request could not be limited to exclude longer seasons and other species of migratory game birds.

Although this issue continues to surface in the Atlantic Flyway, the Service has long maintained that Federal regulations do not prohibit hunting on Sundays and that this prohibition is an option freely selected by certain States. The Service believes this problem is an individual State issue and can best be resolved by each State removing its self-imposed restrictions.

B. Captive-reared Mallards

Council Recommendations: The Atlantic Flyway Council complimented the Service for recognizing the potentially serious impacts of released captive-reared mallards on wild waterfowl populations due to possible spread of disease, the deterioration of data-collection for management programs, the compromise of genetic integrity, and law-enforcement conflicts. The Council extended its thanks to the Service for undertaking a review of this issue and urged the Service to develop a policy regarding these releases and their potential impacts.

The Mississippi Flyway Council recommended that the provisions of 50 CFR part 21.13 should only apply to restrictive situations (i.e., tower shoots). When mallards are free-flying, they would be afforded full protection under the Migratory Bird Treaty Act and count toward the daily bag limit. In order to minimize the harvest of wild birds during tower shoots, shooting should only be permitted between the tower and the feeding area. The Council also believes that shooting should not be allowed directly on the feeding area or within a minimum distance of 100 yards from the feeding area.

The Pacific Flyway Council requested its member States and the Service to adopt a moratorium against new captive-reared waterfowl release programs or the expansion of currently existing programs in the Pacific Flyway. This moratorium would remain in effect until the Service solicits public comment on all aspects of captive-reared waterfowl release programs and publishes a position paper, at which time the Council will again evaluate its position on this issue. The Council requested that the Service report progress on this issue prior to the Pacific Flyway Study Committee meeting in January 1993.

The Pacific Flyway Council is on record as discouraging captive-reared waterfowl programs. They indicated that there is serious concern about the biological impacts on wild populations of waterfowl. These concerns include disease outbreaks, genetic crossing, and the impacts on various biological surveys. There are also problems surrounding the interpretation of regulations pertaining to the use of live decoys and baiting when and wherever captive-reared mallards and wild ducks are in association. The Council believes that a complete review of this issue needs to be undertaken so that sound management decisions protecting wild populations of waterfowl can occur.

Public-Hearing Comments: Mr. Brad Bales reiterated the Pacific Flyway Council's recommendation reported above. He restated the Council's request that the Service initiate a prompt, all-encompassing review and publish a position paper on this issue prior to a meeting of its Pacific Flyway Study Committee in January 1993.

Mr. Richard Bishop reiterated the Mississippi Flyway Council's position opposing the release of captive-reared mallards and requested that released captive-reared mallards be considered the same as wild mallards in terms of regulations. He urged the Service to move forward with a review of the regulations governing the release and harvest of captive-reared mallards.

Service Response: The Service appreciates comments regarding releases of captive-reared mallards. The controversy that has surrounded this practice for several decades has intensified recently as this activity has expanded beyond tower shoots and field trials. The Service has initiated a review of the impacts of these releases on wild populations. The Service is concerned about the potential for

introduction of disease, alteration of wild-stock genetics, confounding management and data-collection efforts, and conflicts with current regulations prohibiting baiting and live decoys. The Service will continue to review the regulations governing the release and harvest of captive-reared mallards.

C. Public Participation

Public-Hearing Comments: Ms. Susan Hagood called for more opportunities for the non-hunting public to be involved in the regulatory process. Mr. Wayne Pacelle provided comment on the regulatory process and the lack of sufficient opportunity for public involvement. He suggested that the Service do a better job inviting public participation since many diverse views on the issue of hunting are not being considered.

Written Comments: The Humane Society indicated that the public cannot effectively participate because the Service excludes them from the regulations-development process. The Wildlife Management Institute said that accusations of restricted public involvement in the process are not credible, given the intensive series of multiple announcements and requests for public input, and public-comment periods which begin in February and end in September each year. The fact that only limited members of the public choose to participate is a matter of choice and capability to offer constructive information.

They further commented that the Service's presentations were good and the information presented was useful in providing an understanding to all outside the agency of the basis for proposed regulations. They also stated that the harvest-perspective presentations offered a positive set of statements about what the likely impact of current harvest rates are versus the overwhelming impact of drought and land-use modifications which are hampering recruitment for North American waterfowl. They encouraged the Service to continue to deal with such perspectives directly in these public forums. The material is technical enough that it frequently needs translation directly by the Service.

Service Response: The Service summarized opportunities for public involvement in the regulations-development process in the September 26, 1991, **Federal Register**. As stated there, the Service believes that the current process is open and receptive to all public comments. There is equal opportunity for the public to provide comments regarding the development of annual and basic regulations. However, the Service welcomes suggested improvements to the process.

D. Biological Data Collection

Public-Hearing Comments: Mr. Tom Hauge commended the Office of Migratory Bird Management and the Service for their annual efforts to compile waterfowl-status information. Ms. Susan Hagood admonished the Service for not collecting data on the status of ruddy ducks, bufflheads, goldeneyes, mergansers, and other duck species. Mr. Gerald Woodmansee urged the Service to conduct better surveys that would reflect the status of waterfowl in the Northeast and report those data as is now done for other parts of the continent. He also requested that population objectives be developed for all duck species.

Written Comments: The Humane Society suggested that the Service has failed to estimate populations of ruddy ducks, bufflheads, mergansers, goldeneyes, eiders, scoters, coots, and other species. They strongly recommended that the Service immediately undertake efforts to obtain population estimates for all hunted species.

Service Response: The Service annually monitors waterfowl populations, including those species identified by the Humane Society, and the impacts of hunting through several surveys. Aerial surveys of the major duck breeding areas of North America provide indices of breeding populations and production. This survey is currently being expanded to include previously unsurveyed areas in eastern North America. Some species, which nest primarily outside of the range of the breeding-grounds survey, are monitored through surveys of wintering areas. In addition, duck-stamp purchasers are surveyed to estimate the annual harvest of all species. The Service and the States are cooperatively developing a new Harvest Information Program which should improve the quality and extent of information on harvests of migratory birds. Finally, the Service coordinates a banding program that provides a variety of information on waterfowl populations.

E. Cormorants and Crows

Public-Hearing Comments: Mr. Gerald Woodmansee urged changes in the Migratory Bird Treaty to allow the taking of cormorants and crows, in part because of their adverse impact on fisheries.

Service Response: Cormorants are included among those birds covered under provisions of migratory bird treaties, but are not designated as game birds. Therefore, hunting seasons may not be established for this species. The Service believes that amending the treaties to add the cormorant to the list of game birds would not be appropriate. Provisions do exist, however, for the control of depredating migratory birds, including cormorants. The provisions and requirements for such control are contained in 50 CFR part 21, subpart D.

Crows are not protected by the treaty with Canada, but were included in a later treaty with Mexico. Federal regulations already allow States to set hunting seasons for crows and contain additional provisions for control of depredating crows.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88-14)," filed with EPA on June 9, 1988. Notice of Availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582). The Service's Record of Decision was published on August 18, 1988 (53 FR 31341). However, this programmatic document does not prescribe year-specific regulations; those are developed annually. The annual regulations and options were considered in the Environmental Assessment, "Waterfowl Hunting Regulations for 1992." Copies of these documents are available from the Service at the address indicated under the caption **ADDRESSES**.

Endangered Species Act Consideration

On July 2, 1992, the Division of Endangered Species concluded that the proposed action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats. Hunting regulations are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species and their habitats. The Service's biological opinions resulting from its consultation under Section 7 are considered public documents and are available for inspection in the Division of Endangered Species and the Office of Migratory Bird Management.

Regulatory Flexibility Act; Executive Orders 12291, 12612, 12630, and 12778; and the Paperwork Reduction Act

In the May 8 **Federal Register**, the Service reported measures it had

undertaken to comply with requirements of the Regulatory Flexibility Act and Executive Order 12291. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publishing a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. It has been determined that these rules will not involve the taking of any constitutionally protected property rights, under Executive Order 12630, and will not have any significant federalism effects, under Executive Order 12612. The Department of the Interior has certified to the Office of Management and Budget that these proposed regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778. These determinations are detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, room 634—Arlington Square, Department of the Interior, Washington, DC 20240. These regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980.

Memorandum of Law

The Service published its Memorandum of Law, required by Section 4 of Executive Order 12291, in the **Federal Register** dated August 21, 1992 (57 FR 38202).

Authorship

The primary authors of this proposed rule are William O. Vogel and David F. Caithamer, Office of Migratory Bird Management.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, the Service intends that the public be given the greatest possible opportunity to comment on the regulations. Thus, when the preliminary proposed rulemaking was published, the Service established what it believed were the longest periods possible for public comment. In doing this, the Service recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the States would have insufficient time to select season dates and limits; to communicate those selections to the Service; and to establish and publicize the necessary regulations and procedures to implement their decisions.

Therefore, the Service, under authority of the Migratory Bird Treaty Act of July 3, 1918, as amended (16 U.S.C. 703–712), prescribes final frameworks setting forth the species to be hunted, the daily bag and possession limits, the shooting hours, the season lengths, the earliest opening and latest closing season dates, and hunting areas, from which State conservation agency officials may select hunting season dates and other options. Upon receipt of season and option selections from these officials, the Service will publish in the **Federal Register** a final rulemaking amending 50 CFR part 20 to reflect seasons, limits, and shooting hours for the conterminous United States for the 1992–93 season.

The Service therefore finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these frameworks will, therefore, take effect immediately upon publication.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1992–93 hunting season are authorized under the Migratory Bird Treaty Act of July 3, 1918, as amended, (16 U.S.C. 703–712) and the Fish and Wildlife Service Act of August 8, 1956, as amended, (16 U.S.C. 742 a—d and e—j).

Dated: September 10, 1992.

James Spagnole,

Acting Assistant Secretary for Fish and Wildlife and Parks.

Final Regulations Frameworks for 1992–93 Late Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Director has approved frameworks for season lengths, shooting hours, bag and possession limits, and outside dates within which States may select seasons for hunting waterfowl and coots. Late-season frameworks are summarized below:

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

Area, Zone, and Unit Descriptions: Geographic descriptions are contained in a later portion of this document.

Area-Specific Provisions: Frameworks for open seasons, season lengths, bag and possession limits, and other special provisions are listed below by flyway.

Atlantic Flyway

The Atlantic Flyway includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Ducks, Mergansers, and Coots

Hunting Season: Not more than 30 days.

Outside Dates: Between October 1, 1992, and January 20, 1993.

Duck Limits: The daily bag limit is 3 and may include no more than 1 hen mallard, 2 wood ducks, 2 redheads, 1 black duck, 1 mottled duck, 1 pintail, and 1 fulvous whistling duck.

Closures: The seasons on canvasbacks and harlequin ducks are closed.

Sea Ducks: In all areas outside of special sea duck areas, sea ducks are included in the regular duck daily bag and possession limits. However, during the regular duck season within the special sea duck areas, the sea duck daily bag and possession limits may be in addition to the regular duck daily bag and possession limits.

Merganser Limits: The daily bag limit of mergansers is 5, only 1 of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Lake Champlain Zone, New York: The waterfowl seasons, limits, and shooting hours shall be the same as those selected for the Lake Champlain Zone of Vermont.

Zoning and Split Seasons: Delaware, Maryland, North Carolina, Rhode Island, and Virginia may split their seasons into three segments; Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Vermont, and West Virginia may select hunting seasons by zones and may split their seasons into two segments in each zone; while Florida, Georgia, and South Carolina may split their statewide seasons into two segments.

Canada Geese

Season Lengths, Outside Dates, and Limits: Unless specified otherwise,

seasons may be split into two segments. Seasons in States, and in independently described goose management units within States, may be as follows:

Connecticut:

North Zone—70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening.

South Zone—70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening. In addition, a special experimental season may be held between January 15 and February 15, with 5 geese per day.

Delaware: 60 days between November 16 and January 20, with 1 goose per day for the first 20 days; 2 geese per day thereafter.

Florida: Closed season.

Georgia: In specific areas, an experimental season may be held between November 15 and February 5, with a limit of 5 Canada geese per day.

Maine: 70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening.

Maryland: 60 days between November 16 and January 20, with 1 goose per day for the first 20 days and 2 geese per day thereafter.

Massachusetts: 70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening. In addition, a special 16-day season for resident Canada geese may be held in the Coastal and Central Zones during January 21 to February 5, with 5 geese per day.

New Hampshire: 70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening.

New Jersey: 70 days between October 15 and January 31, with 1 goose per day through November 15; 2 geese per day through December 31; 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening; no more than 15 days before November 16.

New York:

Northeastern Zone—70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening.

Remainder of State—70 days between October 15 and January 31, with 1 goose per day through November 15; 2 geese per day through December 31; 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening; no more than 15 days before November 16.

North Carolina:

East Zone—Suspended.

West Zone—Suspended.

Pennsylvania:

South Zone—70 days between October 15 and January 31, with 1 goose per day through November 15; 2 geese per day through December 31; 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening; no more than 15 days before November 16. In addition, an experimental late resident Canada goose season may be held along portions of the Susquehanna and Juniata Rivers from January 20 to February 5 with 5 geese per day.

Erie, Mercer, and Butler Counties—70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day thereafter; 1 goose per day for the first 8 days after the opening.

Crawford County—70 days between October 1 and January 20; with 1 goose per day.

Remainder of State—70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening.

Rhode Island: 70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening.

South Carolina: Suspended regular season. A special 4-day season for resident Canada geese may be held in the Central Piedmont, Western Piedmont, and Mountain Hunt Units during January 15 to February 15, with a daily bag limit of 1 Canada goose.

Vermont: 70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening.

Virginia:

Back Bay—Suspended.

Remainder—60 days between November 16 and January 20, with 1 goose per day for the first 20 days; 2 geese per day thereafter.

West Virginia: 70 days between October 1 and January 20, with 3 geese per day.

Light Geese

Definition: For purpose of hunting regulations listed below, the collective term "light" geese includes lesser snow (including blue) geese, greater snow geese, and Ross' geese.

Season Lengths, Outside Dates, and Limits: States may select a 107-day season between October 1, 1992, and February 10, 1993, with 5 geese per day. States may split their seasons into two segments.

Atlantic Brant

Season Lengths, Outside Dates, and Limits: States may select a 50-day season between October 1, 1992, and January 20, 1993, with 2 brant per day.

Mississippi Flyway

The Mississippi Flyway includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Ducks, Mergansers, and Coots

Hunting Seasons: Not more than 30 days.

Outside Dates: Between October 1, 1992, and January 20, 1993.

Duck Limits: The daily bag limit is 3, and may include no more than 2 mallards (no more than 1 of which may be a female), 1 black duck, 1 pintail, 2 wood ducks, and 1 redhead.

As an alternative to conventional bag limits for ducks and mergansers, a point system for bag and possession limits may be selected. Point values are as follows:

100 points—female mallard, pintail, black duck, redhead, hooded merganser.

50 points—male mallard, wood duck.

35 points—all other ducks and mergansers.

Under the point system, the daily bag limit is reached when the point value of the last bird taken, added to the sum of point values of all other birds already taken during that day, reaches or exceeds 100 points. The possession limit is the maximum number of birds that legally could have been taken in 2 days.

Closures: The season on canvasbacks is closed.

Merganser Limits: Under the conventional bag-limit option only, a daily bag limit of 5 mergansers may be taken, only 1 of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Alabama, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Missouri, Ohio, Tennessee, and Wisconsin may select hunting seasons by zones.

In Alabama, Indiana, Iowa, Kentucky, Louisiana, Michigan, Ohio, Tennessee, and Wisconsin, the season may be split into two segments in each zone.

In Mississippi, the season may be split into two segments.

In Arkansas and Minnesota, the season may be split into three segments.

Pymatuning Reservoir Area, Ohio: The waterfowl seasons, limits, and shooting hours shall be the same as those selected in the adjacent portion of Pennsylvania.

Geese

Definition:: For the purpose of hunting regulations listed below, the collective terms "dark" and "light" geese include the following species:

Dark geese—Canada geese, white-fronted geese, and brant.

Light geese—lesser snow (including blue) geese, greater snow geese, and Ross' geese.

Split Seasons: Seasons for geese may be split into two segments.

Season Lengths, Outside Dates, and Limits: States may select seasons for geese not to exceed 70 days for dark geese between the Saturday nearest October 1 (October 3, 1992) and January 31, 1993, and 80 days for light geese between the Saturday nearest October 1 (October 3, 1992), and February 14, 1993. The daily bag limit is 7 geese, to include no more than 2 Canada and 2 white-fronted geese. Specific regulations for Canada geese and exceptions to the above general provisions are shown below by State.

Alabama: The season for Canada geese may extend for 50 days in the respective duck-hunting zones. The daily bag limit is 2 Canada geese.

Arkansas: The season for Canada geese may extend for 23 days in the East Zone. In the West Zone, an experimental season for Canada geese of up to 14 days may be selected. In both zones, the daily bag limit is 2 Canada geese. In the remainder of the State, the season for Canada geese is closed.

Illinois: The total harvest of Canada geese in the State will be limited to 79,000 birds. In the:

(a) Southern Illinois Quota Zone—The season for Canada geese will close after 79 days or when 39,500 birds have been harvested, whichever occurs first. Limits are 2 Canada geese daily and 10 in possession. If any of the following conditions exist after December 20, 1992, the State, after consultation with the Service, will close the season by emergency order with 48 hours notice:

1. 10 consecutive days of snow cover, 3 inches or more in depth.

2. 10 consecutive days of daily high temperatures less than 20 degrees F.

3. Average body weights of adult female geese less than 3,200 grams as measured from a weekly sample of a minimum of 50 geese.

4. Starvation or a major disease outbreak resulting in observed mortality exceeding 500 birds per day for 10 consecutive days, or a total mortality exceeding 5,000 birds in 10 days, or a total mortality exceeding 10,000 birds.

(b) Rend Lake Quota Zone—The season for Canada geese will close after 79 days or when 11,850 birds have been harvested, whichever occurs first. Limits are 2 Canada geese daily and 10 in possession.

(c) Fulton-Knox Zone—The season for Canada geese may not exceed 79 days. Limits are 2 Canada geese daily and 4 in possession.

(d) Remainder of the State—The season for Canada geese may extend for 79 days in the respective duck-hunting zones, except in the Northeastern Zone, where the season may not exceed 88 days. Limits are 2 Canada geese daily and 4 in possession.

Indiana: The total harvest of Canada geese in the State will be limited to 19,000 birds. In:

(a) Posey County—The season for Canada geese will close after 70 days or when 6,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(b) Remainder of the State—The season for Canada geese may extend for 70 days in the respective duck-hunting zones. The daily bag limit is 2 Canada geese, except in LaGrange and Steuben Counties and on the Kankakee and Jasper-Pulaski Fish and Wildlife Areas, where the daily bag limit is 1.

Iowa: The season may extend for 70 days. The daily bag limit is 2 Canada geese. The season for geese in the Southwest Zone may be held at a different time than the season in the remainder of the State.

Kentucky: In the:

(a) Western Zone—The season for Canada geese may extend for 79 days, and the harvest will be limited to 22,400 birds. Of the 22,400-bird quota, 14,560 birds will be allocated to the Ballard Reporting Area and 4,260 birds will be allocated to the Henderson/Union Reporting Area. If the quota in either reporting area is reached prior to completion of the 79-day season, the season in that reporting area will be closed. If this occurs, the season in those counties and portions of counties outside of, but associated with, the respective subzone (listed in State regulations) may continue for an additional 7 days, not to exceed a total of 79 days. The season in Fulton County may extend to February 15, 1993. The daily bag limit is 2 Canada geese.

(b) Remainder of the State—The season may extend for 50 days. The daily bag limit is 2 Canada geese.

Louisiana: Louisiana may hold 80-day seasons on light geese and 70-day seasons on white-fronted geese and brant between the Saturday nearest October 1 (October 3, 1992), and February 14, 1993, in the respective duck-hunting zones. The daily bag limit is 7 geese, to include no more than 2 white-fronted geese, except as noted below. In the Southwest Zone, an experimental 9-day season for Canada geese may be held during January 22-30, 1993. During the experimental season, the daily bag limit for Canada and white-fronted geese in the Southwest Zone is 2, no more than 1 of which may be a Canada goose. Hunters participating in the experimental Canada goose season must possess a special permit issued by the State.

Michigan: The total harvest of Canada geese in the State will be limited to 54,600 birds. In the:

(a) North Zone:

(1) West of Forest Highway 13—The framework opening date for all geese is September 26 and the season for Canada geese may extend for 50 days. The daily bag limit is 2 Canada geese.

(2) Remainder of North Zone—The framework opening date for all geese is September 26 and the season for Canada geese may extend for 50 days. The daily bag limit is 2 Canada geese.

(b) Middle Zone—The season for Canada geese may extend for 50 days. The daily bag limit is 2 Canada geese.

(c) South Zone:

(1) Allegan County GMU—The season for Canada geese will close after 50 days or when 5,000 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose through November 14 and 2 Canada geese thereafter.

(2) Muskegon Wastewater GMU—The season for Canada geese will close after 52 days or when 1,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(3) Saginaw County GMU—The season for Canada geese will close after 40 days or when 4,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(4) Tuscola/Huron GMU—The season for Canada geese will close after 40 days or when 2,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(5) Remainder of South Zone:

(i) West of U.S. Highway 27/127—The season for Canada geese may extend for

45 days. The daily bag limit is 2 Canada geese.

(ii) East of U.S. Highway 27/127—The season for Canada geese may extend for 30 days. The daily bag limit is 2 Canada geese.

(d) Southern Michigan GMU—An experimental late special Canada goose season of up to 30 days may be held between January 9 and February 7, 1993. The daily bag limit is 2 Canada geese.

Minnesota: In the:

(a) West Central Zone—The season for Canada geese may extend for 40 days. In the Lac Qui Parle Zone the season will close after 40 days or when a harvest of 6,000 birds has been achieved, whichever occurs first. Throughout the West Central Zone, the daily bag limit is 1 Canada goose.

(b) Southeast Zone—The season for Canada geese may extend for 70 days, except in the Twin Cities Metro Zone and Olmsted County, where the season may not exceed 80 days. The daily bag limit is 2 Canada geese.

(c) Remainder of the State—The season for Canada geese may extend for 50 days. The daily bag limit is 2 Canada geese.

Mississippi: The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese.

Missouri: In the:

(a) Swan Lake Zone—The season for Canada geese closes after 50 days or when 10,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(b) Schell-Osage Zone—The season for Canada geese may extend for 50 days. The daily bag limit is 2 Canada geese.

(c) Central Zone—The season for Canada geese may extend for 50 days. The daily bag limit is 2 Canada geese. An experimental special season of up to 10 consecutive days prior to October 15 may be selected in addition to the regular season. During the special season, the daily bag limit is 3 Canada geese.

(d) Remainder of the State—The season for Canada geese may extend for 50 days in the respective duck-hunting zones. The daily bag limit is 2 Canada geese.

Ohio: The season may extend for 70 days in the respective duck-hunting zones, with a daily bag limit of 2 Canada geese, except in the Lake Erie SJBP and Northeast SJBP Zones, where the daily bag limit will be 1 Canada goose.

Tennessee: In the:

(a) Northwest Zone—The season for Canada geese may extend for 73 days, and the harvest will be limited to 8,900 birds. Of the 8,900-bird quota, 6,260 birds will be allocated to the Reelfoot Quota Zone. If the quota in the Reelfoot Quota Zone is reached prior to completion of the 73-day season, the season in the quota zone will be closed. If this occurs, the season in the remainder of the Northwest Zone may continue for an additional 7 days, not to exceed a total of 73 days. The season may extend to February 15, 1993. The daily bag limit is 2 Canada geese.

(b) Southwest Zone—The season for Canada geese may extend for 58 days, and the harvest will be limited to 500 birds. The daily bag limit is 2 Canada geese.

(c) Kentucky/Barkley Lakes Zone—The season for Canada geese may extend for 50 days. The daily bag limit is 2 Canada geese.

(d) Remainder of the State—The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese.

Wisconsin: The framework opening date for all geese is September 26. The total harvest of Canada geese in the State will be limited to 71,200 birds. In the:

(a) Horicon Zone—The harvest of Canada geese is limited to 45,000 birds. The season may not exceed 80 days. All Canada geese harvested must be tagged. The daily bag limit is 2 Canada geese and the season limit will be the number of tags issued to each permittee. The possession limit is 10 Canada geese.

(b) Collins Zone—The harvest of Canada geese is limited to 1,700 birds. The season may not exceed 70 days. All Canada geese harvested must be tagged. The daily bag limit is 1 Canada goose and the season limit will be the number of tags issued to each permittee. The possession limit is 10 Canada geese.

(c) Exterior Zone—The harvest of Canada geese is limited to 20,000 birds. The season may not exceed 80 days and the daily bag limit is 1 Canada goose, except as noted below. In the Mississippi River Subzone, the season for Canada geese may extend for 80 days in each duck zone. In the North-Duck-Zone portion of the Subzone, the daily bag limit is 1 Canada goose through the first segment of the duck season, and 2 thereafter; in the South-Duck-Zone portion, the daily bag limit is 1 Canada goose through the first segment of the duck season, and 2 thereafter. In the Brown County Subzone, an experimental late special season to control local populations of giant Canada geese may be held during December 1–31. The daily bag limit during this special season is 2. The progress of the harvest in the Exterior Zone must be monitored, and the zone's season closed, if necessary, to ensure that the harvest does not exceed the limit stated above. This closure will not apply to the late special season in the Brown County Subzone.

Additional Limits: In addition to the harvest limits stated for the respective zones above, an additional 4,500 Canada geese may be taken in the Horicon Zone under special agricultural permits.

Illinois, Indiana, Kentucky, Missouri, and Tennessee Quota Zone Closures: When it has been determined that the quota of Canada geese allotted to the Southern Illinois Quota Zone, the Rend Lake Quota Zone in Illinois, Posey County in Indiana, the Ballard and Henderson-Union Subzones in Kentucky, the Swan Lake Zone in Missouri, and the Reelfoot Subzone in Tennessee will have been filled, the season for taking Canada geese in the respective area will be closed by the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing, or by the State through State regulations with such notice and time (not less than 48 hours) as they deem necessary.

Shipping restrictions: In Illinois and Missouri, and in the Kentucky Counties of Ballard, Hickman, Fulton, and Carlisle, geese may not be transported, shipped, or delivered for transportation or shipment by common carrier, the Postal Service, or by any person except as the personal baggage of licensed waterfowl hunters, provided that no hunter shall possess or transport more than the legally-prescribed possession limit of geese. Geese possessed or transported by persons other than the taker must be labeled with the name and address of the taker and the date taken.

Central Flyway

The Central Flyway includes Colorado (east of the Continental Divide), Kansas, Montana (Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Ducks, Mergansers, and Coots

Hunting Seasons: Seasons in the High Plains Mallard Management Unit, roughly defined as that portion of the Central Flyway which lies west of the 100th meridian, may include no more than 51 days, provided that the last 12 days start no earlier than the Saturday nearest December 10 (December 12,

1992). Seasons in the Low Plains Unit may include no more than 39 days.

Outside Dates: October 1, 1992, through January 20, 1993.

Duck Limits: The daily bag limit is 3, including no more than 2 mallards, no more than 1 of which may be a female, 1 mottled duck, 1 pintail, 1 redhead, and 2 wood ducks. The daily bag limit may include 3 drake mallards in the High Plains Mallard Management Unit.

As an alternative to conventional bag limits for ducks and mergansers, a point system for bag and possession limits may be selected. Point values are as follows:

100 points—female mallard, pintail, redhead, hooded merganser, mottled duck.

50 points—male mallard (Low Plains), wood duck.

35 points—male mallard (High Plains), all other ducks, and mergansers.

Under the point system, the daily bag limit is reached when the point value of the last bird taken, added to the sum of point values of all other birds already taken during that day, reaches or exceeds 100 points. The possession limit is the maximum number of birds that legally could have been taken in 2 days.

Closures: The season on canvasbacks is closed.

Merganser Limits: Under the conventional bag-limit option only, a daily bag limit of 5 mergansers may be taken, only 1 of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Montana, Nebraska (Low Plains portion), New Mexico, Oklahoma (Low Plains portion), and South Dakota (Low Plains portion) may select hunting seasons by zones.

In Montana, Nebraska (Low and High Plains portions), New Mexico, North Dakota (Low Plains portion), Oklahoma (Low and High Plains portions), South Dakota (High Plains portion), and Texas (Low Plains portion), the season may be split into two segments.

In Colorado, Kansas (Low and High Plains portions), North Dakota (High Plains portion), and Wyoming, the season may be split into three segments.

Geese

Definitions: In the Central Flyway, "geese" includes all species of geese and brant; "dark geese" includes Canada and white-fronted geese and black brant; and "light geese" includes all others.

Season Lengths, Outside Dates, and Limits: Seasons may be split into two segments. The Saturday nearest October 1 (October 3, 1992), through January 31, 1993, for dark geese and the Saturday nearest October 1 (October 3, 1992), through the Sunday nearest February 15 (February 14, 1993), except in New Mexico where the closing date is February 28, for light geese. Seasons in States, and independently in described goose management units within States, may be as follows:

Colorado: No more than 107 days, with a daily bag limit of 5 light geese and 3 dark geese.

Kansas: For dark geese, no more than 79 days, with a daily bag limit of not more than 2 Canada geese, or 1 Canada goose and 1 white-fronted goose, for no more than 30 consecutive days, and a daily bag limit of not more than 1 Canada goose and 1 white-fronted goose for the remaining 49 days; or no more than 72 days, with a daily bag limit of not more than 2 Canada geese, or 1 Canada goose and 1 white-fronted goose, for no more than 37 consecutive days, and a daily bag limit of not more than 1 Canada goose and 1 white-fronted goose for the remaining 35 days.

For Light Goose Units 1 and 2, no more than 107 days, with a daily bag limit of 10.

Montana: No more than 107 days, with daily bag limits of 2 dark geese and 5 light geese in Sheridan County and 4 dark geese and 5 light geese in the remainder of the Central Flyway portion.

Nebraska: For dark geese in the North Unit, no more than 79 days, with daily bag limits of 1 Canada goose and 1 white-fronted goose until the Saturday nearest November 8 (November 9, 1992), and no more than 2 Canada geese, or 1 Canada goose and 1 white-fronted goose, for the remainder of the season.

For dark geese in the East and West Units, no more than 79 days, with a daily bag limit of not more than 2 Canada geese, or 1 Canada goose and 1 white-fronted goose, for no more than 30 consecutive days, and a bag limit of not more than 1 Canada goose and 1 white-fronted goose for the remaining 49 days; or no more than 72 days, with a daily bag of not more than 2 Canada geese, or 1 Canada goose and 1 white-fronted goose, for no more than 37 consecutive days, and a bag limit of not more than 1 Canada goose and 1 white-fronted goose for the remaining 35 days.

For light geese, no more than 107 days, with a daily bag limit of 10.

New Mexico: No more than 107 days, with a daily bag limit of 5 light geese and 3 dark geese, except in the Middle Rio Grande Valley where the daily bag limit of light geese is 10.

North Dakota: For dark geese, no more than 79 days, with a daily bag limit of 1 Canada goose and 1 white-fronted goose, or 2 white-fronted geese, until the Saturday nearest October 20 (October 17, 1992), and no more than 2 dark geese during the remainder of the season.

For light geese, no more than 107 days, with a daily bag limit of 10.

Oklahoma: For dark geese, no more than 79 days, with a daily bag limit of 2 Canada geese, or 1 Canada goose and 1 white-fronted goose.

For light geese, no more than 107 days, with a daily bag limit of 10.

South Dakota: For dark geese in the Missouri River Unit, no more than 79 days, with a daily bag limit of 1 Canada goose and 1 white-fronted goose until the Saturday nearest November 8 (November 7, 1992), and no more than 2 Canada geese, or 1 Canada goose and 1 white-fronted goose, for the remainder of the season.

For dark geese in the remainder of the State, no more than 79 days, with a daily bag limit of not more than 2 Canada geese, or 1 Canada goose and 1 white-fronted goose, for no more than 30 consecutive days, and a daily bag limit of not more than 1 Canada goose and 1 white-fronted goose for the remaining 49 days; or no more than 72 days, with a daily bag limit of not more than 2 Canada geese, or 1 Canada goose and 1 white-fronted goose, for no more than 37 consecutive days, and a daily bag limit of not more than 1 Canada goose and 1 white-fronted goose for the remaining 35 days.

For light geese, no more than 107 days, with a daily bag limit of 10.

Texas: West of U.S. 81, no more than 107 days, with a daily bag limit of 5 light geese and 3 dark geese.

For dark geese east of U.S. 81, no more than 79 days. The daily bag limit is 1 Canada goose and 1 white-fronted goose during the first 72 days; during the last 7 days, the season is closed on white-fronted geese and the daily bag limit is 2 Canada geese.

For light geese east of U.S. 81, no more than 107 days, with a daily bag limit of 10.

Wyoming: No more than 107 days, with a daily bag limit of 5 light geese and 3 dark geese.

Pacific Flyway

The Pacific Flyway includes Arizona, California, Colorado (west of the Continental Divide), Idaho, Montana (including and to the west of Hill, Chouteau, Cascade, Meagher and Park Counties), Nevada, New Mexico (the Jicarilla Apache Indian Reservation and west of the Continental Divide), Oregon, Utah, Washington, and Wyoming (west of the Continental Divide including the Great Divide Basin).

Ducks, Mergansers, Coots, and Common Moorhens

Hunting Seasons: Concurrent 59-day seasons may be selected except as subsequently noted. In the Columbia Basin Mallard Management Unit, the seasons may be an additional 7 days. The season on coots and common moorhens may be between the outside dates for the season on ducks, but not to exceed 93 days.

Outside Dates: Between October 1, 1992, and January 20, 1993.

Duck and Merganser Limits: The basic daily bag limit is 4 ducks, including no more than 3 mallards, no more than 1 of which may be a female, 1 pintail, and either 2 canvasbacks, 2 redheads, or 1 of each.

Coot and Common Moorhen Limits: The daily bag and possession limits of coots and common moorhens are 25, singly or in the aggregate.

Zoning and Split Seasons: Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington may select hunting seasons by zones.

Arizona, California, Idaho, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming may split their seasons into two segments either statewide or in each zone.

Colorado and Montana may split their duck seasons into three segments.

Colorado River Zone, California: Duck, coot, and common moorhen seasons and limits shall be the same as seasons and limits selected by Arizona.

Geese (including Brant)

Season Lengths, Outside Dates, and Limits: Except as subsequently noted, 93-day seasons may be selected, with outside dates between the Saturday nearest October 1 (October 3, 1992), and the Sunday nearest January 20 (January 17, 1993), and the basic daily bag and possession limits are 6 geese, provided that the daily bag limit includes no more than 3 light geese (including snow, blue, and Ross') and 3 dark geese (all other species of geese, including brant). In only California, Oregon, and Washington, the daily bag limit is 2 brant and is additional to dark goose limits, and the open season on brant in those States may differ from that for other geese.

Closures: There will be no open season on Aleutian Canada geese in the Pacific Flyway and no open season on cackling Canada geese in California, Oregon, and Washington; those three States must include a statement on the closure for both those subspecies in their respective regulations leaflet. Emergency closures may be invoked for all Canada geese should Aleutian Canada goose distribution patterns or other circumstances justify such actions.

Arizona: The daily bag limit for dark geese may not include more than 2 Canada geese.

California:

Northeastern Zone—White-fronted geese may be taken only during the first 23 days of the goose season. The daily bag limit is 3 geese and may include no more than 2 Canada geese or 2 white-fronted geese.

Colorado River Zone—The seasons and limits must be the same as those selected by Arizona.

Southern Zone—The daily bag and possession limits for dark geese may not include more than 2 Canada geese.

Balance-of-the-State Zone—A 79-day season may be selected, except that white-fronted geese may be taken during only the first 65 days of such season. Limits may not include more than 3 geese per day and in possession, of which not more than 1 may be a dark goose. The dark goose limits may be expanded to 2, provided that they are Canada geese.

Three areas in the Balance-of-the-State Zone are restricted in the hunting of certain geese:

(1) In the Counties of Del Norte and Humboldt there will be no open season for Canada geese.

(2) In the Sacramento Valley Area, the season on white-fronted geese must end on or before November 30, 1992, and, except in the Western Canada Goose Hunt Area, there will be no open season for Canada geese. In the Western Canada Goose Hunt Area, the take of Canada geese other than cackling and Aleutian Canada geese is allowed.

(3) In the San Joaquin Valley Area, the hunting season for Canada geese will close no later than November 23, 1992.

Brant Season: A statewide, 30-consecutive-day season on brant may be selected.

Colorado: The season must end on or before the second Sunday in January (January 10, 1993). The daily bag limit for dark geese may not include more than 2 Canada geese.

Idaho:

Northern Unit—The daily bag limit may not include more than 3 geese.

Southwestern Unit—The season must end on or before the first Sunday in January (January 3, 1993) with a daily bag limit of 3 geese, that may not include more than 2 Canada geese.

Southeastern Unit—The season must end on or before the second Sunday in January (January 10, 1993); the daily bag limit is 3 geese.

Montana:

East of Divide Zone—The season must end on or before the second Sunday in January (January 10, 1993).

West of Divide Zone—The season must end on or before the first Sunday in January (January 3, 1993). The daily bag limit on dark geese may not include more than 2 Canada geese.

Nevada:

Clark County Zone—The daily bag limit of dark geese may not include more than 2 Canada geese.

New Mexico: The daily bag limit for dark geese may not include more than 2 Canada geese.

Oregon:

Eastern Zone—In the Columbia Basin Goose Area, the season may be an additional 7 days.

Malheur County Zone—The season must end on or before the first Sunday in January (January 3, 1993). From November 16, 1992, through the remainder of the season, the daily bag limit of dark geese may not include more than 2 Canada geese.

Lake, Klamath, and Harney Counties Zone—The season length may be 100 days. The dark goose limits are 4 per day and 8 in possession, and may not include more than 2 white-fronted geese per day and 4 in possession. White-fronted geese may not be taken before October 24 during the regular goose season. Light goose limits are 3 per day and 6 in possession and additional to those for dark geese.

Western Zone—In the Special Canada Goose Management Area, except for designated areas, there shall be no open season on Canada geese. In those designated areas, seasons must end upon attainment of their individual quotas which collectively equal 210 dusky Canada geese. Hunting of Canada geese in those designated areas shall only be by hunters possessing a State-issued permit authorizing them to do so. In a Service-approved investigation, the State must obtain quantitative information on hunter compliance of those regulations aimed at reducing the take of dusky Canada geese and eliminating the take of cackling and Aleutian Canada geese.

Brant Season—A 16-consecutive-day season on brant may be selected.

Utah:

Washington County Zone—The daily bag limit for dark geese may not include more than 2 Canada geese.

Remainder-of-the-State Zone—The season must end on or before the second Sunday in January (January 10, 1993). The daily bag limit for dark geese may not include more than 2 Canada geese. In Cache County, the combined special September Canada goose season and

the regular goose season shall not exceed 93 days.

Washington: The daily bag limit is 3 geese.

East Zone—In the Columbia Basin Goose Area, the season may be an additional 7 days.

West Zone—In the Lower Columbia River Special Goose Management Area, except for designated areas, there shall be no open season on Canada geese. For designated areas, seasons on Canada geese must end upon attainment of individual quotas which collectively will equal 90 dusky Canada geese. Hunting of Canada geese in those designated areas shall only be by hunters possessing a State-issued permit authorizing them to do so. In a Service-approved investigation, the State must obtain quantitative information on hunter compliance of those regulations aimed at reducing the take of dusky Canada geese and eliminating the take of cackling and Aleutian Canada geese.

Brant Season—A 16-consecutive-day season on brant may be selected.

Wyoming: In Lincoln, Sweetwater, and Sublette Counties, the combined special September Canada goose seasons and the regular goose season shall not exceed 93 days. The season must end on or before the second Sunday in January (January 10, 1993).

Tundra Swans

In Montana, Nevada, New Jersey, North Carolina, North Dakota, South Dakota, Utah, and Virginia, an open season for taking a limited number of tundra swans may be selected. Permits will be issued by the States and will authorize each permittee to take no more than 1 tundra swan per season. The States must obtain harvest and hunter participation data. These seasons will be subject to the following conditions:

In the Atlantic Flyway

—The season will be experimental.

—The season may be 90 days, must occur during the light goose season, but may not extend beyond January 31.

—In New Jersey, no more than 200 permits may be issued.

—In North Carolina, no more than 6,000 permits may be issued.

—In Virginia, no more than 600 permits may be issued.

In the Central Flyway

—In the Central-Flyway portion of Montana, no more than 500 permits may be issued. The season must run concurrently with the season for taking geese.

—In North Dakota, no more than 2,000 permits may be issued. The experimental season must run concurrently with the season for taking light geese.

—In South Dakota, no more than 1,500 permits may be issued. The experimental season must run concurrently with the season for taking light geese.

In the Pacific Flyway

—A 93-day season may be selected between the Saturday nearest October 1 (October 3, 1992), and the Sunday nearest January 20 (January 17, 1993). Seasons may be split into 2 segments.

—In Utah, no more than 2,500 permits may be issued.

—In Nevada, no more than 650 permits may be issued. Permits will be valid for Churchill, Lyon, and Pershing Counties.

—In the Pacific-Flyway portion of Montana, no more than 500 permits may be issued. Permits will be valid for Cascade, Hill, Liberty, Pondera, Teton, and Toole Counties.

Area, Unit and Zone Descriptions

Ducks (Including Mergansers) and Coots

Atlantic Flyway

Connecticut

North Zone: That portion of the State north of I-95.

South Zone: That portion of the State south of I-95.

Maine

North Zone: Game Management Zones 1 through 5.

South Zone: Game Management Zones 6 through 8.

Massachusetts

Western Zone: That portion of the State west of a line extending south from the Vermont border on I-91 to MA 9, west on MA 9 to MA 10, south on MA 10 to U.S. 202, south on U.S. 202 to the Connecticut border.

Central Zone: That portion of the State east of the Berkshire Zone and west of a line extending south from the New Hampshire border on I-95 to U.S. 1, south on U.S. 1 to I-93, south on I-93 to MA 3, south on MA 3 to U.S. 6, west on U.S. 6 to MA 28, west on MA 28 to I-195, west to the Rhode Island border; except the waters, and the lands 150 yards inland from the high-water mark, of the Assonet River upstream to the MA 24 bridge, and the Taunton River upstream to the Center St.-Elm St. bridge shall be in the Coastal Zone.

Coastal Zone: That portion of Massachusetts east and south of the Central Zone.

New Hampshire

Coastal Zone: That portion of the State east of a line extending west from Maine border in Rollinsford on NH 4 to the city of Dover, south to NH 108, south along NH 108 through Madbury, Durham, and Newmarket to NH 85 in Newfields, south to NH 101 in Exeter, east to NH 51 (Exeter-Hampton Expressway), east to I-95 (New Hampshire Turnpike) in Hampton, and south along I-95 to the Massachusetts border.

Inland Zone: That portion of the State north and west of the above boundary.

New Jersey

Coastal Zone: That portion of the State seaward of a line beginning at the New York border in Raritan Bay and extending west along the New York border to NJ 440 at Perth Amboy; west on NJ 440 to the Garden State Parkway; south on the Garden State Parkway to the shoreline at Cape May and continuing to the Delaware border in Delaware Bay.

North Zone: That portion of the State west of the Coastal Zone and north of a line extending west from the Garden State Parkway on NJ 70 to the New Jersey Turnpike, north on the turnpike to U.S. 206, north on U.S. 206 to U.S. 1 at Trenton, west on U.S. 1 to the Pennsylvania border in the Delaware River.

South Zone: That portion of the State not within the North Zone or the Coastal Zone.

New York

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Long Island Zone: That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I-95, and their tidal waters.

Western Zone: That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I-81, and south along I-81 to the Pennsylvania border.

Northeastern Zone: That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I-81, south along I-81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I-87, north along I-87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone: The remaining portion of New York.

Pennsylvania

Lake Erie Zone: The Lake Erie waters of Pennsylvania and a shoreline margin along Lake Erie from New York on the east to Ohio on the west extending 150

yards inland, but including all of Presque Isle Peninsula.

Northwest Zone: The area bounded on the north by the Lake Erie Zone and including all of Erie and Crawford Counties and those portions of Mercer and Venango Counties north of I-80.

North Zone: That portion of the State east of the Northwest Zone and north of a line extending east on I-80 to U.S. 220, Route 220 to I-180, I-180 to I-80, and I-80 to the Delaware River.

South Zone: The remaining portion of Pennsylvania.

Vermont

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area north and west of the line extending from the New York border along U.S. 4 to VT 22A at Fair Haven; VT 22A to U.S. 7 at Vergennes; U.S. 7 to the Canadian border.

Interior Zone: The remaining portion of Vermont.

West Virginia

Zone 1 : That portion outside the boundaries in Zone 2.

Zone 2 (Allegheny Mountain Upland): That area bounded by a line extending south along U.S. 220 through Keyser to U.S. 50; U.S. 50 to WV 93; WV 93 south to WV 42; WV 42 south to Petersburg; WV 28 south to Minnehaha Springs; WV 39 west to U.S. 219; U.S. 219 south to I-64; I-64 west to U.S. 60; U.S. 60 west to U.S. 19; U.S. 19 north to I-79, I-79 north to U.S. 48; U.S. 48 east to the Maryland border; and along the border to the point of beginning.

Mississippi Flyway

Alabama

South Zone: Mobile and Baldwin Counties.

North Zone: The remainder of Alabama.

Illinois

North Zone: That portion of the State north of a line extending east from the Iowa border along Illinois Highway 92 to Interstate Highway 280, east along I-280 to I-80, then east along I-80 to the Indiana border.

Central Zone: That portion of the State between the North and South Zone boundaries.

South Zone: That portion of the State south of a line extending east from the Missouri border along the Modoc Ferry route to Randolph County Highway 12, north along County 12 to Illinois Highway 3, north along Illinois 3 to Illinois 159, north along Illinois 159 to Illinois 161, east along Illinois 161 to Illinois 4, north along Illinois 4 to Interstate Highway 70, then east along I-70 to the Indiana border.

Indiana

North Zone: That portion of the State north of a line extending east from the Illinois border along State Road 18 to U.S. Highway 31, north along U.S. 31 to U.S. 24, east along U.S. 24 to Huntington, then southeast along U.S. 224 to the Ohio border.

Ohio River Zone: That portion of the State south of a line extending east from the Illinois border along Interstate Highway 64 to New Albany, east along State Road 62 to State 56, east along State 56 to Vevay, east and north on State 156 along the Ohio River to North Landing, north along State 56 to U.S. Highway 50, then northeast along U.S. 50 to the Ohio border.

South Zone: That portion of the State between the North and Ohio River Zone boundaries.

Iowa

North Zone: That portion of the State north of a line extending east from the Nebraska border along State Highway 175 to State 37, southeast along State 37 to U.S. Highway 59, south along U.S. 59 to Interstate Highway 80, then east along I-80 to the Illinois border.

South Zone: The remainder of Iowa.

Kentucky

West Zone: That portion of the State west of a line extending north from the Tennessee border along Interstate Highway 65 to Bowling Green, northwest along the Green River Parkway to Owensboro, southwest along U.S. Bypass 60 to U.S. Highway 231, then north along U.S. 231 to the Indiana border.

East Zone: The remainder of Kentucky.

Louisiana

West Zone: That portion of the State west of a line extending south from the Arkansas border along Louisiana Highway 3 to Bossier City, east along Interstate Highway 20 to Minden, south along Louisiana 7 to Ringgold, east along Louisiana 4 to Jonesboro, south along U.S. Highway 167 to Lafayette, southeast along U.S. 90 to Houma, then south along the Houma Navigation Channel to the Gulf of Mexico through Cat Island Pass.

East Zone: The remainder of Louisiana.

Catahoula Lake Area: All of Catahoula Lake, including those portions known locally as Round Prairie, Catfish Prairie, and Frazier's Arm. See State regulations for additional information.

Michigan

North Zone: The Upper Peninsula.

South Zone: That portion of the State south of a line beginning at the Wisconsin border in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and east and south along the south shore of, Stony Creek to Webster Road, east and south on Webster Road to Stony Lake Road, east on Stony Lake and Garfield Roads to Michigan Highway 20, east on Michigan 20 to U.S. Highway 10B.R. in the city of Midland, east on U.S. 10B.R. to U.S. 10, east on U.S. 10 and Michigan 25 to the Saginaw River, downstream along the thread of the Saginaw River to Saginaw Bay, then on a northeasterly line, passing one-half mile north of the Corps of Engineers confined disposal island offshore of the Carn Power Plant, to a point one mile north of the Charity islands, then continuing northeasterly to the Ontario border in Lake Huron.

Middle Zone: The remainder of Michigan.

Missouri

North Zone: That portion of Missouri north of a line running west from the Illinois border along Interstate Highway 70 to U.S. Highway 54, south along U.S. 54 to U.S. 50, then west along U.S. 50 to the Kansas border.

South Zone: That portion of Missouri south of a line running west from the Illinois border along Missouri Highway 34 to Interstate Highway 55; south along I-55 to U.S. Highway 62, west along U.S. 62 to Missouri 53, north along Missouri 53 to Missouri 51, north along Missouri 51 to U.S. 60, west along U.S. 60 to Missouri 21, north along Missouri 21 to Missouri 72, west along Missouri 72 to Missouri 32, west along Missouri 32 to U.S. 65, north along U.S. 65 to U.S. 54, west along U.S. 54 to Missouri 32, south along Missouri 32 to Missouri 97, south along Missouri 97 to Dade County NN, west along Dade County NN to Missouri 37, west along Missouri 37 to Jasper County N, west along Jasper County N to Jasper County M, west along Jasper County M to the Kansas border.

Middle Zone: The remainder of Missouri.

Ohio

North Zone: The Counties of Darke, Miami, Clark, Champaign, Union, Delaware, Licking (excluding the Buckeye Lake Area), Muskingum, Guernsey, Harrison and Jefferson and all counties north thereof.

Pymatuning Area: Pymatuning Reservoir and that part of Ohio bounded on the north by County Road 306 (known as Woodward Road), on the west by Pymatuning Lake Road, and on the south by U.S. Highway 322.

Ohio River Zone: The Counties of Hamilton, Clermont, Brown, Adams, Scioto, Lawrence, Gallia and Meigs.

South Zone: That portion of the State between the North and Ohio River Zone boundaries, including the Buckeye Lake Area in Licking County bounded on the

west by State Highway 37, on the north by U.S. Highway 40, and on the east by State 13.

Tennessee

Reelfoot Zone: All or portions of Lake and Obion Counties.

State Zone: The remainder of Tennessee.

Wisconsin

North Zone: That portion of the State north of a line extending northerly from the Minnesota border along the center line of the Chippewa River to State Highway 35, east along State 35 to State 25, north along State 25 to U.S. Highway 10, east along U.S. 10 to its junction with the Manitowoc Harbor in the city of Manitowoc, then easterly to the eastern State boundary in Lake Michigan.

South Zone: The remainder of Wisconsin.

Central Flyway

Kansas

High Plains: That area west of U.S. 283.

Low Plains: That area east of U.S. 283.

Montana (Central Flyway Portion)

Zone 1: The Counties of Blaine, Carbon, Daniels, Fergus, Garfield, Golden Valley, Judith Basin, McCone, Musselshell, Petroleum, Phillips, Richland, Roosevelt, Sheridan, Stillwater, Sweetgrass, Valley, Wheatland, and Yellowstone.

Zone 2: The Counties of Big Horn, Carter, Custer, Dawson, Fallon, Powder River, Prairie, Rosebud, Treasure, and Wibaux.

Nebraska

High Plains: West of Highways U.S. 183 and U.S. 20 from the northern State line to Ainsworth, NE 7 and NE 91 to Dunning, NE 2 to Merna, NE 92 to Arnold, NE 40 and NE 47 through Gothenburg to NE 23, NE 23 to Elwood, and U.S. 283 to the southern State line.

Low Plains: East of the High Plains boundary.

Zone 1: Those portions of Burt, Dakota, and Thurston Counties north and east of a line starting on NE 51 on the Iowa border to U.S. 75, north on U.S. 75 to U.S. 20, west on U.S. 20 to NE 12; west on NE 12 to the Boyd County line; to include those portions of Cedar, Dakota, Dixon, and Knox Counties north of NE 12; all of Boyd County; Keya Paha County east of U.S. 183. Where the Niobrara River forms the southern boundary of Keya Paha and Boyd Counties, both banks of the river shall be included in Zone 1.

Zone 2: The area bounded by designated highways and political boundaries starting on NE 2 at the State line near Nebraska City; west to U.S. 75; north to U.S. 34; west to NE 63; north and west to U.S. 77; north to NE 92; west to U.S. 81; south to NE 66; west to NE 14; south to U.S. 34; west to NE 2; south to I-80; west to U.S. 34; west to U.S. 136; east on U.S. 136 to NE 10; south to the State line; west to U.S. 283; north to NE 23; west to NE 47; north to U.S. 30; east to NE 14; north to NE 52; northwesterly to NE 91; west to U.S. 281, north to NE 91 in Wheeler County; west to U.S. 183; north to northerly boundary of Loup County; east along the north boundaries of Loup, Garfield, and Wheeler Counties; south along the east Wheeler County line to NE 70; east on NE 70 from Wheeler County to NE 14; south to NE 39; southeast to NE 22; east to U.S. 81; southeast to U.S. 30; east to the State line; and south and west along the State line to the point of beginning.

Zone 3: The area, excluding Zone 1, north of Zone 2.

Zone 4: The area south of Zone 2.

New Mexico (Central Flyway Portion)

Zone 1: The Central-Flyway portion of New Mexico north of I-40 and U.S. 54.

Zone 2: The remainder of the Central-Flyway portion of New Mexico.

North Dakota

High Plains: That portion of North Dakota west of a line extending north from the South Dakota border on U.S. 83 and I-94 to ND 41, north to ND 53, west to U.S. 83, north to ND 23, west to ND 8, north to U.S. 2, west to U.S. 85, north to the Canadian border.

Low Plains: The remainder of North Dakota.

Oklahoma

High Plains: Beaver, Cimarron, and Texas Counties.

Low Plains:

Zone 1: That portion of northwestern Oklahoma, except the Panhandle, bounded by the following highways: starting at the Texas border, OK 33 to OK 47, OK 47 to U.S. 183, U.S. 183 to I-40, I-40 to U.S. 177, U.S. 177 to OK 33, OK 33 to I-35, I-35 to U.S. 60, U.S. 60 to U.S. 64, U.S. 64 to OK 132, and OK 132 to the Kansas border.

Zone 2: The remainder of the Low Plains portion of Oklahoma.

South Dakota

High Plains: West of highways and political boundaries starting at the State line north of Herreid; U.S. 83 and U.S. 14 to Blunt, Blunt-Canning Road to SD 34, a line across the Missouri River to the northwestern corner of the Lower Brule Indian Reservation, the Reservation Boundary and Lyman County Road through Presho to I-90, and U.S. 183 to the southern State line.

Low Plains:

North Zone: That portion of northeastern South Dakota bounded by the following highways: starting at the North Dakota border, U.S. 83 south to U.S. 212, U.S. 212 east to I-29, I-29 north to SD 15, SD 15 east to Hartford Beach, due east of Hartford Beach to the Minnesota border.

South Zone: Charles Mix County south of SD 44 to the Douglas County line, south on SD 50 to Geddes, East on Geddes Highway to U.S. 281, south on U.S. 281 and U.S. 18 to SD 50, south and east on SD 50 to the Bon Homme County line, the Counties of Bon Homme, Yankton, and Clay south of SD 50, and Union County south and west of SD 50 and I-29.

Middle Zone: The remainder of the Low Plains portion of South Dakota.

Texas

High Plains: West of highways U.S. 183 from the northern State line to Vernon, U.S. 283 to Albany, TX 6 and TX 351 to Abilene, U.S. 277 to Del Rio, and the Del Rio International Toll Bridge access road.

Low Plains: The remainder of Texas.

Pacific Flyway

Arizona—Game Management Units (GMU) as follows:

South Zone: Those portions of GMUs 6 and 8 in Yavapai County, and GMUs 11, 12B, 13B, and 14-45.

North Zone: GMUs 1-5, those portions of GMUs 6 and 8 within Coconino County, and GMUs 7, 9, 10, 12A, and 13A.

California

Northeastern Zone: That portion of the State east and north of a line beginning at the Oregon border; south and west along the Klamath River to the mouth of Shovel Creek; south along Shovel Creek to Forest Service Road 46N10; south and east along FS 46N10 to FS 45N22; west and south along FS 45N22 to U.S. 97 at Grass Lake Summit; south and west along U.S. 97 to I-5 at the town of Weed; south along I-5 to CA 89; east and south along CA 89 to the junction with CA 49; east and north on CA 49 to CA 70; east on CA 70 to U.S. 395; south and east on U.S. 395 to the Nevada border.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as "Aqueduct Road" in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the "Desert Center to Rice Road" to the town of Desert Center; east 31 miles on I-10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the

Ogilby and Tumco Mine Road; south on this road to U.S. 80; east seven miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I-15; east on I-15 to CA 127; north on CA 127 to the Nevada border.

Southern San Joaquin Valley Temporary Zone: All of Kings and Tulare Counties and that portion of Kern County north of the Southern Zone.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and Colorado River Zones, and the Southern San Joaquin Valley Temporary Zone.

Idaho

Zone 1 (Ft. Hall-American Falls Zone): Includes all lands and waters within the Fort Hall Indian Reservation, including private inholdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir drainage; and Power County east of ID 37 and ID 39.

Zone 2: Includes the following counties or portions of counties: Adams; Bear Lake; Benewah; Bingham within the Blackfoot Reservoir drainage; those portions of Blaine west of ID 75, south and east of U.S. 93, and between ID 75 and U.S. 93 north of U.S. 20 outside the Silver Creek drainage; Bonner; Bonneville; Boundary; Butte; Camas; Caribou except the Fort Hall Indian Reservation; Cassia within the Minidoka National Wildlife Refuge; Clark; Clearwater; Custer; Elmore within the Camas Creek drainage; Franklin; Fremont; Idaho; Jefferson; Kootenai; Latah; Lemhi; Lewis; Madison; Nez Perce; Oneida; Power within the Minidoka National Wildlife Refuge; Shoshone; Teton; and Valley Counties.

Zone 3: Ada includes the Counties of; Blaine between ID 75 and U.S. 93 south of U.S. 20 and that additional area between ID 75 and U.S. 93 north of U.S. 20 within the Silver Creek drainage; Boise; Canyon; Cassia except that portion within the Minidoka National Wildlife Refuge; Elmore except the Camas Creek drainage; Gem; Gooding; Jerome; Lincoln; Minidoka; Owyhee; Payette; Power west of ID 37 and ID 39 except that portion within the Minidoka National Wildlife Refuge; Twin Falls; and Washington Counties.

Nevada

Clark County Zone: All of Clark County.

Remainder-of-the-State Zone: The remainder of Nevada.

Oregon

Zone 1: Statewide, except Deschutes, Klamath, and Lake Counties.

Columbia Basin Mallard Management Unit: Morrow and Umatilla Counties.

Zone 2: Deschutes, Klamath, and Lake Counties.

Utah

Zone 1: All of Box Elder, Cache, Davis, Morgan, Rich, Salt Lake, Summit, Utah, Wasatch, and Weber Counties and that part of Toole County north of I-80.

Zone 2: The remainder of Utah.

Washington

East Zone: All areas east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Columbia Basin Mallard Management Unit: Same as East Zone.

West Zone: All areas to the west of the East Zone.

Geese

Atlantic Flyway

Connecticut

Same zones as for ducks.

Georgia

Special Area for Canada Geese: The Counties of Baldwin, Hancock, Harris, Jones, McDuffie, Meriwether, Monroe, Richmond, Upson, Warren, and all Counties north thereof; and Decatur and Seminole Counties and all of Lake Seminole within the State of Georgia.

Massachusetts

Same zones as for ducks.

New Hampshire

Same zones as for ducks.

New Jersey

Same zones as for ducks.

New York

Same zones as for ducks, but in addition:

St. Lawrence Early-Season Goose Area: All or portions of St. Lawrence County; see State hunting regulations for area descriptions.

Erie Early-Season Goose Area: All of Erie, Cattaraugus, and Chautauqua Counties.

North Carolina

Canada Geese

East Zone: That portion of North Carolina east of I-95.

West Zone: That portion of North Carolina west of I-95.

Early-season Canada Goose Area—That portion of the State west of I-95; see State hunting regulations for area descriptions.

Pennsylvania

Crawford County: All of Crawford County.

Erie, Mercer, and Butler Counties: All of Erie, Mercer, and Butler Counties.

North Zone: That portion of the State north of a line extending east from the Ohio border along I-80 to U.S. 220, U.S. 220 to I-180, I-180 to I-80, and I-80 to the Delaware River.

South Zone: The remaining portion of Pennsylvania.

Northwestern Early-Season Goose Area—Butler, Crawford, Erie, and Mercer Counties.

Southeastern Early-Season Goose Area—Bucks, Lehigh, and Montgomery Counties.

South Carolina

Canada Goose Area: The Central Piedmont, Western Piedmont, and Mountain Hunt Units. These designated areas include: Abbeville, Anderson, Cherokee, Chester, Edgefield, Fairfield, Greenville, Greenwood, Lancaster, Laurens, McCormick, Newberry, Oconee, Pickens, Saluda, Spartanburg, Union, and York Counties.

Virginia

Back Bay Area:

Defined for Canada geese as those portions of the cities of Virginia Beach and Chesapeake east of U.S. 17 and I-64.

Defined for white geese as the waters of Back Bay and its tributaries and the marshes adjacent thereto, and on the land and marshes between Back Bay and the Atlantic Ocean from Sandbridge to the North Carolina line, and on and along the shore of North Landing River and the marshes adjacent thereto, and on and along the shores of Binson Inlet Lake (formerly known as Lake Tecumseh) and Red Wing Lake and the marshes adjacent thereto.

West Virginia

Same zones as for ducks.

Mississippi Flyway

Alabama

Same zones as for ducks.

Arkansas

East Zone: Arkansas, Ashley, Chicot, Clay, Craighead, Crittenden, Cross, Desha, Drew, Greene, Independence, Jackson, Jefferson, Lawrence, Lee, Lincoln, Lonoke, Mississippi, Monroe, Phillips, Poinsett, Prairie, Pulaski, Randolph, St. Francis, White, and Woodruff Counties.

West Zone: Baxter, Benton, Boone, Carroll, Cleburne, Conway, Crawford, Faulkner, Franklin, Fulton, Izard, Johnson, Madison, Marion, Newton, Pope, Searcy, Sharp, Stone, Van Buren, and Washington Counties, and those portions of Logan, Perry, Sebastian, and Yell Counties lying north of a line

extending east from the Oklahoma border along State Highway 10 to Perry, south on State 9 to State 60, then east on State 60 to the Faulkner County line.

Illinois

Same zones as for ducks but in addition:

Central Zone:

Fulton-Knox Zone: Knox County and, in Fulton County, the Townships of Buckheart, Canton, Cass, Deerfield, Fairview, Farmington, Joshua, Orion, and Putnam, and that portion of Banner Township bounded on the north by Illinois Highway 9 and on the east by U.S. Highway 24.

South Zone:

Southern Illinois Quota Zone: Alexander, Jackson, Union, and Williamson Counties.

Rend Lake Quota Zone: Franklin and Jefferson Counties.

Northeastern Zone: Cook, DuPage, Grundy, Kane, Kankakee, Kendall, Lake, McHenry, and Will Counties.

Indiana

Same zones as for ducks, but in addition:

Early-season Canada Goose Area—Adams, Allen, DeKalb, Elkhart, Huntington, Kosciusko, LaGrange, Noble, Steuben, Wabash, Wells, and Whitley Counties.

Iowa

Southwest Zone: That portion of the State lying south and west of a line extending north from the Missouri border along U.S. Highway 71 to Interstate Highway 80, west on I-80 to U.S. 59, north on U.S. 59 to State Highway 37, then northwest on State 37 to State 175, then west on State 175 to the Nebraska border.

Kentucky

Western Zone: That portion of the state west of a line beginning at the Tennessee border at Fulton and extending north along the Purchase Parkway to Interstate Highway 24, east along I-24 to U.S. Highway 641, north along U.S. 641 to U.S. 60, northeast along U.S. 60 to the Henderson County line, then south, east, and northerly along the Henderson County line to the Indiana border.

Ballard Reporting Area: That area encompassed by a line beginning at the northwest city limits of Wickliffe in Ballard County and extending westward to the middle of the Mississippi River, north along the Mississippi River and along the low-water mark of the Ohio River on the Illinois shore to the Ballard-McCracken County line, south along the county line to Kentucky Highway 358, south along Kentucky 358 to U.S. Highway 60 at LaCenter; then southwest along U.S. 60 to the northeast city limits of Wickliffe.

Henderson-Union Reporting Area: Henderson County and that portion of Union County within the Western Zone.

Louisiana

Southwest Zone: That portion of the State encompassed by a line extending east from the Texas border along Louisiana Highway 12 to Ragley, east along U.S. Highway 190 to Interstate Highway 49 near Opelousas, south along I-49 to U.S. 167 near Lafayette, south along U.S. 167 to Louisiana 82 at Abbeville, south and west along Louisiana 82 to the Intercoastal Waterway at Forked Island, westerly along the Intercoastal Waterway to the Calcasieu Ship Channel, south along the west side of the Calcasieu Ship Channel to Louisiana 82 at Cameron, westerly along Louisiana 82 to the Texas border. All open waters of Lake Arthur and the Mermentau River from the Louisiana 14 bridge southward are closed.

Michigan

Same zones as for ducks but in addition:

South Zone:

Tuscola/Huron Goose Management Unit (GMU): Those portions of Tuscola and Huron Counties bounded on the south by Michigan Highway 138 and Bay City Road, on the east by Colwood and Bayport Roads, on the north by Kilmanagh Road and a line extending directly west off the end of Kilmanagh Road into Saginaw Bay to the west boundary, and on the west by the Tuscola-Bay County line and a line extending directly north off the end of the Tuscola-Bay County line into Saginaw Bay to the north boundary.

Allegan County GMU: That area encompassed by a line beginning at the junction of 136th Avenue and Interstate Highway 196 in Lake Town Township and extending easterly along 136th Avenue to Michigan Highway 40, southerly along Michigan 40 through the city of Allegan to 108th Avenue in Trowbridge Township, westerly along 108th Avenue to 46th Street, northerly 1/2 mile along 46th Street to 109th Avenue, westerly along 109th Avenue to I-196 in Casco Township, then northerly along I-196 to the point of beginning.

Saginaw County GMU: That portion of Saginaw County bounded by Michigan Highway 46 on the north; Michigan 52 on the west; Michigan 57 on the south; and Michigan 13 on the east.

Muskegon Wastewater GMU: That portion of Muskegon County within the boundaries of the Muskegon County wastewater system, east of the Muskegon State Game Area, in sections 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, and 32, T10N R14W, and sections 1, 2, 10, 11, 12, 13, 14, 24, and 25, T10N R15W, as posted.

Southern Michigan GMU: That portion of the State, including the Great Lakes and interconnecting waterways and excluding the Allegan County GMU, south of a line beginning at the Ontario border at the Bluewater Bridge in the city of Port Huron and extending westerly and southerly along Interstate Highway 94 to I-69, westerly along I-69 to Michigan Highway 21, westerly along Michigan 21 to I-96, northerly along I-96 to I-196, westerly along I-196 to Lake Michigan Drive (M-45) in Grand Rapids, westerly along Lake Michigan Drive to the Lake Michigan shore, then directly west from the end of Lake Michigan Drive to the Wisconsin border.

Early Canada Goose Seasons:

Lower Peninsula—All areas except Huron, Saginaw, and Tuscola Counties and the Allegan State Game Area in Allegan County.

Upper Peninsula—That area encompassed by a line beginning at the Michigan/Wisconsin border in Green Bay and extending north through the center of Little Bay De Noc and the center of White Fish River to U.S. Highway 2, east along U.S. 2 to Interstate Highway 75, north along I-75 to State Highway 28, west along State 28 to State 221, north along State 221 to Brimley, then north to the Ontario border.

Minnesota

West Central Zone: That area encompassed by a line beginning at the intersection of State Trunk Highway (STH) 29 and U.S. Highway 212 and extending west along U.S. 212 to U.S. 59, south along U.S. 59 to STH 67, west along STH 67 to U.S. 75, north along U.S 75 to County State Aid Highway (CSAH) 30 in Lac qui Parle County, west along CSAH 30 to County Road 70 in Lac qui Parle County, west along County 70 to the western boundary of the State, north along the western boundary of the State to a point due south of the intersection of STH 7 and CSAH 7 in Big Stone County, and continuing due north to said intersection, then north along CSAH 7 to CSAH 6 in Big Stone County, east along CSAH 6 to CSAH 21 in Big Stone County, south along CSAH 21 to CSAH 10 in Big Stone County, east along CSAH 10 to CSAH 22 in Swift County, east along CSAH 22 to CSAH 5 in Swift County, south along CSAH 5 to U.S. 12, east along U.S. 12 to CSAH 17 in Swift County, south along CSAH 17 to CSAH 9 in Chippewa County, south along CSAH 9 to STH 40, east along STH 40 to STH 29, then south along STH 29 to the point of beginning.

Lac Qui Parle Zone—That area encompassed by a line beginning at the intersection of U.S. Highway 212 and

County State Aid Highway (CSAH) 27 in Lac qui Parle County and extending north along CSAH 27 to CSAH 20 in Lac qui Parle County, west along CSAH 20 to State Trunk Highway (STH) 40, north along STH 40 to STH 119, north along STH 119 to CSAH 34 in Lac qui Parle County, west along CSAH 34 to CSAH 19 in Lac qui Parle County, north and west along CSAH 19 to CSAH 38 in Lac qui Parle County, west along CSAH 38 to U.S. 75, north along U.S. 75 to STH 7, east along STH 7 to CSAH 6 in Swift County, east along CSAH 6 to County Road 65 in Swift County, south along County 65 to County 34 in Chippewa County, south along County 34 to CSAH 12 in Chippewa County, east along CSAH 12 to CSAH 9 in Chippewa County, south along CSAH 9 to STH 7, southeast along STH 7 to Montevideo and along the municipal boundary of Montevideo to U.S. 212; then west along U.S. 212 to the point of beginning.

Southeast Zone: The Counties of Anoka, Carver, Chisago, Dakota, Dodge, Fillmore, Freeborn, Goodhue, Hennepin, Houston, Isanti, Mower, Olmsted, Ramsey, Rice, Scott, Steele, Wabasha, Washington, and Winona.

Special Canada Goose Seasons:

Fergus Falls/Alexandria Zone: That area encompassed by a line beginning at the intersection of State Trunk Highway (STH) 55 and STH 28 and extending east along STH 28 to County State Aid Highway (CSAH) 33 in Pope County, north along CSAH 33 to CSAH 3 in Douglas County, north along CSAH 3 to CSAH 69 in Otter Tail County, north along CSAH 69 to CSAH 46 in Otter Tail County, east along CSAH 46 to the eastern boundary of Otter Tail County, north along the east boundary of Otter Tail County to CSAH 40 in Otter Tail County, west along CSAH 40 to CSAH 75 in Otter Tail County, north along CSAH 75 to STH 210, west along STH 210 to STH 108, north along STH 108 to CSAH 1 in Otter Tail County, west along CSAH 1 to CSAH 14 in Otter Tail County, north along CSAH 14 to CSAH 44 in Otter Tail County, west along CSAH 44 to CSAH 35 in Otter Tail County, north along CSAH 35 to STH 108, west along STH 108 to CSAH 19 in Wilkin County, south along CSAH 19 to STH 55, then southeast along STH 55 to the point of beginning.

Southwest Border Zone: All of Martin County and that portion of Jackson County south and east of U.S. Highway 60.

Twin Cities Metro Zone: All of Hennepin and Ramsey Counties.

In Anoka County; the municipalities of Andover, Anoka, Blaine, Centerville, Circle Pines, Columbia Heights, Coon Rapids, Fridley, Hilltop, Lexington, Lino Lakes, Ramsey, and Spring Lake Park; that portion of Columbus Township lying south of County State Aid Highway (CSAH) 18; and all of the municipality of Ham Lake except that portion described as follows:

Beginning at the intersection of CSAH 18 and U.S. Highway 65, then east along CSAH 18 to the eastern boundary of Ham Lake, north along the eastern boundary of Ham Lake to the north boundary of Ham Lake, west along the north boundary of Ham Lake to U.S. 65, and south along U.S. 65 to the point of beginning.

In Carver County; the municipalities of Carver, Chanhassen, Chaska, and Victoria; the Townships of Chaska and Laketown; and those portions of the municipalities of Cologne, Mayer, Waconia, and Watertown and the Townships of Benton, Dahlgren, Waconia, and Watertown lying north and east of the following described line:

Beginning on U.S. 212 at the southwest corner of the municipality of Chaska, then west along U.S. 212 to State Trunk Highway (STH) 284, north along STH 284 to CSAH 10, north and west along CSAH 10 to CSAH 30, north and west along CSAH 30 to STH 25, west and north along STH 25 to CSAH 10, north along CSAH 10 to the Carver County Line, and east along the Carver County Line to the Hennepin County Line.

In Dakota County; the municipalities of Apple Valley, Burnsville, Eagan, Farmington, Hastings, Inver Grove Heights, Lakeville, Lilydale, Mendota, Mendota Heights, Rosemont, South St. Paul, Sunfish Lake, and West St. Paul; and the Township of Nininger.

In Scott County; the municipalities of Jordan, Prior Lake, Savage and Shakopee; and the Townships of Credit River, Jackson, Louisville, St. Lawrence, Sand Creek, and Spring Lake.

In Washington County; the municipalities of Afton, Bayport, Birchwood, Cottage Grove, Dellwood, Forest Lake, Hastings, Hugo, Lake Elmo, Lakeland, Lakeland Shores, Landfall, Mahtomedi, Marine, Newport, Oakdale, Oak Park Heights, Pine Springs, St. Croix Beach, St. Mary's Point, St. Paul Park, Stillwater, White Bear Lake, Willernie, and Woodbury; the Townships of Baytown, Denmark, Grant, Gray Cloud Island, May, Stillwater, and West Lakeland; that portion of Forest Lake Township lying south of STH 97 and CSAH 2; and those portions of New Scandia Township lying south of STH 97 and a line due east from the intersection of STH 97 and STH 95 to the eastern border of the State.

Missouri

Same zones as for ducks but in addition:

North Zone:

Swan Lake Zone: That area bounded by U.S. Highway 36 on the north, Missouri Highway 5 on the east, Missouri 240 and U.S. 65 on the south, and U.S. 65 on the west.

Central Zone: Boone County and that portion of Callaway County west of U.S Highway 54.

Middle Zone:

Schell-Osage Zone: That portion of the State encompassed by a line extending east from the Kansas border along U.S. Highway 54 to Missouri Highway 13, north along Missouri 13 to Missouri 7, west along Missouri 7 to U.S. 71, north along U.S. 71 to Missouri 2, then west along Missouri 2 to the Kansas border.

Ohio

Same zones as for ducks but in addition:

North Zone:

Pymatuning Area: Pymatuning Reservoir and that part of Ohio bounded on the north by County Road 306 (known as Woodward Road), on the west by Pymatuning Lake Road, and on the south by U.S. Highway 322.

Early-season Canada Goose Area—Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage, Summit, and Trumbull Counties.

Lake Erie SJBP Zone: Those portions of Erie, Lucas, Ottawa, Sandusky, and Wood counties encompassed by a line beginning in Toledo at the intersection of Summit street and the Michigan border and extending southerly along Summit street to State Route 51, southeasterly along State 51 to Interstate Highway 80/90, easterly along I-80/90 to U.S. Highway 6, northeasterly along U.S. 6 to State 2, easterly along State 2 to the east bank of the Huron River, northerly along the east bank of the Huron River to Lake Erie, and continuing north to the Ontario border.

Northeast SJBP Zone: Those portions of Ashtabula and Trumbull counties encompassed by a line beginning at the intersection of U.S. Highway 6 and the Pennsylvania border and extending southwesterly along U.S. 6 to State Route 534, southerly along State 534 to State 82, then easterly along State 82 to the Pennsylvania border.

Tennessee

Southwest Zone: That portion of the State south of State Highways 20 and 104, and west of U.S. Highways 45 and 45W.

Northwest Zone: Lake, Obion and Weakley Counties and those portions of Gibson and Dyer Counties not included in the Southwest Tennessee Zone.

Kentucky/Barkley Lakes Zone: That portion of the State bounded on the west

by the eastern boundaries of the Northwest and Southwest Zones and on the east by State Highway 13 from the Alabama border to Clarksville and U.S. Highway 79 from Clarksville to the Kentucky border.

Wisconsin

Horicon Zone: That area encompassed by a line beginning at the intersection of State Highway 21 and the Fox River in Winnebago County and extending westerly along State 21 to the west boundary of Winnebago County, southerly along the west boundary of Winnebago County to the north boundary of Green Lake County, westerly along the north boundaries of Green Lake and Marquette Counties to State 22, southerly along State 22 to State 33, westerly along State 33 to U.S. Highway 16, westerly along U.S. 16 to Weyh Road, southerly along Weyh Road to County Highway O, southerly along County O to the west boundary of Section 31, southerly along the west boundary of Section 31 to the Sauk/Columbia County boundary, southerly along the Sauk/Columbia County boundary to State 33, easterly along State 33 to Interstate Highway 90/94, southerly along I-90/94 to State 60, easterly along State 60 to State 83, northerly along State 83 to State 175, northerly along State 175 to State 33, easterly along State 33 to U.S. Highway 45, northerly along U.S. 45 to the east shore of the Fond Du Lac River, northerly along the east shore of the Fond Du Lac River to Lake Winnebago, northerly along the western shoreline of Lake Winnebago to the Fox River, then westerly along the Fox River to State 21.

Collins Zone: That area encompassed by a line beginning at the intersection of Hilltop Road and Collins Marsh Road in Manitowoc County and extending westerly along Hilltop Road to Humpty Dumpty Road, southerly along Humpty Dumpty Road to Poplar Grove Road, easterly and southerly along Poplar Grove Road to County Highway JJ, southeasterly along County JJ to Collins Road, southerly along Collins Road to the Manitowoc River, southeasterly along the Manitowoc River to Quarry Road, northerly along Quarry Road to Einberger Road, northerly along Einberger Road to Moschel Road, westerly along Moschel Road to Collins Marsh Road, northerly along Collins Marsh Road to Hilltop Road.

Exterior Zone: That portion of the State not included in the Horicon or Collins Zones.

Mississippi River Subzone: That area encompassed by a line beginning at the intersection of the Burlington Northern Railway and the Illinois border in Grant County and extending northerly along the Burlington Northern Railway to the city limit of Prescott in Pierce County, then west along the Prescott city limit to the Minnesota border.

Brown County Subzone: That area encompassed by a line beginning at the intersection of the Fox River with Green Bay in Brown County and extending southerly along the Fox River to State Highway 29, northwesterly along State 29 to the Brown County line, south, east, and north along the Brown County line to Green Bay, due west to the midpoint of the Green Bay Ship Channel, then southwesterly along the Green Bay Ship Channel to the Fox River.

Early-Season Goose Subzone: That area encompassed by a line beginning at Lake Michigan in Port Washington and extending west along State Highway 33 to State 175, south along State 175 to State 83, south along State 83 to State 36, southwest along State 36 to State 120, south along State 120 to U.S. Highway 12, then southeast along U.S. 12 to the Illinois border.

Central Flyway

Colorado (Central Flyway Portion)

Northern Front Range Area: All lands in Adams, Boulder, Clear Creek, Denver, Gilpin, Jefferson, Larimer, and Weld Counties west of I-25 from the Wyoming border south to I-70; west on I-70 to the Continental Divide; north along the Continental Divide to the Jackson-Larimer County Line to the Wyoming border.

South Park Area: Chaffee, Custer, Fremont, Lake, Park, and Teller Counties.

San Luis Valley Area: Alamosa, Conejos, Costilla, and Rio Grande Counties and the portion of Saguache County east of the Continental Divide.

North Park Area: Jackson County.

Arkansas Valley Area: Baca, Bent, Crowley, Kiowa, Otero, and Prowers Counties.

Remainder: Remainder of the Central-Flyway portion of Colorado.

Kansas

Light Geese

Unit 1: That area east of U.S. 75 and north of I-70.

Unit 2: The remainder of Kansas.

Dark Geese

Marais des Cygne Valley Unit: The area is bounded by the Missouri border to KS 68, KS 68 to U.S-169, U.S. 169 to KS 7, KS 7 to KS 31, KS 31 to U.S. 69, U.S. 69 to KS 239, KS 239 to the Missouri border.

South Flint Hills Unit: The area is bounded by Highways U.S. 50 to KS 57, KS 57 to U.S. 75, U.S. 75 to KS 39, KS 39 to KS 96, KS 96 to U.S. 77, U.S. 77 to U.S. 50.

Central Flint Hills Unit: That area southwest of Topeka bounded by Highways U.S. 75 to I-35, I-35 to U.S. 50, U.S. 50 to U.S. 77, U.S. 77 to I-70, I-70 to U.S. 75.

Southeast Unit: That area of southeast Kansas bounded by the Missouri border to U.S. 160, U.S. 160 to U.S. 69, U.S. 69 to KS 39, KS 39 to U.S. 169, U.S. 169 to the Oklahoma border, and the Oklahoma border to the Missouri border.

Montana (Central Flyway Portion)

Sheridan County: Includes all of Sheridan County.

Remainder: Includes the remainder of the Central-Flyway portion of Montana.

Nebraska

North Unit: Keya Paha County east of U.S. 183 and all of Boyd County, including the boundary waters of the Niobrara River, all of Knox County and that portion of Cedar County west of U.S. 81.

East Unit: The area east of a line beginning at U.S. 183 at the northern State line; south to NE 2; east to U.S. 281; south to the southern State line, excluding the North Unit.

West Unit: All of Nebraska west of the East Unit.

New Mexico (Central Flyway Portion)

Light Geese

Middle Rio Grande Valley Unit: The Central-Flyway portions of Socorro and Valencia Counties.

Remainder: The remainder of the Central-Flyway portion of New Mexico.

North Dakota

Dark Geese

Missouri River Zone: That area encompassed by a line extending from the South Dakota border north on U.S. 83 and I-94 to ND 41, north to ND 53, west to U.S. 83, north to ND 23, west to ND 37, south to ND 1804, south approximately 9 miles to Elbowoods Bay on Lake Sakakawea, south and west across the lake to ND 8, south to ND 200, east to ND 31, south to ND 25, south to I-94, east to ND 6, south to the South Dakota border, and east to the point of origin.

Statewide: All of North Dakota.

South Dakota

Dark Geese

Missouri River Unit: The Counties of Bon Homme, Brule, Buffalo, Campbell, Charles Mix, Corson (east of SD 65), Dewey, Gregory, Haakon (north of Kirley Road and east of Plum Creek), Hughes, Hyde, Lyman (north and east of I-90 and U.S. 183), Potter, Stanley, Sully, Tripp (east of U.S. 183), Walworth, and Yankton (west of U.S. 81).

Remainder: The remainder of South Dakota.

Texas

West Unit: West of U.S. 81.

East Unit: East of U.S. 81.

Wyoming (Central Flyway Portion)

Area 1: Albany, Campbell, Carbon, Crook, Johnson, Laramie, Niobrara, Sheridan, and Weston Counties east of the Continental Divide.

Area 2: The Counties of Converse and Natrona.

Area 3: The Counties of Bighorn, Fremont, Hot Springs, Park, and Washakie.

Area 4: Goshen County.

Area 5: Platte County.

Pacific Flyway

Arizona

GMU 22 and 23: Game Management Units 22 and 23.

Remainder of State: The remainder of Arizona.

California

Northeastern Zone: That portion of the State east and north of a line beginning at the Oregon border; south and west along the Klamath River to the mouth of Shovel Creek; south along Shovel Creek to Forest Service Road 46N10; south and east along FS 46N10 to FS 45N22; west and south along FS 45N22 to U.S. 97 at Grass Lake Summit; south and west along U.S. 97 to I-5 at the town of Weed; south along I-5 to CA 89; east and south along CA 89 to the junction with CA 49; east and north on CA 49 to CA 70; east on CA 70 to U.S. 395; south and east on U.S. 395 to the Nevada border.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as "Aqueduct Road" in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the "Desert Center to Rice Road" to the town of Desert Center; east 31 miles on I-10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east seven miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I-15; east on I-15 to CA 127; north on CA 127 to the Nevada border.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and the Colorado River Zones.

Del Norte and Humboldt Area: The Counties of Del Norte and Humboldt.

Sacramento Valley Area: That area bounded by a line beginning at Willows in Glenn County proceeding south on I-5 to Hahn Road north of Arbuckle in Colusa County; easterly on Hahn Road and the Grimes Arbuckle Road to Grimes on the Sacramento River; southerly on the Sacramento River to the Tisdale Bypass to O'Banion Road; easterly on O'Banion Road to CA 99; northerly on CA 99 to the Gridley-Colusa Highway in Gridley in Butte County; westerly on the Gridley-Colusa Highway to the River Road; northerly on the River Road to the Princeton Ferry; westerly across the Sacramento River to CA 45; northerly on CA 45 to CA 162; northerly on CA 45-162 to Glenn; westerly on CA 162 to the point of beginning in Willows.

Western Canada Goose Hunt Area: That portion of the above described Sacramento Valley Area lying east of a line formed by Butte Creek from the Gridley-Colusa Highway south to the Cherokee Canal; easterly along the Cherokee Canal and North Butte Road to West Butte Road; southerly on West Butte Road to Pass Road; easterly on Pass Road to West Butte Road; southerly on West Butte Road to CA 20; and westerly along CA 20 to the Sacramento River.

San Joaquin Valley Area: That area bounded by a line beginning at Modesto in Stanislaus County proceeding west on CA 132 to I-5; southerly on I-5 to CA 152 in Merced County; easterly on CA 152 to CA 165; northerly on CA 165 to CA 99 at Merced; northerly and westerly on CA 99 to the point of beginning.

Colorado (Pacific Flyway Portion)

Browns Park Area: The Browns Park portion of Moffatt County.

Delta/Montrose Area: All of Delta and Montrose Counties.

Gunnison/Saguache Area: Gunnison County and that portion of Saguache County west of the Continental Divide.

Dolores/Montezuma Area: All of Dolores and Montezuma Counties.

State Area: The remainder of the Pacific-Flyway Portion of Colorado.

Idaho

Zone 1: Benewah, Bonner, Boundary, Kootenai, and Shoshone Counties.

Zone 2: The Counties of Ada; Adams; Boise; Canyon; Clearwater; those portions of Elmore north and east of I-84, and south and west of I-84, west of ID 51, except the Camas Creek drainage; Gem; Idaho, Latah; Lewis; Nez Perce; Owyhee west of ID 51; Payette; Valley; and Washington.

Zone 3: The Counties of Blaine; Camas; Cassia except the Minidoka National Wildlife Refuge; those portions of Elmore south of I-84 east of ID 51, and within the Camas Creek drainage; Gooding; Jerome; Lincoln; Minidoka; Owyhee east of ID 51, and Twin Falls.

Zone 4: The Counties of Bear Lake; Bingham within the Blackfoot Reservoir drainage; Bonneville, Butte; Caribou except the Fort Hall Indian Reservation; Cassia within the Minidoka National Wildlife Refuge; Clark; Custer; Franklin; Fremont; Jefferson; Lemhi; Madison; Oneida; Power west of ID 37 and ID 39; and Teton.

Zone 5 (Ft. Hall-American Falls Zone): All lands and waters within the Fort Hall Indian Reservation, including private inholdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir drainage; and Power County east of ID 37 and ID 39.

In addition, goose frameworks are set by the following geographical areas:

Northern Unit: Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties.

Southwestern Unit: That area west of the line formed by U.S. 93 north from the Nevada border to Shoshone, northerly on ID 75 (formerly U.S. 93) to Challis, northerly on U.S. 93 to the Montana border (except the Northern Unit and except Custer and Lemhi Counties).

Southeastern Unit: That area east of the line formed by U.S. 93 north from the Nevada border to Shoshone, northerly on ID 75 (formerly U.S. 93) to Challis, northerly on U.S. 93 to the Montana border, including all of Custer and Lemhi Counties.

Montana (Pacific Flyway Portion)

East of the Divide Zone: The Pacific-Flyway portion of the State located east of the Continental Divide.

West of the Divide Zone: The remainder of the Pacific-Flyway portion of Montana.

Nevada

Clark County Zone: Clark County.

Remainder-of-the-State Zone: The remainder of Nevada.

New Mexico (Pacific Flyway Portion)

North Zone: The Pacific-Flyway portion of New Mexico located north of I-40.

South Zone: The Pacific-Flyway portion of New Mexico located south of I-40.

Oregon

Western Zone: All counties west of the summit of the Cascades, excluding Klamath and Hood River Counties.

Special Canada Goose Management Area: Those portions of Coos, Curry, Douglas, and Lane Counties west of U.S. 101; and that portion of western Oregon west and north of a line starting at the Columbia River at Portland, south on I-5 to OR 22 at Salem, east on OR 22 to the Stayton Cutoff, south on the Stayton Cutoff to Stayton and straight south to the Santiam River, west (downstream) along the north shore of the Santiam River to I-5, south on I-5 to OR 126 at Eugene, west on OR 126 to OR 36, north on OR 36 to Forest Road 5070 at Brickerville, west and south on Forest Road 5070 to OR 126, west on OR 126 to the Pacific Coast.

Northwest Oregon Special Permit Goose Area: Includes Sauvie Island Wildlife Area, only in designated areas but excluding North Unit and Columbia River Beaches, private lands of Sauvie Island, and including Scappoose Flat and Deer Island, lower Columbia River Area, Ankeny National Wildlife Refuge, private lands adjacent to William L. Finley National Wildlife Refuge, and private lands adjacent to Baskett Slough National Wildlife Refuge.

Early-season Canada Goose Area—Those portions of Multnomah, Columbia, and Clatsop Counties (excluding Sauvie Island Wildlife Area) within the following boundary: Beginning at Portland, Oregon, at the south end of the I-5 bridge; south on I-5 to U.S. 30; west on U.S. 30 to the town of Svensen; south from Svensen to Youngs River Falls; due west from Youngs River Falls to the Pacific Ocean coastline; north along the coastline to a point where Clatsop Spit and the South Jetty meet; due north to the Washington border; east and south along the Washington border to the I-5 bridge; south on the I-5 bridge to the point of beginning.

Eastern Zone: All counties east of the summit of the Cascades, including all of Klamath and Hood River Counties.

Columbia Basin Goose Area: Gilliam, Morrow, Sherman, Umatilla, Union, Wallowa, and Wasco Counties.

Malheur County Zone: All of Malheur County.

Lake, Klamath, and Harney Counties Zone: All of Klamath, Lake, and Harney Counties.

Utah

Washington County Zone: All of Washington County.

Remainder-of-the-State Zone: The remainder of Utah.

Early-Season Canada Goose Area: Cache County.

Washington

East Zone: All areas east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Columbia Basin Goose Area—Adams, Benton, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Counties and east of Satus Pass (U.S. 97) in Klickitat County.

West Zone: All areas west of the East Zone.

Lower Columbia River Area—Clark, Cowlitz, Pacific and Wahkiakum Counties.

Skagit Area—Island, Skagit, Snohomish, and Whatcom Counties.

Early-Season Canada Goose Area—That area bounded by a line extending from Vancouver at the I-5 Bridge north on I-5 to Kelso, west on WA 4 from Kelso to WA 401, south and west on WA 401 to the Astoria-Megler Bridge, from the Astoria-Megler Bridge along the Oregon border to the point of beginning.

Wyoming (Pacific Flyway Portion)—See State Regulations.

Bear River Area: That portion of Lincoln County described in State regulations.

Salt River Area: That portion of Lincoln County described in State regulations.

Eden-Farson Area: Those portions of Sweetwater and Sublette Counties described in State regulations.

Swans

Pacific Flyway

Montana (Pacific Flyway Portion)

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Nevada

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[FR Doc. 92-22976 Filed 9-21-92; 8:45 am]

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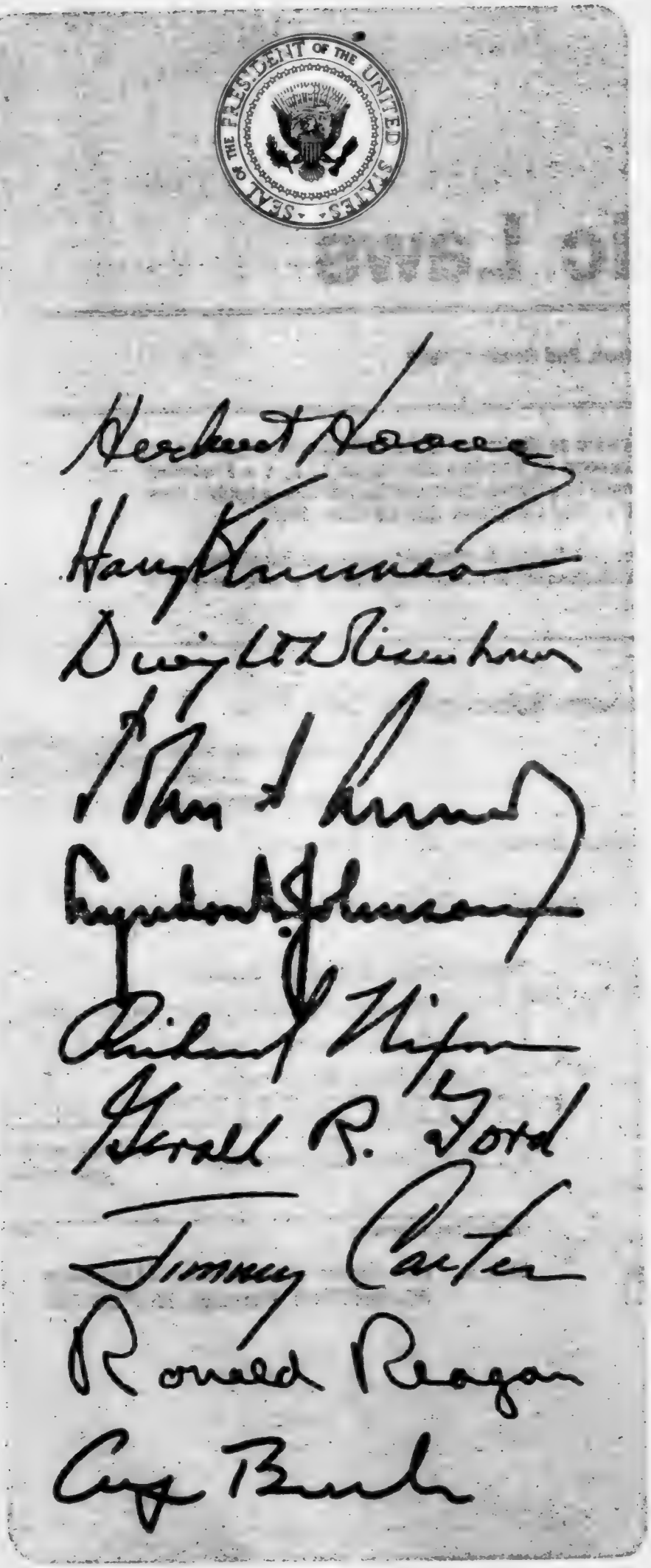

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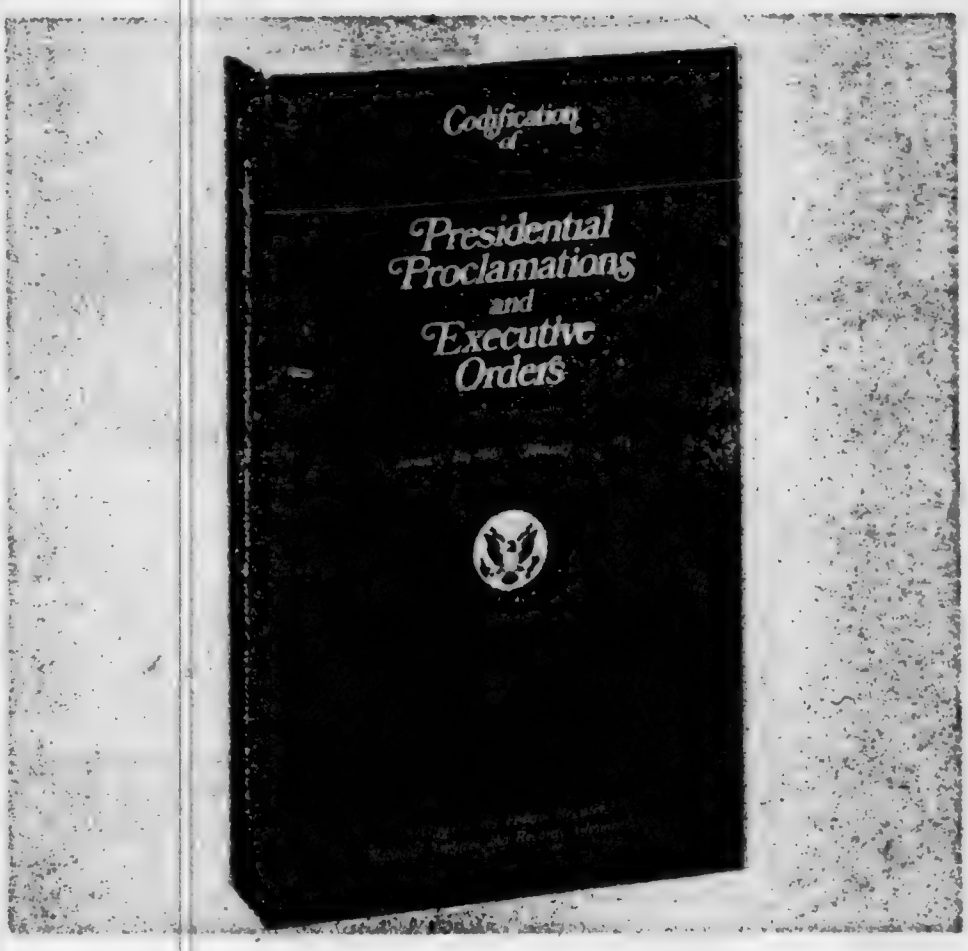

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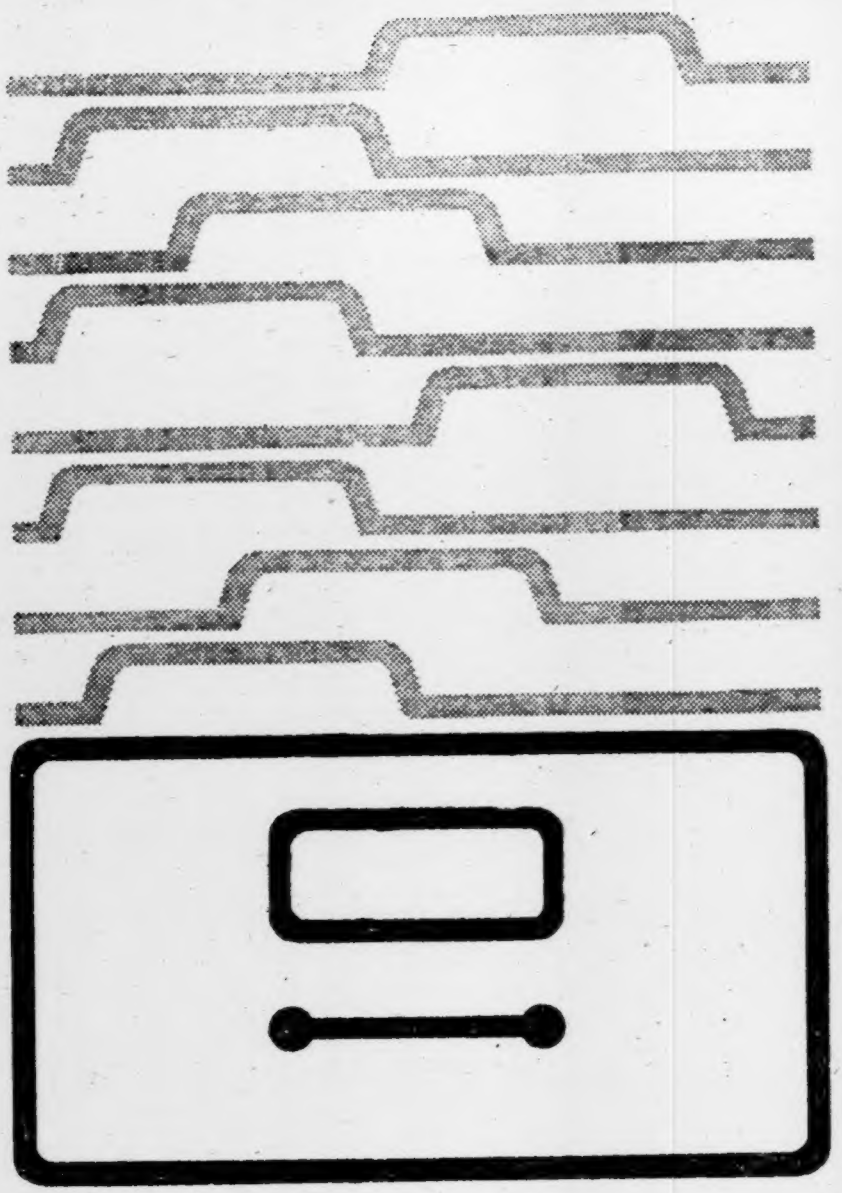

Guide to Record Retention Requirements

in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1992

The GUIDE to record retention is a useful reference tool, compiled from agency regulations, designed to assist anyone with Federal recordkeeping obligations.

The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

The GUIDE is formatted and numbered to parallel the CODE OF FEDERAL REGULATIONS (CFR) for uniformity of citation and easy reference to the source document.

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